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Monday
April 1, 1985

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Coast Guard

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Fisheries
National Oceanic and Atmospheric Administration

Generally Recognized as Safe (GRAS) Food Ingredients
Food and Drug Administration

Government Contracts
Commodity Credit Corporation

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Title 3—

The President

Proclamation 5312 of March 27, 1985

Small Business Week, 1985

By the President of the United States of America

A Proclamation

The history of America is the history of a nation at work—a nation of farmers, manufacturers, and merchants joining together to build a better society. The dedication and commitment of these early citizens provided the foundation for a growing and prosperous America—an America built on individual initiative, a competitive spirit, and an intense pride in the achievements of a new nation.

Today, this enterprising determination to work and to prosper is embodied in more than 14 million small businesses, which provide the technology to keep the economy growing, the manufacturing and marketing skills to keep the nation competitive, and the innovation to guide us into a better future. It is this enterprising genius that has helped small business create most of our new jobs and provide economic opportunities unsurpassed by any nation in the world.

Our sustained economic expansion is encouraging young Americans to form their own businesses. These aspiring entrepreneurs have always been on the leading edge of invention and progress in our society, and their confidence in the future has led to the creation not only of new jobs but of whole new industries. We all benefit from the contributions of small businesses and those who create them.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 5 through May 11, 1985, as Small Business Week and ask that all Americans join with me in saluting our small business men and women by observing that week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-7789
Filed 3-28-85; 11:44 am]
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Rules and Regulations

Federal Register
Vol. 50, No. 62
Monday, April 1, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-310]

Mediterranean Fruit Fly; Removal of Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on November 2, 1984, which amended the Domestic Quarantine Notices by removing "Subpart—Mediterranean Fruit Fly". Subpart—Mediterranean Fruit Fly had quarantined Florida and had imposed restrictions on the interstate movement of regulated articles from a regulated area in Dade County, Florida. Subpart—Mediterranean Fruit Fly was removed from the Domestic Quarantine Notices because it was determined that all infestations of Mediterranean Fruit Fly in Florida had been eradicated and that the Mediterranean Fruit Fly does not exist anywhere else in the United States. The effect of removing Subpart—Mediterranean Fruit Fly is to delete unnecessary restrictions on the interstate movement of previously regulated articles from the previously regulated area in Dade County, Florida.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION: A document published in the **Federal Register** on November 2, 1984, (49 FR 44083-44084) set forth an interim rule amending the Domestic Quarantine Notices (7 CFR Part 301) by removing "Subpart—Mediterranean Fruit Fly" (7 CFR 301.65 *et seq.*).

Subpart— Mediterranean Fruit Fly quarantined the State of Florida and established regulations restricting the interstate movement of regulated articles from a regulated area in Dade County, Florida in order to prevent the artifical spread interstate of Mediterranean Fruit Fly. The document published on November 2, 1984, stated that the quarantine and regulations were being removed from the Domestic Quarantine Notices because trapping and sampling surveys conducted in Dade County and in other parts of the United States indicated that the infestation of Mediterranean Fruit Fly in Florida had been eradicated, and that Mediterranean Fruit Fly did not exist anywhere else in the United States. Therefore, there was no longer a basis for imposing restrictions on the interstate movement of regulated articles from any area in Florida, or from any other area in the United States because of the Mediterranean Fruit Fly.

The amendment became effective on the date of publication in order to relieve unnecessary restrictions on the interstate movement of certain articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of November 2, 1984 still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on November 2, 1984.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process requried by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action deletes restrictions that had been imposed on the interstate movement of regulated articles from a portion of Dade County, Florida, approximately 27 square miles in size. It appears that there is very little commercial activitiy that occurs in this area. Specifically, it is comprised of private residences and small entities including 4 nurseries and 45 small businesses consisting of retail stores, street vendors, and open fruit stands. Although these are small entities, they sell regulated articles primarily for local intrastate, not interstate movement. Further, the retail shops and nurseries sell other items in addition to the regulated articles so that the effect, if any, of deleting restrictions on the interstate movement of articles sold by these entities appears to be minimal.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mediterranean fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 44083-44084 on November 2, 1984, is adopted as a final rule.

Authority. 7 U.S.C. 161, 162; 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51 and 371.2(c).

Done at Washington, D.C., this 27th day of March 1985.

William F. Helms,

Associate Deputy Administrator Plant Protection and Quarantine Animal and Plant Health Inspection Service.

[FR Doc. 85-7711 Filed 3-29-85; 8:45 am]
BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 434

[Doc. No. 2185S]

Tobacco (Dollar Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for tobacco crop insurance in those counties with a March 31 closing date, effective for the 1985 crop year only. This action is being taken to provide additional time for tobacco producers lease arrangements to be processed through the Agricultural Stabilization and Conservation Service (ASCS) so that insurable acreage can be clearly determined when a producer files application for crop insurance. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the Tobacco (Dollar Plan) Crop Insurance Regulations with respect to the authority of the Manager to extend sales closing dates.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), the Manager, FCIC, is authorized to extend the sales closing date for accepting applications for crop insurance in any county. In certain counties, the closing date for accepting applications for tobacco crop insurance is March 31. FCIC is extending the period for accepting applications for tobacco crop insurance in certain counties to provide additional time for processing tobacco producer's lease arrangements through ASCS so that an application for tobacco crop insurance clearly identifies the applicant and acreage. The final date established by ASCS for submitting lease arrangements is April 15. Without clear knowledge of what acreage allotment the producer may have and whether planting will take place, the producer is at a disadvantage as to crop insurance needs. This extension of sales closing date, effective for the 1985 crop year only, is intended to conform with the ASCS closing date, thus allowing additional time for the producer to determine the acreage allotment and consider crop insurance.

It has been determined that no adverse selectivity will result from such extention. However, if adverse conditions should develop during such period of extension, FCIC will immediately discontinue acceptance of applications. The extended period for accepting applications for tobacco crop insurance in all counties with a March 31 closing date will be through the close of business on April 15, 1985, effective for the 1985 crop year only.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation herewith gives notice of the extension of the sales period for accepting applications for tobacco crop insurance in all counties with a March 31 closing date, under the provisions of 7 CFR 434.7(b), effective for the 1985 crop year only, through the close of business on April 15, 1985.

Done in Washington, D.C., on March 26, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85–7681 Filed 3–29–85; 8:45 am]

BILLING CODE 3410–08–M

7 CFR Part 435

[Doc. No. 2192S]

Tobacco (Quota Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for tobacco crop insurance in those counties with a March 31 closing date, effective for the 1985 crop year only. This action is being taken to provide additional time for tobacco producers lease arrangements to be processed through the Agricultural Stabilization and Conservation Service (ASCA) so that insurable acreage can be clearly determined when a producer files application for crop insurance. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the Tobacco (Quota Plan) Crop Insurance Regulations with respect to the authority of the Manager to extend sales closing dates.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Tobacco (Quota Plan) Crop Insurance Regulations (7 CFR Part 435), the Manager, FCIC, is authorized to extend the sales closing date for accepting applications for crop insurance in any county. In certain counties, the closing date for accepting applications for tobacco crop insurance is March 31. FCIC is extending the period for accepting applications for tobacco crop insurance in certain counties to provide additional time for processing tobacco producer's lease arrangements through ASCS so that an application for tobacco crop insurance clearly identifies the applicant and acreage. The final date established by ASCS for submitting lease arrangements is April 15. Without clear knowledge of what acreage allotment the producer may have and whether planting will take place, the producer is at a disadvantage as to crop insurance needs. This extension of sales closing date, effective for the 1985 crop year only, is intended to conform with the ASCS closing date, thus allowing additional time for the producer to determine the acreage allotment and consider crop insurance.

It has been determined that no adverse selectivity will result from such extension. However, if adverse conditions should develop during such period of extension, FCIC will immediately discontinue acceptance of applications. The extended period for accepting applications for tobacco crop insurance in all counties with a March 31 closing date, will be from March 31, through the close of business on April 15, 1985, effective for the 1985 crop year only.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U,S.C. 1501 et seq.),

the Federal Crop Insurance Corporation herewith gives notice of the extension of the sales period for accepting applications for tobacco crop insurance in all counties with a March 31 closing date, under the provisions of 7 CFR 435.7(b), effective for the 1985 crop year only, through the close of business on April 15, 1985.

Done in Washington, D.C., on March 26, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 27, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-7680 Filed 3-29-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 436

[Doc. No. 2190S]

Tobacco (Guarantee Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Extension of Sales Closing Date.

SUMMARY: Under the authority contained in the Federal Crop Insurance Act, as amended, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of the sales closing date for accepting applications for tobacco crop insurance in those counties with a March 31 closing date, effective for the 1985 crop year only. This action is being taken to provide additional time for tobacco producers lease arrangements to be processed through the Agricultural Stabilization and Conservation Service (ASCS) so that insurable acreage can be clearly determined when a producer files application for crop insurance. The intended effect of this notice is to advise all interested parties of the extension of sales closing dates and to comply with the Tobacco (Guarantee Plan) Crop Insurance Regulations with respect to the authority of the Manager to extend sales closing dates.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: Under the provisions contained in the Tobacco (Guarantee Plan) Crop Insurance Regulations (7 CFR Part 436), the Manager, FCIC, is authorized to extend the sales closing date for accepting applications for crop insurance in any county. In certain counties, the closing date for accepting applications for tobacco crop insurance is March 31. FCIC is extending the period for accepting applications for tobacco crop insurance in certain counties to provide additional time for processing tobacco producer's lease arrangements through ASCS so that an application for tobacco crop insurance clearly identifies the applicant and acreage. The final date established by ASCS for submitting lease arrangements is April 15. Without clear knowledge of what acreage allotment the producer may have and whether planting will take place, the producer is at a disadvantage as to crop insurance needs. This extension of sales closing date, effective for the 1985 crop year only, is intended to conform with the ASCS closing date, thus allowing additional time for the producer to determine the acreage allotment and consider crop insurance.

It has been determined that no adverse selectivity will result from such extension. However, if adverse conditions should develop during such period of extension, FCIC will immediately discontinue acceptance of applications. The extended period for accepting applications for tobacco crop insurance in all counties with a March 31 closing date will be from March 31 through the close of business on April 15, 1985, effective for the 1985 crop year only.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation herewith gives notice of the extension of the sales period for accepting applications for tobacco crop insurance in all counties with a March 31 closing date, under the provisions of 7 CFR 436.7(b), effective for the 1985 crop year only, through the close of business on April 15, 1985.

Done in Washington, D.C., on March 26, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: March 27, 1985

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 7679 Filed 3-29-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1126

[Docket No. AO-231-A51]

Milk in the Texas Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Texas Federal milk marketing order. One amendment increases the plant location adjustment to Class I and blend prices by 18 cents per hundredweight in Zone 8 (Houston) of the marketing area. Another amendment revises the procedure for computing the uniform price to provide for a reduction in the producer-settlement fund reserve. The changes are based on evidence presented at a public hearing held October 4-7, 1983, in Dallas, Texas. The changes are necessary to reflect current marketing conditions and to insure orderly marketing of milk in the Texas marketing area.

Issuance of the amended order is favored by more than two-thirds of the producers who supplied milk to the market during the representative period of December 1984.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION:

Prior Documents in This Proceeding

Notice of Hearing: Issued August 29, 1983; published September 1, 1983 (48 FR 39643).

Correction to Notice of Hearing: Published September 12, 1983 (48 FR 40894).

Extension of Time for Filing Briefs: Issued November 25, 1983; published December 1, 1983 (48 FR 54243).

Partial Recommended Decision: Issued December 6, 1983; published December 12, 1983 (48 FR 55290).

Correction to Partial Recommended Decision: Published December 19, 1983 (48 FR 56060).

Extension of Time for Filing Briefs and Exceptions: Issued December 22, 1983; published December 29, 1983 (48 FR 57310).

Extension of Time for Filing Exceptions: Issued January 27, 1984; published February 1, 1984 (49 FR 4006).

Extension of Time for Filing Exceptions: Issued February 21, 1984; published February 24, 1984 (49 FR 6910).

Partial Final Decision and Termination of Proceeding: Issued May 14, 1984; published May 17, 1984 (49 FR 20825).

Recommended Decision: Issued October 25, 1984; published October 31, 1984 (49 FR 43692).

Extension of Time for Filing Exceptions: Issued November 29, 1984; published December 5, 1984 (49 FR 47495).

Final Decision: Issued March 6, 1985; published March 11, 1985 (50 FR 9661).

Correction to Final Decision: Issued March 20, 1985.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Texas order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the tentative marketing agreement and order:

(a) *Findings upon the basis of the hearing record.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Texas marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the delared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of this order amending the order is approved of or favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area during the determined representative period.

List of Subjects in 7 CFR Part 1126

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. In § 1126.52(a)(1), the adjustment per hundredweight for Zone 8 is changed from "Plus 36 cents" to "Plus 54 cents".

§ 1126.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight
Zone 8	Plus 54 cents.

* * * * *

2. In § 1126.61, paragraph (e) is revised to read as follows:

§ 1126.61 Computation of uniform price (including weighted average price).

* * * * *

(e) Subtract not more than 5 cents per hundredweight. The result shall be the "weighted average price."

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674)

Effective date: May 1, 1985.

Signed at Washington, D.C., on March 25, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–7709 Filed 3–29–85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1407

Suspension and Debarment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on January 17, 1985 (50 FR 2578) revising the Commodity Credit Corporation (CCC) regulations (7 CFR Part 1407) with regard to the suspension and debarment of individuals and firms from contracting with CCC is adopted as a final rule with a minor technical change. Under the provisions of this final rule, CCC adopts, with limited reservations, the suspension and debarment regulations issued by the Department of Agriculture.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Claims Specialist, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447–3809.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies of geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is

not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12342 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 4(d) of the CCC Charter Act, as amended (15 U.S.C. 714b(d), authorizes CCC to adopt, amend, and repeal rules and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised. In accordance with this authority, the regulations at 7 CFR Part 1407 set forth the procedures under which CCC may suspend or debar individuals and firms from contracting with CCC and from otherwise participating in programs administered or financed by CCC.

In order to conform CCC's suspension and debarment regulations with those of the Department of Agriculture, it was proposed that the regulations at 7 CFR Part 1407 be revised to adopt the Department's suspension and debarment regulations and to provide that: (1) CCC suspension and debarment proceedings shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers and (2) the authority to suspend or debar is reserved to the Executive Vice President, CCC, or his designee.

Comments were solicited for a period of 30 days after publication of the proposed rule. No comments were received during the comment period. Accordingly, it has been determined that the proposed rule should be adopted as a final rule with a technical change. The provisions of the final rule include a technical change in the reference to the Department's suspension and debarment regulations which are found at 48 CFR 409.403 *et seq.* rather than 41 CFR 4–1.600 *et seq.* as indicated in the proposed rule. It is not believed that this change is of such significance as to warrant any further public rulemaking.

List of Subjects in 7 CFR Part 1407

Administrative practice and procedure, Government contracts, Penalties.

7 CFR Part 1407 is revised to read as follows:

PART 1407—SUSPENSION AND DEBARMENT

Sec.
1407.1 Purpose.
1407.2 Suspension and debarment.
1407.3 Scope.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b).

§ 1407.1 Purpose.

This part prescribes the terms and conditions under which persons (i.e., an individual or any form of business entity, such as a proprietorship, partnership, corporation, association, or cooperative) may be suspended and debarred from contracting with the Commodity Credit Corporation (CCC) and from otherwise participating in programs administered or financed by CCC.

§ 1407.2 Suspension and debarment.

The provisions of 48 CFR 409.403 *et seq.* shall be applicable to all CCC suspension and debarment proceedings, except that the authority to suspend or debar is reserved to the Executive Vice President, CCC, or his designee.

§ 1407.3 Scope.

CCC suspension and debarment proceedings shall not be applicable to contracts entered into by CCC under its price support operations and other CCC programs with persons in their capacity as producers.

Signed at Washington, D.C. on March 26, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–7637 Filed 3–29–85; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1942

Development Grants for Community Domestic Water and Waste Disposal Systems

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding development grants for community domestic water and waste disposal systems. This action is necessary because certain uses of and requirements regarding grant funds are not addressed in the current regulation. The intended effect of this action is to address such uses and requirements in order to more effectively serve domestic water and waste disposal needs of rural areas.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA Room 6328, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay, to affect more than one agency, or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to be more efficient use of financial and natural resources.

The FmHA programs and projects which are affected by this instruction are subject to State and local review under Section 401 of the Intergovernmental Cooperation Act and Section 204 of the Demonstration Cities and Metropolitan Development Act.

This document has been reviewed in accordance with 7 CFR, Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Charles W. Shuman, Administrator, has determined that this final action will not have a significant economic impact on a substantial number of small entities because the action will only affect a small number of rural communities.

The Catalogue of Federal Domestic Assistance program affected is No. 10.418, Water and Waste Disposal Systems for Rural Communities.

This action outlines FmHA's policies and authorizations and sets forth the

procedures for making and processing development grants. These grants assist in financing the development costs of domestic water and waste disposal systems for rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

A proposed rule was published in the Federal Register (49 FR 21542) on May 22, 1984. That proposal provided for a 60-day comment period through July 23, 1984. The major changes proposed were: (1) Make editorial revisions; (2) authorize the use of grant funds to restore FmHA loan funds used to prepay eligible grant purposes; (3) prohibit the use of grant funds to pay loan or grant finders fees; (4) require that applicants be informed that any remaining FmHA project funds, not to exceed the amount of the FmHA grant, will be considered to be grant funds and refunded to FmHA; (5) require that the funding needs of the applicant be reassessed prior to start of construction. Seven comments were received within the comment period. All respondents addressed multiple issues. In general, the respondents addressed agreement or disagreement with specific items of the proposed regulations changes.

A discussion of the comments follows:

1. *Section 1942.358(d)(4)*–Four comments were received regarding eligible grant purposes. The respondents misunderstood the proposed rule language on tap fees and connection charges. We clarified the section so that tap fees and connection charges are eligible when a system must pay such charges to purchase bulk services. Individual tap fees and connection charges are not considered as an elegible grant purpose.

2. *Section 1942.360 (a)(14)*–Two comments were received regarding limitations on use of grant funds when the median household income (MHI) of the service area is more than 85 percent of the nonmetropolitan median household income (NMHI) of the State. The respondents stated that the NMHI in their respective States was below the current poverty line established by Office of Management and Budget. Therefore, projects in areas above 85 percent of the State's NMHI but also below the poverty line could not receive a FmHA grant. These comments will be considered by FmHA. The suggested changes are not being adopted at this time due to changes that would have to be made in other regulations.

3. *Section 1942.363 (c)(2)(ii) and (iii)*—Four comments were received regarding the percentages of MHI and a State's NMHI used to calculate the amount of grant assistance. The respondents stated that the percentages be eliminated and the 85 percent of the State's NMHI be changed to 100 percent. The suggested changes were not adopted. The purpose of this section is to provide grant assistance to the most needy communities.

4. *Section 1942.363 (c)(4)*—Four comments were received regarding the granting of a waiver to the reasonable user rate in certain justifiable cases. The respondents suggested that such a waiver be incorporated. This suggestion has not been adopted. FmHA grant funds should not be used to reduce user costs below what is considered to be reasonable. The regulation defines reasonable user rate as that which is not less than existing prevailing rates in communities being served by an established system constructed at similar cost per user and having similar economic conditions.

One comment was received concerning this option being only available to applicants subsidized by either state, commonwealth, or territory governments. The respondent suggested that Indian tribal governments be included. This suggested change has not been adopted. The regulations as written would apply to all rural residents, including Indian tribes in a state, commonwealth, or territory.

5. *Sections 1942.366(f)(1)(ii) and 1942.369*—Five comments were received concerning actions prior to grant closing and start of construction. The respondents felt that these provisions would discourage participation from other funding agencies and eliminate joint financing of projects. The intent of this section is to adjust project funds which have been made available from all sources after projects costs are known, for example, after bids have been opened. Any reduction of funds at this point should tailor funding needs to the project without adversely affecting funding from other sources.

Subpart A of Part 1942 is being amended to reference renumbered and revised sections of Subpart H of Part 1942.

List of Subjects in 7 CFR Part 1942

Community development, Grant programs—Housing and community development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

1. Section 1942.17 is amended by changing the reference in paragraph (p)(6)(i) from "§ 1942.354" to "§ 1942.358."

§ 1942.17 [Amended]

2. Section 1942.17 is amended by changing the reference in paragraph(s) from "§ 1942.372 (b) and (c)" to "§ 1942.385 (b) and (c).

3. Sections 1942.351 through 1942.372 of Subpart H are revised and §§ 1942.373 through 1942.385 thereof are added and the table of contents for Subpart H is revised to read as follows:

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

Sec.

1942.351 General.
1942.352 [Reserved]
1942.353 Processing applications and docket preparation.
1942.354 [Reserved]
1942.355 Applicant eligibility and priority.
1942.356–1942.357 [Reserved]
1942.358 Use of grant funds.
1942.359 [Reserved]
1942.360 Grant limitations.
1942.361–1942.362 [Reserved]
1942.363 Determining the need for development grants.
1942.364–1942.365 [Reserved]
1942.366 Application review, approval and obligation of funds.
1942.367 [Reserved]
1942.368 Borrower contracts.
1942.369 Preparation for grant closing.
1942.370–1942.371 [Reserved]
1942.372 Grant closing and delivery of funds.
1942.373 Planning and performing development.
1942.374 [Reserved]
1942.375 Actions subsequent to grant closing.
1942.376 Grant servicing.
1942.377 Grant cancellation.
1942.378 [Reserved]
1942.379 Subsequent grants.
1942.380 Regional commission grants.
1942.381 [Reserved]
1942.382 Management assistance.
1942.383 State Supplements and guides.
1942.384 Delegation of authority.
1942.385 Special conditions under Public Law (PL) 98–8 (Emergency Jobs Bill)
1942.386–1942.400 [Reserved]
Exhibits A, B, C, and D.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

§ 1942.351 General.

(a) This Subpart outlines the policies and authorizations and sets forth the procedures for making and processing grants to assist in financing the development cost of domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users. Farmers Home Administration (FmHA) will maintain continuous liaison and coordination with State and substate planning district officials. FmHA shall cooperate fully with appropriate State agencies in making grants in a manner which will assure maximum support of the State's strategies for development of rural areas. State and substate A–95 agencies may recommend priorities for applications. FmHA will give due consideration to all A–95 agency review comments and priority recommendations in selecting applications for funding.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this Subpart that affect applicant eligibility, the adequacy of FmHA's security or the adequacy of service to users of the facility and all other requirements of this Subpart must be met. FmHA State Directors are reminded that funds allocated for use as prescribed in this Subpart are to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. It is essential that Indians residing on such reservations have equal opportunity to participate in the benefits of these programs on as equal a basis as other residents of the State. This is intended to include an equal application of the outreach activities of FmHA County and District Offices.

(c) It is the policy that the County Office will normally be the entry point for preapplications and serve as the local contact point. However, applications will be filed and grants will be processed to the maximum extent possible by the District Office staff. The State Office staff will monitor grant making and servicing and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA regulations. The District Director will supply information on grant activity within the County Office service area to the County Supervisor at key points throughout the grant making process.

(d) Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1942.352 [Reserved]

§ 1942.353 Processing applications and docket preparation.

(a) Preapplications and applications for water and waste disposal development grants will be processed in accordance with §1942.2 of Subpart A of Part 1942 of this chapter.

(b) Grant dockets will be prepared in accordance with this subpart and applicable portions of Subpart A of Part 1942 of this chapter.

§ 1942.354 [Reserved]

§ 1942.355 Applicant eligibility and priority.

(a) *Eligibility.* Applicant eligibility shall be determined in accordance with § 1942.17 (b) of Subpart A of Part 1942 of this chapter. Also, grants shall not be made in connection with any project unless the project:

(1) Will serve a rural area which, if such project is carried out, is not likely to decline in population below that for which the project was designed.

(2) Is designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable. Also, water systems must have sufficient capacity to provide for reasonable fire protection to the extent practicable.

(3) Is necessary for orderly community development consistent with a comprehensive community water, waste disposal, or other development plan of the rural area and not inconsistent with any planned development provided in any State, multijurisdictional, county, or municipal plan approved by competent authority for the area in which the rural community is located.

(b) *Applicant priorities.* Priority for grant funds will be given to applicants and projects in accordance with § 1942.17(c) of Subpart A of Part 1942 of this chapter.

§§ 1942.356–1942.357 [Reserved]

§ 1942.358 Use of grant funds.

Funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve community water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(b) To construct or relocate public buildings, roads, bridges, fences, utilities, and to make such other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(c) To relocate private buildings, roads, bridges, fences, utilities, and to make such other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) To use FmHA grant funds for the following when a necessary part of the project relates to those facilities in paragraphs (a), (b) and (c) of this section.

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquired interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control which are necessary for development of the facility.

(3) Purchase or rent equipment necessary to install, maintain, extend, protect, operate or utilize facilities. (Subject to limitations contained in § 1942.360(a) of this subpart).

(4) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared in accordance with § 1942.18(f) of Subpart A of Part 1942 of this chapter.

(e) To use FmHA grant funds on projects where other types of financial assistance are available on all or part of the projects, provided the other assistance is on reasonable rates and terms. In such cases the maximum percentages allowed under other agencies' authorities will apply to their participation in the project. However, the FmHA grant may not exceed seventy-five percent (75%) of the eligible project development cost. The need for FmHA grant funds must meet the requirements of § 1942.363 of this subpart after considering all project financing.

(f) To restore FmHA loan funds used in accordance with § 1942.17(d)(1)(iv)(G) of Subpart A of Part 1942 of this chapter.

§ 1942.358 [Reserved]

§ 1942.360 Grant limitations.

(a) Grant funds may not be used to:

(1) Finance facilities which are not modest in size, design, and cost.

(2) Pay loan or grant finder's fees.

(3) Pay for the construction of any new combined storm and sanitary sewer facilities.

(4) Pay any annually recurring costs including purchases or rentals that are generally considered to be operation and maintenance expenses.

(5) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale.

(6) Purchase fire trucks, hoses, and other fire fighting equipment or construct housing for such shipment.

(7) Pay rental for the use of equipment or machinery owned by the association.

(8) Pay for salesrooms or other purposes not directly related to operation and maintenance of the facility being installed or improved.

(9) Purchase existing systems.

(10) Refinance existing indebtedness.

(11) Pay any portion of the cost of a facility when the annual reserve based on a typical year exceeds one-tenth of the average annual debt service requirement unless State regulatory agencies require a larger reserve, or when it is anticipated that facility replacement costs on a relatively short-term basis will require a higher reserve.

(12) Pay interest.

(13) Pay any portion of the cost of a facility which is not located in a rural area.

(14) Pay any costs of a project when the median household income of the service area is more than 85 percent of the nonmetropolitan median household income of the State.

(b) An FmHA development grant may not be made in excess of seventy-five percent (75%) of the eligible project development costs. Facilities previously installed will not be considered in determining the development costs.

§ 1942.361–1942.362 [Reserved]

§ 1942.363 Determining the need for development grants.

(a) FmHA District Directors are responsible for determining applicant's eligibility for grants and the amount of such grants. Form FmHA 1942–51, "Water and Waste Disposal Grant Determination," will be used to determine the amount of FmHA grant assistance for which the applicant qualifies. A separate form will be used to record the determination of FmHA grant assistance for each water, sewer collection and treatment, solid waste, and storm drainage project.

(b) Grants will be used for water and waste disposal projects serving the most financially needy communities to reduce user costs to a reasonable level for farmers, ranchers, and rural residents.

(1) *Other Users.* Other rural water and waste disposal users whose total water needs are met or, if there is no meter, could be met by a single residential size water meter also may be considered eligible. For example, a user on a waste system may be considered for a grant when the total water needs of the waste user are met or could be met by such residential-size meter.

(2) *Reasonable Rate.* Reasonable user rate is defined as that which is not less than existing prevailing rates in communities having similar economic conditions being served by an established system constructed at similar costs per user. Similar user costs shall include charges, taxes, and assessments attributable to the system.

(c) Grants will be determined in accordance with the following and will not result in a user rate below that deemed to be reasonable.

(1) Grants may not exceed seventy-five percent (75%) of the eligible project development costs listed in § 1942.358 of this subpart.

(2) Applicants will be considered for grant assistance when the debt service portion of the average annual user cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) *.5 percent* when the median household income of the service area is below the poverty line. The poverty line will be that income prescribed by the Office of Management and Budget for a family of four, as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

(ii) *1.0 percent* when the median household income of the service area is not more than 85 percent of the State's nonmetropolitan household income.

(iii) No FmHA grant funds will be used in any project when the median household income of the service area is more than 85 percent of the nonmetropolitan median household income of the State.

(3) In the exceptional cases where FmHA determines that a reasonable user rate has not been achieved due to unusually *high* operation and maintenance costs, construction or water acquisition costs, or other unusual factors, FmHA may proceed with a grant in an amount necessary to reduce the rate to a reasonable level as defined in paragraph (b)(2) of this section.

(4) If, after applying the formula described in paragraphs (c)(2)(i) or (c)(2)(ii) of this section, FmHA determines that a reasonable average annual cost to the applicant for delivery of service to residential type users has not been achieved, FmHA may proceed with a grant in an amount necessary to reduce such cost to not below a reasonable user rate as defined in paragraph (b)(2) of this section. Reasonable average annual cost to the applicant is defined as that which is not less than existing prevailing costs in communities, being served by an established system, having similar economic conditions. This option is only available to an applicant:

(i) Where the annual cost to the applicant for delivery of service to residential type users is subsidized by either the state, commonwealth, or territory, and

(ii) Where uniform user charges are imposed for similar classes of service throughout the service area.

(5) When the applicant will be furnishing bulk service to rural residents served by another system (entity), a grant to such applicant may also be considered for an amount to reduce the user costs on a basis comparable to that provided in this section for users of such other system. An agreement between the applicant and the other system will be obtained that clearly shows that the benefit of the grant will accrue only to the users intended to be benefited by the grant. For purposes of grant determination, all other systems which will receive bulk service may either:

(i) Be considered as part of the total by averaging the median household incomes of the systems involved and averaging the debt service portion for the particular service of the other systems. Where this method is used, a uniform user rate schedule must be established for similar classes of users. For example, all systems involved would have the same user rate schedule for residential users, or

(ii) Consider the median household income and the debt service portion for the particular service for each entity separately.

(d) The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA. The median household income of the service area or those reference communities used in comparing the proposed system with

similar systems, and the nonmetropolitan median household income for the State will be determined from income data from the most recent decennial census of the U.S. This data will normally be published or unpublished Bureau of the Census data and may be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented on Form FmHA 1942–51 and the applicant may furnish, or FmHA may obtain, additional information regarding such median household income. Such information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State should be updated on a national basis by the FmHA National Office based on data provided by the Bureau of the Census, or other reliable sources. Updating income data for the median household income of the service area and the nonmetropolitan median household of the State should be done concurrently, using data from the same year.

(e) Financial information contained in preliminary engineering reports will be prepared without taking an FmHA grant into consideration

§§ 1942.364–1942.365 [Reserved]

§1942.366 Application review, approval and obligation of funds.

(a) When a grant only (no FmHA loan) is being made, only those applicable provisions of review and approval procedures outlined in § 1942.5 of Subpart A of Part 1942 of this chapter will apply which are necessary to assure that:

(1) The proposed development is completed in accordance with approved plans and specifications.

(2) Grant funds are expended for authorized purposes.

(3) The applicant can comply with the terms of the grant agreement.

(b) When the grant approval official requires an appraisal, Form FmHA 442–10, "Appraisal Report—Water and Waste Disposal Systems," with appropriate supplements, may be used. Appraisal reports may be prepared by the FmHA engineer or, if desired by the grant approval official, another qualified appraiser.

(c) When an FmHA loan and grant are being processed simultaneously, the application review and approval procedures outlined in § 1942.5 of Subpart A of Part 1942 of this chapter will be followed.

(d) Grants will be approved in accordance with this subpart and Exhibit B of FmHA Instruction 1901–A which is available in any FmHA office.

(e) All grants that require National Office review will be submitted in accordance with § 1942.5(b)(1) of Subpart A of Part 1942 of this chapter.

(f) Each letter of conditions involving a grant will contain the following:

(1) Insertions which read:

(i) "Attached is a copy of Form FmHA 1942–31, "Association Water or Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time of grant closing."

(ii) "The applicant contribution shall be considered as the first funds expended except (insert appropriate exceptions if funds from other sources make an exception necessary). After providing for all authorized costs, any remaining FmHA project funds will be considered to be FmHA grant funds and refunded to FmHA. If the amount of unused FmHA project funds exceeds the FmHA grant, that part would be FmHA loan funds.

(2) All items contained in § 1942.5(a)(1) of Subpart A of Part 1942 of this chapter applicable to the grant funding.

(3) Other relative requirements.

(g) State Directors may obligate funds including Regional Commission grant funds when they are available, in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter.

(h) A copy of Form FmHA 1942–51, along with the letter of conditions and Form FmHA 1942–45, "Project Summary—Water and Waste Disposal and Other Utility-Type Projects," (including the required copy of Forms FmHA 442–14, "Association Project Fund Analysis," and FmHA 442–7, "Operating Budget") will be submitted to the National Office, Attention: Water and Waste Disposal Division, by the State Director not later than the time the letter of conditions is issued.

§ 1942.367 [Reserved]

§ 1942.368 Borrower contracts.

The requirements of §§ 1942.4, 1942.17(1), and 1942.18 of Subpart A of Part 1942 of this chapter will be followed when concurring in agreements between grantees and third parties.

§ 1942.369 Preparation for grant closing.

(a) Section 1942.6 of Subpart A of Part 1942 of this chapter will be followed when preparing for grant closing.

(b) The requirements of § 1942.17(n)(1) of Subpart A of Part 1942 of this chapter will be followed for water and waste disposal development grants.

§ 1942.370–1942.371 [Reserved]

§ 1942.372 Grant closing and delivery of funds.

(a) Grants will be closed in accordance with instructions received from the Office of the General Counsel (OGC). FmHA policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Borrower funds will be disbursed before the disbursal of any FmHA grant funds.

(1) FmHA loan funds will be disbursed before the disbursal of any FmHA grant funds except when:

(i) Interim financing of the total estimated amount of funds needed during construction is arranged.

(ii) All interim funds have been disbursed, and

(iii) FmHA grant funds are needed before the FmHA loan can be closed.

(2) If grant funds are available from other agencies and are transferred to the Finance Office for disbursement by FmHA, these grant funds shall be disbursed in accordance with the agreement governing such agencies participation in the project.

(3) Any grant funds remaining will be handled in accordance with § 1942.17(p)(6) of Subpart A of Part 1942 of this chapter.

(b) FmHA grant funds will be disbursed by using multiple advances in accordance with § 1942.17(p)(2) of Subpart A of Part 1942 of this chapter.

(c) Payment for construction will be made in accordance with § 1942.17(p)(5) Subpart A of Part 1942 of this chapter.

(d) Form FmHA 1942–31 will be completed and executed in accordance with the requirements of grant approval and closing instructions. Both District Directors and State Directors are authorized to sign the grant agreement on behalf of FmHA. For grants that supplement FmHA loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing as provided for in paragraph (a)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds. The grant will be considered closed when Form FmHA 1942–31 has been properly executed. Incorporated as a part of this subpart is Form FmHA 1942–31 which appears as Exhibit C in the Federal Register.

§ 1942.373 Planning and performing development.

Planning and performing development will be handled in accordance with §§ 1942.9 and 1942.18 of Subpart A of Part 1942 of this chapter.

§ 1942.374 [Reserved]

§ 1942.375 Actions subsequent to grant closing.

Section 1942.8 of Subpart A of Part 1942 of this chapter will be followed for water and waste disposal development grants.

§ 1942.376 Grant servicing.

Grants will be serviced in accordance with Subpart E of Part 1951 of this chapter.

§ 1942.377 Grant cancellation.

The District Director or State Director may prepare and execute Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA 1940–10. The borrower's attorney and engineer if any, should be notified of the cancellation. The borrower's attorney and engineer may be provided a copy of the notification to the applicant.

§ 1942.378 [Reserved]

§ 1942.379 Subsequent grants.

Subsequent grants will be processed in accordance with this Subpart.

§ 1942.380 Regional commission grants.

Grants are sometimes made by regional commissions for projects eligible for FmHA assistance. FmHA has agreed to administer such funds in a manner similar to FmHA assistance.

(a) When FmHA has funds in the project, no charge will be made for administering commission funds.

(b) When FmHA has neither loan nor grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932 (31 U.S.C. 686). A fee of five percent (5%) of the first $50,000 of a regional commission grant and one percent (1%) of any amount over $50,000 will be paid FmHA by the commission.

(1) *Appalachian Regional Commission.* Exhibit A of this subpart will be followed in determining the responsibilities of FmHA. The Federal Cochairman and the State Director will provide each other with the necessary notification and certification.

(2) *Other regional commissions.* Title V of the Public Works and Economic Development Act of 1965 authorizes other commissions similar to the Appalachian Regional Commission. Exhibit B of this subpart will be used to develop a separate project management agreement between FmHA and the commission for each project. The agreement should be prepared by the FmHA State Director as soon as notification is received that a commission grant will be made and the amount is confirmed.

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1942.5(d) of Subpart A of Part 1942 of this chapter, except that the announcement procedure referred to in § 1942.5(d)(6) is not applicable. Regional commission grants will be obtained from the Finance Office in the same manner as FmHA funds are obtained.

§ 1942.381 [Reserved]

§ 1942.382 Management assistance.

Grant recipients will be supervised to the extent necessary to assure that facilities are constructed in accordance with approved plans and specifications and to assure that funds are expended for approved purposes.

§ 1942.383 State Supplements and guides.

This Subpart may be supplemented by State Supplements and guides in accordance with § 1942.16 of Subpart A of Part 1942 of this chapter.

§ 1942.384 Delegation of authority.

The State Director is responsible for the overall implementation of the authorities contained in this Subpart and may redelegate any such authority to appropriate FmHA employees.

§ 1942.385 Special conditions under Public Law (PL) 98–8 (Emergency Jobs Bill).

Each project to be funded utilizing grant funds authorized by Public Law 98–8 (Emergency Jobs Bill) will be processed in accordance with Exhibit D of this subpart. In Exhibit D of this Subpart, all references to other FmHA regulations and forms will be construed to mean the most current version of those regulations and forms, and the following:

(a) Grant funds shall be made available for projects and activities in civil jurisdictions with high unemployment, or in labor surplus areas, or in political units or in pockets of poverty that are currently or should meet the criteria to be eligible under the Urban Development Grant Action (UDAG) program administered by the Department of Housing and Urban Development.

(b) Each letter of conditions that is issued utilizing FmHA loan and/or grant funds authorized by P.L. 98–8 will contain the following:

(1) Standard paragraphs in accordance with § 1942.5 (a)(1)(ii) of Subpart A of Part 1942 of this chapter, and

(2) "The (i.e. town, district, authority) shall to the extent practicable utilize FmHA funds in manner which maximizes immediate creation of new employment opportunities to individuals 1983. Such a condition will be made part of any construction contract awarded in support of FmHA funds."

(c) The following should be added to the Supplemental General Conditions of construction contracts involving Pub. L. 98–8 funds:

To the extent practicable, the contractor shall hire needed new employees in a manner which maximizes immediate creation of new employment opportunities to individuals who were unemployed at least 15 of the 26 weeks prior to March 24, 1983.

§§ 1942.386–1942.400 [Reserved]

Authority: 7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70.

Dated: January 9, 1985.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 85–7683 Filed 3–29–85; 8:45 am]

BILLING CODE 3410–07–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

[Amdt. 5]

Display of Office of Management and Budget (OMB Control Numbers for Reporting and Recordkeeping Requirements)

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its regulations to indicate Office of Management and Budget (OMB) approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Action of 1980 (Pub. L. 96–511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Zaic, Chief, Information Resources Management Branch, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Telephone No. 653–8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented by 5 CFR Part 1320 that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement. This subpart collects and displays current OMB control numbers and expiration dates. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

PART 133—[AMENDED]

The table appearing in paragraph (c) of § 133.1 is revised to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

* * * * *

(c) * * *

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245–0003	SBA 745 (2–83 ed.), SBA 745A (2–83 ed.)	13 CFR 125.9	4–30–85
3245–0007	SBA 990, SBA 994, SBA 994B, SBA 994F, SBA 994H, SBA 994J	13 CFR 115.5	5–31–85
3245–0009	SBA 480		12–31–87
3245–0012	SBA 770	13 CFR 123.9	10–31–87
3245–0013	SBA 74, SBA 74A, SBA 74B, SBA 183	13 CFR 125.5	3–31–86
3245–0015	SBA 1010A, SBA 1010B, SBA 1010C, SBA 1010D, SBA 1010E, SBA 1010I	13 CFR 124	2–28–86
3245–0016	SBA 4, SBA 41, SBA 4 Sched. A	13 CFR 122.309	10–31–87
3245–0017	SBA 5, SBA 739A, SBA 1368	13 CFR 123	12–31–85
3245–0018	SBA 5C, SBA 739	13 CFR 123.1	8–31–85
3245–0020	SBA 1136, SBA 1136A	13 CFR 111.5	6–30–85
3245–0023	SBA 2006	13 CFR 101.2–6	9–30–85
3245–0024	SBA 1167, SBA 1167A, SBA 1395	13 CFR 125.10	3–31–87
3245–0046	SBA 1174	13 CFR 101.2–7	6–30–86
3245–0062	SBA 415, SBA 415A, SBA 415B	13 CFR 107.102	3–31–85
3245–0063	SBA 468, SBA 468, Pts. 1, 2, 3,	13 CFR 107.1102	3–31–85
3245–0070	SBA 18	13 CFR 101.2–7	9–30–86
3245–0071	SBA 1244	13 CFR 108.503	10–31–85
3245–0072	SBA 22	13 CFR 101.2–7	9–30–86
3245–0073	SBA 1246	13 CFR 108.503	10–31–87
3245–0074	SBA 1253, SBA 1253A, SBA 1253B	13 CFR 108.503	1–31–87
3245–0075	SBA 20	13 CFR 101.2–7	3–31–87
3245–0076	Non Discriminatory Requirements, SBA 601, SBA 652, SBA 793	13 CFR 112.113	4–30–85
3245–0077	Reporting and Recordkeeping Requirements on Non-Bank Lenders	13 CFR 120.5 and 120.6	9–30–87
3245–0078	Small Business Investment Company Records and Reports, SBA 684, SBA 1031	13 CFR 107.1102	4–30–87
3245–0079	SBA 419		10–31–87
3245–0080	SBA 1081	13 CFR 120.4	4–30–87
3245–0081	Funds to Licensee, SBA 25–28,33,34 SBA 1022A, 1022B, C.O. 158, C.O. 159	13 CFR 107.201	4–30–87
3245–0083	Amendments to License, SBA 415C	13 CFR 107.1105	9–30–87
3245–0084	SBA 700	13 CFR 123	10–31–87
3245–0090	SBA 59	13 CFR 101.2–7	10–31–87
3245–0091	SBA 641	13 CFR 101.2–7	12–31–87
3245–0095	SBA 1175		9–30–85
3245–0096	SBA 883	Presidential Proclamation Designating Small Business Week	12–31–86
3245–0101	SBA 355, 1340	13 CFR 121	3–31–85
324–0104	SBA 1356	13 CFR 101.2–7	5–31–86
3245–0108	SBA 1062	13 CFR 101.2–7	8–31–85
3245–0109	SBA 857, SBA 858	13 CFR 107.1101	7–31–86
3245–0110	SBA 1366, SBA 1391	13 CFR 123.17	3–31–87
3245–0112	SBA 1301	13 CFR 108.503	7–31–86
3245–0114	SBA 1302	13 CFR 108.503	7–31–86
3245–0116	SBA 860	13 CFR 107.1101	7–31–86
3245–0117	CO 268		5–30–86
3245–0118	SBA 856	13 CFR 107.1101	6–30–86
3245–0121	Governor's Request for Disaster Declaration	13CFR 123.24	6–30–86
3245–0122	Reconsideration Request	13 CFR 123.11	7–31–86
3245–0123	SBA 888	13 CFR 101.2–7	9–30–85
3245–0124	Notice of Duplication of Benefits	13 CFR 123.22	6–30–86
		13 CFR 123.22	6–30–86
3245–0125	SBA 898	P.L. 92–463	7–31–86
3245–0128	SBA 1160	13 CFR 123	8–31–86
3245–0129	SBA 1238A	3245–0130	8–31–86
3245–0130	SBA 1238		8–31–86
3245–0131	SBA 172	Agency's Participant Handbook	8–31–86
3245–0132	SBA 1149		9–30–87
3245–0133	SBA 2014A	P.L. 95–454	8–31–86
3245–0134	SBA 1369	13 CFR 101.2–7	9–30–86
3245–0135	SBA 1202	13 CFR 101.2–7	9–30–86
3245–0136	SBA 987	13 CFR 123.1	9–30–86
3245–0137	SBA Contract Requirements	OMB Circulars A–110; A–21; A–102; A–122	8–31–86
3245–0140	SBA Grants Mgmt. Program Applications (SBA 1222, 1223, 1224)	OMB Circulars A–110; A–21; A–102; A–122	8–31–86
3245–0141	SBA 843	SBA SOP 60 02	8–31–86
3245–0143	Request for Eligibility Reconsideration	13 CFR 124	11–30–86
3245–0144	SBA 1017	13 CFR 124	11–30–86
3245–0145	Notice of Change in Ownership	13 CFR 124	11–30–86
3245–0146	Request for Approval of Joint Venture Agreement	13 CFR 124	11–30–86
3245–0147	Request for Fixed Program Participation Term (FPPT)	13 CFR 124	11–30–86
3245–0148	Request for Advance Payment and Schedule of Advance Payment Requirements	13 CFR 124	11–30–86
3245–0149	Request for Business Development Expense	13 CFR 124	11–30–86
3245–0151	Submission of Business Financial Statement	13 CFR 124	11–30–86
3245–0153	SBA 1375	Presidential Proclamation Designating Small Business Week	12–31–86
3245–0157	SBA 1386	P.L. 97–219	2–28–87
3245–0158	SBA 1183	SOP 50 50	3–31–87

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0150	SBA 712	15 USC 639	5-31-87
3245-0160	SBA 149	13 CFR 122.15	5-31-87
3245-0164	Liquidation Activities	41 CFR 5	5-31-87
3245-0166	Small Business Week Media Contacts		2-28-87
3245-0167	SBA 1104	13 CFR 101.2-7	2-28-87
3245-0168	Small Business Institute Counseling Case Report	13 CFR 101.2-7	3-31-87
3245-0169	SBDC Quarterly and Financial Reports	13 CFR 101.2-7	2-28-87
3245-0171	Nominate a Small Business Person or Advocate of the Year	P.L. 94-309	2-28-87
3245-0172	SBA 1405	13 CFR 107.1101	2-28-87
3245-0176	Compliance Review Report	13 CFR 112, 113, 117	4-30-87
3245-0177	Survey of DOD Contractors to Determine Whether Veteran-Owned Small Businesses are Successful or not in Obtaining DOD Awards.	P.L. 93-237/94-305	5-31-85
3245-0178	SBA 912	15 USC 6349(b)	3-31-87
3245-0183	SBA 1419	13 CFR 101.2-7	5-30-87
3245-0184	Access to Capital by Subcategories of Small Business		5-30-85
3245-0185	SBA 1085, SBA 1086	13 CFR 120	3-31-85
3245-0186	Sources of Informal Risk Capital for Veteran-Owned Enterprises Study	P.L. 94-305	5-30-85
3245-0187	Small Business' Contributions to the Economy	P.L. 94-305	5-30-85
3245-0188	SBA 413	15 USC 631	10-31-87
3245-0189	Business Loan Reconsideration Request	13 CFR 122	5-30-87
3245-0190	SBA 1347	13 CFR 122	10-31-87
3245-0191	Reporting and Recordkeeping Requirements on Lender Reports and Records	13 CFR 120 and 122	10-31-87
3245-0192	Other Development Company Reporting Requirements	13 CFR 108	10-31-85
3245-0193	SBA 1429	13 CFR 108	10-31-87
3245-0194	SBA 1434	13 CFR 101.2-7	10-31-87
3245-0195	Borrower Reports, Records and Requests	13 CFR 122	10-31-87
3245-0196	Information Submitted by the Federal Agencies Participating in the SBIR Program to the Small Business Administration for the SBIR Annual Report to Congress.		12-31-87
3245-0200	SBA 1050	13 CFR 120 and 122	12-31-87
3245-0201	SBA 147, SBA 148, SBA 153, SBA 159, SBA 160, SBA 160A, SBA 529B, SBA 928, SBA 1059	13 CFR 120 and 122	12-31-87
3245-0202	SBA 1010H	P.L. 95-507	12-31-87
3245-0203	SBA 104A		12-31-87
3245-0204	SBA 1449	P.L. 95-89	12-31-87
3245-0205	SBA 1450	P.L. 96-481	5-25-86

Dated: March 20, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-7552 Filed 3-29-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-3-AD, Amdt. No. 39-5023]

Airworthiness Directives; British Aerospace Model 3101 Jetstream Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Model 3101 Jetstream airplanes which requires a modification to the electrical system to insure that the emergency lighting system is maintained at full charge. BAe has reported that the internal discharge rate of the emergency lighting power pack during periods of airplane non-use may reduce the charge level below that necessary to provide light during an airplane emergency evacuation. The proposed modification will assure that the power packs will contain a sufficient charge for this purpose at all times.

DATES: EFFECTIVE DATE: May 8, 1985.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Alert Service Bulletin (ASB) No. 33-A-JM7431, Revision 1, dated October 7, 1984, applicable to this AD may be obtained from British Aerospace, Engineering Department, Post Office Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. B. Sexton, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the emergency lighting power pack charging system on all British Aerospace Model 3101 Jetstream airplanes was published in the **Federal Register** on February 4, 1985, (50 FR 4887). The proposal resulted from a report from British Aerospace stating that the inservice internal discharge rate of the Model 3101 Jetstream airplane emergency lighting power pack is in excess of the rate declared by the manufacturer. This internal discharge rate is such that it would be necessary to apply a prolonged charge after an aircraft has been out of service for a number of hours in order to regain the minimum charge necessary to provide light for an emergency airplane evacuation. Without power on the essential busbar, an initially fully charged power pack will become fully discharged within 94.5 hours, i.e. less than four days. Complete recharging by the aircraft system will then require 20 hours. As a result, BAe has issued ASB No. 33-A-JM7431, Revision 1, dated October 7, 1984, which specifies a modification (Modification JM7431) to the emergency lighting power pack charging system. This modification will incorporate a trickle charge facility which is connected to the aircraft battery when the airplane is idle (master switch OFF). Existing provision for charging the power packs whenever a 28 volt DC power supply exists on the essential busbar, i.e. whenever the generators are on line or whenever the battery master switch is in the internal position, irrespective of the position of the emergency lighting control switch, remain unchanged.

The United Kingdom Civil Aviation Authority (UKCAA), who has responsibility and authority to maintain

the continuing airworthiness of these airplanes in the United Kingdom, has classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under United Kingdom registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the UKCAA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of ASB No. 33–A–JM7431, Revision 1, dated October 7, 1984, and the mandatory classification of this Alert Service Bulletin by the UKCAA and determined that a Notice of Proposed Rulemaking was appropriate.

Interested persons have been afforded an opportunity to comment on the Notice. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

There are approximately 22 U.S. registered airplanes affected by the AD. The cost of complying with the AD is estimated to be $3,127.08 to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, saftey.

Adoption of the Amendment

Accordingly pursuant to the authority delegated to me by the Administrator, Section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

British Aerospace: Applies to Model 3101 Jetstream (all serial numbers) airplanes, certificated in any category.

Compliance: Required within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To assure adequate emergency lighting system power pack charge for lighting during emergency airplane evacuation, accomplish the following:

(a) Incorporate British Aerospace (BAe) Modification JM7431 in accordance with the instructions contained in BAe Alert Service Bulletin No. 33–A–JM7431, Revision 1, dated October 7, 1984.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

This amendment becomes effective on May 8, 1985.

(Sections 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Issued in Kansas City, Missouri, on March 22, 1985.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 85–7615 Filed 3–29–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–ASW–2; Amdt. 39–5016]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 412 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a repetitive inspection or replacement of certain main rotor pitch horns on certain Bell Helicopter Textron, Inc., Model 412 helicopters certified in all categories. This AD is needed to prevent possible corrosion fatigue failure of the pitch horn assembly which would result in the loss of blade pitch control and possible loss of the aircraft.

DATES: Effective April 10, 1985.

Compliance schedule—as prescribed in the body of the AD. The Director of the Federal Register approved the incorporation by reference of the service information in 49 CFR 39.13 effective on April 1, 1985.

ADDRESSES: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

A copy of the service bulletin is contained in the Rules Docket located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: T.K. Henry, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877–2080.

SUPPLEMENTARY INFORMATION: There have been reports of four cracked main rotor pitch horns on the Bell Model 412 helicopter. These cracks, which are corrosion fatigue cracks, were discovered during magnaflux inspections when the pitch horns were removed for main rotor spindle changes. The cracks resulted from corrosion pitting on the internal surface of the pitch horn bore that mates with the spindle. Each pitch horn had less than 2,300 hours' time in service. In addition, 13 assemblies were reported having corrosion pitting in the spline area which exceeded allowable repair limits. As a result of the corrosion fatigue cracks, the manufacturer issued Alert Service Bulletin (ASB) 412–83–13, Rev. A, August 31, 1983, which imposed a 20–hour interval visual inspection for cracks. Magnetic particle inspection for cracks is required whenever the horn is removed for any reason on all Bell Model 412 helicopters.

Recently, the manufacturer issued Bell ASB 412–84–18 which requires, before March 1, 1985, replacement of the main rotor pitch horn, Part Number (P/N) 412–010–149–105, and pins, P/N 412–010–180–101, with a new corrosion resistant steel pitch horn, P/N 412–010–149–111, and pins, P/N 412–010–180–103, for Bell Model 412 helicopters, Serial Numbers (S/N) 33001 through 33110.

Since a cracked pitch horn is likely to develop on other helicopters of the same type design, an airworthiness directive is being issued which requires a 20–hour interval visual inspection for cracks or replacement of initially designed main rotor pitch horns and pins on certain Bell Helicopter Textron, Inc., Model 412 helicopters certified in all categories. The AD also requires a visual inspection of the spindle spline joint for corrosion

pitting whenever the affected pitch horn is removed.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation involves less than 109 helicopters. The manufacturer's warranty will compensate operators for loss of time in service on parts which are replaced. The manufacturer estimates approximately 2 hours of "hands-on" maintenance time is required to remove and replace the pitch horns and pins for a total cost of less than $10,000 for 109 aircraft. When the pitch horns and pins are replaced, the inspection requirement is discontinued. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc.: Applies to Bell Helicopter Textron, Inc., Model 412 helicopters, S/N's 33001 through 33110, equipped with main rotor pitch horn assembly, P/N 412-010-149-105, and main rotor pins, P/N 412-010-180-101.

Compliance is required as indicated, unless already accomplished.

To detect possible cracks in the main rotor pitch horn, accomplish the following on Model 412 helicopters equipped with pitch horns, P/N 412-010-149-105:

(a) Within the next 20 hours' time in service after the effective date of this AD and thereafter at intervals not to exceed 20 hours' time in service from the last inspection, visually inspect the main rotor pitch horn assembly for cracks in accordance with Part I of Bell Helicopter Textron, Inc., Alert Service Bulletin (ASB) 412-83-13, Rev. A, dated August 31, 1983.

(b) Whenever the main rotor pitch horn assembly is removed for any reason, magnetic particle inspect it for cracks in accordance with Part II of ASB 412-83-13, Rev. A, dated August 31, 1983.

(c) If a crack is found during these inspections replace the pitch horn and pins with serviceable parts.

(d) Prior to installation of the pitch horn and pins, visually inspect the spindle joint for surface defects and corrosion. Note: Component repair and overhaul manual BHT-412-CR & 0-1, Rev. 4, April 15, 1984, Figure 65-10-5 contains allowable damage limits.

Note.—Further inspections are not required when the following parts are installed:

412-010-149-111 Pitch Horn Assembly-4 required per helicopter.

412-010-180-103 Pin-32 required per helicopter.

(Bell Helicopter Textron, Inc., Alert Service Bulletin 412-84-18, November 19, 1984, pertains to replacement of new horns and pins.)

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. These documents may also be examined in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Any alternate methods or equivalent procedures must be approved by Mr. James D. Erickson, Manager, Helicopter Certification Branch, ASW-170, Building 3, Room 211, 400 Blue Mound Road, Fort Worth, Texas 76106.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended 49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective April 10, 1985.

Issued in Fort Worth, Texas, on March 15, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-7614 Filed 3-29-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-10]

Proposed Alteration of Control Zone and Correction to Transition Area Description; Prescott, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: An amendment to the existing Ernest A. Love Field (lat. 34°39'10" N., long. 112°25'15" W.) Control Zone due to the installation of the Prescott Instrument Landing System (ILS) for Runway 21 and editorial correction to the description of the Prescott, Arizona, Transition Area due to the identification change of the Prescott VORTAC to Drake. This action will provide editorial change to the description of the Prescott, Arizona, Transition Area and an extension to the existing Ernest A. Love Field Control Zone, Prescott, Arizona.

DATES: Effective date—0901 G.m.t., June 6, 1985. Comments must be received on or before May 24, 1985.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWP-10, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009.

The official docket may be examined in the office of the Western-Pacific Regional Counsel, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Schmidt, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 536-6655.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although these actions are in the form of a final rule, which involves reconfiguration of the Ernest A. Love Field Zone to encompass the Prescott Runway 21 ILS approach and description change of the Prescott, Arizona, Transition Area, resulting from renaming of the Prescott VORTAC to Drake VORTAC and, thus, were not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA wil use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly

helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) is to change the description of the Prescott, Arizona, Transition Area and Ernest A. Love Field Control Zone. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to reflect the correct description of the Prescott, Arizona, Transition Area and necessary expansion of the Ernest A. Love Field Control Zone. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date. Description of the amended control zone and transition area are set forth below and depicted on the chart at the end of this document.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It therefore—(1) is not a "major rule" under Executive Order 12201; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), are amended as follows:

§ 71.171 Prescott, Arizona [Revised]

Within a 6-mile radius of the Ernest A. Love Field (lat. 34°39'10" N., long. 112°25'15" W.), within 3 miles either side of the Prescott Runway 21 ILS Localizer northeast course extending from the 6-mile radius zone to 9.5 miles northeast of the Runway 21 Localizer (lat. 34°38'39.68" N., long. 112°25'46.05" W.).

§ 71.181 Prescott, Arizona [Revised]

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Ernest A. Love Field, Prescott, Arizona, (lat. 34°39'10" N., long. 112°25'15" W.) and within 3 miles each side of the Drake VORTAC 319° radial extending from the 10.5-mile radius area to 8.5 miles northwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within a 21-mile radius of the Drake VORTAC, extending clockwise from a line 5 miles south of and parallel to the Drake VORTAC 252° radial to a line 5 miles west of and parallel to the Drake VORTAC 159° radial and within a 14-mile radius of Drake VORTAC, extending clockwise from a line 5 miles west of and parallel to the Drake VORTAC 159° radial to a line 5 miles south of and parallel to the Drake 252° radial.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and (14 CFR 11.69))

Issued in Los Angeles, California, on March 22, 1985.

George Harvey,

Acting Director, Western-Pacific Region.

[FR Doc. 85-7611 Filed 3-29-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 95

[Docket No. 24589; Amdt. No. 323]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: April 11, 1985.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involves matters of flight safety, operational efficiency in the National Airspace system, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace, Aviation safety.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT April 11, 1985.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 1, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body

of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on March 25, 1985.

John S. Kern,

Acting Director of Flight Operations.

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 223 EFFECTIVE DATE, APRIL 11, 1985

FROM	TO	MEA

§

§95.1001 DIRECT ROUTES-U.S.95.101 AMBER FEDERAL AIRWAY 1

IS AMENDED TO READ IN PART

U.S. CANADIAN BORDER *2300 - MOCA	MOCHA, AK FIX	*5000
SPARL, AK FIX *2200 - MOCA	OCEAN CAPE, AK NDB	*6000
CAPEM, AK FIX *4400 - MOCA	CORVA, AK FIX	*5000
CORVA, AK FIX	EGGER, AK FIX	2000
PARCK, AK FIX *8500 - MOCA	PUNTILLA LAKE, AK NDB	*9000
PUNTILLA LAKE, AK NDB *8400 - MCA FAREWELL NDB, E BND	*FAREWELL, AK NDB	9000
FAREWELL, AK NDB	TAKOTNA RIVER, AK NDB E BND	7000
	W BND	5000

§95.1001 DIRECT ROUTES-U.S.

IS ADDED TO READ

INT CNX VORTAC 315 & OTO VOR 168 VIA OTO VOR 168	GLINA, NM FIX	12000
PANOCHE, CA VORTAC	GORMAN, CA VORTAC	24000

IS AMENDED TO READ IN PART

GLINA, NM FIX VIA BWS VOR/DME 351	BOLES, NM VOR/DME	#12000 MAA-24000

#RADAR REQUIRED WHEN IN HOLLOMAN APCH CTL ARSPC.

NEWMAN, TX VORTAC	TURQE, NM FIX	8000 MAA-17500
TURQE, NM FIX	BOLES, NM VOR/DME	#8000 MAA-17500

#MAA 11000 MSL WHEN R-5103C IN USE
#ROUTE NOT USABLE WHEN R-5103A OR R-5103B IN USE.
#RADAR REQUIRED WHEN IN HOLLOMAN APPROACH CONTROL ARSPC.

IS AMENDED TO DELETE

ALBUQUERQUE, NM VORTAC *12100 - MOCA	GLINA, NM FIX	*14000 MAA-24000
CORONA, NM VORTAC *9000 - MOCA	GLINA, NM FIX	*12000 MAA-24000

FROM	TO	MEA

§95.1001 DIRECT ROUTES-U.S.—Continued

BAHAMA ROUTES

64V IS AMENDED TO READ IN PART

NIMRO, FL FIX *8500 - MRA **1200 - MOCA	*ISAAC, BF FIX	**6400

65V

PEACH, BF FIX *4000 - MRA **1200 - MOCA	*SYDNY, BF FIX	**2000

§95.6002 VOR FEDERAL AIRWAY 2

IS AMENDED TO READ IN PART

MILES CITY, MT VORTAC	DICKINSON, ND VORTAC	6000
LONE ROCK, WI VORTAC	MADISON, WI VOR/DME	3000

§95.6010 VOR FEDERAL AIRWAY 10

IS AMENDED TO READ IN PART

U.S. CANADIAN BORDER	FAILS, OH FIX	4000
FAILS, OH FIX	YOUNGSTOWN, OH VORTAC	3000

§95.6024 VOR FEDERAL AIRWAY 24

IS AMENDED TO READ IN PART

REDWOOD FALLS, MN VORTAC *4600 - MRA **2700 - MOCA	*ALMAY, MN FIX	**3400

§95.6026 VOR FEDERAL AIRWAY 26

IS AMENDED TO READ IN PART

WHITE CLOUD, MI VORTAC	LANSING, MI VORTAC	3000

§95.6027 VOR FEDERAL AIRWAY 27

IS AMENDED TO READ IN PART

FREES, CA FIX *7000 - MRA **4500 - MOCA	*GETER, CA FIX	**4000

FROM	TO	MEA

§95.6063 VOR FEDERAL AIRWAY 63

IS AMENDED TO READ IN PART

HALLSVILLE, MO VORTAC	QUINCY, IL VORTAC	2900

§95.6114 VOR FEDERAL AIRWAY 114

IS AMENDED TO READ IN PART

BOYCE, LA FIX	ALEXANDRIA, LA VORTAC	2000
BOYCE, LA FIX VIA N ALTER.	ALEXANDRIA, LA VORTAC VIA N ALTER	2000
ALEXANDRIA, LA VORTAC	BATON ROUGE, LA VORTAC	2000
ALEXANDRIA, LA VORTAC VIA N ALTER	MUSHE, LA FIX VIA N ALTER	2000

§95.6141 VOR FEDERAL AIRWAY 141

IS AMENDED TO READ IN PART

DRUNK, MA FIX *2500 - MRA	*CELTS, MA FIX	4000

§95.6188 VOR FEDERAL AIRWAY 188

IS AMENDED TO READ IN PART

U.S. CANADIAN BORDER	FAILS, OH FIX	4000
FAILS, OH FIX	JEFFERSON, OH VORTAC	3000

§95.6212 VOR FEDERAL AIRWAY 212

IS AMENDED TO READ IN PART

ALEXANDRIA, LA VORTAC VIA N ALTER	LARTO, LA FIX VIA N ALTER.	2000

§95.6213 VOR FEDERAL AIRWAY 213

IS AMENDED TO READ IN PART

WOODSTOWN, NJ VORTAC *1400 - MOCA	HOLEY, NJ FIX	*3000
HOLEY, NJ FIX *1500 - MOCA	ROBBINSVILLE, NJ VORTAC	*3000
ROBBINSVILLE, NJ VORTAC *1900 - MOCA	WARRD, NJ	*3000 MAA-10000
WARRD, NJ *2000 - MOCA	SHOTT, NJ FIX	*3000 MAA-10000
SHOTT, NJ FIX *2600 - MOCA	SPARTA, NJ VORTAC	*3500 MAA-10000
SPARTA, NJ VORTAC *2900 - MOCA	FLORR, NY FIX	*3500
FLORR, NY FIX *5500 - MOCA	ALBANY, NY VORTAC	*6000

§95.6214 VOR FEDERAL AIRWAY 214

IS AMENDED BY ADDING

BALTIMORE, MD VORTAC	SWANN, MD FIX	2000
SWANN, MD FIX *1400 - MOCA	KERNO, MD FIX	*2500

FROM	TO	MEA

§95.6214 VOR FEDERAL AIRWAY 214—Continued

KERNO, MD FIX	DUPONT, DE VORTAC	2000
DUPONT, DE VORTAC	YARDLEY, PA VORTAC	2400
YARDLEY, PA VORTAC *2000 - MOCA	TETERBORO, NJ VOR/DME	*3000 MAA-10000

§95.6216 VOR FEDERAL AIRWAY 216

IS AMENDED TO READ IN PART

SQUIB, MI FIX	MUSKEGON, MI VORTAC	3000
MUSKEGON, MI VORTAC	SAGINAW, MI VORTAC	3000
SAGINAW, MI VORTAC	PECK, MI VORTAC	3000

§95.6245 VOR FEDERAL AIRWAY 245

IS AMENDED TO READ IN PART

ALEXANDRIA, LA VORTAC	LARTO, LA FIX	2000

§95.6249 VOR FEDERAL AIRWAY 249

IS AMENDED BY ADDING

ROBBINSVILLE, NJ VORTAC *2100 - MOCA	SOLBERG, NJ VORTAC	*3000 MAA-8000
SOLBERG, NJ VORTAC	SPARTA, NJ VORTAC	3000 MAA-8000

§95.6254 VOR FEDERAL AIRWAY 254

IS AMENDED TO READ IN PART

MILES CITY, MT VORTAC	GLASGOW, MT VOR/DME	6000

§95.6445 VOR FEDERAL AIRWAY 445

IS AMENDED BY ADDING

MITCH, MD FIX *2200 - MOCA	SWANN, MD FIX	*3000
SWANN, MD FIX *1400 - MOCA	KERNO, MD FIX	*2500
KERNO, MD FIX	DUPONT, DE VORTAC	2000
DUPONT, DE VORTAC	YARDLEY, PA VORTAC	2400
YARDLEY, PA VORTAC	JERYY, NJ FIX	3000
JERYY, NJ FIX *1700 - MOCA	WARRD, NJ	*3000
WARRD, NJ *1700 - MOCA	NANCI, NY FIX	*3000 MAA-12000
NANCI, NY FIX	LA GUARDIA, NY VOR/DME	2700

§95.6467 VOR FEDERAL AIRWAY 467

IS AMENDED TO READ IN PART

ADAPS, NJ FIX *1600 - MOCA	NANCI, NY FIX	*3000

FROM	TO	MEA
§95.6467 VOR FEDERAL AIRWAY 467—Continued		
NADDI, NY FIX	LA GUARDIA, NY VOR/DME	2700
§95.6494 VOR FEDERAL AIRWAY 494		
IS AMENDED TO READ IN PART		
MENDOCINO, CA VORTAC *7000 - MRA	*GETER, CA FIX	6000
§ 95.6290 VOR FEDERAL AIRWAY 290		
IS AMENDED TO READ IN PART		
BONNEVILLE, UT VORTAC *11000 - MCA STACO, FIX, SE BND	*STACO, UT FIX	9000
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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
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V-88			
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PHILIPSBURG, PA VORTAC	WILLIAMSPORT, PA VORTAC	28	PHILIPSBURG
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HYANNIS, MA VORTAC	BOSTON, MA VORTAC	30	HYANNIS

[FR Doc. 85-7613 Filed 3-29-85; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts, 904, 922, and 970

50 CFR Parts 216, 219, 246, 285, and 621

[Docket No. 41157-4157]

Seizure and Forfeiture Procedures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule.

SUMMARY: NOAA issues this rule to consolidate its procedural regulations concerning property seized and forfeited under the various statutes it enforces including remission and mitigation of forfeiture and sale of perishable fish. The intent is to consolidate, expand and replace numerous procedural regulations. The rule also establishes uniform procedures for administrative forfeitures under the Endangered Species Act, Lacey Act, and Fur Seal Act, as well as procedures for collecting storage costs under the Lacey and Endangered Species Acts. The rule does not establish standards for determining whether property should be seized or forfeited. The rule is added as Subpart F to NOAA's interim final rules governing civil procedures.

DATES: This rule is effective April 1, 1985, as an interim rule. Comments must be submitted on or before May 31, 1985.

ADDRESSES: Interested persons may submit written comments to NOAA Office of General Counsel, Room 533, 3300 Whitehaven Street, NW., Washington, D.C. 200235.

FOR FURTHER INFORMATION CONTACT: Patricia Kraniotis, (202) 254-8350 [Address above].

SUPPLEMENTARY INFORMATION:

Discussion

These regulations provide consolidated, uniform procedures for treating property that has been seized and is subject to forfeiture, or that has been forfeited under the various statutes NOAA enforces, including the Magnuson Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Atlantic Tunas Convention Act of 1975, the Lacey Act Amendments of 1981, the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972. They do not replace regulations covering the disposal of abandoned and forfeited property at 50 CFR Part 219, Subpart C.

The present regulations governing NOAA's procedures for handling seized and forfeited property are scattered throughout 50 CFR. It is the intent of these regulations to provide a single set of uniform procedures for treating such property. In addition, recent legislative enactments have added to the procedures NOAA may use respecting seized property, such as the authority to sell perishable fish under the Northern Pacific Halibut Act and to recoup storage costs under the Lacey and Endangered Species Acts. These regulations implement the additional statutory procedures.

One of the main additions to NOAA's procedures respecting seized property is the adoption of administrative forfeiture procedures under the Lacey, Endangered Species, and Fur Seal Acts. NOAA has not previously published regulations governing administrative forfeitures under these statutes. Sections 904.503, 904.504, and 904.505 concern administrative forfeitures. Section 904.503 establishes procedures for appraising seized property. This is necessary, among other things, to determine whether property is valued at $100,000 or less and thus subject to administrative forfeiture, or whether such property must be forfeited judicially. The appraisement standards implement 19 U.S.C. 1606. Sections 904.504 and 904.505 establish procedures for notifying claimants of the forfeiture proceedings and for posting claims and bonds. These procedures are governed by applicable Customs law [see 19 U.S.C. 1606-1609 (as most recently amended by Pub. L. 98-473)]. NOAA expects that use of administrative forfeiture procedures (rather than filing *in rem* action in federal district court in all cases) will save time and expense both for the agency and the public, particularily with regard to small-valued, routine seizures. It should be noted that administrative forfeiture procedures do not apply to conveyances (vessels or vehicles) subject to forfeiture in connection with criminal proceedings under the Lacey and Endangered Species Acts.

The summary sale procedures in § 904.505 are patterned after similar regulations issued under the Magnuson Fishery Conservation and Management Act. They consolidate current regulations under several statutes. The provisions apply only to sale of fish. Such procedures are necessary because when NOAA agents seize fish in connection with a violation, because it is highly perishable, the value of the fish may diminish rapidly unless it is immediately sold and processed. The proceeds of such sales substitute for the fish in subsequent legal proceedings. Of course, not all seized fish is sold. For instance, spoiled or contaminated products would not be sold; nor, as a matter of policy, would fish (such as undersized fish) for which there is no legal market generally be sold. Authority to sell seized fish derives from several statutes either directly as in the Northern Pacific Halibut Act, Atlantic Tuna Conventions Act, and Magnuson Fishery Conservation and Management Act (where such authority was further clarified in 1982 by Pub. L. 97-453); or by reference to Customs Law as in the Lacey Act.

Section 904.506 addresses remission and mitigation of forfeitures. It applies to property that either has been forfeited or that is seized and subject to forfeiture. This section, which is patterned after existing regulations, allows NOAA discretion to exercise clemency with respect to forfeitures in appropriate cases, for instance where the owner of otherwise legal property acted in good faith, and the violation that gave rise to seizure was technical, minor and unintentional.

The section sets forth the Customs law standards (19 U.S.C. 1618) for exercising the remission and mitigation authority, including the circumstances in which forfeitures will not be remitted or mitigated. As a general rule petitions for remission or mitigation will not be considered once the property has been decreed forfeited, unless a claimant can show that he or she was unaware of the seizure and pending forfeiture proceedings. (In that case the claimant must submit the petition within three months of the declaration or decree of forfeiture.) This is necessary in order to give the agency a cut-off point after which it can make appropriate disposition of the forfeited property. Section 904.507 contains similar provisions with respect to proceeds from the sale of seized and forfeited property. This section also sets forth procedures for NOAA to deduct its storage and maintenance costs from proceeds of sale of forfeited property prior to depositing such proceeds. These authorities derive from references in the various NOAA statutes to Customs law. Section 904.508 sets forth the procedures for recovering storage and maintenance costs from violators for property seized in connection with violations of the Endangered Species Act and Lacey Act. Under both statutes violators are liable for such costs.

Request for Comments

These rules are effective immediately as interim rules. Although no notice or

comment period is required for rules of agency procedure or practice, we are requesting comments on the rules and will review them in light of the comments.

Classification

NOAA has determined that these rules are not major rules as defined by Executive Order 12291, "Federal Regulations." The Regulatory Flexibility Act does not apply because no notice of proposed rulemaking is required. These rules are categorically excluded from preparation of an Environmental Analysis under the National Environmental Policy Act of 1969 by NOAA Directive 02–10. They do not contain information collection requests that are subject to the Paperwork Reduction Act.

List of Subjects

15 CFR Parts 904, 922 and 970

Administrative practice and procedure, Seizures, Forfeitures.

50 CFR Parts 216, 219, 246, 285, and 621

Dated: March 19, 1985.

Administrative practice and procedure, Seizures, Forfeitures.

Mirco P. Baldero,

Director, Office of Administrative Management, National Oceanic and Atmospheric Administration.

1. The following new Subpart F is added to 15 CFR Part 904:

PART 904—CIVIL PROCEDURES

* * * * *

Subpart—Seizure and Forfeiture Procedures

Sec.

904.500 Purpose and scope.
904.501 Notice of seizure.
904.502 Bonded release.
904.503 Appraisement.
904.504 Administrative forfeiture proceedings.
904.505 Summary sale.
904.506 Remission and mitigation of forfeiture.
904.507 Petition for restoration of proceeds.
904.508 Recovery of certain storage costs.

Authority: Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971i; Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*; Endangered Species Act of 1973, 16 U.S.C. 1531–1543; Fur Seal Act of 1966, 16 U.S.C. 1151 *et seq.* (as amended by Pub. L. 98–129); Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378; Magnusoff Fishery Conservation and Management Act, 16 U.S.C. 1801–1882; Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407; Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431–1434; Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k; North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1032; Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f; Sponge Act, 16 U.S.C. 781 *et seq:* Tuna Conventions Act of 1950, 16 U.S.C. 951–961.

Subpart F—Seizure and Forfeiture Procedures

§ 904.500 Purpose and Scope.

(a) This Subpart establishes procedures relating to seized property (except property seized and held solely as evidence) that is subject to forfeiture under the various statutes administered by the National Oceanic and Atmospheric Administration (NOAA).

(b) Except as provided in this Subpart, these regulations apply to all seized property subject to forfeiture under the following statutes:

(1) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971–971i;

(2) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601–3608;

(3) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.*;

(4) Endangered Species Act of 1973, 16 U.S.C. 1531–1543;

(5) Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*;

(6) Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378;

(7) Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801–1882;

(8) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361–1407;

(9) Marine Protection, Research and Sanctuaries Act, 16 U.S.C. 1431–1434;

(10) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773–773k;

(11) North Pacific Fisheries Act of 1954; 16 U.S.C. 1021–1032;

(12) Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776–776f;

(13) Sponge Act, 16 U.S.C. 781 *et seq.*;

(14) Tuna Conventions Act of 1950, 16 U.S.C. 951–961;

This Subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of items seized under these statutes.

§ 904.501 Notice of seizure.

Except where the owner, consignee, or other party that the facts of record indicate has an interest in the seized property is personally notified, or where seizure is made pursuant to a search warrant, the Administrator, or his or her designee, will, as soon as practicable following the seizure or other receipt of seized property, mail notice of the seizure by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. The notice will describe the seized property and state the time, place and reason for the seizure. The notice will inform each interested party of his or her right to apply for remission or mitigation of the forfeiture (including any agreement that may be required under § 904.506(b)(2)(G) of this Subpart). The notice may be combined with a notice of the sale of perishable fish issued under § 904.505 of this Subpart.

§ 904.502 Bonded release.

The Administrator may, in his or her sole discretion, release any seized property upon deposit with the Administrator of the full value of the property or such lesser amount as the Administrator deems sufficient to protect the interests served by the applicable statute. The deposit will be held in a NOAA suspense account, or deposited with the appropriate court, pending the outcome of forfeiture proceedings. In addition, the Administrator may, in his or her sole discretion, accept a bond or other security in place of fish, wildlife, or other property seized. The bond will contain such conditions as the Administrator deems appropriate. The provisions of § 904.506(f) of this Subpart apply to the Administrator's determination whether to release the property. The deposit or bond will for all purposes be considered to represent the property seized and subject to forfeiture.

§ 904.503 Appraisement.

The Administrator will appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement will be used. If the seized property may not lawfully be sold in the United States, its domestic value will be determined by other reasonable means.

§ 904.504 Administrative forfeiture proceedings.

(a) *When Authorized.* Whenever any property seized under the Endangered Species Act of 1973, the Lacey Act Amendments of 1981, or the Fur Seal Act of 1966, is determined under § 904.503 of this Subpart to have a value of $100,000 or less, the Administrator may obtain its forfeiture under this section. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) *Procedure.*—(1) *Notice of Proposed Forfeiture.* The Administrator will publish a notice of proposed forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. However, if the value of the seized property does not exceed $1,000, the notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, United States District Court, or the United States Customs House nearest the place of seizure, with the date of posting indicated on the notice. In addition, a reasonable effort will be made to serve the notice personally, or by registered or certified mail, return receipt requested, on each person whose whereabouts and interests in the property are known or easily ascertainable.

(2) *Contents.* The notice of proposed forfeiture will:

(A) Describe the seized property, including any applicable registration or serial numbers;

(B) State the time, place and reason for the seizure; and

(C) Describe the rights of an interested person to file a claim to the property (including the right to file a motion to stay administrative forfeiture proceedings and to petition to remit or mitigate the forfeiture).

(3) *Filing a Claim and Bond.*—(A) *Claim.* Except as provided in paragraph (b)(4) of this section, any person claiming the seized property may file a claim with the Administrator, at the address indicated in the notice, within 20 days of the date the notice was first published or posted. The claim shall state the claimant's interest in the property.

(B) *Bond.* Except as provided in paragraphs (b)(3)(E) or (b)(4) of this section, a bond for costs in the penal sum of $5,000 or 10 percent of the appraised value of the property, whichever is lower, but not less than $250, with sureties satisfactory to the Administrator, shall be filed with the claim for seized property. The bond may be posted by certified check or on Customs form 4615 (or a similar form provided by NOAA). There shall be endorsed on the bond a list or schedule in substantially the following form, signed by the claimant in the presence of witnesses, and attested by the witnesses:

List or schedule containing a particular description of seized article, claim for which is covered by the within bond; to wit:

_____

_____

The foregoing list is correct.

_____

Claimant.

Attest

_____

_____

(C) *Claimant Not Entitled to Possfession.* Filing a claim and posting a bond does not entitle the claimant to possession of the property. However, it does stop administrative forfeiture proceedings.

(D) *Referral to Attorney General.* If the claim and bond are timely filed in accordance with this section, the Administrator will refer the matter to the Attorney General to institute forfeiture proceedings in the appropriate United States District Court.

E) *Waiver of Bond.* Upon satisfactory proof of financial inability to post the bond, the Administrator may waive the bond requirement for any person claiming an interest in the seized property.

(4) *Motion for Stay.* Instead of, or in addition to, filing a claim and bond under paragraph (b)(3) of this section, any person claiming the seized property may file with the Administrator within 20 days after the date of first publication or posting of the notice of proposed forfeiture, a motion to stay administrative forfeiture proceedings. The motion shall contain: (i) The claimant's verified statement showing the claimant's absolute title to the seized property, free of all liens or other third party interests; and (ii) the claimant's offer to pay in advance all reasonable costs anticipated for storage and maintenance of the property. The Administrator, in his or her discretion, may grant the stay and impose any conditions deemed reasonable, including but not limited to length of the stay, factors that would automatically terminate the stay, and any requirement for a bond to secure payment of storage or maintenance costs. If the Administrator denies or terminates the stay, the claimant, if he or she has not already done so, has 20 days from receipt of the denial or termination order to file a claim and bond in accordance with paragraph (b)(3) of this section. Failure to file the claim and bond within that 20 days will result in summary forfeiture under paragraph (b)(5) of this section.

(5) *Summary Forfeiture.* If a claim and bond are not filed within 20 days of notice in accordance with this section, the Administrator will declare the property forfeited. The declaration of forfeiture will be in writing and will be served on each person whose whereabouts and prior interest in the seized property are known or easily ascertainable. The forfeited property will be subject to disposition as authorized by law and regulations of the Administrator.

(6) *Judicial Forfeiture.* If the appraised value of the property is more than $100,000, or a timely and satisfactory claim and bond for property appraised at $100,000 or less are submitted to the Administrator, the matter will be referred to the Attorney General to institute *in rem* proceedings in the appropriate United States District Court.

§ 904.505 Summary sale.

(a) In view of the perishable nature of fish, any person authorized to enforce a statute administered by NOAA may, as authorized by law, sell or cause to be sold, and any person may purchase, for not less than its domestic fair market value, fish seized under such statute.

(b) Any person purchasing fish subject to this section shall deliver the proceeds of the sale to a person authorized to enforce a statute administered by NOAA immediately upon request of such authorized person. Anyone who does not so deliver the proceeds may be subject to penalties under the applicable statute or statutes.

(c) The Administrator will give notice of the sale by registered or certified mail, return receipt requested, to the owner or consignee, if known or easily ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

(d) The proceeds of the sale, after deducting any reasonable costs of the sale, will be subject to any administrative or judicial proceedings in the same manner as the seized fish would have been, including an action *in rem* for the forfeiture of the proceeds. Pending disposition of such proceedings, the proceeds will, as appropriate, either be deposited in a NOAA suspense account or submitted to the appropriate court. The proceeds will not be subject to release under §§ 904.502 or 904.506(f) of this Subpart.

(e) Seizure and sale of fish is without prejudice to any other remedy or sanction authorized by law.

§ 904.506 Remission and mitigation of forfeiture.

(a) *Application of This Section.* (1) This section establishes procedures for filing with the Administrator a petition for relief from foreitures incurred, or

alleged to have been incurred, under any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

(2) For purposes of this section, the "remission or mitigation of a forfeiture" or "relief from forfeiture" means action by the Administrator, following coordination as necessary with other federal agencies and the courts, to release from the custody of the United States all or part of property seized and subject to forfeiture, upon compliance with any terms and conditions set by the Administrator, such as payment of a stated amount in settlement of the forfeiture aspects of a violation. Although the Administrator may properly consider a petition for relief from forfeiture along with other consequences of a violation, the remission or mitigation of a forfeiture is not dispositive of any criminal charge filed, civil penalty assessed, or permit sanction proposed, unless the Administrator expressly so states. Remission or mitigation of a forfeiture is in the nature of executive clemency and is granted in the sole discretion of the Administrator only when consistent with the purposes of the particular statute involved and this section.

(3) The Administrator will not consider a petition for remission or mitigation while a forfeiture proceeding is pending in federal court. Once such a case is referred to the Attorney General for institution of judicial proceedings, and until the proceedings are completed, any petition received by the Administrator will be forwarded to the Attorney General for consideration.

(b) *Petition for Relief from Forfeiture.* (1) Any person having an interest in property seized and subject to forfeiture may file a petition for relief from forfeiture. Unless otherwise directed in a notice concerning the seized property, the petition shall be addressed to the Administrator and filed with the Regional Director, National Marine Fishers Service, nearest to the place where the property is held:

Seattle, Washington 98115
Terminal Island, California 90731
Juneau, Alaska 99802
Gloucester, Massachusetts 01930
St. Petersburg, Florida 33702

The Administrator will consider a petition filed after a declaration or decree of forfeiture only if the petitioner demonstrates that he or she did not previously know of the seizure and was in such circumstances as prevented him or her from knowing of it, except that the Administator will not consider a petition filed more than three months from the date of such declaration or decree. (See §904.507 of this Subpart regarding the right of certain claimants to petition for restoration of proceeds from the sale of forfeited property.)

(2) The petition need not be in any particular form, but shall set forth the following:

(A) A description of the property seized;

(B) The date and place of the seizure;

(C) The petitioner's interest in the property, support as appropriate by bills of sale, contracts, mortgages, or other satisfactory evidence;

(D) The facts and circumstances relied upon by the petitioner to justify the remission or mitigation;

(E) Any request for release under paragraph (f) of this section pending final decision on the petition, together with any offer of payment to protect the United States' interest that petitioner makes in return for the release, and the facts and circumstances relied upon by petitioner in the request;

(F) The signature of the petitioner, his or her attorney, or other authorized agent; and

(G) An express agreement to defer administrative or judicial forfeiture proceedings until completion of all other related judicial or administrative proceedings (including any associated civil penalty or permit sanction proceedings). A false statement in a petition will subject petitioner to prosecution under 18 U.S.C. 1001.

(c) *Investigation.* The Administrator will investigate the facts and circumstances shown by the petition and seizure, and may in this respect appoint an investigator to examine the facts and prepare a report of investigation.

(d) *Decision on Petition.* (1) After investigation under paragraph (c) of this section, the Administrator will decide the matter and notify the petitioner. The Administrator may remit or mitigate the forfeiture, on such terms and conditions as under the applicable statute and the circumstances are deemed reasonable and just, upon a finding:

(A) That the forfeiture was incurred without willful negligence and without any intention on the part of petitioner to violate the applicable statute; or

(B) That other circumstances exist that justify remission or mitigation of the forfeiture.

(2) Unless the Administrator determines no valid purpose would be served, the Administrator will condition a decision to remit or mitigate a forfeiture upon the petitioner's submitting an agreement, in a form satisfactory to the Administrator, to hold the United States and its officers or agents harmless from any and all claims based on loss of or damage to the seized property or that might result from grant of remission or mitigation. If the petitioner is not the beneficial owner of the property, or if there are others with a proprietary interest in the property, the Administrator may require the petitioner to submit such an agreement executed by the beneficial owner or other interested party. The Administrator may also require that the property be promptly exported from the United States.

(e) *Compliance with the Decision.* A decision by the Administrator to remit or mitigate the forfeiture upon stated conditions, as upon payment of a specified amount, will be effective for 60 days after the date of the decision. If the petitioner does not comply with the conditions within that period in the manner prescribed by the decision, or make arrangements satisfactory to the Administrator for late compliance, the remission or mitigation will be void, and judicial or administrative forfeiture proceedings will be instituted or resumed.

(f) *Release of Seized Property Pending Decision.* (1) Upon request in the petition for relief from forfeiture, the Administrator may in his or her discretion order the release, pending final decision on the petition, of all or part of the seized property upon payment by the petitioner of the full value of the property to be released or such lesser amount as the Administrator deems sufficient to protest the interests served by the applicable statute. The following, however, will not be released:

(A) Property in which the Administrator is not satisfied that the petitioner has a substantial interest;

(B) Property whose entry into the commerce of the United States is prohibited;

(C) Live animals, except in the interest of the animals' welfare;

(D) Proceeds from the sale of seized property sold under § 904.505 of this Subpart (see § 904.507 of this Subpart regarding petitions for restoration of proceeds from the sale of property declared forfeited); or

(E) Where it appears to the Administrator that it would not be in the best interest of the United States or serve the purposes of the applicable statute to release the property.

(2) If the Administrator grants the request, the amount paid by petitioner will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by petitioner constitutes a

waiver by the petitioner of any claim arising from the seizure and custody of the property. The Administrator will maintain the money so deposited pending his further order, order of a court, or disposition by applicable administrative proceedings.

§ 904.507 Petition for restoration of proceeds.

(a) The general provisions of § 904.506 of this Subpart on petitions for remission or mitigation of forfeitures apply to petitions for restoration of proceeds from the sale of forfeited property, except as modified by this section.

(b) In addition, to any evidence required under § 904.506 of this Subpart, the petition for restoration of proceeds shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him or her from knowing of it.

(c) If forfeited property that is the subject of a claim for restoration of proceeds has been appropriated for official use, retention by the government will be regarded as sale for the purposes of this section.

(d) No petition for restoration of proceeds will be considered unless it is submitted within three months of the declaration or decree of forfeiture.

(e) If no petition is timely filed, or if the petition is denied, prior to depositing the proceeds the Administrator may use the proceeds of sale to reimburse the government for any costs that by law may be recovered or to pay any reward that by law may be paid from such sums.

§ 904.508 Recovery of certain storage costs.

If any fish, wildlife, or evidentiary item is seized and forfeited under the Endangered Species Act, 16 U.S.C. 1531–1543, any person whose act or omission was the basis for the seizure may be charged a reasonable fee for expenses to the United States connected with the transfer, board, handling or storage of such property. If any fish or wildlife is seized in connection with a violation of the Lacey Act Amendments of 1981, 16 U.S.C. 3371–3378, any person convicted thereof, or assessed a civil penalty therefor, may be assessed a reasonable fee for expenses of the United States connected with the storage, care and maintenance of such property. Within a reasonable time after forfeiture, the Administrator will send to such person by registered or certified mail, return receipt requested, a bill for such fee. The bill will contain an itemized statement of the applicable costs, and instructions on the time and manner of payment. Payment shall be made in accordance with the bill. If the recipient of the bill objects to the reasonableness of the costs assessed he or she may, within 30 days of receipt, file written objections with the Administrator at the address stated in the bill. The Administrator will promptly review the written objections and within 30 days mail his or her final decision to the party who filed them. The Administrator's decision will constitute final agency action on the matter.

PART 922—NATIONAL MARINE SANCTUARIES PROGRAM

2. The introductory paragraph of § 922.40 is revised to read as follows:

* * * * *

§ 922.40 Applicable procedures.

NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations, set forth at 46 FR 61643 (1981) (to be codified at 15 CFR 904.100 through 904.273), and the seizure, forfeiture, and disposal procedure regulations set forth at 46 FR 31648 (1981) (to be codified at 50 CFR Part 219), and the seizure and forfeiture procedures set forth at 50 FR 12781 (to be codified at 15 CFR Part 904, Subpart F).

* * * * *

PART 970—DEEP SEABED MINING REGULATIONS FOR EXPLORATION LICENSES

3. Section 970.1104 is revised to read as follows:

* * * * *

§ 970.1104 Remission of forfeitures.

Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including the remission or mitigation of forfeitures.

* * * * *

TITLE 50—WILDLIFE AND FISHERIES

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

4. Section 216.7 is amended by revising paragraph (b) and removing paragraph (c) as follows:

§ 216.7 Holding and bonding.

* * * * *

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR Part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the Act.

(c) [Removed]

* * * * *

PART 219—SEIZURE, FORFEITURE, AND DISPOSAL PROCEDURES

5. Subpart B, consisting of §§ 219.11 through 219.15, is removed and the subpart is reserved, as follows:

Subpart B—[Reserved]

§§ 219.11 through 219.15 [Removed]

PART 246—[RESERVED]

§§ 246.1 through 246.17 [Removed]

6. Part 246, consisting of §§ 246.1 through 246.17 is removed and the Part is reserved.

PART 285—ATLANTIC TUNA FISHERIES

7. Section 285.5 is amended by revising paragraph (b) and removing paragraph (c), as follows:

§ 285.5 [Amended]

* * * * *

(b) Subpart F of 15 CFR Part 904 governs procedures regarding seized property that is subject to forfeiture or has been forfeited under the Act, including sale by the government of seized tuna.

(c) [Removed]

* * * * *

PART 621—CIVIL PROCEDURES

8. Section 621.1 is amended by removing paragraphs (d) and (e) as follows:

§ 621.1 [Amended]

(d) [Removed]

(e) [Removed]

* * * * *

9. Section 621.2 is amended by removing paragraph (d) as follows:

§ 621.2 [Amended]

* * * * *

(d) [Removed]

* * * * *

10. Subpart E, consisting of §§ 621.61 through 621.66, is removed and the subpart is reserved, as follows:

Subpart E—[Reserved]

§§ 621.61 through 621.66 [Removed]

[FR Doc. 85–7404 Filed 3–29–85; 8:45 am]
BILLING CODE 3510–15–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that the table in § 305.9, which sets forth the representative average unit energy costs for four residential energy sources; be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This notice revises the table to incorporate the latest figures for average unit energy costs as published in the Federal Register on February 4, 1985, by DOE.

DATES: The revised Table 1 is effective April 1, 1985. The mandatory dates for using these revised DOE cost figures are detailed below.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–376–8934 or Lucerne D. Winfrey, 202–376–8934, attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201 (1975). The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for seven categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The rule also requires a general disclosure, on certain point-of-sale promotional materials, of the availability of energy cost or energy efficiency information, and requires that any claims concerning energy consumption made in writing or in broadcast advertisements be based on results of the standardized test procedures. The cost and efficiency information obtained by following the test procedures is derived by using representative average unit energy costs, which, as required by section 323(b)(2) of EPCA, DOE must develop and provide to manufacturers. These figures are incorporated into § 305.9 of the Commission's rule.

Table 1 in § 305.9 of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. Section 305.9(b), states that the Table is intended to be revised periodically on the basis of updated information provided by DOE. Table 1 was first revised by publication of new DOE figures on January 13, 1981, in the Federal Register (46 FR 2974).

On February 4, 1985, DOE published (50 FR 4889) the most recent figures for representative average unit energy costs. Consequently, Table 1 must again be updated in order to reflect these latest cost figures. Accordingly, Table 1 is revised to read as set forth below.

Mandatory Use of Revised Cost Figures

The dates when use of these figures becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1985 Submissions of Data Under § 305.8 of the Commission's Rule

The new cost figures must be used in all 1985 submissions except clothes washers. Because it appears that the 1985 costs will not be in effect on the mandatory submission date for these products, clothes washer submissions for 1985 could be based on the 1984 cost figures.

For Labeling and Advertising of Products Under the Commission's Rule

Only those products for which new ranges have been published based on 1985 submissions using these 1985 DOE cost figures should be labeled with estimated annual cost figures calculated using these 1985 DOE representative average unit costs for energy. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the Federal Register. Advertising for these products must also be based on the new costs and ranges beginning ninety days after publication of the new ranges in the Federal Register.

Advertising of Products Covered by EPCA but not by the Commission's Rule

Manufacturers of products covered by 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, central air conditioners, and home heating equipment, not including furnaces) must use the 1985 representative average unit costs for energy in all representations effective July 1, 1985.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

PART 305—[AMENDED]

Section 305.9(a) is amended by revising Table 1 to read as follows:

§ 305.9 Representative average unit energy costs.

(a) * * *

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FOUR RESIDENTIAL ENERGY SOURCES (1985)

Type of energy	In common terms	As required by DOE test procedure	Dollars per million Btu's[1]
Electricity	7.75¢/kWh[2 3]	$0.0775/kWh	$22.71
Natural gas	61.7¢/therm[4] or $6.27/MCF[5 6]	0.00000617/Btu	6.17
No. 2 heating oil	$1.11/gallon[7]	0.00000800/Btu	8.00
Propane	72.0¢/gallon[8]	0.00000791/Btu	7.91

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,413 Btu's.
[4] 1 therm = 100,000 Btu's.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,016 Btu's.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu's.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,000 Btu's.

* * * * *

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–7482 Filed 3–29–85; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF STATE

22 CFR Parts 120, 121, 124, 125, 126, 127, and 128

[Departmental Reg. 108.841]

Revision of the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final Rule; correction and further amendment.

SUMMARY: A revision of the International Traffic in Arms Regulations was published as a final rule in the **Federal Register** on Thursday, December 6, 1984 (49 FR 47682); editorial corrections appeared on Thursday, December 13, 1984 (49 FR 48536). The following are additional changes to parts 120, 121, 124, 125, 126, 127, 128, and 130. They are primarily editorial corrections or minor changes to the final rule.

Also, amendments are being made to § 126.8—Proposals to foreign persons relating to military equipment. During the period of public comment on the proposed rule, all of the comments which were received regarding § 126.8 questioned the continued need for this provision, which requires the approval of the Office of Munitions Control for certain "Proposals to foreign persons relating to significant military equipment." After further considerationof these comments, the Department of State has decided to amend this section to require prior approval only for proposals or presentations involving significant military equipment not previously approved for export. All other cases falling within this section will be subject to a 30-day prior notification requirement.

EFFECTIVE DATE: March 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William B. Robinson, (202) 235–9755, Director, Office of Munitions Control; Mr. Mark L. Wiznitzer, (202) 235–9756, Office of Munitions Control; Ms. Jean U. Bailly, (202) 632–0568, Office of the Legal Adviser.

Accordingly, FR Doc. 84–31706, published at 49 FR 47682, December 6, 1984 is corrected as follows:

1. Page 47684, § 120.1, line 2, change "2728" to "2778"

2. Page 47686, § 120.24(a), add "(7) Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program (Form DSP–94)."

3. Page 47686, § 121.1, Category III(b), line 4, change "power" to "powder"

4. Page 47687, § 121.1, Category VII(d), line 5, change "paragraphs" to "paragraph"

5. Page 47688, § 121.1, Category XIII(a), line 6, change "therefore" to "therefor".

6. Page 47697, § 124.10(a)(4), line 9, between "U.S. Government" and "contributions", insert "must be proportionately reduced to reflect the U.S. Government"

7. Page 47699, § 124.14(e)(1), insert quotation marks at the end of the paragraph.

8. Page 47700, § 125.4(a), insert the following sentence at the end of the paragraph: "A person who determines that an export is not subject to this subchapter should review the Department of Commerce regulations to ensure that the export is not subject to its export jurisdiction."

9. Page 47700, § 125.4(b)(8), line 3, between "exported" and "in accordance", insert "or authorized for export"

10. Page 47702, Part 126, Authority, lines 2–3, delete "601, as amended, 47 Stat. 417 (31 U.S.C. 6a86);"

11. Page 47702, § 126.5(b)(6), line 3, change "(e)" to "(d)"

12. Page 47703, § 126.6, change all references to "DSP–XX" to "DSP–94".

13. Page 47703, § 126.6(c)(2)(i), line 15, change the comma to a period and delete "and which has been stamped: Implemented (date)."

14. Page 47704, 127, Authority, lines 2–3, delete "601, as amended, 47 Stat. 417 (31 U.S.C. 686);"

15. Page 47706, Part 128, Authority, lines 2–3, delete "601, as amended, 47 Stat. 417 (31 U.S.C. 686);"

16. Page 47710, § 130.5(a), line 2, change "(a)(1)" to "(b)"

For the reasons set forth in the summary, 22 CFR Part 126 is amended as follows:

1. In § 126.8(a), revise so much of the introductory text to read as follows: (a) *General.* Either a thirty day prior notification to, or the approval of the Office of Munitions Control is required before a proposal or . . ."

2. Section 126.8(a), is further amended by the addition of the following new flush paragraph after § 126.8(a)(3):

The approval of the Office of Munitions Control must be obtained before a proposal or presentation is made to any foreign person, where the three criteria specified in the preceding paragraph are met, whenever the significant military equipment has not been previously approved for export. Where such proposals or presentations concern equipment previously approved for export, the Office of Munitions Control must be notified in writing thirty days in advance of the proposal or presentation to any foreign person.

3. Section 126.8(b), is amended by inserting the words "notification or" between "prior" and "approval" each time those two words appear.

4. Section 126.8(c)(1) (i) and (ii) are revised to read

(c) * * *

(1) * * *

(i) Refers to a specific notification made or approval previously granted with respect to the transaction; or (ii) Certifies that no proposal or presentation requiring prior notification or approval has been made.

* * * * *

5. In § 126.8(d), the introductory text is revised to read as follows: (d) *Satisfaction of requirements.* The requirement of this section for prior notification is met by informing the Office of Munitions Control by letter 30 days before making the proposal or presentation. This letter must comply with the procedures set forth in paragraph (f) of this section and must identify the license or other approval by which the Office of Munitions Control had previously authorized the export of the identical equipment. The requirement of this section for prior approval is met by any of the following:

6. Section 126.8(e), is revised to read as follows:

(e) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to notify the Office of Munitions Control or to obtain the approval required by this section for significant military equipment which has not been previously authorized for export may be considered to be a reason for disapproval of a license, agreement or sale under the Foreign Military Sales Program of the Department of Defense.

7. Section 126.8(f), is amended in the first sentence by inserting "a prior notification of or" between "for" and "an".

8. Section 126.8(g) is amended by adding the words "Notification to or", after the heading for paragraph (g) and before the word "The".

Dated: March 19, 1985.

William Schneider, Jr.,

Under Secretary of State for Security Assistance, Science and Technology.

[FR Doc. 85-7480 Filed 3-29-85; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-85-1232; FR-2110]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations increases the maximum allowable interest rate on Section 232 (Mortgage Insurance for Nursing Homes) and on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 12.50 percent to 13.00 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—housing and community development, mortgage insurance, Nursing homes, Intermediate care facilites.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance Homeownership, Grant programs, housing and community development.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 13.00 percent per annum with respect to mortgages insured on or after March 25, 1985.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

2. In §235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages insured on or after March 25, 1985.

* * * * *

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortagagor, which rate shall not exceed 13.00 percent per annum with respect to mortgages insured after March 25, 1985.

* * * * *

(Sec. 3(a), 82 Stat. 113; (12 U.S.C. 1709-1); sec. 7 of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: March 22, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing-Deputy FHA Commissioner, HD.

[FR Doc. 85-7701 Filed 3-29-85; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 570 and 595

[Docket No. R-85-1231]

Community Development Block Grants and Neighborhood Self-Help Development Program; Technical Amendments

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Technical amendments.

SUMMARY: The purpose of this document is to make technical amendments to Chapter V of Title 24 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-7055. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: A routine inspection of the 1984 edition of the Title 24 Code of Federal Regulations has revealed the need for several technical amendments before publication of the 1985 edition of the code. The purpose of this document is to publish those amendments where they are necessary.

The Department has determined that this document need not be published as a proposed rule since this rulemaking merely makes technical amendments to existing HUD regulations.

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary, since these technical amendments are categorically excluded under HUD regulations at 24 CFR 50.20(k).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulations issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely reflects technical amendments to Title 24 of the Code of Federal Regulations.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684).

List of Subjects

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 595

Community development, Grant programs: housing and community development, Urban renewal.

Accordingly, the Department amends Title 24 CFR Chapter V as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. In section 570.454, paragraph (b) is revised to read as follows:

§ 570.454 Other actions which must be taken prior to submission of a full application.

* * * * *

(b) *Impact analysis.* Before submitting a full application, the applicant must (1) analyze the impact of the proposed activities, both on the residents (particularly those of low and moderate income) of any residential neighborhood in which such activities are to be carried out, and on the neighborhood in which they are to be carried out; and (2) hold public hearings to obtain the views of citizens.

* * * * *

§ 570.466 [Amended]

2. In § 570.466, paragraph (c)(3)(i) is amended by removing the reference to "(i)" immediately following the word "include" and before the word "Provisions" and by removing the reference to "(ii)" immediately following the word "and" and before the word "provisions" and adding in their places (A) and (B), respectively.

PART 595—NEIGHBORHOOD SELF-HELP DEVELOPMENT PROGRAM

§ 595.102 [Amended]

3. Section 595.102 currently consists of three undesignated paragraphs immediately following paragraph (b)(4). The three paragraphs are designated (i), (ii), and (iii), respectively.

§ 595.103 [Amended]

4. Section 595.103 currently consists of four undesignated paragraphs immediately following paragraph (d)(2). The four paragraphs are designated (i), (ii), (iii), and (iv), respectively.

§ 595.104 [Amended]

5. Section 595.104 currently consists of four undesignated paragraphs immediately following paragraph (e). The four paragraphs are designated (1), (2), (3), and (4), respectively.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 27, 1985.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 85-7702 Filed 3-29-85; 8:45 am]

BILLING 4210-29-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission.

ACTION: Final rule.

SUMMARY: The following procedural rule permits a Federal inmate who is applying for parole to have his presentence investigation report disclosed to the representative whom the inmate has chosen to speak for him at his parole hearing. This disclosure will take place prior to the parole hearing, and is in conjunction with the pre-hearing disclosure rights created by statute at 18 U.S.C. 4208 (1976). Disclosure to the representative is limited to those portions of the report which the sentencing court has already authorized to be disclosed to the inmate. Excluded from this regulation are inmates acting as representatives of other inmates, and access will not be permitted to presentence investigation reports prepared in certain U.S. District Courts. This regulation is part of a court-approved settlement.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: This regulation is one feature of a court-approved settlement of the litigation in *Wallace Russell Childs, Jr., et al.* v. *United States Parole Commission*, Civil Action No. 1616–70, in the U.S. District Court for the District of Columbia. The order approving settlement was entered January 16, 1985. The litigation began as a class-action lawsuit against the U.S. Board of Parole in the early 1970's, challenging a broad range of parole procedures under the Due Process Clause. Over the years, and especially following enactment of the Parole Commission and Reorganization Act in 1976 (18 U.S.C. 4201 et seq.), the various issues which had been litigated were mooted by on-going changes in parole law and procedures.

The last remaining issue was whether a parole applicant's representative should be given access to the presentence report, a document which the majority of U.S. District Courts will not authorize to be copied and given to defendants. After circulating the proposed settlement to all the Chief Judges of the U.S. District Courts, and receiving their replies, the parties reached agreement on a procedure whereby representatives (excluding inmates acting as representatives of other inmates) would be permitted by the U.S. Bureau of Prisons to view the report, and take notes, in the company of the prisoner, prior to the parole hearing, but not to retain a copy unless court permission were secured.

A few U.S. District Courts objected to the proposal, and access to presentence reports from the following districts will not be permitted: The Central District of California, the Eastern District of Kentucky, the Districts of North Dakota and Nevada, the Southern District of Indiana, and the Southern District of Ohio. Presentence reports which originated in the District of New Jersey and which were prepared prior to October 1, 1978, will not be disclosed until reviewed by the Probation Department with a District Judge in that District.

There is no connection between this settlement and whatever rights prisoners and the public may have to obtain copies of presentence investigation reports under the Freedom of Information Act (FOIA). It is the Department of Justice's position that these reports are exempt from disclosure pursuant to a number of exemptions in the FOIA. Accordingly, it is the Government's position that prisoners who wish to obtain copies of their presentence reports should make their requests directly to the sentencing judge, who is in the best position to determine whether, in a given case, a defendant should be able to retain a copy of that document.

Responsibility for implementing the right created by this regulation will lie with the personnel of the U.S. Bureau of Prisons, which has adopted procedures pursuant to the settlement.

Finally, disclosure will not be made to either the prisoner or his representative of any portions of the report deemed to be exempt under Rule 32, Federal Rules of Criminal Procedure, and/or the identical exempting provisions at 18 U.S.C. 4208 (1976). Nothing in this prefatory explanation to the regulation is intended to supplement or interpret the terms of the settlement itself.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), the Commission is amending 28 CFR 2.55 to add a new paragraph (a)(4) to read as follows:

§ 2.55 Disclosure of the file prior to parole hearings: Prehearing review.

(a) * * *

(4) Upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of the initial hearing, interim hearing, and a 15-year reconsideration hearing, pursuant and subject to the regulations of the U.S. Bureau of Prisons. Disclosure shall not be permitted with respect to confidential material withheld by the sentencing court under Rule 32(c)(3)(A), F.R.Crim.P.

Dated: March 19, 1985.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 85–7677 Filed 3–29–85; 8:45 am]

BILLING CODE 4410–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates by reference certain interest rates published by another federal agency. The effect of this amendment is to add to the regulation an appendix containing a table of those interest rates.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–254–4860 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On May 31, 1984, the Pension Benefit Guaranty Corporation ("PBGC") published (at 49 FR 22642) its regulation on Notice and Collection of Withdrawal Liability (29 CFR Part 2644). The regulation deals with rates of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Since the regulation incorporates by reference interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC has decided to collect the applicable rates and republish them in an appendix

to the regulation. This amendment adds an appendix of interest rates to Part 2644 and also adds a cross-reference to the appendix at the end of § 2644.3(b).

The table in the appendix shows, for the period September 26–30, 1980, and for each listed calendar quarter thereafter, the date of the fifteenth day (or next business day if the fifteenth day was not a business day) of the month preceding the beginning of the quarter, and the average quoted prime rate on short-term commercial loans for that date as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). For the period beginning July 2, 1984, the rate listed for each quarter is the rate prescribed for that quarter under § 2644.3(b). For the period from September 26, 1980, to July 1, 1984, the rate listed for each quarter is the rate that would have been prescribed for that quarter under § 2644.3(b) if Part 2644 had been in effect during that period, and is a rate based on prevailing market rates for obligations comparable to withdrawal liability within the meaning of section 4219(c)(6) of ERISA.

The appendix does not prescribe interest rates under the regulation. The rates prescribed by the regulation are those published in Statistical Release H.15 for the dates specified in the regulation. The appendix merely collects and republishes the rates in one convenient place. Because the appendix is informational only and has no substantive effect, the PBGC finds that no useful purpose would be served by expending the resources necessary to follow the procedures for notice and comment. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest, and that there is good cause for making this amendment effective immediately. See 5 U.S.C. 533 (b) and (d).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981 (46 FR 13193), because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

PART 2644—[AMENDED]

In consideration of the foregoing, 29 CFR Part 2644 is amended as follows:

1. The authority citation for Part 2644 reads as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93–406, as amended by secs. 403 (1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1208, 1302 and 1236–1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

2. In § 2644.3, paragraph (b) is revised to read as follows:

§ 2644.3 Interest on overdue, defaulted and overpaid withdrawal liability.

* * * * *

(b) *Interest rate.* Except as otherwise provided in rules adopted by the plan pursuant to § 2644.4, interest under this section shall be charged or credited for each calendar quarter at a rate equal to the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of each calendar quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). Appendix A to this Part sets forth the interest rates for specified time periods.

* * * * *

3. Appendix A is added to Part 2644 to read as follows:

Appendix A—Table of Interest Rates

The following table shows, for the period September 26–30, 1980, and each calendar quarter thereafter, the date of the fifteenth day (or next business day if the fifteenth day was not a business day) of the month preceding the beginning of the quarter, and the average quoted prime rate on short-term commercial loans for that date as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). For the period beginning July 2, 1984, the rates are those prescribed under § 2644.3(b). For the period before July 2, 1984, the rates are those that would have been prescribed under § 2644.3(b) if this Part had been in effect during that period, and are rates based on prevailing market rates for obligations comparable to withdrawal liability within the meaning of section 4219(c)(6) of the Act.

From	To	Date of quotation	Rate (percent)
09/26/80	09/30/80	06/16/80	[1] 12.25
10/01/80	12/31/80	09/15/80	12.25
01/01/81	03/31/81	12/15/80	20.00
04/01/81	06/30/81	03/16/81	18.00
07/01/81	09/30/81	06/15/81	20.00
10/01/81	12/31/81	09/15/81	20.00
01/01/82	03/31/82	12/15/81	15.75
04/01/82	06/30/82	03/15/82	16.50
07/01/82	09/30/82	06/15/82	16.50
10/01/82	12/31/82	09/15/82	13.50
01/01/83	03/31/83	12/15/82	11.50
04/01/83	06/30/83	03/15/83	10.50
07/01/83	09/30/83	06/15/83	10.50
10/01/83	12/31/83	09/15/83	11.00
01/01/84	03/31/84	12/15/83	11.00
04/01/84	06/29/84	03/15/84	11.00
07/01/84	09/28/84	06/15/84	12.50
10/01/84	12/31/84	09/17/84	13.00
01/01/85	03/31/85	12/17/84	11.25
04/01/85	06/30/85	03/15/85	10.50

[1] Statistical Release H.15 showed two average quoted prime rates on short-term commercial loans for June 16, 1980 (12.0 and 12.5 percent). The rate shown in this table is the average of those two rates. The PBGC understands that the Federal Reserve Board has changed its method of determining the average quoted prime rate to avoid future publication of dual rates. If the new determination method were applied to the data for June 16, 1980, it would produce the rate shown in this table.

Effective Date: April 1, 1985.

Issued at Washington, D.C., on this 25th day of March 1985.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–7673 Filed 3–29–85; 8:45 am]

BILLING CODE 7708–01–M

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29 CFR Part 2674

Notice of Insolvency

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This regulation sets forth the procedures under which the plan sponsor of a multiemployer plan in reorganization that is or may become insolvent must notify interested parties and the Pension Benefit Guaranty Corporation of the plan's insolvency and the level of benefits that will be paid during the insolvency year. This regulation applies only to multiemployer plans in reorganization that have not terminated by mass withdrawal. Section 4245(e) of the Employee Retirement Income Security Act requires the sponsor of a multiemployer plan in reorganization to notify the PBGC, contributing employers, employee organizations representing participants, and participants and beneficiaries when the plan sponsor determines that the plan is or may become unable to pay full benefits during a plan year, and thereafter to notify those parties of the level of benefits that will be paid during that year. The effect of this regulation is to establish procedures for complying with the notice requirements of section 4245(e).

EFFECTIVE DATE: This regulation is effective May 1, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), 2020 K Street, NW, Washington, D.C. 20006; telephone 202-254-4860 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Under section 4245(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or the "Act"), an insolvent multiemployer plan must suspend the payment of benefits in excess of those that can be paid from the plan's available resources for a plan year, but may not suspend benefits below the level guaranteed by the Pension Benefit Guaranty Corporation (the "PBGC"). Pursuant to section 4245(b)(1), a plan is insolvent for a plan year if its available resources (defined in section 4245(b)(3)) are inadequate to pay benefits when due for the plan year. When the plan's available resources are inadequate to pay guaranteed benefits, the plan must request financial assistance from the PBGC so that it can pay guaranteed benefits (section 4245(f)(2)).

Under section 4245(d)(1) of ERISA, the plan sponsor of a plan in reorganization under section 4241 must compare, as of the end of the first plan year in reorganization, the value of plan assets with the amount of the plan's benefit payments for that year. This determination must be made at least every three years thereafter, until the plan is no longer in reorganization. If the value of the plan's assets does not exceed three times its total annual benefit payments, the plan sponsor must determine whether the plan may become insolvent in any of the next three plan years. If the plan sponsor determines that the plan may become insolvent, it must issue certain notices to the PBGC and the interested parties. Under section 4245(d)(2), these notices must also be issued if the plan sponsor determines at a time other than that specified in section 4245(d)(1) that the plan will be insolvent for the next plan year.[1]

[1] A plan is in reorganization, pursuant to section 4241 of the Act, when its reorganization index is a positive number. Briefly, this occurs when the plan's "vested benefits charge" exceeds the net charge to its funding standard account. Subject to certain adjustments that are listed in section 4241, the vested benefits charge is the amount needed to amortize the plan's unfunded vested benefits in equal annual installments over 10 years for persons in pay status, and over 25 years for other participants. The net charge to the funding standard account is the excess of charges to the account over certain credits. For further explanation, see section 4241 of the Act.

Pursuant to section 4245(e)(1) of ERISA, whenever the plan sponsor of a plan in reorganization determines that the plan may become insolvent, it must notify the Secretary of the Treasury, the PBGC, contributing employers, employee organizations representing participants, and plan participants and beneficiaries of the determination. For each insolvency year, section 4245(e)(2) requires the plan sponsor to send written notice of the resource benefit level (*i.e.*, the highest level of monthly benefits that can be paid during the year) to the same parties at least two months before the first day of the insolvency year. Section 4245(e)(4) requires the PBGC to prescribe the rules under which these notices (except notice to the Secretary of the Treasury) must be given, and section 4245(e)(5) permits the PBGC to prescribe other times for making the required determinations with respect to plan insolvency and for filing the notices.

The PBGC and the Internal Revenue Service have agreed that, pending the issuance of Treasury regulations, giving notice to the PBGC under this regulation will satisfy the requirement to give notice to the Secretary of the Treasury under section 4245(e) of the Act.

This regulation prescribes the contents of these notices, the manner in which they must be given, and the time limits for their issuance. The notice required by section 4245(e)(1) is referred to as the "notice of insolvency," and the notice required by section 4245(e)(2) is referred to as the "notice of insolvency benefit level." The regulation requires that these notices be given to the PBGC and the interested parties whenever the plan sponsor of a plan in reorganization determines that the plan is or may become insolvent. In almost all cases, the plan sponsor will be able to determine before the beginning of each plan year, whether the plan will be solvent for that year. There may, however, be cases in which, due to unforeseen events, insolvency cannot be predicted before the beginning of the plan year in which it occurs. As the expression "is or may become insolvent" implies, the notices prescribed in this regulation must be issued for all insolvency years, regardless of when the plan sponsor becomes aware of the insolvency.

Notice of Insolvency

Under § 2674.2(a) of the regulation, the plan sponsor of a multiemployer plan in reorganization must notify the PBGC and the interested parties whenever it makes the determination that the plan is or may become insolvent. A single notice may be given covering more than one plan year.

The general rule, contained in § 2674.2(b), is that the notice must be given within 30 days after the plan sponsor's determination that the plan in reorganization is or may become insolvent. However, for participants and beneficiaries in pay status, the plan sponsor may deliver the notice concurrently with the first benefit payment made after that 30-day period (§ 2674.2(b)). The PBGC believes that the additional administrative expense that would result from requiring a separate mailing to these individuals outweighs the benefits of giving them earlier notice.

Section 2674.2(c) of the regulation provides that the notice of insolvency must be mailed or delivered by hand to the PBGC, contributing employers, employee organizations, and participants and beneficiaries in pay status. However, as another means of reducing the plan's costs, § 2674.2(c) provides that the plan need not give personal notice to participants and beneficiaries who are not in pay status. Instead, the plan may use other means of notifying those individuals, such as posting notices at worksites or publication in the union newsletter or a local newspaper. Any method reasonably calculated to reach the non-pay status participants and beneficiaries is permitted.

The PBGC believes that this exception to the requirement of personal notice is an appropriate cost saving step because the great majority of these participants and beneficiaries are not immediately affected by the insolvency and will be adequately protected by notice to their collective bargaining representatives. Furthermore, participants and beneficiaries who will enter pay status during an insolvency year will receive personal notice of the benefits that will be paid to them. (This is discussed in greater detail in the section of this preamble headed, "Notice of Insolvency Benefit Level.")

Section 2674.3 of the regulation prescribes the contents of the notice of insolvency. The information requested is necessary to ensure that the insolvency notice provides adequate information on the condition of the plan and the effect of insolvency on participants' benefits. This information is readily available to a plan sponsor of a plan in reorganization; for example, the plan sponsor will usually have already estimated annual benefit payments and available resources to determine whether the plan faces insolvency.

Paragraph (a) of § 2674.3, dealing with the notice to the PBGC, requires that the notice include identifying information concerning the insolvent plan, the plan year or years in which the plan is or may become insolvent, the plan document and amendments in effect, or to become effective, during the insolvency year or years, a copy of the plan's most recent actuarial valuation, and a copy of the most recent Schedule B of Form 5500 (if it contains more current information than the most recent actuarial valuation). If the plan document has already been submitted with an earlier notice of insolvency or notice of insolvency benefit level, only subsequent amendments need be submitted. Similarly, if the actuarial valuation or Schedule B has already been submitted, another copy need not be submitted. Finally, § 2674.3(a) requires that the notice to the PBGC include estimates, for each insolvency year, of the plan's annual benefit payments (determined without regard to the insolvency) and of available resources.

Under paragraph (b) of § 2674.3, the notices of insolvency to contributing employers, employee organizations, and participants and beneficiaries also must include estimates of annual benefit payments and available resources for each insolvency year covered by the notice. In addition, the notices to these parties must state that, during an insolvency year, benefits above the amount the can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended. The notices must also contain a brief explanation of what benefits are guaranteed by the PBGC.

The estimates of annual benefit payments and available resources together determine the estimated resource benefit level for the insolvency year. Under the statute, the plan sponsor is required to give this information to the PBGC and the interested parties no later than two months before the start of the insolvency year (ERISA section 4245(e)(2)). The PBGC believes, however, that this information is needed, and can be provided, sooner and therefore should be included in the earlier notice of insolvency. Early information concerning the potential occurrence and extent of insolvency is vital to enable the PBGC to foresee its cash flow requirements, to give employers and employee representatives time to take steps to avert insolvency, and to give participants and beneficiaries reasonable advance warning of reductions in benefits. It is reasonable to require this information as part of the notice of insolvency, because the plan sponsor must periodically estimate annual benefit payments and available resources in order to determine whether the plan will become insolvent. Hence, the required information will exist well before insolvency actually occurs.

Notice of Insolvency Benefit Level

The second notice, required by section 4245(e)(2) of ERISA, is a notice advising the PBGC and the interested parties of the plan's resource benefit level for the insolvency year (the "notice of insolvency benefit level"). Reporting only the resource benefit level can be misleading, however, since benefits cannot be suspended below the level guaranteed by the PBGC if that level is higher than the resource benefit level. To avoid creating unnecessary concern among participants and beneficiaries that benefits will be reduced below the guaranteed level, the regulation requires the inclusion in the notice to pay status participants of the actual level of benefits to be paid.

Section 2674.4(c) of the regulation generally requires the plan sponsor to issue the notice of insolvency benefit level at least 60 days prior to the beginning of an insolvency year. In the rare case in which the plan sponsor does not determine that the plan is insolvent until after this deadline has passed, the notice is to be issued within 60 days after the determination is made.

Because the regulation requires the plan sponsor to include much of the insolvency benefit level data in the notice of insolvency, § 2674.4(b) eliminates the requirement of giving notice of insolvency benefit level (required by § 2674.4(a)) to most interested parties in those cases in which it would duplicate the earlier notice of insolvency. Specifically, the notice of insolvency benefit level need not be issued to employers, employee organizations, and non-pay status participants and beneficiaries (§ 2674.4(b)) for a plan year immediately following a plan year in which a notice of insolvency was required to be issued.

For example, if the plan sponsor determines during the 1985 plan year that the plan will be insolvent for the 1986 plan year, the sponsor must issue notices of insolvency within 30 days after making that determination. Normally, notices of the insolvency benefit level would then have to be issued at least 60 days before the beginning of the insolvency year, 1986. However, because most of the insolvency benefit level data (annual benefit payments and available resources for the 1986 plan year) would typically be identical to the data included in the notice of insolvency, the second notice to the specified parties is generally waived. The notice of insolvency benefit level must, nevertheless, be issued to the PBGC and to participants who are in pay status or are reasonably expected to enter pay status during the insolvency year. (This rule is discussed more fully later in this preamble.)

In cases where the notice of insolvency was required to be issued more than one year before the insolvency year, the plan sponsor must issue notices of insolvency benefit level to all interested parties. While the notices must generally be mailed or hand delivered to the interested parties and the PBGC (§ 2674.4(d)), participants and beneficiaries who are neither in pay status nor reasonably expected to enter pay status during the insolvency year may be notified by the optional means permitted in the case of a notice of insolvency.

The notices to the PBGC and the interested parties, other than participants and beneficiaries in or entering pay status, must include the estimated amount of total benefit payments under the plan for the insolvency year (determined without regard to the insolvency), the plan's available resources for that year, and, for the PBGC notice only, the amount of the annual benefit payments that are guaranteed by the PBGC (§ 2674.5 (a) and (b)). This last figure is essential for calculating the amount of any required financial assistance. The notice to the PBGC must also include a copy of the plan in effect during the insolvency year, a copy of the plan's most recent actuarial valuation, and a copy of the most recently filed Schedule B to Form 5500, if that contains more current information than the actuarial valuation.

As discussed above, the notice of insolvency benefit level to the PBGC is not waived, even if the notice of insolvency was filed within the one year period preceding the first day of the insolvency year, because the PBGC must have the most current data possible concerning the plan's resources and obligations in order to determine the amount of financial assistance needed in that year or the likelihood of such assistance in subsequent years. In order to minimize the plan sponsor's reporting burden, however, § 2674.5(a) provides that the plan sponsor need not resubmit information identical to that set forth in the notice of insolvency. Instead, the notice of insolvency benefit level should indicate the date of the prior submission of the information.

Because the benefits of participants and beneficiaries who are in pay status during an insolvency year may be reduced, § 2674.4(a) requires a notice of insolvency benefit level to be issued to these individuals for each insolvency year, regardless of when the notice of insolvency for that year was issued. Each participant and beneficiary must be notified of the monthly benefit that he will receive during the insolvency year, *i.e.*, the greater of his benefit guaranteed by the PBGC or the benefit that is expected to be payable from the plan's available resources (§ 2674.5(c)). The notice must also advise the participant or beneficiary that in subsequent plan years, depending on the plan's available resources, the benefit level may be increased or decreased, but will not fall below the level guaranteed by the PBGC, and that advance notification will be given of the new benefit level if it is less than the full nonforfeitable benefit under the plan. As with the other notices of insolvency benefit level, these notices to participants and beneficiaries in pay status normally must be issued at least 60 days prior to the start of the insolvency year (§ 2674.4(c)). They must be delivered by hand or by mail (§ 2674.4(d)).

As stated above, this notice must be given to each participant or beneficiary who is in pay status or whom the plan sponsor reasonably expects to enter pay status during the insolvency year. The term "participants and beneficiaries reasonably expected to enter pay status" is defined in § 2670.4 as including those individuals who, according to plan records, are disabled, have applied for benefits, or have reached or will reach normal retirement age prior to the issuance of the notice of insolvency benefit level, and any other individuals reasonably expected to enter pay status during the applicable period. In determining the individuals to be included in this group, the plan sponsor should keep in mind that knowledge of the curtailed benefit amounts may be of critical planning importance to individuals who are eligible to retire, but have not yet done so.

Financial Assistance

If the plan's resource benefit level is less than the level of benefits guaranteed by the PBGC, section 4245(f)(2) of ERISA requires the plan sponsor to apply to the PBGC for financial assistance. Furthermore, under section 4245(f)(1), a plan sponsor that anticipates that its plan will not have funds sufficient to pay guaranteed benefits for any month of an insolvency year may apply to the PBGC for financial assistance, even though the resource benefit level is above the guarantee level. Section 4261(b)(1) provides that financial assistance shall be provided under such conditions as the PBGC determines are equitable and appropriate to prevent unreasonable loss to the PBGC. Therefore, § 2674.5(a)(12) of the regulation provides that the PBGC may request additional information (*e.g.*, participant benefit schedules and other information needed to verify the correct amount of financial assistance) if the plan sponsor requests financial assistance.

E.O. 12291 and Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this regulation deals only with matters of procedure, no general notice of proposed rulemaking is required. Further, since no general notice of proposed rulemaking is required, the Regulatory Flexibility Act of 1980 has no application to this regulation. (5 U.S.C. 601(2)).

Under the Paperwork Reduction Act and 5 U.S.C. 1320.12, the PBGC has submitted the information collection contained in this regulation for review by the Office of Management and Budget. The OMB has approved the information collection requests and assigned it OMB Control No. 1212–0033, approved through February 29, 1988.

List of Subjects in 29 CFR Part 2674

Employee benefit plans, Pensions, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended by adding a new Part 2674 as follows:

PART 2674—NOTICE OF INSOLVENCY

Sec.
2674.1 Purpose and scope.
2674.2 Notice of insolvency.
2674.3 Contents of notice of insolvency.
2674.4 Notice of insolvency benefit level.
2674.5 Contents of notice of insolvency benefit level.
2674.6 PBGC address.

Authority: Sections 4002(b)(3) and 4245(e), Pub. L. 93–406, 88 Stat. 829, 1004 (1974), as amended by sections 403(1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1302 and 1260 (1980) (29 U.S.C. 1302(b)(3) and 1426(e)).

§ 2674.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe notice requirements pertaining to insolvent multiemployer plans that are in reorganization. Pursuant to section 4245 of the Act and section 418E(e) of the Internal Revenue Code, plan sponsors of multiemployer plans in reorganization are required to notify employers, employee organizations, plan participants and beneficiaries, the PBGC and the Secretary of the Treasury of plan insolvency and of the level of benefits that will be paid during an insolvency year. This part establishes the procedures for issuing, and the contents of, these notices.

(b) *Scope.* This part applies to multiemployer plans in reorganization covered by section 4021(a) of the Act and not excluded by section 4021(b), other than plans that have terminated by mass withdrawal under section 4041A(a)(2) of the Act.

§ 2674.2 Notice of insolvency.

(a) *Requirement of notice.* A plan sponsor of a multiemployer plan in reorganization that determines under section 4245 (b)(1), (d)(1) or (d)(2) of the Act that the plan's available resources are or may be insufficient to pay benefits when due for a plan year shall so notify the PBGC and the interested parties, as defined in paragraph (d) of this section. A single notice may cover more than one plan year. The notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2674.3.

(b) *When delivered.* A plan sponsor shall mail or otherwise deliver the notices of insolvency no later than 30 days after it determines that the plan is or may become insolvent, as described in paragraph (a) of this section. However, the notice to participants and beneficiaries in pay status may be delivered concurrently with the first benefit payment made more than 30 days after the determination of insolvency.

(c) *Methods of delivery.* The notice of insolvency shall be delivered by mail or by hand to the PBGC and the interested parties described in paragraph (d) of this section, other than participants and

beneficiaries who are not in pay status when the notice is required to be delivered. The notice to participants and beneficiaries who are not in pay status shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

(d) *Interested parties.* For purposes of this part, the term "interested parties" means—

(1) Employers required to contribute to the plan;

(2) Employee organizations that, for collective bargaining purposes, represent plan participants employed by such employers; and

(3) Plan participants and beneficiaries.

§ 2674.3 Contents of notice of insolvency.

(a) *Notice to the PBGC.* A notice of insolvency required to be filed with the PBGC pursuant to § 2674.2 shall contain the information set forth below:

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's duly authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the International Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC. If the plan has no case number, the notice shall state whether the plan has previously filed a notice of insolvency with the PBGC and, if so, the date on which the notice was filed.

(6) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(7) A copy of the plan document, including the last restatement of the plan and all subsequent amendments in effect, or to become effective, during the insolvency year or years. However, if a copy of the plan document was submitted to the PBGC with a previous notice of insolvency or notice of insolvency benefit level, only subsequent plan amendments need be submitted, and the notice shall state when the copy of the plan document was filed.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation. If the actuarial valuation or Schedule B was previously submitted to the PBGC, it may be omitted, and the notice shall state the date on which the document was filed and that the information is still accurate and complete.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for each insolvency year.

(10) The estimated amount of the plan's available resources for each insolvency year.

(11) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency have been given to all interested parties in accordance with the requirements of this part.

(b) *Notices to interested parties.* A notice of insolvency required under § 2674.2 to be given to an interested party, as defined in § 2674.2(d), shall contain the information set forth below:

(1) The name of the plan.

(2) The plan year or years for which the plan sponsor has determined that the plan is or may become insolvent.

(3) The estimated amount of annual benefit payment under the plan (determined without regard to the insolvency) for each insolvency year.

(4) The estimated amount of the plan's available resources for each insolvency year.

(5) A statement that, during the insolvency year, benefits above the amount that can be paid from available resources or the level guaranteed by the PBGC, whichever is greater, will be suspended, with a brief explanation of which benefits are guaranteed by the PBGC. The following statement may be included as an explanation of PBGC-guaranteed benefits:

> Should the plan become insolvent, each participant's benefit guaranteed by the Pension Benefit Guaranty Corporation (PBGC) is determined as follows. Each participant's nonforfeitable monthly benefit payable under the plan at retirement is computed. This benefit is then divided by the participant's years of credited service under the plan. Of the resulting figure (the accrual rate), the first $5 is guaranteed at 100%. Any additional amount (up to $15) is either 75% or 65% guaranteed, depending on the past funding practices of the plan. Any remaining amount that exceeds $20 is not guaranteed. The PBGC guarantees the payment of a monthly benefit equal to this adjusted accrual rate times years of credited service. The PBGC does not guarantee benefits or benefit increases that have been in effect for fewer than 60 months before the plan becomes insolvent or is amended to reduce accrued benefits.

(6) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

§ 2674.4 Notice of insolvency benefit level.

(a) *Requirement of notice.* Except as provided in paragraph (b) of this section, for each insolvency year the plan sponsor shall notify the PBGC and the interested parties, as defined in § 2674.2(d), of the level of benefits expected to be paid during the year (the "insolvency benefit level"). These notices shall be delivered in the manner and within the time prescribed in this section and shall contain the information described in § 2674.5.

(b) *Waiver of notice to certain interested parties.* The notice of insolvency benefit level required under this section need not be given to interested parties, other than participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year, for an insolvency year immediately following the plan year in which a notice of insolvency was required to be delivered pursuant to § 2674.2, provided that the notice of insolvency was in fact delivered.

(c) *When delivered.* The plan sponsor shall mail or otherwise deliver the required notices of insolvency benefit level no later than 60 days before the beginning of the insolvency year, except that if the determination of insolvency is made fewer than 120 days before the beginning of the insolvency year, the notices shall be delivered within 60 days after the date of the plan sponsor's determination.

(d) *Methods of delivery.* The notice of insolvency benefit level shall be delivered by mail or by hand to the PBGC and to the interested parties described in § 2674.2(d); other than participants and beneficiaries who are neither in pay status nor reasonably expected to enter pay status during the insolvency year for which the notice is given. The notice to participants and beneficiaries not in pay status, nor reasonably expected to enter pay status during the insolvency year, shall be provided in any manner reasonably calculated to reach those participants and beneficiaries. Reasonable methods

of notification include, but are not limited to, posting the notice at participants' worksites or publishing the notice in a union newsletter or in a newspaper of general circulation in the area or areas where participants reside. Notice to a participant shall be deemed notice to that participant's beneficiary or beneficiaries.

§ 2674.5 Contents of notice of insolvency benefit level.

(a) *Notice to the PBGC.* A notice of insolvency benefit level required to be filed with the PBGC pursuant to § 2674.4(a) shall contain the information set forth below, except as provided in the next sentence. The information required in paragraphs (a)(7)–(a)(10) need be submitted only if it is different from the information submitted to the PBGC with the notice of insolvency filed for that insolvency year (see § 2674.3(a)(7)–(a)(10)) or the notice of insolvency benefit level filed for a prior year. When any information is omitted under this exception, the notice shall so state and indicate when the notice of insolvency or prior notice of insolvency benefit level was filed.

(1) The name of the plan.

(2) The name, address and telephone number of the plan sponsor and of the plan sponsor's authorized representative, if any.

(3) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with the PBGC. If no EIN or PIN has been assigned, the notice shall so indicate.

(4) The IRS key district that has jurisdiction over determination letters with respect to the plan.

(5) The case number assigned to the plan by the PBGC.

(6) The plan year for which the notice is filed.

(7) A copy of the plan document, including any amendments, in effect during the insolvency year.

(8) A copy of the most recent actuarial valuation for the plan and a copy of the most recent Schedule B (Form 5500) filed for the plan, if the Schedule B contains more recent information than the actuarial valuation.

(9) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(10) The estimated amount of the plan's available resources for the insolvency year.

(11) The estimated amount of the annual benefit payments guaranteed by the PBGC for the insolvency year.

(12) The amount of financial assistance, if any, requested from the PBGC.

(13) A certification, signed by the plan sponsor (or a duly authorized representative), that notices of insolvency benefit level have been given to all interested parties in accordance with the requirements of this part.

When financial assistance is requested, the PBGC may require the plan sponsor to submit additional information necessary to process the request.

(b) *Notices to interested parties other than participants in or entering pay status.* A notice of insolvency benefit level required by § 2674.4(a) to be delivered to interested parties, as defined in § 2674.2(d), other than a notice to a participant or beneficiary who is in pay status or is reasonably expected to enter pay status during the insolvency year, shall include the information set forth below:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) The estimated amount of annual benefit payments under the plan (determined without regard to the insolvency) for the insolvency year.

(4) The estimated amount of the plan's available resources for the insolvency year.

(5) The amount of financial assistance, if any, requested from the PBGC.

(c) *Notices to participants and beneficiaries in or entering pay status.* A notice of insolvency benefit level required by § 2674.4(a) to be delivered to participants and beneficiaries who are in pay status or are reasonably expected to enter pay status during the insolvency year for which the notice is given, shall include the following information:

(1) The name of the plan.

(2) The plan year for which the notice is issued.

(3) A statement of the monthly benefit expected to be paid to the participant or beneficiary during the insolvency year.

(4) A statement that in subsequent plan years, depending on the plan's available resources, this benefit level may be increased or decreased but will not fall below the level guaranteed by the PBGC, and that the participant or beneficiary will be notified in advance of the new benefit level if it is less than his full nonforfeitable benefit under the plan.

(5) The name, address, and telephone number of the plan administrator or other person designated by the plan sponsor to answer inquiries concerning benefits during the plan's insolvency.

(Approved by the Office of Management and Budget under OMB control number 1212–0033)

§ 2674.6 PBGC address.

All notices required to be filed with the PBGC under this part shall be addressed to the Case Classification and Control Division (542), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW, Washington, D.C. 20006.

Effective date. This part is effective May 1, 1985.

Issued at Washington, D.C. on this 20th day of March 1985.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–7671 Filed 3–29–85; 8:45 am]

BILLING CODE 7708–01–M

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29 CFR Part 2677

Procedures for PBGC Approval of Plan Amendments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule prescribes the contents and procedures for notice and approval of those plan amendments by multiemployer pension plans that, if adopted after September 25, 1983, may not be put into effect unless first approved by the Pension Benefit Guaranty Corporation. Section 4220 of ERISA provides that the PBGC shall disapprove an amendment if it finds that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The effect of this rule is to prescribe procedures for requesting the PBGC to approve plan amendments under section 4220.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), 2020 K Street, NW, Washington, D.C. 20006; 202–254–4860 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4220(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act (the

"Act" or "ERISA"), provides that an amendment to a multiemployer pension plan adopted after September 25, 1983, may be put into effect only with the approval of the Pension Benefit Guaranty Corporation (the "PBGC") or if the PBGC fails to disapprove the amendment within 90 days after receipt of notice and a copy of the amendment. Section 4220(c) provides that the PBGC may disapprove an amendment submitted under section 4220(a) only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. With the express exception provided in section 4220(b) for an amendment permitted by section 4211(c)(5) (dealing with the adoption of alternatives to the statutory methods for allocating a plan's unfunded vested benefits), a plan sponsor must seek approval under section 4220 for each plan amendment authorized by sections 4201–4219.

In a notice published on May 2, 1983, the PBGC identified the plan amendments authorized in sections 4201–4219 that require approval under section 4220 (48 FR 19807). At the same time, the PBGC clarified that section 4220(a) does not apply to plan rules—as opposed to amendments—adopted under sections 4201–4219, nor to plan amendments that implement actions that could have been taken through plan rules. Additionally, the PBGC noted that in situations where sections 4201–4219 direct or permit the PBGC to issue regulations allowing certain plan amendments, those regulations will contain whatever restrictions or conditions the PBGC deems necessary, so that approval under section 4220 will be unnecessary.

This regulation sets forth the procedures for requesting PBGC approval of those plan amendments covered by section 4220, as identified in the notice of May 2, 1983. It applies to amendments adopted after September 25, 1983. Because of changes made in the Act by the Deficit Reduction Act of 1984, this date is used rather than the April 28, 1983, date referred to in the May 2, 1983, notice. (The Deficit Reduction Act changed the effective date of the withdrawal liability provisions of ERISA, thus changing the date referred to in section 4220.)

The Regulation

Section 2677.1(a) of the regulation sets forth the general requirement for PBGC approval of plan amendments. It should be noted that this provision requires that any subsequent modification of a plan amendment subject to section 4220 also be submitted for approval, unless the effect of the modification is to reinstate the statutorily provided rule.

Section 2677.1(b) lists those sections of the Act that authorize plan amendments that the PBGC has determined require approval under section 4220 of the Act. This listing is the same as that published on May 2, 1983, in the **Federal Register** (48 FR 19807). This list includes amendments adopted under authorization of the following sections of the Act:

(1) *Section 4203(b)(1)(B)(ii)*—Permitting a nonconstruction industry plan to be amended to apply the special construction industry withdrawal rule to construction industry employers participating in the plan.

(2) *Section 4203(c)(4)*—Permitting an entertainment industry plan to be amended to provide that the special entertainment withdrawal rule will not apply to a group or class of employers under the plan.

(3) *Section 4205(c)(1)*—Permitting a retail food industry plan to be amended to substitute "35 percent" for the "70 percent" partial withdrawal liability test.

(4) *Section 4205(d)*—Permitting a plan described in section 404(c) of the Internal Revenue Code[1] to be amended to provide other conditions for partial withdrawal liability.

(5) *Section 4209(b)*—Permitting a plan to adopt the alternative statutory *de minimis* rule.

(6) *Section 4210(b)(2)*—Permitting a non-construction industry plan to adopt the six-year "free look" rule.

(7) *Section 4211(c)(1)*—Permitting a plan (other than a construction industry plan) to adopt one of the three statutory alternatives for determining an employer's share of a plan's unfunded vested benefits.

(8) *Section 4211(c)(4)(D)*—Requiring a plan using the direct attribution method to adopt one of three statutory methods for determining an employer's allocable share of plan assets.

(9) *Section 4211(d)(1)*—Requiring a plan described in section 404(c) of the Internal Revenue Code to use the rolling-5 allocation method, unless an alternative is adopted by plan amendment.

(10) *Section 4211(d)(2)*—Permitting a plan described in section 404(c) of the Internal Revenue Code to be amended to make sections 4204 (sale of assets), 4209 (*de minimis* rule), 4219(c)(1) (20-year cap on withdrawal liability payments) or 4225 (limitation on allocable unfunded vested benefits upon dissolution or liquidation of an employer) applicable to it.

(11) *Section 4219(c)(1)(C)(ii)(I)*—Permitting a plan to adopt the statutory alternative for computing the annual withdrawal liability payment amount for plan years ending before 1986.

(12) *Section 4219(c)(1)(C)(iii)*—Permitting a plan to be amended to substitute a 5-year period (increasing by one year for each succeeding year up to 10) for the 10-year period used to compute the annual withdrawal liability payment amount under either the normal statutory formula or alternative.

Section 2677.1(c) provides that a request and approval under this part is unnecessary if the PBGC has granted a class approval for a plan amendment covered by section 4220. The PBGC will grant approvals for certain of the plan amendments covered by section 4220; *viz.*, those for which it can determine that the plan amendment could not have the effect under any plan of creating an unreasonable risk for plan participants and beneficiaries or the PBGC. (The PBGC has granted class approval to four such amendments. See 49 FR 37686, published September 25, 1984.)

Section 2677.2(a) provides that, for purposes of section 4220 of the Act, notice to the PBGC shall be given in the form of a request for approval filed with the PBGC. A request is deemed filed on the date on which it is received by the PBGC.

Section 2677.2(d) prescribes the contents of the request for approval. Paragraph (d)(3) requires a plan sponsor to submit a copy of the adopted amendment, including its proposed effective date, and paragraph (d)(4) requires that the most recent actuarial valuation of the plan be submitted. The PBGC recognizes that plan sponsors submit to the Internal Revenue Service an actuarial statement (Schedule B) attached to Form 5500. This actuarial statement is based on an actuarial valuation that is performed at least once every three years. The PBGC has determined that the full actuarial valuation should be submitted rather than the Schedule B actuarial statement because the actuarial valuation includes more detailed data, such as plan population and benefit structure, which is necessary to assess the risk of loss under section 4220 in a timely manner. Pursuant to § 2677.2(d)(5), a statement must also be provided certifying that notice of the adoption of the amendment has been given to all employers who have an obligation to contribute under

[1] A plan established prior to January 1, 1954, as a result of an agreement between employee representatives and the United States during a period of government operation, under seizure powers, of the major part of the productive facilities of an industry.

the plan and to all employee organizations representing employees covered by the plan. This statement serves to inform the PBGC that the plan sponsor has adopted the amendment in compliance with section 4214(b) of the Act. Finally § 2677.2(d)(6) provides that a plan sponsor may submit any other information that demonstrates that the plan amendment will not pose an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC.

Under § 2677.2(e), the PBGC may also request additional information needed to make a finding under section 4220.

Section 2677.3 sets forth the procedures for PBGC's action on a request for approval of a plan amendment. Section 2677.3(a) provides that, unless the PBGC notifies the plan sponsor differently, an amendment may be put into effect 90 days after the PBGC receives the required information. This paragraph further provides that the PBGC will notify the plan sponsor of the start of the 90-day period. If, after the receipt of a complete request, the PBGC determines that it needs additional information in order to determine the risk to plan participants and beneficiaries or to the PBGC, § 2677.3(c) provides that the PBGC may suspend the running of the 90-day period pending receipt of the additional information.

Finally, it should be noted that an approval by the PBGC under this section constitutes its findings only with respect to the issue of risk under section 4220(c) of the Act, and is not a determination with respect to whether the amendment is otherwise properly adopted.

Other Issues

Concurrently with the publication of the May 2, 1983, **Federal Register** notice discussed above, the PBGC published another notice (48 FR 19806) seeking public comment on the PBGC's proposal to grant blanket approvals for two types of plan amendments requiring approval under section 4220. In response to that notice, the PBGC received comments that raise issues appropriately addressed here.

The first comment asked whether, once the PBGC approves a plan amendment under section 4220 or, alternatively, fails to disapprove the amendment within 90 days, the amendment may be made effective as of the date of adoption. In the PBGC's view, section 4220 does not place any restrictions on the effective date of a plan amendment subject to that section. Although the amendment may not be implemented until approval by the PBGC or the expiration of the 90-day period, it may be effective as of some other date.

The second comment requested PBGC confirmation that a plan amendment that restates the presumptive method of allocating unfunded vested benefits (section 4211(b) of the Act) would not be subject to approval under section 4220, whether the amendment were considered a "rule" or an actual amendment. Except as provided by section 4211(d) (relating to a plan described in section 404(c) of the Internal Revenue Code), the presumptive method of section 4211(b) applies by statute to all plans, unless a plan is amended otherwise. Since a plan amendment is not needed to effect this provision, the PBGC has determined that approval of such an amendment is, likewise, not required by section 4220. The same is true of any other plan amendment that merely adopts a provision already applicable to the plan by the terms of the Act.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

Under the Paperwork Reduction Act and 5 CFR 1320.12, the PBGC has submitted the information collection request contained in this regulation for review by the Office of Management and Budget. OMB has approved the information collection request and assigned it OMB Control No. 1212-0031 approved through December 1987.

Because this regulation deals only with matters of procedure, no general notice of proposed rulemaking is required. Because of the need to provide procedures for plans to submit amendments for approval under section 4220 of ERISA, and because this regulation does not require any new action by plans or employers, the PBGC finds that good cause exists for making this regulation effective immediately. Further, since no general notice of proposed rulemaking is required, the Regulatory Flexibility Act of 1980 has no application to this regulation. (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 2677

Employee benefit plans, Pensions.

In consideration of the foregoing, Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended by adding a new Part 2677 as follows:

PART 2677—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

Sec.
2677.1 Purpose and scope.
2677.2 Requests for PBGC approval.
2677.3 PBGC action on requests.

Authority: Sections 4002(b)(3) and 4220, Pub. L. 93-406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302 and 1239 (1980) (29 U.S.C. 1302(b)(3) and 1400).

§ 2677.1 Purpose and scope.

(a) *General.* This part establishes procedures under which a plan sponsor shall request the PBGC to approve a plan amendment under section 4220 of the Act. This part applies to all multiemployer plans covered by section 4021 of the Act that adopt amendments after September 25, 1983, pursuant to the authorization of sections 4201–4219 of the Act, (except for amendments adopted pursuant to section 4211(c)(5)). (The covered amendments are set forth in paragraph (b) of this section). The subsequent modification of a plan amendment adopted by authorization of those sections is also covered by this part. This part does not, however, cover a plan amendment that merely repeals a previously adopted amendment, returning the plan to the statutorily prescribed rule.

(b) *Covered amendments.* Amendments made pursuant to the following sections of the Act are covered by this part:

(1) *Section 4203 (b)(1)(B)(ii).*
(2) *Section 4203(c)(4).*
(3) *Section 4205(c)(1).*
(4) *Section 4205(d).*
(5) *Section 4209(b).*
(6) *Section 4210(b)(2).*
(7) *Section 4211(c)(1).*
(8) *Section 4211(c)(4)(D).*
(9) *Section 4211(d)(1).*
(10) *Section 4211(d)(2).*
(11) *Section 4219(c)(1)(C)(ii)(I).*
(12) *Section 4219(c)(1)(C)(iii).*

(c) *Exception.* Submission of a request for approval under this part is not required for a plan amendment for which the PBGC has published a notice in the **Federal Register** granting class approval.

§ 2677.2 Requests for PBGC approval.

(a) *Filing of request.* A request for approval of an amendment filed with the PBGC in accordance with this section shall constitute notice to the PBGC for purposes of the 90-day period specified in section 4220 of the Act. A request is deemed filed on the date on which a request containing all information required by paragraph (d) of this section is received by the PBGC.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of a plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be delivered by hand or by mail to the Case Classification and Control Division (542), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, D.C. 20006.

(d) *Information.* Each request filed shall contain the following information:

(1) The name of the plan for which the amendment is being submitted, and the name, address and the telephone number of the plan sponsor or its duly authorized representative.

(2) The nine-digit Employer Identification Number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the three-digit Plan Identification Number (PIN) assigned by the plan sponsor to the plan, and, if different, the EIN or PIN last filed with PBGC. If no EIN or PIN has been assigned, that fact must be indicated.

(3) A copy of the amendment as adopted, including its proposed effective date.

(4) A copy of the most recent actuarial valuation of the plan.

(5) A statement containing a certification that notice of the adoption of the amendment has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered by the plan.

(6) Any other information that the plan sponsor believes to be pertinent to its request.

(e) *Supplemental information.* The PBGC may require a plan sponsor to submit any other information that the PBGC determines to be necessary to review a request under this part. The PBGC may suspend the running of the 90-day period pursuant to § 2677.3(c), pending the submission of the supplemental information.

(Approved by the Office of Management and Budget under OMB control number 1212–0031)

§ 2677.3 PBGC action on requests.

(a) *General.* Upon receipt of a complete request, the PBGC shall notify the plan sponsor in writing of the date of commencement of the 90-day period specified in section 4220 of the Act. Except as provided in paragraph (c) of this section, the PBGC shall approve or disapprove a plan amendment submitted to it under this part within 90 days after receipt of a complete request for approval. If the PBGC fails to act within the 90-day period, or within that period notifies the plan sponsor that it will not disapprove the amendment, the amendment may be made effective without the approval of the PBGC.

(b) *Decision on request.* The PBGC's decision on a request for approval shall be in writing. If the PBGC disapproves the plan amendment, the decision shall state the reasons for the disapproval. An approval by the PBGC constitutes its finding only with respect to the issue of risk as set forth in section 4220(c) of the Act, and not with respect to whether the amendment is otherwise properly adopted in accordance with the terms of the Act and the plan in question.

(c) *Suspension of the 90-day period.* The PBGC may suspend the running of the 90-day period referred to in paragraph (a) of this section if it determines that additional information is required under § 2677.2(e). When it does so, PBGC's request for additional information will advise the plan sponsor that the running of 90-day period has been suspended. The 90-day period will resume running on the date on which the additional information is received by the PBGC, and the PBGC will notify the plan sponsor of that date upon receipt of the information.

Issued at Washington, D.C. on this 20th day of March 1985.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–7672 Filed 3–29–85; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85–02]

Marine Event: San Diego Crew Classic

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the San Diego Crew Classic. This event will be held on April 6, 1985 in San Diego, Mission Bay, CA. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on April 6, 1985 and terminate on April 6, 1985.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 20 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold this event was not received until February 21, 1985, and there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD11 85–02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information: The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District, and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation: The SAN DIEGO CREW CLASSIC will be conducted on April 6, 1985 at Mission Bay, CA. This event will have 400–500, rowing shells, 20–40 feet in length that could pose a hazard to navigation. Therefore, vessels desiring to transmit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

List Of Subjects In 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Regulations: In consideration of the foregoing Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section to read as follows:

§ 100.35 11–85–02 San Diego Crew Classic, Mission Bay, CA.

(a) *Regulated Area:* The following area may be closed intermittently to all vessel traffic. That portion of Sail Bay, north of Santa Clara Point, Mission Bay Park, San Diego, CA.

(b) *Effective Dates:* These regulations will be effective from 6:00 AM to 4:00 PM on April 6, 1985.

(c) *Special Local Regulations:* All persons and/or vessels not registered

with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: March 22, 1985.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 85-7691 Filed 3-29-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 157

[CGD 82-28]

Segregated Ballast, Dedicated Clean Ballast and Crude Oil Washing on Tankships of 20,000 DWT or More But Less than 40,000 DWT Carrying Oil in Bulk

Correction

In FR Doc. 85-6720 beginning on page 11622 in the issue of Friday, March 22, 1985, make the following corrections:

1. On page 11626, in the first column, in amendatory language instruction 6, in the first line, "§ 157c" should read "§ 157.10c".

2. In § 157.10c, paragraph (a)(2), in the third line, "state" should read "stage".

3. In paragraph (c), in the sixth line, "carriers" should read "carries".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The

publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan Programs—housing and community development, Manufactured Homes, Veterans.

Approved: March 22, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.

Deputy Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charge the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective March 25, 1985, 15½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective March 25, 1985, 15 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective March 25, 1985, 15½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13 per centum per annum, effective March 25, 1985, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 13 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 13¼ per centum per annum, effective March 25, 1985, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 13¼ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective March 25, 1985, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 14½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 13 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 14½ percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 85-7882 Filed 3-29-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-9-FRL-2809-4]

Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS authority to the California Air Resources Board (CARB) on behalf of the Bay Area Air Quality Management District (BAAQMD). This action is necessary to bring the NSPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from EPA to State and local governments.

EFFECTIVE DATE: December 20, 1984.

ADDRESS: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) (974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS categories on behalf of the BAAQMD. Delegation of authority was granted by a letter dated December 10, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of November 14, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) on behalf of the Bay Area Air Quality Management District (BAAQMD). We have reviewed your request for delegation and have found the BAAQMD's

programs and procedures to be acceptable. This delegation includes authority for the following source category:

NSPS	40 CFR Part 60 Subpart
Automobile & Light-Duty Truck Surface Coating Operations.	MM

In addition, we are redelegating the following NSPS category since the BAAQMD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
Phosphate Rock Plants	NN

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Bay Area Air Quality Management District

With respect to the areas under the jurisdiction of the BAAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the BAAQMD at the address shown in the ADDRESS section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 15, 1985.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 85-7669 Filed 3-29-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2808-6]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAP authority to the California Air Resources Board (CARB) on behalf of the Merced County Air Pollution Control District (MCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: Merced County Air Pollution Control District, 210 E. 15th Street, P.O. Box 471, Merced, CA 95340.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAP categories on behalf of the MCAPCD. Delegation of authority was granted by a letter dated December 18, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of December 3, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) on behalf of the Merced County Air Pollution Control District (MCAPCD). We have reviewed your request for delegation and have found the MCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Metallic Minerals Processing Plants	LL
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Metal Coil Surface Coating Operations	TT
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry	WW
Bulk Gasoline Terminals	XX
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH

NESHAPS	40 CFR Part 61 Subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources) of Benzene.	V

In addition, we are redelegating the following NSPS and NESHAP categories since the MCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
General Provisions	A
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generators	Da
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Sulfuric Acid Plants	H
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Iron and Steel Plants (BOPF)	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces)	AA
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Surface Coating of Metal Furniture	EE
Stationary Gas Turbines	GG
Lime Manufacturing Plants	HH
Lead-Acid Battery Manufacturing Plants	KK
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Phosphate Rock Plants	NN
Ammonium Sulfate	PP
Industrial Surface Coating: Large Appliances	SS
Asphalt Processing and Asphalt Roofing Manufacture.	UU

NESHAPS	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Mendocino County Air Pollution Control District

On January 14, 1985, a letter was sent to the CARB withdrawing delegation authority for NSPS Subpart XX, Bulk Gasoline Terminals. With respect to Subpart XX only, all reports, applications, submittals and other communications should be directed to the EPA, Region 9 Officer at the address shown in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

With respect to the areas under the jurisdiction of the MCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS (except Subpart XX) and NESHAP source categories should be directed to the MCAPCD at the address shown in the ADDRESS section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*)

Dated: March 15, 1985.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 85-7868 Filed 3-29-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2808-7]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAP authority to the California Air Resources Board (CARB) on behalf of the Mendocino County Air Pollution Control District (MCAPCD). This action is necessary to bring the NSPS and NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: February 8, 1985.

ADDRESS: Mendocino County Air Pollution Control District, Court House Square, Ukiah, CA 95482.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAP categories on behalf of the MCAPCD. Delegation of authority was granted by a letter dated January 24, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of December 18, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) on behalf of the Mendocino County Air Pollution Control District (MCAPCD). We have reviewed your request for delegation and have found the MCAPCD'S programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR Part 60 Subpart
Surface Coating of Metal Furniture	EE
Lead-Acid Battery Manufacturing Plants	KK
Metallic Mineral Processing Plants	LL
Phosphate Rock Plants	NN
Graphic Arts Industry: Publication Rotogravure Printing.	QQ
Pressure Sensitive Tape and Label Surface Coating Operations.	RR
Industrial Surface Coating: Large Appliances	SS
Metal Coil Surface Coating	TT
Asphalt Processing and Asphalt Roofing Manufacture.	UU
Synthetic Organic Chemical Manufacturing Industry: Equipment Leaks of VOC.	VV
Beverage Can Surface Coating Industry	WW
Flexible Vinyl and Urethane Coating and Printing.	FFF
Equipment Leaks of VOC, Petroleum Refineries and Synthetic Organic Chemical Manufacturing Industry.	GGG
Synthetic Fiber Production Facilities	HHH

NESHAP	40 CFR Part 61 Subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources) of Benzene.	V

In addition, we are redelegating the following NSPS and NESHAP categories since the MCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR Part 60 Subpart
Fossil-Fuel Fired Steam Generators	D
Electric Utility Steam Generators	Da
Incinerators	E
Portland Cement Plants	F
Nitric Acid Plants	G
Asphalt Concrete Plants	I
Petroleum Refineries	J
Storage Vessels for Petroleum Liquids	K
Petroleum Storage Vessels	Ka
Secondary Lead Smelters	L
Secondary Brass & Bronze Ingot Production Plants.	M
Iron and Steel Plants (BOPF)	N
Sewage Treatment Plants	O
Primary Copper Smelters	P
Primary Zinc Smelters	Q
Primary Lead Smelters	R
Primary Aluminum Reduction Plants	S
Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	T
Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	U
Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	V
Phosphate Fertilizer Industry: Triple Superphosphate Plants.	W
Phosphate Fertilizer Industry: Granular Triple Superphosphate.	X
Coal Preparation Plants	Y
Ferroalloy Production Facilities	Z
Iron and Steel Plants (Electric Arc Furnaces)	AA
Kraft Pulp Mills	BB
Glass Manufacturing Plants	CC
Grain Elevators	DD
Stationary Gas Turbines	GG
Automobile & Light-Duty Truck Surface Coating Operations.	MM
Ammonium Sulfate Manufacturing	PP

NESHAP	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Mendocino County Air Pollution Control District

With respect to the areas under the jurisdiction of the MCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAP source categories should be directed to the MCAPCD at the address shown in the ADDRESS section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.).*

Dated: March 15, 1985.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 85-7667 Filed 3-29-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6599

[U-52734]

Utah; Partial Revocation of Public Water Reserve No. 107

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: We transmit a public land order (PLO) to revoke an Executive order insofar as it affects 40 acres of public land withdrawn for a public water reserve. The land has been identified for "in lieu" State selection rights by the State of Utah. It will remain closed to other forms of surface entry and mining, and open to mineral leasing.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111, 801-524-3074.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of April 17, 1926, creating Public Water Reserve No. 107, as construed by Bureau of Land Management Interpretation dated February 4, 1983, is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian, Utah

T. 37 S., R. 5 E.,
Sec. 13, SE¼NW¼.

The area described contains 40.00 acres in Garfield County.

2. The above described land is classified for State Selection under the Act of June 20, 1910 (36 Stat. 577), pursuant to an application filed by the State of Utah. This land will remain segregated from disposition under other public land laws, including the mining laws (30 U.S.C. Ch. 2), but not to the mineral leasing laws.

Robert N. Broadbent,

Assistant Secretary of the Interior.

March 19, 1985.

[FR Doc. 85-7626 Filed 3-29-85; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 25

[OST Docket No. 79; Amdt. 25-4 (Ref. Notice No. 83-11)]

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act); Acquisition for Federal and Federally Assisted Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Editorial correction notice.

SUMMARY: This notice publishes a statistical report form for the Department of Transportation's final rule implementing the Uniform Act. This form was referenced in the final rule, but was not ready for publication until the present time.

DATES: This notice publishes a form that is part of a final regulation that will become effective on July 3, 1985.

FOR FURTHER INFORMATION CONTACT: Wayne Kennedy, Director, Office of Right of Way, Federal Highway Administration (202-426-0342); Reid Alsop, Office of Chief Counsel, Federal Highway Administration (202-426-0800); or Joseph Canny, Director, Office of Transportation Regulations, Office of the Secretary (202-426-4220). Office hours, Monday through Friday, are 7:45 a.m. through 4:15 p.m. (FHWA) and 9:00 a.m. through 5:30 p.m. (OST).

SUPPLEMENTARY INFORMATION: On March 5, 1985, the Department of Transportation published a final rule to implement the Uniform Act (50 FR 8955). This rule will act as a model regulation for all other Federal agencies with responsibilities under the Uniform Act. Appendix B to this regulation (50 FR 8985) concerns the statistical report form required under §25.9(c) of the rule. As printed on March 5, Appendix B contained the instructions for filling out the form and a notation that the form itself would be published at a later date. OMB approval for this form and the reporting requirement to which it relates have already been obtained (50 FR 8969).

This notice publishes the actual reporting form to be used in connection with § 25.9 and Appendix B of the final rule. The form will be codified in the Code of Federal Regulations as an attachment to Appendix B.

Accordingly, and pursuant to the authority delegated to me by the Secretary (49 CFR 1.57(1)), Part 25 of Title 49 of the Code of Federal Regulations is amended by adding the following form to the end of Appendix B thereof:

PART 25—[AMENDED]

Appendix B—Statistical Report Form

* * * * *

BILLING CODE 4910-62-M

Form Approved
OMB No: 2105-0508
Exp. Date: 1/31/88
Attachment
Appendix B

Model Uniform Act Report

Part A. Persons Displaced by Activities Subject to the Uniform Act During Report Year

	Item	Total (a)	No. of Owners (b)	No. of Tenants (c)
1	Households *(Families and individuals)*			
2	Businesses and Nonprofit Organizations			
3	Farms			

Part B. Relocation Payments and Expenses Under Uniform Act During Report Year

	Item		No. of Claims (a)	Amount (b)
4	Payments for Moving Expenses for Households	Actual Expenses (Section 202(a))		
5		Fixed Payment Including Dislocation Allowance (Section 202(b))		
6	Payments for Moving Expenses for Business and Nonprofit Organizations	Actual Expenses (Section 202(a))		
7		Payment in Lieu of Actual Expenses (Section 202(c))		
8	Payment for Moving Expenses for Farms	Actual Expenses (Section 202(a))		
9		Payment in Lieu of Actual Expenses (Section 202(c))		
10a	Replacement Housing Payments for Homeowners *(Section 203(a))*			
10b	Amount on Line 10a Attributable to Increased Mortgage Interest Costs			
11	Rental Assistance Payment *(Tenants and Certain Others) (Section 204(1))*			
12	Downpayment Assistance *(Tenants and Certain Others) (Section 204(2))*			
13	Housing Assistance as Last Resort *(Section 206(a))*			
14	Relocation Advisory Assistance and Services Cost *(Section 206)*			
15	Total *(Sum of Lines 4 through 14 Excluding Line 10b)*			

Part C. Real Property Acquisition Subject to Uniform Act During Report Year

	Item	No. of Parcels (a)	Compensation (b)
16	Total Parcels Acquired		
17	Total Parcels Acquired by Condemnation included on Line 16 *(where price disagreement was involved)*		

Part D. Relocation Grievances Filed During Report Year

		Total No.
18	Relocation Grievances Filed in Connection with Project / Program	

List of Subjects in 49 CFR Part 25

Transportation, Relocation assistance and real property acquisition, Reporting and recordkeeping requirements.

Issued at Washington D.C. this 27th day of March 1985.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 85-7740 Filed 3-29-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 222

[Docket No. 40805-5024]

Endangered Fish or Wildlife; Certificates of Exemption for Certain Holders of Finished Scrimshaw Products

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA publishes this final rule to implement, in part, the Endangered Species Act Amendments of 1982 concerning certificates of exemption for certain holders of finished scrimshaw products. This rule amends the regulations on certificates of exemption to make them conform with the current state of the law, and changes the recordkeeping and reporting requirements, as well as the application procedure for renewal of a previously issued certificate of exemption.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Springer (Enforcement Division), 202-634-7265, or Ms. Linda Marks (Office of General Counsel), 202-254-8350.

SUPPLEMENTARY INFORMATION:

Background

NMFS enforces the Endangered Species Act of 1973 as amended (the Act), with respect to, but not limited to, all species of whales of the order Cetacea. The aspect that is affected by this final rule is the certificates of exemption issued to dealers in scrimshaw made from whale teeth, whale bone, and baleen.

On July 12, 1976, Congress passed an amendment to the Act (Pub. L. 94-359) that allowed persons who held quantities of endangered species parts prior to December 28, 1973, to obtain a certificate of exemption to sell their stocks through exportation or interstate commerce. Certificate holders were given three years from the date of issuance of a certificate of exemption to sell their pre-Act inventories. In the June 22, 1977, issue of the **Federal Register** (42 FR 28137-41), NMFS published a final rule regarding certificates of exemption.

Congress again amended the Act on December 28, 1979 (Pub. L. 96-159), to allow persons issued an original certificate of exemption under the 1976 amendments (Pub. L. 94-359), to apply for an extension of their certificates of up to three additional years from the date of expiration of the original certificate (45 FR 57132).

Despite the limited number of certificates in existence, the whale ivory inventories were not used up. On October 13, 1982 (Pub. L. 97-304), Congress directed the Secretary of Commerce to carry out a comprehensive review of the regulations governing the administration and enforcement of the certificate-of-exemption program and to submit a report of such review to the House Committee on Merchant Marine and Fisheries, and to the Senate Committee on the Environment and Public Works. Congress also provided that the regulations be revised as deemed "necessary and appropriate." Congress provided that the Secretary of Commerce could renew the certificates for a period not to exceed three years. Copies of the report are available from NMFS at the address given above.

These regulations amend the definition of "scrimshaw product" to conform to the definition in the Act. They require certificate holders who apply for a renewal to inventory their stock and number each item. The inventories will be submitted with the application for renewal and will be used to monitor the quantity of stock. The regulations no longer require certificate holders to provide interstate purchasers with copies of their certificates of exemption.

This change was made to reduce the possibility of unlawful trading using certificates of exemption. Instead, certificate holders must provide purchasers of exempt pre-Act endangered, species parts with written notification of an item's inventory number, and inform purchasers who are not ultimate users of their obligation to report to NMFS.

Certificate holders will now be required to submit quarterly reports identifying sales or transfers of pre-Act parts. The previous regulations imposed similar recordkeeping requirements, and provided that such records could be requested by the Assistant Administrator for Fisheries. The new regulations impose an affirmative reporting requirement in order to respond to the concerns of Congress that there be a "tightening" of the reporting and recordkeeping requirements.

Rulemaking Process

NMFS published proposed rules on December 14, 1984 (49 FR 48777-79). Public comment was invited for a 30-day period which ended January 14, 1985.

Discussion of Public Comments

Nine written comments were received, three from the environmental community and six from, or on behalf of, holders of certificates of exemption. NMFS considered whether suggested changes to the proposed rule would (1) be consistent with the intent of Congress to restrict trade in scrimshaw products, (2) facilitate enforcement, and/or (3) place an unreasonable burden on certificate-of-exemption holders.

Discussion of the comments received is grouped below by major issue.

1. General

One commenter supported publishing the proposed rule as final without change.

One commenter proposed eliminating the certificate of exemption program altogether and prohibiting all trade in scrimshaw products. NMFS cannot comply with this request, because it is contrary to Congress' intention to have the certificates of exemption extended, as expressed in the 1982 amendments to the Act.

One commenter requested changes in the final rule that would allow a certificate holder to sell in interstate or foreign commerce, items purchased from other certificate holders. NMFS must reject this request in order to comply with the mandate of Congress as set forth in the 1982 amendments to the Act. The 1982 amendments specify that, after January 31, 1984, once a scrimshaw product is sold by a certificate of exemption holder, that product cannot be resold in interstate or foreign commerce by any other person.

2. Recordkeeping

One commenter suggested keeping records of large sales separate from records of small sales to help prevent subsequent unlawful sales by those who purchase large quantities of scrimshaw items and claim to be ultimate users. The 1982 amendments to the Act prohibit any person from reselling in interstate or foreign commerce scrimshaw items purchased from a certificate-of-exemption holder. NMFS intends to keep in the same computer file, records of all sales made under

certificates of exemption, whether to commercial dealers or to ultimate users. NMFS does not believe that maintaining separate files based on the quantity of items sold would facilitate enforcement. Accordingly, this suggestion was rejected.

One commenter suggested that reports of all transactions should include the address as well as the name of the purchaser. NMFS agrees with this suggestion and has included this provision in the final rule.

One commenter suggested that certificate-of-exemption holders require commercial enterprise before selling scrimshaw items to them, and that such proof be submitted to NMFS with the required quarterly reports. NMFS rejects this suggestion as it would provide no benefit to NMFS' enforcement effort and would only create an unnecessary burden on the certificate-of-exemption holders.

One commenter expressed the opinion that it would be difficult for certificate holders to comply with the quarterly reporting requirements. In the past, the regulations dealing with certificates of exemption provided that NMFS could require certificates holders to submit reports of transactions under their certificates at any time. In view of Congress' mandate to NMFS to improve accountability within the certificate-of-exemption system, and because a periodic inventory reconciliation would greatly facilitate enforcement, NMFS believes that requiring the quarterly reports is appropriate. Accordingly, the suggestion to remove this requirement from the final rule was rejected.

3. Inventory identification

One commenter suggested that a uniform system should be established for numbering scrimshaw items using the certificate number as a prefix. NMFS believes that such a numbering system would facilitate both enforcement and recordkeeping and has included a uniform numbering system in the final rule.

One commenter suggested that enforcement could be facilitated by requiring certificate holders to include in their inventory data the weight of each item or scrap lot, the number of pieces in each scrap lot and a photograph of each item or scrap lot. NMFS has concluded that (1) enforcement would be greatly facilitated if the weight of each item or scrap lot covered by a certificate of exemption were known; (2) given the weight of a scrap lot, knowing the number of items in the lot is likely to be of little value; and (3) photographs of inventoried items would only occasionally benefit enforcement while creating a considerable burden, in terms of time and expense, on the certificate holders. Considering the above, NMFS has added language to the final rule requiring that each item and scrap lot be inventoried by weight, and has rejected the suggestions that inventories include the number of pieces in scrap lots and photographs of each item or scrap lot.

Two commenters asked how identification numbers should be affixed to individual items. Language has been added to the final rule to clarify the identification requirement.

One commenter proposed an alternative system for assigning numbers to scrimshaw items in a certificate holder's inventory. The proposed system would involve counting the total number of items in an inventory, assigning a block of numbers to cover the total number of items and then assigning specific numbers to individual items at the time they are sold. NMFS believes that this system would inhibit enforcement by making individual items more difficult to track and by concealing the identity of individual items within an inventory until the point of sale. NMFS, therefore, rejects this proposal.

4. Scrap lots

NMFS received a variety of comments regarding the provision in the proposed rule that certificate holders inventory scraps and pieces of raw material in lots not exceeding five pounds. One commenter suggested limiting the size of scrap lots to two pounds, because "[f]ive pounds . . . seems excessive. . . ." Another commenter recommended increasing the size of scrap lots to 100 pounds to give craftsmen more latitude in selecting material from which to fashion finished items. After considering both arguments, NMFS decided to retain the originally proposed five-pound limit on scrap lots.

Two commenters asked whether whole raw whale teeth should be inventoried as individual items or grouped into lots of scrap. NMFS' intent was that whole raw teeth could be inventoried by either method, whichever is more convenient for the individual certificate holder. The relevant section in the final rule has been modified to clarify this matter.

Changes Made in the Rule

For the reasons discussed above, the final rule differs from the proposed rule as follows:

Section 222.11–3

The amendment to paragraph (a)(5) which appeared in the proposed rule was rewritten and expanded to (1) provide a uniform numbering system, (2) require identification of all inventory items by weight, (3) clarify the means by which numbers may be affixed to inventory items and (4) clarify the ways in which raw teeth may be entered on the inventory.

Section 222.11–8

Paragraph (a) was revised to reflect changes in § 222.11–3(a)(5).

Section 222.12–12–8

Paragraph (a) was rewritten for clarity.

Paragraph (b) was changed to require the records of certificate holders to show the address of any purchaser, seller or other transferor of pre-Act endangered species parts.

In paragraph (c)(2), the date on which the first quarterly report is due was changed to July 15, 1985, to be consistent with the publication date of the final rule.

Classification

NOAA's Administrator has determined that this final rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 because the rule directly affects only a small number of entities (less than 50) and, therefore, is not likely to result in an annual effect on the economy of $100 million or more; also the rule is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, state or local governmental agencies, or geographic regions. Further, the rule is not likely to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities because it grants a privilege or exemption to a limited number of people and the costs of compliance and recordkeeping are nominal. Also, this final rule is essentially a restatement and extension of an existing rule.

In view of the need to allow the certificate holders to continue business without interruption, the Agency has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

The collection of information and reporting for certificates of exemption has been approved by the Office of Management and Budget under OMB No. 0648–0078. OMB approved, in April 1984, the additional reporting requirements specified in this rule.

List of Subjects in 50 CFR Parts 217 and [illegible]

Administrative practice and procedure, Permits, Endangered Fish or Wildlife, Reporting and recordkeeping requirements.

Dated: March 27, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

For the reasons set forth in the preamble, 50 CFR Parts 217 and 222 are amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 is revised to read as follows:

Authority: 16 U.S.C. 1521–1543; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. Section 217.12 is amended by revising the defintion of "Scrimshaw Product" to read as follows:

§ 217.12 Definitions.

* * * * *

"Scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving or carving.

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for Subpart B of Part 222 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543.

2. In § 222.11–1, remove from paragraph (a) the phrase "except for importation," remove from paragraph (a)(2) the word "to" between the words "ship" and "interstate" and insert in its place the word "in," and add a new paragraph (c) to read as follows:

§ 222.11–1 General certificate of exemption requirements.

* * * * *

(c) After January 31, 1984, no person may export; deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid certificate of exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

§ 222.11–3 [Amended]

3. In §222.11–3, remove from paragraph (a)(1) the phrase "Pub. L. 96–159," and insert in its place the phrase "Pub. L. 97–304;" remove from paragraph (a)(4) the word "original," and insert in its place the phrase "previous renewal of the;" add in paragraph (a)(6) the phrase "Pub. L. 97–304, 95 Stat. 715," after the phrase "93 Stat. 1225;" and revise paragraph (a)(5) as follows:

* * * * *

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: a unique serial number; the weight of the item in grams, to the nearest whole gram; and a description in detail sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00–000000–0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. Provided that, the number must remain affixed to the item until it is sold to an ultimate user, as defined in § 222.11–8(b) of this part.

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a certificate of exemption.

4. Section 222.11–8 is revised to read as follows:

§ 222.11–8 Purchaser provisions.

(a) Any person granted a certificate of exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold, and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(b) Any purchaser of pre-Act endangered species parts included in a valid certificate of exemption, unless an ultimate user, must within 30 days after the receipt of such parts submit a written report to the address given in the certificate specifying the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. An ultimate user, for purposes of this paragraph, means any person who acquired such endangered species part or product for his own consumption or personal use (including as gifts), and not for resale.

(c) After January 31, 1984, no purchaser may export; deliver, receive, carry or transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered species part or product even though such part or product was acquired under a certificate of exemption either prior to or subsequent to that date.

(Approved by the Office of Management and Budget under control number 0648–0079)

5. Section 222.11–9 is revised to read as follows:

§ 222.11–9 Duration of certificate of exemption.

A certificate of exemption is valid only if renewed in accordance with the procedures set forth in § 222.11–3 of this part. However, no renewal is valid for more than three years from the initial expiration date of the previous renewal of the certificate of exemption. A renewed certificate of exemption entitles the holder to engage in the

business or activity specified in the certificate of exemption, within the limitations of the Act and the regulations contained in this subpart, for the period stated in the certificate of exemption, unless sooner terminated.

6. Section 222.12 is revised to read as follows:

§ 222.12 Locations covered by certificate of exemption.

The certificate of exemption covers the business or activity specified in the certificate of exemption at the address described therein. No certificate of exemption is required to cover a separate warehouse facility used by the certificate of exemption holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the certificate of exemption which is served by the warehouse or storage facility.

§ 222.12-1 [Amended]

7. In § 222.12-1, delete the word "subsequent" from the last sentence.

§ 222.12-6 [Amended]

8. In § 222.12-6, delete the word "subsequent."

§ 222.12-7 [Amended]

9. In § 222.12-7, delete the word "subsequent" in the phrase "of a subsequent purchaser . . ."

10. Section 222.12-8, is amended by revising paragraphs (a)-(c) and adding the OMB control number set forth below at the end of the section to read as follows:

§ 222.12-8 Record of receipt and disposition.

(a) Holders of certificates of exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, must similarly maintain records of all such parts or products they receive.

(b) Such records as referred to in paragraph (a) of this section may consist of invoices or other commercial records which must be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records must (1) show the name and address of the purchaser, seller, or other transferor; (2) show the type, quantity, and identity of the part or product; (3) show the date of such sale or transfer; and (4) be retained, in accordance with the requirements of this subpart, for a period of not less than three years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a certificate of exemption.

(c) (1) Each certificate of exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (b) on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

(2) Quarterly reports are due on January 15, April 15, July 15, and October 15. The first report is due on October 15, 1985.

* * * * *

(Approved by the Office of Management and Budget under control number 0648-0078)

[FR Doc. 85-7648 Filed 3-29-85; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 50338-5038]

Groundfish of the Gulf of Alaska; Emergency Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the domestic sablefish fishery being conducted in the Eastern Regulatory Area of the Gulf of Alaska. A recent increase in the number of pots used to harvest sablefish in the Eastern Regulatory Area is disrupting the traditional sablefish hook-and-line fishery. This disruption is due to the preemption of fishing grounds by pot vessels and to the likelihood that pot vessels will harvest an unprecedented share of the optimum yield early in the season. Based upon a recommendation of the North Pacific Fishery Management Council (Council), the Secretary has prohibited the use of all gear types except hook-and-line in the directed fishery for sablefish in the Eastern Regulatory Area of the Gulf of Alaska. This prohibition is necessary to prevent economic loss to longline fishermen who traditionally fish for sablefish in this area, to processors who rely on the fishery, and to southeast Alaska communities that depend significantly on the sablefish harvest, while the Secretary and the Council develop a long-term response to this situation.

EFFECTIVE DATES: In § 672.24, the existing text is designated as paragraph (a) and a new paragraph (b) is added, to be effective from March 27, 1985 until June 25, 1985.

ADDRESS: The environmental assessment prepared for this action may be obtained from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The domestic groundfish fishery in the fishery conservation zone (3-200 miles offshore) in the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was implemented December 1, 1978 (43 FR 52709, November 14, 1978). It has been amended twelve times.

Current regulations implementing the FMP do not limit the types of gear used in harvesting any of the groundfish categories, including sablefish. The U.S. sablefish fishery is one of the oldest fisheries in Alaska with the first landings documented in 1906. The harvest fluctuated substantially over the next 65 years, but began to increase steadily in the 1970's. Primary processing plants are located at Ketchikan, Sitka, Pelican, Petersburg, and Yakutat.

Most U.S. fishermen have chosen longlines with hooks as the primary gear type when targeting on sablefish. Many of them are experienced in the halibut fishery, in which hook-and-line (longline) gear is used exclusively. Pot gear was first allowed in 1970, and by 1973 a fairly large fishery was established in the southern inner coastal waters of southeast Alaska and Dixon Entrance. That gear type caught over 20 percent of the total harvest in 1974. Since then longline gear has dominated the fishery (Table 1), taking 94 percent or more of the sablefish resource each year.

The Gulf of Alaska sablefish resource is small compared to some other fishable groundfish populations. Its optimum yield (OY) is currently 8,940 metric tons (mt), which represents only 2 percent of the total OY for all groundfish in the Gulf of Alaska. The sablefish fishery has been directed at those marketable adult fish, three pounds and larger, which are found below 300 meters. The fishing grounds are only

one-half to one mile wide on the outer slopes of the continental shelf.

Because of the high ex-vessel value ($0.65/pound on average in 1984 and $0.82/pound to date in 1985), significant employment and income are derived from sablefish. The latest domestic commercial fisheries statistics, published by the Alaska Department of Fish and Game in *Alaska 1982 Catch and Production*, show that in 1982, sablefish contributed $3,388,000, or 14 percent of the total ($24,069,000) wholesale value of non-salmon finfish production in the Eastern Regulatory Area. Numbers of longline fishermen, including crew members, targeting on sablefish have ranged between 190 and 344 during the years 1977–1982.

TABLE 1.—LANDINGS (METRIC TONS) OF SABLEFISH IN THE EASTERN REGULATORY AREA OF THE GULF OF ALASKA BY POT AND LONGLINE GEAR AND NUMBERS OF VESSELS OF EACH GEAR TYPE IN THE FISHERY

Year	Pot gear landings	Number of vessels	Longline gear landings	Number of longline vessels
1970			154	22
1971			66	16
1972			66	28
1973			116	33
1974	[illegible]	1	140	33
1975			391	69
1976	4	2	277	80
1977	8	1	736	86
1978	2	1	1,015	81
1979	123	2	2,018	150
1980	58	4	1,536	97
1981	46	1	1,243	62
1982	7	1	1,974	116
1983	0	0	2,605	116
1984	53	2	4,276	100

Source: Alaska Department of Fish and Games.

As a result of increasing demand, harvests of domestic sablefish have increased markedly. OYs in the Gulf of Alaska were fully harvested by U.S. fishermen to 137° W. longitude (Southeast Outside District) in 1982, to 140° W. longitude (East Yakutat District) in 1983, then to 159° W. longitude (Central Regulatory Area) in 1984. Substantial amounts were also harvested in 1984 in the Western Regulatory Area, where 13 percent of the 1,670 mt OY was harvested by U.S. fishermen. The OY for the entire Gulf of Alaska is expected to be harvested by U.S. fishermen in 1985.

This year pot vessels commenced fishing operations in the Eastern Regulatory Area and proceeded to take large amounts of the OY that otherwise would be taken by longline vessels. These pot vessels are catcher/processors that commonly deliver their catches to ports outside Alaska. NMFS estimates that pot vessels through the first week of February 1985 have already taken about 12 percent of the OY. This catch is a much larger amount of sablefish than has ever been harvested with pot gear in the Eastern Regulatory Area, and a much larger share of the total U.S. sablefish harvest than has been taken with pots since 1974. In 1974, the U.S. sablefish harvest in the Eastern Regulatory Area was less than 1/30 of the corresponding 1984 U.S. harvest. Almost all of the increase has been harvested by longline vessels.

The pot vessels are large and can remain at sea during the inclement weather that is common in the Gulf of Alaska in the early part of the year. Thus they can fish during periods when smaller longline vessels would normally remain in port. Some longline vessels may attempt to fish earlier than would be seasonally normal for fear that the OY will be taken and the season will close before they have been able to harvest their share. Safety of the fishermen and their vessels could, therefore, be jeopardized. Longline fishermen might also set their gear and be forced by storms to return to port; they would not be able to retrieve their catch, and a waste of the resource would occur.

Both longline and pot gears are employed in long skates, or strings, that may be 2 to 4 miles long. They are laid on the ocean bottom with their ends connected to float lines for identification and retrieval. Each pot weighs about 100–125 pounds, and as many as 24 pots may be fished on a string. The groundline used to secure a pot string is much thicker (¾ inch in diameter) and stronger (breaking strength=10,400 pounds) than the groundline used for a longline string (⅝ inch in diameter; breaking strength=3,000 pounds). The pot gangion (cord between the pot and the groundline) is thicker and stronger (⅝ inch; breaking strength=3,000 pounds) than the hook gangion (#36, #42, or #48 cord; breaking strength about 288–300 pounds). Because pot strings are much heavier than longline strings, the use of longlines is proving incompatible with pot strings when employed on the same fishing grounds where pot gear has been, or will be, employed. Pot strings are usually laid parallel to the depth contours, while longline strings are laid obliquely across the depth contours. A longline string usually cannot be retrieved if it is placed first and is then overlaid by a pot string. Additionally, if a longline string has been placed over a pot string and then snags the latter, it often cannot be retrieved. Pot strings can be retrieved even when overlaid with longline strings, but are known to shear the fishing lines, or gangions, from the longline gear. Thus, pot gear effectively preempts the fishing grounds, forcing longline gear out. In addition, individual pots and sometimes entire strings may be lost on the grounds and not recovered, resulting in permanent ground preemptions. To avoid entanglement, longline fishermen must avoid areas where such loss has occurred.

Longline fishermen thus cannot compete for the sablefish resource on the same fishing grounds where pot fishermen are fishing, or where pot fishermen have lost gear. As a result, they are prevented from utilizing the fishing grounds. Sablefish not caught by longline vessels represent a loss not only to longline fishermen but also to the processing industry in southeast Alaska, as most pot-caught fish are transported and landed outside of the State. The community of Sitka, Alaska, in particular, could suffer serious economic harm if pots replaced hook-and-line as the dominant sablefish gear off southeast Alaska. This community has already suffered significant economic setbacks due to the poor condition of the Alaska timber industry.

At its February 5–8, 1985, meeting, the Council addressed this problem after receiving considerable testimony from longline and pot fishermen. The Council recognized the importance of the sablefish longline fishery to the local economies of southeast Alaska, especially that of Sitka. To avoid disruption of those economies, it voted 9 to 1 request the Secretary to implement an emergency rule to prohibit the use of any fishing gear except hook-and-line gear to harvest sablefish in the Eastern Regulatory Area of the Gulf of Alaska. The Council directed its Plan Team to prepare for public review a draft FMP amendment addressing this situation which, if approved by the Secretary, could make permanent a similar management measure. The Council desires to arrest the use of sablefish pot gear, and the resulting economic harm to Sitka and other Alaska coastal communities, until it has had the opportunity to evaluate the situation fully and to formulate a long-term response.

For the above reasons, the Secretary agrees that an emergency exists in the domestic sablefish fishery and prohibits for the duration of this emergency rule the use of any fishing gear other than hook-and-line gear for the harvest of sablefish in the Eastern Regulatory Area of the Gulf of Alaska.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis made it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment or to delay for 30 days the effective date of this rule.

The Director, Alaska Region, NMFS, prepared an environmental assessment (EA) for this action and concluded that no significant impact on the human environment will result from its implementation. A copy of the EA is available at the address listed above.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 under section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by Alaska's Office of Management and Budget under section 307 of the Coastal Zone Management Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 672

Fish, Reporting and recordkeeping requirements.

Dated: March 27, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

For the reasons set out in the preamble, Part 672 is amended as follows:

1. The authority citation for Part 672 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 672.24, the existing text is designated paragraph (a) and a new paragraph (b) is added to read as follows:

§ 672.24 Gear limitations.

(a) * * *

(b) *Eastern Regulatory Area Sablefish Fishery; Hook-and-Line Gear Only.* Vessels subject to this part may not use gear other than hook-and-line gear when conducting a directed fishery for sablefish in the Eastern Regulatory Area

* * * * *

[FR Doc. 85-7639 Filed 3-27-85; 11:51 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 62
Monday, April 1, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Proposed Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service. USDA.

ACTION: Proposed role.

SUMMARY: The proposed rule would increase the reserve base quantity for the 1985–86 crop year from the required minimum of 2.0 percent to 11.55 percent of the total base quantities currently issued to cranberry growers. The proposed rule is designed to update and expand base quantities for the benefit of growers. It is also intended to facilitate the appropriate and equitable operation of the cranberry marketing order with the establishment in the future of any marketable quantity and annual allotment.

DATE: Comments Due: May 1, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V AMS, USDA. Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposed rule is issued under amended marketing agreement and Order No. 929, as amended (7 CFR Part 929). The order regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The agreement and order are effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674). The action was recommended by the Cranberry Marketing Committee.

Each year prior to May 1, the committee considers its marketing policy for the coming season and estimates the marketable quantity. If the Secretary finds from such recommendation of the committee or from other available information that limiting the quantity of cranberries that may be purchased or handled on behalf of growers would tend to effectuate the declared policy of the act, the Secretary shall determine and establish the marketable quantity for that crop year. The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's base quantity pursuant to §929.48.

Such base quantities are issued to growers: (a) Based on their production during the period 1968–69 through 1973–74; (b) as a result of transfers of base quantities from other growers; or (c) as part of an annual reserve of at least two percent of the total base quantities. The reserve shall be used for the issuance of base quantities to new growers and adjustments in base quantities for existing growers with 25 percent being made available for new for new growers and 75 percent available for adjustments for exisiting growers. Any unallocated portion of the 25 percent available to new growers may at the discretion of the committee be prorated among eligible existing growers on an equitable basis. Section 929.48 also provides that a condition for the continuing validity of a grower's base quantity is the production of cranberries in a proprietary capacity. If no bona fide effort is made to produce and sell cranberries thereunder for five consecutive seasons, commencing with the 1978–79 season, the base quantity may be reduced or declared invalid due to lack of use and cancelled at the end of the fifth season of nonproduction. The committee shall establish criteria, subject to approval by the Secretary, whereby the committee may determine whether a bona fide effort has been made to produce and sell cranberries produced on the grower's own acreage.

Section 929.153 implements §929.48 of the order. It prescribes procedures governing the allocation of reserve base quantities to cranberry growers and establishes an annual base quantity reserve equal to two percent of the aggregate base quantities. Also, § 292.153 provides that the base quantity of a grower who has made no bona fide effort to produce and sell cranberries for five consecutive seasons, commencing with the 1978–79 season, may be declared invalid and cancelled at the end of the fifth season.

On February 20, 1985, the Cranberry Marketing Committee held its annual winter meeting to formulate its marketing policy for the 1985–86 crop year. It determined that since demand exceeded supply, implementation of § 929.49 (i.e. the establishment of a marketable quantity and annual allotment) was not recommended. In order to update its base quantities in preparation for any future recommendation for such a marketable quantity, however, the committee determined that 2,951 barrels of base quantity were held by growers who had not produced cranberries on the corresponding acreage for the requisite five years and should be redistributed to growers requesting base from the annual base quantity reserve. The committee noted that cranberry sales were projected to increase and recommended that additional base be issued to all qualified new and existing growers to the full amount of such requests. All qualified new growers who applied for base quantities were granted them by the committee since such applications represented less than 25 percent of the 11.55 percent reserve.

Thus, the net effect of the several committee recommendations is that there should be a total increase of base of 11.55 percent. Such an increase would make additional quantities of base

quantity available to new and existing growers, and insures that base remain only with growers who are making a bona fide effort to produce cranberries. The change also would provide the appropriate updating of base quantities necessary for any future establishment of a marketable quantity and annual allotment.

It is found that this proposed rule would tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 929

Marketing agreements and orders, Cranberries, Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, New York.

Therefore, the proposal is to amend § 929.153 (7 CFR Part 929) by revising paragraph (a) to read as follows:

§ 929.153 Base quantity reserve.

(a) *Establishment.* An annual reserve base quantity equal to 2 percent of total base quantities is hereby established: *Provided,* That, for the 1984–85 crop year, the reserve base quantity shall be 2.38 percent, and for the 1985–86 crop year, the reserve base quantity shall be 11.55 percent.

* * * * *

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: March 28, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–7638 Filed 3–29–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1004

[Docket No. AO–160–A62–RO3]

Milk in the Middle Atlantic Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision revises the definitions of "plant" and "pool plant" under the Middle Atlantic order. The changes are based on evidence presented at a public hearing held in Alexandria, Virginia, on September 13, 1984. The hearing on this issue was requested by a federation of cooperatives, which represents a number of dairy farmers who supply milk to the market. The changes are needed to reflect current marketing conditions. They will allow a federation of cooperatives to qualify its reserve processing plant as a separate pool plant under certain circumstances and to efficiently exchange by-products by pipeline with an adjacent nonpool plant. Cooperative associations will be polled to determined whether producers favor the issuance of the amended order.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by producers and regulated handlers.

Prior Documents in This Proceeding

Notice of Hearing: Issued August 30, 1984; published September 6, 1984 (49 FR 35100).

Emergency Partial Final Decision: Issued October 17, 1984; published October 24, 1984 (49 FR 42737).

Order Amending Order: Issued November 6, 1984; published November 14, 1984 (49 FR 44986).

Recommended Decision: Issued January 29, 1985; published February 1, 1985 (50 FR 4694).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Alexandria, Virginia, on September 13, 1984. Notice of such hearing was issued on August 30, 1984 and published September 6, 1984 (49 FR 35100). The hearing reopened an earlier joint hearing convened on July 19, 1983 which primarily involved consideration of the expansion of the Middle Atlantic and New York-New Jersey marketing areas. That hearing record was reopened for the limited purpose of receiving additional evidence with respect to the economic and marketing conditions which relate to the computation of a producer's base and the pool plant qualification requirements for a reserve processing plant operated by a federation of cooperatives.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on January 29, 1985, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

Under Issue 2

1. A new paragraph is added after paragraph 13.

2. Paragraph 20 is deleted and three new paragraphs are added after paragraph 19.

3. A new paragraph is added at the end of the findings and conclusions.

The material issues on the record of the hearing relate to:

1. Computation of a producer's base.

2. Pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.

3. Whether emergency marketing conditions exist to such an extent that the omission of a recommended decision and the opportunity to file written exceptions thereto are warranted.

This decision deals only with issue 2. Issues 1 and 3 were dealt with in a previous decision on the record.

Findings and Conclusions

The following findings and conclusions on the remaining material issue are based on evidence presented at the hearing and the record thereof:

2. *Pool qualification requirements for a reserve processing plant operated by a federation of cooperatives.* The order should be amended to permit a federation of cooperatives to qualify its reserve processing plant, which is located on the same premises with another person's nonpool plant and is connected by pipeline with such plant, as a pool plant if the pipeline is used only to move by-products.

The change was proposed by Atlantic Processing, Inc. (API), a federation of four cooperative associations. This dairy farmer organization represents a number of producers who supply milk to the market. Proponent claimed that its proposal is needed to reflect current

marketing conditions and to allow the federation to operate efficiently.

API has operated a manufacturing facility at Allentown, Pennsylvania, for several years. Although the facility was considered a single operating unit, a soft-products operation (including sour cream, yogurt, condensed milk, frozen dessert mixes and cottage cheese) was conducted in one portion of the plant and hard cheeses were manufactured in another part of the same facility. The plant was a fully regulated reserve processing plant under the order. In that role, it served as a major outlet for the market's reserve milk supplies.

On April 30, 1984, API sold its hard cheese operation to Beatrice Foods, Inc. (Beatrice). Since then two legally separate businesses have been operating at the Allentown site. The land, buildings and equipment associated with the manufacture of hard cheeses are now independently owned and operated by Beatrice. The land, buildings and equipment used in connection with manufacturing soft dairy products were retained by API and continue to be owned and operated by such handler.

Following the sale of the cheese business, certain physical changes were made by the operators to divide the former plant's operations into two separate operating units. API recently installed new receiving docks at its smaller soft-products plant. With this addition, each operator (API and Beatrice) now has the capacity to receive and segregate a milk supply which is commensurate with its needs. Each business also maintains a separate utility and sewage disposal system.

The by-products resulting from the primary manufacturing operations of these two handlers complement each other. For example, to the extent that Beatrice has sufficient dryer capacity, the acid-whey associated with API's cottage cheese operation can be salvaged. Similarly, the by-products of Beatrice's hard cheese operations, whey cream and whey condensed, can be utilized in the ice cream operations conducted by API. As a convenient and economical method of exchanging these by-products, two existing pipelines have been maintained by the operators.

It is the existence of the pipelines (one for acid-whey and another for whey-cream) that is now causing a problem for API. A plant must constitute a single operating unit under the current order provisions. Because of the pipelines, the market administrator has determined that the soft-products plant of API continues to constitute only a portion of a single operating unit, which includes the operations of both API and Beatrice. Based on this interpretation, it is not possible for API to qualifty such plant separately as a pool plant under the order.

API believed that the cheese business operated by Beatrice would be conducted in a separate nonpool plant and that milk delivered to such plant by the federation would have to be qualified as a diversion if it was to participate in the order's marketwide pool. In recognition of this, API asked for a hearing to consider increasing its diversion allowance to nonpool plants by 10 percentage points.

The API witness stated that the amount of increase in the diversion allowance it proposed at the hearing held in May 1984 was based on the fact that its remaining soft-products operation would qualify as a pool reserve processing plant under the order. After the close of that hearing, API learned about the market administrator's interpretation, i.e., the soft-products operation would not be considered a separate plant and thus could not qualify as a pool plant. It was then that the handler realized that all of the federation's mile delivered to Allentown (either API's soft-products operation or Beatrice's cheese-processing operation) would have to qualified as a diversion to maintain its eligibility to share in the marketable pool. In view of these circumstances, the federation became concerned that in the future it may be unable to keep its diversions to nonpool plants within the higher diversion allowance, which was increased at API's request and became effective on September 1, 1984.

API's witness testified that the federation considered proposing an additional increase in the diversion allowance at this hearing. This alternative was rejected, however, because proponent did not want to relax the order's pooling provisions further and thereby present an opportunity for additional milk to be associated with the market. Proponent asked instead that the order's pool plant provisions be revised in such a way that its remaining soft-product plant could qualify separately as a pool plant if certain conditions are met.

At the hearing API's witness insisted that dividing the total operations of its Allentown plant between two different operators (itself and Beatrice) should not deprive the federation from pooling its remaining smaller soft-products facility as a pool reserve processing plant under the order. He contended that API's market position could be adversely affected if it is unable to qualify its plant. He cited the following examples to support the claim. If the plant is a nonpool plant, the federation's producer milk must be associated with (either by direct receipt at or diversion from) the handler's two fluid processing pool plants at Lansdale, Pennsylvania and Baltimore, Maryland. Whereas, if the handler's soft-products plant qualifies as a pool plant, the federation's producer milk could be associated with such plant in addition to the handler's other two pool plants.

No opposition testimony to the federation's proposal was presented at the hearing. No briefs were received in connection with the issue.

A statement of counsel was made on behalf of Inter-State Milk Products Cooperative (Inter-State), the largest cooperative supplying milk to the market. Counsel indicated that the Inter-State has no objection to the federation's proposal so long as the integrity of regulations can be preseved and the revised provisions can be enforced without undue complication and expense.

Maryland and Virginia Milk Producers Cooperative and the Middle Atlantic Division of Dairymen, Inc. joined with Inter-State in filing exceptions to the recommended decision. The three producer groups did not oppose the amendments adopted in the recommended decision. They did, however, express their concern regarding the administration and enforcement of the revised provisions. In that regard, the three cooperative supported the statement of counsel made on behalf of Inter-State at the hearing.

A spokesman for the Ad Hoc Federal Order Committee, representing most of the major handlers operating under the Middle Atlantic and New York-New Jersey milk orders, presented a statement of position on behalf of the handlers at the hearing. He indicated that such handlers have no objection to API's proposal.

The order's provisions should be tailored to meet the changed marketing conditions which have taken place at the Allentown facility since API sold its cheese-processing business to Beatrice.

The revised provisions adopted herein will not insure pool status for proponent's smaller soft-products plant. However, they remove the impediment which now makes it impossible for API to qualify such plant as a pool plant under the order, i.e., because the plant is connected by pipeline with another person's nonpool plant located on the same premises.

The record indicates that proponent wants to maintain pool status for the milk of its producers who have been

historically associated with the fluid market and whose milk is being handled at proponent's manufacturing operations at Allentown. Unless the order is amended along the lines suggested by proponent, API would have to make numerous plant and marketing adjustments in the future to accomplish this goal. Such adjustments would involve considerable expense for the federation and would result in uneconomic movements of milk products.

The record evidence also shows that API's producer deliveries to the handler's nonpool soft-products plant are now being qualified as diverted producer milk. It is expected that the recently adopted higher diversion allowance in conjunction with the federation's somewhat lower milk supplies now will allow the handler to maintain pool status for all of the milk of its producers who have been associated with this market. It should be noted in this regard that API's monthly diversion allowance and ultimately the handler's ability to qualify milk for pool status under the order is established on the basis of the amount of proudcer milk the federation causes to be received at or diverted from pool plants. Hence, to the extent that the handler's deliveries to its nonpool soft-products plant could be qualified as a diversion, the federation's overall pooling position in the market would be unchanged regardless of the status of its soft-products plant.

Nevertheless, even though API could maintain pool status for its current milk supplies associated with the market, affording pool status to the handler's soft-products plant if certain conditions are met will contribute to orderly marketing of producer milk under the order over the long run. In that regard, it will give the federation more flexibility in marketing its milk in particular situations.

The record indicates that proponent did not ask that the order be amended with the intention of associating additional milk and/or producers with the marketwide pool. In view of this fact, the three cooperatives which filed their exceptions jointly took the position that some additional amendatory language is needed to safeguard the uniform prices for the market's regular dairy farmers. In that regard, they suggested that a dairy farmer's milk should not be a receipt of producer milk at the federation's reserve processing plant if the immediately preceding delivery of such person's milk was received at a nonpool plant and was not diverted producer milk under the Middle Atlantic milk order. Exceptors believed that the additional amendatory language is needed to provide further assurance that proponent operates its reserve processing plant in concert with the handler's stated intentions.

Such a change was not noted in the hearing notice. The imposition of such a limitation on the receipts of milk from dairy farmers at the reserve processing plant was not specifically proposed or addressed at the September 1984 hearing. Hence, there is no record evidence to support the additional amendatory language now advanced by the cooperatives in their exceptions.

If the handler operates its soft-products pool plant in accordance with its stated intention, the changes provided herein should not have an adverse impact on the market positions of other interested parties covered by the order. At the same time, however, API's position in the market will be preserved, i.e., as the operator of a pool reserve processing plant.

The record shows that the pipelines connecting the two facilities will be used only to exchange the aforementioned by-products associated with the manufacturing operations of the two separate operators. This mutually beneficial arrangement whereby the residual product(s) from each handler's principal manufacturing operations can be used by the adjacent operator to produce another product would be facilitated. The efficient method presently used by the two operators in exchanging such by-products will be encouraged to continue under the order changes adopted herein.

If these operations of two separate businesses were conducted at different plant sites, tank trucks would have to be used to exchange the by-products. However, since they are situated on the same premises, it is obviously more practical and more economical to use pipelines rather than tank trucks to move such products. As a convenience to the two operators, the provisions adopted herein will accommodate the needs of the two operators in this regard, as long as the pipelines are utilized in accordance with proponent's stated intentions, i.e., exclusively to move by-products.

It seems inappropriate to deny pool status to the handler's plant simply because it is connected by pipelines with another person's nonpool plant located on the same premises under the unique circumstances where the pipelines are not used to move milk. It seems equally inappropriate to put API in the position of having to modify its physical plant structure by disconnecting the pipelines and exchanging the by-products using tank trucks merely for the purpose of meeting the requirements of the current order provisions. Accordingly, if API is able to prove to the market administrator's satisfaction that pipelines were used only to exchange by-products during the month, its plant could be considered a separate operating unit and thus be eligible for pool status for such month.

Since the market administrator will make the final determination as to whether API's plant qualifies for pool status each month, the integrity of regulation should be protected adequately. In that regard, the market administrator would have complete authority to monitor the plant's activities which affect its pool status.

As already indicated, when API's plant qualifies as a pool plant, all milk received from producers at such plant qualifies as producer milk and is eligible for pool participation. Hence, milk that is ultimately destined for the cheese plant but is not eligible to be diverted could be received at API's pool plant simply to qualify such milk for pooling. It could then be transferred to Beatrice through the pipeline, thereby evading the effectiveness of the order's limitations on diversions to nonpool plants. As proposed, such movements would not be permitted under the revised provisions.

If the market administrator finds that during any month the pipeline was used to move milk, the reserve processing plant would not be a pool plant. The hearing notice proposal was not specific about how long the plant should be a nonpool plant in the event that such a finding was made. Milk receipts and dispositions by all pool handlers are classified and accounted for on a monthly basis under the order. The order should provide that such plant shall not be a pool plant for any month in which such a finding is made.

The same treatment (loss of pool status for the month) should apply during the months of automatic pooling (March through August). Since handlers may divert unlimited quantities of milk to nonpool plants in such months, there is no need for API to move its milk to an intermediate pool plant, because the milk could be moved to its ultimate destination at a nonpool manufacturing plant and maintain pool status.

The hearing notice proposal of API did not specify a different treatment for moving milk to API's pool plant via the pipeline from the nonpool cheese processing plant of Beatrice. Although such movements are not likely, they are contrary to proponent's intentions, i.e., to use the pipelines only to move by-

products. The same treatment under the order should be attached to milk moved in either direction via the pipelines by such operators. The provisions adopted herein carry out proponent's intent and state positively that the reserve processing plant be a pool plant for any month in which the handler demonstrates to the market administrator that the pipeline was used only to move by-products (not milk).

The hearing notice proposal appeared to place the burden of determining whether the API operation qualifies as a pool plant solely on the market administrator. In this particular situation, it is API that wants its plant to be considered for pool status. Such handler has the information regarding the plant's receipts and disposition. It is therefore appropriate that the primary burden of proving such plant's eligibility for pool status be placed on the handler rather than the market administrator. Accordingly, the provisions adopted herein place that responsibility on the handler operating such plant.

In connection with the market administrator's determination, the federation would be given an opportunity to prove to the satisfaction of the market administrator that, for all practical purposes, its plant was operated as a separate operation (even though it was connected by pipeline with a nonpool plant located on the same premises) with respect to its receipts and disposition of milk during the month. For that reason, it should be considered as a separate plant and be eligible for pool status. The record indicates that proponent intends to establish and maintain a record-keeping system in accordance with the market administrator's needs to facilitate the verification of milk receipts and disposition at the plant and assist in making such determination.

This decision responds to a very narrow and specific marketing problem under the Middle Atlantic order. It should be noted that a pool reserve processing plant may be operated by a cooperative as well as a federation of cooperatives in this market. However, there was no proposal to change the application of the order with respect to an individual cooperative. Also, there is no indication that such a modification is needed to meet a current or prospective marketing problem of such a handler. Accordingly, the change adopted herein is limited to the pool status of a reserve processing plant operated by a federation of cooperative associations.

In connection with the revisions in the pool plant provisions, a modification of the order's plant definition is warranted. This corollary change, in the form of an exception to such definition, provides the latitude under the order to allow a reserve processing plant operated by a federation of cooperatives to be considered for pool status as a separate plant even though it is connected by pipeline with a nonpool plant located on the same premises if the conditions specified in § 1004.7(d)(2) are met.

A general exception was filed by an individual dairy farmer. However, the basis of the exception was not related to the pooling requirements for a reserve processing plant operated by a federation of cooperatives.

Rulings on Proposed Findings and Conclusions

No briefs were received.

General findings

The findings and determinations hereinafter set forth supplement those that were made when the Middle Atlantic order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be it the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement And Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Middle Atlantic marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

December 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Middle Atlantic marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1004

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Signed at Washington, D.C., on March 22, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing & Inspection Services.

Order[1] Amending the Order, Regulating the Handling of Milk in the Middle Atlantic Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Middle Atlantic marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on January 29, 1985, and published in the Federal Register on February 1, 1985 (50 FR 4694), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.4 is revised to read as follows:

§ 1004.4 Plant.

Except as specifically provided in § 1004.7(d)(2), "plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment for the receiving, processing or packaging of milk or milk products (including filled milk). However, a separate facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck or only as a distribution depot for fluid milk products in transit for route distribution shall not be included under this definition.

2. In § 1004.7, paragraphs (d)(2), and (e) are revised to read as follows:

§ 1004.7 Pool plant.

* * * * *

(d) * * *

(2) A reserve processing plant operated by a federation of cooperative associations if, during the month, 30 percent or more of the producer milk of member producers of such cooperatives is caused to be delivered to and physically received at pool plants qualified pursuant to paragraph (a) of this section either from the farms of such producers or by transfer in the form of fluid milk products (except filled milk) from the plant(s) of such cooperatives. If a pipeline is maintained between a reserve processing plant and a nonpool plant operated by another person and located on the same premises, the reserve processing plant shall be a pool plant for the month if the operator of such plant proves to the satisfaction of the market administrator that such plant should be eligible for pool status on the basis of the plant's monthly receipts and disposition of milk and that the pipeline was used only to move by-products (not milk) between such plants during the month.

* * * * *

(e) A plant that qualified as a pool plant pursuant to paragraph (b) or (d) of this section during each of the immediately preceding months of September through February shall be qualified for automatic pool plant status for each of the following months of March through August, unless the plant operator files a written request with the market administrator prior to the beginning of any such month asking that such plant not be a pool plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section, subject to the following conditions:

(1) The automatic pool plant status for any plant identified in paragraph (e) of this section shall be cancelled if another plant is qualified as a pool plant on the basis of deliveries to the same plants through which such automatic pooling status was acquired by the plant. Cancellation of the plant's automatic pool plant status shall be effective on the first day of the month in which the other plant is qualified as a pool plant and shall continue until the plant again qualifies as a pool plant pursuant to paragraph (b) or (d) of this section; and

(2) The automatic pool plant status of a reserve processing plant operated by a federation of cooperative associations qualified pursuant to paragraph (d)(2) of this section shall be forfeited for any month during the March through August period in which the market administrator determines on the basis of the investigation conducted pursuant to paragraph (d)(2) of this section that such plant shall not be a pool plant for the month.

* * * * *

[FR Doc. 85-7708 Filed 3-29-85; 8:45 am]
BILLING CODE 3410-02-M

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7 CFR Parts 1007, 1011, 1046, 1063, 1097, 1098, 1102, and 1108

Milk in the Georgia and Certain Other Marketing Areas; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Orders

7 CFR part	Marketing area
1007	Georgia.
1011	Tennessee Valley.
1046	Louisville-Lexington-Evansville.
1063	Alabama-West Florida.
1097	Memphis, Tennessee.
1098	Nashville, Tennessee.
1102	Fort Smith, Arkansas.
1108	Central Arkansas.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rules.

SUMMARY: This action terminates the proceeding that was initiated to consider a proposal to suspend the seasonal base-excess plans for paying producers under the above listed orders during March through August 1985. The suspension was requested by Southern Milk Sales, a cooperative association that represents producers who are located in areas covered by these marketing orders.

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, DAiry Division, Agricultural Marketing Service, U.S. Department of agriculture, Washington, D.C. 20250 (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding—Notice of Proposed Suspension; Issued February 28, 1985; published March 6, 1985 (50 FR 9038).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on March 6, 1985 (50 FR 9038) concerning a proposed suspension of certain provisions of the orders regulating the handling of milk in the aforesaid marketing areas. Interested parties were invited to comment on the proposal in writing by March 13, 1985. The proposal would have inactivated the seasonal base-excess plans for paying producers under the above listed orders during March through August 1985 by suspending the specific provisions listed for each of the orders on pages 9038 and 9039 of the March 6, 1985, **Federal Register.**

Statement of Consideration

The proposed suspension would make inoperative the seasonal base-excess plans under eight orders during the base paying spring and summer months in 1985. The suspension was requested by Southern Milk sales, (SMS) a cooperative association that represents producers who are located in the areas covered by the marketing orders.

Under base-excess plans a base for each producer is computed on the basis of deliveries during the fall and winter months. During the following spring and summer months, producers receive a uniform price for base milk for production that does not exceed the established daily average base. Milk in excess of base production commands a lower "excess" price. The plans are intended to encourage a seasonal leveling of production.

The base-excess plans of these orders were recently amended so that if a producer delivered milk to more than one of these eight markets during the fall and winter months, the deliveries to all of the eight markets could be used to compute the producer's base for the purpose of payments during the spring and summer months. However, SMS contends that substantial quantities of the milk of its producer members were shipped to other deficit southeastern markets that do not have base-excess plans. As a result of supplying these markets, SMS contends that producer members of the cooperative have not established bases that reflect their entire production and thus their returns during the spring and summer will be reduced because an abnormally large proportion of their marketings would be paid for at the lower "excess" price. The cooperative contends that a reduction of returns will jeopardize the maintenance of an adequate supply of milk during the coming months for these and other southeastern markets unless the base-excess plans of the eight orders are suspended during March through August 1985.

Comments supporting a suspension action were filed by one handler and 15 dairy farmers. Most of the producers supporting the suspension action provided no reason as to why the suspension should be granted. However, several producers indicated that production during the base forming period was reduced because of dairy farmer participation in the paid diversion program.

Comments in opposition to the suspension were filed by four dairy farmers, two handlers and four cooperative associations that represent a substantial majority of the total number of producers who supply the eight markets involved in this proceeding. Basically, the producers contend that it would be inappropriate and inequitable to suspend the base-excess payment plans in the middle of the annual production cycle. They contend that suspension of the plans would penalize those producers who geared their production patterns to better meet the fluid milk needs of the markets involved. They further contend that the provisions of the base-excess plans were well known, in advance, by producers and cooperative associations and that producers and cooperative associations should not now be compensated for choosing to ignore these provisions in their production and delivery decisions during the base-forming periods. Opponents further contend that a suspension could lead to legal actions among producers who have already transferred bases at agreed upon values under the provisions of those orders that provide for base transfers.

Base-excess plans affect primarily the manner in which the total value of milk is allocated among the producers who supply the markets. Consequently, a primary consideration in determining whether the plans should be suspended in whether such action is favored by a substantial proportion of the producers who supply the markets. It is evident from the comments received that a substantial majority of the producers oppose a suspension of the base-excess payment plan. For this reason, as well as for other reasons presented by those opposing the action, the suspension request is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1106

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C., on March 25, 1985.

Karen Darling,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–7710 Filed 3–29–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ASO–7]

Proposed Alteration of Control Zones; Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the two control zones which are associated with Page Field and Southwest Florida Regional Airport, Fort Myers, Florida. These changes result from a planned relocation of the Fort Myers VORTAC facility from its present site adjacent to Page Field to a new site west of Southwest Regional Airport. This action will raise the floor of controlled airspace northwest, northeast and southwest of Page Field from the surface to 700 feet above the surface as the existing control zone extensions will no longer be required after relocation of the VORTAC. The proposed effective date of this action is November 21, 1985.

DATES: Comments must be received on or before: May 1, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO–530, P. O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. _____." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will alter the Fort Myers and Fort Myers Southwest Florida Regional Airport, Florida control zones. Relocation of the Fort Myers VORTAC to a new site negates the need for control zone extensions and permits raising the floor of controlled airspace beyond five miles from Page Field. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend the Fort Myers and Fort Myers Southwest Florida Regional Airport, Florida, control zones under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

Fort Myers, FL [Revised]

Within a five-mile radius of Page Field (lat. 26°35'11"N., long. 81°51'49"W.); excluding the portion southeast of a line connecting the two points of intersection with a 5-mile radius circle centered on Southwest Florida Regional Airport (lat. 26°32'10"N., long. 81°45'18"W.).

Fort Myers Southwest Florida Regional Airport, FL [Revised]

Within a 5-mile radius of Southwest Florida Regional Airport (lat. 26°32'10"N., long. 81°45'18"W.); excluding the portion northwest of a line connecting the two points of intersection with a 5-mile radius circle centered on Page Field (lat. 26°35'11"N., long. 81°51'49"W.). This control zone is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in East Point, Georgia, on February 28, 1985.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 85–7610 Filed 3–29–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Proposed Customs Regulations Amendments Relating to Overflight Exemptions and Reporting Requirements for Aircraft Arriving in the United States

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by expanding the coverage of the notice of penetration of U.S. airspace requirements to include more aircraft within those requirements, and by placing additional requirements upon those who might seek an exemption from landing requirements for aircraft arriving from south of the U.S.

Current regulations provide specifics regarding the requirements for reporting arrival, and include a list of designated airports at various border and coastline points at which designated aircraft must land. This notice merely proposes to expand coverage of existing requirements to: Include all aircraft arriving from Puerto Rico and the U.S. Virgin Islands within the notice of penetration requirements; include within the notice requirements aircraft departing and then reentering U.S. airspace, regardless of whether the aircraft commander reports having landed outside of the U.S.; increase from 15 minutes to 1 hour the time required for notice to be given prior to penetrating U.S. airspace; and require aircraft seeking exemptions from certain landing requirements to be equipped with functioning transponders and to provide additional justification for being granted an exemption.

The proposed amendments are necessary because of the severity of the drug abuse problem, the major increase

in illegal drug importations, and the need for action to expand the effectiveness of drug smuggling enforcement. Customs has found that because aircraft arriving in U.S. airspace from certain areas south of the mainland U.S. are exempt from current reporting requirements, and because overflight exemption requirements are too lax, certain potentially high-risk flights are able to bypass the best drug interdiction efforts of Customs. This proposal seeks to remedy that situation.

DATES: Comments must be received before May 31, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229. Comments relating to the information collection aspects of the proposal should be addressed to the Commissioner of Customs, as noted above, and also to the Office of Information and Regulatory Affairs, Attention: Desk officer for U.S. Customs Service, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Bernie Harris, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–5607).

SUPPLEMENTARY INFORMATION:

Background

The National Narcotics Intelligence Consumers Committee has documented that the supply of illegal drugs to the U.S. market and the subsequent extent of drug abuse has reached monumental proportions. Illegal drugs generated an estimated $80 billion in retail sales in 1980, a 23 percent increase from 1979. The severity of the drug abuse problem, the preponderance of drug users, and the major increases in volumes of illegal drug importations in the U.S. are indicated by the significant increase in drug-related deaths, medical care, arrests, and seizures.

The smuggler organization has solidified a dominant position in the U.S. through the penetration of strategic points in the economy. Areas to the south to the U.S. are major sources of illegal drugs destined for the U.S. Smuggling by air is the preferred mode of transportation for high-cost narcotics, with cocaine and marijuana smuggling representing particularly high risk areas. A Stanford Research Institute Study indicates the magnitude of the air smuggling threat at approximately 6,700 flights, annually. Although recent air interdiction activities in the southeastern U.S. have resulted in many arrests and seizures, an end to the present situation of drug abuse in the U.S. is not in sight.

In order to address this national problem, it is necessary to take action to expand the effectiveness of smuggling enforcement. In 1975, the Customs Regulations were amended by adding a new § 6.14 (19 CFR 6.14), to provide for a notice of intended arrival for private aircraft arriving in the U.S. via the U.S./Mexican border.

Because of the magnitude of the drug problem, and in direct response to Executive and Congressional directives, by an interim regulation published as T.D. 82–52 in the **Federal Register** On March 24, 1982, (47 FR 12620), the notice requirements were extended to private aircraft arriving in the U.S. via the Gulf of Mexico, Pacific and Atlantic Coasts. These interim regulations were adopted as a final rule by publication of T.D. 83–192 in the **Federal Register** on September 15, 1983 (48 FR 41381).

By publication in the **Federal Register** on November 9, 1984 (49 FR 46885), § 6.14 was further amended to extend the reporting requirements to certain commercial aircraft arriving from areas south of the U.S. By expanding the definition of private aircraft to include certain commercial flights, Customs sought to increase enforcement coverage to further stem the flow of illicit narcotics. In spite of previous efforts, we have found that there remain certain gaps in the reporting requirements provided in Part 6 of the Customs Regulations. The proposed amendments discussed above and set forth below will fill those gaps.

Authority

This proposal is made under the authority of R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624; 49 U.S.C. appendix 1509).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 225) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Executive Order 12291

This proposal is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The document is subject to the Paperwork Reduction Act. Accordingly, the reporting requirements contained in the document have been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to the Customs Service and to the Office of Management and Budget at the addresses set forth in the **ADDRESS** portion of this document.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports.

Proposed Amendments to the Regulations

It is proposed to amend Part 6, Customs Regulations (19 CFR Part 6), as set forth below.

William von Raab,
Commissioner of Customs.

Approved: March 14, 1985.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

PART 6—AIR COMMERCE REGULATIONS

1. It is proposed to amend § 6.1 by adding a new paragraph (i), to read as follows:

§ 6.1 Scope and definitions.

* * * * *

(i) The term "place" as used in this Part means anywhere outside of the airspace of the United States.

2. It is proposed to amend the second sentence of § 6.14(a) by removing the words "15 minutes", and inserting, in their place, the words "1 hour".

3. It is proposed to amend § 6.14(b) to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

* * * * *

(b) *Advance report of penetration of United States airspace via Gulf and Atlantic Coasts.* All private aircraft arriving in the United States via the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of "United States" in § 6.1(b)) from Puerto Rico, shall furnish a notice of intended arrival to the Customs Service at the nearest designated airport to point of crossing listed in paragraph (g) of this section for first landing in the United States. The notice must be furnished at least 1 hour before crossing the United States coastline. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs.

4. It is proposed to revise § 6.14(f)(1)(iii) to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

(f) * * *

(1) * * *

(iii) A statement that the aircraft is equipped with a functioning transponder which will be in use during overflight;

* * * * *

5. It is proposed to revise § 6.14(f)(1)(xi) to read as follows:

§ 6.14 Private aircraft arriving from areas south of the United States.

(f) * * *

(1) * * *

(ix) Detailed reasons for overflight exemption, stated in terms of savings in cost and time, safety considerations, and convenience.

§ 6.25 [Amended]

6. It is proposed to amend § 6.25(c)(1) by removing the words "which are not inspected by Customs officers in the Virgin Islands".

7. It is proposed to amend § 6.25(c)(2) by removing the words "which were not inspected by Customs officers in the Virgin Islands".

8. It is proposed to amend § 6.25 by removing paragraph (c)(3) from the section, and by redesignating paragraphs (c)(4) and (5) as paragraphs (c)(3) and (4), respectively.

[FR Doc. 85-7676 Filed 3-29-85; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 84N-0341]

Unmodified Food Starches and Acid-Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that certain unmodified food starches, specifically, cornstarch (including waxy maize starch and high amylose cornstarch), wheat starch, milostarch, rice starch, potato starch, tapioca starch, and arrowroot starch, are generally recognized as safe (GRAS) for use as direct human food ingredients. FDA is also proposing to affirm that acid-modified starches are GRAS for use in food-contact surfaces. The safety of these ingredients has been evaluated under a comprehensive safety review conducted by the agency. This proposal does not address the other modified food starches whose use is currently permitted by food additive regulations.

DATE: Comments by May 31, 1985.

ADDRESS: Written comments to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert Leo Martin, Center for Food Safety and Applied Nutrition (HHF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of certain unmodified food starches, specifically, cornstarch (including waxy maize starch and high amylose cornstarch), wheat starch, milostarch (also called grain sorghum starch), rice starch, potato starch, tapioca starch, and arrowroot starch, and of acid-modified starches has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of all of these unmodified food starches for direct use in food and of acid-modified starch for use in food-contact surfaces. This proposal does not affect the current regulatory status of the modified food starches that are regulated as direct food additives under 21 CFR 172.892.

Starch, mainly as a component of cereal products and vegetables, supplies about 20 percent of the energy content of the average American diet. In the years from 1971 through 1974, according to the United States Department of Agriculture (USDA), the available food supply provided about 180 grams (g) of starch per capita per day.

Starch, a polymer of glucose, is the carbohydrate reserve of plants. It can be obtained from many plant sources and is produced commercially by extraction from the roots, fruit, seeds, pith, and tubers of plants. The starch is liberated by grinding aqueous slurries of the raw material. Starch produced in this manner occurs as minute granules that vary in shape and in size, ranging in diameter from approximately 3 to 100 microns, depending on the plant source. This form of starch is known as "unmodified starch."

Unmodified food starches are predominately composed of two polysaccharide components, amylose and amylopectin. Amylose is a linear polymer containing about 200 to 2,000 D-anhydroglucose units (32,000 to 320,000 molecular weight) joined by α-1,4 bonds. Amylopectin is a highly branched molecule that consists of linear α-1,4 linked segments branched through α-1,6 bonds at intervals of 15 to 25 anhydroglucose units. The molecular weights of the amylopectins of unmodified food starches are in the multimillions.

The relative proportions of amylose and amylopectin in unmodified food starches are characteristic of the particular plant species. For example, cornstarch contains about 27 percent amylose; potato starch, 22 percent; and tapioca starch, 17 percent. However, certain species of corn, grain sorghum, and rice are composed almost entirely of amylopectin. On the other hand, another genetic variant of corn, amylomaize, from which high emylose cornstarch is obtained, contains starch having 50 to 80 percent amylose.

Unmodified food starches are foods primarily as thickening or gelling agents and as processing aids. They are used in such foods as puddings, salad dressings, pie fillings, and candies. Cornstarch, for example, is used where a gel structure is required, as in custard and cream fillings. Waxy corn and tapioca starch are used in canned food to provide temporary viscosity and to keep ingredients uniformly suspended during filling operations.

Heating a slurry of starch granules in water beyond a critical temperature (e.g., 62 °C for cornstarch) causes the granules to swell to many times their original size. This process, referred to as gelatinization, is accompanied by an increase in optical clarity and an abrupt rise in the viscosity of the solution. Some starch molecules leach out of the swollen granules, and the granules eventually rupture and collapse as heating is continued (for cornstarch, this occurs at 95 °C), yielding a dispersion of granule fragments, molecular aggregates, and free molecules. Upon cooling, the mixture thickens and, if sufficiently concentrated, may form a gel. As stated above, the property of forming thick pastes or gels is the basis for many of the uses of starch.

Some starches are pregelatinized. Pregelatinization refers to the heat processing of a slurry of starch granules before incorporating the starch into a food product. Pregelatinized starches are used in a variety of products where thickening is required but cooking is to be avoided, such as instant puddings, pie fillings, and cake frostings.

Unmodified starches are also used in the manufacture of paper and paperboard products. The starch, generally in the form of a gelatinized starch paste, is added to the wood pulp slurry to serve as an internal binder and to strengthen the sheets formed on the paper machine. In some mills, starch is added dry to the pulp slurry. However, for the unmodified starch to be effective, the wet paper sheets must reach temperatures sufficient to gelatinize the starch while they are in the dryer. Pregelatinized starches are used in mills where a dry additive is needed.

Wheat starch, tapioca starch, potato starch, and cornstarch are listed in § 182.70 (21 CFR 182.70) as generally recognized as safe (GRAS) for use in cotton and cotton fabrics used in dry food packaging. The regulation listing these uses as GRAS was first published in the **Federal Register** of June 10, 1961 (25 FR 5224), and recodified in the **Federal Register** of March 15, 1977 (42 FR 14302). Cornstarch, pregelatinized starch, unmodified starch, and acid-modified starch are listed in § 182.90 (21 CFR 182.90) as GRAS for use in paper and paperboard products. This regulation also was first published in the **Federal Register** of June 17, 1961 (26 FR 5421), and recodified on March 15, 1977 (42 FR 14302). FDA has also issued opinions stating that "edible starches" are GRAS for use in spray powders on food; that cornstarch is GRAS for use in food; that rice starch is GRAS for use in dietary supplements; and that arrowroot starch, cornstarch, and potato starch are GRAS as off-set powders for use in food packaging.

Unmodified food starches may also be used as optional ingredients in canned corn under 21 CFR 155.130; in salad dressings under 21 CFR 169.150; and in vanilla powder under 21 CFR 169.179.

Acid-modified starch is listed in § 182.90 as GRAS for use in paper and paperboard products used in food packaging. The regulation listing these uses as GRAS was first published in the **Federal Register** of December 23, 1965 (30 FR 15861), and recodified in the **Federal Register** of March 15, 1977 (42 FR 14302). Acid-modified starches are prepared by treating unmodified starches with hydrochloric acid or sulfuric acid or both.

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which, and the levels of usage at which, GRAS ingredients are used in food. Although specific information was not requested for unmodified food starches, food manufacturers voluntarily reported that arrowroot starch, cornstarch, including waxy maize starch, potato starch, rice starch, tapioca starch, and wheat starch were used in 22 of the 63 food categories listed in § 170.3(n) (21 CFR 170.3(n)), including infant foods, and were used for 11 of the technical effects listed in § 170.3(o) at levels varying from 0.001 to 11.7 percent of the food.

FDA estimates that 125 million pounds of unmodified food starches were used in food in 1970. The agency bases this estimate on the NAS/NRC survey and on information provided by USDA on the total poundage of both modified and unmodified food starches.

The NAS/NRC survey provided no information on the use of unmodified food starches or acid-modified starches in paper and paperboard or in cotton and cotton fabrics used for food packaging. Russell (Ref. 1), however, has estimated that the paper and paperboard industry used a total of approximately 1.9 billion pounds of unmodified starches for all packaging applications in 1972, although only a small fraction of this quantity could be expected to be used in food packaging or to migrate into foods from paper or paper products.

Unmodified and acid-modified food starches were the subject of a search of the scientific literature from 1920 to 1977. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavioral effects, (12) detection, and (13) processing. A total of 1,751 abstracts was reviewed and 64 particularly pertinent reports have been summarized in a scientific literature review.

The Select Committee on GRAS Substances (the Select Committee), which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), updated the information from the scientific literature review to 1979 and summarized all the information in the review in its report to FDA. The members of the Select Committee have evaluated all the available safety information on the unmodified food starches and acid-modified starches (Ref. 2, pp. 18–21). In the past, the agency presented verbatim the Select Committee's discussion of the biological data it reviewed. However, because the Select Committee's report is available at the Dockets Management Branch and from the National Technical Information Service, and because it represents a significant savings to the agency in publication costs, FDA has decided to discontinue presenting the discussion in the preamble to proposals that affirm GRAS status in accordance with current good manufacturing practice. In the Select Committee's opinion:

> The digestibility of unmodified cereal and tapioca starches used commercially as food ingredients, both raw and after cooking, is almost complete. Potato and arrowroot starches are less completely digested when fed raw but their digestibility is similar to that of cereal starches after cooking. Pregelatinized starches (dried, cooked starches) generally are highly digestible. Consumption of excessive quantities, pounds per day, of raw starch has resulted in obesity and iron-deficiency anemia in human subjects. Most of the foods to which starch is added by the food industry are cooked in processing or are cooked before serving. Moreover, the total quantity of unmodified and pregelatinized starch added to processed foods is insignificant compared to the natural

starch content of the American dietary, some of which is eaten in its native form in raw vegetables. No adverse effects have been attributed to these starches as added food ingredients. It is suggested, however, that specifications for food grade unmodified starches be developed in order to distinguish them from the starches that are used in non-food applications.

(Ref. 2, p. 62.)

The Select Committee concludes that no evidence in the available information on unmodified or pregelatinized corn, high amylose corn, waxy maize, wheat, milo, rice, potato, tapioca, or arrowroot starch demonstrates or suggests reasonable grounds to suspect a hazard to the public when they are used at levels that are now current or that might reasonably be expected in the future. The Select Committee also concludes that there is no evidence in the available information on these ingredients to suspect a hazard to the public when these substances migrate to food from paper and paperboard or from cotton and cotton fabrics used in food packaging (Ref. 2, p. 62).

The Select Committee's report also states for acid-modified starches:

Hydrolysis of glucosidic linkages occurs during acid modification of starch resulting in molecular fragmentation similar to that which occurs in the production of glucose syrups and maltodextrins. The extent of hydrolysis is limited in the acid-modified starches and is comparable to that of the maltodextrins, the main difference being that the granular form is retained in the acid-modified starches. No adverse effects were noted in feeding acid-modified starches to 3-day-old pigs nor in 90-day rat feeding tests. The evidence indicates that the acid-modified starches are without hazard as food ingredients.

(Ref. 2, p. 64.)

This Select Committee therefore concludes that there is no evidence in the available information on acid-modified starches that demonstrates or suggests reasonable grounds to suspect a hazard to the public when acid-modified starches migrate to food from paper and paperboard or from cotton and cotton fabrics used in food packaging.

FDA has undertaken its own evaluation of all available information on these unmodified food starches and acid-modified starches and concurs with the conclusions of the Select Committee. The agency concludes that no change in the current GRAS status of these starches is justified. Therefore, the agency proposes to affirm that the unmodified food starches listed in § 184.1847 (21 CFR 184.1847) are GRAS for use in food and food-contact surfaces, and that acid-modified starches are GRAS for use in food-contact surfaces. FDA is not, however, proposing a separate listing in Part 186 for the indirect use of the unmodified food starches. The indirect uses of these starches are authorized under §§ 184.1847 and 184.1(a).

Although the Select Committee's report mentioned that starch from the sago palm may be used as a source of unmodified food starch, the Select Committee specifically excluded starch from this source in its list of unmodified food starches. In response to an FDA inquiry regarding this omission, a representative of the Select Committee stated that the Committee had no actual evidence that sago starch is used in food in the United States.

Furthermore, the representative pointed out that sago starch is derived from a source (sago palm) that is very different from other starch sources, and that the Select Committee could not find any information about the process by which this starch is manufactured or about its possible impurities. Thus, the Select Committee concluded that insufficient information was available to evaluate the safety of sago starch as a food ingredient.

FDA finds that although it has been issued an opinion that "edible starches" may be considered GRAS, the agency has not issued a specific opinion on the GRAS status of sago starch. The agency agrees with the Select Committee that no information is available on the manufacturing process and impurities of sago starch. The agency therefore concurs with the conclusion of the Select Committee and is not including sago starch among the unmodified food starches that it is affirming as GRAS. However, the agency will consider whether sago starch may be affirmed as GRAS as a food ingredient if information is provided in comments on this proposal regarding its use in food, chemical identity, manufacturing process, and composition.

Although the Select Committee specifically mentioned in its conclusion that pregelatinized starches are also GRAS, FDA is not affirming these products as separate GRAS ingredients. As explained above, "pregelatinization" refers merely to a method of treating unmodified food starches before they are added to food products. Although this pretreatment is of significance to food manufacturers, the agency finds that there is no reason to differentiate between the use of individual food starches that are gelatinized before they are added to food and the use of the same starches when they are added to food as raw starch. This proposal therefore makes clear that the individual unmodified food starches may be added to food in either their pregelatinized or raw forms.

The proposal also does not list amylose corn starch or waxy maize starch as separate GRAS ingredients because these products are commonly referred to as "cornstarch" and are identified on food product labels by the name "cornstarch." Nonetheless, the proposal includes these products in parentheses following the ingredient listing of cornstarch to make clear that the agency has tentatively concluded that their use should be affirmed as GRAS.

FDA is not proposing to include the food categories, levels of use, or technical effects reported in the 1971 NAS/NRC survey for unmodified food starches in the GRAS affirmation regulations for these ingredients. Both FASEB and the agency have concluded that a large margin of safety exists for the use of these substances, and that a reasonably foreseeable increase in the level of consumption of unmodified food starches will not adversely affect human health. Therefore, the agency is proposing to affirm the GRAS status of these ingredients when they are used under current good manufacturing practice conditions in accordance with § 184.1(b)(1).

In its opinion statement, the Select Committee noted the lack of food-grade specifications for unmodified food starches and suggested that specifications be developed to distinguish food-grade unmodified starches from the same starches that are used in nonfood applications. The agency agrees with the Select Committee that such specifications are needed and will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for these ingredients. If acceptable specifications are developed, the agency will incorporate them into the regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial unmodified food starches comply with the description in the proposed regulation and are of food-grade purity (21 CFR 182.1(b)(3) and 170.30(h)(1)).

Copies of the scientific literature review on starches and the report of the Select Committee on starches and modified starches are available for review at the Dockets Management Branch (address above) and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Starches (scientific literature review).	PB 341-858/AS..	A09	$15.00
Starches and modified starches (Select Committee report).	PB 80-128804....	A06	11.00

[1] Price subject to change.

The proposed actions do not affect the current use of starches in pet food or animal feed.

The agency has determined pursuant to 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

The agency's findings of no economic impact and no significant impact on a substantial number of small entities, if the proposed rule is promulgated, and the evidence supporting these findings are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

References

The following information has been placed on display at the Dockets Management Branch (address above) and may be reviewed in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Russell, C.R., "Industrial Use of Corn Starch," *in* "Industrial Use of Cereals: Symposium Proceedings," American Association of Cereal Chemists, St. Paul, MN, pp. 261–281, 1973.

2. "Evaluation of the Health Aspects of Starches and Modified Starches as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 1979.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

21 CFR Part 186

Food ingredients; Generally recognized as safe (GRAS) food ingredients; Indirect food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), it is proposed that Parts 182, 184, and 186 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.70 [Amended]

a. In § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* by removing the entries for "Cornstarch," "Potato starch," "Tapioca starch," and "Wheat starch."

§ 182.90 [Amended]

b. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entries for "Cornstarch," "Starch, acid-modified," "Starch, pregelatinized," and "Starch, unmodified."

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended by adding new § 184.1847, to read as follows:

§ 184.1847 Unmodified food starches.

(a) Cornstarch (including waxy maize starch and high amylose corn starch), wheat starch, milo (or grain sorghum) starch, rice starch, potato starch, tapioca starch, and arrowroot starch are the unmodified food starches covered by this section. These ingredients are chemically composed of a mixture of two glucose polysaccharides, amylose and amylopectin, whose relative proportions are characteristic of the plant source. Unmodified food starches are generally produced by extraction from the plant source using wet-milling processes in which the starch is liberated by grinding aqueous slurries of the raw material. The ingredients may be pregelatinized before they are used in food or used as a raw starch.

(b) FDA is developing food-grade specifications for unmodified food starches in cooperation with the National Academy of Sciences. In the interim, these ingredients must be of a purity suitable for their intended use.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food with no limitation other than current good manufacturing practice.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. Part 186 is amended by adding new § 186.1846, to read as follows:

§ 186.1846 Starches, acid-modified.

(a) Starches, acid-modified, are starches obtained from the treatment of any of the unmodified food starches (§ 186.1847) with hydrochloric acid or sulfuric acid, or both.

(b) In accordance with § 186.1(b)(1), the ingredient is used in food-contact surfaces with no limitation other than current good manufacturing practice.

The agency is unaware of any prior sanction for the use of these ingredients in food under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on the sanction later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate final rule under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before May 31, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 11, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-7624 Filed 3-29-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83-14]

Truck Size and Weight; Advance Notice of Proposed Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is initiating a proceeding to implement the 12-foot wide lane provisions contained in the Surface Transportation Assistance Act of 1982 (STAA), as amended by the Tandem Truck Safety Act of 1984 (TTSA). This notice identifies for re-examination specific routes on the National Network containing sections with lanes less than 12 feet wide in those States which do not otherwise permit 102-inch wide vehicles on the National Network pursuant to State law. These States are Alabama, Florida, Kentucky, Maryland, Missouri, New Hampshire, New Jersey, New York, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virginia.

DATE: Written comments must be received on or before May 16, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 83-14, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Highway Planning (202) 426-0233, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 416 of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. app. 2316, requires the States to allow 102-inch wide vehicles to operate on the Interstate System. In addition, as originally enacted, Section 416 authorized the Secretary of Transportation to designate for use by such vehicles "any other qualifying highway . . . with traffic lanes designed to be a width of twelve feet or more." This authority was delegated to the FHWA.

In part because of language in a memorandum opinion issued by the United States District Court for the District of Columbia in a suit challenging interim designations of highways open to longer and wider vehicles under the STAA, the preamble to the FHWA's final rule on truck size and weight (49 FR 23302, June 5, 1984) proposed to establish a definition for the statutory term "highway with traffic lanes designed to be a width of twelve feet or more," and requested comments on the proposal. In the interim, Congress passed the Tandem Truck Safety Act of 1984 (TTSA) (Pub. L. 98-554, 98 Stat. 2829). Section 105 of the TTSA amended Section 416 of the STAA to provide authority to designate for operation by 102-inch wide vehicles "qualifying Federal-aid Primary System highway(s)" if FHWA "determines that such designation is consistent with highway safety."

This amendment clarified FHWA's authority to designate highways with less than 12-foot wide lanes and disposed of the need to define further the phrase "highways with traffic lanes designed to be a width of twelve feet or more." Thus, FHWA is withdrawing its proposal to define that term.

The following language is quoted from the Senate Committee Report [1] in reference to the provision that ultimately was enacted as Section 105 of the TTSA:

> The Committee intends that the provisions of section 4 should provide the basis upon which the Secretary, by a supplemental rulemaking, can proceed, with all deliberate speed, rationally to revise and finalize the designations for the nationwide route network. The Secretary's interim and proposed final designations contain highways which the Secretary has determined, at least on a preliminary basis, can safely accommodate 102-inch wide vehicles, but which have lanes not designed to be twelve feet or more.
>
> Section 4 contemplates a supplemental rulemaking in which the Secretary is to confirm, or to determine in the first instance, that the designation of these highways, or any other qualifying highways, is consistent with highway safety and the purposes of Title 49, United States Code. . . .

In accordance with this language, FHWA is hereby undertaking another review of the highways (listed below) that have sections with lanes less than 12 feet wide in those States that do not permit 102-inch wide vehicles to operate on the Network pursuant to State law. This review will be undertaken pursuat to the rules, criteria, and interpretations of the June 5, 1984, rule and preamble. After conducting this review, FHWA intends to propose the deletion of highways with lane widths less than 12 feet wide if such designation is found to be inconsistent with highway safety. The FHWA solicits information, data, and comments concerning these routes that may assist in the review.

The following routes are listed for re-examination:

Posted route No.	From	To
	ALABAMA	
US 72	Mississippi St. Line	Jackson County Road 33 near Hollywood.
US 31	AL 152 Montgomery	AL 14 north of Prattville.
US 31	End of I-65 north of Birmingham.	I-65 north of Kimberly.
US 78	Beginning of four-lane west of AL 5 at Jasper in Walker County.	I-59 Birmingham.
US 80	AL 14 West of Selma	AL 152 Montgomery.
AL 20	US 72 Tuscumbia	US 231 Huntsville.
AL 21	US 431 Anniston	Jacksonville.
US 280	US 31 Mountain Brook.	AL 22 at Alexander City.
US 280	I-85 Opelika	Georgia St. Line.
AL 77	I-59 Gadsden	US 431 Attalla.
	FLORIDA	
US 27	South Bay	Leesburg.
US 27/US 301	Belleview	Ocala.
	KENTUCKY	
US 25	US 421 S. of Richmond.	KY 876 in Richmond.
US 25E	Virginia St. Line	I-75 N. of Corbin.
US 27	Tennessee St. Line	Ohio St. Line (via KY-4 in Lexington).
US 31W	US 31 W. Bypass in Elizabethtown.	I-264.
US 45	US 45 Bypass north of Mayfield.	US 62 in Paducah.
US 60	US 60 Bypass west of Owensboro.	KY 69 Hawesville.
US 60	KY 144 in Meade County.	US 31 west at Ft. Knox.
US 62	I-24 at Paducah	Western Kentucky Parkway.
US 68	I-24 in Trigg County	Green River Pkwy at Bowling Green.
US 68	US 27 at Paris	Ohio St. Line at Maysville (via Paris Bypass).
KY 69	US 60 at Hawesville	Indiana St. Line
KY 79	KY 1051 in Brandenburg.	Indiana St. Line
US 119	US 23 at Pikeville	KY 1441

[1] S. Rep. No. 505, 98th Cong., 2d Sess. 15 (1984).

Posted route No.	From	To
US 127	Tennessee St. Line	US 60 in Frankfort (via Danville & Lawrenceburg Bypasses).
KY 144	KY 448	US 60.
US 150	US 31E at Bardstown	US 27 N. City Limits of Stanford (via Danville Bypass).
US 79	Tennessee St. Line	US 68 Russellville.
KY 151	US 127 near Lawrenceburg.	I-64 near Grassfenburg.
KY 256	Western Kentucky Parkway.	US 62 at Leitchfield.
KY 448	KY 1051 at Brandenburg.	KY 144.
US 641	Tennessee State Line	KY 348 in Benton.
KY 876	I-75 at Richmond	KY 52 East of Richmond.

MARYLAND

MD 201 (Kenilworth Avenue).	D.C. Line	US 50 Cheverly.
US 40	West Virginia State Line.	MD 639 at Cumberland.
US 50	MD 201 Kenilworth Ave., Cheverly.	US 13 (bypass) Salisbury.
US 301	Virginia St. Line	Delaware St. Line.

MISSOURI

US 36	Kansas State Line	Illinois State Line.
US67	Arkansas St. Line	Exit 174 on I-55.
US 61	I-70 St. Charles County.	Iowa St. Line.
US 63	Arkansas St. Line	Iowa St. Line.
US 65	Arkansas St. Line	Iowa St. Line.
US 71	Arkansas St. Line	I-435 Kansas City.
US 71	Exit 53 on I-29	US 136 Maryville.
US 136	Nebraska St. Line	Exit 110 on I-29.
US 54	South Junction US BR 54 at Lake Ozark.	Illinois St. Line.
US 60	MO 37 Monett	US 63 Willow Springs.
MO 13	I-44 Springfield	US 24 Lexington.
US 50	Exit 7 I-470 Kansas City.	Exit 247 on I-44.
US 412	Arkansas St. Line	Exit 19 on I-55.
MO 5	Arkansas St. Line	US 60
MO 171	Kansas St. Line at KS 57.	US 71 at Webb City.
US 60	2 mi. E. of E. Jct. MO 21.	I-55/57 near Sikeston.
US 24	US 61 Taylor	Illinois St. Line.
US 59	Kansas St. Line	I-229 St. Joseph.

NEW HAMPSHIRE

NH 18	I-93 Littleton	Vermont St. Line.

NEW JERSEY

NJ 440	I-95 Edison	New York St. Line at Outerbridge Crossing.

NEW YORK

Inner Loop	I-490 Rochester	I-490 Rochester.
NY 254	I-87 Glens Falls	0.3 mile east of US-9.
NY 104	Maplewood Drive Rochester.	Monroe-Wayne County Line.
US 20	NY 75 Mount Vernon	Howard Road Mount Vernon.

NORTH CAROLINA

US 19	US 64 near Ranger	US 19A near Bryson City.
US 1	US 74 at Rockingham.	I-85 near Henderson.
US 15	US 1 Northview	US 64 Pittsboro.
US 401	South Carolina St. Line.	I-40 Raleigh.
US 17	SR 1409	Virginia St. Line.
SR 1409 (Truck Rt.).	US 76	US 17.
US 64	US 1/70/401 Raleigh	US 17 Williamston.
US 64	US 29 Lexington	US 15 Pittsboro.
US 258	NC 24 near Richlands.	US 64 Tarboro.
US 220	US 74 in Rockingham	Virginia St. Line.
NC 49	I-85 Charlotte	US 52 Richfield.
NC 18	I-40 Near Morganton	US 321 near Lenoir.
US 321	South Carolina St. Line.	I-85 near Gastonia.
US 52	NC 24/27 Albemarle	Virginia St. Line.
US 158	I-40 Winston-Salem	US 29 Reidsville.
US 158	I-85 Henderson	US 258 Murfreesboro.
US 70A	US 70 near Princeton	US 70 near Smithfield.
I-95 Bus	Kenly	Gold Rock.
US 74	I-277, Charlotte	US 17 near Wilmington.
US 23	US 19A Dillsboro	US 441 Franklin.
US 258	US 158 Murfreesboro	Virginia St. Line.
US 521	South Carolina St. Line.	I-77.
NC 24	US 74 Charlotte	US 52 Albemarle.
US 29	I-85 Greensboro	Virginia St. Line.
US 264	US 17 Washington	US 64 near Zebulon.
NC 11	US 760 Kinston	US 264 Greenville.
US 70	US 29-601 Salisbury	I-77 Statesville.
US 421	Kure Bech	I-95 Dunn.
US 421	US 1 Sanford	US 64 Siler City.
NC 24	US 70 Mansfield	US 421 Clinton.
NC 24	I-95, Fayetteville	Spout Springs.
US 70	Beaufort	US 70A near Princeton.
US 19	I-240 Asheville	Jct. US 19-23 near Mars Hill.
NC 49	US 52 at Richfield	US 64 at Asheboro.

PUERTO RICO

PR 2	PR 22 San Juan	PR 1 Ponce.
US 123	Georgia St. Line	US 25 Greenville.
US 76	US 52, Florence	SC 576 near Marion.
US 321	I-26 South of Columbia.	I-95 Hardeeville.
US 15	North Carolina St. Line.	US 52, Society Hill.
US 52	US 15, Society Hill	US 52/I-26 Connector at Goose Creek.

TENNESSEE

US 79	Memphis near I-40	Guthrie at US 41 Kentucky St. Line.
US 641	I-40 near Natchez Trace State Parks.	Kentucky St. Line near TN 140.
US 231	Alabama St. Line near Fayetteville.	Kentucky St. Line near TN 52.
US 127	TN 29 in Chattanooga.	Static at Kentucky St. Line.
US 27	TN 153 in Chattanooga.	Kentucky St. Line.
US 25E	I-81	Cumberland Gap at Virginia St. Line.
US 70	Huntingdon at TN 22	Dickson at TN 96.
US 70S	Murfreesboro at US 231.	Sparta at TN 111.
US 64/41A	Memphis at TN 15	I-24 at Monteagle.
US 64	Cleveland Near I-40	Near Belltown at North Carolina St. Line.
TN 96	US 70 in Dickson	I-40 near Dickson.
US 70	TN 155 in Nashville	Sparta.
TN 20	I-40 at Jackson	US 51 at Dyersburg.

VIRGINIA

US 1	Route I-95 (Spotsylvania County).	Route 17 Bypass
VA 2/US 17 Bus.	Route 17 (New Post)	SCL Fredricksburg.
VA 3	Route 1 By-pass (Fredericksburg).	Route 20 (Wildernesa).
VA 7	Route I-81 (Winchester).	0.66 mile W. of W.C.L. Round Hill.
VA 10	E.C.L.K. Hopewell	0.37 mile W. Route 156 in Hopewell.
VA 10	Route 1 (Chesterfield County).	Route 827 (0.56 mile W. of W.C.L. of Hopewell).
US 11	N. Intersection Rt. 220 Alt. (Botetourt County).	2.15 miles S. of N. Intersection Route 220 Alt.
US 11	Route 100 (Town of Dublin).	Route 645 (Pulaski County).
US 17	Route Route 134 (York County).	Route I-64 (City of Newport News).
US 17	Route I-95 (Stafford County).	Route 29 (Opal).
US 19	Route I-81 via Routes 11 and 140 (Abingdon).	Temp. Route 460 (Route 720) (Bluefield).
US 23	Tennessee St. Line	Alt. Route 58 (Big Stone Gap).
US 23	0.33 Miles North Route 23 Business.	Kentucky St. Line.
US 25	Tennessee State Line	Kentucky State Line.
US 29	North Carolina St. Line.	Route I-85 (Gainesville).
US 33	North Carlton Street (Harrisonburg).	Route 340 (Elkton).
US 33	Route I-64 (New Kent County).	Route 30 E. Intersection (West Point).
VA 42	Route 257 (Bridgewater).	Route 280 (Dayton).
US 50	Route 259 (Gore)	Route 37 (Frederick County).
VA 57	Route 220 (Bassett Forks).	Route 696 (Bassett).
US 58	S. Fary Street (Martinsville).	W.C.L. Emporia.
US 58	.6 mile E. of ECL Emporia.	S. Int Route 35.
US 58	N. Int. Route 35 (Courtland).	Routes 13 & I-264 (Bowers Hill).
Alt. US 58	Route 19 (Hansonville).	Route 23 (Norton).
Alt. US 58	Route 11 (Town of Abingdon).	0.40 Mile West Route 11.
US 60	0.03 mile W. Route 667.	Route 552 West of Powhatan.
Va 86	Route 29 (Danville)	North Carolina St. Line.
VA 114	Route 460 (Town of Christiansburg).	0.09 Mile East Route 750 (Montgomery County).
VA 207	Route I-95 (Caroline County).	0.20 Mile South Route 612.
US 220	North Carolina St. Line.	Route I-581 (Roanoke).
US 220	Route I-81 (Botetourt County).	S.C.L. of Fincastle.
Alt. US 220	Route I-81 (Botetourt County).	Route 11.
VA 224	Route 460 (City of Lynchburg).	Route 29.
US 258	North Carolina St. Line.	Route 58-Franklin By-pass.
VA 277	Route I-81 (Frederick County).	1.80 Miles East of Route I-81.
US 301	Route 301 Bus. (Bowling Green).	Maryland St. Line.
VA 337	(City of Norfolk) Routes 58 EB and 460 EB (St. Paul Blvd.).	Claremont Avenue. (Route 58 Interchange).
US 340	Route 7 by-Pass (Berryville).	West Virginia St. Line.
US 340	I-66 (Warren County)	2.85 miles No. of I-66.
US 360	Route I-64 (City of Richmond).	Route 627 (Village).
US 360	Route 58 (South Boston).	Route 130 (Chesterfield County).
US 460	Route 67 at Raven	Route 19 at Claypool Hill.
US 460	Route 720	West Virginia St. Line.
US 460	West Virginia St. Line	Route I-81 at Christiansburg.
US 460	Route I-581 at Roanoke.	0.08 mile East Route 1512.
US 460	Route 224	1 Mile West of Route 24.
Route 460	0.64 Mile East of Route 707.	Route I-85 South of Petersburg (Dinwiddie County).
US 460	Route I-95 (Petersburg).	Route 58 (Suffolk).
US 501	Route 360 S. Int. (Halifax).	Route 58 (South Boston).

Posted route No.	From	To
US 522	Route 37 (Frederick County).	1.07 miles N. of Rt. 705 at Cross Junction.

In addition, FHWA plans to identify and delete from the Network routes not on the Primary System that were inadvertently placed on the National Network in the June 5, 1984, regulation. The agency requests assistance in identifying these routes.

The FHWA has determined, at this time, that this document contains neither a major proposal under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation will be prepared at the time of the issuance of a notice of proposed rulemaking.

Based upon the information available to FHWA at this time, the action proposed in this notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

(Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. § 315; and 49 CFR 1.48) (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program.)

Issued on March 22, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85–7631 Filed 3–29–85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide; Labeling Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend OSHA's final ethylene oxide (EtO) standard (29 CFR 1910.1047) to provide an exception from the labeling requirements of paragraph (j) of that section, for EtO containers which have been labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This amendment is believed to be necessary to avoid legal and substantive conflict with FIFRA and regulations issued pursuant to FIFRA by the Environmental Protection Agency (EPA).

DATE: Comments concerning this proposed amendment must be postmarked on or before May 1, 1985.

ADDRESS: Comments are to be submitted to the Docket Officer, Docket No. H–200, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Rm N–3641, 200 Constitution Avenue, NW., Washington, D.C., 20210, Telephone (202) 523–8151.

SUPPLEMENTARY INFORMATION: OSHA promulgated a revised standard for EtO on June 22, 1984 (49 FR 25796). One provision of that standard requires employers to "ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level" (29 CFR 1910.1047(j)(1)(ii). The label to be affixed is required to include the word "CAUTION." OSHA's proposed rule for EtO (48 FR 17248) had also provided for a similar container labeling requirement but included the following exemption as proposed paragraph (k)(2)(iii):

The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.

The rationale for this exemption was described in the proposed rule as follows:

A number of EtO products which are utilized as sterilants are registered by the EPA as pesticides, in accordance with FIFRA. EPA must establish terms and conditions for the registration of such products sufficient to ensure that use of the products "will not generally cause unreasonable adverse effects on the environment." These terms and conditions may include restrictions and limitations on use which all users are obligated by law to comply with. For these reasons OSHA is proposing that the labeling requirements under this paragraph not apply to any EtO product registered as a pesticide, as such term is defined under FIFRA, for which labeling is required by EPA under FIFRA and regulations issued pursuant thereto. OSHA feels that this provision is appropriate to mitigate any dual regulatory requirements pesticide registrants may face with regard to container labeling. It is OSHA's understanding, however, that EPA is presently developing EtO labeling requirements that will provide health warnings similar to those on the OSHA label (e.g., cancer and reproductive hazard) 48 FR at 17305.

The final labeling rule adopted by OSHA for EtO did not include the proposed exemption because the Agency "determined that the label required by the final EtO standard does not conflict with EPA labels under FIFRA." (49 FR 25790, June 22, 1984). EPA, however, has since informed OSHA that the content of OSHA's label for EtO is inconsistent with the label which EPA requires under FIFRA and the regulations issued under FIFRA. It is EPA's view, based upon that Agency's analysis of FIFRA and EPA regulations, that OSHA labeling requirments would impose conflicting statutory and regulatory obligations on employers who also are subject to labeing requirements under FIFRA. The nature of the conflict was set forth concisely in an October 19, 1984 letter from Stephen Schatzow, Director of EPA's Office of Pesticide Programs, to Gary Strobel, Director of OSHA's Regulatory Review Committee (Ex. 195, OSHA Docket No. H–200) as follows:

The final standard for EtO includes a provision, 29 CFR 1910.1047(j)(1)(ii), which requires employers to "ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level." Although the proposed standard for EtO included an exception to this requirement for pesticide products registered and labeled pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the final standard deleted this exception. Thus, the OSHA final standard requires that further labeling be added to registered pesticide products containing EtO which currently bear labeling approved by EPA under FIFRA. Such a requirement poses both legal and substantive concerns.

To the extent that § 1910.1047(j)(1)(ii) contemplates that the employer will be responsible for affixing additional labeling not included in the approved FIFRA labeling to individual pesticide containers, EPA believes that this provision is inconsistent with an existing statutory provision. Section 12(a)(2)(A) of FIFRA, 7 U.S.C. 136j (a)(2)(A), states, "It shall be unlawful for any person to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act." We believe that any employer or other user who affixes additional labeling to the container of a registered pesticide product would be violating this provision. While EPA could as a matter of prosecutorial discretion decline to apply this provision to user labeling when it is required by other Federal agencies, it is our view that permitting any alteration or amendment by a user of approved labeling for a registered pesticide

product could have pernicious consequences. Label language is the principal mechanism by which EPA requires users of pesticide products to conform to the terms and conditions of registration.

In addition to this basic legal problem, EPA has additional substantive concern about the specific label language which the OSHA EtO standard requires. Section 1910.1047 (j)(1)(ii) requires that precautionary labeling for each affected product must, among other things, include the word "CAUTION". EPA regulations, 40 CFR 162.10(h), establish specific requirements concerning the warnings and precautionary statements which must appear on pesticide labeling. A particular "human hazard signal word" is assigned to each pesticide depending on how it is classified with respect to toxicity. Ethylene oxide products fall within Toxicity Category I, the most stringent category, and must therefore state on the front panel of the label the signal work "DANGER". In contrast, the signal word "CAUTION" is utilized for products which fall within Toxicity Categories III and IV. In our experience, the human hazard signal word is one of the elements of the label with which applicators and users are most familiar. Because the human hazard signal word describes the intrinsic toxicity of a pesticide and thereby gives general guidance concerning the measure of care required in handling and using that pesticide, it is critical to avoid using signal words in a confusing manner. Indeed, 40 CFR 162.10(h)(1)(i)(E) expressly states that, "In no case shall more than one human hazard signal word appear on the front panel of a label."

For the reasons stated above, I hope OSHA will consider amending its final standard for EtO to include the exception to label requirements for registered pesticide products which was previously included in its proposed standard.

OSHA believes that there is merit in EPA's concern that both legal and substantive conflict exist under OSHA's present labeling requirement. The Agency feels that it is necessary and appropriate to amend the final EtO labeling provision to include the exception for EtO products which are subject to labeling under FIFRA, as originally proposed. This amendment would prevent a statutory and regulatory conflict between OSHA's EtO standard and EPA's labeling requirement under FIFRA, and would relieve employers of the burden of complying with such conflicting requirements.

Summary of Regulatory Impact

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Occupational Safety and Health Administration to consider the impact of the proposed rule on small entities.

The Secretary has determined that this action would not be major as defined by Section 1(b) of Executive Order 12291. The Secretary also certifies that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposed amendment. These comments must be submitted on or before May 1, 1985, and must be submitted in quadruplicate to the Docket Officer, Docket H–200, Room N–3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions will be made part of the record.

Authority: This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., NW., Washington, D.C. 20210.

Pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act (29 U.S.C. 655, 657), and 5 U.S.C. 553, it is hereby proposed to amend 29 CFR 1910.1047, as set forth below.

List of Subjects in 29 CFR Part 1910

Ethylene oxide, Occupational safety and health, Chemicals, Cancer, Health, Risk assessment.

Signed at Washington D.C. this 22nd day of March 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is therefore proposed to be amended by adding a new paragraph (j)(1)(iii) to § 1910.1047 to read as follows:

§ 1910.1047 Ethylene oxide.

* * * * *

(j) * * *

(1) * * *

(iii) The labeling requirements under this section do not apply where ETO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.

* * * * *

(Secs. 6 and 8 of the Occupational Safety and Health Act of 1970, 84 Stat. 1593, 1598, (29 U.S.C. 655, 657); 5 U.S.C. 553; Secretary of Labor's Order 9–83 (48 FR 35736); 29 CFR Part 1911)

[FR Doc. 85–7287 Filed 3–29–85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 216

Production Accounting and Auditing System Regulations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes the information collection requirements necessary to verify that mineral production quantities have been reported and used in calculating royalties due the Government from Federal and Indian leases. This system is called the Production Accounting and Auditing System (PAAS).

DATES: Written comments on this proposed rule must be received on or before 12 noon e.s.t. May 31, 1985.

ADDRESS: Comments should be mailed or delivered to Mr. Orie L. Kelm, Chief, Office of Royalty Regulations, Development and Review, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 660, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Mr. Billie Clark, Lakewood, Colorado, (303) 231–3412.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rulemaking are Mr. Peter Rutledge, Mr. John Price, and Mr. Billie Clark of the Minerals Management Service, Lakewood, Colorado.

In March 1982, the Commission on Fiscal Accountability of the Nation's Energy Resources (Commission) made several recommendations to improve internal controls or accounting for royalties due the Government from Federal and Indian lands. The term "Federal lands" includes Outer Continental Shelf (OSC) lands. One of the primary purposes for which the PAAS was developed by the MMS, was to respond to the Commission recommendation:

That the Royalty Managers incorporate production data into the . . . system in order to cross-check the data for all leases for each payment period.

The Department is considering to perform similar cross-checks for solid materials in response to the statement of the Commission that, ". . . it appears that the general problems of verifying production, . . . and designing an effective audit program are common to all minerals."

The PAAS is an integrated computer system, based upon production and processing reports submitted by lease and facility measurement point operators, designed to track mineral production on Federal and Indian lands from the source of production to the point of disposition with emphasis on the point of royalty determination, and/or point of sale, whichever is applicable.

The Auditing and Financial System (AFS), operated by MMS, will provide payment and sales volumes and values reported by payors. These data will be compared to lease level production and processing volumes reported to PAAS by producers and facility operators. This comparison will enable the MMS to verify that proper royalties are being received for all minerals produced.

The PAAS is based upon an information collection system composed of eight forms for oil and gas. Three forms would be needed for solid mineral leases. One form is applicable to all minerals. Some of these forms are one-time reports. However, all lease operators, at a minimum, would be required to periodically (usually monthly) submit either Form MMS–4054 for Oil and Gas, or Form MMS–4059 for solid minerals. Other forms are for selected use, such as the Form MMS–4056, which is required monthly only from gas plant operators, and Form MMS–5058 required only from operators of facilities or measurement devices handling commingled production.

The regulations proposed herein prescribe which person is to file each form and when the report is due. The report forms covered by this proposed rule are listed below together with the applicable section number which explains the use of the form:

MMS form No.	Name of form	Section reference
MMS–4050	Mine Information Form	216.201.
MMS–4051	Facility and Measurement Information Form.	216.202 and 216.51.
MMS–4052	Well Information Form	216.52.
MMS–4053	First Purchaser Report	216.53.
MMS–4054	Oil and Gas Operations Report.	216.54.
MMS–4055	Gas Analysis Report	216.55.
MMS–4056	Gas Plant Operations Report.	216.56.
MMS–4057	Fractionation Plant Operations Report.	216.57.
MMS–4058	Production Allocation Schedule Report.	216.58.
MMS–4059	Solid Minerals Operations Report.	216.203.
MMS–4060	Solid Minerals Facility Report.	216.204.
MMS–4061	API Well Number Change Report.	216.61.

The PAAS pilot program has been operating with voluntary participants, and the results of this program were considered in developing the proposed rule.

The PAAS would be brought up in stages with operators being converted to the system sequentially.

All operators converting to PAAS will be given a minimum of 180 days prior to the date of first reporting to prepare for the new reporting requirements. The OCS operators have already been given 180-days notice.

At the appropriate time, the MMS will specifically notify each reporter being converted to PAAS of the startup schedules for reporting under PAAS. Simultaneously with startup notification, MMS will provide each reporter with a schedule to discontinue reporting using existing production reports 3160–6 (formerly 9–329 and 9–329–1), 9–152, 9–373A, 9–128, 9–128a, 9–128b, 9–128c, 9–128d, 9–368, 9–1146, etc. For some reporters there may be a short period of overlap of the old and new reporting systems to assure a smooth transition. Following the completion of the conversion to PAAS the Department will promulgate regulations removing the regulatory requirements for submission of existing production reporting forms from the regulations in 43 CFR Part 3160.

This proposed rulemaking would amend 30 CFR Part 216 by adding Subparts, A, B, and E containing §§ 216.1, 216.2, 216.6, 216.10, 216.20, 216.25, 216.30, 216.40, 216.50, 216.51, 216.52, 216.53, 216.54, 216.55, 216.56, 216.57, 216.58, 216.61, 216.200, 216.201, 216.202, 216.203, and 216.204.

Executive Order 12291 Federal Regulations

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291.

Although the proposed rule establishes certain assessments for improper reporting, there is no economic effect so long as there is compliance with the regulations.

The regulatory burden on industry due to the information collection requirements for establishing production quantities is estimated to be approximately $1.5 million. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Some portion of the approximately $1.5 million cost burden to the public will fall on the small businesses that are among the potential respondents. Since the total cost to the public is relatively small, and because the MMS provides special training and assistance to small organizations, there will be no significant economic effect on small entities. Although the proposed rule establishes certain penalty assessments for improper reporting, as long as there is compliance with the regulations, there is no cost. Consequently, it does not require a Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis.

Paperwork Reduction Act of 1980

The information collection requirements contained in Subparts B and E of this proposed rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and granted OMB Clearance Number 1010–0040 and 1010–0063, respectively. Information collection under provisions of § 216.30 will affect less than 10 respondents annually and does not require OMB approval.

National Environmental Policy Act of 1969

This action is categorically excluded (40 CFR 1508.4) from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has been so designated by the Department. (516 DM 2 appendix 1.6; and 516 DM 6, appendix 2.4(B)(1)(k).)

List of Subjects in 30 CFR Part 216

Mineral production, Mineral royalties, Reporting and recordkeeping requirements, Oil and gas, Solid minerals.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Act of May 21, 1930 (30 U.S.C. 301–306); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 41 *et seq.*); the Act of December 12, 1980 (42 U.S.C. 6508); the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); the Act of March 4, 1917 (16 U.S.C. 520); the National Industrial Recovery Act of 1933 (40 U.S.C. 401, 403a and 406); the Emergency Relief Appropriation Act of 1935 (49 Stat. 115,

118); the Act of August 24, 1935 (49 Stat. 750, 781); the Act of July 22, 1937 (7 U.S.C. 1011c and 1018); the Act of June 23, 1952 (66 Stat. 285); the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of June 30, 1950 (16 U.S.C. 508b); the Act of May 9, 1942 (56 Stat. 273), as amended by the Act of October 25, 1949 (63 Stat. 886); the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482), and the Act of June 29, 1936 (49 Stat. 2026); the Act of August 4, 1939 (43 U.S.C. 387); the Act of February 28, 1891 (25 U.S.C. 397); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919 (25 U.S.C. 399); the Tribal Leasing Act of 1938 (25 U.S.C. 396a *et seq.*); the Allotted Indian Land Leasing Act of 1909 (25 U.S.C. 396); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102); Chapter II, Title 30, Subchapter A, Part 216 of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: March 23, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

1. Part 216 is proposed to be added to read as follows:

PART 216—PRODUCTION ACCOUNTING

Subpart A—General provisions

Sec.
216.1 Purpose.
216.2 Scope.
216.6 Definitions.
216.10 Information collection.
216.20 General obligations of the reporter.
216.25 Confidentiality.
216.30 Special forms and reports.
216.40 Assessments for incorrect or late reports and failure to report.

Subpart B—Oil and Gas, General

216.50 [Reserved]
216.51 Facility and measurement information report and supplement.
216.52 Well information report.
216.53 First purchaser report.
216.54 Oil and gas operations report.
216.55 Gas analysis report.
216.56 Gas plant operations report.
216.57 Fractionation plant operations report.
216.58 Production allocation schedule report.
216.61 API well number change report.

Subpart C—Oil and Gas, Onshore—[Reserved]

Subpart D—Oil, Gas, and Sulphur, Offshore—[Reserved]

Subpart E—Solid Minerals, General

216.200 [Reserved]
216.201 Mine information report.
216.202 Facility and measurement information report.
216.203 Solid minerals operations report.
216.204 Solid minerals facility report.

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—Indian Land [Reserved]

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*); the Act of May 21, 1930 (30 U.S.C. 301–306); the Federal Property and Administrative Service Act of 1949 (40 U.S.C. 41 *et seq.*); the Act of December 12, 1980 (42 U.S.C. 6508; the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); the Outer Continental Shelf Land Act, as amended (43 U.S.C. 1331 *et seq.*); the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359); Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix); the Act of March 4, 1917 (16 U.S.C. 520); the National Industrial Recovery Act of 1933 (48 U.S.C. 401, 403a and 408); the Emergency Relief Appropriation Act of 1935 (48 Stat. 115, 118); the Act of August 24, 1935 (49 Stat. 750, 781); the Act of July 22, 1937 (7 U.S.C. 1011c and 1018); the Act of June 23, 1952 (66 Stat. 285); the Act of September 1, 1949 (30 U.S.C. 192c); the Act of June 8, 1926 (30 U.S.C. 291–293); the Act of June 30, 1950 (16 U.S.C. 508b); the Act of May 9, 1942 (56 Stat. 273), as amended by the Act of October 25, 1949 (63 Stat. 886); the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482), and the Act of June 29, 1936 (49 Stat. 2026); the Act of August 4, 1939 (43 U.S.C. 387); the Act of February 28, 1891 (25 U.S.C.397); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919 (25 U.S.C. 399); the Tribal Leasing Act of 1938 (25 U.S.C. 396a *et seq.*); the Allotted Indian Land Leasing Act of 1909 (25 U.S.C. 396); and the Indian Mineral Development Act of 1928 (25 U.S.C. 2102).

Subpart A—General Provisions

§ 216.1 Purpose.

The purpose of the rules of this part is to ensure that the Federal Government receives proper information regarding energy and mineral resources removed from Federal and Indian leases and federally approved agreements.

§ 216.2 Scope.

The rules of this part shall govern the reporting of oil and gas and solid minerals operations information on Federal and Indian leases or federally approved agreements. The rules of this part shall also govern the reporting of other operational information associated with production from Federal and Indian leases or federally approved agreements when such operations occur prior to the point of sale or royalty determination, whichever is applicable. Reporters are required to continue to submit existing production reports (3160–6 (formerly 9–329 and 9–329–1), 9–152, 9–373A, 9–128, 9–128a, 9–128b, 9–128c, 9–128d, 9–368, 9–1146, etc.) until conversion to PAAS. The appropriate MMS official will nofity reporters being converted to PAAS of the proper schedules for start-up of reporting under PAAS and for discontinuing reporting using the existing production report forms.

§ 216.6 Definitions.

As used in this part, the terms are defined as follows:

(a) "Agreement" means a binding arrangement between two or more parties purporting to the act of agreeing or of coming to a mutual arrangement that is accepted by all parties to a transaction (e.g., communitization, unitization, gas storage, or compensatory royalty agreements.).

(b) "Approved mining plan" as used in this part means an approved resource recovery and protection plan (43 CFR 3480.5) or approved mining plan (43 CFR 3572.1).

(c) "Facility" means a structure(s) used to store or process Federal or Indian mineral production prior to or at the point of royalty determination.

(d) "First purchaser" means any entity receiving the lease production in a *first transfer for value* transaction.

(e) "Indian Lands" means any lands or interest in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or an Indian allottee, his heirs or devisees thereto in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of section 3 of the Act of June 1906 (34 Stat. 539).

(f) "Lease" means any contract, profit-share arrangement, joint venture, or other agreements issued or approved by the Secretary under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil, gas, or solid minerals.

(g) "Lessee" means any person to whom the United States, an Indian tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

(h) "Measurement Device" means a mechanical or electrical device that is used to measure production of oil, gas, or solid minerals for sales, transfers, and/or royalty determination.

(i) "Mine" means the site of coal or other solid mineral production operations involving of one or more Federal and/or Indian lease(s).

(j) "Mineral Leasing Law" means any Federal law administered by the

Secretary authorizing the disposition under lease of oil, gas, or solid minerals.

(k) "Oil or Gas" means any oil or gas originating from, or allocated to Federal (including the Outer Continental Shelf) or Indian lands.

(l) "Operator" means any person, including a lessee who has control of, or who manages operations on, any oil and gas or solid minerals lease site on Federal (including the Outer Continental Shelf) or Indian lands. "Operator" also means any entity engaged in the business of developing, drilling for, producing, transporting, purchasing, selling, or processing oil, gas or solid minerals and/or which has the responsibility of reporting production from a lease or a portion thereof.

(m) "Outer Continental Shelf (OCS)" has the same meaning as provided in Section 2 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1331.

(n) "Production Accounting and Auditing System (PAAS)" means an integrated system of manual and automated processes for minerals production reporting, accounting, and auditing. Based upon production reports submitted by lease and facility measurement point operators, the PAAS will track oil, gas, and solid mineral production on Federal and Indian leases from the source of production to the point of disposition with emphasis on the point of royalty determination, or point of sale, whichever is applicable.

(o) "Raw make" means Natural Gas Liquids (NGL's) that are extracted from the wet gas stream at a gas plant (e.g., ethane through natural gasoline) and transferred to a fractionation plant for further processing.

(p) "Reporter" means any reporting entity required to submit a PAAS report or form to the MMS.

(q) "Secretary" means the Secretary of the Interior or his designee.

(r) "Solid Minerals" means those minerals including but not limited to coal, potash, sodium, phoshpate, sulfur, lead, zinc, copper, silica sands, and other minerals under mineral leasing laws originating from or allocated to Federal or Indian leases, excluding oil or gas, oil shale, and geothermal resources.

216.20 Information collection.

The information collection requirements contained in Subpart B require the filing of forms which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h). The forms have been approved by OMB and assigned clearance number 1010–0040. The information is being collected for Federal and Indian royalty accounting purposes. The information collection requirements contained in Subpart E also require the filing of forms which require OMB approval under 44 U.S.C. 3504(h). The forms have been approved and assigned clearance number 1010–0083.

The information collected will be used to permit accounting and auditing of production information submitted by the reporter of Federal and Indian leases and federally approved agreements. Information reporting forms are available from the MMS.

216.20 General obligations of the reporter.

The reporter shall submit accurately and completely, pursuant to the requirements of this part, all information forms and other information required by MMS. Specific guidance on the use of the required forms is contained in the Production Accounting and Auditing System Reporters Handbook. Copies of the handbook are available from the MMS.

A reporter will be provided with 180 days advance notice before being required to convert from existing manual production reporting systems to PAAS.

216.25 Confidentiality.

(a) Information on file with the MMS obtained pursuant to the rules of this part shall be open for public inspection and copying during regular office hours upon a written request, pursuant to rules at 43 CFR Part 2, except that:

(1) Notwithstanding any other provision in this part, information obtained from a reporter under the rules of this part relating to a minerals agreement approved pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. 2101 *et seq.*, shall not be released without the written consent of the Indian tribe(s) and/or Indian(s) who are parties to the mineral agreement.

(2) Information obtained from a reporter under the rules of this part that constitutes a trade secret and/or commercial or financial information which is privileged or confidential or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)), such as geologic and geophysical data concerning wells, shall not be available for public inspection or made public or disclosed without the consent of the reporter. Further, when such information is related to Indian lands, the consent to release the information must also be obtained from the cognizant Tribe or allottee.

(b) Upon termination of a Federal lease, geologic and geophysical data submitted under the rules of this part shall be made available to the public. Upon termination of an Indian lease, confidential information may only be released by the cognizant Tribe or by the Bureau of Indian Affairs (BIA) with the consent of the Tribe or allottee.

§ 216.30 Special forms and reports.

The MMS may require the filing of special forms and reports in addition to those specifically provided in this part. When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by the MMS. Such requests will be made in conformity with the requirements of the Paperwork Reduction Act of 1980, and are expected to involve less than 10 respondents annually.

§ 216.40 Assessments for incorrect or late reports and failure to report.

(a) An assessment of $10.00 per day may be charged for each report not received by MMS by the designated due date.

(b) An assessment of $10.00 per day may be charged for each report received by the designated due date but which is incorrectly completed.

(c) For purposes of oil and gas reporting under the PAAS, a report is defined as each line of production information required on the Oil and Gas Operations Report (Form MMS–4054), Gas Analysis report (Form MMS–4055), Gas Plant Operations Report (form MMS–4056), Fractionation Plant Operations Report (form MMS–4057), and Production allocation schedule report (form MMS–4058).

(d) For purposes of solid minerals reporting under PAAS, a report is defined as each line of production information required on the Solid Minerals Operation Report (Form MMS–4059) and Solid Minerals Facility Report (Form MMS–4060).

(e) An assessment under this section shall not be shared with a State, Indian tribe or Indian allottee.

Subpart B—Oil and Gas, General

§ 216.50 [Reserved]

§ 216.51 Facility and measurement information report and supplement.

(a) The Facility and Measurement Information Form (Form MMS–4051) is required by MMS to precisely identify the facilities where oil and gas production is stored or processed and the metering points where production is measured for sale or transfer. The information is used for reference by field operations personnel and auditors to assure that all production is accounted for properly. The form must

be filed for each facility or measurement device which handles production from any Federal and Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is later. The completed form must be filed by the operator of the facility of measurement device on a one time only basis at the request of MMS during the conversion of facility and measurement device operators to the PAAS. Subsequent to conversion, Form MMS–4051 must be filed no later than 30 days after establishment of a new facility or measurement device, or a change to an existing facility or measurement device.

(b) The Facility and Measurement Information Form-Supplement (Form MMS–4051 Supplement) must be filed for each facility or measurement device that handles production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is later, when such facility or measurement device is operated by any party other than the operator(s) of the lease(s) or approved agreement(s) served by said facility or measurement device. The completed form must be filed by each operator of the lease(s) or federally approved agreement(s) served by said facility or measurement device if that operator is not the same party that operates said facility or measurement device. Form MMS–4051 Supplement must be filed at the request of the MMS on a one time only basis during the conversion of lease and agreement operators to PAAS.

§ 216.52 Well information report.

The Well Information Form (Form MMS–4052) is required by MMS to obtain data or confirmation of data from each lease operator, to assure that all wells are identified. Primary identification is by a number assigned by the American Petroleum Institute (API). Each well on a lease is identified by API and operator well number, producing interval, location, well status, date of first production, and producing reservoir or formation name. The form must be filed at the request of MMS for each Federal or Indian lease, or federally approved agreement, on which there exist wells that are not permanently plugged and abandoned. The completed form must be filed by the operator of the lease or agreement on a one time only basis during the conversion of lease and agreement operators to the PAAS.

§ 216.53 First purchaser report.

The First Purchaser Report (Form MMS–4053) is required by MMS to obtain product prices from selected first purchasers of any product attributable to a Federal or Indian mineral lease. The information is used by MMS auditors to independently verify prices and quantities reported by lease operators. The report must be filed by first purchasers only upon the specific request of MMS.

§ 216.54 Oil and gas operations report.

The Oil and Gas Operations Report (Form MMS–4054) is required by MMS to identify all oil and gas lease production from Federal and Indian lands. Monthly production information will be compared with monthly data on sales and royalty from Form MMS–2014, Report of Sales and Royalty Remittance, to ensure that proper royalties are paid on the oil and gas reported as produced. The report must be filed by the operator of the lease or agreement for each Federal or Indian lease, or federally approved agreement, on which there exist wells that are not permanently plugged and abandoned. Completed Form MMS–4054 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed on or before the 15th day of the second month following the month being reported until the lease or agreement is terminated or the last well is permanently plugged or abandoned or until omission of the report is authorized by the MMS.

§ 216.55 Gas analysis report.

The Gas Analysis Report (Form MMS–4055) is required by MMS to identify the separate components of natural gas production. MMS uses the information to determine the specific natural gas liquids on which royalty is due. The report must be filed for each Federal or Indian lease, or federally approved agreement, from which gas is transferred for processing prior to the point of royalty computation. The completed form must be filed by the operator of the lease or approved agreement. The form is due either quarterly or semi-annually, as specified by MMS, and is submitted on or before the 15th day of the second month following the end of the reporting period to which the information applies.

§ 216.56 Gas plant operations report.

The Gas Plant Operations Report (Form MMS–4056) is required by MMS to identify disposition and components of natural gas from Federal and Indian leases. MMS uses the data to compute expected residue gas and natural gas liquids production and to determine royalties due. The report must be filed for each gas plant that processes gas that originates from a Federal or Indian lease, or federally approved agreement, prior to the point of royalty computation, by the operator of the gas plant. Completed Form MMS–4056 must be filed for each calendar month, beginning with the month in which processing of gas meeting the aforementioned criteria is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

§ 216.57 Fractionation plant operations report.

The Fractionation Plant Operations Report (Form MMS–4057) is required by MMS to identify the volumes of raw make transferred to the plant and of natural gas liquids produced. MMS uses the information to determine the production of specific components on which royalties are due, in conjunction with data from the Gas Plant Operations Report (Form MMS–4056). The report must be filed for each fractionation plant that fractionates raw make attributable to a Federal or Indian lease, or federally approved agreement, prior to the point of royalty computation for such lease or agreement. The completed form must be filed by the operator of the fractionation plant. Form MMS–4057 must be filed for each calendar month, beginning with the month in which fractionation of raw make meeting the aforementioned criteria is initiated, and must be filed on or before the 15th day of the second month following the month being reported

§ 216.58 Production allocation schedule report.

The Production Allocation Schedule Report (Form MMS–4058) is required by MMS to determine whether sales reported by the lessee are reasonable in cases where such sales are from production which has been commingled. Each line identifies a lease and its delivered production and allocated sales or transfer volumes. The report must be filed for each facility or measurement device that handles production from two or more Federal or Indian, or two or more Federal or Indian or non-Federal, leases of agreements if production has been commingled prior to measurement for royalty determination. The completed form must be filed by the operator of such facility or measurement device. Form MMS–4058 must be filed for each calendar month, beginning with the month in which handling or production meeting the aforementioned criteria is initiated, and must be filed on or before the 15th day of the second month following the month being reported.

§ 216.61 API well number change report.

The API Well Number Change Report (Form MMS–4061) is required to notify MMS when a well with a temporary identification number is assigned a permanent American Petroleum Institute (API) well number. The report gives the existing well number and producing interval and the new well number and producing interval. MMS uses the information to change the identification of the well in its data base. The report must be filed for each instance where there is a change to an existing API well number and/or the MMS assigned producing interval code within the PAAS, on which an Oil and Gas Operations Report (Form MMS–4054) has been filed. The completed form must be filed by the operator of the Federal and Indian lease, or federally approved agreement, on which the well resides. Form MMS–4061 must be filed at least 10 days prior to the submission of an Oil and Gas Operations Report containing the new API well number and/or the MMS assigned producing interval code.

Subpart C—Oil and Gas, Onshore [Reserved]

Subpart D—Oil, Gas, and Sulphur, Offshore [Reserved]

Subpart E—Solid Minerals, General

§ 216.200 [Reserved].

§ 216.201 Mine information report.

The Mine Information Form (Form MMS–4050) is required by MMS to identify the mine, the products recovered, the leases that make up the mine, and the mining methods used on each lease. The form must be filed for each mine that includes Federal and Indian leases in its approved mining plan. The completed form must be filed by the operator of the mine/lease(s). Form MMS–4050 must be filed at the request of the MMS on a one time only basis during the conversion of the mine-lease(s) to the PAAS.

§ 216.202 Facility and measurement information report.

The Facility and Measurement Information Form (Form MMS–4051) is required by MMS to identify (1) the scales and meters that measure production at each mine and (2) storage and secondary processing facilities. The form must be filed for each facility or measurement device which handles production from any Federal and Indian lease, or federally approved agreement, through the point of first sale or the point of royalty computation, whichever is applicable.

The completed form must be filed by the operator of the facility or measurement device. Form MMS–4051 must be filed at the request of the MMS on a one time only basis during the conversion of facility and measurement device operators to the PAAS. Subsequent to conversion, Form MMS–4051 must be filed no later than 30 days after establishment of a new facility or measurement device, or a change to any existing facility or measurement device that handles production from any Federal or Indian lease, or federally approved agreement, through the point of first sale or royalty computation, whichever is applicable.

§ 216.203 Solid minerals operation report.

The Solid Minerals Operation Report (Form MMS–4059) is required by MMS to identify, for each lease and lease product, the beginning inventory, quantity produced, processing losses, net production, quality of production, type of disposition, quantity disposed of, identification of the processing facility, and ending inventory. For mines whose production is sold after secondary processing or from remote storage the form identifies the lease or development contract credited with an allocated part of the production, the product and quantity sold, and the facility from which it was sold. The report must be submitted by all Federal and Indian lease operators of producing mines or inactive mines that are part of an approved mine plan. Form MMS–4059 must be filed for the same period established for payment in the lease terms, unless a different reporting frequency is established by an MMS authorized official, and on or before the 15th day of the second month following the period being reported until all the leases within a mine are terminated or until omission of the report is authorized by the MMS.

§ 216.204 Solid minerals facility report.

The Solid Minerals Facility Report (Form MMS–4060) is required by MMS to identify for each mineral processed by a mineral processing facility the mine and measuring point from which a mineral was received, the type of product received, and the quantity and quality of inputs and outputs. The report is also used by MMS to identify, for each product and its source mine, the beginning inventory, raw materials received during the reporting period, amount of production, type of disposition, quantity sold or transferred, the facility or measuring point to which it is transferred, and ending inventory. MMS uses this information to insure that lease production is accurately tracked from the mine to the point of royalty determination, when royalty is determined after secondary processing. The information obtained is compared with that from the Solid Minerals Operation Report (Form MMS–4059) for that purpose. The report must be filed by operators of secondary processing facilities that handle Federal and Indian solid minerals production on which royalty has not yet been determined. The report period is monthly, unless a longer period is specified in the lease document, or otherwise approved by the MMS. It must be filed on or before the 15th day of the second month following the period being reported.

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—Indian Lands [Reserved]

[FR Doc. 85–7647 Filed 3–29–85; 8:45 am]
BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By letters dated July 26 and August 24, 1984, Ohio submitted program amendments to OSM consisting of proposed rules of procedure for the Ohio Reclamation Board of Review (RBR). OSM published notices in the **Federal Register** on August 9 and September 13, 1984, announcing receipt of the amendments (49 FR 31912 and 49 FR 35961). The public comment periods ended September 10 and 28, 1984, respectively.

OSM's review of Ohio's proposed amendments identified concerns relating to the RBR's procedures concerning the findings of fact and the conclusions of law and to the awarding of cost and expenses. OSM notified Ohio about its concerns on February 12, 1985 and on February 27, 1985, Ohio responded by revising the proposed amendments.

Accordingly, OSM is reopening and extending the comment period on Ohio's July 26 and August 24, 1984, proposed amendment as modified on February 27, 1985. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendments.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 pm April 16, 1985, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227.

Copies of the Ohio program, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the State's submittal by contacting the OSM Columbus Field Office.

Office of Surface Mining, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240

Ohio Division of Reclamation, Fountain Square, Building B, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION: The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 38 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**.

By letters dated July 26 and August 24, 1984, Ohio submitted program amendments consisting of proposed rules 1513-3-01 through 1513-3-22 establishing rules of procedure for the Ohio RBR.

During review of the amendments, OSM identified several concerns:

(1) Ohio rule 1513-3-19(E) provides that decisions of the RBR may be general unless one of the parties requests that the RBR issue findings of fact and conclusions of law, and only those findings of the Act and conclusions of law made by the RBR or adopted by the RBR shall form part of the record. The Federal rules at 43 CFR 4.1127 provide that decisions by administrative law judges shall incorporate findings of fact and conclusions of law. Therefore, to be no less effective than 43 CFR Part 4, Ohio must require that RBR decisions include findings of fact and conclusions of law.

(2) Ohio rule 1513-3-21(E)(3) provides that appropriate costs and expenses including attorneys' fees maybe awarded to a permittee from any person or the State of Ohio if the permittee initiates or participates in any proceeding under Chapter 1513 of the Revised Code upon a finding that the permittee made a substantial contribution to a full and fair determination of the issues. The Federal rules at 43 CFR 4.1294(c) provide that costs may be awarded to a permittee if the permittee demonstrates that a notice of violation or an order to show cause why a permit should not be suspended or revoked was issued in bad faith or to harass or embarrass the permittee. Therefore, the Federal standard for the award of costs to permittees is a higher standard than the proposed Ohio standard.

OSM notified Ohio about these concerns by letter dated February 12, 1985, and Ohio responded by submitting clarifying information on February 27, 1985. The clarifying information amends regulatory language for rules 1513-3-19 and 1513-3-21.

The full text of the proposed amendments and of the subsequent material is available for review at the locations listed above under ADDRESSES. Accordingly, OSM is now seeking public comment on the adequacy of Ohio's July 26 and August 24, 1984, amendments in light of the State's February 27, 1985 modification.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 25, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85-7636 Filed 3-29-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 944

Utah Permanent Program Under the Surface Mining Control and Reclamation Act of 1977; Reopening of Public Comment Period

AGENCY: Office of Surface Mining Control and Reclamation and Enforcement (OSM).

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for public comment on the adequacy of proposed amendments to the Utah Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On August 13, 1984, Utah submitted proposed program amendments for OSM's approval pertaining to the definition of "affected area," enforcement and penalty requirements and bonding and insurance requirements (Administrative Record UT 336). The public was invited to comment on these provisions for 30 days (49 FR 40421, October 6, 1984). In a letter to the State dated January 28, 1985, OSM informed Utah of deficiencies in its proposed program amendments (Administrative Record UT-353). On March 6, 1985, Utah submitted additional materials to address the deficiencies identified by OSM. (Administrative Record No. UT-355). OSM is reopening the comment period for 15 days to provide the public an opportunity to comment on the additional material submitted by the State on March 6, 1985.

DATES: Written comments from members of the public must be received by 4:30 p.m. on April 16, 1985 to be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

ADDRESSES: Written comments should be sent to Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Copies of the Utah program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Offive above and the OSM Headquarters office and the office of the State regulatory listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the amendments by contracting the

OSM Albuquerque Field Office listed above.

Utah Division of Oil, Gas and Mining, Department of Natural Resources, 4241 State Office Building, Salt Lake City, Utah 84114, Telephone: (801) 533–5771.

Office of Surface Mining, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–5351.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of the surface coal mining operations in the State (46 FR 5899–5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899–5915).

On August 13, 1984, the Utah Division of Oil, Gas and Mining (DOGM) submitted proposed program amendments for OSM's approval (Administrative Record No. UT–336).

The amendments include proposed changes pertaining to the definition of "affected area", enforcement and penalty requirements, and bonding and insurance requirements.

On October 16, 1984, OSM sought public comment on whether the proposed modifications to the Utah permanent program listed above satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17 (49 FR 40432). In a letter to the State dated January 28, 1985, OSM informed the State of deficiencies identified in the proposed program amendments (Administrative Record No. UT–353). On March 6, 1985, Utah submitted additional material to respond to the concerns raised by OSM in its January 28, 1985 letter (Administrative Record No. UT–355).

OSM is reopening the public comment period on the proposed amendments to provide the public an opportunity to review and comment on the materials submitted by the State on March 6, 1985.

To approve the proposed provisions, OSM must find that the amendments are no less stringent than SMCRA and no less effective than the Federal regulations in meeting the purposes of SMCRA. With respect to Utah's penalty provisions OSM must find that the State program, as proposed to be amended, incorporates penalties no less stringent than those set forth under the Federal requirements and contains the same or similar procedural requirements. With respect to Utah's enforcement provisions, OSM must find that the State program, as proposed to be amended, incorporates sanctions no less stringent than those set forth in the Federal requirements and contains the same or similar procedural requirements. If the Director determines the proposed modifications meet the criteria, the amendments will be approved, and 30 CFR Part 944 modified accordingly. The Director's approval of the amendments would be contingent on the State's adoption of the amendments in the identical form they were reviewed by OSM and the public.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which would require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: March 25, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85–7635 Filed 3–29–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD09–83–02]

Special Anchorage Areas; Chicago Harbor, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to revise the boundaries of the "Grant Park" special anchorage areas in Chicago Harbor, Illinois. The City of Chicago project to straighten the Lake Shore Drive S-curve required the demolition of the structure which was the reference point for the legal description of the special anchorage areas. The project also required landfill which has covered part of the special anchorage area. The proposed action will describe the location and size of the special anchorage areas as they actually are used at the present time.

DATES: Comments must be received on or before May 16, 1985.

ADDRESSES: Comments should be mailed to Commander, Ninth Coast Guard District, Marine Port and Environmental Safety Branch, 1240 E. 9th St., Cleveland, OH 44199. The comments and other materials referenced in this notice will be available for inspection and copying at Marine Port and Environmental Branch, Ninth Coast Guard District, Room 2019, 1240 E. 9th St., Cleveland, Ohio. Normal office hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander P.C. Smith, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, or phone (216) 522–7084.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (09–

83-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant Commander P.C. Smith, project officer, Marine Port and Environmental Safety Branch, and Lieutenant Commander Arthur R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Coast Guard published an advance notice of proposed rulemaking on April 22, 1983 (48 FR 19183) requesting comments on the need for changes of the present special anchorage areas and anchorage grounds in Chicago and Calumet Harbors, Ill. This proposed action relates solely to the special anchorage areas in Chicago Harbor, Ill.

Revision of any other anchorage ground in Chicago Harbor, Ill. will be the subject of separate Notices of Proposed Rule Making. One comment indicated that an anchorage area with mooring facilities in Calumet Harbor, Ill. would be a "tremendous improvement." Captain of the Port, Chicago, has determined, however, that there is insufficient evidence of a demonstrated need for such an anchorage in Calumet Harbor at this time.

Since the establishment of the Grant Park North special anchorage area, the project to straighten the Lake Shore Drive S-curve has required the demolition of the Naval Armory and the Naval Armory Dock as well as significant landfill in the northwest corner of the special anchorage area. After consultation with the U.S. Army Corps of Engineers and the Chicago Park District, the Coast Guard proposes to amend § 110.83 of Title 33, Code of Federal Regulations, to redefine the boundaries of the special anchorage areas. The Chicago Park District controls the location and type of moorings placed in the special anchorage areas. It has requested that the Coast Guard modify the description of the special anchorage areas as provided herein. The proposed action covers four anchorage areas because additional fairways have been established. It takes into account the location and size of the special anchorage areas as they are actually used at the present time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. No significant economic impact is anticipated because the proposed action describes the location and size of the special anchorage areas as they actually are used at the present time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, by revising § 110.83 to read as follows:

§ 110.83 Chicago Harbor, Ill.

(a) *Grant Park North-A.* Beginning at a point 2,120 feet South of the intersection of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said harbor line runs parallel to the overall alignment of said Grant Park bulkhead between its North and South ends, said intersection is approximately 800 feet South of the South face of the former Naval Armory Dock, and 100 feet East of said bulkhead, that point being approximately on the harbor line; thence North along a straight line parallel to said harbor line and bulkhead, 1,705 feet to a point that is 100 feet East of said harbor line and 150 feet East of the Grant Park bulkhead; thence East at a right angle, 150 feet; thence North at a right angle, parallel to the first described line, passing 100 feet East of the Chicago Yacht Club bulkhead, 440 feet; thence Northeasterly 850 feet to a point 1,070 feet East of the aforesaid Grant Park bulkhead; thence Southeasterly 740 feet to a point 1,600 feet East of said harbor line; thence Southerly 1,960 feet to a point approximately 1,555 feet East of said harbor line and about 1,560 feet East of said Grant Park bulkhead; thence Southwesterly 295 feet to a point 1,180 feet due East, in a direction perpendicular to the West line hereof, from the point of beginning; and thence West to the point of beginning.

(b) *Grant Park North-B.* Beginning at a point 145 feet North of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, and 320 feet East of the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said Chicago Yacht Club bulkhead extends due East, perpendicular to the Grant Park bulkhead's overall alignment between its North and South ends, said bulkhead runs parallel to the aforesaid harbor line and is approximately 800 feet South of the South face of the former Naval Armory Dock, said point is 20 feet East of the East face of the Chicago Park District jetty; thence North parallel to said jetty, 230 feet to a point 20 feet South of the South face of the Lake Shore Drive bulkhead, said bulkhead runs Easterly and Westerly in a curved direction; thence Easterly along a line parallel to said curved bulkhead to a point 20 feet Southwest and perpendicular to a line extended along the Southwest side of the Columbia Yacht Club pier to said curved bulkhead; thence Southeasterly parallel to said extended line, 160 feet; thence Southwesterly to the point of beginning.

(c) *Grant Park North-C.* Beginning at a point 970 feet North of the North line of the Chicago Yacht Club bulkhead, as constructed in 1927, which extends due East and perpendicular from the harbor line approved by the Department of the Army on August 3, 1940, said Chicago Yacht Club bulkhead line is approximately 800 feet South of the South face of the former Naval Armory Dock, and 1,170 feet East of said harbor line, said point of beginning is 20 feet East of the East face of the Columbia Yacht Club pier and 20 feet South of the South face of a breakwater, which runs in a East and West direction; thence East along a line parallel to the South face of said East-West breakwater, 540 feet to a point 20 feet West of the West face of a breakwater, which runs in a North and South direction; thence South along a line parallel to the West face of said North-South breakwater, approximately 965 feet; thence Northwesterly to a point 20 feet

Southeast and perpendicular to the Southeast side of the aforesaid Columbia Yacht Club pier; thence Northerly along a line parallel to the East face of said pier to the point of beginning.

(d) *Grant Park South.* Beginning at a point 2,220 feet South of the intersection of the North line of the Chicago Yacht Club Bulkhead, as constructed in 1927, and the harbor line approved by the Department of the Army on August 3, 1940, along the West side of the harbor, said harbor line runs parallel to the overall alignment of the Grant Park bulkhead between its North and South ends, said intersection is approximately 800 feet South of the South face of the former Naval Armory Dock, and 100 feet East of said Grant Park bulkhead, that point being approximately on the harbor line; thence East, perpendicular to the overall alignment of the Grant Park bulkhead, and perpendicular to said harbor line, 1,180 feet; thence Southeasterly 330 feet to a point 1,510 feet East of said Grant Park bulkhead and 225 feet South of an extension of the first described line; thence South perpendicular to the first described line, 220 feet; thence Southwesterly 2,375 feet along a line generally 100 feet Northwesterly from and parallel to the Northwesterly face of the narrow section of the U.S. Inner Breakwater; thence Northwesterly 100 feet to a point 150 feet East of said Grant Park bulkhead (or 100 feet East of the aforesaid harbor line), and 4,570 feet South of the North line of the aforesaid Chicago Yacht Club bulkhead; and thence North 2,350 feet of the point of beginning.

Authority: 33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46, 33 CFR 1.05-1(g).

Dated: March 18, 1985.

A. M. Danielsen,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 85-7690 Filed 3-29-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD09-85-02]

Special Anchorage Area, Little Traverse Bay, Lake Michigan, Harbor Springs, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard at the request of the Harbormaster, City of Harbor Springs, Michigan, is proposing to amend the Anchorage Regulations by establishing a channel through the existing Special Anchorage Area at Little Traverse Bay in Lake Michigan, Harbor Springs, Michigan.

The Harbormaster, City of Harbor Springs has requested the elimination of a section of the existing Special Anchorage Area in order to designate a navigable channel through the harbor.

The creation of this channel through the existing Special Anchorage Area will increase navigational safety in the harbor as it will provide direct assess from the inner harbor to the open waters of Little Traverse Bay and Lake Michigan.

DATE: Comments must be received on or before May 16, 1985.

ADDRESSES: Comments should be mailed to Commander (mpes), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, OH 44199. The comments will be available for inspection and copying at Marine Safety Division, room 2019, 1240 East Ninth Street, Cleveland, OH 44199. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ensign George Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, OH 44199, (216) 522-3919.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, idenfity this notice (CCD09-85-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamp self-addressed postcard or envelope is enclosed.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Ensign George Burns III, Marine Safety Division, project officer, and Lieutenant R. A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Proposed Regulation

The Harbormaster, City of Harbor Springs, Michigan has requested that a portion of the existing Special Anchorage Area be eliminated so that a navigable channel can be established through the area. The existing Special Anchorage Area blocks many of the waterfront facilities from direct access to the open waters of Little Traverse Bay and Lake Michigan. An increase in boater traffic and an increase in shore lights has made it difficult to navigate through the area at night. By creating this channel, navigational safety will be increased, as the need for navigating around moored vessels will be eliminated. The City of Harbor Springs plans to mark this channel with lighted buoys.

Economic Assessment and Certification

This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT order 2100.5). Its economic impact is expected to be minimal since this mofification only affects a portion of an existing anchorage area. Based upon this assessment it is certified in accordance with section 605 (b) or the Regulatory Flexibility Act (5 U.S.C. 605 (b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage Grounds.

PART 110—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, by revising § 110.82a to read as follows:

§ 110.82a Little Traverse Bay, Lake Michigan, Harbor Springs, Michigan.

(a) Area 1. Beginning at latitutde 45°25'42.2" North, longitude 84°59'7.5" West; thence to latitude 45°25'39.5" North, longitude 84°59'09" West; thence to latitude 45°25'35" North, longitude 84°59'07" West; thence to latitude 45°25'35" North, longitude 84°58'55.2" West; thence to latitude 45°25'42.2" North, longitude 84°58'56.5" West; thence to the point of beginning.

(b) Area 2. Beginning at latitude 45°25'42.2" North, longitude 84°58'54" West; thence to latitude 45°25'35" North, longitude 84°58'53" West; thence to

latitude 45°25'35" North, longitude 84°58'24.8" West; thence to latitude 45°25'36.1" North, longitude 84°58'23" West; thence to latitude 45°25'42.2" North, longitude 84°58'39" West; thence to the point of beginning.

(33 U.S.C. 2071; 49 CFR 1.46(h)(14), 33 CFR 1.05-1(g))

Dated: March 18, 1985.

A.M. Danielsen,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 85-7669 Filed 3-29-85; 8:45 am]

BILLING CODE 4910-14

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33 CFR Part 165

[COTP Western Alaska Reg 85-01]

Safety Zone: Kodiak Harbor, Kodiak Island, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is establishing a safety zone around the construction barge, JAN B, while it is engaged in the erection of the Near Island Bridge which is being built over the Kodiak Harbor Channel (locally referred to as the Near Island Channel) between Kodiak Island and Near Island, Alaska in the approximate position of 57° 47'20" N. latitude, 152° 23'40" W longitude. The safety zone is needed to protect vessels transiting Kodiak Harbor between Kodiak and Near Island from a safety hazard associated with the erection of the Near Island Bridge overwater spans by the construction barge, JAN B, and its mooring cables, cranes and associated heavy equipment. The construction operations will take place 12 hours a day, 6 days a week for approximately three weeks. Limiting access to this area will serve to protect both vessels and workers involved in the construction operation and other vessels and crews operating in the area.

DATES: Comments must be received on or before May 1, 1985.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, 701 C. Street, Box 17, Anchorage, Alaska 99513. The comments and other materials referenced in this notice will be available for inspection and copying at the Port Operations Department, U.S. Coast Guard Marine Safety Office Anchorage, 701 C. Street, Room D148, Anchorage, Alaska. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Edward E. Page, U.S. Coast Guard, U.S. Coast Guard Marine Safety Office, Anchorage, Alaska (907) 271-5137.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice, (COTP Western Alaska Reg 85-01), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are Lieutenant Commander Edward E. Page, Project Officer for the Port Operations Department, U.S. Coast Guard Marine Safety Office, Anchorage, and LT A.O. Denny, Project Attorney, Seventeenth Coast Guard District Legal Office.

Discussion of the Proposed Regulations: During the erection of the Near Island Bridge the safe passage of vessels through the entire length of Kodiak Harbor Channel will be prevented by the construction barge, JAN B, its mooring cables, construction barges and an assists tug. It is projected that the construction of the bridge will take three weeks during the month of July, 1985. Work operations will take place approximately 12 hours a day, six days a week. No work is planned on Sundays. At certain stages of the construction the Captain of the Port will restrict vessles from transiting past the JAN B and associated construction equipment due to the safety hazard presented by the mooring cables, bridge girders and the construction vessels. A patrol boat will be present during these times to advise approaching vessels that passage is restricted. At times construction operations will be temporarily terminated so as to permit the movement of major shipping through the channel. The Coast Guard may be contacted on VHF Channel 22 or Channel 16 for specific information as to whether vessels may transit past the construction site. Calls may also be made by phone to the Coast Guard Marine Safety Detachment Kodiak, (907) 487-5750, for up to date information regarding this safety zone; however, this telephone may not be manned at all times. The Coast Guard will also provide current information on this safety zone through both Local Notice to Mariners and Broadcast Notice to Mariners. Some vessel operators will be inconvenienced by these temporary closures which will require their sailing around Near Island to reach their destination, an added three to four miles; however, in the interest of safety, this temporary inconvenience is considered warranted. Vessels underway in this area which are unfamiliar with the safety zone in effect will be approached by a construction assist boat or Coast Guard vessel and advised as to whether through passage is permitted.

Economic Assessment and Certification: These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact transits to and from all facilities in Kodiak harbor will be permitted while this safety zone is in effect and the impact on maritime operations will be restricted to occasional rerouting of vessel transits around Near Island which would be no greater than 4 miles and in most cases less.

Since the impact of this proposal is expected to be minimal the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measure, Vessels, Waterways.

Part 165—[AMENDED]

Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend part 165 of Title 33, Code of Federal Regulations by adding § 165.T1701 to read as follows:

§ 165.T1701 Kodiak Harbor.

(a) A safety zone is established to include all waters extending 100 yards from the construction barge JAN B while engaged in the erection of the Near Island Bridge, Kodiak Harbor, Alaska.

(b) Except as indicated below, no vessel may navigate, transit, fish, anchor or drift in the waters within this safety zone without prior permission of the Captain of the Port.

(c) Unless otherwise notified, vessels may transit the area encompassed by the safety zone without specific approval of the Captain of the Port during nonworking hours, Monday through Saturday evenings after 7:00 p.m. to 6:30 a.m. the following morning and Sundays from 6:30 a.m. to 6:30 a.m. the following Monday morning.

(d) Any vessel within the zone shall follow the directions of the patrolling vessel. If instructed to leave, the vessel will do so immediately.

(e) Vessels desiring to transit this area may contact the Captain of the Port about specific restrictions or, to obtain permission to transit the safety zone, by contacting one of the following Coast Guard units:

(1) Coast Guard Marine Safety Detachment Kodiak at: (907) 487–5750, or

(2) Coast Guard Communication Station Kodiak, via VHF channel 22 (preferred) or channel 16.

(f) This regulation is effective on 1 July 1985 and remains continuously in force until 31 July 1985 unless otherwise modified by the Captain of the Port Western Alaska.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; and 33 CFR 165.5)

Dated: March 25, 1985.

G.E. Haines,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 85–7688 Filed 3–29–85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Annual Fee—Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: In order to achieve consistency in the application of third-class annual bulk fee requirements, the Postal Service proposes to amend the regulation in the Domestic Mail Manual governing the collection of these fees. Specifically, the proposal would require payment of an annual bulk fee only by those persons or organizations which actually enter mailings at the bulk rates. Currently, a bulk fee must be paid by or for any person or organization which engages a business concern or other individual to mail for them.

DATE: Comments must be received on or before May 1, 1985.

ADDRESSES: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classfication Department, U.S. Postal Service, Washington, DC 20260–5361.

Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room P220, U.S. Postal Service Headquarters 935 L'Enfant Plaza N., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller of the Office of Mail Classification, 202/245–4655.

SUPPLEMENTARY INFORMATION:

I. Background

The regulation proposed for amendment, section 641 of the Domestic Mail Manual, currently requires mailers of third-class bulk matter to pay annual bulk fees even when an agent has been engaged to present their material to the Postal Service. Identifying the "mailer" or orginator of third-class matter may be difficult. Therefore, some rules of thumb have envolved to achieve consistency and render the problem manageable at the post office level. For example, whenever an advertising agency designs and produces a coupon mailing for a collection of advertisers, the Postal Service has considered the mailing to be the product of the advertising agency. Only the preparing firm is required to pay the annual bulk fee at the office of mailing. On the other hand, when an agent merely collects mailing pieces from a variety of persons or organization and bundles them for third-class entry (a typical shared mailing), the Postal Service requires that each entity submitting pieces to the mailing pay the annual fee at the office of mailing.

Because current mailer practices do not always coincide with the previously described Postal Service guidelines, it is becoming increasingly difficult to identify the originators of components of a given mailing and to assess appropriate bulk fees. For example, a shared mailing consisting primarily of promotional pieces prepared by advertisers and furnished to an agent for mailing may also contain advertisements designed and produced for clients by the mailing agent. Similarly, a mailing consisting primarily of coupons developed and produced by an advertising firm may also include coupons or other promotional material produced and furnished by the firm's clients. In these situations, when it is not clear which persons or organizations should be considered "mailers" or originators, the regulation concerning the collection of applicable bulk fees ha not been consistently applied.

The guidelines previously applied by the Postal Service were useful in determining when bulk fees were applicable, but appear to no longer have logical appeal. There is no obvious reason that questions of who designed or who printed the various components of a third-class mailing piece should control decisions about the applicability of bulk fees. The recent problems also highlight the tendency for the current fee requirements, as currently applied, to cause most of the costs the fee itself covers, such as accounting and shared mail verification costs.

II. Recommended Change

The Postal Service concludes that the proposed change would lead to consistent enforcement since it would simplify the regulation and make it analogous to the approach taken to the First-Class annual presort fee. It would also reduce post office workload. Finally, because the fee would henceforth be paid only by those entities which actually present the mail and thus deal directly with the Postal Service, the proposed regulation would be more closely related to the legitimate business purposes which best support the fee.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

Chapter 6 Third-Class Mail

640—Authorizations and Permits

Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Each person or organization which enters mailing at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2). The annual bulk mailing fee must be paid at

or before the time of the first bulk rate mailing of each calendar year.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

(39 U.S.C. 401, 404)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-7703 Filed 3-29-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL-2805-7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed reaffirmation.

SUMMARY: On September 26, 1984, EPA designated an area within Summit County, Ohio as attaining the primary and secondary national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2). 49 FR 37754. In response to a petition to reconsider that action filed by the Natural Resources Defense Council, Inc. (NRDC), EPA has further studied emissions and ambient levels of SO_2 in that area, and prepared the memorandum entitled "SO_2 Attainment Designation of Barberton, Summit County, Ohio". The memorandum confirms that the area attains the NAAQS, and EPA hereby proposes to reaffirm the attainment designation.

DATES: Comments must be received on or before May 1, 1985.

ADDRESSES: Copies of the report and the supporting data are available for review at the following address: United States Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Comments should be submitted to Mr. Gary Gulezian, Chief, Regulatory Analysis Section, at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Koerber, Technical Analysis Section, (312) 886-6061.

SUPPLEMENTARY INFORMATION: EPA's Redesignation Criteria. EPA's redesignation criteria are summarized in an April 21, 1983 memorandum from the Director, Office of Air Quality Planning and Standards, entitled "Section 107 Designation Policy Summary" and a December 23, 1983 memorandum from the Chief, Control Programs Operations Branch, entitled "Section 107 Questions and Answers." In general, and SO_2 redesignation to attainment must be supported by: (1) Quality-assured representative ambient monitored data showing no violations over the most recent eight consecutive quarters (or the most recent four quarters if actual, enforceable emission reductions are responsible for air quality improvement), provided that the data reflect anticipated source operating rates; (2) a reference model attainment demonstration at the State Implementation Plan (SIP) allowable emission limitations; and (3) a demonstration that the SIP control strategy, or its equivalent, such as a permanent shutdown of major emitting sources, has been implemented.

EPA's Review of Monitoring and Modeling Data

The most recent nine quarters of quality-assured air quality data collected in the Barberton area from 1982 through the first quarter of 1984 show attainment of the 3 and 24-hour standards. Additionally, EPA reviewed adjusted monitoring data for the period 1978-1981. This data was adjusted to reflect emissions at the maximum allowable emission rate under the State Implementation Plan (SIP) for PPG Industries, Inc., the dominant source in the Barberton area. 46 FR 49550. The adjusted monitored data indicate attainment of the constraining standard, in this case the 24-hour NAAQS, assuming compliance with SIP emission limitations. All major sources in the Barberton area, including PPG, are in compliance with SIP emission limitations, or permanently shutdown.

In addition to monitoring data, the Agency remodeled emissions from PPG using CRSTER and MPTER reference models. The modeling demonstrates attainment of the SO_2 NAAQS in the Barberton area at the SIP allowable emission levels. EPA's modeling analyses are discussed in detail in the Technical Support Documents at the reginal EPA Office listed in the **ADDRESSES** section of this notice.

The NRDC petition raised the issue of whether the NAAQS should be interpreted as "running-" or "block-" average standards. *See PPG Industries, Inc.,* v. *Costle,* 659 F.2d 1239 (D.C. Cir. 1981). The findings discussed above hold under either interpretation. Therefore, this issue is not relevant to the attainment designation.

Conclusion

The attainment status of the Barberton area is supported by both monitored and model data. Thus, after reconsideration, EPA proposes to reaffirm the attainment designation.

Miscellaneous

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Secs. 107(d) and 301(a) of the Clean Air Act (42 U.S.C. 7407(d) and 7601(a)))

Dated: March 22, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-7537 Filed 3-29-85; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 50, No. 62
Monday, April 1, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Lincoln Inspection Service, Inc. (NE) and Omaha Grain Inspection Service, Inc. (NE)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Lincoln Inspection Service, Inc. (Lincoln), and Omaha Grain Inspection Service, Inc. (Omaha), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: May 1, 1985.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The November 1, 1984, issue of the **Federal Register** (49 FR 43980) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Lincoln's and Omaha's designations terminate on April 30, 1985, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by December 3, 1984.

Lincoln and Omaha each applied for renewal of their respective designations. In addition, Richard G. Probst and Darlene M. Probst, proposing to do business as Nebraska-Iowa Grain Inspection Service, applied for the Omaha designation.

FGIS announced the names of these applicants and requested comments on same in the January 1, 1985, issue of the **Federal Register** (50 FR 135). Comments were to be postmarked by February 19, 1985; none were received.

Subsequent to the request for comments, the Probsts withdrew their application for designation.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act (7 U.S.C. 71 *et seq.*), and in accordance with Section 7(f)(1)(B), decided that Lincoln and Omaha are able to provide official services in the respective geographic areas for which FGIS is renewing their designations. Each assigned geographic area is the entire one previously described in the November 1 **Federal Register** issue.

Effective May 1, 1985, and terminating April 30, 1988, Lincoln and Omaha are responsible to provide official inspection services in their respective specified geographic areas.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Regulatory branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Lincoln Inspection Service, Inc., 505 Garfield Street, P.O. Box 2724, Station B, Lincoln, NE 68502

Omaha Grain Inspection Service, Inc., 1905 Harney Street, 534 Grain Exchange Bldg., Omaha, NE 68102.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 21, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–7577 Filed 3–29–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Grain Inspection, Inc. (ND) and Kankakee Grain Inspection Bureau, Inc. (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Grain Inspection, Inc. (Jamestown), and Kankakee Grain Inspection Bureau, Inc. (Kankakee).

DATE: Comments to be postmarked on or before May 16, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The February 1, 1985, issue of the **Federal Register** (50 FR 4716) contained a notice from the Federal Grain Inspection Service requesting applications for designation to provide official services under the U.S. Grain Standards Act, as Amended (7 U.S.C. 71 *et seq.*) in the areas currently assigned to the official agencies. Applications

were to be postmarked by March 4, 1985.

Jamestown and Kankakee, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 21, 1985.

J.T. Ashlee,

Director, Compliance Division.

[FR Doc. 85-7578 Filed 3-29-85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Perform Official Services in the Geographic Area Currently Assigned to Louisville Grain Inspection Services, Inc. (KY), Minot Grain Inspection Service, Inc. (ND), and Tri-State Grain Inspection Service, Inc. (OH)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standars Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each specified agency. The official agencies are Lousiville Grain Inspection Services, Inc., Minot Gran Inspection Service, Inc., and Tri-State Grain Inspection Service, Inc.

DATE: Applications to be postmarked on or before May 1, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Louisville Grain Inspection Services, Inc. (Louisville), 1400 Oldham Street, P.O. Box 10115, Lousiville, KY 40210; Minot Grain Inspection Service, Inc. (Minot), 601 Third Avenue, S.W., Box B, Minot ND 58701; and Tri-State Grain Inspection Service, Inc. (Tri-State), 3906 River Road, Cincinnati, OH 45204, were each designated under the Act as an official agency to perform inspection functions on October 1, 1982.

Each agency's designation terminates on September 30, 1985. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Louisville, in the States of Indiana and Kentucky, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Indiana, Clark, Crawford, Floyd, Harrison, Jackson, Jennings, Jefferson, Lawrence, Martin, Orange, Scott, and Washington Counties.

In Kentucky, Allen, Anderson, Barren, Breckinridge, Bullitt, Butler, Carroll, Edmonson, Fayette, Franklin, Grayson, Hardin, Hart, Henry, Jefferson, Jessamine Larue, Meade, Nelson, Oldham, Scott, Shelby, Simpson, Spencer, Trimble, Warren, and Woodford Counties.

The geographic area presently assigned to Minot, in the State of North Dakota, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the North Dakota State line east to State Route 14;

Bounded on the East by State Route 14 south to State Route 5; State Route 5 east to State Route 60; State Route 60 southeast to State Route 3; State Route 3 south to State Rute 200;

Bounded on the South by State Route 200 west to State Route 41; State Route 41 south to U.S. Route 83; U.S. Route 83 northwest to State Route 200; State Route 200 west to U.S. Route 85; U.S. Route 85 south to Interstate 94; Interstate 94 west to the North Dakota State line; and

Bounded on the West by the North Dakota State line.

The following locations, outside of the foregoing contiguous geographic area, are presently assigned to Minot and are part of this geographic area assignment:

1. Farmers Elevator Company, Bottineau, Bottineau County.
2. Farmers Feed & Grain and Farmers Union, Harvey, Wells County.
3. Farmers Union, Rugby, Pierce County.
4. Farmers Elevator & Mercantile Co., and Coast Trading Company, Underwood, McLean County.
5. Merle A. Larson Elevator, Inc., Washburn, McLean County.

The geographic area presently assigned to Tri-State, in the States of Indiana, Kentucky, and Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Indiana, Dearborn, Decatur, Franklin, Ohio, Ripley, Rush (south of State Route 244), and Switzerland Counties.

In Kentucky, Bath, Boone, Bourbon, Bracken, Campbell, Clark, Fleming, Gallatin, Grant, Harrison, Kenton, Lewis (west of State Route 59), Mason, Montgomery, Nicholas, Owen, Pendleton, and Robertson Counties.

In Ohio, the area shall be:

Bounded on the North by the northern Preble County line east; the western and northern Miami County lines east to State Route 296; State Route 296 east to State Route 560; State Route 560 south to the Clark County line; the northern Clark County line east to U.S. Route 68;

Bounded on the East by U.S. Route 68 south to U.S. Route 22; U.S. Route 22 east to State Route 73; State Route 73 southeast to the Adams County line; the eastern Adams County line;

Bounded on the South by the southern Adams, Brown, Clermont, and Hamilton County lines; and

Bounded on the West by the western Hamilton, Butler, and Preble County lines.

Interested parties, including Louisville, Minot, and Tri-State, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning October 1, 1985, and ending September 30, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 22, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–7579 Filed 3–29–85; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies; Consideration for Surveys

Notice is hereby given that the Bureau of the Census proposes to conduct a Company Organization Survey for 1985 under the provisions of Title 13, United States Code, sections 182, 224, and 225. This survey, which has been conducted for many years, is designed to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. The information will be used to make company and establishment changes to the data for multiestablishment companies in the Standard Statistical Establishment List. The data will have significant application to the needs of the public and to governmental agencies and are not publicly available from nongovernmental or governmental sources.

The survey, if conducted, shall begin not earlier than December 1, 1985.

Copies of the proposed forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject of the proposed survey submitted to the Director in writing within 60 days after the date of this publication will receive consideration.

Dated: March 26, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–7682 Filed 3–29–85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Biotechnology Technical Advisory Committee; Partially Closed Meeting

A meeting of the Biotechnology Technical Advisory Committee will be held April 17, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington, D.C.

The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to biotechnology and related equipment or technology.

Agenda

1. Welcoming Remarks—Deputy Assistant Secretary, Walter J. Olson.
2. Welcoming Remarks—DOD, Deputy Under Secretary, International Programs and Technology, Talbot S. Linstrom.
3. Overview of Export Administration—Director, John K. Boidock.
4. Some International Aspects of Biotechnology—DOS, Coordinator for Biomedical Research and Health Affairs, William J. Walsh.
5. Presentation of papers or comments by the public.
6. Introduction of Biotechnology Technical Advisory Committee members.
7. Election of chairman.
8. Current DOC controls in biotechnology: James Seevaratnam.
9. Determination of planned work program—Monty Baltas.
   (a) Requirement for annual plan.
   (b) Requirement for annual report.
   (c) TAC Chairmen's meeting—June 1, 1985.

Executive Session

10. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377–4217. For further information or copies of the minutes contact Margeret A. Cornejo (202) 377–2583.

Dated: March 27, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–7698 Filed 3–29–85; 8:45 am]

BILLING CODE 3510-DT-M

[A-351-404]

Termination of Antidumping Investigation; Certain Welded Carbon Steel Pipes and Tubes From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 15, 1985, the Committee on Pipe and Tube Imports withdrew its antidumping petition, filed on July 17, 1984, on Certain Welded Carbon Steel Pipes and Tubes from Brazil. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–1777.

SUPPLEMENTARY INFORMATION:

Case History

On July 17, 1984, we received a petition from the Committee on Pipe and Tube Imports filed on behalf of the U.S. industry producing certain welded carbon steel pipes and tubes.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on August 6, 1984 (49 FR 21390). On August 31, 1984, the ITC found that there is a reasonable indication that imports of Certain Welded Carbon Steel Pipes and Tubes from Brazil materially injure, or threaten material injury to, a United States industry. (49 FR 35871). On December 24, 1984, we made a preliminary determination that Certain Welded Carbon Steel Pipes and Tubes from Brazil were being, or were likely to be, sold in the United States at less than fair value (49 FR 50753).

Scope of Investigation

The products covered by this investigation are "certain welded carbon steel pipes and tubes," which include certain small-diameter circular welded carbon steel pipes and tubes. Small-diameter circular welded carbon steel pipes and tubes, with an outside diameter of 0.375 inch or more but not over 4.5 inches and with a wall thickness of not less than 0.065 inch, are currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3231, 610.3234, 610.3241, 610.3242, and 610.3243. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120 and A–135.

Withdrawal of Petition

On March 15, 1985, petitioner notified us that it was withdrawing its petition, and requested that the investigation be terminated. UNder section 734(a) of the Act, as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is basgd on arrangements with the government of Brazil to limit the volume of imports of this product. We have assessed the pulic interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 26, 1985.

[FR Doc. 85–7728 Filed 3–29–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

National Advisory Committee on Oceans and Atmosphere; Partially Closed Meeting

March 27, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that a portion of the National Advisory Committee on Oceans and Atmosphere (NACOA) meeting on April 17–18, 1985 will be closed. The portion of the meeting to be closed will be the morning session on April 18, 1985 which will be held at the Intelligence Commission Headquarters on 1724 F Street, NW., Washington, DC. All other sessions of the meeting will be held at 2001 Wisconsin Avenue, NW. in Rooms 416 and B–100.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Wednesday, April 17, 1985

2001 Wisconsin Avenue, NW. Page Building #1, Rooms 416 and B–100 Washington, DC

9:00 a.m.–10:30 a.m.—Plenary, Room 416

- Introductory Remarks.
- Guest Speaker, Congressman Mike Lowry.

10:30 a.m.–12:30 p.m.—Panel meeting

- Federal/State Relationships, Chairman: John Norton Moore, Room 416.

Topic: Work Session on CZMA Reauthorization/Consistency

Speakers: None

12:30 p.m.–1:30 p.m.—Lunch

1:30 p.m.–4:00 p.m.—Panel meetings

- Exclusive Economic Zone, Chairman: Lee Gerhard, Room 416.

Topic: Elements of a National Plan

Speakers:

Harris B. Stewart, Jr., Professor of Marine Studies, Director, Center of Marine Studies, Old Dominion University

George Zahn, President, Deep Sea Ventures, Inc.

Juan Carlos Torres, President, Sea Pharm.

- Atmospheric Affairs, Chairman: S. Fred Singer, Room B–100.

Topic: Acid Rain

Speakers: None

4:00 p.m.–5:00 p.m.—Plenary

- Federal/State Relationships.

Topic: CZMA Reauthorization/Consistency

5:00 p.m.—Recess

Thursday, April 18, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

8:30 a.m.–10:00 a.m.—Plenary, Room 416

- Shipbuilding, Presentation by Panel Chairman.

10:30 a.m.–12:30 p.m.—Plenary

Intelligence Commission Headquarters, 1724 F Street, NW., Washington, DC

- Closed Session, Presentation by the Department of Defense on data protection.

12:30 p.m.–1:30 p.m.—Lunch

2:00 p.m.–4:00 p.m.—Plenary

- Panel Reports.
- Other Business.

4:00 p.m.—Adjourn.

The public is welcome to the open sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session. With respect to the closed panel session from 10:30 a.m.–12:30 p.m. on Thursday, April 18, the Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 20, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to

be disclosed during this closed session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because it will be considered within the purview of 5 U.S.C. 552b(c)(1), i.e., to discuss matters that are authorized to be kept secret in the interest of national defense.

A copy of the determination to close a portion of this meeting is available for public inspection and copying in the Central Reference & Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, area code 202/377–3271.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653–7818.

Dated: March 27, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85–7678 Filed 3–29–85; 8:45 am]

BILLING CODE 3510-12-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

March 27, 1985.

On April 1, 1985, the Government of the United States, pursuant to Article 3 and Annex B of the Arrangement Regarding International Trade in Textiles, requested the Government of the Federative Republic of Brazil to enter into consultations concerning exports to the United States of printcloth in Category 315, sateen fabrics in Category 317pt. (only TSUS items 320.— through 331.— with statistical suffixes 50, 87 and 93), knit shirts in Category 338/339, dressing gowns in Category 350, sheets in Category 361, terry and other pile towels in Category 363, and acrylic spun yarn in Category 604 pt. (only T.S.U.S.A. 310.5049), produced or manufactured in Brazil and exported during the twelve-month period beginning on April 1, 1985.

Summary market statements for each of these categories follow this notice.

To forestall market disruption, pending further consultations to reach a mutually satisfactory solution concerning these categories, the United States Government has decided to control imports at the levels designated in the directive to the Commissioner of Customs which follows this notice. Charges for shipments in excess of the level established for man-made fiber textile products in Category 604 pt. (only TSUSA 310.5049) during the twelve-month period which began on April 1, 1984 will exhaust the level for the category for the period beginning on April 1, 1985. Consequently, the category will not reopen.

The United States remains committed to finding a solution for these categories. Should agreement be reached during consultations on mutually satisfactory levels, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Brazil—Market Statement

Category 315—Cotton Printcloth

March 1985.

Summary and Conclusions

U.S. imports of Category 315 from Brazil tripled in 1984 to 11.95 million square yards. This increase accrued after Brazil's imports doubled in 1983. This is a continual sharp and substantial increase in imports into a sector already adversely affected by imports. This substantial growth could be expected to accelerate if not subject to restraints under a bilateral textile agreement or Article 3 of the MFA.

The market for Category 315 has been disrupted by imports. Imports from Brazil have contributed to the disruption. The removal of restraints on imports from Brizil would only intensify the market disruption.

U.S. Production

U.S. production of Category 315 has been on a downward trend since 1977. During 1977–1982, annual production of cotton printcloth dropped in each year from 770 million square yards to 339 million, declining on an average of about 86 million square yards. In spite of U.S. production increasing in 1983 and the first three quarters of 1984, it is still well below 45 percent, the 1977 level.

U.S. Imports

In four of the last seven years, imports of Category 315 from all sources increased dramatically to a point where overall imports during 1977–1984 increased by more than five fold. An exceptionally large quantity of cotton printcloth entered and severely disrupted the U.S. market in 1981 as in 1978. Again, as in 1978–1979, a significant portion of the 1981 imports were carried over into 1982 when they continued to disrupt the U.S. market for printcloth. Import demand declined in 1982 due to the heavy import carryover; nevertheless, 1982 imports reached a high level, 59 percent, above the 1979–1980 average. Since 1982, imports have increased for two consecutive years at 40 and 30 percent per year for 1983 and 1984, respectively. Imports in 1984, at 338 million square yards were well above the previous record level reached in 1981.

Import Penetration

As a result of the dramatic increases in imports, the ratio of imports to domestic production increased sevenfold, rising from 8.3 percent in 1977 to 60.7 percent in 1983. The ratio for the first three quarters of 1984 was 82.1 percent.

Domestic Producers Market Share

The U.S. producer's share in this market has declined from 92.3 percent in 1977 to 62.2 percent in 1983 with a particularly sharp drop in the first three quarters of 1984 to 54.9 percent.

Brazil—Market Statement

Category 317 Pt.—Cotton Sateen Fabric

March 1985.

Summary and Conclusions

United States imports of Category 317 pt.—cotton sateen fabric from Brazil totalled 8.1 million square yards in 1984, an increase of 171 percent over the 3.0 million square yards imported in 1983. Brazil is now the second largest supplier of cotton sateen fabric and in 1984 accounted for 18 percent of the total cotton sateen imports. In the absence of restraints this rapid import growth is expected to accelerate.

The market for Category 317 pt. is disrupted by imports and the sharp and disruptive growth trends of Brazilian cotton sateen fabric is a major contributor. The expiration of restraints on Brazilian imports would intensify market disruption.

U.S. Production

Domestic production of cotton sateen fabric was adversely affected by imports. Production dropped from 79.2 million square yards in 1981 to 58.1 million square yards in 1982, a 27 percent decline, and then dropped another 22 percent to 45.6 million square yards in 1983. Production rose by 7 percent during the first three quarters of 1984 when measured against the same period of 1983, but remained well below pre-recession levels.

U.S. Imports

Cotton sateen fabric imports from all countries have increased steadily over the last few years. In 1979 imports totalled 25.5 million square yards. They rose to 37.3

million square yards in 1981 and then dropped to 22.2 million square yards in 1982. Cotton sateen fabric imports rebounded in 1983 and again in 1984, reaching 45.3 million square yards, an increase of 104 percent over the 1982 level.

Import Penetration

Rising imports and declining production has sent import to production ratios soaring. In 1982 the ratio was 38.3 percent, but by 1983, it had risen to 66.3 percent. This upward trend continued in 1984 reaching 101.7 percent for the January–September 1984 period.

Market Share

The U.S. poducer's share of the market for domestically produced and imported cotton sateen fabric declined from 72.3 percent in 1982 to 60.1 percent in 1983. Market share losses continued for U.S. producers in 1984, declining from 62.4 percent during the first three quarters of 1983 to 49.6 percent for the same three quarters of 1984.

Employment

As a result of increased imports and declining production, employment in the broadwoven cotton fabric industry declined by 7.2 percent in 1984. Employment in this industry has steadily declined over the years. However, 1984 recorded the single greatest loss in employment in the industry in a non-recession year.

Import Value vs Domestic Producer Price

Approximately 90 percent of cotton sateen fabric is entering from Brazil under TSUSA No. 320.1054. These imports enter at duty-paid values below the U.S. producer price.

Brazil—Market Statement

Categories 338 and 339—Cotton Knit Shirts and Blouses

March 1985.

Summary and Conclusions

Cotton knit shirt and blouse imports from Brazil more than tripled in 1984 to 420,886 dozen from 117,040 dozen in the previous year. Brazil accounted for 7 percent of the growth in cotton knit shirt and blouse imports from all sources that year. This was substantial growth in imports from Brazil and could be expected to accelerate if not subject to restrants under a bilateral textile agreement or unilateral restraint.

The U.S. market for cotton knit shirts and blouses has been disrupted by imports. Imports from Brazil have contributed to the disruption and removal of restraints on imports from Brazil would intensify the market disruption.

U.S. Market

The U.S. market for cotton knit shirts and blouses was at a five year high of 42,755,000 dozen in 1979. Although it declined to 37,066,000 dozen in 1980, it rebounded by 1983 to 40,094,000 dozen.

U.S. producers experienced a steady and substantial erosion in market share during this period. In 1979, U.S. manufacturers contributed 68 percent of the market. By 1983, however, the U.S. share was down to 60 percent. Indications are that the U.S. market share will be reduced even further in 1984, given the four and a half million dozen increase in imports in the latter year. If U.S. production remains at 1983 levels, the 1984 market will exceed 1979 by 2 million dozen but the U.S. market share will be down to 54 percent.

U.S. Production

Cotton knit shirt and blouse production in the United States was 23,978,000 dozen in 1983, a decline of 2.5 percent from the previous year and 17 percent below 1979. However, data for 1982 and 1983 include some additional establishments and teamsport uniforms not previously provided for. Comparable data, it is estimated, would show 1983 production levels 21 percent below 1979. Production is estimated to have declined even further in 1984. Men's and women's knit sport shirt cuttings were down 6.7 percent for the year. All of the decline was in the second half of the year when cuttings were off 4.2 percent in the third quarter of 1984 and 31.2 percent during the fourth quarter.

U.S. Imports

In contrast to the contraction in domestic output, imports of cotton knit shirts and blouses increased 17 percent during 1979–1983 when these imports rose from 13,834,000 dozen to 16,116,000 dozen. On top of this, imports were up 29 percent in 1984 to 20,737,000 dozen. The increase of 4.6 million dozen in 1984 was three times greater than the 1.5 million dozen increase the previous year.

Import to Production Ratio

For every 100 cotton knit shirts and blouses produced in the United States in 1983, 67 were imported. This is significantly higher than the 1979 import to production ratio of 47.8 percent. Given the substantial increase in 1984 imports, even if U.S. production remains at 1983 levels, the 1984 I/P ratio will be almost double 1979.

Employment

Employment in the industries producing cotton knit shirts and blouses was down one percent in December 1984, to 158,000 employees, when compared to December 1983. Compared with December 1979, employment was off by seven percent.

Import Value vs Domestic Producer Price

Twenty-nine percent of the cotton knit shirt and blouse imports from Brazil are entered under TSUSA No. 383.2730—women's nonornamented shirts and blouses other than T-shirts and sweatshirts; fifteen percent under 379.4050—men's and boys' other ornamented cotton shirts; thirteen percent under 383.2706—women's tank tops; and, eleven percent under 383.2720—WGI nonornamented T-shirts. These garments are entering at landed, duty paid values below prices for comparable U.S. garments.

Brazil—Market Statement

Category 350—Cotton Dressing Gowns

March 1985.

Summary and Conclusion

United States imports of Category 350 from Brazil were 58,300 dozen during 1984. These imports compare with 27,500 dozen in 1982. This was substantial growth and could be expected to accelerate if not subject to restraints under a bilateral textile agreement or unilateral restraints.

The market for Category 350 has been disrupted by imports; imports from Brazil have contributed to the disruption; and, removal of restraints on imports from Brazil would intensify the market disruption.

U.S. Production

U.S. production of Category 350, cotton dressing gowns declined steadily from 682,000 dozens in 1979 to 571,000 in 1983. The downward trend reportedly contained in 1984 and is expected to continue in 1985. Production may be below the level of total imports before the end of 1985.

U.S. Imports

Imports from all sources of Category 350 increased steadily from 1979 to 1984 increasing from 173,000 dozens to 531,000 dozens.

Brazil is the fourth largest exporter of cotton dressing gowns to the United States and accounted for 11 percent of all Category 350 imports in 1984. Imports of Category 350 from Brazil increased 33 percent in 1984 reaching 58,300 dozen. This growth was on top of a 60 percent increase in 1983 bringing the total increase for this two year period to 112 percent. Since 1979 imports from Brazil of this category have increased 407 percent.

Import/Production Ratio

The import/production ratio for this category has soared from 25.4 percent in 1979 to close to 95 percent in 1984. In the 1981–84 period, the ratio climbed at least 10 percentage points each year, and if the trend continues in 1985, the I/P will top 100 percent.

Domestic Producer's Market Share

The U.S. market for Category 350 was 855,000 dozen in 1979 and the U.S. producer's market share was 79.6 percent. By 1983 the market had risen to approximately 1.1 million dozens, but the U.S. producers share was 55.3 percent. The 1984 share was probably just in excess of 50 percent since imports increased 15 percent and production reportedly declined.

Import Value vs Domestic Producers Price

Approximately 93 percent of Category 350 imports from Brazil entered under TSUSAs 379.4920, mens and boys cotton, noncorduroy, robes and bathrobes and 383.3770 women's, girls' and infants' cotton, noncorduroy, robes and bathrobes. These items are predominately terry-cloth. The duty-paid values for these garments are below the U.S. producer prices for comparable items.

Brazil—Market Statement

Category 361—Cotton Sheets

March 1985.

Summary and Conclusions

United States imports of Category 361 from Brazil are non-institutional type sheets. Imports from Brazil during 1984 were 305,445 sheets (25,454 dozen), up 231.2 percent from the 1983 imports of 92,225 sheets (7,685 dozen). This was substantial growth and can be expected to accelerate if not subject to restraints.

The market for Category 361 non-institutional sheets has been disrupted by imports; imports from Brazil have contributed to the disruption; and, removal of restraints on imports from Brazil would intensify the market disruption.

U.S. Production

Production of non-institutional cotton sheets in the United States increased from 990,000 dozen in 1979 to 1,279,000 dozen in 1980. Production trended downward after 1980, declining to 1,014,000 dozen sheets in 1983. Production for the first three quarters of 1984 were 567,000 dozen sheets, down 26.3 percent from the same period in 1983. Production by quarters in 1984 trended downward pointing toward a more substantial decline in 1984 than is indicated by the decrease registered during the first three quarters.

U.S. Imports

U.S. imports of non-institutional cotton sheets increased from 22,000 dozen in 1979 to 248,000 dozen in 1983. Imports in 1984 were up 150 percent to 622,000 dozen. Imports during the last quarter of 1985 were 247,000 dozen sheets, almost equal to the total 1983 imports.

Import Penetration

The ratio of imports to domestic production increased sharply, up ten-fold, from 2.2 percent in 1979 to 24.5 percent in 1983. The ratio for the first three quarters of 1984 was 66.1 percent, 263 percent above the same period in 1983. The very sharp spurt in imports during the last quarter of 1984 probably resulted in an import ratio between 80 and 85 percent for the full year of 1984.

Domestic Producers Market Share

The U.S. market for domestically produced and imported non-institutional cotton sheets, after increasing in 1980, was remarkably stable through 1984. The U.S. producers share of the market was also stable through 1981, but began to decline an increasing rate thereafter. The domestic producers share for 1981 was 95 percent; if dropped to 89 percent in 1982; to 80 percent in 1983; and to 60 percent during the first three quarters of 1984. The full year share in 1984 will be even smaller due to the surge in imports during the last quarter.

Import Values vs U.S. Producers Price

Approximately 68 percent of the cotton sheets imported from Brazil are combed sheets entered under TSUSA no 363.3030. The remainder are carded sheets entering under TSUSA No. 363.3010. Imports are better quality sheets which are landed at a duty-paid value below the U.S. producers price for comparable sheets.

Brazil—Market Statement

Category 363—Cotton Terry and Other Pile Towels

April 1985.

Summary and Conclusions

United States imports of Category 363 from Brazil were 14.0 million towels in 1984, two and one-thirds the 1983 level of 6.0 million and four and two-thirds of the 1982 imports of 3.0 million. Its growth from 1982 of 11.0 million towels was one-half the growth in iports from all sources for the period.

The import growth of Category 363 from Brazil was substantial and could be expected to accelerate if imports are not subject to restraints. The market for Category 363 has been disrupted by imports; imports from Brazil contributed to the disruption; and removal of restraints on imports from Brazil would intensify the market disruption.

U.S. Production

Production of cotton terry towels increased in 1983 when demand recovered strongly from the recession impacted low of 1982. Production in 1983 almost rebounded to the 1979 level. Production was especially strong during the last quarter of 1983 when 30 percent of the entire year's production was shipped. Domestic production during the first three quarters of 1984 were 361.4 million towels, down 4 percent from the 375.0 million produced a year earlier. Market reports indicate that the fourth quarter 1984 production will decline at a greater rate than that for the first three quarters as some mills are working short weeks and most mills had extended closures at Thanksgiving and Christman. Mills were fully occupied during the fourth quarter of 1983.

Imports

Imports from all sources increased by 140 percent from 40.5 million towels in 1979 to 97.1 million in 1984. Imports from Brazil, over the same time span, increased 370 percent from 2.98 million towels for 14.0 million.

Import Penetration

The ratio of imports to domestic production of Category 363 almost doubled from 8 percent in 1979 to 15.9 percent in 1983. The ratio for the first three quarters of 1984 was 21.0 percent.

Domestic Producer's Market Share

The U.S. producers share at the market for domestically produced and imported towels trended downward from 91 percent in 1979 to 83 percent during the first three quarters of 1984. Since domestic production did not increase from 1979 to 1983 and was down in 1984, the market growth accrued to the foreign suppliers.

Import Values vs U.S. Producer Prices

Approximately 96 percent of the Category 363 imports from Brazil in 1984 were entered under TSUSA No. 366.2460—cotton terry towels, over one dollar and forty-five cents per pound in value. These imports are being entered at duty-paid landed values well below the U.S. producer prices for comparable towels.

Brazil—Market Statement

Category 604 Part—Spun Plied Acrylic Yarns

March 1985.

Summary and Conclusions

U.S. imports of Category 604 part, spun plied acrylic yarns, from Brazil totaled 1.7 million pounds in 1984. Imports would have been much higher if imports had not been embargoed. These imports compare with 446,000 for 1981. This substantial growth is expected to accelerate if not subject to restraints under a bilateral textile agreement or unilateral restraint. In just the past three years, Brazil has become the fourth largest supplier of plied acrylic yarns, accounting for eight percent of the 1984 imports.

The U.S. market for plied acrylic yarn has been disrupted by imports and imports from Brazil have contributed to this disruption. The removal of the restraints on Brazil's imports would intensify the market disruption.

U.S. Shipments

U.S. producers' shipments of plied acrylic yarns have been on a downward trend since 1981. Shipments rose from 42.4 million pounds in 1979 to 44.7 million in 1981 than dropped to 38.3 and 35.8 million for 1983 and 1984, respectively. The later figure is 20 percent less than the 1981 level.

During 1984, inventories increased as industry shipments fell. As of December 1984, U.S. producer's inventories were up 46.9 percent over December 1983 level. This increase in inventory growth coupled with a weak domestic market resulted in extended mill shut-downs and some permanent plant closing.

U.S. Imports

During 1979–1984, imports of plied acrylic yarns increased by more than two fold to 20.4 million pounds in the latter years. Imports moderated in 1984, actually declined 6 percent compared with 1983, but still 33 percent above 1982 level and 41 percent higher than the 1979–1983 annual average of 14.5 million pounds. Imports in 1984 were second highest on record.

Import Penetration

The ratio of imports to domestic shipments of plied acrylic yarns increased by three-fold, rising from 21.1 percent in 1979 to 57.1 percent in 1984.

Domestic Producers Market Share

The U.S. producers' share of plied acrylic year market declined from 83 percent in 1979 to 64 percent in 1983 and continued to drop in 1984. Prior to the decline in the U.S. market in 1984, the increase in imports accounted for all the market growth from 1981 to 1983. Over the past five years, the import share more than doubled.

Employment

The number of production workers in the industry producing spun plied acrylic yarns has declined since 1979. Employment during 1984 averaged 2,200 employees compared with 3,385 employees in 1979. This was a drop of 35 percent.

Import Values

All of the 1984 imports of Category 604 from Brazil are entered under TSUSA No. 310.5049, spun plied acrylic yarn. The duty-paid landed values of these imports from Brazil are below the U.S. producer prices for comparable yarn.

March 27, 1985.

Committee for the Implementation of Textile Agreements

Commission of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended, (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on April 1, 1985 and extending through March 31, 1986, in excess of the following levels:

Category	12-month level
315	11,475,556 square yards.
317 pt.[1]	7,324,755 square yards.
338/339	441,078 dozen.
350	51,150 dozen.
351	393,998 numbers.
363	12,248,360 numbers.
604 pt.[2]	378,227 pounds.

[1] In Category 317, only TSUSA Numbers 320.— through 331.— with statistical suffixes 50, 87 and 93.
[2] In Category 604, only TSUSA number 310.5049. Merchandise in excess of the limit previously established for Category 604 pt. has amounted to 519,036 pounds and should be charged.

In carrying out this directive cotton and man-made fiber textile products in the foregoing categories, except Catergory 315, produced or manufactured in Brazil and exported to the United States on and after April 1, 1984, and extending through March 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to this directive. Textile products in Category 315 which have been exported before January 1, 1985 shall not be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published inthe **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-7696 Filed 3-29-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in India

March 27, 1985.

On February 1, 1985 a notice was published in the **Federal Register** (50 FR 4723) announcing that, on December 31, 1984 the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, had requested the Government of India to enter into consultations concerning exports to the United States of cotton gingham and other yarn-dyed fabrics in Category 310/318, produced or manufactured in India.

No agreement has been reached in consultations on a mutually satisfactory solution. The United States Government has decided, therefore, until such time as a different solution is agreed, to control imports of cotton textile products in Category 310/318 at the twelve-month limit of 4,281,876 square yards for Category 310/318, exported during the period which began on January 1, 1985 and extends through December 31, 1985.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 310/318, exported during the designated period, in excess of 4,281,876 square yards.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377-4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 27, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854, and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 310/318, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1985 in excess of 4,281,876 square yards.[1]

Textile products in Category 310/318 which have been exported to the United States during the ninety-day period which began on December 31, 1984 and extends through March 30, 1985, shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-7697 Filed 3-29-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1984.

Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

March 28, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commission of Customs to be effective on March 29, 1985. For further information contact Diana Bass Solkoff, International Trade Specialist (202) 377–4212.

Background

On April 6, 1984, a notice was published in the **Federal Register** (49 FR 13736), which established an import restraint limit for twills and sateens in Category 317, produced or manufactured in China and exported during the twelve-month period which began on March 29, 1984 and extended through March 28, 1985. This limit is filled.

On December 14, 1984 a further notice was published in the **Federal Register** (49 FR 49879) announcing that, as of January 1, 1985, the Committee for the Implementation of Textile Agreements, in order to prevent market disruption, would direct the U.S. Customs Service, as appropriate, to permit entry into the Unitd States for consumption, or withdrawal from warehouse for consumption, of such goods which were exported during a prior restraint period in excess of the restraint limit at a prescribed rate per month during each of the first five months of the following period. CITA has decidd, in the case of imports in Category 317, exported from China on and after March 29, 1984, to direct Customs to permit entry in an amount not to exceed 3,120,000 square yards in Category 317 with a sublimit of 624,000 square yards in sateen (only TSUS items 320.— through 333.— with statistical suffixes 50, 87 and 93) during each of the thirty-day periods beginning on March 29, 1985 and exending through August 28, 1985. The thirty-day periods are stipulated in the letter to the Commissioner of Customs which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 28, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on March 29, 1985, to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 317, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on March 29, 1984 and extended through March 28, 1985 which were in excess of the restraint limit established for that period, the following amounts per thirty day period.

Category	Amount to be entered per 30-day period
317	3,120,000 square yards of which not more than 624,000 square yards shall be in TSUS items 320.— through 333.— with statistical suffixes 50, 87 and 93.

The thirty-day periods shall be as follows:

March 29–April 28, 1985
April 29–May 28, 1985
May 29–June 27, 1985
June 28–July 28, 1985
July 29–August 28, 1985

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–7869 Filed 3–29–85; 9:28 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements; Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through January 31, 1988, of information collection requirements in regulations implementing flammability standards for carpets and rugs. The regulations are codified at 16 CFR Parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs.

Details About the Requested Extension of Approval of Requirements for Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, DC 20207.

Title of information collection: Standard for the Flammability of Carpets and Rugs (FF 1–70), 16 CFR Part 1630; Standard for the Flammability of Small Carpets and Rugs (FF 2–70), 16 CFR Part 1631.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of goods manufactured or imported.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours for each respondent: 532 per year.

Comments: Comments on this requested extension of approval of

information collection requirements should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7313. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492-6529.

This is not a proposal to which 44 U.S.C 3504(h) is applicable.

Dated: March 27, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-7743 Filed 3-29-85; 8:45 am]

BILLING CODE 6355-01-M

Performance Review Board; Senior Executive Service; Appointment of Members

The purpose of this notice is to publish the names of the members of the Performance Review Board of the Consumer Product Safety Commission, effective March 19, 1985. The members are as follows:

(1) Leonard DeFiore, Chairman (membership term expires March 1988);

(2) Daniel R. Levinson (unlimited membership term);

(3) Bert G. Simson (unlimited membership term);

(4) Kenneth R. Rashid (membership term expires July 1985);

(5) Harry I. Cohen (membership term expires June 1987);

(6) John P. Mackey (unlimited membership term).

Dated: March 27, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-7742 Filed 3-29-85; 8:45 am]

BILLING CODE 6355-01-M

COUNCIL ON ENVIRONMENTAL QUALITY

Tennessee-Tombigbee Waterway Wildlife Mitigation Plan, Alabama and Mississippi

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only. Recommendations of the Council on environmental quality regarding the Tennessee-Tombigbee Waterway Wildlife Mitigation Plan, Alabama and Mississippi.

SUMMARY: The Council on Environmental Quality's (CEQ) regulations for the implementation of the National Environmental Policy Act (NEPA) includes procedures for referring to CEQ federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects (40 CFR Part 1504).

On December 31, 1984, CEQ received a referral from the Department of the Interior (DOI) regarding the Department of the Army Corps of Engineers' (COE) Final Environmental Impact Statement (FEIS) for the Tennessee-Tombigbee Waterway Wildlife Mitigation Feasibility Study, Alabama and Mississippi. The DOI referral letter stated, in part:

> As the FEIS documents, there will be severe long-term environmental impacts as a result of construction of the TTW, including the destruction of approximately 34,000 acres of forested wetlands. Mitigation measures proposed in the subject document inadequately replace project-induced losses. The Corps' mitigation proposal, which in part describes the need for 46,300 acres of separable mitigation lands, is only 49 percent of the separable acreage deemed necessary by Interior. * * *
>
> Though Interior continues to recommend the acquisition of 95,500 acres of separable land as justified and necessary to adequately mitigate for the range of wildlife damages associated with the project, we have expressed a willingness to work with the Corps to forge a mutually acceptable compromise. * * * We met on November 8–9, 1984, but were unable to reach agreement.

The COE responded to the referral by letter of January 23, 1985 and stated in part:

> Areas of disagreement are primarily matters of differing agency policy, * * * Resolution of such differences cannot be achieved by compromise on a specific undertaking. At our most recent meeting, held on 8–9 November 1984, the Department of the Interior's principal spokesman concluded, in essence, that while it appeared we could reach agreement on the biological values involved, there appeared to be so many institutional constraints we could not reach a consensus on the mitigation plan. I agree, and conclude that further discussions with the Department of the Interior would be pointless.

Upon review of the documents submitted by the DOI and the COE, the FEIS itself, and letters from the public, the Council determined that there were significant unresolved questions regarding this proposal. To better understand the reasoning of both the DOI and the Corps' decisions regarding the proposal, the Council held an open Sunshine Act meeting with representatives of both agencies on February 19, 1985. 50 FR 5467 Feb. 8, 1985. As a result of the February 19 Sunshine Act meeting, and the materials reviewed before the meeting, the Council determined it was necessary to address two basic issues in the Tennessee-Tombigbee mitigation controversy; (1) in-kind replacement of special resources and (2) the use of land on other projects for mitigating habitat losses on the Tennessee-Tombigbee. By letters of March 25, 1985, to both the referring agency (DOI) and the lead agency (Corps), the Council made the following recommendations regarding these two issues:

> *The Council believes that the bottomland hardwoods in the Southeast are of such importance as wildlife habitats, and becoming so scarce, that the principle of full, in-kind replacement should override other considerations. We strongly recommend that the Department of the Interior and the Corps of Engineers work out a mitigation plan that fully replaces the 34,000 acres of bottomland hardwoods lost, through a combination of management and acquisition (public or private) of bottomland and hardwood habitats.*
>
> *We recommend that that the two agencies reach an agreement whereby the management of lands on the five existing projects can be used for credit on the Tennessee-Tombigbee consistent with the principle of in-kind replacement of bottomland hardwoods.*

DATE: March 26, 1985.

SUPPLEMENTARY INFORMATION: There follows the text of the letters addressed to E.R. Heiberg, III, Chief of Engineers and Richard R. Hite, Deputy Assistant Secretary, Policy, Budget & Administration, DOI:

This letter is the action taken by the Council on Environmental Quality on the referral of the Tennessee-Tombigbee Waterway Wildlife Mitigation Plan. It is based on evaluation of the official documents presented to the Council by the referring and lead agencies, the written and oral responses of the two agencies at the public meeting held on February 19, and letters written to the Council by the public.

The project itself is an enormous engineering undertaking, encompassing 234 miles. The waterway had been opened for traffic only a month before the Council's public meeting. Not surprisingly, the mitigation plan contains a complex blend of technical and policy decisions. By the time that the Council on Environmental Quality received the referral, most of the technical and policy problems regarding the mitigation plan had been worked out. Nevertheless, a limited number of significant policy questions remained unresolved.

Mitigation as a Public Policy Issue

The Council is deeply concerned about the general policy questions related to mitigation. As a result of this referral, it became clear to us that there is no consistency in mitigation policies from agency to agency, and there are differences in how they are implemented as well. We recommend that a future activity be initiated to discuss and resolve these policy issues, apart from the press of deadlines that characterize specific projects. All agencies that are involved in either wildlife mitigation or construction related activities should be a part of such a cooperative effort. The activity could deal with procedural questions (such as the point in the planning schedule that mitigation discussions begin), technical questions (such as agreement on habitat valuation methods), and policy questions (such as when the policy of in-kind replacement should be employed.

Such a longer term, broad look at mitigation policies would tend to minimize the kinds of disagreements that resulted in this referral. It would, therefore, have a positive impact on wildlife management and project implementation that extends far beyond the narrow issues represented in the Tennessee-Tombigbee Waterway Wildlife Mitigation Plan. In the meantime, the Council must focus on this single project, and we must do it within the schedule imposed by the NEPA regulations.

The Council's Approach

The Council chose not to render a decision on the technical question of the specific acreage of wildlife mitigation that should be provided for the Tennessee-Tombigbee Project. Instead, the Council accepted the referral as an opportunity to openly examine the remaining policy questions related to mitigation and make a recommendation on what the appropriate policies should be.

While the two agencies involved have had their disagreements in the past, we tried to conduct our deliberations in an open and non-adversarial manner. We hoped, as a third party, to help the Department of the Interior and the Corps of Engineers to view their positions more objectively and to find some middle ground on which they can agree.

In this letter, we will analyze the primary unresolved issues and suggest directions in which future negotiations might proceed. Two basic issues in the Tennessee-Tombigbee mitigation controversy seem to overwhelm all the rest. These are (1) in-kind replacement of special resources and (2) the use of lands on other projects (for which mitigation is incomplete) for mitigating habitat losses on the Tennessee-Tombigbee. We also observe the key role that a single factor—time—has played in raising these issues to a level of importance.

In-Kind Replacement

The project will result in a net loss of 34,000 acres of bottomland hardwoods. We were told in the public meeting that forested wetlands can be upgraded by 15 to 25 percent through intensive wildlife habitat management. The COE proposal provides for the upgrading of a total of 87,000 acres of bottomland hardwoods. Thus, if each acre were upgraded by 25 percent, this proposal would replace 21,750 (63 percent) of the bottomland hardwoods lost. The DOI proposal provides for the upgrading of 118,900 acres of bottomland hardwoods. This would replace 29,500 (87 percent) of the bottomland hardwoods lost. We conclude, therefore, that even the more ambitious mitigation proposal may fall short of full replacement of the value of bottomland hardwoods habitat lost.

Both agencies promote in-kind mitigation as a planning goal, but there are key differences in how this policy is expressed. The Department of the Interior promotes in-kind replacement of high value and scarce habitats. This policy is rather strict in application for those habitat types judged to be of high value and scarce. The Corps of Engineers policy promotes in-kind replacement as a mitigation planning goal, but provides broad discretion for substituting alternative habitats based on technical, economic and political feasibility.

There is a similar divergence on the relative importance of bottomland hardwood habitats. Based on recent studies of the losses of bottomland hardwood habitats, the DOI reports that bottomland hardwood forests in the Mississippi Alluvial Plain decreased from 11.8 million acres in 1937 to 5.2 million acres in 1978, with a downward trend expected to continue. This trend, and the high relative habitat value of bottomland hardwoods, provided the basis for a strong stance on the part of the DOI in favor of protecting this habitat type. The COE written materials acknowledge a determination that mitigation proposals should give priority to replacing habitat value of bottomland hardwood habitat losses. However, the mitigation plan replaces much of the bottomland hardwood losses with other habitat types, and the COE representative in the public meeting argued that bottomland hardwoods are not "scarce."

We understand that the two agencies approach the problem of mitigation from different perspectives. The agency consulted on mitigation will concern itself with what is desirable from a wildlife management standpoint, while the construction agency is also concerned with feasibility. In making our decision, we recognize that economic and other factors should be considered in discussions leading to a revised mitigation plan. We considered two questions. First, what mitigation policies are desirable in this case? Second, to what extent is the feasibility test a limiting factor in the Tennessee-Tombigbee mitigation plan?

The Corps contends that its mitigation plan meets the tests of technical, economic and political feasibility, but does not demonstrate that full, in-kind mitigation of bottomland hardwoods would be infeasible.

It is our opinion that full, in-kind replacement may meet all three feasibility tests contained within the COE policy. First, it is technically possible, through intensive wildlife management of other forested wetlands. Second, the value of each additional increment of mitigation still exceeds the cost in the Corps' proposal. Third, the 1983 COE survey of willing sellers indicates the availability of 92,080 acres of flood plain forests (Mitigation EIS, p. 118).

The Council believes that the bottomland hardwoods in the Southeast are of such importance as wildlife habitats, and becoming so scarce, that the principle of full, in-kind replacement should override other considerations. We strongly recommend that the Department of the Interior and the Corps of Engineers work out a mitigation plan that fully replaces the 34,000 acres of bottomland hardwoods lost, through a combination of management and acquisition (public or private) of bottomland hardwood habitats.

Mitigation Credits from other Projects

Both agencies agree, in principle, with the concept of allowing mitigation credits from existing projects to apply to new projects. Examples were cited in which this has been done. However, for the Tennessee-Tombigbee, the DOI objects because the existing projects had not yet been fully mitigated. The COE agrees that they were not fully mitigated, but contends that they never will be, apart from an alternative source of funding such as the Tennessee-Tombigbee. The Council recognizes that the projects were constructed in the 1950's and it is unreasonable to subject them to today's standards.

We recommend that the two agencies reach an agreement whereby the management of lands on the five existing projects can be used for credit on the Tennessee-Tombigbee consistent with the principle of in-kind replacement of bottomland hardwoods.

Time as a Contributing Factor

Time was a factor in disagreements on the issue of mitigating the Tennessee-Tombigbee Waterway. The agencies agreed on a technical approach under which the wildlife mitigation planning was initiated. The analysis, using the Habitat Analysis Procedures (HEP), was conducted by a multi-agency team, using nine key species for the evaluation. Subsequently, the DOI published its mitigation Policy which provided for full in-kind replacement of certain special habitats. In addition, the COE later conducted an independent evaluation, using a modified approach but continuing to use the nine key species.

Changes in project plans and mitigation plans are to be expected. However, some provision should have been made for accommodating change. We recommend that mitigation planning on future projects begin early, and that the participants agree in advance on a procedure for modifying the mitigation plan as the project plans change and as habitat information changes.

Sincerely,

A. Alan Hill,
Chairman.

William L. Mills,
Member.

Jacqueline E. Schafer,
Member.

A. Alan Hill,
Chairman.

[FR Doc. 85-7718, Filed 3-29-85; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities; Meeting

AGENCY: Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities.

ACTION: Notice of open and closed meeting.

SUMMARY: Pursuant to the provisions of Pub. L. 92-463, notice is hereby given that an open and closed meeting of the blue ribbon panel on sizing DoD medical treatment facilities has been scheduled as follows:.

DATE: April 11, 1985, 1:30 p.m. to 4:00 p.m.

ADDRESS: The Pentagon, Room 3E869, Washington, D.C.

NOTICE CLOSED MEETING: The panel will meet in closed session from 8:30 a.m. to 12:30 p.m. on April 11, 1985 in room 3E467, the Pentagon, Washington, D.C. to discuss classfied information that pertains to sizing issues in accordance with section 10(d) of 5 U.S.C. APP I.

FOR FURTHER INFORMATION CONTACT: LTC Michael Averbuch, Deputy Staff Director, Blue Ribbon Panel on Sizing DoD MTF c/o ASD (HA), Room 3E349, The Pentagon, Washington, D.C. 20301 [(202) 653-0060/0061].

SUPPLEMENTARY INFORMATION: The open meeting will concentrate on presentation of information related to staffing ambulatory care, and need determination methodologies within the Military Health Care System. The open meeting will be followed by an Executive Session to discuss personnel matters. To obtain access to the meeting room, members of the public must call 653-0060, by 4:00 p.m. on 10 April 1985 to arrange for an escort.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

March 27, 1985.

[FR Doc. 85-7721 Filed 3-29-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board; Advisory Committee meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board will meet in closed session on 8-9 May 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as the affect the perceived needs of the Department of Defense. At this meeting the Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Command, Control and Communications, and Technology Issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

March 27, 1985.

[FR Doc. 85-7722 Filed 3-29-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Acquisition Management of Conventional Munitions; Advisory Committee Meeting Change

The meeting of the Defense Science Board Task Force on Acquisition Management of Conventional Munitions scheduled for May 8-9, 1985 in the Pentagon, Arlington, Virginia as published in the Federal Register (Vol. 49, No. 220, Tuesday, November 13, 1984, FR Doc. 84-29709) has been changed to May 15-16, 1985. In all other respects the notice remains unchanged.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

March 27, 1985.

[FR Doc. 85-7723 Filed 3-29-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Software; Advisory Committee Meetings

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Software will meet in closed executive session on April 22 1985 and in closed session on May 28-29 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. The meeting on April 22, 1985 will allow the Task Force to assess the alternatives available to the DoD to improve software productivity. The meeting on May 28-29 1985 will provide the Task Force members with information on the software engineering techniques used by various DoD program managers and associated contractors in on-going development efforts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.

March 27, 1985.

[FR Doc. 85-7724 Filed 3-29-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Office of the Secretary, DoD.

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4)

Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 20 and Related Clauses in Part 52.220

Information concerns certain data required to support award of labor surplus area contracts.

Reporting is necessary to determine eligibility of contractor (responsiveness) to perform a labor surplus set-aside award.

Small business firms.
Responses: 805
Burden Hours: 201

T2Addresses: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1535, Pentagon, Washington, D.C. 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301, telephone (202) 697–8334. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 27, 1985.

[FR Doc. 85–7725 Filed 3–29–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Office of the Secretary, DoD.

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplement Part 19 and Related Clauses in Part 52.219

Information concerns certain data required to support evaluation of certain set-aside awards and to provide a basis for required reporting on awards placed in labor surplus areas under combined small business labor surplus procedures.

Reporting is necessary to insure proper evaluation and to obtain a contractor's statement of intent to perform in a labor surplus area.

Small business firms.
Responses: 1,610
Burden hours: 402

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301, telephone (202) 697–8334. This is a revision of an existing collection.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 27, 1985.

[FR Doc. 85–7726 Filed 3–29–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Addition to the Notice of Intent To Prepare Supplemental Environmental Impact Statement for the Production of QL, a Binary Munition Precursor Chemical

AGENCY: Department of Army, DOD.

ACTION: Addition to Notice of Intent to prepare a Supplemental Environmental Impact Statement for the production of QL, a non-lethal precursor chemical to be used in binary chemical munitions.

SUMMARY: 1. The previous Notice of Intent (January 18, 1985, 50 FR 2708) explained that the Army is considering three sources for the production of QL: A commercial source; Newport Army Ammunition Plant, Newport, Indiana; and the Pine Bluff Arsenal, Pine Bluff, Arkansas. This addition announces that the commercial production option is with Crawford and Russell, Inc., Stamford, CT; their intended subcontractor for production is the Vertac Chemical Corporation located in the West Helena Industrial Park, Highway 242 South, West Helena, Arkansas 72390. Also, as a result of reviewing existing environmental documentation as described in the previous Notice and new cost data indicating that Pine Bluff Arsenal is much more expensive than the other alternatives, the Army is deleting Pine Bluff Arsenal as a reasonable alternative for the production of QL.

2. A public scoping meeting in the Newport, Indiana, area has already been held. The scoping process for the environmental document is being extended to include direct input from the West Helena area. Government officials and community leaders in the area will be consulted, and a public meeting may be held if the public expresses an interest in holding such a meeting. Public comment is also sought by direct communication to the address below. To provide an opportunity for public input to the extended scoping process, government agencies, private organizations and interested individuals, both residents and non-residents of the affected areas, are invited to submit information and comments on this proposed action for consideration by the Army and possible incorporation into the Environmental Impact Statement. To be considered in the draft environmental document, comments should be received by April 17, 1985.

3. Comments and questions regarding the environmental document may be addressed to Commander, US Army Chemical Research and Development Center, ATTN: SMCCR–MUP–P (Mr. Duggan), Aberdeen Proving Ground, MD 21010 or by calling Mr. Duggan at (301) 671–4186. Mr. Duggan may also be contacted by individuals who wish to be added to the contact list to be notified of any future meetings and announcements.

Lewis D. Walker,

Deputy for Environment Safety and Occupational Health.

[FR Doc. 85–7619 Filed 3–29–85; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on April 23–24, 1985, at the Naval Base, Charleston, South Carolina. The first session will commence at 8:30 A.M. and terminate at 4:00 P.M. on April 23. The second and final session will commence at 8:30 A.M. and terminate at 12:30 P.M. on April 24. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to orient the Committee members with capabilities of surface ships and submarines and mine warfare. The agenda for the meeting will consist of readiness briefings and tours of surface ships and submarines, and a briefing on mine warfare. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest rquires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: March 27, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–7608 Filed 3–29–85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Naval Special Warfare Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Naval Special Warfare Panel will meet on 18–19 April 1985, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The agenda will include technical briefings on the capability to respond to warfare situations that require mobile, self-contained forces of an unconventional nature. The meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on April 18 and 19, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the technological capability of Naval Special Warfare forces to respond to warfare situations that require mobile, self-contained forces of an unconventional nature. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870

Dated: March 27, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–7607 Filed 3–29–85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before April 29, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 27, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Postsecondary Education

Type of Review Requested:
Reinstatement
Title: Alternate Disbursement System (ADS) Validation Roster for the Pell Grant Program
Agency Form Number: ED 579
Frequency: Annually
Affected Public: Businesses or other for-profit; Non-profit institutions; Small Businesses or organizations
Reporting Burden: Responses: 1,100; Burden Hours: 1,650
Recordkeeping Burden: Recordkeepers: 1,100; Burden Hours: 88

Abstract: The Validation Roster will be used to verify data previously submitted by institutions participating in the Pell Grant Program through the Alternate Disbursement System (ADS)

and to reconcile accounts for the ADS system

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Evaluation of the Impact of the Projects With Industry Program as It Relates to the Competitive Employment of Disabled Individuals
Agency Form Number: B20–5P
Frequency: One time only
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions
Reporting Burden: Responses: 1,017; Burden Hours: 1,057.6
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Rehabilitation Act of 1973, as amended by Pub. L. 98–221, mandates a comprehensive evaluation of the Projects With Industry (PWI) program and a report to Congress by February 1, 1986. All PWI projects and a sample of PWI participants and employers will be surveyed to evaluate the operations and effectiveness of the PWI program in assisting persons with disabilities to obtain competitive employment.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: College and University Libraries Survey, Fall 1984
Agency Form Number: ED 2300–5
Frequency: Biennially
Affected Public: Non-profit institutions
Reporting Burden: Responses: 3,450; Burden Hours: 3,278
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey will provide information on academic libraries that will enable Federal agencies to administer library programs and to evaluate the condition of libraries. The data are also needed by State library agencies, library administrators, and library associations to appraise and compare library resources, to develop accreditation criteria and to evaluate markets for library materials.

Type of Review Requested: New
Title: National Assessment of Educational Progress—The Foundations of Literacy: A Description of Fundamental Knowledge of U.S. History and Literature
Agency Form Number: ED 2371–17
Frequency: Non-recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden: Responses: 72,000; Burden Hours: 1,188
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: Congress mandated the collection of National Assessment survey data. Exercises in U.S. History and Literature are to be field tested in 1985 and the results will be used to select exercises for the 1985–86 Assessment. Respondents will be 17 year old, eleventh-grade students. The 1985–86 Assessment will be used by the National Assessment of Educational Progress (NAEP) and by the Excellence in Education Network, a project which is funded by the National Endowment for the Humanities.

Type of Review Requested: New
Title: Fast Response Survey System—Survey of School Districts on High School Academic Requirements and Initiatives
Agency Form Number: ED 2379–23
Frequency: Non-recurring
Affected Public: Local educational agencies
Reporting Burden: Responses: 600; Burden Hours: 300
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey will be used by the National Institute of Education to determine the level of local educational agency initiatives and to identify programs and issues that promote excellence in education.

Type of Review Requested: Revision
Title: 1985 Survey of 1983–84 College Graduates
Agency Form Number: ED 2385
Frequency: Biennially
Affected Public: Individuals or households
Reporting Burden: Responses: 18,400; Burden Hours: 3,864
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This survey is conducted biennially by the National Center for Education Statistics to study the post degree employment and education experiences of recent college graduates. It is also used to produce a report on the supply and demand of persons newly qualified to teach and on the status of other new college graduates in the job market.

[FR Doc. 85–7737 Filed 3–29–85; 8:45 am]
BILLING CODE 4000–01–M

Office of Elementary and Secondary Education

School Construction in Areas Affected by Federal Activity; Cutoff Date Notice for the Transmittal of Applications for Fiscal Year 1985

Applications are invited for new projects under the School Construction Program.

Authority for this program is contained in Pub. L. 81–815, school construction in areas affected by Federal activities.

(20 U.S.C. 631–647)

Notice is given that the Secretary of Education has established a cutoff date for the transmittal of applications for increase periods ending June 1985 or June 1986 for assistance under Sections 5 and 9 of Pub. L. 81–815. (An increase period is a period of four consecutive regular school years during which a school district has experienced a substantial increase in school membership as a result of new or increased Federal activities.) This cutoff date also applies to applications for new projects under Section 14 of Pub. L. 81–815, and to new applications for supplemental assistance under Section 8 of Pub. L. 81–815. (Section 14 authorizes assistance for certain school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property. Section 8 authorizes assistance that supplements certain awards made under Sections 5, 9, and 14 of Pub. L. 81–815.)

Approval of these applications is subject to availability of funds.

Cutoff Date for Transmittal of Applications: Applications must be mailed or hand delivered to the U.S. Secretary of Education from the State educational agencies on or before July 1, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the Secretary of Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2107A, Washington, D.C. 20202–6272.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legibly mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office. An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new project will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, 400 Maryland Avenue, SW., Room 2107A, Washington, D.C.

A hand-delivered application will be accepted between 8:00 a.m. and 4:30 p.m. (Washington, D.C., time) daily, except Saturday, Sundays, and Federal holidays. A hand-delivered application will not be accepted after 4:30 p.m. on the cutoff date.

Program Information: Federal funds are provided for the construction or temporary provision of urgently needed minimum school facilities in school districts which have had substantial increases in school membership of children who reside on Federal property or reside with a parent who is either in the Uniformed Services of the United States or who is employed on Federal property. Federal funds are provided for construction of needed minimum school facilities in school districts which serve children residing on Indian lands, or which are significantly burdened by the presence of nontaxable Federal property.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to States and local officials by requiring Federal agencies to accommodate States and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12373. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

State	
Alabama	New Mexico
Arizona	New York
Arkansas	North Carolina
California	North Dakota
Colorado	Ohio
Connecticut	Oklahoma
Delaware	Oregon
District of Columbia	Pennsylvania
Florida	Rhode Island
Hawaii	South Carolina
Illinois	South Dakota
Indiana	Tennessee
Iowa	Texas
Kansas	Utah
Louisiana	Vermont
Maine	Virginia
Maryland	Washington
Massachusetts	West Virginia
Michigan	Wisconsin
Mississippi	Wyoming
Missouri	Guam
Montana	Northern Mariana Islands
Nebraska	Puerto Rico
Nevada	Trust Territory
New Hampshire	Virgin Islands
New Jersey	

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate Stae single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by *September 3, 1985* to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.040, 400 Maryland Ave, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application forms: Application forms and instructions may be obtained from the appropriate State educational agency which serves the applicant local educational agency.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competitions.

(Approved by the Office of Management and Budget under control number 1810–0036)

Applicable regulations: The regulations applicable to the program are:

(a) Regulations governing the School Construction Program (34 CFR Part 221).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 79).

(20 U.S.C. 633)

(Catalog of Federl Domestic Assistance No. 84.040, School Assistance in Federally Affected Areas-Construction)

Dated: March 27, 1985.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85–7738 Filed 3–29–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Request for Comments on the Public Utility Regulatory Policies Act Annual Report on Electric and Gas Utilities

AGENCY: Energy Information Administration DOE.

ACTION: Request for Comments on the Public Utility Regulatory Policies Act (PURPA) Annual Report on Electric and Gas Utilities, Form ERA–166.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Energy (DOE), through its Energy Information Administration (EIA), conducts a consultation program to provide the general public with an opportunity to comment on proposed and continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

At this time, EIA requests comments on the continuing use of the PURPA Annual Report on Electric and Gas Utilities form. The form is described in the Supplementary Information Section of this Notice. Interested persons are asked to review the form and its instructions and provide comments to the information contact descibed below.

EFFECTIVE DATE: Written comments must be submitted on or before May 1, 1985.

ADDRESS: Comments should be sent to Mr. Steven Mintz at the address listed immediately below.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the form or instructions contact: Mr. Steven Mintz (RG–22), Economic Regulatory Administration, Department of Energy, Mail Station: GA–007, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–9506.

SUPPLEMENTARY INFORMATION:

I. Background

The EIA announces a proposed extension of the Form ERA–166, "PURPA Annual Report on Electric and Gas Utilities." This form continues the annal collection of data pursuant to sections 116(a) and 309(a) of PURPA. These sections require State regulatory authorities and certain nonregulated utilities to submit to the DOE annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. The information requested in Form ERA–166 is required annually from all electric and gas utilities covered by the provisions of PURPA sections 102(c) and 301(d). The form provides DOE with the only readily available source of data with which to access utility progress in considering the ratemaking and other regulatory standards.

The form provides information such as general questions on the State regulatory authority or nonregulated utility, questions pertaining to the consideration status of each of the eleven standards, and standard specific questions. The data from Form ERA–166 is summarized and analyzed by the Economic Regulatory Administration and serves as the basis for the annual reporting requirement to the President and Congress pursuant to sections 116(b) and 309(b) of PURPA.

II. Comment Procedures

The EIA invites prospective respondents and users of the data from this collection to comment within 30 days of the publication of this notice. The following general guidelines are provided to assist in the responses.

(As a potential data provider:)

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can the data be submitted in accordance with the response time specified in the instructions?

D. How many hours, including time for computation, preparation and administrative review, will it take your organization to complete and submit the form?

E. What is the estimated cost of completing the form, including direct and indirect costs associated with the data collection? Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP, and other administrative costs, directly attributable to providing this information.

F. Do you know of other Federal, State, or local agencies that collect similar data? (If yes, please identify.)

G. How can this form be improved?

(As a potential data user:)

A. Can your company analysts use data at the levels of detail indicated on the form?

B. For what purpose would you use these data? (Be specific.)

C. How could the form be improved to better meet your specific data needs?

D. Are there alternative sources of data and do you now use them? What are their deficiencies?

EIA is also interested in receiving comments from persons as to their views on the need for the collection of this information. Comments or summaries of comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, DC, on March 28, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 85–7644 Filed 3–29–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 6523–003]

Campbell Development, Inc.; Surrender of Preliminary Permit

March 20, 1985.

Take notice that Campbell Development, Inc., Permittee for the proposed North Lone Pine Creek Hydro Project No. 6523, has requested that its preliminary permit be terminated. The permit was issued on December 29, 1982, and would have expired December 31, 1985. The project would have been located on the North Lone Pine Creek in Larimer County, Colorado. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on March 5, 1985, and the preliminary permit for Project No. 6523 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7651 Filed 3–29–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP85–350–000, et al.]

Natural Gas Certificate Filings; El Paso Natural Gas Company et al.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company.

[Docket No. CP85-350-000]

March 25, 1985.

Take notice that on March 11, 1985, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-350-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization under the certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, to install and operate a sales meter station in El Paso County, Texas, to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale in Homestead Meadows (Homestead), all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

It is stated that El Paso presently sells and delivers natural gas to SUG for distribution and resale to consumers situated in various communities and areas in the State of Texas, pursuant to a service agreement dated September 1, 1959, between El Paso and SUG. It is stated that El Paso received a written request from SUG for natural gas service at a location on El Paso's existing 26-inch California line and 30-inch California first loop line in El Paso County, Texas. The natural gas would be utilized to serve residential and commercial space-heating requirements of consumers in an unincorporated area in El Paso County, east of the City of El Paso, Texas.

El Paso proposes to install a 1-inch sales tap and valve assembly and one American 250B positive meter on El Paso's existing 26-inch California line and 30-inch California first loop line to accommodate the subject request for service. It is stated that SUG projects the estimated annual and peak-day deliveries required to serve Homestead during the third full year of service to be 122,907 Mcf and 1,001 Mcf, respectively. El Paso indicates that SUG would install a distribution system to serve the Homestead area.

El Paso states that the additional quantities of gas to be delivered would be sold by El Paso to SUG for resale to Homestead in order to accommodate projected Priority 1 and 3 requirements. It is stated that the projected Priority 1 load growth, would not alter SUG's entitlements under El Paso's Permanent Allocation Plan approved in Docket No. RP72-6, *et al.*

El Paso submits that the anticipated Priority 3 load growth would be accommodated within the existing monthly average day end-use profiles that currently limit the quantities available to SUG from El Paso for service to Priority 3 requirements under the operation of El Paso's Permanent Allocation Plan.

Comment date: May 9, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP82-483-006]

March 25, 1985.

Take notice that on March 11, 1985, Colorado Interstate Gas Company (Petitioner), P.O. Box 1087, Colorado Springs Colorado 80944, filed in Docket No. CP82-483-006 a petition to amend further, the order of November 26, 1982, as amended on January 14, 1985, issuing a certificate of public convenience and necessity in Docket No. CP82-483-000 pursuant to section 7(c) of the Natural Gas Act by deleting authorization for the operation of two supply delivery points for the receipt of natural gas by Petitioner for Wycon Chemical Company (Wycon), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Wycon has been purchasing natural gas from Mountain Fuel Supply Company and its successor in interest, Mountain Fuel Resources, Inc. (Mountain Fuel), pursuant to the terms of a gas purchase and sale agreement dated June 3, 1982, as amended. It is also stated that Wycon and Petitioner entered into a gas transportation agreement dated March 16, 1982, as amended, which agreement constitutes Rate Schedule X-44 of Petitioner's FERC Gas Tariff. Pursuant to the terms of the transportation agreement, Petitioner receives gas from Mountain Fuel for the account of Wycon at the Kanda and Green River delivery points in Sweetwater County, Wyoming, it is indicated. Petitioner states that such gas is then transported for ultimate redelivery to Wycon's Cheyenne, Wyoming, facilities.

It is indicated that Wycon, having secured alternative sources of supply which are currently being transported by Petitioner, has terminated its gas purchase contract with Mountain Fuel. It is further indicated that Mountain Fuel has filed, in Docket No. CP85-188-000, for authority to abandon the service provided for Wycon through the Kanda and Green River delivery points. Therefore, Petitioner requests deletion of the authorization to operate the Kanda and Green River delivery points under the agreement between Petitioner and Wycon. Petitioner states that no facilities would be abandoned under this proposal.

Comment date: April 15, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Alabama-Tennessee Natural Gas Company

[Docket No. CP85-359-000]

March 25, 1985.

Take notice that on March 12, 1982, Alabama-Tennessee Natural Gas Company (Applicant) P.O. Box 918, Florence, Alabama 35630, filed in Docket No. CP-85-359-000 an application pursuant to section 7 of the Natural gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Comment date: April 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

Northwest Central Pipeline Corporation

[Docket No. CP85-313-000]

March 26, 1985.

Take notice that on February 25, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288 Tulsa, Oklahoma 74101, filed in Docket No. CP85-313-000 an application pursuant to section 7(c) of the Natural Gas Act for limited-term certificate of public convenience and necessity authorizing the continued transportation of natural gas for Georgia-Pacific Corporation (Georgia-Pacific) beyond June 30, 1985, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to continue transporting gas for Georgia-Pacific, as presently authorized under prior notice in Docket No. CP85-149-000, beyond the June 30, 1985, date imposed by Order No. 234-B under the blanket certificate program. It is stated that the term of the transportation agreement runs for a period of one year which began October 30, 1984, and would extend to October 29, 1985, and month to month thereafter until terminated by either party.

It is stated that Applicant would continue to transport gas which Georgia-Pacific purchases from Williams Gas Supply Company (Williams) at points in

Pawnee, Washington, Payne and Nowata Counties, Oklahoma, to Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), in Barton County, Kansas. Applicant states that Northern would continue to deliver the gas to Panhandle Eastern Pipe Line Company (Panhandle), which in turn would continue to deliver it to Central Illinois Public Service Company (CIPS) for final delivery to Georgia-Pacific. It is submitted that the interruptible service of 1,500 Mcf of natural gas per day is provided for use in Georgia-Pacific's paper mill in Taylorville, Illinois. Applicant submits that this transportation service does not significantly alter its system operations and that CIPS states that it has sufficient capacity to transport gas to Georgia-Pacific without detriment or disadvantage to its other customers.

Applicant states that, in consideration of the transportation service rendered by Applicant, Georgia-Pacific shall compensate Applicant in accordance with the then-effective rates and provisions, including added incentive charge, set forth from time to time in Applicant's F.E.R.C. Gas Tariff, Original Volume No. 2.

Comment date: April 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-358-000]

March 28, 1985.

Take notice that on March 12, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-358-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 128 horsepower compressor unit located in Beaver County, Oklahoma, all or more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to declining volume production, one 128 horsepower compressor unit is no longer needed at the Beaver County No. 10 gathering station.

Northern proposes to utilize said compressor elsewhere on Northern's system or sell it to a potential buyer.

Comment date: April 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Consolidated Gas Transmission Corporation

[Docket No. CP85-355-000]

March 28, 1985.

Take notice that on March 12, 1985, Consolidated Gas Transmission Corporation (Consolidated) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-355-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add four new delivery points to Hope Gas, Inc. (Hope), an existing customer, and to construct and operate apurtenant measuring and regulating facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Consolidated proposes to add new delivery points to Hope at the following locations on its pipeline system:

(1) Line No. H-171 near the community of Chelyan in Cabin Creek, Kanawha County, West Virginia, for estimated annual deliveries of approximately 1,603,500 dekatherms equivalent of natural gas;

(2) Line No. TL-404 near the community of Proctor in Proctor District, Wetzel County, West Virginia, for estimated annual deliveries of approximately 279,000 dekatherms equivalent of natural gas;

(3) Line No. TL-440 near the community of New Martinsville District, Wetzel County, West Virginia, for estimated annual deliveries of approximately 278,000 dekatherms equivalent of natural gas; and,

(4) Line No. TL-255 near the community of Ripley, Ripley District, Jackson County, West Virginia, for estimated annual deliveries of approximately 212,000 dekatherms equivalent of natural gas.

Consolidated states that Hope has requested these delivery points and quantities to meet increases in its market requirements and that its requirement-type service to Hope, under Rate Schedule RQ of its FERC Gas Tariff, Original Volume No. 1, permits such an increase in deliveries. Consolidated states that Hope has advised it that the gas it will purchase at these delivery points will be sold to a public utility customer in West Virginia to meet its system supply requirements and that such sale will be in intrastate commerce and subject to the jurisdiction of the Public Service Commission of West Virginia.

Comment date: May 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gulf Transmission Company

[Docket No. CP85-328-000]

March 28, 1985.

Take notice that on March 4, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-328-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Natural on an interruptible, best-efforts basis up to 8,000 Mcf of natural gas per day and such further volumes as Applicant agrees to accept, pursuant to a gas transportation agreement dated November 12, 1984. Applicant submits that Natural is purchasing gas produced from Main Pass Block 77, offshore Louisiana. It is stated that Natural would transport or cause the transportation of this gas from offshore Louisiana to the point of receipt at the interconnection of Applicant's and Sea Robin Pipeline Company's facilities located in Vermilion Parish, Louisiana. Applicant states that it would receive Natural's volumes of gas for transportation at the point of receipt and redeliver thermally equivalent volumes to Natural, by displacement, either at the tailgate of Texaco Inc.'s Henry processing plant, located in Vermilion Parish, Louisiana (Henry point of delivery) or at existing Measuring Station No. 426 connecting the facilities of Applicant and Natural in Cameron Parish, Louisiana (Cameron point of delivery). Deliveries would be made at the Cameron point of delivery only when deliveries cannot be made at the Henry point of delivery, it is stated. Applicant states that the volumes delivered would be reduced to reflect the retainage of 1.2 percent of the total volumes of gas received at the point of receipt for Natural's *pro rata* share of gas used as fuel and unaccounted-for volumes.

It is stated that Natural would pay Applicant 6.20 cents per Mcf for gas received at the point of receipt for transportation to the Henry point of delivery and would pay Applicant 8.56 cents per Mcf for gas received at the point of receipt for transportation to the Cameron point of delivery.

Applicant submits that the transportation service commenced on January 4, 1985, pursuant to

authorization granted in Docket No. CP80–105 in Docket No. ST85–456–000 and that the service would continue in effect for a period of eight years from the date of initial receipt of gas and from year to year thereafter.

Comment date: April 16, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Columbia Gas Transmission Corporation

[Docket No. CP85–340–000]

March 28, 1985.

Take notice that on March 6, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–340–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Briggs Division of The Celotex Corporation (Briggs) under the certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 310 million Btu equivalent of natural gas per day for Briggs through June 30, 1985. Columbia states that the gas to be transported would be purchased from Yankee Resources, Inc. (Yankee), and would be used as process gas in Briggs' Somerset, Pennsylvania, plant.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

It is indicated that Columbia has released certain gas supplies of Yankee and that these supplies are subject to the ceiling price provisions of Sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Briggs has made arrangements to purchase this released gas from Yankee. Columbia states that it would receive the gas from Yankee and redeliver the gas to Columbia Gas of Pennsylvania, Inc. (COP) the distribution company serving Briggs, near Somerset, Pennsylvania.

Columbia states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within COP's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of COP's TDE's. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted for gas. In addition, Columbia states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: May 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7855 Filed 3–29–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TC85–11–000]

Mississippi River Transmission Corp.; Proposed Tariff Change

March 26, 1985.

Take notice that on March 15, 1985, Mississippi River Transmission Corporation (Mississippi), 9900 Clayton Road, St. Louis Missouri 63124, tendered for filing in Docket No. TC85–11–000 the following revised tariff sheets in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective April 15, 1985:

Fourth Revised Sheet No. 75
Third Revised Sheet No. 76
Fourth Revised Sheet No. 78
Third Revised Sheet No. 79

Mississippi states that this filing reflects changes in the Index of Protected Essential Agricultural Use (Step 10) Entitlements and in the Index of High Priority (Step 11) Entitlements. The proposed tariff sheets would be effective during the period, April 15, 1985, through October 31, 1985, pursuant to paragraph 8.2(a)(i) of Mississippi's curtailment plan, it is explained.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before April 5, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7652 Filed 3-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-29-004]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

March 25, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on March 19, 1985 tendered for filing Second Substitute Thirty-Second Revised Sheet No. 12, Third Substitute Thirty-Third Revised Sheet No. 12 and Third Substitute Thirty-Fourth Revised Sheet No. 12 to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective dates of these tariff sheets are November 1, 1984, February 13, 1985 and March 1, 1985, respectively. The revised tariff sheets reflect a rate decrease in accordance with Section 4.1(c) of Transco's Rate Schedule LSS, effective November 1, 1984 which is attributable to reduced rates for service rendered by Transco's supplier, Consolidated Gas Transmission Corporation (Con Gas).

As a result of Con Gas' filing of November 19, 1984 in Docket No. RP82-115-000 which resulted in a reduction in Con Gas' monthly capacity charge for service to Transco under Con Gas' Rate Schedule GSS, Transco is reducing the monthly capacity charge from 5.29¢ per dt of annual storage capacity to 5.16¢ under Transco's Rate Schedule LSS.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 2, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7653 Filed 3-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-369-000, et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Company et al.

March 22, 1985.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP85-369-000]

Take notice that on March 15, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-369-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of American Cyanamid Company (Shipper) under the certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport up to 9,500 Mcf of natural gas per day and up to 3,375,000 Mcf of natural gas per year, on behalf of Shipper. It is stated that Shipper is purchasing gas from Libra Energies, Inc., an intrastate pipeline, and Wheless Industries, Inc., a producer of natural gas. It is further stated that the Shipper would cause the natural gas to be delivered to 24 receipt points in Louisiana and Texas as designated in the gas transportation agreement dated December 20, 1984. United proposes to transport and deliver thermally equivalent volumes to Shipper's facilities located near Pensacola, Escambia County, Florida.

United explains that its proposed transportation charge would be based upon United's Northern Zone Rate which includes components for gas consumed in the operation of United's pipeline system and the Gas Research Institute surcharge. Such rate is currently 43.19 cents per Mcf, it is asserted. United states there is no added incentive charge for the proposed service.

Shipper would utilize the natural gas transported for boiler fuel use at its Santa Rosa plant located in Escambia County, Florida, it is stated. United further states that it would not construct or add to its existing facilities to provide this service. United proposes to perform this service for a term not to extend beyond June 30, 1985.

Comment date: May 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-309-000]

Take notice that on February 25, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-309-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to modify an existing delivery point to a accommodate natural gas deliveries to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to modify an existing delivery point for the delivery of natural gas to Peoples to accommodate the increased crops drying needs of one of Peoples' customers, Joe Auge, d/b/a Farmers Mill and Elevator (Joe Auge), in Dakota County, Minnesota. Applicant states that it would install an additional 7M meter at the existing delivery point to accommodate these needs. It is said that the modifications to existing facilities would allow deliveries of natural gas to Peoples for Joe Auge to increase from 270 Mcf on a peak day and 3,422 Mcf annually to 990 Mcf on a peak day and 20,811 Mcf on an annual basis.

Applicant estimates the cost of the facility to be $4,060.

Comment date: May 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP82-50-010]

Take notice that on March 7, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP82-50-010, a petition to amend the order issued May 19, 1982, as amended, in Docket No. CP82-50-000 pursuant to section 7(c) of the Natural

Gas Act so as to authorize the transportation on a best-efforts basis on behalf of United Gas Pipe Line Company (United) of natural gas assigned or released by United to third parties (release gas), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to a letter agreement dated June 15, 1984, to the gas transportation agreement dated October 20, 1982 (agreement), Natural states it has agreed to receive release gas at the specific existing receipt points in the Anadarko Basin area of Texas, Oklahoma and Kansas under the agreement and transport such gas on behalf of United on a best-efforts basis to existing redelivery points. It is explained that such release gas would be excess deliverability purchased by third parties to whom United assigns or releases its contractual rights.

Natural states that the daily volumes of release gas transported would be limited to the volumes provided under the interim period of the agreement, not to exceed a daily volume equal to the lesser of the volume of gas attributed to the specific wells or interest, or 137.5 billion Btu less the gas volumes owned by and transported for United.

Natural states that its obligation to transport the release gas is on a best-efforts basis and that in the event Natural is unable to receive all or a portion of the release gas for transportation, the total monthly demand charges paid by United would not be reduced.

Natural submits that the transportation of release gas would continue for a period of one year following the commencement date and thereafter, unless cancelled by either party's giving six month advanced written notice to the other. Natural requests abandonment authority upon the expiration of the transportation arrangement.

Comment date: April 12, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Great Lakes Gas Transmission Company

[Docket No. CP85-333-000]

Take notice that on March 4, 1985, Great Lakes Gas Transmission Company (Applicant), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP85-333-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a gas transportation service for TransCanada PipeLines Limited (TransCanada) and construction and operation of appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that TransCanada has requested the transportation of additional volumes of gas to be delivered at the point of interconnection of the facilities of TransCanada and Applicant at Sault Ste. Marie, Michigan, for a total winter quantity at that point of 102,000 Mcf per day.

Applicant further states that in order to perform the service, it proposes to construct approximately 15.12 miles of 12-inch loop pipeline parallel to its existing line presently serving Sault St. Marie and Rudyard, Michigan, and Sault Ste. Marie, Ontario.

Applicant alleges that to provide this service, the Great Lakes-TransCanada gas transportation contract dated September 12, 1967, as amended, would be further amended to increase the maximum daily delivery by 10,000 Mcf per day.

Applicant states that the estimated cost of constructing the facilities is $3,907,300 which would be financed by internally generated funds together with short-term bank borrowing, if necessary.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Company

[Docket No. CP85-344-000]

Take notice that on March 7, 1985, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP85-344-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to operate certain existing metering facilities under the certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that in 1946 it constructed a non-jurisdictional camp fuel metering facility (Jal Camp Meter Station) and a 2⅜-inch fuel line from its Jal No. 1 plant to the Jal No. 2 propane line to provide natural gas service to company housing units (Jal Camp) near the City of Jal in Lea County, New Mexico. Applicant also states that, by order issued August 21, 1969, in Docket No. CP69-23, it was granted authorization to continue the operation of existing facilities for the sale and delivery of natural gas to Jal Gas Company, Inc. (Jal Gas), for resale and distribution in Jal, New Mexico.[1]

Applicant indicates that the Jal Camp housing is no longer needed and that the houses may be purchased by the employees or sold to qualified buyers. It is stated that Jal Gas proposes to acquire the Jal Camp distribution facilities commencing at the existing Jal Camp Meter Station on Applicant's 2⅜-inch fuel line. Jal Gas would receive up to 162 Mcf of gas per day, pursuant to the Service Agreement, from Applicant at the metering facility in order to continue service to Jal Camp, it is averred. Applicant proposes to charge Jal Gas the currently effective Rate Schedule X-1 rate as reflected in its FERC Gas Tariff for this service.

6. East Tennessee Natural Gas Company

[Docket No. CP85-346-000]

Take notice that on March 7, 1985, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP85-346-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline loop to enhance the integrity of its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate approximately 3,700 feet of 22-inch pipeline loop across the Melton Hill Lake on the Clinch River in Knox and Anderson Counties, Tennessee. Applicant avers that it has reviewed its entire system and concluded that its system's integrity would be substantially enhanced with the looping of certain major river crossings. Applicant further avers that the proposed crossing is at a very critical location on its system in that, based on market analysis of peak and average deliveries, some 58 percent of its total marketable gas passes through this crossing. Applicant contends that while some of its downstream customers have peaking supplies which could be utilized on an emergency basis, it would be unable to serve over half its market in the event of a failure in the Clinch River. Applicant further contends that failure on the service in the Clinch River would

[1] It is explained that deliveries by Applicant to Jal Gas are made pursuant to the currently effective service agreement (Service Agreement) dated December 15, 1960, which provides for the sale and delivery of natural gas to Jal Gas for resale and distribution in certain areas in New Mexico. Comment date: May 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

have a severe, irreparable impact on many customers and cause considerable economic hardship and human suffering.

Applicant asserts that the proposed facilities would not increase the throughput or alter the capacity of its system. Applicant estimates the cost to construct of the proposed facilities to be $2,040,000. Applicant proposes to finance the cost from funds on hand or generated internally within Tenneco Inc.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Consolidated Gas Transmission Corporation

[Docket No. CP85-354-000]

Take notice that on March 12, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-354-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the limited-term off-system sale in interstate commerce of natural gas for resale to Orange and Rockland Utilities, Inc. (O&R), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell for resale up to 30,000 dt equivalent of natural gas per day to O&R from the date following the receipt of regulatory authorization through February 28, 1986. Applicant states that the sale would be made on an interruptible basis at a rate equivalent to the average unit cost at 100 percent load factor under Applicant's Rate Schedule RQ of its FERC Gas Tariff, Original Volume 1, which is presently $3.7600 per dt. Applicant proposes to deliver the gas for the account of O&R at existing points of interconnection between the facilities of Applicant and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee). Applicant further states that the gas would be transported for O&R by Tennessee on a self-implementing basis pursuant to section 311(a) of the Natural Gas Policy Act of 1978 and the Commission's Regulations. It is stated by Applicant that the subject natural gas is, and would be, surplus to the need of Applicant's present customers throughout the term of the proposed to be constructed.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Columbia Gulf Transmission Company

[Docket No. CP85-323-000]

Take notice that on March 1, 1985, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP85-323-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation on an interruptible basis of up to 3,000 Mcf of natural gas per day for Champlin Petroleum Company (Champlin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 3,000 Mcf of gas per day, as well as excess volumes, for Champlin on a best-efforts interruptible basis for a term of five years. It is stated Applicant would receive the gas at the point of interconnection of the facilities of Applicant and Trunkline Gas Company in St. Mary Parish, Louisiana. It is further stated that Applicant would transport the gas and deliver it to Texas Gas Transmission Corporation (Texas Gas), for the account of Champlin, at an interconnection of the facilities of Applicant and Texas Gas in Acadia Parish, Louisiana.

Applicant states it would charge Champlin 6.60 cents per Mcf of gas received from Champlin and that Applicant would retain 1.82 percent of the gas for fuel and unaccounted-for volumes.

Applicant submits that the proposed transportation is the most practical and economical way to make Champlin's gas supplies available to Champlin.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Columbia Gas Transmission Corporation

[Docket No. CP85-342-000]

Take notice that on March 6, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-342-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Rocco Feeds, Inc. (Rocco Feeds), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 220 million Btu of natural gas per day, less retainage, for Rocco Feeds through June 30, 1985. Columbia states that the gas to be transported hereunder would be used as boiler fuel in Rocco Feeds' Harrisonburg, Virginia, plant.

Columbia indicates that the gas to be purchased involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of sections 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas from Energy Management, Inc. and redeliver such gas to Columbia Gas of Virginia, Inc., (distribution company), which in turn redelivers the gas to Rocco Feeds.

Columbia states that it would charge its current rate of 29.93 cents per dt equivalent of volumes that are within the distribution company's total daily entitlement, or its current rate of 41.27 cents per dt equivalent of volumes that are in excess of distribution company's total daily entitlement, exclusive of company-use and unaccounted-for gas. It is further stated that Columbia would retain for company-use and unaccounted-for gas a percentager of the gas delivered hereunder as reflected in Columbia's rate filings; this percentage is currently 2.43 percent.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end/user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gas Transmission Corporation

[Docket No. CP85-341-000]

Take notice that on March 6, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-341-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Industrial Platers, inc. (Industrial Platers), under the certificate issued in

Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 148 million Btu equivalent of natural gas per day for Industrial Platers through June 30, 1985. Columbia states that the gas to be transported would be purchased from Energy Management, Inc. (EMI), and would be used as boiler fuel in Industrial Platers' Columbus, Ohio, plant.

It is indicated that Columbia has released certain gas supplies of EMI and that these supplies are subject to the ceiling price provisions of section 103, 107, and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Industrial Platers has made arrangements to purchase this released gas from EMI. Columbia states that it would receive the gas from EMI and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving Industrial Platers, near Columbus, Ohio.

Columbia states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu, provided the volumes are within COH's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of COH's TDE's. Columbia further states it would retain 2.43 percent of the total unaccounted-for gas. In addition, Columbia states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.

[Docket No. CP85–324–000 and CP85–324–001]

Take notice that on March 1, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85–324–000 an application, as supplemented March 13, 1985, in Docket No. CP85–324–001, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for SCM Corporation (SCM), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 12,000 million Btu equivalent of natural gas per day on behalf of SCM through June 30, 1985. It is stated that the gas to be transported would be purchased from The Resource Group, Inc., and would be used as boiler fuel and as fuel for sulfate and chloride plant heating equipment. It is explained that Columbia Gulf would receive the gas at existing points of receipt in Louisiana from United Gas Pipe Line Company and deliver it to Columbia Transmission which would deliver it to Baltimore Gas and Electric Company, the distribution company serving SCM.

Applicants also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Columbia Transmission states that it would charge rates set forth in its Rate Schedule TS–1; Columbia Gulf states that it would charge rates set forth in its Rate Schedule T–2. Further, Columbia Transmission states that it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas as set forth in Rate Schedule TS–1; Columbia Gulf states that it would retain the applicable percentage as set forth in Rate Schedule T–2.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. Colorado Interstate Gas Company

[Docket No. CP85–311–000]

Take notice that on February 25, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–311–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate three new delivery points for the City of Fort Morgan, Public Service Company of Colorado, and Greeley Gas Company to provide additional service under the certificate issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it has sufficient capacity to render the proposed service without detriment or disadvantage.

It is indicated that the City of Fort Morgan's new delivery point would be known as the County Road S sales delivery point, which would service a larger asphalt plant in Morgan County, Colorado. CIG states that gas volumes are expected to rise from the present 25 Mcf per hour to 60 Mcf per hour maximum and that the maximum daily volume obligation (MDVO) is estimated at 505 Mcf.

It is also stated that the Public Service Company of Colorado proposed tap and delivery point would serve the Pinon market area in Pinon, Colorado. The MDVO is estimated at 30 Mcf, which would be used to serve residential and commercial customers.

CIG indicates that Greeley Gas Company's sales tap and delivery point would serve Fremont County, Colorado, Industrial Park. The MDVO usage is estimated to be 150 Mcf.

It is asserted that the gas volumes to be delivered are within the respective total daily entitlements of each existing customer. CIG states that it has sufficient capacity to render the proposed service without detriment or disadvantage to any of its other existing customers.

Comment date: May 5, 1985, in accordance with Standard Paragraph G at the end of this notice.

13. ANR Pipeline Company

[Docket No. CP85–329–000]

Take notice that on March 4, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85–329–000

an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a firm natural gas transportation service on behalf of Trunkline Gas (Trunkline), all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR states that it proposes to transport for Trunkline up to 14,000 Mcf of natural gas per day (contract demand) on a firm basis pursuant to a transportation agreement dated June 15, 1984. ANR states that it would receive natural gas for Trunkline's account, up to the contract demand, at a subsea value on the High Island Area Block A-355 lateral line, offshore Texas, and transport thermally equivalent volumes, less Trunkline's share of fuel, lost and unaccounted-for gas, to High Island Offshore System (HIOS) for the account of Trunkline at a manifold platform in High Island Area block A-343, offshore Texas. It is indicated that the term of the proposed firm transportation service is for an initial term of ten years from first deliveries and from year-to-year thereafter, unles cancelled by either party with six months prior written notice. It is explained that ANR is currently providing a best-efforts service on behalf of Trunkline to transport the subject gas pursuant Subpart G of Part 284 of the Commission's Regulations.

ANR states that as consideration for the service Trunkline would pay ANR a monthly demand charge of $2.55 per Mcf of contract demand.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

14. American Distribution Company, Inc.

[Docket No. CP85-361-000]

Take notice that on March 12, 1985, American Distribution Company, Inc. (ADC), 1234 Capital Bank Plaza, Houston, Texas 77002, filed in Docket No. CP85-361-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.222 of the Commission's Regulations (18 CFR 384.222) for a certificate of public convenience and necessity for blandet authorization to transport, sell or assign natural gas in interstate commerce under the Natural GAs Act as if ADC were an interstate pipeline as defined subject to the Commission's regulations in Subparts C, D and E of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ADC states that its rates, services and facilities are subject to the regulatory jurisdiction of the Railroad Commission of Texas and that it would comply with the conditions set forth in § 284.222(e) of the Commission's Regulations. ADC also states that because it commenced service on February 12, 1985, it is unable to supply the volumetric information required by § 284.222(c) of the Commission's Regulations.

ADC indicates that it intends to enter into mutually beneficial exchange agreements with interstate pipelines for which no rate will be charged. ADC also states that if in the future it wishes to charge for any transaction entered into under the blanket certificate, it would comply with the provisions of § 284.222(e) of the Commission's Regulations.

Comment date: April 12, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7650 Filed 3-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-295-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Bennington Power Associates et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

March 25, 1985.

Take notice that the following fillings have been made with the Commission:

1. Bennington Power Associates

[Docket No. QF85-295-000]

On March 11, 1985, Bennington Power Associates, (Applicant) of 37 Coats Street, Wellsville, New York 14895, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bennington, New Hampshire at the site of Monadnock Paper Mills. The facility will consist of two steam boilers and one extraction-condensing turbine generating unit. The net electric power production capacity will be 20 MW. Extraction steam produced from the facility will be utilized at the Monadnock Mills for further electric power production, mechanical drive and, drying paper products. The primary

energy source of the facility will be wood or coal. The facility's expected on-line date is April, 1987.

2. LEMCO-IPS

[Docket No. QF85-292-000]

On March 11, 1985, LEMCO Engineers, Inc. of 11933 Westline Industrial Drive, St. Louis, Missouri 63146 and Independent Power Systems International, Inc. of 321 North Lake Boulevard, Suite 210, North Palm Beach, Florida 33408, a joint venture Applicant known as LEMCO–IPS, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Archbald Borough, Lackawanna County, Pennsylvania. The facility will consist of a boiler used to produce high pressure steam to drive an extraction condensing steam-turbine generator. Low pressure steam extracted from the turbine will be used to heat water that will be circulated in a nearby produce greenhouse for heating purposes. The primary energy source will be culm, a waste product of anthracite coal mining. The electric power production capacity will be 18.77 megawatts. Construction is scheduled to be completed and commercial operation to begin by early 1987.

3. New York Zoological Society

[Docket No. QF85-290-000]

On March 8, 1985, the New York Zoological Society, Bronx Zoo, 185th Street & Southern Boulevard, Bronx, New York 10460, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Bronx Zoo cogeneration facility will consist of three dual-fueled reciprocating engine/generator sets generating approximately 2000 kW of electrical power. The facility will be primarily natural gas fired with distillate oil as the alternative fuel. Medium temperature hot water will be recovered and used for heating, cooling and domestic hot water.

Environmental review, in accordance and 24 CFR Part 58, was completed on January 30, 1985 for release of Urban Development Action Grant funds.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7657 Filed 3-29-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-374-000, et al.]

Electric Rate and Corporate Regulation Filings; Florida Power & Light Company et al.

March 25, 1985.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER85-374-000]

Take notice that on March 18, 1985, Florida Power & Light Company (FP&L) tendered for filing a document entitled Amendment Number Nine to Agreement to Provide Specified Transmission Service Between FP&L and Jacksonville Electric Authority (Rate Schedule FERC No. 60).

FP&L states that under Amendment Number Nine, FP&L will transmit power and energy for Jacksonville Electric Authority as is required in the implementation of its interchange agreement with the City of Tallahassee, Florida.

FP&L requests waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation

[Docket No. ER85-363-000]

Take notice that on March 13, 1985, American Electric Power Service Corporation (AEP) on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operating subsidiary, Modification No. 22 dated January 30, 1985 to the Operating Agreement dated June 14, 1962 between OPCO and the Cleveland Electric Illuminating Company (Cleveland Company). The Commission has previously designated the 1962 Agreement as OPCO's Rate Schedule FERC No. 31 and Cleveland Company's Rate Schedule FERC No. 1.

AEP states that Sections 1 and 2 of Modification No. 22 provide for an increase in the transmission demand rate for Short Term Power when OPCO is the supplying party to $0.46 per kilowatt per week and to $0.092 per kilowatt per day. Section 3 increases the Limited Term Power transmission demand rate when OPCO is the supplying party to $2.00 per kilowatt per month. The proposed rates included in this Modification No. 22 for Short Term and Limited Term Power are similar to the rates for Transmission Service provided by the AEP System which have been filed and accepted for filing by the Commission and are the same as the rates for Short Term and Limited Term Power transmission demand rates which have been filed with the Commission on behalf of OPCO. AEP requests an effective date of April 15, 1985, which will allow AEP to offer similar services at similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries as established in previous AEP filings, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Public Utilities Commission of Ohio.

Comment date: April 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. American Electric Power Service Corporation

[Docket No. ER85-373-000]

Take notice that on March 18, 1985, American Electric Power Service Corporation (AEP) tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) an agreement dated May 1, 1984 between OPCO and City of St. Marys, Ohio (St. Marys).

AEP states that St. Mary's is a Municipal Corporation of the State of Ohio and owns and operates an electric utility system in the city of St. Marys and presently is a patron of American Municipal Power-Ohio, Inc. (AMPO). AMPO is a not-for-profit organization existing under the laws of the State of Ohio for the benefit of municipal electric systems in Ohio which are patrons of AMPO, including St. Marys. This

Agreement was entered into for the purpose of establishing facilities for the delivery of Power and Energy Agreement which enable St. Marys to utilize the services, subject to the existing rates, presently in effect between AMPO and OPCO, due to St. Marys' standing as patron of AMPO.

AEP further states that this Agreement does not revise any rates between the parties.

AEP requests an effective date of May 31, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the City of St. Marys, Ohio, AMPO, and the Public Utilities Commission of Ohio.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Arkansas Power and Light Company

[Docket No. ER85-364-000]

Take notice that on March 14, 1985, Arkansas Power and Power Company (AP&L) tendered for filing the Tenth Amendment to the Power Coordination, Interchange and Transmission Service Agreement between AP&L and Arkansas Electric Cooperative Corporation (AECC). The amendment provides for an increase in capacity at one delivery point, the transfer of capacity at two delivery points, the addition of one point of delivery, and the abandonment of two points of delivery.

AP&L requests that the Commission waive any notice requirements.

Comment date: April 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER84-370-000]

Take notice that on March 15, 1985, Florida Power & Light Company (FP&L) tendered for filing the following documents:

Amendment Number Sixteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and New Smyrna Beach Utilities Commission.

Amendment Number Seventeen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and New Smyrna Beach Utilities Commission.

FP&L states that under Amendment Number Sixteen and Amendment Number Seventeen, FP&L will transmit power and energy for New Smyrna as is required in the implementation of its interchange agreements with Seminole Electric Cooperative, Inc. (Seminole) and City of Starke, Florida (Starke), respectively.

FP&L requests waiver of the Commission's notice requirements to allow the proposed Amendments to become effective immediately.

Copies of this filing were served on the City of New Smyrna Beach.

Comment date: April 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Gulf States Utilities Company

[Docket No. ER85-371-000]

Take notice that on March 15, 1985, Gulf States Utilities Company (Gulf States) tendered for filing proposed changes in its rate schedules regarding electric service to the Town of Erath, The Town of Gueydan, the City of Kaplan, and the City of St. Martinville, Louisiana (the Towns). The rate schedule changes do not provide for a rate increase.

Gulf States states that these contracts were entered into so that the Towns would cease to take service under Rate Schedule WSD (Wholesale Power at Distribution Voltage) and start to take service under Rate Schedule WST (Wholesale Power at Transmission Voltage). To qualify for the WST rate, the Towns agreed to pay a facilities charge of 2 percent per month of the allocated cost of the existing Gulf States substation and associated equipment (Rider A). With these changes, the Towns pay less for electric service.

Gulf States indicates that all necessary waivers of the Commission's rules be granted so that the changes in rate schedules from the WSD rate schedule to the WST rate schedule and Rider A to the WST rate schedule become effective as of March 15, 1983, for the Town of Erath, as of March 25, 1983, for the Town of Gueydan, as of February 22, 1983, for the City of Kaplan, and as of March 14, 1984, for the City of St. Martinville. Gulf States represents that granting the requested waivers would eliminate any uncertainty that might exist as to the status of the contracts being submitted for filing and should have no effect upon purchasers under other rate schedules.

Copies of the filing have been served on the Towns and upon the Louisiana Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Power and Light Company

[Docket No. ER85-366-000]

Take notice that on March 14, 1985, Iowa Power and Light Company (Iowa Power) tendered for filing a Council Bluffs Generating Station Unit 3 Electric Transmission and Substation Facilities Operating Agreement (Agreement) between Iowa Power, Atlantic Board of Waterworks and Electric Light and Power Plant Trustees (Atlantic), Cedar Falls Municipal Electric Utility (Cedar Falls), Central Iowa Power Cooperative, Inc. (CIPCO), Corn Belt Power Cooperative, Inc. (Corn Belt), Eastern Iowa Light and Power Cooperative, Inc. (EILP), and Iowa-Illinois Gas and Electric Company (Iowa-Illinois), dated July 1, 1981.

The Agreement pertains to outlet transmission related to Council Bluffs Generating Station Unit 3 and the manner in which the transmission facilities identified as Unit 3 Electric Transmission and Substation Facilities ("CB3 Transmission") would be owned, operated and maintained. An effective date of December 4, 1978 is requested for the Agreement, and waiver of the Commission's notice requirements are requested accordingly.

Iowa Power and Light Company states that in addition to providing for the operation of CB3 Transmission, the Agreement provides for the determination and establishment of capacity schedules CB3 Transmission and for assignment of such capacity schedules by a party to another party, or nonparty, including the associated rights, obligations, and charges. Iowa Power and Light Company further states the purpose of the proposed rate for assignment of such capacity schedules is to compensate the assigning parties for the costs of the portion of CB3 Transmission over which the capacity schedule flows.

Iowa Power and Light Company states that a copy of the filing has been mailed to each of the other parties to the Agreement, the Iowa State Commerce Commission, and the Illinois Commerce Commission.

Comment date: April 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Long Island Lighting Company

[Docket No. ER85-335-000]

Take notice that on March 4, 1985, Long Island Lighting Company (LILCO) tendered for filing as an initial rate schedule a transmission agreement between LILCO and the Power Authority of the State of New York (PASNY) where by LILCO agreed to wheel power sold by PASNY to an additional PASNY customer, the Grumman Corporation.

LILCO requests an effective date of October 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Comment date: April 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER85-369-000]

Take notice that on March 15, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Exhibits A and B, Revision No. 14 to the Transmission Agreement between Pacific and Western Area Power Administration (Western) under Pacific's FPC Rate Schedule No. 45.

Exhibits A and B to the Transmission Agreement dated May 16, 1962, between Pacific and Western is revised annually in accordance with Articles 15(a)(ii) and 18(a)(ii) of this Agreement, specifying commitments for service for a four-year rolling period.

Copies of the filing were supplied to Western and the Wyoming Public Service Commission.

Comment date: April 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Hampshire

[Docket No. ER85-365-000]

Take notice that on March 14, 1985, the Public Service Company of New Hampshire (PSNH) tendered for filing an amendment to paragraph (C) of Article IV of the June 30, 1959 power and transmission contract between PSNH and Central Maine Power Company (Central Maine). The changes are necessary to track identical changes made in a March 4, 1985 compliance filing by Yankee Atomic Electric Company (Yankee Atomic) in Docket No. ER84-654-000.

PSNH and Central Maine are both stockholders in Yankee Atomic, but, since Central Maine is not located in a state adjacent to Massachusetts, it is not entitled to purchase power directly from Yankee Atomic. Instead, PSNH purchases 9.5% of Yankee Atomic's output and resells it to Central Maine under the contract being amended by this filing. The arrangement is intended to flow through to Central Maine the same costs that PSNH pays Yankee Atomic. The payment provisions of the contract being amended by PSNH's filing are therefore the same as in the contract under which PSNH buys the power from Yankee Atomic.

On February 1, 1985 the Commission, in accepting a rate increase filed by Yankee Atomic in Docket No. ER84-654-001, required changes in the contract under which Yankee Atomic sells power to PSNH. On March 4, 1985 Yankee Atomic submitted its compliance filing making the changes. The same changes are incorporated in the amended payment provisions of PSNH's contract with Central Maine tendered for filing here. Article VIII of that contract permits PSNH to file these changes unilaterally.

PSNH requests that the present filing be accepted to become effective as of the same date as the changes filed by Yankee Atomic are permitted to become effective. PSNH requests waiver of the Commission's 60-day notice requirements.

Copies of this filing have been mailed to Central Maine, the New Hampshire Public Utilities Commission and the Maine Public Utilities Commission.

Comment date: April 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7656, Filed 3-29-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-406; FRL-2808-1]

Certain Companies; Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food additive petitions relating to the establishment, amendment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-406] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail:

Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM-16, William Miller.	Rm. 211, CM#2 (703-557-2600).	EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202.
PM-17, Timothy A. Gardner.	Rm. 207, CM#2 (703-557-2690).	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food additive (FAP) petitions relating to the establishment, amendment and/or withdrawal of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filing

FAP 5H5457. Roussel Uclaf, 163, Avenue Gambetta, 75020 Paris, France. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the insecticide tralomethrin: [1*R*,3*S*)3[(1′*RS*)(1′,2′,2′,2′-tetrabomoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its major metabolites, deltamethrin: (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and *trans*-deltamethrin: (1*S*,3*R*)-3(2,2-(dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester in or on the commodity cottonseed oil (crude and refined) at 0.16 part per million (ppm). (PM–17)

II. Amended Petition

PP 4F3110. American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. EPA issued a notice published in the **Federal Register** of January 30, 1985 (50 FR 4265) which announced that American Cyanamid Co. had submitted PP 4F3110 to the Agency proposing to amend 40 CFR 180.400 by establishing tolerances for residues of the insecticide (±) cyano (3-phenoxyphenyl)methyl (±)-4-(difluoromethoxy)-alpha-(1-methylethyl) benzeneacetate in or on the commodities field corn fodder (stover) and forage at 1.0 ppm, and field corn silage at 0.05 ppm.

Mobay has amended the petition by increasing the tolerance level on corn fodder (stover) and forage from 1.0 ppm to 3.0 ppm.

The proposed analytical method for determining residues is gas chromatography. (PM–17)

III. Petition Withdrawal

PP 1F2451. Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120. EPA issued a notice published in the **Federal Register** of March 3, 1981 (46 FR 14954) which announced that Mobay Chemical Corp. had submitted pesticide petition 1F2451 to the Agency proposing to amend 40 CFR 180.387 by establishing a tolerance for the combined residues of the insecticide 1-methylethyl 2-((ethoxy((1-methylethyl)amino)phosphinothioyl)oxy) benzoate and its cholinesterase-inhibiting metabolities 1-methylethyl(amino) phosphinoyl)oxy), benzoate, 1-methylethyl 2-((ethoxy(1-amino) phosphinothioyl)oxy) benzoate, and 1-methylethyl 2-((ethoxy(1-amino) phosphinothioyl)oxy) benzoate in or on the dry bulb of onions at 1.0 ppm.

Mobay Chemical Corp. has withdrawn this petition without prejudice to future filing in accordance with section 408 of the Federal Food, Drug and Cosmetic Act. (PM–16)

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)), 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: March 21, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–7661 Filed 3–29–85; 8:45 am]

BILLING CODE 6560-50-M

[AD–FRL–2807–4]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held on May 1 and 2, 1985, at the Sheraton University Center, Greenbriar Ballroom (2nd Floor), 2800 Middleton Avenue at Morreene Road and 15–501, Durham, North Carolina 27705. The commercial telephone number is (919) 383–8575.

The tentative agenda for the meeting is as follows:

May 1 (Wednesday)—9:00 a.m.

Coke Oven Emissions From Wet-Coal-Charged By-Product Coke Oven Batteries—Status Report to Committee, National Emission Standards for Hazardous Air Pollutants (Section 112 of the Clean Air Act).

Ammonium Sulfate Manufacture, Review of Standards of Performance for New Stationary Sources (Section 111 of the Clean Air Act).

Industrial Boilers—Sulfur Dioxide, New Source Performance Standards (Section 111 of the Clean Air Act).

May 2 (Thursday)—9:00 a.m.

Continuation of May 1—As Required.

Lead, Control Techniques Document (Section 108 of the Clean Air Act).

Plastic Parts for Business Machines—Surface Coating, New Source Performance Standards (Section 111 of the Clean Air Act).

All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by April 26, 1985. The commercial telephone number is (919) 541–5571, and the FTS number is 629–5571.

The dockets containing material relevant to coke oven emissions from wet-coal-charged by-product coke oven batteries (A–79–15), ammonium sulfate manufacture (A–84–47), industrial boilers-sulfur dioxide (A–83–27), and plastic parts for business machines-surface coating (A–83–50) are located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby-Gallery 1, 401 M Street, SW., Washington, DC 20460. The dockets may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Dated: March 24, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–7541 Filed 3–29–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting

Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the first meeting of the President's Advisory Committee on Mediation and Conciliation will be held on April 10, 1985, from 10:30 a.m. to 4:30 p.m. in the Maryland Room of the Mayflower Hotel, 1127 Connecticut Avenue, Northwest, Washington, D.C. 20036.

The functions of the Committee, established pursuant to Executive Orders 12462 and 12497, are to:

(1) Advise the President and the Director of the Federal Mediation and Conciliation Service on methods of improving the efficiency of arbitration of disputes arising under collective bargaining agreements, and on other matters, not involving particular labor disputes, of general significance to strengthening and increasing the effectiveness of bilateral dispute resolution mechanisms under such agreements, and

(2) Review regulations promulgated by the Federal Mediation and Conciliation Service that affect established arbitration and mediation procedures, and offer their findings and recommendations in a report to the President and the Director of the Federal Mediation and Conciliation Service.

The meeting will be open to the public. Interested persons may file statements with the Committee. Subject to reasonable Committee procedures, interested persons may also make oral statements on matters germane to subjects under consideration at the Committee meeting.

Further information regarding this meeting can be obtained from Mr.

Dennis Minshall, Advisory Committee Management Officer, Federal Mediation and Conciliation Service, 2100 K Street, Northwest, Washington, D.C. 20427, or call (202) 653-5290.

Dated: March 28, 1985.

Dana M. Beckmaster,

Deputy Director, Federal Mediation and Conciliation Service.

[FR Doc. 85-7736 Filed 3-29-85; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

B-Banc Corp.; Formation of; Acquisition by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 15, 1985.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *B-Banc Corp.*, Odessa, Texas; to become a bank holding company by acquiring all of the voting shares of Andrews Financial Corporation, Odessa, Texas, and thereby indirectly acquire First National Bank of Hamilton, Hamilton, Texas, and Andrews Bancshares, Inc., Odessa, Texas, and its subsidiary bank, Commercial State Bank, Andrews, Texas; De Leon Bancshares, Inc., Odessa, Texas, and thereby indirectly acquire Farmers and Merchants Bank, De Leon, Texas; Dublin Bancshares, Inc., Odessa, Texas, and thereby indirectly acquire Dublin National Bank, Dublin, Texas; Glen Rose Bancshares, Inc., Odessa, Texas, and thereby indirectly acquire First National Bank in Glen Rose, Glen Rose, Texas; Ranger Bancshares, Inc., Odessa, Texas, and thereby indirectly acquire First State Bank, Ranger, Texas.

B-Banc Corp. has also applied to acquire the leasing portfolio of Andrews Financial Corporation and Andrews Bancshares, Inc., and thereby engage in leasing activities under 12 CFR 225.25(b)(5).

Board of Governors of the Federal Reserve System, March 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7839 Filed 3-29-85; 8:45 am]

BILLING CODE 6210-01-M

F.N.B.Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 22, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation*, Hermitage, Pennsylvania; to acquire 100 percent of the voting shares of Reeves Bank, Beaver Falls, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Citizens Bancshares, Inc.*, Weston, West Virginia; to become a bank holding company by acquiring 100 percent of the voting share of The Citizens Bank of Weston, Weston, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Commerce Corporation*, St. Francisville, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Feliciana Commerce Corporation, St. Francisville, Louisiana, thereby indirectly acquiring Bank of Commerce & Trust Company, St. Francisville, Louisiana.

2. *First National Bancshares of Paulding County, Inc.*, Dallas, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Paulding County, Dallas, Georgia.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Bancorp, Inc.*, Manchester, Missouri; to acquire 64.56 percent of the voting shares of The Citizens Bank of Owensville, Owensville, Missouri.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *C.C.B., Inc., New Central Colorado Company*, and *Central Bancorporation, Inc.*, all of Denver, Colorado; to acquire 100 percent of the voting shares of Cherry Creek National Bank, Denver, Colorado.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Richardson Bancshares, Inc.*, Richardson, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Richardson, Richardson, Texas.

Board of Governors of the Federal Reserve System, March 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 7022 Filed 3-29-85; 8:45 am]

BILLING CODE 6210-01-M

Republic New York Corp., Saban, S.A., Republic Holding S.A., Trade Development Finance (Netherlands Antilles) N.V., and Trade Development Holland Holding B.V.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 18, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Republic New York Corporation*, New York, New York; *Saban S.A.*, Panama City, Republic of Panama; *Republic Holding S.A.*, City of Luxembourg, Grand Duchy of Luxembourg; *Trade Development Finance (Netherlands Antilles) N.V.*, Curacao, The Netherlands Antilles; and *Trade Development Holland Holding B.V.*, Amsterdam, The Netherlands; to engage *de novo* through its subsidiary, Republic Information and Communications Services, Inc., in providing off-site hardware and standard software disaster facilities for funds transfer services to allow financial institutions to satisfy the requirements of banking regulatory agencies at minimal costs, pursuant to section 225.25(b)(7).

Board of Governors of the Federal Reserve System, March 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7823 Filed 3-29-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES AMINISTRATION

Interim Correction to the Looseleaf Version of the Federal Acquisition Regulation

AGENCY: Office of Acquisition Policy, General Service Administration.

ACTION: Notice of interim correction to the looseleaf version of the Federal Acquisition Regulation.

SUMMARY: Civilian Agency Acquisition Council letter, March 26, 1985, Subject: Interim Correction to the Looseleaf Version of the Federal Acquisition Regulation, requests heads of civilian agencies other than NASA to disseminate instructions to FAR recipients to make certain pen-and-ink changes to the looseleaf version of the FAR pending receipt of more formal changes. The purpose of this notice is to disseminate the information to recipients of the looseleaf version of the FAR who are concerned with contracting with civilian agencies other than NASA.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Rizzi, Acting Chairman, Civilian Agency Acquisition Council. (202) 523-0692.

Lawrence J. Rizzi,

Acting Chairman, Civilian Agency Acquisition Council.

SUPPLEMENTARY INFORMATION: The following Civilian Agency Acquisition Council letter to heads of civilian agencies other than NASA contains information of interest to recipients of the looseleaf version of the FAR who are concerned with contracting with civilian agencies other than NASA:

Civilian Agency Acquisition Council Letter

March 26, 1985.

TO: Heads of Civilian Agencies, Other Than NASA

SUBJECT: Interim Correction to the Looseleaf Version of the Federal Acquisition Regulation.

The Competition in Contracting Act of 1984 imposed certain deadlines with respect to implementation of the statute in the FAR, with certain materials to be effective on April 1, 1985, and other materials to be effective prior to that date. The developoment and publication of FAR coverage in a sequence that corresponded to the respective statutory deadlines, however, was not feasible. As a result, it was necessary to issue Federal Acquisition Circular (FAC) 84-5 with an effective date of April 1, 1985 and FAC 84-6 with an effective date of January 10, 1985. Accordingly, the looseleaf version of FAC 84-5 is to be filed in the FAR after the looseleaf version of FAC 84-6 is filed. When this happens, it will result in certain inaccuracies that must be corrected.

Therefore, pending receipt of more formal changes, agencies are requested to disseminate instruction to FAR recipients to make the following pen-and-ink changes to the looseleaf version of FAC 84-5. This will conform the looseleaf version of the FAR to the regulatory actions actually taken, as reflected is the **Federal Register**.

On the page entitled "General Structure" change Part 33, Disputes and Appeals, to read as follows:

Part 33, Protests, Disputes, and Appeals.

On the table of contents for Part 1, revise Subpart 1.5—Agency and Public Participation to read as follows:

Subpart 1.5—Agency and Public Participation

1.501 Solicitation of agency and public views.
1.501-1 Definition.
1.501-2 Opportunity for public comments.
1.501-3 Exceptions.
1.502 Unsolicited proposed revisions.
1.503 Public meetings.

On page 14-17 and 14-18, delete the coverage under the heading 14.407-8, Protests aganist award, and substitute therefor the following:

See Subpart 33.1, Protests.

Lawrence J. Rizzi,

Acting Chairman, Civilian Agency Acquisition Council.

[FR Doc. 85-7825 Filed 3-29-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Announcement of Competitive Grant Applications for General Family Planning Training Projects

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs, Office of Family Planning, announces that applications from public and nonprofit private entities are now being accepted for grant awards under section 1003(a) of the Public Health Service (PHS) Act (42 U.S.C. 300a–1(a)) as implemented by regulations at 42 CFR Part 59 to provide training for personnel to carry out family planning service programs described in section 1001 of the PHS Act (42 U.S.C. 300).

DATE: Applications for projects to serve Regions I, IV, VIII, and IX must be postmarked or received by the close of business May 20, 1985. Applications not meeting this requirement will not be accepted for review.

ADDRESS: Completed applications should be mailed to the following address: Grants Management Office, Office of Population Affairs, DHHS North Building, Room 1351, 330 Independence Avenue SW. Washington, D.C. 20201. Application kits, including all necessary forms, instructions, review criteria, and information relating to the grant application may be obtained upon written request or by calling this Office on 202/245–0146.

FOR FURTHER INFORMATION CONTACT: Joyce Elmore-Almonte, Ph.D., R.N. Project Officer, Office of Population Affairs, Office of Family Planning, DHHS North Building, Room 1351, 330 Independence Avenue, S.W., Washington, D.C. 20201. Telephone number 202/245–0151.

SUPPLEMENTARY INFORMATION: The program anticipates approximately $845,000 will be available for four competitive general family planning training grants. Grants will be made to public and/or private nonprofit organizations to assist in the establishment and operation of projects which will promote the purposes of section 1003 of the PHS Act, taking into account the degree to which the project meets the requirements of the regulations (42 CFR 59.205 and 59.206). Applications are invited for the following four grants:

One general training grant for Department of Health and Human Services (DHHS) Region I (Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont). A funding range of $150,000–$165,000 is under consideration for this grant.

One general training grant for DHHS Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee). A funding range of $289,000–$352,000 is under consideration for this grant.

One general training grant for DHHS Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming). A funding range of $130,000–$145,000 is under consideration for this grant.

One general training grant for DHHS Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, and Trust Territory of Pacific Islands). A funding range of $216,000–$238,000 is under consideration for this grant.

Criteria for review include the following categories: (1) Organization and Administration, (2) Personnel, (3) Curriculum, (4) Students/Trainees, (5) Resources. Detailed Information will be provided with the application kit.

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. Applicants should discuss their projects with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit will contain the current available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission of information to the relevant SPOC. All comments by the SPOC(s) should be forwarded to the Grants Management Office, Office of Population Affairs, Room 1351, HHS North Building, 330 Independence Avenue SW., Washington, D.C. 20201. Such comments must be received by the Office of Population Affairs within 60 days of the due date for the application to be considered. In the event that an application is submitted to the Office of Population Affairs without notification to the relevant SPOC(s), the SPOC(s) will be notified of the submission.

Dated: March 22, 1985.

(Catalog of Federal Domestic Assistance number 13.260)

Jo Ann Gasper,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 85-7649 Filed 3-29-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Proposed Finding Against Federal Acknowledgment of the Southeastern Cherokee Confederacy, Inc., the Northwest Cherokee Wolf Band, and the Red Clay Inter-Tribal Indian Band

March 26, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary proposes to decline to acknowledge that three separate but related petitioners (the Southeastern Cherokee Confederacy, Inc., the Northwest Cherokee Wolf Band, and the Red Clay Inter-tribal Indian Band) exist either individually as Indian tribes or collectively as one Tribe within the meaning of Federal law. This finding includes all bands and clans now affiliated with these organizations or affiliated in their past history. The petitioners are:

Southeastern Cherokee Confederacy, Inc., c/o William R. Jackson, Route 1, Box 111, Leesburg, Georgia 31763.

Northwest Cherokee Wolf Band, Southeastern Cherokee Confederacy, Inc., c/o Robert E. Ponder, P.O. Box 592, Talent, Oregon 97540.

Red Clay Inter-tribal Indian Band, Southeastern Cherokee Confederacy, Inc., c/o John F. Neikirk, 7703 Georgetown Road, Ooltewah, Tennessee 37363.

This notice is based on determinations that these groups individually as well as collectively do not meet four of the criteria set forth in 25 CFR 83.7 and, therefore, do not meet the requirements necessary for a government-to-government relationship with the United States. Preliminary determinations follow regarding each of these groups.

The Southeastern Cherokee Confideracy (hereinafter SECC), which was initially organized in November 1976, has had a continuous existence of less than nine years. No predecessor group existed prior to that time. The

SECC is not the historical and legal successor to the Cherokee Nation of 1839, which has existed in Oklahoma since 1839 and in western North Carolina as the federally recognized Eastern Band of Cherokees. Headquarters for the SECC, which includes some four "clans" in Georgia and eight "bands" elsewhere in the United States, are located in Leesburg, Georgia. The size of the current membership is estimated at 823, and is spread over 37 states.

The Northwest Cherokee Wolf Band (NWCWB) began as a band of the SECC in August of 1980. In July of 1982 the group dissociated itself from the SECC and formed a separate and autonomous organization. It has had a separate, continuous existence of less than three years. No predecessor group is known to have existed in Oregon or elsewhere prior to August, 1980. Headquarters for the NWCWB are located in Talent, Oregon. The group includes at least two "bands" in Oregon, one in Georgia, and one in Idaho. Current membership is estimated to be 609.

The Red Clay Inter-tribal Indian Band (RCIIB) also began as a band of the SECC in July 1982. In April of 1984 it dissociated itself from the SECC and formed a separate and autonomous organization. Thus the RCIIB has had a separate, continuous existence of less than one year. No predecessor group is known to have existed in Tennessee or elsewhere, and no historical connection can be made to the historic Red Clay settlement of the Cherokees. RCIIB headquarters are located in Ooltewah, Tennessee. The group currently is organized into two "bands," one in Tennessee, the other in Oregon, with an estimated total membership of 87.

The SECC, NWCWB, and RCIIB do not represent themselves as historical communities nor do they claim to descend as groups from historical predecessor groups. Group members do not live in residential clusters or communities which are viewed as American Indian and distinct from other populations in the area.

The petioners submitted copies of governing documents now being used by the organization. They also each submitted current and former membership data where it existed. Membership in each of the petitioning organizations is open to persons who are of 1/16th Indian blood of any American Indian tribal heritage. Although Cherokee is the predominant Indian ancestry claimed by members, ancestry is also claimed from as many as 37 other recognized and unrecognized tribes and groups. Virtually all of this Indian ancestry appears to be unverifiable.

In general, individuals joining the petitioning organizations have done so in an effort to get in contact with and learn more about their own Indian heritage. Members are recruited by word of mouth as well as through the use of notices in the local media. Group size and composition fluctuates significantly largely because membership status is based on payment or non-payment of annual dues. There has been virtually no intermarriage either between families within the petitioning groups or between the petitioning groups.

Only a few members of all three groups combined appear also to be enrolled members of federally recognized North American Indian tribes. The SECC, NWCWB, and RCIIB have not been the subject of Congressional legislation which has terminated or forbidden the Federal relationship.

The SECC, NWCWB, and RCIIB and their affiliated bands and clans (past and present), whether considered individually or collectively as one group, are recently formed, overtly multi-tribal voluntary associations of individuals who believe themselves to be of Indian descent. The petitioning organizations are not consistent in any way with the concept of tribe intended by the regulations (25 CFR Part 83).

Based on this preliminary factual determination, we conclude that each of the petitioning organizations (SECC, NWCWB, RCIIB) meets criteria d, f, and g, but does not meet a, b, c, and e of § 83.7 of 25 CFR.

Section 83.9(g) of the regulations provides that any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 120 days from the date of publication of this notice.

Under Section 83.9(f) of the Federal regulations, a report summarizing the evidence for the proposed decision is available to the petitoners and interested parties upon written request. Comments and requests for a copy of the report should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, Attention: Branch of Acknowledgment and Research.

After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after the expiration of the 120-day response period, the Assistant Secretary will publish a final determination regarding the petitioners' status in the Federal Register as provided in § 83.9(h).

Theodore C. Krenzke,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-7700 Filed 3-29-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-8512]

Alaska Native Claims Selection; Albert W. Wilson

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(5) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(h)(5), will be issued to Albert W. Wilson for approximately 120 acres. The lands involved are in the vicinity of Sitka, Alaska.

Cooper River Meridian Alaska

T. 56 S., R. 64 E. (Unsurveyed)
A portion of sec. 20.
Containing approximately 120 acres.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Sitka Sentinel. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5593).

Any party claiming a property interest which is adversely affected by the decisions shall have until May 1, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-7685 Filed 3-29-85; 8:45 am]

BILLING CODE 4310-JA-M

Colorado; Grand Junction Draft Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the Draft Resource Management Plan and Environmental Impact Statement and notice of public hearings.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft resource management plan (RMP) and environmental impact statement (EIS) for proposed management of public land in the Grand Junction Resource Area.

The BLM also had identified potential areas of critical environmental concern (ACECs) within the Grand Junction Area pursuant to 43 CFR 1610.7–2.

ADDRESS: Copies of the draft RMP EIS are available upon request from the Grand Junction Resource Area office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Forest Littrell, Area Manager, Bureau of Land Management, Grand Junction Resource Area, 764 Horizon Drive, Grand Junction, Colorado 81506. Telephone: 303–243–6552.

SUPPLEMENTARY INFORMATION:

Alternatives Analyzed

Four alternatives for managing 1,280,000 acres of public land are analyzed in the draft RMP EIS. In addition to public land within the Grand Junction Resource Area, 108,703 acres in the Montrose District, Colorado, and Moab District, Utah, are analyzed for wilderness and/or grazing only.

The Continuation of Current Management Alternative represents the existing situation and serves as the baseline for analyzing other alternatives. The present level of management of public land would continue. No wilderness study areas would be recommended for wilderness designation. No areas would be recommended for designation as areas of critical environmental concern (ACEC's).

The Commodity Alternative would emphasize making public land and resources available for use and development. Environmental values would be protected only to the extent required by law or regulation. Restrictions on mineral leasing and development, off-road vehicle use, and timber harvesting would be minimal. Disposal of isolated or difficult to manage parcels of public land would also be emphasized. No wilderness study areas would be recommended as suitable for wilderness designation. Four areas totaling 19,310 acres would be recommended for ACEC designation:

1. Indian Creek (350 acres) would be managed as a high value archaeological site.

2. The Baxter/Douglas Pass soil slump area (18,000 acres) would be managed to reduce soil slumping. Surface occupancy and surface disturbance would be limited to that necessary to reduce possible soil slumping.

3. An area in Cactus Park (800 acres) would be managed as a high value archaeological site and to stabilize severely-eroding soils.

4. Skipper's Island (160 acres) would be managed to protect riparian values. Most surface-disturbing activities would be prohibited, including no surface occupancy for oil and gas.

The Protection Alternative would emphasize the maintenance or improvement of environmental values and fragile and unique resources. Restrictions on mineral leasing and development, off-road vehicle use, and timber harvesting would be stringent. Wildlife habitat would be managed to improve habitat condition, to protect species from surface-disturbing activities, and to increase wildlife populations. Management of intensive recreation use would increase substantially. All seven wilderness study areas and an expanded acreage to enhance manageability would be recommended as suitable for wilderness designation. Eight areas totaling 54,170 acres would be designated as ACECs:

1. Indian Creek (350 acres) would be managed as a high value archaeological site. Surface occupancy for mineral development would be prohibited, off-road vehicle use would be limited to designated roads, and timber harvesting would be prohibited.

2. The Baxter/Douglas Pass soil slump area (18,000 acres) would be managed to reduce soil slumping. Surface occupancy would be prohibited, and surface-disturbing activities would be severely limited.

3. An area in Cactus Park (1,500 acres) would be managed as a high value archaeological site, and severely-eroding soils would be stabilized. The area would be leased with no surface occupancy for mineral development, closed to off-road vehicle use. Other surface-disturbing activities would be severely limited.

4. Skipper's Island (160 acres) would be managed to protect riparian values. Timber harvesting, off-road vehicle use, and placement of public utilities would be prohibited.

5. South Shale Ridge (22,500 acres) would be managed to protect scenic values, consistent with valid existing rights. Stipulations would be placed on mineral development to protect natural and scenic values, off-road vehicle use would be limited to designated roads, and a portion of the area would be identified as unsuitable for public utilities.

6. Mount Garfield and the slope of Grand Mesa (9,520 acres) would be designated a visual resource management Class I area and managed to protect scenic values. The area would be leased with a no surface occupancy stipulation for mineral development, closed to off-road vehicle use, and identified as unsuitable for public utilities.

7. The Badger Wash Uplands (1,230 acres) would be managed to protect a sensitive plant association. The area would be leased with a no surface occupancy stipulation for mineral development, closed to off-road vehicle use, and identified as unsuitable for public utilities.

8. Rough Canyon (1,470 acres) would be managed to protect an endangered plant and scenic values and also as a high value archaeological site. Except for archaeological investigations, surface-disturbing activities would be severely limited. It would be leased with a no surface occupancy stipulation for mineral development, closed to off-road vehicle use, and identified as sensitive to public utilities.

The Preferred Alternative represents the Bureau's favored management approach. It includes aspects from the other three alternatives and would provide a rational and balanced approach to management of public land. Production and use of commodity resources and commercial use authorization would occur, and fragile and unique resources would be protected. Four wilderness study areas would be recommended as suitable for wilderness designation. No areas would be recommended for ACEC designation.

Public Hearings

Public hearings have been scheduled to solicit comments on the draft RMP EIS. Public hearings are required because of the wilderness issue; however, comments on other issues will also be accepted. The public hearings will be held as shown below:

May 13, 1985, 7:30–8:30 p.m.—Grand Junction District Office, Bureau of

Land Management, 764 Horizon Drive, Grand Junction, Colorado

May 14, 1985, 7:30–8:30 p.m.—Gateway Community Center, Gateway, Colorado

May 15, 1985, 7:30–8:30 p.m.—Delta Middle School, 822 Grand Avenue, Delta, Colorado

May 20, 1985, 7:30–8:30 p.m.—Ramada Inn Foothills, 11595 West Sixth Avenue, Denver, Colorado

An informal open house has been scheduled to precede each hearing. The open house will start at 6:30 p.m. and run until 7:30 p.m.

Dated: March 15, 1985.

Kannon Richards,

State Director, Colorado State Office.

[FR Doc. 85–7452 Filed 3–29–85; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–034708, Group 179]

Florida; Filing of Plat of Dependent Resurvey and Survey

March 26, 1985.

1. The plat of the dependent resurvey of the west boundary and the survey of the east and south boundaries, Township 51 South, Range 35 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 10, 1985.

2. The dependent resurvey and survey were made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 10, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85–7628 Filed 3–29–85; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–034706, Group 179]

Florida: Filing of Plat of Retracement and Establishment

March 26, 1985.

1. The plat of the establishment of the corner of Townships 49 and 50 South, Ranges 35 and 36 East, and the retracement of the west boundary, Township 49 South, Range 35 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 10, 1985.

2. The retracement and establishment were made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the retracement and establishment and must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 10, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reporduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85–7630 Filed 3–29–85; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–034709, Group 179]

Florida; Filing of Plat of Retracement and Survey

March 26, 1985.

1. The plat of the survey of a portion of the south boundary and a portion of the subdivisional lines, Township 49 South, Range 36 East, and the retracement of a portion of the south boundary, Township 48 South, Range 36 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 10, 1985.

2. The retracement and survey were made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the retracement and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 10, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85–7629 Filed 3–29–85; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–034707, Group 179]

Florida; Filing of Plat of Retracement, Dependent Resurvey and Survey

March 26, 1985.

1. The plat of the retracement of a portion of the west boundary, dependent resurvey of a portion of the west boundary, and the survey of the east boundary, Township 50 South, Range 35 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 10, 1985.

2. The retracement, dependent resurvey and survey were made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the retracement, dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 10, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85–7627 Filed 3–29–85; 8:45 am]

BILLING CODE 4310–GJ–M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I) and the Office of Management and Budget Circular No. A63, Revised. The Advisory Committee on Mining and Mineral Research will meet from 9:00 a.m. to 5:00 p.m. (or completion of business), on Thursday, May 16, 1985.

The Committee meeting will be held in: Room 5160, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

The meeting will deal with the following subjects:

1. Welcome of Committee members by Secretary.
2. Election of Cochairman.
3. Review of minutes of meeting of June 18, 1984.
4. Status of 1985 allotment grant awards.
5. Status of research grants for five generic research areas.
6. Status of congressional action on mineral institute budget.
7. Procedure for determining continuing eligibility of mineral institutes based on revised eligibility criteria of Public Law 98–409.
8. Procedure for developing a National plan for research in mining and mineral resources to be submitted to the Secretary, the President, and the Congress on or before March 1, 1986.
9. New business.

The meeting is open to the public. Approximately 20 visitors can be accommodated on a first-come, first-

served basis. Written statements concerning the subjects are welcome.

In order to ensure admission to the building and the availability of seating, visitors who expect to attend must make this known no later than May 13, by informing Dr. Ronald Munson, Chief, Office of Mineral Institutes, Bureau of Mines, MS 1020, 2401 E Street, NW., Washington, DC 20241, phone (202) 634–1320.

Dated: March 28, 1985.

Robert C. Horton,

Director.

[FR Doc. 85–7618 Filed 3–29–85; 8:45 am]

BILLING CODE 4310-53-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Outer Continental Shelf Order No. 13, "Production Measurement and Commingling," Submitted Under Plans, Programs, Procedures, and Other Narrative Formats

Abstract: Respondents are required to submit information and recordkeeping in the form of plans, programs, procedures, and other narrative formats on meter measurement factors, facilities, and malfunctions. This information will be used by the Minerals Management Service District Supervisors to evaluate and approve or disapprove the adequacy of equipment and/or procedures to be used during production measurement and commingling operations offshore.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees performing production operations offshore.

Annual Responses: 15,540

Annual Burden Hours: 31,680

Bureau Clarence Officer: Dorothy Christopher, (703) 435–6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85–7685 Filed 3–29–85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Exploration, Development, and Production Activities

Abstract: Respondents are required to submit an exploration plan and a development and production plan along with their respective Environmental Reports to the Minerals Management Service for approval prior to the exploration, development and production of a lease. The information is being collected and will be used to analyze and evaluate the planned exploration and development and production activities of lessees offshore in order to assure compliance with the requirements of the Outer Continental Shelf Lands Act.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees

Annual Responses: 1,233

Annual Burden Hours: 516,219

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85–7686 Filed 3–29–85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive, Reston, Virginia 22091.

Title: Outer Continental Shelf Order No. 2, "Drilling Operations," Submitted Under Plans, Programs, Procedures, and Other Narrative Formats

Abstract: Respondents are required to submit information and recordkeeping in the form of plans, programs, procedures, and other narrative formats on drilling operations. The information will be used by the Minerals Management Service District Supervisors to ascertain the drilling conditions of a drilling site in order to mitigate hazards inherent in drilling operations and to increase the margin of safety of personnel and the environment.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Federal oil and gas lessees performing drilling operations offshore.

Annual Responses: 2,368

Annual Burden Hours: 23,422

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6214

Dated February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-7687 Filed 3-29-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Capital Memorial Advisory Committee; Meeting

Pursuant to section 9 of the Federal Advisory Committee Act of October 6, 1972 (86 Stat. 770), the Secretary of the Interior approved a charter establishing the National Capital Memorial Advisory Committee. This charter was renewed by the Secretary on February 14, 1985. In 1975 the Committee established criteria and guidelines which were published in the **Federal Register**. The Committee recently amended those guidelines with the addition of Item #5 to the Criteria and Guidelines, concerning recommendations to the Secretary of the Interior on proposals for memorialization of persons and events on Federal lands in the National Capital Region, through the media of monuments, memorials and statues.

It is the purpose of this notice, through the publication of information and materials included herein, to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in memorial proposals, of the amended actions that have been taken by the Committee in order that there will be a greater awareness of the means by which memorials are considered and erected in the Nation's Capital and its environs, as well as the criteria which is used in evaluating each memorial proposal. The notice includes the amended criteria and guidelines as adopted by the Committee and an analysis of the action taken by the Committee concerning future military memorials.

Persons who wish to file written comments on the guidelines and criteria or who want further information concerning the National Capital Memorial Advisory Committee may contact or write Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, 1100 Ohio Drive, SW., Room 201, Washington, D.C., 20242, telephone: 202/426-7750, within 30 days after publication of this notice. At that time the comments will be evaulated and if necessary, revisions of the guidelines will be considered in light of such comments before they are submitted to the Secretary of the Interior for final adoption.

Dated: March 22, 1985.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

National Capital Memorial Advisory Committee

Criteria and Guidelines

Because of their National importance as well as their availability and visibility to the visitor, the parks of the Nation's Capital, both large and small, have been sought after for many years for the memorialization of various persons and events.

In recognition of the diminishing number of memorial sites on lands under the jurisdiction of the Secretary of the Interior in the National Capital Region, and in particular in the Monumental Core of the Nation's Capital, it shall be deemed appropriate for the National Capital Memorial Advisory Committee to recommend limiting the use of the few remaining sites to memorializations of events of National or international significance, quality and value; and to memorialization of persons of exceptional national or international significance and achievements. Suitable sites outside the Monumental Core shall be recommended for other memorializations. Through this action, it is hoped that the early depletion of the limited memorial sites in the Monumental Core will be curtailed while still providing for the memorialization of persons and events through expressions of commemorative ideas. The following guidelines are provided to achieve the above objectives.

1. The National Capital Memorial Advisory Committee, hereinafter referred to as the Committee, will review each proposal for a memorial to be placed on lands under the jurisdiction of the Department of the Interior and on all other Federal lands or public properties in the National Capital Region where such review is provided for in proposed or enacted legislation. The Committee will consider the location appropriateness and adequacy of each proposal as it prepares its recommendations to the Secretary of the Interior.

2. Sponsors are urged not to select specific sites or prepare designs prior to consultation with the National Capital Memorial Advisory Committee. Site determination should be made by the Secretary of the Interior in consultation with the National Capital Planning Commission and the Commission of Fine Arts after enactment of legislation. Where circumstances preclude a site selection recommendation by the Committee, the Committee shall assist the Secretary of the Interior in locating the memorial and guiding development on the site selected. The Committee will coordinate site and design matters with the National Capital Planning Commission and the Commission of Fine Arts. The committee will forward its decisions on proposals to the above Commissions.

3. Sites shall be determined by considering such matters as: Appropriateness of memorialization, location, compatibility with surroundings and effects on environmental integrity. The Committee, in making its recommendations, will give consideration to identifying the most suitable site having surroundings that will tend to enhance the purpose and quality of the memorial. Natural features of the landscape would be preserved and utilized to the fullest extent possible in the memorial design. When a site is selected, it should include a positive and intentional contribution to urban design determined in advance to be an integral part of the aesthetic urban composition.

4. Subjects to be memorialized within the Monumental Core of the Nation's Capital shall be of outstanding national or international significance. The monument or memorial must be of enduring quality and character. The Committee will make a strict interpretation of the long term historic importance of subjects of memorialization in meeting these criteria.

5. Military memorials should be limited to a specific war which relates to a major combat operation or branches of service of the Armed Forces, such as the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, U.S. Coast Guard and the Merchant Marine.

6. Persons interested in sponsoring a memorial or anyone wishing advice with respect to procedures to be followed for memorialization should contact the Regional Director, National Capital, Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242.

Analysis of Military Memorial Proposals; National Capital Memorial Advisory Committee

Supplementary Information

Because of their National significance as well as their availability and visibility to the visitor, the parks of the Nation's Capital, both large and small, have been sought after for many years for the memorialization of various persons and events.

The criteria and guidelines established by the Committee recommended limiting the use of the remaining sites to memorialization of exceptional significance, quality, and value; and, as to person, their degrees of achievement. Military memorials commemorating all members of the Armed Forces identified with an important event (World War II, the Korean War, etc.), and memorials to the individual branches of the service (Army, Air Force, etc.), would be appropriate.

Background

The existing 106 monuments, memorials and plaques which honor various individuals from the United States and foreign countries, Presidents of the United States, military units, military heroes of the Civil, Revolutionary and World Wars, and significant events and people, are categorized as follows: Presidential memorials-13; military units-7; Civil War heroes-14; Revolutionary War heroes-4; various individuals-29; international persons-12; military units-3; wars-2; plaques-13; and events-9.

The design of the City of Washington, D.C., has resulted in magnificent park areas which are suitable for memorialization of our National and international heroes, persons and events. Over 100 memorials have been erected in the last 100 years. A recent review of potential memorial sites under the jurisdiction of the Secretary of the Interior indicates that approximately 50 suitable locations remain. Suitability criteria for site selection were:

1. Within the historic L'Enfant City.
2. Sites where the memorial would not encroach on an existing memorial.
3. Sites where a memorial would not intrude on the previously established legislative purpose of a park.

Of course, if consideration was given to more remote park areas, such as Rock Creek Park, Fort Circle Parks, or the Anacostia River parklands, numerous additional sites could be found. However, in our experience, proponents of memorials reject these park areas in favor of the highly visible "Memorial and Monumental Core" of this historic L'Enfant city.

Branch of Specialties—At the present time there are existing military memorials which commemorate the U.S. Marine Corps (Iwo Jima Statue), and the U.S. Navy, currently under construction in Market Square along Pennsylvania Avenue. Thus, only the U.S. Army, the U.S. Air Force and the U.S. Coast Guard remain to be memorialized. In considering the potential impact of a proliferation of military memorials, the three organizational levels of the Armed Forces were considered. If branches or specialties of the various units of the Armed Forces were considered as the appropriate level of memorialization, 49 potential memorials could result. The existing memorial to the Seabees is in this category.

Unit Level Memorials—If Division size or larger were considered appropriate, there would be a potential 496 memorials. Three division level memorials now exist. Additional memorials could evolve from special existing associations. A preliminary review indicates 11 such associations.

If the various branches, specialties and divisions were to seek memorial legislation for the use of Federal parkland, there would not be enough open space available to accommodate the memorializations. Memorials of this type should be erected at military establishments which are significant to their history, and included in memorials in Washington to wars or branches of service.

[FR Doc. 85-7684 Filed 3-29-85; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-251X)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment in Boulder County, CO; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abondon its 1.40-mile line of railroad between milepost 47.15 near Barnett and milespost 48.55 near Lyons in Boulder County, CO.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Colorado Public Utilities Commission has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 1, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by April 11, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 22, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 22, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85-7705 Filed 3-29-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-252X)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment Exemption in Logan County, CO; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.9-mile line of railroad between milepost 230.1 and milepost 232.0 near Sterling, CO.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 1, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by April 22, 1985, and petitions

for reconsideration, including environmental, energy, and public use concerns, must be filed by April 11, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main St., Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental of public use conditions.

Decided: March 21, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-7704 Filed 3-29-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-245)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment in Cass and Traill Counties, ND; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 10.45-mile rail line between Hunter (milepost 75.50) and Blanchard (milepost 85.95) in Cass and Traill Counties, ND. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-7706 Filed 3-29-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a monthly notice of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. This is the first monthly notice. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before May 31, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, D.C. 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedule are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L. St. NW, Washington, D.C.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of any agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federl agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records covered by the schedule. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval:

1. Department of the Air Force (NC1-AFU-85-16). Records relating to the administration at Air Force installations of postal accounts, such as those pertaining to money orders, stamp stock, and postage meter operations.

2. Department of the Army, Office of the Adjutant General (NC1-AU-85-33). Certificates indicating receipt and accountability for petty cash and change funds, signed by individuals.

3. Department of the Army, Office of the Adjutant General (NC1-AU-85-34). Plan for distribution of publications and blank forms received by an office or activity.

4. Tennessee Valley Authority, Office of Corporate Services, Division of Medical Services (NCI-142-85-2). Administrative records and case files, in paper, microfilm and machine-readable format, used by rehabilitation counselors to monitor the rehabilitation process of injured employees returning to the work force.

G.N. Scaboo,

Deputy Archivist of the United States.

[FR Doc. 85-7561 Filed 3-29-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning January 1, 1984 and ending December 31, 1984.

Name and Title

Robert E. Allen—Associate General Counsel, Enforcement Litigation

Harold J. Datz—Associate General Counsel, Advice
Joseph E. DeSio—Associate General Counsel, Operations Management
John E. Higgins, Jr.—Deputy General Counsel
Joseph A. Latham—Chief Counsel to Board Member
Paul E. Long—Deputy Director of Administration
Hugh L. Reilly—Solicitor
Peter B. Robb—Chief Counsel to Board Member
Eugene L. Rosenfeld—Deputy Associate General Counsel, Operations Management
Earnest Russell—Director of Administration
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary
Terry Vann—Chief Counsel to Board Member
Robert F. Volger—Deputy Executive Secretary
Melvin J. Welles—Chief Administrative Law Judge
Charles M. Williamson—Chief Counsel to the Chairman

Dated: Washington, D.C., March 26, 1985.
By Direction of the Board.
John C. Truesdale,
Executive Secretary, National Labor Relations Board.
[FR Doc. 85-7625 Filed 3-29-85; 8:45 am]
BILLING CODE 7545-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Linguistics; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Linguistics.
Date and Time: April 17-19, 1985: 9:00 A.M. to 5:00 P.M. each day.
Place: National Science Foundation, 1800 G Street, NW., Room 338, Washington, D.C. 20550.
Type of Meeting:
Part Open-Open 4/19 9:00 a.m. to 12:00 Noon
Closed 4/17 9:00 a.m. to 5:00 p.m.
Closed 4/18 9:00 a.m. to 5:00 p.m.
Closed 4/19 12:00 Noon to 5:00 p.m.
Contact person: Dr. Paul G. Chapin, Program Director, Linguistics Program, Room 320, National Science Foundation, Washington, D.C. 20550 (202) 357-7898.
Summary minutes: May be obtained from the Contact Person at the above stated address.
Purpose of meeting: To provide advice and recommendations concerning support for research in linguistics.
Agenda: Open—General discussion of the current status and future plans of the Linguistics Program.
Closed—To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.
M. Rebecca Winkler,
Committee Management Officer.
March 27, 1985.
[FR Doc. 85-7693 Filed 3-29-85; 8:45 am]
BILLING CODE 7555-01-M

Advisory Panel for Sensory Physiology and Perception; Meetings

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception Program.
Date and time: April 17, 18, and 19, 1985; 9:00 a.m. to 5:00 p.m. each day
Place: National Science Foundation, 1800 G St., NW, Room 1141, Washington, DC.
Type of meeting:
Part Open-Closed 4/17—9:00 a.m. to 5:00 p.m.
Closed 4/18—9:00 a.m. to 12:00 noon
Open 4/18—12:00 noon to 2:00 p.m.
Closed 4/18—2:00 p.m. to 5:00 p.m.
Closed 4/19—9:00 a.m. to 5:00 p.m.
Contact person: James Larimer, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, DC 20550, telephone (202) 357-7428.
Summary minutes: May be obtained from the Contact Person at the above stated address.
Purpose of meeting: To provide advice and recommendations concerning support for research in sensory physiology and perception.
Agenda: Open—General discussion of the current status and future plans of the Sensory Physiology and Perception Program.
Closed—To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of the proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.
M. Rebecca Winkler,
Committee Management Officer.
[FR Doc. 85-7694 Filed 3-29-85; 8:45 am]
BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-199]

Renewal of Facility Operating License; Manhattan College

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 6 to Facility Operating License No. R-94 for Manhattan College (the licensee) which renews the license for operation of the training and research reactor located in New York City, New York. The facility is a non-power reactor that has been operating at power levels not in excess of 0.1 watt (thermal). The renewed Operating License No. R-94 will expire twenty years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on September 30, 1983, at 48 FR 44952. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1098) for the renewal of Facility Operating License No. R-94 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment dated February 6, 1985, for the renewal of Facility Operating License No. R-94 and has concluded that this action will not have a significant effect on the quality

of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the Federal Register on March 13, 1985 at 47 FR 9734.

For further details with respect to this action, see (1) the application for amendment dated August 26, 1983, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 6 to Operating License R–94, (4) the Commission's related Safety Evaluation Report (NUREG–1098), and (5) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Copies of NUREG–1098 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 26th day of March 1985.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85–7720 Filed 3–29–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 20939, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 11–13, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the Federal Register on March 19, 1985.

The agenda for the subject meeting will be as follows:

Thursday, April 11, 1985

8:30 A.M.—8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.—10:45 A.M.: Long-Range Activities of the NRC (Open)—The members will discuss proposed activities of the ACRS ad hoc subcommittee to consider long-range activities of the NRC.

10:45 A.M.—11:30 A.M.: Nuclear Power Plant Scram Systems (Open)—The members will hear and discuss the report of is subcommittee on actions taken by the NRC to improve the performance of nuclear power plant scram systems and a proposed ACRS report on reliability of scram systems in PWR nuclear power plants.

11:30 A.M.—12:30 P.M.: Management and Disposal of Radioactive Wastes (Open)—Members of the Committee will discuss the extent of ACRS participation in DOE and NRC activities related to management and disposal of civilian radioactive wastes

1:30 P.M.—2:00 P.M.: Topics for Discussion with NRC Commissioners (Open)—Discuss ACRS positions and comments regarding the proposed NRC rule on backfitting of nuclear power plants, the desirability of an organization like the NTSB to evaluate nuclear power plant accidents, and the ACRS role in the management and disposal of high-level civilian radioactive wastes.

2:00 P.M.—3:30 P.M.: Meeting with NRC Commissioners (Open)—The members of the Committee will discuss the items noted above with members of the Nuclear Regulatory Commission.

3:30 P.M.—5:00 P.M.: Nuclear Accident Source Term (Open)—The members will hear and discuss a briefing by members of the American Physical Society regarding their recent Study Group on Radionuclide Release from Severe Accidents in Nuclear Power Plants.

5:00 P.M.—5:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of its subcommittee on prioritization of an additional group of generic safety issues. Members of the NRC Staff will participate to the degree considered appropriate.

5:30 P.M.—6:00 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated activities of ACRS subcommittees and proposed items for consideration by the full Committee.

Friday, April 12, 1985

8:30 A.M.—11:00 A.M.: General Electric Standardized Safety Analysis (GESSAR II) (Open/Closed)—The members of the Committee will hear and discuss the report of its subcommittee regarding the request for preliminary design approval of the GESSAR II type nuclear power plant. Representatives of the NRC Staff and the Applicant will participate.

Portions of this session will be closed as necessary to discuss Proprietary Information and details of the secuirty provisions for this type of nuclear facility.

11:00 A.M.—12:00 Noon: NRC Research, Programmatic Activities and Policies (Open)—The members will discuss proposed Committee comments in response to a request from Congressman Morris K. Udall regarding NRC research, programmatic activities, and policies for FY 1986 and 1987.

1:00 P.M.–2:00 P.M.: NRC Vendor Inspection Program (Open)— The members will hear and discuss a briefing by representatives of the NRC Office of Inspection and Enforcement regarding the NRC vendor inspection program.

2:00 P.M.–3:00 P.M.: Systematic Review of Nuclear Power Plants (Open)—The members will discuss proposed clarification of the ACRS report to NRC dated July 18, 1984 on the proposed NRC Policy Statement on Severe Accidents with respect to the systematic review of nuclear power plants.

3:00 P.M.–5:45 P.M.: ACRS Subcommittee Activities (Open/Closed)—Chairmen of designated ACRS subcommittees will report on recent activities regarding assigned areas of reponsibilities, including requalification of nuclear power plant operators, emergency core cooling systems, seismic margins in nuclear power plant, seismic reevaluation of the Diablo Canyon Nuclear Plant, and reliability of electrical power supplies (emergency diesel-generators).

Portions of this session will be closed as necessary to discuss information involved in an adjudicatory proceeding.

Saturday, April 13, 1985

8:30 A.M.–11:30 A.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports regarding items discussed during this meeting and proposed ACRs comments regarding conduct of NRC activities regarding the Diablo Canyon Nuclear Power Plant.

Portions of this session will be closed as required to discuss Proprietary Information, detailed safeguards information, and information involved in an adjudicatory proceeding

11:30 A.M.–12:30 P.M.: Long-Range Activities of the NRC (Open)—The members will continue discussion of the ACRS ad hoc subcommittee assignment to consider long-range technical activities of the NRC.

1:30 P.M.–2:30 P.M.: Subcommittee Activities (Open)—Chairmen of designated subcommittees will report on recent activities of assigned subcommittees in designated areas including the proposed NRC base

research program and ACRS policies and practices.

2:20 P.M.–4:00 P.M.: Miscellaneous Activities (Open)—Complete Committee discussion of topics considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) P.L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss safeguards informtion (5 U.S.C. 552b(c)(3)), Proprietary Information (5 U.S.C. 552b(c)(4)), and information involved in an adjudicatory proceeding (5 U.S.C. 552b(c)(10)) related to the topics being discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. e.s.t.

Dated: March 26, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–7719 Filed 3–29–85; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Withdrawal of Request for Determination of No Substantial Damage With Respect to Cessation of Contributions by TAF Delivery Systems, Inc., to Trucking Employees of North Jersey Welfare Fund, Local 641

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of withdrawal of request.

SUMMARY: This notice advises interested persons of the withdrawal of a request for a determination of no substantial damage under section 4203(d) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Section 4203(d) provides a special withdrawal rule for cessations of contributions involving plans and employers in the trucking industry (as defined in that section). On April 16, 1984, the Pension Benefit Guaranty Corporation published (at 49 FR 15033) a notice of the pendency of a request from TAF Delivery Systems, Inc. ("TAF"), for a determination of no substantial damage under section 4203(d)(5) of ERISA with respect to the cessation of contributions by TAF under the Trucking Employees of North Jersey Welfare Fund, Local 641. TAF has withdrawn its request. The effect of this notice is to advise interested persons that the request has been withdrawn.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, N.W., Washington, D.C. 20006; 202–254–4860 (202–254–8010 for TTY and TDD). (These are not toll-free numbers.)

Issued at Washington, D.C., this 25th day of March, 1985.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–7674 Filed 3–29–85; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–4088]

Issuer Delisting; Application To Withdraw From Listing and Registration; Triangle Industries, Inc.

March 26, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the 11½% Subordinated Debentures ("Debentures") due 2003 of Triangle Industries, Inc. ("Company") from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

(1) The Company has considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Debentures on both the Exchange and the New York Stock Exchange, Inc. The Company does not see any particular advantage in the dual trading and believes that dual trading would fragment the market for its Debentures.

(2) The Exchange has informed the Company that it poses no objection to the withdrawal of the Company's Debentures from listing on the Exchange.

Any interested person may, on or before April 16, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–7642 Filed 3–29–85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 25, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Royal International Optical Corporation
Common Stock, $.10 Par Value, File No. 7–8371

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 15, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–7641 Filed 3–29–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

March 25, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Pittston Company
Common Stock, $1.00 Par Value, File No. 7–8372

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 15, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–7640 Filed 3–29–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

March 27, 1985.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Giant Food, Inc.
Class A Common Stock, $1.00 Par Value, File No. 7–8373
Giant Yellowknife Mines Ltd.
Capital Stock, No Par Value, File No. 7–8374
Kirby Exploration Company
Common Stock, $1.00 Par Value, File No. 7–8375

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 17, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85–7713 Filed 3–29–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–21838; SR–MSRB–85–3]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board, Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), on February 5, 1985, submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to amend MSRB rule G–3 [1] to require a person who otherwise is a municipal securities principal, and who has been associated for two or more years with a municipal securities broker or municipal securities dealer that has not filed with the MSRB in compliance with MSRB rule A–12,[2] to pass the Municipal Securities Principal Exam and be qualified as a municipal securities representative in order to retain his or her status as a municipal securities principal.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21773, published in the **Federal Register** (50 FR 7680, February 25, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of Section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: March 27, 1985.

John Wheeler,
Secretary.

[FR Doc. 85–7714 Filed 3–29–85; 8:45 am]

BILLING CODE 8010–01–M

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[1] MSRB rule G–3 sets forth qualification standards for being or becoming a municipal securities principal or representative.

[2] MSRB rule A–12 requires every municipal securities broker or municipal securities dealer to pay an initial fee to the MSRB.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 27, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

MAXXAM Group, Inc.

Common Stock, $.08-⅓ Par Value, File No. 7-8325

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before April 17, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-7716 Filed 3-29-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14436 (File No. 812-6032)]

Equitable Life Financing Corporation; Application and Opportunity for Hearing

March 26, 1985.

Notice is hereby given that Equitable Life Financing Corporation ("Applicant"), c/o The Equitable Life Assurance Society of the United States, 1285 Avenue of the Americas, New York, New York 10019, filed an application on January 25, 1985, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

According to the application, Applicant, a Delaware corporation, is a wholly-owned subsidiary of The Equitable Life Assurance Society of the United States ("Equitable"), a New York mutual life insurance company. Applicant states that Equitable issues a wide variety of individual and group life insurance policies and annuity contracts, directly and through its subsidiaries. Applicant states that the Equitable organization also offers other insurance and investment products, provides investment advisory services to individuals, institutions and group pension plans, and manages its own large porfolio of mortgages, debt and equity securities, real estate and other investments that support its obligations. Applicant further states that Equitable is subject to extensive supervision and regulation by the Insurance Department of the State of New York under the New York Insurance Law.

Applicant represents that its primary function will be to borrow funds through the offer and sale of its debt securities in United States and European or other overseas markets and to invest the proceeds in Funding Agreements issued by Equitable. Applicant further represents that it will only invest in Funding Agreements issued by Equitable, Government securities and other securities described in Rule 3a-5(a)(6) under the Act, within the limits of Rule 3a-5(a)(5), under the Act. Applicant also represents that it will not issue its voting securities to any person other than Equitable, nor will it issue covertible securities. Finally, Applicant represents that Equitable will not pledge or otherwise encumber its stock of the Applicant.

Applicant states that it will issue its debt securities pursuant to indentures ("Indentures") to be entered into among Applicant, Equitable and a trustee ("Trustee") which will be a major United States money center bank. Applicant states that the proceeds of each debt issuance will be used to acquire a specific Funding Agreement that will be issued to the Applicant and the Trustee. Applicant states that its interest in the Funding Agreement will be assigned to the Trustee under the Indenture for the benefit of holders of that particular class of debt securities issued by the Applicant. Applicant further states that the terms of each Indenture will require Equitable to make all payments under the Funding Agreement directly to the Trustee, and that the Trustee, in turn, will be required to make all payments of principal, interest and premium, if any, directly to the individual investors who have purchased the debt securities issued by the Applicant under the Indenture.

Applicant represents that under the terms of each Indenture, the holders of the Applicant's debt securities, acting through the Trustee, will have recourse against Equitable to enforce payment under the Funding Agreement, should that ever become necessary, without the need to first bring an action against the Applicant. Applicant further represents that the Funding Agreements will require Equitable to make payments in amounts and at times which correspond to the principal, interest and any premium payment obligations of the Applicant under the Indenture. Thus, it is asserted, although Equitable will not guarantee Applicant's debt there will at all times be an uninterrupted payment of funds by Equitable to the Trustee.

Applicant states that the Funding Agreements will be supported by assets held in Equitable's general account. It is further stated that holders of the Applicant's debt securities will also benefit from safeguards that are not present in the guarantee of the usual, non-regulated industrial parent, since Equitable is subject to regulation and supervision under the New York Insurance Law. This, according to the Applicant, together with Equitable's assets, creates a backing that in economic reality must be regarded as at least equal to an "unconditional guarantee."

Applicant proposes to offer and sell an issue of its notes (the "Notes") in a firm commitment underwriting to be managed by one or more major underwriters. The offering will be made solely overseas and will be structured to assure that no Notes will be offered or sold to United States citizens or residents or entities organized or having their principal place of business in the United States (collectively, "United States Investors"). Although additional debt offerings are expected to be made overseas, on a similar basis, to persons who are not United States Investors, Applicant does not presently propose to make any public offering of its securities in the United States. However, Applicant states that it could offer its debt securities in the United States in transactions exempt from registration under the Securities Act of 1933.

Applicant states that it may be subject to the Act because, by acquiring Funding Agreements which will constitute more than 40% of its assets exclusive of cash items, Applicant may be deemed an "investment company"

under Section 3(a)(3) of the Act. Equitable does not concede that the fixed type Funding Agreements supported by general account assets are "securities" within the meaning of the Act. Nor does the Applicant concede that it will be primarily in the business of investing, reinvesting, owning, holding, or trading in securities and thus unable to rely on the exclusion in Section 3(b)(1). Nevertheless, the Applicant is submitting the application in order to remove any doubt as to its status under the Act.

Applicant states that it may not rely on the safe harbor provided by Rule 3a–5 under the Act because Equitable is exempted from the definition of investment company under Section 3(c) of the Act instead of Section 3(a) or 3(b) of the Act and would not fall within the definition of a "parent company" under Rule 3a–5. Applicant submits that the concern in excluding Section 3(c) exempted issuers is that these companies could be engaged or intend to engage primarily in investment company activities. Applicant asserts that the nature of Equitable's operations does not raise the concerns that prompted the exclusion of Section 3(c) persons from the literal terms of Rule 3a–5 under the Act. Applicant states that Equitable's exempt status under the Act is derived from Section 3(c)(3) of the Act and that it is an insurance company whose primary activities involve the business of insurance. Applicant further asserts that its primary purpose is to finance the business operations of Equitable and that neither its structure nor its mode of operation resembles that of an investment company.

Applicant states that it also cannot rely on the Rule because its debt securities are not unconditionally guaranteed as specified in the Rule. However, Applicant asserts that the Funding Agreements issued in connection with Applicant's financing activities are at least equivalent to the unconditional guarantee referred to in the Rule. Applicant states that the Funding Agreements involve a direct obligation by Equitable to make payments to a Trustee which is required to make principal, interest and any premium payments directly to Applicant's debt holders, and that they are supported by assets held in Equitable's general account, including reserves maintained for such agreements.

On the basis of the foregoing, Applicant submits that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 19, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–7717 Filed 3–29–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 812–5785; Release No. 14367A; March 27, 1985; Correction]

Robert E. Lee; Filing of an Application for an Order; Correction

This document corrects paragraphs 4–6 of Release No. 14367 published February 19, 1985 (50 FR 7022) FR Doc. 85–3890 to read as follows.

* * * * *

At the time of the alleged violation, the Applicant was the Chief Executive Officer of IntraWest Bank of Denver, N.A., which was then the largest subsidiary of InterWest Financial Corporation, a registrant under the Securities Exchange Act of 1934. The allegations leading to the Complaint and the Decree related to the method of determining the Allowance for Possible Loan Losses in IntraWest Bank of Denver, N.A. and the amount of such Allowance actually determined as of March 31, June 30, and September 30, 1982. It was alleged that the method of determining the Allowance was described in a false and misleading manner in the 10–K Report of IntraWest Financial Corporation for 1981, and that the Allowance was set at an insufficient level as of March 31, June 30, and September 30, 1982, which resulted in material overstatements of the earnings of the bank (and accordingly of the registrant, IntraWest Financial Corporation).

On October 1, 1983, IntraWest Bank of Denver, N.A. was merged into First Interstate Bank of Denver, N.A., a subsidiary of First Interstate Bankcorp. The applicant is now Chairman of the Board of First Interstate Bank of Denver, N.A. From and after October 1, 1983, there has been no connection between IntraWest Financial Corporation and either the Applicant's present employer, First Interstate Bank of Denver, N.A., or its parent, First Interstate Bancorp.

The Applicant represents that it is foreseeable that in performance of his duties as Chairman of a major bank, the Applicant will be requested or required to commence acting in the capacity of an employee, officer, director, member of an advisory board, investment advisor, or depositor for a registered investment company at a future time, either because First Interstate Bank of Denver, N.A. ceases by statutory enactment to be exempt from the Act or because a subsidiary of its parent holding company or some other company affiliated or associated in business with said Bank becomes registered under the Act.

* * * * *

John Wheeler,

Secretary.

March 27, 1985.

[FR Doc. 85–7715 Filed 3–29–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See, 14 CFR 302.1701 et seq.); Week Ended March 22, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Mar. 18, 1985	42980	Presidential Airways, Inc., c/o Jonathan B. Hill, Dow, Lohnes & Albertson, Suite 500, 1255 23d Street, NW., Washington, D.C. 20037. Application of Presidential Airways, Inc., pursuant to section 401 of the Act and subpart Q of Regulations requests a certificate of public convenience and necessity to engage in scheduled air transportation of persons, property and mail in interstate and overseas transportation. Conforming Applications, Motions to Modify Scope and Answers may be filed by Apr. 15, 1985.
Mar. 29, 1985	42989	Air Borealis, Inc., c/o Robert L. Murray, 281 East 51st, Anchorage, Alaska 99502. Application of Air Borealis, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity to perform scheduled Anchorage—Seattle and Anchorage—Honolulu service for an indefinite period. Conforming Applications, Motions to Modify Scope and Answers may be filed by Apr. 17, 1985.
Do	42978	Continental West Airlines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Ave., NW., Washington, D.C. 20036. Application of Continental West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, mail and property. Conforming Applications, Motions to Modify Scope and Answers may be filed by Apr. 17, 1985.
Mar. 22, 1985	42982	DHL Airways, Inc. c/o Herbert A. Rosenthal, Hauseman & Rosenthal, 2020 K St., NW., Suite 350, Washington, D.C. 20006. Application of DHL Airways, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations requests issuance of a new or amended certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property between points in the United States and points in Japan. Conforming Applications, Motions to Modify Scope and Answers may be filed by Apr. 19, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-7739 Filed 3-29-85; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

National Airspace Review Enhancement; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 4-3 of the Federal Aviation Administration National Airspace Review Enhancement Advisory Committee. The agenda for this meeting is as follows: Microwave Landing System (MLS) has been adopted by ICAO member states as the world standard to replace Instrument Landing System. MLS provides full range (civil/military) operational requirements including multiple approach courses and selectable glide paths with precision distance measuring equipment. The full spectrum of resultant adjustments to associated procedures, regulations, and airspace assignments should be reviewed and include study of microwave landing system application for situations such as wake turbulence avoidance, noise abatement, and aircraft segregation from excluded airspace in terminal areas.

DATE: Beginning Tuesday, May 14, 1985, at 9 a.m., through Friday of the first week and resuming at 9 a.m. Monday through Thursday of the following week.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 9A/B/C, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Enhancement Program Management Staff, room 639, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 755-5624. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Enhancement Advisory Committee, Associate Administrator for Administration, AAD-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by May 7, 1985. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C. on March 25, 1985.

Burton L. Gifford,
Manager, National Airspace Review Enhancement Staff, Office of the Associate Administrator for Administration.
[FR Doc. 85-7612 Filed 3-29-85; 8:45 am]
BILLING CODE 4910-13-M

Proposed Advisory Circular 24-XX; Auxiliary Fuel System Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25-XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) concerning auxiliary fuel system installations. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATE: Comments must be received on or before July 1, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Regulations and Policy Office, ANM-110, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Regulations and Policy Office, at the address above, telephone (206) 431-2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25-XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Regulations and Policy Office before issuing the final AC.

Background

In recent years, the FAA has received a number of applications for amended or supplemental type certificates to incorporate additional fuel capacity in existing certificated transport category airplanes. Because the design and safety concepts for fuel storage and transfer proposed in these applications have varied considerably, the FAA conducted a public forum on November 15 through 18, 1983, to discuss the various certification requirements pertaining to auxiliary fuel tanks. In addition to FAA personnel, attendees included representatives of various manufacturers, modifiers, and users. The proposed AC, which provides guidance concerning satisfactory auxiliary fuel tank installations, is a direct result of the discussions held during this forum.

Issued in Seattle, Washington, on March 20, 1985.

Donald L. Riggin,
Acting Manager, Aircraft Certification Division, ANM-110.
[FR Doc. 85-7609 Filed 3-29-85; 8:45 am]
BILLING CODE 4910-13-M

Maritime Administration

Proposed Procedures for Considering Environmental Impacts

Correction

In FR Doc. 85–6770 beginning on page 11606 in the issue of Friday, March 22, 1985, make the following correction: On page 11608, in the first column, in paragraph 3, in the first line, insert "environmental assessment, the Coordinator shall direct preparation of either an" after "of the".

BILLING CODE 1505-01-M

National Highway Traffic Safety Administration

[Docket No. EX85–1; Notice 2]

British Coach Works Ltd.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards

On March 14, 1985, Notice was published inviting comment on the petition by British Coach Works, Ltd., of Arnold, PA, for temporary exemption from several Federal motor vehicle safety standards on grounds of substantial economic hardship (50 FR 10340).

The Notice inadvertently omitted the company's request for a three-year exemption from Motor Vehicle Safety Standard No. 207, *Seating Systems*. The petitioner has stated that the seating system of its vehicle consists of two individual seats that are replicas of those used in the original MG TD car. The seat tracks to which the seats are attached are those of the Chevrolet Chevette "and in compliance with the requirements of the standard". Petitioner is unsure, however, whether the seating system would meet all the performance requirements of the standard and due to the limited resources of the company, "actual testing of the seating system as set out in the standard would not be feasible".

Interested persons are invited to submit comments on the petition of British Coach Works, Ltd., as supplemented above. Comments should refer to the docket number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

Comment closing date: April 15, 1985.

(Sec. 3, Pub. L. 92–548, 86 Stat 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on March 28, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–7632 Filed 3–27–85; 11:12 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[4-00236]

Eastern Indemnity Company of Maryland; Surety Companies Acceptable on Federal Bonds; Liquidation

Eastern Indemnity Company of Maryland, a Maryland corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 49 FR 27252, July 2, 1984. The company's authority was terminated by the Department of the Treasury effective December 14, 1984. Notice of the termination was published in the **Federal Register** of December 20, 1984, on page 49534.

There is printed below a copy of the Order of Liquidation dated January 28, 1985, from the Maryland Department of Insurance, indicating the company is now being liquidated. All persons having claims against Eastern Indemnity must file their claim by January 28, 1986, or be barred from sharing in the distribution of assets. The Maryland Insurance Department anticipates providing all currently known claimants with a Proof of Claim form as soon as the form becomes available. It is recommended that any person who has not yet filed their claim with the Maryland Insurance Department should submit their claim, in writing to: Mr. James A. Gordon, Receiver, Eastern Indemnity Company of Maryland in Liquidation, P.O. Box 17391, Baltimore, MD 21203.

Government agencies involved in Federal surety bonding operations where third parties such as subcontractors, materialmen, and suppliers may have a claim against the company are requested to use their best efforts to notify such third parties of the liquidation, assist them in filing claims, inform them of their priority status based on section 3713 of the United States Code and provide them with copies of the notice of liquidation. If priority status is not being granted, please notify the Department of Treasury at the address indicated below.

Government agencies should be aware that, where reinsurance was obtained on a bond, the reinsuring company may be liable to the United States Government for the full amount of the reinsurance or the full amount of the default, whichever is less.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service (formerly Bureau of Government Financial Operations), Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2319. An information notice containing additional information concerning the filing of claims will be distributed by this office to Federal agencies.

Dated: March 20, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

Order of Liquidation

State of Maryland, ex rel. Edward J. Muhl, State Insurance Commissioner of Maryland v. Eastern Indemnity Company of Maryland

In the Circuit Court for Montgomery County Case No: 3406, in consideration of the application for Order of Liquidation and Request for Hearing regarding Order of Insolvency filed in the above-captioned matter by the State Insurance Commissioner of Maryland and Rehabilitator of Eastern Indemnity Company of Maryland ("Commissioner"), and pursuant to Maryland Code Annotated Article 48A, § 137 and § 142, this Court finds that further efforts to rehabilitate EICOM appear to be futile and, therefore, it is this 28th day of January, 1985, ORDERED that:

1. Edward J. Muhl, State Insurance Commissioner of Maryland and Rehabilitator of Eastern Indemnity Company of Maryland ("EICOM") is directed forthwith to take possession of the property of EICOM; to liquidate its business, to deal with EICOM's property and business either in his own name as State Insurance Commissioner, or in the name of EICOM as this Court may direct;

2. To give notice to all creditors who may have claims against the insurer to present such claims;

3. Within 120 days of the signing of this Order, the Commissioner shall file an Affidavit of compliance with paragraph 2 above with the Clerk of this Court; and

4. Pursuant to Maryland Code Annotated Article 48A, § 135 and § 151 all persons asserting claims against EICOM are hereby enjoined, for a period of 180 days from the date of this order from: commencing or maintaining any action in the nature of an attachment, garnishment, or execution against EICOM or its assets; and from commencing, maintaining, or prosecuting any actions, or obtaining any preferences, judgments, attachments, liens, or the making of any levy against EICOM or its assets, except that nothing in this Order shall prevent any person from asserting a claim against EICOM pursuant to Maryland Code Annotated Article 48A, sections 147, 148 or 149.

David L. Cahoon,

Judge.

[FR Doc. 85–7616 Filed 3–29–85; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 62
Monday, April 1, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	2
Federal Mine Safety and Health Review Commission	3
Tennessee Valley Authority	4

1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, April 5, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a record announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7838 Filed 3-28-85; 3:04 pm]

BILLING CODE 6210-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, April 3, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Part Open/Part Closed to the Public.

MATTERS TO BE CONSIDERED: 1. ATV Proposal

The Commission will consider action options on all terrain vehicles.

Open to the Public

2. Mid-year Review

The Commission will consider CPSC's Fiscal Year 1985 Operating Plan.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: March 27, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-7741 Filed 3-28-85; 9:00 am]

BILLING CODE 6355-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 26, 1985.

TIME AND DATE: 10:00 a.m., Thursday, March 28, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. United Mine Workers of America on behalf of Rowe, etc. v. Peabody Coal Company, Docket Nos. KENT 82-103-D, etc., and Secretary of Labor on behalf of Williams v. Peabody Coal Company, Docket No. LAKE 83-69-D. (Consideration of allegations of judicial misconduct.)

2. Chapman Merrell v. Peabody Coal Co., Docket No. KENT 84-250-D. (Consideration of petition for interlocutory review.)

It was determined by a unanimous vote of Commissioners that a meeting be held on these items and that no earlier announcement of the meeting was possible. (5 U.S.C. § 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-7792 Filed 3-28-85; 12:13 pm]

BILLING CODE 6735-01-M

4

TENNESSEE VALLEY AUTHORITY

Meeting No. 1347

TIME AND DATE: 10:15 a.m. (CST), Wednesday, April 3, 1985.

PLACE: Richards Education Center, 541 Riverview Drive, Florence, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on March 19, 1985.

Action Items

Old Business Item

1. Supplement to Contract No. TV-61451A between TVA and Forest Resources Systems Institute covering arrangements for establishment of a research and development arm of the Institute.

New Business Items

B—Purchase Awards

B1. Invitation 84-949143—Requirement contract for powdered ion exchange resin at Browns Ferry Nuclear Plant.

B2. Contract payment on Nuclear Steam Supply System Contract 75C60-84840-2 and Nuclear Fuel Contract 75P65-6087-2 with Combustion Engineering, Inc., for Yellow Creek Nuclear Plant.

C—Power Items

C1. Cooperative agreement TV-66389A with the Electric Power Research Institute for the 160-MW Atmospheric Fluidized Bed Combustion Demonstration Plant Project.

E—Real Property Transactions

E1. Grant of permanent easement to the Town of Oliver Springs, Tennessee, for municipal purposes affecting approximately 4.4 acres of Oliver Springs Flood Project lands in Anderson, Morgan, and Roane Counties, Tennessee—Tract No. XTOSFP-10E.

E2. Grant of permanent easement to Rhea County, Tennessee, for a firehall/community building affecting approximately 0.6 acre of Watts Bar Reservoir land in Rhea County, Tennessee—Tract No. XTWBR-132FC.

E3. Abandonment of certain rights to A. E. Jolley affecting approximately 0.13 acre of Cherokee Reservoir land in Hawkins County, Tennessee—Tract No. XCK-389.

E4. Sale of term easements to accommodate the construction and operation of commercial parking facilities affecting up to 7.5 acres of TVA property adjacent to and south of the new Chattanooga Office Complex building in Chattanooga, Tennessee—Tracts XCOFC-1PL and -2PL.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: March 27, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-7791 Filed 3-28-85; 12:13 pm]

BILLING CODE 8120-01-M

federal register

Monday
April 1, 1985

Part II

Office of Personnel Management

SES Positions That Were Career Reserved During 1984; Notice

OFFICE OF PERSONNEL MANAGEMENT

SES Positions That Were Career Reserved During 1984

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: As required by the Civil Service Reform Act of 1978, this gives notice of all positions in the Senior Executive Service (SES) that were career reserved during 1984.

FOR FURTHER INFORMATION CONTACT: Charles Vaughn, Office of Executive Personnel, (202) 632-4625.

SUPPLEMENTARY INFORMATION: Below is a list of titles of SES positions that were career reserved any time in calendar year 1984, whether or not they were still career reserved on December 31, 1984. Section 3132(B)(4) of Title 5, United States Code, requires that the head of each agency publish the list by March of the following year. OPM is publishing a consolidated list for all agencies.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984

Agency organization	Career reserved positions
ACTION	
Ofc of the Director	Deputy Assistant Director for Compliance
	Inspector General.
	Asst Dir for Financial Management.
Administrative Conference of the U.S.	
Administrative Conference of the U.S.	Executive Director.
	General Counsel.
	Research Director.
Advisory Council on Historic Preservation	
Ofc of the Exec Director	Executive Director.
Department of Agriculture	
Ofc of the Inspector General	Asst Inspector General for Investigations.
	Dep Asst Inspector General for Investigation.
	Asst Inspector General for Audit.
	Asst Inspector General for Sec & Spec Oper.
	Asst Inspector General for Analysis and Eval.
	Regional Inspector General for Audit.
	Regional Inspector General for Audit.
Office of Asst Sec'y Administration.	Assistant Secretary for Administration.
Office of Operations	Director Office of Operations.
Farmers Home Administration.	Dep Admr—Financial and Administrative Opers.
	Asst Admin. Accounting & Dir, Finance Ofc.
	Asst Dep Admin for Automated Sys Development.
	Asst Admin for Planning, Budgeting & Finance.
	Asst Admr, Community and Business Programs.
Agricultural Marketing Service.	Deputy Administrator, Management.
	Director, Fruit & Vegetable Division.
	Director, Cotton Division.
	Director, Dairy Division.
	Director, Livestock Division.
	Director, Warehouse & Seed Division.
	Director, Tobacco Division.
	Agricultural Marketing Svc., Dir Poultry Div.
	Assoc. Deputy Administrator for Compliance.
Animal & Plant Health Inspection Service.	Deputy Administrator for Management & Budget.
	Assoc Dep Administrator for Mgt. & Budget.
	Assist Dep Admin for International Programs.
Veterinary Services	Asst Dep Adm: R-Animal Health Progs—Vet Serv.
	Dir Natl Veterinary Services Labs, Ames.
	Dir., Nat Prog Planning Staffs, Vet Services.
	Director, Northern Region.
	Dir, SE Region, Veterinary Services.
	Dir, Natl Brucellosis Eradication Program.
	Director, Western Region.
	Director, South Central Region.
	Director, North Central Region.
Plant Protection & Quarantine Service.	Dir, Natl Prog Plan Staff, Plant Prot & Quarantine.
	Dir, SE Region, Plant Prot & Quarantine.
	Assist Dep Admin for Natl & Emergency Progr.
	Director, Northeastern Region.
	Director, South Central Region.
	Director, Western Region.
	Assistant to Director.
	Asst Dep Admin, National & Emergency Programs.
Federal Grain Inspection Service.	Asst Dep Admin—Program Opers (Field).
Food Safety and Inspection Service.	Asst Deputy Admin Technical Services.
	Dep Admr—Administrative Mgmt.
	Dir Northeast Region, Phila., PA.
	Regl Director, Atlanta, Georgia.
	Dir, North Central Region, Des Moines, Iowa.
	Director, Southwestern Region, Dallas, Texas.
	Dir, Western Region, Alameda, California.
	Asst Dep Admr Comp & Staff Operations.
	Asst Deputy Admin Regional Operations.
	Assistant Deputy Admr Science FSQS.
	Asst Dep Admin (Admin Mgt).
	Deputy Administrator, Science.
	Dep Admr Interni Programs.
Food & Nutrition Service.	Deputy Admin for Financial Management.
	Deputy Admr for Management.
Agricultural Stabilization & Conservation Service.	Accounting Officer.
Foreign Agricultural Service.	Asst Administrator, Management.
	Dir, Grain & Feed Div.
	Dir, Oilseeds & Prod Div.
	Dir, Dairy, Livestock & Poultry Div.
	Deputy Assistant Administrator Export Credits.
	Dep Asst Admr, Interni Agric Statistics.
Ofc of Dir Science and Education Administration.	Research Leader, Wheat Research.
	Research Leader—Fruit & Vegetable Chem Research.
	Research Leader—Forage and Turf Research.
	Res Leader—Plant Physio & Photosynthesis Res.
	Dep Admr for Adm Mgmt.
	Director, Nutrition Research Ctr on Aging.
	Dir, Children's Nutrition Research Center.
	Dir, Western Human Nutrition Research Center.
Agriculture Research Service.	Dir, Beltsville Human Nutrition Research Ctr.
	Chief Fermentation Laboratory.
	Chf, Plant Virology Lab Beltsville, MD.
	Res Leaders Natural Products Chemistry Res.
	Dir, Southern Regional Res Center, New Orlean.
	Assoc Dep Admr.
	Director, USDA Honey Bee Research Laboratory.
Regional Offices, ARS	Dir Northern Regional Research Center.
	Dir Nat'l Animal Disease Ctr.
	Director, Beltsville Agric Research Center.
	Director Eastern Regl Research Center.
	Dir, Plum Island Animal Disease Ctr.
	Director, Western Regional Research Center.
	Director, California-Hawaii-Nevada Area.
	Director, Florida-Antilles Area.
	Director, Southern Plains Area.
	Director, Natl Soil Erosion Res Laboratory.
	Director, Mid-South Area.
	Director, Pacific Northwest Area.
	Director, Northern States Area.
	Director, Arid Southwest Area.
	Director, Conservation & Production Res Lab.
	Dir, Grand Forks Human Nutrition Res Ctr.
	Dir Midwest Area.
	Director, North Atlantic Area.
	Dir Pacific Basin Area.
	Director, Northwest Region.
	Director, South Atlantic Area.
	Director, Beltsville Area Office.
	Director, Mountain States Area.
	Director, Central Plains Area.
National Program Staff	Deputy Administrator National Program Staff.
	Assoc Dep Admr, Natl Prog Staff.
Research Staff	Director, U.S. Salinity Laboratory.
	Dir Insects Affecting Man Laboratory.
Extension Service	Deputy Admin Management.
	Dep Admr, Home Economics & Human Nutrition.
Office of Grants and Program Systems.	Administrator, Ofc of Grants and Prog Systems.
	Director, Ofc of Grants and Program Systems.
Soil Conservation Service.	Director, Engineering Division.
	Dir Ecological Sciences and Technology Divisi.
	Dep Chf for Administration.
	Dir, Consv Planning and App.
	Dir, Project Dev and Maint.
	Dir, Basin & Area Planning (Soil Conserv).
	Assoc Dep Chief for Administration.
	Dir, Soils (Soil Scientist).
	Dir, Land Treatment Program.
	Dir Information Resources Management.
	Dir South National Technical Center.
	Flach Kiosk W.
Forest Service	Dep Chf for Administration.
	Associate Deputy Chief—Administration.Dir Forest Pest Mgmt Staff.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dir Fiscal and Accounting Management.
	Director, Cooperative Fire Protection.
	Associate Deputy Chief for Administrator.
Research	Director, Timber Mgmt Research Staff.
	Dir Insect and Disease Research Staff.
	Dir Forest Environment Research Staff.
	Director, Forest Resource Economics Staff.
	Dir Forest Products & Eng Res Staff.
	Dir, Forest Fire & Atmos Sciences Res Staff.
Nat'l Forest System	Dir, Range Management Staff.
	Dir, Recreation, Mgmt Staff.
	Dir Timber Management Staff.
	Director, Engineering Staff.
	Director, Aviation and Fire Management Staff.
	Director, Lands Staff.
	Dir Land Management Planning Staff.
	Dir, Wildlife & Fisheries Mgt Staff.
	Dir, Minerals & Geology Staff.
	Dir, Watershed Mgt Staff.
State & Private Forestry	Dir of Area Planning & Dev Staff.
	Dir Cooperative Forestry.
Field Units	NE Area Dir, State & Private Forestry, U Darb.
	Dir Intermountain Forest & Range Exp Stat, OGD.
	Dir N Eastern Forest Experiment Station.
	Dir, North Central Forest Exp Station.
	Dir, Pacific NW Forest & Range Exp Station.
	Dir, Pacific SW for & Range Exper Sta.
	Director Rocky Mt Forest & Range Exper Stat.
	Dir S Eastern Forest Experiment Station.
	Dir, S. Forest Experiment Station, New Orleans.
	Director, Forest Products Laboratory.
	Dep Dir Forest Products Lab.
Economic Research Service.	Admr, Economic Research Service.
	Associate Administrator—Economic Rsch Svc.
	Director International Economics Division.
	Career Reserved Positions.
	Director National Economics Division.
	Dir, Natural Resource Economics Div.
	Director, Economic Development Division.
	Dep Admr/Planning & Organizational Relations.
Economics Management Staff.	Director, Economics Management Staff.
Statistical Research Service.	Administrator SRS.
	Dep Administrator, Statistical Reporting Svc.
	Dir Estimates Div.
	Director Survey Division.
	Director Statistical Research Division.
	Director State Statistical Division.
World Agricultural Outlook Board.	Chairperson.
	Dep Chairperson.
Board for International Broadcasting	
Board Staff	Exec Director.
	Financial Manager.
	Foreign Information Officer.
	Foreign Information Officer.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Department of Commerce	
Office of the General Counsel.	Dep Asst. GC for Administration.
Ofc of Asst Secy for Administration.	Dir, Ofc of Information Resources Management.
	Dep Dir for Procurement & Admin Services.
Director for Management and Information.	Dir, Ofc of Information Management.
	Dir, Ofc of Information Systems.
	Dir Ofc of Adm Serv.
Director for Management Support Operations.	Dir, Ofc of Admin Services Operations.
Director Personnel and Civil Rights.	Director for Personnel and Civil Rights.
	Deputy Director of Personnel.
Director for Planning Budget and Evaluation.	Director, Office of Budget.
Ofc of the Under Secy for Economic Affairs.	Dep Dir Bureau of Industrial Economics.
	Statistical Coor for the Asst Sec for Eco Aff.
	Dir Office of Business Analysis.
	Supervisory Economist.
Ofc of Asst Secy for Productivity, Tech & Innov.	Research and Development Administrator.
	Dep Dir Ofc of Productivity Tech & Innovation.
Bureau of Industrial Economics.	Dir, Bureau of Industrial Economics.
	Dir Ofc of Industry Econ Res and Analysis.
	Director Office of Producer Goods.
	Dir Ofc of Basic Industries.
	Dir, Ofc Consumer Goods & Svc Ind.
	Dir Ofc Regulatory & Federal Prog Anal.
Bureau of Economic Analysis.	Director.
	Dep Dir, Bur of Economic Analysis.
	Assoc Dir for Natl Economic Accounts.
	Assoc Dir for Natl Analysis & Projections.
	Assoc Dir for Regional Economics.
	Assoc Dir for Internat'l Economics.
	Chief Economist.
	Chf Statistician.
	Asst to the Director for Econometrics.
	Chf, Nat'l Income & Wealth Div.
	Chief, Current Business Analysis Div.
	Chief, Business Outlook Div.
Bureau of the Census	Dep Dir.
	Asst Dir for Computer Services.
	Chief Data User Services Division.
	Chief, Computer Operations Division.
	Chief, Technical Services Division.
	Assoc Dir for Management Services.
	Senior Program Analyst.
	Asst Dir for Administration.
	Chief, Long-Range ADP Planning Staff.
Demographic Fields	Associate Director for Demographic Fields.
	Asst Dir for Demographic Censuses.
	Chf, Population Div.
	Chf, Statistical Methods Div.
	Chief Demographic Surveys Division.
	Asst Dir for International Programs.
	Chief, Decennial Census Div.
Statistical Standards and Methodology.	Assoc Dir for Statistical Standards & Method.
	Chief Statistical Research Division.
Field Operations	Assoc Dir for Field Operations.
	Chf, Geography Div.
	Chief, Field Div.
	Chief Data Preparation Division.
Economic Fields	Associate Director for Economic Fields.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Asst Dir for Economic & Agric Censuses.
	Chief, Agriculture Div.
	Chf, Business Div.
	Chf, Construction Statistics Div.
	Chf, Econ Surveys Div.
	Chf, Foreign Trade Div.
	Chf, Government Div.
	Chf, Industry Div.
	Chief Center for Economic Studies.
	Asst Dir for Economic Surveys.
Institute for Telecommunications Sciences.	Assoc Admr for Telecommunications Science.
	Deputy Dir for Systems & Networks.
	Special Technology Liaison.
	Deputy Director for Spectrum.
	Dir, Off of Public Works.
Economic Development Administration.	Director, Ofc of Plan, Techn Asst, Res & Eval.
Ofc of the Inspector General.	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
	Deputy Assistant Inspector Gen for Auditing.
	Asst Inspector Gen for Planning & Evaluation.
	Technical Advisor to the Inspector General.
	Counsel to the Inspector General.
	Asst Insp Gen for Vulnerability Assess & Mgt Svc.
	Technical Advisor to the Inspector General.
	Asst Inspector General for Auto Info Sys.
Ofc of Dep Asst Secy for Basic Industries.	Dir, Ofc of Metals, Minerals & Commodities.
Ofc of Dep A/S Capital Goods & Internat'l Construction.	Dir, Office of Special Industrial Machinery.
Ofc of Dep A/S for Automotive Affairs & Consumer Goods.	Director Office of Consumer Goods.
National Oceanic and Atmospheric Administration	Asst Dir Ocean Minerals and Energy.
Office of Budget and Finance.	Director, Office of Budget and Finance.
	Dep Dir, Office of Budget and Finance.
Office of Administrative & Technical Services.	Dep Dir, Office of Admin and Technical Serv.
	Chief, Personnel Division.
	Chief, Information & Management Serv Div.
	Deputy Dir for Management Support Operation.
	Chief, General Services Management Division.
	Chief, Management and Budget Staff.
National Marine Fisheries Service.	
Fisheries Centers	Dir NE Fisheries Ctr.
	Dir SE Fisheries Ctr.
	Dir SW Fisheries Center.
	Dir NW & Alaska Fisheries Ctr.
Natl Environ Satellite, Data & Info Services.	Chief, Systems Planning & Development Staff.
Deputy Asst Admr for Satellites.	Chief Satellite Experiment Laboratory.
	Chief Earth Science Laboratory.
Dep Asst Admr for Information Services.	Dir, Environmental Science Info Center.
	Dir, Natl Oceanographic Data Center.
	Dir, Assessment and Information Services.
	Deputy Director.
	Director, National Climatic Data Center.
	Dir, National Geophysical Data Center.
Office of Sea Grant & Extramural Programs.	Dep Dir, Ofc of Sea Grant & Extramural Progr.
Environmental Research Laboratories.	Dep Dir, Environmental Research Laboratories.
	Dir Ofc of Weather Res & Modification.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Atlantic Oceanographic and Meteorological Labs.	Dir, Atlantic Oceanographic & Meteorological.
	Depy Dir Atlantic Oceanographic & Meteorologi.
Wave Propagation Lab	Director.
Aeronomy Lab	Director, Aeronomy Laboratory.
	Senior Scientist Deputy Director.
Geophysical Fluid Dynamics Laboratories.	Director.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
	Supervisory Rsch Meteorologist.
Great Lakes Environmental Research Lab.	Dir Great Lakes Environmental Research Lab.
National Severe Storms Laboratory.	Dir Nat'l Severe Storms Lab.
Air Resources Laboratory.	Director Air Rsources Laboratory.
Pacific Marine Environmental Lab.	Dir Pacific Marine Environmental Lab.
Ofc of Program Devel & Coordination.	Spec Proj & Weather Modification Officer.
Ocean Services & Coastal Zone Management.	Chf Scientist.
	Dir, Engrg Dev Lab.
	Special Assistant to the Chief Scientist.
Ocean and Coastal Resources Management.	Spec Asst to Dir Ofc of Ocean & Coastal Res.
	Dir, National Marine Pollution Programs Ofc.
Oceanography & Marine Services.	Chief, Ocean Systems Division.
	Chief, Ocean Resources Assessment Division.
	Chief, Ocean Services Division.
	Chief, Ocean Requirements & Data Anal Div.
National Ocean Service	Dir Geodetic Research & Development Lab.
	Assoc Dir Ofc of Aeronautical Charting & Cart.
	Chief Geodesist.
National Weather Service	Dep Dir—National Weather Service.
	Director, NOAA Data Buoy Office.
	Chief, International Affairs Staff.
	Dir, Nexrad Joint Systems Program Ofc.
	Chief, Management and Budget Staff.
	Chf, External Relat & Indus Meteorology Staff.
	Chf, Ofc of the Fed Coordinator for Meteorolg.
	Chief, Policy and Long Range Planning Staff.
Office of Meteorology	Dir, Office of Meteorology.
	Chief Operations Division.
	Chf, Prog Requirements & Plng Division.
Office of Hydrology	Director, Office of Hydrology.
	Chief, Hydrologic Services Division.
	Chief, Hydrologic Research Laboratory.
Office of Technical Services.	Dir, Ofc of Technical Services.
	Chf, Communications Division.
	Chief, Engineering Division.
	Chief AFOS Operations Division.
Office of Systems Development.	Director, Office of Sytemes Development.
	Chief, Integrated Systems Laboratory.
	Chief, Techniques Devel Laboratory.
	Chief, Advanced Systems Laboratory.
National Meteorological Ctr.	Director National Meteorological Center.
	Deputy Director.
	Chief, Climate Analysis Center.
	Chief, Automation Division.
	Chief, Development Div.
	Chf—Forecast Division.
Regional Offices & Centers.	Dir Southern Region, Ft Worth.
	Dir, Salt Lake City Region.
	Dir, Alaska Region, Anchorage.
	Dir Eastern Region Nws.
	Director Central Region.
	Dir, Natl Severe Storms Forecast Center.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Director, Natl Hurricane Center.
National Bureau of Standards.	Assoc Dir for International Affs.
	Tech Advisor to the Director.
	Director, Planning Ofc.
	Assoc Dir for Programs, Budget, and Finance.
	Deputy Dir Office of Product Standards Policy.
National Measurement Lab.	Senior Science Advisor.
	Senior Mathematical Statistician.
	Associate Director for Planning.
	Group Leader Surface and Structure Kinetics.
	Chief Inorganic Analytical Research Division.
	Chief Gas and Particulate Science Division.
Deputy Director for Programs.	Deputy Director for Programs.
	Chief, Off of Environmental Mgmts.
	Director, Standard Reference Data.
	Prog Manager, Industrial Process Data.
	Program Manager, Energy and Environmental Dat.
	Director, Measurement Services.
Center for Basic Standards.	Director, Center for Basic Standards.
	Senior Research Fellow.
	Chief, Electricity Division.
	Mgr, Tech Applications of Measurement Stds.
Quantum Physics Division.	Chf, Quantum Physics Div (Ctr for APC).
	Sr Sci & Fellow of Jila.
	Senior Research Scientist.
	Senior Scientist, Boulder.
	Sr Scientist & Fellow of Jila.
	Senior Scientist—Fellow of Jila.
Time and Frequency Division.	Chf, Time & Frequency Div.
	Group Leader & Senior Scientist.
Center for Analytical Chemistry.	Director—Center for Analytical Chemistry.
	Group Leader, Laser Analytical Chemistry.
	Deputy Director, Ctr for Analytical Chemistry.
	Scientific Asst to the Dir Ctr for Analytical.
	Deputy Dir Center for Analytical Chemistry.
Center for Radiation Research.	Dir, Center for Radiation Research.
	Dep Dir, Ctr for Radiation Research.
	Chf Atomic & Plasma Radiation Div.
	Chf—Radiation Source & Instrumentation Divisi.
	Chief Radiometric Physics Division.
Nuclear Radiation Division.	Chief Nuclear Radiation Div.
	Physicist (Nuclear).
	Physicist (Nuclear).
	Principal Scientist Radiation Physics Div.
Radiation Physics Division.	Prin Scientist in X-Ray Physics.
	Group Leader for Far Ultraviolet Physics.
Center for Materials Science.	Dir—Center for Materials Science.
	Deputy Dir Center for Materials Science.
	Senior Scientist.
	Group Leader for Fiberous Systems.
	Chf, Ofc of Nondestructive Evaluation.
	Chief, Metallurgy Div.
	Scientific Assistant to the Director.
Fracture and Deformation Division.	Chf, Fracture and Deformation Division.
	Group Leader Mechanical Properties.
	Chief Inorganic Materials Division.
Ceramics Glass and Solid State Science Division.	Group Leader for Crystallography.
	Grp Leader for Glass Tech Inorganic Materl Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Polymer Science and Standards Division.	Chf Polymers Science and Standards Div.
	Physicist (Solid State).
Reactor Radiation Division.	Chf, Reactor Radiation Div.
	Group Leader Neutron Condensed Matter Science.
Center for Chemical Physics.	Director Center for Chemical Physics.
	Deputy Director, Center for Chemical Physics.
	Quantum Chemistry Group Leader.
	Group Leader for Environ Chemical Process.
	Chief, Surface Science Div.
	Chief, Molecular Spectroscopy Division.
National Engineering Lab.	Assoc Dir for Technical Evaluation.
	Group Leader Equation of State.
	Chief, Office of Sponsored Programs.
	Deputy Director for NEL Programs.
Center for Fire Research.	Director—Center for Fire Research.
	Chief, Fire Safety Technology Division.
	Chief, Fire Measurement & Research Division.
	Chief, Office of Fire Research Resources.
Center for Building Technology.	Director—Center for Building Technology.
	Deputy Director, Center for Building Tech.
	Chf, Building Thermal & Serv Sys Div.
	Chf Thermal Analysis Program.
	Chief, Structures Division.
	Chief Building Physics Division.
	Chf, Building Materials Div.
	Chief, Building Equipment Division.
Ctr for Mechanical Engring & Process Technology.	Dir Center for Manufacturing Engineering.
	Deputy Dir Ctr for Manufacturing Engineering.
	Chief Automated Production Technology Div.
	Chief Mechanical Production Metrology Div.
	Manager Ofc of Auto Manufacturing Tech Transf.
	Chief, Industrial Systems Division.
	Chf, Thermophysical Properties Div.
Center for Applied Mathematics.	Director, Center for Applied Mathematics.
	Deputy Director.
	Chf Statistical Engineering Division.
	Chief, Scientific Computing Division.
	Assoc Dir for Computing.
	Chief, Operations Research Division.
	Chief, Scientific Computing Division.
Center for Electronics and Electrical Engring.	Dir—Ctr for Electronics & Electrical Engineer.
	Deputy Director.
	Chf Electrosystems Division.
	Chf—Electromagnetic Technology Division.
	Senior Research Scientist.
	Chief, Semiconductor Materials & Proc Div.
Center for Field Methods.	Chief Semiconductor Devices & Circuits Div.
	Chief, Electromagnetic Fields Division.
Center for Chemical Engineering.	Deputy Director Ctr for Chemical Engineering.
	Director Center for Chemical Engineering.
	Chief Thermophysics Division.
Inst for Computer Sciences and Technology.	Dir Center for Programming Science & Techn.
	Dir Center for Computer Systems Engineering.
	Chief, Systems & Network Architecture Div.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
	Chief, Systems & Network Architecture Div.
	Assoc Dir for Planning Budget & Evaluation.
	Chief System Components Division.
	Chief, Data Mgt. & Programming Lang. Division.
Patent and Trademark Administration.	Asst Commissioner for Finance and Planning.
	Assistant Commissioner for External Affairs.
Office of Assistant Commissioner for Patents.	Adm'r for Documentation.
	Spec Asst to the Dep Asst Comm for Patents.
Chemical	Group Director 110.
	Group Director 120.
	Group Director for 130.
	Group Director 150.
	Group Director for 260.
Electrical	Group Director 210.
	Group Director for 220/290.
	Group Director—230.
	Group Director 240.
	Group Director 250.
Mechanical	Group Director—310.
	Group Director—320.
	Group Director—330.
	Group Director—340.
	Group Director—350.
Office of Assistant commissioner for Trademarks.	Deputy Asst Commissioner for Trademarks.
	Director, Trademark Examining Operation.
	Chairman, Trademark Trial & Appeal Board.
	Deputy Assistant Commissioner for Trademarks.
Board of Patent Interferences.	Chairman.
Commodity Futures Trading Commission	
Office of the General Counsel.	Assoc Gen Counsel (Opinions & Review).
	Deputy General Counsel (Litigation).
	Deputy General Counsel (Reg & Adm).
Office of the Executive Director.	Dep Exec Dir.
Division of Economics Analysis.	Dep Chf Economist.
	Chf, Analysis Section.
	Associate Director for Surveillance.
Division of Enforcement	Deputy Dir Division of Enforcement.
	Deputy Director Division of Enforcement.
	Deputy Director (Western Operations.
	Deputy Director (Eastern Operations).
Division of Trading and Markets.	Deputy Director, Div of Trading & Markets.
	Deputy Director (Contract Markets).
	Chief Counsel.
Consumer Product Safety Commission	
Ofc of General Counsel	Dep Gen Counsel Reg Aff/Gen Law.
Ofc of Executive Dir	Dir, Ofc of Prog Mgt.
	Director, Ofc of Budget, Prog Plan & Eval.
	Associate Executive Dir for Field Operations.
Office of AED for Epidemiology.	Associate Exec Dir for Epidemiology.
Ofc of AED for Compliance & Administrative Litigation.	Assoc Exec Dir for Compl & Admin Litigation.
Ofc of AED for Administration.	Assoc Exec Dir for Adm.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
Ofc Secy of Defense	
Office of the Secretary	Asst to the Secy of Defense (Intel Oversight).
Ofc of Deputy Under Secy for Policy.	Dir, Counter Intel & Investigative Prog.
	Dir, Information Security.
Director Operational Test and Evaluation.	Dep Dir, Policy, Resources & External Affairs.
	Asst Dep Dir, Tactical & Elec Warfare Systems.
	Asst Dep Dir, Strategic, Space & C3I Systems.
Organization Abolished	Director Contract Audit Follow-up.
Ofc of Inspector General.	Deputy Inspector General
	Asst Inspector General for Audit Follow-up.
	Dir Audit res & Internal Audit & Ivest Fol-up.
	Asst Inspector General for Investigations.
	Asst Inspector General for Management.
	Dir Internal Audit Oversight & Evaluation.
	Dir, Contract & Ext O/Sight and Evaluation.
	Dep Asst Inspector Gen for GAO Reports Analy.
	Director Major Acquisition Programs.
	Director Contract Audits.
	Asst Insp Gen for Criminal Invest Pol & Ovsht.
	Asst Inspector Gen for Audit Policy & Oversht.
	Asst Dep IG for Progr Lpanning, Review & Eval.
	Dep Asst Inspector General (Audit-Followup).
	Dep Asst Inspector General for Auditing.
Defense Audit Service	Director, Defense Audit Service.
	Deputy Director, Defense Audit Service.
	Assoc Director—Special Program Audits.
	Assoc Dir Intelligence and Communications Aud.
	Assoc Dir, Systems & Logistics Audits.
	Assoc Dir, Resources & Overseas Audits.
	Assoc Dir Financial Mgmt and Manpower Audits.
	Dir, Overseas & Nonappropriated Fund Per/Mgmt.
	Dir Personnel Management.
	Deputy Director for Labor Management Relation.
	Dep Dir Compensation & Overseas Empty Policy.
Ofc Dep Asst Sec (Civilian Personnel Policy & Req).	Director, Accession Policy.
Ofc Dep Asst Sec Mil Personnel & Force Management.	
Ofc of Deputy Asst Sec, Equal Opportunity.	Dir for Civilian Equal Opportunity Programs.
Ofc of Dir of DOD Dependents Schools.	Dir Pacific Region Dobbs.
	Director, Germany Region.
DDASD (Mobilization Planning & Requirements).	Assistant Director for Engineering.
Office Assistant Sec Health Affairs.	
Office of Assistant Secretary, Public Affairs.	Dir, Def Enrolmnt Eligibl Reptng Sys (Deers).
	Dir, Freedom of Information & Security Review.
Ofc of Dep Director (Strategic Programs).	Dir Strat Def and Theater Nuclear Forces Div.
Washington Headquarters Services.	Director of Personnel and Security.
Ofc Dep Asst Secy of Defense (Cost & Audit).	Dep Comptroller for Audit Policy.
Ofc of Under Secretary for Research and Engineering.	Asst Under Secy of Def (Plans & Devel).
	Spec Asst for Assessment & Exec Officer—DSB.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
	Director, Program Control and Administration.
	Asst U/S of Def (Conv In) & Dir Conv in Prog.
	Special Assistant for Resource Planning.
Ofc of Dep Under Secy (International Programs and Tech).	Asst Dep Under Secy of Def (Intl Prgs).
	Dir, Technology Export.
	Special Assistant for Technology Transfer.
	Director, NATO Affairs.
	Dir Far East & Southern Hemisphere Affairs.
	Asst Dep Under Secretary of Defense.
	Spec Asst for Intern Coop Matters & STE.
Ofc of Asst Dep Und Secy of Def (Prod Policy).	Asst Dep Under Secy of Def (Production Pol).
	Dir Standardization & Acquisition Support.
	Dir Industrial Resources.
	Dir Industrial Productivity.
Ofc of Asst Dep Und Secy of Def (Acquisition).	Asst Dep Under Secy of Defense (Acquisition).
	Director Cost Pricing and Finance.
	Dir, Defense Acquisition Regulatory Systems.
	Director Major Systems Acquisition.
	Dir DOD Contract Studies & Mgmt Spt Services.
	Director Contract Policy.
	Director Contract Administration.
Office of the Director Test and Evaluation.	Dep Dir (Strategic & Naval Sys Div).
	Dep Dir for Test Facilities and Resources.
	Staff Spec for Strategic & Naval Warfare Sys.
Ofc of Dep Under Secy for Research and Advanced Tech.	Asst Dep Under Sec of Defense (Res & Adv Tech).
	Dir, Very High Speed Integrated Cir & Elec Ds.
Ofc-Dir-Engineering Technology.	Dir (Engineering Technology).
	Staff Specialist for Vehicle Propulsion.
	Staff Specialist for Materials & Structures.
	Staff Specialist for Ordnance.
	Staff Specialist for Weapons Technology.
	Staff Specialist for Directed Energy Weapons.
Ofc-Dir-Electronics and Physical Sciences.	Staff Spec for Elec Warfare and Target Acq.
	Staff Specialist for Search and Surveillance.
Ofc-Dir-Environmental Life and Sciences.	Staff Specialist for Chemical Technology.
	Dir Environmental & Life Sciences.
Ofc-Dir-Rsch and Technical Info.	Dir, Research & Technical Information Ofc.
	Staff Specialist for Research.
Office of Directed Energy Programs.	Dir, Directed Energy Programs.
Ofc of Computer Software and Systems.	Director, Computer Software and Systems.
	Staff Specialist for Software Tech (A&RS).
Ofc of the Dir, Offensive and Space Systems.	A/D Under S/D (Offensive & Space Systems).
	Staff Specialist for Space & Advanced Systems.
	Staff Spec for Techn & Analysis (Off Sys).
Ofc-Dir-Defensive Systems.	A/D Under S/D (Defensive Systems).
	Staff Spec for Early Warn, Air Def & At Assets.
	Staff Spec for Ball Missile Def Sys.
Ofc Dir Strat Aero & Theat Nuc Sys.	A/D Under S/D (Strategic Aerosp & Theater N/S).
Ofc-Dir-Start & Arms Control Office.	A/D Under S/D (Start & Arms Control).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Ofc-Dir-Land Warfare	Asst Dep Under Secy of Def (Land Warfare).
	Staff Specialist for Ground Air Defense Sys.
Ofc Dir Air Warfare	Asst Dep Under Secy of Def (Air Warfare).
	Staff Spec for Interdiction/Naval Strike.
	Staff Spec. Close Air Sup/Battlefield Int.
Ofc of Director-Naval Warfare	Asst Dep Under Secy of Def. (NW and Mobility).
	Staff Specialist for Antisub & Mine Systems.
	Stf Spec for Naval Proj & Anti-Air Systems.
Office of Mobility and Special Projects.	Director Mobility and Special Projects.
	Staff Specialist for Air Mobility.
	Staff Spec Intertheater/Intratheater Mobility.
Office of Munitions	Director, Office of Munitions.
Office of Dep Asst Secy of Defense (C3).	Asst Dep Under Sec of Def (Commun Comm & Cont).
	Staff Spec for Switched & Spec Purpose Comm S.
	Staff Spec for WWMCCS & Other C3 Systems Arc.
	Staff Spec for Satellite Communications Syste.
	Staff Specialist for Tactical Command & Contr.
	Dir Long-Range Planning & Sys Evaluation.
	Dir. Electronic Warfare & C3 Countermeasures.
	Director, Information Systems.
	Stf Spec/Elec Warfare & C3 C/ Meas Supt Actv.
	Dir Theater & Tactical Commun Command & Contr.
	Dir Strategic & Theater Nuclear Forces C3.
	Special Asst for C3 Prog Assessment & Eval.
	Director C3 Resources.
	Assistant Director, Electronic Combat Systems.
	Dir Special Warfare Systems.
	Asst Director, Special Operations Technology.
	Spec Asst for C3 Mobilization.
Office of Dep Asst Secy of Defense (Intelligence).	Director, Tactical Intelligence Systems.
	Director National Intelligence Systems.
	Staff Specialist for Combat Systems Analysis.
	Sr Scientist for Natl Intelligence Systems.
	Senior Scientist for Tactical Intell Systems.
	Staff Spec for Combat Systems Architecture.
Under Ofc of Asst Dep Secy of Def (Systems Integration).	Director, Systems Architecture and Analysis.
	Director, C3I Resource Management.
Defense Advanced Research Projects Agency.	Deputy Director for Research.
	Deputy Director for Technology.
Tactical Technology Office.	Dir—Tactical Technology Office.
	Dep Dir Tactical Technology Office.
	Assistant Director for Air Warfare.
	Assistant Director for Land Warfare.
Information Processing Techniques Office.	Dir, Information Processing Techn Ofc.
	Prin Res Manager (Info Process Tech Ofc).
	Computer Research Manager.
	Assistant Director, Electronics Sciences.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Engineering Applications Office.	Assistant Director for Applications.
	Director, Defense Strategic Computing Office.
	Deputy Director, Engineering Applications Ofc.
Material Sciences Office.	Assistant Director for Materials Sciences.
Defense Sciences Office.	Dir, Defense Sciences Ofc.
	Dep Dir, Def Sciences Ofc.
	Assistant Director for Geophysical Sciences.
	Assistant Director Systems Sciences.
	Dir Defense Sciences Office.
Strategic Technology Office.	Dir—Strategic Technology Office.
	Asst Dir, Surveillance.
	Dep Dir, Strategic Techn Ofc.
	Asst Dir for Advanced Systems Research.
Directed Energy Office	Dir, Directed Energy Ofc.
	Dep Dir, Directed Energy Ofc.
	Asst Dir for Technology, Directed Energy Off.
	Deputy Director for Space Defense Technology.
	Dep Dir for Laser & Particle Beam Technology.
Vehicles Technology Office.	Asst Dir Naval Warfare Division.
Office of the Joint Chiefs of Staff.	Scientific and Technical Advisor to the Chief.
	Deputy Joint Requirements Integration Mgr.
	Dep Joint Requir Integrat Mgr/Sci Tech Adv.
Defense Contract Audit Agency.	Director, DCAA.
	Deputy Director DCAA.
	Asst Dir Operations & Professional Dev.
	Asst Dir Policy & Plans.
	Director Field Detachment.
Regional Managers	Regional Director, Atlanta.
	Regional Director, Boston.
	Regional Director, Chicago.
	Regional Director, Los Angeles.
	Regional Director, Philadelphia.
	Regional Director, San Francisco.
Defense Logistics Agency.	Special Asst for Integrity in Contracting.
Off of Exec Dir, Qual Assurance, ODDCAS.	Dep Exec Dir, Quality Assurance.
Off of the Staff Dir—Small & Disadvantaged Business Util.	Staff Dir Small & Disadvantaged Business Util.
Office of Staff Director, Personnel.	Staff Director, Personnel.
	Deputy Staff Director, Personnel.
Ofc of Telecommunications & Information Systems.	Chief, ADP & Telecomm Technology Division.
	Chief AIS Development & Control Division.
Exec Dir, DLA Contracting.	Executive Director, Contracting.
	Chief, Contracts Division.
Exec Dir, DLA, Tech & Logistics Services.	Chf Property Disposal Div.
National Communications System.	Asst Mgr NCS for Technology & Standards.
	Deputy Manager National Communications System.
	Asst Mgr NCS Plans and Operations.
	Scientific Advisor for Operations Research.
WWMCCS System Engy Organ.	Dep WWMCCS System Engineer—Europe.
	Spec Asst to the Dep Dir, C3 (A & MA).
	Dep Dir, C3 Architecture & Mission Analysis.
	Dir, Planning & Systems Integration Center.
Center for Planning and Systems Integration.	S/A to the Dir, CPSI for Satellite Com Sys.
	S/A to the Dir, CPSI/Strat & Theat Nuc Forc.
	S/A to the Dir, CPSI for NATO & Interm'l C3.
Defense Communications Engineering Center.	Dep Dir, Def Communications Engineering Cente.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Career Reserved Positions.
	Chf Interoperability & Standards Div.
	Associate Director for Integrated Sys Design.
	Deputy Director Switched Network Engineering.
	Associate Deputy Director, Switched Systems.
	Dir, Communications Architectures & Plng Dir.
	Dir, Def Communications Engineering Center.
Office of Comptroller	Special Asst to the Compt for C3 Prog Assesm.
Ofc of Dep Dir, Commd & Control Techn Ctr.	Dep Dir, Command and Control Technical Center.
	Tech Dir, WWMCCS ADP Technical Supt Direct.
Command and Control Engineering Center.	Director, Command & Control Engineering Ctr.
	Dep Dir, Strategic Connectivity Engr Dir.
	Dep Dir, Engineering Integration Directorate.
	Dep Dir, Command & Control Sys Organization.
Natl Military Comd Syst ADP Directorate, CCTC.	Asst Deputy Dir, NMCS ADP.
	Asst Dep Dir for Computer Services.
	Asst-Dep Dir Def Communications Engr Ctr.
	Program Manager, Defense Switched Network.
Military Satellite Communications Office.	Dep Dir Mil Satellite Communication Systems.
Office of the Director	Dir, Acquisition Management Directorate.
Office of Deputy Director Science & Technology.	Dep Dir (Science & Technology).
	Scientific Asst to Dep Dir (Science and Tech).
	Asst to Dep Dir (Sci & Tec) for Theoretical R.
	Asst to the Dep Dir (Experimental Res).
	Asst to the Dep Dir (Sci & Tech) for Testing.
	Chf, Strategic Structures Division.
	Chf Aerospace Sys Div.
	Chief, Atmospheric Effects Division.
	Scientific Advisor to Director (AFFRI).
	Tech Pro Mngr for Nuclear Assessment Director.
	Chf, Electromagnetic Pulse Eff Div.
	Chief Lethality Hardening Division.
DMA Headquarters	Dep Dir for Systems & Techniques.
	Dep Dir, Mngmt & Technology.
	Dep Dir for Progs, Prod & Opers.
	Asst Dep for Plans and Requirements.
	Chief, Advanced Technology Division.
	Chf Acq Sys Dev Div.
	Staff Director of Personnel.
	Asst Deputy Dir for Programming.
	Asst Deputy Dir for Production and Distributi.
	Dir Spec Prog Ofc for Exploitation Modernizat.
	Associate Deputy Director for Hydrography.
	Dep Dir, Spec Prog Ofc Exploits & Modernization.
DMA Field Activities	Tech Dir DMA Aero Center.
	Tech Dir—DMA Hydrographic/ Topographic Center.
	Dep Dir Prog Prod Oper DMA HTC.
	Dep Dir for Progs, Production and Operations.
Defense Investigative Service.	Dir Defense Investigative Service.
	Deputy Director (Investigations).
	Dep Dir (Industrial Security).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Department of Air Force	
Office of the Secretary	Administrative Assistant to the Secy.
	Dep Adm Asst.
Ofc Dir of Procurement Policy.	Dir, Ofc of Small & Disadv Bus Utilization.
Office of the Under Secretary.	Special Assistant for International Affairs.
ODAS M/P Res & Military Pers.	Dep for Air Force Review Boards.
ODAS Installations Environment & Safety.	Deputy for Installations Management.
ODAS Acquisition Management.	Dep for Acquisition.
	Dep for Programs & Production.
ODAS Logistics	Dep for Supply & Maintenance.
	Dep for Transporation & Civil Aviation.
Office of Assistant Secretary, Financial Management.	Deputy for Accounting and Internal Audit.
	Deputy Assistant Secretary (Acct and Audit).
Office, Asst Vice Chief of Staff.	Chief Office of Air Force History.
Director of Administration.	Chief, Publishing Div.
Asst Chief of Staff for Information Systems.	Associate Director (Technical).
Ofc of Dep Chief of Staff, Logistics and Engineering.	Assoc Dir for Logistics Plans & Programs.
	Assoc Dir of Maintenance Engineering & Supply.
	Assoc Dir for Engineering & Services.
Office of Dep Chf of Staff, Res & Dev and Acquisition.	Assoc Dir of Contracting & Manufacturing Pol.
Special Advisory Group	Special Advisor.
Director of Civilian Personnel.	Dep A/S (CPP & EEO) & Dir of Civilian Pers.
	Deputy Director of Civilian Personnel.
Office of Deputy Chief of Staff, Comptroller.	Dep Comptroller.
Director of Management Analysis.	Assoc Dir of Mgmt Analysis.
Director of Budget	Deputy Director of Budget.
	Asst Dep Dir of Budget (Operations).
	Chief Budget Management Division.
	Chf, Investment Appropriations Div.
National Guard Bureau	Spec Asst to the Chief, NGB.
Office of the Commander.	Assistant for Product Assurance.
DCS Contracting & Manufacturing.	Prin Asst/Contracting & Manufacturing.
	Chairperson Contract Review Committee.
	Dir of Manufacturing.
DCS Personnel	Director of Civilian Personnel.
Deputy Chief of Staff/ Comptroller.	Asst to the DCS/Comptroller.
DCS/Development Plans.	Asst Dep Chief of Staff/Plans and Programs.
DCS/Intelligence	Dep Chf of Staff for Intelligence.
AF Ofc of Scientific Research.	Tech Director AF Ofc of Scientific Research.
Air Force Space Technology Center.	Asst Dep for Procurement & Manufacturing.
Air Force Weapons Laboratory.	Techn Dir (Physical Optics, Lasers, Prototype).
	Technical Director (Nuclear Technology).
Aeronomy Division	Director Aeronomy Division.
	Dir, Space Physics Div, AFGL.
Space Physics Division	CH, Atmosphenc Structure BR.
Optical Physics Division	Dir Optical Physics Division.
Air Force Rocket Propulsion Laboratory.	Dir. Solid Rocket Div.
Electronic Systems Division.	Deputy (Technical Operations & Prod Assurance).
	Asst Dep for Contracting & Manufacturing.
	Assistant Deputy for Tactical Systems.
	Asst Dep for Strategic Systems.
	Dep Comm for Intel C3 Countermeas & Supp Sys.
Rome Air Development Center.	Director (Plans).
	Techn Dir (Intelligence & Reconnaissance).
	Technical Director (Communications).
	Tech Dir Reliability & Compatibility.
	Technical Dir (Surveillance).
	Technical Director (Command & Control).
Aeronautical Systems Division.	Deputy Comptroller.
	Techn Dir, Flt Systems engineering.
Dep for Proc and Manufacturing, ASD.	Asst Deputy for Procurement and Manufacturing.
Dep for Engineering, ASD.	Tech Dir Directorate of Equipment Engineering.
	Techn Dir, Directorate of Avionics.
	Technical Director, Deputy for Avionics.
	Director of Engineering Tactical Systems.
	Engineering Advisor Product Assurance Engr.
	Dir Engineering Propulsion Systems.
Systems Engineering Office, ASD.	Director of Engineering (F-16).
	Dir of Eng Reconnaissance & Elec Warfare Sys.
	Director of Engineering (Airlift Trainer Sys).
Materials Laboratory, AFWAL.	Dir, Metals & Ceramics Div.
	Sr Sci Organic Chemistry.
	Dir Manufacturing Technology Division.
Aero Propulsion Laboratory, AFWAL.	Dir, Turbine Engine Div.
Armament Division	Technical Advisor.
Foreign Technology Division.	Technical Director (Aerospace Systems).
	Technical Director (Engineering).
	Technical Director (Technology and Threat).
USAF School of Aerospace Medicine.	Research Director (Crew Technology).
Aerospace Medical Research Lab.	Dir, Toxic Hazard Div.
	Director Human Engineering.
Air Force Human Resources Lab, AMD.	Chief Scientist.
Air Force Flight Test Center.	Techn Dir (Engineering).
Air Force Logistics Command.	Asst Dep Chf of Staff, Maintenance.
	Chairman AF Logistics Command Procur Committ.
	Asst DCS/Plans & Operations.
	Director of Civilian Personnel.
	Asst DCS/Procurement & Production.
	Deputy Asst to the Commdr—Internl Logistics.
	Asst Dep Chief/Logistics Management Systems.
	Asst Deputy Chief of Staff, Materiel Mgt.
	Director Acquisition Logistics.
AF Acquisition Logistics Div.	Asst DCS—Comptroller.
	Asst to the Commander AFALD.
	Deputy for Contracting and Manufacturing.
	Asst to the Commander, Logistics Oper Center.
	Dep for Log Force Structure, Dev & Acquisit.
Air Logistics Center, San Antonio.	Dep Dir, Directorate of Maintenance.
	Dep. Dir. Material Mgt. San Antonio Log. Ctr.
Air Logistics Center, Oklahoma City.	Dep Dir, Directorate of Material Mgmt.
	Dep Dir, Directorate of Maintenance.
Air Logistics Center, Warner Robins.	Deputy Director, Directorate of Material Mgt.
	Deputy Dir, Dir of Maintenance.
Air Logistics Center, Ogden.	Dep Dir, Directorate of Maintenance.
	Deputy Director, Directorate of Material Mgt.
Air Logistics Center, Sacramento.	Dep Dir, Directorate of Material Management.
	Dep Dir, Directorate of Maintenance.
Air Force Audit Agency	The Auditor General of the Air Force.
	Director of Field Activities.
	Director of Operations.
	Director of Forces and Support Management.
	Dir, Acquisition & Logistics Systems.
Air Force Electronic Security Command.	Asst to the Commander.
Air Force Communications Command.	Tech Asst to Comdr Data Sys Design Center.
Science & Research	Chief, Operations Analysis Division.
	Chief, Applied Research Division.
Tactical Air Command	Chief Scientist Tactical Air Warfare Ctr.
Headquarters, Pacific Air Force.	Chief, Operations Analysis.
U.S. Air Forces in Europe.	Director of Civilian Personnel.
SHAPE Technical Center.	Chief Information Systems Division, NATO.
	Director, SHAPE Technical Centre.
Space Command	Senior Space Scientist.
Dep Chf of Staff, Plans & Programs.	Senior Scientific and Technical Advisor.
AF Operational Test and Eval Center (AF OTEC).	Scientific Advisor (Test & Evaluation).
Joint Electronic Warfare Center (JEWC).	Technical Director.
Air Force Commissary Service.	Deputy to the Commander, AF Commissary Serv.
Directorate of Accounting & Finance.	Dep Dir, Acctng & Finance.
Joint Program Management Office (JPMO).	Director of Plans & Systems.
	Technical Director.
AF Engrg and Services Center (Field).	Technical Director.
Office of Civilian Personnel Operations (OCPO).	Technical Director.
	Chf Ofc of Civilian Personnel Opers.
Department of Army	
Office of the Under Secretary.	Operations Research Analyst.
	Chf, Opers Res GRP for Forces & Readiness.
	Operations Research Analyst for Systems.
	Opers Research Analyst for CMD, Cont, C & I.
Ofc of the Administrative Assistant.	Adm Asst to the Secy of the Army.
	Dep Administrative Assistant.
	Director, Defense Supply Service—Washington.
OASA Research Development and Acquisition.	Director Acquisition Management Review Agency.
ODASA Acquisition	Dep for Materiel Acq Mgmt.
	Dep for Procurement Policy.
ODASA Management and Programs.	Dep for Management and Programs.
	Assistant Deputy for Management and Programs.
Ofc of Asst Secretary (Installations & Logistics).	Asst Deputy for Installations & Housing.
	Asst Dep for Logistics.
Ofc of Asst Secy (Financial Mgmt).	Deputy for Information Resource Management.
Off of Asst Secretary, Manpower & Reserve Affairs.	DASA (DA Review Bds and Personnel Security).
	Dep for Civ Personnel Pol & Eq Opportunity.
	Dep A/S of the Army (Rev Bd's & Personnel Sec).
Ofc of Asst Secretary Civil Works.	Dep for Program Planning Review & Evaluation.
	Deputy for Management and Budget.
	Dep for Policy, Plng & Legislative Affairs.
Office, Assistant Chief of Staff, Intelligence.	Spec Asst to the ACSI.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Ballistic Missile Def Prog Manager.	Chief Scientist Ballistic Missile Prog Ofc.
Ballistic Missile Def Sys Command.	Chief, Contracts Office.
Ballistic Missile Def Adv Techn Ctr.	Dir Technology Analysis Directorate.
	Dir Discrimination Directorate.
	Dir Missile Directorate.
	Director Radar Directorate.
	Dir—Data Processing Directorate.
	Director Optics Directorate.
Chf Scientist & Director of Army Research.	Asst Dir for Laboratory Activities.
	Adst Director for Research Programs.
	Asst Dir for Technology Planning.
	RDA Analysis Officer.
	Asst Dir Technology Planning.
	Director of Army Research & Technology.
	Assistant Director, Laboratory Management.
	Assistant Director, Research.
Dir of Combat Support Systems.	Physical Scientist Admr (Chem & Engr Sci).
	Combat Spt Sys Techol Mgr.
	Assistant Director Technology Assessment.
	Assistant Director Threat Integration.
Dir of Weapons Systems.	Physical Scientist (Aerospace Engr).
Office, Dep Chief of Staff for Personnel.	U.S. Army Safety Director
Directorate of Civilian Personnel.	Director of Civilian Personnel.
	Dep Director of Civ Personnel.
	Chief, Pos Mgmt, Class & Comp Policy Ofc.
	Chief, Staffing, Career Mgmt & Training Ofc.
Civilian Personnel Center.	Chf—Civilian Personnel Ctr.
Army Research Institute for Behavioral & Social Sciences.	Dir, Systems Rsch Lab & Assoc Dir Art.
	Dir Training Res Lab & Assoc Dir Art.
	Dir, Manp & Pers Res Lab & Assoc Dir. Art.
Dir Manpower Plans and Budget.	Dep Dir Manpower Plans and Budget.
Office, Deputy Chief of Staff for Logistics.	Asst Director for Supply Mgmt.
	Asst Dir of Resources and Mgmt.
	Asst Dir For Maintenance Mgmt.
	Spec Asst to DCSLOG & Chf Av Log Ofc.
	Chief Security Assistance Policy Coord Ofc.
	Asst Dir for Transportation.
	Asst Dir for Energy & Troop Support.
Office of the Comptroller of the Army.	Dep Comptroller.
	Director of Cost Analysis.
	Deputy Director of Operations & Maintenance.
	Director of Resource Management.
	Asst Comptroller of the Army for Econ Policy.
Finance and Accounting Center.	Dep C.ndr US Army Finance & Acctng Ctr.
	Assoc Dep Asst Comp of the (F&A) & PM for Afs.
	Army Intrernal Control Program Administrator.
Director of Army Budget.	Deputy Director.
	Dep Dir of Army Budget for Budget Management.
Army Audit Agency	The Auditor General, U.S. Army.
	Deputy Auditor General.
	Director, Logistical & Financial Audits.
	Director, Acquisition & Systems Audits.
	Dir Personnel and Force Management Audits.
	Dir Audit Policy Plans and Resources.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Regional Auditor General (European Region).
Ofc Dep Chf of Staff for Operations & Plans.	Tech Adv to Dep Chf of Staff for Opers & Plan.
	Dir, US Army Ctr of Mil His & Chf of Mil His.
Directorate of Command, Control, Comms & Computers.	Dep Asst Chf of Staff Automation and Comms.
	Army Spectrum Manager.
US Army Computer Systems Command.	Dir, Army Mgmt Systems Support Agency.
US Army Nuclear & Chemical Agency.	Technical Director.
Concepts Analysis Agency (OCSA).	Dir for Joint Forces & Strategy.
	Dir of Methodology & Resources & Computation.
Army Center of Military History.	Chief Historian.
Army War College	Director of Academic Affairs.
USA Med Rsch & Devel Cmd.	Special Assistant for Biotechnology.
U.S. Army and Med Res Inst of Infectious Dis, Ft Detrick MD.	Deputy for Science.
	Program Director Hazardous Viruses.
Training and Doctrine Command (TRADOC).	Deputy for Science.
	Scientific Advisor.
	Dep Chief of Staff for Persnl Admin Logistics.
	Asst Deputy Chief of Staff for Resources Mgmt.
Combat Developments Experimentation Command.	Dir, USA Combat Develop Experimentation Ctr.
TRADOC Operations Research Activity.	Director, TRADOC Operations Research Activity
US Army TRADOC Systems Analysis Activity.	Dir US Army TRADOC Systems Analysis Activity.
TRADOC Combined Arms Test Facility.	Scientific Advisor.
Military Traffic Mgmt Comnd.	Special Assistant for Transportation Engr.
U.S. Army Forces Command.	Civilian Personnel Director.
	Deputy Comptroller.
U.S. Army Corps of Engineers.	Chief, Office of Personnel.
	Spec Asst to the Chf of Engin For Internl Aff.
	Deputy Director, Resource Management.
Ofc, Asst Chf of Engineers.	Chief, Programing Div. Ace.
Directorate of Civil Works.	Chf—Ofc of Policy.
	Chf, Eng Div, Civil Works.
	Chief, Elect & Mech Br, Engineering Div.
	Chf, Programs Div.
	Chf—Planning Division.
	Chf Construction—Operations Division.
	Chief Operations & Readiness Division.
Water Resources Support Center.	Chief Dredging Division.
Organization Abolished	Deputy Director for CEMXPA.
	Chief Engineering Directorate.
Directorate of Engineering & Construction.	Chief, Engineering Division.
	Chf, Construction Division.
	Chf, Operations & Maintenance Div.
	Deputy Chief Construction Division.
	Chief Construction Division.
	Chief Engineering Division.
	Dep/Dir Engineering and Construction.
Board of Engineers for Rivers and Harbors.	Tech Dir, Bd Engr Rivers and Harbors.
Institute for Water Resources.	Director Institute for Water Resources.
Planning Divisions, COE	Chf Planning Div, Ohio River Div.
	Chf Planning Div, No Pacific Div.
	Chf, Planning Div, South Atlantic Div.
	Chief, Planning Div Lower Miss Valley Div.
	Chf, Planning Div, Mo River Div.
	Chf, Planning Div, South Pacific.
	Chief Planning Div, N. Atlantic Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Chf Planning Div—Southwestern Div.
	Chf Planning Dir North Central Div.
Engineering Divisions, COE.	Chief Engineering Div., Ohio River Div.
	Chief Engineering Div, Southwestern Div.
	Chief, Engineering Div., N. Central Div.
	Chief, Engineering Div., S. Pacific Div.
	Chief, Engineering Div, N Atlantic Div.
	Chief, Engineering Div, S. Atlantic Div.
	Chief, Engineering Div, Lwr Miss Valley Div.
	Chief Engineering Div Middle East.
	Chief, Engineering Div, Missouri River Div.
	Chief, Engineering Div, North Pacific Div.
	Chief, Engineering Div, Pacific Ocean Div.
	Chf Engineering Div, Europe Div.
	Chief Engineering Div, Huntsville Div.
Construction Divs—COE.	Chf Construction Div, Middle East
	Chf, Construction—Operations Div, S Atlantic.
	Chief Construction—Operations Div S Western.
	Chief Construction—Operations Div, Ohio River.
	Chief Construction—Operations Div, Lr MS Val.
Direc for Mgmt Info Sys.	Dir of Mgmt Information Systems.
	Dir Automated Logistics Mgt. Systems Activity.
Direc for Supply, Maint & Trans.	Dep Dir of Supply Maintenance & Transp.
Direc for Product Assurance & Test.	Director of Product Assurance and Test.
	Deputy Director of Product Assurance and Test.
Ofc Dep Cmdg Gen Material Dev Dercom.	Prin Asst Dep for Res Develop and Acquisition.
	Asst Dep for Science & Technology.
	Asst Dep Int'l Programs & Technical Transfer.
	Dir Technology Planning Management.
Dir for Devel Engineering & Acquisition.	Dep Dir of Develop Engineering & Acquisition.
	Deputy for Systems Management.
	Deputy for Program Management.
Office of Manufacturing Technology.	Dir of Manufacturing Technology.
Ofc Dep Cmdg Mat.l Readiness.	Asst Dep for Material Readiness.
Direc for Internat'l Logistics.	Dep Dir of Security Assistance.
Direc for Material Management.	Duputy for Weapon Systems Management.
	Deputy for Policy Plans and Procedures.
Direc for Readiness	Dep Dir of Readiness.
	Deputy Director of Readiness.
Direc for Procurement & Production.	Assoc Dir for Procurement.
	Dep Dir Procurement and Production.
Direc for Test, Measurement & Diag Eq.	Deputy Executive Director for TMDE.
Ofc Dep Commanding General for Resource Management.	Asst Deputy for Resource Management.
Direc for Personnel Trng & Force Dev.	Dep Dir, Personnel Training & Force Devel.
	Chief, Civilian Personnel Div.
Office of Comptroller DARCOM Hq.	Deputy Comptroller.
	Assistant Deputy for Cost Analysis.
Program Analysis & Evaluation Directorate.	Director for Program Analysis & Evaluation.
Armament Materiel Readiness Command (ARRCOM).	Comptroller.
	Deputy for Procurement and Production.
	Deputy for Logistics Readiness

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dep for Indust Preparedness & Installations.
Office of Commander ARRADCOM.	A/Tech/Dir/ (Sys Development & Engineering).
	Director of Product Assurance.
Large Caliber Weapon Systems Lab ARRADCOM.	Chf—Energetic Materials Div.
	Chief Munitions Systems Division.
	Chief Nuclear and Fuze Division.
	Chief Applied Sciences Division.
Fire Cont & Small Caliber Weapon Sys Lab ARRADCOM.	Chf Fire Control Systems Division.
Chemical Sys Lab ARRADCOM.	Chf Munitions Division.
	Chief Research Division.
Ballistics Research Lab ARRADCOM.	Chf, Sys Engineering & Concepts Analysis Div.
	Chief Interior Ballistics Division.
	Chf—Launch and Flight Division.
	Chf Terminal Ballistics Div.
	Chf Vulnerability Lethality Division.
Aviation Systems Command (AVSCOM).	Dir of Procurement and Production.
Directorate of Systems Engineering.	Director, Development and Qualification.
Research & Technology Labs.	Dir—Aeromechanics Laboratory.
	Dir—Structures Laboratory.
	Director Propulsion Laboratory.
	Dir—Research and Technology Labs.
Communications & Elect Comd (CECOM).	Comptroller, CERCOM.
	Dir of Procurement and Production.
	Dir of Product Assurance and Test.
Communications Res & Dev Command (CORADCOM).	Director, Communications Systems Center.
	Dir Systems Engineering and Integration.
Program Mgr Army Tactical Data Systems (CORADCOM).	Assoc Techn Dir (Command, Control & Commun).
Depot Systems Command (DESCOM).	Deputy for Command Operations.
Electronics Research & Development CMMD (ERADCOM).	Assoc Technical Dir for Res & Technology.
	Assoc Tech Dir for Elec Warfare and Intel.
	Chf, Dev & Eng Div.
Harry Diamond Labs (ERADCOM).	Director, Harry Diamond Laboratories.
	Dep Dir, Night Visions and Electro-Optics Lab.
Night Vision & Electro-Optics Lab (ERADCOM).	
Ofc of Commander—(MICOM).	Director for Procurement and Production.
	Associate Director for Systems.
	Dir, Missile Logistics Ctr.
	Director of Product Assurance.
Project Mgmt Offices (MICOM).	Deputy Project Manager, US Roland.
	Deputy Director for Directed Energy.
Engineering Lab (MICOM).	Dir for System Engineering.
	Dir for Test and Evaluation.
	Dep Dir Systems Simulation & Development.
Technology Lab (MICOM).	Director for Advanced Sensor.
	Chief, Advanced Technology Function.
	Asst Dep for Readiness.
Missile Intelligence Agency.	Dep Dir, Missile Intelligence Agency.
	Director Missile Intelligence Agency.
Belvoir Research & Development Center.	Assoc Techn Dir for Research & Dev.
	Assoc Tech Dir for Engineering and Acqui.
Natick Research & Development Center.	Director Individual Protection Laboratory.
	Director Science & Advance Technology Lab.
	Director, Food Engineering Laboratory.
Tank-Automotive Comd (TACOM).	Comptroller, TARCOM.
	Dir for Procurement and Production.
	Director of Product Assurance.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Aberdeen Proving Ground, Md. TE Command.	Assoc Dir—Material Testing Directorate.
Patriot Project Office	Dep Project Manager, Patriot.
XM-1 Tank Project Office.	Chf Engineer/Chf, Systems Engineering Div.
Fighting Vehicle Systems Project Ofc.	Dep Program Mgr—Fighting Vehicle Systems.
Advanced Attack Helicopter Project Office.	Dep/Prog/Mgr Advanced Attack Helicopter.
Army Research Office DARCOM (Durham NC).	Dir, Engr Sci Div.
Foreign Science & Technol Ctr DARCOM.	Dep Director Foreign Sci & Technology Center.
	Dir of Intelligence Production.
Army Material Systems Analysis Agency DARCOM.	Chf Combat Support Div AMSAA.
	Chf Air Warfare Div.
	Chf Reliability, Availability & Maintainabil.
	Chf Ground Warfare Division—AMSAA.
Army Communications Command.	Comptroller.
Headquarters, US Army, Europe.	Asst Dep Chf of Staff, Personnel (Civ Pers).
	Asst Dep Chief of Staff Eng for Eng & Housing.
Joint Tactical Command, Control & Comms Agency.	Dep Dir for Engineering.
	Associate Director Tri-Tac Office.
	Chf, Systems Div.
	Dep Dir Acquisition Management Directorate.
DOD Wage Fixing Authority.	Director, Technical Staff.
Department of Navy	
Office of the Under Secretary of the Navy.	Assistant for Administration.
Office of the Auditor General.	Auditor General of the Navy.
Naval Audit Service Headquarters.	Director, Plans and Policy.
Ofc of the Asst Secy of Navy (Manpwr & Res Affs).	Director, Audit Operations.
Office of the Comptroller of the Navy.	Staff Dir/Director, Manpower Analysis.
	Staff Director Program Policy.
	Assoc Dir, Budget & Reports/Fiscal Manag Div.
	Exec Asst Compt for Financial Mgmt Systems.
	Exec Asst Comp Bank, Cash Mgmt, Cont Fin, Compt.
	Counsel.
	Dir, Investment & Dev Div.
	Assoc Dir for Finance.
	Dir, Budget & Mgmt, Policy and Procedures Div.
	Exec Asst Comptroller for Accounting Systems.
	Dir, Budget Evaluation Group.
	Dep Director for Independent Cost Analysis.
	Dir Civilian Manpower Division.
Navy Comptroller Standard Systems Activity.	Dir, Navy Comptroller Standard Sys Activity.
Office of the General Counsel.	Asst General Counsel (Acquisition).
	Asst Gen Counsel (Civilian Personnel Law).
	Deputy Director, Long Range Planning Group.
Director—Naval Administration/Asst Vice CNO.	Asst for Net Assessment & Mid-Range Objective.
Director, Navy Program Planning.	Asst for Spec Analyses & Head, Proj Forces Br.
	Hd Support Force Manpower & Logistics Branch.
	SecNav/CNO Advisor for Resource Analysis.
	Chairman Resources & Cost Analysis.
	Dep. Director, Strategic Sealift Division.
	Tactical Development & Evaluation Support.
	Deputy Director for Programming.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Asst for Readiness & Sustainability.
Director Command and Control.	Dir, Electromagnetic Spectrum Management.
	Assoc Director, Information Systems Division.
	Technical Advisor.
Director, Naval Warfare	Dep for International & Interagency Affairs.
Office of the Oceanographer of the Navy.	
Director, R&D Test and Evaluation.	Spec Asst for Financial Matters.
	Asst for RDT&E Aquisition Mgmt.
Director, Naval Intelligence.	Spec Asst to Dir of Naval Intel.
	Spec Asst to Dir of Naval Intel-Investigatns.
	Tech Dir—Ofc of Naval Intelligence.
	Advisor for Research & Development Programs.
	Sr Adv to the Dir of Naval Intel for Scy Doc.
DCNO (Manpower, Personnel & Training).	Director, Total Force Information Sys Mgt Div.
ADCNO (OCP/EEO)/ Civ Pers Pol Division.	Asst Dep Chf of Naval Opers (Civilian Personn)
	Dep Dir, Civilian Personnel Div.
	Head, Staffing and Pay Systems Branch.
	Hd, Labor & Employee Relations Branch.
	Head Personnel Management & Evaluation Br.
Office DCNO (Submarine Warfare).	Technical Director, SSBN Security Program.
	Technical Director of Research & Development.
Office DCNO (Logistics)	Dep Dir, Logistics Plans Division.
Office DCNO (Air Warfare).	Spec Asst for Aviation Budget and Acquisition.
Office DCNO (Plans, Policy & Operations).	Assoc Dir OP-83/Dir, Intern'l Prog, Pol & Neg.
Naval Civilian Personnel Command.	Director, Naval Civilian Personnel Command.
Naval Civilian Personnel Command—Pacific Region.	Director Pacific Region.
Naval Civilian Personnel Command.	Dir Military Pay Financial Mgmt Directorate.
Naval Observatory	Dir, Time Service Div.
Naval Data Automation Command Headquarters.	Technical Director.
	Comptroller.
Naval Intelligence Support Center.	Technical Director.
Naval Intelligence Processing System Support Activity.	Director of Threat Assessments.
	Technical Director.
Naval Medical Research and Development Command.	Dir of Prog & Scientific Advisor.
Naval Aerospace Medical Research Laboratory.	Spec Asst, Scien Progs & Hd, Psychophysiology.
U.S. Naval Medical Research Unit #3.	Hd, Medical Zoology Dept, Cairo, Egypt.
Military Sealift Command.	Dep Ex Dir.
	Counsel.
	Engineering Officer.
	Comptroller.
Naval Tactical Support Activity.	Dir Navy Tactical Support Acty.
Naval Space Command	Technical Director.
Ofc of the Chief of Naval Education and Training.	Comptroller.
	Prin Adv Edu Trng/Deputy Chief Edu Dev and R&D.
U.S. Marine Corps Headquarters Office.	Fiscal Dir of the Marine Corps.
	Asst Dcs for Installations and Logistics.
	Dir Contracts Division.
	Counsel for the Commandant.
	Sci Adv to Deputy Chief of Staff (R&D).
	Accounting Officer of Marine Corps.
	Special Assistant to the Dir of Intelligence.
	Deputy Director Materiel Division.
	Technical Director.
Office of Naval Research.	Dir of Planning and Assessment.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Assistant Td for Ocean Science.
	Dep Dir for Technology Programs.
	Counsel, Office of Naval Research.
	Science Advisor.
Ofc of the Comptroller	Dir, Fin Mgmt/Compt/Spec Asst (FM) to ASN (R, E &S.
	Deputy Comptroller.
	Dep to the Spec Asst (FM) to the ASN (RE&S).
Ofc of Assistant Chief for Patents.	Dir Navy Patents Program/Patent Counsel Navy.
	Field Dir, Navy Patents.
	Departmental Director, Navay Patents.
Office of Procurement Services.	Director, Acquisition.
Office of the Assistant Chief for Research.	Dir of Research Programs.
	Dep Dir Ocean Sciences & Techn Div.
	Head Information Sciences Division.
	Head Mechanics Division.
	Head Physics Division.
	Head Chemistry Division.
	Leader, Arctic, Atmos & Ionospheric Scis Div.
	Head, Psychological Sciences Division.
	Assoc Dir for Life Sciences.
	Head Biological Sciences Division.
	Assoc Dir for Mathematical & Physical Science.
	Head Mathematical Sciences Division.
	Associate Director for Engineering Sciences.
	Head Electronics Division.
	Head Geophysical Sciences Division.
	Head Ocean Sciences Division.
	Head Materials Division.
Assistant Chief for Technology.	Dir Mgmt & Manpower.
Ocean Science and Technology Division.	Associate Director for Environmental Sciences.
Office of Naval Technology.	Assoc Tech Dir for Weapons & Platform Tech.
	Dep Tech Dir/Dir, Tech Plan'g & Assess Group.
	Technical Director.
	Director, Support Technology Division.
	Director Surveillance & C3 Division.
Naval Ocean Research and Development Activity.	Tech Dir.
	Assoc Tech Dir & Dir Ocean Prog Mgmt Ofc.
	Assoc Tech Dir & Dir, Ocean Science Directorate.
	Assoc Tech Dir & Dir Ocean Acoustics & Tech Dir.
Office of the Director of Research.	Dir of Research.
Technical Services Directorate.	Assoc Dir of Res & Dir of Tech Services.
Systems Research and Technology Directorate.	Assoc Dir of Res & Dir of Sys Res and Tech.
Acoustics Division	Supt, Acoustics Div.
Underwater Sound Refernce Division.	Supt Underwater Sound Reference Division.
Radar Division	Supt, Radar Div.
Marine Technology Division.	Superintendent Marine Technology Division.
Tactical Electronic Warfare Division.	Supt, Tactical Electronic Warfare Div.
Material Science and Component Technology Direc.	Assoc Dir of Res & Dir of Mat Sci & Comp Tech.
	Head Magnetism Branch.
	Chf Sci, Lab for Structure of Matter.
Chemistry Division	Supt, Chemistry Div.
	Head Combustion and Fuels Branch.
Material Science and Technology Division.	Supt Materials Sci and Tech Division.
	Head Thermostructural Materials Branch.
Electronics Technology Division.	Superintendent Electronics Technology Div.
Optical Sciences Division.	Superintendent, Optical Sciences Div.
Radiation Technology Division.	Supt Condensed Matter & Radiation Sci Div.
Plasma Physics Division	Chief Sci Lab for Computational Physics.
Space and Communications Technology Directorate.	Assoc Dir of Res & Dir of Space & Comm Techn.
Space Systems Division	Superintendent, Space Systems Div.
	Head, Space Technology Br.
	Superintendent, Space Systems Div.
Communication Sciences Division.	Superintendent, Communications Sciences Div.
	Chf Sci for Telec & Hd, Transm Techs Br.
General Science and Technology Directorate.	Assoc Dir of Res & Dir of Gen Sci and Tech.
Plasma Physics Division	Superintendent, Plasma Physics Div.
	Cont Therm Res Coord Hd, Exp Plas Physics Br.
Space Science Division	Superintendent Space Science Div.
Office of the Dir, NATO, SACLANT AWS Research Ctr.	Director, NATO SACLANT AWS Research Centre.
Naval Material Command Headquarters.	Dir Manpower/Personnel Mgmt.
	Dir, CCPO, Crystal City.
Director of Resources Management.	Asst Dep Cmm for Program Budget & Finance.
	Cmm Adv for Cost Analysis/Dir, Cost Analy Div.
	Spec Asst to Dir Res Mgmt/Dir Fin Mgmt Sys Di.
Dep Chief of Naval Material (Logistics).	Asst Dep Chf of Naval Material (Oper & Logist).
	Dir, Logistic Programs & Assessments Div.
Dep Chief of Naval Material (Acquisition).	Executive Director for Acquisition.
Asst Dep Chf of Naval Mat (Contracts & Bus Mgmt).	Exec Dir for Contracts and Business Managemen.
	Dir, Procurement Control & Clearance Div.
Dep Chief of Naval Material (Laboratories).	DCNM (Laboratories)/Dir of Navy Laboratories.
	Assoc Dir of NV Labs.
	Spec. Assistant to the Director of Navy Labs.
Asst Dep Chf of Naval Mat (Reliability & Eng).	Asst Dep Chf Nav Mat (Reliability and Eng).
Executive Development Cadre.	Director, Civilian Resources Management Dir.
	Asst for Transition of Ship Eng Techs.
	Corporate Management Consultant to the Cmdr.
	Spec Asst for Long Range Strategic Planning.
	Special Assistant to the President.
Naval Training Equipment Center.	Dir, Dat Training Data & Analysis Center.
Plans and Program Division.	Director, Plans & Programs Division.
	Deputy Director, Plans & Programs Division.
	Head, Resources Branch.
Technical Division	Chf Engr.
	Asst for Systems Integration & Compatibility.
Navigation Branch	Hd, Navigation Equip Sect.
	Branch Engineer, Navigation Branch.
Test and Instrumentation Branch.	Test & Instrumentation Branch Engineer.
Fire Control and Guidance Branch.	Hd, Guidance Section.
	Head Fire Control Section.
	Br Engr Fire Control & Guidance Br.
SSBN Security Technology Program.	Chief Scientist, SSBN Security Technology Pro.
Missile Branch	Head Operations Engineering Section.
	Sec Engr, Engrg Section.
	Chf Engr, Missile Branch.
	Sect Head, Reentry Systems Sect. Missile Br.
Launcher Branch	Branch Engr, Launcher Branch.
Ship Installation and Design Branch.	Branch Engr, Ship Installation & Design Br.
Trident Systems Project Office.	Technical Dir, Trident Systems Project Office.
Joint Cruise Missile Project Office.	Exec Dir, Acquisition Directorate.
	Chief Engineer, Joint Cruise Missiles Project.
	Technical Dir Joint Cruise Missiles Project.
Anti-Submarine Warfare Systems Project Office.	Director Financial Managment Office.
	Techn Dir.
Theatre Nuclear Warfare Project Office.	Tech Dir Theater Nuclear Warfare Proj Office.
Naval Air System, Command.	Deputy Commander, Naval Air Sys Command.
Ofc of Asst Commdr for Research and Technology.	Director, Research Division.
	Director, Surveillance Division.
	Command Control & Guidance Technology Admr.
	Director, Weapons Division.
	Director, Aircraft Division.
	Assoc Techn Dir for Res & Technology.
	Director, Avionics Division.
	Techn
	Dir, Res & Techn Chief Scientist.
	Technology Demonstration Manager.
	Director, Operations & Management Directorate.
Office of the Assistant Chief for Contracts.	Exec Dir, Procurement Management.
	Dir, Aircraft Weapons Systems Purchase Div.
	Dir, Missile Weapons Systems Contract Div.
Asst Commdr for Logistics/Fleet Support.	Deputy Dir Logistics/Fleet Support & Group.
	Asst Dir Logistics Mgmt Div.
Deputy Commander for Plans and Programs.	Executive Director, Management, Plans & Progr.
	Asst Dep Commander for Anti-Air Warfare R & EWP.
	Prog Dir/Air for EW & Mission Support Prog.
	ADC/for Anti-Submarine Warfare & Support Proj.
Dep Commander for ASW Warfare Projects.	Deputy Project Manager (LAMPS).
Office of Counsel	Counsel, Naval Air Systems Command.
Deputy Comptroller	Deputy Comptroller.
Assistant Commander for Systems and Engineering.	Exec Dir for Acquisition Management.
	Tech Dir—Armament Div.
	Dir, Engineering Sup & Prod Integ Mgmt Div.
	Techn Dir, Core Avionics Div.
	Dir, Evaluation Div.
	Technical Director Air Vehicle Division.
	Dir, Systems Acquisition Directorate.
	Director Cost Analysis Division.
	Dir, Systems Alternatives Directorate.
	Dir,Mission and Effectiveness Anaytsis Div.
	Asst Dir Propulsion & Power Division.
	Assoc Dir Systems Engineering Mgmt.
	Director, Corporate Management Directorate.
Asst Commander for Test and Evaluation, NAVAIR.	Tech Dir, Test & Evaluation.
	Director Resources Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Naval Air Engineering Center.	Technical Director.
Naval Air Test Center	Technical Director, NATC, Patuxent Riv, MD.
Naval Avionics Center	Executive Director.
	Dir of Applied Research.
	Director of Engineering.
Pacific Missile Test Center.	Technical Director.
System Evaluation Directorate.	Assoc Dir-Sys Evaluation Directorate.
Range Directorate	Assoc Dir and Assoc TD (Ranges and Tests).
	HD, Range Dev Dept.
Navy Aviation Logistics Center.	Exec Dir.
Naval Electronic Systems Command.	Deputy Comptroller.
	Counsel.
	Techn Dir, C31 Systems & Techn Directorate.
	Technical Dir, C3 Software Dev & Support.
Director Logistics Directorate.	Executive Director, Life Cycle Support Group.
Contracts Directorate	Exec Dir, Contracts.
Navelex Project Offices	Asst Proj Mgr. Ship & Shore Communications Div.
	Tech Dir, Navy Space Project Ofc.
	Dep Proj Mg & Tech Dir REWSON Systems Proj.
	Asst Project Mgr For ELF Communications.
	Asst Proj Manager for Submarine Commun Syst.
	Assoc Dep Proj. Manager/Technical Dir.
	Project Manager for Communications Systems.
	Deputy Director Research and Technology Group.
Research and Technology Directorate.	Techn Dir, Sys Integration & Design Group.
	Exec. Dir, C31 Requirements Analysis Group.
Acquisition Engineering Directorate.	Deputy Project Manager/Technical Director.
	ADC—Life Cycle (Engring & PID).
	Deputy Project Mgr/Tech Dir, Com Sys Proj Ofc.
Command Support System Office.	Dep Assistant Project Dir for C2 Programs.
	Exec Director for Systems Engineering.
Office of Commander	Counsel.
	Dep Dir of Programs & Comptroller.
	Techn Advisor-Real Property Management.
	Asst Commander for Facilities & Transp.
Asst Commander, Design and Engineering.	Asst Commander for Engineering & Design.
Deputy Commander for Acquisition.	Assistant Commander for Contracts.
	Chief Engineer.
U.S. Naval Construction Battalion Center.	Technical Director.
Naval Sea Systems Command.	Asst Deputy Commander for Logistics.
Office of Commander & Staff Offices NAVSEA(OO).	Counsel.
	Dir, Corporate Planning Office.
	Director, Reliability and Maintainability.
	Deputy Counsel.
Compt Directorate NAVSEA (01).	Asst Dep Commdr, Plans, Prog Financ Mgt/Dep Com.
	Director Cost Estimating & Analysis.
Contracts Directorate, NAVSEA (02).	Asst Dep Commander for Contracts.
	Dir, Shipbldg & Overhaul Contracts Div.
	Dir, Surface Warfare, Elec & R&D Contract Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Ship Design and Intergration Directorate, NAVSEA (03).	Dir, Ship Des Res & Tech Ofc (SEA-03R).
	Dir, Adv Des Div/At Dep Dir. Ship Conc Dev Gp.
	Div, Structural Integrity Div.
	Exec Dir/Dep Ofc Dir/Dep Grp Dir/Div Dir.
	Exec Dir/Dep Ofc Dir/Dep Grp Dir/Div Dir.
	Exec Dir/Dep Ofc Dir/Dep Grp Dir/Div Dir.
	Exec Dir/Dep Ofc Dir/Dep Grp Dir/Dep Dir.
Ship Systems Directorate, NAVSEA (05).	Exec Dir, Ship Systems Directorate.
	Dir, Ship Systems Res & Technology Office.
	Deputy Director, Propulsion Systems Subgroup.
	Deputy Dir Hull Systems Sub Group.
	Dep Dir, Auxiliary Systems Group.
	Deputy Director, Electrical Systems Group.
	Director, Materials Engineering Office.
Combat Systems Directorate, NAVSEA (06).	Asst Div Dir/Tech Dir Combat Sys Dev & Int Di.
	Dir Combat Systems Design & Test Subgroup.
	Exec Director, Combat Systems Directorate.
Industrial and Facilities Mgmt, Direct NAVSEA (07).	Asst Dep Cmdr, Ind/Fac Mgmt Directorate.
Nuclear Propulsion Directorate, NAVSEA (08).	Director-Reactor Materials Division.
	Head Advanced Design Branch.
	Head, Improved Reactor Design Branch.
	Dir—Secondary Plant Components Division.
	Asst Dir React Engr Div, Hd Adv Reactor Br.
	Director Reactor Plant Valve Division.
	Deputy Director For Submarines.
Acquisition Directorate, NAVSEA (90).	Dir Surface Ship Systems Division.
	Technical Assistant for Surface Ship Systems.
	Executive Director Acquisition Directorate.
Submarine Directorate, NAVSEA (92).	Dep Dir, Submarine Logistics Div.
	Exec Dir, Submarine Directorate.
Surface Combatant Ships Directorate, NAVSEA (93).	Executive Director, Surface Ship Directorate.
	Dep Dir, Surface Combatant Ship Logistics Div.
Management Support Directorate, NAVSEA (99).	Asst Dep Comd for Acquisition & Admin.
Undersea Warfare Systems Group WS & E NAVSEA.	Dep Asst (Tecn) for ASW & Undersea Wf Sys.
Surface Warfare Systems Group WS & E NAVSEA.	Exec Dir, Surface Warfare Sys Grp.
Research Technology and Assessment Office, NAVSEA.	Dir, Research Tech, & Assessment Ofc.
Deep Submergence Systems Project Office.	Dep Proj Mgr & Techn Dir.
	Dep Proj Mgr, Guided Miss Frig Ship ACQ Proj.
	Exec Dir-Aegis Shipbuilding Project.
	Dep Proj Mgr/Tech Dir Nucl Power Aircraft Lab.
	Dep Proj Mgr/Tech Dir Attack Sub Project Ofc.
	Dep Program Mgr Directed Energy Laser Weapons.
	Director—SSW Submarine Systems Division.
	Dep Proj Mgr/Tech Dir Aux & Spec Mission Ship.
	Dep Program Mgr Amphibious Ship ACQ Program.
	Dep Techn Dir, Technical Division.
	Torp Md Adv Cap Weap Sys Prog Manage.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Project Manager, Deep Submergence Sys Project.
Naval Weapons Station, Seal Beach.	Technical Director.
Naval Undersea Warfare Engineering Station.	Technical Director.
Naval Ship Weapons Systems Engineering Station.	Technical Director.
Naval Ordnance Station	Technical Director.
Naval Supply Systems Command.	Executive Director, Planning and Resources.
Headquarters	Counsel.
	Asst Dep Commander for Plans, Policy & Syst D.
	Asst Dep Cmdr for Fin Mgmt/Comp.
	Spec. Asst—Breakout & Competitive Procurement.
	Director of Research & Technology.
	Asst Dep Commander, Fleet Support & Sup Oper.
Navy Ships Parts Control Center.	Exec Dir Acquisition & Logistics Plng & Suppt.
Navy Aviation Supply Office.	Executive Dir Logistics Planning & Support.
Navy Fleet Material Support Office.	Exec Dir, ADP System Planning and Development.
Naval Air Development Center.	Dir—Communication & Navigation Tech Directors.
	Dir Sensors & Avionics Technology Directorate.
	Head-Computer Department.
	Dir—Systems Directorate.
	Dir Aircraft and Crew Systems Technology Dire.
	Dir—Planning Assessment Resources Staff.
	Technical Director/Consultant.
	Technical Director/Consultant.
	Dir, Software/Computer Technology Directorate.
	Senior Sci, Airborne ASW Technol.
	Weapons Systems Technology Manager
Naval Coastal Systems Center.	Tech Dir/Consultant.
	Hd, Coastal Technol Dept.
	Head Engineering & Test/Evaluation Department.
	Head Systems Department.
Naval Ocean Systems Center.	Dir Command Control and Communications.
	Director Ocean Surveillance.
	Director Weapon Systems.
	Director Engineering and Computer Sciences.
	Chief Res Sci Subm Arctic Tech & Dir Arctic Subm.
	Dir Independent Research and Development.
	Technical Director/Consultant.
	Assoc Technical Dir, San Diego, Cal.
	Dir Marine Science & Technology Directorate.
	Head Electronics Engineering & Sciences Dept.
Naval Personal Res & Dev Center.	Technical Director, NPRDC.
	Dep Techn Dir for Manpower & Personnel.
	Assistant for Civilian Personnel Research.
	Dir Training Research Laboratory.
David W. Taylor Naval Ship Research & Dev Center.	Dir for Long Range Plans & Programs.
	Tech Dir Consultant.
Aviation and Surface Effects Department.	Associate Tech Dir for Sys Development.
	Asst Tech Dir (Research Consultant).
	Assoc Tech Dir for Aerodynamics.
	Assoc Tech Dir Computation & Mathematics.
Ship Acoustics Department.	Assoc Tech Dir for Ship Acoustics.
Propulsion and Auxiliary Systems Department.	Assoc Tech Dir Prop & Auxiliary Systems.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Ship Performance Department.	Assoc Tech Dir for Ship Performance.
Materials Department	Assoc Tech Dir for Materials Sci & Technology.
Structures Department	Head Submarine Division.
	Assoc Tech Dir Structural Mechanics.
Naval Surface Weapons Center.	Tech Dir Consultant.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Techn Dir/Assoc Techn Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
Combat Systems Integration Department.	Dept Hd/Dep Tech Dir/Associate Tech Dir.
Weapons Systems Department.	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
Strategic Systems Department.	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
Engineering Department	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
Research and Technology Department.	Dept Hd/Dep Tech Dir/Assoc Tech Dir.
Naval Underwater Systems Center.	Deputy Technical Director.
	Tech Dir Consultant.
Associate Technical Director Plans and Analysis.	Assoc Tech Dir for Plans & Analysis.
Systems Development Directorate.	Head, Submarine Sonar Department.
	Hd Weapons Sys Dept.
	Head, Surface Ship Sonar Department.
	Head Undersea Ranges Department.
	Hd, Submarine Electromagnetic Sys Dept.
Science and Technology Directorate.	Assoc Tech Dir for Technology.
Naval Weapons Center	Tech Dir/Consultant.
	Test & Eval Dir/Asst Tech Dir for Test & Eval.
	Head Aerothermochemistry Division.
Laboratory Directorate—NWC.	Laboratory Dir/Deputy Tech Dir.
	Asst Tech Dir Dev (E/W)/Hd Elec Warfare Dept.
	Asst Tech Dir Deve (Ord Sys) & Dept Head.
	Asst Tech Dir for Weapons & Head Weapons Dept.
	Asst Tech Dir for Res & Head Res Dept.
	Asst Tech Dir for Aircraft Wpns Integration.
	Asst Tech Dir for Engne & Head Engrr Dept.
	Asst Tech Dir for Plans & Hd Weapons Plan Grp.
	Asst Tech Dir for Fuzes/Hd Fuzes Dept.
	Asst Tech Dir for Weapons & Head Weapons Dept.
Naval Training Equipment Center.	Technical Director.
	Director of Engineering.
Department of Education	
Management	Dir Admin Resource Management Service.
	Director Personnel Management Service.
	Dir, Assistance Management & Procurement Serv.
	Director Financial Management Service.
Inspector General	Deputy Inspector General
	Assistant Inspector General for Audits.
	Asst Insp for Policy Plng & Mgmt Serv.
	Asst Inspector General for Investigation.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dep Asst Insp General for Tech Serv & Fld Ope.
General Counsel	Associate General Counsel.
Post-Secondary Education.	Dir, Div of Grants & Loan Management.
National Center for Education Statistics.	Asst Admr Postsecondary & Voc Ed Stats.
	Adm, National Ctr for Educational Research.
	Asst Admr for Research and Analysis.
	Asst Admr for Elem & Secondary Edu Stats.
Department of Energy	
Office of Hearings & Appeals.	Dep Dir for Legal Analysis.
	Dep Dir for Financial Analysis.
	Dep Dir for Econ Analysis.
Albuquerque Operations Office.	Dir Weapons Prod Div.
	Director Quality Assurance Division.
	Dir Fac and Const Mgmt Div.
	Asst Mgr for Administration.
	Dir Transportation Stgds Div.
	Dir Ofc of Strategic Planning & Analysis.
	Dir Budget & Resources Mgmt Div.
	Director, Production Operations Div.
	Director, Weapon Programs Division.
	WIPP Project Manager.
Chicago Operations Office.	Asst Manager for Administration.
	Area Manager Batavia Area Office.
	Asst Mgr for Acquisition and Assistance.
	Asst Mgr for Laboratory Management.
Idaho Operations Office	Assistant Manager for Administration.
	Dir Reactor Ops & Prgms.
	Dir Nuclear Fuel Cycle and Waste Mgmt Div.
Nevada Operations Office.	Chief Counsel.
	Asst Mgr for Admin.
	Asst Mgr for Energy & Conservation.
	Assistant Manager for Administration.
Oak Ridge Operations Office.	Dir Enriching Op Div.
Richland Operations Office.	Asst Mgr for Admin.
	Assistant Manager for Defense.
	Asst Mgr Commercial Nuclear Waste & Projects.
	Asst Mgr for Safety, Safeguards & Qual Assur.
San Francisco Operations Office.	Asst Mgr for Admin.
	Director, Livermore Site Office.
Savannah River Operations Office.	Asst Mgr for Admin.
	DWPF Project Manager.
Bonneville Power Administration.	Asst Admr for Pwr Mgmt.
Western Area Power Administration.	Asst Admr for Mgmt Svcs.
Ofc of Asst Insp Gen for Audits.	Manager, Western Regional Audit Office.
	Director Program Development Division.
	Manager, Eastern Regional Audit Office.
	Director Audit Management Division.
	Manager Capital Regional Audit Office.
Ofc of Asst Insp Gen for Inspections.	Asst Insp Gen for Inspec.
Ofc of Asst Insp Gen for Investigations.	Asst Inspector General for Investigations.
Office of Management Services.	Dir Ofc of Mgmt and Program Coordination.
Energy Information Administration.	Director, EIA-ADP Services Staff.
Office of Oil & Gas	Dir, Ofc of Oil and Gas.
	Dep Dir, Ofc of Oil and Gas.
	Director Petroleum Supply Division.
	Director Electric Power Division.
	Chief Data Analysis and Support Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dir Reserves and Natural Gas Division.
	Director Petroleum Marketing Division.
Ofc. of Coal, Nuclear, Electric & Alternate Fuels.	Dir Ofc of Coal Nucl Elec & Altern Fuels.
	Dir Coal Division/Dep Dir Ofc.
	Dir, Nuclear and Alternate Fuels Division.
Office of Energy Markets & End Use.	Director, Ofc of Energy Markets & End Use.
	Director, Energy End Use Division.
	Director Longer-Term Information Division.
	Director Economics & Statistics Division.
	Dir Internal & Contingency Planning Division.
	Dir, Energy Analysis & Forecasting Division.
Office of Statistical Standards.	Dir Ofc of Statistical Standards.
	Director Quality Assurance Division.
Asst. Sec. for Conservation & Renewable Energy.	Dir Photovoltaic Energy Technology Div.
Office of State & Local Assistance Programs.	Dir Weatherization Assistance Programs Div.
Office of Industrial Programs.	Deputy Director, Ofc of Industrial Programs.
Office of Energy Systems Research.	Director, Electric Energy Systems Division.
Ofc of Solar Heat Technologies.	Dir Active Heating and Cooling Division.
Office of Renewable Technology.	Dir Geothermal & Hydropower Technologies Div.
	Dir Biomass Energy Technology Division.
	Dir, Solar Thermal Technology Div.
Office of Nuclear Safety	Chf, Environmental Protection & Pub Safe Br.
Office of Military Application.	Dir, Prog Analysis & Resource Management Div.
	Dep Dir, Div of Safty, Envr & Emergy Action.
	Associate Director of Military Applications.
	Dir Div of Weapons Research Dev & Testing.
Office of Safeguards & Security.	Dir, Div of Safeguards.
	Dir, Div of Pol and Prog Support.
Office of Scientific & Technological Intelligence.	Dir Ofc of Scientific Techology Intelligence.
Office of Energy Research.	Scientific Computing Staff.
Office of Management	Director, Fiscal Management Division.
	Deputy Dir for Management.
	Director for Management.
Office of Health & Environmental Research.	Director, Human Health & Assessment Div.
	Dir Health Effects Research Division.
Office of Basic Energy Sciences.	Dir Engr Math and Geo Sci Div.
	Dir Chem Sci Div.
	Dir Adv Egy Proj Div.
	Dir Mat Sci Div.
	Chf Fund Interactions Br.
	Chf Processes and Tech Br.
	Chf Solid St Phy and Mat Chemistry Branch.
Office of High Energy & Nuclear Physics.	Chf Physics Research Branch.
	Dir High En Physics Div.
Fossil Energy Field Centers.	Dir Coal Projects Management Division.
Deputy Assistant Secretary for Naval Reactors.	Program Manager for Commissioned Submarines.
	Director, Reactor Safety & Computation Div.
	Director, Submarine Systems Division.
	Director, Instrumentation & Control Div.
	Director, Office of Resources Management.
	Hd Submarine Section.
	Assoc Dir for Trid & Adv Sub Projs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Director, Reactor Refueling Division.
	Dep Dir for Keeserling.
	Assoc Dir for Surf Ship & WCB.
	Hd Surface Ship Section.
	Sr Naval Reactors Rep (W Milton).
	Asst Program Manager for Surface Ships.
	Deputy Director for Naval Reactors.
	Prog Mgr for Prototypes & SAPSO.
	Assistant Chief Physicist.
	Director Nuclear Technology Div.
	Dir Reactor Engineering Division.
	Chief Advanced CORE Manufacturing Branch.
	Dep Dir, Nuclear Techn Div.
	Dep Director Reactor Materials Division.
	Director, Fiscal Division.
	Program Manager for Shipyard Matters.
	Dir Nuclear Components Division.
	Program Mgr for Surface Ships & Adv Sub Proj.
Schenectady Naval Reactors Office.	Asst Manager for Operations.
Pittsburgh Naval Reactors Office.	Sr. Naval Reactors Rep (Portsmth).
	Sr. Naval Reactors Rep. (Nwpt News).
	Senior Naval Reactors Rep (Pearl Harbor).
	Senior Naval Reactors Representative.
Ofc of Terminal Waste Disposal & Remedial Action.	Director, Div of Waste Repository Deployment.
Office of Personnel	Dir Ofc of Personnel.
	Director, Personnel Policies and Programs.
	Dir Empl Dvlmt & Trng Div.
	Dir Hq Personnel Operations Div.
Office of Organization & Management Services.	Dir Ofc of Org and Mgmt Sys.
	Dep Dir Ofc of Org and Mgmt.
	Dir Management Sys Analysis Div.
	Dir Manpwr Res Mgmt Div.
	Dir Org Plng and Mgmt Div.
Office of Project & Facilities Management.	Dir Construction & Facilities Mgmt Div.
	Dir, Prog/Const Mgm, Proce & Operations Div.
	Director Real Estate Management Division.
	Dep Dir Ofc of Project and Facilities Mgmt.
Office of Administrative Services.	Dir Ofc of Admin Svcs.
	Dep Dir of Admin Serv..
Office of ADP Management.	Dir Ofc of ADP Mgmt.
	Dep Dir Ofc of ADP Mgmt.
Office of Computer Services & Telecommun Mgmt.	Dir Ofc Comp Serv and Tel Mgmt.
	Dep Dir Ofc of Comp Serv and Tele Mgmt.
	Dir—Div of Telecommunications.
	Director, Operations Division.
	Dir Information Systems Division.
	D/ADP Telecomm Plning & Integrity Division
Office of Industrial Relations.	Dir Ofc of Industrial Relations.
	Dir Cont Pant Mgnt Div.
	Dir Prgm Mgmt and Asmt Div.
Procurement & Assistance Management Directorate.	Director, Procurement Management Rev Div.
	Director, Policy and Procedures Division.
Ofc of Small & Disadvantaged Business Utilization.	Dir of Sm and Disadv Bus Utlz.
Office of Policy	Dir Ofc of Policy.
	Dir Policy and Procedures Div.
Office of Procurement Support.	Dir Ofc of Procurement Support.
Office of Procurement Review.	Director Office of Procurement Review.
	Dir Cont Bus Clmce Div.
Office of Procurement Operations.	Dir Ofc of Procurement Operations.
	Dep Dir Ofc of Procur Op.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Asst Controller for Budget Policy & Compliance.	Dir Ofc of Budget.
	Dir Budget Oper Div.
	Dep Dir Ofc of Budget.
	Director, Budget Analysis Division..
	Director, Budget Operations Division..
Asst Controller for Financial Sys & Accounting.	Dir, Dept Accounting & Analysis Div.
	Director, Financial Pol & Rev Div.
	Dir Ofc Headquarters Accounting Operations.
	Director, Ofc of Departmental Accounting.
	Dir Ofc of Financial Policy.
Office of Policy, Integration & Outreach.	Director, Institutional Relations Staff.
Office of Geologic Repositories.	Dir Geosciences & Technology Division.
	Dir Engineering & Licensing Division.
	Dir Rep Coordination Division.
	Director Siting Division.
Office of Storage & Transportation Systems.	Deputy Assoc Dir for Storage & Sys Devel.
	Dir, Transportation and Waste Systems Div.
	Director Storage Division.
Environmental Protection Agency	
Office of the Assoc Apmr for Internatl Activities.	Sr Advisor for Intern'll Chemical Affairs.
Ofc of the Asst Admr for Admin & Resources Management.	Assoc to Asst Adm for Prog Mgmt and Policy.
	Spec Asst to the Asst Admin for Administrator.
	Spc Asst to Asst Admin for Admin & Resc Mgnt.
Office of the Comptroller.	Dir Ofc of the Comptroller.
	Dir, Financial Mgmt Div.
	Associate Comptroller.
	Associate Comptroller for Operations.
	Director, Budget Division.
	Dir Resource Systems Staff.
Office of Administration...	Dir Ofc of Administration.
	Deputy Dir Ofc of Administration
	Dir Occupational Health & Safety Staff.
	Dir, Grants Admin Div.
	Director, Personnel Management Div.
	Dir, Management and Organization Division.
	Dir Procurement & Contracts Mgmt Division.
Office of Information Resources Management.	Dir Ofc of Information Resources Management.
	Dep Dir Ofc Info Resources Management.
	Dir Mgmt Info and Data Sys.
	Dir, Facilities and Support Services Division.
	Dir Ofc of Admin—Cincinnati.
Office of Administration—Cincinnati, OH.	
Office of Administration—RTP, NC.	Director, Office of Administration—RTP.
	Director Office of Administration Res Mgmt.
	Director, Office of Data Processing.
Office of Human Resource Management.	Director, Office of Human Resource Mgmt.
	Director, Senior Executive Service Staff.
Ofc Asst Admr for Enforcement & Compliance Monitoring.	Dir Ofc of Management Operations.
National Enforcement Investigations Ctr—Denver.	Dir Nat'l Enforcement Investigations Center—D.
Office of Policy Analysis	Dir Econ Analysis Div.
	Director, Energy Policy Division.
	Dir, Intergated Environmental Mgmt Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Dir Integrated Environmental Mgmt Division.	
Office of Standards and Regulations.	Chief, Regulatory Reform Staff.
	Dir, Chemical & Statistical Policy Division.
Office of Management Systems and Evaluation.	Dir Ofc of Management Systems & Evaluation.
	Director, Program Evaluation Division.
	Dir, Management Systems Div.
Office of the Inspector General.	Deputy Inspector General.
	Assist Inspector Gen for Investigations.
	Asst Inspector General for Audits.
	Dep Asst Inspector General for Audits.
	Dep Asst Inspector General for Investigations.
	Asst Insp General for Mgmt & Technical Assess.
	Deputy Inspector General.
Office of the Assistant Administrator for Water.	Policy Advisor.
Office of Water Enforcement and Permits.	Director Enforcement Division.
	Director, Permits Division.
Office of Water Regulations and Standards.	Director, Effluent Guidelines Division.
	Director, Monitoring & Data Support Div.
	Director, Criteria and Standard Division.
	Dir, Analysis and Evaluation Division.
Office of Water Program Operations.	Director Municipal Construction Division.
	Director, Facility Requirements Division.
	Dir Water Planning Division.
Office of Drinking Water..	Dir Criteria and Standards Division.
	Dir, Ofc of Prog Dev & Evaluation.
	Director, State Programs Division.
Office of Ground-Water Protection.	Sr Adv for Ground-Water Policy & Management.
Office of Waste Programs Enforcement.	Dep Dir, Office of Waste Programs Enforcement.
	Dir, CERCLA Enforcement Division.
	Director, RCRA Enforcement Division.
Office of Solid Waste	Dir, Hazardous & Industrial Waste Div.
	Dir, State Prog & Resource Recovery Div.
	Dir Wast Mgmt and Economics Division.
	Dir Characterization & Assessment Division.
	Director, Permits & State Programs Division.
Office of Emergency and Remedial Response.	Dir, Hazardour Response Support Div.
	Dir, Emergency Response Div.
	Director, Hazardous Site Control Division.
Ofc of the Asst Admr for Air and Radiation.	Director, Ofc of Program Mgmt Operations.
	Director State & Local Programs Div.
	Director, Standards & Regulation Div.
Office of Air Quality Planning and Standards.	Dir—Stationary Source Enforcement Div.
	Director, Monitoring & Data Analysis Division.
	Dir, Strategies & Air Stds Div—Durham, NC.
Office of Mobile Sources.	Director, Emission Control Technology Div.
	Director Certification Division.
	Dir Manufacturers Operations Division.
	Dir Field Operations & Support Division.
Ofc of Asst Admr for Pesticides & Toxic Substances.	Dir International Chemical Affairs Staff.
	Dir Regulatory Reform Staff.
	Dir, Compliance Monitoring Staff.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Director, Chemical Coordination Staff.
Office of Pesticides Programs.	Dir, Ofc of Pesticides Programs.
	Dir—Registration Division.
	Director—Program Support Division.
	Dir—Hazard Evaluation Division.
	Dir Benefits and Field Studies Dir.
	Sr Science Advr (Hazard Evaluation).
Office of Toxic Substances.	Director Exposure Evaluation Division.
	Dir, Existing Chemicals Assessment Division.
	Dir, Health & Environmental Rev Dir.
	Director Chemical Control Division.
	Director, Mgmt Support Division.
	Dir Toxic Subs Control Act Assistance Ofc.
	Sr Scientific Advisor for Chemical Info.
	Director Economics & Technology Division.
	Director, Chemical Coordination Staff.
Ofc of the Asst Admr for Research and Development.	Principal Physical Science Advisor.
	Dir, Ofc of Exploratory Research.
	Principal Science Advisor for Ecology.
Ofc of Research Program Management.	Dep Dir for Technical Information.
	Dep Dir for Operations.
Center for Environmental Research Info—Cincinnati.	Dir Environmental Research Information Center.
Office of Health and Environmental Assessment.	Director Reprod Effects Assessment Group.
	Director Exposure Assessment Group.
Environmental Criteria & Assessment Ofc (RTP).	Dir, Env Criteria & Ofc (Air)—RTP.
Ofc of Monitoring Systems and Quality Assurance.	Dir Air Toxics & Radiation Monitoring Res Div.
	Director Water & Waste Mngt Monitoring Resc.
	Dir, Acid Deposition & Atmospheric Res Dir.
Environmental Monitoring Systems Lab—RTP.	Dir Envir Monitoring & Systems Laboratory.
Environmental Monitoring & Support Lab—Cincinnati.	Dir Environmental Monitoring & Support Lab Cin.
Environmental Monitoring Systems Lab—Las Vegas.	Dir, Env Monitoring Sys Lab, Las Vegas.
Ofc of Environmental Engineering and Technology.	Dir, Industrial & Extractive Processes Div.
	Dir Waste Management Division.
	Dir Energy Processes Division.
Industrial Environmental Research Laboratory—RTP.	Dir Industrial Environmental Research Lab RTP.
Industrial Environmental Research Lab—Cincinnati.	Dir, Industrial Environmental Res Lab—Cinci.
	Dep Dir—Industrial Env Res Lab Cincinnati.
Municipal Environmental Research Lab—Cincinnati.	Director Municipal Environmental Research Lab.
Office of Environmental Process and Effects.	Dir Water Supply Research Div.
	Dir, Integrated Pest Management Program.
	Director Toxics and Pesticides Division.
	Director, Water and Land Division.
Environmental Sciences Research Laboratory—RTP.	Dir, Environmental Sciences Res Lab—RTP.
	Dep Dir-Environmental Sciences Rsch Lab—RTP.
Environmental Research Laboratory—Corvallis.	Dir, Env Research Laboratory Corvallis.
Environmental Research Laboratory—Athens.	Dir Environmental Research Lab Athens, GA.
Robert S. Kerr Environmental Res Laboratory—ADA.	Dir, Robert S. Kerr Environmental Res Lab.
Environmental Research Laboratory—Duluth.	Dir Environmental Research Lab—Duluth.
Environmental Research Laboratory—Narragansett.	Dir Environmental Research Lab.
Environmental Research Laboratory—Gulf Breeze.	Dir Env Res Lab Gulf Breeze.
Office of Health Research.	Dir, Air, Noise & Radiation Health Res Div.
	Dir Water & Toxic Substance Health Res Div.
Health Effects Research Laboratory—RTP.	Dir—Health Effects Research Lab—RTP.
Region I—Boston	Director, Water Management Division.
	Dir Waste Management Division
	Regional Counsel.
Region II—New York	Director, Environmental Services Division.
	Director, Water Management Division.
	Asst Regl Admr for Policy and Management.
	Dir Air & Waste Management Division.
	Regional Counsel, Region II, New York.
	Dir, Office of Emergency & Remedial Response.
Region III—Philadelphia	Director, Water Management Division Reg III.
	Director, Air & Waste Management Div Reg III.
	Regional Counsel.
	Asst Reg Admin for Policy & Management.
Region IV—Atlanta	Dir Water Management Division Region IV.
	Dir Air & Waste Management Division
	Dir Environmental Services Division Region IV.
	Asst Regional Admin for Policy and Mgmt.
	Regional Counsel, Reg IV, Atlanta George.
Region V—Chicago	Dir Air Management Div Region V
	Dir Envir Services Div Region V
	Dir Water Management Div Region V.
	Asst Regional Admr for Policy & Management.
	Regional Counsel.
	Director, Waste Management Division.
Region VI—Dallas	Dir Air & Waste Management Div.
	Dir Water Management Division
	Director, Environmental Services Division.
	Asst Regional Admr for Management.
	Regional Counsel.
Region VII—Kansas City.	Dir Water Management Division.
	Dir Air & Waste Management Division.
	Regional Counsel.
Region VIII—Denver	Dir Water Management Division
	Dir Environmental Services Division.
	Regional Counsel.
Region IX—San Francisco.	Director, Water Management Division.
	Director, Air Management Division
	Regional Counsel, Reg IX, San Fran. Cal.
	Asst Regl Admr for Pol, Techn & Reg Mgmt.
	Dir, Toxics & Waste Management Div.
	Asst Regional Admr for Policy & Management.
Region X—Seattle	Director, Air & Waste Management Division.
	Dir—Water Div Reg X.
	Director, Environmental Services Division.
	Regional Counsel.
	Director, Air and Toxics Division.
	Director, Hazardous Waste Division.
Equal Employment Opportunity Commission	
Office of the Chairman	Director, Office of Review and Appeals.
Region I	Dist Dir (Baltimore).
	Dist Dir (New York).
	Dist Dir (Atlanta).
	Dist Dir (Miami).
	Dist Dir—(Birmingham).
	Dist Dir—(Charlotte).
	Dist Dir— (Philadelphia).
Region II	District Director (Detroit).
	Dist Dir (Chicago).
	Dist Dir—(St. Louis).
	Dist Dir (Indianapolis).
	Dist Dir (Memphis).
	Dist Dir—(New Orleans).
	Dist Dir (Cleveland).
Region III	Dist Dir (Houston).
	Dist Dir (San Francisco).
	Dist Dir (Dallas).
	District Director (Los Angeles).
	Dist Dir—(Denver).
	Dist Dir—(Phoenix).
	Dist Dir—(Seattle).
Farm Credit Administration	
Farm Credit Administration.	Division Director.
Ofc of Examination & Supervision.	Associate Deputy Governor.
	Assistant Deputy Governor.
	Division Director.
	Division Director.
Organization Abolished	Assoc. Dep Governor and Chf Examiner.
Ofc of Administration	Director, Record and Projects Division.
	Associate Deputy Governor & Chief Economist.
Ofc of Internal Audit	Director of Internal Audit.
Federal Communications Commission	
Mass Media Bureau	Chief Audio Services Division.
	Chief Video Services Division.
	Chf, Enforcement Div.
Private Radio Bureau	Chief Land Mobile & Microwave Division.
Field Operations Bureau.	Chief Enforcement Division.
Common Carrier Bureau.	Chief, Tariff Division.
	Asst Bureau Chief (International).
	Chief Domestic Facilities Division.
	Chief Enforcement Division.
	Chief, Accounting and Audits Division.
Ofc of Science & Technology.	Chief Spectrum Management Division.
	Chief Technical Analysis Division.
	Chief Authorization & Standards Div.
Federal Emergency Management Agency	
Office of the Director	Inspector General.
	Comptroller.
	Deputy Inspector General.
Emergency Operations Directorate.	Deputy Associate Director.
	Asst Assoc Dir Oprns, Anal & Control.
	Asst Assoc Dir Operating Systems Mgmt.
	Asst. Assoc. Director for Facilities Mgmt.
	Asst Assoc Dir Readiness P:ng & Ops.
	Asst. Assoc. Dir. of Emerg Coord & Support.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Office of Resources Preparedness.	Asst Assoc Dir. Off Resource Prep.
	Chief Economic Resources Division.
	Chief Mobilization Resources Div.
Office of Federal Preparedness.	Chief, Government Continuity Div.
Office of Civil Preparedness.	Chief, Industrial Protection Division.
Organization Abolished	Asst Assoc Dir. of Research.
Office of Natural and Technological Hazards Programs.	Chief, Technological Hazards Division.
Federal Insurance Administration.	Deputy Administration.
Federal Energy Regulatory Commission (DOE)	
Ofc of Chief Accountant.	Deputy Chief Accountant.
	Dir, Division of Audits.
	Dep Dir. Div of Audits.
Ofc of Pipeline and Producer Regulation.	Dir, Div of Producer Rates and Certifications.
Federal Home Loan Bank Board	
Office of Administration	Director Administration.
Office of Examinations & Supervision.	Dep Dir Examinations/Field Operations.
	Deputy Director-Examinations/Policy.
Ofc of Internal Eval and Compliance.	Dir Internal Evaluation and Compliance Ofc.
Federal Labor Relations Authority	
Federal Service Impasses Panel.	Exec Director FSIP.
Ofc of the Executive Director.	Executive Director/Administrator.
	Deputy Executive Director.
	Solicitor.
Office of The Chief Counsel.	Dir Case Management.
	Chief Counsel.
	Asst Chief Counsel for Negotiability.
	Asst Chf Coun for Rep & Unfair Labor Practice.
	Assistant Chief Counsel for Arbitration.
Ofc of the General Counsel.	Deputy General Counsel.
	Asst General Counsel (Field Management).
	Asst General Counsel (Appeals).
	Asst Counsel (Field Mgmt/Legal Policy).
	Associate General Counsel.
Regional Offices	Regional Director—Washington, D.C.
	Regional Director—Boston.
	Regional Director—New York.
	Regional Director—Atlanta.
	Regional Director—Dallas.
	Regional Director, Chicago Illinois.
	Regional Director—Los Angeles.
	Regional Director, San Francisco.
	Regional Director, Denver.
Federal Maritime Commission	
Office of the Members	Secretary.
Office of the General Counsel.	Dep Gen Coun for Reports Opinions and Decision.
Program Offices	Director of Programs.
	Dir, Bureau of Agreement & Trade Monitoring.
	Dir, Bureau of Tariffs.
	Dir, Bureau of Investigations.
	Dir, Bureau of Hearing Counsel.
Federal Trade Commission	
Ofc of Executive Director.	Deputy Exec Dir for Management.
Dep Exec Dir for Planning & Information.	

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
General Services Administration	
Office of the Administrator.	Special Counsel to the Admr for Ethics.
	Dir. Ofc of Small & Disadvantaged Bus Utiliz.
Office of Associate Administrator for Administration.	Director of Personnel.
	Deputy Director of Personnel.
Office of Policy and Management Systems.	Director Office of Oversight.
	Director of Administrative Service.
	Director of oversight.
Office of the Inspector General.	Deputy Inspector General.
	Asst Inspector Gen for Auditing.
	Deputy Asst Inspector General for Auditing.
	Asst I/G for Investigations.
	Counsel to the Inspector General.
	Asst Insp Gen for Policy, Plans & Mgmt Sys.
Office of Acquisition Policy.	Asst Admr for Acquisition Policy.
	Deputy Assistant Admr for Acquisition Policy.
	Dir of Acquis Mgmt and Contract Clearance.
	Policy Advr to the Asst Admr for Acq Policy.
	Director Federal Acquisition Institute.
Office of the Comptroller.	Dir of Finance.
	Director of Budget.
	Director of Transportation Audits.
Federal Property Resources Service.	Asst Commr for Real Property.
	Asst Commissioner for Stockpile Management.
	Asst Commissioner for Stockpile Transactions.
Public Buildings Service	Asst Commissioner for Building Management.
	Asst Commr for Space Planning & Management.
	Asst Commr for Design and Construction.
	Asst Commissioner for Fed Protective Ser Mgmt.
	Assistant Commissioner for Public Utilities.
Office of Information Resources Management.	Director of Information Resources Procurement.
	Director of Network Services.
	Dir of Information Resources Mgmt Policy.
	Director of Advanced Planning.
	Director of Office Information Systems.
	Director, of Regional Information Services.
	Director of GSA Information Systems.
	Dir of Systems and Technology Assessment.
	Prog Dir. Wash Interagency Telecom Sys (WITS).
	Chief, Federal Program Information Branch.
National Archives and Records Service.	Dir, L B Johnson Library.
	Asst Archivist for Fed Records Ctr.
	Dir, Harry S. Truman Library.
	Dir, Dwight D. Eisenhower Library.
	Asst Archivist, Natl Archives.
	Assistant Archivist for Records Admin.
Office of Federal Supply and Services.	Director of Procurement.
	Dir of Policy and Agency Assistance.
	Dir of Transportation.
	Director of Property Management.
	Director of Contract Management.
Region 1—Boston	Asst Reg Admr for Public Bldg and Real Property.
Region 2—New York	Asst Reg Admr for Public Bldg and Real Property.
	Regional Controller, R-2 (NY).
	Asst Reg Admr for Federal Supply and Services.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Region 3—Philadelphia	Asst Regl Admr for Public Bldng and Real Proty.
National Capital Region	Region Controller.
	Asst Regl Admr for Pub Bldgs and Real Property.
	Asst Regl Admr for Info Resources Mgmt.
	Asst Reg Admr for Federal Supply and Services.
Region 4—Atlanta	Asst Reg Admr for Public Bldg and Real Pro R-4.
	Assistant Reg Admin for Inform Res Mgmt—R-4.
	Asst Reg Admr for Federal Supply and Services.
Region 5—Chicago	Regional Controller.
	Asst Regl Admr for Pub Bldgs and Real Prop R-5.
	Asst Reg Admr for Federal Supply and Services.
Region 6—Kansas City	Regional Controller—Region 6.
	Asst Reg Admr for Public Bldgs and Real Property.
	Asst Reg Admr for Information Res Management.
Region 7—Fort Worth	Asst Regl Admr for Pub Buildings and Real Prop.
	Asst Regl Admr for Info Resources Mgmt R-7.
	Asst Reg Admr for Federal Supply and Services.
Region 8—Denver	Asst Reg Admr for Public Bldgs and Real Property.
Region 9—San Francisco.	Asst Regl Admr for Pub Bldgs and Real Property.
	Asst Reg Admr for Federal Supply and Services.
	Asst Reg Admr for Information Res Management.
Region 10—Auburn, Washington.	Asst Regl Admr for Public Build and Real Prop.
Department of Health and Human Services	
OAS for Management and Budget.	Dep Asst Sec., Finance.
	Dir, Div of Accounting Systems and Procedures.
	Dep Asst Secy for Procurement, Asst and Log.
	Dir Off Procurement and Asst Financial Mgmt.
	Dep to the Dep Asst Secretary Finance.
OAS for Personnel Administration.	Asst Sec for Personnel Administration.
	Dir Ofc of Personnel Systems Integrity.
Office of the General Counsel.	Asst Gen Counsel (Business and Admin Law Div).
	Dep Asst Gen Count Bus and Admin Law Division.
Office of the Inspector General.	Asst Inspector General for Audit.
	Dep Asst Inspector General for Audit.
	Asst I/G for Health Care and Systems Review.
	Asst Inspector General for Investigations.
	Dep Asst Inspector Gen for Investigations.
	Sr Asst Insp Gen for Audit and Systems.
	Executive Assistant Inspector General.
	Asst Inspector Gen for Health Fin Integrity.
	Dir, Health Care Financing Audit Division.
	Dep Asst Inspector Gen for SSP Integrity.
	Dep Asst Insp Gen for Criminal Investigation.
	Director Grants Intnal Sys Audit Division.
	Dep Asst Inspector Gen for Civil Fraud.
	Director, Social Security Audit Division.
	Dep/Asst/Insp/Gen for Headquarters Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Asst/Dep/Insp/Gen for Info Res Management.
Health Care Financing Administration.	Dir Ofc of Program Validation.
OAA for Management and Support Services.	Dep Dir, Bureau of Support Services.
	Dir Bur of Support Services.
	Dir Ofc of Financial Management.
	Dir Office of Human Resources and Admin Service.
	Dir, Ofc of Financial and Actuarial Analysis.
	Dir, Bureau of Data Management and Strategy.
	Dep Dir, Bureau of Data Management and Strategy.
OAA for Operations	Dir Ofc of Prog Adm, Bur of Prog Operations.
	Deputy Director Bureau of Quality Control.
	Dir Office of Quality Control Programs.
	Dir, Ofc of Professional Stds Review Org.
OAA for Policy	Dir Ofc of Demonstrations and Evaluations.
	Director, Ofc of Research.
	Dep Dir, Ofc of Research and Demonstrations.
OAS for Health	Dep Dir, Office of Administrative Management.
	Director, Office of Resource Management.
	Assoc Dir, Cooperative Hlth Stats Sys.
National Center for Health Statistics.	Assoc Dir for Coop Health Statistics System.
	Assoc Dir for Analysis and Epidemiology.
	Assoc Dir for Research and Methodology.
	Assoc. Dir, Ofc. of Prog. Plng. Eval. and Coord.
National Ctr For Health Services Research.	Dir Div of Intramural Research.
	Dir Div of Extramural Research.
	Associate Director for Research.
	Dir Ofc of Health Technology Assessment.
Alcohol, Drug Abuse and Mental Health Admin.	Assoc Admin for Extramural Programs.
Natl Inst of Alcohol Abuse and Alcoholism.	Chief Laboratory of Clinical Studies.
	Dir Division of Extramural Research.
	Dir, Div of Intramural Clinical and Bio Res.
	Dir Div of Biometry and Epidemiology.
National Institute on Drug Abuse.	Director Addiction Research Center.
	Dir Div of Preclinical Research.
	Director Division of Clinical Research.
	Dir, Div of Epidemiology and Statistical Analy.
Natl Inst of Mental Health.	Dir Division of Extramural Research Programs.
	Dir, Div of Scientific and Techn Info.
	Chf, Theoretical Statistics and Mathematics Brain.
	Dir Div of Mental Health Svc Programs.
	Assoc Dir Extramural Programs.
	Chf, Pharmacologic and Somatic Tr/neuro Res Br.
	Dir Div of Human Resources.
	Dep Dir, Div of Extramural Research Programs.
Saint Elizabeths Hospital.	Asst Superintendent, St. Elizabeths Hospital.
	Director John E. Marr Division.
	Dir Gooding Div.
	Director Richardson Division.
	Dir Overholser Division of Training.
	Dir Div of Medical Surgical Support Programs.
	Chief Blackburn Laboratory.
	Dir, Medicine and Surgery Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Chief Department of Medicine.
Intramural Research	Dir, Intramural Research Programs.
	Dir Division of Special Mental Health Research.
	Chief, Lab. of Preclinical Pharmacology.
	Chf, Lab of Cerebral Metabolism.
	Chief, Section of Myelin Chemistry.
	Chf, Lab Neurochemistry.
	Chf, Lab of Gen and Comparative Biochemistry.
	Chief, Lab of Brain Evolution and Behavior.
	Chief, Lab of Neurobiology.
	Chf, Lab of Neurophysiology.
	Chf Lab of Socio-environmental Studies.
	Chf Lab of Developmental Psychology.
	Chf, Sect on Pharmacology.
	Chf Clinical Neuropharmacology Branch.
	Chf Clinical Psychobiology Branch.
	Chief Lab of Psychology and Psychopathology.
	Chief Laboratory of Neuropsychology Dcbr.
	Chief Section Histopharmacology.
Centers for Disease Control.	Deputy Director, NIOSH.
	Dir, Div of Biomedical and Behavioral Science.
	Dir, Bacteriology Div.
	Chf, Licensure and Proficiency Testing Division.
	Dir Parasitology Div.
	Dir Clinical Chemistry Div.
	Assoc Director for Research.
	Assistant to the Director.
	Asst Dir for Laboratory Science.
Food and Drug Administration.	Director, Parklawn Computer Center.
	Director, Orphan Products Development.
Office of Regulatory Affairs.	Dep Assoc Commissioner for Regulatory Affairs.
	Director, Enforcement Policy Staff.
	Regl Food and Drug Dir, Reg I, Boston.
	Regional Director, FDA, Reg II, New York.
	Regl Food and Drug Dir, Reg III, Philadelphia.
	Regl Dir, Food and Drug Adm, Reg IV, Atlanta.
	Regl Food and Drug Director, Reg V, Chicago.
	Regional Food and Drug Dir, Reg VI, Dallas.
	Regl Food and Drug Dir Reg VII, Kansas City.
	Regl Food and Drug, Reg VIII, Denver.
	Regl Dir, Food and Drug Adm, Reg IX (San Francisco).
	Regl Food and Drug Dir, Reg X, Seattle.
National Center for Toxicological Research.	Director, Division of Biometry.
	Assoc Dir for Research.
	Assoc Dir for Chemical Evaluations.
Center for Food Safety and Applied Nutrition.	Dir Division of Toxicology.
	Dir, Div of Chemistry and Physics.
	Dir, Ofc of Physical Sciences.
	Dir, Div of Food Technology.
	Deputy Dir or Ofc of Physical Sciences.
	Dir Ofc of Nutrition and Food Sciences.
	Assoc Dir for Laboratory Investigations.
	Dir Div of Nutrition.
	Dir Ofc of Compliance.
	Dir Div of Microbiology.
	Director, Division of Regulatory Guidance.
	Dep Dir, Ofc of Nutrition and Food Sciences.
	Dir Div of Chemical Technology.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Director Ofc of Toxicological Sciences.
	Dir Div of Food and Color Additives.
	Director Division of Mathematics.
Center for Drugs and Biologics.	Asso Director for New Drug Evaluation.
	Dir, Div of Anti-Infective Drug Products.
	Dir Div of Scientific Investigations.
	Dir Div of Cardio-Renal Drug Products.
	Dir Office of Compliances.
	Dep Assoc Dir for Drug Monographs.
	Assoc Dir for Pharmaceutical Research and Testi.
	Dir, Div of Drug Biology.
	Director—Division of Drug Chemistry.
	Assoc Dir for Information Systems.
	Dep Dir Ofc of Epidemiology and Biostatistics.
	Dir Div of Biometrics.
	Dir Div of Drug and Biological Experience.
	Dir, Div of Blood and Blood Products.
	Dir, Div of Neuropharmacological Drug Prod.
	Dir Div of Surgical Dental Drug Products.
	Dir, Div of Metabolism and Endocrine Drug Prod.
	Dir Ofc of Epidemiology and Biostatistics.
	Dep Assoc Dir, Pharmaceutical Res and Testing.
	Dir Div Biological Product Compliance.
	Dep Dir for Prog Management.
	Dir, Div of Product Quality Control.
	Dep Dir Ofc of Biologics Research and Review.
	Deputy Director for Medical Activities.
	Director, Division of Biochem and Biophysics.
	Director, Division of OTC Drug Evaluation.
	Dir Ofc of Drug Research and Review Ctr.
	Associate Director for Program Coordination.
	Director, Office of Drug Standards.
	Deputy Dir, Ofc of Drug Standards.
Center for Veterinary Medicine.	Dir—Div of Thera Drugs for Non Food Animals.
	Dir Ofc of Surveillance and Compliance.
	Dir Ofc of Scientific Evaluation.
	Director, Office of Research.
	Director Office of Human Food Safety.
	Dir Ofc of Voluntary Compliance and Operations.
	Dir, Div of Drugs Manufacturing and Controls.
	Dir Div of Biometrics and Production Drugs.
	Dir Div of Therapeutic Drugs for Food Animals.
	Dir Div of Veterinary Medical Research.
	Assoc Dir Scientific Infor and Education.
Center for Devices and Radiological Health.	Director Division of Risk Assessment.
	Assoc Director for Standards.
	Director Office of Compliance.
	Dir Ofc of Standards and Regulations.
Immediate Office of the Director.	Director, Div of Financial Management.
	Director, Division of Contracts and Grants.
	Dir Ofc of Protection From Research Risk.
	Assoc Dir for Intramural Research.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Nat'l Heart, Lung and Blood Institute.	Assoc Director for Review.
	Assoc Dir Epidemiology and Biometry Res Prog.
	Chf Sickle Cell Disease Branch.
	Dir Div of Lung Diseases.
	Dep Dir Div of Lung Diseases.
	Dir, Div of Blood Diseases and Resources.
	Dir, A/Sclerosis, Hypertension and Lip Met Prog.
	Dep Director Div of Extramural Affairs.
	Assoc Dir Clinical Applic Program Div.
Intramural Research	Chf Surgery Br.
	Chf Lab of Biochemical Genetics.
	Chf Lab of Biochemistry.
	Chief Lab of Molecular Hematology.
	Hd, Section On Chemistry.
	Chief, Laboratory of Chemical Pharamacology.
	Sr Rsch Chemist, Sect on Cell Biology.
	Chief Macromolecules Section.
Division of Cancer Biology and Diagnosis.	Dep Dir Div of Cancer Biology and Diagnosis.
	Chf—Laboratory of Pathophysiology.
	Chief, Laboratory of Cell Biology.
	Hd Biochemical Genetics Section.
	Assoc Chf—Lab/Immunbiology/Hd Humoral Immunit.
	Head, Cell Organization Sect, Lab Molecular.
	Hd, Protein Chemistry Section.
	Chief Laboratory of Biochemistry.
	Director, Extramural Research Program.
	Chf, Macromolecular Interactions Section.
	Chief, Dermatology Branch.
	Head, Cellular Immun of Mod Self Antigens Gr.
Division of Cancer Etiology.	Dir, Div of Cancer Etiology.
	Chief Lab of Biology.
	Chief Biometry Branch.
	Chief Clinical Epidemiology Branch.
	Chief Laboratory of Molecular Carcinogenesis.
	Chf Lab of Experimental Pathology.
	Sci Coord for Environmental Carcinogeneses.
	Head, Math Statistics and Applied Mathematics.
	Head in Vitro Carcinogenesis Section.
	Chief, Lab of Viral Carcinogenesis.
	Associate Dir for Biological Carcinogenis.
	Assoc Dir for Chem and Physical Carcinogenesis.
Division of Cancer Prevention and Control.	Dep Dir, Div of Cancer Prevention and Control.
	Associate Director, Prevention Program.
	Assoc Dir, Centers and Community Oncology Prog.
	Associate Dir, Cancer Control Science Program.
Division of Extramural Activities.	Dir, Div of Extramural Activities.
	Deputy Dir, Div of Extramural Activities.
Division of Cancer Treatment.	Director Division of Cancer Treatment.
	Dep Dir—Div of Cancer Treatment.
	Assoc Dir Developmental Therapeutics Prog.
	Chf—Radiation Oncology Br.
	Chf—Drug Evaluation Branch.
	Chf—Lab of Medicinal Chemistry and Biology.
	Assoc Dir, Cancer Therapy Evaluation Program.
	Assoc Dir Radiation Research Program.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Assoc/Dir Biological Response Modifiers Prog.
Natl Inst of Arthritis Diabetes and Digestive and K D.	Assoc Dir Prog Anal Scientific Communication.
	Assoc Dir for Digestive Diseases and Nutrition.Kidney, Urologic and Chematologic Diseases.
	Dir Div Kidney, Urologic and Hematologic Diseases.
	Dir Division of Extramural Activities.
	Assoc Dir for Diabetes, Endocrin and Metab Dis.
	Assoc Dir for Arthritis, Bone, Skin Diseases.
	Associate Dir for Nutrition.
	Assoc Director for Research and Assessment.
Intramural Research	Chf, Laboratory of Nutrition and Endocrinology.
	Chf Sect on Enzymes and Cellular Biochemistry.
	Chf Sect on Intermediary Metabolism.
	Chief Section on Biochemical Mechanisms.
	Chf Sect on Biochemistry.
	Chf Sect Biochemistry of Amino Acids.
	Chf, Lab of Physical Biology.
	Chf, Section on Comparative Physiology.
	Chf, Section on Spectroscopy and Structure.
	Chf, Sect on Metabolic Enzymes.
	Chf Sect on Physical Chemistry.
	Chief, Section on Molecular Structure.
	Sr Res Physicist, Mathematical Research Br.
	Sr Chemist, Clinical Endocronology Br.
	Senior Research Chemist.
	Chief Lab of Chemistry.
	Chief Section on Physical Biochemistry.
	Chf Arthritis and Rheumatism Br
	Senior Research Chemist.
	Chief, Laboratory of Bio-Organic Chemistry.
	Chief, Genetics and Biochemistry Branch.
	Chief Oxidation Mechanisms Section L B C.
National Library of Medicine.	Dep Dir, Natl Lib of Medicine.
	Dep Dir for Res and Education.
	Associate Director for Library Operations.
	Associate Director Div of Extramural Programs.
	Dir Lhnc for Biomedical Commun.
	Assoc Dir, Specialized Info Services.
	Asst Dir for International Programs.
	Dep Dir Lister Hill Natl Ctr for Biomed Comms.
	Associate Director for Planning.
	Director, Information Systems.
Natl Inst of Allergy and Infectious Diseases.	Dir—Immunology-Allergic and Immunologic Disease.
	Dir—Intramural Research Prog.
	Chf, Lab of Parasitic Diseases.
	Chf, Lab of Biology of Viruses.
	Chf, Laboratory of Microbial Immunity.
	Spec Asst for Biometry, Off Sci Dir.
	Hd, Molecular Virology Section.
	Director, Microbiology and Infectious Dis Progs.
	Chief, Lab of Immunogenetics.
	Director, Extramural Activities Program.
	Ch. Lab of Microbial Structure and Function.
	Chief Lab of Molecular Microbiology.
	Head Malaria Section.
Natl Inst on Aging	Scientific Dir NIA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Clinical Dir and Chf Clin Physiology Branch.
	Chief, Lab of Molecular Aging.
	Chief Lab of Cellular and Molecular Biology.
	Associate Dir for Behavioral Sciences Res.
Natl Inst of Child Health and Human Development.	Chief, Laboratory of Molecular Genetics.
	Dep Dir Center for Population Res.
	Chf, Endocrinology and Reproduction Research Br.
	Dir Epidemiology and Biometry Res Program.
	Director Ctr for Res for Mothers and Children.
	Chief Pregnancy Research Branch.
	Director Ctr for Population Research.
Natl Institute of Dental Research.	Chief Lab of Microbiology and Immunology.
	Chf, Laboratory of Dev Biology and Anomalies.
	Chf. Enzyme Chemistry Section.
	Assoc Dir. Extramural Research Program.
	Chief Mineralized Tissue Research Branch.
	Assoc Dir, Epidem & Oral Disease Preven Prog.
Natl Inst of Environmental Health Sciences.	Scientific Dir, NIEHS.
	Chf, Lab of Pulmonary Function and Toxicology.
	Chief, Biometry Branch.
	Hd, Cell Pharmacology Section.
	Chief, Lab of Genetics.
	Head Mutagenesis Section.
	Head Mammalian Mutagenesis Section.
	Dir Biometry and Risk Assessment Program.
	Dir Toxicology Research and Testing Programs.
Natl Inst of General Medical Sciences.	Dir, Cell and Molec Basis of Disease Prog.
	Dir Genetics Program.
	Assoc Dir for Program Activities.
	Dir, Pharmacological Sciences Program Branch.
	Dir Bio Phys Sciences Program Branch.
Natl Inst of Neuro & Comm Disorders & Stroke.	Chf, Olc of Biometry and Epidemiology.
	Dir Fundamental Neurosciences Program.
	Director, Communicative Disorders Program.
	Director, Stroke and Trauma Program.
Intramural Research	Clinical Dir, NINCDS.
	Chief Lab of Central Nervous System Studies.
	Chf, Devel and Molab Neurology Branch.
	Chf Lab of Molecular Biology.
	Deputy Chief, Lab of Central Nervous Sys Stud.
	Hd Cellular Neuropathology Section.
	Chief, Section on Neuroradiology.
	Chief, Lab of Biophysics.
	Chf. Lab of Neuropathology & Neuroanatomical S.
	Chf, Lab of Neurochemistry.
	Chief, Neuronal Interactions Section.
	Chf, Surgical Neurology Branch.
	Chf, Lab of Neuro-Otolaryngology.
	Chief Laboratory of Molecular Genetics.
Nat'l Eye Institute	Clinical Director NEI.
	Chf. Lab of Vision Research.
	Chf, Olc of Biometry & Epidemiology.
	Dep Chief Olc of Biometry and Epidemiology.
	Head Experimental Pathology Section.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dir, Intramural Research Program, NEI.
	Chief, Lab of Molecular & Dev. Biology.
	Chief, Laboratory of Sensorimotor Research.
NIH Clinical Center	Assoc Dir For Clin Care NIH & Dir Clin: Al Can.
	Health Systems Administrator.
Division of Computer Research & Tech.	Chief, Computer Center Branch.
	Chief, Lab of Applied Studies.
	Chief, Physical Sciences Lab.
	Chief, Data Management Branch.
Division of Research Resources.	Dir, Div of Research Resources.
	Dep Dir. Div of Res Resources.
	Dir, Gen Clinical Res Center Program Branch.
Division of Research Grants.	Chief, Referral & Review Branch.
Division of Research Services.	Chf Biomedical Engineering & Instrumentation.
Ofc of Mgmt, Budget, and Pers.	Div Ofc of Mateml Resources.
	Dir Ofc of Financial Resources.
Ofc of Assessment	Assoc. Commr. for Assessment.
	Dir Ofc of Security and Program Integrity.
	Deputy Associate Commissioner Assessment.
Ofc of Hearings and Appeals.	Dep Assoc Commr OHA.
Ofc of Actuary	Chf Actuary.
	Dep Chief Actuary (Long-Range).
	Dep Chief Actuary Short Range SSA.
Ofc of System Integration.	Director, Office of Programmatic Systems.
Ofc of System Operations.	Dir. Ofc of Computer Processing Operations.
Ofc of System Requirements.	Dir. Office of Claims & Payment Requirements.
	Dir, Ofc of Planning Control & Validation.
	Dir, Ofc of Pre-Claims Requirement.
Ofc of Policy	Chief Mathematical Statistician.
	Dir Div of Supplemental Security Studies.
Department of Housing and Urban Development	
Office of the Inspector General.	Deputy Inspector General.
	Asst Inspector General for Investigations.
	Asst Inspector General for Audit.
	Asst IG for Fraud Control & Mgmt Operations.
	Deputy Asst Inspector General For Audit Oper.
	Dep Asst Inspector Gen for Technical Services.
Assistant Secretary for Administration.	Deputy Director of Personnel.
	Director, Office of Finance & Accounting.
	Dir. Mortgage Insurance Accounting Group.
	Director Ofc of Procurements & Contracts.
	Director, General & Program Accounting Group.
	Deputy Director Office of Finance & Accounting.
	Dep Dir for Accounting Policy & Planning.
Asst Secy for Policy Development and Research.	Dir Building Technology Division.
	Dir Government Capacity Sharing Division.
Assistant Secretary for Housing.	Dir, Interstate Land Sales Registration Div.
	Director, Field Monitoring Staff.
Asst Secy for Fair Housing and Equal Opportunity.	Dir Ofc of HUD Program Compliance.
	Dir Ofc of Fair Housing Enforce and Sec 3.
Asst Secy for Community Planning and Development.	Dir Office of Environment and Energy.
Region II—New York	Manager.
	Area Manager—NY Region II.
Region III—Philadelphia	Manager.
Region IV—Atlanta	Manager.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Region V—Chicago	Manager.
	Manager.
	Manager.
	Manager.
Region VI—Dallas	Manager.
	Manager.
Region IX—San Francisco.	Manager.
Department of Interior	
Ofc of the Inspector General.	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigations.
Office of Hearings and Appeals.	Special Counsel.
Organization Abolished	Mem—Bd of Surface Mining and Reclamation Appls.
	Mem—Bd of Surface Mining & Reclamation Appeal.
Ofc of the Solicitor	Deputy Assoc Solicitor, General Law.
	Deputy Assoc Solicitor, Indian Affairs.
	Asst Solicitor Bureau of Parks and Recreation.
	Special Asst to the Assoc Solicitor—Gen Law.
	Dep Associate Solicitor—Energy & Resources.
Asst Secy for Policy, Budget & Administration.	Chief, Division of Acquisition and Grants.
	Asst Dir for Economics.
	Asst Dir for Studies.
	Chief, Div of Budget Operations (A).
	Chief Division of Budget Operations (B).
Nat'l Park Service	Senior Scientist.
	Superintendent Great Smoky Mtns Natl Park.
	Asst Dir Minority Business Enterprise.
US Fish & Wildlife Service.	Deputy Assoc Dir—Federal Assistance.
	Dep Assoc Dir—Natl Wildlife Refuge Sys.
	Deputy Associate Director—Research.
	Assoc Dir, Planning and Budget.
	Deputy Associate Director—Fishery Resources.
	Deputy Assoc Dir—Wildlife Resources.
	Deputy Associate Director—Environment.
Bureau of Mines	Chief Scientist.
	Resch Dir, Pittsburgh Research Center.
	Research Dir, Twin Cities Research Ctr.
	Research Director, Albany Research Ctr.
	Chf, Div of Minerals Informations Systems.
	Chief Div of Materials & Recycling Technology.
	Chief Mineral Economist.
	Chief Division of Minerals Availability.
	Staff Asst to Asst Dir Mineral Data Analysis.
	Chief Div of Extractive Metallurgy Technology.
	Research Director, Twin Cities Research Ctr.
	Chief Engineer.
	Staff Asst to Asst Dir Mining Research.
	Chief Div of Health & Safety Technology.
	Chief Div of Conservation & Development.
	Chief State Liaison Office.
Bureau of Reclamation	Chief Div of Design.
	Chief, Div of Atmospheric Water Resources Mgm.
	Chief Div of Research & Lab Services.
	Chief, Div of Program Coordination & Finance.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Chief Division of Planning.
	Deputy Asst Commissioner Eng & Research.
	Chief Division of Water & Land.
US Geological Survey	Chief, Earth Resources Observation Sys Prog.
	Deputy Asst Dir for Information Systems.
	Staff Geologist for NPRA/Alaska Activities.
National Mapping Div	Chief, National Mapping Division.
	Associate Chief, National Mapping Division.
	Chief, EROS Data Center.
	Asst Division Chief for Plans Operations.
	Chief Western Mapping Center.
	Chief Mid-Continent Mapping Center.
	Chief Rocky Mountain Mapping Center.
	Digital Cartography Program Manager.
	Asst Div Chief for Information & Data Svc.
	Chief Eastern Mapping Center.
	Asst Div Chf for Research.
Water Resources Div	Chief Hydrologist.
	Assoc Chief Hydrologist.
	Regl Hydrologist Central Reg Lakewood.
	Chief, Branch of Surface Water.
	Chief, Branch of Ground Water.
	Regl Hydrologist, Southeastern Region.
	Asst Chief Hydrologist, Res and Tech Coordinati.
	Regional Hydrologist, Western Region.
	Regional Hydrologist, Northeastern Region.
	Chief, Branch of Water Quality.
	Chf, Water Data Comm.
	Asst Chf Hydrologist for Operations.
	Asst Chf Hydrologist, Scien Public and Data Mg.
	Dep Asst Chf Hydrologist for Res and Tech Coord.
	Chf, Ofc Natl Water Summary and Long Range Ptng.
	Stf Asst to the Chf Hydrologist for Spec Proj.
	Chf Water Res Scie Intrn Ctr (WRSIC) Oper Ofc.
	Senior Water Research Coordinator.
	Spec Asst for Water Research Programs.
Geologic Div	Chief Geologist.
	Chief, Ofc of Earthquakes, Volcanoes and Engr.
	Chief, Ofc of Scientific Publications.
	Assoc Chf Geologist.
	Chf, Ofc of Mineral Resources.
	Chief, Office of Energy and Marine Geology.
	Chief, Office of International Geology.
	Chief, Office of Regional Geology.
	Asst Chief, Ofc of Energy and Marine Geology.
	Assistant Chief Geologist for Programs.
	Staff Assistant to Chief Geologist.
Bureau of Land Management.	Asst Dir—Technical Services.
	Asst Dir—Renewable Resources.
	Asst Dir, Land Resources.
	Asst Dir, Fluid Leasable Minerals.
	A/D/D Ener and Min Res and A/D Min Res and Mining Law.
	Asst Dir, Solid Leasible Minerals.
	Special Liaison for Tribal and Indian Lands.
Ofc of Surface Mining Reclam and Enforcement.	Dep Asst Dir for Prog Opers and Insp (East).
	Dep Asst Dir, Prog Operations and Inspect Wt.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Administrator—Technical Center-East.
	Administrator—Technical Center-West.
	Spec Asst to the Asst Dir Prog Opers and Inspec.
Minerals Management Service.	Regional Manager, Gulf of Mexico OCS Region.
	Dep Associate Director for Offshore Leasing.
	Chief, Leasing Management Division.
	Regional Manager, Atlantic OCS Region.
	Regional Manager, Alaska OCS Region.
	Assistant Assoc Dir for Offshore Minerals Mgt.
	Regional Manager, Pacific OCS Region.
	Dep Associate Dir for Royalty Management.
	Dep Associate Dir for Offshore Operations.
	Asst Assoc Dir for Int Prog and Strat Crit Min.
	Staff Economist.
Bureau of Indian Affairs	Assistant Dir of Admin (Financial Manager).
	Dep Dir of Indian Ed Progs (Comptroller).
International Development Cooperation Agency	
Olc of the General Counsel.	Deputy General Counsel.
Office of the Inspector General.	Asst Inspector General for Security.
	Asst Inspector General for Investigations.
	Assistant Inspector General for Audit.
Office of Equal Opportunity Programs.	Dir, Olc of Equal Opportunity Programs.
Bureau for Management	Assistant to the Administrator for Management.
Office of Financial Management.	Controller and Senior Financial Officer.
	Deputy Controller.
Office of Personnel Management	Deputy Dir, Office of Personnel Management.
	Dep Dir, Office of Personnel Management.
Directorate for Program and Management Services.	Associate Director for Management.
	Dir, Olc of Contract Management.
	Dep Dir Olc of Contract Management.
	Dir, Commodity Management.
	Dir Office of Information Resource Management.
	Dir, Olc of Management Operations.
Interstate Commerce Commission	
Office of the General Counsel.	Associate General Counsel, Litigation.
	Assoc Gen Counsel—Litigation.
Olc of the Managing Director.	Dir of Personnel.
Bureau of Accounts	Director, Bureau of Accounts.
	Dep Dir, Bureau of Accounts.
Bureau of Traffic	Dir, Bureau of Traffic.
	Asst Dir, Bu of Traffic.
Office of Transportation Analysis.	Assoc Dir, Olc of Transportation Analysis.
Office of Compliance & Consumer Assistance.	Dir Olc of Compliance & Consumer Assistance.
	Deputy Director for Enforcement.
	Associate Director.
	Deputy Director/Chief Section of Operations
	Dep Dir for Policy Dev & Coordination.
Regional Offices	Regional Director (Boston).
	Regional Director (Philadelphia).
	Regional Director (Atlanta).
	Regional Director (Chicago).
	Regional Director (Fort Worth).
	Regional Director (San Francisco).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Office of Proceedings	Associate Dir.
	Deputy Director.
	Deputy Director.
	Assistant Deputy Director.
	Assistant Deputy Director.
	Asst to the Director.
Department of Justice	
Office of the Attorney General.	Counsel on Professional Responsibility.
	Dep Counsel on Professional Responsibility.
Justice Management Division.	Asst Attorney General for Administration.
	Prin Dep Asst Atty General for Administration.
	Dir Audit Staff.
	Director Security Staff.
	Special Asst to the Asst Attorney Gen for Adm.
	Deputy Director Audit Staff.
	Senior Management Counsel.
	Senior Management Counsel.
	Senior Advisor.
Office of the Controller	Deputy Assistant Attorney General.
	Director, Budget Staff.
	Dir Finance Staff.
	Director, Evaluation Staff.
Office of Personnel and Administration.	Deputy Assistant Attorney General.
	Director Personnel Staff.
	Director Procurement and Contracts Staff.
	Director Administrative Services Staff.
Office of Information Technology.	Deputy Assistant Attorney General.
	Dir Computer Techn & Telecommunications Staff.
	Director, Systems Policy Staff.
	Director, Litigation Systems Staff.
Executive Office for Immigration Review.	Chief Immigration Judge.
	Assistant to the Director.
Immigration and Naturalization Service.	Comptroller.
	Asst Commissioner for Detention & Deportation.
	Assistant Commissioner for Border Patrol.
Associate Commissioner for Information Systems.	Assistant Commissioner for Record Systems.
	Assistant Commissioner for Data Systems.
Associate Commissioner for Examinations.	Asst Commissioner for Adjudication & Naturai.
	Asst Comm for Inspections.
Associate Commissioner for Enforcement.	Assistant Commissioner for Investigations.
Associate Commissioner for Management.	Asst Commissioner for Administration.
	Asst Commr for Personnel & Training.
Community Relations Service.	Regl Director, Region IX, San Francisco.
	Regl Director, Region III, Philadelphia.
Executive Olc for U.S. Attorneys.	Dir Olc of Mgnt Information Systems Support.
	Senior Management Advisor.
U.S. Parole Commission	Executive Director.
Federal Prison System	Asst Dir for Planning and Development.
	General Counsel.
	Assoc Commr, Fed Prisons Industries, Unicor.
	Dep Assoc Commr—Sec, Fed Prison Industries, I.
	Dep Assoc Comm for Fed Prison Industries.
	Dep Asst Dir for Edu and Vocational Training.
	Deputy Asst Dir for Admin.
Office of Correctional Programs.	Dep Asst Dir for Correctional Programs.
	Asst Dir Correctional Programs Div.
Northeast Region	Regional Director.
	Warden, Lewisburg, PA.
	Warden, Otisville, New York.
	Warden—Petersburg, VA.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Warden.
Southeast Region	Regional Director.
	Warden Atlanta.
	Warden, Lexington Kentucky.
North Central Region	Regional Director.
	Warden Leavenworth Kansas.
	Warden.
	Warden Marion Illinois.
	Warden Terre Haute, IN.
	Warden Rochester NY.
South Central Region	Regional Director.
	Warden El Reno Okla.
Western Region	Regional Director.
	Warden Terminal Island, CA.
	Warden, Lompoc, CA.
Olc of Justice Research and Statistics.	Gen Counsel.
	Comptroller, Olc of the Comptroller.
National Institute of Justice.	Asst Dir, Olc of Research Programs.
	Asst Dir, Olc of Dev Testing & Dissemination.
Bureau of Justice Statistics.	Deputy Dir, Bureau of Justice Statistics.
U.S. Marshals Service	Associate Director for Administration.
	Associate Director for Operations.
	Assistant Director for Inspections.
	Assistant Director for Financial Management.
Department of Labor	
Olc of the Inspector General.	Deputy Inspector General.
	Asst Inspector Gen for Investigations.
	Asst Inspector Gen for Audit.
	Deputy Assistant Inspector General for Audit.
	Dir Olc Resource Mgmt & Legislative Assmt.
	Dir, Olc of Resource Mgmt & Legislative Assmt.
Office of the Solicitor	Deputy Solicitor (Regional Operations).
	Associate Solicitor for Labor-Management laws.
	Assoc Solicitor for Plan Benefits Security.
	Assoc Solicitor for Civil Rights.
	Assoc Solicitor for Occupational Safety & Hlt.
	Assoc Solicitor for Mine Safety & Health.
	Assoc Solicitor for Fair Labor Standards.
	Assoc Solicitor for Employee Benefits.
	Associate Solicitor for Spec Litigation.
	Assoc Sol for Spec Appel & Sup Court Lit.
	Assoc Solic for Occupatl Safety & Health.
Regional Solicitors	Regional Solicitor.
	Regional Solicitor Region IV—Atlanta.
	Regl Solicitor Boston.
	Regl Solicitor New York.
	Regional Solicitor Philadelphia.
	Regl Solicitor Dallas.
	Regl Solicitor Kansas City.
	Regl Solicitor San Francisco.
OAS for Administration and Management.	Asst Sec'y for Admin & Mgmt.
	Dep Asst Sec for Adm and Mgmt.
	Dir Admin Serv & Safety & Health Programs.
	Dir Olc of Budget.
	Dir Olc Labor Mgmt Relations.
	Dir of Management Policy.
	Comptroller for the Department.
	Dir., Office of Equal Employment Opportunity.
	Dir. Of Personnel Management.
	Dep Dir of Personnel Management.
	Deputy Comptroller.
	Dir, Olc of Information Technology.
	Deputy Director Office of Civil Rights.
	Dir. Olc of Civil Rights.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dir, of Procurement & Grants Management.
	Dir, Natl Capital Service Center.
Office of Management, Administration and Planning.	Dir. Olc of Mgmt., Administration and Planning.
Olc of Federal Contract Compliance Programs.	Dir—Dir of Enforcement Coordination.
Wage and Hour Division	Asst Admin for Program Operations.
	Asst Admin for Policy Planning & Review.
Olc of Workers Compensation Programs.	Dir. Federal Employees Compensation.
	Dir. Coal Mine Workers Compensation.
Office of Management	Director, Office of Management.
Organization Abolished	Dir. Olc of Labor—Management Stds Enforcement.
Office of Pension & Welfare Benefit Programs.	Dep Admr for Pension & Welfare Benefit Prog.
	Assistant Administrator for Enforcement.
	Asst Admr for Pension & Welfare Benefit Prog.
	Asst Admr for Fiduciary Standards.
	Asst Admr. Reporting & Plan Standards.
	Dep Administrator for Program Operations.
	Asst/Admnr for Regulations & Interpretations.
	Assistant Administrator for Prog Services.
	Deputy Asst Admin for Program Services.
Office of Labor Management Standards.	Asst Director for Compliance & Enforcement.
	Dir Olc of Standards, Tech Asst & Disclosure.
	Dir Olc of Elect Trustshp/Intern'l Union Audit.
Bureau of Labor Statistics.	Assoc Commr for Field Operations.
Data Analysis	Assoc. Commr. OCC Safety & Health Stat.
	Assoc Commr. Economic Growth.
	Assoc Comr for Prices and Living Conditions.
	Assoc Commr Productivity & Technology.
	Assoc Commr for Wages & Industrial Relations.
	Assoc Commissioner for Research & Evaluation.
	Assoc Comm for Employment & Unempl Statistics.
	Dep Assoc Commr for Prices & Liv Conditions.
	Asst Commr for Consumer Prices & Price Indexes.
	Asst Commr for Indust Prices & Price Indexes.
	Dep Assoc Comm for Empl. & Unempl Statistics.
Statistical Operations & Processing.	Asst Commissioner for Mathematical Statistics.
Administrative and Internal Operations.	Assistant Commissioner for Administration.
	Dep Comm for Adm and Internal Operations.
	Assistant Commissioner and Survey Processing.
	Asst Commissioner for Tech & Operations Rev.
Regional Commissioners.	Reg Commr—BLS (Chicago).
Office of Employment Security.	Director, Olc of Trade Adjustment Assistance.
Office of Financial Control and Management Systems.	Dir. Olc of Management & Information Sys.
	Comptroller.
	Admin Olc of Financial Control & Mgmt Sys.
	Dep Admr Olc Financial Ctlr & Mgmt Sys.
Administrative Programs	Dir, Adm Progs.
Health Standards Programs.	Dir Health Standards Programs.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Safety Standards Programs.	Director Safety Standards Programs.
Federal/State Operations.	Director Federal/State Operations.
Technical Support	Dir Tech Support.
Mine Safety and Health Administration.	Chf of Standards, Regulations & Variances.
	Director of Administration and Management.
	Director of Technical Support.
Merit Systems Protection Board	
Olc of Managing Director.	Managing Dir. Assistant Managing Director for Management.
	Asst Managing Dir for Regional Operations.
	Assoc Asst Managing Director for Management.
Olc of General Counsel	Deputy General Counsel.
	Associate General Counsel for Litigation.
Office of Appeals Counsel.	Associate Director Office of Appeals Counsel.
Regional Offices	Regional Director, New York.
	Regional Director, San Francisco.
	Regional Director, Chicago.
	Regional Director, Atlanta.
	Regional Director, Philadelphia.
	Regional Director, Dallas.
	Regional Director, Washington, D.C.
National Aeronautics and Space Administration	
Office of the Comptroller.	Asst Cmpt for Prog Status Rev & Cost Assess.
Institutional Analysis Division.	Director Institutional Analysis Division.
Financial Management Division.	Dir Financial Mgmt Div.
	Dep Dir, Financial Management Div.
Resources Analysis Division.	Deputy Dir Resources Analysis Div.
	Dir Resources Analysis Division.
Budget Operations Division.	Dir, Budget Operations Div.
Olc of Chief Engineer, NASA.	Director, Safety Division.
	Dir, Reliability & Quality Assurance Division.
	Dep Chief Engr for Safety Reliability & Q/A.
	Dir Safety Reliability & Quality Assur Progs.
Olc of the Assoc Admr, Space Science and Applications.	Director Space Station Concept Development.
Information Systems Office.	Manager, Information Systems Office.
Environmental Observations Division.	Dep/Dir Earth Science & Applications Division.
	Chief, Atmospheric Processes Branch.
	Chief, Oceanic Processes Branch.
	Discipline Chief Agristars Program.
	Discipline Scientist Interplanetary Physics.
	Chf, Atmospheric Dynamics and Radiation Br.
Communications Division.	Deputy Director Communications Division.
Life Sciences Division	Dept Dir Life Sciences Division.
	Chf, Res & Tech Development Branch.
	Manager Operational Medicine.
	Chief, Flight Programs Branch.
Earth and Planetary Exploration Division.	Dep/Dir Solar System Exploration Division.
	Chief, Non-Renewable Resources Branch.
	Chief Scientist (Geodynamics Program).
	Chief, Geodynamics Branch.
	Chief Mission Operations & Information Sys Br.
	Dep Dir, Earth and Planetary Exp Div (Tech).
	Chief Planetary Science Branch.
	Chief, Advanced Development Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Spacelab Flight Division	Dep Dir, Spacelab Flight Div.
	Mgr, Advanced Instrumentation & Sensor Engineer.
	Chf, Space Science Missions Branch.
	Chief Astrophysics Payload Branch.
Astrophysics Division	Dep Director Astrophysics Division (Science).
	Manager, Advanced Programs & Technology.
	Chf, High Energy Astrophysics Br.
	Chief, Astronomy/Relativity Branch.
	Chief Research Flight Programs Dev Branch.
	Chief, Observatories Development Branch.
	Chf, Solar & Heliospheric Physics Br.
	Asst Director, Astrophysics Div (Technical).
Space Telescope Development Division.	Dir Space Telescope Development Division.
Office of Procurement	Asst Admr for Procurement.
	Deputy Asst Admr for Procurement.
	Director, Program Operations Division.
	Director, Procurement Policy Division.
	Dir Procurement Management Division.
	Dir Contract Pricing & Finance Office.
Government Affairs Division.	Chief, Industry Affairs Division.
Olc of the Assoc Admr Space Flight.	Tech Asst to the Asst Assoc Admn (Space Shut).
Advanced Programs & Plans.	Dep Dir Adv Progs.
	Chief, Platforms & Services Branch.
Resources and Institutions Office.	Deputy Dir Resources & Institutions Olc.
	Chief Sts Program Budget and Control.
Space Transportation Support Program Division.	Chief, Sts/Centaur Program Branch.
	Dep Dir, Space Transp Support Prog Div.
Spacelab Division	Deputy Director, Spacelab Program Division.
	Chief, Development Branch.
	Chief, Operations Branch.
Customer Services Division.	Director, Resources Management and Admin.
	Chf, Commercial and Foreign Utilization Branch.
	Chief, DOD Utilization Branch.
	Chief, NASA Utilization Branch.
	Chief, Policy/Business Development Branch.
	Special Assistant to the Director.
	Deputy Director, Customer Service Division.
Space Shuttle Operations Office.	Director, Shuttle Operations Division.
	Chf, Production and Logistics Branch.
	Director, Integration Division.
	Deputy Director, Shuttle Operations Division.
	Chief, Operations Integration.
Orbiter Programs Division.	Director, Space Shuttle Orbiter Division.
	Director, Shuttle Orbiter Division.
Propulsion Division	Deputy Director, Shuttle Propulsion Division.
	Chief, External Tank Programs.
	Mgr. Spc Shuttle Propulsion Pro/ Oper Support.
	Director, Shuttle Propulsion Division.
Flight and Turnaround Operations.	Dir, Flight and Turnaround Operations Div.
Office of the Associate Administrator, Management.	Director, Management Support Office.
	Dir Aircraft Management Olc.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
Headquarters, Administration Division.	Dep Dir Headquarter Administration Division.
Facilities and Engineering and Computer Management Div.	Dir, Facilities Engineering and Comp Mgmt Div.
	Deputy for Facilities Management.
Logistics Management and Information Programs Division.	Dir, Logistics Mgmt and Info Programs Division.
	Chf Scientific and Tech Info Br.
	Dep Dir, Logistics Mgmt and Info Prog Div.
Personnel Programs Division.	Dir Personnel Programs Div.
	Dep Dir Personnel Progs Div.
Information Systems Division.	Dep Dir. Automated Information Systems Div.
	Director Automated Information Systems Div.
Ofc of the Assoc Admr, Aeronautics and Space Tech.	Asst Assoc Administrator for Mgmt Support.
	Manager, Small Business Innovation Research.
	Spec Asst to the Associate Administrator.
Ofc of Director for Aeronautics.	Deputy Director for Aeronautics.
	Deputy Director, Aeronautical Systems Div.
	Manager, Rotocraft.
	Manager, High Performance Aircraft.
	Manager Subsonic Aircraft.
	Manager, Fluid and Thermal Physics.
	Assistant Director for Program Development.
	Assistant Director for Aeronautics.
	A/D for Aeronaut (Gen Aviat and Trans Aircraft).
	S/A to the Director (Military Programs).
Ofc of Dir for Space	Deputy Director for Space.
	Manager, Spacecraft Systems Office.
	Manager, Transportations Systems Office.
	Manager, Space Power Systems.
	Dep Dir Space Sys Div.
	Manager Space Station Systems.
	Asst Dir for Space (Space Station Technology).
	Dep Dir for Space (Program Development).
Ofc of Dir for Institutions.	Deputy Director for Institutions.
	Deputy Director for Resources.
	Assistant Director for Facilities.
Aerodynamics Division	Deputy Director, Aerodynamics Division.
Information Sciences and Human Factors Division.	Deputy Director Aerospace Research Division.
	Mgr for Propulsion Systems Office.
	Materials and Structures, Manager of The.
	Manager, Controls and Flight Management.
	Manager Computer Science and Electronics.
	Deputy Director Info Sci & Human Factors Div.
Materials & Structures Division.	Director, Materials and Structures.
	Deputy Director, Materials and Structures.
Propulsion, Power, and Energy Divison.	Manager, Energy Systems.
	Dir, Propulsion, Power and Energy Division.
	Deputy Director (Aeronautics).
	Manager Alternate Energy Sources.
Flight Projects Division	Deputy Director, Flight Projects Division.
Policy & Plans Office	Deputy Dir Policy & Plans Office.
	Chief Cooperative Programs Plans Branch.
Engineering Division	Chief Sys/Management Engineering Branch.
	Deputy Dir Engineering Division.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
Ofc of the Assoc Admr, Space Tracking and Data Systems.	D/A/A Space Tracking & Data Systems (Networks).
	Spec Asst (Operations).
Communications and Data Systems Division.	Dir, Communications & Data Systems Div.
	Assoc Dir, Communications & Data Systems Div.
Deep Space Network Operations Programs.	Manager, Deep Space Network Operations Progra.
	Mgr Space Tracking and Data Network Prog.
Network Systems Development Programs Division.	Dep Director Network Systems Division.
TDRSS Division	Assoc Dir, Tracking & Data Relay/SSPD.
	Chief, TDRSS Operations.
Discrimination Complaints Division.	Director, Discrimination Complaints Division.
Office of the Inspector General.	Assist Inspector General for Investigation.
	Assistant Inspector General for Auditing.
	Asst Inspector General for Technical Services.
Ames Research Center	Assoc Dir, NASA Ames Res Ctr.
	Chief Engineer.
Aeronautics and Flight Systems Directorate.	Dep Dir of Aeronautics and Flight Systems.
	Chief, Aerodynamics Division.
	Chief, Aircraft Operations Division.
	Chf Flight Systems & Simulation Rsch Div.
	Chf Helicopter & Powered Lift, Technology Div.
Life Sciences Directorate.	Deputy Director of Life Sciences.
	Chief, Biomedical Research Division.
	Chief, Extraterrestrial Research Division.
	Chief, Biosystems Division.
	Chief Aero-Space Human Factors Research Div.
Research Support Directorate.	Dep Dir, Engineering & Computer Systems.
	Chief, Computer Systems Division.
Astronautics Directorate	Deputy Director of Astronautics.
	Chief, Airborne Mission & Applications Div.
	Chief, Space Science Division.
	Chief, Thermo- and Gas-Dynamics Division.
	Chief Computational Fluid Dynamics Branch.
	Chf, Systems Engineering Div.
Flight Operations Directorate.	Chf Engineer.
	Chief Dryden Aircraft Operations Division.
	Chief Flight Support Division.
	Deputy Chief Dryden Aircraft Operations Div.
	Chief Shuttle Project Office.
Goddard Space Flight Center.	Comptroller.
	Chief Counsel.
	Asst Dir for Technology Plng & Assessment.
	Deputy Comptroller.
Management Opers Directorate.	Dep Dir of Management Operations.
	Procurement Officer.
Flight Assurance Directorate.	Director of Flight Assurance.
Flight Projects Directorate.	Deputy Director of Flight Projects.
	Dep Dir Flight Proj Space Telescope Goddard.
	Assoc Dir of Flight Proj for User Systems.
	Assoc Dir of Flight Proj for Sys Mgmt.
	Assoc Dir of Flight Projects for New Projects.
	Project Manager, Landsat-D.
	Project Mgr. Tracking & Data Relay Satellite Sys.
	Delta Project Manager.
	Assoc Dir of Flight Proj for Mission Systems.
	Manager Adv Land Obser Sys Studies Ofc.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
	Dep Dir of Flight Proj for Space Stat-Goddard.
	Project Manager, METSAT Project.
Mission Operations & Data Systems Directorate.	Dep Dir of Mission & Data Operations.
	Asst Dir of Mission & Data Ops (Rsch & Tech).
	Deputy Dir of Mission Operations & Data Sys.
	Deputy Dir of Networks (for Networks).
	Dep Dir of N/Works for the TDRS.
	Chief Networks Division.
Space & Earth Sciences Directorate.	Deputy Director (Research).
	Deputy Director (Projects).
	Assoc Dir of Sciences.
	Chief, Lab for Atmospheric Sciences.
	Head, Electrodynamics Branch.
	Chief, Lab for High Energy Astrophysics.
	Chief, Lab for Astronomy and Solar Physics.
	Chief, Lab for Extraterrestrial Physics.
	Asst Dir for Space Station (Mission Planning).
	Chief, Space Data and Computing Division.
	Special Assistant to the Director.
	Special Assistant to the Director.
	Chief, Laboratory for Terrestrial Physics.
	Associate Director for Program Planning.
	Associate Director for Space Station.
Engineering Directorate	Dep Dir Engineering.
	Chief, Instrument Division.
	Chief, Applied Engineering Div.
	Chief Space Technology Division.
	Asst Dir of Engineering for Development Proj.
	Assistant Director for Technical Resources.
Organization Abolished	Deputy Director of Applications.
	Asst Dir of Aps for Earth & Ocean Phys Aps Prog.
	Chief, Information Extraction Div.
	Chief, Lab for Planetary Atmospheres.
	Chief Earth Survey Applications Divisions.
	Chief Applications Systems Analysis Ofc.
Johnson Space Center	Assistant to Dir (Plans).
	Dir of Public Affairs.
	Special Assistant to the Director.
Center Support	Deputy Dir Center Operations.
	Deputy Dir Admin.
	Dir Admin.
	Dir of Procurement.
	Dir Center Operations.
	Assistant Director, Administration.
Space Operations	Assistant to the Director of Space Operations.
	Chief, Astronaut Office.
	Chief, Aircraft Operations Division.
	Chief Training Division.
	Chief, Mission Planning & Analysis Division.
	Chf., Spacecraft Software Div., Data Systems.
	Director, Mission Operations.
	Deputy Director Mission Operations.
	Deputy Director, Missions Support.
	Chief Operations Division.
	Chief, System Div.
	Asst for Planning Assessment.
	Dep Chief Flight Operations Integration Ofc.
Research & Engineering.	Deputy Director, Engineering.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Asst to the Dir of Research & Engineering.
	Assistant Director, Space & Life Sciences.
	Chief, Tracking & Communications Division.
	Chief, Avionics Systems Div.
	Chief, Propulsion & Power Division.
	Chief, Structures and Thermal Division.
	Chief, System Engineering Division.
	Chf., Crew Systems Div., Engineering & Dev.
	Chief Solar System Exploration Division.
	Chief, Medical Sciences Division.
	Director, Engineering.
	Asst for Program Development.
Natl Space Transp Sys Prog Ofc.	Deputy Manager NSTSPO.
	Manager, Mission Integration Office.
	Manager Systems Integration.
	Manager Operations Integration.
	Assistant to the Director, DS/AD.
Space Shuttle Projects Ofc.	Mgr, Shuttle Flight Equip Proj Ofc.
	Asst Manager, Space Shuttle Projects Ofc.
	Dep Mgr, Space Shuttle Projects Office.
	Manager, Shuttle Avionics Office.
Safety, Reliability & Quality Assurance.	Manager, Manufacturing & Test Off.
	Dir, Safety, Reliability, & Quality Assurance.
	Dep Dir, Safety, Reliability & Qual Assurance.
STS Operations Programs Office.	Manager, Customer Integration Office.
	Dep Manager, Space Station Program Office.
	Manager, Sys Engineering & Integration Office.
	Manager, Integration & External Affairs Ofc.
NASA White Sands Test Facility.	Manager, NASA White Sands Test Facility.
Kennedy Space Center	Dir, Exec Management Ofc.
	Associate Deputy Director.
Comptroller	Deputy Comptroller.
Biomedical Office	Chf., Biomedical Office.
Public Affairs	Dir Public Affairs.
Safety, Reliability and Quality Assurance.	Dir., Safety Reliability & Quality Assurance.
Chief Engineer	Chief Engineer.
KSC Off Site Operations Shuttle Project.	Manager, KSC Off-Site Operations Shuttle Proj.
Shuttle Processing	Director, Launch and Landing Operations.
OIC Engineer	Director, Shuttle Engineering.
Launch Support Services.	Director, Launch Support Services.
Information Systems	Director of Information Systems.
Center Support Operations.	Director of Center Support Operation.
	Deputy Director of Center Support Operation.
Engineering Development.	Deputy Director of Engineering Development.
Project Management	Director, Project Management.
Mechanical and Facilities Engineering.	Dir., Mechanical & Facilities Engineering.
Electronic Engineering	Director, Electronic Engineering.
Cargo Management and Operations.	Deputy Director, Cargo Operations.
STS Cargo Operations	Dir STS Cargo Operations.
Deployable Payloads	Director, Deployable Payloads.
Projects Directorate	Manager, Aeronautical Systems Office.
Electronic Directorate	Chf., Analysis & Computation Division.
	Chief, Flight Dynamics and Control Division.
	Chf., Flight Electronic Division.
	Chf. Instrument Research Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Chief Flight Control Systems Division.
Structures Directorate	Chf., Acoustics & Noise Reduction Div.
	Asst Chief, Acoustics & Noise Reduction Div.
	Chief, Structures and Dynamics Division.
	Chf., Materials Division.
	Chief, Loads and Aeroelasticity Division.
Aeronautics Directorate	Chief Transonic Aerodynamics Div.
	Chief, High-Speed Aerodynamics Div.
	Chief, Low-Speed Aerodynamics Division.
Space Directorate	Chief, Space Systems Division.
	Chief Atmospheric Sciences Division.
	Special Assistant to the Director for Space.
	Manager Evolutionary Definition Office.
Systems Engineering and Operations Directorate.	Assistant Dir for Systems Engineering Oper.
	Chief Facilities Engineering Division.
	Chief Systems Engineering Div.
Lewis Research Center	Dep Dir Ofc of Rsch & Technology Assessment.
	Special Asst. Altitude Wind Tunnel Project.
Administration & Computer Services.	Chief, Computer Services Division.
	Asst for Computer Systems.
Aeronautics Directorate	Chf Aerothermodynamics and Fuels Division.
	Chf, Aerodynamics & Engine Systems Division.
	Chief Internal Fluid Mechanics Division.
	Chf, Propulsion Systems Div.
	Chief Aeropropulsion Facilities & Exper Div.
	Chief Advanced Programs and Planning Office.
	Deputy Director of Aeronautics.
Space Stations Systems Directorate.	Dep Dir of Space Station Systems.
	Chief, Energy Technology Division.
	Chief, Space Power Technology Division.
	Chief Power Sys Engineering Division.
Aero Space Technology Directorate.	Dep Dir of Aerospace Technology.
	Chief, Space propulsion Technology Division.
	Chief Structures & Mechanical Technol Div.
	Chief, Materials Division.
	Chief, Structures Division.
Space Flight Systems Directorate.	Chief, Space Communications Division.
	Manager Acts Project Office.
	Manager, Atlas Centaur Project Office.
	Manager Shuttle/Centaur Project Office.
	Chief, Space Transportation Engineering Div.
Engineering & Technical Services Directorate.	Chief, Engineering Design Division.
Marshall Space Flight Center.	Center Comptroller, NASA MSFC.
	Executive Assistant to the Director.
Science and Engineering.	Dep Dir, Science & Engineering.
	Assoc Dir for Engineering.
	Chf Engineer, Solid Rocket Booster Integratio.
	Chf, Engineer, Space Shuttle Main Engineer.
	Chf Engineer, Space Telescope.
	Dir, Reliability & Quality Assurance Ofc.
	Chf Guidance Cont and Instrumentation Div.
	Dir Materials & Processes Laboratory.
	Director, Space Sciences Lab.
	Chf, Atmospheric Sciences.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Director, Structures & Propulsion Laboratory.
	Dep Dir Structures and Propulsion Lab.
	Director, Syst Anal & Integration Laboratory.
	Dep Dir Sys Analysis and Integration Lab.
	Chf Mission Analysis Division.
	Director, Systems Dynamics Laboratory.
	Chf, Aerophysics Div.
	Dir—Test Laboratory.
	Deputy Director Materials and Processes Lab.
	Deputy Associate Director for Engineering.
	Chf Engineer, External Tank Project.
	Chf Engineer, Space Shuttle Main Propul Sys.
	Dep Dir, Systems Dynamics Laboratory.
	Director Information & Electronic Sys Lab.
	Dep Dir Information & Electronic Systems Lab.
Spacelab Payload Project.	Dep Mgr, Spacelab Payload Proj Ofc.
	Manager Applications & Technology Missions.
	Manager, Science Payload Projects.
Space Station Projects Office.	Manager, Space Station Projects Office.
Spacelab Program Office.	Deputy Manager, Spacelab Program Office.
Program Development	Deputy Direcor, Program Development.
	Director, Preliminary Design Office.
Shuttle Projects Office	Manager, External Tank Project Office.
	Manager, Solid Rocket Booster Project Office.
	Manager, Flight Engine Project.
	Deputy Manager, for Development.
	Manager, Development Engine Project.
	Deputy Manager, for Production & Logistics.
	Manager, Systems Management Office.
Space Telescope Project Office.	Deputy Manager, Space Telescope Project.
	Manager Optical Telescope Project Office.
	Dep Mgr for Sys Engineering & Integration.
Administration and Program Support.	Dep Dir, Administration & Program Support.
National Space Technology Laboratories.	Deputy Manager.
	Deputy Manager—Programs.
National Capital Planning Commission	
National Capital Planning Commission Staff.	Assoc Exec Dir Regional Affairs.
	Executive Director.
	Assoc Exec Dir D.C. Affairs.
	General Counsel.
	Assistant Executive Director for Operations.
National Credit Union Administration	
Central Office	Director, Off Of Internal Audit & Invest.
National Endowment for the Arts	
National Endowment for the Arts.	Director of Program Coordination
	Deputy Chairman for Management
National Endowment for the Humanities	
National Endowment for the Humanities.	Director of Administration.

Positions That Were Career Reserved During Calendar Year 1984—Continued

Agency organization	Career reserved positions
National Labor Relations Board	
Olc of the Board Members.	Executive Secy.
	Deputy Executive Secretary.
Div of Enforcement Litigation.	Deputy Assoc. Gen. Counsel Appellate Court Br.
	Director, Office of Appeals.
Div of Advice	Associate Gen Counsel, Div of Advice.
	Deputy Assoc Gen Counsel.
Div of Administration	Director of Administration.
	Deputy Director of Administration.
Div of Operations Management.	Assoc General Counsel, Div of Operation—Mgmt.
	Dep Asso Gen Counsel, Div of Operations—Mgmt.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Assistant General Counsel.
	Asst to the General Counsel.
Regional Offices	Regl Dir Reg. 1, Boston.
	Regional Director, Reg. 2, New York.
	Regional Director, Reg. 3, Buffalo.
	Regl Dir, Reg 4, Philadelphia.
	Regional Director, Reg. 5, Baltimore.
	Regional Director, Reg. 6, Pittsburgh.
	Regl Dir, Region 7, Detroit, Mich.
	Regional Director, Reg. 8, Cleveland.
	Regional Director, Reg. 9, Cincinnati.
	Regl Dir, Reg. 10, Atlanta.
	Regl. Dir, Reg. 11, Winston Salem.
	Regional Director, Reg. 12, Tampa.
	Regional Director, Reg. 13, Chicago.
	Regl Dir, Reg. 14, St Louis.
	Regl Dir, Reg. 15, New Orleans.
	Regl Dir, Reg. 16, Ft Worth.
	Regl Dir, Reg. 17, Kansas City.
	Regl Dir, Reg. 18, Minneapolis.
	Regl Dir, Reg. 19, Seattle.
	Regional Dir, Reg. 20, San Francisco.
	Regional Director, Reg. 21, Los Angeles.
	Regional Director, Reg. 22, Newark.
	Regional Director, Reg. 23, Houston, Texas.
	Regional Director, Reg. 24, Hato Rey, Puerto Rico.
	Regl Dir, Reg. 25, Indianapolis.
	Regl Dir, Reg. 26, Memphis.
	Regl Dir, Reg. 27, Denver.
	Regl Dir, Reg. 28, Phoenix.
	Regl Dir, Reg. 29, Brooklyn.
	Regl Dir, Reg. 30, Milwaukee.
	Regl Dir, Reg. 32, Oakland.
	Regional Director, Reg. 33, Peoria, Ill.
	Regl Dir, Reg. 31, Los Angeles.
National Science Foundation	
Office of the Director	Senior Staff Assoc. for Inter-Agency Affairs.
	Senior Staff Associate.
	Special Assistant.
	Special Assistant.
	Special Assistant.
	Special Assistant.
	Special Assistant.
Office of the General Counsel.	Deputy General Counsel.
Office of Audit and Oversight.	Director 2
	Deputy Director and Head, Audit Office.
	Head, Evaluation Staff
Office of the Controller	Chief Budget Analysis & Executive Branch.
	Chief Program & Budget Development Branch.
Organization Abolished	Division Director.
Office of Legislative and Public Affairs.	Assoc Dir for Public Programs.
Directorate for Astro, Atmos, Earth and Ocean Sciences.	Senior Staff Associate.
Division of Astronomical Sciences.	Section Head, Ast. Center Section.
	Section Head, Ast Research Section.
Division of Atmospheric Sciences.	Section Head Grant Programs Section.
	Section Head—Ctrs and Facilities Program Sec.
Division of Ocean Sciences.	Sec Hd, Oceanographic Facilities Support Sec.
	Section Head Ocean Sciences Research Section.
Division of Polar Programs.	Deputy Division Director.
	Manager Polar Ops Section.
Directorate for Engineering.	Senior Staff Associate.
Division of Electrical, Computer & Systems Engineering.	Senior Staff Associate.
	Deputy Division Director.
Division of Chemical and Process Engineering.	Deputy Division Director.
Directorate for Biological, Behavioral Social Sciences.	Executive Asst/Planning.
Organization Abolished	Senior Scientist.
Division of Behavioral and Neural Sciences.	Deputy Division Director.
Division of Social and Economic Sciences.	Sect Head Political & Policy Sciences Sect.
	Section Head Economics Section.
	Sect Hd Social Meas and Anal.
Division of Cellular Biosciences.	Deputy Division Director.
Division of Molecular Biosciences.	Deputy Division Director.
Directorate for Mathematical and Physical Sciences.	Dep Asst Dir.
	Senior Staff Associate for Planning.
	Senior Staff Associate for operations.
Division of Physics	Deputy Division Dir.
	Section Head Nuclear Science Section.
	Senior Staff Associate.
Division of Mathematical Sciences.	Deputy Division Director.
Division of Computer Research.	Deputy Division Director.
Division of Materials Research.	Sect Head, Metallurgy, Polymers, & Ceramics.
	Sect Hd Cond Matter Science.
Division of Chemistry	Sect Hd Chem Syn and Analy.
	Sect Hd Phy Chem and Dynam.
Directorate for Science & Engineering Education.	Deputy Office Director.
	Head Fellowship Section.
	Head, Awards Amdin & Liaison Section.
	Senior Staff Associate.
Organization Abolished	Deputy Divison Director.
Office of College Sciences Instrumentation.	Office Head.
Directorate for Scientific, Tech & Internat'l Affairs.	Dir of Strategic Planning and Assessment.
Planning and Special Projects Staff.	Senior Planning Officer.
	Senior Staff Assoc for Strategic Plan Asses.
Division of Policy Research and Analysis.	Deputy Division Director.
	Section Head, Science & Innovation Pol. Sec.
	Section Head, Policy Sciences Section.
	Section Head, Technology & Resource Policy Sec.
Division OOF Science Resources Studies.	Dep Division Director.
	Section Head, Sci & Tech Pers.
Division of International Programs.	Deputy Division Director
	Head, Special Program Section.
	Head, Industrial Countries Section.
	Head, Developing Countries Section.
	Senior Advisor on International Science Plcy.
Division of Industrial Sciences & Technology Innovation.	Section Head Industrial Support Section.
	Section Head Productivity Improvement Res Sec.
	Senior Staff Associate.
Division of Research Initiation & Improvement.	Dep Dir for Intergovernmental Progs.
	Prgm. Dir. Exper. Prgms.—Stimulate Comp. Rsch.
Directorate for Administration.	Director Reform '88 Project Coordinat Staff.
	Senior Staff Associate.
Division of Grants and Contracts.	Division Director.
Division of Financial Management.	Division Director.
Division of Personnel and Management.	Division Director.
National Transportation Safety Board	
Office of the Managing Director.	Deputy Managing Director.
Bureau of Administration.	Dir Bureau of Administration.
Bureau of Accident Investigation.	Director Bureau of Accident Investigation
	Dep Dir for Operations.
	Director, Bureau of Field Operations.
Bureau of Technology	Dir Bureau of Technology.
	Deputy Director of Technology.
Bureau of Safety Programs.	Director, Bureau of Safety Programs.
Nuclear Regulatory Commission	
Atomic Safety and Licensing Brd Panel.	Chairman ASLBP.
	Deputy Chief Administrative Judge Executive.
Atomic Safety and Licensing Appeal Panel.	Chairman ASLAP.
	Vice Chairman ASLAP.
Office of Inspector and Auditor.	Director, Office of Inspector and Auditor.
	Dir OIA.
	Dep Dir and Asst Dir for Audits.
Office of Investigations	Dir Policy and Program Support Staff.
Olc for ANA and EVA Oper Data.	Chief Reactor Operations Analysis Branch.
	Chief, Program Technology Branch.
Div of Contracts	Director, Division of Contracts.
Div of Security	Director, Div of Security.
Hearing Division	Assistant Chief Hearing Counsel III.
	Assistant Chief Hearing Counsel IV.
	Assistant Chief Hearing Counsel I.
	Assistant Chief Hearing Counsel VI.
	Asst Chf Hearing Counsel II/Antitrust Counsel.
Division of Accounting and Finance.	Dir Divison of Accounting and Finance.
Olc of Small and Disadv Bus Utilization/Civil Rights.	Director.
Asst Dir for Operating Reactors.	Chf Operating Reactors Branch #1.
	Chief Operating Reactors Br #2.
	Chief Operating Reactors Br #3.
	Chief Operating Reactors Br #4.
Asst Dir for Licensing	Chief Licensing Branch #1.
	Chief Licensing Branch #2.
	Chief Licensing Branch #3.
	Chief Licensing Branch #4.
Asst Dir for Safety Assessment.	Chf Standardization and Spec Projects Branch.
	Chief Operating Reactors Branch #5
	Chf, Systematic Evaluation Program Branch.
	Chief Operating Reactors Assessment Branch.
	Chief Structural Engineering Br.
Asst Dir for Components and Structures Engineering.	Chief Mechanical Engineering Branch.
	Chief Geoscience Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Civ Structures and Geotechnical Engr Branch.
	Chief Equipment Qualifications Branch.
Asst Dir for Materials, Chemical and Environ Technology.	Chief Chemical Engineering Branch.
	Chief Materials Engineering Branch.
	Chief Site Analysis Branch.
	Chief Environmental and Hydrology Branch.
Asst Dir for Core and Plant Systems.	Chief Instrum and Control Systems Branch.
	Chief Power Systems Branch.
	Chief Containment Systems Branch.
	Chief Auxiliary Systems Branch.
	Chief Core Performance Branch.
Asst Dir for Radiation Protection.	Chief Radiological Assessment Branch.
	Chief Accident Evaluation Branch.
	Chief, Meterology and Effluent Treatment Branch.
Asst Dir for Reactor Safety.	Chief Reactor Systems Branch.
Division of Human Factors Safety.	Chief Human Factors Engr Branch.
	Chief Procedures and Test Review Branch.
	Chief Licensee Qualifications Branch.
	Chief Operator Licensing Branch.
	Chief Procedures and Systems Review Branch.
Asst Dir for Generic Projects.	Chief Generic Issues Branch.
	Chief Research and Stds Coordination Branch.
Asst Director for Technology.	Chief, Safety Program Evaluation Branch.
	Chief Reliability and Risk Assessment Branch.
	Dir NMSS.
Office of Nuclear Material Safety and Safeguards.	
Division of Safeguards	Chief Material Transfer SG Licensing Branch.
	Chief Fuel Facility SG Licensing Branch.
	Chief Power Reactor SG Licensing Branch.
	Chf, Licensing Policy and Programs Br.
	Chief Safeguards Special Projects Branch.
Division of Fuel Cycle and Material Safety.	Chief Transportation Branch.
	Chf Uranium Fuel Licensing Br.
	Chief Procedures and Certification Br.
	Chf Advanced Fuel and Spent Fuel Licensing Br.
	Chief, Materials Licensing Branch.
Division of Waste Management.	Chief Low-Level Waste License Br.
	Chf, Hi-Level Waste Technical Development Br.
	Chf Hi-Level Waste Licens Mgmt Br.
	Chf Licensing Proc and Integration Br.
	Chief Geotechnical Branch.
	Chief Engineering Branch.
	Chief Low Level Waste and Uranium Rec P Branch.
Division of Engineering Technology.	Chief, Mechanical/Structural Engineering Br.
	Chief Materials Engineering Br.
	Chief Chemical Engineering Branch.
	Chief Electrical Engineering Branch.
	Chief Elec Engr and Instrumentation Control Sts.
Division of Accident Evaluation.	Chief, Severe Accident Assessment Branch.
	Chief Fuel Systems Research Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Chief Experimental Programs Branch.
	Chief Reactor Systems Research Branch.
	Chief Containment Sys Research Branch.
Division of Risk Analysis and Operations.	Chief, Transportation and Materials Risk Br.
	Chief, Reg Analysis Br.
	Chief, Reactor Risk Branch.
	Chief Regulatory Analysis and Matls Risk Branch.
	Chief Human Factors and Safeguards Branch.
Organization Abolished	Chief, Human Factors Br.
	Chief, Instrumentation and Control Staff.
Division of Radiation Programs and Earth Sciences.	Chief Occupational Protection Branch.
	Chief Earth Sciences Branch.
	Chief Waste Management Branch.
	Chief Health Effects Branch.
Office of Inspection and Enforcement.	Director Enforcement Staff.
Division of Quality Assurance, Safeguards and Insp Prog.	Chf, Safeguards Branch.
	Chief, Quality Assurance Branch.
	Dep Brch Chief, Quality Assurance Branch.
	Chief, Operating Reactor Programs Branch.
	Chief, Reactor Construction Programs Branch.
	Chief, Safeguards and Materials Programs Brch.
	Chief Vendor Program Branch.
Div of Emergency Preparedness & Engineering Response.	Chief, Events Analysis Branch.
	Chief Engineering Generic Communication Branch.
	Chief Incident Response Branch.
	Chief Emergency Preparedness Branch.
Region I	Deputy Regional Administrator.
	Dir, Div of Resident and Reactor Project Insp.
	Dir Div of Eng & Tech Inspection Region 1.
	Dir, Div of Radiation Safety & Safeguards.
	Deputy Director, Division of Reactor Projects.
Region II	Deputy Regional Administrator Region II.
	Dir Div of Engineering & Technical Inspection.
	Dir Div of Res and Reactor Project Inspection.
	Dir, Div of Radiation Safety & Safeguards.
	Deputy Director, Division of Reactor Projects.
	Director, Division of Reactor Projects.
	Director, Division of Reactor Safety.
Region III	Dep Regional Administrator Region III.
	Director, Division of Reactor Safety.
	Director, Division of Reactor Projects.
	Dir, Div of Radiation Safety & Safeguards.
	Deputy Director Division of Reactor Projects.
Region IV	Deputy Regional Administrator Region IV.
	Dir Div of Vendor & Technical Programs.
	Dir Div of Res Reactor Proj & Eng Programs.
	Director Uranium Recovery Field Office.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Region V	Deputy Regional Administrator Region V.
	Dir, Div of Resident Reactor Proj & Engr Prog.
	Dir, Div of Radiation Safety & Safeguards.
Office of Management and Budget	
Office of the Director	Deputy Associate Director for Administration.
	Deputy Associate Dir for Economic Policy.
Office of Special Counsel/Civil Rights.	Dep Gen Counsel for Reg Affr & Litigation.
Legislative Reference Division.	Asst Dir Legislative Reference.
	Dep/Asst/Dir for Legislative Reference.
	Chief, Economics, Science & Govt. Branch.
	Chief, Resources—Defense—International Branch.
Office of Federal Procurement Policy.	Principal Assoc Admr for Procurement.
	Asst Admr for Commercial Products.
	Dir Federal Acquisition Institute.
	Assoc. Administrator for Management Control.
Office of Information and Regulatory Affairs.	Chief Information Policy Branch.
	Chief Reports Management Branch.
	Senior Mgmt Policy Analyst.
	Chief Regulatory Policy Branch.
	Senior Regulatory Policy Analyst.
	Chief Statistical Policy Branch.
	Deputy Chief, Information Policy Branch.
	Chief Regulatory Analysis Branch.
Associate Director for Management.	Asst Dir Fed Pers Policy.
Planning and Communications Management Div.	Deputy Associate Director.
Organization Abolished	Dep Assoc Dir FPR Interagency Activities.
Finance and Accounting Division.	Dep Assoc Dir for Finance and Accounting.
Management Improvement Division.	Dep Assoc Dir Mgmt Improvement Div.
Budget Review Division	Asst Dir for Budget Review.
	Dep Assistant Director for Budget Review.
	Chief Fiscal Analysis Branch.
	Dep Chief Fiscal Analysis Branch.
	Chf, Budget Preparation Branch.
	Chief, Resources Systems Branch.
	Chief Fed Prog Info Branch.
	Deputy Chief Budget Preparation Branch.
Assoc Dir for National Security and International Affs.	Dep Assoc Dir for Management.
International Affairs Division.	Dep Assoc Dir for Internatl Affairs.
	Dep Chief, International Affairs Division.
	Chief, State—ICA Branch.
	Chief, Economic Affairs Branch.
	Chief International Security Affairs Branch.
National Security Division.	Dep Assoc Dir for National Security.
	Dep Chief.
	Chf.; Intelligence Community Branch.
	Chief, Navy Branch.
	Chief, Air Force Branch.
	Chief, Army Branch.
	Chief, Manpower, Pay & Policy Branch.
Assoc Dir for Human Resources, Veterans and Labor.	Dep Assoc Dir for Management.
Health and Income Maintenance Division.	Dep. Assoc. Dir. for Health & Income Maintena.
	Chief Health Branch.
	Chf, Income Maintenance Branch.
	Chief Health & Social Services Branch.
	Chief Health & Financing Branch.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Labor, Veterans, and Education Division.	Deputy Associate Director for Labor, Vet & Ed.
	Dep Div Chf—Labor
	Chief, Education Branch.
	Chf Veteran Affairs Branch.
Associate Director for Economics and Government.	Dep Assoc Dir for Special Studies.
Transportation, Commerce, and Housing Division.	Dep Assoc Dir for Transportation—Comm & Housi.
	Chief Transportation Branch.
	Chief Commerce Branch.
	Chief Housing & Urban Dev Branch.
	Chf Housing & Urban Dev Branch.
Justice, Treasury and Personnel Division.	DAD for Justice, Treas & Gen Mgmt.
	Chief, Justice and Personnel Branch.
	Chief, Treasury & General Services Branch.
	Senior Management Analyst.
Assoc Dir for Natural Resources, Energy, and Science.	Dep Assoc Dir for Spec Studies.
Natural Resources Division.	Dep, Associate Dir, for Natural Resources.
	Chief, Water Resources Branch.
	Chief, Agricultural Branch.
	Chief, Environment Branch.
	Chief Interior Branch.
Energy and Science Division.	Dep. Assoc. Dir for Energy & Sciences.
	Chief, Nuclear Energy Branch.
	Chief Science and Space Programs Branch.
	Deputy Div Chief.
	Chief Non-Nuclear Energy Branch.
Office of Personnel Management	
Office of the Inspector General.	Inspector General.
Office of the Actuary	Chief Actuary.
Office of Retirement Programs.	Asst Dir for Retirement Programs.
Office of Insurance Programs.	Asst Dir for Insurance Program.
Office of Staffing Operations.	Chief, Medical Policy and Programs Division.
Office of Standards Development.	Assistant Dir for Standards Development.
Office of Staffing Policy	Asst Dir for Personnel Research & Development.
	Chief, Examining Policy Analysis Division.
Office of Agency Compliance & Eval.	Ass Dir for Agency Compliance & Evaluation.
Office of Personnel Investigations.	Asst Dir for Personnel Investigations.
Office of the Special Counsel (MSPB).	
Headquarters, Office of the Special Counsel.	Assoc Spec Counsel (Investigation).
	Dep Assoc Spec Counsel (Investigation).
	Assoc Special Counsel (Prosecution).
	Deputy Associate Spec Counsel for Prosecution.
	Managing Director for Operations.
Railroad Retirement Board	
Board Staff	Assoc Exec Dir for Unempl & Sickness Insur.
	Dir of Retirement Claims.
	Executive Director.
	Chf Actuary.
	Deputy Executive Director.
	Dir Budget & Fiscal Opers.
	Dir Bureau of Data Processing.
	Associate Executive Director for Financial.
	Assoc. Executive Dir. for Program Operations.
	Assoc Exec Dir for Legal & Adm Serv & Gen Cou.
	Assoc Exec Dir for Retirement Claims.
	Chief Actuary and Director of Research.
	Assoc Exec Director—Field Services.
Securities and Exchange Commission	
Office of the Chairman	Dep Chf Accountant
Office of the Executive Director.	Dep Exec Director.
Div of Corporate Finance.	Assoc Dir (Operations).
Selective Service System	
Selective Service System.	Assoc Dir, Administration.
	Assoc Director, Planning.
	Associate Director, Ofc of Mgt. Services.
	Chief of Staff.
Small Business Administration	
Ofc of the Inspector General.	Assistant Inspector General for Audits.
	Asst Inspector General for Investigations.
Office of the General Counsel.	Associate General Counsel for General Law.
	Assoc. Gen Counsel Litigation.
	Associate General Counsel for Financial Law.
Office of EEO and Compliance.	Dir Ofc of Equal Employment Opport & Complian.
Office of Hearings and Appeals.	Asst Administrator for Hearings and Appeals.
Office of Procurement & Technology Assistance.	Director of Procurement Assistance.
Ofc of Minority Small Business & Capital Ownership Dev.	Dir of Business Development.
	Deputy Dir of Business Development.
Office of Administration	Director of Computer Sciences.
Office of Personnel	Director of Personnel.
District Directors	District Dir Phila.
	District Dir, Reg IX, Los Angeles.
	District Director, Region V, Chicago.
	District Director, New York.
	District Director.
Department of State	
Foreign Policy Planning Council.	Member, Planning & Coordination Staff.
Bureau of Economic & Business Affairs.	Dir, Office of East-West Trade.
	Spec Asst Asst Sec State Economic Affs.
Bureau of Intelligence and Research.	Dir, Ofc of Resources Policy.
	Dir, Ofc of Research & Analysis Soviet Affrs.
	Dep Dir, Ofc of Economic Analysis.
International Boundary & Water Commission.	Supervisory Civil Engineer.
Department of Transportation	
Office of Inspector General.	Asst Insp General for Auditing.
	Asst I/G for Policy, Planning and Resources.
	Dir, DOT-Wide Programs.
	Asst Inspector General for Investigations.
	Dir, Ofc of Surface Transportation Programs.
	Dir, Ofc of Aviation Marine & Research Progs.
	Dep Asst Inspector General for Auditing.
	Dir, Office of Adp Audits & Technical Support.
Asst Sec for Administration.	Asst Secy for Administration.
Ofc of Installations and Logistics.	Dir, Ofc of Installation & Logistics.
Assoc Adm'r for Safety	Assoc Admr for Safety.
Ofc of Pipeline Safety Regulation.	Assoc Dir, Ofc of Pipeline Safety Regulation.
Ofc of Operations and Enforcement.	Assoc Dir, Ofc of Opers & Enforcement—M.T.B.
Maritime Administration	International Activities Officer.
	Assoc Admr for Marketing & Domestic Enterprs.
Office of Associate Administrator for Research and Dev.	Dir, National Maritime Research Center, KP.
	Dir, Office of Advanced Ship Operations.
	Director, Office of Maritime Technology.
Office of Assoc Admr for Shipbuilding Opers & Research.	Dir, Ofc of Ship Construction.
	Dir, Ofc of Shipbuilding Costs.
	Dir/Ofc of Naval Architecture & Engineering.
	Dir, Office of Shipbuilding Costs & Production.
Office of Associate Administrator for Maritime Aids.	Associate Administrator for Maritime Aids.
Office of Aviation Safety.	Dir, Ofc of Aviation Safety, Ofc Aviation Saf.
	Dep Director, Office of Aviation Safety.
	Mgr. Safety Regulations Division.
Office of Accounting	Dir Office of Accounting.
Acquisition and Material Service.	Dir Acquisition & Material Service.
	Deputy Dir Acquisition & Material Service.
	Mgr, Contracts Division.
Assoc Admr for Air Traffic.	Assoc. Administrator for Air Traffic.
	Dep Assoc Admin for Air Traffic.
	Manager, Procedures Division.
	Mgr, ATC Automation Division.
	Mgr, System Plans and Programs Division.
	Mgr, Airspace—Rules & Aeronautical Inf. Div.
	Manager, Operations Division.
	Manager, Quality Assurance Division.
Advanced Automation Program Office.	Dir, Advanced Automation Program Office.
	Dep Dir Advanced Auto Program Office.
	Mgr, System Engineering Division.
	Manager System Development Division.
Office of Airport Planning and Programming.	Dir, Office of Airport Planning and Program.
	Mgr, Grants-in-Aid Division.
Assoc Admr for Aviation Standards.	Assoc Admr for Aviation Standards.
	Deputy Assoc Admr for Aviation Standards.
Office of Airworthiness	Director Office of Airworthiness.
	Deputy Director Office of Airworthiness.
	Manager, Aircraft Engineering Division.
	Mgr, Aircraft Maintenance Division.
Office of Civil Aviation Security.	Director, Office of Civil Aviation Security.
Office of Flight Operations.	Dir Ofc of Flight Operations.
	Deputy Director Office of Flight Operations.
	Mgr, General Aviation and Commercial Div.
	Mgr, Air Transportation Div.
Aviation Standards—National Field Office.	Dir, Aviation Standards Nat'l Field Ofc.
	Deputy Directors.
Office of Aviation Medicine.	Fed Air Surgeon.
	Deputy Federal Air Surgeon.
	Mgr, Aeromedical Stds Div.
Mike Monroney Aeronautical Center.	Mgr, Civil Aeromed Institute.
Great Lakes Region—Chicago.	Mgr, Air Traffic Division.
	Mgr, Flight Standards Division.
New England Region—Burlington, MA.	Mgr, Flight Standards Division.
	Mgr, Aircraft Certification Division.
Northwest Mountain Region—Seattle.	Mgr, Aircraft Certification Division.
	Mgr, Los Angeles Area Aircraft Cert Ofc.
	Mgr, Seattle Area Aircraft Cert Office.
	Mgr, Flight Standards Div.
	Mgr, Air Traffic Division.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Central Region—Kansas City.	Mgr, Flight Standards Div.
	Mgr, Aircraft Certification Division.
	Manager, Air Traffic Division.
Eastern Region—New York.	Mgr, Air Traffic Division.
	Mgr, Flight Standards Div.
Southern Region—Atlanta.	Mgr, Flight Standards Division.
	Mgr, Air Traffic Division.
Southwest Region—Fort Worth.	Mgr, Air Traffic Div.
	Mgr, Flight Standards Div.
	Mgr, Aircraft Certification Division.
Western Pacific Region—Los Angeles.	Mgr, Flight Standard Div.
	Mgr, Air Traffic Division.
Federal Highway Administration.	Executive Director.
Assoc Admr for Admin	Director Office of Fiscal Services.
Assoc Admr for Safety Traffic Engr and Motor Carriers.	Assoc Admr/Safety Traffic Engrng and Motor Crs.
Bu of Motor Carr Safety	Director.
	Dep Dir.
Office of Highway Safety.	Dir Ofc of Highway Safety.
Assoc Admr for Right of Way and Environment.	Assoc Admr for Right-of-Way and Environment.
Off of Environmental Policy.	Dir Ofc of Environmental Policy.
	Chf Environmental Programs Div.
Off of Right of Way	Director, Office of the Right-of-Way.
	Chief, Real Estate Division.
	Chief Relocation Division.
	Chf, Accident Investigation Div.
Natl Center for Statistics and Analysis.	
Vehicle Research and Test Ctr.	Chf Safety Research Lab.
Ofc of Vehicle Safety Comp.	
Ofc of Vehicle Safety Standards.	Chief, Validation Division.
	Chf Crash Avoidance Division.
	Chf Crashworthiness Division.
U.S. Coast Guard	Technical Director.
Department of Treasury	
Office of the Secretary	Senior National Intelligence Adviser.
Ofc of the Inspector General.	Asst Inspector General (Fiscal Svc/Adp).
	Assistant Inspector General (TDSCA).
Ofc of Tax Analysis	Deputy Director (Revenue Estimating).
	Assistant Director (Revenue Forecasting).
	Senior Advisor (Economics).
Ofc of Asst Secy (Economic Policy).	Asst Dir for Economic Forecasting.
	Senior Adv for Bal of Payments Anal and Proj.
	Sr Economist.
Ofc of the Fiscal Asst Secy.	Fiscal Assistant Secretary.
	Deputy Fiscal Asst Secy.
	Assistant Fiscal Assistant Secretary.
Bureau of Government Financial Operations.	Comm'r of Government Financial Operations.
	Dep Com, Bur of Govt Financial Operations.
	Dep Commr Bur of Gov Financial Operations.
	Asst Commissioner, Banking & Cash Management.
	Asst Commissioner, Comptroller.
	Asst Commr Govt-Wide Accounting.
	Asst Commr Disbursement & Claims.
	Dir Div of Check Claims.
	Chief Disbursing Officer.
	Dir Govt Accounting Sys Staff.
	Dir Div of Govt Accounts and Reports.
	Dir Div of ADP.
	Assistant Commissioner, Information Systems.
	Asst Commissioner Federal Finance.
	Assistant Commissioner, Comptroller.
	Asst Commissioner Headquarters Operations.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Asst Commissioner Field Operations.
	Director, Check Claims Group.
	Director, Operations Group.
	Director, Sytems Development Group.
	Director, Accounting Group.
	Director, Technology & Information Group.
	Asst Commissioner Administration.
	Director, Working Capital Group.
Bureau of Public Debt	Commissioner.
	Dep Commr of the Public Debt.
	Asst Commissioner (Savings Bond Operations).
	Assistant Commissioner (Washington).
	Asst Commr (Financing).
	Asst Commr (Administration).
Federal Finance	Dir, Ofc of Finance and Market Analysis.
Dep Asst Secy for Developing Nations.	Dir Ofc of International Debt Policy.
Ofc of Foreign Exchange Operations.	Dir Ofc of Foreign Exchange Operations.
Ofc of the Comptroller of the Currency.	Dep Comptroller for Sys and Financial Mgmt.
Ofc of the Chief Counsel.	Dir, Enforcement & Compliance.
Dir, Litigation Div.	
	Dir Legal Advisory Services Division.
Sr Dep Comptroller (Policy & Planning).	Dep Comp for Bank Organization and Structure.
Sr Dep Comptroller (Bank Supervision).	Senior Deputy Comptroller (Bank Supervision).
	Dep Comptroller for Internal Rel & Fin Eval.
Multinational Banking	Dep Comptroller for Multinational Banking.
Special Surveillance	Dep Comptroller for Special Surveillance.
	Deputy Comptroller for Supervisory Analysis.
	Dir for Spec Projects.
Chief National Bank Examiner.	Deputy Comptroller for Trust and Securities.
	Chf National Bank Examiner.
	Assistant Chief National Bank Examiner.
Sr Dep Comptroller (National Operations).	Deputy Comptroller for Operations.
Senior Dep Comptroller (National Operations).	
	Deputy Comptroller for Operations.
	Senior Deputy Comptroller for Natl Operations.
District Offices	Reg'l Adm'r of National Banks (Region 2).
	Reg'l Adm'r of Nat'l Banks (Reg 12).
	Regional Admr of National Banks (Reg 6).
	Regl Admr of Natl Banks (Reg 11).
	Regl Admr of Natl Banks (Reg 13).
	Deputy Comptroller (Northeastern District).
	Deputy Comptroller of the Currency.
	Deputy Comptroller of the Currency.
	District Administrator (Midwestern District).
	District Administrator.
	Deputy Comptroller (Southeastern District).
	Deputy Comptroller (Southwestern District).
	District Administrator.
	District Administrator.
	Deputy Comptroller (Western District).
	District Administrator (Northeastern District).
	District Administrator (Central District).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
Ofc of Personnel	Dep Dir of Personnel.
	Asst Dir (Exec Manpower and Emp).
Bur of Alcohol, Tobacco, Firearms.	Associate Director (Compliance Operations).
	Assistant Director (Criminal Enforcement).
	Assistant Director Internal Affairs.
	Regional Director for Investigations.
	Midwest Regl Counsel.
	Southeast Regl Counsel.
	North Atlantic Regional Counsel.
	Regl Dir of Investigations, Atlanta, Georgia.
Deputy Director (Compliance Operations).	Deputy Director (Compliance Operations).
	Dep. Associate Dir. (Compliance Operations).
Deputy Director (Law Enforcement).	Deputy Director (Law Enforcement).
	Deputy Assoc Dir (Law Enforcement).
	Special Agent in Charge, Chicago Dist Off.
Comptroller	Director, Laboratory Services.
US Customs Service	Asst to the Commr.
	Special Assistant to the Commissioner.
Ofc of the Chief Counsel.	Asst Chief Counsel (Customs Court Litigat).
	Miami Regl Counsel.
	Chicago Regl Counsel.
	New York Regl Counsel.
	Regional Counsel (Pacific Region).
Office of the Comptroller.	Dir Ofc of Financial Mgmt & Prog Analysis.
	Director, Ofc of Data Systems.
	Dir Budget and Planning.
	Director, Office of Human Resources.
Ofc of Asst Commr for Internal Affairs.	Asst Commissioner or Internal Affairs.
Ofc of Asst Commr for Enforcement.	Deputy Assistant Commissioner (Enforcement).
	Dir Ofc of Patrol.
	Dir Ofc of Investigations.
	Dir Ofc of Enforcement Support.
	Director Office Intelligence.
Ofc of Asst Commr for Inspection & Control.	Asst Commr (Inspection & Control).
	Deputy Asst Commr (Inspection & Control).
Ofc of Asst Commr for Commerical Operations.	Director Technical Services Div.
	Director, Classification and Value Division.
	Dir Ofc of Regulations and Rulings.
	Director, Entry Procedduras & Penalties Div.
	Dir Duty Assesement Div.
	Dir Ofc of Trade Operations.
Ofc of Asst Commr for International Affairs.	Dep. Asst. Commission—Ofc. Internal Affairs.
Regional Offices	Regl Commr Reg 2, NY.
	Reg. Commr. Reg 1, Boston.
	Asst Regn Commr Operations Reg II, New York.
	Regl Commr, Reg 4, Miami.
	Regl Commr:Reg V, New Orleans.
	Reg Commr of Customs, Reg VI.
	Regional Commissioner, Chicago.
	Asst Regional Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regl Commr (Operations).
	Asst Regl Commr.
	Asst Regional Commr (Operations).
	Asst Regional Commissioner L.A. (Enforcement).
	Asst Regional Commissioner Enforcement.
	Deputy Regional Commissioner, Pacific Region.
	Area Director, JFK Airport.
	Area Director, New York Seaport.
	Asst Regl Commr—Houston (Enforcement).

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Asst Regl Commr—Miami (Enforcement).
	District Director, Los Angeles.
	Asst Regl Commr (Enforcement).
US Secret Service	Director of the Secret Service.
	Deputy Director U.S. Secret Service.
	Asst to the Dir, Training.
	Asst to the Dir, Pub Affs.
	Assistant to the Director (Interpol—USNCB).
Ofc of Administration	Assistant Director, Administration.
Ofc of Inspection	Assistant Director Inspection.
Ofc of Protective Research.	Asst Dir (Protective Research).
	Dep. Asst. Dir (Protective Research).
	Spec Agent in Charge—Tech Sec Div.
	Spec Agent in Charge—Intelligence Div.
Ofc of Protective Operations.	Asst Dir (Protective Operations).
	Dep Asst Dir (Protective Operations).
Spec Agent in Charge—Presidential Protective.	DAD Protective Opers (Uniformed Div).
	Spec Agent in Charge—VP Protect Div.
	Spec Agent in Charge—Dignitary Protective Div.
	Deputy Special Agent in Charge—Pres Prot Div.
	Deputy Special Agent in Charge.
Office of Investigations	Asst Director, Investigations.
	Dep Asst Dir Investigations.
	Special Agent in Charge, New York Office.
	Dep Spec Agent in Charge—NY Field Office.
	Special Agent in Charge, Chicago.
	Special Agent in Charge, Los Angeles Office.
	Spec Agent in Charge—Washington Field Office.
	Spec Agent in Charge—Philadelphia Field Office.
Ofc of the Treasurer of the US.	Dep to the Treasurer of the U.S. (Manuf).
Bureau of the Mint	Associate Director of Operations.
	Assoc Dir of Pol & Management.
Ofc of the Commissioner.	Deputy Commissioner.
	Asst to the Deputy Commissioner.
	Director, Legislative Analysis Division.
	Asst to the Commissioner (Equal Opportunity.
	Taxpayer Ombudsman.
Appeals Division	Director, Appeals Division.
	Reg Dir of Appeals—Central Region.
	Reg Dir of Appeals, Mid-Atlantic Region.
	Reg Dir of Appeals—Southwest Reg.
	Reg Dir of Appeals—Southeast Reg.
	Regional Dir of Appeals, North Atlantic Region.
	Reg Dir of Appeals, Midwest Reg.
	Regional Director of Appeals—Western Region.
	Chief Appeals Office, New York City.
Data Processing	Assoc Commr (Data Processing).
	Director, Taxpayer Service Division.
	Director, National Computer Center.
	Dir, Returns Processing and Accounting Div.
	Director Planning and Control Staff.
	Dir, Program Planning & Review Staff.
	Asst Dir Returns Processing & Accounting Div.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	Dep Asst Commissioner (Computer Services).
	Director, Statistics of Income Division.
	Assistant Commissioner (Tax System Redesign).
	Dep Asst Commr (Returns & Info Processing).
	Director, Management Systems Division.
	Asst Dir, Statistics of Income Division.
	Assistant Dir, Taxpayer Service Division.
	Director, Management System Div.
	Asst Commissioner (R&IP).
	Director, Hardware Division.
	Assistant Director Software Division.
	Director, Software Division.
	Asst Commr (Computer Services).
Ofc of Asst Commr, Inspection.	Assistant Commissioner (Inspection).
	Dep Asst Commr (Inspection).
	Director, Internal Audit Div.
	Assistant Director Internal Audit Division.
	Director, Internal Security Division.
	Asst Dir, Internal Security Division.
	Regional Inspector, Midwest Reg.
	Regional Inspector, North Atlantic.
	Regional Inspector, Western Region.
	Regional Inspector, Southwest Reg.
	Regional Inspector, Mid-Atlantic Reg.
	Regional Inspector, Central.
	Regional Inspector, Southeast.
Policy and Management	Associate Commissioner (Policy and Mgmt).
	Dir, Tax Forms & Publications Div.
	Dir, IRS Data Center Detroit.
	Fiscal Management Officer.
	Dir, Facilities Mgt Div.
	Director, Personnel Division.
	Asst Dir, Personnel Div.
	Dir, Resources Management Div.
	Director, Ta Administration Adv Serv Div.
	Asst Commr (Planning, Finance & Research).
	Dep Asst Commissioner (Support and Services).
	Dep Asst Commr (Planning, Finance, & Resch).
	Asst Dir, Disclosure & Security Division.
	Director Centralized Service Division.
	Director, Human Resources Technology Staff.
	Assistant Commissioner (Support & Services).
	Director, Training and Dev Div.
	Director, Planning and Analysis Division.
	Director, Disclosure and Security Division.
	Dep Asst Commr (Human Resources).
	Director, Personnel Division.
	Director, Research Division.
	Assistant Dir, Tax Forms & Publications Div.
	Asst Fiscal Management Officer.
	Assistant Commissioner (Human Resources).
Central Region	Regional Commr.
	ARC (Examination) Central Region.
	Asst Regional Commissioner (Criminal Investi).
	Asst Regl Comm (Resource Management).
	Assistant Regional Commissioner (Collection).
	Asst Regl Commissioner (Data Processing).
	Dir Service Ctr Cincinnati.

POSITIONS THAT WERE CAREER RESERVED DURING CALENDAR YEAR 1984—Continued

Agency organization	Career reserved positions
	District Dir (Cleveland).
	District Director Detroit.
	District Director (Parkersburg).
	District Director, Indianapolis.
	District Director, Louisville.
	District Dir, Cincinnati.
	Asst District Director, Cleveland.
	Assistant District Director Detroit.
Mid-Atlantic Region	Regl Commissioner.
	ARC (Examination) Mid-Atlantic.
	ARC (Criminal Investigation) Mid Atlantic Reg.
	ARC (Resources Mgmt).
	Asst Regl Commr (Collection).
	Assistant Regional Commissioner (Data Proc).
	Service Center Dir. Philadelphia.
	District Dir, Newark.
	District Dir, Philadelphia.
	District Dir, Pittsburgh.
	District Director Richmond District.
	Asst District Dir, Philadelphia.
	Asst District Director (Newark).
	Assistant District Director—Baltimore, MD.
	District Director, Wilmington.
	District Dir, Baltimore.
	Director, Foreign Operations District.
Midwest Region	Regional Commr, Midwest Region.
	Asst Regl Commr (Resources Mgmt).
	ARC (Criminal Investigation) Midwest Region.
	Assistant Regional Commissioner (Data Proc).
	ARC (Examination), Midwest Region.
	ARC (Collection) Midwest Region.
	Special Asst to the Regional Commissioner.
	Srvc Ctr Dir, Kansas City.
	District Dir, Chicago.
	District Director, St Louis.
	District Dir, Des Moines.
	District Dir, St Paul.
	District Dir, Omaha.
	District Dir, Springfield.
	District Dir, Milwaukee.
	Asst District Dir, Chicago.
	Asst District Dir, St Louis.
	District Director, Fargo.
	District Director, Aberdeen.
	Chief, Examination Division.
North Atlantic Region	Regl Commr.
	Asst Regl Commr (Exam) North Atlantic Reg.
	ARC (Criminal Investigating).
	ARC (Resources Mgmt).
	ARC (Collection) North Atlantic Region.
	Assistant Regional Commissioner (Data Proc).
	Service Center Director, Andover, Mass.
	Srvc Ctr Dir, Brookhaven.
	District Dir, Manhattan.
	District Dir, Brooklyn.
	District Dir, Boston.
	Chief Examination Div, Manhattan.
	District Dir, Albany.
	District Dir, (Hartford).
	District Dir, Buffalo.
	Asst Dist Dir, Brooklyn.
	Assistant District Director Manhattan.
	Asst District Dir, Boston.
	District Director, Providence.
	Dist Dir, Augusta.
	District Director, Portsmouth.
	District Director, Burlington.
Southeast Region	Regl Commr.
	ARC (Examination) Southeast Region.
	Asst Reg Commissioner—Criminal Investigation.
	Asst Regl Commr (Resources Management).
	Asst Regl Commr. (Collection-SE Reg Atlanta.

Agency organization	Career reserved positions
Southwest Region	Assistant Regional Commissioner (Data Proc).
	Service Center Director, Memphis.
	Srvc Ctr Dir, Atlanta.
	District Dir, Jacksonville.
	District Dir, Atlanta.
	District Director, Greensboro.
	District Dir, Nashville.
	District Director, Birmingham.
	District Director, Columbia.
	District Director, Jackson, Miss.
	Asst District Director, Jacksonville.
	Assistant District Director, Atlanta.
	Regional Commr.
	Asst Regl Commr (Examination).
	ARC (Criminal Investigation) SW Region.
	ARC (Resources Mgmt).
	Assistant Regional Commissioner (Collection).
	Assistant Regional Commissioner (Data Proc).
	Service Center Director.
	District Dir, Austin.
	District Director, Dallas.
	Service Center Dir (Austin).
	District Director, Wichita.
	District Director, Oklahoma City.
	District Dir, New Orleans.
	District Director, Little Rock District.
	District Dir, Denver.
	Asst Dist Dir, Austin.
	Assistant District Director, Dallas.
	District Director, Albuquerque.
	District Director, Cheyenne.
	Assistant District Director.
	District Director, Houston.
Western Region	Regl Commr.
	ARC (Criminal Investigation).
	Asst Regl Commr (Collection), Western Region.
	Assistant Regional Commissioner (Data Proc).
	Asst Regional Commissioner (Examination).
	Asst Regl Commr (Collection).
	Asst Regl Commr/(Resources Management).
	Service Center Director, Fresno.
	Service Center Dir, Ogden.
	District Dir, Los Angeles.
	District Dir, San Francisco.
	District Dir, Reno.
	District Director, Portland District.
	District Dir, Seattle.
	District Dir, Phoenix.
	Asst District Dir, Los Angeles.
	Asst Dist Dir, San Francisco.
	District Director, Salt Lake City.
	District Director, Honolulu.
	District Director, Anchorage.
	District Director, Boise.
	Chf, Examination Div, Los Angeles.
	District Director (Sacramento).
	District Director, San Jose.
	District Director, Helena.
	Assistant District Director, Laguna Niguel.
	District Director, Laguna Niguel.
Operations	Assoc Commr (Operations).
	Asst Commr (Employee Plans & Exemp & Organcs).
	Director, Exempt Organizations Division.
	Dir, Employee Plans Division.
	Director, Actuarial Division.
	Special Asst for Exempt Organization Matters.
	Assistant Director, Employee Plans Division.
	Chief, Technical Branch, EO.
	Chief, Technical Branch, EP.
	Spec Asst for Employee Plans.
	Assistant Commissioner (Examination).
	Asst Commr (Criminal Investigation).
	Dir, Exempt Organizations, Technical Division.
	Dir, Employee Plans & Exempt Org Oper Div.
	D/Employee Plans Tech & Actuarial Division.
	Deputy Assistant Commissioner (Examination).

Agency organization	Career reserved positions
Ofc of Chf Counsel	Dep Asst Commr (Criminal Investigation).
	Asst/Dir Exempt Organizations Techn Division.
	Asst/Dir Employee Plans Techn and Actuarial Div.
	Tech Adv/Asst to Dir Employee Plans Div.
	D/A Commissioner (Employee Plan and Exempt Orgs).
	Dep Asst Commr (Collection).
	Assistant Commissioner (Collection).
	Deputy Chief Counsel.
	Associate Chief Counsel (Technical).
	Associate Chief Counsel (Litigation).
	Deputy Associate Chief Counsel (Technical).
	Deputy Associate Chief Counsel (Litigation).
	Director Individual Income Tax Div.
	Director, Corporation Tax Division.
	Tech Adv to Dir—Corp Tax Div.
	Chf, Corporation Tax Branch.
	Chf Individual Income Tax Branch.
	Chief, Engineering and Valuation Branch Corp Tax.
	Asst Dir, Individual Tax Division.
	Asst Dir, Corporation Tax Div.
	Dir, General Litigation Div.
	Dir, Tax Litigation Div.
	Dir, Interpretive Div.
	Dir, Legislation and Regulations Div.
	Director, Operations Division.
	Dir, Criminal Tax Div.
	Dir, Gen Legal Services Div.
	Director, Disclosure Litigation Division.
	Dir—Employee Plans and Exempt Org Div.
	Asst Dir, Tax Court Litigation Div.
	Asst Dir, Interpretive Div.
	Asst Dir, Legislation and Regulations Div.
	Chf Estate and Gift, Wage Excise and Prod Br.
	Career Reserved Positions.
	Chief, Reorganization Branch.
	Techn Adv to the Assoc Chf Counsel (Techn).
	Special Appellate Counsel.
	Sen Tech Adv to the Assoc Chf Counsel (Tech).
	Assistant to the Chief Counsel.
	Assistant to the Chief Counsel.
	Special Litigation Counsel.
Regl Counsels	Regl Counsel, Central Reg.
	Dep Regl Counsel (Criminal Tax).
	Regional Counsel, Mid-Atlantic Region.
	Dep Regl Counsel (Criminal Tax).
	Regl Counsel Midwest Region.
	Dep Regl Counsel (Criminal Tax).
	Dep Regl Counsel (General Litigat).
	Dep Regl Counsel (Tax Litigation).
	Regl Counsel, North Atlantic Region.
	Dep Regl Coun (Tax Litigat) No-Atlantic Reg.
	Deputy Regional Counsel (General Litigation).
	Regional Counsel SE Region.
	Regl Counsel Southwest Region.
	Regional Counsel.
	Dep Regl Counsel (Gen Litigation).
	District Counsel—Boston.
	District Counsel—Los Angeles.
	District Counsel—Cincinnati.
	District Counsel—Philadelphia.
	District Counsel—Newark.
	District Counsel—Chicago.
	District Counsel—Manhattan.
	District Counsel—Atlanta.
	District Counsel—Dallas.
	District Counsel—San Francisco.
U.S. Arms Control and Disarmament Agency	
Verification and Intelligence Bureau	Chief, Computer Services Group.
	Senior Advisor—Operations Res and Analysis.
	Chief, Verification Division Ver and Intell Bur.

Agency organization	Career reserved positions
	Chief, Operations Analysis Division.
	Senior Operations Research Analyst.
Ofc of Administration	Administrative Director.
Theatre Affairs Division	Chief, Theatre Affairs Division.
Strategic Affairs Division.	Chf, Strategic Affs Div.
Nuclear and Weapons Control Bureau.	Chief, Def Prog and Analysis Div.
	Chf, Arms Transfer Div
	Chf, Nuclear Safeguards and Technology Div.
	Chief, International Nuclear Affairs Division.
Multilateral Affairs Bureau.	Chief Scientist.
United States Information Agency	
Ofc of the Director	Inspector General.
Bureau of Management	Director Office of Personnel.
	Director Office of Comptroller.
	Dir of Security.
	Dep Dir of Admin for Technology.
	Dir Ofc of Contracts.
Bureau of Broadcasting	Deputy for Operations.
Ofc of the Gen Counsel & Cong Liaison.	Dep General Counsel.
U.S. International Trade Commission	
Office of Industries	Dir, Ofc of Industries.
Office of Investigations	Dir, Ofc of Investigations.
Veterans Administration	
Inspector General	Dep Inspector General.
	Assistant Inspector General for Auditing.
	Asst Inspector General for Investigation.
	Asst Insp Gen for Policy, Plan & Resources.
	Executive Asst to Inspector General.
	Dep Asst for Inspec General for Hospital Audits.
	Dep Asst Inspec General for Regional Audits.
	Dep Asst I/G for Policy, Planning & Resources.
Board of Veterans Appeals.	Chairman.
	Vice Chairman.
	Deputy Vice Chairman.
	Deputy Vice Chairman.
Office of Construction	Project Director, Northeastern Region.
	Project Dir, Southern Region.
	Project Director—Central Region.
	Project Director, Western Region.
	Dir, Program Control and Analysis.
Office of Procurement and Supply.	Dir, Office of Procurement & Supply.
	Dep Dir, Office of Procurement and Supply.
Office of Info Mgmt & Statistics.	Dir, Office of Information Mgmt & Statistics.
Office of Data Management and Telecommunications.	Assoc Dir for ADP Policy and Oper Management.
	Assoc Dir for Sys Design & Integration Mgmt.
	Associate Director for Telecommunications.
Data Processing Center (DPC) Directors.	Director DPC Austin.
Office of Personnel and Labor Relations.	Assoc Dir for Personnel Policy.
	Assoc Dir for Personnel Operations.
Department of Veterans Benefits.	Director Budget Staff.
	Dep Dir, Compensation & Pension Service.
Department of Medicine & Surgery.	Dir, Facility Eng Plann & Construction Office.
	Dep Dir, Mental Health & Behavioral Sciences.
	Dir, Canteen Service.
	Dep Dir, Facility Eng, Plan & Const Ofc.
	Dir, Resources Management Ofc.
	Deputy Director, Resource Management Office.

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federal register

Monday
April 1, 1985

Part III

Department of Health and Human Services

Office of Human Development Services

Resource Centers for Child Welfare Services, Availability of Funds and Request for Applications; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. CWS-RC-85-1]

Resource Centers for Child Welfare Services; Availability of Funds and Request for Applications

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Announcement of availability of funds and request for applications under the Office of Human Development Services' Discretionary Grants Program.

SUMMARY: The Office of Human Development Services announces that applications are being accepted for new grants for Resource Centers for Child Welfare Services authorized by multiple discretionary funding program legislation, as identified below.

It should be noted that this grant competition is separate from the Office of Human Development Services' (OHDS) Coordinated Discretionary Funds Program for which availability of funds was announced in the **Federal Register** on August 23, 1984 (49 FR 33530), and others which may apppear later this fiscal year.

DATE: The closing date for receipt of applications is June 17, 1985.

FOR FURTHER INFORMATION CONTACT: HDS/ACYF/Children's Bureau, Program Support Division, P.O. Box 1182, Washington, D.C. 20013, Carolyn Dean, (202) 755-7730.

SUPPLEMENTARY INFORMATION:

Statutory Authorities

The individual statutory authorities under which grants will be awarded through this program announcement are as follows:

Section 426 of the Social Security Act, 42 U.S.C. 626 and Section 4(a) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5103(a).

Scope of This Announcement

This Program Announcement covers all Resource Center grants to be awarded for fiscal year 1985.

The FY 1985 Resource Center Grant Program includes the following provisions:

1. Applications received under this Announcement will be reviewed, awarded, and administered by the Administration for Children, Youth and Families central office in Washington, D.C.

2. Grants will be awarded in nine priority areas related to child welfare services which have been identified under this grant program. At least two of the grants awarded will focus specifically on issues related to child abuse and neglect.

3. Competition for grants in all priority areas will be national, by priority area, with some consideration given to geographic distribution of competing applications. While we are not necessarily seeking to fund a Center in each Department of Health and Human Services Regional area, to the extent possible, we will seek a broad geographic spread.

Program Purpose

The purpose of this grant program is to develop, expand, strengthen, and improve the capacity of State and local, public and private child welfare agencies to utilize exemplary methods and resources to provide effective services to children and families. Therefore, consideration will be given to applications which propose to enhance the resources and techniques available to State and local service providers. The Office of Human Development Services (OHDS) will support a series of Resource Centers for Child Welfare Services designed to improve the delivery and management of social service programs for children and families. Funds are intended to support projects that provide leadership in the identification, collection, development, dissemination, and utilization of program models, systems improvements, training programs, and other resource materials on effective methods of addressing child welfare service needs, and the improvement of State and local capacities to address those needs.

OHDS will support a three year effort to develop and disseminate resources and facilitate the exchange of information on effective and innovative practices for child welfare services. The Resource Centers will function as centers of excellence whose services will be sought by the field, enabling them to provide resources, training, and consultative services, and to receive payment for their services such that they can become self-supporting over a three year period. In purchasing such services from the Resource Centers, State or local agencies may use other Federal funds if the authority by which they were granted permits. It is anticipated that grant related program income retained by the Resource Centers may be used in accordance with all three alternatives identified in Title 45 of the Code of Federal Regulations (CFR) Part 74, subpart F. Applicants should identify which alternative or alternatives they intend to use in reporting program income.

Background

Over the past ten years, the Children's Bureau funded a series of regional resource centers focused on particular areas of child welfare. Funding for resource centers on child abuse and neglect began in 1974, and additional centers on adoption and child welfare training were added in 1979. In 1982, the three types of regional centers were consolidated into a single region-wide operation capable of providing technical assistance, expert consultation, and support to State and local agencies in multiple program areas including child abuse and neglect, adoption, foster care, child welfare training, youth services, and other related program areas. Funding for the consolidated centers terminated at the end of the 1984 fiscal year.

However, because the state-of-the-art of service programs is dynamic, it is critical to identify and develop mechanisms for the dissemination and utilization of new information and resource materials that are being developed. The newly established Resource Centers will build on the information and experience gained from previous OHDS grant programs, and make information, exemplary materials, and expertise readily available to State and local child welfare agencies and other service providers so that effective methods and strategies for improved child welfare services can be more broadly implemented in the field.

Approach

The FY 1985 Resource Centers for Child Welfare Services will be task-oriented, time-limited, and specific. All Resource Centers approved for funding will be designed to address common, clearly defined functions which will include the following activities:

1. Identification, collection, and dissemination of known, useful resource materials including the review and evaluation of existing materials.

2. Provision of technical assistance, training, and consultation to promote utilization of resources and best practices related to child welfare services including methods and techniques for program implementation and evaluation.

3. Documentation and development of innovative methods and appropriate materials to repond to recognized deficiencies of resources in specific

aspects of programs and emerging program needs.

4. Development of networking and coordination activities to establish linkages between agencies, organizations, and individuals serving children and families.

In addition, all Resource Centers will be required to develop specific work plans for addressing the needs of minority children and families within their respective areas of activity. In developing work plans, special attention should also be given to the requirements of Pub. L. 95–608, the Indian Child Welfare Act of 1978.

Because Federal funding of the Resource Centers will be limited to a three year period at the end of which Federal funding will terminate, all applicants will be required to identify non-Federal sources of funding and document the level of support that will be provided to supplement Federal funds during the three year project period. Foundation support and private sector involvement which reflect an on-going partnership between the applicant and other sources of funding are particularly encouraged. Centers will also be required to develop a three year plan, outlining strategies for acquiring additional non-Federal support to sustain the full cost of the project when Federal funding terminates. Projects should develop contractual arrangements with State and local agencies and other relevant service providers to acquire additional program income on a fee-for-services basis. Projects should focus on the marketing of exemplary resource materials and training and consulation services.

As an incentive for continuation funding, one of the criteria for approval of second and third year grants will be the extent to which the Centers have succeeded in marketing their skills and services, and have firm commitments for purchase of services. By the ninth month of the first year of funding, grantees must show evidence of commitments for income producing services or products. By the twenty-first month, grantees must have firm commitments for income producing activities of not less than 40 percent of the second year funding amount, in order to obtain third year funding.

All Centers will also be required to develop a program component specifically designed to attract private sector initiatives, and involve private sector agencies and organizations in the activities of the Centers.

Program Priorities: The following program priorities are of special interest to OHDS. Applications must address a single priority area, and should describe how the proposed Centers will address the specific issues and tasks discussed under the selected priority area. Multiple applications are not prohibited, although it is unlikely that the same applicant will be funded to conduct more than one Center.

1. Resource Center for Foster Care Programs

Children in foster care, and their families continue to be a large and very costly segment of the population served by child welfare agencies. In the four years since passage of Pub. L. 96–272, the child welfare population has been reduced by 40 percent; however, 250,000 children remain in foster care. Major elements of Pub. L. 96–272, were specifically directed to improving services to children living outside of their own homes. Public child welfare agencies are required to establish services and procedures to improve the quality of substitute care and to make specific efforts to reunify children with their families or provide another permanent home, usually through adoption.

A Resource Center directed to foster care program improvement should assist child welfare agencies in the following areas:

(a) Methods and techniques for implementing the permanency planning purposes of Pub. L. 96–272 including:

(i) Statewide implementation of case review systems and training in developing appropriate case plans and other activities to facilitate family reunification;

(ii) Developing and maintaining reliable systems to assure timely and appropriate services delivery;

(iii) Establishing clear guidance for terminating parental rights including documentation of efforts at family reunification;

(b) Procedures for regular assessment of the nature and scope of needs for foster homes and recruitment and training of an adequate number and range of foster homes, particularly family foster homes for adolescents, pregnant adolescents and physically and mentally handicapped children;

(c) Development of family foster homes for care of children with severe medical problems;

(d) Coordination with other agencies concerned with services to children with complex care needs, particularly State and local health and education agencies.

2. Resource Center for Adoption Services

Adoption is a critical service needed to achieve permanent homes for children with special needs who are in the public child welfare system. In the six years since the passage of Pub. L. 95–266, the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Title II, the Adoption Opportunities Program, through grants and contracts, has developed extensive resources, training material and program models to address barriers to the adoption of these children.

The programs were successful in assisting States to place greater numbers of children with special needs in adoptive homes. However, there remains a strong need to provide on-going assistance to States in developing and implementing services required for the adoptive placement of the large number of children with special needs awaiting adoption. The most recent available statistics indicate that of the 33,000 children in the public child welfare system free for adoption but not placed, 58.2 percent are 11 years old and older, 42 percent are of minority background, and 37 percent are handicapped.

With the large increase in the number of children with special needs placed for adoption, we learned that post-placement, and post-adoption (post-legalization) services for the families were necessary to sustain placements. This need was also recognized in Pub. L. 98–457, Title II—Amendments to the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978. This amended Act directs the Department to promote quality standards for adoption services, pre-placement, post-placement and post legal adoption services for children in need of adoption.

An Adoption Resource Center is now needed to provide agencies with broader access to methods and techniques for expanded special needs adoption services in the following areas:

(a) Recruitment of adoptive families for children with special needs at the State and local community level;

(b) Adoption preparation of children with special needs and for prospective adoptive parents;

(c) Models of placement, post-placement and post-adoption services specifically designed to support adoptive families of children with special needs;

(d) Effective utilization of adoption subsidies for children with special needs;

(e) Cooperation and networking with agencies providing services to children with developmental disabilities;

(f) Techniques to avoid adoption disruption and to determine what services are needed if it occurs;

(g) Mechanisms for interstate cooperation including assistance to States in the passage of authorizing legislation and adoption of the Interstate Adoption Compact;

(h) Repository for products from previous HHS corporate sector grants, such as the model adoption benefit kits, industry guides to adoption, and other descriptive materials specifically designed for corporate use and involvement in promoting special needs adoption.

3. Resource Center for Family Based Preventive Services

Under Pub. L. 96–272, all States must provide services designed to prevent separation of children from their families, and in cases where placement cannot be prevented, States must provide services designed to reunify foster children with their families. Methods for providing family based and family support services are not widely known. Agency restructuring and extensive training as well as the development of additional community resources are frequently required.

Evaluation of services is essential to put together the most effective and cost-effective models of service delivery. Most evidence indicates that family based or family systems approaches are most effective, but care in planning and structuring is essential to attain quality services. The Resource Center for Family Based Preventive Services must offer agencies programs for placement prevention through the provision of emergency and on-going family based services.

This Center will provide technical assistance and consultation and will identify and disseminate information on exemplary programs with an emphasis on effective and cost-effective family based services directed toward two different levels of activity:

(a) Technical assistance and consultation to State, County, Tribal and private agencies to restructure and reorient services to provide effective emergency and family based services for child abusing or neglecting families. Technical assistance should also assist agencies in meeting the Pub. L. 96–272 "reasonable efforts" requirement to try to eliminate the need for removal from the home, and, generally, to meet the requirements of Pub. L. 93–247 (Child Abuse Prevention and Treatment Act, as amended) and Pub. L. 96–272 (Adoption Assistance and Child Welfare Act of 1980, as amended) as they relate to parents. The Center's activities will encourage use of family based and crisis services, and education and support services for families in crisis.

(b) On the community level, provide information, consultation, and networking activities to encourage the development of family and parental capacity through parent education, parent support, drop-in centers, and self-held groups. Networking among local resource systems should be specifically encouraged.

4. Center for Services to Developmentally Disabled Children in the Child Welfare System

Historically, developmentally disabled children have come into the child welfare system because of family problems not necessarily related to the handicapping condition of the child. However, many of these children were then referred by child welfare agencies to developmental disability or mental health facilities for care. Only a small percentage of the children were cared for by the child welfare system and, generally, the two systems were not closely linked. As community services to the developmentally disabled have improved, many children are able to remain with their families and, as with every segment of the population, many families incur the need for child welfare services.

Most child welfare agencies give policy recognition to the principle that developmentally disabled children are entitled to the full range of services of the agency, however, most lack the expertise to assure that a full range of needed services are provided and coordinated.

The complex and ongoing needs of children with developmental disabilities require coordination of agencies and services beyond those required for non-disabled children. The case management may include monitoring of a variety of medications, medical appliances, physical, occupational, or other educational therapies, behavioral management programs, environmental adaptations, and others. Successful implementation of permanency planning goals in often hindered by the overwhelming complexity of the child's disability.

It is clear, also, that agency staff need additional training to more fully understand developmental disabilities in order to recruit and prepare families and to provide appropriate pre-placement and post-placement services to child and family.

A Resource Center for developmentally disabled children should assist child welfare agencies to develop expertise in providing services to meet these complex needs and to develop linkages with State and local developmental disabilities programs to assure a full range of services and effective services delivery.

5. Resource Center for Youth Services

Important activities to be addressed in the field of youth services include technical assistance and dissemination of training materials for States, localities, non-profit and profit-making agencies, and coordinated networks of such agencies for meeting the needs of youth in the child welfare system, especially older adolescents. Increasing numbers of adolescents are in need of assistance to make the transition from foster care situations into independent living, which traditional youth-serving agencies are unable to provide. Large numbers of youth-at-risk including runaway and homeless youth are only marginally served by public child welare agencies which do not provide effective alternatives or solutions to the problems of youth involved with drug abuse, prostitution, teenage pregnancy, and suicide.

Child welfare agencies have traditionally provided some counselling services for youth in the child welfare system, but as the needs of the youth have become more problematic, fewer services or effective alternatives have been provided. This is especially true for pregnant teenagers whose numbers have increased significantly in recent years. Child welfare agencies need assistance in providing information, resources and alternatives for pregnant teenagers and for other sub-groups of youth-at-risk within the child welfare system. The Center must be prepared specifically to assist State and local agencies with programs to counsel pregnant teenagers about the "adoption option" and to prepare and provide training and materials on the "adoption option".

Program models, training materials, and technical assistance are especially needed in these critical program areas to insure that effective services can be provided to those young people most in need of assistance. Linkages are also needed between State and local youth-serving agencies and established networks of alternative service providers so that adolescents with special needs and problems can be served by appropriate community-based programs.

A Resource Center for Youth Services is needed to:

(a) Disseminate information on effective program models and resources for working with youth-at-risk;

(b) Provide training and consultation services to State and local child welfare agencies and other public youth-serving agencies that interface with the child

welfare system including the educational system, family courts, and law enforcement agencies;

(c) Facilitate coordination and exchange of information between Federal, State and local agencies focusing on youth populations (including OHDS, Public Health Services, and the Departments of Justice, Labor, and Education) and alternative private non-profit youth service providers;

(d) Assist public and voluntary child welfare agencies in providing information and services to pregnant adolescents including programs that promote adoption as an alternative to abortion;

(e) Assist public and voluntary child welfare agencies to develop and provide effective alternatives for youth involved with or potentially involved with drugs, prostitution, pregnancy, and suicide.

6. Resource Center for Child Welfare Program Management and Administration

Child welfare program management and administration have become increasingly complex. Recent developments have placed new demands on State agencies which are responsible for more varied and difficult client populations, a wider range of services and placement settings, mandated case review systems, and more specialized staffs. Programs are funded under broad and complex legislation which holds agencies accountable for client outcomes and for the effectiveness of agency operations in producing services for clients. Innovative use of information, efficient resource utilization, and creative management approaches are required for program success.

Currently State agency information systems are frequently outdated, data entry is slow and data are not readily retrievable, especially statewide. In many instances, tracking systems, although meeting the legislative requirements of Pub. L. 96–272, have limited capacity for program monitoring, management and evaluation. Many States have numerous information systems pertaining to child welfare that cannot be linked. Often child welfare client and case characteristics are stored in a different information system than payment records. Sound program and fiscal planning is difficult if mechanisms for the integration of these systems are not available.

State agencies also need assistance with a variety of personnel issues which present administrative and management problems. These include recruitment and management of personnel, staff development and training, and performance evaluation.

In recent years, agencies have had to respond to a growing demand for new services such as those for child sexual abuse victims and their families, families who have adopted children with special needs, adolescents in foster care, and families requiring in-home services. These developments stimulated the need for increased staff training and also for innovative approaches to organization and management of child welfare agencies.

Many of the specific mandates of Pub. L. 96–272 can be reinforced by State level licensing programs. Licensing also mandates conditions which prevent abuse of children and provides a mechanism for corrective action when abuse occurs. The positive potential of licensing is not realized in most States. The amount of written material and specialized resources on licensing are quite limited.

The Resource Center for management and administration should address methods and techniques for imporving State program management and administration through:

(a) Improved capability of data systems including managment information, case management and case review systems, and program planning and evaluation;

(b) Improved methods of staff recruitment and retention, development and training, and performance evaluation;

(c) Development, collection, and dissemination of effective licensing materials and direct assistance to States in implementing and adopting improvements;

(d) Innovative approaches to organization and management including improved internal communication and methods of gathering and analyzing data for planning for future service needs.

Projects capable of adapting recently developed management approaches from business and industry to fit the needs of child welfare agencies are particularly encouraged.

7. Center for Legal Resources on Child Welfare Programs

All child welfare programs operate within a framework of law. Recently, the legal context of child welfare programs has been expanded and redefined by major legislation. New and complex programs have been mandated and relationships have been redefined between State agencies, judicial systems and a range of advocacy groups and constituencies. State agencies are inundated with new concerns, conflicting issues and reinterpretations of principles and policies. Practical experience and legal expertise are needed to assist States to delineate a range of legal issues and through access to legal precedents, avoid a trial and error approach to these developing areas of law.

The Center for Legal Resources on Child Welfare Programs will focus on methods and techniques for addressing issues and problems and improving coordination between the child welfare system and judicial systems, provide a legal education function for State, local and voluntary agencies on emerging child welfare issues, and perform legal research and clearing house functions to provide a valid legal background against which legally supportable procedures can be developed on complex issues. Projects may identify a variety of problem areas such as confidentiality in child sexual abuse cases, legal issues related to Pub. L. 96–272, problems of youthful offenders and other relevant legal issues.

The Center will disseminate relevant information and materials to appropriate State and local agencies including resource materials developed by other OHDS grantees. Materials developed by the National Council of Juvenile and Family Court judges project, adoption and other legal codes developed by the American Indian Law Center, and information on the American Bar Association's Court Appointed Special Advocates (CASA) project will be broadly disseminated.

8. Resource Center on Child Abuse and Neglect

The 1,008,134 cases of child maltreatment reported in 1983 represent a 142 percent increase over the number of reports in 1976, the first year that national data were gathered. No single project or program model can be expected to address the full gamut of maltreatment related issues, or to meet the needs of all providers, professional groups, legislators, policy makers, volunteers or community support groups. The increasing pressures on service providers and continued increases in the reports of child abuse and neglect testify to the pervasiveness of the problem. The complexity of the problem and the multiplicity of service systems involved require that multidisciplinary and coordination approaches be strengthened, developed and expanded.

A Resource Center on child abuse and neglect is needed:

(a) To facilitate coordination and exhange of information for State and

local public and private agencies and providers of child protective services, such as health, law enforcement, judicial, educational, professional, volunteers, and other community agencies and organizations involved in the identification, prevention and treatment of child abuse and neglect.

(b) To disseminate information on effective treatment techniques, methods and skills, as well as prevention models for working with families.

(c) To develop innovative approaches to managing services to abused and neglected children and their families by the systems and providers that serve them, including ways to reduce out of home placement of neglected children.

(d) To enhance statewide and local systems to improve child protective service case management and to increase providers' knowledge and skills in case management.

(e) To assist State child protective service agencies to respond to and manage the increased volume of reported child abuse and neglect cases.

B. Resource Center for Prevention and Treatment of Child Sexual Abuse

Child sexual abuse has been defined in a variety of ways and encompasses a wide range of behavior, from fondling and exhibitionism, forcible rape and incest, to commercial exploitation in prostitution or the production of pornographic materials. The Child Abuse Prevention and Treatment Act, as amended, by Pub. L. 98–457, the Child Abuse Amendments of 1984, defines the term sexual abuse as:

". . . (i) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct, or;

. . . (ii) the rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby . . ."

The Child Abuse Amendments of 1984 also expressly broadened the definition of persons responsible for the child's welfare to include an employee of a residential facility or any staff person providing out of home care. This change broadens the scope of preventive efforts and extends protective services to children abused in out of home situations, such as day care centers.

The scope of this Resource Center shall include attention to both intrafamilial and extrafamilial sexual abuses of children as well as sexual exploitation of children as defined in the legislation. The Center shall be comprehensive in addressing issues of prevention, identification, diagnosis and treatment of child sexual abuse. Emphasis shall also be placed on serving as a resource to public, private, and voluntary agencies as well as multidisciplinary professionals (child protective services workers, health providers, law enforcement, court personnel, counselors, therapists, school personnel, and others) and the general public concerned with the care and treatment of child victims and their families.

Marketable resource services shall be developed to enhance the exchange of new knowledge, best case management practices, effective treatment approaches and modalities, sensitive and coordinated investigatory and judicial procedures, and other methods in the investigation and management of child sexual abuse cases from the initial report through disposition. Resource Center services shall be available to State and local child protective service agencies, law enforcement agencies, the courts, schools, day care providers, mental health and other health care providers, and others who respond to the children and their families.

Eligible Applicants

Any State, local, public or non-profit organization or agency including accredited colleges and universities may submit an application under this announcement. Applications developed jointly by State, local, and community based social services agencies, foundations, colleges or universities are encouraged.

Availability of Funds

Of funds expected to be available for fiscal year 1985, approximately $2,000,000 will be awarded for new Resource Center grants. Funding levels for each Center will vary based upon the scope of work projected in the grant application.

Grants will be made for a three year project period, subject to availability of funds and specified performance criteria. One of the criteria for continuation funding will be the extent to which projects have succeeded in marketing their skills and services, and obtained commitments for purchase of services for the second and third year of the grant period.

Grantee Share of the Project

At least 25 percent of the total cost of proposed projects must come from a source other than the Federal government except in the case of research grants with universities which already have an institutional cost sharing agreement with the Department of Health and Human Services. The non-Federal share of project costs may be in the form of grantee incurred costs or third party in-kind contributions. For every three dollars of Federal support requested, a minimum of one dollar must come from a non-Federal source, except in those cases identified as item (1) or (2) above. This represents a minimum 25 percent grantee non-Federal share contribution. The simplest way to arrive at the correct non-Federal share is to divide the Federal share requested by three (3). The following example illustrates this requirement:

Federal share	$75,000
Non-Federal share = $75,000 ÷ 3	25,000
Total project cost	100,00

The Application Process

Availability of Forms

Full applications for grants for the Resource Centers for Child Welfare Services must be submitted on standard forms provided for this purpose. The standard form 424 and application instructions have been reprinted for your convenience as Appendices A and B of this program announcement. Additional copies of application forms and instructions may be obtained from the Regional Office listed at the end of this announcement, or by writing or telephoning:

Program Support Division, Children's Bureau; ACYF, P.O. Box 1182, Washington, D.C. 20013, (202) 755–7730.

Application Submission

At a minimum, one signed original and two copies of the application are required. However, an additional five copies would be helpful in expediting the review process. Applications, including all attachments, must be submitted to:

Grants Management Office, OHDS, Grants and Contracts Management, Division, Humphrey Building, Room 345–F–1, 200 Independence Avenue, SW., Washington, D.C. 20201, Attention: Mary White CWS–RC–85–1

In order to be considered for a grant under this program announcement, an application must be submitted on the forms and in the manner required by the Administration for Children, Youth and Families. The application must be executed by an individual authorized to act for the applicant agency and to

assume responsibility for the obligations imposed by the terms and conditions of the grant award.

Application Consideration

Applications which are complete and conform to the requirements of this program announcement are subject to a competitive review and evaluation by qualified individuals. The Commissioner, Administration for Children, Youth and Families determines the final action to be taken with respect to each grant application for this program. In addition to the results of the review, in making final decisions the Commissioner will also take into consideration comments from Central and Regional Office staff.

After the Commissioner has approved the final selection, unsuccessful applicants will be notified in writing of this final decision. The successful applicant will be notified through the issuance of a Notice of Financial Assistance Awarded which sets forth the amount of funds awarded, the budget period for which support is given, and the total period for which project support is contemplated.

Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs", and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities". State Processes or directly affected State, area-wide, regional, and local officials and entities have 60 days to comment on the application, starting from the deadline date for application submission to ACYF. A Single Point of Contact (SPOC) to fulfill the requirements of E.O. 12372 has been established in all States and territories except Alaska, Idaho, American Samoa and Guam (applicants from these four areas need take no action regarding E.O. 12372). Applicants must submit required material to their SPOCs so that ACYF can obtain comments from the SPOCs as part of the award process. (Applicants for programs to be administered directly by Federally recognized Indian tribes are exempt from the requirements of E.O. 12372). Applicants should contact their SPOC as soon as possible to alert them of the prospective application and receive specific instructions regarding the process (see Appendix A for addresses). Required material should be sent to the SPOC as early as possible. SPOCs will submit their comments directly to:

Beatrice D. Moore, Director, Program Support Division, Children's Bureau, ACYF, OHDS, P.O. Box 1182, Washington, D.C. 20013.

OHDS will notify the State of any application received which has no indication that the State Process has had an opportunity for review.

Additional Requirements for Applications

To insure that proposed projects are designed to achieve the purpose, goals, and objectives identified in this Program Announcement, the following requirements have been established. Applicants are advised that applications will be reviewed for conformance with these requirements, and that applications that are non-conforming will not be considered for funding:

(a) Applications must include letters of support from foundations, private sector organizations, and affiliated State and local agencies which document that they intend to participate in the planning and implementation of the proposed project and indicate the kinds of involvement these organizations will undertake to insure specific and substantive support of specified goals and objective.

(b) Applications must include a three year plan documenting the level of support to be derived from foundations, and other private sector organizations, and identifying the continued involvement of these and other affiliated State and local agencies in selected program activities. Applications must also indicate how the proposed project will secure additional non-Federal sources of funding to sustain the project when Federal funding terminates, and how the transition to self-sufficiency will be administered.

(c) Applications must identify and address a specific program priority and develop specific work plans to address all four functional activities outlined above under "Approach".

(d) Applications must indicate how the proposed project will address the specific needs of minority children and families in the child welfare system.

(e) The proposed budget must include funds for travel to two State or regional meetings on child welfare issues per project year, and to an annual national meeting of all Resource Centers in Washington, D.C.

Criteria for Review and Evaluation of Applications

Applications which are determined to be in conformance with this announcement will be reviewed by panels of experts in child welfare services and related disciplines. Panels may be composed of staff from Federal, State, or local agencies, colleges and universities, national organizations, and other non-government agencies. Applications will be reviewed and evaluated competitively against the following criteria:

(1) Project Design and Soundness of Work Plan (20 points)

The project design or methodology is clearly presented. Specific problems to be addressed are clearly stated. The application contains a concise statement of goals and objectives, and the project methodology and work plan are clearly related to the problems and issues the project intends to address.

Work plans describe how the proposed project will achieve specific program objectives including all four functional activities identified in the program announcement, as well as specific activities related to minority children and families, and private sector involvement. Target indicators for identifying and measuring program outcomes are proposed and timetables are included.

(2) Outcomes and Potential for Success (15 points)

The proposed project will result in identifiable, measurable outcomes including, for example, concrete reduction of a significant problem. The goals of the proposed project are realistic, and if well executed, are capable of achieving their intended results.

(3) Evidence of Non-Federal Support (15 points)

The application contains documentation identifying non-Federal sources of support and indicates the precise nature, level, and extent of assistance that is anticipated.

(4) Marketing Strategy and Evidence of User Interest (15 points)

The marketing strategy is workable, clearly presented, and if well executed will provide supplementary sources of program income. The application also includes documentation indicating the nature and extent of user interest in the services or products proposed.

(5) Experience and Capability of the Applicant (15 points)

The project personnel are well qualified to conduct the proposed project, and the application indicates that the applicant has adequate resources and the organizational, professional, and educational capacity to address the critical issues related to the project's goals and objectives.

(6) Innovativeness of Approach and Implementation (10 points)

The application clearly proposes a significant improvement upon or important departure from previous related work in the field of child welfare services, and identifies methods or techniques for implementing new approaches.

(7) Cost/Benefit (10 points)

The estimated costs to the government and to the proposed project are reasonable considering the anticipated results, and the applicant has included funds to send key staff to two state-wide or regional meetings related to child welfare issues and to one national meeting of all Resources Centers in Washington, D.C. for each project year.

Instructions for Completing the Application

1. *Application Requirements.* In order to be considered for a Resource Center grant, an applicant must submit one signed original and two copies of the grant application, including all attachments. ACYF encourages the submission of an additional five copies for a total of one original and seven copies in order to expedite the processing and to facilitate the panel review process. There is no penalty for not submitting these additional copies. The original copy of the application must have original signatures. Each copy should be stapled (back and front) in the upper left corner. One copy of the complete application should be sent to the appropriate Regional Office listed at the end of this announcement. The remaining complete applications, including the original and all other copies, must be sent to:

HDS/Division of Grants and Contracts Management, 200 Independence Avenue, SW., Room 345–F–1 Humphrey Building, Washington, DC. 20201

ATTENTION: Mary White, CWS–RC–85–1

In order to facilitate handling, please do not use covers, binders or tabs. Three extra copies of the SF–424 and three copies of the cover sheet/abstract, stapled together apart from the copies of the application are requested.

2. *Content of Application.* Each copy of the application must contain the following items in the order listed:

(a) A Standard Form 424, page 1

(b) A Project Abstract Form

(c) Part II—Project Approval Information

(d) Part III—Budget Information

(e) Part IV Project Narrative

(f) HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964

(g) HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, As Amended.

3. *Instructions for Preparing the Application.* For your convenience, we have reprinted the forms and instructions for applying for Federal Assistance from HDS programs as Appendices A and B of this announcement. We suggest that you reproduce the forms and use them to prepare your application. Additional copies of the application forms and instructions may be obtained from the Regional offices listed at the end of this announcement. Prepare your application in accordance with the following instructions:

(a) Standard Form 424, Page 1:

Follow instructions contained in Appendix B except for the following specific instructions:

Item 6.a. Omit program number. Check multiple box.

Item 6.b. Enter CWS—Resource Center, *and* the number and title of the Resource Center which the application addresses, as follows:

1. Foster Care
2. Adoption
3. Family Based Preventive Services
4. Developmentally Disabled Children
5. Youth Services
6. Program Management and Administration
7. Legal Resources
8. Child Abuse and Neglect
9. Child Sexual Abuse

Item 7. The title should describe the focus of the proposed project briefly and clearly. Do not use acronyms, abbreviations or jargon. Avoid unnecessary phrases. Do not use more than 100 characters, including punctuation and spaces between words. Characters in excess of 100 will be lost during electronic data entry.

(b) Project Abstract Form: Use a single sheet of plain white bond, and type single-spaced:

- Title of application (exactly as entered in item 7 on Form 424).
- Name and address of applicant organization (exactly as in item 4).
- Priority area under which the application is submitted, as indicated in item 6b.
- Target population(s).
- Total project period and total amount requested.
- Proposed match which should be at least one dollar for every three requested from HDS except in the case of research grants with universities which already have an existing cost sharing agreement with DHHS. If this exception applies, state so clearly here.
- Project abstract: In 200 non-technical words or less, summarize the proposed project. The abstract should be so clearly written that the following questions could be answered by a member of the general public who reads it:

What is the specific purpose of the project?

How is the project to be conducted?

What concrete outcomes will result from the project?

What difference might the results make?

It is important that the abstract be an accurate reflection of the activities proposed in the application.

- Indicate the name of the author(s), their current relationship to the applicant and their proposed role in the conduct of the project.

c. Part II—Project Approval Information: Follow the instructions contained in Appendix B.

d. Part III—Budget Information: Follow the instructions contained in Appendix B.

e. Part IV—Project Narrative: Describe the project you propose in response to this announcement. Your narrative (30 pages typed double-spaced, or 15 pages typed single-spaced maximum, on 8½" x 11" plain white bond with 1" margins on both sides) should provide information on how the application meets the review criteria and how the proposed project will achieve the purpose, goals, and objectives identified in this program announcement. We strongly suggest that you follow the format and page limitations outlined below:

(1) *Project Design* (12 pages typed double-spaced or 6 pages typed single-spaced maximum)

This portion of the application should describe a well-defined and carefully worked out technical approach for the proposed project. It should include a discussion of the problems and issues the project will address and a clear statement of the project's goals and objectives. The project design should include a discussion of the methodology to be used in the conduct of the project and the relationship between the methodology and the issues or problems the project is designed to address.

(2) *Project Implementation Plan* (6 pages typed double-spaced or 3 pages typed single-spaced maximum)

This portion of the application should present the specific work plans for the proposed project identifying all major tasks to be undertaken during the project period and the time frames

anticipated for accomplishing these tasks. In addition to providing information on the programmatic initiatives to be developed for the proposed project, this section of the application should include specific information on how the project will address the needs of minority children and families and how the project will acquire additional non-Federal and other private sector support, including specific activities to generate program income on a fee for services basis.

(3) *Beneficial Impact* (4 pages typed double-spaced or 2 pages typed single-spaced maximum)

This portion of the application should indicate how the information, methods or technology to be developed or disseminated by the project can be expected to impact benefically on human service programs or the specific target populations identified to be affected by the project. Target indicators should be clearly identified, and emphasis should be placed on specific outcomes that can be identified and measured.

(4) *Staffing and Management* (4 pages typed double-spaced maximum or 2 pages typed single-spaced)

This portion of the application should list the proposed staff and briefly describe their qualifications to conduct the proposed project. The division of responsibility for specific project tasks and the proportion of staff time to be allocated per project task should be included. This portion of the application should also describe the capacity of the applicant organization to conduct the proposed project including relevant resources and facilities that will be utilized.

(5) *Budget* (4 pages typed double-spaced maximum or 2 pages typed single-spaced)

This portion of the application should indicate that the proposed budget is commensurate with the level of effort needed to accomplish the project goals and objectives and that the cost of the project is reasonable in relationship to the results anticipated.The application should also clearly identify all non-Federal services of support and the precise nature and extent of assistance that is anticipated. The contributions of all collaborative agencies and organizations including foundations and other private sector organizations must be assured in writing and included with the application when it is submitted.

f. HHS–SF 441, Assurance of Compliance, Title VI, Civil Rights Act of 1964: self explanatory

g. HHS–SF 641, Assurance of Compliance, Sec. 504, Rehabilitation Act of 1973, as amended: self explanatory

Closing Date for Receipt of Applications

The closing date for receipt of applications is (75 days after publication). Applications may be mailed or hand delivered to:

Grants Management Office, HDS Grants and Contracts, Management Division, 200 Independence Ave., SW., Room 345–F–1 Humphrey Building, Washington, D.C. 20201

Attention: Mary White, CWS–RC–85–1

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date at the HDS Grants and Contracts Management Office, or

(2) Sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late applications: Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

Hand-delivered applications: Hand-delivered applications are accepted at the HDS Grants and Contracts Management Office during the normal working hours of 8:30 A.M. to 5:00 P.M. Monday through Friday.

Extention of deadlines: OHDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is widespread disruption of the mails. However, if OHDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Regional Program Directors Administration for Children, Youth, and Families

Region I—(VT, CT, ME, NH, RI, MA)

Mr. Richard Stirling, Regional Program Director, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203,
Attention: Tina Burrell (617–223–6450)

Region II—(NY, NJ, PR, VI)

Mr. Dennis Coughlin, Acting Regional Program Director, Office of Human Development Services, 26 Federal Plaza, Room 4149, New York, New York 10278
Attention: Ward Sinclair (212–264–2974)

Region III—(DE, DC, MD, VA, WV, PA)

Mr. Alvin Pearis, Regional Program Director, Office of Human Development Services, 3535 Market Street, P.O. Box 13714, Philadelphia, Pennsylvania 19101,
Attention: Donald Barrow (215–596–6763)

Region IV—(AL, FL, GA, KY, MS, NC, SC, TN)

Mr. John Jordan, Regional Program Director, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323,
Attention: Thad Godwin/Jim Shelton (404–242–2128)

Region V—(IL, IN, MN, OH, WI, MI)

Mr. German White, Regional Program Director, Office of Human Development Services, 300 South Wacker Drive, Chicago, Illinois 60606,
Attention: Thelma Thompson (312–353–8085)

Region VI—(LA, NM, OK, TX, AR)

Mr. Tommy Sullivan, Regional Program Director, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, Texas 75202,
Attention: S. M. Pat Murphy (214–729–6596)

Region VII—(IA, KS, MO, NE)

Mr. Hilton Baines, Regional Program Director, Office of Human Development Services, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, Missouri 64106,
Attention: Robert Fain (816–374–5401)

Region VIII—(CO, MT, ND, SD, UT, WY)

Mr. David Chapa, Regional Program Director, Office of Human Development Services, 1961 Stout Street, Federal Office Building, 9th Floor, Denver, Colorado 80294,
Attention: Jane Mathieu (303–844–3106)

Region IX—(AZ, CA, HI, NV, GU, AS, TT, CN, MI)

Mr. Roy Fleischer, Regional Program Director, Office of Human Development Services, 50 United Nations Plaza, San Francisco, California 94102,
Attention: Ray Myrick (415–556–6178)

Region X—(AK, ID, OR, WA)

Mr. William Hayden, Regional Program Director, Office of Human Development Services, 2901 Third Avenue, Mail Stop 503, Seattle, Washington 98121,

Attention: Richard McConnell (206–442–0650)

Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939

Alaska

None

Arizona

Office of Economic Planning and Development, State of Arizona

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Jo Stephens, Director, Local Government Assistance, ATTN: Arizona State Clearinghouse, 1700 West Washington, Rm. 205, Phoenix, Arizona 85007, Tel. (602) 255–5004

Arkansas

State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, tel. (501) 371–2311

California

Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 445–0282

Colorado

State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156

Connecticut

Gary E. King, Under Secretary, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Tel. (203) 566–4298

Delaware

Executive Department, Thomas Collins Building, Dover, Delaware 19903, Attn: Franchine Booth, Tel. (302) 736–4204

Flordia

Ron Fahs, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Tel. (404) 656–3855

Hawaii

Kent M. Keth, Director, Department of Planning and Economic Development, P.O. Box 2359, Honolulu, Hawaii 96804,

For Information Contact: Hawaii State Clearinghouse, Tel. (808) 548–3085

Idaho

None

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639

Indiana

Ms. Susan J. Kennell, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604

Iowa

Office for Planning and Programming, Capital Annex, 523 East 12th Street, Des Moines, Iowa 50319, Tel. (515) 281–6483

Kansas

Kansas Department of Human Resources, Office of the Secretary, Attention: Judy Krueger, 401 Topeka Avenue, Topeka, Kansas 66603, Tel. (913) 296–5075

Kentucky

Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Tel. (502) 564–2382

Louisiana

Michael J. Jefferson, Dept. of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 44455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 925–3722

Maine

State Planning Office, Attn: Intergovernmental Review Process, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3154

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse for Intergovernmental Assistance, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 383–7875

Massachusetts

Executive Office of Communities and Development, 100 Cambridge Street, Rm. 1401, Boston, Massachusetts 02202, Tel. (617) 727–7078

Michigan

Carol Hoffman, Director, Office of Business and Community Development, Michigan Department of Commerce, P.O. Box 30004, Lansing, Michigan 48909, Tel. (517) 373–0933

Mississippi

Office of Federal State Programs, Department of Planning and Policy, 1504 Walter Silers Bldg., 500 High Street, Jackson, Mississippi 39202

For Information Contact: Mr. Marlan Baucum, Department of Planning and Policy, Tel. (601) 359–3069

Minnesota

Thomas N. Harren, Minnesota State Planning Agency, Capitol Square Bldg., Rm. 101, St. Paul, Minnesota 55101, Tel. (612) 296–3698

Missouri

Missouri Federal Assistance Clearinghouse, Office of Administration, Division of Budget and Planning, Capitol Bldg., Rm. 129, Jefferson City, Missouri 65102, Tel. (314) 751–4834 or 751–2345

Montana

Anges Fipperian, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Helena, Montana 59620, Tel. (406) 444–5522

Nebraska

Policy Research Office, P.O. Box 94601, State Capitol, Rm. 1321, Lincoln, Nebraska 68509, Tel. (402) 471–2414

Nevada

Ms. Linda A. Ryan, Director, Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel (702) 885–4420

Note.—Correspondence & questions concerning this State's E.O. 12372 process should be directed to:

John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420

New Hampshire

David G. Scott, Acting Director, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services,

Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625, Tel. (609) 292–6613

Note.—Correspondence & questions concerning this State's E.O. process should be directed to:

Nelson S. Silver, State Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025

New Mexico

Peter C. Pence, Director, Dept. of Finance and Administration, State of New Mexico, 515 Don Gaspar, Santa Fe, New Mexico 87503, Tel. (505) 827–3885

New York

Director of the Budget, New York State

Note.—Correspondence & questions concerning the State's E.O. 12372 process should be directed to:

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Tel. (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, State Clearinghouse, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–4131

North Dakota

Office of Intergovernmental Assistance, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094

Ohio

State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, Ohio 43215

For Information Contact: Mr. Leonard E. Roberts, Deputy Director, Tel. (614) 466–0699

Oklahoma

Office of Federal Assistance Management, 4545 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, Tel. (405) 528–8200

Oregon

Intergovernmental Relations Division, State Clearinghouse, Executive Building, 155 Cottage Street, N.E., Salem, Oregon 97310, Tel. (503) 373–1998

Pennsylvania

Pennsylvania Intergovernmental Council, P.O. Box 1288, Harrisburg, Pennsylvania 17108

ATTN: Charles Griffiths, Executive Director, Tel (717) 783–3700

Rhode Island

Daniel W. Varin, Chief, Rhode Island Statewide Planning Program, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656

South Carolina

Danny L. Cromer, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 758–2417

South Dakota

Jeff Stroup, Commissioner of the Bureau of Intergovernmental Relations, Second Floor, Capitol Building, Pierre, South Dakota 57501, Tel. (605) 773–3661

Tennessee

Tennessee State Planning Office, 1800 James K. Polk Building, 505 Deaderick Street, Nashville, Tennessee 37219, Tel. (615) 741–1676

Texas

Bob McPherson, State Planning Director, Office of the Governor, Austin, Texas 78711, Tel. (512) 475–6156

Utah

Michael B. Zuhl, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245

Vermont

State Planning Office, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828–3326

Virginia

Robert H. Kirby, Intergovernmental Review Officer, Dept. of Planning and Budget, P.O. Box 1422, Richmond, Virginia 23211, Tel. (804) 786–1921

Washington

Ken Black, Washington Department of Community Development, Ninth and Columbia Building, Olympia, Washington 09504, Tel. (206) 753–2200

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Economic and Community Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348–4010

Wisconsin

Secretary Doris J. Hanson, Wisconsin Department of Administration, 101 South Webster—GEF 2, Madison, Wisconsin 53702, Tel. (608) 266–1212

Wyoming

Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777–7574

Virgin Islands

Toya Andrew, Federal Program Coordinator, Federal Programs Office, Office of the Governor, The Virgin Islands of the United States, P.O. Box 580, Charlotte, Amalie, St. Thomas 00801, Tel. (809) 774–6511, Staff contact: Phyra Budson

District of Columbia

Pauline Schneider, Director, Office of Intergovernmental Relations, Rm. 416, District Building, Washington, D.C. 20004, Tel. (202) 727–6265

Puerto Rico

Nelson Soto, President, Puerto Rico Planning Board, P.O. Box 4119, Minilla Station, San Juan, Puerto Rico 00940, Tel. (809) 724–7900

North Mariana Islands

Planning and Budget Office, Office of the Governor, Saipan, CM 96950

American Samoa

None

Guam

None

(Catalog of Federal Domestic Assistance Program Numbers: 13.606 ACYF Child Welfare Research and Development, 13.628 Child Abuse and Neglect Prevention and Treatment.)

Dated: March 25, 1985.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: March 25, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

APPENDIX A

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

SECTION I—APPLICANT/RECIPIENT DATA

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☐ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER NOTE: TO BE ASSIGNED BY STATE
- a. NUMBER
- b. DATE ASSIGNED Year month day 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER
- MULTIPLE ☐
- b. TITLE

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

14. TYPE OF APPLICATION
A—New; B—Revised; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

18. DATE DUE TO FEDERAL AGENCY ▶ Year month day 19

19. FEDERAL AGENCY TO RECEIVE REQUEST
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT▶ To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE▶ Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

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OMB NO. 0348-0006

PART II
PROJECT APPROVAL INFORMATION

Item 1.
Does this assistance request require State, local regional, or other priority rating?
_____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances?
_____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require State, local, regional or other planning approval?
_____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 4.
Is the proposed project covered by an approved comprehensive plan?
_____ Yes _____ No
Check one: State ☐ Local ☐ Regional ☐
Location of Plan _____

Item 5.
Will the assistance requested serve a Federal installation?
_____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 6.
Will the assistance requested be on Federal land or installation?
_____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 7.
Will the assistance requested have an impact or effect on the environment
_____ Yes _____ No
See instructions for additional information to be provided.

Item 8.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?
_____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 9.
Is there other related assistance on this project previous, pending, or anticipated
_____ Yes _____ No
See instructions for additional information to be provided.

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OMB NO. 1510-0006

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	$	$	$	$	$
7. Program Income	$	$	$	$	$

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OMB NO. 0348-0038

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach Additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

PART IV PROGRAM NARRATIVE (Attach per instruction)

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PART V

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including 45 CFR Part 74, and OMB Circulars No. A-102 and A-110, as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

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The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

13. Applicants for the Administration for Native Americans Programs, hereby certify in accordance with 45 CFR 1336.53, that the financial assistance provided by the Office of Human Development Services for the specified activities to be performed under this program, will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

14. It will comply with the Age Discrimination Act of 1975 which provides that: No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity for which the applicant receives Federal financial assistance.

15. It will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

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ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")

(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated_____ _____

(Applicant)

By _____

(President, Chairman of Board, or comparable authorized official)

_____

_____

(Applicant's mailing address)

HDS GRANTS MANAGEMENT

HHS-441 Return Original To: Office of Civil Rights, Room 5627/B North Building
330 Independence Ave. S.W.
Washington, D.C. 20201

Send Copy to Grants Management

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) A73 employs fewer than fifteen persons;

b. ( ) A74 employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

Name of Designee(s) – Type or Print
C12 C42

Name of Recipient – Type or Print
A12 A41

Street Address or P.O. Box
A42 A71

(IRS) Employer Identification Number
A1 A11
B1 B11
C1 C11

City
B12 B41

State B42 Zip B71

I certify that the above information is complete and correct to the best of my knowledge.

Date
B72 B77

Signature and Title of Authorized Official
B78

If there has been a change in name or ownership within the last year, please PRINT the former name below:

NOTE: The 'A', 'B', and 'C' followed by numbers are for computer use. Please disregard.

PLEASE RETURN ORIGINAL TO: Office for Civil Rights, Room 5627/B North Building
330 Independence Ave. S.W.
Washington, D.C. 20201

Send Copy to Grants Management

HDS GRANTS MANAGEMENT

HHS-641 (10/80)

BILLING CODE 4130-01-C

Appendix B

OMB 0960-0016
EXPIRES: 2/85
CLEARANCE
PENDING: 2/88

Instructions for Applying for Federal Assistance from HDS Programs

Introduction

Use of Forms

The forms included in this "kit" shall be used to apply for all new discretionary grants and cooperative agreements awarded by the Office of Human Development Services. They shall also be used to request supplemental assistance, proposed changes or amendments, and request continuation or refunding for previously approved grants or cooperative agreements from the Office of Human Development Services. An original and two copies of the forms should be submitted to the responsible grants management office. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Applications

Applicants for new awards and competing continuations are required to submit a complete application which consists of Parts I (SF–424) through Part V. Applicants for new projects must include completed Standard Forms 441, Civil Rights Assurance and HHS—641, Rehabilitation Act Assurance. Applicants for additional funding (such as a non-competing continuation or supplemental grant) or amendments to a previouy submitted application should include only affected pages. Previously submitted pages whose information is still current need not be resubmitted. Additionally, applicants for certain HDS programs may be subject to Executive Order 12372, Intergovernmental Review of Federal Programs (see Attachments 1 and 2). These applicants must follow the instructions provided relative to Executive Order 12372 coverage where appropriate, as listed on page 11.

Submission of Applicants

(1) Non-competing Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects and Competing Continuations—Applicants for Assistance to support new projects or for competing continuations should refer to program announcements for information regarding deadline dates for submission of forms.

Instructions for Completion of Part I (SF–424)

Section I

Applicants shall complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk(*) and use Section IV. An explanation follows for each item.

Item

1. Mark appropriate box. Preapplication and application are described in OMB Circular A–102 and HDS program instructions. Use of the SF–424 as a Notice of Intent is at State option. HDS does not require Notice of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared.

3a. For a program covered by Executive Order 12372, enter the number assigned, if any, by the State Point of Contact Office. Applications submitted to OHDS must contain this identifier, if provided by the State Point of Contact. Note: Item 22 of this form must be completed for programs covered by E.O. 12372.

3b. Date identifier is assigned by State.

4a.–4h. Enter legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request.

IF THE PAYEE WILL BE OTHER THAN THE APPLICANT, ENTER IN THE REMARKS SECTION "PAYEE". THE PAYEE'S NAME, DEPARTMENT OR DIVISION, COMPLETE ADDRESS AND EMPLOYER IDENTIFICATION NUMBER AND DHHS ENTITY NUMBER.

If an individual's name and/or title is desired on the payment instrument, the name/or title of the designated individual must be specified.

5. Enter Employer Identification Number of applicant as assigned by the Internal Revenue Service. If the applicant organization has been assigned a DHHS Entity Number consisting of the IRS employer identification number prefixed by "1" and suffixed by a two-digit number, enter the full Entity Number. If applicant has other grants with DHHS and has been assigned a Payee Identification Number, enter PIN in parenthesis () beside employer identification number.

6a. Enter the Catalog of Federal Domestic Assistance number assigned to progam under which assistance is requested. If more than one program (e.g., joint funding) enter "multiple" and explain in Section IV remarks. If unknown, cite Public Law or U.S. Code.

6b. Enter the program title from Catalog of Federal Domestic Assistance. Abbreviate if necessary.

7. Enter title and appropriate description of project. For Notification of Intent, continue in Section IV if necessary to convey proper description. If project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. Enter appropriate letter to designate grantee type—"City" includes town, township or other municipality. If the grantee is other than that listed, specify type on "Other" line e.g., Council of Government. Note: Non-profit organizations which have not previously received HDS program support must submit proof of nonprofit status.

9. Enter Governmental unit where significant and meaningful impact could be observed. List only largest unit or units is affected, such as State, county, or city. If entire unit as affected, list it rather than subunits.

10. Identify estimated number of persons directly benefiting from project, as described in the program narrative.

11. All applicants for new, competing continuation and non-competing continuation grants should enter the letter "A". And applicants for supplemental grant funding should enter the letter "B".

12. Enter amount requested or to be contributed during the initial funding/budget period by each contributor. Where allowable the value of in-kind contributions should be included. If the action is a change in dollar amount of existing grant (a revision or augmentation), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding use totals and show program breakdowns in remarks. Item definitions: 12a, amount requested from Federal Government; 12b, amount applicant will contribute; 12c, amount from State, if applicant is not a State; 12d, amount from local government, if applicant is not a local government; 12e, amount from any other sources, explain in Section IV. Note: Applicants for research grants should complete 12a and 12f only.

13a. Self explanatory.

13b. Enter the district(s) where most of actual work will be accomplished. If city-wide or State-wide covering several

districts, write "city-wide" or "State-wide".

14. Enter appropriate letter.

Definitions are:

A. *New.* A submittal for the first time for a new project or project period (includes competing continuations).

B. *Renewal.* Not applicable to HDS grant programs.

C. *Revision.* A modification to project after the initial funding/budget period and within the approved project period.

D. *Continuation.* Support for a non-competing continuation project after the initial funding/budget period and within the approved project period.

E. *Augmentation.* (Referred to elsewhere in these instructions and in other HDS publications as a "supplemental"). An application for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Enter approximate date project is expected to begin. If initial budget period is other than 12 months, check item 21 and explain in Part IV.

16. Enter estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (Supplements) (Item 14e).

18. Date application/preapplication must be submitted to HDS in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Enter existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA".

21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

Section II

Applicants will always complete either item 22a or 22b and items 23a and 23b. An explanation follows for each item.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

Note.—All written comments submitted by or through the State Contact must be attached, if available. Applicants are advised of the delay of funding near the end of the fiscal year, if a timely notification to the State Contact is not made.

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

23b. Self explanatory.

Note:—Authorized representative signature cannot be signed by designee.

Note:—Applicant completes only sections I and II. Section III is completed by Federal agencies.

Instructions for Completion of Part II

Negative answers will not require an explanation unless the responsible HDS program office requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with these instructions.

Item 1—Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2—Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the approximate date that it will be obtained.

Item 3—Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 4—Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 5—Show the population residing or working on the Federal installation who will benefit from this project. (Federally recognized Indian reservations are not "Federal Installations")

Item 6—Show the percentage of the project work that will be conducted on Federally-owned land or leased land. Give the name of the Federal installation and its location.

Item 7—Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it.

Item 8—State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions, if additional data is needed.

Item 9—Show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending or anticipated assistance from another funding source.

Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, HHS funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed. However, Head Start, funded by the Administration for Children, Youth and Families requires that activities commonly identified by program accounts be displayed separately on individual lines (Lines 1–4 under Section A and Columns 1–4 under Section B).

Since HDS programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should reflect the need for Federal assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A—Budget Summary

Lines 1–4

Col. (a): For applications pertaining to a single grant program and *not* requiring a functional, activity or program account breakout enter on Line 1 under Column (a) the Federal Domestic assistance Catalog program title (See attached listing). For "Head Start", enter the activities (program accounts) name and number for which funds are being requested on separate lines.

Col. (b): Enter appropriate Catalog of Federal Domestic Assistance number. For "Head Start", enter the activities (program accounts) name and number for which funds are being requested on separate lines.

Col. (c)-(g): For *New applications*, leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period. Applicants for research grant should make no entries in Column (f).

For *non-competing*, or *competing continuation applications*, enter in Columns (c) and (d) the estimated amounts for funds which will remain unobligated at the end of the current budget period. Enter in columns (e), (f), and (g) the appropriate amounts needed

to support the project for the new budget period. (Applicants for research grants should make no entries in Columns (d) or (f). Column (g) should equal the total of Column (e) and Column (f).

For *augumentation* (supplements) *and changes to existing grants*, leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column (g) the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Columns (g) should not equal the sum of the amounts in Columns (e) and (f). Applicants for research grants should make no entries in columns (d) or (f).

Line 5

Enter the totals for all columns completed.

Section B—Budget Categories

Column 1–5

In the Column heading (1) through (4), enter the same titles of the grant programs and/or program accounts shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity (program account) entered in Columns (1) through (4) enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 45 CFR Part 74 and the HDS Grants Administration Manual.

Personnel—Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants or personnel costs of delegate agencies. (See Section F, Line 21, for additional requirements).

Fringe Benefits—Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate. Provide break-down of amounts and percentages that comprise fringe benefit costs.

Travel—Line 6c: Enter the total costs of out-of-town travel for employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See Line 6h and Section F, Line 21, for additional instructions).

Equipment—Line 6d: Enter the total costs of all equipment to be acquired by the project. "Equipment" means an article of tangible personal property having a useful life of more than two years and an acquisition cost of $500 or more per unit. An applicant may use its own definition of equipment, provided that such a definition would at least include all tangible personal property as defined in the preceeding sentence. (See Section F. Line 21 for additional requirements).

Supplies—Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on line 6d.

Contractual—Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.), and, (2) contracts agreements with secondary recipient organizations including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. Attach a list of contractors indicating the name of the organization; the purpose of the contract; statement (scope) of work; period of performance; and the estimated dollar amount of the award. If the Name of Contractor, Scope of Work and estimated total is not available or has not been negotiated, include in Line h, "Other". (Note: Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must submit sections A and B of Part III, Budget Section, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total cost of all such agencies will be part of the amount shown on Line 6(f). Provide back-up documentation identifying Name of contractor, purpose of contract and major cost elements.

Construction—Line 6g: Enter the costs of alterations or renovation. Provide narrative justification and break-down or costs. New construction is unallowable.

Other—Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs, (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Total Direct Charges—Line 6i: Show the total of Lines 6(a) through 6(h).

Indirect Charges—Line 6j: Enter the total amount of indirect costs. If no indirect costs are requested enter "none". This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Health and Human Services. If rate has recently been approved, please enclose a copy of current rate. Local governments shall enter the amount of indirect costs determined in accordance with HHS requirements. In the case of training grants to other than State or local governments, the reimbursement of indirect costs will be limited to the lesser of actual indirect costs or 8 percent of the amount allowed for direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alteration and renovations. It should be noted that when an indirect cost rate is requested, these costs included in the indirect cost pool should not be also charged as direct costs to the grant.

Total—Line 6k: Enter the total amounts of Lines 6(i) and 6(j). For all new competing and non-competing continuation applications, the total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all supplements or changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Program Income—Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or substract this amount from the total project amount. Show, in the program narrative statement, the nature and source of income.

Section C—Non-Federal Resources

Line 8–11: Enter amounts of non-Federal resources that will be used to support the project. (Applicants for research grants should not complete this Section but will negotiate appropriate cost sharing arrangements with the funding office). Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in-kind. If in-kind, is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only) including number of square feet and value assigned per square foot; and

(3) Determination of depreciation and use allowance for grantee-owned space; [Include statement whether space was purchased or constructed, totally or in part with federal funds for items (2) and (3)].

(4) Type and value of other in-kind contributions expected.

Column (a): Enter the program title or activities (program accounts) as in Column (a) Section A.

Column (b): Enter the amount of cash and in-kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State agency.

Column (d): Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns (b), (c), and (d).

Line 12—Enter total of each of Columns (b) through (e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D—Forecasted Cash Needs

Line 13—Enter the amount of Federal cash needed for this grant, by quarter, during the budget period.

Line 14—Enter the amount of cash from all other sources needed by quarter during the budget period. (Applicants for research grants should not complete this line).

Line 15—Enter totals of amounts on Line 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of Projects

Line 16–19—Enter in Column (a) the same program title or activities (program accounts) as in Column (a) Section A. For new or competing continuation or non-competing continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). Do not enter current year budget amount; enter second, third, fourth, and fifth year budget estimate needs. This Section need not be completed for Headstart applicants with indefinite project periods or for revisions or supplements for the current budget period which do not increase the general level of support.

Line 20—Enter the totals of each of the Columns (b) through (e).

Section F—Other Budget Information

Line 21—Use this space to fully explain and justify the major items included in the budget categories shown in Section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the HDS program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative.

2. Any foreign travel;

3. A list of all equipment (See Part III, Section B, Line 6d) and estimated cost of each item to be purchased. Need for equipment must be supported in program narrative.

4. Contractual: Major items or groups of smaller items; and

5. Other: group and major categories, e.g., consultants, local transportation, space rental, training allowances, staff training, computer equipment, etc. Provide a complete break-down of all costs that make up this category.

Line 22—Enter the type of indirect rate (provisional, final fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date HDS approved the rate, where applicable. Attach a copy of rate agreement if recently approved.

Line 23—Provide any other explanations required or deemed necessary.

Attachment 1

EXECUTIVE ORDER 12372 COVERAGE

1. General

Executive Order 12372, "Intergovernmental Review of Federal Programs," provides for the State and local government coordination and review of proposed Federal financial assistance. Certain applicants for HDS grants must comply with the provisions of E.O. 12372 and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and activities." The following table provides a listing of all HDS assistance programs identified by Catalog of Federal Domestic Assistance Number (CFDA), and shows those programs and activities which are covered by E.O. 12372 and those which are exempt from coverage.

Federally recognized Indian Tribes are exempt from the provisions and requirements of E.O. 12372 (see 48 FR 29196 dated June 24, 1983).

States may design their own processes for reviewing and commenting on proposed Federal assistance under certain Federal programs. States adopting a review process under the E.O. will have designated a State official or organization to act as the State's "Single Point of Contact" (SPOC) for sending official State recommendations to HDS. Applicants with projects subject to E.O 12372 review must adhere to the requirements of their State processes.

2. Procedures for New and Competing Continuation Applications

E.O. 12372 requires applicants for new and competing continuation grants and cooperative agreements to coordinate their plans at the State and local levels through the State SPOC. Names and addresses of the State SPOC are listed in the Federal Register announcement soliciting applications or in the application kit. A current listing can also be obtained from the regional or headquarters grants management office. Potential applicants should contact their State SPOC at the earliest feasible time and notify them of their intent to apply for Federal assistance. Many State offices have their own notification forms and instructions, and applicants should obtain this material directly from them.

Applications submitted to HDS must respond to the E.O. 12372 Certification, Item 22 on Standard Form 424. HDS will notify the State SPOC of any application covered by E.O. 12372 that does not indicate that the State contact has had an opportunity to review it. Therefore, failure to notify the State of the proposed application to HDS may result in a delay of funding as HDS will not make an award without assurance of compliance with this process.

State SPOC offices have sixty (60) days after the HDS deadline date for the receipt of applications in which to review and resolve problems with the applicant and submit comments to HDS.

3. Procedures for Non-Competing Continuation Applications

Applicants for non-competing continuations of awards covered by E.O. 12372 must contact the State SPOC regarding their application at the earliest possible time. Applications submitted to HDS must respond to the E.O. 12372 Certification, Item 22 on the Standard Form 424. HDS will notify the State SPOC of the receipt of any covered program application which has

no indication that the State process has had an opportunity for review.

The closing date for submission of State comments is thirty (30) days after the deadline date for receipt of applications. Applicants are advised to make clear to the SPOC that they are applying for a non-competing continuation award with a thirty day rather than a sixty (60) day review period.

Attachment 2

HDS PROGRAMS AND ACTIVITIES COVERED BY EXECUTIVE ORDER 12372

Catalog of Federal domestic assistance No.	Discretionary grants	Mandatory or formula grants
13.600	Head Start—Basic Head Start Program, Research, Training and Technical Assistance, Demonstration, and Pilot Projects.	
13.623	Runaway Youth—All projects.	
13.626	Child Abuse and Neglect Prevention and Treatment—All projects.	State Child Abuse and Neglect Prevention and Treatment.
13.630		Developmental Disabilities—Basic Support and Advocacy.
13.631	Developmental Disabilities Special Projects.	

HDS PROGRAMS AND ACTIVITIES COVERED BY EXECUTIVE ORDER 12372—Continued

Catalog of Federal domestic assistance No.	Discretionary grants	Mandatory or formula grants
13.633		Aging—Title III–A and III–B, Grants for Supportive Services and Senior Centers.
13.635		Aging—Title III–C, Nutrition Services.
13.645		Child Welfare Services—Title IV–B State Grants.
13.646		Work Incentive Program (WIN).

HDS PROGRAMS AND ACTIVITIES COVERED BY EXECUTIVE ORDER 12372

Catalog of Federal domestic assistance No.	Discretionary grants	Mandatory or formula grants
13.606	Child Welfare Research and Demonstration Section 426 of Social Security Act (SSA).	
13.612	Native American Program—Financial Assistance.	
13.632	Developmental Disabilities—University Affiliated Facilities and Satellite Centers.	

HDS PROGRAMS AND ACTIVITIES COVERED BY EXECUTIVE ORDER 12372—Continued

Catalog of Federal domestic assistance No.	Discretionary grants	Mandatory or formula grants
13.647	Social Services Research and Demonstration—Section 1110 of SSA.	
13.648	Child Welfare Services (426) Training.	
13.652	Adoption Opportunities—Research and Demonstration.	
13.655	Aging—Title VI Grants to Indian Tribes.	
13.658		Title IV–E—Foster Care.
13.659		Title IV–E—Adoption Assistance.
13.661	Native American Programs—Research, Demonstration, and Evaluation.	
13.662	Native American Programs—Training and Technical Assistance.	
13.667		Social Services Block Grant.
13.668	Aging—Title IV Research, Demonstration, and Training.	

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federal register

Monday
April 1, 1985

Part IV

Department of Health and Human Services

Office of Human Development Services

45 CFR Part 1321

Grants for State and Community Programs on Aging; Interim Rule

45 CFR Part 1328

Grants to Indian Tribes for Supportive and Nutrition Services; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1321 and 1328

Grants for State and Community Programs on Aging; and Grants to Indian Tribes for Supportive and Nutrition Services

AGENCY: Office of Human Development Services (HDS), HHS.

ACTION: Interim Final Rules With Comment Period.

SUMMARY: The Administration on Aging (AoA), in the Office of Human Development Services, is issuing interim final regulations for the Title III and Title VI programs under the Older Americans Act (OAA). These interim final regulations respond to the comments on the AoA Notice of Proposed Rulemaking (NPRM) published on March 2, 1983 (48 FR 8984). They recodify current regulations to delete statutory language, reduce reporting and paperwork requirements and provide options to grantees in the administration of these programs.

In addition, they incorporate conforming changes, as appropriate, pursuant to the 1984 Amendments to the OAA.

DATE: The interim final regulations are effective May 1, 1985, except the information collection requirements contained in sections 1321.7–1321.13 and 1328.19 will not go into effect until OMB approval has been obtained; comments on the interim final regulations must be received on or before May 31, 1985.

ADDRESSES: Address comments in writing to Commissioner on Aging, Administration on Aging, Room 4638, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201. Agencies and organizations are requested to submit comments in duplicate. Beginning two weeks from today, the public may review the comments submitted in response to this notice in Room 4639, HHS North Building, 330 Independence Avenue, S.W., Washington, D.C. 20201, between the hours of 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Smith or Frederick Luhmann, Office of Management and Policy Control, Administration on Aging, Room 4639, 330 Independence Ave., S. W., Washington, D.C. 20201 (202) 472–3057.

SUPPLEMENTARY INFORMATION:

1. Background

History of Program

The Older Americans Act was first enacted in 1965. The Act was amended 10 times between 1965 and 1984. On October 9, 1984 the President signed the Older Americans Act Amendments of 1984 (Pub. L. 98–459).

As first enacted, the Act authorized funding under Title III to support in each State a State Agency on Aging. Title III also provided funds for each State agency to initiate local community projects to provide social services to older persons. In fiscal year 1966, the total appropriation under the Act was $7.5 million.

In 1972, a new Title VII, which authorized funds for local community projects to provide nutrition services to the elderly, was enacted. The projects were designed to provide older persons aged 60 and older and their spouses with at least one hot nutritious meal five or more days a week. Emphasis was placed on services to older persons with greatest economic need and on reducing the isolation of old age.

A second major change occurred in 1973. The amendments revised the Title III State Grant Program by requiring the State agency to: (1) Divide the entire State into planning and services areas, (2) determine in which areas an area plan would be developed, and (3) designate an area agency on aging to develop and administer the plan in each area. The 1973 amendments also added a new Title V to the Act which authorized the Commissioner to make grants directly to local community agencies to pay part of the cost of the construction, acquisition, renovation, alternation, or initial staffing of facilities for use as multipurpose senior centers.

The 1975 amendments specified that three priority services be provided under State plans: Access, in-home services and legal services. These amendments added a new section 303(b)(3) to the Act. It authorized the Commissioner to withhold a portion of a State's allotment and to grant it directly to an Indian tribe if he or she determined that the State had failed to provide benefits to older Indians that were equivalent to those provided to non-Indian older persons and that the Indians would be better served by a direct grant. This provision was never used.

The 1978 amendments consolidated under Title III the social services, nutrition services, and multipurpose senior center programs formerly authorized under Titles III, V and VII. This consolidation was designed to eliminate duplicative and overlapping functions that had been conducted under each Title. It also reemphasized the concept of a single focal point for service delivery within each community. The 1978 amendments also required each area plan on aging to spend at least 50 percent of the area's Title III social services funds for the three priority services: access, in-home, and legal services. These amendments also enacted a new Title VI, a direct grant program to Indian tribal organizations for older Indians.

The 1981 amendments made several technical amendments to the Act and reinforced the basic direction established under the 1978 amendments. They also made several significant changes in both the Title III and Title VI programs. Most of the changes increased administrative flexibility. For example, one of the Title III changes provides discretion in how funds are spent by requiring only that "an adequate proportion" (instead of a minimum of 50 percent, as between 1978 and 1981) of such area's Title III supportive services funds be spent for priority services.

The 1984 amendments to the Act reemphasized the thrust of the 1981 amendments and further clarified the roles of the State and Area Agencies on Aging. The amendments incorporated into the Act several definitions which previously appeared only in regulations. The amendments also included a requirement to give particular attention to minority low income persons in the delivery of services. In the area of services, the amendments: Referenced services to prevent elder abuse; increased the authority of States to transfer funds between supportive and nutrition services; and required States, after September 30, 1986, to spend some service funds for effective demonstration projects in health and nutrition education. Additionally, the amendments eliminated the separate authorization of funds for State agency administration and, as an alternative, authorized States to use a portion of their services allotments for State agency administration. The Secretary especially invites public comments on the changes made to conform to the 1984 Amendments. A more detailed discussion of the amendments and of their regulatory implications is provided elsewhere in this preamble.

2. Approach to Writing the NPRM and the Interim Final Rules

On March 2, 1983, we published an NPRM for the Title III and Title VI programs. The NPRM was written based on the Department's effort to reduce regulatory burden; provide greater

flexibility to State and area agencies and tribal organizations in administering their program; and, by publishing an NPRM that did not repeat the statutory provisions, help grantees and the public distinguish between statutory and regulatory requirements.

The NPRM was based on six rulemaking principles the Department is applying in the development of all regulations. These principles are:

1. Insure that all regulations are clearly within the authority delegated by law and consistent with Congressional intent.

2. Emphasize private market forces whenever feasible, rather than government mandate, when developing policies to reach desired objectives.

3. Provide maximum flexibility to State and local governments.

4. Minimize Federal, State, local and private costs.

5. Prevent fraud, abuse, waste and inefficiency.

6. Eliminate regulations not serving a compelling Federal interest or reform those not implemented in the least intrusive means available.

In the NPRM we stated that the regulations would supplement, not repeat, the requirements of the Act and urged readers to read the regulations in conjunction with the Act. We anticipated that commenters would be better able to focus on the regulatory provisions we had proposed.

Despite this explanation many commenters were confused by the shortened version of the regulations and by the deletion of many sections of the regulations with which they had become familiar. They interpreted this to mean that if provisions were no longer in regulations they would not be in effect despite their presence in the Act. They believed that the Department had retreated from its commitment to Older Americans Act programs.

The Department remains firmly committed to the goals and requirements of the Older Americans Act. It is our view that regulations which reduce burdens and offer additional flexibility to grantees will be easier to administer and allow grantees to adapt the program to meet better the unique needs of older persons in the area they serve.

3. Written Comments

During the 60 day comment period following publication of the NPRM, we received approximately 375 letters; however, only three of those concerned the Title VI program. The letters came from a cross section of individuals and organizations: Members of Congress (27), national organizations (22), State units on aging (24), 25 of the 57 State human services agencies, 100 of the 662 area agencies on aging, other community agencies (130), and individuals (47). Many of the letters applauded the Administration's efforts to encourage greater State flexibility. However, a number of commenters indicated that there are provisions in current regulations they wish to see retained.

As a result of the comment review process, a number of regulatory sections were revised or added. Changes were made in areas where the majority of comments were concentrated and where we felt that such changes met a compelling Federal interest and/or were necessary to maintain the integrity of the Title III program.

Major changes include the addition of a new *Subpart D, Area Agency Organization, Functions, and Responsibilities*, several new regulatory sections in *Subpart C, State Agency Responsibility*. In addition, we have adapted the appropriate language from the Legal Services Corporation Act regulations.

The regulatory provision restricting expenditure of funds for program development and coordination (section 1321.25) has also been incorporated as a State plan assurance under § 1321.9(e)(5). These revisions and others which are described in this preamble have resulted in substantial numerical re-designation of Part 1321.

Discussion of Comments and Changes Made From the NPRM

A. Legal Services (Section 1321.73)

(1) The NPRM indicated that the Legal Services Corporation had published proposed rules containing revisions to 45 CFR Chapter XVI on November 8, 1982 and that AoA intended to adapt appropriate subparts of the final Legal Services Corporation regulations to the interim final Title III regulations. Although the Legal Services Corporation had not published final rules for all of Chapter XVI, § 1612.4 *Legislative and Administrative Representation* was amended pursuant to the lobbying provisions of Pub. L. 97–377 and was published in final, as § 1612.5, on May 21, 1984, (48 FR 11709), after the publication of the Title III NPRM.

Many commenters argued that we should not include in the final Title III regulations the broader restrictions under Pub. L. 97–377, in particular, the new provisions set forth in paragraph § 1612.5(f). Section 1612.5(f) precludes providers from using funds to directly or indirectly influence any decision by Federal, State of local agencies. Most commenters noted that the restrictions were pursuant to the continuing resolution which appropriated FY 1983 funds for the Legal Services Corporation (Pub. L. 97–377), and not pursuant to the Legal Services Corporation Act. Therefore, commenters submitted that, since the Older Americans Act refers only to regulations promulgated under the Legal Services Corporation Act, it is questionable whether or not the Department of Health and Human Services has the authority to adopt restrictions promulgated pursuant to other laws. Most commenters contended that § 1612.5(f) concerning restrictions on lobbying was intended to deal specifically with the Legal Services Corporation network and was to expire on September 30, 1983. For these reasons, they did not think that § 1612.5(f) should be made applicable to legal services programs funded under the Older Americans Act.

AoA response: The Older Americans Act makes providers of legal assistance funded under Title III of the Act subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act as determined appropriate by the Commissioner. Section 307(a) of the Act clearly allows the Commissioner to select any Legal Services Corporation Act regulation as an appropriate requirement for the provision of legal assistance under Title III. These interim final regulations contain the codified text of Parts 1604, 1608, 1609 and 1612 of the current Legal Services Corporation Act regulations as adapted for the Title III program. The Commissioner has concluded that the provisions of § 1612.5(f) are appropriate for Title III legal assistance providers because they clearly define those specific lobbying activities that are prohibited.

Part 1612 of the Legal Services Corporation regulations will apply to all assistance and providers under the Older Americans Act. These requirements as adapted under subsection 1321.73 of these regulations, will only apply to legal services providers, and only when they are using Older Americans Act funds.

(2) Many commenters opposed the inclusion of Part 1604 *Outside Practice of Law* from the Legal Services Corporation Act regulations into the Older Americans Act regulations. This Part, according to commenters, restricts outside practice by severely limiting the selection of legal services contractors to Legal Services Corporation grantees and prohibits legal services providers from employing part-time lawyers.

AoA response: The NPRM did not change the current Title III regulations, as published on March 31, 1980, which

require a legal services provider to ensure that no attorney of the provider engages in any outside practice of law if the director of the provider has determined that the practice is inconsistent with the attorney's full-time responsibilities. Adoption of Part 1604 of the Legal Services Corporation regulations retains the current restrictions on outside practice. The additional provisions adopted from Part 1604 will clarify those areas of compensated and uncompensated outside practice of law in which a provider may permit an attorney to engage.

Clearly, the provider determines what an attorney's full-time responsibilities will be. Therefore, nothing in § 1321.73(f) would preclude an area agency from contracting with a provider from the private sector or a provider from employing a part-time attorney.

3. Many commenters proposed that convenient sites, capacity to be cost effective, and ability to obtain other resources be retained as selection factors for legal services providers. Some commenters suggested that efforts to involve the private bar be retained as a contract condition.

AoA response: Section 307(a)(15)(A) of the Act requires the Commissioner to promulgate standards for the provision of legal assistance. We think that accessibility of offices, cost effectiveness, obtaining other resources, and involving the private bar as a contract condition are dependent on geography, available resources, and the manner in which services are coordinated in a given planning and service area. Therefore, the discretion to use these types of service standards will be given to the area agencies.

B. Planning and Service Area (Section 1321.7)

Some commenters, particularly State units on aging, suggested that there was no need to require State agencies to submit their intent to maintain or amend the designation of existing planning and service area boundaries prior to the submission of the State plan, as proposed in § 1321.7 of the NPRM. Most commenters contended that the geographical description of the planning and service areas in the State plan was sufficient. A few commenters suggested that the requirement is not in keeping with the Department's stated objective of more State flexibility.

AoA Response: Under section 305 of the Older Americans Act, a State is required to divide the State into distinct planning and service areas. This is one of the requirements for a State to be eligible to participate in programs of grants to States from allotments under Title III of the Act. The requirements in section 305 must be completed prior to the submission of a State plan under section 307. The assurances under section 307(a)(1) [*State plan will be based on area plans developed by area agencies on aging within the State designated under section 305(a)(2)(A)*] substantiate the statutory intent that requirements under section 305 be met prior to the submission of the State plan.

As the comments indicate, it has not been clear at the State and local levels that the requirements under section 305 and section 307 are different. Further, it has not been clear that the establishment of eligibility under section 305 is a periodic process that the Commissioner is required to monitor and review, although not required to approve. For these reasons we have added the requirements under § 1321.7 to ensure that the requirements and procedures of section 305(b) of the Act are periodically carried out by State agencies in a timely manner. We do not think that the requirements under § 1321.7 would be met through the submission of planning and service area information under the State plan because that approach would deny the Commissioner the opportunity to monitor and review the planning and service area designation process. We do not think that this procedure will abridge State flexibility in any manner. Accordingly, we have retained § 1321.7 as it appeared in the NPRM.

C. Prior Review of Grants and Contracts (Section 1321.55)

Some commenters, particularly State units on aging, recommended the removal of § 1321.35, which precludes a State agency from requiring an area agency to submit subgrants or contracts from public or private non-profit organizations for prior review or approval. Many of these commenters thought that prior review and approval is a good way to safeguard against fraud, abuse, and the prevention of future audit problems.

AoA Response: AoA's policy for some time has clearly supported the authority of the area agency to award grants or contracts to public or private non-profit agencies or organizations without prior State agency review or approval. In designating area agencies under section 305(a)(2)(A) of the Act, the State agency must provide assurance to the Commissioner as set forth in section 305(c)(5) that area agencies will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the area plan. Making grants or entering into contracts is a normal exercise of area agency responsibility. We have, therefore, concluded that the Federal interest in preserving the autonomy of area agencies is sufficient to require that area agency granting and contracting not be subject to prior review and approval by the State agency except as provided under section 212 of the Act. Accordingly, we have not changed this provision in § 1321.55.

D. State and Area Agency Administration (Sections 1321.5, 1328.5, 1321.21, and 1321.57)

A number of letters recommended retention of the current rules which require State and area agencies to have a single organizational unit. A significant number of letters were also received on the related issue of staffing. Most of the comments supported continuation of regulations which require the hiring of a qualified full-time director and adequate numbers of qualified staff, including a State ombudsman, to administer the Title III program. Most commenters expressed concern that elimination of these requirements would disperse the State and/or area agency functions among staff in various organizational structures who may not be qualified to administer the Title III program. Further, some commenters felt that this change in the regulations would diminish the role of State and area agencies as focal points for services to older persons. Finally, some commenters objected to the removal of affirmative action plans for State and area agencies, suggesting that the removal of this requirement is a retreat from the enforcement of affirmative action.

AoA Response: After careful consideration of these comments, we have decided to modify those provisions of current regulations pertaining to the organization and staffing of the State and area agencies. We are sensitive to the anxieties expressed by commenters. Nonetheless, State agencies have been in existence since the passage of the Older Americans Act in 1965, and, in some cases, prior to that time. Many area agencies date back to the 1973 amendments to the Act or shortly thereafter. For more than a decade, in the case of area agencies, and two decades, in the case of State agencies, we have witnessed a remarkable maturation of the network. Both State and area agencies have gained, through their own prodigious efforts, respected and secure status as advocates and focal points for the concerns of their

respective constituencies of older persons.

We believe, therefore, that through the exemplary nature of their performance State and area agencies have attained a high degree of credibility and that they have a broad base of support at the State and community levels. For these reasons, and because of our commitment to provide maximum flexibility to State and local communities, we are disinclined to be overly prescriptive in the matter of imposing organizational and staffing requirements for State and area agencies. We are convinced that the record and present performance of State and area agencies speak for themselves. It is our firm opinion that State and area agencies on their own strength and merit will continue as integral, visible and important focal points for the concerns of the increasing numbers of older persons in our nation. This will occur, we are convinced, regardless of any Federal regulatory prescriptions. Yet, we are not unmindful of the lingering concern expressed by commenters on the NPRM. In response to this concern, in §§ 1321.21 and 1321.57 we have retained modified regulatory provisions regarding the organization and staffing of State and area agencies.

Regarding affirmative action, the current regulations require State agencies and area agencies which are public organizations to have affirmative action programs which comply with the provisions of Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards of a Merit System of Personnel Administration. We deleted this requirement because State agencies, and public agencies which include area agencies, are required by the sole authority of Title 5 of the Code of Federal Regulations, Part 900, Subpart F, Standards of a Merit System of Personnel Administration, to have affirmative action programs. There is no reason to repeat the requirement in this rule. Although we have deleted affirmative action requirements for the above reasons, the Department remains committed to affirmative action requirements, and encourages State agencies to continue their efforts in this important area.

E. Advocacy Responsibilities (Sections 1321.33, 1321.65)

A number of commenters, including members of the Congress, objected to the deletion of sections on the advocacy responsibilities of State and area agencies. Most of these objections were based on the idea that advocacy activities are a major function of State and area agencies and that deletion of the advocacy concept from Title III regulations denotes decreased emphasis on advocacy by the Administration.

AoA Response: We concur with the views of commenters regarding the importance of advocacy in behalf of older persons. Section 305(a)(1)(D) and section 306(a)(6)(D) of the Act specify that State and area agencies, respectively, must engage in advocacy. Although this statutory mandate is clear, comments indicate that State and area agencies have found it helpful to have advocacy concepts defined in regulations. We also consider advocacy to be a major State and area agency function from a programmatic as well as a statutory perspective. During this time of diminishing resources, the importance of advocacy as a tool for tapping the services and benefits of volunteers and other public and private organizations should not be underestimated. Further, State and area agency advocacy in behalf of older persons has been and should continue to be a mechanism which highlights needs and destroys stereotypes that plague older persons. Therefore, the deletion of advocacy from the Title III regulations, does not signify a de-emphasis on advocacy. On the contrary, we consider it to be a major component of the Title III program framework underlying all State and area agency activities.

However, in retaining these sections, we have modified them to give States and area agencies more flexibility in carrying out their responsibilities. We have modified paragraph (a) in §§ 1321.33 and 1321.65 to delete the requirement for public hearings. This change allows States and area agencies to use whatever methods they determine appropriate (including public hearings) to obtain comments from the public on the needs of older persons.

In addition, we are concerned that those advocacy activities undertaken by State and area agencies, in compliance with the law, do not extend to prohibited lobbying and related activities. Accordingly, we have deleted the references to representing the interests of older persons before legislative, executive and regulatory bodies in the State, and we have added paragraphs that clearly prohibit lobbying.

F. Public Participation: (Sections 1321.27 and 1321.61)

A number of comments recommended retention of current regulations which address requirements for establishing State advisory councils on aging, fifty percent representation by older persons on area agency advisory councils, and the need to hold public hearings. Most commenters expressed the view that these are tools which enhance opportunities for participation by older persons and the public in decision-making about the Title III program.

AoA response: We concur with the views of commenters about the importance of participation in Title III program decision-making by older persons. As discussed in the NPRM, we feel that the Act adequately establishes in sections 305(a)(2)(B) and 306(a)(6)(C) the responsibility of States to obtain the views of recipients of supportive and nutrition services in connection with matters involving the developmental and administration of the State and area plans. However, many commenters, including members of Congress, felt that the current regulatory requirements for public participation should be retained in the regulations.

The Department, strongly supports obtaining the advice of the elderly and persons knowledgeable in the development and administration of older Americans Act programs. However, State advisory councils and public hearings are not the only, or necessarily the best, way to do so.

In response to these concerns, we have revised § 1321.27 based on current requirements for public participation in State plan development. Section 1321.27 incorporates this decision with the addition of the words "and administering" which were inadvertently omitted. These words are found in the statute. Section 1321.27 now reads: "The State must have a mechanism to obtain and must consider the views of older persons in developing and administering its State plan."

Our expectation is that the great majority of States will continue to use already established methods of obtaining citizen input, but, based on the experience under the block grants, other States will institute innovative, equally or more effective models. However, we will monitor the implementation of this provision and will consider regulatory changes if problems arise.

To parallel the change we have made above for State agencies, we have revised § 1321.61 to allow area agencies the same flexibility, except that area agency advisory councils are required by the statute at section 306(a)(6)(F). The current requirements for area agency advisory councils (Section 1321.97), including the requirement for a 50% representation of the elderly, are now found in § 1321.61.

In addition, we have retained in § 1321.37, *Intrastate funding formula,* the provision in section 305(a)(2)C) which requires a State agency to publish

its intrastate funding formula for review and comment.

G. State Agency Maintenance of Effort (Section 1321.53)

Most commenters opposed the removal of the current maintenance of effort provisions from the regulations. Under these provisions, each fiscal year, a State must spend at least the same amount of State funds it spent in the last fiscal year to meet the required non-Federal share. The commenters indicated that removal might result in a less flexible interpretation of the maintenance of effort requirements in section 309(c) of the Act. Many commenters felt that a more restrictive interpretation would jeopardize the appropriation of additional State funds for programs and would particularly penalize the use of one-time monies for research, demonstration, evaluation, construction, or start-up purposes.

AoA response: We do not think that the statutory requirement in section 309(c) was intended to penalize States that choose to increase their expenditures from State sources or to experiment with special demonstration projects. Accordingly, to make explicit our interpretation of expenditures from State sources under the State plan, we have retained the current maintenance of effort provision in section 1321.53.

H. Types of Agencies That May Be an Area Agency (Secton 1321.45)

Many commenters recommended that AoA retain the provision precluding any regional or local agencies of the State from being designated area agencies. Most commenters said that Congress intended that there be some type of separation between State and area agencies. They thought that removal of the prohibition would clearly allow State agencies to designate State regional or local agencies as area agencies.

AoA Response: We did not intend that regional and local agencies of the State become area agencies. Therefore, we have retained the provision that precludes such designations in section 1321.45.

I. Food Requirements for Nutrition Services Providers (Section 1321.9)

Most of the letters received on this subject supported inclusion of regulations which require nutrition services providers to comply with all State and local health laws concerning the preparation, handling and serving of food. Some commenters also advocated regulations requiring nutrition services providers to follow procedures which preserve nutritional value of meals and to assist participants in taking advantage of benefits under the food stamp program.

AoA Response: The issue of food safety in the purchase, handling, preparation and delivery of meals received careful review. We concur with some commenter who view food safety as a matter of national as well as State and local concern. However, our analysis of health and safety issues revealed other areas where these questions are of equal concern, such as the alteration, renovation and construction of multipurpose senior centers or the provision of transportation services. Since health and safety questions cover a broad range of issues, the NPRM at § 1321.9 proposed requiring a State plan assurance that all services provided under Title III meet any existing State and local licensure, and safety requirements established for the provision of those services, We feel that this provision adequately addresses commenters' concerns about safe provision of nutrition services as well as other Title III services. Therefore, we have decided to retain without change the provision for State plan assurance of compliance with State and local licensure and safety requirements in § 1321.9.

Regarding regulatory guidance on procedures to preserve the nutritional value of meals, we feel that this matter is adequately addressed in section 331(a) of the Act. It states that providers must assure that each meal served includes a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences—National Research Council. We feel that the development of procedures to assure that meals meet this standard is a matter of State and area agency policy making.

We also agree that it is appropriate for nutrition services providers to assist participants in obtaining access to the food stamp program. The Act at section 331(3) allows State and local agencies, the option of providing nutrition education services as well as other appropriate nutrition services. We concluded, therefore, that it would not be necessary to emphasize the food stamp or any other specific program at this is a matter for State and local decision. Again, we feel that, in the interest of flexibility, development of procedures assuring appropriate access to specific services is a matter for State and area agency decision. These decisions result from needs assessments and public input. We also recommend that the provision of specific services by nutrition services providers be addressed in grant and contract negotiations.

J. Title VI Application Approval (Section 1328.21)

As indicated in the preamble to the 1980 regulations, AoA may continue to give first priority to those applicants that have successfully performed under a previous Title VI grant. We have added a new § 1329.21(b) to reflect this policy.

5. Other Comments (Sections 1321.9 and 1321.37)

Some commenters were concerned about the removal of a number of regulatory sections that they believed should have been retained. We did not include these sections under the major discussion because the regulatory requirements were clearly removed in response to either allowing State flexibility or because the regulation substantially repeated the Act. Therefore, those sections that addressed expenditures in rural areas, priority services, State plan based on area plans, community focal points, and comprehensive and coordinated delivery systems were removed because they substantially repeated the Act. Further, those sections that addressed minimum hearing procedures, written area agency administrative procedures, content of area plan, direct provision of services tests, outreach and training, and amendments to area plans were removed to provide States with greater flexibility in the administration of Title III programs.

Many commenters were concerned that both the regulations and the Act had to be read to fully understand all the responsibilities of State and area agencies. While we agree that it is more time consuming to have to read both the Act and regulations, we think that it is more important to distinguish between what is required by the Act and what AoA is actually regulating. For this reason we have continued to apply the rulemaking principle of not duplicating statutory provisions except when needed for clarity.

Many commenters disagreed with the deletion of provisions which assure preference is given to older persons in greatest social or economic need. These commenters insisted that the proposed rules retreated from AoA's responsibility in this area. We disagree with this preception that AoA has retreated from its responsibility. In § 1321.9(e)(1) and § 1321.37, assurances and requirements have been established which require State and area agencies to

monitor and, when necessary, advocate on behalf of older individuals in greatest social or economic need. Although we have deleted specific reference to the provisions of preference to older persons in greatest economic or social need, State and area agencies must continue to assure that such preference is provided for in the delivery of services under the plans. This is required under sections 306 and 307 of the Act, and we have not retreated from our belief that such preference is needed to assure that services are targeted to the low income and minority elderly.

Some commenters were concerned that the establishment of poverty income guidelines by the Secretary of Health and Human Services, rather than the Bureau of the Census, would confuse State and area agency planning efforts. At the time the Notice of Proposed Rulemaking was issued, there was no definition in the Older Americans Act of the term "greatest economic need." The 1984 amendments added a new provision to sec. 306(a) of the Act defining this phrase in terms of the poverty threshold established by the Bureau of the Census. Therefore, the interim final regulations have been amended to be consistent with that provision of the law. See the discussion of the 1984 Amendments.

6. Technical Changes (Sections 1321.11, 1321.41, 1321.63, 1321.3, 1321.13 and 1321.15)

We have revised § 1321.11, Amendments to the State plan, to include, for simplification, all the requirements previously found in § 1321.27 by adding language that describes when a State must amend its plan. A State must amend its plan to reflect a material change in any law, organization, policy, or State agency operation.

Both § 1321.28 (new 1321.41) and § 1328.13, respectively, required State agencies and tribal organizations to assure that they would comply with chapter 23 of the Uniform Building Code, or Chapter 12 of the Standard Building Code when State or local laws or codes concerning load bearing members did not exist at either level. We have determined that most State and local governments have such codes and there is no longer a need for a Federal standard.

To clarify the requirements implicit in §§ 305(c)(5), 306(a) and 307(a)(1), we have added a new § 1321.63 requiring that "The area agency must submit the area plan or amendments to the State agency for approval, following procedures specified by the State agency."

A-95 clearinghouse requirements were not included in § 1321.63, *Submission of an area plan to the State for approval* because the provisions of OMB Circular A-95, Part I are no longer required. However, under Executive Order 12372 and implementing regulations (45 CFR Part 100), States must establish their own review procedures.

With regard to Title VI, we have clarified the definition of older Indian in § 1328.3 by changing the word "identified" to "determined". This clarifies statutory intent allowing tribes to determine the minimum age for receiving Title VI services. This differs from tribal eligibility for the Title VI program which requires that based on changes in the 1984 amendments a tribe have at least 60 individuals who are age 60 or older.

We have removed those provisions under § 1328.15 that require tribal organizations to comply with the provisions of 7 CFR Part 250 General Regulations and Policies—Food Distribution. The provision was removed because participants in USDA programs are required to comply with Part 250 solely on the authority of that Part.

Summary of the 1984 Amendments and Discussion of Changes Made

The 1984 amendments made several technical changes in the Act. These changes reinforce the basic direction of the 1981 amendments and clarify the roles of State and area agencies on aging. Many increased administrative flexibility. The six rulemaking principles mentioned above were also used to analyze these statutory changes. A section-by-section discussion of these revisions is as follows.

Section 301

The amendments to section 301 of the Act strike *local agencies* and insert *area agencies;* add *implementation* to comprehensive and coordinated service systems; and add *voluntary organizations* to the list of service providers. These technical amendments to the Act are clear in nature and require no changes to the interim final regulations.

Section 302

One of the major amendments to section 302 of the Act modifies the requirement in the term "information and referral source" that the State or any public or private agency employ a specifically trained staff where such employment is feasible.

This modification to the definition in the Act is clear, therefore it was not repeated in §§ 1321.21 and 1321.57 on agency organization and staffing.

The amendments also require that reference to "legal services" in section 302 be changed to "legal assistance." This required conforming changes in the language in § 1321.73.

The amendments to section 302 define the term, "older individual", for purposes of Title III to mean "any individual who is 60 years of age or older." The statutory definition is clear, therefore no regulation is necessary.

A new definition in section 302, defines the term, "multipurpose senior center." Because of our rulemaking criterion of not repeating statutory language, this new statutory definition has removed the necessity for AoA to continue to define "multipurpose senior center" in the regulations, and accordingly, the definition of "multipurpose senior center" was removed from § 1321.3.

A new definition in section 302, defines the term, "focal point", as "a facility established to encourage the maximum collocation and coordination of services for older individuals." The statute is clear; therefore, this language need not be repeated in the interim final regulations.

Section 303

The amendments establish new authorization of appropriations for supportive services, congregate and home-delivered nutrition services. This funding information is not in the interim final regulations because it would only repeat the statute.

Section 304

The amendments require each State, after September 30, 1986, to set aside not more than one percent of its Title III allotment to conduct demonstration projects in health and nutrition education. The statute is clear; therefore, this language need not be repeated in the interim final regulations.

Section 305

The amendments expand the provisions in section 305, which require each State agency to provide assurances that preference be given to older individuals with the greatest economic or social needs by specifying that in doing so it give "particular attention to low-income minority individuals." The minority preference statement refers directly to those in "greatest economic or social need." Therefore, it does not require changes in the interim final regulations to clarify or provide emphasis. However, criteria for the intrastate funding formula in § 1321.37

have been modified to include "low-income minority individuals."

Section 305 is amended to specify which components of each State's formula for intrastate distribution of Title III funds will be published for review and comment. No change in §1321.37 of the interim final regulations was required. The Commissioner, by law, continues to establish guidelines that require the State to consult with area agencies and to reflect the needs of older individuals in greatest economic or social need in developing its intrastate funding formula. We have retained those current regulatory provisions which require the State agency to review and update its formula when submitting a new State plan, and assure that older persons and the general public review and comment on the formula.

The 1984 amendments to section 305 require that whenever a State agency designates a new area agency after the date of enactment of the 1984 amendments, the State agency shall give the right of first refusal for area agency designation to a unit of general purpose local government with boundaries that are reasonably contiguous with the planning and service area. This amendment required some modification of § 1321.45 in the interim final regulations. This was necessary to clarify a possible conflict with paragraph 305(c) of the Act which also gives priority to established offices on aging. To implement this 1984 amendment, we provided, in effect, that this right of first refusal takes precedence over the priority given to established area offices on aging.

Section 305 is amended to define "greatest economic need" as "income below the poverty threshold as established by the Bureau of the Census", and to define "greatest social need" as "non-economic factors which restrict ability to perform normal daily tasks or which threaten capacity to live independently". These definitions parallel the definitions in the current regulations. AoA developed these definitions to clarify these terms pursuant to the 1978 amendments to the Act. Now that the Congress has adopted the definitions in the statute, the regulatory version would merely repeat the statute. Therefore, we struck these definitions from §1321.3. Further, the statutory language is clear and does not need to be regulated.

Section 306

Section 306 is now amended to include a reference to the efforts of voluntary organizations under the area agency planning responsibilities. Since the statute is clear, no regulation change was required.

Section 306 now allows the provision of supportive services to the families of elderly victims of Alzheimer's disease and other neurological and organic brain disorders. This merely adds to the list of supportive services and did not require a change to the interim final regulations.

The amendments to section 306 also require that the area agency annually detail in its area plan the amount of funds expended for each category of priority service during the previous fiscal year. This requirement is included in § 1321.9(e)(6) to clarify that area agencies must comply with this annual requirement.

The amendments to section 306 require that area agencies give particular attention to low-income minority individuals in carrying out the requirement under the area plan to give preference to individuals with the greatest economic or social need. The interim final regulations do not address area plan requirements, as the statute is clear.

The amendments to section 306 require that each area advisory council include within its membership older minority individuals who are participants or who are eligible to participate in the Act's programs. We have amended § 1321.61 to include minority individuals in the composition of the area agency advisory council.

The amendments to section 306 add the following new area plan requirements: (1) Conduct efforts to facilitate the coordination of community-based, long-term care services; (2) identify the entities involved in the treatment of elder abuse and determine the extent to which the need for appropriate services for such individuals is unmet; and (3) facilitate the involvement of long-term care providers and work to ensure community awareness of and involvement in addressing the needs of residents of long-term care facilities. Although these are new area plan requirements, it is clear that the area agencies' responsibilities to coordinate, identify, conduct need assessments, and advocate are unchanged. These are local decisions which will be made based on the needs and resources of a particular planning and services area with guidance and leadership from the State agency. Therefore, a change in the interim final regulations was not required.

Finally, the amendments to section 306 require that an area agency, before requesting waiver of a priority service requirement, conduct a public hearing meeting certain procedural requirements. The statute is clear that the area agency must conduct a public hearing on its waiver request and furnish a record of the hearing to the State agency along with the request. Any specific procedures should be provided by the State agency which has the responsibility for approving the waiver request. Therefore, a change to the interim final regulations was not required.

Section 307

Section 307 has six new provisions which will be reflected in the content of State Plans. They affect program operation, personnel, and the Ombudsman and Legal Assistance programs. Specifically:

(1) An exception to the direct provision of service can now be made when the service is directly related to the State or area agency administrative functions or when services of comparable quality can be provided more economically by the State or area agency on aging;

(2) The State ombudsman must be a full-time worker; training staff is authorized; and the views of area agencies, older individuals, and service providers must be considered in planning and operating ombudsman programs;

(3) Nutrition project grantees or contractors may now solicit voluntary contributions rather than "charge" participants for meals;

(4) The Act's requirement that a grantee may not furnish legal services unless it is a recipient of funds from the Legal Service Corporation has been deleted, as has the requirement that the legal assistance program provide legal assistance to *all* individuals with social or economic need; in addition, the State must assign personnel to "provide State leadership in developing legal assistance programs for older individuals";

(5) State and area agency activities related to elder abuse—its prevention, confidentiality of records, and prevention of "involuntary or coerced participation in those services"—are specified; and

(6) States must provide inservice training opportunites for personnel of agencies and programs under the Act.

In all the above State plan provisions, we found that the statute was sufficiently clear, or that the provision was already contained in the NPRM. Thus, no changes relating to section 307 were required in the interim final regulation.

Section 308

Section 308, *Administration of State Plans*, contains two changes. It makes several technical amendments to the administration of State Plans and incrementally increases the percentage of funds which may be transferred between Title III supportive and nutrition services to 27% in 1985, 29% in 1986 and 30% in 1987. It also allows States to use, for State Plan administration, the greater of 5 percent or $300,000 in any fiscal year when the appropriated amount for Title III does not exceed $800 million and allows States to use the greater of 5 percent or $500,000 in any fiscal year that the Title III appropriation exceeds $800 million. The statute is clear on both transfers between Parts B and C and funding requirements for administration of State Plans, so no change in the final regulation was required. However, because the Act allows the Commissioner to determine the percentage transfer between congregate and home delivered meals, we have revised § 1321.35 of the interim final regulations to allow States to transfer up to 30 percent without having to obtain the Commissioner's permission. This will reduce the State's paperwork burden and will require States to continue to request authority for all transfers over 30 percent.

Section 311

Section 311 makes several technical amendments to the USDA program of commodities or cash in lieu of commodities. In Addition, States are now required to submit interim final reimbursement claims for meals within 90 days after the last day of the quarter for which the reimbursement is claimed. The statute is clear; therefore, no changes were required in the interim final regulations.

Section 313

Section 313 prohibits State and Area Agencies on Aging from requesting information or data from providers which is not pertinent to services furnished under the Act or a payment for service. The statute is clear, so no regulation was necessary.

Section 321

Section 321 adds four new types of Title III–B supportive services: (1) Elder abuse prevention; (2) inservice training and State leadership for legal assistance activities; (3) health and nutrition education; and (4) services to enable mentally impaired older persons to attain and maintain emotional well being and independent living. It also amends the present description of Title III–B services designed to assist older individuals in avoiding institutionalization by specifically referring to "client assessment through case management". The statute clearly describes the new services; no additional changes were needed in the interim final regulations.

Section 602

Section 601 of Pub. L. 98–459 amended section 602 of the Older Americans Act to reduce from 75 to 60 the number of individuals aged 60 and older which an Indian Tribe must represent to be eligible for Title VI assistance. To conform with the statutory amendment, we have revised the language of § 1328.19 to incorporate this change.

Summary of Interim Final Regulations on Which Comments Are Especially Invited

Of the 35 amendments, four required language changes, two required removal, and two required additions to the regulations.

Technical changes in regulatory language:

- Section 1321.73—changes term "legal services to legal assistance".
- Section 1321.61—adds language to include minority individuals in the composition of the area agency advisory council.
- Section 1321.37—modifies criteria for the intrastate funding formula to include "low-income minority individuals".
- Section 1328.19—revises language to reduce from 75 to 60 the number of individuals aged 60 or older needed for tribal eligibility for Title VI assistance.

Sections removed from the regulations:

- Section 1321.3—removes the definition for "multipurpose senior center".
- Section 1321.3—removes the definitions for greatest economic and social need.

Sections added to the regulations:

- Section 1321.45—requires modification to clarify a possible conflict with 305(c) of the Act which also gives priority to established offices on aging.
- Section 1321.9—requires modification to clarify how this impacts on the State's option to allow area agencies to develop two, three, or four year area plans.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that these rules do not constitute a major rule because it will not have an annual effect on the economy of $100 million or more; result in major increase in costs or prices for consumers, any industries, any governmental agency or any geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of these regulations is on the State agencies and to a lesser extent on area agencies. Actual delivery of services may be provided in some circumstances by proprietary, public and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant impact on a substantial number of small entities.

Recordkeeping and Reporting Requirements

Sections 305, 307, and 604 of the Act require area and State plans and tribal applications. These rules at §§ 1321.7–1321.13 and 1328.19 contain information collection requirements for plans and applications. As required by section 3504(h) of the *Paperwork Reduction Act of 1980*, we submitted a copy of these information collection requirements to the Office of Management and Budget (OMB) for its review.

OMB has not approved the information collection requirements contained in these rules. The information collection requirements contained in §§ 1321.7–1321.13 and 1328.19 will not go into effect until OMB approval has been obtained. Although OMB has not approved the sections of these regulations associated with the

development of State and area plans and tribal applications, those statutory activities required to maintain eligibility for funding remain in effect. When OMB assign numbers, we will publish a notice in the Federal Register.

List of Subjects

45 CFR Part 1321

Administrative practice and procedure, Aged, Grant program/social programs, Nutrition, Reporting requirements.

45 CFR Part 1328

Administrative practice and procedures, Aged, Grant programs Indians, Grant programs social programs, Indians, Reporting requirements, Supplemental security income (SSI).

(Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Parts A and B—Grants on Aging; 13.635 Special Programs for Aging, Title III Part C—Nutrition Services); (13.655 Special Programs for Aging—Title VI—Grants for Indian Tribes)

Dated: February 13, 1985.

Carol Fraser Fisk,

Acting Commissioner on Aging.

Approved: March 19, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Accordingly, for the reasons set forth in the preamble we amend 45 CFR Chapter XIII, as follows:

1. Subchapter C, Part 1321 is revised as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

Subpart A—Introduction

Sec.

1321.1 Basis and purpose of part.
1321.3 Definitions.
1321.5 Applicability of other regulations.

Subpart B—The State plan

1321.7 Amendment of planning and service areas.
1321.9 Duration, format and effective date of the State plan.
1321.9 Content of State plan.
1321.11 Amendments to the State plan.
1321.13 Submission of a State plan to the Commissioner for approval.
1321.15 Notification of State plan approval.
1321.17 State agency administration.
1321.19 Confidentiality and disclosure of information.

Subpart C—State Agency Responsibility

1321.21 Organization and staffing of the State agency.
1321.23 Restriction of delegation of authority to other agencies.
1321.27 Public participation.
1321.33 Advocacy responsibilities: General.
1321.35 Transfer between congregate and home-delivered nutrition service allotments.
1321.37 Intrastate funding formulas.
1321.39 Withdrawal of area agency designation.
1321.41 Licensure and safety.
1321.43 Designation of planning and service areas.
1321.45 Designation of area agencies.
1321.47 Appeal to Commissioner.
1321.49 Interstate planning and service area.
1321.51 Single State planning and service area.
1321.53 State agency maintenance of effort.
1321.55 Area agency subgrants or contracts.

Subpart D—Area Agency Organization, Functions, and Responsibilities

1321.57 Organization and staffing of the area agency.
1321.61 Area agency advisory council.
1321.63 Submission of an area plan to the State for approval.
1321.65 Advocacy responsibilities of the area agency.

Subpart E—Service Requirements

1321.67 Greatest economic or social need preference.
1321.69 Service contributions.
1321.71 Home-delivered nutrition services.
1321.73 Legal assistance.

Subpart F—Hearing Procedures for State Agencies

1321.75 Scope.
1321.77 When a decision is effective.
1321.79 How the State may appeal.
1321.81 How the Commissioner may reallot the State's withheld payments.

Authority: Title III of the Older Americans Act (42 U.S.C. 3021 through 3030g).

Subpart A—Introduction

§ 1321.1 Basis and purpose of part.

(a) This part prescribes requirements State agencies must meet to receive grants to develop comprehensive and coordinated systems for the delivery of supportive and nutrition services under Title III of the Older Americans Act, as amended (Act). These requirements include—

(1) Designation and responsibilities of State agencies;

(2) State plans and amendments;

(3) Services delivery; and

(4) Hearing procedures for applicants for planning and services area designation.

(b) The requirements of this part are based on Title III of the Act. Title III provides for formula grants to State agencies on aging under approved State plans for the development of comprehensive and coordinated systems for the delivery to older persons of supportive services, including multipurpose senior centers, and nutrition services. Each State agency designates planning and service areas in the State, and makes a subgrant or contract under an approved area plan to one area agency in each planning and service area. Area agencies in turn make subgrants or contracts to service providers.

§ 1321.3 Definitions.

"Act" means the Older Americans Act of 1965 as amended.

"Administrative action," as used in section 307(a)(12)(A) of the Act with respect to the investigation and resolution of complaints under long-term care ombudsman programs, means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a government agency, which affects the provision of service to residents covered under the long term care program.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not is excess of double the square footage of the original facility and all physical improvements.

"Constructing," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees.

"Department" means the Department of Health and Human Services.

"Fiscal year," as used in section 303 and 304 of the Act with respect to authorization of appropriations, uses of funds and allotment, and Federal share, means the Federal Fiscal Year.

"Human services," as used in § 1321.51(a)(1) of this Part, with respect to criteria for designation of a statewide planning and service area, means social, health, or welfare services.

"Means test," as used in the provision of services, means the use of an older person's income or resources to deny or limit that person's receipt of services under this part.

"Reservation," as used in section 305(b)(4) of the Older Americans Act with respect to the designation of planning and service areas, means any federally or State recognized Indian tribe's reservation, pueblo, or colony, including reservations in Oklahoma, Alaskan Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

"Service provider," as used in section 306(a)(1) of the Older Americans Act

with respect to the provision of supportive and nutrition services, means an entity that is awarded a subgrant or contract from an area agency to provide services under the area plan.

§ 1321.5 Applicability of other regulations.

The following requirements in Title 45 of the Code of Federal Regulations apply to all activities under this Part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) Part 74—Administration of Grants, except Subpart N;

(c) Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(d) Part 81—Practice and Procedures for Hearings Under Part 80;

(e) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation;

(f) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS; and

(g) Part 100—Intergovernmental Review of the Department of Health and Human Services Programs and Activities.

Subpart B—The State Plan

§ 1321.7 Amendment of planning and service areas.

Prior to the Commissioner's final approval of a State plan, under these regulations, the following requirements must be completed:

(a) A notice of intent either to maintain or amend the designation of existing planning and service area geographic boundaries must be received by the Commissioner before the submission of the State plan.

(b) A State agency must submit to the general public (including older persons, governmental officials, and the aging services network) the details of the State's intention to maintain or amend the designation of existing planning and service area boundaries, at least 30 days following the notice of intent to the Commissioner.

§ 1321.8 Duration, format and effective date of the State plan.

A State may use its own judgment as to the format to use for the plan, how to collect information for the plan, and whether the plan will remain in effect for two, three, or four years.

(a) An approved State plan or amendment becomes effective on the date designated by the Commissioner.

(b) An agency may not make expenditures under a new plan or amendment until it is approved.

§ 1321.9 Content of State plan.

To receive a grant under this part, a State must have an approved State plan as prescribed in section 307 of the Act. In addition to meeting the requirements of section 307, a State plan must include:

(a) Identification by the State of the single State agency that has been designated to develop and administer the plan.

(b) Statewide program objectives to implement the service delivery requirements under Title III of the Act and any objectives established by the Commissioner through the rulemaking process.

(c) A resource allocation plan indicating the proposed use of all Title III funds directly administered by a State agency, and the distribution of Title III funds to each planning and service area.

(d) Identification of the geographic boundaries of each planning and service area.

(e) Each of the assurances and provisions required in sections 305 and 307 of the Act, and provisions that the State meets each of the requirements under §§ 1321.5 through 1321.73 of this part, and the following assurances as prescribed by the Commissioner:

(1) Preference is given to older persons in greatest social or economic need in the provision of services under the plan;

(2) Procedures to ensure that all services under this part are provided without use of any means tests;

(3) All services provided under Title III meet any existing State and local licensure, health and safety requirements for the provision of those services; and

(4) Older persons are provided opportunities to contribute voluntarily to the cost of services.

(5)(i) The State will not fund program development and coordination activities as a cost of supportive services, until it has first spent 8.5 percent of the total of its combined allotments for supportive and nutrition services on the administration of area plans; and

(ii) State and area agencies on aging will, consistent with their budgeting cycles (annually, biannually or otherwise), submit the details of their proposals to pay for program development and coordination as a cost of supportive services, to the general public (including older persons, government officials, and the aging services network) for review and comment.

(6) Area plans will specify as submitted, or be amended annually, to include details of the amount of funds expended for each priority service during the past fiscal year.

§ 1321.11 Amendments to the State plan.

A State must amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulation or (2) a material change in any law, organization, policy or State agency operation. If a State intends to amend provisions of its plan required under § 1321.9 (a) or (e), it must submit its proposed amendment to the Commissioner for approval. If the State changes any of the provisions of its plan required under § 1321.9 (b) through (d), it must amend the plan and notify the Commissioner. A State need only submit the amended portions of the plan.

§ 1321.13 Submission of a State plan to the Commissioner for approval.

Each State plan must be signed by the Governor or his/her designee and submitted to the Commissioner to be considered for approval at least 45 calendar days before the proposed effective date of the plan.

§ 1321.15 Notification of State plan approval.

(a) The Commissioner approves a State plan by notifying the Governor or his/her designee in writing.

(b) When the Commissioner proposes to disapprove a State plan, the Commissioner notifies the Governor in writing, giving the reasons for the proposed disapproval, and informs the agency that it has 60 days to request a hearing on the proposed disapproval following the procedures specified in Subpart F.

§ 1321.17 State agency administration.

(a) A State agency must have and follow written policies to carry out its activities under this part at the State and area level. A State agency must keep its policies current, and revise them as necessary.

(b) A State must have on file for review a functional statement of the manner in which an agency performs all of its functions under this part.

§ 1321.19 Confidentiality and disclosure of information.

(a) A State agency must have procedures to protect the confidentiality of information about older persons collected in the delivery of services. The procedures must ensure that no information about an older person, or obtained from an older person by a service provider or the State or area

agencies, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal, State, or local monitoring agencies.

(b) A State agency is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

Subpart C—State Agency Responsibility

§ 1321.21 Organization and staffing of the State agency.

The State shall designate a sole State agency with a qualified staff to perform the functions prescribed in this Part.

§ 1321.23 Restriction of delegation of authority to other agencies.

A State or area agency may not delegate to another agency the authority to award or administer funds under this part.

§ 1321.27 Public participation.

The State agency must have a mechanism to obtain and must consider the views of older persons in developing and administering the State plan.

§ 1321.33 Advocacy responsibilities: General.

(a) The State agency must—

(1) Review and, where appropriate, comment on all State plans, budgets, and policies which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Coordinate statewide planning and development of activities related to the purposes of the Act and assure that each area agency has effective procedures to coordinate programs related to the purposes of the Act within the planning and service area;

(4) Provide technical assistance to agencies, organizations, associations, or individuals representing older persons;

(5) Establish and operate the long-term care ombudsman program; and

(6) Review and comment, upon request, on applications to State and Federal agencies for assistance relating to meeting the needs of older persons.

(b) No requirements in this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds.

§ 1321.35 Transfer between congregate and home-delivered nutrition service allotments.

(a) A State agency may, without the approval of the Commissioner, transfer between allotments up to 30 percent of a State's separate allotments for congregate and home-delivered nutrition services.

(b) A State agency may apply to the Commissioner to transfer from one allotment to the other a portion exceeding 30 percent of a State's separate allotments for congregate and home-delivered nutrition services. A State agency must:

(1) Specify the percent which a State agency proposes to transfer from one allotment to the other;

(2) Specify whether the proposed transfer is for the entire period of a State plan or a portion of a plan period; and

(3) Specify the purpose of the proposed transfer.

§ 1321.37 Intrastate funding formula.

The State agency, after consultation with all area agencies in the State, must develop and use an intrastate funding formula for the allocation of funds to area agencies under this part. The State agency must publish the formula for review and comment by older persons and the general public. The formula must reflect the porportion among the planning and service areas of persons age 60 and over in greatest economic or social need with particular attention to low-income minority individuals. The State agency must review and update its formula as often as a new State plan is submitted for approval.

§ 1321.39 Withdrawal of area agency designation.

(a) In carrying out section 305 of the Act, a State must withdraw the area agency designation whenever it, after reasonable notice and opportunity for a hearing, finds that—

(1) An area agency does not meet the requirements of this part;

(2) An area plan or plan amendment is not approved; or

(3) There is substantial failure in the provisions or administration of an approved area plan to comply with any provision of the Act or of this part.

(b) If a State agency withdraws an area agency's designation under paragraph (a) of this section it must—

(1) Provide a plan for the continuity of services in the affected planning and service area; and

(2) Designate a new area agency in the planning and service area in a timely manner.

(c) If necesary to ensure continuity of services in a planning and service area, the State agency may, for a period up to 180 days after its final decision to withdraw designation of an area agency—

(1) Perform the responsibilities of the area agency; or

(2) Assign the responsibilities of the area agency to another agency in the planning and and service area.

(d) The Commissioner may extend the 180 day period if a State agency—

(1) Notifies the Commissioner in writing of its action under (c);

(2) Requests an extension; and

(3) Demonstrates to the satisfaction of the Commissioner a need for the extension.

§ 1321.41 Licensure and safety.

The State must ensure: (a) That, in making awards for multipurpose senior center activities, the area agency will ensure that the facility complies with all applicable State and local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(b) The technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part, by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

§ 1321.43 Designation of planning and service area.

(a) In designating planning and service areas, a State agency must meet all the requirements in § 1321.7.

(b) Any unit of general purpose local government, region within a State recognized for areawide planning, metropolitan area, or Indian reservation may make application to the State agency to be designated as a planning and service area, in accordance with State agency procedures.

(c) A State agency must approve or disapprove any application submitted under paragraph (b) of his section.

(d) Any applicant under paragraph (b) of this section whose application for designation as a planning and service area is denied by a State agency, may appeal the denial to the State agency, under procedures specified by the State agency.

(e) If the State denies an applicant for designation as a planning and service area under paragraph (b), the State must provide a hearing on the denial of the application, if requested by the

applicant, as well as issue a written decision.

§ 1321.45 Designation of area agencies.

An area agency may be any of the types of agencies under section 305(c) of the Act. A State may not designate any regional or local agency of the State as an area agency. However, when a new area agency on aging is designated, the State shall give right of first refusal to a unit of general purpose local government as required in section 305(b)(5)(B) of the Act. If the unit of general purpose local government chooses not to exercise this right, the State shall then give preference to an established office on aging as required in section 305(c)(5) of the Act.

§ 1321.47 Appeal to Commissioner.

This section sets forth the procedures the Commissioner follows for providing hearings to applicants for designation as a planning and service area, under § 1321.43(b), whose application is denied by the State agency.

(a) Any applicant for designation as a planning and service area under § 1321.43(b) whose application is denied, and who has been provided a hearing and a written decision by the State agency, may appeal the denial to the Commissioner in writing 30 days following receipt of a State's hearing decision.

(b) The Commissioner holds a hearing, and issues a written decision, within 60 days following receipt of an applicant's written request to appeal the State agency hearing decision to deny the applicant's request under § 1321.43(b).

(c) When the Commissioner receives an appeal, the Commissioner requests the State Agency to submit:

(1) A copy of the applicant's application for designation as a planning and service area;
(2) A copy of the written decision of the State; and
(3) Any other relevant information the Commissioner may require.

(d) The procedures for the appeal consist of—

(1) Prior written notice of the applicant and the State agency of the date, time and location of the hearing;
(2) The required attendance of the head of the State agency or designated representatives;
(3) An opportunity for the applicant to be represented by counsel or other representative; and
(4) An opportunity for the applicant to be heard in person and to present documentary evidence.

(e) The Commissioner may—

(1) Deny the appeal and uphold the decision of a State agency;
(2) Uphold the appeal and require a State agency to designate the applicant as a planning and service area; or
(3) Take other appropriate action, including negotiating between the parties or remanding the appeal to the State agency after initial findings.

(f) The Commissioner upholds the decision of the State agency if it followed the procedures specified in § 1321.43, and the hearing decision is not manifestly inconsistent with the purposes of this part.

(g) The Commissioner's decision to uphold the decision of a State agency does not extend beyond the period of the approved State plan.

§ 1321.49 Interstate planning and service area.

(a) Before requesting permission of the Commissioner to designate an interstate planning and service area, the Governor of each State must execute a written agreement that specifies the State agency proposed to have lead responsibility for administering the programs within the interstate planning and service area and lists the conditions, agreed upon by each State, governing the administration of the interstate planning and service area.

(b) The lead State must request permission of the Commissioner to designate an interstate planning and service area.

(c) The lead State must submit the request together with a copy of the agreement as part of its State plan or as an amendment of its State plan.

(d) Prior to the Commissioner's approval for States to designate an interstate planning and service area, all applicable requirements and procedures in §§ 1321.7, 1321.43 and 1321.45 of this part, must be met.

(e) If the request is approved, the Commissioner increases the allotment of the State with lead responsibility for administering the programs within the area and reduces the allotment(s) of the State(s) without lead responsibility by one of these methods:

(1) Reallotment of funds in proportion to the number of individuals age 60 and over for that portion of the interstate planning and service area located in the State without lead responsibility; or
(2) Reallotment of funds based on the intrastate funding formula of the State(s) without lead responsibility.

§ 1321.51 Single State planning and service area.

(a) The Commissioner approves the application of a State which was, on or before October 1, 1980, a single planning and service area, to continue as a single planning and service area if the State agency demonstrates that:

(1) The State is not already divided for purposes of planning and administering human services; or

(2) The State is so small or rural that the purposes of this part would be impeded if the State were divided into planning and service areas; and

(3) The State agency has the capacity to carry out the responsibilities of an area agency, as specified in the Act.

(b) Prior to the Commissioner's approval for a State to continue as a single planning and service area, all the requirements and procedures in §§ 1321.7 and 1321.43 must be met.

(c) If the Commissioner approves a State's application under paragraph (a) of this section:

(1) The Commissioner notifies the State agency to develop a single State planning and service Area Plan which meets the requirements of sections 306 and 307 of the Act.

(2) A State agency must meet all the State and area agency function requirements specified in the Act.

(d) If the Commissioner denies the application because a State fails to meet the criteria or requirements set forth in paragraphs (a) or (b) of this section, the Commissioner notifies the State that it must follow procedures in section 305(A)(1)(E) of the Act to divide the State into planning and service areas.

§ 1321.53 State agency maintenance of effort.

In order to avoid a penalty, each fiscal year the State agency must spend under the State plan for both services and administration at least the same amount of State funds it spent under the plan in the previous fiscal year to meet the required non-Federal share applicable to its allotments under this part. If the State agency spends less than this amount, the Commissioner reduces the State's allotments for social and nutrition services under this part by a percentage equal to the percentage by which the State reduced its expenditures.

§ 1321.55 Area agency subgrants or contracts.

The State agency may not require the area agency to submit to it for prior review or approval any proposed subgrants or contracts with public or private nonprofit agencies or organizations.

Subpart D—Area Agency Organization, Functions, and Responsibilities

§ 1321.57 Organization and staffing of the area agency.

The State shall designate a sole agency in each planning and service area with a qualified staff to perform the functions prescribed in this Part.

§ 1321.61 Area agency advisory council.

(a) *Functions of council.* The area agency must establish an advisory council. The council must advise the agency to—

(1) Develop and administer the area plan;

(2) Conduct public hearings;

(3) Represent the interest of older persons; and

(4) Review and comment on all community policies, programs and actions which affect older persons.

(b) *Composition of the council.* The advisory council must be made up of—

(1) More than 50 percent older persons and include—

(i) Older persons with greatest economic or social need;

(ii) Older minority individuals; and

(iii) Participants under this part;

(2) Representatives of older persons;

(3) Local elected officials; and

(4) The general public.

(c) *Review by advisory council.* The area agency must submit the area plan and amendments for review and comment to the advisory council.

§1321.63 Submission of an area plan to the State for approval.

The area agency must submit the area plan or amendments to the State agency for approval following procedures specified by the State agency.

§ 1321.65 Advocacy responsibilities of the area agency.

(a) The area agency must—

(1) Monitor, evaluate, and, where appropriate, comment on all policies, programs, hearings, levies, and community actions which affect older persons;

(2) Solicit comments from the public on the needs of older persons;

(3) Represent the interests of older persons to local level and executive branch officials, public and private agencies or organizations;

(4) Carry out activities in support of the State administered long-term care ombudsman program; and

(5) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons.

(b) No requirements in this section shall be deemed to supersede statutory or other regulatory restrictions regarding lobbying or political advocacy with Federal funds.

Subpart E—Service Requirements

§ 1321.67 Greatest economic or social need preference.

Each area agency on aging must establish priorities and methods for serving older persons with greatest economic or social need. Such methods may include location of services and specialization in the types of services most needed by these groups to meet this requirement. However, means tests may not be used.

§ 1321.69 Service contributions.

This section applies to the requirements and procedures for collecting contributions.

(a) Each service provider must:

(1) Provide each older person with an opportunity to contribute voluntarily to the cost of the service;

(2) Protect the privacy of each older person with respect to his or her contributions;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions only to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(C)(ii) of the Act.

(b) Each service provider may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the provider must consider the income ranges of older persons in the community and the provider's other source of income. However, means tests may not be used.

(c) A service provider that receives funds under this part may not deny any older person a service because the older person will not or cannot contribute the cost of the service.

§ 1321.71 Home-delivered nutrition services.

The area agency may award home-delivered nutrition services funds under this part to provide meals and other nutrition services as follows:

(a) Eligibility—

(1) A person age 60 or over who is homebound by reason of illness, incapacitating disability, or is otherwise isolated, is eligible to receive a home delivered meal;

(2) The spouse of the older person, regardless of age or condition, may receive a home-delivered meal if, according to criteria determined by the area agency, receipt of the meal is in the best interest of the homebound older person.

(b) Selection of home-delivered meals providers—

(1) The area agency may make awards for home-delivered nutrition services to a provider that furnishes either or both congregate or home delivered nutrition services.

(2) The area agency, to the extent feasible, must give preference in making awards for home-delivered nutrition services to providers that meet the requirements of section 307(a)(13)(H) of the Act.

(c) Each provider must:

(1) With the consent of the older person, or his or her representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person or the household in imminent danger;

(2) Where feasible and appropriate, make arrangements for the availability of meals to older persons in weather related emergencies;

(3) Assist participants in taking advantage of benefits under other programs.

§ 1321.73 Legal assistance.

(a) The provisions and restrictions in the section apply only to legal assistance providers and only they are providing legal assistance under section 307(a)(15) of the Act.

(b) The area agency must award funds to the legal assistance provider(s) that most fully meet the standards in this subsection. The legal assistance provider(s) must—

(1) Have staff with expertise in specific areas of law affecting older persons in economic or social need, for example, public benefits, institutionalization and alternatives to institutionalization;

(2) Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;

(3) Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;

(4) Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound older individuals effectively; and

(5) Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language.

(c) A legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under this part.

(d) A legal assistance provider may ask about the person's financial circumstances as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older person may be eligible.

(e) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(f) Each legal assistance provider and its attorney and employees must comply with the following regulations when engaged in the outside practice of law:

(1) No attorney shall engage in any outside practice of law if the director of the provider has determined that such practice is inconsistent with the attorney's full time responsibilities.

(2) If the requirement of paragraph (f)(1) is met, a provider may permit an attorney to engage in compensated outside practice of law when the attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible; or

(3) If the requirement of paragraph (f)(1) is met, a provider may permit an attorney to engage in compensated outside practice of law when the attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction, and remits to the provider all compensation received.

(4) If the requirement of paragraph (f)(1) is met, a provider may permit an attorney to engage in uncompensated outside practice of law when the attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdictional or on behalf of a close friend, family member, religious community, or charitable group.

(g) A provider, employee of the provider, or staff attorney shall not engage in the following prohibited political activities:

(1) A provider shall not contribute or make available Older Americans Act funds, or any personnel or equipment to any political party or association to the campaign of any candidate for public or party office; or for use in advocating or opposing any ballot measure, initiative, or referendum;

(2) No employee shall intentionally identify the Title III program or provider with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office;

(3) No employee shall use any Older Americans Act funds for activities prohibited to attorneys under § 1321.73(g)(1); nor shall an employee intentionally identify or encourage others to identify the provider with such activities;

(4) While engaged in legal assistance activities supported under the Act ["Legal assistance activities," means any activity carried out during an employee's working hours which uses resources provided under the Older Americans Act, and, in fact, provides legal assistance to an eligible client], no employee and no staff attorney shall, at any time—

(i) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;

(ii) Directly or indirectly coerce, attempt to coerce, command or advise an employee under the Act to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or

(iii) Be a candidate for partisan elective public office;

(5) While engaged in legal assistance activities supported under the Act, no attorney shall engage in—

(i) Any political activity;

(ii) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election; or

(iii) Any voter registration activity; and

(6) Nothing in this section is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

(h) No provider shall use funds received under the Act to provide legal assistance in a free-generating case unless other adequate representation is unavailable. All providers shall establish procedures for the referral of fee-generating cases.

(1) "Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

(2) Other adequate representation is deemed to be unavailable when the provider has determined that fee referral is not possible because any of the following—

(i) The case has been rejected by the local lawyer referral service, or by two private attorneys;

(ii) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

(iii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(3) Other adequate representation is deemed to be unavailable when—

(i) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other non-pecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(ii) A court appoints a provider or an employee of a provider pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(iii) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

(4) A provider may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if—

(i) The requirements of paragraph 1321.73(g) (2) and (3) are met; and

(ii) Funds received are not used for purposes prohibited by the Act.

(5) When a case or matter subject to this section results in a recovery of damages, other than statutory benefits, a provider may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with case or matter, if

(i) The requirements of paragraph 1321.73(g) (2) and (3) are met; and

(ii) The client has agreed in writing to reimburse the provider for such costs and expenses.

(i)(1) While carrying out legal assistance activities funded under the Act, no employee shall—

(i) Knowingly participate in any public demonstration, picketing, boycott, or

strike, except as permitted by law in connection with the employee's own employment situation; or

(ii) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(2) While employed under the Act, no employee shall, at any time—

(i) Knowingly participate in any rioting or civil disturbance; activity in violation of an outstanding injunction of any court of competent jurisdiction; or any other illegal activity that is inconsistent with an employee's responsibilities under the Act, or the Code of Professional Responsibility; or

(ii) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(3) Nothing in this part shall prohibit an attorney from—

(i) Informing and advising a client about legal alternative to litigation or the lawful conduct thereof;

(ii) Fulfilling the professional responsibilities of an attorney to a client.

(j) No funds made available to a provider under the Act shall be used, at any time, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body or State proposals by initiative petition, except that—

(1) An employee may respond to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient to testify, draft or review measures or to make representation to such agency, body, committee or member on a specific matter; or

(2) An employee may engage in such activities at the request of an eligible client of a provider, to the extent such activities are necessary to the provision of a legal advice and representation to a client who has sought such legal advice and representation with respect to particular legal rights and responsibilities which would be affected by particular legislation or administrative measures, but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible.

(k) Providers shall adopt procedures and forms to document that the legislative and administrative activities in which the engage fall within the activities permitted in § 1321.73(j). Such documentation shall include—

(1) With respect to activities permitted under § 1321.73(j)(1), a written request signed by an official of the governmental agency or a member of the legislative body or committee making the request which states the type of representation or assistance requested and identifies the executive or administrative order or regulation, or legislation to be addressed.

(2) With respect to activities permitted under § 1321.73(j)(2), a retainer agreement, signed by the client or clients represented, or by an official of the client group in the case of a group client, which agreement shall specify the legislative or administrative measure on which representation is sought, (appearance at a hearing, legislative drafting, etc.), and which shall include a statement of the client's direct interest in the particular legislative or administrative measure to be addressed;

(3) Providers shall obtain the documentation required by this section prior to undertaking any of the activities permitted by paragraphs 1321.73(j)(1), or, 1321.73(j)(2) except that providers may respond to an oral request made pursuant to §§ 1321.73(j)(1) or 1321.73(j)(2) in the absence of a written request provided that the fact, nature, and circumstances of the request are subsequently documented in writing and signed by the requesting authority.

(l) No funds made available under the Older Americans Act shall be used to:

(1) Maintain separate offices for the sole purpose of engaging in legislative activity;

(2) Pay dues to any organization (other than a bar association), a substantial purpose or function of which is to take positions on matters pending before legislative or administrative bodies;

(3) Pay for transportation to legislative or administrative proceedings of persons other than employee engaged in activities permitted under this section or witnesses entering appearances in such proceedings on behalf of clients of the providers, except that such funds may be used to transport the client where necessary and appropriate. This subsection does not authorize payment of transportation expenses for employees not actually engaged in permitted representation activities;

(4) Pay, in whole or in part for the conduct of or transportation to, an event in if a primary purpose of the expenditure is to facilitate lobbying or any other activity which would be prohibited if conducted with funds made available under the Older Americans Act;

(5) Pay for administrative or related costs associated with any activity prohibited by this part; or

(6) Assist others, through legislative liaison activities, to influence legislation in a manner that would be prohibited is undertaken with funds made available under the Older Americans Act. Legislative liaison activities include but are not limited to attending legislative sessions or committee hearings, gathering information regarding pending legislation, and analyzing the effect of pending legislation.

(m) Notwithstanding the provisions of § 1321.73(j)(1) providers shall not use funds made available under the Act for publicity or propaganda purposes designed to support or defeat proposed legislation or legislation pending before Congress or any State legislature. For purposes of this regulation, "publicity or propaganda" means any oral communication or any advertisement, telegram, letter, article, newsletter, or other printed or written matter or device which contains a direct suggestion, or, when taken as a whole, an indirect suggestion to the public at large or to selected individuals to contact elected representatives in support of or in opposition to pending or proposed legislation.

(n) No funds made available to a provider under the Act shall be used to support the preparation, production, and dissemination of any article, newsletter, or other publication or written matter for general distribution which contains any reference to proposed or pending legislation unless—

(1) The publication does not contain any publicity or propaganda prohibited by § 1321.73(m);

(2) The provider has adopted a policy requiring the provider's executive director, or his or her designee, to review each publication produced by the provider prior to its dissemination for conformity to these regulations;

(3) The provider provides a copy of any such material produced by the provider to the area agency within 30 days after publication; and

(4) Such funds are used only for costs incident to the preparation, production, and dissemination of such publications to providers, providers' staff and board members, private attorneys representing eligible clients, and the area agency, as opposed to the public at large.

(o)(1) Notwithstanding the provisions of § 1321.73(j), no funds made available to a provider under the Act shall be

used directly or indirectly, to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence any decision by a Federal, State, or local agency, except where legal assistance is provided by an employee of a provider to an eligible client on a particular application, claim, or case, which directly involves the client's legal rights and responsibilities, or to influence any Member of Congress or any other Federal, State, or local elected officials to favor or oppose any Acts, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure of the Congress any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications made in response to any Federal, State, or local official upon a specific matter.

(2) The exception for communications to officials does not authorize communication with anyone other than the requesting party. No employee of the provider shall, directly or indirectly, solicit a request from any official to testify or otherwise advocate the support or defeat of legislative measures.

(p) Nothing in this section is intended to prohibit an employee from—

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies;

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation consistent with the requirements of paragraphs (m) and (n) of this section;

(3) Responding to an individual client's request for advice only with respect to the client's own communications to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law. This provision does not authorize publication or training of clients on lobbying techniques or the compostion of a communication for the client's use; or

(4) Making direct contact with the area agency for any purpose.

Subpart F—Hearing Procedures for State Agencies

§ 1321.75 Scope.

(a) Hearing procedures for State plan disapproval, as provided for in section 307(c) and section 307(d) of the Act are subject to the provisions of 45 CFR Part 213 with the following exceptions:

(1) Section 213.1(a); § 213.32(d); and § 231.33 do not apply.

(2) Reference to SRS Hearing Clerk shall be read to mean HDS Hearing Clerk.

(3) References to Administrator shall be read to mean Commissioner on Aging.

(b) Instead of the scope described in § 213.1(a), hearing procedures described in this subpart apply to nature and opportunity for a hearing on:

(1) Disapproval of a State plan or amendment;

(2) Determination that a State agency does not meet the requirements of this part;

(3) Determination that there is a failure in the provisions or the administration of an approved plan to comply substantially with Federal requirements.

§ 1321.77 When a decision is effective.

(a) The Commissioner's decision specifies the effective date for AoA's reduction and withholding of the State's grant. This effective date may not be earlier than the date of the Commissioner's decision or later than the first day of the next calendar quarter.

(b) The decision remains in effect unless reversed or stayed on judicial appeal, or until the agency or the plan is changed to meet all Federal requirements, except that the Commissioner may modify or set aside his or her decision before the record of the proceedings under this subpart is filed in court.

§ 1321.79 How the State may appeal.

A State may appeal to the U.S. Court of Appeals which has jurisdiction in the State the final decision of the Commissioner disapproving the State plan or plan amendment, finding noncompliance, or finding that a State agency does not meet the requirements of this part. The State must file the appeal within 30 days of the Commissioner's final decision.

§ 1321.81 How the Commissioner may realiot the State's withheld payments.

The Commissioner disburses funds withheld from the State directly to any public or nonprofit private organization or agency, or political subdivision of the State, that has the authority and capacity to carry out the functions of the State agency and submits a State plan which meets the requirements of this part and which contains an agreement to meet the non-federal share requirements.

2. Subchapter C, Part 1328 is revised to read as follows:

PART 1328—GRANTS TO INDIAN TRIBES FOR SUPPORTIVE AND NUTRITIONAL SERVICES

Sec.

1328.1 Basis and purpose of part.
1328.3 Definitions.
1328.5 Applicability of other regulations.
1328.7 Confidentiality and disclosure of information.
1328.9 Contributions.
1328.11 Prohibition against supplantation.
1328.13 Optional services.
1328.15 Nutrition services.
1328.17 Information and referral.
1328.19 Application requirements.
1328.21 Application approval.
1328.23 Hearing procedures.

Authority: Title VI of the Older Americans Act (42 U.S.C. 3057).

§ 1328.1 Basis and purpose of part.

This part implements Title VI of the Older Americans Act, as amended, by establishing the requirements that an Indian tribal organization must meet in order to receive a grant to provide supportive and nutrition services to older Indians and to acquire, alter, or renovate a facility for use as an Indian multipurpose senior center. This part also prescribes application and hearing requirements and procedures for these grants.

§ 1328.3 Definitions.

"Acquiring," as used in section 307(a)(14) of the Act, means obtaining ownership of an existing facility in fee simple or by lease for 10 years or more for use as a multipurpose senior center.

"Act" means the Older Americans Act of 1965, as amended.

"Altering" or "renovating," as used in section 307(a)(14) of the Act with respect to multipurpose senior centers, means making modifications to or in connection with an existing facility which are necessary for its effective use as a center. These may include renovation, repair, or expansion which is not in excess of double the square footage of the original facility and all physical improvements.

"Budget period," as used in § 1328.19 of this part, means the intervals of time into which a period of assistance (project period) is divided for budgetary and funding purposes.

"Department," means the Department of Health and Human Services.

"Indian reservation," means the reservation of any Federally recognized Indian tribe, including any band, nation, pueblo, or rancheria, any former reservation in Oklahoma, any community on non-trust land under the

jurisdiction of an Indian tribe, including a band, nation, pueblo, or rancheria, with allotted lands, or lands subject to a restriction against alienation imposed by the United States, and Alaskan Native regions established, pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

"Indian tribe," means any Indian tribe, band, nation, or organized group or community, including any Alaska Native Village, regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of the status as Indians (25 U.S.C. 450b).

"Means test," as used in the provision of services, means the use of an older Indian's income or resources to deny or limit that person receipt of services under this part.

"Older Indians," means those individuals who have attained the minimum age determined by the tribe for services.

"Project period," as used in § 1328.19 of this part, means the total time for which a project is approved for support, including any extensions.

"Service area," as used in § 1328.9(b) and elsewhere in this part, means that geographic area approved by the Commissioner in which the tribal organization provides supportive and nutritional services to older Indians residing there. A service area may include all or part of the reservation and any portion of a county or counties which have a common boundary with the reservation. A service area may also include a non-contiguous area is the designation of such an area will further the purpose of the Act and will provide for more effective administration of the program by the tribal organization.

"Service provider," means any entity that is awarded a subgrant or contract from a tribal organization to provide services under this part.

"Tribal organization," as used in § 1328.7 and elsewhere in this part, means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. Provided that in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite to the letting or making of the contract or grant (25 U.S.C. 450b).

§1328.5 Applicability of other regulations.

The following regulations in Title 45 of the Code of Federal Regulations apply to all activities under this part:

(a) Part 16—Procedures of the Departmental Grant Appeals Board;

(b) Part 74—Administration of Grants, except subpart N;

(c) Part 75—Informal Grant Appeals Procedures;

(d) Part 80—Nondiscrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) Part 81—Practice and procedures for hearings under Part 80;

(f) Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Benefits from Federal Financial Participation; and

(g) Part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

§ 1328.7 Confidentiality and disclosure of information.

A tribal organization must have confidentiality and disclosure procedures as follows:

(a) A tribal organization must have procedures to ensure that no information about an older Indian or obtained from an older Indian by any provider of services is disclosed by the provider of such services in a form that identifies the person without the informed consent of the person or of his or her legal representative, unless the disclosure is required by court order, or for program monitoring by authorized Federal or tribal monitoring agencies.

(b) A tribal organization is not required to disclose those types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act, 5 U.S.C. 552.

§ 1328.9 Contributions.

(a) Each tribal organization must—

(1) Provide each older Indian with a free and voluntary opportunity to contribute to the cost of the service;

(2) Protect the privacy of each older Indian with respect to his or her contribution;

(3) Establish appropriate procedures to safeguard and account for all contributions;

(4) Use all supportive services contributions to expand the services provided under this part; and

(5) Use all nutrition services contributions only to expand services as provided under section 307(a)(13)(c)(ii) of the Act.

(b) Each tribal organization may develop a suggested contribution schedule for services provided under this part. In developing a contribution schedule, the tribal organization must consider the income ranges of older Indians in the service area and the tribal organization's other sources of income. However, means tests may not be used.

(c) A tribal organization that receives funds under this part may not deny any older Indian a service because the older Indian will not or cannot contribute to the cost of the service.

§ 1328.11 Prohibition against supplantation.

A tribal organization must ensure that the activities provided under a grant under this part will be in addition to, and not in substitution for, comparable activities provided without Federal assistance.

§ 1328.13 Optional services.

(a) A tribal organization may provide all the services mentioned under Part B, of the Older Americans Act, and any other supportive services that are necessary for the general welfare of older Indians.

(b) If an applicant elects to provide multipurpose senior center activities or uses any of the funds under this part for acquiring, altering or renovating a multipurpose senior center facility, it must comply with the following requirements:

(1) The tribal organization must comply with all applicable local health, fire, safety, building, zoning and sanitation laws, ordinances or codes.

(2) The tribal organization must assure the technical adequacy of any proposed alteration or renovation of a multipurpose senior center assisted under this part. The tribal organization assures technical adequacy by requiring that any alteration or renovation of a multipurpose senior center that affects the load bearing members of the facility is structurally sound and complies with all applicable local or State ordinances, laws, or building codes.

(c) If an applicant elects to provide legal services, it must substantially comply with the requirements in § 1321.73 and legal services providers must comply fully with the requirements in § 1321.73(c) through 1321.73(p).

§ 1328.15 Nutrition services.

(a) In addition to providing nutrition services to older Indians, a tribal organization may—

(1) Provide nutrition services to the spouses of older Indians;

(2) Provide nutrition services to nonelderly handicapped or disabled Indians who reside in housing facilities occupied primarily by the elderly, at which congregate nutrition services are provided; and

(3) Offer a meal, on the same basis as meals are provided to older Indians, to individuals providing volunteer services during meal hours.

(b) Each tribal organization is entitled to receive cash payments in lieu of donated foods for all or any portion of its entitlement available under section 311(a)(4) of the Act.

To receive cash or commodities, the tribal organization must have an agreement to be a distributing agency with the U.S. Department of Agriculture's Food and Nutrition Service (FNS).

(c) Where applicable, the tribal organization must work with agencies responsible for administering other programs to facilitate participation of older Indians.

§ 1328.17 Information and referral.

A tribal organization must—

(a) Establish or have a list of all services that are available to older Indians in the service area.

(b) Maintain a list of services needed or requested by the older Indians; and

(c) Provide assistance to older Indians to help them take advantage of available services.

§ 1328.19 Application requirements.

A tribal organization must have an approved application. The application must be submitted as prescribed in section 604 of the Act and in accordance with the Commissioner's instructions for the specified project and budget periods. The application must provide for—

(a) Program objectives, as set forth in section 604(a)(5) of the Act, and any objectives established by the Commissioner.

(b) A description of the geographic boundaries of the service area proposed by the tribal organization;

(c) Documentation of the ability of the tribal organization to deliver supportive and nutrition services to older Indians, or documentation that the tribal organization has effectively administered supportive and nutrition services within the last 3 years;

(d) Assurances as prescribed by the Commissioner, including assurances that—

(1) A tribal organization has methods and procedures to ensure that older Indians represented under the grant do not receive services under Part 1321 for the period of the grant;

(2) A tribal organization represents at least 60 individuals who have attained 60 years of age or older;

(3) A tribal organization will comply with all applicable State and local licensure and safety requirements for the provision of those services;

(4) If a substantial number of the older Indians residing in the service area are of limited English-speaking ability, the tribal organization will utilize the services of workers who are fluent in the language spoken by a predominant number of older Indians;

(5) Procedures to ensure that all services under this part are provided without use of any means tests; and

(6) A tribal organization will comply with all requirements set forth in §§ 1328.7 through 1328.17.

(e) A tribal resolution(s) authorizing the tribal organization to apply for a grant under this part; and

(f) Signature by the principal official of the tribe.

§ 1328.21 Application approval.

(a) Approval of any application under section 604(e) of the Act, shall not commit the Commissioner in any way to make additional, supplemental, continuation, or other awards with respect to any approved or portion thereof.

(b) The Commissioner may give first priority in awarding grants to grantees which have effectively administered such grants in the prior year.

§ 1328.23 Hearing procedures.

In meeting the requirements of section 604(d)(3) of the Act, if the Commissioner disapproves an application from an eligible tribal organization, the tribal organization may file a written request for a hearing with the Commissioner.

(a) The request must be postmarked or delivered in person within 30 days of the date of the disapproval notice. If it requests a hearing, the tribal organization must submit to the Commissioner, as part of the request, a full written response to each objection specified in the notice of disapproval, including the pertinent facts and reasons in support of its response, and any and all documentation to support its position. Service of the request must also be made on the individual(s) designated by the Commissioner to represent him or her.

(b) The Administration on Aging will have the opportunity to respond within 30 days to the merits of the tribal organization's request.

(c) The Commissioner notifies the tribal organization in writing of the date, time and place for the hearing.

(d) The hearing procedures include the right of the tribal organization to—

(1) A hearing before the Commissioner or an official designated by the Commissioner;

(2) Be heard in person or to be represented by counsel, at no expense to the Administration on Aging;

(3) Present written evidence prior to and at the hearing, and present oral evidence at the hearing if the Commissioner or designated official decides that oral evidence is necessary for the proper resolution of the issues involved, and

(4) Have the staff directly responsible for reviewing the application either present at the hearing, or have a deposition from the staff, whichever the Commissioner or designate official decides.

(e) The Commissioner or designated official conducts a fair and impartial hearing, takes all necessary action to avoid delay and to maintain order and has all powers necessary to these ends.

(f) Formal rules of evidence do not apply to the hearings.

(g) The official hearing transcript together with all papers, documents, exhibits, and requests filed in the proceedings, including rulings, constitutes the record for decision.

(h) After consideration of the record, the Commissioner or designated official issues a written decision, based on the record, which sets forth the reasons for the decision and the evidence on which it was based. The decision is issued within 60 days of the date of the hearing, constitutes the final administrative action on the matter and is promptly mailed to the tribal organization.

(i) Either the tribal organization or the staff of the Administration on Aging may request for good cause an extension of any of the time limits specified in this section.

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April 1, 1985

Part V

Department of Energy

Bonneville Power Administration

Impact Aid Policy; Final Revised Policy; Notice

DEPARTMENT OF ENERGY

Bonneville Power Administration

Impact Aid Policy; Final Revised Policy

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Adoption of Final Revised Impact Aid Policy and Submission for Approval to the Federal Energy Regulatory Commission (FERC).

SUMMARY: Section 7(m) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) provides that BPA may establish a regionwide uniform formula for payment of impact aid to local governments which have been substantially impacted by the presence of a BPA major transmission facility located within the government's boundaries. This final policy responds to public comment on earlier proposed versions. The first proposal was published in the Federal Register on May 20, 1982 (47 FR 21912); the second (revised) proposal was published on December 15, 1983 (48 FR 55763).

The final policy contains the formula and administrative requirements for making impact aid payments. The payment formula itself takes into account the nature and costs of local government services provided to the BPA Administrator in connection with major transmission facilities.

DATES: This policy will become effective immediately upon FERC approval.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa M. Cunningham, Public Involvement Staff, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212, or at (503) 230–3478. Oregon callers outside of Portland may use the toll-free number 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 NE. Irving Street, Portland, Oregon 97232, (503) 230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, (503) 687–6852.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, (509) 456–2518.

Mr. George Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, (406) 329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, (509) 662–4377, extension 379.

Mr. Richard Casad, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, (206) 422–4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, (509) 525–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, (208) 523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, (208) 334–9137.

SUPPLEMENTARY INFORMATION:

I. Background

A. Public Review and Comment

The Pacific Northwest Power Act allows BPA to develop a regionwide formula for making annual impact aid payments to appropriate local governments in accordance with the procedures for public notification and hearings as described in sec. 7(m) of the Pacific Northwest Power Act.

BPA held hearings on its proposed formula in May and June of 1982. In addition to the opportunity to submit oral and written material, BPA encouraged the submission of written views, data, and arguments for inclusion in the record. The Administrator developed a revised proposed formula after considering the public comments received. That revised formula was published, and comment solicited during the following 3-month period (December 1983–March 1984). After a second revision, the final policy has been signed by the Administrator to establish a uniform regionwide formula for impact aid. Pursuant to sec. 7(m)(2), of the Pacific Northwest Power Act, the policy must still be approved by FERC before it may be implemented.

B. Summary of Impact Aid Formula

The final policy represents BPA's efforts to maximize payments to affected local governments, given the limitations contained in the Congressional authorization. The intent is to pay for a qualifying local government's cost of services concerning a BPA major transmission facility located within the government's boundaries. If the local government spends more than the amount calculated by the formula, the additional amount will be paid. That facility must have been completed, or a modification of it undertaken, after passage of the Pacific Northwest Power Act, and it must result in a substantial impact on the local government. The latter requirement is met where application of the construction period formula results in an annual payment figure of at least $1,000. Services covered are all those reasonably related to the facility and the personnel associated with it, and include fire protection, police protection, facility planning services, emergency services, road maintenance, school services, etc.

As stipulated in the Pacific Northwest Power Act, payments may not begin until the first full fiscal year after approval of a regional plan by the Pacific Northwest Electric Power and Conservation Planning Council (Regional Council). The Regional Council approved the plan in April 1983; BPA's fiscal year begins on October 1. However, the Pacific Northwest Power Act also requires that the formula be approved by the Federal Energy Regulatory Commission. That approval is currently being sought. After approval, payments may begin. At that time, a qualifying local government would receive payment for services provided since December 5, 1980. Thereafter, construction payments would be made at the beginning of each fiscal year, and preconstruction and operation and maintenance period payments would be made generally at the time of incurrence.

C. Discussion of Significant Concerns About and Changes in the Policy

The public's subjects of concern fell into several general categories:

- Potential exclusions of other local governments and school districts in impact aid payment formula;
- Perceived disparity between impact payments and the anticipated loss of tax revenue;
- Equalization of payments to account for "richer" and "poorer" counties;
- The perceived requirement to prove an expenditure of $1,000 before qualifying for impact payments; and
- The perceived burdens of recordkeeping in obtaining or qualifying for impact aid.

A Staff Evaluation/Record of Decision has been prepared to address the points above, to record the decisions taken, and to discuss the significance of the following issues. It is available from the Public Involvement staff member listed earlier.

Issue: Qualifying Local Governments

BPA's definition of a local government is the county. This definition does not include other local governments, such as cities, towns, school districts, water districts, fire districts, and other special

districts. These other entities provide services to BPA which were not compensated for directly under the revised proposed formula.

BPA Decision: The final Impact Aid Policy recognizes other local taxing authorities, because BPA does not wish to provide impact aid inequitably. These other entities will pass their claims through the appropriate county for BPA approval and payment beyond the construction payment formula.

Issue: Substantially Impacted

The construction period formula is based on the number of non-local workers introduced into the county by the project. Counties were under the misapprehension that they must demonstrate $1,000 in *expenditures* in order to qualify for aid. In fact, the local government does not have to spend or to demonstrate that it spent more than $1,000, unless it is claiming expenses greater than the amount calculated by the construction formula.

BPA Decision: The wording of the policy, including the section explaining the process for payment of costs exceeding that provided by the formula, has been rewritten for clarity.

Issue: Adjustments for Dependents of Non-Local Workers

The revised proposed policy multiplier to compensate for dependents accompanying non-local workers into the project area was 1.67. A study commissioned by BPA *(Transmission Line Construction Worker Profile)* used a figure of 1.677.

BPA Decision: The formula has been rounded off for simplicity by using a multiplier of 1.7, rather than 1.67 or 1.677, to determine the number of non-local dependents.

Issue: Interest Payments

The revised proposed policy allowed the inference that BPA maintained an inconsistent policy on interest payments, declining to pay interest if BPA impact aid payments were late and claiming as part of the compensation any interest gained by county governments from prepayment. This struck the public as unfair.

BPA Decision: The intent has been clarified to show that any interest gained by the qualifying local government from BPA's prepayment will be in addition to the payment made according to the proposed formula.

Issue: Application Procedures

Commenters expressed concern over the implications of a statement that impact aid would be paid only subject to availability of funds. As with all BPA expenses, impact aid is subject to available funds and budget authority. However, it is not necessary to state this fact.

BPA Decision: The statement introduces unnecessary controversy. Therefore it has been removed from the policy.

Issue Disqualification of Local Governments

Commenters expressed concern that attempts to correct noncompliance would not be well received by BPA.

BPA Decision: Policy language has been clarified to allow governments to correct such problems.

II. Impact Aid Policy

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Section 2. *Definitions*
Section 3. *Payment System*
Section 4. *Payment Schedule*
Section 5. *Recordkeeping and Review*
Section 6. *Penalties*
Section 7. *Modification*

Section 1. Introduction

The following provisions constitute Bonneville Power Administration's (BPA) implementation of a regionwide uniform formula, as allowed by sec. 7(m) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act). Funds will be provided for the implementation of this policy as part of the annual BPA budget. Section 7(m) allows impact aid payments to qualifying local governments which have been substantially impacted by the location of a major transmission facility within their jurisdictional boundaries. In compliance with the Pacific Northwest Power Act, the payment formula is to identify and take into account the services provided to the BPA Administrator concerning such facilities and the associated costs to such governments as the result of such facilities.

To be eligible for impact aid payments, the construction of the facilities, or any modification thereof, must be completed after the effective date of the Pacific Northwest Power Act (December 5, 1980), and any modification must result in a substantial increase in capacity. Payments may not begin until the beginning of the first fiscal year (FY 84) after final adoption of a Regional Plan (FY 83) and approval of the formula by the Federal Energy Regulatory Commission (FERC).

Additional requirements are identified in sec. 7(m) of the Pacific Northwest Power Act and in the provisions that follow. Failure to comply with any requirements herein may disqualify a local government from impact aid payments, if such non-compliance cannot be corrected to the satisfaction of BPA.

Section 2. Definitions

a. "Construction Period" includes the time from the first Notice to Proceed (NTP) date to the final completion date, as scheduled in or for the construction contracts, and is applied to the separately energized segments of each Major Transmission Facility.

b. "Fiscal Year" is the BPA (and Federal Government) fiscal year of October 1 through September 30.

c. "Location" or "Located" generally means the beginning of construction of a Major Transmission Facility or segment thereof, but may also include preconstruction activity related to BPA consideration of various sites. Alternative sites will be covered only to the extent they are so identified in BPA's Notice of Intent. [See also sec. 2(g) of the Policy.]

d. "Major Transmission Facility" [as defined in sec. 3(c) of the Federal Columbia River Transmission System Act (FCRTSA)] means a transmission facility completed after the effective date of the FCRTSA that has been or would have been identified for inclusion in BPA's budget as a major transmission facility requiring specific Congressional approval.

e. "Notice of Intent" is publication in the **Federal Register** of the BPA Administrator's decision to consider construction of a given facility.

f. "Operation and Maintenance (O&M) Period" includes the time from the construction completion date as stated in the construction contract, until such time as the facility is permanently taken out of service (decommissioned), is subject to reconstruction or major modification, or is sold or otherwise removed from BPA operation.

g. "Preconstruction Period" includes the time from publication of BPA's Notice of Intent (NOI) in the **Federal Register** regarding a facility until the Notice to Proceed (NTP) date for that particular facility's construction. [See also sec. 2(c) of the Policy.]

h. "Qualifying Local Governments" are counties which have been Substantially Impacted by the location of BPA Major Transmission Facilities within their jurisdictional boundaries. A qualifying county may represent other local governmental entities which submit invoices for actual service costs through the county to BPA pursuant to sec. 3 of the policy.

i. "Regional Plan" means the plan and program developed and adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to secs. 4(d) and 4(h) of the Pacific Northwest Power Act.

j. "Substantially Impacted" is a requirement met by a local government where application of the Construction Period formula results in an annual payment figure of at least $1,000.

k. "Substantial Increase of Capacity" is a requirement for modifications to existing Major Transmission Facilities. It is met where there is a 100-percent increase in the design electrical capacity of such facility.

Section 3. Payment Section

Each Qualifying Local Government shall be paid pursuant to the following formula:

a. *Preconstruction Period:* Actual costs plus reasonable overhead costs, will be paid, in accordance with the Office of Management and Budget Circular No. A–87, Cost Principles for State and Local Governments, for all services requested by BPA or necessarily incurred as a direct consequence of proposed BPA action. The Substantially Impacted requirement shall not be applicable during this period. A negotiated advance will be paid by BPA to each local government. That amount may be increased as necessary, and the local government will return any excess within 60 days after construction has commenced.

b. *Construction Period:* Annually, an amount equal to the estimated non-local work force and family members present in the county times the county's per capita cost for services will be paid. This can be represented by:

$1.7 \times A \times B$

Where

A = county share of facility average non-local work force

B = county's annual per capita budgeted service expenditure

The .7 factor reflects the presence of workers' family members. The average non-local work force is determined based on BPA construction estimates. The county share is determined on the basis of the ratio of structure mileage in a county to total facility mileage for the line, with substation work force allocated separately. Annually updated county budget and population figures will determine per capita expenditure. Annually updated figures will be sent to BPA by the counties.

Annual construction payments will be prorated for periods of construction lasting less than 1 calendar year. Payments will be offset for any period of construction suspension (not applicable to seasonal adjustment). The first payment will cover the period from the effective date of the Pacific Northwest Power Act through the calendar year numbered the same as the fiscal year in effect at the time of formula approval. Any interest gained by counties as a result of the advance formula payment shall not be recovered and shall not offset BPA payments.

The construction payment is intended to pay for normal services provided by Qualifying Local Governments. Where a Qualifying Local Government can prove an annual expenditure for services which exceeds that allowed by the construction period formula, BPA will pay the actual amount. Any extraordinary expenditures are beyond the coverage of this policy and will be handled separately.

c. *Operation and Maintenance (O&M) Period:* Actual costs plus reasonable overhead costs, in accordance with OMB Circular A–87, for all services requested by BPA or necessarily incurred as a direct consequence of proposed BPA action or presence will be paid. The Substantially Impacted requirement shall not be applicable during this period. Payment will be made 30 days after approval of invoices received for such services.

Other entities providing services on behalf of a major transmission facility may submit invoices for actual service costs through the appropriate county to BPA. BPA will make payment 30 days after approval of such invoices.

Section 4. Payment Schedule

As the regional Plan was finally adopted in fiscal year 1983, payments shall begin following approval of the impact aid formula by FERC [see Pacific Northwest Power Act secs. 7(m)(1) and (2)]. For facilities already located, formula-derived payment will be mailed to all known Qualifying Local Governments. For future facilities, payments shall begin once such facilities have been appropriately identified by the BPA Administrator in a Notice of Intent. Thereafter, as appropriate, construction payments shall be made annually at the beginning of each fiscal year for the same numbered calendar year, and other payments shall be made as indicated in sec. 3 of this policy. No interest will be paid with respect to impact aid payments.

Section 5. Recordkeeping and Review

All Local Governments receiving impact aid payments shall keep adequate records of their total service budget and population figures, and shall make such records available to BPA upon request. In addition, BPA, or its designee, may conduct such audits, examinations, or inspections of the local government's records and procedures, as BPA deems appropriate. Any audit will be performed in accordance with audit standards established by the Comptroller General of the United States. The number, timing, and extent of such audits will be at the discretion of BPA or its designee. The right to audit will be available for a 3-year period subsequent to the date of payment.

Section 6. Penalties

Officials or others who provide information or documentation under this formula are subject to, among other laws, the criminal penalties of Title 18 of the United States Code. Sections 287 and 1001, which punish the submission of false, fictitious, or fraudulent claims and the making of false, fictitious, or fraudulent statements, provide for a fine of not more than $10,000 or imprisonment for not more than 5 years, or both. Violators are likewise subject to the civil penalties of 31 U.S.C. 231. Section 231 provides that the person liable "shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

Section 7. Modification

This formula is subject to modification where determined necessary by the BPA Administrator; such modification shall not occur more often than once a year. Any changes of a major nature shall require application of the Pacific Northwest Power Act sec. 7(i) procedure, including FERC review.

Issued in Portland, Oregon, on March 18, 1985.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 85–7643 Filed 3–29–85; 8:45 am]

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Monday
April 1, 1985

Part VI

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Energy Efficiency Standards for Dishwashers, Television Sets, Clothes Washers, and Humidifiers and Dehumidifiers; Notice of Proposed Rulemaking and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-113]

Energy Conservation Program for Consumer Products; Proposed Rulemaking and Public Hearing Regarding Energy Efficiency Standards for Dishwashers, Television Sets, Clothes Washers, and Humidifiers and Dehumidifiers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemaking and publlic hearing.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, as a general matter requires that the Department of Energy prescribe an energy efficiency standard for each of certain major household appliances, unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

The Department of Energy is proposing to determine that an energy efficiency standard for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers would not result in a significant conservation of energy or be economically justified. Therefore, the Department is today proposing to amend Title 10, Part 430 of the Code of Federal Regulations to include a determination of no standard for the above-mentioned covered products.

The purpose of this notice of proposed rulemaking is to provide interested persons an opportunity to comment on the proposed rule and to invite interested persons to participate in the rulemaking process.

DATES: Written comments in response to this notice must be received by July 1, 1985; requests to speak at the public hearing must be received by May 8, 1985; speakers will be notified by May 9, 1985; statements must be submitted by May 10, 1985; the public hearing will be held on May 15, 1985, at 9:30 a.m.

ADDRESSES: Written comments, requests to speak at the public hearing, and copies of statements of each speaker are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Appliances (Docket No. CAS-RM-79-113), Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252-9319.

The public hearing will be held at Room 1E-245, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the transcript of the public hearing, the Technical Support Document, and the public comments received may be obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, D.C. 20585. (202) 252-6020. 9:00 am-4:00 pm.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-112.1, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9513

U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9319.

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619),[1] created the Energy Conservation Program for Consumer Products Other Than Automobiles. The consumer products subject to this program (referred to hereafter as "covered products") are: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. *See* section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts: testing, labeling, and energy efficiency standards. The Department of Energy, in consultation with the National Bureau of Standards, is required to establish test procedures for each of the covered products. *See* section 323(a)(2). The purpose of the test procedures is to provide for test results that reflect the energy efficiency, energy use, or estimated annual operating costs of each of the covered products. *See* section 323(b)(1). All test procedures were required to be adopted not later than May 1, 1978. *See* section 323(a) (4) and (6). A test procedure was not required if DOE determined by rule that one could not be developed. *See* section 323(a)(6)(B). Beginning 180 days after a test procedure for a product is adopted, no manufacturer may represent the energy consumption of or the cost of energy consumed by the product except as reflected in tests conducted according to the DOE procedure. *See* section 323(c). Test procedures have been prescribed relating to all products, but on the basis of continuing review, certain classes of products do not have currently applicable test procedures.

The Federal Trade Commission (FTC) is required by the Act to prescribe rules

[1] Part B of Title III of EPCA, as amended by the NECPA, is often referred to in this notice as the "Act."

governing the labeling of the covered products. *See* section 324(a). These rules are to require that each particular model of a covered product bear a label that indicates its estimated annual operating cost and the range of estimated annual operating costs for other models of that product. *See* section 324(c)(1). A rule is not required under section 324 if the Secretary of Energy determines that disclosure of estimated annual operating costs on a label is not technologically feasible or if the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically or technically feasible. *See* section 324(c). No labeling rule can be made with respect to a product for which there is no DOE test procedure. *See* section 324(b)(3). At the present time, there is an FTC rule requiring labels under the Act for the following products: room air conditioners, furnaces, clothes washers, dishwashers, water heaters, freezers, and refrigerators and refrigerator-freezers.[2] The FTC has proposed a rule that requires labels for central air conditioners.[3]

For each of the covered products, DOE is required to establish mandatory energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. *See* section 325 (a)(1) and (c). The Act provides, however, that no standard for a product is to be established if there is no test procedure for the product, or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. *See* section 325(b). In determining whether a standard is economically justified, the Department is directed to determine whether the benefits of the standard exceed its burdens by weighing six specific factors, as well as any other factors DOE considers relevant. *See* section 325(d). The factors are:

(1) The economic impact of the standard on the manufacturers and on the consumers of the product subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses, of the covered products which are likely to result from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition determined in writing by the Attorney General that is likely to result from the imposition of the standards; and

(6) The need of the Nation to conserve energy.

A rule establishing an energy efficiency standard for a product may set different levels of efficiencies for different classes [4] of that product if they use a different kind of energy or have different capacity or performance related features that justify different levels of efficiencies. *See* section 325(f). When a standard has been established, DOE may exempt a manufacturer from the effect of the standard for up to two years, if a manufacturer's gross revenues in the preceding year did not exceed $8 million and, after obtaining the views of the Attorney General, DOE determines that failure to grant the exemption would likely result in a lessening of competition. *See* section 325(e).

The Act specifies the priorities and procedures to be followed in adopting efficiency standards. Nine of the 13 covered products are given priority under the Act. *See* section 325(g). These nine products are: refrigerators and refrigerator-freezers; freezers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; kitchen ranges and ovens; central air conditioners; and furnaces. The remaining four covered products assigned a lesser priority are dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. The latter four products are the subject of this rulemaking.

The procedures to be followed in adopting an efficiency standard included a requirement for an advance notice of proposed rulemaking upon which interested persons may make written comments. *See* section 325(i)(1). Thereafter, there is to be a notice of proposed rulemaking, upon which interested persons may make written and oral comments, including an opportunity to question those who make such comments with respect to disputed issues of material fact. *See* section 325(i)(3) and section 336(a)(1).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. *See* section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy is a rule that supersedes any State standard. *See* section 325(b). If, because there is no Federal rule, a State efficiency standard is not superseded, persons subject to it may petition DOE to have it superseded on the basis that there is no significant State or local interest sufficient to justify the regulation and such regulation unduly burdens interstate commerce. *See* section 327(b)(1). A State whose energy efficiency standard is superseded may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is a stricter standard. However, DOE cannot issue the requested rule if the State standard would unduly burden interstate commerce. *See* section 327(b)(3).

b. Background

On December 13, 1979, the DOE published an advance notice of proposed rulemaking pursuant to section 325(i)(1) for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers (44 FR 72276). (Hereafter referred to as the December 1979 advance notice.) The advance notice was designed to present a full discussion of the Department's views concerning the standards program and the process for its implementation. DOE also set forth its views concerning the criteria for selecting classes in each product type and the maximum technologically feasible energy efficiency level for each class of product. DOE specifically requested comments on all matters presented in the advance notice. Meetings were held on January 15 and 17, 1980 to solicit the views of all concerned parties.

II. General Discussion

As indicated in the *Authority* section above, the Act prohibits DOE from promulgating a standard for a product if (1) there is no test procedure for the product, (2) a standard is not technologically feasible, (3) DOE finds a standard would not result in a significant conservation of energy, or (4) DOE finds a standard would not be economically justified. DOE analyzed

[2] 44 FR 66475 (November 19, 1979).
[3] 45 FR 53340 (August 11, 1980).
[4] Each covered product type may be made up of several classes.

the effect of standards for each product or class of product.[5]

a. Test Procedures

Test procedures have been prescribed for each of the four product types subject to today's proposal. Test procedures for clothes washers were published on September 28, 1977 (42 FR 49802); for television sets on September 14, 1977 (42 FR 46171); for humidifiers on October 18, 1977 (42 FR 55599); for dehumidifiers on October 18, 1977 (42 FR 55608); and for dishwashers on August 8, 1977 (42 FR 39964). On May 19, 1981, DOE amended the test procedures for clothes washers to clarify sections concerning automatic termination controls, test cloths, and dryer preconditioning, and to include technical revisions (46 FR 27324). On June 17, 1982, DOE proposed amendments to the test procedures for dishwashers to include water heating dishwashers (47 FR 26143). On March 3, 1983, a final rule amending the dishwasher test procedure was published (48 FR 9202). On June 4, 1984, DOE proposed amendments to the test procedures for dishwashers to revise the definition of water heating dishwashers (49 FR 23142). On November 27, 1984, the test procedures for dishwashers were amended to revise the definition of water heating dishwashers (49 FR 46533).

The Act specifically prohibits standards for a product (or class of products) if there is no applicable test procedure for it.[6] All classes of products addressed in today's proposed rule have applicable test procedures.

b. Technological Feasibility

The maximum technologically feasible energy efficiencies for each product class are shown in Table 1. Preliminary maximum technologically feasible energy efficiencies for the four products were published in the December 1979 advance notice. These levels were based on design options commercially available in 1978. These design options are reported in the product specific discussions in today's proposed rule.

TABLE 1.—PRODUCT CLASSES AND MAXIMUM TECHNOLOGICALLY FEASIBLE ENERGY EFFICIENCIES

Product type	Product class	Maximum technologically feasible energy efficiency
Dishwasher	Standard	0.41 cycles/kWh.
	Compact	0.50.
	Water Heating	0.455.
Television Sets	Color	200 percent.
	Monochrome	175.
Clothes Washers	Top Loading	1.302 ft³/kWh.
	Front Loading	1.25.
Humidifiers	Central System	88.6 percent.
	Room	83.
Dehumidifiers	(No separate classes specified).	2.90 pints/kWh.

The maximum technologically feasible energy efficiency levels proposed today by DOE for the four products are those levels which are currently commercially available.[7] For compact dishwashers, monochrome television sets, front loading clothes washers, room humidifiers, and dehumidifiers, the levels proposed today are indentical to the levels in the December 1979 notice. DOE received no information for these products at that time stating that the proposed levels were not appropriate for the maximum technologically feasible energy efficiency. The maximum technologically feasible energy efficiency levels for standard size dishwashers, color television sets and central system humidifiers are being revised today to reflect product developments which are currently available in the marketplace. These products were not available when the December 1979 advance notice was published. Since then, DOE established the dishwasher class called water heating dishwashers (48 FR 9202, March 3, 1983) and the maximum technologically feasible energy efficiency for this product class is also based on design options currently available in the marketplace. For top loading clothes washers, the level proposed today is based on comments from the Association of Home Appliance Manufacturers (AHAM) in response to the December 1979 advance notice requesting each private labeler, importer or manufacturer of a consumer product covered by the notice to complete two survey forms.

DOE is interested in receiving data, comments and statements concerning whether the levels proposed today are the maximum improvement in energy efficiency which is technologically feasible for each of covered products.

c. Energy Savings

1. *Significance of Savings.* Under section 325(b) of EPCA, as amended, DOE is prohibited from adopting a standard for a product if that standard would not result in "significant" energy savings. The statute, however, does not define the term "significant." Such a term is not readily susceptible to precise definitions, and DOE believes that Congress used such a term with the intent that DOE would, in the exercise of its informed judgment, determine what level of savings is significant and under what circumstances.

In the December 1982 final rule, DOE adopted three tests to determine whether the savings attributable to a standard would result in a significant conservation of energy under section 325(b)(1). If the savings attributable to that standard would meet any one of the three tests, then the savings attributable to that standard would be deemed significant. The three tests were generally described as: whether savings of oil or gas are large enough to decrease meaningfully this Nation's reliance on foreign sources of energy; whether savings of electricity are large enough either to reduce significantly new generation requirements or to affect significantly the environment; and, whether a standard would result in a product using 16.67 percent less energy than it would absent a standard. Specifically, the first test would deem significant the savings attributable to a standard if the standard would result in the savings of 10,000 bpd of oil, or the savings of natural gas equivalent to 10,000 bpd of oil (56,530 mcf/day) over the period of the average life of the product in question beginning with the year 1987.[8] The second test would deem significant the savings attributable to a standard if the standard would result in the savings of one percent of national electricity use over the period of the average life of the product in question beginning with the year 1987. The third test would deem savings significant if the annual energy savings attributable to a standard for a product were equal to 16.67 percent of a standard measured over the one-year period following the period of the average life of the product

[5] As used in this preamble, "product" refers to the generic product of each type lised in section 322(a) of EPCA (e.g., dishwasher or television set). "Class" means a product subset which has the same primary energy source (e.g., gas, oil or electricity) and the same capacity or performance-related features which affects the energy efficiency of the unit (e.g., color television set and monochrome television set).

[6] For example, for dishwashers, DOE did not consider basing the standard levels on a certain European design in which the dishwasher is no longer connected to the hot water supply line. The European dishwasher directly heats incoming cold water, which is assumed to be 55 °F. Currently applicable test procedures for dishwashers cover incoming water which is at either 120 °F of 140 °F. Therefore, DOE did not consider these European dishwashers for the standard levels because the test procedures do not cover dishwashers which use cold water.

[7] The one exception is the Level 2 standard for top loading clothes washers in which the maximum technologically feasible energy efficiency level is based on the highest level expected to be commercially available January 1, 1988.

[8] 56,530 mcf of natural gas contain the same BTUs as 10,000 barrels of oil.

purchased in the last year before the standard could be imposed.

During the eight products rulemakings, commenters contended that the three tests were not appropriate because one or more products were technically incapable of meeting one or more of the significance tests. If the savings attributable to a standard for a product cannot meet a particular test for significance because the technologically feasible improvements are insufficient to produce a large amount of savings, this is not by itself evidence of a fault of the significance test. Congress, in specifying certain products concerning which DOE would be required to conduct standards rulemakings, did not prejudge or determine that a standard for any or all of these products could in fact result in a significant conservation of energy. Rather, the specific products named were included because of the amount of energy they used. Whether a standard was appropriate, i.e., among other things whether it would result in a significant conservation of energy, was to be determined by DOE. For example, DOE proposed no standard for electric furnaces because improvements would not save energy. Similarly improvements to efficiency in other products may save only small amounts of energy. It is clear, however, that the fact that the potential savings are too small to meet one or more of the significance tests does not constitute a fault with the test.

Moreover, the fact that a particular product does not use enough energy to be able to meet the oil or gas and electricity tests does not indicate the inappropriateness of those tests. DOE acknowledges that the oil or gas and electricity savings tests had a natural bias toward products that use a large amount of energy. That is, a relatively small improvement in energy efficiency attributable to a standard for a product that uses a large amount of energy might meet the oil or gas or electricity savings tests, but for certain products that use relatively little energy, those tests might be impossible to meet. Accordingly, DOE proposed the third test which would be neutral as to the amount of energy used by the product, by measuring the savings as a percent of the use by that product. Consequently, DOE concludes that the three tests are appropriate, even if a particular product might not be able to meet one or more tests.

2. *Determination of Savings.* Energy savings attributable to standards for the four products were forecasted by the Energy Use Projection Model (EUP Model), which was developed by DOE especially for the four products standards analysis. The Oak Ridge National Laboratory Residential Energy End Use Model (ORNL Model), which was used by DOE for the eight products standards rulemakings, was not used for today's proposed rule for the four products, as discussed below.

DOE decided against using the ORNL Model because it does not treat the four products separately. The ORNL Model determines the energy use for ten categories of appliances—the nine priority products and lighting. A single miscellaneous category is used for all other residential appliances. The ORNL Model does not specifically identify the appliances that are included in the miscellaneous category; however, it is certain that it includes appliances in addition to the four products; for example, household fans, automatic coffeemakers, stereos and power tools. DOE believes that it would be difficult to determine the portion that each of the four products contribute to the miscellaneous category in the ORNL Model. Therefore, DOE determined it preferable that the four products standards rulemaking proceed using the EUP Model in lieu of the ORNL Model.

A. *EUP Model.* The EUP Model is the analytical tool developed for forecasting savings due to energy efficiency standards for dishwashers, television sets, clothes washers, and humidifiers and dehumidifiers. It is an interactive BASIC computer program. The EUP Model forecasts the residential energy use for each of the four products each year from 1988 to 2006 for two separate scenarios, a market-based scenario (one without standards) and a standards scenario. The market-based scenario projects the year-by-year energy use of a product by using a forecast of market-based efficiency improvements similar to the forecast of market-based efficiency improvements for the eight products. The standards scenario estimates the year-by-year energy use of a product by using the forecast of market-based efficiency improvements as the sales-weighted efficiency level for all products purchased before 1988, the year that standards would be implemented. After 1988, the standards level is used as the efficiency level for the products. Savings due to standards is the difference in energy use between the two scenarios, The EUP Model uses the dominant product class in a product type for determining energy savings. See the product specific discussions in today's proposal for the product classes chosen to represent the product type in the EUP Model.

Oil savings are expressed in barrels of oil per day (bpd). The EUP Model expressed natural gas savings in barrels of oil per day equivalent (bpde). Natural gas savings have been converted to thousand cubic feet of gas (mcf) per day in today's proposed rule so that these savings are consistent with the eight products rulemakings. Electricity savings are expressed in either trillion Btu's or percent savings of national electricity use over the average life of the product.

The EUP Model uses the sales-weighted energy efficiency (SWEF) in 1972 and 1978 of each product, the standard level for each product, the annual amount of product use, the market saturation of each product in households, the total population of households, the average capacity (television sets, clothes washers, humidifiers and dehumidifiers only) and the average product lifetime. Energy efficiency and the total population of households were assumed to change over time.

Two prominent features in the EUP Model were developed from the ORNL Model. First, the total population of households used in the EUP Model were forecasted by the ORNL Model. Second, the trend in energy efficiency in the market-based scenario in the EUP Model is based upon forecasts made by ORNL Model for the eight products. The ORNL Model predicts that the sales-weighted energy efficiency for products shipped in 2005 would range from 75.9 percent of the standards level for central air conditioners to 100 percent of the standards level for oil furnaces. The average for the eight products was 91.2 percent of the standards level. *See* Table 2.

Due to the lack of information concerning the trend in energy efficiency in the market-based scenario for the four products, DOE decided to pattern the future trend in energy efficiency for the four products after the average of the trends forecasted by the ORNL Model for the eight products. That is, the EUP Model assumes that the sales-weighted energy efficiency in 2006 for each of the four products will be 91.2 percent of the standards level.[9] DOE is

[9] An exception to this rule is when the 1978 SWEF is greater than 91.2 percent of standards level. For example, the 1978 SWEF for humidifiers is 90 percent. The standard level is 93 percent so that 91.2 percent of the standards level would be 85 percent. The EUP Model assumes that energy efficiency cannot decrease over time. Therefore, the energy efficiency for humidifiers remains constant at the 1978 SWEF of 90 percent during the no standards scenario.

interested in receiving data, comments and statements concerning the appropriateness of basing the future trend in energy efficiency for the four products on the average of the trends forecasted by the ORNL Model for the eight products.

TABLE 2.—APPLIANCE ENERGY EFFICIENCIES IN 2005

Appliance	Base level	Standards level	Ratio
Gas furnace	88.0	88.2	0.998
Oil furnace	93.6	93.6	1.000
Room air conditioner	7.57	9.13	0.829
Central air conditioner	7.93	10.45	0.758
Electric water heater	88.1	92.1	0.957
Gas water heater	50.5	51.1	0.992
Refrigerator-freezer	7.64	8.50	0.899
Freezer	14.0	16.2	0.864
Average			0.912

Source: Table 3-12. *Supplement To: March 1982 Consumer Products Efficiency Standards Engineering Analysis and Economic Documents*, DOE/CE-0045, July 1983.

The EUP Model calculates the energy use in the base year (1978). The energy use in each succeeding year to the year 2006 is calculated by a three-step process. First, the energy use for the units in the base year population still in service is calculated by assuming that these units are replaced by new units at a retirement rate that depends on the product lifetime. Second, the energy use of new units added in each year since 1978 due to the retirement of base year units and the growth in total households is calculated. Lastly, the EUP Model checks to see if any of the new units, added after 1978, are retired in order to calculate the energy use for new units which replaced units added after 1978. For example, the energy use in the year 1988 is the sum of the following: the energy use of the base year units still in service in the year 1988; the energy use of the new units added since 1978 and still in service in the year 1988; and the energy use for new units which replaced those units added since 1978. *See* Technical Support Document, pages 9 through 13 and 106 and 107.

B. *Model Validation.* Results from both the EUP and ORNL Models should be reasonably close. To demonstrate that results between the two models are close, the EUP Model was modified to forecast the savings realized by standards for refrigerators and refrigerator-freezers. The modifications included adding data for refrigerators and refrigerator-freezers into the EUP Model. The data included the 1977 per unit annual energy consumption, the 1978 sales-weighted energy efficiency, the number of refrigerators per household, and the standards level. *See* Technical support Document, Chapter VIII. The estimated savings were then compared to the ORNL Model savings.

The product type, refrigerators and refrigerator-freezers, was selected for comparison because the EUP Model does not consider fuel switching, such as replacing an oil furnace with a gas furnace. DOE is interested in comments and statements concerning whether the EUP Model is a valid analytical tool for forecasting energy savings due to standards for the four products.

Results from the refrigerator-freezer version of the EUP Model were compared to the ORNL Model results. The difference in energy efficiency between the two models is within 2 percent. *See* Table 3. For the ORNL Model, refrigerators and refrigerator-freezers are forecasted to use about 1.19 Quads in 1990 and about 1.07 Quads in 2000. For the EUP Model, refrigerators and refrigerator-freezers are forecasted to use about 1.17 Quads in 1990 (for a 1.9 percent difference) and about 1.07 Quads in 2000 (no difference). For refrigerators and refrigerator-freezers, the ORNL Model estimated that they will use about 21.20 Quads from 1987 to 2005 while the EUP Model forecasted use of about 20.95 Quads from 1988 to 2006. The difference between the two forecasts is 1.2 percent. In the August 1983 final rule, using the ORNL Model, it was estimated that Level 4 standards for refrigerator-freezers would save 1.7 Quads over the 1987–2005 time frame. *See* Table 5–1 in Supplement to March Consumer Products Efficiency Standards Engineering Analysis and Economic Analysis Document, DOE/CE–0045, July 1983. The EUP Model forecasts energy savings of 1.77 Quads which is about a 4 percent difference. *See* Technical Support Document, Table 39. Some of the differences between the two models occur because the EUP Model uses a different retirement function and a different equation for projecting future shipments.

TABLE 3.—REFRIGERATORS AND REFRIGERATOR-FREEZERS ENERGY EFFICIENCY

[Ft³/kwh/cycle]

Year	ORNL model	EUP model	Percent difference
1990	6.79	6.815	0.4
1995	7.07	7.196	1.8
2000	7.35	7.496	2.0
2005	7.64	7.752	1.5

For Level 4 standards for refrigerator-freezers, the ORNL Model predicts that the electricity savings to the national electricity use over the appliance lifetime is 0.22 percent, based on the energy savings of 1.69 Quads. For the EUP Model, the electricity savings to the national electricity use over the appliance lifetime are about 0.23 percent, based on the energy savings of 1.70 Quads. Also, the savings in the year 2006, which is the year following the period of the average life of a refrigerator-freezer purchased in the last year before standards would be imposed, is forecasted to be about 14.59 percent for the ORNL Model and about 14.64 percent for the EUP Model.

For the ORNL Model, the residential sales for refrigerator-freezers were forecasted to be about 6.308 million in 1990 and about 6.476 million in 2005. For the EUP Model, residential sales for refrigerator-freezers were forecasted to be about 5.685 million in 1990 (for a 9.9 difference) and about 6.494 million in 2005 (for a 0.3 percent difference). Differences in residential sales between the two models are due to differences in both the retirement function and in the equation for projecting residential sales. Comparisons in annual shipments were shown only for two years, because data for 1990 and 2005 were readily available for refrigerator-freezers. Even though differences in any particular year may be large, the overall number of refrigerator-freezers sold from 1987 to 2005 for the EUP Model is expected to be close to the number for the ORNL Model.

In summary, DOE believes the results from the EUP Model were reasonably close to projections that could have been expected from the ORNL Model. In most cases, the differences between the two models were within 2 percent. Two exceptions were the 4 percent difference in total energy savings over the lifetime of an appliance and the 9.9 percent difference in residential sales in 1990.

C. *Sensitivity Analyses.* In the EUP Model, the future trend in energy efficiency during the market-based scenario is represented as assigned percentages of the particular standards level in question. The assigned percentages increase to 91.2 percent of the standards level in 2006, the last year of the analysis. Assigned percentages were used because the future trend in energy efficiency for the four products is not well known.

Accordingly, sensitivity analyses were conducted that used different assumptions about trends in energy efficiency during the market-based scenario. Four sensitivity analyses were conducted about the Level 1 standards. One sensitivity analysis was conducted about the Level 2 standards. The five sensitivity analyses are the constant efficiency analysis, the conservative analysis, the historical analysis (Case 1),

the historical analysis (Case 2), and the Level 2 sensitivity analysis.

For the constant efficiency analysis, the future trend in energy efficiency during the market-based scenario remains constant at the 1978 SWEF. There is no improvement in energy efficiency over the 1978–2006 period. The standards scenario is based on the Level 1 standards. This scenario was selected to show the maximum effect that Level 1 standards could have in saving energy.

For the conservative improvement in efficiency analysis, the future trend in energy efficiency is taken to be the lowest trend in energy efficiency forecasted by the ORNL Model for the eight products. This was for central air conditioners for which the energy efficiency in 2005 was projected to be 75.9 percent of the standards level. The standards scenario is based on Level 1 standards. This sensitivity analysis was undertaken to show the effect that Level 1 standards would have were there to be a less optimistic trend in increased energy efficiency (a trend culminating in 75.9 percent of the standards level) than used during the standards analysis, where the SWEF for the year 2006 reached 91.2 percent of the standard level.

Two historical analyses were conducted which provided estimates of the upper and lower limits of energy savings assuming that improvements in energy efficiency are expected to continue. For each, the future trend in energy efficiency without standards is expected to increase, initially, at the historical rate. The historical rate was based on the improvement in energy efficiency from 1972 to 1978. The rate is then assumed to decrease over time and approach an efficiency limit, which for Case 1 is the Level 1 standards and for Case 2 is the Level 2 standards. The standards scenario in each case is based on the Level 1 standards. A straight line rate was not considered to be reasonable for the historical analyses because improvements in energy efficiency tend to decrease over time as was projected by the ORNL Model for the eight products. Therefore, the historical analyses were based on the premises that the rate of energy efficiency improvements would decrease over time and that the energy efficiency would reach an upper limit.

For the Level 2 sensitivity analysis, the future trend in energy efficiency during the market-based scenario is identical to the market-based scenario in the Level 1 standards analysis. The standards scenario is based on Level 2 standards. This scenario was selected to show the effect that standards would have due to a more pessimistic trend in energy efficiency during the market-based scenario than was used in the Level 2 standards analysis. DOE is interested in receiving comments and statements concerning the sensitivity analyses conducted for the four products.

d. Economic Justification

Section 325(b) prohibits an appliance efficiency standard for a product if that standard is not economically justified. Section 325(d) states that a standard can be economically justified only if DOE determines that the benefits of the standard exceed its burdens. In other words, even if a standard saved "significant" amounts of energy, if the benefits of that standard did not outweigh its burdens, the standard would not be economically justified. In determining whether a particular standard's benefits exceed the burdens, to the greatest extent practicable, DOE is to weigh six specific factors as well as any other factors DOE deems appropriate. *See* section 325(d) (1)–(7). These factors are separately addressed below.

Certain of these factors can be quantified, albeit through projections and computer models; others are not quantifiable. Congress recognized this and indicated that greater weight should not be given to a factor merely because it was quantifiable. *See* H.R. Rep. No. 95–1751, 95th Cong., 2d Sess. 116 (1978).

1. *Economic Impact on Manufacturers and Consumers (Sec. 325(d)(1)).* For consumers, one measure of economic impact is the first cost of the product. Increased first costs to consumers resulting from standards can affect different consumers in different ways. For lower income consumers, increases in first costs for a particular product can have the effect of precluding the purchase of a new model of that product. As a result, some consumers may retain products past their useful life or purchase older used appliances. These older products are generally less efficient than newer models to begin with, and DOE believes that for some appliances initial efficiencies may deteriorate if they are retained beyond their useful life. Thus, these consumers might, because of standards, be forced to live with less efficient products and, in turn, use more energy. However, if no standards were adopted, consumers of all income levels would be able to choose from a range of products with varying energy efficiencies and prices. It would then be possible for a lower income person to purchase a new product with a higher efficiency than the model it was replacing, albeit at an efficiency less than would be required under standards, but also at a purchase price less than would be available under standards. DOE believes that this impact of standards on lower income persons is important even if the number of such persons disadvantaged is relatively small compared to the total number of persons affected by standards. This is so because lower income persons are the least able to endure economic disadvantage resulting from governmental regulatory action.

The development of first cost relationships to efficiency for the four products was patterned after the method used for the eight products. When possible, exponential cost curves were developed based on retail price and energy efficiency data. Otherwise, cost curves were developed by use of regression analyses. *See* Technical Support Document, pages 81 thru 88. Market survey data were used for the four products because, unlike in the eight products rulemaking, detailed engineering cost data were not available.

The market survey data provided information by model on price and energy efficiency. However, the market survey data provided no information of this nature as to individual utility or performance related features or individual design options associated with improvements in energy effiiciency.[10]

In the case of dishwashers, clothes washers, and humidifiers, the market survey data points correlated well with a simplified form of the curves used for the eight products. Accordingly, simplified exponential costs curves were developed and used for dishwashers, clothes washers, and humidifiers. The exponential cost curves initially developed for both television sets and dehumidifiers, however, significantly overestimated the costs of very efficient products and did not rationalize well the frequent occurrences of more efficient products at lower prices. For these two products, analytical regression curve techniques were used to derive a relationship between cost and efficiency.

DOE is interested in receiving further cost and energy efficiency data specific to particular design options. DOE is also interested in receiving comments

[10] For example, the market survey data for television sets listed products at the same energy efficiency, but with a wide variation in price. The variation in price was, in part, due to utility features, such as remote control and cable ready, that were included in the higher price models. These kinds of features had little effect on energy efficiency.

concerning whether first cost curves can be developed for the four products by using market survey data in lieu of detailed engineering costs and whether the first cost curves for television sets and dehumidifiers, which use analytical regression curve techniques in lieu of an exponential cost curve, are reasonable.

For consumers, another measure of economic impact is the life cycle cost of a product, because it takes account of the increased first cost, any increased maintenance costs, and the reduced fuel costs over the product's service life resulting from the product's greater efficiency. The life cycle cost analyses are discussed under a separate heading below.

For manufacturers, no measure of economic impact was made. Results from the EUP Model projected that standards would probably not result in significant conservation of energy for any of the four products. Moreover, the economic impact on consumers predicted that standards would likely increase both the first costs and the life cycle costs for all four products. DOE considers the failure of a standard to achieve significant conservation of energy and the associated increases in both first and life cycle costs to be substantial impediments towards standards. Consequently, DOE did not determine the economic impact on manufacturers.

2. *Life Cycle Cost (Sec. 325(d)(2)).* The life cycle cost (LCC) analysis calculates the total cost of ownership for consumers for each class of product. The lifetime operating costs for each of the four products accounted for the future escalation in energy prices and were discounted to the present. The discount rate of 10 percent, which was used for the eight products, was used. The forecasts for energy prices were from NEPP IV. The amount of energy used annually by a typical consumer product was based on the DOE test procedures. *See* Technical Support Document, Chapter IV. Comparison of the life-cycle cost of the projected 1988 sales weighted energy efficiency models with models at the standard level allows DOE to determine the changes in total cost of ownership.

If the life cycle at a particular standard level is greater than the life cycle cost of the projected 1988 sales weighted energy efficiency model, this demonstrates that it is not economically beneficial for the average consumer to purchase a product built to the standard level compared to the projected 1988 sales weighted energy efficiency model. That is, the increased first costs of obtaining a particular efficiency are not offset by fuel savings over the life of the product.

The life cycle cost analysis was used to determine the life cycle cost minimum, which for the "average" consumer should be at the optimal efficiency level. Where a consumer is not average, however, that level is not necessarily optimal. If the consumer has higher than average fuel prices or higher than average usage rates, there may be a more optimal efficiency level for that consumer, but the consumer is not penalized because the market is able to provide such a model. If, however, the consumer has lower than average fuel prices or lower than average usage rates, the consumer may be penalized by having to purchase a product whose efficiency level was required by a Federal standard that assumed higher fuel prices or higher usage than is true for that consumer.

For the eight products, DOE conducted a net present value (NPV) analysis to show the total differential economic impacts on consumers that would occur generally from the adoption of standards, compared to a base case with no standards but with market-induced efficiency improvements. The NPV analysis is similar to the LCC analysis, and the greatest NPV generally should occur at the standard level set at the LCC minimum for the product. The ORNL Model calculated the total cost for each product (discounted total value of energy consumption from 1987 through the last year of use for those products purchased through the year 2005, plus the total discounted equipment costs for equipment purchased from 1987 through 2005) with and without standards. The difference between these two is the NPV attributable to standards. A positive NPV for a product at a given standard level indicates that, if that standard were adopted, consumers of that product as a whole would save that much more money in fuel costs, discounted to the present, than they would pay in increased first cost for more efficient products, discounted to the present, compared to the situation where no standard is adopted. DOE considers the failure of a standard to achieve a positive NPV to result in a substantial burden.

It is anticipated that, if a NPV analysis were to be conducted for the four products, it would result in a negative NPV. The primary reason for the negative NPV is that the standards level identified for analysis in each instance deviated from the minimum LCC point. This results in a substantial burden for consumers and fails the test of positive savings. Consequently, DOE concluded that a NPV analysis for the four products is not required.

3. *Energy Savings (Sec. 325(d)(3)).* While the significant conservation of energy is a separate statutory requirement for imposing an energy efficiency standard, the total projected savings directly resulting from standards is also one factor to be considered in weighing the burdens and benefits under section 325(d). The EUP Model results were utilized for this factor. In each product-specific analysis, the savings are specified.

4. *Lessening of Utility or Performance of Products (Sec. 325(d)(4)).* This factor cannot be quantified. In the eight product rulemaking by establishing classes of products, DOE attempted to eliminate any degradation of utility or performance in existing covered products. That is, to the extent that comments or our own research indicated that a product included a utility or performance related feature that affected energy efficiency, a class was created for the product with a lower standard. In this way, DOE attempted to minimize the impact of this factor as a result of the standards analyzed. Product classes are also reflected in today's rulemaking.[11] The existence of classes, however, does not affect the product analyses, except for a portion of the analysis of television sets. See *infra*. This is so because the analyses generally assume the most prevalent class to be the only class.

However, even were DOE able to eliminate any lessening of utility or performance in existing products as a result of standards, DOE believes it is not possible to eliminate all impacts of standards that might lessen the utility or performance of future products. This is true for two reasons. First, DOE believes that the effect of requiring investments on the basis of regulations rather than fundamental business considerations may result in manufacturers foregoing some investments that would have been made in the absence of the regulatory requirements. These investments might be in improvements in utility or performance of a product.

Second, while separate classes of products in light of their different performance features can aid in

[11] For example, there are separate product classes for front loading clothes washers and top loading clothes washers. Top loading clothes washers, which generally are less efficient than other kinds of clothes washers, provide added utility for consumers by being able to spin clothes dryer. Consequently, the Level 1 standard selected for top loading clothes washers was lower than the level selected for front loading clothes washers.

minimizing degradation of utility or performance, there is not a specific mechanism in the statute for recognizing new performance features after a final rule is adopted. That is, were a final rule adopted with specific standards for different classes of products, it would have the effect of freezing those classes in the regulation. A manufacturer would be prohibited from distributing in commerce any covered product with new performance feature, if that feature would have the effect of reducing the products' energy efficiency below the standard level as measured by an applicable DOE test procedure, unless and until the rule were amended to create a new class or a new standard in light of such a new performance feature. The delay and uncertainty associated with this process would create a disincentive for manufacturers to develop the feature in the first instance.

While this possible disincentive to the development of more energy intensive performance features cannot be quantified, it could create a risk that some performance features that otherwise might be developed would not be. Given the importance of many past performance features that reduce the energy efficiency of a product, such as remote control television sets, which, if standards had been imposed before their development, might result in the new product failing the standard, DOE believes that any risk created by such a disincentive constitutes a burden to be considered in weighing the burdens of and benefits of possible standards. DOE requests comments on this issue.

5. *Impact of Lessening Competition (Sec. 325(d)(5)).* The determination of this factor must be made by the Attorney General.

6. *Need of the Nation to Conserve Energy (Sec. 325(d)(6)).* Although the Nation's need to conserve energy must be balanced against other factors to determine the net burdens or benefits of an efficiency standard, Congress did not define what the Nation's need to conserve energy was.

The statute itself, however, provides clear evidence that Congress did not consider the need to save energy to be absolute. First, section 325(f) authorizes DOE to establish higher or lower standards for classes of product in the same product type that use different sources of energy. Thus, for example, DOE could set a lower standard for oil furnaces than electric furnaces, effectively limiting possible energy savings. Second, section 325(f) also authorizes DOE to establish higher or lower standards for different classes of products in the same product type if they have different utility or performance-related features. Thus, a color television set, which inherently uses more energy than a monochrome television set, can have a less stringent standard. Because these effects of the law reduce the potential savings that could be obtained from standards, saving energy must be balanced with other considerations. By including these provisions, Congress recognized that a standard which might save the greatest amount of energy, could effectively ban appliances using certain types of fuel (because of their relative inefficiencies compared to the same product using a different source of energy) or having useful performance features. The statute is clear, DOE believes, in providing that such a result should not be the consequence of standards. These provisions indicate that the statute itself recognizes that the importance of saving energy is relative, not absolute.

NECPA's findings and purposes singled out oil and gas as the two energy sources of particular concern. Yet since the passage of NECPA, this Nation's total imports of oil have declined about 43 percent.[12] To the extent that a source of energy other than oil and gas is involved, DOE believes the relative need to conserve energy is less. Electrical generation capacity is generally adequate. After a number of years of large growth in demand, the industry is now seeing a demand increase at an annual rate of 3.2 percent.[13] Problems with the supply of electricity at the present time and for the foreseeable future are localized in nature, depending on specific circumstances. Such problems are generally better dealt with in light of the specific circumstances, not by means of a Federal nationwide solution.

The above discussion is not intended to indicate that DOE does not value highly the benefits of conservation in the use of all energy. Rather, it is intended merely to recognize that the degree of the Nation's need to save energy depends on the fuel involved and can change over time. To the extent that the market and government initiatives to remove regulatory disincentives to conservation and energy production result in a healthier national energy situation, the need for additional, Federally mandated conservation of energy is decreased. Because of the across-the-board improvements in the national energy picture of the past few years and its projected continuation into the future [14]—without regard to appliance program—the need of the Nation to conserve marginal increased amounts of energy through a particular appliance efficiency standard is diminished.

7. *Other Factors.* Section 325(d)(7) requires DOE to include in the process of weighing the burdens and benefits of a standard, and other factors the Secretary considers relevant. The Department requests comments from interested persons as to what other factors, not hitherto considered, should be considered relevant in weighing the burdens and benefits of standards.

8. *Weighing of Factors.* The above discussion of the factors to be weighed in determining the burdens and benefits of possible standards is intended to identify the factors and explain their bases. Some of the burdens discussed above are not dependent on a particular product-specific standard, but on the existence of any standard at all. The existence of these generic burdens does not, in itself, disqualify a particular standard or standards. Standards for each product must be judged on their own merits, weighing the burdens and benefits arising from them.

III. Product-Specific Discussion

This section presents separate discussions for each of the four products. Each product-specific discussion is divided into the following five subjects: product classes, design options, standard levels, energy savings and economic justification. The discussion on energy savings addresses each of the three tests of significant energy savings (oil and gas savings, electricity savings and percent savings). The discussion on economic justification addresses the six economic factors cited in section 325(d) of the Act.

a. Dishwashers

A "dishwasher" means a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical,

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[12] According to the *1983 Annual Energy Review*, DOE/EIA–0384(83), Table 35, total imports of oil peaked in 1977 and averaged 8.81 million barrels per day. During 1983, total imports of oil averaged 4.99 million barrels per day, the lowest level since 1972.

[13] Total electricity sales are projected to rise at an average annual rate of 3.9 percent with the continuation of the economic recovery from 1983 to 1985. From 1985 to 1990, electricity sales are expected to grow at an average rate of 3.4 percent per year, slightly more rapidly than the real GNP. From 1990 to 1995, electricity sales are expected to increase at an average annual rate of 2.8 percent, so that, over the entire 1983 to 1995 period, electricity sales are expected to grow at an annual rate of 3.2 percent. *See* Annual Energy Outlook 1983 with projections to 1995, DOE/EIA–0383(83), page 122.

[14] See generally the National Energy Policy Plan, DOE/S–0014/1, October 1983, (hereafter referred to as "NEPP IV").

mechanical and/or electrical means and discharges to the plumbing drainage systems. *See* 10 CFR Part 430.2.

1. *Product Classes.* Two classes of dishwashers, standard and compact, were specified by DOE in the December 1979 advance notice. These classes are distinguished by their capacity. Dishwasher energy consumption is strongly related to the hot water usage of the machine. Compact dishwashers use less water and less energy than standard size dishwashers. Compact dishwashers are dishwashers having an exterior width of less than 22 inches. Compact dishwashers generally have an exterior width of 18 inches, and fit into smaller spaces and handle smaller loads than standard size dishwashers.

Standard size dishwashers are defined as those with an exterior width greater than or equal to 22 inches. Standard size dishwashers generally have an exterior width of 24 inches. Standard size dishwashers typically have lower energy factors than compact dishwashers, but their larger capacity provides increased utility to consumers.

Exterior width was chosen as the measure of capacity because it accurately delineates the two classes of dishwashers in the current population and is a readily available dimension.

As discussed above, DOE has established a third product class, called water heating dishwashers. Water heating dishwashers have added utility and performance for consumers because the thermostat settings for water heaters could be lowered resulting in overall reductions of utility bills. A class of water heating dishwashers is appropriate due to differences in utility, as well as the seperate treatment of water heating dishwashers in the test procedures.

2. *Design Options.* The December 1979 advance notice identified five design options or combinations of design options that, if incorporated into the design of a dishwasher, were projected to achieve the max tech level. These design options were optional power dry, reduced inlet water temperature, modified sump geometry, improved fill controls, and improved insulation.[15]

[15] Water heating dishwashers is the only product class for which the design option of reduced inlet water temperature is appropriate. Compact and standard size dishwashers generally use incoming water at 140 °F, while water heating dishwashers use incoming water at 120 °F. DOE did not consider lowering the incoming water temperature below 120 °F as a viable design option because this is not addressed in the test procedures. Consequently, the inlet water temperature was not reduced below 120 °F.

The dishwasher with the highest energy factor was reported to incorporate the optional power dry design option. Most dishwashers are insulated to reduce noise. Using additional insulation was reported to be of marginal use in saving energy. *See* Topical Report—Subtask 3.1 Clothes Washer and Dishwasher Use, September 1979. Thus, improved insulation was no longer considered a design option. The Topical Report also considered improved food filters as a viable design option. Therefore, the three design options considered for dishwashers are:

(a) Modified sump geometry
(b) Improved fill controls
(c) Improved food filters

3. *Standard Levels.* *See* Table 4 for the standard levels selected for dishwashers. The Level 1 standards are 0.50 cycles/kWh for compact dishwashers, 0.38 cycles/kWh for standard size dishwashers and 0.455 cycles/kWh for water heating dishwashers. The Level 1 standard for compact dishwashers is identical to the level published in the December 1979 advance notice.

TABLE 4.—STANDARD LEVELS SELECTED FOR DISHWASHERS

Product class	Level 1	Level 2
1. Compact	[1] 0.50	[1] 0.50
2. Standard Size	0.38	0.41
3. Water Heating	0.455	0.455

[1] Cycles per kilowatt hour.

DOE is revising the level for standard size dishwashers in today's notice. DOE received several comments stating that the level in the December 1979 advance notice was determined incorrectly by failing to account for the energy usage during the normal cycle of a dishwasher. The level only considered the energy usage during the truncated normal cycle. The level should be the average of the energy usage during both the normal and truncated normal cycles. The commenters recommended that it should be 0.38 cycles/kWh. Therefore, DOE is using 0.38 cycles/kWh as the Level 1 standard for standard size dishwashers in today's notice.

The Level 2 standard is 0.41 cycles/kWh for standard size dishwashers. The Level 2 standard is based on a dishwasher design which does not incorporate a power-dry feature. Level 2 standards for compact dishwashers and water heating dishwashers are the same as the Level 1 standards because the Level 1 standards are expected to be the maximum improvement in energy efficiency which is technologically feasible for these two product classes. DOE would like comments concerning whether the Level 1 standards for the compact and water heating dishwashers are the maximum improvement in energy efficiency.

4. *Energy Savings.* The energy savings realized by standards for dishwashers were projected by the EUP Model. Compact dishwashers and water heating dishwashers are not widely in use. Consequently, the EUP Model based the energy savings for dishwashers solely on standard size dishwashers by specifying that all dishwashers are standard size dishwashers. Since standard size dishwashers typically use more energy than compact or water heating dishwashers, specifying that all dishwashers are standard size dishwashers would tend to overstate the energy savings that could be achieved by standards for all dishwashers.

According to results from the EUP Model, Level 1 standards for dishwashers are projected to save about 0.125 Quads over the 1988–1999 period, the 12-year average life of a dishwasher. *See* Technical Support Document, Table 4. Likewise, Level 2 standards for dishwashers are projected to save about 0.135 Quads over the 1988–1999 period. *See* Technical Support Document, Table 5. Energy savings are forecasted to be less than the three tests of significant energy savings. Therefore, DOE believes that standards for dishwashers would not likely result in significant conservation of energy.

A. *Oil and Gas Savings.* For Level 1 standards, savings of 0.125 Quads [16] would result in the savings of 430 bpd of oil and of 9,260 mcf per day of natural gas. This is only 4 and 16 percent, respectively, of the amount that DOE deems significant. For Level 2 standards, savings of 0.135 Quads would result in the savings of 470 bpd of oil and of 9,960 mcf per day of natural gas. This is only 5 and 18 percent, respectively, of the amount that DOE deems significant.

B. *Electricity Savings.* For Level 1 standards, electricity savings of 0.079 Quads over the 12-year period are less than 0.02 percent of the total national

[16] The 0.125 Quads of energy savings resulting from Level 1 standards are due to savings achieved by using less hot water. The fraction of households which heat water by electricity is 33 percent and is 54 percent for natural gas and 13 percent for oil. *See* Residential Energy Consumption Survey: Housing Characteristics 1980, DOE/EIA–0314, June 1982. Further, it is assumed that oil constitutes 2.05 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. *See* 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173(81)/3, February 1982.

energy used for electricity.[17] For Level 2 standards, electricity savings of 0.085 Quads over the 12-year period are about 0.02 percent of the total national energy used for electricity. DOE believes that the electricity savings are so small as to have no measurable effect on the environment or on the need for new generating capacity.

C. *Percent Savings.* The percent savings in the year 2000, the year after the average life of a dishwasher purchased in the year 1987, the last year before standards would be imposed, are projected to be about 6.1 percent for Level 1 standards and about 6.6 percent for Level 2 standards.

D. *Conclusion.* On the basis of the above, DOE believes that standards for dishwashers would not result in a significant conservation of energy.

5. Economic Justification

A. *Economic Impact on Consumers.* The economic impact on consumers was found by estimating the additional first cost, if any, that a consumer would pay in order to purchase a dishwasher which meets the standard. The development of a first cost curve for dishwashers was patterned after the exponential cost curve developed for the eight products. *See* Technical Support Document, page 84. Market survey data for 31 dishwashers were used.[18] Due to the wide scatter in data used in developing the first cost curve, the difference for the 31 dishwashers between the market survey data and the first cost curve averaged about 20 percent. DOE is interested in comments regarding the uncertainties associated in estimating the first costs for dishwashers at various efficiencies.

The average cost of a dishwasher in 1988 (one with an energy efficiency of 0.327 cycles/kWh) is expected to be about $329. The average cost of a dishwasher meeting the Level 1 standard is expected to be about $439. The economic impact of the Level 1 standard is projected to increase the first cost of a dishwasher by about 33 percent ($110).

B. *Life Cycle Cost.* The life cycle cost for dishwashers is the sum of the first cost and the operating costs discounted over the lifetime of the appliance. More efficient dishwashers are not expected to result in increased maintenance costs. Thus, maintenance costs were not included in estimating life cycle costs.

The minimum life cycle cost is estimated to be about $829 and occurs for a dishwasher with an energy efficiency of 0.320 cycles/kWh. *See* Technical Support Document, Figure 8. The life cycle cost for a dishwasher, which meets the Level 1 standard, is estimated to be about $870. Standards for dishwashers could result in an increase of life cycle costs over the LCC minimum of approximately $41.

C. *Energy Savings.* As indicated above, the energy savings attributable to standards for dishwashers over the period 1988–1999, the average life of a dishwasher, are forecasted to range from 0.125 to 0.135 Quads based on savings for Level 1 and Level 2 standards, respectively.

Results from sensitivity analyses also indicated that standards would not result in significant conservation of energy. Energy savings over the period of the average life of a dishwasher beginning with the year 1988 were forecasted to range from 330 bpd to 800 bpd for oil savings and from 7,150 mcf/day to 17,160 mcf/day for gas savings. Each sensitivity analysis fails the significant energy savings test regarding oil and natural gas. *See.* Table 5.

TABLE 5.—SENSITIVITY ANALYSIS ON ENERGY SAVINGS FOR DISHWASHERS

Analysis	Oil (bpd)	Gas (mcf/day)	Electricity (percent)	Percent
Constant efficiency	800	17,160	0.036	11.64
Conservative	800	17,160	0.036	11.64
Historical (case 1)	410	8,810	0.019	5.82
Historical (case 2)	330	7,150	0.015	3.96
Level 2 sensitivity	850	13,960	0.029	9.48

Electricity savings over the period of the average life of a dishwasher beginning with the year 1988 were projected to range from 0.015 percent to 0.036 percent of the national electricity use. Each sensitivity analysis fails the significant energy savings test concerning electricity. The annual savings in the year 2000, the year following the period of the average life of a dishwasher purchased in the last year before a standard could be imposed, were forecasted to range from 3.96 percent to 11.64 percent. Each sensitivity analysis fails the significant energy savings test for percent savings. Accordingly, DOE proposes that standards for dishwashers are not likely to result in significant conservation of energy.

D. *Lessening of Utility or Performance of Products.* As indicated in the General Discussion section, there is no assurance that future utility or performance of dishwashers would not be lessened as a result of disincentives caused by standards to investments in new energy-using features.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Dishwashers use electricity directly, and oil, natural gas and electricity indirectly through their use of hot water. Energy savings, which are forecasted to be 0.123 Quads for Level 1 standards and 0.135 Quads for Level 2 standards are expected to be achieved through reduced use of hot water. DOE believes that the need of the Nation to save the marginal amount of energy realized by dishwasher standards is an insufficient reason for standards.

Conclusion

Benefits of a standard for dishwashers, compared to no standards, are that standards would save energy.

Burdens of a standard at level 1 are estimated to be: the increased first cost of a dishwasher by about 33 percent ($110) over the average cost of a dishwasher purchased in 1988; and the life cycle cost is increased by about $41 over the life cycle minimum. Burdens of a standard at level 2 would result in even greater economic burdens for consumers.

In light of all the factors discussed here and in the General Discussion, on balance, DOE believes that the burdens of standards for dishwashers outweigh the benefits. Therefore, DOE proposes that dishwasher standards are not economically justified as required by section 325(b)(2) of the Act.

b. Television Sets

A "television set" means a color television set or a monchrome television set. "Color television set" means an electrical device designed to convert incoming broadcast signals into color television pictures and associated sound. "Monochrome television set" means an electrical device designed to convert incoming broadcast signals into monochrome television pictures and associated sound. *See* 10 CFR Part 430.2.

1. *Product Classes.* Two classes of television sets, color and monochrome, were specified by DOE in the December 1979 advance notice. These classes are distinguished by their ability to reproduce images in color or in black and white, a performance-related feature which affects utility and efficiency.

Color television sets consume more energy than monochrome television sets because of the use of multiple electron

[17] Electricity usage over the period 1988–1999 is estimated to be about 413.1 Quads. This number is derived from NEPP IV.

[18] A literature search was made to collect market survey data for dishwashers. Data for dishwashers were found in the report, "Appliance Efficiency Information, Survey and Data Base Development," Bonneville Power Administration, August 1983.

guns, whereas monochrome television sets use only one electron gun. For this reason, energy efficiency levels achieved by monochrome television sets are not achievable for color television sets. Since color television sets and monochrome television sets offer distinct differences in utility to the consumer, DOE is specifying separate classes for color and monochrome television sets. DOE did not receive comments on the classes proposed in the December 1979 advance notice, so these classes remain unchanged.

2. *Design Options.* The December 1979 advance notice identified the following design options for television sets:

(a) Eliminate Instant-On.

(b) Replace Tubes (other than picture tube) with Solid State Components.

(c) Improve Thermal Design.

The elimination of the instant-on feature and the use of solid state components have already become common practices and the adoption of standards is not necessary to encourage these features. Several commenters noted that improved thermal design is not a valid means of improving energy consumption. However, the substantial differences that exist in the energy consumption of color television sets of the same picture tube size with the same features suggest that improved thermal design is a valid design option.

Another commenter suggested that "beam indexing" design which uses a single picture tube gun rather than the standard three gun design be factored into the standard levels. The levels analyzed were based on commercially available television sets. Since "beam indexing" television sets are not commercially available, DOE has determined that it should not be factored into the standard levels.

3. *Standard Levels. See* Table 6 for the standard levels selected for television sets. The Level 1 standards are 176 percent for monochrome television sets and 181 percent for color television sets. The Level 1 standard for monochrome television sets is identical to the level published in the December 1979 advance notice.

TABLE 6.—STANDARD LEVELS SELECTED FOR TELEVISION SETS

Product class	Level 1 (percent)	Level 2 (percent)
1. Monochrome	176	176
2. Color	181	200

The Level 1 standard in today's notice for color television sets is different from the level of 229 percent published in the December 1979 advance notice. DOE received several comments stating that the level was based on a color television set with a 12-inch screen and that the level is dependent on screen size. The average screen size for a color television set is reported to be 19 inches. *See* Technical Support Document, page 34. The level is being revised today to be for an average color television set (one with a 19-inch screen) and is 181 percent.

The Level 2 standard is 200 percent for color television sets. Level 2 standard for monochrome television sets is the same as the Level 1 standard, because the Level 1 standard is expected to be the maximum improvement in energy efficiency which is technologically feasible for this product class. DOE would like comments concerning whether the Level 1 standard for monochrome television sets is the maximum improvement in energy efficiency.

4. *Energy Savings.* The energy savings realized by standards for television sets were projected by the EUP Model. Color television sets are reported to be the dominant product class and typically use over three times the energy of monochrome television set.[19] Consequently, the EUP Model bases the savings for all television sets on data for color television sets by specifying that all television sets are color television sets. Since color television sets typically use more energy than monochrome television sets, specifying that all television sets are color television sets would tend to overstate the energy savings that could be achieved for all television sets.

According to results from the EUP Model, Level 1 standards for television sets are projected to save about 0.240 Quads over the 1988–1999 period, the 12-year average life of a television set. *See* Technical Support Document, Table 11. Likewise, Level 2 standards for television sets are projected to save about 0.246 Quads over the 1988–1999 period. *See* Technical Support Document, Table 12.

A. *Oil and Gas Savings.* For Level 1 standards, savings of 0.24 Quads [20] would result in the savings of 250 bpd of oil and of 3,240 mcf per day of natural gas. This is only 3 and 6 percent, respectively, of the amount that DOE deems significant. For Level 2 standards, savings of 0.246 Quads would result in the savings of 250 bpd of oil and of 3,320 mcf per day of natural gas. This is only 3 and 6 percent, respectively, of the amount that DOE deems significant.

B. *Electricity Savings.* For Level 1 standards, electricity savings of 0.24 Quads over the 12-year period is less than 0.06 percent of the total national electricity usage.[21] For Level 2 standards, electricity savings of 0.246 Quads is less than 0.06 percent of the total national energy used for electricity, DOE believes that the electricity savings are so small as to have no measurable effect on the environment or on the need for new generating capacity.

C. *Percent Savings.* Results from the EUP Model show that the percent savings in the year 2000, the year after the average life of a television set purchased in the year 1987, the last year before standards would be imposed, are projected to be about 15.3 percent for Level 1 standards and about 16.7 percent for Level 2 standards. The EUP Model tends to overstate the energy use for television sets by assuming that all television sets are color television sets. In fact, the energy use for a monochrome television set is about one-third the energy use for a color television set. Since the percent savings for Level 2 standards projected by the EUP Model are at the threshold of significance, DOE analyzed the percent savings by the actual class composition of television sets.

From 1975 to 1982, monochrome television sets represented about 37.18 percent of all television sets sold. *See* U.S. Statistical Abstract of the United States, 1984, 104th Edition, Table 958. As presented below, DOE estimated the energy use for color television sets and monochrome television sets separately for the market-based and standards scenarios in the Level 2 standards analysis. The energy use for both classes was then added to yield the estimated energy use of all televisions.

For the market-based scenario, the EUP Model forecasted that all television sets are expected to use about 0.193 Quads in the year 2000. The forecast is 0.161 Quads in the Level 2 standards scenario. *See* Technical Support Document, Table 12. By adjusting the results from the EUP Model in order to

[19] The typical annual energy use is reported to be 240 kWh for color television sets and 77 kWh for monochrome television sets. *See* Technical Support Document, page 34.

[20] This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. *See* 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173(81)/3, February 1982.

[21] Electricity usage over the period 1988–1999 is estimated to be about 413.1 Quads. This number is derived from NEPP IV.

more closely consider the effects of standards to monochrome television sets, all television sets are forecasted to use about 0.146 Quads in the market-based scenario and 0.122 Quads for Level 2 standards.[22]

In conclusion, DOE believes that, by considering more fully the effects that standards would have on monochrome television sets, the percent savings would be about 16.2 percent. This value is lower than the level of 16.67 percent required for significant energy savings. Consequently, DOE believes that standards for television sets would not result in significant energy conservation. DOE is interested in receiving comments and statements concerning whether the adjustments to the percent savings forecasts by the EUP Model are appropriate.

Conclusion

On the basis of the above, DOE believes that standards for television sets would not result in a significant conservation of energy.

5. Economic Justification

A. *Economic Impact on Consumers.* The economic impact on consumers was found by estimating the additional first cost, if any, that a consumer would pay in order to purchase a television set which meets the standard. DOE is interested in comments regarding the uncertainties associated with estimating the first costs for television sets at various efficiencies.

The exponential first cost developed for television sets showed a poor correlation to the market survey data. The difference between the market survey data and the exponential first cost curve averaged about 34 percent. A linear regression analysis was then conducted to improve the correlation to the market survey data. A cubic first cost curve showed the best correlation to the market survey data. The difference between the market survey data and the cubic first cost curve averaged about 17 percent. Therefore, on the basis of an improved correlation, the cubic first cost curve was used to estimate the economic impact on consumers. *See* Technical Support Document, page 85.

The average first cost of a television set in 1988 (one with an energy efficiency of 143 percent) is expected to cost about $439. The average first cost of a television set meeting the Level 1 standard (161 percent) is expected to cost about $507. The economic impact of the standard is projected to increase the first cost of a television set by about 15 percent ($68). Similarly, the average cost of a television set meeting the Level 2 standard (200 percent) is expected to cost about $608, which is projected to increase the first cost of a television set by about 38 percent ($169).

B. *Life Cycle Cost.* The life cycle cost for television sets is the sum of the first cost and the operating costs discounted over the lifetime of the appliance. More efficient television sets are not expected to result in increased maintenance costs. Consequently, maintenance costs were not included in estimating life cycle costs.

The minimum life cycle cost is estimated to be about $541 and occurs for a television set with an energy efficiency of 145 percent. *See* Technical Support Document, Figure 9. The life cycle cost for a television set, which meets the Level 1 standard, is estimated to be about $580. For Level 2 standards, the life cycle cost is estimated to be about $661. Standards for television sets could result in an increase of life cycle costs of approximately $47 for Level 1 standards and $140 for Level 2 standards.

C. *Energy Savings.* As indicated above, the energy savings attributable to standards for television sets over the period 1988–1998, the average life of a television set, are forecasted by the EUP Model to range from 0.240 to 0.246 Quads based on savings for Level 1 and Level 2 standards, respectively.

Results from sensitivity analyses indicated that standards might result in significant energy savings. For the sensitivity analyses, energy savings over the period of the average life of a television set beginning with the year 1988 were forecasted to range from 230 bpd to 660 bpd for oil savings and from 3,040 mcf/day to 8,930 mcf/day for gas savings. Each sensitivity analysis fails the significant energy savings test regarding oil and natural gas. *See* Table 7. Electricity savings over the period of the average life of a television set beginning with the year 1988 were projected to range from 0.056 percent to 0.16 percent of the national electricity use. Each sensitivity analysis fails the significant energy savings test concerning electricity. The annual savings in the year 2000, the year following the period of the average life of a television set purchased in the last year before a standard could be imposed, were forecasted to range from 12.48 percent to 37.04 percent.

TABLE 7.—SENSITIVITY ANALYSIS ON ENERGY SAVINGS FOR TELEVISION SETS

Analysis	Oil (bpd)	Gas (mcf/day)	Electricity (percent)	Percent
Constant Efficiency	660	8,930	0.16	37.04
Conservative Case	510	6,840	0.12	29.06
Historical (Case 1)	290	3,950	0.070	16.71
Historical (Case 2)	230	3,040	0.056	12.48
Level 2 Sensitivity	360	4,880	0.086	20.37

DOE believes that for television sets, the sensitivity analyses tend to overstate the energy savings attributable to standards. Historically, television sets have shown a dramatic improvement in energy efficiency. The energy efficiency improved from 60 percent in 1972 to 114 percent in 1978. *See* Technical Support Document, page 34. The EUP Model forecasts that the energy efficiency in 2000 under the two historical extrapolation sensitivity analyses would range from 163 to 174 percent. *See* Technical Support Document, Tables 16 and 17. The trend in energy efficiency for television sets indicates that the energy efficiency will not remain constant, as in the constant efficiency analysis, or increase slightly, as in the conservative analysis. Therefore, DOE believes that for television sets, the constant efficiency and conservative analyses overestimate energy savings.

DOE also believes that the historical (Case 1), historical (Case 2), and the Level 2 sensitivity analyses also result in overestimates of energy savings. Advancements in electronics, in general, are an ongoing drive toward

[22] In the year 2000, color television sets are forecasted to use 0.122 Quads in the market-based scenario and 0.101 Quads in the Level 2 standards scenario. These numbers are 82.8 percent of the results from the EUP Model.

For determining the energy use for monochrome television sets in the market-based scenario, the value of 0.193 Quads is adjusted by the following. First, the value of 0.193 Quads is multiplied by 37.16 percent (the fraction of television sets that are monochrome) for a product of 0.0719 Quads. Second, the EUP Model bases the energy use for all television sets on the energy use for color television sets. Typically, a color television set uses about three times more energy than a monochrome television set. Consequently, the value of 0.0719 Quads, which is based on the energy use of color television sets, must be adjusted to reflect the energy use of monochrome television sets. The annual per unit energy use in the year 2000 is forecasted to be 183 kWH for color television sets and 55 kWh for monochrome television sets. *See* Technical Support Document, Appendix C. Therefore, the value of 0.0719 Quads was adjusted by the ratio of 55 kWh to 183 kWh to account for the difference in energy use between a typical monochrome television set and a color television set, resulting in that monochrome television sets are expected to use about 0.024 Quads. In the market-based scenario, all television sets are forecasted to use about 0.146 Quads in the year 2000 (0.122 Quads for color television sets and 0.024 Quads for monochrome television sets). By a similar procedure, all television sets are forecasted to use 0.122 Quads in the year 2000 for the standards scenario. *See* Technical Support Document, Appendix C.

miniaturization and lower power requirements as vacuum tubes were replaced by transistors and transistors are replaced by integrated circuits. Television sets are following this overall trend. Newer designs in television sets could become commercially available after 1988 which could be substantially more efficient than any standard level based on available technology in 1988. For example, newer technology is emerging which could replace picture tubes with low-power flat screens. Three types of flat screens being developed use color liquid crystal displays (LCD), gas plasma, and electroluminescence. Manufacturers have already developed prototypes of small screen color LCD television sets. DOE expects television sets with low power flat screens will be commercially available in the future (by 2000). If these technologies, or other similar technologies, become competitive with picture tubes, power requirements for television sets could drop remarkably. Therefore, DOE believes that the sensitivity analyses for television sets results in overestimates of energy savings because emerging technologies could become commercially available which could result in all television sets being more efficient than the standards level.

A further concern with the constant efficiency and and conservative sensitivity analyses is that the improvement in energy efficiency in the market based scenario is projected to be lower than the improvement in the Level 1 standards analysis. For these sensitivity analyses, standards would result in greater burdens to consumers. For example, television sets are projected to cost about $415 in the constant sensitivity analysis and $426 in the conservative sensitivity analysis, while television sets which meet Level 1 standards were projected to cost $507. The resulting increases in first costs to consumers would be $92 (22 percent) for the constant sensitivity analysis. Similarily, the resulting increases in first costs to consumers are expected to be $72 (17 percent) for the historical analysis (Case 1) and $69 (16 percent) for the historical analysis (Case 2). These increases are greater than the projected increase for the Level 1 standards analysis.

D. *Lessening of Utility or Performance of Products.* As indicated in the General Discussion section, there is no assurance that future utility or performance of television sets would not be lessened as a result of disincentives caused by standards to investments in new energy-using features.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Energy savings as forecasted by the EUP Model are 0.240 Quads for Level 1 standards and 0.246 Quads for Level 2 standards. DOE believes that the need of the Nation to save the marginal amount of energy realized by television set standards is an insufficient reason for standards.

Conclusion

Benefits of a standard for television sets, compared to no standards, are that standards would save energy.

Burdens of a standard at Level 1 are estimated to be: the increased first cost of a television set by about 15 percent ($68) over the average cost of a television set purchased in 1988; the life cycle cost is increased by about $47 over the life cycle minimum. Burdens of a standard at Level 2 would result in even greater economic burdens for consumers.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of standards for television sets outweigh the benefits. Therefore, DOE proposes that television set standards are not economically justified as required by section 325(b)(2) of the Act.

c. Clothes Washers

A "clothes washer" means a consumer product designed to clean clothes, utilizing a water solution of soap and/or detergent and mechanical agitation or other movement. *See* 10 CFR 430.2.

1. *Product Classes.* Two classes of clothes washers, top loading and front loading, were specified by DOE in the December 1979 advance notice. These classes are distinguished by performance-related features which affect utility and efficiency.

Front loading clothes washers typically use significantly less water than top loaders. Since clothes washer energy consumption is a function of the hot water usage of the machine, front loaders typically use significantly less energy than top loaders. Top loaders, on the other hand, offer a distinct performance-related feature in that they spin the clothes drier. Front loaders are difficult to balance during the spin cycle and may vibrate significantly. Spin speeds are typically lower with the front loaders than with top loaders in order to reduce vibration. Therefore, top loaders typically remove more water from the clothes during the spin cycle than do front loaders. Because of differences in utility and efficiency, top loading clothes washers and front loading clothes washers are specified as separate classes.

Based on comments received on the December 1979 advance notice recommending expansion of the classes, DOE has determined that there may be merit in adding some or all of the following additional clothes washers classes to the program: top loading automatic clothes washers, top loading semi-automatic clothes washers, and clothes washers with suds-saver features.

2. *Design Options.* The design options for clothes washers specified in the December 1979 advance notice were:

(a) Eliminate Warm Rinses.
(b) Improve Fill Control.
(c) Reduce Thermal Mass.
(d) Increase Motor Efficiency.
(e) Add Insulation.
(f) Reduce Tub Clearances.

3. *Standard Levels. See* Table 8 for the standard levels selected for clothes washers. The Level 1 standards are 1.14 ft^3/kWh for top loading clothes washers and 1.25 ft^3/kWh for front loading clothes washers. The Level 1 standard for front loading clothes washers is identical to the level published in the December 1979 advance notice.

TABLE 8.—STANDARD LEVELS SELECTED FOR CLOTHES WASHERS

Product class	Level 1	Level 2
1. Top Loading	[1] 1.14	[1] 1.302
2. Front Loading	1.25	1.25

[1] Cubic feet per kilowatthour.

DOE is revising Level 1 for top loading clothes washers in today's notice. DOE received several comments stating that the level was determined incorrectly by using 2.39 ft^3 as the average tub capacity of a top loading clothes washer. The average tub capacity was actually 1.94 ft^3. Therefore, the commenters recommended that 1.14 ft^3/kWh should be the level. Consequently, DOE is also using 1.14 ft^3/kWh as the Level 1 standard for top loading clothes washers.

The Level 2 standard is 1.302 ft^3/kWh for top loading clothes washers and is based on the industry data as to the most efficient clothes washers available in 1988. The Level 2 standard designated for front loading clothes washers is the same as the Level 1 standard, because the Level 1 standard is expected to be the maximum improvement in energy efficiency which is technologically feasible for this product class.

4. *Energy Savings.* The energy savings realized by standards for clothes washers were projected by the EUP

Model. Over 98 percent of all clothes washers shipped in 1979 were reported to be top loading units. *See* Technical Support Document, page 45. Therefore, the EUP Model uses top loading clothes washers to represent all types of clothes washers.

According to results from the EUP Model, Level 1 standards for clothes washers are projected to save about 0.347 Quads over the 1988–2000 period, the 13-year average life of a clothes washer. *See* Technical Support Document, Table 18. Likewise, Level 2 standards for clothes washers are projected to save about 0.396 Quads over the 1988–2000 period. *See* Technical Support Document, Table 19.

A. *Oil and Gas Savings.* For Level 1 standards, savings of 0.347 Quads [23] would result in the savings of 1,100 bpd of oil and of 23,690 mcf per day of natural gas.[24] This is only 11 and 42 percent, respectively, of the amount that DOE deems significant. For Level 2 standards, savings of 0.396 Quads would result in the savings of 1,260 bpd of oil and of 27,140 mcf per day of natural gas. This is only 13 and 48 percent, respectively, of the amount that DOE deems significant.

B. *Electricity Savings.* Electricity savings of 0.218 Quads of electricity over the 13-year period is less than 0.05 percent of the total national energy used for electricity.[25] For Level 2 standards, electricity savings of 0.250 Quads over the 13-year period is less than 0.06 percent of the total national energy used for electricity. DOE believes that electricity savings are so small as to have no measureable effect on the environment or on the need for new generating capacity.

C. *Percent Savings.* The percent savings in the year 2001, the year after the average life of a clothes washer purchased in the year 1987, the last year before standards would be imposed, is projected to be about 9.0 percent for Level 1 standards and about 10.8 percent for Level 2 standards.

[23] The 0.347 Quads of energy savings resulting from Level 1 standards are due to savings achieved by using less hot water. The fraction of households which heat water by electricity is 33 percent and is 54 percent for natural gas and 13 percent for oil. *See* Residential Energy Consumption Survey: Housing Characteristics 1980, DOE/EIA–0314, June 1982.

[24] This assumes that oil constitutes 2.85 percent and gas 8.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. *See* 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173 (81)/3, February 1982.

[25] Electricity usage over the period 1988–2000 is estimated to be about 452.5 Quads. This number is derived from NEPP IV.

Conclusion

On the basis of the above, DOE believes that standards for clothes washers would not result in a significant conservation of energy.

5. Economic Justification

A. *Economic Impact on Consumers.* The economic impact on consumers was found by estimating the additional first cost, if any, that a consumer would pay in order to purchase a clothes washer which meets the standard. The development of a first cost curve for clothes washers was patterned after the exponential cost curve developed for the eight products. *See* Technical Support Document, page 85. Market survey data for 27 clothes washers were used.[26] Due to the wide scatter in data used in developing the first cost curve, the difference for the 27 clothes washers between the market survey data and the first cost curve averaged about 14 percent. DOE is interested in comments regarding the uncertainties associated in estimating the first costs for clothes washers at various efficiencies.

The average cost of a clothes washer in 1988 (one with a energy factor of 0.993 ft^3/kWh) is expected to cost about $460. Similarly, the average cost of a clothes washer meeting the standard level of 1.14 ft^3/kWh is expected to cost about $674. The economic impact of the Level 1 standard is projected to increase the first cost of a clothes washer by about 47 percent ($214). First costs at Level 2 are expected to be even greater.

B. *Life Cycle Cost.* The life cycle cost for clothes washers is the sum of the first cost and the operating costs discounted over the lifetime of the appliance. More efficient clothes washers are not expected to result in increased maintenance costs. Consequently, maintenance costs were not included in estimating life cycle costs.

The minimum life cycle cost is estimated to be about $1003 and occurs for a clothes washer with an energy efficiency of 0.87 ft^3/kWh. *See* Technical Support Document. Figure 10. The life cycle costs for a clothes washer, which meets the standard level of 1.14 ft^3/kWh, is estimated to be about $1173. Standards for clothes washers set at Level 1 could result in an increase of life cycle costs of approximately $170 over the LCC minimum. Life cycle costs at Level 2 are expected to be even greater.

[26] A literature search was made to collect market survey data for clothes washers. Data for clothes washers were found in the report, "Appliance Efficiency Information, Survey and Data Base Development", Bonneville Power Administration, August 1983.

C. *Energy Savings.* As indicated above, the energy savings attributable to a standard for clothes washers over the period 1988–2000, the average life of a clothes washer, are forecasted to range from 0.347 to 0.396 Quads based on savings for Level 1 and Level 2 standards, respectively.

For the sensitivity analyses, energy savings over the period of the average life of a clothes washer beginning with the year 1988 were forecasted to range from 300 bpd to 2,130 bpd for oil savings and from 6,380 mcf/day to 45,960 mcf/day for gas savings. Each sensitivity analysis fails the significant energy savings test regarding oil and natural gas. *See* Table 9. Electricity savings over the period of the average life of a clothes washer beginning with the year 1988 were projected to range from 0.013 percent to 0.096 percent of the national electricity use. Each sensitivity analysis fails the significant energy savings test concerning electricity. The annual savings in the year 2001, the year following the period of the average life of a clothes washer purchased in the last year before a standard could be imposed, were forecasted to range from 1.30 percent to 18.16 percent. Each sensitivity analysis, except for the Level 2 sensitivity analysis, fails the third significant energy savings test for percent savings. Energy savings for the Level 2 sensitivity analysis are projected to be 18.16 percent. The standards level in the Level 2 sensitivity analysis is based on the highest energy efficiency level projected to be commercially available by January 1, 1988. DOE believes that this is an unlikely occurrence because it is difficult to believe that all clothes washers manufactured after January 1, 1988, would be at this efficiency level. DOE further believes, that if the percent savings were adjusted to account for separate product classes as was done for television sets, the adjusted savings would be less than the forecasted value of 18.16 percent. In fact, the adjusted savings could be less than the level of 16.67 percent, resulting in no significant energy savings for this sensitivity analysis.

TABLE 9.—SENSITIVITY ANALYSIS ON ENERGY SAVINGS FOR CLOTHES WASHERS

Analysis	Oil (bpd)	Gas (mcf/day)	Electricity (percent)	Percent
Constant Efficiency	1,950	40,460	0.094	15.48
Conservative Case	1,950	40,460	0.094	15.48
Historical (Case 1)	830	17,880	0.037	5.80
Historical (Case 2)	300	6,380	0.013	1.30
Level 2 Sensitivity	2,130	45,960	0.096	18.16

D. *Lessening of Utility or Performance of Products.* As indicated in the General Discussion section, there is no assurance that future utility or performance of clothes washers would not be lessened as a result of disincentives caused by standards to investments in new energy-using features.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Clothes washers use electricity directly, and oil, natural gas, and electricity indirectly through their use of hot water. Energy savings, which are forecasted to be 0.347 Quads for Level 1 standards and 0.396 Quads for Level 2 standards, are expected to be achieved through reduced use of hot water. DOE believes that the need of the Nation to save the marginal amount of energy realized by clothes washer standards is insufficient reason for standards.

Conclusion

Benefits of a standard for clothes washers, compared to no standards, are that standards would save energy.

Burdens of a standard are estimated to be: the increased first cost of a clothes washer by about 47 percent ($214) over the average cost of a clothes washer purchased in 1988; and the cost is increased by about $170 over the life cycle minimum.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of standards for clothes washers outweigh the benefits. Therefore, DOE proposes that clothes washer standards are not economically justified as required by section 325(b)(2) of the Act.

d. Humidifiers and Dehumidifiers

A "humidifier" is a consumer product designed to add moisture into the conditioned air, and which falls into one of the following classes: a central system humidifier or a room humidifier. A "dehumidifier" means a self-contained, electrically-powered, mechanically-refrigerated device designed primarily to decrease the moisture content of the air in an enclosed space; it has a refrigerated surface (evaporator) onto which moisture from the air condenses, a refrigerating system that includes an electric motor, a fan for circulating air, and a drainage arrangement for collecting and/or disposing of the condensate. *See* 10 CFR 430.2.

1. *Product Classes.* The three product classes specified by DOE in the December 1979 advance notice are central system humidifiers, room humidifiers, and dehumidifiers.

The two classes of humidifiers are distinguished by their performance-related features which affect utility and efficiency. Central system humidifiers are designed to add moisture into the air stream of a central heating system. A central system humidifier uses energy supplied by the warm air furnace to evaporate water used for humidification, and it adds moisture to the entire residence.

Room humidifiers are designed to add moisture directly to the conditioned air without requiring connection to a separate heating or distribution system. Room humidifiers have heaters or other means to evaporate the water used for humidification. A room humidifier can be used to add moisture to a local area of the residence, and can be moved from one room to another, if necessary.

Because of the differences in the source of heat for evaporating the water used for humidification, the DOE test method for determining the energy efficiency is different for central system and room humidifiers. This difference, as well as differences in utility, require that separate classes be specified for central system and room humidifiers.

No classes of dehumidifiers are specified. All dehumidifiers have essentially the same combination of components and there do not appear to be any different functional characteristics which affect energy consumption that warrant the specification of separate classes. DOE is interested in receiving statements concerning whether there should be specific product classes for dehumidifiers.

2. *Design Options.* The December 1979 advance notice identified the following design options for humidifiers:

(a) Add Humidistat.
(b) Improve Fan Motor Efficiency.

Based upon comments on the December 1979 advance notice, DOE believes that almost all humidifiers are fitted with humidistats. Therefore, the projected savings are based on improved fan motor efficiency only.

The December 1979 advance notice identified the following design options for dehumidifiers:

(a) Improve Compressor Efficiency.
(b) Improve Condensor Heat Transfer.
(c) Improve Fan Motor Efficiency.
(d) Improve Controls.
(e) Improve Cycle Efficiency.

3. *Standard Levels. See* Table 10 for the standard levels selected for humidifiers and dehumidifiers. The Level 1 standards are 93 percent for central system humidifiers, 93 percent for room humidifiers and 2.9 pints/kWh for dehumidifiers. The Level 1 standards for room humidifiers and dehumidifiers are identical to the levels published in the December 1979 advance notice.

TABLE 10. STANDARD LEVELS SELECTED FOR HUMIDIFIERS AND DEHUMIDIFIERS

Product class	Level 1	Level 2
1. Central System Humidifier	[1] 93	[1] 98.6
2. Room Humidifier	[1] 93	[1] 93
3. Dehumidifier	[2] 2.9	[2] 2.9

[1] Percent.
[2] Pints per kilowatthour.

The level 1 standard in today's notice for central system humidifiers is different from the level of 92 percent published in the December 1979 advance notice. The Auto Flo Company, Division of Masco Corporation (Auto Flo) commented that the energy efficiency of one of its central system humidifiers in 1978 was 93 percent. *See* Auto Flo, comment Number 9, Exhibit 1, page 5. The level is being revised today to be 93 percent for central system humidifiers.

The level 2 standard for central system humidifiers is 98.6 percent. Level 2 standards are the same as the Level 1 standards for room humidifiers and dehumidifiers because the Level 1 standards are expected to be the maximum improvement in energy efficiency which is technologically feasible.

4. *Energy Savings.* The energy savings realized by standards were projected separately for humidifiers and dehumidifiers. Central system humidifiers use over 20 percent more energy than room humidifiers. *See* Technical Support Document, page 55. The EUP Model uses central system humidifiers to represent all types of humidifiers.

According to results from the EUP Model, Level 1 standards for humidifiers are projected to save about 0.015 Quads over the 1988–1997 period, the 10-year average life of a humidifier. *See* Technical Support Document, Table 25. Likewise, Level 2 standards for humidifiers are projected to save about 0.041 Quads over the 1988–1997 period. *See* Technical Support Document, Table 26. For dehumidifiers, Level 1 standards are projected to save about 0.007 Quads over the 1988–1998 period, the 11-year average life of a dehumidifier. *See* Technical Support Document, Table 32. As presented below, the projected savings are forecasted to be less than the three tests of significant energy savings. Therefore, DOE believes that standards for humidifiers and dehumidifiers would not likely result in significant conservation of energy.

A. *Oil and Gas Savings.* For Level 1 standards, savings for humidifiers of 0.015 Quads [27] would result in the savings of 20 bpd of oil and of 250 mcf per day of natural gas. This is only 0.2 and 0.4 percent, respectively, of the amount that DOE deems significant. For level 2 standards, savings of 0.041 Quads would result in the savings of 50 bpd of oil and 670 mcf per day of natural gas. This is only 0.5 and 1 percent, respectively, of the amount that DOE deems significant.

For level 1 standards, savings for dehumidifiers of 0.007 Quads would result in the savings of 10 bpd of oil and of 100 mcf per day of natural gas. This is only 0.1 and 0.2 percent, respectively, of the amount that DOE deems significant.

B. *Electricity Savings.* For Level 1 standards, electricity savings for humidifiers of 0.015 Quads over the 10-year period are less than 0.005 percent of the total national energy used for electricity.[28] For Level 2 standards, electricity savings of 0.041 Quads over the 10-year period are about 0.013 percent of the total national energy used for electricity. DOE believes that the electricity savings are so small as to have no measurable effect on the environment or on the need for new generating capacity.

For level 1 standards, electricity savings for dehumidifiers of 0.007 Quads over the 11-year period are less than 0.002 percent of the total national energy used for electricity.[29] DOE believes that the electricity savings are so small as to have no measurable effect on the environment or on the need for new generating capacity.

C. *Percent Savings.* The percent savings for humidifiers in the year 1998, the year after the average life of a humidifier purchased in the year 1987, the last year before standards would be imposed, are projected to be about 1.1 percent for Level 1 standards and 3.0 percent for Level 2 standards.

The percent savings for dehumidifiers in the year 1999, the year after the average life of a dehumidifier purchased in the year 1987, the last year before standards be imposed, are projected to be about 2.7 percent for Level 1 standards.

Conclusion

On the basis of the above, DOE believes that standards would not result in a significant conservation of energy.

5. Economic Justification

A. *Economic Impact on Consumers.* For humidifiers and dehumidifiers, the economic impact on consumers was found by estimating the additional first cost, if any, that a consumer would pay in order to purchase a product which meets the standard. The development of a first cost curve for humidifiers was patterned after the exponential cost curve developed for the eight products. *See* Technical Support Document, page 86. Market survey data for four humidifiers were used.[30] Due to the limited data and the scatter in data used in developing the first cost curve, the difference for the four humidifiers between the market survey data and the first cost curve average about 6 percent. DOE is interested in comments regarding the uncertainties associated in estimating the first costs for humidifiers at various efficiencies.

The average cost of a humidifier in 1988 (one with an energy factor of 90 percent) is expected to cost about $120. Similarly, the average cost of a humidifier meeting the standard level of 93 percent is expected to cost about $137. The economic impact of a standard is projected to increase the first cost of a humidifier by about 14 percent ($17).

The exponential first cost curve developed for dehumidifiers showed a poor correlation to the market survey data. In order to achieve a better correlation, a parabolic first cost curve was developed. *See* Technical Support Document, page 87. Market survey data for 12 dehumidifiers were used.[31] Due to the wide scatter in data used in developing the parabolic first cost curve the difference for the 12 dehumidifiers between the market survey data and the first cost curve averaged about 14 percent. DOE is interested in comments regarding the uncertainties associated in estimating the first costs for dehumidifiers at various efficiencies.

The average cost of a dehumidifier in 1988 (one with an energy efficiency of 2.454 pints/kWh) is expected to cost about $218. Similarly, the average cost of a dehumidifier meeting the standard level of 2.90 pints/kWh is expected to cost about $267. The economic impact of a standard is projected to increase the first cost of a dehumidifier by about 22 percent ($49).

B. *Life Cycle Cost.* The life cycle cost for humidifiers and dehumidifiers is the sum of first cost and the operating costs discounted over the lifetime of the appliance. More efficient humidifiers and dehumidifiers are not expected to result in increased maintenance costs. Consequently, maintenance costs were not included in estimating life cycle costs.

For humidifiers, the minimum life cycle cost is estimated to be about $648 and occurs for a humidifier with an energy efficiency of 92 percent. *See* Technical Support Document, Figure 11. The life cycle cost for a humidifier, which meets the standard level of 93 percent, is estimated to be $653. Level 1 standards for humidifiers could result in an increase of life cycle costs of approximately $5 over the LCC minimum.

For dehumidifiers, the minimum life cycle cost is estimated to be about $503 and occurs for a dehumidifier with an energy efficiency of 2.64 pints/kWh. *See* Technical Support Document, Figure 2. The life cycle cost for a dehumidifier, which meets the standard level of 2.90 pints/kWh is estimated to be about $513. Standards for dehumidifiers could result in an increase of life cycle costs of approximately $10 over the LCC minimum.

C. *Energy Savings.* For humidifiers, the energy savings attributable to a standard over the period 1988–1997, the average life of a humidifier, were forecasted to range from 0.015 to 0.041 Quads based on savings for Level 1 and Level 2 standards, respectively.

Results from sensitivity analyses indicated that standards would not result in significant conservation of energy. Energy savings over the period of the average life of a humidifier beginning with the year 1988 are forecasted to range from 20 bpd to 50 bpd for oil savings and from 20 mcf/day to 670 mcf/day for gas savings. Each sensitivity analysis fails the significant energy savings test regarding oil and natural gas. *See* Table 11. Electricity savings over the period of the average life of a humidifier, beginning with the year 1988, are projected to range from

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[27] This assumes that oil constitutes 2.65 percent and gas 6.15 percent of the energy used to generate electricity over this time period. These percentages are the average of the projected proportions for the years 1990 and 1995. *See* 1981 Annual Report to Congress, Volume 3: Forecasts, DOE/EIA 0173(81) / 3, February 1982.

[28] Electricity usage over the period 1988–1997 is estimated to be about 336. 8 Quads. This number is derived from data in the 1981 Annual Report to Congress, Volume 3: Energy Projections, DOE/EIA–0173(81)/3, February 1982.

[29] Electricity usage over the period 1988–1998 is estimated to be about 404.4 Quads. This number is derived from data in the 1981 Annual Report to Congress, Volume 3: Energy Projections, DOE/EIA/ 0173(81)/3, February 1982.

[30] A literature search was made to collect market survey data for humidifiers. Data for humidifiers were found in the catalog, "Fall/Winter 1983 Catalog", Eastern Edition, Sears, Roebuck and Co.

[31] A literature search was made to conduct market survey data for dehumidifiers. Data for dehumidifiers were found in the article, "Dehumidifiers: Dryer Air Indoors", *Consumers Research Magazine*, Consumers Research, Inc., July 1983; in the article "Dehumidifiers", *Consumers Reports*, Consumers Union, May 1981; and the *1983 Directory of Certified Dehumidifiers*, Edition No. 1, AHAM.

0.005 percent to 0.013 percent of the national electricity use. Each sensitivity analysis fails the significant energy savings test concerning electricity. The annual savings in the year 1996, the year following the period of the average life of a humidifier purchased in the last year before a standard could be imposed, are forecasted to range from 1.12 percent to 3.03 percent. Each sensitivity analysis fails the significant energy savings test for percent savings. Accordingly, DOE proposes that standards for humidifiers are not likely to result in significant conservation of energy.

For dehumidifiers, the energy savings attributable to a standard over the period 1988–1998, the average life of a dehumidifier, are forecasted to be about 0.007 Quads based on Level 1 standards.

Results from sensitivity analyses indicated that standards would not result in significant conservation of energy. Energy savings over the period of the average life of a dehumidifier beginning with the year 1988 were forecasted to range from 10 bpd to 20 bpd for oil savings and from 110 mcf/day to 220 mcf/day for gas savings. Each sensitivity analysis fails the significant energy savings test regarding oil and natural gas. *See* Table 12.

Electricity savings over the period of the average life of a dehumidifier beginning with the year 1988 were projected to range from 0.002 percent to 0.004 percent of the national electricity use. Each sensitivity analysis fails the significant energy savings test concerning electricity. The savings in the year 1999, the year following the period of the average life of a dehumidifier purchased in the last year before a standard could be imposed, were forecasted to range from 2.69 percent to 5.78 percent. Each sensitivity analysis fails the significant energy savings test for percent savings. Accordingly, DOE proposes that standards for dehumidifiers are not likely to result in significant conservation of energy.

TABLE 11.—SENSITIVITY ANALYSES ON ENERGY SAVINGS FOR HUMIDIFIERS

Analysis	Oil (bpd)	Gas (mcf/day)	Electricity (percent)	Percent
Constant Efficiency	20	250	0.005	1.12
Conservative Case	20	250	0.005	1.12
Historical (Case 1)	20	250	0.005	1.12
Historical (Case 2)	20	250	0.005	1.12
Level 2 Sensitivity	50	670	0.013	3.03

TABLE 12.—SENSITIVITY ANALYSIS OF ENERGY SAVINGS FOR DEHUMIDIFIERS

Analysis	Oil (bpd)	Gas (mcf/day)	Electricity (percent)	Percent
Constant Efficiency	20	220	0.004	5.78
Conservative Case	20	220	0.004	5.78
Historical (Case 1)	10	120	0.002	2.91
Historical (Case 2)	10	120	0.002	2.91

D. *Lessening of Utility or Performance of Products.* As indicated in the General Discussion section, there is no assurance that future utility or performance of humidifiers and dehumidifiers would not be lessened as a result of disincentives caused by standards to investments in energy-using new features.

E. *Impact of Lessening Competition.* The determination of this factor must be made by the Attorney General.

F. *Need to Save Energy.* Energy savings for humidifiers are forecasted to be 0.015 Quads for Level 1 standards and 0.041 Quads for Level 2 standards. Energy savings for dehumidifiers are forecasted to be 0.007 Quads for Level 1 standards. DOE believes that the need of the Nation to save the marginal amount of energy realized by standards for both humidifiers and dehumidifiers is insufficient reason for standards.

Conclusion

Benefits of a standard for humidifiers and dehumidifiers, compared to no standards, are that standards would save energy.

Burdens of a standard for humidifiers are estimated to be: the increased first cost by about 14 percent ($17) over the average cost of a product purchased in 1988; the life cycle cost is increased by about $5 over the life cycle minimum.

Burdens of a standard for dehumidifiers are estimated to be: the increased first cost by about 22 percent ($49) over the average cost of a product purchased in 1988; the life cycle cost is increased by about $10 over the life cycle minimum.

In light of all the factors discussed here and in the general discussion, on balance, DOE believes that the burdens of standards for humidifiers and dehumidifiers outweigh the benefits. Therefore, DOE proposes that humidifier and dehumidifier standards are not economically justified as required by section 325(b)(2) of the Act.

IV. Preemption of State Regulations

The Department has adopted procedural regulations at 10 CFR Part 430, Subpart D, giving States an opportunity to petition the Department to preserve State or local efficiency standards for a covered product. 47 FR 57198 (December 22, 1982) and 48 FR 39376 (August 30, 1983). If DOE adopts the rule proposed today with regard to each of the four products, any State or local efficiency standard for those products would be superseded pursuant to section 327(a)(2) of the Act. DOE believes that Florida, which has a dishwasher standard, and New York, which has standards for both dishwashers and television sets, are the only States which currently have standards for any of the four products subject to today's notice. Nevertheless, if, at a future time, any State or other persons wish the Department to review State or local efficiency standards that have been promulgated, the regulations at 10 CFR Part 430, Subpart D, provide the procedural requirements which must be met.

V. Environmental, Regulatory Impact, and Regulatory Flexibility Reviews

The Department has reviewed today's proposed action in accordance with the Department's obligations under:

- The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR 1500 *et seq.*) and the Department's own NEPA guidelines (10 CFR Part 1021);
- Executive Order 12291 (46 FR 13193, February 19, 1981) which pertains to agency review of the impact of Federal regulations; and
- The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) which requires, in part, that an agency prepare an initial regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification and explanation of that determination in the **Federal Register.**

a. Environmental Review

The Department proposes to establish no energy efficiency standards for four types of consumer products. By operation of the Act, all State energy efficiency standards for these products would be preempted, except those for which States petition and receive from the Department a rule which exempts them in accordance with section 327(b)(3) of the Act. Thus, the proposed action potentially has three elements: (1) No establishment of energy efficiency standards for the four products in those States that do not now have standards

in effect; (2) Federal approval of certain State standards (i.e., exemption from Federal preemption); and (3) Federal "supersession" of certain existing State standards.

The first element clearly would not be environmentally significant since it is simply a continuation of the status quo.

As for the second element, in all cases where DOE is requested to approve State standards, DOE will conduct an appropriate NEPA review on a case-by-case basis. It is anticipated that the vast majority of these cases will be adequately covered by the Environmental Assessment (EA) (DOE/EA–0113) and the Addendum to the EA which the Department prepared and issued on the impact of setting and implementing energy efficiency standards for all 13 types of consumer products identified in section 322(a)(1)–(13) of the Act. A Finding of No Significant Impact and Notice of Availability of that EA were published with the June 30, 1980 proposed rule for minimum energy efficiency standards for eight of the products (45 FR 44086). Copies of that Environmental Assessment and addendum may be obtained from the address indicated at the beginning of this notice.

As for the third element, a State with existing standards could possibly not seek exemption or would be denied an exemption from preemption. For dishwashers, Florida and New York are the only States to DOE's knowledge that have applicable energy efficiency standards. Both States require a switch to manually control the power dry feature. If these two States either do not seek exemption from or are denied an exemption from preemption, elimination of these standards for dishwashers would result in maximum increased energy usage of about 0.003 Quads per year.[32]

For television sets, New York is the only State known to DOE which has standards. New York prohibits instant-on television sets. If New York either does not seek exemption from or is denied an exemption from preemption, elimination of State standards for television sets would result in maximum increased energy usage of about 0.002 Quads per year.[33]

For clothes washers and humidifiers and dehumidifiers, DOE is not aware of any State that has energy efficiency standards for these products. Since State standards do not exist, none will be preempted and there will clearly be no environmental impact.

The 1980 Environmental Assessment (EA) and Addendum analyzed the environmental impacts of setting and implementing Federal energy efficiency standards. One conclusion from this EA was that a change in energy usage of 1.6 Quads would not have a significant impact on the quality of the human environment. As discussed above, the preemption of State energy efficiency standards for the four products would result in a maximum increase of approximately 0.005 Quads per year (0.003 Quads per year for dishwashers and 0.002 Quads per year for television sets). This annual change in energy consumption is considerably less than the change in energy consumption of 1.6 Quads determined not to have a significant impact on the quality of the human environment in the 1980 EA. Moreover, there is no difference *in kind* between the impacts of setting standards and eliminating standards. Therefore, the Department has determined the proposed rulemaking clearly will not significantly affect the quality of the human environment so that neither an Environmental Assessment or an Environmental Impact Statement is required.

b. Regulatory Impact Review

In light of the foregoing analysis of the effect of the proposed action, DOE has concluded that the rule is not a "major rule" for purposes of Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, in accordance with Section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the proposed rule was submitted to the Director of OMB for review without a regulatory impact analysis.

Finally, as mentioned above, the Department intends to consider the regulatory impacts, consistent with Executive Order 12291, of all rules proposed in response to petitions to preserve or supersede State standards under Section 327(b) of the Act.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act requires agencies, when proposing a rule that is likely to have a significant economic impact on a substantial number of small entities, to prepare an initial regulatory flexibility analysis. The rule proposed today—that is, determination that no standard should be adopted for the four covered products—would not likely have such an impact, if adopted. In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In addition, the Department will consider, as appropriate, any significant economic impact on small entities in deciding petitions to preserve or supersede State standards under section 327(b) of the Act.

VI. Public Comment Procedures

a. Participation in Rulemaking

DOE encourages the maximum level of public participation possible in this rulemaking. Following publication of the December 13, 1979 advance notice of proposed rulemaking, DOE held two public meetings to acquaint the public with the issues relating to this particular rulemaking and invited public participation in the rulemaking process. There were also opportunities for the public to submit written comments on the advance notice.

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[32] The increased energy use for dishwashers is the product of the projected energy use for dishwashers in 1988 of 0.28 Quads times the fraction of the nation's households within the States with standards (12.5 percent) multiplied by the maximum savings that would be realized by the existing State standards (6.5 percent). *See* Technical Support Document, Table 4, for the energy use in 1988. Florida (3,744,000 households) and New York (6,340,000 households) represented about 12.5 percent of the Nation's total households (80,390,000) in 1980. *See* Statistical Abstract of the United States, 1984, 104th Edition, Table 66. The savings realized by standards are 0.26 kWh/cycle. *See* Household Appliance Usage Data, page C–3. The savings were then divided by the sales-weighted average energy use in 1988 of 3.06 kWh/cycle for a savings of 6.5 percent. *See* Technical Support Document, Table 4.

[33] The increased energy use for television sets is the product of the projected energy use for television sets in 1988 of 0.22 Quads times the fraction of the Nation's households within New York State (7.9 percent) multiplied by the savings realized by standards (11 percent). *See* Technical Support Document, Table 4 for the energy use in 1988. New York (6,340,000 households) represented about 7.9 percent of the Nation's total households (80,390,000) in 1980. *See* Statistical Abstract of the United States, 1984, 104th Edition, Table 66. The instant-on feature for television sets uses about 11 percent of the annual energy use for television sets. *See* Energy Efficiency Program for Appliances, Television Sets, Report 50–RD–77, Federal Energy Administration, October 31, 1977.

The Department again encourages interested persons to participate in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers' associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal. The Department also encourages interested persons to participate in the public hearing to be held in Washington, D.C., at the time and place indicated at the beginning of this notice.

One Technical Support Document has been prepared in connection with this proposed rule which is referenced in the text of this preamble. Copies of this document may be found in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of this document by writing to the address specified at the beginning of this notice.

The DOE has established a comment period of 90 days following publication of this notice, for persons to comment on this proposal. Upon completion of the comment period, all comments including the determinations made by the Attorney General pursuant to section 325(d)(5) of the Act and transcripts of all hearings will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below. It is requested that, wherever reasonably possible, comments for each product type of addressed separately.

Comments should be labeled both on the envelope and on the documents, "Appliances (Docket No. CAS–RM–79–113)" and must be received by the date specified at the beginning of this notice, in order to insure full consideration. Seven copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation. As mentioned above, 90-day comment period is being provided.

All written comments received on the proposed rule will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors, of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearings

1. Procedure for Submitting Requests to Speak. In order to have the benefit of a broad range of public viewpoints in this rulemaking, DOE will hold a hearing. Listed at the beginning of this notice are the date, address, and DOE contact for this hearing. Any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, may make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the evelope, "Appliances (Docket No. CAS–RM–79–113)" and should be sent to the address and must be received by the time specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person requesting an opportunity to speak should give a concise summary of the proposed oral presentation. Each person selected to be heard will be so notified by DOE by the date specified at the beginning of this notice.

Each person selected to be heard is requested to submit seven copies of the statement by the date given at the beginning of this notice. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in the letter requesting to make an oral presentation.

Lists of the persons selected to be heard at the hearings will be available upon request from the Office of Hearings and Dockets at the address and after dates specified at the beginning of this notice. The lists will also be available for inspection in the DOE Freedom of Information Reading Room as specified at the beginning of this notice.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at this hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 USC 553 and Section 336 of the Act. At the conclusion of all initial oral statements at each day of the hearing, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for response.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Energy Policy and Conservation Act, Pub. L. 94–163, as amended by Pub. L. 95–619; Department of Energy Organization Act, Pub. L. 95–91.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., March 15, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

§ 430.32 [Amended]

Section 430.32 is amended by adding paragraphs (c), (h), (j), and (k), as follows:

* * * * *

(c) Dishwashers: No standard for all classes.

* * * * *

(h) Televisions sets: No standard for all classes.

* * * * *

(j) Clothes washers: No standard for all classes.

(k) Humidifiers and dehumidifiers: No standard for all classes.

[FR Doc. 85–7646 Filed 3–29–85; 8:45 am]

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List of Public Laws

Last List March 27, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

S. 592/Pub. L. 99-7

To provide that the chairmanship of the Commission on Security and Cooperation in Europe shall rotate between members appointed from the House of Representatives and members appointed from the Senate, and for other purposes. (Mar. 27, 1985; 99 Stat. 18) Price: $1.00

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1985

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
April 1	April 16	May 1	May 16	May 31	July 1
April 2	April 17	May 2	May 17	June 3	July 1
April 3	April 18	May 3	May 20	June 3	July 2
April 4	April 19	May 6	May 20	June 3	July 3
April 5	April 22	May 6	May 20	June 4	July 5
April 8	April 23	May 8	May 23	June 7	July 8
April 9	April 24	May 9	May 24	June 10	July 8
April 10	April 25	May 10	May 28	June 10	July 9
April 11	April 26	May 13	May 28	June 10	July 10
April 12	April 29	May 13	May 28	June 11	July 11
April 15	April 30	May 15	May 30	June 14	July 15
April 16	May 1	May 16	May 31	June 17	July 15
April 17	May 2	May 17	June 3	June 17	July 16
April 18	May 3	May 20	June 3	June 17	July 17
April 19	May 6	May 20	June 3	June 18	July 18
April 22	May 7	May 22	June 6	June 21	July 22
April 23	May 8	May 23	June 7	June 24	July 22
April 24	May 9	May 24	June 10	June 24	July 23
April 25	May 10	May 28	June 10	June 24	July 24
April 26	May 13	May 28	June 10	June 25	July 25
April 29	May 14	May 29	June 13	June 28	July 29
April 30	May 15	May 30	June 14	July 1	July 29

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
7 Parts:		
0–45	13.00	Jan. 1, 1984
46–51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53–209	13.00	Jan. 1, 1984
210–299	13.00	Jan. 1, 1984
*300–399	8.00	Jan. 1, 1985
400–699	13.00	Jan. 1, 1984
700–899	13.00	Jan. 1, 1984
900–999	14.00	Jan. 1, 1984
1000–1059	12.00	Jan. 1, 1984
1060–1119	9.50	Jan. 1, 1985
1120–1199	8.00	Jan. 1, 1985
1200–1499	13.00	Jan. 1, 1985
1500–1899	7.50	Jan. 1, 1985
1900–1944	14.00	Jan. 1, 1984
1945–End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1–199	13.00	Jan. 1, 1984
200–End	9.50	Jan. 1, 1984
10 Parts:		
0–199	14.00	Jan. 1, 1984
200–399	9.50	Jan. 1, 1985
*400–499	12.00	Jan. 1, 1985
500–End	13.00	Jan. 1, 1984
11	7.50	Jan. 1, 1985
12 Parts:		
1–199	9.00	Jan. 1, 1984
200–299	14.00	Jan. 1, 1984
300–499	9.50	Jan. 1, 1984
500–End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1985
14 Parts:		
1–59	13.00	Jan. 1, 1984
60–139	13.00	Jan. 1, 1984
140–199	7.50	Jan. 1, 1985
200–1199	13.00	Jan. 1, 1984
1200–End	8.00	Jan. 1, 1985
15 Parts:		
0–299	6.50	Jan. 1, 1985
300–399	13.00	Jan. 1, 1984
400–End	12.00	Jan. 1, 1985
16 Parts:		
0–149	9.00	Jan. 1, 1985
150–999	10.00	Jan. 1, 1985
1000–End	13.00	Jan. 1, 1984
17 Parts:		
1–239	14.00	Apr. 1, 1984
240–End	13.00	Apr. 1, 1984
18 Parts:		
1–149	12.00	Apr. 1, 1984
150–399	15.00	Apr. 1, 1984
400–End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1–399	7.50	Apr. 1, 1984
400–499	13.00	Apr. 1, 1984
500–End	14.00	Apr. 1, 1984
21 Parts:		
1–99	9.00	Apr. 1, 1984
100–169	12.00	Apr. 1, 1984
170–199	12.00	Apr. 1, 1984
200–299	4.25	Apr. 1, 1984
300–499	14.00	Apr. 1, 1984
500–599	13.00	Apr. 1, 1984
600–799	6.00	Apr. 1, 1984
800–1299	9.50	Apr. 1, 1984
1300–End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0–199	8.00	Apr. 1, 1984
200–499	14.00	Apr. 1, 1984
500–699	6.00	Apr. 1, 1984
700–1699	12.00	Apr. 1, 1984
1700–End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0–1.169	14.50	Apr. 1, 1984
§§ 1.170–1.300	10.00	Apr. 1, 1984
§§ 1.301–1.400	7.50	Apr. 1, 1984
§§ 1.401–1.500	13.00	Apr. 1, 1984
§§ 1.501–1.640	12.00	Apr. 1, 1984
§§ 1.641–1.850	12.00	Apr. 1, 1984
§§ 1.851–1.1200	14.00	Apr. 1, 1984
§§ 1.1201–End	17.00	Apr. 1, 1984
2–29	13.00	Apr. 1, 1984
30–39	9.00	Apr. 1, 1984
40–299	14.00	Apr. 1, 1984
300–499	9.50	Apr. 1, 1984
500–599	8.00	[1] Apr. 1, 1980
600–End	5.50	Apr. 1, 1984
27 Parts:		
1–199	13.00	Apr. 1, 1984
200–End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0–99	14.00	July 1, 1984
100–499	6.50	July 1, 1984
500–899	14.00	July 1, 1984
900–1899	7.50	July 1, 1984
1900–1910	15.00	July 1, 1984
1911–1919	5.50	July 1, 1984
1920–End	14.00	July 1, 1984
30 Parts:		
0–199	13.00	July 1, 1984
200–699	5.50	July 1, 1984
700–End	13.00	July 1, 1984
31 Parts:		
0–199	8.00	July 1, 1984
200–End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	July 1, 1984
1–39, Vol. II	19.00	July 1, 1984
1–39, Vol. III	18.00	July 1, 1984
40–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–629	13.00	July 1, 1984
630–699	12.00	July 1, 1984
700–799	13.00	July 1, 1984
800–999	9.50	July 1, 1984
1000–End	6.00	July 1, 1984
33 Parts:		
1–199	14.00	July 1, 1984
200–End	13.00	July 1, 1984
34 Parts:		
1–299	14.00	July 1, 1984
300–399	8.50	July 1, 1984
400–End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1–199	9.00	July 1, 1984
200–End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0–17	14.00	July 1, 1984
18–End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1–51	13.00	July 1, 1984
52	14.00	July 1, 1984
53–80	18.00	July 1, 1984
81–99	14.00	July 1, 1984
100–149	9.50	July 1, 1984
150–189	13.00	July 1, 1984
190–399	13.00	July 1, 1984
400–424	13.00	July 1, 1984
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41 Chapters:		
1, 1–1 to 1–10	13.00	July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3–6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
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101	15.00	July 1, 1984
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42 Parts:		
1–60	12.00	Oct. 1, 1984
61–399	8.00	Oct. 1, 1984
400–End	18.00	Oct. 1, 1984

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43 Parts:		
1–999	9.50	Oct. 1, 1984
1000–3999	14.00	Oct. 1, 1984
4000–End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1–199	9.50	Oct. 1, 1984
200–499	6.50	Oct. 1, 1984
500–1199	13.00	Oct. 1, 1984
1200–End	9.50	Oct. 1, 1984
46 Parts:		
1–40	9.50	Oct. 1, 1984
41–69	9.50	Oct. 1, 1984
70–89	6.00	Oct. 1, 1984
90–139	9.00	Oct. 1, 1984
140–155	9.50	Oct. 1, 1984
156–165	10.00	Oct. 1, 1984
166–199	9.00	Oct. 1, 1984
200–499	13.00	Oct. 1, 1984
500–End	7.00	Oct. 1, 1983
47 Parts:		
0–19	13.00	Oct. 1, 1984
20–69	14.00	Oct. 1, 1984
70–79	13.00	Oct. 1, 1984
80–End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1–51)	13.00	Oct. 1, 1984
1 (Parts 52–99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3–6	12.00	Oct. 1, 1984
7–14	14.00	Oct. 1, 1984
15–End	12.00	Oct. 1, 1984
49 Parts:		
1–99	7.50	Oct. 1, 1984
100–177	14.00	Nov. 1, 1984
178–199	13.00	Nov. 1, 1984
200–399	13.00	Oct. 1, 1984
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1000–1199	13.00	Oct. 1, 1984
1200–1299	13.00	Oct. 1, 1984
1300–End	3.75	Oct. 1, 1984
50 Parts:		
1–199	9.50	Oct. 1, 1984
200–End	14.00	Oct. 1, 1984
CFR Index and Findings Aids	17.00	Jan. 1, 1984
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Individual copies	3.75	1985

[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.

CFR ISSUANCES 1985
January 1985 Editions and Projected April, 1985 Editions

This list sets out the CFR issuances for the January 1985 editions and projects the publication plans for the April, 1985 quarter. A projected schedule that will include the July, 1985 quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1984–1985 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

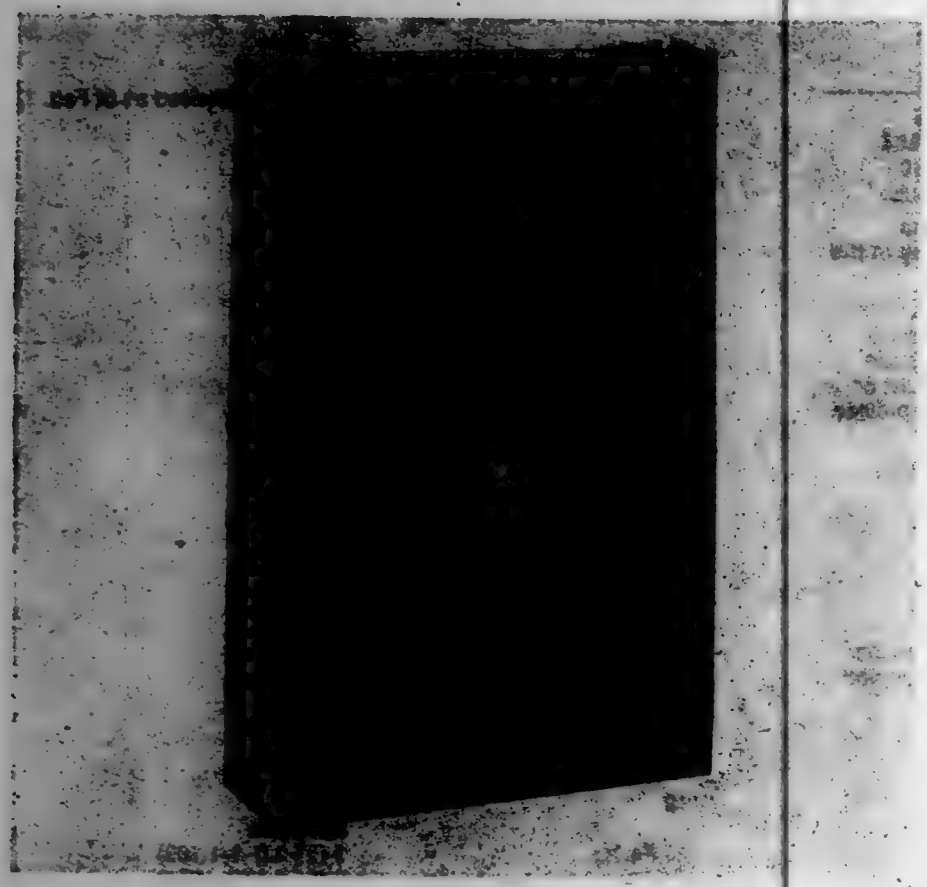
Titles revised as of January 1, 1985:

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4	1000–1059
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	25
19	
	26 Parts:
20 Parts:	1 (§§ 1.0–1–1.169)
1–399	1 (§§ 1.170–1.300)
400–499	1 (§§ 1.301–1.400)
500–End	1 (§§ 1.401–1.500)
	1 (§§ 1.501–1.640)
21 Parts:	1 (§§ 1.641–1.850)
1–99	1 (§§ 1.851–1.1200)
100–169	1 (§§ 1.1201–End)
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300–499	40–299
500–599	300–499
600–799	500–599 (Cover only)
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1300–End	
	27 Parts:
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federal register

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Community Development
Farmers Home Administration

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Fuel Additives
Environmental Protection Agency

Gasoline
Federal Trade Commission

Handicapped
Transportation Department

Loan Programs—Housing and Community Development
Farmers Home Administration
Veterans Administration

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Labor Department

Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
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Television Broadcasting
Federal Communications Commission

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Tuesday, April 2, 1985

Presidential Documents

Title 3—

The President

Proclamation 5313 of March 29, 1985

Suspension and Modification of Import Fees on Certain Sugars, Sirups and Molasses

By the President of the United States of America

A Proclamation

1. By Proclamation No. 5164 of March 19, 1984, I imposed import fees on certain sugars, sirups and molasses pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624).

2. The Secretary of Agriculture has advised me that he has reason to believe that changed circumstances require the termination of those import fees for articles described in item 956.15 of the Tariff Schedules of the United States (TSUS) and the modification of those import fees for articles described in items 956.05 and 957.15 of the TSUS.

3. I agree that there is reason for such belief by the Secretary of Agriculture, and therefore I am requesting the United States International Trade Commission to make an investigation with respect to this matter pursuant to Section 22 of the Agricultural Adjustment Act of 1933, as amended.

4. The Secretary of Agriculture has further advised me that a condition exists with regard to the importation of those certain sugars, sirups and molasses requiring emergency treatment and therefore the import fees for articles described in TSUS item 956.15 should be suspended and the import fees for articles described in TSUS items 956.05 and 957.15 should be modified without awaiting the report and recommendations of the United States International Trade Commission.

5. On the basis of the information submitted to me, I find and declare that changed circumstances require the suspension and modification of the import fees for sugars, sirups and molasses, as described below, without awaiting the report and recommendations of the United States International Trade Commission.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by Section 22 of the Agricultural Adjustment Act of 1933, as amended, and the Constitution and statutes of the United States of America, do hereby proclaim as follows:

A. The application of the fees prescribed for item 956.15 and the provisions of headnote 4(c) of part 3 of the Appendix to the Tariff Schedules of the United States are suspended.

B. Items 956.05 and 957.15 of part 3 of the Appendix to the Tariff Schedules of the United States are amended by inserting "One cent per pound" in place of "An amount determined and adjusted in accordance with headnote 4(c)" in both places in which it occurs.

C. The provisions of paragraph C of Proclamation No. 5164 are suspended.

D. This proclamation shall be effective as of 12:01 a.m. Eastern Standard Time April 1, 1985, and shall remain effective pending my action upon receipt of the report and recommendations of the United States International Trade Commission on this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of March, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-7980
Filed 4-1-85; 11:08 am]
Billing code 3195-01-M

Editorial note: For the President's letter to the Chairman of the U.S. International Trade Commission, dated Mar. 29, 1985, on the subject of the import fees, see the *Weekly Compilation of Presidential Documents* (vol. 21, p. 385).

Rules and Regulations

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1872, 1942, 1944, 1951, 1955 and 1962

Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) is issuing three new regulations to prescribe policies and procedures for servicing cases where an unauthorized loan or other financial assistance was received. These regulations cover FmHA's housing and community and business programs and amend portions of existing regulations which deal with unauthorized interest credits on section 502 Rural Housing loans and unauthorized loans and grant assistance under section 504. The regulations apply to FmHA loans, grants, and other financial assistance, such as interest subsidies and set forth detailed procedures for collecting loans, grants, and subsidies which were unauthorized. This action establishes a set of uniform policies and procedures for servicing unauthorized loans or other cases of financial assistance since the Agency has no formalized procedures. Occasionally, FmHA program review assessments or external audits reveal cases where program recipients were not entitled to the loan or other assistance granted by FmHA. These regulations address such cases and set forth various corrective measures to remedy the violation. This action has the effect of facilitating the effective servicing of cases falling within the category of unauthorized loans or other assistance.

DATES: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Chief, Property Management Branch, Single-Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, Telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures set forth in Departmental Regulation 1512–1 which implements Executive Order 12291 and was determined to be "nonmajor" since the annual effect on the economy is less than $100 million and will create no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document was reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action which significantly affects the quality of the environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L 91–190, an environmental impact statement is not required.

Some of the FmHA programs/activities affected by these regulations are subject to the provisions of intergovernmental consultation in the manner delineated in 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Administration Programs and Activities." See FmHA Instruction 1940–J available in any FmHA Office. The FmHA Water and Waste Disposal Loan and Grant and Community Facilities Loan Programs are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

Dwight O. Calhoun, Acting Associate Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because the number of FmHA borrowers affected by this rule is estimated to be no more than one percent of the total caseload, and a low volume of the one percent is expected to be small entities. The economic impact on the small entities affected is not expected to be significant to their overall operations.

Primary policies and authorities set forth in these regulations are:

(a) An effort will be made to collect all financial assistance which is determined to be unauthorized.

(b) When the recipient of unauthorized assistance does not repay that assistance and the amount involved is $1,000 or more, the security, if any, should be liquidated. Exceptions are cases where it is determined (1) The recipient was not at fault, (2) it would be highly inequitable to require liquidation, and (3) continuation with the loan will not adversely affect FmHA's financial interests; or (4) in any case where it is clearly not in the Government's best financial interest to force liquidation. In those case, alternative options in lieu of calling the loan are outlined for each program.

(c) Appeal rights will be given to the recipient unless the recipient and the servicing official have reached an agreement on satisfactory arrangements for repayment.

(d) In cases where the recipient does not repay the unauthorized assistance at once and liquidation is not required, account adjustments will be made in accordance with the Subpart applicable to the type loan involved.

(e) The Administrator, FmHA, will have authority to make exceptions to provisions of these Subparts which are not inconsistent with the statute authorizing the FmHA program involved.

Provisions of these regulations require complying changes to Subpart A of Part 1872, Subparts A and H of Part 1942, Subparts A and J of Part 1944, Subparts E and G of Part 1951, Subpart A of Part 1955, and Subpart A of Part 1962 of this chapter.

On May 23, 1984, a proposed rule was published in the **Federal Register** (49 FR 21744) for a 60-day review and comment period. The proposed rule contained four Subparts. Subpart L, pertaining to Farmer Programs, has been withheld from this final rule. When the regulations for special servicing of delinquent and problem case farm

borrowers are published as a final rule. Subpart L will be published simultaneously.

There was only one commentor from the private sector, and those comments were confined to Subpart M, §§ 1951.606 and 1951.607. These comments were, basically, that it is untenable for the Government to attempt to recoup financial assistance to which the recipient was not entitled when it was received because of error on the part of an FmHA employee. Sections 1951.606 and 1951.612 were apparently overlooked by the commentor, because § 1951.606 provides that where the recipient is (1) not at fault, (2) it would be highly inequitable to require prompt repayment of the unauthorized assistance, and (3) failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests, FmHA may continue with the recipient. Section 1951.612 then specifies the servicing options for different situations when the three provisions outlined above are met.

The reasoning behind these regulations is:

(1) There are cases where recipients have obtained financial assistance to which they were not entitled.

(2) Regardless of the reason for their receiving that assistance, it is money owed to the Government and an effort must be made to collect it.

(3) If it is not repaid in full promptly, provisions are made to continue with the recipient on existing or modified terms if there was no intent by the recipient to defraud, it would be inequitable to enforce collection, and the Government's financial interests are not adversely affected. A number of comments were made by FmHA employees and some changes resulted from these. Included in this category are:

(a) In the "Policy" section of each subpart, the phrase was added: ". . . unless any applicable Statute of Limitations has expired."

(b) In the "Decision on servicing actions" section of each subpart, headings were added to each subsection to direct the reader more easily through the section.

(c) In the respective sections concerning liquidations, [§§ 1951.606 (e)(1)(i)(A), 1951.658 (e)(1)(i)(A), and 1951.708 (e)(1)(i)(A)], a phrase is added to clarify that the amount outstanding includes the total of principal, accrued interest, and any recoverable costs charged to the account.

(d) The titles of §§ 1951.618, 1951.668, and 1951.715 were changed for clarification.

(e) The definition of "servicing official," was expanded to provide that "District Director" could also include a District Loan Specialist if so designated.

(f) In Subpart N, modifications were made to provide for use of a direct input computer form to notify the Finance Office of account adjustments. This form (Form FmHA 1951–52) is unique to the accounting system used for Multiple Family Housing accounts.

(g) Several other minor changes were made to correct typographical errors and for additional clarification.

Several other suggestions from FmHA personnel were considered but not adopted, primarily because it was deemed they did not fit within the scope of these regulations or were otherwise not appropriate.

Catalog of Federal Domestic Assistance Titles and Numbers:

10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, and Rural areas.

7 CFR Part 1942

Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal—Domestic, and Water supply—Domestic.

7 CFR Part 1944

Farm labor housing, Aged, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Migrant Labor, Public housing, Rent subsidies, Low and moderate income housing—Rental, Mortgages, Rural housing, and Subsidies.

7 CFR Part 1951

Account servicing, Credit, Grant programs—Housing and community development, Interest credit, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages, Recapture of subsidy, Reporting requirements, and Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7 of the Code of Federal Regulations, is amended as follows:

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-only Cases

§ 1872.17 [Amended]

1. In § 1872.17 paragraph (g), in the 6th and 9th lines from the end of the paragraph, the number of the form entitled "Accelerated Repayment Agreement" is changed from "Form FmHA 465–11," to "Form FmHA 1965–11."

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

2. In § 1942.17, paragraph (r)(5) is revised to read as follows:

§1942.17 Appendix A—Community Facility Loans.

* * * * *

(r) * * *

(5) Other loan servicing actions will be in accordance with Subparts E and O of Part 1951 of this chapter.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

3. § 1942.376 is revised to read as follows:

§ 1942.376 Grant servicing.

Grants will be serviced in accordance with §1951.215 of Subpart E and Subpart O of Part 1951 of this chapter.

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

4. In § 1944.34, paragraph (j) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(j) Unauthorized interest credit. When it is determined that a borrower has received interest credit to which he/she was not entitled (unauthorized interest credits), the case will be serviced according to Subpart M of Part 1951 of this chapter.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

5. § 1944.473 is revised to read as follows:

§ 1944.473 Unauthorized loans and/or grants.

Unauthorized loans and/or grants are those where it is determined the recipient was not eligible for the assistance received or where loan and/or grant was approved for unauthorized purposes. A case of this type will be serviced according to Subpart M of Part 1951 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

Subpart E—Servicing of Community Program Loans and Grants

§ 1951.201 [amended]

6. At the end of § 1951.201, the following sentence is added: "Community Programs cases where unauthorized loan or other financial assistance has been received will be serviced according to Subpart O of Part 1951 of this chapter."

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

§1951.301 [Amended]

7. At the end of § 1951.301, the following sentence is added: "Single Family Housing cases where unauthorized loan or other financial assistance has been received will be serviced according to Subpart M of Part 1951 of the chapter."

8. Subpart M is added to Part 1951 and reads as follows:

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

Sec.

1951.601 Purpose.
1951.602 Definitions.
1951.603 Policy.
1951.604 Categories of unauthorized SFH assistance.
1951.605 [Reserved]
1951.606 Initial determination that unauthorized assistance was received.
1951.607 Notification to recipient.
1951.608 Decision on servicing actions.
1951.609–1951.611 [Reserved]
1951.612 Servicing options in lieu of liquidation or legal action to collect.
1951.613–1951.617 [Reserved]
1951.618 Account adjustments and reporting requirements.
1951.619 Exception authority.
1951.620–1951.649 [Reserved]
1951.650 OMB control number.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

§ 1951.601 Purpose.

This Subpart prescribes the policies and procedures for servicing Single-Family Housing (SFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. As used in this Subpart, SFH includes section 502 Rural Housing (RH) loans and section 504 loans and grants, as well as sections 523 and 524 Rural Housing Site (RHS) loans, Section 523 Self-Help Technical Assistance (TA) grants, and section 525 Technical and Supervisory Assistance (TSA) grants.

§1951.602 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, an interest subsidy, or a grant which was unauthorized.

(h) *Servicing official.* For all Single-Family Rural Housing loans or section 504 grants, the servicing official is the County Supervisor; for all other types of loans or grants, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated.

(i) *Unauthorized assistance.* Any loan, interest subsidy, or grant received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible. Interest subsidy includes interest credits, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§1951.603 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

§1951.604 Categories of unauthorized SFH assistance.

(a) Unauthorized SFH assistance includes but is not limited to these categories:

(1) *Section 502 loan:* (i) The recipient was not eligible for a loan.

(ii) The recipient was eligible for a loan but had an income in a category for which there were no funds available at the time the loan was approved, and the loan was obligated from funds designated for another income category. For example, an otherwise-eligible recipient with above-moderate income who received a loan from low- or moderate-income funds. This does not include a loan obligated as low-income where the income rose to moderate prior to closing provided the case was handled according to § 1944.33(a) of this chapter.

(iii) The recipient was eligible and the loan was made for authorized purposes but the recipient received unauthorized subsidy benefits because the loan was closed at an interest rate lower than the correct rate in effect when the loan was approved.

(iv) The loan was made for unauthorized purposes including but not limited to the following:

(A) To buy or improve income-producing land; or buy, build or improve income-producing buildings or finance a building not essential for RH purposes.

(B) To buy, build, or improve a dwelling which exceeds modest standards for size, design, and cost as compared to other housing in the locality for low- and moderate-income families as defined in § 1944.16 (a) or (b) or Subpart A of Part 1944 of this chapter.

(C) To buy or improve a nonfarm tract that exceeds a minimum-adequate site as defined in § 1944.11(c) of this chapter.

(D) To refinance debts not meeting the requirements of § 1944.22 of this chapter.

(E) To buy, build, or improve with an initial loan, a dwelling located in an area not designated as rural, unless it is on a farm as defined in § 1944.2(h) of this chapter.

(v) Unauthorized or excessive interest credits were granted.

(vi) Where recapture of subsidy was due but:

(A) The loan was assumed by another party without collecting the amount due from the transferor (or without the transferee assuming it); or

(B) Final payment was accepted but did not include the recapture amount due.

(2) *Section 504 loan or grant.* (i) The recipient was not eligible for a loan or grant.

(ii) The loan or grant was made for unauthorized purposes.

(iii) The recipient obtained more than the statutory maximum amount of loan and/or grant.

(3) *Sections 523 and 524 Rural Housing Site (RHS) loan, section 523 Self-Help Technical Assistance (TA) grant, and section 525 Technical and Supervisory Assistance (TSA) grant.*

(i) The recipient was not eligible for the loan/grant.

(ii) The loan or grant was made for unauthorized purposes.

(b) Categories *not* to be considered as unauthorized assistance within the scope of this Subpart include but are not limited to:

(1) The determination is made that the recipient did not have repayment ability for a loan initially.

(2) The determination is made that the recipient could likely have obtained credit elsewhere or financed housing needs with other resources at the outset.

§ 1951.605 [Reserved]

§ 1951.606 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA; through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA assistance. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the OIG will be requested as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.607 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.607 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit D of this Subpart (available in any FmHA office); and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.608 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this Subpart (available in any FmHA office). The servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of improperly granted interest credit, as a "Miscellaneous Collection for Application to the General Fund."

(4) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.612(b) or § 1951.618(a)(1)(i) as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.612 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.602(d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.607 within 30 days the servicing official will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized;

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the servicing official will proceed with the actions outlined in paragraph (e) of this section, as applicable. If, during the course of appeal, the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraphs (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraphs (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to make account adjustments or establish an obligation to repay the unauthorized assistance as provided in § 1951.612, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. A letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be required in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of Part 1955 of this Chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(i)(B) of this section, a request for an exception under § 1951.619 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) of this section are met, but the recipient does not repay or refuse to execute documents to effect necessary account adjustments according to the provisions of § 1951.612, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section, account adjustments will be made by FmHA without the signature of the recipient according to § 1951.618(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Forms FmHA 1951–12, "Correction of Loan Account," of FmHA 1951–13, "Change in Interest Rate," as applicable, enclosed to reflect the adjustments.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as note-only, collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect.

§§ 1951.608–1951.611 [Reserved]

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.608(b) are met, servicing options outlined in this section may be considered. Accounts will be serviced according to this section and § 1951.618.

(a) *Servicing SFH cases involving unauthorized assistance.*—(1) *Outstanding Section 502 loan.* Continuation with the loan may be authorized and one of the following servicing actions will be taken as appropriate to the case:

(i) If the recipient's income was above the moderate-income level but the recipient was otherwise eligible and the loan was approved for authorized purposes, a loan closed *before* November 30, 1983, will be converted to an "above-moderate" RH loan. A loan in this category which was closed after November 30, 1983, will be converted to an "Other Real Estate" (ORE) loan. In either case, the interest rate from Exhibit C of this Subpart (available in any FmHA office) which was in effect on the date the loan was approved will be used and the final due date of the original loan will be unchanged. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i), as applicable. If unauthorized interest credits are also involved, that will be serviced simultaneously according to paragraph (a)(2) of this section so that payments are reversed and reapplied only once. A delinquency created through these actions will be serviced according to Subpart G of Part 1951 of this Chapter.

(ii) If the recipient was eligible for a loan and the loan was approved for authorized purposes but the incorrect interest rate was charged, resulting in receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. The change in interest rate will be accomplished according to § 1951.618 (a)(1)(iii) or (b)(1)(i), as applicable. A delinquency which is created through these actions will be serviced according to Subpart G of Part 1951 of this Chapter.

(iii) If the recipient was not eligible for a loan, or if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604, the recipient may be allowed to enter into an accelerated repayment agreement according to FmHA Instruction 465.1, XVII G, § 1872.17(g) of Subpart A of Part 1872 of this Chapter except that the above-moderate interest rate which was in effect on the date the loan was

approved will be used according to Exhibit C of this Subpart (available in any FmHA office). This provision should be used only where repayment ability can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be reclassified as an ORE loan.

(iv) When the case is not serviced according to paragraphs (a)(1) (i), (ii), or (iii) of this section, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, *except* that, if interest credits are granted in a case where continuation is authorized under the provisions of this paragraph (a)(1)(iv) of this section, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credits are granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iv) of this section executing an agreement in the format of Exhibit E of this Subpart (available in any FmHA office).

(B) The original executed agreement will be placed in the case file, and the borrower's card in the management system will be marked "ALL SUBSIDY SUBJECT TO RECAPTURE—SEE AGREEMENT ATTACHED TO NOTE OR ASSUMPTION AGREEMENT."

(C) If necessary to secure recapture, a supplemental mortgage will be taken with the advice of OGC.

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iv)(A) of this section, interest credits will *not* be granted on the loan.

(2) *Unauthorized interest credits.*

(i) *On outstanding loan.* Continuation with the loan is authorized provided the recipient executes the forms necessary to effect correction of the account through reversal and reapplication of payments. The account will be serviced according to § 1951.618(a)(3).

(ii) *On inactive loan.* Have the recipient execute a promissory note and give the best mortgage obtainable to secure repayment of the unauthorized interest credits. The interest rate will be the same as in the promissory note for the loan which was subsidized through the unauthorized interest credits, and the term will be within the recipient's repayment ability or a maximum of 5 years.

(3) *Outstanding Section 504 loan.*

(i) *Secured loan.* Continuation under the existing terms is authorized.

(ii) *Unsecured loan.* Continuation under the existing terms is authorized, and the best mortgage obtainable will be taken to secure the loan.

(4) *Outstanding Section 523 or 524 Rural Housing Site loan.* When the objectives of the loan can be achieved, continuation under the existing terms is authorized.

(5) *Section 504 grant.* Have the recipient execute a promissory note and the best mortgage obtainable to secure repayment of the unauthorized assistance. The amount will be the grant amount and the terms will be as follows:

(i) If the recipient was eligible for a section 504 loan at the time the grant was made, the interest rate and term will be the same as if a section 504 loan had been made instead of a great.

(ii) If the recipient was not eligible for either a section 504 loan or grant, or if the grant was made for unauthorized purposes, the note will bear interest at 5 percent for a term of not more than 5 years.

(6) *Section 523 Self-Help Technical Assistance (TA) grant or Section 525 Technical and Supervisory Assistance (TSA) grant.* If the grant objectives can be achieved, continuation under the terms of the grant agreement is authorized. If the grant objectives cannot be achieved and the grant assistance actually paid out is to be repaid as provided in the grant agreement, interest will be charged at the rate specified in the grant agreement for default of 5 percent per annum if the grant agreement does not specify an interest rate for default cases. When grant assistance is to be repaid, no further disbursement of committed funds will be made.

(b) *Collections, recordkeeping, and reporting in connection with repayment of unauthorized grant assistance.* When a recipient is to repay unauthorized grant assistance as provided in paragraphs (a)(5) or (a)(6) of this section, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due, and all collections will be remitted with Form FmHA 451–2 as "Miscellaneous Collections for Application to the General Fund." For cases identified in *OIG audits only*, the servicing official will report by the 1st of March, June, September, and December of each year the following information on cases of this type to the State Director: Recipient's name, case number, fund code, audit report number, audit finding number, date of claim, original amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance. The State Director will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

§ 1951.613–1951.617 [Reserved]

§ 1951.618 Account adjustments and reporting requirements.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case of unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Only the cases of unauthorized assistance identified by an OIG audit will be reported to the Finance Office by submission of Form FmHA 1951–12, completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Any payment reversed will be reapplied as of the original date of credit. "Loan" refers to an account with an active borrower unless specified as "inactive."

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was made for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA 451–2, in accordance with the FMI. Form FmHA 1951–12 will reflect the amount and the Schedule Number.

(ii) *Accelerated repayment agreement.* If the recipient has entered into an "Accelerated Repayment Agreement," Form FmHA 1965–11 will be prepared and distributed according to the FMI, attaching the original form to Form FmHA 1951–12.

(iii) *Continuation with loan under existing or modified terms.* When it is determined that all the conditions outlined in § 1951.608(b) are met and continuation with the loan under the existing or modified terms is authorized, the servicing official will submit Form FmHA 1951–12 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on a loan is changed, Form FmHA 1951–12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date.

Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan. When a loan is converted to above-moderate RH or ORE, the loan must be identified and serviced by the servicing official accordingly.

(3) *Unauthorized interest credits.* Unauthorized interest credits will be recovered through submission of Form FmHA 1944–15, "Interest Credit Agreement Cancellation," or Form FmHA 1944–6, "Interest Credit Agreement," to cancel or adjust the amount of interest credits for each period of time unauthorized interest credits were received. Form FmHA 1951–12 will be prepared in accordance with the FMI and Forms FmHA 1944–15 or 1944–6, as applicable, will be attached. Payments made during the period unauthorized interest credits were received will be reversed and reapplied according to the documents submitted, after which the unauthorized interest credits will be reported to OIG as resolved. A delinquency which is created will be serviced according to Subpart G of Part 1951 of this Chapter.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951–12 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation has not been initiated because of the provisions of § 1951.608(e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to § 1951.612 and this section, and the adjustments will be reflected on Form FmHA 1951–12. In this instance *only*, account adjustments will be made even though the recipient does not sign Form FmHA 1951–12 and any related documents.

(6) *Unauthorized grant assistance.* The State Office will submit a composite report for the State to the Finance Office by the 15th of March, June, September, and December each year, reflecting the information outlined in § 1951.612(b).

(7) *Establishment of account of inactive borrower or judgment account.*

(i) When a recipient agrees to repay unauthorized assistance and executes documents to evidence the obligation, Form FmHA 1951–12 will reflect this, and the Finance Office will establish the account according to the terms shown on Form FmHA 1951–12.

(ii) When a judgment is obtained against a recipient, Form FmHA 1962–20, "Notice of Judgment," will be forwarded to the Finance Office for establishment of a judgment account.

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For circumstances outlined in paragraph (a)(1), (a)(2), or (a)(7)(i) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When liquidation action is pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the loan is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (a)(6) of this section, collections and status as reported by the State Office will be included in the report to OIG until the amount is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than OIG audit report, the Finance Office will be notified only if adjustments to an account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in paragraph (b) of this section, the loan(s) will be serviced in the same manner as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Form FmHA 451–28, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing on a loan is necessary, Form FmHA 1951–13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) For unauthorized interest credits on SFH loans, Form FmHA 1944–15 or Form FmHA 1944–6, as applicable, will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(iii) For accounts to be rescheduled or reamortized, Form FmHA 1965–11, or 452–2, "Reamortization and/or Deferral Agreement," as applicable, will be prepared and submitted in accordance with the respective FMI.

(iv) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such as obligation, the servicing official will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish the account according to the terms of the promissory note.

(v) When a judgment is obtained against a recipient, Form FmHA 1962–20, "Notice of Judgment," will be forwarded to the Finance Office for establishment of a judgment account.

(vi) When a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to Subpart G of Part 1951 of this Chapter.

§ 1951.619 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse

effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or maintained if the exception is granted.

[§§ 1951.639–1951.649 (Reserved)]

§ 1951.650 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0105.

9. Subpart N is added to Part 1951 to read as follows:

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

Sec.
1951.651 Purpose.
1951.652 Definitions.
1951.653 Policy.
1951.654 Categories of unauthorized assistance.
1951.655 [Reserved]
1951.656 Initial determination that unauthorized assistance was received.
1951.657 Notification to recipient.
1951.658 Decision on servicing actions.
1951.659–1951.660 [Reserved]
1951.661 Servicing options in lieu of liquidation or legal action to collect.
1951.662–1951.667 [Reserved]
1951.668 Servicing unauthorized assistance accounts.
1951.669 Exception authority.
1951.670–1951.699 [Reserved]
1951.700 OMB control number.
Exhibits A, B, and C.

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

§ 1951.651 Purpose.

This Subpart prescribes the policies and procedures for servicing Multiple Family Housing (MFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. As used in this Subpart, MFH loans and grants are Section 515 Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans and Sections 514 and 516 Labor Housing (LH) loans and grants.

§ 1951.652 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, or a grant which was unauthorized.

(h) *Unauthorized assistance.* Any loan, interest subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible.

Interest subsidy includes interest credits, rental assistance, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

§ 1951.653 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless, any applicable Statute of Limitations has expired. The prepayment restrictions imposed by Subpart E of Part 1944 of this Chapter do not apply to cases of unauthorized assistance.

§ 1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

(a) The recipient was not eligible for the assistance.

(b) The property, as approved, does not qualify for the program. For example: An RRH or LH project which clearly is above modest in size, design and/or cost or was not located in an area designated as rural when the initial loan was made.

(c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.

(d) The recipient was granted unauthorized subsidy in the form of:

(1) Interest credits (IC) on an RRH loan;

(2) Rental Assistance (RA) in connection with an RRH or LH loan; or

(3) A subsidy benefit received through use of an incorrect interest rate.

§ 1951.655 [Reserved]

§ 1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA assistance. If FmHA has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the Office of the Inspector General (OIG) will be requested as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.657 of this Subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.857 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed by the servicing official to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit C of this Subpart (available in any FmHA office); and

(3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

§ 1951.858 Decision on servicing actions.

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this Subpart (available in any FmHA office). The District Director will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," as follows:

(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in § 1951.668 (a)(1)((i), (a)(3), or (a)(6) as applicable.

(4) In the case of RA, the repayment will be handled as outlined in § 1951.861 (a)(3) and Exhibit E to FmHA Instruction 1930–C.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.668 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.652 (d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.657 within 30 days, the District Director will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized;

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraphs (a) or (b) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) *Active borrower with a secured loan.* (i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with Subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 1951.869 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) or this section are met, but the recipient does not repay or

refuses to execute documents to effect necessary account adjustments according to the provisions of § 1951.661, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by FmHA without the signature of the recipient according to § 1951.668(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Form FmHA 1951–12, "Correction of Loan Account," if applicable.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The District Director will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

§ 1951.653–1951.659 [Reserved]

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in § 1951.656(b) are met, an unauthorized loan or grant will be serviced according to this section and § 1951.668, provided the recipient has the legal and financial capabilities.

(a) *Active borrower/grantee.*—(1) *Unauthorized loan.* (i) *Correction of problem.* If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a subsidy was in excess amount; or where the loan included funds for purchase of excess of the unauthorized amount, the recipient will refund the excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment.

(ii) *Continuation on existing terms.* When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to Subpart B of Part 1965 of this Chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to § 1951.668. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.

(3) *Unauthorized interest credits or rental assistance.* In cases involving RA and/or IC, the subsidy benefits should be terminated as provided in the Interest Credit and Rental Assistance Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph X B of Exhibit E of Subpart C of Part 1930 of this Chapter.

(i) *Tenant's failure to properly report changes in income or size of the household to the borrower.* In cases where a tenant has received RA and/or IC benefits to which he/she was not entitled because of the tenant's failure to properly report income or changes in household size, the borrower-landlord will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Director of the unauthorized benefits and of the agreement made by the tenant to repay. Money collected will be remitted according to the FMI for Form FmHA 1944–9. If the borrower has rental assistance, that portion attributable to RA will be credited to the borrower's RA account. In the event that the tenant does not repay through active collection efforts including legal remedy, the borrower will report the facts to the District Director. The District Director will report to the State Director who will obtain the advice of OGC on further actions.

(ii) *Tenant knowingly misrepresented income or number of occupants to the borrower.* If it appears the tenant has knowingly misrepresented income to the borrower, the District Director will look into the case to determine the facts. If the District Director determines that income or number of occupants was misrepresented, he/she will direct the borrower-landlord to demand and to attempt to recoup improperly received rental subsidy from the tenant. Money collected will be remitted to the Finance Office according to the FMI for Form FmHA 1944–9. If the tenant fails to make restitution, the District Director will refer the case to the State Director who will request the advice of OGC on further actions.

(iii) *Unauthorized RA and/or IC paid due to borrower's error.* Whether unauthorized RA or IC was received by the borrower due to miscalculation or oversight by the borrower or the borrower's management agent, the borrower is required to make restitution to FmHA. This restitution will not be charged to any tenant or to the project as any part of the budget or operating expense. The restitution will be handled as a refund according to the FMI for Form FmHA 1944–49. In the case of a nonprofit or public body borrower, when funds from nonproject sources are not available, the State Director may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution.

(iv) *Rental assistance assigned to wrong household.* When the tenant has correctly reported income and household size, but RA was assigned by the borrower to the household in error, the tenant's RA benefit will be cancelled and reassigned.

(A) *Notification and cancellation.* Before the borrower notifies the tenant, the borrower or management agent will review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice by the borrower or management agent that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(*1*) The tenant has the right to cancel the lease based on the loss of subsidy benefit to the tenant.

(*2*) The RA granted in error will not be recaptured.

(*3*) The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. The borrower must give the tenant appeal rights under Subpart L or Part 1944 of this Chapter.

(B) *Reassignment of RA.* Rental assistance will be reassigned in accordance with Paragraph XII of Exhibit E to Subpart C of Part 1930 of this chapter.

(v) *Rental assistance in excess of contract.* When rental assistance is

advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) *Unauthorized grant assistance.* (i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form FmHA 451–2, "Schedule of Remittances," as a "Miscellaneous Collection for Application to the General Fund." For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to § 1951.868 (a)(6).

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

(5) *Cases where recipient has both authorized and unauthorized loans outstanding.* When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regulations in effect for an authorized loan of its type.

(b) *Inactive borrower.* When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the Exhibit A (available in any FmHA office) letter according to § 1951.857. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years.

(2) Take the best mortgage obtainable to secure the note.

§§ 1951.862–1951.867 [Reserved]

§ 1951.868 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notifed of necessary account adjustments as outlined in this section, depending upon whether the case or unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Ony the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form FmHA 1951–12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form FmHA 1951–52, "MFH Record Adjustment—Audit Claim," according to the FMI to advise the Finance Office. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. "Loan" as used in this section refers to an account with an active borrower unless specified as "inactive."

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA 1944–9, in accordance with the FMI. Forms FmHA 1951–12 and 1951–52 will reflect the amount and the Schedule Number from Form FmHA 1944–9.

(ii) *Continuation with loan on existing terms.* When continuation with the loan on the existing terms is approved according to § 1951.661 (a)(1)(ii), the District Director will submit Form FmHA 1951–52 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on an entire loan is changed, Form FmHA 1951–52 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will thereafter be treated as an authorized loan.

(3) *Unauthorized interest credits and/or rental assistance.* Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of § 1951.861. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and December of each year for inclusion in the OIG report.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, Form FmHA 1951–52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to Subpart G of Part 2033 (available in any FmHA State or District Office).

(5) *Liquidation not initiated.* Cases in which Liquidation has not been initiated because of the provisions of § 1951.858 (e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to §1951.861 and this section of this Subpart, and the adjustments will be reflected on Form FmHA 1951–52. In this instance only, account adjustments will be made even though the recipient does not sign Form FmHA 1951–52 and any related documents.

(6) *Unauthorized grant assistance.* When grant funds are to be repaid as provided in § 1951.661(a)(4) the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) *Establishment of account for inactive borrower.* When an inactive borrower agrees to repay unauthorize assistance and executes documents to evidence such an obligation, Forms FmHA 1951–12 and 1951–52 will be completed according to the FMIs. The Finance Office will establish the

account according to the terms indicated on Form FmHA 1951–52.

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraphs (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraphs (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collectons, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit case; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form FmHA 451–26, "Transaction Record," from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form FmHA 1951–13, "Change in Interest Rate," will be completed according to the FMI and executed by the borrower. Form FmHA 1951–521 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iii) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1)(i) of this section will be serviced according to Subpart B of Part 1965 of this Chapter.

§ 1951.669 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.670–1951.699 [Reserved]

§ 1951.700 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0104.

10. Subpart O is added to Part 1951 to read as follows:

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

Sec.

1951.701 Purpose.
1951.702 Definitions.
1951.703 Policy.
1951.704–1951.705 [Reserved]
1951.706 Initial determination that unauthorized assistance was received.
1951.707 Notification to recipient.
1951.708 Decision on servicing actions.
1951.709–1951.710 [Reserved]
1951.711 Servicing options in lieu of liquidation or legal action to collect.
1951.712–1951.714 [Reserved]
1951.715 Account adjustments and reporting requirements.
1951.716 Exception authority.
1951.717–1951.749 [Reserved]
1951.750 OMB Control number.
Exhibits A, B and C.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

§ 1951.701 Purpose.

This Subpart prescribes the policies and procedure for servicing Community and Business Program loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans.

§ 1951.702 Definitions.

As used in this Subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability of foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Finance assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would

not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has (have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* "Recipient" refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, a grant, or a portion of a grant which was unauthorized.

(h) *Servicing official.* For Community Programs, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated. For Business Programs, the servicing official is the State Director or Designee.

(i) *Unauthorized assistance.* Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official or the documents were prepared in error.

§ 1951.703 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitation has expired.

§ 1951.704—1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been receive by a recipient of FmHA assistance. If the servicing official has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case file including the advice of the Regional Office of the General Counsel (OGC) will be referred to the National Office for review and comment. In every case where it is known or believed by FmHA that the assistance was based on false information, investigation by the OIG will be requested as provided for in FmHA Instruction 2012–B (available in any FmHA office). If OIG conducts an investigation, the actions outlined in § 1951.707 will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient.

(c) Submission of inaccurate or false information by another authorized party acting on the recipient's behalf including professionl consultant such as engineers, architects, and attorneys, when the recipient did not know the other part had submitted inaccurate or false information;

(d) Error by FmHA personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.707 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA office), and mailed to the recipient by "Certified Mail, Return Receipt Requested," with a copy to the State Director and, for a case identifed in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance, including any accrued interest to be repaid; and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§ 1951.708 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay the amount in question, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be determined according to § 1951.711(a). the servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA 451–2, "Schedule of Remittances," as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a "Miscellaneous Collection for Application to the General Fund."

(3) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in § 1951.711(b)(2) or 1951.715 as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in § 1951.711 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.702(d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA's determination, or if the recipient fails to respond to the initial letter prescribed in § 1951.707 within 30 days, the servicing

official will notify the recipient by letter substantially similar to Exhibit B of this Subpart (available in any FmHA office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA to be unauthorized including any accrued interest.

(2) A statement of further actions to be taken by FmHA as outlined in paragraphs (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in Exhibit B of this Subpart (available in any FmHA office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to Subpart B of Part 1900 of this Chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an apeal is not made during the time allowed, the servicing official will document the facts in the case file and submit to State Director, if the servicing official is other than State Director, who will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraphs (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraphs (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in §1951.711, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented in the case file. Where real property is involved, a letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. A resolution of the governing body may be required.If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with applicable provisions of Subpart A of Part 1955 of this Chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 951.716 will be made.

(ii) When all of the conditions of paragraphs (a) or (b) of this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according of the provisions of § 1951.711, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraphs (e)(1)(i)(A) or (e)(1)(i)(B) of this section, continuation with the loan on existing terms will be provided. In these cases, the recipient will be notified by letter of the actions taken.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case file and submit it to the State Director, if the servicing official is other than the State Director, who will request the advice of the OGC on pursuing legal action to effect collection. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions. The State Director will tell OGC what assets, if any, are available from which to collect.

§ 1951.709—1951.710 [Reserved]

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in § 1951.708(b) are met, the servicing options outlined in this section will be considered. Accounts will be serviced according to this section and § 1951.715.

(a) *Determination of unauthorized loan and/or grant assistance amount.*

(1) *Unauthorized loan amount.* The principal loan amount that was unauthorized will be determined. The unauthorized amount will be the unauthorized principal plus any accrued interest on the unauthorized principal at the note interest rate until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraphs (b)(1) or (c) of this section.

(2) *Unauthorized grant amount.* The unauthorized grant actually expended will be determined. The unauthorized amount will be the unauthorized grant with accrued interest at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid in accordance with § 1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraphs (b)(2) or (c) of this section.

(b) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate. In each instance, the servicing official will advise the Finance Office by memorandum of the actions necessary to effect the account adjustment.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to paragraph (a)(1) of this section will be established at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective community and business program area. The loan will be amortized for a period not to exceed fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to paragraph (a)(2) of this section will be converted to a loan at the market interest rate for the respective Community and Business Programs area in effect on the date the financial assistance was provided, and will be amortized for a period not to exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this obligaton, and the best security position practicable in a manner which will adequately protect the FmHA's interests during the repayment period will be taken as security. When the recipient is to repay grant assistance, the servicing official must maintain records on the "account" as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due and all collections will be remitted with Form FmHA 451–2 to the Finance Office as "Miscellaneous Collections for Application to the General Fund." For cases identified in OIG audits only, the servicing official will report by the 1st of March, June,

September, and December of each year the following information on cases of this type to the State Director: Recipient's name, fund code, audit report number, audit finding number, date of claim, amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph when legally possible. The interest rate will be adjusted to the appropriate interest rate which was in effect on the date of loan approval or when the recipient was notified according to § 1951.707 of this Subpart, whichever is greater. (see Exhibit C of this Subpart for interest rates (available in any FmHA office).) No retroactive adjustment of interest rate and collection of unauthorized subsidy benefits will be required. Appropriate adjustments will be made to recipient's account to reflect the revised installments. No reversal and reapplication of previous payments will be required.

(c) *Continuation of existing terms.* When the recipient does not have the legal and/or financial capabilities for the options outlined in paragraphs (b)(1), (b)(2), or (b)(3) of this section, as appropriate, to be exercised, the recipient may be allowed to continue to meet the loan/grant obligations outlined in the existing loan/grant instruments. Unless the unauthorized assistance was identified in an OIG audit, no Finance Office notification or action is necessary. If identified by OIG, the servicing official will advise the Finance Office by memorandum of the determination to continue with the recipient on the existing terms of the loan/grant.

(d) *Reporting requirements to National Office.* An annual report will be submitted by the State Office to the Assistant Administrator, Community and Business Programs, within 30 days following the end of the Government's fiscal year for each case of unauthorized assistance or subsidy benefits. The report will include for each case the account name, case number, fund code, OIG audit number (if applicable), amount collected during period, and the balance owed on the unauthorized assistance. Each State Office is responsible for coordinating with the servicing official's office so that this information can be accumulated and consolidated by the State Office within the allotted time. A negative report is required from States which have no unauthorized assistance cases.

§ 1951.712–1951.714 [Reserved]

§ 1951.715 Account adjustments and reporting requirement.

Cases of unauthorized assistance which require Finance Office notification and action, regardless of whether they were identified in an OIG audit or by other means, will be submitted to the Finance Office by memorandum from the servicing official, as provided in applicable paragraphs of § 1951.711 of this Subpart. Each memorandum should include account (borrower) name, case number, audit report number (if applicable), finding number (if applicable), fund code, loan number, and an explanation of the actions to be taken. If the unauthorized assistance was identified in an OIG audit report, the memorandum should be clearly annotated "Audit Claim for OIG Report" as a part of the subject. The explanation should provide sufficient details to allow the Finance Office to properly adjust the account. The State Office will forward a consolidated report on unauthorized grant assistance identified in an OIG audit to the Finance Office by the 15th of March, June, September, and December of each year reflecting the information reported by servicing officials in accordance with § 1951.711(b)(2) for inclusion in the report to OIG.

(a) *Entire loan unauthorized.* When the entire loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, which of the following servicing actions will be taken.

(1) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan in full through refinancing or other available resources, the payment will be remitted with Form FmHA 451–2 and the schedule number will be included in the memorandum.

(2) *Continuation with loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination including an explanation of the terms, if modified.

(b) *Portion of loan unauthorized.* When only a portion of the loan has been determined to be for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, of the servicing actions as follows:

(1) *Repayment in full of unauthorized portion.* If the recipient has arranged to repay the unauthorized portion of the loan through refinancing or other available resources, the remittance will be submitted with Form FmHA 451–2, and the schedule number will be included in the memorandum.

(2) *Continuation with unauthorized portion of loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the unauthorized portion of the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination, including an explanation of the terms if modified. The authorized portion will retain the original loan number with installments adjusted accordingly. Payments previously made will not be reversed and reapplied. The amortized unauthorized amount will be assigned the next available loan number. Installments for the authorized and unauthorized loans will be scheduled and paid concurrently.

(c) *Unauthorized subsidy benefits received.* The unauthorized subsidy benefits received will be serviced according to § 1951.711 (b)(3) or (c).

(d) *Liquidation pending.* When liquidation is initiated under the provisions of this Subpart, the servicing official will advise the Finance Office, by memorandum, that an unauthorized assistance account is to be established. This account will be flagged "FAP" (Foreclosure Action Pending) or "CAP" (Court Action Pending), as applicable.

(e) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.708(e)(1), will be serviced in accordance with § 1951.708(e)(1)(iii). If the unauthorized assistance was identified through means other than an OIG audit report, the Finance Office will not be notified and no action is necessary.

(f) *Unauthorized grant assistance.* A grant that is to be repaid will be serviced according to § 1951.711(b)(2). If the unauthorized assistance was identified through means other than an OIG audit report and a determination has been made not to recover, the Finance Office will not be notified and no action is necessary.

(g) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were

identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(1) For an unauthorized loan account established as provided in paragraphs (a) or (b) of this section, reporting will be as follows:

(i) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(ii) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(2) For unauthorized subsidy cases as provided in paragraph (c) of this section, once the interest rate has been appropriately adjusted, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(3) When an account is established with liquidation action pending as provided in paragraph (d) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(4) When liquidation is not initiated as provided in paragraph (e) of this section, this will be reported on the next scheduled report. No further reporting is required.

(5) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (f) of this section, collections and status will be included in the report to OIG until the amount is paid in full.

§ 1951.716 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests will be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1951.717–1951.749 [Reserved]

§ 1951.750 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0103.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

9. In § 1955.15, paragraph (d)(15)(i) is revised to read as follows:

§ 1955.15 Foreclosure of loans secured by real estate.

* * * * *

(d) * * *

(15) * * * (i) If a deficiency judgment is obtained in accordance with paragraph (b)(2) of this section, the account will be classified as a judgment case and Form FmHA 1962–20, "Notice of Judgment," will be prepared and distributed according to the FMI. [For MFH cases the District Director should contact the State Office or MFH Unit in the Finance Office for instructions on altering Form 1962–20 to meet the requirements of the Automated Multiple Family Housing Accounting System (AMAS).] The account will be serviced in accordance with Section 1962.49(e) of Subpart A of Part 1962 of this chapter. When action to obtain a deficiency judgment is pending at the time Form FmHA 465–6 (Form FmHA 1965–19 for MFH cases) is sent to the Finance Office, the action will be indicated on the form.

* * * * *

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.49 [Amended]

10. In § 1962.49, paragraph (e)(1), the number of the form entitled "Notice of Judgment" is changed from "Form FmHA 455–20" to "Form FmHA 1962–20."

Authorities: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, Sec. 10, Pub. L. 93–357, 88 Stat. 392, 7 CFR 1.23, 7 CFR 2.70, 29 FR 14764, 32 FR 9850.

Dated: February 22, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, FmHA, Farmers Home Administration.

[FR Doc. 85–7809 Filed 4–1–85; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding loans and grants for Community Facility projects. This action is being taken to eliminate restrictions that could adversely affect certain low income communities. The intended effect of this action is to correct an unforeseen problem created by the September 19, 1984 regulation change. This will allow FmHA to more effectively serve the needs of rural communities participating in FmHA's Community Facility programs.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382–9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries; Federal, State, or Local government agencies; or geographic regions. Futhermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. Additional efforts to administer the changes are expected to be minimal. Increased program costs are, therefore, not anticipated. The net result is expected to provide better service to rural communities.

The FmHA programs and projects which are affected by these instructions are subject to State and local review under section 401 of the Intergovernmental Cooperation Act and section 204 of the Demonstration Cities and Metropolitan Development Act.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this

action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

The FmHA Administrator, has determined that the action will not have a significant economic impact on a substantial number of small entities because the proposed action will only affect a small number of rural communities.

The Catalog of Federal Domestic Assistance programs affected are No. 10.418, Water and Waste Disposal Systems for Rural Communities, and No. 10.423, Community Facilities Loans.

This action requires no change in recordkeeping or reporting requirements imposed upon the public.

This action amends FmHA's policies for making loans and development grants. These loans and grants assist in financing the development costs of community facilities and domestic water and waste disposal systems to rural communities and other associations of farmers, ranchers, rural residents, and other rural users.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to correct an unforeseen problem created by a previous regulation change and any delay would be contrary to the public interest.

On September 19, 1984, FmHA published a final rule at 49 FR 36627 amending its regulations to use median household income (MHI) in lieu of median family income (MFI) in determining interest rates and amount of grant assistance. This change has resulted in some low income rural communities not being eligible for intermediate interest rate loans and grant assistance in five States and Puerto Rico. In these States and Puerto Rico, 85 percent of the nonmetropolitan median houshold income (NMHI) is below the poverty line prescribed by the Office of Management and Budget for a family of four, as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d). Under current regulations intermediate interest rates and development grants cannot be made to rural communities whose MHI is more than 85 percent of a State's NMHI, but also below the poverty line.

This was not intended to occur as a result of the above regulation change. It was never the intent of FmHA to eliminate intermediate interest rates and grant assistance to rural communities whose MHI is below the poverty line.

To address this problem, FmHA amends Subparts A and H of Part 1942 by authorizing intermediate interest rates and development grants to rural communities whose MHI is more than 85 percent of a State's NMHI but also below the poverty line. This will allow FmHA to continue to provide financial assistance to low income communities in accordance with the objectives of the Administration and Congress.

FmHA amends Subpart A of Part 1942 as follows:

1. Sections 1942.17(c)(2)(iii)(C) (*2*) and (*3*) to clarify the point distribution where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line.

2. Section 1942.17(f)(3) to authorize intermediate interest rates where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line.

FmHA amends Subpart H of Part 1942 as follows:

1. Section 1942.360(a)(14) to change the eligibility for grant assistance. The change will authorize the use of grant funds where the MHI of the service area is more than 85 percent of a State's NMHI but also below the poverty line. Also, to add a definition for "poverty line."

2. Section 1942.363(c)(2)(i) to remove the definition of "poverty line" now in Section 1942.360(a)(14).

3. Section 1942.363(c)(2)(ii) to clarify the use of 1.0 percent of MHI in determining the amount of grant assistance where the MHI of the service area is above the poverty line but not more than 85 percent of the State's NMHI.

4. Section 1942.363(c)(2)(iii) is removed. This paragraph is not needed with the revision to section 1942.360(a)(14).

List of Subjects in 7 CFR Part 1942

Community development, Grant programs—Housing and Community Development, Rural areas, Waste treatment and disposal—Domestic, Water supply—Domestic.

PART 1942—ASSOCIATIONS

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

Subpart A—Community Facility Loans

1. In § 1942.17, paragraphs (c)(2)(iii)(C) (*2*) and (*3*), and paragraph (f)(3) are revised to read as follows:

§ 1942.17 Community Facilities.

* * * * *

(c) * * *
(2) * * *
(iii) * * *
(C) * * *

(*2*) More than the proverty line and less than 85 percent of the State's nonmetropolitan median household income—20 points.

(*3*) More than the poverty line and between 85 percent and 100 percent, inclusive, of the State's nonmetropolitan median household income—15 points.

* * * * *

(f) * * *

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 85 percent of the nonmetropolitan median household income of the State.

* * * * *

Subpart H—Development Grants for Community Domestic Water and Waste Disposal Systems

2. Section 1942.360 is amended by revising paragraph (a)(14) to read as follows:

§1942.360 Grant Limitations.

(a) * * *

(14) Pay any costs of a project when the median household income of the service area is above the poverty line and more than 85 percent of the nonmetropolitan median household income of the State. The poverty line will be that income prescribed by the Office of Management and Budget for a family of four, as adjusted under Section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

* * * * *

3. Section 1942.363 is amended by removing paragraph (c)(2)(iii) and revising paragraph (c)(2)(i) and paragraph (c)(2)(ii) to read as follows:

§ 1942.363 Determining the need for development grants.

* * * * *

(c) * * *
(2) * * *

(i) *.5 percent* when the median household income of the service area is below the poverty line.

(ii) *1.0 percent* when the median household income of the service area is above the poverty line but not more than 85 percent of the State's nonmetropolitan median household income.

* * * * *

(7 U.S.C. 1989; 7 CFR 2.23; 7 CFR 2.70)

Dated: February 26, 1985.

Dwight O. Calhoun,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85-7861 Filed 4-1-85; 8:45 am]

BILLING CODE 3410-07-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Exceptions to Notice and Comment Rulemaking Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The final rule amends the Commission's rules of practice by revising Commission rulemaking procedures contained in 10 CFR 2.804 and 2.805 to clarify the Commission's use of the exceptions to notice and comment rulemaking contained in section 4 of the Administrative Procedure Act, 5 U.S.C. 553(b). This clarification is necessary in light of the U.S. Court of Appeals for the District of Columbia decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F. 2d 370 (D.C. Cir. 1983).

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-8689.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Court of Appeals for the District of Columbia, in its decision in *Union of Concerned Scientists* v. *Nuclear Regulatory Commission*, 711 F. 2d 370 (D.C. Cir. 1983) ("*UCS* v. *NRC*"), vacated the Commission's rule of June 30, 1982, which amended operating licenses by removing the deadline for the environmental qualification of electric equipment (47 FR 28363, June 30, 1982). The D.C. Circuit held that by making the rule immediately effective instead of providing for notice and comment, the NRC had among other things, violated Commission regulations. This holding was based on language in 10 CFR 2.804 which the Court read, contrary to the Commission's interpretation, as a requirement for prior notice and opportunity for comment in all Commission rulemakings. The Court concluded that the NRC had divested itself of whatever discretion applicable statutes might allow for dispensing with notice and comment.

In response, the Commission issued a proposed rule to clarify its regulations so as to leave no doubt that the Commission does assert, to the extent allowable, its discretion under Section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), to make exceptions to the general requirements for notice and opportunity for comment in informal rulemaking (49 FR 13043, April 2, 1984). In making this clarification, however, the Commission also noted that the D.C. Circuit in *UCS* v. *NRC* had called into question the extent to which the Commission can lawfully claim discretion to invoke the APA exceptions to notice and comment rulemaking. As an alternative reason for vacating the rule under review, the D.C. Circuit held that the notice and hearing requirements in Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239a, prevented the Commission from relying on the APA "good cause" exception in the June 30, 1982, rulemaking. In the Commission's view, however, the Court's explanation of this holding left unclear whether the Court saw Section 189a as a general bar to use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensees, or as a less sweeping restriction that would only apply to rulemakings which specifically amend reactor licenses. Consequently, the Commission moved the D.C. Circuit to vacate this part of its opinion. The Commission noted to the Court that the discussion of the relation between Section 189a and the APA "good cause" exception was unnecessary to the result of the case, raised issues which had not been briefed, was ambiguous in its scope, and could, if read broadly, interfere severely with the Commission's ability to act promptly in the interest of public health and safety. The Court then called for simultaneous briefing by the parties on the availability of the APA "good cause" exception in Commission rulemaking. The Commission filed a brief which maintained that Section 189a does not restrict use of the "good cause" exception. The Union of Concerned Scientists argued that there was a virtually total bar to use of the exception. After receiving this additional briefing, the Court on December 5, 1983 denied without opinion the Commission's motion to amend the decision, offering no further explanation or clarification of its holding, and ordered that its mandate should issue.

In the Supplementary Information to the proposed rule, the Commission noted its view that any reading of Section 189a which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by individual order or by rulemaking, when safety requires it, is contrary to the intent of Congress and is an erroneous interpretation of the Atomic Energy Act. A limitation on use of the APA "good cause" exception clearly has the potential for such interference and therefore should be interpreted narrowly.

Under these circumstances, it is reasonable to interpret the court's opinion no broader than the language and the context require. Accordingly, the Commission interprets the language in *UCS* v. *NRC* relevant to the availability of the "good cause" exception to apply only to the rulemaking under review in that case, *i.e.*, amendments of specific reactor licenses requiring prior notice by statute, while leaving unaffected the Commission's authority under the APA to make other kinds of rules effective without prior notice and comment when there is good cause. In response to the D.C. Circuit's opinion in *USC* v. *NRC*, the Commission proposed to include in 10 CFR 2.804 language providing that the APA exceptions to notice and comment rulemaking will apply only where notice and comment are not required by statute.

The proposed rule left intact for the most part the Commission's longstanding and consistent interpretation of its statutory authority and of rulemaking procedures contained in 10 CFR Part 2, Subpart H, that the Commission could avail itself of the exceptions to notice and comment rulemaking contained in the APA for—

- Interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A); or
- When the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B).

To ensure that the regulation unambiguously reflected the Commission's intentions, the proposed rule amended 10 CFR 2.804 and 2.805 to provide explicitly for Commission

discretion to invoke in appropriate situations the APA exceptions to notice and comment rulemaking cited above, as permitted by law. Under the proposed rule, notice and comment would not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest.

II. Comments

The Commission received five comments on the proposed rulemaking. Two of these were from the nuclear industry (Yankee Atomic Electric Company, Comment 2; Middle South Services, Comment 4), one from a private citizen (M.L. Lewis, Comment 1), one from a public interest group (Union of Concerned Scientists, Comment 5), and one from a Federal agency (Administrative Conference of the United States, Comment 3).

One of these commenters (M.L. Lewis) expressed the opinion that the proposed rule was an attempt to remove the public's right to comment on a rule before it becomes effective. The proposed rule simply incorporates into the Commission's regulations, the exceptions to notice and comment provided in the APA. These statutory exceptions, generally available to all agencies, are a congressional recognition that in some situations the normal public participation procedures should not be required in advance of taking the action. Public comment, however, will be sought post-promulgation pursuant to new Section 2.804(e) where it is necessary because of public interest in the rule. The Commission's normal practice, in keeping with Section 4 of the APA, is to provide for public participation in Commission rulemakings.

Another commenter, the Administrative Conference of the United States (ACUS), recommended that the final rule provide an opportunity for "post-promulgation" comment whenever the good cause exception of Section 4 of the APA was invoked because prior notice and comment was "impracticable" or "contrary to the public interest." However, such post-promulgation comment need not be provided when the good cause exception was invoked because prior notice and comment are "unnecessary." This corresponds to Administrative Conference Recommendation 83–2, 1 CFR 305, 83–2 (1984). Recommendation 83–2 stated that experience has confirmed the need for a "good cause" exception from the APA's notice and comment requirements. However, a post-promulgation comment opportunity "will give interested persons a chance to expose any errors or oversights that occurred in the formulation of the rule and to present policy arguments for changing the rule." *Id.* at 158. The post-promulgation comment opportunity should not extend to rules for which the agency determines public notice and comment to be "unnecessary" because such rules have been found by the courts to be minor or merely technical amendments in which the public has little interest.

The Commission agrees in principle with the recommendation of the ACUS. Accordingly, the final rule incorporates a new provision, 10 CFR 2.804(e), to provide for post-promulgation comment on rules when the "good cause" exception is invoked when prior notice and comment is "impracticable" or "contrary to the public interest." After receipt of comments, the Commission will publish a statement in the **Federal Register** which provides an evaluation of any significant issues raised by the public comments, as well as any revisions to the rule that have resulted from the staff evaluation of the public comments.

In addition, the ACUS recommended that the Commission should normally use notice and comment when adopting interpretative rules or general policy statements that are likely to have a substantial impact on the public, or at least to provide a post-promulgation comment opportunity if there has been no notice and comment prior to the adoption of such rules or statements. This corresponds to ACUS Recommendation 76–5, 1 CFR 305.76–5 (1984). The Commission normally provides for notice and opportunity for comment on policy statements and interpretative rules, and will continue to do so in the future. In order to retain the flexibility provided by the exception in Section 4 of the APA, the Commission has not adopted the ACUS recommendation completely. The Commission, in 10 CFR 2.804(e), provides for a post-promulgation comment opportunity for interpretative rules or general statements of policy issued without prior notice and comment, except when the Commission finds that post-promulgation comment would "serve no public interest or would be so burdensome as to outweigh any forseeable gain." This latter provision reflects ACUS Recommendation 76–5. *Id.*

A third commenter, the Union of Concerned Scientists (UCS), asserted that Section 189a of the Atomic Energy Act requires the Commission to provide notice and opportunity for comment with respect to *any* rulemaking proceeding dealing with the activities of licensees and consequently prohibits the Commission from restricting the limitation on the use of the APA exceptions to notice and comment rulemaking to rulemakings which amend reactor licenses. Section 189a(1) of the Atomic Energy Act provides, among other things, that:

> In any proceeding under this chapter, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, *and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licensees*, and in any proceeding for the payment of compensation, an award or royalties under sections 2183, 2187, 2236(c) or 2238 of this title, *the Commission shall grant a hearing* upon the request of any person whose interest may be affected by the proceeding. (Emphasis added)

UCS argues that this provision constitutes a statutory bar to the use of the APA exceptions from notice and comment rulemaking. These exceptions are normally available, "except when notice or hearing is required by statute." 5 U.S.C. 553(b). According to the commenter, this proposition was affirmed in *UCS* v. *NRC* where the D.C. Circuit held that "[w]hether characterized as a license amendment or a rulemaking, the Commission's action runs afoul of the express terms of Section 189(a) which unequivocally requires notice and opportunity to comment for both types of proceedings." *Supra* at 380. Therefore, the commenter argues, the Commission cannot limit the decision in *UCS* v. *NRC* to the specific type of rule at issue in that case, i.e. rules which specifically amend reactor licenses. Furthermore, the commenter does not believe that the Commission needs the APA "good cause" exception to take immediate action when safety requires it: In support, the commenter cited the Commission's ability to issue an "immediately effective license amendment" when no significant hazards are involved or to issue an "immediately effective order."

In response, the Commission first reiterates its earlier statement that it is reasonable to give the Court's opinion in *UCS* v. *NRC* an interpretation no more restrictive than the language and context appear to require. As noted earlier, the Court's explanation of its holding left unclear whether the Court saw section 189a of the Atomic Energy

Act as a general bar to the use of the APA "good cause" exception in any NRC rulemaking affecting the activities of licensee, or as a less sweeping restriction, which would only apply to rulemakings which specifically amend reactor licenses. The Commission would note that Section 181 of the Atomic Energy Act states that "[t]he provisions of the Administrative Procedure Act . . . shall apply to all agency action taken under this Act," 42 U.S.C. 2231. It is well-established that Commission rulemaking is governed by the APA requirements for informal rulemaking, set out in 5 U.S.C. 533, in which the exceptions to notice and comment appear.[1] Unless the APA exceptions are withdrawn by language elsewhere in the Atomic Energy Act, it should be presumed the Congress intended the exceptions to be available. The Commission does not believe that the language of Section 189a, or any other language in the Atomic Energy Act, compels a finding that Congress intended to deprive the Commission of the rulemaking flexibility permitted by the APA. Nothing in the language of Section 189a or the legislative history specifies that in rulemaking the Commission is to be limited by the constraints of the APA, but denied the opportunity to use the flexibility provided by the APA. The Commission's interpretation of the Atomic Energy Act as not prohibiting the promulgation of a rule without notice and opportunity to comment when APA "good cause" requirements have been met has been consistent and longstanding, and is reflected in Commission practice.[2]

The interpretation on which UCS insists cannot be reconciled with the Nuclear Regulatory Commission's clear responsibility to act swiftly to protect public health and safety when it perceives that a regulated activity presents an undue risk. Under the regulatory framework established by the Atomic Energy Act, the Commission's primary means of responding to hazards is by suspending, revoking, or amending licenses. The notice and hearing requirements for such actions are set out in Section 189a(1) of the Act in the same language that applies to rulemaking dealing with the activities of licensees. Accordingly, if Congress intended the language of Section 189a(1) to be read, as the commentor would read it, as an absolute bar on the Commission's ability to promulgate regulations without delay even when there is good cause for doing so, the same bar apparently would apply to immediate action by the Commission to suspend or revoke licenses in circumstances where delay could have grave consequences. This cannot have been Congress' intention. Even the commentor recognizes that such a restriction would be fundamentally at odds with the Commission's responsibilities.[3] The Commission therefore rejects their interpretation of Section 189(a) as overriding the APA good cause exception and requiring prior notice and comment in all Commission licensing and rulemaking activities, regardless of circumstances.

The language the commenter cites from *UCS* v. *NRC that* "[w]hether characterized as a license amendment or a rulemaking, the Commission's action runs afoul of the express terms of section 189a which unequivocally requires notice and comment for both types of proceedings," *supra* at 380, must be read in the context of the Court's reference to Section 187 of the Atomic Energy Act, 42 U.S.C. 2237. Section 187 explicitly provides that "the terms and conditions of all licenses shall be subject to amendment, revision, or modification, . . . by reason of rules and regulations issued in accordance with the terms of this Act." As the Court noted:

> We express no opinion on the arguments of the parties on the question whether these amendments must be made by adjudication or whether they fall within that category of license amendments that may be made by rule under section 187 of the Atomic Energy Act, 42 U.S.C. § 2237 (1976). That is a matter for the NRC to determine in the first instance on remand. We merely hold here that notice and an opportunity to comment must be provided whatever administrative route is taken. Section 187 provides that "[t]he terms and conditions of all licenses shall be subject to amendment . . . by reason of rules and regulations *issued in accordance with the terms of this chapter* [sic]." 42 U.S.C. § 2237 (emphasis added). Since section 189(a) requires a hearing "in any proceeding for the issuance . . . of rules and regulations dealing with the activities of licensees," id. § 2239(a), a license amendment effected pursuant to section 187 but without notice and comment would not be "issued in accordance with the terms of this chapter." *Id.*

In order to comply with the Court's decision, 10 CFR 2.804 of the final rule provides for prior notice and comment whenever a rulemaking would specifically amend reactor licenses. However, as noted earlier, the Commission believes it is reasonable to give the Court's opinion an interpretation no more restrictive than the language and context requires.

Any reading of Section 189a, which interferes with the Commission's ability to take immediate action affecting the activities of NRC licensees, whether by order or by rulemaking, when safety requires it, is contrary to the intent of Congress. A limitation on use of APA "good cause" exception clearly has the potential to interfere with the Commissions safety responsibilities and therefore should be interpreted narrowly. The existence of the other mechanisms cited by the commenter that would enable the Commission to act quickly in the event of a safety emergency is not a sufficient rationale to deny the Commission the availability of all mechanisms provided by law, such as the use of the APA exceptions to notice and comment rulemaking.

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[1] *See, e.g. Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 (1978).

[2] For example, see the following instances where the Commission has invoked the APA exceptions to notice and comment rulemaking: Amendment to Definition of Production Facility, 26 FR 4669 (June 6, 1961); Siting of Reprocessing Plants and Related Waste Management Facilities, 36 FR 5411 (March 23, 1971); Prohibition of Site Preparation and Related Activities, 37 FR 5745 (March 21, 1972); Exemption for Facilities Processing Irradiated Materials Containing Limited Quantities of Special Nuclear Materials, 39 FR 4871 (February 8, 1974); Application of Certain Cost—Benefit Analysis Requirements of Appendix I to Certain Nuclear Power Plants, 40 FR 40816 (September 4, 1975); Codes and Standards for Nuclear Power Plants, 41 FR 23831 (June 14, 1976); Revocation of Certain Reporting Requirements, 43 FR 49175 (October 25, 1978); Amendment to Definition of Basic Components, 43 FR 49621 (October 10, 1978); Domestic Licensing Proceedings; Modified Adjudicatory Procedures, 44 FR 66050 (November 9, 1979); Packaging of Radioactive Materials for Transport and Transportation of Radioactive Materials Under Certain Conditions, 44 FR 63083 (November 2, 1979); Physical Protection of Irradiated Reactor Fuel in Transit, 44 FR 34466 (June 15, 1979); Emergency Planning and Preparedness for Production and Utilization Facilities, 46 FR 63031 (December 30, 1981); Commission Review Procedures for Power Reactor Construction Permits and Operating Licenses 47 FR 40535 (September 15, 1982); Filing of Copies of Changes to Emergency Plans and Procedures, 47 FR 57670 (December 29, 1982).

[3] The Union of Concerned Scientists states in its comments that the Commission retains authority to take immediate safety action, but apparently believes that language in Section 189a authorizing immediately effective license amendments that involve "no significant hazards consideration" gives the Commission its sole power to act immediately to protect safety. This language was not included in the 1954 statute and did not appear until the 1962 amendments. Thus, UCS's approach implies that prior to 1962 the Commission had no power at all to take immediate safety action affecting licensees and that after 1962, Congress allowed such action only through the device of amending licenses, even if a temporary license suspension would be more appropriate. This approach is contradictory to the emphasis on safety and flexibility apparent throughout the Act, its legislative history, and longstanding Commission practice prior to 1962. A more reasonable approach which the Commission adopts, is that Congress intended from the beginning that the APA exceptions for immediately effective action should be available to the Commission and were not to be overridden by Section 189.

On a separate matter, UCS also objected to a provision currently in 10 CFR 2.804 which allows the Commission to use means of providing notice of proposed rulemaking other than publication in the **Federal Register**. Section 2.804(a) provides that:

> when the Commission proposes to adopt, amend, or repeal a regulation it will cause to be published in the **Federal Register** a notice of proposed rulemaking unless all persons subject to the notice are named and either personally served or otherwise have actual notice in accordance with law.

According to the commenter, Section 189a of the Atomic Energy Act requires the Commission to provide a notice and comment hearing to any person whose interest may be affected by the proceeding. Because this could include all members of the public affected by the proceeding, the commenter argues that it is misleading to suggest that the Commission could avoid **Federal Register** publication by attempting personal service of all affected members of the public. In addition, the commenter asserts that the provision would be illegal if the Commission intends to implement the rule by giving notice only to the licensees governed by particular rules.

This provision is within the permissible scope of 5 U.S.C. 552(a), is not an issue that was addressed in *USC* v. *NRC*, and does not fall within the ambit of this rulemaking. Therefore, this provision is unaffected by this rulemaking and is retained as part of Commission regulations.

Another commenter, (Yankee Atomic) writing in support of the rule, stated that the notice and comment requirements of Section 4 of the Administrative Procedure Act must be followed whenever a Commission rulemaking ". . . changes existing rights and obligations . . ." for licensees. The basis for this statement, and the source of the quoted material, is the decision in *Lewis—Mota* v. *Secretary of Labor*, 469 F.2d 478, 482 (2d. Cir. 1972). In response, the Commission reiterates that any limitations on the use of the APA exceptions from notice and comment inferred from *UCS* v. *NRC* only apply to the kind of rulemaking under review in that case, i.e. rules that specifically amend reactor licenses. Under the final rule, the Commission can avail itself of the APA exemptions, if the requisite criteria are met, for any other rulemakings even if they do affect the "rights and obligation" of licensees. The case cited by the commenter, *Lewis-Mota* v. *Secretary of Labor*, focused on an application of the APA exception from notice and comment rulemaking for *interpretative* rules. The issue in the case was whether the particular rule was a "substantive" rule or an "interpretative" rule. The phrase cited by the commenter was made in the context of determining whether the rule was a "substantive" rule, i.e., whether it "changes existing rights and obligations." In applying the exemptions contained in Section 4 of the APA, the Commission will follow all applicable law, including judicial decisions, in determining whether a rule is an interpretative rule or a substantive rule as a part of its determination concerning what rulemaking procedures are applicable.

Finally, one commenter (Middle South Services), although supporting the rule, recommended that 10 CFR 2.805 be amended to ensure that public participation in Commission rulemaking is of a "timely" fashion. The Commission does not believe that it is necessary to amend Section 2.805 to include the word "timely." Each Commission rulemaking establishes appropriate requirements for timely participation.

III. Final Rule

Section 2.804(d). This section provides for Commission discretion to invoke, in appropriate situations, the APA exceptions to notice and comment rulemaking as permitted by law. Under the final rule, notice and comment would not be mandatory in Commission rulemaking within the scope of section 553 of the U.S. Code, when they involve interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment are impracticable, unnecessary or contrary to the public interest. However, the use of such exceptions is not available when notice and comment are required by statute. The Commission interprets the *UCS* v. *NRC* case as establishing such a limitation on the use of the APA exceptions only for rules which specifically amend reactor licenses. The exceptions to notice and comment will be available for use, in appropriate situations for all other rules, including those that deal with the activities of licensees.

Section 2.804(e). This section provides for post-promulgation comment for all rules issued on the basis of the good cause exception when prior notice and comment was "impracticable" or "contrary to the public interest." Section 2.804(e) will also provide a post-promulgation comment opportunity for policy statements and interpretative rules that are issued without prior notice and comment. However, this opportunity for post-promulgation comment on interpretive rules and policy statement is not required if the Commission finds that such procedures would serve no public interest or would be so burdensome as to outweigh any foreseeable gain.

Section 2.804(f). This section provides for a Commission evaluation of all significant issues raised by the comments received under the post-promulgation procedures of § 2.804(e).

Section 2.805(a). This section has been revised to reflect the revisions made to § 2.804.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. It merely clarifies and affirms existing Commission practice on utilizing the statutory exceptions to notice and comment rulemaking contained in Section 4 of the Administrative Procedure Act, 5 U.S.C. 553.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and

reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Subpart H—Rulemaking

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Sections 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1437 (42 U.S.C. 2135).

2. In § 2.804, paragraph (a) is revised and new paragraphs (d), (e), and (f) are added to read as follows:

§ 2.804 Notice of proposed rulemaking.

(a) Except as provided by paragraph (d) of this section, when the Commission proposes to adopt, amend, or repeal a regulation, it will cause to be published in the **Federal Register** a notice of proposed rulemaking, unless all persons subject to the notice are named and either are personally served or otherwise have actual notice in accordance with law.

* * * * *

(d) The notice and comment provisions contained in paragraphs (a), (b), and (c) of this section will not be required to be applied—

(1) To interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(2) When the Commission for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest, and are not required by statute. This finding, and the reasons therefor, will be incorporated into any rule issued without notice and comment for good cause.

(e) The Commission shall provide for a 30-day post-promulgation comment period for—

(1) Any rule adopted without notice and comment under the good cause exception on paragraph (d)(2) of this section where the basis is that notice and comment is "impracticable" or "contrary to the public interest."

(2) Any interpretative rule, or general statement of policy adopted without notice and comment under paragraph (d)(1) of this section, except for those cases for which the Commission finds that such procedures would serve no public interest, or would be so burdensome as to outweigh any foreseeable gain.

(f) For any post-promulgation comments received under paragraph (e) of this section, the Commission shall publish a statement in the **Federal Register** containing an evaluation of the significant comments and any revisions of the rule or policy statement made as a result of the comments and their evaluation.

3. In § 2.805, paragraph (a) is revised to read as follows:

§ 2.805 Participating by interested persons.

(a) In all rulemaking proceedings conducted under the provisions of § 2.804(a), the Commission will afford interested persons an opportunity to participate through the submission of statements, information, opinions, and arguments in the manner stated in the notice. The Commission may grant additional reasonable opportunity for the submission of comments.

* * * * *

Dated at Washington, D.C., this 28th day of March 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85–7848 Filed 4–1–85; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 204, 208, and 217

[Docket No. R–0542]

Regulations D, H, and Q; Repurchase Agreement Involving Shares of a Money Market Mutual Fund Whose Portfolio Consists Wholly of United States Treasury and Federal Agency Securities; State Member Bank Purchase of Shares of a Money Market Mutual Fund Whose Portfolio Consists Wholly of Securities That the Bank May Purchase Directly

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: The Board of Governors has issued an interpretation of the definition of deposit in Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204) and Regulation Q—Interest on Deposits (12 CFR Part 217) to exclude from the definition of the term "deposit" repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and federal agency securities. The Board of Governors has also issued an interpretation to Regulation H—Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) to permit state member banks to purchase shares in a money market mutual fund whose portfolio consists entirely of assets that the bank may purchase directly.

EFFECTIVE DATE: The reserve computation period beginning June 4, 1985.

FOR FURTHER INFORMATION CONTACT: J. Virgil Mattingly, Associate General Counsel (202/452–3430), or Elaine M. Boutilier, Attorney (202/452–2418), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

SUPPLEMENTARY INFORMATION:

List of Subjects

12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties, Reporting requirements.

12 CFR Part 208

Banks, banking, Federal Reserve System, Reporting requirements, Securities.

12 CFR Part 217

Advertising, Banks, banking, Federal Reserve System, Foreign banking.

Pursuant to its authority under sections 9 and 19 of the Federal Reserve Act (12 U.S.C. 321 *et seq.* and 461 *et*

seq.), the Board amends 12 CFR Part 204, Regulation D, 12 CFR Part 208, Regulation H and 12 CFR Part 217, Regulation Q as follows:

PART 204—[AMENDED]

1. Regulation D (12 CFR Part 204) is amended by adding a new § 204.124 as follows:

§ 204.124 Repurchase agreement involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221) imposes Federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase (12 CFR 217.1(f)(2)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(c) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B–83–58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly (12 CFR 208.123).

(d) The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof [1] would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a *pro rata* portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or federal obligations by enhancing the market for such obligations.

PART 208—[AMENDED]

2. Regulation H (12 CFR Part 208) is amended by adding a new § 208.123 as follows:

§ 208.123 Purchase of shares of a money market mutual fund whose portfolio consists wholly of securities that the member bank may purchase directly.

(a) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, with certain limited exceptions, a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(b) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased or sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly.

(c) The Board of Governors has determined to permit state member banks to purchase shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly. The purchase by a state member bank of shares of such a MMMF is functionally equivalent to the bank's purchase of the securities that comprise the portfolio of the MMMF. A bank that purchases shares of a MMMF acquires an undivided equitable ownership interest in the securities that comprise the MMMF portfolio. Moreover, purchase of shares of such a MMMF would not result in speculative risks or wide fluctuations because the bank currently may purchase directly the assets comprising the MMMF portfolio and because of the rules of the Securities and Exchange Commission concerning MMMFs. Indeed, by providing greater scope for diversification, particularly for smaller banks, allowing the purchase of such MMMF shares may contribute to lower risk than purchase by the state member bank of the assets comprising the MMMF portfolio directly.

(d) The Board has adopted the following conditions, similar to those adopted by the Comptroller of the Currency for national banks, to ensure that in those cases in which a state member bank may purchase securities in limited amounts, the bank does not

[1] The term "United States government or any agency thereof" as used herein shall have the same meaning as in § 204.2(a)(1)(vii)(B) of Regulation D, 12 CFR 204.2(a)(1)(vii)(B).

exceed the limitations indirectly through the purchase of MMMF shares:

(1) The fund is an open-end investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and Securities Act of 1933 or a privately offered fund sponsored by an affiliated commercial bank.[2]

(2) When the fund's assets consist solely of and are limited to obligations that are eligible for investment without limit by a state member bank, there is no limit on the bank's investment. But where the fund contains securities subject to the bank's investment or lending limitations, investment in the MMMF may not exceed these investment or lending limitations. Where the state member bank purchases shares in more than one fund containing securities subject to the bank's investment or lending limitations, the bank's aggregate investment in such funds may not exceed these investment or lending limitations. Where the state member bank purchases such securities directly, the aggregate maximum allowable investment in such MMMF(s) is reduced accordingly.

(3) The fund's shares are bought and sold at par (i.e., the fund is a money market fund).

(4) The shareholder has an equitable and equal proportionate undivided interest in the underlying assets of the fund.

(5) Shareholders are shielded from personal liability for acts or obligations of the fund.

(6) The bank's investment policy, as formally approved by its board of directors, specifically provides for such investments; prior approval of the board of directors is obtained for initial investments in specific funds and recorded in the official board minutes; and procedures, standards, and controls for the implementation of such investments are established.

(7) The bank conducts reviews at least monthly of its holdings of investment company shares to ensure that such investments are in accordance with the foregoing principles.

[2] This provision concerning a privately offered fund sponsored by an affiliated commercial bank is a limited provision applicable only to a privately sponsored fund of a subsidiary of a holding company whose shares may be purchased only by other subsidiaries of the holding company.

(e) State member banks would also be subject to any other restrictions imposed by applicable state law.

PART 217—[AMENDED]

3. Regulation Q (12 CFR Part 217) is amended by adding a new § 217.161 as follows:

§ 217.161 Repurchase agreements involving shares of a money market mutual fund whose portfolio consists wholly of United States Treasury and Federal agency securities.

(a) The Federal Reserve Act, as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96–221) imposes federal reserve requirements on transaction accounts and nonpersonal time deposits held by depository institutions. The Board is empowered under the Act to determine what types of obligations shall be deemed a deposit (12 U.S.C. 461). Regulation D—Reserve Requirements of Depository Institutions exempts from the definition of "deposit" those obligations of a depository institution that arise from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States government or any agency thereof that the depository institution is obligated to repurchase (12 CFR 204.2(a)(1)(vii)(B)). A parallel exemption in Regulation Q—Interest on Deposits exempts from the definition of "deposit" obligations that evidence an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the bank is obligated to repurchase (12 CFR 217.1(f)(2)).

(b) The National Bank Act provides that a national bank may purchase for its own account investment securities under limitations and restrictions as the Comptroller may prescribe (12 U.S.C. 24, ¶ 7). The statute defines investment securities to mean marketable obligations evidencing indebtedness of any person in the form of bonds, notes, and debentures. The Act further limits a national bank's holdings of any one security to no more than an amount equal to 10 percent of the bank's capital stock and surplus. However, these limitations do not apply to obligations issued by the United States, general obligations of any state and certain obligations of federal agencies. In addition, generally a national bank is not permitted to purchase for its own account stock of any corporation. These restrictions also apply to state member banks (12 U.S.C. 335).

(c) The Comptroller of the Currency has permitted national banks to purchase for their own accounts shares of open-end investment companies that are purchased and sold at par (i.e., money market mutual funds) provided the portfolios of such companies consist solely of securities that a national bank may purchase directly (Banking Bulletin B–83–58). The Board of Governors has permitted state member banks to purchase, to the extent permitted under applicable state law, shares of money market mutual funds ("MMMF") whose portfolios consist solely of securities that the state member bank may purchase directly (12 CFR 208.123).

(d) The Board has determined that an obligation arising from a repurchase agreement involving shares of a MMMF whose portfolio consists wholly of securities of the United States government or any agency thereof [3] would not be a "deposit" for purposes of Regulations D and Q. The Board believes that a repurchase agreement involving shares of such a MMMF is the functional equivalent of a repurchase agreement directly involving United States government or agency obligations. A purchaser of shares of a MMMF obtains an interest in a *pro rata* portion of the assets that comprise the MMMF's portfolio. Accordingly, regardless of whether the repurchase agreement involves United States government or agency obligations directly or shares in a MMMF whose portfolio consists entirely of United States government or agency obligations, an equitable and undivided interest in United States and agency government obligations is being transferred. Moreover, the Board believes that this interpretation will further the purpose of the exemption in Regulations D and Q for repurchase agreements involving United States government or federal obligations by enhancing the market for such obligations.

By order of the Board of Governors, March 26, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–7621 Filed 4–1–85; 8:45 am]

BILLING CODE 6210–01–M

[3] The term "United States government or any agency thereof" as used herein shall have the same meaning as in § 204.2(a)(1)(vii)(B) of Regulation D, 12 CFR 204.2(a)(1)(vii)(B).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-97-AD; Amdt. 39-5027]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Airbus Industrie Model A300 B2 and B4 series airplanes which requires inspections for cracking of flap beams No. 2, left and right. During fatigue tests, the flap beam developed cracks and ultimately failed. This condition can lead to flap asymmetry and create a hazardous flight condition.

EFFECTIVE DATE: May 9, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Centreda, Avenue Didier Daurat, 31700 Blagnac, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) has issued a Consigne de Navigabilité which mandates compliance with the requirements of Airbus Industrie Service Bulletin A300-57-116.

Analyses show that cracks may occur at the bolt holes of the flap beam base members and light alloy side members. Fatigue tests proved these analyses, since the flap beam developed cracks at 43,000 simulated landings and failed in the expected locations at 48,000 simulated landings. Based on this data, the manufacturer determined that the flap beam must be inspected prior to 15,000 landings to detect cracks before failure of the beam.

The service bulletin prescribes inspections for cracking of the base steel member of the light alloy side members of the flap beams No. 2, LH and RH. The service bulletin also prescribes replacement of the flap beams if cracks exceed a specified dimension.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the Federal Register on November 20, 1984 (49 FR 45755). The comment period closed on December 30, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. The manufacturer indicated that a note should be added to paragraph A. of the AD to clarify the method of measuring crack length. This has been done in the final document. The other commenter had no objections to the AD.

In addition to the change mentioned above, another paragraph has been added to the AD which allows adjustments in the inspection intervals so that the inspections can be accomplished during the operator's maintenance schedules.

It is estimated that 33 airplanes will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $15,840.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously noted.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircaft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, certificated in all categories. To prevent flap asymmetry, within 120 days after the effective date of this AD or upon reaching 15,000 landings, whichever occurs later, accomplish the following, unless previously accomplished:

A. Inspect the base steel member and light alloy side members of the flap beams No. 2, LH and RH, for cracks, in accordance with the accomplishment instructions of Airbus Industrie Service Bulletin A300-57-116, Revision 1, dated August 27, 1983.

1. If no cracks are found, repeat the inspection at intervals not to exceed 1,700 landings.

2. If cracks are detected, repeat the inspection at intervals not to exceed 250 landings as long as crack length is 4mm or shorter. If crack length exceeds 4mm, the flap beam must be replaced before further flight.

Note.—Measurement of crack length is performed by measurement of the probe displacement (perpendicular to symmetry plane of beam) between defect indication appearance and its complete disappearance. Do not interpret the bolt hole indication as a defect indication. These two indications appear very close together because the defects originate from the bolt holes.

B. Five thousand (5,000) additional landings are permitted before performing the first of the repetitive inspections required by paragraph A.1., above, if the modification described in Airbus Industrie Service Bulletin A300-57-128, dated August 27, 1983, is incorporated, provided:

1. No cracks are detected, and

2. The number of landings accumulated is 16,700 or less.

C. Upon request of an operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 9, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7744 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-59-AD; Amdt. 39-5028]

Airworthiness Directives; Lockheed-California Company Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires the modification of the bleed air duct overheat sensor system and structure in the Mid-Electrical Service Center (MESC) area in Lockheed Model L-1011 series airplanes. This action is prompted by reports of clamp and duct failures in the vicinity of the MESC area during flight. This condition could result in total loss of electrical power and, as a consequence, would result in the loss of communications, flight instruments, control systems, and environmental systems.

DATES: Effective May 9, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Systems & Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) requiring the modification of the bleed air duct overheat sensor system and structure in the Mid-Electrical Service Center (MESC) area in Lockheed Model L-1011 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 8, 1984 (49 FR 31703). The comment period for the proposal closed September 28, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Seven comments were received.

Three commenters questioned whether the Hamilton Standard Bulletin 21-1113, referenced in Lockheed Service Bulletin 093-21-214, was considered part of the structural modification required by the proposed airworthiness directive. They objected to reworking the seals in the flow control valve because they considered that the leakage of hot air, both through the valve motor seal and the vent hole in the valve housing, was insignificant. The FAA has not included the valve rework as part of the requirements of this AD.

One commenter objected to the adoption of Lockheed Service Bulletin 093-21-222, which calls for the installation of structural barriers between duct channels. The commenter's reasoning was based upon the belief that the downstream area where the modification is installed is not as critical as the upstream area. The commenter asserted that adequate protection was afforded by the added flow sensors and thermal detectors in the upstream area. The FAA disagrees. The structural modification called for in Lockheed Service Bulletin 093-21-222 provides for barriers which would help inhibit hot air cross-flow between channels and the activation of the incorrect overheat indicator. Though more overheat or flow sensors would be present upstream of the flow control valves, the barriers would provide for better isolation of the duct channels and, thus, better detection of leaks overall.

Another commenter requested that the FAA incorporate into the final AD an interim inspection of the ducts, fittings, and clamps prior to the installation of the modifications. The FAA disagrees. Although an interim inspection might aid in detecting loose clamps or imminent fitting or duct failures, it cannot assure the operator of an intact system in the future. The FAA considers the compliance time of 3,600 flight hours before installation of the required modification to be appropriate to safeguard the MESC from duct and clamp failures, since the modification will include a more extensive detection system and structural isolation barriers.

Finally, four commenters felt that the compliance time was overly restrictive. The FAA has determined that the severity of the problem justifies the compliance time of 3,600 flight hours. Kits are presently available from the manufacturer.

It is estimated that 91 U.S. registered airplanes will be affected by this AD; that it will take a total of 40 manhours per airplane to accomplish the required actions; and that the average labor cost will be $40 per manhour. The cost of modification parts is estimated to be $7,330 per aircraft.

Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $812,630.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

After careful review of the available data, including the comments noted above, the FAA had determined that air safety and the public interest require the adoption of the proposed rule.

List of Subjects in CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011 series airplanes, serial numbers -1002 to and including -1221 (unless Lockheed Service Bulletin 093-21-184 dated November 2, 1983, or later FAA approved revisions has been accomplished), certificated in all categories.

Compliance required within the next 3,600 flight hours after the effective date of this AD, unless previously accomplished. To minimize the potential for unrecoverable loss of all AC/DC electrical power, including the emergency bus, accomplish the following:

A. Extend and reroute Fenwall Thermal Overheat Sensors below Mid-Electrical Service Center (MESC) floor and remove excess flow sensors and modify the structure below the MESC floor as outlined in the Accomplishment Instructions of Lockheed Service Bulletin 093-21-214, dated December 9, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Extend barrier in the MESC area in accordance with Lockheed Service Bulletin 093-21-222, dated January 9, 1984, or later revisions approved by the Manager, Los

Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment become effective May 9, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7745 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-34-AD; Amdt. 39-5025]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) which requires inspections of the fuselage lower skin in the immediate area surrounding the VHF antenna, on certain McDonnell Douglas DC-9 series airplanes. This amendment reduces the threshold to 2,000 landings. This amendment is prompted by a report of a 15-inch crack in the skin adjacent to the mounting holes for the VHF antenna on an airplane with 5,450 landings. If allowed to go undetected, this type of crack could result in rapid depressurization of the airplane.

DATES: Effective April 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: AD 85-03-58, Amendment 39-4994 (50 FR 4637; February 1, 1985), requires initial visual inspections at 150 landings, and repetitive visual inspections at 250 or 1,000 landings, to detect cracks in the fuselage skin adjacent to or under the lower forward VHF antenna on DC-9 series airplanes with 10,000 or more landings.

After Amendment 39-4994 was issued, one operator reported finding a 15-inch crack along the left hand side of the VHF antenna mounting holes, and cracks in both sides of the support intercostal along the length of the antenna base. This airplane had a total of 5,450 landings.

Since this situation is likely to exist or develop on other airplanes of the same type design, this amendment is being issued to require inspection for cracks of the lower fuselage skin, forward and aft of the VHF antenna, on all DC-9 airplanes with 2,000 or more landings. This reduced threshold is considered necessary to provide an adequate level of safety in view of crack growth rate scatter encountered in service.

Further, since a situation exists which requires immediate adoption of this regulation, it is found that notice and public procedure are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects 14 CFR Part 39

Aviation Safety, Aircraft

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 85-03-06, Amendment 39-4994 (50 FR 4637, February 1, 1985) by revising the first phrase of paragraph A. to read as follows:

"A. For airplanes with 2,000 or more landings, * * *"

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective April 15, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-7746 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-138-AD; Amdt. 39-5026]

Airworthiness Directive; Sperry SPZ-7000 Digital Automatic Flight Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which imposes a restriction on use of the Sperry SPZ-7000 Digital Automatic

Flight Control Systems in the instrument landing system (ILS) mode. The AD is prompted by reports of improper glide slope tracking. This condition, if not corrected, can result in premature contact with the ground and loss of aircraft.

DATES: Effective April 15, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Sperry Flight Systems, Avionics Division, P.O. Box 29000, Phoenix, Arizona 85038. This information may also be examined at, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Thompson, Aerospace Engineer, Systems & Equipment Section, ANM–173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office, 15000 Aviation Blvd., Hawthorne, California; telephone (213) 536–6375. Mailing Address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

SUPPLEMENTARY INFORMATION: There have been reports that a Sperry SPZ–7000 Digital Automatic Flight Control System can provide incorrect glide slope tracking during an autopilot coupled approach in the instrument landing system (ILS) mode, resulting in excessive departure from the beam center.

When the ILS mode is engaged above the normal valid radio altimeter range (2,000 feet), the FZ–700 computer P/N 7003183–901/902 may allow ILS signal gain reduction too early on the descent and provide poor or no glide slope tracking; this can result in premature contact with the ground.

This condition is known to exist on, but may not be limited to, the following installations:

(a) Sikorsky Model S–76A helicopters modified in accordance with Supplemental Type Certificate (STC) No. SH2218NM.

(b) S.N.I.A.S. Model AS–365N helicopters modified in accordance with STC No. SH2215NM.

Since this condition is likely to exist on other automatic flight control systems of the same type design, this airworthiness directive requires the use of any manual autopilot control mode except the ILS mode until below 2,000 feet radio altitude, after which time, the autopilot/flight director ILS mode can be engaged.

This restriction is to remain in effect until an approved modification is incorporated in the Sperry SPZ–7000 AFCS FZ–700 computer P/N 7003183–901/902.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft, Air transportation, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Sperry Flight Systems, Avionics Division: Applies to Sperry Model SPZ–7000 with FZ–700 computer Part No. 7003183–901 or 7003183–902 installed. The SPZ–7000 installation is known to exist on, but may not be limited to, Sikorsky Model S–76A helicopters modified in accordance with Supplementary Type Certificate (STC) No. SH2218NM, and S.N.I.A.S. Model AS–365N helicopters modified in accordance with STC No. SH2215NM.

Compliance is required within ten (10) days after the effective date of this AD, unless previously accomplished.

To prevent improper (dangerous) excursions from the glide slope during instrument landing system (ILS) approach, accomplish the following:

A. Install a placard adjacent to the autopilot/flight director mode selector in full view of pilot, stating "DO NOT ENGAGE ILS MODE ABOVE 2000 FEET AGL DURING ILS APPROACH."

B. Installation of FZ–700 computers, P/N 7003183–902 with mode "E" incorporated, on Sikorsky S–76A helicopters terminates the requirement of paragraph A. of this AD.

C. Alternate modifications or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

This amendment becomes effective April 15, 1985.

(Sections 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 25, 1985.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–7747 Filed 4–1–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 40802–4102]

Foreign Trade Statistics; Amendments to the Regulations

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Foreign Trade Statistics Regulations (FTSR) to eliminate the requirement for filing Shipper's Export Declarations (SEDs) for shipments from the United States and Puerto Rico to the Northern Mariana Islands and to reflect the transfer of the Panama Canal to the Republic of Panama.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Barry Cohen, Chief, Foreign Trade Division, Bureau of the Census, (301) 763–5342.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking published in the **Federal Register** of September 24, 1984, (49 FR 37425) proposed amending the FTSR to eliminate the requirement for filing SEDs for shipments from the United States and Puerto Rico to the Northern Mariana Islands and to reflect the transfer of the Panama Canal to the Republic of Panama.

On January 9, 1978 the Northern Mariana Islands entered into a political union with the United States, *The*

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.

Public Law 94–241, 48 U.S.C. 1661 (hereinafter referred to as the "Covenant"). Section 502(a) of the Covenant states that Federal laws and regulations applicable to Guam and the several states should apply to the Northern Mariana Islands.

On June 1, 1968 the Government of Guam began collecting statistical documentation on merchandise imported into Guam in preparation for implementing its program for compiling Guam's trade statistics. Therefore, effective March 21, 1970, it was decided to eliminate the requirement for filing SEDs for shipments to Guam. At the same time SED filing requirements for shipments to certain "United States Possessions" (except for shipments to American Samoa and the Virgin Islands of the United States) were eliminated. On September 28, 1976 SED filing requirements for shipments to American Samoa also were eliminated.

Section 370.4 of the Export Administration Regulations was amended in October 1979 exempting shipments to the Trust Territory of the Pacific Islands (that is, the Caroline, Marshall, and Northern Mariana Islands) from licensing requirements.

Section 603(c) of the Covenant provides that imports from the Northern Marians Islands shall be subject to the same treatment as import from Guam; therefore, Customs Service Decision 83–51 of February 22, 1983, accords to imports into the United States from the Northern Mariana Islands duty-free treatment for certain merchandise as set forth in the General Headnotes and Rules for Interpretation of the Tariff Schedules of the United States.

Accordingly, this amendment is not at variance with the Convenant or procedures of other agencies, but provides for consistency in the reporting of both import and export trade data of the Northern Mariana Islands.

On October 1, 1979 the United States transferred jurisdiction over the Panama Canal Zone to the Republic of Panama. To reflect this transfer, which incorporates the Canal Zone with the Republic of Panama, the Foreign Trade Statistics Regulations (FTSR) are amended so that all requirements for SEDs to foreign countries apply, without specifying, to the Republic of Panama. Previously, shipments from the United States to the Panama Canal Zone Government and Panama Canal Company for their exclusive use were exempt from SED filing requirements because the Canal Zone was under the sole jurisdiction of the United States Government.

Because these changes affected the reporting requirements, interested persons were given 60 days from the date of publication in the **Federal Register** (September 24 to November 23, 1984) to submit their comments regarding the notice.

Discussion of Major Comments

No comments were received.

Regulatory Impact Analysis and Information Collection

These amendments do not constitute a major rule as defined in Executive Order 12291. Pursuant to the provision of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce certified to the Small Business Administration that these amendments will not have a significant economic effect on a substantial number of small entities. Further, these amendments impose no additional reporting burden on the public. The collection of this information has been approved by the Office of Management and Budget under Control numbers 0607–0001, 0607–0018, 0607–0150, and 0607–1052.

This Final Rule is being made effective immediately because it eliminates the requirement for filing SEDs for shipments from the United States and Puerto Rico to the Northern Mariana Islands.

List of Subjects in 15 CFR Part 30

Economic statistics, foreign trade, Reporting and recordkeeping requirements.

Amendment to the Regulations

The Foreign Trade Statistics Regulations (15 CFR Part 30) are amended as set forth below.

PART 30—FOREIGN TRADE STATISTICS

Section 30.1 is amended by revising paragraph (a)(1) to read as follows:

§ 30.1 General statement of requirement for Shipper's Export Declarations.

(a) * * *

(1) To foreign countries or areas including Trust Territories under U.S. administration, with the exception of the Northern Mariana Islands, and to Foreign Trade Zones located in foreign countries or areas from any of the following: * * *.

* * * * *

(Title 13, United States Code, secs. 301–307; and Title 5, United States Code, sec. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765)

John G. Keane,

Director, Bureau of the Census.

January 4, 1985.

I Concur.

J.M. Walker, Jr.,

Assistant Secretary, Department of the Treasury.

February 15, 1985.

[FR Doc. 85–7794 Filed 4–1–85; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in Externally Applied Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administraton (FDA) is postponing the closing date for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use as color additives in externally applied drugs and cosmetics. The new closing date will be June 3, 1985. This postponement will provide additional time for determining the applicability of the statutory standard for the listing of noningested color additives to the results of the scientific investigations of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37.

DATES: Effective April 2, 1985, the new closing date for D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 will be June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 2, 1985, for the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 for use in externally applied drugs and cosmetics by a final rule published in the **Federal Register** of February 1, 1985 (50 FR 4641). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional

listing of these color additives, see 43 FR 26314 for D&C Red No. 19 and D&C Red No. 37 and 43 FR 44774 for D&C Orange No. 17.

FDA extended the closing date for the provisional listing of these color additives on these occasions to permit consideration of the scientific and legal aspects of the submissions of the petitioner, the Cosmetic, Toiletry and Fragrance Association, Inc., in support of the safety of the external uses of these color additives. Although D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 have been shown to be animal carcinogens upon ingestion, somewhat different questions are raised by the request to list these color additives for noningested use. It has taken more time to review the data involved in resolving these questions than the agency anticipated. Additional time is still needed to determine the applicability of the statutory standard for the listing of color additives for noningested use to D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37. The regulations set forth below will postpone the April 2, 1985 closing date for the provisionally listed use of these color additives until June 3, 1985. The postponement will also provide additional time for the preparation and the publication of Federal Register documents setting forth the final decision on the petitions for the permanent listing of these color additives for external use. The continued use of these color additives in the externally applied products for the short time needed for the adequate review of the data and for the preparation of Federal Register documents that will announce the decision on these color additives will not pose a hazard to the public health.

FDA has received a petition from Public Citizen Health Research Group that asks the agency to ban the use of these color additives. This petition is currently under review. This postponement will provide additional time for consideration of this petition.

Because of the short time until the April 2, 1985 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing the postponement as a final rule. This final rule will permit the uninterrupted use of these color additives until June 3, 1985. To prevent any interruption in the provisional listing of D&C Orange No. 17, D&C Red No. 19, and D&C Red No. 37 and in accordance with 5 U.S.C. 553(d)(1) and (3), this final rule is being made effective April 2, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives*, by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (b) to read "June 3, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing*, by revising the closing date for "D&C Orange No. 17," "D&C Red No. 19," and "D&C Red No. 37" in paragraph (d) to read "June 3, 1985."

Effective date. This final rule shall be effective April 2, 1985.

(Secs. 701, 706(b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376(b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: March 18, 1985.

Joseph P. Hile,

Acting Commissioner for Regulatory Affairs.

[FR Doc. 85–7768 Filed 4–1–85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of FD&C Red No. 3 and of FD&C Yellow No. 5 in Cosmetics and Externally Applied Drugs and of Their Lakes in Food and Ingested Drugs; Provisional Listing of FD&C Yellow No. 6 for Use in Food, Drugs and Cosmetics; Provisional Listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 in Drugs and Cosmetics; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of these color additives for use in coloring food and ingested drugs; of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics. The new closing date for the provisional listing of all of these color additives will be June 3, 1985. This postponement will provide additional time for the determination of the applicability of the statutory standard for the listing of color additives to the results of the scientific investigations of FD&C Red No. 3, FD&C Yellow No. 5, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36.

DATES: Effective April 2, 1985, the new closing date for FD&C Red No. 3 and its lakes, FD&C Yellow No. 5 and its lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 will be June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gerad McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of April 2, 1985, for the provisional listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in cosmetics and in externally applied drugs and for the provisional listing of the use of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 in food and ingested drugs; of FD&C Yellow No. 6 for use in foods, drugs, and cosmetics; and of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in drugs and cosmetics by a rule published in the Federal Register of February 1, 1985 (50 FR 4642). The agency had previously extended the closing dates for these color additives on several occasions. For a full procedural history of the provisional listing of these color additives, see 48 FR 45237 for FD&C Red No. 3, 48 FR 45760 for FD&C Yellow No. 5, 49 FR 13344 for FD&C Yellow No. 6, 48 FR 42807 for D&C Red No. 8 and D&C Red No. 9, 48 FR 44773 for D&C Red No. 33, and 49 FR 38935 for D&C Red No. 36.

FDA extended the closing dates for the provisional listing of each of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 to permit the consideration of the scientific and legal aspects of the data concerning the safety of their provisionally listed uses. FDA expected that the current

closing dates would provide time for the preparation and publication of appropriate regulations in the **Federal Register** regarding the final decision on the petitions for the permanent listing of the aforementioned uses of these color additives and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5.

The review of the data relevant to the provisionally listed uses of FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, FD&C Yellow No. 6, D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 has required more time than anticipated, however. Additional time is still needed to determine the applicability of the statutory standard for listing color additives to D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as to FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes.

This postponement will provide additional time for the preparation and publication of the appropriate **Federal Register** documents setting forth the decision on the petitions for the permanent listing of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring cosmetics and externally applied drugs and of the lakes of FD&C Red No. 3 and of FD&C Yellow No. 5 for use in coloring food and ingested drugs; for the permanent listing of FD&C Yellow No. 6 for use in food, drugs, and cosmetics; and for the permanent listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, and D&C Red No. 36 for use in coloring drugs and cosmetics. The continued use of these color additives for the short time needed for a fully coordinated review of the data and for the preparation of the **Federal Register** documents will not pose a hazard to the public health.

FDA has received a petition from Public Citizen Health Research Group that asks the agency to ban the use of these color additives (Docket No. 84P–0429). The petition is currently under review. This postponement will provide additional time for consideration of this petition.

Because of the short time until the April 2, 1985 closing date, FDA concludes that notice and public procedure on these amendments are impracticable, and that good cause exists for issuing this postponement as a final rule. This final rule will permit the uninterrupted use of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, until June 3, 1985. To prevent any interruption in the provisional listing of D&C Red No. 8, D&C Red No. 9, D&C Red No. 33, D&C Red No. 36, and FD&C Yellow No. 6, as well as FD&C Red No. 3 and FD&C Yellow No. 5 and their lakes, and in accordance with 5 U.S.C. 553(d) (1) and (3), this regulation is being made effective on April 2, 1985.

List of Subjects in 21 CFR Part 81

Color additives, Color additives provisional list, Food, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

§ 81.1 [Amended]

1. In § 81.1 *Provisional lists of color additives,* by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," and "FD&C Red No. 3" in paragraph (a) to read "June 3, 1985" and by revising the closing dates for "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36," in paragraph (b) to read "June 3, 1985."

§ 81.27 [Amended]

2. In § 81.27 *Conditions of provisional listing,* by revising the closing dates for "FD&C Yellow No. 5," "FD&C Yellow No. 6," "FD&C Red No. 3," "D&C Red No. 8," "D&C Red No. 9," "D&C Red No. 33," and "D&C Red No. 36" in paragraph (d) to read "June 3, 1985" and by revising the closing dates for "FD&C Red No. 3" and "D&C Red No. 33" in paragraph (e) to read "June 3, 1985."

Effective date. This final rule is effective April 2, 1985.

(Secs. 701, 706 (b), (c), and (d), 52 Stat. 1055–1056 as amended, 74 Stat. 399–403 (21 U.S.C. 371, 376 (b), (c), and (d)); sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note))

Dated: March 18, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–7709 Filed 4–1–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5c, 11, and 301

Miscellaneous Amendments; Corrections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to **Federal Register** publications of October 23, 1981; May 11, 1984; October 31, 1984; February 20, 1985; and March 26, 1985.

DATE: These corrections are effective March 29, 1985.

FOR FURTHER INFORMATION CONTACT: George Bradley, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attn: CC:LR:T. Telephone 202–566–3486 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 23, 1981, the **Federal Register** published temporary regulations relating to the special rules for leases under the Economic Recovery Tax Act of 1981. These regulations, issued as Treasury Decision 7791, appeared at 46 FR 51907.

On May 11, 1984, the **Federal Register** published final regulations relating to tables for valuing annuities, life estates, terms for years, remainders, and reversions for purposes of Federal income, estate and gift tax. These regulations, issued as Treasury Decision 7955, appeared at 49 FR 19973.

On October 31, 1984, the **Federal Register** published temporary regulations relating to tax shelter registration and the requirement to maintain lists of investors in potentially abusive tax shelters. These regulations, issued as Treasury Decision 7990, appeared at 49 FR 43640.

On February 20, 1985, the **Federal Register** published temporary regulations relating to the substantiation with respect to certain means of transportation for taxable years beginning after 1984. These regulations, issued as Treasury Decision 8009, appeared at 50 FR 7038.

On March 26, 1985, the **Federal Register** published regulations relating to the effect of windfall profit tax overpayments on estimated income tax payments and penalties. These regulations, issued as Treasury Decision 8016, appeared at 50 FR 11853.

Need for Correction

As published, the amendatory language for Treasury Decisions 7955, 7990, 8009, and 8016 inadvertently contains language that was not intended and that may be misleading. In addition, Treasury Decision 7791 inadvertently contains a paragraph designation that should be removed.

Accordingly, 26 CFR is corrected as follows:

PART 1—INCOME TAX

Paragraph 1. In the second column of 50 FR 7044, published February 20, 1985, the amendatory language that is designated "Par. 4." is revised to read as follows:"

"**Par. 4.** A new § 1.274–6T is added immediately after § 1.274–6 to read as follows:"

Par. 2. Beginning in the third column of 50 FR 11855, published March 26, 1985, the amendatory language that is designated "Par. 6." and the accompanying text which proposed to revise 1.6655–1(b)(5)(ii)(B), and the amendatory language that is designated "Par. 7." and the accompanying text which proposed to revise 1.6655–2(c)(1)(ii)(B) are removed.

PART 5c—TEMPORARY INCOME TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

Par. 3. In the second column of 46 FR 51910, published October 23, 1981, in the first line of text of § 5c.168 (f)(8)–5, the language "(a) *Term of lease*—(1) *Basic rules.* To" is removed and the language "(a) *Term of lease—Basic rules.* To" is added in its place.

PART 11—TEMPORARY INCOME TAX REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Par. 4. In the third column of 49 FR 19992, published May 11, 1984, in the amendatory language that is designated "Par. 10.", the language "which is appropriate" is removed and the language "whichever is appropriate" is added in its place.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. In the first column of 49 FR 43646, published October 31, 1984, in the amendatory language that is designated "Par. 2.", the language "and answers 17 and 18 to read as follows" is removed and the language "and answers 17(1) and 18 to read as follows" is added in its place.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–7912 Filed 4–1–85; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 601 and 602

[T.D. 8011]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

Correction

In FR Doc. 85–6015, beginning on page 10221, in the issue of Thursday, March 14, 1985, make the following corrections:

PART 602—[CORRECTED]

§ 602.101 [Corrected]

Section 602.101 paragraph (c) is corrected as follows:

1. On page 10224, in the first column, in the table, under column one, the entry "§ 1.708–(b)(2) (i) and (ii)" should read "§ 1.708–1(b)(2) (i) and (ii)".

2. On page 10226, in the first column, in the table, under column one, the entry "§ 11.412(c)–11 (a) thought (d)" should read "§ 11.412(c)–11 (a) through (d)".

3. On page 10227, in the second column, in the table, under column one, on the twenty-eighth line from the bottom, after "§ " remove "51."

4. On the same page in column three, on the eleventh line, in the table, in the second column, "1545–0242" should read "1545–0123".

5. On the same page, same column, on the twenty-sixth line, in the table, in the second column, "1545–0023" should read "1545–0230".

6. And on the same page, same column, forty-fourth line insert "§" just at the beginning of the entry "301.6017–1" in the first column.

7. On page 10228, in column one, in the table, on the sixth line, in the first column, the entry should read "§ 301.7216–2(l)".

BILLING CODE 1505–01–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Specially Adapted Housing Assistance—Computation of Cost

AGENCY: Veterans Administration.

ACTION: Final Regulation.

SUMMARY: The VA (Veterans Administration) in implementing Pub. L. 98–543, the Veterans' Benefits Improvement Act of 1984, 98 Stat. 2735, is amending its regulations to conform to a statutory change increasing the maximum amount of specially adapted housing assistance from $5,000 to $6,000 for service-connected disabled veterans who are blind or have lost, or lost the use of, both hands.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420, (202) 389–3042.

SUPPLEMENTARY INFORMATION: The specially adapted housing assistance program is codified in chapter 21 of title 38, United States Code. Previously, section 802(b) of the statute limited assistance to the lesser of (1) the actual cost of the adaptations determined to be reasonably necessary, or (2) $5,000.

This amendment implements section 304 of Pub. L. 98–543, which increases the maximum statutory assistance to $6,000.

As a result of this legislation, there will be an increase in the value of the benefit available to service-connected disabled veterans who are blind or have lost, or lost the use of, both hands, and must make special adaptations to a residence because of such disabilities.

This amendment conforms the existing regulations to the requirements of Pub. L. 98–543. Since this amendment merely implements a statutory change intended to provide an increase in a benefit to veterans seeking specially adapted housing assistance, the VA is not seeking public participation in promulgating this regulation. The intent of the legislation is clear, and prior publication for public comment is unnecessary. Accordingly, these changes come within exceptions to the general VA policy of prior publication of proposed regulatory development as set out in 38 CFR 1.12. Because a proposed notice is not necessary and will not be published, this change does not come within the definition of the term "rule" (5 U.S.C. 601(2)) under the Regulatory Flexibility Act, and is not subject to the requirements of that Act.

The amendment has been reviewed pursuant to Executive Order 12291, entitled Federal Regulation, and has been found to be a nonmajor regulation. The regulation will not impact on the public or private sectors as a major rule. It will not have an annual effect on the economy of $100 million or more, cause

a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program Number 64.106)

This amendment is adopted under authority granted to the Administrator by sections 210(c), 801(b)(1) and 802(b) of title 38, United States Code, and the enabling legislation.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—Housing and Community Development, Manufactured homes, Veterans.

Approved: March 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

Title 38, CFR, Part 36, LOAN GUARANTY is amended as follows:

§ 36.4404 [Amended]

Section 36.4404 is amended by changing the amount "$5,000" to "$6,000" in paragraph (b)(2).

(38 U.S.C. 802(b); sec. 304, Pub. L. 98-543).

[FR Doc. 85-7833 Filed 4-1-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-9-FRL-2808-8]

Withdrawal of Delegation of New Source Performance Standards (NSPS); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Withdrawal of Delegation.

SUMMARY: The EPA hereby places the public on notice that it has withdrawn delegation of several categories of NSPS authority from the California Air Resources Board (CARB) on behalf of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). The action to withdraw the delegation of authority was requested by the CARB and the MBUAPCD. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS categories from the State and local governments to EPA.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested withdrawal of delegation for several NSPS categories on behalf of the MBUAPCD. The request to withdraw the categories was based on the following information provided by the MBUAPCD.

1. There are no existing sources to which these categories apply.

2. These sources are not expected to locate in the District in the foreseeable future.

In response to the above, withdrawal of authority was granted by a letter dated December 18, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 "Q" Street, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 3, 1984, we are granting your request for withdrawal of delegation of authority for the following New Source Performance Standards, on behalf of the Monterey Bay Unified Air Pollution Control District.

40 CFR Part 60 Subpart	Category
P	Primary Copper Smelters.
Q	Primary Zinc Smelters.
R	Primary Lead Smelters.
S	Primary Aluminum Reduction Plants.
T	Phosphate Fertilizer Industry (PFI).
U	PFI: Superphosphoric Acid Plants.
V	PFI: Diamonium Phosphate Plants.
W	PFI: Triple Superphosphate Plants.
X	PFI: Granular Triple Superphosphate.
Y	Coal Preparation Plants.
Z	Ferroalloy Production Facilities.
AA	Iron and Steel Plants.

We have reviewed the information provided and determined that authority to implement and enforce these subparts can be withdrawn.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Monterey Bay Unified Air Pollution Control District

With respect to the areas under the jurisdiction of the MBUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS source categories should be directed to the EPA, Region 9 office at the address shown in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*)

Dated: March 15, 1985.

David P. Howekamp,

Acting Regional Administrator.

[FR Doc. 85-7666 Filed 4-1-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[A-9-FRL-2809-1]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAP); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAP authority to the California Air Resources Board (CARB) on behalf of the Northern Sonoma County Air Pollution Control District (NSCAPCD). This action is necessary to bring the NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: Northern Sonoma County Air Pollution Control District, 134 A North Street, Healdburg, CA 95448.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAP categories on behalf of the NSCAPCD. Delegation of authority was granted by

a letter dated December 18, 1984 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box, 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 5, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of National Emission Standards for Hazardous Air Pollutants (NESHAP) on behalf of the Northern Sonoma County Air Pollution Control District (NSCAPCD). We have reviewed your request for delegation and have found the NSCAPDC's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NESHAP	40 CFR Part 61 Subpart
Asbestos	M

In addition, we are redelegating the following NESHAP categories since the NSCAPCD's revised programs and procedures are acceptable:

In addition, we are redelegating the following NSPS and NESHAP categories since the MCAPCD's revised programs and procedures are acceptable:

NESHAP	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: Northern Sonoma County Air Pollution Control District

With respect to the areas under the jurisdiction of the NSCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAP source categories should be directed to the NSCAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 15, 1985.

David P. Howekamp,
Acting Regional Administrator.

[FR Doc. 85-7865 Filed 4-1-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 61

[A-9-FRL-2809-2]

Delegation of National Emission Standards for Hazardous Air Pollutants (NESHAP); State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NESHAP authority to the California Air Resources Board (CARB) on behalf of the North Coast Unified Air Pollution Control District (NCUAPCD). This action is necessary to bring the NESHAP program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NESHAP categories from EPA to State and local governments.

EFFECTIVE DATE: January 2, 1985.

ADDRESS: North Coast Unified Air Pollution Control District, 5630 South Broadway, Eureka, CA 95501.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NESHAP categories on behalf of the NCUAPCD. Delegation of authority was granted by a letter dated January 24, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA

Dear Mr. Boyd: In response to your request of December 5, 1984, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of National Emission Standards for Hazardous Air Pollutants (NESHAP) on behalf of the North Coast Unified Air Pollution Control District (NCUAPCD). We have reviewed your request for delegation and have found the NCUAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NESHAP	40 CFR Part 61 Subpart
Equipment Leaks (Fugitive Emission Sources) of Benzene.	J
Asbestos	M
Equipment Leaks (Fugitive Emission Sources) of Benzene.	V

In addition, we are redelegating the following NESHAP categories since the NCUAPCD's revised programs and procedures are acceptable:

In addition, we are redelegating the following NSPS and NESHAP categories since the MCAPCD's revised programs and procedures are acceptable:

NESHAP	40 CFR Part 61 Subpart
General Provisions	A
Beryllium	C
Beryllium Rocket Motor Firing	D
Mercury	E
Vinyl Chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the Federal Register in the near future.

Sincerely,

Judith E. Ayres,
Regional Administrator.

cc: North Coast Unified Air Pollution Control District

With respect to the areas under the jurisdiction of the NCUAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NESHAP source categories should be directed to the NCUAPCD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of Section 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: March 15, 1985.
David P. Howekamp,
Acting Regional Administrator.
[FR Doc. 85-7664 Filed 4-1-85; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201, App. A

[FIRMR Temp. Reg. 10]

Triennial Review of Agency Administration and Operation of Information Resources Management

Correction

In FR Doc. 85-7067 beginning on page 11861 in the issue of Tuesday, March 26, 1985, make the following corrections:

Appendix A—[Corrected]

1. On page 11862, in the middle column, in the paragraph designated "8.", in the fifth line, after the word "ongoing" add the following language: "review activity in the IRM area. Examples include".

2. On page 11863, in the last column, in the paragraph designated "b.", in the third line, "Policy (KMPP)" should read "Policy Branch (KMPP)".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 78-72 and 80-286]

MTS and WATS Market Structure; and Amendment of the Rules and Establishment of a Joint Board; Correction

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order adopting guidelines and Waiver of the rules; Correction.

SUMMARY: This document corrects an error in the Memorandum Opinion and Order (FCC 85-71) which refers to tariff filing dates incorrectly. The Memorandum Opinion and Order is published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Margot Bester at (202) 632-6363.

Erratum

Released: March 6, 1985.

On February 14, 1985, the Commission adopted a *Memorandum Opinion and Order* in this proceeding, FCC 85-71, released February 26, 1985. The first full sentence on page 21 (para. 41) of this *Order* inadvertently states that the National Exchange Carrier Association (NECA) and the American Telephone and Telegraph Co. (AT&T) flow-through tariff filings are to be made on March 15, 1985. As clearly stated elsewhere in the *Order*, only NECA is to file on March 15; AT&T is to file on 45 days' notice for effectiveness June 1. Accordingly, the sentence should be corrected to read as follows:

In order to ensure prompt reflection of the increased subscriber line charge revenues in the carrier common line rates and in AT&T's toll rates, we are requiring that NECA and AT&T make tariff filings which adjust their presently effective charges to reflect the increased flat rate recovery of interstate NTS costs.

Federal Communications Commission.
Albert Halprin,
Chief, Common Carrier Bureau.
[FR Doc. 85-7519 Filed 4-1-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket Nos. 78-72 and 80-286; FCC 85-71]

MTS and WATS Market Structure; and Amendment of the Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order adopting guidelines and waiver of certain sections of the rules.

SUMMARY: In this *Order*, The Commission adopts guidelines for the implemenation of the optional tariff provisions for the recovery of carrier common line costs. The Commission also adopts procedural guidelines for Joint Board review of experimental tariffs for the recovery of the interstate allocation of NTS costs and procedures to ensure that the revenues generated by the subscriber line charges for residential and single line business customers are flowed through to the public in the form of toll rate reductions. This action is taken to implement the guidelines for alternative tariffs.

EFFECTIVE DATE: The waiver of the sections in Part 69 is effective April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Margot Bester at (202) 632-6363.

Memorandum Opinion and Order

In the matter of MTS and WATS Market Structure, CC Docket No. 78-72; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286.

Adopted: February 14, 1985.
Released: February 26, 1985.
By the Commission.

I. Introduction

A. Summary

1. The Commission hereby adopts guidelines for the implementation of the optional alternative tariff provisions for the recovery of carrier common line costs provided for in our *Decision and Order* in this proceeding adopted December 19, 1984.[1] The Commission also adopts procedural guidelines for Joint Board review of experimental tariffs for the recovery of the interstate allocation of NTS costs, and procedures to ensure that the revenues generated by the subscriber line charges for residential and single line business customers are flowed through to the public in the form of toll rate reductions.

2. With regard to the procedures and support data for alternative tariffs, we provide that: (1) The alternative tariffs are to be filed as part of the local exchange carrier's basic access charge tariff; (2) state or Joint Board concurrence is to be obtained before the actual tariff filing is made with the FCC; (3) an alternative tariff can be made with the Commission at any time during the access charge year; (4) Part 61.38 data is to be filed with the alternative tariff provisions along with a letter from the state commission or the Joint Board certifying their concurrence; (5) information is to be filed with the tariff showing that it is properly targeted to prevent bypass of the local exchange by reducing the level of non-traffic sensitive cost recovery from users with a high volume of interstate toll traffic over their switched access lines;[2] (6) the submission to the state commission is to contain proposed tariff pages and all of the support data required for the filing with the Commission, although the state or Joint Board may request additional information; and (7) the state or Joint Board will be notified of any changes in an alternative tariff filing required by the Commission and allowed to withdraw its concurrence.

3. In order to ensure that the alternative tariff filings are effective in combatting bypass and do not produce distortions in the competitive

[1] *Decision and Order, MTS and WATS Market Structure,* and *Amendment of Part 67 of the Commission's Rules,* CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985).

[2] The Commission will consider requests for waiver of these requirements concerning the timing of filings and supporting materials in appropriate circumstances.

marketplace, the Commission is adopting the following substantive requirements concerning the volume discount mechanism in alternative traffis: (1) Volume discounts are to be limited to customers served by offices equipped for Feature Group D and are to be based on a particular customer's total originating switched access minutes at a single premise including use of services provided by the other common carriers as well as AT&T; (2) the discount is to be implemented by the local exchange company as a direct credit to the customer; (3) when carriers engaged in resale obtain switched access at the local business rate in conjunction with the resale of WATS, the usage over the WATS access line may be excluded from eligibility for the discount. The local exchange carriers are free to file alternative tariff provisions which do not satisfy these criteria, but they will be required to demonstrate that their filing satisfies the Commission's concerns about the effectiveness of the tariffs in preventing bypass and ensuring that the tariffs do not produce distortions in the competitive marketplace. The Commission is also directing the Joint Board to complete its review of experimental tariff proposals [3] and present its recommendations to the Commission within five months of submission of the proposal.

4. In addition, the Commission adopts the following procedures to ensure that the revenue generated by the residential and single line business subscriber line charge to be effective June 1, 1985 is flowed through to the public in the form of toll rate reductions: (1) On March 15, 1985,[4] the National Exchange Carrier Association (NECA) is to file premium and non-premium carrier common line rates to be effective June 1, 1985 reflecting a reduction in the rates which are effective today equivalent to the projected residential and single line business subscriber line charge revenues;[5] (2) the § 69.206 (b) formula is to be used in calculating the OCC non-premium carrier common line charge to be filed on March 15, 1985 by NECA; and (3) the American Telephone and Telegraph Co. (AT&T) is to file revisions to its MTS and WATS tariffs, AT&T Tariff Nos. 1 and 2 which reflect a reduction in its rates which are effective today equivalent to the projected reduction in its premium carrier common line charges[6] on 45 days' public notice to be effective June 1, 1985.[7]

B. Background

5. On November 15, 1984, the Joint Board adopted its *Recommended Decision and Order* concerning the recovery of the interstate allocation of non-traffic sensitive (NTS) local exchange costs.[8] The Commission adopted the Joint Board's recommendations with minor changes and clarifications at its meeting on December 19, 1984.[9] The Joint Board recommended that the Commission implement limited subscriber line charges for residential and single line business subscribers. Under the Joint Board proposal, a $1.00 monthly subscriber line charge for these customers would be implemented effective June 1, 1985. This would be increased to $2.00 per month effective June 1, 1986.

6. The Joint Board also recommended that local exchange telephone companies, with the concurrence of state regulatory officials or the Joint Board,[10] be given the flexibility to implement optional alternative interstate tariff provisions for the recovery of carrier common line costs in order to combat localized bypass problems. The Joint Board envisioned that these alternative tariffs would reflect volume discount rates for interstate access or other innovative rate structures designed to encourage use of the local switched network by the interexchange carriers and large volume customers. The Joint Board also emphasized that in order for these alternative rates or tariff structures to be fully effective in preventing bypass of the local network, large volume switched access users in the relevant study area must realize cost savings. The Joint Board proposed that the Commission allow a uniform monthly surcharge up to a maximum of $.35 on the subscriber line charge for all customers in the relevant study area to fund any revenue shortfall resulting from the alternative tariff filings. In addition, the Joint Board recommended that the alternative tariff filings be structured to ensure nationwide averaging of carrier common line costs as required by our access charge rules.[11]

7. In addition, the Joint Board recommended that a further Joint Board proceeding be instituted in late 1986 to examine the effectiveness of the subscriber line charges and optional alternative tariff provisions in preventing bypass, promoting economic efficiency, and preserving universal service. The purpose of this proceeding would be to recommend what, if any, further steps should be taken by the Commission. The Joint Board also urged the Commission to explore more

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[3] Alternative tariff proposals will involve mechanisms other than those specified in Part 69 of our rules for recovering carrier common line costs. Experimental tariff proposals may go beyond this to reflect different mechanisms for recovering the entire interstate allocation of NTS costs.

[4] The presently scheduled March 1, 1985 date for the NECA tariff filing reflecting the $1.00 subscriber line charge for residential and single line business customers as well as the flow through revisions to the premium and non-premium carrier common line charge is being extended to March 15, 1985 to ensure that NECA will have adequate time to prepare a filing which reflects the Commission's action concerning subscriber line charges for party line service customers. Section 69.3 of the Commission's rules is hereby waived to allow these filings to be made on less than 90 days' public notice.

[5] The NECA filing is also to reflect the refund of the exchange carrier's excess earnings for 1978. *Decision, AT&T Earnings on Interstate and Foreign Services During 1978*, 49 FR 49502 (December 20, 1978). The Commission will act on the Petitions for Stay of the refund decision before this tariff becomes effective.

[6] AT&T is also to reflect the refund of its excess earnings for 1978 in this filing. *AT&T Earnings on Interstate and Foreign Services During 1978*, 49 FR 49502 (December 20, 1978).

[7] This filing is not to reflect any other changes in AT&T's underlying costs.

[8] *See Recommended Decision and Order*, CC Docket Nos. 78–72 and 80–286, 49 FR 48325 (December 12, 1984). In this *Order*, the Joint Board also made recommendations concerning: (1) Modifications to the previously adopted measures for assisting subscribers in areas where the cost of providing telephone service is unusually high; and (2) measures to assist low income households in affording telephone service.

[9] *See* note 1 *supra*.

[10] The Joint Board recommended that alternative tariff filings be allowed pursuant to Part 69 of the Commission's rules only when the local exchange company concludes that such tariff changes are desirable and the state regulatory commission concurs in that decision. The Joint Board also recommended that the local companies be allowed to ask the Joint Board to override a state commission's objection or action on such proposals if the state commission does not do so within 60 days of the filing. Once state commission or Joint Board concurrence is obtained, the actual tariff would be filed with the FCC on 90 days' public notice and reviewed pursuant to normal FCC tariff filing procedures.

[11] The averaging of most NTS costs through the carrier common line access charge element contributes to maintaining geographically averaged interstate toll rates. In order to ensure continued averaging of carrier common line costs, the Joint Board recommended that the local exchange companies implementing alternative tariffs pay into the NECA pool as if these tariffs were not in effect. In the first year of the alternative tariff, the company's payment into the NECA pool would be based on an extrapolation from its current carrier common line minutes, ignoring the stimulation effect of the alternative tariff. In subsequent years, the number of minutes to be used in calculating the company's payments to the NECA pool would be developed based on a comparison of: (1) Projections based on the company's carrier common line minutes in the last year prior to the implementation of the alternative tariff; and (2) the previous year's carrier common line minutes and the minutes under the alternative tariff. The objective would be to develop an estimate of the company's total switched access minutes excluding the stimulation effect of the alternative tariff.

comprehensive alternative tariff mechanisms for recovering the interstate allocation of NTS costs by providing for review of such proposals through the Joint Board process.[12]

8. In recommending that local exchange companies be given the option of developing alternative tariff provisions for the recovery of carrier common line costs, the Joint Board recognized that there were a number of questions concerning the implementation of such tariffs which should be examined further. Accordingly, on December 18, 1984, the Chief, Common Carrier Bureau released an *Order Inviting Comments* [13] which requested comments concerning these implementation issues. Comments were also requested concerning guidelines for Joint Board review of experimental tariff proposals. Comments were filed on January 11, 1985. Replies were filed on January 23, 1985.

II. Order Inviting Comments

9. This *Order* requested comments concerning a number of issues related to the procedures for filing alternative tariffs and the supporting data to accompany these filings.[14] The Bureau also requested comments concerning measures to ensure that the alternative tariffs are effective in combatting bypass. In this regard, the Joint Board noted that there appeared to be two approaches for designing volume discount alternative tariffs. One approach involves changes in the access charges paid by the interexchange carriers with these changes reflected in their long distance rates to the public. The other approach involves billing credits or offsets for high volume toll users. The *Order* asked for comments concerning how we could ensure that the benefits of alternative tariff provisions implemented through changes in the interstate access charges paid by the interexchange carriers would be reflected in rates to the public.[15] The Bureau also requested comments on the need for guidelines to ensure that the alternative tariff mechanism did not undermine competition, and whether resale could undermine the effectiveness of alternative tariff provisions in combatting bypass.[16]

III. Tariff Filing Procedures and Support Data

A. Comments

10. *Approach for filing tariffs.* AT&T stated that the alternative tariffs should be filed either as exception rates or as separate rate elements within a basic access tariff. MCI Telecommunications Corporation (MCI) stated that these tariffs should be filed as a modification to the local exchange company's existing access tariff. Satellite Business Systems (SBS) argued that the local exchange carriers should incorporate all end user and alternative tariff charges in a single separate tariff in order to facilitate Commission review. The Bell Operating Companies (BOCs) were divided on this issue. Ameritech and Bell Atlantic argued that these tariff provisions should be filed as separate tariffs. BellSouth, US West, Pacific Bell and Southwestern Bell all stated that the carriers should be given flexibility in the approach used for filing alternative tariffs. NYNEX argued that alternative tariffs should be filed as a separate section in the basic access tariff. GTE Corporation (GTE), United Telephone System, Inc. (United) and Rochester Telephone Company (Rochester Telephone) stated that the carriers should be given flexibility in choosing the form of the tariff filings. The United States Telephone Association (USTA), National Telephone Cooperative Association (NCTA), National Rural Telecom Association (NRTA) and the Organization for the Protection and Advance of Small Telephone Companies (OPASTCO) (the Associations) filed joint comments taking the position that the local exchange companies should be allowed the option of choosing the approach to be used in filing the alternative tariff. The states of Florida and Michigan [17] argued that the local exchange companies should be permitted to select whether alternative tariff provisions are filed as a separate tariff or as provisions within the carrier's basic access tariff. Aeronautical Radio, Inc. (ARINC) also supported flexible procedural guidelines for the implementation of these tariffs.

11. *Supporting Materials Needed.* AT&T asserted that Part 61 of the Commission's rules provides satisfactory guidelines for tariff support material. Ameritech stated that Part 61 information should be submitted to the FCC only if the state commission does not concur with a filing. BellSouth asserted that compliance with Part 61 requirements should be sufficient but stated that the exchange carriers should be allowed to reference their annual access charge data filing. US West stated that the details of the supporting data to be provided should be left to the states and the exchange carriers since the states have their own procedures. NYNEX stated that Part 61 of the rules should apply, but in a simplified form to facilitate implementation of these filings. Pacific Bell and the Associations stated that the Part 61 data is more than adequate for FCC review of these filings. The State of Florida argued that if a state commission decides that Part 61 requirements are inadequate, it should have the authority to request additional support data. The Ad Hoc Telecommunications Users Association (Ad Hoc) and the International Communications Association (ICA) stated that Part 61 information should be required.

12. AT&T stated that no useful purpose would be served by requiring the local exchange carriers to document a specific bypass threat in order to file an alternative tariff. MCI argued that exchange companies should submit present evidence of a bypass threat in the affected study area in order to justify the apparent discrimination inherent in the alternative tariffs. SBS argued that we should establish precise rules regarding bypass showings to be required for implementation of an alternative tariff. Ameritech took the position that the state commissions did not need extensive cost data to make determinations on alternative tariffs but

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[12] For example, the Florida Public Service Commission filed a petition on November 8, 1984 for authority to implement a comprehensive unified interstate and intrastate access charge plan in Florida on an experimental basis (Florida Plan). The Commission adopted an *Order Inviting Comments* concerning the Florida Plan on January 9, 1985. CC Docket Nos. 78-72 and 80-286, 50 FR 2833 (January 22, 1985).

[13] *Order Inviting Comments*, CC Docket Nos. 78-72 and 80-286, 49 FR 50410 (Dec. 28, 1984).

[14] Specifically, the *Order* requested comments on: (a) Whether the alternative tariff provisions should be filed as exception rates or rate elements within the basic access tariff or as a separate tariff; (b) what guidelines should be adopted concerning the form of the alternative tariff proposals and the supporting data to be submitted to the FCC, the state commissions and the Joint Board (i.e. illustrative tariff pages, cost data, and documentation of a bypass threat); (c) whether we should adopt guidelines concerning development of traffic projections to be used in determining the level of the subscriber line surcharge to cover any shortfall caused by these alternative tariffs; (d) whether the local exchange carriers should be allowed to file alternative tariff provisions with the FCC (assuming state or Joint Board concurrence) at any time during the access charge year; and (e) what measures could be taken to limit the administrative burdens on the local exchange carriers and state and federal regulators.

[15] In conjunction with this, the Bureau requested information concerning the ability of local exchange companies to measure terminating interstate switched access minutes and whether such traffic should be included in alternative tariff provisions.

[16] The Bureau also requested comments on whether alternative tariff provisions reflecting a system of billing credits to subscribers would contravene the prohibition on rebates contained in section 203 of the Act.

[17] The state of Michigan and the Michigan Public Service Commission filed jointly.

stated that evidence of a bypass threat was necessary. Bell Atlantic also stated that full cost support data is unnecessary, but argued that the exchange carriers should have to demonstrate the threat of bypass. BellSouth stated that further studies of the threat of bypass should not be required. US West argued that although details of the proposals should be left to the states and the local exchange carriers, cost data should be filed, and the exchange carriers should be required to demonstrate the threat of bypass. NYNEX also took the position that the threat of bypass should be demonstrated, but stated that cost data should not be required since the total NTS revenue requirement for the access rate year will not change. Pacific Bell stated that cost data must be submitted to demonstrate the existence of potential bypass in a study area. GTE, United and Rochester Telephone all agreed that guidelines should be flexible and that cost support data and the information required to document the existence of a potential bypass threat should be kept to a minimum. The Associations argued that cost data should not be required since the surcharge and alternative tariff plan reflect a demand-based approach to the threat of bypass. They also asserted that the local carriers should only have to demonstrate potential, rather than actual, bypass in support of their tariffs. The National Cable Television Association, (NCTA) stated in its reply that these tariffs should be subject to traditional Commission tariff review procedures.

13. Both the District of Columbia Public Service Commission (D.C. Commission) and the State of Florida argued that the local exchange carrier should be required to demonstrate the existence of a bypass threat and to support its proposal with extensive cost support data. The state of Michigan argued that the local exchange carriers should be allowed to submit broad based cost support data and limit their bypass showing to a demonstration of the potential for bypass. In its reply comments, the Ohio Office of Consumers' Counsel (OCCO) recommended that alternative tariff proposals be subject to evidentiary hearings. ARINC stated that the local carriers should be required to demonstrate that bypass alternatives are available to the targeted customers in its service areas.

14. *Development of Traffic Projections.* AT&T argued that guidelines with respect to traffic forecasts should focus on the documentation required to support forecasts and not the choice of a particular forecasting method. Ameritech, Bell Atlantic and BellSouth took the position that the exchange carriers should pay into the NECA pool on the basis of actual carrier common line minutes of use rather than estimated minutes of use as contemplated by the Joint Board proposal. Bell Atlantic stated that any attempt to use projected minutes could result in lengthy proceedings to resolve disputes concerning the proper projection. This position was supported by United, ALLTEL Corp. and the Associations. US West stated that the Commission should set forth detailed guidelines to govern the exchange carriers' traffic projections and that those projections should be examined by a standard of reasonableness. NYNEX argued that separate traffic forecasts were not necessary since forecasts are an essential part of the exchange carriers' participation in the carrier common line rate development process. Pacific Bell and Southwestern Bell took the position that the guidelines for these traffic projections should be similar to those for projections used in the interstate access tariff filings. They also argued that periodic reconciliations should be required to ensure that alternative tariffs do not undermine the averaging of NTS costs for carrier common line purposes. Rochester Telephone suggested an approach which would not require traffic projections in addition to those already done for the NECA filing. The state of Florida argued that we should require justification for projected changes in demand. The state of Michigan took the position that reconciliations were not necessary since traffic projections submitted by the exchange carriers will always be subject to the scrutiny of those reviewing the tariff.

15. *Timing of Alternative Tariff Filings.* AT&T advocated a single annual filing deadline to coincide with the new access charge year after 1985. SBS also stated, that in the interest of administrative efficiency, a single annual filing deadline should be established, assuming that the exchange carriers have received state commission or Joint Board approval. Teltec Saving Communications Company (Teltec) stated that adequate notice of alternative tariff proposals must be given so that affected parties will have a meaningful opportunity to respond. All of the Bell Operating Companies as well as United, Rochester, the state of Michigan, Ad Hoc and the Associations took the position that the local companies should be allowed to file alternative tariff provisions at any time during the access year in order to maximize flexibility. Rochester also argued that the notice requirements should be waived to the extent necessary to allow implementation of alternative tariffs effective June 1, 1985. The D.C. Commission stated that these tariffs should be filed only when the access charge itself is scheduled to be filed in order to minimize confusion by the public.

16. Bell Atlantic asserted that the alternative tariff filing should be submitted to the FCC and the appropriate state commission simultaneously to ensure that the state commissions take timely action. BellSouth argued that the state commission and Joint Board should have a 30 day period for review, and that once concurrence is obtained, the local exchange carrier should be allowed to file these tariffs with the FCC on 45 days' notice. US West took the position that waivers of the FCC rules should be liberally granted in order to minimize administrative burdens. NYNEX maintained that the state should concur or reject within a 90 day period, and that the Joint Board should concur or reject within 45 days. Southwestern Bell asserted that the FCC should be liberal in granting waivers of unnecessary rules and impose a two month limit on Joint Board review. The Associations argued that administrative burdens on the local exchange carriers could be minimized if the 60 day notice period for state review and the 90 day notice period with the FCC were allowed to run concurrently. The state of Michigan stated that the tariffs could be allowed to go into effect after 30 or 60 days' notice barring negative FCC action.[18]

B. Discussion

17. *Approach for Filing Tariffs.* In the *Order*, we solicited comments from interested parties as to whether the

[18] The Ad Hoc Telecommunications Users Committee (Ad Hoc) filed a Motion for Leave to Accept Late Filed Pleading in conjunction with their reply comments. According to the motion, Ad Hoc's pleading was completed in time for filing on January 23, 1985, but inadvertently was not included in the package of filings submitted to the Commission on that day. We grant Ad Hoc's motion and accept its late-filed pleading because of this inadvertent error. US West also filed a Motion for Extension of Time to file reply comments. US West stated that it needed more time to prepare its comments because of the complex issues raised by the Bureau's *Order* and because it was also preparing pleadings at the same time in another Commission proceeding. We deny US West's motion, finding that it has not shown good cause for an extension of time in light of the need for expeditious action in this proceeding.

alternative tariff provisions for the recovery of carrier common line costs should be filed as exception rates, rate elements within the basic access charge tariffs or as a separate tariff. After consideration of the rationales offered for the various approaches, we conclude that the alternative tariff provisions should be filed in a separate section of each exchange carrier's basic access charge tariff. Such a requirement will make it easier for subscribers to learn of the existence of a discount than if the discount provisions were to appear in a totally separate tariff. We are also requiring that the filing with the state commission contain all of the information that we are requiring for the formal tariff filing with the FCC. This will ensure that the state commission has adequate information on which to base its decision concerning concurrence in the filing.

18. *Support Data Required.* We require that the cost information submitted with the alternative tariff provisions meet the requirements of Part 61.38 of our rules.[19] Part 61 provides the procedures that common carriers must follow when filing tariffs pursuant to section 203 of the Act. Part 61 has recently been revised to eliminate unnecessary requirements and adopt more flexible procedural options to ease the carriers' compliance burdens.[20] Section 61.38 specifically delineates the cost information needed to support a tariff filing. In conformity with our standard practices, we will allow § 61.38 cost support filings to cross reference data already on file. However, we will require demand and revenue projections and information concerning their effects to be submitted with the alternative tariff filing.

19. We see no need to require that carriers demonstrate the extent of actual or potential bypass in their service territory in conjunction with an alternative tariff filing. The threat of bypass has been established and is well documented in the record of the *MTS and WATS Market Structure* proceeding.[21] Nothing precludes the state commissions from requiring more detailed information regarding the threat of bypass. For our purposes, we will simply require the carriers to demonstrate that the volume discount is properly targeted to those users of switched access services with high volumes of interstate toll traffic over their switched access lines.

20. *Traffic Projections for Payments into the NECA Pool.* As noted above, the Joint Board's *Recommended Decision* (which was subsequently adopted by the Commission) provided that local exchange carriers which implement alternative tariffs would pay into the NECA carrier common line pool based on the number of carrier common line minutes which they would have billed without the stimulation effect of the alternative tariff. Thus, in the first year of an alternative tariff, the carrier's payment into the NECA pool would be based on an extrapolation from its previous year's carrier common line minutes, ignoring the stimulation effect of the alternative tariff. In subsequent years, the number of minutes to be used in calculating the company's payments to the NECA pool would be developed by comparing projections based on the company's carrier common line minutes in the last year prior to the alternative tariff and the total of the previous year's carrier common line minutes and the minutes under the alternative tariff. Under this approach, increased revenues due to the stimulation of traffic under the alternative tariffs would reduce the level of the subscriber line surcharge.

21. Many of the commenting parties stated that actual rather than projected minutes should be used to calculate a carrier's payment into the NECA pool. They argued that the procedures adopted by the Commission would be extremely difficult to implement. These assertions appear to be meritorious, and we are persuaded that we should waive Section 69.611 of our rules and provide for use of actual access minutes in calculating a carrier's payments into the NECA pool in order to eliminate the administrative burdens and uncertainty which could result from use of the previously adopted approach.

22. *Timing of Filings.* As stated in the *Recommended Decision,* the exchange carriers are required to obtain state commission [22] or Joint Board concurrence before filing alternative tariffs with the FCC.[23] This procedure is necessary to avoid FCC processing time devoted to alternative tariffs which may never receive state or Joint Board concurrence. After concurrence is obtained, the exchange carrier may file the alternative tariff provisions with the FCC at any time during the year.[24] If we require any changes in the alternative tariff filing, the state or Joint Board will be notified and given ten working days after the notice is mailed from our headquarters to withdraw its concurrence.[25] Notice to the FCC that a state or the Joint Board is withdrawing its concurrence is to be provided in writing.

IV. Substantive Requirements Concerning the Alternative Tariffs

A. Comments

23. *Tariff Structure Best Suited to Combating Bypass.* AT&T asserted that since the threat of bypass arises from the toll charges paid by high volume users, it can be combatted only by giving interexchange carriers the means to structure toll rates so as to reduce the incentive to bypass. MCI argued that volume discounts should not be offered until equal access is available to serve the large volume user. It also took the position that the local exchange carriers should provide volume discounts directly to large users. SBS agreed that the best approach to ensure that the end user does not bypass is a system of billing credits.

24. Most of the BOCs stated that the Commission should allow the local exchange carriers to implement either a system of billing credits or a carrier common line discount for the interexchange carriers. Southwestern Bell argued that a carrier common line reduction was the most practical approach. GTE stated that it was unable to say that either option was likely to produce benefits in excess of the implementation costs. United, Rochester Telephone, ALLTEL and CP National argued that the surcharge revenues

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[19] However, we will allow the states to request any additional information from the local exchange carriers that they conclude is necessary to properly evaluate the alternative tariff filings.

[20] *Amendment of Parts 1 and 61 of the Commission's Rules, Report and Order,* CC Docket No. 83-992, 49 FR 40858 (October 18, 1984).

[21] *Bypass of the Public Switched Network* (Com. Car. Bur., December 19, 1984), accepted by *Order,* FCC 84-635, released January 18, 1985.

[22] The states must concur or object within 60 days after an alternative tariff proposal is filed.

[23] Alternative tariff filings must be accompanied by a letter from the state commission or Joint Board stating that they concur in the filing. This letter is to contain the name, telephone number and address of a state commission or Joint Board contact person.

[24] *See, National Exchange Carrier Association, Inc.,* Mimeo No. 1990, released January 17, 1985. In that decision, the Chief, Common Carrier Bureau allowed NECA to increase the carrier common charge before June 1, 1985, the effective date for new access charge filings. The Bureau allowed these revisions because NECA was relying on previously filed cost data to support modification of its current rates. An alternative tariff filing would not involve changes in underlying cost support data, either.

[25] In order to ensure adequate opportunity for the state commission or Joint Board to consider any changes in an alternative tariff filing, the contact person listed in the letter of concurrence accompanying the tariff will be notified by telephone before the notice is mailed. When appropriate, the notice will also be sent by U.S. Express Mail or courier service.

should be distributed directly to qualifying end users by the local exchange companies. The Associations stated that the exchange carriers should have the option of implementing end user credits or carrier common line discounts. The D.C. Commission and the state of Michigan favored the use of billing credits. The state of Florida argued that any reduction in the carrier common line charge should result in reduced rates to the subscriber. OCCO opposed the customer surcharge, arguing that it is not worth the administrative problems it will cause. ARINC argued that the Commission should provide for billing credits or some other form of direct pass-through to end users of reduced carrier common line charges. ICA argued that the carriers benefitting from the alternative tariffs should be required to pass the cost savings through to end users. Commline, Inc.[26] opposed giving the local exchange carriers flexibility in choosing which approach to use. Bell Atlantic, BellSouth, US West, and NYNEX also stated that a billing credit is not contrary to the prohibition against rebates contained in Section 203 of the Act since the credit would be reflected in the tariff.

25. *Flow Through of Carrier Common Line Reduction.* AT&T asserted that all interexchange carriers receiving a discount should be required to show how they plan to use the savings to combat bypass, regardless of whether they are required to file tariffs. MCI argued that the Commission should require dominant carriers to insert explicit provisions in their tariffs ensuring the flow through of their access charge savings to appropriate large users. Ameritech, Pacific Bell, and Southwestern Bell stated that the interexchange carriers should be required to notify the Commission concerning how they intend to flow savings through to end users. NYNEX stated that market forces should be allowed to govern the implementation of these tariffs. The state of Florida took the position that the interexchange carriers should be required to notify the FCC and the state commissions concerning how they propose to flow through any cost savings.

26. *Effect of Alternative Tariffs on Interstate Service Competition.* AT&T asserted that providing alternative tariff credits to each interexchange carrier in proportion to its share of total carrier common line charges in the study area would avoid placing any carrier at a competitive disadvantage. MCI stated that volume discounts must be limited to offices where equal access has been implemented in order to prevent anti-competitive effects. SBS argued that the discount must not be affected by the choice of interexchange carrier. Ameritech agreed that an access charge discount for interexchange carriers could undermine competition if the discount were not based on the subscriber's total traffic regardless of the carrier involved. Bell Atlantic also stated that the credit should be structured to apply without regard to the identity of the interexchange carrier or carriers serving the end user. BellSouth stated that alternative tariff discounts directed to high volume users regardless of their choice of interexchange carrier would ensure fair competition. US West argued that implementation of these tariffs would promote fair interexchange competition regardless of the approach used. NYNEX stated that to ensure fair competition, the exchange carriers should be required to apply the same percentage discount to all carrier common line rates for the various feature groups. Southwestern Bell stated that the tariff proposal which could be considered to be the most non-discriminatory—an across the board decrease in carrier common line rates—may be the least effective method of reducing the incentive for bypass.

27. GTE and United both asserted that the interests of all of the interexchange carriers could be protected by prohibiting the alternative tariffs from discriminating between the services provided by the interexchange carriers. Rochester Telephone stated that making high volume users of the local switched network eligible for a discount would minimize the effect on competition. The Associations stated that the exchange carriers should be required to apply the same percentage discount to all carrier common line feature group rates in order to ensure that implementation of these tariffs would not adversely affect competition.

28. The D.C. Commission stated that a system of billing credits to end users would have no impact on toll competition. The state of Michigan argued that if an exchange carrier proposes an alternative tariff for which non-premium access customers are eligible, such customers should receive a discounted credit. ICA stated that any alternative tariff should be consistently applied to all interexchange carriers and their customers who have the potential for bypass. The National Cable Television Association expressed concern that the alternative tariff mechanism may be used to discourage the development of new services. Commline also expressed concern that the implementation of alternative tariffs might hamper the development of economically efficient alternative local distribution technologies.

29. *Inclusion of Terminating Access Traffic.* AT&T stated that the amounts paid for both originating and terminating access traffic should be included in any volume discount because purchasers of switched access may have significant volumes of terminating traffic. Ameritech, Bell Atlantic, and Pacific Bell all maintained that any alternative tariff mechanism must focus on originating access, since terminating access cannot be measured. BellSouth, US West, NYNEX and Southwestern Bell argued that the local exchange carriers should decide whether terminating minutes should be considered in their plan. Rochester Telephone stated that alternative tariffs should exclude terminating usage. The Associations argued that the local exchange companies should be allowed to decide whether to include terminating usage in alternative tariff proposals. The state of Florida took the position that local exchange carriers which can measure terminating traffic should include terminating switched access minutes in any discount. The state of Michigan argued that basing alternative tariffs on originating traffic would be preferable, but stated that the carriers should not be precluded from proposing tariffs which apply to terminating minutes.

30. *Resale.* AT&T argued that resellers should be treated in the same manner as other customers of the exchange carrier. AT&T further argued that the potential for resale to undermine the effectiveness of the alternative tariffs could be minimized by structuring the tariffs to provide credits to the interexchange carriers based on their total carrier common line payments. MCI stated that the alternative tariffs should not contain resale restrictions because resale will help restrain exchange carrier abuse of the alternative tariff mechanism. Teltec argued that resale is a fundamental force in a free market and will not undermine the effectiveness of the alternative tariffs.

31. Ameritech argued that resale could undermine the effectiveness of alternative tariffs reflecting volume discounts. Ameritech stated that an end user credit would mitigate this problem since the tariff could be designed so that resale carriers would not qualify. Bell Atlantic stated that the extent and effect of resale are impossible to predict at this

[26] Colony Communications, Inc. concurred in Commline's comments and replies.

time, but urged the Commission to remain receptive to proposals for dealing with resale problems if they develop. BellSouth and Pacific Bell stated that since resellers can benefit from bypass, they should be given the same incentives to remain on the switched network as other high volume users. US West, NYNEX, and Southwestern Bell argued that resale could undermine the effectiveness of the alternative tariff provisions since resellers could qualify as large users and pass along the benefits of the lower rates to smaller users who would not qualify for lower rates individually. NYNEX and Southwestern Bell stated that the local exchange carriers should be given maximum discretion regarding the structure of alternative tariffs. United and Rochester Telephone stated that any discount plan is susceptible to arbitrage through resale and argued that the Commission should permit the exchange carriers to exclude resellers from eligibility for the discounts. The Associations also stated that resale could undermine the effectiveness of the tariff. The state of Florida argued that resellers should be treated as interexchange carriers with regard to bypass credits. The state of Michigan took the position that the local exchange carrier should bear the burden of developing an alternative tariff which does not promote resale.

B. Discussion

32. The alternative interstate tariff mechanism should serve as a useful supplement to subscriber line charges in combatting localized bypass problems. However, we cannot allow alternative tariffs to undermine full and fair interexchange competition. We must also ensure that these tariffs are properly structured to effectively reduce high volume users' incentives for bypass of the local switched network. Based on our analysis of the comments in this proceeding, we have concluded that there are certain tariff structures which appear to satisfy our concerns in this regard. We are not prohibiting the local exchange carriers from filing alternative trariffs using other approaches which satisfy these concerns. However, we emphasize that alternative tariff filings which would undermine interexchange competition or which are not structured to effectively reduce bypass incentives will not be allowed to become effective.

33. In order to ensure that the alternative tariff filings are effective in combatting bypass and do not produce distortions in the competitive marketplace, we conclude that volume discounts in the alternative tariffs should be limited to customers served by offices equipped for Feature Group D and should be based on a particular customer's total originating switched access minutes from a single premise. The total traffic volume on which the discount is based must include services offered by the other common carriers (OCCs) as well as AT&T in order to avoid adverse competitive effects. Since a particular customer's usage of OCC services employing Feature Groups A and B from a particular location cannot generally be measured, we believe that alternative tariff discounts must be limited to customers served by offices which have been equipped for Feature Group D. A customer's traffic from a particular location using an OCC service employing Feature Group D can be measured. There may also be some OCC traffic in these offices using premium Feature Group A which cannot be measured in this manner, but the amount of this traffic should be sufficiently limited to allow implementation of volume discount alternative tariffs without an appreciable effect on interexchange competition.[27] Discounts must also be directed to subscribers with high volumes of interstate toll traffic from a particular location because it is the concentration of toll traffic to or from a single location that creates the incentive to bypass the switched local network. Directing the discount to customers with high volumes of toll usage without regard to the number of locations involved would not target the discount to those users with the greatest inventive to bypass.

34. We also conclude that volume discount alternative tariffs should be implemented by the local exchange carrier as a direct credit to the subscriber.[28] This approach will eliminate the difficulties involved in ensuring that the interexchange carriers flow the benefits that they would receive from a carrier common line discount through to high volume users. It also appears that this approach will be much more effective in ensuring that the benefits received by the high volume user are in fact proportional to that customer's total interstate toll usage from a particular location (including OCC usage). Such end user credits do not constitute an unlawful refund or rebate pursuant to section 203 of the Communications Act, 47 U.S.C. 203, since the credit will be set out in the local exchange carrier's tariff.[29] *MCI Telecommunications Corp.*, 53 FCC 2d 572 (1975).

35. We also find that alternative tariff discounts should generally be limited to originating switched access minutes. The comments indicate that terminating interstate traffic to a particular customer location cannot be measured under normal circumstances. Several of the commenting parties also state that exclusion of terminating toll traffic will not undermine the effectiveness of the alternative tariffs because toll traffic is usually more highly concentrated at the originating end.

36. A number of the commenting parties took the position that resale would undermine the effectiveness of the alternative tariffs. Other parties argued that carriers engaged in resale are potential bypassers and should receive the volume discount. We conclude that there are certain circumstances under which a carrier engaged in resale does not have an incentive to bypass on the originating end and should not qualify for an alternative tariff volume discount. In particular, a carrier engaged in resale should not receive the discount for traffic over a WATS closed end access line when the carrier obtains switched access to the local network at the local business rate in conjunction with resale of the WATS service. In this situation, the carrier engaged in resale has no incentive to bypass because replacement of the WATS access line with a special access connection would force the carrier to pay switched access charges for access to the local network. This is the result of our rules which allow a carrier reselling WATS to obtain access to the local exchange at the local business rate in order to prevent double payment of switched access charges—once for customer access to the resale carrier and a second time for the resale

[27] Since the charge for premium Feature Group A access and Feature Group D access will be similar, the OCC can be allowed to make a business judgment as to whether loss of the discount offsets other possible advantages which may be associated with the use of premium Feature Group A.

[28] Under this approach, the local exchange carrier would show an interstate credit stated in a dollar amount on the local bills rendered to customers with high volumes of interstate toll traffic. This credit could be applied against the customer's charges for interstate access or local exchange service. Use of the credit in this fashion would not affect jurisdictional separations and would allow use of the credit mechanism even if the implementing local exchange carrier no longer provided billing services for AT&T or any other interexchange carrier.

[29] Section 203, 47 U.S.C. 203, requires that the carriers file tariffs showing the rates, terms and conditions for their service offerings. It prohibits them from charging, or otherwise receiving amounts other than those set out in these tariffs. Refunds or rebates of the tariffed charges are also prohibited. From this language it is clear that the prohibition on rebates does not limit the tariff structures which the carriers may use. Instead, it prohibits a net charge which is different than that shown in the tariff.

carrier's access to the WATS serving office.

V. Procedural Guidelines for Joint Board Review of Experimental Tariff Proposals

A. Comments

37. AT&T stated that both the local exchange carriers and the state commissions should be permitted to develop experimental tariff plans. SBS argued that an experimental tariff with unified state and federal charges would be illegal if filed with a state since the FCC cannot delegate its regulatory responsibilities. Teltec expressed concern that certain aspects of the experimental tariff proposed by Florida are contrary to established federal policies and stated that careful federal review is required before experimental tariffs are allowed to become effective. Ameritech and Pacific Bell both stated that the Commission should adopt very flexible guidelines in this area since the purpose of these tariffs is to develop data concerning different cost recovery approaches. BellSouth and Southwestern Bell both argued that experimental tariffs should be consistent with FCC access charge policies.

38. GTE argued that experimental tariffs should be developed by the local exchange carriers, not the state commissions. United took the position that the FCC should defer acceptance of these tariffs until 1986 pending the resolution of issues relating to state flexibility in designing alternative tariffs. Rochester Telephone proposed that the Commission adopt a policy which is flexible enough to permit exchange carriers to devise experiments suited to their individual circumstances, but strict enough to discourage the filing of numerous speculative proposals. The Associations argued that our guidelines for experimental tariffs should be the same as for alternative tariffs.

39. The state of Florida took the position that state commissions should have a great deal of latitude in designing experimental tariffs. OCCO also asserted that the states should be allowed to experiment with different NTS cost recovery the issues concerning the implementation of alternative tariffs before considering experimental tariffs. ARINC emphasized that experimental tariffs should not delay implementation of access charges.

B. Discussion

40. Although a number of parties have suggested the adoption of substantive guidelines for Joint Board review of experimental tariff proposals, we believe that steps to ensure prompt review of these proposals are all that is desirable. Clearly, an experimental tariff proposal which reflects an approach to NTS cost recovery that is fundamentally different from that recently recommended by the Joint Board and adopted by the Commission will require very careful scrutiny. However, we do not believe that such proposals should be barred. Accordingly, we are directing the Joint Board to complete preparation of its recommendations concerning such proposals within five months of the submission of the proposal.[30] Review of experimental tariff proposals which involve relatively minor changes in the recently adopted NTS cost recovery structure should be completed in less time whenever possible.

VI. Flow Through of Subscriber Line Charge Revenues

41. In the Commission's December 19, 1984 *Decision and Order* in this proceeding, we stated that we would adopt guidelines to ensure that the full amount of the revenue generated by the $1.00 residential and single line business subscriber line charge is flowed through to consumers in the form of reduced interstate toll rates.[31] There are a number of factors such as changes in underlying NTS costs as well as the increased subscriber line charge revenues which could affect the level of the NECA carrier common line charge. In order to ensure prompt reflection of the increased subscriber line charge revenues in the carrier common line rates and in AT&T's toll rates, we are requiring that NECA and AT&T make tariff filings on March 15, 1985 which adjust their presently effective charges to reflect the increased flat rate recovery of interstate NTS costs. These filings are not to reflect any other change in costs or modifications in rate structure. This will ensure that the rate reductions flowing from implementation of residential and single line business subscriber line charges are not delayed by the need to consider other cost or rate structure changes reflected in the same tariff filing. NECA and AT&T are free to make other tariff filings reflecting changes in underlying costs or rate structures.

42. Accordingly, we are directing NECA to file carrier common line rates on March 15, 1985 [32] to be effective June 1, 1985, that reflect a reduction in the premium and non-premium rates that are effective today that is equivalent to the projected revenues from the residential and single line business subscriber line charges and the exchange carrier portion of the excess 1978 earnings.[33] The § 69.206(b) formula is to be used in lieu of the § 69.206(c) formula for purposes of computing the non-premium per line and per minute charges. For purposes of this filing, the carrier common line revenue requirement described in §§ 69.205(b) and 69.206(b) will be computed on the assumption that revenues from the current premium and non-premium carrier common line charges would have equaled the carrier common line revenue requirement in the absence of residential and single line business subscriber line charges. In order to achieve consistency, we are also directing NECA and all exchange carriers that file separate charges for other elements to use the § 69.206(b) formula to compute all premium and non-premium charges.

43. We are also directing AT&T to file MTS and WATS rates which reflect a reduction in its rates in effect today equivalent to the projected reduction in its premium carrier common line charge payments as well as its 1978 excess earnings[34] on 45 days' public notice to be effective June 1, 1985. AT&T is to divide this reduction between its domestic and foreign services in proportion to the switched access minutes of use for these services. AT&T is to reflect its reduction in domestic rates in the form of an across the board reduction in all of its MTS and WATS offerings. AT&T is not to include changes in its domestic rate structure in this filing. We are not requiring AT&T to implement an across the board reduction in its foreign toll rates. In light of the fact that AT&T's earnings on particular international toll routes may vary and the other unique factors affecting international toll service, we believe that targeting the reduction to particular routes may be appropriate in this area. To the extent that AT&T does not implement an across the board international toll rate reduction, it will be required to file cost support data and other information necessary to justify its decisions concerning targeting of the reductions in its international rates. We

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[30] The Joint Board may extend the period for its review of experimental tariff proposals by one month when necessary. Review of the experimental tariff proposal filed by the Florida Public Service Commission is to be completed within five months of the release of the Commission *Order* requesting comments on that proposal.

[31] CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985). In conjunction with this, we hereby waive § 69.502 of the rules to extend the effective date of this provision pending further Commission action.

[32] *See* note 4, *supra*.

[33] *See* note 5, *supra*.

[34] *See* note 6, *supra*.

will scrutinize AT&T's filing to ensure that any selective international rate reductions are not anti-competitive in nature.

VII. Ordering Clauses

44. Accordingly, IT IS ORDERED, That local exchange carriers proposing alternative tariff provisions for the recovery of carrier common line charge revenues shall follow the procedural and substantive guidelines contained herein.

45. It is further ordered, That §§ 69.3, 69.206(c), 69.502 and 69.611 of the Commission's rules ARE WAIVED.

46. It is further ordered, That the Ad Hoc Telecommunications Users Committee's Motion for Leave to Accept Late Filed Pleading is granted.

47. It is further ordered, That US West's Motion for Extension of Time to file comments is denied.

48. The Joint Board is directed to review experimental tariff filings in accordance with the schedule set out herein.

49. NECA and AT&T are directed to make tariff filings as described herein.[55]

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-7748 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-522; RM-4653]

FM Broadcast Stations in Pine Top, AZ; Changes in Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of D & M, Inc., allots FM Channel 294 to Pine Top, Arizona, as that community's first FM Channel.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Pine Top, Arizona); MM Docket No. 84-522, RM-4653.

Adopted: March 13, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24408, published June 13, 1984, proposing the allotment of Class C FM Channel 294 to Pine Top, Arizona, as that community's first allotment. The *Notice* was adopted in response to a petition filed by D & M, Inc. ("petitioner"). Petitioner submitted supporting comments reaffirming its interest in the channel. Double Eagle Broadcasting ("DEB"), licensee of Station KXJJ, Clifton, Arizona, submitted an unacceptable counterproposal requesting Channel 293 at Clifton and Channel 275 at Pine Top in order to upgrade its facilities to a Class C station.[1] Petitioner filed reply comments in response to the comments. KBW Associates, Inc. ("KBW"), licensee of Stations KRFM and KVSL (AM), Show Low, Arizona filed reply comments in opposition to the proposal. Petitioner filed a "Motion to Strike" and KBW filed an opposition thereto.[2] Petitioner seeks to have KBW's reply comments struck because it contends they raise new matters which were more appropriately filed as comments.

2. KBW argues that the allocation of Channel 294 to Pine Top would preclude the use of that channel as well as others throughout the state of Arizona. KBW states that Pine Top is more than adequately served by numerous radio services, and should be denied an allotment.

3. The issues raised by KBW are not valid reasons for considering denying an assignment. See, *Revision of FM Assignment Policies and Procedures*, BC Docket No. 80-130, 90 FCC 2d 88 (1982), wherein the Commission eliminated preclusion as a consideration. Further, the Commission indicated that it would continue to give emphasis to local service. Therefore, a community's need for first local service cannot be met by other stations not licensed to that locality.

4. After careful consideration of the proposal, the Commission believes that the public interest would be served by the allotment of FM Channel 294 to Pine Top, Arizona, thereby providing that community with a first FM service. The assignment can be in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

5. Concurrence of the Mexico government has been received since Pine Top is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with regard to the following community:

City	Channel No.
Pine Top, AZ	294

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 US.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Divisions, Mass Media Bureau.

[FR Doc. 85-7750 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-520; RM-4693]

FM Broadcast Stations in Ellwood, CA; Change in Table of Allotments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 233 to Ellwood, California, as that community's first local FM allotment, at the request of Thomas M. Eells.

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[55] These actions are taken pursuant to sections 1, 4 (i)&(j), 201, 202, 203, 205, 218, 221(c), 403, and 410 of the Act, 47 U.S.C. 151, 154 (i)&(j), 201, 202, 203, 205, 218, 221(c), 403 and 410. This *Order* is to be effective March 14, 1985. To the extent that the Administrative Procedure Act, 5 U.S.C. s 553, would normally require publication of the provisions adopted herein 30 days prior to their effective date, the Commission finds that there is good cause to make these provisions effective March 14, 1985 in order to allow interested companies to go forward with alternative tariff filings as soon as possible and to allow the prompt filing of the NECA and AT&T flow through tariffs with a substantial period of public notice.

[1] The counterproposal is unacceptable because Channel 293 at Clifton, is short-spaced to a vacant channel at Las Mosco, Mexico (Channel 292).

[2] Since KBW is responding to DEB's counterproposal we believe it is appropriate for consideration. Therefore, the Motion to Strike is denied.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Ellwood, California); MM Docket No. 84–520, RM–4503.

Adopted: March 13, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 24409, published June 13, 1984, seeking comments on the allotment of Class B FM Channel 233 to Ellwood, California, as that community's first local service. The *Notice* was issued in response to a petition filed by Thomas M. Eells ("petitioner") and he has filed comments reiterating his intent to apply for the channel.

2. The *Notice* raised the issue of whether Ellwood qualified as a community, as required by section 307(b) of the Communications Act, as it is not listed in the 1980 U.S. Census. In response, petitioner states that the Resource Management Department of the County of Santa Barbara considers Ellwood to be a distinct community and attaches an affidavit attesting to this belief. Petitioner also points out that the National Automobile Club includes Ellwood in its map entitled "Santa Barbara County and Its Communities." He states that Ellwood has its own school, a post office with an Ellwood zip code, and a number of commercial establishments which identify themselves with the community, such as Ellwood Graphics, Ellwood Apartments, and the Ellwood Mutual Water Company. Petitioner also asserts that there are community-oriented organizations such as the Ellwood School Parent-Teacher Association, Lion's Club and Optimists Club, among others.

3. We believe that the petitioner has provided us with sufficient indicia to conclude that Ellwood does meet the Commission's definition of a community for allotment purposes. It is an identifiable population grouping with businesses and community organizations which identify themselves with the residents of Ellwood. Further, the County of Santa Barbara recognizes a specific area as the community of Ellwood, with a population of 13,076 persons.

4. Channel 233 can be allotted in compliance with the Commission's mileage separation requirements, provided Station KBBY, Channel 236 at Ventura, California, moves from the site where it is presently licensed to the new site for which a construction permit has been granted (BPH–831216AL).

5. We believe the public interest would be served by allotting Channel 233 to Ellwood, California, as it could provide that community with its first local FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Ellwood, CA	233

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7758 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–440; RM–4657, RM–4679]

FM Broadcast Stations in Grand Junction, CO, Change in Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channels 282 and 300 to Grand Junction, Colorado, at the request of Daniel L. Harris and Keith E. Lamonica, respectively. The assignment of the two channels could provide Grand Junction with its third and fourth local FM services.

EFFECTIVE DATE: May 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Grand Junction, Colorado); MM Docket No. 84–440, RM–4657, RM–4679.

Adopted: March 11, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 20312, published May 14, 1984, requesting comments on the proposal to assign FM Channels 282 and 300 to Grand Junction, Colorado, as that community's third and fourth local services, at the request of Daniel L. Harris ("Harris") and Keith E. Lamonica ("Lamonica"), respectively. Comments were filed by International Broadcast Network, Inc. ("IBN"), by Decker Communications ("Decker"), and by Larry Capetto ("Capetto"). Comments in opposition to the assignments were filed by Mesa Broadcasting Company ("Mesa") to which Lamonica responded. Both channels can be assigned in compliance with the Commision's minimum distance separation and other technical requirements.

2. Mesa is the licensee of one of the two existing Grand Junction FM stations, Station KQIX, Channel 226, and AM Station KQIL. Mesa contends that Grand Junction is already adequately served by the two existing FM stations and four AM stations, and will receive service from three additional FM stations licensed to nearby communities, two of which are now on the air. Therefore, based on the size of Grand Junction, with a 1980 U.S. Census population of 28,144 persons, it feels that the community does not provide a sufficient population and economic base to support two additional radio services. However, it states that should the Commission feel that the assignment of the two additional channels would be in the public interest, it requests that we assign lower-powered Class A frequencies instead of the requested Class Cs channels.

3. As noted earlier, four parties have expressed an intention to apply for the Class C FM channels, if assigned. Both IBN and Decker, in addition to expressing their intention to apply for one of the channels, if assigned, provide demographic data to show that Grand Junction is a substantial community which could benefit from the increased aural service. Lamonica, the only party filing reply comments, reiterates his interest in a Class C and specifically discounts any interest in utilization of a Class A channel. It appears that Mesa's opposition to the assignment of two additional Class C allocations is centered around its concern of economic harm to its existing co-owned stations. However, this argument is not sufficient justification for its denial. For as we have held previously, the question of economic impact is more appropriately considered when raised in connection with an application for a channel. See, *Chadron, Nebraska*, 52 R.R. 2d 1480 (1982), and *Sacramento, California*. 50 R.R. 2d 951 (1982).

4. In view of the above considerations and having found no policy objections to the proposal, we believe the public interest would be served by assigning Channels 282 and 300 to Grand Junction, Colorado. As noted earlier, these assignments could provide a third and fourth local FM service to the community. Accordingly, pursuant to the authority contained in sections (i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Grand Junction CO	222, 226, 282, and 300.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7749 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-509; RM-4690]

FM Broadcast Stations in Slayton, MN; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 276A to Slayton, Minnesota, in response to a petition filed by Dorothea A. Kinsman. The assignment could provide a first local broadcast service for Slayton.

EFFECTIVE DATE: May 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Slayton, Minnesota); MM Docket No. 84-509, RM-4690.

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 24399, published June 13, 1984, in response to a petition filed by Dorothea A. Kinsman ("petitioner"). The *Notice* proposed the assignment of FM Channel 276A to Slayton, Minnesota, as that community's first FM service. Petitioner filed comments in support of the *Notice* and restated her intention to apply for the channel, if assigned.

2. A staff study indicates that Channel 276A could be assigned to Slayton, Minnesota, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. However, this allotment would limit the 16 kilometer buffer zone of Station KTFC, Sioux City, Iowa.[1]

3. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first FM service in that community.

[1] Existing Class C stations operating with less than a 300 meter antenna height are now permitted the buffer zone. However, this requirement does not apply to petitions such as the instant one which were filed before March 1, 1984. See BC Docket 80-90, *recons.* 97 FCC 2d 279 (1984).

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules is amended with respect to the community listed below:

City	Channel No.
Slayton, MN	276A

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7753 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-515; RM-4398]

FM Broadcast station in Stephenville, TX; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 252A to Stephenville, Texas, in response to a petition filed by Ms. R.K. Jack. A counterproposal filed by Mayor J.C. Pratt, for a Channel 252A assignment to Dublin, Texas, is dismissed.

EFFECTIVE DATE: April 29, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Stephenville, Texas); MM Docket 83-515, RM-4398.

Adopted: March 13, 1985.
Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. The Commission in its *Notice of Proposed Rule Making*, 48 Fed. Reg. 28493, published June 22, 1983, proposed the assignment of Channel 252A to Stephenville, Texas, as its second FM allocation, in response to a petition filed by Ms. R.K. Jack ("petitioner"). A *Further Notice* was adopted in this proceeding (49 FR 15096, published April 17, 1984), to consider substituting Channel 252A for Channel 289, rather than adding Channel 252A as a second FM service. In response to the *Further Notice*, Dixie Broadcasters ("Dixie") [1] filed comments partially opposed to the proposal. Comments in support were filed by Donita S. Jones. The original petitioner, Ms. R.K. Jack, did not respond to the *Further Notice*. On June 11, 1984, Jack L. Pratt, Mayor of Dublin, Texas, submitted a letter requesting that Channel 252A be assigned to Dublin.

2. Since the *Further Notice* was adopted, the Commission has issued a construction permit to "Dixie" for operation on Channel 289 at Stephenville, Texas. Thus the comments of "Dixie" requesting that this proceeding be held in abeyance until such time as the Commission acts on its application to modify the facilities of Station KWWM (FM) from Channel 252A to Channel 289, is moot.

3. The request of Mayor Pratt to assign Channel 252A to Dublin, Texas, did not meet the filing deadline for counterproposals as set forth in § 1.420(d) of the Rules. Therefore, since no justification was set forth for the late filing, we have not accepted the proposal for consideration in this proceeding.

4. After consideration of the comments filed in response to the *Further Notice*, we find that the public interest would benefit from the assignment of Channel 252A at Stephenville as it could provide for a second FM service to that community. Although the petitioner did not express a continuing interest in the proposal, Donita S. Jones, in comments, stated her intention to apply for Channel 252A at Stephenville, if assigned.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective April 29, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Stephenville, TX	252A, 289.

6. It is further ordered, That the request of Mayor Jack L. Pratt, seeking to have Channel 252A assigned to Dublin, Texas, is dismissed.

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7757 Filed 4–1–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–462; RM–4646]

FM Broadcast Stations in Christiansted, St. Croix, Virgin Islands; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Paul L. Crogan, assigns Channel 232A to Christiansted, St. Croix, Virgin Islands, as that community's fifth local FM broadcast service.

EFFECTIVE DATE: May 1, 1985.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Christiansted, St. Croix, Virgin Islands); MM Docket No. 84–462, RM–4646.

Adopted: March 11, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 21989, published May 24, 1984, proposing the assignment of FM Channel 232A to Christiansted, St. Croix, Virgin Islands, as that community's fifth local broadcast service, at the request of Paul L. Crogan ("Petitioner"). Petitioner filed supporting comments restating an intention, either personally or as part of a corporation formed by him, to apply for the channel, if assigned. Joseph Bahr ("Bahr") filed an opposition to the proposal, to which the petitioner responded.

2. Bahr, licensee of FM Station WVIS (Channel 291), Fredericksted, St. Croix, Virgin Islands suggests the assignment of Channel 232A to Charlotte Amalie Virgin Islands, instead.[1] The request was unacceptable as a counterproposal because Bahr failed to express an intention to apply for a channel at Charlotte Amalie, if assigned. Generally the Commission does not consider alternate uses of a channel without an interest therefor. See *Second Report and Order* in Docket No. 80–130, 90 FCC 2d 88 (1982).

3. Petitioner states that the opposing comments were actually late-filed comments to the Charlotte Amalie-Isabel Segunda proceeding, MM Docket No. 83–1142, and should not be considered herein. See footnote 1 *supra*.

4. The Commission believes that the public interest would be served by the assignment of FM Channel 232A to Christiansted, St. Croix, Virgin Islands, as a fifth local FM service. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel No.
Christiansted, VI	232A, 236, 258, 262, and 291.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

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[1] Dixie Broadcasters is the licensee of Station KWWM (FM), Stephenville, Texas.

[1] Recently the Commission assigned Channel 296A to Charlotte Amalie in *Report and Order*, MM Docket No. 83–1142, 49 Fed. Reg. 36379, published September 17, 1984.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7750 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-646; RM-4719]

FM Broadcast Stations in Stevens Point, WI; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 285A to Stevens Point, Wisconsin, as that community's third local FM assignment, at the request of Stevens Point Broadcasters. The request of Baraboo Broadcasting Corp. to assign Channel 285A to Wisconsin Rapids, Wisconsin, is dismissed as technically defective.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of section 73.202(b), Table of Assignments, FM Broadcast Stations (Stevens Point, Wisconsin); MM Docket No. 84-646, RM-4719.

Adopted: March 13, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 27960, published July 9, 1984, proposing the assignment of Channel 285A to Stevens Point, Wisconsin, at the request of Stevens Point Broadcasters ("petitioner"). The assignment of Channel 285A could provide that community with its third local FM service. Comments were filed by the petitioner reiterating its intent to apply for Channel 285A, if assigned, and Baraboo Broadcasting Corp. ("Baraboo"), to which the petitioner responded.

2. In its comments, Baraboo requests that Channel 285A be assigned to Wisconsin Rapids, as that community's second FM allocation. It contends that Wisconsin Rapids is a city of "equal size and equal need." Therefore, according to Baraboo, Wisconsin Rapids should receive its second local FM service before Stevens Point receives its third. Petitioner, in its reply comments, avers that should Channel 285A be assigned to Wisconsin Rapids, the transmitter would have to be located 10.9 miles outside the city limits. It notes that a transmitter located this distance from the city limits would not be able to provide the requisite city grade signal to the entire community of license. Therefore, the channel should be assigned to Stevens Point where it can be utilized at a site which will provide the required signal coverage to the entire community and a party has expressed an interest in use of the frequency, according to the petitioner.

3. The staff has conducted its own analysis of the assignment of Channel 285A to Wisconsin Rapids and confirms the findings of the petitioner. In order to prevent short-spacing to Station WAXX, Channel 283 at Eau Claire, Wisconsin, and to Station WNFM, Channel 285A at Reedsburg, Wisconsin, the transmitter for a Channel 285A operation at Wisconsin Rapids would have to be located at least 8.7 miles northeast. At this distance, the requisite city grade (70 dBu) signal cannot be provided to the community. Therefore, the request of Baraboo will be dismissed as technically defective. See Section 73.315 of the Rules.

4. We believe the assignment of Channel 285A at Stevens Point, Wisconsin, to be in the public interest, as it could provide the community with its third local FM service. The channel can be assigned in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) southwest.

5. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, That effective May 3, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended to read as follows for the community listed below:

City	Channel No.
Stevens Point, WI	244A, 250, and 285A.

6. It is further ordered, That the request of Baraboo Broadcasting Corp. to assign Channel 285A to Wisconsin Rapids, Wisconsin, is dismissed.

7. It is further ordered, That this proceeding is terminated.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-7760 Filed 4-1-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-496; RM-4704]

FM Broadcast Stations in Sturgeon Bay, WI; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 249A to Sturgeon Bay, Wisconsin, in response to a petition filed by Door County Radio Company as that community's third FM assignment.

EFFECTIVE DATE: May 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 76.202(b), Table of Assignments, FM Broadcast Stations (Sturgeon Bay, Wisconsin); MM Docket No. 84-496, RM-4704.

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 23899, published June 8, 1984, proposing the assignment of FM Channel 249A to Sturgeon Bay, Wisconsin as that community's third FM assignment. The *Notice* was adopted in response to a petition filed by Door County Radio Company ("petitioner"). Supporting comments were filed by petitioner in which it reaffirmed its intention to apply for the channel, if assigned. Comments in opposition were filed by Door County Broadcasting

Company, Inc. ("Door County") to which petitioner did not respond.

2. In opposition Door County asserts that Sturgeon Bay has "sufficient radio service" in a "very small city" which also receives broadcasts from Marinette, Wisconsin, and Menominee, Michigan. Further, the addition of another radio service in the Sturgeon Bay market would "fractionalize the audience . . . resulting in reduced services to the community." Door County concludes, therefore, that an "additional radio station in Sturgeon Bay would not be in the public interest, convenience or necessity."

3. The focal point of Door County's opposition appears to be its concern of economic harm if the Commission allocates a third FM channel to Sturgeon Bay, Wisconsin. However, the Commission's FM policy revisions in 1982,[1] eliminated any consideration of economic impact as an issue in a rule making proceeding. As we stated therein and have held on other occasions, that if the status of a community is not in question and a petitioner believes that the service is needed, the Commission does not generally question this judgment. Rather, such a matter is a business judgment that should be made by the applicant. If the station's viability proves to be erroneous, then the applicant, and not the public, will suffer the unpropitious consequences of a business failure. See, *Chadron, Nebraska*, 52 R.R. 2d 1480 (1982); and *Sacramento, California*, 50 R.R. 2d 951 (1982).

4. As to Door County's allegation that the addition of another radio station in Sturgeon Bay would not be in "the public interest, convenience or necessity," this is a burden which it must bear to establish how, in fact, the public would be harmed by the competition.[2] It is a matter, therefore, that can best be addressed at the application stage rather than in a rule making proceeding. See *Bend, Oregon*, 46 FR 62858, published December 29, 1981, and cases cited therein.

5. In consideration of the foregoing, it appears that the benefits of the proposal are clear, since it could provide an additional competitive service to the community and a third local nighttime voice for the expression of diversified programming. We believe this determination is consistent with the Commission's policy favoring competition through the authorization of additional broadcast services, and is consistent with the mandate of § 307(b) of the Communications Act of 1934, as amended, to provide a fair, efficient and equitable distribution of radio services among the various communities. The proposal is also in accord with our assignment priorities set forth in the *Second Report and Order, supra*, and with traditional assignment principles.[3]

6. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Rules. The concurrence of the Canadian government in the assignment of Channel 249A to Sturgeon Bay has been received.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 1, 1985, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended, for the following city:

City	Channel No.
Sturgeon Bay, WI	230, 249A, and 261A.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7751 Filed 4–1–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–503; RM–4759]

TV Broadcast Stations in Oshkosh, WI; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel *50 to Oshkosh, Wisconsin, as that community's first noncommercial educational television service, in response to a petition filed by the State of Wisconsin-Educational Communications Board.

EFFECTIVE DATE: May 1, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Oshkosh, Wisconsin); MM Docket No. 84–503, RM–4759.

Adopted: March 13, 1985.
Released: March 25, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rulemaking*, 49 FR. 24406, published June 13, 1984, which proposed the assignment and reservation of UHF television Channel *50 to Oshkosh, Wisconsin, as that community's first local educational television facility, in response to a petition filed by the State of Wisconsin-Educational Communications Board ("petitioner"). Supporting comments were filed by the petitioner reiterating its intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Oshkosh (population 49,620),[1] the seat of Winnebago County (population 131,703), is located in east central Wisconsin, approximately 125 kilometers (80 miles) northwest of Milwaukee. Currently, Oshkosh is assigned UHF television Channel 22, for which a construction permit has been issued.

3. As indicated in the *Notice*, UHF television Channel *50 can be assigned to Oshkosh consistent with the applicable minimum distance separation requirements to §§ 73.610 and 73.698 of the Commission's Rules.

4. In light of the above, we believe the public interest would be served by the assignment and reservation of UHF television Channel *50 to Oshkosh, Wisconsin, since it could provide a first local educational television service to the community.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered,

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[1] See *Second Report and Order* in BC Docket No. 80–130, *Revisions of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

[2] *Carroll Broadcasting v. F.C.C.*, 258 F. 2d 550 (D.C. Cir. 1958).

[3] See, *Anamosa and Iowa City, Iowa*, 46 F.C.C. 2d 520, 524–55 (1974).

[1] Population figures were extracted from the 1980 U.S. Census.

That effective May 1, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Oshkosh, WI	22+ and *50+.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning the above, contact Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7752 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–652; RM–4745]

TV Broadcast Stations in Eureka, CA; Change in Table of Assignments.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television Channel 29 to Eureka, California, as that community's third commercial television service, in response to a petition filed by Sainte Broadcasting Corporation.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Eureka, California); MM Docket No. 84–652, RM–4745.

Adopted: March 13, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 29420, published July 20, 1984, proposing the assignment of UHF television Channel 29 to Eureka, California, as that community's third commercial television service, in response to a petition filed by Sainte Broadcasting Corporation ("petitioner"). Supporting comments were filed by petitioner reiterating his intention to apply for the channel, if assigned.

2. Eureka (population 24,153),[1] the seat of Humboldt County (population 108,514), is located on the California coast, approximately 370 kilometers (230 miles) north of San Francisco. Currently, commercial VHF Channels 3 (Station KIEM-TV) and 6 (Station KVIQ(TV)), as well as noncommercial educational Channel 13 (Station KEET(TV)) are licensed to the community.

3. A staff engineering study reveals that UHF television Channel 29 can be assigned to Eureka, California in conformity with the applicable minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. In light of the fact that the proposed assignment could provide a third commercial television service to Eureka for the expression of diverse viewpoints and programming, we believe the public interest would be served by assigning Channel 29 thereto.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to Eureka, California, as follows:

City	Channel No.
Eureka, CA	3–, 6–, *13–, and 29.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning the above, contact Nancy V. Joyner or Jeffrey D. Sutherland, Mass Media Bureau (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303).

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7763 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

[1] Population figures were extracted from the 1980 U.S. Census.

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47 CFR Part 73

[MM Docket No. 84–651; RM–4750]

TV Broadcast Stations in Jackson, MS; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 51 to Jackson, Mississippi, as that community's sixth local allocation, at the request of Larry G. Fuss, Sr.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Jackson, Mississippi; MM Docket No. 84–651, RM–4750.

Adopted: March 11, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 29428, published July 20, 1984, proposing the assignment of UHF TV Channel 46 to Jackson, Mississippi, at the request of Larry G. Fuss, Sr. ("petitioner"). The allocation could provide Jackson with its sixth local television service. Petitioner filed comments reiterating his intention to apply for the channel, if assigned.

2. As stated in the *Notice*, the assignment of Channel 46 at Jackson would require a site restriction of at least 20.1 miles south to avoid a short-spacing to Channel *32, unoccupied and unapplied for, at Yazoo City, Mississippi. However, petitioner has indicated an interest in utilizing a site west-southwest of Jackson, in the vicinity of a current "antenna farm." As this would not be possible with the site restriction which we have announced, he requests that Channel *32 be deleted from Yazoo City, either with the substitution of channel *52 therefor or with no replacement.

3. The Commission has traditionally refrained from deleting unused educational channels, without replacement, absent compelling justification. See, *e.g., Cullowhee and Andrews, North Carolina, et al.*, MM

Dockets 83–1135 and 84–378, 49 FR 19070, published May 4, 1984, and cases cited therein. As the petitioner has indicated that a substitute channel is available for use at Yazoo City, we see no reason to consider the deletion of Channel *32 without replacement. Concerning the petitioner's suggestion that Channel *52 be assigned to Yazoo City as a replacement for Channel *32, we find that this is not necessary. The staff has performed a channel search and found that Channel 51 can be assigned to Jackson, without requiring the imposition of a site restriction. Therefore, we believe that if Channel 51 were assigned, petitioner and any other interested party would be free to consider a transmitter site in the vicinity of the "antenna farm."

4. Based on the above discussion, we believe that the provision of an additional local television service at Jackson would be in the public interest. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(l), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective May 3, 1985, the TV Table of Assignments, § 73.606(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel No.
Jackson, MS	3, 12+, 16, *29+, 40+, and 51.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7762 Filed 4–1–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–712; RM–4768]

TV Broadcast Stations in Sumter, SC; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 63 to Sumter, South Carolina, as its first commercial TV assignment, in response to a petition filed by Rodney M. Sprott.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Sumter, South Carolina); MM Docket No. 84–712, RM–4768.

Adopted: March 11, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 30544, published July 31, 1984, in response to a petition filed by Rodney M. Sprott ("petitioner"). The *Notice* proposed the assignment of UHF Television Channel 63 to Sumter, South Carolina as its first commercial television channel. Petitioner filed comments in support of the *Notice* and restated his intention to apply for the channel, if assigned.

2. Sumter (population 24,890),[1] seat of Sumter County (population 88,243), is located in central South Carolina, approximately 130 kilometers (80 miles) north of Charleston, South Carolina.

3. In view of the fact that the assignment could provide a first commercial TV channel to Sumter, we believe that the public interest would be served by assigning Channel 63 to that community. Channel 63 can be assigned in conformance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Commission's Rules, it is ordered, That effective May 3, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Sumter, SC	*27–, and 63–.

5. It is further ordered, That this proceeding is terminated.

[1] Population figures are taken from the 1980 U.S. Census.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7764 Filed 4–1–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–650; RM–4785]

TV Broadcast Stations in Grundy, VA; Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television 68 to Grundy, Virginia, as its first TV assignment, in response to a petition filed by Reverend Buford Smith.

EFFECTIVE DATE: May 3, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Grundy, Virginia); MM Docket No. 84–650, RM–4785.

Adopted: March 11, 1985.
Released: March 26, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 29427, published July 20, 1984, which proposed the assignment of UHF Television Channel 68 to Grundy, Virginia, as that community's first television broadcast service, in response to a petition filed by Reverend Buford Smith ("petitioner"). Comments were filed by the petitioner restating his intention to apply for the channel, if assigned.

2. The Commission believes that the public interest would be served by assigning UHF Television Channel 68 to Grundy. A need for television service to the community has been shown and the assignment can be made consistent with the minimum distance separation

requirements of § 73.610 of the Commission's Rules, provided there is a site restriction of 2.5 miles southeast of Grundy. The site restriction will prevent a short spacing to a construction permit for Station WEKT on Channel 69 at Paintsville, Kentucky.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, That effective May 3, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the community listed below:

City	Channel No.
Grundy, VA	69

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7761 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 27

[Docket No. 58b; Amdt. No. 27–2]

Nondiscrimination on the Basis of Handicap in Programs Receiving Financial Assistance From the Department of Transportation

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends Appendix A to the Department of Transportation's existing interim final rule concerning nondiscrimination on the basis of handicap in programs receiving financial assistance from the Department. Appendix A provides examples of various compliance approaches. This document amends one of the examples to make it conform with the changes in the Urban Mass Transportation Administration (UMTA) program resulting from recent statutory changes.

DATE: This rule is effective April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10105, 400 Seventh Street SW., Washington, D.C. 20590, (202) 426–4723. Hearing-impaired persons may contact Mr. Ashby by dialing TTY (202) 755–7687.

SUPPLEMENTARY INFORMATION: The Department's requirements for various UMTA recipients concerning nondiscrimination on the basis of handicap are found in 49 CFR Part 27. Section 27.77(a)(1) requires recipients of funds from UMTA, under section 3 and 5 of the Urban Mass Transportation Act of 1964, as amended, (49 U.S.C. 1602 and 1604) (UMT Act) to certify that "special efforts are being made in their service area to provide transportation that handicapped persons, including wheelchair users and semiambulatory persons, can use." In addition, the rule requires the special efforts to "be consistent with the guidance in Appendix A. . . ."

Appendix A provides advisory information on programming for handicapped persons. While the Appendix does not specify a particular program designed to meet the special efforts requirement, it does provide three examples that illustrate a level of effort that will be deemed to satisfy the requirements with respect to wheelchair users and semiambulatory persons. It is important to note that the examples are not regulatory standards or minimums, but merely examples.

The first example describes a program for wheelchair users and semiambulatory persons under which a recipient spends "an average annual dollar amount equivalent to a minimum of 3.5 percent of the financial assistance that the urbanized area receives under section 5 of the UMT Act." The example states that the expenditure need not be of section 5 funds, but may be derived from sources other than section 5.

In the Surface Transportation Assistance Act of 1982 (Pub. L. No. 97–424) (the STAA of 1982), Congress added a new section 9 Block Grant program to the UMT Act. The section 9 program begins in FY 84 and generally replaces the section 5 program. Therefore, Congress did not appropriate any new section 5 funds for FY 84 in the Department of Transportation and Related Agencies Appropriation Act of 1984 (Pub. L. No. 98–78). UMTA will, however, apportion some section 5 funds in FY 84. These funds will be reapportioned funds that were previously apportioned but lapsed to the urbanized areas after their initial four year period of availability under section 5(c)(4) of the UMT Act. This amount, however, will be considerably less than the total section 5 apportionment for any one previous year. As a result, if a recipient were to continue to follow the example described above, its expenditure for FY 84 or subsequent fiscal years could be markedly decreased since, its section 5 apportionment will be decreased.

The Department is concerned that this change in the UMTA program would have an adverse effect on the transportation service provided to handicapped persons. Consequently, the Department is amending Example 1 in Appendix A so that the dollar expenditure should be equivalent to 3.5 percent of the section 5 funds the recipient received in FY 83. The Department is confident that this change will not work any hardship on recipients, yet ensure an adequate level of service for handicapped persons.

It should be emphasized that under this example, a recipient would not have to spend any UMTA funds to satisfy the example. Although a recipient could choose to spend its section 5 or 9 funds, for example, to fund projects that count towards the 3.5 percent, it could spend all local funds. The expenditure of an equivalent dollar amount is all that the example stipulates.

On September 8, 1983, the Department published a notice of proposed rulemaking (NPRM) that would replace the current interim rule (48 FR 40614). The Department received more than 640 comments on the NPRM and has completed its review of the comments. The Department is resolving issues raised by the comments and is analyzing costs and benefits. The Department hopes to publish a final rule later in 1985.

Rulemaking Process Requirements

Notice and Comment; Immediate Effective Date

Under the Administrative Procedure Act, Federal agencies are required to publish all substantive rules not less than 30 days before the rule's effective date (5 U.S.C. 553(d)). An exception is provided, however, when the agency determines for good cause that such a period is not necessary. In this situation, the Department finds that there is good cause to make this amendment effective immediately. There is potential confusion for UMTA recipients who have opted to follow Example 1 about the appropriate level of expenditure since their section 5 apportionment for this fiscal year will be considerably

decreased from past years. Therefore, in order to prevent any further confusion and to ensure a continuing and reliable level of service for handicapped persons, the Department finds that this amendment must be effective immediately. In addition, the same reasons support the Department's decision that notice and comment are unnecessary under 5 U.S.C. 553(b).

Environmental Impact Evaluation

This amendment will have no significant environmental impact.

Executive Order 12291 and DOT Regulatory Policies and Procedures

This amendment is not considered a "major rule" as defined in Executive Order 12291 or a significant regulation under the Department's Regulatory Policies and Procedures.

Regulatory Flexibility Act

The Department certifies that this amendment does not have a significant economic impact on a substantial number of small entities. Since the Department is amending the existing regulation to maintain an already described level of expenditure, there will be no significant economic impact on any UMTA recipients.

List of Subjects in 49 CFR Part 27

Mass transportation, Handicapped.

Authority

(Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); section 3, 5, 16, and 18 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, 1612, and 1614); section 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.))

Issued on March 27, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

For the reasons set forth in the preamble,

Title 49 of the Code of Federal Regulations, Part 27, § 27.71, is amended by revising the first sentence in the first paragraph of Example 1 in Appendix A thereof to read:

Appendix A—Advisory Information on Programming for Handicapped Persons

* * * * *

1. A program for wheelchair users and semiambulatory handicapped persons that will involve the expenditure of an average annual dollar amount equivalent to a minimum of 3.5 percent of the financial assistance that the urbanized area received in FY 83 under section 5 of the UMT Act.

* * * * *

[FR Doc. 85-7866 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska; Season Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that early closure of the Tanner crab fishery in the Southeast District in Registration Area A is necessary to protect Tanner crab stocks. The Secretary of Commerce (Secretary) therefore issues this notice of closure of the Southeast District to fishing for Tanner crab by vessels of the United States. The intended effect is to conserve Tanner crab stocks.

DATES: This notice is effective from noon, Alaska Standard Time (AST), March 28, 1985, until noon, Alaska Daylight Time (ADT), May 1, 1985. Public comments on this notice of closure are invited until April 15, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary under criteria set out in that section.

Section 671.26(c) establishes two districts within Registration Area A in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these is the Southeast District. The FMP specifies the optimum yield (OY) for the Southeast District to be 1.0–3.0 million pounds.

Since the 1981/1982 season, commercial fisheries and stock assessment information indicate that the Tanner crab stock is declining. Young crabs newly recruited into the fishery now dominate the commercial harvest. The catch of Tanner crabs taken incidentally while conducting research on king crab stocks in southeast Alaska has shown a decline from about 9.7 Tanner crabs per pot in 1981 to about 2.9 Tanner crabs per pot in 1984. Based on this information, the Alaska Department of Fish and Game (ADF&G) issued a news release on December 20, 1984, to allow a 1985 harvest of up to 1.5 million pounds.

The 1985 fishery opened on February 10. Current weekly catches are smaller than weekly catches for the 1984 season, indicating that stocks have declined even more than was known before the 1985 fishery opened. During the second, third, and fourth statistical reporting weeks of the 1985 season, cumulative catches were only 61–65 percent of the cumulative catches for the same statistical weeks during the 1984 season. This new information justifies limiting the harvest to 1.0 million pounds. About 900,000 pounds were landed through March 19, 1985. At the current rate of harvest, 1.0 million pounds will be taken by noon, March 28, 1985.

In light of this information, the Regional Director, under § 671.27(b), has determined that

(1) The actual condition of Tanner crab stocks in the Southeast District is substantially different from the condition anticipated at the beginning of the fishing year; and

(2) This difference reasonably supports the need to protect those Tanner crab stocks by closing the Southeast District of Registration Area A, as defined in § 671.26(c)(1)(i). This district is therefore closed to all fishing for Tanner crab from noon, AST, March 28, 1985, until noon, ADT, May 1, 1985, at which time the closure of this district prescribed in § 671.26(c)(2)(i) will begin.

This closure will become effective when this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the ADF&G. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be

reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Southeast District will be subject to damage by overfishing unless this closure takes effect promptly. The Agency therefore finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest, and that its effective date should not be delayed.

This action is taken under regulations specified at § 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information request, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-7862 Filed 3-29-85; 9:53 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Tomato Juice

Correction

In FR Doc. 85-6430, beginning on page 10970, in the issue of Tuesday, March 19, 1985, make the following corrections:

1. On page 10970, third column, in the table of contents, in the entry for § 52.3622, the first word should read "Definitions", and in the entry for § 52.3625, insert "of" between "fill" and "Container".

§ 52.3622 [Corrected]

2. On page 10971, first column, in § 52.3622, paragraph (a)(1), second line, insert "in" between "red" and "tomato"; in paragraph (a)(2), thirteenth line should read:

"21 percent of the area of Yellow (2.5 YR 5/12)", and in column two, paragaph (a)(3)(ii), fourteenth line, "finish," should read "finish),".

§ 52.3626 [Corrected]

3. On the same page, third column, in § 52.3626, paragraph (a), first line, "to" should read "or".

§ 52.3627 [Corrected]

4. On page 10972, first column, in § 52.3627, in Table II, the first line of table heads "Tomato soluble solids (minimum)" and "5.0 pct by weight" should have appeared at the end of the table preceding the footnotes.

BILLING CODE [illegible]

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-034]

Public Hearing on Importation of Certain Animal Embryos

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Public Hearing on Importation of Certain Animal Embryos.

SUMMARY: This document gives notice of a public hearing concerning a proposal to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses.

DATE: The public hearing will be held May 15, 1985, beginning at 10 a.m.

ADDRESS: The public hearing will be held at the Airport Sheraton Inn, 7301 Northwest Tiffany Springs Road, Kansas City, Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. D. E. Herrick, Senior Staff Veterinarian, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8530.

SUPPLEMENTARY INFORMATION:

Public Hearing

On October 22, 1984, a document was published in the **Federal Register** (49 FR 41257-41261) which proposed to establish regulations governing the importation into the United States of certain embryos of cattle, sheep, goats, other ruminants, swine, horses, and asses. The document provided for receipt of written comments on or before December 21, 1984. A document published in the **Federal Register** on January 14, 1985 (50 FR 1863), reopened and extended the comment period to July 15, 1985, and announced that a public hearing would be scheduled to receive additional comments on the proposed rule. This document gives notice of the public hearing.

A representative of the Animal and Plant Health Inspection Service will preside at the hearing. Any interested person may appear and be heard in person, by attorney, or by other representative.

The hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, the hearing may be terminated at any time after it begins if all of those persons desiring an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Those registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded such opportunity after the registered persons have been heard. It is requested that duplicate copies of any written statements that are presented be provided to the presiding officer at the hearing.

If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Dated: March 28, 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-7860 Filed 4-1-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Request for Comments Concerning the Use of Computer Simulation or Engineering Analysis for Rating Central Air Conditioners

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy (DOE) is publishing for comment a document entitled "A Rating Procedure for Mixed System Central Air Conditioners." This document describes a procedure to determine the energy performance of a central air conditioner

combination (condensing unit and indoor coil) without conducting the full laboratory procedure prescribed by DOE test procedures. DOE is planning to amend the test procedures for central air conditioners to prescribe, among other actions, the procedure to rate untested central air conditioner combinations.

DATE: DOE will accept comments, data and information not later than June 3, 1985.

ADDRESSES: Written comments and statements shall be sent to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Docket No. CAS–RM–79–102, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9319.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–112.1, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9513

SUPPLEMENTARY INFORMATION:

I. Background
II. Technical Approach
III. Questions for Public Comment
IV. Comment Procedures

I. Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub. L. 95–619, 92 Stat. 3266, and requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

Test procedures for central air conditioners were originally proposed by notice issued June 7, 1977. 42 FR 30401, June 14, 1977. Final test procedures for central air conditioners were prescribed on November 21, 1977. 42 FR 60150, November 25, 1977. DOE proposed to amend the test procedures on April 6, 1979 (44 FR 23468, April 19, 1979) in order to include testing procedures for heat pumps, and solicited public comments on the need to modify any provisions of the existing test procedures for all types of central air conditioners. Final test procedures for central air conditioners (including heat pumps) were prescribed on December 10, 1979. 44 FR 76700, December 27, 1979.

The December 1979 final rule recognized that laboratory testing of every combination of condensing unit and evaporator coil would be burdensome to users of the test procedures. Coil manufacturers (typically small entities), commenting on the April 1979 proposal, stressed the impossibility of laboratory testing all combinations they offer for sale. Condensing unit manufacturers (typically large entities) were in favor of an alternative to laboratory testing as long as it resulted in equal accuracy for their combinations. Consequently, in the December 1979 final rule, the Department allowed the use of an unspecified computer simulation or engineering analysis to predict the energy performance of untested combinations provided that, at a minimum, laboratory testing was done on the model combination representing the largest sales volume, and the simulation technique demonstrated an acceptable level of repeatable accuracy.

Since 1979, users of the test procedures have reported a high degree of variability resulting from the allowance to use simulation techniques. For instance, it has been reported to DOE that utilities which have instituted rebate programs for the purchase of high efficiency central air conditioners have received different ratings for the same combinations. The simulation techniques that have been submitted to DOE, in accordance with § 430.23(m)(7) of 10 CFR, exhibit a variety of methodologies.

In response to the concerns raised, DOE asked the National Bureau of Standards (NBS) to evaluate various simulation techniques to determine the level of accuracy and repeatability. Concurrent with the NBS research, the Air-Conditioning and Refrigeration Institute (ARI) contracted with the Electrical Testing Laboratories (ETL) to conduct a test program to compare results of a number of simulation methods in use with actual test results. These efforts indicated that although some simulation techniques would appear to have reasonable accuracy, other techniques demonstrated significant variability of results. Based on a review of the ARI test results, the techniques used by the independent coil manufacturers appear to exhibit a higher degree of variability than the techniques used by condensing unit manufacturers. Part of the variability is believed to be attributable to the inability of coil manufacturers to obtain energy performance information regarding the condensing units that are to be used with their product.

In the interest of improving this situation NBS, with input from the ARI, coil manufacturers, and consulting engineers, has developed a uniform procedure for rating untested combinations. Today's notice publishes the NBS recommended procedure for the purpose of receiving further comment from interested parties. DOE is considering the adoption of this procedure as the only allowable method to rate the energy performance of untested combinations, thus eliminating the problematic provisions which allow the use of unspecified engineering analysis and computer simulations. DOE realizes that some users of the specified procedure may find the predictions somewhat conservative (e.g. lower efficiencies) when compared to the predictions using their own proprietary simulations. If the new procedure is adopted as drafted, these users would be faced with a decision either to accept the conservative rating or to rate based on testing. DOE believes the adoption of a single method to rate untested combinations is justified in order to improve the overall accuracy and consistency of the energy performance information available to the consumer.

Today's Notice of Inquiry is to solicit comments on this rating procedure. After comments are received, the Department plans to issue a Notice of Proposed Rulemaking (NOPR). This NOPR will propose amendments to the central air conditioner test procedure, among which will be provisions on rating untested central air conditioner combinations.

II. Technical Approach

The technical approach for the simplified rating procedure for untested combinations was developed by NBS. Initially, NBS conducted a series of tests on one condensing unit with several different evaporator coils for developing a simplified rating procedure for a family of coils for one condensing unit. The simplified rating procedure was later expanded by computer modeling to cover different condensing units. The simplified rating procedure was verified by comparing tested ratings to ones from the simplified rating procedure for 22 combinations.[1] The ratings based on

[1] These 22 combinations consisted of 11 different condensing units, each tested with two different coils.

tests for the 22 combinations were provided to DOE by ARI. For all 22 combinations, the ratings from the simplified rating procedure were within 5 percent of the test value for both SEER and capacity.

The procedure published today is simply the mathematical expressions necessary to rate an untested combination. The mathematical expressions, including the values of the coefficients and exponents, have been developed through computer and laboratory studies conducted by NBS. The procedure requires knowledge of the following factors: (1) capacity of the matched system; (2) indoor fan power of the mixed and matched systems; (3) coil capacity of the mixed and matched coils; (4) the type of expansion device on the mixed and matched systems; and (5) the physical geometry of the expansion device on the mixed and matched systems. With these data the user is able to calculate the energy performance of untested combinations of central air conditioners using the NBS simplified rating procedures.

III. Questions for Public Comment

DOE is interested in receiving comments and data concerning the accuracy and workability of this approach. Also DOE welcomes discussion on technical improvements or alternatives to this approach. It is hoped that some comments will include actual test data. If it is thought that some aspects of these data are proprietary in nature, the commenter may request that this information be treated as confidential. The procedures for requesting confidential treatment are described below in Section IV.

In addition, DOE welcomes and encourages interested parties to comment on any issue pertaining to the central air conditioner test procedures.

IV. Comment Procedure

Interested persons are invited to submit written comments to DOE. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Central Air Conditioners Rating Method (Docket No. CAS–RM–79–102)". Six (6) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and all other relevant information will be considered by DOE before proposing an amendment. Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and 6 copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination. Notice of a determination of non-confidential status shall be given no less than seven (7) calendar days prior to intended public disclosure.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

Issued in Washington, D.C., March 15, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

A Rating Procedure for Mixed System Central Air Conditioners

The following relationships have been developed for rating the mixed system central air conditioner charged with R22 refrigerant. The term "matched" refers to that component which was part of the system that was tested, whereas "mixed" refers to the system whose performance is being determined by this procedure. Two performance parameters (capacity and seasonal energy efficiency ratio) are to be determined. Since this rating procedure is a relative methodology, that is, based on changes from a matched system value (which was test based), obtaining the component (i.e., coil, expansion device) data from the same source is paramount. When such data for the matched system are not available in the literature, it is expected that the mixed system rater obtain the matched equipment and make the measurements necessary.

Capacity at DoE Test A Conditions, Q_x

$$Q_x = [Q_m + 3.413 \cdot P_{F,m}]\ QR^{0.37} \cdot R^{\alpha} - 3.413 \cdot P_{F,x}$$

Seasonal Energy Efficiency Ratio, $SEER_x$

$$SEER_x = SEER_m \left(\frac{Q_x}{Q_m}\right)_{82} \cdot \left(\frac{P_x}{P_m}\right)_{82}^{-1}$$

$$\left(\frac{Q_x}{Q_m}\right)_{82} = \left[1 + \frac{3.25 \cdot P_{F,m}}{Q_m}\right] QR^{\gamma} \cdot R^{\alpha} - 3.25\ \frac{P_{F,x}}{Q_m}$$

$$\left(\frac{P_x}{P_m}\right)_{82} = QR^{0.14} \cdot R^{\beta}$$

Exponents

$\alpha = -0.15$ for $R > 1$
$\alpha = 0$ for $R < 1$
$\beta = 0.$ for $R > 1$
$\beta = -0.2$ for $R < 1$
$\gamma = 0.44$ if mixed expansion device is a capillary tube(s) or a thermostatic expansion valve
$\gamma = 0.35$ if mixed expansion device is an orifice

Other symbols

$P_{F,m}$ = energy input to an indoor fan of a matched system at air mass flow rate at which capacity of a matched coil, $Q_{c,m}$' is evaluated. If indoor fan is not supplied with the system, $P_{F,m}$ is evaluated as follows: $P_{F,m} = DFM_m \cdot 0.365$ (watt)
where CFM_m is a volumetric flow of air through the matched indoor coil (ft^3/min)
$P_{F,x}$ = energy input to an indoor fan of a mixed system at air mass flow rate at which capacity of a mixed coil, $Q_{c,x}$ is evaluated. If indoor fan is not supplied with the system, $P_{F,x}$ is evaluated as follows: $P_{F,x} = CFM_x \cdot 0.365$ (watt)
where CFM_x is a volumetric flow of air through the mixed indoor coil (ft^3/min)
Q_m = capacity of a matched system at DoE Test A (Btu/h)
Q_x = capacity of a mixed system at DoE Test A (Btu/h)

$QR = \frac{Q_{c,x}}{Q_{c,m}}$, evaporator scaling factor

$Q_{c,x}$ = Capacity of a mixed coil (Btu/h)

$Q_{c,m}$ = capacity of a matched coil

Capacities of mixed and matched coils have to be obtained by the same verified method. The following are conditions that have to be met:

—air conditions—80 °F dry bulb/67°F wet bulb
—air mass flow rate—equal to the mass flow rate at which particular coil is working in the system
—refrigerant saturation temperature at evaporator outlet—45°F
—refrigerant superheat at evaporator outlet—the same for both matched and mixed coils.

If coil capacities are obtained by means of a catalog or computer simulation, the same method has to be applied for both coils. Coil material and geometry namely, inside tube diameter, tube staggering, fin spacing, fin thickness, fin shape, and number of tube depth rows have to be accounted for.

R = expansion device scaling factor

Evaluation of factor R depends on the type of expansion device:

*If mixed expansion device is a TXV - R = 1

*If both expansion devices consist of capillary tubes

$$R = \frac{\Sigma\phi_{x,i}}{\Sigma\phi_{m,j}} = \frac{\phi_{x,1} + \phi_{x,2} + \phi_{x,3} + \cdots\phi_{x,i}}{\phi_{m,1} + \phi_{m,2} + \cdots\phi_{m,j}}$$

where ϕ_x and ϕ_m are flow factors for capillary tubes employed in mixed and matched expansion devices, respectively, and determined based on their geometry with the aid of ASHRAE Guide and Data Book Equipment Volume, 1983, Chapter 20, Figure 38.

*If mixed expansion device consists of orifices and matched expansion device consists of orifices:

$$R = \frac{\Sigma\phi_{x,i}}{\phi_{m,j}} = \frac{\phi_{x,1} + \phi_{x,2} + \cdots\phi_{x,i}}{\phi_{m,1} + \phi_{m,2} + \cdots\phi_{m,j}}$$

$$\text{where } \phi_x = \frac{D_x^2}{(0.58 + 0.008\frac{L_x}{D_x})^{0.5}}$$

$$\phi_m = \frac{D_m^2}{(0.58 + 0.008\frac{L_m}{D_m})^{0.5}}$$

D_x = inner diameter of an orifice employed in a mixed expansion device (inch)
L_x = length of an orifice employed in a mixed expansion device (inch)
D_m = inner diameter of an orifice employed in a matched expansion device (inch)
L_m = length of an orifice employed in a matched expansion device (inch)

*If a mixed expansion device consists of orifices, and a matched expansion device consists of capillary tubes:

$$R = \frac{\Sigma\phi_{x,i}}{109.6 * \Sigma\phi_{m,j}} = \frac{\phi_{x,1} + \phi_{x,2} + \ldots + \phi_{x,i}}{109.6(\phi_{m,1} + \phi_{m,2} + \ldots + \phi_{m,j})}$$

$$\text{where } \phi_x = \frac{72200 D^2_x}{(0.58 + 0.008 \frac{L_x}{D_x})^{0.5}}$$

D_x = inner diameter of an orifice employed in a mixed expansion device (inch)
L_x = length of an orifice employed in a mixed expansion device (inch)
ϕ_m = flow factor for a capillary tube employed in a matched expansion device, and determined based on geometry with the aid of ASHRAE Guide and Data Book, Equipment Volume, 1983, Chapter 20, Figure 38.

*If a mixed expansion device consists of capillary tubes and a matched expansion device consists of orifices:

$$R = \frac{109.6 * \Sigma\phi_{x,i}}{\Sigma\phi_{m,j}} = \frac{109.6(\phi_{x,1} + \phi_{x,2} + \ldots + \phi_{x,i})}{\phi_{m,1} + \phi_{m,2} + \ldots + \phi_{m,j}}$$

where ϕ_x = flow factor for a capillary tube employed in a mixed expansion device, and determined based on geometry with the aid of ASHRAE Guide and Data Book, Equipment Volume, 1983, Chapter 20, Fig. 38.

$$\phi_m = \frac{72200 D^2_m}{(0.58 + 0.008 \frac{L_m}{D_m})^{0.5}}$$

D_m = inner diameter of an orifice employed in a matched expansion device (inch)
L_m = length of an orifice employed in a matched expansion device (inch)

Note.—(1) Subscript i and j in all above given cases corresponds to the number of parallelly connected capillary tubes or orifices in mixed and matched expansion devices, respectively.

(2) This method for evaluating R does not cover cases of capillary tube or orifices connected in series.

(3) This methodology for evaluation of performance of a mixed system cannot be used if obtained R is less than 0.85.

$SEER_m$ = seasonal energy efficiency ratio, matched system (Btu/(h • watt))
$SEER_x$ = seasonal energy efficiency ratio, mixed system (Btu/ (h • watt))

SUMMARY OF PERFORMANCE PREDICTIONS FOR A MIXED SYSTEM

(All performance data given as a fraction of ETL test results)

System	Matched system data as per ARI catalog		NBS prediction based on ARI catalog data		Consultant prediction based on ARI catalog data		NBS prediction based on ETL test results		Expansion device scaling factor, R
	Q_{95}	SEER	Q_{95}	SEER	Q_{95}	SEER	Q_{95}	SEER	
2	0.987	0.980	0.977	0.981	0.953	0.957	0.990	1.000	1.30
3	0.980	0.980	.958	0.939	1.021	1.112	.977	.968	1.01
4	1.035	1.019	1.060	1.045	1.124	1.110	1.016	1.024	1.00
5	1.006	0.931	1.060	0.947	0.959	1.002	1.054	1.017	0.77
6	0.909	0.938	0.937	0.911	1.078	1.040	1.029	.970	1.03
7	0.967	0.976	0.955	0.930	1.038	1.057	.986	.952	1.02
8	1.027	0.974	1.029	0.943	1.151	1.032	1.005	.970	1.40
10	1.005	1.048	0.974	0.964	1.036	1.129	.970	.921	0.73
11	0.916	0.903	0.922	0.906	0.935	0.936	1.007	1.006	0.91

Note.—Q_{95}—Capacity of DoE Test A Conditions.

[FR Doc. 85-7645 Filed 3-29-85; 8:45 am]
BILLING CODE 6450-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 306

Octane Certification and Posting Rule

AGENCY: Federal Trade Commission.

ACTION: Request for comments.

SUMMARY: The Federal Trade Commission ("FTC"), in accordance with the Regulatory Flexibility Act and publication of a Plan for the Periodic Review of Commission Rules, 46 FR 35118 (July 7, 1981), is soliciting comments and data on whether the Octane Certification and Posting Rule, 16 CFR Part 306 ("the Rule"), has had a significant economic impact on small entities, and if it has, whether the Rule should be amended to minimize any such significant economic impact on small entities.

DATE: All comments and data should be received by the Commission no later than May 2, 1985.

ADDRESS: Comments and data should be sent to Secretary, Federal Trade Commission, Washington, D.C. 20580. Submissions should be identified as "Octane Rule—RFA Comment".

FOR FURTHER INFORMATION CONTACT: James G. Mills, or Don Winfrey, (202) 376–8934, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the FTC conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.

Section 203(c)(1) of the Petroleum Marketing Practices Act (PMPA) [1] requires that the Commission prescribe, by rule, a uniform method by which a person may certify to another the octane rating of automotive gasoline, and a uniform method of displaying the octane rating of automotive gasoline at the point of sale to ultimate consumers. On March 30, 1979, the Commission issued the Octane Certification and Posting Rule,[2] which fulfills these requirements. The Rule establishes standard procedures for determining, certifying and posting (by means of a label on the fuel dispenser) the octane rating of automotive gasoline intended for sale to consumers. In addition, the Rule contains recordkeeping requirements that require gasoline refiners and importers to retain octane rating test records and gasoline distributors and retailers to retain octane certification records pertaining to the gasoline they sell in commerce for one year. Thus, the certification, or representation of the octane rating, of a particular shipment of gasoline begins with the importer or refiner and travels through the chain of distribution to the retailer, where the octane rating is posted on the pump. The Rule is intended to enable consumers to buy gasoline with an octane rating that is high enough to prevent inefficient and harmful "engine knock" and to help consumers to avoid buying gasoline with an octane rating that is needlessly higher than the requirements of their automobiles.

In the promulgation of the Octane Rule, an effort was made to minimize the burden imposed by these requirements, including the burden on small businesses, by permitting the octane certification requirement to be satisfied by documents already in use in the industry (shipping receipts, delivery tickets, etc.), on which the octane rating was already being noted, or to be accomplished with a one-time letter of certification.

For the purpose of this review under the RFA, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR Part 121, and recently revised by the Small Business Administration (49 FR 5024 *et seq.* February 9, 1984)). The definitions of "small entity" applicable to those business entities covered by the Rule are: For petroleum refiners, fewer than 1,500 employees; for petroleum and petroleum products wholesalers, fewer than 500 employees; and for gasoline service stations, under $4.5 million in annual sales.

The purpose of this review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

In order to conduct the periodic review of this Rule pursuant to the RFA, the FTC poses the following questions for comment. The Commission requests that the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

(2) Is there a continued need for the Rule and all of its requirements?

(3) (a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens that small entities would also experience under standard and prudent business practice?

(4) What changes, if any, should be made to the Rule that would minimize the economic effect on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other federal, state and local government rules?

(6) Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the Rule or those covered by it?

List of Subjects in 16 CFR Part 306

Gasoline, Labeling, Trade practices.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–7798 Filed 4–1–85; 8:45 am]

BILLING CODE 6750-01-M

[1] Pub. L. 95–297, 92 Stat. 322, 15 U.S.C. 2801 *et seq.*, (1978) ("PMPA").

[2] 44 FR 19160 (March 30, 1979) (codified at 16 CFR Part 306).

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 19

Right to Financial Privacy Act of 1978; Proposed Implementation Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would authorize Department of Labor units to request financial records from a financial institution pursuant to the formal written request procedure established by the Right to Financial Privacy Act of 1978, 92 Stat. 3697, 12 U.S.C. 3401 *et seq.*, and would set forth the conditions under which such requests may be made. Section 1108(2) of the Right to Financial Privacy Act of 1978 requires that the formal written request be authorized by regulations promulgated by the head of the agency or department. These proposed regulations would thus, once implemented, enable Department of Labor units to utilize the formal written request procedure to obtain financial records.

DATES: Comments may be submitted until May 2, 1985.

ADDRESS: Send comments to Seth D. Zinman, Associate Solicitor for Legislation and Legal Counsel, Office of the Solicitor, U.S. Department of Labor, Room N–2428, 200 Constitution Avenue NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, U.S. Department of Labor, Room N–2428, 200 Constitution Avenue NW., Washington, D.C. 20210; telephone (202) 523–8188.

SUPPLEMENTARY INFORMATION: The Right to Financial Privacy Act of 1978, 92 Stat. 3697, 12 U.S.C. 3401 *et seq.*, limits government access to financial records of customers of financial institutions. In order for government agencies to obtain such records, the Act provides for customer authorization, authorized search warrants, judicial and adminstrative subpoenas, and formal written requests by a governmental authority. Formal written requests may only be made pursuant to a regulatory authorization promulgated by the head of the agency or department, 12 U.S.C. 3408(2).

In order to assist those departmental agencies or units that have no statutory administrative subpoena power, the proposed regulatory authorization is needed to comply with 12 U.S.C. 3408(2).

Classification

The proposed rule is procedural in character in that it implements the formal written procedure established by the Right to Financial Privacy Act of 1978. Therefore, this proposed rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Under Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposal is procedural in character in that it implements the formal written request procedure established by the Right to Financial Privacy Act of 1978 and thus no economic impact is expected with respect to small entities, nor with respect to other entities as well. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

This proposed rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not contain a collection of information requirement.

List of Subjects in 29 CFR Part 19

Privacy.

Accordingly, it is proposed that a new Part 19 be added to Subtitle A of Title 29 of the Code of Federal Regulations as follows:

PART 19—RIGHT TO FINANCIAL PRIVACY ACT

Sec.
19.1 Definitions
19.2 Purpose.
19.3 Authorization.
19.4 Contents of request.
19.5 Certification.

Authority: Sec. 1108, Right to Financial Privacy Act of 1978, 92 Stat. 3697 *et seq.*, 12 U.S.C. 3401 *et seq.*, (5 U.S.C. 301); and Reorganization Plan No. 6 of 1950.

§ 19.1 Definitions.

For purposes of this regulation, the term:

(a) "Financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative bank, credit union, consumer financial institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(b) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(c) "Person" means an individual or a partnership of five or fewer individuals.

(d) "Customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

(e) "Law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of or failure to comply with any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(f) "Departmental unit" means those offices, divisions, bureaus, or other components of the Department of Labor authorized to conduct law enforcement inquiries.

(g) "Act" means the Right to Financial Privacy Act of 1978.

§ 19.2 Purpose.

The purpose of these regulations is to authorize Departmental units to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act, and to set forth the conditions under which such requests may be made.

§ 19.3 Authorization.

Departmental units are hereby authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(a) No administrative summons or subpoena authority reasonably appears to be available to the Departmental unit to obtain financial records for the

purpose for which the records are sought;

(b) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further the inquiry;

(c) The request is issued by the Assistant Secretary or Deputy Under Secretary heading the Departmental unit requesting the records, or by a senior agency official designated by the head of the Departmental unit. Officials so designated shall not delegate this authority to others;

(d) The request adheres to the requirements set forth in § 19.4; and

(e) The notice requirements set forth in section 1109(4) of the Act, or the requirements pertaining to delay of notice in Section 1109 of the Act are satisfied, except in situations where no notice is required. (e.g., section 1113(g)).

§ 19.4 Contents of request.

The formal written request shall be in the form of a letter or memorandum to an appropriate official of the financial institution from which financial records are requested. The request shall be signed by an issuing official of the requesting Departmental unit, as specified in § 19.3(c). It shall set forth that official's name, title, business address and business phone number. The request shall also contain the following:

(a) The identity of the customer or customers to whom the records pertain;

(b) A reasonable description of the records sought;

(c) Any other information that the issuing official deems appropriate, e.g., the date on which the requesting Departmental unit expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual to whom disclosure is to be made, etc.

(d) In cases where customer notice is delayed by a court order, a copy of the court order shall be attached to the formal written request.

§ 19.5 Certification.

Prior to obtaining the requested records pursuant to a formal written request, a senior official designated by the head of the requesting Departmental unit shall certify in writing to the financial institution that the Departmental unit has complied with the applicable provisions of the Act.

Signed at Washington, D.C. this 27th day of March 1985.

Ford B. Ford,

Under Secretary of Labor.

[FR Doc. 85-7856 Filed 4-1-85; 8:45 am]

BILLING CODE 4510-23-M

POSTAL SERVICE

39 CFR Part III

Extension of Time for Filing Comments on "Plus" Issues

AGENCY: Postal Service.

ACTION: Proposed rule; extension of time.

SUMMARY: On March 6, 1985, the Postal Service published a proposed rule change intended to clarify postal regulations related to second-class mail, particularly as they concern so-called "Plus" issues or editions. 50 FR 9051 (March 6, 1985). The Postal Service requested comments on the proposed regulations on or before April 5, 1985. *Id.*

Several mailers have asked that the deadline for comments be extended so that they may make a more complete assessment of the proposal and its potential impact.

The Postal Service believes that comments generated by such assessments will provide valuable information. The Postal Service is therefore extending the deadline for comments on the proposed rule change by 45 days, or until May 20, 1985.

DATES: Comment on the proposed rule change must now be received on or before May 20, 1985.

ADDRESS: Written comments should be directed to Robert Lowry, Law Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, D.C. 20260-1142. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in the Law Department, Room 5103, Comsat Building North, 955 L'Enfant Plaza North, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Robert Lowry, (202) 245-3891.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-7785 Filed 4-1-85; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

Vessel Obligation Guarantees; Waivers for Foreign Built Main Diesel Engines

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is withdrawing an Advance Notice of Proposed Rulemaking (ANPRM) published on April 21, 1983. It proposed to allow all applications for waiver of the "Buy American" requirement with respect to issuing Title XI "obligation guarantees" for the construction of vessels using foreign-built high speed and medium speed diesel engines, if such diesel engines afford a specified energy savings.

FOR FURTHER INFORMATION CONTACT: Mr. Paul E. Speicher, Jr., Office of Naval Architecture and Engineering, Maritime Administration (721) 400 Seventh Street SW., Washington, D.C. 20590. Tel (202) 426-5727.

SUPPLEMENTARY INFORMATION: By an ANPRM published in the **Federal Register** (48 FR 17120) on April 21, 1983, MARAD proposed a policy of allowing all applications for waivers to use foreign-built high and medium speed diesel engines in the construction of vessels financed with "obligation guarantees" issued pursuant to Title XI, Merchant Marine Act, 1936 (46 U.S.C. 1271-1279), if using such foreign-built diesel engines would: (1) Result in a 10 percent fuel savings (on a thermal basis); or (2) allow vessel operation using a lower quality fuel that would reduce the magnitude of distillate fuel consumed by 50 percent over the best comparable U.S.-built engine. In view of the fact that MARAD on March 21, 1985, published a comprehensive proposed rulemaking action related to all "Buy American" requirements in its Title XI obligation guarantee program, that includes the subject matter of this ANPRM within its scope (50 FR 11397), this separate rulemaking action is being withdrawn.

Authority: 46 U.S.C. 1114(b); 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: March 28, 1985.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 85-1827 Filed 4-1-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-231; RM-4265]

FM Broadcast Stations in Panama City, FL; Proposed Change in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of petition.

SUMMARY: Action taken herein dismisses a petition filed by WANM, Inc. to assign FM Channel 285A to Panama City, Florida. The petition is dismissed because no expression of interest has been filed by the petitioner or any other party.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Panama City, Florida); MM Docket No. 83–231, RM–4265.

Adopted: March 13, 1985.
Released: March 21, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is the *Notice of Proposed Rule Making*, 48 FR 14675, published April 5, 1983, requesting the assignment of FM Channel 285A to Panama City, Florida, in response to a petition filed by WANM, Inc. ("petitioner"). Petitioner filed comments supporting the assignment.

2. As one of four applicants for Channel 292A at Panama City, the petitioner suggested that another channel be assigned to avoid a comparative hearing. However, neither competing applicants nor the petitioner expressed an interest in applying for the proposed additional channel at Panama City. Therefore, consistent with Commission policy and the procedures set forth in the Appendix to the *Notice*, we must dismiss the petition to assign an FM channel to Panama City.

3. In view of the foregoing, it is ordered, That the petition of WANM, Inc. requesting the assignment of FM Channel 285A to Panama City, Florida, is hereby dismissed.

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–7756 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1132

[Ex Parte No. 445 (Sub-No. 1)]

Intramodal Rail Competition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission intends to adopt rules to govern its handling of various competitive access issues.[1] The proposed rules result from petitions requesting the Commission to adopt rules to provide standards to govern the cancellation of through routes and joint rates, and the prescription of through routes, through rates and reciprocal switching. We now have before us two proposals—one by the National Industrial Transportation League (NITL) and the Association of American Railroads (AAR) jointly, and the other by Railroads Against Monopoly—which we are offering for public comment.[2] The first proposal is thought necessary to maintain and promote the intermodal competition contemplated under the Staggers Act and the second is designed to address the concern of small regional railroads that cancellation by large carriers of their joint rates and through routes adversely affects their right to compete. Following the comment period, the Commission intends to adopt rules that are acceptable to as broad a section of the marketplace as is possible consistent with statutory requirements.

DATES: Interested parties must notify the Commission in writing of their intent to participate by April 17, 1985. A service list will be issued by May 2, 1985, and all comments must be served on parties on the service list.

Comments are due May 17, 1985.
Replies are due June 3, 1985.

ADDRESS: Send an original and 15 copies of comments referring to Ex Parte No. 445 (Sub-No. 1) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: The text of the two sets of proposed rules is reproduced in the appendix. Additional information is contained in the Commission decision. To obtain a copy of the full decision write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call 202–275–7428.

This action does not appear to affect the quality of the human environment, energy conservation, or have a significant effect on small entities.

Lists of Subjects in 49 CFR Part 1132

Railroads, Administrative Practice and Procedure.

Authority: 49 U.S.C. 10321, 10703, 10705, 10707 and 11103, and 5 U.S.C. 553.

Decided: March 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

PART 1132—[AMENDED]

We propose to amend Chapter X of Title 49 of the Code of Federal Regulations by adding a new § 1132.3 to read as one of the alternatives set forth below:

Alternative 1, AAR/NITL Proposed Rules:

§ 1132.3 Through route and through rate cancellation regulations.

(a) *Notification, explanation, and justification.* A carrier proposing to cancel a through route and/or a joint rate shall publish notice of its intent to make such a cancellation forty-five days prior to the effective date of such cancellation. Upon request of any affected party seeking (1) an explanation of how the proposed cancellation would affect such party, or (2) justification for the cancellation as it would apply to a route or rate actively utilized or participated in by such party, the carrier proposing to cancel shall provide such explanation of justification within ten days.

(b) *Negotiation.* Prior to bringing any proceeding challenging a cancellation or seeking the prescription of a through route or through rate, any party intending to initiate such a proceeding shall first seek to enter into negotiations to resolve its dispute with the

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[1] Competitive access is the term now in use to describe a number of intrarailroad operating practices, *viz.*, joint rates and through routes, reciprocal switching, and terminal trackage rights.

[2] On March 12, 1985, AAR and the Chemical Manufacturers Association filed a joint petition for rulemaking on competitive access issues. They state that the terms of the AAR/CMA agreement are substantially similar to and entirely consistent with the standards previously proposed by AAR/NITL, but that the AAR/CMA agreement clarifies the AAR/NITL agreement. This petition will be treated as a comment, and must be served on parties to this proceeding when the service list is served. Also, because the petition has been served on all parties to Ex Parte Nos. 445 and 456, we will accept comments on the AAR/CMA agreement.

prospective defendants in any such proceeding. Any such party may bring a proceeding challenging a cancellation or seeking prescription of a through route or through rate five days after seeking to enter into negotiations, if such negotiations have not successfully resolved the dispute. Participation in such negotiations does not waive a party's right to file a timely petition for suspension for investigation.

(c) *Suspension for investigation of a proposed through route and/or joint rate cancellation.* The ICC shall suspend for investigation a proposed cancellation of a through route and/or a joint rate if it determines:

(1) That a protesting shipper has utilized the through route and/or joint rate proposed to be cancelled to meet a significant portion of its current or future railroad transportation needs; or

(2) That a protesting carrier has utilized or would utilize the affected through route and/or joint rate for a significant amount of traffic; and

(3) That such cancellation would eliminate effective railroad competition for the affected traffic between the origin and destination.

(d) *Investigation of cancellations.* In investigating a proposed cancellation of a through route and/or a joint rate, the Commission shall determine that the cancellation is contrary to the public interest under 49 U.S.C. 10705 if it finds that the cancellation, or a rate that would remain in place after the cancellation, is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive. In making its determination, the Commission shall take into account all relevant factors, including:

(1) Factors relevant under 49 U.S.C. 10101a and 10705, including 10705(e)(1);

(2) The revenues of the involved railroads on the affected traffic via the rail routes in question;

(3) The efficiency of the rail routes in question, including the costs of operating via those routes;

(4) The rates charged or sought to be charged by the cancelling railroad or railroads;

(5) The revenues, following the cancellation, of the involved railroads for the traffic in question via the affected through route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a cancellation is anticompetitive.

However the Commission shall not consider product competition; and if a railroad wishes to rely in any way on geographic competition, it shall have the burden of proving the existence of such competition by clear and convincing evidence. Any investigations of cancellations under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis. Where a cancellation has been determined to be contrary to the competitive standards of this section, the overall revenue inadequacy of the cancelling carrier shall not excuse such a cancellation.

(e) *Establishment of through routes, throught rates and reciprocal switching.* A through route or a through rate shall be prescribed under 49 U.S.C. 10705 or reciprocal switching shall be established under 49 U.S.C. 11103 if the Commission determines:

(1) That the complaining shipper has utilized or would utilize the through route, through rate or reciprocal switching to meet a significant portion of its transportation needs; or

(2) That the complaining carrier has utilized or would utilize the through route, through rate or reciprocal switching for a significant amount or traffic; and

(3) That the prescription or establishment is necessary to remedy or prevent an act contrary to the competition policies of 49 U.S.C. 10101a or which is otherwise anticompetitive. In making its determination, the Commission shall take into account all relevant factors, including:

(i) Factors relevant under 49 U.S.C. 10101a and 10705, including 10705(e)(1);

(ii) The revenues of the involved railroads on the affected traffic via the rail routes in question;

(iii) The efficiency of the rail routes in question, including the costs of operating via those routes;

(iv) The rates charged or sought to be charged by the cancelling railroad or railroads;

(v) The revenues, following the prescription, of the involved railroads for the traffic in question via the affected route; the costs of the involved railroads for that traffic via that route; the ratios of those revenues to those costs; and all circumstances relevant to any difference in those ratios; provided that the mere loss of revenue to an affected carrier shall not be a basis for finding that a prescription or establishment is necessary to remedy or prevent an act contrary to the competitive standards of this section.

However, the Commission shall not consider the product competition; and if a railroad wishes to rely in any way on geographic competition, it shall have the burden of proving the existence of such competition by clear and convincing evidence. When a sought prescription of a through route, through rate or reciprocal switching is necessary to remedy or prevent an act contrary to the competitive standards of this section, the overall revenue inadequancy of the defendant railroad(s) shall not be a basis of denying the sought prescription.

(f) *Effect of Commission determinations or findings under the standards set forth here.* Any Commission determinations or findings under the preceding paragraphs with respect to compliance or non-compliance with the standards of paragraph (d) or paragraph (e)(3) of this section shall not be given any res judicata or collateral estoppel effect in any litigation involving the same facts or controversy arising under the antitrust laws of the United States.

Alternative 2, RAM Proposed Rules:

§ 1132.3 Through route and through rate cancellation regulations.

(a) Notification, justification and standards for suspension. The ICC shall suspend for investigation a proposed cancellation of a joint rate and/or through route if it determines:

(1) That such cancellation would reduce effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected routes; or

(2) That the mileage between origin and destination over the joint rate or route proposed to be cancelled or closed is not more than the mileage between the same origin and destination over the joint rates and through routes that would remain in effect after the cancellation; or

(3) That the ratio of revenue to variable cost for the cancelling railroad under the affected joint rate and through route is equal to or greater than the lowest ratio over the cancelling railroad's alternative joint or single line routes on the affected traffic between the origin and destination involved; or

(4) That within ten days after receipt of a request for such explanation and justification that the cancelling railroad failed to provide a full explanation and justification for the cancellation as it would apply to a rate or route utilized or participated in by the requesting party, including relevant mileage, revenue and variable cost data adequate to compare efficiency and profitability.

(b) Investigation of cancellations. In an investigation of a cancellation of a through route and/or joint rate, the

Commission shall determine that the cancellation is not consistent with the public interest under 49 U.S.C. 10705 if it finds that:

(1) The ratio of revenue to variable cost for the cancelling railroad under the affected joint rate and through route is equal to or greater that the lowest ratio over the cancelling railroad's remaining alternative single or joint line routes on the affected traffic between the origin and destination involved; or

(2) That such cancellation would reduce effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected routes.

(c) Complaint proceeding regarding cancellations. in a complaint proceeding regarding a cancellation of a through route and/or joint rate, the Commission shall determine that the cancellation is not consistent with the public interest under 49 U.S.C. 10705 if it finds:

(1) That the ratio of revenue to variable cost for the cancelling railroad under the affected joint rate and through route is equal to or greater than the lowest ratio over the cancelling railroad's remaining alternative single or joint line routes on the affected traffic between the origin and destination affected; or

(2) That such cancellation would reduce effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected routes.

In a complaint proceeding, the cancellation of a through route or joint rate shall be presumed to violate the public interest standard of section 10705 if the complainant demonstrates that the route at issue is of reasonably comparable or superior efficiency to any competitive rail route in which the cancelling carrier participates, and the rates of the cancelling carrier will reduce effective railroad competition for the traffic at issue. The cancelling carrier may rebut the presumption by a showing that the cancellation or subsequently applicable rates will not reduce effective railroad competition for the traffic at issue.

(d) *Establishment of through routes and joint rates.* (1) Upon petition of an interested party or on motion of the Commission, a through route or joint rate shall be prescribed if the Commission determines:

(i) That the prescription or establishment is necessary to remedy or prevent an act or condition that is contrary to the competition policies of 49 U.S.C. 10101a, or that is otherwise anticompetitive; or

(ii) That the ratio of revenue to variable cost for any nonconcurring railroad is no lower than the lowest ratio over the alternative joint or single line rail routes on the affected traffic between the origin and destination affected.

(2) In making its determination, the Commission shall take into account all relevant factors, including:

(i) Whether the prescription or establishment is necessary to provide effective railroad competition for the affected traffic between the origin and destination, or any portion of the affected rates, and

(ii) The efficiency of the rail routes in question, and

(iii) The comparison of the revenues and variable costs of all involved railroads over the alternative routes.

Except that product and geographic competition and revenue adequacy and inadequacy shall not be considered.

(e) *Prescription of reciprocal switching and charges.* Reciprocal switching shall be prescribed by the Commission upon an application filed by a shipper or carrier who demonstrates said switching is either practicable and in the public interest or necessary to provide competitive rail service if the Commission determines:

(1) That a shipper has utilized or would utilize such reciprocal switching to meet a significant portion of its current or future transportation needs; or

(2) That the complaining carrier has utilized or would utilize such reciprocal switching for a significant amount of traffic.

(3) Charges for reciprocal switching established by the Commission shall not exceed the fully allocated cost of providing such service.

(4) Any establishment or prescription under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

(5) The provisions of this paragraph are inapplicable if the carrier physically serving the industry is a Class III, Class II or Class I railroad having less than two percent of the railroad industry gross freight revenue.

(f) *Prescription of terminal trackage rights.* Terminal trackage rights, including main line tracks for a reasonable distance outside of a terminal shall be prescribed by the Commission upon an application filed by a carrier who demonstrates said trackage rights are practicable and in the public interest, unless the owning carrier establishes that the granting of an application would substantially impair its ability to handle its own business:

(1) The foregoing provision is inapplicable if the owning carrier is a Class III, Class II or Class I railroad having less than two percent of railroad industry gross freight revenues.

(2) To accomplish the objectives of 49 U.S.C. 1103(a), charges for terminal trackage rights established by the Commission shall put the tenant in the some position as the owning carrier.

(3) Any establishment or prescription under the terms of this paragraph will be conducted and concluded by the Commission on an expedited basis.

[FR Doc. 85-7797 Filed 4-1-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. 38904]

49 CFR Part 1207 and 1249

Elimination of Accounting and Reporting Requirements for Motor Carriers of Property; Extension of Time to File Comments

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: At 50 FR 7201, February 21, 1985, the Commission proposed to eliminate the uniform system of accounts (49 CFR Part 1207) and revise the periodic reporting requirements (49 CFR Part 1249) for Class I and Class II common and contract motor carriers of property. In response to petitions, the April 8, 1985 due date for comments set by that notice is being extended for 180 days by this notice.

DATE: Comments must be received by October 8, 1985.

ADDRESS: Send comments (original and 15 copies) to: Docket No. 38904, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: The American Trucking Associations, Inc. (ATA) and the Regular Common Carrier Conference (RCCC), by joint petition on behalf of their motor carrier members, have requested that the time for filing comments in this proceeding be extended 180 days. The Household Goods Carrier's Bureau, Inc. (HGCB), on behalf of its members, has made a similar request for a 90-day extension. ATA and RCCC state that they need the extension to provide adequate time to assess the burdens and costs that the

current, proposed, or alternate reporting requirements will have on carriers.

The 180-day extension is warranted. The additional time will give all interested parties an opportunity to provide informed comments on this action while not unduly delaying the Commission's consideration of the proposal.

It is ordered: The date for filing comments is extended to October 8, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: March 27, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-7795 Filed 4-1-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Four Petitions, and of Review of One Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and review.

SUMMARY: The Service announces findings that a petition to reclassify the American alligator to threatened due to similarity of appearance throughout South Carolina has presented substantial information indicating that such action may be warranted, that petitions to add the spiny river snail and desert tortoise to the List of Endangered and Threatened Wildlife have also presented substantial information, and that a petition to list McKay's bunting and the St. Matthew vole has not presented substantial information. The Service also announces a review of the status of the alligator in South Carolina.

DATES: Relevant information or comments may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Associate Director—Federal Assistance (OES), U.S. Fish and Wildlife Service, Washington, D.C. 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982, requires the Service to make a finding on whether a petition to add a species to the Lists of Endangered and Threatened Wildlife and Plants, or to remove or reclassify a species, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, such a finding is to be made within 90 days of receipt of the petition, and the finding is then to be promptly published in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species. Recently, the Service received and made findings on the following four petitions.

1. A petition from the South Carolina Wildlife and Marine Resources Department, dated July 27, 1984, and received by the Service on August 15, 1984, requested reclassification of the American alligator (*Alligator mississippiensis*) to threatened due to similarity of appearance througout the State of South Carolina. At present, the alligator is classified as endangered in some parts of South Carolina and threatened in other parts of the State. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

2. A petition from the American Malacological Union, dated August 13, 1984, and received by the Service on August 22, 1984, requested determination of either endangered or threatened status for the spiny river snail (*Io fluvialis*) of Tennessee and Virginia. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

3. A petition from the National Audubon Society, dated August 29, 1984, and received by the Service on the same day, requested determination of endangered status for McKay's bunting (*Plectrophenax hyperboreus*) and the St. Matthew vole (*Microtes abbreviatus fisheri*), both found on St. Matthew Island, Alaska. The petition expressed concern that prospective development on the island could jeopardize these two species and their habitats. This contention, however, is contradicted by detailed additional information available to the Service. Specifically, the proposed development would effect, at most, only about five percent of the island. The petition's expressed fear that development would lead to an increase in the number of predatory arctic foxes, and to introduction of new predators and competitors, does not appear valid, based on experience on other arctic islands and because of various controls and prohibitions. The Service, therefore, has made the finding that this petition does not present substantial information indicating that the requested action may be warranted.

4. A petition submitted jointly by Defenders of Wildlife, the National Resources Defense Council, and the Environmental Defense Fund, dated September 11, 1984, and received by the Service on September 14, 1984, requested determination of endangered status for the desert tortoise (*Gopherus agassizii*) throughout its entire range in Arizona, California, Nevada, and Utah. Currently, only the Beaver Dam Slope, Utah, population of this species is classified as endangered. The Service has made the finding that this petition does present substantial information indicating that the requested action may be warranted.

As required in the case of a positive finding, the Service hereby initiates a review of the status of the American alligator in South Carolina. Reviews of the spiny river snail and desert tortoise are already in progress, as those species were covered, respectively, by the Service's Review of Invertebrate Wildlife in the **Federal Register** of May 22, 1984 (49 FR 21664-21675), and Review of Vertebrate Wildlife in the **Federal Register** of December 30, 1982 (47 FR 58454-58460).

Section 4(b)(3)(B) of the Act requires that within 12 months of receipt of a petition found to present substantial information, a finding be made as to whether the petitioned action is not warranted, warranted, or warranted but precluded by other listing activity. All comments and information received in response to the status reviews of the spiny river snail, American alligator, and desert tortoise will be considered in making such findings regarding these species.

The authors of this notice are Linda M. Hurley and Ronald M. Nowak, Office

of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.;* Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 25, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–7828 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 10:00 a.m., Tuesday, April 9, 1985, at 2120 L Street, NW, Suite 500, Washington, D.C. Agenda: (1) Further discussion of legislative proposals to establish a unified corps of administrative law judges; and (2) implications of the recent Supreme Court decision in *Cleveland Board of Education* v. *Loudermill*. Contact: Richard K. Berg, 202–254–7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting. Minutes of the meeting will be available on request.

Richard K. Berg,
General Counsel.
March 28, 1985.
[FR Doc 85–7840 Filed 4–1–85; 8:45 a.m]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Human Nutrition Information Service

Joint Nutrition Monitoring Evaluation Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Joint Nutrition Monitoring Evaluation Committee.
Date: April 29, 30, and May 1.
Place: Conference Room 561A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.
Time: 8:30 a.m. to 4:00 p.m.
Purpose: To evaluate the findings of the Nationwide Food Consumption Survey (NFCS), the National Health and Nutrition Examination Survey (NHANES), and other Federal nutrition monitoring efforts and develop a report on the nutritional status of the U.S. population.
Agenda: The agenda for the seventh meeting will include the following items: review text and charts completed to data and plan future work.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements or comments of concern to the committee may be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, 6505 Belcrest Road, Room 360, Hyattsville, MD 20782.

Done at Washington, DC, this 28th day of March 1984.
Isabel D. Wolf,
Administrator.
[FR Doc. 85–7859 Filed 4–1–85; 8:45 am]
BILLING CODE 3410–ICE–M

COMMISSION ON CIVIL RIGHTS

Arkansas Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 4:00 p.m. on April 23, 1985, at the Riverfront Hilton Inn, 2 Riverfront Place, the Barring Crossing Room, North Little Rock, Arkansas. The purpose of the meeting is to discuss planning and programming, fair housing, desegregation of colleges and universities, and affirmative action in state government.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Marcia McIvor or Richard Avena in the Southwestern Regional Office (512) 229–5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.
Bert Silver,
Assistant Staff Director for Regional Programs.
[FR Doc. 85–7844 Filed 4–1–85; 8:45 am]
BILLING CODE 6335–01–M

Colorado Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon, on April 20, 1985, at the Executive Tower Building, 1405 Curtis Street, Denver, Colorado. The purpose of the meeting is to hold a mini-forum to gather information on the civil rights enforcement effort in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Minoru Yasui or William Muldrow of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.
Bert Silver,
Assistant Staff Director for Regional Programs.
[FR Doc. 85–7845 Filed 4–1–85; 8:45 am]
BILLING CODE 6335–01–M

Kentucky Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 4:00 p.m., on April 26, 1985, at the Hyatt Regency Lexington 400 West Vine Street, The Board Room Lexington, Kentucky. The purpose of the meeting is to meet with city/county housing officials and representatives from local civil and human rights organizations.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Oberst or Bobby Doctor of the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–7843 Filed 4–1–85; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 12:30 p.m., on April 27, 1985, at the Northern Hotel, Broadway at 1st Avenue, North, Billings, Montana. The purpose of the meeting is to brief the Committee on Native American civil rights concerns in the State, review the Montana Jail project and discuss the jurisdiction of the U.S. Commission on Civil Rights.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Angela Russell or William Muldrow of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–7842 Filed 4–1–85; 8:45 am]

BILLING CODE 6335–01–M

South Dakota Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 1:00 p.m. on April 19, 1985, at the Travelodge Motel, 125 Main Street, Rapid City, South Dakota. The purpose of the meeting is to hold a community forum to collect information on affirmative action for minority businesses in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Rae Johnson, or William Muldrow of the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–7841 Filed 4–1–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 290]

Resolution and Order Approving the Application of the City of Baltimore for a Special-Purpose Subzone at Sparrows Point, MD, Within the Baltimore Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 USC 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Baltimore, Maryland, grantee of Foreign-Trade Zone 74, filed with the Foreign-Trade Zones Board (the Board) on June 18, 1984, requesting special-purpose subzone status for the shipyard of Bethlehem Steel Corporation at Sparrows Point, Maryland, within the Baltimore Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorported into merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Bethlehem shall advise the Board's Executive Secretary as to significant new contracts, other than for the TAKX project, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone at Sparrows Point, Maryland, Within the Baltimore Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act, "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-Trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the City of Baltimore, Maryland, grantee of Foreign-Trade Zone No. 74, has made application (filed June 18, 1984, Docket No. 33–84, 49 FR 26770) in due and proper form to the Board for authority to establish a special-purpose subzone at Bethlehem Steel Corporation's shipyard at Sparrows Point, Maryland, within the Baltimore Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution;

Now, therefore, in accordance with the application filed June 18, 1984, the Board hereby authorizes the establishment of a subzone at Bethlehem's Sparrows Point Shipyard, designated on the records of the Board as Foreign-Trade Subzone No. 74A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying

this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 14th day of March 1985 pursuant to Order of the Board.

Foreign-Trade Zones Board.

William T. Archey,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-7788 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-201-407]

Termination of Countervailing Duty Investigations; Welded Carbon Steel Pipe and Tube Products From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 19, 1985, the three subcommittees of the Committee on Pipe and Tube Imports withdrew their countervailing duty petition, filed on October 25, 1984, on welded carbon steel pipe and tube products from Mexico. Based on the withdrawal, we are terminating the countervailing duty investigations.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Case History

On October 25, 1984, we received a petition filed by the Committee on Pipe and Tube Imports (CPTI) on behalf of the U.S. welded carbon steel pipe and tube products industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that producers, manufacturers, or exporters in Mexico receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act"). On November 7, 1984, CPTI submitted a letter amending the petition to establish separate subcommittees of CPTI to be the petitioners for the three distinct groups of pipe and tube subject to these investigations.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations and, on November 14, 1984, we initiated these investigations (49 FR 45182).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) of the Act apply to these investigations. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

We sent questionnaires to the government of Mexico and the producers of the subject merchandise on November 21, 1984. The responses to our questionnaires were received on January 2, 1985. On January 18, 1985, we preliminary determined that the respondents were receiving bounties or grants and published an appropriate notice (50 FR 4555).

We conducted a verification in Mexico between February 11 and February 22, at government and respondent company offices and examined government and company records. At the request of the Sidermex companies, we held a hearing on March 6, 1985. Post-hearing briefs were filed March 13, 1985.

The final determinations in these investigations would have been due on April 3, 1985. On February 27, 1985, the government of Mexico agreed to a steel trade arrangement with the United States Government which limits the volume of U.S. imports of the subject merchandise. On March 19, 1985, we received a letter from counsel for the petitioners withdrawing their petition.

Scope of the Investigations

The products covered by these investigations fall into three major groups:

(1) Certain small diameter, circular, welded carbon steel line pipe. Small diameter circular welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches in outside diameter and with a wall thickness of not less than .065 inch are currently classifed in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3206 and 610.3209. These products are produced to various API specifications for line pipe, most notably API-5L or API-5X.

(2) Certain light-walled, rectangular, welded carbon steel pipe and tube. Rectangular (including square) welded carbon steel pipe and tube having a wall thickness of less than 0.156 inch are currently classified under TSUSA item 610.4926. This product, commonly referred to in the industry as mechanical or structural tubing, is generally produced to ASTM specifications A-500 or A-513.

(3) Certain small diameter, circular, welded carbon steel pipe and tube. Small diameter circular welded carbon steel pipe and tube, with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness are currently classified under TSUSA item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120 and A-135. Products used in the drilling of oil or gas and classified in these TSUSA numbers are not included in the scope of these ivestigations.

Withdrawal of Petition

On March 19, 1985, petitioners notified us that they were withdrawing their petition, and requested that these investigations be terminated. Under section 704(a) of the Act (19 U.S.C. 1671c(a)), upon withdrawal of a petition, the administering authority may terminate investigations after giving

notice to all parties to the investigations. We have notified all parties to the investigations of petitioners' withdrawal and our intention to terminate. We have assessed the public interest factors set out in section 704(a)(2) of the Act and consulted with potentially affected producers, workers, and consuming interests. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

For these reasons, we are terminating our investigations of welded carbon steel pipe and tube products from Mexico.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

March 27, 1985.

[FR Doc. 85-7846 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-25-M

Applications for Duty-Free Entry of Scientific Instruments, University of Illinois et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 84-321R. Applicant: University of Illinois/Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Pulsed Dye Laser, Model FL 2002E. Original notice of this resubmitted application was published in the **Federal Register** of October 24, 1984.

Docket No. 85-109. Applicant: University of Alabama in Birmingham, University Station, Birmingham, AL 35294. Instrument: Two Electrophysiological Data Interfaces, Model EDI 64. Manufacturer: Institut de Genie Biomedical, Canada. Intended use: Studies of the effects of myocardial infarction, ischemia, pacing, and drug interactions on the cardiac conductive system to gain greater insight into the mechanisms and treatment of cardiac arrhythmias in the canine model. Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-110. Applicant: Tulane University School of Medicine, 1430 Tulane Avenue, New Orleans, LA 70112. Instrument: Electron Microscope, Model JEM-100CXII with Accessories. Manufacturer: JEOL, Co., Ltd., Japan. Intended use: Scanning and transmission microscopy in the following projects:

1. Mechanical conformation of the internal structure of the carotid sinus.
2. Mechanism of release of catecholamines from adreno-medullary and carotid body cells.
3. Immunocytochemical studies of the neurons of the brain stem.
4. Surface characteristics of exfoliated transitional cell.
5. Microscopic studies of the mucosa of the small bowel.
6. Analysis of development of cortical neurons.
7. The instrument will be used to train *graudate students* and *postdoctoral fellows* in the fundamentals of ultramicroscopy.

Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-111. Applicant: University of Maryland, School of Medicine, 655 West Baltimore Street, Baltimore, MD 21201. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manfuacturer: JEOL, Ltd., Japan. Intended use: study of the composition and structure of experimental animal biopsy specimens and body fluids. The experiments to be conducted will include:

(i) Examination of neuromuscular juctions from animals exposed to insecticide-type poisons. Sodium and calcium accumulations are expected.

(ii) Study of stimulated electric organ nerve terminals; the accumulation of calcium by synaptic vesicles will be studies.

(iii) Study of nerve terminals in the mammalian brain after seizures; the distribution of sodium and calcium is of interest.

(iv) Study of calcium movements during the various phases of insulin secretion from Islet of Langerhans beta cells.

The instrument will also be used in the training of graduate students and postdoctoral fellows requiring fine structural and analytical techniques in their research investigations.

Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-112. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Scanning Electron Microscope, Model Steroscan 253-G60PL/250Mk3 with Accessories. Manufacturer: Cambridge Instruments, Inc., United Kingdom. Intended use: Studies of advanced metals, advanced ceramics, and advanced polymeric materials including composite materials. The experiments will be conducted on the following:

1. The structure and properties of ultra-fine grain RS microcrystalline alloys prepared by crystallization from the glassy state.
2. Structure and properties of lithium alloyed 2024 and Al-Mg-Li typed aluminum alloys prepared from rapidly solidified particles.
3. Multiple phase strengthening of R.S.P.M. based superalloys using Γ', oxides and carbides.
4. The structure and properties of RSX7091 Alloy prepared as hot extruded bar.
5. High strength hot, high temperature, high thermo-conductivity copper-base alloys: Ingot and RS alloys.
6. High temperature creep crack growth in four nickel based super alloys.
7. Mechanisms of iodine stress corrosion cracking of zircaloy.
8. Fatigue behavior of rail steels.
9. Microstructure of high temperature oxide and sulfide scales.
10. Fiber reinforced epoxies.
11. Nickel sulfide stones in glass.
12. Design of artifical skin.
13. Experimental treatment of burn victims in field hospitals.

The instrument will also be used for training in the use of scanning electron microscopy. Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85-113. Applicant: Rutgers Medical School, Department of Pathology, P.O. Box 101, Piscataway, NJ 08854. Instrument: Electron Microscope, Model EM 420T with Accessories. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use: The instrument is intended to be used in conducting the following research projects:

(1) Structure of the Chick Corneal Basement Membrane.

(2) Corenal Fibroblasts and Morphogenesis of an Orthogonal Collagenous Stroma.

(3) STEM and X-ray Diffraction Analysis of Collagen Fibrils.

(4) SLS-Crystallite Structure and Fibril Patterns.

(5) Binding of Zinc Ions to the Basement Membrane of the Mullerian Duct.

(6) Glomerular Hemodynamics and Serial Section Reconstructions.

(7) Ultrastructural Studies of Genito-Urinary, Renal and Matrix Pathology.

(8) Immunoelectron Microscopic Localization of Adenovirus Early Proteins in Transformed Cells.

Application received by Commissioner of Customs: March 11, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7784 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Correction

In the Notice of Consolidated Decision appearing at page 11747 of the **Federal Register** of March 25, 1985, the following docket should be deleted:

Docket No. 84-268. Applicant: National Institute of Mental Health Washington, D.C. 20032. Instrument: Electron Microscope, Model EM 10CA and Accessories. Date of Denial Without Prejudice to Resubmission: October 22, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7781 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision for Duty-Free Entry of Scientific Instrument; Correction; Moncrief Radiation Center

In FR Doc. 85-6951 appearing at page 11747 in the **Federal Register** of March 25, 1985, Docket Number 83-232, the second and third sentences under **Reasons** are to be corrected to read:

In order to make the determination of scientific equivalency, it is clear that some scientific use for the foreign article, whether educational or research, must be intended. Although the foreign article falls within the tariff items eligible for duty-free consideration, its purpose is to plan the treatment of patients undergoing radio-therapy thereby achieving savings in equipment cost and personnel.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7782 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; San Diego State University Foundation

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 82-00286R. Applicant: San Diego State University Foundation, San Diego, CA 92182-1900. Instrument: Excimer Laser, Model TE-861S and Accessories. Manufacturer: Lumonics, Inc., Canada. Intended Use: See notice at 47 FR 39546.

Comments: None received.

Decision: Denied. Instruments of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, are being manufactured in the United States.

Reasons: This application is a resubmission of Docket No. 82-00286, which was denied without prejudice to resubmission (DWOP). In the DWOP, we asked the applicant to provide a clear comparison with domestic instruments (Models 800 and 801XR) available from Tachisto Incorporated because the applicant had compared the foreign article with a Tachisto model discontinued prior to the date of purchase (April 5, 1982) of the foreign instrument. In the resubmission the applicant asserts that the Tachisto literature describing performance specifications for models 800XR and 801XR did not specify operation with flourine gas (F_2) at a wavelength of 157 nanometers and, therefore, that those modes do not satisfy research requirements for lasing capabilities with F_2. The National Bureau of Standards (NBS) in its November 19, 1982, memorandum accompanying the DWOP, however, specifically stated that both domestic instruments were capable of operation with F_2.

In its April 21, 1983, memorandum addressing the resubmission, NBS points out that the Tachisto literature provided the applicant, although it does not specifically refer to F, F_2 and N_2 (flourine and nitrogen gases), "does imply operation on these laser gases."

We agree with NBS that charts and diagrams in the Tachisto literature clearly indicate operation on F_2. The literature also presents a table which provides guarantee specifications for laser operation with each of four commonly used lasing (gas) media. Although flourine is not included in this table, a figure in the brochure clearly shows the relative output energies of Tachisto instruments using fluorine and nitrogen as well as the four gases mentioned in the table. The applicant may have overlooked this information, but we agree with NBS that there is "no reason to believe that Tachisto would not have responded with a quotation and specifications to a specific need for an instrument capable of operaton on F_2 gas." The law requires a finding only that an "instrument or apparatus of equivalent scientific value . . . is being manufactured in the United States," not that there be an active United States bidder. 19 U.S.C. 1202, Schedule 8, Part 4, headnote 6.

In order to clarify these matters, we asked the applicant to provide a copy of the letter sent tachisto dated January 18, 1983. The applicant's letter was a general inquiry rather than a request for specific information on an operating characteristic needed for research requirements (such as operation on F_2). Such detailed information would be required, of course, to make a meaningful comparison of the domestic instruments with the foreign instrument.

NBS also advises that both the foreign and domestic instruments satsify the specification claimed pertinent and that the overall operating performance of the referenced instruments is comparable. We also note that the applicant has failed satisfactorily to address the request of the DWOP.

Subsection 301.5(d)(3) of the regulations states that "The burden of proof shall be on the applicant to demonstrate that no instrument of equivalent scientific value for the purposes for which the foreing instrument is to be used is being manufactured in the United States" and Subsection 301.5(e)(8) states that "In the event an applicant fails to address the noted deficiencies in the response to the DWOP, the Director may deny the application."

For all the foregoing reasons, we deny the application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-7763 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

March 27, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1985. For further information contact James Nader, International Trade Specialist (202) 377-4212.

Background

On January 31, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia, a CITA directive was published in the **Federal Register** (50 FR 4568), which established an import restraint limit for men's and boys' cotton knit shirts in Category 338, produced or manufactured in Indonesia and exported during the ninety-day period which began on December 31, 1984 and extended through March 31, 1985. The notice also stated that the Government of the Republic of Indonesia is obligated under the bilateral agreement, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the prorated twelve-month period which began on December 31, 1984 and extends through June 30, 1985 to 110,562 dozen.

The notice also stated that merchandise in the category which is in excess of the ninety-day limit, if it is allowed to enter, may be charged to the limit established for the prorated twelve-month period.

The United States Government has decided, inasmuch as no mutually satisfactory solution has been agreed concerning this category, to control imports at the prorated twelve-month limit. The limit may be adjusted to include prorated swing and carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

March 27, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of October 13 and November 9, 1982, as amended, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 1, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 338, produced or manufactured in Indonesia and exported during the period which began on December 31, 1984 and extends through June 30, 1985 in excess of 110,562 dozen.[1]

Textile products in Categories 338, which have been exported to the United States during the ninety-day period which began on December 31, 1984 shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607, December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-7735 Filed 4-1-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to reflect any imports exported after December 30, 1984.

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety, CPSC.

ACTION: Notice of Meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on April 15 and 16, 1985, in Washington, D.C. The purpose of this meeting is to discuss recommendations for screening tests of commercially available cigarettes, and a proposal for testing of experimental cigarettes by the National Bureau of Standards.

DATE: The meeting will be from 9:30 a.m. through 5:00 p.m. on April 15, 1985; will resume at 9:00 a.m. on April 16, 1985, and will conclude that day.

ADDRESS: The meeting will be in Room 5051, HHS North Building, 330 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567; 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on April 15-16, 1985, to discuss the following topics:

Recommendations for screening tests of commercially available cigarettes;

A proposal for testing of experimental cigarettes by the National Bureau of Standards.

The meeting will be open to observation by members of the public.

but only members of the Technical Study Group may participate in the discussion.

Dated: March 27, 1985.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 85-7810 Filed 4-1-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 7, 1985, Tuesday, May 14, 1985; Tuesday, May 21, 1985 and Tuesday, May 28, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Installations and Logistics) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an aency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

March 28, 1985.

[FR Doc. 85-7867 Filed 4-1-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Meeting on Educational Research Priorities

AGENCY: Office of the Secretary of Education.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Secretary of Education will conduct a meeting on educational research priorities. This notice announces the date, time, and place for the meeting. It also notifies the general public of their opportunity to attend.

DATE: April 17, 1985 at 9:30 a.m.

ADDRESS: The Secretary's Conference Room, Room 4003, 400 Maryland Avenue SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Thomas R. Ascik, NIE Senior Associate, Room 815K, National Institute of Education, 1200 19th Street NW., Washington, D.C. 20208. Telephone: (202) 254-6070.

SUPPLEMENTARY INFORMATION: The Secretary of Education has invited a small number of distinguished scholars to meet informally for the purpose of exchanging information and views on current and future educational research priorities of the Department of Education. The meeting will include a discussion of the following questions:

—In what areas does the application of knowledge and insights that research can reasonably be expected to produce hold greatest promise for improving the quality of American education?

—How satisfactorily do the research activities currently underway at the Department of Education, and those planned for the future, match the priorities suggested by the anwer to the prior question?

—In particular, were the appropriate priorities reflected in guidance that the National Institute of Education (NIE) supplied in October, 1984 to prospective applicants for educational research and development center grants? It should be noted that no changes will be made in the eleven "missions" previously identified by NIE, but the Secretary may wish to supply additional guidance to prospective applicants on more specific "research areas." Any additional guidance will be published in the Federal Register by May 15, 1985.

This meeting is open to the public. Written comments are invited and may be mailed to Thomas Ascik at his address provided above or hand delivered to Mr. Ascik at the meeting.

Dated: March 29, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-7957 Filed 4-1-85; 9:31 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council Refinery Capability Task Group; Meeting

Notice is hereby given that the Refinery Capability Task Group will meet in April 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Capability Task Group will hold its fourth meeting on Monday, April 15, 1985, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, D.C.

The tentative agenda for the Refinery Capability Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review the work of the Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the pubilc who wishes to file a written statement

with the Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mrs. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 26, 1985.

Willian A. Vaughan,

Assistant Secretary Fossil Energy.

[FR Doc. 85–7864 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

National Petroleum Council; Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in April 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Survey Task Group will hold its fifth meeting on Monday, April 15, 1985, starting 1:00 p.m. in the Conference Room of the National Petroleum Council, 1625 K Street NW., Suite 600, Washington, D.C.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the status of Refinery Survey responses.
3. Discuss proposals for aggregations of survey data.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353/2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on March 26, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85–7863 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Uranium Enrichment; Public Meeting

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Energy (DOE) is conducting a detailed assessment of the economic and technical prospects of two advanced technologies for the enrichment of uranium for use in civilian nuclear power plants. These are the Advanced Gas Centrifuge (AGC) and the Atomic Vapor Laser Isotope Separation (AVLIS) processes, respectively. The objective is to select one of these technologies as the primary option for continued development, demonstration, and potential deployment. Selection is scheduled for May 1985. A meeting is scheduled to report on the status of the uranium enrichment enterprise and the process for technology selection.

DATE: The meeting will be held April 22, 1985, 9:00 a.m. to 6:00 p.m.

ADDRESS: U.S. Department of Energy Auditorium, Germantown, Maryland.

FOR FURTHER INFORMATION CONTACT: William L. R. Rice, Office of Advanced Technology Projects (NE–35), U.S. Department of Energy, Washington, DC 20545 (301/353–4201).

SUPPLEMENTARY INFORMATION:

Introduction

Natural uranium is presently enriched in three gaseous diffusion plants for use as nuclear fuel. The plants are owned by the United States Government and are operated under contract for the DOE at Oak Ridge, Tennessee; Paducah, Kentucky; and Portsmouth, Ohio. Also, a Gas Centrifuge Enrichment Plant (GCEP) is under construction within the perimeter of the gaseous diffusion complex at Portsmouth, Ohio. The first two process buildings of a projected multi-building plant are constructed, along with associated support facilities needed for repair and recycle of gas centrifuges, process gas handling, adminstration, etc. However, majority of the centrifuges to fill these buildings have not been manufactured.

Research and development on advanced enrichment technologies is being supported by DOE. This work encompasses two approaches—development of AGC technology for introduction in GCEP, and the AVLIS process. Both are being developed to reduce cost of enriched uranium.

Process Evaluation

The Office of Uranium Enrichment (UE) of DOE is responsible for the overall management and execution of uranium enrichment programs, including existing plants, future technologies, and enrichment business activities within the U.S. and abroad. Domestic and foreign sales of enriched uranium from this enterprise total approximately $1.6 billion and represent about 47% of the total free world market. A major goal of the enterprise is to remain a competitive world supplier of enriched uranium to fuel nuclear power reactors and to supply U.S. defense needs. In the context of this goal is an objective to offer the lowest priced enrichment services possible to our customers consistent with good business practices.

In June 1984, the Secretary of Energy announced the establishment of a Process Evaluation Board. It was directed to evaluate the two advanced uranium enrichment technologies (AGC and AVLIS) as a key step in the DOE plan to select, by May 1985, one advanced process for continued development and future deployment. The Secretary requested the Board to analyze each technology and develop a report which will form the basis for the technology selection. The evaluation will include a detailed assessment of the technical performance, costs, and schedule for the two processes, and identification of the business and market factors that will impact their future deployment on a large scale.

The bases for evaluating the AGC and AVLIS technologies are presented in a DOE document defining the selection criteria, issued in July 31, 1984. The selection criteria emphasized the economic merit of the technologies. Characteristics for evaluation will include potential product costs, implementation schedules and costs,

cost competitiveness with other means of production, technical status, development risk, the operational aspects of each technology, and the relative attractiveness of alternative financing options. Information on these characteristics is being obtained from all participants in a series of four data packages. The information and the assessment of the information will form the basis for the PEB findings. An integral part of the review process has been a series of topical meetings and detailed peer review meetings, at which the process proponents defend their respective technologies in a series of point, counterpoint presentations. It should be noted that the large majority of the data is classified and cannot be discussed during the public meeting.

Process Selection

The PEB findings will be submitted to the Secretary. UE will consider the PEB findings in the context of the DOE uranium enrichment program goals, and will forward the PEB findings to the DOE selection official, the Secretary of Energy.

The Public Meeting

As scheduled above, DOE will hold a public meeting to present the status of the selection process described above. The purpose of the public meeting is for the Department to receive public, nonclassified input that could affect the Department's future decisions, and to inform the public on the status of these activities. Specifically, the Deputy Assistant Secretary for Uranium Enrichment will provide an overview of the operation of the enrichment enterprise, and the Chairman of the PEB will describe the process leading to the Board's ultimate findings.

Persons wishing to provide a written statement for consideration should provide such statement on or before the day of the meeting. Persons wishing to provide an oral statement will be provided fifteen (15) minutes during the meeting to make such a statement. A written summary of each oral statement must be provided no later than two (2) days before the meeting if the speaker wishes to be placed on the agenda. Within the final two (2) hours of the meeting, an additional five (5) minutes will be provided for any person desiring to make a final statement. Oral statements will only be presented on April 22, 1985. All speakers will be selected on a first come, first served basis, both for fifteen (15) minute statements any for any concluding five (5) minute remarks.

All Statements Should be Submitted to: William L. R. Rice, Office of Advanced Technology Projects (NE–35), U.S. Department of Energy, Washington, DC 20545 (301/353–4201).

A limited number of the U.S., Department of Energy document, "Criteria and Methodology for the Assessment of the AGC and AVLIS technologies", dated July 31, 1984, plus all amendments thereto, will be available and provided upon request and at the day of the meeting at the Department of Energy Auditorium.

Approximately two (2) weeks following conclusion of the meeting, a copy of the meeting transcript will be available for public review. It will be located in the Department of Energy's Freedom of Information Reading Room. This is located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC

Dated: March 20, 1985.

John R. Longenecker,

Deputy Assistant Secretary for Uranium Enrichment.

[FR Doc. 85–7616 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Berkeley Nuclear Laboratory; England

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42. U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for supply of the following material: Contract Number WC–EU–277, for the supply of 12 uranium oxide pellets, containing a total of 54 grams of uranium depleted in U–235, to the Berkeley Nuclear Laboratory, England, for use in oxidation rate studies, and subsequent disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7732 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangements; Central Bureau for Nuclear Measurements, Belgium

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above mentioned agreement involve approval of the following sales: Contract Number S–EU–841, to the Central Bureau for Nuclear Measurements, Geel, Belgium, 620 milligrams of thorium-230, for preparation of targets and isotope dilution mass spectrometry. Contract Number S–EU–842, to Eurodif-Production, France, 445.2 grams of normal uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7730 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; Joint Research Center, Federal Republic of Germany

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S–EU–826, to the Joint Research Center, the Federal Republic of Germany, one gram of uranium depleted in the isotope U–235, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7731 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangements; Government of Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government os Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above mentioned agreements involve approval of the following retransfers:

RTD/EU (SW)–72, from Sweden to the Federal Republic of Germany, 715 kilograms of uranium, enriched to 2.95% in U–235, for use as fuel in the Philippsburg power reactor.

RTD/SW (EU)–132, from the Federal Republic of Germany to Sweden, 911 grams of uranium, enriched to 0.94% in U–235 and 8 grams of plutonium for post-irradiation examination.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: March 26, 1985.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85–7729 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Design and Construction Grant; Restriction of Eligibility for Grant Award

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) announces that pursuant to DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for the award of a grant for the design and construction of an energy basic industry research laboratory located in Evanston, Illinois.

Procurement request No. 02–85CE90231.000.

FOR FURTHER INFORMATION CONTACT: John J. Brogan, CE–14, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC, (202) 252–1477.

Authority

Title II and section 327 of the Department of the Interior and Related Agencies Appropriations Act, 1985, Public Law 98–473, and DOE Financial Assistance Rules, 10 CFR 600.7(b).

Project Scope

In the Department of the Interior and Related Agencies Appropriations Act, 1985, Congress directed DOE to make available $16 million to establish an energy conservation basic industry research laboratory in Evanston, Illinois. These funds will provide for design and initial construction of the facility which will be the only research center devoted exclusively to DOE's energy conservation program. Eligibility for award of this grant is being restricted to Northwestern University to comply with the specific statutory direction discussed above. The anticipated project period of the grant is June 30, 1985 through June 29, 1987, and the amount of DOE funds to be awarded shall be $15,681,000 by application of section 327 of the Appropriations Act which reduced each amount of budget authority provided in the Act by 2 per cent.

Issued in Washington, D.C. on March 12, 1985.

Hilary J. Rauch,

Manager, Chicago Operations Office.

[FR Doc. 85–7815 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Elk Trading Co., Inc. and Neal Davis; Proposed Remedial Order

Pursuant to 10 CFR 2054.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Elk Trading Company, Inc. This Proposed Remedial Order alleges pricing violations in the amount of $15,897,743.69 plus interest in connection with the resale of crude oil at prices in excess of those permitted under 10 CFR Part 212 during the time period May 1978 through December 1980.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Mary Johnson, Economic Regulatory Administration, Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207 or by calling (214) 767–4646. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Room: 6F–078, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas on the 11 day of March, 1985.

Ben Lemon, Director

Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 85–7817 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Proposed Remedial Order; Goldsberry Operating Co., Inc.

AGENCY: Department of Energy.

ACTION: Notice of Amended Proposed Remedial Order to Hood Goldsberry D/B/A Goldsberry Operating Co., Inc.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of an Amended Proposed Remedial Order which was issued to Hood Goldsberry D/B/A Goldsberry Operating Co., Inc. (Goldsberry) doing business at 1200 American Tower, Shreveport, Louisiana 71101. This Amended Proposed Remedial Order alleges that Goldsberry

charged prices in excess of ceiling prices in first sales of domestically produced crude oil in violation of 10 CFR 212.32, 212.54, 212.73 and 212.74 during the period December 1973 through September 1980 in the amount of $300,549.78.

A copy of the Amended Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas on the 12th day of March, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-7811 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF85-304-000, et al.]

Amalgamated Sugar Co. et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of the notice.

March 26, 1985.

Take notice that the following filings have been made with the Commission:

1. Amalgamated Sugar Company

[Docket No. QF85-304-000]

On March 13, 1985, Amalgamated Sugar Company (Applicant), of P.O. Box 127, Twin Falls, Idaho 83301, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The existing topping-cycle cogeneration facility is located on Orchard Road, South East Twin Falls, Twin Falls County, Idaho. The existing facility consists of two boilers and two extraction steam turbine/generator units. The electric power production capacity of the two units is 4 MW. The electric power output provides 50 percent of the plant's electric power requirement. The thermal energy is used for the extraction of sugar from sugar beets. The primary source of energy is coal.

The proposed addition to the existing topping cycle cogeneration facility will consist of a condensing steam turbine/generator driven by the existing boilers. The electric power production capacity of this unit will be 6 MW. The additional thermal energy will be used for the extraction of sugar from sugar beets.

2. Jeffery Bradley

[Docket No. QF85-296-000]

On March 11, 1985, Jeffery Bradley (Applicant), of c/o Leatherwood, RD #1, Box 399, Bloomsbury, New Jersey 08804 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10.0 kilowatt wind facility is located on Myler Road in Bloomsbury, New Jersey.

3. Faulkner Land & Livestock

[Docket No. QF85-291-000]

On February 18, 1985, Faulkner Land & Livestock (Applicant), of c/o John Faulkner, H/C 60 Box 1360, Bliss, Idaho 88314 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes as complete filing.

The 0.9 megawatt hydroelectric facility is located in Gooding County, near the town of Bliss, Idaho.

A separate application is required for hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. Lawrence E. Steward

[Docket No. QF85-298-000]

On March 11, 1985, Lawrence E. Steward (Applicant), of 3080 Valmont, Unit 1, Boulder, Colorado 80301, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located in Weld County, Colorado. The facility will consist of wind turbine/generators located in a wind farm configuration. The electric power production capacity of the facility will be 20 MW with an annual electric energy production of 60,000 MWH. The primary source of energy will be wind.

5. TDEnergy, Inc.

[Docket No. QF85-294-000]

On March 11, 1985, TDEnergy, Inc. (Applicant), of 68 Broad Street, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power production facility, facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 20.0 megawatt wind facility is located in Florida, Massachusetts.

6. TDEnergy, Inc.

[Docket No. QF85-293-000]

On March 11, 1985, TDEnergy, Inc. (Applicant), of 68 Broad Street, Boston, Massachusetts 02109 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5.0 megawatt wind facility is located in Windsor, Massachusetts.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7734 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-44-000 and TA85-2-44-001]

Commercial Pipeline Co., Inc.; Notice of PGA Filing

March 28, 1985.

Take notice that on March 22, 1985, Commercial Pipeline Co., Inc. ("Commercial") tendered for filing its 47th Revised Sheet No. 3A, superseding 46th Revised Sheet No. 3A reflecting Purchased Gas Adjustments and Total Rate as shown below.

	Current adjustment	Cumulative adjustment	Surcharge adjustment	Total rate
(Base)	$(.1189)	$(.1118)	$(1.6554)	$2.2887
(Excess)	(.0990)	(.0864)	(1.6554)	2.8206

The effective date of Commercial's filing is April 23, 1985.

Commercial states that this filing reflects adjustments in its purchased gas cost to provide for the tracking of a corresponding PGA adjustment by Commercial's sole supplier, Northwest Central Pipeline Corporation. The filing also reflects surcharge adjustments in accordance with Commercial's PGA.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7801 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8820-000, et al.]

Hydroelectric Applications (City of New York, et al.); Notice of Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8820-000.

c. Date Filed: December 24, 1984.

d. Applicant: City of New York.

e. Name of Project: Downsville Dam.

f. Location: East Branch of Delaware River in Delaware County, New York.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Joseph T. McGough Jr., Commissioner, Department of Environmental Protection, 2358 Municipal Building, New York, New York 10007

i. Comment Date: May 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 204-foot-high, 2,450-foot-long earthfill concrete core dam owned by the City of New York, at crest elevation 1,304 feet m.s.l.; (2) an existing reservoir with a surface area of 6,400-acres and net storage capacity of 430,000 acre-feet; (3) an existing 40-foot-diameter, 520-foot-long diversion tunnel; (4) an existing 8-foot-diameter, 140-foot-long tunnel which bifurcates into a short length of 6-foot-diameter tunnels; (5) a proposed generating unit within the existing valve chamber at the terminus of the south 6-foot-diameter tunnel with a rated capacity of 766-kW; (6) a proposed tailrace conduit approximately 8 feet in diameter and 210 feet long, connected back into the existing 40 feet diameter tunnel; and (7) a proposed powerline connected into the existing power distribution line at the site which ties into the New York State Electric and Gas System. The Applicant estimates a 3.6 million kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

2a. Type of Application: Preliminary Permit.

b. Project No.: 8866-000.

c. Date Filed: February 20, 1985.

d. Applicant: David G. DeMera.

e. Name of Project: Black Lassic and South Shanty Power Project.

f. Location: On Black Lassic and South Shanty Creeks, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David G. DeMera, P.O. Box 628, Murphys, California 95247.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 20-foot-long diversion dam on Black Lassic Creek at elevation 4,200 feet; (2) a 4-foot-high, 20-foot-long diversion dam on South Shanty Creek at elevation 4,200 feet; (3) a 24-inch-diameter, 1,500-foot-long diversion conduit; (4) a 2-foot-diameter, 8,400-foot-long penstock; (5) a powerhouse with a total installed capacity of 1,500 kW operating under a head of 1,200 feet; and (6) a 3.5-mile-long, 12.5-kV transmission line from the powerhouse to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 4 million kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No.: 8863-000.

c. Date Filed: February 19, 1985.

d. Applicant: David G. DeMera.

e. Name of Project: Glen Creek Power Project.

f. Location: On Glen Creek, near Forest Glen, within shasta-Trinity National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David G. DeMera, P.O. Box 628, Murphys, California 95247.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 20-foot-long diversion dam at elevation 3,000 feet; (2) a 24-inch-diameter, 100-foot-long diversion conduit; (3) a 24-inch-diameter, 5,000-foot-long penstock; (4) a powerhouse with a total installed capacity of 700 kW

operating under a head of 500 feet; and (5) a 1,700-foot-long, 12.5-kV transmission line connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 2.0 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks insurance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

4a. Type of Application: Preliminary Permit.

b. Project No.: 8907–000.

c. Date Filed: January 30, 1985.

d. Applicant: Pine Creek Hydro Company.

e. Name of Project: Pine Creek Project.

f. Location: On Pine Creek, near Weitchpec, within Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Avenue B–4, Sacramento, California 95821.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 335-foot-long diversion dam at elevation 360 feet; (2) a 83-inch-diameter or 8.5-foot-wide and 4.5-foot-deep, 7,000-foot-long diversion conduit or channel; (3) a 69-inch-diamemter, 350-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 4,560 kW operating under a head of 189 feet; and (5) a 3-mile-long, 12.5-kV transmission line to be connected to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation of 18.7 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 8604–000

c. Date Filed: September 17, 1984.

d. Applicant: The Incorporated County of Los Alamos.

e. Name of Project: Cochiti Water Power Project.

f. Location: On the Rio Grande in Sandoval County, New Mexico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ronald C. Jack, County Administrator, Incorporated County of Los Alamos, New Mexico, 2300 Trinity Drive, P.O. Box 30. Los Alamos, New Mexico 87544.

i. Comment Date: May 6, 1985.

j. Competing Application: Project No. 8493, Date Filed August 6, 1984.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Cochiti Dam and Reservoir, located on lands of the Pueblo de Cochiti, and would consist of: (1) A new penstock utilizing the existing outlet works, with modifications, or possibly a completely new pressure conduit constructed to the left of the existing outlet works; (2) a new powerhouse to contain two turbine-generator units rated at 7.5 MW each for a total rated capacity of 15.0 MW with a possible increase to 20 MW if a new pressure conduit is feasible; (3) a tailrace returning flow to the river near the existing stilling basin outlet; (4) a new transmission line connecting to an existing 115-kV line of the Public Service Company of New Mexico about 6.5 miles distant; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 53,000,000 kWh with a possible increase to 59,000,000 kWh if a new pressure conduit is constructed and plant capacity is increased.

l. Purpose of Project: Project energy will be integrated into Los Alamos' power distribution system with the possibility that some of the energy may be marketed to area utilities.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $80,000.

6a. Type of Application: Conduit Exemption.

b. Project No.: 6876–002.

c. Date Filed: October 30, 1984.

d. Applicant: Fillmore City Corporation.

e. Name of Project: Chalk Creek Hydro Project.

f. Location: On Chalk Creek in Millard County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Honorable Doris Rasmussen, Mayor, P.O. Box 686, Fillmore, Utah 84631.

i. Comment Date: May 6, 1985.

j. Description of Project: An existing irrigation project consists of a diversion structure on Chalk Creek into a 4,150-foot-long, 24-inch-diameter pipeline leading to a weir which divides the flow between the Fillmore water users irrigation system and the Chalk Creek Irrigation Company (CCI); the CCI flow then enters a 3,000-foot-long, 18-inch diameter pipeline which subsequently serves another irrigation system. The proposed project consist of two powerhouses: (1) An upper powerhouse, near the end of the 24-inch pipeline, to contain a turbine-generator unit rated at 180 KW and discharging flow above the dividing weir; and (2) a lower powerhouse, near the end of the 18-inch pipeline, to contain a turbine-generator unit rated at 120 KW and discharging flow into the lower irrigation system. The Applicant estimates that the average annual energy output would be 899,800 kWh for the upper plant and 720,500 kWh for the lower plant.

k. Purpose of Project: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3b.

7a. Type of Application: Exemption from Licensing (5MW).

b. Project No.: 8848–000.

c. Date Filed: December 28, 1984.

d. Applicant: Sawyer-Bellamy Mill Associates.

e. Name of Project: Sawyers Mill Project.

f. Location: On the Bellamy River in the City of Dover, Strafford County, New Hampshire.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Dr. George K. Lagassa, Mainstream Associates, 48 Congress Street, Portsmouth, New Hampshire 03801.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would consist of the following two developments:

A. The Upper Dam development consisting of: (1) An existing 15-foot-

high, 80 foot-long dam; (2) a reservoir having a surface area of 18 acres, a storage capacity of 75 acre-feet, and a normal water surface elevation of 47.9 feet msl; (3) a new intake structure; (4) an existing 11-foot-deep, 22-foot-wide, 25-foot-long open flume; (5) an existing 10-foot-long, 4-foot-diameter steel penstock; (6) a new powerhouse containing one generating unit with an installed capacity of 62 kW; (7) a new 8-foot-long, 4-foot-diameter steel discharge pipe; (8) a new 150-foot-long, 12.47-kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 145,000 kWh.

B. The Lower Dam development consisting of: (1) An existing 80-foot-long, 18-foot-high dam; (2) a reservoir having a surface area of 0.7 acre, a storage capacity of 2.5 acre-feet, and a normal water surface elevation of 35.5 feet m.s.l.; (3) a new intake structure; (4) a new 350-foot-long-diameter steel penstock; (5) a new powerhouse containing one generating unit having an installed capacity of 105 kW; (6) a new 40-foot-long excavated tailrace; (7) a new 130-foot-long, 12.47-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 255,000 kWh.

The proposed Sawyers Mill project would have a total installed capacity of 167 kW, and would generate an estimated total of 400,000 kWh annually.

k. Purpose of Project: All project energy generated would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3A.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8606–000.

c. Date Filed: September 18, 1984, and amended on January 10, 1985.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Schuylerville Project.

f. Location: On the Fish Creek in the Towns of Schuylerville and Victory Mills, Saratoga County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: John W. Keib, Senior Systems Attorney, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202.

i. Comment Date May 6, 1985.

j. Description of Project: The proposed project would consist of: (1) An exising 553-foot-long, 20-foot-high concrete gravity dam; (2) a reservoir having a surface area of 13 acres, a storage capacity of 320 acre-feet and a normal water surface elevation of 146 feet msl; (3) an intake structure; (4) an existing above ground pipeline consisting of a 197-foot-long, 9-foot-diameter steel pipe and a 590-foot-long, 9-foot-diameter wood stave pipe; (5) an existing 55-foot-long, 16.5-foot-diameter concrete surge tank; (6) an existing above ground 50-foot-long, 9-foot-diameter steel penstock; (7) an existing powerhouse containing 2 generating units (one existing, one new) with a total installed capacity of 1,620 kW; (8) an existing 80-foot-long tailrace; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 6,750,000 kWh.

k. Purpose of Project: All project energy generated would be used by the Applicant for distribution to its customers.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

9a. Type of Application: Declaration of Intention.

b. Project No.: EL 85–20–000.

c. Date Filed: February 6, 1985.

d. Applicant: Energy Stream, Inc.

e. Name of Project: Pyramid Creek Hydroelectric.

f. Location: On Pyramid Creek on Unalaska Island in the Aleutian Chain of Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Harry A. Noah, Energy Stream, Inc., 1013 Dimond Boulevard, #352, Anchorage, Alaska 99515.

i. Comment Date: May 1, 1985.

j. Description of Project: The proposed project would utilize an existing City of Unalaska water supply dam and would consist of: (1) An 8,000-foot-long penstock from the water supply dam to the powerhouse; (2) a 10-foot-high, 85-foot-wide, sheet-pile diversion dam on the lower part of the creek; (3) a 4,800-foot-long penstock to the powerhouse; (4) a 25-foot by 35-foot, prefabricated metal powerhouse within the city limits of Unalaska containing a generating unit rated at 1,400 kW and producing an average annual output of 7.1 GWh; and (5) a transmission line from the powerhouse to the city's existing transmission lines.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over the project.

k. Purpose of Project: Power would be sold to the publicly-owned utility in Unalaska. All power would be consumed within the city limits.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10a. Type of Application: Major License (over 5 MW).

b. Project No.: 3246–001.

c. Dated Filed: May 3, 1983.

d. Applicant: Missouri Joint Municipal Electric Utility Commission.

e. Name of Project: Mississippi River Locks and Dam No. 26R.

f. Location: On the Mississippi River in St. Charles County, Missouri, and Madison County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joe R. Moody, Jr., Benham-Holway Power Group, 5300 South Yale Avenue, Tulsa, Oklahoma 74135, and Mr. Richard E. Melon, Missouri Joint Municipal Electric Utility Commission, P.O. Box 401, Jefferson City, Missouri 65102.

i. Comment Date: May 24, 1985.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdication of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed headrace; (2) a proposed powerhouse containing six generating units rated at 13 MW each for a total install capacity of 78 MW; (3) a proposed tailrace; (4) a proposed one-mile-long, 161-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 400,000,000 kWh.

k. Purpose of Project: Power produced at the project would be distributed to members of the Missouri Joint Municipal Electric Utility Commission.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11a. Type of Application: License (Under 5 MW).

b. Project No.: 8433–000.

c. Date Filed: July 13, 1984.

d. Applicant: The Towns of Londonderry, Windham, Wardsboro, Dummerston, and Newfane, Vermont.

e. Name of Project: Jamaica.

f. Location: On the West River in Windham County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Donnie R. Pope, Hydroelectric Development, Inc. 200 Union Blvd., Suite 306, Denver, Colorado 80228.

i. Comment Date: May 6, 1985.

j. Competing Application: Project No. 7046–000. Date Filed: February 1, 1983.

k. Description of Project: The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers' Ball Mountain Dam and would consist of: (1) A new 11.5-foot-diameter and 80-foot-long steel penstock connected to the existing outlet works; (2) a new powerhouse with 3 turbine-generator units with a total installed capacity of 3,720 kW; (4) a new 12.47–kV and 2,500-foot-long underground transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 12,147,000 kWh.

l. Purpose of Project: Project energy would be sold to the Central Vermont Public Service Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

12a. Type of Application: Preliminary Permit.

b. Project No.: 8887–000.

c. Date Filed: February 21, 1985.

d. Applicant: Nelson's Crossing Hydro Company.

e. Name of Project: Fall River at Nelson's Crossing Project.

f. Location: On Fall River, within Plumas National Forest, in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Ave., B–4, Sacramento, California 9521.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high concrete diversion dam at elevation 3,000 feet; (2) a 5,300-foot-long diversion conduit; (3) a 30-inch-diameter, 1,060-foot-long penstock; (4) a powerhouse containing generating units with combined rated capacity of 2,045 kW; and (5) a 5-mile-long, 12.5–kV transmission line will connect the project with an existing Pacific Gas and Electric Company (PG&E) line south of the powerhouse.

k. Purpose of Project: The project's estimated 9.7 million kWh of annual energy will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

13a. Type of Application: Preliminary Permit.

b. Project No.: 8893–000.

c. Date Filed: January 28, 1985.

d. Applicant: Hydro Power Development Inc.

e. Name of Project: Snake River Hydro Power.

f. Location: In Summit County, Colorado on the Snake River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Bobby L. Cox, Hydro Power Development Inc., Colorado Springs, Colorado 80901.

i. Comment Date: May 28, 1985.

J. Description of Project: The proposed project would consist of: (1) Two proposed diversion dams each approximately 5 feet high and 25 feet long impounding lees than one acre-foot of water at a surface elevation of 9,960 feet m.s.l. diverting the flow of the Peru Creek and Snake River into: (2) the proposed Peru Creek penstock which will be 3 feet in diameter and 1,600 feet in length and the proposed Snake River penstock which will be 3 feet in diameter and 1,900 feet in length with both penstocks converging at; (3) a proposed powerhouse 24 feet long and 10 feet high to contain three turbine/generators for a total rated capacity of 576 kW conveying flows to; (4) a proposed tailrace 48 inches in diameter and 10 feet long; (5) a new 25–kV transmission line 300 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 2,037,800 kilowatt hours operating under a net hydraulic head of 125 feet. The project power would be sold to the Public Service Company of Colorado.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $80,000.

14a. Type of Application: Conduit Exemption.

b. Project No.: 8821–000.

c. Date Filed: December 24, 1984.

d. Applicant: City of New York.

e. Name of Project: Delaware Tunnel.

f. Location: West Delaware Tunnel Outlet in Sullivan County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 823(a).

h. Contact Person: Joseph T. McGough Jr., Commissioner, Department of Environmental Protection, City of New York, Municipal Building, Rm. 2358, New York, New York 10007.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would utilize the existing City of New York's West Delaware Tunnel and would consist of the following: (1) A new 6-foot-7-inch diameter, 60-foot-long penstock connected to the discharge channel of the outlet works of the existing tunnel; (2) a new power station containing a generating unit with a rated capacity of 6,300-kW at elevation 833.5 feet m.s.l.; and (3) a new 2,700-foot-long transmission line tying into the existing Central Hudson Gas and Electric Corporation system. The Applicant estimates a 16,870-MWh average annual energy production.

k. Purpose of Exemption: An exemption if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

15a. Type of Application: Preliminary Permit.

b. Project No.: 6761–002.

c. Date Filed: September 4, 1984.

d. Applicant: Blackfeet Indian Tribe.

e. Name of Project: Lake Sherburne Hydropower.

f. Location: On Swiftcurrent Creek, within U.S. lands held in trust on behalf of the Blackfeet Tribe, near Babb, in Glacier County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Earl Old Person, Blackfeet Tribe, Browning, Montana 59417.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would utilize the existing 96.5-foot-high Lake Sherburne Dam owned by the Bureau of Reclamation. The proposed project would modify one of the outlet conduit by the installation of a steel penstock to accomodate pressurized releases from the reservoir to a new powerhouse and would consist of: (1) A 300-foot-long, 72-inch-diameter

steel penstock; (2) a powerhouse containing two generating units with a total installed capacity of 2,000 kW; and (3) a 300-foot-long, 14.4-kV transmission line connecting to an existing Glacier Electric Cooperative transmission line. The Applicant estimates an average annual energy prodution of 4.9 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $198,000. No new roads would be constructed during the feasibility study.

k. Purpose of Project: The project power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No.: 8869–000.

c. Date Filed: January 7, 1985.

d. Applicant: G&G Associates.

e. Name of Project: Low Head 2 Water Power.

f. Location: East Low Canal lateral owned by the U.S. Bureau of Reclamation near Othello, in Adams County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ray L. Gunderson, Star Route, Box 60, Spirit Lake, Idaho 83869.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-long, 36-square foot-cross section conduit located at the existing flow control structure; (2) a powerhouse containing three generating units with a total installed capacity of 270 kW; and (3) a 2,500-foot-long transmission line connecting to an existing transmission line. The Applicant estimates an average annual energy production of 800,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

17a. Type of Application: Preliminary Permit.

b. Project No.: 8885–000.

c. Date Filed: January 18, 1985.

d. Applicant: Ririe Hydro Ltd., Partnership.

e. Name of Project: Ririe Dam Hydroelectric.

f. Location: On Willow Creek, within U.S. lands administered by the Bureau of Reclamation, near Popular, in Bonneville County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Archie R. Ford, P.O. Box 1940, Orofino, Idaho 83544.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would utilize the existing 253-foot-high, 1070-foot-long Ririe Dam owned by the Bureau of Reclamation and would consist of: (1) A 200-foot-long penstock from the existing headworks, through the existing outlet conduit, to a new powerhouse located on the southern bank of the outlet channel; (2) a powerhouse containing one to two generating units with a total installed capacity of 2,500 kW; and (3) a 200-foot-long transmission line connecting to an existing transmission line owned by Utah Power and Light. The Applicant estimates an average annual energy production of 10.9 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $26,500. No new roads would be constructed or drilling conducted during feasibility study.

k. Purpose of Project: The project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

18a. Type of Application: Preliminary Permit.

b. Project No.: 8913–000.

c. Date Filed: February 1, 1985.

d. Applicant: La Crosse Associates.

e. Name of Project: La Crosse Hydroelectric Project.

f. Location: On the Mississippi River in Huston County, Minnesota, and Vernon County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, 8 Peabody Terrace #32, Cambridge, Massachusetts 02138.

i. Comment Date: May 28, 1985.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdication of the U.S. Army Corps of Engineers. The proposed projected would consist of: (1) A proposed headrace; (2) a proposed penstock, which would be approximately 25 foot long and approximately 3 feet in diameter; (3) a proposed powerhouse containing two generating units rated at 5,000 kW each; (4) a proposed tailrace; (5) a proposed 69-kV, 400-foot-long transmission line; and (6) appurtenant facilities.

The estimated average annual energy output for the project is 53.50 GWh.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of the Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

19a. Type of Application: Preliminary Permit.

b. Project No.: 8864–000.

c. Date Filed: January 7, 1985.

d. Applicant: Weyerhaeuser Company.

e. Name of Project: Calligan Creek Hydroelectric.

f. Location: On Calligan Creek, near North Bend, in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Norbert E. Methven, Weyerhaeuser Company, Tacoma, Washington 98477.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-long concrete diversion structure located directly downstream of the outflow of the Calligan Lake at elevation 2,210 feet; (2) an 8,000-foot-long, 42-inch-diameter steel penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 5,050 kW; (4) a switchyard located adjacent to the powerhouse; and (5) a 4-mile-long, 115-kV transmission line. The Applicant estimates an average annual energy production of 20.6 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental

feasibility studies and prepare an FERC license application at a cost of $50,000. No new roads would be constructed or drilling conducted during feasibility study.

k. Purpose of Project: The project power would be either used by the Applicant or sold to a nearby utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

20a. Type of Application: Declaration of Intention.

b. Project No.: EL84-24-001.

c. Date Filed: October 29, 1984.

d. Applicant: Robert L. Jackman.

e. Name of Project: Standalone Hydropower.

f. Location: On Mathews Creek in Stevens County, Washington.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Robert L. Jackman, Box 588, Northport, Washington 99157.

i. Comment Date: May 6, 1985.

j. Description of Project: The proposed project would utilize an existing catch basin and would consist of: (1) A 2-foot-high, 6-foot-wide intake structure; (2) a 6-inch-diameter, 1,300-foot-long penstock; (3) a generating unit with a rated capacity of 22 kW producing an average annual output of 42,372 kWh; and (4) a ⅓-mile-long transmission line from the unit to the Applicant's residence.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over the project.

k. Purpose of Project: To generate power for personal home consumption.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

21a. Type of Application: License (Under 5MW).

b. Project No.: 8036-001.

c. Date Filed: July 30, 1984.

d. Applicant: Energenics Systems Inc.

e. Name of Project: Nimrod Dam.

f. Location: Fourche La Fave River, Perry County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Granville J. Smith, Energenics Systems, Inc., 1725 K Street, NW., Washington, D.C. 20006.

i. Comment Date: May 24, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Nimrod Dam and would consist of: (1) A proposed intake structure; (2) a proposed 15-foot-diameter penstock about 25 feet long, bifurcating into a 9-foot-diameter and a 4.5-foot-diameter penstock, each 55 feet long; (3) a proposed powerhouse located on the right dam abutment, about 80 feet downstream of the dam toe, and housing two generating units with a total installed capacity of 2,520 kW; (4) a proposed tailrace about 10 feet long; (5) a proposed 700-foot-long 13.8/kV transmission line to connect with an existing transmission system; and (6) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 8.3 GwH would be sold to Arkansas Power & Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

22a. Type of Application: Preliminary Permit.

b. Project No.: 8904-000.

c. Date Filed: January 30, 1985.

d. Applicant: Devils Canyon Hydro Company.

e. Name of Project: Devils Canyon Creek Project.

f. Location: On Devils Canyon Creek, near Hawkins Bar, within Six Rivers National Forest, in Trinity County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Avenue B-4, Sacramento, California 95821.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 165-foot-long diversion dam at elevation 2,005 feet; (2) a 63-inch-diameter or 6.5-foot-wide and 3.5-foot-deep, 8,400-foot-long diversion conduit or channel; (3) a 49-inch-diameter, 1,150-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,900 kW operating under a head of 330 feet; and (5) a 12-mile-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual generation of 15.3 million kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

23a. Type of Application: Preliminary Permit.

b. Project No.: 8868-000.

c. Date Filed: January 7, 1985.

d. Applicant: G&G Associates.

e. Name of Project: Low Head 1 Water Power.

f. Location: East Low Canal lateral owned by the U.S. Bureau of Reclamation near Othello, in Adams County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ray L. Gunderson, Star Route, Box 60, Spirit Lake, Idaho 83869.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-long, 36-square foot-cross section conduit located at the existing flow control structure; (2) a powerhouse containing three generating units with a total installed capacity of 270 kW; and (3) a 300-foot-long transmission line connecting to an existing transmission line. The Applicant estimates an average annual energy production of 800,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasbility study.

k. Purpose of Project: The project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

24a. Type of Application: Preliminary Permit.

b. Project No.: 8870-000.

c. Date Filed: January 7, 1985.

d. Applicant: G&G Associates.

e. Name of Project: Low Head 3 Water Power.

f. Location: East Low Canal lateral owned by the U.S. Bureau of Reclamation near Othello, in Adams County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ray L. Gunderson, Star Route, Box 60, Spirit Lake, Idaho 83869.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed project would consist of: (1) A 75-foot-long, 36-square foot-cross section conduit located at the existing flow control structure; (2) a powerhouse containing three generating units with a total installed capacity of 270 kW; and (3) a 50-foot-long transmission line connecting to an existing transmission line. The Applicant estimates an average annual energy production of 800,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks

issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $5,000. No new roads would be constructed or drilling conducted during the feasbility study.

k. Purpose of Project: The project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later that 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the

particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Any one may submit comments, a protest, or a motion to invervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385. 210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Aplicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy opf an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 28, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7805 Filed 4–1–85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7389–001]

Hydro-West, Inc.; Surrender of Preliminary Permit

March 27, 1985.

Take notice that Hydro-West, Inc., Permittee for the proposed Range Queen Power Station Project No. 7389, requested by letter dated February 18, 1985, that its preliminary permit be

terminated. The preliminary permit was issued on December 12, 1983 and would have expired on May 31, 1985. The project would have been located on the White River in Rio Bianco County, Colorado.

The Permittee filed the request on February 25, 1985, and the preliminary permit for Project No. 7389 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7802 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-43-000 and 001]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

March 28, 1985.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on March 22, 1985, tendered for filing Fourth Revised Sheet No. 6 and Fifth Revised Sheet Nos. 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. Northwest Centeral states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing Provisions in Article 24 of its FERC Gas Tariff, it proposes to decrease its rates effective April 23, 1985, to reflect:

(1) 45.13¢ per Mcf decrease in the Cumulative Adjustment due to a decrease in Northwest Central's projected gas purchase costs.

(2) A 5.48¢ per Mcf increase in the Surcharge Adjustment (to a negative 17.52¢ per Mcf from a negative 23.00¢ per Mcf) to Amortize the Deferred Purchased Gas Cost Subaccount balance.

(3) A .11¢ per Mcf decrease in the Advance Payment Rate Adjustment (to a negative 1.40¢ per Mcf from a negative 1.29¢ per Mcf) in compliance with the Stipulation and Agreement in Docket No. RP82-114-000, *et al.*

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 925 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7803 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-34-000]

PacifiCorp Doing Business as Pacific Power & Light Co.; Notice of Application

March 27, 1985.

Take notice that on March 15, 1985, PacifiCorp doing business as Pacific Power & Light Company (Pacific) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it to issue and sell not more than 5,000,000 shares of Common Stock.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 15, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7804 Filed 4-1-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Case Filed Week of February 22 Through March 1, 1985

During the week of February 22 through March 1, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[Week of Feb. 22 through Mar. 1, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 14, 1985	Economic Regulatory Administration, Washington, D.C.	HRZ-0237	Interlocutory order. If granted: The July 27, 1984 Proposed Remedial Order issued to United Independent Oil Company (Case No. HRO-0247) would be amended to include the legal finding that the firm's conduct during May 1977, resulted in the circumvention or contravention of the Entitlements Program, in violation of 10 CFR Section 205.202.
Jan. 25, 1985	Economic Regulatory Administration, Washington, D.C.	HRZ-0236	Interlocutory order. If granted: The July 22, 1984 Proposed Remedial Order issued to United Independent Oil Company (Case No. HRO-0247) would be amended to join Mr. Peter L. Hirschburg as a party.

[Week of Feb. 22 through Mar. 1, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 25, 1985	Bayport Refining Company et al., Washington, D.C	HRD-0270, HRH-0270.	Motion for discovery and motion for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Bayport Refining Company, Robert H. House, Olene Crumpton, Malcolm M. Turner and Harry F. Mason in response to a Proposed Remedial Order (Case No. HRO-0255) issued to all of the above.
Do	Natural Resources Defense Council, Inc., Washington, D.C	HFA-0278	Appeal of an information request denial. If granted: The January 14, 1985 Freedom of Information Request Denial issued by the Office of Nuclear Materials Production would be rescinded, and Natural Resources Defense Council, Inc. would receive access to documents relating to experimental production of plutonium isotopes in Richland, Washington.
Feb. 26, 1985	C & B Warehouse Distributing, Virginia, MN	HEE-0122	Exception to the reporting requirements. If granted: C & B Warehouse Distributing would no longer be required to file form EIA-782B "Reseller/Retailer's Monthly Petroleum Products Sales Report."
Do	Brownlie, Wallace, Armstrong & Bander, Washington, D.C	HEF-0584	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the August 28, 1984, Consent Order entered into with Brownlie, Wallace, Armstrong & Bander.
Do	Cordele Operating Co., Washington, D.C	HEF-0585	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the May 31, 1984, Consent Order entered into with Cordele Operating Company.
Do	L.B. White, Dallas, TX	HRD-0271	Motion for discovery. If granted: Discovery would be granted to L.B. White in connection with the Statement of Objections submitted in response to a Proposed Remedial Order (Case No. HRO-0266) issued to Brio Petroleum, Inc. and L.B. White.
Feb. 27, 1985	Government Accountability Project, Washington, D.C	HFA-0279	Appeal of an information request denial. If granted: Government Accountability Project would receive access to all agency records relating to the Los Alamos Primer.
Feb. 28, 1985	Formby Oil Co., Pawhuska, OK	HEE-0123	Exception to the reporting requirements. If granted: Formby Oil Company would not be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."

Refund Applications Received

[Week of Feb. 22 to Mar. 1, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/25/85	Hertz/Aluminum Company of America.	RF76-4
2/25/85	Amtel/Dooley Oil Co	RF46-32
2/25/85	Waller/Cambridge Rubber Co	RF76-5
2/25/85	Amoco/Elston-Rostner Standard	RF21-12384
2/25/85	Amoco/Glen Gibson	RF21-12385
2/25/85	Amoco/Cars-A-Washing	RF21-12386
2/25/85	Amoco/Johnston Standard Service.	RF21-12387
2/25/85	Hertz/Ashland Services Co	RF76-5
2/25/85	Hertz/Natural Gas Pipeline Co. of America.	RF76-6
2/25/85	Hertz/Paccar, Inc	RF76-7
2/25/85	Hertz/Interlake, Inc	RF76-8
2/25/85	Hertz/AMF, Inc	RF76-9
2/25/85	Hertz/The Marmon Group	RF76-10
2/25/85	Hertz/Armco, Inc	RF76-11
2/25/85	Hertz/A.L. Smith Corp	RF76-12
2/25/85	Hertz/Weyerhaeuser Co	RF76-13
2/25/85	Hertz/Brunswick Corp	RF76-14
2/26/85	Hertz/General Dynamics Corp	RF76-15
2/26/85	Hertz/Data Point	RF76-16
2/26/85	Hertz/United Technologies	RF76-17
2/26/85	Hertz/General Signal	RF76-18
2/26/85	Hertz/Figgie International	RF76-19
2/26/85	Hertz/The Singer Co	RF76-20
2/26/85	Hertz/U.S. Steel	RF76-21
2/26/85	Van Gas/John Fredericks	RF06-15
2/26/85	Palo Pinto/Kansas	RQ5-158
2/26/85	Belridge/Kansas	RQ8-159
2/26/85	Amoco/Kansas	RQ21-160
2/26/85	Vickers/Utah	RQ1-156
2/26/85	Belridge/Utah	RQ8-157
2/26/85	Amtel/Teague Oil Co	RF46-35
2/26/85	Amtel/U.S. Oil Co., Inc	RF46-34
2/26/85	Amtel/John R. McDonald	RF46-33
2/27/85	Alsik/Adams/Farmland Industries, Inc.	RF6-64
2/27/85	J.A.L./McManus Bros. Service Station.	RF71-5
2/27/85	Hertz/Abbott Laboratories	RF76-22
2/27/85	White/Lee Motor Lines, Inc	RF60-2
2/27/85	Hertz/Rapid-American Corp	RF76-23
2/27/85	Hertz/Phillips Petroleum Co	RF76-24
2/27/85	Consolidated Gas/Surburban Propane Gas.	RF77-2

Refund Applications Received—Continued

[Week of Feb. 22 to Mar. 1, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
2/27/85	Amtel/Imperial Refineries Corp	RF46-36
2/27/85	Amtel/Lere' Freeway	RF46-37
2/27/85	Hammers and Sons Service	RF46-38
2/27/85	Amtel/Harral's Auto Service	RF46-39
2/27/85	Amtel/Tom's Freeway	RF46-40
2/27/85	Amtel/Harper's Service Center	RF46-41
2/27/85	Amtel/J-B Freeway	RF46-42
2/27/85	Amtel/Larson's Freeway	RF46-43
2/27/85	Amtel/Miller Premier Service	RF46-44
2/27/85	Amtel/Alvarado Premier Service Station.	RF46-45
2/27/85	Amtel/Freeway Gas	RF46-46
2/27/85	Amtel/McCormick's Gas and Oil Co.	RF46-47
2/27/85	Amtel/Freeway Service Station	RF46-48
2/27/85	Diamond Shamrock/Farmland Industries.	RF93-2
2/27/85	National Cooperative Refinery/ Farmland Industries.	RF94-2
2/27/85	Superior/Farmland Industries	RF103-2
2/27/85	OKC/Farmland Industries	RF105-1
2/27/85	TOCO/Farmland Industries	RF106-1
2/27/85	TXO Oil/Farmland Industries	RF107-1
2/28/85	Windham/Hi-Lo Oil Co., Inc	RF43-10
2/28/85	Windham/Workingman's Friend Oil, Inc.	RF43-11
2/28/85	Amtel/Self Serve Oil of Tennessee.	RF46-49
2/28/85	Hertz/Gulf & Western Industries, Inc.	RF76-26
2/28/85	Hertz/Ingersoll-Rand Co	RF76-27
2/28/85	Hertz/Motorola, Inc	RF76-28
2/28/85	Hertz/Honeywell, Inc	RF76-29
2/28/85	Hertz/Fort Howard Paper Co	RF76-30
2/28/85	Hertz/Morrison-Knudsen Co., Inc	RF76-25
3/1/85	Hertz/Coopers & Lybrand	RF76-31
3/1/85	Hertz/Gould Electronics	RF76-32
3/1/85	Hertz/Stauffer Chemical Co	RF76-33
3/1/85	Hertz/I.B.M	RF76-34
3/1/85	Hertz/United Airlines	RF76-35
3/1/85	Hertz/Tenneco, Inc	RF76-36
2/25/85 thru 3/1/85.	Gulf Refund Applications	RF40-1733 thru 1761

[FR Doc. 85-7814 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 7 Through January 11, 1985

During the week of January 7 through January 11, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Temporary Exception

Andi-Co Appliances, Inc., 1/10/85; HEL-0103

Andi-Co Appliances, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR Part 430, Subpart B, Appendix C in which the firm sought temporary exception relief from the test procedures applicable to dishwashers. In considering the request, the DOE found that temporary exception relief was necessary to prevent the firm from suffering irreparable harm. The DOE also found that immediate relief would prevent DOE test procedures from inhibiting the introduction of a new dishwasher design and, therefore, that such relief was in the public interest. Accordingly, tempoary exception relief was granted.

Motion for Discovery

Office of Special Counsel for Compliance, 1/10/85; HRD-0212

The Office of Special Counsel for Compliance (OSC) filed a Motion for Discovery in connection with a Proposed Remedial Order (PRO) which it issued to Texaco, Inc. In the PRO, it is alleged that Texaco overcharged the New York State Office of General Services (GS) in the sale of motor gasoline as a result of Texaco's

assignment of GS to an improper class of purchaser. In considering the OSC's motion, the DOE ruled that discovery was necessary in order to establish Texaco's historic pricing policy regarding customers like GS and to determine the class of purchaser to which GS should have been assigned. The DOE noted that discovery was warrented in view of apparently conflicting statements made by Texaco during the course of this proceeding. The DOE therefore granted OSC's discovery request and ordered Texaco to produce certain documents for OSC's inspection and to respond to OSC's written interrogatories.

Implementation of Special Refund Procedures

Apco Oil Corporation, 1/8/85; HEF-0008

The DOE issued a Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the $1 million received as a result of a consent order entered into by the Apco Liquidating Trust and the DOE on August 12, 1981. The funds will be available to customers who purchased motor gasoline, middle distillates, or other covered products from Apco Oil Corporation. Those who purchased fuel from Apco service stations may apply for refunds based on purchases made between March 1, 1973, and October 16, 1978. Other applicants may claim refunds based on purchases made between March 1, 1973 and July 1, 1978. Applications for refund must be filed within 90 days of the publication of the decision in the **Federal Register**. Details regarding the information to be included in refund applications is discussed in the Decision and Order.

Waller Petroleum Company, Inc., 1/8/85; HEF-0191

The DOE issued a Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the settlement funds obtained as the result of the consent order which the DOE entered into with Waller Petroleum Company, Inc. As of November 30, 1984, the Waller escrow account contained the $91,913 settlement amount plus accrued interest of $57,998.81. The funds will be available to customers which purchased No. 2 heating oil and Nos. 4, 5, and 6 fuel oils from Waller during the period November 1, 1973 through May 31, 1974. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

Conoco, Inc./ECO Petroluem Banco Properties, 1/11/85; RR34-1; RR34-2

The DOE issued a Decision and Order concerning Requests for Modification filed by two purchasers of Conoco motor gasoline. The firms had previously received refunds of the threshold amount based on the presumption of injury method. In the current filings, the applicants demonstrated that the prices they paid for motor gasoline were greater than those prevailing in their markets for several months of the consent order period, and the DOE concluded that the applicants should receive refunds based on the total amount of their purchases for that period. The refunds granted in this proceeding totaled $15,269.

Palo Pinto Oil & Gas/Georgia, 1/11/85; RM5-2

The DOE issued a Decision and Order granting the Motion for Modification submitted by the State of Georgia, in which the State proposed to modify its utilization plan for the refund received in the Palo Pinto proceeding. Georgia proposed to use part of the funds, with which it was installing solar projects on weatherized low-income homes, to install a solar project on a building that housed part of the agency carrying out the utilization plan. The solar project will be used to heat the building, and as a greenhouse to grow food for low-income residents.

Standard Oil Company (Indiana)/Ernest E. Ashley Enterprises, 1/11/85; RF21-10915

The DOE issued a Decision and Order concerning an Application for Refund filed by a retailer of Amoco motor gasoline. The firm elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the Application, the DOE concluded that the firm should receive a refund based upon the total volume of its Amoco motor gasoline purchases. The refund granted in this proceeding totaled $697.

Standard Oil Co. (Indiana)/Gulf States Oil & Refining Co., 1/9/85; RF21-11164

The DOE issued a Decision and Order concerning an Application for Refund filed by a reseller of natural gas liquids (NGLs), Gulf States Oil & Refining Company, in connection with the Standard Oil Company (Indiana) (Amoco) refund proceeding. The DOE found that Gulf States experienced a competitive disadvantage as a result of its purchases of butane and natural gasoline from Amoco, yet the firm did not experience any competitive disadvantage as a result of its propane purchases. The DOE concluded therefore that the firm should receive a portion of its allocable share of the consent order funds based on the volumetric approach. The refund granted in this proceeding totaled $41,382.

Standard Oil Company (Indiana)/Kies Oil Company, et al., 1/9/85; RF21-8170 et al.

The DOE issued a Decision and Order concerning file Applications for Refund filed by a reseller of middle distillates and by wholesalers of Amoco motor gasoline who also sold a portion of their products through retail stations that they owned. All of these firms contended that they were injured by more than the presumptive levels of injury adopted in *Office of Special Counsel*, 10 DOE ¶ 84,048 (1982). In considering the Applications, the DOE rejected the firms' claim that their inability to sell gasoline at their maximum lawful selling prices established that they incurred greater injury than the presumptive levels. The DOE also rejected the firms' contention that refund monies remaining after payment of refunds to first-stage claimants should be allocated to first-stage claimants on a pro rata basis. Finally, the DOE rejected the wholesaler's contention that a presumption of injury level of 45 percent should be established for gallons of motor gasoline that they allegedly purchased from Amoco at wholesale prices and sold through retail stations that they owned. The DOE found that the applicants had not demonstrated that 45 percent was the appropriate presumptive level of injury for wholesaler/retailers, and further determined that their request for the establishment of a new presumption of injury was not made in timely fashion. Accordingly, the applicant's request for refunds greater than those produced by the presumption method was rejected. The DOE determined, however, that the applicants should be granted refunds based upon the presumption method. The refunds granted in this proceeding totalled $20,884.

Texas Oil & Gas Corp./Mobil Oil Corp., 1/7/85; RF42-7

The DOE issued a Decision and Order concerning an Application for Refund filed by Mobil Oil Corporation. The firm sought a portion of the funds remitted by Texas Oil & Gas Corporation pursuant to a consent order that TOGCO entered into with the DOE. In considering the request, the DOE found that Mobil was competitively injured as a result of the natural gas liquid product prices that TOGCO charged at above average market price levels. The DOE therefore granted Mobil a refund of $1,145,160 plus, which was equal to the portion of the TOGCO fund allocated to Mobil based on the volume of NGLPs that Mobil purchased from TOGCO during the consent order period.

Dismissals

The following submissions were dismissed:

Name	Case No.
Dept. of Interior	HEE-0070, HEO-0195, HEH-0195
Parade Company	HRO-0137

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-7812 Filed 4-1-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of January 28 Through February 15, 1985

During the period of January 28 through February 15, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Phillips Petroleum Co., Bartlesville, Oklahoma; BEE–1688, Crude Oil

Phillips Petroleum Company (Phillips) filed an Application for Exception from the provisions of 10 CFR § 211.69, the Entitlements Program clean-up regulations. The exception request, if granted, would permit Phillips to file amended ERA–49 forms for a period prior to the cut-off date established by the clean-up regulations. This would enable Phillips to correct for errors which it discovered in the original ERA–49 forms that it filed for the period November 1979 through September 1980.

On February 13, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR DOC. 85–7813 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Salt Lake City Area; Proposed Pre-1989 Salt Lake City Area Integrated Projects Firm Power Offer

AGENCY: Western Area Power Administration, DOE.

ACTION: Extension of Written Comment Period; Proposed Pre-1989 SLCA Integrated Projects Firm Power Offer.

SUMMARY: The Western Area Power Administration (Western) is in the process of developing a pre-1989 firm power offer of the Salt Lake City Area Integrated Projects resources. In the **Federal Register** issue of March 7, 1985 (50 FR 9321), Western's Salt Lake City Area Office published the proposed offer and requested written comments to be submitted to Western by March 20, 1985. Western has now determined that an extension of this deadline date is desirable.

DATE: The deadline date for written comments on the March 7, 1985, publication is now extended to 15 days from the publication of this notice.

ADDRESS: On or before this extended deadline date, written comments on the proposed firm power offer should be sent to: Mr. Mark N. Silverman, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, Utah 84147, telephone (801) 524–5494. Further information concerning the request for written comments or other information pertaining to the terms of the proposed offer should be addressed to Mr. Silverman.

Issued in Golden, Colorado, March 22, 1985.

William H. Clagett,

Administrator.

[FR Doc.85–7733 Filed 4–1–85; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 25, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: 3060–0134
Title: Application for Renewal of Radio Station License
Form No.: FCC 574–R
Action: Revision
Estimated Annual Burden: 66,000 Responses; 4,422 Hours

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–7755 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1505]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

March 25, 1985.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of BC Docket No. 80–90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84–231).

Filed by: Marvin J. Diamond and Katherine A. Schoff, Attorneys for Richard Foster and Dempsey Wilcox on 1–16–85. (Banner Elk, North Carolina).

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–7754 Filed 4–1–85; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 83–1145; Phase I and Phase II, Part I]

Investigation of Access and Divestiture Related Tariffs

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order; Correction

SUMMARY: This action finds that certain language at the middle of Paragraph 18 of the *Special Access Cost Order,* appearing on page 11442, in the issue of

March 21, 1985, has to be deleted, specifically, the two consecutive sentences beginning "The mismatch . . ." and ending with ". . . increased substantially." This action does not affect the validity of the Commission's conclusion in that Order.

This action is necessary to inform interested parties of the necessary deletions.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, Tariff Division, 202–632–6387.

SUPPLEMENTARY INFORMATION: The Memorandum Opinion and Order in this proceeding (FCC 85–100) was published on March 21, 1985, 50 FR 11440.

Erratum

In the matter of Investigation of Access and Divestiture Related Tariffs; CC Docket No. 83–1145, Phase I and Phase II, Part I.

Released: March 20, 1985.

1. On March 8, 1985, the Commission released a Memorandum Opinion and Order in the above-captioned proceeding. At the middle of Paragraph 18 in that Order, delete the two consecutive sentences beginning "The mismatch . . ." and ending with ". . . increased substantially." The statement here that the OCC NRC rates have not changed over the past 10 years is incorrect, since the rates in issue were based upon AT&T Tariff F.C.C. No. 260 which has experienced a number of rate increases over that time period. This does not, however, affect the validity of the Commission's conclusion. Since these increases have all been across the board for both NRC and monthly charges, the relationship between the historically deficient NRCs and the monthly recurring charges within Tariff F.C.C. N. 260 has not changed. Thus, the traditional practice of setting relatively low NRC rates and recovering the difference in monthly rates has apparently continued, and been extended by the exchange carriers to the OCCs.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–7520 Filed 4–1–; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Bernuth Lines Ltd., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–010693–002.

Title: Florida/Caribbean Liner Association.

Parties:
Bernuth Lines Ltd.
Calypso Lines
West Indies Shipping Corp.
Tropical Shipping & Construction Co., Ltd.
Shipping Corporation of Trinidad and Tobago
Saguenay Shipping Ltd.
TEC Lines Ltd.
Sea-Land Service, Inc.
Concorde/Nopal Lines

Synopsis: The proposed amendment would expand the scope of the agreement to include ports and points in Suriname and Guyana and would restrict voting on matters relating to Suriname and Guyana to carriers serving those countries. The parties have requested a shortened review period.

Agreement No. 213–010719–001.

Title: EAC and MOSK Space Charter and Sailing Agreement.

Parties:
The East Asiatic Company, Ltd. A/S
Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would permit the parties to charter space on each other's vessels for the carriage of noncontainerized cargo.

By Order of the Federal Maritime Commission.

Dated: March 28, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–7851 Filed 4–1–85; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 224–002647–004]

Agreement Between the Port of Long Beach and C. Brewer Terminals, Inc. (Formerly Nomal Co., Inc.); Erratum

The **Federal Register** Notice of March 20, 1985 (Vol. 50, No. 54, Page 11246) incorrectly identified Agreement No. 224–002647–004 as Los Angeles Terminal Agreement, whereas it should have read Long Beach Terminal Agreement.

By Order of the Federal Maritime Commission.

Dated: March 27, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–7832 Filed 4–1–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Denmark Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 or Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activites will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Denmark Bancshares, Inc.*, Denmark, Wisconsin; to acquire McDonald Insurance Agency, Denmark, Wisconsin, thereby engaging in the sale of general insurance in a town with a population not exceeding 5,000. This activity would be conducted in Brown, Kewaunee and Manitowoc Counties in the State of Wisconsin.

2. *East Troy Bancshares, Inc.*, East Troy, Wisconsin; to acquire Wisconsin Discount Securities Corporation, Milwaukee, Wisconsin, thereby engaging in the activity of discount brokerage.

B. **Federal Reserve Bank of Kansas City**, (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Firstier, Inc.*, Omaha, Nebraska; to acquire Investors Mortgage Access Corp., Des Moines, Iowa. Applicant proposes to operate company as a branch office of applicant's mortgage subsidiary, Firstier Mortgage Co., Omaha, Nebraska. The branch office located in Des Moines, Iowa, will serve as an office for residential mortgage loans for sale to permanent investors. The loans will be primarily FHA or VA guaranteed. Conventional loans will also be processed. The office will process applications, issue commitments and close loans. Comments on this application must be received not later than April 16, 1985.

Board of Governors of the Federal Reserve System, March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7773, Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

Irwin Union Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons, a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in providing portfolio investment advice, general economic information, and financial advice to clients; engaging in underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in; providing management consulting advice to nonaffiliated bank and nonbank depository institutions.

Board of Governors of the Federal Reserve System, March 7, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7774 Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

Pierson Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pierson Bancorporation, Inc.*, Pierson, Iowa; to become a bank holding company by acquiring 97.2 percent of the voting shares of Farmers Savings Bank, Pierson, Iowa.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Capital Bank Corporation*, Frankfort, Kentucky; to acquire at least 96.0 percent of the voting shares of The Lawrenceburg National Bank, Lawrenceburg, Kentucky.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Community Bankers, Inc.*, Granbury, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Cleburne, Cleburne, Texas, and to acquire Granbury Bancshares, Inc., Granbury, Texas, thereby indirectly acquiring Granbury State Bank, Granbury, Texas, and to acquire Grandview Bancshares, Inc., Grandview, Texas, thereby indirectly acquiring First State Bank, Grandview, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Central Bancorp, Inc.*, Phoenix, Arizona; to become a bank holding

company by acquiring 100 percent of the voting shares of First Central Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7775 Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancshares, Inc.*, Mapleton, Iowa; to become a bank holding company by acquiring 91 percent of the voting shares of Mapleton Trust & Savings Bank, Mapleton, Iowa, and 100 percent of the voting shares of Danco, Inc., Mapleton, Iowa, thereby indirectly acquiring Farmers Savings Bank, Danbury, Iowa. In addition, Valley Bancshares, Inc. has applied to acquire Danco's insurance business, thereby engaging in general insurance sales in a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, March 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7776 Filed 4-1-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective—
(1) 85-0141—Clark Equipment Company's proposed acquisition of voting securities of VBM International N.V., a joint venture.	Mar. 11, 1985.
(2) 85-0150—Aktiebolaget Volvo's proposed acquisition of voting securities of VBM International N.V., a joint venture.	Do.
(3) 85-0153—Clark Equipment Company's proposed acquisition of voting securities of Volvo BM AB, (Aktiebolaget Volvo, UPE).	Do.
(4) 85-0154—Aktiebolaget Volvo's proposed acquisition of voting securities of Clark Michigan Corporation, (Clark Equipment Company, UPE).	Do.
(5) 85-0158—Soparind Meat Packing Corporation, (Jean-Noel Bongrain, UPE) of voting securities of Sunnyland America, Inc., (L. Bryant Harvard, Sr., UPE).	Mar. 12, 1985.
(6) 85-0209—Bell Resources Ltd's proposed acquisition of voting securities of UB Minerals, Inc., (General Electric Company, UPE).	Do.
(7) 85-0233—E. R. Ginn, III's proposed acquisition of voting securities of The Hilton Head Company, Inc., (United States Steel Corporation, UPE).	Do.
(8) 85-0221—The Lubrizol Corporation's proposed acquisition of voting securities of Merichem Company.	Mar. 13, 1985.
(9) 85-0202—Sandoz, Ltd.'s proposed acquisition of assets of Master Builders Division of Martin Marietta Corporation and voting securities of Set Products, Inc., MB II Corp. and Master Builders Company.	Mar. 15, 1985.
(10) 85-0210—Masuo Hosokawa's proposed acquisition voting securities of U.S. Filter Systems, Inc., (Ashland Oil, Inc., UPE).	Do.
(11) 85-0215—Macadamia Orchards of Kapua, Ltd.'s proposed acquisition of assets of Mac Farms of Hawaii, Inc., (CSR Limited, UPE).	Do.
(12) 85-0216—The Cordier Group, Inc.'s proposed acquisition of voting securities of The Olofsson Corporation, (John Brown, P.L.C.)	Do.
(13) 85-0219—Varian Associates, Inc.'s proposed acquisition of assets of Continental Electronics Mfg. Co., (Continental Electronics Mfg. Co. Shareholders Trust, (Interfirst Bank, Dallas, N.A. (Trustee).	Do.
(14) 85-0227—Ryder System, Inc.'s proposed acquisition of voting securities of International Customs Service, Inc., (Robert L. Waggoner, UPE).	Do.
(15) 85-0239—Greyhound Corporation's proposed acquisition of Purex Corporation and Ellio's Pizza, Inc., (Purex Industries, UPE).	Do.
(16) 85-0203—Ronald O. Perelman's proposed acquisition of voting securities of Pantry Pride, Incorporated.	Mar. 18, 1985.
(17) 85-0207—Perry Drug Stores, Inc.'s proposed acquisition of voting securities of Apex Drug Stores, Inc.	Do.
(18) 85-0223—Humana, Inc.'s proposed acquisition of assets of Med Central, Inc., (Kinder-Care Learning Centers, Inc., UPE).	Do.
(19) 85-0196—Brentwood Associates IV, L.P.'s proposed acquisition of voting securities of Chartpak, Chartpak, Ltd., Pickett Industries, Plan Hold Corporation and M. Grumbacher, Inc., (The Times Mirror Corporation, UPE).	Mar. 19, 1985.
(20) 85-0231—Time Incorporated's proposed acquisition of voting securities of Southern Progress Corporation.	Do.
(21) 85-0271—The Louisiana Land and Exploration Company's proposed acquisition of voting securities of Clam Petroleum Company.	Do.
(22) 85-0212—Reuters Holding PLC's proposed acquisition of voting securities of Rich Inc., (Anthony J. Rich, UPE).	Mar. 20, 1985.
(23) 85-0213—Jerome A. Rich's proposed acquisition of voting securities of Reuters Holding PLC.	Do.
(24) 85-0232—Care Enterprises' proposed acquisition of voting securities of First Ohio Investment Group, Inc.	Mar. 21, 1985.
(25) 85-0236—E. Trine Starnes, Jr.'s proposed acquisition of assets of the Orange Plus and Awake Brands of frozen concentrate, (General Foods Corporation, UPE).	Do.
(26) 85-0265—Cartess, Capel Leonard PLC's proposed acquisition of assets of LTV Corporation.	Do.
(27) 85-0272—United States Steel Corporation's proposed acquisition of CLAM Petroleum Company.	Do.

Transaction	Waiting period terminated effective—
(28) 85-0204—Reichhold Chemicals Inc.'s proposed acquisition of voting securities of Eschem and Eschem Ltd. and the operating assets of Eschem Canada, Inc., (Beatrice Companies, Inc., UPE).	Do
(29) 85-0228—Imperial-Reed Companies' proposed acquisition of voting securities of Nawco, a newly formed joint venture.	Mar. 22, 1985.
(30) 85-0239—Dresser Industries, Inc.'s proposed acquisition of voting securities of Nawco, a newly formed joint venture.	Do

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC. 20580, (202) 523–3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85–7799 Filed 4–1–85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA85–1–21–002]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 28, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 22, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on March 1, 1984:

Substitute Ninety-seventh Revised Sheet No. 16
Substitute Fifth Revised Sheets Nos. 16B & 16C
Substitute Thirty-fourth Revised Sheet No. 64

Columbia states that the foregoing tariff sheets are being filed in compliance with Ordering Paragraph (B) of the Commission's Order issued February 28, 1985, which directs Columbia to file revised tariff sheets to reflect the downward modification to the rates of its pipeline suppliers contained in its original filing of January 29, 1985.

The instant filing reflecting this revision provides for (1) an additional decrease of $701,012 to that reflected in the January 29, 1985 filing, which results in a revised decrease in current Purchased Gas Cost Applicable to Sales Rate Schedules in the amount of $61,899,480 and (2) an additional credit of $706 to that reflected in the January 29, 1985 filing, which results in a revised credit to the Purchased Gas Surcharge Applicable to Rate Schedule SGES in the amount of $193,751.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7800 Filed 4–1–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Symposium on the Prevention of the Leading Work-Related Diseases and Injuries; Open Meeting

A National Symposium on the Prevention of the Leading Work-Related Diseases and Injuries will be held May 1–3, 1985, at the Omni International Hotel, Atlanta, Georgia. This symposium is sponsored by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC). NIOSH has developed and published a suggested list of the Ten Leading Work-Related Diseases and Injuries and has proposed national strategies for the prevention of five of these. At this symposium, NIOSH will introduce these proposed strategies for discussion, revision, elaboration, and further development.

The symposium is scheduled to begin at 9:00 a.m., Wednesday, May 1, with an opening session and continue through 12:30 p.m., Friday, May 3. Beginning at 2:00 p.m., May 1, and continuing on May 2 until 5:00 p.m., there will be five concurrent workshops with a panel of experts on the proposed prevention strategies:

Workshop I: Prevention of Occupational Lung Diseases
Workshop II: Prevention of Musculoskeletal Injuries
Workshop III: Prevention of Occupational Cancers
Workshop IV: Prevention of Severe Occupational Traumatic Injuries
Workshop V: Prevention of Cardiovascular Diseases

On Friday, May 3, there will be summaries of the above five prevention strategies.

For further information, please contact: Roger W. Turenne, NIOSH, CDC, Building 1, Room 3040, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephones: FTS: 236–3794, Commercial: 404/329–3794.

Dated: March 26, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers of Disease Control.

[FR Doc. 7808 Filed 4–1–85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No: 85E–0098]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fonar Beta 3000 Nuclear Magnetic Resonance Scanning System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the medical device, the Fonar Beta 3000 Nuclear Magnetic Resonance Scanning System, and is publishing this notice of the determination as required by law. This determination follows from the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Writen comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank Sasinowski, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the act) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed.

Under the act, a product's "regulatory review period" forms the basis for determining the amount of extension an applicant may receive. A regulatory review period consists of two periods of

time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and contnues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has determined that the applicable regulatory review period for the Fonar 3000 Nuclear Magnetic Resonance Scanning System is 513 days. Of this time, 262 days occurred during the testing phase of the regulatory review period, while 251 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun: May 2, 1983:*

FDA did not verify May 2, 1983, which was claimed by the applicant for patent extension as the date on which a clinical trial of the device was begun. Because this device was judged to be other than a significant risk device under 21 CFR Part 812, the applicant was not required to submit and obtain approval of an application for an investigational device exemption before initiating a clinical investigation of the device. Accordingly, FDA cannot comment on the date that the applicant claims clinical testing of the device commenced.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act*: January 19, 1984.

The applicant claimed that the premarket approval application (PMA) for the device (PMA No. P830076) was initially submitted on October 31, 1983. FDA received the PMA on November 9, 1983. More important, FDA notified the applicant that the PMA was incomplete and could not be filed. On January 19, 1984, FDA received the additional information necessary to make the application sufficiently complete to permit agency action to begin.

3. *The date the application was approved*: September 26, 1984.

FDA has verified that PMA No. P830076 was approved on September 26, 1984, as stated by the applicant.

Anyone with knowledge that any of the dates published is in error may, on or before June 3, 1985, submit to the Dockets Management Branch written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 30, 1985, for a determination regarding whether the applicant acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98–857, Part 1, 98 Cong., 2d Sess., pp 41–42, 1984.) Petitions should be in the format described in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Received comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–7766 Filed 4–1–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85E–0127]

Determination of Regulatory Review Period for Purposes of Patent Extension; Promit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the human drug product, Promit, and is publishing this notice of the determination as required by law. This determination follows from the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank Sasinowski, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the act) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed.

Under the act, a product's "regulatory review period" forms the basis for determining the amount of extension an applicant may receive. A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigation of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until permission to market the drug product is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has determined that the applicable regulatory review period for Promit (Dextran 1) is 468 days. None of this time occurred during the testing phase of the regulatory review period because the applicant never filed for an exemption to conduct clinical studies within the United States. All 468 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act involving this drug product became effective:* Not applicable.

Clinical studies supporting the safety and efficacy of Promit were performed outside the United States. No exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act involving the drug product was filed.

2. *The date an application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* July 20, 1983.

The applicant claimed that the new drug application for the drug (OB–NDA 83–715) was initially submitted on July 15, 1983; however, FDA did not receive the application until July 20, 1983.

3. *The date the application was approved:* October 30, 1984.

FDA has verified that OB–NDA 83–715 was approved on October 30, 1984, as stated by the applicant.

Anyone with knowledge that any of the dates published is in error may, on or before June 3, 1985, submit to the Dockets Management Branch written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before September 30, 1985, for a determination regarding whether the applicant acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98–857, Part 1, 98 Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format described in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Received comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–7767 Filed 4–1–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F–0092]

Squirt & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Squirt & Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame (1-methyl *N*-L-α-aspartyl-L-phenylalanine) as a sweetener in ready-to-serve nonrefrigerated, pasteurized, aseptically packaged dilute fruit juice beverages.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3829) has been filed by Squirt & Co., 777 Brooks Ave., Holland, MI 49423, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N*-L-α-aspartyl-L-phenylalanine) as a sweetener in ready-to-serve nonrefrigerated, pasteurized, aseptically packaged dilute fruit juice beverages.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: March 25, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–7765 Filed 4–1–85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Information Requested by the Task Force on Organ Transplantation

The Task Force on Organ Transplantation announces that it is gathering information to assist it in its deliberations on a multitude of issues relating to organ procurement and transplantation. Interested individuals and organizations are invited to submit materials for consideration of the Task Force as it addresses the issues mandated by the National Organ Transplant Act (Pub. L. 98–507). The information being sought should address the following:

Immunosuppressive Medications

- The safety, effectiveness, and cost (including the cost-savings from improved success rates of transplantation) of different modalities of treatment;
- The extent of insurance reimbursement for long-term immunosuppressive drug therapy for organ transplant patients by private insurers and the public sector;
- Problems that patients encounter in obtaining immunosuppressive medications; and
- The comparative advantages of grants, coverage under existing Federal programs, or other means to assure that individuals who need such medications can obtain them.

Organ Procurement and Transplantation

- Public and private efforts to procure human organs for transplantation and factors that diminish the number of organs available for transplantation;
- Problems in coordinating the procurement of viable human organs including skin and bone;
- The education and training of health professionals, including physicians, nurses, and hospital and emergency care personnel, with respect to organ procurement;
- The education of the general public, the clergy, law enforcement officers, members of local fire departments, and other agencies and individuals that may be instrumental in effecting organ procurement;
- Assuring equitable access by patients to organ transplantation and assuring the equitable allocation of donated organs among patients medically qualified for an organ transplant;
- Barriers to the donation of organs to patients (with special emphasis upon pediatric patients), including barriers to the improved identification of organ donors and their families and organ recipients;
- The number of potential organ donors and their geographical distribution;
- Current health care services provided for patients who need organ transplantation, and organ procurement procedures, systems, and programs which affect such patients;
- Cultural factors affecting the family with respect to the donation of the organs;
- Ethical and economic issues relating to organ transplantation needed by chronically ill patients;
- The conduct and coordination of continuing research concerning all aspects of the transplantation of organs;
- The factors involved in insurance reimbursement for transplant procedures by private insurers and the public sector;
- The manner in which organ transplantation technology is diffused among and adopted by qualified medical centers;
- Whether the number of transplant centers using such technology is sufficient or excessive;
- Whether the public has sufficient access to medical procedures using such technology;

• The feasibility of establishing, and the likely effectiveness of a national registry of human organ donors.

The Task Force is to submit reports on these issues to the Secretary and the Congress on August 14, 1985 (on immunosuppressive therapies) and on January 14, 1986 (on all other issues).

Any person or group wishing to provide the Task Force with relevant information should do so no later than May 30, 1985. Written material should be submitted to Jon Gold, Office of Organ Transplantation, Office of the Administrator, HRSA, Room 17–60, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 20857.

FOR FURTHER INFORMATION CONTACT: Linda D. Sheaffer, Acting Executive Director, Task Force on Organ Transplantation, Room 17–60, Parklawn Building, Rockville, Maryland 20857, (301) 443–7577.

Dated: March 27, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85–7770 Filed 4–1–85; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action C–38545; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Serial No. C–38545, Determination of land suitable for exchange under the authority of Sections 205, 206, 302(b), and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732, and 1740).

SUMMARY: Forty acres of public land under the jurisdiction of the Bureau of Land Management located near El Jebel, Colorado, in Eagle County have been determined suitable for exchange. The determination of suitability has been made in response to a Bureau-benefiting exchange proposal received from Mr. Gene A. Grange. In the proposal, Mr. Grange has offered to exchange forty acres also located near El Jebel, Colorado, in Eagle County. The exchange proposal has been made to facilitate the consolidation of both entity's land holdings and thus increase managerial efficiency and the public values of natural resources found on the land being considered for exchange.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

The following lists the land determined suitable for exchange.

Offered Private Land

Legal Description	Acres
Sixth Principal Meridian T. 7 S., R. 87 W., Sec. 35: NE¼SW¼	40

Selected BLM Land

Legal Description	Acres
Sixth Principal Meridian T. 7 S., R. 87 W., Sec. 35: S½S½SW¼	40

Terms and Conditions: The following reservations for existing uses and users would be made in a patent issued for the public lands.

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation for an existing power transmission line under authorization D–011779.

The publication of this notice in the **Federal Register** will segregate the public land described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant. This segregation will expire two years from the date of publication of this notice.

Those non-Federal lands described above subject to prior Federal reserved minerals are hereby segregated to the extent that such interests will not be subject to appropriation under the mining laws until a notice pursuant to 43 CFR 2200.3(a) is issued.

For Further Information and Public Comment: Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 and 24, Glenwood Springs, Colorado. For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81501. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue his final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior.

Dated: March 22, 1985.

Wright Sheldon,

District Manager, Grand Junction District Office.

[FR Doc. 85–7824 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–84–M

Reassessment of Wilderness Inventory Decision; Idaho and Oregon

Notice is hereby given that the Idaho and Oregon State Directors of the Bureau of Land Management will be reassessing the wilderness inventory decision as it relates to Inventory Unit ID–16–48a/OR–3–194A, Lookout Butte.

This unit, located in the Boise and Vale Districts, was declared as lacking in wilderness characteristics in the wilderness inventory decision of November 1981. That decision was appealed to the Interior Board of Land Appeals (IBLA).

On February 11, 1985, the IBLA ruled that the inventory decision was set aside and remanded. The Idaho and Oregon State Directors will review the wilderness inventory files and the IBLA decision, and will issue a revised final inventory decision on the unit by July 1985.

For further information, contact the Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, ID 83706.

Harold H. Rasmussen,

Deputy State Director for Renewable Resources.

[FR Doc. 85–7855 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–GG–M

Proposed Classification of Lands; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed classification.

SUMMARY: The following described lands, classified for recreation under serial number U–016659, have been examined pursuant to application U–49798, filed by the Utah State Division of Parks and Recreation, under the Recreation and Public Purposes Act of June 14, 1926, as amended.

T. 26 S., R. 19 E., SLM
Sec. 25: all above 5,800 feet;
Sec. 26: E½ to canyon rim;
Sec. 35: NE¼NE¼ to rim, SE¼NE¼ to rim.

T. 26 S., R. 20 E., SLM
Sec. 28: SW¼, W½SE¼;
Sec. 29: E½E½, NW¼NE¼;
Sec. 29: NW¼NE¼, N½NW¼;
Sec. 30: N½N½;
Sec. 31: Lots 3–4 SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 33: E½SW¼, W½SE¼, SE¼SE¼.
T. 27 S., R. 20 E., SLM
Sec. 4: Lots 3, 6, SE¼NW¼, NE¼SW¼;
Sec. 8: NW¼.

The areas described aggregate 2,700 acres.

The following described lands have been examined pursuant to a petition for classification under the Recreation and Public Purposes Act of June 14, 1926, as amended.

T. 26 S., R. 20 E., SLM
Sec. 21: SE¼;
Sec. 27: S½NW¼, W½SW¼;
T. 26 S., R. 19 E., SLM
Sec. 36: W½ to rim, E½W½W½.
T. 28 S., R. 20 E., SLM
Sec. 20: W½NE¼, NW¼.

The areas described aggregate 705 acres.

The lands are hereby classified as unsuitable for Recreation and Public Purposes because they are more suitable for retention in Federal ownership for the development of multiple resources.

This determination is based on the following factors:

1. Of 56,220 acres of land classified for recreation, 2,700 acres remain classified after creation of Canyonlands National Park and Dead Horse Point State Park. The classification segregated the lands only from disposal, except under the recreation and public purposes act. Therefore, the land are being managed for multiple uses, including grazing, recreation and mineral exploration on the mesa tops and primarily for mineral exploration on the steep cliffs which contain the uranium-bearing Chinle formation. The lands should continue to be managed for multiple uses.

2. The State of Utah, Division of Parks and Recreation, applied for 2,169 acres of land when development is only planned on approximately 94 acres. In accordance with 43 CFR 2741.4(c), "No more public lands than are reasonably necessary shall be conveyed. . . ."

3. The mineral report on the subject lands indicates that they are prospectively valuable for the leasable minerals potash, oil and gas and that disposal of the surface on approximately 2,110 acres would unreasonably interfere with their development.

4. The mineral report indicates that the area has potential for the occurrence of locateable minerals and that the area is covered with mining claims. These claims, which the claimants will not relinquish, have the effect of granting a possessory right to the mining claimant in both the surface and sub-surface, thus precluding disposal of the surface.

From the date of this notice until May 24, 1985 interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, UT 84532.

Additional information is available for inspection at the Moab District Office, 82 E. Dogwood, P.O. Box 970, Moab, UT 84532 or the Grand Resource Area Office, Sand Flats Road, P.O. Box M, Moab, UT 84532.

Gene Nodine,
District Manager.
Dated: March 22, 1985.

[FR Doc. 85-7777 Filed 4-1-85; 8:45 am]
BILLING CODE 4310-DQ-M

Colorado; Filing of Plats of Survey

March 22, 1985.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 22, 1985.

The plat representing the dependent resurvey of a portion of the east and north boundaries, subdivisional lines, and Mineral Survey No. 15394, Spar Fissure lode, and the survey of the subdivision of section 1, T. 15 S., R. 72 S., Sixth Principal Meridian, Colorado, Group 776, was accepted March 14, 1985.

The supplemental plat prepared to show a subdivision of original lot 9, Section 24, T. 8 S., R. 87 W., Sixth Principal Meridian, Colorado, was accepted February 20, 1985.

The plat, in two sheets, representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary T. 5 S., R. 102 W.), the east and west boundaries, and subdivisional lines, and the survey of the subdivision of certain sections, T. 5 S., R. 103 W., Sixth Principal Meridian, Colorado, Group 662, was accepted February 25, 1985.

The plat representing the dependent resurvey of the First Standard Parallel South through R. 103 W., and a portion of R. 104 W., a portion of the south boundary, the west boundary, and subdivisional lines, and the survey of the subdivision of certain sections, T. 6 S., R. 104 W., Sixth Principal Meridian, Colorado, Group 662, was accepted February 25, 1985.

These surveys were executed, and the supplemental plat was prepared for certain administrative needs of this Bureau.

The plat representing the metes-and-bounds of Tract 37, T. 8 N., R. 78 W., Sixth Principal Meridian, Colorado, Group 775, was accepted February 17, 1985.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the dependent resurvey of H. E. S. No. 259, and the survey of the subdivision of sections 33 and 34, T. 4 N., R. 78 W., Sixth Principal Meridian, Colorado, Group 775, was accepted February 27, 1985.

The plat representing the dependent resurvey of a portion of the south boundary, of T. 34, N., R. 5 E., a portion of the east boundary, a portion of the subdivisional lines, and a portion of Homestead Entry Survey No. 97, and the survey of the subdivision of sections 1 and 2, T. 33 N., R. 5 E., New Mexico Principal Meridian, Colorado, Group 710, was accepted March 12, 1985.

The plat representing the dependent resurvey of a portion of the east boundary and the metes-and-bounds survey of certain tracts, T. 39, N., R. 2 E., New Mexico Principal Meridian, Colorado, Group 727, was accepted March 14, 1985.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a portion of Tracts 41 and 43, and the metes-and-bounds survey of lot 18 in section 2 and lot 19 in section 3, T. 39, N., R. 3 E., New Mexico Principal Meridian, Colorado, Group 727, was accepted March 14, 1985.

The plat representing the dependent resurvey of a portion of the 10th Standard Parallel North on the south boundary of T. 41, N., Rs. 12 and 13 W., a portion of the south, east and west boundaries, a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 40 N., R. 13 W., New Mexico Principal Meridian, Colorado, Group 723, was accepted March 14, 1985.

The plat representing the dependent resurvey of a portion of the east and west boundaries, the north boundary, and a portion of the subdivisional lines; the survey of the subdivision of certain sections, and the remonumentation of certain original corners, T. 46, N., R. 11 W., New Mexico Principal Meridian, Colorado, Groups 449 and 715, was accepted March 12, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020

Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 85–7829 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–84–M

New Mexico; Availability of Draft Rio Puerco Resource Management Plan and Environment Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management announces the availability of the Draft Rio Puerco Resource Management Plan (RMP)/Environment Impact Statement (EIS) for public review and comment. This document analyzes land use planning options for approximately 896,490 acres of public land in central and north central New Mexico. The BLM also proposes nine Areas of Critical Environmental Concern (ACEC).

Public participation: Comments on the Draft RMP/EIS will be accepted until close of business July 1, 1985. There will be public hearings at the following locations:

Cuba, May 29, 1985, 7 p.m., Municipal Complex Meeting Room

Albuquerque, May 30, 1985, 7 p.m., Albuquerque Convention Center, 401 Second Street, NW

Estancia, June 3, 1985, 7 p.m., Catholic Center

Grants, June 4, 1985, 7 p.m., Holiday Inn, I–40 Exit 85

Oral testimony will be limited to 10 minutes. Written comments are encouraged even if an oral presentation is made.

A copy of the draft RMP/EIS will be sent to all individuals, government agencies, and groups who have expressed interest in the Rio Puerco planning process. In addition, review copies may be examined at the following locations:

Bureau of Land Management Offices

New Mexico State Office

Public Affairs Staff, Room 2016, U.S. Post Office and Federal Building, P.O. Box 1449, Sante Fe, New Mexico 87501, (505) 988–6316

Albuquerque District

505 Marquette SW, Western Bank Building, 8th Floor, P.O. Box 6770, Albuquerque, New Mexico 87109, (505) 766–2455

Rio Puerco Resource Area

3550 Pan American Freeway, NE, P.O. Box 6770, Albuquerque, New Mexico 87109, (505) 766–3114

SUPPLEMENTARY INFORMATION: Four alternatives for managing the public land in the Rio Puerco are analyzed in the Draft RMP/EIS.

The Current Management Alternative discusses a level of management similar to the current situation. This alternative corresponds to the No-Action alternative required by NEPA.

The Resource Conservation Alternative emphasizes the protection and enhancement of nonconsumptive natural resource values. The Resource Production Alternative emphasizes the development of resources that generate goods and services that contribute to the local and regional economy. The Balanced Management/Preferred Alternative emphasizes providing needed goods and services while protecting important and sensitive environmental values.

Areas of Critical Environmental Concern: Nine Areas of Critical Environmental Concern (ACEC) are recommended for designation. These areas are discussed briefly below.

1. The Torrejon Fossil Fauna Area is a paleontological area, covering 3,000 acres. The area will be protected for scientific study and off-road-vehicles will be limited to existing roads and trails.

2. The Jones Canyon Area (650 acres) has a prehistoric Pueblo II–III community and contains over 25 masonry sites. Non-public lands would be acquired, minerals would be withdrawn, vehicles would be limited to existing roads and trails, and no surface occupancy for oil and gas activities would be allowed in the area.

3. San Luis Mesa Raptor area has sandstone bluffs which provides excellent raptor habitat on 1,400 acres. This area also covers the Empedrado Watershed which is part of the Rio Puerco Hydrology Study.

There would be seasonal restriction on surface disturbing activities, and vehicle use would be limited to existing roads and trails in the area. All minerals would be withdrawn in the Empedrado Watershed Area, which includes 640 acres.

4. Cabezon Peak (5,800 acres) a volcanic plug, is a popular recreational area and local landmark. The area also contains two rare cactus species, a prehistoric shrine (possibly still in use) and raptor nesting areas. The non-public lands would be acquired and the area would be closed to vehicle use.

5. Canon Tapia (1,100 acres) has a large number of prehistoric rock art sites in both large panels and individuals glyphs as well as other site types. Non-public lands would be acquired, and no surface occupancy for oil and gas activities would be allowed in this area.

6. Elk Springs (10,300 acres) was designated a crucial winter range for elk and deer herds in the New Mexico Comprehensive Wildlife Plan. This area also contains a paleontological area which is a Geologic Reference Section for the Juana Lopez member of the Mancos Formation. The non-public lands would be acquired, there would be seasonal restrictions on oil and gas activities and vehicle use in this area. In addition, the reference section would be designated as a research natural area, and minerals would be withdrawn in the research natural area.

7. Tent Rocks (1,700 acres) is a popular recreation area that has unique volcanic tufts. These formations are steep cone formations up to 90 feet tall. Management agreements would be developed with private landowners, and vehicles would be limited to existing roads and trails.

8. Ojito (13,700 acres) has several rare plant species, and includes the Querencia Watershed Study Area which is part of the Rio Puerco Hydrology Study. The area also contains a substantial underground gas storage facility, which would be managed as a geologic hazard. There would be no surface disturbance, vehicles would be limited to existing roads and trails, a portion of the area would be closed to vehicle use, and the gas storage area and the Querencia Watershed would be withdrawn from locatable minerals.

9. Ball Rach (1,900 acres) has unique communities of rare plants and paleontological resources including Eocene mammal bones. Vehicles would be limited to existing roads and trails, no surface disturbance would be allowed, and the area would be withdrawn from minerals.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain copies of the Draft RMP/EIS contact Herrick Hanks, Area Manager Rio Puerco Resource Area, P.O. Box 6770, Albuquerque, New Mexico 87109. Telephone (505) 766–3114.

Dated: March 14, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85–7807 Filed 4–1–85; 8:45 am]

BILLING CODE 4310–FB–M

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 38 S., R. 3 W.;
T. 25 S., R. 4 W.;

Accepted February 22, 1985, and officially filed March 5, 1985.

The above-listed plats represent dependent resurveys, and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: March 25, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-7779 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Sandhill Crane Harvest Survey Questionnaire.

Abstract: Survey data aids the Service in properly managing the crane population. Data is gathered on the magnitude and distribution of such harvests; the results are coordinated with similar data gathered by the Canadian Wildlife Service, and used by Federal, State, and provincial managers in monitoring the crane population.

Service Form Number: 3-530
Frequency: Annually
Description of Respondents: Sandhill crane hunting permittees
Annual Responses: 6,000
Annual Burden Hours: 572
Service Clearance Officer: Arthur J. Ferguson, 202-653-7499

Dated: March 12, 1985.

Don W. Minnich,

Acting Associate Director—Wildlife Resources

[FR Doc. 85-7823 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395-7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division, Mail Stop 646; Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 4, Submitted Under Plans, Programs Procedures, and Other Narrative Formats
Abstract: Respondents are required to submit information pertaining to each new well's capability of producing oil and gas in paying quantities. The information submitted will be used by the Minerals Management Service District Service District Supervisors of all Offshore Regions to determine the capability of a well to produce oil or gas and to demonstrate the diligence of the lessee in developing the lease.
Bureau Form Number: None
Frequency: On occasion
Description of Respondents: Federal oil and gas lessees offshore performing operations under OCS Order No. 4, "Determination of Well Producibility."
Annual Responses: 118
Annual Burden Hours: 472
Bureau Clearance Officer: Dorothy Christopher, (703) 435-6214

Dated: February 25, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-7837 Filed 4-1-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 23, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 16, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Sedona, *Taylor Cabin Line Camp*, Sycamore Canyon Wilderness Area

ARKANSAS

Phillips County

Helena, *Short, William A., House*, 317 Biscoe St.
Helena, *Straub, William Nicholas, House*, 531 Perry St.

White County

Searcy, *Hicks-Dungan-Deener House*, 306 E. Center

CALIFORNIA

Humboldt County

Hoopa vicinity, *De-No-To Cultural District*, Vicinity of N. Trinity Mtn. and Trinity Summit Six Rivers National Forest

GEORGIA

Barrow County

Winder, *Jackson-Johns House*, 116 Candler St.

Clarke County

Athens, *Bloomfield Street Historic District*, Roughly bounded by Bloomfield and Peabody Sts., U of G campus, Rutherford St. and Milledge Ave.
Athens, *Boulevard Historic District*, Roughly bounded by the Seaboard Coastline RR tracks, Pulaski St., Prince Ave., and Hiawassee St.
Athens, *Milledge Avenue Historic District*, Milledge Ave. from Broad St. to Five Points
Athens, *Milledge Circle Historic District*, Milledge Park, Lumpkin St., Milledge Circle and Milledge Ave.

Liberty County

Hinesville, *Bacon-Fraser House*, 208 E. Court St.

Lowndes County

Valdosta, *Dasher High School*, 900 S. Troup St.

McIntosh County

Ridgeville, *Ridge, The*, Old Shell Rd. GA 99

Mitchell County

Camilla, *Camilla Commercial Historic District*, Roughly bounded by Broad, S. Scott and N. Scott Sts.

Thomas County

Thomasville, *Fletcherville Historic District*, Roughly bounded by Siexas, Wright, S. College and W. Jackson St.
Thomasville, *Gordon Avenue Historic District*, Gordon Ave.

IOWA

Harrison County

Logan, *State Savings Bank*, 312 E. 7th St.

KENTUCKY

Muhlenberg County

Greenville, *Greenville City Hall (Greenville Kentucky MRA)*, Court St.
Greenville, *Greenville Commercial Historic District (Greenville Kentucky MRA)*, 100 blks. of N. Main and E. Main Cross Sts.
Greenville, *Martin House (Greenville Kentucky MRA)*, 144 E. Main Cross St.
Greenville, *North Main Street Historic District (Greenville Kentucky MRA)*, 100 and 200 blks. of N. Main St.
Greenville, *Old Muhlenberg County Jail (Greenville Kentucky MRA)*, Court Row
Greenville, *Rice Tobacco Factory (Greenville Kentucky MRA)*, 112 N. Cherry St.
Greenville, *South Cherry Street Historic District (Greenville Kentucky MRA)*, Rougly bounded by S. Cherry, Hopkinsville, W. Main Cross and N. Cherry Sts.

LOUISIANA

Jefferson David Parish

Jennings, *Sunny Meade*, 819 Cary Ave.

MICHIAGN

Bay County

Bay City, *Bay City Downtown Historic District*, Roughly bounded by Saginaw River, Second and Adams Sts. and Center Ave.

Calhoun County

Battle Creek, *Kellogg, W.K., House*, 256 W. Van Buren St.

Lenawee County

Adrian, *Adrian Union Hall-Croswell Opera House*

MISSOURI

Cape Girardeau County

Jackson, *Bennett-Tobler-Pace-Oliver House*, 224 E. Adams

NEW JERSEY

Morris County

Mendham Borough, *Mendham Historic District*, Roughly bounded by Halstead St. and Country Lane on W. and E. Main Sts., Mountain Ave. and Hilltop Rd., Prospect and New Sts.

NEW YORK

Niagara County

North Tonawanda, *Allan Herschell Carousel Factory*, 180 Thompson St.

OHIO

Cuyahoga County

Cleveland, *Gordon Square Building*, 6500–6616 Detroit Ave. and 1396–1490 W. 65th St.

Franklin County

Columbus, *New Indianola Historic District*, Roughly bounded by Chittenden and Grant Aves., Fifth St., Seventh Ave., and Fourth St.

Hardin County

Kenton, *North Main-North Detroit Street Historic District*, Roughly Main St. bounded by Marie, Cherry, Carroll and Detroit Sts.

Miami County

Casstown vicinity, *Plainview Farm*, 535–545 Weddle Rd.

Summit County'

Northfield Center vicinity, *Wallace Farm*, 8239 Brandywine Rd.
Peninsula, *Tilden, Daniel, House*, 2325 Stine Rd.

TENNESSEE

Washington County

Jonesboro vicinity, *Plum Grove Archaeological Site (40WG17)*, Jackson Bridge Rd.

VERMONT

Bennington County

Dorset, *Dorset Village Historic District*, Roughly bounded by Main and Church Sts. and Dorset Hollow Rd.

[FR Doc. 85–7831 Filed 4–1–85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–254 (Preliminary)]

Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–254 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inch, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute (A.P.I.) specifications for oil-well casing, provided for in item 610.39 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 9, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369) or Vera Libeau (202–523–0368), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 25, 1985, by:

Bull Moose Tube Co., St. Louis, MO;
Copperweld Tubing Group, Pittsburgh, PA;
Kaiser Steel Corp., Los Angeles, CA;
Maruichi American Corp., Santa Fe Springs, CA;
UNR-Leavitt, Chicago, IL; and
Welded Tube Co., of America, Chicago, IL.

Participation in the investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in

the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 16, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bonnie Noreen (202–523–1369) not later than April 12, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before April 18, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12)

Issued: March 27, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–7772 Filed 4–1–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 320 (Sub-3)]

Product and Geographic Competition

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed change in guidelines.

SUMMARY: The Commission is seeking public comment on the request by the Association of American Railroads, supported by the National Industrial Traffic League and the American Paper Institute, that we supplement the evidentiary guidelines adopted in *Market Dominance Determinations*, 365 I.C.C. 118 (1981). The proposed supplemental guidelines (*See* Appendix) cover product and geographic competition and the burden of proof for these factors. The Commission may make any new guidelines effective on short notice under 5 U.S.C. 553(d)(2).

DATES: Comments are due May 17, 1985. Replies are due June 1, 1985.

Interested parties must notify the Commission, in writing, of their intent to participate by April 17, 1985. A service list will be issued by May 2, 1985, and all comments must be served on parties on the service list.

ADDRESS: Send an original and 15 copies of comments referring to Ex Parte No. 320 (Sub-No. 3) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The text of the proposed supplemental guidelines is reproduced in the Appendix. Additional information is contained in the Commission's decision. To obtain a copy of the full decision write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428.

This action does not appear to affect the quality of the human environment, energy conservation, or small entities.

Authority: 49 U.S.C. 10321 and 10708, and 5 U.S.C. 553(b).]

Decided: March 26, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix.—Railroad Market Dominance Standards and Issues of Geographic or Product Competition

(1) In determining whether geographic competition provides effective competition for a particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) The number of alternative geographical sources of supply or alternative destinations available to the producer or receiver for the product in question:

(b) The number of these alternative sources or destinations served by different carriers;

(c) The suitability of the product available from each source or required by each such destination;

(d) The operational and economic feasibility and relative costs of transportation services from alternative sources or to alternative destinations;

(e) The accessibility of each such transportation alternative;

(f) The capacity of each source to supply the product in question or the capacity of each such destination to absorb the product in question; and

(g) Evidence of long-term supply contracts made before October 1, 1980.

(2) In determining whether product competition provides effective competition for particular rail service, the Commission shall consider, but not be limited to, any evidence with respect to the following criteria:

(a) The substitutability and availability of the substitute products; and

(b) The relative costs of using the substitute products.

(3) The fact that a railroad faces geographic or product competition with respect to a receiver would not, in and of itself, establish the existence of effective geographic or product competition vis-a-vis a producer; and the fact that a railroad faces geographic or product competition vis-a-vis a producer would not, in and of itself,

establish the existence of effective geographic or product competition vis-a-vis a receiver. In any individual rate case, a railroad seeking to establish that receiver alternatives effectively restrain railroads vis-a-vis producers, or that producer alternatives effectively restrain railroads vis-a-vis receivers, would bear the burden of proof as to that issue.

(4) The burden of proving the existence of effective geographic or product competition shall in all cases be borne by the railroads.

[FR Doc. 85-7798 Filed 4-1-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water; Atlas Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 12, 1985 a proposed consent decree in *United States* v. *Atlas Minerals Division of Atlas Corporation*, Civil Action No. C-84-0601J was lodged with the United States District Court for the District of Utah. The consent decree concerns discharge of pollutants from an openpit copper mine owned and operated by Atlas Minerals Division.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Atlas Minerals Division of Atlas Corporation* D.J. Ref. 90-5-1-1-2156.

The proposed consent decree may be examined at the office of the United States Attorney, District of Utah, 466 U.S. Post Office and Courthouse, 350 South Main Street, Salt Lake City, Utah 84101 and at the Region VIII Office of the Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-7836 Filed 4-1-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration
UI Random Audit
1205-0218; ETA RC 63
Monthly, Quarterly
State or local governments
52 respondents; 179,712 burden hours; no forms.

Audit a sample of individual Unemployment Insurance benefit payments to assure they were made properly, and to assess operating effectiveness of State agencies. The Random Audit program will reduce errors, save money, and assure benefit payment integrity.

Reinstatement

Occupational Safety and Health Administration
Initial and Renewal Application for Training and Education Grant
1218-0020, OSHA 177
Annually
Non-profit institutions
100 respondents; 6,330 hours; 0 forms.

The application is submitted by nonprofit organizations interested in participating or countinuing in the New Directions grant program. It is used by OSHA staff to select organizations which can effectively carry out the objectives of the program. The application becomes part of the grant award document for successful applicants.

Signed at Washington, D.C., this 28th day of March 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-7858 Filed 4-1-85; 8:45 am]

BILLING CODE 4510-26, 4510-24-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein present summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 18, 1985–March 22, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–15,658; Weyerhaeuser Co., White River Saw Mill, Enumclaw, WA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,673; Oak Communications Systems, Elkhorn, WI

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–15,671; Western Block, Lockport, NY

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA–W–15,656; State of Florida, Dept. of Citrus, Lakeland, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–15,623; Westmoreland Glass Co., Grapeville, PA

A certification was issued covering all workers separated on or after November 30, 1983 and before September 30, 1984.

TA–W–15,647; Bata Shoe Co., Inc., Belcamp, MD

A certification was issued covering all workers separated on or after December 10, 1983.

TA–W–15,672; Westinghouse Electric Corp., Power Circuit Breaker Div., Trafford, PA

A certification was issued covering all workers separated on or after December 17, 1983.

TA–W–15,646; A & T Fashion Sportswear, Inc., Woonsocket, RI

A certification was issued covering all workers separated on or after June 1, 1984 and before December 31, 1984

TA–W–15,615; American Brush Co., Inc., Brockton, MA

A certification was issued covering all workers separated on or after November 20, 1983 and before February 3, 1985.

TA–W–15,670; U.S. Steel Corp., Gary Works, Tie Plate Div., Gary, IN

A certification was issued covering all workers separated on or after December 18, 1983 and before June 1, 1984.

TA–W–15,662; B–G Shoe Co., Lititz, PA

A certification was issued covering all workers separated on or after December 19, 1983.

TA–W–15,659; Zenith Electronics Corp., T.V. Modular Repair & Service Group, Plant #40, Franklin Park, IL

A certification was issued covering all workers separated on or after December 1, 1984.

TA–W–15,654; Pandora Industries, Inc., Pelham Fabrics Div., Pelham, NH

A certification was issued covering all workers separated on or after December 6, 1983 and before January 31, 1985.

TA–W–15,653; Lloyd Davis Shoe Co., Inc., Somersworth, NH

A certification was issued covering all workers separated on or after December 11, 1983 and before January 31, 1985.

TA–W–15,652; Juvenile Shoe Corp. of America, Sarcoxie, MO

A certification was issued covering all workers separated on or after July 1, 1984 and before December 31, 1984.

I hereby certify that the aforementioned determinations were issued during the period March 18, 1985–March 22, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 28, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment assistance.

[FR Doc. 85–7857 Filed 4–1–85; 8:45 am]

BILLING CODE 4510–30–M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85–63; Exemption Application No. D–4677 et al.]

Grant of Individual Exemptions; Kay-Bee Toy & Hobby Shops, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue

exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kay-Bee Toy & Hobby Shops, Inc., Profit Sharing Plan (the Plan) Located in Lee, Massachusetts

[Prohibited Transaction Exemption 85–63; Exemption Application No. D–4877]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1981, to the extension of credit by the Plan to Melville Corporation (Melville), the parent corporation of Kay-Bee Toy & Hobby Shops, Inc. (Kay-Bee), the sponsor of the Plan, in connection with the sale by the Plan to Melville of all of its shares of stock of Kay-Bee, provided that the terms of the transaction were not less favorable to the Plan than those obtainable in an arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1985 at 50 FR 3993.

Effective Date:

This exemption is effective July 1, 1981.

Written Comments: The Department received one written comment with regard to the proposed exemption. The comment did not address any substantive issue involving the transaction which is the subject of the exemption.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Mitchell, Lewis & Staver Profit Sharing Plan (the Plan) Located in Portland, Oregon

[Prohibited Transaction Exemption 85–64; Exemption Application No. D–4728]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason by section 4975f(c)(1) (A) through (E) of the Code, shall not apply to: (1) The continued lease (the New Lease) by the Plan from June 29, 1984 through October 31, 1984, of a parcel of improved real property (Parcel I) to Mitchell, Lewis & Staver Company, the Plan sponsor; (2) the proposed sale (the Sale) by the Plan of Parcel I and two parcels of unimproved real property to Hubert A. Brown, a trustee of the Plan, and Shirley L. Brown (the Browns) pursuant to an earnest money agreement between the Plan and the Browns; and (3) an extension of credit (the Loan) between the Plan and the Browns in connection with the Sale, provided that all the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable in transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1985 at 50 FR 3995.

Effective Date: The effective date of this exemption is June 29, 1984, as to the New Lease and the date of the grant as to the Sale and the Loan.

For Further Information Contact: Mr. David Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Richard J. Cavell, M.D., Ltd. Money Purchase Pension Plan and Trust (the Plan) Located in Reno, Nevada

[Prohibited Transaction Exemption 85–65; Exemption Application No. D–5174]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by the Plan from Dr. Richard J. Cavell of a 17.273% interest (the Interest) in a certain royalty interest in a gold mine located in Hawthorne, Nevada, for $38,000 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 11, 1985 at 50 FR 5692.

For Further Information Contact: Mr. Gray H. Lefkowitz of the Department, telephone (202) 532–8881. (This is not a toll-free number.)

Floyd Browne Associates, Limited et al., Employees Profit Sharing Trust (the Plan) Located in Marion, Ohio

[Prohibited Transaction Exemption 85–66; Exemption Application No. D–5473]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of an improved parcel of real property by the Plan to either Floyd Browne Associates, Limited, the Plan sponsor, or Browne Investment Company, a party in interest with respect to the Plan, provided that the sales price is not less than the fair market value of the property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1985 at 50 FR 3998.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

McCree, Gahagan, McLean & Ketterhagen, M.D., P.A. Amended and Restated Employee Money Purchase Pension Plan and Trust (the Plan) Located in Naples, Florida

[Prohibited Transaction Exemption 85–67; Exemption Application No. D–5884]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a certain parcel of real property (the Property) by the individually directed account of Thomas C. Gahagan, M.D. (Dr. Gahagan) in the Plan to Dr. Gahagan, a trustee of the Plan, for the appraised fair market value of the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

proposed exemption published on February 11, 1985 at 50 FR 5698.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-7819 Filed 4-1-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5175] et al.

Proposed Exemptions; Penn United Technology, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Penn United Technology, Inc. Employee Stock Bonus Plan and Trust (the Plan) Located in Saxonburg, Pennsylvania

[Application No. D-5175]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c) (1) (A) through (E) of the Code shall not apply to: 1) the lease (the 1984 Lease) by Selectronic Plating, Inc. (Selectronic) of a portion of a parcel of improved real property (the Leasehold Premises) from Carl E. and Kathryn Jones (Mr. and Mrs. Jones), parties in interest with respect to the Plan; and 2) the proposed addendum (the Addendum) to the 1984 Lease, provided that the terms of the transactions are no less favorable to the Plan than an arm's-length transaction with an unrelated party.

Effective Dates: The effective date of this proposed exemption, if granted, will be August 20, 1984, with respect to the 1984 Lease and the date of a final grant of this proposed exemption with respect to the Addendum.

Summary of Facts and Representations

1. The Plan is an employee stock bonus plan established in 1973 with 60 participants as of Febraury 4, 1985. Also as of that date, the Plan held 66.64% of the capital stock of Penn United Technology (the Employer). In addition, Carl E. Jones, John B. Campbell, Jr. and Robert F. Becker, the trustees of the Plan owned, in the aggregate, 14.26% of the capital stock of the Employer. As of March 31, 1983, the Plan's capital stock had a value of $2,211,585 and total Plan assets amounted to $2,558,727.

2. The Employer manufactures tungsten carbide, steel tolls and dies, gages, fixtures, necessary spares and stampings off of the tools and dies. The applicant represents that during 1982 the

Employer became aware of an opportunity to conduct a new type of a manufacturing operation which was potentially profitable but which required that a new corporation be created at a location geographically separate from the Employer due to industry and commercial restraints. Therefore, the Employer incorporated Selectronic to conduct this new business, the provision of specialized precious metal plating to components used in the electronics industry. The Employer owns 98% of the shares of Selectronics and the remaining 2% is owned by the operational manager of Selectronic.

3. On December 1, 1982, Selectronic entered into an agreement (the 1982 Lease) to lease the Leasehold Premises from Mr. and Mrs. Jones for $550 per month. The 1982 Lease was for a one year term and provided that Selectronic would pay for the gas and electricity used as well as all water and sewer rents assessed upon the Leasehold Premises. On December 2, 1983, Selectronic and Mr. and Mrs. Jones entered into a new lease (the 1983 Lease) for a ten year term with the same terms and conditions as the 1982 Lease. The applicant acknowledges that the assets of the Employer and Selectronic constitute plan assets and that in accordance with Interpretive Bulletin 75–2 (29 CFR 2509.75–2), the 1982 Lease and 1983 Lease (the Old Leases) constitute prohibited transactions as indirect leases between the Plan and parties in interest with respect to the Plan. The applicant represents that Mr. Jones will pay all applicable excise taxes with respect to the Old Leases within 60 days of the grant of the proposed exemption.

4. On August 30, 1984, Valley National Bank (the Bank) acting as agent for Selectronic, entered into the 1984 Lease with Mr. and Mrs. Jones, covering the Leasehold Premises. The 1984 Lease is for a term of 10 years and provides for a rental of $550 per month for the first two years of the term. Thereafter the rent shall be adjusted every two years based upon a determination by an independent real estate appraiser. The 1984 Lease provides that Mr. and Mrs. Jones shall pay all real estate taxes for the Leasehold Premises and all charges for gas, electricity, water, sewage and waste disposal.

5. On June 21, 1984, the Bank accepted appointment as independent fiduciary on behalf of the Plan. The Bank represents that it is independent of the parties to the 1984 Lease. The Bank further represents that total loans to the officers and management personnel of the Employer amount to less than one-tenth of one percent of the Bank's total loans and that the total deposits of the officers and management personnel of the Employer amount to less than one-tenth of one percent of the Bank's total deposits. In addition, the Bank represents that it agreed to approve, monitor and enforce the 1984 Lease on behalf of the Plan. In arriving at its decision to approve the 1984 Lease, the Bank represents that it reviewed the Plan's needs, the Plan's most recent financial statements and the appraisal of the fair market rental of the Leasehold Premises including the appraisal by David J. King, MAI. Mr. King determined that as of March 19, 1984, the fair market rent for the Leasehold Premises was $550 per month. The Bank represents that it concluded that the 1984 Lease was fair to the Plan and in the best interest of the Plan's participants and beneficiaries because (a) the rental rate is not more than the appraised fair market rental rate; (b) Mr. and Mrs. Jones pay the taxes, water, sewage and electric charges; (c) Selectronic cannot find more suitable quarters at comparable rent; and (d) the success of Selectronic will be benefit to all Plan participants.

6. On September 13, 1984, the Bank, acting as agent for Selectronic and Mr. and Mrs. Jones entered into the Addendum whereby Selectronic will rent more space (the Expanded Premises) in the parcel of improved real property owned by Mr. and Mrs. Jones in order to expand its operation. The Addendum shall not be effective and the rent due thereunder shall not be paid until this proposed exemption is granted. The Addendum provides for rent of $1300 per month for the Expanded Premises. On May 31, 1984, Mr. King determined that, as of that date, the fair market rent for the Expanded Premises was $1300 per month. In a letter dated November 5, 1984, Mr. King stated that he examined the industrial market in Butler County (where Selectronic is located) and determined that there was no similar type facilities available to be leased at that time. Mr. King further stated that there were some older industrial facilities in the area but they would require extensive modernization and rehabilitation to serve Selectronic's needs.

7. The Bank represents that the Addendum is in the best interest of the Plan because (a) if Selectronic moved it would lose the $30,000 worth of improvements it has made to the Leasehold Premises; (b) Selectronic would incur moving expenses and/or would have to devide its operations between two locations; and (c) Selectronic needs additional space and the logical location for its expansion is in other parts of a building in which it is already situated.

8. In summary, the applicant represents the 1984 Lease and the Addendum meet the statutory criteria of section 408(a) because (a) both the 1984 Lease and the Addendum were approved by the Bank, acting as independent fiduciary on behalf of the Plan; (b) the rents due under the 1984 Lease and the Addendum were determined by a qualified independent appraiser; and (c) the Bank, acting as independent fiduciary on behalf of the Plan, will monitor and enforce the terms of the 1984 Lease and the Addendum.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

The Prudential Property Investment Separate Account (PRISA) Located in Newark, New Jersey

[Application No. D–5400]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to, effective August 31, 1981, (1) the continuation of a mortgage loan with respect to property owned by 745 Property Investments (the Trust), a real estate investment trust owned by PRISA, where the general account of the Prudential Insurance Company of America (Prudential) is the mortgagee; and (2) the continuation of a wraparound mortgage loan where the Trust is the mortgagee on the wraparound mortgage loan and Prudential's general account is the lender on the underlying or "wrapped" mortgage as described herein; provided that the terms and conditions of the transactions are not less favorable to the Trust than those available in an arm's length transaction with an unrelated party.

Effective date: If granted, this exemption will be effective August 31, 1981.

Summary of Facts and Representations

1. PRISA is a real estate pooled separate account which has more than

375 employee pension benefit plan participants. The plans participating in PRISA are either large Taft-Hartley pension plans or large corporate pension plans. As of September 30, 1983, PRISA had total assets of $5 billion, of which approximately $4 billion represented equity investments in real estate and $105.7 million represented mortgage loan investments. The remainder were represented primarily by cash and short-term investments and $105 million of common shares of beneficial interest in Corporate Property Investors, a real estate investment trust.

2. PRISA is maintained by Prudential, a mutual life insurance company with total assets, as of December 31, 1983, of approximately $72 billion. Prudential, among its other asset management services, maintains several pooled separate accounts in which employee benefit plans participate, including PRISA. Prudential has made substantial mortgage loan investments in real estate on behalf of its general account. As of December 31, 1983, Prudential's general account maintained a mortgage loan portfolio of more than $13.9 billion of which approximately $12.1 billion represented mortgage loans secured by income-producing real properties.

3. On August 31, 1981, PRISA acquired 97% of the outstanding shares of Connecticut General Mortgage and Realty Investments (CG Mortgage). CG Mortgage was managed by Congen Realty Advisory Company, an affiliate of the Connecticut General Life Insurance Company. By October 29, 1981, PRISA had acquired almost all of CG Mortgage's remaining outstanding shares. In this regard, of the 25 million shares outstanding as of October 29, 1981, only 123 shares are held by persons other than PRISA. Such shares are held by outside parties to enable CG Mortgage to maintain its status as a real estate investment trust. The total acquisition price of the shares of CG Mortgage was approximately $335.5 million. CG Mortgage is now known as the Trust.

4. At the time of PRISA's acquisition of the Trust, the real estate investment portfolio of the Trust included 80 equity investments. The Trust also held 46 mortgage loan investments with an outstanding aggregate principal balance of more than $138 million as of its acquisition date. As in the case of all of its real estate investments, Prudential's Real Estate Investment Department prepared an in-depth financial analysis of the Trust's investment portfolio prior to the acquisition of the Trust. This analysis included a review of financial, leasing and other information with respect to the investment properties and on-site inspections of the properties. Upon completion of its investment analysis, the Real Estate Investment Department recommended the acquisition of the shares of the Trust to Prudential's Board of Directors.

5. Because PRISA acquired the Trust's investment portfolio on an "all or nothing basis", the individual investments of the Trust were not separately available for acquisition. In this regard, Prudential determined that the investment portfolio as a whole represented an attractive investment opportunity for PRISA and that such investments were compatible, both in terms of the geographic location and the types of property involved, with investments already held by PRISA.

6. Two of the investments included in the portfolio of the Trust involve mortgage loan arrangements in which Prudential's general account is the holder of the first mortgage. One of these investments involves an equity property investment by the Trust, an office building known as the Southdale Office Building, which is subject to a first mortgage loan held by Prudential's general account (the Equity Investment). The other investment involves a wraparound mortgage loan investment in which the Trust is the lender on the wraparound mortgage loan and Prudential's general account is the lender on the underlying or "wrapped" first mortgage loan (the Mortgage Investment).

7. With respect to the Equity Investment, Prudential's general account holds a $5.8 million face amount 25-year first mortgage loan dated January 24, 1974. The Trust purchased the Southdale Office Building in 1976 subject to this mortgage loan. The interest rate on the loan is 8.75 percent and the loan matures February 1, 1999. As of October 31, 1983, the outstanding balance on the mortgage loan was $5,191,485. The original borrower was the Dayton Development Company, which is totally unrelated to Prudential.

8. Under the mortgage loan, after 15 years the borrower (the Trust) may make additional payments of principal if "prepayment consideration" is paid to the mortgagee (Prudential). If the prepayment occurs prior to the twentieth year, prepayment consideration will equal two percent of the amount of excess principal paid. After twenty years, prepayment consideration will equal one percent of the excess principal paid. No prepayments under the mortgage loan have been made. In this regard, Prudential has agreed that the Trust will not prepay the mortgage loan.

In addition, under the mortgage loan agreement if an event of a default under the mortgage loan occurs, Prudential, as mortgagee, may foreclose upon the mortgaged property. The mortgage loan is not, and to Prudential's knowledge has not previously been, in default. In this regard, Prudential will not foreclose on the property in the event of a default and will also not exercise any discretionary authority that it may have under the mortgage loan documents without first obtaining an administrative exemption or other necessary approval from the Department.

9. With respect to the Mortgage Investment, such investment consists of two loans, the wraparound (the Wraparound Mortgage Loan) and the wrapped mortgage loan. The Trust is the mortgagee or lender of the Wraparound Mortgage Loan and Prudential's general account is the mortgagee of the "wrapped" mortgage loan (the Prudential Mortgage Loan). The Wraparound Mortgage Loan encumbers a shopping mall located in Lima, Ohio (the Lima Mall).

The Wraparound Mortgage Loan is a $6,650,000 face amount mortgage loan dated December 28, 1972, between Lima Mall, Inc., as mortgagor, and the Trust, as mortgagee. The interest rate on the Wraparound Mortgage Loan is 7.625 percent and the monthly payment is $52,036.25. The outstanding balance on the Wraparound Mortgage Loan was $4,726,444.65 as of October 31, 1983. The loan will mature on December 28, 1987. At maturity, the remaining principal balance of the loan is expected to be $3,436,192.

The underlying or wrapped Prudential Mortgage Loan is a $6,000,000 face amount mortgage loan dated October 15, 1965, between Lima Mall, Inc., as mortgagor, and Society National Bank of Cleveland, as the original mortgagee. The mortgagee's interest was assigned to National City Bank of Cleveland on July 19, 1966, and to Prudential on December 8, 1966. The Prudential Mortgage Loan matures on March 15, 1986. The loan's interest rate is six percent and the monthly mortgage payment is $43,020. The outstanding balance on this loan was $1,145,010.24 as of October 31, 1983.

Pursuant to the terms of the Wraparound Mortgage Loan note, the mortgagor (Lima Mall, Inc.) is obligated to make the monthly wraparound mortgage payment ($52,036.25) to the wraparound mortgagee (the Trust). The Trust, in turn, is obligated to make the required mortgage payments to

Prudential's general account, as mortgagee of the Prudential Mortgage Loan. After the maturity of the Prudential Mortgage Loan, the Wraparound Mortgage Loan will be amortized in accordance with conventional mortgage loan procedures until it matures, at which time the remaining principal balance will become due and payable under a balloon payment.

10. As indicated above, the Trust is obligated to deliver to Prudential's general account the monthly mortgage loan payment received from Lima Mall, Inc. (the mortgagor). The Trust is not, however, obligated to make any payments to the general account under the Prudential Mortgage Loan in the event Lima Mall, Inc. fails to make its required monthly mortgage payments under the Wraparound Mortgage Loan. However, if Lima Mall, Inc. fails to make its required payments, the Wraparound Mortgage Loan note provides that the Trust, at its option, may make such payments on behalf of Lima Mall, Inc. in which case the amount of the payments and any costs incurred by the Trust in connection therewith would be added to the principal balance of the Wraparound Mortgage Loan. Prudential, on behalf of the Trust (PRISA), will not authorize the making of any such payments by the Trust on behalf of Lima Mall, Inc. as long as the Trust is the mortgagee of the Wraparound Mortgage Loan and Prudential is the holder of the first mortgage.

Both the Wraparound Mortgage Loan and the Prudential Mortgage Loan are secured by the Lima Mall property pursuant to the terms of the respective mortgage loan agreements. The agreements provide that in the event of a default the Trust must look solely to the mortgaged property for payment of the indebtedness secured by the Wraparound Mortgage and that neither Lima Mall, Inc. nor any other person will be personally liable upon default. In such case, the Wraparound Mortgage Loan agreement provides that the Trust may elect to foreclose against the mortgaged property. However, the Wraparound Mortgage Loan Agreement also provides that the mortgaged property is subject to the lien of the Prudential mortgage. Thus, Prudential's general account, as mortgagee of the Prudential Mortgage Loan, has a superior security interest in the mortgaged property in the event of default and foreclosure. In order to protect the interests of PRISA, Prudential, as long as it is the holder of the first mortgage and the Trust is the holder of the Wraparound Mortgage, will treat the Trust's security interest under the Wraparound Mortgage on an equal basis, rather than on an inferior basis, with that of the general account's security interest under the Prudential Mortgage Loan.

11. The applicant requests an exemption from section 406(a) of the Act for the continuation of the above mortgage loan arrangements. The applicant represents that the Equity Investment and the Mortgage investment were negotiated between Prudential, the Trust and unrelated parties on an arm's-length basis many years before PRISA acquired the Trust. The applicant represents that PRISA acquired the Trust on an "all or nothing basis" with respect to its entire investment portfolio and that the mortgage loan arrangements constitute only two of the then approximately 128 equity and mortgage loan investments of the Trust. The applicant further represents that the continuation of the mortgage loan arrangements allows PRISA to be obligated on debt instruments bearing a rate of interest substantially lower than current market rates. The applicant represents that Prudential's amendments to each mortgage arrangement providing that it will not exercise any discretionary authority with respect to the mortgage instruments will eliminate any potential self-dealing and conflicts of interest.

12. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because (a) the mortgage arrangements were negotiated on an arm's-length basis between the Trust, Prudential and unrelated parties many years before PRISA acquired the Trust in 1981; (b) Prudential determined that the purchase of the entire investment portfolio of the Trust by PRISA was an appropriate investment for PRISA; and (c) the continuation of the mortgage loan arrangements will allow PRISA to be obligated on debt at a lower than current market interest rate.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Society of the New York Hospital Employees' Retirement Plan Trust (the Plan) Located in New York, New York

[Application No. 3–5586]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the continuation beyond June 30, 1984 of four mortgage loans (the Mortgages) by the Plan to the Society of the New York Hospital (the Employer), the sponsor of the Plan, provided that the terms of the Mortgages are at least as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, it will be effective July 1, 1984.

Summary of Facts and Representations

1. The Employer is a New York charitable corporation located in New York City engaged in the operation and maintenance of a general hospital and two psychiatric hospitals. The Plan was created as of January 1, 1947. United States Trust Company of New York (U.S. Trust) is currently the trustee, having assumed this responsibility as of November 15, 1976. As of January 31, 1984, the Plan's assets had a market value in excess of $86,000,000. The Plan had approximately 5,405 participants as of December 31, 1984.

2. On January 1, 1968, the Plan was assigned as mortgagee a mortgage loan (Loan One), which had originally been made to the Employer by Phipps Houses, an unrelated corporation. Loan One was originally in the amount of $1,902,644, and was secured by the premises located at 428–436 East 69th Street, New York City (Property One). When Loan One was assigned to the Plan, the annual rate of interest was increased from 3½% to 5½%. Loan One is self-liquidating and has a maturity date of November 1, 1991. As of June 30, 1984, the outstanding principal balance was $781,000.

3. On January 19, 1970, the Employer borrowed $2,500,000 from the Plan (Loan Two) at 8% interest. Loan Two was secured by the premises located at 445 East 68th Street, New York, New York (Property Two). As of June 30, 1984, Loan Two had an outstanding principal balance of $1,148,000, and the loan is due October 19, 1989.

4. On January 1, 1973, the Employer borrowed $600,000 from the Plan at an annual interest rate of 8% (Loan Three). Loan Three was secured by the premises located at 434 East 70th Street and 1303 York Avenue, New York, New York (Property Three). As of June 30, 1984, the

outstanding principal balance of Loan Three was $377,000 and the loan is due January 1, 1993.

5. On January 1, 1973, the Employer borrowed an additonal $689,700 from the Plan at an annual interest rate of 8% (Loan Four). Loan Four was also secured by Property Two. As of June 30, 1984, Loan Four had an outstanding principal balance of $433,000, and the loan is due January 1, 1993.

6. The applicants represent that all four Mortgages were statutorily exempt until June 30, 1984 from the prohibitions of section 406 of the Act and section 4975 of the Code by virtue of sections 414(c)(1) and 2003(c)(2)(A) of the Act.[1] The applicants recognized that the statutory exemption for the Mortgages would expire on June 30, 1984, and thus sought an exemption to continue the Mortgages beyond that date. The interest rate for all the Mortgages was adjusted upward to 15% as of July 1, 1984. The applicants represent that the Employer has been making Mortgage payments in accordance with the revised annual interest rate of 15% since July 1, 1984, and the Mortgages are current with no history of default. The interest rate for the Mortgages is to remain at 15% until June 30,1985, when it will be reviewed by U.S. Trust. The interest rate of 15% was selected by U.S. Trust based on Citibank, N.A.'s rate as of July 1, 1984 for such loans. U.S. Trust will review the rate of interest to be paid by the Employer as of July 1 of each subequent year based on the annual rate for such loans of Citibank, N.A., or such other comparable lending institution as U.S. Trust may determine.

7. Messrs. Eugene A. Hegy, Jr. and Kenneth H. Bowen of Brown, Harris, Stevens, Inc., independent real estate appraisers in New York, New York, have appraised the fair market value of the Properties as of February 4, 1985. They have represented that Property One has a fair market value of $10,000,000, Property Two has a fair market value of $23,000,000 and Property Three has a fair market value of $6,500,000. Thus, the Mortgages are secured by real property having a fair market value many times greater than the principal outstanding balances of the Mortgages.

8. U.S. Trust, the Plan's independent fiduciary, has represented that it reviewed the subject transactions and has determined that, as of June 30, 1984, the terms are equivalent to arm's-length transactions between unrelated parties. U.S. Trust has concluded that the Mortgages are fair, reasonable and in the best interests of the participants and beneficiaries of the Plan. U.S. Trust has based its conclusions on the following factors: (a) The interest rate will be modified each year to yield a market rate of interest for similar types of loans; (b) the Mortgages are fully protected in the event of default by the Employer as evidenced by the independent appraisal of the fair market values of the Properties; (c) the availability, as the result of the restructuring of the interest rates, of a ready market without loss to the Plan if the Mortgages were to be sold by the Plan to a third party; and (d) the Mortgages constitute less than 5% of the Plan's total assets. U.S. Trust further represents that it will monitor the Mortgages to ensure the Employer's compliance with the terms of the Mortgages.

9. In summary, the applicants represent that the subject transactions satisfy the criteria of section 408(a) of the Act because: (a) The Mortgages represent less than 5% of the Plan's assets; (b) the interest rate for the Mortgages is that which is currently charged by an unrelated bank for similar loans, and will be reviewed annually by the Plan's independent fiduciary and modified to yield a market rate of interest for similar loans; (c) an independent appraiser has appraised the Properties securing the Mortgages as having values many times in excess of the principal amounts of the Mortgages; (d) U.S. Trust, the Plan's independent fiduciary, has determined that the subject transactions are appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries; and (e) U.S. Trust will monitor the Mortgages and take whatever action is necessary to enforce the Plan's rights under the Mortgages.

For futher information contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Electric Pension Trust (the Trust) Located in New York, New York

[Application No. D-5701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

(a) *General Exemption.* The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, financing, or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) or the borrowing or lending of money in connection therewith, between a parity in interest and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by the trustees of the Trust, as described herein,

(2) Any such party in interest is not—

(i) General Electric Company (GE), the sponsor of the Trust, any person directly or indirectly controlling, controlled by, or under common control with GE, any officer, director, or employee of GE or any of its subsidiary or affiliated companies, or any partnership in which GE is a 10 percent or more (directly or indirectly in capital or profits) partner; or

(ii) A person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction.

(3) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the Trustees or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties.

(4) GE shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of GE, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below; and

[1] The Department expresses no opinion as to whether the Mortgages were statutorily exempt until June 30, 1984 from the prohibitions of section 406 of the Act and section 4975 of the Code by reason of sections 414(c)(1) and 2003(c)(2)(A) of the Act.

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at GE's headquarter's offices, or, upon prior arrangement with GE, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative or the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a plan which is funded, in whole or part, by the Trust with respect to which GE is a named fiduciary or any duly authorized employee or representative of such fiduciary,

(C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine GE's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific Exemption.* The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

Transactions Involving Places of Public Accommodation

The furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a)(4) and (5) of this proposed exemption are met.

Summary of Facts and Representations

1. The Trust holds assets of the General Electric Company Pension Plan and the International General Electric Puerto Rico, Inc., Pension Plan (the Plans). As of December 31, 1983, there were approximately 243,769 active participants in the Plans, and the Plans had net assets of approximately $9.89 billion. Approximately 13% of the Trust's total portfolio is currently invested or committed for specific investment in real estate or real estate related investments.

2. The Trust is administered by the Benefit Plans Investment Committee (BPIC) and a group of five trustees (the Trustees). The BPIC is chaired by one of three internal members of the board of directors of GE and is composed of officers of GE. BPIC was created by the board of directors of GE and is charged with the responsibility for the direction and oversight of the Trust's investment policy. This responsibility is discharged by reviewing Trust allocation to various investment media (equities, fixed income, etc.) and reviewing investment strategies and overall performance. In addition, certain specific investment decisions are reviewed by BPIC and selected transactions are approved.

The Trustees are appointed by the BPIC and are currently five in number. The Trustees are all employees of GE and include two vice-presidents of GE. The Trustees maintain overall responsibility for investment of the Trust's assets. Mr. Francis X. Tansey, Manager—Fixed Income Investments, is the Trustee primarily responsible for the Trust's real estate investments. Mr. Tansey's functions include the identification and analysis of real estate investments within a framework endorsed by all of the Trustees. The Trustees are assisted in-house by a staff of 91 professionals and support staff of which approximately three-quarter are professional personnel whose sole function is the management and administration of Trust assets. Approximately one-half of these professional employees are involved in some manner in real estate investment.

3. The applicant requests an exemption to allow the Trust to engage in certain real property transactions which may otherwise be prohibited under the Act. GE represents that all prospective transactions will be effected on behalf of the Trust by the Trustees and will not involve parties in interest who have formal or actual authority over the investments. The applicant represents that due to the size and complexity of the sponsor of the Trust, GE, the normal operation of the Trust in real estate investments may involve party in interest transactions. The Department recognizes this situation and, to date, has proposed and granted various individual exemptions on behalf of the large trusts involving real estate investments where parties in interest who maintain no actual or formal authority over the investments have been involved.

4. The applicant represents that the Trust's investments in real estate are made in various forms. Such forms involve real estate partnerships, joint ventures, leases, and mortgages. As a result of such real property investment arrangements, prohibited transactions by and between the Trust and party in interest bank lenders, lessees, joint venturers, and partnership partners may occur. Such parties would maintain no authority with respect to the Trust's investment.

5. GE has described various examples of real estate transactions, sale-leasebacks, convertible mortgages, and direct equity investments, which may result in prohibited transactions. In a sale-leaseback transaction, the Trust would typically purchase the fee interest in the ground underlying the project in question. It would then lease the ground to the owner/operator pursuant to a long term ground lease. In most instances the owner/operator would continue to own the improvements in fee, but the ground lease would provide that, upon its expiration, title to any remaining improvements would pass to the Trust. The ground lease generally provides for a fixed rental together with an additional rental based on a percentage of revenues from the project. The Trust will typically provide additional financing for the project by extending the owner/operator a loan secured by a mortgage on the improvements and on the leasehold interest in the land. There are also several variations to this basic structure. For example, the Trust may purchase the improvements as well as the land and lease them all to the owner/operator, rather than financing the improvements with a mortgage. Or, alternatively, the entire financing may be in the form of mortgage debt with the Trust receiving a stated interest rate and an additional interest amount based on a percentage of the projects's revenues.

A convertible mortgage structure involves mortgage financing coupled with an option to purchase a percentage interest in the project. For example, the Trust would extend a mortgage loan to the owner/operator and obtain an option to purchase an interest in the project (*e.g.*, 50%) during a specified period in the future (*e.g.*, during the tenth year of the mortgage). The mortgage may provide that a portion of the interest will not be payable currently, but, instead, will accrue and compound. That accrual account will then be available as currency for the exercise of the option. If the option is not exercised, the accrual account amortizes over the remainder of the loan. The form of the investment after the exercise of the option may be either a tenancy in common with the owner/

operator or a partnership in which the Trust would be either a general or a limited partner of the owner/operator.

A direct equity investment involves a real estate project, made either by the Trust itself or by a specially formed title holding company subsidiary of the Trust. Here, too, the form of the investment may be a tenancy in common with the owner/operator or a partnership. Additional partnership interests may be sold to other investors, either publicly or by private placement.

With respect to each investment structure, the projects in question are typically office buildings or shopping centers but include hotels and other commercial or multi-family residential projects. The owners/operators/developers with whom the Trust invests are carefully chosen and are experienced in the evaluation, ownership, management, financing and (in the case of new projects) development of real estate.

6. The applicant states that it is possible that the investment by the Trust in places of public accommodation may result in the use of such facilities by parties in interest. Therefore, such transactions involving these places of public accommodation may constitute prohibited transactions as described in the Act.

7. All transactions which are the subject of this exemption request will be subject to the discretion and control of the Trustees and specifically the Trustee directly responsible for real estate investments. The applicant represents that regardless of the structure chosen, each real estate investment receives thorough and careful analysis by the Trustees and by its staff of professionals. The investment process operates as follows: Potential real estate investments are generally brought to the attention of one or more of the Trustees or members of the Trust's professional staff by real estate investors, brokers, or advisers. A staff of real estate professionals under the direction of Mr. Tansey and under the day-to-day direction of Joel R. Wilson, Manager—Real Estate Investments, then inspects and appraises prospective properties, considers existing and prospective tenants and evaluates numerous other financial and non-financial aspects such as size, location, actual and potential use, financing, taxes, insurance, title requirements and compliance with zoning and other applicable laws. Sophisticated computer models are utilized as a tool to assist the real estate professionals and to evaluate risk and reward criteria.

Upon completion of this analysis, the potential real estate investment is either rejected or, upon approval by Mr. Wilson, is submitted (together with a transaction proposal) in writing to Mr. Tansey. If Mr. Tansey approves the proposed transaction, it is then presented to the other Trustees. Approval by at least two additional Trustees is required before the investmant may be referred for further consideration. After approval by a majority of the Trustees, independent approval by the Trust's in-house legal staff is required both as to the substance of the transaction and its suitability under the Act. Before funds are actually disbursed, the mechanics of the approval process are independently verified by a staff financial professional, and the corporate audit staff of GE reviews the entire process annually for compliance. If the proposal receives a negative assessment at any one of the foregoing levels of analysis or approval, the transaction is not consummated.

8. GE represents that they have thus established rigorous financial standards and procedures to ensure sound real estate investments with appropriate rates of return. GE represents that any covered transactions will be on terms not less favorable to the Trust than those available between the Trust and unrelated parties. The applicant represents that given the size and scope of the Trust and their investments, and its relationship to numerous financial institutions, denial of the exemption would substantially inhibit the Trust from investing in many prime quality real estate projects of substantial size.

9. In summary, the applicant represents that the transactions meet the criteria for an exemption as provided in section 408(a) of the Act because (a) all investments will be subject to the discretion and control of the Trustees and its professional and support staff which has extensive experience in real property investments and makes complete analyses with respect to Trust investments; (b) the Trust will be able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Trust's operation; (c) all transactions will involve parties who are competely independent from GE and will have no discretion, authority or control with respect to the exercise of GE's fiduciary responsibility relating to the transactions; and (d) all transactions will be conducted on an arm's-length basis on terms not less favorable to the Trust than those available in arm's-length transactions with unrelated parties.

Notice to Interested Persons: Notice will be provided to interested persons within 20 days of the date of publication of this notice in the **Federal Register**. Comments and hearing requests are due within 50 days from the date of publication.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Electronic Data Systems Corporation Retirement Plan (Retirement Plan); Electronic Data Systems Corporation Deferred Compensation Plan (401(k) Plan; collectively, the Plans) Located in Dallas, Texas

[Application No. D-5790]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1), (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective August 13, 1984, to the sale by the Plans of all of their shares of Electronic Data Systems (EDS) common stock to General Motors Corporation (GM) in exchange for cash and certain notes and stock issued by GM, provided that the terms of the transaction are at least as favorable to the Plans as those obtainable in a similar transaction with unrelated parties.

Effective Date: If granted, this exemption will be effective August 13, 1984.

Summary of Facts and Representatives

1. The Retirement Plan is a defined benefit plan with 9,484 participants as of August 15, 1984. As of January 1, 1984, the Retirement Plan had total assets of approximately $42 million. As of September 10, 1984, the Retirement Plan held approximately 142,100 shares of EDS stock constituting approximately .24% of the total outstanding EDS shares and approximately 10.7% of the Retirement Plan's total assets.

The 401(k) Plan is a defined contribution individual account savings plan. As of August 31, 1984, 5,274 employees were eligible to participate in the 401(k) Plan and 2,604 actually participated. All participants in the 401(k) Plan are also participants in the Retirement Plan. As of July 31, 1984, the 401(k) Plan held assets valued at $5,817,371. The 401(k) Plan held 52,277 shares of EDS stock as of August 31,

1984, amounting to approximately .09% of the total outstanding EDS shares and approximately 40% of the 401(k) Plan's assets. The 401(k) Plan provided each participant with three different investment options. Each participant could elect twice annually to invest or reinvest his account in Investment Fund 1, an equity fund; Investment Fund 2, a fixed income fund; or Investment Fund 3, which was invested in EDS stock.

EDS also sponsors a payroll stock ownership plan (the PAYSOP) which is a defined contribution plan qualified under section 409 of the Code. As of August 15, 1984, 5,132 persons were eligible to participate in the PAYSOP. As of that date, the PAYSOP held 7,499 shares of EDS stock, amounting to approximately .01% of the total outstanding EDS shares.[2]

2. The trustees (the Trustees) of each Plan are a group of three individuals, Messrs. William K. Gayden, J. Thomas Walter, and Anthony E. Weynand. Each Trustee is an officer and shareholder of EDS, the sponsor of the Plans. EDS and its affiliates and subsidiaries provide high-technology computer-based systems and related professional services to a variety of customers such as governmental agencies, finance, industrial and insurance companies, and health care institutions. As of September 10, 1984, the record date for purposes of voting on the merger, EDS had 59,106,733 shares of voting common stock outstanding. Approximately 50.3% of these shares were beneficially owned by officers and directors of EDS as a group, including approximately 28.0% beneficially owned by H. Ross Perot (Mr. Perot), the founder and chairman of the board of EDS, and approximately 16.9% held by Thomas J. Marquez, and EDS director, in his capacity as trustee of investment trusts established for the benefit of relatives of Mr. Perot (Perot Investment Trusts). The remaining 49.7% of the EDS shares were widely held. EDS shares were traded on the New York Stock Exchange (NYSE) and the Pacific Stock Exchange.

GM is incorporated under the laws of Delaware. As of September 21, 1984, GM had outstanding approximately 315,000,000 shares of voting GM common stock and also had outstanding two classes of non-voting preferred stock. GM common stock is widely held and is traded on the NYSE and on a number of other exchanges.

3. On August 13, 1984, an Agreement and Plan of Merger (Merger Agreement) were entered into between GM, EDS and EDS Acquisition Corporation (EDS Acquisition), a newly formed wholly-owned subsidiary of GM, whereby GM would acquire 100% of the outstanding stock of EDS through a merger in which EDS Acquisition will be merged into EDS. Pursuant to this arrangement EDS would become a wholly-owned subsidiary of GM.

4. As a condition to GM's entering into the Merger Agreement, GM simultaneously entered into stock purchase agreements (Stock Purchase Agreements) with Mr. Perot, Mr. Marquez, individually and as trustee for the Perot Investment Trusts, Morton H. Meyerson (President and a director of EDS), the Trustees in their individual capacities, and other officers of EDS, for the purpose of obtaining their agreement to sell their shares of EDS Stock to GM immediately prior to consummation of the Merger, as well as, in most instances, obtaining their proxy to vote their shares of EDS Stock. Pursuant to the Stock Purchase Agreements, GM purchased, immediately prior to consummation of the Merger, an aggregate of 28,904,274 EDS shares (approximately 48.9% of the shares outstanding as of September 10, 1984). The Stock Purchase Agreements signed by the above shareholders granted to nominees of GM irrevocable proxies to vote their shares of EDS Stock in favor of the Merger Agreement. As of the record date, the EDS stock described above and subject to proxies comprised approximately 47.1% of the outstanding EDS shares.

5. The Stock Purchase Agreements provide, as do the terms of the Merger Agreement, that each selling shareholder has a right to receive, at the election of the shareholder, either (i) $44.00 in cash (Option 1); or (ii) $35.20 in cash, two-tenths of a share of a new class of GM common stock known as GM Class E Stock (E Stock), and a two-tenths interest in notes issued by GM (the Contingent Notes) in connection with the merger (Option 2). The E Stock and Contingent Notes are described as follows.

6. The E Stock has been issued in an amount up to 13,650,000 shares in connection with the transactions. The E Stock has a ten cent ($.10) par value. The E Stock allows a holder a one-half vote per share and entitles a holder to share in liquidation proceeds in proportion to voting rights vis-a-vis other classes of GM stock. The E Stock has no divident preference. GM has agreed to issue at least an additional 22,600,000 shares of E Stock to the public within two years after the effective date of the merger. These new shares may be issued either in a public offering or as a stock dividend on existing GM common stock. The board of directors of GM reserves a limited right to recapitalize GM by converting the E Stock into GM common stock at any time after December 31, 1994. The E Stock will generally be freely transferable. However, if the E Stock is transferred (other than to certain "permitted transferees") within 180 days from the effective date of the merger, the holder of the E Stock will forfeit certain rights under the Contingent Note. The E Stock has been the subject of a registration statement filed with the Securities and Exchange Commission (SEC).

7. With regard to the Contingent Notes, Morgan Guaranty Trust Company in New York will act as trustee (the Indenture Trustee) under the Contingent Note Indenture. The maturity date of the Contingent Notes is October 18, 1991, the seventh anniversary date of the effective date of the merger. The Contingent Note will pay at maturity the difference, if any, between $125 and the value of each share of E Stock received in the merger. The Contingent Note is forfeitable to the extent the noteholder disposes of E Stock received in the merger within 180 days after the merger. The Contingent Note will be prepayable (in whole or in part) on request by the holder, on a date five years and ten days after the closing date of the merger, and at six-month intervals thereafter up to seven years after the merger. The amount payable under the Contingent Note is discounted prior to maturity. No stated annual interest is paid on the Contingent Note except in the case of a default by GM. However, "special interest" will be paid either at maturity or on prepayment of the note. The "special interest" is generally calculated to reimburse individual noteholders for any additional federal income tax incurred because all or a portion of the note payment is treated as ordinary income rather than long-term capital gain. The same amount of "special interest" will be paid to every holder of the note, regardless whether or not the holder is subject to tax.

The Contingent Note requires a mandatory additional payment two years after the closing date of the merger if no public market for the Class E Stock exists at that time. The Contingent Note is not transferable except to certain defined "permitted transferrees" and then only on advance notice to the Idenure Trustee. The EDS board of directors may approve any other transferee. Participants and beneficiaries of EDS's employee benefit plans are not expressly included as "permitted transferrees", but may be

[2] The sale of EDS stock by the PAYSOP is not the subject of this exemption request.

approved as such by the EDS board of directors. The Contingent Notes have been the subject of a registration statement filed with the SEC.

8. The merger was approved on October 18, 1984, as 86% of EDS shareholders voted in favor of the merger, .15% voted against, .19% voted to abstain, and 13.51% failed to register a vote. All of the shares granted to GM by the EDS officers and directors pursuant to the proxies (47.1% of the outstanding shares) were voted in favor of the merger. No shareholder exercised dissenters rights under Texas law. Shareholders who voted against the merger but did not exercise dissenters rights received consideration pursuant to either Option 1 or Option 2.

9. Shareholders subject to the Stock Purchase Agreements (the Sellers) received consideration that varied from the consideration received by shareholders under the Merger Agreement, which included the Plans. Pursuant to the Stock Purchase agreements, the Sellers were committed to take the Option (2) consideration (E Stock, Contingent Notes and cash) and further agreed that to the extent other EDS shareholders elect Option (1), the E Stock and Contingent Notes that otherwise would have been received by such other EDS shareholders would be received by the Sellers on a pro rata basis, and the amount of cash received by the Sellers will be correspondingly reduced. Under the Stock Purchase Agreements, if a Seller received cash in excess of $100,000 he or she could elect instead to receive an installment note from GM for the cash amount payable in full either in 1985 or 1995, paying interest at a fluctuating rate tied to the interest rate on 91-day Treasury obligations. The installment note is subject to substantial retrictions on transfer and is intended to qualify for installment reporting for federal income tax purposes. In addition, certain of the Stock Purchase Agreements provide indemnities to certain of the Sellers (including Mr. Walter and Mr. Gayden, individually) for potential liabilities in connection with the sale of their shares and give certain Sellers a right to cause registration of the E Stock. The Stock Purchase Agreements provide certain Sellers with an option to exchange the E Stock for GM common stock, based on then market values, during a six-month period immediately after the seventh anniversary of the effective date of the merger.

10. The Plans received consideration pursuant to the Merger Agreement. As with all other shareholders selling under the Merger Agreement, the Plans were free to sell their EDS shares on the open market up to the date of the Merger. The Plans, as with all other shareholders selling under the Merger Agreement, did not receive certain options, rights and indemnities which the Sellers received under the Stock Purchase Agreements.

11. The applicant represents that the terms of the acquisition were negotiated on an arms-length basis among EDS, GM and the parties to the Stock Purchase Agreements. EDS shares were trading on the NYSE at $30.87 on May 15, 1984, the last day prior to public announcement of merger discussions. Beginning on July 2, 1984, EDS and GM had one common director, Mr. Perot.

Lazard Freres (Lazard), an investment banking firm, rendered an opinion to the EDS board of directors to the effect that the consideration to be received by EDS shareholders in the merger is fair from a financial point of view. Lazard supplied appraisals of the E Stock and Contingent Notes as of the effective date of the merger. The EDS board of directors unanimously approved the merger and recommended approval of the merger to its shareholders.

12. Prior to the effective date of the merger, the Trustees turned over to an independent fiduciary, as described below, the decisons relative to the disposition or retetention of the EDS stock by the Plans. In this regard the independent fiduciary was empowered to make decisions relative to voting for or against the merger, exercising dissenters rights, and choosing which Option to receive as consideration for the shares. With respect to the decision relative to voting for or against the merger, the participants in the 401(k) Plan were given the right by proxy to direct voting of their shares in favor of or against the merger. In its regard, participants in the 401(k) Plan holding 36,371 shares directed their shares to be voted in favor of the merger, 2,115 shares wer directed to be voted against the merger, and 421 shares were directed to abstain. Such participants did not have the right to elect the form of consideraion (i.e. Option 1 or 2) to be received in the merger. The Trustees of the 401(k) Plan voted the shares of EDS Stock held by participants to the extent they did not execise their right to direct the voting of the shares (see paragraph 17, infra).

13. 401(k) Plan participants were also given the right to make a "special investment election" prior to October 4, 1984, so that assets held in their different Investment Funds could be transferred among the different Funds. Each participant in the 401(k) Plan received detailed information regarding the special one-time election and the merger in the form of letters of instruction, a copy of Form S-8, Registration Statement under the Securities Act of 1933 and a copy of a proxy statement/prospectus (Prospectus), which discusses the merger in greater detail. The applicant represents that pursuant to such election 188 participants in the 401(k) Plan elected to transfer out of Investment Fund 3 which was invested in EDS stock, and 620 participants elected to transfer into Investment Fund 3. The EDS stock of a participant who moved out of Investment Fund 3 was liquidated at the then current market price of the shares and such amount was invested in Investment Fund 2. The applicants represent that neither the Trustees of the 401(k) Plan nor the administrator of the 401(k) Plan exerted pressure, control or influence on 401(k) Plan participants to pursue any course of action with respect to the special election or with respect to the voting of the EDS shares allocated to such participant's account.

14. The applicant seeks an exemption for the Plans' participation in the merger and receipt of E Stock and Contingent Notes in connection with the merger. The applicant represents that the E Stock may not constitute "qualifying employer securities" as described in the Act and that the Contingent Notes may not qualify as "marketable obligations" or defined in section 407(e) of the Act because more than 50% of the Contingent Notes may be held by persons who are not considered independent of the issuer. Accordingly, the applicant represents that it is unable to conclude that the statutory exemptive relief provided in section 408(e) of the Act is applicable to the transactions.

15. The MBank Dallas N.A. (MNB) was appointed to serve as the independent fiduciary to the 401(k) Plan and the Retirement Plan with respect to the merger transactions. MNB is a national banking association which is a wholly-owned subsidiary of Mercantile Texas Corporation (MTC), a bank holding company. MNB is the second largest bank in Dallas in terms of domestic deposits and the 52d largest bank in the United States. MNB holds approximately $3 million of assets as trustee, custodian or in other fiduciary capacities. Approximately $1 million of these assets are funds of employee benefit plans. MNB has discretionary investment authority over approximately $600 million of employee benefit plan assets. In the conduct of its fiduciary duties, MNB is frequently assisted by the services of Mercantile Securities Corporation, another wholly-

owned subsidiary of MTC, which is a registered investment adviser under the Investment Advisers Act of 1940.

MNB currently has no outstanding deposits, loans or lines of credit with EDS, with Mr. Perot, with the Perot Investment Trusts, or with GM. MNB has certain commercial relationships with General Motors Acceptance Corporation (GMAC), a subsidiary of GM. Such relationships consist of GMAC deposits constituting approximately .04% of MNB's total assets; outstanding lines of credit which have not been drawn on, amounting to 1.17% of MNB's total outstanding undrawn lines of credit; and other assets of GMAC held in trust or in other fiduciary capacities representing approximately 1.7% of total assets held by MNB in trust or in other fiduciary capacities. Neither GM, EDS, Mr. Perot nor the Perot Investment Trusts own any MTC shares. Neither EDS nor GM has any directors who are also directors of MTC or MNB.

16. MNB, in arriving at its determinations as a fiduciary of each Plan, reveiwed EDS's and GM's audited financial statements for prior years, read and evaluated management discussions concerning the operations and future business prospects of both corporations, reviewed the financial terms of the merger and compared such terms to the financial terms of certain other friendly and unfriendly mergers, reviewed each Plan's documents and trust agreements, and studied the differences in consideration to be received by shareholders under the Stock Purchase Agreements and the Merger Agreement. MNB represents that they thoroughly examined the Prospectus which outlines in great detail all relevant facts concerning the transactions, and reviewed each Plan's funding policy and investment objections and compared those to investment returns possible under each Option available to each Plan under the Merger Agreement. This specific review took into consideration the current trading price range of EDS shares, the $44.00 cash offer available under Option 1, comparable yields available in current fixed income and equity markets, and reasonable estimates of future investment performances of alternative investment vehicles.

17. MNB determined, with respect to each Plan, prior to the consummation of the merger, that the consideration to be received by other EDS shareholders is not more favorable than the consideration available to each Plan. MNB determined that the receipt of consideration by each Plan pursuant to Option 2 under the Merger Agreement is in the best interests of each Plan and their participants. MNB determined therefore, prior to the consummation of the merger that it is in each Plan's best interest to vote its shares in favor of the merger and that the election of Option 2 and consequent receipt of E Stock and the Contingent Notes is appropriate and in the best interests of each Plan and its participants and beneficiaries. MNB therefore provided written directions to the Trustees of the Retirement Plan and the 401(k) Plan (to the extent participants did not direct the voting of their shares) to vote in favor of the merger, and instructed the Trustees with respect to each Plan in writing to elect Option 2 under the Merger Agreement. MNB acknowledged in writing that it is serving as a fiduciary with respect to each Plan.

18. MNB will continue to serve as each Plan's fiduciary with regard to holding of the Contingent Notes. MNB will monitor all future transactions involving the Contingent Notes, including exercise of any prepayment rights by each Plan and enforce each Plan's rights if GM defaults under the Contingent Notes. MNB will continue to serve as fiduciary for each Plan with regard to the holding of the E Stock until the expiration of the later of the 180 day period following the effective date of the merger or the date of the Trustees determine that the E Stock is a qualifying employer security as defined in the Act.

19. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) of the Act because (a) the sale of the EDS stock to GM, including the shares held by the Plans, was negotiated on an arm's-length basis between unrelated parties; (b) each Plan received consideration not less favorable for the shares than the consideration received by other shareholders under the Stock Purchase and Merger Agreements; (c) each Plan was represented by MNB, a qualified independent fiduciary, who determined that the voting in favor of the merger and election of the receipt of the E Stock and Contingent Notes was appropriate and in the best interests of each Plan; and (d) MNB will monitor all future transactions involving the Contingent Notes and enforce the rights of each Plan under the instruments.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Pension Plan of Wertheim & Co., Inc. (the Plan) Located in New York, New York

[Application No. D-5929]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed contribution of a certain zero coupon note (the Note) to the Plan by Wertheim & Co., Inc. (the Employer), provided that the Note is valued at its fair market value at the time it is contributed.

Summary of Facts and Representations

1. The Employer and its subsidiaries are engaged in financial and investment services, including but not limited to services as a broker, dealer, underwriter and distributor of securities and commodities. Also, the Employer renders investment advisory and managerial services to individuals, corporations and other organizations. All of the stock of the Employer is held by Wertheim & Co., a New York general partnership. As of September 30, 1984, the Employer had assets of $462,729,151 and stockholder's equity of $54,515,208.

2. The Plan is a qualified, non-contributory defined benefit plan with 480 participants and beneficiaries as of January 1, 1984. The administration of the Plan and the investment of its assets are the responsibility of the Administration Committee and the Investment Committee, respectively, who are appointed as fiduciaries of the Plan by the Employer from its officers and directors. The trustee of the Plan is Chase Manhattan Bank, N.A. The fair market value of Plan assets on November 30, 1984, was $7,205,544.

3. The Employer proposes to contribute the Note to the Plan. The value of the Note will be determined by the Plan's independent fiduciary appointed for this transaction (*See* representation 5., below). The value of the Note will be less than 2.35 percent of the Plan's total assets.

4. The Note is a zero coupon obligation issued by Johnston Associates (Johnston), a New York limited partnership, for the face amount of $400,000. The Note represents a 12.5

percent interest in a $3,200,000 obligation which arose with a sale and leaseback transaction between Johnston and Allendale Mutual Insurance Company (Allendale). Johnston purchased the headquarters building of Allendale in Johnston, Rhode Island and leased the building back to Allendale for an initial term of 25 years plus renewal options. The Note is secured by Allendale's lease obligation to Johnston and is subordinated to approximately $32 million in debt incurred in the sale and leaseback transaction. Allendale has no other long term debt and has a net worth of approximately $265 million with AA rating by Standard & Poor and A+ rating by Best. The Employer and its principals have no special relationship with Johnston or Allendale and a relationship only through the provision of financial services in the regular course of its business.

Total principal and interest payments over the life of the Note will be $4,761,028.58. The Note accrues interest at the rate of 10 percent compounded semiannually. Payments on the note will commence in February 2000 in semiannual cash payments of $46,875, increase to semiannual payments of $150,000 in February 2005, decrease to semiannual payments of $139,614 in February 2010, and the fully paid in August 2019.

5. Moore, Juran and Company, Inc. (Moore-Juran), an investment banker located in Minneapolis, Minnesota, has agreed to act as an independent fiduciary on behalf of the Plan in connection with the proposed contribution by the Employer of the Note. Moore-Juran is in the investment banking business with experience in the valuation of securities, including debt instruments such as the Note, and in recent years has annually traded between $500 million to $700 million of such instruments. Its business dealings with the Employer are limited to occasional contacts in the ordinary course of business, generating commissions of a few thousand dollars a year which are *de minimus* in comparison to its annual income.

Moore-Juran has examined the application for exemption and the exhibits. In valuing the Note, Moore-Juran has relied upon its experience with similar debt instruments and its knowledge of prevailing interest rates. After discounting the Note at a rate of 14 percent per annum, Moore-Juran concluded that as of January 24, 1985, the Note should have a fair market value of $175,500.

Moore-Juran believes that the acceptance of the Note is in the best interests of the Plan and its participants and beneficiaries because of the high return and quality of the Note and because it avoids the reinvestment risk inherent in non-zero coupon obligations. Moore-Juran considers it significant that the assets of the Plan are well diversified with the Note representing less than 2.35 percent of Plan assets. Also, Moore-Juran believes that the collateral securing the Note and the high credit rating and strong financial position of Allendale demonstrate that the Note is adequately secured and a prudent investment for the Plan. Although initially the lease is for 25 years with options to renew, Moore-Juran believes that Johnston could sell or lease the building to another to make payments to the Plan. Based upon its experience in the private placement of debt securities, Moore-Juran believes that there is a market for the Note at the value determined by Moore-Juran.

6. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because:

(a) Moore-Juran has determined that the proposed contribution will be in the best interests of the Plan and protective of the rights of the participants and beneficiaries of the Plan; and

(b) The Note will be valued at its fair market value on the date contributed by Moore-Juran

Written Comments and Hearing Requests: Notice will be provided to interested persons within 5 days of the date of publication of this notice in the **Federal Register**. Comments and hearing requests are due within 35 days of the date of publication of this notice. Comments and requests for hearing should state the reasons for the writer's interest in the pending exemption.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-7901. (This is not a toll-free number.)

Central Orthopaedic Clinic, P.A. Profit Sharing Plan and Trust (the P/S Plan)

Central Orthopaedic Clinic, P.A. Money Purchase Pension Plan and Trust (the M/P Plan) Located in Jackson, Mississippi

[Application Nos. D-5993 and D-5994]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed: (1) Purchase by the P/S Plan and the M/P Plan (together, the Plans) of certain real property (the Property) from The Central Orthopaedic Partnership (the Partnership), whose partners are officers and directors of the employer (the Employer) of the Plans' participants and beneficiaries, provided the purchase price is not more than the fair market value of the Property on the date of the purchase, (2) assumption by the Plans, in connection with the proposed purchase, of certain debt obligations of the Partnership, (3) extension of credit by the Partnership to the Plans, and (4) lease of the Property by the Plans to the Employer, provided the terms of transactions (2), (3), and (4) are at least as favorable to the Plans as those the Plans could obtain in similar transactions with an unrelated party.

Summary of Facts and Representations

1. Each of the Plans covered 24 participants as of September 30, 1983. As of June 6, 1984, the P/S Plan's total assets equalled $1,557,698 and its net assets totalled $1,444,218; on the same date the M/P Plan's total assets equalled $813,053.58, which also was the amount of its net assets. The trustees of the Plans are Thomas C. Turner, M.D. and James O. Manning, M.D. They and George D. Purvis, M.D., William B. Thompson, M.D., and George W. Truett, M.D. are the partners in the Partnership. The Partnership owns the Property and currently leases it to the Employer. The partners of the Partnership are all directors, officers and stockholders of the Employer. No partners of the Partnership or stockholders of the Employer own any property adjoining the Property.

2. On September 6, 1984, The Sunburst Bank (the Special Trustee), a member of the Grenada Bank, with its main office located in Jackson, Mississippi, was appointed by the Employer to serve as Special Trustee of the Plans with respect to the proposed transactions. After reviewing the proposed transactions and related documents, the special Trustee has accepted this appointment. The Special Trustee maintains retirement plans with total assets exceeding $100,000,000 and has been administering qualified retirement plans for over 20 years. It has a staff of trust officers, attorneys, and support staff who are versed in matters involving the Act. The Special Trustee states that it fully recognizes its responsibilities and duties regarding the Plans and their

participants and beneficiaries. No share holder, director, officer, or employee of the Special Trustee is in any way employed by the Employer or any corporation, partnership, or other entity affiliated therewith. The Special Trustee has no banking relationship of any kind with the Employer or any corporation, partnership, or other entity affiliated therewith. One officer of the Employer currently has a small demand deposit account with the Special Trustee, representing .00131% of the entire demand deposits of the Special Trustee. The Special Trustee has no banking relationships with any other officer of the Employer or any corporation, partnership, or other entity affiliated therewith.

3. The Property is comprised of the land, building, and parking area located at 421 S. Stadium Circle, Jackson, Mississippi. The building located on the Property is a two-story medical clinic occupying 10,634 square feet on a lot of 50,900 square feet. Mr. T. E. Tate, M.A.I., S.R.P.A., Vice President of Wortman & Mann, Inc., Real Estate Division, Appraisal Department, has determined that as of February 24, 1983, the fair market value of the Property, excluding furnishings and equipment, was $560,000 and the annual fair rental value of the Property was $96,350 gross and $52,300 net (after subtracting expenses), providing an annual net income at an overall rate of 11.6%. Mr. Tate states that he is not related to the Partnership, the Employer, or the Plans and that the highest and best use of the Property is its continued utilization as a medical facility. He notes, in this regard, that there are some 4,350 square feet of excess land not currently utilized that could accommodate additional improvements and is available for future expansion.

4. The Property is presently subject to three liens securing indebtedness represented by three promissory notes (the Existing Notes). The first of these had an outstanding balance due at October 31, 1984 of $2,721.91 and is payable to Deposit Guaranty National Bank, Jackson, Mississippi, in monthly installments of $1,375.80 each, including interest at 5½%, with the final payment due December 18, 1984. The second Existing Note had an outstanding balance due at October 31, 1984 of $175,678.90 and is payable to Deposit Guaranty National Bank in monthly installments of $2,393.67 each, including interest at 9%, with the final payment due September 18, 1993. The last Existing Note had an outstanding balance due at October 31, 1984 of $15,918.03 and is payable to the Employer in monthly installments of $839.40 each, including interest at 6%, with the final payment due June 10, 1986.

5. It is proposed that on July 1, 1985, the Partnership would sell the Property by warranty deed to the Plans for a total purchase price of $560,000. The P/S Plan would purchase a 36% interest in the Property, and the M/P Plan would purchase a 64% interest therein. These percentages would determine the portions each Plan would pay of the total purchase price and would receive of the net rental income or loss derived from the Property. Each Plan's interest in the Property would not exceed 25% of its net assets. The Plans would make an aggregate cash down payment of $200,000 and would assume responsibility for repaying the Existing Notes in accordance with their terms (see 4, above). The Plans would also deliver two promissory notes (the Proposed Notes) to the Partnership. The total principal amount of both Proposed Notes would equal the difference between (a) the proposed purchase price and (b) the sum of (i) the aggregate cash down payment of $200,000 and (ii) the total principal balance due under all three Existing Notes. Each Proposed Note would bear interest at the rate of 11% per annum, would require monthly payments of principal and interest for 120 months, and would be secured by a deed of trust on the Property. The continued payment of the Existing Notes would also be secured by deeds of trust on the Property.

6. It is also proposed that the Plans will lease the Property to the Employer effective July 1, 1985, under a written lease agreement (the Lease) requiring the Employer to pay a total annual rental of $58,928 initially, all ad valorem taxes assessed against the Property, all premiums for liability and casualty insurance on the Property, and all costs for repairs and maintenance of the Property. The applicants represent that to the extent the initial rent exceeds the fair rental value of the Property, such excess, if treated as Employer contributions to the Plans, will not disqualify them under the provisions of section 415 of the Code. The initial term of the Lease will be 10 years, and the Employer has two options to renew the Lease, each for a period of 5 years. However, no extension of the Lease beyond its initial term shall be allowed unless the Special Trustee determines before each proposed extension that such extension is in the best interest of the Plans, their participants and beneficiaries. For the first 5 years of the Lease, the Property will be leased at an annual rental of $58,928. For each subsequent 5 years of the Lease (including the renewal option periods), the Property will be leased at an annual rental equal to the greater of the annual rental for the preceding term or comparable market rentals for medical clinics in North Jackson, as determined by an independent appraiser. In the event the Employer should default on its obligations under the Lease, the Plans, in their sole discretion, may sell the Property and pay off the Existing Notes and the Proposed Notes without incurring any additional liability or may lease the Property to another party. Mr. Tate (see 3, above) has reviewed the Lease and found its rental, renewal options, and other terms and conditions to be most representative of the current market for similar type properties located in North Jackson, Mississippi.

7. The applicants represent that beginning in 1987 and thereafter the annual obligations of the Plans under the Existing Notes and the Proposed Notes will be fully amortizable from the rentals to be received under the Lease and that no Employer contributions will be needed to cover any of those payments. However, for the last six months of 1985 and for calendar year 1986, the applicant has projected negative cash flows of $3,629 and $3,060, respectively, resulting in a cumulative cash deficit of $6,689 at the end of 1986, which would be reduced by the projected positive cash flow of $2,817 for 1987, resulting in a cumulative cash deficit of $3,872 at the end of 1987. The applicant represents that the yearly cash available should remain constant until 1989. These projections do not include charges for unrelated business income tax because the applicant represents that the proposed transactions will not be subject to such tax. Nevertheless, the applicant represents that should such tax be assessed, the negative cash flows for 1985 and 1986 would be increased by approximately $675 and approximately $1,550, respectively, resulting in a cumulative cash deficit of approximately $8,914 by the end of 1986.

8. The applicants also state that all expenses incurred in the proposed transactions will be borne by parties other than the Plans. Finally, the applicants represent that if the proposed exemption is granted: An updated appraisal of the fair market value and the fair rental value of the Property will be made by a qualified appraiser unrelated to the Partnership, the Employer, or their principals; the Plans will pay no more than the fair market value of the Property as of the date of the purchase as determined by such appraiser; and the initial rent under the

Lease will not be less than the fair rental value of the Property as determined by such appraiser.

9. The Special Trustee has reviewed the documents involved in the proposed transactions, including the warranty deed, the Existing Notes, the Proposed Notes, the deeds of trust, the Lease, the appraisal, and a projection of cash flow and estimated appreciation resulting from the proposed transactions. The Special Trustee certifies that the terms of these documents are comparable with the terms of similar transactions in Jackson, Mississippi, and that the Special Trustee finds the terms of these transactions acceptable. Based upon its review of the terms and conditions of the proposed transactions, the Special Trustee asserts that these transactions are clearly in the best interest of the Plans and their participants and beneficiaries.

In conjunction with the proposed transactions, the Special Trustee states that it has considered the following matters, among others:

—The ages of the Plans' participants and their vested interests, account balances, and years of service with the Employer;

—The overall investment portfolio of the Plans, the existing degree of diversification of the Plans' assets, the liquidity requirements which would be necessary to satisfy the Plans' distribution requirements, and the Plans' investment objectives and policies;

—The safety of the proposed transactions, the probable income and gain to be derived therefrom, the regularity of income generated, the Property's marketability, the term and probable duration of the Lease, the probable market conditions with respect to (a) the value of the Property when the Plans terminate and (b) reinvestment at the time the prorposed investment is liquidated, the Employer's financial outlook, and the likelihood of inflation.

The Special Trustee concludes that the proposed transactions offer a fair return commensurate with prevailing rates when considering the small amount of risk involved and the potential for appreciation, that the Plans will keep sufficient liquidity to permit distributions, that Plan assets are sufficiently diversified to satisfy any reasonable liquidity requirements of the Plans, and that the proposed transactions would satisfy the Plans' investment objectives and policies. It asserts that the proposed transactions are reasonably designed to further the purpose of the Plans, taking into account the risk of loss and opportunity of gain. The Special Trustee also states that the proposed transactions are in the best interests of the Plans and their participants and beneficiaries notwithstanding the projected cash deficits because it has been the experience of the Special Trustee that the projected cash deficits under the proposed Lease are small in comparison to the size of the transaction and that seldom do investments of this nature have an immediate positive cash flow.

10. The Special Trustee has agreed to monitor the proposed transactions throughout their duration on behalf of the Plans, taking any and all appropriate actions necessary to safeguard the interest of the Plans on behalf of their participants and beneficiaries and to enforce their rights. It has been given authority to do so by amendment to each Plan as of September 6, 1984. In addition, the Special Trustee states that it will review financial statements and other documents required to be filed by the Plans.

11. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The proposed purchase price will not exceed the fair market value of the Property as of the date of the purchase, as determined by a qualified appraiser unrelated to the Partnership, the Employer, or their principals; (b) the initial rent under the proposed Lease will be no less than the fair rental value of the Property as of the effective date of the Lease as determined by such appraiser; (c) during the second 5 years of the Lease and for each 5-year renewal option exercised, the Property will be leased at an annual rental equal to the greater of the annual rental for the preceding term or comparable market rentals for medical clinics in North Jackson, as determined by an independent appraiser; (d) under the proposed Lease, the Employer will also pay all ad valorem taxes assessed against the Property, all premiums for liability and casualty insurance on the Property, and all costs for repairs and maintenance of the Property; (e) all other expenses incurred in the proposed transactions will be borne by parties other than the Plans; (f) the Special Trustee, who is unrelated to the Partnership, the Employer, and their principals, certifies that the terms of the proposed transaction are comparable with those of similar transactions in Jackson, Mississippi, and asserts that these transactions are clearly in the best interest of the Plans and their participants and beneficiaries and are administratively feasible; (g) the Special Trustee agrees to monitor the proposed transactions throughout their duration on behalf of the Plans, taking any and all appropriate actions necessary to safeguard the interests and enforce the rights of the Plans and their participants and beneficiaries; and (h) the Lease will not be extended after its initial term expires unless the Special Trustee determines before each extension that each such extension is in the best interests of the Plans and their participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404, and 415.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Richard J. Cavell, M.D., Ltd. Profit Sharing Plan and Trust (the Plan) Located in Reno, Nevada

[Application No. D-6032]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the purchase by the Plan from Dr. Richard J. Cavell (Dr. Cavell) of a 17.727% interest (the Interest) in a certain royalty interest (the Property) in a gold mine located in Hawthorne, Nevada, for $39,000 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the acquisition.[3]

[3] Since Dr. Cavell is the sole shareholder of Richard J. Cavell, M.D., Ltd. (the Employer) and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with one participant, Dr. Cavell. As of February 12, 1985, the Plan had assets of approximately $157,000. Dr. Cavell, who is the sole shareholder of the Employer, is also the trustee of the Plan. The applicant represents that in the event any other eligible employee is subsequently retained by the Employer, a separate plan or segregated account will be created for such employee so that Dr. Cavell will be the only participant affected by the subject transaction.

2. In March, 1977, Dr. Cavell acquired the Property from unrelated parties for $50,000. The Property consists of a 1.275% undivided, overriding royalty interest in a gold mine known as the Borealis Mine, located in Hawthorne, Nevada. The mine is operated by Tenneco Minerals, a Tenneco Corporation subsidiary.

3. Dr. Cavell now wishes to sell an undivided 17.727% interest in the Property to the Plan. Dr. Cavell, as trustee for the Plan, wants to acquire the Interest in the Property because it is a good investment. Dr. Cavell, as trustee, believes the appreciation in value of the Property will be substantial. The Plan will hold its Interest in the Property for investment purposes.

4. Dr. John Whitney of Whitney & Whitney, Inc., independent management consultants for mining, industry and government, located in Reno, Nevada, has appraised the Property as having a fair market value of $220,000 as of November 28, 1984. Thus, the Interest would have a fair market value of $39,000.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (1) The transaction involves less than 25% of the Plan's assets; (2) the Plan will be paying the fair market value of the Interest as determined by an independent appraiser; and (3) Dr. Cavell is the only participant to be affected by this transaction, and as Plan trustee he has determined that it is appropriate for the Plan and in the Plan's best interest.

Notice to Interested Persons: Because Dr. Cavell is the sole stockholder of the Employer and the sole participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after the publication of this notice in the **Federal Register.**

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to a an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 27th day of March, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-7818 Filed 4-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.
Date and time: April 18, 19, 20, 1985;

Thursday—9:00 am to 7:00 pm
Friday—9:00 am to 7:00 pm
Saturday—9:00 am to 1:00 pm

Place: Room 602, National Science Foundation, 2000 L Street, NW., Washington, DC 20550.

Type of meeting: Closed.

Contact Person: Daniel H. Newlon, Program Director for Economics, Room 312, National Science Foundation, Washington, DC 20550 Telephone (202) 357-9674.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in the Economics Program.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a propietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1985.

[FR Doc. 85-7853 Filed 4-1-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Metabolic Biology Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and time: April 18, 19 and 20, 1985 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, Room 1242A, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. William van B. Robertson, Program Director Metabolic

Biology Program, Room 325 National Science Foundation, Wash., DC 20550. Telephone (202) 357–7987.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

March 28, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–7854 Filed 4–1–85; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Place: Room 1242–B, National Science Foundation, 1800 "G" Street, N.W. Washington, DC 20550.

Date: Thrusday, April 18; Friday, April 19; and Saturday, April 20, 1985.

Time: 9:00 a.m.–5:00 p.m., those days.

Type of meeting:

Part Open—April 18, 9–1 (Open);
April 18, 1–4:30 (Closed);
April 18, 4:30–5:00 (Open);
Part Open—April 19, 9–1 (Open);
April 19, 1–4:30 (Closed);
April 19, 4:30–5:00 (Open);
Part Open—April 20, 9–1 (Closed);
April 20, 1–4:30 (Open)

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357–9794.

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda—*Thursday, April 18, 1985:*

9:00 a.m. Introductory remarks; Overviews of the NSF, the Mathematical and Physical Sciences Directorate, and the Division of Materials Research (DMR)
10:15 a.m. Status Report, Synchrotron Radiation Center (SRC)
11:15 a.m. Role of the Engineering Directorate in the Support of Materials
12:00 noon Lunch
1:00 p.m. Report and Discussion of the *ad hoc* Oversight Reports on the Metallurgy, the Ceramics and Electronic Materials, and the Polymer Programs (CLOSED)
4:30 p.m. Role of the Department of Energy in the Support of Materials
5:00 p.m. Adjourn

Friday, April 19, 1985:

9:00 a.m. Convene; Overview of NSF activities which impact DMR such as the "Support of Materials."
10:15 a.m. Status of Advanced Materials Initiative: Materials Chemistry, Materials Research Groups, Novel Materials.
12:00 noon Lunch.
1:00 p.m. Discussion of the *ad hoc* Oversight Reports on the Metallurgy, Polymers, and Ceramics (MPC) Section. Continued (CLOSED).
4:30 p.m. The Role of the Office of Advanced Scientific Computing in the Support of Materials.
5:00 p.m. Adjourn.

Saturday, April 20, 1985:

9:00 a.m. Convene; Completion of the Discussion of the *ad hoc* Oversight Reports on the MPC Section; Lunch (CLOSED).
1:00 p.m. Concluding Discussion.
4:30 p.m. Adjourn.

Reasons for closing: The Oversight Reports involve discussion of proposals containing information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

March 28, 1985.

[FR Doc. 85–7852 Filed 4–1–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Time Change

The Federal Register published on Friday March 22, 1985 (50 FR 11604) contained notice of a meeting of the ACRS Subcommittee on State of Nuclear Power Safety, to be held on April 10, 1985, Room 1046, 1717 H Street, NW, Washington, DC. The starting time for this meeting has been *changed to 3:30 p.m.* All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 28, 1985.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 85–7849 Filed 4–1–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co. (Big Rock Point Plant); Exemption

I

The Consumers Power Company (CPC) (the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes operation of the Big Rock Point Plant, located in Charlevoix County, Michigan, at a rated power level of 240 megawatts (thermal). This license provides, among other things, that it is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

II

Section III.G.2.f of Appendix R to 10 CFR Part 50 requires that cables of redundant trains of equipment needed to achieve safe shutdown and located inside noninerted containments be separated by a noncombustible radiant energy shield. By letter dated June 1, 1984, CPC requested an exemption from this requirement for the south face of the steam drum enclosure wall. The licensee's submittal stated that the south face of the steam drum enclosure wall is approximately 45 feet tall. Conduits that contain cables that actuate the reactor depressurization system (RDS) valves are located on the wall, as well as RDS discharge piping. Numerous level and pressure transmitters/indicators are located on the wall near floor level.

The new cables proposed to be installed as part of the alternate

shutdown system will be run in conduits up the left side of this wall. These conduits contain cables from the emergency condenser outlet valves and will, in some places, be less than 20 feet from the nearest RDS conduit. All cables on this wall are contained in conduit. There are no significant combustibles or fire hazards either on the wall or on the floor. As this location is in containment, transient combustible loading is kept at a minimum. This configuration does not meet the requirements of Section III.G.2 because redundant cables will not be separated by either a distance of 20 feet or by a noncombustible radiant heat shield.

The redundant cables identified in this exemption request are for the RDS and the emergency condenser (EC) and are needed for post-fire shutdown using on-site power. The licensee states that off-site power would remain available in the event of a fire in this area and that with off-site power available, the plant can be safely shut down without relying on either the RDS or the EC.

Due to the extremely low combustible load, the wide open area of the containment, and the fact that both sets of cables are contained in separate conduits, the NRC staff has concluded that a fire in this area is unlikely and if it occurred would not affect both sets of cables. Additionally, a fire in this area is not likely to cause a loss of off-site power because of the few faulted circuits involved and their small current carrying capability. Although a plant trip might possibly result from such a fire, loss of the small generating capacity of Big Rock Point compared to the overall grid capacity would not upset the grid and hence would not cause a grid-related loss of off-site power.

Based upon the above evaluation, the staff concludes that the installation of a noncombustible radiant energy shield between the RDS and the EC cables will not significantly increase the level of fire safety at Big Rock Point; therefore, the exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

An exemption to Section III.C.2 of Appendix R to allow the installation of reactor depressurization system and emergency condenser control cables on the south face of the steam drum enclosure wall with separation of less than 20 feet without the installation of noncombustible radiant energy shields.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (October 3, 1984, 49 FR 39124).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 26th day of March 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Deputy Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-7850 Filed 4-1-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-339]

Virginia Electric and Power Company et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF-7 issued to the Virginia Electric and Power Company and the Old Dominion Electric Cooperative (the licensee), for operation of the North Anna Power Station, Unit No. 2 (NA-2) located in Louisa County, Virginia.

The proposed amendment would make changes to the NA-2 Technical Specifications (TS) which address the NA-2 emergency diesel generators. The changes are necessary to redress immediate diesel reliability concerns identified by recent NA diesel failures. The licensee has proposed changes which represent the recommendations of the diesel generator manufacturer and are consistent with the appropriate recommendations provided in the Commission's Generic Letter (GL) 84-15, "Proposed Staff Actions to Improve And Maintain Diesel Generator Reliability," July 2, 1984.

The licensee's initial response to GL 84-15 was on August 16, 1984 which provided projected response dates in order to adequately address GL 84-15. The licensee's first response was dated September 28, 1984 and provided survey information. The licensee's second response, addressing diesel engine reliability data, was scheduled to be submitted on January 31, 1985. However, three diesel generator failures occurred at NA-2 during December 1984. In one case, both NA-2 diesels were concurrently inoperable which required the shutdown of NA-2 for eight days while repairs were made on the two diesels. The licensee initiated an investigation and expedited an ongoing diesel engine reliability study to determine whether the NA-2 test requirements were detrimental to sustained engine reliability. On January 10, 1985, a fourth diesel generator failure occurred at NA-2 which then required both NA-2 diesels be tested every three days as specified in the NA-2 TS. By the middle of January 1985, the licensee's investigation had then determined that the NA-2 TS diesel engine requirements for fast starts from ambient conditions, rapid electrical loading and frequency of surveillance testing were contributing factors in diesel engine degradation and diminished engine reliability. Therewith, the licensee in consultation with the diesel manufacturer, immediately began the preparation of draft NA-2 TS which followed the GL 84-15 guidelines. The draft submittal of the NA-2 TS by the licensee were reviewed by the NRC staff on January 22 and 26, 1985 at the request of the licensee to ensure the draft submittal met the intent of GL 84-15. The licensee's formal submittal for the proposed NA-2 TS changes regarding the emergency diesel generators was submitted on February 1, 1985.

Also, on February 1, 1985, NA-1 experienced its first diesel engine failure similar to the previous failures at NA-2. Therewith, the licensee initiated an additional review to determine if any other factor, not previously identified, could be a contributing cause to engine degradation and failure. This review identified diesel overload conditions as an additional possible root cause of engine degradation and failure. These matters were discussed with the licensee on February 8, 1985. On February 13, 1985, the NRC staff observed the licensee's proposed NA-2 diesel engine startup procedures on-site, and further discussed these matters with the licensee on February 14, 1985. The licensee was requested to document the NA-1 engine failure and subsequent investigation as well as the NA-1 & 2 engine maintenance records and the licensee's commitments to a diesel engine reliability program. This additional information was submitted on March 13, 1985 to support the licensee's February 1, 1985 proposed TS change request. On March 15, 1985, NA-2 experienced an additional diesel engine failure that necessitated major repairs and testing which exceeded the 72 hour limiting condition for operation and thus required the plant to commence shutdown on March 18, 1985. On March 20, 1985, operability testing was successfully completed and NA-2 commenced power operations.

Recent NA–2 diesel generator failures have been investigated by the licensee and the diesel manufacturer, Colt Industries. Findings of this investigation have identified three items in the NA–2 TS which are contributing factors to diesel failure. These items are: (1) Fast starts from ambient conditions, (2) rapid electrical loading, and (3) frequency of surveillance testing.

The presently specified NA–2 TS require the diesels to accelerate to synchronous speed within 10 seconds and be loaded to greater than or equal to 2750 Kilowatts (Kw) in less than 60 seconds for routine surveillance tests. This requirement routinely subjects critical parts of the diesel to severe thermal transients which, when repeated excessively, can lead in part to the type of failure recently experienced at NA–2. In addition, it is noted that the NA–1 TS do not have similar 60 second loading requirements or accelerated test frequency, and the NA–1 diesel engines had not experienced the type of failures recently occurring to the NA–2 diesel engines until February 1, 1985.

In addition, the NA–2 emergency diesels have been subjected in the past to more frequent starts than is the case for NA–1. The additional starts are due to the NA–2 TS which require an increased frequency of surveillance testing based on engine failures in the last 100 valid tests for both diesel engines. Finally, it is noted that the NA–2 TS require the diesel engines be fully loaded in 60 seconds for routine surveillance.

As noted above, the first NA–1 engine failure similar to the previous NA–2 engine failues occurred on February 1, 1985. Investigation by the licensee identified the possibility of diesel engine overload as a contributing cause to engine degradation or as a failure mode. It is noted that the present NA–2 TS require loading to greater than or equal to the continuous rating of 2750 KW for surveillance testing. This requirement, when combined with instrument error and reading inaccuracies, provides the potential for routine overloading during surveillance testing.

The proposed changes germane to the discussion above would revise the NA–2 TS 3.8.1.1 and associated action statements for performing Surveillance Requirement 4.8.1.1.2.a.4. In addition, Surveillance Requirement 4.8.1.1.2.a.4 would be revised as well as the NA–2 TS Table 4.8–2 which specifies the required testing frequency for the diesel engines. Specifically, NA–2 TS 3.8.1.1, Action Statement-a (demonstration of diesel operability when declaring one offsite circuit inoperable) would be revised to require the performance of Surveillance Requirement (SR) 4.8.1.1.2.a.4 once within 24 hours of declaring the offsite circuit inoperable unless previously tested in the last seven days. The present requirement is to demonstrate diesel operability within one hour and at least once per 8 hours thereafter regardless of the time at which the last test was performed. This proposed change is consistent with the Commission guidance provided in GL 84–15.

NA–2 TS 3.8.1.1, Action Statement-b (demonstration of diesel operability with one diesel declared inoperable) would be revised to require performance of SR 4.8.1.1.2.a.4 once within 24 hours of declaring the offsite circuit inoperable. The present requirement is to perform SR 4.8.1.1.2.a.4 within one hour and at least once per 8 hours thereafter. The proposed change is consistent with the Commission guidance provided in GL 84–15.

NA–2 TS 3.8.1.1, Action Statement-c (demonstration of diesel generator operability when declaring one offsite circuit and one diesel generator inoperable) would be revised to require performance of SR 4.8.1.1.2.a.4 once within 8 hours of declaring both sources inoperable. The present requirement is to demonstrate operability within one hour and at least once per 8 hours thereafter. The proposed change is consistent with Commission guidance provided in GL 84–15.

NA TS 3.8.1.1, Action Statement-d (demonstration of diesel operability when two offsite power circuits are declared inoperable) would be revised to require performance of SR 4.8.1.1.2.a.4 once within 8 hours of declaring the offsite circuits inoperable. The present requirement is to demonstrate operability within one hour and at least once per 8 hours thereafter. The proposed change is consistent with Commission guidance provided in GL 84–15.

Surveillance Requirement (SR) 4.8.1.1.2.a.4 (which covers the starting of the diesels and the parameters that must be met during startup testing) would be revised to include the following: (1) A two-three minute prelubrication period prior to starting; (2) a one-two minute gradual stair casing to synchronous speed (900 rpm); (3) a five minute warmup unloaded for preconditioning while synchronizing to the appropriate bus (4160±420 volts); (4) a five to ten minute gradual stair casing to fully rated load; (5) one to two hours at load, and (6) a five to ten minute gradual ramp down in load prior to terminating the test. The present requirement is to require the diesels to accelerate to at least 900 rpm per minute, 4160±420 volts and 60±1.2 Hertz (Hz) within 10 seconds. The proposed change is in accordance with the diesel generator manufacturer's recommendations and is consistent with Commission guidance provided in GL 84–15.

Surveillance Requirement (SR) 4.8.1.1.2.a.5 (which addresses the loading requirements of the diesel's during routine testing) would be revised by removing the time limit to reach rated load (2500–2600 Kw) and would be combined with SR 4.8.1.1.2.a.4 discussed immediately above. As noted above, the rated load would be specified as an operating band of 2500–2600 Kw versus the nameplate rating of 2750 Kw. The present requirement requires loading the diesel to greater than or equal to 2750 Kw in at least 60 seconds. The proposed change is consistent with the Commission's GL 84–15.

The licensee has proposed a new Surveillance Requirement (SR) 4.8.1.1.2.c which covers the semiannual requirement to perform a 10-second start (900 rpm, 4160±420 volts, 60±1.2 Hz) from ambient conditions and a 60-second loading from 2500 to 2600 Kw. This requirement has been added to verify diesel capability to perform during the worst case Design Base Accident (DBA) conditions (Loss-Of-Coolant Accident concurrent with loss-of-offsite power). The proposed new change is consistent with the Commission's GL 84–15. Also, the licensee has proposed that the eighteen month shutdown Surveillance Requirement (SR) 4.8.1.2.d.7 for verifying worst case DBA be assigned similar operating bands for required loads.

The licensee has proposed to the NA–2 TS Table 4.8.2. which addresses diesel generator surveillance testing frequency. The existing TS test frequency is based on the number of valid diesel failures experienced in the last 100 tests on a per nuclear unit basis. The test frequency proceeds from 31 days for one failure to 3 days for four or more failures. The proposed change would revise Tables 4.8.2 reflect the Generic Letter 84–15 concept of reliability goals. Specifically, five failures or more in the last 100 tests would require increased surveillance at least once per seven days to ensure a minimum desired confidence level of 95% for diesel realiability. Otherwise, monthly testing would be specified. Finally, the proposed test frequency would be based on a per diesel generator basis rather than the per nuclear unit as presently specified. The proposed change is consistent with the Commission's Generic Letter 84–15.

The proposed revisions to the NA–2 TS would be made in response to the

licensee's application for amendment dated February 1, 1985, as revised March 13, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated is not increased by the proposed changes. Reducing the test frequency and modifying starting and loading requirements consistent with the diesel manufacturer and Generic Letter 84–15 recommendations will enhance diesel reliability by minimizing severe test conditions which can lead to premature failures. Also, the possibility for an accident or malfunction of a type different than previously evaluated is not created since the proposed change affects only testing frequency, starting and loading practices and has no actual impact on any previously analyzed accident in the Final Safety Analysis Report. Finally, the margin of safety as defined in the basis for any Technical Specification is not reduced. The changes in the testing requirements do not affect the capability of the diesels to perform their function. Rather, the purpose of the changes is to increase overall diesel generator reliability. Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in additional diesel engine degradation at NA–2. Furthermore, failure to process the proposed change in an expedited manner will be detrimental to sustained engine reliability and increases the likelihood of additional engine failures and possible plant shutdown. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

It the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to James R. Miller, Chief of Operating Reactors Branch No. 3, by collect call to 301–492–4559 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch. All comments received by April 17, 1985 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia and the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia.

Dated at Bethesda, Maryland, this 29th day of March 1985.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 85–7951 Filed 4–1–85; 8:45 am]

BILLING CODE 7590–01–M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Members of Performance Review Board

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice.

SUMMARY: The document gives notice of a list of Performance Review Board members.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Paul M. Lyons, Executive Director, Occupational Safety and Health Review Commission, 1825 K Street NW., Washington, D.C. 20006, (202) 634–7940.

OSHRC Performance Review Board Members

Thomas B. Flynn
Joan M. Hollenbach
Paul M. Lyons
Earl R. Ohman, Jr.

Dated: March 27, 1985.

E. Ross Buckley,

Chairman.

[FR Doc. 85–7820 Filed 4–1–85; 8:45 am]

BILLING CODE 7600–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the **Federal Register** of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 47 FR 16697, 49 FR 47467, 50 FR 8428, 50 FR 9342 and 50 FR 11741.

Under Section 1–103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, the therefore, I, William E. Brock, United States Trade Representative, in conformance with the provisions of section 2(b) of the Act, section 701(b) of the tariff Act of 1930 as amended, and section 1–103(b) of Executive Order 12188, hereby determine that:

With repect to the Agreement on Interpretation and Application of articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), the United States having notified the Director General of the GATT that the United States does not consent to the application of the Subsidies Code between the United States and New Zealand, the obligations of the Agreement will not apply between New Zealand and the United States effective April 1, 1985, until such time as the United States otherwise notifies the Director General.

In accordance with section 701(b)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)(1)), as of April 1, 1985, and until further notice, New Zealand is not a "country under the Agreement." This notice supersedes my prior determination of September 16, 1981 with regard to New Zealand (46 FR 46263).

William E. Brock,
United States Trade Representative.
March 27, 1985.

[FR Doc. 85-7780 Filed 4-1-85; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Order Updating International Cargo Rate Flexibility Level

The Civil Aeronautics Board, by Policy Statement PS-109, effective February 22, 1983, adopted a policy of not suspending international cargo rate changes within a specified zone, except in extraordinary circumstances. That policy, implemented by Regulation ER-1322, effective February 27, 1983 (14 CFR Part 221), eliminates the requirement of economic justification for international cargo rates which are within Board-established zones of flexibility. As stated in ER-1322, the Board took this action to allow air carriers to respond more quickly to changing costs and competitive conditions. Effective January 1, 1985, the Board was abolished and the Department now has jurisdiction over this subject.

In establishing the SFRL for the two-month period starting February 1, 1985, we have projected nonfuel costs based on the year ended September 30, 1984, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 85-3-75 cargo rates may be increased by the followng adjustment factors over the April 1, 1982, level:

Atlantic	1.0487
Western Hemisphere	1.0307
Pacific	.9694

Copies of the Department's order are available from the Distribution Section. Persons outside the metropolitan area may send a postcard request.

For Further Information Contact: John D. Coakley, (202) 472-5492.

By the Department of Transportation:

Matthew V. Scocozza,
Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-7865 Filed 4-1-85; 8:45 am]
BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "The Age of Suleiman the Magnificent" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about February 1, 1987, to on or about May 17, 1987; The Art Institute of Chicago, Chicago, Illinois, beginning on or about June 14, 1987, to on or about September 7, 1987; and The Metropolitan Museum of Art, New York New York, beginning on or about October 4, 1988, to on or about January 17, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Thomas E. Harvey,
General Counsel and Congressional Liaison.
Dated: March 27, 1985.

[FR Doc. 85-7786 Filed 4-1-85; 8:45 am]
BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Elba to Damascus: Art and Archeology of Ancient Syria" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Department of Antiquities, Arab Republic of Syria, and the Smithsonian Institution. I also determine that the temporary exhibition or display of the listed exhibit objects at the Walters Art Gallery, Baltimore, Maryland, beginning on or about September 4, 1985, to on or about October 27, 1985; the Museum of Natural History, Denver, Colorado, beginning on or about November 20, 1985, to on or about February 16, 1985; the Natural History Museum, Los Angeles, California, beginning on or about March 15, 1986, to on or about June 1, 1986; the Cincinnati Art Museum, Cincinnati, Ohio, beginning on or about October 11, 1986, to on or about December 28, 1986; the Detroit Institute of Arts, Detroit, Michigan, beginning on or about January 24, 1987, to on or about April 12, 1987; and the National Museum of Natural History, Washington, D.C., beginning on or about May 9, 1987, to on or about September 8, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 27, 1985.

Thomas E. Harvey,
General Counsel and Congressional Liaison.

[FR Doc. 85-7787 Filed 4-1-85; 8:45 am]
BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 63
Tuesday, April 2, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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National Credit Union Administration	2
Nuclear Regulatory Commission	3

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 4, 1985.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. United Mine Workers of America on behalf of Rowe, etc. v. Peabody Coal Company, Docket Nos. KENT 82-103-D, etc., and Secretary of Labor on behalf of Williams v. Peabody Coal Company, Docket No. LAKE 83-69-D. (Consideration of allegations of judicial misconduct.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-7888 Filed 3-29-85; 11:56 am]

BILLING CODE 6735-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING.

TIME AND DATE: 2:10 p.m., Tuesday, March 26, 1985.

PLACE: 1776 G Street, N.W., Washington, D.C., 6th Floor.

STATUS: CLOSED.

MATTER CONSIDERED:

1. Order of Conservatorship.

The Board unanimously voted that the Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted to close the meeting under exemptions (8), and (9)(B). The Director, Department of Legal Services, certified that the meeting could be closed under these exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-7889 Filed 3-29-85; 11:56 am]

BILLING CODE 7535-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 1, 8, 15, and 22, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 1

Tuesday, April 2

2:00 p.m.
Discussion of Indian Point Order (Public Meeting).

Wednesday, April 3

9:30 a.m.
Briefing on Source Term (Public Meeting).
2:00 p.m.
Continuation of Briefing on Source Term (Public Meeting) (if needed).
3:00 p.m.
Briefing by IDCOR on Evaluation of Nuclear Power Plant Accident Risk (Public Meeting).

Thursday, April 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).
2:00 p.m.
Discussion of Environmental Qualification of Electrical Equipment—Status of Compliance with Rule (Public Meeting) (postponed from March 28).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Director's Decision on TMIA 10 CFR 2.206 Petition on GPU Nuclear's Character.
b. TMI-1—Aamodt Motion for Reconsideration and Reopening of the Record (tentative).
c. Motions to Disqualify Judge Smith in TMI-1 Restart Proceeding (tentative).

Week of April 8—Tenatative

Thursday, April 11

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting).
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed).

Week of April 15—Tentative

Tuesday, April 16

10:00 a.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7).

Friday, April 19

9:30 a.m.
Briefing on TMI-1 Steam Generator and Other Plant Matters (Public Meeting).
11:15 a.m.
Affirmation/Discussion and Vote (Public Meeting).
a. Indian Point Order (tentative).

Week of April 22—Tentative

Tuesday, April 23

10:00 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7).
11:00 a.m.
Discussion of Diablo Canyon-2 Contested Issued (Closed—Ex. 10) (tentative).
2:00 p.m.
Discussion/Possible Vote on Diablo Canyon-2 Low Power License (Public Meeting).

Thursday, April 25

2:00 p.m.
Affirmation Meeting (Public Meeting (if needed).

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

March 28, 1985.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 85-7992 Filed 3-29-85; 3:55 am]

BILLING CODE 7590-01-M

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federal register

Tuesday
April 2, 1985

Part II

Environmental Protection Agency

40 CFR Part 80
Regulation of Fuels and Fuel Additives; Banking of Lead Rights; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR-FRL-2806-1]

Regulation of Fuels and Fuel Additives; Banking of Lead Rights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Agency is today taking final action to allow the banking of lead usage rights in connection with its recently promulgated regulations significantly reducing the allowable lead content of gasoline. See 50 FR 9386 (March 7, 1985). Under the banking mechanism, refiners who use less lead in gasoline in certain calendar quarters than is allowed under the regulations will be allowed to use additional lead in gasoline in certain future quarters in an amount equal to the lead previously not used. The Agency is taking this action because it believes banking will provide an efficient method of achieving reduced total lead levels in gasoline while allowing the affected industry greater flexibility in meeting the more stringent lead in gasoline standards. The banking portion of this regulation is being made effective beginning the first quarter of 1985 and continuing through the last quarter of 1985. Withdrawal and usage of banked lead rights will be allowed starting in the second quarter of 1985 and ending in the last quarter of 1987.

EFFECTIVE DATE: The final actions taken in this notice are effective March 25, 1985.

ADDRESS: Written comments and other information relevant to this rulemaking are maintained in Docket No. EN–84–05, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The docket is located in the West Tower Lobby of EPA at the above street address, and may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. This is the same docket as that of the revisions to the gasoline lead content regulations.

FOR FURTHER INFORMATION CONTACT: Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, D.C. 20460. Telephone (202) 382–3333.

SUPPLEMENTARY INFORMATION:

I. Background

On August 2, 1984, EPA proposed to reduce the gasoline lead content standard from 1.10 grams of lead per leaded gallon (gplg) to 0.10 gplg, effective January 1, 1986. 49 FR 31032. The Agency also proposed to eliminate the inter-refinery averaging mechanism, effective January 1, 1986. This mechanism allows a refinery whose lead usage in a calendar quarter exceeds the applicable standard to average with another refinery whose lead usage is less, in order to demonstrate compliance. The Agency also indicated that it was considering a total ban on lead in gasoline by approximately 1995.

On January 4, 1985, EPA proposed a regulatory provision that would allow refiners to "bank" lead usage rights for future use in conjunction with more stringent lead content standards. 50 FR 718. Under the proposed mechanism, refiners (importers would be treated like refiners) would be allowed to bank lead usage rights during any calendar quarter in 1985 in an amount equal to that by which their lead usage during that quarter was lower than the applicable standard. Such banked lead usage rights could then be used (or transferred for use by another refiner) during any quarter from the second quarter of 1985 through the last quarter of 1987. Actual lead usage in such a quarter could exceed the applicable standard, so long as subtraction of the banked lead rights used in the quarter from the actual lead usage would result in compliance with the standard. The proposed banking mechanism was designed to provide greater flexibility to refiners in meeting the more stringent standards that the Agency expected to promulgate, resulting in significant cost savings without affecting the total reductions in lead usage that would otherwise be required during the 1985–1987 period. A public hearing was held concerning this proposal on January 15, 1985, and the comment period for written comments ended on February 19, 1985.

On March 7, 1985, the Agency promulgated an interim gasoline lead content standard of 0.50 gplg, effective July 1 to December 3, 1985, and a permanent standard of 0.10 gplg, effective January 1, 1986. 50 FR 9386. At the same time the Agency took final action to revoke the inter-refinery averaging mechanism, effective January 1, 1986. In another notice the same day, the Agency asked for public comments on new information that may support a total ban on lead in gasoline by as early as January 1, 1988. 50 FR 9400.

II. Statutory Authority

Section 211(c)(1) of the Clean Air Act, 42 U.S.C. 7545(c)(1), confers broad authority on the Administrator to "control or prohibit the manufacture . . . or sale" of any fuel or fuel additive whose emission products cause, or contribute to, "air pollution which may be reasonably anticipated to endanger the public health or welfare" or which "will impair to a significant degree the performance of any emission control device or system . . . in general use. . . ." EPA's authority to control usage of lead as an additive in gasoline under section 211(c)(1)(A) to protect public health is well-established, and prior regulations significantly curtailing lead additive usage have been upheld in court. *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir. (en banc)), cert. denied, 426 U.S. 941 (1976); *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506 (D.C. Cir. 1983).

Section 301(a)(1) of the Clean Air Act authorizes the Administrator to prescribe such regulations as are necessary to carry out the functions of the Act.

III. Final Action

EPA is today promulgating a banking mechanism for use in 1985, 1986, and 1987 that will provide additional flexibility for refiners and importers in meeting the more stringent lead standards promulgated by the Agency on March 7, 1985.

The Agency received oral testimony at the January 15, 1985, public hearing or written comments by the February 19, 1985, close of the public comment period (or both) from 46 organizations or individuals, including refiners, environmental groups, California legislators, petroleum industry trade groups, a union representing refinery workers, an industry consulant, and an antique car owners association. The majority of these commenters supported the banking proposal, either in combination with whatever gasoline lead phasedown schedule the Agency promulgated or in conjunction with the specific schedule discussed in the banking NPRM and promulgated on March 7. These commenters generally agreed with the Agency that this mechanism would provide greater flexibility to refiners in meeting more stringent standards. Some commenters noted that banking would enable the refining industry to meet the 0.50 and 0.10 gplg standards by assisting those refineries that are deficient in octane capacity. Some refiners said promulgation of banking is mandatory if

these standards are promulgated. Some noted that banking would enable the industry to make the best use of available octane capacity. Since the last few tenths of a gram of lead added to a gallon of gasoline provide less octane boost than the first few tenths, the octane value of lead saved at a 1.10 gplg standard will be greater later when the standard is lower. Several refiners stated their belief that lead rights would be freely traded. Others noted that banking would be helpful in providing them with flexibility in the event of equipment breakdowns or other unexpected events.

One or more commenters (generally refiners) also noted that banking would have the following effects:

(1) It would permit a more efficient use of lead without increased lead usage;

(2) The value of lead rights would be stabilized (such rights are currently lost at the end of a quarter under the inter-refinery averaging mechanism);

(3) The concentration of lead in gasoline throughout a compliance period would be more consistent;

(4) It would provide small refiners a greater opportunity to compete in the marketplace; and

(5) It would result in cost savings for refiners and benefits for consumers.

The Agency agrees that the major benefits identified by commenters will result from a banking mechanism. In particular, EPA believes that this mechanism will significantly assist those refiners whose equipment may need to be upgraded to meet the 0.10 gplg standard by allowing them to use banked lead usage rights while such equipment is being constructed. It will also assist all refiners by providing additional flexibility in planning for, and meeting, gasoline lead content standards during the 1985–7 period and in meeting unexpected problems (e.g., equipment breakdowns).

Because the savings from using extra lead under a 0.10 gplg standard are greater than the cost of reducing lead usage by the same amount under a 1.10 or 0.50 gplg standard, the Agency also anticipates that refiners will realize significant savings from banking. In the final regulatory impact analysis (RIA) that accompanied the final regulations promulgated on March 7, 1985, the Agency estimated the amount of such savings. Assuming that banking begins in the first quarter of 1985, the Agency estimates that about 9.1 billion grams would be banked and that such banking would save refiners approximately $226 million. A further discussion of these estimates is contained in Chapter II of that final RIA. As discussed more fully in Part IV of this notice, the Agency does not expect that these regulations will have a significant adverse impact, if any, on the public health or the environment.

Responses to coments that opposed the banking mechanism or that recommended revisions thereto are discussed in Part IV of this notice. The following is an explanation of the provisions of the regulation promulgated today.

The banking mechanism promulgated today allows a refiner or importer to bank lead usage rights during any calendar quarter of 1985 in an amount equal to the difference between the number of grams of lead allowed to be used under the applicable standard and the number of grams of lead actually used in the calendar quarter (or the number of grams constructively used in the quarter, if the inter-refinery averaging provisions of 40 CFR 80.20(d) are utilized during the quarter). As proposed, no lead usage rights may be banked for actual lead usage during this period of less than 0.10 gplg, so that production of leaded gasoline containing less than that amount of lead will not be encouraged. For example, assume that during the second quarter of 1985 a refinery produced 100,000 gallons of leaded gasoline with an average lead content of 0.60 gplg. Since the standard in that quarter is 1.10 gplg, the refinery could legally have used 110,000 grams of lead in its leaded gasoline during that period (100,000 gallons × 1.10 gplg). Because its actual lead usage was only 60,000 grams (100,000 gallons × 0.60 gplg), it can bank 50,000 grams of lead usage rights. If, pursuant to the inter-refinery averaging provisions, the refinery received a constructive allocation of 10,000 grams of lead usage from another refinery during this quarter (i.e., sold lead rights to another refinery), its constructive lead usage of 70,000 grams (60,000 actual plus 10,000 allocated) would be subtracted from the allowable lead usage of 110,000 grams to result in 40,000 grams of bankable lead usage rights.

Banked lead usage rights may be withdrawn and used during any calendar quarter from the second quarter of 1985 through the last quarter of 1987. As explained in Part IV of this notice, the Agency will not allow the use of banked lead usage rights beyond the latter date. Such rights may be used by the refinery at which they were banked, or they may be transferred to another refinery for its use. The Agency expects that "banked" lead usage rights will be freely transferred (i.e., bought and sold) in the same manner that inter-refinery averaging now takes place. A refinery will be in compliance with the regulations if its actual lead usage (or its constructive lead usage during 1985, if inter-refinery averaging is used) during a calendar quarter minus the amount of withdrawn lead usage rights used during the quarter, divided by its leaded gasoline production during the quarter, does not exceed the applicable standard in that quarter. For example, assume that during the second quarter of 1986 a refinery produces 200,000 gallons of leaded gasoline with an average lead content of 0.30 gplg (or a total lead usage of 60,000 grams). Since under the applicable standard of 0.10 gplg only 20,000 grams of lead may legally be used in that amount of leaded gasoline (200,000 gallons × 0.10 gplg), the refiner would have to use 40,000 grams of banked lead usage rights (60,000 − 20,000) to demonstrate compliance with the standard. Such rights could be withdrawn from the refinery's lead rights "bank" or transferred from that of another refinery.

The regulations contain additional reporting requirements necessary to track and verify the banking, withdrawal, transfer, and use of lead usage rights. In response to public comments and to better allow monitoring of banking transactions, these requirements have been somewhat modified from those proposed, as discussed below and in Part IV of this notice. A refinery for which the banking mechanism is utilized will be considered to have a lead usage rights "bank account." Lead usage rights will be considered "banked" or "deposited" in this account when either: (1) Lead usage (in a calendar quarter in which banking is permitted) is lower than that allowed by the applicable standard and the amount of lead usage rights banked during that quarter is reported to EPA; or (2) lead usage rights are transferred from the account of another refinery to that of the "banking" refinery. Lead usage rights will be considered "withdrawn" from a refinery's bank account when either: (1) They are used to demonstrate compliance by that refinery with the applicable standard for a quarter and such use is reported to EPA; or (2) they are transferred to the account of another refinery. An importer will be considered to have one lead usage rights bank account for all of its importation activities. Refiners and importers will be required to report all transactions involving the lead usage rights banking accounts of their refineries and importation activities during a calendar quarter, including the banking, withdrawal, use and transfer of lead usage rights. In addition, they must

report the "balance" of their account as of the beginning and end of each quarter.

The regulations also contain other provisions comparable to those contained in the inter-refinery averaging regulations, including provisions restricting the banking or use of lead usage rights where a state gasoline lead content standard is in effect under section 211(c)(4) of the Clean Air Act. The restriction on banking, which has been made more explicit to avoid any potential confusion, will allow California refiners to bank lead usage rights only up to the California standard of 0.80 gplg in the first two quarters of 1985, instead of the federal 1.10 gplg standard. The Agency's responses to comments on this issue are set forth in Part IV of this notice.

In addition, an agreement for the transfer of lead usage rights between the accounts of different refineries or importers would have to be made by the end of the calendar quarter in which the rights are used to demonstrate compliance with a standard. The regulations would permit banking or "saving" of unused lead for future quarters. They would not permit "borrowing" of lead to be paid back in future quarters. Thus the average lead content of gasoline produced at a refinery must be in compliance with the applicable standard in each quarter, after taking into account transactions permitted under the inter-refinery averaging and banking mechanisms. There are no other limitations on transfers of banked lead usage rights, so long as all transfers during a calendar quarter are properly reported to EPA (with supporting documentation as required by the regulations). Lead usage rights may be used only once, of course.

IV. Responses to Significant Comments

(1) *Comment:* Several commenters (California refiners and a union) opposed the proposal because it would limit the amount of lead rights that can be banked to the difference between any applicable state gasoline lead content standard (if lower than the federal standard) and the lead usage of the refiner or importer. California currently has a standard of 0.80 gplg. A number of other commenters (including other California and non-California refiners, California Congressmen and state legislators, and petroleum industry trade groups) also opposed this restriction, but not the proposal as a whole. Commenters argued that such a restriction would be discriminatory and inequitable toward California refiners and importers, and would place them at a competitive disadvantage to those located elsewhere. The restriction was viewed by some as a penalty for California's environmental leadership. It was also argued that it would be just as difficult and costly (and would take as much time) for refiners in that State to go from 0.80 gplg to 0.10 gplg as it would be for others to go from 1.10 gplg to 0.10 gplg, and therefore the same amount of flexibility would be needed. One commenter said that removal of this restriction would allow 8% more lead rights to be banked in 1985 and 4 million fewer barrels of crude oil imported, as well as lower the risk of gasoline shortages in the summer of 1986. Several commenters noted that the restriction would allow California refiners who could reduce lead use to 0.50 gplg in the first half of 1985 to bank only 50% of what other refiners could bank (0.3 gplg instead of 0.6 gplg). Some commenters also argued that the restriction would place a serious burden on California refiners competing in interstate commerce, and may be a violation of the Commerce Clause of the U.S. Constitution. The same commenters stated that irreparable harm could result to California refiners (both major and small) and the entire West Coast gasoline market. One refiner who opposed the restriction noted that although total lead use would increase (if the restriction were removed) compared to a 0.10 gplg standard in January 1986, it would be less than under the alternative phasedown schedule listed as an example in the August 2, 1984, notice of proposed rulemaking. A non-California refiner stated that banking of the 0.30 gplg difference between the federal and state standards should be allowed only if the ultimate lead usage is confined to California. A trade group claimed that EPA's analyses of lead usage did not take into account the more stringent California standard. A California refiner argued that there was not the same justification for the California restriction in the banking mechanism as there had been for a similar provision in the current inter-refinery averaging mechanism (i.e., to prevent greater lead usage outside California), since lead rights banked by California refiners would be used in their own refineries. Another California refiner stated that the California standard places a cap of 0.80 gplg on each gallon and that banking would not cause this to be exceeded. Further, a uniform banking rule would be easier to enforce and would not provide an incentive to "transport leaded gasoline production activities for banking purposes."

Response: The Agency is retaining the restriction on banking by California refineries. This restriction is intended to assure that the banking mechanism per se does not result in increased lead usage. If this restriction were dropped, the Agency estimates that national lead usage would increase by about 600 metric tons, or 4% of total national lead usage, during the 1986–1987 period. This extra lead usage would not be confined to California, since lead usage rights will be fully transferrable throughout the country. In monetary terms (excluding any blood pressure-related benefits), deletion of the proposed California restriction would result in a net loss of $15 million since it would reduce national monetized benefits (including health benefits) by about $20 million at a savings to California refiners of about $5 million. In addition, allowing California refineries to bank lead usage rights above the California standard of 0.80 gplg would result in a windfall financial gain because they would be granted credit for reductions already required by State regulations.

In light of these adverse impacts, the Agency does not find the above comments persuasive. Any potential competitive disadvantage is outweighed by such impacts. In terms of flexibility, the Agency notes that, even with the California restriction, refineries in that State will have significantly more flexibility than they would in the absence of banking. The Agency does not believe that such a restriction will place a serious burden on State refineries competing in interstate commerce nor cause irreparable harm to them or the West Coast gasoline market. Obviously such a restriction does not violate the Commerce Clause of the Constitution, since this provision merely authorizes the federal government to regulate interstate commerce and does not prohibit restrictions of this type.

Contrary to one of the comments, the rationale for the restriction on banking and use of lead usage rights is the same as that for the inter-refinery averaging portion of the current gasoline lead content regulations: to assure that the mechanism does not result in additional lead usage. As noted above, there is no guarantee that banked lead usage rights will be used in California and so the increase in lead usage that would result from not promulgating such a restriction is a national, not just a California, problem. The Agency does not believe that the existence of a California "per gallon" cap is relevant, since the concern is not actual violations of the 0.80 gplg standard. The Agency has not experienced any difficulties in enforcing

the current restriction in the inter-refinery averaging mechanism, and does not expect any in regard to banking.

If the State changes its standard to allow more lead usage, California refiners will of course be able to bank up to that level (so long as it is not higher than the federal standard) starting in the quarter in which the new State standard takes effect.

(2) *Comment:* Three refiners (including two who own refineries in California) supported the proposed California restriction. They argued that it is consistent with EPA's intent to reduce overall lead usage, and that removal would result in a financial windfall for California refiners and importers. One refiner argued that the primary purpose of banking is to help industry adjust to a faster phasedown than anticipated, and that California refiners have had time to plan for a 0.80 gplg standard and no time for that adjustment is needed. Another noted that the current inter-refinery averaging provisions do not allow California refiners to generate lead rights up to the federal standard.

Response: The Agency generally agrees with these comments, and as explained in the Response to Comment (1), above, is promulgating this restriction.

(3) *Comment:* Several commenters (including refiners, an environmental group, and a union) opposed the proposal on the basis that refiners and importers would maximize banked lead rights by increasing leaded gasoline production in 1985, and thus there would be greater lead use than would otherwise occur during the period in which the banking mechanism is in place. Other related adverse consequences were predicted by one or more of these commenters, including: (1) A widening of the price differential between leaded and unleaded gasoline in 1985, increasing the amount of misfueling in that year; (2) a decrease in production of unleaded gasoline in 1985, as higher octane blending components are used to produce "low-lead" leaded gasoline, with possible shortages and supply disruptions cited by some commenters. An environmental group recommended that if banking were adopted, EPA restrict the volume of gasoline on which lead rights could be earned to a refiner's (or importer's) reported 1984 leaded gasoline production scaled down to take into account the projected decline in 1985 of demand for this product. One refiner noted that the proposal itself has already resulted in many of these adverse impacts, including diversion of higher octane unleaded components to the leaded pool and increased demand for, and price of, high octane blending components (e.g., toluene), as well as higher costs to refiners that will be passed on to consumers.

Response: EPA agrees that the banking rule may generate some additional production of leaded gasoline during 1985, but believes that any net increase will be small, for two reasons. First, it is likely that even in the absence of banking, refiners would increase their production of leaded gasoline shortly before a tighter new standard takes effect, because lower costs under the less stringent standard would justify the storage costs. For example, even without banking, some refiners might find it profitable to produce extra leaded gasoline in late 1985 (at 0.50 gplg) for sale in early 1986.

Second, if refiners increase production of leaded gasoline beyond what they would have produced in the absence of banking, they will have to either store the excess production for later sale or lower the price to induce higher sales. Either action is self-limiting, as the first raises costs (due to additional handling and the time value of money) and the second lowers revenues per gallon.

Based on both of these considerations, the Agency does not expect the banking rule to significantly increase leaded gasoline production. As a result, it does not believe that banking will have a significant impact on total lead usage, misfueling, or the production of unleaded gasoline.

Moreover, any limit on lead usage rights based on historic production would be extremely difficult to draft and enforce, and may create more problems than it solves. Designing a lead usage rights cap is made particularly difficult because both inter-refinery averaging and banking will be in effect in 1985. For example, a refiner that desired to bank more lead usage rights than its cap allowed might transfer these excess rights to another refiner under the inter-refinery averaging provisions in 1985. The second refiner could bank these rights (assuming it did not exceed its own cap) and return them to the first refiner in 1986 or 1987. These actions would circumvent the intent of a cap. While some complex rules could be developed to prevent such a circumvention, EPA believes that the small possibility of a significant increase in lead usage does not warrant more complexity in the banking mechanism.

(4) *Comment:* Several refiners who opposed the proposal (as well as some who supported it) argued that few banked leaded rights would be sold or traded. They argued that those who could bank would be likely to save the banked rights for use in the case of equipment breakdowns and upsets, fires, and other events that could result in extra lead usage. One refiner said it would use all lead rights it banked, and that most other refiners would do so also. Another refiner said lead rights would also be saved to offset highly leaded imports. Others claimed that what lead rights would be available for sale would likely be at very high prices—one commenter noted that the price of lead rights currently has jumped dramatically to 3 cents/gram, and that one major refiner had pegged the "breakeven" price for a banked lead right at 7 cents/gram. Another refiner noted that those who need lead rights could be faced with trying to buy lead rights from competitors.

Response: As noted in Part III of this notice, several other refiners stated their belief that banked lead rights will be freely traded. The Agency agrees and believes that enough trading will take place to significantly aid those refiners who may need to add additional processing equipment to meet more stringent standards. While it can be expected that some banked lead rights will be saved for emergencies and other events that could result in extra lead usage, the Agency believes that the majority of such rights will be used or sold for the general purpose of meeting the 0.10 gplg standard. The Agency has not made predictions concerning the price at which lead rights will be sold, but anticipates that it will be lower than the cost of complying with the applicable standard by other means (e.g., purchasing new equipment). Because potential bankers include hundreds of refiners and importers throughout the country, it is unlikely that a direct competitor will be the sole seller available to a refiner. Finally, the Agency notes that while a great deal of skepticism was expressed in 1982 as to whether lead rights would be traded under the inter-refinery averaging mechanism promulgated at that time, in actual practice such rights have been heavily traded (e.g., 13.8% of all lead usage in the third quarter of 1984 was traded).

(5) *Comment:* Several smaller-sized refiners opposed the proposal because they believe it would adversely affect small refiners who currently rely on the inter-refinery averaging mechanism to demonstrate compliance with the 1.10 gplg standard. One refiner also opposed elimination of the inter-refinery averaging mechanism after 1985, arguing that this mechanism has benefited all refiners through requiring the use of lead rights by the end of a calendar quarter. Banking would allow such rights to have

value beyond the end of a quarter, and major refiners would have no incentive to sell them during the quarter generated. Since lead rights would no longer be available, those who now relied on such rights to comply with the standard would no longer be able to produce leaded gasoline (and, if unable to produce unleaded, would be driven out of business). Another refiner noted that banking would restrict the sale of lead rights at a time when it would most need them, i.e., under a 0.50 gplg standard. The same refiner claimed that those rights that could be bought would be "extraordinarily expensive" (see Comment (4), above). A third refiner strongly objected to banking on the grounds that it would impose significant costs on small refiners while enabling large refiners to reap an economic windfall. The same refiner claimed that even if a small refiner could make modifications needed to meet stringent standards, banking would threaten its vaibility by preventing it from obtaining lead rights that would otherwise be available to deal with emergencies, thus causing the refinery to shut down. This commenter viewed the combination of a strict phasedown schedule and the effect of banking in severely restricting the ability to purchase lead rights as regulatory actions designed to hurt small refiners the most.

Response: The Agency took final action to eliminate the inter-refinery averaging mechanism in its March 7, 1985, NFRM, effective on January 1, 1986. As explained more fully in Part II.D of that notice and in Part IV of the accompanying "Responses to Comments" document, EPA believed it prudent to take that action in order to assure that engines originally designed to run on leaded gasoline will receive approximately 0.10 gram of lead in each gallon of gasoline to minimize the risk of valve-seat recession. The Agency recognizes that promulgation of a banking mechanism may have the effect in 1985 (while the inter-refinery averaging mechanism is still available) of making lead rights more expensive and/or more difficult to obtain. However, the Agency believes that the flexibility and cost savings ($226 million) that banking will provide refiners in the 1985–1987 period, particularly small refiners and others who might otherwise find it difficult to comply with a 0.10 gplg standard in 1986 and 1987, more than offset any short-term disadvantages. The Agency also notes that banking is not intended to provide a permanent solution to those refiners who are unable to produce gasoline under the more stringent standards. As discussed in Chapter IX of the "Responses to Comments" document that accompanied the March 7, 1985, NFRM, EPA recognizes that some individual companies may not remain in the gasoline production business. Those who cannot remain in this business with the additional flexibility provided by banking will definitely not be able to do so without the assistance of this mechanism. The Agency also notes that, without banking, refiners (including small refiners) would not have as much flexibility starting in 1986 to deal with emergencies.

(6) *Comment:* Several commenters (refiners and a union) opposed the proposal because they claimed it discriminates in favor of importers and against refiners, and could lead to refinery closings. One refiner argued that refiners have a finite ability to generate lead rights, while importers don't have to invest in equipment and can generate virtually unlimited lead rights by importing more gasoline in 1985. The same commenter predicted that U.S. refining capacity would be exported overseas and many U.S. refiners would close in 1986 (assuming a refiner could only meet a 0.50 gplg standard and that lead rights trading would not take place, the commenter predicted that a California refiner would shut down on May 15, 1986, and one located elsewhere on October 1, 1986). It also claimed the balance of payments deficit would increase and the U.S. would be more dependent on foreign finished products. Another refiner who opposed the proposal argued that importers could have an unfair advantage through cheating (i.e., underreporting lead content and generating more lead rights).

In addition to those commenters opposing banking on these bases, a number of commenters who generally supported the proposal called for the exclusion of importers from those allowed to bank lead rights. Many also called for the exclusion of blenders. These commenters cited many of the arguments listed above. Many also noted that these entities do not need to install additional processing equipment or make capital investments to meet more stringent standards, and thus don't need the flexibility that banking is intended to provide. One refiner noted that blended and imported gasoline sold out of bulk plants and deep water terminals doesn't have the quality assurance provided by pipeline fungibility tests. Because it believed this creates a greater opportunity for illegality, EPA needs to strengthen its enforcement concerning imports. Others echoed this call for more enforcement, some noting that the Agency should work more closely with other government agencies (e.g., Customs) in this effort. Another refiner noted that importers have the option of marketing leaded gasoline in other countries, and thus do not need banking. Another refiner argued that exploration of subquality gasoline to the U.S. may be encouraged, although why this would result was not explained. Another refiner argued that importers could flood the market with low-lead leaded gasoline just prior to the effective dates of tougher standards to earn lead rights.

Another refiner filed extensive comments on this issue. In addition to citing some of the reasons for exclusion discussed above, this commenter argued: (1) Imports of leaded blending components are growing rapidly, as are the number of importers and blenders; (2) if these entities can bank, there will be more competition for lead rights and some domestic refiners may suffer; (3) banking by these entities will result in more lead in the environment, citing a New York City survey indicating a relationship between imports and mislabeling; (4) imported leaded gasoline is generally priced below domestic, and thus more likely to be used as a loss leader and encourage misfueling; (5) importers will be able to bring in even more leaded gasoline at lower prices in 1985 due to foreign government subsidies or because it is a "byproduct," while domestic refiners can only generate lead rights by producing lower lead content gasoline at a higher price.

Response: The Agency does not agree that the banking mechanism favors importers to the detriment of refiners. The additional flexibility provided by the banking proposal can be useful to both, and it is unclear how the banking proposal in and of itself can cause refinery closings. While it is true that importers do not require additional equipment, foreign refiners that supply importers would need such equipment to produce gasoline under more stringent standards. Moreover, any refiner who would close because it could not afford to purchase lead usage rights (whose price should reflect industry average costs) clearly could not afford to comply in the long run anyway, since nothing is likely to bring its costs below the average cost to the industry.

The comment on refinery closings implies that the industry does not have the capability to meet the 0.10 gplg standard. EPA extensively analyzed the ability of the industry to meet the 0.10

gplg standard on January 1, 1986, and found that it could, under all but the most pessimistic assumptions. For a more detailed discussion of EPA's analyses, see Part I.A of the "Responses to Comments" document and the final RIA.

The possibility of abuse exists here as it does in every regulatory action. However, it would be unfair to say that "cheating" will be limited to importers and blenders, or that banking will induce more "cheating" by these groups than by others. The Agency is aware of the potential for abuse and fully intends to monitor the banking mechanism closely and to enforce against any abusers. EPA has already taken steps to work with other government agencies to ensure compliance.

The comment that importers will flood the market to earn lead usage rights is at odds with the comment that there will be more competition for lead rights. If in fact importers have the ability to earn unlimited lead usage rights, it seems logical to assume that those rights will be sold, thereby offering a large pool of banked lead usage rights that can be used by those refiners who are unable to produce leaded gasoline at the 0.10 gplg standard in the short run. In any case, the claim that importers will flood the market is purely speculative and not supported by any concrete information.

Finally, with regard to the general comment that importers and blenders should be excluded from the banking lead rights, such exclusion may violate obligations of the United States under the General Agreement on Tariffs and Trade (GATT). Pursuant to GATT, the U.S. has agreed that regulations, taxes and other requirements affecting the internal sale of products should not be applied to imported or domestic products so as to afford protection to domestic production. Further, the supplementary Tokyo Round of Multilateral Trade Negotiations (MTN) Agreement on Technical Barriers to trade, codified in the Trade Agreement Act of 1979, prohibits a federal agency from engaging in standard-related activities that create unnecessary obstacles to foreign commerce with the United States. Thus, importers should remain on the same footing as domestic refiners.

(7) *Comment:* One refiner who opposed the proposal argued that it would not result in savings, saying the alternatives to lead not used in 1985 are more expensive. The result will be increased costs "to buy time to operate a little longer in the future."

Response: The commenter did not provide any analyses or specific cost estimates in support of its comment. The Agency has prepared such cost estimates, which indicate that banking will result in significant cost savings over the 1985–1987 period. Assuming that banking begins in the first quarter of 1985, as promulgated today, EPA estimates that approximately 9.1 billion grams of lead rights will be banked in 1985, resulting in savings of about $226 million over the 1985–1987 period. While refiners who choose to bank lead rights will have greater costs during the "banking" period than they otherwise would, these costs will be more than offset by savings during the "withdrawal" period because of the greater octane value of lead at lower levels. A detailed discussion of EPA's analysis is contained in Chapter II.E of the final RIA that accompanied the March 7, 1985, final rulemaking.

(8) *Comment:* Several commenters (both those who opposed and supported the proposal) argued that it provides the most benefits to those who need it the least, large refiners with the ability to reduce lead usage in 1985 to generate lead rights. Conversely, those who need flexibility the most to meet more stringent standards will be those least able to reduce lead usage in 1985 and generate lead rights. One refiner argued that banking in combination with standards that a majority of refiners can't meet will create enormous advantages for those few refiners who overbuilt their downstream refining capacity (i.e., by allowing them to increase their market share while others add new equipment and, through use of banked rights, to sell gasoline with a higher lead content than 0.10 gplg until 1988). Another said banking would generate "windfall" profits for those few who can make 100% unleaded gasoline, while it is doubtful those who can't make gasoline without lead would stay in business and that few, if any, of these would be saved by banking.

Response: This comment assumes that only those refiners that can generate lead rights can reap the benefits of this proposal, which is not the case. The Agency expects that "banked" lead rights will be freely transferred between refiners and importers. Thus, a refiner who can produce at the lower lead level can sell the unused lead rights to a refiner whose costs of meeting the applicable standard are higher. In such transactions, both buyers and sellers benefit. The seller benefits because the revenues from the sale of the rights exceed the cost of producing them (by using less lead). The buyer benefits because the cost of buying the rights is lower than the savings from being able to use more lead. If both parties do not benefit, the transaction will not occur because it is purely voluntary and neither is compelled to participate. Thus EPA believes that banking will lower net costs for refiners with both above and below-average costs of producing octane. There is no reason to believe that any class of refiners will be disadvantaged by the Agency's adoption of a mechanism that allows refiners to spread out their lead usage through the banking and use of lead rights.

EPA also acknowledges, however, that while banking will reduce overall costs and will increase the flexibility of individual refineries in meeting the new standards, some poorly equipped refineries are still likely to find themselves unable to compete at law lead levels, and may cease producing gasoline even with the availability of banking.

(9) *Comment:* A refiner and an environmental group that opposed the proposal claimed that it is inconsistent with the Agency's goal of reducing lead usage to the maximum extent possible. If industry can meet a more stringent standard in 1985 than those promulgated, that should be the standard.

Response: The Agency has promulgated stringent but feasible standards, an interim standard of 0.50 gplg during the last half of 1985 and a permanent standard of 0.10 gplg starting in January 1986. In addition, EPA has requested public comments on whether a total ban on lead in gasoline should be promulgated as early as January 1988. These actions demonstrate the Agency's commitment to reducing lead usage as quickly and as much as feasible. The banking mechanism is consistent with this goal, and it will further it by providing incentives to refiners to reduce lead usage earlier (i.e., in 1985) than they otherwise would. While some refiners can and will reduce lead usage earlier, that does not mean that the industry as a whole could.

(10) *Comment:* A small refiner who opposed the proposal argued that banking thwarts the purpose of lowering the gasoline lead standard by allowing major refiners with banked lead rights to "overlead" in later years or to import "extremely" leaded gasoline. The commenter also noted that banking may have adverse regional impacts in areas where gasoline can be imported. An environmental group that also opposed the proposal argued that it could add to the production of gasoline with extremely high lead contents and to geographical lead hot spots, which could result in further exposure of already high risk groups. Arguing that the proposal fails to take into account future

declines in leaded gasoline demand, the same group argued that the average lead content of leaded gasoline would be even higher in the future as the result of banking than it otherwise would be, frustrating anti-misfueling efforts and reducing the benefits of lead phasedown. This group recommended that EPA promulgate a maximum lead content for each gallon of leaded gasoline (e.g., 1.10 gplg).

Response: Analysis done by EPA in connection with the final rule promulgated on March 7, 1985, indicates that there are probably no significant geographical differences in the value and uses of lead. Therefore, geographic distributions of lead concentrations in gasoline are likely to be very similar regardless of whether banking is or is not permitted. At the average levels of lead usage anticipated with banking in 1985 (about 0.60 gplg), the likelihood of a severe hot spot is remote. This level is about half the currently permissible level of 1.10 gplg, so even an unexpected hot spot is unlikely to exceed current levels. Such a hot spot is even less likely in 1986 and 1987.

As to the suggestion that a maximum lead content per gallon standard be adopted, the Agency considered such a standard during its first lead phasedown rulemaking in 1973. At that time, refiners argued that a per gallon standard was unduly restrictive in the production of leaded gasoline since the quantity of lead to be added to a specific blend of gasoline varied with the quality of the blending stocks and their susceptibility to octane boosts from lead additives. With the 0.10 gplg and 0.50 gplg standards, refiner flexibility in producing leaded gasoline is still important. Moreover, with such low standards, it is unlikely that large deviations from a fairly uniform level will occur. For these reasons, the Agency sees no compelling reason to establish a per gallon maximum standard.

(11) *Comment:* An environmental group opposed the proposal partially on the basis that banking is unnecessary for an accelerated lead phasedown schedule, based on EPA's own analysis showing the industry capable of meeting tight standards without this mechanism. This group also argued that inter-refinery averaging provides enough flexibility for refiners who need it.

Response: This commenter fails to differentiate between the ability of the industry as a whole to meet standards and that of individual refiners to do so. As discussed more fully in Part II.A of the March 7, 1985, NFRM and in the accompanying final RIA, EPA agrees that the industry as a whole is capable of meeting the 0.50 and 0.10 gplg standards without the banking mechanism, except in the extremely unlikely event of a number of pessimistic conditions occurring at the same time. The banking mechanism is intended to alleviate or eliminate any problems that individual refiners might have in meeting these standards, as well as alleviate any feasibility problems that the industry as a whole might have in even the most extreme cases. The Agency also notes that the inter-refinery averaging mechanism will not be available to provide flexibility in 1986 and 1987, for the reasons discussed in the Response to Comment (5), above.

(12) *Comment:* Many refiners and trade groups argued that banking is not an adequate substitute for a less rapid phasedown schedule than those proposed or promulgated by EPA. While most of these commenters agreed that banking would provide greater flexibility, it would not be enough to allow refiners to meet an accelerated phasedown schedule. Some refiners noted the schedule that they could meet or referred to earlier comments on this issue, and noted problems with more rapid schedules (e.g., lower gasoline production, supply problems, reduced gasoline quality, increased use of alcohols, increased finished product imports). One small refiner who opposed the proposal called banking a "sham" designed to justify adoption of the most restrictive schedule suggested in the August 2, 1984, NPRM. Another noted that banking doesn't create lead reduction capability and therefore is no help if a refiner can't reduce lead content below the level of the standard.

Response: EPA did not propose the banking of lead usage rights as a substitute for other regulatory action. Instead, the Agency proposed the banking mechanism to provide additional flexibility for refiners and importers in conjunction with reductions in the total lead levels in gasoline.

Part II.A of the March 7, 1985, NFRM sets forth the Agency's reasoning for adopting the 0.50 gplg and 0.10 gplg standards effective on July 1, 1985, and January 1, 1986, respectively, noting that EPA was not persuaded by those who said this "accelerated" schedule was infeasible. In addition, the "Responses to Comments" document and the final RIA that accompanied that NFRM contained the Agency's analysis of, and responses to, the problems that these commenters believed would occur under a rapid phasedown schedule.

Finally, the Agency agrees with the comment that banking does not create lead reduction capability; it was not meant to do so. However, the refiner who cannot reduce the lead content of the gasoline it produces may still be able to meet the applicable standard by purchasing lead usage rights, and thus obtaining the benefits that banking was meant to achieve.

(13) *Comment:* A lead manufacturer argued that banking and an accelerated phasedown schedule of 0.50 gplg on July 1, 1985, and 0.10 gplg on January 1, 1986, are "unwarranted and unnecessary" in light of data showing significant reductions in lead usage and leaded gasoline market share in 1984. This commenter predicted that lead usage would be below EPA's 1982 goal by mid-1986 or early 1989 without additional regulations, and that it makes little sense to lower the standard and upset the availability of leaded gasoline for the remaining vehicles that need it. In addition, as the unleaded market share increases, the price differential between leaded and unleaded gasoline will narrow, negating a major incentive for fuel switching.

Response: This comment is not really directed at the banking proposal. In any case, the August 2, 1984 NPRM extensively reviewed the need for further regulation of lead, as well as estimates of current lead usage. The total gasoline demand during 1983 was found to exceed the 1982 projections by 10.4 percent. Moreover, the total demand for leaded gasoline failed to decline as quickly as the Agency expected. Although it may be true that natural attrition could eventually eliminate lead usage, it would take too long, thus unnecessarily exacerbating the health effects from exposure to gasoline lead in the environment.

EPA reevaluated its estimate of total lead usage for the period 1985–94 in Part III.A of the March 7, 1985 NFRM. As stated there, even if the 0.10 gplg standard and the 0.50 gplg interim standard only reduce the amount of lead in leaded gasoline without affecting leaded gasoline demand or eliminating fuel switching, lead usage would be reduced more than 80 percent from what if would be if the current standard was not changed.

Further, the Agency agrees that attrition could also eventually take care of the fuel switching problem, as this commenter suggests. However, any use of leaded gasoline, whether by a legitimate user or by a misfueler, poses a serious threat to the health and environment of the nation. Thus, the Agency believes it is justified in the actions taken.

(14) *Comment:* A small refiner opposed banking in conjunction with a 0.50 gplg interim standard on July 1,

1985, because this would severely penalize it even though it had made good faith efforts to comply with a 0.10 gplg standard and could do so by January 1, 1986. If such an interim standard is adopted, there should be an exemption for refiners who have made a good faith effort to meet the strict final standard. A large refiner also opposed adding a 0.50 gplg interim standard, saying that industry would not be able to generate enough lead rights to make banking effective unless a 1.10 gplg standard is applicable throughout 1985. This commenter stated that industry would not be able to meet both dates. Two other refiners and three petroleum industry trade associations also recommended a 1.10 gplg standard for all of 1985 in conjunction with banking. One large refiner predicted that with a 0.50 gplg standard in the second half of 1985, refiners could bank enough lead rights to last through the first 6–9 months of 1986, not enough time to construct new facilities and get permits for them. Another refiner predicted that once the 0.50 gplg standard goes into effect, many refiners won't be able to bank and some will start withdrawing banked lead rights. Several trade associations said banking in conjunction with a 1.10 gplg standard in 1985 would ease the transition to a 0.10 gplg standard in 1986. One refiner supported a 0.80 gplg standard for the last half of 1985 in conjunction with banking, in order to generate additional needed lead rights.

Response: Part II.A.2 of the March 7, 1985, NFRM states the rationale for the Agency's adoption of a 0.50 gplg standard for the last half of 1985. In addition, the accompanying "Responses to Comments" document contains detailed responses to comments opposing an interim 1985 standard. Allowing the banking of lead usage rights up to a 1.10 gplg standard during the last half of 1985 would be completely inconsistent with the adoption of a 0.50 gplg standard for that period. While the Agency does not expect as many lead usage rights to be banked under a 0.50 gplg standard as will be banked under a 1.10 gplg standard, it believes that the total amount of lead rights banked in 1985 will be adequate to provide significant flexibility and cost savings to the industry through 1987. Because the Agency believes that the industry as a whole is capable of meeting a 0.50 gplg standard in July 1985 and that banking will alleviate compliance problems of individual refiners, an exemption process is not needed.

(15) *Comment:* A union representing refinery workers opposed banking because it "doesn't meet the criteria that this Administration supposedly supports, and that is a reduction of government programs, not the creation of new ones." This commenter said that the Administration is supposed to be a friend of the business community and to oppose government programs that will shut business down or hurt them financially (citing a study estimating that new phasedown regulations will shut down ⅓ of U.S. refiners and eliminate thousands of jobs).

Response: The banking mechanism is not a new government program, but rather an alternative means by which refiners can comply with a regulatory program first promulgated over a decade ago. Refiners are free to choose whether or not to use this mechanism, which imposes only a few additional reporting requirements on those who voluntarily choose to use it. As many commenters noted, the flexibility and cost savings provided by this mechanism will benefit the refining industry.

(16) *Comment:* Two refiners and an environmental group supported the banking proposal only in conjunction with a phasedown schedule of 0.50 gplg in July 1985 and 0.10 gplg in January 1986. Another refiner supported the proposal only in conjunction with this schedule or with a 0.10 gplg standard in January 1986. The environmental group stated that otherwise an unjustifiably lax regulatory framework would be created and "double-dipping" by refiners would be allowed (i.e., additional time to meet a 0.10 gplg standard and an extended opportunity to bank lead rights). One refiner said that banking is a short-term tool to allow refiners more time to make needed changes, and shouldn't be used by companies to escape making needed adjustments.

Response: On March 7, 1985, the Agency promulgated a phasedown schedule of 0.50 gplg starting on July 1, 1985, and 0.10 gplg starting on January 1, 1986. See 50 FR 9386.

(17) *Comment:* An antique car group supported the banking proposal only if the Agency requires retail gasoline stations to post the lead and methanol content of gasoline at the pump. This group argued that the public should have a right to know what it is buying, especially since some engines need more lead and methanol has adverse effects on certain engine components.

Response: Requiring the posting of the lead and methanol content of gasoline at service station pumps is outside the limited scope of this rulemaking. The Agency responded to a similar comment in the rulemaking action that culminated in the March 7, 1985, NFRM, noting in Part XIV of the accompanying "Responses to Comments" document, that most state and local governments have the authority to regulate the labelling of gasoline and in many cases have done (or will do) so. The Agency believes at this time that action on those levels of government is more appropriate, if they believe there is a need for such labelling.

(18) *Comment:* One large refiner supported the proposal only if: (1) A 1.10 gplg standard applied throughout 1985; (2) refiners in all states could bank up to the same standard; (3) lead banks must be "fully transferable between refineries"; and (4) "drawdown of the banks" be allowed at least through the end of 1987.

Response: Issues related to the standard applicable during 1985 are discussed in the Response to Comment (14), above. Issues related to whether refiners in all states should be allowed to bank to the same standard are discussed in the Responses to Comments (1) and (2), above. Under the regulations promulgated today, there are no restrictions on the transferability of lead usage rights and such rights may be used through the end of 1987.

(19) *Comment:* Seven refiners supported extension of the period during which banked lead rights could be withdrawn and used beyond the proposed end date of December 31, 1987. Three supported a one-year extension of this period, one a four-year extension, and three did not propose a specific end date. Two other refiners said EPA should strongly consider such an extension, or that there would be some merit to it (although its use would likely be small). One refiner stated that this would reduce imports of crude oil by 1.5 million barrels, due to the relative efficiency of lead at different gplg levels. The same commenter (and others) noted that no more lead would be used, and that there may be health benefits from dropping the lower lead levels earlier. Others argued that construction of octane enhancement facilities would take longer than January 1, 1986. Another refiner noted that refiner flexibility would be increased and a longer period would be provided for farm equipment phaseout/alteration. Another refiner argued that such an extension would be more efficient alternative to maintaining large inventories of high octane components or using other costly octane enhancers (e.g., toluene, xylene, MTBE) in case of shutdowns and emergencies.

Response: The Agency believes that the period of time between now and the

end of 1987 will be adequate for the construction of any new processing equipment needed at a refinery to meet the 0.10 gplg standard. While banking should be helpful to refiners in the case of shutdowns and emergencies, its principal purpose is to provide flexibility for those individual refiners that may need additional time to construct new equipment or take additional actions to comply with the 0.10 gplg standard on a regular basis. EPA notes that nine commenters (including seven refiners) supported the proposed end date of the withdrawal period, agreeing that this would provide enough time for planning and construction of new refinery equipment.

(20) *Comment:* An environmental group argued that making the proposal "retroactive" to January 1, 1985, is arbitrary and irrational. It claimed that the only impact of a "retroactive" banking rule would be an increase in allowable lead usage in the future by the amount of lowered lead use between January 1, 1985, and the date of final rulemaking. Such a provision is entirely inconsistent with the goal of reducing lead use to protect public health.

Response: The Agency believes that it is desirable to allow the banking of lead usage rights during the first quarter of 1985 because of the limited period before the 0.10 gplg standard becomes effective. Obviously, allowing banking during the first quarter of 1985 will potentially allow the generation of a greater number of lead usage rights than if banking during this period were not allowed, since banking is easiest under a 1.10 gplg standard. This, in turn, will further EPA's purpose of allowing additional flexibility to the industry in meeting the recently-promulgated, more stringent lead content standards. The January 4, 1985, NPRM indicated the Agency's intent to make the rule applicable to this period, regardless of when final action is taken. 50 FR 519. The Agency is not persuaded by the comment that this provision should be changed, and does not believe this provision, as an important part of the banking mechanism, is inconsistent with the goal of reducing lead use.

In addition, EPA notes that three refiners specifically supported this provision. One refiner noted that there is no disadvantage to other refiners or the environment, even if only a few companies bank during this period. This commenter also stated that it began to reduce its lead usage in order to generate lead usage rights when banking was proposed, and that it would be difficult to meet the 0.50 gplg and 0.10 gplg standards without such banking. Another refiner supported this provision because of the extremely limited time available for banking, and because it believes that it would be a greater injustice not to finalize this portion of the proposal because many refiners have already committed resources to generate lead usage rights.

In any case, this rule is not "retroactive" in the legal sense since it imposes no burdens and creates no new obligations as a result of any person's past conduct.

(21) *Comment:* One refiner opposed the proposed provision that would not allow the banking of lead rights below 0.10 gplg. Instead, this commenter suggested that "leaded gasoline" be defined as having no less than 0.10 gplg. In addition, the Agency should allow the banking and sale of lead rights (to zero) by refiners who switch from making leaded to all unleaded gasoline (and such banking should be permitted beyond the end of 1985).

Response: The Agency believes that this provision is necessary to discourage the production of leaded gasoline containing less than 0.10 gplg, in order to assure that engines originally designed to run on leaded gasoline receive approximately this amount of lead in each gallon of such gasoline (an amount that was selected to minimize the risk of engine damage). This is the same rationale as that for eliminating the inter-refinery averaging mechanism when the 0.10 gplg standard goes into effect. While the commenter's recommendation would also likely have this effect, it would necessitate promulgation of a complex set of regulations to allocate lead usage rights to refiners claiming to go out of the leaded gasoline business, and is therefore less enforceable and desirable than the promulgated provision.

The Agency also notes that eight refiners supported the proposed provision. One refiner opposed the suggestion to allow credit below 0.10 gplg to encourage unleaded production, saying the regulation should be simple, straightforward, and avoid opportunities for inequities. The Agency agrees that such a regulation is desirable and that the commenter's proposed alternative is more likely to result in inequities than the provision adopted by the Agency.

(22) *Comment:* A small refiner and a union noted that the proposal has no variance procedures. Even with banking, they said, a refiner would have to be located outside California and be able to meet a 0.30 gplg standard starting on January 1, 1985 (which very few refiners can do) in order to be able to have a new facility on stream by July 1988.

Response: The Agency believes that an adequate amount of lead usage rights will be available to alleviate or eliminate any problems that individual refiners might have in meeting the 0.10 gplg standard. A refiner need not rely on lead usage rights banked at its own refinery(ies), but can also purchase such rights from other refiners. In any case, EPA believes that all refiners can have processing equipment on stream by January 1988, as discussed more fully in the Response to Comment (19), above. The Agency has considered the issue of variance procedures in conjunction with the overall gasoline lead regulatory program, and its rationale for not adopting such procedures is discussed fully in Part I.C of the "Responses to Comments" document that accompanied the March 7, 1985, NFRM.

(23) *Comment:* Three refiners recommended changes to reporting requirements. One refiner believed that the requirement for submittal of supporting documentation evidencing an agreement to transfer lead rights would be overly burdensome. Two refiners believed reporting of the quarter in which withdrawn lead rights were banked would be unnecessary. Instead, one said total accumulated lead rights should be reported each quarter, as well as amounts withdrawn when used or transferred.

Response: Supporting documentation is necessary to insure that reported transactions between different refiners have in fact taken place. Elimination of this requirement would significantly weaken EPA's ability to monitor compliance with the regulations. However, EPA has dropped the reporting requirement concerning the quarter in which withdrawn lead usage rights were banked, as well as that requiring reporting on the refinery at which such rights were banked. As explained fully in Part III of this notice, the final reporting requirements now call for submittal of information concerning transactions during a reporting period, as well as the opening and closing lead usage rights "bank account" balances.

(24) *Comment:* One industry consultant suggested several modifications to the regulations. This commenter generally supported the proposal, but believed that it would not sufficiently address the needs of smaller refiners since large refiners would be likely to retain lead rights. As a solution, EPA should extend the period for banking of lead rights through 1987 and impose penalties on refiners who retain banked lead rights for long periods of time. This commenter also submitted comments to the effect that there is no

analytical basis for a 0.10 gplg standard (from the standpoint of engine valve protection) and that instead the Agency should: (1) Adopt an interim standard of 0.50 gplg; (2) adopt a sunset provision whereby EPA must reevaluate and repropose a standard after 50% of banked lead rights have been used; and (3) in order to reduce crude oil imports, encourage automakers to warrant cars for increased use of alcohol via CAFE credits.

Response: The Agency will respond to these comments in the order raised:

A. As discussed earlier, the Agency expects that banked lead usage rights will be freely transferred, in the same manner that now occurs under the inter-refinery averaging mechanism.

B. Allowing banking of lead usage rights to continue beyond December 31, 1985, would encourage refiners to produce leaded gasoline with less than 0.10 gplg, which may increase the risk of valve damage for some engines designed for leaded gasoline. This is the same reason that inter-refinery averaging will not be permitted after December 31, 1985, and that banking of lead usage rights below 0.10 gplg is not being allowed.

C. The banking mechanism is a voluntary mechanism, and there is no requirement that lead rights be banked. As such, imposing penalties on refiners for not using or trading their lead rights is unreasonable and would limit the flexibility that this mechanism is intended to provide.

D. The basis for EPA's conclusion that a 0.10 gplg standard is adequate to protect engine valves is discussed in detail in the final RIA and the "Responses to Comments" document that accompanied the March 7, 1985 NFRM. While an interim 0.50 gplg standard has been established, this is only for a short period prior to the date that a 0.10 gplg standard takes effect.

E. With regard to the "sunset" provision suggested in this comment, there is no need for such a provision since the Agency has adopted the 0.10 gplg standard on a permanent basis starting on January 1, 1986. Such a provision would only make sense if the Agency had doubts about the feasibility of such a standard and had promulgated it only on a temporary or interim basis. The commenter submitted no rationale for why the use of 50% of banked lead usage rights should trigger a reevaluation of the standard. In addition, the Agency notes that one refiner specifically opposed this "sunset" provision on the basis that it would only prolong uncertainties associated with lead phasedown, thereby causing "unnecessary difficulties and misallocation of resources in making investments or other plans . . . ." The Agency agrees with this refiner.

F. The additional crude oil imports that the Agency predicts will result from the March 7, 1985, NFRM are relatively small. Its does not appear reasonable to amend CAFE or warranty rules solely in an attempt to reduce such imports. In any case, this recommendation is outside the limited scope of this rulemaking.

(25) *Comment:* One refiner recommended that "all unused lead usage rights be banked until the 0.1 gplg standard is in place."

Response: The Agency believes it more appropriate to also allow the use of banked lead usage rights under a 0.50 gplg or even a 1.10 gplg standard, and thus the final regulations allow withdrawal and use of lead usage rights in the second, third, or fourth quarters of 1985. Although it is likely that most banked lead usage rights will be used in 1986 and 1987, allowing their use in 1985 will provide greater flexibility to those that may need it earlier.

(26) *Comment:* One small refiner said that since banking would in effect eliminate the current mechanism of transferring lead rights and would therefore directly impact small refiners (see Comment (5)), a regulatory flexibility analysis (RFA) must be prepared. Another small refiner said that EPA must carefully analyze the economic impact of the proposal on small refiners before taking final action.

Response: The Response to Comment (5), above, discusses the Agency's analysis of the impact of the banking mechanism on small refiners. In summary, while banking may have some indirect, short-term, adverse impacts on such refiners, the Agency believes that the benefits of this mechanism during the 1985–1987 period for small refiners will far outweigh any such adverse impacts. In addition, the Agency notes that comments about adverse impacts on small refiners were submitted by only a few of the 46 organizations and individuals that submitted timely comments on the proposed rule. On this basis, the Agency does not believe that a substantial number of small refiners will be adversely affected by the banking rule even in the near-term. Therefore, the Agency has concluded that the banking rule will not have a significant adverse impact on a substantial number of small entities and an RFA is not required.

(27) *Comment:* An environmental group said that the proposal would not prevent a refiner from selling unleaded gasoline as low-lead leaded gasoline in order to generate lead rights. The only apparent way to prevent this would be to specify a minimum lead content of leaded gasoline, which it believes would be environmentally undesirable. A refiner argued that abuse is possible in the opposite direction, namely that gasoline with a lead content of 0.10 gplg could be imported (and earn 1.0 gram of lead rights), blended with unleaded gasoline to lower its lead content to below .05 gplg and then sold as unleaded gasoline (thus increasing total lead usage).

Response: EPA sees no reason to believe that refiners would sell unleaded gasoline as leaded to obtain lead rights, because at any given octane level it is less expensive to make leaded than unleaded gasoline. In any event, such action by a refiner would actually lower total lead use, as such mislabeled gasoline would displace sales of leaded gasoline.

EPA is aware of the potential for the second type of problem (i.e., that leaded gasoline might be blended with unleaded to reach a concentration below 0.05 gplg, and then sold as unleaded). Current regulations, however, specify that gasoline to which any lead has been added intentionally is classified as leaded, regardless of the concentration, so such a sale would be illegal. Moreover, the potential for such abuse also exists with the current inter-refinery averaging mechanism, but none appears to occur.

(28) *Comment:* A refiner warned that EPA must exercise caution in the wording of the final regulation to prohibit "possible pyramiding of lead rights," by which a "daisy chain blending scheme" could earn lead rights for each participant in the chain on the basis of the same blending components.

Response: The commenter is apparently referring to the possibility of double accounting. Under such a scheme, one blender might claim lead usage rights based on leaded gasoline produced, while another blender adds a small amount of lead or alcohol to this gasoline and again claims credit for the same volume. This is strictly prohibited. Lead usage rights earned by the second party may only be based on the volume of leaded gasoline that party actually produces and he may not count the original volume. EPA will continue to vigorously enforce against any double accounting or similar scheme designed to circumvent the regulations.

(29) *Comment:* An industry trade group believed that the first banking period should be longer than a calendar quarter, stating that a half-year would be more appropriate.

Response: Because the banking rule is being made effective for the first quarter, EPA sees no advantage in lengthening the initial averaging period for banking; any reductions made during the first quarter will be bankable. In addition, a change in the initial banking period would necessitate a similar change in the initial compliance period in 1985. With banking, the definition of the compliance period becomes less important, except for purposes of enforcement and administration. On both of those grounds, EPA believes that maintenance of the current definition of compliance periods is desirable.

(30) *Comment:* One refiner states that refiners, blenders and importers should all have the same rule, and that there should be no "created" lead banks or "special accounts" outside the rules. These would lead to disruptive market distortions.

Response: The regulation promulgated today provides the same rules governing banking by refineries, blenders and importers. There are no provisions that allow created lead banks or special accounts outside the rules.

(31) *Comment:* One refiner said that importers should not be allowed to use quarterly averaging, but should be required to meet the regulatory standard on a cargo-by-cargo basis. Another refiner said there is a need for a method of certifying the lead content of imported and blended gasoline equivalent to that used for refining gasoline.

Response: Prior to the lead phasedown rule promulgated on October 29, 1982, the lead content of gasoline imported into the United States was unregulated. The August 27, 1982, proposal for that rulemaking recognized the need for regulating imported leaded gasoline and discussed various schemes for bringing such imported gasoline within the scope of the regulations. One scheme considered was holding importers to a cargo-by-cargo standard.

At that time the Agency decided that a cargo-by-cargo standard would be unreasonably burdensome since it would be very costly to require U.S. Customs Service and EPA personnel to certify every shipment of imported gasoline, it would be relatively ineffective to involve more than one federal agency in enforcement, and it would be an unequal burden on importers vis-a-vis domestic refiners. None of these elements have changed substantially since the October 29, 1982, rulemaking, and the Agency intends to maintain the quarter compliance period for importers.

As to the comment regarding a method of certifying lead content, such a method is currently in effect. Since domestic refiners must buy lead additives from domestic lead manufacturers EPA requires these manufacturers to report quarterly sales, which can be cross-checked with refinery reports. Such a system is impossible to implement with imported leaded gasoline, since the Agency cannot require lead reports from lead additive manufacturers or refiners in foreign countries. For the purpose of verifying the lead content of imported leaded gasoline, therefore, EPA requires each shipment of imported leaded gasoline sold in the U.S. to be tested by the atomic absorption spectrometry test. See 40 CFR 80.20(c)(2)(i). This test must be performed on a representative sample of the shipment.

Thus, although the method of verification of lead content differs between refiners and importers, equivalent tests do exist. EPA enforces lead phasedown regulations vigorously for both refiners and importers.

(32) *Comment:* One refiner believed that inter-refinery averaging should be retained after December 31, 1985, and "include actual lead used, banked lead and exchanged amounts of lead." Another argued that elimination of inter-refinery averaging would have the opposite effect of that intended concerning valve-seat recession by encouraging the production of low-lead leaded gasoline. There is currently no incentive to produce below 0.05 gplg because of consumer protection laws and the low value of lead rights (½—1 cent per gram). With banking, a refiner can do so and save lead rights for future use when their value is likely to be greater. EPA should address the problem of valve-seat recession directly by requiring that leaded gasoline contain a minimum of 0.05 gplg and a maximum of 1.10 gplg, along with the continuation of inter-refinery averaging. A third refiner also supported inter-refinery averaging, as well as the quarterly averaging period, in conjunction with banking.

Response: The rationale for elimination of the inter-refinery averaging mechanism after 1985 is discussed in the Response to Comment (5), above. The Agency's rationale for not promulgating a maximum lead content standard is discussed in the Response to Comment (10), above. The Agency does not believe that a minimum lead content standard is necessary because there will not be a significant economic incentive to produce leaded gasoline that contains less lead than allowed by the regulations, particularly since no banked lead rights can be earned for reductions in lead content below 0.10 gplg. The Agency is retaining the quarterly averaging period. See also the Response to Comment (21), above.

(33) *Comment:* An industry trade association stated that the banking period may be inadequate to prevent octane shortages and supply disruptions. This commenter also noted that banking does not shorten the lead time for plant construction and permitting, and that it should be implemented as soon as possible to reduce the uncertainties of phasedown.

Response: The Agency has analyzed the issue of whether octane shortages and supply disruptions are likely to occur in conjunction with the promulgation of the 0.50 and 0.10 gplg standards and has concluded that, even without banking, the likelihood of such events occuring is extremely remote. Banking should alleviate any such problems for the industry as a whole under even the most pessimistic conditions. This issue is discussed in detail in Part II.A.1 of the March 7, 1985, final rule, in Chapter II of the final RIA that accompanies that final rule, and in Part I.A of the "Responses to Comments" document that accompanies that rule. The Agency realizes that banking does not reduce the lead time for plant construction and permitting. However, it does provide additional flexibility for refiners that need to take such steps to meet the 0.10 gplg standard. Banking is being made effective starting in the first quarter of 1985, as proposed.

(34) *Comment:* An environmental group that opposed banking said that, if adopted, it should be coupled with a ban on all lead use not later than January 1, 1988.

Response: On March 7, 1985, the Agency published a supplemental notice of proposed rulemaking requesting comments on such a ban as early as January 1, 1988. This notice requests comments on new health studies suggesting substantial additional health benefits of a total ban, as well as on information suggesting that engines may not need lead to prevent valve damage.

(35) *Comment:* A small refiner that opposed the proposal argued that banking would increase the competition for lead rights, since even those producing gasoline with a lower lead content than allowed would want to purchase more rights for future use.

Response: Such an increase in competition is possible. However, the Agency does not believe that banking should be discarded for this reason. Even with such competition, the cost of lead rights should be lower than the cost

of complying with the standards through other means.

(36) *Comment:* Several commenters argued that banked lead rights should be freely transferrable between refiners.

Response: The final regulations place no restrictions on the transfer of lead rights, once lawfully banked, among refiners and importers. Transfers of lead rights may occur between any willing buyer and seller. Those using this mechanism must, of course, comply with all reporting requirements, as well as with applicable lead content standards.

(37) *Comment:* An antique car group stated its opposition to any lead content standard below 0.50 gplg, saying that if a lower standard is adopted it is critically important that there be a provision in such a ruling (including any ruling on banking) allowing the manufacture of a lead additive.

Response: The Agency's response to comments opposing a standard below 0.50 glpg is contained in Part I of the "Responses to Comments" document that accompanied the March 7, 1985, final rule. In addition, Part III.F of that final rulemaking notice stated that leaded gasoline sold as a consumer additive would not require a prior waiver from EPA under section 211(f)(4) of the Clean Air Act and that such an additive could be used by consumers to provide engine valve lubrication.

(38) *Comment:* A refiner that opposed the proposal also opposed the concept of a national gasoline lead content standard (arguing that lead is a regional problem). This commenter also opposed a schedule of 0.5. gplg in July 1985 and 0.10 gplg in January 1986, saying that EPA must stick to one timetable. Although it called lead banking "hollow at best," this commenter agreed that lead rights "are best structured maximizing transferability" but are not a solution to the dilemma of constantly changing final regulations.

Response: In the August 2, 1984 NPRM, EPA discussed the basis for its conclusion that there is a continuing national health problem associated with exposure to environmental lead. 49 FR 31032. Further, the reasons for a 0.10 gplg standard effective January 1, 1986, and an interim standard of 0.50 gplg effective July 1, 1985, are discussed in the March 7, 1985, NPRM. 50 FR 9386. The regulations provide that banked lead rights can be freely transferred, thereby facilitating the transition to more stringent standards. While EPA recognizes that regulatory changes may create planning problems for refiners, its statutory mandate to protect the environment and the public health must take precedence.

V. Additional Information

A. Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis (RIA) for major rules, defined by the Order as those likely to result in:

(1) An annual adverse effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this final regulation does not meet the definition of a major rule under E.O. 12291. The final rule is expected to have a beneficial effect on the economy, refiner costs, consumer prices, and competition. Therefore an RIA is not required. However, the impact of the banking mechanism was analyzed by the Agency in the final RIA that was prepared in conjunction with the final regulations adopted on March 7, 1985 (see Chapter II.E).

This notice of final rulemaking has been submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written comments from OMB and any EPA responses to such comments are available for public inspection at the Central Docket Section, at the address listed above.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), when an agency promulgates a final rule, after being required to publish a general notice of proposed rulemaking, it must prepare a final regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b). For the reasons discussed in the Response to Comment (26) in Part IV of this notice, I certify that this rule will not have a significant adverse impact on a substantial number of small entities. On the basis of this certification, a final RFA has not been prepared.

C. National Academy of Sciences Recommendations

Section 307(d)(3) of the Clean Air Act, 42 U.S.C. 7607(d)(3), requires that rulemaking proceedings under section 211 of the Act, 42 U.S.C. 7545, take into account any pertinent findings, comments, and recommendations by the National Academy of Sciences. The Academy has made no such pertinent findings, comments and recommendations concerning "banking" of lead rights.

D. Paperwork Reduction Act

The information collection requirements contained in the regulations promulgated by the Agency on March 7, 1985, were cleared by OMB under control number 2060–0068 on October 18, 1984, pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The changes to the information requirements finalized in this notice will increase slightly the reporting requirements, but they will apply only to refiners and importers who voluntarily choose to use the banking mechanism. These charges were submitted to OMB for review under the Paperwork Reduction Act, and were cleared by that office under the same control number on January 16, 1985.

E. Judicial Review

The final actions described in this notice are made under the authority of sections 211 and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review must be filed on or before June 3, 1985. Judicial review may not be obtained in subsequent enforcement proceedings.

F. Effective Date

EPA finds that there is "good cause" to make this rule effective immediately in order to avoid confusion as to the status of banking for the first quarter of 1985. Also, it would serve no purpose to postpone the technical effective date of this rule since the rule itself provides that refiners and importers may bank lead usage rights for reductions in lead usage during the January 1 to March 31, 1985 period.

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

(Secs. 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7545 and 7601(a))

Dated: March 25, 1985.

Lee M. Thomas,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, § 80.20 of Title 40 of the Code of Federal Regulations is amended by adding a new paragraph (e) to read as follows:

§ 80.20 Controls applicable to gasoline refiners and importers.

* * * * *

(e) *Banking and withdrawal of lead usage rights.*—(1) *Banking of lead usage rights.* (i) During any calendar quarter beginning on or after January 1, 1985, and ending prior to January 1, 1986, a refiner may bank lead usage rights in an amount equal to the amount of lead usage allowed at a refinery in the calendar quarter minus the amount of lead actually or constructively used in the same calendar quarter at the refinery, as determined under paragraphs (e)(1) (ii) and (iii) of this section.

(ii) The amount of lead usage rights that may be banked by a refiner at a refinery pursuant to paragraph (e)(1)(i) of this section shall be equal to the number of grams of lead determined by:

(A) Multiplying the number of gallons of leaded gasoline reported by the refinery for the calendar quarter pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section by the Federal lead content standard applicable to the refinery during the calender quarter (as set forth in paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i), or (c)(1)(ii) of this section) or any applicable state lead content standard prescribed pursuant to section 211(c) (4) (B) or (C) of the Clean Air Act, whichever allows less lead usage; and

(B) Subtracting from the result in paragraph (e)(1)(ii)(A) the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section.

(iii) When compliance with the requirements fo paragraph (a)(1)(i), (a)(1)(ii), (c)(1)(i) or (c)(1)(ii) is demonstrated pursuant to the inter-refinery averaging provisions of paragraph (d) of this section, the total grams of lead reported pursuant to paragraph (d)(2)(iii) of this section shall be used instead of the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section, for purposes of paragraph (e)(1)(ii)(B) of this section.

(iv) the total grams of lead used for purposes of paragraph (e)(1)(ii)(B) of this Section may not be less than the amount calculated by multiplying the number of gallons of leaded gasoline reported by the refinery for the calendar quarter pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section by 0.10 gram of lead of such gasoline.

(v) A refiner who banks lead usage rights pursuant to this sub-section shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the information described in paragraph (e)(1)(ii) and (e)(1)(iii) of this section.

(2) *Withdrawal of lead usage Rights.* (i) During any calendar quarter beginning on or after April 1, 1985, and ending prior to January 1, 1988, a refiner may withdraw lead usage rights banked pursuant to paragraph (e)(1) of this section. Such rights may be used by the refiner to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii), or may be transferred by the refiner for such use by another refiner. A lead usage right shall be considered to be withdrawn when it is so used or transferred by the banking refinery.

(ii) Compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) through the use of lead usage rights shall be determined by:

(A) Subtracting the lead usage rights used by the reporting refinery from the total grams of lead reported pursuant to paragraph (a)(3)(vii) or (c)(2)(iv) of this section (or, if compliance is also demonstrated pursuant to the inter-refinery averaging provisions of paragraph (d) of this section, subtracting the lead usage rights used by the reporting refinery from the total grams of lead reported pursuant to paragraph (d)(2)(iii) of this section); and

(B) Dividing the result in paragraph (e)(2)(ii)(A) by the number of gallons of leaded gasoline reported pursuant to paragraph (a)(3)(v) or (c)(2)(v) of this section.

(iii) A refiner who deposits, withdraws, transfers, or uses lead usage rights during a calendar quarter shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the following information:

(A) The amount of lead usage rights withdrawn from the reporting refinery's account and used to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) for the calendar quarter;

(B) The amount of lead usage rights withdrawn from the reporting refinery's account and transferred to the account of another refinery during the calendar quarter;

(C) The amount of lead usage rights transferred from the account of another refinery to that of the reporting refinery and used to demonstrate compliance with the requirements of paragraph (a)(1)(ii) or (c)(1)(ii) for the calendar quarter;

(D) The amount of lead usage rights transferred from the account of another refinery in the calendar quarter and deposited in the account of the reporting refinery during the calendar quarter;

(E) The banked average lead content of leaded gasoline produced in the calendar quarter, as determined pursuant to paragraph (e)(2)(ii) of this section;

(F) If the other refinery to or from which the lead usage rights reported in paragraph (e)(2)(iii)(B), (e)(2)(iii)(C) or (e)(2)(iii)(D) were transferred is owned or controlled by another refiner, supporting documentation adequate to show the agreement by such refiner to the transfer of the lead usage rights.

(3) *Other requirements.* (i) For purposes of paragraph (e) of this section, the total amount of imported leaded gasoline sold during a calendar quarter by each importer shall be treated as the output of a single refinery, and each importer shall be treated as a refiner.

(ii) The banked average lead content of leaded gasoline produced at a refinery during a calendar quarter, as determined pursuant to paragraph (e)(2)(ii) of this section, may not exceed any state gasoline lead content standard prescribed pursuant to section 211(c)(4) (B) or (C) of the Clean Air Act.

(iii) An agreement between two (or more) refiners to transfer lead usage rights may be made no later than the final day of the calendar quarter in which the lead usage rights are used.

(iv) Any refiner who has lead usage rights on deposit in a lead usage rights bank account at the end of a calendar quarter or who makes deposits to or withdrawals from a lead usage rights banking account under the provisions of paragraph (e) of this section during a calendar quarter shall submit to the Administrator, as an additional part of the report required by paragraph (a)(3) or (c)(3) of this section, the following information:

(A) The number of grams of lead usage rights in the refinery's lead usage rights bank account at the beginning of the calendar quarter for which the report is submitted;

(B) The number of grams of lead usage rights in the refinery's lead usage rights bank account at the close of the calendar quarter which the report is submitted (after all deposits and withdrawals in such account during the calendar quarter have been taken into account).

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Tuesday
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Part III

Environmental Protection Agency

40 CFR Parts 50, 51, 52, 53, 58, and 81
Regulations for Implementing Revised Particulate Matter Standards; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51, 52, 53, 58, and 81

[FRL-2800-5]

Regulations for Implementing Revised Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations governing State implementation plan (SIP) programs under the Clean Air Act to account for revisions to the national ambient air quality standards (NAAQS) for particulate matter that EPA proposed in the Federal Register on March 20, 1984 (49 FR 10408). In particular, EPA proposes: (1) Amendments to significant harm and air pollution episode levels associated with particulate matter, (2) new definitions related to particulate matter, and (3) amendments to the various requirements for the preconstruction review of new stationary sources and modifications in nonattainment new source review (NSR) regulations and in prevention of significant deterioration (PSD) regulations.

This notice also sets forth EPA's proposed policy on the course of action States are to follow in revising their State implementation plans to account for the revised standards. EPA is particularly interested in receiving public comment on this policy.

Finally, this notice announces the closing date for public comment on EPA's proposed revisions to the national ambient air quality standards for particulate matter in 40 CFR part 50 (49 FR 10408), for EPA's proposed retention of total suspended particulates (TSP) as the definition of particulate matter for PSD purposes (49 FR 10421), for EPA's proposed regulations concerning ambient air quality surveillance in 40 CFR Part 58 (49 FR 10435), and for EPA's proposed regulations regarding ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454).

DATES: All comments, including those pertaining to Parts 50, 53 and 58, must be submitted on or before June 3, 1985.

ADDRESSES: Comments on the regulations, policy and guidance proposed in today's action should be submitted (in triplicate if possible) to: Central Docket Section (LE–131), EPA, Attention: Docket Number A–82–38, 401 M Street, SW., Washington, D.C. 20460. Comments on the proposed revisions to the particulate matter standards in 40 CFR Part 50 (49 FR 10408) should be sent to the same address, Attention: Docket Number A–82–37. Comments on the proposed revisions to the ambient air monitoring reference and equivalent methods in 40 CFR Part 53 (49 FR 10454) should be sent to the same address, Attention: Docket Number A–82–43. Comments on the proposed revisions to EPA's regulations on ambient air quality surveillance for particulate matter in 40 CFR Part 58 (49 FR 10435) should be sent to the same address, Attention: Docket A–83–13. Comments on the proposed retention of TSP for PSD purposes (49 FR 10421) should be sent to the same address, Attention: Docket No. A–83–48. The Central Docket Section is located in the West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

If anyone contacts EPA requesting to speak at a public hearing on the regulations, policy and guidance proposed in today's action, it will be held at EPA's Office at 401 M Street, SW., Washington, D.C. Persons wishing to present oral testimony should notify Joseph Sableski, Standards Implementation Branch (MD–15), Environmental Protection Agency, Research Triangle Park, NC 27711 within two weeks of publication of this document in the Federal Register.

Availability of Related Information

EPA has prepared and hereby solicits comments on the following two draft documents relating to the proposals in this notice:

- *PM_{10} SIP Development Guideline.*
- *Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or Inhalable Particulate Data.*

In addition, EPA has made draft revisions to *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD).* These draft revisions are also available for public comment.

These documents are available for inspection and copying at:

- The Central Docket Section.
- State Air Programs Branch, EPA, Region I, JFK Federal Building, Boston, MA 02203.
- Air Programs Branch, EPA, Region II, 26 Federal Plaza, New York, NY 10278.
- Air Management Branch, EPA, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106.
- Air Management Branch, EPA, Region IV, 345 Courtland Street, NE, Atlanta, GA, 30365.
- Air Programs Branch, EPA, Region V, 230 S. Dearborn Street, Chicago, IL 60604.
- Air Programs Branch, EPA, Region VI, First International Building, 1201 Elm Street, Dallas, TX 75270.
- Air, Noise and Radiation Branch, EPA, Region VII, 324 East 11th Street, Kansas City, MO 64106.
- Air Programs Branch, EPA, Region VIII, 1860 Lincoln Street, Denver, CO 80295.
- Air Programs Branch, EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105.
- Air Programs Branch, EPA, Region X, 1200 6th Avenue, Seattle, WA 98101.

A limited number of copies can be obtained from the EPA Library (MD–35), Research Triangle Park, NC 27711, telephone (919) 541–2777 (FTS 629–2777). In addition, EPA is making copies available to State and local agencies.

FOR FURTHER INFORMATION CONTACT: Roger Powell or Joseph Sableski regarding the SIP program, or Michael Trutna regarding PSD/NSR questions, Standards Implementation Branch (MD–15), Environmental Protection Agency, Research Triangle Park, NC 27711. John H. Haines regarding the proposed particulate matter standards and proposed air quality surveillance regulations, Ambient Standards Branch (MD–12) Environmental Protection Agency, Research Triangle Park, NC 27711. Phones: [Mr. Powell or Mr. Sableski: (919) 541–5697 or (FTS) 629–5697]; [Mr. Trutna: (919) 541–5591 or (FTS) 629–5591]; [Mr. Haines, (919) 541–5531 or (FTS) 629–5531].

SUPPLEMENTARY INFORMATION:

I. Background

A. NAAQS Review

On April 30, 1971, EPA promulgated primary and secondary NAAQS for particulate matter under sections 108 and 109 of the Clean Air Act (36 FR 8186). The reference method for measuring attainment of these standards is the "high-volume" sampler (40 CFR Part 50, Appendix B) which effectively collects particulate matter up to a nominal size of 25 to 45 micrometers (um) (so called "total suspended particulate," or "TSP"). Thus, TSP is the current indicator for the particulate matter standards. The existing primary standards for particulate matter (measured as TSP) are 260 $\mu g/m^3$, averaged over a period of 24 hours and not to be exceeded more than once per year, and 75 $\mu g/m^3$ annual geometric

mean. The secondary standard (measured as TSP) is 150 $\mu g/m^3$, averaged over a period of 24 hours, and not to be exceeded more than once per year. The scientific and technical bases for these standards are contained in the original criteria document, *Air Quality Criteria for Particulate Matter* DHEW, 1969).

On August 7, 1977, Congress added to the Act a new section 109(d) [42 U.S.C. section 7409(d)] directing the Administrator to periodically review the NAAQS and the criteria upon which they are based and revise both as appropriate. Accordingly, EPA has reviewed and revised the criteria upon which the existing primary and secondary particulate matter standards are based. As a result of its review and revision of the health and welfare criteria, EPA proposed on March 20, 1984 (49 FR 10408), the following revisions to the particulate matter standards:

(1) That TSP as an indicator for particulate matter be replaced for both of the primary standards by a new indicator that includes only those particles with an aerodynamic diameter smaller than or equal to a nominal 10 micrometers (PM_{10});

(2) That the level of the 24-hour primary standard be changed to a value to be selected from a range of 150 to 250 $\mu g/m^3$, and that the current deterministic form of the standard be replaced with a statistical form that permits one expected exceedance of the standard level per year;

(3) That the level and form of the annual primary standard be changed to a value to be selected from a range of 50 to 65 $\mu g/m^3$, expressed as an expected annual arithmetic mean; and

(4) That the current 24-hour secondary TSP standard be replaced by an annual TSP standard selected from a range of 70 to 90 $\mu g/m^3$, expected annual arithmetic mean.

Because no scientific consensus exists on specific levels of the standards, and the analytical and policy basis for making these decisions under the statute are limited and difficult to implement, the Administrator did not propose specific standard levels within the above ranges. Rather, he solicited additional comment and information from the public to be considered in promulgating the final regulation, which will specify a specific level for each of the standards. Given the precautionary nature of the Act, the Administrator indicated that he was inclined to select the levels of primary standards from the lower portions of the proposed ranges. He also indicated that he was inclined to continue the level of protection provided by the current annual TSP standard and select a level for the revised secondary standard from the upper portion of the proposed range.

Simultaneously with the above actions, a new Federal Reference Method (Appendix J to Part 50) was proposed to provide for measuring PM_{10} in the ambient air. EPA also proposed to add a new Appendix K to Part 50, which would provide guidance on the statistical nature of the proposed revisions to the standards. Related notices also published on March 20, 1984, set out proposed revisions to EPA's regulations concerning Ambient Air Monitoring Reference and Equivalent Methods (40 CFR Part 53), and Ambient Air Quality Surveillance (40 CFR Part 58). The reader should consult the March 20, 1984, **Federal Register** notices for more details on these proposals.

B. New State Implementation Plan Programs

1. Basis of Proposal

Upon EPA adoption of revised primary and secondary NAAQS, the States will have to adjust their State implementation plans (SIP's) accordingly. This notice proposes necessary regulatory revisions and EPA's policy for making those adjustments. The program proposed herein assumes the levels of the annual and 24-hour primary PM_{10} NAAQS will be selected from the lower portions of the proposed ranges and the level of the annual secondary TSP NAAQS will be selected from the upper portion of the proposed range as Administrator Ruckelshaus indicated in the March 20, 1984, notice. The final standards, however, could depart significantly from those assumed for the purposes of developing the implementation program proposed herein. Thus, it may be necessary to modify the program to conform to the final standards adopted, possibly through reproposal.

2. Applicable Act Requirements

The Act currently contains two major sets of SIP requirements. The first set, found in section 110 and Part D of Title I, requires States to adopt and implement plans that provide for attainment and maintenance of the NAAQS. This notice addresses the need for revising these SIP's and the timing and content of SIP revisions as they apply to existing and new sources. It also addresses the consequences of failing to submit revisions.

The second major set of requirements is intended to prevent significant deterioration (PSD) of air quality in areas that have attained the NAAQS. The PSD program focuses on the review of new sources and the protection of maximum allowable pollution increases known as "increments." This notice presents EPA's proposed action on increments, determination of applicability, and a transition program.

C. Preamble Structure

The remainder of this notice first describes in detail the statutory and regulatory background for implementing the revised NAAQS, then presents the rationale for EPA's interpretation of the Act. It then compares the proposed NAAQS to the current NAAQS because such comparisons are germane to interpreting the various portions of the Act. Following that is a discussion of the program for revising SIP's to provide for attainment and maintenance of the NAAQS. This is followed by a discussion of the PSD program and nonattainment new source review (NSR) requirements. Finally, this notice discusses and presents specific regulatory revisions designated to implement the program.

D. Public Comment

The regulations in this notice deal with the implementation of the revised particulate matter standards. Comments sent to Docket Number A–82–38, therefore, should concern only (1) the regulations being proposed at the end of this notice, (2) the related draft documents previously noted under Availability of Related Information, and (3) the EPA policy contained herein.

On November 21, 1984 (49 FR 45871) EPA extended the period for public comment on the Part 50, Part 53 and Part 58 proposals, on the proposed retention of TSP for PSD purposes, and on the public hearing until the 60th day after EPA proposes the Part 51 and Part 52 requirements for particulate matter. With today's action, comments on the Part 50, Part 53, Part 58, and PSD proposals, including any comments on the implications thereon of the Part 51 and Part 52 proposals, must be submitted on or before June 3, 1985. [Comments on the Part 50 proposal should be submitted to Docket Number A–82–37, comments on the Part 53 proposal should be submitted to Docket Number A–82–43, comments on the Part 58 proposal should be sent to Docket Number A–83–13, and comments on the PSD proposal should be submitted to Docket Number A–83–48, all at the address provided above.]

II. Statutory and Regulatory Requirements

A. Statutory Background

1. State Implementation Plan

In 1970 Congress comprehensively amended the Clean Air Act to establish a joint State and Federal program to control air pollution. Under Sections 108 and 109, EPA is responsible for the program's first step, the promulgation of national ambient air quality standards (NAAQS). The States then have primary responsibility for implementing the NAAQS. In broad outline, each State must develop and submit to EPA a plan that provides for attainment and maintenance of each NAAQS as expeditiously as practicable within certain time limits. EPA must review each plan, termed the State implementation plan (SIP), and approve or disapprove its provisions. If a State fails to submit a plan, or submits a plan which EPA finds inadequate, EPA may, and in some cases must, promulgate whatever measures are necessary to fill the gap.

a. Section 110

(1) *Timing.* Under section 110(a)(1), each State must adopt and submit a SIP ". . . within 9 months after the promulgation of a national primary ambient air quality standard (or any revision thereof). . . ." Section 110(a)(1) also sets a 9-month deadline for submittal of SIP's for new and revised secondary NAAQS; however, section 110(b) authorizes the Administrator to extend that deadline for up to 18 months where "necessary."

Under section 110(a)(2)(A), SIP's must provide for attainment of any primary NAAQS ". . . as expeditiously as practicable but [subject to subsection (e)] in no case later than 3 years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard). . . ." SIP's for secondary NAAQS must provide for attainment within a "reasonable time."

Section 110(e) allows the Administrator to extend the attainment date for the primary NAAQS for up to 2 years, if he finds that sources will not be able to comply with their emission limitations within the 3-year deadline because needed technology will not be available. The plan, however, must provide for interim control of the noncomplying sources and controls on all other sources of the same pollutant in the same air quality control region.

(2) *Content of SIP's.* A core requirement of section 110 is that each SIP must include:

> . . . emission limitations, schedules and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard . . . . [Section 110(a)(2)(B)]

The remaining subsections of section 110(a)(2) elaborate on this general framework. Specific to today's proposal:

- Section 110(a)(2)(C) requires the plan to provide for operation of a system that collects and analyzes air quality data.
- Section 110(a)(2)(D) states that each SIP must provide a preconstruction review program consisting of ". . . a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that the national ambient air quality standards are achieved and maintained . . . ."
- Section 110(a)(2)(F) provides that plans must require owners or operators of stationary sources to monitor and report on emissions from their sources.
- Section 110(a)(2)(H) requires each plan to contain a self-correction mechanism in case the plan proves unsatisfactory. The plan must contain provisions that the State will revise the plan:

> . . . from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious means of achieving such primary or secondary standard; or . . . whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977. . . .

- Section 110(c)(1)(C) authorizes the Administrator to notify a State that it needs to revise its plan in accordance with the section 110(a)(2)(H) requirements for self-correction and to set a deadline for submitting the revision. The deadline is within 60 days after the notification, but may be later at the Administrator's discretion.
- Section 110(a)(2)(F)(v) provides that SIP's must contain contingency plans for immediate emission reductions where pollution levels increase to the point of presenting an imminent and substantial endangerment to public health.

(3) *Consequences of failing to submit a SIP.* Section 110 provides for Federal intervention if a State fails to submit an adequate SIP. Under section 110(c)(1), EPA must promulgate plan provisions for a State if the State fails to submit a plan at all, submits a plan that does not meet the section 110 requirements, or fails to revise its plan in response to the "notification" referred to in section 110(c)(1)(C), i.e., a call for a plan revision under the provisions of section 110(a)(2)(H). EPA must promulgate a substitute plan unless the State in the interim adopts and submits a plan that EPA finds adequate.

Other sections of the Act provide financial incentive for State participation in the SIP development process such as section 105(b), which gives EPA general authority to impose conditions on its grants to air pollution control agencies. Thus, EPA may condition grants on the submittal of satisfactory SIP's or SIP revisions. Beyond that, section 176(b) prohibits EPA from making any grants in any area where the responsible State or local authority ". . . is not implementing any requirement of an approved or promulgated plan under section 110 . . . ." This prohibition would apply if a State failed to implement the SIP provision that requires the State to revise its plan under the circumstances stipulated in sections 110(a)(2)(H) and 110(c)(1)(C).

b. Part D and Associated Amendments

In many areas of the country, the original SIP's that were approved and promulgated in the early 1970's failed to bring about attainment within the statutory deadlines. When Congress revised the Act in August 1977, it added a new Part D and amendments to sections 107 and 110 to address this nonattainment problem.

(1) *Identification of air quality problems.* Congress first instructed the States and EPA to identify all areas of the country that were experiencing violations of the NAAQS. A new section 107(d) required each State to list for EPA by early December 1977 those areas that were experiencing violations (nonattainment areas), those areas that were meeting the standards (attainment areas), and those areas that could not be classified for lack of air quality data (unclassifiable areas). It then required EPA to review the lists, make necessary modifications, and promulgate them all by early February 1978. Section 107(d)(5) allows States to modify a list even after promulgation:

> . . . [a] State may from time to time review, and as appropriate revise and resubmit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.

(2) *Content and timing of plan revisions.* Congress then added section 110(a)(2)(I) which required each SIP to contain a provision that would ban the

construction or modification after June 30, 1979, of any major stationary source:

> . . . in any nonattainment area [as defined in Section 171(2)] to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of Part D (relating to nonattainment areas).

Congress then specified other new requirements for SIP content in Part D. In essence, Part D relaxed attainment dates but tightened control requirements for both new and existing sources.

In section 172(a)(1), Congress directed the States to adopt plans that provided for attainment of all of the primary standards as expeditiously as practicable, and, except for ozone and carbon monoxide, no later than December 31, 1982. Plans were also to provide for all emission reductions available from applying "reasonably available control technology" (RACT). Each plan also had to establish a permit program under section 173 for the construction and modification of major stationary sources.

Congress directed each State to adopt whatever provisions would be necessary to meet these Part D requirements, and submit them to EPA, by January 1, 1979. [See Pub. L. 95–95, section 129(c).] Congress required the States to follow EPA's 1976 interpretive ruling on new source construction and modification in the period before the new plans were to come into effect. [See Pub. L. 95–95, section 129(a) (uncodified).]

(3) *Consequences of failing to submit a plan.* All of the consequences of failing to submit a SIP described above under section 110 potentially apply to States that fail to submit Part D SIP's. In addition, after July 1, 1979, the mandatory construction ban required by section 110(a)(2)(I) was to apply in any nonattainment area that lacked a revised plan that met the Part D requirements. Further, if a State failed to implement its SIP in a nonattainment area, which includes not complying with a call for a SIP revision under section 110(c)(1)(C), the nonattainment area would be subject to a construction ban required by section 173(4).

c. *Part C and Associated Amendments*

The 1977 amendments also added to the Act as Part C to Title I a third set of SIP requirements aimed at the prevention of significant deterioration (PSD) of air quality in attainment and unclassifiable areas. New section 110(a)(2)(J) generally requires each SIP to satisfy the requirements of Part C. Revised section 110(a)(2)(D) specifically requires each SIP to meet Part C's requirements for a preconstruction review program for major new sources and major modifications. Section 161 of the new Part C requires that:

> . . . each applicable implementation plan contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) identified pursuant to Section 107(d)(1) (D) or (E) of this title . . . [i.e., the attainment and unclassifiable areas].

The remaining Part C provisions limit deterioration by establishing maximum allowable increases in pollution, commonly called "increments," and by requiring preconstruction review of major new stationary sources and major modifications.

(1) *The increment system.* For sulfur dioxide and "particulate matter," section 163(a) requires that each plan ". . . contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded . . ." Section 163(b) establishes three sets of "maximum allowable increases" for these two pollutants. The most restrictive increments apply in Class I areas, while larger increments apply in areas designated as Class II or Class III. No provision in the Act, however, defines "particulate matter"as used in section 163.

Section 162(a) designates as Class I areas all international parks and then all national parks, national wilderness areas, and national memorial parks exceeding certain sizes and existing on the effective date of the 1977 amendments. Section 162(a) prohibits the States from changing this designation. Other areas that may have been designated as Class I under earlier EPA regulations for the prevention of significant deterioration retain their Class I designations, but may be redesignated under procedures described in section 164. Section 162(b) provides that all other areas ". . . identified pursuant to section 107(d)(1) (D) or (E) which are not established as Class I . . . shall be Class II areas . . . ." States may, however, redesignate such areas as Class I or Class III under section 164.

While Part C does not contain an increment system for the NAAQS pollutants other than sulfur dioxide and particulate matter, it directs EPA to create such a system or an equivalent one for those pollutants. Thus, for carbon monoxide, ozone, nitrogen oxides, and ". . . pollutants for which national ambient air quality standards are promulgated after the date of enactment of this part . . . ," sections 166 (a) and (d) require EPA to promulgate ". . . specific measures at least as effective as the increments established in section 163 . . ."

(2) *The preconstruction review program.* The key element of the preconstruction review program required by Part C is the requirement that a company obtain a PSD permit before constructing virtually [1] any new major stationary source or making any major modification in an attainment or unclassifiable area [Section 165(a); 40 CFR 51.24(i) (1983)]. A major stationary source is any plant that has the potential to emit 100 tons per year (tpy), or 250 tpy, depending on plant type, of any pollutant regulated under the Act, including the NAAQS pollutants. A major modification is, in general, any change to a plant that would result in a significant net increase in emissions of a regulated pollutant [Section 169; 40 CFR 51.24(b) (1983)].

To obtain a permit, an applicant must show that the source or modification would be subject to "best available control technology" for each regulated pollutant it would emit in significant amounts [Section 165(a)(3); 40 CFR 51.24(j) (1983)]. In addition, an applicant must show that:

> . . . emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard . . . [Section 164(a)(3)].

Finally, an applicant must provide, for each regulated pollutant emitted by the project, an analysis of (1) existing air quality in the project area; (2) the effect the project would have on soils, vegetation and visibility; and (3) the effect growth associated with the project would have on air quality. For NAAQS pollutants, the analysis of existing air quality generally must include a year's worth of monitoring data [Section 165

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[1] Under EPA's current regulations, a project that emits some regulated pollutant can escape PSD review only if it locates in an area that is designated nonattainment for all pollutants to which Section 107(d) applies or if it emits only those pollutants for which the area is designated nonattainment (45 FR 52676, 52710–52712, August 7, 1980).

(a)(2), (a)(b), and (e); 40 CFR 51.24(k)–(o) (1983)].[2]

2. New Source Performance Standards

The 1970 amendments also require EPA to establish standards of performance (NSPS) for major new air pollution sources. Under Section 111, EPA must promulgate such a standard for any category of sources that:

> . . . in [the Administrator's] judgment . . . causes or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare . . . [Section 111(b)(1)(A)].

The standards apply to "new sources," which include both new and modified stationary sources [Section 111(e), 111(a)(2)]. The standards must:

> . . . reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. . . [Section 111(a)(1].

B. Regulatory Background

1. Implementation of PM Standards

a. *Section 110 SIP's*

Since 1971 EPA has promulgated, in Part 51, regulations covering the entire range of planning requirements set forth by section 110.

b. *Part D SIP's*

(1) *Section 107(d) designations.* EPA promulgated attainment status designations for particulate matter and four other NAAQS on March 3, 1978, in 40 CFR Part 81 (43 FR 8962).

In the preamble of this action, EPA pointed out that it had designated some rural areas as "attainment" or "unclassifiable" for particulate matter despite data showing that these areas were experiencing violations of the particulate matter NAAQS (43 FR 8963). Under its Fugitive Dust Policy (Tuerk, 1977), EPA defined as "rural" any area with low population that lacked major industrial development or major industrial particulate emissions. In the absence of evidence to the contrary, EPA presumed rural dust to be less harmful than urban dust because it consisted primarily of natural materials not contaminated by industrial products.

EPA also promulgated a rule explaining that it could redesignate areas when air quality data showed that a change was warranted (40 CFR 81.300).[3]

(2) *Guidance for Part D SIP revision: "RACT plus studies" policy.* EPA published most of its guidance for SIP's for nonattainment areas in the form of a "general preamble" interpreting the Part D planning requirements (44 FR 20372, April 4, 1979). EPA generally required States to apply reasonably available control technology (RACT) to all stationary sources unless the State could show that controls on a particular source or group of sources would not bring about attainment any faster. Moreover, the States had to submit all needed control measures in fully enforceable form (43 FR 20375). For particulate matter, however, EPA allowed States to postpone the adoption of control measures for "nontraditional" sources until the States had an opportunity to study what control measures would be efficacious (43 FR 20378). "Nontraditional" sources included area or background sources such as vehicle traffic and construction activities. All emissions from industrial processes at stationary sources were subject to the requirement for enforceable RACT measures.

Later, as EPA reviewed specific plan revisions, it expanded this policy to allow States to postpone the submittal of attainment demonstrations for the particulate matter standards until the States had a chance to quantify the effects of controlling nontraditional sources. However, the demonstrations, when submitted, still had to provide for attainment of the primary standards by the end of 1982. Also, EPA required areas that postponed demonstrations to impose RACT measures on all traditional sources, since they would be unable to show that they could attain with less stringent controls.

(3) *New source review rules.* EPA originally issued guidance on the new source review requirements of Section 173 in the general preamble. However, in 1980 EPA promulgated detailed regulations on the content of approvable State programs (45 FR 31304, May 13, 1980 and 45 FR 52678, August 7, 1980), codified at 40 CFR 51.18(j) (1983). Part D and these regulations provide, among other things, that State plans must require major stationary sources and major modifications to offset their proposed emissions and achieve the "lowest achievable emission rate" (LAER).[4]

(4) *EPA action on Part D plans: construction bans, conditional approvals, and policy for correcting deficient Part D plans.* By July 1, 1979, no nonattainment areas had fully approved SIP's, and very few had SIP provisions in effect that limited construction as required by sections 110(a)(2)(I) and 173(4). Consequently, on July 2, 1979, EPA published a regulation that inserted the section 110(a)(2)(I) and Section 173(4) construction bans into all SIP's that lacked them (44 FR 39471). In the same notice, EPA announced that the section 110(a)(2)(I) ban had become effective in each nonattainment area that lacked an approved or promulgated Part D plan revision. EPA explained that it would remove these bans when it took final action approving or promulgating a plan that met all relevant Part D requirements.

EPA, however, concluded that the section 110(a)(2)(I) construction ban would not apply if a State lacked a Part D revision for a secondary NAAQS, since section 110(b) allows States to obtain extensions for submitting secondary plans and the legislative history of Part D shows Congress' chief concern was the protection of human health (47 FR 44729, October 12, 1982). For many nonattainment areas, States failed to attain the primary standards by the end of 1982. EPA has interpreted the Act, however, as not requiring the Agency to impose the full array of available sanctions immediately in all of these areas. Instead, on November 2, 1983, EPA announced that it would find plans for areas that failed to attain to be "inadequate" under section 110(a)(2)(H) and 110(c)(1)(C) (48 FR 50686). EPA would require these areas to submit

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[2] Part C gives special protection to Federal Class I areas. It places an "affirmative responsibility" on each Federal land manager (FLM) to protect the air quality related values (AQRV's) of its Federal Class I areas. It then forbids the issuance of a PSD permit in any case where the FLM of a Class I area shows to the satisfaction of the permitting authority that the project in question would affect the AQRV's of the area adversely, even if the applicant shows that the project would not cause or contribute to a violation of an increment over the area [Section 165(d)(2) (B), (C)].

On the other hand, Part C provides certain variances from the Class I increments. For instance, even if a project would cause or contribute to an increment violation over a Federal Class I area, the permitting authority may issue a permit if the FLM certifies that the project would not affect an AQRV adversely and the project would not violate certain special increments. For particulate matter, these special increments are equal to the normal Class II increments [Section 165(d)(2)(c)].

[3] One court has ruled that section 107(d) does not authorize EPA to redesignate areas to nonattainment unless a State concurs in the redesignation. See *Bethlehem Steel Corp.* v. *EPA*, 723 F.2d 1309 (7th Cir. 1983). No other court has yet decided this issue.

[4] Under regulations recently upheld by the Supreme Court, *Chevron, Inc.* v. *NRDC*, NO. 82–1005 (U.S. June 25, 1984), EPA defines "major stationary source" for purposes of the nonattainment area NSk program as essentially an entire plant.

revisions; and, if any area failed to comply, EPA would find that the area was not implementing the portion of its SIP that requires revisions in response to a notice under section 110(c)(1)(C). This finding would trigger a construction ban under section 173(4) and funding restrictions under section 176(b).

EPA acknowledged in its November 1983 notice that it was considering a revision to the particulate matter standard (48 FR 50697). Consequently, EPA deferred, and is continuing to defer, the issuance of notices of inadequacy for particulate matter plans.

2. Implementation of PSD Requirements

Prior to the enactment of Part C in 1977, EPA had promulgated Federal PSD regulations as § 52.21 in response to court rulings that the 1970 Clean Air Act required SIP's to include PSD measures. [See *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (D.C. 1972), *aff'd per curiam*, 4 ERC 1815 (D.C. Cir. 1972), *aff'd by an equally divided court, sub. nom. Fri* v. *Sierra Club*, 412 U.S. 541 (1973).] EPA inserted the Federal PSD regulations directly into each SIP pursuant to section 110(c) (39 FR 42510, December 5, 1974). In 1978 EPA substantially amended its Federal PSD regulations to conform them to the detailed PSD requirements contained in the 1977 amendments (43 FR 25380), now codified, as amended, at 40 CFR 52.21 (1983). At the same time EPA inserted the amended Federal PSD regulations into each SIP.

Pursuant to the statutory requirements, the amended PSD regulations established a Federal permitting system for preconstruction review of new major projects and authorized the Administrator to approve construction only of those facilities that would employ best available control technology (BACT) and would not cause or contribute to ambient air quality in excess of any NAAQS or applicable PSD increment [40 CFR 52.21 (j), (k) (1983)]. The regulations explicitly refer to the statutory increments for sulfur dioxide and "particulate matter" [40 CFR 52.21(c) (1983)].

In 1978 EPA also promulgated a second set of PSD regulations outlining the requirements for an approvable State PSD program (43 FR 26380), now codified, as amended, at 40 CFR 51.24 (1983). These regulations mirrored the Federal PSD program for the most part.

Numerous industry and environmental groups challenged the amended PSD regulations, which were subsequently affirmed in part and remanded in part in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The court in *Alabama Power* took the position, which was not essential to any of its ultimate dispositions, that EPA had discretion to define "particulate matter" to exclude particles of a size or composition determined not to present substantial health or welfare concerns, not only for purposes of the NAAQS, but also for purposes of the PSD increments (*Id.* at 370, footnote 134).

In 1980 EPA again amended its PSD regulations, this time to make them conform to the *Alabama Power* decision (45 FR 52676, August 7, 1980). EPA amended both the Federal PSD program at 40 CFR 52.21 and the requirements for approvable State programs at 40 CFR 51.24. EPA again inserted the amended Federal regulations into the SIP for each State that had not previously submitted an approvable PSD program.

3. *Implementation of NSPS*

EPA has promulgated NSPS in 40 CFR Part 60 that limit particulate matter emissions from 22 categories of stationary sources. EPA determined that the sources in these categories emit significant amounts of particulate matter. For NSPS, EPA defined "particulate matter" in § 60.2 of Part 60 as ". . . any finely divided solid or liquid material, other than uncombined water, as measured by reference methods specified under each applicable subpart, or an equivalent method. . . ."

4. *Regulatory Precedents: EPA Actions on NAAQS Since 1977*

EPA has promulgated two major rules concerning NAAQS since Congress revised the Clean Air Act in 1977. In 1978, EPA for the first time promulgated NAAQS for lead (43 FR 46246, October 5, 1978). In a related action addressing implementation issues, EPA directed States to submit plans controlling new and existing sources under section 110, as opposed to Part D (43 FR 46284, October 5, 1978). Thus, there are no formal designations of attainment status under section 107(d) for the lead NAAQS.

Any new major lead source or modification must undergo the PSD review that section 165 requires of all regulated pollutants, unless the source or modification locates in an area that is not designated attainment or unclassifiable for any NAAQS pollutant. [Since EPA has not promulgated any section 107 designations for lead, no source can escape PSD review because it locates in an area designated as nonattainment for lead (see footnote 1)]. Such a source or modification must also undergo the review outlined in § 51.18 (a)–(i) to ensure that the project will meet applicable SIP limits and not cause or contribute to a NAAQS violation.

In 1979 EPA renamed the NAAQS for "photochemical oxidants" so they applied to "ozone" and raised the numerical level of the primary and secondary standards (44 FR 8202, February 8, 1979). In this case EPA instructed the States to follow Part D. EPA concluded that, since the revised standard represented a relaxation, States would have no difficulty meeting the Part D deadlines for submitting plans and attaining standards (43 FR 26962, 26963, June 22, 1983 (proposed rule); 44 FR 8202, 8203).

III. Interpretation of Act Requirements

As indicated above, the Act suggests different methods of implementing revised NAAQS. These pathways fall under two general categories which for ease of discussion are referred to as (1) the section 110 core and (2) Part D. EPA has concluded preliminarily that only section 110 would govern the implementation of the revised primary PM standards that EPA has proposed. EPA has not, however, decided whether Part D or section 110 would govern the implementation of a revised secondary TSP standard. In the following sections of this notice, EPA discusses alternative legal interpretations of the Act that affect the choice between Part D and section 110, summarizes the regulatory consequences of the choice for the primary and secondary particulate matter standards, and solicits comment on its analysis.

A. Legal Interpretation

1. Conflict in the Literal Language of the Act

A literal reading of sections 110 (a)(1) and (a)(2)(A) yields a general rule for implementing revised standards and a partial exception. Section 110(a)(1) requires each State to submit ". . . within nine months after the promulgation of a national . . . ambient air quality standard (or *any revision* thereof) . . ." a SIP that implements the new standard in all regions of the State [5] (emphasis added). Section 110(a)(2)(A), which applies to all plans submitted under paragraph (1), then stipulates that a plan, to be approvable by the Administrator, must provide for attainment and maintenance within certain specified periods except as may be provided in subparagraph (a)(2)(I). Section 110(a)(2)(A)(i), for example, requires each SIP implementing a primary standard to provide for attainment as expeditiously as

[5] Section 110(b) allows EPA to extend this submittal deadline an additional 18 months for revised secondary NAAQS.

practicable but ". . . in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard) . . . ." section 110(a)(2)(I) requires the SIP to contain a construction ban that applies after June 30, 1979. ". . . in any nonattainment area (as defined in section 171(2) . . . unless, . . . such plan meets the requirements of Part D . . . ." section 171(2) defines "nonattainment area" as any area that ". . . is shown . . . to exceed *any* national ambient air quality standard . . ." (emphasis added).

Since the term "any revision" in section 110(a)(1) appears to encompass any revised standard, sections 110(a) (1) and (2) appear to set a general rule that States must submit SIP revisions for all areas to account for NAAQS revisions generally within nine months after promulgation of the revised NAAQS and that the SIP revisions must provide for attainment within the periods specified in section 110(a)(2)(A)—for example, three years from plan approval for a primary standard.

However, since the reference to "any national ambient air quality standard" in section 171(2) also appears to encompass any revised standard, section 172(2) together with section 110(a)(2)(I) seem to state an exception to section 110(a)(2)(A) for areas that are "nonattainment" for any standard, new or revised—namely, that SIP revisions for all such "nonattainment areas" must include a construction ban that can be avoided by satisfying Part D instead of providing for attainment within the periods of section 110(a)(2)(A).

Thus, the Act appears to contain two different and conflicting blueprints, one in section 110 and the other in Part D, for SIP's for areas that are "nonattainment" under a revised primary or secondary standard.

2. Two Ways of Reconciling the Conflict

EPA sees primarily two ways of reconciling the conflict between Section 110 and Part D as to "nonattainment areas." First, EPA could read the relevant Part D provisions as governing no revised standards at all. Section 171(2) defines "nonattainment areas" as areas exceeding "any national ambient air quality standard", without reference to revised standards. In contrast, section 110(a)(1) expressly applies its nine-month SIP submittal deadline, and section 110(a)(2)(A) its three-year attainment deadline for primary standards, to "revisions." Congress clearly could have included a similar reference to revised standards in section 171(2) if it had intended Part D to apply to revised standards. This indicates that Congress may have intended the general section 110 scheme to govern the implementation of all revised standards. This reading, however, would produce the result that a relaxation of a pre-1977 NAAQS would automatically shield areas exceeding the revised standard from the strict Part D requirements, even though the revision made it easier for them to attain. It is unclear whether Congress would have intended this result. Hence, EPA could also read the section 110(a)(2)(A) exception, and thus Part D, as applying only to the nonattainment problems that Congress faced when it enacted Part D in 1977 and to only those revised NAAQS that result in no significant increase in those problems.

It seems clear in any event that Congress did not intend Part D to govern implementation of any revised standard that requires a significantly greater degree of control than its predecessor. In particular, the fixed attainment deadline of December 31, 1982, could produce unreasonable results if applied to such a revised NAAQS. Since that date has already passed, an area arguably would become subject to Part D sanctions immediately after a finding that the area exceeds the revised, more stringent NAAQS. Thus, the area could be penalized for having failed to attain by December 31, 1982, through a degree of control that was never required until sometime after that date.

EPA might attempt to ease this burden by interpreting the 1982 attainment deadline as a dead letter so that the residual Part D requirement for attainment "as expeditiously as practicable" would apply to areas shown to exceed a revised standard. However, this approach would drain section 110(a)(2)(A)'s 3-year deadline as it relates to revised standards of most of its meaning.[6] It would also mean that an area exceeding a revised standard that imposes significant new planning burdens would not be subject to section 110(a)(2)(A)'s 3-year attainment deadline, while areas exceeding an entirely new standard would be. This would treat these two areas differently, and would treat revised standards more flexibly, even though they would face essentially the same type of planning requirements, which would in all probability be more challenging for new than for revised standards. It is unlikely that Congress would have intended these inconsistent results.

The legislative history of section 110 and Part D supports the view that revised standards requiring a greater degree of control should not be implemented under Part D. Congress in 1970 created a SIP development scheme that until 1977 clearly applied to all revised NAAQS. When Congress added Part D in 1977, it did not repeal the requirements either for SIP submittal in section 110(a)(1) or for attainment and maintenance in section 110(a)(2)(A). Moreover, the conflicts between section 110 and Part D (e.g., their different attainment deadlines) show that a single revised standard could not have been intended to be subject to both schemes at one time. Congress, therefore, must have intended section 110 to remain effective for areas that are not attaining at least some revised NAAQS.

Many areas failed to plan adequately to attain the standards EPA promulgated in the early 1970's. The legislative materials behind Part D strongly indicate that Congress' main purpose in enacting Part D was to address the nonattainment problems that persisted because of those planning failures. Congress chose to solve those problems by giving States one last planning opportunity before imposing the sanctions authorized in Part D. In contrast, the history reveals no evidence that Congress intended these tougher measures to apply also where EPA revises a NAAQS so as to impose planning burdens significantly beyond what the Act imposed under the pre-1977 standards. Stated simply, areas that exceed such a revised, more stringent standard are unlike those for which Part D was plainly intended—namely, areas that had already failed to plan adequately in the first SIP round.

Moreover, inferring congressional intent that these measures apply to such revisions would conflict with the pattern of legislation in this area. Congress reserved substantial power to the States when it enacted the 1970 Clean Air Act. The tough Part D measures, by providing for a significant Federal intrusion on what had previously been the States' domain, represented an exception to the Act's general scheme of cooperative State and Federal regulation. Interpreting ambiguity in the Act's language so as to authorize the most intrusive implementation of Part D would be inconsistent with the basic thrust of the Act.

In sum, EPA sees two ways of reconciling the conflict between Section 110 and Part D. On the one hand, EPA could apply section 110 to any revised

[6] EPA might attempt to avoid this result by continuing to apply the 3-year deadline to areas that are out of attainment with entirely *new* rather than for revised standards. This, however, appears inconsistent with the express applicability of section 110(a)(2)(A)'s 3-year deadline to any primary standard plan and any revision thereof to take account of a revised primary standard.

NAAQS on the theory that Part D refers only to the NAAQS in existence in 1977. On the other hand, it could apply section 110 only to revised NAAQS that require significantly greater control and Part D to revised NAAQS that allow SIP relaxation, on the theory that the latter NAAQS present the same sort of planning problems that Congress sought to solve by means of Part D. In any event, EPA would apply section 110 to revised NAAQS that require significantly greater control.[7]

3. Other Approaches

EPA considered three additional methods suggested by the statute for implementing revised standards. The basic premise for each of these alternatives is that the revised NAAQS would merely refine or "fine-tune" the existing particulate matter standards and hence should be implemented essentially as if they were the standards Congress faced when it enacted Part D, or, stated another way, as if they address the same air quality problems Congress sought to remedy with Part D.

Under the first alternative, EPA would apply the Part D deadlines for plan submittal and attainment figuratively. For example, Part D SIP's for implementing the revised primary standards would have to provide for attainment as expeditiously as practicable but within a period equal to the 5½-year period between the date Congress enacted Part D and the December 31, 1982, attainment date in section 172(a).

Under the second alternative, EPA would use section 110(c)(1)(C), 110(a)(2)(H)(ii) and Part D to implement the revised standards. Section 110(a)(2)(H)(ii) requires each SIP to provide that a State will revise its SIP whenever EPA determines that the plan is substantially inadequate to achieve "the standard which it implements." Using the SIP provisions that section 110(a)(2)(H)(ii) has spawned and section 110(c)(1)(C), EPA would issue notices of deficiency to areas found to be in nonattainment of revised standards, give States reasonable deadlines for revising their current TSP SIP's to implement the revised standards, require those SIP's to provide for attainment as expeditiously as practicable, but not by a specific deadline, and impose the section 173(4) construction ban on areas that fail to revise their SIP's accordingly. [See EPA's post-1982 nonattainment policy for more information (48 FR 50686, November 2, 1983).]

A review of section 110, however, suggests that Congress would not have intended either of these alternatives to govern implementation of any revised standard which represents a significant tightening. Under both approaches, EPA could set SIP submittal deadlines without regard to section 110(a)(1)'s 9-month deadline, even though that date plainly applies to at least those NAAQS that result in significantly greater controls. This would read that provision out of the Act for revised standards altogether. If Congress had intended that result, it would have repealed section 110(a)(1)'s reference to "revisions." Because it did not, EPA has preliminarily rejected these two potentially useful approaches as being plainly inconsistent with the statutory language.[8]

Moreover, it appears that Congress would not have intended EPA to implement revised standards under section 110(a)(2)(H)(ii). Its literal language contemplates the case where the relevant planning entities created a SIP that they judged to be adequate to attain and maintain a particular NAAQS, but that over time proved to be inadequate. Section 110(a)(2)(H)(ii) deals with the need for repair of an old plan in relation to a continuing goal, not with the need for creation of a new plan in relation to a new goal.

Finally, EPA considered a third alternative that would also utilize the section 110(a)(2)(I), Part D exception. Under this option, EPA would treat sections 110(a)(2)(H)(i), 110(a)(2)(I), and 110(c) as governing the implementation of all revisions of NAAQS that were in existence when Congress enacted Part D, including the revisions to the primary particulate matter standards.

Section 110(a)(2)(H)(i) requires each SIP to contain provisions that in turn require the State to revise the SIP ". . . as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard. . . ." Section 110(c)(i)(C) then appears to set the schedule for these revisions, allowing the State ". . . 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H)." Under this alternative, EPA would interpret the term "any national ambient air quality standard" in section 171(2) and the term "revision" in section 110(a)(2)(H)(i) to include revisions of those NAAQS that were in existence in 1977. This in turn would permit EPA to give notice of those revisions, designate areas as nonattainment, establish an appropriate SIP submittal period under section 110(c) [just as the Agency would for substantially inadequate plans under section 110(a)(2)(H)(ii)], and apply Part D as interpreted in EPA's post-1982 nonattainment policy (48 FR 50686, November 2, 1983). Under the policy, EPA would require the timely submittal of SIP's providing for attainment as expeditiously as practicable, under penalty of a construction ban.

EPA has tentatively rejected this third option because the legislative history shows that Congress did not intend section 110(a)(2)(H)(i) to be implemented selectively for revisions to NAAQS in existence in 1977. Congress did not add section 110(a)(2)(H)(i) when it enacted Part D; rather, it had already included that provision in the Clean Air Act enacted in 1970. Hence, it obviously intended section 110(a)(2)(H)(i)'s SIP revision requirement to work in conjunction with section 110(a)(1) as the general scheme for implementing all NAAQS revisions. Nothing in the language or history of Part D suggests that in 1977 Congress injected into section 110(a)(2)(H)(i) a new meaning under which it would operate independently of section 110(a)(1) to govern SIP submittals under a particular subset of NAAQS revisions.[9]

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[7] A fundamental assumption of the proceeding analysis is that, for implementation purposes, the proposed NAAQS would be "revisions" to the current particulate matter standards. A different approach would be to treat them not as "revisions" but instead as entirely new standards. Even in that case, however, EPA would still need to choose between the section 110 core and the Part D implementation pathways, because each standard would still fall within the plain meaning of both the phrases "a national . . . ambient air quality standard" in section 110(a)(1) and the phrase "any national ambient air quality standard" in the Part D definition of "nonattainment area" [Section 171(2)]. Plainly, though, EPA would resolve this conflict by implementing the new primary and secondary NAAQS under section 110, because EPA has never interpreted Part D to govern entirely new standards promulgated after Congress enacted Part D. EPA solicits comment on whether, in light of the resulting application of section 110, the Agency should view the proposed standards as new standards rather than "revisions" for implementation purposes.

[8] It seems doubtful that the 9-month deadline would still have force under these alternatives for revisions that do not require significantly greater controls. The 9-month deadline is plainly intended to govern new planning efforts. A standard revision that requires no greater control, however, presents no new planning effort.

[9] The decision in *Bethlehem Steel* v. *EPA*, 723 F.2d 1303 (7th Cir. 1983), bears on EPA'S authority to use Part D to implement revised standards. In that case, the Court held that EPA may not initiate redesignations of areas pursuant to section 107 and that the provisions of Part D, therefore, cannot be applied to additional areas unless the State concurs in the nonattainment designation. EPA is currently

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B. Comparison of Proposed and Existing PM NAAQS

Since, under the second approach discussed in Section III.A.2. of this notice, the relative stringencies of the current and revised particulate matter standards would determine whether Section 110 or Part D applies, the Agency compared the different sets of standards (Powell, 1984).

1. Comparison for the Proposed Primary NAAQS

EPA has performed a rough assessment of the impact of revised primary NAAQS by examining the nonattainment probabilities for ambient monitoring sites for which TSP data indicate attainment of current TSP NAAQS. The number of these sites with probabilities above 50 percent is an estimate of the number of areas which would need additional control measures above those required to attain the current primary NAAQS.

EPA has performed this analysis for three different levels of the primary standards from the ranges of values proposed for the PM_{10} NAAQS. The analysis performed for the lowest end of the ranges proposed for the PM_{10} primary standards (that is 50 $\mu g/m^3$ for the annual and 150 $\mu g/m^3$ for the 24-hour), indicate approximately 150 areas may need stricter emission controls than those necessary for current NAAQS. When performed for higher NAAQS levels, but still within the lower portion of the ranges proposed (55 $\mu g/m^3$, annual and 180 $\mu g/m^3$, 24-hour),[10] the analysis indicates approximately 48 sites which show the potential need for additional controls. At the upper end of the ranges proposed (65 $\mu g/m^3$, annual and 250 $\mu g/m^3$, 24-hour), the estimated number of sites for which additional controls could be needed falls to 12.

EPA concludes on the basis of this analysis that if PM_{10} NAAQS are adopted from the lower portions of the proposed ranges, there is a potential for States to be required to implement additional control requirements for a significant number of areas above those required under existing primary standards.

It should be emphasized that these results are preliminary and only approximate since (1) they are based not on actual PM_{10} monitoring data, but on probability estimates of PM_{10} violations derived from TSP data; and (2) they exclude areas that are currently nonattainment for TSP and for which still more SIP measures may be required to avoid violations of the revised NAAQS.

The data that appear in Table V.1 of the addendum to the *Regulatory Impact Analysis on the National Ambient Air Quality Standards for Particulate Matter* (RIA) (EPA, 1983) indicate that, even at the lowest values in the proposed ranges for the PM_{10} NAAQS, there would be overall fewer nonattaining sites for PM_{10} than for the current primary TSP NAAQS. Additional analysis indicates, however, that these sites are not the same in all cases. That is, a site may be in attainment of current primary NAAQS but projected to be in nonattainment of primary PM_{10} NAAQS selected from the lower ends of the proposed ranges; or, a current nonattainment site may be projected to be in attainment of PM_{10} NAAQS. Whereas it is possible that revised primary NAAQS within the proposed ranges could represent overall less stringent requirements for emission controls nationwide, EPA's analysis indicates that at a significant number of individual sites, control requirements more stringent than those now required may be necessary.

The proposed change in the indicator for the primary NAAQS from TSP to PM_{10} could create regulatory burdens even where it did not shift an area from attainment to nonattainment. This could result in the need for control strategies to refocus on sources emitting small particles. States may also need to develop PM_{10} emission inventories and perform modeling based upon PM_{10}. Thus, the change in indicators alone could cause significant impacts which would be a factor to consider in interpreting the Act.

2. Comparison for the Proposed Secondary NAAQS

The comparison analysis performed for the proposed secondary standard consisted of examining ambient TSP data with respect to existing and proposed TSP NAAQS. The intent of the analysis was to determine the number of sites for which data indicated current NAAQS are being attained, but where a proposed NAAQS would not be attained. The results would be an indication of potential new control requirements above those necessary for existing TSP NAAQS. For a revised secondary standard at the lower end of the proposed range (70 $\mu g/m^3$), it was evident that there would be well over 100 sites (the actual number was not calculated) that would become nonattainment due to a revised secondary NAAQS. However, for a revised standard from the upper portion of the proposed range,[11] there are no sites now in attainment of all existing TSP NAAQS which would become nonattainment under a revised secondary TSP NAAQS, except for four sites if the revised NAAQS were set at 80 $\mu g/m^3$.[12] EPA thus concludes preliminarily that more stringent controls will not be required at a significant number of sites for a revised secondary NAAQS from the upper portion of the proposed range.

C. The Act's Applicability to the Proposed NAAQS

As stated earlier, EPA has concluded preliminarily that section 110 governs the implementation of either (1) all revised standards or (2) just those that would impose significant new control requirements beyond what the pre-1977 standards required. For the reasons just described, EPA believes that the expected PM_{10} standards will likely impose new control requirements in a significant number of areas. Hence, under either view of the Act, section 110 will govern nonattainment problems arising from the revised primary standards.

The policies and rules that EPA proposes in the remainder of this notice would implement the Agency's basic

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contesting the correctness of the *Bethlehem Steel* decision in the First Circuit. If other courts choose to follow *Bethlehem Steel's* reasoning, States could deprive EPA of the power to compel SIP revisions for PM_{10} that comply with Part D, or to impose a construction ban against areas that fail to submit SIPs that meet part D's requirements, merely by declining to designate areas as nonattainment.

The Agency would have few if any remedies for this. It could require a SIP revision pursuant to section 110(a)(2)(H) without requiring designations; but this would put EPA in the same position as if it had opted against the use of Part D from the start because it is the nonattainment area designation that triggers Part D's applicability. Alternatively, EPA could use its section 301 authority to designate nonattainment areas without reference to section 107(d) and to apply Part D-like requirements in those areas; but this might stretch the Agency's section 301 authority beyond its limits. EPA therefore invites comment on the implications of *Bethlehem Steel* for the possible use of Part D.

[10] As previously discussed, for purposes of deriving a SIP development policy, EPA is assuming that the Administrator will promulgate PM_{10} primary NAAQS from the lower portions of the proposed ranges.

[11] For purposes of deriving a SIP development policy, EPA is assuming that the Administrator will promulgate a secondary TSP NAAQS from the upper portion of the proposed range.

[12] This analysis assumes that if any current TSP NAAQS, either primary or secondary, is not being attained, the measures necessary to attain the existing NAAQS will bring about attainment of the revised secondary NAAQS. This assumption is based on EPA's finding that a secondary standard from the upper portion of the proposed range would be roughly comparable in stringency to the current annual primary standard.

conclusion that Section 110, and not Part D, applies to implementation of the PM_{10} primary standards. Throughout this notice, however, EPA has attempted to account for the possibility that the Agency could conclude after considering public comment that Part D is appropriate for implementing those primary standards.

By contrast, the expected secondary TSP standard might not impose more stringent control requirements in any area. If this is the case, section 110 would govern the implementation of that standard under only the first of the two interpretations described above; Part D would govern under the second interpretation. EPA has decided that, rather than select one interpretation for purposes of this proposal, it will summarize the policy and the regulatory consequences of applying Part D and section 110, respectively, to a revised TSP secondary standard, and solicit comment on these two alternatives.

D. Solicitation of Comment

EPA recognizes that one important consequence of implementing the PM_{10} primary standards under section 110 is that the Agency would be unable to use such implementation tools as the section 173(4) construction ban, which would be available under the alternative approaches described earlier. Also, one consequence of applying Part D to the revised TSP secondary standard is that areas that are exceeding that standard would be required to meet Part D's strict RACT, LAER, and statewide compliance requirements even when they have already attained the health-based primary PM_{10} standard. Furthermore, for the reasons explained at length in the discussion of PSD increments (see Section V.1.d. of this notice), the choice of section 110 to implement both the primary and secondary NAAQS could relieve new and modified particulate matter sources of the requirement to demonstrate protection of the PSD increments for Class II and III areas.

EPA solicits comment on its legal analysis and conclusions, and whether it has properly concluded that these consequences would result from selection of different alternative schemes for implementing the revised standards and whether these consequences should affect the Agency's choice of a legal pathway.

IV. State Implementation Plan Transition Program

A. General

This portion of the preamble sets forth EPA's proposed policy for actions that States must take to meet the planning requirements of the Act, focusing on the preparation and submission of appropriate SIP revisions for existing sources. The next portion of this preamble focuses on the SIP program for the preconstruction review of new sources, including the PSD permit program.

B. Primary NAAQS

1. Transition Policy

Because the existing control strategies serve to reduce ambient levels of both TSP and PM_{10}, States must not dismantle existing particulate matter control programs until they can demonstrate that the existing SIP's can be altered without jeopardizing timely attainment or maintenance of the primary PM_{10} NAAQS (or the revised secondary NAAQS). All requirements of existing SIP's will remain in effect until SIP revisions modifying existing emission limitations are approved by the Agency. [See Section 110(i), 42 U.S.C. section 7410(i).] The existing limitations will remain fully enforceable for purposes of Federal and State enforcement and citizen suits. The Agency will work closely with State and local agencies to assure a vigorous enforcement program throughout the transition period.

This policy is not only in conformance with the Clean Air Act but also is appropriate for environmental and equitable reasons. Compliance dates for particulate sources have long since passed. Further delays in compliance based merely on a possibility of a future change in ambient standards would adversely affect air quality and could be unfair to sources that have complied. Moreover, it is unlikely that many sources could demonstrate with certainty that the current level of required control goes well beyond the level that would be required at the most stringent combination of ambient levels contained in the proposal.

2. Ambient Data Base

In establishing the PM_{10} SIP development policy, a major concern is the lack of ambient PM_{10} data with which to ascertain the extent of NAAQS violations or to develop an attainment and maintenance strategy. This section discusses the scarcity of ambient PM_{10} data and the background of procedures for using TSP data where PM_{10} data are not available. The program for SIP development discussed in the next section has been especially tailored to account for the lack of ambient PM_{10} data.

Ambient samplers with inlets designed to collect PM_{10} have recently become available but are not yet in widespread use. EPA has been operating thirty-nine PM_{10} samplers since mid-1983. These 39 samplers, together with any samplers that State or local air pollution control agencies or industry may have in operation, will not provide sufficient ambient PM_{10} data to allow States to comprehensively evaluate the PM_{10} attainment status for all areas. To make such a determination, States will have to use all available ambient data. This includes TSP data as well as data and statistical relationships derived from EPA's "inhalable particulate" (IP) network.

In 1979 EPA began operating ambient samplers in the IP network which consisted of ambient air monitoring stations containing high volume samplers (hi-vols) collocated with dichotomous samplers having inlets designed to measure particles nominally 15 micrometers and less (PM_{15}) and fine particulates (less than 2.5 micrometers). The stations in the network were located in urban and suburban areas throughout the U.S. to reflect maximum concentration and population exposure due to urban and industrial sources, and also in nonurban areas to provide information on background levels. The 39 ambient samplers measuring PM_{10} noted above were added to existing stations in this network.

Analysis of data from the IP network, including nine PM_{10} samplers operated since early 1982, reveals that the PM_{10} portion of TSP varies widely. It would, therefore, not be appropriate to establish a single nationwide conversion factor to simply convert ambient TSP values to ambient PM_{10} values. EPA has used the IP network data, however, to develop a statistical approach for estimating from ambient TSP data the probability that PM_{10} NAAQS are being violated in the area represented by the ambient sampler. This probability has been termed the "nonattainment probability."

Procedures for using statistical probabilities in the absence of ambient PM_{10} data are explained in a draft document, *PM_{10} SIP Preparation Guideline*. A companion document, *Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or Inhalable Particulate Data* (referred to herein as the "probability guideline") explains in detail the methods for estimating PM_{10} levels using ambient PM_{15} data, or for estimating the probability of PM_{10} nonattainment using TSP data. EPA solicits comments on both documents. The probability guideline also contains guidance on

determining the spatial extent of PM_{10} nonattainment problems, i.e., the "area" represented by an ambient PM_{10} sampler for purposes of control strategy development and implementation. EPA solicits comments on using the criteria to define PM_{10} areas, specifically, the appropriateness of the criteria, any other criteria that could be used, and how to assure nationwide consistency.

3. SIP Development Policy

a. *General Background*

For the reasons described earlier, EPA is proposing to require implementation of the primary PM_{10} standards under section 110 of the Act. Section 110(a)(1) provides that each State shall adopt and submit, within 9 months after revision of a NAAQS, a plan (SIP) providing for attainment and maintenance of the revised NAAQS everywhere in the State as expeditiously as practicable but no later than 3 years from the date EPA approves the SIP. Section 110(a)(2) requires that a SIP contain emission limits, schedules and timetables and such other measures as may be necessary to assure expeditious attainment and maintenance. EPA regulations in 40 CFR 51.13, adopted under section 110(a)(2) of the Act, require that States demonstrate through modeling or an adequate alternative that this control strategy will indeed assure timely attainment and maintenance.

EPA has considered different ways of implementing this control strategy demonstration requirement under the 9-month SIP submittal schedule in section 110(a)(1). There is a great deal of merit in awaiting ambient PM_{10} data to specifically define the extent and degree of PM_{10} nonattainment situations before developing control strategies. However, due to applicable Act requirements, and the environmental risk in areas with severe air quality problems, the Administrator cannot permit delay in the development of PM_{10} control programs simply because ambient PM_{10} data are unavailable.

Another approach would be simply to call upon States to develop and submit a full PM_{10} attainment demonstration and control strategy for every area of the country within the 9-month period. EPA believes, however, that such a requirement would be unreasonable for certain areas. An analysis of the latest ambient TSP data in conjunction with the methodology in the probability guidelines indicates that there could be from around 60 to 200 counties in which the PM_{10} NAAQS will not be attained. While these numbers are the best indication at this time of the potential nonattainment situation for PM_{10}, they are only estimates and, furthermore, will probably change as new ambient TSP and PM_{10} data become available. The estimates are, however, useful as an indication of the degree of PM_{10} SIP that may eventually be necessary. The key point is that many of the 3,141 counties in the nation will need additional particulate matter SIP provisions due to the revised NAAQS. Thus, for many areas, the existing TSP SIP's already provide for timely attainment and/or maintenance of the primary PM_{10} NAAQS, even if EPA were to set the standards at the low ends of the ranges it has proposed. To call upon areas that almost certainly have adequate SIP's to resubmit those SIP's along with full attainment demonstrations would be unnecessary and therefore wasteful of limited State resources.[13]

Furthermore, there will be areas that have a significant likelihood of attaining and maintaining PM_{10} NAAQS, with only minor SIP changes. States may be able to gather ambient PM_{10} data in these areas, adopt any additional measures that a review of both the ambient data and the current SIP's may show to be necessary, implement those measures, and still meet the 3-year attainment deadline in section 110(a)(2)(A). Of course, modeling could reveal the need for major SIP adjustments in some of these areas; therefore, immediate modeling and adoption of necessary control measures could bring about attainment more expeditiously than would result if States delayed these actions until after receipt of ambient PM_{10} data. However, because these areas may well need only minor SIP adjustments and because PM_{10} monitoring may show this to be true well before the 3-year attainment deadline, EPA believes that a demand for immediate submissions of attainment demonstrations and control strategies for these areas would extract an impracticable price for this more expeditious attainment.

b. *SIP Policy Description*

For the reasons given immediately above, EPA is proposing the following approach. At the time EPA promulgates the final PM_{10} primary NAAQS, EPA will divide all areas of the country into three categories: (1) Areas with a strong likelihood of violating the PM_{10} NAAQS and therefore of needing substantial SIP adjustment (Group I), (2) areas where existing SIP's probably need only minor adjustment (Group II), and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and therefore of needing no SIP adjustments at all (Group III). For purposes of this program, "areas" are conceptually the same as "areas" for which classifications are designated in Part 81, although there will be no area designations in Part 81 for PM_{10}. Furthermore, the spatial extent of a PM_{10} attainment or nonattainment situation may differ from TSP area boundaries. As discussed previously, guidance is provided in the probability guideline for determining area boundaries for PM_{10}.

The requirements for SIP's which follow pertain only to SIP's for attainment and maintenance of PM_{10} standards. Requirements for SIP's for preconstruction review of new or modified sources are discussed in the next major section of this notice.

(1) *Requirements for Group I Areas.* States will be required to submit SIP's for all areas in Group I within 9 months of promulgation of the primary PM_{10} NAAQS. These SIP's will have to contain full PM_{10} control strategies including a demonstration of attainment as expeditiously as practicable, but no later than 3 years from approval of the SIP, and provisions for maintenance.

As provided in section 110(e) of the Act, the Governor may apply, at the time the SIP is submitted, for up to 2 additional years for attainment. The Administrator may grant an extension if he determines that:

> . . . (A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and
>
> (B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

and that the plan provides for:

> . . . (A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (A) [above] within the 3-year period, and
>
> (B) such interim measures of control of the sources (or classes) described in paragraph

[13] Developing a sound attainment demonstration is generally resource intensive. It requires an in-depth study of the emission characteristics of specific sources in the demonstration area and a thorough evaluation of the anticipated effects of various emission levels from those sources. Although States have gained substantial expertise developing attainment demonstrations for other standards, including the current TSP standards, such factors as the new PM_{10} data requirements and the change from a deterministic to a statistical form of NAAQS will require the States to conduct new types of analyses. While EPA will provide guidance in this area (e.g., the PM_{10} SIP guideline), the States will bear the primary responsibility for producing these new demonstrations.

(A) [above] as the Administrator determines to be reasonable under the circumstances.

(2) *Requirements for Group II Areas.* States will also be required to submit SIP's for all areas in Group II within 9 months of NAAQS promulgation, but those SIP's need *not* contain full control strategies and demonstrations of attainment and maintenance. Instead, States may submit "committal" SIP's that supplement the existing SIP's with enforceable commitments to:

(a) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.[14]

(b) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(c) When the appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see Section 2.0 of the PM_{10} SIP Development Guideline) or when an AAM above the level of the manual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(d) Within 30 days of the notification referred to in (c) above, or by the date 18 months after approval of the committal SIP, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(e) Within 6 months of the notification referred to in (d) above adopt and submit (if necessary) to EPA as PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 year from approval of this committal SIP.

The committal SIP must include an enforceable schedule with appropriate milestones or checkpoints. EPA will review and act on both the committal SIP's and on control strategies submitted under step (e). For Group II areas States may, if they wish, submit full PM_{10} attainment demonstrations required for Group I areas in lieu of the committal SIP.

(3) *Requirements of Group III Areas.* For Group III, EPA will administratively determine that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. States will, therefore, not be required to make any SIP submission for Group III areas at this time other than as required under the preconstruction review and air quality monitoring programs.

(4) *Area Grouping Procedures.* For those areas where there are sufficient ambient PM_{10} data to define PM_{10} NAAQS attainment or nonattainment, the need for SIP revision can be determined relatively easily. For these areas, EPA will determine the appropriate group based upon PM_{10} data. For other areas with insufficient PM_{10} data, EPA will use a 3-step process to categorize areas. First, where ambient TSP data are available, EPA Headquarters staff, in cooperation with the EPA Regional Offices, will use those data and the probability guideline to classify areas preliminarily as Group I, II, or III.[15] Even though there is some uncertainty in inferring PM_{10} levels from TSP data, the ambient TSP data now available and the probability guideline can be used for this purpose.

The Agency will presume that (1) areas with a probability of at least 95 percent fit into Group I, (2) areas with a probability of between 20 and 95 percent fit into Group II, and (3) areas with a probability of less than 20 percent fit into Group III. Second, the Agency's Regional Offices, after consulting with the appropriate State and local agencies, will evaluate the existing TSP SIP's and other relevant information for each area in their jurisdiction (1) to see whether information other than the probability of nonattainment justifies changing the group for an area, and (2) to determine the appropriate group for areas that the Agency could not classify under the first step because ambient TSP data were unavailable. Third, when a Regional Office suggests such a change, a review group consisting of representatives of EPA's Headquarters and all Regional Offices will be the final arbiter.[16]

This process will assure that the decisions regarding grouping are nationally consistent.

Examples of information that may warrant moving an area from Group III to Group II, or from Group II to Group I, are:

- facts showing that the current air quality is attributable to an economic slowdown or some other temporary phenomenon rather than the stringency of the area's TSP SIP requirements,
- facts suggesting that there are few enforceable measures in existing SIP's yet to be implemented that would reduce emissions that significantly affect air quality,
- site-specific ambient PM_{10} data showing that the area will have a greater probability of violating the PM_{10} NAAQS than initially presumed, and
- evidence that the area has an unusually high proportion of sources in categories whose emissions typically have a high ratio of PM_{10} to total particulate matter.

Examples of information that may warrant moving an area from Group I to Group II, or from Group II to Group III, are:

- facts suggesting that sources are not yet in compliance with SIP measures that, if enforced, would reduce emissions that significantly affect the area's air quality;
- site-specific ambient PM_{10} data showing that the area will have a lower probability of violating the PM_{10} NAAQS than initially presumed; and
- evidence that the area has an unusually high proportion of sources in categories whose emissions typically have a low ratio of PM_{10} to total particulate matter.

Examples of information that may affect EPA's classification of an area not preliminarily classified using a nonattainment probability are:

- the amount and density of industrial activity that would likely result in significant ambient PM_{10} concentrations in the area;
- the number and density of roadways in the area that are near activities likely to generate significant particulate emissions and that are subject to moderate and heavy vehicle traffic;
- the degree to which the existing TSP SIP will likely limit PM_{10} emissions from these traditional and nontraditional sources.

(5) *Failure to Submit SIP.* Where a State fails to submit a PM_{10} committal SIP for a Group II area within 9 months of EPA's promulgation of primary PM_{10} NAAQS, EPA will treat that area instead as a Group I area. Section 110(c)

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[14] Section 58.13(c) of Part 58, which EPA proposed on March 20, 1984, would require States, within 1 year after PM_{10} NAAQS are promulgated, to begin sampling for PM_{10} everyday (at at least one site) in areas with a PM_{10} nonattainment probability of 95 percent or greater, and every other day (at at least one site) in areas with a nonattainment probability between 20 and 95 percent.

[15] EPA has computerized the procedures described in the probability guideline and will make the computer software available to States to calculate nonattainment probabilities. EPA will also make the results of its own calculations available to the States.

[16] Preliminarily, the number of areas in Group I, based on a 95-percent nonattainment probability cutoff, will be from around 40 to 50 percent of the number of projected nonattaining area, depending on the levels set for the PM_{10} NAAQS. Dropping the probability cutoff in 5 percent increments would add roughly an additional 5 percent of the number of projected nonattaining areas to Group I. For the 95-percent cutoff, the number of areas initially in Group I could vary from approximately 25 to 100 for the upper and lower ends of the proposed NAAQS ranges, respectively. It must be emphasized, however, that the number of areas ultimately assigned to each of the three groupings will change as more recent ambient data become available and when the Regional Offices conduct the remainder of the group categorization process.

of the Act which provides for EPA promulgation would then apply. Section 110(c) would also apply where a State fails to submit a SIP for an area that EPA initially categorized in Group I.[17]

(6) *Ambient Data Collection.* The Agency encourages States to begin measuring ambient PM_{10} in all areas as soon as possible regardless of how they expect EPA to group particular areas under the system just described. EPA will not designate ambient reference or equivalent method samplers until sometime after promulgation of the revised NAAQS and of the accompanying Part 50 and Part 53 reference and equivalent method requirements. Data from nondesignated samplers, however, may be used prior to such designation (see Section 3.3.2 of the PM_{10} SIP guideline). Measured data that may be used for directly determining PM_{10} NAAQS attainment or nonattainment (instead of a probability based on ambient TSP data) are those data collected with samplers fitted with inlets designed to collect PM_{15} or PM_{10}. The samplers include dichotomous samplers, high-vols utilizing quartz fiber filters, and the relatively new medium-flow samplers now being marketed. The States must also have utilized proper quality assurance procedures when collecting the data. States should consult with the appropriate Regional Office to determine if certain data can be used for PM_{10} attainment/nonattainment determinations.

(7) *Technical Guidance.* The PM_{10} SIP guideline contains technical information on the PM_{10} NAAQS and on preparing control strategies for them. Topics discussed include monitoring PM_{10} air quality, determining from ambient data when nonattainment problems are apparent, using PM_{10} emission factors, dispersion and receptor modeling, interpreting model results, writing emission regulations, and measuring PM_{10} emissions. It is meant to cover all aspects of SIP development where additional guidance is needed due to the new focus on a PM_{10} size range. References to other sources of information are included where more detail may be required. The guideline is now in draft form and the public is invited to examine it and submit comments on it.

[17] In the event EPA concludes that Part D applies to the primary PM_{10} standards, EPA's PM_{10} development policy would be quite different from that just described. As discussed earlier, those alternatives generally would provide for more flexible SIP submittal and attainment deadlines and allow EPA to use such measures as the Section 173(4) construction ban to address a State's failure to submit an adequate PM_{10} SIP revision.

Following the final promulgation action on these proposals, EPA's Office of Air Quality Planning and Standards will conduct workshops in selected cities to provide further guidance on developing SIP revisions to account for PM_{10} NAAQS. The workshops will also address the secondary NAAQS and the preconstruction review program. These workshops will be open to State and local air pollution control agency personnel and other interested parties. A schedule of the workshops will be provided in the final promulgation notice.

C. Secondary NAAQS

1. Transition Policy

There are ample ambient TSP data available for determining the extent and degree of the TSP nonattainment problem for the revised secondary NAAQS. States also have a great deal of experience in modeling TSP and applying controls to resolve ambient TSP problems. Since a revised NAAQS at the upper end of the proposed range for the secondary NAAQS would be roughly equivalent to the current annual primary NAAQS, most States may already have SIP's sufficient for the revised secondary NAAQS.

Until SIP's are revised to account for the revised secondary NAAQS, which will in some cases entail only verifying the adequacy of existing provisions, the same transition policy applies as described for the revised primary NAAQS. That is, a State's existing SIP regulations are still in effect until the State revises them and EPA approves them.

2. SIP Development Policy

As stated earlier, EPA has decided not to select for the purpose of this proposal a legal interpretation that would determine whether Part D or Section 110 governs nonattainment problems arising under the expected secondary TSP standard. Instead the Agency summarizes below the implementation policies and rules that it would apply under each alternative.

a. *The Part D Alternative*

Since under this alternative Part D and section 107 of the Act would still apply for the revised secondary NAAQS, the area designations for secondary TSP NAAQS would be retained in Part 81. If the revised NAAQS affected an area's attainment/nonattainment classification, the area would be redesignated as appropriate in Part 81.

Part D requirements would apply for purposes of the revised secondary standard in all areas designated as nonattainment for the current secondary particulate matter standard. This includes all areas designated nonattainment for the current primary standards. Not all of these areas have approved SIP's and not all approved SIP's for these areas appear to be adequate to provide for attainment of both the current and proposed TSP standards. Consequently, where appropriate EPA would issue notices of deficiency and call for SIP revisions under section 110(a)(2)(H) either at the same time or soon after it promulgates the revised secondary standard. The Agency would use the discretion provided under section 110(c)(1)(C) to require States to submit revised SIP's within 9 months of the notice of inadequacy.[18] EPA is proposing a 9-month deadline for SIP submittal to allow States to coordinate planning for both the revised primary and secondary standards.

Under this alternative, the revised SIP's for these nonattainment areas would have to provide for attainment as expeditiously as practicable and would have to meet other Part D requirements. States would have to impose RACT on existing sources, at least to the extent necessary to provide for attainment. EPA would expect States to submit plans containing complete attainment demonstrations and adopted control requirements. Under some circumstances, however, EPA might accept schedules for the adoption of identified control measures. The previous approach of applying RACT to traditional sources in conjunction with studies of nontraditional sources, with later determination of the nontraditional control measures that would be needed (44 FR 20372, April 4, 1979), would no longer be acceptable. States would also have to establish nonattainment new source review programs as described in the next portion of this preamble on new source review.

If a State failed to submit a SIP revision in response to a notice of inadequacy, EPA would propose (1) to find that the area had failed to implement the portion of its SIP that requires it to respond to a notice of inadequacy, and (2) to withhold Clean Air Act funding under section 176(b).

Different requirements would apply in all areas that are not designated nonattainment under section 107(d). As

[18] Thus, under this alternative EPA would construe section 110(a)(1)'s 9-month SIP submittal deadline not to apply to less stringent standards, but only to those revised standards that would require significantly greater controls.

previously discussed, some States might choose not to redesignate as nonattainment some attainment and unclassifiable areas that would be violating the revised secondary standard. Under this alternative, following promulgation of the revised standards, EPA would review the air quality data from all attainment and unclassifiable areas. Where the Agency found violations of the revised secondary standard in these areas, it would issue a notice of inadequacy and call for a SIP revision under section 110(a)(2)(H). To promote coordination, EPA would use its discretion under section 110(c)(1)(C) to set a 9-month deadline for submission of the revised plans. (Where appropriate, EPA would also redesignate areas to nonattainment.)

In those areas not designated nonattainment, Part D would not apply and the revised plans would have to meet only section 110 requirements. Section 110(a)(2)(A) requires plans to provide for attainment of secondary NAAQS within a reasonable time. EPA would review attainment dates for these areas on a case-by-case basis. As part of this review, EPA would take into account an existing regulation in § 51.13(b) of Part 51 which states that:

> . . . Where the degree of emission reduction necessary for attainment and maintenance of a secondary standard . . . can be achieved through the application of reasonably available control technology, "reasonable time" for attainment . . . shall be not more than 3 years unless the State shows that good cause exists for postponing application of such control technology.
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> . . . In any region where application of reasonably available control technology will not be sufficient for attainment and maintenance of such secondary standard, or where the State shows that good cause exists for postponing the application of such control technology, "reasonable time" shall depend on the degree of emission reduction needed for attainment of such secondary standard and on the social, economic, and technological problems involved in carrying out a control strategy adequate for attainment and maintenance of such secondary standard.

As this passage indicates, § 51.13 requires States to attain the secondary NAAQS in all secondary nonattainment areas within three years of secondary plan approval if the application of reasonably available control technology (RACT) will bring about attainment within that time. Even though attainment may be postponed in these areas in such cases when the State shows good cause to do so, EPA solicits comment on whether it is appropriate to presume that attainment of the revised secondary standard within three years using RACT constitutes attainment within a "reasonable time" and, in particular, on whether EPA should amend § 51.13 to delete that presumption.

Requirements for preconstruction review of major new or modified sources appear subsequently in this notice.

If any area failed to respond to a notice of inadequacy, EPA could propose and implement funding restrictions under section 176(b) as it would do as described above for Part D plan revisions.

b. *The Section 110 Alternative*

As indicated earlier, if EPA were to choose section 110 over Part D for purposes of implementing the revised secondary TSP standard, it would be interpreting the phrase "a national ambient air quality standard" as it appears in sections 171(2) and 107(d)(1) as referring only to the NAAQS in existence in 1977 and hence as excluding any revision, whether a tightening or a relaxation—of those NAAQS. Thus, EPA would have no choice but to rescind the current designations for particulate matter for an area if a State under section 107(d)(5) asked EPA to do so. For that reason, the remainder of this discussion describes substantive SIP development requirements that would apply under the section 110 alternative in areas *not* designated "nonattainment" for the revised secondary standard. (Subsequent sections of this notice discuss new source review requirements that would apply if EPA implemented the secondary TSP standard under section 110.)

Under this alternative, EPA would construe the SIP submittal deadline in section 110(A)(1) to apply to *all* NAAQS revisions. States would therefore have 9 months from NAAQS promulgation to submit SIPs to attain the revised secondary standard. States could petition the Administrator under Section 110(b), however, to extend this deadline up to 18 months beyond the end of the initial 9-month SIP submittal period.

Under section 110(a)(2)(A), these secondary plans would have to provide for attainment of the secondary TSP standard within a "reasonable" time. As stated earlier, EPA would review the attainment dates for these areas case by case and would apply the § 51.13(b) requirements discussed earlier. The SIP's for these areas would not need either to require sources to apply reasonably available control technology (RACT) or to provide for "reasonable further progress" toward attainment.

It a State either failed to submit a secondary standard SIP for a particular area before the applicable submittal deadline, or submitted a SIP that did not meet the Act's requirements, EPA could promulgate a SIP for the area under section 110(c) or withhold Clean Air Act funding under Section 176(b).

D. Associated Issues

1. Fugitive Dust Policy

The Administrator intends to continue the fugitive dust policy (Tuerk, 1977; Hawkins, 1977). Comment on this proposed course of action is solicited.

2. Emissions Trading (Bubble) Policy

Revision of the particulate matter NAAQS will affect alternative emission reduction options (bubbles) that were approved for existing particulate matter SIP's. In the initial bubble policy, as published on December 1, 1979, in the **Federal Register** (44 FR 71780), sources were warned that EPA was considering revising its particulate matter NAAQS and that if such size-specific standards were promulgated, some alternative approaches, initially approved by EPA, might no longer be adequate under the revised NAAQS. The policy indicated that sources that used a bubble approach to meet SIP emission limitations could be treated no differently from sources that did not; i.e., emissions from sources using bubbles could not cause any violations of the ambient air quality standards. States should, therefore, consider bubbles that were approved after the publication of the policy but prior to development of SIP's for revised primary NAAQS as any other existing SIP provision and may or may not revise them in lieu of controlling PM_{10} from other sources in the same affected area. The determination of which additional emission control measures are most effective in providing for attainment remains at the discretion of the State.

Even though the Emissions Trading Policy Statement, which was proposed on April 7, 1982 (47 FR 15076) as a revision to the 1979 bubble policy, is silent with respect to size-specific particulate matter NAAQS, the intent is the same. In general, bubbles cannot interfere with a State's efforts to attain and maintain NAAQS even if those NAAQS are revised.

V. Impact on NSR/PSD Program

A. Overview

EPA's proposal to revise the NAAQS for particulate matter necessitates proposal of a number of significant changes to the existing preconstruction review requirements for new and

modified major stationary sources. The proposed NAAQS revisions would potentially affect six existing sets of Federal preconstruction review regulations in Parts 51 and 52, and would lead to substantial revisions to existing SIP's for nonattainment NSR and PSD (NSR/PSD). The affected regulations include PSD requirements in §51.24 and 52.21, regulations in §51.18(j) and (k), and Appendix S (The Offset Ruling) of Part 51, which govern how States are to develop approvable nonattainment NSR rules, and the construction moratorium codified in §52.24.

The purpose of this portion of the preamble is to describe the anticipated impact of revised NAAQS for particulate matter on the applicability and content of the NSR/PSD regulations and to propose a transition program that would enable EPA and the States to make the necessary changes within their preconstruction review programs.

Changes to the existing NSR/PSD program would result from any of the following factors: (1) A finding that Part D would not govern implementation of the primary PM_{10} standards;[19] (2) a finding that Part D also would not govern implementation of the secondary TSP standard;[20] and (3) the establishment of a new, additional indicator for particulate matter, i.e., PM_{10}. For instance, the application of only section 110 to either the primary or secondary NAAQS would significantly affect the geographic applicability of NSR/PSD rules. Also, the creation of a second regulated form of particulate matter acts to create a dual PM_{10}/TSP system for the control of particulate matter in the PSD regulations.

B. PSD Program

1. Program Jurisdiction

Section 51.24 sets forth minimum PSD requirements that SIP's must contain in order to warrant EPA approval. States with EPA-approved PSD requirements in their SIP's can implement their PSD preconstruction review program without direct EPA intervention. Until EPA approves a State PSD SIP program, however, EPA must ensure that a PSD program is conducted according to procedures under §52.21 (hereinafter, the "Part 52 PSD Regulations"). Under the Part 52 PSD Regulations, EPA may delegate all or a portion of its implementation and enforcement authority for the Federal PSD program to a State.[21] States with delegated PSD responsibility are required to carry out the PSD preconstruction review process in accordance with EPA policies and procedures.

Most States either administer their own approved PSD programs, having received SIP approval under § 51.24, or administer the Federal PSD program through a delegation of authority by EPA under §52.21(u). For less than ten States, EPA implements the Federal PSD program as part of the SIP as required by section 110(c) of the Act.

The Administrator is inclined to make the changes to the Part 52 PSD regulations that are proposed below effective immediately upon promulgation of the revised PM_{10} standard. States, on the other hand, will have 9 months to adopt new PDS rules for PM_{10} and submit them to EPA for approval. Thus, the new requirements for PM_{10} would be effective immediately not only where the Administrator is directly responsible for the program, but also where he has delegated the Agency's PSD authority to a State or local agency. Consequently, prospective sources applying for a PSD permit in areas where EPA's Part 52 PSD Regulations are in effect would have to take PM_{10} into account.

Each delegation (including any supporting State regulations and the terms of the delegation itself) should be carefully evaluated by the affected agency to determine whether it would be the intent of that agency, and within its legal authority, to begin implementing the PSD program in accordance with the amendments being proposed. Many PSD delegations were possible only after PSD requirements were developed at the State level. This regulatory language, while not formally submitted as part of the SIP, was determined by many States to be a necessary step to enable them to issue federally enforceable PSD permits under a delegated program. Even in the case of State delegations which did not require the development of parallel State PSD rules, the language of the delegation agreement may not be open to an immediate transition to PM_{10}. In some cases, the delegation agreement made between EPA and the State or local agency may not require that the agency request or implement enforcement authority for future standards and requirements. EPA encourages any agency with delegated PSD responsibility to continue implementing and enforcing the program and will work with each applicable agency to ensure that the transition to a dual PM_{10}/TSP system will be completed as smoothly as possible.

Similarly, States with approved PSD programs in their SIP's should carefully evaluate their regulatory and statutory language to determine whether such programs could inevitably expand to cover PM_{10}. For example, some State PSD regulations may refer to the "national ambient air quality standards" without any subsequent reference tying such "standards" to a particular version of the NAAQS. Consequently, States having an "open-ended" reference to the NAAQS may determine that the State regulations automatically incorporate any subsequent revision of these national standards. Similarly, EPA believes that references throughout a State's PSD regulation to the term "particulate matter" can sometimes be interpreted to refer to the specific size fraction of particulate matter regulated by EPA and an amendment specifying PM_{10} would not be necessary.

EPA will also work closely with those agencies having an approved PSD program in their SIP, who may wish to accept delegated authority to implement the amendments proposed today, while any necessary changes are being made to their existing SIP's in order to accommodate PM_{10}.

Today's proposal assumes that PSD rule conversions to PM_{10} can take place without serious problems. However, since a considerable number of States now have responsibility for implementing the PSD program, this assumption needs to be carefully evaluated to see if an alternative approach for phasing in the new Part 52 requirements would be more appropriate. The alternative being considered most seriously by the Administrator is to delay amendment of the Part 52 PSD regulations (as described in this notice) until the time when all States are required to have approved preconstruction review procedures in their SIP's. Delay of the Part 52 PSD amendments is being considered since significant program changes are expected under any of the

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[19] While EPA now believes that section 110, rather than Part D, should entirely govern implementation of the proposed primary PM_{10} standards, the Agency is open to the possibility that Part D may actually apply. As noted throughout today's notice, EPA is soliciting comment on the issue of which legal pathway is appropriate to direct SIP development pursuant to the proposed NAAQS changes for particulate matter.

[20] As indicated earlier, EPA has not decided whether Part D or Section 110 would apply under the revised TSP secondary standard. The NSR/PSD discussion, therefore, describes the consequences of choosing each scheme.

[21] Full delegation represents a complete transfer of EPA responsibility for implementing and enforcing the PSD regulations. A partial delegation means that EPA retains some program responsibility. Often, under a partial delegation, the State or local agency will carry out the "processing" activities, including review applicability, permit completeness, BACT, air quality, and other impact analyses, while EPA retains responsibility to issue and deny PSD permits.

implementation alternatives described in this notice. As will be discussed in more detail, however, EPA acknowledges that the changes will be especially extensive, particularly in the area of geographic applicability, in the event that EPA chooses to apply section 110 to the new standards.

During the public comment period, EPA expects to gain a much better understanding of the immediate adaptability of existing PSD programs to address PM_{10}. In the event that most States are unable to make an immediate conversion needed to cause a PM_{10} review, then the Administrator would consider delaying the implementation of the PM_{10} changes in the areas where EPA has direct PSD permit responsibility, including areas where States implement PSD review under delegated authority.

Thus, the Administrator solicits comments on the merit of a delay in the implementation of the Federal PSD program, including whether an immediate conversion is necessary to provide adequate environmental protection in the interim. That is, does the TSP review under PSD represent a reasonable program for particulate matter during the time of PM_{10} development, or must EPA insist on an immediate conversion within its Part 52 rules even before States are given an opportunity to revise their own rules?

2. Proposed Part 52 PSD Regulations

PSD regulations in § 52.21 govern the way that EPA and its delegated State representatives carry out PSD reviews. EPA is proposing to add several new PM_{10} requirements to its Part 52 PSD regulations, which would establish a dual system for the preconstruction review of particulate matter, i.e., TSP and PM_{10}. As mentioned above, EPA intends to make the new rule requirements effective immediately on the date the final notice appears in the **Federal Register**, using its authority under section 301(a)(1) of the Act. However, under section 301, EPA also has authority to fashion a transition program to avoid any unreasonable hardship associated with applying new PM_{10} requirements within the rule changes too quickly. As proposed, each new provision governing PSD review for particulate matter would apply to any proposed major stationary source or major modification that has not filed a complete PSD application on or before the effective date of the new requirements. In addition grandfather provisions granting varying degrees of relief from the PM_{10} ambient monitoring requirements are also being proposed in today's action as described below.

a. *Source Applicability*

PSD review applies to new major stationary sources and major modifications of existing major stationary sources. A "major stationary source" for PSD purposes is (1) any source type belonging to a list of 28 source categories that emits or has the potential to emit 100 tons per year (TPY) or more of *any* pollutant regulated under the Act, or (2) any other source that emits or has the potential to emit any pollutant regulated under the Act in an amount equal to or greater than 250 TPY. The PSD review requirements apply to any regulated pollutant which the new or modified major stationary source would emit in significant amounts. Thus, a source may be "major" for only one pollutant, but PSD review would apply to other pollutants emitted in "significant" amounts but for which the source is not a major emitter.

To date, implementation of PSD regulations with respect to particulate matter has been principally guided by the definition of particulate matter contained in § 60.2 of 40 CFR Part 60 which refers to emissions of particulate matter that can affect ambient concentrations of TSP. While this linkage to ambient TSP is somewhat by design, the definition of particulate matter principally enables enforcement authorities to determine if the applicable control technology is effective in its operation. In order to make the necessary distinction between emissions that contribute to ambient amounts of TSP versus ambient amounts of PM_{10}, EPA is proposing two new definitions. First, a definition of "particulate matter emissions" is being proposed in § 51.100(gg) to have essentially the same meaning as the definition of "particulate matter" in § 60.2, and would apply to particles affecting the ambient concentrations of TSP. Second, EPA is proposing a definition of "PM_{10} emissions" in § 51.100(ii), which focuses on emissions of particles affecting ambient concentrations of PM_{10}.

While these two definitions would serve to distinguish between emissions of the two regulated forms of particulate matter being proposed, it should also be apparent that "PM_{10} emissions" are included in "particulate matter emissions." Thus, amounts of PM_{10} being emitted by a source would count toward the amount of "particulate matter emissions" (TSP) that a source would emit regardless of whether the PM_{10} contribution was significant in itself.

EPA is also proposing a new emissions rate within § 52.21(b)(23)(i) that would define the term "significant" for PM_{10}. The new rate would establish formally that PM_{10} is a "regulated" pollutant for the purposes of the Part 52 PSD regulations. This rate would be used to determine when emissions of PM_{10} from a major new or modified source would require PSD review. An emissions rate lower than the significant emissions rate would allow such source to be excluded from PSD review with respect to PM_{10} on the grounds that such lower emissions would be insignificant, i.e., *de minimis*.

In selecting a value which is being proposed to be used to define "significant" for PM_{10}, the Administrator has applied the methodology used to select the original particulate matter significant emissions rate promulgated on August 7, 1980. That methodology used four percent of the 24-hour primary standard as a design value which was then converted to an emissions rate in accordance with EPA modeling procedures and rounded to the nearest 5 tons.[22] This resulted in a significant emissions rate for particulate matter of 25 TPY. Applying this approach to PM_{10}, based on a 24-hour primary standard of 150$\mu g/m^3$ for PM_{10}, yields an emissions rate of 15 TPY.

While the Administrator is proposing today a significant emissions rate of 15 TPY for PM_{10}, he wishes to emphasize two points. First, the proposed value is based on the Administrator's preliminary inclination to select a 24-hour PM_{10} NAAQS from the lower portion of the range of PM_{10} concentrations that he has proposed. Should he select a different value for the NAAQS, the significance level for PM_{10} would be adjusted accordingly.

Second, EPA is currently undertaking a study which will use a permit data base of approximately 300 major and nonmajor sources to analyze alternative significance thresholds. The study will examine the impact of a range of emissions rates, including the 15 TPY value, in terms of environmental benefits (as quantified by emissions reductions achieved) versus administrative burden (as quantified, for example, by number of PM_{10} permit reviews). The results of this analysis will be considered in the final selection of the significance value for PM_{10}. In addition, the completed evaluation will be placed in the rulemaking docket as soon as possible but no later than 30

[22] A detailed description of how and why EPA selected the particular approach referred to here to define the significant emissions rates is presented in the preamble to the August 7, 1980, PSD amendments (45 FR 52678). This discussion is contained in *Section XI, De Minimis Exemptions*, pp. 52705–52710.

days after the date of this proposal. This will allow for at least 30 days of public inspection of the contents of the study so that the appropriate public comment may be formulated. The Administrator intends to take into consideration all relevant comments before making his final selection.

A "major modification" is generally a physical change to, or change in the method of operation of, a major stationary source resulting in a significant net increase in the emissions of any pollutant subject to regulation under the Act. As proposed, the PSD review requirements would apply to particulate matter if a significant net increase in the amount of either particulate matter emissions (25 TPY) or PM_{10} emissions (15 TPY occurs at a stationary source that had already been established as "major" before the proposed modification.

The determination of whether a proposed modification would exceed the PM_{10} significance threshold would be based only on PM_{10} emissions changes which include actual emissions changes from a particular modification and other creditable increases or decreases in actural emissions that are contemporaneously associated with the modification. That portion of the contemporaneous particulate matter emissions changes with a particulate size larger than PM_{10} would *not* be creditable as an emissions reduction or increase with respect to PM_{10} emissions. Consequently, projects that could avoid PSD review for TSP by demonstrating that no significant net emissions increase would occur with respect to TSP might still be subject to review for PM_{10}.

b. PSD Geographic Applicability

If a proposed source of modification qualifies as major, its existing or prospective location must be in a PSD area in order for a PSD review to apply. A PSD area is one designated as attainment or unclassifiable under Section 107 or *any* pollutant for which a NAAQS exists, regardless of what pollutant emissions cause the source to be major. In general, once it is determined that a proposed major source or major modification would occur in a PSD area, the PSD review appplies to significant emissions increases of *each* regulated air pollutant, unless the area is designated nonattainment under section 107 for that pollutant. For the nonattainment pollutant(s), certain nonattainment NSR rules in § 51.18 and Part 51 Appendix S would apply instead.

With respect to PM_{10}, EPA anticipates that under a section 110 pathway, the PM_{10} preconstruction review would be covered under the PSD requirements in all locations for two reasons.[23] First, States would not be designating PM_{10} nonattainment areas pursuant to section 107 of the Act. Second, since PSD would apply to major construction in any area designated as attainment or unclassifiable pursuant to secton 107 for *any* pollutant, then the PSD requirements would apply in all areas unless an area were designated as nonattainment for *all* of the pollutants for which section 107 designations apply. This pervasive nonattainment situation does not now exist for any area in the nation, so there is no basis for exempting a major source from PSD review with respect to PM_{10}. However, in the event that this should occur and PM_{10} sources are allowed to escape major source preconstruction review, the Administrator would consider imposing a new applicability requirement for PM_{10} sources that would bring PM_{10} sources under PSD review regardless of the section 107 area status for other pollutants. The Administrator believes that he has authority to promulgate a new applicability requirement for PM_{10} under section 166 of the Act, but has no compelling need to do so at this time.

The PSD review for TSP would apply in many areas regardless of whether Part D or section 110 would govern implementation of a revised secondary TSP standard. Under the Part D option, the PSD review for TSP would continue to apply to new major sources or major modifications that emit significant amounts of particulate matter emissions (TSP) in areas designated pursuant to section 107 as attainment or unclassifiable for a revised TSP secondary, NAAQS. Only in cases where the area is designated as nonattainment for the TSP standard would the nonattainment NSR rules instead of the PSD requirements apply to that regulated form of particulate matter. If section 110 applied instead of Part D, PSD review for TSP would occur in all areas for the same reasons that the review for PM_{10} would apply in all locations.

[23] These reasons would not apply should the Administrator reverse his preliminary conclusion and decide that the PM_{10} NAAQS is governed in part by Part D of the Act. Under a Part D approach, PSD review for PM_{10} would occur only in areas which are designated unclassified or attainment for PM_{10}. In nonattainment areas, preconstruction review requirements developed pursuant to Part D of the Act would apply.

c. *Best Available Control Technology (BACT)*

Any major stationary source or major modification subject to PSD must conduct an analysis to ensure application of BACT for each pollutant regulated under the Act that the source or modification would emit in a significant amount (except a pollutant for which the area is nonattainment). Today's proposal to make PM_{10} a regulated form of particulate matter is not expected to cause significant changes in the way that BACT determinations are made for particulate matter, at least for the near term.

Technology presently applied for particulate matter appears generally to be effective for controlling both TSP and PM_{10}. No compelling reason now exists to emphasize one form of control over another. The Agency is in the process of assessing the effectiveness of various existing NSPS in controlling PM_{10} emissions (see Section VI, IMPACT ON NSPS PROGRAM) and will later make any necessary adjustments in BACT policy.

The addition of PM_{10} requirements could cause PM_{10} emissions to trigger the BACT requirement for particulate matter independently from TSP. In addition, the triggering of BACT by PM_{10} emissions may necessitate a change in the way the BACT emissions rates in the permit for particulate matter are to be be expressed.

The Administrator envisions two possible approaches for setting and enforcing BACT for PM_{10}. He would, as a matter of policy, allow the use of either approach, provided that the selected limit is enforceable. First, the permitting authority could write an emissions limitation expressly for PM_{10} by using available PM_{10} emissions factors. This approach would also use PM_{10} emissions estimates reflecting source operation under application of the best control technology achieved in practice, taking into account energy, environmental and economic impacts, and other costs.

Alternatively, once the control technology for meeting BACT with respect to PM_{10} has been determined, the permitting authority could express the emissions limitation in terms of particulate matter emissions rather than PM_{10} emissions. This alternative approach may be more desirable initially for States finding that the existing particulate matter emissions limits in their SIP's are sufficient to prevent PM_{10} NAAQS violations and therefore will not be revised and expressed in terms of PM_{10} emissions.

and a control strategy based on particulate matter controls is to be retained for some period of time. Similarly, this approach may be advisable where the SIP does not contain an enforceable means to ensure compliance with PM_{10} emission limits. The use of such a surrogate BACT emissions limit may also appear useful when the selected BACT equates to NSPS since it is not likely that there will be any immediate changes made to the existing NSPS emissions limits for particulate matter as established under Part 60.

d. *NAAQS Analysis/Increment Consumption*

Section 165(a)(3) of the Act provides that no PSD source can be approved for construction if it would cause or contribute to ambient concentrations of a pollutant that would exceed the applicable NAAQS. For any PSD application submitted to EPA on or after the effective date of these proposed Part 52 amendments, such demonstrations for particulate matter would be based on PM_{10} and TSP, as applicable. (See Section e, *PSD Monitoring*, of this notice for further discussion pertaining to interim impact analyses for PM_{10} NAAQS.

As described earlier, the PSD program for PM_{10} under the section 110 pathway would apply to both attainment and nonattainment situations. This means that the PSD NAAQS analysis and all other applicable PSD requirements would affect the ability of new and modified PM_{10} sources to construct in an area where PM_{10} NAAQS violations already exist or could result from the proposed source. The applicable criteria for determining when a source or modification would be causing or contributing to a NAAQS violation for PSD purposes are those set forth under § 51.18(k), which the Administrator is proposing to revise today to accomodate PM_{10}.[24] (See also the discussion in Section C., *Nonattainment NSR Requirements*, of this notice.)

The Administrator, under the Part 52 PSD regulations, intends to require, at a minimum, that sources found to cause or contribute to a PM_{10} NAAQS violation must obtain sufficient offset so as to provide a net air quality benefit in the affected area, thus satisfying the "cause or contribute to" language under section 165(a)(3) of the Act. The Administrator is also considering whether the "cause or contribute to" language may require additional conditions beyond the type of emissions offset program just described, and he solicits comments as to what additional conditions should be considered.

As described earlier, if EPA chooses to implement the revised secondary TSP standard under section 110, the PSD program for TSP would, like the program for PM_{10}, govern in all areas regardless of their attainment status. This means that EPA would apply the requirements of § 51.18(k), including the additional requirements suggested in the previous paragraph, to assure that new and modified TSP sources do not cause or contribute to TSP NAAQS violations. If EPA implements the revised secondary TSP standard under Part D, however, the PSD program for TSP and the requirements of § 51.18(k) would apply only to new and modified sources locating outside areas designated nonattainment for TSP under section 107.

Under section 165(a)(3) of the Act, each PSD application must also contain a demonstration that the proposed source or modification would not cause or contribute to air quality concentrations which exceed the maximum allowable increases (PSD increments) for particulate matter or sulfur dioxide (SO_2) for at least those areas designated as Class I areas under Part C of the Act.

The choice between section 110 and Part D to govern implementation of a relaxation of the secondary NAAQS for particulate matter, however, arguably would affect the applicability of the PSD increments for Class II areas for that pollutant.

In general, to be a Class II area and hence subject to the Class II increments, an area must be designated "attainment" or "unclassifiable" under section 107(d). [See sections 162(b) and 163(b) of the Act.] To be subject to the Class II increments for particulate matter, an area arguably must bear such a designation for a NAAQS for particulate matter, not just for any NAAQS.[25]

If EPA were to choose section 110 over Part D for purpose of implementing the secondary TSP standard, it would be interpreting the phrase "a national ambient air quality standard" as it appears in section 171(2) and 107(d)(1) as referring only to the NAAQS in existence in 1977 and hence as excluding any relaxation to those NAAQS. Under the interpretation, and assuming EPA also retains its preliminary conclusion that section 110 governs the primary PM_{10} NAAQS, EPA would have no choice but to rescind the current designations for particulate matter for an area, if a State under section 107(d)(5) asked EPA to do so. If EPA rescinded those designations, the area would no longer be a Class II area for particulate matter and therefore no longer subject to the Class II increments for that pollutant.

If EPA were to choose Part D over section 110 for the secondary TSP standard, on the other hand, it would be interpreting the phrase "a national ambient air quality standard" as encompassing relaxations to the NAAQS in existence in 1977. Under that interpretation, EPA would retain its current powers to redesignate areas and to accept or reject changes that States submit under section 107(d)(5). Hence, EPA could retain "attainment" or "unclassifiable" designations for the new particulate matter NAAQS, and the Class II increments for particulate matter would remain in effect for areas with these designations.

The remaining discussion of the requirements for new and modified particulate matter sources to demonstrate protection of the Class II increments for particulate matter, therefore, arguably will be relevant only if EPA implements one of the revised particulate standards under Part D rather than section 110. For illustration only, the discussion assumes that EPA implements the secondary TSP standard under Part D.

The Administrator ultimately envisions a dual increment system for particulate matter. That is, separate PSD increments for TSP and PM_{10} would be in effect. The existing increments for particulate matter, i.e., TSP, are defined by statue and cannot be changed, given

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[24] The § 51.18(k) program, as proposed, would continue to apply under a Part D pathway for the primary PM_{10} standards but would then apply only in areas designated as attainment or unclassified for PM_{10}. Preconstruction review requirements developed pursuant to Part D of the Act would apply to major new or modified sources that would construct in designated PM_{10} nonattainment areas.

[25] Specifically, section 165 applies only to major construction located " . . . in any area to which this part applies . . . ." Section 163 states that the maximum allowable concentration of any air pollutant in any area to which Part C applies shall not exceed any increment of air quality for sulfur dioxide and particulate matter. Section 162(b) clarifies that "All areas in such State identified pursuant to section 107(d)(1) (D) or (E) which are not established as class I under subsection (a) shall be class II areas. . . ." Thus, taken collectively, the PSD increments for each pollutant are strongly linked to the section 107 designation process for that pollutant. To conclude otherwise (i.e., that all of the PSD increments apply in any area designated as attainment or unclassifiable under section 107(d)(1)(D) of (E) for any pollutant) would suggest that major construction locating in an area that is clean under section 107 for *any* pollutant would face an increment review for all pollutants, even if the area were nonattainment for both SO_2 and particulate matter.

the factual record available to date.[26]

Under today's proposal, these increments will be clarified so as to apply to ambient TSP concentrations. The proposed revisions to the particulate matter NAAQS, when finalized, would trigger a requirement under section 166 of the Act to promulgate, within two years after the NAAQS revision, additional regulations to prevent significant air quality deterioration with respect to the primary PM_{10} NAAQS. Section 166(c) requires that "Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 101 and section 160." Section 166(d) further provides that the measures established be at least as effective as the existing section 163 increments.

This discussion is intended to raise issues associated with PM_{10} Section 166 rulemaking and place EPA in a position to complete rulemaking as expeditiously as practicable. In addition, it should serve to aid States now in their comprehensive design of PM_{10} PSD programs.

One of the first considerations must be the rationale for setting the PM_{10} increments in light of the primary NAAQS and the existing TSP increments. The approach used by Congress to establish the existing increments for SO_2 and particulate matter involved the use of specific percentages of the lowest NAAQS concentration in each measurement period.[27] Given the likely event that the Administrator selects NAAQS concentrations for PM_{10} from the lower portions of the proposed ranges, then PM_{10} increments (annual and 24-hour) as small as 3 $\mu g/m^3$ and 10 $\mu g/m^3$ (Class I), 13 $\mu g/m^3$ and 37 $\mu g/m^3$ (Class II), and 25 $\mu g/m^3$ and 75 $\mu g/m^3$ (Class III) could result. Increments for Class I variances, as defined in § 52.21(p)(4), would be similarly proportioned and established. The Administrator will consider using this approach to establish PM_{10} increments. It should be noted, however, that its use would result in PM_{10} increments less stringent than the existing TSP increments if the Administrator selects PM_{10} NAAQS concentrations from the upper portions of the proposed ranges. The Administrator will also appraise the consequences of that potential outcome in establishing PM_{10} increments.

Once established, PM_{10} increments in many respects could be implemented in a similar fashion to those now in effect for TSP. As such, only one exceedance would be allowed per year for the short-term increment. Also, each PM_{10} increment would apply over a baseline concentration consisting of PM_{10} emissions representative of sources in existence on the applicable baseline date. In addition, major construction commencing after January 6, 1975, would affect available PM_{10} increment.

Several differences from the current TSP increment system would also be apparent if the Administrator implements the PM_{10} program pursuant only to a section 110 pathway. The concepts of baseline date and baseline area would have to be altered to accommodate the PM_{10} system. Baseline area now refers to all areas that are designated attainment or unclassifiable under section 107 for particulate matter or SO_2 and in which a PSD source triggering the baseline date would construct or have a significant air quality impact. An alternative to the area designation process would have to be established in order to define PM_{10} baseline areas.[28] Readily identifiable boundaries, such as the county, AQCR, or entire State, would be subject to consideration as an alternative baseline area for PM_{10}. Similarly, the definition of baseline date would have to be amended to accommodate the revised definition of baseline area.

Another related problem concerns where the new Class I PM_{10} increments would apply. It appears that the mandatory Class I areas identified in Section 162 would not automatically be relevant to any new increments established under Section 166 for PM_{10}. If there are no automatic Class I areas for PM_{10}, then EPA is inclined to establish under the authority of Sections 166 and 301 that Class I areas defined under section 162 are mandatory Class I areas for the PM_{10} increments as well.

The Administrator solicits comments as to the extent to which new regulations pertaining to PM_{10} increments are needed and the details that should be considered in light of the preceding discussion. The Administrator believes that the system to be used should provide States with sufficient flexibility for them to implement the new requirements in harmony with their existing PSD programs.

e. PSD Monitoring

PSD applicants generally must provide continuous ambient monitoring data representing the relevant air quality around the proposed source or modification during a 1-year period preceding the PSD application. The need for monitoring data is determined in part by the source's projected ambient impacts in the affected area, and the existing air pollution in that area. Usually, a source may be exempted from the preapplication monitoring requirement if the projected impact of the source or modification on the existing air quality is *de minimis* for the pollutant of concern.

EPA has defined the existing significant ambient concentration for particulate matter as 10 $\mu g/m^3$ (24-hr average), expressed as "total suspended particulate," for *monitoring* purposes. This concentration would be retained due to the Administrator's proposal to have a secondary TSP NAAQS. Establishing a PM_{10} primary NAAQS would necessitate that EPA define a new significance level for *monitoring* purposes, which reflects ambient PM_{10} concentrations.

The significance level that EPA originally defined for TSP represents 5 times the lowest detectable concentration in ambient air that can be measured by the available instrumentation, i.e., a high-volume sampler (hi-vol) August 7, 1980 (45 FR 52710). Because the sensitivity of the PM_{10} sampling methodology is

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[26] Pursuant to a settlement with petitioners in *Chemical Manufacturers Association v. EPA*, D.C. Cir. No. 79-1112, EPA agreed to propose revisions to certain PSD requirements, if appropriate, at the time it proposed revisions to the particulate matter standards on public health or welfare. In relevant part, the settlement stated that "[w]hen EPA proposes a new size cutoff for purposes of the NAAQS, it shall also propose (a) a new size cutoff for PSD purposes that would remain in effect indefinitely (i.e., the 'permanent PSD cutoff'), and (b) an interim size cutoff for PSD purpose that would remain in effect until EPA takes final action on the permanent PSD cutoff. The interim cutoff will exclude only those particles which clearly appear not to pose substantial health and welfare risks and therefore are highly likely to be excluded permanently."

As discussed in the rationale for the primary and secondary standards, in the March 20, 1984, proposal notice, although the Agency's review of the data suggests that particles larger than 10 micrometers might be safely excluded from the primary standard, such particles can contribute to soiling and nuisance and therefore may have substantial welfare effects. The Administrator therefore proposed to retain TSP as the indicator for the secondary standard. Thus, by the terms of the CMA agreement itself, there appears to be no appropriate cutoff below that for TSP, and the contemplated interim and permanent relief is not available. Therefore, EPA proposed in the March 20, 1984, notice not to change how "particulate matter" is defined for purposes of the PSD increments (49 FR 10906).

[27] HR Rep No. 95-294, 95th Congress, 1st Sess. (1977), p. 153ff.

[28] This would not be the case if a Part D pathway governed the implementation of the PM_{10} NAAQS revision instead of Section 110. The present area designation process could be used for both TSP and PM_{10} in defining those areas where baseline dates are triggered.

essentially identical to the TSP methodology, EPA finds no basis for establishing a different significance level for ambient concentrations of PM_{10}. Thus, EPA is today proposing to establish a PM_{10} significant ambient concentration of 10 $\mu g/m^3$, 24-hour average, to be used to determine when a prospective source may be exempted from the ambient monitoring data requirements for PM_{10}. See the proposed amendment to § 52.21(i)(8)(i).[29]

Under the provisions proposed in § 52.21(i)(11) (i) and (ii), EPA intends to allow the use of ambient data collected from ambient samplers not designated as PM_{10} reference or equivalent methods until PM_{10} reference or equivalent method samplers are designated and commercially available. These alternative samplers would include measurement of the following particulate matter size fractions: (1) PM_{10}, (2) PM_{15}, or (3) TSP. While EPA intends temporarily to allow applicants to use data from certain alternative monitoring methods, the data would be used to support an air quality impact analysis demonstrating compliance with the PM_{10} primary NAAQS. Accordingly, EPA is proposing a new provision requiring the PSD applicant to use only ambient data collected by alternative samplers approved by the Administrator, and requiring conversion of the data using estimating procedures approved by the Administrator. See proposed § 52.21(m)(1)(viii).

The above provisions would apply during the monitoring transition period until all PSD applicants are required to use ambient PM_{10} monitoring data collected by approved PM_{10} reference or equivalent methods. EPA intends to use procedures, which are set forth in the draft revisions to the EPA document entitled *Ambient Monitoring Guidelines for Prevention of Significant Deterioration* (PSD), to implement such provisions. The draft document is available for public comment in the docket for today's proposed rulemaking. [See AVAILABILITY OF RELATED INFORMATION.]

f. *Transition Provisions*

Because today's proposal could subject additional sources to PSD review for particulate matter, some transition provisions are necessary in the PSD regulations to phase in this new regulatory coverage. Two grandfather provisions would be necessary to address the phase-in of any new PSD requirements (excluding ambient monitoring) resulting from a revised particulate matter NAAQS.

First, under the amendments being proposed, EPA does not intend to cause the retroactive review of sources that were not previously subject to PSD review, provided that the sources (a) obtained all the necessary approvals under the SIP before the effective date of the new requirements, and (b) commenced physical construction within 18 months of the effective date of the new requirements (or any earlier time required under the SIP). See proposed § 52.21(i)(4)(ix).

Second, EPA is proposing a grandfather provision to exclude from PSD review under the proposed regulations any sources that have submitted a complete application (including those for which a final determination has not yet been made) to EPA or its delegated representative on or before the promulgation of the Part 52 PSD regulations being proposed today. Such sources would be required to comply only with the existing PSD requirements. See proposed § 52.21(i)(4)(x).

EPA also believes that it is necessary to provide some additional relief to applicants who would otherwise be expected to begin collecting ambient monitoring data for PM_{10} as of the promulgation date of the amendments being proposed today.[30] One year of preapplication monitoring data is generally required to be submitted as part of a complete PSD application package. Thus, the grandfathering provisions mentioned above, which cover complete applications submitted before promulgation of the new PSD regulations, would be insufficient to provide adequate relief for applicants whose ongoing application preparation and on-site monitoring efforts did not take into account any PM_{10} monitoring. EPA intends to allow those applicants to use, where available, TSP monitoring data or data from certain nondesignated samplers to estimate ambient PM_{10} levels.

In addition to the problem of existing monitoring efforts which did not consider PM_{10}, EPA believes that other important time factors need to be considered. First, the commercial availability of ambient PM_{10} samplers suitable for designation as reference or equivalent method samplers could be delayed up to almost one year from the promulgation date of the revised NAAQS for particulate matter. Then, once the samplers are available and designated, additional time would be needed for applicants to install and calibrate the samplers on site before a PM_{10} sampling network could begin to operate. Taking into account the extended period before which PM_{10} sampling with reference or equivalent methods could begin, as well as the fact that a minimum of 4 months of data must be collected from any site [See § 52.21(m)(1)(iv)], EPA is proposing that certain nondesignated methods be allowed as an interim alternative in the specific situations outlined below. See Section e., *PSD Monitoring*, of this preamble for further discussion of the interim alternatives to PM_{10} reference or equivalent method monitoring.

EPA is proposing three transition provisions which relate to preapplication monitoring requirements for PM_{10}. The first of the three transition provisions, related to ensuring the availability of PM_{10} instrumentation, would give the Administrator discretionary authority to exempt from PM_{10} monitoring requirements certain applicants who would become subject to PM_{10} monitoring requirements under the newly proposed requirements, provided they submit complete applications within 10 months after promulgation of the proposed PSD amendments for PM_{10}. See proposed § 52.21(i)(11)(i). EPA generally tends to grant the exemption unless the Administrator determines that representative ambient monitoring data [31] would be available and

[29] The Administrator is taking this opportunity to correct several errors that have existed in the table of significant ambient concentrations since the time the table was first published on August 7, 1980. First, the averaging period for lead is being revised to a 3-month average. This would conform to the 3-month averaging period specified for the lead NAAQS. The averaging period for each criteria pollutant was intended to conform to the shortest averaging period for which a NAAQS was defined for that particular pollutant.

Second, the Administrator is revising the significant concentrations for beryllium and hydrogen sulfide because these concentrations were listed incorrectly. The beryllium concentration was promulgated as 0.0005, which was low by a factor of two. It should have been 0.001 $\mu g/m^3$. The hydrogen sulfide concentration was promulgated as 0.04 $\mu g/m^3$, which is the minimum detectable concentration and did not reflect the factor of five as used to establish each of the other significant ambient concentrations. The correct value for hydrogen sulfide should therefore be 0.2 $\mu g/m^3$. The Administrator does not intend to take comments on these specific revisions because he regards them to be technical and clarifying amendments.

[30] As mentioned above, the Administrator is considering the need to delay the effect of the PM_{10} amendments in 40 CFR Part 52 until after States have had the normal opportunity to revise their SIP's. If such delay is determined to be appropriate, then a monitoring transition scheme reduced in scope will be promulgated. Using the same rationale as identified later in this section, the length of transition will be discounted by the amount of time allowed for in making the 40 CFR Part 52 regulations effective.

[31] EPA allows PSD applicants to meet the PSD preapplication monitoring data requirements

Continued

sufficient time would exist before submission of an otherwise complete application to collect and analyze such representative data and to estimate PM_{10} concentrations from it.

The next provision applies to those sources that submit an application that is complete, except for the monitoring data requirements for PM_{10}, between 10 and 16 months after the date of promulgated PSD amendments. This provision would allow certain applicants to monitor PM_{10} or other particulate size fractions during the interim period when they would be unable to acquire and make operational a PM_{10} monitoring network utilizing designated samplers. In particular, the proposed rule would provide that data based on TSP sampling or on a nondesignated method for PM_{10} or PM_{15}, as approved by the Administrator, shall be gathered over a period at least equal to a period extending from the date 6 months after promulgation to the date when the application would otherwise become complete. [See proposed § 52.21(i)(11)(ii).]

Finally, the third transition provision related to PM_{10} monitoring equipment phase-in would address all PSD applications that would become complete, except for the PM_{10} monitoring requirements, between 16 and 24 months after promulgation. This phase-in provision would require that for certain sources the reference method PM_{10} monitoring data shall be gathered with designated methods over at least the period extending from the date 12 months from the date of promulgation to the date when the application becomes otherwise complete with respect to the other monitoring requirements [See proposed § 52.21(m)(1)(vii)].

3. Proposed Part 51 PSD Regulations

EPA is also proposing amendments to the PSD requirements in Part 51. Section 51.24 sets forth the minimum SIP requirements for an approvable PSD program. States must adopt procedures that follow these requirements when developing new or revised portions of a SIP. The proposed amendments generally parallel the changes to the Part 52 PSD Regulations establishing a dual PM_{10}/TSP review system for particular matter. The amendments include the addition of the PM_{10} size fraction and an emissions rate of 15 TPY to the definition of "significant" under Section 51.24(b)(23)(i), and the addition of PM_{10} and an ambient value of 10 $\mu g/m^3$, 24-hour average, to the list of significance values pertaining to ambient monitoring under § 51.24(i)(8)(i). The reasons for EPA's selection of these particular values associated with PM_{10} were described in the previous discussion of the Part 52 PSD amendments.

A new § 51.24(i)(10) is also being added so that States could adopt transition provisions, including those dealing with grandfathering provisions and a PM_{10} monitoring phase-in program, that are compatible with the intent of the Federal transition provisions proposed in the Part 52 PSD regulations.

C. Nonattainment NSR Requirements

1. Applicability

Sources seeking to construct in areas designated as nonattainment for particulate matter (TSP) under section 107 of the Act for any (primary or secondary) NAAQS are currently subject to one of three sets of nonattainment NSR regulations depending on the specified circumstances. A fourth NSR regulation applies to sources that would not locate in a designated nonattainment area but would cause or contribute to a NAAQS violation. In all cases, the requirements are applied to major stationary sources or major modifications. A "major stationary source" for nonattainment purposes is any source that emits or has the potential to emit 100-TPY of any pollutant. A "major modification" is defined in the same manner as for PSD, using significance values to determine whether a significant net emissions increase at a major stationary source would occur.

Under the first set of regulations, after June 30, 1979, State plans that satisfy the NSR requirements of Part D of the Act are to be in effect in any Section 107 area designated as nonattainment for TSP. Pursuant to Part D and EPA's NSR regulations in § 51.18(j), States are to develop plans requiring major stationary sources and major modifications of particulate matter to offset their proposed emissions and to apply the "lowest achievable emission rate" (LAER). All offsets must be secured in a manner consistent with the plan's requirement to show reasonable further progress while attaining the primary ambient air quality standards no later than the prescribed statutory attainment deadlines. Part D also requires that each major source that has common ownership with the proposed project within the same State must be in compliance with the applicable SIP requirements.

Second, before July 1, 1979, and in other situations, such as where a Part D plan was not due by July 1, 1979, EPA's Emissions Offset Interpretative Rule (Offset Rule) is to apply. The Offset Rule requirements are similar to those of § 51.18(j) and are contained in Appendix S to Part 51.

Third, for areas where a Part D plan is due but a plan satisfying the Part D requirements has not been submitted or is not being carried out in accordance with such requirements, a ban on major construction is to be imposed. Section 110(a)(2)(I) bans construction of major stationary sources and major modifications of the applicable nonattainment pollutant until EPA approves a Part D SIP, including adequate NSR provisions. Under section 173 of the Act, major construction involving the nonattainment pollutant is to be prevented in any nonattainment area where a State or local government fails to properly carry out its approved Part D SIP. Regulations governing implementation of the growth moratorium are codified at 40 CFR 52.24.

Finally, on May 13, 1980, EPA promulgated additional NSR requirements in § 51.18(k) to provide a procedure that would allow States to meet the statutory requirements contained in sections 110(a)(2)(D) and 165(a)(3)(B) of the Act. When taken together, these statutory provisions require that States review all major sources that would not locate in designated nonattainment areas but would cause or contribute to violations of national standards, to reduce their impact on air quality so as to assure attainment and maintenance of ambient air quality standards.

General criteria for evaluating each State's program under § 51.18(k) were provided in the preamble at the time of promulgation (45 FR 31312, May 13, 1980). Under those criteria, States must submit a program that: (1) Applies to all major sources significantly causing or contributing to a violation of a standard under the significance criteria used by Section III.A. of the Offset Rule, and (2) assures that ambient air quality standards are attained and maintained. EPA also indicated in the preamble that, until a State plan meeting § 51.18(k) requirements is approved by EPA, the permit program under § 51.18(j) (if such requirements were already in place and applicable) or EPA's Offset Rule would apply to sources causing or contributing to a violation and not locating in a designated nonattainment area.

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through the use of existing representative air quality monitoring data. Before EPA will approve the use of representative data, however, certain criteria which consider the monitor location, quality of the data, and currentness of the data must be met. These criteria are discussed in detail in the EPA guideline entitled *Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD).*

The impact of implementing the proposed revisions to the particulate matter NAAQS under a section 110 pathway would be significant in terms of which nonattainment NSR requirements would apply with respect to the two regulated forms of particulate matter. Implementing the revised secondary TSP standard under Section 110 rather than Part D would significantly change current NSR requirements for TSP sources. A discussion of the proposed applicability of NSR to each form follows.

a. *Primary Standards (PM_{10})*

As proposed today, PSD programs in conjunction with the nonattainment NSR requirements in § 51.18(k) would apply in all areas to sources whose emissions cause or contribute to violations of the PM_{10} primary NAAQS. The Administrator's preliminary finding that Part D of the Act does not apply in implementing the PM_{10} SIP requirements determines that a Part D NSR program does not apply to any PM_{10} nonattainment situations.[32] Accordingly, in the absence of a formal area designation process for PM_{10} nonattainment areas, the State § 51.18(k) program will have to address a potentially broad range of nonattainment situations. In light of this vast and varied coverage, the Administrator is concerned as to what collection of preconstruction review requirements would represent an adequate § 51.18(k) program for PM_{10}.

The Administrator interprets section 110(a)(2)(D) of the Act to require States, as a minimum, to implement an emissions offset program as part of the preconstruction review of any major new source or major modification whose prospective construction in a PSD area would cause or significantly contribute to an existing violation of any NAAQS. Under that program, any such source would have to obtain emissions offsets sufficient to provide a positive net air quality benefit in the area(s) of significant impact. Moreover, EPA would approve the emissions offset program under § 51.18(k) only if creditability criteria at least as strigent as the criteria set forth under § 51.18(j) are required to be applied to the offsets.

EPA interprets this offset requirement, in conjunction with the mentioned criteria for applying offsets, as the minimum condition to be applied to a major source or modification locating outside a designated nonattainment area but causing or contributing to a NAAQS violation with respect to the nonattainment pollution. EPA believes that this is necessary to require sources to reduce their impact so as not to interfere with the attainment and maintenance of national standards. The Administrator is concerned, however, that an emissions offset program as described may not always be sufficient to assure attainment and maintenance of the PM_{10} § NAAQS. For this reason, the Administrator is soliciting comments regarding the need to impose, under § 51.18(k), additional requirements, such as the requirements for LAER and Statewide compliance under Part D of the Act, upon all or certain sources with respect to their PM_{10} emissions causing or contributing to a PM_{10} § NAAQS violation.

As stated earlier in this preamble, the Agency intends to require an offsets program under the Part 52 PSD regulations and has solicited comments as to what additional conditions should be considered. The Administrator intends to be consistent in terms of the minimum conditions that would be applied by EPA when issuing a PSD permit under the Part 52 PSD regulations and the minimum conditions that EPA would ultimately require from States under an approved § 51.18(k) program. The Administrator will consider carefully all relevant comments in order to establish such criteria for PM_{10}.

With respect to an emissions offset program for PM_{10}, the Administrator believes that States should be given considerable flexibility in designing their own programs. They can opt for a case-by-case offset system or they can choose to meet § 51.18(k) by developing a PM_{10} growth allowance to account for new and modified sources. An acceptable NSR program using a growth allowance system must ensure that usable PM_{10} emissions reductions are: (1) Specifically defined as surplus in the relevant attainment demonstration, (2) Federally enforceable at the time of source construction approval, (3) sufficient to offset the new emissions of the subject source (using the § 51.18(j) criteria regarding emissions offset baseline), and (4) permanent and have occurred on or before the operation date of the new or modified source. See § 51.18(j)(3)(ii)(c). States opting to use a growth allowance account may also want to implement a case-by-case offset program as an alternate program should the account become inadequate to approve further growth at any particular time.

Until States revise their SIP's under § 51.18(k) with respect to PM_{10}, EPA is proposing that certain interim measures be implemented which satisfy section 110(a)(2)(D)(i) to ensure the protection of the PM_{10} standards by State preconstruction review programs. In the May 18, 1980, **Federal Register**, in which EPA promulgated § 51.18(k) requirements, the Administrator indicated that the EPA Offset Rule would remain in effect until States submitted and received approval of their program under § 51.18(k). The Administrator is today proposing to amend Section III of the Offset Rule to address major sources or major modifications constructing in an attainment or unclassifiable area, i.e., a PSD area, and causing or contributing to a PM_{10} NAAQS violation. The rule would then become effective for PM_{10} on the date of final notice, which will occur simultaneously with promulgation of revised NAAQS for particulate matter. The Offset Rule would continue in effect with respect to PM_{10} until a State's own § 51.18(k) program is approved by EPA.

Under Section III of EPA's Offset Rule, any affected major construction project must apply LAER, obtain emissions offsets which provide a positive net air quality benefit in the affected area, and certify Statewide source compliance. In harmony with the approach being proposed for determining BACT, the Administrator believes that either of two methods for setting and enforcing the LAER requirements could be followed. First, where the techniques are available to estimate and enforce levels of PM_{10} stack emissions from the proposed source, LAER could be expressed directly as a PM_{10} emissions limitation. However, where sufficient uncertainty in the related techniques would exist or where inadequate data would prevent meaningful estimates of PM_{10} stack emissions, the emissions limitation could continue to be expressed in terms of particulate matter emissions, provided this procedure ensures application of the best control technology for PM_{10}. The Administrator solicits comment on these and any

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[32] If the proposed PM_{10} primary NAAQS is determined to be implemented in part under a Part D approach, then the Part D nonattainment preconstruction review system would also apply for PM_{10}. In addition, the area classification system as it would pertain directly to PM_{10} (e.g., attainment, nonattainment) would be used to determine which particular preconstruction review requirements would apply. In areas designated as nonattainment for PM_{10}, EPA would require that a Part D new source review program (including requirements for LAER, emissions offsets consistent with reasonable further progress, Statewide compliance, and construction ban) be implemented pursuant to requirements under § 51.18(j), as these requirements would be revised to include PM_{10}.

Section 51.18(k) would continue to apply as proposed but would be limited in its applicability (in the same manner as would the PSD program for PM_{10} to areas not designated as nonattainment for PM_{10}.

alternative means to ensure LAER for PM_{10}.

The requirement to procure sufficient offsetting emissions reductions would be fulfilled in a manner consistent with netting requirements under today's PSD proposal. That is, just as reductions of large particles are not creditable against increases in PM_{10} emissions in deciding whether a source has undergone a major modification, neither are such reductions appropriate for fulfilling the emissions reduction requirement under condition 3 of the Offset Rule. Finally, with respect to intrastate compliance, the requirement would continue to apply to major sources under common ownership with the proposed project.

With respect to applications of the construction ban in § 52.24, no growth ban for reasons related to the nonattainment area status of the existing TSP primary NAAQS would be continued or imposed under today's proposal. Since nonattainment designations under section 107 of the Act would not apply with respect to the PM_{10} primary standards under a section 110 legal pathway, no construction ban under either section 110(a)(2)(I) or section 173(4) of the Act would immediately apply either, and bans already in effect for particulate matter would be lifted upon promulgation of the PM_{10} NAAQS.[33]

EPA is considering whether imposition of the construction ban for PM_{10} would be appropriate under authority of section 301 when a State fails to meet its obligation to develop and submit an acceptable PM_{10} plan revision within the 9-month period following EPA's promulgation, or fails to implement a plan after it has been approved. Section 301(a)(1) of the Act authorizes the Administrator to prescribe regulations that are *necessary* to carry out his functions under the Act. Without the imposition of a PM_{10} construction ban, the Agency would retain the ability to encourage expeditious SIP development, but only through potential section 176(b) funding sanctions or the promulgation of Federal rules to ensure attainment. Incentives for PM_{10} SIP development essentially would be limited to the same types of incentives used for lead, visibility, and PSD SIP's (i.e., SIP's not stemming from Part D requirements) that were not submitted in a timely manner. EPA believes that additional sanctions may be necessary where PM_{10} NAAQS violations are occurring.

On the other hand, the Administrator recognizes the clear intent of Congress that States be given considerable flexibility in carrying out their planning responsibilities under the Act. Comments are therefore solicited on the real value of the construction ban as an air quality planning tool and the specific need to establish it for PM_{10} SIP development purposes. Comments are also requested on the planning circumstances under which such a ban should be imposed.

b. *Secondary Standards*

The new source review requirements that would apply to new and modified TSP sources under the revised secondary TSP standard will depend on whether EPA implements that standard under Part D or section 110. Under the Part D alternative, all current efforts to develop NSR requirements would remain appropriate. During the period when additional requirements are being added or existing requirements are being modified, the NSR rules approved under § 51.18(j) would remain in effect for TSP. States with nonattainment areas for which adequate TSP plans, including NSR requirements, were not developed, or with areas that are newly classified as nonattainment for TSP, would implement the Offset Rule to govern the approval process for major construction until SIP development work to accommodate the new TSP secondary NAAQS is completed.[34]

Under the Part D approach, newly designated TSP nonattainment areas could include some TSP areas earlier classified as attainment under EPA's fugitive dust policy, should applicable portions of that policy be no longer available. Whether areas would be redesignated as new nonattainment areas for TSP is not certain at this time, however (see footnote 3). In the event that any area does remain designated as attainment or unclassifiable for the TSP secondary NAAQS under Section 107, States would be required to implement the PSD program in conjunction with the program requirements for offsets under § 51.18(k).

No TSP construction bans would be imposed, in any event since EPA would continue its existing policy relative to the secondary standards. As explained above, the Agency believes that it is inappropriate to impose the ban if a State fails to achieve a secondary standard, including the one proposed for TSP on March 20, 1984. EPA continues to believe that a penalty such as the construction ban was intended by the Congress to be used in areas where it could catalyze more rapid development of suitable SIP's where needed to protect public health.

If EPA chooses to implement the revised secondary TSP standard under section 110 instead of Part D, the nonattainment NSR program that would apply for purposes of the primary PM_{10} NAAQS (described above) would apply in essentially the same way to new and modified TSP sources. Thus, The PSD requirements in conjunction with the § 51.18(k) requirements described above would replace the Part D NSR rules and apply to sources in all areas whose emissions would cause or contribute to violations of the secondary TSP NAAQS. Those States that had not revised their SIP's to apply the § 51.18 (k) program would, under today's proposal, be subject to the requirements of the Offset Rule until they adopted and received EPA approval of such a program. For the reasons discussed earlier, EPA would not apply any construction ban to areas exceeding the revised secondary TSP standard. EPA could, however, use its section 176(b) authority to restrict funding to States that did not revise their SIP's to include the new NSR requirements.

2. Proposed Changes Within the Nonattainment NSR Regulations

The following sections of this notice describe the changes EPA will make in its nonattainment NSR regulations if it implements the primary PM_{10} standards under section 110 and the secondary TSP standards under Part D. This description serves as an illustration of the regulatory consequences that accompany one particular choice of implementation schemes. Choice of a different scheme (e.g., implementation of the primary and secondary NAAQS under section 110) would result in additional changes as described in this notice.

a. *Construction Ban (Section 52.24)*

No changes are being proposed within § 52.24 to reflect PM_{10} applicability under the section 110 legal pathway. As mentioned, this regulation would not be triggered automatically by the failure of

[33] Under a Part D legal pathway, the Agency believes that the construction ban, particularly the ban arising from section 173(4), would remain available for failures to implement PM_{10} revisions in designated PM_{10} nonattainment areas. Bans currently in effect for particulate matter would not be lifted unless the area is redesignated to attainment for the primary NAAQS or a PM_{10} SIP is approved EPA.

[34] Section 129 of the Act states that the EPA Offset Rule applies in nonattainment areas until either the growth ban is imposed or a State rule meeting the applicable Part D requirements is approved. In the case of the secondary standards, the Offset Rule can only be superseded by an approved State NSR rule due to EPA's longstanding policy not to apply the construction ban with respect to secondary standards.

an area to develop or implement a PM_{10} SIP since the Administrator has made a preliminary determination that Part D does not apply to the primary NAAQS being proposed. However, as discussed above, the Administrator is soliciting comments as to whether he can and should: (1) Use his rulemaking discretion under section 301 of the Act to reestablish a construction ban to stimulate the timely development and implementation of PM_{10} plans, and (2) implement the particulate matter NAAQS changes under a Part D pathway instead of the proposed section 110 pathway so as to retain Part D authority to retain and/or impose the construction ban.

b. *Offset Rule (Appendix S of Part 51)*

If EPA chooses to implement the PM_{10} standards under section 110 and the secondary TSP standard under Part D, EPA's Offset Rule would continue to apply for situations involving particulate matter in the form of TSP, and EPA would amend the rule to address PM_{10} during the period preceding EPA approval of a State's § 51.18(k) program for PM_{10}. In order to enable the distinction between the two forms of particulate matter, EPA is proposing to amend the significant emissions rate for "particulate matter" so that the existing emissions rate of 25 TPY would apply to "particulate matter emissions." This term is being proposed to define that portion of particulate matter measured as ambient TSP. A new significant emissions rate of 15 TPY for "PM_{10} emissions" is also being proposed. [See proposed revision to Section II.A.10.(i). of Appendix S to Part 51.]

Section III of the Rule is proposed to be amended by adding "PM_{10}" to the table containing significant ambient concentrations for different averaging periods. Annual and 24-hour concentrations of 1.0 $\mu g/m^3$ and 5 $\mu g/m^3$, respectively, are to be added. These concentrations would be used to determine whether a PM_{10} source would have significant ambient impact and thereby cause or contribute to a NAAQS violation. Because EPA has proposed to set a secondary TSP NAAQS only in terms of an annual averaging period, deletion of the 24-hr significant ambient concentration currently in effect is proposed. [See proposed Section III.A. of Appendix S to Part 51.]

c. *Part D NSR Requirements [Section 51.18(j)]*

EPA is proposing to amend the existing significant emissions rate for "particulate matter" (TSP) in paragraph (j)(1)(x) in the same manner as was described above for the Offset Rule.

While EPA is not proposing any revisions to the Part D NSR requirements with respect to PM_{10} because of the preliminary selection of a section 110 pathway, the Agency does recognize that States may want to cover PM_{10} within their existing nonattainment rule structure and to incorporate the revisions into a maintenance strategy. This would be appropriate in existing nonattainment areas with respect to TSP, which become "clean" areas with respect to PM_{10}, but would have air quality only marginally better than that dictated by the revised NAAQS. In such cases, the State may want to incorporate into its PM_{10} plan some of the requirements associated with the current Offset Rule or § 51.18(j). Such requirements would then be added to the existing PSD requirements as criteria for new source approval when PM_{10} emissions are being reviewed.

d. *Section 51.18(k)*

EPA is proposing certain amendments to § 51.18(k) which are necessary to reflect the proposed changes to the particulate matter NAAQS, and to clarify the existing requirements. With respect to particulate matter, EPA is proposing to add "PM_{10}" as a regulated pollutant and to establish annual and 24-hour significant ambient impact levels (expressed as ambient concentrations of PM_{10}). The significant ambient impact levels are to be used to enable a source to determine whether its emissions would cause or contribute to a NAAQS violation at any location. EPA is also proposing to delete the 24-hour significance level for TSP in light of the fact that only an annual TSP secondary NAAQS is being considered under the Administrator's proposal. See proposed § 51.18(k)(2).

EPA is proposing to clarify that the requirements apply to any major stationary source as defined by section 302(j) of the Act, i.e., 100 TPY or more of any pollutant. See proposed § 51.18(k)(1). The Act uses this definition of major source for the purposes of section 110(a)(2)(D). Thus, as proposed, the major source definition in § 51.18(k) would cover all PSD sources as well as certain non-PSD sources. Such non-PSD sources would include sources that have the potential to emit 100 TPY or more (but less than 250 tons per year) and are not included on the 28-source category listing for PSD.

For PSD sources, the requirements under § 51.18(k) would be applied in addition to all applicable PSD requirements. With regard to non-PSD major sources, § 51.18(k) requirements would be applied in addition to whatever existing permit requirements for major sources remain in the approved SIP. In either case, the requirements would apply to significant PM_{10} emissions (proposed as 15 TPY or more) if the resulting impact from the source is at least 5 $\mu g/m^3$ (24-hour) or 1 $\mu g/m^3$ (annual).

D. Solicitation of Comments on an Alternative Approach

While proposing to retain a TSP secondary standard, the Administrator, as noted in his proposal on March 20, 1984, solicited public comment on the possibility of making the secondary NAAQS equivalent in all respects, including particle size, to the proposed primary standards for PM_{10}. such an action could well have profound implications for the NSR/PSD program.

With respect to geographic applicability of NSR/PSD rules, the program outlined previously for the PM_{10} primary standards would generally apply for the secondary NAAQS as well, assuming that the results of the level selected for the secondary standard would be viewed as requiring additional plan requirements above the current secondary NAAQS. That is, the PSD rules would apply to both attainment and nonattainment preconstruction reviews of the PM_{10} primary and secondary NAAQS until nonattainment problems are addressed in an approved SIP rule ensuring sufficient PM_{10} offsets.

Also possible is the prospect that the selected level for the secondary standard, expressed as PM_{10}, would require less stringent plan requirements than the existing secondary NAAQS. As such, the applicable requirements would depend on whether EPA decides that Part D governs relaxations of the pre-1977 NAAQS or, instead, that section 110 governs all NAAQS revisions. If EPA decides that Part D would govern the implementation of the revised secondary NAAQS, then a new Part D program for secondary PM_{10} NAAQS, similar in every way to the present one for TSP, would be established. PSD review would apply to PM_{10} for purposes of the secondary standard in areas designated attainment or unclassifiable under section 107 for the PM_{10} secondary standard.

Under PM_{10} primary and secondary NAAQS, PM_{10} would clearly be regulated under the Act. A proposed project would be subject to the appropriate NSR/PSD preconstruction review for PM_{10}, if sufficient quantities of new PM_{10} emissions would result from its construction. However, it is not clear whether TSP would continue to be regulated under the Act. If it were, the

dual PSD system for PM_{10} and TSP outlined in preceding parts of this section would also be expected to apply. Potential reasons for the continued regulation of TSP include the fact that the many NSPS under their existing design for TSP continue to restrict particulate matter.

In addition, PSD increments, although phrased in terms of particulate matter, were designed assuming TSP as the regulated pollutant. Since some adverse effects are expected from particles larger than PM_{10}, it appears plausible that this statutorily defined allowance could continue to operate in terms of TSP if the section 163 increments remain geographically applicable (see discussion below). If so, TSP might still be viewed as being regulated under the Act and, as such, would remain subject to PSD review.

The possible impact on the existing PSD increments for particulate matter could be more severe if a PM_{10} secondary NAAQS were interpreted as being more stringent than the current TSP secondary standard. If this were so, section 107 designations would not be established for either the primary or secondary PM_{10} NAAQS. In that case, the particulate matter PSD increments might not apply in any area because they arguably apply only in areas designated as attainment or unclassifiable pursuant to section 107(d)(1) (D) or (E) for particulate matter. [See footnote 27 and accompanying text.]

EPA believes that Congress intended the PSD increments to be a budgeting mechanism for controlling air quality increases before the NAAQS level would be reached. Consequently, serious questions arise as to whether the section 163 increments for particulate matter would continue to apply in areas [35] based on their previous section 107 designations for TSP or whether these increments (or some substitute ones based on PM_{10}) must be reestablished under section 166 of the Act in order to apply. See the preceding discussion on section 166 rulemaking for PM_{10} increments.

The Administrator solicits comment as to the impact on the TSP-based increments contained in section 163 should the section 107 designation process no longer apply to particulate matter, i.e., if both the secondary and primary NAAQS revisions, whether in terms of PM_{10} or TSP, are implemented using only section 110 of the Act without Part D. This may lead to the nonapplicability of current Class II and III increments for particulate matter, since section 162(a)(3) limits the Class II increments to areas identified pursuant to section 107. If the current particulate matter increments would not apply in areas other than the mandatory Class I areas, then EPA also solicits specific comment on the need to reinstate, through its section 301 rulemaking powers, the section 163 increments for TSP. Such increments would be in addition to section 166 increments for PM_{10}.

The Administrator requests comment on all the probable impacts to the NSR/PSD program if a PM_{10} standard is chosen to define both the primary and secondary NAAQS. This information will be valuable should the Agency promulgate any standards that are different from the proposed PM_{10} primary and TSP secondary NAAQS combination.

VI. Impact on NSPS Program

Section 111(b)(1)(A) of the Clean Air Act requires that standards of performance for new sources (NSPS) be established for any category of stationary sources that ". . . causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare . . . ." Under section 111(a)(1), the standards must reflect ". . . application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated . . . ." This level of control technology required by NSPS is often referred to as "best demonstrated technology" or "BDT." Currently, there are 22 NSPS that regulate particulate matter.

The current NSPS also have the effect of controlling PM_{10} pollution. For example, most NSPS are based on either fabric filters or electrostatic precipitators, and these technologies control PM_{10} that is emitted in the particulate phase. Depending on the source, PM_{10} fractions in these controlled gas streams may range from 60 percent to almost 100 percent.

If EPA promulgates NAAQS for PM_{10}, it intends to take the following actions on NSPS:

(1) The Agency would complete an assessment already underway to determine whether or not to revise NSPS because of PM_{10} considerations. The NSPS assessment would identify the source categories that are significant emitters of PM_{10} and the effectiveness of the controls required by the NSPS in controlling PM_{10}. The analysis would address not only primarily emitted particulates, but also condensible gases that form PM_{10} in the ambient air after release from the stack. The study would produce a list of source categories for which NSPS should be revised to reflect BDT for PM_{10}. The Agency would then proceed to revise NSPS giving highest priority to the most significant emitters of PM_{10}.

(2) Each NSPS is reviewed every 4 years as required by section 111(b)(1)(B) of the Act. All NSPS would be assessed for effectiveness in controlling PM_{10} when they were reviewed. This approach would ensure that all NSPS for particulate matter would be evaluated regardless of whether or not identified as high priority in the source assessment screening.

(3) EPA would consider PM_{10} in developing any future NSPS.

VII. Revisions to Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans [36]

A. Regulatory Reform

EPA proposed on October 11, 1983 (48 FR 46152), to streamline Part 51 by deleting obsolete provisions, removing unnecessary requirements, reducing reporting burdens on the States, and restructuring the entire part into a new format that will be easier to use than the existing format. Restructuring of Part 51 is a separate action independent from today's action concerning revised particulate matter standards. In keeping with that effort, however, some of the revisions to Part 51 being proposed today are in the new format. Specifically, the revisions (discussed below) to §§ 51.1 and 51.16 are the new section numbers 51.100 and 51.151, respectively, in the restructured Part 51 format.

Once completely restructured, Part 51 will reflect the act requirements pertaining to SIP's in general terms rather than specifying requirements by pollutant. This action will simplify formerly detailed regulations and provide for more flexibility. Since most references to specific pollutants will have been removed from Part 51, only a small number of changes, aside from the NSR/PSD changes, are needed in this

[35] The questions regarding continued increment applicability do not extend to the mandatory Federal Class I areas and increments, since they are directly established by the Act and are not linked to the section 107 area designation process. See sections 162(a) and 163(b)(1) of the Act.

[36] The revisions described in this section and proposed at the end of this notice are illustrative of the regulatory consequences of one of several choices of implementing the revised NAAQS.

action to revise Part 51 in response to the revised particulate matter standards.

B. Basic SIP Requirements

Part 51 will still contain requirements that must be met by control strategies in order to be approvable. The new Subpart G, Control Strategy, of the restructured format will contain these requirements. All of these requirements are applicable to SIP's for primary and secondary particulate matter NAAQS. The Administrator will judge the SIP's against these requirements to determine their approvability. Where SIP's already contain certain provisions, such as a description of administrative procedures, these need not be repeated in the SIP revision submitted for the revised particulate matter NAAQS.

C. Section 51.18, Review of New Sources and Modifications

In this section the significance level for particulate matter is being revised to indicate that the emission rate is in terms of "particulate matter emissions" as opposed to "particulate matter." This conforms to proposed definitions of these terms. In paragraph (k)(1) reference is added to paragraphs (j)(1)(iv) and (v) of § 51.18 which contain definitions of "new major stationary source" and "major modification." Also in paragraph (k)(1) a change is proposed to replace "40 CFR 81.300 *et seq.*" with "Section 107 of the Act" where reference is made to area classifications. A table (now in Appendix S) is proposed to be added to § 51.18(k) to indicate significant ambient impact concentrations. Within this table the 24-hour concentration is proposed to be deleted for TSP, since there would no longer be a 24-hour TSP NAAQS; significant concentrations for the annual and 24-hour averaging times are proposed to be added for PM_{10}. Finally, paragraph (k)(3) is proposed to be added which would exclude a source from the requirements of paragraph (k) with respect to any pollutant for which the location of the source is designated as nonattainment.

D. Section 51.24, Prevention of Significant Deterioration of Air Quality

Various amendments to the requirements for the prevention of significant deterioration are being proposed to be added to § 51.24 to address PM_{10}. Paragraph (a)(6)(i) is proposed to be changed to allow States 9 months from the date of promulgation of PM_{10} NAAQS to adopt and submit the appropriate SIP revisions. In paragraph (b)(23)(i), the existing significant emissionsrate for particulate matter is proposed to be changed so as to clarify that it is to be measured in terms of "particulate matter emissions." A new significant emissions rate for particulate matter is also proposed to be added which would be expressed in terms of "PM_{10} emissions." Thus, for particulate matter there would be significant emissions rates for both regulated forms, i.e. TSP and PM_{10}. The increments for particulate matter in paragraphs (c) and (p) are proposed to be changed to indicate that the specified concentrations apply to ambient TSP. In paragraph (i) the significant ambient concentration for particulate matter is proposed to be changed to indicate that the specified value applies to either TSP or PM_{10}. Also in paragraph (i), technical and clarifying amendments are being made to lead, beryllium, and hydrogen sulfide to correct for previous typographical errors. Finally, an amendment is being proposed that would allow States to adopt PM_{10} transition provisions that parallel the proposed transition provisions in § 52.21.

E. Section 51.100, Definitions

EPA proposes to add clarifying definitions to Part 51. A generic definition of "particulate matter" is added which parallels the use of the term in the revised criteria document for particulate matter. Definitions of "particulate matter emissions" and "PM_{10} emissions" are proposed which would distinguish between the two. A definition of "PM_{10}" is proposed which would define PM_{10} as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 um as mesured by a reference method based on Appendix J of Part 50. Finally, a definition of "total suspended particulate" is proposed which would define it as particulate matter measured by the method described in Appendix B of Part 50.

F. Section 51.151, Significant Harm Levels

The review and revision of health and welfare criteria for particulate matter and sulfur oxides and the proposed revisions to the NAAQS for particulate matter necessitate certain changes to the significant harm levels. To conform with the proposed revisions to the primary (health based) NAAQS for particulate matter, the Administrator proposes that the indicator for the particulate matter significant harm level be changed from TSP to PM_{10}.

It is also proposed that the significant harm concentration level for particulate matter be revised. The criteria document indicates that increases in daily total mortality during the London winters of 1958/59 to 1971/72 occurred when particle levels, measured as British Smoke (BS),[37] and sulfur dioxide (SO_2) levels where both above 500 $\mu g/m^3$ (p. 14–51). While the relative importance of SO_2 cannot be specified unequivocally, the conservative assumption (with respect to particles) is that similar responses might have occurred without substantial amounts of SO_2 present as discussed in the EPA staff paper for particulate matter (EPA 1982, p. 98). In addition to potential SO_2 interaction, consideration must also be given to comparing BS and PM_{10}. Because the smoke reading responds to darkness instead of mass, the relationship between BS and a mass index such as PM_{10} is particularly uncertain. To account for this, the staff paper (p. 99) derives general boundary relationships comparing BS and PM_{10} units from the available aerometric data. The lower bound assumes a BS reading equals a PM_{10} mass reading while the upper bound assumes PM_{10} mass = BS reading + 100 $\mu g/m^3$. The lower bound includes a margin of safety compared with the upper bound of the range. In light of the previous assumption regarding SO_2 interaction, it would be reasonable when expressing BS results in PM_{10} units to use the upper and less conservative portion of the range identified in the staff paper. Therefore, based on the available evidence, EPA proposes to change the significant harm level for particulate matter from 100 $\mu g/m^3$ measured as TSP to 600 $\mu g/m^3$ measured as PM_{10}.

The Administrator also proposes that the significant harm level for the combined levels of particulate matter (measured as TSP) and sulfur dioxide be deleted. As noted in the staff paper (p. 71), it is not clear from the relevant scientific evidence that such a combined particulate matter-sulfur dioxide index provides any improvement in protecting against significant harm from particulate matter over a single significant harm level for particulate matter that is chosen with due consideration of the potential interactive effects. As discussed above, the proposed significant harm level for particulate matter does take into account, in a conservative fashion, potential SO_2 interaction. Continuation of the current combined TSP-SO_2 index is, therefore, no longer appropriate nor needed from the standpoint of particulate matter. The

[37] British Smoke (BS) is a pseudo-mass indicator related to small particle (size less than a nominal 4.5 micrometers) darkness. This particulate matter indicator was widely used in British and other European studies.

possibility of new combined significant harm level from the standpoint of SO_2 will be considered in the review of the SO_2 standards and significant harm level.

More detailed discussion of the information supporting these proposed revisions can be found in the criteria document and staff paper which are available for inspection at the Central Docket Section (Docket No. A–82–37). The address of the Central Docket Section is given at the beginning of this notice.

G. Section 51.322, Sources Subject to Emission Reporting

Since the proposed revisions to the NAAQS for particulate matter would retain a secondary standard for TSP, the Agency foresees a continuing need to obtain annual reports on particulate matter emissions [as proposed to be defined in § 51.100 (gg)] in order to perform various types of national analyses and to prepare national emissions trends reports. No change is proposed to the existing definition of sources of particulate matter subject to reporting. The reporting of emissions data to the National Emissions Data System (NEDS) for facilities and emission points of particulate matter would continue as required by the existing regulations.

The new proposed provisions would establish annual reporting of PM_{10} emissions data from facilities and emission points located within areas for which a PM_{10} control strategy is prepared. Facility-specific PM_{10} emissions would be used by the Agency to prepare analyses for its environmental management reports, for analyzing progress toward attainment and air quality-emissions relationships and for special analyses of problem areas. The Agency recognizes that States may not typically determine PM_{10} emissions for sources in areas where control strategies are not prepared. It is the Agency's intent to require reporting of annual PM_{10} emissions only for facilities and emission points that will be included within the emission inventories needed to prepare State implementation plans for the PM_{10} NAAQS. The criteria for determining which sources are subject to reporting would be the same emission levels as for particulate matter emissions. These are: facilities emitting over 90.7 metric tons (100 tons) of PM_{10} and emission points of over 22.7 metric tons (25 tons) of PM_{10}.

H. Section 51.323, Reportable Emissions Data and Information

The proposed revisions to this section would require that PM_{10} emissions data be reported to EPA's Hazardous and Trace Emissions System (HATREMS). This would be necessary because NEDS has a capability limited to storing emissions data for particulate matter (i.e., *total* particulate matter emissions), sulfur dioxide, carbon monoxide, volatile organic compounds, and nitrogen dioxide. In order to minimize reporting burdens associated with PM_{10} emissions reporting, only four data items would have to be reported for any facility or emission point: the NEDS identification code, the annual PM_{10} emissions (expressed as tons per year), the estimation method, and the year of record. All other information on PM_{10} sources will be updated routinely through the annual reports on sources of particulate matter submitted to NEDS.

I. Revisions to Appendix L

Appendix L to Part 51 contains example air pollution episode levels and contingency plans for the purpose of preventing air pollution from reaching the significant harm levels prescribed in Section 51.151. To conform with the proposed revisions to the significant harm level for particulate matter, certain changes to Appendix L are required. EPA proposes the following revisions to the example episode levels for particulate matter:

(1) That the indicator particulate matter episode levels be changed from TSP to PM_{10}, as is proposed for the significant harm level;

(2) That the combined particulate matter/sulfur dioxide episode levels be deleted;

(3) That the example alert level for particulate matter be changed to 350 $\mu g/m^3$, 24-hour average;

(4) That the example warning level for particulate matter be changed to 420 $\mu g/m^3$ 24-hour average; and

(5) That the example emergency level be changed to 500 $\mu g/m^3$, 24-hour average.

The basis for changing the indicator for particulate matter and for deleting the combined particulate matter/sulfur dioxide episode levels is the same basis as discussed above for the revisions to Section 51.151. With respect to example episode levels, the proposed alert level reflects the upper bound of the range of interest in the staff paper. The staff paper concludes that at or above 350 $\mu g/m^3$ health effects are likely to occur in certan sensitive population groups. Therefore, it would be appropriate under the episode criteria to initiate first stage control action when this ambient level of particulate matter occurs. The proposed warning and emergency levels are set at approximately equal increments between the proposed alert level and the proposed significant harm level. This approach would provide some opportunity for the control actions associated with each episode level to take effect before the next stage is triggered and additional control actions become necessary.

J. Revisions to Appendix S

Appendix S is proposed to be revised by changing the existing significant emissions rate for particulate matter in paragraph II.A.10(i) to indicate that the specified rate of 25 TPY applies with respect to "particulate matter emissions." Also in paragraph II.A.10(i), a new significant emissions rate for particulate matter, in the form of PM_{10} is proposed to be added which would be expressed in terms of "PM_{10} emissions." In paragraph III.A., the table of significant ambient impact levels is proposed to be revised by deleting the 24-hour level for TSP, and by adding the pollutant "PM_{10}" and significant levels for PM_{10} with respect to the annual and 24-hour averaging periods. Thus, for particulate matter, there would be significant emissions rates and significant ambient impact levels for both regulated forms, i.e., TSP and PM_{10}.

VIII. Revisions to Part 52, Approval and Promulgation of Implementation Plans [38]

A. Section 52.01, Definitions

The proposed amendments to this section are the same as those proposed for § 51.100.

B. Section 52.21, Prevention of Significant Deterioration of Air Quality

The amendments for the Part 52 PSD regulations in § 52.21 include the amendments proposed for § 51.24 concerning (1) the significant emission rate for particulate matter, (2) the ambient increments for particulate matter, and (3) the significant ambient concentrations for particulate matter, lead, beryllium and hydrogen sulfide. Also, in paragraph (i)(4) new provisions are being proposed to grandfather certain applicants from additional PSD review resulting from new PM_{10} requirements where prescribed criteria have been met by the applicant. In paragraphs (i)(11) and (m)(1) (vii) and

[38] The revisions described in this section and proposed at the end of this notice are illustrative of the regulatory consequences of one of several choices of implementing the revised NAAQS.

(viii), new transition provisions for preconstruction monitoring have been proposed which would exclude applicants from PM_{10} monitoring methods depending on when a complete application is submitted relative to the promulgation date of the PM_{10} NAAQS. Finally, paragraph (w)(2) is proposed to be changed to replace the date "June 28, 1978," with the date "August 7, 1980," which is the latest date on which PSD requirements under this section were issued.

IX. Revisions to Part 81, Designation of Areas for Air Quality Planning Purposes [39]

Part 81 is proposed to be revised to remove the area designations for the primary particulate matter NAAQS since section 107 would not apply to the PM_{10} NAAQS. The designations for the secondary particulate matter NAAQS will be retained only if EPA decides that section 107 and Part D of the Act would still apply to the revised secondary NAAQS.

On August 27, 1979, EPA noted in the **Federal Register** (44 FR 50098) that for the original particulate matter nonattainment designations, for areas in which both primary and secondary NAAQS were being violated only the column for the primary NAAQS was marked, rather than both primary and secondary NAAQS columns being marked. The notice pointed out that if an area is nonattainment for the primary particulate matter NAAQS, it is assumed nonattainment for the secondary NAAQS also, even though the secondary NAAQS column is not marked. Since this caused confusion, EPA began marking the secondary NAAQS columns where appropriate on an individual (by State) basis as **Federal Register** notices revising designations were published. Today's proposal completes the process of marking the secondary NAAQS columns and then deletes the columns for the primary NAAQS.

Regulatory and Environmental Impacts

I. Regulatory Impact Analysis

Under Executive Order (EO) 12291, EPA must determine whether a regulation is a "major rule" for which a Regulatory Impact Analysis (RIA) is required. The Agency has determined the particulate matter NAAQS proposal of March 20, 1984, to be a major action, and has prepared a draft RIA which is discussed in that notice (49 FR 10421). The regulations proposed herein have been determined by the Agency not to be a major action in and of themselves. This action addresses the implementation of the proposed NAAQS and does not itself result in the economic effects set forth in Section I of the Order as grounds for finding a regulation to be a major rule.

II. Impact on Small Entities

The Regulatory Flexibility Act requires that all Federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA has considered the potential impacts of today's action in combination with the March 20, 1984, proposals on small entity groups and included a detailed discussion of that effort in the March 20, 1984, notice (page 10422). The reader is referred to that discussion for further details.

III. Impact on Reporting Requirements

The proposed revisions to Parts 51 and 52 were submitted to the Office of Management and Budget (OMB) for review as required by EO 12291. The reporting and record keeping provisions addressed in this notice, however, have been submitted separately for review by OMB under Section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq. OMB comments and EPA responses to those comments are available for public inspection in the docket for this action.

Authority: This rulemaking is promulgated under authority of Sections 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act, 42 U.S.C. 7401(b)(1), 7410, 7570–7579, 7501–7508, and 7601(a).

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Hydrocarbons, Ozone, Carbon monoxide, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, State implementation plans.

40 CFR Parts 50 and 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Carbon monoxide, Hydrocarbons, Particulate matter.

40 CFR Part 53

Administrative practice and procedure.

40 CFR Part 58

Reporting and recordkeeping requirements, Pollutants standard index, Ambient air quality monitoring system.

40 CFR Part 81

National parks and wilderness areas.

Dated: March 20, 1985.

Lee M. Thomas,

Administrator.

References

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EPA [U.S. Environmental Protection Agency] (1982). Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information—OAQPS Staff Paper. Office of Air Quality Planning and Standards, Research Triangle Park, N.C. EPA–450–82001. NTIS No. PB82–177874.

Hawkins, David G. [Assistant Administrator for Air and Waste Management] (1977). Model Letter Regarding State Designation of Attainment States. Memorandum to Regional Administrators. October 7, 1977.

Tuerk, Edward F. [Acting Assistant Administrator for Air Waste Management] (1977). Guidance on SIP Development and New Source Review in Areas Impacted by Fugitive Dust. Memorandum to Regional Administrators. August 16, 1977.

Powell, Roger D., U.S. EPA, Plans Guidelines Section (1984). Analysis of Current vs. Revised PM NAAQS. Memorandum to Joseph J. Sableski. April 25, 1984.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, Part 51 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. In § 51.18, the fourth line in the list in paragraph (j)(1)(x) and paragraph (k) are revised. As amended, § 51.18 reads as follows:

§ 51.18 Review of new sources and modifications.

* * * * *

(j) * * *

(1) * * *

(x) * * *

Particulate matter: 25 TPY of particulate matter emissions.

* * * * *

(k)(1) Each plan shall include a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary

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[39] The revisions described in this section and proposed at the end of this notice are illustrative of the regulatory consequences of one of several choices of implementing the revised NAAQS.

source or major modification as defined in paragraphs (j)(1) (iv) and (v) of this section. Such a program shall apply to any such source or modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when it would cause or contribute to a violation of any national ambient air quality standard.

(2) A major source or major modification will be considered to cause or contribute to a violation of a national standard when such source or modification would exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

	Annual	Averaging time (hours)			
		24	8	3	1
Pollutant:					
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
TSP	1.0 μg/m³				
PM_{10}	1.0 μg/m³	5 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5 mg/m³		2 mg/m³

(3) The requirements of paragraph (k) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under Section 107 of the Act.

2. In § 51.24, paragraph (a)(6)(i) is revised, the fourth line in the list in paragraph (b)(23)(i) is revised, the entries under the headings "Particulate matter" in the tables in paragraphs (c) and (p)(4) are revised, paragraphs (i)(8)(i)(*c*), (*f*), (*h*), and (*l*) are revised, and new paragraph (i)(10) is added as follows:

§ 51.24 Prevention of significant deterioration of air quality.

* * * * *

(a) * * *

(6) *Amendments.* (i) Any State required to revise its implementation plan by reason of an amendment to this section, including any amendment adopted simultaneously with this paragraph, shall adopt and submit such plan revision to the Administrator for approval before [date 9 months after promulgation].

* * * * *

(b) *Definitions.*

* * * * *

(23)(i) * * *

Particulate matter: 25 tpy of particulate matter emissions 15 tpy of PM_{10} emissions.

* * * * *

(c) * * *

Maximum allowable increases [Micrograms per cubic meter].

Class I

Pollutant

Particulate matter:

TSP, annual geometric mean..... 5

TSP, 24-hr maximum..... 10

* * * * *

Class II

Particulate matter:

TSP, annual geometric mean..... 19

TSP, 24-hr maximum..... 37

* * * * *

Class III

Particulate matter:

TSP, annual geometric mean..... 37

TSP, 24-hr maximum..... 75

* * * * *

(i) * * *

(8) * * *

(i) * * *

(*c*) Particulate matter—10 ug/m ^{3} TSP, 24-hour average, 10ug/m ^{3} of PM_{10}, 24-hour average:

* * * * *

(*f*) Lead 0.1 μg/m ^{3}, 3-month average;

* * * * *

(*h*) Beryllium—0.001 μg/m ^{3}, 24-hour average;

* * * * *

(*l*) Hydrogen sulfide—0.2 μg/m ^{3}, 1-hour average;

* * * * *

(10) If EPA approves a plan revision under § 51.24 as in effect before [date of publication of Final Rule], any subsequent revision which meets the requirements of this section may contain transition provisions which parallel the transition provisions of § 52.21 (i)(11)(i)–(iii), and (m)(1)(vii) and (viii) of this chapter as in effect on that date, these provisions being related to monitoring requirements for particulate matter. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in § 52.21 of this chapter.

* * * * *

(p) * * *

(4) * * *

Particulate matter:

TSP, annual geometric mean..... 19

TSP, 24-hr maximum..... 37

* * * * *

3. In § 51.100, as proposed on October 11, 1983 (48 FR 46152), paragraphs (ff), (gg), (hh), (ii), and (jj) are added to read as follows:

§ 51.100 Definitions.

* * * * *

(ff) "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than a few hundred micrometers.

(gg) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.

(hh) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of this chapter and designated in accordance with Part 53 of this chapter or by an equivalent method designated in accordance with Part 53 of this chapter.

(ii) "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in this chapter or by a test method specified in an approved State implementation plan.

(jj) "Total suspended particulate (TSP)" means particulate matter as measured by the method described in Appendix B of Part 50 of this chapter.

4. In § 51.151, as proposed on October 11, 1983 (48 FR 46152), the third unnumbered subdivision beginning "sulfur dioxide and particulate matter combined" is deleted and the second unnumbered subdivision beginning "particulate matter" is revised to read as follows:

§ 51.151 Significant harm levels.

* * * * *

PM_{10}—600 micrograms/cubic meter, 24-hour average.

* * * * *

5. In § 51.322, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 51.322 Source subject to emissions reporting.

* * * * *

(1) For particulate matter, sulfur oxides, hydrocarbons, nitrogen oxides, and PM_{10} emissions, any facility that actually emits a total of 90.7 metric tons (100 tons) per year or more of any one pollutant.

* * * * *

(b) * * *

(1) For particulate matter, sulfur oxides, hydrocarbons, nitrogen oxides, and PM_{10} emissions, 22.7 metric tons (25 tons) per year or more.

6. In § 51.323, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 51.323 Reportable emissions data and information.

(a) * * *

(1) Emissions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, and hydrocarbons, as specified by AEROS Users Manual, Vol. II (EPA–450/2–76–029, OAQPS No. 1.2–039) to be coded into the National Emissions Data System (NEDS) point source coding forms, and

(2) PM_{10} emissions and emissions of lead or lead compounds measured as elemental lead as specified by AEROS Users Manual, Vol. II (EPA–450/2–76–029, OAQPS No. 1.2–039) to be coded into the Hazardous and Trace Emissions System (HATREMS) point source coding forms.

* * * * *

7. In Appendix L, paragraphs (b), (c), and (d) are amended by removing the unnumbered subdivisions beginning "SO_2 and particulate combined" and by revising the unnumbered subdivisions beginning "Particulate" to read as follows:

Appendix L—Example Regulations for Prevention of Air Pollution Emergency Episodes

* * * * *

(b) * * *

PM_{10}—350 $\mu g/m^3$, 24-hour average.

(c) * * *

PM_{10}—420 $\mu g/m^3$, 24-hour average.

(d) * * *

PM_{10}—500 $\mu g/m^3$, 24-hour average.

* * * * *

8. In Appendix S, the fourth line beginning "Particulate matter" in the list in Section II.A.10(i) and the table in Section III.A. are revised to read as follows:

Appendix S—Emission Offset Interpretative Ruling

* * * * *

II. * * *

10(i) * * *

Particulate matter: 25 tpy of particulate matter emissions 15 tpy of PM_{10} emissions.

* * * * *

III. * * *

A. * * *

	Annual	Average time (hours)			
		24	8	3	1
Pollutant: SO_2	1.0 $\mu g/m^3$	5 $\mu g/m^3$		25 $\mu g/m^3$	
TSP	1.0 $\mu g/m^3$	5 $\mu g/m^3$			
PM_{10}	1.0 $\mu g/m^3$				
NO_2	1.0 $\mu g/m^3$				
CO			0.5 mg/m^3		2 mg/m^3

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, Part 52 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. In § 52.01, paragraphs (i), (j), (k), (l), and (m) are added to read as follows:

§ 52.01 Definitions.

* * * * *

(i) "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than a few hundred micrometers.

(j) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.

(k) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of this chapter and designated in accordance with Part 53 of this chapter or by an equivalent method designated in accordance with Part 53 of this chapter.

(l) "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in this chapter or by a test method specified in an approved State implementation plan.

(m) "Total suspended particulate (TSP)" means particulate matter as measured by the method described in Appendix B of Part 50 of this chapter.

2. In § 52.21, the fourth item in the list in paragraph (b)(23)(i) is revised; the entries under the headings "Particulate matter" in the tables in paragraphs (c) and (p)(4) are revised; paragraphs (i)(4)(ix) and (x) are added; the third, sixth, eighth, and twelfth items in the list in paragraph (i)(8)(i) are revised; paragraph (i)(11) is added; paragraphs (m)(1)(vii) and (viii) are added, and paragraph (w)(2) is revised as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) *Definitions.* * * *

(23)(i) * * *

Particulate matter: 25 tpy of particulate matter emissions, 15 tpy of PM_{10} emissions.

* * * * *

(c) * * *

Class I

Pollutant

Particulate matter:

TSP, annual geometric mean..... 5

TSP, 24-hr maximum..... 10

* * * * *

Class II

Particulate matter:

TSP, annual geometric mean..... 19

TSP, 24-hr maximum..... 37

* * * * *

Class III

Particulate matter:

TSP, annual geometric mean..... 37

TSP, 24-hr maximum..... 75

* * * * *

(i) * * *

(4) * * *

(ix) The source or modification was not subject to § 52.21 as in effect on August 7, 1980, and the owner or operator:

(*a*) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before [date of publication of Final Rule];

(*b*) Commenced construction within 18 months from [date of publication of Final Rule], or any earlier time required under the State implementation plan; and

(*c*) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time;

(x) The source or modification was subject to 40 CFR 52.21 as in effect on August 7, 1980, and the owner or operator submitted an application for a permit under this section on or before [date of publication of Final Rule], and the Administrator subsequently determines that the application as submitted before that date was complete with respect to the requirements of this section as is effect on August 7, 1980.

* * * * *

(8) * * *

(i) * * *

Particulate matter—10 μg/m³ of TSP, 24-hour average, PM_{10}, 24-hour average;

* * * * *

Lead—0.1 μg/m³, 24-hour average;

* * * * *

Beryllium—0.001 μg/m³, 24-hour average;

* * * * *

Hydrogen sulfide—0.2 μg/m³, 1-hour average;

* * * * *

(11)(i) At the discretion of the Administrator, the requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(i)–(iv) of this section may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before [date 10 months after publication of Final Rule] and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i)–(iv).

(ii) The requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(iii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section between [date 10 months after publication of the Final Rule] and [date 16 months after promulgation]. The data shall have been gathered over at least the period from [date 6 months after publication of the Final Rule] to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii) of this section, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

* * * * *

(m) *Air quality analysis.* (1) * * *

(vii) For any application that becomes complete, except as to the requirements of paragraph (m)(1)(iii) and (iv) pertaining to PM_{10}, between [date 16 months after publication of the Final Rule] and [date 24 months after publication of the Final Rule], the data that paragraph (m)(1)(iii) requires shall have been gathered over at least the period from [date 12 months after publication of the Final Rule] to the date the application becomes otherwise complete, except that the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring PM_{10} under paragraphs (i)(11)(i) and (ii) of this section, the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.

* * * * *

(p) * * *

(4) * * *

Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37

* * * * *

(w) *Permit rescission.* * * *

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under § 52.21 as in effect on August 7, 1980, or any earlier version of this section, may request that the Administrator rescind the permit or a particular portion of the permit.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

For the reasons set out in the preamble, Part 81 of Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

§§ 81.301–81.356 [Amended]

In §§ 81.301 through 81.356, for each table entitled "(State name)—TSP":

1. Any "X" in the second column entitled "Does not meet primary standards" is transferred to the third column entitled "Does not meet secondary standards," unless a corresponding "X" already appears in the third column.

2. The second column entitled "Does not meet primary standards" is removed.

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GENERAL ACCOUNTING OFFICE

4 CFR Part 83

Privacy Procedures for Personnel Records

AGENCY: General Accounting Office.
ACTION: Final regulations.

SUMMARY: These regulations establish procedures and limitations designed to protect the privacy of General Accounting Office (GAO) personnel records. While GAO is not subject to the principal requirements of the Privacy Act (Act), 5 U.S.C. 552a, it is GAO policy to conduct its activities, to the maximum extent possible, in a manner consistent with the spirit of the Act and its duties, functions, and responsibilities to the Congress.

EFFECTIVE DATE: May 3, 1985.

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SUPPLEMENTARY INFORMATION: Although GAO is not covered by the principal requirements of the Privacy Act, it has been GAO's position to conform to the spirit of that Act consistent with its duties and functions and responsibility to the Congress. Consequently, GAO published in the **Federal Register** (48 F.R. 39632) proposed regulations entitled "Privacy Procedures for Personnel Records." These regulations do not list either the various systems of personnel records or routine uses of such records which will be published periodically in the **Federal Register**. A listing of existing systems of personnel records and proposed routine uses will appear in the **Federal Register** shortly.

Generally, the comments received on the proposed regulations were technical in nature and recommended specific changes to the proposed regulations but did not criticize their general purpose of scope. The following summarizes those changes made in the proposed regulations.

In § 83.2(b) the "General Services and Controller Division" was substituted for the former "Office of Information Services and Systems," to reflect a recent internal reorganization of the Office.

The definition for "record" in § 83.3(e) has been made consistent with the definition for "record" set forth in the Privacy Act by making it clear that the relevant records about an individual are those that contain his name or other identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint or a photograph.

The definition for "system of personnel records" in § 83.3(g) was revised to make clear that GAO's privacy procedures apply only to personnel records.

In § 83.4(b) setting forth one of the conditions of disclosure, the word "required" was substituted for "authorized" to conform to the Privacy Act phrasing. Language was also added stating that GAO may disclose information as provided in § 83.5 (formerly § 83.11) which governs disclosure of information concerning GAO employees.

Section 83.4(k) has been added to reflect the recent amendment to the Privacy Act concerning disclosure to a consumer reporting agency.

Section 83.5 governs responses to a member of the public, prospective employers, and law enforcement officials for access to GAO employee information. Section 83.5 was initially designated §83 .11. However, since it deals with the disclosure of information and § 83.4 deals with the conditions of disclosure, the placement of these two sections together is logical. As a result of this redesignation, §§ 83.5 through 83.10 have been redesignated §§ 83.6 through 83.11, respectively. Paragraphs (f) and (g) of former § 83.11 have been deleted since their content is now contained in § 83.4(g) and § 83.4(a) respectively. Paragraph (k) of former § 83.11 concerning classified material is deleted since disclosure of classified material is provided in § 83.21(a)(1). Paragraph (m) of former § 83.11 concerning medical information has also been deleted, since disclosure of medical information will be governed by the conditions set out in § 83.4.

Paragraph (n) of former § 83.11 concerning investigations was redesignated paragraph (j) of § 83.5 and revised to state that when personnel investigations are provided only on a loan basis by another Federal agency to GAO on the condition that GAO not release such data, GAO will refer parties requesting such information to the originating agency.

This revision was included to assure that GAO does not jeopardize its ability to obtain investigative reports. Also, if the originating agency is subject to the Privacy Act, the records would be protected pursuant to that Act with all the civil and criminal remedies available to any injured party, including a GAO employee.

In § 83.7(d), the time period for publication of notices of systems of records in the **Federal Register** was revised. Publication was changed from "at least every 2 years" to "upon establishment or revision" of the existence or character of a personnel system of records. This change reflects recent changes to the Privacy Act.

Sections 83.7(i)(1) and 83.7(i)(3) have been changed to indicate that GAO shall not only establish but also *maintain* appropriate safeguards to assure the security and confidentiality of personnel records. Similarly, § 87.3(i)(2) has been revised to provide that adequate control procedures are set up so that removed records are properly controlled during such periods of removal.

Section 83.12(a) is clarified to show that an individual may not gain access to his own record if the information is otherwise exempted.

In § 83.17(a) the charge for copying is changed from 10 cents per page to 20 cents per page in order to reflect the cost to GAO.

Section 83.21(a)(1) has been revised to reflect more clearly the fact that all personnel records are exempted from an individual's gaining access to the accounting of disclosure as well as access to the record itself if the record is subject to the provisions of 5 U.S.C. 552(b)(1) of the Freedom of Information Act. That section states that an agency does not have to make available to the public matters that are specifically

authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Section-by-Section Analysis

Section 83.1 Purpose and Scope of Part.

This section establishes the purpose and scope of the proposed regulations, a purpose in harmony with the objectives of the Privacy Act. The regulations apply to systems of personnel records, which are our most important and extensive systems. The disclosure of these and other GAO records will also be governed by 4 CFR Part 81, concerning the public availability of General Accounting Office Records.

Section 83.2 Administration.

The Director, Personnel, of the General Accounting Office is responsible for administering the regulations.

Section 83.3 Definitions.

The definitions used in this part include those terms defined in the Privacy Act, and Office of Personnel Management regulations published at 5 CFR Parts 294–297 (1982).

Section 83.4 Conditions of Disclosure.

The regulations adopt most of the same conditions of disclosure that govern executive agencies under the Privacy Act. If the records are to be so used, the statutory provisions of Title 13, United States Code, concerning disclosure to the Bureau of the Census would control. Also the GAO/OPM/GSA Memorandum of Understanding, reprinted in Appendix I, as well as GSA's own statutory provisions, govern disclosure to the National Archives.

Section 83.5 Specific Disclosures of Information.

The regulations concerning the availability of information generally track the regulations of the Office of Personnel Management concerning availability of records except no special provision is made for medical information.

Also, subsection (j)(2) provides that GAO will refer parties requesting investigative information to the Federal agency from which it originated if GAO receives such information on the condition that it not be released.

Section 83.6 Accounting of Certain Disclosures.

This section adopts accounting provisions similar to those under the Privacy Act, recognizing GAO's record retention schedule.

Section 83.7 GAO Policy and Requirements.

The GAO requirements generally track the requirements imposed on executive agencies under the Privacy Act.

Section 83.8 Standards of Conduct.

This section differs from the Privacy Act in that GAO standards of conduct involve internal controls only, whereas the Privacy Act grants statutory Federal civil and criminal jurisdiction over Privacy Act violations. Since GAO is not covered by the procedural requirements of that Act, it cannot grant similar jurisdiction for individuals to bring a cause of action to the United States courts.

Section 83.9 Social Security Number.

This section reiterates the requirements of section 7 of the Privacy Act, the only section of that Act that is applicable to GAO. Since 1974, GAO has been following the requirements of this section.

Section 83.10 First Amendment Rights.

This section tracks the Privacy Act guarantees of protecting First Amendment rights.

Section 83.11 Official Personnel Folder.

This section deals with the most important record system of personnel systems of records—the Official Personnel Folder. Ownership of the Folder is already established by the GAO/OPM/GSA Memorandum of Understanding (Appendix I); regulations concerning the Folder are consistent with the Office of Personnel Management's regulations concerning the Official Personnel Folders of executive branch agencies.

Section 83.12 Procedures for Individual Access to Records.

This section provides the specific procedures and identification requirements for individual requests for access to GAO personnel records and generally tracks the Office of Personnel Management regulations in this regard.

Section 83.13 Inquiries.

This section provides procedures for individuals in making general inquiries about systems of records.

Section 83.14 Denial of Access Requests.

This section tracks the Privacy Act and gives the requester the right to receive the reason for the denial of his access request and the identification of the official responsible for the decision.

Section 83.15 Request for Amendment of Record.

This section prescribes procedures similar to the Privacy Act whereby an individual can request amendment of a personnel record.

Section 83.16 Administrative Review of Request for Amendment of Record.

This section provides procedures whereby a requester can seek administrative review of GAO's denial of a request for amendment of the requester's record.

Section 83.17 Fees.

This section prescribes fees for obtaining copies of records.

Section 83.18 Rights of Legal Guardians.

This section establishes the rights of legal guardians of incompetent individuals.

Section 83.19 Government Contractors.

This section provides that Government contractors stand in the shoes of GAO personnel when GAO provides, by contract, for the maintenance by or on behalf of GAO of a system of personnel records.

Section 83.20 Mailing Lists.

This section establishes that GAO may not sell or rent mailing lists unless specifically authorized by law.

Section 83.21 Exemptions.

Certain systems of records are exempted from requirements relating to accounting for disclosures and individual access to records. These exemptions generally track those of the Privacy Act.

List of Subjects in 4 CFR Part 83

Administrative practices and procedures, Government employees, Privacy.

Accordingly, Title 4 CFR is amended by the addition of a new Part 83, to read as follows:

PART 83—PRIVACY PROCEDURES FOR PERSONNEL RECORDS

Sec.

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83.3 Definitions.
83.4 Conditions of disclosure.
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83.17 Fees.
83.18 Rights of legal guardians.
83.19 Government contractors.
83.20 Mailing lists.
83.21 Exemptions.

Appendix I—Memorandum of Understanding.

Authority: 31 U.S.C. 711(1); Memorandum of Understanding between the U.S. Office of Personnel Management, the National Archives and Records Service of the General Services Administration and the U.S. General Accounting Office; 4 CFR Part 81; 5 CFR Parts 294–297; and 31 U.S.C. 731, *et seq.*

§ 83.1 Purpose and scope of part.

This part describes the policy and prescribes the procedures of the United States General Accounting Office (GAO) with respect to maintaining and protecting the privacy of GAO personnel records. While GAO is not subject to the Privacy Act (Act) (5 U.S.C. 552a), GAO's policy is to conduct its activities in a manner that is consistent with the spirit of the Act and its duties, functions, and responsibilities to the Congress. Application of the Privacy Act to GAO is not to be inferred from the provisions of these regulations. These regulations are designed to safeguard individuals against invasions of personal privacy by requiring GAO, except as otherwise provided by law, to—

(a) Protect privacy interests of individuals by imposing requirements of accuracy, relevance, and confidentiality for the maintenance and disclosure of personnel records;

(b) Inform individuals of the existence of systems of personnel records maintained by GAO containing personal information; and

(c) Inform individuals of the right to see and challenge the contents of personnel records containing information about them.

This part applies to all systems of personnel records (as defined in § 83.3(g)) for which GAO is responsible.

§ 83.2 Administration.

The administration of this part is the duty and responsibility of the Director, Personnel, United States General Accounting Office, 441 G Street NW., Washington, D.C. 20548. To this end, the Director, Personnel, in consultation with the Office of the General Counsel, is authorized to issue such supplemental regulations or procedural directives as may be necessary and appropriate.

(a) The Director, Personnel, shall have general responsibility and authority for implementing this part, including—

(1) Approving all systems of personnel records to be maintained by GAO (whether physically located in GAO's Office of Personnel or elsewhere), including the contents and uses of such systems, accounting methods, and security methods; and

(2) Responding to an individual's request to gain access to or amend his or her own personnel records.

(b) The Director, Personnel, may delegate within GAO any of his functions under this part.

§ 83.3 Definitions.

As used in this part:

(a) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) "Information" means papers, records, photographs, magnetic storage media, micro storage media, and other documentary materials, regardless of physical form or characteristics, containing data about an individual and required by GAO in pursuance of law or in connection with the discharge of official business, as defined by statute, regulation, or administrative procedure;

(c) "Maintain" includes to collect, to use, or to disseminate;

(d) "Personnel record" means any record concerning an individual which is maintained pursuant to GAO's personnel management process or personnel policy setting process;

(e) "Record" means any item, collection, or grouping of information about an individual that is maintained by GAO, including, but not limited to, education, financial transactions, medical history, criminal history, or employment history, that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voice print, or a photograph;

(f) "Routine use" means the disclosure of a record for a purpose which is compatible with the purpose for which it was collected;

(g) "System of personnel records" means a group of personnel records under the control of GAO from which information is retrieved by the name of the individual or by some identifying number, symbol, or other indentifying particular assigned to the individual; and,

(h) "System manager" means the Director of Personnel, his designee, or other GAO official designated by the Comptroller General, who has the authority to decide matters relative to systems of personnel records maintained by GAO.

§ 83.4 Conditions of disclosure.

GAO shall not disclose any record that is contained in a system of personnel records by an means of communication to any person or organization, including another agency, without the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of GAO who have a need for the record in the performance of their duties; or

(b) Required under regulations implementing the public availability of GAO records published at Part 81 of this chapter, or authorized under § 83.5; or

(c) For a routine use as defined in § 83.3(f); or

(d) To a recipient who has provided GAO with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable; or

(e) To another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, if the head of the agency or instrumentality has made a written request to GAO specifying the particular record desired and the law enforcement activity for which the record is sought; or

(f) To any person pursuant to a showing of compelling circumstances affecting the health or safety of an individual (not necessarily the data subject) if upon such disclosure notification is transmitted to the last known address of the subject of the personnel record; or

(g) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(h) Pursuant to the order of a court of competent jurisdiction or in connection with any judicial or quasi-judicial proceedings; or

(i) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code; or

(j) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to

determine whether the record has such value; or

(k) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 83.5 Specific disclosure of information.

(a) This section governs responses to a member of the public, prospective employers, and law enforcement officials, for access to information covered by this part. It does not limit in any way other disclosures of information pursuant to other provisions of this part.

(b) The following information about most present and former GAO employees is available to the public:

(1) Name;

(2) Present and past position titles;

(3) Present and past grades;

(4) Present and past salaries; and

(5) Present and past duty stations (which include room numbers, shop designations, or other identifying information regarding buildings or places of employment.

(c) Disclosure of the above information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations of Government employees which, as determined by the Director, Personnel, is:

(1) Selected in such a way as to constitute a clearly unwarranted invasion of personal privacy because the nature of the request calls for a response that would reveal more about the employees on whom information is sought than the five enumerated items; or

(2) Would otherwise be protected from mandatory disclosure under an exemption of Part 81 of this title concerning the public availability of GAO records.

(d) In addition to the information that may be made available under paragraph (a) of this section, GAO may make available the following information to a prospective employer of a GAO employee or former GAO employee:

(1) Tenure of employment;

(2) Civil service status;

(3) Length of service in GAO and the Government; and

(4) When separated, the date and reason for separation shown on the required standard form.

(e) In addition to the information to be made available under paragraph (a) of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that complaint, information, accusation, or other writ involving nonsupport or a criminal offense has been filed against the employee and the employee's address is needed for service of a summons, warrant, subpoena, or other legal process.

(f) Except as provided in paragraphs (a) through (e) of this section, and except as provided in this part, information required to be included in an Official Personnel Folder is not available to the public and is protected from disclosure by § 81.6(f) of this chapter.

(g) Personnel Appeal Files. (Those records maintained by the General Accounting Office Personnel Appeals Board of petitions or appeals filed with the Board by GAO employees, former employees, or applicants for employment. Such records do not include any of the investigative files or reports of the Personnel Appeals Board General Counsel. See 4 CFR 28.18(c)). GAO, upon receipt of a request which identifies the individual from whose file the information is sought, shall disclose the following information from a Personnel Appeal File to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the case;

(3) The decision on the case;

(4) The nature of the action appealed; and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(h) Leave Records. The annual and sick leave record of an employee, or information from these records, is not to be made available to the public by GAO or other Government agency.

(i) Examinations and Related Subjects. Information concerning the results of examinations will be released only to the individual concerned, and to those parties explicitly designated in writing by the individual. The names of applicants for GAO positions or eligibles on GAO or civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public.

(j) Investigations.

(1) Upon written request, GAO will disclose to the parties concerned any report of personnel investigation under its control, or an extract of the report, to the extent the report is involved in a processed before GAO. For the purpose of this paragraph, the "parties concerned" means the Government employee involved in the proceeding, his or her representative designated in writing, and the representative of GAO involved in the proceeding. Where GAO obtains reports of personnel investigations or information from such reports from other government agencies on condition that it not release such data, GAO will refer parties requesting such information to the originating agency where their request will be processed.

(2) GAO will not make a report of investigation or information from a report under its control available to the public or to witnesses, except as otherwise required under GAO regulations implementing the public availability of records published at Part 81 of this chapter.

§ 83.6 Accounting of certain disclosures.

(a) With respect to each system of personnel records, GAO shall, except for disclosures made under §§ 83.4(a) and 83.4(b), keep an accurate accounting of—

(1) The date, nature, and purpose of disclosure of a record to any person; and

(2) The name and address of the person, agency, or organization to whom the disclosure is made.

(b) Such accounting shall be retained for at least 3 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(c) Except for disclosures made under § 83.4(e), the accounting shall be available upon written request to the individual named in the record.

§ 83.7 GAO policy and requirements.

(a) GAO shall maintain in its personnel records only such information about an individual as is relevant and necessary to accomplish an authorized official purpose. Authority to maintain personnel records does not constitute authority to maintain information in the record merely because a need for it may develop in the future. Both Government-wide and internal agency personnel records shall contain only information concerning an individual that is relevant and necessary to accomplish GAO's personnel management objectives as required by statute, GAO internal directive, or formal agreements between GAO and other Federal agencies.

(b) GAO shall make every reasonable effort to collect information about an individual directly from that individual when the information may result in adverse determinations about the individual's rights, benefits, and privileges under Federal programs. Factors to be considered in determining whether to collect the data from the

individual concerned or a third party are:

(1) The nature of the information is such that it can only be obtained from another party;

(2) The cost of collecting the information directly from the individual is unreasonable when compared with the cost of collecting it from another party;

(3) There is virtually no risk that information collected from other parties, if inaccurate, could result in a determination adverse to the individual concerned;

(4) The information supplied by an individual must be verified by another party; or

(5) Provisions are made, to the greatest extent practical, to verify information collected from another party with the individual concerned.

(c) GAO shall inform each individual whom it asks to supply information for a personnel record, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of—

(1) The authority for the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and

(4) The effects, if any, of not providing all or any part of the requested information;

(d) Subject to the provisions of paragraph (i) of this section, GAO shall publish in the **Federal Register**, upon establishment or revision, a notice of the existence and character of its systems of personnel records. Such notice shall include—

(1) The name and location(s) of each system of personnel records;

(2) The categories of individuals about whom records are maintained in each such system;

(3) The categories of records maintained in each system of personnel records;

(4) Each routine use of the records contained in each system of personnel records, including the categories of users and the purpose(s) of such use;

(5) The policies and practices of GAO regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the GAO official who is responsible for maintaining each system of personnel records;

(7) GAO procedures whereby an individual can ascertain whether a system of personnel records contains a record pertaining to the individual;

(8) Procedures whereby an individual can request access to any record pertaining to him contained in any system of personnel records, and how the individual may contest its content; and

(9) The categories of sources of records in each system of personnel records.

(e) GAO shall maintain all records which it uses in making any determination about any individual with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(f) GAO shall, prior to disseminating any record about an individual to any person other than a Federal agency, make all reasonable efforts to reassure that such records are accurate, complete, timely, and relevant for GAO's purposes;

(g) GAO shall make reasonable efforts to serve notice on an individual or his authorized representative when any personnel record on such individual is being made available to any person under compulsory legal process as soon as practicable after service of the subpoena or other legal process;

(h) GAO shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of personnel records or files or in maintaining any record, and to instruct each person with respect to such rules and requirements of this part, including any other rules and procedures adopted pursuant to this part;

(i)(1) GAO shall establish and maintain appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of personnel records. At a minimum, these controls shall require that all persons whose official duties require access to and use of personnel records be responsible and accountable for safeguarding those records and for ensuring that the records are secured whenever they are not in use or under the direct control of authorized persons. Generally, personnel records should be held, processed, or stored only where facilities and conditions are adequate to prevent unauthorized access;

(2) Except for access by the data subject, only employees whose official duties require and authorize access shall be allowed to handle and use personnel records, in whatever form or media the records might appear. To the extent feasible, entry into personnel record storage areas shall be similarly limited. Documentation of the removal of records from storage areas must be kept so that adequate control procedures can be established to assure that removed records are returned intact on a timely basis and properly controlled during such period of removal.

(3) In addition to following the above security requirements, managers of automated personnel records shall establish and maintain administrative, technical, physical, and security safeguards for data about individuals in automated records, including input and output documents, reports, punched cards, magnetic tapes, disks, and on-line computer storage. As a minimum, the safeguards must be sufficient to:

(i) Prevent careless, accidental, or unintentional disclosure, modification, or destruction of identifiable personal data;

(ii) Minimize the risk of improper access, modification, or destruction of identifiable personnel data;

(iii) Prevent casual entry by persons who have no official reason for access to such data;

(iv) Minimize the risk of unauthorized disclosure where use is made of identifiable personal data in testing of computer programs;

(v) Control the flow of data into, through, and from computer operations;

(vi) Adequately protect identifiable data from environmental hazards and unnecessary exposure; and

(vii) Assure adequate internal audit procedures to comply with these procedures.

(4) The disposal of identifiable personal data in automated files is to be accomplished in such a manner as to make the data unobtainable to unauthorized personnel. Unneeded personal data stored on reusable media, such as magnetic tapes and disks, must be erased prior to release of the media for reuse.

(j) At least 30 days prior to publication of information under paragraph (d)(4) of this section, GAO shall publish in the **Federal Register** notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to GAO.

§ 83.8 Standards of conduct.

(a) GAO employees whose official duties involve the maintenance and handling of personnel records shall not disclose information from any personnel record unless disclosure is part of their official duties or required by statute, regulation, or internal procedure.

(b) Any GAO employee who makes an unauthorized disclosure of personnel records or a disclosure of information derived from such records, knowing that such disclosure is unauthorized, or otherwise knowingly violates these regulations, shall be subject to appropriate disciplinary action. GAO employees are prohibited from using personnel information not available to the public, obtained through official duties, for commercial solicitation or sale, or for personal gain. Any employee who knowingly violates this prohibition shall be subject to appropriate disciplinary action.

§ 63.9 Social Security number.

(a) GAO may not require individuals to disclose their Social Security Number (SSN) unless disclosure would be required—

(1) Under Federal statute; or

(2) Under any statute, executive order, or regulation that authorizes any Federal, State, or local agency maintaining a system of records that was in existence and operating prior to January 1, 1975, to request the SSN as a necessary means of verifying the identity of an individual.

(b) Individuals asked to voluntarily provide their SSN shall suffer no penalty or denial of benefits for refusing to provide it.

(c) When GAO requests an individual to disclose his or her SSN, it shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

§ 63.10 First amendment rights.

Personnel records or entries thereon describing how individuals exercise rights guaranteed by the First Amendment to the United States Constitution are prohibited, unless expressly authorized by statute or by the individual concerned, or unless pertinent to and within the scope of an authorized law enforcement activity. These rights include, but are not limited to, free exercise of religious and political beliefs, freedom of speech and the press, and freedom to assemble and to petition the Government.

§ 63.11 Official Personnel Folder.

(a) GAO shall establish and maintain an Official Personnel Folder for each of its employees, except as provided in the GAO/U.S. OPM/GSA Memorandum of Understanding (see subsection (b)). Except as provided for in Federal Personnel Manual (FPM) Supplement 293–31 there will be only one Official Personnel Folder maintained for each employee.

(b) GAO/U.S. OPM/GSA Memorandum of Understanding. The Memorandum of Understanding agreed to by the U.S. General Accounting Office, the U.S. Office of Personnel Management (U.S. OPM), and the National Archives and Records Service of the General Services Administration (GSA), Appendix I, constitutes the official and sole agreement concerning the continuity and coordination of the Official Personnel Folder.

(c) GAO policy is to assure continuity and coordination of the Official Personnel Folder when a person, for whom an Official Personnel Folder has been established, separates from GAO, or transfers to or from GAO from or to a Federal agency subject to regulations of the U.S. OPM relating to Official Personnel Folders. GAO will maximize the pooling of information between itself and those Federal agencies subject to U.S. OPM rules and regulations concerning the Official Personnel Folder so that a GAO employee may transfer to and from other Federal agencies with one complete and informative Official Personnel Folder.

(d) Ownership of Official Personnel Folder.

(1) The Official Personnel Folders of individuals whose employment with GAO terminated prior to October 1, 1980, are the records of U.S. OPM and are under the jurisdiction and control of U.S. OPM.

(2) The Official Personnel Folders of current GAO employees whose GAO employment began on or after October 1, 1980, and who have had no previous employment by an executive branch agency of the Federal government shall be under the jurisdiction and control of, and are the records of GAO. GAO shall retain jurisdiction over such records even when they are transferred to an executive branch agency.

(3) The Official Personnel Folders of current GAO employees who were employed prior to October 1, 1980, by either GAO or an executive branch agency shall be under the control of GAO, but those records established prior to October 1, 1980, by GAO, and all records established as a result of employment by an executive branch agency shall remain under the jurisdiction of, and be part of the records of, U.S. OPM.

(4) GAO will maintain those Official Personnel Folders containing records of employment by an executive branch Federal agency, or by GAO prior to October 1, 1980, in compliance with regulations of the U.S. OPM in accordance with the procedures contained in the Memorandum of Understanding and the provisions of regulations of U.S. OPM contained in 5 CFR Parts 293, 294, and 297, as well as the provisions of FPM Chapters 293, 294, and 297.

(e) Maintenance and Content of Folder. GAO shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The Folder shall also contain permanent records affecting the employee's status and service as required by U.S. OPM instructions and as designated in FPM Supplement 293–31.

(f) Use of Existing Folders upon Transfer or Reemployment. In accordance with paragraph (a) of this section, GAO shall request the transfer of the Official Personnel Folder for a person who was previously employed with a Federal agency that maintains such a Folder. The Folder so obtained shall be used in lieu of establishing a new Official Personnel Folder.

(1) When a person for whom an Official Personnel Folder has been established transfers from GAO to another Federal agency that maintains the Folder, GAO shall, on request, transfer the Folder to the new employing agency.

(2) Before transferring the Official Personnel Folder, GAO shall—

(i) Remove those records of a temporary nature filed on the left side of the Folder; and

(ii) Ensure that all permanent documents of the Folder are complete, correct, and present in the Folder in accordance with FPM Supplement 293–31.

(g) Disposition of Folders of Former Federal Employees.

(1) Folders containing the personnel records of individuals separated from employment with GAO will be retained by GAO for 30 days after separation, and may be retained for an additional 60 days. Thereafter, the Folder shall be transferred to the same location and in the same manner as Official Personnel Folders of persons separated from Federal agencies which are subject to U.S. OPM regulations in accordance with the Memorandum of Understanding.

(2) GAO shall remove temporary records from the Folder before it is transferred in accordance with guidelines applicable to Federal agencies which are subject to U.S. OMP regulations.

(3) If a former GAO employee is reappointed in the Federal service, the employee's Folder shall, upon request,

be transferred to the new employing agency.

(h) Access Requests and Amendments to the Official Personnel Folder. Requests for access to, disclosure from, correction of, or amendments to documents contained in the Official Personnel Folder will be made in accordance with the Memorandum of Understanding.

§ 83.12 Procedures for individual access to records.

(a) Upon written request by any individual outside of GAO or upon written or oral request by any officer or employee of GAO to gain access to his or her record or to any information pertaining to the individual which is contained in a system of personnel records, and not otherwise exempted, GAO shall permit the individual and upon the individual's request a person of his or her own choosing to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her, except that GAO may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence. When access to the records has been granted by a system manager or designee:

(1) Inspection in person may be made in the office designated in the system notice during the hours specified by GAO.

(2) Upon the determination of the designated GAO official, records may be transferred to a GAO office more convenient to the data subject to review.

(3) Generally, GAO will not furnish certified copies of records. Where certified copies of records are to be furnished, they may be mailed at the request of the data subject or, as determined by GAO, only after payment of any fee levied in accordance with §83.17 is received.

(4) In no event shall original records be made available for review by the individual except in the presence of a system manager or designee.

(b) The general identifying information items that the designated GAO official may ask to be furnished before a specific inquiry is granted include:

(1) Full name, signature, and home address;

(2) Picture identification card;

(3) The current or last place and dates of Federal employment, if appropriate; and

(4) Social security number (for those systems of records retrieved by this identifier).

(c) A request or inquiry from someone other than the individual to whom the information pertains shall contain such documents or copies of documents that establish the relationship or authorize access as follows:

(1) When the requester is the parent or legal guardian of a data subject who is a minor, the requester shall identify the relationship with the data subject and furnish a certified or authenticated (e.g. notarized) copy of any document establishing parentage or appointment as legal guardian.

(2) Where the requester is the legal guardian of a data subject who has been declared incompetent by the courts, the requester shall identify the relationship with the data subject and furnish a certified or authenticated copy of the court's appointment of guardianship.

(3) Where the requester is a representative of the data subject, the requester shall identify the relationship with the data subject or the data subject's parent or legal guardian, and furnish documentation designating the representative as having the authority to act on behalf of the data subject.

(d) When the requester appears in person and cannot be identified by sight and signature, proof of identity is required as follows:

(1) When a request is from the data subject, the means of proof, in order of preference, are:

(i) A document bearing the individual's photograph and signature (for example, driver's license, passport, or military or civilian identification card); or

(ii) Two documents bearing the individual's signature (for example, Medicare card, unemployment insurance book, employer identification card, major credit card, professional, draft, or union membership card).

(2) When a request is made by the parent, legal guardian, or authorized representative of the data subject, the means of identifying the requester and his or her authority for acting on behalf of the data subject shall be as prescribed in paragraph (c) of this section. In addition, the requester shall establish the identity of the data subject by requiring the identifying information in paragraph (b) of this section.

(e) When a written inquiry or request is received from the data subject, or from the data subject's parent, legal guardian, or authorized representative, it should be signed and—

(1) For an inquiry, contain sufficient identifying information about the data subject to permit searching of the record system(s) and to permit response; and

(2) For an access request—

(i) From the data subject, contain sufficient information to locate the record and establish that the requester and the data subject are the same (e.g. matching signatures); or

(ii) From the data subject's parent, legal guardian, or authorized representative, contain sufficient information to locate the record, match identity with the data subject, and such documentation of association or authorization as is prescribed in paragraphs (c) and (d) of this section.

(f) The signed request from the data subject, or from the data subject's parent, legal guardian, or authorized representative specified in paragraph (c) of this section shall be sufficient proof of identity of the requester, unless for good cause, the system manager or designee determines that there is a need to require some notarized or certified evidence of the identity of the requester.

§ 83.13 Inquiries.

(a) General inquiries to request assistance in identifying which system of records may contain a record about an individual may be made in person or by mail to the Director, Personnel.

(b) An inquiry that requests GAO to determine if it has, in a given system of personnel records, a record about the inquirer, should be addressed to the official identified in the **Federal Register** notice for that system. Inquirers should specify the name of the system of personnel records, if known, as published in the **Federal Register**. Such inquiries should contain the identifying data prescribed in § 83.12 before a search can be made of that particular system of records.

§ 83.14 Denial of access requests.

(a) If an access request is denied, the official denying the request shall give the requester the following information:

(1) The official's name, position title, and business mailing address;

(2) The date of the denial;

(3) The reasons for the denial, including citation of appropriate sections of this or any other applicable part; and

(4) The individual's opportunities for further administrative consideration, including the name, position title, and address of the GAO official (see paragraph (c) of this section) responsible for such further review.

(b) Denial of a request for access to records will be made only by the official GAO designee and only upon a determination that:

(1) The record is subject to an exemption under § 83.21 when the

system manager has elected to invoke the exemption; or

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding; or

(3) The data subject or authorized representative of the data subject refuses to abide by procedures for gaining access to records.

(c) A request for administrative review of a denial shall be made to the Assistant Comptroller General for Human Resources, United States General Accounting Office, 441 G Street, NW, Washington, D.C. 20548. The Assistant Comptroller General shall acknowledge receipt of a request for administrative review of a denial of access within 10 working days after receipt of the request. If it is not possible to reach a decision within an additional 10 working days, the requester shall be informed of the approximate date (within 30 working days) when such a decision may be expected.

(d) In reaching a decision, the Assistant Comptroller General will review the criteria prescribed in this section which were cited as the basis for denying access, and may seek additional information as deemed necessary.

§ 83.14 Request for amendment of record.

(a) Individuals may request the amendment of their records in writing or in person by contacting the system manager or designee indicated in the notice of systems of records published by GAO in the Federal Register. Time limits will be measured from receipt at the proper office.

(b) A request for amendment should include the following:

(1) The precise identification of the records sought to be amended, deleted, or added.

(2) A statement of the reasons for the request, with all available documents and material that substantiate the request.

(c) GAO shall permit an individual to request amendment of a record pertaining to the individual. Not later than 10 working days after the date of receipt of such request, the designated GAO official shall acknowledge in writing such request and, promptly, either—

(1) Make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the refusal to amend the record in accordance with his or her request, the reason for the refusal, and the name and business address of the GAO official responsible for the refusal.

(3) The GAO offical shall permit an individual who disagrees with the refusal by the designated GAO official to amend his or her record to request review of such refusal. A request for administrative review of a denial shall be made in accordance with § 83.16.

(4) In any disclosure containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under § 83.10(d), GAO shall clearly note any portion of the record which is disputed and provide copies of a concise statement of the reasons for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

(5) Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(d) If necessary, the official authorized to rule on a request for amendment may seek additional information pertinent to the request to assure that a fair, equitable, and accurate decision is reached.

(e) The following criteria will be considered by the system manager or designee in reviewing initial requests for amendment of records:

(1) The sufficiency of the evidence submitted by the data subject;

(2) The factual accuracy of the information submitted and the information in the record;

(3) The relevancy, necessity, timeliness, and completeness of the information in light of the purpose for which it was collected;

(4) The degree of possibility that denial of the request could result in unfair determinations adverse to the data subject;

(5) The character of record sought to be amended;

(6) The propriety and feasibility of complying with specific means of amendment requested by the data subject; and

(7) The possible involvement of the record in a judicial or quasi-judicial process.

§ 83.15 Administrative review of request for amendment of record.

(a) A request for administrative review of GAO's denial to amend a record in GAO's system of personnel records shall be addressed to the Assistant Comptroller General for Human Resources, United States General Accounting Office, 441 G Street, NW, Washington, D.C. 20548. The Assistant Comptroller General shall acknowledge receipt of a request for administrative review of a denial of amendment within 10 working days.

(b) If a decision cannot be made within an additional 10-day period, a letter will be sent within that time explaining the delay and furnishing an expected date for the decision. A decision on the request must be made within 30 working days after receipt of the request. Only for good cause shown, and at the discretion of the Assistant Comptroller General for Human Resources can this time limit be extended. Any extension requires written notification to the requester explaining the reason for the extension and furnishing a new expected date for the decision. Generally, such extension shall be for no more than an additional 30 working days.

(c) When a request for administrative review of an amendment denial is submitted, the individual must provide a copy of the original request for amendment, a copy of the initial denial, and a statement of the specific reasons why the initial denial is believed to be in error.

(d) An individual requesting an amendment of a record has the burden of supplying information in support of the propriety and necessity of the amendment request. The decision on the request will then be rendered based on a review of the data submitted. The GAO official is not required to gather supporting evidence for the individual and will have the right to verify the evidence which the individual submits.

(e) Amendment of a record will be denied upon a determination by the system manager or designee that:

(1) The record is subject to an exemption from the provisions of this part, allowing amendment of records;

(2) The information submitted by the data subject is not accurate, relevant, or of sufficient probative value;

(3) The amendment would violate a statute or regulation;

(4) The individual refuses to provide information which is necessary to process the request to amend the record; or

(5) The record for which amendment is requested is a record presented in a judicial or quasi-judicial proceeding, or maintained in anticipation of being used in a judicial or quasi-judicial proceeding, when such record is or will become available to the individual under that proceeding.

(f) If, after review, the Assistant Comptroller General for Human Resources also refuses to amend the record in accordance with the request, the individual will be permitted to file with the system manager or designee of the system of records concerned a concise statement setting forth the

reasons for his or her disagreement. Any such statement of disagreement will be treated in accordance with paragraph (c)(4) of § 83.15.

§ 83.17 Fees.

(a) Generally, GAO's policy is to provide the first copy of any record or portion thereof, furnished as a result of this part, at no cost to the data subject or authorized representative. However, in cases where GAO deems it appropriate (for example, where the record is voluminous), the system manager or designee in his or her discretion may charge a fee when the cost for copying the record (at a rate of 20 cents per page) would be in excess of ten dollars ($10).

(b) There shall be no fees charged or collected from a data subject for the following:

(1) Search for or retrieval of the data subject's records;

(2) Review of the records;

(3) Making a copy of a record when it is a necessary part of the process of making the record available for review;

(4) Copying at the initiative of GAO without a request from the individual;

(5) Transportation of the record; and

(6) Making a copy of an amended record to provide the individual with evidence of the amendment.

(c) Certification of authenticity shall be $10 for each certificate, which fee may be waived in the discretion of the system manager or designee.

§ 83.18 Rights of legal guardians.

For the purposes of this part, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

§ 83.19 Government contractors.

When GAO provides by a contract for the operation by or on behalf of GAO of a system of personnel records to accomplish a function of GAO, GAO shall, consistent with its authority, cause the requirements of this part to be applied to such system. Any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered, for the purposes of this part, to be an employee of GAO. Contractor employees will be required to observe the confidentiality requirements of this part. Violations of this part by contractor employees may be a sufficient ground for contract termination.

§ 83.20 Mailing lists.

An individual's name and address may not be sold or rented by GAO unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

§ 83.21 Exemptions.

(a) All personnel records are exempted from §§ 83.6(c), 83.12, 83.13, 83.14, and 83.15, relating to making an accounting of disclosures available to the data subject or his authorized representative and access to and amendment of the records and other sections relating to procedural requirements of the above-cited sections if the record is:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and is in fact classified pursuant to such Executive order. *See* 31 U.S.C. 716(e)(1) and 716(b)(3) concerning the applicability of these requirements to GAO.

(2) Investigatory material compiled for law enforcement purposes: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protection services to the President of the United States or other individuals pursuant to section 3056 of Title 18, United States Code;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purposes of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of the source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence (*see* § 83.5(j)(1) for the procedure to be used to obtain investigative data originated by other Government agencies);

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an express or implied promise that the identity of the source would be held in confidence.

Appendix I—Memorandum of Understanding

This memorandum of understanding constitutes an agreement between the U.S. Office of Personnel Management (OPM), the National Archives and Records Service of the General Services Administration (NARS), and the U.S. General Accounting Office (GAO) concerning:

(1) The maintenance of the Official Personnel Folder (OPF) of an individual who has been employed in a position subject to the provisions of Title 5, U.S.C. and to the regulations and procedures issued by OPM to govern the Federal civil service, and also in a position subject to the GAO Personnel Act of 1980 (Pub. L. 96–191) and its implementing regulations and procedures;

(2) The exchange of personnel documents and data between the Federal civil service administered by OPM and the personnel system administered by GAO;

(3) The establishment of procedures for processing requests for access to, disclosure from, and amendment of documents in the OPF of an individual who has service under both personnel systems;

(4) The establishment of procedures to be followed by the National Personnel Records Center (NPRC) when responding to requests pertaining to separated employees in any of the following circumstances:

(a) When the OPF contains documentation resulting from employment in both systems;

(b) When a request is received for transfer of an OPF between systems;

(c) When processing a request for an OPF, and that OPF contains only records of GAO employment since October 1, 1980;

(5) The agreement of the parties to consult and cooperate in matters relating to the establishment and revision of personnel procedures which may have mutual effect so as to insure the sharing of essential information while minimizing the recordkeeping burden of all three parties.

It is recognized that adjustments to this memorandum may be needed from time to time in order to conform to program changes imposed by statute, executive order, or other appropriate authority. Such adjustments will be made by mutual agreement between the parties and will be appended to this agreement.

Legal and Administrative Provisions

The Privacy Act of 1974 and the Freedom of Information Act (as amended)

Records maintained by the Legislative Branch of the Federal Government, including the GAO, are not covered by the Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of Information Act (5 U.S.C. 552). Both Acts, however, do for the most part apply to those records established as a result of employment in a position subject to regulations and procedures issued by OPM since such records remain the property of OPM even when in the physical possession of GAO.

Title 5, U.S.C.

The General Accounting Office Personnel Act of 1980 (Pub. L. 96–191) exempts the GAO personnel system from most of the provisions of Title 5, U.S.C. and from most of the regulations and procedures issued by OPM. Personnel recordkeeping by GAO prior to October 1, 1980 was conducted under the provisions of Title 5, U.S.C.

Executive Order 12107

Executive Order 12107, "Relating to the Civil Service Commission and Labor Management in the Federal Service," designated the OPF maintained by most Federal agencies as the property of OPM. However, GAO is not a Government agency subject to the provisions of this executive order.

Use of Existing OPFs upon Transfer to or Reemployment by GAO

Current Federal Employees

When GAO hires an individual who is currently employed by a Federal agency which maintains OPFs in accordance with OPM regulations, GAO will request that agency to transfer the subject employee's OPF. In making such a request GAO will follow the procedures contained in FPM Supplement 293–31, and the losing agency will furnish the OPF to GAO within the time frame prescribed in that FPM Supplement.

Former Federal Employees

When GAO hires an individual who was formerly employed by a Federal agency (including a former GAO employee who was previously employed by that agency prior to October 1, 1980) which maintained OPFs in accordance with OPM regulations, and such individual is not currently employed by the Federal government, GAO will request the individual's OPF from the National Personnel Records Center (NPRC). In making such requests, GAO will follow the procedures contained in FPM Supplement 293–31, and NPRC will furnish the OPF within the established time frames therein.

Establishment and Maintenance of OPFs

GAO shall establish and maintain an OPF for each of its employees. Althought GAO is not bound by OPM regulations and procedures relating to OPFs. GAO agrees to follow the OPF maintenance procedures contained in FPM Supplement 293–31, in so far as is practicable. In order to: (1) Minimize the burden and paperwork inherent in establishing and operating an independent personnel recordkeeping system; (2) insure the sharing of essential information and personnel records between the two systems; and (3) insure proper maintenance of documents related to OPM-controlled functions, e.g., civil service retirement, Federal Employee's Health Benefits (FEHB), and Federal Employee's Government Life Insurance (FEGLI).

Ownership of OPFs

Former GAO Employees

The OPFs of individuals whose employment with GAO terminated prior to October 1, 1980, are under the jurisdiction and control of, and are part of the records of OPM.

Current GAO Employees

The OPFs of current GAO employees whose GAO employment began on or after October 1, 1980, and who have had no previous employment by an Executive Branch agency of the Federal Government shall be under the jurisidiction and control of, and part of the records of GAO. GAO shall retain jurisdiction over such records even when they are transferred to an Executive Branch agency.

The OPFs of current GAO employees who were employed by either GAO prior to October 1, 1980, or an Executive Branch agency shall be under the control of GAO but those records established prior to October 1, 1980 by GAO, and all records established as a result of employment by an Executive Branch agency shall remain under the jurisdiction of, and be part of the records of, OPM.

GAO agrees to maintain those OPFs containing records of employment by an Executive Branch Federal agency, or by GAO prior to October 1, 1980, in compliance with OPM regulations in accordance with the procedures contained in this memorandum and the provisions of OPM regulations contained in 5 CFR Parts 293, 294, and 297, as well as the provisions of FPM Chapters 293, 294, and 297.

Transfer of OPFs from GAO

When a person who is currently employed by GAO, and for whom GAO maintains an OPF, transfers to an Executive Branch agency of the Federal Government, GAO shall, when requested, transfer the OPF to the new employing agency. However, before such transfer, GAO shall:

—Remove any temporary records filed in the OPF by GAO; and

—Ensure that all long term documents in the OPF are completed and correct and that all documents relevant to areas remaining under OPM control (e.g., retirement, FEHB, and FEGLI) are filed in OPF in accordance with the requirements of FPM Supplement 293–31.

OPFs of individuals separated from employment by GAO, but not transferring to another agency, will be retained by GAO and forwarded to NPRC in accordance with GAO regulations. The OPF will be transferred to the NPRC in the same manner as an OPF of an individual separated from an Executive branch agency subject to OPM regulations. Such OPFs shall be purged of temporary material in accordance with guidelines established by OPM in FPM Supplement 293–31 and this memorandum, prior to transfer to NPRC. When such OPFs are received by NPRC, they will be maintained in accordance with the procedures and practices governing OPFs of Executive branch agencies subject to OPM regulations, including the release of OPFs or data therefrom in the same manner as with all other OPM controlled OPFs.

Use of Existing OPFs Upon Transfer From GAO to an Executive Branch Agency

When an individual who was employed by GAO on or after October 1, 1980, is transferred to, or after a break in service is subsequently reemployed by an Executive branch agency subject to OPM regulations, that agency will request the OPF from GAO or NPRC (as appropriate) in accordance with the procedures contained in FPM Supplement 293–31, and shall use that OPF in lieu of establishing a new OPF. However, records contained in such an OPF which were created by GAO for employment after October 1, 1980, are to remain in the OPF and are not to be purged or modified in any way by the Executive branch agency.

Use of SF 66, Official Personnel Folder Jackets by GAO

GAO will use the SF 66, Official Personnel Folder jacket issued by OPM. However, GAO agrees to mark or annotate the front of all GAO OPFs with the letters "GAO" in order to provide for easy identification by NPRC personnel.

Responding to FOIA Requests

OPF In Custody of GAO

When GAO has custody of an OPF containing records of employment in an Executive branch agency subject to OPM regulations including employment by GAO prior to October 1, 1980, and GAO receives a request citing either the Freedom of Information Act (FOIA) or GAO's own procedures (if any) which equate to that Act for information about the subject individual, GAO shall respond in accordance with its own regulations. When GAO is processing the request it will:

—Consult with OPM before releasing records or data created by an Executive Branch agency or by GAO previous to October 1, 1980; and

—Inform requesters that, insofar as there is a denial of records or data created under OPM's regulations, the requester may address a request for review to: General Counsel, U.S. Office of Personnel Management, Washington, D.C. 20415

Current Executive Branch Employee

When an executive branch agency receives a request under the FOIA for information contained in an OPF, and:

—That OPF contains data resulting from employment in GAO on or after October 1, 1980; and

—The agency determines that the request should be denied,

the agency will provide the requester with a decision in accordance with its regulations. In addition, the agency will inform the requester that, insofar as the decision to deny may relate to records created as a result of the individual's employment by GAO, the requester should address any request for review of the denial of access to those records to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548.

Review of denials of access to other records will be subject to applicable agency regulations and procedures.

Former Federal Employees

When OPM processes a request under the FOIA for records found in the OPF of a former Federal employee and that individual has service in both the Executive branch and in GAO on or after October 1, 1980, OPM will process that request in accordance with applicable regulations. When OPM is processing the request it will:

—Consult with GAO before releasing records or data created by GAO on or after October 1, 1980; and

—Inform the requester that, insofar as there is a denial of records or data created by GAO, the requester may address a request for review to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548

Privacy Act Requests

Current Employees of GAO Access

Requests for access to personnel records by current employees of GAO will be processed by GAO in accordance with GAO regulations and procedures. However, when processing requests for records which were created by an Executive branch agency subject to OPM regulations and procedures (including GAO prior to October 1, 1980), or for records created by GAO subject to OPM control (e.g., FEGLI, FEHS, retirement), GAO agrees to provide at least the same procedural rights and benefits as apply to the processing of similar requests by an Executive branch agency.

Amendment

Requests for amendment of personnel records by current employees of GAO will be processed in accordance with GAO regulations and procedures. However, when processing requests to amend records which:

—Are contained in an OPF; and

—Were created during a period of employment by an Executive branch agency subject to OPM regulations and procedures; or

—Were created by GAO prior to October 1, 1980; or

—Were created by GAO since October 1, 1980, and relate to an area which remains subject to OPM regulations and procedures:

GAO agrees to abide by OPM regulations contained in 5 CFR Part 297, and procedures contained in FPM Chapter 297. In addition, GAO agrees to consult with OPM prior to acting on any such request and to notify requesters of a right to appeal an adverse decision relating to the amendment of records subject to OPM control to: Assistant Director for Workforce Information, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, D.C. 20415.

Current Employees of Executive Branch Agencies

Access

When processing a request for access to an OPF by a current employee who has previously worked for GAO on or after October 1, 1980, an Executive branch agency will follow OPM's regulations and procedures applicable to other Privacy Act access requests. However, if there is any question as to the propriety of releasing a document created by GAO on or after October 1, 1980, that agency shall consult with GAO.

Amendment

When processing a request for amendment of a record contained in an OPF of an individual who was previously employed by GAO, an Executive branch agency shall first determine whether the record involved was created by GAO on or after October 1, 1980. When the Executive branch agency determines that the record was created by GAO before October 1, 1980, the agency shall proceed to consider the request for amendment in accordance with OPM regulations contained in 5 CFR Part 297, and FPM Chapter 297. When the record in question was created by GAO prior to October 1, 1980, the Executive branch agency may (if it deems appropriate) consult with GAO prior to rendering a decision. When the request deals with a record created by GAO on or after October 1, 1980, the Executive Branch agency will:

—Notify the requester that the record in question was created by the GAO on or after the effective date of the GAO Personnel Act of 1980, and that it is subject to GAO regulations and procedures; and

—Forward the record in question, the request for amendment and all supporting evidence to: Director of Personnel, U.S. General Accounting Office, Washington, D.C. 20548.

Former Employees

Access

Requests for access to records contained in the OPF of an individual who is not currently employed in an Executive branch agency subject to OPM regulations, or in GAO, shall be processed by OPM in accordance with procedures contained in FPM Chapter 297. When some of the records in question were created by GAO on or after October 1, 1980, and the OPM office processing the request has a question as to the propriety of releasing one or more such documents, it may consult with GAO prior to rendering a decision.

Amendment

Request for amendment of records contained in the OPF of an individual who is not currently employed in an Executive branch agency subject to OPM regulations, or in GAO, shall be processed as follows:

—If all of the records in question were created by GAO on or after October 1, 1980, and are not subject to OPM control, the requester shall be notified that the records in question are under the jurisdiction and control of GAO, and the request shall be transferred to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548.

—If some of the records in question were created by GAO on or after October 1, 1980, and those records are not subject to OPM control, OPM will: process that portion of the records subject to its control in accordance with regulations contained in 5 CFR Part 297 and FPM Chapter 297; will notify the requester that part of the records requested to be amended were created by GAO after the enactment of the GAO Personnel Act of 1980, and that those records are subject to GAO's sole jurisdiction and control; and will transfer the request, the records in question, a copy of the OPM decision, and any available background information to: General Counsel, U.S. General Accounting Office, Washington, D.C. 20548.

NPRC Procedures Relating to this Memorandum of Understanding

NPRC will process requests for OPFs in its physical custody in accordance with the following instructions:

—When NPRC receives a request from an Executive branch agency for the OPF of a former GAO employee, NPRC will forward that OPF to the requesting agency;

—When NPRC receives a request from GAO for the OPF of a former Executive branch employee, NPRC will forward that OPF to GAO;

—When the request is from an Executive branch agency for an OPF which contains records of employment both in the Executive branch and in GAO, NPRC will forward the OPF to the Executive branch agency;

—When the request is from GAO for an OPF which contains records of employment both in the Executive branch and in GAO, NPRC will forward the OPF to GAO;

—When NPRC receives a direct request for access to or amendment of an OPF which contains records of employment both in the Executive Branch and/or GAO prior to October 1, 1980 as well as in GAO after October 1, 1980, NPRC will:

• Forward the request and the OPF to the following address if the individual was last employed by an Executive branch agency (including GAO prior to October 1, 1980): Assistant Director for Workforce Information U.S. Office of Personnel Management 1900 E. Street, N.W. Washington, D.C. 20415

• Forward the request and the OPF to the following address if the individual was last employed by GAO (on or after October 1, 1980):

Director of Personnel
U.S. General Accounting Office
Washington, D.C. 20548

—When NPRC receives as request for verification of employment data or for a transcript of employment, it will process that request as it would any other for the same information;
—NPRC will provide a transcript of employment when requested by a former employee of the Executive Branch or GAO;
—Requests received at NPRC from former employees seeking copies of documents or information from an OPF containing records of employment both in the Executive branch and in GAO (on or after October 1, 1980), will be forwarded either to OPM or GAO as indicated above, together with the appropriate OPF.

Requests Received from Researchers and Genealogists

NPRC will respond to requests received from genealogists, researchers, or other unauthorized third parties for information concerning individuals who were employed by GAO on or after October 1, 1980, by providing only the following information:

—Name of employee;
—Past and present position titles;
—Past and present grades;
—Past and present salaries; and
—Past and present duty stations.

Requests for additional information, or requests which provide information indicating that the individual is deceased will be forwarded to the legal custodian of the record for direct response.

Requests for Documents from the OPF

When NPRC receives a request either from a former employee or an authorized third party for information or photocopies of specified documents filed in the OPF, the request and the OPF in question will be forwarded to the legal custodian for direct response.

Requests From Federal Investigators

NPRC will grant Federal investigators access to OPFs of former GAO employees subject to the same procedures and limitations which apply to granting investigators access to OPFs under the custody and control of OPM. Such investigators shall be allowed to photocopy any material in such OPFs.

Coordination and consultation

OPM, NARS, and GAO agree that there is a need for continuing close cooperation and consultation concerning the exchange of personnel documents and data and the applicability of procedures relating to the maintenance and use of OPFs and that matters of mutual concern which may arise, but are not covered by this memorandum, will be mutually resolved.

The Assistant Director for Workforce Information of OPM, the Assistant Archivist for Federal Records Centers of NARS and The Director of Personnel of GAO are designated as the coordinators and contact points for the establishment and oversight of relevant procedures, and will assign staff members to implement this agreement. Additional detailed agreements that the coordinators jointly establish will be considered to be a part of this agreement.

Procedures and Regulations Issued to Implement this memorandum

It is agreed that OPM, NARS, and GAO may issue regulations and procedures to implement this memorandum of understanding. The coordinators agree that they will consult concerning the development and issuance of such regulations and procedures, and that when such regulations or procedures are issued, a copy will be furnished to the other parties to this agreement.

Approved:

Dated: June 11, 1982.

Felix R. Brandon, II.

Director of Personnel, U.S. General Accounting Office.

Dated: May 20, 1982.

Dr. Philip A.D. Schneider,

Assistant Director for Workforce Information, U.S. Office of Personnel Management.

Dated: July 12, 1982.

G.N. Scaboo,

Acting Assistant Archivist for Federal Records Centers, National Archives and Records Service, General Services Administration.

Dated: March 26, 1983.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 85-7868 Filed 4-2-85; 8:45 am]

BILLING CODE 1610-02-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 307 and 316

Veterans Readjustment Appointments; Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: This interim rule reflects the statutory changes in the expiration date and amendments for use of the Veterans Readjustment Appointment (VRA) authority. The VRA statutory authority, cited in Pub. L. 97-72, expired on September 30, 1984. On October 24, 1984, the President signed Pub. L. 98-543, "Veterans' Benefits Improvement Act of 1984." This law revises the VRA authority and extends the expiration date through September 30, 1986. Consequently, a corresponding change in 5 CFR Parts 307 and 316 must be made.

DATE: Effective: May 3, 1985. Comments: Must be received by June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Don A. Smith, Chief, Evaluations Division, Office of Affirmative Employment Programs, (202) 632-7062.

SUPPLEMENTARY INFORMATION: On September 30, 1984, Pub. L. 97-72, which was the statutory base for the VRA Program, expired. On October 24, 1984, the President signed Pub. L. 98-543, which revised and extended the VRA Program through September 30, 1986 under 38 U.S.C. 2014. The revisions increase the maximum grade level for appointments from GS-7 to GS-9; provide for limited appeal rights for VRA appointees who are terminated during their first year of employment; and replace the semiannual VRA report with an annual report. OPM is required by law to issue and amend regulations governing the VRA Program.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and making this effective 30 days after publication. The regulation is being made effective immediately to ensure maximum consistency with Pub. L. 98-543, "Veterans' Benefits Improvement Act of 1984," which provides that the Veterans Readjustment Appointment Program be revised and extended through September 30, 1986 under 38 U.S.C. 2014.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal Government employees.

List of Subjects

5 CFR Part 307

Government employees, Reporting requirements, Veterans.

5 CFR Part 316

Government employees, Veterans.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending Parts 307 and 316 of Title 5 of the Code of Federal Regulations as follows:

PART 307—VETERANS READJUSTMENT APPOINTMENTS

1. The authority for Part 307 reads as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR 1970 Comp., p. 912; 38 U.S.C. 2014.

2. In § 307.102(b), "1984" is changed to "1986."

3. In § 307.103(a), "GS–7" is changed to "GS–9."

4. In § 307.105, the single paragraph is redesignated as paragraph (a) and paragraph (b) is added to read as follows:

§ 307.105 Conditions of employment.

* * * * *

(b) Veterans readjustment appointees are entitled to limited appeal protections during their first year of service as set forth in § 315.806 of this chapter.

5. Section 307.107 is revised to read as follows:

§ 307.107 Reporting requirement.

As provided by 38 U.S.C. 2014 (d) and (e), OPM will, on at least an annual basis, obtain information and submit to the Congress a report on Government-wide progress in implementing the veteran readjustment appointment authority.

PART 316—TEMPORARY AND TERM EMPLOYMENT

§ 316.302 [Amended]

6. In § 316.302, paragraph (c)(2)(iii) in the second sentence, "GS–7" and "1984" are changed to "GS–9" and "1986" respectively.

(5 U.S.C. 3301, 3302, 3304(c); 38 U.S.C. 2014; E.O. 12362)

§ 316.402 [Amended]

7. In § 316.402, paragraph (b)(4)(iii) in the second sentence, "GS–7" and "1984" are changed to "GS–9" and "1986" respectively.

(5 U.S.C. 3312; 22 U.S.C. 2506, 93 Stat. 371, E.O. 12137; 5 U.S.C. 3301, 3302, 3304(c); 38 U.S.C. 2014; E.O. 12362)

[FR Doc. 85–7884 Filed 4–2–85; 8:45 am]

BILLING CODE 6325–01–M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Publication of Revised Merit Systems Protection Board Appeal Form

AGENCY: Merit Systems Protection Board.

ACTION: Publication of Revised Appeal Form.

SUMMARY: The Board announces publication of a new MSPB Appeal Form, Appendix I of 5 CFR Part 1201, which has been revised in format to facilitate the filing of appeals with the Board. The Board has arranged for copies of the new form (Optional Form 283 (11/84)) to be made available to agencies through their normal procurement channels from the General Services Administration. The Board's regulations at 5 CFR 1201.21(c) require each agency to provide a copy of the appeal form to any employee to whom it has issued a personnel decision notice on a matter appealable to the Board.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Director, Information Services Division, Office of the Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, D.C. 20419, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board's revision of the appeal form (Edition 11/84) does not constitute a substantive change over the previous appeal form (Edition 5/80) and the latter will remain valid for purposes of filing appeals with the Board. However, the Board encourages agencies and employees to order and use the new appeal form since it has been revised to improve the accuracy and completeness of appeal filings. The following summarizes the significant changes in format of the revised form:

(1) *Instructions.* The instructions type size was expanded to improve readability, and instructions were added regarding premature appeals and other matters to improve completeness and legibility of appeal filings.

(2) *Copies.* The new instructions request one original and one copy (the old form requested three copies) reflecting the internal MSPB change to a single file system.

(3) *Spacing and Wording.* The overall spacing and wording of the form's information blocks were changed to help improve the accuracy and completeness of responses.

(4) *Hearing/Representative.* The previous Part III, "Hearing" section, was divided, and a "Designation of Representative" section was established as Part IV. The old line 27B signature block, and the old line 28 witness blocks were eliminated because they were not necessary.

(5) *Part V—RIF.* The previous Part IV, "Reduction-in-Force" (RIF), is now Part V.

Please note that the Voluntary Expedited Appeal Form, Appendix 1–A to 5 CFR Part 1201, remains valid for the purposes of appeals filed in Board regional offices where the voluntary expedited appeals procedure is in effect.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Government employees.

Dated: March 28, 1985.

For the Board.

Herbert E. Ellingwood,

Chairman.

Accordingly, 5 CFR Part 1201, Appendix I, is revised as follows:

BILLING CODE 7400–01–M

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS:

THE PURPOSE OF THIS FORM IS TO HELP YOU PROVIDE IMPORTANT INFORMATION TO THE U.S. MERIT SYSTEMS PROTECTION BOARD ("THE BOARD") WHEN YOU FILE AN APPEAL. YOU ARE NOT REQUIRED TO USE THIS FORM, AND YOU ARE NOT LIMITED TO ANSWERING THE QUESTIONS ON THE FORM IF YOU FEEL THERE IS OTHER INFORMATION YOU WISH TO PROVIDE. HOWEVER, IF YOU DO NOT USE THE FORM, YOUR APPEAL DOCUMENTS MUST COMPLY WITH THE BOARD'S REGULATIONS. YOUR AGENCY'S PERSONNEL OFFICE WILL PROVIDE YOU WITH A COPY OF THESE REGULATIONS AND THE BOARD ADVISES YOU TO REVIEW THEM.

ALL APPEALS FILED BEFORE AGENCY ACTION HAS BEEN TAKEN WILL BE CONSIDERED PREMATURE AND WILL BE RETURNED WITHOUT ACTION.

ALL APPELLANTS WHO ELECT TO USE THIS FORM SHOULD COMPLETE PARTS I THROUGH IV. ONLY THOSE WHO ARE APPEALING REDUCTION-IN-FORCE (RIF) ACTIONS ARE REQUIRED TO COMPLETE PART V. THE INFORMATION MUST BE TYPED OR PRINTED CLEARLY. ANSWER ALL QUESTIONS AND USE "N/A" WHEN THE QUESTION IS NOT APPLICABLE TO YOUR APPEAL. ALL APPELLANTS MUST SIGN AND DATE THE FORM IN THE SPACE PROVIDED AT THE END OF PAGE 4 FOR IT TO BE ACCEPTED BY THE BOARD, AND TO INDICATE APPROVAL OF THE CONTENTS OF THE ENTIRE FORM.

YOU MAY SUPPLEMENT YOUR RESPONSE TO ANY QUESTION IN THE SPACE PROVIDED ON PAGE 4 OR, IF NEEDED, ON SEPARATE SHEETS OF PAPER. IF SEPARATE SHEETS ARE USED, PLEASE PUT YOUR NAME AND SOCIAL SECURITY NUMBER AT THE TOP OF EACH PAGE. INDICATE BY NUMBER WHICH QUESTION YOU ARE ANSWERING, AND ATTACH THE EXTRA PAGES TO THE FORM.

WHERE TO FILE—YOU OR YOUR REPRESENTATIVE ARE REQUIRED TO FILE ONE ORIGINAL AND ONE COPY OF THIS FORM, TOGETHER WITH ITS ATTACHMENTS, WITH THE BOARD'S REGIONAL OFFICE IDENTIFIED IN THE DECISION NOTICE PROVIDED BY THE AGENCY. FILING MUST BE MADE EITHER BY PERSONAL DELIVERY DURING NORMAL BUSINESS HOURS TO THE APPROPRIATE BOARD REGIONAL OFFICE OR BY MAIL ADDRESSED TO THAT OFFICE. THE BOARD RECOMMENDS BUT DOES NOT REQUIRE THAT YOU USE CERTIFIED MAIL.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*

2. SOCIAL SECURITY NUMBER

3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)* YOU ARE REQUIRED TO NOTIFY THE BOARD OF ANY ADDRESS CHANGE IN ORDER TO INSURE THE CORRECT DELIVERY OF A DECISION.

4. HOME PHONE *(Include area code)*

5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE THE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS *(e.g., a Notice of Proposed Action, a Form 50, or Agency Appeal Decision)*

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*

8. APPELLANT'S POSITION TITLE AT TIME OF ACTION

9. GRADE AT TIME OF ACTION

10. SALARY AT TIME OF ACTION

$ PER

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ YES ☐ NO	12. EMPLOYMENT STATUS ☐ Temporary ☐ Applicant ☐ Retired ☐ Permanent ☐ Term	13. IF RETIRED, DATE OF RETIREMENT *(Month, day, year)*

14. TYPE OF SERVICE ☐ Competitive ☐ Excepted	15. LENGTH OF GOVERNMENT SERVICE	16. LENGTH OF SERVICE WITH ACTING AGENCY	17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT THE TIME ACTION WAS TAKEN BY THE AGENCY? ☐ YES ☐ NO

18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year)* *(Attach copy)*	19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year)* *(Attach Copy)*	20. EFFECTIVE DATE OF ACTION *(Month, day, year)*

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

24. HAVE YOU FILED A FORMAL DISCRIMINATION COMPLAINT CONCERNING THE MATTER WHICH YOU ARE SEEKING TO APPEAL WITH YOUR AGENCY OR ANY OTHER AGENCY? ☐ YES *(Attach copy)* ☐ NO

24A. IF YES, DATE FILED *(Month, day, year)*	24B. PLACE FILED *(Agency and location)*	24C. HAS THERE BEEN A DECISION? ☐ YES *(Attach copy)* ☐ NO

24. HAVE YOU, OR ANYONE IN YOUR BEHALF, FILED A FORMAL GRIEVANCE WITH YOUR AGENCY CONCERNING THIS MATTTER, UNDER A NEGOTIATED GRIEVANCE PROCEDURE PROVIDED BY A COLLECTIVE BARGAINING AGREEMENT?

☐ YES *(Attach copy)* ☐ NO

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS DECISION BEEN ISSUED? ☐ YES *(Attach copy)* ☐ NO
25D. IF YES, DATE FILED *(Month, day, year)*	25E. NAME OF ISSUING OFFICIAL	25F. TITLE OF ISSUING OFFICIAL

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. IF NO SQUARE IS CHECKED, THE BOARD WILL PRESUME YOU ARE WAIVING A HEARING. *DO YOU WANT A HEARING?*

☐ YES ☐ NO

IF YOU CHOOSE TO HAVE A HEARING THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

PART IV. DESIGNATION OF REPRESENTATIVE

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL. IF HE/SHE AGREES TO DO SO, THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. REPRESENTATIVE'S ADDRESS AND PHONE NUMBER	27C. REPRESENTATIVE'S SIGNATURE	27D. DATE
	27E. REPRESENTATIVE'S EMPLOYER	

PART V. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

28. RETENTION GROUP OR SUB-GROUP	29. SERVICE COMPUTATION DATE	30. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ YES ☐ NO
31. TITLE OF POSITION OFFERED	32. GRADE OF POSITION OFFERED	33. SALARY OF POSITION OFFERED $ PER
34. LOCATION OF POSITION OFFERED	35. DID YOU ACCEPT THIS POSITION? ☐ YES ☐ NO	

36. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE *(Explanations could include: You were placed in the wrong retention group or subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower retention group or subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

37. SUPPLEMENTAL ANSWER SPACE

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

☆ U.S. GOVERNMENT PRINTING OFFICE : 1984 O - 461-275 (337)

[FR Doc. 85-7900 Filed 4-2-85; 8:45 am]
BILLING CODE 7405-01-C

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-306]

European Larch Canker

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: On May 4, 1984, an interim rule was published in the Federal Register which added new "Subpart—European Larch Canker" to the Domestic Quarantine Notices. On September 20, 1984, an interim rule was published in the Federal Register amending the interim rule of May 4, 1984, by revising areas designated as regulated areas. This document affirms without change the interim rule of May 4, 1984, as amended by the interim rule of September 20, 1984. These actions are necessary to prevent the artificial spread interstate of European larch canker into noninfested areas of the United States.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: E. Elliott Crooks, Senior Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8249.

SUPPLEMENTARY INFORMATION: A document published in the Federal Register on May 4, 1984 (49 FR 18989-18995) amended the Domestic Quarantine Notices (7 CFR Part 301) by adding new "Subpart-European Larch Canker" (contained in 7 CFR 301.91 *et seq.*, and referred to below as the regulations). The regulations quarantined the State of Maine for European larch canker, *Lachnellula willkommii* (Dasyscypha), a dangerous plant disease, and designated certain areas in Maine as "regulated areas", designated certain articles as "regulated articles", and established regulations governing the interstate movement of regulated articles from regulated areas. Subsequently, on September 20, 1984, another document was published in the Federal Register (49 FR 36815-36817) amending "Subpart—European Larch Canker" by expanding areas previously designated as regulated areas, and by designating new areas as regulated areas because of the spread of European larch canker within the State of Maine.

Comments were solicited for 60 days after the publication of each amendment. No comments were received on either amendment. Further, the factual situations set forth in the documents of May 4, 1984, and September 20, 1984, still provide a basis for these amendments. Accordingly, it has been determined that the amendment published in the Federal Register on May 4, 1984, should remain effective as revised by the amendment published in the Federal Register on September 20, 1984.

Executive Order and Regulatory Flexibility Act

These amendments have been issued in conformance with Executive Order 12291 and have been determined to be not "major rules." Based on information compiled by the Department, it has been determined that the amendments of May 4, 1984, and September 20, 1984, will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that the amendments of May 4, 1984, and September 20, 1984, will not have a significant economic impact on a substantial number of small entities. These actions only affected the interstate movement of regulated articles from portions of Hancock, Knox, Lincoln, Waldo, and Washington Counties in Maine by imposing restrictions on the movement of such articles. Further, information from the Maine Forest Service and the USDA Forest Service, indicates that the items designated as regulated articles (namely, logs, pulpwood, branches, twigs, plants, scion and other propagative material from larch trees) have little commercial value, and there is very little interstate movement of these regulated articles for commercial purposes or otherwise.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, European Larch Canker, Plant diseases, Plants (agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 18989-18995 on May 4, 1984, as amended by the interim rule published at 49 FR 36815-36817 on September 20, 1984, is adopted as a final rule.

Authority: 7 U.S.C. 161, 162; 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 28th day of March 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-7899 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 301

[Docket No. 85-319]

Golden Nematode, Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the "Golden Nematode" quarantine and regulations by designating a previously nonregulated area in Livingston County, New York, as a generally infested area. The quarantine and regulations impose restrictions on the interstate movement of certain articles from suppressive areas and generally infested areas in New York. This amendment is necessary as an emergency measure in order to prevent the artificial spread interstate of golden nematode.

DATES: Effective date of this interim rule is April 3, 1985.

Written comments concerning this interim rule must be received on or before June 3, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim action. Due to the possibility that golden nematode could be artificially spread interstate to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest.

Further, pursuant to the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this documents in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

The golden nematode is a plant pest which is highly destructive to potatoes and other solanaceous plants. It is undoubtedly the most serious pest threatening the American potato industry. Potatoes cannot be grown economically on land containing large numbers of the nematode.

The golden nematode has been determined to occur in the United States only in parts of New York. The "Golden Nematode" quarantine and regulations (7 CFR 301.85 *et seq.*) quarantine the State of New York because of the golden nematode, and restrict the interstate movement from areas in New York designated as regulated areas of articles designated as regulated articles because of the golden nematode. Such restrictions are necessary for the purpose of preventing the artificial spread of the golden nematode.

Regulated areas are those areas in which the golden nematode has been found or in which there is reason to believe that the golden nematode is present or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of the golden nematode is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the artificial movement of golden nematode to noninfested areas and to prevent the reinfestation of suppressive areas where the golden nematode no longer occurs.

As an emergency measure, the following area in Livingston County in New York which was previously a nonregulated area, is designated as a generally infested area:

New York

Livingston County. The towns of Avon, Caledonia, Geneseo, Groveland, Leicester, Lima, Livonia, Mount Morris, West Sparta, and York.

Based on soil sample surveys conducted by inspectors of the U.S. Department of Agriculture and the New York Department of Agriculture and Markets, it has been determined that the golden nematode has spread to certain areas beyond the outer perimeter of areas previously designated as generally infested areas. Therefore, as an emergency measure, it is necessary to designate such area as golden nematode generally infested area and impose restrictions on the interstate movement of regulated articles from this area in accordance with the regulations in order to prevent the artificial spread of the golden nematode.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of less than $4,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from a specified area in Livingston County in New York. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are thousands of small entities that move regulated articles interstate from New York and many more thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that fewer that 32 small entities move regulated articles interstate from the specified area affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $4,000.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Golden Nematode, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, § 301.85–2a of the Golden Nematode quarantine and regulations (7 CFR 301.85–2a) is amended by revising the entries under New York to read as follows:

§ 301.85–2a Regulated areas; suppressive and generally infested areas.

* * * * *

New York

(1) *Generally infested area:*

Cayuga County. The town of Montezuma.

Genesee County. The towns of Elba and Byron.

Livingston County. The towns of Avon, Caledonia, Geneseo, Groveland, Leicester, Lima, Livonia, Mount Morris, West Sparta, and York.

Nassau County. The entire county.

Orleans County. The towns of Barre and Clarendon.

Seneca County. The town of Tyre.

Steuben County. The towns of Prattsburg and Wheeler; that area known as "Arkport Muck" located in the town of Dansville and bounded by a line beginning at a point where the Conrail right-of-way (Erie Lackawanna Rail Road) intersects County Road 52 (known as Burns Road), then north and northeast along County Road 52 to its junction with New York Route 36, then south and southeast along New York Route 36 to its intersection with the Dansville Town line, then west along the Dansville Town line to its intersection with the Conrail right-of-way (Erie Lackawanna Rail Road), then north and northwest along the Conrail right-of-way to the point of beginning; and the Werth, Dale, farm, known as the "Werthwhile Farm," located in the town of Cohocton on the north side of County Road 5 (known as Brown Hill Road), and 0.2 mile west of the junction of County Road 5 with County Road 58 (known as Wager Road).

Suffolk County. The entire county.

Wayne County. The town of Savannah.

(2) *Suppressive area:*

Yates County. The town of Italy.

Authority: 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 29th day of March 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-7886 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT-2]

Electronic Fund Transfers; Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The revisions represent final action on proposed changes published for comment in December 1984, and include new material and changes in existing material.

EFFECTIVE DATES: April 1, 1985, except for the revision to question 7–18.5 applicable to foreign-initiated transfers, which is effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or John C. Wood, Senior Attorneys, or Richard S. Garabedian, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452–3667 or (202) 452–2412.

SUPPLEMENTARY INFORMATION: (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). Effective September 24, 1981, an official staff commentary (EFT–2, Supp. II to 12 CFR Part 205) was published to interpret the regulation.

The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. There have been two updates so far, the first on April 6, 1983 (48 FR 14880), and the second on October 18, 1984 (49 FR 40794). A proposed third update was published for comment on December 4, 1984 (49 FR 47405); this notice contains the final version.

(2) *Explanation of revisions.* Question 2–28 addresses robberies at automated teller machines (ATMs). Many of the commenters that discussed the proposed version believed that the reference to "at gunpoint" narrowed the application of the interpretation too much. The final version incorporates a change to respond to these comments.

Question 5–4.5 has been substantially changed from the proposed version. The proposal would have barred financial institutions from issuing validated personal identification numbers (PINs) on an unsolicited basis, if the PIN would permit a debit card previously issued for point-of-sale (POS) transactions to be used at ATMs. A number of commenters argued that the proposal would greatly inhibit the provision of new services and the implementation of new technology. In its final form, the interpretation sanctions the issuance of PINs, but an institution may not impose liability on the consumer for unauthorized transactions involving use of the PIN until the consumer has indicated acceptance of the PIN. (For a discussion of PIN issuance in connection with existing credit cards, see comment 12(a)(1)–8 in the official staff commentary to Regulation Z, published elsewhere in this **Federal Register** issue.)

Questions 7–18.5 and 11–11.5 relate to amendments to Regulation E adopted by the Board on October 11, 1984 (49 FR 40794), which cover all debit card transactions whether or not an electronic terminal is involved. The amendments also extended the time periods for resolution of errors involving POS debit card transactions; the longer periods parallel those applicable to foreign-initiated transfers.

Question 7–18.5 reverses an existing interpretation; until now, disclosure of the longer error resolution time periods in the case of foreign-initiated transfers has not been required because they are relatively infrequent (as compared, for example, to POS debit card transactions). The revised interpretation requires that the disclosures for accounts subject to foreign-initiated or POS debit card transactions state the extended time periods. The rationale for the revision as to foreign-initiated transfers is that institutions would have to revise their disclosures for POS transactions anyway, and therefore including references to foreign-initiated transactions would present little or no additional burden. Industry comment suggested, however, that some small institutions hold consumer accounts that could be affected by foreign-initiated transfers but not by POS transactions. Accordingly, the effective date of the revision to question 7–18.5 is deferred to October 1, 1985, for the disclosure applicable to foreign-initiated transfers (but not POS transactions), to minimize the compliance burden for such institutions.

Some commenters asked that the Board provide new model forms for disclosing the longer time periods. The change required in the error resolution disclosure is minimal, and therefore new model forms appear unnecessary. The existing model form could be adopted, for example, by simply inserting, after references to 10 business days, a phrase such as "(20 business days, in the case of a transfer resulting from a point-of-sale debit card transaction or a transfer initiated outside the United States)." A similar parenthetical phrase could be inserted after the reference to 45 days. Or, a paragraph could be added to the disclosure, stating the longer time periods that are applicable to foreign-initiated and POS transactions.

Question 11–11.5 discusses what transactions qualify as POS for purposes of the longer error resolution periods. Some commenters wanted additional types of transactions (for example, transactions at ATMs in merchant locations) to be treated as POS debit card transactions. No change has been made on this point, however. The regulatory amendment of October 1984 expanding the time periods was intended to grant relief in connection with the new coverage of certain POS

debit card transactions; ATM transactions, in contrast, have been covered since the inception of the regulation, and thus institutions should already have in place procedures that are in compliance with the 10-business-day and 45-calendar-day deadlines.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

(3) *Text of revisions.* The revisions to the Official Staff Commentary on Regulation E (EFT–2, Supp. II to 12 CFR Part 205) read as follows:

* * * * *

Section 205.2 Definitions and Rules of Construction

* * * * *

Q 2–28: *Unauthorized transfers—forced initiation.* A consumer is forced by a robber (at gunpoint, for example) to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A. *Yes.* The transfer is unauthorized for purposes of Regulation E. Under these circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(l) and 205.6)

* * * * *

Section 205.5 Issuance of Access Devices

* * * * *

Q 5–4.5: *Unsolicited issuance—PINs.* May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines or at merchant locations with POS terminals that require PINs?

A: Yes. A validated PIN may be issued to an existing debit card holder without a specific request provided the PIN cannot be used alone to make an electronic fund transfer. The institution may impose no liability on the consumer for unauthorized transfers involving use of the PIN, however, until this new combination of debit card and PIN becomes an "accepted access device" under the regulation. The card-PIN combination can be treated as an accepted access device, for example, if the card and PIN have been used and the consumer does not dispute having used them. (§§ 205.5(a) and 205.2(a))

* * * * *

Section 205.7 Initial Disclosure of Terms and Conditions

* * * * *

Q 7–18.5: *Error-resolution disclosure—extended time periods.* The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States or transfers resulting from POS debit card transactions, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which these types of transfers can be made?

A: A financial institution's error-resolution disclosures must reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfers must therefore disclose the longer periods in its error-resolution disclosures. Similarly, an institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures accordingly. (§§ 205.7(a)(10)), 205.8(b), and 205.11 (c)(3) and (c)(4)).

* * * * *

Section 205.11 Procedures for Resolving Errors

* * * * *

Q 11–11.5: *POS debit card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit card transactions?

A: POS debit card transactions generally take place at merchant locations, but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location. (§ 205.11(c)(4))

* * * * *

(15 U.S.C. 1601 *et seq.*)

Board of Governors of the Federal Reserve System, March 28, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–7882 Filed 4–2–85; 8:45 am]

BILLING CODE 6210–01–M

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12 CFR Part 226

[Reg. Z; TIL–1]

Truth in Lending; Official Staff Commentary Update

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The revisions address a variety of questions that have arisen about the regulation concerning such matters as the assumption provision, surcharges, discounted variable-rate disclosures, and implementation of the statutory change to the open-end right of rescission.

EFFECTIVE DATE: April 1, 1985, but reliance optional until October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Contact the following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452–2412 or (202) 452–3867:

Subpart A—Richard Garabedian, Gerald Hurst

Subpart B—Richard Garabedian, Adrienne Hurt

Subpart C—Susan Werthan, Steven Zeisel

SUPPLEMENTARY INFORMATION: (1) *General.* Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR Part 226) was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise.

There have been three general updates so far—the first in September 1982 (47 FR 41338), the second in April 1983 (48 FR 14882), and the third in April 1984 (49 FR 13482). There was also a limited update concerning fees for the use of automated teller machines, which was adopted in October 1984 (49 FR 40560). This notice contains the fourth general update, which was proposed for comment on December 4, 1984 (49 FR 47406). The changes are effective on April 1, 1985. Although creditors are free to rely on the provisions as of that date and are protected if they do so, they need not follow the revisions until October 1, 1985, the uniform effective date provided for in section 105(d) of the revised Truth in Lending Act.

(2) *Explanation of revisions.* Following is a brief description of the revisions to the commentary and how they differ, if at all, from those proposed:

Subpart A—General

Section 226.2 Definitions and Rules of Construction.

2(a) Definitions.

2(a)(15) "Credit Card".

Comment 2(a)(15)–2 is revised to make clear that certain types of access devices that are used at wholesale petroleum distribution terminals—whether or not credit is involved—are not considered credit cards under Regulation Z. The comment has been revised from the proposal to address points raised by the commenters. First, language has been added to clarify that devices other than cards would also be excluded from the regulation's credit card definition if those devices in fact served the purpose described in the

comment. The Comment also has been modified to indicate that, in order to come within the terms of the exclusion, the device need not be required both to gain access to the facility and also to obtain the petroleum products.

2(a)(17) "Creditor".

Paragraph 2(a)(17)(i).

Comment 2(a)(17)(i)–8 is added to explain how the numerical tests for determining who is a "creditor" should be applied to loans made by employee savings plans. It provides that the numerical test should be applied to the plan as a whole rather than to the individual account. The final comment has been revised from the proposal to make clear that it does not apply to plans in which the participants' accounts constitute individual trusts.

2(a)(20) "Open-End Credit".

Comment 2(a)(20)–5 is revised to correct a potential contradiction caused by the language "specific approval for each extension." Because "verification" of credit information—which is permissible under the open-end credit definition—necessarily involves "approval" if a credit extension is not denied after verifying the credit information, the "specific approval" language may have been confusing. The revised provision, therefore, does not contain that language. The comment continues to mean, however, that, while creditors may verify credit information on an open-end credit plan before authorizing additional credit extensions, they may not undertake activities such as requiring a new application for each additional credit extension, without jeopardizing a program's status as an open-end credit plan.

Section 226.4 Finance Charge.

4(a) Definition.

The first sentence of comment 4(a)–3 is revised to clarify which charges by third parties are excluded from the finance charge. The revision makes clear that, in order to be excluded, the charge must be imposed on the consumer and the creditor must not retain the charge. The final comment has been reworded from the proposal to make it easier to read and understand.

Subpart B—Open-End Credit

Section 226.7 Periodic Statement.

7(h) Other Charges.

Comment 7(h)–4 is added to make clear that, in disclosing "other charges" on the periodic statement, creditors have the flexibility to disclose them individually or as a total, as long as the charges are still itemized and identified by type.

Section 226.9 Subsequent Disclosure Requirements.

9(d) Finance Charge Imposed at Time of Transaction.

Comment 9(d)–1 is totally rewritten since the ban on credit card surcharges expired on February 27, 1984. Section 226.9(d) requires the disclosure of the amount of any finance charge, such as a credit card surcharge, that is imposed by a person other than the card issuer on a consumer for using a credit card. Revised comment 9(d)–1 makes clear that such finance charges must be disclosed to consumers prior to their being committed to purchasing property or services.

The final comment has been revised from the proposal to more clearly reflect the regulatory requirement to disclose the amount of the surcharge. In addition, at the suggestion of several commenters, the examples that were in the supplementary information to the proposal are now included in the comment. More detailed guidance on the disclosure requirements for surcharges may prove necessary in the future should surcharges continue to be permitted.

Section 226.12 Special Credit Card Provisions.

12(a) Issuance of Credit Cards.

Paragraph 12(a)(1).

Comment 12(a)(1)–8 is added to make clear that card issuers may issue, without a specific request from the consumer, a personal identification number (PIN) to existing cardholders, provided the PIN cannot be used by itself to obtain credit. The example given in the final comment has been revised from the proposal to clarify that the PINs might be issued to allow existing credit cards to be used at electronic terminals at point-of-sale, as well as at ATMs. (For a discussion of PIN issuance for use with existing debit cards, see question 5–4.5 in the update to the official staff commentary to Regulation E, published elsewhere in this Federal Register issue.)

Section 226.15 Right of Rescission.

15(a) Consumer's Right to Rescind.

Paragraph 15(a)(1).

Comment 15(a)(1)–2 is revised to reflect the amendment to the Truth in Lending Act in Pub. L. 98–479 which permanently exempts from the right of rescission individual transactions made on an open-end line of credit in accordance with a previously established credit limit.

References

Reference to section 205 of Pub. L. 98–479 is added to the References section to reflect the permanent exemption from the right of rescission for individual credit extensions made on an open-end credit line.

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements.

17(a) Form of Disclosures.

Paragraph 17(a)(1).

Comment 17(a)(1)–5 is revised to clarify that other conditions of assumption, in addition to the currently-allowed reference to a due-on-sale clause, may be briefly reflected in the assumption policy disclosure under § 226.18(q).

17(b) Time of Disclosures.

Comment 17(b)–2, regarding conversion of open-end to closed-end credit, is expanded to address the question of the basis for disclosures when an open-end plan is converted to a variable-rate closed-end transaction. The revision makes clear that, where closed-end disclosures are delayed in accordance with the comment, the disclosures should reflect the rate in effect at the time of conversion.

Section 226.18 Content of Disclosures.

18(f) Variable Rate.

Comment 18(f)–5 is revised to add recent federal adjustable rate mortgage regulations to the list of variable rate regulations for which footnote 43 to § 226.18(f) may be used. Creditors making disclosures in accord with the rules issued by the Department of Housing and Urban Development (49 FR 23580) need not make the variable rate disclosures required by § 226.18(f).

Comment 18(f)–5 is also revised to reflect a new citation to the variable rate regulation of the Federal Home Loan Bank Board. The revision is technical and reflects no substantive change in the comment.

Comment 18(f)–6 is revised to clarify the application of the discounted variable rate rules to some types of variable rate transactions. A paragraph is added to explain that transactions in which the only difference between the initial rate and the index rate at consummation results from a change in the index are not discounted transactions. Material also is added to address plans that have a built-in delay

between index changes and implementation of those changes. In calculating a composite annual percentage rate for these plans, creditors may use an index value within a certain period before consummation. Finally, premium loans are specifically referenced, and editorial changes are made to clarify some of the explanatory material.

18(k) Prepayment.

Comment 18(k)–2 is revised to delete the example regarding student loans with loan fees, in order to make the comment more consistent with comment 18(k)–3. Comment 18(k)–2 illustrates transactions that may require disclosures under both § 226.18(k)(1), regarding penalties for prepayment of simple interest transactions, and § 226.18(k)(2), regarding rebates for prepayment of precomputed transactions. Comment 18(k)–3 clarifies that prepaid finance charges do not require rebate disclosures. Since loan fees in student loans are normally prepaid finance charges, the continued use of that type of transaction as an example of a loan requiring a rebate disclosure is inappropriate and may cause confusion. The deletion of the example is a technical revision and does not affect the substance of either comment.

18(q) Assumption Policy.

Comment 18(q)–1 is revised to clarify the disclosure required when uncertainty exists as to the assumability of the obligation. Under the revision, the uncertain nature of a future assumption should be reflected in the disclosure, in order to more adequately inform consumers.

Section 226.23 Right of Rescission.

23(f) Exempt Transactions.

Comment 23(f)–6 is added to clarify the application of the right of rescission to close-end credit transactions arising from the conversion of an open-end credit account. Where consummation of both the closed-end and open-end credit occurs at the time the consumer enters into the open-end agreement, the closed-end disclosures may be delayed until conversion, as provided by comment 17(b)–2. Comment 23(f)–6 makes clear that, if the creditor has previously complied with the rescission requirements on the open-end account, no new right of rescission applies on the conversion of an account secured by the consumer's principal dwelling.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

(3) *Text of revisions.* The revisions to the commentary (TIL–1, Supplement I to 12 CFR Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL–1

SUBPART A—General

* * * * *

Section 226.3 Definitions and Rules of Construction

2(a) Definitions

* * * * *

2(a)(15) "Credit Card"

* * * * *

2. *Examples.* Examples of credit cards include:

- A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit
- A card that accesses both a credit and an asset account (that is, a debit-credit card)
- An identification card that permits the consumer to defer payment on a purchase
- An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension

In contrast, credit card does not include, for example:

- A check guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.
- Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

* * * * *

2(a)(17) "Creditor"

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Paragraph 2(a)(17)(i)

* * * * *

8. *Loans from employee savings plans.* Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances. Unless each participant's account is an individual trust, the numerical tests should be applied to the plan as a whole rather than to the individual accounts, even if the loan amount is determined by reference to the balance in an individual account and the repayments are credited to the individual account.

* * * * *

2(a)(20) "Open-End Credit"

* * * * *

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may verify credit information such as the consumer's continued income and employment status or information for security purposes. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a close-end credit loan commitment.* * *

* * * * *

Section 226.4 Finance Charge

* * * * *

4(a) Definition

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3. *Charges by third parties.* Charges imposed on the consumer by someone other than the creditor for services not required by the creditor are not finance charges, as long as the creditor does not retain the charges.

For example:

- A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker (even if the creditor knows of the loan broker's involvement or compensates the broker)
- A tax imposed by a state or other governmental body on the credit transaction that is payable by the consumer (even if the tax is collected by the creditor)

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Subpart B—Open-End Credit

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Section 226.7 Periodic Statement

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7(h) Other Charges

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4. *Itemization—types of "other charges".* Each type of "other charge" (such as late payment charges, over-the-credit-limit charges, ATM fees that are not finance charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of "other charges" attributable to both an over-the-credit-limit charge and a late payment charge would not be permissible. "Other charges" of the same type may be disclosed, however, individually or as a total. For example, three ATM fees of $1 may be listed separately or as $3.

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Section 226.9 Subsequent Disclosure Requirements

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9(d) Finance Charge Imposed at Time of Transaction

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer

has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

* * * * *

Section 226.12 Special Credit Card Provisions

* * * * *

12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

* * * * *

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point-of-sale terminals that require PINs.

* * * * *

Section 226.15 Right of Rescission

* * * * *

15(a) Consumer's Right to Rescind

Paragraph 15(a)(1)

* * * * *

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the act.

* * * * *

References

Statute: Sections 113, 125, 130, and the Housing and Community Development Technical Amendments Act of 1984, Sec. 205 (Pub. L. 98-479).

* * * * *

1981 Changes: Section 226.15 reflects the statutory amendments of 1980, providing for a limited right of rescission when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. The 1980 amendments provided that this limited rescission right be available for a three-year trial period. However, Pub. L. 98-479 now permanently exempts such individual credit extensions from the right of rescission. * * *

* * * * *

Subpart C—Closed-End Credit

Section 226.17 General Disclosure Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

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5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following:

* * * * *

• A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms."

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17(b) Time of Disclosure

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2. *Converting open-end to closed-end credit.* If an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction. If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion. If disclosures are delayed until conversion and the closed-end transaction has a variable-rate feature, disclosures should be based on the rate in effect at the time of conversion. (See the commentary to § 226.5 regarding conversion of closed-end to open-end credit.)

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Section 226.18 Content of Disclosures

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18(f) Variable Rate

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5. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of § 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board (12 CFR 545.33), the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR Part 29) and the adjustable-rate mortgage regulations issued by the Department of Housing and Urban Development (24 CFR Parts 203 and 234). The exception in footnote 43 is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by Title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

* * * * *

8. *Discounted variable-rate transactions.* In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

• When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use the index value in effect not more than 45 days before consummation in calculating a composite annual percentage rate.

• The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

• If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

• Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with section § 226.22(a)(3) of the regulation.

• Examples of discounted variable-rate transactions include:

—A 30-year loan for $100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of $804.62 and 348 payments of $1,025.31. The finance charge should be $286,463.32 and the total of payments $386,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting these

three rate levels, the payment schedule should show 12 payments of $804.62, 12 payments of $850.09, and 336 payments of $1,024.34. The finance charge should be $265,234.76, and the total of payments $365,234.76.

—Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of $804.62, 12 payments of $864.97, 12 payments of $929.86, 12 payments of $999.60, and 312 payments of $1,070.03. The finance charge should be $277,037.96, and the total of payments $377,037.96.

This paragraph does not apply to variable-rate loans in which the initial interest rate is set according to the index or formula used for later adjustments, but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

* * * * *

18(k) Prepayment

* * * * *

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H–15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

* * * * *

18(q) Assumption Policy

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under § 226.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as "subject to conditions," "under certain circumstances," or "depending on future conditions." The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, "Someone buying your home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee." See comment 17(a)(1)–5 for an example for a reference to a due-on-sale clause.

* * * * *

Section 226.23 Right of Rescission

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23(f) Exempt Transactions

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8. *Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion, assuming that the right of rescission was previously provided on the open-end account pursuant to § 226.15.

* * * * *

Board of Governors of the Federal Reserve System, March 28, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–7883 Filed 4–2–85; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Statement of Policy on Capital; Correction

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Statement of Policy on Capital; correction.

SUMMARY: This document corrects a statement of policy that appeared on page 11138 of the **Federal Register** of Tuesday, March 19, 1985. The action is necessary to conform the statement of policy to a definitional correction that was made to the FDIC's final rule on capital maintenance (12 CFR Part 325), and to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, (202) 389–4761.

Correction

FR Doc. 85–6427, issued March 19, 1985, is corrected as follows:

1. On page 11139, the term "adjusted total assets" in the last paragraph of the first column is corrected to read "total assets".

2. On page 11139 in the third column, under the caption "Capital Plans", the words "total ratios" are corrected to read "total capital ratios".

3. On page 11140 in the first column, the second caption is corrected to read *"Savings Banks With a Mutual Form of Ownership"*.

Dated: March 28, 1985.

Federal Deposit Insurance Corporation.

Hoyle Robinson,

Executive Secretary.

[FR Doc. 85–7886 Filed 4–2–85; 8:45 am]

BILLING CODE 6714–01–M

12 CFR Part 325

Capital Maintenance; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared on page 11128 of the **Federal Register** of Tuesday, March 19, 1985. The action is necessary to conform provisions of the regulation to the definition of "total assets" contained in § 325.2(k).

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, (202) 389–4761, or Peter M. Kravitz, Senior Attorney, Legal Division, (202) 389–4171, 550 17th Street NW., Washington, D.C. 20429.

Correction

The following corrections are made in FR Doc. 85–6429 in the issue of March 19, 1985:

1. On page 11134 11 lines counting from the bottom of the second column, the words "intense of analysis" are corrected to read "intensive analysis".

2. On page 11135 in the 11th and 12th lines at the top of the third column, "(12 U.S.C. 8(a) and (b))" is corrected to read "(12 U.S.C. 1818(a) and (b))".

3. On page 11137, the term "adjusted total assets" is corrected to read "total assets" each time it appears in § 325.4(c) introductory text, (c)(1) and (c)(2).

Dated: March 28, 1985.

Federal Deposit Insurance Corporation.

Hoyle Robinson,

Executive Secretary.

[FR Doc. 85–7887 Filed 4–2–85; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket N. 85-AWP-7]

Proposed Alternation of Control Zone and Transition Area Description; Santa Barbara, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: An amendment to the existing description of the Santa Barbara Municipal Airport (Lat. 34°25'35" N., Long. 119°50'20" W.) Control Zone and Transition Area is necessary due to the decommissioning of an outer marker (OM) used in used in the legal descriptions. This action will provide only editorial amendments to a reference point used in the descriptions.

EFFECTIVE DATE: May 1, 1985.

ADDRESSES: The official docket may be examined in the Office of Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 536-6649.

List of Subjects in 14 CFR Part 71

Control zones and Transition areas, aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.171 Santa Barbara, California [Revised].

Within a 5-mile radius of Santa Barbara Municipal Airport (lat. 34°25'35" N., long. 119°50'20" W.); within 2 miles each side of the Santa Barbara ILS localizer west course, extending from the 5-mile Radius Zone to a point lat. 34°25'31" N., long. 119°57'28" W.

§ 71.181 Santa Barbara, California [Revised].

That airspace extending upward from 700 feet above the surface within 2-miles each side of the Santa Barbara ILS localizer west course, extending from a point lat. 34°25'31" N., long. 119°57'28" W. to 2-miles west of that point, between the arcs of a 5-mile radius circle and 8.5 mile radius circle centered on the Santa Barbara Municipal Airport (lat. 34°25'35" N., long. 119°50'20" W.), extending clockwise from a line 2-miles north. of the 089° bearing from the Santa Barbara LMM to a line 2.5 miles south of the 115° bearing from the LMM; and within 2-miles east and 7-miles west of the Santa Barbara VORTAC 196° radial, extending from a 5-miles radius circle centered on the Santa Barbara Municipal Airport to 15.5 miles south of the VORTAC; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 35°35'00" N., long. 120°05'00" W.; to lat. 35°05'00" N., long. 120°05'00" W.; to lat. 35°05'00" N., long. 119°30'00" W.; to lat. 34°20'00" N., long. 119°30'00" W.; to lat. 34°20'00" N., long. 120°00'00" W.; to lat. 34°08'00" N., long. 120°00'00" W.; to lat. 34°08'00" N., long. 120°26'00" W.; to lat. 34°06'15" N., long. 120°30'00" W.; to lat. 34°24'00" N., long. 120°30'00" W.; to lat. 34°24'45" N., long. 120°27'20" W.; to lat. 34°35'00" N., long. 120°31'40" W.; to lat. 34°39'50" N., long. 120°31'15" W.; to lat. 34°46'15" N., long. 120°26'40" W.; to lat. 34°49'00" N., long. 120°27'15" W.; to lat. 34°59'32" N., long. 120°41'50" W.; to lat. 35°10'00" N., long. 120°55'00" W.; to lat. 35°21'00" N., long. 121°03'00" W.; to lat. 35°33'00" N., long. 121°03'00" W.; to lat. 35°33'00" N., long. 120°40'30" W.; to lat. 35°22'25" N., long. 120°31'50" W.; to lat. 35°31'40" N., long. 120°15'00" W.; to lat. 35°35'35" N., long. 120°18'10" W.; thence to the point of beginning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect an air traffic procedure and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (revised, Pub. L. 97-449 January 12, 1983)); and 14 CFR 11.69)

Issued in Los Angeles, California, on March 22, 1985.

George Harvey,

Acting Director, Western-Pacific Region.

[FR Doc. 84-7876 Filed 4-2-85; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1214 by revision subpart 1214.11, "NASA Astronaut Candidate Recruitment and Selection Program." The process for selection of astronauts to support Space Shuttle mission operations is being revised to enable NASA to establish and maintain an integrated pool of qualified civilian applicants from which to select astronaut candidates. This will streamline the overall process to allow astronaut selections by NASA within a period of 3 to 4 months instead of 12 to 15 months.

These procedures concern agency management and personnel and are therefore exempt under 5 U.S.C. 553(a)(2) from notice and public comment requirements.

EFFECTIVE DATE: April 3, 1985.

ADDRESS: Office of Space Flight, Code M, National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Charles F. Perry, 202/453-1889.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Payload Specialist, Mission Manager, NASA-Related Payload, Mission Specialist, Investigator Working Group, Government Employees, Government Procurement, Security Measures, Space Transportation and Exploration, SSUS Procurement, Small Self-Contained Payloads, Reimbursement for Shuttle Services, Authority of Space Transportation Systems (STS) Commander, Articles Authorized to be Carried on Space Transportation System Flights, Space Transportation System Personnel Reliability Program, Nonscientific Payloads, Space Flight Participants.

PART 1214—SPACE TRANSPORTATION SYSTEM

14 CFR Part 1214 is amended by revising subpart 1214.11 to read as follows:

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

Sec.
1214.1100 Scope.
1214.1101 Announcement.
1214.1102 Evaluation of applications.
1214.1103 Requesting candidates.
1214.1104 Evaluation and ranking of highly qualified candidates.
1214.1105 Final ranking.
1214.1106 Selection of astronaut candidates.
1214.1107 Notification.

Authority: 42 U.S.C. 2473.

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

§ 1214.1100 Scope.

It is NASA policy to maintain an integrated Astronaut Corps. This Subpart 1214.11 sets forth NASA procedures and assigns responsibilities for recruitment and selection of astronaut candidates. It applies to all pilot and mission specialist astronaut candidate selection activities conducted by the National Aeronautics and Space Administration.

§ 1214.1101 Announcement.

(a) Astronaut candidate opportunities will be announced by the Johnson Space Center (JSC) on a nationwide basis and open to the general public on a continuing basis, and republicized annually, unless specifically cancelled by NASA.

(b) Civilian applicants may apply at any time.

(c) JSC is responsible for implementing and refining the astronaut candidate application process to minimize the effort required to file and/or update applications.

(d) Military personnel on active duty must apply through and be nominated by the military service with which they are affiliated. Military nominees will not be part of the continuing pool of applicants. The Military services will normally convene their internal selection board annually during the latter part of the year and provide nominees to NASA early the following year. The military nominees will be evaluated by NASA and the military services will be notified promptly of those nominees who are finalists.

(e) The Assistant Administrator for Equal Opportunity Programs, NASA Headquarters, will provide assistance in the recruiting process.

§ 1214.1102 Evaluation of applications.

(a) All incoming applications will be reviewed by the JSC Personnel Office to determine whether or not applicants meet basic qualifications. Those not meeting the basic qualification requirements will be so notified in writing and will not be eligible for further consideration. Those meeting the basic qualification requirements will have their applications retained for review by designated rating panels.

(b) The JSC Director, or designee, will appoint discipline experts who will review and rate qualified applicants into one of three levels: Qualified, Well Qualified, or Highly Qualified.

(c) Efforts will be made to assure that minorities and females are included among these discipline experts.

(d) The criteria for each level will be developed by JSC and will serve as the basis for the ratings. The evaluation will be based on the extent to which the individual's academic achievements, experience, and special qualifications relate to the astronaut candidate position. Reference information on those rated "Highly Qualified" will be obtained. The JSC Personnel Officer will monitor this process to assure adherence to applicable rules and regulations.

(e) Medical documentation on the Highly Qualified will be evaluated by the JSC medical staff and an initial medical determination made. Applicants may be contacted for further information if necessary. Only medically qualified applicants will be referred for final evaluation and possible interview and selection. Those who are not medically qualified will be so informed and will not be eligible for further consideration.

§ 1214.1103 Requesting candidates.

(a) The JSC Director, or designee, is responsible for identifying the need for additional astronaut candidates and for obtaining necessary approval to make selections.

(b) Once such approval has been obtained, the JSC Director will request the list of Highly Qualified applicants from the JSC Personnel Officer.

(c) The date of this request will determine the cutoff date for acceptance of applications for that selection. Applications received after the date of the request will be maintained and processed for the next selection.

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) The JSC Director, will appoint a selection board consisting of discipline experts and such other persons as appropriate to further evaluate and rank those Highly Qualified applicants certified to the JSC Director by the JSC Personnel Officer.

(b) Efforts will be made to assure that minorities and females are included on this board.

(c) Those Highly Qualified applicants who are determined to be the "best qualified" will be invited to the Johnson Space Center for an interview, orientation, and detailed medical evaluation.

(d) Background investigations will be initiated on those applicants rated best qualified.

§ 1214.1105 Final ranking.

Final rankings will be based on a combination of the selection board's initial evaluations and the results of the interview process. Veteran's preference will be included in this final ranking in accordance with applicable regulations.

§ 1214.1106 Selection of astronaut candidates.

The selection board will recommend to the JSC Director its selection of candidates from among those finalists who are medically qualified. The number and names of candidates selected to be added to the corps will be approved, as required, by JSC/NASA management and the Associate Administrator for Space Flight, prior to notifying the individuals or the public.

§ 1214.1107 Notification.

Selectees and appropriate military services will be notified and the public informed. All unsuccessful qualified applicants will be notified of nonselection and given the opportunity to update their applications and indicate their desire to receive consideration for future selections.

James M. Beggs,
Administrator.

[FR Doc. 85-7871 Filed 4-2-85; 8:45 am]
BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 369

[Docket No. 50337-5037]

Restrictive Trade Practices or Boycotts

AGENCY: International Trade Administration, Commerce.

ACTION: Interpretation.

SUMMARY: The Department is clarifying the application of its antiboycott regulations (15 CFR Part 369) to certain

contractual language, purporting to involve unilateral and specific selection of suppliers, which has recently appeared in contractual proposals emanating from boycotting countries.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Jon Paugh, Director, Compliance Policy Division, Office of Antiboycott Compliance, U.S. Department of Commerce (202–377–4550).

SUPPLEMENTARY INFORMATION: In an earlier interpretation, the Department reviewed a contractual clause regarding unilateral and specific selection which was then in use in certain boycotting countries. Supplement No. 1 to Part 369. The Department concluded that agreement to the clause recited therein fell within the exception for unilateral and specific selection contained in § 369.3(c) and that compliance with unilateral and specific selections subsequently made pursuant to that clause would be permissible if the selections met all of the requirements of § 369.3(c).

The Office of Antiboycott Compliance has recently become aware of new contractual language which has some superficial similarity to that discussed in the earlier interpretation but which differs in important ways from that earlier language. To avoid any possible confusion concerning the status of this language under the regulations, the Office is now providing this interpretation of the antiboycott regulations.

This interpretative rule is exempt from notice and comment requirements of the Administrative Procedure Act and will become effective upon publication in the **Federal Register**.

This interpretation is not subject to the requirements of the Regulatory Flexibility Act.

This interpretation does not impose a burden under the Paperwork Reduction Act of 1980.

List of Subjects in 15 CFR Part 369

Boycotts, Foreign trade, Reporting and recordkeeping requirements, Restrictive trade practices, Trade practices.

Interpretation

The principal author of this interpretation is Jon Paugh, Director, Compliance Policy Division, Office of Antiboycott Compliance. The following appendix is added to Part 369 as Supplement 13.

PART 369—[AMENDED]

Supplement No. 13

Summary

This interpretation considers boycott-based contractual language dealing with the selection of suppliers and subcontractors.

While this language borrows terms from the "unilateral and specific selection" exception contained in 15 CFR 369.3(c), it fails to meet the requirements of that exception. Compliance with the requirements of the language constitutes a violation of the regulatory prohibition of boycott-based refusals to do business.

Regulatory Background

Section 369.2(a) prohibits U.S. persons from refusing or knowingly agreeing to refuse to do business with other persons when such refusal is pursuant to an agreement with, requirement of, or request of a boycotting country. That prohibition does not extend to the performance of management, procurement or other pre-award services, however, notwithstanding knowledge that the ultimate selection may be boycott-based. To be permissible such services: (1) Must be customary for the firm or industry involved and (2) must not exclude others from the transaction or involve other actions based on the boycott. 15 CFR 369.2(a)(6), "Refusals to Do Business", and ex. (xiii).

A specific exception is also made in the regulations for compliance (and agreements to comply) with a unilateral and specific selection of suppliers or subcontractors by a boycotting country buyer. 15 CFR 369.3(c). In Supplement No. 1 to the Regulations, the following form of contractual language was said to fall within that exception for compliance with unilateral and specific selection:

The Government of the boycotting country (or the First Party), in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed carriers, insurers, suppliers of services to be performed within the boycotting country, or of specific goods to be furnished in accordance with the terms and conditions of this contract.

The Department noted that the actual steps necessary to comply with any selection made under this agreement would also have to meet the requirements of § 369.3(c) to claim the benefit of that exception. In other words, the discretion in selecting would have to be exercised exclusively by the boycotting country customer and the selection would have to be stated in the affirmative, naming a particular supplier. 15 CFR 369.3(c)(4)(5).

Analysis of the New Contractual Language

The Office of Antiboycott Compliance has learned of the introduction of a new contractual clause into tender documents issued by boycotting country governments. This clause is, in many respects, similar to that dealt with in Supplement No. 1, but several critical differences exist.

The clause states:

Boycott of [Boycotted Country]

In connection with the performance of this Agreement, Contractor acknowledges that the import and customs laws and regulations of [boycotting country] apply to the furnishing and shipment of any products or components thereof to [boycotting country]. The Contractor specifically acknowledges that the aforementioned import and customs laws and regulations of [boycotting country] prohibit, among other things, the importation into [boycotting country] of products or components thereof: (A) Originating in [boycotted country] (B) Manufactured, produced and furnished by companies organized under the laws of [boycotted country] and (C) Manufactured, produced or furnished by Nationals or Residents of [boycotted country].

The Government, in its exclusive power, reserves its right to make the final unilateral and specific selection of any proposed Carriers, Insurers, Suppliers of Services to be performed within [boycotting country] or of specific goods to be furnished in accordance with the terms and conditions of this Contract.

To assist the Government in exercising its right under [the preceding paragraph], Contractor further agrees to provide a complete list of names and addresses of all his Sub-Contractors, Suppliers, Vendors and Consultants and any other suppliers of the service for the project.

The title of this clause makes clear that its provisions are intended to be boycott-related. The first paragraph acknowleges the applicability of certain boycott-related requirements of the boycotting country's laws in language reviewed in Supplement No. 1, Part II.B. and found to constitutie a permissible agreement under the exception contained in § 369.3(a–1) for compliance with the import requirements of a boycotting country. The second and third paragraphs together deal with the procedure for selecting subcontractors and suppliers of services and goods and, in the context of the clause as a whole, must be regarded as motivated by boycott considerations and intended to enable the boycotting country government to make boycott-based selections, including the elimination of blacklisted subcontractors and suppliers.

The question is whether the incorporation into these paragraphs of some language from the "unilateral and specific selection" clause approved in Supplement No. 1 suffices to take the language outside § 369.2(a)'s prohibition on boycott-based agreements to refuse to do business. While the first sentence of this clause is consistent with the language discussed in Supplement No. 1, the second sentence significantly alters the effect of this clause. The effect is to draw the contractor into the decision-making process, thereby destroying the unilateral character of the selection by the buyer. By agreeing to submit the names of the suppliers it plans to use, the contractor is agreeing to give the boycotting country buyer, who has retained the right of final selection, the ability to reject, for boycott-related reasons, any supplier the contractor has already chosen. Because the requirement appears in the contractual

provision dealing with the boycott, the buyer's rejection of any supplier whose name is given to the buyer pursuant to this provision would be presumed to be boycott-based. By signing the contract, and thereby agreeing to comply with all of its provisions, the contractor must either accept the buyer's rejection of any supplier, which is presumed to be boycott-based because of the context of this provision, or breach the contract. In these circumstances, the contractor's method of choosing its subcontractors and suppliers, in anticipation of the buyer's boycott-based review, cannot be considered a permissible pre-award service because of the presumed intrusion of boycott-based criteria into the selection process. Thus, assuming all other jurisdictional requirements necessary to establish a violation of Part 369 are met, the signing of the contract by the contractor constitutes a violation of § 369.2(a) of the regulations because he is agreeing to refuse to do business for boycott reasons.

The apparent attempt to bring this language within the exception for compliance with unilateral and specific selections is ineffective. The language does not place the discretion to choose suppliers in the hands of the boycotting country buyer but divides this discretion between the buyer and his principal contractor. Knowing that the buyer will not accept a boycotted company as supplier or subcontractor, the contractor is asked to use his discretion in selecting a single supplier or subcontractor for each element of the contract. The boycotting country buyer exercises discretion only through accepting or rejecting the selected supplier or contractor as its boycott policies require. In these circumstances it cannot be said that the buyer is exercising a right of unilateral and specific selection which meets the criteria of § 369.3(c). For this reason, agreement to the contractual language discussed here would constitute an agreement to refuse to do business with any person rejected by the buyer and would violate § 369.2(a).

Dated: March 27, 1985.

William V. Skidmore,

Director, Office of Antiboycott Compliance.

[FR Doc. 85-7964 Filed 4-2-85; 8:45 am]

BILLING CODE 3510-DT-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3150]

Sentronic Controls Corp., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this Consent Order, among other things, requires three Chicago, Ill. corporations and three individuals engaged in the advertising, sale and distribution of an ultrasonic pest control product called the "Pest Sentry," to cease representing that the Pest Sentry or any other ultrasonic pest control device will eliminate cockroaches, rats, mice, and other such pests from a home or place of business; eliminate them within a specified period of time; prevent them from entering or remaining in an area where the product is being used; and serve as an effective alternative to the use of conventional pest control products. The Order further bars the firms from making any performance or effectiveness claims for ultrasonic pest control devices unless they possess and rely on competent and reliable substantiating evidence when making those claims.

DATE: Complaint and Order issued February 21, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H 214, Edwin Dosek, Washington, D.C. 20580 (202) 523-3660.

SUPPLEMENTARY INFORMATION: On Friday, July 6, 1984, there was published in the **Federal Register**, 49 FR 27773, a proposed consent agreement with analysis In the Matter of Sentronic Controls Corporation, a corporation; International Marketing & Manufacturing, Inc., a corporation; Unigraf, Inc., a corporation; Stanley Stewart; Anne K. Stewart; and Richard Muller, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form or order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its modified order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.0 Advertising falsely or misleadingly; § 13.20 Comparative data or merits; § 13.170 Qualities or properties of product or service; § 13.170-46 Insecticidal or repellant; § 13.170-80 Rodenticidal; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure; § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

[1] Copies of the Complaint filed with the original document.

List of Subjects in 16 CFR Part 13

Ultrasonic pest control products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before the Federal Trade Commission

[Docket No. C-3150]

Decision and Order

In the matter of Sentronic Controls Corporation, a corporation; International Marketing & Manufacturing, Inc., a corporation; Unigraf, Inc., a corporation; Stanley Stewart, Anne K. Stewart, and Richard Muller.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondents Sentronic Controls Corporation and International Marketing and Manufacturing, Inc. are Illinois corporations with their offices and principal places of business located at 730 North LaSalle Street, Chicago, Illinois.

Respondent Unigraf, Inc. is an Illinois corporation with its principal place of business located at 60 West Erie Street, Chicago, Illinois.

Resonent Stanley Stewart is an officer of SCC and an officer of IMM. Respondent Anne K. Stewart is an officer of IMM. Respondent Richard Muller is a director of SCC and an officer and director of Unigraf.

As such, the individual respondents formulate, direct and control the policies, acts and practices of said corporations, and their business addresses are the same as those for said corporations.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

Order

Part I

It is ordered that respondents Sentronic Controls Corporation, a corporation, its successors and assigns, and its officers, International Marketing & Manufacturing, Inc., a corporation, its successors and assigns, and its officers, Unigraf, Inc., a corporation, its successors and assigns, and its officers, and Stanley Stewart, Anne K. Stewart and Richard Muller, individually and as officers of said corporations, and respondents' agents, representatives, distributors, and employees, directly or through any corporation, subsidiary, division of other device, in connection with the advertising offering for sale, sale or distribution of the Pest Sentry (PS–1500) or any other pest control product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission act, do forthwith cease and desist from:

A. Representing, directly or by implication, that respondents' Pest Sentry (PS–1500) or any such ultrasonic product will:

(1) Eliminate cockroaches, rats, mice and other pests from a home or place of business;

(2) Eliminate rodent and insect problems from a home or place of business within two to six weeks, or within any other specified period of time;

(3) Prevent rodents and insects from entering or remaining in an area where the ultrasonic product is in use in a home or place of business;

(4) Protect, from rodent and insect infestations, areas up to 1500 square feet in a home or place of business, or within any other specified square footage area;

(5) Serve as an effective alternative to the use of conventional products such as sprays, powders, traps or other chemicals in providing protection from insect and rodent infestation.

B. Representing, directly or by implication, any performance characteristic of any pest control product unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which substantiates the representation. Evidence shall be competent and reliable only if tests, experiments, analyses, research studies, or other evaluations are conducted in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant professions or sciences to yield accurate, reliable, and reproducible results.

C. Representing directly or by implication, that any pest control product is effective in providing protection from insect and rodent infestation in a home or place of business unless at the time of making such representation respondents possess and rely upon competent and reliable evidence which either directly relates to such home or place of business use conditions or which can properly be applied to such conditions.

Part II

It is further ordered that for three years after the last date of dissemination of the relevant representation respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of all materials relied upon to support any representation covered by Part I of this Order, and copies of all documents in respondents' possession that contradict, qualify, or otherwise call into question any such representations, including complaints from consumers.

Part III

It is further ordered that respondents shall for a period of three years:

A. Distribute a copy of this Order to all managerial employees, distributors, independent sales agents and retailers present and future.

B. Notify each present and future distributor or sales representative that the failure to comply with the Order may result in cancellation of the distributorship or other selling agreement with respondents.

C. Require all distributors, independent sales agents and retailers to report to respondents semi-annually all consumer requests for refund and their action taken in response to such requests.

Part IV

It is further ordered that for a period of ten years:

A. Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

B. The individual respondents named herein shall promptly notify the Commission of the discontinuance of their present pest control product business or employment and of their affiliation with any new pest control product business or employment, stating the nature of the business or employment in which the individual is newly engaged as well as a description of duties and responsibilities in connection with such new business or employment and the address of such new business and employment.

Part V

It is further ordered that respondents shall, within sixty (60) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Issued: February 21, 1985.

By the Commission. Chairman Miller dissenting.

Emily H. Rock,

Secretary.

[FR Doc. 85–7891 Filed 4–2–85; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 85–22]

Changes to the Customs Service Field Organization: Columbia-Snake: Boise, Idaho; Colorado Springs, Colorado

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a portion of a recent final rule that modified the field organization of the Customs Service. T.D. 85–22, published

on February 5, 1985 (50 FR 4973), implemented § 238 of the Trade and Tariff Act of 1984 (Pub. L. 98–573), by establishing a new Customs district, port of entry, and station. A printing error in the description of the Boise, Idaho, port of entry is being corrected. Also, the description of the new Columbia-Snake district is being corrected to conform to Congressional intent. The new district headquarters is located in Portland, Oregon, and the district falls entirely within the Customs Pacific region.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202–566–8157).

Corrections

The following corrections are made to FR Doc. 85–2887, published as T.D. 85–22, appearing on 4973 in the issue of February 5, 1985 (50 FR 4973):

1. On page 4973 at the top of column three, the word "Cleveland" in the description of the Boise, Idaho, port of entry, is corrected to read "Cloverdale".

2. On page 4974, the items in columns one and two describing the amendments to § 101.3, Customs Regulations (19 CFR 101.3), are corrected as follows:

(a) Item 2 is removed.

(b) Item 3 is redesignated as 2 and revised to read as follows, "2. In that part of the table describing the Pacific Region, the "Area" column directly opposite "Portland, Oreg." is revised to read, "The State of Oregon, the State of Idaho below 47° latitude, and the State of Washington counties of Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Skamania, Wahkiakum, Walla Walla, and Whitman, and that part of Pacific County, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean."

(c) Item 4 is redesignated as 3 and revised to read as follows, "3. Also in the Pacific Region, the following is added in the "Ports of entry" column to correspond to the new area description of "Portland, Oreg."

* * * * *

Ports of Entry

"COLUMBIA–SNAKE CUSTOMS DISTRICT, PORTLAND, OREGON

Astoria (including territory described in T.D. 73–338). Boise, Idaho (Pub. L. 98–573 T.D. 85–22) Coos Bay, Oreg. (E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 23, 1945; 10 FR 3173). Longview (including territory described in T.D. 73–338). Newport, Oreg."

(d) Item 5 is redesignated as 4. The text remains unchanged.

Dated: March 27, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85–7927 Filed 4–2–85; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Redefinition of the Term "Lender"

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulations to redefine the term "lender." The revised definition includes individual owners, company and corporate officers, and other employees of the firms engaged in any phase of mortgage lending with the assistance of VA guaranty and insurance programs. The amendments also provide for the suspension of any participating lender employing a suspended person in any position with responsibility in the decisionmaking process.

The purpose is to give the VA flexibility to apply sanctions to individuals who are found to have committed fraud or were responsible for material misrepresentations in the soliciting, processing, servicing or approval of loan applications submitted to the VA for guaranty or insurance.

The authority to impose suspensions on lender employees will be a major deterrent to suspended persons moving their employment from one organization to another where they may continue to practice fraudulent or irregular activities in the soliciting, processing, or servicing of VA loans or loan applications.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, (202) 389–3042.

SUPPLEMENTARY INFORMATION: On April 5, 1984, the VA published in the **Federal Register** (49 FR 13553) proposed amendments to 38 CFR 36.4202, 36.4216, 36.4301 and 36.4331, the Loan Guaranty regulations. Public comments were requested on a proposal to amend the definition of lender to include individual owners, company and corporate officers, and other employees of the firms engaged in any phase of mortgage lending with the assistance of VA guaranty and insurance programs. The proposal also provided for the suspension of any participating lender employing a suspended owner, company or corporate officer, or other person as a loan solicitor, loan servicer, loan processor, office manager, or an employee in any other position with responsibility in the decisionmaking process.

The governing statutes and regulations currently provide that the Administrator may, subject to notice and the opportunity for a hearing, suspend a lender or holder from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance of any loans made or purchased after the date of its suspension. These sanctions may be imposed on a finding by the VA that a lender has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has willfully or negligently engaged in practices otherwise detrimental to the interest of veterans or of the Government.

The term "lender" is currently defined in 38 CFR 36.4202(g) as "the payee or assignee or transferee of an obligation at the time it is guaranteed." The term is similarly defined in section 36.4301 but includes "insured loans." Under these definitions, when fraud or other serious irregularities are found in loan applications which are guaranteed or insured by the VA, the lending institution may be suspended under authority of the statute. The statute does not provide for the suspension of individual owners, officials, or other employees of the lender. However, under previous legal precedents and opinions, the suspension of a lender may also apply to principals and officers of a lender who were personally involved in the irregular practices or who have a major responsibility in the decisionmaking process.

These amendments define the term "lender" in the regulations to include principals, officers, and other employees. They provide specific regulatory authority for sanctioning an individual who is directly responsible for material misrepresentation or fraud in the origination or servicing of a loan. The amendments also provide for the suspension of an individual who is in a supervisory or managerial position and who either willfully or negligently encourages or overlooks irregular practices by employees under his or her supervision or otherwise does not exercise supervisory controls of employees taking actions which are

detrimental to veterans or the Government.

The amendments make it possible for the VA to suspend individual lender employees who are responsible for fraud or material misrepresentation in processing or servicing VA loans without the necessity of first suspending the lender for whom that employee is working. Some large lenders operate regionally or nationwide. It is not always possible for these lenders to monitor and to fully supervise the processing and servicing of loans in the many different locations. In some cases the lender is unaware of the irregular conduct of the employee and cannot detect the fraud or other irregularity from a review of the completed loan application package. It would be inequitable in some circumstances to suspend an entire regional or national lender because of the improper conduct of one or more employees of that firm in one of its branch offices. It would, however, be appropriate for the VA to suspend the errant employee or employees in that office from further participation in soliciting, processing, or servicing of VA loans. This situation demonstrates the need for a revision of the regulations so that for suspension purposes the definition of a lender shall include officers, principals, and other employees who make or conspire with others to use false, fictitious, or fraudulent statements, representations, or documents in any loan application or other document submitted to the VA for the purpose of securing VA guaranty or insurance of a loan.

Under present procedure, a notice of suspension to a lender is effective as to agents, representatives, and correspondents when acting for or on behalf of the person or entity suspended. When these individuals, including employees of the suspended lender, are not specifically included in a lender suspension, they may then be employed by a different lender with impunity. Individual employee suspensions would be an effective method of preventing these employees from being hired by a different lending organization where they might continue fraudulent or irregular practice in the soliciting, processing, or servicing of VA loans or loan applications.

These amendments, in addition to the revision of the definition of a lender, provide a means for the VA to suspend any lender who employs a suspended person as a loan processor, loan solicitor, or who is in a managerial capacity with responsibility in the decisionmaking process. Any lender so suspended will have a right to notice and an opportunity for a hearing in the same manner as any other program participant that has been sanctioned by the VA. Termination on the employment of the suspended lender or employee by the secondary employer would automatically terminate its suspension.

Three responses were received from the public on the proposed amendments, all of which favored the redefinition of a lender and extension of the authority of the VA to suspend individual employees of lending firms and lenders who employ previously suspended individuals.

One commentator made five specific suggestions for additions to these amendments to ensure clarity and procedural fairness. They suggested that a lender employing a previously suspended individual should not be suspended unless it had actual knowledge of the prior suspension. Under current procedures a lender is given 20 days notice by the VA of its intention to suspend that lender and states the specifications on which the action is based. That lender then has the opportunity to terminate the employment of the previously suspended individual and by so doing would avoid suspension.

The commentator has suggested that the VA disseminate its suspension list of all suspended program participants quarterly. Although it has been determined that the identity of suspended lenders should not be withheld under the provisions of the Privacy Act it would be impractical to provide the suspension list to the many hundreds of program participants on a regular basis. Although routine distribution of the list of suspendees would not be practical the information will be available to interested firms and individuals by contacting the local VA regional office or Central Office in Washington, D.C. Lenders who are contemplating hiring a new employee who has previously worked in the industry may protect against hiring a previously suspended individual by contacting the local VA regional office to ascertain whether that individual is in a suspended status.

Another suggestion was that the VA should not invoke a reciprocal suspension on program participants previously denied participation under the National Housing Act by the Secretary of Housing and Urban Development unless there is a clear connection between the conduct supporting the earlier sanction and the lender's or employee's responsibilities to the VA. This is and has been the rule of the VA since enactment of the law allowing reciprocal sanctions based on action of the Secretary. The suspension of participants sanctioned by the Secretary are not automatic but are based on a careful review of the facts supporting the earlier sanction. When the basis for sanctions imposed by the Secretary has no connection with the rules and regulations governing VA loan activity by a lender, no reciprocal sanction is imposed.

The commentator suggested the VA clearly define "failure to maintain adequate loan accounting records, failure to demonstrate proper loan servicing, or failure to exercise proper credit judgment." This language is not a proposed rule but is essentially a part of the specific language of the statute authorizing lender suspension. The VA has never tried to characterize the specific acts or omissions of lenders which might arise under this authority because of the many possible deficiencies which could arise in these areas of loan accounting records, loan servicing, and credit judgment. All lenders engaged in VA loan activities have been furnished the guidelines required by the VA for handling these matters. They should be aware of what is required in these areas and govern themselves accordingly. Therefore, it would not be practicable or appropriate for the VA to attempt to itemize all of the possibilities which might arise under this specific statutory provision.

Another suggestion was that the VA give notice and an opportunity for a presuspension hearing before taking suspension action. Current procedures for lender sanctions provide for presuspension notice by furnishing a notice of intention to suspend at a future specified date. It allows the lender an opportunity to appear and show cause as to why a suspension should not be invoked prior to the specified date of the intended sanction. The lender may also file a brief setting out the reasons why the sanctions should not be imposed. When either of these actions are taken by the lender, action on the proposal is withheld until further review is performed by the VA. In the few instances in which it is determined that the actions of the lender are so flagrant that any continued participation in the program would cause irreparable harm to veterans or to the Government, immediate sanctions may be imposed without a prior hearing. This authority is seldom invoked.

Another organization made general comments on three points. It suggested that VA procedures insure that suspension actions are preceded by notice and an opportunity for a hearing

and appeal. The regulations are quite explicit in this regard. In all cases in which lender sanctions are proposed, the lender is afforded ample opportunity to respond to a proposed suspension and, if suspension is invoked, it has full due process rights for a formal administrative hearing.

This commentator also suggested that the VA publish detailed standards for the "adequacy of records," "proper credit judgment" and "proper ability to service loans adequately" and that the VA provide notice to participating lenders of the prior suspensions of individuals. As pointed out above, the VA believes that it would be impracticable to attempt to reduce the statutory language to specifics or to provide suspension lists to all participating lenders. A list of suspended lenders will be furnished to any interested firm.

One commentator suggested that the VA may issue a single suspension notice naming both an employee and the employer and not provide for separate answers to the charges or for separate hearings in cases of appeals. In all lender suspensions current practice provides for suspension of the lender, and its principals and officers who have the decisionmaking responsibilities. The VA will still use that procedure in most suspensions since it is generally not possible to definitely establish that the basis for the suspension rests with a specific employee who is not a principal or officer of the firm. In such cases the VA procedures provide for a single hearing for the firm and its principals and officers. It would not be possible to provide separate hearings for the firm and its principals and officers in such cases. In all instances of the suspension of a lender and a named individual who is not a principal or officer, the parties are entitled to separate hearings if they request individual hearings. Suspension notices will inform individuals of their right to a separate hearing. This revised regulation primarily redefines a "lender" and makes no changes in the hearings and appeal procedure.

Technical amendments have also been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Pub. L. 97–306, 96 Stat. 1429, enacted October 14, 1982.

The Administrator has certified that these regulation changes will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt form the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that the changes will not directly affect any small entity except to the extent that it may be precluded from employing a small number of suspended individuals. Small entities which are private and nonprofit organizations and small government jurisdictions will not be affected. Present regulations already permit suspensions of responsible officials of a lender. In the case of lenders which are small entities, as distinguished from large corporate lenders, the VA's authority to suspend such officials will not change significantly because of the positions which they generally hold in the small business. That is, individual positions covered under these amended regulations will in most instances be occupied, in the case of small lenders, by individuals holding positions already subject to suspension under the existing regulations.

These regulations will not impact on the public or private sectors as "major rules" as that term is defined in Executive Order 12291. They will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(Catalog of Federal Domestic Assistance Program numbers 64.114 and 64.119.)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan programs—housing and community development, Manufactured Homes, Veterans.

These amendments are promulgated under the authority granted the Administrator by sections 210(c), 1803, 1804, and 1819, title 38, United States Code

Approved: March 18, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—[AMENDED]

38 CFR Part 36, LOAN GUARANTY, is amended as follows:

1. In the center heading proceeding § 36.4201, the word "MOBILE" is changed to "MANUFACTURED".

2. In § 36.4202, paragraph (g) is revised to read as set forth as follows; and paragraphs (j), (k), (m), (n), and (o) are amended by replacing the word "mobile" with "manufactured" wherever it appears and by adding the cite "(sec. 408, Pub. L. 97–306)" at the end of those paragraphs.

§ 36.4202 Definitions

* * * * *

(g) *Lender.* The payee or assignee or transferee of an obligation at the time it is guaranteed. This term also includes any sole properietorship, partnership, or corporation and the owners, officers, and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

3. Section 36.4216 is amended by changing the word "chairman" to "chairperson" in paragraph (e) and by revising paragraph (a) to read as follows:

§ 36.4216 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty of loans or from the right to the guaranty in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4221(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed manufactured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans of the Government, or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and: (1) An indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. 1819, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension

may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

4. Section 36.4301 is amended by revising the definition of "Lender" to read as follows:

§ 36.4301 Definitions. * * *

* * * * *

Lender. The payee or assignee or transferee of an obligation at the time it is guaranteed or insured. This term also includes any sole proprietorship, partnership, or corporation and the owners, officers and employees of a sole proprietorship, partnership, or corporation engaged in the origination, procurement, transfer, servicing, or funding of a loan which is guaranteed or insured by the VA. (38 U.S.C. 1804(d); 1819(g))

* * * * *

5. Section 36.4331 is amended by revising paragraph (a) to read as follows:

§ 36.4331 Disqualification of lenders.

(a) A lender or holder may be suspended from obtaining guaranty or insurance of loans or from the right to the guaranty or insurance in respect to any loan made or purchased after the date of its suspension, except as provided in paragraph (h) of this section, whenever any of the employees designated in § 36.4342(b) finds that the lender or holder (hereinafter referred to as lender) has failed to maintain adequate loan accounting records, or to demonstrate proper ability to service loans adequately, or to exercise proper credit judgment, or has declined to make a guaranteed or insured home loan to an eligible veteran because of the applicant's race, color, religion, sex, or national origin, or has willfully or negligently engaged in practices otherwise detrimental to the interests of veterans or of the Government or has been refused the benefits of participation under the National Housing Act pursuant to a determination of the Secretary of Housing and Urban Development. Suspension of a lender shall be effected only when specifically authorized by the Administrator, the Deputy Administrator, or by the Chief Benefits Director, Department of Veterans Benefits. In any case in which suspension has been so authorized and (1) an indictment has been secured or a criminal information has been filed against the lender in connection with a transaction involving 38 U.S.C. ch. 37, or (2) is based upon action taken by the Secretary of Housing and Urban Development, an immediate suspension may be effected. A lender may also be suspended under this section if it is owned by, or employs as an officer, loan solicitor, loan processor, loan servicer, loan supervisor, office manager, or in any other position, a person who engages in or is responsible for the processing or servicing of VA guaranteed or insured loans if that person has been previously suspended by the VA under this section. In any other case in which the Director of a regional office has obtained Central Office authorization to initiate suspension proceedings, prior written notice of intention to apply the suspension sanction shall be furnished to the lender concerned. (38 U.S.C. 1804(d); 1819(g))

* * * * *

[FR Doc. 85-7834 Filed 4-2-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4F3118/R748; FRL-2909-5]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxyfluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide oxyfluorfen in or on the raw agricultural commodity artichokes. This regulation to establish a maximum permissible level for residues of oxyfluorfen in or on artichokes was requested by Rohm and Haas Co.

EFFECTIVE DATE: Effective on March 3, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4F3118/R748], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington D.C. 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 8, 1984 (49 FR 31756), which announced that Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, had filed pesticide petition 4F3118 to EPA proposing that 40 CFR 180.318 be amended by establishing a tolerance for residues of the herbicide oxyfluorfen [2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene] and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity artichokes at 0.05 part per million.

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolerance include a rat oral median lethal dose (LD_{50}) with an LD_{50} greater than 5.0 grams (g) per kilogram of body weight (bw); a rat cytogenetic test (purified oxyfluorfen), negative; an Ames assay (technical) positive; Ames assay (purified oxyfluorfen), negative; a host-mediated assay (purified oxyfluorfen), negative; an Unscheduled DNA Synthesis (UDS) Assay (technical), negative; a rat teratology study with no terata at 1,000 mg/kg of bw (highest dose) and a fetotoxic no-observed-effect level (NOEL) of 100 mg/kg of bw; a rabbit teratology study with no terata at 30 mg/kg (highest dose) and a fetotoxic NOEL of 10 mg/kg; a 3-generation rat reproduction study with a NOEL of 10 ppm (0.5 mg/kg of bw); a 2-year rat chronic feeding/oncogenicity study with a NOEL of 40 ppm (2.0 mg/kg of bw); a 20-month mouse-feeding study (chronic feeding/oncogenicity) with a NOEL of 2 ppm (0.3 mg/kg of bw); and a 2-year dog-feeding study with a NOEL of 100 ppm (5.0 mg/kg of bw).

Based on the NOEL of 2 ppm in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set at 0.003 mg/kg day with a maximum permissible intake

(MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a theoretical maximum residue contribution of 0.03942 mg/day in a 1.5-kg diet and use 21.90 percent of the ADI.

There are no regulatory actions pending against this pesticide. Oxyfluorfen was the subject of a Rebuttable Presumption Against Registration (RPAR) process and a Notice of Determination that was published in the Federal Register of June 23, 1982 (47 FR 27118).

One of the solvents used in the production of technical oxyfluorfen, perchloroethylene (PCE), has been shown to produce liver tumors in mice. The Agency has concluded that potential benefits from use of oxyfluorfen outweigh risks from PCE, provided oxyfluorfen products are produced with no more than 200 ppm PCE Contaminant. The producer of oxyfluorfen has verified that oxyfluorfen formulations contain a maximum of 200 ppm PCE.

The pesticide is considered useful for the purpose for which the tolerances are sought. The metabolism of the pesticide is adequately understood for use on artichokes, and an adequate analytical method, gas chromatography, is available for enforcement purposes. Because there are no feed items involved, there will be no problem of secondary residues in meat, milk, and eggs.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the commodity will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerance or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1985.

Steven Schatzow,

Director, Office of Pesticides Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.381 is amended by adding, and alphabetically inserting, the raw agricultural commodity artichokes in the table, to read as follows:

§ 180.38 Oxyfluorfen; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Artichokes	0.05
* * * * *	

[FR Doc. 85-7621 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4F2975/R747; FRL-2809-4]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide thiabendazole in or on dry beans. This regulation to establish the maximum permissible level for residues of thiabendazole in or on the raw agricultural commodity was requested by Merck and Co., Inc.

EFFECTIVE DATE: Effective on April 3, 1985.

ADDRESS: Written objections, identified by the document control number [4F2975/R747], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail:

Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of November 23, 1983 (48 FR 52974), which announced that Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065, had filed a pesticide petition 4F2975 with EPA The petition proposed that 40 CFR 180.242 be amended by establishing a tolerance for residues of the fungicide thiabendazole [2-(4-thiazolyl) benzimidazole] in or on the raw agricultural commodity dry beans at 0.1 part per million (ppm).

There were no comments received in response to the notice filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the tolerance include an acute oral lethal dose rat study (median lethal dose (LD_{50})=3.3 grams per kilogram (g/kg)); an acute oral lethal dose mouse study (LD_{50}=3.8 g/kg); a 2-year rat-feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day that was negative for oncogenic potential under the conditions of the study up to, and including, 160 mg/kg/day; a 2-year dog-feeding study with a NOEL of 50 mg/kg/day; a mouse oncogenicity feeding study with a negative oncogenic potential under the conditions of the study up to, and including, 799.5 mg/kg/day; a rat teratology study that was negative at 80 mg/kg; a rabbit teratology study that was negative at 800 mg/kg; a mouse reproduction study with a NOEL of 150 mg/kg/day; and a rat reproduction study with a NOEL of 20 mg/kg/day. Based on the 2-year rat-feeding study (NOEL=10 mg/kg/day) and using a 100-fold safety factor, the allowable daily intake (ADI) is 0.10 mg/kg/day; the maximum permissible intake (MPI) is 6.0 mg/day for a 60-kg person. Established tolerances and this tolerance result in a maximum theoretical exposure of 2.4712 mg/day for a 60-kg person and utilize 41.18 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in or on a variety of raw agricultural commodities

(40 CFR 180.242). There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing this tolerance. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for the fungicide thiabendazole in or on the raw agricultural commodity dry beans will protect the public health. Therefore, the regulation is established by amending 40 CFR 180.242, as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512, 21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 21, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.242(a) is amended, by adding the tolerance for dry beans, to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Beans (dry)	0.1
* * * * *	

[FR Doc. 85–7822 Filed 4–2–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC–507–F]

Medicaid Program; Federal Financial Participation for Inmates in Public Institutions and Individuals in an Institution for Mental Disease or Tuberculosis

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule brings regulations into conformance with the Medicaid statute by clarifying that no Federal financial participation (FFP) is available for any services furnished to certain institutionalized individuals. These are individuals who are inmates of public institutions which are not medical institutions or patients under age 65 in institutions for mental diseases or tuberculosis. In accordance with statute, an exception is provided for individuals under age 22 who are receiving covered inpatient services in psychiatric facilities. Prior regulations provided that FFP was available for noninstitutional services furnished during the month in which the individual became an inmate or patient and the last month of institutionalization and were inconsistent with the statute.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Roy Trudel, 301–594–9128.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1905(a) of the Social Security Act (the Act) prohibits Federal payments for services provided to inmates of public institutions which are not medical institutions or to individuals under age 65 who are patients in an institution for mental diseases or tuberculosis unless these individuals are under age 22 and are receiving covered inpatient services in psychiatric facilities. The intent of this provision is to ensure that Medicaid funds are not used to finance care which traditionally has been the responsibility of State and local governments. Aside from the exceptions specified in section 1905(a) of the Act, FFP has never been available for institutional services provided to patients in public institutions or under age 65 in institutions for mental diseases or tuberculosis. (For purposes of this preamble, we refer to institutional services as inpatient psychiatric or tuberculosis services provided to the individual who is a patient or inmate. We refer to noninstitutional services as all other services covered under the State plan.)

In a proposed rule (NPRM) published in the March 31, 1983 Federal Register (48 FR 13446), we proposed to revise Medicaid regulations at 42 CFR 435.1008(b) and 435.1004(b) to bring our regulations into conformance with section 1905(a) of the Act. Under the prior regulations, FFP was allowed during the first and last months of institutionalization for noninstitutional services provided under the State plan to otherwise eligible individuals who under the statute, were inmates of public institutions or patients of mental or tuberculosis institutions. This exception in the regulations was not based on the statute, but rather on a judgment that such an arrangement would be more administratively convenient for States. (When current regulations were published, States generally did not have sophisticated claims processing systems. However, the situation has changed and most States now have a mechanized claims processing and information retrieval system which enables them to determine when noninstitutional services furnished to certain institutionalized individuals are no longer covered.)

As explained in the preamble to the NPRM, we decided to change our regulations and ensure that Medicaid funds are not used to finance care for institutionalized individuals who have traditionally been the responsibility of State and local governments. We concluded that, in this case, a policy of administrative convenience (which is not a statutory requirement) should not take precedence over a specific statutory provision.

II. Provisions of the Regulations

After consideration of public comments received following our proposal, we are adopting the provisions of the proposed regulations without change in this final rule. (The comments

and our responses to them, are found in section III of this preamble.) As proposed, we are amending 42 CFR 435.1008 and 436.1004 to preclude the availability of FFP for all services provided to individuals who are inmates of public institutions (which are not medical institutions) or to individuals under age 65 who are patients in institutions for mental diseases or tuberculosis, from the date of admission to the date of discharge. By the term "institution for tuberculosis", we mean an institution traditionally thought of as a tuberculosis sanitarium. Under the policy set forth in this rule, FFP will not be available for Medicaid services provided from the date of admission until the date of discharge. However, in accordance with section 1905(a)(16) of the Act, we will continue to provide FFP for services furnished to individuals under age 22 who are receiving inpatient psychiatric services as defined in 42 CFR 440.160. These final regulations do not affect Federal matching funds for services to individuals who are *not* residing in (i.e. have been discharged from) these facilities. FFP will continue to be available for covered services furnished to an eligible individual during any part of the month in which the individual is not an inmate of a public institution or a patient in an institution for mental diseases or tuberculosis. The provisions of this rule do not affect individual eligibility under Medicaid but rather FFP for services furnished to certain institutionalized individuals.

III. Public Comments

Thirty comments were received from States, professional organizations and local health departments. The majority of comments were received voiced opposition to the proposed regulations for the reasons discussed below. All comments were considered in drafting these final regulations.

A. General Comments

Comment: Seven respondents stated that the proposed regulations were contrary to Congressional intent because a 1965 Senate Report (S. Rep. No. 404, Part 1) refers to FFP for a partial month of services provided to eligible individuals admitted to an institution and to the administrative inconvenience of having to segregate bills by the day of month on which services were provided.

Response: We do not agree that these regulations contradict Congressional intent. The language at section 1905(a) of the Act specifically excludes FFP for any services provided to inmates of public institutions or patients under age 65 in an institution for mental diseases or tuberculosis. The plain language of the statute thus clearly precludes FFP for all such services.

Comment: Three commenters felt that there was no basis for eliminating FFP for noninstitutional services provided to inmates of public institutions or patients of institutions for mental diseases or tuberculosis.

Response: We believe the statute (section 1905(a) of the Act) clearly justifies these regulations. The language of this provision prohibits FFP for all services to individuals in certain types of institutions (with specified exceptions). Specifically, subparagraphs (A) and (B) following section 1905(a)(16) provide that no FFP is available ". . . with respect to care or services for any individual who is an inmate of a public institution . . ." or ". . . with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases."

Comment: One respondent thought that our statement that the purpose of section 1905(a) is to ensure that Medicaid funds are not used to finance care which has traditionally been the responsibility of State and local governments, was unfounded since States and local governments do not have adequate finances for acute inpatient psychiatric care.

Response: Even under our present regulations, FFP has not been available beyond the first and last months of institutionalization for any care provided to inmates of public institutions and individuals under age 65 in institutions for mental diseases or tuberculosis (except for those under age 22 in qualified psychiatric facilities).

We recognize that States and local governments may be reassuming financial responsibility for such care; however, we believe this was contemplated by Congress since the statute clearly precludes FFP for services provided to certain institutionalized individuals in certain types of institutions.

Comment: One professional association commented that the regulations allowing FFP for services furnished to eligible individuals during the month in which they become patients of an institution for mental diseases did not limit FFP to services "not provided by the institution". They questioned why this distinction was made in the proposed rule and requested that it not be retained in the final rule.

Response: Since section 1905(a) of the Act (with limited exceptions) precludes *any* payment with respect to care or services for inmates of public institutions or patients under age 65 of institutions for mental diseases or tuberculosis, we have made this statutory exclusion clear in these regulations. That is, the exclusion in the statute and regulations applies to both services provided by the institution and to services rendered by other Medicaid providers to institutionalized individuals in the types of facilities specified by the law.

Comment: One respondent stated that Medicaid payments should be available for disabled individuals of all ages dually entitled to Medicare and Medicaid, to cover Medicare deductibles and copayments.

Response: The availability of FFP for services provided under Medicaid is determined by law. The only legal exceptions to the preclusion of FFP for inmates of public institutions or patients in institutions for mental diseases or tuberculosis are those which are specified in the law at section 1905(a) of the Act.

Comment: Two commenters stated that the proposed rule would negatively affect the care provided to patients by causing premature discharges or disrupting Medicaid benefits.

Response: We do not believe that this change will significantly affect patient care. Changes as a result of these regulations do not require the termination of any services. Rather they place the responsbility for payment for care provided during those portions of the first and last months during which an individual is in a facility outside the federally-assisted Medicaid program.

Comment: One State mental health department requested that HCFA "hold harmless" States that received reimbursement for services provided in public institutions.

Response: We cannot legally "hold harmless" States that received reimbursement for services provided which are not covered services; thus any State which received FFP for such services is subject to recovery action. We note, however, that since our regulations specifically allowed payment for covered noninstitutional services to eligible institutionalized individuals during the first and last months of institutionalization, FFP for such services furnished up to the effective date of this regulation will not be subject to recovery.

B. Economic Impact of the Regulations

Comment: One commenter contended that contrary to the Secretary's certification under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility

Act (Pub. L. 96-354), these regulations would have a significant impact on providers of services.

Response: We continue to believe this policy will not significantly affect providers of these services. However, we do agree that State governments will be affected to the extent that they reassume the responsibility for full funding of services provided to inmates of public institutions and some patients in institutions for mental diseases or tuberculosis. However, since State governments are not considered small entities under the provisions of the Regulatory Flexibility Act, we consider the Secretary's certification accurate.

Comment: Several commenters questioned the statement in the preamble to the NPRM that a regulatory impact analysis is not needed. They stated that HCFA failed to account for the impact on States of eliminating FFP for partial month institutional and noninstitutional services.

Response: HCFA is aware that these regulations will have some impact on State governments. As stated earlier in this preamble, (aside from the exceptions specified in section 1905(a)) FFP has never been available for institutional services provided to patients in public institutions or under age 65 in institutions for mental diseases or tuberculosis. Thus, the impact on State governments is reduced only to the loss of FFP for noninstitutional services for the months of entry and discharge in the institution. Additional, State governments are not considered small entities for purposes of the Regulatory Flexibility Act. Further, as we noted in the preamble to the NPRM, even though we were unable to develop exact cost estimates because of insufficient data, there was no evidence to suggest that the results of this change will exceed the $100 million a year criteria. Accordingly, we do not believe an impact statement is necessary.

Comment: Several respondents stated that the proposed regulations would impact negatively on both State and local governments. They noted that reduced FFP could result in the elimination of other State and local programs or hinder the capacity of those governments to provide care to patients.

Response: As previously stated, we acknowledge that these regulations will have some impact on State governments. We do not believe that the impact on local governments will be great. However, because of the statutory exclusion for all services to individuals in public institutions which are not medical institutions and individuals in institutions for mental disease between the ages of 22 and 64, or under age 65 in institutions for tuberculosis, we believe it is necessary to issue these regulations.

Comment: One State social services department commented that the proposed regulations would penalize States which use various cost containment mechanisms that depend on the availability of FFP for partial months.

Response: We do not believe that these regulations preclude State governments from establishing cost containment mechanisms which provide fiscal disincentives for more costly institutional placement when this placement is inappropriate. We recognize that under these regulations States will have to assume the costs of those mechanisms associated with partial month institutionalization in the types of institutions for which FFP is not available.

Comment: One respondent noted that general hospital psychiatric units routinely shift the costs of acute psychiatric care from Medicare to Medicaid for dually entitled individuals who run out of Medicare psychiatric benefits. The respondent alleged that institutions for mental diseases (IMDs) often follow the same practice for dually entitled Medicare patients who run out of Medicare psychiatric benefits around the time of their discharge to an IMD, so that, IMDs have been claiming for a partial month of institutional services under Medicaid.

According to the respondent, these regulations prevent IMDs from following this practice and would result in additional cost-shifting to the Medicaid program because hospitals would retain the patients. Additionally, because of the loss of revenue, IMDs would prematurely discharge patients.

Response: In limiting Medicaid funds for psychiatric services, the statute refers only to services for those under 65 in institutions for mental diseases and tuberculosis except for covered inpatient services in psychiatric facilities for individuals under age 22. While it is true that general hospital psychiatric units are not affected by these regulations, most admissions to such units are for acute psychiatric episodes which generally do not extend beyond the number of hospital days in a Medicare-benefit period; therefore, we do not believe there are many opportunities under these circumstances for general hospitals to shift costs to the Medicaid program. In regard to premature discharges and institutions losing revenue, services need not be terminated because the only change to occur is the locus of responsibility for a portion of certain expenses during partial months of care.

C. Administrative Effects of the Regulations

Comment: One commenter stated that the expected administrative costs to States under the proposed regulations would exceed any savings to the Federal government realized by disallowing FFP for services provided during a partial month of institutionalization.

Response: We do not believe that these regulations will cause undue administrative burden or expense to State governments, given the sophistication of existing mechanisms for administering the Medicaid program. At least 90 percent of the jurisdictions participating in the Medicaid program currently have an approved mechanized claims processing and information retrieval system or have received approval on an advanced planning document to implement a system. The system has the capability of determining when noninstitutional services furnished to certain institutionalized individuals are no longer covered. Based upon this existing capability, we believe States will not have difficulty in implementing this regulation change. However, any administrative burdens resulting from these regulations are outweighed by the need to fully effectuate Congressional intent as expressed in the statute.

Comment: One State human resources department questioned the administrative feasibility of the regulations. Medicaid eligibility is determined prospectively and inappropriate claims for partial months are not identified until after services have been provided. They contend that HCFA should maintain the policy set forth at 42 CFR 435.1004, which permit FFP to continue through the end of the second month following the month in which a determination of ineligibility is made.

Response: These regulations will not affect eligibility under Medicaid; they preclude FFP for services provided to individuals admitted to specific types of institutions. Regulations at 42 CFR 435.1004 do not apply to this situation. We do not believe this change in the regulations is administratively unrealistic or that it will cause a serious disruption to State governments' administration of Medicaid programs.

Comment: One State recommended that HCFA provide a "hold harmless" period of time to allow States to react to a change in Medicaid eligibility.

Response: The regulations do not affect Medicaid eligibility; therefore, a special period of time is not needed.

Comment: One respondent noted that Federal and State regulations require

advance notice if Medicaid benefits are adversely affected. Since it is impossible for a State to anticipate when a recipient will become an inmate of a public institution, the proposed regulations are contrary to Federal advance notice requirements.

Response: Federal regulations (42 CFR 431.211) require advance notice when eligibility for the Medicaid program is adversely affected. These regulations do not apply to this situation; advance notice is not required when an otherwise eligible recipient receives services for which FFP is not available.

Comment: One State commented that it provides eligibility for the entire month in which an individual is determined to be Medicaid eligible and guarantees reimbursement to providers during that month. The State believes that the proposed regulations would jeopardize the reliance providers have in this system and cause many of them to withhold services.

Response: The regulations do not affect Medicaid eligibility, but rather the availability of FFP for services provided to individuals in certain institutions. A State can continue to guarantee reimbursement to providers for the remainder of the month of admission, but at 100 percent State cost.

Comment: One State human resources department noted that it uses SSI eligibility criteria to determine Medicaid eligibility. Compliance with the proposed regulations, therefore, would require the State not to accept SSI eligibility criteria for affected individuals.

Response: As noted above, these regulations do not affect Medicaid eligibility; therefore, States can continue to use SSI eligibility criteria to determine Medicaid eligibility. However, States must apply these regulations to determine which services provided to eligible individuals can be claimed for FFP. We note that up to now, States have had to apply the rules set forth in this regulation whenever the individual is in an institution for more than one month.

IV. Impact Analysis

Executive Order 12291

The Secretary has determined that these regulations do not meet the criteria for a "major rule", as defined by section 1(b) of Executive Order 12291. That is, the regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

In terms of any future program costs, we cannot provide an exact estimate since we are unable to determine with specificity—

1. The number of eligible individuals located in public institutions which are not medical institutions or who are under age 65 and in institutions for mental disease or tuberculosis which are not psychiatric hospitals for persons age 22 and under,
2. How many of these individuals will require covered noninstitutional services during the portion of the month after admission to an institution, and
3. What the specific costs for any of these services would be.

In addition, we do not believe that State governments will incur undue administrative burden or expense as a result of publishing this final rule. For example, as stated earlier, at least 90 percent of the jurisdictions participating in the Medicaid program currently have an approved mechanized claims processing and information retrieval system or have received approval on an advanced planning document to implement a system. Based upon the system's existing capability to determine when noninstitutional services furnished to certain institutionalized individuals are no longer covered, we believe States will have little, if any, difficulty implementing this regulation. Any administrative burdens that States may incur are outweighed by the need to fully effectuate Congressional intent as expressed in the statute.

However, there is no evidence that any difference in costs will exceed the $100 million threshold. Since the threshold will not be exceeded, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not have a significant economic impact on a substantial number of small businesses, nonprofit entities or small local governments. Generally, the policy will not significantly impact the providers of these services. Public institutions and State governments will be affected in that they will reassume responsibility for full funding of services provided to inmates of public institutions and some patients in institutions for mental diseases or tuberculosis. However, State governments are not considered small entities under the provisions of the Act. As discussed in the Executive Order analysis, an actuarial estimate of cost avoidance has not been determined, and there is no indication that these provisions are likely to result in a significant impact on a substantial number of small entities.

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to families with dependent children, Aliens, Contracts, (Agreements), Eligibility, Grant-in-aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority.— Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. Section 435.1008 is amended by revising paragraphs (a) and (b) to read as follows:

§ 435.1008 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for tuberculosis or mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a)(2) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 436.1004 is amended by revising paragraphs (a) and (b) to read as follows:

§ 436.1004 Institutionalized individuals.

(a) FFP is not available in expenditures for services provided to—

(1) Individuals who are inmates of public institutions as defined in § 435.1009; or

(2) Individuals under age 65 who are patients in an institution for tuberculosis or mental diseases unless they are under age 22 and are receiving inpatient psychiatric services under § 440.160 of this subchapter.

(b) The exclusion of FFP described in paragraph (a)(2) of this section does not apply during that part of the month in which the individual is not an inmate of a public institution or a patient in an institution for tuberculosis or mental diseases.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: May 18, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 17, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-7885 Filed 4-2-85; 8:45 am]

BILLING CODE 4120-01-M

UNITED STATES INFORMATION AGENCY

48 CFR Ch. 19

Acquisition Regulation

AGENCY: United States Information Agency.

ACTION: Final rule.

SUMMARY: This rule establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of Title 48, Code of Federal Regulations. The IAAR implements and supplements the Federal Acquisition Regulation (FAR), Title 48 CFR Chapter 1. The IAAR contains the United States Information Agency's significant policies and procedures on government procurement. The IAAR supersedes the IAPR Procurement Regulation (41 CFR Chapter 19).

EFFECTIVE DATE: April 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary H. Wood, Policy and Procedures Staff, Office of Contracts, U.S. Information Agency, 330 C Street, SW., Room 1611, Washington, D.C. 20547, telephone (202) 485-6404.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking was published on Page 37020 of the Federal Register on September 20, 1984 and invited comments by October 22, 1984.

We have changed within the provision and clause headings the date to February 1985 to coincide with date of publication of this final rule.

Executive Order 12291

This rule is exempt from the provisions of Executive Order 12291, with the exception of section 5 in accordance with OMB Bulletin 85-7 dated December 14, 1984.

Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. Since this rule reformats existing procurement policies to comply with the FAR structure and does not promulgate any new procurement policies which would impact the public, USIA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this rule have been cleared by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. OMB Control No. 3116-0185, Expiration date December 31, 1987.

List of Subjects in 48 CFR Ch. 19

Government procurement.

Title 48 Chapter 19 Code of Federal Regulations is established as set forth below:

CHAPTER 19—UNITED STATES INFORMATION AGENCY

General Structure

SUBCHAPTER A—GENERAL

Part 1901—United States Information Agency Acquisition Regulation System

Part 1902—Definitions of Words and Terms

Part 1903—Improper Business Practices and Personal Conflicts of Interest

Part 1904—Administrative Matters

SUBCHAPTER B—ACQUISITION PLANNING

Part 1909—Contractor Qualifications

Part 1910—Specifications, Standards and Other Purchase Descriptions

Part 1912—Contract Delivery or Performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 1913—Small Purchase and Other Simplified Purchase Procedures

Part 1915—Contracting by Negotiation

Part 1917—Special Contracting Methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 1919—Small Business and Small Disadvantaged Business Concerns

Part 1922—Application of Labor Laws to Government Acquisitions

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 1927—Patents, Data, and Copyrights

Part 1932—Contract Financing

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 1942—Contract Administration

Part 1946—Quality Assurance

SUBCHAPTER H—CLAUSES AND FORMS

Part 1952—Solicitation Provisions and Contract Clauses

Part 1953—Forms

SUBCHAPTER A—GENERAL

PART 1901—UNITED STATES INFORMATION AGENCY ACQUISITION REGULATION SYSTEM

Sec.

1901.000 Scope of part.

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

1901.102 Authority.

1901.103 Applicability.

1901.104 Issuance.

1901.104-1 Publication and code arrangement.

1901.104-2 Arrangement of regulations.

Subpart 1901.4—Deviations from the FAR

1901.403 Individual deviations.

1901.404 Class deviations.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

1901.602 Contracting officers.

1901.602-1 Authority.

1901.670 Ratification of unauthorized commitments.

Sec.
1901.670–1 Authority.
1901.670–2 Definitions.
1901.670–3 Procedures.
1901.670–4 Limitations on exercise of authority.
1901.670–5 Nonratifiable commitments.

Authority: 40 U.S.C. 486(c).

1901.000 Scope of part.

This part describes the method by which the United States Information Agency implements and supplements the Federal Acquisition Regulation and contains policies and procedures that implement and supplement Chapter 1 of the Federal Acquisition Regulation (48 CFR).

Subpart 1901.1—Purpose, Authority, Issuance

1901.101 Purpose.

This subpart establishes the United States Information Agency Acquisition Regulation (IAAR) as Chapter 19 of the Federal Acquisition Regulations System (48 CFR Chapter 19) and states the relationship of the IAAR to the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1.

1901.102 Authority.

The USIA Acquisition Regulation is prescribed by the Director of the United States Information Agency pursuant to the authority of the Reorganization Plan No. 2 of 1977 and the Federal Property and Administrative Services Act of 1949, as amended, and other applicable law.

1901.103 Applicability.

Except where a deviation is specifically authorized in accordance with Subpart 1901.4 or otherwise authorized by law, the FAR and the IAAR govern all USIA acquisitions within the United States.

1901.104 Issuance.

1901.104–1 Publication and code arrangement.

(a) The IAAR is published in the **Federal Register** and, in cumulative form in the Code of Federal Regulations (CFR).

(b) The IAAR is issued as Chapter 19 of Title 48, CFR.

1901.104–2 Arrangement of regulations.

The IAAR uses the same numbering system and arrangement used in the FAR. Where the IAAR implements the FAR, it is numbered and captioned to correspond to the FAR. Where there is no corresponding material in the FAR, numbers beginning with 70 or higher are assigned to the IAAR supplementing part. Where the subject matter is the FAR requires no implementation, the IAAR contains no corresponding part.

Subpart 1901.4—Deviations From the FAR

1901.403 Individual deviations.

Deviations from the IAAR or the FAR in individual cases shall be authorized by the Agency Procurement Executive or a designee unless FAR 1.405(e) is applicable. The request shall cite the specific part of the IAAR or FAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reason for the action requested.

1901.404 Class deviations.

Class deviations affecting more than one contracting action shall be authorized only by the Agency Procurement Executive, unless FAR 1.405(e) is applicable, and shall be subject to the limitations set forth in FAR 1.404. Requests shall include the same information as cited in 1901.403.

Subpart 1901.6—Contracting Authority and Responsibilities

1901.601 General.

The Director, Office of Contracts, is designated the Agency Procurement Executive. The Agency Procurement Executive is delegated the full delegable authority of the Director of this Agency with respect to the acquisition of goods and services by contract and such other methods as may be prescribed in the FAR. The Agency Procurement Executive is delegated overall responsibility by the Director for the Agency's contracting activities.

1901.602 Contracting officers.

1901.602–1 Authority.

USIA Contracting Officers designated by name on Certificates of Appointment by the Agency Procurement Executive are authorized to enter into, administer, and terminate contracts and make related determinations and findings, subject to all requirements and limitations set forth in the Certificate of Appointment. A list of USIA employees who have been appointed as Contracting Officers and the limits of their authority is available from the Policy and Procedures Staff, Office of Contracts.

1901.670 Ratification of unauthorized commitments.

1901.670–1 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts on behalf of the Government. Subject to the limitations in 1901.670–4, the Agency Procurement Executive may ratify an unauthorized commitment, provided:

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The Agency Procurement Executive could have granted or had the authority to enter into the commitment at the time it was made and still has the authority to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1901.670–2 Definitions.

"Ratification," as used in this section, means that act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1901.670–3 Procedures.

USIA components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1901.670–4 Limitations on exercise of authority.

The authority in 1901.670–1, may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(d) Funds are available and were available at the time the unauthorized commitment was made; and

(e) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978.

1901.670–5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1902—DEFINITIONS OF WORDS AND TERMS

Subpart 1902.1—Definitions

1902.101 Definitions

As used throughout this regulation, the following words and terms are used as defined in this subpart unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion of a part.

"Agency" means the United States Information Agency, acting through any of its duly authorized officials.

"Agency Procurement Executive" means the Director, Office of Contracts.

"AR/CO" means Authorized Representative of the Contracting Officer (See 1942.202–70).

"Contracting activity" means the Office of Contracts, which has the responsibility to contract for the acquisition of supplies and services (including construction).

"Head of the agency" (also called "Agency head") means the Agency Director or Deputy Director; and the term "authorized representative" means any person, persons or board (other than the contracting officer) authorized to act for the Head of the Agency.

"Purchasing Activity" means an office with one or more Level I or Level II Small Purchases Contracting Officer(s) exercising limited redelegations of contracting officer authority.

"USIA" means the United States Information Agency.

(40 U.S.C. 486(c))

PART 1903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.
1903.000 Scope of part.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.
1903.101–2 Solicitation and acceptance of gratuities by Government personnel.
1903.101–3 Agency regulations.
1903.103 Independent pricing.
1903.103–2 Evaluating the certification.

Subpart 1903.2—Contracting Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.
1903.204 Treatment of violations.

Subpart—1903.3 Reports of Suspected Antitrust Violations

1903.301 General.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.
1903.670 Contracts between USIA and former employees.

Authority: 40 U.S.C. (486(c).

1903.000 Scope of part.

This Part implements FAR Part 3, cites USIA regulations on employee responsibilities and conduct, establishes responsibility for reporting violations and related actions, and provides for authorization of exceptions to policy.

Subpart 1903.1—Safeguards

1903.101 Standards of conduct.

1903.101–2 Solicitation and acceptance of gratuities by Government personnel.

USIA employees and their spouses, minor children, and members of their households may not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly, from or on behalf of an actual or prospective contractor of USIA. This general prohibition does not apply to the following:

(a) Gifts, gratuities, favors, entertainments, loans or any other thing of monetary value received on account of close family or personal relationships, when the circumstances make it clear that it is the relationship rather than the business of the persons concerned which is the motivating factor;

(b) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans;

(c) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value;

(d) Acceptance of rates and discounts offered to employees as a class. Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.

(e) Contractor provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable. Unless prior approval of the Agency Procurement Executive has been obtained, a full report of the circumstances of the acceptance shall be made to the employee's supervisor for inclusion in the contractor's file.

1903.101–3 Agency regulations.

(a) *General.* USIA regulations on Employee Responsibilities and Conduct are contained in 22 CFR Part 10. All personnel involved in acquisition actions shall become familiar with the statutory and regulatory prohibitions. Any questions concerning them shall be referred to the Agency's Office of the General Counsel.

(b) *Non-Disclosure of proposed acquisition.* Agency personnel, particularly requirements officers, project officers, technical staff and their supervisors often need to discuss standard commercial products or services, new manufacturing techniques, processes and equipment with members of industry in their efforts toward the goal of obtaining a quality product or service for the Agency. During these discussions, Agency personnel shall not disclose any information on a specific acquisition, especially its funding and scheduling. Information on proposed acquisitions shall be released concurrently to all prospective contractors in a common solicitation.

1903.103 Independent pricing.

1903.103–2 Evaluating the certification.

Whenever an offer is rejected under FAR 3.103–2 or the Certificate of Independent Price Dètermination is suspected of being false, the Contracting Officer shall report the situation to the Inspector General through the Agency Procurement Executive for referral to the Attorney General in accordance with FAR 3.303.

Subpart 1903.2—Contractor Gratuities to Government Personnel

1903.203 Reporting suspected violations of the Gratuities clause.

USIA personnel, particularly Contracting Officers, shall promptly report, by memorandum, suspected violations of the Gratuities clause in solicitations or contracts to the Agency Procurement Executive.

1903.204 Treatment of Violations.

Suspected violations shall be treated as provided in the USIA debarment and suspensions procedures in 1909.4.

Subpart 1903.2—Reports of Suspected Antitrust Violations

1903.301 General.

The Contracting Officer shall report any instances of suspected collusion or other violations of antitrust laws in connection with competitive acquisitions to the General Counsel through the Agency Procurement

Executive for possible referral to the Attorney General in Accordance with FAR Subpart 3.3.

Subpart 1903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1903.602 Exceptions.

To avoid potential conflicts of interest or the appearance of preferential treatment, it is USIA policy not to award contracts, purchase orders, grants or cooperative agreements to Government employees or their family members or business concerns owned or controlled by Government employees or their family members. Exceptions to this policy must be approved by the Agency Director or Agency Procurement Executive and supported by written Findings and Determination. A contract with an employee for services may result in violation of the dual salary compensation statutes (5 U.S.C. 5533). Nothing in this paragraph is intended to render inapplicable the conflict of interest prohibition set out in 18 U.S.C. 208.

1903.670 Contracts between USIA and former employees.

To avoid conflicts of interest or the appearance of preferential treatment, purchase orders, contracts, grants or cooperative agreements with former employees of USIA, or with firms in which former employees or their family members are known to have controlling interest, may be entered into within two years following separation from employment only with the written approval of the Agency Director. A written justification shall be made a part of the file. The justification must address the issue of conflict of interest and conclude that it does not exist; or that in spite of its existence, the Agency's ability to meet its mission would be seriously harmed without the award.

PART 1904—ADMINISTRATIVE MATTERS

Subpart 1904.70—Procurement Requests

1904.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with Agency procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

(40 U.S.C. 486(c))

SUBCHAPTER B—ACQUISITION PLANNING

PART 1909—CONTRACTOR QUALIFICATIONS

Subpart 1909.4—Debarment, Suspension, and Ineligibility

Sec.
1909.403 Definitions.
1909.404 Consolidated list of debarred, suspended, and ineligible contractors.
1909.406 Debarment, suspension, and ineligibility.
1909.406–3 Procedures.

Authority: 40 U.S.C. 486(c).

Subpart 1909.4—Debarment, Suspension, and Ineligibility

1909.403 Definitions.

The Agency Procurement Executive, is designated the "debarring official" and the "suspending official" as defined in FAR 9.403 and is designated as the agency official authorized to make the decisions required in FAR 9.405)a, 9.405–1(b), 9.405–2, 9.406–1(c), and 9.407–1(d).

1909.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Policy and Procedures Staff, Office of Contracts, shall be responsible for the maintenance and distribution of the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors. It will be coordinated with the Solicitation Mailing List and appropriate notations will be made on both lists, when additions or deletions are necessary. Contracting Officers shall notify the Policy and Procedures Staff, Office of Contracts, of their distribution needs and shall ensure the list is used effectively.

(b) The Agency Procurement Executive (or designee) is responsible for notifying GSA of the information required by FAR 9.404(b).

1909.406 Debarment, suspension, and ineligibility.

1909.406–3 Procedures.

(a) *Investigation and referral.* Any officer of the Agency who becomes aware of circumstances which may serve as a basis for a debarment, suspension, or ineligibility shall report the circumstances by memorandum to the Agency Procurement Executive for consideration of debarment, suspension or ineligibility action.

(b) *Decision-making process.* (1) Contractors shall be given the opportunity to submit, in person, in writing, or through a representative, information and arguments in opposition to a proposed debarment or suspension. All rebuttals shall be addressed to the Agency Procurement Executive. However, if a response to the proposed debarment or suspension is not received by the Agency Procurement Executive within 30 calendar days of receipt of the notice, the debarment or suspension shall become final.

(2) If a contractor, or a representative, desires to present information and arguments in person to the Agency Procurement Executive, an oral presentation will be held within 20 calendar days of receipt of the request, unless a longer period of time is requested by the contractor. Hearings will be held before a three-person fact-finding board composed of one member each from the Office of General Counsel and Congressional Liaison, the Bureau of Management, and the Office of Contracts, other than the initiating officer. The fact-finding board shall deliver written findings to the Agency Procurement Executive (together with a transcription of the proceedings, if made) within 10 calendar days after the hearing. The findings shall resolve any

facts in dispute based on a preponderance of the evidence presented and determine whether a cause for debarment or suspension exists.

(c) *Debarring/suspending official's decision.* The debarring/suspending official's final decision shall be made in writing in accordance with FAR 9.406–3 and notice of the decision will be given in accordance with FAR 9.406–3. A copy of the notice shall be given to the affected agency component.

PART 1910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

1910.004–70 Brand name products or equal.
1910.004–71 Limits on the use of brand name or equal purchase descriptions.
1910.004–72 Soljcitations, brand name or equal descriptions.
1910.004–73 Offer evaluation and award, brand name or equal descriptions.
1910.004–74 Procedure for negotiated, procurements and small purchases.
1910.011 Solicitation provisions and contract clauses.

Authority: 40 U.S.C. 486(c).

1910.004–70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(a)(2), USIA acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase description.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirements. (See 1910.004–73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g., a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1910.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision of 1952.210–70 would be impracticable, the requirement to include the entry described in 1910.004–72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practicable.

(c) *Approval required.* A brand name or equal purchase description shall not be used unless it has been approved at one level above the contracting officer.

1910.004–72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding On:
Manufacturer's Name: _____
Brand: _____
No. _____

(b) Because bidders frequently overlook the requirements of the clause at 1952.210–70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "Brand Name or Equal" set forth in 1952.210–70 of the solicitation.)

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1910.004–73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

1910.004–74 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed for sealed bid procurements shall be generally applicable to negotiated procurements.

(b) The clause set forth at 1952.210–70 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in unusual and compelling urgency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that the offered products meet fully the salient characteristics requirements of the solicitation.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

1910.011 Solicitation provisions and contract clauses.

The Contracting Officer shall include the provision at 1952.210–70, Brand Name or Equal, in solicitations for which brand name or equal purchase is used.

PART 1912—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1912.70—Delays

1912.701 Delays.

The Contracting Officer shall insert the clause at 1952.212–70 in all USIA contracts.

(40 U.S.C. 486(c))

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1913.1—General

Sec.
1913.106–70 Data to support small purchases over $1,000.
1913.107 Solicitation and evaluation of quotations.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.
1913.203 Establishment of blanket purchase agreements.
1913.203–1 General.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.
1913.405 Procedures.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.
1913.505–2 Agency order forms in lieu of Optional and Standards Forms.

Authority: 40 U.S.C. 486(c).

Subpart 1913.1—General

1913.106–70 Data to support small purchases over $1,000.

Form IA–21, Abstract of Quotations (see 1953.370–21) may be used to satisfy documentation requirements of FAR 13.106(c).

1913.107 Solicitation and evaluation of quotations.

(a) Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an equivalent form has been authorized for use by the Agency Procurement Executive. (See also FAR 53.103). Exceptions under this subpart shall be processed through the Agency Procurement Executive.

(b) Quotations on standard contractor quotation forms may be accepted when they provide sufficient information for fair and equal competitive evaluation.

Subpart 1913.2—Blanket Purchase Agreements

1913.201 General.

The Agency Procurement Executive may require that only contracting officers make purchases under a blanket purchase agreement.

1913.203 Establishment of blanket purchase agreements (BPA's).

1913.203–1 General.

Blanket purchase agreements shall be established and administered in accordance with Agency instructions.

Subpart 1913.4—Imprest Fund

1913.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $150 ($300) under emergency conditions.

1913.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with documentation requirements.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements.

Subpart 1913.5—Purchase Orders

1913.505 Purchase order and related forms.

1913.505–2 Agency order forms in lieu of Optional and Standard Forms.

(a) Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an equivalent form has been authorized for use by the Agency Procurement Executive (or Designee). Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for over printing (FAR 53.104) is not needed.

(b) USIA Form IA–44 (see 1953.370–44) is authorized for use when obtaining nonpersonal services on an intermittent basis for such services as script writers, translators, narrators, etc.

PART 1915—CONTRACTING BY NEGOTIATION

Subpart 1915.1—General Requirements for Negotiation

1915.106 Contract clauses.

1915.106–70 Key personnel and facilities.

Whenever contractor selection has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1952.215–70 in the awarded contract.

(40 U.S.C. 486(c))

PART 1917—SPECIAL CONTRACTING METHODS

Subpart 1917.1—Multiyear Contracting

1917.102 Policy.

When consistent with 22 U.S.C. 1472(b), the Head of the Agency may approve multiyear contracts up to five years.

(40 U.S.C. 486(c))

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1919.2—Policies.

Sec.
1919.201 General policy.
1919.201–70 Director, Office of Small and Disadvantaged Business Utilization.

Authority: 40 U.S.C. 486(c).

Subpart 1919.2—Policies

1919.201 General policy.

The Agency Procurement Executive shall also serve as the Director, Office of Small and Disadvantaged Business Utilization (OSDBU).

1919.201–70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small, disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Agency in discussions with other Government agencies on small and small disadvantaged business matters.

PART 1922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1922.3—Contract Work Hours and Safety Standards Act

Sec.
1922.305 Contract clauses.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

Subpart 1922.70—Service Contract Act of 1965

1922.7001 Clause for contracts over $2,500.

Authority: 40 U.S.C. 486(c).

Subpart 1922.3—Contract Work Hours and Safety Standards Act

1922.305 Contract clauses.

The Contracting Officer shall insert the clauses at 1952.222-82 and 1952.222-83 in lieu of the clause at FAR 52.222-4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), implemented by FPR Temp. Reg. 70, dated June 28, 1983, 48 FR 31028 July 6, 1983.

Subpart 1922.4—Labor Standards for Contracts Involving Construction

1922.470 Contract clauses.

(a) Except as required by 1922.470(b), every construction contract in excess of $2,000 (or of such other amount as may be specificallly indicated) for work within the United States shall include the following clauses:

Davis-Bacon Act (40 U.S.C. 276a–276a–7) clause of 1952.223-70.

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333) clause at 1952.222-71.

Apprentices and Trainees clause at 1952.223-72.

Payrolls and Basic Records clause at 1952.222-73.

Compliance with Copeland Act Requirements clause at 1952.222-74.

Withholding clause at 1952.222-75.

Subcontracts clause at 1952.222-76.

Contract Termination; Debarment clause at 1952.223-77.

Disputes Concerning Labor Standards clause at 1952.222-78.

Compliance with Davis-Bacon and Related Act Requirements clause at 1952.222-79.

Certification of Eligibility clause at 1952.223-80.

(b) Every construction contract in excess of $2,000 for work outside the United States, but which is nevertheless subject to the Contract Work Hours and Safety Standards Act as set forth in FAR Subpart 22.3, shall include the Work Hours and Safety Standards Act Overtime Compensation clause at 1952.222-71.

Subpart 1922.70—Service Contract Act

1922.7001 Clause for contract over $2,500.

The Contracting Officer shall insert in full text the clause at 1952.222-81, Service Contract Act of 1965, As Amended, in solicitations and contracts, in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1927—PATENTS, DATA, AND COPYRIGHTS

Subpart 1927.4—Rights in Data and Copyrights

Sec.
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1927.405 Solicitation provisions and contract clauses.

Authority: 40 U.S.C. 486(c).

Subpart 1927.4—Rights in Data and Copyrights

1927.400 Scope of subpart.

This subpart sets forth policies, procedures, and instructions with respect to (a) rights in data and copyrights and (b) requirements for data.

1927.401 Definitions.

"Computer Software," as used in this subpart means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

"Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights," as used in this subpart, means the rights of Government in limited-rights data, as set forth in a Limited Rights Notice if included in the data rights clause of the contract.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"Technical data," as used in this subpart, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and computer software documentation. Technical data does not include computer software of financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

"Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

1927.402 Policy.

(a) It is necessary for the U.S. Information Agency in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of USIA activities; insure appropriate utilization of the results of research, development, and demonstration activities; and meet other programmatic and statutory

requirements. At the same time, the Government recognizes that its contractors may have a property right or other valid economic interest in certain data resulting from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and maintain the Government's ability to obtain access to our use of such data.

(b) The protection of this data by the Government is necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the above considerations to strike a balance between the Government's needs and the contractor's property rights and economic interests.

1927.403 Procedures.

(a) *General.* All contracts that require data to be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1952.227–70, Rights in Data—General, where determined appropriate by the Agency as discussed in paragraph (b), below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c), (d), (e), and (f) below.

(b) *Basic Rights in Data.*—(1) *Summary.* The clause at 1952.227–70, Rights in Data—General, is structured to strike a balance between USIA's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that USIA is to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to USIA, or when USIA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b)(4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b)(6) below.) This clause also includes procedures that apply when the Government questions whether notices on data are authorized (see paragraph (b)(7) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see Paragraph (b)(9) below); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) below).

(2) *Alternate definition of limited-rights data.* In the clause at 1952.227–70, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, the alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socioeconomic reports, educational material, health and safety information, management analysis, and related matters.

(3) *Unlimited-rights data.* Under the clause at 1952.227–70, Rights in Data-General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1952.227–70, Rights in Data-General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if and USIA specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1952.227–70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable USIA selectively to obtain the delivery withheld or withholdable data with limited rights. The limitations on the Governments rights to use and disclose limited-rights data when the clause is used are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited

purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause:

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the USIA program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair of overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1952.227-71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-70, Rights in Data—General. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1952.227-70, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1952.227-70, Rights in Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if USIA specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1952.227-70, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to this clause to enable the Government selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in a "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which USIA acquired the software.

(iii) The restricted rights set forth in 1927.409(b)(5)(ii) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) below.)

(iv) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1952.227-71, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1952.227-70, Rights in Data—General. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotations are based on an unsolicited proposal. However, use of the clause at 1952.227-70, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(6) *Copyrighted data*—(i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1952.227-70, Rights in Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. USIA may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data

for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless: (*1*) The data consists of a report that represents the official views of USIA or that USIA is required by statute to prepare; (*2*) the data is intented primarily for internal use by the Government; (*3*) the data is of the type that USIA itself distributes to the public under an established program; or (*4*) USIA determines that limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1952.277–70, Rights in Data—General. However, USIA may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if USIA determines that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) if included in the clause at 1952.277–70, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1927.403(b)(8). Otherwise, data delivered with a copyright notice 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable rights set forth in (b)(6)(i)(A) above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge the applicable copyright license.

(7) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1952.227–70, Rights in Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with USIA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1952.227–70, Rights in Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1952.227–70, Rights in Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings, unless otherwise specifically authorized in writing by the contracting officer.

(ii) USIA may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of USIA mission objectives, or determined to be necessary in support of specific USIA programs.

(10) *Inspection of data at the contractor's facility.* USIA may obtain the right to inspect data at the contractor's facility by use of paragraph (j) of the clause to provide that right in the clause at 1952.227–70, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically

used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* [Reserved]

(d) *Acquisition of existing data other than limited-rights data.* [Reserved]

(e) *Specific Acquisition of Unlimited Rights in Technical Data.* (1) Notwithstanding any other provision of this subsection the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that—

(i) There is a clear need for reprocurement of the item, component, or process to which the technical data pertains;

(ii) There is no suitable item, component or process of alternate design or availability;

(iii) The item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) Anticipated net savings in reprocurements will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in paragraph (b)(1) above shall specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of paragraph (f)(1) above, the clause at 1952.227–75, Rights in Technical Data—Specific Acquisition, shall be used.

(f) *Architect-Engineer and Construction Contracts*—(1) *General.* This section sets forth policies, procedures, implementing instructions, solicitation provisions, and contract clauses pertaining to data, copyrights, and designs unique to the acquisition of construction and architect-engineer services.

(2) *Acquisition and Use of Plans, Specifications, and Drawings*—(i) *Plans and Specifications and As-Built Drawings.* Insert the clause at 1952.227–76 Government Rights (Unlimited), in solicitations and contracts calling for architect-engineer services or in contracts for construction involving architect-engineer services.

(ii) *Shop Drawings for Construction.* In acquiring shop drawings for construction, the Government shall obtain the unlimited rights to use and reproduce such drawings, but shall not exclude a similar right in the designer or others. Accordingly, in solicitations and contracts calling for delivery of such drawings, insert the clause at 1952.227–77, Rights in Shop Drawings.

(3) *Contracts for Construction Supplies and Research and Development Work.* The solicitation provisions and contract clauses in Subpart 1927.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitation and contracts for the acquisition of other than construction or architect-engineer services are applicable when the acquisition is limited to either (i) construction supplies or materials as such, as distinguished from construction as defined in FAR 36.102; (ii) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (iii) both. The right of the Government and others to use, duplicate, or disclose such data or computer software will be determined by the terminology of the applicable clauses in the contracts or the terminology of agreements recited-in or made part of the contracts.

(4) *Mixed Contracts.* When solicitations and resulting contracts call for (i) supplies or materials, (ii) experimental, developmental or research work, or (iii) both, in addition to either construction or architect-engineer work, the solicitation provisions and contract clauses in Subpart 1927.4 relating to technical data, other data, computer software, and copyrights and prescribed for use in solicitations and contracts for the acquisition of other than construction or architect-engineer services shall be included in such solicitations and resultant contracts in addition to the appropriate solicitation provisions and contract clauses prescribed for use in solicitation and contracts for construction or architect-enginner services. In such cases, the solicitations and resulting contracts shall clearly indicate which of the solicitation provisions and contract clauses apply only to the supplies or materials being acquired, or to experimentral, developmental, or research work, or to both, and which of the solicitation provisions and contract clauses apply only to the construction or architect-engineer work.

1927.404 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e. data requirements) and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e. data rights). This section relates to data requirements; 1927.403 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restriction to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1952.227–72,

Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1927.405 Solicitation provisions and contracts clauses.

(a) *Rights in Data—General.* (1) The contracting officer shall insert the clause at 1952.227–70, Rights in Data—General, (see 1927.403(b)) in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, except that such clause shall not be used in solicitations and contracts—

(i) For the production of special works. [Reserved]

(ii) For the separate acquisition of existing works. [Reserved]

(iii) When all technical data to be delivered is to be acquired with unlimited rights pursuant to the policy at 1927.403(e) in which case the clause at 1952.227–75, Rights in Technical Data—Specific Acquisition shall be used;

(iv) When performance will be limited solely to architect-engineer services or construction pursuant to the policy at 1927.403(f), in which case the clause at 1952.227–76, Government Rights (Unlimited) applies;

(v) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see paragraph (k) below).

(2) If the contracting officer determines, in accordance with 1927.403(b)(2), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(3) If USIA needs to obtain the delivery of limited-rights data the clause shall be used with its Alternate II (see 1927.403(b)(4)). The contracting officer shall assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Rights Notice" of subparagraph (g)(2) of the clause in accordance with 1927.403(b(4). The contract may exclude identified items of data from delivery under subparagraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If USIA needs to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III (see 1927.403(b)(5).) Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(5) If USIA wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause shall be used with its Alternate IV. (See 1927.403(b)(6).) Alternate IV provides a substitute subparagraph (c)(1) in the clause with such limitation. This subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1927.403(b)(6).

(6) If USIA needs to have the right to inspect certain data at a contractor's facility, the clause shall be used with its Alternate V. (See 1927.403(b)(10).) Alternate V adds a paragraph (j) to the clause to provide for such right, including the limitations thereon. Inspection may be by the contracting officer or representative, and may be made at all reasonable times up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If USIA desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1952.227–71, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1952.227–70, Rights in Data—General. The contractor's response will provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III. (See 1927.403(b) (4) and (5).)

(c) The contracting officer shall insert the clause at 1952.227–72, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1927.404.) This clause may also be used in other contracts when considered appropriate. If the clause at 1952.227–70, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used".

(d) Special Works [Reserved]

(e) Existing Works [Reserved]

(f) The contracting officer shall insert the clause at 1952.227–75, Rights in Technical Data—Specific Acquisition, in solicitations and contracts when all technical data is to be acquired with unlimited rights in accordance with 1927.403(e) (1), (2), and (3). The clause shall also be included in subcontracts when the Government has determined to acquire all technical data with unlimited rights from a subcontractor in accordance with the authority and findings of 1927.403–2(e) (1), (2), and (3). The clause shall not be used under any other circumstances.

(g) The contracting officer shall insert the clause at 1952.227–76, Government Rights (Unlimited) in solicitations and contracts in accordance with 1927.403(f)(2)(i).

(h) The contracting officer shall insert the clause at 1952.227–77, Rights in Shop Drawings, in solicitations and contracts in accordance with 1927.403(f)(2)(ii).

(i) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1927.403(d)(2).

(j) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items) (see 1927.403(d)(3)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1927.403(d)(3).)

(k) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of section 1927.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(l) The Contracting Officer shall insert the clause at 1952.227–78, Disposition of Prints and Videotape Recordings in License Agreements which limit the period for distribution and exhibition of video-tape programs and films.

PART 1932—CONTRACT FINANCING

Subpart 1932.1—General

1932.111 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 1952.232–70 and 1952.232–71, Payment Due Date, in solicitations and contracts. The contracting officer shall select the clause that is applicable to the type of supplies or services being procured.

(b) The contracting officer shall insert the clauses 1952.232–72, Interest on Overdue Payments, in solicitations and contracts.

(c) The contracting officer shall insert the clause at 1952.232–73, Invoice Requirements, in solicitations and contracts for supplies or services which require the submission of invoices.

(d) The contracting officer shall insert the clause at 1952.232–74, Method of Payment, in all solicitations and contracts, except those which are subject to simplified small purchase procedures.

(40 U.S.C. 486(c))

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 1942—CONTRACT ADMINISTRATION

Subpart 1942.2—Assignment of Contract Administration

1942.202–70 Authorized Representative of the Contracting Officer (AR/CO).

The Contracting Officer may designate an appropriately qualified Government employee to act as the Authorized Representative of the Contracting Officer (AR/CO). Such designation shall apply to a single contract, must be in writing, and shall define the scope and limitations of the AR/CO's authority. The instrument designating an AR/CO shall not contain authority to sign or agree to any contract or major modification to a contract. Contractual commitments shall be made only by a duly certified contracting officer. The Contracting Officer shall insert the clause at 1952.242–70, Authorized Representative of the Contracting Officer, in solicitations and contracts when an individual is to be selected and designated by the Contracting Officer to perform administration of a given contract(s).

(40 U.S.C. 486(c))

PART 1946—QUALITY ASSURANCE

Subpart 1946.7—Warranties

1946.704 Authority for use of warranties.

(a) The procurement request initiator is responsible for preparing a written recommendation for those purchases deemed to be appropriate for application of warranty provisions. The recommendation shall state why a warranty is appropriate by specifically addressing the criteria set forth in FAR 46.703. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty provision is to be included.

(40 U.S.C. 486(c))

SUBCHAPTER H—CLAUSES AND FORMS

PART 1952—SOLICITATION PROVISIONS AND CONTRACTS CLAUSES

Sec.

1952.000 Scope of part.

Subpart 1952.1—Instructions for Using Provisions and Clauses

Sec.

1952.102–1 Incorporation in full text.
1952.104 Procedures for modifying and completing provisions and clauses.

Subpart 1952.2—Texts of Provisions and Clauses

1952.200 Scope of part.
1952.210–70 Brand name or equal.
1952.212–70 Notice of delay.
1952.215–70 Key Personnel and facilities.
1952.222–70 Davis-Bacon Act (40 U.S.C. 276a–276a–7).
1952.222–71 Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333).
1952.222–72 Apprentices and trainees.
1952.222–73 Payroll and basic records.
1952.222–74 Compliance with Copeland Act Requirements.
1952.222–75 Withholding.
1952.222–76 Subcontracts.
1952.222–77 Contract termination; debarment.
1952.222–78 Disputes concerning labor standards.
1952.222–79 Compliance with Davis-Bacon and Related Act Requirements.
1952.222–80 Certification of eligibility.
1952.222–81 Service Contract Act of 1965.
1952.222–82 Contract Work Hours and Safety Standard Act—Overtime Compensation (40 U.S.C. 327–333)—(Non-Construction only).
1952.222–83 Payrolls and basic records (Non-Construction only).
1952.227–70 Rights in data—General.
1952.227–71 Notification of limited rights data and restricted computer software.
1952.227–72 Additional data requirements.
1952.227–73 Rights in data—Special works [Reserved].
1952.227–74 Rights in data—Existing works [Reserved].
1952.227–75 Rights in technical data—Specific acquisition.
1952.227–76 Government rights (unlimited).
1952.227–77 Rights in shop drawings.
1952.227–78 Disposition of prints and videotape recordings.
1952.232–70 Payment due date—F.O.B. Destination or F.A.S. Vessel.
1952.232–71 Payment due date—F.O.B. Origin.
1952.232–72 Interest on overdue payments.
1952.232–73 Invoice requirements.
1952.232–74 Method of payment.
1952.242–70 Authorized Representative of the Contracting Officer.

Authority: 40 U.S.C. 486(c).

1952.000 Scope of part.

This part implements and supplements FAR Part 52 which sets forth solicitation provisions and contract clauses for use in the acquisition of personal property and nonpersonal services (including construction).

Subpart 1952.1—Instructions for Using Provisions and Clauses

1952.102-2 Incorporation in full text.

All IAAR provisions and clauses shall be incorporated in solicitations and/or contracts in full text.

1952.104 Procedures for modifying and completing provisions and clauses.

IAAR provisions and clauses shall not be modified (see FAR 1952.101(a) unless authorized by the Director, Office of Contracts, and when so authorized, contracting officers must comply with the procedures in FAR 1952.104.

Subpart 1952.2—Texts of Provisions and Clauses

1952.200 Scope of subpart.

This subpart sets forth the full text of all IAAR provisions and clauses.

1952.210-70 Brand name or equal.

As prescribed in 1910.011 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Feb. 85)

(As used in this provision the term "brand name" includes identification of products by make and model.)

A. If items called for by this solicitation have been identified in this schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Solicitations offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

B. Unless the offeror clearly indicates in the offer that an "equal" product is being offered, the offer shall be considered as offering a brand name product referenced in the solicitation.

C. 1. If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the solicitation, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in the offer as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting activity is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting activity. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of the offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting activity.

2. If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall (i) include in the offer a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

3. Modifications proposed after date for receipt of offers to make a product conform to a brand name product referenced in the solicitation will not be considered.

(End of Clause)

1952.212-70 Notice of delays.

As prescribed at 1912.70, insert the following clause in all contracts:

Notice of Delay (Feb. 85)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1952.215-70 Key personnel and facilities.

As prescribed in 1915.106-70 insert the following clause in appropriate contracts:

Key Personnel and Facilities (Feb. 85)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of Clause)

1952.222-70 Davis-Bacon Act (40 U.S.C. 276a-276a-7).

As prescribed in 1922.403(a) the contracting officer shall insert the following clauses:

Davis-Bacon Act (40 U.S.C. 276a-276a-7) (Feb. 85)

(a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all time by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract

shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. *Provided*, That the Secretary of Labor has found, upon written request of the Contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(e) Paragraphs (a) through (d) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of Clause)

1952.222-71 Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333).

As prescribed at 1922.403(a), the contracting officer shall insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327-333) (Feb. 85)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor of subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222-72 Apprentices and Trainees.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Apprentices and Trainees (Feb. 85)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other

than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of Clause)

1952.222-73 Payrolls and basic records.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Payrolls and Basic Records (Feb. 85)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "Payrolls and Basic Records" and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deduction have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of Clause)

1952.222-74 Compliance with Copeland Act Requirement.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Compliance With Copeland Act Requirement (Feb. 85)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(End of Clause)

1952.222-75 Withholding.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Withholding (Feb. 85)

The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentices, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Prime Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of Clause)

1952.222-76 Subcontracts.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Subcontracts (Feb. 85)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination-Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

(End of Clause)

1952.222-77 Contract termination; debarment.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Contract Termination; Debarment (Feb. 85)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act-Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Act Requirements," "Subcontracts," "Compliance With Davis-Bacon and Related Act Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(End of Clause)

1952.222-78 Disputes concerning labor standards.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Disputes Concerning Labor Standards (Feb. 85)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222-79 Compliance with Davis-Bacon and Related Act Requirements.

As prescribed in 1922.403(a), the contracting officer shall insert the following clauses:

Compliance With Davis-Bacon and Related Act Requirements (Feb. 85)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of Clause)

1952.222-80 Certification of eligibility.

As prescribed in 1922.403(a), the contracting officer shall insert the following clause:

Certification of Eligibility (Feb. 85)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person of firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of Clause)

1952.222-81 Service Contract Act of 1965.

As prescribed in 1922.1006 insert the following clause:

Service Contract Act of 1965, As Amended (Feb. 85)

(a) This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b)(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative of the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all

pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d)(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(f) The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with safety and health standards applied under 29 CFR Part 1925.

(g)(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from

the completion of the work records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 4.6(g)(1) (i) through (iv) approved by the Office of Management and Budget under OMB control number 1215–0017 and sections 4.6(g)(1) (v) and (vi) approved under OMB control number 1215–0150.):

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to 4.6(l)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(j) The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(k)(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent provision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for *informational purposes only:*

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class		Monetary wage-fringe benefits

(l)(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (sec. 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(n)(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92–473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by

section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: *Provided, however*, That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act Minimum wage through the combination of direct wages and tip credit; (approved by the Office of Management and Budget under OMB control number 1215–0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be revolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6 and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

1952.222–82 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327–333) (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

Contract Work Hours and Safety Standards Act Overtime Compensation (40 U.S.C. 327–333) (Feb. 85)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen, and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of Clause)

1952.222–83 Payrolls and basic records (Nonconstruction only).

As prescribed in 1922.305 insert the following clause:

Payrolls and Basic Records (Feb. 85)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, and transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(End of Clause)

1952.227-70 Rights in data—General.

(a) As prescribed in 1927.405(a)(1) insert the following clause:

(a) *Definitions:*

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article 1, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in a this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair, and

(iv) All other data delivered under this contract unless otherwise provided for limited-rights data or restricted computer software in accordance with paragraph (g) below.

(2) The contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect form unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights or restricted rights notices, and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright.* (1) Data first produced in the performance of this contract. Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this contract. The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402 unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; provided, however, that if such data is computer software, the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract, or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except as may be provided otherwise below in this paragraph.

(2) The contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, the contracting officer may either return the data to the contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The contracting officer makes written inquiry to the contractor concerning the propriety of the markings, providing the contractor 30 days to respond; and

(ii) The contractor fails to respond within the 30 day period (or such longer time approved by the contracting officer for good cause shown), or the contractor's response fails to substantiate the propriety of the markings.

(2) The contracting officer shall consider the contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The contracting officer shall furnish written notice to the contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may request, within six months (or such longer time approved by the contracting officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the contractor's expense, and the contracting officer may agree to do so if the contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(2) (i), (ii), and (iii) above, is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software, the contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the contractor shall identify the data being withheld and furnish form, fit and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2)–(3) (Reserved)

(h) *Subcontracting.* The contractor has the responsibility to obtain from its subcontractors all data and right therein necessary to fulfill the contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the contractor shall promptly bring such refusal to the attention the contracting officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(b) *Alternate I.* As prescribed in 1927.405(a)(2) substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(c) *Alternate II.* As prescribed in 1927.405(a)(3) insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the contracting officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise by withholdable. If delivery of such data is so required, the contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

Limited Rights Notice

(a) This data is submitted with limited rights under Government contract No ——— (subcontract ———, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(The contracting officer may list additional purposes as set forth in 1927.403(b)(4).)

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of Notice)

(d) *Alternate III.* As prescribed in 1927.405 (a)(4) insert the following subparagraph (g)(3) in the clause:

(g)(3) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of restricted computer software that has been withheld. If delivery of such computer software is so required, the contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice

(a) This computer software is submitted with restricted rights under Government Contract No. ——— (and subcontract ——— if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. ——— (and subcontract ——— if appropriate) with ——— (name of contractor and subcontractor).

(End of Notice)

(e) *Alternate IV.* As prescribed in 1927.405(a)(5) substitute the following subparagraph (c)(1) in the clause:

(c)(1) Data first produced in the performance of this contract. Unless provided otherwise in subparagraph (d) below, the contractor may establish claim to copyright subsisting in scientific and technical, or professional journals. The prior, express written permission of the contracting officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with USIA Acquisition Regulation 1927.403(b)(8). When claim, to copyright is made, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(f) *Alternate V.* as prescribed in 1927.405(a)(6), add the following paragraph (j) to the clause:

(j) The contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the contracting officer or an authorized representative may, at all reasonable times up to three years after acceptance of all items to be delivered under this contract, inspect at the contractor's facility any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance or verifying the contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the contractor whose data is to be inspected demonstrates to the contracting officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the contracting officer shall designate an alternate inspector.

(End of clause)

1952.227-71 Notification of limited-rights data and restricted computer software.

As prescribed in 1927.405(b) insert the following provision in solicitations that include the clause at 1952.227–70, Rights in Data—General:

Notification of Limited-Rights Data and Restricted Computer Software (Feb. 85)

(a) This solicitation sets forth the work to be performed and the Government's known requirements for data (as defined in USIA Acquistion Regulation, 1927.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements

clause (USIA Acquisition Regulation 1952.227–73) if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (USIA Acquisition Regulation 1952.227–71) that is to be included in this contract. Under this clause, a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and delivered form, fit, and function data in lieu thereof. This clause also may be used with Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software with limited rights or restricted rights. In addition, use of alternate V with this clause provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include any of the above Alternates in the clause at 1952.227–70, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

1952.227–72 Additional data requirements.

As prescribed in 1927.405(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

Additional Data Requirement (Feb. 85)

(a) In addition to the data (as defined in the Rights in Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the contracting officer may at any time during contract performance or within a period of three years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the contractor to deliver any data: (1) The withholding of which is authorized by the Rights in Data—General clause of this contract; or (2) which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the contractor will be compensated for: (1) Converting the data into the prescribed form, (2) reproduction; and (3) delivery.

(d) The contracting officer may release the contractor from the requirements of this clause for specifically indentified data items at any time during the three-year period set forth in (a) above.

1952.227–73 Rights in Data—Special Works. [Reserved]

1952.227–74 Rights in Data—Existing Works. [Reserved]

1952.227–75 Rights in Technical Data—Specific Acquisition.

As prescribed in 1927.405(f), insert the following clause:

Rights in Technical Data—Specific Acquisition (Feb. 85)

(a) *Definition.* Technical Data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be able or used to define a design or process or to procure, produce, support, maintain, or operate material. The Data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) *Copyright.* (1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in subparagraph (c)(1) above.

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

This material may be reproduced by or for the U.S. Government pursuant to the copyright license under the clause at 1952.227–75 (Feb. 85).

(d) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of Clause)

1952.227–76 Government rights (unlimited).

As prescribed in 1927.405(g), insert the following clause:

Government Rights (Unlimited) (Feb. 85)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyrights laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

1952.227–77 Rights in shop drawings.

As prescribed in 1927.405(h), insert the following clause:

Rights in Shop Drawings (Feb. 85)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation

(i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

1952.227-78 Disposition of prints and videotape recordings.

As prescribed in 1927.405(j) insert the following clause in License Agreements:

Disposition of Prints and Videotape Recordings (Feb. 1985)

If the Agency elects to discontinue distribution and exhibition hereunder, or upon expiration of the term of this License Agreement, the Agency will destroy all prints and erase all videotape recordings of the Film. A certificate(s) attesting to such destruction and/or erasure will be furnished the Licensor upon its written request.

(End of Clause)

1952.232-70 Payment due date: F.O.B. Destination or F.A.S. Vessel.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on an F.O.B. Destination of F.A.S. Vessel basis or in service contracts for nonrecurring work payable upon completion of performance. Contracts providing advance payments or contracts for utilities covered by tariff are excluded:

Payment Due Date—F.O.B. Destination of F.A.S. Vessel (Feb. 85)

A. Payments under the contract will be due on the ———* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date the supplies or services are accepted by the Government.

B. For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the ———** calendar day after the date of delivery of the supplies or completion of service performance in accordance with the terms of the contract.

C. If the supplies or services are rejected for failure to conform to the technical requirements of the contract, such as damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies or satisfactory completion of the services.

D. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

**The contracting officer should insert a number (e.g., 15 days, unless some other number of days is necessary).

1952.232-71 Payment due date; F.O.B. Origin.

As prescribed in 1932.111(a), insert a clause substantially the same as the following in contracts for supplies when delivery is on as F.O.B. Origin basis with inspection and acceptance at source and proof of shipment (e.g., a GBL) is to be required to be furnished with the invoice and in nonpersonal service contracts when the contractor's invoice covers services performed on a recurring basis with periodic billings:

Payment Due Date—F.O.B. Origin (Feb. 85)

A. Payments under this contract will be due on the ———* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The invoice must include proper documentation that the supplies have been delivered to and accepted for shipment by an approved carrier; or in the case of services, that the services have been rendered and accepted.

B. However, when the contract specifies that inspection and acceptance will take place at the ultimate destination point, payment for items shipped F.O.B. Origin will not constitute final acceptance.

C. The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer should insert an appropriate number (e.g., 30 days, unless some other number of days is necessary).

1952.232-72 Interest on overdue payments.

As prescribed in 1932.111(b), insert the following clause in solicitations and contracts for supplies and services, including construction, and in leases of real property.

Interest on Overdue Payments (Feb. 85)

(a) The Prompt Payment Act, Pub. L. 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract, except contracts providing advance payments or contracts for utilities covered by tariff, and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

(End of Clause)

1952.232-73 Invoice requirements.

As prescribed in 1932.111(c), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices:

Invoice Requirements (Feb. 85)

Invoices shall be submitted in an original and one (1) copy to the Government office designated in this contract or on the delivery order to receive invoices. To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

(1) Name of the business concern and invoice date.

(2) Contract number, or other authorization for delivery of property or services.

(3) Description, price, and quantity of property and services actually delivered or rendered.

(4) Shipping and payment terms, and such other substantiating documentation or information as required by the contract.

(5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

(End of Clause)

1952.232-74 Method of payment.

As prescribed in 1932.111(d), insert the following clause in solicitations and contracts:

Method of Payment (Feb. 85)

A. Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

B. The Contractor shall forward the following information in writing to the Contracting Officer not later than 7 days after receipt of notice of award:

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(a) Address and telegraphic abbreviation of the correspondent financial institution.

(b) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

C. Any changes to the information furnished under paragraph B. of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes promptly to avoid payments to erroneous addressees or bank accounts.

D. The document furnishing the information required in paragraphs B. and C. must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of Clause)

1952.242-70 Authorized Representative of the Contracting Officer.

As prescribed in 1942.202-70 insert the following clause in solicitations and contracts:

Authorized Representative of the Contracting Officer (Feb. 85)

The Contracting Officer will appoint by letter an Authorized Representative of the Contracting Officer (AR/CO) who will be given the responsibility of ensuring that the work conforms to the requirements of the contract and such other responsibilities as are specifically identified in the letter of authorization, unless specifically delegated such authority, in writing, by the Contracting Officer. The AR/CO *shall not* have the authority to make changes in the scope or terms and conditions of the contract; *only* the Contracting Officer has such authority. THE RESULTANT CONTRACTOR IS HEREBY FOREWARNED THAT IT MAY BE HELD FULLY RESPONSIBLE FOR ANY CHANGES NOT AUTHORIZED IN ADVANCE, IN WRITING, BY THE CONTRACTING OFFICER, AND MAY BE DENIED COMPENSATION FOR ANY ADDITIONAL WORK PERFORMED WHICH IS NOT SO AUTHORIZED.

(End of Clause)

PART 1953—FORMS

Subpart 1953.3—Illustrations of Forms

Sec.
1953.300 Scope of subpart.
1953.370 USIA forms.

Authority: 40 U.S.C. 486(c)

Subpart 1953.3—Illustrations of Forms

1953.300 Scope of subpart.

This subpart contains illustrations of some forms referenced in this IAAR.

1953.370 USIA forms.

This section contains illustrations of USIA forms references in this IAAR.

Note.—IAAR forms are not published in the Federal Register or in the Code of Federal Regulations. Forms may be obtained by writing: Office of Contracts, United States Information Agency, Washington, DC 20547. For the convenience of the user, a list containing section numbers, form numbers and form titles appears below:

Sec.
1953.370-21 USIA Form IA-21, Abstract of Quotations.
1953.370-44 USIA Form IA-44, Requisition-Purchase—Order-Invoice for Professional Services.

Dated: March 27, 1985.

Philip R. Rogers,

Director, Office of Contracts.

[FR Doc. 85-7932 Filed 4-2-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Amendment No. 192-49; Docket PS-81]

Transportation of Natural and Other Gas by Pipeline; Ovality of Field Bends in Steel Pipe

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment removes the ovality limitation requirement of 2½ percent of the nominal diameter for a field bend made in steel pipe during construction of transmission lines and mains. This limitation was operational in origin (i.e., to permit the passage of internal "pigging" devices) and has been found to be redundant because of other performance requirements that each bend have a smooth contour, be free of mechanical damage, and must not impair the serviceability of the pipe. Experience has also shown that the rule was unnecessary for safety.

EFFECTIVE DATE: May 3, 1985.

FOR FURTHER INFORMATION CONTACT: William A. Gloe, (202) 426-2082, regarding the content of this amendment, or the Dockets Branch, (202) 426-3148, regarding copies of the amendment or other information in the docket file for this proceeding.

SUPPLEMENTARY INFORMATION:

Background

Section 192.313, Bends and elbows, is contained in the minimum Federal safety standards for gas pipelines to provide for the structural integrity of field pipe bends and for elbows in steel transmission lines and mains. Requirements of the section were largely derived from the 1968 edition of the industry standard, ANSI B31.8, and were later modified by a rulemaking action and issuance of Amendments 192-26 and 195-10 (14 FR 26018; June 24, 1976). Amendment 192-26 revised § 192.313 while Amendment 195-10 concurrently revised § 195.212 of 49 CFR Part 195, the minimum Federal safety standards for hazardous liquid pipelines. As resulted from that rulemaking, § 192.313(a) reads as follows:

§ 192.313 Bends and elbows.

(a) Each field bend in steel pipe, other than a wrinkle bend made in accordance with § 192.315, must comply with the following:

(1) A bend must not impair the serviceability of the pipe.

(2) For pipe more than 4 inches in nominal diameter, the difference between the maximum and minimum diameter at a bend must not be more than 2½ percent of the nominal diameter.

(3) Each bend must have a smooth contour and be free from buckling, cracks, or any other mechanical damage.

(4) On pipe containing a longitudinal weld, the longitudinal weld must be as near as practicable to the neutral axis of the bend unless:

(i) The bend is made with an internal bending material; or

(ii) The pipe is 12 inches or less in outside diameter or has a diameter to wall thickness ratio less than 70.

In the 1976 rulemaking it was stated that MTB intends to propose deletion of the ovality restriction in § 192.313. MTB averred, however, in the preamble of the final rule that the deletion could not be made in that proceeding because it had not been proposed in the advance notice or the Notice of Proposed Rulemaking (NPRM). Comments were occasioned on the ovality restriction for the reason that MTB had proposed amending § 195.212 to include the restriction in the hazardous liquid pipeline safety regulations, then existing in Part 192 as § 192.313(a)(4). The following excerpt from the preamble (41 FR 26017) describes evaluation of the comments and the decision to exclude the restriction from Part 195:

Ovality—For pipe more than 4 inches in nominal diameter, § 192.313(a)(4) provides a numerical restriction on ovality due to bending. The liquid pipeline bending regulations do not contain a similar requirement. Because the ovality restriction limits wall thinning and excessive strain due to bending, MTB proposed that § 195.212 be amended to include the ovality limitation now existing in § 192.313(a)(4). This proposal resulted in a considerable amount of negative comment. Commenters pointed out that the proposed ovality requirement is twice as restrictive as the current industry practice and more stringent than the ovality limitation in pipe manufacturing specifications. In the latter case, if the proposal were adopted, pipe from a manufacturer could exceed the ovality restriction before being bent. Another commenter pointed out that liquid pipeline carriers have not filed with the Department any reports of failures caused by bends with excessive ovality.

Based on all the comments to Notice 75–7, MTB now believes that a numerical restriction on ovality is not necessary to provide for the safety of a steel pipeline subjected to field bending. Rather, MTB believes that the performance standards involving smoothness, mechanical damage, and serviceability are sufficient to protect against material damage due to bending. In effect, these standards also limit ovality because excessive ovality would impair the serviceability of a pipeline or cause mechanical damage. It further appears that the ovality restriction now existing in 192.313(a)(4) is derived from a provision of the 1968 addition [sic] of the ANSI B31.8 Code which was based on an operating consideration, e.g., passage of internal cleaning and inspection equipment, rather than a strength of materials consideration. Consequently, the proposed ovality amendment to § 195.212 is not adopted.

Although a numerical restriction on the ovality of field bends was shown to be unnecessary, further action was not taken due to the apparent absence of problems in meeting the requirement. Thus, the subject remained inactive until receipt of a January 25, 1984, petition from the Interstate Natural Gas Association of America (INGAA) for deletion of § 192.313(a)(2) (as the requirement has since been designated). The petition stated:

INGAA is not aware of ovality being a problem in construction, operation or safety; in fact, to the best of our knowledge ovality has not been connected with the cause of a single pipeline failure. Furthermore, with the retention of the requirements in Section 192.313(a)(1) and (a)(3), and we are not suggesting their elimination, it is our opinion the specific ovality limits contained in (a)(2) are unnecessary and do not contribute toward improving public safety.

NPRM and Discussion of Comments

A notice was published in the **Federal Register** on October 31, 1984 (49 FR 43728), proposing to delete the ovality restriction from Part 192, in agreement with conclusions of the previous rulemaking and the INGAA January 1984 petition. Favorable letter comments were received from all of the 12 respondents, consisting of oil and gas pipeline operators, a pipeline contractor, industry associations, and the Iowa State Commerce Commission.

In its comment, the Iowa Commission expressed concern that the ability of a bend to permit passage of internal cleaning or inspection equipment is relevant to pipeline safety and should not be ignored. MTB agrees. In fact, this issue was considered before in Amendments 192–26 and 195–10 regarding bending of pipe for gas and hazardous liquid pipelines. In deciding not to adopt a proposed ovality restriction for liquid pipelines while at the same time adopting a proposed performance standard regarding pipe serviceability, MTB stated:

The requirement of the existing § 192.313(a)(1) that a bend may not impair the serviceability of the pipe was proposed to be added to § 195.212 as necessary to provide for continued safe bends. There were no adverse comments to this proposal. The requirement is particulary meaningful in the absence of an ovality restriction. If, for instance, a pipeline is so out-of-round that it prevents the passage of cleaning scrapers and other equipment necessary for safe operation of the pipeline, the pipeline's serviceability would be impaired. (41 FR 26017)

MTB believes the existing performance requirement that "[a] bend must not impair the serviceability of the pipe" (§ 192.313(a)(1)) is sufficient to assure that bends do not interfere with operation's by preventing the passage of internal cleaning or inspection devices. A more stringent regulation such as the current ovality restriction is not needed for this purpose because internal cleaning or inspection activities normally are closely monitored by operator personnel. Therefore, MTB concludes that there is no need for a specific restriction on the ovality of field pipe bends in Part 192 to provide for structural safety and the safety consideration raised by the Iowa Commission is covered by the existing performance standard regarding serviceability. This conclusion is supported by an informative background comment from the Columbia Gas System Research Department that the 2½ percent ovality requirement initially was self-imposed by the industry for operating and economic reasons, and not for safety.

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under that statute be submitted to a 15-member advisory committee for its consideration. The committee, composed of persons knowledgeable about transportation of gas by pipeline, considered the proposed amendment to § 192.313 at a meeting in Washington, D.C., on October 30, 1984. The Committee found the proposed amendment, as set forth in the NPRM, to be technically feasible, reasonable, and practicable.

Classification

This final rule is not "major" under Executive Order 12291 because it will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and governmental agencies, and no adverse effects are anticipated. Also, it is not "significant" under Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979). Further, MTB has determined that this final rule does not require a full Regulatory Evaluation under those procedures. While the rule would provide definite cost savings for operators in some cases, the difference between the existing and revised requirements and the frequency at which savings would occur should result only in a minor cost savings impact on the gas pipeline industry as a whole.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that this final rule will not have a significant economic impact on a substantial number of small entities, because few, if any, gas pipeline operators who would be classed as small entities engage in the field bending of large steel pipe, and therefore such operators would not be affected by this rulemaking.

List of Subjects in 49 CFR Part 192

Pipeline safety, Pipe bends and elbows.

PART 192—[AMENDED]

In view of the foregoing, MTB amends 49 CFR 192.313(a) by removing paragraph (a)(2) and redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively.

(49 U.S.C. 1672 and 1804; 49 CFR 1.53, and Appendix A of Part 1)

Issued in Washington, D.C., on March 29, 1985.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 85–7931 Filed 4–2–85; 8:45 am]

BILLING CODE [illegible]

Proposed Rules

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 24185, Notice No. 84-11B]

Fire Protection Requirements for Cargo or Baggage Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice announces the reopening of the comment period for Notice of Proposed Rulemaking (NPRM) No. 84-11 (49 FR 31830; August 8, 1984), which invites comments relative to amending Part 25 of the Federal Aviation Regulations (FAR) to upgrade the fire safety standards for cargo or baggage compartments in transport category airplaines by establishing new fire test criteria and by limiting the volume of Class D compartments. This reopening is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATES: Comments must be received on or before June 3, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Officer of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24185, 800 Independence avenue SW., Washington, D.C. 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. All comments must be marked: Docket No. 24185. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel Weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch, Regulations and Policy Office, ANM-110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2112.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. 24185." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of Notice No. 84-11 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify Notice No. 84-11. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On May 7, 1984, the FAA issued Notice No. 84-11 (49 FR 31830; August 8, 1984). In that notice the FAA proposed to amend Part 25 of the FAR to upgrade the fire safety standards for cargo or baggage compartments in transport category airplanes by establishing new fire test criteria and by limiting the volume of Class D compartments. These proposals are the results of research and fire testing conducted by the FAA at its Technical Center. The FAA invited interested persons to submit comments and suggestions as to future action regarding this rulemaking. Because of requests received from persons wishing more time in which to study the proposal and prepare their comments, the FAA issued Notice No. 84-11A (49 FR 40041; October 12, 1984) which reopened the comment period for an additional 90 days. That comment period closed January 10, 1985. In light of further cargo liner testing conducted by the FAA at its Technical Center, the Aircraft Industries Association and the Air Transport Association requested meetings with the FAA to discuss the test results as well as additional comments on the Notice. These meetings were held and copies of the minutes have been placed in the Rules Docket for public inspection. Additionally, a report entitled "Suppression and Control of Class C Cargo Compartment Fires," issued in February 1985, which documents the test results, has been placed in the Rules Docket. In order to afford the public an opportunity to review these documents, the FAA is reopening the comment period on Notice 84-11 for 60 days.

Reopening of Comment Period

In consideration of the need for public participation in determining future action regarding this rulemaking, the FAA concludes that the comment period should be reopened.

Accordingly, the comment period for Notice No. 84-11 is reopened and will close on June 3, 1985.

Conclusion

This document reopens the comment period on an NPRM to afford the public and industry with additional time in which to review and respond to this notice. The FAA has determined that this document involves a proposed regulation which is not considered to be significant as defined in Department of Transporation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and is not major as defined in Executive Order 12291, and the FAA certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities since few, if any, small entities are involved.

List of Subjects in 14 CFR Part 25

Aviation safety, Aircraft, Air transportation, Safety, Tires.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 US.C. 1354(a), 1421, and 1423); 49 U.S.C 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.45)

Issued in Seattle, Washington, on March 19, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–7873 Filed 4–2–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–19]

Proposed Establishment of VOR Federal Airways—TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a low altitude Federal Airway structure using the new Frankston, TX, very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) installation for the enhancement of the traffic flow within the Houston Air Route Traffic Control Center (ARTCC) area.

DATES: Comments must be received on or before May 16, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–19, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a low altitude VOR Federal Airway structure with a new segment of V–569 from Lufkin, TX, to Scurry, TX, and by creating a new airway from Leona, TX, to Quitman, TX. V–569 is a new airway scheduled to take effect on June 6, 1985. The segments proposed in this notice would extend the V–569 route structure and amend the description of V–569, effective on or after its planned effective date of June 6. The new routes would utilize the new Frankston, TX, VOR/DME (FZT) facility (lat. 32°04'28.12" N., long. 95°31'50.28" W.), upon completion of the installation, to facilitate and enhance the traffic flow within the Houston ARTCC area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

§ 71.123 [Amended]

V–569 will be added effective June 6, 1985. The following is an alteration to

the original description of V-569, effective upon the establishment.

V-288 [Amended]

By removing the words "to Lufkin." and by substituting the words "Lufkin; Frankston, TX; to Scurry, TX."

V-563 [New]

From Leona, TX, via Frankston, TX; to Quitman, TX.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on March 28, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-7874 Filed 4-2-85; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

Processing of Monetary Claims (General); Claims Collection and Off-Set Standards

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA proposes to amend 14 CFR Part 1261 by revising Subpart 1261.4 (Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration), and by adding new Subparts 1261.5 (Administrative Offset) and 1261.6 (Salary Offset). The regulations reflect changes pursuant to the Debt Collection Act of 1982 (Pub. L. 97-365, enacted October 25, 1982), as implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101-105, of March 9, 1984, at 49 FR 8889), and by the Office of Personnel Management (5 CFR Part 550, Subpart K, §§ 550.1101-550.1106, issued July 3, 1984, at 49 FR 27470).

DATE: Written comments must be received by June 3, 1985.

ADDRESS: Office of General Counsel, Code GS, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202-453-2432.

SUPPLEMENTARY INFORMATION: These regulations comply with the joint regulation of the General Accounting Office (GAO) and the Department of Justice (DJ), and the regulation of the Office of Personnel Management (OPM). Comments which have been considered and rejected or accepted by those agencies should not be submitted to NASA. Consequently, commenters should familiarize themselves with the GAO/DJ/OPM regulations and limit their comments to standards specifically adopted by NASA to accommodate NASA functions.

Miscellaneous.

These regulations do not constitute a major rule for the purpose of Executive Order 12291 (46 FR 13193, February 19, 1981).

These regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980; 5 U.S.C. 601 et seq.).

List of Subjects in 14 CFR Part 1261

Administrative practice and procedures, Claims, Debt collections, Administrative offset, Government employees, Pay administration, Salary offset.

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

14 CFR Part 1261 is amended by revising Subpart 1261.4 and by adding Subparts 1261.5 and 1261.6 to read as follows:

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration

Sec.

1261.400 Scope of subpart.
1261.401 Definitions.
1261.402 Delegation of authority.
1261.403 Consultation with appropriate officials; negotiation.
1261.404 Services of the Inspector General.
1261.405 Subdivision of claims not authorized; other administrative proceedings.
1261.406 Aggressive collection action; documentation; minimum amount excluded.
1261.407 Demand for payment; limitation periods.
1261.408 Use of consumer reporting agency.
1261.409 Contracting for collection services.
1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.
1261.411 Collection in installments.
1261.412 Interest, penalties, and administrative costs.
1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.
1261.414 Compromise of claims.
1261.415 Execution of releases.
1261.416 Suspending or terminating collection action.
1261.417 Referral to Department of Justice (DJ) or General Accounting Office (GAO).

Subpart 1261.5—Administrative Offset of Claims

1261.500 Scope of subpart.
1261.501 Definition.
1261.502 Notification procedures.
1261.503 Agency records inspection; hearing or review.
1261.504 Interagency requests.
1261.505 Multiple debts.
1261.506 Limitation periods.
1261.507 Civil Service Retirement and Disability Fund.
1261.508 Offset against a judgment.

Subpart 1261.6—Collection by Offset from Indebted Government Employees

1261.600 Purpose of subpart.
1261.601 Scope of subpart.
1261.602 Definitions.
1261.603 Procedures for salary offset.
1261.604 Nonwaiver of rights by involuntary setoff.
1261.605 Refunds.
1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).

Authority: 42 U.S.C. 2473(c)(1); 31 U.S.C. 3701; 31 U.S.C. 3711 et seq.; 5 U.S.C. 5514; 4 CFR Parts 101-105; 5 CFR Part 550, Subpart K, §§ 550.1101—550.1106.

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

§ 1261.400 Scope of subpart.

(a) These regulations do the following:

(1) prescribe standards for the administrative collection, compromise, suspension or termination of collection, and referral to the General Accounting Office (GAO), and/or to the Department of Justice (DJ) for litigation, of civil claims as defined by 31 U.S.C. 3701(b), arising out of the activities of NASA;

(2) designate the responsible NASA officials authorized to effect actions hereunder; and

(3) require compliance with the GAO/DJ joint regulations at 4 CFR Parts 101-105 and the Office of Personnel Management (OPM) regulations at 5 CFR Part 550, Subpart K.

(b) Failure to comply with any provision of the GAO/DJ or OPM regulations shall not be available as a defense to any debtor (4 CFR 101.8).

(c) These regulations do not include any claim based in whole or in part on violation of the anti-trust laws; any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; tax claims; or

Federal interagency claims (4 CFR 101.3).

§ 1261.401 Definitions.

(a) Claim and debt—The terms denote a civil claim arising from the activities of NASA for an amount of money, or return or value of property (see 4 CFR 101.5), owing to the United States from any person, organization, or entity, except another Federal agency. The words "claim" and "debt" have been used interchangeably and are considered synonymous.

(b) Delinquent debt—The debt is "delinquent" if it has not been paid by the date specified in the initial written notification (e.g., § 1261.407) or applicable contractual agreement, unless other acceptable (to NASA) payment arrangments have been made by that date, or if, at any time thereafter, the debtor fails to satisfy an obligation under the payment agreement.

(c) Referral for litigation—Referral through the NASA installation's legal counsel to the Department of Justice (Main Justice or the United States Attorney, as appropriate) for legal proceedings.

§ 1261.402 Delegation of authority.

The following NASA officials are delegated authority, as qualified by §1261.403, to take such action as it authorized by these regulations to collect, compromise, suspend/terminate collection, and upon consultation with and through legal counsel, to refer the claim (as applicable) to the GAO or Department of Justice:

(a) For field installations, with regard to Subpart 1261.4 and Subpart 1261.5: the Director of the Installation or a designee who reports directly to the Installation Director. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(b) For Headquarters, with regard to Subpart 1261.4 and Subpart 1261.5: the Associate Administrator for Management or a designee who reports directly to the Associate Administrator for Management. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: the NASA Comptroller or designee.

(d) NASA wide, with regard to subpart 1261.6: The NASA Comptroller or designee.

(e) NASA wide, for complying with pertinent provisions under these regulations for agency hearing or review (see § 1261.408(b), § 1261.503, and § 1261.603(c)): the NASA General Counsel or designee.

§ 1261.403 Consultation with appropriate officials; negotiation.

(a) The authority pursuant to § 1261.402 to determine to forgo collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

(1) With respect to claims against contractors or grantees arising in connection with contracts or grants—the contracting officer and the financial management officer of the installation concerned.

(2) With respect to claims against commercial carriers for loss of or damage to NASA freight shipment—the cognizant transportation officer or the official who determined the amount of the claim, as appropriate, and the financial management officer of the installation concerned.

(3) With respect to claims against employees of NASA incident to their employment—the personnel officer and the financial management officer of the installation concerned.

(b) The appropriate counsel's office shall review and concur in the following:

(1) All communications to and agreements with debtors relating to claims collection.

(2) All determinations to compromise a claim, or to suspend or terminate collection action.

(3) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.404(b)(1).

(4) All documents releasing debtors from liability to the United States.

(5) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to § 1261.402 may affect the rights of the United States.

§ 1261.404 Services of the Inspector General.

(a) At the request of an official designated in or pursuant to § 1261.402, the Office of the Inspector General will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of the debtors.

(b) Any claim which, in the opinion of an official designated in or pursuant to § 1261.402 or § 1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, the IG shall:

(1) Notice the official, from whom the claim was received, of the findings and refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(2) If it is found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

§ 1261.405 Subdivision of claims not authorized; other administrative proceedings.

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $20,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 1261.414) or suspension or termination of collection (§ 1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim (4 CFR 101.6).

(b) *Required administrative proceedings.* Nothing contained in these regulations is intended to require NASA to omit, foreclose, or duplicate administrative proceedings required by contract or other applicable laws and implementing regulations (4 CFR 101.7).

§ 1261.406 Aggressive collection action; documentation; minimum amount excluded.

(a) NASA shall take aggressive action, on a timely basis with effective follow-up, to collect all claims of the United States for money or property arising out of NASA activities, and to cooperate with the other Federal agencies in debt collection activities.

(b) All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation, including the Claims Collection Litigation Report under § 1261.417(e), should be retained in the appropriate claims file.

§ 1261.407 Demand for payment; limitation periods.

(a) Appropriate written demands shall be made promptly upon a debtor of the

United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, NASA will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within 1 year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of:

(1) the basis for the indebtedness and whatever rights the debtor may have to seek review within the agency;

(2) the applicable standards for assessing interest, penalties, and administrative costs (§ 1261.412); and

(3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand delivered. The responsible official should exercise care to insure that demand letters are mailed or hand delivered on the *same day* that they are actually dated. Apart from these requirements, there is no prescribed format for demand letters. However, as appropriate to the circumstances, the responsible official may consider including, either in the initial demand letter or in subsequent letters, such items as the NASA's willingness to discuss alternative methods of payment, or intentions with respect to referral of the debt to the Department of Justice for litigation.

(c) NASA should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If either prior to the initiation of, any time during, or after completion of the demand cycle, a determination to pursue offset is made, then the procedures specified in Subparts 1261.5 and 1261.6, as applicable, should be followed. The availability of funds for offset and NASA's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of § 1261.502 or § 1261.603(a), as applicable.

(e) NASA should undertake personal interviews with its debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors; and may attempt to effect compromise of the claim in accordance with § 1261.414.

(f) When a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with Subpart 1261.6, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469, which provides that:

> An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law. (4 CFR 102.81).

§ 1261.408 Use of consumer reporting agency.

(a) The term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 (a)(3)), which reads:

> (A) A consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f); or
>
> (B) A person that, for money or on a cooperative basis, regularly—
>
> (i) Gets information on consumers to give the information to a consumer reporting agency; or
>
> (ii) Serves as a marketing agent under an arrangment allowing a third party to get the information from a consumer reporting agency.

(b) NASA Headquarters, Financial Management Division, shall be the focal contact between NASA and consumer reporting agencies. The following procedures shall apply when such agencies are employed by NASA:

(1) After the appropriate notice pursuant to 5 U.S.C. 552a(e)(4) has been published, NASA may disclose, in accordance with 5 U.S.C. 552a(b)(12), information about a debtor to a consumer reporting agency. Such information may include:

(i) That a claim has been determined to be valid and is overdue (including violation by debtor of a repayment plan or other claim settlement agreement);

(ii) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual responsible for the claim;

(iii) Amount, status, and history of the claim;

(iv) Program or pertinent activity under which the claim arose.

(2) Before disclosing the information specified in paragraph (b)(1) of this section, NASA shall comply with 31 U.S.C. 3711(f) by:

(i) Taking reasonable action to locate the individual if a current address is not available;

(ii) If a current address is available, noticing the individual by certified mail, return receipt requested, that: the designated NASA official has reviewed the claim and determined that it is valid and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

(3) If an administrative review or reconsideration is requested, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for an impartial review and determination by counsel or designee based on the entire written record. If the reviewer cannot resolve the question of indebtedness based upon the available documentary evidence, verified written statements by the debtor or the responsible official may be requested on any pertinent matter not addressed by the available record.

(c) If the information is to be submitted to a consumer reporting agency, the responsible official shall obtain a verified statement from such agency which gives satisfactory assurances that the particular agency is complying with all laws of the United States related to providing consumer credit information; and thereafter insure that the consumer reporting agency is promptly informed of any substantial change in the condition or amount of the claim, or on request of such agency, promptly verify or correct information about the claim.

§ 1261.408 Contracting for collection services.

(a) When NASA determines that there is a need to contract for collection services, the following conditions must attach:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation must be retained by NASA;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices—for example, the Fair Debt Collection Practices Act (15 U.S.C. 1692), and 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to collection actions and related reports, current address of debtor, and reasonably current credit information upon returning an account to NASA for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) NASA may fund a collection service contract on a fixed-fee basis—that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. However, such contract may be entered into only if and to the extent provided in the appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute. Accordingly, payment of the fixed-fee must be charged to available agency appropriations. See 4 CFR 102.6(b) (1) and (3).

(2) NASA may also fund a collection service contract on a contingent-fee basis—that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice. See 4 CFR 102.6(b)(2).

(3) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, NASA must deposit all amounts recovered under collection service contracts (or by NASA employees on behalf of the Agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302. See 4 CFR 102.6(b)(4).

§ 1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.

(a) In seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance, NASA will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In the case of a contractor under 48 CFR Chapter 18, NASA will comply with the debarment, suspension, and ineligibility requirements of the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) at 48 CFR 1809.4, published on March 29, 1984, at 49 FR 12404–12405. Likewise, in making, guaranteeing, insuring, acquiring, or participating in loans, NASA will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower, or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 must be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

(b) If NASA is holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, it should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. NASA will provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by applicable contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

§ 1261.411 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the claim is unsecured, an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.412 Interest, penalties, and administrative costs.

(a) Pursuant to 31 U.S.C. 3717, NASA shall assess interest, penalties, and administrative costs on debts owed to the United States. Before assessing these charges, NASA must mail or hand deliver a written notice to the debtor explajning the requirements concerning the charges (see § 1261.407(b)).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an "advance billing" procedure is used—that is, a bill is mailed before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Designated officials should exercise care to insure that the notices required by this section are dated and mailed or hand delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. NASA may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, NASA may set a new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) NASA shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 1261.401(b). Calculations of administrative costs should be based upon acutal costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) NASA shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 1261.401(b) for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) NASA must waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. NASA may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, NASA may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs (assessed under this section) under the criteria specified in § 1261.414 relating to the compromise of claims (without regard to the amount of the debt), or if NASA determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. See 4 CFR 102.13(g). Such optional waivers should be handled on a case-by-case basis, in consultation with officials designated under § 1261.403. Examples of situations in which NASA may consider waiving interest and other related charges are:

(1) Pending consideration of a request for reconsideration or administrative review;

(2) Acceptance of an installment plan or other compromise agreement, where there is no indication of lack of good faith on the part of the debtor in not repaying the debt, and the debtor has provided substantiating information of inability to pay or other unavoidable hardship which reasonably prevented the debt from being repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 1261.416(c)(3).

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply to:

(i) Debts owned by any State or local government;

(ii) Debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) Debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

§1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Comptroller will:

(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likly to exceed recoveries, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish interial controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.

§ 1261.414 Compromise of claims.

(a) Designated NASA officials (see § 1261.402 and (§ 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may excercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer,

including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advise. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant to this section if NASA cannot collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability or refusal to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; and

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) A claim may be compromised if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

(e) A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

(f) *Enforcement policy.* Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1261.411, in every case in which this is possible.

(h) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD–500 or OBD–500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(i) *Joint and several liability.* When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from

other debtors jointly and severally liable on the claim.

§ 1261.415 Execution of releases.

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to § 1261.414, the official designated in § 1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

§ 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Report. See § 1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) *Suspension of Collection Activity.*—(1) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: telephone directories; city directories; postmasters; drivers' licence records; automobile title and registration records; state and local government agencies; the Internal Revenue Service (see 4 CFR 102.18); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(2) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(i) The applicable statute of limitations has been tolled or started running anew; or

(ii) Future collection can be effected by offset, notwithstanding the stutute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principle amount of the debt with interest at a later date.

(3) *Request for waiver or administrative review.* If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano v. Yamasaki*, 422 U.S. 682 (1979)), then collection action must be suspended until either: the agency has considered the request for waiver/review; or the applicable time limit for making the waiver/review request, as prescribed in a written notice has expired and the debtor, upon notice, has not made such a request. If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/review request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(4) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/ review request (in the event the agency acts favorably on it), collection action should ordinarily be suspended, withour regard to the facotrs specified for permissive waivers, unless it appears clear, based on the request is frivolous and was made primarily to delay collection. See 4 CFR 104.2.

(d) *Termination of collection activity.* Collection activity may be terminated and NASA may close its file on the claim based on the following:

(1) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been conscealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(2) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, and either:

(i) There is no security remaining to be liquidated, or

(ii) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(4) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(5) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(e) *Transfer of Claim.* When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d) (1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

§ 1261.417 Referrals Department of Justice (DJ) or General Accounting Office (GAO).

(a) *Prompt referral.* Except as provided paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with § 1261.406 and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with § 1261.414 and § 1261.416, shall be promptly referred to the Department of Justice for litigation.

(1) Claims for which the gross original amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this subpart, and in any event, well within the period for bringing a timely suit against the debtor. Ordinarily, referrals should be made within 1 year of the agency's final determination of the fact and the amount of the debt.

(3) *Minimum amount.* NASA is not to refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless:

(i) Referral is important to a significant enforcement policy; or

(ii) The debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Claims arising from audit exceptions taken by the GAO to payments made by agencies must be referred to the GAO for review and approval prior to referral to the Department of Justice for litigation, unless NASA has been granted an exception by the GAO. Referrals shall comply with instructions, including monetary limitations, contained in the GAO Policy and Procedures Manual for Guidance to Federal Agencies and paragraphs (e) and (f) of this section.

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to GAO or to the DJ, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the DJ, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

(e) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by NASA, effective March 1, 1983, shall be used with all referrals of administratively uncollectible claims. As required by the CCLR, the following information must be included:

(1) *Report of prior collection actions.* The report must contain a checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the administrative collection actions have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions enumerated in this subpart (see 4 CFR Part 102).

(2) *Current address of debtors.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made must be stated if known. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the commencement of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* The report must also include reasonable current credit data which indicate that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of:

(i) A commercial credit report;

(ii) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(iii) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(iv) An audited balance sheet of a corporate debtor.

(4) Reasons for credit data omissions. The credit data may be omitted if:

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

Supart 1261.5—Administrative Offset of Claims

§ 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include "Salary Offset," which is governed by Subpart 1261.6, infra. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

§ 1261.501 Definition

"Administrative offset"—the term, as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government."

§ 1261.502 Notification procedures.

(a) Before collecting any claim through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;

(2) NASA's intention to collect by administrative offset; and

(3) An explanation of the debtor's rights under 31 U.S.C. 3716(a), or other relied upon statutory authority, which must include a statement that the debtor has the opportunity, *within* the 30-day notice period, to:

(i) Inspect and copy records of NASA with respect to the debt;

(ii) Request a review by NASA of its decision related to the claim; and

(iii) Enter into a written agreement with the designated official (see § 1261.402) to repay the amount of the claim. However, sound judgment should be exercised in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, NASA should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(b) NASA may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (a) of this section if:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(3) In cases where the procedural requirements of paragraph (a) of this section had previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance or salary offset under Subpart 1261.603, the agency is not required to duplicate those requirements before taking administrative offset.

§ 1261.503 Agency records inspection; hearing or review.

(a) NASA shall provide the debtor with a reasonable opportunity for an "oral hearing" when:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebetedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be carefully documented. See 4 CFR 102.3(c)(1). Such hearing may be an informal discuss-interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official designated by the NASA

General Counsel or designee on a case-by-case basis. The decision of the reviewing-hearing official should be communicated in writing (no particular form is required) to the affected parties, and will constitute the final administrative decision of the agency.

(b) Paragraph (a) of this section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. See 4 CFR 102.3(c)(2).

(c) In those cases where an oral hearing is not required or granted, NASA will nevertheless accord the debtor a "paper hearing"—that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 4 CFR 102.3(c)(3). In such case, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for review and determination by counsel or designee.

(d) A request to inspect and/or copy the debtor's own debt records or related files, and/or for a hearing or review accompanied by a statement of the basis or grounds for such hearing or review, must be submitted within 30 calendar days of the receipt of the written notice under § 1261.502(a). A reasonable time to inspect and copy records will be provided during official working hours, but not to exceed 5 business days, unless a verified statement showing good cause requires a longer period. Any suspension of collection or other charges during the period of the inspection, or hearing or review, shall comply with § 1261.412 and § 1261.416. Requests for or consideration of compromising the debt must comply with § 1261.414.

§ 1261.504 Interagency requests.

(a) Requests to NASA by other Federal agencies for administrative offset should be in writing and forwarded to the Office of the NASA Comptroller, NASA Headquarters, Washington, DC 20546.

(b) Requests by NASA to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations; however, if such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from NASA should be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(d) Requests from or to NASA must be accompanied by a certification that the debtor owes the debt (including the amount) and that the provisions of (or comparable to) Subpart 1261.5 or Subpart 1261.6, as applicable, have been fully complied with. NASA will cooperate with other agencies in effecting collection.

§ 1261.505 Multiple debts.

When collecting multiple debts by administrative offset, NASA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstnaces of the particular case, paying special attention to applicable statutes of limitations.

§ 1261.506 Limitation periods.

NASA may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsiblity to discover and collect such debts. Determination of when the debt first accrued is to be made in accordance with existing law regarding the accrual of debts, such as under 28 U.S.C. 2415. See 4 CFR 102.3(b)(3).

§ 1261.507 Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, NASA may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management (OPM) in accordance with the OPM regulations (see 5 CFR 831.1801–831.1807).

(b) When making a request for administrative offset under paragraph (a) of this section, NASA shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) NASA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) NASA has complied with the requirements of this Subpart 1261.5 which implements 4 CFR 102.3, including any required hearing or review.

(c) Once NASA has decided to request administrative offset under this section, the request should be made as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If NASA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the designated official should act promptly to modify or terminate the Agency's request to OPM for offset.

(e) OPM is not required or authorized by 4 CFR 102.4 to review the merits of NASA's determination with respect to:

(1) The amount and validity of the debt;

(2) Waiver under an applicable statute; or

(3) Provide or not provide an oral hearing.

§ 1261.508 Offset against a judgment.

Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

Subpart 1261.6—Collection by Offset From Indebted Government Employees

§ 1261.600 Purpose of subpart.

This subpart implements 5 U.S.C. 5514 in accordance with the OPM regulation and establishes the procedural requirements for recovering pre-

judgment debts from the current pay account of an employee through what is commonly called salary offset, including a situation where NASA (the current paying agency) is not the employee's creditor agency. Salary offset to satisfy a judgment or a court determined debt is governed by section 124 of Pub. L. 97–276 (October 2, 1982), 5 U.S.C. 5514 note.

§ 1261.601 Scope of subpart.

(a) *Coverage.* This subpart applies to agencies and employees as defined in § 1261.602.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain prejudgment debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this Subpart should be consistent with Subpart 1261.5.

(1) *Excluded debts or claims.* The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705, employee training expenses in 5 U.S.C. 4108, and debts determined by a court as provided in 5 U.S.C. 5514 note).

(2) *Waiver requests and claims to the General Accounting Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 1261.602 Definitions.

For purposes of this subpart:

(a) "Agency" means an Executive Agency as defined by section 105 of Title 5 of the United States Code, the U.S. Postal Service, the U.S. Postal Rate Commission, and a Military Department as defined by section 102 of Title 5 of the United States Code.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. NASA must exclude deductions listed in OPM's garnishment regulations at 5 CFR 581.105(b) through (f) to determine disposable pay subject to salary offset.

(e) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(g) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(h) "Waiver" means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 1261.603 Procedures for salary offset.

If NASA is both the paying and creditor agency, the following requirements must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice.* The employee must be sent a minimum of 30 days written notice, which specifies:

(1) The origin, nature and amount of the indebtedness, and the official to contact within the agency (ordinarily, the designated financial management official for the particular installation);

(2) The intention of the agency to initiate collection of the debt through salary offset by deductions from the employee's current disposable pay, stating the amount, frequency, proposed beginning date, and duration of intended deductions (the amount to be deducted for any period, without the consent of the employee, may not exceed 15 percent of disposable pay);

(3) An explanation of any interest, penalties, or administrative costs included in the amount, and that such assessment must be made unless excused in accordance with § 1261.412;

(4) The right for an opportunity (which does not toll the running of the 30-day-day period) to inspect and copy NASA records relating to the debt or to request and receive (if reasonable) a copy of such records, provided that such opportunity must be exercised on or before the 15th day following receipt of the notice and can be conducted only during official working hours for a reasonable period of time not to exceed 5 working days;

(5) If not previously provided, the opportunity (under terms agreeable to NASA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the authorized agency official (see § 1261.402) and documented in NASA's files (see § 1261.407(d));

(6) An opportunity for a hearing, as provided in paragraph (c) of this section, on the agency's determination concerning the existence and amount of the debt, and the terms of the repayment schedule (in the case of an employee whose repayment schedule is established other than by written agreement);

(7) The hearing request should be addressed to the Office of the NASA General Counsel or to the Office of Chief Counsel of the NASA installation involved, as appropriate; counsel's name and address will be as stated in the notice.

(8) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(9) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) *Exception to entitlement to written notice.* NASA is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(c) *Petition filing; hearing; decision and review* The notice described in paragraph (a) of this section should include the following provisions, which may be copied and attached to the notice.

(1) The employee may petition for a hearing, but such petition *must be in writing and received* by NASA on or before the 15th day following receipt of the notice, and include a statement of the reasons for such hearing. No particular form is required, and a timely, legible letter request (with the stated reasons) will suffice; however, the employee must sign the petition and include with it, with reasonable specificity, all the supporting facts and evidence, including a list of the witnesses, if any.

(2) The petition should be addressed to the agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator or by appointment of an administrative law judge. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition. A hearing official will be designated on a case-by-case basis under reimbursable arrangements or through direct payment as events may warrant.

(3) The timely filing of the petition will stay the commencement of collection; and the final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(4) Any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) penalties under the False Claims Act, Sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(5) The form and content of the hearing will be determined by the hearing official depending on the nature and complexity of the transaction giving rise to the debt. The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice. The hearing official must maintain a summary record of the hearing provided under this subpart. (For additional guidance, see § 1261.503.)

(6) The decision will be in writing and state:

(i) the facts purported to evidence the nature and origin of the alleged debt;

(ii) the respective positions of the agency and of the employee;

(iii) the hearing official's analysis (which address the employee's/agency's grounds, the amount and validity of the alleged debt, and (where applicable) the repayment schedule; and

(iv) the hearing official's findings and conclusions.

(7) The hearing official will notify the employee, the NASA Comptroller or designee, and the designated agency counsel of the decision.

(8) The decision of the hearing official shall constitute the Final Administrative Decision of the agency.

(d) *Petition after the time expiration.* No petition for a hearing is to be granted if made after the 15-day period prescribed in paragraph (c)(1) of this section, unless the employee can show to the satisfaction of the agency official indicated on the notice that the delay was caused by circumstances beyond his or her control (for example, proven incapacity, illness, or hospitalization), or that the agency did not give notice of the time limit and the employee was otherwise unaware of such limit.

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts must be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see § 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

(f) *Determining ability to pay.* An offset may produce an extreme financial hardship for an employee if it prevents the employee from meeting costs necessarily incurred for essential subsistence expenses for food, reasonable housing, clothing, transportation, and medical care. In determining whether an offset would prevent the employee from meeting the essential subsistence expenses, the employee may be required to show income from all sources (including spouse and dependents, if applicable), list all known assets, explain exceptional expenses, and produce any other relevant factors.

(g) *Liquidation from final check; other recovery.* If the employee retires or resigns from Federal service, or if his or her employment or period of active duty ends before collection of the debt is completed, the balance may be deducted from the final salary payment and any remaining balance from the lump-sum leave, if applicable. If the debt is not fully paid by offset from any final payment due the former employee as of the date of separation, offset may be made from later payments of any kind due the former employee from the United States (as provided in Subpart 1261.5, including offset from the Civil Service Retirement and Disability Fund under § 1261.507).

(h) *Interest, penalties, and administrative costs.* Assessment of interest, penalties, and administrative costs, on debts being collected under this subpart, shall be in accordance with § 1261.412 which implements 4 CFR 102.13.

§ 1261.604 Non-waiver of rights by involuntary setoff.

The employee's involuntary payment of all or any portion of the debt, being collected under this subpart, must not be construed as a waiver of any rights which the employee may have under an existing written contract applicable to the specific debt or under any other pertinent statutory authority for the collection of claims of the United States or the agency.

§ 1261.605 Refunds.

(a) NASA will promptly refund to the employee amounts paid or deducted under this subpart when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds are not to bear any interest unless the law applicable to that particular debt specifically requires or permits a stated interest amount on refunds.

§ 1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).

(a) *Format of the request.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must:

(1) Complete and certify the appropriate debt claim form specified by OPM;

(2) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM;

(3) If the collection must be made in installments, the creditor agency must also advise NASA of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the action(s) taken under 5 U.S.C. 5514(a)(2) and give the date(s) the action(s) was/were taken.

(b) *Limitation period.* The creditor agency may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, except as provided in § 1261.506, which implements 4 CFR 102.3(b)(3).

(c) *Employees who are separating or have separated.*—(1) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(1) of the OPM regulations [§ 1261.603(f) of this subpart] for "liquidation from final check." NASA must then certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph c(3) of this section. If NASA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Funds, or other similar payments, it should notify the creditor agency and forward the copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency, not NASA, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(2) *Employees who have already separated.* If the employee is already separated and all payments due from NASA have been paid, NASA must return the claim to the creditor agency for any further collection, indicating the employee's date of separation and the current employment and mailing address(es), if known.

(3) *Employee who transfers from NASA to another Federal agency.*—(i) *Certification of amount collected.* If, after the creditor agency has submitted the debt claim to NASA, the employee transfers to another Federal agency before the debt is collected in full, NASA must then certify the total amount of the collection made on the debt. A copy of the certification should be furnished the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer.

(ii) *Official personnel folder insertion; new paying agency.* The original of the debt claim form must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 and this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving NASA's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt.*—(1) *Incomplete claim.* If NASA receives an improperly completed debt claim form, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly completed debt claim form received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If NASA receives a properly completed debt claim form, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim form must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim form.

(3) NASA is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim form.

James M. Beggs,

Administrator.

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16 CFR Part 13

[File No. 792-3233]

The Korman Corp.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Trevose, Pa. homebuilder, developer and real estate manager, among other things, to cease representing that it will correct any problems due to faulty materials, workmanship or design, unless the firm corrects the problem within a reasonable time after being informed of the defect by the homeowner. The firm would also be barred from failing to perform its warranty obligations within a reasonable period of time and remedy non-warranted problems that the company has represented that it will correct. Should a written warranty be offered in connection with the sale of a home, a notice would have to be conspicuoulsy displayed in sales offices advising that a free copy of the warranty is available upon request. All limitations on, disclaimers of, or exclusions from coverage under the written warranty would have to be clearly and conspicuously disclosed within both the warranty and each sales contract used by the firm. If homes are covered by a written warranty, the firm would have to use a prescribed dispute settlement process to resolve warranty disputes, and provide a written description of that process to each home purchaser. The

Order would additionally require the company to provide repairs or reimbursements, in accordance with redresss procedures set forth in the Order, to eligible homeowners who bought their homes since October 1, 1978 and still own those homes; and to maintain specified files for a period of three years.

DATE: Comments must be received on or before June 3, 1985.

ADDRESS: Comments should be directed to FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: James Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, Suite 14371, Chicago, IL 60603 (312) 353–4423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Trade practices.

Before the Federal Trade Commission

In the Matter of the Korman Corporation, a corporation.

[File No. 792–3233]

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Korman Corporation, and it now appearing that the Korman Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between The Korman Corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Korman Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located at 2 Neshaminy Interplex, Trevose, PA 19407.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirements that the Commission's decision contain a statement of findings of facts and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

8. With respect to the unfair or deceptive acts or practices which are alleged in the complaint and which occurred before the date of service of this order, the Commission hereby waives all claims it may have against respondent for consumer redress under Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b.

Order

For purposes of this Order and all appendices attached hereto, the following definitions shall apply:

1. "Korman" shall mean respondent The Korman Corporation and its successors and assigns.

2. "Home" shall mean a new single-family residential unit in the United States which is a detached structure or an attached or semi-attached townhouse or twin unit and which is offered for sale or is sold to the general public by Korman.

3. A "specific problem" shall mean any single problem or any set of problems resulting from the same cause and involving the same component(s) or defect(s). For example, two or more leaking windows caused by improper installation shall be deemed a "specific problem."

I

It is ordered that respondent The Korman Corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the construction, advertising, offering for sale, or sale of any home in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Representing, directly or by implication, that Korman will correct or otherwise remedy any problem due to faulty materials, workmanship or design unless Korman does, in fact, correct or otherwise remedy such problem within a reasonable time after the homeowner has notified Korman of the problem; provided, however, that Korman may specify a reasonable method(s) that a homeowner must use to so notify Korman.

B. Failing to perform any warranty obligation, including correction of any problem inadequately repaired by Korman, within a reasonable time after the homeowner has made a request for warranty work; provided, however, that Korman may specify in its warranty a reasonable method(s) that a homeowner must use to make such a request, and provided further that nothing herein shall preclude Korman from denying or contesting in good faith a warranty claim reasonably believed to be without merit, or in such cases from invoking any rights provided by law.

C. Failing, when Korman represents, directly or by implication, that it will correct or otherwise remedy any problem not covered by a warranty, to correct or otherwise remedy such problem within a reasonable time after the homeowner has notified Korman of the problem; provided, however, that Korman may specify a reasonable method(s) that a homeowner must use to so notify Korman.

II

It is further ordered, that, in connection, with any offering for sale of a home for which Korman provides a written warranty, Korman shall:

A. Clearly and conspicuously display in each sales office a notice that a copy of the warranty may be obtained free of charge upon request.

B. Provide a copy of the warranty to each prospective purchaser upon request.

C. Provide a copy of the warranty to each purchaser before or at the time of execution of the sales contract for the home.

D. Disclose clearly and conspicuously within the warranty and within each sales contract used by Korman any limitations on, disclaimers of, or exclusions from coverage under the written warranty or under any warranty under state law; provided, however, that Korman shall not make any representation, written or oral, concerning any such limitation, disclaimer or exclusion where such limitation, disclaimer or exclusion is prohibited by state or federal law.

III

It is further ordered that, in connection with any sale after the date of service of this Order of a home for which Korman provides a written warranty, Korman shall use a dispute settlement process conforming to Appendix A of this Order to handle disputes concerning Korman's performance under the warranty and shall provide each purchaser with a written description of such dispute settlement process before or at the time of execution of the sales contract for the home; provided, however, that nothing herein shall prohibit Korman from using a form of sales contract which clearly and conspicuously provides that the homeowner agrees to resort to such dispute settlement process before pursuing any other remedy provided by law.

VI

It is further ordered that if after the date of service of this Order Korman denies a request for warranty work Korman shall, within forty-five (45) days after receipt of the request, provide the homeowner with a detailed written statement of reasons for the denial, together with notice of the homeowner's right to submit any warranty dispute to a dispute settlement process conforming to Appendix A of this Order and with notice that at the homeowner's request Korman will send the homeowner a written description of such process and the form(s) needed to initiate such process; provided, that Korman shall not be deemed to have denied a request for warranty work if it informs a homeowner who has made an oral complaint that a complaint must be made in writing.

V

It is further ordered that, for each homeowner who purchased a home from Korman from October 1, 1978, to the date of service of this Order and who is still an owner of that home as of the date of service of this Order, Korman shall establish and abide by redress procedures conforming to Appendix B of this Order for any claim relating to the pre- or post-settlement inspection of such homeowner's home or made by such homeowner under Korman's written warranty, provided that:

A. In the case of a claim relating to a pre- or post-settlement inspection, the problem had been listed on the Pre-/Post-Settlement Inspection Report or other inspection report at the time of the pre- or post-settlement inspection; or in the case of a warranty claim, the homeowner made the claim to Korman within the time period required by the warranty and there is credible written evidence in Korman's or the homeowner's possession to establish that the claim was then made; provided, however, that a record of a telephone message in Korman's possession shall not by itself establish that the claim was then made;

B. The claim has not been satisfied, and the value of the unsatisfied claim relating to a specific problem is established by credible written evidence to be $500 or more, measured:

1. For repairs already made, by the home-owner's out-of-pocket expenses to make the repairs or have them made; and

2. For repairs not yet made, by the estimated cost of repair by a contractor; and

C. In the case where the homeowner has modified the home in a manner that substantially increases the cost of repairing or otherwise correcting a problem, Korman shall not be required to bear the increase in cost of repair or correction resulting from the modification.

VI

It is further ordered that Korman shall maintain the following records and shall make such records available to the Commission for inspection and copying upon reasonable notice:

A. For three years after the date of service of this Order, all documents related to requests for redress under Part V of this Order, including action taken in response thereto; and

B. For three years after the sale of any home, all documents relating to any such home and to:

1. Korman's issuance of a written warranty to any purchaser;

2. Any request for warranty work, including action taken in response thereto; and

3. Any dispute handled under the dispute-settlement process required by Part III of this Order.

VII

It is further ordered that Korman shall notify the Commission at least thirty (30) days before any proposed change in Korman's corporate status, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

VIII

It is further ordered that Korman shall, within thirty (30) days of the date of service of this Order, distribute a copy of this Order to (a) each of Korman's operating subsidiaries and divisions, and (b) each officer and supervisory employee of Korman and of said subsidiaries and divisions who is engaged in the construction, advertising, offering for sale, or sale of any home or in customer service related to any home sold by Korman.

IX

It is further ordered that within ninety (90) days after the date of service of this Order, and again within ninety (90) days after the completion of Korman's obligations under Part V of this Order or within two years after the date of service of this Order, whichever comes first, Korman shall file with the Commission a report, in writing, setting forth in detail the manner in which it has complied with this Order.

X

It is further ordered that all provisions of this Order except Part I shall expire ten (10) years after the date of service of this Order.

Appendix A.—Dispute Settlement Process

The dispute settlement process required by this Order shall include the following:

1. The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.

2. The process shall be available to homeowners for a filing fee of up to $75 during the three years after the date of service of this Order, a fee of up to $100 during the fourth through sixth years after the date of service of this Order, and a fee of up to $125 thereafter. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if each dispute filed under the fee is settled before a hearing is held under Paragraph 6 below.

3. After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.

4. The process shall use an independent Dispute Settler who is knowledgeable about home construction.

5. The Dispute Settler shall:

(a) Be bound by the provisions of Korman's written warranty and any express or implied warranties arising from state law; and

(b) Use a consistent set of standards, such as the Home Owners Warranty Program Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions.

6. Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed or, if Korman is a participant in an informal dispute settlement procedure for which the Commission has granted an exception to the 40-day requirement in 16 CFR 703.5(d), within the time period established by such exemption, whichever is longer. The decision shall determine:

(a) What corrective action, if any, Korman shall take in response to the homeowner's warranty claim(s); and

(b) The time allowed after Korman receives the homeowners's acceptance of a decision for Korman to perform such corrective action or otherwise settle the dispute.

A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision. If the homeowner is required by the sales contract to resort to this dispute settlement procedure before pursuing any other remedy provided by law, he/she will be deemed to have fulfilled that requirement if a decision is not rendered within the required time period.

7. The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. If the homeowner rejects the decision, he/she shall have the right to pursue any other legal remedies available. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that if a homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

8. If the homeowner accepts the decision, Korman shall comply with the decision.

Appendix B.—Redress Procedures

The redress procedures required by this Order shall include the following:

1. Within sixty (60) days after the date of service of this Order, Korman shall send by postage-paid first-class mail addressed to the original owner(s) of any home sold by Korman from October 1, 1978, to the date of service of this Order a letter identical in content to that in Appendix C together with a copy of the written warranty for such home and claim forms identical in content to those in Appendix D; provided, however, that Korman is not required to make such a mailing to any home which Korman knows is no longer owned, in whole or in part, by any person who purchased the home from Korman.

2. Within sixty (60) days after the date of the mailing required by Paragraph 1, the homeowner shall mail or deliver a claim to Korman or forfeit any right to repairs or reimbursement under this Order.

3. Within sixty (60) days after receipt of any claim for redress, Korman shall provide the homeowner with a written description of the dispute settlement process required by Paragraph 5 of this Appendix and with the form(s) needed to initiate such process and shall respond in writing to the homeowner by either:

(a) Offering to settle the claim within a stated time by performing specified remedial measures and/or paying an amount of money, and at the same time informing the homeowner of his/her right to accept or reject the offer, along with notice that:

(i) If the homeowner accepts the offer, he/she has the right to submit any dispute over Korman's performance under the offer to the dispute settlement process; and

(ii) If the homeowner rejects the offer, he/she has the right to submit the disputed claim to the dispute settlement process; or

(b) Denying the claim and at the same time giving the homeowner a detailed written statement of reasons for the denial, along with notice that the homeowner has the right to submit the denied claim to the dispute settlement process.

4. If the homeowner accepts the offered remedy, Korman shall perform the remedy within the time promised.

5. The dispute settlement process shall include the following:

(a) The process shall be organized and staffed to ensure the fair and timely disposition of all disputes.

(b) The process shall be available to homeowners for a filing fee of up to $75. One filing fee shall cover multiple disputes that are filed simultaneously. The filing fee shall be refunded if a decision rendered under subparagraph (f) below includes an award of reimbursement of the filing fee.

(c) After a homeowner files a dispute, written acknowledgement of the filing shall be sent to the homeowner.

(d) The process shall use an independent Dispute Settler who is

knowledgeable about home construction.

(e) To decide warranty claims and to decide claims relating to a per- or post-settlement inspection, the Dispute Settler shall:

(i) Be bound by the provisions of Korman's written warranty, the relevant pre- or post-settlement inspection report, and any express or implied warranties arising from state law and

(ii) Use a consistent set of standards, such as the Home Owners Warranty Program Quality Standards, relevant provisions of the building code in the jurisdiction in which the home is located, and other relevant information to interpret the warranty provisions and the pre- or post-settlement inspection report.

(f) Unless otherwise agreed to by the homeowner and Korman, the Dispute Settler shall hold a hearing and render a decision in writing within sixty (60) days after the dispute is filed. The decision shall:

(i) Include reimbursement of the filing fee unless the arbitrator determines that each of the homeowner's claims was not substantially justified;

(ii) Determine what corrective action, if any, Korman shall take in response to the homeowner's warranty claims(s) or claims(s) relating to a pre- or post-settlement inspection; and

(iii) Determine the time allowed after Korman receives the homeowner's acceptance of a decision of Korman to perform such corrective action or otherwise settle the dispute. A copy of the decision shall be mailed to the homeowner within one week after the Dispute Settler renders the decision.

(g) The Dispute Settler's decision shall be binding on both Korman and the homeowner if the homeowner accepts the decision. At the time the homeowner receives a copy of the decision, he/she shall be provided with a form enabling him/her to accept the decision, along with notice that:

(i) If the homeowner accepts the decision, both he/she and Korman shall be bound by the decision, and the homeowner shall have the right to submit any dispute over the actual performance of the decision to the dispute settlement process at no cost to the homeowner; provided, however, that the homeowner's submission of such dispute must be made within sixty (60) days after Korman's performance of the decision;

(ii) If the homeowner does not accept the decision, neither he/she nor Korman shall be bound by the decision, and the homeowner shall have the right to pursue any other legal remedies available; and

(iii) if the homeowner does not accept the decision by signing and returning it to Korman within forty-five (45) days of receiving a copy of the decision and the aforesaid form, the homeowner shall be deemed to have rejected the decision, and Korman shall be under no obligation to comply with the decision.

(h) If the homeowner accepts the decision, Korman shall comply with the decision.

Appendix C.—Redress Letter

Dear Korman Homeowner: This letter is to notify you that you may be entited to have certain repairs made to your home at no cost to you. You may also qualify for reimbursement of money you have already spent repairing your home. Korman is doing this because of an agreement with the Federal Trade Commission and our desire to make you, the Korman homeowner, a comfortable and satisfied homeowner.

If you purchased your home from us on or after October 1, 1978, and if you were still the owner on (date of service of the Order), You may be entitled to certain repairs or reimbursement for claims you made under Korman's written warranty or for items listed during the pre- or post-settlement inspection of your home. A copy of the warranty is enclosed.

For a warranty claim to be eligible for repairs or reimbursement, it must be a claim covered by the warranty and there must be credible written evidence that you made the claim within the time period required by the warranty. A claim related to a pre- or post-settlement inspection must be for a problem that was listed on your inspection report.

A claim is eligible for repair or reimbursement only if the claim relates to a specific problem and the value of the claim is $500 or more. A "specific problem" is any single problem or a set of problems resulting form the same cause and involving the same component(s) of defect(s). For example, two or more leaking windows caused by improper installation would be a "specific problem." To determine whether a claim meets the $500 requirement, you can measure the value of the claim like this:

For repairs which have already been done, the value of a claim is measured by your out-of-pocket expenses to make the repairs or have them made. You must have written evidence (cancelled checks, receipts, etc.) or your out-of-pocket expenses and must submit this evidence with your claim.

For repairs which have not yet been done, the value of a claim is measured by the estimated cost of repair by a contractor. The contractor's estimate must be in writing and must be detailed enough to show how the estimate was calculated. You must submit the estimate with your claim.

Please note that if you have modified the part of your home affected by a problem, and if you made the modification in a manner that substantially increases the cost of repairing the problem, we will not bear the increase in repair cost resulting from the modification. For example, if you finished your basement and thus covered up a problem, we are not responsible for the cost of refinishing your basement after our repair work.

The eligibility requirements for warranty claims and for claims related to your pre- or post-settlement inspection are summarized below.

Warranty Claims

You are eligible for repairs or reimbursement under the warranty if all of the following are true:

1. You experienced a problem that was covered by the warranty. See the enclosed warranty for a description of covered problems.

2. You or Korman has credible written evidence that you made a claim concerning the problem within the time period required by the warranty. If you do not have a copy of a letter or some other record showing that you made a claim, we will check our customer files for any record of your complaint about the problem. If our files contain, for example, a letter from you or a Korman work order authorizing repair of the problem, this would show that you made a warranty claim. But a phone message in our files will not by itself establish that you made a claim.

3. The value of a claim related to a specific problem is $500 or more.

4. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

Claims Related to the Pre- or Post-Settlement Inspection

You are eligible for repairs or reimbursement for this type of claim if all of the following are true:

1. The problem was listed on your "Pre-/Post-Inspection Report" or other inspection report. If you do not have a copy of your inspection report, we will check our files for it.

2. The value of a claim related to a specific problem is $500 or more.

3. Korman did not repair the problem or inadequately repaired the problem. Repair is considered to be inadequate if it failed to meet industry standards.

What You Must Do

If you think are eligible for repairs or reimbursement, please fill out the enclosed "Claim Form" and mail it in the enclosed pre-addressed envelope to:

(Name)
The Korman Corporation
2 Neshaminy Interplex
Trevose, PA 19407

You must mail or deliver this claim form to us by (60 days from the mailing date of this letter). If you miss this deadline, you will not be eligible for repairs or reimbursement. Remember to keep a copy of your claim and a record of the date you mail it, just in case your claim gets lost in the mail.

Korman will review your claim(s) in accordance with industry standards for homebuilders. Within 60 days of receiving your letter we will tell you whether we will honor your claim. If we dispute any part of your claim, we will tell you why. If you are not satisfied with what we offer you as a repair or reimbursement, you will have the right to take the dispute to an impartial arbitrator. We will explain the details of the arbitration program when we reply to your claim.

If you have any questions about this repair and reimbursement program, call (name of Korman representative) at (phone number) between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

Very truly yours,

The Korman Corporation

Enclosures:
Copy of your warranty
Claim forms
Self-addressed envelope

Appendix D.—Claim Form

This claim form must be mailed or delivered to us by (60 days from the mailing date of the letter of notification). If you miss this deadline, you will not be eligible for repairs or reimbursement.

Today's date———————

I. Homeowner Information

Name(s) of Homeowner(s) ———————
Telephone (Home) ———————
(Work) ———————
Mailing Address ———————
(Street)
———————
(City) (State) (Zip Code)

II. Address of Korman Home

The address of my (our) Korman home is:
———————
(Street)
———————
(City) (State) (Zip Code)
(Name of Subdivision) ———————

III. Eligibility To Submit a Claim

A. I (we) bought my (our) home:
MARK ONE
( ) From Korman
( ) From another party

Note.—To be eligible for repairs or reimbursement, you must have bought *directly* from Korman.

B. The date of settlement/closing on my (our) Korman home was:
(Enter date you took title).———————

Note.—To be eligible for repairs or reimbursement, you must have bought your home *on or after October 1, 1978.*

C. On (date of service of the Order):
MARK ONE
( ) I was (we were) the owner of this Korman home.
( ) I was (we were) no longer the owner of the Korman home.

Note.—To be eligible for repairs or reimbursement, you must have been the owner as of (date of service of the Order).

IV. Warranty Claims

Instructions

* List each problem separately, using additional sheets of paper if necessary.
* Remember that each problem must have a value of $500 or more.
* Describe in detail the nature of each problem.
* Attach a copy (*not* originals) of any written evidence you have that shows you made a claim concerning the problem within the time period required by the warranty. This can be a copy of a letter or any other record showing that you notified us about the problem. If you do not have written evidence that you made a warranty claim about a problem, we will check our customer files to see if we have any record showing that you made a claim within the warranty time period. A telephone message in our files will not by itself establish that you made a timely warranty claim. *If there is no other written evidence in either our possession or yours that you made a timely claim, we can deny your claim for a problem.*
* If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
* If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the warranty

I (we) request The Korman Corporation to make repairs or reimbursement under the warranty for the following problem(s):

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

V. Claims Related to the Pre-Settlement or Post-Settlement Inspection

Instructions

* List each problem separately, using additional sheets of paper if necessary.
* Remember that each problem must have a value of $500 or more.
* Describe in detail the nature of each problem.
* Attach a copy (*not* originals) of your "Pre-/Post-Settlement Inspection Report" or other inspection report. If you do not have your inspection report, we will look for it in our files. If a problem was not listed on the inspection report, it is *not* eligible for repair or reimbursement.
* If you are requesting repair of a problem, describe the repair below and attach a copy (*not* the original) of a contractor's estimate of the cost of repair. The contractor's estimate must be detailed enough to show how the estimate was calculated.
* If you are requesting reimbursement of money you spent for repairs, describe the repairs and your expenses below and attach a copy (*not* originals) of cancelled checks or receipts showing that you paid for repairs. Also attach a copy (*not* originals) of any other document(s) showing what repairs were made and what you paid for them.

Claim(s) for repairs or reimbursement under the pre- or post-settlement inspection

I (we) request The Korman Corporation to make repairs or reimbursement for the following problem(s) related to the pre- or post-settlement inspection:

[Describe the repairs which you request and/or the repairs and expenses for which you request reimbursement]

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Korman Corporation ("Korman"), a homebuilder, developer, and real estate manager in the Philadelpia metropolitan area.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint accompanying the proposed consent order alleges that Korman has engaged in unfair and deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act by frequently failing to make repairs promised under its written warranty and during home inspections. The complaint also alleges that when Korman has made promised repairs, it has done so only after delays often exceeding five months.

If the proposed consent order becomes final, it will prohibit Korman from:

(1) Representing that it will correct problems due to faulty materials, workmanship, or design unless Korman does in fact correct these problems within a reasonable time;

(2) Failing to perform warranty obligations within a reasonable time; and

(3) Failing to correct within a reasonable time problems not coverd by a warranty when Korman has represented that it will correct these problems.

For ten years the proposed order will also require Korman, if it sells homes covered by a written warranty, to give homeowners the opportunity to arbitrate warranty disputes.

Homeowners who bought their homes from Korman since October 1, 1978 and who still own their homes will be eligible for free repairs or cash reimbursement under the proposed order. Repairs or reimbursement will be made if the homeowners have unrepaired problems covered by the warranty which cost $500 or more to repair, and there is written evidence that the problems were reported to Korman during the warranty period. Repairs or reimbursement will also be made for unrepaired problems listed on an inspection report during the pre- or post-settlement inspection and which cost $500 or more to repair. If a homeowner has a dispute over a claim for repairs or reimbursement, the homeowner will have the right to arbitrate the dispute for a fee of $75, which will be refunded to the homeowner unless the arbitrator determines that the claim was not substantially justified.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-7886 Filed 4-2-85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 460

Regulatory Flexibility Act Review of Trade Regulation Rule Concerning Labeling and Advertising of Home Insulation.

AGENCY: Federal Trade Commission.

ACTION: Summary of comments.

SUMMARY: On May 25, 1984, the Federal Trade Commission ("FTC") published a notice in the **Federal Register** [1] regarding the Trade Regulation Rule Concerning Labeling and Advertising of Home Insulation (the "Rule" or "R-value Rule"), 16 CFR Part 460. The Notice, published in accordance with the requirements of the Regulatory Flexibility Act, 5 U.S.C. 610 (1982), solicited comments and data on whether the R-value Rule has had a significant economic impact on small entities, and if so, whether the Rule should be amended to minimize any such significant economic impact on small entities.[2] The Notice requested that all comments and data be submitted to the Commission no later than June 25, 1984.[3] This Notice summarizes the comments received.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, (202) 376-8934, or Lee J. Plave, (202) 376-2805, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the FTC conduct a periodic review of rules which have or will have a significant economic impact upon a substantial number of small entities.

The R-value Rule concerns home insulation labels, fact sheets, advertisements, and other promotional materials in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* Any violation of the Rule constitutes an unfair and deceptive act or practice under section 5 of that Act, and is subject to civil penalties of up to $10,000 per violation.

The Rule requires that members of the home insulation industry follow certain requirements in the manufacture, distribution, promotion, installation and sale of home insulation products. Manufacturers must test their products to determine R-value (a measure of heat resistance) in accordance with specified scientific standards. The R-value for each product must be listed on the package label. The label must also contain information regarding the type of insulation, the dimensions or other coverage area information, and disclosures defining the term "R-value" and concerning installation instructions. Manufacturers also must provide to retailers and installers fact sheets for their products which must include specified disclosures and product information. Retailers and installers must make these fact sheets available to consumers who ultimately buy home insulation. Installers and sellers of new homes must provide consumers with a contract or receipt specifying certain information pertinent to the insulation installed in the home. In addition, all advertising for home insulation (except television advertising, *see* 45 FR 54702 (1980)) which makes certain claims must include designated product information and certain specific disclosures. The Rule was promulgated on August 27, 1979, 44 FR 50242 (1979), became effective on September 29, 1980, 45 FR 54702 (1980), and remains in full force and effect, except for disclosure requirements for television advertising.

The FTC, in accordance with the RFA, solicited comments and data (49 FR 22104) on whether the R-value Rule has had a significant economic impact on a substantial number of small entities and if they have, whether the Rule should be amended to minimize any significant economic impact on small entities.

Questions were posed on: (1) The economic impact of the Rule on small entities, (2) the continued need for the Rule, (3) the burdens, if any, that compliance with the Rule places on

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[1] 49 FR 22104 (May 25, 1984) (the "Notice").

[2] The definition of the term "small entity" is set out in the Notice. *Id.*

[3] The comments have been placed in the public record for this proceeding under Category Z (Regulatory Flexibility Act Review—Public Comments) in FTC File No. 215-59. The comments have been labeled Documents Z-1 through Z-28.

small entities and whether any such burdens are the same as those experienced under standard business practices, (4) the changes that might be made to the Rule which would minimize its effect on small entities, (5) the extent to which the Rule overlaps, duplicates or conflicts with other regulations, and (6) any changed conditions that may have occurred which affect the Rule.

Twenty-eight parties submitted comments. Seventeen comments contained information relevant to the questions asked. The other comments were not directly responsive, but rather discussed other specific concerns of the commenters.[4]

Based upon the comments received the Commission has no basis to conclude that the R-value Rule has had a significant economic impact upon a substantial number of small entities. Accordingly, the Commission has concluded that the R-value Rule should not be amended.

A. Question (1)

Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

Almost all of the comments which addressed this question were very general, stating that the Rule was still needed and that it did not have an adverse substantial economic impact upon small entities.[5] Several commenters specifically noted that because strong enforcement of the Rules tends to protect the integrity of the product, they have benefitted from the Rule. Other comments mentioned a positive impact from the Rule and encouraged the Commission to vigorously enforce the R-value Rule. For example, one commenter stated that "[w]e have experienced a substantial increase in interest in our product in Florida following the enforcement procedures by state agencies. We would expect a similar experience in other states if the FTC actively enforces [the R-value Rule]." [6]

Two parties [7] suggested that the Rule has had a negative impact upon their businesses due to an alleged lack of enforcement activity. These two parties indicate that "honest" installers and contractors who comply with the R-value Rule are placed at a competitive disadvantage compared to those who do not comply. These comments suggest that the Rule should be revoked so that all members of the industry could compete on an even footing—even though the footing may be based on representations which the Commission deemed unfair and deceptive when it issued the Rule.[8]

One commenter stated that the Rule has had an adverse impact upon cellulose insulation manufacturers.[9] The commenter claims that when the Rule took effect, there were between 600 to 800 manufacturers of cellulose insulation, but that the number has fallen to about 200 at present. The commenter states that larger mineral wool manufacturers have larger budgets for research and development than do smaller cellulose manufacturers, which has led to an alleged concentration in the insulation market. The commenter alleges that the decline and concentration in the industry shows that the R-value Rule has had a negative impact upon small entities (particularly cellulose manufacturers). However, the comment demonstrates no causal relation between the Rule and the drop in the number of manufacturers of cellulose insulation. Indeed, this decline in numbers could be attributed to any of a myriad number of factors, included among which are economic conditions and the decline in new home construction in recent years. In addition, if it is true that larger manufacturers spend more than smaller manufacturers on research and development it is clearly not a result of the Rule.

The comments received that address this question do not provide a basis to conclude that the Rule has had a significant impact on a substantial number of small entities.

B. Question (2)

Is there a continued need for the Rule and all of its requirements?

The consensus of the commenters was that there is definitely a continued need for the R-value Rule. Several of these comments suggested that there is a need for a greater emphasis on enforcement activity by the Commission.[10]

An official of the Farmers Home Administration of the U.S. Department of Agriculture noted that:

Without honest and standardized labeling, the consumer, including home builders, would have no practical way of evaluating products on the market. Standardized labeling of products greatly aids home financing agencies such as FmHA in administering

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[4] Nine comments addressed concerns over the use of foil-faced building products in the state of Florida: Wilkinson Insulation Co., Document No. Z–4; West Coast Insulation, Document No. Z–7; L.C. Cassiday & Sons Florida, Inc., Document No. Z–8; Florida Chapter of the Insulation Contractors Association of America, Document No. Z–9; U-Back Insulation Contractors Inc., Document No. Z–11; Magic Triangle Inc., Document No. Z–13; Dierco Supply Corp. of Tampa, Document No. Z–15; Gale Enterprises, Inc., Document No. Z–23; and Quality Fiberglas Industries, Inc., Document No. Z–28.

Another commenter alleged that some manufacturers sell scrap material for blowing wool which could create "a large margin of error . . . ." Carolina Insulating of Charlotte, Inc., Document No. Z–2. Finally, another interested party voiced its concern that the fiberglass, rockwool and foam insulation industries were not providing accurate R-value figures. Johnnie Walker & Associates, Document No. Z-20.

[5] State of South Carolina Office of the Governor ("South Carolina"), Document No. Z–1 at 2; National Manufactured Housing Federation ("NMFH"), Document No. Z–10 at 1; State of Georgia, Office of the Governor, Office of Consumer Affairs ("Georgia"), Document No. Z–16 at 2; Rock Wool Mfg. Co., Document No. Z–19 at 1; Celotex Corp. Document No. Z–17 at 1; Manufactured Housing Institute ("MHI"), Public Document No. Z–21 at 1.

[6] American Rockwool, Inc., Document No. Z–5. *See also* Rockwool Industries, Document No. Z–3 ("A positive economic impact would be enjoyed if the rule were enforced . . . ."); Dow Chemical U.S.A., Document No. Z–22 at 1 (The Rule "has brought *added* attention to product quality control, product labeling, literature verification, advertising disclosure statements, compliance forms, and . . . educational training." (emphasis supplied)); Insulation Contractors Assoc., Document No. Z–27 at 1 ("A positive economic impact is achieved by the current rule. It helps to eliminate high R-value claims and the attendant inflated prices."). Another party commented that the Rule is ineffective and difficult to follow in the context of new homes sales, but concluded that "[w]e need help, but in the form of enforcement, not new or watered down regulations." Energy Saving People, Inc., Document No. Z–12.

[7] Applegate Insulation Systems, Document No. Z–14 at 3; R.J. Marshall Co., Document No. Z–24.

[8] Applegate Insulation Systems alleges that "most" contractors sell loose-fill insulation based on blown density rather than settled density. Document No. Z–14 at 3. In the Statement of Basis and Purpose for the Rule ("SBP"), the Commission recognized that such insulation settles after it is blown into place, and that such settling reduces the R-value of the area in which the insulation is installed. 44 FR 50218, 50220 (1979). The Commission specifically noted that the industry also agreed that such insulation should be tested (and installed) at its "settled density", to more accurately reflect its actual thermal performance over time. *Id.* Loose-fill insulation is properly installed by blowing it into an area, such as an attic, based upon a coverage chart which indicates how many bags of insulation need to be used to achieve the desire R-value after settling has occurred.

[9] Applegate Insulation Systems, Document No. Z–14 at 2–3.

[10] *See supra* notes 6–7 and accompanying text. *See also* South Carolina, Document No. Z–1 at 2 ("A few $10,000 fines in each state would help the consumers get what they [pay for]."); American Rockwool, Document No. Z–5 ("The Rule is good. The consumer can be served well. Small manufacturers can compete. The key is enforcement."); Celotex Corp., Document No. Z–17 at 1 ("There is a continued need for this labeling rule . . . but only if [it] is vigorously and consistently enforced.").

energy conservation policies in our construction programs.[11]

The comment received from the State of Georgia's Office of Consumer Affairs noted that Georgia recently adopted a regulation similar to the R-value Rule.[12] The comment states that Georgia's regulation will be adversely affected if the FTC decides to alter the R-value Rule.[13] The Georgia comment goes on to state that there is a continued need for the Rule, citing, as an example, the "severe problems associated with the installation of blown insulation in [Florida]."[14]

The Minnesota Department of Energy and Economic Development echoed a similar theme, commenting that the "[t]he lack of effective, meaningful standards would be disastrous for consumers, and alone should warrant continuing these regulations." [15] In addition, the Attorney General of the State of Minnesota observed that:

> The disclosure and performance requirements of the Rule also bind manufacturers to at least a minimal standard of accountability, at all levels of distribution and also provide a legal basis for action if insulation is found to be defective or sub-standard, or otherwise not in accordance with the disclosures provided by the manufacturer.[16]

Three comments recommended that the Rule be eliminated.[17] One party suggested that due to sheer numbers of contractors, the Rule is physically impossible to enforce. Because of this, the commenter suggested that "it is better to be without [the Rule] so that literal law-abiding contractors and manufacturers are not put at a competitive disadvantage by trying to follow the letter of the law when the majority of their competition continues to ignore the Rule." [18] The same observation was made by another commenter which suggested that "[i]nformational guidelines would make the buyer aware of the R-value principle without the cost of government enforcement."[19] Finally, the president of the Central Texas Division of U.S. Home Corporation asserted that the disclosures mandated by the Rule are misleading because they refer to the heat resistance of the insulation material alone instead of the heat resistance of a wall, ceiling or roof, as a unit. He concluded that the Rule should be completely eliminated, noting that "[t]hose of us that are doing a good job will continue to do so. Those of us that aren't, won't sell houses and will go out of business and the problem will be mitigated."[20]

The comments provide a basis to conclude that there is a continued need for the Rule. The comments received from large and small manufacturers, installers and State and Federal government agencies express general agreement that there is a continued need for the Rule, and urge the Commission to place a greater emphasis on enforcement in the future. Those comments which suggest that the Rule should be abolished do not provide a reasonable or factual basis as support for their assertions, and do not outweigh the clear support and need expressed for continuation of the Rule.

C. Question (3)

(a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens ones which entities would also experience under standard and present business practice?

The responses to these questions indicated that the Rule does not place significant burden upon small entities. The comments identified recordkeeping, labeling, and "becoming familiar with all insulation manufacturers' recommendations" as common burdens.[21]

Another comment noted, however, that manufacturers "are only required to document and deliver performance information they would need in any event for their product labeling to the consumer. . . . The nominal cost of product testing for purposes of quality control and labeling [is] simply a cost of doing business." [22]

None of the comments received indicated that the R-value Rule places a significant burden upon small entities. Accordingly, there is no basis to find that the Rule places a significant burden on small entities. Any burdens which are imposed by the Rule are similar to those that would be experienced under standard and prudent business practice.[23]

D. Question (4)

What changes, if any, should be made to minimize the economic effect on small entities?

The general consensus of the commenters in response to this question was that no changes need be made to the R-value Rule.[24] Some comments suggested tha a more active enforcement program would be appropriate in the future.[25] Another comment recommended that small entities should be made aware of manufacturers' recommendations and specifications.[26]

Two comments recommended that the Rule be amended to exempt the manufactured housing industry.[27] In their comments, both the National Manufactured Housing Federation ("NMHF") and the Manufactured Housing Institute ("MHI") cite the fact that the U.S. Department of Housing and Urban Development ("HUD") regulates the manufactured housing industry. These HUD regulations, according to the comments, render application of the R-value Rule to their industry, "wastefully redundant."[28] Specifically noted is a

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[11] Farmers Home Administration, U.S.D.A., Document No. Z–6.

[12] Georgia, Document No. Z–16 at 1.

[13] *Id.* at 2–4.

[14] *Id.* at 3. The State of Florida recently conducted an investigation of insulation disclosures in the sale of new homes. That inquiry determined that problems exist in regard to the accuracy of those disclosures. *See also supra* note 5 and accompanying text.

[15] Minnesota Department of Energy and Economic Development ("Minnesota DEED"), Document No. Z–18 at 2.

[16] Minnesota Attorney General, Document No. Z–25 at 1–2.

[17] Applegate Insulation Systems, Document No. Z–14; R.J. Marshall Co., Document No. Z–24; U.S. Home Corp., Central Texas Division, Document No. Z–28.

[18] Applegate Insulation Systems, Document No. Z–14 at 3.

[19] R. J. Marshall Co., Document No. Z–24. While a primary goal of the Commission in issuing this Rule was to inform consumers of the R-value principle, an equally important aim of the Rule was to enable consumers to use R-value information to compare insulation products and select those with the greatest efficiency and potential for energy savings. SBP, 44 FR at 50216.

[20] U.S. Home Corp., Central Texas Division, Document No. Z–28 at 3.

[21] Dow Chemical U.S.A., Document No. Z–22 at 2. *See also* Celotex Corp., Document No. Z–17 at 1; Georgia, Document No. Z–16 at 3; NMHF, Document No. Z–10 at 2.

[22] Celotex Corp., Document No. Z–17 at 1.

[23] The Insulation Contractors Association observed that whatever burdens the Rule imposes, they are essentially the same as those experienced under a standard and prudent business practice, but that "not every business is operated prudently." Document No. Z–27 at 1.

[24] *See, e.g.*, South Carolina, Document No. Z–1 at 2; Rockwool Industries, Document No. Z–3 at 1; Georgia, Document No. Z–16 at 3; Minnesota DEED, Document No. Z–18 at 2; Rock Wool Mfg Co., Document No. Z–19 at 1; Minnesota Attorney General, Document No. Z–25 at 2; Insulation Contractors Association, Document No. Z–27 at 1.

[25] *See supra* note 10 and accompanying text.

[26] Dow Chemical U.S.A., Document No. Z–22 at 2.

[27] NMHF, Document No. Z–10; MHI, Document No. Z–21.

[28] NMHF, Document N. Z–10 at 2.

proposed amendment to the HUD regulations which would require sellers of manufactured homes to provide a "technical information sheet", to be prepared by the manufacturer, that would provide R-value information for the insulation in the home.[29] NMHF characterizes the R-value Rule as duplicating the requirements of the proposed HUD regulation.[30]

The comments of NMHF and MHI do not provide a basis for the conclusion that the Rule ought be amended to exclude the manufactured housing industry. The Commission rejected [31] a 1980 petition for such an exemption.[32] At that time, the petitioners asserted that the R-value Rule was unnecessary because of the construction standards issued by HUD.[33] The Commission determined that the existing HUD regulations do not require disclosure of comparative insulation information which could be used to compare competing mobile (or manufactured) homes.[34] The existing HUD regulations, like some state and local building codes, require a minimum level of thermal performance in mobile homes.[35] However, when issuing the Rule, the Commission found that mere minimum performance standards which do not require insulation R-value disclosures to new homes purchasers are not an adequate substitute for such R-value disclosures to consumers.[36] In addition, the proposed amendments to the HUD regulations would simply require that such manufacturers prepare a technical information sheet which would state, in R-values, the level of insulation contained in various purchase options available to the consumer.[37] Section 460.16 of the R-value Rule requires that consumers be given information concerning the type, thickness and R-value of the insulation installed in each part of a new home. It appears that printed information required under Section 460.16 of the R-value Rule would also be sufficient to satisfy the requirements of the proposed amendments to the HUD regulations. Finally, in their comments, NMHF and MHI assets that inasmuch as HUD is the "prime" regulator of their industry, HUD should be allowed to administer the R-value Rule instead of the FTC.[38] In turning down their exemption petition, the Commission observed that "all housing is subject to some form of local or federal standards; that mobile homes are subject to the HUD standard should not preclude mobile home sellers from disclosing comparative information under the Rule."[39]

In sum, there is no basis upon which to conclude that the Rule should be amended, in any manner, to minimize its economic effect on small entities.

E. Question (5)

To what extent does the Rule overlap, duplicate or conflict with other Federal, State or Local governmental rules?

Only a few comments directly addressed this question. The State of Georgia, as noted in Section B, above, has adopted a regulation similar to the R-value Rule.[40] Several comments noted that although some States have regulations covering this topic the R-value Rule does not generally overlap, duplicate or conflict with other regulations.[41]

NMHF commented that the R-value Rule "duplicates" the HUD regulations, discussed above concerning manufactured housing.[42] However, to the extent that those regulations require *some* informational disclosure, they are merely proposed amendments to the HUD regulations, not yet finalized rules. In addition, the proposed amendments to HUD's regulations do not require disclosure of the R-value information required under § 460.16 of the Rule. Therefore, no additional burden would be imposed upon small entities, even if the proposed amendments to the HUD regulations were to be issued.

F. Question (6)

Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the Rule or those covered by it?

The comments received which addressed this question indicate that technological, economic and other changes have not affected the Rule and those covered by it in any way which would warrant amending the Rule.[43] The Celotex Corporation concluded its comment by noting that "[a]lthough the energy crunch is not with us today to the degree it was a few years ago, we must continue to encourage enlightened energy efficiency as a way of life in all aspects in order to keep our country from becoming more energy dependent in the future."[44]

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling. Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-7887 Filed 4-2-85; 8:45 am]

BILLING CODE 6750-01-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing record; extension of comment period.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission has extended the comment period to April 17, 1985 for submission of written testimony on a proposed amendment to the Commission's Comprehensive Plan and *Water Code of the Delaware River Basin* in relation to well registration. The proposed amendment calls for the

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[29] *Id.* at 1.

[30] *Id.* at 2. *Cf.*, MHI, Document No. Z-21. MHI incorrectly characterized the proposed HUD regulation as requiring disclosure not of R-values of insulation alone, but the thermal performance levels for the walls, floors and ceilings as an *insulating unit.*

[31] 48 FR 2969 (Jan. 24, 1983).

[32] NMHF, MHI, and the Indiana Manufactured Housing Association petitioned the Commission for an exemption from the R-value Rule. The Commission granted a temporary stay during the pendency of its review. 45 FR 68927 (Oct. 17, 1980). Later, the Commission solicited public comments on the proposed exemption. 46 FR 41080 (Aug. 14, 1981).

[33] 45 FR at 68927.

[34] 45 FR at 2972.

[35] *Id. See* 24 CFR §§ 3280.501–3280.511 (1984).

[36] SBP, 44 FR at 50232.

[37] 48 FR 37136, 37173 (Aug. 16, 1983) (to be codified at 24 CFR 3280.510) (proposed Aug. 16, 1983).

[38] NMHF, Document No. Z-10 at 2; MHI, Document No. Z-21 at 2. In discussing this matter with HUD staff, FTC staff was advised that while NMHF and MHI object to the application of the R-value Rule on the grounds that HUD is the primary regulator of their industry, they also object to regulation by HUD on the grounds that they are regulated by the FTC.

[39] 46 FR at 2973.

[40] *See supra* text accompanying notes 12–14.

[41] Rockwool Industries, Document No. Z-3 at 1; Minnesota DEED, Document No. Z-18 at 1; Dow Chemical U.S.A., Document No. Z-22 at 2; Minnesota Attorney General, Document No. Z-25 at 2; Insulation Contractors Association, Document No. Z-27 at 1.

[42] NMHF, Document No. Z-10 at 2. *See also* MHI, Document No. Z-21 at 2. HUD, however, specifically noted that it was evaluating its proposed amendments in relation to the R-value Rule "to ensure that manufacturers will not be subject to duplicative regulation." 48 FR at 37142.

[43] Rockwool Industries, Document No. Z-3 at 2; Georgia, Document No. Z-16 at 3; Rock Wool Mfg Co., Document No. Z-10 at 1; Celotex Corp., Document No. Z-17 at 2; Dow Chemical U.S.A., Document No. Z-22 at 2-3; Insulation Contractors Association, Document No. Z-27 at 2.

[44] Celotex Corp., Document No. Z-17 at 2.

registration by the four signatory states of all new and existing wells or projects that withdraw 10,000 gallons per day or more during any 30-day period.

DATES: A public hearing was held on March 27, 1985 in Philadelphia, Pennsylvania as first noticed in the February 22, 1985 **Federal Register**, Vol. 50, No. 36, pages 7350 and 7351 and corrected in the March 7, 1985 **Federal Register**, Vol. 50, No. 45, pages 9284 and 9285. Written testimony received by the Secretary and postmarked on or before April 17, 1985 will be included in the hearing record.

ADDRESS: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey [illegible].

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, Telephone (609) 883–9500.

Authority: Delaware River Basin Compact (75 Stat. 688).

Susan M. Weisman,

Secretary.

March 28, 1985.

[FR Doc. 85–7880 Filed 4–2–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700 and 761

Applying the Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent to conduct rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) intends to propose a rule and develop a complete administrative record on the applicability of the prohibitions in sections 522(e) (4) and (5) of the Surface Mining Act which prohibit mining within one hundred feet or three hundred feet of certain specified structures or facilities. The rulemaking will focus on how these prohibitions apply to underground coal mining. Of particular importance in the rulemaking will be the relationship of section 522(e) and mining-related subsidence.

FOR FURTHER INFORMATION CONTACT: Brent Wahlquist, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240, (202) 343–4264.

SUPPLEMENTARY INFORMATION: Section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 USC 1201 *et seq.* (the Act), prohibits surface coal mining operations in certain enumerated areas, subject to valid existing rights. Section 522(e)(4) of the Act prohibits surface coal mining operations within one hundred feet of the outside right-of-way line of any public road, subject to certain exceptions. Section 522(e)(5) of the Act bans such operations within one hundred feet of a cemetery, as well as within three hundred feet of any public building, school, church, community or institutional building, public park, and, unless waived by the owner, any occupied dwelling. The term "surface coal mining operations" is defined in section 701(28) of the Act and 30 CFR 700.5 of the regulations as including, subject to the requirements of Section 516 of the Act, "surface operations and surface impacts incident to an underground coal mine. . . ."

OSM implemented sections 522(e) (4) and (5) of the Act through the promulgation of 30 CFR 761.11 (1984). Because 30 CFR 761.11 (d), (e), (f) and (g) and the definition of "surface coal mining operations" do little more than repeat the relevant language of sections 522(e) (4) and (5) and 701(28) of the Act, respectively, these regulations do not address the interrelationship between the section 522(e) mining prohibitions and the definition of "surface coal mining operation" in detail.

In its January 21, 1985 reply brief in the pending challenge to § 761.11 in *In Re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C. 1984), the National Wildlife Federation has focused on the possible ambiguities in § 761.11 which have existed since 1979. It is apparently unclear whether OSM's rules have the effect of prohibiting underground mining operations related to the features and facilities within the distance limits enumerated in sections 522(e) (4) and (5) of the Act. The resolution of this issue could have important consequences for the underground mining industry.

Accordingly, for the purpose of determining how the prohibitions of section 522(e) (4) and (5) and 30 CFR 761.11 (d), (e), (f) and (g) apply, OSM intends to propose a rule which will address the issue of what is a "surface impact" incident to underground mining subject to the requirements of Section 516. The rulemaking will fully explore the attendant legal, policy, environment and potential economic considerations.

Dated: March 29, 1985

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–7935 Filed 4–2–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–3–FRL–2810–1; EPA Docket No. AM013WV]

Proposed Revision to the West Virginia State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The State of West Virginia has submitted regulations pertaining to the Prevention of Significant Air Quality Deterioration (PSD). The regulations have been determined to be equivalent to the Federal requirements contained in 40 CFR 51.24. EPA is proposing approval of the West Virginia PSD regulations as a revision of the West Virginia State Implementation Plan (SIP). The State submittal also meets the requirements of the Clean Air Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

DATE: Comments must be submitted on or before May 3, 1985.

ADDRESSES: Copies of the PSD regulations submitted by West Virginia are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106, Attn: Michael Giuranna (3AM11)

West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311, Attn: Carl G. Beard, II

FOR FURTHER INFORMATION CONTACT: Mike Giuranna (3AM11), PA/WV Section at the EPA, Region III address above, or telephone (215) 597–9189.

SUPPLEMENTARY INFORMATION: On June 13, 1984, the State of West Virginia submitted to the Environmental Protection Agency Regulation XIV ("Permits for the Construction and Modification of Stationary Sources of Air Pollution for the Prevention of Significant Deterioration") and requested that it will be reviewed and processed as a revision of the West Virginia State Implementation Plan (SIP).

The West Virginia PSD regulations are, in most instances, identical to those contained in 40 CFR 51.24. However, West Virginia did not adopt separate regulations dealing with obtaining variances from maximum allowable increases in sulfur dioxide and particulate matter in Class I areas but simply incorporated the EPA's regulations set forth in 40 CFR 51.24(p)(4), (5), (6) and (7) by reference. This procedure is acceptable to EPA. Also, in accordance with 40 CFR 51.4, a public hearing regarding this SIP revision was held on September 13, 1983.

Under the PSD Program the WVAPCC will be issuing permits and establishing emission limitations that may be affected by the Stack Height Regulation which was proposed by EPA on November 9, 1984 (49 FR 44818). For this reason EPA will request, in a letter, that the WVAPCC agree to enforce the Stack Height Regulation which was proposed in the above mentioned notice. We will also request that the WVAPCC revise their regulations when the final Stack Height Regulation is promulgated and that they inform all permit applicants that their PSD permits may then be subject to change. EPA will also request, in the same letter, that West Virginia commit to clarify several matters related to their PSD Regulations. These commitments are listed in the technical support document which is available for public inspection at the locations referenced above. EPA will not commence final rulemaking before these maters are resolved.

Conclusion

The PSD regulations have been reviewed and have been determined to meet the requirements of the Clean Air Act and 40 CFR 51.24. They are therefore being proposed for approval as a revision of the West Virginia SIP.

EPA invites the public to comment on whether this revision should be approved. Comments should be submitted to the EPA, Region III address given above.

Administrative Procedures

EPA's final decision to approve or disapprove the proposed revision will be based on the comments received and on a determination of whether the revision conforms to the requirements of section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirments of section 3 of Executive Order 12291. Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur Oxides, Nitrogen dioxides, Lead, Particulate matter, Carbon Monoxide, Hydrocarbons, Intergovernmental relations.

(Secs. 110 and 301, Clean Air Act)

Dated: January 14, 1985.

Stanley Laskowski,

Acting Regional Administrator.

[FR Doc. 7914 Filed 4-2-85; 8:45 am]

BILLING CODE [illegible]

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40 CFR Part 166

[OPP-250065; FRL 2806-2]

Exemption of Federal and State, Agencies for use of Pesticides Under Emergency Conditions; Notification to Secretary of Agriculture of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation that would revise EPA's regulations on exempting Federal and State agencies from certain requirements for the use of pesticides under emergency conditions. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Franklin Gee, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 1120B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register** anytime after the 30-day period.

Pursuant to FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, Stat. 973 as amended (7 U.S.C. 136 et seq.)

Dated: March 22, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-7660 Filed 4-2-85; 8:45 am]

BILLING CODE [illegible]

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40 CFR PART 180

[PP 4E2974/P363; FRL 2807-8]

Cyano(3-Phenoxyphenyl) Methyl-4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the raw agricultural commodity collards. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E2974/P363], must be received on or before May 3, 1985.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Rm 236, CM #2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

Information sumitted as a comment concernig this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be

disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in RM. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 716B. CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E2974 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Alabama, Georgia, Maryland, North Carolina, and Oklahoma.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity collards at 10 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were an acute oral rat toxicity study with a median lethal dose (LD_{50} of 1 to 3 grams (g)/kilogram (kg) (water vehicle) and 450 milligrams (mg)/kg of body weight (bw) (dimethylsulfoxide vehicle); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (12.5 mg/kg, highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm (6.25 mg/kg); an 18-month mouse feeding study with a NOEL of less than 100 ppm (15 mg/kg) with no oncogenci effects observed under the conditions of the study at dosage levels of 100, 600, 1,000 and 3,000 ppm (3,000 ppm being the highest dosage level tested in the study); a 24-month mouse feeding study with a NOEL of 10 to 50 ppm (1.5 to 7.5 mg/kg) for males and 50 to 250 ppm for females (7.5 to 37.5 mg/kg), no oncogenic effects were noted at dosage levels of 10, 50, 250, and 1,250 ppm (1,250 ppm being the highest dosage level tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (50 mg/kg, only level tested, significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (12.5 mg/kg, highest level fed), no oncogenic effects were observed; a three-generation rat reproduction study with a NOEL of 250 ppm (12.5 mg/kg, highest level fed); teratology studies (in mice and rabbits), each negative at 50 mg/kg/day (highest dose tested); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); Ames test *in vitro* (negative), and a bone marrow cytogenic study in Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: a hen study negative at 1.0g/kg of bw for 5 days repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm (25 mg/kg) and a NOEL of 1,500 ppm (75 mg/kg) with respect to nerve damage.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 12.5 mg/kg, or 250 ppm) and using a 100-fold safety factor, is calculated to be 0.1250 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 7.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.9134 mg/day; the current action for collards will increase the TMRC by 0.01226 mg/day, 1.34 percent. Published and pending tolerances utilize 34.54 percent of the ADI; the current action will utilize an additional 0.16 percent.

The nature of the residues is adequately understood and an adequate analytical method, electron-capture gas chromatography, is available for enforcement purposes. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency and the fact that there are no animal feed items involved, there will be no secondary residues in meat, milk, poultry or eggs; the tolerance established by amending 40 CFR 180.379 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E2974/P363]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: March 21, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR 180.379 be amended by adding and

alphabetically inserting the raw agricultural commodity collards, to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl-4-chloro-alpha-(1-methyl-ethyl)benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
Collards	10

[FR Doc. 85-7662 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 264

[FRL-2810-2]

Hazardous Waste Management; Preparation of Permits for Hazardous Waste Land Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the public comment period for the *Permit Writers' Guidance Manual for Location of Hazardous Waste Land Storage and Disposal Facilities—Phase I: Criteria for Location Acceptability and Existing Applicable Regulations* to June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Glen Galen, Office of Solid Waste (WH-565E), U.S. EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4678.

SUPPLEMENTARY INFORMATION: The announcement of availability of the guidance manual was made in the **Federal Register** on February 7, 1985 (50 FR 5268). Public comment was invited and commentors were asked to submit their remarks by April 8, 1985. However, distribution of the manual to requestors was unexpectedly delayed. Consequently, the EPA is providing interested parties with adequate opportunity to comment by extending the comment period by 60 days from the original deadline. The comment period is now extended until June 7, 1985.

Dated: March 21, 1985.

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 85-7913 Filed 4-2-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1301

Head Start Program

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule requests comments from the public on a proposed change in the Head Start program regulations governing the recruitment and selection of Head Start staff. We are proposing to require that local program recruitment and selection policies require a declaration from all individuals prior to employment, listing: (1) All pending and prior criminal arrests and charges and their disposition related to child abuse, neglect and/or child sexual abuse; and (2) all felony convictions and current criminal charges. In addition, the policies must specify that prior to permanent employment, individuals must be interviewed, that their personal and employment references must be checked, and that a State and national criminal record check must be made, to the extent permitted by State law.

We are also proposing that the policies must require that the grantee or delegate agency will expicitly advise every employee and volunteer that sexual activity with children is illegal, and have a plan for responding to suspected or reported abuse of Head Start children whether it occurs inside or outside the program. The purpose of these proposed changes is to help prevent the possibility of child abuse and neglect in Head Start programs.

DATE: In order to be considered, comments on this proposed rule must be received on or before June 3, 1985.

ADDRESS: Please address comments to: Clennie H. Murphy, Jr., Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013.

It would be helpful if agencies and organizations would submit their comments in duplicate. Beginning June 17, 1985, comments will be available for public inspection in Room 5754, 400 6th Street SW., Washington, D.C. 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terry R. Lewis, 202-755-8208.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct,and direction of local programs. In FY 1984, Head Start served 442,100 children through a network of more than 1,280 grantees and more than 670 delegate agencies which have an approved written agreement with the grantee to operate Head Start program.

While Head Start is targeted primarily on children whose families have incomes below the poverty line or are eligible for public assistance, the Administration for Children, Youth and Families' (ACYF) policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. Head Start also requires that a minimum of 10 percent of enrollement opportunities be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers, and to receive needed special education and related services.

II. Purpose of the NPRM

The proposed amendment to the exiting regulations governing local Head Start grantee and delegate agency personnel policies is in response to reports of child abuse and neglect that have surfaced recently in a small number of child care programs across the nation . The Administration for Children, Youth and Families proposes to emphasize the importance of careful screening of employees in Head Start programs by requiring that Head Start programs have formal personel policies and procedures in place that will provide safeguards against the possibility of abuse and neglect, including sexual abuse, occuring in the Head Start program. In an effort to prevent sexual abuse, we propose that all employees and volunteers be advised that sexual activity with children is illegal. We also propose that grantees or delegate agencies develop a plan for responding to known or suspected abuse or sexual abuse of Head Start children

whether it occurs inside or outside the program.

III. Discussion of the Proposed Regulation

Current regulations at 45 CFR 1310.31 require that all Head Start grantees and delegate agencies have written personnel policies and include a list of items to be addressed in those policies. The proposed rule would further specify that these policies must provide that, before an employee is hired on a permanent basis, he or she will sign a declaration related to prior criminal arrests and convictions, and the agency will have conducted an interview of applicants and a check of personal and employment references, and that a State and national criminal record check of convictions for crimes related to child abuse and neglect be conducted, to the extent permitted by State law. This will allow the agency to hire an individual for a probationary period, if necessary, until all references and record checks are completed.

We are proposing that agencies be permitted to exclude from the declaration requirement offenses, other than offenses related to child abuse and/or child sexual abuse, committed by prospective employees prior to their 18th birthday which were finally adjudicated in a juvenile court or under a youth offender law. The reason we have proposed this exclusion is the fact that most States have a policy of sealing juvenile records. Courts take this action under the theory that potential damage to the youth of revealing convictions for criminal behavior outweighs any possible benefit to the public or future employers of having such information.

This exclusion underscores the importance of a comprehensive personal and employment reference check conducted with those individuals who have come in contact with the applicant on a day-to-day basis.

The Department views the above policy changes as essential safeguards. However, these changes must be complemented by continued parental involvement and vigilance.

Grantees should be aware that $25 million has been made available to States under the Social Services Block Grant (SSBG) for the purpose of training, including training in the prevention of child abuse in child care settings. These additional funds are intended as an incentive to States to establish laws and regulations by September 30, 1985 for national criminal record checks, employment history and background checks for operators, employees and staff of all child care providers and certain juvenile facilities. The SSBG agency in each State can provide details on planned State activities for the use of the additional $25 million and on any procedures developed for carrying out the employment history, background and nationwide criminal record checks.

In addition, the Department plans to make additional funds available to States through the National Center on Child Abuse and Neglect to assist States to develop and implement the new requirements.

Section 1301.31(e) also proposes to require that the grantee or delegate agency will explicitly advise every employee and volunteer that sexual activity with children is illegal, and develop a plan for responding to suspected or reported child abuse whether it occurs inside or outside the program.

We are proposing these changes to help prevent the possibility of child abuse and neglect and child sexual abuse in Head Start programs and to assure that grantees and delegate agencies are aware of State and/or local procedures and have a plan for responding to suspected or reported instances of child abuse and neglect.

The proposed rule requires these changes in personnel policies governing recruitment and selection of staff as a minimum. Head Start grantees and delegate agencies are, of course, encouraged to adopt additional personnel policies which safeguard, to the greatest extent possible, against child abuse, neglect and child sexual abuse.

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that these regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of of 1980

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small entities. While these regulations would affect small entities, these requirements are not substantial and in many instances the small entities may already meet some of the proposals. For these reasons, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These proposed rules do contain information collection requirements or increase Federal paperwork burden on the public or private sector. Section 1301.31 of this proposed rule contains information collection requirements. As required by the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Executive Office of Management and Budget (OMB) for its review of the information collection requirements. Other organizations and individuals desiring to submnit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3201), Washington, D.C. 20503, Attention: Judy McIntosh, Desk Officer for HHS/HDS.

List of Subjects in 45 CFR 1301

Administrative practice and procedure, Education of disadvantaged, Grant programs/social programs, Child abuse and neglect.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: January 29, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: March 13, 1985.

Margaret M. Heckler,

Secretary, Department of Health and Human Services.

PART 1301—[AMENDED]

For the reasons set forth in the Preamble, 45 CFR Part 1301, Subpart D, is proposed to be amended as follows:

1. The authority citation for Part 1301 is revised to read as follows:

Authority: Pub. L. 97–35, Title VI, Subchapter B, 95 Stat. 499 et seq. (42 U.S.C. 9831 et seq.), as amended by Pub. L. 98–558, Title I, 98 Stat. 2878 et seq. (42 U.S.C. 9831 et seq.).

2. Section 1301.31 is amended by reprinting paragraphs (a) and (b) for the convenience of the reader and by adding new paragraphs (c), (d), and (e) as follows:

§ 1301.31 Personnel policies.

(a) Head Start agencies shall establish personnel policies for themselves and their delegate agencies. At a minimum, such policies must govern the following: Staff qualifications, recruitment and selection, classification of positions, salaries, employee benefits (including leave, holidays, overtime, and fringe benefits), conflicts of interest, official travel, career development, performance evaluations, and employee management relations (including employee grievances and adverse actions).

(b) The policies shall be in writing, approved by the Head Start Policy Council or Committee, and made available to all Head Start grantee and delegate agency employees.

(c)(1) The policies must require that, before any employee is hired on a permanent basis, he or she must sign a declaration which lists:

(i) All pending and prior criminal arrests and charges and their disposition related to child abuse, neglect and/or child sexual abuse; and

(ii) All felony convictions and current criminal charges.

(2) The declaration required by paragraph (c)(1)(ii) of this section may exclude:

(i) Traffic fines of $50.00 or less;

(ii) Any offense, other than an offense related to child abuse and/or child sexual abuse, committed before the prospective employee's 18th birthday which was finally adjudicated in a juvenile court or under a youth offender law;

(iii) Any conviction the record of which has been expunged under Federal or State law; and

(iv) Any conviction set aside under the Federal Youth Corrections Act or similar State authority.

(d) The policies governing recruitment and selection of staff must provide that, before an employee is hired on a permanent basis, the grantee or delegate agency will have conducted:

(1) An interview of the applicant; and

(2) A check of personal and employment references to be provided by the applicant, including verification of the accuracy of the information provided by the applicant.

(3) A check to determine if the applicant has a criminal record at the State or national level of crimes related to child abuse and neglect, to the extent permitted by State law.

(e) The policies must require that the grantee or delegate agency will:

(1) Explicitly advise every employee and volunteer that sexual activity with children is illegal; and

(2) Develop a plan for responding to suspected or reported child abuse or sexual abuse of Head Start children whether it occurs inside or outside the program.

[FR Doc. 85–7808 Filed 4–2–85; 8:45 am]
BILLING CODE 4130–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, and 25

[Gen. Docket No. 84–1234; RM–4247; Gen. Dockets 84–689 and 84–690; RM–4426]

Land Mobile Satellite and Radiodetermination Satellite Services; Order Extending Time for Filing Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: The Common Carrier Bureau issues a Memorandum Opinion and Order responding to requests for extension of time in this proceeding concerning the use of radio frequencies in a Land Mobile Satellite Service and a Radiodetermination Satellite Service (published in the **Federal Register** on February 28, 1985, 50 FR 8149).

DATES: Complete applications for MSS must be received on or before April 30, 1985. Applications for RDSS must be received on or before April 5, 1985.

ADDRESS: Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

In the Matter of Amendment of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; General Docket 84–1234, RM–4247; Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish Rules and Policies Pertaining to the Use of Radio Frequencies and the Licensing of Space and Earth Stations in a Radiodetermination Satellite Service, General Dockets, 84–689 and 84–690, RM–4426,

Adopted March 25, 1985.
Released March 26, 1985.
By the Chief, Common Carrier Bureau.

1. The Notice of Proposed Rulemaking to establish a land mobile satellite service (MSS) was released on January 28, 1985, and set March 29, 1985 as the due date for applications for such a service. The application date also applied to radio determination satellite service (RDSS), as noted at para. 44 in the MSS NPRM. In a footnote in the NPRM (n. 79), the Commission stated that "requests for reasonable extensions of the application period will be entertained." We have received extension requests from Skylink Corporation (Skylink) and Mobile Satellite Corporation (Mobilesat), together with supporting comments from Omninet Corporation (Omninet), and an opposition from Geostar Corporation (Geostar).[1]

2. Skylink argues for an extension of time based on several factors: the uncertainty of the L-band allocation, the fact that the MSS "clarification" was released only two weeks before the application date,[2] and the complexity, noted by the Commission in its NPRM, of MSS applications. Skylink also argues for a unified filing rather than the two-part application process established by the March 15 Public Notice. The two-part process, according to Skylink, raises difficulties in determining what information should be filed at each time, presents the possibility of "copycat" applications, and fails to alleviate the insufficiency of time. Mobilesat seconds the arguments supporting an extension of time, referring to the Skylink request, but suggests that the application process remain bifurcated. Omninet states its strong feeling that any extension of time

[1] We have also received a Motion for Modification from Global Land Mobile Satellite, Inc., asking that the Demand Study required by the NPRM be due on the Second (May 28) filing date rather than the first (March 29) date. This request is granted in part to the extent that we extend the March 29 date.

[2] The clarification took the form of a Public Notice, released March 15, 1985. It established a two-part application process, with "supplemental" applications (to meet Appendix B, satellite service, requirements) due May 28.

for MSS applications must be accompanied by a matching extension for RDSS applications. Omninet cites the Commission's determination, stated in its MSS NPRM, that the procedural dates for the two services should be identical so that applicants would not be foreclosed from submitting combined proposals. Geostar objects that to delay the RDSS procedure by another month is not justified and would severely prejudice it and other RDSS applicants.

3. In view of the arguments submitted in these motions, the Commission's express intention to entertain reasonable extension requests, and various informal expressions of concern from prospective applicants and other interested parties, we are persuaded that a brief extension of time for MSS applications is justified and necessary. We are further persuaded that the bifurcated application process creates more problems than it solves and should be abandoned. Because the addition of Appendix B requirements is basically a change in format rather than substance, and because we are by this order extending the March 29 due date, we do not foresee any significant difficulties for applicants in meeting a single application date of April 30, 1985. The Commission stated that the RDSS and MSS procedures should go forward in such a way as to allow a single applicant to apply to provide both services; this does not, however, require that the procedures have identical filing dates. We find that a further delay of one month in the RDSS proceedings would unduly prejudice RDSS applicants and is unjustifiable, and that these considerations outweigh concerns regarding the public availability of any joint application. Because of the shortness of this notice to RDSS applicants, however, we will postpone that service's filing date to April 5, 1985. Comments and petitions on the applications in both proceedings will be due thirty days after public notice of their filing.

4. Accordingly, it is ordered that the motion of Skylink Corporation that all MSS applications, in completed form, be due on April 30, 1985 is granted.

5. It is further ordered that the request of Geostar Corporation that the RDSS application date not be postponed is granted, to the extent noted above. These applications are therefore due on April 5, 1985.

6. This Order is issued under § 0.291 of the Commission's rules and *Order Delegating Authority*, FCC 82-435, released October 6, 1982, and is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the rules of this order may be filed within 30 days of the date of the public notice of this Order (see § 1.4(b)(2)).

7. The Secretary shall see that this Order is printed in the **Federal Register**.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85-7929 Filed 4-2-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR); Definition of Women-Owned Small Businesses

Correction

In FR Doc. 85-6796 appearing on page 11523 in the issue of Friday, March 22, 1985, in the third column, under **SUPPLEMENTARY INFORMATION**, in the twelfth line, "representatives" is corrected to read "representations".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-13)]

Rail Abandonments—Use of Rights-of-Ways as Trails

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: At 50 FR 7200, February 21, 1985, the Commission proposed rules to provide for early notice to interested persons of the possibility of making a trails use request, and to allow interested persons to request use of rail rights-of-way as trails as long as they provide information concerning their willingness and ability to comply with certain financial requirements. The comments were due 30 days after **Federal Register** publication on March 25, 1985. At the request of numerous parties, the due date has been postponed 30 days to April 24, 1985.

DATE: Comments are due April 24, 1985.

ADDRESS: An original and 10 copies of comments referring to Ex Parte No. 274 (Sub-No. 13) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Wayne A. Michel, (202) 275-7657.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: March 25, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-7910 Filed 4-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50329-5029]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: NOAA issued a proposed rule March 20, 1985 (50 FR 11215), to modify buy-boat operating procedures. This proposed rule is within the framework of the 1983 recommendations of the International Commission for the Conservation of Atlantic Tunas and prohibits buy-boat operations when the daily limit for giant Atlantic bluefin tuna in the General category is one fish per day per vessel. NOAA extends the public comment period for an additional two weeks, because the initial response to the proposed rule indicates that a longer public comment period would be in the best interest of the public. A number of constituents suggested they needed more time to discuss the issue among themselves prior to responding to the proposed rule.

DATES: The public comment period is extended from April 4, 1985, to April 18, 1985.

ADDRESS: Send comments to NMFS, Northeast Region, Management Division, State Fish Pier, Gloucester, MA 01930-3097. Mark "Comments on 1985 Atlantic bluefin tuna proposed rulemaking" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617-281-3600, extension 325; or David S. Crestin, 617-281-3600, extension 253.

Dated: March 28, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-7890 Filed 3-29-85; 3:31 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding Replacement of Historic Bridges in the State of Wyoming

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the Federal Highway Administration, U.S. Department of Transportation, and the Wyoming State Historic Preservation Officer, providing for the management of historic bridges which must be replaced. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic bridges will be managed, taking into account the public interest, to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)).

Comments due: May 3, 1985.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401.

Dated: March 28, 1985.

John M. Fowler,

Acting Executive Director.

[FR Doc. 85-7872 Filed 4-2-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

March 29, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Attention: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

- Economic Research Service
- US Milled Rice Distribution Survey
- Biennially
- Businesses or other for-profit; Small businesses or organizations; 20 responses; 80 hours; not applicable under 3504(h)
- Shelby H. Holder, (501) 740-0583.

New

- Farmers Home Administration
- 7 CFR 1944-N, Housing Preservation Grants
- On occasion, Quarterly
- Individuals or households; State or local governments; Non-profit institutions; 3,800 responses; 9,700 hours; not applicable under 3504(h)
- John Pentecost, (202) 382-8983.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85-7949 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

Section 22 Import Fees; Determination of Quarterly Import Fees On Sugar

AGENCY: Office of the Secretary; USDA.

ACTION: Notice.

SUMMARY: Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) requires the Secretary of Agriculture to determine on a quarterly basis the amount of the fees which shall be imposed on imports of raw and refined sugar (TSUS items 956.05 956.15 and 957.15) under the authority of section 22 of the Agricultural Adjustment Act of 1933, as amended. This notice announces those determinations for the second calendar quarter of 1985. However, the application of the fee to TSUS item 956.15 has been suspended and the fees on TSUS items 956.05 and 957.15 have been changed by Presidential Proclamation effective April 1, 1985.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Harper, Foreign Agricultural Service, Department of Agriculture, Washington, D.C. 20250 (202-382-9061).

SUPPLEMENTARY INFORMATION: By Presidential Proclamation No. 5164, dated March 19, 1984, Headnote 4 of Part 3 of the Appendix to the TSUS was amended to provide for the imposition of quarterly adjusted fees on imports of raw and refined sugar (TSUS items 956.05, 956.15, and 957.15). Paragraph (c)(ii) of Headnote 4 provides that the quarterly adjusted fee for item 956.15 shall be the amount by which the average of the adjusted daily spot (domestic) price quotions for raw sugar for the 20 consective market days immediately preceding the 20th day of the month preceding the calendar

quarter during which the fee shall be applicable (as reported by the New York Coffee, Sugar, and Cocoa Exchange), expressed in United States cents per pound, in bulk, is less than the market stabilization price. The market stabilization price for the second calendar quarter of 1985 is 21.57 cents per pound. Paragraph (c)(i) of Headnote 4 further provides that the quarterly adjusted fee for items 956.05 and 957.15 shall be the amount of the fee for item 956.15 plus one cent.

The average of the adjusted daily spot (domestic) price quotations for raw sugar for the applicable period prior to the second calendar quarter of 1985 has been calculated to be 18.8515 cents per pound. This would result in a fee of 2.7185 cents per pound for item 956.15, since the adjusted average spot price is less than 21.57 cents. Accordingly, the fee for items 956.05 and 957.15 for the second calendar quarter of 1985 would be 3.7185 cents per pound.

Headnote 4(c) requires the Secretary of Agriculture to determine and announce the amount of the quarterly fees no later than the 25th day of the month preceding the calendar quarter during which the fees shall be applicable. The Secretary is also required to certify the amounts of such fees to the Commissioner of Customs and file notice thereof with the Federal Register prior to the beginning of the calendar quarter during which the fees shall be applicable. This notice is therefore being issued in order to comply with the requirements of Headnote 4(c). However, the President has signed an emergency proclamation suspending the application of the fee the TSUS item 956.15 and has changed the fees on TSUS items 956.05 and 957.15 to one cent per pound effective April 1, 1985.

Notice is hereby given that, in accordance with the requirements of Headnote 4(c) of Part 3 of the Appendix to the Tariff Schedules of the United States, it is determined that the quarterly adjusted fees for raw and refined sugar (TSUS items 956.05, 956.15, and 957.15) for the second calendar quarter of 1985 would be as follows:

Item	Fee (cents per lb.)
956.05	2.7185
956.15	2.7185
957.15	2.7185

However, the President has signed an emergency proclamation suspending the application of the fee to TSUS item 956.15 and changing the fees for TSUS items 956.05 and 957.15 to one cent per pound, effective April 1, 1985.

Signed at Washington, D.C. on March 29, 1985.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 85-7956 Filed 3-39-85; 4:49 pm]

BILLING CODE 3410-10-M

Agricultural Marketing Service

National Advisory Committee for Tobacco Inspector Services; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I) announcement is made of the following Committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 23, 1985.

Place: The Ramada Inn, 525 Waller Avenue, Lexington, Kentucky, 40504.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*), to hear from individuals who have requested to address the Committee and who have been prescheduled to do so, and to discuss the level of tobacco inspection and related services and the fees and charges associated with providing these services.

The meeting is open to the public. Public participation will be limited to written statements submitted before or at the meeting unless otherwise requested by the Committee Chairperson. Persons, other than members, who wish to address the Committee at the meeting are requested to contact Lionel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, 300 12th Street SW., U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2567.

Dated: March 29, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-7950 Filed 4-2-85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

1984-85 Milk Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of determination of milk price support level and Commodity Credit Corporation purchase prices.

SUMMARY: This Notice of Determination provides that the level of price support for milk containing 3.67 percent milkfat for the period April 1, 1985, through September 30, 1985, shall be $12.10 per hundredweight. It also establishes prices at which butter, cheese and nonfat dry milk (NDM) will be purchased by the Commodity Credit Corporation (CCC) in order to carry out the support of the price of milk at that level.

EFFECTIVE DATE: April 1, 1985..

FOR FURTHER INFORMATION CONTACT: Indulis Kancitis, Dairy Division, ASCS-USDA, 5741 South Building, P.O. Box 2415, Washington, D.C. 20013 (202-447-3385).

The Final Regulatory Impact Analysis regarding the actions of this Notice of Determination is available from Charles N. Shaw, Dairy/Sweeteners Group, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7601..

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major" since the provisions of this notice will have an effect on the economy exceeding $100 million.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051 as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act is not applicable to this notice since CCC is not required to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Section 102(b) of the Dairy and Tobacco Adjustment Act of 1983 (Pub. L. 98-180) requires that the provisions of section 201(d) of the Agricultural Act of 1949, as amended by the 1983 Act, be implemented without regard to the provisions requiring notice and other public procedures for public participation in rulemaking as set forth in 5 U.S.C. 553, or in any directive of the Secretary of Agriculture.

This notice is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as water quality or air quality. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is required.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

On December 16, 1983, a notice was published in the Federal Register (48 FR 55886) establishing the level of price support at $12.60 per hundredweight for

milk containing 3.67 per centum milkfat for the period December 1, 1983, through September 30, 1985. That level of price support was established under the provisions of section 201(d) of the 1949 Act, as amended by Section 102 of the 1983 Act.

Section 201(d), as amended, further provides that if the Secretary of Agriculture estimates on April 1, 1985, that for the twelve-month period beginning on that date the CCC net price support purchases of dairy products would be in excess of six billion pounds milk equivalent, the Secretary may reduce the price support rate in effect on that date in the amount of 50 cents per hundredweight.

CCC supports the price of milk through the purchase of nonfat dry milk, butter and cheese. It is estimated that if the level of price support were continued at $12.60, CCC net price support purchases of such products for the twelve-month period beginning April 1, 1985, would be 11.7 billion pounds, milk equivalent. Since this estimate of CCC net price support purchases exceeds 6 billion pounds, milk equivalent, it has been determined that the level of price support in effect on April 1, 1985, shall be reduced from $12.60 per hundredweight by the amount of 50 cents per hundredweight. This notice implements that reduction.

It has been further determined that a level of support of $12.10 effective April 1, 1985, will assure an adequate supply of pure and wholesome milk to meet current needs. The reduction in the level of price support to $12.10 per hundredweight is needed to bring about a reduction in the currently excessive purchases and costs of the program. Even with the reduction in the price support level, it is expected that CCC net purchases for the twelve month period beginning April 1, 1985, will be 9.1 billion pounds milk equivalent.

Accordingly, the price of milk shall be supported, effective April 1, 1985, at a rate equivalent to $12.10 per hundredweight for milk containing 3.67 per centum milkfat. While this level of price support is effective for the period April 1, 1985, through September 30, 1985, a further adjustment in the level of price support may be made on July 1, 1985, in accordance with section 201(d) of the 1949 Act, as amended, based upon estimates of CCC net price support purchases of dairy products under the milk price support program for the twelve-month period beginning on that date.

It has been determined that the purchase by CCC of butter, cheese and nonfat dry milk produced on or after April 1, 1985, at the prices set forth in this notice will support the price of milk at a rate equivalent to $12.10 per hundredweight for milk containing 3.67 per centum milkfat.

Determination

Accordingly, the level of support for milk and the prices at which CCC will purchase the products of milk shall be as follows:

(a) The level of support for the period April 1, 1985, through September 30, 1985, shall be $12.10 per hundredweight for milk containing 3.67 percent milkfat.

(b) Effective Apr. 1, 1985, CCC purchase prices for butter, cheese and nonfat dry milk shall be as follows:

	Products Produced before Apr. 1, 1985 and graded and offered by Apr. 15, 1985 (dollars per pound)	Products Produced on or after April 1, 1985 or not graded and offered prior to Apr. 15, 1985 (dollars per pound)
Butter, 64- and 68-lb. blocks: (U.S. Grade A or higher)	[1] 1.4625	[2] 1.4325
Nonfat dry milk (spray), 50-lb. bags: (U.S. Extra Grade, but not more than 3.5 percent moisture)		
Nonfortified	0.91	0.8475
Fortified (Vitamins A and D)	0.9225	0.8575
Cheddar cheese, standard moisture basis:		
40- and 60-pound blocks, U.S. Grade A or higher (No vat shall contain more than 39.5 percent moisture)	1.3475	[3] 1.2675
500 lb. in fiber barrels, U.S. Extra Grade (No vat shall contain more than 36.5 percent moisture)	1.3175	[3] 1.2450

[1] This is the purchase price at New York City and Jersey City, Newark and Secaucus, New Jersey. The price of butter at any other point outside these cities will be the price at New York City minus 80 percent of the lowest domestic railroad through freight rate for frozen butter in effect on October 1 of each marketing year from such other point to New York City. The appropriate freight rate will be calculated on a per pound gross weight basis for a 60,000-pound carlot. However, the price at any location shall be not less than the purchase price at New York City minus 3 cents per pound. In the area consisting of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland and Virginia, CCC will purchase only bulk butter produced in that area; butter produced in other areas is ineligible for offering to CCC in such states.

[2] Single nationwide price for butter at all locations.

[3] The cheese price will be adjusted for moisture content, except that the price adjustment for cheese with a moisture content of less than 34 percent will not exceed that for cheese with a moisture content of 34 percent.

(c) Any further adjustment in the level of support or CCC purchase prices will be announced by the Secretary of Agriculture in a notice published in the **Federal Register.**

(Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)); and secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b and 714c))

Signed at Washington, D.C. on March 29, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-7934 Filed 3-29-85; 4:00 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency

Title: DOC Grantee Contract Awards Report

Form No.: Agency—None; OMB—None

Type of Request: New collection

Burden: 2,000 respondents; 2,000 reporting hours

Needs and Uses: The Department of Commerce, in responding to the requirements of E.O. 12432, will collect information on contract awards made by grant recipients receiving funding of $25,000 or more. The information will allow the Department to measure its progress in assisting minority firms

Affected Public: Individuals or households, state and local governments, businesses or other for-profit institutions, Federal agencies or employees, non-profit institutions, small business or organizations

Frequency: Semi-annually

Respondent's Obligation: Voluntary

OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 27, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-7918 Filed 4-2-85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1985 Company Organization Survey (COS)

Form No.: Agency—NC–9901, NC–9907: OMB—0607–0444

Type of Request: Revision of a currently approved collection

Burden: 89,000 respondents; 75,092 reporting hours

Needs and Uses: The 1985 COS is needed to continually update and maintain the Census file of company and establishment records. The data will be used to assign establishment level payroll and employment size codes and to summarize the data by SIC, geographic location, and employment size groups for the County Business Patterns publication for the multiestablishment portion of the economic universe

Affected Public: Farms, businesses or other for-profit institutions, non-profit institutions, small businesses or organization

Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Date: March 28, 1985.

Edward Michals,
Departmental Clearance Officer.

[FR Doc. 85–7919 Filed 4–2–85; 8:45 am]
BILLING CODE 3510–07–M

Bureau of the Census

Census Advisory Committee (CAC) of the American Economic Association (AEA), the CAC of the American Marketing Association (AMA), the CAC of the American Statistical Association (ASA), and the CAC on Population Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC of the AEA, CAC of the AMA, CAC of the ASA, and the CAC on Population Statistics. The joint meeting will convene on April 25, 1985, at the Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

The CAC of the AEA is composed of 9 members appointed by the President of the AEA. It advises the Director, Bureau of the Census, on technical matters, accuracy levels, and conceptual problems concerning economic surveys and censuses; reviews major aspects of the Bureau's programs; and advises on the role of analysis within the Bureau.

The CAC of the AMA is composed of 9 members appointed by the President of the AMA. It advises the Director, Bureau of the Census, regarding the statistics that will help in marketing the Nation's products and services and on ways to make the statistics the most useful to users.

The CAC of the ASA is composed of 12 members appointed by the President of the ASA. It advises the Director, Bureau of the Census, on the Bureau's programs as a whole and on their various parts, considers priority issues in the planning of censuses and surveys, examines guiding principles, advises on questions of policy and procedures, and responds to Bureau requests for opinions concerning its operations.

The CAC on Population Statistics is composed of four members appointed by the Secretary of Commerce and five members designated by the President of the Population Association of America from the membership of that Association. The CAC on Population Statistics advises the Director, Bureau of the Census, on current programs and on plans for the decennial census of population.

The agenda for the combined meeting that will begin at 8:45 a.m. and end at 12:15 p.m. is: (1) Introductory remarks by the Director, Bureau of the Census, including staff changes and Bureau organization, budget and program developments, and other topics of current interest; (2) 1987 economic and agriculture censuses—issues in focus; (3) on-line maintenance of the Standard Statistical Establishment List data base; (4) update on 1990 census planning and operations, including (a) census tests, (b) criteria for site selection, and (c) status of automation—1985–1986 census test; (5) update on the Survey of Income Participation; and (6) Regional Outreach and Data Dissemination Program—what is it? and how do we evaluate it?

The agendas for the four committees in their separate and jointly held meetings that will begin at 1:30 p.m. and adjourn at 5:15 p.m. on April 25, 1985, are as follows:

The CAC of the ASA: (1) Census Bureau response to previous Committeee recommendations and Bureau activities of special interest to the CAC of the ASA, (2) quality and comparability of personal income data from surveys and the decennial census (joint with the other committtees), (3) automated matching, and (4) methodological changes in population estimates (joint with CAC on Population Statistics).

The CAC on Population Statistics: (1) Census Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC on Population Statistics, (2) quality and comparability of personal income data from surveys and the decennial census (joint with the other committees), (3) valuation of noncash benefits (joint with CAC of the AMA and CAC of the AEA), and (4) methodological changes in population estimates (joint with the CAC of the ASA).

The CAC of the AMA: (1) Census Bureau response to previous Committee recommendations and Bureau activities of special interest to the CAC of the AMA, (2) update on the Longitudinal Establishment Data file and the Harmonized System, (3) quality and comparability of personal income data from surveys and the decennial census (joint with the other committees), (4) valuation of noncash benefits (joint with CAC on Population Statistics and CAC of the AEA), and (5) transportation data issues (1983 Commodity Transportation Survey and proposed 1985 survey) (joint with the CAC of the AEA).

The CAC of the AEA: (1) Census Bureau response to previous Committee recommendations including an update on construction statistics and Bureau activities of special interest to the CAC of the AEA, (2) quality and comparability of personal income data from surveys and the decennial census (joint with the other committees), (3) valuation of noncash benefits (joint with

CAC on Population Statistics and CAC of the AMA), and (4) transporation data issues (1983 Commodity Transportation Survey and proposed 1985 survey) (joint with CAC of the AMA).

The agendas for the April 26 meetings that will begin at 8:45 a.m. and adjourn at 3:00 p.m. are:

The CAC of the ASA: (1) Automated coding (joint with the CAC on Population Statistics), (2)(concurrent seasonal adjustment and diagnostic procedure for determining seasonal adjustability (joint with CAC of the AEA), (3) development and discussion of recommendations, and (4) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC on Population Statistics: (1) Automated coding (joint with CAC of the ASA), (2) 1990 census content and results of local public meetings, (3) development and discussion of recommendations, and (4) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC of the AMA: (1) Industry statistics—new data needs (joint with CAC of the AMA), (2) electronic reporting in economic surveys, (3) reconstructing the Standard Industrial Classification (SIC)—consistency versus change (joint with CAC of the AMA), (4) development and discussion of recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

The CAC of the AEA: (1) Industry statistics—new data needs (joint with CAC of the AMA), (2) concurrent seasonal adjustment and diagnostic procedure for determining seasonal adjustability (joint with CAC of the ASA), (3) reconstructing the SIC—consistency versus change (joint with CAC of the AMA), (4) development and discussion of recommendations, and (5) continued Committee and Bureau staff discussions and plans and suggested agenda for the next meeting.

All meetings are open to the public, and a brief period is set aside on April 26 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Committee Liason Officer at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact the Committee Liaison Officer, Mr. Melvin Hendry, Bureau of the Census, Room 3061, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20233). Telephone (301) 763–3856.

Dated: March 29, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85–7946 Filed 4–2–85; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 296]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Southeast Texas, Inc., for Foreign-Trade Zones in the Beaumont, Port Arthur and Orange, Texas Customs Port of Entry Areas

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign-Trade Zone of Southeast Texas, Inc., a Texas non-profit corporation affiliated with the Beaumont, Port Arthur and Orange Navigation Districts and Jefferson County, filed with the Foreign-Trade Zones Board (the Board) on May 7, 1984, and amended on November 5, 1984, requesting a grant of authority for establishing, operating, and maintaining three general-purpose Foreign-Trade Zones in the Beaumont, Port Arthur and Orange, Texas, Customs port of entry areas, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, subject to the condition that activation of approved zone space beyond 200 acres at Site 2 of the Port Arthur zone requires further Board approval.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zones. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board. The three attached grants of authority, one for each of the above ports of entry, are incorporated in this order.

Foreign-Trade Zones Board

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Beaumont, TX, Port of Entry Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "to provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zones of Southeast Texas, Inc., (the Grantee) has made application (filed May 7, 1984, Docket No. 21–84, 49 FR 20747, and amended on November 5, 1984, 49 FR 44779) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Jefferson and Orange Counties, Texas, adjacent to the Beaumont Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 115 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Port Arthur, TX, Port of Entry area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zone of Southeast Texas, Inc., (the Grantee) has made application (filed May 7, 1984, Docket No. 21–84, 49 FR 20747) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Jefferson County, Texas, adjacent to the Port Arthur Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 116 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Any activation of approved zone space at Site 2 beyond 200 acres requires further Board approval.

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in the Orange, TX, Port of Entry Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Foreign-Trade Zone of Southeast Texas, Inc., (the Grantee) has made application (filed May 7, 1984, Docket No. 21–84, 49 FR 20747) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in Orange County, Texas, adjacent to the Orange Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 117 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations;

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all

necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board
Malcolm Baldrige,
Chairman and Executive Officer.

Attest:
John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85-7893 Filed 4-2-85; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 297]

Resolution and Order Approving the Application of the Foreign-Trade Zone of Southeast Texas, Inc., for a Special-Purpose Subzone Within the Beaumont Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Foreign-Trade Zone of Southeast Texas, Inc., filed with the Foreign-Trade Zones Board (the Board) on November 8, 1984, requesting special-purpose subzone status for Bethelehem Steel Corporation's Beaumont Shipyard in Jefferson County, Texas, adjacent to the Beaumont Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any steel plate, angles, shapes, channels, rolled sheet stock, bars, pipes and tubes, classified under Schedule 6, Part 2, Subp. B, TSUS, and not incorporated into merchandise otherwise classified, and which is used in manufacturing shall be subject to Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and (2) in addition to the annual report, Bethlehem shall advise the Board's Executive Secretary as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Jefferson County, TX, Adjacent to the Beaumont Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Foreign-Trade Zone of Southeast, Texas, Inc., grantee of Foreign-Trade Zone No. 115, has made application (filed October 30, 1984, Docket No. 49–84, 49 FR 44779) in due and proper form to the Board for authority to establish a special-purpose subzone at Bethlehem Steel Corporation's Beaumont Shipyard in Jefferson County, Texas, adjacent to the Beaumont Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied if approval is given subject to the conditions stated in the resolution;

Now, therefore, in accordance with the application filed October 30, 1984, the Board hereby authorizes the establishment of a subzone at Bethlehem's Beaumont Shipyard, designated on the records of the Board as Foreign-Trade Subzone No. 115A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of March 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board
Malcolm Baldrige,
Chairman and Executive Officer.

Attest:
John J. De Pasta, Jr.,
Executive Secretary.

[FR Doc. 85-7882 Filed 4-2-85; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[C-122-404]

Preliminary Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled and Frozen Pork Products from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of live swine and fresh, chilled and frozen pork products. The bonding/deposit rate is Can$0.053/lb.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of live swine and fresh, chilled and frozen pork products from Canada that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination by June 10, 1985.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of live swine and fresh, chilled and frozen pork products. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Program

- Hog Stabilization Payments Provided Under the Agricultural Stabilization Act.
- Record of Performance Program.
- Hog Carcass Settlement Program.

Provincial Programs

- New Brunswick Hog Price Stabilization Program.
- Nova Scotia Pork Price Stabilization Program.
- Prince Edward Island Price Stabilization Program.
- Newfoundland Provincial Government Loans to Pork Producers.
- British Columbia Swine Producers Farm Income Plan.
- Alberta Pork Producer's market Insurance Plan.
- Saskatchewan Hog Assured Returns Program.
- Manitoba Hog Income Stabilization Plan.
- Ontario Weaner Pig Stabilization Plan.
- Quebec Farm Income Stabilization Insurance.
- Quebec Meat Sector Rationalization Program.

The bonding/deposit rate is Can$0.053/lb.

Case History

On November 2, 1984, we received a petition from the National Pork Producers Council (NPPC) on behalf of the domestic pork producers, which include hog producers and packers of unprocessed pork products. Seven domestic pork packers are co-petitioners. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleged that producers or exporters in Canada of live swine and fresh, chilled and frozen pork products directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigation, and on November 23, 1984, we initiated such an investigation (49 Fed. Reg. 47079). We stated that we expected to issue a preliminary determination by January 28, 1985. On January 4, 1985, we determined this investigation to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination to 65 until April 1, 1985 (50 Fed. Reg. 1613).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On December 19, 1984, the ITC determined that there is a reasonable indication that these imports materially injure a U.S. industry (49 FR 50315).

We presented a questionnaire concerning the allegations to the government of Canada in Washington, D.C. on December 11, 1984. On January 29, 1985, we received a response to the questionnaire. We received supplemental responses on February 19, 20, March 5, 11, and 14, 1985.

Subsequent to our initiation, we received timely requests for exclusion from several Canadian firms. Questionnaires were presented to these firms in order that the Department might determine the extent to which they may have benefited from the alleged subsidy programs. Responses were received on February 25, 1985.

There are approximately 37,000 known producers and exporters in Canada of live swine and fresh, chilled and frozen pork products. For purposes of this preliminary determination the period for which we are measuring subsidization is the Government of Canada's 1984 fiscal year—April 1, 1983, to March 31, 1984.

Standing of Petitioner

The petition was filed by the National Pork Producers Council, an association of domestic hog growers, naming as the products to be investigated imports of live swine, and fresh, chilled and frozen pork products from Canada. Because the petitioner is an association of hog growers, respondents challenged its standing to file a petition against fresh, chilled and frozen pork products, as well as live swine.

According to section 702(b) of the Act, a petitioner must be a domestic interested party filing on behalf of an industry. 19 U.S.C. 1671a(b). Under section 771(9)(C) of the Act, an association of producers of a like product is an interested party qualified to be a petitioner. A like product, in turn, is defined in section 771(10) as like or most similar in characteristics and uses to the product under investigation. 19 U.S.C. 1677(10). NPPC members produce the like product, at least insofar as live swine are the product under investigation.

The second requirement for standing is that the petitioner file on behalf of an industry, which section 771(4) of the Act describes as all or most of the domestic producers of the like product. 19 U.S.C. 1677(4). As representative of the United States hog growers, NPPC clearly has filed on their behalf.

Seven pork packers, including one of the largest in the United States, are now co-petitioners. As producers of fresh, chilled and frozen pork products, they produce the product like the pork products under investigation and are therefore domestic interested parties qualified to be petitioners. Of those packers who advised the Department of their positions, a substantial majority either gave unqualified support to the petition or urged us to include pork products in the scope of the investigation of live swine from Canada. The co-petitioners satisfy the statutory requirements for filing on behalf of an industry. We find that the petitioners and co-petitioners have standing, having filed a petition on behalf of producers of live swine and fresh, chilled and frozen pork products. Since we have found that inclusion of the seven packers as co-petitioners provides standing with respect to pork products, we need not address whether the NPPC on behalf of the hog growers has standing with respect to pork products.

Scope of the Investigation

The products covered by this investigation are live swine and fresh, chilled and frozen pork products, as currently provided for in items 100.8500, 106.4020 and 106.4040 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

All values referred to are in Canadian dollars.

Upstream Issue

Respondents argue that benefits bestowed on live swine are not subsidies on fresh, chilled and frozen pork products unless the Department determines that there is an upstream subsidy within the meaning of section 771(A) of the Act, as amended by section 613(a) of the Trade and Tariff Act of 1984. We disagree. In his floor statement presenting to the Senate the bill as approved by the Conference Committee, Senator Dole defined upstream subsidies as subsidies on "inputs or components of the finished product" (130 Cong. Rec. S. 13970, daily ed. Oct. 9, 1984). Inputs (or parts) and components are transformed into different articles in the production process. For example, bolts used in producing engines are transformed in the process. The finished product (an engine) is different from the part.

No such transformation occurs here. The pork meat industry can be characterized as a single, continuous line of production. The pork meat is *not* transformed into a different article during its various stages (from live swine to fresh, chilled and frozen pork meat). The pork meat remains substantially unchanged. Moreover, the product yielded by each stage has no commercial use except in the next stage of production.

The primary, if not the sole, purpose of all segments of the industry is to produce a single end product—pork meat. Thus, unlike bolts, which can be used as parts in a variety of finished products besides engines, the raw material here (live swine) is only used to produce one finished product—pork meat. The fact that beyond this stage many separate processed products can be made (e.g., bacon and canned ham) is irrelevant. The key is that there is a single continuous line of production from live swine to pork meat.

Congress recognized the special nature of agriculture and foresaw that analyses of subsidies and injury involving agricultural products would be different from analyses of industrial products. Congress explicitly noted that the ITC faced special problems in determining the appropriate industry in agricultural cases. (See S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979)). Indeed, this report uses livestock as the example where growers and packers could be considered as one industry. Although Congress did not explicitly comment on the issue before us, logic dictates that since growers and packers can be considered as the same industry, and there is a single, continuous line of production resulting in one end product (that is not substantially transformed during the production process), a subsidy to any segment of the pork meat industry is applicable to the output of the industry.

In light of this decision, the requests for exclusion submitted by certain Canadian packers will not be considered. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Programs Determined to Confer Subsidies

We preliminarly determine that subsidies are provided to producers or exporters in Canada of live swine and fresh chilled and frozen pork products under the following programs:

A. Federal Programs.—1. *Hog Stabilization Payments Provided Under the Agricultural Stabilization Act.* The Agricultural Stabilization Act (ASA) of 1957–58 was enacted to provide for the stabilization of the prices of certain agricultural commodities. Three groups of commodities are explicitly provided for within the ASA (cattle, hogs and sheep; industrial milk and industrial cream; and corn, soy beans, oats and barley) Other natural or processed agricultural products, with certain exceptions, may be designated by the Governor in Council. Programs of the ASA are administered by the Agricultural Stabilization Board (the Board), whose members are appointed by the Governor in Council.

The Board has the duty to take such action in accordance with the ASA as is necessary to stabilize the prices of the covered agricultural commodities at their prescribed prices, and the power to "pay to producers of an agricultural commodity . . . the amount by which the prescribed price exceeds a price determined by the Board to be the average price by which the commodity is sold . . ." Chapter A–9, section 10(1)(b).The mechanism by which the stabilization payment is determined is as follows: (1) "base price" is established, which is the average price of the commodity in representative markets for the 5-year period immediately preceding the year in review; (2) "prescribed price" is determined by taking a minimum of 90 percent of the base price and adjusting it

by an index reflecting changes in production costs; and (3) "average market return price" for the commodity for the year in review is established. The difference between the prescribed price and the average market return price is the amount of the gross stabilization payment.

In fiscal year 1984, because the average market return price for hogs of Can$66.98/hundredweight. fell short of the prescribed price of Can $71.75/hundredweight., the federal government authorized a stabilization payment of Can$4.77/hundredweight. or Can$8.19/hog. this amount was reduced by approximately 20 percent to reflect the proportion of Canadian production which was exported in fiscal year 1984, resulting in a net payment of Can$6.54/hog. All producers who sold hogs of index 80 (a grading factor) or better for slaughter were eligible for benefits under this program provided they submitted an application with appropriate proof of sale and slaughter. For 1983–84, there was a participation ceiling of 12,000 hogs per producer. However, while payments for fiscal year 1984 were authorized, no payments were actually disbursed during the period.

To avoid double counting, the federal government deducted the amount of any provincial stabilization payment from the federal stabilization payment before it reimbursed each producer. If the provincial payment was greater than or equal to the federal payment, the federal government made no stabilization payment. If the federal payment exceeded the provincial payout, the federal government paid the producer the difference between the federal and provincial stabilization payments.

Respondents have claimed that ASA payments are not countervailable because they are provided to more than a specific enterprise or industry, or group of enterprises or industries. In support of their claim, they cite a previous Department ruling that benefits provided to the agricultural sector are not limited in availability within the meaning of section 771(5)(B). *See Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico* (49 FR 15007).

We disagree with respondents' claim. Based on the information received, we find that ASA payments are made only to selected agricultural producers and that the level of price stabilization payments varies, at the discretion of the Agricultural Stabilization Board, from commodity-to-commodity. As such, we cannot conclude that ASA payments are available to more than a specific enterprise or industry, or group of enterprises or industries.

The legislation establishing the ASA program specifically lists "named products" that are eligible for price support payments: Livestock (cattle, hogs and sheep), certain dairy products (industrial milk and industrial cream), and certain grains (corn, soy beans, oats and barley). The ASA further allows the Governor in Council to designate other agricultural products ("designated products") for coverage.

Thus, three types of products are singled out in the legislation. Each year, prescribed prices are calculated for these named products, and if the prescribed price is less than the average market return price, payments can be authorized. Moreover, the ASA directs that for named products prescribed prices will be calculated as at least 90 percent of the base price (adjusted by a production cost index).

This treatment of named products can be compared to that of designated products. Designated products are only considered for ASA payments if the Governor in Council so directs. There apparently is no automatic calculation of a prescribed price and potential for ASA payments, as is the case with named products. Also, there is no legally mandated coefficient to be applied to the base price of designated products.

A second aspect of the scheme which leads us to conclude that ASA payments benefit a specific enterprise or industry, or group of enterprises or industries is the lack of neutrality in the formula for calculating the prescribed price. As noted above, there is not a prescribed coefficient for designated products. Even among the named products, there is discretion in setting the coefficient to be applied to the base price. Ninety percent only serves as a minimum.

Therefore, unlike the benefits discussed in *Flowers*, ASA payments are made to selected agricultural products in specific amounts and the specific rates of support provided depend upon the commodity in question. Hence, we preliminarily determine that ASA income support payments made to Canadian hog producers are countervailable.

In reaching this preliminary conclusion, we have focused primarily on the apparent selectivity in entitlement to ASA payments. Respondents have provided us with information that many agricultural products have been eligible for payments as designated products. Therefore, they have argued, the program is provided *de facto* to agriculture in general. We will seriously consider this issue for our final determination and invite interested parties' views.

Calculation of Benefit

In deciding whether to allocate the benefit arising from stabilization payments to the year of receipt or over time, we have examined whether the program under which the payments are authorized is recurring or non-recurring (exceptional), *i.e.*, has the program been established for a period of years, or is it designed as a "one-time, shot-in-the-arm" subsidy program for the live swine industry? In the case of recurring programs, we would allocate the benefit to the year of receipt; in non-recurring programs, we would allocate the benefit over time.

The support for this approach derives from the legislative history surrounding the Trade Agreements Act of 1979, where both the House and Senate Reports singled out "non-recurring subsidy grants or loans" for special treatment:

> Reasonable methods of allocating the value of such subsidies over the production or exportation of the subsidies benefiting from the subsidy must be used.

S. Rep. No. 249, 96th Cong., 1st Sess. 85 (1979). *See also* H. Rep. No. 317, 96th Cong., 1st Sess. 75 (1979).

In the case, we have determined that the Federal Hog Stabilization Program is long-standing. It was established in 1957 by the Agricultural Stabilization Act. Annual market prices and five-year prescribed prices have been calculated for at least the last 5 years; stabilization payments have been authorized for 3 of the last 5 years. In addition, we have no reason to believe that the program will not continue. For these reasons, we have determined that the benefits provided under this program are not exceptional and should, therefore, be allocated to the year of receipt.

Because no federal stabilization payments were received during the period we investigated, and because we are allocating the benefits to the year of receipt, we find that no subsidy was received under this program during the period we investigated. However, in cases where changes have occurred after the period for which we are measuring subsidization and prior to a preliminary determination, and where the changes are verifiable, the Department's practice is to adjust the bonding/deposit rate to correspond as nearly as possible to the eventual duty liability. *See Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Brazil* (49 FR 46570) and *Final Affirmative Countervailing Duty Determination: Certain Cast Iron Pipe Fittings from Brazil* (50 FR 8755). In this case, because

1984 federal stabilization payments are not being made, we are adjusting the bonding/deposit rate to reflect those payments. We calculated the adjusted bonding rate by applying the federal payment of Can $6.54/hog to all eligible hogs. We then divided that value by the total weight of the products under investigation. This calculation resulted in a bonding/deposit rate of Can $0.26/lb.

2. *The Record of Performance Program.* The Canadian Swine Record of Performance Program (ROP) is a national herd testing system designed to assist swine producers in improving breeding stock and to encourage the production of a uniformly wholesome, high quality pork product at minimal production costs. In accordance with the guidelines formulated by the Canadian Swine Record of Performance Advisory Board and Agriculture Canada, the ROP provides for performance testing on the farm and at central test stations for backfat thickness and growth rates. Information from the testing program enables within-herd ranking and comparison of animals for genetic merit. The Canadian government funds this program.

Because this program is limited to a specific industry, we preliminarily dertermine it to be counteravilable. To calculate the benefit, we divided the total value of the government contribution to the program during the period for which we are measuring subsidization by the total weight of the products under investigation. This resulted in a subsidy rate of Can $0.001/lb.

3. *Hog Carcass Settlement System.* Hog carcasses and meat in Canada are graded under the Hog Carcass Grading Regulations, pursuant to the federal Livestock Grading Program and the Canada Agricultural Products Standards Act. The cost of the hog marketing grading program is borne by the federal government. Participation in this program is voluntary—and producer can get grading services who sends hogs to a government inspection plant. While the government of Canada has stated that grading programs similar to this program are available to a wide spectrum of agricultural products, it has not provided any evidence to that effect. Therefore, we preliminarily determine this program to be countervailable because it appears to be limited to a specific industry.

We calculated the benefit by dividing the total weight of the products under investigation. This resulted in a subsidy rate of Can $0.001/lb.

B. *Provincial Stabilization Programs—1. Alberta Pork Producers' Market Insurance Program (PPMIP).* Pursuant to the Marketing of Agricultural Products Act, the PPMIP was created in 1981 to succeed the Stop Loss Program. The program assures hog producers in Alberta a specified level of return over certain production costs. It is administered by the Alberta Pork Producers Marketing Board (the Board), and is funded by a 1981 Can$10 million grant from the government of Alberta, by loans secured by the provincial government, by premiums paid by participating hog producers, and by interest earned on the foregoing.

Participation in the program is voluntary; however, once producers have elected to participate in the program they must continue to do so for its duration. All hog producers which were registered with the Board are eligible. For stabilization payments on increased herds (over 10 percent more than the number of hogs marketed in the immediately preceding year) producers must seek and obtain Board approval. Without such approval, the producer will be liable for premium payments due to excess production without receiving additional stabilization payments.

Support levels are adjusted quarterly to reflect fluctuations in the cost components of hog production. Support payments are calculated weekly, and paid monthly based on the difference between the support level and weekly average market price. In fiscal year 1984, the provincial share of the support payments made to hog producers averaged Can$2.93/hog.

2. *British Columbia Swine Producers—Farm Income Plan (SPFIP).* Created in 1979 pursuant to British Columbia's Farm Income Insurance Act, the SPFIP assures hog producers in British Columbia a specified level of return over certain basic production costs. The program is administered by the provincial Ministry of Agriculture and Food, the British Columbia Federation of Agriculture and the British Columbia Pork Producers' Association. The program is funded by contributions, in roughly equal proportions, by the provincial government and participating hog producers.

Participation in the program is voluntary and is open to all producers who are members of the British Columbia Pork Producers' Association and who have an annual production capacity of 300 eligible market hogs. Certain participation ceilings restrict the number of hogs for which the program provides coverage. There are also payment ceilings, above which benefits are reduced.

Participating hog producers receive stabilization payments in calendar quarters during which certain costs of production exceed market returns. Costs of production and market returns are determined monthly by the administering authorities. Stabilization payments are made quarterly and are equal to the difference between costs of production and market return, multiplied by the number of eligible hogs sold, less a discount representing the producer's contribution. Producers make contributions to SPFIP in all quarters, regardless of whether costs of production exceed market returns. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can$10.73/hog.

3. *Manitoba Hog Income Stabilization Plan (HISP).* Created in 1983 pursuant to The Farm Income Assurance Plans act, the HISP provides price support payments to hog producers in Manitoba. The program is administered by the provincial Ministry of Agriculture and the Manitoba Hog Producers' Marketing Board. It is funded by premiums from participating producers and from the government of Manitoba. The government also makes loans to HISP, if needed, during periods when payouts are made to producers.

Participation in the program is voluntary and is open to all producers registered with the Manitoba Hog Producers' Marketing Board. Coverage is limited to 1,250 hogs per calendar quarter, per producer, with special provision for higher ceilings for multiple family unit producers.

Participating producers receive payments at the end of each quarter in which the market price for hogs falls below a support level. This price support level is 87 percent of a cost of production model, which is recalculated each quarter. Producer premiums are deducted from the proceeds realized upon the sale of hogs. Provincial government contributions account for approximately 30 percent of the stabilization payment; the balance is funded by members' premiums, up to a maximum of 2 percent of the sale price. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can$5.26/hog.

4. *The New Brunswick Hog Stabilization Program (NBHSP).* The NBHSP, a joint program of the New Brunswick Department of Agriculture and the Hog Marketing Board (the Board), was established in 1974. Its purpose is to assure hog producers greater income stability, to enable hog producers to remain in the business during periods of low hog prices, and to provide a more uniform volume of pork production for the processing industry.

All hog producers in New Brunswick who market hogs through the Board are eligible to participate in this program. The maximum quarterly eligibility is equal to 25 percent of the producer's previous twelve-month production level. Each producer may carry forward any unused eligibility for a maximum of three additional quarters.

The Board establishes the price at which farmers make the required contributions. When the weekly market price exceeds this level, hog producers make the required contribution. If the weekly market price increases, the required contribution increases proportionately up to Can$2.50/hog.

In addition, the Board establishes a stabilization price which is based on certain production costs. When the average weekly price falls below the stabilizing price, the Board will make deficiency payments equal to the difference between the average weekly price and the stabilization price. In fiscal year 1984, this program was in a deficit position. Producers were not required to fund their share of the deficiency payment through a premium, but received a loan from the province to cover their share of the payment. We have no information on the terms or conditions of their loans. In fiscal year 1984 the deficiency payment, which may include loans, was Can$18.26/hog.

5. *Nova Scotia Pork Price Stabilization Program (NSPPSP).* Pursuant to the Nova Scotia Natural Products Act, NSPPSP is administered by the Pork Producers Marketing Board of Nova Scotia (the Board) pursuant to the Nova Scotia Pork Marketing Plan of August 9, 1983. The purpose of the program is to assure price stability with respect to the production of hogs by compensating farmers for fluctuations in the hog price sycles and by assuring that producers consistently recover direct operating costs. Participation is open to all hog producers who market hogs through the Board. Maximum eligibility is established annually according to the producers' existing production facilities.

The NSPPSP is funded by producer contributions to the Pork Price Stabilization Fund. Each quarter, the Board sets and reviews the price at which producers contribute to the fund (the contribution price) and the price at which they receive payments from the fund (the stabilization price, which is set to reflect current, direct, out-of-pocket operating costs). When the weekly market price exceeds the producers' contribution price, the Board deducts the amount of the contribution from the sale price and deposits it in the Stabilization Fund. When the weekly market price falls below the stabilization price, the Board pays the producer the full amount of the difference between the weekly market price and the stabilization price. In fiscal year 1984, this program was in a deficit position. Producers were not required to fund their share of the deficiency payment through a premium, but received a loan from the province to cover their share of the payment. We have no information on the terms or conditions of their loans. In fiscal year 1984, the deficiency payment, which may include loans was Can$16.74/hog.

6. *Ontario Weaner Pig Stabilization Plan.* This program was initiated on April 1, 1980, pursuant to Ontario's Farm Income Stabilization Act. Ontario does not have a price stabilization program for slaughter hogs; this program covers only weaner pigs. A weaner pig is a swine, at the stage of production at which it has been separated from the sow, but before it becomes a pig and eventually a slaughter hog. This program is intended to contribute towards providing income stabilization to sow weaner producers. It is administered by the Farm Income Stabilization Commission on Ontario's Ministry of Agriculture and Food.

Particpation in the program is voluntary and is open to all sow weaner producers in Ontario with a minimum of four sows. A producer's participation is limited to the number of weaner pigs produced by 100 sows in any production period. (Production periods under this program are 6-month time periods, from April 1 to September 30 and from October 1 to March 31 of the following year.) The cost of this program is shared by the provinical government, which pays two-thirds of the costs, and participating producers which pay one-third.

Participating producers receive suport payments in any production period in which the average market price for that period is below a support price. This support price is calculated at 95 percent of the average price in the five years immediately preceding the production period, adjusted for cash-cost changes. Price and cash costs are those used in the Federal ASA program for slaughter hogs. Payments are calculated on a slaughter hog basis and then converted to a per sow basis by formula. In fiscal year 1984, the provincial payments under this program amounted to Can$3,660,444.

7. *The Prince Edward Island (PEI) Price Stabilization Program.* In accordance with the PEI Natural Products Marketing Act, the PEI Hog Commodity Marketing Board established the PEI Price Stabilization Program in 1973. The purpose of the program is to provide income stability to hog producers by compensating them for fluctuations in prices caused by traditional hog-price cycles.

The Price Stabilization Fund is made up of equal producer and provincial government contributions. Contributions are made when the weekly average market price for hogs exceeds a predetermined level and are increased proportionally as the average weekly price for hogs increases. If the weekly market price for hogs falls below the contribution level no payments are made. If the weekly market price declines below a second predetermined level (the stabilization price). The PEI Hog Commodity Marketing Board will pay the producer a deficiency payment equal to of one-half the difference between the depressed market price and the stabilization price. Support levels are recalculated quarterly in March, June, September and December.

Participation in the program is voluntary; there are no minimum production requirements. However, producers are only eligible to receive deficiency payments on the number of hogs equal to the average number of hogs marketed in the previous quarter, up to a ceiling of 4,000 hogs in four consecutive quarters. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can $9.33/hog.

8. *Quebec: Farm Income Stabilization Insurance.* The 1981 Act Respecting Farm Income Stabilization Insurance was enacted to guarantee a net annual income to participating producers. The program is administered by the Regie des Assurances Agricoles du Quebec (Regie), which annually decides the level at which it supports agricultural producers.

In order to participate in this program, Quebec producers must agree to stay with the program for at least 5 years and produce at least 100 hogs and own 15 sows during the first year, with a participation ceiling of 5,000 hogs or 400 sows.

At the end of each year, the Regie calculates the level of stabilization income, which is based on a farm production model designed to cover fixed costs, variable costs and producers' remuneration. The provincial government annually assesses participants for contributions to the income stabilization fund. These funds make up one-third of the Stabilization Insurance Fund. The provincial government provides the balance. In fiscal year 1984, the provincial share of the support payment to hog producers averaged Can $15.08/hog.

9. *Saskatchewan Hog Assured Returns Program (SHARP).* SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act and provides stabilization payments to hog producers in Saskatchewan at times when market prices fall below certain production costs. The program is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture.

Participation in the program is voluntary and is open to all hog producers in the province. Coverage is limited to 1,500 hogs per producer each calendar quarter. During the period we investigated, nearly 75 percent of all hogs marketed in Saskatchewan were covered by the program.

This program is funded by contributions from participating producers and by matching amounts from the provincial government. Producer contributions range from 1.5 to 4.5 percent of market returns on the sale of hogs which are covered by the program. Whenever the balance in the SHARP account is insufficient to make payments to participants, the provincial government loans the needed funds to the Program.

The stabilization price under this program is the total of all cash production costs plus 75 percent of non-cash costs. This price is determined each calendar quarter. Stabilization payments are made at the end of each quarter to each participating producer whose average price for hogs marketed in that quarter is less than the stabilization price. However, in order to make a stabilization payment, the difference between average market price obtained and the stabilization price must be least Can$1.00. For fiscal year 1984, the provincial share of the support payment to hog producers averaged Can$8.09/hog.

Summary of Provincial Stabilization Programs

Stabilization plans similar to these programs may also be available with respect to some other agricultural commodities in each of the provinces cited above. However, neither the government of Canada nor the provincial governments have provided information on (1) the other commodities receiving stabilization payments, (2) the value of those payments, and (3) the mechanism by which those payments are determined. Therefore, for purposes of this preliminary determination, we find that benefits under these plans are provided to a specific industry, and are countervailable.

Calculation of Benefits

We have determined that the various provincial stabilization benefits are being provided under recurring government programs, and have, therefore, allocated the benefits to the year of receipt. For each province, we calculated the total stabilization payment made during the period for which we are measuring subsidization (after netting out producer contributions), and divided that value by the total weight of the products under investigation. In those provinces where deficiency payments may be in the form of loans (Nova Scotia and New Brunswick) we have treated the entire amount as having been received, because we did not have information on the terms and conditions of the loans. Adding the benefits found for the provincial stabilization programs together resulted in a bonding/deposit rate of Can$0.025/lb.

D. *Other Provincial Programs*—1. *Newfoundland: Low-Interest Loans to Provincial Pork Producers.* In 1983–84, the Newfoundland provincial government provided loans to provincial pork producers. We have not received any information as to the terms or conditions of these loans. However, the Canadian federal government estimates a benefit to the hog producers of Can$0.85/hog. For purposes of this preliminary determination, we have applied this value to all hogs sold in Newfoundland, and have calculated a benefit under this program of Can$0.00002/lb.

2. *Quebec: Grants to Pork Packers under the Meat Sector Rationalization Program.* Between 1975 and 1978, the Quebec Ministry of Agriculture, Fisheries and Food instituted the meat Sector Rationalization Program. The purposes of the program are: (1) To encourage the development of the Quebec meat sector, (2) to ensure Quebec producers with viable, sustained outlets for their production, (3) to provide the industry with a competitive advantage, and (4) to direct businesses to new markets.

Under this program the Quebec Ministry of Agriculture, Fisheries and Food provides technical assistance and grants for the establishment, standardization, expansion, or modernization of slaughterhouses, processing plants, or plants preparing foods containing meat. All businesses operating or wishing to operate such a facility are qualified to participate in this program. Total capital costs must exceed Can$10,000 and processors may not depreciate new equipment to the extent of any grant.

Because benefits under this program are limited to the meat sector, we preliminarily determine that they are provided to a specific enterprise or industry, or group of enterprises or industries, and are therefore countervailable. The Government of Quebec has reported that three packers currently in operation have received benefits under this program. Using the grant methodology, we have calculated a benefit of Can$0.00005/lb.

II. Programs Determined Not To Confer Subsidies

We preliminarily determine that subsidies are not being provided to producers or exporters in Canada of live swine and fresh, chilled and frozen pork products under the following programs:

A. *Federal Financing Programs.*—1. *Farm Credit Act.* Canada's Farm Credit Act of 1959 provides long-term loans to individual farmers, farming corporations, and cooperative farm associations for the acquisition of farm land and for a broad array of agricultural operations. The program is administered by the Farm Credit Corporation.

Loans are for a maximum term of thirty years and must be secured. With two exceptions, these loans are made at a fixed annual rate of interest which is 1 percent above a base rate. This base rate is the same as the yield on government of Canada bonds with maturities of five to ten years. The exceptions to the above are (1) loans which were approved between October 18, 1979, and March 31, 1980, at a fixed rate of 12 percent per annum, and (2) a special provision for interest rates on loans approved on or after November 15, 1968, part of the proceeds of which are used to repay prior loans under this program.

2. *Farm Syndicates Credit Act.* The Farm Syndicates Credit Act provides long-term loans to farming corporations, cooperative farm associations and other farm associations for the purchase or improvement of farm buildings and land, and for the acquisition of farm machinery. The program is administered by the Farm Credit Corporation.

Loans are made for up to Can$100,000, on terms which vary according to the use of the proceeds. Interest rates are prescribed by the Farm Credit Corporation and are set at levels which cover the Corporation's cost of money and its administrative expenses.

3. *Special Farm Assistance Programs.* Under this program, long-term loans were available to distressed farming enterprises. The program ended on June 28, 1984.

Summary of Federal Financing Programs

The enabling federal legislation indicates that financing under these Federal plans is available without restriction to the producers of any agricultural product in Canada. Because the programs do not designate specific products for receipt of financing or establish differing terms for specified products, we preliminarily determine that the Federal financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs. *See Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico* (49 FR 15007).

B. *Provincial Programs.*—1. *Grant Programs in Quebec.* (a) *Grants under the Act to Promote the Development of Agricultural Operations.* Under the Act to Promote the Development of Agricultural Operations, grants are provided to assist farmers in carrying out improvements on their farms.

(b) *Grants to Provincial Pork Packers under the Quebec Industrial Assistance Act (IAA)* The IAA was established in 1971 to promote economic development in Quebec. Through it, the government of Quebec may make low-interest loans, grants, loan guarantees, and may purchase shares in manufacturing and commercial operations. Two pork packers received grants under this program.

Summary of Quebec Grant Programs

Because the programs do not designate specific products for receipt of funding to establish differing terms for specified products, we preliminarily determine that the Quebec grant programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

2. *Financing Programs in Quebec.* (a) *Low-Interest Financing under an Act to Promote Long-Term Farm Credit by Private Institutions.* The Office du Credit Agricole du Quebec offers low-cost financing to agricultural producers who maintain a profitable farm as their primary occupation and who demonstrate a need for such financing. The Act permits lenders to make variable-interest, low-cost long-term loans to borrowers so that the interest charged does not exceed the prime rate plus ½ percent. In addition, twice a year the Office reimburses a part of the interest, equal to half the difference between 4 percent and the interest charged, to the borrower. On loans granted before November 23, 1983, the Office returns to the producer the portion of the interest exceeding 2½ percent on the first Can$15,000 and the portion exceeding 8 percent on the next Can$135,000 (Can$185,000 for group operations).

(b) *Low-interest Financing under the Farm Credit Act.* Under the Farm Credit Act, the Office du Credit Agricole du Quebec can make long-term loans on conditions similar to those in the Act to Promote Long-Term Farm Credit by Private Institutions. The interest charged is 2.5 percent on the first Can$15.000 and 8 percent on the remaining amount up to Can$150,000 (or Can$200,000 for group operations). Since August 1, 1978, the Office has ceased making loans although it may, under exceptional circumstances, make loans when private lenders are unable to do so. In addition, the Fonds d'Assurances-prete Agricoles et Forestiers guarantees loans and lines of credit extended to farmers by private institutions under the Farm Credit Act even though these loans carry no interest subsidy.

(c) *Low-Interest Guaranteed Loans under An Act to Promote Farm Improvement.* The Office du Credit Agricole guarantees medium-term loans of up to Can$200,000, whose variable interest-rate may not exceed the prime rate plus ½ percent. Twice a year the Office reimburses borrowers a portion of the interest equal to 3 percent on the first Can$15,000 of loans. All farmers who maintain profitable farms as their primary occupation, and who demonstrate a need for such financing, qualify.

(d) *Interest-Free Loans under the Act to Promote the Establishment of Young Farmers.* The Act to Promote the Establishment of Young Farmers was promulgated on September 1, 1982. It permits newly established farmers between the ages of 18 and 40 to receive interest subsidies equal to the net interest payable for five years on the first Can$50,000 of a loan.

(e) *Low Interest Mortgages under the Farm Loan Act.* The Farm Loan Act permits the Office du Credit Agricoles du Quebec to reimburse a portion of the interest on the first Can$15,000 of a mortgage granted by the Farm Credit Corporation of Canada. The Office will reimburse one half of the difference between 4 percent and the rate charged by the Office. On loans granted by the Farm Credit Corporation of Canada (FCC) before November 21, 1981, the Office reimburses the difference between 2½ percent and the rate charged by the FCC on these loans.

Summary of Quebec Financing Plans

Because the programs do not designate specific products for receipt of funding nor do they establish differing terms for specified products, we preliminarily determine that the Quebec financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

(3) *New Brunswick.* (a) *Financing Provided Under the Farm Adjustment Act of 1980.* Under the Farm Adjustment Act of 1980, the Farm Adjustment Board was empowered to make loans for the purchase of farms and farmland, farm buildings, equipment, and for the conversion of short-term liabilities to medium- and long-term obligations; and to make loans and grants for the conversion of ineffectively used land to more effective use. In addition, the Farm Adjustment Board may conduct research, investigations and feasibility studies to assist in land-use or land-management projects aimed at increasing income and employment in rural areas.

(b) *Loans, Leases and Purchasing Rights under the Farm Adjustment Act of 1984.* The New Brunswick Regulations under the Farm Adjustment Act of December 20, 1984 permits the Farm Adjustment Board to extend loans, lease property and sell land to qualifying farmers.

Summary of New Brunswick Financing Programs

Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the New Brunswick financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprise or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

4. *Nova Scotia Loans Received Under the Agriculture and Rural Credit Act.* The Agriculture and Rural Credit Act establishes the Nova Scotia Farm Loan Board whose purpose is to make low-interest loans for agricultural purposes. Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the Nova Scotia financing programs

for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

5. *Alberta Agricultural Development Corporation.* The Agricultural Development Corporation provides low-interest loans and loan guarantees to farming operations, including hog producers. Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the Alberta financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

6. *British Columbia: Interest Free Loans and Loan Guarantees by British Columbia Ministry of Agriculture and Food.* Under British Columbia's Agricultural Credit Act, interest-free loans and loan guarantees are provided to eligible farmers. Because the programs do not designate specific products for receipt of funding or establish differing terms for specified products, we preliminarily determine that the Alberta financing programs for agriculture are available to more than a specific enterprise or industry, or group of enterprises or industries, and hence are not countervailable. At verification, we will carefully look at the availability of funds under these programs.

V. Programs Determined Not To Be Used

We preliminarily determine that producers or exporters in Canada of live swine and fresh, chilled and frozen pork products did not use the following programs:

A. *Ontario Red Meat Plan.* Under this program, various grants and services are provided by Ontario's Ministry of Agriculture and Food to producers of beef and sheep. Benefits are not available to producers or exporters of live swin and fresh, chilled and frozen pork products.

B. *Swine Sales Assistance Policy.* This program is designed to promote the distribution within Ontario of pure-bred animals of superior quality. Grants of Can$2.50 per animal, to a maximum of Can$100 per sale may be made to Breeders' Clubs. These grants are to assist in defraying the costs of conducting consignment sales. No payments were made under this program during the period we investigated.

IV. Programs for Which More Information Is Needed

A. *Ontario Farm Tax Reduction Program.* This program, which orginated in 1970, provides rebates of 60 percent of municipal property taxes on farmland to all eligible farmers in Ontario. For farm property to be eligible, annual municipal property taxes must be at least Can$20, and it must realize a gross annual production of Can$5,000 if located in eastern and northern Ontario, and Can$8,000 if located elsewhere in the province. Farmers who have received such rebates for a property and convert it to non-farm use must repay all debates of the preceding ten years, with interest.

This program appears to be countervailable as a regional subsidy within the Province. However, we need more information regarding benefits received by the producers of live swine and fresh, chilled and frozen pork products during the period we investigated.

B. *British Columbia-Partial Interest Reimbursement.* This program operates to reimburse farmers in British Columbia for part of the interest on loans. The government of British Columbia has not provided the enabling legislation for this program. Further informaiton is needed to determine whether benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries, in specific regions of the Province.

C. *Manitoba Agricultural Credit Corporation Loan Guarantees.* The government of Manitoba, through the Manitoba Agricultural Credit Corporation, provides guarantees for short-term loans to farmers for general operating expenses. The enabling legislation for this program has not been provided. Further information is needed to determine whether or not benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries, in specific regions of the Province.

D. *New Brunswick Loan Guarantee Under the Livestock Incentives Act, January 1976.* The Livestock Incentives Act of January 1976 empowers the Ministers of Agriculture and Rural Development to pay a lender the amount of loss sustained by it as a result of a livestock loan if the terms of the loan were consistent with government regulations. In addition, the Minister may extend a grant to farmers or on their behalf, if the farmers conducted their operations in accordance with a farm plan approved by government officials. Further information is needed to determine whether or not benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries. To the extent that this program may be countervailable, we also need more information regarding benefits received by the producers of live swine and fresh, chilled and frozen pork products during the period we investigated.

E. *Saskatchewan Financial Assistance for Livestock and Irrigation.* Under this program, low-interest loans are made available to farmers for the production of livestock, including swine, and to finance irrigation of farmland. Loans to each particpant are limited to Can$350,000. Further information is needed to determine whether or not benefits under this program are limited to a specific enterprise or industry, or group of enterprises or industries, in specific regions of the province.

F. *Saskatchewan: Livestock Investment Tax Credit.* Saskatchewan's 1984 Livestock Tax Credit Act provides a tax credit of Can$3.00 per hog for hogs slaughtered between March 22, 1984, and December 31, 1986. Producers and other eligible claimants must own the hogs for a minimum feeding period of 60 days and either slaughter them themselves or market them for immediate slaughter. There is a Can$100 deduction from the credit in each year in which this tax credit is claimed. Any unused portion of the tax credit may be carried forward by the claimant for up to seven years after the year in which not used.

Because these tax credits were not available until the 1984 tax year, for which returns would be filed no earlier than 1985, it is virtually impossible to quantify the value of these benefits based on the information we now have. We will seek additional information regarding the benefits provided under this program at verification.

V. Program Determined Not To Exist

A. *Proposed Tripartite Red Meat Stabilization Programs.* Proposals exist for the introduction of stabilization programs for five sectors of red meat production in Canada, including one for hog producers. These would provide national uniformity in support levels within each sector and would replace the existing federal and provincial programs. These proposals are now in the discussion stage; thee is not yet any legislative foundation for them. Accordingly, we determine that this program does not exist.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in

making our final determination. As previously stated, if any statement in the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidattion of all entries of live swine and fresh, chilled and frozen pork products from Canada which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register and to require a cash deposit or bond for each such entry of this merchandise of Can$0.053/lb. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 120 days after the Department makes its preliminary affirmative determination or 45 days after its final affirmative determination, whichever is latest.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 9, 1985, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of pre-hearing briefs must be submitted to the Deputy Assistant Secretary by May 3, 1985. Oral presentations will be limited to issues reaised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: March 28, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–7847 Filed 4–2–85; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing New Specific Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

March 29, 1985.

Under the terms of paragraph 7(e)(IV) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 23, 1982, as amended, between the Government of the United States and Hong Kong, the United States Government has converted the following categories to specific limit categories for the 1985 agreement year:

Category	Description	12-mo. limit
337	Playsuits	[4] 652,800
359 pt.[1]	Vests	[4] 2,019,600
359 pt.[2]	Coveralls	[4] 999,000
359 pt.[3]	Infants' Sets	[5] 5,796,228
369 pt.[6]	Shop Towels	[6] 1,191,012
605 pt.[5]	Thread	[7] 481,395
649	Brassieres	[4] 564,974
652	Underwear	[4] 3,583,365
659 pt.[6]	Knit Swimwear	[7] 411,316
659 pt.[7]	Coveralls	[4] 1,071,000

[1] In Category 359, only TSUSA numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, and 383.4320.
[2] In Category 359, only TSUSA numbers 379.0822, 379.8410, 383.0528 and 383.5027.
[3] In Category 359, only TSUSA numbers 383.0350, 383.0655, 383.3060, and 383.5057.
[4] In Category 369, only TSUSA number 366.2740.
[5] In Category 605, only TSUSA number 310.9140
[6] In Category 659, only TSUSA numbers 379.2340, 379.3170, 370.9100, 379.9570, 383.1920, 383.2239, 383.8330, 383.8400 and 383.9255.
[7] In Category 659, only TSUSA numbers 379.9605, 379.3325, 383.2005, 383.2327, 383.8605 and 383.9210.
[4] Dozen.
[5] Pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782) and Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

The purpose of this notice is to advise the public of these 1985 limits.

Walter C. Lenahan.

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–7923 Filed 4–2–85; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Personnel Research and Development Center (NPRDC) Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on April 18–19, 1985, at the Naval Personnel Research and Development Center, San Diego, California. The agenda will include technical briefings from NPRDC which will assist the team in their efforts to make a thorough evaluation of the scientific, technical and engineering health of the activity. The first session of the meeting will commence at 8:30 a.m. and terminate at 4:00 p.m. on April 18. The second and final session will commence at 8:30 a.m. and terminate at 5:30 p.m. on April 19. All sessions of the meeting will be open to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NPRDC.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: March 29, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–7928 Filed 4–2–85; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 3, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: March 29, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Special Education and Rehabilitative Services

Type of Review Requested: Reinstatement
Title: Three-year State Plan for Vocational Rehabilitation Services Under Title I of the Rehabilitation Act, as amended
Agency Form Number: ED (RSA)—SPVR
Frequency: Annually; Three-year cycle
Affected Public: State or local governments
Reporting Burden: Responses: 83; Burden Hours: 1,600
Recordkeeping Burden: Recordkeepers: 83; Burden Hours: 6.6

Abstract: Title I of the Rehabilitation Act of 1973 as amended authorizes grants to assist State Vocational Rehabilitation (VR) agencies in providing vocational rehabilitation services to handicapped individuals so that they may prepare for and engage in gainful employment to the extent of their capabilities. Each State submits a State plan in order to receive Federal funds.

Type of Review Requested: Revision
Title: Quarterly Cumulative Caseload Report
Agency Form Number: ED 113
Frequency: Quarterly
Affected Public: State or local governments
Reporting Burden: Responses: 328; Burden Hours: 328
Recordkeeping Burden: Recordkeepers: 82; Burden Hours: 82

Abstract: Section 13 of the Rehabilitation Act of 1973 as amended by Pub. L. 98-221 requires the Secretary to report on activities and expenditures under the Act. This report, submitted by State Vocational Rehabilitation Agencies, provides caseload data used to track numbers and types of clients served and caseload flow through the Vocational Rehabilitation system.

Office of Planning, Budget and Evaluation

Type of Review Requested: New
Title: Evaluation of Indian Controlled Schools
Agency Form Number: P75-3P
Frequency: One time
Affected Public: Local educational agencies; schools operated by Indian tribes or Indian organizations
Reporting Burden: Responses: 2,811; Burden Hours: 2,933.7
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information will provide a factual basis for evaluating the payroll costs, academic standards and attendance levels in Indian controlled schools. The affected public includes those schools and selected public of Bureau of Indian Affairs' schools, and the students and staff within them. The information will be used by Congress in determining future funding levels for the Indian controlled schools.

[FR Doc. 85-7988 Filed 4-2-85; 8:45 am]

BILLING CODE 4000-1-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-006; OFP Case No. 51047-9243-30-34]

Order Granting to AES Placerita, Inc., an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to AES Placerita, Inc. (AES Placerita), a permanent cogeneration exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), its proposed electric powerplant to be located in Newhall, California. The exemption granted permits the use of natural gas as the primary energy source for the identified powerplant.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on June 3, 1985.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

K.E. Workman, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-1730

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On January 31, 1984, AES Placerita filed a petition with ERA requesting a

permanent cogeneration exemption for its proposed electric powerplant from the prohibitions of Title II of FUA.[1] AES Placerita proposes to construct and operate a cogeneration facility that will include two Brown Boveri Type 8 gas turbines (85.2 MW total output) coupled with two waste heat recovery boilers, one capable of producing 250,000 pph of 1015 psia, 85% saturated steam, and one generating 181,750 pph of 598 psia, 887°F steam and 34,000 pph of 769 psia, 309°F steam for delivery to a single steam turbine. The steam turbine produces approximately 16.8 MW of electricity.

The cogeneration facility will occupy six and one-half acres, and an associated water storage site will occupy one-half acre.

The cogeneration facility will be operated 24 hours per day, 7 days per week. Downtime for scheduled and unscheduled maintenance is anticipated for a maximum of 33 days per year.

Natural gas will be the sole fuel utilized, and there will be no emergency standby fuel. Also, no fuel will be stored on the site.

Based on a 91% annual fee factor of 7972 hours per year operations, the following are the average annual production and fuel rates forecasted for the facility.

Electric Production—782,810,000 kWh/yr
Steam Export—1,992,900,000 lbs/yr
Fuel Consumption—72,741×10⁶ Btu/yr LHV
(Natural Gas)—80,625×10⁶ Btu/yr HHV.

AES Placerita intends to use steam injection at the rate of 1.8 pounds of steam per pound of fuel to control emissions of nitrogen oxides. A selective catalytic reduction process will also be used to reduce nitrogen oxide emissions. An oxidation catalyst to control carbon monoxide emissions will be installed within each boiler. Efficient combustion and a clean fuel will provide Best Available Control Technology (BACT) for the other pollutants.

AES Placerita, Inc., will obtain approximately 945 gallons of water per minute from the TOSCO Enhanced Oil Recovery Corporation (TEORCO) as a by-product of TEORCO's steam injection process for oil recovery. (The water is currently reinjected into the ground by TEORCO.) The majority of the water will be used to produce process steam for TEORCO. Water for NO_x control and the steam-electric generation boiler (approximately 150 gpm with an additional 20 gpm required intermittently) will be obtained from the Newhall County Water District and will be further treated in a demineralizer unit.

There will be two sources of liquid effluents from the project. Neutralized chemicals and blowdown water form one effluent stream of approximately 210 gallons per minute. Spent regenerate chemicals (dilute sulfuric acid and sodium hydroxide) and rinse water from the cogeneration facility demineralizer will be neutralized. This water, the cooling tower blowdown, and the boiler blowdown will then be injected into the ground along with TEORCO's returned process water.

TEORCO currently has a permit to inject its process water, and this permit will be amended to include the 210 gpm of cogeneration process water.

A septic tank system will be provided on-site for the cogeneration facility for its sanitary waste water effluent.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

On September 28, 1984, AES Placerita submitted an amended petition for permanent exemption. On October 22, 1984, an extension was granted for 45 days until December 7, 1984. Notice of that extension was published in the **Federal Register** on November 1, 1984 (49 FR 44011). On December 5, 1984, an additional extension was granted to AES Placerita for 90 days until March 7, 1985. Notice of that extension was published in the **Federal Register** on December 18, 1984 (49 FR 49168). On February 6, 1985, AES Placerita submitted an amended petition for permanent exemption.

Basis For Exemption Order

The permanent exemption granted by ERA to the powerplant is based upon AES Placerita's certification, pursuant to section 212(c) of FUA and 10 CFR 503.37(a)(1), that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the congeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum and natural gas and an alternate fuel in a cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In addition to the exhibits containing the bases for the certification (as required by 10 CFR 503.37(c)), AES Placerita also submitted an environmental impact analysis, as required under 10 CFR 503.13.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed powerplant in the **Federal Register** on March 8, 1984 (49 FR 8671), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency for comments.

During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on April 23, 1984. No comments were received and no hearing was requested.

NEPA Compliance

After review of AES Placerita's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that AES Placerita has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37(a)(1). Therefore, pursuant to section 212(c) of FUA, hereby grants a permanent cogeneration exemption of AES Placerita to permit the use of natural gas as the primary energy source for its powerplant to be located in Newhall, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial reveiw thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

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[1] Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new major fuel burning installations. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA were published in the **Federal Register** at 46 FR 59872 (December 7, 1981). A revised final rule governing eligibility and evidentiary requirements for the cogeneration exemption was issued on June 25, 1982 (47 FR 29200 (July 6, 1982)).

Issued in Washington, D.C., March 15, 1985.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-7943 Filed 4-2-85; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Petroleum Supply Reporting System (PSRS) Forms

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments concerning proposed changes to the petroleum supply reporting system forms and notice of public hearing.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicits comments concerning proposed changes to the Petroleum Supply Reporting System forms. In an effort to maximize public participation in the discussion of revisions to these forms, the EIA will conduct a public hearing on Thursday, May 9, 1985, in Room 1E245 of the Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, beginning at 9:00 a.m. (edt).

DATE: Those wishing to provide oral testimony at the public hearing must request to speak at the hearing by 4:30 p.m. Friday, April 19, 1985, and must submit a copy of their presentation to the EIA by 4:30 p.m. Monday, April 29, 1985.

Those wishing to provide written comments only must submit a copy of their comments to the EIA by 4:30 p.m. Friday, May 3, 1985.

ADDRESS: Send comments, requests to speak at the hearing, and written presentations to: Susan J. Harris, Office of Oil and Gas, Energy Information Administration, Department of Energy, Mail Stop 2H-058, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-5992.

To obtain copies of the proposed forms and instructions, contact: Petroleum Supply Division, Energy Information Administration, Department of Energy, Mail Stop 2H-058, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4052.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Comments and Public Hearing Procedures

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275), and the Department of Energy (DOE) Organization Act (Pub. L. 95-91), the Energy Information Administration (EIA) is obliged to publish, and otherwise make available to the public, high-quality statistical data that reflect national and regional petroleum supply activity as accurately as possible.

To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant primary petroleum supply activity in the U.S.

II. Current Actions

In keeping with DOE's mandated responsibilities, the EIA proposes changes in the following petroleum supply data collection forms:

Weekly Refinery Report (Form EIA-800)
Weekly Bulk Terminal Report (Form EIA-801)
Weekly Product Pipeline Report (Form EIA-802)
Weekly Crude Oil Stock Report (Form EIA-803)
Weekly Imports Report (Form EIA-804)
Weekly Shipments From Puerto Rico to the United States Report (Form EIA-805)
Monthly Refinery Report (Form EIA-810)
Monthly Bulk Terminal Report (Form EIA-811)
Monthly Product Pipeline Report (Form EIA-812)
Monthly Crude Oil Report (Form EIA-813)
Monthly Imports Report (Form EIA-814)
Monthly Shipments From Puerto Rico to the United States Report (Form EIA-815)
Annual Refinery Report (Form EIA-820).

In addition, EIA proposes to redesignate the following forms and to incorporate them into the PSRS.

	Old No.	New No.
Weekly Crude Watch Report	EIA-739	EIA-805
Monthly International Energy Agency Import/Stocks-at-Sea Report.	EIA-142	EIA-818
Petroleum Facility Operator Identification Survey.	EIA-747	EIA-825

The proposed changes and modifications are designed to reduce respondent burden, to increase consistency between the weekly, monthly, and related petroleum supply publications, and to reduce ambiguity in instructions.

The proposed changes are summarized below:

1. Form EIA-800 (Weekly Refinery Report): a. Begin collecting data on stocks of liquefied petroleum gases and other petroleum products.

2. Form EIA-801 (Weekly Bulk Terminal Report): a. Begin collecting data on stocks of liquefied petroleum gases, other petroleum products, and unfinished oils.

3. Form EIA-802 (Weekly Product Pipeline Report): a. Begin collecting data on stocks of liquefied petroleum gases, other petroleum products, and unfinished oils.

4. Form EIA-803 (Weekly Crude Oil Stocks Report): a. Begin collecting data on stocks of unfinished oils.

5. Form EIA-804 (Weekly Imports Report):

a. Expand the number of source countries for crude oil imports to include OPEC countries not presently identified (Kuwait, Qatar, Ecuador, Gabon) and countries that are gaining prominence as import sources (Angola, People's Republic of China).

b. Begin collecting data on imports of motor gasoline blending components and unfinished oils.

c. Require companies shipping petroleum from Puerto Rico to the United States to report on the Form EIA-804 instead of Form EIA-805, "Weekly Shipments From Puerto Rico to the United States."

6. Form EIA-805 (Weekly Shipments From Puerto Rico to the United States Report): a. Eliminate Form EIA-805. Respondents to the Form EIA-805 will now report on Form EIA-804.

7. Form EIA-806 (Weekly Crude Watch Report): a. Form designation changed from Form EIA-739. Data elements and instructions are unchanged.

8. Form EIA-810 (Monthly Refinery Report): a. Reduce the amount of information collected on still gas and liquefied refinery gases by eliminating the requirement to separately identify refinery receipts, inputs, production, shipments, fuel use and losses, and stocks intended for petrochemical use and for other use. These two end-use categories are now combined.

9. Form EIA-811 (Monthly Bulk Terminal Report): a. Begin collecting data on stocks of unfinished oils.

10. Form EIA-812 (Monthly Product Pipeline Report): a. Begin collecting data on stocks of unfinished oils and movements of unfinished oils between PAD Districts.

11. Form EIA-813 (Monthly Crude Oil Report): a. Begin collecting data on stocks of unfinished oils and movements of unfinished oils between PAD Districts.

12. Form EIA-814 (Monthly Imports Report):

a. Reduce the number of categories of natural gas liquids and liquefied petroleum gases from 19 to 5: i.e.,

...

ethane, propane, normal butane, isobutane, and pentanes-plus.

b. Add storage and certain end-use facilities (e.g. electric utility power plants) to the types of facilities for which the imported oil is destined. This will aid in the identification of further processing activities and expected end use.

c. Eliminate the requirement to indicate under which section of the oil import regulations an item was imported.

d. Separately identify four categories of unfinished oils imports: naphthas and lighter, kerosene and light gas oils, heavy gas oils, and residuum.

e. Require companies shipping petroleum products from Puerto Rico to the United States to report on the Form EIA–814 instead of the Form EIA–815, "Monthly Shipments From Puerto Rico to the United States."

13. Form EIA–815 (Monthly Shipments From Puerto Rico to the United States Report): a. Eliminate Form EIA–815. Respondents to the Form EIA–815 will now report on Form EIA–814.

14. Form EIA–818 (Monthly International Energy Agency Imports/Stocks-at-Sea Report): a. Form designation changed from Form EIA–142. Data elements and instructions are unchanged.

15. Form EIA–820 (Annual Refinery Report): a. Begin collecting data on the average heat content of crude oil, liquefied petroleum gases, natural gas, still gas, petroleum coke, coal used as fuel at refineries, and steam and electricity purchased for use at refineries.

16. Form EIA–825 (Petroleum Facility Operator Identification Survey): a. Form designation changed from Form EIA–747. Data elements and instructions are unchanged.

III. Comments and Public Hearing Procedures

A. Written Comments

The EIA invites the public to comment on these proposed changes and provides the following guidelines to assist in preparation of responses.

If you are a possible data provider:

(1) How many hours, including time for research, computation, preparation and administrative review, will it take your firm to change from current reporting procedures to the proposed procedures during the first year of reporting?

(2) How many hours will your firm require in subsequent years of reporting?

(3) Estimate the initial cost of modifying your systems to be able to respond to the revised forms, including direct and indirect costs associated with the data collection. Direct costs should include all one-time and recurring costs, such as development, assembly, equipment, ADP and other administrative costs.

(4) Estimate the cost in subsequent years of reporting.

(5) Do you agree with each of the proposed changes? Are there additional changes that you would recommend?

If you are a data user:

(1) Do you need data at the levels of aggregation that would be available using the modified (new) forms; that is: do the products, frequency, market categories and geography reflect your needs?

(2) Do you need any of the elements of information that would be eliminated by this proposal? For what purposes would you use these data?

(3) How could the forms be improved to better meet your specific data needs?

Comments will be summarized and consolidated in EIA's submission to the Office of Management and Budget and will become a matter of public record.

B. Public Hearings

1. Procedures for Request to Make Oral Presentation

The time and place for the hearing are indicated in the "Dates" and "Address" sections above.

The EIA invites any interested person wishing to provide oral testimony on these forms to request to speak at the hearing no later than 4:30 p.m. Friday, April 19, 1985, and to provide a copy of the presentation to the EIA by 4:30 p.m. Monday, April 29, 1985.

Such a presentation should describe major points of interest or concern and include, if appropriate, a statement indicating why the individual is a proper representative of a class of persons that has such an interest or concern. A telephone number where this individual may be contacted during the day should also be provided. The EIA will notify each person selected to speak at the hearing by Tuesday, April 30, 1985. Persons selected should bring 25 copies of their written presentations to the hearing.

2. Conduct of the Hearing

The EIA will schedule the presentations and establish the procedures governing the conduct of the hearing. Any person desiring to present oral testimony will be allowed to do so, time permitting. Although time constraints may limit the number of persons who will be allowed to speak, the EIA will consider all comments submitted. Likewise, the length of each presentation may be limited based on the number of persons requesting to be heard. An EIA official will preside at the hearing. This will not be a judicial or evidentiary-type hearing, and there will be no cross-examination of persons presenting statements. Any other procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained in the EIA and made available for inspection at the DOE Freedom of Information Office, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

Issued in Washington, D.C., on March 28, 1985.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 85–7944 Filed 4–2–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB).

Date and Time: May 1, 1985 from 9:00 a.m. to 4:30 p.m., May 2, 1985 from 9:00 a.m. to 3:30 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW, Room 8–E089, Washington, DC 20585.

Contact: Sarah Goldman, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items and times are frequently subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the day of the meeting.

Draft Agenda

May 1

9:00 a.m.—Administrative Items
—Minutes of last meeting
—Plans for summer meeting
—Future meeting dates through 1986

9:30 a.m.—Long Range Energy R&D Stategy Study Steering Committee Overview
10:15 a.m.—Break
10:30 a.m.—Report from Supply Subpanel
11:15 a.m.—Report from Demand Subpanel
12:00 Noon—Lunch
1:00 p.m.—Electronic mail demonstration
1:30 p.m.—Report from Infrastructure Subpanel
2:15 p.m.—Report from Research Subpanel
3:00 p.m.—Break
3:15 p.m.—Strategy Study: next steps
4:00 p.m.—Discussion of DOE activities
4:20 p.m.—Public Comment (10 minute rule)
4:30 p.m.—Adjourn

May 2

9:00 a.m.—Materials Facilities Report
10:00 a.m.—Further Reviews of NRC Reports
10:15 a.m.—Break
10:30 a.m.—Clean Coal Technologies Report
12:00 Noon—Lunch
1:00 p.m.—Report from International Panel
2:00 p.m.—National Energy Policy Plan Status
2:50 p.m.—Public Comment (10 minute rule)
3:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Sarah Goldman at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 28, 1985.

J. Robert Franklin,
Deputy Advisory Committee Management Officer.

[FR Doc. 85–7903 Filed 4–2–85; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER85–264–000]

Duquesne Light Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion To Reject, Ordering Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued March 29, 1985.

On January 30, 1985, Duquesne Light Company (Duquesne) tendered for filing, under the abbreviated filing requirements provided for in § 35.13(a)(2) of the Commission's regulations, a proposed increase in its rates for full requirements service to the Borough of Pitcairn, Pennsylvania (Pitcairn).[1] The proposed rates would increase revenues by approximately $158,000 (34.3%), based on the calendar year 1983 test period. Duquesne requests that the proposed rates become effective on April 1, 1985.

Notice of the company's filing was published in the Federal Register,[2] with comments due on or before March 1, 1985. On March 6, 1985, Pitcairn filed an untimely motion to intervene and protest,[3] in which it moves to reject the company's filing or, alternatively requests a five month suspension and a hearing. Pitcairn asserts that Duquesne's filing is deficient for failure to comply with §§ 35.13(d)(5) and 35.13(d)(7) of the Commission's filing requirements which govern submission of workpapers and attestation by an accounting representative. In support of its request for a maximum suspension, Pitcairn raises cost of service issues, including: Rate base, rate of return, cost allocation, and the proposed late payment provision. Finally, Pitcairn alleges price squeeze.

On March 22, 1985, Duquesne filed an answer to Pitcairn's pleading. The company opposes Pitcairn's untimely motion to intervene and denies Pitcairn's allegations regarding the requests for rejection and suspension. Duquesne also contends that the issue of price squeeze has not been plead with sufficient specificity to enable it to respond and that the issue should therefore not be permitted to be raised in this proceeding.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), we find, despite Duquesne's opposition, that good cause exists to grant Pitcairn's untimely intervention, given its interest, the early stage of this proceeding, and the apparent absence of any prejudice or delay.

Under the Commission's abbreviated filing requirements, submission of the workpapers and the attestation specified in §§ 35.13(d)(5) and 35.13(d)(7) is not required. We note that Duquesne has satisfied the preconditions to making an abbreviated filing under our regulations and has substantially complied with those filing requirements. Therefore, we shall deny Pitcairn's motion for rejection.

Duquesne has filed to synchronize the test year interest expense used in its income tax calculation. The Commission has consistently held that, for tax allowance purposes, the interest expenses should be computed as the product of the weighted cost of debt used for rate of return purposes and the allocated rate base.[4] Therefore, we shall order summary disposition with respect to the interest synchronization issue. However, because the dollar effect of this decision is relatively small, we shall not require Duquesne to refile at this time.

Our preliminary review of Duquesne's filing and the pleadings indicate that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates may not result in substantially excessive revenues. Therefore, we shall suspend Duquesne's proposed rates for one day, to become effective, subject to refund, on April 2, 1985.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by Pitcairn.[5]

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[1] Designated as: Duquesne Light Company, Supplement No. 8 to Rate Schedule FPC No. 11. (Supersedes Supplement No. 7).

[2] 50 FR 7371 (February 22, 1985).

[3] Pitcairn states that it received the notice of the filing on February 21, 1985, and was under the mistaken belief that it had 30 days from the date of the notice to file its motion to intervene. Pitcairn also contends that Duquesne has not been prejudiced by its delay in filing.

[4] *E.g., Public Service Company of New Mexico*, 17 FERC ¶ 61,123 at 61,249 (1981), *reh denied*, 18 FERC ¶ 61,036 (1982).

[5] We are not persuaded by Duquesne's argument that Pitcairn has not adequately raised the issue of price squeeze in this proceeding. We note that, under the Commission's phased price squeeze procedures, a party seeking to pursue a price squeeze claim must make a prima facie case at the conclusion of the rate phase of a proceeding in any event. At that point, we will be able to assess the sufficiency of Pitcairn's allegations pursuant to § 2.17 of the Commission's regulations.

The Commission Orders

(A) Pitcairn's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Pitcairn's motion to reject Duquesne's filing is hereby denied.

(C) Summary disposition is hereby ordered, as noted in the body of this order, with respect to the interest synchronization issue. Duquesne shall reflect this summary disposition in its compliance cost of service at the conclusion of this proceeding.

(D) Duquesne's proposed rates are hereby accepted for filing and are suspended for one day, to become effective, subject to refund, on April 2, 1985.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Duquesne's proposed rates.

(F) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(I) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7936 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-1958-002, et al.]

Frederic E. Greenman et al.; Interlocking directorate applications

March 28, 1985.

Take notice that the following filings have been made with the Commission:

1. Frederic E. Greenman

[Docket No. ID-1958-002]

Take notice that the following supplemental application was filed by Frederic E. Greenman on March 15, 1985, pursuant to section 305(b) of the Federal Power Act, for authority to hold the following positions:

Title and Company

Director—Connecticut Yankee Atomic Power Company
Director—Maine Yankee Atomic Power Company
Clerk—Massachusetts Electric Company
Assistant Secretary—New England Electric Transmission Corporation
Director and Vice President—New England Hydro-Transmission Corporation
Director, Vice President, and Assistant Clerk—New England Hydro-Transmission Electric Company, Inc.
Vice President and Assistant Clerk—New England Power Company
Director—Vermont Yankee Nuclear Power Corporation
Director—Yankee Atomic Electric Company.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Robert King Wulff

[Docket No. ID-2163-000]

Take notice that the following application was filed by Robert King Wulff on March 15, 1985, pursuant to section 305(b) of the Federal Power Act, for authority to hold the following positions:

Assistant Clerk—Massachusetts Electric Company
Clerk—New England Power Company.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. William R. Gould

[Docket No. ID-1926-001]

Take notice that on February 28, 1985, William R. Gould filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Southern California Edison Company
Director—Ecolaire Prime, Inc.
Director—Ecolaire Incorporated.

Comment date: April 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Robert H. McLaren

[Docket No. ID-2162-000]

Take notice that the following applicaiton was filed by Robert H. McLaren on March 15, 1985, pursuant to section 305(b) of the Federal Power Act, for authority to hold the following positions:

Title and Company

Assistant Treasurer—New England Electric Transmission Corporation
Assistant Treasurer—New England Power company.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7941 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-188-000, et al.]

Mountain Fuel Resources, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Resources, Inc.

[Docket No. CP85-188-000]

March 27, 1985.

Take notice that on December 20, 1984, Mountain Fuel Resources, Inc. (Resources), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP85-188-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon the service provided to Mountain Fuel Supply Company (Supply) at two existing points of interconnection with Colorado Interstate Gas Company (CIG), for the account of Wycon Chemical Company (Wycon), located in Sweetwater County, Wyoming, under the abandonment authorization issued in Docket No. CP82-491-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Resources proposes to abandon the service provided to Supply for the account of Wycon under Resources' FERC Rate Schedules CD-1 and X-33 at the pipleline interconnection between Resources and CIG at Resources' Kanda Compressor Station (Kanda) and Resources' Green River Interconnection with CIG's pipeline facilities (Green River) located in Sweetwater County, Wyoming.

Supply requests, by a letter dated December 18, 1984, that Resources suspend deliveries to it for the account of Wycon at Kanda and Green River effective January 31, 1985, in response to Wycon's letter dated November 13, 1984, notifying Supply of Wycon's intent to terminate the June 3, 1982, Gas Purchase and Sales Agreement, as amended, between Wycon and Supply effective January 11, 1985, it is asserted.

Comment date: May 13, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Trunkline Gas Company

[Docket No. CP85-345-000]

March 27, 1985.

Take notice that on March 7, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-345-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (NGPL), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for NGPL from a proposal point of receipt in Eugene Island Block 361, offshore Louisiana, at a proposed point of interconnection between the facilities of Tarpon Transmission Company (Tarpon) and NGPL in Eugene Island Block 361, for delivery to NGPL at an existing point of interconnection with NGPL in Cameron Parish, Louisiana. Applicant states that it would transport up to 25,000 Mcf of natural gas per day on a firm basis and up to 6,000 Mcf of natural gas per day on an interruptible basis pursuant to a gas transportation agreement dated February 13, 1985. It is said that Tarpon would seek Commission authorization to provide Applicant with the Eugene Island Block 361 point of receipt pursuant to an amendment dated February 14, 1985, to the transportation agreement between Tarpon and Applicant dated February 15, 1977. It is further said that Tarpon received authorization to provide transportation service on behalf of Applicant by Commission order dated August 4, 1977, in Docket No. CP77-315. The proposed service, it is said, is the most efficient and economical means of transporting the gas for NGPL.

Applicant states that NGPL would pay a monthly demand charge of $246,250 for firm service and 32.40 cents per Mcf for the interruptible service.

Comment date: April 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-314-000]

March 27, 1985.

Take notice that on February 25, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-314-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the continued transportation of gas for Frito-lay, Inc. (Frito-Lay), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it proposes to continue transporting gas, which Frito-lay purchases from Garfield Gas Gathering Company in Oklahoma County, Oklahoma, and Cowley County, Kansas, to Gas Service Company for redelivery to Frito-lay in Shawnee County, Kansas, for a term ending June 1, 1986, and month-to-month thereafter until cancelled by either party. Applicant proposes to transport a volume of 2,000 Mcf of gas per day tendered to Applicant for Frito-Lay's account, as well as any excess volumes Frito-Lay may request Applicant to transport, such volumes to be transported on a best-efforts, interruptible basis.

Applicant further states that Frito-Lay would pay Applicant the then effective rates and provisions, including added incentive charge, set forth in Applicant's FERC Gas Tariff, Original Volume No. 2.

The gas is currently being transported under authorization issued in Docket No. CP84-568-000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205).

Comment date: April 17, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP85-348-000]

March 28, 1985.

Take notice that on March 8, 1985, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85-348-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Chautauqua Hardware Corporation (Chautauqua), under the certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National Fuel proposes to transport up to 215 MMBtu's equivalent of natural gas per day on an interruptible basis on behalf of Chautauqua from June 1 through June 30, 1985.

It is stated that the gas to be purchased by Chautauqua involves gas supplies previously under contract to and released by National Fuel. In this regard, National Fuel submits that the released gas that would be transported under the arrangement would be treated as gas taken for purposes of any take-or-pay obligations National Fuel may have with respect to the seller. It is further submitted that National Fuel's service agreements with its traditional resale customers do not contain minimum bill provisions. Last, National Fuel indicates that the gas to be sold by the seller, Vineyard Oil & Gas Company, is subject to Natural Gas Policy Act of 1978 section 107 and a current contract price equal to the highest commodity rate of any pipeline supplier from whom National Fuel is making discretionary puchases in any given month.

National Fuel states that the natural gas would be transported and delivered to National Fuel Gas Distribution Corporation which, in turn, would deliver the natural gas to Chautauqua at

its facilities in Jamestown, New York, pursuant to the terms of a natural gas transportation agreement dated February 1, 1985. National Fuel further states that it proposes to charge Chautauqua a transportation rate pursuant to its Rate Schedule T–2, which rate is currently 26.72 cents per Mcf, plus 2 percent retainage for shrinkage.

National Fuel indicates that no new facilities would be necessary for the proposed transportation. The natural gas would be used at Chautauqua's facility for boiler fuel.

Natural Fuel also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. National Fuel will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 10, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. K N Energy, Inc.

[Docket No. CP85–297–000]

March 28, 1985.

Take notice that on February 20, 1985, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP85–297–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of gas to end-users under the certificate issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate three new sales taps to provide gas service of 120 Mcf annually for Darwin Hoffman in Greeley County, Kansas, 1,200 Mcf annually for Frank Soukup in Holt County, Nebraska, and 1,000 annually for Margaret Ackuman in Franklin County Nebraska. K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: May 13, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7940 Filed 4–2–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8537–001]

Pure Energy Co.; Surrender of Preliminary Permit

March 29, 1985.

Take notice that Pure Energy Company, Permittee for the proposed Patria Project No. 8537, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 11, 1984, and would have expired on May 31, 1986. The project would have been located on Wolf Creek, near Bridgeport, in Mono County, California.

The Permittee filed the request on March 11, 1985, and the preliminary permit for Project No. 8537 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–7939 Filed 4–2–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 7985–001]

Michael J. Skopos; Surrender of Preliminary Permit

March 29, 1985.

Take notice that Michael J. Skopos, Permittee for the Proposed Sierra Buttes Project No. 7985, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 14, 1984, and would have expired on November 30, 1985. The project would have been located on Independence Ravine, tributary of the North Fork Yuba River, near Sierra City, in Sierra County, California.

The Permittee filed the request on February 25, 1985, and the preliminary permit for Project No. 7985 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following

that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7937 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS76-911-001 et al.]

Teton Energy Co., Inc. (Petrotech Inc. dba TXP, Inc.), et al.; Applications for "Small Producer" Certificates [1]

March 28, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before April 15 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS76-911-001	3/18/85	Teton Energy Co., Inc. (Petrotech, Inc. d.b.a. TXP, Inc.), P.O. Box 13634, Denver, CO 80201-3634.
CS85-44-000	3/6/85	Kenneth W. Cory, 1980 Post Oak Boulevard, Suite 1400, Houston, TX 77056
CS85-45-000	3/7/85	McDaniel Oil Co., P.O. Box 12282, Odessa, TX 79768.
CS85-46-000	3/7/85	Washita Production Co., Inc. 7136 South Yale, Suite 330, Tulsa, OK 74136.
CS85-47-000	3/11/85	Richard Tully d.b.a. Tully Oil and Gas Co., P.O. Box 268, Farmington, NM 87499-0268.
CS85-48-000	3/11/85	Beck Pump & Supply, Inc., P.O. Box 175, Hennessey, OK 73742.
CS85-51-000	3/15/85	Orion Resources Inc., 520 Madison Ave. 3902, New York, NY 10022.
CS85-53-000	3/18/85	Dean Operating Co., Inc., 1014 Union Center, Wichita, KS 67202.
CS85-55-000	3/18/85	La Barge Minerals, Inc., P.O. Box 127, La Barge, WY 83123.
CS85-49-000	3/22/85	DoMar Oil & Gas, Inc., P.O. Box 1805, 2140 N. Hiway 83, Liberal, KS 67901.
CS85-56-000	3/22/85	First National Bank of Shreveport, Dative Testamentary Executor of the Succession of E.D. Holcomb, Jr., P.O. Box 21116, Shreveport, LA 71154.
CS85-57-000	3/22/85	First National Bank of Shreveport, Dative Administrator of the Succession of Lura Thomason Holcomb, P.O. Box 21116, Shreveport, LA 71154.
CS77-869	12/19/85	Virgil Hess d.b.a. Tumbleweed Production Co. (tumbleweed Production Company) P.O. Box 3382, Borger, TX 79007.

[1] Letter received dated March 5, 1985 requesting that Petrotech, Inc. d.b.a. TXP, Inc. be added to Teton Energy Co's small producer certificate.

[2] Orion Resources Inc. is the General Partner for Orion Eta Drilling & Production Program; Orion Theta Drilling & Production Program and Orion 1984 Private Energy Program.

[3] Letter received dated February 11, 1985 requesting that the small producer certificate issued to Tumbleweed Production Company be redesignated as Virgil Hess d.b.a. Tumbleweed Production Company.

[FR Doc. 85-7938 Filed 4-2-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50634; FRL 2806-7]

American Cyanamid Co. et al.; Issuance of Experimental Use Permits

AGENCY: Envirnomental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Envirnomental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-114. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 98540. This experimental use permit allows the use of 24,000 pounds of the herbicide 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid with 2-propanamine salt in forests to evaluate the control of herbaceous and woody weeds. A total of 16,00 acres are involve; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from February 12, 1985 to February 12, 1987. (Robert Taylor, PM 25, Rm. 245, CM #2, (703-557-1800))

464-EUP-78. Extension. Dow Chemical U.S.A., P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 33 pounds of the herbicide methyl 2-(4)-((3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)propanoate on cotton and soybeans to evaluate the control of weeds. A total of 66 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi Missouri, Nebraska, North Carolina, Ohio, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from April 17, 1985 to April 17, 1986. The permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm 237, CM # 2, (703-557-1820))

1471-EUP-89. Issuance. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 870 pounds of the herbicide ethalfluralin on potatoes to evaluate the control of carious weeds. A total of 580 acres are involved; the program is authorized only in States of Alabama, California, Colorado, Florida, Idaho, Minnesota, New York, North Carolina, North Dakota, Oregon, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from February 21, 1985 to February 21,

1986. A temporary tolerance for residues of the active ingredient in or on potatoes has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

43808–EUP–1. Renewal. State of Florida, 1115 E. Memorial Boulevard, P.O. Box 148, Lakeland, FL 33802. This experimental use permit allows the use of 43.3 pounds of the plant regulator 5-chloro-3-methyl-4-nitro-1H-pyrazole on oranges to evaluate its use as an abscission agent. A total of 78.7 acres are involved; the program is authorized only in the State of Florida. The experimental use permit was previously effective from January 5, 1984 to January 5, 1985. The permit is now effective from February 12, 1985 to February 12, 1986. A temporary tolerance for residues of the active ingredient in or on oranges has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

45639–EUP–25. Issuance. Nor-Am Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 22,600 pounds of the herbicide diethatyl-ethyl on carrots, celery, and peppers to evaluate the control of weeds. A total of 4,250 acres are involved; the program is authorized only in the States of California, Delaware, Florida, Michigan, New Jersey, New York, North Carolina, and Wisconsin. The experimental use permit is effective from February 13, 1985 to February 13, 1986. A temporary tolerance for residues of the active ingredient in or on carrots, celery, and peppers has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

201–EUP–76. Extension. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, DC 20036. This experimental use permit allows the use of 285.0 pounds of the fungicide azetidine-3-carboxylic acid on barley and wheat to evaluate its use as an hybridizing agent. A total of 1,569 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Minnesota, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, Texas, and Washington. The experimental use permit is effective from August 1, 1985 to August 1, 1986. (Richard Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

2724–EUP–44. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.3125 pound of the insecticide permethrin and 0.375 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2724–EUP–45. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.30 pound of the insecticide permethrin and 0.36 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2724–EUP–46. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.375 pound of the insecticide permethrin and 0.156 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2724–EUP–47. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 0.15 pound of the insecticide permethrin and 0.36 pound of the insecticide hydroprene in homes and apartments to evaluate the control of cockroaches. This experimental use permit and the three above each involve a total of 200 living units. The programs are authorized only in the States of California and Texas. The experimental use permits are effective from February 1, 1985 to February 1, 1986. The permits will use the same active ingredients but different formulations. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: March 20, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–7338 Filed 4–2–85; 8:45 am]

BILLING CODE 6560–50–M

[PP 1G2441/T485; FRL–2806–6]

American Hoechst Corp; Extension of Tempoary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide tralomethrin and its metabolite in or on the raw agricultural commodity cottonseed.

DATE: This temporary tolerance expires April 27, 1986.

FOR FURTHER INFORMATION CONTRACT:

By mail: Timonthy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice that was published in the **Federal Register** of August 1, 1984 (49 FR 30792), announcing the establishment of a temporary tolerance for the combined residues of the insecticide tralomethrin [1R[1(s*) 3 (RD*)]]-2,2-dimethyl-3(1,2,2,2-tetrabromoethyl)cyclopropanecarboxylic acid alpha-cyano-(3(3-phenoxyphenyl) methyl ester and its metabolite (1R, 3R)3-(2,2-dibromoviny1)-2,2-dimethylcyclopropanecarboxylic acid (S) alpha-cyano-3(3-phenoxyphenyl) methyl ester in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). This tolerance was issued in response to pesticide petition PP 1G2441, submitted by American Hoechst Corp., Agricultural Division, Rt. 202–206 North, Somerville, NJ 08876.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 8340–EUP–6, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that

have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires April 27, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on the pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entitites. A certification statement of this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: March 15, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–7339 Filed 4–2–85; 8:45 am]

BILLING CODE 6560-50-M

[Region 6; A–6–FRL–2810–4]

Final Agency Action on a PSD Permit for Valley View Energy Corporation

Notice is hereby given that on June 25, 1984, pursuant to 40 CFR 52.21, Region 6 of the Environmental Protection Agency (EPA) issued a Prevention of Significant Deterioration (PSD) permit number PSD–TX–617, to Valley View Energy Corporation for approval to construct a manure-fueled electrical generating station to be located immediately south of State Highway 60, approximately 5 miles northeast of Hereford, Deaf Smith County, Texas. On August 7, 1984, Monty and Cheryl Adams petitioned the Administrator for review of the PSD permit.

Because a petition for review was filed with the Administrator, the issuance of the permit was no longer a final agency action, and the PSD permit for Valley View Energy was not effective. [*See* 40 CFR 124.15(b)(2)] The petition for review was withdrawn by Mr. and Mrs. Adams on February 7, 1985. Pursuant to CFR 124.19(f)(1), a final permit decision on PSD–TX–617 was issued by Region 6 on March 14, 1985.

Under section 307(b)(1) of the Clean Air Act, judicial review of PSD–TX–617 is available *only* by the filing of a petition for review in the United States Court of Appeals for the Fifth Circuit within 60 days of today. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Copies of all of the materials concerning PSD–TX–617 are available for public inspection upon request at the following locations:

Environmental Protection Agency,
Region 6, Air and Waste Management Division, Air Branch, InterFirst Two Building, 1201 Elm Street; Dallas, Texas 75270

Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

Dated: March 22, 1985.

Dick Whittington,

Region Administrator, Region 6.

[FR Doc. 85–7915 Filed 4–2–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Establishment of a Federal Advisory Committee; 1987 ITU World Administrative Radio Conference; Mobile Services

March 27, 1985.

On March 18, 1985, the General Services Administration (GSA) approved the establishment of an FCC Advisory Committee for the 1987 ITU World Administrative Radio Conference on Mobile Communications.

The Advisory Committee will be chaired by Leonard R. Raish of the Washington, DC law firm of Fletcher, Heald & Hildreth. Martin W. Bercovici of the law firm of Keller and Hechman, Washington, DC, will serve as vice chairman. The FCC has appointed Gordon Hempton to be the designated Federal employee to the Advisory Committee.

A Charter for this Committee is appended to this Public Notice.

A tentative agenda for the first Committee meeting is as follows:

1. Approval of agenda
2. History leading up to establishment of Committee
3. Areas of Committee study
4. Establishment of working groups
5. Discussion of proposed agenda for the 1987 Mobile WARC
6. Distribution of documents from participants (if any)
7. Other business
8. Selection of next meeting date

The first meeting of this Advisory Committee will be held in the Commission Meeting Room 856 at 1919 M Street NW., Washington, DC, on Tuesday, May 7, 1985 at 9:30 a.m.

Anyone interested in joining this Committee should contact Gordon Hempton, FCC/OST at (202) 623–7073 no later than April 26, 1985. These meetings are open to the public.

Charter of the Advisory Committee for the World Administrative Radio Conference for the Mobile Services

A. *The Committee's Official Designation.* Advisory Committee for the World Administrative Radio Conference for the Mobile Services.

B. *Names of the Subcommittees.* None.

C. *Committee's Objectives and Scope of its Activity.* (1) *Objective:* To advise the staff of the Federal Communications Commission concerning preparations for the International Telecommunication Union World Administrative Radio Conference for the Mobile Services currently scheduled for 1987.

(2) a. Scope of activity on the agenda for the mobile conference: All steps necessary to assemble information and provide advice concerning the following matters:

- Development of a list of ITU Radio Regulation issues that should be addressed by the Mobile WARC, and the potential impact on interests of the United States if those issues either are considered or are not considered.

b. Scope of activity for the United States proposals: all steps necessary to assemble information and provide advice concerning the following matters:

- Development of technical, operational, regulatory and related radio frequency ideas and criteria to meet needs of the United States in a consolidated and cohesive manner, presenting such data in ITU Radio Regulation format.
- The gathering of data and the establishment of agreed parameters to define radio frequency spectrum use and requirements, compiling such material

into a cohesive recommendation, presenting rationale, alternatives, and ideas for its successful use at the conference.

c. Scope of activity concerning advice for possible use by the United States Delegation: All steps necessary to assemble information and provide advice concerning the following matters:

- An evaluation of the interests of other nations and international organizations that may be involved in preparing for the Mobile WARC.
- An assessment of the impact on mobile terrestrial and satellite radiocommunication services by the various envisioned conference outcomes, including, to the extent determinable, economic and regulatory effects.

D. *Period of Time Necessary for the Committee to Carry Out Its Purposes:* Final written reports for the activities associated with the development of the Agenda for the Mobile WARC must be completed by June 1, 1985. Final written reports for consideration in developing the United States proposals or use by the United States Delegation must be completed by June 1, 1986.

E. *Official to Whom the Committee Reports.* Chief Scientist and Chief, Private Radio Bureau, FCC.

F. *Agency Responsible for Providing Necessary Support.* The FCC will furnish necessary administrative support, including the facilities needed for conducting meetings of the Committee.

G. *Description of the Duties for Which the Committee is Responsible.* The duties of the Committee will be to assemble data and prepare analyses and recommendations concerning the points enumerated in Part C above and to furnish them to the FCC staff.

H. *Estimated Operating Costs in Dollars and Man-years.* The estimated annual operating costs are $20,000 for the FCC. Estimated man-years are 0.5 for the FCC and 10.0 for private and other government participants.

I. *Estimated Number and Frequency of Committee Meetings.* The Committee will meet at least 3 times per year.

J. *Committee's Termination Date.* The Committee will terminate six (6) months prior to the WARC convening date, or two years from its inception, whichever is later.

K. *Date the Charter is Filed.* March 18, 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-7930 Filed 4-2-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202-009548-027.

Title: North Atlantic/Mediterranean Freight Conference.

Parties:

Constellation Lines, S.A.
Farrell Lines, Inc.
Prudential Lines, Inc.

Synopsis: The proposed amendment would expand the scope of the conference to include U.S. South Atlantic ports and add U.S. microbridge authority. To reflect this change the name of the conference would be changed to the "United States Atlantic Ports/Eastern Mediterranean and North Africa Freight Conference". It would also enlarge the notice period for independent action to ten days and provide for the filing of individual member's rates on certain U.S. Government impelled agricultural cargoes in a special tariff section.

Dated: March 29, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-7922 Filed 4-2-85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Agreement Approval

Agreement No. T-4169.

Title: Alameda, California Terminal Agreement

Parties:

Encinal Terminals
Western Stevedore and Terminals Co., Inc.

Synopsis: The parties to the referenced agreement having provided notice of the termination of the agreement, the Commission hereby gives notice of its intent to terminate its previously granted approval of the agreement effective March 25, 1985, the date the Commission received the parties' termination notice.

Dated: March 29, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-7921 Filed 4-2-85; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 85-9]

Broes Trucking Company, Inc. v. Holt Cargo Systems, Inc.; filing of Complaint and Assignment

Notice is given that a complaint filed by Broes Trucking Company, Inc. against Holt Cargo Systems, Inc. was served March 28, 1985. Complainant alleges that respondent has violated sections 10(b)(11), 10(b)(12), and 10(d)(1) of the Shipping Act of 1984, by demanding that complainant pay certain wharf demurrage fees, refusing to deal with complainant, and diverting cargo to be transported by complainant to other trucking companies and refusing complainant access to its pier.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by March 31, 1986, and the final decision of the Commission shall be issued by July 31, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-7920 Filed 4-2-85; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on March 25,

1985, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No. 201–000090.

Title: Pacific Maritime Association Assessment Agreement.

Parties: Members of the Pacific Maritime Association.

Synopsis: This agreement provides that the ILWA-PMA Holiday Plan and ILWU-Walking Bosses' Holiday Plan will henceforth be funded through man-hour assessments. This agreement does not increase or decrease the man-hour or tonnage assessments being paid by anyone. This agreement will become effective for the payroll period ending March 30, 1985.

Dated: April 1, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–7963 Filed 4–2–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First American Bank Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation,* Elk Grove Village, Illinois; to acquire 100 percent of the voting shares of Community Bank & Trust, Hanover Park, Illinois; and to acquire Old Orchard Bank & Trust Company, Skokie, Illinois.

First American Bank Corporation has also applied to acquire First American Data Services, Inc., Elk Grove Village, Illinois, thereby continuing to engage in data processing activities limited to the processing or furnishing of financial and banking data.

Board of Governors of the Federal Reserve System, March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7961 Filed 4–2–85; 8:45 am]

BILLING CODE 6210-01-M

First Atlanta Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 26, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Atlanta Corporation,* Atlanta, Georgia; to acquire 100 percent of the voting shares of First Gwinnett Bancshares, Inc., Lawrence, Georgia, thereby indirectly acquiring First National Bank of Gwinnett County, Lawrenceville, Georgia.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pullman Bancshares, Inc.,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage/Pullman Bank and Trust Company, Chicago, Illinois.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoeing, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Shamrock Bancshares, Inc.,* Colgate, Oklahoma; to acquire 89 percent of the voting shares of Mountain View Bancorp, Mountain View, Oklahoma, thereby indirectly acquiring First National Bank, Mountain View, Oklahoma.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *American Bank Holding Corporation,* Corpus Christi, Texas; to acquire 100 percent of the voting shares of American National Bank-Uptown, Corpus Christi, Texas, a *de novo* bank.

2. *Crosby Bancshares, Inc.,* Crosby Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Crosby State Bank, Crosby, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Intermountain Holding Corp.*, Salt Lake City, Utah; to acquire 80 percent of the voting shares of Guardian Bancorp, Salt Lake City, Utah, thereby indirectly acquiring Guardian State Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7982 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers National Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manufacturers National Corporation*, Detroit, Michigan; to engage *de novo* through its subsidiary, Manufacturers Bank-Delaware, Wilmington, Delaware, in the business of providing consumer credit through credit cards, accessed lines of credit and through unsecured revolving credit plans of various kinds; and to borrow money and accept deposits of money providing such deposits bear a maturity date of no less than thirty days beyond the date of such deposit and are in an amount not less than $100,000. In addition, Applicant also applied to engage *de novo* through Manufacturers Service Corporation, Detroit, Michigan (a subsidiary of Company), in providing service functions for Company, such as customer services including collections, resolution of billing disputes and the expediting of lost cards or stolen card reports.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First State Bancshares, Inc.*, Somerville, Tennessee; to engage *de novo* in acting as agent or broker in the sale of insurance that is directly related to an extension of credit by a bank or is directly related to the provision of other financial services by a bank. These activities would be conducted in the State of Tennessee.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Security Corporation*, Salt Lake City, Utah; to expand the geographic scope of First Security Insurance, Inc., Salt Lake City, Utah, to include the entire United States; and to engage *de novo* in general insurance agency and brokerage activities, pursuant to the Board's Order of March 11, 1985, approving these activities.

Board of Governors of the Federal Reserve System, March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7980 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

Great Falls Bancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 25, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Great Falls Bancorp.*, Totowa, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Great Falls Bank, Totowa, New Jersey.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Bancorp of Washington*, Washington, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank and Trust Company, Washington, Indiana.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Clarks Fork Stock Co.*, Fromberg, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Clarks Fork National Bank, Fromberg, Montana.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Metroplex Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of Gleneagles National Bank, Plano, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 28, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-7881 Filed 4-2-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of a California State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on May 7, 1985, in San Francisco, California, to reconsider our decision to disapprove California State Plan Amendment 84-20.

Closing Date : Requests to participate in the hearing as a party must be received by April 18, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearings Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a California State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether California's proposal to revise the Medically Needy Income Level (MNIL) for determining Medicaid eligibility for a family of two adults violates sections 1903(f)(1)(B), 1902(a)(4) and 1902(a)(19) of the Social Security Act and Federal regulations at 42 CFR 435.1007.

Section 1903(f)(1)(B) of the Social Security Act and implementing Federal regulations at 42 CFR 435.1007 provide that Federal Financial Participation (FFP) in expenditures for services is only available where the income (after deduction of incurred medical expenses) for a two adult family does not exceed 133⅓ percent of the highest amount ordinarily paid to a two person family (without income or resources) under the State's Aid to Families with Dependent Children (AFDC) program. California State Plan Amendment No. 84-20 proposed to establish a MNIL for two adults at 133⅓ percent of the State's AFDC payment level for a family of three.

Although the 133⅓ percent limit section 1903(f)(1)(B) of the Act is not strictly speaking a State plan requirement, the statute provides that FFP is not available for medical assistance to persons whose income exceeds that limit.

By setting the MNIL for a family of two adults at 133⅓ percent of the AFDC level for a family of three, California could provide medical assistance to individuals with income in excess of the limitation. Therefore, HCFA determined that the proposed State plan amendment would not be consistent with the "proper and efficient operation of the plan" and would thus violate section 1902(a)(4) of the Act. In addition HCFA has determined California's proposed plan violates section 1902(a)(19) of the Act which requires a plan to be "consistent with simplicity of administration."

The notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Stanley Cubanski,
Director, Department of Health Services, 714/744 P Street, Room 1601, Sacramento, CA

Dear Mr. Cubanski: This is to advise you that your request for reconsideration of the decision to disapprove California State Plan Amendment 84-20 was received on March 1, 1985. You have requested a reconsideration of whether this plan amendment, which would revise the Medically Needy Income Level for determining Medicaid eligibility for a family of two adults, conforms to the requirements for approval under the Social Security Act and pertinent Federal requirements.

I am scheduling a hearing on your request to be held on May 7, 1985, at 10 a.m., in the 20th Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-7870 Filed 4-2-85; 8:45 am]

BILLING Code 4120-03-M

Public Health Service

Emergency Medical Services for Children; Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that in furtherance of the November 23, 1981 delegation (46 FR 62184-62185) by the Secretary of Health and Human Services to the Assistant Secretary for Health of authority under Title XIX of the PHS Act, the Acting Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration the authority under section 1910 of the PHS Act (42 U.S.C. 300w-9), as amended, concerning emergency medical services for children.

In addition, the Acting Assistant Secretary for Health has modified the November 23, 1981 delegation to the Director, Centers for Disease Control, of authority under Part A, Title XIX of the PHS Act in that section 1910 is excluded from the Director, Centers for Disease Control's area of functional responsibility.

All other delegations made to PHS officials of authority under Title XIX of the PHS Act are unchanged.

The delegation to the Administrator, Health Resources and Services Administration, became effective on March 5, 1985.

Dated: March 5, 1985.

James O. Mason, M.D., Dr. P.H.,

Acting Assistant Secretary for Health.

[FR Doc. 85-7924 Filed 4-2-85; 8:45 am]

BILLING CODE 4160-16-M

Assessment of Medical Technology; Treatment of Systemic Lupus Erythematosus

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of apheresis in the treatment of systemic lupus erythematosus. Specifically we are interested in the medical indications for the procedure and its clinical acceptability. Information that would define the population of patients with this disease that might benefit from the application of this technology is also being sought.

PHS assessment consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government, and are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 30, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies, and other information related to the characterization of the patient population most likely to benefit from, and the clinical acceptability and effectiveness of this technology. Proprietary information is not being sought.

Written material should be submitted to: National Center for Health Services Research, and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 21, 1985.

Enrique D. Carter, M.D.,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-7925 Filed 4-2-85; 8:45 am]

BILLING CODE 4160-01-M

Assessment of Medical Technology; Treatment of Landry-Guillain-Barrie Syndrome

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use of apheresis in the treatment of acute Landry-Guillain-Barre Syndrome. Specifically we are interested in the medical indications for the procedure and its clinical acceptability. Data that would help to define the population of patients with this disease that might benefit from the application of this technology is also being sought.

PHS assessment consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government, and are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 17, 1985, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies, and other information related to the characterization of the patient population most likely to benefit from, and the clinical acceptability and effectiveness of this technology. Proprietary information is not being sought.

Written material should be submitted to: National Center for Health Services Research, and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 2, 1985.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-7926 Filed 4-2-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Boise District, ID; Advisory Council Meeting

ACTION: Boise District, Idaho, Advisory Council Meeting.

SUMMARY: In accordance with Pub. L. 92-483, the Federal Advisory Committee Act, and Pub. L. 94-579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Multiple Use Advisory Council will meet April 16, 1985.

SUPPLEMENTARY INFORMATION: The meeting will take place April 16, from 9:00 a.m. to 12:00 p.m. It will be held in the main floor conference room at the BLM, Boise District Office. The council will discuss the Draft Grazing Fee Review and Evaluation Report.

The public is invited to attend. A public comment period has been scheduled from 10:00 a.m. to 11:00 a.m.

FOR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334-1582. Minutes of the meeting will be available for public inspection at the District Office.

J. David Brunner,

Acting District Manager.

[FR Doc. 85-8014 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-84-M

Boise District, ID; Grazing Board Meeting

ACTION: Boise District, Idaho, Grazing Board Meeting.

SUMMARY: In accordance with P.L. 92-483, the Federal Advisory Committee Act, and Pub. L. 94-579, the Federal Land Policy and Management Act, notice is hereby given that the Boise District Grazing Advisory Board will meet April 23, 1985.

SUPPLEMENTARY INFORMATION: The meeting will take place April 23, from 9:00 a.m. to 12:00 p.m. It will be held in the main floor conference room at the

BLM, Boise District Office. The Board will discuss the Draft Grazing Fee Review and Evaluation Report.

The public is invited to attend. A public comment period has been scheduled from 10:00 a.m. to 11:00 a.m.

FUR FURTHER INFORMATION CONTACT: Further information is available at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334–1582. Minutes of the meeting will be available for public inspection at the District Office.

J. David Brunner,

Acting District Manager.

[FR Doc. 85–8013 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-84-M

Las Cruces District, NM; Proposed Designation of an Area of Critical Environmental Concern, Sacramento Escarpment Scenic Area, Otero County, NM

AGENCY: Bureau of Land Management (BLM), Las Cruces District, White Sands Resource Area, New Mexico.

ACTION: Initiation of a 60-day public comment period on the proposed designation of the Sacramento Escarpment Scenic Area of critical environmental concern (ACEC).

SUMMARY: Pursuant to the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 [section 202(c)(3)] and 43 CFR 1610.7–2(b), a 60-day public comment period is initiated on the proposed designation of the Sacramento Escarpment as an ACEC for visual resources.

DATE: Written comments on the proposed designation of the Sacramento Escarpment ACEC must be received no later than May 29, 1985.

ADDRESS: Comments should be sent to: Larry Nunez, Area Manager, Bureau of Land Management, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Willis M. Bird, Jr., RMP/EIS Team Leader, Bureau of Land Management, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005. Telephone: (505) 525–8228 or FTS 571–8353.

SUPPLEMENTARY INFORMATION: The Sacramento Escarpment is located in Otero County, immediately southeast of Alamogordo, New Mexico. The Sacramento Escarpment meets the two criteria required for an area to be considered as an ACEC for visual resources: (1) The area rates high in scenic quality and (2) the area has a high rating for scarcity. The Sacramento Escarpment is proposed as an ACEC for visual resources in the Draft White Sands Recource Management Plan/ Environmental Impact Statement (RMP/ EIS). This document was made available to the public on March 1, 1985, and written comments are due May 29, 1985. The Draft RMP/EIS considers four alternative management plans for the Sacramento Escarpment. Under the Balanced Alternative, the ACEC would be 3,640 acres in size, would be managed under Visual Resource Management (VRM) Class I objectives, would be designated limited to existing roads and trails for off-road vehicle (ORV) use, and would be designated No Surface Occupancy (NSO) for oil and gas and geothermal leasing. Under the Protection Alternative, the ACEC would be 4,300 acres in size, would be managed under VRM Class I objectives, would be designated closed to ORV use, would be designated NSO for oil and gas and geothermal leasing, and would be withdrawn from locatable mineral entry. In addition, two privately-owned 40-acre land parcels are proposed for possible acquisition to improve the manageability of the ACEC under the Protection Alternative. Under the Production and No Action Alternatives, current management of the Sacramento Escarpment would essentially continue.

Copies of the Draft RMP/EIS and the Technical Report for the Sacramento Escarpment ACEC Management Plan are available at the White Sands Resource Area Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

Dated: March 27, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85–7933 Filed 4–2–85; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Notification of Outer Continental Shelf (OCS) Programwide Policy on Water-Depth Criterion for Longer Primary Lease Terms for OCS Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notification of OCS Programwide Policy.

SUMMARY: The Department of the Interior is adopting a programwide policy on a water-depth criterion for longer primary lease terms for OCS oil and gas leases. The policy will be implemented in two stages. Initially, because numerous leases would be affected in upcoming sales, leases on blocks in water depths of 400 to 900 meters will be issued on a sale-by-sale basis with a stipulation providing for an 8-year primary lease term and the requirement that an exploration will be commenced within the first 5 years. In the meantime, a rule is being prepared that proposes to amend 30 CFR 256.37, Lease terms, to reflect the above-mentioned policy. Because the policy is meant to be applicable to all new leases in 400 to 900 meters of water on the entire OCS, amending the regulations is preferable in the long run to making sale-by-sale decisions. Following final promulgation of the rule, a lease stipulation would no longer be necessary.

The requirement for commencement of an exploratory well within the first 5 years is intended to ensure diligence. Please note that commencement of a required exploratory well could be delayed beyond the fifth anniversary when a suspension of operations (SOO) is approved under 30 CFR 250.12. Otherwise, without an SOO, the lease would be cancelled after 5 years. Where an exploratory well is drilled under an exploration plan approved under an approved unit agreement, the drilling of that well could satisfy the drilling requirements on each of the unitized leases. Leases on blocks in water depths of 900 meters or more will continue to be issued with 10-year primary terms. Leases in the Arctic OCS will also continue to be issued with 10-year primary terms due to remoteness and hostile environmental conditions such as ice.

DATE: This programwide policy will be implemented beginning with the Central Gulf of Mexico Sale 98 (May 1985).

FOR FURTHER INFORMATION CONTACT: Dr. Marshall Rose or Ms. Carol Hartgen, Minerals Management Service, MS 643, 12203 Sunrise Valley Drive, Reston, Virginia 22091, telephone (703) 860–7558.

SUPPLEMENTARY INFORMATION: Section 8(b) of the OCS Lands Act provides the Secretary of the Interior with discretionary authority to issue leases for an initial period of longer than 5 years but not to exceed 10 years if it is found that a longer period is necessary to encourage exploration and development in areas because of unusually deep water.

During the past 4 years, decisions on the appropriate water-depth criterion for longer primary lease terms have been made on a sale-specific basis. Since 1982, sale-specific decisions have water depths of 900 meters or more. The question of what to do for leases in 400- to 900-meter depths has continued. In

April 1984 an Interim Final Rule was published (49 FR 17449) that provided for a mandatory SOO for Gulf of Mexico (GOM) leases in 400 to 900 meters of water. The SOO is granted for a period of time necessary to complete the activities scheduled in a development and production plan approved prior to the end of the 5-year primary term. The comments received in response to the Interim Final Rule indicated that a 5-year term was not adequate to explore and have a development and production plan approved. The commenters also stated that any policy should apply to the entire OCS and not only the GOM.

Exploration and development at any water depth depend on the state of technology, cost, and risk. Technologically, the petroleum industry has the capability to explore in deep waters beyond the 400- to 900-meter water-depth range. Actual production in deep water is occurring at approximately the 300-meter isobath. Cost-effective production systems in the form of guyed towers and tension-leg platforms become a necessity and replace conventional fixed-leg platform designs beyond the 400-meter water-depth range. If a sufficiently larger reserve is found in deep water, the costs associated with development are extremely high, warranting more detailed and timely engineering and cost studies than would be conducted in shallower waters.

Based on analysis of current deepwater technology, estimated timeframes and historical data of the time necessary to commence development in water depths of 200 to 900 meters and 400 to 900 meters, an 8-year primary term for leases in 400 to 900 meters was adopted based on the findings that in this water-depth range more than 5 years are generally necessary to initiate development. The historical data indicate no lessee has commenced development at these depths in fewer than 5 years, and most often it has taken 9 years. Estimated timeframes to complete delineation drilling at these depths range from 4 to 6 years or 9 to 12 years to complete development. The drilling requirement was considered necessary to ensure diligent exploration and development.

Dated: March 28, 1985.

William D. Bettenberg,

Director.

[FR Doc. 85-7879 Filed 4-2-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1985, through October 31, 1985. The List of Restricted Joint Bidders published in the **Federal Register** on October 2, 1984, at 49 FR 38993 covered the bidding period of November 1, 1984 through April 30, 1985.

Group I. Chevron U.S.A. Inc.; Chevron Corporation; Gulf Oil Corporation.

Group II. Exxon Corporation.

Group III. Mobil Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Superior Oil Company.

Group IV. MTS Limited Partnership (Mesa Petroleum Co., Texaco Inc., Sequoia Petroleum Inc.); Texaco Inc.; Getty Oil Company; Texaco Oils Inc.; Texaco Producing Inc.

Group V. Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.

Dated: March 28, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-7948 Filed 4-2-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-209, Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSALS:

(1) Number of forms submitted: two.

(2) Title of form: Annual Surveys Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize—Questionnaires for U.S. Producers and Importers.

(3) Type of request: new.

(4) Frequency of use: annual, through 1989.

(5) Description of respondents: firms which produce or import carbon and alloy steel products.

(6) Estimated annual number of respondents: 350.

(7) Estimated total number of hours to complete the forms: 7,250.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from Dennis Rapkins, (USITC, tel. no. 202-523-0438). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395-7231. Copies of any comments should be provided to William Fry (U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436)

Issued: March 29, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary

[FR Doc. 85-7965 Filed 4-2-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-205 (Final)]

Carbon Steel Wire Rod From East Germany

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-205 (Final) under section 735(b) of the

Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from East Germany of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before May 20, 1985, and the Commission will make its final injury determination by July 9, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: March 12, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Reed (202–523–0255), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary dtermination by the Department of Commerce that imports of carbon steel wire rod from East Germany are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 26, 1984, by counsel on behalf of Atlantic Steel Co., Continental Steel Co., Georgetown Steel Corp., North Star Steel Texas, and Raritan River Steel Co. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 45937, Nov. 21, 1984).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rule (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on May 22, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 5, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 23, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on May 30, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 30, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 12, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 12, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–7967 Filed 4–2–85; 8:45 am]

BILLING CODE 7020–02–M

[332–210]

Conditions Relating to the Importation of Softwood Lumber Into the United States

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of gathering and presenting information on the competitive and economic factors affecting the importation of softwood lumber into the United States.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Ruggles or Mr. Thomas Westcot, Agriculture, fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–724–1766 or 202–724–0095, respectively.

Background

The U.S. Trade Representative (USTR) in a letter dated March 6, 1985, requested, at the direction of the President, that the Commission conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of updating the Commission's April 1982 study entitled *Conditions Relating to the Importation of Softwood Lumber into the United States* (investigation No. 332–134), and reporting on all significant factors affecting the competitive status of the U.S. Canadian softwood lumber industries. The USTR requested that the investigation examine conditions in the softwood lumber industry over the past 3 years and report any significant developments since the Commission completed its earlier investigation.

To the extent possible, the study will provide information on the structure of the U.S. market; stumpage prices and appraisal methods; fixed and variable costs of production; transportation costs; marketing practices; Government policies and regulations and their influence on the softwood lumber industry; and a comparative analysis of United States and Canadian stumpage appraisal systems, industry wage rates, nature of forest resources, forest policy, employment policy as it relates to the softwood lumber industry, methods of taxation, and profit and risk allowances.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of §201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than May 3, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: March 28, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–7966 Filed 4–2–85; 8:45 am]

BILLING CODE 7035–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30620]

Chicago, West Pullman & Southern Railroad Company; Modified Certificate of Public Convenience and Necessity

March 27, 1985.

By notice served February 14, 1985, the Chicago, West, Pullman & Southern Railroad Company (CWPS) was authorized, effective January 31, 1985, to operate for 120 days under a modified certificate over a 58.95-mile line acquired in portions by the State of Wisconsin Department of Transportation (WISDOT) and the South Central Wisconsin Rail Transit Commission (SCWR) and over a 79.6-mile line acquired by WISDOT. The two lines are controlled by SCWR and the Pecatonia Rail Transit Commission, public agencies of the State of Wisconsin. CWPS was to operate the lines pursuant to service agreements with the two transit commissions.

On March 1, 1985, the Wisconsin & Calument Railroad, Inc. (WCR), a new corporation affiliated with CWPS by common ownership, directors, and officers, filed a modified certificate notice seeking to be substituted for CWPS as a replacement operator of the two lines for the remainder of the 120-day period. This notice was docketed Finance Docket No. 30631. WISDOT opposed the substitution contending that WCR failed to comply with the information requirements of 49 C.F.R. 1150.23 and the 60-day notice requirement for cessation of service. WISDOT stated that further review of WCR's financial structure, operating capabilities, insurance, and implementation of service agreements would be necessary before the State of Wisconsin could approve the substitution.

By letter filed March 14, 1985, the Railway Labor Executives' Association (RLEA) protested and substitution, petitioned for oral argument, and alternatively requested imposition of the labor protective conditions in Finance Docket No. 29601, *Indian Hi Rail Corp.-Feeder Line Acq.*, 366 I.C.C. 42 (1981). The United Transportation Union (UTU), by protest filed March 20, 1985, expressed opposition to the substitution contending that WCR is an alter ego set up by CWPS to avoid its collective bargaining agreement with UTU, the exclusive representative of certain employees.

On March 22, 1985, CWPS and WCR (1) withdrew the notice of substitution pending in Finance Docket No. 30631 and stated that WCR would be dissolved as a separately incorporated entity and (2) gave notice that the modified certificate in Finance Docket No. 30620 should be amended to have the authority issued on behalf of "Chicago, West Pullman & Southern Railroad Company doing business as Wisconsin & Calument Railroad."

As of March 31, 1985, CWPS is authorized to operate under this modified certificate doing business as the Wisconsin & Calumet Railroad. Amending the modified certificate in this manner will eliminate the need for termination and will establish an identity for WCR without the separate corporate form that is objectionable to the State of Wisconsin. The amendment also is consistent with the service agreements between CWPS and the two transit commissions. As amended, the modified certificate should not have an adverse affect on any of the parties to Finance Docket No. 30631. WISDOT and RLEA do not oppose the amendment, and UTU has withdrawn its protest.

Finance Docket No. 30631 is dismissed.

This notice must be served upon the Association of American Railroads (Car Service Division) as agent of all-railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–7911 Filed 4–2–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Reimbursable Services—Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for

each preclearance installation are determined as set forth below and will be effective with the pay period beginning April 28, 1985.

Installation	Biweekly excess cost
Montreal, Canada	$9,774.04
Toronto, Canada	14,126.71
Kindley Field, Bermuda	1,895.95
Freeport, Bahama Islands	5,598.60
Nassau, Bahama Islands	7,297.06
Calgary, Canada	4,218.71
Edmonton, Canada	3,045.70
Vancouver, Canada	7,436.58
Victoria, Canada	1,897.26
Winnipeg, Canada	1,372.67

As stated in the final rule published 3/26/85 at 50 FR 11841, the biweekly reimbursable excess costs for the first billing period are based on excess preclearance costs for fiscal year 1984. These amounts will be in effect and billed biweekly until the first full pay period after the notice of the third quarter, fiscal year 1985, reimbursable biweekly excess costs are published in the **Federal Register** (i.e., a July 25, 1985, publication date would mean that billing for the revised reimbursable biweekly excess costs would be effective for the pay period commencing August 4, 1985).

Dated: March 28, 1985

Malcolm E. Arnold,

Controller.

[FR Doc. 85-7917 Filed 4-2-85; 8:45 am]

BILLING CODE 6410-10-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-68; Application Folo No. D-5259]

Permanent Class Exemption To Permit Employee Benefit Plans to Invest in Customer Notes of Employers

AGENCY: Office of Pension and Welfare Benefit Programs, Department of Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a class exemption to permit employee benefit plans to purchase and hold customer notes of employers. [Replaces Prohibited Transaction Exemption 79-9]. The exemption affects participants, beneficiaries and fiduciaries of plans investing in customer notes, and employers of the plan participants.

EFFECTIVE DATE: July 1, 1984. A condition requiring independent fiduciary oversight will be effective with respect to transactions entered into after 30 days after the date of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-7901. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On August 10, 1984, notice was published in the **Federal Register** (49 FR 32127) of the pendency before the Department of a proposed class exemption to allow an employee benefit plan to purchase and hold customer notes from an employer of employees covered by the plan. A temporary class exemption, Prohibited Transaction Exemption (PTE) 79-9 (44 FR 17819, March 23, 1979), permitting transactions of this kind expired on June 30, 1984. The exemption provided relief from the prohibited transaction restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code.

In order to establish a record on which to base a determination as to whether permanent relief should be granted for plan investments in customer notes, the Department contacted a number of plans that had relied on PTE 79-9 seeking information concerning their experience with the temporary class exemption. The Department also solicited the views of the Associated Equipment Distributors (AED), an association of several hundred small businesses engaged primarily in the sale of construction equipment. Responses to the Department's inquiries and to a survey conducted by the AED among its member companies indicated that PTE 79-9 had provided good investment opportunities to the participating plans which afforded them relatively favorable yields with a high degree of safety. At the urging of plans that have relied on PTE 79-9 and the AED, the Department proposed the new permanent class exemption on its own motion under section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and section 3.01 of ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The notice gave interested persons an opportunity to comment and to request a hearing on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

1. Description of the Exemption

The class exemption granted pursuant to this notice permits a plan to acquire customer notes accepted by an employer of employees covered by the plan in the ordinary course of the employer's primary business activity. The exemption covers sales as well as contributions of customer notes by an employer to its plan. The new exemption incorporates many of the same conditions or limitations imposed under PTE 79-9, which were intended as safeguards to ensure the protection of the plan assets involved in the transactions. These conditions include a written guarantee by the employer to immediately repurchase a note if it becomes more than 60 days delinquent. A plan may not invest more than 50 percent of its assets in customer notes and over 10 percent in the notes of a single customer. Each customer note sold to a plan must be secured by a perfected security interest in the property financed by the note and the collateral must be insured. Also, maximum terms ranging up to five years are imposed on the notes, depending on the type of property being financed.

A condition of PTE 79-9 that required a plan to notify the Department annually in writing if it relied on the exemption is not retained in the new exemption for reasons discussed in the preamble to the proposal.[2] On the other hand, a new requirement for independent fiduciary oversight in regard to plan investments in customer notes has been included in the exemption. Under this new condition, a plan fiduciary who is independent of the employer must approve in advance any acquisition of customer notes by a plan and must monitor the plan's ongoing rights with respect to the customer notes held in its portfolio.

2. Discussion of Comments Received

The Department received nine letters commenting on various aspects of the proposed class exemption. The comment letters in general urged that the class exemption be adopted and stated that an exemption of this kind is in the best interests of the participants and beneficiaries of plans.

Four comment letters objected to the requirement proposed in the exemption that a fiduciary, who is independent of the employer, approve in advance any sales of customer notes to a plan and

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] See 49 FR at 32120.

monitor the ongoing plan investments in these notes. The letters asserted that the available evidence indicates that the temporary exemption worked well without an independent fiduciary requirement and that sufficient safeguards already are present in the proposed new exemption. The commenters maintain that the requirement for an independent fiduciary would add an unnecessary expense to a plan's operation which would reduce the plan's net investment return. Some of the letters further indicated that certain financial institutions either would be reluctant to serve in the capacity defined in the exemption or would demand a broader fiduciary role. The commenters noted that many employers relying on the exemption are smaller companies that traditionally have not utilized independent fiduciaries.

As stated in the preamble to the proposed exemption, the Department believes, based on its experience with both class exemptions and individual exemptions, that independent fiduciary oversight is an important method of protecting the plan assets involved in an exempt transaction and avoiding a potential conflict of interest situation where, for example, the employer, who is typically a fiduciary, engages in transactions with the plan. The Department recognizes that PTE 79–9 appears to have operated well with the safeguards incorporated in the temporary exemption and that this new requirement may impose some added expense on the part of plans utilizing the exemption. The Department is not convinced, however, that the marginal savings to a plan in cost or effort from eliminating this condition outweigh the added protection of having any covered transaction subject to the prior approval and monitoring of a fiduciary independent of the employer. For this reason and the reasons previously outlined in the preamble to the proposed exemption, condition III(b) is being retained in the final exemption.

Two comment letters recommended, without further explanation, that the scope of the exemption be expanded to permit sales of customer notes to a plan by affiliates of the sponsoring employer as well as by the employer itself. Section II of the proposal states, in part, that the exemption provides relief for the "acquisition from an employer with respect to a plan * * * of customer notes." Under the definition of customer notes in Section I, such a note must be accepted in connection with the employer's primary business activity as a seller of the tangible personal property being financed by the note. The commenters point out that an individual exemption (PTE 82–48, 47 FR 10924) was granted on March 12, 1982 on a temporary basis to the retirement plans of the Bale Chevrolet affiliated group. The exemption covers transactions similar to those described in PTE 79–9 except that the customer notes are purchased from Bale Finance Company (Bale Finance) which finances automobile sales for customers of the Bale Chevrolet Company (Bale Chevrolet). Bale Chevrolet and Bale Finance are the sole members of a controlled group as defined in section 1563(a) of the Code. The Department stated in the preamble to the notice of pendency that the exemption was proposed to be in effect only through June 30, 1984 to coincide with the expiration date of PTE 79–9, so that the Department could make a determination at that time in regard to future relief for the applicant.

The Department does not believe that a sufficient showing has been made that the problems associated with the scope of the exemption are commonplace and, consequently, has determined not to modify the definition of customer notes in the exemption. However, the Department continues to be prepared to consider individual exemptive relief for transactions of the type described in PTE 82–48 if the requisite findings under section 408(a) of ERISA can be made.

The Associated Equipment Distributors submitted a letter of comment concerning condition III(d) of the proposed exemption. Under that condition, an employer is required to repurchase a customer note from a plan in the event the note becomes over 60 days in arrears. As noted in the preamble to the proposal, the AED had stated in a letter to the Department dated April 5, 1984 that business customers sometimes experience seasonal or temporary cash-flow problems not reflective of their basic financial condition. As a result, the 60-day default period has occasionally caused good notes with favorable yields to be removed from a plan. At that time the AED recommended that the default period be extended from 60 to 90 days. The Department tentatively rejected that earlier recommendation for reasons discussed in the preamble to the proposed exemption.

In its most recent comment letter, the AED urged the Department to reconsider this matter and reiterated its view that such an extension would be in the best interests of plan participants. According to the AED, an employer, such as an equipment dealer, knows its customers well and therefore usually knows whether a customer is in a sound financial position despite occasional seasonal difficulties.

The AED recommended that the proposed exemption be modified to state that, while a note would still be considered to be in default if it was 60 days in arrears, the employer would have another 30 days to repurchase the note or to see that payments on the note are made timely. Alternatively, the AED recommended that, in cases of a 60-day delinquency, the employer could petition the independent fiduciary referred to in section III(b) of the proposed exemption to grant a 30-day extension.

After consultation with the employer, the independent fiduciary would have the discretion to grant or deny the requested extension based on his or her judgment as to the soundness of the note and the likelihood of its becoming current.

Upon consideration of the arguments put forth by the AED, the Department has decided to accept the second alternative suggested in the comment letter and has modified section III(d) of the exemption accordingly. In all other respects, the proposed exemption is being adopted without change.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The class exemption set forth herein is administratively feasible,

(ii) It is in the interests of plans and of their participants and beneficiaries, and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The class exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, the following class exemption is hereby granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Definition of Customer Notes. For purposes of this exemption, a customer note is a two-party instrument, executed along with a security agreement for tangible personal property, which is accepted in connection with, and in the normal course of, an employer's primary business activity as a seller of such property. A two-party instrument is a promissory instrument used in connection with the extension of credit in which one party (the maker) promises to pay a second party (the payee) a sum of money.

Section II. Transactions Covered. Effective July 1, 1984, if the conditions of section III of this exemption are satisfied, the prohibitions of sections 406(a), 406(b) (1) and (2) and 407(a) of ERISA and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition from an employer with respect to a plan and holding by the plan of customer notes (which, pursuant to section III(d), are guaranteed by the employer), or the repurchase of those notes by the employer.

Section III. Conditions. The following conditions must be met in the case of each plan which engages in covered transactions in reliance on the exemption:

(a) The transaction is on terms at least as favorable to the plan as an arm's-length transaction with an unrelated party would be.

(b) Effective with respect to customer notes sold after May 3, 1985—

(1) Prior to the consummation of a transaction described in section II of this exemption, the transaction is approved on behalf of the plan by a fiduciary who is independent of the employer, upon a determination made by such fiduciary that the (other) conditions of this exemption will be satisfied. The independent fiduciary shall acknowledge his or her plan fiduciary status in writing with respect to the transaction. For purposes of this paragraph, a person is independent of an employer even though he or she was selected by the employer (or by a person with an interest in the employer) if he or she has no other interest in the transaction for which an exemption is sought that might affect his or her best judgment as a fiduciary;

(2) The plan's continuing rights under the terms and conditions of the acquired customer note(s) and under this exemption shall be monitored and enforced on behalf of the plan by the same or another plan fiduciary who is independent of the employer and who has acknowledged his or her fiduciary status and liability as described in paragraph (b)(1) of this section. The independent fiduciary shall be responsible for taking all appropriate actions necessary to protect the plan's rights with regard to the safety and collection of the notes purchased by the plan. These actions shall include, but not be limited to, ascertaining that payments are received timely, diligently pursuing the receipt of delinquent payments and enforcing the employer's guarantee to repurchase delinquent notes, with accrued interest, as described in paragraph (d) of this section.

(c) The acquisition of a customer note from the employer shall not cause a plan to hold immediately following the acquisition (i) more than 50 percent of the current value (as defined in section 3(26) of ERISA) of plan assets in customer notes of the employer or (ii) more than 10 percent of the current value of plan assets in the notes of any one customer.

(d) The employer guarantees in writing the immediate repayment of the outstanding balance of the notes and accrued interest in the event the note is more than 60 days in arrears or if other events occur that, in the opinion of the independent fiduciary referred to in paragraph (b) of this section, impair the safety of the note as a plan investment. The independent fiduciary may at his or her discretion grant an additional 30-day extension before repurchase of the note by the employer is necessary upon a petition by the employer, if the fiduciary determines, after consultation with the employer, that such an extension is in the best interests of the participants and beneficiaries of the plan. The other events (of impairment) referred to above include, but are not limited to, the following:

(1) The obligor on the note fails to comply with any terms or conditions of the note.

(2) The obligor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of creditors or a liquidating agent, offers a composition or extension to creditors or make a bulk sale.

(3) Any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or amendments thereto for reorganization, composition, extension, arrrangements, receivership, liquidation or dissolution is begun by or against the obligor.

(4) A receiver of any property of the obligor is appointed under any jurisdiction at law or in equity.

(5) The obligor fails to take proper care of or abandons the property being financed by the note.

(e) The plan receives adequate security for the note. For purposes of this exemption, the term adequate security means that the note is secured by a perfected security interest in the property purchased by the obligor on the note so that if the security is foreclosed upon, or otherwise disposed of, in default of repayment of the loan, the value and liquidity of the security is such that it may reasonably be anticipated that loss of principal or interest will not result. In no event shall adequate security mean an interest in intangible personal property, such as, but not limited to, accounts, contract rights, documents, instruments, chattel paper, and general intangibles.

(f) Insurance against loss or damage to the collateral from fire or other hazards will be procured and maintained by the obligor until the note is repaid or repurchased by the employer, and the proceeds from such insurance will be assigned to the plan.

(g) Repayment must be provided for in the following manner:

(1) Where the note is secured by heavy equipment, the term shall in no event exceed 60 months. For purposes of this exemption, heavy equipment shall include machinery sold by equipment distributors such as, but not limited to, earth moving, material handling, pipe laying, power generation, and construction machinery manufactured according to standard specifications, but shall not include such equipment which has been specifically designed and manufactured to a user's specifications and which cannot reasonably be expected to be resold in the ordinary course of the equipment distributor's business.

(2) Where the note is secured by passenger automobiles and light-duty highway motor vehicles, the term shall in no event exceed 48 months. For purposes of this exemption, passenger automobiles and light-duty highway motor vehicles are defined as vehicles which have a gross weight of 10,000 pounds or less, are propelled by means of their own motor and are a type used for highway transportation.

(3) Where the note is secured by tangible personal property other than heavy equipment or motor vehicles described in paragraph (g) (1) and (2) of this section, the term shall in no event exceed 36 months.

(h) All records, information and data required to be maintained which relates to plan investments in customer notes covered by this exemption shall be unconditionally available at their customary location for examination during normal business hours by:

(1) The Department of Labor,

(2) The Internal Revenue Service,

(3) Plan participants and beneficiaries, or

(4) Any duly authorized employee or representative of a person described in subparagraph (1) through (3) above.

Signed at Washington, D.C., this 28th day of March 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 85-7901 Filed 4-2-85; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Review of the Significant Actions of the Office of Personnel Management During CY 1984; Call for Comments

Correction

In the issue of Tuesday, March 26, 1985, in the document appearing on page 11958 make the following corrections:

1. On page 11958, in the third column, in the file line at the end of the document, "FR Doc. 85-7191" should have read "85-7091".

2. In the second column, fourth line of paragraph (b)(1), "commission or" should have read "commission of".

3. In the third column, eighth line of paragraph (c)(3), "effects" should have read "affects".

BILLING CODE 1505-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days from date of notice.

ADDRESS: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, (202) 786-0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Room 3208, Washington, D.C. 20503, (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202) 786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category—New Form
Title: Travel to Collections Program, Supplemental Instructions for preparing Final Performance Reports
Form Number: N/A
Frequency of Collection: Occasional, at end of each grant
Respondents: All recipients of NEH Travel to Collections Program grants
Use: Program Evaluation and meeting requests for information from OMB and Congress
Estimated Number of Respondents: 500-600
Estimated Hours of Respondents to Provide Information: 1-3 hours

Bruce Carnes,

Acting Director of Administration.

[FR Doc. 85-7902 Filed 4-2-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. Class exemption for reports concerning possible non-routine generic problems.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On Occasion.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: Varies.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 5,000.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC is requesting approval authority to collect information concerning emergency non-routine generic problems which would require prompt action to preclude potential threats to public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland this 28th day of March 1985.

For the Nuclear Regulatory Commission.
Patricia G. Norry,
Director, Office of Administration.
[FR Doc. 85-7952 Filed 4-2-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-13]

Babcock & Wilcox Co.; Finding of No Significant Environmental Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the Babcock & Wilcox Company to dismantle their critical facility near Lynchburg, Virginia and to dispose of the reactor components in accordance with the application dated August 7, 1984, as supplemented.

The Order would authorize dismantling of the facility and disposal of the components in accordance with the licensee's application for decontamination and dismantling dated August 7, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Termination of Facility License published in the **Federal Register** September 18, 1984 at 49 FR 36579.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of human environment.

Summary of Environmental Impacts

The environmental impacts associated with the dismantling and decontamination operations are discussed in an Environmental Assessment associated with this action, dated January 31, 1985. The operations are calculated to result in a total radiation exposure of less than 1 person-Rem to all operating personnel and less than 10 person millirem for the population within a 10-mile radius. The Environmental Assessment concluded that the operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact all operations are carefully planned and controlled, that all contaminated components and soil are removed, packaged, and shipped offsite, and that the radiological effluent control procedures and systems ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA).

For further details with respect to this proposed action, see the application for dismantling, decontamination and license termination dated, August 7, 1984, as supplemented, the Environmental Assessment, and the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland this 38th day of March 1985.

For the Nuclear Regulatory Commission.
Dennis M. Crutchfield,
Assistant Director of Safety Assessment, Division of Licensing.
[FR Doc. 85-7953 Filed 4-2-85; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21900; SR-NYSE-85-2]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 28, 1985.

The New York Stock Exchange, Inc. ("NYSE") submitted on January 21, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend NYSE Rule 451 (Proxies), Supplementary Material .91, and NYSE Rule 465 (Company Reports to Stockholders), Supplementary Material .21, to establish a surcharge that may be charged by NYSE members and member organizations to issuers in connection with proxy solicitations. The purpose of the surcharge is to permit the recoupment of start-up costs incurred by NYSE members and member organizations in complying with Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Act, which were designed to facilitate direct communications by issuers to non-objecting beneficial stockholders.[1]

I. Background

In July 1983, the Commission adopted new paragraph (c) of Rule 14b-1 under the Act to improve the process whereby issuers communicate with shareholders whose securities are held in street name.[2] New paragraph (c) requires brokers to provide issuers, upon request and assurance of reimbursement of reasonable expenses (direct and indirect), with the names, addresses and securities positions of customers who are beneficial owners of the issuers' securities and who have not objected to such disclosure. The Commission also adopted a corresponding amendment to Rule 17a-3(a)(9) under the Act to require that the customer records maintained by brokers for street name holders include whether the beneficial owner has objected to the disclosure to issuers of his or her identity, address, and securities positions. To provide time for the determination of reasonable costs by self-regulatory organizations ("SROs") and to minimize costs, the Commission established January 1, 1985, as the effective date for both provisions. Thereafter, associations representing the entities most directly affected by the rules jointly recommended that the effective date be deferred to January 1, 1986, and agreed to facilitate the determination and allocation of reasonable costs and the development of an efficient means of furnishing beneficial owner information to issuers.[3]

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[1] Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission release (Securities Exchange Act Release No. 21702, February 1, 1985) and by publication in the Federal Register (50 FR 5461, February 8, 1985). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

[2] Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082.

[3] The terms of the agreement are detailed in letters from the Securities Industry Association ("SIA") to the American Society of Corporate Secretaries ("ASCS") and the National Investor Relations Institute ("NIRI"), dated August 3, 1984, from the ASCS to SIA, dated August 10, 1984, and from NIRI to the SIA, dated August 20, 1984. The letters are part of File No. S7-854.

The Commission deferred the effective date, as requested, in the belief that a cooperative effort would result in the best system for communicating with shareholders while maintaining the system of nominee registration.[4]

In adopting the direct shareholder communications rules the Commission left the determination of reasonable costs to the SROs, because, as representatives of both issuers and brokers, they were deemed to be in the best position to make a fair allocation of the costs associated with the amendments, including start-up and overhead costs.[5] Accordingly, the NYSE formed an Ad Hoc Committee on Identification of Beneficial Owners ("Ad Hoc Committee"), composed of issuers, broker-dealers, banks, transfer agents, and proxy solicitors, to provide guidance on this issue.

Based on the recommendations of the Ad Hoc Committee, the NYSE's proposed rule change originally provided that the start-up costs associated with the implementation of the rules be funded by a surcharge of $.20 per proxy for each of an issuer's two annual meeting proxy solicitations subsequent to the approval of the surcharge.[6] At the request of the Commission staff, the NYSE has modified its original proposal to apply the surcharge for only one year and has agreed to submit more cost data when it proposes an additional surcharge for the next year's proxy dissemination.[7] Based on the number of proxies processed in the 1984 proxy season, the Ad Hoc Committee believes that the surcharge, if collected by all broker-dealers for one year will raise $12,500,000 for the securities industry as a whole. The proposed rule change is not designed to assure that, even with a second-year surcharge, each individual broker will exactly recover its start-up costs which are estimated to average $.70 per account.[8]

Both the SIA Operations Committee and the Securities Industry Committee of the ASCS have submitted letters to the NYSE endorsing the proposed rule change. One comment letter, relating to the proposed rule change, filed by Duquesne Light Company ("Duquesne"), was received during the Commission's comment period.[9] Duquesne claimed that the plain language of Rule 14b–1(c) "evidences an intent that those issuers who request this service bear the costs." Duquesne suggested that a surcharge be assessed only on those issuers who request or indicate they will request the information and that an "appropriate" fee be developed for issuers who request the information at some later date.

The NYSE asserts that insufficient information was available on which to base an allocation of the start-up costs of the number of issuers who would request the data. Furthermore, the AD Hoc Committee reasoned that an across-the-board surcharge would be the fairest way to recoup broker-dealer start-up costs. The NYSE stated in its filing that all issuers should share proportionately in the new system's start-up costs because all issuers "might reasonably be expected to benefit sooner or later."

II. Discussion

Under section 19(b) of the Act, the standard for approval of a proposed SRO rule change is that the proposal be consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 6(b) of the Act sets forth the general requirements for exchange rules. Section 6(b)(4) requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5) requires that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers, or dealers. Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this case, the Commission believes that, to the extent the surcharge is reasonable and fairly allocated, it will meet the standards of the Act.

In determining to have the SROs develop a reasonable allocation of costs, the Commission recognized the need to balance the interests of broker-dealers and issuers in an area requiring difficult estimates. With the exception of the number of account holders,[10] the estimates which form the basis for the NYSE proposal do not appear unreasonable. Moreover, the fees do not appear to unfairly discriminate among issuers because all issuers have the opportunity to request information regarding their beneficial owners, and more than a narrow class of issuers appears to be interested in receiving this information.[11] In response to the proposal of Rule 14b–1(c), 152 issuers supported the proposal.[12]

Furthermore, the Commission believes the proposal is the result of good faith negotiation between representatives of broker-dealers and issuers and is endorsed by associations representing both groups. Accordingly, the amount of the surcharge and first-year payments to

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[4] Securities Exchange Act Release No. 21339 [September 21, 1984) 49 FR 38001.

[5] Securities Exchange Act Release No. 20021 (July 22, 1983), 48 FR 35082.

[6] The cost estimates which served as the basis for the proposal were based on the assumption that broker-dealers would be required to solicit "some 34 million shareowners" as to whether they would object to disclosure of their names and other information to issuers, at an estimated cost of $.70 per shareholder. The 34 million number was taken from a 1983 NYSE survey of all shareowners including those who hold in their own names and those who hold securities through banks. Because broker-dealers only will be required to solicit consent of those shareowners whose securities are held by their broker in street name, this number appears to be inflated. 1983 FOCUS data for all broker-dealers and 1984 FOCUS data for NYSE firms indicates that broker-dealer customer accounts totaled just under 20 million as of December 31, 1984. Therefore, the Commission believes that further cost data is necessary to approve a second year surcharge.

[7] *See* letter from James E. Buck, Secretary, NYSE to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated March 14, 1985.

[8] By far the greatest portion of these costs is attributable to the postage expenses of soliciting account holders as to whether the beneficial owners would object to having their name, address, and security position passed on to the issuer. The balance of the costs is related to systems modifications to collect and maintain this information as required by Rule 17a–3(a)(9)(ii). The SIA cost estimate is set forth in SIA's letter to John S.R. Shad, Chariman, SEC, dated June 25, 1984.

[9] *See* letter from Diane S. Dismont, Corporate Secretary, Duquesne Light Company, to Secretary, SEC, dated February 22, 1985.

[10] See note 6, *supra*. Even with a reduction of estimated account holders to 20 million, the estimated costs to broker-dealers would total approximately $16 million, substantially in excess of $12 million estimate of the revenue, which will be raised by the first year proxy surcharge.

[11] It is, of course, possible for a rule nominally to apply across-the-board but, by virtue of an uneven impact, to impose inappropriate competitive burdens. The Commission has been unable to identify, and commentators have not asserted, any such impacts from this proposed rule. The costs of this proposal for any given issuer will not be significant, and they will be borne proportionally by each issuer in accordance with the number of proxies it distributes. It could be argued, as alluded to in Duquesne's comment, that it is unfair to impose start-up costs on issuers who have no intention of requesting information on beneficial shareholders. It is unlikely, however, that any such costs will impose a material competitive burden on such issuers. In any event, the Commission believes any such burden is substantially outweighed by the administrative advantages of an across-the-board rule. Accordingly, the Commission finds the NYSE proposal to be consistent with section 6(b)(8) of the Act.

[12] In a joint ACIS/NYSE survey 643 representative NYSE-listed companies indicated that 55% of the companies wanted the data on non-objecting beneficial shareholders, 18% did not want the data, and 27% did not know whether they wanted the data. Of the 184 companies not NYSE listed who responded (for which there was insufficient data to determine whether they were representative) 62% indicated they wanted data, 18% indicated they did not want the data, and 20% did not know whether they wanted the data.

broker-dealers appears to be reasonable and thus consistent with the section 6(b)(4) of the Act.

With respect to the arguments raised by Duquesne, it may be correct that the Commission, in adopting Rule 14b–1(c), anticipated that the SROs would devise a system of fees applicable only to issuers who requested information on beneficial shareholders. Duquesne is incorrect, however, in its suggestion that the Commission mandated such a result or that the language of Rule 14b–1 requires such a result. Rather, in adopting the Rule, the Commission concluded that the SROs were in the best position to make a fair allocation of all the costs associated with the Rule, including start-up costs. Accordingly, the Commission did not limit the SROs' discretion to fashion a reasonable solution. Moreover, the text of Rule 14–1(c) compels no particular approach to recouping broker-dealer start-up costs.[13]

The statutory standards applicable to SRO rules are written in terms of purposes to be achieved. The purpose of the proposed surcharge is to establish a fair rate to recoup the costs of a communication system which the Commission determined should be developed. Furthermore, the Ad Hoc Committee determined that user-only funding was impractical because the assumptions required were arbitrary [14] and presented a substantial possibility that broker-dealers would not be compensated for their legitimate start-up costs, at least not on a timely basis. Accordingly, the Ad Hoc Committee determined that the initial costs of the system to be developed in 1985 should be borne by all issuers, who will then be free to assess whether the incremental cost of actually requesting data on non-objecting beneficial shareholders are off-set by benefits of direct communication with them.

[13] Rule 14b–1(c) states in relevant part—

A broker . . . shall . . . [p]rovide the issuer, upon its request and assurance that it will reimburse the broker's reasonable expenses (direct and indirect), with the names, ...

[14] In this regard, Duquesne apparently recognized, but did not address, the complex estimation and cost allocation questions raised by its suggestion that only those issuers who actually request, or indicate they will request, the information be assessed. Faced with the uncertainties and other difficulties posed by such an approach, including the question of how broker-dealers should finance any revenue shortfalls should the number of requesting issuers fall short of expectations, the Commission believes the NYSE, in consultation with groups representing issuers and broker-dealers, reasonably concluded that it was simpler and in the end probably fairer, for start-up costs to be assessed on all issuers who could take advantage of Rule 14b–1(c), not merely those electing to do so.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of sections 6(b)(4), 6(b)(5), and 6(b)(8) and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.[15]

By the Commission.

Shirley E. Sollis,

Assistant Secretary.

[FR Doc. 85–7955 Filed 4–2–85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 09/09 5351]

Application for License To Operate as a Small Business Investment Company; Hawaii Venture Capital, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Hawaii Venture Capital Inc.

Address: 1111 Bishop Street, Suite 204, Honolulu, Hawaii 96813

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Iris H. Toguchi, 1111 Bishop St., Honolulu, HI 96813.	President/Director	0
Kim Woolaway, 1111 Bishop St., Honolulu, HI 96813.	Vice President	0
Richard C. Lim, 1111 Bishop St., Honolulu, HI 96813.	Secretary	0
Lionel Y. Tokioka, 1111 Bishop St., Honolulu, HI 96813.	Director	0
ISL Services Corp., Inc.; 1111 Bishop St., Honolulu, HI 96813.	Shareholder	100

ISL Services Corporation, Inc. is the wholly owned subsidiary of International Savings and Loan Association, Ltd., a publicly held state chartered states savings and loan association with 13 offices in the Hawaiian Islands.

The Applicant, a Hawaii corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of Hawaii.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities comtemplated under the Act and will provide assistance solely to small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Honolulu, Hawaii area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 29, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–7973 Filed 4–2–85; 8:45 am]

BILLING CODE 8025-01-M

[15] The Commission approves the proposed rule change as amended by the NYSE to provide a surcharge only for one year. *See* text accompanying note 7, *supra*.

[Application No. 08/08-0350]

Application for License to Operate as a Small Business Investment Company; RCL, Inc.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for the license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 et. seq.) and the Rules and Regulations promulgated thereunder.

Applicant: RCL, Inc.

Address: 1111 Bishop Street, Suite 204, Honolulu, Hawaii 96813

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Ida H. Toguchi, 1111 Bishop St. Honolulu, HI 96813.	President/Director	0
Kim Woolaway, 1111 Bishp St., Honolulu, HI 96813.	Vice President	0
Richard C. Lim, 1111 Bishop St., Honolulu, HI 96813.	Secretary	0
Lionel Y. Tokioka, 1111 Bishop St., Honolulu, HI 96813.	Director	0
ISL, Services Corp., Inc., 1111 Bishop St., Honolulu, HI 96813.	Shareholder	100

ISL Services Corporation, Inc. is the wholly owned subsidiary of International Savings and Loan Association. Ltd., a publicly held state savings and loan association with 13 offices in the Hawaiian Islands.

The Applicant, a Hawaii corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of Hawaii.

Matters involved in SBA's consideration of the application included the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Honolulu, Hawaii area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 29, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-7974 Filed 4-1-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 2185]

Declaration of Disaster Loan Areas; New York

The area affected is bordered on the north by Flushing Avenue, on the south by Park Avenue, on the west by Hall Street, and on the east by Ryerson Street in the City of New York, Brooklyn Borough, Kings County, New York. This constitutes a disaster area because of damage resulting from a fire which occurred on January 22, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on May 28, 1985, and for economic injury until the close of business on December 30, 1985, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations) including charitable and religious organizations)	11.125

The number assigned to this disaster is 218605 for physical damage and for economic injury the number is 629700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 28, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-7969 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

Montana; Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, April 26, 1985, at the Federal Office Building, 301 South Park, Room 389, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449-5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 25, 1985.

[FR Doc. 85-7971 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

Pennsylvania; Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadephia, Pennsylvania, will hold a public meeting at 8:00 A.M. on Friday, May 24, 1985, at the Philadelphia District Office, Suite 400-East Lobby. One Bala Plaza, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania, 19004 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004 (215) 596-5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 25, 1985.

[FR Doc. 7970 Filed 4-2-85; 8:45 am]

BILLING CODE 8025-01-M

West Virginia; Region III Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting to begin at 1:00 PM Tuesday, April 30 and end 12:00 Noon Wednesday, may 1, 1985, at the Holiday Inn (Charleston House), 600 Kanawha Blvd., East, Charleston, West Virginia, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Marvin P. Shelton, District Director, U.S. Small Business Administration, P.O. Box 1608, Clarksburg, West Virginia 26302–1608 or phone (304) 622–1601.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 25, 1985.

[FR Doc. 85–7972 Filed 4–2–85; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Proposal for a Coordinated Framework for Regulation of Biotechnology

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Notice of extension of public comment period.

SUMMARY: The purpose of this **Federal Register** notice is to provide an extension of the public comment period to April 15, 1985, for the Proposal for a Coordinated Framework for Regulation of Biotechnology published in the **Federal Register** on December 31, 1984 (49 FR 50856).

DATE: Comments must be received on or before April 15, 1985.

Public participation: The Cabinet Council Working Group on Biotechnology through the Office of Science and Technology Policy, is seeking the advice of individuals, public interest groups, industry and academia on all aspects of this publication. The Working Group welcomes candid assessments of the process and the policy as well as questions raised regarding the scope of the proposal.

The intention of the Working Group is to republish this material in final form as soon as possible following the close of the comment period. This will assure that well understood regulatory policy and process are established in timely manner to enable a beneficial industry to proceed safetly and efficiently.

Information submitted as comments to EPA on this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A sanitized copy of any material containing Confidential Business Information must be provided to EPA by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

ADDRESS: Comments specific to the EPA, USDA, or FDA policy statements should be addressed to:

EPA: Docket #OPTS 00049, Document Control Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Room E–409, 401 M Street, S.W.; Washington, D.C. 20460.

USDA: Docket #APHIS 00049, Ms. Karen Darling, Deputy Assistant Secrtary, Marketing and Inspection Services, U.S. Department of Agriculture, Room 242–E, Administration Building, 12th and Independence Avenue, S.W., Washington, D.C. 20250.

FDA: Docket # 84N–0431, Dockets Management Branch, Food and Drug Administration (HFA–305), Room 4–62, 5600 Fishers Lane, Rockville, Maryland 20857.

Any other comments should be provided to the following address: Dr. Bernadine Healy, Deputy Director, Office of Science and Technology Policy, Executive Office of the President, NEOB Room 5005, Washington, D.C. 20500.

April 1, 1985.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 85–8102 Filed 4–2–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular—Damage Tolerance and Fatigue Evaluation of Structure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed revision to Advisory Circular 25.571–1 and request for comments.

SUMMARY: This Notice announces the availability of and requests comments on a proposed revision to an advisory circular concerning damage-tolerance and fatigue evaluation requirements of aircraft structure.

DATES: Comments must be received on or before July 3, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Regulations & Policy Office, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations and Policy Office, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.571–1 and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Regulations & Policy Office before issuing the final AC.

Discussion

During recent years, there have been significant state-of-the-art and industry-practice developments in the area of structural fatigue and fail-safe strength evaluation of transport category airplanes. Recognizing that these developments could warrant some revision of the existing fatigue requirements in §§ 25.571 and 25.573 of Part 25 of the FAR, the FAA, on November 18, 1978, gave notice of its Transport Category Airplane Fatigue Regulatory Review Program and invited interested persons to submit proposals to amend those requirements (41 FR 50956). The proposals and related discussions formed the basis for the revision of the structural fatigue evaluation standards of §§ 25.571 and 25.573 and the development of guidance material. To that end, § 25.571 was revised, § 25.573 was deleted (the scope of § 25.571 was expanded to cover the substance of the deleted section), and guidance material (AC 25.571–1) was provided containing compliance provisions related to the proposed change. Since issuance of AC 25.571–1 on 9/28/78, additional guidance material has been developed and is incorporated in the proposed revision.

Issued in Seattle, Washington, on March 19, 1985.

Donald Riggin,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 85–7877 Filed 4–2–85; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular—Fuselage Doors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed Advisory Circular 25.783–XX and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance information for showing compliance with structural and functional safety standards for doors and their operating systems. The intent of the requirements and some acceptable means of compliance are discussed.

DATES: Comments must be received on or before July 3, 1985.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Regulations and Policy Office, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address betwen 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Regulations & Policy Office, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under **"FOR FURTHER INFORMATION CONTACT."** Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify AC 25.783–XX and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Regulations & Policy Office before issuing the final AC.

Discussion

For several years, considerable attention has been given to developing design criteria for outward opening doors in pressurized cabins to prevent inadvertent opening in flight. A critical design review team was assigned the task of reviewing outward opening doors on wide body airplanes and of developing safety standards relative to design and operation of these doors. These criteria were made applicable to all external passenger, cargo, and service doors by Amendment 25–54 to Part 25 of the Federal Aviation Regulations (FAR). The proposed AC sets forth an acceptable means of compliance with those provisions.

Issued in Seattle, Washington, on March 19, 1985.

Donald L. Riggin,

Acting Manager, Aircraft Certification Division, Northwest Mountain Region.

[FR Doc. 85–7878 Filed 4–2–85; 8:45 am]

BILLING CODE 4910–13–M

RTCA Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of Radio Technical Commission for Aeronautics, (RTCA) Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on April 23–24, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Fifth Meeting Held on January 23–24, 1985; (3) Review Task Assignments from Previous Meeting; (4) Review of Manufacturer Reports; (5) Review Draft of Committee Report on Potential Interference to Aircraft Electronics Equipment; (6) Assignment of Tasks; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on March 28, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–7875 Filed 4–2–85; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation and Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Leonardo to Van Gogh: Master Drawings from Budapest" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Szepmuveszeti Museum, Budapest, Hungary, the National Gallery of Art, The Art Institute of Chicago, and the Los Angeles County Museum of Art. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about May 12, 1985, to on or about July 14, 1985; The Art Institute of Chicago, Chicago, Illinois, beginning on or about July 24, 1985, to on or about September 22, 1985; and the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about October 10, 1985, to on or about December 8, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 27, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85–7828 Filed 4–2–85; 8:45 am]

BILLING CODE 8230–01–M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 64
Wednesday, April 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, April 8, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Tustin Thrift and Loan Association, an operating noninsured industrial bank located at 530 East Street, Tustin, California.

Lyndon Guaranty Bank of Ohio, a proposed new bank to be located at 2479 East Dublin-Granville Road, Columbia, Ohio.

Application for consent to relocate a branch:

Washington Mutual Savings Bank, Seattle, Washington, for consent ot relocate a branch from 425 North Market Boulevard to 65 South Market Boulevard, within Chehalis, Washington.

Application for consent to retire preferred stock:

Equibank, Latrobe, Pennsylvania.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,198–SR: Columbia Pacific Bank & Trust Company, Portland, Oregon
Memorandum and Resolution re: National Bank of Odessa, Odessa, Texas

Memorandum regarding furniture requirements for the Corporation's Dallas Regional Office.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Reports Under Delegated Authority, Status of Approved Committee Cases

Discussion Agenda:

Memorandum and resolution re: Proposed amendment to the Corporation's rules and regulations in the form of new Part 352, entitled "Nondiscrimination on the Basis of Handicap in the Federal Deposit Insurance Corporation," which amendment implements section 504 of the Rehabiliation Act of 1973, as amended, and ensures that, to the extent practicable, handicapped persons are provided with equal access to Corporation programs and activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 1, 1985.

Federal Deposit Insurance Corporation
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 85–8061 Filed 4–1–85; 4:01 pm]
BILLING CODE 6714–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:15 p.m. on Friday, March 29, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Fidelity Bank of Denver, Denver, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Friday, March 29, 1985; (2) accept the bid for the transaction submitted by American Bank of Commerce, Denver, Colorado, a newly-chartered State nonmember bank subsidiary of America Bankshares, Ltd.; (3) approve the applications of American Bank of Commerce, Denver, Colorado, for Federal deposit insurance, and for consent to purchase certain assets of and to assume the liability to pay deposits made in Fidelity Bank of Denver, Denver, Colorado; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 1, 1985.

Federal Deposit Insurance Corportion.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 85–8062 Filed 4–1–85; 4:01 pm]
BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 8, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 1, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–8083 Filed 4–1–85; 4:00 pm]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 8, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streeets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 29, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–7959 Filed 4–1–85; 9:07 am]

BILLING CODE 6210-01-M

5

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50–10577.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 p.m. (eastern time) Tuesday, March 26, 1985.

CHANGE IN THE MEETING: The following item was moved to the closed portion of the meeting: "Proposed Contract for Expert Services in Connection With a Court Case"

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:
Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred Alvarez, Commissioner
R. Gaull Silberman, Commissioner
Opposed: None

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634–6748.

Dated: March 28, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85–8057 Filed 4–1–85; 8:45 am]

BILLING CODE 6750-06-M

federal register

Wednesday
April 3, 1985

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 101

Food Labeling, Proposed Rule Concerning Sulfiting Agents; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 84N-0103]

Food Labeling; Proposed Rule Concerning Sulfiting Agents

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation that will clarify the circumstances in which the presence of sulfiting agents (also referred to as "sulfites") must be declared on the label of foods. Sulfiting agents (sulfur dioxide, sodium sulfite, and sodium or potassium bisulfite or metabisulfite) are usually added to foods for their preservative effect. The proposed regulation makes clear that when a sulfite that is added either to a food or to one of its ingredients is detectable in the finished food, it is present in that food at a significant level. In such circumstances, the sulfite is not an incidental additive and must be declared on the label. The proposed regulation also makes clear the level of sulfites that the agency considers to be detectable.

DATES: Comments by June 3, 1985. The agency proposes that any final rule based on this proposal become effective 6 months after the date of publication of the final rule.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard Pippin, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: Recent scientific developments have shown that sulfiting agents can cause reactions in a significant portion of the population. As a result of these developments, FDA has taken several actions with regard to the use of sulfites in food. On March 4, 1983, the agency issued an interpretation for the Retail Food Protection Program Information Manual concerning the use of sulfiting agents in restaurants. The interpretation stated that "fruits and vegetables or other foods for raw consumption to which the retail operator has added sulfiting agents without advising consumers are to be considered unsafe." FDA also is forming an Ad Hoc Advisory Committee on Hypersensitivity to Sulfiting Agents in Food to review and to evaluate available data on adverse reactions in humans associated with the use of sulfiting agents in food (49 FR 15021; April 16, 1984). In addition, FDA has reviewed its regulations to determine whether they are adequate to ensure that the labeling of a food will advise consumers that a sulfiting agent has been added to that food. This document announces the outcome of that review.

Finally, the agency has asked the Federation of American Societies for Experimental Biology to review currently available evidence that indicates that the use of sulfiting agents has increased (49 FR 27994; July 9, 1984).

Several statutory and regulatory provisions are relevant to this review. Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(i)(2)) requires the declaration of the ingredients of nonstandardized foods. Section 402(g)(2) of the act requires that the labeling of foods that are subject to a standard of identity list any optional ingredients that have been used. Section 101.100(a)(3) of FDA's regulations (21 CFR 101.100(a)(3)) creates an exception from these declaration requirements for incidental additives. Incidental additives are substances that are present in a food at insignificant levels and that do not have any functional or technical effect in that food.

The agency has concluded that it would be impractical to list all such substances (38 FR 20704, 20705; August 2, 1973) and thus does not require that they be declared on the label. Finally, section 403(k) of the act states that a food that bears or contains a chemical preservative will be deemed to be misbranded unless the presence of the preservative is declared on the label.

FDA's regulations thus require that sulfiting agents be declared on the label when:

1. They are used as chemical preservatives; or

2. They are used in food as other than incidental additives.

A problem has developed in recent years with regard to the use of sulfiting agents and to when they are exempt from label declaration under 21 CFR 101.100(a)(3). Some manufacturers have incorrectly interpreted what constitutes an insignificant level of a sulfiting agent. This development is of concern to the agency because sulfites have been shown to cause reactions in sensitive individuals, particularly asthmatics, even when ingested at very low levels.

The agency has conducted a computer update of the scientific literature on sulfiting agents from 1975 to the present. FDA has reviewed the abstracts and has evaluated those references that are particularly pertinent. These references, listed at the end of the preamble to this proposal, are available at the Dockets Management Branch (address above).

The agency concludes that the scientific data on human sensitivity to sulfiting agents establish that certain sensitive individuals, asthmatics in particular, can react to ingested sulfiting agents. Estimates of the number of asthmatic individuals at risk range from 450,000 to one million. The clinical studies conducted by Simon and Stevenson (Refs. 1 through 4) suggest that 5 percent of 9 million asthmatics, or some 450,000 individuals, may be sensitive to sulfiting agents. This approximates the 6 percent that Freedman suggested in his study of 272 asthmatics (Ref. 5). No estimate of the number of nonasthmatic, healthy individuals that may be at risk is available. The agency notes, however, that nonasthmatics were involved in several of the complaints of reactions to sulfiting agents that it has received and investigated, and four of the individuals described in the published medical case reports are nonasthmatic.

Thus, sulfiting agents have been shown to produce allergic-type responses in humans, and the presence of these ingredients in food may have serious health implications for those persons who are intolerant of sulfites. Including the sulfiting agents in the list of ingredients in the label of a food will alert susceptible persons to their presence in that food. Persons who know they are intolerant of sulfites are likely to be selective in the types of food that they use. Thus, an appropriate label declaration will enable those persons to avoid the potential hazard of an allergic-type reaction to a sulfiting agent by reading the label. Accordingly, a label declaration of sulfites in food will enable persons intolerant to sulfites to minimize their exposure to these ingredients.

To assure that manufacturers fully understand the circumstances in which sulfites must be declared, and to assure that sensitive individuals are protected by appropriate labeling, FDA has determined that it is necessary to clarify its labeling regulations. The proposed clarifying provision (§ 101.100(a)(4)) states that a sulfiting agent that has been added to any food or to any ingredient in any food will be considered to have been used as an incidental additive and, thus, exempt from labeling requirements under § 101.100(a)(3), only if no detectable amount of the sulfite remains in the

finished food. The agency is proposing to find that any detectable amount of a sulfiting agent is significant for labeling purposes because FDA is unaware of any evidence that establishes a level below which these substances will not cause a reaction in sensitive individuals. Thus, the agency has tentatively concluded that the only way it can assure that sensitive individuals are given adequate notice of the presence of a sulfiting agent is by requiring a label declaration when the sulfiting agent is present in a detectable amount.

The proposed provision defines "a detectable amount" as being 10 parts per million or more. This amount represents the lowest level at which sulfites can be detected using currently available methods.

FDA proposes that this regulation become effective 6 months after publication of the final rule rather than on the next uniform effective date for compliance with new food labeling requirements that is periodically announced. Thus, the agency proposes that by 6 months after the date of publication of any final regulation, all finished foods that are initially introduced or initially delivered for introduction into interstate commerce and that contain a detectable amount of a sulfiting agent must bear labeling that declares the presence of the sulfiting agent. The agency recognizes that, even though it is only a clarification, this regulation will require many manufacturers who currently do not declare sulfites on the labels of their products to revise their labels. Nonetheless, FDA is proposing the 6-month effective date because information about the presence of sulfiting agents is not merely informative but is necessary to protect the health of sensitive individuals. On the basis of its experience, the agency believes that 6 months is an adequate amount of time for manufacturers to change their labeling. The agency urges manufacturers and distributors, however, to declare sulfiting agents on their labels as soon as possible.

The agency has determined pursuant to 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This proposed regulation clarifies an existing regulatory requirement. Therefore, the proposed regulation should have no economic effect. However, because FDA recognizes that there has not been universal compliance with this requirement, the agency has examined, in accordance with Executive Order 12291, the economic consequences of requiring that sulfiting agents be declared on the label when present in food in a detectable amount as though this requirement were new. On the basis of available information, the agency has determined that this proposed regulation may impose one-time costs of $1.3 million. It, therefore, is not a major rule as defined by the Order.

Furthermore, FDA in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities, including small businesses, and has concluded that the proposed regulation would require a label change resulting only in a minimal impact on any individual firm. Approximately 450 small firms may incur costs totalling about $300,000. It is unlikely that any small firms will bear excessive or unreasonable burdens as a result of this regulation. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will be caused by this regulation.

Paperwork Reduction Act of 1980

Section 101.100(a)(4) of this proposed rule contains an information collection requirement. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the information collection requirement. Other organizations and individuals desiring to submit comments on the information collection requirement should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 3208, Washington, DC 20503, Attention: Bruce Artim.

References

A copy of the threshold assessment supporting these determinations and the following information have been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Stevenson, D.D., and R.A. Simon, "Sensitivity to Ingested Metabisulfites in Asthmatic Subjects," *Journal of Allergy and Clinical Immunology*, 68:26–32, July 1981.

2. Simon, R.A., et al., "The Incidence of Ingested Metabisulfite Sensitivity in an Asthmatic Population," *Journal of Allergy and Clinical Immunology*, 69:118, January 1982.

3. Simon, R.A., written communication to FDA, February 8, 1983.

4. Stevenson, D.D., and R.A. Simon, Abstract No. 10, American Academy of Allergists Meeting, March 1981.

5. Freedman, B.J., "Asthma Induced by Sulfur Dioxide, Benzoate and Tartrazine Contained in Orange Drinks," *Clinical Allergy*, 7:407–415, 1977.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047–1048 as amended, 1055 (21 U.S.C. 343, 371(a))) and under 21 CFR 5.11, it is proposed that § 101.100 be amended by adding new paragraph (a)(4) to read as follows:

PART 101—FOOD LABELING

§ 101.100 Food; exemptions from labeling.

(a) * * *

(4) Any sulfiting agent (sulfur dioxide, sodium sulfite, sodium bisulfite, potassium bisulfite, sodium metabisulfite, and potassium metabisulfite) that has been added to any food or to any ingredient in any food will be considered to be an incidental additive under paragraph (a)(3) of this section only if no detectable amount of the agent is present in the finished food. For the purpose of this paragraph (a)(4), a detectable amount of a sulfiting agent is 10 parts per million or more of the sulfite in the finished food when that food is analyzed using section 20.123–20.125, "Total Sulfurous Acid," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Ed. (1984), which is incorporated by reference. A copy is available from the Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Interested persons may, on or before June 3, 1985, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments

are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 2, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services

[FR Doc. 85-8138 Filed 4-2-85; 10:48 am]

BILLING CODE 4160-01-M

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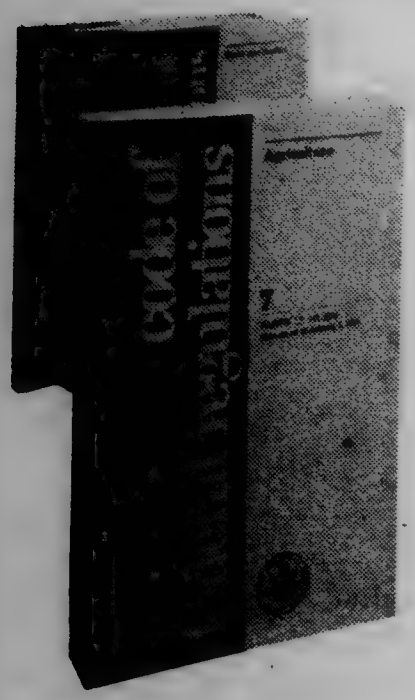
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LIST OF PUBLIC LAWS

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Last List April 1, 1985



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Vol. 50 No. 65

federal register

Thursday
April 4, 1985

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Pages 13309-13536

federal register

Thursday
April 4, 1985

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Government Procurement
Defense Department
General Services Administration
National Aeronautics and Space Administration

Imports
Animal and Plant Health Inspection Service

Inventions and Patents
Commerce Department

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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National Highway Traffic Safety Administration

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Railroad Safety
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Superfund
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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California

Correction

In FR Doc. 85–7707 beginning on page 12515 in the issue of Friday, March 29, 1985, make the following correction: In the first column, in the **DATE** paragraph, in the fifth line, "May 15, 1985" should read "April 15, 1985".

BILLING CODE 1505-01-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85–025]

Animal and Poultry Import Restrictions; St. Petersburg-Clearwater, FL; Designated Limited Port

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations in 9 CFR Part 92 by adding St. Petersburg-Clearwater, Florida, to the list of limited ports of entry for animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. This rule is necessary to add St. Petersburg-Clearwater, Florida, to this list in order to reflect the availability of the Veterinary Services inspection facilities and personnel so that importers can make arrangements for the importation of such animals and animal products.

EFFECTIVE DATE: April 4, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in § 92.3 of 9 CFR Part 92 list a large number of ports with inspection stations or quarantine stations maintained by Veterinary Services for the importation of animals and animal products. In addition to air and ocean ports and several other types of ports, § 92.3 lists certain limited ports of entry for the importation of animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. On January 9, 1985, an interim rule was published in the **Federal Register** (50 FR 1040) which amended § 92.3(e) of the regulations by adding St. Petersburg-Clearwater, Florida, to the list of such limited ports of entry.

The interim rule was made effective on January 9, 1985. Comments were solicited for 60 days following publication. No comments were received. The factual situation which was set forth in the interim rule still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a major rule. The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that the addition of St. Petersburg-Clearwater, Florida, to the list of limited ports for the importation of animals and animal products which do not appear to require restraint and holding inspection facilities will not cause a substantial change in the number of such animals and animal products entering the United States or in the number of persons importing such animals and animal products.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 published in the **Federal Register** on January 9, 1985, at 50 FR 1040–1041 is adopted as a final rule.

Authority: 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, 371.2(d).

Done at Washington, D.C., this 1st day of April 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–8008 Filed 4–3–85; 8:45 am]

BILLING CODE 3410-34-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 122

[Rev. 7 for Part 120; Rev. 4 for Part 122]

Business Loans

Correction

In FR Doc. 85–6927 beginning on page 12472 in the issue of Thursday, March 28, 1985, make the following corrections:

§ 120.1–3 [Corrected]

1. On page 12479, second column, in § 120.1–3, second line, "March 28, 1985" should have read "March 28, 1985".

§ 122.3–1 [Corrected]

2. On page 12495, first column, in § 122.3–1, second line, "[the date of publication of this rule]" should read "March 28, 1985".

BILLING CODE 1505-01-M

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13 CFR Part 121

Small Business Size Standards; Engineering Services

AGENCY: Small Business Administration.

ACTION: Notice of clarification.

SUMMARY: On March 13, 1985, at 50 FR 9985, SBA published a notification that its size standard for the engineering services industy (except for military and aerospace equipment and weapons) would remain at $7.5 million average annual receipts. This notice is intended to indicate that SBA will continue to review the appropriateness of this size standard and revise it if that review so warrants.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653–6373.

SUPPLEMENTARY INFORMATION: On March 13, 1985, SBA published a notice of its intent to retain its current size standard of $7.5 million in average annual receipts for the engineering services industry (except for military and aerospace equipment and weapons), together with information supporting that decision. Since that publication, many inquiries have been received regarding the finality of that notice. This notice is intended to advise the public that SBA is continuing to review all of its size standards, including specifically the engineering services size standard. SBA will make such appropriate regulatory changes as that review indicates are appropriate in a timely manner. While the size standard for the engineering services industry announced in the March 13 notice remains in effect until superseded by appropriate regulatory change, the public should be award that SBA's continuing review may result in such change at a later date.

Dated: March 29, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–8109 Filed 4–3–85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–16, Amdt. 39–5013]

Airworthiness Directives; Rolls-Royce Limited Dart Engine Series 525, 526, 527, 528, 529, 530, 531, 532, 535, 551, and all Variants of These Series

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two currently effective airworthiness directives (ADs) applicable to the flame tube suspension of Rolls-Royce Limited Dart engine series 525, 526, 527, 528, 529, 530, 531, 532, 535, 551, and all variants of these series, which do not feature Rolls-Royce Modifications 1425, 1618, 1719, or 1723. The amendment is needed to align the inspection requirements of the AD with those of the new Rolls-Royce service bulletin (SB), add a new modification, and provide a less restrictive inspection requirement for modified engines.

DATES: Effective—April 3, 1985.

Compliance schedule—As prescried in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on April 3, 1985.

ADDRESSES: The applicable SBs may be obtained from Rolls-Royce Limited, Manager—Dart Service, East Kilbride, Glasgow G74 4PY, Scotland.

Copies of the SBs are contained in Rules Docket No. 84–ANE–16 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Steeves, General Aviation Engine Branch, ANE–142, Engine Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7097.

SUPPLEMENTARY INFORMATION: Amendment 39–3027, AD 77–18–02 and Amendment 39–3109, AD 78–01–07 are the currently effective ADs being superseded. The FAA has determined that the inspections required by the current ADs have not been totally effective in detecting excessive wear of the flame tube liners and suspension pins. Failures have occurred, after the ADs were issued, which resulted in flame breakout from the combustion chambers. Rolls-Royce has simplified and combined the inspection requirement into a single Rolls-Royce Dart SB (Da72–485) which replaces Dart SBs Da72–A413 and Da72–417 referenced in the current ADs. In addition, Rolls-Royce Modification 1736, Part 2, has been shown to be effective in preventing excessive wear of the flame tube suspension system and will preclude flame breakout. This AD incorporates the simplified inspection requirements of Rolls-Royce SB Da72–485 and Modification 1736, Part 2. Since a situation exists affecting continued airworthiness of these engines that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by superseding AD 77–18–02 and AD 78–01–07 with the following new AD:

§ 39.13 [Amended]

Rolls-Royce Limited: Applies to Rolls-Royce Limited Dart engine series 525, 526, 527 528, 529, 530, 531, 532, 535, 551, and all variants of these series which do not feature Rolls-Royce Modifications 1425, 1618, 1719, or 1723.

Compliance required as indicated unless already accomplished.

To prevent excessive wear in flame tube liners and suspension pins which may lead to flame breakout from the combustion chamber and to overheating and failure of the high pressure turbine disk rim, accomplish the following:

1. For engines which do not have Modification 1736, Part 2 incorporated accomplish the following:

(a) Inspect flame tube liners and suspension pins for wear at the primary and repetitive intervals in accordance with mandatory Rolls-Royce Dart SB No. Da72–485, dated July 2, 1984. Replace the affected parts, if wear is outside the "acceptable" limits given in paragraphs 4D(3) and 4D(4) of SB Da72–485, prior to further flight.

(b) Incorporate Modification 1736, Part 2, in accordance with Rolls-Royce SB No. Da72–423, Part 2, Revision 16, dated July 13, 1984, at the next flame tube overhaul.

2. For engines which have incorporated Modification 1736, Part 2, inspect flame tube liners and suspension pins for wear at the initial and standard intervals in accordance with Rolls-Royce Dart SB Da72–470, Revision 1, dated March 30, 1984. Replace the affected parts, if wear is outside the "acceptable" limits given in paragraphs 4D(3) and 4D(4) of SB 72–470, prior to further flight.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulation (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Manager, Dart Service, Rolls-Royce Limited, East Kilbride, Glasgow, G74 4PY Scotland. These documents also may be examined at the Office of the Regional Counsel, FAA, New England Region, Rules Docket No. 84–ANE–16, 12 New England Executive Park, Burlington, Massachusetts 01803, weekdays, except federal holidays, between the hours of 8:00 a.m. and 4:30 p.m.

This AD supersedes AD 77–18–02, Amendment 39–3027, and AD 78–01–07, Amendment 39–3109, which became effective on September 28, 1977, and January 12, 1978, respectively

This amendment becomes effective on April 3, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on March 11, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85–8041 Filed 4–1–85; 2:20 pm]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1252

Nondiscrimination on the Basis of Age in Programs and Activities Receiving Federal Financial Assistance

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration publishes its final rule on specific regulations to set out NASA's policies and to implement the Age Discrimination Act of 1975, according to the government-wide regulations published in the Federal Register on June 12, 1979, on page 33768. The Age Discrimination Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance; the Act contains exceptions which permit, under certain circumstances, continued use of age distinctions or factors other than age that may have a disproportionate effect on a particular age group; and excludes from its coverage most employment practices except for programs funded under the public services employment titles of the Comprehensive Employment and Training Act (CETA).

EFFECTIVE DATE: April 4, 1985.

ADDRESS: Richard N. Wolf, Office of General Counsel, Code GK, National Aeronautics and Space Administration, Washington, D.C. 20546. Telephone (202) 453–2445.

SUPPLEMENTARY INFORMATION: NASA published its proposed rulemaking in 45 FR 40994–40999, June 17, 1980. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments to NASA on the proposal by July 17, 1980. No comments were received. Therefore, the proposed rulemaking is hereby adopted as written.

This regulation does not constitute a major rule for the purposes of Executive Order 12291. This regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 1252

Civil rights, Age.

14 CFR Chapter V is amended by adding Part 1252 to read as follows:

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart 1252.1—General

Sec.

1252.100 What is the purpose of NASA's age discrimination regulations?
1252.102 To what programs do these regulations apply?
1252.103 Definitions.

Subpart 1252.2—Standards for Determining Age Discrimination

1252.200 Rules against age discrimination.
1252.201 Exceptions to the rules against age discrimination.
1252.202 Burden of proof.
1252.203 Special benefits for children and the elderly.

Subpart 1252.3—Responsibilities of Recipients

1252.300 General responsibilities of recipients.
1252.301 Notice to subrecipients.
1252.302 Assurance of compliance and recipient assessment of age distinctions.
1252.303 Information requirements.

Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

1252.400 Compliance reviews.
1252.401 Complaints.
1252.402 Mediation.
1252.403 Investigation.
1252.404 Prohibition against intimidation or retaliation.
1252.405 Compliance procedure.
1252.406 Hearings.
1252.407 Notices, decisions, and post-termination proceedings.
1252.408 Remedial action by recipients.
1252.409 Alternate funds disbursal procedure.
1252.410 Exhaustion of administrative remedies.
1252.411 Age Distinctions.

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq. (45 CFR Part 90).

Subpart 1252.1—General

§ 1252.100 What is the purpose of NASA's age discrimination regulations?

The purpose of these regulations is to set out NASA's policies and to implement agencywide or agency procedures under the Age Discrimination Act of 1975 according to the government-wide age discrimination regulations at 45 CFR Part 90. (Published at 44 FR 33768, June 12, 1979.) The Act and the government-wide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities and recipients of Federal funds, to continue to use age distinctions

and factors other than age which meet the requirements of the Act and the governmentwide regulations.

§ 1252.102 To what programs do these regulations apply?

(a) These regulations apply to each NASA recipient and to each program or activity operated by the recipient which receives or benefits from Federal financial assistance provided by NASA.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 et seq.).

§ 1252.103 Definitions.

As used in these regulations, the term:

(a) "Act" means the Age Discrimination Act of 1975, as amended. (Title III of Pub. L. 94–135.)

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Discrimination" means unlawful treatment based on age.

(g) "NASA" means the National Aeronautics and Space Administration.

(h) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or interest in or use of property, including:

(i) Transfer or lease of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "FMCS" means the Federal Mediation and Conciliation Service.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) "Administrator" means the Administrator of the National Aeronautics and Space Administration or designee.

(l) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extents or passes on Federal Financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(m) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

Subpart 1252.2—Standards for Determining Age Discrimination

§ 1252.200 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1252.201.

(a) *General rule:* No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules:* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 1252.201 Exceptions to the rules against age discrimination.

(a) Definitions. For purposes of this section, the terms "normal operation" and "statutory objective" shall have the following meaning:

(1) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(2) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, state statute or local statute or ordinance adopted by any elected, general purpose legislative body.

(b) Normal operation or statutory objective of any program or activity. A recipient is permitted to take an action otherwise prohibited by § 1252.200 if the action reasonably takes into account age as a factor necessary to the normal operation of the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure of approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(c) Reasonable factors other than age. A recipient is permitted to take an action otherwise prohibited by § 1252.200 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1252.202 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 1252.201 (b) and (c) is on the recipient of Federal financial assistance.

§ 1252.203 Special benefits for children and the elderly.

If a recipient operating a program provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program, notwithstanding the provision of § 1252.10.

Subpart 1252.3—Responsibilities of Recipients

§ 1252.300 General responsibilities of recipients.

Each NASA recipient must ensure that its programs and activities comply with these regulations.

§ 1252.301 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from NASA to subrecipients, the recipient shall provide the subrecipient written notice of their obligations under these regulations.

§ 1252.302 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from NASA shall sign a written assurance as specified by NASA that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 91.41, NASA may require a recipient employing the equivalent of 15 or more employees to complete a written self-evaluation, in a manner specified by the responsible Agency official, of any age distinction imposed in its program or activity receiving Federal financial assistance from NASA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act and the NASA regulations, the recipient shall take corrective action.

§ 1252.303 Information requirements.

(a) Keep records in a form that contains information which NASA determines may be necessary to ascertain whether the recipient is complying with the Act and these regulations.

(b) Provide to NASA, upon request, information and reports which NASA determines are necessary to ascertain whether the recipient is complying with the Act and these regulations.

(c) Permit reasonable access by NASA to the books, records, accounts, and other recipient facilities and sources of information to the extent NASA determines is necessary to ascertain whether the recipient is complying with the Act and these regulations.

Subpart 1252.4—Investigation, Conciliation, and Enforcement Procedures

§ 1252.400 Compliance reviews.

(a) NASA may conduct compliance reviews and pre-award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NASA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, NASA will attempt to secure the recipient's voluntary compliance with the Act. If voluntary compliance cannot be achieved, NASA will arrange for enforcement as described in § 1252.405.

§ 1252.401 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NASA, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complaint must be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NASA may extend this time limit.

(b) NASA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting as a sufficient complaint, any written statement, which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and assigned by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact NASA for information and assistance regarding the complaint resolution process.

(c) NASA will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 1252.402 Mediation.

(a) Referral of complaints for mediation. NASA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NASA will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NASA. NASA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement. However, NASA retains the right to monitor the recipient's compliance with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) NASA will use the mediation process for a maximum of 60 days after receiving a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time NASA receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to NASA.

§ 1252.403 Investigation.

(a) *Informal inquiry.* (1) NASA will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial inquiry, NASA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts, and, if possible, settle the complaint on terms that are mutually agreeable to the parties. NASA may seek the assistance of any involved State program agency.

(3) NASA will put any agreement in writing and have it signed by the parties and an authorized official at NASA.

(4) The settlement shall not affect the operation of any other enforcement effort of NASA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation.* If NASA cannot resolve the complaint through informal means it will develop formal findings through further investigations of the complaint. If the investigation indicates a violation of these regulations, NASA will attempt to obtain voluntary compliance. If NASA cannot obtain voluntary compliance, it will begin enforcement as described in § 1252.405.

§ 1252.404 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, inquiry, hearing, or other part of NASA's investigation, conciliation, and enforcement process.

§ 1252.405 Compliance procedure.

(a) NASA may enforce the Act and these regulations through:

(1) Termination of a recipient's Federal financial assistance from NASA under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from NASA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NASA will limit any termination under § 1252.405(a)(1) to the particular program activity NASA finds in violations of these regulations. NASA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from NASA.

(c) NASA will take no action under paragraph (a) until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) NASA also may defer granting new Federal financial assistance from NASA to a recipient when a hearing under § 1252.405(a)(1) is initiated.

(1) New Federal financial assistance from NASA includes all assistance for which NASA requires an application or approval, including renewal or continuation of existing activities during the deferral period. New Federal financial assistance from NASA does not include assistance approved prior to the beginning of a hearing under § 1252.405(a)(1).

(2) NASA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 1252.405(a)(1). NASA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Administrator. NASA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 1252.406 Hearings.

The procedural provisions for those hearings required by § 1252.405 are contained in 14 CFR 1250.108.

§ 1252.407 Notices, decisions, and post-termination proceedings.

All notices, decisions, and post-termination proceedings, insofar as NASA is concerned, shall be made in accordance with 14 CFR 1250.109.

§ 1252.408 Remedial action by recipients.

(a) Where NASA finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NASA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NASA may require both recipients to take remedial action.

(b) Even in the absence of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipients program or activity on the basis of age.

§ 1252.409 Alternate funds disbursal procedure.

(a) When NASA withholds funds from a recipient under these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 1252.410 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and NASA has made no finding with regard to the complaint; or

(2) NASA issues any findings in favor of the recipient.

(b) If NASA fails to make a finding within 180 days or issues a finding in favor of the recipient, NASA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in a United States district court for the district in which the

recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint.

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and

(iv) That the notice must state: the alleged violation of the act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

§ 1252.411 Age distinctions.

There are no Federal statutes or regulations containing age distinctions which affect financial assistance administered by the agency.

James M. Beggs,

Administrator.

[FR Doc. 85-7977 Filed 4-3-85; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Approval of Permanent Program Amendment From the Commonwealth of Pennsylvania Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes a program for blasting training, examination and certification.

Pennsylvania submitted the proposed program amendment by letter dated March 2, 1984 (Administrative Record No. PA 495). OSM published a notice in the **Federal Register** on April 11, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 14402). The public comment period ended May 11, 1984. On October 10, 1984, Pennsylvania submitted additional information (Administrative Record No. PA 537) addressing concerns raised by OSM in a letter dated September 12, 1984 (Administrative Record No. 531). OSM subsequently reopened the public comment period until December 3, 1984, in the November 1, 1984 **Federal Register** (49 FR 43974).

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations with one exception, and is approving it while requiring correction of the remaining deficiency. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this action. This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by the Act.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Field Office Director, Harrisburg Field Office, Office of Surface Mining, 101 South Second St., Suite L-4, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Pennsylvania program was conditionally approved by the Secretary of the Interior on July 31, 1982. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050-33063).

II. Submission of Program Amendment

By letter dated March 2, 1984, Pennsylvania submitted regulations and other material governing the training, examination and certification of blasters working in surface coal mining operations, material which the Commonwealth supplemented on October 10, 1984. These materials include:

- Regulations:

—25 PA Code 210 Subchapter A (Blaster's License).

—25 PA Code 211 (Storage, Handling and Use of Explosives).

- Form ER-QE-16: Permit for the Purchase of Explosives.
- Form ER-QE-17: Permit for Sale of Explosives.
- Form ER-QE-18: License for the Storage of Explosives.
- Form ER-MR-41: Blasting Report with Instructions.
- Form ER-QE-20: Application for Examination and Blaster's License.
- Assorted Blaster Training Course instructional materials.
- Blaster Training Course Outline.
- List of Requirements for a Blaster's License.
- Notice of Blaster Training and License Examination.
- Notice of Blaster Refresher Course Offering.
- Notice of Licensed Blaster's Responsibilities.

At the time of the Secretary's approval of the Pennsylvania program, OSM had not yet promulgated Federal rules governing the training and certification of blasters. Therefore, the Commonwealth was not required to include such requirements in its program. However, in the notice announcing conditional approval of the Pennsylvania program, the Secretary specified that Pennsylvania would be required to adopt such provisions following promulgation of the Federal standards (Finding 24, 47 FR 33058, July 30, 1982).

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Ch. M (48 FR 9486). The Federal rules require each State to design and implement its own blaster certification program. Under the Federal rules, each State must develop the method of training, examining and certifying blasters which best meets local needs within the Federal regulatory framework. The Federal rules require training, field experience and a written examination, and specify certain other requirements.

The Federal rules at 30 CFR 850.12 require the State regulatory authority to develop a program and submit it to OSM as a proposed program amendment within 12 months after the publication date of the Federal rules. The Federal rules at 30 CFR 816.61(c) further provide that no later than 12 months after the State's blaster certification program has

been approved by OSM, all blasting operations in the State shall be conducted under the direction of a certified blaster.

On April 11, 1984, OSM published a notice in the Federal Register announcing receipt of the amendment and inviting public comment on whether the proposed amendment was no less effective than the Federal regulations (49 FR 14402). The public comment period ended May 11, 1984. The public hearing scheduled for May 7, 1984, was not held because no one expressed a desire to present testimony.

In a letter dated September 12, 1984, OSM notified Pennsylvania of its concerns relative to the proposed amendment, and requested the Commonwealth to clarify six issues pertaining to training and examination subject areas, certificate suspension and revocation requirements and procedures, certificate protection procedures, certificate display requirements, and nondelegation of responsibility. OSM received the Commonwealth's response on October 15, 1984. The November 1, 1984, Federal Register reopened the public comment period until December 3, 1984. No comments were received during either comment period.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the program amendment submitted by Pennsylvania on March 2, 1984, and as modified on October 10, 1984, meets the requirements of SMCRA and 30 CFR Ch. VII with one exception, as discussed below.

A. General

The Pennsylvania submission provides that the Explosives Safety Section of the Division of Mining and Reclamation of the Pennsylvania Department of Environmental Resources will be responsible for the training, examination and licensing (certification) of blasters within the Commonwealth. The Explosives Safety Section is the successor to the "Division of Explosives" and the "Division of Mines, Quarries and Explosives" to which Chapters 210 and 211 of Title 25 of the Pennsylvania Code (PA Code) refer.

Chapter 211 of Title 25 of the PA Code deals only with the storage, handling and use of explosives, and does not pertain to the amendment subject. Since its provisions do not govern the blaster training, examination and certification program required by 30 CFR Part 850, the Director has not evaluated Chapter 211 and is neither approving nor disapproving it.

B. Specific Findings

1. The blaster licensing procedures and requirements of Chapter 210, Subchapter A, of Title 25 of the Pennsylvania Code correspond to the blaster certification procedures and requirements of 30 CFR Part 850. These regulations require all blasters to be licensed through passage of a written examination. A license is then issued only if the applicant submits proof of at least one year of qualifying experience.

Pennsylvania has no regulations governing training. However, the March 2, 1984 submission includes a training course outline and associated materials. Since 1983 the Commonwealth has offered this training course on a regularly scheduled basis, and, in accordance with 30 CFR 850.13(a)(1), it has recently made successful completion of the course a prerequisite to the taking of the license examination. Pennsylvania also offers an optional refresher course for licensed blasters on a periodic basis.

Section 210.6 of Title 25 of the Pennsylvania Code provides that a maximum of six "blaster learners" may work on a blasting crew under the direct supervision and direction of a licensed blaster. This meets the requirement of 30 CFR 850.13(a)(2) that uncertified blasting crew members receive direction and on-the-job training from a certified blaster.

In response to the concern raised by OSM in its letter of September 12, 1984, and a subsequent technical review that the training and examination materials did not completely cover all the topics listed in 30 CFR 850.13(b), Pennsylvania submitted revised materials on October 10, 1984, which did meet all Federal requirements.

The Director finds that the regulations (25 PA Code 210 Subchapter A), training and examination materials and administrative requirements, as submitted on March 2, 1984, and revised on October 10, 1984, are no less effective than the Federal blaster training and examination requirements at 30 CFR 850.13 and 850.14.

2. Pennsylvania blaster licenses are valid for an intitial period not exceeding one year, and must be renewed annually thereafter. The Commonwealth has the discretionary authority to require applicants for license renewal to undergo re-examination for due cause. Blasters who permit their licenses to expire must be re-examined before a new license can be issued.

25 PA Code 210.2(f) grants the Chief of the Explosives Safety Section discretionary authority to suspend a blaster's license, and gives the Secretary of the Department of Environmental Resources discretionary authority to revoke such a license following written notice and a hearing before a panel of experts. Both actions may be appealed to the Environmental Hearing Board. In addiction, the Department customarily holds an informal conference prior to suspension or revocation. These procedures meet the notice and hearing requirements of 30 CFR 850.15(b). However, the Pennsylvania regulations contain no counterpart to the Federal requirement at 30 CFR 850.15(b)(1) for mandatory license suspension or revocation upon a finding of willful conduct resulting in (1) noncompliance with any order of the regulatory authority; (2) unlawful use in the work place of, or current addiction to, alcohol, narcotics or other dangerous drugs; (3) violation of any provision of State or Federal explosives laws or regulations; or (4) provision of false information or misrepresentation for the purpose of obtaining a blaster's license.

With the exception of the absence of mandatory license suspension or revocation provisions, the Director finds the blaster licensing provisions of 25 PA Code 210 Subchapter A in combination with the "Notice of Licensed Blaster's Responsibilities" as submitted on October 10, 1984, to be no less effective than the Federal regulations at 30 CFR 850.15. The Director is requiring a program amendment to provide for mandatory license suspension or revocation upon a finding of willful conduct with respect to one or more of the activities listed in 30 CFR 850.15(b)(1).

On October 10, 1984, Pennsylvania notified OSM that, effective immediately, all new licenses and renewals would be accompanied by a "Notice of Licensed Blaster's Responsibilities", providing that (1) the holder shall comply with all applicable statutes and regulations; (2) the license is not transferable; (3) the holder shall take reasonable precaution to protect the license from loss, theft, or unauthorized duplication, and shall immediately report any such occurrence to the Department; and (4) the holder shall surrender the license immediately upon notification of suspension or revocation. A blaster cannot delegate responsibility as 25 PA Code 210.4(a) prohibits license transfers, 25 PA Code 210.5(a) prohibits detonation by unlicensed blasters, and 25 PA Code 87.124(c) requires that all blasting be done by competent, licensed blasters. In accordance with 30 CFR 850.15(e)(1), 25 PA Code 210.2(e) requires the blaster to display his license upon the request of

any authorized representative of the Department.

IV. Public Comments

Of the Federal agencies invited to comment, only the U.S. Soil Conservation Service responded, and that agency provided no comments. No other public comments were received.

The disclosure of Federal agency comments is made pursuant to Section 503(b) (1) and (2) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Pennsylvania program as submitted on March 2, 1984, and modified on October 10, 1984. As discussed above in Finding B.2., one deficiency does exist, which Pennsylvania must correct by submission of a program amendment by June 3, 1985. The Director is amending Part 938 of 30 CFR Chapter VII to implement this decision.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory Impact Analysis and Regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 29, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 938—PENNSYLVANIA

1. 30 CFR 938.15 is amended by adding a new paragraph (g) as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(g) The following amendment submitted to OSM on March 2, 1984, as modified on October 10, 1984, is approved effective April 4, 1985.

Pennsylvania's blaster training, examination and certification program, as contained in Chapter 210, Subchapter A, of Title 25 of the Pennsylvania Code, and all other items as submitted by Pennsylvania on March 2, 1984, and modified on October 10, 1984, with the exception of Chapter 211 of Title 25 of the Pennsylvania Code.

2. 30 CFR Part 938 is amended by adding a new § 938.16 as follows:

§ 938.16 Required program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following program amendment by June 3, 1985.

(a) As required by 30 CFR 850.15 (b)(1), Pennsylvania shall amend its program to require suspension or revocation of a blaster's license upon a finding of willful conduct on the part of the licenses with respect to any of the following actions:

(1) Noncompliance with any order of the regulatory authority.

(2) Unlawful use in the work place of, or current addiction, to alcohol, narcotics or other dangerous drugs.

(3) Violation of any provision of State or Federal explosives laws or regulations.

(4) Provision of false information or misrepresentation for purpose of obtaining a license.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

[FR Doc. 85–8056 Filed 4–3–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 45

[CGD 82–067]

Enlisted Personnel

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising Part 45 of Title 33 Code of Federal Regulations dealing with enlistment, reenlistment and discharges of Military members of the regular Coast Guard. This document removes outdated and non-regulatory provisions contained within this Part. This revision will provide general guidelines which are supplemented by agency directives.

EFFECTIVE DATE: This revision becomes effective on April 4, 1985.

FOR FURTHER INFORMATION CONTACT: LT James Brown, Office of Personnel, Room 4415 Coast Guard Headquarters, Washington, D.C. 20593, (202)–426–6540.

SUPPLEMENTARY INFORMATION: The need for flexibility in setting standards for enlistment, reenlistment and discharge of military members of the regular Coast Guard, makes it impracticable to publish all current material in the Code of Federal Regulations. In order that regulations may reflect the existence of these policies, this rulemaking will remove the existing detailed regulations and replace that material with a single general section that provides an address where information may be obtained. These subjects concern personnel administration within the Coast Guard and do not affect the public. They are addressed in internal Coast Guard directives and publications that are readily available to members of the Coast Guard. Since they are related solely to personnel rules and practices of the Coast Guard they are exempt from the requirements of 5 U.S.C. 552 and the provisions of 5 U.S.C. 553. Therefore, notice and comment are not required and the rule may be effective upon publication.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11045; February 26, 1979). The economic impact of the final rule has been found to be so minimal that further evaluation is unnecessary. The removal of this material from the Code of Federal Regulations will not change current personnel policies and practices and will not affect the public. Since the economic impact of the final rule is expected to be minimal, the agency certifies it will not have a significant economic impact on a substantial number of small entities. These revisions do not require the preparation of an Environmental Impact Statement under the National Environmental Policy Act.

Paperwork Reduction Act

This rulemaking contains information collection requirements. These items have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by Office of Management and Budget. The section number and the corresponding Office of Management and Budget approval number are as follows: Section 45.1 of 33 CFR Part 45; OMB approval number 2115-0030.

Drafting Information

The principal persons involved in drafting this document are LT James Brown, Project Officer and LT S. R. Sylvester, Project Attorney, Office of Chief Counsel.

List of Subjects in 33 CFR Part 45

Military personnel.

Therefore, Title 33 of the Code of Federal Regulations is amended by revising Part 45 of Chapter 1 to read as set forth below:

PART 45—ENLISTMENT OF PERSONNEL

Sec.
45.1 Enlistment of personnel.
45.2 Records of enlistment of former service members.

Authority: 14 U.S.C. 351, 371; 49 CFR 1.46(b).

§ 45.1 Enlistment of personnel.

(a) The Coast Guard is a military service which operates within the Department of Transportation. All personnel enlisted in the Coast Guard are subject to the Uniform Code of Military Justice.

(b) Any person desiring to enlist in the Coast Guard should apply at a Coast Guard Recruiting Office, or direct inquiries to, Commandant (G–PMR), U.S. Coast Guard, Washington, DC 20593. Enlistments in the Coast Guard shall be for general service and enlisted persons may be transferred as necessary from one unit to another. Original enlistments will be made only at regular recruiting offices unless otherwise directed by the Commandant. An original enlistment is the enlistment of an individual who has not had previous service in the Regular Coast Guard. In processing an application for enlistment, the Coast Guard will determine the mental, moral and physical fitness of the applicant through reference to local police files, character references, employers, school authorities and physical and mental examinations. Concealment of any fact, circumstance or condition existing prior to enlistment which would render the applicant ineligible for enlistment may subject the applicant to criminal penalties under the Uniform Code of Military Justice and/or administrative separation from the Coast Guard.

§ 45.2 Records of enlistment of former service members.

Former members who have any questions about their service or who need information regarding their service should contact the nearest Coast Guard Recruiting Office or Commandant (G–PMR), U.S. Coast Guard, Washington, D.C. 20593.

Dated: March 20, 1985.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 85-8042 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD3 83-039]

Drawbridge Operation Regulations; Saugatuck River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Metro-North Commuter Railroad and Connecticut Department of Transportation, the Coast Guard is changing the regulations governing the Metro-North "SAGA" railroad and the State Route 136 drawbridges, respectively. Both bridges cross the Saugatuck River at Saugatuck, CT. The SAGA railroad bridge will be permitted to remain closed during peak commuter rail periods. The Route 136 bridge will be permitted to remain closed during peak vehicular traffic periods and will require advance notice at all othe times. These changes are being made because of minimal requests to open the draws during affected periods, and to respond to the needs of commuter rail and vehicular traffic during traditionally heavy use periods. This action will accommodate the needs of rail and vehicular traffic, relieve the bridge owners of the burden of having a person constantly available to open the draws, and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 6, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District, (212) 668–7994.

SUPPLEMENTARY INFORMATION: On December 24, 1984, the Coast Guard published proposed rules (49 FR 49854) concerning this amendment. The Commander, Third Coast Guard District, also published the proposal as a Public Notice dated January 7, 1985. In each notice interested persons were given until February 7, 1985 to submit comments.

Reference was erroneously made in the proposed regulations to the "SAUG" railroad bridge. This should have read, "SAGA". In addition, requirement for eight hours notice at the SAGA bridge from 5:30 p.m. to 7:40 p.m. (on weekends and holidays from October 1 through May 31) was inadvertently omitted. Regulations providing for eight hours notice during this time frame have been in effect at the bridge since 1959. Both discrepancies are corrected in this final rule with no change in the substance.

Drafting Information

The drafters of these regulations are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Comments

Seven responses were received on the proposed regulations for this action. Two responses were received from governmental agencies and had no objections. The remaining five respondents all objected to the proposed regulations; specifically regarding commuter closure hours at the SAGA railroad bridge. Three of the objections were related to a charter boat operation and potential interference of the proposed regulations with free access; one related to inability to obtain bait and bait fish (for a bait and tackle company) during morning commuter closure; and the other expressed concern because of potential safety hazards. The Coast Guard feels that the best way to respond to the objections would be to reduce the commuter closure hours to the minimal extent practicable. This would respond in part to all objections and concerns of mariners with minimal inconvenience to rail commuters. The only substantive change made in this final rule is reduction of the commuter closure hours at the SAGA railroad bridge. The closure hours will be from 7 a.m. to 8:10 a.m., and from 5:30 p.m. to 7 p.m.

Several of the persons objecting to the proposed regulations stated that a history of past delays in openings of the SAGA bridge would further add to inconveniences caused by commuter bridge closings. However, the Coast Guard Authorization Act of 1982 provides for a civil penalty of up to $1,000 as a remedy to unauthorized opening delays. This enforcement tool is now available and being used by the Coast Guard to address problems of this nature.

Various other minor objections were raised by respondents. Most of these objections only required clarification and were addressed through correspondence with the individual respondents.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The reduction in commuter closure periods made in this final rule should respond in part to objections received from mariners. Since the greatest interval between scheduled trains (during the commuter closures) is 16 minutes, it would be difficult to conveniently open for vessels. These regulations are felt to be a fair compromise between the needs of the mariner, and needs of rail and vehicular traffic and should not cause undue inconvenience to any mode of transportation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended by revising the existing § 117.221 to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.221 Saugatuck River.

(a) The draw of each moveable bridge shall open at all times as soon as possible for passage of a public vessel of the United States, vessel in tow or for a vessel in distress.

(b) The draw of the Metro-North "SAGA" Bridge, mile 1.1 at Saugatuck shall operate as follows:

(1) Year-round need not open:

(i) Weekdays from 7 a.m. to 8:10 a.m. and 5:30 p.m. to 7 p.m. except on federal holidays;

(ii) From 9 p.m. to 5 a.m.

(2) From October 1–May 31, open on signal:

(i) Weekdays from 8:10 a.m.–4 p.m.;

(ii) Weekends and federal holidays 7 a.m.–4 p.m.;

(iii) If at least eight hours notice is given: daily, from 5 a.m.–7 a.m., 4 p.m.–5:30 p.m. and 7 p.m.–9 p.m., and weekends and federal holidays from 5:30 p.m.–7 p.m.

(3) From June 1–September 30, open on signal 5 a.m.–9 p.m., except as provided in paragraph (b)(1)(i) of this section.

(4) A delay in opening the draw not to exceed 10 minutes may occur when a train scheduled to cross the bridge without stopping has entered the drawbridge block.

(c) The draw of the Route 136 Bridge, mile 1.8 at Saugatuck shall operate as follows:

(1) Year-round, need not open weekdays, except federal holidays, from 7 a.m. to 8:30 a.m. and 5:30 p.m. to 7:30 p.m.

(2) From April 15–October 31, open on signal if at least two hours notice is given, except as provided in paragraph (c)(1) of this section.

(3) From November 1–April 14, open on signal:

(i) From 8:30 a.m. to 3 p.m. if at least eight hours notice is given;

(ii) From 3 p.m. to 8:30 a.m., if at least 24 hours notice is given, except as provided in paragraph (c)(1) of this section.

(33 U.S.C. 499; 49 CFR 1.46(c)(2); 33 CFR 1.05-1(g)(3))

Dated: March 26, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 85-8043 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRMR Temp. Reg. 11]

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources

AGENCY: Office of Information Resources Management, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation implements the Competition in Contracting Act of 1984 (Pub. L. 98-369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98-577) regarding the special category procurement and contracting regulations for certain automatic data processing and telecommunication resources, as well as related management provisions, contained in the Federal Information Resources Management Regulation (FIRMR). Other changes are made in provisions that are affected by the statutory implementation actions. The intent is to appropriately amend the FIRMR to accomplish the new statutory objectives and requirements.

DATES: *Effective date:* April 1, 1985; *Expiration date:* December 31, 1986; *Comments are due:* April 30, 1985.

ADDRESS: Comments should be submitted to the General Services Administration, Office of Information Resources Management, Policy Branch (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566-0194 or FTS, 566-0194.

SUPPLEMENTARY INFORMATION: (1) The changes being made by this issuance are explained in paragraph 5 of the temporary regulation.

(2) To the extent that provisions in FIRMR Temporary Regulations 1 (Supp. 1), 4, 5, 6, and 9 are changed by this temporary regulation, the existing provisions in the temporary regulation are superseded.

(3) Pursuant to section 6(h)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(h)(1)), and with reference to section 22(d) of that Act (Sec. 302(a) of Pub. L. 98-577), the publication of proposed rules has been waived because of the necessity for providing implementation of Pub. L. 98-369 and 98-577 for Federal agencies by the statutory effective dates.

(4) Notice of proposed rulemaking regarding this action was published in the **Federal Register** (50 FR 10252, March 14, 1985). The period for submission of comments is extended as indicated in this document.

(5) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Ch. 201

Government information resources activities, Government procurement.

In 41 CFR Chapter 201, the following temporary regulation is added to Appendix A at the end of the chapter.

FIRMR Temporary Regulation / /

March 11, 1985.

To: Heads of Federal agencies.

Subject: Implementation of Pub. L. 98–369 and 98–577.

1. *Purpose.* This regulation prescribes policies and procedures for Federal agencies implementing certain provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369) and the Small Business and Federal Procurement Competition Enhancement Act of 1984 (Pub. L. 98–577).

2. *Effective date:* This regulation is effective April 1, 1985.

3. *Expiration date.* This regulation expires December 31, 1986.

4. *Background.* While general contracting provisions in the Federal Acquisition Regulation (48 CFR Chapter 1) (FAR) are being changed to implement Pub. L. 98–369 and 98–577, the special category procurement and contracting regulations for certain automatic data processing and telecommunications resources, as well as related management provisions, contained in the Federal Information Resources Management Regulation (FIRMR) also require change. In addition, changes not required by the statutes are made in provisions that are affected by the statutory implementation action.

5. *Explanation of changes.* a. Paragraph 5B. sets froth, consecutively section by section, explanations of implementations of Pub. L. 98–369 and 98–577. Paragraph 5c. sets forth explanations of other changes being made in sections that are a effected by paragraph 5b. actions. Paragraph 5d. sets forth "pen and ink" changes, primarily in terminology, necessary for consistency in implementation of the above referenced statutes. Paragraph 6 sets forth the changes discussed in this paragraph 5.

b. The following sections are changed to implement Pub. L 98–369 and 98–577.

(1) Section 201–1.102, Authority, is amended to cite Pub. L. 98–369 and Pub. L. 98–577.

(2) Section 201–1.102–2, Other related autorities, is amended to cite pertinent sections of the Office of Federal Procurement Policy Act, as amended, appearing in Pub. L. 98–369 and Pub. L 98–577.

(3) Section 201–1.502, Solicitation of agency and public views, is amended to implement Pub. L. 98–577.

(4) Section 201–2.001, Definitions, is amended (i) to add definitions for "Compatibility limited requirement," "Full and open competition," and "Responsible source;" (ii) to modify the definition for "Selection plan;" and (iii) to remove definitions for "Competitive requirement," "Maximum practicable competition," and "Noncompetitive (sole source) requirement." (See also paragraph 5c(3).)

(5) Section 201–11.001, The full and open competition objective, is added.

(6) Section 201–11.001–1, Application of FAR provisions, is revised to specifically reference implementation of Pub. L. 98–369 in the Federal Acquisition Regulation (48 CFR Ch.1).

(7) Section 201–11.002, Other than full and open competition, is revised to change the caption and text to set forth the special agency activities required when a requirement is contemplated to be satisfied through other than full and open competition.

(8) Section 201–11.003, Agency responsibilities, is amended to change the caption and text to recognize the relationship between agency front-end ADP procurement activities and attainment of the full and open competition objective.

(9) Section 201–16.001, Planning, is added to recognize that attainment of the full and open competition objective is a necessary consideration in the planning process.

(10) Section 201–23.103, Procurement and contracting authority, is amended to specifically reference Part 201–11, Competition, provisions.

(11) Section 201–23.104, Blanket regulatory delegations of procurement authority, is amended where necessary (in the various subsections) to express the thresholds in terms of the type of specifications that are used in contracting, in order to place emphasis on agency requirement definition activities as a means of attaining the competition objective. (See also paragraph 5c(4).)

(12) Section 201–23.106, Specific acquisition delegation of procurement authority, is amended to adjust provisions (in the two subsections) regarding documentation and submission requirements, particularly where the type of specification selection and sole source requirements are discussed. Similar action is taken in § 201–39.006–4, Data, facsimile, and record telecommunication services submissions.

(13) Section 201–24.104, Small purchases, is revised to provide that FAR Part 13 procedures apply to requirements for information resources under $25,000, except when following the FIRMR procedures for use of GSA information resources schedule contracts.

(14) Section 201–24.207, Solicitations for compatibility limited requirements, is amended to change the caption and orientation to the contracting process. Conditions are established for solicitations using compatibility limited requirements when offers for non-compatible items for replacement systems or augmentation components are restricted. Management provisions involving the establishment of requirements formerly appearing in this section are revised and moved to new § 201–30.009–3, Establishing compatibility limited requirements.

(15) Sections 201–24.211, 201–24.212, and 201–24.304 are removed and reserved and the specification management provisions are now contained in §§ 201–30.013, Specifications; 201–30.013–1, Use of functional specifications; 201–30.013–2, Use and documentation of specific make and model specifications; and 201–38.012, Use of functional telecommunication system specifications, reflecting the pre-solicitation nature of the activity.

(16) Section 201–30.007, Determination of need and requirements analysis, is amended to place emphasis on the full and open competition objective during agency requirements analysis activities, including performance evaluation of currently installed systems.

(17) Section 201–30.008, Determination of system/item life, is amended to require consideration of subsequent procurement when establishment system/item lives when the requirement is available from only one responsible source.

(18) Section 201–32.102, Least cost acquisition, is amended to recognize the restriction in Pub. L. 98–369 on the use of concerns related to funding as a basis for agency actions.

(19) Section 201–32.206, Use of GSA ADP schedule contracts, and § 201–40.008, Use of GSA telecommunication schedule contracts, are amended to adjust the competitive procedures to precisely conform to the intent of Pub. L. 98–369. (See also paragraphs 5c (6), (7), and (8).)

(20) Section 201–32.303–3, Procedures for acquiring TSP services, is amended to state that the lowest overall cost alternative must be met when using abbreviated procedures.

c. The following sections are changed for reasons other than statutory implementations.

(1) Section 201–1.104–3, Copies, is amended to clarify ordering the looseleaf edition of the FIRMR.

(2) Section 201–1.402, Policy, is amended to reflect the Administrator of General Services' delegation of authority to GSA's Assistant Administrator for Information Resources

Management to approve requests by Federal agencies for individual deviations from the FIRMR.

(3) Section 201–2.001, Definitions, is also amended to add (i) the words "ADP system" to the title of the term "Functional ADP system specification" and (ii) a clarifying sentence to the definition of the term "Lowest overall cost". (See also paragraph 5d.)

(4) Section 201–23.104–7, ADP equipment systems, is also amended to explain how the DPA thresholds apply to combined procurements of equipment, software, and maintenance under a single procurement and where these items are combined with commercial ADP services under a single procurement. (See also paragraph 5b(11).)

(5) Section 201–24.210 is amended to require that an agency conduct a new market survey before exercising a renewal option in an ADP services contract based on a sole source system life selection, and if an alternate source exists, prepare an acquisition plan to initiate a subsequent competitive procurement.

(6) Sections 201–32.206 and 201–40.006 are also amended to reflect determinations made pursuant to Pub. L. 98–72 and Pub. L. 98–577. The Administrators of GSA and the Small Business Administration have agreed, in a findings and determination dated September 26, 1984, that it is not appropriate or reasonable to require a 30-day synopsis in the Commerce Business Daily (CBD) for all orders above $10,000 under GSA nonmandatory ADP and telecommunication schedule contracts. (The effect of this determination is explained in FIRMR Bulletin 13, November 15, 1984.) GSA consulted with the Office of Federal Procurement Policy and made a similar determination with respect to the $10,000/30-day synopsis required by Pub. L. 98–577. These sections continue the synopsis requirement at the $50,000/15 day level, but extend the policy uniformly to all orders in excess of $50,000 under GSA nonmandatory ADP and telecommunication schedule contracts. (See also paragraph 5b(19).)

(7) Sections 201–32.206 and 201–40.006 are also amended to expressly require that agencies wait at least 15 days from the date the synopsis appears in the CBD before placing an order under the GSA nonmandatory ADP and telecommunication schedule program, in response to complaints received by GSA regarding some agencies' practices. (See also paragraphs 5b(19) and 5c(6).)

(8) Section 201–32.206 is also amended to require that the synopsis notice indicate, when applicable, that the requirement was described by technical or requirements personnel using a specific make and model specification. (See also paragraph 5b(19), 5c(6), and 5c(7).)

(9) Section 201–32.206 is also amended to delete the references to CPUs in connection with the continued lease of ADPE, in recognition that CPUs are included in more and more devices, which makes this distinction less significant. (See also paragraphs 5b(19), 5c(6), 5c(7), and 5c(8).)

(10) Section 201–36.010, Analysis of data communication requirements, is revised to correct an editorial error by removing the word "[Reserved]" and inserting the words "See Temp. Reg. 9" and to make a terminology change in paragraph (b).

d. The following sections are changed to provide terminology changes required by statutory implementation.

(1) The following additional sections are amended to reflect "full and open" competition where the term "maximum practicable" was formerly used, to implement Pub. L. 98–369:

201–1.103 Applicability.
201–21.011 GSA policies and objectives.
201–24.202 Severable ADP requirements.
201–24.203 Furnishing ADP items and services to contractors.
201–30.012 Conversion planning and management responsibilities.
201–32.106 Publicizing contracting actions.
201–32.303–2 Scope of the TSP.

(2) The following additional sections are amended to use the terms "requirements" and "specifications" on a consistent basis (deleting "procurement," "acquisition," "negotiation" or "purchase descriptions," where necessary) when describing the documentation of requirements:

201–23.111–1 Requiring agency responsibilities.
201–23.111–2 GSA responsibilities.
201–30.012 Conversion planning and management responsibilities.
201–30.012–1 Software conversion studies.

(3) The following sections are amended to use the term "an unusual and compelling urgency" where "a public exigency" was used, to implement Pub. L. 98–369:

201–6.101–3 Exception to a Federal Telecommunication Standard (FED-STD).
201–24.106. Urgent requirements.

6. *Changes to provisions.* The following sections are changed from the integrated FIRMR text published as Part II of the Federal Register on January 30, 1985. All changes are to the Amendment 1 text except where appearance in a specific temporary regulation is noted.

PART 201–1—[AMENDED]

a. Section 201–1.102 is amended by adding paragraphs (c)(4) and (c)(5) to read as follows:

§ 201–1.102 Authority.

* * * * *

(c) * * *

(4) Pub. L. 98–369, The Competition in Contracting Act of 1984.

(5) Pub. L. 98–577, The Small Business and Federal Procurement Competition Enhancement Act of 1984.

b. Section 201–1.102–2 is amended by revising paragraph (b)(3) to read as follows:

§ 201–1.102–2 Other related authorities.

* * * * *

(b) * * *

(3) The Office of Federal Procurement Policy Act of 1974, Pub. L. 93–400 (41 U.S.C. 401 et seq.), as amended, including section 6(h) (41 U.S.C. 405(h)) regarding authority relationships, section 16(3) (41 U.S.C. 414) regarding agency responsibilities, section 18 (41 U.S.C. 416) regarding procurement notices, and section 22 (41 U.S.C. 418b) regarding publication of proposed regulations.

* * * * *

§ 201–1.103 [Amended]

c. Section 201–1.103 is amended by (i) removing from paragraph (b)(3) the words "maximum practicable" and inserting in their place the words "full and open" and (ii) removing the period and adding at the end of paragraph (g) the words "(see § 201–23.104–6).".

d. Section 201–1.104–3 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 201–1.104–3 Copies.

* * * * *

(b) * * *

(1) Federal agencies from the GPO, using SF–1 rider requisitions to GSA requisitions; and

(2) The public from the GPO, using direct subscription.

e. Section 201–1.402 is revised to read as follows:

§ 201–1.402 Policy.

Deviations from the FIRMR shall be kept to a minimum consistent with the specific needs and statutory authorities of each agency. Individual deviations may be authorized only by the GSA Assistant Administrator for Information Resources Management, or the officials designated by the Assistant Administrator for this purpose. Class

deviations may be authorized only by the Administrator of General Services.

f. Section 201–1.502 is amended by revising paragraphs (a), (b), (c), and (d); redesignating paragraph (e) as (f); and adding a new paragraph (e). As revised § 201–1.502 reads as follows:

§ 201–1.502 Solicitation of agency and public reviews.

(a) Views of interested parties will be considered in formulating policies and regulations under the FIRMR.

(b) The opportunity to submit written comments on proposed significant changes to the FIRMR will be provided by a notice in the **Federal Register**. Each of these notices will—

(1) Include the text of the proposal or a summary and a statement specifying where the full text may be obtained; and

(2) Request interested parties to submit comments on the proposed coverage, addressed to the General Services Administration, Chief, Policy Branch (KMPP), Washington, DC 20405, for consideration in the formulation of the final coverage that will be published in the **Federal Register**.

(c) The length of the comment period will not be less than 30 days. Normally, at least 60 days will be given for the receipt of comments.

(d) Comments need not be solicited if the proposed coverage does not constitute a signficant change to the FIRMR, except as required by statute.

(e) The Administrator of General Services may issue a temporary change to the FIRMR where solicitation of comments is impractical due to urgent and compelling circumstances (e.g., when a new statute must be implemented in a relatively short period of time). However, provision will be made for a public comment period of at least 30 days for consideration in the formulation of the final change to the FIRMR.

(f) Consideration will also be given to unsolicited recommendations for changes to the FIRMR that have been submitted in writing with sufficient data and rationale to permit evaluation.

PART 201–2—[AMENDED]

g. Section 201–2.001 is amended by adding (alphabetically) definitions, to read as follows:

§ 201–2.001 Definitions.

* * * * *

"Compatibility limited requirement" means a statement of ADP equipment or service requirements expressed in a form where the items are described in functionally equivalent terms that require the items to be compatible with the operating system and ADP equipment which the items are intended to replace or augment.

* * * * *

"Full and open competition" means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement. (41 U.S.C. 403(7))

* * * * *

"Responsible source" means a prospective contractor who:

(a) Has adequate financial resources to perform the contract or the ability to obtain such resources;

(b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;

(c) Has a satisfactory performance record;

(d) Has a satisfactory record of integrity and business ethics;

(e) Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain such organization, experience, controls, and skills;

(f) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(g) Is otherwise qualified and eligible to receive an award under applicable laws and regulations. (41 U.S.C. 403(8))

* * * * *

"Specific make and model specification" means a description of a Government requirement that is expressed in a form so restrictive that only the specified make and model will satisfy the Government's needs, irrespective of the number of suppliers that may be able to furnish the specific make and model.

* * * * *

h. Section 201–2.001 is amended further (see paragraph 6g, above) (i) by removing from the FIRMR the following definitions—"Competitive requirement," "Maximum practicable competition," and "Noncompetitive (sole source) requirement" and (ii) by modifying existing definitions as follows—Change the term "Functional specification" by adding the words "ADP system" to read "Functional ADP system specification;" add after the second sentence of the definition "Lowest overall cost" (appearing in Temp. Reg. 6) the following sentence "The quantifiable cost of conducting the contracting action and other administrative costs directly related to the acquisition process are included."; and remove from the last sentence of the definition for "Selection plan" the words "make or model description" and insert in their place the words "make and model specification."

PART 201–8—[AMENDED]

§ 201–8.101–3 [Amended]

i. Section 201–8.101–3 is amended by removing from paragraph (a)(2) the words "a public exigency" and inserting in their place the words "an unusual and compelling urgency."

PART 201–11—[AMENDED]

j. The table of contents of Part 201–11 is amended as follows by (i) revising the entries for 201–11.001 to "The full and open competition objective.", for 201–11.002 to "Other than full and open competition.", for 201–11.003 to "Agency responsibilities.", (ii) removing the entries for 201–11.002–1, 201–11.002–2, 201–11.003–1, and 201–11.003–2; and (iii) removing the word "[Reserved]" from 201–11.001–1.

k. Section 201–11.001 is revised to read as follows:

§ 201–11.001 The full and open competition objective.

(a) The basic procurement objective in satisfying ADP and telecommunication requirements is to obtain full and open competition through the use of competitive procedures (including the GSA multiple award schedule program) which permit all responsible sources that can satisfy the needs of the Government to submit offers. The contract action shall be made at the lowest overall cost to the Government, price and other factors considered, over the system/item life with due regard to the nature of the supplies or services to be acquired.

(b) This requires an acquisition strategy, suitable to the circumstances, in which the statement of the user's requirement is set forth in the least restrictive terms possible without compromising economy or efficiency. It shall be designed to elicit favorable offers from all responsible sources capable to satisfying the Government's needs.

l. Section 201–11.001–1 is revised to read as follows:

§ 201–11.001–1 Application of FAR provisions.

FAR Part 6 prescribes policies and procedures to promote competition. They provide for full and open competition, full and open competition after exclusion of sources, and other than full and open competition. These provisions are applicable to the acquisition of ADP and telecommunications resources, in

addition to those set forth in this Part 201–11.

m. Section 201–11.002 is revised to read as follows:

§ 201–11.002 Other than full and open competition.

(a) *General.* When an agency determines that full and open competition cannot be obtained in satisfying an ADP or telecommunication requirement, the procurement action must be justified and approved in accordance with Part 201–23 and FAR Part 6. The agency is required to document its files with a justification for the contemplated procurement action (see FAR 6.303). Technical and requirements personnel must provide certified data supporting their recommendations for these procurement actions. Lack of advance planning or concerns related to the amount of funds available cannot be used for this justification.

(b) *Sole source certification requirements.* When an agency determines (1) that only one responsible source can meet its requirement after following the management, planning, and market research activities referred to in § 201–11.003 and (2) that no other type of supplies or services will satisfy the agency's needs, technical and requirements personnel are responsible for providing, and certifying as accurate and complete, the necessary data to support the recommendation for a sole source requirement (see FAR 6.303–1(b)).

§§ 201–11.002–1 and 201–11.002–2 [Removed]

n. Sections 201–11.002–1 and 201–11.002–2 are removed.

o. Section 201–11.003 is revised to read as follows:

§ 201–11.003 Agency responsibilities.

(a) Full and open competition is a basic procurement objective of the Government. Full and open competition among offerors who are capable of meeting the user's needs will ensure that the Government's needs are satisfied at the lowest overall cost, price and other factors considered, over the system/item life. It is essential that proper management actions, including planning and market research activities, be accomplished before the contract action becomes imminent (see Parts 201–16, 201–20, 201–21, 201–23, 201–24, 201–30, and 201–38).

(b) Agency information resources managers and contracting officers share the responsibility for ensuring that this basic procurement objective is met. This responsibility extends to fostering competitive conditions for subsequent procurements.

(c) Agencies must keep their systems life and contract expiration dates in mind when planning for future information resources requirements activities. Agency plans for follow-on procurements should allow sufficient time for the acquisition process; e.g., conversion of data files and programs. A competition for the follow-on period shall be started in sufficient time to ensure completion before the expiration of the existing contract.

§§ 201–11.003–1 and 201–11.003–2 [Removed]

p. Sections 201–11.003–1 and 201–11.003–2 (appearing in Temp. Reg. 4) are removed.

PART 201–16—[AMENDED]

q. The table of contents of Part 201–16 is amended by revising the entry for 201–16.001 to read as follows: "Planning to meet the full and open competition objective.".

r. Section 201–16.001 is revised to read as follows:

§ 201–16.001 Planning to meet the full and open competition objective.

(a) The head of the agency shall use advance procurement planning and market research directed to the achievement of the full and open competition objective. This planning is a joint responsibility of the agency's requirements and procuring activities. It is essential to the success of this objective that the manager who establishes the needs, the manager who prepares the requirement specifications, and the manager who contracts for satisfying the requirement all coordinate their efforts in establishing a realistic acquisition plan.

(b) Agency performance of this responsibility will serve as a factor in GSA's determinations for granting delegations of procurement authority to agencies.

PART 201–21—[AMENDED]

§ 201–21.011 [Amended]

s. Section 201–21.011 is amended by removing from paragraph (a)(4) the words "to the maximum practicable extent." and inserting in their place the words "on a full and open basis.".

PART 201–23—[AMENDED]

t. The table of contents of Part 201–23 is amended by adding "201–23.104–7 ADP equipment systems.".

u. Section 201–23.103 is amended by revising paragraph (b)(2) (appearing in Temp. Reg. 6) to read as follows:

§ 201–23.103 Procurement and contracting authority.

* * * * *

(2) Agencies shall accomplish procurement actions in accordance with applicable provisions of the FIRMR, including the provisions of Parts 201–11, 201–24, and 201–32.

v. Section 201–23.104–1 (appearing in Temp. Reg. 6) is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 201–23.104–1 Automatic data processing equipment (ADPE).

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) below, $2,500,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $1,000,000; or

(2) $250,000 purchase price or basic monthly rental charges (including attendant maintenance costs) that do not exceed an annual rate of $100,000 for requirements available from only one responsible source or requirements using specific make and model specifications.

w. Section 201–23.104–2 (appearing in Temp. Reg. 6) is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 201–23.104–2 Software.

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) below, $1,000,000; or

(2) $100,000 for requirements available from only one responsible source.

x. Section 201–23.104–3 (appearing in Temp. Reg. 6) is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 201–23.104–3 Maintenance services.

* * * * *

(b) * * *

(1) Except as provided in paragraph (b)(2) below, an annual rate of $1,000,000; or

(2) An annual rate of $100,000 for requirements available from only one responsible source.

y. Section 201–23.104–5 (pertinent portion appearing in Temp. Reg. 6) is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 201-23.104-5 Commercial ADP services.

(a) * * *

(1) Except as provided in paragraph (b)(2) below, an annual rate of $2,000,000; or

(2) An annual rate of $200,000 for requirements available from only one responsible source.

* * * * *

z. A new § 201-23.104-7 is added, as follows:

§ 201-23.104-7 ADP equipment systems.

(a) When ADPE, software, and maintenance services (or any combination thereof) are "combined" and procured as an equipment system under a single procurement action, GSA approval shall be required when the individual price of either the equipment, the software, or the maintenance services exceeds the applicable dollar threshold in §§ 201-23.104-1, 201-23.104-2, or 201-23.104-3.

(b) When commercial ADP services and any combination of ADPE, software, or maintenance services are procured under a single procurement action, GSA approval shall be required when the individual price of either the equipment, the software, the maintenance services, or the commercial ADP services exceeds the applicable dollar threshold in §§ 201-23.104-1, 201-23.104-2, 201-23.104-3, or 201-23.104-5.

aa. Section 201-23.106-1 is amended by (i) revising paragraphs (a)(11), (a)(17), (b)(3)(ii), and (b)(4) (ii), (iii), (iv), and (viii), and (ii) adding paragraph (a)(18) to read as follows:

§ 201-23.106-1 Agency procurement request (APR) submissions.

(a) * * *

(11) If applicable, a copy of documentation supporting any use of a specific make and model specification as required by § 201-30.013-2; and if applicable, the certified data supporting a contemplated sole source requirement (see § 201-11.002(b)).

* * * * *

(17) Findings to support the use of compatibility limited requirements as required by § 201-30.009-3, where applicable.

(18) A statement as to whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(i) Full and open competition (see FAR Subpart 6.1);

(ii) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(iii) Other than full and open competition (See FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

(b) * * *

(3) * * *

(ii) Summary description of the alternatives considered to meet the requirement, the related costs, and the basis for the alternative selected with reference to the agency's requirements analysis and analysis of alternatives (see §§ 202-30.007 and 201-30.009, respectively).

* * * * *

(4) * * *

(ii) Type of specification (see § 201-30.013).

(iii) The basis and documentation to support the use of compatibility limited requirements, when applicable (see § 201-30.009-3).

(iv) If applicable, a copy of the documentation supporting the use of a specific make and model specification as required by § 201-30.013-2; and, if applicable, the certified data supporting a contemplated sole source requirement (see § 201-11.002(b)).

* * * * *

(viii) A statement as to whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

* * * * *

bb. Section 201-23.106-2 (appearing in Temp. Reg. 5) is amended by revising paragraphs (b)(3)(i) and (b)(5), and by adding paragraph (b)(3)(iv) to read as follows:

§ 201-23.106-2 Alternate APR submission requirements.

* * * * *

(b) * * *

(3) *Acquisition strategy:* (i) Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification; whether compatibility limited requirements will be used on either a mandatory or nonmandatory basis; and specify the type of contract expected to be used.

* * * * *

(iv) Indicate whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (see FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302-1 through 6.302-7 permitting the use of such procedures.

* * * * *

(5) *Regulatory Compliance:* (i)(A) Provide a statement which indicates that the agency has reviewed and complied (or will comply) with all applicable regulations, or

(B) List those deviations to the regulations that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request (see Subpart 201-1.4).

(ii) Provide the date of completion or most recent update of the following documentation, or indicate not applicable:

Documentation	Date
(A) Requirements analysis (see § 201-30.007)	
(B) Analysis of alternatives (see § 201-30.009)	
(C) Performance evaluation for the currently installed ADP system (see §§ 201-30.007(d)(9) and 201-34.002)	
(D) Findings to support the use of compatibility limited requirements (see § 201-30.009-3)	
(E) Software conversion study (see § 201-30.012-1)	
(F) Certified data to support a contemplated requirement available from only one responsible source (see § 201-11.002(b))	
(G) Justification to support a contemplated requirement using a specific make and model specification (see § 201-30.013-2)	
(H) Description of those planned actions necessary to foster competition for subsequent procurements (see § 201-30.012)	

* * * * *

cc. Section 201-23.111-1 is amended by revising paragraph (a) to read as follows:

§ 201-23.111-1 Requiring agency responsibilities.

* * * * *

(a) Submit to GSA the documentation required by § 201-23.106-1. The documentation shall include the agency's requirements, the system/item life, the technical specification, and, if applicable, the justification to support the contracting procedure;

* * * * *

dd. Section 201-23.111-2 is amended by revising paragraphs (b), (d), (f), (g), (j), and (k), and by redesignating (l) thru (q) as (k)(2), (k)(3), (k)(4), (l), (m), and (n), respectively. As revised, § 201-23.111-2 reads as follows:

§ 201-23.111-2 GSA responsibilities.

* * * * *

(b) Form the contracting team which will be headed by the GSA contracting officer;

* * * * *

(d) Prepare the contracting plan (which will be coordinated with the requiring agency), and any justifications or contractual material needed for the selection plan;

* * * * *

(f) Receive offers from the offerors;

(g) Provide copies of all offers received to the requiring agency;

* * * * *

(j) Notify the offeror concerned when an offer is determined to be unacceptable;

(k) If applicable, (1) Conduct negotiations with all offerors whose proposals are within the competitive range, price and other factors considered;

(2) Notify the offerors of the date and time that negotiations are to be terminated;

(3) Provide the requiring agency's designated point of contact with both a report which summarizes the results of negotiations and copies of proposed contracts negotiated with offerors for consideration in the requiring agency's evaluation and analysis; and

(4) Brief the appropriate requiring agency personnel on the results of contract negotiations when requested;

(l) Award the contract after receiving notification of the requiring agency's selection;

(m) Debrief offerors, with the assistance of requiring agency representatives, when debriefings are requested by offerors; and

(n) Distribute the contract and forward all pertinent documents to the successor contracting officer appointed by the requiring agency.

PART 201-24—[AMENDED]

ee. The table of contents of Part 201-24 is amended by revising the entries for 201-24.207 to "Solicitations for compatibility limited requirements." and for 201-24.211, 201-24.212 and 201-24.304 to "[Reserved]."

ff. Section 201-24.104 (appearing in Temp. Reg. 1, Supp. 1) is revised to read as follows:

§ 201-24.104 Small purchases.

(a) Except as provided in paragraph (b) of this § 201-24.104, the provisions of FAR Part 13 (Small purchases and other simplified purchase procedures) apply when the aggregate amount over the system/item life of a requirement for information resources does not exceed $25,000.

(b) Alternatively, if the contracting officer elects to satisfy such requirements through use of GSA information resources schedule contracts, applicable FIRMR schedule procedures shall be followed (see §§ 201-32.206, 201-32.303, and 201-40.008).

gg. Section 201-24.106 is revised to read as follows:

§ 201-24.106 Urgent requirements.

The existence of an unusual and compelling urgency (e.g., the Government will suffer serious injury, financial or otherwise, if the equipment or services are not available by a specific date) shall not relieve the agency from responsibility of requesting offers from as many potential sources as is practicable under the circumstances. The system/item life duration for an urgent requirement contracted for under other than full and open competition procedures shall be held to the minimum practicable life.

§ 201-24.202 [Amended]

hh. Section 201-24.202 is amended by removing from paragraph (a) the words "maximum practicable" and inserting in its place the words "full and open."

§ 201-24.203 [Amended]

ii. Section 201-24.203 is amended by removing from paragraph (b) the words "maximum practicable" and inserting in their place the words "full and open."

jj. Section 201-24.207 is revised to read as follows:

§ 201-24.207 Solicitations for compatibility limited requirements.

(a) Compatibility limited requirements shall not be made mandatory requirements solely for reasons of economy or efficiency. Solicitations for the replacement of a computer system(s) may exclude non-compatible offers only if the agency determines that the risk of a conversion failure will not allow pursuit of the lowest overall cost solution without this limitation (see § 201-30.009-3).

(b) Solicitations which include compatibility limited requirements for the augmentation of a computer system(s) may exclude non-compatible offers only if the agency determines that exclusion of non-compatible components and any other alternative is justified (see § 201-30.009-3). The justification for precluding the use of any alternative other than augmentation with compatible components must be based on the recent completion of both a requirements analysis (see § 201-30.007) and an analysis of alternatives (see § 201-30.009).

(c) If the conditions of paragraphs (a) or (b) of this § 201-24.007 are not met, solicitations which include compatibility limited requirements shall provide for the submission and evaluation of acceptable non-compatible offers from responsible offerors that will meet the user's requirement at the lowest overall cost, price and other factors considered, over the system/item life.

kk. Section 201-24.210 is revised to read as follows:

§ 201-24.210 Exercising renewal options in ADP services contracts.

(a) Before exercising and renewal options, including those on a TSP basic agreement (BA) or MAS system life selection, the agency shall conduct an analysis to determine whether exercising the renewal option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(b) Before exercising a renewal option on a system life selection awarded on a sole source basis, the agency shall conduct a new market survey to determine the availability of alternate sources of supply. If the survey indicated that an alternate source of supply exists, the agency shall prepare an acquisition plan showing the major milestones for conducting a competitive procurement.

(c) Agency acquisition files shall be documented with the results of the evaluation.

§ 201-24.211 and 201-24.212 [Removed and Reserved]

ll. Sections 201-24.211 and 201-24.212 are removed and reserved.

§ 201-24.216 [Amended]

mm. Section 201-24.216 is amended by removing from paragraph (e) the words

"comparative cost analysis" and inserting in their place the words "analysis of alternatives".

§ 201-24.304 [Removed and Reserved]

nn. Section 201-24.304 (appearing in Temp. Reg. 4) is removed and reserved.

PART 201-30—[AMENDED]

oo. The table of contents of Part 201-30 is amended by (i) adding the following entries "201-30.009-3 Establishing compatibility limited requirements.", "201-30.013-1 Use of functional specifications." and "201-30.013-2 Use and documentation of specific make and model specifications." and (ii) revising the entry for 201-30.013 to "Specifications.".

pp. Section 201-30.007 (appearing in Temp. Reg. 8) is amended by (i) adding a sentence to paragraph (a), (ii) redesignating paragraph (c) as paragraph (d), (iii) adding a new paragraph (c), and (iv) adding a subparagraph (9) to new paragraph (d). As revised, paragraphs (a), (c), and (d) read as follows:

§ 201-30.007 Determination of need and requirements analysis.

(a) The acquisition of new or additional information processing resources shall be based on mission needs. These needs shall be specified in a manner designed to achieve the full and open competition objective for the procurement, with due regard to the nature of the property and services to be acquired. These needs shall be expressed in the form of deficiencies in existing capabilities, new or changed program requirements, or opportunities for increased economy and efficiency. In any event, and as required by § 201-20.003, the needs shall be supported by a requirements analysis that is commensurate with the size and complexity of the need.

* * * * *

(c) The needs and specific circumstances of the acquiring agency will determine how the requirements are specified. The types of specifications shall depend on the nature of the mission need and the market available to satisfy such needs. The range of specifications is described in § 201-30.013. Subject to such needs, the specification may be functional, equipment performance oriented, a combination of functional and equipment performance, plug-to-plug compatible, brand name or equal, or specific make and model. If any specification is used to describe a requirement that is available from only one responsible source, the provisions of § 201-11.003 apply. If the specification is based on a compatibility limited requirement, it must be justified as required by § 201-30.009-3. The use of a specific make and model specification must be justified as required by § 201-30.013-2.

(d) As a minimum, the agency shall consider the following factors in the requirements analysis:

(1) The information processing functions that must be performed.

(2) The agency applications, information resource systems, and components involved, their physical locations, and operational constraints.

(3) The problem that will be solved by acquiring new or additional equipment, systems and/or software.

(4) The nature of the data or information to be generated, transmitted, or stored on the proposed equipment or system, who will maintain it, and who will require access to it.

(5) The feasibility of sharing, using reassigned or excess Government-owned or -leased equipment, the off-loading of lower priority applications, using Federal data processing centers and GSA sources of supply, using commercial ADP services, or if applicable, increasing the capability and productivity of the existing system.

(6) The probable improvement in operational effectiveness and the economies that will be realized from acquiring new or additional equipment, systems, and/or software.

(7) Space management considerations; e.g., heat dissipation, air flow, temperature range, relative humidity, energy conservation, power supply, cables, including coordination with building managers and GSA (see FPMR § 101-17.101-5).

(8) The present and projected workload in terms of

(i) Systems life;

(ii) Data entry and associated telecommunication support;

(iii) Data base(s) and data base management;

(iv) Data handling or transaction processing by type and volume;

(v) Output needs and associated telecommunication support;

(vi) Expandability requirements; and

(vii) Privacy and security safeguards.

(9) A performance evaluation of the currently installed ADP system(s) to provide a baseline for evaluation of proposed alternatives for meeting the data processing needs.

qq. Section 201-30.008 is amended by adding paragraph (d) to read as follows:

§ 201-30.008 Determination of system/item life.

* * * * *

(d) *Agencies shall consider subsequent procurement when establishing system/item lives.* The system/item life duration for the requirements available from only one responsible source or for requirements with unusual and compelling urgency shall be held to the minimum practicable time. The sole source justification shall be used to manage and plan for any subsequent procurement. Agency information resources managers and contracting officers share responsibility for management and planning actions necessary to foster full and open competitive conditions for subsequent procurements. When applicable, an acquisition plan showing the major milestones for completing a follow-on full and open competitive procurement shall be prepared.

rr. Section 201-30.009-3 is added to read as follows:

§ 201-30.009-3 Establishing compatibility limited requirements.

(a) A compatibility limited requirement shall be expressed in a type of specification (see § 201-30.013) that will serve to accomplish the full and open competition objective. When it is necessary to express a requirement in a specific make and model specification, special justification is required (see § 201-30.013-2).

(b) A statement of requirements to augment or replace existing ADP equipment or services that is limited to ADP equipment or services compatible with the existing operating system and ADPE shall be—

(1) Supported by a software conversion study (see § 201-30.012-1);

(2) Justified on the basis of agency mission-essential data processing requirements and economy and efficiency; and

(3) Meet the requirements of this section.

(c) The following factors shall be considered in determining whether the incorporation of compatibility limited requirements is justified for the augmentation or replacement acquisition:

(1) The essentiality of existing software, without redesign, to meet agency critical mission needs; e.g., the continuity of operations may be so critical that conversion is not a viable alternative.

(2) The additional risk associated with conversion if compatibility limited requirements are not used and the extent to which the Government would

be injured, financially or otherwise, if the conversion to the new ADP system fails.

(3) The additional adverse impact of factors such as delay, lost economic opportunity, and less than optimum utilization of skilled professionals if compatibility limited requirements are not used.

(4) The steps being taken to foster competitive procedures in the augmentation or replacement acquisition (see § 201–30.012).

(5) The off-loading of selected applications programs to commercial data processing service facilities as an alternative to conversion.

(6) The continuation of ADP services for selected application programs with the present commercial ADP services contractor as an alternative to conversion of all programs in the present ADP resource system.

(7) The extent of essential parallel operations; i.e., the need to continue operation of the old system in parallel with the new system until the new system can fully support the mission needs.

(8) The feasibility of competing conversion requirements to be performed on a guaranteed basis under a separate solicitation that couples the conversion effort and ADP services in a single contract, including consideration of the basis for a calculation of liquidated-damages provisions for conversion performance failure.

(d) The findings that support the use of compatibility limited requirements shall be submitted with each agency procurement request (APR) (see §§ 201–23.106–1 and 201–23.106–2) for an augmentation or replacement acquisition when the use of specifications incorporating compatibility limited requirements is contemplated.

(e) Provisions regarding solicitation for compatibility limited requirements are contained in § 201–24.207.

§ 201–30.012 [Amended]

ss. Section 201–30.012 is amended by (i) removing from the opening paragraph the words "as to be a major impediment to effective competition by a noncompatible offeror" and inserting in their place the words "that it is not a viable alternative"; (ii) inserting in paragraph (a) the word "competitively" between the words "are met" and "at the lowest"; (iii) inserting in paragraphs (a) and (b)(8) the word "competitive" between the words "subsequent" and "acquisitions"; (iv) removing in paragraph (b)(8) the words "to the maximum practicable extent"; and (v) removing from paragraph (b)(10)) the words "purchase descriptions limit the competitiveness of the acquisition" and inserting in their place the words "specifications tend to limit the number of responsible sources that can satisfy the requirement."

§ 201–30.012–1 [Amended]

tt. Section 201–30.012–1 is amended by (i) inserting in paragraph (a) the word "competitively" between the words "are met" and "at the lowest" and (ii) inserting in paragraph (c)(2)(v) the word "requirements" after the word "noncompatible" and the word "time" between the words "with" and "schedules."

uu. Section 201–30.013–1 is revised to read as follows:

§ 201–30.013 Specifications.

(a) Agencies shall design ADP specifications describing Government requirements to obtain full and open competition from all responsible sources (including manufacturers, leasing companies, third-party vendors, and ADP service contractors) with due regard to the nature of the property or services to be acquired. The type of specification included in a solicitation shall depend on the nature of the agency needs. Functional specifications maximize competition. If functional specifications cannot be used, other types of specifications shall be used in the following order of precedence:

(1) Equipment performance specifications.

(2) Software and equipment plug-to-plug compatible functionally equivalent specifications.

(3) Brand name or equal specifications.

(4) Specific make and model specifications.

(b) Specific make and model type specifications restrict competition. Use of this type of specification must be justified (see § 201–30.013–2).

vv. Section 201–30.013–1 is added to read as follows:

§ 201–30.013–1 Use of functional specifications.

Specifications shall be developed in such a manner as is necessary to maximize, and not limit, competition. Due regard to the nature of the property or services to be acquired may require the use of restrictive provisions or conditions, but only to the extent necessary to satisfy the needs of the agency. Functional specifications are the preferred method of expressing the user's requirements in solicitation documents. The functional specification may be augmented with equipment characteristics and element of performance when necessary to reflect the user's needs.

ww. Section 201–30.013–2 is added to read as follows:

201–30.013–2 Use and documentation of specific make and model specifications.

(a) A specific make and model specification shall be used only when no other type of specification set forth in § 201–30.013 can satisfy the needs of the Government.

(b) Agencies shall document their justifications supporting the use of a specific make and model specification. The justification shall address:

(1) The intended use or application of the equipment;

(2) The unique features and/or mandatory requirements, dictated by the intended use, that limit the acquisition to a specific make or model;

(3) The existence of a patent, copyright, or other limitation; and

(4) The practical factors which preclude the development of a less restrictive specification.

(c) If a specific make and model specification is used to describe a requirement that is available from only one responsible source, see also § 201–11.002(b).

PART 201–32—[AMENDED]

xx. The table of contents of Part 201–32 is amended by revising the entry for 201–32.206 to read "Use of GSA ADP schedule contracts."

§ 201–32.102 [Amended]

yy. Section 201–32.102 is amended by removing from paragraph (a) the words ", subject to the availability of funds."

§ 201–32.106 [Amended]

zz. Section 201–32.106 is amended by inserting in the opening paragraph the words "full and open" between the words "that" and "competition" and removing the words "to the maximum practicable extent."

aaa. Section 201–32.206 (appearing in Temp. Reg. 6, except for paragraph (h)) is revised to read as follows:

§ 201–32.206 Use of GSA ADP schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory ADP schedule contract under § 201–23.104 is subject to the provisions of this § 201–32.206 and other applicable FIRMR provisions, including Parts 201–24, 201–30, and 201–32.

(2) An order against a nonmandatory ADP schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures

of this § 201–32.206, regardless of the type of specification, and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. Accordingly, if responsible alternative sources are available, the availability of items under a nonmandatory ADP schedule contract shall not necessarily preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. In addition, the availability of those items under an ADP schedule contract shall not preclude or otherwise detract from procuring the items (including peripheral equipment or items for augmenting an existing system) from a number of different sources if this action will be in the best interest of the Government. Any restrictive requirement (e.g., an "all or none" requirement or a requirement for "only new" equipment) shall not be used unless specifically justified.

(3) Suitable equipment or services must be considered whether or not it is on an ADP schedule contract. When an agency is procuring under the blanket delegation of procurement authority provisions of § 201–23.104, the lowest overall cost alternative shall be sought. When using an ADP schedule, an agency shall consider the offerings of a sufficient number of schedule contractors to ensure that its requirements are satisfied at the lowest overall cost to the Government. Alternatively, the agency may choose to prepare a solicitation document in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process consumes time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of solicitation and contracting;

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor (e.g., "third party" suppliers) for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any ADP schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered under the schedule.

(4) An agency shall comply with the synopsis requirements of paragraphs (f) and (g) of this section before placing an order against a GSA nonmandatory ADP schedule contract.

(b) *Initial acquisition of ADPE.* An order for the initial acquisition of ADPE (whether for purchase or rental) may be placed against an ADP schedule contract provided that both of the following conditions are met.

(1) The order does not exceed any applicable contract maximum order limitation (MOL).

(2) When the purchase price of the items covered (even though rented or leased) exceeds $300,000, a specific delegation of procurement authority (DPA) is obtained. (See §§ 201–23.104–1(b) and 201–23.106.)

(c) *Continued rental or lease of installed ADPE and software.* An ADP schedule contract may be used for the continued lease or rental of installed equipment and software. However, before issuing a renewal order where the schedule purchase price exceeds $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the Commerce Business Daily (CBD) synopsis indicate that identical (specific make and model) or suitable substitute equipment is available from a source other than the schedule contract.

(d) *Conversion from lease to purchase of installed ADPE.* An ADP schedule contract may be used for the conversion from lease to purchase of installed ADPE. However, before issuing an order to purhase previously leased ADPE with a net order price exceeding $300,000, a specific DPA under § 201–23.104 shall be obtained if the results of the CBD synopsis indicates that identical (specific make and model) or suitable substitute equipment is available from a source other than the schedule contract.

(e) *Acquisition of software and maintenance services.* (1) An order may be placed against an ADP schedule contract for software and maintenance services provided that the order does not exceed any applicable contract MOL.

(2) An ADP schedule contract may contain ADP support services that are limited exclusively to direct support of operating/executive systems and other proprietary software under the contract.

(f) *Synopsis requirements.* (1) The intent to place an order against a nonmandatory ADP schedule contract shall be synopsized in the CBD at least 15 calendar days before placing the order when (i) the purchase price of the equipment (whether purchased or leased) exceeds $50,000, (ii) the software charges (whether annual rate or single charge) exceed $50,000, (iii) the maintenance charges exceed a $50,000 annual rate, or (iv) the value of any order exceeds $50,000. In calculating the 15 days for synopsizing, notwithstanding the presumption in FAR 5.203(f), the first day shall be the actual date the synopsis appears in the CBD. (In accordance with the Administrator of General Services' determination under Pub. L. 98–577, this synopsis requirement supersedes the requirement in FAR Subpart 5.2 to synopsize orders in excess of $10,000 for 30 days.)

(2) The synopsis should include sufficient information to permit the agency analysis required by paragraph (g) of this § 201–32.206. It shall be prepared and forwarded in accordance with FAR 5.207. The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses shall be considered by the agency;

(ii) The name, business address, and telephone number of the contracting officer;

(iii) A request for pricing data;

(iv) A statement that no contract award will be made on the basis of any response to the notice, because the synopsis of intent to place an order against the schedule contract shall not be considered a solicitation document; and

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific make and model of any equipment to be ordered or maintained;

(B) The name, functional description, and operating environment of any software packages to be ordered;

(C) The quantities, dates required, period of performance, and system/item life;

(D) The support requirements (e.g., hours of maintenance coverage or response times) for the ordered items;

(E) Any restrictive (e.g., "bundled," "only new," or "all or none") requirements that have been justified; and

(F) When applicable, a statement that the item(s) to be ordered is intended to satisfy a requirement that was described by technical or requirements personnel using a specific make or model specification.

Note.—This statement is not applicable if the requirement was described by a higher order specification (see § 201–30.013).

(3) Publication of contract award information in the CBD is not required when an order is placed against an ADP schedule contract since the schedule contracts are publicized in accordance with FAR Subpart 5.3.

(g) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from

discounting prices in the competitive commercial marketplace) and such additional product and cost information as might be submitted by potential nonschedule suppliers in response to the CBD notification. After consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a nonmandatory ADP schedule contract, or preparing a solicitation document, results in the lowest overall cost alternative to meet the needs of the Government. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and an analysis that indicates that an order placed against the applicable schedule contract provides the lowest overall cost alternative to the Government.

(2) When a response to the CBD notice is received from either a responsible nonschedule vendor or a schedule contractor (expressing an interest either on or off schedule) for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an analysis that indicates that the respondent's item(s) would not meet the requirement, or that the synopsized schedule item(s) provides the lowest overall cost alternative, and place an order against the synopsized schedule contract;

(ii) Document the procurement file with an analysis that indicates that a responding contractor's schedule offering is the lowest overall cost alternative and place an order against that ADP schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a nonmandatory schedule may not result in the lowest overall cost alternative to the Government. When this is the case, the contracting officer normally should issue a solicitation document. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract against which the order was to be placed. The addresses of the solicitation shall include the schedule contractor to ascertain any interest in furnishing the item(s) off the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price under a separate proposal that would not be a "price reduction" in the schedule contract.

(B) The agency shall publicize the procurement in accordance with the provisions of FAR Subpart 5.2.

(C) The contracting officer shall evaluate the offers received. It should be noted that some offerors may not agree to the solicitation terms and conditions that schedule contractors have accepted. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a schedule contractor if the order provides the lowest overall cost alternative. The procurement file shall be documented to justify the action taken.

(h) *Lowest overall cost alternative order not at lowest price.* If items are to be acquired under an ADP schedule contract at other than the lowest delivered price available for identical or similar items under any ADP schedule contract, an agency shall justify the action and shall retain the justification and supporting data or submit them to GSA if a specific DPA is required (see § 201–23.108). The following are examples of factors that may be used in support of a justification that an order at other than the lowest delivered price is the lowest overall cost alternative to meet the needs of the Government.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points will produce savings over the system/items life which are greater than the difference in order prices.

§ 201–32.303–2 [Amended]

bbb. Section 201–32.303–2 (appearing in Temp. Reg. 1, Supp. 1) is amended by removing from paragraph (d) the words "maximum practicable" and inserting in their place the words "full and open."

ccc. Section 201–32.303–3 is amended by revising paragraph (d) (appearing in Temp. Reg. 1, Supp. 1) to read as follows:

§ 201–32.303–3 Procedures for acquiring TSP services.

* * * * *

(d) *Abbreviated procedures.* When the annual cost is not expected to exceed $50,000, an agency may elect to use a special abbreviated procedure under the MAS. This abbreviated procedure permits considering a sufficient number of MAS contractors that the selecting agency's contracting officer deems necessary to ensure that the requirement is met at the lowest overall cost alternative to meet the needs of the Government. This abbreviated procedure does not allow letters of interest, modifications of any type, or benchmarking. The technically acceptable MAS evaluated as the lowest overall cost alternative, price and other factors considered, shall be selected from the MAS contractors.

* * * * *

PART 201–38—[AMENDED]

ddd. The table of contents of Part 201–38 is amended by revising the entry for § 201–38.012 to read "Use of functional telecommunication system specifications." and removing the word "[Reserved]" from 201–38.010.

§ 201–38.010 [Amended]

eee. Section 201–38.010 is amended by removing the word "[Reserved]" and inserting in its place the words "See Temp. Reg. 9" and by removing the words *"Comparative cost analysis."* and inserting in their place the words *"Analysis of alternatives."* in paragraph (b) (appearing in Temp. Reg. 9).

fff. Section 201–38.012 is added to read as follows:

§ 201–38.012 Use of functional telecommunication system specifications.

(a) Functional telecommunication system specification shall be used where possible. Agency telecommunication specifications shall not be limited to tariff descriptions. Where applicable, requirements shall be set forth in a manner that will permit all responsible tariff and nontariff suppliers to submit offers.

(b) The fact that a tariffed carrier can provide the required service and/or equipment does not by itself constitute justification to order from the tariffed carrier.

(c) Section 201–40.007 sets forth requirements concerning telecommunication solicitations.

ggg. Section 201–39.006–4 (appearing in Temp. Reg. 9) is amended by revising paragraphs (c)(3)(i) and (c)(5) and by adding paragraph (c)(3)(iii) to read as follows:

§ 201–39.006–4 Data facsimile, and record telecommunication services submissions.

* * * * *

(c) * * *

(3) *Acquisition strategy:* (i) Indicate whether or not the proposed procurement approach is to satisfy a requirement using a specific make and model specification. Specify the type of contract expected to be used. Indicate whether GSA multiyear contracting authority is required.

* * * * *

(iii) Indicate whether the acquisition plan contemplates contracting (see FAR 7.104(c)) under policies and procedures for:

(A) Full and open competition (see FAR Subpart 6.1);

(B) Full and open competition after exclusion of sources (see FAR Subpart 6.2); or

(C) Other than full and open competition (See FAR Subpart 6.3). In addition, provide the applicable statutory contracting authority cited in FAR 6.302–1 through 6.302–7 permitting the use of such procedures.

* * * * *

(5) *Regulatory compliance:* (i)(A) Provide a statement which indicates that the agency has reviewed and complied (or will comply) with all applicable regulations, or

(B) List those deviations to the regulations that apply to this request for which approval is sought and provide an explanation for each regulatory deviation request (see Subpart 201–1.4).

(ii) Provide the date of completion or most recent update of the following documentation or indicate not applicable:

(A) Requirements analysis (see § 201–38.010(a));

(B) Analysis of alternatives (see § 201–38.010(b)); and

(C) Certified data to support a contemplated requirement available from only one responsible source (see § 201–11.002(b)).

* * * * *

PART 201–40—[AMENDED]

hhh. The table of contents of Part 201–40 is amended by revising the entry for § 201–40.008 to read "Use of GSA telecommunication schedule contracts.".

iii. Section 201–40.008 (appearing in Temp. Reg. 4) is revised to read as follows:

§ 201–40.008 Use of GSA telecommunication schedule contracts.

(a) *General.* (1) An order placed against a GSA nonmandatory telecommunication schedule contract is subject to the provisions of this § 201–40.008 and other applicable FIRMR provisions, including Parts 201–24, 201–38 and 201–40.

(2) An order against a nonmandatory telecommunication schedule contract is placed under competitive procedures when (i) the ordering agency follows the procedures of this § 201–40.008, regardless of the type of specification, and (ii) the order provides the lowest overall cost alternative to meet the needs of the Government. Accordingly, if responsible alternative sources are available, the availability of items under a nonmandatory telecommunication schedule contract shall not necessarily preclude or waive the requirement to seek (through alternative contracting procedures) the lowest overall cost alternative to meet the needs of the Government. Any restrictive requirement (e.g., a requirement for "only new" equipment or unique features) shall not be used unless specifically justified.

(3) Suitable equipment or services must be considered whether or not it is on a telecommunication schedule contract. The lowest overall cost alternative shall be sought. When using a telecommunication schedule, an agency shall consider the offerings of a sufficient number of schedule contractors to ensure that its requirements are satisfied at the lowest overall cost to the Government. Alternatively, the agency may choose to prepare a solicitation document (see § 201–40.007) in an effort to secure appropriate products and related services at lower overall costs to the Government. Even though the solicitation process "consumer" time and resources, it may be in the best interest of the Government when:

(i) The expected cost reduction will exceed the added costs of solicitation and contracting;

(ii) There is a reasonable expectation that better offers will be received from suppliers other than the schedule contractor for suitable items; or

(iii) The agency requirement cannot be satisfied reasonably by any telecommunication schedule contractor; e.g., the agency's requirement calls for a customized package of equipment, training services, or other features not offered under the schedule.

(4) An agency shall comply with the synopsis requirements of paragraphs (b) and (c) of this section before placing an order against a GSA nonmandatory telecommunication schedule contract.

(5) An order against a telecommunication schedule contract shall not exceed any applicable contract maximum order limitation (MOL).

(b) *Synopsis requirements.* (1) The intent to place an order against a nonmandatory telecommunication schedule contract shall be synopsized in the CBD at least 15 calendar days before placing the order when (i) the purchase price of the equipment (whether purchased or leased) exceeds $50,000, (ii) the maintenance charges exceed a $50,000 annual rate, or (iii) the value of any order exceeds $50,000. In calculating the 15 days for synopsizing, notwithstanding the presumption in FAR 5.203(f), the first day shall be the actual date the synopsis appears in the CBD. (In accordance with the Administrator of General Services' determination under Pub. L. 98–577, this synopsis requirement supersedes the requirement in FAR Subpart 5.2 to synopsize orders in excess of $10,000 for 30 days.)

(2) The synopsis should include sufficient information to permit the agency analysis required by paragraph (c) of this section. It shall be prepared and forwarded in accordance with FAR 5.207. The synopsis shall not be unnecessarily restrictive of competition, and as a minimum, and as applicable, it shall include:

(i) A statement that all responsible sources may respond to the synopsis and that all such responses shall be considered by the agency;

(ii) The name, business address, and telephone number of the contracting officer;

(iii) A request for pricing data;

(iv) A statement that no contract award will be made on the basis of any response to the notice, because the synopsis of intent to place an order against the schedule contract shall not be considered a solicitation document; and

(v) An accurate description of the equipment or services to be ordered, including:

(A) The specific equipment to be ordered or maintained;

(B) The quantities, dates required, period of performance, and system/item life;

(C) The support requirements (e.g., hours of maintenance coverage, response times) for the ordered items; and

(D) Any restrictive requirements that have been justified.

(3) Publication of contract award information in the CBD is not required when an order is placed against a telecommunication schedule contract since the schedule contracts are publicized in accordance with FAR Subpart 5.3.

(c) *Actions after the CBD synopsis.* The schedule order synopsis technique provides agencies with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and such

additional product and cost information as might be submitted by potential nonschedule suppliers in response to the CBD notification. After consideration of the responses received in response to the CBD notice, the contracting officer must decide whether ordering from a nonmandatory telecommunication schedule contract, or preparing a solicitation document, results in the lowest overall cost alternative to meet the needs of the Government. Accordingly, the contracting officer shall take one of the following actions:

(1) When no responses are received, the procurement file shall be documented with the results of the CBD synopsis and an analysis that indicates that an order placed against the applicable schedule contract provides the lowest overall cost alternative to the Government.

(2) When a response to the CBD notice is received from either a responsible nonschedule vendor or a schedule contractor (expressing an interest either on or off schedule) for an item(s) that meets the user's requirement, the contracting officer shall take one of the following actions:

(i) Document the procurement file with an analysis that indicates that the respondent's item(s) would not meet the requirement, or that the synopsized schedule item(s) provides the lowest overall cost alternative, and place an order against the synopsized schedule contract;

(ii) Document the procurement file with an analysis that indicates that a responding contractor's schedule offering is the lowest overall cost alternative and place an order against that telecommunication schedule contract; or

(iii) Document the procurement file with an analysis that indicates that ordering from a nonmandatory schedule may not result in the lowest overall cost alternative to the Government. When this is the case, the contracting officer normally should issue a solicitation document. In this event:

(A) The solicitation should contain terms and conditions substantially the same as those contained in the schedule contract against which the order was to be placed. The addressees of the solicitation shall include the schedule contractor to ascertain any interest in furnishing the item(s) off the schedule. This procedure will permit the schedule vendor to discount the schedule item(s) price under a separate proposal that would not be a "price reduction" in the schedule contract.

(B) The agency shall publicize the procurement in accordance with the provisions of FAR Subpart 5.2.

(C) The contracting officer shall evaluate the offers received. It should be noted that some offerors may not agree to the solicitation terms and conditions that schedule contractors have accepted. The contracting officer shall act in a manner most advantageous to the Government by either awarding a contract based on the offers received in response to the solicitation or placing an order with a schedule contractor if the order provides the lowest overall cost alternative. The procurement file shall be documented to justify the action taken.

(d) *Lowest overall cost alternative order not at lowest price.* It items are to be acquired under a telecommunication schedule contract at other than the lowest delivered price available for identical or similar items under any telecommunication schedule contract, an agency shall justify the action and shall retain the justification and supporting data. The following are examples of factors that may be used in support of a justification that an order at other than the lowest delivered price is the lowest overall cost alternative to meet the need of the Government.

(1) Special features of one item, not provided by comparable items, are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already being used.

(4) Greater maintenance availability, lower maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points will produce savings over the system/item life which are greater than the difference in order prices.

7. *Agency actions.* Pending the issuance of a permanent amendment of the FIRMR, agencies shall follow the policies and procedures in this temporary regulation.

8. *Information and assistance.* Inquiries concerning this regulation should be directed to William R. Loy, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

9. *Submission of comments.* The views of agencies and other interested parties are invited regarding the effect or impact of this regulation and the policies and procedures that should be adopted in the future. All comments received before April 30, 1985 will be considered, notwithstanding the due date appearing in the **Federal Register** notice of proposed rulemaking. Comments should be addressed to the General Services Administration, Office of Information Resources Management, Policy Branch (KMPP), Washington, DC 20405.

(Sec. 205(c), 84 Stat. 390; 40 U.S.C. 486(c))

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–7980 Filed 4–3–85; 8:45 am]

BILLING CODE 6820–25–M

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility; Income Levels for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule; revised Appendix.

SUMMARY: The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Official Poverty Threshold as defined by the Department of Health and Human Services.

EFFECTIVE DATE: April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting Deputy General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005 (202) 272–4010.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's Regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Official Poverty Threshold as defined by the Office of Management and Budget. Responsibility for revision of the Official Poverty Threshold was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1985 equivalent to 125% of the current official Poverty Threshold are set forth below:

List of Subjects in 45 CFR Part 1611

Legal services, Eligibility.

PART 1611—ELIGIBILITY

Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation Poverty Guidelines

Size of family unit	All States but Hawaii [1] and Alaska	Alaska [2]	Hawaii [3]
1	$6,852	$8,225	$7,780
2	8,812	11,012	10,137
3	11,062	13,850	12,725
4	13,312	16,637	15,312
5	15,562	19,475	17,900
6	17,812	22,262	20,475
7	20,062	25,100	23,100
8	22,312	27,887	25,662

[1] For family units with more than eight members, add $2,250 for each additional member in a family.
[2] For family units with more than eight members, add $2,812 for each additional member in a family.
[3] For family units with more than eight members, add $2,587 for each additional member in a family.

(Sec. 1007(a)(2) of the Legal Services Corporation Act, (42 U.S.C. 2996f(a)(2)))

Dated: April 1, 1985.

Richard N. Bagenstos,

Acting Deputy General Counsel.

[FR Doc. 85-8010 Filed 4-3-85; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 84-491; RM-4504; RM-4593; FCC 85-143]

Austin, TX; Table of Assignments for Air-Ground Stations in the Public Land Mobile Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 22.521(b) of the Commission's Rules, the allocation for air-ground frequencies, to add Austin, Texas on channel 11.

This action is taken because the Commission found that substantial need exists in the Austin area for an air-ground station.

This action is not expected to cause electrical interference for aircraft flying up to 20,000 feet MSL.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Communications common carriers.

Report and Order (Proceeding Terminated)

[FCC 85-143]

In the matter of amendment of § 22.521(b) of the Commission's rules to include Austin, Texas, in the table of assignments for air-ground stations in the Public Land Mobile Service (CC Docket No. 84-491; RM-4504; RM-4593).

Adopted: March 25, 1985.
Released: March 27, 1985.

By the Commission

1. On May 22, 1984, the Commission adopted a Notice of Proposed Rulemaking (FCC 84-231) which proposed to add Austin, Texas to the table of assignments for air-ground stations in the Public Land Mobile Service. The Notice was issued in response to two petitions for rulemaking filed by Saleem Tawil (Tawil) (RM-4504) and Mobilfone Communications, Inc. (Mobilfone) (RM-4593). Tawil filed comments reaffirming his intention to apply for the channel, if assigned. Comments in support of assigning the channel were received from Mobilfone and from Hastings Telephone Answering Service, Inc. No other comments were filed.

2. Section 22.521(a) of the Commission's Rules allocates twelve frequency pairs for assignment to land mobile radio stations that are interconnected to the public switched telephone network for the purpose of providing communications service to airborne stations. Section 22.521(b) allocates from one to four of these frequency pairs, or working channels, to specific geographic locations. That subsection requires that base stations operating on these frequencies be within 25 miles of the location specified.

3. Austin, Texas is not among the locations listed in § 22.521(b), nor is it within 25 miles of any of the other specified locations. Tawil and Mobilfone requested that § 22.521(b) be amended by adding Austin to the list of assignments for air-ground stations. This amendment would allow an air-ground station to be operated on the working frequency 454.925 MHz (Channel 11) and on 454.675 MHz (the nationwide signaling channel) within 25 miles of Austin, Texas. Petitioners expect that no harmful electrical interference will be caused by this amendment.

4. The nearest air-ground station on Channel 11 is New Orleans, Louisiana, approximately 480 miles away. Tawil argues that a similar separation between co-channel stations has been authorized elsewhere by the Commission. He further states that there is a significant unsatisfied need for air-ground radiotelephone service in the Austin area. In response to a survey conducted by Tawil among the general aviation community in the Austin area, several firm applications for service were produced from aviation firms, oil companies, state government officials, and other business interests. As the capital city and major business center of Central Texas, Austin is the scene of significant general aviation activity. Mr. John Trevino, Jr., Mayor of Austin, Texas, supports Tawil's petition in an accompanying letter. Mobilfone makes similar observations regarding co-channel station distance, and demonstrates a significant need for air-ground service in the Austin area. Mobilfone states that it has 43 firm applications for service from such businesses as real estate, oil, charter services, and state government. It further points out that although local aircraft at sufficiently high altitudes can obtain service through a distant base station they must then pay toll charges to communicate with Austin telephones.

5. Based on the information in the record it is clear that there is substantial evidence of need for air-ground communications service in Austin, Texas. Furthermore, petitioners have shown that Austin is more than 400 miles from the nearest existing station on the proposed working channel, which will provide air-ground service with little probability of interference for aircraft flying up to 20,000 feet above mean sea level. In addition, we note that Austin is more than fifty miles from the nearest existing air-ground station. Accordingly, the probability of interference on the signalling channel will be acceptably low. For the foregoing reasons, we find that the public interest would be served by amendment of § 22.521(b) of the Commission's Rules, assigning air-ground channel 11 frequency 454.925 MHz and signaling channel 454.675 MHz, to Austin, Texas, pursuant to our authority set forth in 47 U.S.C. 4(i), 303 (g) and (r), and 307(b), as amended.

6. Accordingly, it is ordered, that effective May 6, 1985, § 22.521(b) of the Commission's Rules is amended as set forth in the attached appendix.

7. It is further ordered, that this proceeding is terminated.

8. The Secretary shall cause this *Report and Order* to be published in the **Federal Register.**

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 22—[AMENDED]

Part 22 of Title 47 of the CFR is amended as follows:

Section 22.521(b) is amended by adding an entry for Austin, Texas on channel 11.

§ 22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
* * *	
Texas	
* * *	
Austin	11
* * * * *	

[FR Doc. 85-8077 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-803; RM-4822]

TV Broadcast Stations in Steamboat Springs, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 24 to Steamboat Springs, Colorado, as its first commercial television assignment, in response to a petition filed by Colorado Communications.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Steamboat Springs, Colorado); MM Docket No. 84-803, RM-4822.

Adopted: March 11, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 34255, published August 29, 1984, in response to a petition filed by Colorado Communications ("petitioner"). The *Notice* proposed the assignment of UHF Television Channel 24 to Steamboat Springs, Colorado, as its first commercial television channel. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if assigned.

2. Steamboat Springs (population 5,098),[1] seat of Routt County (population 13,404) is located in northwestern Colorado, approximately 180 kilometers (112 miles) northwest of Denver, Colorado.

3. In view of the fact that the assignment could provide a first local commercial channel to Steamboat Springs, we believe that the public interest would be served by assigning UHF Television Channel 24 to that community. Channel 24 can be assigned in conformance with the minimum distance separation requirements of Section 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Steamboat Springs, Colorado	24+

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8078 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-802; RM-4800]

TV Broadcast Stations in Key West, FL

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: Action taken herein assigns VHF Television Channel 3 to Key West, Florida, as its third commercial television assignment, in response to a petition filed by Contemporary Communications.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, Television Broadcast Station (Key West, Florida); MM Docket 84-802, RM-4800.

Adopted: March 11, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 34256, published August 29, 1984, in response to a petition filed by Contemporary Communications ("petitioner"). The *Notice* proposed the assignment of VHF television channel 3 to Key West, Florida, as its third commercial television channel. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if assigned. No other comments were received.

2. Key West (population 24,382) [1] seat of Monroe County (population 63,188), is located at the southern tip of Florida approximately 200 kilometers (125 miles) southwest of Miami, Florida.

3. In view of the fact that the assignment could provide a third local commercial channel to Key West, we believe that the public interest would be served by assigning VHF Television Channel 3 to that community. Channel 3 can be assigned in conformance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Key West, Florida	3+, 16+, and 22+.

5. It is further ordered, that this proceeding is terminated.

[1] Population figures are taken from the 1980 U.S. Census.

[1] Population figures were taken from the 1980 U.S. Census.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8079 Filed 4–3–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–893; RM–4793, RM–4873]

TV Broadcast Stations in Las Vegas and Paradise, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 33 to Las Vegas, Nevada, at the request of William A. DiMeolo, as that community's seventh local television allocation and UHF TV Channel 39 to Paradise, Nevada, as that community's first local television allocation, at the request of Silver State Communications, Inc.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, [202] 634–6530

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Las Vegas and Paradise[1], Nevada); MM Docket No. 84–893, RM–4793, RM–4873.

Adopted: March 11, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 38679, published October 1, 1984, seeking comments on the request of William A. DiMeolo ("DiMeolo") to assign UHF TV Channel 33 to Las Vegas, Nevada, as that community's sixth commercial broadcast service. Silver State Communications, Inc. ("SSCI") filed a counterproposal requesting the assignment of Channel 33 to Paradise, Nevada, as that community's first local television allocation.[2] Comments and reply comments were filed by DiMeolo and Las Vegas Electronics, Inc. ("Electronics"), an applicant for FM Channel 281 at North Las Vegas, Nevada.

2. Las Vegas (population 164,674,[3] the seat of Clark County (population 463,087), is located in southern Nevada, approximately 400 kilometers (250 miles) northeast of Los Angeles, California. Paradise is an unincorporated "Census Designated Place" adjacent to the southern boundary of Las Vegas, with a population of 84,818 persons.

3. SSCI states that Paradise, an "unincorporated town" with definite geographical boundaries, is located within the Las Vegas Standard Metropolitan Statistical Area ("SMSA"). With no television stations currently licensed to Paradise, SSCI contends that the assignment of Channel 33 could provide an opportunity for the provision of a first local TV transmission service for the community's residents. It states that it will apply for Channel 33, if it is not granted a construction permit for FM Channel 281 at North Las Vegas.[4]

4. DiMeolo filed comments reiterating his intent to apply for Channel 33 at Las Vegas and opposing SSCI's counterproposal. DiMeolo contends that Paradise is a largely residential and underdeveloped area on the southern boundary of Las Vegas. He claims that SSCI has made no showing that Paradise is a "principal community" for assignment purposes under § 73.1120 of the rules. DiMeolo states that television stations, unlike radio, provide regional rather than local service, and therefore any station, whether assigned to Las Vegas or Paradise, would, in effect, serve the same area. Therefore, he is concerned that should we determine that Paradise is a community for assignment purposes and allocate Channel 33 there, the new station would be forced to compete with stations identifying with the larger and well-known community of Las Vegas.

5. Regardless of the Commission's determination as to the status of Paradise as a community, DiMeolo and Electronics both argue that SSCI's counterproposal should be denied as it has failed to provide an unqualified statement of intent to apply for the channel, if assigned. They argue that SSCI's unwillingness to apply for the television channel until the North Las Vegas FM proceeding is concluded could delay initiation of the new service indefinitely. Electronics also questions the true intent behind SSCI's counterproposal, stating that SSCI is arguing in the North Las Vegas FM proceeding that Paradise is not the type of community which deserves a section 307(b) preference while urging the opposite result here.

6. We reject DiMeolo's contention that Paradise does not qualify as a "community" for assignment purposes. Although unincorporated, it is listed in the 1980 U.S. Census and credited with an increase in population of 246.5% since the 1970 Census. Although this in itself is not always dispositive, the fact that the Commission has already licensed an AM station to serve Paradise and recommended that an FM station also be similarly licensed, clearly indicates that Paradise does meet the Commission's definition of a "community" for assignment purposes.

7. DiMeolo and Electronics are correct in their assertion that the Commission will not assign a broadcast channel without a statement of intent to apply on the part of the petitioner. While it is true that SSCI has conditioned its intent upon a final FCC ruling in the North Las Vegas FM proceeding, we do not believe that awaiting such a decision will entail the lengthy delay envisioned by DiMeolo and Electronics. Exceptions to the Initial Decision have been filed, oral argument has been held before the Review Board, and their ruling should be issued in the near future. We have not been presented with any facts which would lead us to believe that SSCI will pursue its FM application beyond this point, as propounded by DiMeolo and Electronics. Therefore, we feel that SSCI's statement of intent can now be considered as meeting our requirements. We believe that SSCI will proceed promptly should Paradise receive its first local television allocation.[5]

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[1] This community has been added to the caption.

[2] Public Notice of the filing of the counterproposal was given on November 23, 1984, Report No. 1486.

[3] Population figures are derived from the 1980 U.S. Census.

[4] SSCI is one of six mutually exclusive applicants for use of Channel 281 at North Las Vegas (MM Docket Nos. 83–858, *et al.*). All but one of the parties specify North Las Vegas as their proposed community of license, with Las Vegas Electronics, Inc. specifying Paradise instead. On August 29, 1984, an Initial Decision was issued recommending that Las Vegas Electronics be awarded the construction permit.

[5] Electronics contends that should SSCI ultimately prevail in the FM proceeding, it would not be permitted to apply for the television allocation under the Commission's rules. SSCI may also be operating under this belief. The Commission's cross-ownership rules generally prohibit the common ownership of FM and TV stations in the same community. However, an exception to this rule is made where the TV station is in the UHF band. In such cases, the Commission will determine if the application should be granted on a case-by-case basis. See § 73.3555, Note 4.

8. With the above issues now resolved, we believe that both communities could benefit from the assignment of a television channel. An engineering study has been performed and we have found that Channel 33 can be assigned to Las Vegas, as proposed, and Channel 39 can be assigned to Paradise. Both channels can be assigned in compliance with the Commission's minimum mileage separation and other technical requirements. Accordingly, it is ordered, that effective May 6, 1985, the Television Table of Assignments, Section 73.606(b) of the Rules, is amended with respect to the communities listed below, to read as follows:

City	Channel No.
Las Vegas, Nevada	3, 8–, *10+, 13–, 15+, 21+, and 33+.
Paradise, Nevada	39+.

9. It is further ordered, that this proceeding is terminated.

10 For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 46 Stat., as amended, 1066, 1082; 4 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8080 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 48–789; RM–4810]

TV Broadcast Stations in Anchorage, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 33 to Anchorage, Alaska, as that community's seventh local television broadcast service, at the request of Brown Resources, Inc.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Anchorage, AK); MM Docket No. 84–789, RM–4810.

Adopted: March 11, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 33464, published August 23, 1984, proposing the assignment of UHF Television Channel 33 to Anchorage, Alaska, as that community's seventh local television broadcast service, at the request of Brown Resources, Inc. ("petitioner"). Petitioner filed supporting comments affirming its intention to apply for the channel, if assigned.

2. Anchorage (population 174,431) [1] in Anchorage Borough (population 174,431), is located on the coast of south central Alaska. Currently, it is served by six VHF television stations, KTUU (Channel 2); KTBY (Channel 4); Channel 5 (vacant and unapplied for); KAKM (Channel *7); KTVA (Channel 11); and KIMO (Channel 13).

3. The Commission believes that the public interest would be served by the assignment of UHF TV Channel 33 to Anchorage, Alaska, as that community's seventh local television broadcast service. The channel can be assigned in compliance with the Commission's minimum mileage separation and other technical requirements.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Anchorage, AK	2–, 4–, 5, *7–, 11, 13–, and 33.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

[1] Population figures were extracted from the 1980 U.S. Census.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8093 Filed 4–3–85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84–891; RM–4794]

TV Broadcast Stations in Fort Bragg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns VHF Television Channel 8 to Fort Bragg, California, and deletes UHF Television Channel 17 from that community, in response to a petition filed by California Communications Group. The assignment could provide a first local television service for Fort Bragg.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Fort Bragg, California); MM Docket No. 84–891, RM–4794.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 38678, published October 1, 1984, in response to a petition filed by California Communications Group ("petitioner"). The *Notice* proposed the assignment of VHF Television Channel 8 to Fort Bragg, California, as that community's first television broadcast service. Petitioner filed comments in support of the *Notice* and restated its intention to apply for the channel, if assigned.

2. Fort Bragg (population 5,019), [1] in Mendocino County (population 66,738), is located on the California Coast, approximately 230 kilometers (142 miles) northwest of San Francisco. The requested channel could provide the first television broadcast service for the

[1] Population figures are from the 1980 U.S. Census.

community. The channel can be assigned consistent with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

3. The *Notice* also proposed the deletion of UHF Television Channel 17 from Fort Bragg. Although Channel 17 is assigned to Fort Bragg, it has been unavailable for television use since 1970 when the Commission designated UHF Channels 14–20 for shared use in land mobile communications service.[2] Accordingly, since Channel 17 is unavailable to Fort Bragg and there appears no useful purpose in retaining it in the Table, we shall delete the channel herein.

4. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for first local service in that community. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below:

City	Channel No.
Fort Bragg, CA	8–

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8094 Filed 4–3–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–715; RM–4787]

TV Broadcast Stations in Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 43 to Wiggins, Mississippi, as its first TV assignment, in response to a petition filed by South Mississippi Broadcasting Company, Inc.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Wiggins, Mississippi); MM Docket No. 84–715, RM–4787.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 30548, published July 31, 1984, issued in response to a petition filed by Community Broadcasting Company, Inc.[1] ("petitioner"), proposing the assignment of UHF Television Channel 43 to Wiggins, Mississippi, as its first TV service. In response to the *Notice*, petitioner filed comments and restated its intention to apply for Channel 43 at Wiggins, if assigned.

2. Wiggins (population 3,205),[2] seat of Stone County (population 9,176), is located in southern Mississippi, approximately 150 kilometers (90 miles) northeast of New Orleans, Louisiana.

3. In view of the fact that the assignment could provide a first television service to Wiggins, we believe that the public interest would be served by assigning UHF Television Channel 43 to that community. The assignment conforms to the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 0.204(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Wiggins, MS	43–

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8096 Filed 4–3–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–722; RM–4769, RM–4842]

TV Broadcast Stations in Manteo, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns VHF TV Channel 4 to Manteo, North Carolina, as that community's first local television assignment, at the request of Virginia B. Whichard.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Manteo, North Carolina); MM Docket No. 84–722, RM–4769, RM–4842.

Adopted: March 11, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 30755, published August 1, 1984, proposing the assignment of VHF TV Channel 4 to Manteo, North Carolina, as that community's first local television assignment. The *Notice* was issued in response to a petition filed by Virginia

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[2] See, *First Report and Order*, Docket 18261, 23 R.R. 2d 325, 343–344, 359 (1970).

[1] The petitioner is now known as South Mississippi Broadcasting Company, Inc.

[2] Population figures are extracted from the 1980 U.S. Census.

B. Whichard ("petitioner"). A separate petition was filed, on August 6, 1984, by Metro Telecasting ("Metro") requesting the assignment of Channel 4 to Nags Head, North Carolina[1] Metro subsequently requested its petition be withdrawn, upon learning it conflicted with the Manteo proposal and expressed an interest in the Manteo proposal. Petitioner filed supporting comments reaffirming her intention to apply for the channel, if assigned. Supporting comments were also filed by Capitol Broadcasting Company, licensee of Station WRAL-TV, Raleigh, North Carolina and jointly by Tommy J. Payne and Jesse Cowan ("Payne and Cowan").[2]

2. Manteo (population 901),[3] the seat of Dare County (population 13,377), is located on the Outer Banks of North Carolina, approximately 108 kilometers (68 miles) southeast of Virginia Beach, Virginia.

3. In view of the above, we believe the public interest would be served by the assignment of VHF TV Channel 4 to Manteo, in order to provide that community with its first local television service. The channel can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Manteo, NC	4

5. It is further ordered, that the petition of Metro Telecasting requesting the assignment of Channel 4 to Nags Head, North Carolina is dismissed and this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8097 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice (Report No. 1475) of the counterproposal was given on August 17, 1984.

[2] Payne and Cowan originally expressed their interest in the channel at Nags Head, North Carolina, and subsequently withdrew their comments.

[3] Population figures were taken from the 1980 U.S. Census.

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47 CFR Part 73

[MM Docket No. 84-716; RM-4761]

TV Broadcast Stations in Eugene, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 34 to Eugene, Oregon, as its fourth commercial TV assignment, in response to a comment filed by Telecasters of Eugene.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations. (Eugene, Oregon); MM Docket 84-716, RM-4761.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 31719, published August 8, 1984, issued in response to a petition filed by Sainte Broadcasting Corporation ("petitioner"), proposing the assignment of UHF Television Channel 34 to Eugene, Oregon, as its fourth commercial TV service. Petitioner filed comments reaffirming its intention to apply for the channel. However, Telecasters of Eugene did file supporting comments and indicated it would apply for the channel, if assigned.

2. Eugene (population 105,624) [1], seat of Lane County (population 275,226), is located in west central Oregon, approximately 160 kilometers (100 miles) south of Portland, Oregon.

3. In view of the fact that the assignment could provide a fourth commercial television service to Eugene, we believe that the public interest would be served by assigning UHF Television Channel 34 to that community. The channel can be assigned to Eugene, Oregon in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

PART 73—[AMENDED]

§ 73.606 [Amended]

4. Accordingly, pursuant to the authority contained in sections (i), 5(c)(1), 309 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the community listed below:

City	Channel No.
Eugene, OR	9+, 13, 16+, *28-, and 34.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8099 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census.

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47 CFR Part 73

[MM Docket No. 84-714; RM-4760]

TV Broadcast Stations in Medford, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF TV Channel 27 to Medford, Oregon, as that community's fourth commercial television channel, at the request of Sainte Broadcasting Corporation.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, [202] 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Medford, Oregon); MM Docket No. 84–714, RM–4760.

Adopted: March 13, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, (49 FR 30543, published July 31, 1984) adopted in response to a petition filed by Sainte Broadcasting Corporation ("petitioner"), proposing the assignment of UHF TV Channel 27 to Medford, Oregon, as that community's fourth commercial television channel. Petitioner submitted supporting comments reiterating its intention to apply for the channel, if assigned. Sunshine Television, Inc. ("Sunshine"), licensee of Station KDRV (TV), Medford, Oregon, submitted a counterproposal to assign Channel 22 in lieu of Channel 27 to Medford, and to assign Channels 19 and *25 to Klamath Falls, Oregon, the latter as a substitute for Channel *22. No oppositions to the proposal were received.

2. Sunshine proposes the substitution of Channel *25 for Channel *22 at Klamath Falls, Oregon and its reassignment to Medford, in order to operate a satellite station for Station KDRV in Medford. A staff engineering study indicates an alternate channel (Channel 31) can be assigned to Klamath Falls for use as a satellite station for Station KDRV. Therefore, the counter-proposal is being treated as a separate docket, with Channel 31 being proposed for Klamath Falls (RM–4874).

3. Medford (population 39,603) [1] county seat of Jackson County (population 132,456) is located in southern Oregon, approximately 370 kilometers (225 miles) south of Portland, Oregon. Medford currently has three commercial and one noncommercial education television stations.

4. We believe the public interest would be served by the assignment of Channel 27 to Medford, Oregon, as that community's fourth commercial television channel. The channel can be assigned in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules, with a site restriction of 17.4 miles north of Medford. The site restriction is required to avoid short-spacing to noncommercial educational Channel *20 in Yreka City, California.

[1] Population figures were extracted from the 1980 U.S. Census.

PART 73—[AMENDED]

§ 73.606 [Amended]

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Medford, OR	5, *8+, 10+, 12+, and 27.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8098 Filed 4–3–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 94

[PR Docket No. 83–426; FCC 85–53]

Authorizing Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* which expands the options available for sharing Private Operational-Fixed Microwave Radio Service (OFS) systems to include: the authorization of private carrier microwave systems to provide communication service to other Part 94 eligibles on a for-profit basis; and the lease of excess capacity on private OFS systems to Part 94 eligibles on a for-profit basis. This action is taken to enhance the availability of data communications for business, state and local governmental entities and assure more efficient use of available private microwave spectrum.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554..

FOR FURTHER INFORMATION CONTACT: Frederick J. Day or Joseph A. Levin, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave radio service, Radio.

First Report and Order

In the matter of amendment of part 94 of the Commission's rules and regulations to authorize private carrier systems in the private operational-fixed microwave radio service; PR Docket No. 83–426.

Adopted: January 31, 1985.
Released: April 1, 1985.

By the Commission: Commissioner Dawson concurring and issuing a statement; Commissioner Rivera issuing a separate statement at a later date.

Summary

1. On May 17, 1983 the Commission released a *Notice of Proposed Rule Making* in the above-captioned matter to permit the offering of a communications service on a commercial basis by eligibles in the Private Operational-Fixed Microwave Radio Service (OFS). In the *Notice* [1] the Commission proposed both (1) to permit licensees in the Operational-Fixed Microwave Service who had built microwave systems in order to meet internal telecommunications requirements to make excess capacity on their systems available to other entities on a for-profit basis; and (2) to establish a category of eligibility specifically for entrepreneurs who wished only to provide communications service to others on a private carrier basis. With respect to both the sale of excess capacity and the licensing of entrepreneurs to provide a communications service to others on a private carrier basis, the *Notice* stated that the service could be provided only to entities eligible under Part 94 of the Commission's Rules.[2]

[1] *Notice of Proposed Rule Making* in Docket No. 83–426 (FCC 83–172), adopted April 27, 1983, 48 FR 24,950 (June 3, 1983).

[2] 47 CFR Part 94. Part 94 of the Commission's Rules governs the licensing and operation of private operational-fixed microwave systems in frequency bands at 928–929 MHz and above 952 MHz.

Continued

2. Additionally, the *Notice* proposed to relax existing rules governing recordkeeping requirements for OFS systems used by two or more eligibles on a cooperative, non-profit basis, and to adopt specific rules to govern the multiple licensing of facilities in the Private Microwave Service.[3] Based on the record of this proceeding, and for the reasons discussed below, the Commission is adopting rules to establish private carrier service essentially as proposed.

Background

3. To place the issue of shared use of private microwave systems in its historical context, since the 1950's the Commission has allowed eligibles in the OFS to build private microwave systems for their own use, rather than employing common carrier service, and to share these systems on a non-profit, cooperative basis. In reviewing this matter in 1966, in Docket No. 16218, the Commission affirmed its conclusion that the building of these facilities and the sharing of them by those who were eligible served the public interest by enabling a greater number of entities to obtain the benefits of microwave communications without the expense of constructing their own independent systems. This served the public interest by encouraging the larger and more effective use of radio because it allowed persons to fashion the kinds of particularized communications networks they required to meet their specific needs.[4] The Commission also affirmed that joint use of private facilities resulted in more efficient utilization of microwave systems and conserved frequency spectrum and antenna sites.[5] In 1971 the Commission again looked at the sharing of private facilities and commenced a new proceeding (Docket No. 19309) to consider methods of further facilitating these types of joint-use approaches.[6]

4. During the same period, in the context of mobile services, the Commission concluded that the public interest was served by the establishment of a private carrier category of eligibility to enhance the options available to private service eligibles for satisfying their communications needs. Thus, in 1974, the Commission authorized private carrier SMR (Specialized Mobile Radio) systems in Docket No. 18262 for the 800 MHz private land mobile spectrum, [7] and in 1982, the Commission authorized private carrier paging systems at 900 MHz.[8] These public interest findings of the Commission were ratified in the Communications Amendments Act of 1982, when the Congress affirmed the desirability of private carrier offerings in the private land mobile radio services in furtherance of the public interest objectives they served.[9] In view of these developments and motivated by a public interest policy of providing a maximum number of ways under which eligible entities may avail themselves of efficient and effective radio communications, the Commission initiated this proceeding in May 1983 to explore the public interest in extending this private carrier approach to the private microwave bands.

5. Comments and reply comments in response to the issues raised in the *Notice of Proposed Rule Making* in this proceeding were submitted by the following parties:

Comments

Central Committee on Telecommunications of the American Petroleum Institute (API)
American Telephone and Telegraph Company (AT&T)
Association of American Railroads (AAR)
Autophone Communications and Electronics, Inc.
Bell Operating Companies (BOCs)
California Public Utilities Commission
Clark Equipment Company
County of Los Angeles
Crocker National Bank
Direct Broadcast Satellite Corporation
Harris Corporation (Farinon Division)
Hughes Aircraft Company (MCP)
Manufacturers Radio Frequency Advisory Committee (MRFAC)
May Department Stores Company
Kansas City Southern Industries, Inc. (KCSI)
MCI Communications Corporation
Municipality of Anchorage (d/b/a Anchorage Telephone Utility)
Northwest Energy Company
Special Industrial Radio Service Association, Inc. (SIRSA)
Strasburg Telephone Company (Strasburg, CO)
United States Independent Telephone Association (USITA)
Utilities Telecommunications Council (UTC)

Reply Comments

American Petroleum Institute
American Telephone and Telegraph Company
Bell Operating Companies
Combined Network, Inc. (Allnet)
Discount Long Distance, Inc., Interstate Communications, Inc., CommuniGroup, Inc., Long Distance Savers, Inc. (joint filing)
Kansas City Southern Industries, Inc.
Motorola, Inc.
Municipality of Anchorage
Public Service Company of Oklahoma
Utilities Telecommunications Council

Discussion

A. Spectrum Allocated for OFS Use

6. The *Notice of Proposed Rule Making* in this proceeding anticipated that all of the frequencies allocated to the Operational-Fixed Service would be made available for operation of the proposed private carrier communications services. The frequency bands allocated for OFS use are set forth below.[10]

Eligibility in Part 94 is limited to persons qualified for licensing in a radio service under either Part 81 (Stations on Land in the Maritime Service and Alaska-Public Fixed Stations); Part 87 (Aviation Services); or Part 90 (Private Land Mobile Radio Services). See § 94.5 of the Commission's Rules (47 CFR 94.5).

[3] Multiple licensing is a well-established practice in the private land mobile services. Under multiple licensing, eligibles using a particular transmitting facility do not own the equipment, but rather lease capacity on stations established by third-party equipment companies. All participants in a multiple licensing arrangement are licensed to use the stations in common, i.e., each user is allowed to operate the transmitters directly. The licensees pay the third-party equipment companies for the goods and services provided.

[4] *Report and Order in the Matter of Cooperative Sharing of Operational-Fixed Stations*, Docket No. 16218, 4 FCC 2d 406, 416–17 (1966).

[5] *Id.* at 417.

[6] *Memorandum Opinion and Order, Notice of Inquiry, and Notice of Proposed Rule Making*, Docket No. 19309, 31 FCC 2d 786 (1971). This proceeding was terminated without action in 1983. *See Order* (FCC 83–173), adopted April 27, 1983, 48 FR 27113 (June 13, 1983).

[7] *Land Mobile Radio Services, Second Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974); *reconsidered, Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945 (1975); affirmed on appeal *sub nom. NARUC v. FCC*, 525 F.2d 630 (D.C. Cir. 1976); *cert. denied*, 425 U.S. 992 (1976).

[8] *Second Report and Order*, Gen. Docket No. 80–183, 91 FCC 2d 1214 (1982).

[9] Communications Amendments Act of 1982, Pub. L. 97–259, 96 Stat. 1087 (September 13, 1982). The legislative history of this Act provides a discussion of the distinction between private and common carrier land mobile services. Conference Report No. 97–765, 97th Cong., 2nd Sess., August 19, 1982, at 54–56, *reprinted* in 1982 U.S. Code Cong. & Ad. News 2237, 2298–2300.

[10] The Operational-Fixed Service frequency bands, and limitations applicable to each band, are listed in § 94.61(b) of the Commission's Rules. The *Notice of Proposed Rule Making* in this proceeding did not propose to alter any of the restrictions contained in § 94.61(b). For example, note (25) to § 94.61, in conjunction with § 94.93, provides that OFS stations authorized in the 12,200–12,700 MHz band after September 9, 1983 are secondary to Direct Broadcast Satellite systems. Under the proposal, any new system which might be established in the 12,200–12,700 MHz band for the rendition of a private carrier communications

Continued

Frequency Band (MHz)	
928–929	12.700–13.250
952–960	13.200–13.250
1850–1990	17.700–18.820
2138–2150	18.820–18.870
2150–2160	18.920–19.160
2160–2200	19.160–19.210
2450–2500	19.260–19.700
2500–2690	21.200–23.600
6525–6875	31.000–31.200
10.550–10.680	38.600–40.000
12.200–12.700	Above 40.000

B. Leasing of Excess Capacity

7. The comments in this proceeding indicated substantial support for the proposal to permit Part 94 licensees to lease their excess capacity on a for-profit basis to other entities eligible in the Private Operational-Fixed Microwave Service.[11] Typical of the comments urging adoption of the proposal were those of the May Department Stores Company, which stated that permitting the sale of excess capacity would obviate the need for others to build redundant parallel microwave systems and would enable smaller business entities to take advantage of the efficiencies inherent in use of private microwave communications without the capital expenditures associated with constructing such a system. Supporting commenters also noted that the proposal would promote spectrum efficiency by allowing existing facilities to be used to maximum capacity, thereby avoiding the construction of unnecessary new microwave facilities or the assignment of additional spectrum to meet marginal communications requirements.

8. Of all the private microwave associations and users participating in this proceeding, only two entities expressed disapproval of the proposal. The Central Committee on Telecommunications of the American Petroleum Institute (API) and the Special Industrial Radio Service Association, Inc. (SIRA) both expressed concern that the potential for economic gain would cause a dramatic upsurge in the growth of new OFS systems in congested areas and thereby aggravate the spectrum scarcity problem for larger traditional users of this spectrum. API and SIRSA both suggested that those who were unable or unwilling to build their own systems should in most instances be required to satisfy their communications needs through common carrier service offerings. They argued that commercial communications offerings should be confined to common carriers and we should not authorize private carriage in the Private Operational-Fixed Service.

9. Two parties with common carrier interests, the Strasburg Telephone Company of Strasburg, Colorado and the United States Independent Telephone Association (USITA), also opposed the proposal. They argued that adoption of rules permitting leasing of excess capacity would encourage bypass of the local telephone exchange network, thereby placing undesirable pressures on local phone rates as private users migrate from the network. Strasburg feared that the effect of this migration of users from the carriers' revenue bases could be so severe that it would cause a reduction in the level of phone service provided to individual customers.

10. The comments of the Municipality of Anchorage (doing business as Anchorage Telephone Utility) and the State of California Public Utilities Commission disputed the conclusion reached in the *Notice* that Part 94 licensees engaging in the sale of excess capacity would be bona fide private licensees not subject to regulation as common carriers. Both parties contended that in many cases the carriers so authorized would be involved in purely intrastate communications. Since the proposal anticipates that private carriers would not be subject to common carrier regulations and since the private carriers are likely to provide intrastate service, both Anchorage and the California PUC contended that adoption of the proposal would violate section 2(b) of the Communications Act of 1934, as amended (47 U.S.C. 152(b)), by depriving states of their authority over intrastate communications.

11. The American Telephone and Telegraph Company (AT&T) did not comment on the merits of the proposal but noted that the proposal contemplates permitting private carriers to offer local distribution and intercity communications services to other entities. Such private carriers would, in AT&T's view, be in direct competition with the regulated services offered by AT&T and other common carriers. AT&T concluded that there would be little practical difference between private carriers and common carriers, except that private carriers could respond more quickly to market conditions than regulated common carriers. In the interest of fostering a truly competitive environment, AT&T therefore urged the Commission to act promptly on measures to decrease the regulatory burdens and restraints on common carriers, if it decides to implement the private carrier proposals. Similarly, the Bell Operating Companies (BOCs), though endorsing the proposals insofar as they would promote more efficient utilization of the spectrum, expressed concern that adoption of the proposals would be contrary to established Commission policy favoring market-specific regulation rather than carrier-specific or firm-specific regulation. The BOCs argued that adoption of the proposals without concomitant action to lift the regulatory burdens on exchange carriers would be tantamount to carrier-specific regulation since regulated exchange carriers would have to compete against unregulated private carriers in the same exchange access markets. To remedy the situation, the BOCs suggested that the Commission should either impose the current exchange carrier regulatory structure on private carriers or deregulate the exchange carrier services. The BOCs were skeptical that the exchange carriers would be deregulated in the short term, however, and therefore argued that the Commission should subject private carriers to the same regulatory structure as the exchange carriers.

C. Licensing of Entrepreneurs Under Part 94 to Provide a Commercial Private Communications Service

12. Seven commenters filed comments supporting the proposal to license entrepreneurs to use the OFS spectrum for providing private carrier service to Part 94 eligibles. Nine commenters opposed this proposal.[12] Commenters

service under Part 94 would be on a secondary basis to DBS and would be required to make any adjustments necessary to prevent interference to DBS systems.

[11] Parties filing comments in favor of this proposal include the Utilities Telecommunications Council, Association of American Railroads, Manufacturers Radio Frequency Advisory Committee, Northwest Energy Company, Hughes Aircraft Company, County of Los Angeles, Harris Corporation (Farinon Division), Direct Broadcast Satellite Corporation, MCI Telecommunications Corporation, May Department Stores Company, Clark Equipment Company, Kansas City Southern Industries, Inc., Autophone Communications and Electronics, Inc., and Crocker National Bank. The proposal was opposed by six commenters: American Petroleum Institute, Special Industrial Radio Service Association, Inc., Strasburg Telephone Company, United States Independent Telephone Association, California Public Utilities Commission, and Anchorage Telephone Utility.

[12] Supporting the proposal were the County of Los Angeles, Hughes Aircraft Company, Clark Equipment Company, Crocker National Bank, Autophone Communications and Electronics, Inc., MCI, and Direct broadcast Satellite Corp. Opposing the proposal were UTC, AAR, Northwest Energy Company, API, SIRSA, Anchorage Telephone Utility, California Public Utilities Commission, USITA, and Strasburg Telephone Company. The comments of API, SIRSA, Strasburg, USITA, Anchorage Telephone Utility, California PUC, AT&T, and the BOCs summarized in paragraphs 7 to 11 above equally to the proposal to permit Part 94

Continued

who favored adoption of the proposal identified several benefits which would result from the licensing of private carrier offerings under Part 94: first, the private carrier concept would permit small business and local governmental entities to satisfy their particularized communications requirements, where possible, by sharing systems, thereby reducing everybody's costs while also assuring communications links in situations where common carriers would not provide service; second, the creation of private microwave carriers would eliminate the need to build redundant microwave facilities by eligibles who could afford to build their own systems and would if the private carrier approach were not permitted, thereby conserving spectrum; third, the efficiencies of data transmission technology, which is an increasingly essential component of our society in all of its aspects, would be available on a more widespread basis. Each of the commenters opposed to the proposal to permit licensees to lease their excess capacity also opposed the proposal to license entrepreneurs who would establish commercial communications systems for use by other eligibles. Additionally, the Utilities Telecommunications Council (UTC), the Association of American Railroads (AAR), and Northwest Energy Company, although supporting the concept of leasing excess capacity, opposed the proposal to permit the licensing of entrepreneurs. UTC noted that the OFS spectrum would be especially attractive to entrepreneurs because of its relative availability and the ease of entry into the OFS service. With the heightened level of competition in the common carrier market, UTC was concerned that the private radio spectrum not yet assigned to licensees will be completely consumed by entrepreneurs offering this alternative to common carrier service. To avoid depletion of the OFS spectrum and ensure spectrum availability in the future for essential entities such as power companies, UTC suggested that the Commission require that OFS licensees seeking to provide private carrier service first utilize some minimum percentage of their available microwave capacity for their own communications needs before being permitted to offer commercial service to other entities.

13. AAR commended the Commission for seeking to promote greater utilization of the OFS spectrum. However, it suggested that the inevitable competition for spectrum which would occur among Part 94 licensees if an economic motivation were injected into seeking private spectrum would result in squandering, not conservation, of spectrum. Likewise, Northwest Energy expressed concern that the proposal to establish entrepreneurs under Part 94 would generate widespread speculation in frequencies, resulting in the construction of OFS systems with little or no attempt to appraise the actual need for the frequencies. For this reason, Northwest Energy believed that adoption of the proposal would be detrimental to Part 94 eligibles having a need for spectrum to serve their own communications requirements.

licensees to sell excess capacity. The discussion of the views of these latter eight commenters will not be repeated here.

D. Legal Authority for Permitting the Sale of Excess Capacity and Authorizing Private Carrier Entrepreneurs

14. Relying on *National Association of Regulatory Utility Commissioners* v. *FCC* (NARUC I),[13] the *Notice of Proposed Rule Making* concluded that the Commission's legal authority to permit private carrier operation had been clearly established. Referring to the indicia of private carriage set forth in *NARUC I*, the *Notice* stated that like SMRS systems, private carrier microwave licensees would be likely to establish medium-to-long-term contractual relations with relatively stable clientele and that the private operators would likely tailor their offerings based on the personal and operational compatibility of potential users vis-a-vis the users already on the system.[14]

15. Some commenters disputed the conclusion that there was adequate legal authority for authorizing private carriers under Part 94. For instance, the Anchorage Telephone Utility noted that the Communications Amendments Act of 1982, which gave statutory recognition to SMRS, a type of private carrier authorized at 800 MHz, is limited by its explicit terms to the private land mobile services. Anchorage could find no other provisions in the Communications Act which would give the Commission statutory authority to implement private microwave carriers. Anchorage contended that the *NARUC I* analysis contained in the *Notice* misinterprets the Court's holding in that case. Anchorage noted that the *Notice* anticipates that private microwave carriers, if authorized, could permit bypass of the local telephone exchange and that this by definition would be tantamount to common carrier activity. In this way, Anchorage construed the Commission's recognition that private carriers would provide bypass service to Part 94 eligibles as an admission that the private carriers would actually be engaging in common carriage. Accordingly, Anchorage argued, the Commission's own conclusion that private microwave carriers would engage in telephone bypass renders *NARUC I* inappropriate, since the Court's decision was directed to a factual setting in which the issue of common carriage was then still unsettled.

16. Further, Anchorage finds a similarity between the type of service at issue in *Graphnet Systems*[15] and the service which would be offered by private carriers. In *Graphnet Systems*, the Commission considered whether Electronic Computer Originated Mail (ECOM), a service of the United States Postal Office which transmits communications electronically on a point-to-point basis using Western Union switching and communications facilities, was a common carrier activity. Anchorage noted that the Commission concluded that "ECOM is a quasi-public offering of a for-profit service which affords the public an opportunity to transmit messages of its own design and choosing" and determined that ECOM was a common carrier service. Anchorage argued that the proposed private microwave carrier service would constitute a common carrier activity under the Commission's rationale in *Graphnet Systems*, since OFS licensees would be transmitting information of the customers' own choosing for a fee.

17. The California PUC was doubtful that entrepreneurs licensed under Part 94 would, in practice, be able to satisfy the *NARUC I* test for private carriage. The PUC noted that in *NARUC II (National Association of Regulatory Utility Commissioners* v. *FCC*[16] the Court rejected the FCC's contention that interactive cable communications systems are not common carriers, holding that the "actual activities he carries on" are the decisive factors for purposes of establishing the operator's regulatory status. The PUC thought it likely that market conditions and competitive forces would encourage private carriers to offer their services indiscriminately to all eligible users. The

[13] 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

[14] *Notice*, 48 FR at 24951.

[15] *Memorandum Opinion and Order in the Matter of Request for Declaratory Ruling and Investigation by Graphnet Systems, Incorporated Concerning a Proposed Offering of Electronic Computer Originated Mail*, Docket No. 79-8, 73 FCC 2d 283 (1979).

[16] 533 F.2d 601 (D.C. Cir. 1976)

PUC stated that there is every reason to believe that private carriers will offer their services on a common carrier basis in competition with such traditional carriers as The Pacific Telephone and Telegraph Company, whose common carrier voice and data services are subject to state regulation. Further, the PUC argued that although private carriers may create different services for different types of users, their marketing practices would not be equivalent to the individualized private contracts with distinct classes of users found to be characteristic of private carriage in *NARUC I*.

18. Combined Network, Inc. (Allnet), Utilities Telecommunications Council, Kansas City Southern Industries, Inc. (KCSI), and other commenters argued that there is ample legal authority to support the Commission's proposals. Allnet pointed out that the Commission's proposals did not envision allowing private microwave licensees to make capacity available to the general public but rather restricted access to entities eligible under Part 94. Moreover, they would be limited to persons who, practically, could share the system. Allnet's reply comments also contended that both the California PUC and Municipality of Anchorage misinterpret *NARUC I* when they suggest that the principles fashioned by the Court are limited to the land mobile services. Allnet argued that the decision reached in *NARUC I* specifically addressed the distinction between common carriers and private carriers generally and developed a universal definition that can be applied as legal authority for all types of radio services.

19. The reply comments of KCSI observed that the holding in *NARUC I* specifically pointed out that the Commission could, within its discretion, impose on any particular carrier the obligations inherent in common carrier status or decline to do so where it reasonably concludes that the carrier will not offer service in an indiscriminate manner. KCSI stated that it would be entirely appropriate for the Commission to conclude that an OFS licensee selling excess capacity is performing a private carrier function since it would not be holding itself out to serve one and all, would not be a dominant carrier, and would not be tariffing its services. Further, KCSI contended that the *NARUC II* decision, when applied to the question of private microwave carriers, does not alter the outcome which would be reached through the *NARUC I* analysis. In *NARUC II*, KCSI noted, the Court expanded the *NARUC I* test to include consideration of whether the customer transmits intelligence of his own design and choosing. KCSI cautioned, however, that *NARUC II* does not suggest that carriers which do not control the message are necessarily common carriers. KCSI disputed Anchorage's assertion that carriers providing alternative local telephone exchange service are de facto common carriers. KCSI also observed that *Graphnet Systems* involved an offering of Electronic Computer Originated Mail that was clearly indiscriminate in nature, whereas the Commission determined that Part 94 private carriers would not engage in indiscriminate service offerings.

20. In a similar vein, UTC noted that the intent underlying the Commission's proposals is clearly that the acceptance and terms of any for-profit-sharing arrangement will be a matter of negotiation between concerned parties, and that at the outset, the licensee will have complete discretion whether to enter into such an arrangement. UTC urged the Commission to include in the regulations to be adopted an affirmative statement that the licensees retain complete authority to accept or terminate the leasing agreements. In UTC's view, such a statement would establish beyond doubt that private carriers would be under no legal compulsion to serve customers indifferently. UTC also stated that if the Commission were to insist that licensees use some minimum threshold level of their systems' capacity for their own communications before being able to offer service to others, there would be clearly no expectation of an indifferent holding out to the eligible user public. UTC believed that private carrier microwave licensees who must use their systems to carry significant level of their own communications would necessarily be precluded from making an indiscriminate offering to the public at large and therefore would be indisputably in compliance with the requirements of *NARUC I*. Moreover, UTC observed, shared for-profit use of OFS systems is feasible only in particularized situations where persons have communications needs along substantially the same routes. Since existing systems have physical and engineering constraints that limit the scope of any excess capacity offering, UTC concluded, the sale of excess capacity by its nature would be available only to a confined category of customers. Therefore, UTC observed, private carrier microwave licensees would be likely to establish medium-to-long-term contractual relations with a relatively stable clientele, similar to the private carrier SMRS services addressed in *NARUC I*.

E. Potential for OFS Systems to be Used for Bypass of the Exchange Network

21. The *Notice of Proposed Rule Making* noted that OFS facilities are potentially useful for exchange bypass and specifically asked for comments on this point. The *Notice* stated that existing OFS facilities would appear to represent the type of facilities which would be economical as compared with alternative local telephone facilities, wholly apart from the effects of access charges under the *Access Charge Order*.[17] The *Notice* indicated, however, that the Commission did not have specific information on this point or on the effects of the construction of private carrier facilities.[18]

22. The Bell Operating Companies (BOCs) expressed concern with the potential for use of private radio facilities primarily as an alternative to local carrier access facilities. The BOCs stated that offerings of private carrier access facilities could find a ready market among large users who are relatively small in number but who generate a disproportionately large percentage of telephone company revenues. The BOCs noted that the tariff structure set forth in the *Access Charge Order* shifts the cost of non-traffic sensitive plant recovery to end users over a five-year transition period. They further noted that it is important for the Commission to continue on this path to assure that the policies proposed for private carriers do not exacerbate the problem of uneconomic bypass.

23. The BOCs observed that the determination of an exchange carrier's exchange plant cost that is covered by interstate access charges must be in accordance with existing separations methodology. When the results of using existing separations methodology are coupled with the tariff requirements placed upon exchange carriers, the BOCs argued, the combined effect is likely to increase the "cost" for rate-making purposes of tariffed access service in comparison with the cost which private carriers might charge for comparable access service. This cost differential between exchange carrier service and private carrier service would occur, the BOCs maintained, even if the private carrier and the exchange carrier use the same technology. In the view of th BOCs, therefore, many

[17] *Third Report and Order* in CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1980).

[18] *Notice*, 48 FR at 24952.

customers would choose the less expensive private carrier to provide access service, thereby bypassing the exchange carrier. This result, according to the BOCs, would be a classic example of "uneconomic bypass."

24. In their reply comments, the BOCs expressed great concern with suggestions raised in the comments that private carriers should be permitted to act as the collectors of telecommunications traffic for delivery to a bypassing carrier on an intraLATA basis. [19] The BOCs said that the fundamental issue raised in this proceeding is whether the public interest would be served by the development of an "artificially induced uneconomic bypass."

25. The comments of the California PUC regarding bypass closely paralleled those of the BOCs. California noted that, as a result of the "bypass" which the proposals would engender and the "inevitable migration" of institutional telecommunications users to private carriers, the great proportion of users continuing to receive service from exchange carriers would be the smaller, less affluent customers. These remaining users would then have to cover the fixed costs of the telephone network through higher rates.

26. The Hughes Aircraft Company maintained that concerns about bypass of the local telephone carriers are misplaced. For over thirty years, private individuals have been permitted to build their own communications systems, rather than use common carriers, in recognition of the fact that the public interest is served by allowing business and state and local governments to tailor communications systems to meet their specific needs. Hughes stated that the proposals would not result in large-scale additional bypass, but that users would continue to build or use alternative systems in situations where it is economically or technically advantageous to do so. Hughes argued that the real solution to the bypass problem rests with the measures now being implemented by the Commission to reduce and ultimately eliminate the pricing distortions which create the incentive for uneconomic bypass.

27. Similarly, MCI was unsympathetic to the concerns about bypass raised by some commenters. MCI argued that the public interest is best served by promoting the development of efficient technological competition to the existing local distribution network. MCI maintained that the erection of regulatory barriers to the development and use of existing and new technologies, in the interest of precluding by pass, is contrary to sound national policy. In MCI's view, the increased competition for local distribution ultimately would do far more to protect local rates than restriction of such competition. Competition, MCI maintained, would provide incentives for the local telephone companies to offer innovative, efficient access service based on cost and will force the exchange carriers to modernize their facilities in order to compete effectively for their share of the market, thus improving the over-all national well-being in this new information age.

28. KCSI argued in its comments that the Commission was considering the bypass problem in the Access Charge proceeding and that it would be inappropriate to consider the bypass issue at length in the instant proceeding. Further, KCSI stated that, at this point, the Commission could only hypothesize about the possible impact of the proposals on bypass issues because the actual effect of bypass, if any, will be realized only at some distant point in the future. UTC argued that it would be inconsistent for the Commission to delay action on the proposals merely because some bypass of local exchange facilities could ensue. Economic bypass, UTC stated, is consistent with the Commission's pro-competitive policies articulated in the *Computer II* proceeding. [20]

F. Preemption of State Regulation

29. The Municipality of Anchorage argued in its comments that the proposed rules attempt to provide the Commission with jurisdiction over matters which the Communications Act has specifically reserved for the states. Anchorage cited section 2(b) of the Act [21] and relevant case law for the proposition that the nature of the communications rather than the location of the facilities through which they pass is determinative of the ultimate regulatory jurisdiction. Anchorage maintained that by adopting the proposed rule the Commission would be attempting to exercise jurisdiction over communications which are completely intrastate in nature and which are therefore beyond the Commission's jurisdiction. In Anchorage's view, private carriers must necessarily be categorized as common carriers under the *NARUC I* and *NARUC II* court decisions. According to Anchorage, the Commission clearly has statutory authority to allow the use of private radio facilities for common carrier operations on an interstate basis, but is precluded by section 2(b) from preempting the jurisdiction of the states concerning entry and rate regulation of Part 94 carriers operating intrastate. Anchorage therefore argued that the decision of whether to authorize any new carriers to provide microwave communications on an intrastate basis rests exclusively with the state public utilities commissions.

30. The California PUC expressed concerns similar to those of the Municipality of Anchorage, maintaining that the states must not be prevented from promoting the creation of innovative communications services and from protecting the maintenance of universal service. California asserted that states, being sensitive to local needs and local concerns, must retain the authority they now possess to assert regulatory control over carriers operating within their boundaries.

31. KCSI, in its reply comments, disputed Anchorage's assertion that communications which are totally intrastate in nature are beyond the Commission's jurisdiction. If this were true, KCSI stated, every low power radio device, every private digital termination system offering purely local service, all local cellular-subscriber to local cellular-subscriber calls, and many other purely intrastate activities would be beyond the Commission's jurisdiction. To the contrary, KCSI contended, state jurisdiction is carefully circumscribed by the Communications Act to embrace only certain narrow and specific circumstances set out in sections 2(b) and 221(b). [22]

32. UTC's comments urged the Commission, if it proceeds with the proposals, to adopt specific language clarifying that the states are preempted

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[19] Under the Modified Final Judgment in *United States* v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 103 S.Ct. 1240 (1983), the Bell Operating Company territory has been divided into 162 regions known as local access and transport areas, or LATAs. The Bell Operating Companies provide service within the LATAs, and interexchange carriers, including AT&T, provide service between the LATAs.

[20] *Final Decision* in Docket No. 20828, 77 FCC 2d 384, *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer & Communications Industry Ass'n* v. *FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S.Ct. 2107 (1983).

[21] Section 2(b) states "nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier. . . ." 47 U.S.C. 152(b). " 'Common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio. . . ." 47 U.S.C. 153(h).

[22] 47 U.S.C. 152(b) and 221(b).

from imposing local regulations on for-profit private microwave arrangements. UTC recognized that the Communications Act does reserve some regulatory responsibility to the states for common carriage and specifically preempts the Commission from promulgating regulations concerning "charges, classifications, practices, services, facilities, regulations for or in connection with wire, mobile, or point-to-point radio telephone exchange service . . . ." [23] However, UTC argued that it is well settled that the Commission exercises sole and exclusive jurisdiction in the area of private carriage. UTC urged the Commission to adopt language which states explicitly the Commission's intention to preempt state regulation of private microwave carriers. Motorola concurred with UTC's suggestion that the Commission declare its intention to preempt state regulation of for-profit microwave sharing arrangements. Motorola believed that such clarifying language will prevent conflicts at the state level which might otherwise delay realization of the benefits inherent in the proposals.

G. "Market-Specific" Versus "Carrier-Specific" Regulation

33. The comments of AT&T and the Bell Operating Companies argued that the private radio regulatory status proposed for carriers authorized under Part 94 would violate the principles established in the competitive carrier rule making proceeding. [24] In that proceeding, AT&T observed, the Commission recognized the inequity of giving one group of competitors an advantage over other providers of a similar service. In this regard, AT&T suggested that private carriers will be able to respond to market conditions more quickly than regulated common carriers and, as a result, private carriers will enjoy a competitive advantage that is due solely to regulation. This theme was echoed by the Bell Operating Companies, which maintained that authorizing private carriers to provide essentially the same service as common carriers is an example of the type of firm-specific or carrier-specific regulation which has been rejected consistently by the Commission in the past.

34. To remedy the situation, the BOCs urged the Commission to place the private carriers and the exchange carriers on an equal footing with respect to regulatory constraints. One alternative, the BOCs stated, would be to subject private carriers to the current common carrier regulatory structure, thereby requiring private carriers to tariff any service which they offer. A second approach would be to lift promptly the existing regulatory burdens and restrictions placed on the exchange carriers. The BOCs cited the Commission's recent action in BC Docket No. 82-536 [25] as a model for equal treatment of entities providing comparable services. In that proceeding, the BOCs stated, the Commission recognized that it was not in the public interest to give FM broadcasters a competitive advantage based entirely on regulatory action over common carriers offering a similar service. Accordingly, the Commission held that FM broadcasters offering non-broadcast services would be treated in the same manner and with all of the same benefits, obligations and responsibilities as the providers of similar services. [26]

35. The BOCs stated that severe restrictions in terms of pricing, marketing, and entry and exit are characteristic of the existing common carrier regulatory structure. These restrictions may work to deprive regulated entities of the flexibility to respond to market forces in a timely fashion. The BOCs argued that when regulation is imposed in a competitive market, the regulated entity is in effect regulated twice, once by competitive elements and once by the regulating authority. On the other hand, private carriers, a service which the BOCs view as the functional equivalent of the local exchange, would be subject only to the natural regulatory forces of the marketplace.

H. Depletion of OFS Spectrum

36. Several commenters suggested that the Commission's proposals, rather than achieving the stated purpose of conserving microwave spectrum and promoting more efficient utilization of OFS facilities, actually will deplete the remaining available spectrum. This is so, argued the Municipality of Anchorage, because the proposals offer greatly increased incentives for establishing new microwave systems. Under the proposed rules, Anchorage claimed, the Commission will not be able to examine the actual need for the spectrum which applicants for private carrier systems will seek to use. In Anchorage's view, the Commission will be obliged to grant almost any application for OFS frequencies, since an applicant will always be able to justify its requests for spectrum simply by claiming that there is a market for additional microwave capacity.

37. The American Petroleum Institute agreed with these concerns, maintaining that public interest considerations require the Commission to ensure that suitable microwave spectrum remains available to satisfy the traditional private telecommunications requirements. API feared that entrepreneurs will apply for licenses on a speculative basis in the hope of later developing a market for their service. This diversion of frequencies for commercial purposes, API stated, is incompatible with the Commission's obligation to make sure that frequency assignments will be available for the critical public safety, transportation and energy industry requirements. API contended that the record already developed in Docket No. 82-334 [27] has shown conclusively that sufficient microwave spectrum is not now available to accommodate known needs in critical areas. Likewise, SIRSA, UTC and Northwest Energy Company urged the Commission not to authorize private microwave carriers on a purely entrepreneurial basis in light of the existing congestion in the OFS spectrum in many parts of the country.

38. On the other hand, many commenters minimized the potential impact which private carriers would have on spectrum availability. Certain commenters lauded the proposals as an important element in efficient future use of the spectrum. MCI, for example, stated that it believed the proposals are likely to reduce the waste represented by unused system capacity. The Manufacturers Radio Frequency Advisory Committee contended that for-profit sharing of the OFS spectrum would assist in meeting the increased demand for service without creating further frequency congestion. By allowing existing facilities to be used to

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[23] 47 U.S.C. 221(b).

[24] *Further Notice of Proposed Rule Marking In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore* (Docket No. 79-252), 1981, 84 FCC 2d 445 (1981).

[25] *First Report and Order* (FCC 83-154), released May 19, 1983, 48 Fed. Reg. 28,445 (June 22, 1983).

[26] On reconsideration in Docket No. 82-536, however, the Commission preempted state entry regulation of common carrier FM subcarrier services. The Commission found that overriding public policy concerns necessitated federal preemption of state regulation over common carrier FM subcarrier services, even though the states would continue to regulate conventional radio common carrier paging services. *Memorandum Opinion and Order* (FCC 84-187), released May 2, 1984, 49 FR 19659 (May 9, 1984).

[27] *In the Matter of Establishment of a Spectrum Utilization Policy for the fixed and Mobile Services' Use of Certain Bands Between 947 MHz and 40 GHz.* See *First Report and Order* (FCC 83-393), released September 30, 1983, 48 FR 50722 (November 3, 1983).

maximum capacity, rather than requiring new facilities to be constructed to serve marginal requirements, spectrum efficiency would be increased measurably, MRFAC stated. Similar views were expressed by the May Department Stores Company, the BOCs, Combined Network, Inc., Harris (Farinon), KCSI, Crocker National Bank and others.

I. Leasing of OFS Capacity to Part 94 Eligibles

39. Kansas City Southern Industries, Inc. enthusiastically endorsed the private carrier proposals but urged that the rules ultimately adopted also permit KCSI to make its excess capacity available to an affiliated telephone reseller of MTS/WATS service. KCSI maintained that modification of the proposed rules to permit leasing to resale common carriers would substantially improve the spectral efficiency of its system by putting idle channel capacity to economic and productive use. KCSI stated that the spectral efficiencies which could be achieved are clearly in the public interest and will not cause technical, operating or economic harm to other OFS licensees or uses. To implement its proposal, KCSI proposed changes to Part 94 which would permit the leasing of excess capacity to entities affiliated with a Part 94 licensee, even if the affiliated entity did not itself qualify as an eligible user under the Private Operational-Fixed Service rules. KCSI also suggested that the Commission could, if it deemed it necessary, require that the leasing of OFS capacity to entities not eligible under Part 94 be on a secondary basis, subject to future withdrawal or other limitations necessary to meet the legitimate needs of OFS eligibles.

40. Similarly, Clark Equipment Company and Combined Network, Inc. urged the Commission not to restrict the leasing of OFS capacity to entities eligible under Part 94. Clark noted that great interest has been shown by competitive interexchange common carriers in leasing excess private capacity for the carriage of voice and data traffic between exchange networks. Clark argued that permitting the leasing of excess capacity to non-eligibles would promote efficient use of the spectrum and would help to promote competition in the common carrier industry.

41. UTC supported the proposal to limit the sale of excess OFS spectrum to Part 94 eligibles. UTC believed this limitation necessary to avoid depletion of the spectrum by entrepreneurs who could otherwise make a wholesale offering of service to any interested party. Accordingly, UTC opposed the changes suggested by KCSI. UTC argued that Part 94 spectrum must be preserved for use by Part 94 eligibles and that the changes recommended by KCSI would violate this fundamental purpose of discrete allocations of spectrum for private and common carrier use. Further, UTC stated, expansion of the class of permitted recipients of OFS service to include common carriers would deplete scarce private microwave spectrum and blur the important legal distinction between private and common carriage. API also opposed the suggestion that the Commission permit the leasing of excess OFS capacity to entities not eligible under Part 94.

J. Leasing of Excess Capacity in the 928/952 MHz, 1850–1990 MHz and 6525–6875 MHz Bands

42. In an *ex parte* presentation in this docket, UTC urged the Commission to permit Power Radio Service eligibles to lease their excess capacity on the 928 MHz and 952 MHz multiple address frequencies to all Part 94 eligibles. Under current rules, twenty sets of 25 kHz-wide frequency pairs at 928 MHz and 952 MHz are allocated exclusively to the Power Radio Service for use in multiple address electric, gas, water, or steam utility system operation.[38] UTC stated that while it continues to support the restriction in the proposed § 94.17(a) which limits sharing to those entities eligible in their own right to use the channels, this limitation would not be desirable with respect to the 928/952 MHz multiple address channels. UTC argued that these multiple address channels, under the proposed rules, could be shared only with other Power Radio Service eligibles. In this respect, UTC claimed, the 928/952 MHz frequencies are unique, unlike other OFS frequency bands which could be used by all other Part 94 eligibles, or in the case of the 1850–1990 MHz and 6525–6875 MHz bands, by at least a substantial portion of the Part 94 eligibles.[39]

43. Moreover, UTC stated that these multiple address channels, unlike regular point-to-point frequencies, have the capability of addressing most of the residences in a utility's operating area. Accordingly, UTC believes that non-Power Radio Service entities eligible under Part 94 generally, such as burglar alarm companies, might find it beneficial to use reserve capacity on multiple address systems licensed to Power Radio eligibles. UTC therefore suggested that the Commission adopt a footnote specifically addressed to these 928 MHz and 952 MHz frequencies to permit a utility having its own requirements for the frequencies to share excess capacity with other Part 94 eligibles.

44. In contrast to UTC's proposal that Power Radio Service licensees be permitted to lease excess miltiple address capacity to non-power radio eligibles, UTC urged the Commission not to adopt a similar approach with respect to the leasing of excess capacity on the 1850–1990 MHz and 6525–6875 MHz bands to Business Radio Service eligibles. As noted above, under current rules these two bands are not available to entities whose basis for eligibility in the Private Microwave Service stems solely from their operation of a commercial activity. UTC contended that it would not be appropriate for the Commission to relax this restriction pertaining to Business Radio Service eligibles. Accordingly, in UTC's view, licensees of systems at 1850–1990 MHz and 6525–6875 MHz should not be permitted to lease excess capacity to entities whose only basis for eligibility is the Business Radio Service. The Association of American Railroads and the American Petroleum Institute supported UTC on this point, arguing that permitting the leasing of excess capacity at 1850–1990 MHz and 6525–6875 MHz to Business Radio Service eligibles would place intolerable demands for spectrum on bands that are already heavily congested in many areas.

K. Leasing of Excess Capacity by Common Carriers Licensed for Systems in the Private Microwave Service

45. The Association of American Railroads urged the Commission to modify the proposed rules to prohibit common carriers who operate private microwave facilities for the conduct of their own business from leasing excess capacity on a commercial basis. AAR noted that common carriers are eligible under Part 94 to establish OFS systems for their own internal communications. AAR expressed concern that if common carriers were permitted to lease excess capacity on these systems to other entities, the carriers might use the OFS system for routing what would otherwise be common carrier message traffic subject to regulation under Part 21 of the Commission's rules.

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[38] *See* §§ 94.65(a)(1) and 90.63 of the Rules. 47 CFR 94.65(a)(1) and 47 CFR 90.63.

[39] Under the provisions of § 94.61(b), note 15, the 1850–1990 MHz and 6525–6875 MHz frequency bands are not available to entities whose sole basis for eligibility in the Private Operational-Fixed Microwave Service is under § 90.75(a)(1) of the Rules relating to the Business Radio Service.

46. Both AT&T and the Bell Operating Companies vigorously opposed AAR's proposal. AT&T stated that there is no reason to prevent common carriers from enjoying a business opportunity that would be available to other Part 94 eligibles. Further, AT&T declared that allowing common carrier entities to provide private carrier service would have the distinct benefit of offsetting, to some extent, the competitive advantage private carriers would have over common carriers and would mitigate in part the effects of both the local and intercity bypass opportunities which would result from the adoption of the proposals.

47. Similarly, the BOCs argued that if the Commission adopts the proposals, all Part 94 eligibles, including common carriers, should be able to resell capacity on systems licensed under Part 94. The BOCs urged that if a common carrier entered the private carrier market, such entry should be viewed as outside common carrier regulatory review. In particular, stated the BOCs, there should be no artificial constraints on rate of return regarding the provision of such services. Additionally, the BOCs argued that depreciation on equipment used to provide the private carrier services should be at the same rate as that accorded other private carriers and not calculated on a regulated basis.

L. Cooperative Sharing Agreements and Annual Cooperative Use Reports

48. Under current Rule § 94.17, licensees entering into non-profit cooperative sharing of their OFS facilities with other Part 94 eligibles must file with the Commission copies of the written contracts implementing such sharing arrangements. Also, the licensees are required to file annual financial reports with the Commission to verify that the sharing was on a non-profit basis. The *Notice of Proposed Rule Making* in this proceeding recognized that if the Commission adopted the proposals for private carriage, the recordkeeping requirements relating to cooperative sharing arrangements would appear to be unnecessary. The *Notice* stated that since a licensee could elect to operate either as a cooperative or as a private carrier, it would appear inappropriate to impose rigorous recordkeeping burdens on cooperatives or to constrain the ways in which private service eligibles could share their costs.[30]

49. No commenters responding to the *Notice of Proposed Rule Making* voiced any objection to the proposal to delete the requirement for filing cooperative sharing agreements and annual reports. Though not all commenters specifically addressed this aspect of the *Notice*, those who did consider it unanimously supported deletion of the filing requirements.

Decision

50. In the traditional telecommunications environment, private microwave radio systems have played a role that is beneficial to society. Private microwave systems have served as useful alternatives to common carriers, where common carriers could not or would not provide the necessary service, by making available an effective communications capability designed to meet the unique needs of the user. At the same time, however, the typical private microwave system is constructed with sufficient capacity to meet the future needs of the licensees as they are expected to develop over a period of years. This process of planning OFS systems to ensure that they will be capable of meeting the long-term growth in a user's communications requirements means that, initially, the system capacity exceeds existing needs. In an economic sense, the communications capacity not exploited during the early years in the operation of a system represents a resource that has been wasted.

51. The Commission has long been concerned with regulations which impede rather than promote development of the full potential for the efficient and effective use of the radio spectrum because the Congress itself recognized in the Communications Act that through the greater use of radio, the public well-being of the nation as a whole is served. Economic waste results when the rigidity of the regulatory structure discourages technological innovation or maintains the price of services at an artifically high level. In proposing to permit private carriers to operate on frequencies allocated for the Private Operational-Fixed Microwave Service, the Commission was motivated by a desire to promote more efficient use of the OFS Spectrum. After careful consideration of the comments in this proceeding, we have determined that the establishment of private carriers under Part 94 of the Commission's Rules would serve the public interest. We see a clear public benefit in authorizing Part 94 licensees to lease their excess capacity to other entities eligible under Part 94.[31] Further, for the reasons enunciated below, we conclude that it is in the public interest to license entrepreneurs to establish private operational-fixed stations for the sole purpose of leasing communications capacity to others on a private carrier basis.

A. Legal Authority for Authorizing Private Microwave Carriers

52. Contrary to the contention of some commenters, we do not view the scope of *NARUC I* to be limited to the specific case of Specialized Mobile Radio Systems. Rather, the Court's decision reveals a deliberate attempt to fashion a generic definition of common carriage. The Court considered at length the statutory definition of "common carrier" and concluded:

> (w)hether the common carrier concept is invoked to support strict tort liability or as a justifying basis for regulation, it appears that the critical point is the quasi-public character of the activity involved. To create this quasi-public character, it is not enough that a carrier offer his services for a profit, since this would bring within the definition private contract carriers which the courts have emphatically excluded from it. What appears to be essential to the quasi-public character implicit in the common carrier concept is that the carrier "undertakes to carry for all people indifferently. . . ." [32]

Further, the Court concluded that "a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal." [33] Applying these principles to the concept of the SMRS, the Court noted that the nature of the dispatch services which an SMRS offers appeared necessarily to involve the establishment of "medium-to-long-term contractual relations" and a relatively stable clientele. The Court determined, therefore, that there would be little reason to expect any sort of indifferent holding out of services to the public, the prime characteristic of common carriage.[34]

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[30] *Notice*, 48 FR at 24961–962.

[31] Furthermore, we would not preclude any subsequent subleasing of excess capacity to Part 94 eligibles.

[32] 525 F.2d at 641 (footnotes omitted).

[33] *Id.*

[34] *Id.* at 643–44. The Communications Amendments Act of 1982, note 9 *supra*, implemented a new test for distinguishing private carriers from common carriers in the land mobile services. The new statutory test is based on the manner in which a multiple licensed or shared private land station is interconnected with a telephone exchange or interexchange service or facility. 47 U.S.C. 331(c)(1). The Congress intended this test to supersede the common law test of *NARUC I* for the land mobile services. The *NARUC I* standard continues as the prevailing test for all other radio communication services.

53. *NARUC I* establishes general principles which can be applied to distinguish private carriers from common carriers. We conclude that *NARUC I* is the appropriate mechanism for distinguishing fixed services offered by common carriers from fixed services provided by private carriers. The comments filed in this proceeding, together with our analysis of long-established operating practices among OFS users, convince us that private carrier microwave licensees will be likely to establish medium-to-long-term contractual relations with a relatively stable clientele. Indeed, we expect that the tendency for private microwave carriers to tailor their offerings based on the "personal and operational compatibility of a given applicant" vis-a-vis other users on the system will be even more pronounced than with regard to SMRS operations. We reach this conclusion in part because of the importance of reliable communications links to many private microwave system operators. Power companies, for example, tend to demand a reliability factor of 99.995 percent.[35] We feel that power companies will negotiate carefully when considering the leasing of excess capacity on their systems in light of the need to preserve high system reliability. The same is generally true of petroleum companies and other large system operators. Moreover, many OFS licensees are so heavily dependent upon reliable and secure microwave communications for reasons of safety and effective business operations that they install redundant microwave links along each transmission path to ensure continuity of operations in the event the primary system malfunctions. These system operators are likely to be most careful about allowing others to use their systems, given their concern, first and foremost, that they preserve the integrity of the system and the availability of the system for meeting their own communications needs. Therefore, consistent with NARUC I, the private microwave carriers will have a very strong incentive to select customers whose operations will be compatible with the communications of other users on the systems.

54. It seems clear, then, that the personal and operational compatibility of a given applicant with respect to the OFS system as a whole and other users will be one of the foremost considerations when a private carrier determines to make its system available to additional users. A private carrier would not be able, as a matter of practice, to hold itself out indiscriminately to serve the public without jeopardizing the system reliability and operational security essential to effective microwave communications.

55. Further, though Anchorage and the California PUC assume that private carriers will be the functional equivalent of common carriers, this is clearly not the case. Some OFS systems are used to serve remote areas which do not have the benefit of common carrier service. Additionally, common carriers by their very nature are entitled to provide service to any person or entity, whereas private carriers will be restricted to providing service to Part 94 eligibles within the confines of *NARUC I, supra.*[36] Therefore, we conclude that for-profit carriers in the Operational-Fixed Service will be private rather than common carriers under the principles established in *NARUC I.*

56. Moreover, we are not persuaded by arguments that the rationale applied in *Graphnet Systems, Inc.* governs the issue of the appropriate regulatory classification for carriers in the Operational-Fixed Service. In *Graphnet Systems,* it was clearly established that "(i)n offering ECOM, the Postal Service would thus be holding out to the *public* a single, integrated communications service, consisting of both transmission and delivery." (Emphasis added.)[37] The Commission's determination that Electronic Computer Originated Mail service constituted a common carrier activity was based on the fact that "ECOM is a quasi-public offering of a for-profit service which affords the public any opportunity to transmit messages of its own design and choosing."[38] Viewed from the perspective of *NARUC I,* there was no likelihood of medium-to-long-term contractual relations associated with the ECOM offering and no attempt to tailor the offering to individual customers to ensure personal and operational compatibility with other users. In short, the characteristics of the ECOM offering were quite different from the services involved here and did represent the offering of a common carrier service to the public. This will not be the case with private microwave carriers.

57. Similarly, we reject the California PUC's contention that the holding in *NARUC II* compels the conclusion that OFS carriers will operate as common carriers. We agree with KCSI that *NARUC II,* when applied to the question of private microwave carriers, does not alter the outcome reached through application of the *NARUC I* analysis. In *NARUC II,* the Court clearly spoke of two prerequisites of common carrier service: first, the expectation that the carrier will hold out its services to the public in an indifferent, nondiscriminatory manner; and second, that customers of the service transmit intelligence of their own design and choosing.[39] With respect to the first prerequisite, the Court explicitly stated:

> . . . it is the practice of such indifferent service that confers common carrier status. That is to say, a carrier will not be a common carrier where its practice is to make individualized decisions in particular cases whether and on what terms to serve.[40]

As stated earlier, a private microwave carrier's concern about protecting the security, reliability, economic viability and operational effectiveness of its system undoubtedly will preclude the carrier from indifferently holding out its service to the public. Therefore, the second part of the *NARUC II* test, standing alone, is is not determinative of common carrier status.

B. Leasing to Part 94 Eligibles

58. As noted in the discussion of issues, the comments of KCSI, Clark Equipment Company, and Combined Network, Inc. suggested that private carriers should not be limited to

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[35] This is higher than the level of reliability for most common carrier services.

[36] The similarities between the private carrier proposals and other recent Commission actions permitting the leasing of excess capacity on a private carrier basis were noted in the *Notice of Proposed Rule Making. See,* for example, *Report and Order* in BC Docket No. 81-741 (authorizing TV broadcast licensees to sell teletext capacity), FCC 83-120, released May 20, 1983, 48 FR 27054 (June 13, 1983); *Report and Order* in BC Docket No. 81-794 (permitting broadcast auxiliary microwave station licensees to lease capacity on a private carrier basis), FCC 83-153, released April 15, 1983, 48 FR 17061 (April 21, 1983); *Report and Order* in Gen. Docket No. 80-112 (permitting ITFS licensees to lease excess capacity on a private carrier basis), FCC 83-243, released July 15, 1983, 48 FR 33873 (July 26, 1983); *First Report and Order* in BC Docket No. 82-536 (permitting FM radio station licensees to lease subchannels on a private carrier basis), FCC 83-154, released May 19, 1983, 48 FR 28445 (June 22, 1983).

[37] 73 FCC 2d at 290. Under the ECOM (Electronic Computer Originated Mail) proposal, a customer would "prepare its messages in electronic form and transmit them over communications channels to Western Union's facilities. . . . Western Union, employing its switching and communications facilities, will then transmit the messages to appropriate destination post offices as indicated by the zip coding. There, Western Union provided printers will convert the messages to hard copy form for physical delivery by postal employees." *Id.* at 284.

[38] *Id.* at 289.

[39] 533 F.2d at 608-09.

[40] Id.

providing service to Part 94 eligibles. KCSI seeks authority to lease excess capacity to resale common carriers, while Clark stated that competitive interexchange common carriers are interested in leasing excess private capacity. We are unable at this time to conclude that allowing OFS licensees to sell excess capacity to common carriers and other non-Part 94 eligibles would serve the public interest. While it may be appropriate to consider across-the-board sharing of all microwave spectrum by common carrier, mass media and private service systems without any specific allocations, we do not believe that we have an adequate record before us on this issue to justify authorizing leasing of excess private microwave capacity for common carriage. Accordingly, at this time we will restrict private carriers to providing service to Part 94 eligibles. However, in a Further Notice of Proposed Rule Making in this proceeding, the Commission will seek comments to develop a full record on the question of expanding the use of excess private microwave capacity for non-private uses.

C. Bypass of Common Carrier Facilities

59. We are concerned about the potential impact of the increased use of private microwave facilities on the cost and availability of local telephone service. However, the sale of excess capacity on existing private microwave systems and the construction of private carrier microwave systems to provide a commercial communications service also have clear public benefits. The public interest in allowing the construction as well as sharing of such systems by other eligibles has been a settled principle for over thirty years. Authorization of the sale of excess capacity merely creates an economic incentive for more intensive use of scarce spectrum, particularly when the system is already built. We anticipate that adoption of our proposal will result in increased spectrum efficiency, as well as increased use of the microwave equipment itself. Furthermore, economic incentives to purchase more efficient equipment are created for those who are constructing new private microwave systems. For example, under the current restrictions on shared use of private systems, a licensee is likely to buy the least expensive, least sophisticated equipment that will carry the projected communications flow with the required level of reliability. However, if the same licensee had the option of sharing the microwave system on a for-profit basis, a clear economic incentive would exist to obtain a more sophisticated system with greater communications capacity. We are confident that such incentives will serve to spur the development of more efficient microwave equipment.

60. Our determination to proceed expeditiously is based on the importance of information and information distribution in our society. Information distribution is no longer the exclusive domain of Fortune 500 firms; it is important to virtually every business, small or large. The demand for communications capacity to facilitate information distribution will continue to grow and place a strain on existing systems. This has important ramifications, especially for small entities who may have a vital data communication requirement but lack the capital or spectrum resources to implement their own system. We believe it is important from the standpoint of economic efficiency to provide additional user options which will enable small entities to contract to obtain microwave communications service from other Part 94 eligibles.

61. Authorization of private carrier systems solely to provide communications for other eligibles present somewhat different issues than the sale of excess capacity, including bypass of the local telephone network. In our recently released study of *Bypass of the Public Switched Network*,[41] we recognized that subscribers with high calling volumes and large telephone bills have strong incentives to seek alternatives that reduce their telecommunications expenditures. Private carrier microwave systems represent one such alternative. These systems are likely to be advantageous to those private service eligibles who seek (1) to obtain cost savings, (2) to achieve special service characteristics such as high reliability, (3) to meet specialized data transmission requirements, or (4) to satisfy a combination of these or other requirements.[42] However, our study of the bypass issue also demonstrated that during the next few years, the most prevalent form of bypass will be service bypass (i.e., the use of special access lines) rather than use of private radio systems. After reviewing all the comments filed in response to the private carrier proposals, we conclude that it would not be in the public interest to restrict the use of scarce microwave spectrum because of concern about possible adverse effects on local telephone service. It is more appropriate to deal with the cost of local telephone service separately, as we are doing in CC Docket No. 78-72 *(Access Charge Order)*, rather than retaining inefficient regulatory restrictions on private microwave licensees. The current restrictions clearly limit the availability of fixed communications services, and thus force the prices of these services to be higher than they would be in the absence of such restrictions. Furthermore, there is no record to support the proposition that private carriers would have an immediate negative impact on common carriers providing telephone service. In many cases there may be no substitute common carrier service readily available, either because of the locale in which the service is required or because of the high speed data rates required. The private carrier option has been particularly popular in the private land mobile services, as evidenced by the large number of private carrier systems authorized since 1974. We conclude that the public interest is served by extending this private carrier option to the Private Microwave Service.

62. Similarly, we do not feel constrained to defer action in this docket until we complete action in other proceedings dealing with initiatives for further deregulation of common carriers. While private carriers may compete with common carriers in certain instances, the main thrust of our action in the current proceeding is to make it easier for Part 94 eligibles, not the universe of common carrier customers, to have access to private microwave communications systems,[43] and to promote spectrum efficiency by authorizing OFS licensees to aggregate on their systems the private radio communications of entities already entitled to establish their own individual OFS systems. There is no reason to assume that, as a general matter, entities choosing to use the services of a private carrier would have subscribed to

[41] Report on *Bypass of the Public Switched Network*, FCC 84-635, adopted December 19, 1984, released January 18, 1985.

[42] The comments in our bypass study, for instance, reflect the views of user groups that service characteristics rather than cost savings, are the most important reasons for undertaking bypass of the public switched network. *Id.* at 9, n. 13.

[43] The Bell Operating Companies and AT&T cite the competitive carrier and FM subcarrier rulemaking proceedings in support of their contention that the Commission should impose the same obligations and responsibilities on private carriers as are imposed on the providers of similar services regulated as common carriers. In both the competitive carrier and FM subcarrier proceedings, however, the Commission was addressing the issue of competition among similar radio services in the same regulatory classification, i.e., the common carrier radio services. Neither of these proceedings considered the question of the appropriate degree of regulation for different, overlapping services regulated under two different communication classifications, such as common carrier services and the private services.

common carrier service if they were precluded by regulation from leasing excess OFS capacity. Indeed, it is likely that many potential private carrier customers would otherwise elect to construct their own OFS systems in lieu of obtaining service from a common carrier.[44] For all of these reasons, we do not believe it is necessary or desirable to defer action on private carriers until after completion of the Competitive Carrier proceeding.

D. Preemption of State Regulation

63. When establishing the concept of Specialized Mobile Radio Systems in Docket No. 18262, the Commission concluded that these systems would not necessarily be confined to serving the needs of "local" users. There clearly would be many SMR stations, the Commission stated, "that will extend for many miles, traverse one political subdivision of a state and then another, and go from state to state."[45] Further, the Commission noted:

> . . . the plan does not contemplate *per se* intrastate operations. It is a national plan, with national ramifications; and in no instance will we be able to forecast what dimensions a particular system may take on. . . . It has been perfected by us to meet the specific and particular requirements of these defined classes of eligible users, not on a local, but on a national basis, wherever the eligible may be, without regard to state or local jurisdictional boundaries and limitations. In these circumstances, we think it is obvious that implementation of the plan must be under one direct authority.[46]

64. In its review of this decision to preempt state regulation over SMRS's the U.S. Court of Appeals for the District of Columbia Circuit found that "this action appears reasonably necessary in order to create the atmosphere of free entry and competition which the Commission has determined is desirable as a means of maximizing the development of mobile radio technology."[47] The Court held that section 221(b) of the Act, which bars the Commission from promulgating regulations "for or in connection with wire, mobile, or point-to-point radio telephone exchange service" was not applicable to regulation of SMR systems. The Court pointed out that section 221(b) explicitly referred only to "telephone companies" and "telephone exchange service" and hence was applicable solely to common carrier service.[48] Likewise, the Court found that section 2(b) of the Act "only has application to common carriers, and our affirmance of the Commission's non-common carrier classification of SMRS vitiates any objection which might rest upon it."[49]

65. As was the case with SMR systems, those who oppose our private carrier proposals in the microwave service rely on sections 2(b) and 221(b) of the Act to support their contention that the Commission is precluded from preempting state regulation. We think, however, that these two statutory sections are equally inapplicable to private microwave carriers. We expect private microwave carriers to function in a manner vastly different from common carriers. They will not hold themselves out indifferently to the public. They will of necessity be very selective when offering their services to others. The service will be made available only to entities eligible under Part 94 and will be offered on the basis of medium to long term contractual arrangements. In short, we conclude that private microwave carriers will be functionally and legally distinguishable from common carriers. This being the case, sections 221(b) and 2(b) are not applicable.

66. Further, we think the same considerations which warranted federal preemption of state regulation of SMR systems are relevant, in large part, to the regulation of private carrier microwave systems. Like SMR systems, the operation of private carriers in the Operational-Fixed Service will not be confined to intrastate communications. Indeed, many microwave stations now licensed under Part 94 to railroads, motor carriers, power and petroleum companies span the borders of two or more states. Experience has shown that the existence of a single licensing and regulatory authority for Part 94 systems has served the Operational-Fixed Service well. The Service has provided a means whereby Part 94 eligibles can construct, with a minimum of regulation, efficient and reliable communications systems at a relatively low cost. We conclude that our federal objectives would be frustrated by permitting multifarious state regulations regarding private microwave carriers. These state regulations could have the effect of prohibiting or impeding the implementation of private carrier microwave systems, thereby frustrating the Commission's mandate to promote spectrum efficiency and to facilitate the introduction of new communications services. *See* 47 U.S.C. 303(g). We find, therefore, that allowing state regulation of private microwave carriers would conflict with the Commission's duty under Title III of the Act to license and regulate radio communication facilities.[50] Accordingly, we are preempting entry and rate regulation by the states of private carriers licensed in the Operational-Fixed Service.

67. Federal preemption of state regulation over private carriers was the subject of two *ex parte* statements submitted by the Utilities Telecommunications Council. In a statement submitted July 13, 1984, UTC expressed concern that the authorization of entrepreneurs in the private microwave bands could result in rapid depletion of useful spectrum in the 1850–1990 MHz and 6525–6875 MHz bands. In anticipation of greatly increased congestion in these bands, UTC stated that its members are developing fiber optic systems to meet their wide band communications needs. UTC noted, however, that fiber optics, while offering extremely high communications capacity, is also extremely expensive. Given the high cost associated with fiber systems, UTC contends that resale of excess capacity on such systems will be essential to the economic viability of fiber optics. UTC also suggests that if fiber optics is to develop as a useful alternative to private microwave communications, it will be necessary to preempt state regulation of fiber optic systems. Burdensome state regulation, UTC argues, poses a serious threat to private carrier operations on fiber optic systems. Further, such state regulation would undermine the potential usefulness of fiber optics as a remedy for the congestion which is likely to occur in the microwave spectrum if the Commission adopts the private carrier proposals. Accordingly, UTC urged the Commission to provide for federal preemption of state regulation over private fiber optic systems as part of the

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[44] We base this conclusion, in part, on the evidence obtained from numerous petitions for waiver filed by Business Radio Service eligibles who have applied during the past year to use the OFS bands at 6525–6875 MHz and 1850–1990 MHz, both of which are not routinely available to Business Radio Service applicants. Some of these applicants cite, as justification for the waivers, the fact that common carrier facilities either are not available to serve their needs or, if available, lack the capacity to carry the high-speed data which the applicants seek to transmit.

[45] 51 FCC 2d at 973.

[46] *Id.*

[47] 525 F.2d at 646.

[48] *Id.*

[49] *Id.* at 647.

[50] 47 U.S.C. 301. It should also be noted that the Communications Amendments Act of 1982, note 9 *supra*, amended Section 301 to make explicit that our authority extends to "intrastate as well as interstate communications" by radio and to conform to "judicial decisions holding that all radio signals are interstate by their very nature." *Conference Report*, H.R. Rep. No. 765, 97th Cong., 2d Sess. at 31–32 (1982).

private microwave carrier proceeding. We have considered these comments carefully and have reached the following conclusions. The Commission clearly has broad authority over interstate and foreign commerce in communication by wire and radio to facilitate a rapid and efficient, nationwide communication service pursuant to Sections 1 and 2 of the Communications Act of 1934, as amended. 47 U.S.C. 151 and 152. Thus, where a communications system incorporates both radio and fiber optic links, we believe our jurisdictional mandate would permit any preemptive measures that are necessary to ensure effective performance of these comprehensive statutory responsibilities. *Cf. United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968) (upholding Commission's "ancillary" jurisdiction over non-common carrier cable systems in order to effectuate Commission's jurisdiction over radio broadcasting). And, while we think our plenary jurisdiction over radio is sufficient by itself to support the necessary preemptive action, *see* 47 U.S.C. 301, our jurisdictional concern may be heightened when the services in question are interstate. Our policy goals in authorizing these radio services are to allow maximum flexibility in the provision of private microwave systems and new communications services. These policy goals could be frustrated by restrictive state regulation. Such regulation could also delay the implementation of service, prevent effective use of the spectrum, and add to the expense of providing the service. Accordingly, we are preempting state regulation of communications systems which use a combination of private microwave and private fiber optic links.

E. Impact on Spectrum Utilization

68. We recognize the concerns raised by the Association of American Railroads, American Petroleum Institute, Utilities Telecommunications Council, Special Industrial Radio Service Association, and other commenters that the licensing of entrepreneurs solely to provide a communications service to Part 94 eligibles will exacerbate existing spectrum congestion problems.[51] Nonetheless, we have a statutory mandate to attempt to maximize efficient and effective use of the radio spectrum by the public.[52] The concept of private microwave carriers is not a device for enlarging the number of users eligible to access the OFS spectrum. Rather, it is a means of bringing the cost of access to OFS facilities, and the resulting efficiencies of private microwave communications, within the reach of Part 94 eligibles who heretofore have been precluded from using the spectrum because of the cost of constructing a microwave system for their own individual use. In essence, the high cost of constructing a microwave system has served as a rather arbitrary device for apportioning access to the OFS spectrum. To the extent that eligible users, because of the high cost of construction, are prevented from gaining access to spectrum allocated for their use, we believe we have a duty to attempt to eliminate the economic barrier. We therefore believe it is appropriate to adopt mechanisms for enhancing use of the private spectrum by all eligible entities.[53]

69. Permitting the sale of excess capacity will permit entities interested in taking advantage of the efficiencies of microwave communications to determine, prior to applying for their own systems, whether their communications needs can be satisfied more economically by arranging to lease capacity from an existing system serving the same route. As noted by some commenters, the private carrier concept may result in the conservation rather than depletion of spectrum, as potential users are presented with the alternative of leasing capacity on an existing system instead of building an entirely new system. Also, in areas where there is a shortage of either spectrum or desirable antenna sites, the ability of a prospective user to purchase microwave capacity from an existing licensee may represent the only alternative for obtaining access to necessary communications links.

F. Leasing of Capacity in the 928/952 MHz, 1850–1990 MHz, and 6525–6875 MHz Bands

70. We are persuaded by the arguments of UTC in favor of permitting licensees operating in the Power Radio Service pool of multiple address frequencies to make their excess capacity available to non-Power Radio Service eligibles. We think that permitting non-power Radio Service eligibles to have access to the excess capacity of Power Radio Service systems at 928/952 MHz will permit more efficient utilization of this particularly useful portion of the OFS spectrum. Additionally, as a general matter, we do not think there is any particular benefit to be gained by precluding licensees in the 1850–1990 MHz and 6525–6875 MHz bands from selling excess capacity to Business Radio Service eligibles. Business Radio Service eligibles have been particularly disadvantaged by the reallocation of the 12,200–12,700 MHz OFS band to the Direct Broadcast Satellite (DBS) Service,[54] and permitting Business Radio Service eligibles to lease excess capacity from licensees at 1850–1990 MHz and 6525–6875 will help offset this disadvantage.[55] We will not, however, license entrepreneurs to establish private carrier systems solely to serve the communications needs of others in the Power Radio Service frequencies at 928/952 MHz or in the 1850–1990 MHz and 6525–6875 MHz bands. As is currently the case, applicants seeking to construct OFS facilities which will use frequencies in these two bands will have to demonstrate an underlying basis for eligibility under Part 94 other than

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[51] The comments of API suggest that the record previously developed in Gen. Docket No. 82–334 demonstrated that there is not sufficient microwave spectrum available to accommodate private radio needs in critical areas. We recognize that insufficient spectrum may exist in some of the private bands in specific areas of the country. However, we did not reach any general conclusions in the *First Report and Order* in Docket No. 82–334, note 27 *supra*, regarding the overall availability of OFS spectrum. The *First Report and Order* was chiefly concerned with allocating replacement spectrum to be used for reaccommodating OFS stations which would be displaced from the 12.2–12.7 GHz band by Direct Broadcast Satellite systems, not with assessing the degree of congestion in the private spectrum. Nonetheless, in the discussion related to use of the 6 GHz private band (6525–6875 MHz) for reaccommodating displaced 12 GHz users, the *First Report and Order* stated that "(o)ur review of the loading in the 6 GHz private microwave band indicates that, while this band is used extensively, additional assignments could be made without degrading existing uses." 48 FR at 50727–28.

[52] Sections 1 and and 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 151 and 303(g).

[53] We expect that entities eligible for licensing under Part 94 will apply for frequencies only when the applicants themselves fully intend to construct and operate the stations for which they have applied. We recognize, however, that our decision to authorize private microwave carriers could enable some entities to apply for spectrum solely to be able to sell to other parties the right to establish the station. This could delay the implementation of OFS systems and would not serve the public interest. Therefore, we are adopting rules requiring completion of station construction prior to the assignment or transfer of OFS licenses.

[54] *Report and Order* in Gen. Docket 80–603, 90 FCC 2d 676 (1982).

[55] The 1850–1990 MHz and 6525–6875 MHz bands are the only OPS bands below 12 GHz which are channelized for 10 MHz bandwidth. However, these bands are not available to Business Radio Service eligibles, except under waiver. Therefore, while many OPS eligibles who would have applied for 12 GHz systems with a 10 MHz bandwidth prior to the DBS decision now look to the 1850–1990 MHz and 6525–6875 MHz bands as alternatives, the only alternatives routinely available to Business Radio Service eligibles under existing rules are the frequencies at 13,200–13,250 MHz, 17,700–19,700 MHz or frequencies higher in the spectrum. The propagation characteristics of these higher frequencies are generally less advantageous than those of frequencies below 12 GHz.

§ 90.75(a)(1) of the Rules. In our view, licensing entrepreneurs to use the frequencies at 1850–1990 MHz and 6525–6875 MHz to offer service to Part 94 eligibles generally would effectively negate the prohibition against use of these bands by Business Radio Service eligibles. We do not think that such an action is within the scope of the proposals in this proceeding. Further, since the proposals advanced in Gen. Docket No. 82–334[56] include consideration of the issue of whether to delete the Business prohibition for 1850–1990 MHz and 6525–6875 MHz, we think the matter of Business use of these two bands properly should be considered in that proceeding.

G. Privacy and National Security Concerns

71. The authorization of private carriers is likely to broaden the types of and numbers of businesses using fixed radio facilities as an alternative to the traditional common carrier plant. Diversion of traffic to these OFS systems will expose an increasing volume of communications to possible interception by undesired third parties. Large scale interception of commercial information can also pose a national security concern with respect to interception by foreign entities. The wire plant of traditional carriers is intrinsically difficult to tap on a large scale. While intercity common carrier radio systems are technically vulnerable to interception, government initiatives have resulted in some protection of such systems at no direct cost to the user in areas of high threat. If private carrier systems are not designed with privacy concerns in mind, they would be much more vulnerable to interception and their widespread use would partially defeat a considerable Executive Branch investment in protection. While we do not have a record at this point to propose specific action, we would like to point out to communication users and private carriers our concern in this area[57] and encourage them to consider their privacy requirements and possible protection equipment.

H. Other Matters

72. We are not persuaded that it is either necessary or appropriate to preclude common carriers from offering private carrier service under Part 94. There are adequate restrictions in Part 94 to prevent such common carrier licensees from using their OFS systems to route common carrier traffic. Common carriers operating systems licensed under Part 94, like other Part 94 licensees, will be permitted to lease capacity for private carriage, but will be prohibited from carrying common carrier communications by Section 94.9 of the Rules. If it becomes apparent that common carrier licensees are routing common carrier message traffic over a private carrier system in violation of the Rules, we will invoke our enforcement authority to remedy the situation.

73. We will not impose any minimum threshold levels regarding the amount of system capacity which must be dedicated to a licensee's own internal communications before the licensee will be permitted to lease excess capacity to others. In view of our decision to permit entrepreneurs to obtain licenses under Part 94 solely to serve the communications needs of other eligibles, there is no public interest reason for requiring other licensees to devote some minimum level of capacity to their own communications before making their facilities available for use by others.

74. We received no comments regarding the rules proposed for multiple licensing of transmitting equipment in the Operational-Fixed Service. However, since the purpose of the proposed multiple licensing rules, i.e., to permit more efficient utilization of private microwave systems, is compatible with the underlying purpose of our private carrier proposals, we see no reason not to adopt the rules as proposed. Multiple licensing will present another option for OFS eligibles to consider when planning systems to satisfy their communications needs and will permit greater utilization of systems established under Part 94.

75. Also, we received no comments in opposition to the proposal to amend § 94.17 of the Rules to delete the rules requiring licensees who cooperatively share their systems with other eligibles to file a copy of the sharing agreements and an annual financial report. In light of our decision to authorize private carriers in this service, we are adopting the proposed amendments to § 94.17 because there is no further regulatory purpose to be served by continuing to require the submission of cost-sharing agreements and annual reports.

76. We do not expect any significant changes in our licensing procedures as a result of the decision to authorize private carriers in the Operational-Fixed Service. Under current procedures, Part 94 eligibles who share a licensee's system on a cooperative non-profit or non-cost basis are not individually licensed to use the system which they are sharing. Rather, they derive their authority to use the system from the license held by the entity who is primarily responsible for operation of the system. Similarly, we will not issue individual licenses to eligible entities who share a licensee's system on a private carrier basis. All sharers of OFS systems, whether sharing on a non-profit, or for-profit basis, will continue to derive their authority to use the systems from the license held by the entity who is responsible for operation of the system.

77. Finally, we agree with the comments filed by UTC that any leasing of excess capacity by OFS licensees to other eligibles should be on a voluntary basis. OFS licensees are under no legal compulsion to serve other entities. Rather, the decisions of whether to share existing capacity and with whom to share are completely within the discretion of the licensees themselves. To impose rules mandating that licensees lease their excess capacity to others would deprive licensees of operational control over their systems and would be contrary to the basic tenets of the Private Microwave Service.

I. Final Regulatory Flexibility Analysis

78. This proceeding increases the options available for the sharing of stations in the Private Operational-Fixed Microwave Service. No comments were received which addressed issues specifically related to the Initial Regulatory Flexibility Analysis. The proposed rules were developed to minimize the regulatory burden on all users of private operational fixed microwave systems, including small businesses. Since no alternative regulatory approaches were suggested in the comments to further reduce the anticipated burden on small businesses and we are not aware of any such alternatives, we see no need to modify the regulatory structure proposed in the *Notice*.

J. Paperwork Reduction Act Statement

79. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

K. Ordering Clauses

80. Accordingly, it is ordered, effective May 8, 1985, that Part 94 of the Commission's Rules (47 CFR Part 94) is amended as set forth in the Appendix

[56] Footnote 27, *supra*.

[57] *See Third Report and Order* in Docket No. 80–183 (FCC 84–148), adopted April 11, 1984, 49 FR 22318 (May 29, 1984).

attached hereto. The authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

81. For further information concerning this proceeding contact Frederick J. Day or Joseph A. Levin, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554, [202] 634–2443.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 94—[AMENDED]

Part 94 of the Commission's Rules and Regulations is hereby amended as follows:

1. Section 94.3 is amended by the addition of the term "private carrier" and the revision of the terms "person" and "rated power output" in the list of definitions to read as follows:

§ 94.3 Definitions.

* * * * *

Person. An individual, partnership, association, joint stock company, trust, or corporation.

Private Carrier. An entity licensed in the private services and authorized to provide communications service to other private service eligibles on a commercial basis.

Rated Power Output. The maximum radio frequency power output capability (peak or average power) of a transmitter, under optimum conditions of adjustment and operation, specified by its manufacturer.

* * * * *

2. Section 94.5 is revised to read as follows:

§ 94.5 Eligibility.

Any person, or any governmental entity or agency eligible for licensing in a radio service under Part 81, 87, or 90 for private operational-fixed communications related to activities for which licensing is available in such service or any person proposing to provide communications service to such persons, governmental entities or agencies is eligible to hold a license under this part.

3. Section 94.9 is amended by revising paragraph (a)(2) to read as follows:

§ 94.9 Permissibility of communications

(a) * * *

(2) The communications of the licensee's parent corporation, or of another subsidiary of the same parent, or its own subsidiary where the party to be served is regularly engaged in any of the activities which constitute the basis for eligibility to use the frequencies assigned.

* * * * *

4. Section 94.17 is revised to read as follows:

§ 94.17 Shared use of radio stations and the offering of private carrier communications service.

Licensees of radio stations authorized under this Part may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions and limitations:

(a) Persons or governmental entities licensed to operate radio systems on any of the frequencies set out in § 94.61(b) may share such systems with, or provide private carrier service to, any entity eligible for licensing under this Part, regardless of individual eligibility restrictions enumerated in § 94.61(b), provided that the communications being carried are permissible under § 94.9.

(b) The licensee must maintain access to and control over all facilities authorized under its license.

(c) All sharing and private carrier arrangements must be conducted pursuant to a written agreement to be kept as part of the station records.

(d) The licensee must keep an up-to-date list of system sharers and private carrier subscribers and the basis of their eligibility under Part 94. Such records must be kept current and must be made available upon request for inspection by the Commission.

5. A new § 94.19 is added to read as follows:

§ 94.19 Multiple licensing of radio transmitting equipment in the Private Operational-Fixed Microwave Radio Service.

Two or more persons or governmental entities eligible for licensing under this Part may use the same transmitting equipment under the following terms and conditions:

(a) Each licensee complies with the general operating requirements set out in Subpart D of this part.

(b) Each licensee is eligible for the frequency(ies) on which the facility operates.

(c) Each licensee must have the ability to access the transmitter(s) which it is authorized to operate under the multiple licensing arrangement.

6. Section 94.47 is amended by designating the present paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 94.47 Transfer and assignment of station authorization.

(a) A station authorization, and the rights therein granted by such authorization, shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, or indirectly disposed of by transfer of control of any corporation holding such authorization, to any person, unless the Commission shall, after securing full information, advise that said transfer is in the public interest. (See § 94.27(b) for standard forms and procedures required for assignment of station licenses.)

(b) A license to operate a station authorized under this Part may not be assigned or transferred prior to the completion of construction of the facility. However, the Commission may give its consent to the assignment or transfer of control of such a license prior to the completion of construction where:

(1) The assignment or transfer does not involve a substantial change in ownership or control of the authorized radio facilities; or,

(2) The assignment or transfer is involuntary due to the licensee's bankruptcy or death.

7. Section 94.61(b) is amended by revising footnote (15) to read as follows:

§ 94.61 Applicability.

* * * * *

(b) * * *

(15) This band is not available to: (i) Persons whose sole basis for eligibility in the Private Operational-Fixed Microwave Service is established under § 90.75(a)(1) relating to the Business Radio Service (Part 90), except when they are sharing a system authorized to an eligible entity, and (ii) persons seeking to establish systems solely to provide private carrier communications service to other entities eligible under Part 94. Persons and entities eligible for this band may use these frequencies for the point-to-point transmission of their products and information service, excluding video entertainment material, to their customers.

* * * * *

8. Section 94.103(b) is revised to read as follows:

§ 94.103 Operator requirements.

* * * * *

(b) An unlicensed person, with the consent or authorization of the licensee, may employ stations in this service for the purpose of telecommunications in accordance with the conditions and limitations set forth in § 94.17 of this part.

* * * * *

Concurring Statement of Commissioner Mimi Weyforth Dawson

March 22, 1985.

This Report and Order is a logical step in the evolution of private microwave radio. It continues a long line of pro-competitive decisions in the Private Operational Fixed Microwave Service (OFS). Since the 1950's, the Commission has authorized licensees to construct their own private microwave systems. Our Report and Order today allows private microwave carriers—both existing licensees and new third party entrepreneurs—to make their facilities available to eligible users for a profit so the users may satisfy their communications needs without the necessity of building their our systems.

I support this decision and the policy goals behind it. It goes a long way toward creating a competitive and spectrum efficient OFS marketplace. However, several aspects of it cause me some concern.

Restricted Bands. Although the Report and Order makes almost all of the OFS spectrum available for use by entrepreneurs, it prohibits their operations on certain frequencies. On the Power Radio Service frequencies at 928/952 MHz, and on specific frequencies at 2 and 6 GHz, only the existing licensees may sell their excess capacity. New entrepreneurs are not allowed to enter these bands and offer competitive services.

In my opinion, entrepreneurs should be free to compete in the marketplace with the existing licensees on *all* the OFS spectrum. I see no public interest reason to preclude their operations at 928/952 MHz or at 2 and 6 GHz.

Common Carriage. Under our current Part 94 rules, OFS facilities may not be used to transmit common carrier message traffic. Accordingly, the Report and Order today prohibits OFS licensees and entrepreneurs from leasing excess capacity to common carriers for common carriage purposes. But in view of the potential benefits that a relaxation of this prohibition could bring, we have decided to reconsider it as part of a Further Notice in this proceeding.

A relaxation of the rules may be appropriate. Private radio facilities may be available in areas where common carrier facilities are not yet constructed. Requiring common carriers to build their own systems even though OFS facilities are already built and could satisfy their requirements is spectrally and economically wasteful. Common carrier use of private OFS facilities would generate additional revenues for OFS licensees and entrepreneurs and, at the same time, would help to offset the interexchange carriers' high costs. It would create additional options and more flexibility for common carriers in designing their systems to meet the public's needs. At a minimum it would stimulate competition in the interexchange market.

Bypass. Our recent study on bypass concluded that the use of private lines will be the most prevalent form of bypass during the next few years (*Order*, CC Docket 78-72, FCC 84-635, January 18, 1985). However, the new OFS options we have created today may well lead to an unexpected and significant increase in the use of private radio systems for bypass purposes. I am particularly concerned that we monitor these developments in our Access Charge docket in order to determine the long-term effect of today's decision on the costs of the nation's telephone service.

Fiber Optics. Increased use of OFS as a result of these new sharing opportunities may cause frequency congestion in some areas of the country. In response, some private microwave radio users may need to develop high capacity fiber optic systems as an adjunct to their OFS systems or as an alternative method of handling their communications needs.

In light of our policy goals of encouraging new communications services and allowing maximum flexibility in the provision of private microwave systems, the Report and Order preempts restrictive state regulation of private communications systems utilizing both radio and fiber optic links. The issue of preempting state regulation of private systems using only fiber optic technology will be addressed in the Further Notice in this proceeding. I will state my concern now, however, that a piecemeal state-by-state approach to fiber optica regulation may inhibit the development of what otherwise could be a fundamental backbone of the nation's communications system.

Our action today makes truly competitive service offerings available in the Private Operational Fixed Microwave Service for the first time. I am enthusiastic about the new opportunities and public interest benefits this will create and look forward to resolving the remaining issues as part of the Further Notice in this proceeding.

[FR Doc. 85-8074 Filed 4-3-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 201, 205, 206, 207, 208, 210, 213, 214, 215, 216, 217, 219, 220, 225, 235, 236, 237, 245, 247, 250, 252 and 270

[Defense Acquisition Cir. 84-10]

DoD FAR Supplement

AGENCY: Department of Defense.

ACTION: Temporary rule and request for comment.

SUMMARY: Defense Acquisition Circular (DAC) 84-10 revises various sections of the DoD FAR Supplement (DFARS) to incorporate changes required by the Competition in Contracting Act of 1984 (CICA).

EFFECTIVE DATE: April 1, 1985.

Comments must be received before June 3, 1985. Please cite DAR Case 84-128 in all correspondence to this issue.

ADDRESS: Interested parties should submit comments to: Defense Acquisition Regulatory Council, Room 3D139, Pentagon, Washington, D.C. 20301-3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 84-5 contains substantial revisions to conform the FAR to the requirements of the new Competition in Contracting Act of 1984 (CICA). All solicitations for bids or proposals issued after March 31, 1985 must comply with CICA. For this reason, revisions to the FAR have been distributed for use in acquisition planning and preparation, and revisions to the DoD FAR Supplement are distributed to assist in preparing for the effectivity date.

List of Subjects in 48 CFR Ch. 2

Government procurement.

James T. Brennan,

Director, Defense Acquisition, Regulatory Council.

Defense Acquisition Circular

[Number 84-10]

January 10, 1985.

All DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective April 1, 1985.

Defense Acquisition Circular (DAC) 84-10 amends the DoD FAR Supplement and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

ITEM I—Competition in Contracting Act of 1984

Federal Acquisition Circular 84–5 contains substantial revisions to conform the FAR to the requirements of the new Competition in Contracting Act of 1984 (CICA). Inasmuch as all solicitations for bids or proposals issued after March 31, 1985 must comply with CICA, these FAR revisions have already been distributed for use in acquisition planning and preparation. For the same reason, this Defense Acquisition Circular (DAC), which implements and supplements the revised FAR in the DoD FAR Supplement, is being distributed to assist in preparing for the effectivity date. These revisions will be published in the **Federal Register** prior to that date (March 31, 1985) as temporary regulations. A 60-day period for public comment will be allowed. The replacement pages in this DAC become effective after March 31, 1985 and should be inserted in the loose-leaf versions of the DoD FAR Supplement at that time.

To implement CICA fully for DoD acquisitions, this DAC contains new definitions of "Head of the Agency" and "Senior Procurement Executive"; formats for determinations and findings; revised guidance on acquisition planning, publicizing proposed acquisitions, and acceptance of unsolicited proposals; as well as supplemental policies and procedures for excluding a source from a particular procurement and for using other than full and open competition under appropriate circumstances.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority for 48 Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.601 [Amended]

2. Section 201.601 is amended by changing the penultimate word "his" to read "that".

3. Section 201.602 is revised to read as follows:

201.602 Authority of Contracting Officers.

201.602–1 Authority.

(a) Contracting officers at contracting offices are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of The United States of America, by sealed bidding, by negotiation, or by coordinated or interdepartmental acquisition; and, when authorized under FAR Part 42, to administer such contracts. This authority is subject to the requirements, consistent with this supplement and the FAR, imposed by the appointing authority. Contracting officers at contract administration offices are, except as provided in FAR Part 42, authorized to perform the applicable contract administration functions and to perform additional acquisition functions when delegated by the contracting office.

(b) Business clearances or approvals shall be obtained as prescribed by applicable departmental procedures.

4. A new Subpart 201.7, consisting of sections 201.702, 201.704 and 201.707, is added to read as follows:

Subpart 201.7—Determinations and Findings

201.702 General.

(a) As an example of reasonable variations in estimated quantities, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, e.g., requirements of other Departments, and Military Assistance Program requirements, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if the acquisition process reveals that additional quantities can be acquired under the approved program and within available funds.

201.704 Content.

Additional guidance to that contained in FAR 1.704 for the preparation of a D&F is set forth with the appropriate subject matter. Where a format for a D&F is set forth with the appropriate subject matter, the D&F should conform generally to that format.

201.707 Signatory authority.

The Agency Head may make any of the determinations, and written findings in support thereof, that may be made by the head of any contracting activity signing as a chief officer responsible for contracting or by a contracting officer. Determinations, and findings in support thereof, not required to be made by higher authority may be made by the head of a contracting activity signing as chief officer responsible for contracting.

PART 202—DEFINITIONS OF WORDS AND TERMS

5. Section 202.1 is amended by adding or revising the following paragraphs to read as follows:

202.1 Definitions.

"Department of Defense" means the Office of the Secretary of Defense and the Military Departments.

"Department" or "Military Department" includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Audiovisual Agency, the Defense Communications Agency, the Defense Mapping Agency, the Defense Nuclear Agency, and the National Security Agency.

"Head of the Agency" means the Secretary of Defense, the Under Secretary of Defense (Research and Engineering), the Secretary, Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order limits the exercise of authority to specific individuals at the Secretarial level. In the latter situation, the Under Secretary of Defense (Research and Engineering), unless specifically restricted to the Secretary of Defense, shall exercise the authority for Defense agencies.

"Senior Procurement Executive" means for the:

Department of Defense, Under Secretary of Defense for Research and Engineering;

Army, The Assistant Secretary of the Army (Research, Development and Acquisition);

Navy, The Assistant Secretary of the Navy (Shipbuilding and Logistics);

Air Force, The Assistant Secretary of the Air Force (Research, Development and Logistics);

Defense Logistics Agency, the Deputy Director (Acquisition Management);

Defense Audiovisual Agency, The Assistant Director for Acquisition and logistics;

Defense Communications Agency, The Director, Defense Communications Agency;

Defense Mapping Agency, The Deputy Director, Management and Technology;

Defense Nuclear Agency, The Deputy Director (Operations and Administration); and

National Security Agency, The Director, National Security Agency, Chief/CSS.

(a) * * *

For the Army:

Office of the Deputy Assistant Secretary (Acquisition), Assistant Secretary of the Army (Research, Development and Acquisition);
Directorate of Procurement & Production, Headquarters, U.S. Army Materiel Command;
* * * * *
U.S. Army Troop Support Agency;
U.S. Army Troop Support Command;
U.S. Army Tank-Automotive Command;
U.S. Army Aviation Systems Command;
* * * * *
Office of the Chief of Engineers;
U.S. Army Information Systems Command;
* * * * *
U.S. Army Ballistic Missile Defense Organization;
Eighth U.S. Army; and
U.S. Army Depot Systems Command.
* * * * *

PART 205—PUBLICIZING CONTRACT ACTIONS

205.001 [Redesignated/Amended]

6. Section 205.001 is redesignated as section 205.002 and the new section 205.002 is amended by removing in the first sentence of paragraph (c) between the word "proposed" and the word "and" the word "procurements" and inserting in its place the words "contract actions"; and by removing in the first sentence of paragraph (c) between the word "publicizing" and the word "actions" the word "procurements" and inserting in its place the word "such".

205.101 [Amended]

7. Section 205.101 is amended by removing in paragraph (a)(2) the word "procurement" and inserting in its place the words "contract action".

205.102 [Amended]

8. Section 205.102 is amended by removing in paragraph (a)(4)(i) the words "procurements of" and inserting in their place the words "acquisitions for".

Subpart 205.2—[Amended]

9. Subpart 205.2 is amended by removing in the title the word "CONTRACTS" and inserting in its place the words "CONTRACT ACTIONS".

§ 205.201 [Amended]

10. Section 205.201 is amended by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; by removing in the title of paragraph (S–70) the word "Procurements" and inserting in its place the words "Contract Actions"; by removing in paragraph (S–70) between the word "by" and the word "personnel" the word "procurement" and inserting in its place the word "contracting"; and by removing in paragraph (S–70) between the word "proposed" and the word "less" the word "procurements" and inserting in its place the words "contract actions".

205.202 [Removed]

11. Section 205.202 is removed.

205.203 [Removed]

12. Section 205.203 is removed.

205.205 [Amended]

13. Section 205.205 is amended by removing in paragraph (c)(1) the word "procurement" and inserting in its place the words "contract action"; and by removing in paragraphs (c)(2) and (c)(S–70) the word "procurement" and inserting in its place the words "contract actions".

205.207 [Amended]

14. Section 205.207 is amended by removing in paragraph (d)(2), Note 12, between the word "this" and the word "may" the word "procurement" and inserting in its place the word "acquisition" and revising paragraphs (d)(S–70) and (d)(S–71) to read as follows:

205.207 Preparation and transmittal of synopses.

* * * * *

(d)(S–70) If the synopsis is for a sole source contract action, as authorized by one of the exceptions in FAR 6.302, the synopsis shall include reference to Numbered Note 22. The Numbered Note will appear in the *Commerce Business Daily* as follows:

Note 22: This contract action is for supplies or services for which the Government intends to solicit and negotiate with only one source under authority of FAR 6.302. Interested persons may identify their interest and capability to respond to the requirement or submit proposals. This notice of intent is not a request for competitive proposals. However, all proposals received within forty-five days after the date of publication of this synopsis will be considered by the Government. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement.

(End of Note)

(d)(S–71) Each notice publicizing a contract action for architect-engineer services shall be headed "R. Architect-Engineer Services." The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria and their relative order of importance to the Government, the estimated construction cost range (see FAR 36.204), the construction cost limitation (see FAR 36.205), the type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255, if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. The foregoing data shall be followed by the statement *"Firms desiring consideration shall submit appropriate data as described in Numbered Note 62."* The name of the responsible procurement office should follow together with the complete address and telephone number. The numbered note will appear in one issue each week of the *Commerce Business Daily* as follows:

Note 62: Architect-engineer firms which meet the requirements described in this announcement are invited to submit: (1) A Standard Form 254, Architect-Engineer and Related Services Questionnaire; (2) a Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, when requested; and (3) any requested supplemental data to the procurement office shown. Firms having a current Standard Form 254 on file with the procurement office are not required to resubmit this form. Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements as listed. Following an initial evaluation of the qualification and performance data submitted, three or more firms considered to be the most highly qualified to provide the services required will be chosen for interview. The Department of Defense procedure for selection of architect-engineer firms is a competitive procedure which includes consideration of the professional qualifications necessary for the satisfactory performance of the professional services required, subject to the following additional considerations: (1) Specialized experience of the firm in the type of work required; (2) capacity of the firm to accomplish the work in the required time; (3) past experience, if any, of the firm with respect to performance on Department of Defense contracts; (4) location of the firm in the general geographic area of the project, *Provided*, that there is an appropriate number of qualified firms therein

for consideration; and (5) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior consideration for future projects administered by the procurement office (subject to specific requirements for individual projects) are encouraged to submit annually a statement of qualifications and performance data, utilizing Standard Form 254, Architect-Engineer and Related Services Questionnaire.

[End of Note]

Note 62 is a *Commerce Business Daily* standard Numbered Note which applies to all DoD notices publicizing contract actions for architect-engineer services. When the notice is used in accordance with FAR 5.205(c), the substance of the numbered note shall be included.

205.301 [Removed]

15. Section 205.301 is removed.

16. Section 205.302 is amended by removing paragraphs (b)(S–70), (S–71), (S–72) and (S–73), and by adding paragraph (b)(2) to read as follows:

205.302 Preparation and transmittal of synopses of awards.

(b) * * *

(2) Size status ((S) for small business and (L) for large business) of the contractor.

17. A new Part 206 is added to read as follows:

PART 206—COMPETITION REQUIREMENTS

Subpart 206.2—Full and Open Competition After Exclusion of Sources

Sec.

206.202 Establishing or maintaining alternative sources.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.
206.302–1 Only one responsible source.
206.302–2 Unusual and compelling urgency.
206.306 Justification.
206.303–1 Requirements.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) This authority may be used, as appropriate, to totally or partially exclude a particular source from a contract action.

(b) (S–70) Additional instructions and formats for agency head determination and findings for exclusion of a particular source.

(i) When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a) (1), (2), or (3). The supporting data, as well as the determination and findings, must name the source to be excluded from the contract action. Additionally, the supporting documents shall include the following information as applicable, and such other information as may be pertinent:

(A) The specific purpose to be served (i.e., to increase or maintain competition, the interest of national defense in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essential engineering, research or development capability) by excluding a particular source from the contract action;

(B) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(C) The circumstances which make it necessary to exclude a particular source from the contract action:

a. The reasons for lack of, or potential loss of, alternative sources; e.g., the technical complexity and criticality of the item;

b. The current annual requirement and prospective needs for the supplies or services;

c. Address projected future requirements as justification for the exclusion of a particular source from the contract action;

(D) Explain whether the existing source must be totally excluded from a contract action or whether a partical exclusion of the existing source from a contract action is sufficient;

(E) Describe the potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions;

(F) When the authority of FAR 6.202(a)(1) is cited:

a. Provide basis for assumption of future competition;

b. Provide the basis for the determination that exclusion of a particular source will likely result in reduced overall costs either for the current acquisition, or for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, facilitization costs, duplicative administration costs (additional inspection, testing, etc.), economic order quantities, and life cycle cost considerations;

(G) When the establishment of an additional source(s) is necessary to provide production capacity to meet current and mobilization requirements, the following:

a. The current annual and the mobilization requirements for the item, citing the source of, or the basis for, such planning data;

b. The comparison of current production capacity necessary to meet mobilization requirements; and

c. The hazards of relying on the present source and the time required for a new source(s) to acquire the necessary facilities and skills and achieve the production capacity necessary to meet mobilization requirements.

(ii) Set forth below is the sample format for D&Fs citing the authority of FAR 6.202(a)(1).

(Military Department or Agency)

Determination and Findings

Authority to Exclude a Source

Upon the basis of the following and determination which I hereby make as agency head pursuant to 10 U.S.C. 2304(b)(1), the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the aforementioned source.

2. The aforementioned source is the source which can be expected to receive an award for the above requirement.

3. It is necessary to establish or maintain an alternative source or sources through the use of full and open competition after exclusion of the aforementioned source.

4. The exclusion of the aforementioned source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services. This estimate is based on (3).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization, because (4).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of a source from the proposed contract action will increase or maintain competition and is likely to result in reduced overall costs for the acquisition or any anticipated acquisition of such supplies or services.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to have a supplier available for furnishing the above

supplies or services in case of a national emergency or industrial mobilization.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to establish or maintian an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date ———————————

(1) Name of source to be excluded.

(2) Description of estimated reduction in overall costs.

(3) Description of how estimate was derived.

(4, 5) Description of circumstances necessitating the exclusion of source.

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source.

(c)(S-70) The authority of FAR 6.302-1(a) shall not be used in the case of acquisitions described in FAR 6.302-1(b)(6) unless the equipment or parts have been adopted as standard items of supply in accordance with DoD Standardization Program (see DoD 4120.3 and Departmental procedures). This authority shall not be used for initial acquisitions of equipment or spare parts, or to select arbitrarily the equipment or parts of certain suppliers. (If supplies might subsequently be standardized, see FAR 15.407(b).)

206.302-2 Unusual and compelling urgency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(c)(2) may be used and are not intended to be all inclusive:

(1) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(2) Essential equipment for, or repair to, a ship when such equipment or repair is needed at once for compliance with the orders of the ship;

(3) Essential equipment for, or repair to, aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(4) Construction needed at once to preserve a structure or its contents from damage;

(5) Essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance; or

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority System (UMMIPS) of 4 or higher, or citing "Electronic Warfare QRC Priority" may justify other than full and open competition, but in such cases the specific circumstances must be set forth in the justification required by FAR 6.303.

206.303 Justifications.

206.303-1 Requirements.

(b)(S-70) Any recommendation by technical and requirements personnel for other than full and open competition must have been reviewed and approved at an appropriate management level in accordance with agency procedures prior to submittal to the contracting officer.

PART 207—ACQUISITION PLANNING

207.102 [Removed]

18. Section 207.102 is removed.

207.103 [Amended]

19. Section 207.103 is amended by redesignating the existing paragraphs (a) through (g) and (c) through (i); by inserting in the first sentence of the redesignated paragraph (c)(1) between the word "The" and the word "acquisition" the word "formal"; by inserting in the introductory text of the redesignated paragraph (c)(2) before the word "acquisition" the word "Written"; by removing in the redesignated paragraphs (c)(3), (c)(4), and (c)(5) the references (a)(2)(i), (a)(2), and (a)(2) and inserting in their place the references (c)(2)(i), (c)(2), and (c)(2) respectively; by inserting in the redesignated paragraph (c)(4) between the word "of" and the word "acquisition" the word "written"; by inserting in the redesignated paragraph (c)(5) between the word "buyout" and the word "a" the word "or"; by removing in the redesignated paragraph (c)(5) the words "or small, repetitive buys (see FAR 7.102)"; and by inserting in the first sentence of the redesignated paragraph (d) before the word "acquisition" the word "Written".

207.104 [Removed]

20. Section 207.104 is removed.

21. Section 207.105 is amended by removing in the title of paragraph (b)(5) the words "contracting by negotiation" and inserting in their place the words "other than full and open competition"; by adding paragraph (b)(13)(iv); by removing in the first sentence of paragraph (b)(70)(vi) the word "Negotiation" and inserting in its place the words "Other than full and open competition"; by redesignating paragraph (b)(S-70)(viii) as (b)(S-70)(xi); by adding new paragraph (b)(S-70)(viii); and by removing in paragraph (b)(S-70)(x) the reference "FAR 7.105(b)(19)" and inserting in its place the reference "FAR 7.105(b)(18)"; to read as follows:

207.105 Contents of written acquisition plans.

* * * * *

(b)(13) * * *

(iv) See DoDD 4120.3 for procedures relative to standardization.

(b) (S-70) * * *

(viii) *Incentives.* When appropriate, discuss plans for providing for incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

* * * * *

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.070 [Amended]

22. Section 208.070 is amended by removing in paragraph (f)(2) the first word "Purchases" and inserting in its place the word "Acquisitions"; by removing in paragraph (f)(2) the remainder of the sentence beginning with the word "or" and inserting in its place the words "under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3;" by inserting in paragraph (f)(3) a comma following the word "Devices," removing between the word "Devices" and the word "High" the word "and", inserting between the word 'Silicon" and the parenthesis the words "and High Carbon Ferrochrome (HCF)", adding a comma following the reference "208.74", removing between the reference "208.74" and the reference "208.75" the word "and", inserting between the reference "208.75" and the word "of" the words "and 208.76"; by removing in paragraph (f)(4) the reference "215.217" and inserting in its place the references "206.202(a)(2) and 206.302-3"; by removing in the last sentence of the introductory text of paragraph (g) the word "procurement" and inserting in its place the word "contract"; by removing in paragraph (g)(1) the word "procurements" and inserting in its place the word "acquisitions", and inserting at the end of the paragraph between the word "surplus" and the parenthesis the words "area concerns"; by removing in paragraph (g)(2) the first two words "Use negotiation", capitalizing the word "Procedures", removing the reference "FAR 15.217" and inserting in its place

the references "FAR 6.202(a)(2) or 206.302–3"; by removing in the first sentence of paragraph (g)(3) between the word "component," and the word "individual" the words "award of"; and by removing in the first sentence of paragraph (g)(4) the word "procured" and inserting in its place the word "acquired".

208.402 [Removed]

23. Section 208.402 is removed.

208.404–3 [Amended]

24. Section 208.404–3 is amended by removing in the first sentence of paragraph (b) the word "procured" and in the penultimate sentence the word "purchased" and inserting in their place the word "acquired".

208.7004–1 [Amended]

25. Section 208.7004–1 is amended by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition".

208.7004–2 [Amended]

26. Section 208.7004–2 is amended by removing in paragraph (a) the word "procurement" and inserting in its place the word "contract"; by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; by removing in the first sentence of paragraph (f) the words "preparing a procurement plan, and making a Determinations and Findings." and inserting in their place the words "and preparing an acquisition plan."

27. Section 208.7004–3 is amended by inserting in the title before the word "Determinations" the words "justifications and approvals and"; by removing paragraphs (a)(1) and (a)(2); and by revising paragraph (a) to read as follows:

208.7004–3 Justifications and approvals and determinations and findings.

(a) Coordinated procurement shall not be used by Departments to avoid FAR Part 6 requirements concerning full and open competition (see FAR 6.002). When a Requiring Department requests that a Procuring Department obtain supplies or services by contract using other than full and open competition, the Requiring Department shall prepare the justification required by FAR 6.303 and obtain the approval specified in FAR 6.304. The Requiring Department shall also make the Determinations and Findings specified in FAR 6.302–7(c)(1) and FAR 6.202(b)(1), where applicable. The Requiring Department shall preserve the original justification and approval and determination and findings with supporting data as required by 215.3. Two copies shall be attached to the MIPR or purchase request in the Procuring Department's contract file.

* * * * *

208.7004–4 [Amended]

28. Section 208.7004–4 is amended by removing in the third sentence the word "procurement" and inserting in its place the word "acquisition".

208.7004–5 [Amended]

29. Section 208.7004–5 is amended by removing in the first sentence the word "procurement" and inserting in its place the word "acquisition".

208.7004–6 [Amended]

30. Section 208.7004–6 is amended by removing the word "procurement" and inserting in its place the word "acquisition".

31. Section 208.7100–2 is amended by revising paragraphs (a)(3) and (a)(4); by removing in the introductory text of paragraph (a)(5) and in the last sentence of paragraph (a)(5)(i) the word "procured" and inserting in its place the word "acquired"; by removing in both sentences of paragraph (a)(5)(ii) the word "procures" and inserting in its place the word "acquires"; by removing in paragraphs (a)(5)(iii) and (a)(6) the word "procured" and inserting in its place the word "acquired"; by removing in the second and third sentences of paragraph (a)(6)(i) the words "the procurement" and inserting in their place the words "the acquisition"; by removing in the fourth and fifth sentences of paragraph (a)(6)(i) the words "a procurement" and inserting in their place the words "an acquisition"; by removing in the last sentence of paragraph (a)(6)(i) the words "formal advertising" and inserting in their place the words "sealed bid"; by removing in paragraph (a)(7) the word "procured" and inserting in its place the word "acquired"; and by removing in paragraphs (a)(8), (a)(8)(i), (a)(8)(iii), (a)(8)(iii)(C) and (a)(9) the words "procurements" and "procurement" wherever they appear and insert in their place the words "acquisitions" and "acquisition" respectively; as follows:

208.7100–2 Exclusions—DLA and GSA Assignments.

(a) * * *

(3) Items to be acquired under the authority of 10 U.S.C. 2304(c)(6) and FAR 6.302–6, acquisitions when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(4) Items to be acquired under the authority of 10 U.S.C. 2304(c)(1) and FAR 6.302–1 (a)(1) and (b)(2), follow-on contracts for the continued development or production of a major system or highly specialized equipment including major components thereof;

* * * * *

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.004 [Amended]

32. Section 210.004 is amended by removing the last sentence in paragraph (b)(3)(i)(A); by removing in paragraph (b)(3)(i)(C) the words "invitation for bids or requests for proposals" and inserting in their place the word "solicitation"; by removing in the title of paragraph (b)(3)(iv) the word "procurements" and inserting in its place the word "acquisitions"; by removing in paragraph (b)(3)(iv)(A) the words "formally advertised procurements" and inserting in their place the words "acquisitions by sealed bidding"; by removing in paragraph (b)(3)(iv)(A) the last word "procurements" and inserting in its place the word "acquisitions"; by removing in the first sentence of paragraph (b)(3)(iv)(B) the last word "procurements" and inserting in its place the word "acquisitions"; and by removing in the second sentence of paragraph (b)(3)(iv)(B) the words "exigency purchases" and inserting in their place the words "an unusual and compelling urgency".

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.203–2 [Amended]

33. Section 213.203–2 is amended by removing paragraph (c) in its entirety.

213.204 [Amended]

34. Section 213.204 is amended by placing a period in the first sentence in paragraph (b) after the word "Points"; by removing the word "and" between the word "Points" and the word "calls" and inserting in its place the word "BPA" to begin a new sentence; by removing the period in the redesignated second sentence after the word "value" and inserting in its place a "semi-colon"; and by removing the existing last sentence and inserting, in its place the words "however, such actions over $25,000 must satisfy the requirements of Part 208."

213.505-2 [Amended]

35. Section 213.505–2 is amended by removing and reserving paragraph (S–73)(1)(xxvi).

PART 214—SEALED BIDDING

36. Part 214 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

37. Sections 214.404 and 214.404–1 are added to read as follows:

214.404 Rejection of bids.

214.404–1 Cancellation of invitation after opening.

(c) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(e) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

214.406–3 [Amended]

38. Section 214.406–3 is amended by removing in the first sentence of paragraph (e)(2) the words "procuring activity" and inserting in their place the words "contracting activity or officer".

Subpart 214.5—[Amended]

39. Subpart 214.5 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

214.503–1 [Amended]

40. Section 214.503–1 is amended by removing in paragraph (a)(i) the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 215—CONTRACTING BY NEGOTIATION

41. Section 215.103 is added to read as follows:

215.103 Converting from sealed bidding to negotiation procedures.

Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.170, 215.171, 215.172 [Removed]

42. Sections 215.170, 215.171, and 215.172 are removed.

215.173 and 215.174 [Redesignated]

43. Sections 215.173 and 215.174 are redesignated as sections 215.170 and 215.171 respectively.

Subparts 215.2 and 215.3—[Removed]

44. Subparts 215.2 and 215.3 are removed.

215.402 [Amended]

45. Section 215.402 is amended by removing in the first sentence of paragraph (f) the reference "215.202(b)" and inserting in its place the reference "206.302–1".

46. Section 215.507 is amended by revising the introductory text in paragraph (b)(S–70) to read as follows:

215.507 Contracting methods.

(b)(S–70) When the requirements of FAR Part 6 and FAR Subpart 15.5 have been met, contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal. However, when so limited by an applicable DoD Appropriation Act, such contracts may be entered into only when the head of the contracting activity or his designee (no lower than the chief of the contracting office) determines that:

* * * * *

47. Section 215.608 is added to read as follows:

215.608 Proposed evaluation.

(b) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.613 [Amended]

48. Section 215.613 is amended by removing in paragraph (c)(1) the word "negotiated" and the reference "15.202" and inserting in their place the word "acquired" and the reference "6.302–2" respectively.

215.804–2 [Amended]

49. Section 215.804–2 is amended by removing in the first sentence of paragraph (a)(2) the figure "$500,000" and inserting in its place the figure "$100,000"; and by removing in the last sentence of paragraph (a)(2) between the word "which" the word "considers" the word "he" and inserting in its place the words "the contracting officer."

50. Section 215.804–3 is amended by adding paragraph (e)(3)(i) to read as follows:

215.804–2 Exemption from or waiver of submission of certified cost or pricing data.

* * * * *

(e)(3) * * *

(i) Set forth below is a format for the D&Fs to be made by the agency head with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306(f), and for waiving the inclusion of the clauses required by FAR 52.214–27 and 252.215–25. The format may be used also for the D&Fs for such waiver made by the Head of the Procuring Activity for contracts with foreign governments or agencies thereof.

(Military Department or Agency)

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(f), as implemented by FAR 15.804–3(i).

Findings

1. The (2) proposes to enter into a contract with (3) for the acquisition of (4).

2. Pursuant to FAR 15.804–2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: (5).

Determination

1. The requirement for submission of cost or pricing data for the proposed contract action may be waived.

Date _____

Notes.

(1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a procuring activity."

(2) Procuring or contracting activity.

(3) Name of supplier.

(4) Brief description of supplies or services.

(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e., limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed contract action an exceptional case and state the reasons which justify the proposed waiver.

Subpart 215.10—[Amended]

51. Subpart 215.10 is amended by inserting in the title after the word "PREAWARD" a comma and the word "AWARD,".

215.1001 [Amended]

52. Section 215.1001 is amended by adding in the title an "s" to the first word "Notification" and by adding between the word "to" and the word "Offerors" the word "Unsuccessful"; and by removing in paragraph (b)(2) the word "Procurements" and inserting in its place the word "Acquistions".

215.1002 [Redesignated]

53. Section 215.1002 is redesignated as section 215.1003.

PART 216—TYPES OF CONTRACTS

54. Section 216.102 is added to read as follows:

216.102 Policies.

(d) Set forth below is a format for the D&Fs to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (see FAR 16.301–3(c) and FAR 16.403(c)). The format may be modified as appropriate.

(Military Department or Agency)

Determination and Findings

Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a (1) basis.

Findings

1. The (2) proposes to enter into a (1) contract for the acquisition of (3) at an estimated cost of $ (4).

2. The work to be performed is (5).

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract. (6)

(Alt: The use of the proposed type of contract is likely to be less costly than other methods.) (6)

(Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method. (6)

2. The estimated cost of the proposed contract is $ (4). (7)

Date _____

Notes

(1) Enter type of contract to be used, i.e., fixed-type incentive, cost-plus-incentive-fee, cost, or cost-plus-fixed-fee.

(2) Contracting activity.

(3) Brief description of supplies or services.

(4) Enter amount to nearest thousand.

(5) Describe the nature of the work to be performed and set forth the facts (for type of contract proposed, see FAR Part 16) that show why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However, where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

(6) Use the determination responsive to the findings. See Note (5) above.

(7) Determination to be made when a cost-plus-fixed-fee contract is proposed.

* * * * *

PART 217—SPECIAL CONTRACTING METHODS

217.7004–1 [Amended]

55. Section 217.7004–1 is amended by removing in the third sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "either sealed bidding or negotiation"; by inserting in the same sentence between the word "used" and the word "except" the words "as appropriate (see FAR Part 6)"; by removing in the same sentence after the word "that" the dash; by removing paragraph (a)(1); by removing the designation "(2)" of the existing paragraph (a)(2); by removing in the first word of the existing paragraph (a)(2) the capital "W" and inserting in its place lower case "w"; and by inserting in the third sentence of paragraph (a) after the word "that" the text of the paragraph (a)(2).

217.7005 [Amended]

56. Section 217.7005 is amended by removing in the fourth sentence the word "procured" and inserting in its place the word "acquired".

217.7103–5 [Amended]

57. Section 217.7103–5 is amended by removing in the third sentence the words "formally advertised" and inserting in their place the words "has been made under sealed bid procedures".

217.7103–7 [Amended]

58. Section 217.7103–7 is amended by removing in the first sentence the words "formally advertised basis, to determine" and inserting in their place the words "sealed bid basis, to determine".

217.7201 [Amended]

59. Section 217.7201–1 is amended by removing in the introductory text the colon; by removing paragraph (a); by removing in the existing paragraph (b) the designation "(b)" and inserting the text of the existing paragraph (b) after the word "policy" in the existing introductory text and changing "To" to read "to"; by removing in the penultimate sentence the word "increasing" and inserting in its place the words "permitting full and open"; by removing in the last sentence the words "two policies" and inserting in their place the word "policy"; by adding in the same sentence an "s" to the word "produce"; and by removing in the same sentence the word "procurement" and inserting in its place the word "acquisition".

217.7201–2 [Amended]

60. Section 217.7201–2 is amended by removing in the title the word "procurement" and inserting in its place the word "acquisition"; by adding in paragraph (a) between the word "independent" and the comma the word "development"; by removing in paragraph (a) the word "seek" and inserting in its place the words "provide for"; by removing in paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; by removing in paragraph (b) the words "with reference in the order of this listing" and inserting in their place the words "in order of preference"; by removing in the first sentence of paragraph (b)(1) the words "practical, procurement shall be competitive" and inserting in their place the words "items of identical design are not required, the contracting officer shall provide for full and open competition"; by inserting in the same sentence between the word "other" and the word "specifications" the word "similar"; by removing the second and third sentences of paragraph (b)(1); by removing in the fifth sentence of paragraph (b)(1) the words "formal advertising" and inserting in their place the words "sealed bidding"; by removing in the last sentence of paragraph (b)(1) the word "participating" and the word "procuring" and inserting in their place the word "participation" and the word "contracting" respectively; by removing in paragraph (b)(2) the words "it is determined that competitive procurement is not practicable" and inserting in their place the words "other than full and open competition is authorized under Part 206"; by removing from paragraph (b)(2) the words "on a competitive basis"; by removing in the last sentence of paragraph (b)(3) the word "procurement"and inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (b)(4) the word "procurement" and inserting in its place the word "acquisition."

217.7201–3 [Amended]

61. Section 217.7201–3 is amended by removing in the title the word "purchase" and inserting in its place the word "acquisition"; by removing in the first sentence the word "he" and the word "procurement" and inserting in their place the word "it" and the word "acquisition" respectively; and by removing in the last sentence the word "his" and the word "he" and inserting in their place the word "the" and the words "the bidder/offeror" respectively.

217.7202-1 [Amended]

62. Section 217.7202-1 is amended by removing in the first sentence of paragraph (a) the word "of" and the word "purchased" and inserting in their place the word "for" and the word "acquired" respectively.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.502-4 [Removed]

63. Section 219.502-4 is removed.

219.502-70 [Amended]

64. Section 219.502-70 is amended by removing in the first sentence of paragraph (c) the words " 'Small Business Restricted Advertising,' the preferred method, (FAR 15.201) or by conventional negotiation" and inserting in their place the words "sealed bidding or negotiation (see FAR 6.102, FAR Parts 14 and 15)".

219.809 and 219.809-1 [Removed]

65. Sections 219.809 and 219.809-1 are removed.

PART 220—LABOR SURPLUS AREA CONCERNS

220.7003 [Amended]

66. Section 220.7003 is amended by removing in the sixth sentence of paragraph (b)(3)(i) the word "procurement" and inserting in its place the word "acquisition"; by removing in the eighth sentence of paragraph (b)(3)(i) the words "procuring by advertising" and inserting in their place the words "acquired by sealed bidding"; by placing a period in the eighth sentence of paragraph (b)(3)(i) after the word "regulations" and removing the remainder of the sentence; by placing a period in the last sentence of paragraph (b)(3)(iii) after the word "contractor"; by removing in the existing last sentence of paragraph (b)(3)(iii) the words "since his" and inserting in their place the words "The contractor's"; by removing in paragraph (c) the words "procurement by advertising" and inserting in their place the words "acquisition by sealed bidding"; and by removing paragraph (d).

PART 225—FOREIGN ACQUISITION

225.302 [Amended]

67. Section 225.302 is amended by removing in paragraph (a)(S-72)(1)(vii)(C) the word "his" and inserting in its place the word "its" and by removing in the same paragraph the reference "FAR 15.213" and inserting in its place the reference "DoD Standardization policy (see DoD 4120.3)".

225.7104 [Amended]

68. Section 225.7104 is amended by removing in paragraph (a)(2)(iii) the words "formally advertised" and the words "formal competitive" and inserting in both places the word "sealed"; by reversing in paragraph (b)(2) the words "purchases negotiated" to read "negotiated purchases"; by removing in paragraph (b)(2) the words "under FAR 15.205 or FAR 15.211"; by removing inparagraph (b)(2) the words "negotiated under FAR 15.202 for public exigency; purchases negotiated under FAR 15.203 for" and inserting in their place the words "of unusual or compelling urgency".

225.7202 [Amended]

69. Section 225.7202 is amended by removing in paragraph (a) the second and third sentences; by removing in the last sentence of paragraph (a) the word "negotiate" and inserting in its place the words "contract without full and open competition"; and by removing in the last sentence of paragraph (a) the reference "10 U.S.C. 2304(a)(17)" and inserting in its place the reference "10 U.S.C. 2304(c)(5)".

225.7204 [Amended]

70. Section 225.7204 is amended by removing the words "Formal Advertising" and inserting in their place the words "Sealed Bidding".

225.7307 [Amended]

71. Section 225.7307 is amended by removing in the third sentence of paragraph (a) the reference "15.210" and inserting in its place the reference "6.302-4"; by removing in the third sentence of paragraph (a) the words "negotiate on a sole source basis" and inserting in their place the words "contract without full and open competition"; by removing in the fourth sentence of paragraph (a) the words "sole source"; by inserting in the last sentence of paragraph (a) between the word "honor" and the word "requests" the word "such"; by removing in the last sentence of paragraph (a) the words "for sole source prime and subcontracts"; and by inserting in the same sentence between the word "customer" and the word "as" the word "only".

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.001 [Amended]

72. Section 235.001 is amended by inserting in the definition "Unsolicited proposal" between the word "a" and the word "research" the word "written"; by removing in the same paragraph between the word "research" and the word "development" the word "or" and inserting in its place the word "and"; and by removing the remainder of the paragraph following the word "proposal" and inserting in its place the words "submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs)".

235.006 [Amended]

73. Section 235.006 is amended by removing in the last sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

235.007 [Amended]

74. Section 235.007 is amended by removing in the second sentence of the introductory text in paragraph (b) the word "he" and inserting in its place the words "the source"; by removing in the same sentence the words "his request denied" and inserting in their place the words "provided a copy of the solicitation in accordance with FAR 5.102 if still requested"; by inserting in the third sentence of the introductory text in paragraph (b) between the word "furnished" and the word "but" the words "in accordance with FAR 5.102"; by inserting at the end of the last sentence in the introductory text in paragraph (b) between the word "source" and the colon, the words "in accordance with Part 206"; by inserting at the end of paragraph (b)(1) the parenthetical reference "(See 206.302-1(b)(1).)"; by inserting at the end of paragraph (b)(2) the parenthetical reference "(See 206.302-1(b)(3).)"; by inserting at the end of paragraph (b)(3) the parenthetical reference "(See 206.302-1(b)(7) or 206.302-3(b)(2).)"; and by removing in paragraph (i) the references "215.2 and 215.5" and inserting in their place references "FAR Part 6 and Subpart 215.5".

235.008 [Amended]

75. Section 235.008 is amended by removing in three places in paragraph (e)(S-70)(iii) the word "his" and inserting in all three places the words "the offeror's".

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.103 [Amended]

76. Section 236.103 is amended by removing in paragraph (a) the word

"procured" and inserting in its place the word "acquired"; and by removing in two places in paragraph (a) the words "formal advertising" and inserting in both places the words "sealed bidding".

236.203 [Amended]

77. Section 236.203 is amended by removing in the third sentence of paragraph (c) the word "procurement" and inserting in its place the word "acquisition"; and by removing in two places in the third sentence of paragraph (c) the words "formal advertising" and inserting in their place the words "sealed bidding".

Subpart 236.3—[Amended]

78. Subpart 236.3 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

236.303 [Amended]

79. Section 236.303 is amended by removing in the first and second sentences of paragraph (S–70) the word "invitation" and inserting in its place the word "solicitation"; and by removing in the last sentence of paragraph (S–70) the word "him" and inserting in its place the words "the low bidder".

236.401 [Removed]

80. Section 236.401 is removed.

PART 237—SERVICE CONTRACTING

237.104 [Amended]

81. Section 237.104 is amended by removing in paragraph (b)(S–70)(b)(2) the word "normally" and inserting in its place the words "on a sole source basis"; by removing in paragraph (b)(S–70)(b)(2) the reference "10 U.S.C. 2304(a)(4)" and the reference "FAR 15.204" and inserting in their place the reference "10 U.S.C. 2304(c)(1)" and "FAR 6.302–1" respectively.

237.205–71 [Amended]

82. Section 237.205–71 is amended by removing in paragraph (a)(6)(iv) the words "or non-competitively" and inserting after the word "awarded" the words "or not".

237.7100 [Amended]

83. Section 237.7100 is amended by removing in the last sentence the word "procuring" and inserting in its place the word "acquiring".

237.7101 [Amended]

84. Section 237.7101 is amended by removing in paragraph (a) the last sentence and inserting in its place the sentence "Such acquisitions shall be made using the sealed bid method when the criteria of FAR 6.103(a) are met."; and by removing in paragraph (c) the words "Bids or offers" and inserting in their place the word "Offer".

237.7103 [Amended]

85. Section 237.7103 is amended by removing in paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bid".

237.7301 [Amended]

86. Section 237.7301 is amended by redesignating the introductory text as paragraph (a); by redesignating the existing paragraphs (a) and (b) as paragraphs (1) and (2) respectively; by redesignating paragraph (a) of the existing section 237.7302 as paragraph (b) of section 237.7301.

237.7302 [Amended]

87. Paragraph (b) of section 237.7302 is removed and the section is marked "Reserved."

237.7304 [Amended]

88. Section 237.7304 is amended by removing in paragraph (a) paragraph 6 of the Educational Service Agreement and redesignating the existing paragraphs 7, 8, and 9 as paragraphs 6, 7, and 8 respectively.

237.7405–1 [Amended]

89. Section 237.7405–1 is amended by removing in paragraph (a) the words "Generally, communication" and inserting in their place the word "Communication"; by removing in paragraph (a) the word "procured" and inserting in its place the word "acquired"; by removing in the second sentence of paragraph (b) the word "procurement" and inserting in its place the word "acquisition"; and by removing in the last sentence of paragraph (b) the words "on a competitive basis to the maximum extent practicable" and inserting in their place the words "using full and open competition unless otherwise authorized by FAR Subpart 6.3".

237.7503 [Amended]

90. Section 237.7503 is amended by removing in paragraph (b) the words "are negotiated acquisitions and"; by removing in paragraph (b) the reference "10 U.S.C. 2304(a)(17)" and inserting in its place the reference "10 U.S.C. 2304(a)(1)"; and by inserting between the word "authority" and the period the words "for award".

PART 245—GOVERNMENT PROPERTY

245.610–1 [Amended]

91. Section 245.610–1 is amended by removing in paragraph (a)(2)(iii) the word "his"; by removing in paragraph (a)(3)(i) the word "procuring" and inserting in its place the word "contracting"; by removing in paragraph (a)(3)(i) the words "FAR 15.304 and"; and by inserting after the reference "245.613(d)" the words "and FAR Subpart 1.7".

PART 247—TRANSPORTATION

247.270–3 [Removed]

92. Section 247.270–3 is removed and reserved.

247.270–6 [Amended]

93. Section 247.270–6 is amended by removing in paragraph (a) the word "Contractors" and inserting in its place the word "Offerors"; by removing in paragraph (a) the word "man-hour" and inserting in its place the word "labor-hour"; and by removing in paragraph (b)(1)(i) the word "men" and inserting in its place the word "workers".

247.270–7 [Amended]

94. Section 247.270–7 is amended by removing wherever it appears the word "man-hour" and inserting in its place the word "labor-hour"; and by removing in the third sentence the word "man" and inserting in its place the word "worker".

247.270–8 [Amended]

95. Section 247.270–8 is amended by removing the word "man-hour" and inserting in its place the word "labor-hour".

247.270–9 [Amended]

96. Section 247.270–9 is amended by removing in paragraph (b) the words "formally advertised" and inserting in their place the words "sealed bid".

247.271–2 [Amended]

97. Section 247.271–2 is amended by removing in the first sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

98. Section 250.105 is amended by removing in paragraph (S–70)(2)(vii) the reference "(6)" and inserting in its place the reference "(vi)"; by revising the title and text of paragraph (S–70)(2)(xi); and by removing in the second sentence of paragraph (S–70)(2)(xiv) the word "some" and inserting in its place the word "a"; to read as follows:

250.105 [Amended]

(S–70) * * *

(2) * * *

(xi) *Award procedure.* The procedure under which the contract was awarded, e.g., formal advertising, negotiation, or

sealed bidding, should be indicated. The specific authority, if applicable, should be indicated; for example: "Neg. 10 U.S.C. 2304(a)(14)."

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.215-7000 [Amended]

99. Section 252.215-7000 is amended by removing in the title of the clause the date "1984" and inserting in its place "1985"; and by removing in the text of the clause the figure "$500,000" and inserting in its place the figure "$100,000".

252.217-7103 [Amended]

100. Section 252.217-7103 is amended by removing in the title of the clause the date "1982" and inserting in its place "1985"; and by removing in the first sentence of paragraph (c) of the clause the words "formally advertised" and inserting in their place the words "sealed bidding".

252.219-7001 [Amended]

101. Section 252.219-7001 is amended by removing in the title of the clause the date "JUN 1978" and inserting in its place "APR 1985"; and by removing in the first sentence of paragraph (a)(1) of the clause the word "procurement" in two places and inserting in both places the word "acquisition"; by removing in the second sentence of paragraph (a)(1) of the clause the words "the Government procurement" and inserting in their place the words "Government acquisition"; by removing in paragraph (a)(2) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (b)(1) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (c)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (c)(3)(iii)(A) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in Step Six of paragraph (c)(3)(iii)(B) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in paragraph (d) of the clause the word "procurement" and inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition".

252.219-7002 [Amended]

102. Section 252.219-7002 is amended by removing in the title of the clause the date "JUN 1978" and inserting in its place "APR 1985"; and by removing in the first sentence of paragraph (a)(1) of the clause the word "procurement" in two places and inserting in its place the word "acquisition"; by removing in the second sentence of paragraph (a)(1) of the clause the words "the Government procurement" and inserting in their place the words "Government acquisition"; by removing in paragraph (a)(2) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (b)(1) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (c)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the last sentence of paragraph (c)(3)(iii)(A) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in paragraph (d) of the clause the word "procurement" and inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition".

252.219-7003 [Amended]

103. Section 252.219-7003 is amended by removing in the title of the clause the date "1984" and inserting in its place "1985"; by removing in the last sentence of paragraph (c)(1) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; and by removing in the last sentence of Step Six of paragraph (c)(2) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding".

252.219-7004 [Amended]

104. Section 252.219-7004 is amended by removing in the title of the clause the date "JUNE 1978" and inserting in its place the date "APR 1985"; and by removing in the first sentence of the clause the word "procurement" and inserting in its place the word "acquisition".

252.220-7000 [Amended]

105. Section 252.220-7000 is amended by removing in the title of the clause the "JUN 1978" and inserting in its place "APR 1985"; by removing in the first sentence of paragraph (a) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in paragraph (b)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by adding in paragraph (b)(3)(iii)(A) of the clause between the word "non-set-aside" and the word "portion" the words "portion. Concerns may offer less than the total non-set-aside"; by removing in Step Five of paragraph (b)(3)(iii)(B) of the clause between the word "portion" and the word "quantity" the word "of" and inserting in its place the word "on"; by removing in Step Six of paragraph (b)(3)(iii)(B) of the clause the words "procured by advertising" and inserting in their place the words "acquired by, sealed bidding"; by adding in the first sentence of paragraph (c)(2) of the clause an "s" to the word "area"; by removing in the last sentence of paragraph (c)(3) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (d) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition"; and by inserting in paragraph (e) of the clause between the word "Department" and the word "Labor" the word "of".

252.220-7001 [Amended]

106. Section 252.220-7001 is amended by removing in the title of the clause the "1984" and inserting in its placed the date "1985"; by removing in paragraph (a) of the clause the word "procurement" and inserting in its place the word "acquisition"; by removing in paragraph (b)(1)(i) of the clause the word "procurement" and inserting in its place the word "acquisition"; by adding in the title of paragraph (b)(3) of the clause between the word "Set-Aside" and the word "Price" the word "Award"; by adding in the penultimate sentence of paragraph (b)(3) of the clause between the word "and" and the word "price" the word "the"; by removing in Step One of paragraph (b)(3)(iii)(B) of the clause the word "excluded" and inserting in its place the word "excluding"; by removing in Step Five of paragraph (b)(3)(iii)(B) of the clause the word "of" and inserting in its place the word "on"; by removing in Step Six of paragraph (b)(3)(iii)(B) of the clause the words "procured by advertising" and inserting in their place the words "acquired by sealed bidding"; by removing in the last sentence of paragraph (c)(3) of the clause the word "his" and inserting in its place the word "its"; by removing in paragraph (d) of the clause the word "procurement" and

inserting in its place the word "acquisition"; and by removing in the first sentence of paragraph (e) of the clause the word "procurement" and inserting in its place the word "acquisition".

107. Section 252.225–7001 is amended by removing in the title of the clause the date "OCT 1980" and inserting in its place the date "APR 1985"; and by adding new paragraphs (d) and (e) before "End of clause", to read as follows:

252.225–7001 Buy American Act and the Balance of Payments Program.

* * * * *

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

* * * * *

108. Section 252.225–7006 is amended by removing in the title of the clause the date "1984" and inserting in its place "1985"; and by adding new paragraphs (d) and (e) before "End of clause", to read as follows:

252.225–7006 Buy American Act, Trade Agreements Act, and the Balance of Payments Program.

* * * * *

(d) Generally, when the Buy American Act is applicable, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by: (i) Adding 50% of the offer, exclusive of duty; (ii) adding 6% of the offer, inclusive of duty, if a domestic offer is from a large business that is not a labor surplus area concern; or (iii) adding 12% of the offer, inclusive of duty, if the domestic offer is from a small business concern or any labor surplus area concern. Evaluation will be inclusive or exclusive of duty whichever results in the greater evaluated price. See DoD FAR Supplement 225.1 for procedures and exceptions.

(e) Generally, when the Balance of Payments Program applies, each nonqualifying country offer of defense equipment shall be adjusted for the purpose of evaluation by increasing the offer by 50%. See DoD FAR Supplement 225.3 for procedures and exceptions.

* * * * *

252.243–7000 [Amended]

109 Section 252.243–7000 is amended by removing in the title of the clause the date "1984" and inserting in its place the date "1985"; and by removing in the penultimate sentence of paragraph (b) of the clause the figure "$500,000" and inserting in its place the figure "$100,000".

PART 270—ACQUISITION OF COMPUTER RESOURCES

270.000 [Amended]

110. Section 270.000 is amended by adding at the end of the section after the word "authority" a new sentence reading: "ADP protests to GSBCA are covered in FAR Part 33."

270.303–3 [Amended]

111. Section 270.303–3 is amended by removing in paragraph (a) the word "negotiated" and inserting after the word "contracting" the words "on an other-than-full and open competition basis, if applicable".

270.307 [Amended]

112. Section 270.307 is amended by removing in the undesignated paragraph following paragraph (b)(7) the word "expressly" and inserting in its place the word "clearly"; and by removing at the end of the last sentence of paragraph (b) the period and inserting after the word "solicitation" the words "along with their relative importance".

113. Section 270.314 is amended by designating in paragraph (b) the introductory text as paragraph (1); by redesignating the existing paragraphs (1) and (2) as paragraphs (i) and (ii) respectively; by revising the redesignated paragraph (ii); by adding a new paragraph (b)(2); by removing in paragraph (c) the designation of paragraph (1) and inserting in the introductory text of paragraph (c) after the word "that:" the text of the existing paragraph (c)(1); by removing in the last sentence of paragraph (d) the words "For a least 15 calendar days" and inserting in their place the words "in accordance with FAR Subpart 5.2"; by removing in paragraph (d) the figure "$50,000" and inserting in its place the figure "$10,000"; by adding at the end of paragraph (d) the sentence "The contract file shall be documented with the results of the synopsis."; by inserting in the second sentence of paragraph (e) between the word "synopsized" and the word "when" the words "in accordance with FAR Subpart 5.2"; by removing in paragraph (e) the figure "$50,000" and inserting in its place the figure "$10,000"; and by adding at the end of paragraph (e) the sentence "The contract file shall be documented with the results of the synopsis."; to read as follows:

270.314 GSA Nonmandatory Schedule Contracts.

* * * * *

(b) * * *

(ii) The intent to place an order with a purchase value of $25,000 or above, including maintenance, is synopsized in the CBD in accordance with FAR Subpart 5.2, and either:

(A) No response is received to such notice. The contract file shall be documented accordingly; or

(B) The only interest expressed in response to the synopsis is to satisfy the requirement under the terms of an existing ADP schedule contract. The file shall be documented with evidence that use of the selected ADP schedule contract, including the method of financing (e.g., purchase, lease) is the lowest overall cost alternative, price and other factors considered.

(2) Whether for purchase, lease or rental, if a response(s) to the synopsis issued in accordance with (1)(ii) above indicates an intention to offer terms, conditions, or prices not contained in ADP schedule contracts, the requirement shall be met using the policy and procedures of FAR Part 6.

* * * * *

270.802–1 [Amended]

114. Section 270.802–1 is amended by removing in the penultimate sentence the words "for justified noncompetitive requirements" and inserting in their place the words "when other-than-full and open competition is justified".

270.802–2 [Amended]

115. Section 270.802–2 is amended by removing in paragraph (a) the capital letter "P" in the "Properly" at the beginning of the third sentence and inserting in its place a lower case letter "p"; by inserting in paragraph (a) at the beginning of the third sentence the words "Contracting actions using other-than-full and open competitive procedures, if"; by adding in the same sentence a comma after the word "justified" the first time it appears in the sentence; by removing in the same sentence the words "noncompetitive contracting actions"; and by removing in the same sentence the word "conducted" and inserting in its place the word "placed".

270.1404 [Amended]

116. Section 270.1404 is amended by removing in paragraph (b)(1) the words "that a sole source justification be prepared" and inserting in their place the words "justification for use of other-than-full and open competition (see FAR 6.303)"; and by inserting in paragraph (b)(1) between the word "a" and the word "competitive" the words "full and open".

[FR Doc. 85-8040 Filed 4-3-85; 8:45 am]
BILLING CODE 3810-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1803, 1804, 1808, 1812, 1815, 1819, 1822, 1827, 1832, 1844, 1845, 1847, 1851, and 1852

[NASA FAR Supplement Directive 85-3]

NASA FAR Supplement Partial Implementation of the Small Business and Federal Procurement Competition Enhancement Act

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect selected provisions of Pub. L. 98-577, Small Business and Federal Procurement Competition Enhancement Act of 1984, particularly those provisions relative to rights to and acquisition of data that are applicable to NASA. Other miscellaneous internal and administrative matters are also addressed.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION: Proposed rule making was published on page 49875 of the **Federal Register** of December 24, 1984, which made available to the public a copy of NASA FAR Supplement Directive 85-3 for review and possible comment for a 30-day period, ending January 23, 1985

The primary changes arising from Pub. L. 98-577 occur in sections 1827.4 and 1852.227 relative to rights to and acquisition of data. The more significant ones are: Section 1827.273-2(c) clarifies the policy that if data first produced under contract represents only minor modifications to items, components, processes, or computer software developed at private expense, the limited rights data relating thereto (including such minor modifications) may be protected; section 1827.473-2(f) provides for negotiation of less than unlimited rights in the Government in contracts involving co-sponsored research and development if the contractor is required to make substantial contributions of funds or resources (such as cost sharing or repayment of nonrecurring costs); and a new clause at 1852.277-83, Technical Data Certification, Revision and Withholding of Payment has been added for use in major systems acquisitions. All received comments related to these changes proposed by NFSD 85-3 have been considered and the Directive has been revised where appropriate; however, none of these comments were of particular significance.

Several comments were also received regarding existing NASA policies which were neither established by nor changed by the proposed Directive. Some changes were made in response to these comments in keeping with NASA's continuing interest in refining and improving its regulations where possible. These changes are:

1. The procedure is revised for obtaining rights to technical data in winning proposals to assure that contractors have a clear opportunity to limit the Government's rights (1827.473-2(k)).

2. A new clause and guidance is added to make clear that, in acquisitions of commercial computer software, the contract terms are not superseded by delivery documents containing inconsistent data rights provisions (1827.463-4(b) and 1852.227-79).

3. The data rights clause for use in SBIR Program contracts has been standardized (1852.227-80).

4. NADA policy no longer places a time limit (7 years) on limited rights data (1827.473-2(d)(1) and 1852.227-74 Alt. II).

5. Sections 1827.471 and 1852.227-74 clarify that the form, fit and function data acquired with unlimited rights, if it relates to restricted computer software, does not include any algorithm, process, formulas or flow chart of the software.

A few comments were directed to provisions of Pub. L. 98-577 that are not applicable to NASA; therefore, no changes could be made in response.

NASA FAR Supplement (NFS) material published in the Directive is effective, at the procurement officer's option, on April 15, 1985. It is mandatory beginning July 1, 1985; and shall remain in effect until: (1) Changed by a subsequent NFSD or Procurement Notice (PN); (2) incorporated in any new Edition of the NFS; or (3) specifically cancelled.

List of Subjects in 48 CFR Ch. 18

Government procurement.

Dated: March 28, 1985.

L.E. Hopkins,

Deputy Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Ch.18 reads as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1803—[AMENDED]

Subpart 1803.3—Reports of Identical Bids and Suspected Antitrust Violations

Section 1803.303, paragraph (c), is revised to read as follows:

1803.303 Reporting suspected antitrust violations.

* * * * *

(c) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Code HP. The report shall include the reasons for suspecting collusion. Code HP will forward a copy of the report to the NASA Office of the Inspector General.

PART 1804—[AMENDED]

Subpart 1804.70—Transfer of Contracting Office Responsibility

1804.7004 [Amended]

3. Section 1804.7004, the introductory text is amended by changing "his" to read "the transferring".

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002-74 [Amended]

4. Sections 1808.002-74, paragraphs (a) and (b) are amended by changing "1808.002-74(l)" to read "1808.002-74(j)."

Subpart 1808.3—Acquisition of Utility Services

1808.307-71 [Amended]

5. Section 1808.307-71 is amended by changing "by 1804.71." to read "by 1804.7205 and 1804.71."

PART 1812—[AMENDED]

Subpart 1812.1—Delivery or Performance Schedules

6. Section 1812.102-70, paragraph (b), is revised to read as follows:

1812.104-70 Additional clauses.

* * * * *

(b) See 1827.475–10 regarding reports of work.

PART 1815—[AMENDED]

Subpart 1815.1—General Requirements for Negotiation

7. Section 1815.102 is added to read as follows:

1815.102 General.

Procurement personnel, as well as other personnel concerned with the procurement, shall ensure that contract negotiations are completed expeditiously. However, all details of the negotiation must be completed before the contract is actually placed. This includes, to the extent applicable—

(a) Arrangements regarding Government-furnished property, including the contractor's responsibility for controlling, maintaining, and accounting for such property;

(b) Determination that the prospective contractor is responsible, including completion of preaward surveys where required;

(c) Arrangements with other Government agencies for the use of facilities under their control;

(d) Where the contract will be administered by another Government agency, any necessary arrangements with the responsible activity of that agency;

(e) Where the contract will involve access to classified information, verification that required security clearance has been obtained;

(f) The requirement for the furnishing of data by the contractor in the performance of the contract, both for technical evaluation and for competitive reprocurement where follow-on procurement is probable, in those situations where the appropriate technical office has requested that the contracting officer obtain such data; and

(g) Consideration of whether technical data contained in the proposal is to be obtained as an item of deliverable data, as well as what rights should be obtained in such data under 1827.473–2(k).

Subpart 1815.4—Solicitation and Receipt of Proposals and Quotations

8. Subpart 1815.413–2 is amended by adding paragraph (e) to read as follows:

1815.413–2 Alternate II.

* * * * *

(e) *Rights in proposal data.* NASA may obtain rights in technical data (but not commercial and financial information) contained in a solicited or unsolicited proposal upon which a contract award is based, by specific agreement with the prospective contractor in accordance with the procedures of 1827.473–2(k) and the clause at 1852.227–81, Rights to Proposal Data (Technical).

Subpart 1815.5—Unsolicited Proposals

9. Section 1815.507, paragraph (a), is revised to read:

1815.507 Contracting methods.

(a) The technical office sponsoring the contract shall support its recommendation with a Justification for Acceptance of Unsolicited Proposal (JAUP) which includes facts and circumstances that preclude competition, along with consideration of the evaluation factors listed in FAR 15.506–2(a). A "Justification for Other Than Full and Open Competition" may be used in lieu of a JAUP when required by FAR 6.302. The law (10 U.S.C. 2304(f)(4)) requires that this justification and any related information shall be made available for inspection by the public consistent with the provisions of the Freedom of Information Act. (See FAR 6.305 and 1806.305.) Accordingly, care should be taken not to include information which need not be released under the Freedom of Information Act, unless that information is essential to the justification. The JAUP shall be in writing and shall be submitted for the approval of the Procurement Officer or a designee after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable.

* * * * *

Subpart 1815.6—Source Selection

10. Section 1815.610 is revised to read as follows:

1815.610 Written or oral discussion.

FAR 15.610(c)(2) shall not be applied in negotiation of NASA procurements. It is contrary to NASA procedures (see FAR 15.613 and 1815.613).

1815.613–71 [Amended]

11. Section 1815.613–71, paragraph (b)(3)(ii), is revised to read as follows:

* * * * *

(b) * * *

(3) * * *

(ii) Simple technical nonresponsiveness in the sense in which the term is used in formal advertising is not alone sufficient to constitute unacceptability if the proposal is otherwise competitive and written and oral discussions or negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

PART 1819—[AMENDED]

Subpart 1819.2—Policies

12. Section 1819.201, paragraph (a), is revised to read as follows:

1819.201 General policy.

(a) *NASA Headquarters.* The Director of the Office of Small and Disadvantaged Business Utilization is responsible for the general supervision and coordination of the NASA Small Business Program. The Director is also responsible for developing the policy and procedures for implementing the NASA Small Business Program, Minority Business Program, Women Owned Business Program and Labor Surplus Area Program, advising the Administrator and other NASA officials on these matters, and representing NASA before other Government agencies and industry on matters related to the small business program.

* * * * *

PART 1822—[AMENDED]

Subpart 1822.8—Equal Employment Opportunity

1822.805–70 [Amended]

13. Section 1822.805–70 is amended by changing "his" to read "its".

PART 1827—[AMENDED]

14. Subpart 1827.4 is revised to read as follows:

Subpart 1827.4—Data and Copyrights

Sec.

1827.470 Scope of subpart.
1827.471 Definitions.
1827.472 Policy.
1827.473 Procedures—data rights.
1827.473–1 General.
1827.473–2 Basic rights in data clause.
1827.473–3 Production of special works.
1827.473–4 Rights relating to the acquisition of existing data other than limited-rights data.
1827.473–5 Contracts awarded under Small Business Innovative Research (SBIR) Program.
1827.474 Procedures—acquisition of data.
1827.475 Solicitation provisions and contract clauses.
1827.475–1 Rights in data—general.
1827.475–2 Representation of limited-rights data and restricted computer software.
1827.475–3 Additional data requirements.
1827.475–4 Rights in data—special works.
1827.475–5 Rights in data—existing works.
1827.475–6 Commercial computer software—restricted rights.

1827.475–7 Rights in data—SBIR Program.
1827.475–8 Additional clauses.
1827.475–9 Rights to proposal data (technical).
1827.475–10 Reports of work.
1827.475–11 Acquisitions of major systems or parts therefor.

Subpart 1827.4—Data and Copyrights

1827.470 Scope of subpart.

This subpart sets forth NASA policy, procedures, and solicitation provisions and contract clauses with respect to (a) rights in data and copyrights and (b) the acquisition of data, including the requirements of section 21 of the Office of Federal Procurement Policy Act (as amended by section 301 of Pub. L. 98–577) relating to the rights in data and to the acquisition of data that are applicable to NASA.

1827.471 Definitions.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as contract cost analyses or any financial, business, and management information required for contract administration purposes.

"Technical data", as used in this subpart, means that data (other than computer software) which is of a scientific or technical nature.

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this subpart, means data relating to items, components or processes that is sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it specifically excludes the algorithm, process, formulas, and flow charts of the software.

"Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (NASA may, however, adopt when appropriate (see 1827.473–2(b)) the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

"Limited rights," as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

"Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

1827.472 Policy.

(a) It is necessary for NASA, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of its contracts. Such data may be required to obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of NASA activities; insure appropriate utilization of the results of NASA supported research, development, and demonstration activities; and meet other programmatic and statutory requirements. At the same time, NASA recognizes that its contractors may have a legitimate proprietary interest (e.g., a property right or other valid economic interest) in certain data resulting exclusively or partially from private investment, and that protection from unauthorized use and disclosure of this data is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commerical position, and maintain NASA's ability to obtain access to or use of such data. The protection of this data by NASA is also necessary to encourage qualified contractors to participate in NASA programs and apply innovative concepts to such programs.

(b) The specific procedures and prescriptions for use of solicitation provisions and contract clauses set forth below are framed in light of the considerations in paragraph (a) above to strike a balance between NASA's needs and the contractor's property rights and economic interests, and to implement those provisions of section 21 of the Office of Federal Procurement Policy Act, consistent with the foregoing, that are applicable to NASA. In applying these procedures and prescriptions it is important to recognize and maintain the conceptual distinction between those contract terms whose purpose is to define the respective rights and obligations of the Government and the contractor regarding the use, duplication and disclosure of that data which is developed, used, or delivered in the performance of a contract (i.e. data rights); and those contract terms whose purpose is to specify the data (in terms of both quantity and quality) that is to be delivered in the performance of a contract (i.e. data acquisition). Section 1827.473 below relates to data rights; section 1827.474 below relates to data acquisition. Section 1827.475 sets forth the solicitation provisions and contract clauses relating to both data rights and data acquisition in accordance with the procedures of 1827.473 and 1827.474.

1827.473 Procedures—data rights.

1827.473–1 General.

All contracts that require data be produced, furnished, or acquired in meeting contract performance requirements must contain terms that delineate the respective rights and obligations of NASA and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding that require only existing or off-the-shelf data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1852.227–74, Rights in Data—General, including Alternates I, II, and/or III where determined appropriate as discussed in 1827.473–2, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other prescribed clauses or do not need a prescribed clause, as discussed in 1827.473–3 or 1827.473–4 (see also 1827.474 for procedures relating to data acquisition.)

§ 1827.473-2 Basic rights in data clause.

(a) *Summary.* The clause at 1852.227-74, Rights in Data—General, is structured to strike a balance between NASA's needs for using, duplicating, and disclosing data involved in or resulting from contract performance in order to carry out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualifies as limited-rights data or restricted computer software. (See paragraph (b) below for an alternate definition of limited-rights data.) This clause also specifically delineates the categories or types of data that NASA is to acquire with unlimited rights. (See paragraph (c) below.) The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to NASA; or when NASA has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (d) and (e) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain copyright license rights. (See paragraph (g) below.) This clause also includes procedures that apply when NASA questions whether notices on data are authorized (see paragraph (h) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (i) below); and addresses the contractor's right to release, publish or use certain data involved in contract performance (see paragraph (j) below).

(b) *Alternate definition of limited-rights data.* In the clause at 1852.227-74, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, NASA may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or that is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use, or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socio-economic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be adopted, where appropriate, by using the clause with its Alternate I. This Alternate I is to be used only with approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel.

(c) *Unlimited-rights data.* Under the clause at 1852.227-74, Rights in Data—General, the following data is acquired with unlimited rights except as provided in paragraph (g) below for copyrighted data: (1) Data first produced in the performance of contract, except to the extent such data constitutes minor modifications to data that is limited-rights data or restricted computer software; (2) form, fit, and function data delivered under a contract; (3) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components or processes delivered or furnished for use under a contract; and (4) all other data delivered under a contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data with the notice of 17 U.S.C. 401 or 402, it is acquired under a copyright license as set forth in paragraph (g) below rather than with unlimited rights.

(d) *Protection of limited-rights data.* (1) The contractor may protect data (other than unlimited-rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1852.227-74, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the clause is used with its Alternate II and delivery of the data is required, by delivering such data with limitations on its use and disclosure. The mode of protection afforded the contractor (i.e., withhold or deliver with limited rights) is provided for in paragraph (g) of the clause at 1852.227-74, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withheld limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable NASA selectively to request the delivered of withhold or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data when the clause is used with its Alternate II are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described in paragraph (d)(2) below.

(2) Limited-rights data delivery with the Limited Rights Notice contained in subparagraph (g)(2) (Alternate II) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as may be included in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. Specific purposes which may be included in the Limited Rights Notice of subparagraph (g)(2) of the clause are set forth below. The purpose set forth in paragraph (d)(2)(i) below is to be included unless the contracting officer determines it is not necessary. The purposes set forth in paragraph (d)(2) (ii) through (v) below may be included if determined necessary by the contracting officer. No other purposes are to be included without approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel.

(i) Use by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use by other contractors participating in the Government's program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(iv) Emergency repair or overhaul work.

(v) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by or on behalf of such government.

(3) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1852.227-75, Representation of Limited-Rights Data and Restricted Computer Software,

may be included in any solicitation containing the clause at 1852.227–74, Rights in Data—General. This provision requests an offeror to state in a response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1852.227–74, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable. Installation Intellectual Property or Patent Counsel should be consulted on questions regarding the use of Alternate II.

(e) *Protection of restricted computer software.*

(1) The contractor may protect computer software that qualifies as restricted computer software under the clause at 1852.227–74, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or if the clause is used with its Alternate III and delivery of the software is required, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The mode of protection afforded the contractor (i.e. withhold or deliver with restricted rights) is provided for in paragraph (g) of the clause at 1852.227–74, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to this clause to enable NASA selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. It should be particularly noted that unlike other data, computer software is also an end item in itself, such that if it is withheld and form, fit, and function data is provided in lieu thereof an operational program will not be acquired. Thus, if delivery of restricted computer software is anticipated to be needed to meet contract performance requirements (see paragraph (e)(4) below), the contracting officer should assure that the clause is used with its Alternate III. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in a "Restricted Rights Notice" which the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(2) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be—

(i) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(ii) Used or copied for use in or with a backup computer if the computer for which it is acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights and

(v) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(3) The restricted rights set forth in paragraph (e)(2) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be either included in the Notice or specified in the contract. This should include obtaining appropriate rights for networking (i.e., loading the program into the memory of a host computer for use in or with multiple processors, computers, workstations, and terminals which may form a network or system located at a single site or be connected by communications to other networks or systems located at different sites), if such need exists. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See 1827.473–4(b).)

(4) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1852.227–75, Representation of Limited-Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1852.227–74, Rights in Data—General. This provision requests an offeror to state in a response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1852.227–74, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable. Installation Intellectual Property or Patent Counsel should be consulted on questions regarding the use of Alternate III.

(5) Whenever data that would qualify as limited-rights data if delivered in human-readable form is formatted as a computer data base for the purposes of delivery under a contract containing the clause at 1852.227–74, Rights in Data-General, such data is to be treated as limited-rights data subject to the Limited Rights Notice of subparagraph (g)(2) (Alternate II) of that clause, and not as restricted computer software subject to the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) of that clause.

(f) *License rights in data.* In certain contracts involving co-sponsored research and development wherein the contractor is required to make substantial contributions of funds or resources (i.e., by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software developed or produced under the contract are not readily segregable, NASA may acquire license rights rather than unlimited rights to any data developed and delivered under such contract. Basically such license rights will, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and will address any disclosure limitations or restrictions

to be imposed on the data. Since the purpose of the co-sponsored research, the legitimate proprietary interests of the contractor, the needs of NASA, and the respective contributions of both parties may vary, no specific clauses are prescribed but a License Rights in Data clause may be taylored to the circumstances consistent with the foregoing and the policy set forth in section 1827.472. Use of a License Rights in Data clause must be authorized by the Procurement Officer and developed in consultation with installation Intellectual Property or Patent Counsel. As a guide, use is to be authorized only when the contribution of funds or potential repayment of non-recurring costs by the contractor is approximately 50% of the cost to the Government absent such cost sharing, and the respective contributions are not readily segregable for any work elements to be performed under the contract. Such clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance its use will be in addition to whatever other data rights clause is prescribed under this Subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements.

(g) *Copyrighted data.*—(1) *Data first produced in the performance of a contract.* (i) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be granted permission to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1852.227–74, Rights in Data—General. This permission is normally granted in paragraph (c)(1) of the clause for scientific and technical articles based on the work performed under the contract and published or presented in academic, professional and technical journals or conference papers. For all other data, such permission may be granted by the contracting officer, in consultation with installation Intellectual Property or Patent Counsel, in accordance with the procedures in paragraph (g)(1)(ii) below.

(ii) Usually, permission for a contractor to establish claim to copyright for data first produced under the contract will be granted under subparagraph (c)(1) of the clause at 1852.227–74, Rights in Data—General, when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless: (A) The data consists of a report that represents the official views of the agency or that the agency is required by statute to prepare, (B) the data is intended primarily for internal use by the Government, (C) the data is of the type that the agency itself distributes to the public under an established program, or (D) the data is of a type that is subject to limited distribution due to Government Policy.

(iii) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1852.227–74, Rights in Data—General. However, NASA may on a case-by-case basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if the contracting officer determines, with concurrence of installation Intellectual Property or Patent Counsel, that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(2) *Data not first produced in the performance of a contract.* (i) Contractors are not to incorporate in data delivered under a contract any data that is not first produced under the contract and that is marked with the copyright notice of 17 U.S.C. 401 or 402, without either (A) acquiring for or granting to the Government a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data or (B) obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) (Alternate III) if included in the clause at 1852.227–74, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(ii) Contractors delivering data with both an authorized limited-rights or restricted-rights notice and the copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded an opportunity to correct it in accordance with 1827.473–2(h). Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (g)(2)(i) above, without disclosure limitations or restrictions.

(iii) If contractor action causes limited-rights or restricted-rights data to be published with the copyright notice of 17 U.S.C. 401 or 402 after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government, request that a copyright notice be placed on the copies of the data delivered to the Government, and acknowledge that the applicable copyright license set forth in paragraph (g)(2) above applies.

(h) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1852.227–74, Rights in Data—General, the right to either return to the contractor data containing markings not authorized by subparagraphs (g)(2) or (g)(3) of that clause, or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and normally affording the contractor at least 30 days to substantiate the propriety of the markings. This 30-day period may be shortened to a period of not less than 5 days from the date of receipt of such inquiry by the contractor if the contracting officer determines, with approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel, that there are exigencies justifying a shorter period for the contractor to respond. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings.

The above procedures may be modified in accordance with regulations inplementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(i) *Omitted or incorrect notices.* (1) Data delivered under a contract containing the clause at 1852.227–74, Rights in Data—General, without a limited rights notice or restricted rights notice, and without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within 6 months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor (i) identifies the data for which a notice is to be added or corrected, (ii) demonstrates that the omission of the proposed notice was inadvertent, (iii) establishes that use of the proposed notice is authorized, and (iv) acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(j) *Release, publication and use of data.* (1) In paragraph (d) of the clause at 1852.227–74, Rights in Data—General, subparagraph (d)(1) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced in the performance of a contract except to the extent such data may be subject to the Federal export control laws and regulations or unless otherwise set forth in either paragraph (d) of the clause or as expressly set forth in the contract (see the procedures of paragraphs (j) (2) and (3) below). In addition, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract from the Government or others acting on behalf of the Government, and the data contains restrictive markings, subparagraph (d)(2) provides an agreement with the contractor to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(2) In accordance with NASA policy and procedures for the distribution of computer software developed by NASA and NASA contractors (NASA Management Instruction 2210.2A, April 24, 1978), a contractor is not to establish claim to copyright, publish, or release to others computer software first produced in the performance of contract without prior written permission of the contracting officer. This limitation is therefore included in subparagraph (d)(3) of the clause at 1852.227–74, Rights in Data—General. Such permission may be granted only with concurrence of the cognizant official named in the NMI. The contracting officer may also, at the request of the contractor prior to contract award, delete said subparagraph (d)(3) from the clause or modify or override it with express contract provisions, if the contracting officer, with the concurrence of the cognizant official named in the NMI, determines either that the contract will not require a significant development effort for computer software as defined in NASA Management Instruction 2210.2A, or that such deletion, modification or overriding is otherwise consistent with the NMI.

(3) Any other provisions imposing limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish data first produced in the performance of a contract must be expressly stated in the contract, and contain specific reference to paragraph (d) of the clause at 1852.227–74, Rights in Data—General. Use of such provisions requires approval of the Procurement Officer and concurrence of installation Intellectual Property or Patent Counsel. Additional contractual limitations or restrictions (other than as may be required for national security reasons) are not to be imposed on data specifically used, but not first produced, in the performance of a contract without the approval of the Assistant Administrator for Procurement.

(k) *Rights to technical data in successful proposals.* (1) NASA may, as consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, the prospective contractor may (i) advise the contracting officer that the technical data, or portions thereof, (to be identified by the prospective contractor) are covered by the prescribed "Restriction on Use and Disclosure of Proposal and Quotation Information (Data)" notice (as set forth in 1852.215–72 for solicited proposals and in 1815.509–70 for unsolicited proposals) and request that such protection continue, or (ii) establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract and request that such portions be excluded from the Government's rights.

(2) If unlimited rights to technical data in successful proposals, as set forth in paragraph (k)(1) above, are to be acquired, it shall be by use of the clause at 1852.227–81, Rights to Proposal Data (Technical). Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in Part 1815 relating to proposal information (i.e., will be used for evaluation purposes only). If the clause at 1852.227–81 is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (k)(1) above, and the contract file must reflect that fact. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to its acquisition as limited-rights data, if it so qualifies, in accordance with paragraph (d) above.

1827.473–3 Production of special works.

(a) The clause at 1852.227–77, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or obtain indemnity for liabilities that may arise out of the content, performance or disclosure of the data. Examples are contracts for—

(1) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(2) Histories of the respective agencies, departments, services, or units thereof;

(3) Works pertaining to recruiting, morale, training, or career guidance;

(4) Surveys of Government establishments;

(5) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(6) The compilation of reports, studies, surveys, or similar documents that do not involve research, development, or experimental work performed by the contractor;

(7) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(8) Investigation reports; or

(9) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities.

(b) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(c) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that is subject to the clause, may be deleted or limited in scope where the contracting officer determines, in consultation with installation Intellectual Property or Patent Counsel, that because of the nature of the particular data involved such liability will not arise.

1827.473–4 Rights relating to the acquisition of existing data other than limited-rights data.

(a) *Existing audiovisual and similar works.* The clause at 1852.227–78, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works, pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are: (1) Means of exhibition or transmission, (2) time, (3) type of audience, and (4) geographical locations. If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 1852.227–77, Rights in Data—Special Works, is to be used. (See 1827.473–3.)

(b) *Separate acquisition of existing computer software.* (1) If the contract is for the separate acquisition of existing computer software, no specific contract clause contained in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software and must contain terms obtaining sufficient rights for the Government to fulfill the need for which the software is being acquired. The restricted rights set forth in 1827.473–2(e) should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be used for networking purposes (i.e., loading a program into the memory of a host computer for use in or with multiple processors, computers, workstations, and terminals which may form a network or system located at a single site or be connected by communications to other networks or systems located at different sites), adequate rights for such purposes must also be obtained. If the computer software is "commercial" computer software (i.e., privately developed software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction) the clause at 1852.227–79, Commercial Computer Software—Restricted Rights, may be used in the contract or purchase order (see also subparagraph (2) below). When using such clause the contract or purchase order may expressly state any additions to, or limitations on, the restricted rights set forth in subparagraph (d)(2) of the clause. If the computer software is to be acquired with unlimited rights, the contract or purchase order must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like) and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(2) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (6)(1) above. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause 1852.227–79, Commercial Computer Software—Restricted Rights, is used, inconsistencies in the vendor's standard commercial agreement are reconciled by the clause.

(3) If a prime contractor under a contract containing the clause at 1852.227–74, Rights in Data—General, with its Alternate III, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the contracting officer may approve any additions to or limitations on the restricted rights in the Restricted Rights Notice of subparagraph (g)(3) in a collateral agreement incorporated in and made part of the prime contract. (See also 1827.473–2(e).)

(c) *Other existing works.* Except for existing audiovisual and similar works as discussed in paragraph (a) above, and existing computer software as discussed in paragraph (b) above, no clause contained in this subpart need be included in (i) contracts where the only data to be acquired consists solely of books, publications, and simlilar items in the exact form in which such items exist prior to the request for purchase (i.e. the off-the-shelf purchase of such items) unless reproduction rights of such items are to be obtained or (ii) contracts resulting from sealed bidding that require only existing data (other than limited-rights data) to be delivered unless reproduction rights for such data are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

1827.473–5 Contracts awarded under Small Business Innovative Research (SBIR) Program.

The clause at 1852.227–80, "Rights in Data—SBIR Program, is for use in all

Phase I or Phase II contracts awarded under the Small Business Innovative Research (SBIR) Program established pursuant to Pub. L. 97–219 (the Small Business Innovation Development Act of 1982). The clause is limited to use solely in contracts awarded under the SBIR Program, and is the only data rights clause to be used in such contracts.

1827.474 Procedures—acquisition of data

(a) *General.* (1) The requirements for data to be delivered under a contract should strike a balance between NASA's policies of providing for the widest practical and appropriate dissemination of the results of NASA's research and development activities, protecting a contractor's legitimate proprietary interest, providing for full and open competition, and obtaining adequate documentation to operate and maintain items and components or use processes necessary for NASA to carry out its missions and objectives.

(2) It is NASA's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloguing, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum consistent with paragraph (a)(1) above.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data, shall be specified in the contract. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, NASA installations may in accordance with paragraph (b) below, develop their own contract schedule provisions (including data requirements lists and data description documents) for listing, specifying, describing, identifying source of, assuring delivery of, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(b) *Specifying data delivery requirements.* (1) The requirements for technical and other data (including computer software and documentation thereof) to be delivered as an element of performance under any contract, as well as the delivery schedule therefor, should, to the maximum extent practicable, be either specified or referenced in a single section of the contract addressing data delivery requirements. Such requirements shall take into consideration the factors set forth in paragraphs (b)(2)–(5) below. Any specifications used to describe the data, in terms of type, purpose, and format, should also be referenced in that single section of the contract and made applicable to the data required to be delivered.

(2) The contractor normally should be required to furnish reports of work performed under all research and development contracts (fixed price and cost reimbursable), and also may be required to furnish such reports in cost-reimbursable supply contracts if considered desirable for monitoring contract performance. This may be achieved by including the clause substantially as provided at 1852.227–82, Reports of Work, in contracts with other than nonprofit organizations or by including substantially the same requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements. Normally in contracts with nonprofit organizations, the clause should be modified to eliminate the requirement for monthly process reports. Consideration should be given to the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the entire contract. If the clause at 1852.227–82 is used, it should be referenced in the section of the contract specifying data delivery reguirements. Use of such clause, however, does preclude the listing of other data in such section to be delivered under the contract. The clause may also be modified to enable the contracting officer to provide specific instructions regarding delivery, report numbering, distribution lists, and other information to assure appropriate distribution of the required reports of work, or such instructions may be included in the section of the contract specifying data delivery requirements. In addition, if in accordance with NASA Management Instruction (NMI) 2230.1, "NASA Scientific and Technical Document Availability Authorization," an initial determination is made that any of the foregoing reports of work required to be furnished under a research and development contract may receive unrestricted release (a publicly available document) pursuant to a blanket release as authorized in the NMI, the contractor may be requested to send a reproducible copy and a printed copy of such reports to—

NASA Scientific & Technical Information Facility, Attn: Accessioning Department, P.O. Box 8785, Baltimore/Washington International Airport, MD 21240

This may be achieved by either using the clause at 1852.227–82 with its Alternate I, or by stating such requirement in the section of the contract specifying data delivery requirements.

(3) Requirements for delivery of technical data relating to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which such items, component, or process is being procured. Normally a vendor's manuals for installation, operation or routine maintenance and repair, and/or form, fit, and function data, is adequate for most needs.

(4) Any detailed design, development, or production contract with an estimated cost (in current year dollars) of $1,000,000 or more at the time of procurement plan approval should have the delivery requirements for technical data set forth in separate contract line items. Such data line items should normally be broken down in terms of the subassembly, assembly, or subsystem to which the data relates. If practicable under the circumstances, such line items may be further broken down to the part or component level if the design or development of the part or component is required as a work element under the contract and there are anticipated reprocurement needs for such part or component. Separate data line items may also be used in contracts not meeting the above thresholds. Pursuant to Pub. L. 98–577, separate data line items are required in contracts for a major system acquisition (and to which the clause at 1852.227–83 is applicable, see paragraph (d) below).

(5) In no event should any data delivery requirements be construed to require that a contractor provide the Government, as a condition of the procurement, unlimited rights in, or reprocurement rights to, any data that qualifies as limited-rights data or restricted computer software. Rather, form, fit, and function data is to be furnished with unlimited rights in lieu of the qualifying data, or the qualifying data is to be furnished with limited rights or restricted rights if needed (see 1827.473–2 (d) and (e)). The provision at 1852.227–75, Representation of Limited-Rights Data and Restricted Computer Software, should be used as an aid in determining whether any limited-rights data or restricted computer software is likely to be used in meeting contract data requirements. The matter should also be addressed during contract negotiations.

(c) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1852.227–73, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under this clause at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract, and data authorized to be withheld under that clause will not be required to be delivered under the Additional Data Requirements clause.

(d) *Major system acquisitions.* (1) In order to assure that technical data needed to support a major system acquisition is timely delivered and is complete, accurate, and satisfies the requirements of the contract concerning the data, the clause at 1852.227–83, Technical Data Certification, Revision and Withholding of Payment, is to be included in every detailed design, development, or production contract for a major system acquisition (as the term "major system" is defined in section 4 of the Office of Federal Procurement Policy Act, as amended by Pub. L. 98–577), and in contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property which may be replaced during the service life of the system, and including spare parts and replenishment spare parts unless it is determined prior to the time of contract execution, with approval of the Assistant Administrator for Procurement, that it is not needed for either a given contract or for identified work elements (including the data delivery requirements therefor) of a given contract. It is to be used in other contracts only with approval of the Assistant Administrator for Procurement.

(2) The clause at 1852.227–83 requires the contractor, upon delivery of any technical data made subject to the clause in the contract, to certify that such data is complete, accurate, and complies with contract requirements. It also provides for corrections of any deficiencies in the data, as well as for the ability of the Government to request revisions of the data to reflect engineering design changes made during performance of the contract and affecting form, fit, and function of the items the data depicts. Further included is the authority to withhold payment under the contract to assure timely delivery of the technical data and/or assure correction if the technical data is not complete, accurate, and in compliance with contract requirements.

(3) When the clause at 1852.227–83 is used, the section of the contract specifying data delivery requirements (see paragraph (b)(4) above) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the technical officer, or such other designated official responsible for data management under the contract, shall review the technical data and the contractor's certification relating thereto to assure that the data is complete, accurate, and complies with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until the technical officer, or other designated official, provides a written statement to the contracting officer that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

1827.475 Solicitation provisions and contract clauses.

1827.475–1 Rights in data—general.

(a)(1) The contracting officer shall insert the clause at 1852.227–74, Rights in Data—General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1827.473–3, but the clause at 1852.227–74, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of exisiting works, as described in 1827.473–4;

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see also 1827.475–8(a) below);

(iv) For architect-engineer services or construction work, in which case the contracting officer may prescribe different clauses (see 1827.475–8(b) below), but the clause at 1852.227–74, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(v) A Small Business Innovative Research (SBIR) contract (Phase I or Phase II) (see 1827.475–7); or

(iv) A contract involving co-sponsored research and development in which a License Rights in Data Clause has been authorized pursuant to 1827.473–2(f) (see also 1827.475–8(c) below).

(2) If the contracting officer determines, in accordance with 1827.475–2(b), to adopt the alternate definition of limited-rights data for use in the clause, the clause shall be used with its Alternate I.

(3) If the contracting officer determines it is necessary to obtain the delivery of limited-rights data, the clause shall be used with its Alternate II (see 1827.437–2(d)). The contracting officer shall, when Alternate II is used, assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Rights Notice" of subparagraph (g)(2) of the clause in accordance with 1827.473–2(d)(2). The contract may exlcude identified items of data from delivery under subparagraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If the contracting officer determines it is necessary to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III (see 1827.473–2(e)). Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract. The contract may exclude identified items of computer software from delivery under subparagraph (g)(3) of the clause. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(b) The contracting officer may modify paragraph (d) of the clause as

authorized in 1827.473–2(j)(2) or 1827.473–2(j)(3).

1827.475–2 Representation of limited-rights data and restricted computer software.

If the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1852.227–75, Representation of Limited-Rights Data and Restricted Computer Software, in the Representations section of any solicitation containing the clause at 1852.227–74, Rights in Data—General. The contractor's response will provide an aid in detemining whether the clause should be used with Alternate II and/or Alternate III. (See 1827.473–2 (d) and (e)).

1827.475–3 Additional data requirements.

(a) The contracting officer shall insert the clause at 1852.227–76, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work, except those awarded using small purchase procedures, unless all the requirements for data are believed to be known at the time of contracting and are specified in the contract. (See 1827.474) This clause may also be used in other contracts when considered appropriate, after consultation with installation Intellectual Property or Patent Counsel. If the clause at 1852.227–74, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data.

(b) The contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in paragraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data.

1827.475–4 Rights in data—special works.

The contracting officer shall insert the clause at 1852.227–77, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 1827.473–3. The contract may specify the purpose and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired. The contracting officer, in consultation with installation Intellectual Property or Patent Counsel, may delete or limit the scope of paragraph (e) of the clause where there is no specific need to obtain indemnity for the liabilities specified therein (see 1827.473–3(c)).

1827.475–5 Rights in data—existing works.

(a) The contracting officer shall insert the clause at 1852.227–78, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1827.473–4(a). The contract may set forth limitations consistent with the purposes for which the work is begin acquired. The clause at 1852.227–75, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(b) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1827.473–4(b). In addition, the clause at 1852.227–79, Commercial Computer Software—Restricted Rights, may be used as prescribed in 1827.475–6.

(c) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items, see 1827.473–4(c)), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1827.473–4(c).)

1827.475–6 Commercial computer software—restricted rights.

The contracting officer may insert the clause at 1852.227–79, Commercial Computer Software—Restricted Rights, in solicitations and contracts for the separate acquisition of existing privately-developed computer software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction, if it is desired to assure consistency with the restricted rights set forth in 1827.473–2(e). (See also 1827.473–4(b)).

1827.475–7 Rights in data—SBIR Program.

The contracting officer shall insert the clause at 1852.227–80, Rights in Data—SBIR Program, in solicitations and contracts for Phase I and Phase II under the Small Business Innovative Research (SBIR) Program.

1827.475–8 Additional clauses.

(a) The contracting officer may develop and include as appropriate and in consultation with installation Intellectual Property or Patent Counsel, clauses consistent with the policy of 1827.472 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(b) The contracting officer may develop and include as appropriate and in consultation with installation Intellectual Property or Patent Counsel, clauses consistent with the policy in 1827.472 in contracts for architect-engineer services and construction work.

(c) The contracting officer may develop and include, with approval of the Procurement Officer and in consultation with installation Intellectual Property or Patent Counsel, a License Rights in Data clause in solicitations and contracts under the circumstances discussed in 1827.473–2(f). Such clause may be used for all or for specifically-identified tasks or work elements under the contract. In the latter instance its use may be in addition to the clause at 1852.277–74, Rights in Data—General, with the contract specifically identifying which clause is to apply to which tasks or work elements to be performed under the contract.

1827.475–9 Rights to proposal data (technical).

The contracting officer shall insert the clause at 1852.227–81, Rights to Proposal Data (Technical), in solicitations and contracts it if is desired to obtain (with contractor agreement) unlimited rights to technical data contained in the proposal upon which contract award is

based. When this clause is used, the prospective contractor must be afforded an opportunity to exlcude technical data from the clause (i.e., unlimited rights are not acquired for the excluded data) and the contract file must reflect that fact. This clause is not to be used to obtain rights to any commercial or financial information in the proposal. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to its acquisition with limited rights in accordance with 1827.473–2(d).

1827.475–10 Reports of work.

(a) The contracting officer shall prescribe the clause at 1852.227–82, Reports of Work, in all research and development contracts unless it is determined, consistent with the procedures of 1827.474(b)(2), that it is not needed because the reporting requirements thereof are adequately addressed in a section of the contract schedule relating to data delivery requirements. The clause may also be used in cost-reimbursement supply contracts if considered desirable for monitoring contract performance. When the clause is used, it should be cross-referenced in the section of the contract schedule specifying data delivery requirements. The clause may be modified, as appropriate, in accordance with 1827.474(b)(2).

(b) The clause may be used with its Alternate I if there is a blanket authorization, in accordance with NMI 2230.1, to have reports funished under the clause disseminated by the NASA Scientific and Technical Information Facility without restriction.

1827.475–11 Acquisitions of major systems or parts therefor.

The contracting officer shall insert the clause at 1852.227–83, Technical Data Certification, Revision and Withholding of Payment, in contracts in support of a major system of the type, and to the extent, set forth in 1827.474(d). When used, this clause requires that the technical data to which it applies be specified in the contract (see 1827.474(d)(3)).

PART 1832—[AMENDED]

Subpart 1832.1—General.

15. Section 1832.111–70 is revised to read as follows:

1832.111–70 NASA contract clauses.

(a) The contracting officer shall insert the clause at 1852.232–71, Invoices, in all fixed-price contracts (including letter contracts) and solicitations therefore, except those for construction work, architect-engineer services, or utility service.

(b) The contracting officer shall insert the clause at 1852.232–73, Payments (Utility Services), in negotiated utility service contracts and solicitations therefor.

(c) The contracting officer shall insert the clause at 1852.232–74, Payments (Facilities), in consolidated facilities contracts and solicitations therefor.

(d) The contracting officer shall insert the clause at 1852.232–78, Payment Information, in contracts and substitutions therefor that will result in one or more payments in excess of $25,000.

1832.172 [Amended]

16. Section 1832.172 is amended by changing "charges" to read "changes."

PART 1844—[AMENDED]

Subpart 1844.3—Contractors' Purchasing Systems Reviews.

1844.302–71 NASA—Conducted contractor purchasing systems reviews.

17. The heading for section 1844.302–71 is revised to read as set forth above.

PART 1845—[AMENDED]

Subpart 1845.3—Providing Government Property to Contractors

18. Section 1845.302–71 is added to read as follows:

1845.302–71 Acquisition of ADPE.

The proposed acquisition of automatic data processing equipment as defined in the FIRMR (41 CFR Ch. 201) shall be—

(a) Submitted on DD Form 1419 through the contracting officer to the installation's ADPE staff, for screening availability; and

(b) Approved in accordance with the provisions of NASA Handbook 2410.1, "Computer Resources Management."

PART 1847—[AMENDED]

Subpart 1847.3—Transportation in Supply Contracts

1847.305–70 [Amended]

19. Section 1847.305–70 is amended by changing "contract-furnished" to read "contractor-furnished".

PART 1851—[AMENDED]

Subpart 1851.1—Contractor Use of Government Supply Sources

1851.102 [Amended]

20. Section 1851.102 paragraph (c), the introductory text, is amended by changing "determinations and findings" to read "letter".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.212–71 [Redesignated as 1852.227–82]

21. Section 1852.212–71 is redesignated 1852.227–82 and revised to read as follows:

1852.227–82 Reports of Work.

As prescribed at 1827.475–10, insert the following clause:

Reports of Work (April 1985)

(a) *Monthly progress reports.* The Contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form and brief and informal in content. Monthly reports shall be submitted in——copies. Monthly reports shall include—

(1) A quantitative description of overall progress.

(2) An indication of any current problems which may impede performance and proposed corrective action.

(3) A discussion of the work to be performed during the next monthly reporting period.

(b) *Quarterly progress reports.* The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs, and drawings shall be included to convey the intended meaning. Quarterly reports shall be submitted in——copies.

(c) *Final report.* The Contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs, and drawings in sufficient detail to comprehensively explain the results achieved under the contract. The final report shall be submitted in——copies.

(d) *Submission.* The quantities of reports specified in paragraphs (a) theough (c) shall be submitted to the technical monitor of the contract.

(End of clause)

Alternate I (APRIL 1985). If authorized under 1827.475–10(b), the following may be added to paragraph (d) of the clause:

In addition, a reproducible copy and a printed or reproduced copy shall be sent to—NASA Scientific and Technical Information Facility, Attn: Accessioning Department, P.O. Box 8757, Baltimore/Washington International Airport, MD 21240.

22. Section 1852.227–74 is revised to read as follows:

1852.227-74 Rights in Data—General.

As prescribed in 1827.475–1(a)(1) and (1827.275–1(b), insert the following clause:

Rights in Data—General (April 1985)

(a) *Definitions.*

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Technical data," as used in this clause, means that data (other than computer software) which is of a scientific or technical nature.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that is sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it specifically excludes the algorithm, process, formulas, and flow charts of the software.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software, including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in the Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair; and

(iv) All other data delivered under this contract unless provided otherwise for limited-rights data or restricted computer software in accordance with pargraph (g) below.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited-rights or restricted-rights notices and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* Unless provided otherwise in subparagraph (d) below, the Contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published or presented in academic, technical and professional journals or conference papers. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with 1827.473–2(f) of the NASA FAR Supplement. If claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgment of Government sponsorship on the data when deposited in the U.S. Copyright Office or published. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that is not first produced in the performance of this contract and that contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; *provided*, however, that if such data is computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract except to the extent such data may be subject to the Federal export control laws and regulations, or unless either provided otherwise below in this paragraph or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data that is necessary for the performance of this contract and that contains restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(3) The Contractor agrees not to establish claim to copyright, publish, or release to others computer software first produced in the performance of this contract without prior written permission of the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be canceled or ignored unless—

(i) The Contracting Officer makes written inquiry to the Contractor concerning the propriety of the markings, providing the Contractor 30 days (or a shorter period of not less than 5 days from the date or receipt of such inquiry by the Contractor if the Contracting Officer determines, in accordance with 1827.473–2(g) of the NASA–FAR Supplement, that there are exigencies justifying such shorter period) to respond; and

(ii) The Contractor fails to respond within the set period (or a longer time approved by the Contracting Officer for good cause shown), or the Contractor's response fails to substantiate the propriety of the markings.

(2) The Contracting Officer shall consider the Contractor's response, if any, and determine whether the markings shall be canceled or ignored. The Contracting Officer shall furnish written notice to the Contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act

(5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) below, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) above is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(2)–(3) [Reserved]

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (April 1984). If a determination is made pursuant to 1827.475–1(a)(2), substitute the following definition for the definition of "Limited-rights data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

Alternate II (April 1984). As prescribed in 1827.475–1(a)(3), insert the following subparagraph (2) in paragraph (g) of the clause:

(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the Contracting Officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. Limited-rights data formatted as a computer data base is to be treated as limited-rights data under this subparagraph. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

Limited Rights Notice (April 1985)

(a) This data is submitted with limited rights under Government contract No. —— (and subcontract ——, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use by support service contractors.

(2) (The Contracting Officer may list additional purposes in accordance with 1827.473–2(d) or shall insert "Reserved").

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice)

Alternate III (APRIL 1984). As prescribed in 1827.475–1(a)(4), insert the following subparagraph (3) in paragraph (g) of the clause:

(3)(i) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. Computer data bases comprising limited-rights data are to be treated as limited-rights data. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice (April 1984)

(a) This computer software is submitted with restricted rights under Government contract No. —— (and subcontract ——, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) above.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form) (April 1984)

Use, reproduction, or disclosure in subject to restrictions set forth in contract No. —— (and subcontract ——, if appropriate).

(End of notice)

23. Section 1852.227–75 is revised to read as follows:

1852.227–75 Representation of Limited-Rights Data and Restricted Computer Software.

As prescribed in 1827.475–2, insert the following provision in solicitations that include the clause at 1852.227–74, Rights in Data—General:

Representation of Limited-Rights Data and Restricted Computer Software (April 1985)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known requirements for data (as defined in 1827.471 of the NASA FAR Supplement (NFS)). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 1852.227–76 of the NFS, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 1852.227–74 of the

NFS that is to be included in this contract. Under the latter clause a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate.

(b) As an aid in determining the Government's need to include any of the aforementioned Alternates in the clause at 1852.227–74, Rights in Data—General, of the NFS, the offeror's response to this solicitation shall, to the extent feasible, complete the representation below to either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

Representation Concerning Data Rights

Offeror has reviewed the requirements for the delivery of data or software and states (offeror check appropriate block)—

None of the data or software proposed for fulfilling such requirements qualifies as limited-rights data or restricted computer software.

Data or software proposed for fulfilling such requirements qualifies as limited-rights data or restricted computer software and is identified as follows:

Note.—"Limited-rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights In Data—General."

(End of provision)

24. Section 1852.227–79 is added to read as follows:

1852.227–79 Commercial Computer Software-Restricted Rights.

As prescribed in 1827.475–6, insert the following clause:

Commercial Computer Software—Restricted Rights (April 1985)

(a) Any restricted computer software (including documentation thereof) delivered under this purchase order/contract shall be subject to the "Restricted Rights" required by the NASA FAR Supplement (NFS 1827.473–2(e) and 1827.473–4(b)), as set forth in paragraph (d), below. Where the vendor proposes its standard commercial software license, or lease agreement, those applicable portions thereof consistent with Federal laws, standard industry practices, the Federal Acquisition Regulations (FAR) and the NASA FAR Supplement, including the "Restricted Rights" set forth in paragraph (d) below, shall be incorporated into and made a part of this purchase order/contract.

(b) If the vendor proposes its standard commercial software license or lease agreement after this purchase order/contract has been issued, or at or after the time the computer software is delivered, such license or lease agreement shall be deemed incorporated into and made a part of the resulting contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, etc. on the computer software, the NASA Contracting Officer or the NASA Contractor Technical Representative/User may sign any license or lease registration form or card and return it directly to the vendor; however, such signing shall not alter any of the terms and conditions set forth in this clause.

(c) Vendor's acceptance is expressly limited to the terms and conditions of this purchase order/contract. If the specified computer software is shipped or delivered to NASA, it shall be understood that the vendor has unconditionally accepted the terms and conditions set forth in paragraphs (a) and (b) above, and that such terms and conditions constitute the entire agreement between the parties concerning rights in the computer software.

(d) The following "Restricted Rights" of NFS 1827.473–2(e) shall apply:

(1) The restricted computer software delivered under this purchase order/contract may not be used, reproduced or disclosed by the Government except as provided below or otherwise expressly stated in the purchase order/contract.

(2) The restricted computer software may be—

(i) Used or copied for us in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(ii) Used with a backup computer if the computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(v) Disclosed and reproduced for use by support contractors or their subcontractors, subject to the same restrictions under which the Government acquired the software.

(3) If the restricted computer software is published, copyrighted computer software it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (2) above.

(End of Clause)

25. Section 1852.227–80 is added to read as follows:

1852.227–80 Rights in Data—SBRI Program.

As prescribed in 1827.475–7, insert the following clause:

Rights in Data—SBIR Program (April 1985)

(a) *Definitions.*

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Technical data," as used in this clause, means that data which is of a scientific or technical nature.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this clause, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or priviledged, or is published copyrighted computer software, including minor modifications of such computer software.

"SBIR data," as used in this clause, means data first produced by a contractor that is a small business firm in the performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638 (Pub. L. 97–219, "Small Business Innovation Development Act of 1982"), and which, without obligation as to its confidentiality, has not been made available to others by the Contractor, or is not already available to the Government.

"SBIR rights," as used in this clause, mean the rights in SBIR data as set forth in the SBIR Rights Notice of paragraph (d) of this clause.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner, and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) below or for limited-rights data or restricted

computer software in accordance with paragraph (g) below.

(2) The Contractor shall have the right to—

(i) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) below;

(ii) Withhold from delivery that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited-rights or restricted-rights notices and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) below.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. If claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 and 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government for all such data.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that is not first produced in the performance of this contract and that contains the copyright notice of 17 U.S.C. 401 and 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(3) *Removal of notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Rights to SBIR data.* The Contractor is authorized to affix the following "SBIR Rights Notice" to SBIR data delivered under this contract and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) below, in accordance with such Notice:

SBIR Rights Notice (April 1985)

This SBIR data is furnished with SBIR rights under NASA Contract No. —— (and subcontract —— if appropriate). For a period of 2 years after acceptance of all items to be delivered under this contract the Government agrees to use this data for Government purposes only, and it shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support contractors. After the aforesaid 2-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, this data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of this data by third parties. This Notice shall be affixed to any reproductions of this data, in whole or in part.

(End of notice)

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in paragraph (d) above and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by the contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The Contracting Officer makes written inquiry to the Contractor concerning the propriety of the markings, providing the Contractor 30 days (or a shorter period of not less than 5 days from the date of receipt of such inquiry by the Contractor if the Contracting Officer determines, with approval of the Head of the Contracting Activity, that there are exigencies justifying such shorter period) to respond; and

(ii) The Contractor fails to respond within the set period (or a longer time approved by the Contracting Officer for good cause shown), or the Contractor's response fails to substantiate the propriety of the markings.

(2) The Contracting Officer shall consider the Contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The Contracting Officer shall furnish written notice to the Contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) above, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(1) (i) and (iii) above is specified to be delivered under this contract and such data qualifies as either limited-rights data or restricted computer software the Contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

26. Section 1852.227–81 is added to read as follows:

1852.227–81 Rights to Proposal Data (Technical).

As prescribed in 1827.475–9, insert the following clause:

Rights to Proposal Data (Technical) (April 1985)

Except for data contained on pages——, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data" clause contained in this contract) in and to the technical data contained in the proposal upon which this contract is based.

(End of clause)

27. Section 1852.227–83 is added to read as follows:

1852.227–83 Technical Data Certification, Revision, and Withholding of Payment.

As prescribed in 1827.475–11, insert the following clause:

Technical Data Certification, Revision, and Withholding of Payment (April 1985)

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that has been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data certification.* (1) All technical data that is subject to this clause shall be accompanied by the following certification upon delivery:

Technical Data Certification (April 1985)

The Contractor, ———, hereby certifies that the technical data delivered herewith under Government contract No. —— (and subcontract ——, if appropriate) is complete, accurate, and complies with the requirements of the contract concerning such technical data.

(End of certification)

(2) The Government shall rely on the above certification in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which, in its opinion, are not in compliance with contract requirements. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that is subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor will be compensated for any such revisions to the technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $50,000 or 5% of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion respecting any technical data that is subject to this clause, the Contractor fails to—

(i) Make timely delivery of such technical data as required by this contract;

(ii) Provide the certification required by subparagraph (b)(1) above;

(iii) Make the corrections required by subparagraph (b)(2) above; or

(iv) Make revisions requested under paragraph (c) above.

(2) Such reserve or balance shall be whthheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized above. The amount withheld under this paragraph shall be in addition to any withholding under any other terms of this contract. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

1852.232-77 [Amended]

28. Section 1852.232-77, the introductory text, is revised by changing "1832.705-270(b) to "1832.705-270".

[FR Doc. 85-8047 Filed 4-3-85; 8:45 am]

BILLING CODE 7516-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket HM-139G; Amdt. Nos. 172-97, 173-187, 178-84, and 179-38]

Conversion of Individual Exemptions Into Regulations of General Applicability

Correction

In FR Doc. 85-6846 beginning on page 11700 in the issue of Monday, March 25, 1985, make the following correction:

§ 173.100 [Corrected]

On page 11702, third column, in § 178.100(ii), which was corrected to read § 173.100(ii) at 50 FR 12544, in the second line from the bottom, "of" should read "or".

BILLING CODE 1505-01-M

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC-6, Notice 11]

Railroad Freight Car Safety Standards

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Amendment of final rule.

SUMMARY: This document amends the final rule published on December 31, 1979 (44 FR 77328), which revised the Freight Car Safety Standards (49 CFR Part 215). It makes a technical correction to one section to eliminate confusion over the proper measurement of the extensiveness of discoloration found on freight car wheels due to an oxidation process that occurs after a wheel has been subjected to thermal abuse.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, telephone (202) 426-0897.

SUPPLEMENTARY INFORMATION: On June 22, 1984, FRA published in the **Federal Register** (49 FR 25645) a notice of proposed rulemaking (NPRM) to respond to a number of communications that it had received concerning the intent and appropriate interpretation of the language contained in § 215.103(h) of its Freight Car Safety Standards (49 CFR Part 215). This section prohibits a railroad from keeping a freight car in service if it has a defective wheel. Since a wheel that has been thermally abused presents a significant risk of sudden failure and consequent derailment, subsection (h) defines such wheels as defective when they show symptoms that have been associated with thermal abuse.

For the reasons detailed in the preamble to the NPRM, the existing language of this section, read literally, has a more restrictive effect than FRA intended. To eliminate the resulting confusion over this provision and to state the agency's intent more clearly, FRA proposed to amend § 215.103(h) to specify that: (i) Discoloration must be present on both faces of a freight car wheel, (ii) measurement can be made on either face, and (iii) measurements are to be made from the inner edge of the wheel rim.

Two commenters responded to the NPRM by urging that FRA correct the deficiencies in the existing rule and agreeing that FRA's proposed rule would improve the section. However, one commenter cautioned that if one face of the wheel is obscured by grime, grease, or environmental conditions present in some loading and unloading facilities, it may be difficult to observe both faces of the wheel. In supporting the change, both commenters agreed with FRA's technical analysis that oxidation discoloration from a sufficient heat input will occur on both sides of the wheel and supported FRA's proposal that its rule reflect this fact.

One commenter urged FRA to go well beyond the very limited scope of the present proposal. This commenter urged that FRA alter the criteria for suspected thermal abuse in several particulars and

strongly advocated rejection of the use of any discoloration criteria. Since both of these concerns exceed the scope of the notice of the proposed rule, FRA has not adopted any change other than those proposed in the NPRM. The other topics will be addressed in future FRA actions concerning the problem of thermally abused freight car wheels including the public hearing scheduled for April 25, 1985 (50 FR 9977). Consequently, FRA has decided to adopt the proposed changes to § 215.103(h) as an interim step in the process of reevaluating and studying this issue. This change will eliminate the current confusion and state more clearly the agency's intent.

List of Subjects in 49 CFR Part 215

Railroad safety.

Regulatory Impact

This amendment is simply a technical language change to eliminate confusion and its adoption will have no substantive impact. FRA has interpreted and enforced section 215.103(h) in accordance with the intent stated explicitly in this notice and implicitly in the current rule. Consequently, this technical amendment will impose no new or additional burdens; indeed, it may have the effect of reducing burdens for those who have read the section literally.

FRA has evaluated this amendment in accordance with existing regulatory policies. It is considered to be nonmajor under Executive Order 12291 and nonsignificant under DOT policies and procedures (44 FR 11034; February 26, 1979). It will have no economic impact. Based on these facts, FRA certifies that the amendment will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The amendment will not have any environmental impact and does not involve, directly or indirectly, any information collection requirements.

The Rule

PART 215—[AMENDED]

In consideration of the foregoing, § 215.103 of Part 215 of Title 49, Code of Federal Regulations, is amended by revising paragraph (h) to read as follows:

§ 215.103 Defective wheel.

* * * * *

(h) A wheel on the car shows signs of having been overheated as evidenced by a reddish brown discoloration, to a substantially equal extent on both the front and the back face of the rim, that extends on either face more than four inches into the plate area measured from the inner edge of the front or back face of the rim; or,

* * * * *

(Secs. 202 and 208, Federal Railroad Safety Act of 1970 (45 U.S.C. 431, 437); Sec. 1.49(n) of the regulations of the Office of the Secretary, 49 CFR 1.49(n))

Issued in Washington, D.C. on March 28, 1985.

John H. Riley,

Administrator.

[FR Doc. 85-7830 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 50342-5042]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206-624-1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada by Order-in-Council. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requiements established therein.

The substantive changes from the previous regulations, published at 49 FR 21738 (May 23, 1984), are as follows: (1) New halibut fishing seasons and area catch limits are established; (2) a new subarea of Area 2A is established, to be governed by its own season and gear restrictions in order to accommodate Indian treaty fishing rights; (3) new procedures for retrieval of halibut fishing gear from closed areas are prescribed; (4) vessel clearance requirements for various parts of Area 4 are changed; (5) greater flexibility in the opening and closing of seasons is provided for; (6) changes are made in log retention and landing record maintenance requirements; (7) the period before a halibut fishing season during which a vessel used to catch or possess halibut may not use setline gear is reduced from 120 hours to 72 hours; (8) changes are made in the sport fishing seasons for 1985 and 1986.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations.

List of Subjects in 50 CFR Part 301

Fish, fisheries.

Dated: March 29, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource, Management, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Chapter III is amended by revising Part 301 to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

301.1 Short title.
301.2 Interpretation.
301.3 Application.
301.4 Regulatory areas.
301.5 Fishing periods.

301.6 Closed periods.
301.7 Closed area.
301.8 Catch limits.
301.9 Size limits.
301.10 Licensing of vessels.
301.11 Vessel clearance and hold inspection.
301.12 Logs.
301.13 Receipt and possession of halibut.
301.14 Fishing gear.
301.15 Retention of tagged halibut.
301.16 Supervision of unloading and weighing.
301.17 Sport fishing for halibut.
301.18 Previous regulations superseded.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the *Pacific Halibut Fishery Regulations*.

§ 301.2 Interpretation.

(a) In this part,

Charter vessel means a vessel used for hire in sport fishing for halibut.

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered.

Commission means the International Pacific Halibut Commission.

Fishing means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component of setline gear anywhere in the maritime area.

Land with respect to halibut means to bring to shore and to offload.

License means a halibut fishing license issued by the Commission pursuant to §§ 301.10 and 301.17.

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.4.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing.

(b) In this part, all bearings are magnetic, unless otherwise stated, and all positions are determined by the most recent charts issues by the United States National Ocean Survey or the Canadian Hydrographic Service.

§ 301.3 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, inlcuding the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.4 to 301.16 apply only to commercial fishing for halibut.

(c) Section 301.17 applies only to sport fishing for halibut.

(d) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.4 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts of the states of California, Oregon, and Washington. Subarea 2A–1 includes all waters off the coast of Washington that are north of latitude 48°02'15" N., east of longitude 125°44'00" W., and west of longitude 123°42'30" W.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.).

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.7 that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.7 which are east of a line extending true northwest (315°) from a point at latitude 56°20'00" N., longitude 170°00'00" W. and west of longitude 168°00'00" W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, and west of Area 4C.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.7, east of longitude 168°00'00" W., and south of latitudes 65°34'00" N.

§ 301.5 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and in subsection (b) and apply where the catch limits specified in § 301.8 have not been taken, except that the June 24–26 fishing period in Areas 2C, 3A, 3B, 4A, 4B, and 4D may be modified by the Commission to insure fishing in later months.

2A	
05/09–05/21	06/23–09/04
06/06–06/20	09/19–10/01
07/24–08/05	
2B	
4/20–04/29	09/20–09/29
06/07–06/16	10/11–10/20
08/09–08/18	
2C	
04/27–04/29	09/09–09/11
05/27–05/29	09/20–*
06/24–06/26	
3A–3B	
04/27–04/29	09/09–09/11
05/27–05/29	09/20–*
06/24–06/26	
4A–4B	
04/27–04/29	07/09–07/13
05/27–05/29	08/07–08/14
06/24–06/26	09/20–*
4D	
04/27–04/29	07/09–07/19
05/27–05/29	08/07–08/14
06/24–06/26	09/20–*
4C	
06/01–06/02	07/05–07/06
06/03–06/04	07/07–07/08
06/05–06/06	07/09–07/10
06/07–06/08	07/11–07/12
06/09–06/10	07/13–07/14
06/11–06/12	07/15–07/16
06/13–06/14	07/17–07/18
06/15–06/16	07/19–07/20
06/17–06/18	07/21–07/22
06/19–06/20	07/23–07/24
06/21–06/22	07/25–07/26
06/23–06/24	07/27–07/28
06/25–06/26	07/29–07/30
06/27–06/28	07/31–08/01
06/29–06/30	08/02–08/03
07/01–07/02	08/04–08/05
07/03–07/04	08/07–*
4E	
05/21–05/23	08/14–08/16
05/24–05/26	08/17–08/19
05/27–05/29	08/20–08/22
05/30–06/01	08/23–08/25
06/02–06/04	08/26–08/28
06/05–06/07	08/29–07/01
06/08–06/10	07/02–07/04
06/11–06/13	07/05–07/07

07/08-07/10	09/03-09/05
07/11-07/13	09/06-09/08
07/14-07/16	09/09-09/11
07/17-07/19	09/12-09/14
07/20-07/22	09/15-09/17
07/23-07/25	09/18-09/20
07/26-07/28	09/21-09/23
07/29-07/31	09/24-09/26
08/01-08/03	09/27-09/29
08/04-08/06	09/30-10/02
08/07-08/09	10/03-10/05
08/10-08/12	10/06-10/08
08/13-08/15	10/09-10/11
08/16-08/18	10/12-10/14
08/19-08/21	10/15-10/17
08/22-08/24	10/18-10/20
08/25-08/27	10/21-10/23
08/28-09/30	10/24-10/26
08/31-09/02	10/27-10/29

*Date to be announced by the Commission.

(b) In Subarea 2A–1:

(1) The fishing season shall commence on April 20 and terminate when the catch limit specified in § 301.8 for Area 2A is reached, or on October 1, whichever is earlier;

(2) Fishing in Subarea 2A–1 at times when fishing in Area 2A is closed is authorized only for persons holding valid identification cards issued pursuant to 25 CFR 249.3 and whose historic halibut fishing is documented and has been acknowledged by an executive agency of the United States.

(c) Notwithstanding paragraph (a) of this section, where Area 3A is closed under § 301.8 on a date before the attainment of the catch limit in Area 3B, Area 3B will close on the same date.

(d) Where Area 3B is closed under paragraph (c) of this section, it shall reopen on the next scheduled opening date on the schedule of fishing periods referred to in paragraph (a) of this section and continue on that schedule until the catch limit specified in § 301.8 is attained.

(e) Each fishing period shall begin and terminate at 1200 hours Pacific Standard Time on the date set out in the table to this section, unless the Commission specifies otherwise.

(f) All commercial fishing for halibut shall cease at 1200 hours Pacific Standard Time on October 31.

§ 301.6 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.5 in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.14 (h) and (i), this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No person shall retrieve any halibut fishing gear from a closed area until the vessel first offloads any halibut on board and then obtains a hold inspection from a fishery officer or a representative of the Commission, except as provided in paragraph (f) of this section.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear in a closed area after notifying a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraphs (e) and (f) of this section the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraphs (e) or (f) of this section.

§ 301.7 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W. and south of a line from the latter point to Cape Newenham (latitude 58°39'00" N., longitude 162°10'25" W.) are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.8 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.5 shall be limited to the weight expressed in pounds or metric tons shown the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	500,000	227
2B	10,000,000	4,536
2C	9,000,000	4,082
3A	23,000,000	10,433
3B	9,000,000	4,082
4A	1,700,000	771
4B	1,300,000	590
4C	600,000	272
4D	600,000	272
4E	50,000	23

(b) Catches taken in Subarea 2A–1 shall be a part of the total allowable catch specified in paragraph (a) of this section for Regulatory Area 2A.

(c) The weights in each catch limits shall be computed on the basis that the heads of the fish are off and their entrails, removed.

(d) The Commission shall determine and announce to the public the data on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory area.

(e) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(f) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 32,000,000 pounds (14,515 metric tons) for the combined areas is taken.

(g) When under paragraphs (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in the area after the date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.9 Size limits.

(a) No person shall take or possess any halibut that:

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the schedule, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the schedule.

(b) No person shall mutilate or other wise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

§ 301.10 Licensing of vessels.

(a) The Commission may issue a license in respect of a vessel used for halibut fishing.

(b) No person shall fish for halibut from a vessel, nor possess halibut caught from a vessel, unless the Commission has issued a license in respect of that vessel.

(c) A license issued in respect of a vessel referred to in paragraph (b) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(d) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a

completed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from customs or fishery officers of either Contracting Party, or from the Commission.

(f) Licenses issued under this section shall be valid only during the year in which they are issued.

(g) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(h) No person shall:

(1) Fish for halibut while on board a vessel in respect of which the Commission has issued a license while that vessel is in an area where commercial fishing for halibut is not permitted under this part; or

(2) Possess halibut while on board a vessel referred to in paragraph (h)(1) of this section in an area referred to in that paragraph unless that vessel is in transit to or within a port in which that halibut may be lawfully sold.

(i) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

§ 301.11 Vessel clearance and hold inspection.

(a) No person other than a person who lands all of his halibut catch at a port within Area 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.7 shall fish for halibut in Area 4A, 4B, or 4D from a vessel for which a license is required under this part, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Area 4A, 4B, or 4D.

(b) No person other than a person who lands all of his halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel claearance and hold inspection both before and after such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands all of his halibut catch at a port within Area 4E, or the closed area defined in § 301.7 may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspection required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(e) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(f) No halibut shall be on board at the time of inspection required by paragraph (e) of this section.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section is not valid if the vessel has fished for halibut in Area 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

§301.12 Logs.

(a) The operator of any vessel five (5) net tons or greater holding a license shall keep an accurate log of all fishing operations undertaken under the license including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.13 Receipt and possession of halibut.

(a) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, shall keep an accurate record of each such purchase or receipt, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(b) The record referred to in paragraph (a) of this section shall be:

(1) Retained by the person keeping it for a period of two years from the date the record is made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(c) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(d) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (a) of this section shall be maintained by the operator of the vessel from which halibut was caught, in compliance with paragraph (b) of this section.

§ 301.14 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear except as provided in § 301.15.

(c) No person shall possess halibut while on board a vessel containing any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) At times when Area 2A is closed no person authorized to fish in Subarea 2A–1 shall fish for halibut in that subarea using gear other than a handline or nonpowered rod and reel with no more than two hooks attached.

(e) At times when Area 2A is closed no person authorized to fish in Subarea 2A–1 shall possess halibut taken in that subarea with gear other than a handline or nonpowered rod and reel with no more than two hooks attached.

(f) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing in a regulatory area shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number,

which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(g) All longline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing in a regulatory area shall be marked as required by the *British Columbia Fishery (General) Regulations.*

(h) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

§ 301.15 Retention of tagged halibut.

Nothing contained in this Part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.16 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

§ 301.17 Sport fishing for halibut.

(a) Sport fishing for halibut is only permitted from March 1 to December 31, 1985, and from February 1 to October 31, 1986.

(b) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(c) No person shall catch, possess, or land more than two halibut of any size per day from a vessel that is engaged in sport fishing.

(d) After two halibut have been taken by any person engaged in sport fishing, those halibut shall be landed before that person takes more halibut on any succeeding day.

(e) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(f) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel.

(g) A license issued in respect of a vessel referred to in paragraph (f) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by custom and fishery officers of the Contracting Parties.

(h) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(i) Licenses issued under this section shall be valid only during the year in which they are issued.

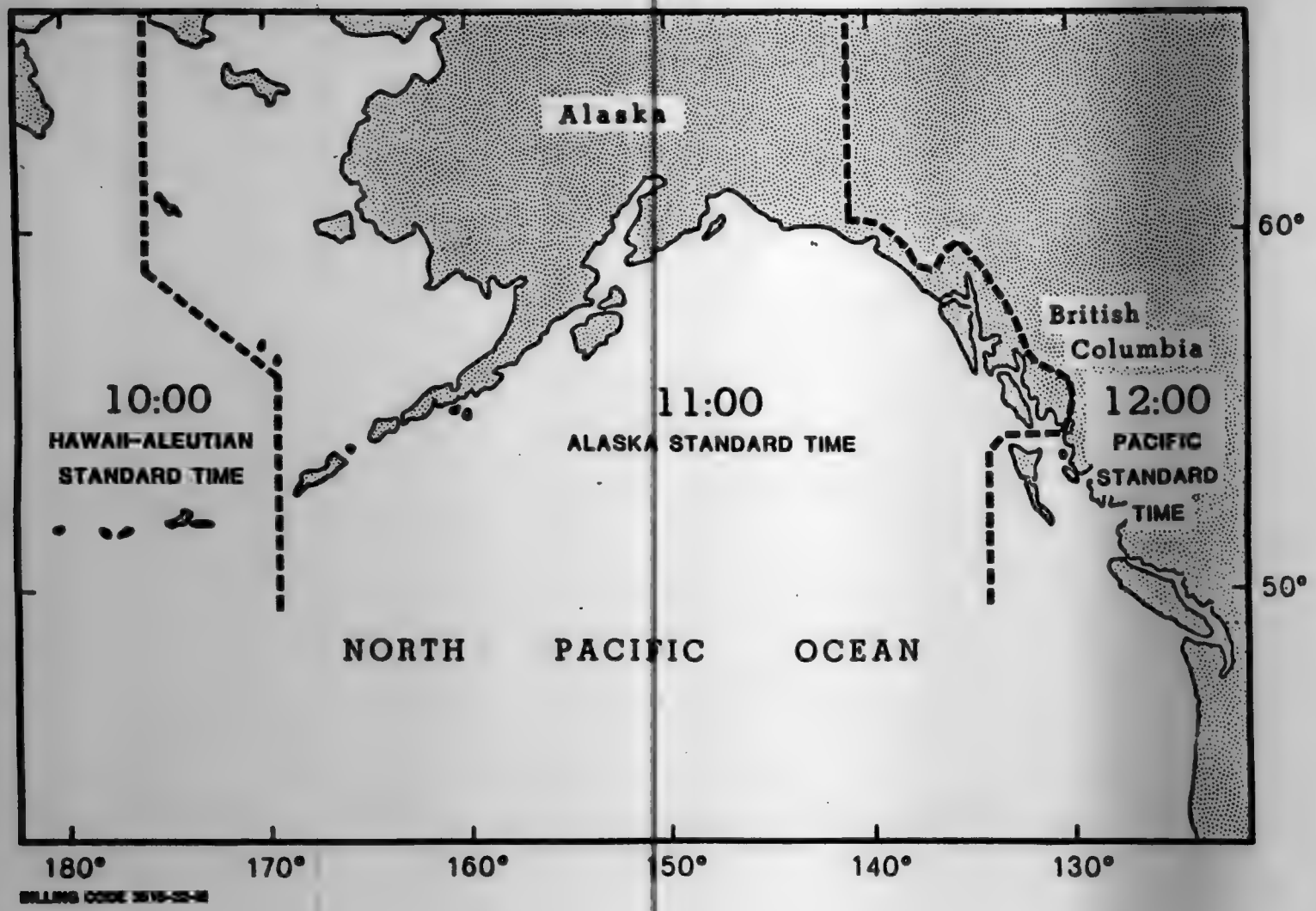
§ 301.18 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

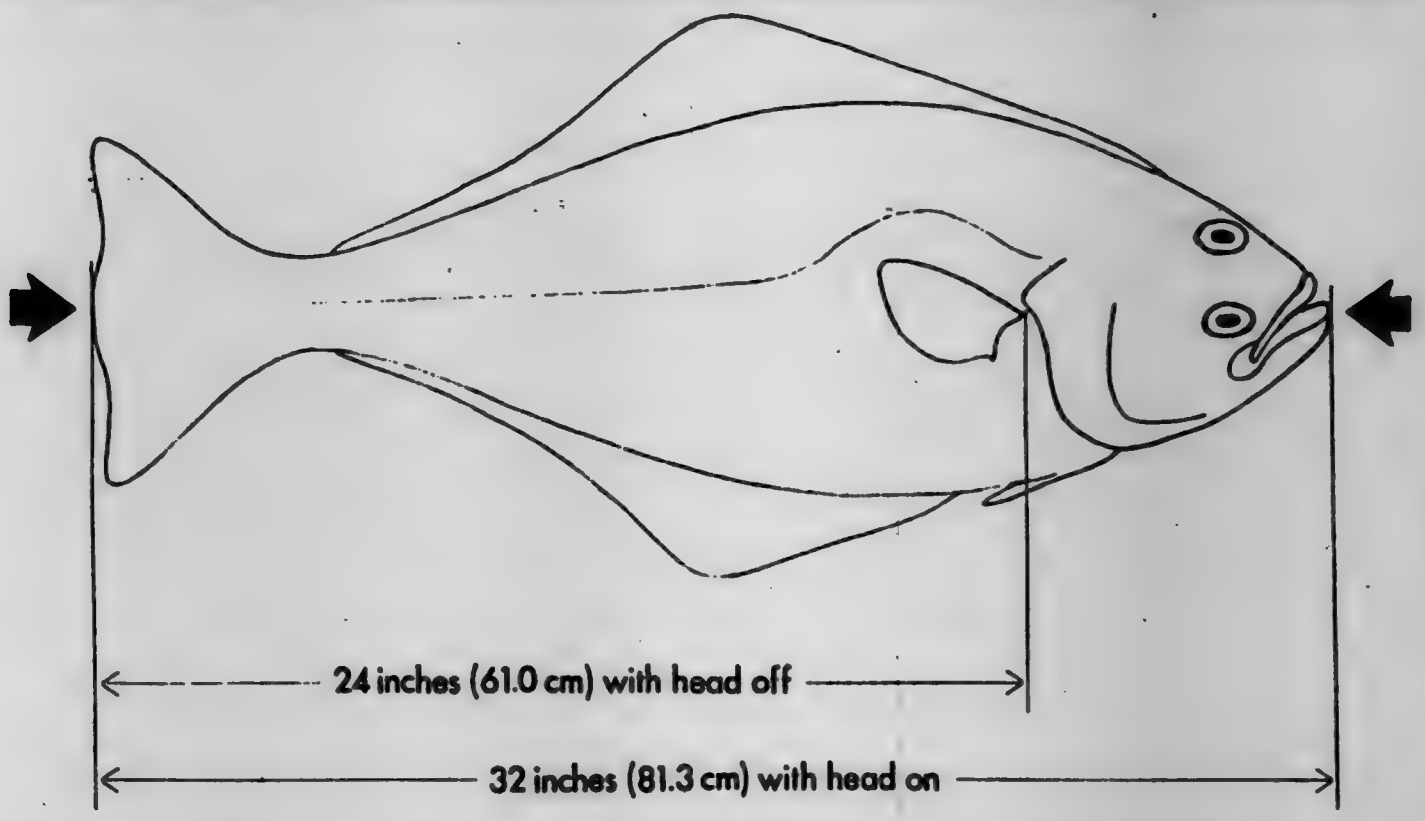
SCHEDULE

[Legal Opening and Closing Hours for Halibut Fishing for Standard Time (ST) and Daylight Savings Time (DT) in Different Time Zones of the Northeastern Pacific Ocean]

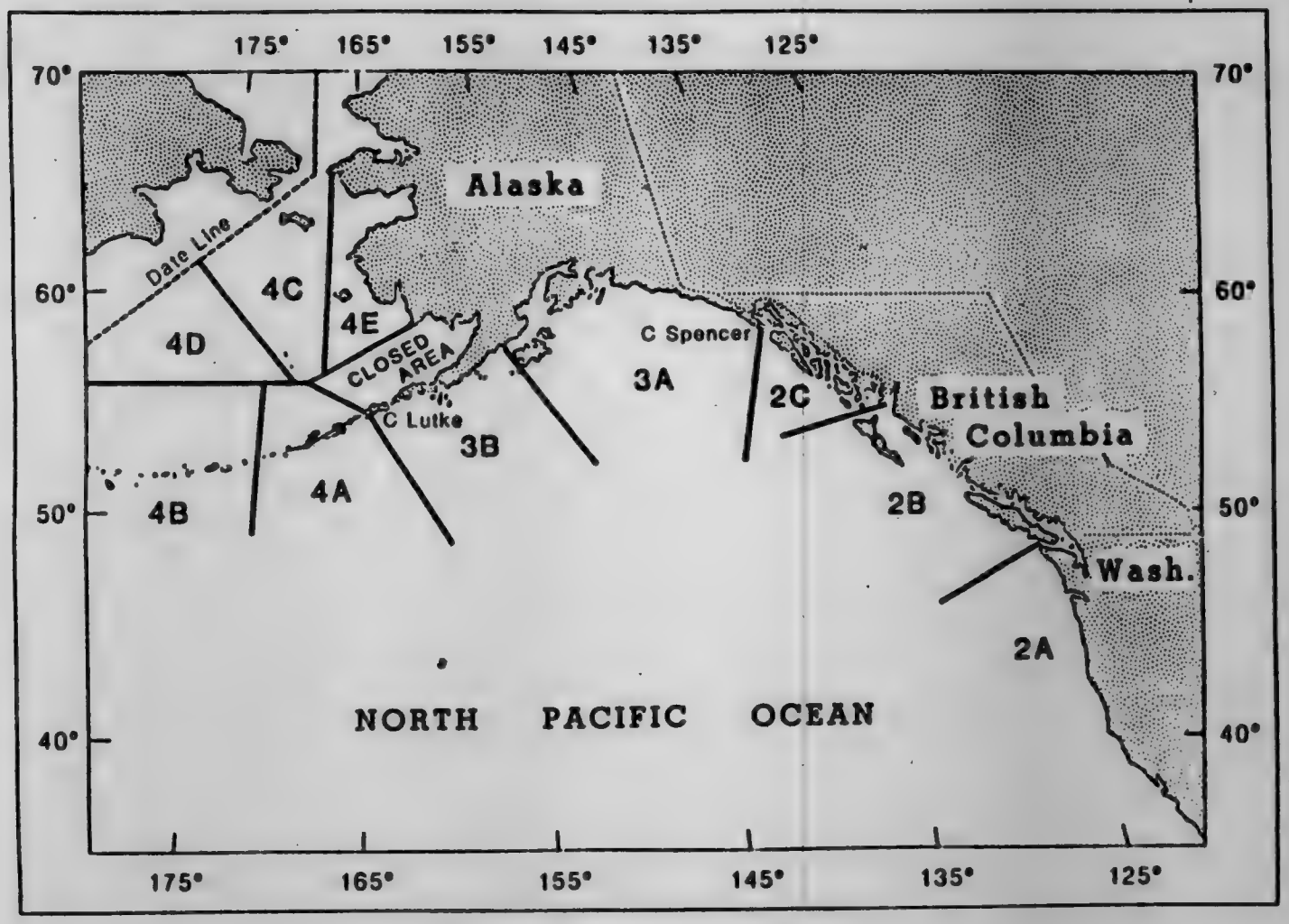
Time zone	Pacific		Alaska		Aleutian	
	PST	PDT	AkST	AkDT	AlST	AlDT
Hours	1200	1300	1100	1200	1000	1100



BILLING CODE 3510-22-M



Minimum commercial size.



Regulatory areas for the Pacific halibut fishery.

[FR Doc. 85-7994 Filed 4-3-85; 8:45 am]
BILLING CODE 3510-22-C

Proposed Rules

Federal Register
Vol. 50, No. 65
Thursday, April 4, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21903; File No. S7-5-85]

Confirmation Disclosure for Reported Securities

AGENCY: Securities and Exchange Commission.

ACTION: Extension of comment period for proposed rule amendments.

SUMMARY: The Commission has extended from March 29, 1985 to April 30, 1985 the deadline for submitting comments on the amendments which the Commission proposed on February 4, 1985 to its rule governing customer confirmation disclosure for principal transactions in reported securities.

DATE: Comments are to be received by April 30, 1985.

ADDRESS: All comments should be submitted in triplicate and addressed to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. All comments should refer to File No. S7-5-85, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Leland H. Goss, (202) 272-2827, Room 5204, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission has extended from March 29, 1985 to April 30, 1985 the deadline for submitting comments on the amendments proposed by the Commission on February 4, 1985 to Rule 10b-10 under the Securities Exchange Act of 1934,[1] which would require broker-dealers to report on confirmations the trade prices and markups in principal transactions with customers. The Commission has extended the deadline in order to afford an additional opportunity for public comment.

By the Commission.

John Wheeler,

Secretary.

March 28, 1985.

[FR Doc. 85-8085 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211 and 310

[Docket No. 84N-0311]

Adverse Drug Experience Reporting Requirements for Marketed Prescription Drugs Without Approved New Drug or Abbreviated New Drug Applications

Correction

In FR Doc. 85-6686 beginning on page 11478 in the issue of Thursday, March 21, 1985, make the following corrections:

1. On page 11479, in the first column, in the second line from the bottom, "pre-1963" should read "pre-1938".

2. In the third column, in the fourteenth line, "intervenous" should read "intravenous".

3. On page 11482, in the first column, in the first complete paragraph, in the nineteenth line, "§ 210.305(c)(5)" should read "§ 310.305(c)(5)".

4. In the second column, in paragraph E, in the fourth line from the bottom of the paragraph, "indentifier" should read "identifier".

5. On page 11483, in the first column, in the heading of § 310.305, in the second line, "market" should read "marketed".

BILLING CODE 1505-01-M

[1] *See* Securities Exchange Act Release No. 21708 (February 4, 1985) 50 FR 5790.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Iowa Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Iowa as proposed amendments to the State's permanent regulatory program (hereinafter referred to as the Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Iowa regulations concerning civil penalty assessments and collections including a proposed penalty assessment schedule, and performance bond amounts. This notice sets forth the times and locations that the Iowa program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments not received by 4:30 p.m., May 6, 1985, will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Iowa program.

A public hearing on the proposed amendments has been scheduled for April 24, 1985. Any person interested in speaking at the hearing should contact Mr. Richard Rieke at the address or telephone number listed below by April 19, 1985. If no person has contacted Mr. Rieke by that date to express an interest in the hearing, the hearing will not be held. If only one person requests the

opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing is scheduled for 1:00 p.m. at the Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106

Written comments and requests for a hearing should be directed to Mr. Richard Rieke, Director, Kansas City Field Office, Professional Building, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Copies of the Iowa program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the Kansas City Field Office.

Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Office of Surface Mining, Kansas City Field Office, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106

Iowa Department of Soil Conservation, Mine's and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Director, Kansas City Field Office, Professional Building, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April 10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register.**

II. Submission of Revisions

By letters dated January 31, 1985 and February 5, 1985, Iowa submitted proposed program amendments consisting of:

1. An amendment to Iowa Code 83.15 concerning civil penalties, which is intended to bring the Iowa program into conformity with the Federal regulations at 30 CFR 845. The rule concerns the assessment of civil penalties for violations of an operator's permit. It establishes general criteria for determining the amount of the penalty and provides for establishing a penalty assessment schedule. The rule also provides for a penalty of not less than $750 per day during which the violations continue. The rule provides for an informal conference to review the recommended penalty. The rule also provides that the State Attorney General shall institute civil action in the district court for the assessment of a civil penalty. This rule is also known as House File 531;

2. An amendment establishing a new Iowa rule 780–4.6(83) "Penalty Schedule." This rule establishes a schedule by which the Iowa Department of Soil Conservation (DSC) will assign points for assessing penalties. The authority for this schedule was established in the amendment above;

3. An amendment to the Iowa program concerning the method used to calculate bond amounts. Iowa is proposing to use subrule 4.42(1) of its approved program. At the same time the State is withdrawing its request for consideration of a $10,000 per acre bonding maximum as well as the proposed six-point methodology for determining per acre bonding amounts, which were found to be inconsistent with SMCRA and disapproved by the Director, OSM, on December 7, 1984 (49 FR 47834).

The full text of the proposed amendments is available for review at the address listed above. Upon request to OSM's Field Office Director, each person may receive, free of charge one single copy of the proposed program amendments. The Director now seeks public comment on whether the proposed amendments are consistent with the Federal regulations. If approved, the amendments will become part of the Iowa program.

III. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements establish by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

Dated: March 29, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–8055 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 84–33]

Drawbridge Operation Regulations; Mantua Creek, New Jersey

AGENCY: Coast Guard, Dot.

ACTION: Proposed rule.

SUMMARY: At the request of Consolidated Rail Corporation (CONRAIL), and New Jersey Department of Transportation (NJ DOT), the Coast Guard is considering a change to the regulations governing the Mantua Creek railroad and Route 44 drawbridges, respectively. Both bridges cross Mantua Creek at Paulsboro, New Jersey. The changes would allow the railroad bridge to open on advance notice form 11 p.m. to 7 a.m. from March

through November, and would permit both bridges to open on advance notice at all times from December through the last day of February. This proposal is being made because of minimal openings during the applicable periods. This action should relieve the bridge owners of the burden of having a person constantly available to open the draws and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 20, 1985.

ADDRESSES: Comments should be mailed to Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212)668–7994.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Third Coast Guard District will evaluate all communications received and will determine a final course of action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ernest J. Feemster, project manager, and Mary Ann Arisman, project attorney.

Discussion of Proposed Regulations

The Mantua Creek railroad bridge, about 1.4 miles from the creek mouth, has a one-foot vertical clearance at Mean High Water (MHW). The Route 44 bridge approximately 3/10 mile upstream has a vertical clearance of five feet at MHW. Both bridges have a five-foot greater clearance at Mean Low Water. Most vessels transiting upstream of the railroad bridge are smaller power vessels, many of which are enroute to or from a small marina located between the bridges. There are no other waterfront facilities upstream of the railroad bridge. The railroad bridge presently opens on signal and is required to open for most vessels due to its minimum vertical clearance.

CONRAIL requested that the railroad draw only be required to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and open on four hours notice at all other times. Review of bridge opening logs for 1983 shows that there were 12 openings from December through February, and 7 openings from March through November from 11 p.m. to 7 a.m. These minimal openings do not appear to warrant maintaining a draw operator from December through February, and from 11 p.m. to 7 a.m. March through November.

The Route 44 bridge presently opens on signal, except four hours notice is required from 11 p.m. until 7 a.m. year-round. Because of minimal openings during the winter, NJ DOT requested that four hours notice be required at all times from December through February. Review of bridge opening logs for 1982–1984 (December through February) shows four openings and they were all in December 1982. These few openings in 1982 and lack of openings the last two years (during the winter) do not appear to warrant maintaining a draw operator during the winter months.

The changes requested by both bridge owners would result in identical regulations at both bridges. This would simplify opening requirements for vessels using the waterway. The Coast Guard, therefore, is proposing that: (1) The railroad bridge require four hours notice from 11 p.m. to 7 a.m., March through November and at all times December through the last day of February, and (2) the Route 44 bridge require four hours notice at all times December through the last day of February and continue to require four hours notice 11 p.m. to 7 a.m. from March through November.

Mantua Creek accommodates only recreational vessels, mainly in the boating season during the day. The few winter openings of the railroad draw include vessels engaged in hunting or trapping.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is because the waterway is used only by recreational vessels and these regulations should respond to their needs. The regulations should similarly be responsive to the needs of the recreational boat marina located between the two bridges. Vessels operating outside hours the draw would open on signal will be required to give advance notice to receive an opening. This, however, should not pose a major inconvenience or significantly impact such vessels due to infrequency of such openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certified that, if adopted, it would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title, 33, Code of Federal Regulations, by revising § 117.729, to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§117.729 Mantua Creek.

(a) The draw of each moveable bridge shall be opened at all times as soon as possible for passage of a public vessel of the United States.

(b) The draw of the CONRAIL railroad bridge, mile 1.4 and the S.R. 44 bridge, mile 1.7, both at Paulsboro, shall open on signal from March 1 through November 30 from 7 a.m. to 11 p.m., and shall open on signal at all other times upon four hours notice.

(33 U.S.C. 499; 49 CFR 1.46(c)(2)); 33 CFR 1.05–1(g)(3))

Dated: March 19, 1985.

R.L. Johanson,

Captain, U.S. Coast Guard, Acting Commander, Third Coast Guard District.

[FR Doc. 85–8044 Filed 43–3–85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2810–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing rulemaking to disapprove a revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). This revision pertains to the incorporation of a source-specific variance for Sours Grain Company into the Illinois SIP. USEPA's action to propose disapproval of the requested SIP revision is based on the failure of the State to demonstrate that the variance would not jeopardize attainment and maintenance of the TSP national ambient air quality standards (NAAQS).

DATE: Comments on this revision and on the proposed USEPA aciton must be received by May 6, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6035, before visiting the Region V office.)

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: In a March 8, 1984, Opinion and Order of the Board (IPCB 79–210), the Illinois Pollution Control Board (IPCB) granted Sours Grain Company a variance from IPCB Rules 203(d)(8)(B)(ii)(a) and 203(d)(8)(B)(iv) until November 8, 1985, for particulate emissions from the truck dumping pit and watercraft loading spout at its Pekin, Illinois grain elevator. This grain elevator is located in Pekin Township, Tazewell County. The present TSP air quality status designation for this Township is secondary nonattainment.

Rule 203(d)(8)(B)(ii)(a) requires the use of induced draft at major dump pits and their associated equipment so that a minimum face velocity is maintained at the effective grate surface sufficient to contain particulate emissions generated in unloading operations. Rule 203(d)(8)(B)(iv) requires the use of an induced draft air stream which is ducted through air pollution control equipment as emissions controls for load-out areas.

USEPA analysis of the proposed SIP revision was completed in conformance with the provisions of a July 29, 1983, memorandum from Sheldon Meyers, Director of the Office of Air Quality Planning and Standards, to the Directors of the regional Air and Waste Management Divisions and with Section 110(a)(2) of the Clean Air Act (Act). This Sheldon Meyers memorandum sets forth USEPA's policy and requirements relative to the approval of source-specific SIP revisions. Prior to securing approval of a TSP source-specific relaxation that would maintain the overall approval status of the Part D SIP in a nonattainment area, USEPA policy requires the State to show that the SIP, as a whole, despite the relaxation, will continue to provide for the attainment and maintenance of the TSP national ambient air quality standards (NAAQS). This proposed SIP revision is a relaxation in that it provides additional time to comply with existing State requirement that have been approved as part of the Illinois SIP. For TSP, a modeling demostration using USEPA's reference modeling techniques and the best available information is required. The State's submittal failed to contain a modeling demonstration showing that the emission levels from this facility during the variance period would have no adverse impact on the timely attainment and maintenance of the particulate matter ambient standard. USEPA, therefore, proposes disapproval of this variance.

All interested persons are invited to submit written comments on the proposed SIP revision and on USEPA's proposed disapproval. Written comments received by the date specified above will be considered in USEPA's final rulemaking action.

Under 5 U.S.C. 605(b), USEPA has determined that this proposed action, if finally disapproved, will not have a significant economic impact on a substantial number of small entities. Only a single entity, Sours Grain Company, is affected by this action.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management of Budget (OMB) for review. Any comments from OMB to USEPA and any USEPA response are available for public inspection at the USEPA Region V office listed above.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110, 172, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

Dated: December 27, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–8030 Filed 4–3–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 712

[OPTS–82012; FRL–2811–1]

Comprehensive Assessment Information Rule; Opportunity for Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public meetings.

SUMMARY: The Environmental Protection Agency is considering conducting a series of public meetings to discuss the concept and reporting requirements of a new comprehensive reporting rule. The rule, which is being developed under section 8(a) of the Toxic Substances Control Act (TSCA), will contain an extensive list of questions for which reporting by chemical manufacturers, importers, and processors may be required. Each time data are needed on a chemical the rule will be amended. The subject chemical and the specific question(s) which must be reported on will be listed in the amendment. Only those data elements which are of primary interest to the users of the data will be requested. EPA will use this rule to obtain information needed by it and other Federal agencies to support assessments of and regulations on chemical substances.'

DATE: Persons interested in participating in these meetings or in suggesting topics for discussion, or in requesting additional information, should contact the EPA TSCA Assistance Office on or before May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

I. Background

To protect the general public and the environment from toxic chemicals, the regulatory agencies in the Federal

Government generally follow similar information-gathering processes to support the development of risk assessment/management strategies. Once an agency receives information that a particular chemical may, in certain circumstances, produce adverse health or environmental effects, that agency proceeds to gather a variety of information on that chemical which is needed to determine possible courses of action. Even if enough general information is already available to assist in making a preliminary decision to initiate regulatory development, additional, more precise information often is needed to supplement available information so that the agency can develop an appropriate regulatory strategy.

The data elements needed on an almost routine basis by each agency involved with developing chemical regulations have many similarities. Much of the needed information is proprietary to chemical manufacturers and processors and is therefore not publicly available. In most cases these agencies then rely on statutory authority to require the industry in question to provide the necessary information via a reporting regulation.

The development of information-gathering regulations as it is now carried out can be time-consuming and relatively costly to both the companies submitting the information and the agency making the request. Before an agency can promulgate a reporting rule several actions must occur. These include: (1) The actual questions must be drafted, (2) a proposed rule must be drafted and undergo various stages of review, (3) the proposal must be published, (4) public comments must be reviewed, (5) a process and data base must be established for managing the information collected by the agency and (6) a final rule must be drafted, reviewed and published. Regardless of the nature of the rule, most of these stages must occur. The longer it takes to complete these stages and issue a rule, the longer it will be until actual data have been reported. This delays important assessments and regulatory actions.

EPA requires less time to add chemicals to a model rule (a rule used repetitively) by amendment than is needed to promulgate a chemical-specific rule. Unlike chemical-specific rules, a model rule probably will not require. (1) The design of a new data base each time a chemical is added to the rule, (2) the development of a new process for handling and receiving completed forms as they are received by the Agency, and (3) extensive review of the rule and reporting requirements by EPA each time chemicals are added to the rule by amendment. Agency experience with one model information gathering rule—the Preliminary Assessment Information Rule—has shown that the time to promulgate an amendment adding chemicals to this rule is one-quarter to one-third the time needed to publish the original rule.

Issuing a more detailed model rule would establish many of the information elements EPA considers important in preparing risk assessments and supporting chemical regulations. EPA's routine use of these standard information elements for the development of risk assessments should lead toward greater consistency in chemical evaluations. Further, the public will have a better understanding of what information is needed to complete these evaluations.

The Agency has found, through its experience with model rules that, as industry becomes more accustomed to a specific set of the reporting requirements, fewer mistakes are made in completing the model rule reporting form.

The Preliminary Assessment Information Rule issued by EPA and published in the Federal Register of June 22, 1982 (47 FR 26992), required chemical manufacturers to complete EPA Form No. 7710–35 on an initial list of approximately 250 chemicals and to submit their reports to the Agency no later than November 19, 1982. Each form submitted to the Agency was reviewed both manually and by computer to detect any reporting errors. For each error detected, the respondent was contacted and required to make the necessary corrections. In some cases where several respondents incorrectly answered the same questions, EPA reviewed the reporting form and published a supplement to clarify the original instructions.

Approximately one error was detected for each form submitted in response to the June 22, 1982 rule. With each of several subsequent amendments adding chemicals to the rule, fewer errors have been detected. This suggests that there is a learning curve for reporting for a model rule. As this learning takes place, fewer errors occur in reporting and fewer companies need to make corrections and resubmit their forms. This allows the Agency to have complete and accurate data sooner than would otherwise be possible if many correction cycles were required. Based on this experience, EPA believes that over time fewer EPA and company resources will be required to implement a model rule than for a series of individual chemical-specific rules.

Duplicative reporting from companies responding to EPA and other government agencies on the same chemical is a major problem for industry. With the development of a comprehensive information model rule EPA intends to consolidate all information reported into one data base. Such centralization of information will permit EPA and other agencies to verify quickly if a request for information on particular chemical has ever been made before using the model rule. At present, due to the wide variety of data bases and reporting rules in existence, it is difficult to search for data that may previously have been reported on a chemical. This new model rule should lead to greater coordination among EPA program offices and other Federal agencies that evaluate chemical data and should facilitate information collection and sharing among these groups. More effective and efficient information coordination between EPA and other agencies should reduce the information collection burden placed on industry.

Thus, to reduce industry compliance costs and to provide a quick and efficient mechanism for obtaining relevants data, EPA has begun development, under section 8(a) of TSCA, of the Comprehensive Assessment Information Rule (CAIR). This notice solicits public participation in the development of CAIR.

II. Areas of Discussion

A. CAIR

Under section 8(a)(2) of TSCA, EPA can require manufacturers and processors of chemical substances to keep such records and submit such information to the Agency as the Administrator may reasonably require. The information that can be required includes (but is not limited to): (1) Chemical identity, (2) categories of use, (3) quantities manufactured and/or processed, (4) description of byproducts, (5) exposure, (6) environmental and health effects, (7) environmental fate data, and (8) environmental release information.

In developing CAIR, EPA will create a comprehensive list of questions which will provide section 8(a)(2)-type information. Since many types of information will be needed, these questions will vary both in the type of information elements required and the level of accuracy. For example, information requirements could include: "What quantity of the chemical is

produced each year?", "What is the ambient air concentration in the workplace?", "What is the vapor pressure of the chemical?", "Provide a block diagram of the process you use in manufacturing the subject chemical", or "Are your employees required to undergo a complete medical examination before they are hired?" Questions may also vary in degrees of accuracy required; for example: "What is the percentage of impurities in your final product to an accuracy of 25 percent?" or, "What is the percentage of impurities in your final product to an accuracy of 5 percent?"

The rule will establish questions like these, together with appropriate reporting procedures, in the Code of Federal Regulations. Each time data are needed on a particular chemical, the rule will be amended. The subject chemical will be added and the specific question(s) in the rule which must be reported on will be listed in the amendment. Only those data elements for which information is needed on the specific chemical will be cited in a given reporting requirement rule. In addition to adding chemicals to the rule by amendment, the reporting form and instructions may change by the addition of new questions or modification of existing questions via amendments to the rule. In those instances where CAIR is not specific enough for a particular information need, and the addition of specific questions to the reporting form is not warranted due to the likelihood that the Agency will not need them for future reporting, the Agency will issue a chemical-specific rule.

EPA's Office of Toxic Substances (OTS) will be responsible for developing CAIR and for amending it by adding chemicals or additional questions when necessary. However, EPA also intends to use this rule to support certain information-gathering needs of other program offices in EPA and other Federal agencies that require information for chemical risk assessment/management purposes. Other offices and agencies will be consulted about chemicals of interest to them, and, as appropriate these chemicals will be included in the CAIR rule.

In addition to filling new information needs in EPA and other Federal agencies, CAIR may also be used to replace or supplement existing section 8(a) rules. In order to centralize reporting requirements, the Agency may incorporate other model rules (e.g., the Preliminary Assessment Information Rule) into the CAIR rule. Before modifying CAIR for these additions, the Agency will propose any changes for public comment.

B. Who Would Report

EPA may, according to section 8(a) of TSCA, require reporting from manufacturers, processors, and importers. For the Preliminary Assessment Information Rule, only manufacturers and certain importers were subject to the proposed rule. The Comprehensive Assessment Information Rule will be structured to allow EPA to require reporting by manufacturers, importers and/or processors; those who must report will be identified for each chemical-specific use of the rule.

C. Confidentiality

Respondents will be permitted to claim certain information required by the CAIR rule as confidential provided substantiation requirements are met. Any information covered by a claim would be disclosed by EPA only as provided in the procedures set forth at 40 CFR Part 2. If no claim accompanied the information at the time it was submitted to EPA or if certification as to the claim was not made on the reporting form, EPA would place the information in an open file available to the public without further notice to the submitter.

III. Public Meetings

The Agency is considering holding two sets of meetings. The first set will be concerned with the concept of the rule, including such topics as: "Who should be subject?" "What definitions should be incorporated into the rule?" "What chemicals should be added to the rule?" etc. The next series of meetings will deal with the actual reporting form. These meetings will discuss such issues as: "What questions should be included in the form?" "What degree of accuracy should be required?" etc. The Agency will determine, based on the responses to this Notice, whether such meetings are warranted. Therefore, EPA encourages persons interested in attending these meetings and/or suggesting alternative topics for discussion to contact the TSCA Assistance Office. A Notice will be published in the **Federal Register** announcing the dates and locations of any public meetings.

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Recordkeeping and reporting requirements.

Dated: March 28, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-8033, Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 761

[OPTS-62042; TSH-FRL 2812-3]

Polychlorinated Biphenyls; Proposed Incorporation by Reference Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA has incorporated by reference certain American Society for Testing and Materials (ASTM) test methods in the Polychlorinated Biphenyl (PCB) regulations. The test method ASTM D 3178–73 has been revised by ASTM. EPA is proposing that the revised method be used to meet particular PCB testing requirements and invites comments on the revised method.

DATE: Comments on this proposed amendment must be submitted by May 6, 1985.

ADDRESS: Address written comments to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

EPA requests that written comments be submitted in triplicate. Comments should include the docket control number OPTS–62043. Comments on this proposed rule will be available for review and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E–107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: The ASTM test method ASTM D 3178–73 (Reapproved 1979)—Standard Test Methods for Carbon and Hydrogen in the Analysis Sample of Coke and Coal has been revised. The new number designation for the test method is ASTM D 3178–84. EPA invites comments on the revised test method, copies of which are available from the Document Control Officer (see ADDRESS reference above).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Incorporation by reference.

(Sec. 6, 90 Stat. 2020 (15 U.S.C. 2065))

Dated: March 28, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 761—[AMENDED]

Therefore, it is proposed that Part 761 of Title 40 of Chapter I be amended as follows:

§ 761.19 [Amended]

1. In § 761.19(b), the entry "ASTM D 3178–73" is revised to read "ASTM D 3178–84."

§ 761.60 [Amended]

2. In paragraph (a)3)(iii)(B)(*6*), the reference "ASTM D 3178–73" is revised to read "ASTM D 3178–84."

[FR Doc. 85–8028 Filed 4–3–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6640]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 3554 on January 25, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Borough of Bloomingdale, Passaic County, New Jersey.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Borough of Bloomingdale, previously published at 50 FR 3554 on January 25, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Source of Flooding	Location	Elevation in feet national geodetic vertical datum
Cold Spring Brook.	Approximately 600 feet upstream of Glen Wild Avenue.	*593
Van Dam Brook	Approximately 520 feet upstream of Knolls Road.	*322

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator.

Issued: March 25, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–7990 Filed 4–3–85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 5, 18, 21, 22, 73, 83, 90, 95, and 99

[Gen. Docket No. 85–75; FCC 85–127]

List of Rules To Be Reviewed During 1985–1986

AGENCY: Federal Communications Commission.

ACTION: Notice of the Commission's list of rules to be reviewed during 1985–1986.

SUMMARY: This action (Notice) invites public comment on the Commission's List of Rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act of 1980, 5 U.S.C. 610. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities. Upon receipt of comments from the public, said comments will be evaluated and action will be taken to rescind or amend the Commission's rules, as required.

DATES: Comments may be filed June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Donald L. McClure, Office of the General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

In the matter of Federal Communications Commission's list of rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act during 1985–1986; Gen. Docket No. 85–75.

Adopted: March 15, 1985.
Released March 21, 1985.

By the Commission.

1. On July 29, 1981, the Federal Communications Commission released its Regulatory Flexibility Act (REA) (5 U.S.C. 601 *et seq.*) Plan for periodic review of all rules issued by the agency which have, or will have, a significant economic impact upon a substantial number of small entities. See 46 FR 39183 (July 31, 1981). Attached to the Commission's plan was a table outlining a broad schedule for reviewing FCC regulations toward the ends specified by the FRA during the next five years. The Notice in Gen. Docket No. 81–706 implemented the first year of the five year plan. See 46 FR 56466 (November 17, 1981). The RFA Plan has been revised to accomplish the review of the Commission's Rules over the next three years (1982–1985) thereby decreasing the original term of review by one year.[1]

2. In accordance with the revised RFA Plan, the staff has reviewed the subparts of the Commission's regulations targeted for review from March 1985 through February 1986. The attached Appendix lists specific rules or closely related groups of rules which are to be examined pursuant to section 610(c) of the RFA during the fourth and final year of the Commission's RFA review. The public is invited to comment on these rules for regulatory flexibility purposes. Comments should address the following: (1) The nature of the economic impact the rule(s) has (or have) on the commenting party; (2) the continued need for the rule(s); (3) the complexity of the rule(s); (4) the extent to which the rule(s) overlap(s); duplicate(s) or conflict(s) with other Federal rules, and, to the extent feasible, with state and local governmental rules; (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule(s); (6) any other matters that would

[1] The Notice in Gen. Docket No. 82–812 implemented the second year of the revised RFA Plan. See 47 FR 58315, (December 30, 1982). The Notice in Gen. Docket No. 84–381 implemented the third year of the revised RFA Plan. See 49 FR 17045, (April 23, 1984).

facilitate an informed review of the specified regulations.

3. Commenting parties should submit one original and five copies of each filing to the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.[2] Comments should specify the docket number of the proceeding and the name of the reviewing Bureau or Office.

4. Interested parties may file comments June 3, 1985.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission,

William J. Tricarico,

Secretary.

Regulatory Review Plan

Office of the General Counsel

PART 1—PRACTICE AND PROCEDURE

Subpart A—General Rules of Practice and Procedure

Need: These rules prescribe general practice and procedures for parties, practitioners and witnesses appearing before the Commission.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

1.001 Proceedings before the Commission.
1.002 Declaratory rulings.
1.003 Suspension, amendment, or waiver of rules.
1.004 Computation of time.
1.005 Mailing address furnished by licensee.
1.006 Availability of station logs and records for Commission inspection.
1.008 Withdrawal of papers.
1.010 Transcript of testimomy; copies of documents submitted.
1.012 Notice to attorneys of Commission documents.
1.014 Citation of Commission documents.
1.021 Parties.
1.022 Authority for representation.
1.023 Persons who may be admitted to practice.
1.024 Censure, suspension, or disbarment of attorneys.
1.025 Former Commissioners and employees.
1.026 Appearances.
1.027 Witnesses; right to counsel.
1.041 Informal requests for Commission action.
1.042 Applications, reports, complaints; cross-reference.
1.043 Requests for stay; cross-reference.
1.044 Separate pleadings for different requests.
1.045 Pleadings; filing periods.
1.046 Motions for extension of time.
1.047 Service of documents and proof of service.
1.048 Length of pleadings.
1.049 Specifications as to pleadings and documents.
1.050 Specifications as to briefs.
1.051 Number of copies of pleadings, briefs, and other papers.
1.052 Subscription and verification.
1.061 Procedures for handling applications requiring special aeronautical study.
1.062 Operation pending action on renewal application.
1.065 Substantial and significant changes in information furnished by applicants to the Commission.
1.068 Action on application for license to cover construction permit.
1.077 Detailed application procedures; cross-references.
1.080 Forfeiture proceedings.
1.083 Application for radio operator license.
1.084 Procedure with respect to commercial radio operator license applications.
1.085 Suspension of operator licenses.
1.087 Modification of license or construction permit on motion of the Commission.
1.088 Predesignation pleading procedure.
1.089 Notice of violations.
1.091 Revocation and/or cease and desist proceedings; hearings.
1.092 Revocation and/or cease and desist proceedings; after waiver of hearing.
1.093 Consent orders.
1.094 Consent order procedures.
1.095 Violation of consent orders.
1.101 General provisions.
1.102 Effective dates of actions pursuant to delegated authority.
1.103 Effective dates of Commission actions; finality of Commission actions.
1.104 Preserving the right of review; deferred consideration of application for review.
1.106 Petitions for reconsideration.
1.108 Reconsideration on Commission's own motion.
1.110 Partial grants; rejection and designation for hearing.
1.113 Action modified or set aside by person, panel, or board.
1.115 Application for review of action taken pursuant to delegated authority.
1.117 Review on motion of the Commission.
1.120 Protests of grants without hearing.

Subpart B—Hearing Proceedings

Need: These rules prescribe hearing proceedings and procedures for parties, practitioners, and witnesses appearing before the Commission.

Legal Basis; 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.201 Scope.
1.202 Official reporter; transcript.
1.203 The record.
1.204 Pleadings; definition.
1.205 Continuances and extensions.
1.207 Interlocutory matters, reconsideration and review; cross-references.
1.209 Identification of responsible officer in caption to pleading.
1.211 Service.
1.221 Notice of hearing; appearances.
1.223 Petitions to intervene.
1.224 Motion to proceed in forma pauperis.
1.225 Participation by non-parties; consideration of communications.
1.227 Consolidations.
1.229 Motions to enlarge, change or delete issues.
1.241 Designation of presiding officer.
1.243 Authority of presiding officer.
1.245 Disqualification of presiding officer.
1.246 Admission of facts and genuineness of documents.
1.248 Prehearing conferences; hearing conferences.
1.249 Prehearing statement.
1.250 Discovery and preservation of evidence; cross-references.
1.251 Summary decision.
1.253 Time and place of hearing.
1.254 Nature of the hearing; burden of proof.
1.255 Order of procedure.
1.258 Closing of the hearing.
1.260 Certification of transcript.
1.261 Corrections to transcript.
1.263 Proposed findings and conclusions.
1.264 Contents of findings of fact and conclusions.
1.267 Initial and recommended decisions.
1.271 Delegation of review function.
1.273 Waiver of initial or recommended decision.
1.274 Certification of the record to the Commission for initial or final decision.
1.276 Appeal and review of initial decision.
1.277 Exceptions; oral arguments.
1.279 Limitation of matters to be reviewed.
1.282 Final decision of the Commission.
1.291 General provisions.
1.294 Oppositions and replies.
1.296 Service.
1.297 Oral argument.
1.298 Rulings; time for action.
1.301 Appeal from presiding officer's interlocutory ruling; effective date of ruling.
1.302 Appeal from presiding officer's final ruling; effective date of ruling.
1.311 General.
1.313 Protective orders.
1.315 Depositions upon oral examination—notice and prelimimary procedure.
1.316 Depositions upon written interrogatories—notice and preliminary procedure.
1.318 The taking of depositions.
1.319 Objections to the taking of depositions.
1.321 Use of depositions at the hearing.
1.323 Interrogatories of parties.
1.325 Discovery and production of documents and things for inspection, copying or photographing.
1.331 Who may sign and issue.
1.333 Requests for issuance of subpena.
1.334 Motions to quash.
1.335 Rulings.
1.336 Service of subpenas.
1.337 Return of service.
1.338 Subpena forms.
1.339 Witness fees.
1.340 Attendance of witness; disobedience.
1.351 Rules of evidence.
1.352 Cumulative evidence.
1.353 Further evidence during hearings.
1.354 Documents containing matter or material.
1.355 Documents in foreign language.
1.356 Copies of exhibits.

[2] The original will be placed in the public docket and the Secretary will forward one copy to the appropriate Bureau or Office.

1.357 Mechanical reproductions as evidence.
1.358 Tariffs as evidence.
1.359 Proof of official record; authentication of copy.
1.360 Proof of lack of record.
1.361 Other proof of official record.
1.362 Production of statements.
1.363 Introduction of statistical data.
1.364 Testimony by speakerphone.

Subpart C—Rule Making Proceedings

Need: These rules prescribe rulemaking proceedings and procedures, such as petitions for and notice of proposed rule makings, form of comments, replies and further notice of rule makings before the Commission.
Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.399 Scope.
1.400 Definitions.
1.401 Petitions for rule making.
1.403 Notice and availability.
1.405 Responses to petitions; replies.
1.407 Action on petitions.
1.411 Commencement of rule making proceedings.
1.412 Notice of proposed rule making.
1.413 Content of notice.
1.415 Comments and replies.
1.419 Form of comments and replies; number of copies.
1.420 Additional procedures in proceedings for amendment of the FM, TV or air-ground Table of Assignments.
1.421 Further notice of rule making.
1.423 Oral argument and other proceedings.
1.425 Commission action.
1.427 Effective date of rules.
1.429 Petition for reconsideration.
1.430 Proceedings on a notice of inquiry.

Subpart D—Broadcast Applications and Proceedings

Need: These rules prescribe filing requirements, application forms and procedures for broadcast services.
Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.502 Emergency Broadcast Authorizations.
1.511 Applications required.
1.512 Where to file; number of copies.
1.513 Who may sign applications.
1.514 Content of applications.
1.516 Specification of facilities.
1.517 Contingent applications.
1.518 Inconsistent or conflicting applications.
1.519 Repetitious applications.
1.520 Multiple applications.
1.522 Amendment of applications.
1.525 Agreements between parties for amendment or dismissal of, or failure to prosecute broadcast applications.
1.526 Records to be maintained locally for public inspection by commercial applicants, permittees and licensees.
1.527 Records to maintained locally for public inspection by non-commercial educational applicants, permittees and licensees.
1.531 Formal and informal applications.
1.533 Application forms for authority to construct a new station or make changes in an existing station.
1.534 Application for extension of construction permit or for construction to replace expired construction permit.
1.536 Application for license to cover construction permit.
1.538 Application for modification of license.
1.539 Application for renewal of license.
1.540 Application for voluntary assignment of transfer of control.
1.541 Application for involuntary assignment of license or transfer of control.
1.542 Application for temporary authorization.
1.543 Application for renewal or modification of special service authorization.
1.544 Application for broadcast station to conduct field strength measurements and for experimental operation.
1.545 Application permit to deliver programs to foreign countries.
1.546 Application to determine operating power by direct measurement of antenna power.
1.547 Application for permission to use lesser grade operators.
1.548 Application to operate by remote control.
1.549 Requests for extensions of authority to operate without required monitors, indicating instruments, and EBS Attention Signal devices.
1.550 Requests for new or modified call sign assignments.
1.561 Staff consideration of applications which receive action by the Commission.
1.562 Staff consideration of applications which do not require action by the Commission.
1.564 Acceptance of applications.
1.566 Defective applications.
1.568 Dismissal of applications.
1.569 Applications for frequencies adjacent to Class I–A channels.
1.570 AM broadcast station applications involving other North American countries.
1.571 Processing AM broadcast station applications.
1.572 Processing TV broadcast and translator station applications.
1.573 Processing FM broadcast and translator station applications.
1.574 Processing of international broadcasting applications.
1.578 Amendments to applications for renewal, assignment or transfer of control.
1.580 Local public notice of filing of broadcast applications.
1.584 Pleadings to deny.
1.587 Procedure for filing informal applications.
1.591 Grants without hearing.
1.592 Conditional grant.
1.593 Designation for hearing.
1.594 Local public notice of designation for hearing.
1.597 Procedures on tranfer and assignment applications.
1.598 Period of construction.
1.599 Forfeiture of construction permit.
1.601 Simultaneous modification and renewal of license.
1.603 Special waiver procedure relative to applications.
1.605 Retention of applications in hearing status after designation for hearing.
1.611 Financial report.
1.612 Annual employment report.
1.613 Filing of contracts.
1.615 Ownership reports.

Private Radio Bureau

Subpart F—Private Radio Services Applications and Proceedings

Need: These rules prescribe filing criteria, application forms and procedures of private radio services.
Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

1.901 Scope.
1.911 Applications required.
1.912 Where applications are to be filed.
1.913 Who may sign applications.
1.914 Full disclosures.
1.915 Shared use of broadcast antenna structure.
1.916 Repetitious applications.
1.918 Amendment of applications.
1.921 Procedure for obtaining a radio station authorization and for commencement of operation.
1.922 Forms to be used.
1.923 Waiver of construction permit requirement.
1.924 Assignment or transfer or control, voluntary and involuntary.
1.925 App. for special temp. authorization, temp. permit, temp. op. authority, or interim amateur permit.
1.926 Application for renewal of license.
1.927 App. for ship radio inspection or periodical survey of ships subject to compulsory radio regs.
1.928 Procedure w/respect to apps. for ship radio inspection or periodical survey.
1.929 Application for exemption from compulsory ship radio requirements.
1.930 Application for temporary waiver of annual inspection.
1.932 Time in which station must be placed in operation.
1.933 Installation or removal of apparatus.
1.934 Procedure with respect to amateur radio operator license.
1.951 How applications are distributed.
1.952 How file numbers are assigned.
1.953 How applications are processed.
1.955 Frequency coordination, Canada.
1.956 Rented communications equipment.
1.958 Defective applications.
1.959 Resubmitted applications.
1.961 Dismissal of applications.
1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.
1.971 Grants without a hearing.
1.981 Reports, annual and semiannual.

Subpart G—Schedule of Fees Filed with the Commission

Need: These rules specify a fee schedule for radio broadcast, common carrier, safety and special radio, cable television, cable TV relay and commercial radio services.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1101 Authority.
1.1102 Payment of fees.
1.1103 Return or refund of fees.
1.1104 General exceptions.
1.1105 General rule (STA and waiver).
1.1111 Schedule of fees for Radio Broadcast Services.
1.1113 Schedule of fees for Common Carrier Services.
1.1115 Schedule of fees for the Safety and Special Radio Services.
1.1116 Schedule of fees for Cable Television and Cable TV Relay Services.
1.1117 Schedule of fees for commercial radio operator examinations and licensing.
1.1120 Schedule of fees for equipment type approval, type acceptance and certification.

Subpart H—Ex Parte Presentations

Need: These rules prescribe permissible and prohibited ex parte presentations before the Commission and decisionmaking Commission personnel.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1201 Definitions.
1.1203 Restricted adjudicative proceedings.
1.1205 Decision-making Commission personnel (restricted adjudicative proceedings).
1.1207 Restricted rule making proceedings.
1.1209 Decision-making Commission personnel (restricted rule making proceedings).
1.1211 Non-restricted rule making proceedings.
1.1213 Decision-making Commission personnel (non-restricted rule making proceedings).
1.1221 Presentations prohibited in restricted proceedings which have been designated for hearing.
1.1223 Presentations prohibited in restricted adjudicative proceedings prior to designation for hearing.
1.1225 Solicitation of ex parte presentations.
1.1227 Permissible ex parte communications.
1.1229 Presentations prohibited in restricted informal rule making proceedings.
1.1231 Presentations in non-restricted informal rule making proceedings.
1.1241 Written ex parte communications.
1.1243 Oral ex parte communications.
1.1245 Disclosure of information concerning ex parte presentations.
1.1251 Sanctions.

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

Need: These rules prescribe Commission actions authorizing construction of certain classes of communications facilities which require the preparation of an environmental impact statement.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1301 Basis and Purpose.
1.1303 Scope.
1.1305 Major actions.
1.1311 Environmental information to be submitted with applications for authority to construct major communications. facilities.
1.1313 Commission consideration of environmental information.
1.1315 The draft environmental impact statement; comments.
1.1317 The final environmental impact statement.
1.1319 Consideration of the final environmental impact statement during the hearing and decision-making process.

Subpart J—Pole Attachment Complaint Procedures

Need: These rules provide complaint and enforcement procedures to ensure that rates, terms, and conditions for cable television pole attachments are reasonable.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

1.1401 Purpose.
1.1402 Definitions.
1.1403 Notice of removal and petition for temporary stay.
1.1404 Complaint.
1.1405 File numbers.
1.1406 Dismissal of complaints.
1.1407 Response and reply.
1.1408 Number of copies and form of pleadings.
1.1409 Commission consideration of the complaint.
1.1410 Remedies.
1.1411 Meeting and hearings.
1.1412 Enforcement.
1.1413 Forfeiture.
1.1414 State certification.
1.1415 Other orders.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

Subpart L—Registration of Telephone Terminal Equipment

Need: These rules specify that telephone terminal equipment must be registered.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

2.1300 Cross Reference.
2.1302 Application for registration under Part 68.

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

Subpart C—Technical Standards

Need: These rules prescribe technical standards for frequencies used in Experimental Radio Services.

Legal Basis: 47 U.S.C. Sec. 154, 301, 303.

Section Number and Title Description

5.101 Frequency stability.
5.102 Types of emission.
5.103 Emission limitations.
5.104 Modulation requirements.
5.105 Power and antenna height.
5.106 Transmitter control requirements.
5.107 Transmitter measurements.
5.108 Wildlife tracking and ocean buoy tracking operations.
5.109 Acceptability of transmitters for licensing.

Subpart D—Operating Requirements

Need: These rules prescribe operating requirements for experimental radio services.

Legal Basis: 47 U.S.C. 154, 301, 303.

Section Number and Title Description

5.151 General limitations on use.
5.152 Station identification.
5.153 Suspension of transmission required.
5.154 Mobile installations in vehicles not under the continuous control of the licensee.
5.155 Operator requirements.
5.156 Evidence of operator license.
5.157 Posting station licenses.
5.158 Authorized points of communication.
5.159 Operation during an emergency.
5.160 Inspection of stations.
5.161 Inspection and maintenance of tower marking and lighting and associated control equipment.
5.162 Notice of violation.
5.163 Content of station records.
5.164 Form of station records.
5.165 Retention of station records.
5.166 Adherence to program of research.

Subpart E—Experimental Service (Research)

Need: These rules prescribe licensing eligibility, scope of service and reporting requirements for experimental service for research purposes.

Legal Basis: 47 U.S.C. 154, 301, 303.

Section Number and Title Description

5.201 Eligibility for license.
5.202 Scope of service.
5.203 Frequencies for experimental service (Research).
5.204 Experimental report.

Subpart F—Experimental Service (Developmental)

Need: These rules prescribe licensing eligibility, scope of service and reporting requirements for experimental service for developmental purposes.

Legal Basis: 47 U.S.C. 154, 301, 303.

Section Number and Title Description

5.251 Eligibility for license.
5.252 Scope of service.
5.253 Frequencies for Experimental Service (Developmental).
5.254 Frequencies for field strength surveys or equipment demonstrations.
5.255 Experimental report.

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Subpart C—Ultrasonic Equipment

Need: These rules specify type approval and certification requirements for ultrasonic equipment which emits radio frequencies to prevent the propagation of harmful interference.

Legal Basis: 47 U.S.C. 154(i), 301, 303(r).

Section Number and Title Description

18.71 Operation without a license.
18.72 Technical limitations.
18.73 Type approval.
18.74 Identification of type approved equipment.
18.75 Effect of certificate of type approval.
18.76 Changes in type approved equipment.
18.77 Withdrawal of certificate of type approval.
18.78 Measurement of field strength.
18.79 Location of equipment.
18.80 Certification attesting compliance with rules.
18.81 Renewal of certification.
18.82 Certification after maintenance work.
18.83 Prototype certification permitted.
18.84 Effective date.

Subpart D—Industrial Heating Equipment

Need: These rules specify certification requirements for industrial heating equipment which emits radio frequencies to prevent the propagation of harmful interference.

Legal Basis: 47 U.S.C. 154(i), 301, 303(r).

Section Number and Title Description

18.101 Operation without a license.
18.102 Technical limitations.
18.105 Inspection of industrial heating equipment.
18.106 Renewal of certificate.
18.107 Measurement of field strength.
18.108 Location of equipment.
18.109 Report of radiation measurements.
18.111 Form of certificate.
18.112 Certification regarding operation.
18.113 Certification regarding radiation.
18.114 Prototype certification permitted.
18.115 Compliance with installation instructions.
18.116 Certificate to be filed with Commission.
18.117 Copy of certificate with equipment.
18.118 Rejection of certificate.
18.119 Elimination and investigation of harmful interference.
18.120 Interference to a radionavigation or safety service.
18.121 Interference to other radio services.
18.122 Report of interference investigation.
18.125 Prototype certification procedure.
18.126 Information to be filed for prototype certification.

Subpart E—Medical Diathermy Equipment

Need: These rules prescribe methods of operation procedures for type approval, and effect of certificate of approval for medical diathermy equipment.

Legal Basis: 47 U.S.C. Sec. 154(i), 301, 303(r).

Section Number and Title Description

18.141 Operation on assigned frequencies.
18.142 Operation on unassigned frequencies.
18.143 Measurement of field strength.
18.144 Procedure for type approval.
18.145 Effect of certificate of type approval.
18.146 Withdrawal of certificate of type approval.

Subpart F—RF Stabilized Arc Welders

Need: These rules prescribed technical and certification requirements for RF stabilized arc welders.

Legal Basis: 47 U.S.C. Sec. 154(i), 301, 303(r).

Section Number and Title Description

18.161 Technical specifications.
18.162 Certification requirements.
18.163 Location of Certificate.

Subpart H—Miscellaneous Equipment

Need: These rules specify technical operating limits and certification requirements for miscellaneous equipment which emits radio frequencies to prevent the propagation of harmful interference.

Legal Basis: 47 U.S.C. Sec. 154(i), 301, 303(r).

Section Number and Title Description

18.261 Miscellaneous equipment.
18.262 Existing epilation equipment.

Subpart I—Induction Cooking Ranges

Need: These rules describe the general purpose of regulations for induction cooking ranges.

Legal Basis: 47 U.S.C. Sec. 154(i), 303(r).

Section Number and Title Description

18.271 Purpose of regulations for an induction cooking range.
18.272 Induction cooking range subject to these rules.
18.273 Radiation Limit.
18.274 Conducted RF Limit.
18.275 Certification of an induction cooking range.
18.277 Induction range manufactured prior to February 1, 1980.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

Subpart F—Developmental Authorizations

Need: These rules prescribe standards for developmental authorizations in the Domestic Public Fixed Radio Services.

Legal Basis: 47 U.S.C. 307–310.

Section Number and Title Description

21.400 Eligibility.
21.401 Scope of service.
21.402 Adherence to program of research and development.
21.403 Special procedure for the development of a new service contrary to rules.
21.404 Terms of grant; general limitations.
21.405 Supplementary showing required.
21.406 Developmental report required.

PART 22—PUBLIC MOBILE RADIO SERVICES

Subpart H—Rural Radio Service

Need: These rules prescribe standards for the rural radio service in the Public Mobile Radio Services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

22.600 Eligibility.
22.601 Frequencies.
22.602 Transmitter power.
22.603 Types of emission.
22.604 Emission limitations.
22.605 Modulation requirements.
22.606 Permissible communications.
22.607 Priority of service.
22.608 Supplementary showing required with application for interoffice stations.
22.609 Supplementary showing required with apps. for central office stat. and rural subscriber stations.
22.610 Rural subscriber, interoffice, and central office stations at temporary fixed locations.
22.611 Notification of station operation at temporary locations.

Subpart K—Domestic Public Cellular Radio Telecommunications Service

Need: These rules prescribe the eligibility requirements, application procedures, and operational and technical standards for stations licensed in the Domestic Public Cellular Radio Telecommunications Service.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

22.900 Scope.
22.901 Eligibility.
22.902 Frequencies.
22.903 Cellular system service areas.
22.904 Power limitations.
22.905 Antenna height-power for base stations.
22.906 Types of emissions and modulation requirements.
22.907 Emission requirements.
22.908 Transmitter construction and installation.
22.909 Control point.
22.910 Station identification.
22.911 Permissible communications.
22.912 Responsibility for operational control and maintenance of mobile stations.
22.913 Content of applications.
22.914 Provisions of service to subscribers.
22.915 Cellular system capability specification.
22.916 Evaluation of cellular applications.
22.917 Demonstration of financial qualifications.
22.918 Amendment of cellular applications.
22.919 Restrictions on motions to enlarge issues.

Subpart L—Offshore Radio Telecommunications Service

Need: These rules prescribe standards for the Offshore Radio Telecommunication Service in the Public Mobile Radio Services.

Legal Basis: 47 U.S.C. Sec. 154, 303.

Section Number and Title Description

22.1000 Eligibility.
22.1001 Frequencies.
22.1002 Power limitations.
22.1003 Bandwidth and emission limitations.
22.1004 Modulation requirements.
22.1005 Permissible communication.
22.1006 Station at temporary-fixed locations.
22.1007 Modification of station operation at temporary locations.

PART 73—RADIO BROADCAST SERVICES

Subpart E—Television Broadcast Stations

Need: These rules prescribe licensing policies, technical and operational standards for all television broadcast stations.

Legal Basis: 47 U.S.C. Sec. 154, 301, 303, 307.

Section Number and Title Description

73.601 Scope of subpart.
73.602 Cross reference to rules in other parts.
73.603 Numerical designation of television channels.
73.606 Table of Assignments.
73.607 Availability of channels.
73.609 Zones.
73.610 Minimum distance separations between stations.
73.611 Reference points and distance computations.
73.612 Protection from interference.
73.614 Power and antenna height requirements.
73.615 Administrative changes in authorizations.
73.621 Noncommercial educational stations.
73.635 Use of common antenna site.
73.636 Multiple ownership.
73.641 Subscription TV definitions.
73.642 Subscription TV licensing policies.
73.643 Subscription TV operating requirements.
73.644 Subscription TV transmission systems.
73.646 Teletext Service.
73.653 Operation of TV aural and visual transmitters.
73.658 Affil. agreements & network prog. prac.; territorial exclus. in non-network prog. arrange.
73.661 TV operator requirements.
73.663 Determining operating power.
73.665 Use of TV Aural Baseband subcarriers.
73.667 TV Subsidiary Communications Services.
73.669 TV Stereophonic aural and multiplex subcarrier operation.
73.676 Remote control operation.
73.677 TV remote control authorizations.
73.681 Definitions.
73.682 Transmission standards.
73.683 Field intensity contours.
73.684 Prediction of coverage.
73.685 Transmitter location and antenna system.
73.686 Field strength measurements.
73.687 Transmission system requirements.
73.688 Indicating instruments.
73.691 Modulation monitors.
73.694 Requirements for type approval of aural modulation monitors.
73.698 Tables.
73.699 TV engineering charts.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Subpart O—Use of Radiotelephony

Need: These rules prescribe the use of radiotelephony by stations on shipboard in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.351 Frequencies available.
83.352 Frequencies for use in distress and search and rescue operations.
83.353 Frequencies for calling.
83.354 Frequencies below 5000 kHz for public correspondence.
83.355 Frequencies below 5000 kHz to 27.5 MHz for public correspondence.
83.357 Additional frequencies for ship to shore communication.
83.358 Frequencies below 3000 kHz for safety purposes.
83.359 Frequencies in the band 156–162 MHz available for assignment.
83.360 Frequencies for business and operational purposes.
83.361 Frequencies available for use in Vessel Traffic Service Systems.
83.362 Frequencies below 3000 kHz for safety, business, and operational purposes.
83.363 Use of U.S. Government frequencies for telephony.
83.364 Identification of station.
83.365 Procedure in testing.
83.366 General radiotelephone operating procedure.
83.367 Station documents.
83.368 Radiotelephone station log.
83.369 Operation under interim ship station license.
83.370 Frequencies below 27.5 MHz available in the Alaska area.
83.371 Public telephone service, ship stations to common carrier coast stations.
83.372 Frequencies available in one or more zones of the Alaska area.
83.373 Frequencies available for radiotelephony—216–220 MHz.

Subpart P—Use of Radiodetermination

Need: These rules prescribe the use of radiodetermination by stations on shipboard in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.401 Assignable frequencies for direction finding.
83.403 Radiodetermination by cable-repair ship.
83.404 Assignable frequencies above 2400 MHz.
83.405 Special provisions applicable to ship-radar stations.
83.406 Special provisions applicable to emergency positions indicating radiobeacons.

Subpart Q—Developmental Stations

Need: These rules prescribe the use of developmental stations on shipboard in the maritime services.

Legal Basis: 47 U.S.C. Sec. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.431 Supplemental eligibility.
83.432 Showing and statement required.
83.433 Assignable frequencies.
83.434 Use of developmental stations.
83.435 Developmental program.
83.436 Report of operation required.
83.437 Identification of station.

Subpart S—Radiotelephone Stations Pro. for Comp. With Part II of Title III

Need: These rules specify that radiotelephone stations must comply with appropriate provisions of the Communications Act or the Radio Provisions of the Safety Convention.

Legal Basis: 47 U.S.C. Sec. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.481 Inspection of station.
83.482 Radiotelephone station.

83.483 Radiotelephone installation.
83.484 Radiotelephone transmitter.
83.486 Automatic radiotelephone alarm signal generator.
83.487 Installation of automatic radiotelephone alarm signal generator.
83.488 Radiotelephone receivers.
83.489 Main source of energy.
83.491 Reserve source of energy.
83.492 Required capacity.
83.493 Proof of capacity.
83.494 Antenna system.
83.496 Emergency electric lights.
83.497 Radiotelephone station clock.
83.498 Spare antenna.
83.499 Tools and testing equipment.
83.501 Card of instructions.
83.502 Test of radiotelephone station.

Subpart T—Radiotelephone Installation Pro. for Comp. w/Part II of Title III of the Communications Act

Need: These rules specify that radiotelephone installation must comply with appropriate provisions of Part II of Title III of the Communication Act.

Legal Basis: 47 U.S.C. Sec. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.511 Applicability.
83.512 Inspection of radiotelephone installation.
83.513 Posting of certificate.
83.514 Radiotelephone installation.
83.516 Principal operating position.
83.517 Medium frequency transmitter.
83.518 Very high frequency transmitter.
83.519 Radiotelephone receivers.
83.521 Main source of energy.
83.522 Reserve source of energy.
83.523 Required capacity.
83.524 Proof of capacity.
83.526 Antenna system.
83.527 Electic light.
83.528 Antenna redio frequency indicator.
83.529 Nameplate.
83.531 Test of radiotelephone installation.
83.532 General exemptions.

Subpart U—Radiotelephone Installation In Compliance With Great Lakes Radio Agreement

Need: These rules specify that radiotelephone installation must comply with the Great Lakes Radio Agreement.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.536 Applicability to vessels.
83.537 Survey and certification.
83.539 Radiotelephone installation.
83.541 Principal operating position.
83.542 Radiotelephone transmitter.
83.543 Radiotelephone receiver.
83.544 Main source of energy.
83.545 Auxiliary source of energy.
83.546 Atenna system.
83.547 Illumination of operating controls.
83.548 Trial of radiotelephone installation.
83.550 Antenna radio frequency indicator.

Subpart V—Type Approval of Compulsory Shipboard Equipment

Need: These rules prescribe type approval of compulsory shipboard equipment in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.551 Scope of type approval.
83.552 Requirements for main transmitter.
83.553 Requirements for reserve transmitter.
83.554 Requirements for radiotelegraph auto alarm.
83.555 Requirements for automatic-alarm-signal keying device.
83.556 General requirements for survival craft radio equipment.
83.557 Requirements for survival craft portable radio equipment.
83.558 Requirements for survival craft nonportable radio equipment.
83.559 Radiotelephone distress frequency watch receiver.

Subpart W—Violations

Need: These rules prescribe procedures for radiotelegraph violations.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.601 Answers to notice of violation.
83.602 Reports of infringements of the International Radio Regulations.

Subpart X—Radiotelegraph Stations Provided for Compliance With Vessel Bridge-to-Bridge Radiotelephone Act

Need: These rules specify that radiotelephone status must be in compliance with the Vessel Bridge-to-Bridge Radiotelephone Act.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.701 Applicability.
83.703 bridge-to-Bridge station.
83.705 Inspection of bridge-to-bridge station.
83.709 Bridge-to-bridge radiotelephone installation.
83.711 Principal operating position.
83.713 Bridge-to-bridge transmitter.
83.715 Bridge-to-bridge receiver.
83.717 Bridge-to-bridge source of energy.
83.719 Bridge-to-bridge antenna system.
83.721 Antenna radio frequency indicator.
83.723 Nameplate.
83.725 Test of radiotelephone installation.

Subpart Z—Use of On-board Communications

Need: These rules prescribe procedures for the use of on-board communication in the maritime services.

Legal Basis: 47 U.S.C. 152, 154, 155, 301, 303, 307, 309, 315, 317.

Section Number and Title Description

83.811 Authorized frequencies.
83.813 Supplemental eligibility requirements.
83.815 Points of communication.
83.817 Antenna height.
83.819 Station records.
83.821 Station logs.
83.823 Station operation.
83.825 Identification of station.
83.835 Remote control for maneuvering or navigation.

Subpart BB—VHF Radiotelephone Stations Provided for Compliance With the Radio Provisions of the Safety Convention

Need: These rules specify that VHF radiotelephone stations in the maritime services must comply with the Radio Provisions of the Safety Convention.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

83.851 VHF radiotelephone station.
83.852 The VHF radiotelephone installation.
83.853 VHF radiotelephone transmitter.
83.854 VHF radiotelephone receiver.
83.855 VHF radiotelephone source of energy.
83.856 VHF radiotelephone antenna system.
83.857 Controls and indicators required for the VHF radiotelephone installations.

Subpart CC—How to Use Your VHF Marine Radio

Need: These rules prescribe the general licensing and operating requirements and procedures for VHF marine radio in the maritime services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

83.1001 (VHF Marine Rule 1) Who are these rules for?
83.1002 (VHF Marine Rule 2) What do these rules tell me?
83.1003 (VHF Marine Rule 3) Do I need a license?
83.1004 (VHF Marine Rule 4) How do I apply for my license and for my RP?
83.1005 (VHF Marine Rule 5) May I operate my marine radio while my applications are being processed?
83.1006 (VHF Marine Rule 6) How do I make changes during my license term?
83.1007 (VHF Marine Rule 7) How do I renew my license?
83.1008 (VHF Marine Rule 8) What do I do if I lose my license or RP?
83.1009 (VHF Marine Rule 9) What must I do if I sell my boat?
83.1010 (VHF Marine Rule 10) What type of equipment must I have?
83.1011 (VHF Marine Rule 11) May I install and service my marine radio by myself?
83.1012 (VHF Marine Rule 12) What channels may I use?
83.1013 (VHF Marine Rule 13) How do I operate my marine radio?
83.1014 (VHF Marine Rule 14) What communications are prohibited?
83.1015 (VHF Marine Rule 15) Do I have to keep a radio log?

83.1016 (VHF Marine Rule 16) Do I need a copy of the FCC's rules?
83.1017 (VHF Marine Rule 17) Do I have to make my ship station available for inspection?
83.1018 (VHF Marine Rule 18) What happens if I violate these rules?
83.1019 (VHF Marine Rule 19) How do I call another boat?
83.1020 (VHF Marine Rule 20) How do I place a call through a public coast station?
83.1021 (VHF Marine Rule 21) What are the marine emergency signals?
83.1022 (VHF Marine Rule 22) What is the marine distress procedure?

Subpart DD—Inland Waterways Communication System (IWCS)

Need: These rules prescribe general procedures and eligibility requirements for Inland Waterways Communication System (IWCS).

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

83.1100 Service authorized.
83.1103 Supplemental eligibility requirements.
83.1105 Frequencies available.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart N—Operating Requirements

Need: These rules prescribed general operating requirements to include points of communications, methods of station identification and record keeping for private land mobile radio services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

90.401 Scope.
90.403 General operating requirements.
90.405 Permissible communications.
90.407 Communications permitted during emergency.
90.409 Emergency operations of Public Safety and Special Emergency mobile stations at fixed locations.
90.411 Civil Defense Communications in the Public Safety and Special Emergency Radio Services.
90.413 Civil Defense Communications in the Taxicab Radio Service.
90.415 Prohibited uses.
90.417 Interstation communication.
90.419 Points of communication.
90.421 Operation of mobile units in vehicles not under the control of the licensee.
90.423 Operation on board aircraft.
90.425 Station identification.
90.427 Precautions against unauthorized operation.
90.429 Control point and dispatch point requirements.
90.431 Unattended operation.
90.433 Operator license requirements.
90.435 Posting of operator license.
90.437 Posting station licenses.
90.439 Inspection of stations.
90.441 Inspections and maintenance of tower marking and associated control equipment.
90.443 Content of station records.
90.445 Form of station records.
90.447 Retention of station records.
90.449 Answers to a notice of violation.

Subpart O—Transmitter Control

Need: These rules prescribe terms and conditions for transmitter control or the private land mobile radio services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

90.460 Scope.
90.461 Direct and remote control of transmitters.
90.463 Transmitter control points.
90.465 Control of systems of communication.
90.467 Dispatch points.
90.469 Unattended operation.
90.471 Points of operation in internal transmitter control systems.
90.473 Operation of internal transmitter control systems through licensed fixed control points.
90.475 Operation of internal transmitter control systems in specially equipped systems.
90.476 Interconnection of fixed stations and certain mobile stations.
90.477 Interconnected systems.
90.483 Permissible methods and requirements of interconnecting private & public systems of communications.

Subpart Q—Developmental Operation

Need: These rules prescribe procedures and requirements for filing of applications for developmental licenses.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

90.501 Scope.
90.503 Eligibility.
90.505 Showing required.
90.507 Limitations on use.
90.509 Frequencies available for assignment.
90.511 Interference.
90.513 Special provisions.
90.515 Change or cancellation of authorization without hearing.
90.517 Report of operation.

Subpart R—Emergency Communications Pursuant to the ICEP and LATICEP Plans

Need: These rules prescribe procedures for emergency communications pursuant to Industrial Communications Emergency Plan and the Land Transportation Industries Communications Emergency Plan.

Legal Basis: 47 U.S.C. 154, 301, 303, 307, 308, 309, 312, 316, 318, 319, 606.

Section Number and Title Description

90.525 Industrial Communications Emergency Plan (ICEP).
90.527 Land Transportation Industries Communications Emergency Plan (LATICEP).
90.555 Combined frequency listing.

PART 95—PERSONAL RADIO SERVICES

Subpart E—Technical Regulations

Need: These rules prescribe the technical standards necessary for operation and maintenance of, and type acceptance of equipment used in the Personal Radio Services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title Description

95.601 Basis and purpose.
95.603 Definitions.
95.611 Availability of frequencies.
95.613 Transmitter power.
95.615 Frequency tolerance.
95.617 Emission limitations.
95.618 Antenna limitations.
95.619 Modulation requirements.
95.621 Compliance with technical requirements.
95.631 External radio frequency power amplifiers prohibited.
95.641 Acceptability of transmitters for licensing.
95.643 Procedure for type acceptance of equipment.
95.645 Additional requirements for type acceptance.
95.647 Submission of non-crystal controlled R/C station transmitters for type approval.
95.649 Type approval of receiver-transmitter combinations.
95.651 Minimum equipment specifications.
95.653 Test procedure.
95.655 Certificate of type-approval.
95.657 Modification of transmitters.

PART 99—DISASTER COMMUNICATIONS SERVICE

Subpart A—General

Need: These rules provide for licensing of radio stations to provide essential communications incident to or in connection with disasters or other incidents which involve loss of communication facilities.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.1 Basis and purpose.
99.3 Definitions.

Subpart B—Station License or Authorization

Need: These rules prescribe eligibility criteria for stations licensed in the Disaster Communications Service.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.07 Eligibility.
99.09 Organization of networks.

99.11 Applications.
99.13 Limitation on antenna structures.
99.15 License term.

Subpart C—Use of Stations

Need: These rules prescribe licensing policies, technical and operational standards of stations in the Disaster Communications Service.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.17 Activation of stations.
99.19 Points of communications.
99.21 Limitations on use.
99.23 Permissible communications.
99.25 Station identification.
99.27 Radio station log.

Subpart D—Operating Requirements

Need: These rules prescribe operating requirements of stations in the Disaster Communications Service.

Legal Basis: 47 U.S.C. 154, 303, 307.

Section Number and Title Description

99.29 Limitations on use of frequencies.
99.31 Liaison with licensees in the Industrial Radio-location Service.
99.33 Assigned frequencies and authorized emissions.
99.35 Transmitting power.
99.37 Equipment requirements.
99.39 Operator requirements.
99.41 Availability of station and operator licenses.

[FR Doc. 85-7047 Filed 4-3-85; 8:45 am]
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47 CFR Part 73

[MM Docket No. 84-758; RM-4733]

TV Broadcast Stations in Crystal River, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Action taken herein dismisses the petition filed by William F. Parrish to assign UHF televison channel 39 to Crystal River, Florida for lack of continuing interest.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Crystal River, Florida); MM Docket No. 84-758, RM-4733.

Adopted: March 11, 1985.
Released: March 27, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 49 FR 32410, published August 14, 1984, proposing the assignment of UHF Television Channel 39 to Crystal River, Florida, as that community's first local television broadcast service.[1] The *Notice* was adopted in response to a petition filed by William F. Parrish ("petitioner"). Petitioner failed to file comments reaffirming his intention to apply for the channel, if assigned. He also failed to comply with Section 1.52 of the Commission's Rules by not providing his mailing address or telephone number. No other comments on the proposal were received.

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be assigned. Therefore, in accordance with Commission policy, no further consideration will be given to the assignment of UHF Television Channel 39 to Crystal River, Florida.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204 and 0.283 of the Commission's Rules, it is ordered, that the petition of William F. Parrish is dismissed and this proceeding is terminated.

4. For further information concerning the above, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-8095 Filed 4-3-85; 8:45 am]
BILLING CODE 6712-01-M

[1] Petitioner subsequently submitted an amendment to the original petition seeking assignment of Channel 57 instead of 39 to Crystal River, Florida.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-16; Notice 4]

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In November 1979, the agency initially applied Standard No. 204, *Steering Control Rearward Displacement*, to trucks, buses and multipurpose passenger vehicles (MPV's) with an unloaded vehicle weight of 4,000 pounds or less. This notice proposes to extend the coverage of the standard to vehicles with an unloaded vehicle weight of 5,500 pounds or less. Agency research has consistently shown that steering assemblies are a major source of driver-related injuries in light trucks and vans. Research has also demonstrated the effectiveness of Standard No. 204 in reducing those injuries.

DATES: Comment closing date for the proposal is May 20, 1985. The proposed effective date is September 1, 1987.

ADDRESS: Comments should refer to the docket number and notice number of the notice and be sumitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m..)

FOR FURTHER INFORMATION CONTACT: Mr. William Smith, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: On November 9, 1978 (43 FR 53364), the agency proposed extending the applicability of Standard No. 204, as well as that of two other standards, to trucks, buses, and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating of 10,000 pounds or less. The agency proposed these changes to reduce the markedly higher fatality rates in light trucks and vans as compared to passenger cars. In particular, research had indicated that additional safety improvements were needed to reduce steering assembly-

related injuries to drivers of light trucks and vans. Based on the demonstrated effectiveness of steering assembly-related improvements in passenger cars, the agency, on November 29, 1979 (44 FR 68470), amended Standard No. 204, *Steering Column Rearward Displacement*, to extend its applicability only to vehicles with an unloaded vehicle weight of 4,000 pounds or less. The agency explained that it took that action while it continued to study methods for dealing with certification problems, discussed below, experienced by final-stage manufacturers of vehicles that have an unloaded vehicle weight greater than 4,000 pounds. The agency is now proposing to complete this rulemaking action by extending the benefits of Standard No. 204 to additional vehicles.

Certification Problems

The certification problems faced by final-stage manufacturers stem from the nature of the final-stage manufacturing process. There are approximately 3,500 final-stage manufacturers in the U.S. They purchase incomplete vehicles from a major vehicle manufacturer, such as Chrysler, Ford or General Motors. (An incomplete vehicle usually consists of a stripped chassis and driver's compartment.) When an incomplete vehicle manufacturer sells an incomplete vehicle, it makes a representation that the vehicle will comply with all applicable Federal safety standards if the vehicle is completed in accordance with certain restrictions. These restrictions often involve weight and center of gravity limitations.

The final-stage manufacturer adds the remaining portions of the body and other equipment to the chassis to complete it as a specialized vehicle, such as tow truck. If a final-stage manufacturer potentially jeopardizes a vehicle's compliance with the standards by not adhering to the restrictions imposed by the incomplete vehicle manufacturer, NHTSA's certification regulations require the final-stage manufacturer to rectify the vehicle based upon its own information, analysis or testing. Because of the stringent nature of the restrictions imposed by incomplete vehicle manufacturers, final-stage manufacturers have not been able to rely on the incomplete vehicle manufacturer's certification or to complete vehicles on the same chassis they previously used prior to the application of Federal safety standards to those vehicles. As a result, the final-stage manufacturer must either buy the same chassis as before and then recertify them or buy a more expensive chassis with a higher GVWR that has less stringent weight and center of gravity limitations.

The agency first addressed possible solutions to the problems of final-stage manufacturers in the rulemaking that proposed extending Standard No. 212, *Windshield Mounting*, and Standard No. 219, *Windshield Zone Intrusion*, to light trucks, buses and MPV's. In that rulemaking, the agency proposed two alternative test methods of determining compliance with the standards. Both methods were designed to test vehicles at lower weights. The agency believed that either method would encourage incomplete vehicle manufacturers to reduce the number of weight and center of gravity limitations they place on final-stage manufacturers.

As a result of that rulemaking, the agency, in April 1980 (45 FR 22044), extended the applicability of the two standards to trucks, buses and MPV's with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds. The agency concluded that limiting the application of the standard would reduce compliance problems for final-stage manufacturers without compromising occupant safety.

The agency is now proposing to extend Standard No. 204 to vhicles that have an unloaded weight of between 4,000 and 5,500 pounds. As discussed in more detail below, the agency is proposing that the standard become effective with model year 1988 vehicles. Based on the agency analysis of manufacturer submitted data, it is the agency's best judgment that approximately 13 to 25 percent of the light vehicle fleet in model year 1988 will consist of vehicles with an unloaded vehicle weight between 4,000 and 5,500 pounds. Based on the agency's estimate of approximately 4.4 million light trucks and van sales in MY 1988, the agency expects that approximately 570,000 to 1.1 million vehicles may be affected by the proposed amendment.

It is possible that some of these vehicles might already comply with the standard. When the agency initially extended the applicability of the standard, manufacturers may have voluntarily redesigned the steering columns of all of their vehicles with a GVWR of 10,000 pounds or less. The agency specifically requests the manufacturers to provide information on the current levels of compliance.

Editorial Changes

As presently codified in the Code of Federal Regulations, the text of Standard No. 204 is followed by a note setting forth two agency interpretations concerning the test procedures of the standard. The agency adopted these interpretations soon after the original standard was issued in 1967. The first interpretation states that a driver test dummy may be used during a compliance test without measuring the impact force developed on the chest. The agency has never used a driver test dummy in its compliance test because of the possibility that the test dummy could interfere with the rearward displacement of the steering column and the use of such a dummy would preclude the use of a scratch tube device for measuring steering control dynamic displacement. It is the agency's understanding that manufacturers also do not use test dummies when doing Standard No. 204 compliance tests. The agency is thus proposing to delete this interpretation since it is unnecessary.

The second interpretation explains how to correct steering column rearward displacement measurements for impact speeds greater than 30 mph. At present, the test speeds for barrier impact test can be precisely controlled to within ±0.5 mph. Because of this advance in the state-of-the-art of impact testing, there is no need for a correction factor and thus the agency is proposing to delete it.

The agency is also adopting into the standard requirements from the agency's compliance test procedures for Standard No. 204. (Document TP-204-07 March 17, 1982) These pre-impact test requirements include latching the vehicle's door, disengaging the parking brake, placing the transmission in neutral and inflating the vehicle's tires to the manufacturer's specified tire pressure.

In addition, the agency is proposing to adopt in Standard No. 204, several of the test procedures that are currently incorporated in the agency's other standards involving frontal barrier impact tests. Those requirements include latching the doors, placing an adjustable steering wheel at its mid-position, and filling the fuel tank to 90 to 95 percent of its capacity. These procedures have been routine in the agency's other crash test standards and adopting them in Standard No. 204 will make the agency's standards more consistent.

Leadtime

At the time that Standard No. 204 was originally extended to trucks, buses and MPV's, the agency provided approximately two years of leadtime. This leadtime was based on a cost analysis performed for the agency that estimated the required leadtime as 18 to 24 months. The agency is proposing to

provide two years of leadtime for the proposed extension of the standard.

Cost and Benefits

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has placed in the docket a regulatory evaluation of the economic and other effects of this rulemaking action. This proposed rule would increase the number of vehicles which are covered by the standard and the modifications necessary to comply with the standard will cost approximately $3.50 for trucks and $17.50 for MPV's and buses. Since most of the vehicles in the 4,000–5,500 pound unloaded vehicle weight fleet are trucks, the average cost per affected vehicle is in the $6 to $8 range. Using the worst case assumption that none of the affected vehicles are currently in compliance, the total consumer cost of the proposed amendment is $3.4 to $8.8 million per year.

At the time the agency originally extended Standards Nos. 203 and 204, the agency estimated that those standards would reduce 0.85 to 1.7 percent of all light truck fatalities and serious injuries. (The agency combined the benefits from both standards since each affects the steering column.) Assuming that none of the vehicles that would be covered by the proposed extension of Standard No. 204 currently comply with the standard, the agency estimates that this rulemaking action annually will reduce an estimated 6 to 12 fatalities and 85 to 170 serious injuries once all vehicles in the fleet meet the standard.

Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act and I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The primary cost effect of this proposed rule will be on incomplete vehicle manufacturers, which are large corporations. Although many final-stage manufacturers are small businesses, the impact on them should be minor since the relatively small increase in price of the incomplete vehicle can be passed on to the ultimate consumer, small organizations and governmental units.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Council, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

For the reasons set out in the preamble, the agency proposes to amend § 571.204 of Title 49 of the Code of Federal Regulations as follows:

§ 571.204 [Amended]

1. The first sentence of Section 2 is revised to read as follows:

This standard applies to passenger cars and to multipurpose passenger vehicles, trucks and buses with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

2. Section 4 is revised to read as follows:

S4 *Requirements.* When a vehicle traveling longitudinally forward at any speed up to and including 30 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, under the conditions of S5, the upper end of the steering column and shaft shall not be displaced more than 5 inches horizontally rearward parallel to the longitudinal axis of the vehicle relative to an undisturbed point on the vehicle. The amount of rearward displacement is determined by dynamic measurement.

3. Section 5 is revised to read as follows:

S5 *Test conditions.* The requirements of S4 shall be met when the vehicle is tested in accordance with the following conditions.

S5.1 The vehicle, including test devices and instrumentation, is loaded to its unloaded vehicle weight. For the purposes of this section, unloaded vehicle weight does not include the weight of workperforming accessories.

S5.2 Adjustable steering controls are adjusted so that a tilting steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. A telescoping steering control is set at the adjustment position midway between the forwardmost and rearwardmost position.

S5.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S5.4 Doors are fully closed and latched but not locked.

S5.5 The fuel tank is filled to any level from 90 to 95 percent of capacity.

S5.6 The parking brake is disengaged and the transmission is in neutral.

S5.7 Tires are inflated to the vehicle manufacturer's specifications.

4. The note following the text of Standard No. 204 is removed.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: March 29, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8048 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 683

Bottomfish and Seamount Groundfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries; Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings.

SUMMARY: The Western Pacific Fishery Management Council will hold a series of public hearings to obtain comments on the draft fishery management plan (FMP) for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific. The draft FMP (1) addresses the need for cooperative Federal/State management of the bottomfish resource through a "framework" procedure in the island areas where unilateral Federal or unilateral State management would be less effective; (2) addresses the need to maintain bottomfish harvesting capacity in balance with harvestable stocks in the fishery conservation zone (FCZ) of the Northwestern Hawaiian Islands where there is a rapidly-expanding fishery; and (3) incorporates the recommendation for a moratorium on trawling in the FCZ portion of the seamount groundfish fishery.

DATE: All hearings will begin at 7:30 p.m., except for the hearing scheduled for April 29, 1985, in American Samoa, which will begin at 4:30 p.m. See "SUPPLEMENTARY INFORMATION" for locations and dates of the public hearings. All written comments should be received by May 1, 1985.

ADDRESS: All written comments should be sent to the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813, telephone 808-523-1368.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

Oahu

April 1, 1985—Wainae Satellite City Hall, 75-670 Farrington Highway, Wainae, Hawaii 96792

April 2, 1985—Old Haleiwa Gym, Haleiwa, Hawaii 96712

April 4, 1985—Heeia Kea State Park, 46—465 Kam Highway, Kaneohe, Hawaii 96744

April 11, 1985—United Fishing Agency, Ltd., 117 Ahui Street, Honolulu, Hawaii 96813

Kauai

April 3, 1985—Kauai County Council Office, County Building, Lihue, Kauai, Hawaii 96766

Hilo

April 8, 1985—University of Hawaii Cooperative Extension Service Office, 875 Komohana, Hilo, Hawaii 96720

Kona

April 9, 1985—First Hawaiian Bank, Kona Branch Meeting Room, 74-5593 Palani Road, Kailua-Kona, Hawaii 96740

Maui

April 10, 1985—Maalaea Boat and Fishing Club House, Maalaea Harbor, Maui, Hawaii, 96753

Guam

April 11, 1985—Guam Legislative Session Hall, Chalan Santo Papa, Agana, Guam 96910

American Samoa

April 29, 1985—American Samoa Government, Convention Center, Fagatogo, Pago Pago, American Samoa 96799

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-7958 Filed 4-1-85; 8:48 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 65
Thursday, April 4, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Senior Companion Program; Availability of Demonstration Funds

AGENCY: ACTION.

ACTION: Notice of availability of demonstration funds; Senior Companion Program.

The Office of Older American Volunteer Programs, ACTION, announces the availability of funds in fiscal year 1985 to initiate the Homebound Elderly grants under the Senior Companion Program authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title II, Part C, 42 U.S.C. 5013).

The funds appropriated by Congress for the Senior Companion Program, approximately $3,000,000., shall be available for the start-up of the in-home health care program recently authorized under Pub. L. 98–288. Approximately 50%, or $1,500,000., will be allocated to Regional Offices for new projects on a demonstration basis; approximately 20%, or $600,000., will be allocated to existing ACTION-funded Senior Companion Programs, for new components on a demonstration basis; and approximately 30%, or $900,000., will be allocated to ACTION HQs for Congressionally mandated evaluations and for new projects on a demonstration basis selected on a national competitive basis. Applications for new projects should be developed for a minimum of 30 volunteer service years to 65 volunteer service years in size. Applications for new components to existing ACTION-funded Senior Companion Programs should be developed for 10 or more volunteer service years in size. Sponsors who are awarded a demonstration grant for either a new project or a new component will be required to actively participate in an extensive evaluation program and must fully cooperate with ACTION Headquarters staff who will be doing the evaluation and collecting the required data.

Publication of this announcement does not obligate ACTION to award any specific number of demonstration grants. Application kits will be available in ACTION State and Regional Offices after April 15, 1985. Both new projects and new components will be awarded according to the guidance described in these application kits. A completed application form, with original signature, must be received in the appropriate ACTION State Office no later than 5:00 pm local standard time on Monday, June 3, 1985. Any applications received after that date will not be considered for fiscal year 1985 funds.

Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Region Office, 411 Stuart Street, 9th Floor, Boston MA 02116
ACTION State Office, Abraham Ribicoff Fed. Bldg., 450 Main St., Rm 524, Hartford, CT 06103
ACTION State Office, Federal Bldg., Rm 210, 66 Pearl Street, Portland, ME 04101
ACTION State Office, 441 Stuart Street, 9th Floor, Boston, MA 02116

New Hampshire/Vermont

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Rm 316, Concord, NH 03301
ACTION State Office, John E. Fogarty Bldg., Rm 200, 24 Weybosset Street, Providence, RI 02903

Region II

ACTION Region Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1611, New York, NY 10278
ACTION State Office, 145 East State St., Rm 506, Broad Street Bank Bldg., Trenton, NJ 00000

Metropolitan New York

ACTION State Office, Jacob K. Javits Fed. Bldg., 26 Federal Plaza, Suite 1609, New York, NY 12207

Upstate New York

ACTION State Office, US Courthouse & Federal Bldg., 445 Broadway, Room 103, Albany, NY 12207

Puerto Rico/Virgin Islands

ACTION State Office, Frederico Gatau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918

Region III

ACTION Region Office, U.S. Customs House, 2d and Chestnut St., Rm 108, Philadelphia, PA 19106
ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202
ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 918H, Baltimore, MD 21201
ACTION State Office, Federal Building, Room 500, 85 Marconi Blvd., Columbus, OH 43215
ACTION State Office, US Customs House, Room 108, 2d and Chestnut Streets, Philadephia, PA 19106

Virginia/Dist. of Columbia

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240
ACTION State Office, 603 Morris Street, 2d Floor, Charleston, WV 25305

Region IV

ACTION Region Office, 101 Marietta St., NW., Suite 1003, Atlanta, GA 30323
ACTION State Office, 2121 8th Avenue North, Rm 722, Birmingham, AL 35203
ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803
ACTION State Office, 75 Piedmont Ave., NE, Suite 412, Atlanta, GA 30303
ACTION State Office, Federal Building, Rm 1005–A, 100 West Capital Street, Jackson, MS 39269
ACTION State Office, Federal Bldg., P.O. Century Station, 300 Fayetteville Street Mall, Rm 131, Raleigh, NC 27601
ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201
ACTION State Office, Federal Bldg./US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203

Region V

ACTION Region Office, 10 West Jackson Blvd., 3rd Floor, Chicago, IL 60604
ACTION State Office, 10 West Jackson Blvd., 3rd Floor, Chicago, IL 60604
ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204
ACTION State Office, 950 Office Park Road, Suite 220, West Des Moines, IA
ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226
ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401
ACTION State Office, 517 East Wisconsin Ave., Rm 601, Milwaukee, WI 53202

Region VI

ACTION Region Office, 1100 Commerce, Rm 6B11, Dallas, TX 75242
ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201

ACTION State Office, Federal Building, Room 171, 444 S.E. Quincy, Topeka, KS 66603
ACTION State Office, 628 Main Street, Suite 102, Baton Rouge, LA 70801
ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106
ACTION State Office, Federal Building, Cathedral Place, Room 129, Sante Fe, NM 87501
ACTION State Office, 722 North Broadway, Room 101, Oklahoma City, OK 73102
ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701

Region VIII (No Region VII)

ACTION Region Office, Executive Tower Building, 1405 Curtis Street, Suite 2930, Denver, CO 80202
ACTION State Office, Columbia Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203
ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001
ACTION State Office, Federal Office Bldg., Room 1982, Helena, MT 59626
ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508

North & South Dakota

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501
ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 107, Salt Lake City, UT 84101

Region IX

ACTION Region Office, 211 Main Street, Rm 530, San Francisco, CA 94105
ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004
ACTION State Office, 211 Main Street, Room 534, San Francisco, CA 94105
ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024

Hawaii/Guam/American Samoa

ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502

Region X

ACTION Region Office, 1111 Third Avenue, Suite 330, Seattle, WA 98101
ACTION State Office, Owyhee Plaza, Suite 260, 1109 Main Street, Boise, ID 8702

Alaska

ACTION State Office, 1111 Third Avenue, Suite 330, Seattle, WA 98101
ACTION State Office, Federal Bldg., Room 647, 511 N. W. Broadway, Portland, OR 97205
ACTION State Office, 1111 Third Avenue, Suite 330, Seattle, WA 98101.

(42 U.S.C. 5013; 5042)

Dated in Washington, D.C. on March 29, 1985.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 85–8045 Filed 4–3–85; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Hall-Flat Creek Watershed, IN; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Hall-Flat Creek Watershed project, Dubois County, Indiana, effective on March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, Suite 2200, 5610 Crawfordsville Road, Indianapolis, Indiana 46224, telephone 317/248–4350.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Robert L. Eddleman,

State Conservationist.

[FR Doc. 85–8073 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

Benson Critical Area Bank Stabilization RC&D Measure, AZ; Environmental Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Benson Critical Area Bank Stabilization RC&D Measure, Cochise County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, Soil Conservation Service, 201 East Indianola, Suite 200, Phoenix, Arizona 85012, telephone 602–241–2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Verne M. Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to prevent damages to a trailer park, the Benson town well, city sewage lagoon and other utilities from bank erosion and wash scouring. Gabion bank protectors and grade stabilization structures will be used to correct the problem.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne M. Bathurst.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Verne M. Bathurst,

State Conservationist.

[FR Doc. 85–8068 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

Big Creek (Tri-County) Watershed, TX; Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Billy C. Griffin, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001–1008, in the State of Texas, is hereby providing notification that a record of decision to

proceed with the installation of the Big Creek (Tri-County) Watershed project is available. Single copies of this record of decision may be obtained from Billy C. Griffin at the address shown below.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone 817–774–1214.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable)

Dated: March 22, 1985.

O. Dale Fischgrabe,

Deputy State Conservationist.

[FR Doc. 85–8061 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact; Grassy Creek Watershed, MO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Grassy Creek Watershed, Lewis and Marion Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Paul F. Larson, State Conservationist, Soil Conservationist, Soil Conservation Service, 555 Vandiver Drive, Columbia, Missouri 65202, telephone 314/875–5214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul F. Larson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 66 small reservoirs, and accelerated financial and technical assistance for land treatment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Paul F. Larson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects are applicable)

Dated: March 28, 1985.

Paul F. Larson,

State Conservationist.

[FR Doc. 85–8100 Filed 4–3–85; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Admimistration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Pipe and Tube Arrangement with respect to welded rectangular steel tubing in the following metric sizes:

A. 80 mm x 60 mm x 4 mm
B. 100 mm x 80 mm x 3 mm
C. 40 mm x 40 mm x 4 mm
D. 60 mm x 40 mm x 4 mm
E. 50 mm x 40 mm x 4 mm
F. 80 mm x 60 mm x 6mm

EFFECTIVE DATE: Comments must be submitted no later than ten days after publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Agreements Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Agreement Compliance Division, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, D.C. 20230, Room 3087B, (202) 377–4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department ". . . shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received a request for short supply for the following product:

1. Welded rectangular steel tubing conforming to either DIN specification 2395 PT 3 or ASTM specification A–513 in the following metric sizes:

A. 80 mm x 60 mm x 4 mm
B. 100 mm x 80 mm x 3 mm
C. 40 mm x 40 mm x 4 mm
D. 60 mm x 40 mm x 4 mm
E. 50 mm x 40 mm x 4 mm
F. 80 mm x 60 mm x 6 mm

Any party interested in commenting on this request should send written comments as soon as possible, and no later than April 12, 1985. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of their submission and also submit with it a non-confidential submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B–099 at the above address.

April 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–8060 Filed 4–3–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of experimental fishing permit application and request for comment.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest shortbelly rockfish from a domestic vessel using a trawl net in the fishery conservation zone (FCZ) off the coast of Oregon. If granted, the EFP would allow fishing which otherwise would be prohibited by Federal regulations governing the mesh size of trawls.

DATE: Comments on this experimental fishing permit application must be received by April 12, 1985.

ADDRESS: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Building 1, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its regulations specify that EFPs may be issued under § 663.10 to authorize fishing that would otherwise be prohibited.

An EFP application to harvest shortbelly rockfish (*Sebastes jordani*) with mid-water trawl gear with a liner of one and one-half inch mesh in the codend of the net in the FCZ off the coast of Oregon was received by the Northwest Regional Office, NMFS, on March 7, 1985. Current groundfish regulations at § 663.28(b) prohibit use of a mesh size smaller than three inches in pelagic trawls in the area off Oregon where the applicant proposes to fish. If granted, the EPA would suspend the mesh size restriction for the time, area, and vessel specified.

The applicant proposes to place a liner of one and one-half inch mesh in the codend of a mid-water trawl net to catch shortbelly rockfish effectively. The purpose and goal of the experiment is to develop a market for a currently underutilized species. The applicant proposes to harvest approximately 45 metic tons of shortbelly rockfish per week off the coast of souther Oregon. In addition, the applicant proposes to utilize other nonprohibited species caught with the experimental gear. The applicant has requested that the EFP be issued for one year beginning May 1, 1985.

In 1982, four EFPs were issued to U.S. fishing vessels to harvest shortbelly rockfish with pelagic trawls in the FCZ off the coast of California for delivery to a foreign processing vessel. Of the amount delivered, 89 percent was shortbelly rockfish, 11 percent was Pacific whiting, and less than one-half of one percent was other rockfish, sablefish, flatfish, and other fish. No salmon were taken. One EFP was issued in 1983 and one in 1984 to U.S. fishing vessels to harvest shortbelly rockfish for delivery to a shorebased, domestic processor. However, no fishing was done under these EFPs for technical reasons.

Other EFP applications have been received in 1985; none of these requested permission to fish off Oregon.

(16 U.S.C. 180 *et seq.*)

Dated: March 29, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–7793 Filed 4–3–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

April 1, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 1, 1985. For further information contact Diana Solkoff, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated May 10, 1984 (49 FR 20751), as amended, established restraint limits for specified categories of cotton, wool and man-made fiber textile products including categories 331, 334, 335, 340, 341, 347, 631, 635, 640, 641, 645/646, and 648, produced or manufactued in SRI Lanka and exported during the twelve-month period which began on June 1, 1984. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, under the terms of which these limits were established, also includes provisions for the carryover of shortfalls from the previous agreement year in certain categories (carrover), for percentage increases in certain designated categories (swing), and for the borrowing of yardage from the subsequent agreement year with the amount used being deducted from the limit in that following year (carryforward). Pursuant to these provisions of the bilateral agreement and at the request of the Government of Sri Lanka, the limits established for the foregoing categories are being variously adjusted. These adjustments result in decreases in the limits for Categories 335, 640 and 641. All remaining limits are increased.

A description of the textile categories in terms of T.S.U.S.A. members was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

April 1, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of May 10, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1984.

Effective on April 1, 1985, paragraph 1 of the directive of May 10, 1984, is hereby further amended to include the following adjusted restraint limits.[1]

[1]The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1984 between the Governments of the United States and Sri Lanka provides, in part, that: (1) Any specific limit and sublimit may be exceeded by designated percentages of the square yard equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one of more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Category	Adjusted 12-month restraint limit [1]
331	949,341 Dozen pairs.
334	193,274 Dozen.
335	128,781 Dozen.
340	518,630 Dozen.
341	523,574 Dozen.
347	371,277 Dozen.
631	275,857 Dozen.
635	160,777 Dozen.
640	94,221 Dozen.
641	482,853 Dozen.
645/646	109,710 Dozen.
648	57,416 Dozen.
649	168,508 Dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation for Textile Agreements.

[FR Doc. 85-8006 Filed 4-3-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Chemical Warfare and Biological Defense; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Warfare and Biological Defense will meet in closed session on 1 May 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on 1 May 1985 the Task Force will continue its review of progress in chemical warfare and biological defense since the 1980 DSB Summer Study on Chemical Warfare and changes in the chemical/biological threat environment.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7996 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on On-Site Inspection; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on On-Site Inspection will meet in closed session on April 30-May 1, 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine concepts for on-site inspection technical sensor systems which could verify possible arms control limits.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7997 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 15-16 May and 12-13 June 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7998 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Strategic Defense Initiative Advisory Committee; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Strategic Defense Initiative (SDI) Advisory Committee will meet in closed session, in Washington, D.C., on April 29 and 30, 1985.

The mission of the SDI Advisory Committee is to advise the Secretary of Defense and the Director, Strategic Defense Initiative Organization on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on April 29 and 30, the committee will discuss status of SDI research and management issues.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this SDI Advisory Committee meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-7995 Filed 4-3-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meetings.

March 26, 1985.

The USAF Scientific Advisory Board's Ad Hoc Committee on Artificial Intelligence will meet at the Pentagon, Washington, DC on April 25-26, 1985.

The purpose of the meeting will be to review contractor and Air Force near-term AI application plans. There will also be a short working session for report writing. The meeting will convene

from 8:30 a.m. to 5:00 p.m. on April 25, and from 8:30 a.m. to 4:00 p.m. on April 26.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–8005 Filed 4–3–85; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Mangement; Toll-Free Telephone Information Service

On June 17 and June 27, 1983, the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) respectively signed a Procedural Agreement (48 FR 38701, 8–25–83) which outlines the procedures which DOE and NRC will observe in their interactions on the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425, 96 Stat. 2201).

The Procedural Agreement specifies that schedules for acitivities pertaining to technical meetings between DOE and NRC will be made publicly available by DOE in a timely manner with members of the public invited to attend as observers.

To provide members of the public with timely information pertaining to the time, location and agenda for all such public meetings, DOE established a toll-free telephone information service as follows:

For calls originating in Maryland 800–492–4610

For calls originating in the other 49 states 800–368–2235

The procedural agreement also specifies that DOE will notify the public that a toll-free telephone service is available by annually noticing in the **Federal Register** the toll-free telephone numbers. This notice fulfills DOE's commitment.

For additional information about the toll-free telephone information service contact: Charles Head, Office of Civilian Radioactive Waste Mangement, U.S. Department of Energy, RW–23, Washington, D.C. 20585.

Dated: March 28, 1985.

Ben Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 85–8106 Filed 4–3–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–84–027; OFP Case No. 55118–9193–03–12]

Order Granting to General Motors Corp. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Rescission of an Order Granting Permanent Fuel Mixtures Exemption for the Same Facility

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to General Motors Corporation (GMC or "the petitioner"). The permanent exemption permits the use of natural gas as the primary energy source for a boiler located at its plant in Shreveport, Louisiana, based on the lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on June 3, 1985. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, D.C. 20585, Phone (202) 252–1251.

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On September 28, 1984, GMC petitioned ERA under section 212 of FUA and 10 CFR 503.32(c) for a permanent exemption to permit the use of natural gas in an existing boiler. The petition for exemption based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum was filed simultaneously with a request that ERA, pursuant to 10 CFR 501.000 *et seq.*, rescind a permanent 25 percent fuel mixtures exemption previously granted by ERA on June 15, 1981, applicable to the same boiler.[1] Since ERA is granting the petition pursuant to 10 CFR 503.32(c), the Rescission Order will be effective contemporaneously. The project for which the exemption is requested is a boiler located at GMC's Shreveport plant. The unit, which is already in place, is designated as Boiler No. 3, and will burn natural gas.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record that shows that in accordance with the requirements of 10 CFR 503.32(c), GMC has certified that:

1. The unit will be operated less than 1500 full load hours annually;

2. The use of mixtures is not feasible, as required under § 503.9; and

3. Prior to operation, all applicable environmental certifications will be secured.

The last certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, GMC submitted and certified as accurate the information required by the environmental checklist in §503.13(b)(2).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption based on the lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion). GMC has certified that it will secure all applicable permits and approvals prior to commencement of operation of the unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, has reviewed the completed environmental

[1] OFC Case No. 55119–9193–01, 02, 03–12 46 FR 32305 (June 22, 1981) as modified by 47 FR 43774 (October 4, 1982).

checklist submitted by GMC pursuant to 10 CFR § 503.13, together with other relevant information. It appeared during the proceeding on GMC's exemption that the grant of the exemption will not significantly affect the quality of the human environment, and that no additional environmental review will be required.

Pursuant to 10 CFR 501.3, ERA hereby grants GMC's petition for a permanent exemption for lack of alternate fuel supplies at a cost which does not substantially exceed the cost of using imported petroleum for Boiler No. 3.

Rescission Request

ERA hereby grants GMC's request for Rescission of Permanent 25 percent Fuel Mixtures Exemption Applicable to Boiler No. 3. GMC's request for rescission was based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the fuel mixtures exemption to GMC. Accordingly, pursuant to 10 CFR 501.101(f), GMC submitted documentation supporting its Request for Rescission. It was originally anticipated that operation of Boiler No. 3, a given steaming capacity would be necessary at various times to meet the then anticipated demand at the plant. However, subsequent to commencement of commercial operations, GMC has determined that the plant would be operated more efficiently if Boiler No. 3 were permitted to operate with a 1500 hour full load exemption.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on January 30, 1985 (50 FR 42554), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on March 18, 1985; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that GMC has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32(c). Therefore, pursuant to section 212 of FUA, ERA hereby grants a permanent exemption to GMC to permit the use of natural gas as the primary energy source for a 1500 hour full load exemption for Boiler No. 3 at its Shreveport, Louisiana, plant.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, D.C., on March 27, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-8104 Filed 4-3-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-3-20-000 and TA85-3-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 1, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 25, 1985 tendered for filing Substitute First Revised Sheet No. 204 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Substitute First Revised Sheet No. 204 is being filed to reflect in Algonquin Gas' Rate Schedule F-3 revised rates in National Fuel Gas Supply Corporation's ("National Fuel") underlying Rate Schedule RQ.

Algonquin Gas requests that the Commission accept such tariff sheet, to be effective February 1, 1985, to concide with the proposed effective date of National Fuel's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before April 8, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7981 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-375-000, et al.]

Centel Corp.—Kansas, et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Centel Corporation—Kansas

[Docket No. ER85-275-000]

March 28, 1985.

Take notice that on March 18, 1985, Centel Corporation—Kansas (Centel), formerly Centel Corporation, Western Power Division, tendered for filing the proposed following proposed rate schedules:

Rate Schedule 85-CWh-2, replacing Rate Schedule 84-CWh-2, for service to ten rural electric distribution cooperatives (the RECs);

Rate Schedule 85-MWh-5, replacing Rate Schedule 84-CWH-5, for service to 11 distribution municipalities (the Municipals);

Service Schedule 85-A-1, replacing Service Schedule 84-A-1, for firm partial requirements service to the cities of Anthony, Attica, Beloit, Hoisington, Kingman, Osborne, Pratt, Stockton, Russell, and Washington, Kansas (the Firm Municipals);

Transmission Tariff 85-TSv-1, replacing Transmission Tariff 84-TSv-1, for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Transmission Tariff 85-TSv-2, a new Transmission Tariff, for firm transmission service to Kansas Electric Power Cooperative, Inc. (KEPCo).

Service Schedule 85-D, replacing Service Schedule 84-D, for Off-Peak partial requirements customers eligible for service under Service Schedule 85-A-1.

Centel proposes May 18, 1985 as the effective date of these rate schedules and states that copies of this filing were served upon each of the wholesale customers affected by this filing and the Kansas State Corporation Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Electric Energy, Inc.

[Docket No. ER85-372-000]

March 28, 1985.

Take notice that on March 15, 1985, Electric Energy, Inc. (EEI) tendered for filing a First Revised Service Schedule E, Additional Power Requirements, dated February 1, 1985, revising Amendment No. 5 to the Interim, Supplemental and Surplus Power Agreement, FERC Rate Schedule No. 8, between EEI and its Sponsoring Companies (Central Illinois Public Service Company, Illinois Power Company, Kentucky Utilities Company and Union Electric Company). First Revised Service Schedule E provides for a change in the pricing of additional power which EEI purchases from time to time from the Sponsoring Companies when the United States Department of Energy (DOE) requests power in excess of the amounts EEI is contractually obligated to supply to DOE pursuant to contract ATO (40-1)-1312, Modification No. 11, as amended, FERC Rate Schedule No. 7, between EEI and DOE.

EEI asks an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Sponsoring Companies, the DOE, the Illinois Commerce Commission, the Kentucky Public Service Commission and the Missouri Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. ER85-378-000]

March 28, 1985.

Take notice that on March 18, 1985, Oklahoma Gas and Electric Company (OG&E) tendered for filing a set of three Agreements dated February 20, 1985, between OG&E and Oklahoma Municipal Power Authority (OMPA).

The three Agreements are as follows: (1) Power Sales Agreement, (2) Transmission Service Agreement, and (3) Dispatch and Load Regulation Agreement.

OG&E states these Agreements provide the basis whereby OMPA will privide electric service to certain municipalities which are formerly customers (Blackwell, Edmond, Kingfisher, Okeene, Ponca City, Pond Creek, Waynoka and Wynnewood) of OG&E or formerly customers of the Southwestern Power Administration (Goltry, Lexington, Spiro and Yale). Additionally, OG&E indicates these Agreements are intended to facilitate OMPA's ability to acquire the electrical resources necessary to meet its Participants' capacity and energy requirements.

OG&E requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon each OMPA Participant, SWPA, Oklahoma Corporation Commission and Arkansas Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER85-380-000]

March 28, 1985.

Take notice that on March 20, 1985, Florida Power & Light Company (FP&L) tendered for filing a notice of an increase in transmission service rates under its various transmission service agreements. FP&L provides transmission service under long term contracts with the Florida Municipal Power Agency, the Orlando Utilities Commission, the Utilities Commission, City of New Smyrna Beach, the Seminole Electric Cooperative. FP&L also provides transmission service to support interchange transaction between third party utilities under 17 transmission service agreements (TSAs). FP&L has submitted with the instant filing amendments to each of the above agreements reflecting the increased rates proposed herein.

FP&L states that the proposed new transmission service rates are designed to take effect, if necessary in two phases. FP&L requests an effective date of May 19, 1985, for the Phase II rates, and requests a one day suspension so that the Phase II rates may go into effect on May 20, 1985. In the event the Commission determines that the Phase II rates should be suspended for more than one day, FP&L requests the Commission place into effect its proposed Phase I rates on May 20, 1985, following a one day suspension, and until the Phase II suspension period is over. Finally, the Commission determines that FP&L's proposed Phase I rates should be placed into effect only after a full-five month suspension, FP&L requests that the Phase I rates be considered withdrawn, and that the Phase II rates be placed into effect at the end of the five-month suspension period.

The proposed Phase II rates would produce an increase in revenues of $8,141,000 from long term transmission service based on the twelve-month period ending December 31, 1985, which represents a 51% increase over FP&L's existing rates. The proposed Phase I rates would produce an increase in revenues of $3,987,000 based on the same period, which represents a 25% increase over existing rates. FP&L states that it has requested this rate increase in order that it can recover its cost of providing service and earn a fair and adequate return on its rate base used to provide transmission service.

EP&L states that copies of the filing were served upon each of its transmission service customers and upon the Florida Public Service Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Company

[Docket No. ER85-376-000]

March 28, 1985.

Take notice that on March 18, 1985, Kansas Gas and Electric Company (KG&E) tendered for filing a proposed change in its FERC Electric Service Tariff No. 93. The proposed Letter of Intent specifies the amount of transmission capacity requirements for the existing Delivery Points and establishes the fourth delivery point for the Kansas Power and Light Company for the period from June 1, 1985 through May 31, 1986. The proposed change also constitutes complete cancellation of full requirements service under the Agreement for Wholesale Electric Service, FERC Rate Schedule No. 150.

The Letter of Intent is necessary because KP&L has requested a change in the amount of transmsission capacity to be reserve for KP&L's use.

Copies of this filing were served upon the Kansas Power and Light Company and the Kansas Corporation Commission.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Power and Light Company

[Docket No. ER85-377-000]

March 28, 1985.

Take notice that on March 18, 1985, Kansas Power and Light Company (KP&L) tendered for filing a newly executed renewal contract dated March 6, 1985, with the City of Holton, Kansas renewal for wholesale service to that community. KP&L states that this contract permits the City of Holton to receive service under rate schedule WTU-12/83 designated Supplement No. 9 to R. S. FERC No. 189. The proposed effective date is June 1, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KP&L

states that copies of the contract have been mailed to the City of Holton and the State Corportion Commission of Kansas.

Comment date: April 10, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Company

[Docket No. ES85-35-000]

March 28, 1985.

Take notice that on March 25, 1985, Idaho Power Company (Applicant) filed an Application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act seeking an Order authorizing the applicant to change the par value of the authorized shares of the Applicant's Common Stock from $5.00 per share to $2.50 per share and to change each share of outstanding Common Stock with the par value of $5.00 per share into two shares of Common Stock with the par value of $2.50 per share.

Comment date: April 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7988 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-18-001]

Natural Gas Pipeline Company of America; Compliance Filing

April 1, 1985.

Take notice that on March 5, 1985, Natural Gas Pipeline Company of American (Natural) tendered for filing a report in accordance with the Federal Energy Regulatory Commission's Order (Order) that issued January 29, 1985, in Docket No. RP85-18-000. Natural states that this report details the one-time billing allowed by said Order. Natural asserts that additional production-related cost information required by the January 29, 1985 Order is identical to information filed by Natural on February 19, 1985 in Docket No. RP85-99-000 and therefore incorporates this material, available at the Commission for public inspection, by reference.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7982 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-29-003]

Natural Gas Pipeline Company of America; Compliance Filing

April 1, 1985.

Take notice that on March 25, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the listed tariff sheets to be effective March 1, 1985.

Second Substitute Fifty-seventh Revised Sheet No. 5
Second Substitute Twenty-fourth Revised Sheet No. 5A

The purpose of the instant filing is to reflect rate adjustments in compliance with the Commission Order issued February 28, 1985, in Docket Nos. TA85-1-26, *et al.* (Order). These tariff sheets also reflect the effect of Natural's Stipulation and Agreement in Docket Nos. RP83-68, *et al.*, approved by Commission Order issued December 19, 1984 (Settlement) which had not become final at the time of the original filing.

The above listed tariff sheets reflect the impact on Natural's rates of the recently renegotiated pricing terms for Canadian gas purchases as required by Ordering Paragraph (D) of the Order. Using as a base of comparison the Settlement rates, the overall effect of the adjustments on Natural's DMQ-1 rates is a decrease of 4.99 cents in the commodity component, and increase of $.53 in the demand component, and an increase of 2.4 cents in the entitlement component. Of the 4.99 cents commodity rate decrease, (.01) cents is attributable to the Research, Development and Demonstration Adjustment (RD&D) and (.07) cents is attributable to an Advance Payment Tracking Adjustment. In addition, appropriate adjustments have been made with respect to Natural's other sales rate schedules. The effect of these rate changes over the next six month deferred account recovery period is a slight revenue decrease of $.5 million compared to a revenue increase of $21.6 million in the original filing.

Further, Natural submitted additional information in compliance with Ordering Paragraphs (E), (F) and (G) of the above subject order. None of this information which dealt with NGPA category codes, Natural's RD&D adjustment, and the interest calculation on Natural's deferred account balance, respectively, produced a rate adjustment.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted herein to become effective on March 1, 1985.

A copy of this filing has been being mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211. All such motions or protests must be filed on or before April 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7983 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-156-001 and ER84-604-000]

Southwestern Public Service Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting Waiver of Notice, Establishing Hearing Procedures, and Consolidating Dockets

Issued April 1, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On January 31, 1985, Southwestern Public Service Company (SPS) submitted for filing a revised Bulk Power Market Experiemental Adjustment Clause (EAC) and a Fuel Adjustment Clause (FAC) rider,[1] in response to a deficiency letter dated January 3, 1985 from the Director of the Commission's Office of Electirc Power Regulation.[2] SPS requests waiver of the notice requirements to permit an effective date of October 1, 1984.

Notice of SPS' filing was published in the **Federal Register**,[3] with comments due on or before March 8, 1985. A timely pretest, motion to intervene, and motion to suspend was jointly filed by Lubbock Power & Light of the City of Lubbock, Texas and the Cities of Brownfield, Floydada, and Tulia, Texas (Municipals). The Municipals state that they have not fully reviewed the SPS filing and that they have no objection to the filing or the requested effective date at this time. However, the Municipals request that the Commission suspend the filing for one day and set the matter for hearing to preserve their rights as partial requirements customers of SPS.

On March 12, 1985, the full requirements cooperative customers of SPS (Cooperatives) [4] filed a motion for late intervention in the proceeding. Although not protesting the EAC filing, the Cooperatives request intervenor status in this docket to protect their interests in the EAC as it may affect SPS' rate increase filing in Docket No. ER84-604-000. The Cooperatives assert that the procedural status of Docket Nos. ER84-604-000 and ER85-156-000 constitutes good cause for their late intervention in this proceeding and that no prejudice or delay should result from ganting them intervenor status at this time.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make the Municipals parties to this proceeding. We also note that, as wholesale customers of SPS, the Cooperatives appear to have a direct interest in the outcome of this proceeding. Furthermore, given their relatively short delay in seeking to intervene and the early stage of this proceeding, granting the motion should result in no undue prejudice or delay. Accordingly, we find that good cause exists to grant the Cooperatives' untimely motion to intervene.

Our review of the company's filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the submittal for filing and suspend it as ordered below.

In *West Texas Utilities Company*, 19 FERC ¶ 61,189 (1982), we explained our suspension policy primarily in the context of increased utility rates. Here, through its proposed EAC and FAC rider, SPS seeks to change the way in which it collects FAC revenues which would affect the rates collected under the FAC. We note that, although SPS has requested an effective date of October 1, 1984 here, it requested an effective date of October 16, 1984 for its general rate increase in Docket No. ER 84-604-000. The Commission suspended the first phase of the proposed rate increase in that docket for one day, to become effective, subject to refund, on October 17, 1984. We believe that Opinion No. 203 requires that bulk power market adjustment clauses become effective at the same time as the requirements rates with which the clauses are associated. 25 FERC at 62,055. Under these circumstances, given the affected customers' lack of opposition to the requested waiver of notice, we find that good cause exists to waive the notice requirements and to suspend SPS' submittal for a nominal period, to become effective, subject to refund, on October 17, 1984.

We find that common questions of law and fact may be presented in Docket Nos. ER84-604-000 and ER85-156-001. As a result, we shall consolidate those dockets for purposes of hearing and decision.

Finally, we note that we have previously dealt with the bulk power market experiment in Opinion No. 203, 25 FERC ¶ 61,469 (1983), and in Opinion No. 203-A, 27 FERC ¶ 61,154 (1984). In those orders, we approved the bulk power market experiment agreement and accepted it for filing without suspension. We consider the scope of the proceeding in Docket No. ER85-156-001 to be limited to the question of whether SPS' submittal is consistent with the Commission's regulations and the pertinent portions of Opinion Nos. 203 and 203-A. We do not intend that issues previously dealt with in Opinion Nos. 203 and 203-A be raised again in the consolidated proceeding we order here.

The Commission Orders

(A) The Cooperatives' untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) SPS' request for waiver of the notice requirements is hereby granted for good cause shown.

(C) SPS' submittal is hereby accepted for filing and suspended for a nominal period, to become effective on October 17, 1984, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procerdure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of SPS' submittal.

(E) Docket No ER85-156-001 is hereby consolidated with Docket No. ER84-604-000 for purposes of hearing and decision.

(F) The administrative law judge designated to preside in Docket No. ER84-604-000 shall determine

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[1] *See* Attachment for rate schedule designations and affected customers.

[2] SPS had originally tendered for filing an EAC as part of its compliance filing in Docket No. ER84-604-001. This EAC was not required to be filed pursuant to the Commission's order in that docket, 29 FERC ¶ 61,056, and therefore was separately docketed as Docket No. ER85-156-000. The January 3, 1985 deficiency letter informed SPS that the EAC should be filed separately under part 35 of the Commission's regulations. The company was also informed of certain deficiencies in the filed EAC and of the need to revise its existing FAC to take account of transactions under the bulk power market experiment approved in Opinion No. 203, 25 FERC ¶ 61,469 (1983).

[3] 50 FR 8655 (1985).

[4] The Cooperatives consist of Golden Spread Electric Cooperative, Inc., Kimwood Electric Cooperative, Inc., Bailey County Electirc Cooperative, Central Valley Electric Cooperative, Deaf Smith Electric Cooperative, Farmers Electric Cooperative, Greenbelt Electric Cooperative, Lamb County Electric Cooperative, Lea County Electric Cooperative, Lighthouse Electric Cooperative, Lyntegar Electric Cooperative, Midwest Electric Cooperative, North Plains Electric Cooperative, Rita Blanca Electric Cooperative, Roosevelt County Electric Cooperative, South Plains Electric Cooperative, Swisher Electric Cooperative, and Tri-County Electric Cooperative.

procedures best suited to accommodate consolidation of this docket with the pending proceeding.

(G) The secretary shall promptly publish this order in the Federal Register

By the Commission.

Kenneth F. Plumb,

Secretary.

SOUTHWESTERN PUBLIC SERVICE COMPANY
RATE SCHEDULE DESIGNATINGS

[Docket No. ER85-156-001]

Supplement No.	To supplement No.	Rate schedule FERC No.	Other party
1	3	86	Bailey County Electric Cooperative, Inc.
1	3	87	Central Valley Electric Cooperative, Inc.
1	3	88	Deaf Smith Electric Cooperative, Inc.
1	3	89	Farmers Electric Cooperative, Inc.
1	3	90	Greenbelt Electric Cooperative, Inc.
1	3	91	Lamb County Electric Cooperative, Inc.
1	3	103	Lea County Electric Cooperative, Inc.
1	3	92	Lighthouse Electric Cooperative, Inc.
1	3	93	Lyntegar Electric Cooperative, Inc.
1	3	105	Midwest Electric Cooperative, Inc.
1	3	99	North Plains Electric Cooperative, Inc.
1	4	94	Northlolk Electric Cooperative, Inc.
1	1	102	Public Service Company of New Mexico.
1	3	98	Rita Blanca Electric Cooperative, Inc.
1	3	95	Roosevelt County Electric Electric Cooperative, Inc.
1	3	96	South Plains Electric Cooperative, Inc.
1	3	97	Swisher Electric Cooperative, Inc.
1	9	75	Texas-New Mexico Power Company.
1	3	100	Tri-County Electric Cooperative, Inc.
1	4	86	Bailey County Electric Cooperative, Inc.
1	4	87	Central Valley Electric Cooperative, Inc.
1	4	88	Deaf Smith Electric Cooperative, Inc.
1	4	89	Farmers Electric Cooperative, Inc.
1	4	90	Greenbelt Electric Cooperative, Inc.
1	4	91	Lamb County Electric Cooperative, Inc.
1	4	103	Lea County Electric Cooperative, Inc.
1	4	92	Lighthouse Electric Cooperative, Inc.
1	4	93	Lyntegar Electric Cooperative, Inc.
1	4	105	Midwest Electric Cooperative, Inc.
1	4	99	North Plains Electric Cooperative, Inc.
1	5	94	Northlolk Electric Cooperative, Inc.
1	2	102	Public Service Company of New Mexico.
1	4	98	Rita Blanca Electric Cooperative, Inc.
1	4	95	Roosevelt Electric Cooperative, Inc.
1	4	96	South Plains Electric Cooperative, Inc.
1	4	97	Swisher Electric Cooperative, Inc.

SOUTHWESTERN PUBLIC SERVICE COMPANY
RATE SCHEDULE DESIGNATINGS—Continued

[Docket No. ER85-156-001]

Supplement No.	To supplement No.	Rate schedule FERC No.	Other party
1	10	75	Texas-New Mexico Power Company.
1	4	100	Tri-County Electric Cooperative, Inc.
1	9	81	Brownfield, Texas.
1	9	83	Floydada, Texas.
1	7	85	Lubbock Power and light Company.
1	7	101	Tulia, Texas.
1	4	107	Texas-New Mexico Power Company.

[FR Doc. 85-7985 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-93-006]

Trunkline Gas Co.; Change in Tariff

April 1, 1985.

Take notice that Trunkline Gas Company (Trunkline), on March 25, 1985 tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2.

The proposed effective date of the revised tariff sheets other than those for Rate Schedule OST, is March 1, 1985, and are listed in Appendix A to Trunkline's filing. The Appendix B tariff sheets relating to Trunkline's Rate Schedule OST, are proposed to become effective April 1, 1985.

Trunkline states that the instant filing contains the revised tariff sheets necessary to implement the reduced rates resulting from the Docket No. RP83-93, *et al.* Stipulation and Agreement that was filed with the Commission on March 22, 1985, pending FERC approval of that instrument and is requesting the necessary waivers of the Commission's regulations to place the reduced rates into effect on March 1, 1985 and April 1, 1985 respectively, on an interim basis, subject to being superseded by those currently in effect if the Stipulation and Agreement is not approved on or before June 20, 1985.

Copies of the filing were served on all jurisdictional customers and applicable State Regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7984 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-52]

United Gas Pipe Line Co.; Customer Meeting

April 1, 1985.

Pursuant to the Stipulation and Agreement approved in the above-captioned proceeding, a meeting of United Gas Pipe Line Company and its interested customers will be held on April 11, 1985, at 10:00 a.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-7986 Filed 4-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-365-000, et al.]

Williston Basin Interstate Pipeline Co., et al.; Natural Gas Certificate Applications

Take notice that the following filings have been made with the Commission:

1. Williston Basin Interstate Pipeline Company

[Docket No. CP85-365-000]

March 28, 1985.

Take notice that on March 14 1985, Williston Basin Interstate Pipeline Company (WBI), 304 East Rosser Avenue, Suite 200, Bismarck, North Dakota 58501, filed in Docket No. CP85-365-000 an application pursuant to section 7(c) of the Natural GAs Act for a certificate of public convenience and necessity authorizing the construction and operation of certain jurisdictional natural gas storage facilities in Fallon County, Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WBI proposes to construct and operate eight storage field meter stations, convert 10.5 miles of gathering line from native production to jurisdictional storage line and repalce 1.2 miles of various sized field gathering

pipeline with 3.5-inch field storage related pipeline. WBI estimates the cost of the proposed facilities to be $114,080, which would be financed through internally generated funds and/or interim short-term bank loans.

WBI asserts that the installation of the eight storage field meter stations would give WBI more detailed injection/withdrawal data at selected well groups and provide greater efficiency for operating the storage field in Unit 8A of the Baker Storage field. WBI also asserts that a general upgrade of the facilities in Unit 8A is required in order to handle the higher injection pressure associated with the storage process, hence WBI's proposal to replace 1.2 miles of ¾-inch, 1-inch, 1½-inch and 2-inch pipeline formerly use for field gathering with 3.5 inch pipeline to be used for storage related activities.

Comment date: April 18, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP70-7-029 (Phase II)]

March 28, 1985.

Take notice that on March 8, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP70-7-029 (Phase II) a petition to amend the order issued October 29, 1969, 42 FPC 944, in Docket No. CP70-7 (Phase II), as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the operation of six existing sales taps and appurtenant facilities for delivery of gas to United States Steel Corporation (USS), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Southern states that it was authorized by the October 29, 1969 order, as amended, to transport natural gas and to operate facilities for deliveries to USS in Jefferson County, Alabama, for use by USS in its mills for the manufacture and/or finishing of steel and steel products. Southern further states that it proposes to operate six sales taps and appurtenant facilities to serve as additional points of delivery to USS under a direct sales agreement between Southern and USS dated May 14, 1982, (sales agreement), as amended. Southern asserts that operation of the proposed sales taps would enable USS to utilize natual gas it purchases under the sales agreement to operate at other business locations in addition to those located in Alabama.

Southern states that the proposed sales taps would be the existing facilities located at (1) the point of interconnection between the facilities of Sea Robin Pipeline Company (Sea Robin) and Columbia Gulf Transmission Company (Columbia Gulf) at the terminus of Sea Robin's offshore pipeline near Erath in Vermilion Parish, Louisiana (Erath delivery point); (2) the point of the interconnection between the jointly-owned facilities of Southern and ANR Pipeline Company (ANR) and Southern's Shadyside compressor station in St. Mary Parish, Louisana (Shadyside delivery point); (3) the point of interconnection between Southern's pipeline and Texas Eastern Transmission Corporation's (Texas Eastern) 36-inch pipeline in Iberville Parish, Louisiana (White Castle delivery point); (4) the point of interconnection between an existing meter located near milepost 34.4 on Southern's 24-inch Duck Lake-Frankinton loop line and Acadian Gas Pipeline System's (Acadian) 16-inch pipeline in the Iverbille Parish, Louisiana (Carville delivery point); (5) the flange or weld connecting the pipeline facilities of Transcontinental Gas Pipe Line Corporation (Transco) with the outlet of Southern's meter in Livinston Parish, Louisiana (Livingston delivery point); and (6) the point of interconnection between the facilities of Southern and Natural Gas Pipeline Company of America (Natural) located near the outlet of Texaco Inc.'s Henry plant in Vermilion Parish, Louisiana (Henry plant delivery point). Southern indicates that the gas would be transported from the Erath, Shadyside, White Castle, Carville, Livingston and Henry Plant delivery points by Columbia Gulf, ANR, Texas Eastern, Acadian, Transco, and Natural, respectively, for delivery to USS to be used for operations in Indiana, Ohio and Pennsylvania.

It is stated that USS is entitled under the sales agreement, as amended, to purchase from Southern at the old and new delivery points a quantity of gas not to exceed USS's total requirements of 74,796 Mcf of natual gas per day as set forth in the Index of Requirements in Southern's currently effective FERC Gas Tariff. Except at the Carville delivery point where deliveries are limited to 60,000 Mcf per day, it is explained that USS may purchase the maximum amount at any delivery point or at any combination of delivery points. Southern states that USS would pay a negotiated rate under the sales agreement, as amended, that tracks changes in the price payable under Southern's OCD-2 Rate Schedule.

Comment date: April 18, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP85-360-000]

March 28, 1985.

Take notice that on March 13, 1985, Texas Gas Transmission Corporation (Applicant), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-360-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Occidental Chemical Corporation (Occidental) under the certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 1.3 billion Btu of natual gas per day on an interruptible basis for Ohio River Pipeline Corporation (Ohio River), as agent for Occidental, for ultimate delivery to Occidental at its Jefferson, Indiana, plant. Applicant proposes to render the service until June 30, 1985, with an extension for a term to end no later than October 31, 1985, should the Commission extend the end-user transportation program beyond June 30, 1985. Pursuant to a gas transportation agreement dated January 30, 1985, between Applicant and Ohio River, Applicant would receive the gas to be transported at an existing point on Applicant's pipeline in Bossier Parish, Louisiana. Applicant would then transport and redeliver such gas, less a 4 percent reduction for fuel, to Ohio River at Applicant's New Albany/Crestwood sales meter station located near Crestwood in Oldham County, Kentucky. It is explained that Ohio River would then transport the subject gas for ultimate delivery to Occidental. Applicant indicates that the gas to be transported would be purchased by Occidental from Entrade Corporation.

Applicant states that it would charge its TSC-4 contract service rate for Rate Schedule G sales customer, currently 23.66 cents, plus 1.25 cents GRI surcharge, for each million Btu redelivered at the point of redelivery.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Occidental. The flexible authority requested would apply only to points related to sources of gas supply not to delivery points in the market area. Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the

application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 13, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-363-000]

March 29, 1985.

Take notice that on March 13, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP85-363-000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon by reclaim facilities involving 1,000 horsepower of compression and for a certificate of public convenience and necessity authorizing the construction and operation of facilities involving 230 horsepower of compression, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central proposes to abandon the compression facilities at its West Waynoka station which contains a single 500-horsepower compressor unit and appurtenant facilities, stating that this station did not operate on the 1983–1984 peak day. Additionally, Northwest Central would abandon the compression facilities at its East Waynoka station which also contains a single 500-horsepower compressor unit and appurtenant facilities. It is stated that both stations are located in Woods County, Oklahoma.

Northwest Central proposes to replace the abandoned facilities by installing two new 115-horsepower 2-stage compressor units at the East Waynoka station. It is explained that such compressor units would be used to compress all gas received from the Northeast Waynoka field as well as the West and East Waynoka fields for delivery into the Pampa-Wichita 20-inch pipeline. It is further explained that the smaller-sized replacement compression facilities are required due to the declining production in the area.

Northwest Central states that the estimated cost of the facilities proposed to be constructed is $593,000, which would be paid from treasury cash. The estimated total reclaim cost for the facilities proposed to be abandoned is $98,000 and the estimated salvage value is $200,000.

Comment date: April 19, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-7987 Filed 4-3-85; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41016; TSH-FRL 2811-7]

Interagency Testing Committee; Establishment of Intent-To-Designate Category of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Interagency Testing Committee (ITC) decision to establish a new intent-to-designate category of chemical substances as part of its selection process. This selection process leads to the recommendation of chemicals for priority testing consideration under the Toxic Substances Control Act (TSCA). The new category of chemicals will provide industry and the public the opportunity to supply information before the ITC designates the chemicals for priority testing and sets into motion an expensive regulatory process. If the needed information is forthcoming, the Committee will determine whether the new information would justify modifying its intention to designate the chemicals in question. The first group of chemicals in this new category appears elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: This procedural change is effective on April 4, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail:
Arthur Stern, Acting Executive Secretary, Interagency Testing Committee (TS-792), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and phone number: Rm. E-539C, 401 M St., SW., Washington, D.C. 20460, (202-382-4281).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2006 *et sec.*; 15 U.S.C. 2603 *et seq.*), authorizes the Administrator of the Environmental Protection Agency to require testing of chemical substances or mixtures if the Administrator makes certain findings that are set forth in

section 4(a) of TSCA. Section 4(e) established the TSCA Interagency Testing Committee. The ITC is charged with recommending to the EPA Administrator chemical substances or mixtures (chemicals) to which EPA should give priority consideration for promulgating testing rules for health effects, ecological effects, and chemical fate under section 4(a) of TSCA. The EPA Administrator must respond to the ITC recommendations by initiating rulemaking to require testing of recommended chemicals or by publishing in the **Federal Register** the Agency's reasons for not doing so.

In developing its testing priorities, the ITC considers, together with all other relevant information, the following factors with respect to chemical substances or mixtures under consideration:

1. Quantity manufactured or which will be manufactured.
2. Quantity which enters or will enter the environment.
3. Occupational exposures and their duration.
4. General human population exposures.
5. Similarity in chemical structure to other substances which are known to present an unreasonable risk of injury to health or the environment.
6. Existence of data concerning the effects on health and the environment.
7. The extent to which testing will develop data upon which the effects on health or the environment can reasonably be determined or predicted.
8. The reasonably foreseeable availability of testing facilities and personnel.

II. Committee's Chemical Selection and Designation Process

In meeting its charge, the Committee conducts a multi-step screening procedure (approximately every 18–24 months) to identify, for detailed review, a limited number of substances likely to have priority for testing to determine their effects on human health and the environment.

The basic steps in the process adopted by the Committee are as follows:

1. Establishment of an initial listing of substances suspected of being a potential risk to human health or the environment.
2. Compilation of a smaller master file of substances through elimination from the initial listing of substances not subject to TSCA regulations or of lower priority to the Committee for various reasons.
3. Selection of a preliminary list of substances for further consideration based on evaluation of the production volume, occupational exposure, and general human and environmental exposure potential of the substances in the master file.
4. Selection about 80–100 candidates for detailed review based on evaluation of the potential exposure, biological activity, and the need for health effects, ecological effects, and chemical fate testing.
5. Evaluation of the need for testing based on review of all available information on each candidate.

The Committee's evaluation of each chemical substance for possible testing leads to one of three decisions:

1. Designation for testing: Substances in this category are placed on the priority list submitted to the EPA Administrator, and require priority consideration and response within 12 months.
2. Recommendation for testing: Substances in this category are placed on the priority list without a specified time for EPA response.
3. Deferral: Substances are so categorized when the Committee believes that: (a) There is insufficient exposure to be of concern; (b) the chemical is not likely to be hazardous; (c) sufficient information/test data are already available.

III. Notice of Intent-to-Designate

The Committee designates chemicals for testing when it believes that the potential for exposure and adverse effects is sufficient to warrant testing and when sufficient data to adequately characterize the hazards of the chemicals are lacking. Designation sets into motion an extensive and expensive regulatory process by both EPA and industry. However, in a limited number of cases, the needed information may be relatively small.

If the additional information needed by the ITC to reach a more informed decision could be forthcoming from industry or the public-at-large, a considerable amount of time and expense on the part of both government and industry might be obviated.

Therefore, the Committee is establishing an "intent-to-designate" category as part of its selection process. "Intent-to-designate" a particular chemical means that the Committee is offering to industry and to the public a prescribed time period in which to provide additional information on the chemical.

Lists of chemicals in the intent-to-designate category will be published in the **Federal Register** from time-to-time, as the need arises. The Committee will cite specifically what additional information it needs on each substance in order to possibly modify its intention to designate. The completeness and quality of the submitted information or data will also play a major role in the Committee's considerations.

Dated: March 29, 1985.

Bernard Greifer,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 85–8024 Filed 4–3–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–41017; TSH–FFL 2311–8]

Certain Chemicals, Placement in the Intent-To-Designate Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Interagency Testing Committee (ITC) decision to include 1*H*-benzotriazole, C. I. Pigment Green 7, and *N*-ethyl-*N*-benzylaniline in its new intent-to-designate category of chemical substances. The decision to establish this category and the ITC's rationale for so doing appear elsewhere in this issue of the **Federal Register**. Comments and information are desired before ITC designates the chemicals for priority consideration for testing requirements and sets into motion an expensive regulatory process.

DATE: Comments and information, identified by the document control number [OPTS–41017], must be submitted by September 1, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail:

Arthur Stern, Acting Executive Secretary, Interagency Testing Committee (TS–792), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and phone number: Rm. E–539C, 401 M St., SW., Washington, D.C. 20460, (202–382–4281).

SUPPLEMENTARY INFORMATION: Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2006 *et seq.*; 15 U.S.C. 2603 *et seq.*), authorizes the Administrator of the Environmental Protection Agency to require testing of chemical substances or mixtures if the Administrator makes certain findings that are set forth in section 4(a) of TSCA. Section 4(e) established the TSCA Interagency Testing Committee. The ITC is charged with recommending to the EPA Administrator chemical substances or mixtures (chemicals) to which EPA should give priority

consideration for promulgating testing rules for health effects, ecological effects, and chemical fate under section 4(a) of TSCA. The EPA Administrator must respond to the ITC recommendations by initiating rulemaking to require testing of recommended chemicals or by publishing in the Federal Register the Agency's reasons for not doing so.

In meeting its charge, the Committee conducts a multi-step screening procedure, concluding with a detailed review of a limited number of substances likely to have priority for testing to determine their effects on human health and the environment.

The Committee's evaluation of each chemical substance for possible testing leads to one of three decisions:

1. *Designation for testing.* Substances in this category are placed on the priority list submitted to the EPA Administrator, and require priority consideration and response within 12 months.

2. *Recommendation for testing.* Substances in this category are placed on the priority list without a specified time for EPA response.

3. *Deferral.* Substances are so categorized when the Committee believes that: (a) there is insufficient exposure to be of concern; (b) the chemical is not likely to be hazardous; (c) sufficient information/test data are already available.

The Committee designates chemicals for testing when it believes that the potential for exposure and adverse effects is sufficient to warrant testing and when sufficient data to adequately characterize the hazards of the chemicals are lacking. Designation sets into motion an extensive and expensive regulatory process by both EPA and industry. However, in a limited number of cases, the needed information may be relatively small. If the additional information needed by the ITC to reach a more informed decision could be forthcoming from industry or the public-at-large, a considerable amount of time and expense on the part of both government and industry might be obviated.

Therefore, the Committee has established an "intent-to-designate" category of chemicals as part of its screening process. Lists of chemicals in the intent-to-designate category are published in the Federal Register from time-to-time, as the need arises. The Committee cites specifically what additional information it needs on each chemical. The completeness and quality of the submitted information or data also plays a major role in the Committee's considerations. At the end of this period, the Committee will re-evaluate the chemical(s) in this category and make a final decision regarding their disposition.

The TSCA Interagency Testing Committee (ITC) intends to designate the following three chemicals for chemical fate and ecological effects testing in its November 1985 Report to the EPA Administrator. The list indicates the minimum amount of information needed for a determination of the environmental hazard potential of each compound. If this information is received by September 1, 1985, the Committee will determine whether the new information would justify modifying its intention to designate.

CHEMICALS INTENDED TO BE DESIGNATED AND INFORMATION NEEDED

Chemical	Information needed	Comments
1. 1H-Benzotriazole (CAS No. 95-14-7).	Chemical Fate: Persistence in surface waters....	
	Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae..	Reliable estimates of concentrations toxic to organisms cannot be made from fish toxicity data previously provided.
2. C.I. Pigment Green 7 (CAS No. 1328-53-6).	Chemical Fate: Water solubility.....	
	Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae..	Reliable estimates of concentrations toxic to aquatic organisms cannot be made from available fish and aquatic invertebrate studies previously provided.
3. N-Ethyl-N-Benzylaniline (CAS No. 92-59-1).	Chemical Fate: Water solubility, soil adsorption coefficient, and persistence in soil and water. Ecological Effects: Acute toxicity to fish, aquatic invertebrates and algae; bioconcentration in fish..	No data were found on the chemical fate and ecological effects of this chemical.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Information or data are being solicited from industry and the public on each chemical. The deadline for receipt of this information or data is September 1, 1985.

Dated: March 29, 1985.

Bernard Greifer,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 85-8023 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2811-6]

Science Advisory Board; Risk Assessment Guidelines Review Group; April 22-23, 1985—Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Risk Assessment Guidelines Review Group of the Science Advisory Board will be held at the Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, D.C. 20001. The meeting will begin at 9:00 a.m. and will adjourn at approximately 5:00 p.m. on both days.

This is the second meeting of the Risk Assessment Guidelines Review Group. The purpose of the meeting is to enable the Review Group to evaluate and provide comment to the Environmental Protection Agency (EPA) on the scientific adequacy of the Agency's proposed Risk Assessment Guidelines. EPA has previously published in the Federal Register and solicited public comment on the guidelines for Carcinogenicity, Mutagenicity, Developmental Effects, Complex Mixtures and Exposure.

The format for the meeting consists of the Review Group subdividing into five separate panels, one for each of the guidelines, meeting in parallel session to carry out its charge. These panels will periodically convene into a committee-of-the-whole to exchange information and provide status reports on the course of their respective reviews, and they will prepare draft reports of their major conclusions and recommendations.

The meeting is open to the public. Any member of the public wishing to attend, obtain information or participate in the meeting should contact Dr. Terry F. Yosie, Director, Science Advisory Board, U.S. Environmental Protection Agency (A-101), 401 M Street, SW., Washington, D.C. 20460, by close of business April 15, 1985. The telephone number is (202) 382-4126. The public is advised that seating at the meeting is limited.

Dated: March 24, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-8035 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2811-5]

Science Advisory Board; Executive Committee April 25-26, 1985—Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held at the Environmental Protection Agency, 401 M Street, SW., Conference Room 1101, West Tower, Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on both days and will adjourn at approximately 12:00 noon on April 26.

The major purposes of this meeting are to review the draft reports to the Administrator on (1) the EPA Risk Assessment Guidelines for Carcinogenicity, Mutagenicity, Developmental Effects, Complex Mixtures, and Exposure prepared by the Risk Assessment Guidelines Review Group; (2) Water Quality Criteria prepared by the Environmental Effects, Transport and Fate Committee; and (3) a review, by the Environmental Engineering Committee, of a methodology developed by the EPA Office of Solid Wastes to be used as a basis for determining which hazardous wastes to ban from landfills; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board (A-101), 401 M Street, SW, Washington, D.C. 20460 or call (202) 382-4126 before close of business April 15, 1985. The public is advised that seating at the meeting is limited.

March 28, 1985

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-8036 Filed 4-3-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: New

Title: Activities-Results List

Abstract: States will use this list as the core format for their statements of work. Each quarter States will update numbers completed vs. expected on the lists, reproduce them, and submit them as quarterly reports. Program managers will then monitor progress.

Type of respondents: State or Local Governments, Federal Agencies or employees

Number of respondents: 56

Burden hours: 7,420

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: March 28, 1985.

Walter A. Girstantas, *Director, Administrative Support.*

[FR Doc. 85-7992 Filed 4-3-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-735-DR]

Major Disaster and Related Determinations; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA-735-DR), dated March 29, 1985, and related determinations.

DATED: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of March 29, 1985 the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms and flooding beginning on February 23, 1985, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide necessary Public Assistance in the affected areas, once an acceptable State commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Ronald Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster: Calhoun, Cass, Clark, Fulton, Grundy, Mason, Morgan, Peoria, Pike, Rock Island, Tazewell, Will and Woodford Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-7991 Filed 4-3-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Agreement No. 117-010726]

Space Charter Agreement Between Puget Sound Tug and Barge Company and Foss Alaska Line, Inc.; Availability of Finding of No Significant Impact

Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's final resolution of Agreement No. 117-010726 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning

of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

Agreement No. 117–010728 is between Puget Sound Tug and Barge Company and Foss Alaska Line Inc. (FOSS). It covers transportation of cargo between Washington and ports in Western Alaska and permits space-available charter of space to FOSS during the 1985 shipping season in the Seattle, Washington/Western Alaska trade. The Agreement, which is open to membership to any common carrier by water in this trade, has been filed with the Commission pursuant to section 15, Shipping Act, 1916, as amended.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the Federal Register unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523–5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8101 Filed 4–3–85; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Annual Report; Availability of Filing

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463 (5 U.S.C. Appendix I), the Fiscal Year 1984 Annual Report for the following advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

Immunization Practices Advisory Committee

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C. (telephone 202/287–6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, SW., Washington, D.C. (telephone 202/245–6791).

Dated: March 29, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–8011 Filed 4–3–85; 8:45 am]

BILLING CODE 4160–18–M

Public Health Service

Angelchik Anti-Gastroesophageal Reflux Implantable Devise

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), has announced that it is conducting a reassessment of what is known of the safety, clinical effectiveness of, and indications for the surgical implantation and use of the Angelchik anti-gastroesophageal reflux implantable device. Specifically the PHS is soliciting information that would define the population of patients that might benefit from the implantation of this device. In addition information is sought regarding the post implantation followup experience with these devices from the standpoint of safety as well as efficacy as an antireflux measure.

Since the publication of the previous Federal Register notice of assessment (FR Vol 46:No.227,57768, November 25, 1981) the PHS completed and forwarded to the Health Care Financing Administration an assessment of the subject technology. This reassessment now seeks to update the existing experience with the use of this device and to determine if a change in existing Medicare coverage policy is warranted.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS Agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendations will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing by no later than June 17, 1985.

The information being sought is a review and assessment of past, current and planned research related to this technology, a bibliography of published controlled clinical trials and other well designed clinical studies, and other information related to the clinical acceptability and relative utility of this technology. Proprietary information is not being sought.

Written material should be submitted to: National Center for Health Services, Research and Health Care Technology Assessment, Office of Health Technology Assessment, Park Building, Room 3–10, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: March 28, 1985.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85–8039 Filed 4–3–85; 8:45 am]

BILLING CODE 4160–17–M

General Powers and Duties of the Public Health Service; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of January 14, 1981 (46 FR 10016) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Director, National Center for Health Services Research and Health Care Technology Assessment, (NCHSR) with authority to redelegate, the following authorities under Title III of the Public Health Service Act (42 U.S.C. 241 *et seq*):

(1) Section 301 of the Public Health Service Act (42 U.S.C. 241), as amended, authority relative to research, investigation, and testing functions.

(2) Section 304 of the Public Health Service Act (42 U.S.C. 242b), as amended, general authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology.

(3) Section 305 of the Public Health Service Act (42 U.S.C. 242c), as amended, authority pertaining to the National Center for Health Services Research and Health Care Technology Assessment.

(4) Section 307 of the Public Health Service Act (42 U.S.C. 2421), as amended, international cooperation authority.

(5) Section 308 of the Public Health Service Act (42 U.S.C. 242m), as amended, insofar as general provisions apply to sections 304, 305, 306, and 307.

(6) Section 310 of the Public Health Service Act (42 U.S.C. 242o), as amended, authority relative to health conferences and health education information.

The December 24, 1981 delegation by the Acting Deputy Assistant Secretary for Health Research, Statistics, and Technology to the Director, National

Center for Health Services Research has been superseded insofar as it pertains to authorities under Title III of the Public Health Service Act. Provision has been made for previous delegations and redelegations made to other officials currently within the NCHSR to continue in effect for no longer than 90 days from the date of the delegation to the Director, NCHSR, provided they are consistent with the delegation to the Director, NCHSR.

The delegation to the Director, National Center for Health Services Research and Health Care Technology Asssessment became effective on March 22, 1985.

Dated March 22, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-8038 Filed 4-3-85; 8:45 am]

BILLING CODE 4160-17-M

National Research Institutes; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of July 20, 1979 (44 FR 46318) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Director, National Center for Health Services Research and Health Care Technology Assessment (NCHSR), with authority to redelegate, the following authorities under Title IV of the Public Health Service Act (42 U.S.C. 281 *et seq*):

(1) Section 472 of the Public Health Service Act, (42 U.S.C. 2891–1), as amended, pertaining to National Research Service Awards, excluding the authority to promulgate regulations; and

(2) Section 473 of the Public Health Service Act, (42 U.S.C. 2891–2), as amended, pertaining to studies respecting biomedical and behavioral research personnel, excluding the authority to submit reports to Congress or its Committees.

The December 24, 1981 delegation by the Acting Deputy Assistant Secretary for Health Research, Statistics, and Technology to the Director, National Center for Health Services Research has been superseded insofar as it pertains to the authorities under Title IV of the Public Health Service Act.

Provision has been made for previous delegations and redelegations made to other officials currently within the NCHSR of these authorities to continue in effect for no longer than 90 days from the date of the delegation to the Director, NCHSR, provided they are consistent with the delegation to the Director, NCHSR.

The delegation to the Director, National Center for Health Services Research and Health Care Technology Assessment became effective on March 22, 1985.

Dated: March 22, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-8037 Filed 4-3-85; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Part S, as published in the **Federal Register** on June 1, 1983, (48 FR 24465–24467) is being amended to reflect the changes in the organizational designation and functional responsibilities for the Office of Research, Statistics and International Policy (ORSIP), Office of Policy (OP). Accordingly, the sections of Chapter SR which describe the mission, organization and functions of OP are begin amended to reflect the changes in the organizational designation and functional responsibilities of the Office. The revisions are as follows:

Section SR.10 *The Office of Policy*—(Organization):

E. The Office of Research, Statistics and International Policy (SRV).

Delete Subsection 2. The Research Grants and Contracts Staff (SRV3).

Add Subsection 2. The Program Analysis Staff ( ).

Retitle Subsection 4 to read: 3. The Division of Statistical Operations and Services (SRV7).

Add Subsection 5. The Division of Statistics Analysis ( ).

Renumber Subsection 5 to 6. The International Policy Staff (SRVE).

Section SR.20 *The Office of Policy*—(Functions):

E. The Office of Research, Statistics and International Policy (SRV).

Delete Subsections 2., a, b, c, d and e.

Add Subsection 2. The Program Analysis Staff ( ).

Plans, designs and conducts surveys of program target groups and performs policy-relevant research. Analyzes the impact of proposed policy options and legislative proposals, analyzes special high-priority issues and prepares briefing materials for SSA administrators.

Redescribe Subsection 3., a and b, and add c. The Division of Economic Research (SRV5).

a. Plans, directs and executes issue-oriented research to provide information about relationships between the Social Security program, the economy and other aspects of society.

b. Makes program revenue projections and interprets changing demographic and economic trends as they relate to the broad field of economic security and to overall economic and social policy.

c. Studies such major areas as: Social Security financing, economic impacts of Social Security, income maintenance, effects of Social Security on lifetime income redistribution, alternative measures of income adequacy, and labor market and retirement behavior.

Retitle Subsection 4 to read: The Division of Statistical Operations and Services (SRV7).

Redescribe Subsections 4., a and b as follows:

a. Plans and directs the development, maintenance and revision of a broad statistical program concerning the basic retirement, survivors, disability insurance and SSI program statistics.

b. Provides statistical services throughout SSA and technical consultation to users of these statistics, both within and outside SSA.

Adds Subsection 5. The Division of Statistic Analysis ( ).

a. Plans and develops a continuing program of research and analysis related to Social Security, Supplemental Security Income (SSI), other social welfare programs and to the employment, earnings and coverage status of the nation's work force.

b. Plans and directs the collection for publication of OASDI and SSI statistics as well as statistics on employment and earnings covered under the Social Security program.

Renumber Subsection 5 to 6. The International Policy Staff (SRVE).

Dated: March 13, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-8019 Filed 4-3-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance offices at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer, Ramona Moore, telephone (202) 343-3574 and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C., 20503, telephone 202-395-7313.

Title: Subchapter M Part 271 General Contract Requirements—25 CFR 271.46 and 271.49.

Abstract: Parts 271.46 and 271.49 require a tribal contractor to establish and maintain a recordkeeping system and provide financial status and program progress reports; such records and reports are essential to proper administration, monitoring and evaluation of contracts awarded under Pub. L. 93-638

Bureau Form Number: None.

Frequency: Quarterly

Description of Respondents: Indian tribes or tribal organizations across tribal lands

Annual Responses: 11,440

Annual Burden Hours: 5,720

Bureau clearance officer: Ramona Moore, (202) 343-3574.

John W. Fritz,

Assistant Secretary—Indian Affairs.

[FR Doc. 85-8082 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Arizona; Notice of Conveyance

[A-18823-F]

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Fred D. and Corlene Armstrong, 2514 Greenway Street, Arlington, Texas 76010, have purchased by competitive sale, for $13,950.00 public land situated in Mohave County described as follows:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 18 N.,
Sec. 34, N½SE¼, N½SW¼SE¼, E½SW¼SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼.

Containing 155.00 acreas.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-8069 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-32-M

Arizona; Notice of Conveyance

[A-18822-E]

March 25, 1985.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Ralph M. Born, 170 Pinto Place, Norco, California 91760, has purchased by competitive sale, for $17,110.00, public land situated in Mohave County described as follows:

Gila and Salt Rver Meridian, Arizona

T. 21 N., R. 18 W.,
Sec. 34, NE¼,

Containing 160.00 acreas.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

Don R. Mitchell,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-8071 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-32-M

Realty Action; Disposal of Public Lands in Rio Arriba and Taos County, NM

Dated: March 28, 1985.

AGENCY: Bureau of Land Management Albuquerque District Office, Interior.

ACTION: Notice of realty action on proposed land disposal.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM) is proposing to dispose of approximately 64.04 acres of public land near the unicorporated villages of Embudo, Pilar, and Dixon within Taos and Rio Arriba Counties, State of New Mexico.

SUPPLEMENTARY INFORMATION: The BLM has determined that the 64.04 acres of public land described below are suitable for disposal under the Color-of-Title Acts of 1928 (45 Stat. 1069), 1932 (47 Stat. 53; 43 U.S.C. 178), the Recreation and Public Purposes Act (43 U.S.C. 869 et seq), and Sales under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

Dixon I, New Mexico Public Land Disposal Block:

T. 23 N., R. 10 E., NMPM,
Sec. 19: Lots 29, 30, 31, 32;
Sec. 20: Lot 10;
Sec. 28: Lot 69;
Sec. 29: Lots 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32.
T. 24 N., R. 11 E., NMPM,
Sec. 29: Lot 11.

Comprising approximately 64.04 acres.

Disposal of these lands is consistent with: (1) The approved Land Use Recommendations of the BLM's 1979 Rio Grande, Management Framework Plan. (2) Their location as well as the physical characteristics and the private ownership of adjoining lands, make them difficult and uneconomical to manage as public lands, so disposal would best serve the public interest. (3) various public meetings were held throughout the area during the land use planning process. (4) This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional delegation and the relevant congressional committees by BLM.

The specific parcels of public land will be disposed of using the following "Tract Disposal Criteria" in descending order of priority:

1. *Color-of-Title.* Color-of-Title disposals will be made to any applicant within the disposal area who qualifies under the Color-to-Title Acts.

2. *Non-Competitive (Direct) Sale.* Public lands within the disposal block will be sold without competition at Fair Market Value to those individuals who occupied the parcels before June 11, 1979 (the date land use plans were approved) but who do not qualify for title under one of the color-of-title acts.

3. *Public Purposes.* If unoccupied lands within the disposal area are identified for recreational or other public purposes by state or local governments or other qualified public purposes applicants, they will be considered for disposal under the R&PP Act.

The terms and conditions applicable to the disposal are:

1. The patents will contain a reservation to the United States for ditches and canals.

2. All disposals are for surface estate only. The patents will contain a

reservation to the United States for all minerals.

3. Tracts which lie within the 100 year floodplain of the Embudo river will be subject to EO 11988 which precludes the seeking of compensation from the Untied States or its agencies in the event existing or future facilities on those tracts are damaged by flood.

4. All disposals will be made subject to prior existing rights. Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571 or telephone (505) 758–8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the state Director, this realty action will become the final determination of the Department of the Interior.

L. Paul Applegate,

District Manager.

[FR Doc. 85–8084 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-FB-M

[N–39182]

Nevada; Realty Action-Noncompetitive Sale of Public Land in Mineral County, NV

The following described land, comprising approximately .32 acre, has been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750), 43 U.S.C. 1713:

Mount Diablo Meridian, Nevada

T. 8 N., R. 34 E.,
Sec. 34: Lots 2 and 6.

The land will be offered at the appraised fair market value to Wilfred Buffington who owns land on three sides of each lot and controls access to lot 2. The land would become a part of a planned construction project. If sold as individual lots, neither would be large enough to meet County requirements for a building permit.

The sale is consistent with Bureau planning and is compatible with County plans. The land, due to its location, is without access, is uneconomic to manage, and is not needed for any federal purpose. It would best be managed in private ownership to allow for community expansion. The public interest will be well served by making the land available for sale.

Patent, if and when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

A more detailed description of this mineral reservation, which will be incorporated in the patent document, is available for review at this BLM Office.

Detailed information concerning the sale is available for review at the Carson City District Office.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all forms of nondiscretionary appropriation under the public land laws, including the mining laws, except the mineral leasing laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or other document of conveyance to such land, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

The land will not be offered for sale sooner than 60 days after the date of this notice. For a period of 45 days after the date of this notice, interested parties may submit comments to the Bureau of Land Management, Carson City District Office, 1050 E. William Street, Suite 335, Carson City, Nevada 89701. Any adverse comments will be evaluated by the District Manager. The Nevada State Director, Bureau of Land Management, may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated this 28th day of March 1985.

Thomas J. Owen,

District Manager, Carson City District.

[FR Doc. 85–8085 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-HC-M

[N–36597, et al]

Realty Action; Sale of Public Lands in Lincoln County, NV

The following described lands have been examined and identified as suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value shown:

Mount Diablo Meridian, Lincoln County, State of Nevada

Parcel No.	Serial No.	Legal description	Acres	Minimum bid appraised value (dollars)
		T.7S.,R. 61E		
		Section 9		
85–01	N–36598	N½NW¼NW¼	20.0	30,000
		Section 5		
85–02	N–36597	N¼NW¼SW¼NW¼	5.0	3,000
85–03	N–39393	S½NW¼SW¼NW¼	5.0	5,000
85–04	N–39394	N½SW¼SW¼NW¼	5.0	5,000
85–05	N–39395	S½SW¼SW¼NW¼	5.0	5,000
85–06	N–39396	N¼NW¼NW¼SW¼	5.0	4,000
85–07	N–39397	S½NW¼NW¼SW¼	5.0	4,500
85–08	N–39398	N½SW¼NW¼SW¼	5.0	4,500
85–09	N–39399	S½SW¼NW¼SW¼	5.0	5,000
85–10	N–39400	N½NE¼SW¼NW¼	5.0	3,500
85–11	N–39401	S½NE¼SW¼NW¼	5.0	4,500
85–12	N–39402	N¼SE¼SW¼NW¼	5.0	4,500
85–13	N–39403	S¼SE¼SW¼NW¼	5.0	5,000
85–14	N–39404	N½NE¼NW¼SW¼	5.0	3,500
85–15	N–39405	S½NE¼NW¼SW¼	5.0	4,500
85–16	N–39406	N½SE¼NW¼SW¼	5.0	4,500
85–17	N–39407	S½SE¼NW¼SW¼	5.0	5,000

The method of sale will be competitive sealed bid. The land sale will be held at the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89126, at a date to be announced later.

This sale is consistent with the Bureau of Land Management's planning system and the Master Plan for Lincoln County.

The public interest will be served by offering this land for sale. Based on a recent ocular reconnaissance survey, the sale lands support approximately 3–4 AUMs livestock carrying capacity in the West Pahranagat Grazing Allotment. However, until sheduled monitoring studies over the total allotment have been completed and evaluated, the sale

will not result in an adjustment in total preference. Particulars for this sale will be made available to the public prior to the scheduled sale date. The land will not be offered for sale until 60 days after the date of this notice.

Detailed information concerning the sale, including the planning documents, and the environmental assessment/land report is available for review at the Bureau of Land Management Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89126. Federal law requires that bidders be U.S. citizens, 18 years of age or older.

Sealed bids may be submitted to our Las Vegas District Office, 4765 W. Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126. Bids must be received at the District Office no later than close of business (4:15 p.m.) the day prior to the bid opening date to be eligible for that bid opening. Qualified sealed bids will be opened starting at 9:00 a.m. at the Las Vegas District Office. Sealed bids for each subsequent bid opening date may be submitted starting the third Thursday of each month for opening the third Wednesday of the following month.

Sealed bids must be enclosed in an envelope identified with the parcel number and labled "sealed bid—do not open" on the outside. The enclosure within the envelope must contain the parcel number, the amount of the bid, the bidder's name and address, and payment of at least 20% of the bid tendered. Certified check, postal money order, bank draft or a cashier's check made payable to the Department of Interior, Bureau of Land Management are the only acceptable forms of payment. No bids will be accepted for less than the minimum bid specified for each parcel.

If you are the successful bidder at the sale offering (i.e. bid opening date), the balance of the amount bid is due within 180 days of your receipt of the notice declaring you the successful bidder. Failure to submit the full bid price within 180 days shall result in cancellation of the sale of the parcel and the deposit shall be forfeited and disposed of as other receipts of sale.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.[1]

3. Parcels 85–02 through 85–17 will further be subject to those rights granted by oil and gas lease, N–32207, made under Section 29 of the Act of February 25, 1920, 41 Stat. 437 and the Act of March 4, 1933, 47 Stat. 1570. This patent is issued subject to the right of the prior permittee or lessee to use so much of the surface of said land as is required for oil and gas exploration and development operations, without compensation to the patentee for damages resulting from proper oil and gas operations, for the duration of oil and gas lease, N–32207, and any authorized extension of that lease. Upon termination or relinquishment of said oil and gas lease, this reservation shall terminate.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comment will be evaluated by the District Manager, who may vacate or modify this reality action. BLM may accept or reject any or all offers, or withdraw any land or interest in land from the sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws.

Dated: March 22, 1985.

Kemp Conn,

District Manager, Las Vegas.

[FR Doc. 85–8067 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-HC-M

[1] The succesful bidder may request conveyance of the Federally owned mineral interest (with the exception of oil and gas) under Section 209 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2757, 43 U.S.C. 1719.

Intent To Hold Public Scoping Meetings and To Prepare an Environmental Impact Statement for a Coal Preference Right Lease Application (PRLA) Located in the Craig District, CO; Amendment

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Public Scoping and Information Meetings for Preparation of an Amendment to the White River Management Framework Plan (MFP) and Environmental Impact Statement (EIS) (James Creek PRLA EIS).

SUMMARY: This notice amends and supplements a Notice of Intent published on February 26, 1985, in the following ways:

(1) Advising the public that both an EIS and an MFP Amendment will be prepared. The requirements for both actions will be integrated into one process with documentation for both contained in the EIS.

(2) Correcting the deadline for public comments from March 8, 1985 (an error in the February 26, 1985, Notice), to April 18, 1985.

An original Notice of Intent was published on January 4, 1984. This notice (and the February 26, 1985, notice) update that original notice and advise the public that the Bureau of Land Management will accept comments through April 18, 1985, to assist BLM in defining the range of uses and issues or concerns. The information gathered will be considered in preparation of:

(1) The White River MFP amendment which will identify those parts of PRLA C–0126998 which are acceptable for further consideration for coal leasing by applying 20 unsuitability criteria (43 CFR Part 3461); and

(2) The EIS on the leasing and development of the PRLA and adjacent existing leases.

This notice is issued in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7 and 1508.22), and BLM planning regulations (43 CFR 1610.2) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited. Any information or issues identified in January 1984 to BLM will be considered and need not be resubmitted.

For Further Information and Submission of Comments

An information packet and PRLA location map will be available upon request from the Craig District Office at the address given below. Written comments may be mailed to Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Written comments will be accepted through April 18, 1985. For more information you may also call the BLM at (303) 824–8261.

SUPPLEMENTARY INFORMATION: The EIS is intended to evaluate leasing/development alternatives as well as identifying mitigating measures and special stipulations that the applicant must take into consideration when preparing the PRLA's final showing. Alternatives that have been tentatively identified include the following: (1) No Action, or no development alternative,

(2) Applicant's Proposed Action (a 10 million ton per year surface mine), and (3) Applicant's Proposed Action incorporating BLM Mitigating Measures and Special Stipulations. The purpose of the meetings is to encourage participation from interested persons in defining significant environmental issues and concerns which may result from the issuance of a noncompetitive coal lease. This participation is designed to supplement information gathered in January 1984. Issues and concerns previously identified will be considered. Duplicate information need not be provided.

The next opportunity for public comment and participation will be provided on publication of the Draft EIS. At that time BLM will distribute copies and publish a Notice of Availability to inform the public that the Draft EIS is available and public meetings will be held to gather comments. All comments received will be considered in preparation of the Final EIS. On publication of the Final, BLM will again distribute copies and publish notice in the **Federal Register**. Public comment on the Final will be received for 30 days.

Potential issues in the area associated with development of this PRLA include impacts to wildlife, groundwater hydrology, and socioeconomics. Preparation of the EIS is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations, (40 CFR Part 1500), Federal Coal Management Regulations (43 CFR Part 3430), BLM Planning Regulations (43 CFR Part 1600), and other Federal laws and regulations, and Department of the Interior policies and procedures.

Disciplines Included in the Analysis and Location of the Project Area

Disciplines included in the analysis are: Air quality, Hydrology, Soils and reclamation, Wildlife, Cultural resources, Transportation and noise, Socioeconomics, Vegetation, land-use and grazing, Geology and mineral resources.

The PRLA is located about nine miles northeast of Meeker, Colorado and encompass 5,100 acres, most of which lies in the James Creek Drainage.

Location and Availability of Relevant Documents

The following documents are available for public review:

- 1982 White River MFP amendment applied the unsuitability criteria to the 1982 White River surrounding areas.
- Consolidation Coal PRLA Environmental Assessment prepared in 1982 addressing development of an underground mine on the PRLA.
- A development proposal submitted by Consolidation Coal Company to BLM in December 1984.

The above documents are available at the following BLM offices:

Place	Address
Denver, CO	BLM, Colorado State Office, 2020 Arapahoe, Denver, CO 80205.
Craig, CO	BLM, Craig District Office, 455 Emerson St., Craig, CO 81625.

Kannon Richards,

State Director.

[FR Doc. 85-8068 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-84-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget desk officer, at (202) 395-7340.

Title: Oil and Gas Leasing—National Petroleum Reserve—Alaska

Abstract: Respondents supply information which will be used to determine the eligibility of an applicant to hold leases, to explore for, and produce oil and gas in the National Petroleum Reserve—Alaska under the authority of the Department of the Interior Appropriations Act of 1981.

Bureau Form Numbers: N/A

Frequency: On Occasion

Description of Respondents: General public, small businesses, and oil companies.

Annual Responses: 150

Annual Burden Hours: 150

Bureau Clearance Officer: Evelyn Weeks (202) 653-8853

James M. Parker,

Acting Director.

January 28, 1985.

[FR Doc. 85-8004 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-84-M

Designation of Area of Critical Environmental Concern; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of designation of area of critical environmental concern.

SUMMARY: Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(c)(3)) and 43 CFR 1610.7-2, the following area is designated as an area of critical environmental concern. The designation and associated managment requirements were developed with public involvement in the Glenwood Springs Resource Management Plan, available for inspection at the addresses listed below.

Thompson Creek Natural Environment Area, an Area of Critical Environmental Concern

4,286 acres of BLM-administered land in T. 6 S., R. 88 W., Secs. 20, 21, 28, 29, 30, 31, 32, and 33 and T. 8 S., R. 89 W., Secs. 25, 35, and 36, 6th P.M., Pitkin County, Colorado.

This area is designated to perserve geological, ecological, cultural and scenic values in Thompson Creek and to provide for educational and recreational use. The combination of features present provides an outstanding setting for environmental education activities by local schools and for recreational activities including hiking and cross-country skiing. Management of the area has been prescribed in the Record of Decision for the Glenwood Springs Resource Management Plan and will be directed toward maintaining relatively undisturbed conditions, acquiring legal public access and developing trailhead facilities. Limitations on resource uses include: designation as unsuitable for utility and communication facilities, no surface occupancy stipulation on oil and gas leasing, prohibition of vegetation manipulation and timber harvesting, and closure to off-road vehicle use.

ADDRESSES: For further information about the designation or specific management requirements, contact either of the following Bureau of Land Management offices:

Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

Glenwood Springs Resource Area Office, P.O. Box 1009, 50629 Highway 6 and 24, Glenwood Springs, Colorado 81602.

Dated: March 28, 1985.

Kannon Richards,

Colorado State Director.

[FR Doc. 85-8002 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-JB-M

[A22548-C]

Realty Action; Exchange of Public Lands, Navajo County, AZ

BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 19 N., R. 18 E.,
Sec. 20, E½NE¼.
Containing 80 acres.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: March 27, 1985.

Marlys V. James,

District Manager.

[FR Doc. 85-7999 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-32-M

[AA-54884]

Realty Action; Lease of Public Lands; Southcentral Alaska

SUMMARY: This Notice of Realty Action involves a lease on public lands administered by the Bureau of Land Management (BLM) and selected by the State of Alaska near Denali National Park. The lease is intended to authorize a pre-existing unauthorized use of approximately five (5) acres of public land at Purkeypile landing strip. These lands have been examined and found suitable for leasing under the provisions of Section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976, and are located within the area described as follows:

Section 23, Township 33 North, Range 16 West, Seward Meridian, Alaska.

The lands will be leased on a non-competitive basis. Annual rental has been estimated at $200 per acre per year, subject to final appraisal. No application will be accepted for less than the appraised price per acre. In addition, the lessee shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing and monitoring the lease.

Applications may be hand-delivered or mailed to the Anchorage District Office, Bureau of Land Management, 4700 East 72nd Avenue, Anchorage, Alaska 99507, within 60 days following publication of this notice. Applications must include a reference to this notice.

For more details of application content, refer to 43 CFR 2920, copies of which are available at the BLM Anchorage District Office, McGrath Resource Area. Also available is information on terms and conditions that will apply to the lease, location maps, etc. The Environmental Assessment prepared for the adjacent airport lease, AA-53262, is also available for public review.

For a period of 60 days following Federal Register publication, interested parties may submit comments to the McGrath Resource Area Manager, 4700 E. 72nd Ave., Anchorage, Alaska 99507. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the District Manager, this realty action will become the final determination of the Bureau.

Robert Conquergood,

Area Manager, McGrath Resource Area.

[FR Doc. 85-8003 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-JA-M

Emergency Notice (Less Than 30 Days); Shoshone District Advisory Council and Grazing Advisory Board Joint; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a joint meeting of the Shoshone District Advisory Council and Grazing Advisory Board.

DATE: Wednesday, April 24, 1985 at 9:30 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-0576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: Grazing Fee Study, BLM/Forest Service Interchange.

It is anticipated the meeting will adjourn by noon, however, the Grazing Board may continue in session to complete actions on financial matters.

The Shoshone District Advisory Council is established under Section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.) as amended. The Shoshone District Grazing Advisory Board is established under Section 403 of the Federal Land Policy and Management Act, as amended. Operation and administration of the Council and Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92-463; 5 U.S.C Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement between 11:00 a.m. and 12:00 noon, or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Management by April 23, 1985. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Charles J. Hazzier,

District Manager.

[FR Doc. 85-8001 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-GG-M

[PHX-077993]

Arizona; Order Providing for Opening of Public Lands

Correction

In FR Doc. 85–5229 appearing on page 8793 in the issue of Tuesday, March 5, 1985, make the following correction: In the first column, the land description following paragraph 2, the second line, "Sec. 31, NE½, SW¼" should read "Sec. 32, N½, SW¼".

BILLING CODE 1505-01-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7313; with copies to David A. Schuenke; Chief, Branch of Rules, Orders and Standards; Offshore Rules and Operations Division; Mail Stop 646; Room 6A110; Minerals Management Service: 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: OCS Order No. 8, "Platforms and Structures."

Abstract: Respondents are required to submit information pertaining to a platform's strength, foundation, structural integrity, fabrication method, and installation. The information submitted will be used by the Minerals Management Service Regions to determine the structural integrity of all offshore structures and to ensure that such integrity will be maintained throughout the useful life of the structure.

Bureau Form Number: None

Frequency: On Occasion

Description of Respondents: Federal oil and gas lessees performing offshore opertions under OCS Order No. 8, "Platforms and Structures."

Annual Responses: 237

Anmual Burden Hours: 7,202

Bureau Clearance Officer: Dorothy Christopher, (703) 435–6214

Dated: March 5, 1985.

Bruce G. Weetman,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 85–8000 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-MR-M

Receipt of Proposed Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1608 and 2137, Block 60, and Lease OCS–G 2943, Block 59, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 28, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS PLans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 28, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–8072 Filed 4–3–85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Receipt of Proposed Development Operations Coordination Document, McMoran Offshore Exploration Co.

AGENCY: Minerals Management Service Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that McMoRan Offshore Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4102, Block 36, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 25, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/

Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 25, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-8070 Filed 4-3-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 94)]

Seaboard System Railroad, Inc.; Abandonment in Boone, Carroll, Clinton, Hamilton, and Marion Counties, IN; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc., to abandon its 42.95-mile line of railroad between milepost B-137.50 near Frankfort and milepost B-180.95 near Indianapolis, in Clinton, Boone, Marion, and Hamilton Counties, IN. A certificate will be issued authorizing this abandonment unless, within 15 days after this publication, the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in boldface in the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27(b).

James H. Bayne,

Secretary.

[FR Doc. 85-8017 Filed 4-3-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30619]

Southern Pacific Transportation Co.; Trackage Rights Exemption in Fort Worth, TX

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Southern Pacific Transportation Company from the prior approval requirements of 49 U.S.C. 11343 for its acquisition of trackage rights over a 1.36-mile line of The Atchison, Topeka and Santa Fe Railway Company in Forth Worth, TX, subject to standard employee protective conditions.

DATES: This exemption will be effective on April 11, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30619 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 25, 1985.

By the Commission, Chairman Taylor, Vice Chariman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor dissenting in part, would have made the exemption effective immediately.

James H. Bayne,

Secretary.

[FR Doc. 85-8018 Filed 4-3-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1089-85]

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces five forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the five meetings, together with an explanation of why the second meeting will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATES: April 22, 23, 24, 25, 1984, 10:00 a.m. to 12:00 noon; 1:00 p.m. to 3:00 p.m. (public hearing). April 22, 1985, 4:00 p.m. to 6:00 p.m. (closed meeting).

ADDRESS: Ceremonial Courtroom, Room 2525, Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604 (public hearing); Room 2502, Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois 60604 (closed meeting).

FOR FURTHER INFORMATION CONTACT: James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, NW., Suite 700, Washington, D.C. 20005; (202) 786-3500.

SUPPLEMENTARY INFORMATION: The closed meeting on April 22 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described at the public hearings. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearing. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. Pursuant to the authority vested in him by section 8 of Pub. L. 98-368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the the Federal Advisory Committee Act by 5 U.S.C. 552b(c) (5) and (7) (C), (D), and (F).

which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

The public hearings on April 22, 23, 24, and 25 are to be open to both the public and press, and are for the purpose of receiving testimony concerning organized criminal groups in the United States involved in labor-management and union racketeering activities. The Commission will solicit testimony concerning the scope of activities of such groups, the manner in which their operations are conducted, and the effectiveness of Federal and state statutes and agencies in dealing with such groups. In particular, the Commission will solicit testimony from labor officials and members of the public who have been victimized by labor-management and union racketeering, persons believed to be involved in racketeering activities, and law enforcement officials with experience in this type of racketeering investigation. Members of the public who wish to present written statements to the Commission are invited to send such statements to the President's Commission on Organized Crime, 1425 K Street, N.W., Suite 700, Washington, D.C. 20005.

Dated: March 28, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85–8020 Filed 4–3–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Modification to a Consent Decree Pursuant to the Clean Air Act; United States Steel Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 19, 1985, a proposed Fifth Modification of Consent Decree in *United States* v. *United States Steel Corporation*, Civil Action No. 79–709, (W.D. Pa) was lodged with the United States District Court for the Western District of Pennsylvania. The proposed modification addresses alleged violations of the Clean Air Act at coke oven batteries 19, 20, 21, and 22 at U.S. Steel's Clairton, Pennsylvania works. The alleged violations involved exceedences of the requirement, contained in the Consent Decree (the "Mon Valley" Consent Decree) and Pennsylvania's State Implementation Plan, that U.S. Steel shall permit visible emissions from no more than 2% of the charging ports or charging port seals (lids) on Batteries 19, 21, and 22, and from no more than 1% of the lids at Battery 20, a rebuilt coke battery. The proposed Modification requires U.S. Steel to pay $50,000 in civil penalties for the violations, and provides for stipulated penalties of $2,500 each for any such violations in the future. In addition, the proposed Modification contains provisions: (1) Continuing in effect through December 31, 1985 a progam to improve the performance of pushing emission cleaning cars (CHEMICO cars); (2) permitting U.S. Steel to cease the operation of emission control equipment on the combustion stack at Battery 21, providing that strict conditions are met and, if three governmental agencies permit the equipment to be shut off, that a continuous emission monitoring system must be installed to monitor the opacity of visible emissions from the stack; (3) modifying the fugitive dust emissions program to reflect current operations in U.S. Steel's Monongahela Valley complex; (4) revising and extending U.S. Steel's self-monitoring obligations under the Decree, while maintaining the Decree's requirement that U.S. Steel perform a total of 5,000 man-hours of observations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Modification. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *United States Steel Corporation*, DOJ Ref. 90–5–2–3–1087A.

The proposed Modification may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Room 633, United States Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19106; and at the Environmenal Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Modification may be obtained in person by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–8063 Filed 4–3–85; 8:45 am]

BILLING CODE 4410–01–M

LEGAL SERVICES CORPORATION

Funding Availability for Development of Plans To Encourage the Private Bar To Provide Higher Quality Paid Services and To Expand Pro Bono Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) through its Office of Field Services (OFS) requests proposals for the development of plans to encourage the private bar to provide higher quality paid services and expand *pro bono* programs which would increase the legal services to the elderly poor. LSC/OFS will distribute one-time non-annualized grants totalling approximately $200,000 for a term of up to twelve (12) months. Applicants may request funding up to $40,000 per grantee. All awards will be made pursuant to authority conferred by Pub. L. 98–411 and section 1006(a)(1)(B and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Recipients are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by The American Bar Association, or accredited for purposes of bar admission by state bar associations of the state in which the law schools is located. Proposals may be submitted by either a single law school or a consortium of law schools.

Additionally proposals will be solicited from bar associations and others interested in encouraging the

private bar to provide better *pro bono* and higher quality paid services to the elderly poor. An effort will be made to ensure nationwide participation and geographic distribution.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before May 6, 1985. Grant awards will be announced no later than June 1985.

FOR FURTHER INFORMATION CONTACT: Beverly Bunn, Legal Services Corporation, Office of Field Services, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272–4351.

SUPPLEMENTARY INFORMATION: Proposals under the solicitation should focus on the development of plans to encourage the private bar to provide higher quality paid service and expand *pro bono* programs which would increase legal service to the elderly.

Consistent with that view, this LSC/OFS initiative has been conceptualized to achieve five major goals: (1) Developing or expanding private bar programs which address the civil legal needs of the elderly poor. These should supplement the current levels of delivery either in a substantive manner or in geographic scope; (2) enhancing *pro bono* programs which sensitize and educate the private bar to legal issues most frequently affecting the elderly. Existing areas can be updated and new areas identified and both expanded upon; (3) expanding the number of lawyers interested in and providing legal services to elderly poor persons; (4) maximizing cooperation between the established bar and all segments of the legal community (e.g. LSC grantees, law schools, etc.); and (5) developing and disseminating materials which help to provide better *pro bono* services and higher quality paid services to the elderly.

All proposals will be evaluated by OFS using selection criteria which include: (1) The provision of a clear description of proposed activities which includes an effective plan for management of the project and a plan for development and distribution of the results; (2) an explanation of how the proposed project complements, supplements or enhances existing coverage both in substantive legal matters and in geographic coverage. Identify and discuss current elderlaw or *pro bono* activity; (3) the extent to which a coordinated effort is shown between an area's legal service providers and the private bar in the development or expansion of the *pro bono* program. Cooperative efforts should help to negate duplication. Letters or other evidence of support and assistance may be attached where appropriate; (4) the extent to which the proposed project will increase the participation of both senior attorneys and young lawyers in the delivery of legal services to the elderly. Note any interest in and willingness to continue cooperative development in this area; (5) evidence that the proposed project provides for the high quality training of volunteer attorneys in the necessary areas of the law; (6) evidence that the project director and key staff have the qualification and experience to effectively administer the proposed project and will be able to allocate an adequate amount of time and resources to the project; (7) the provision of a budget which is adequate to support project activities, and which cites costs that are reasonable in relation to the duration and objectives of the proposed project. Indirect administrative costs must be specified in the proposal. Lower indirect costs will be given a higher rating; in order to maximize service delivery, an absence of indirect costs would be preferred; (8) the degree to which the applicants regular budget is currently allocated to its elderlaw or *pro bono* program and activities. Assurances or evidence that such budgetary support will be maintained during and beyond the term of the grant. The viability of the project beyond the term of the grant must be specifically addressed; and (9) demonstration that the applicant plans to make an adequate in-kind contribution which, among other things, could include contribution of adequate facilities and equipment to the proposed project.

Note.—Federally funded assets and projects cannot be counted as an in-kind contribution.

Peter P. Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85–7979 Filed 4–3–85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85–21]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report form under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by April 11, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl. F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Reports

Title: Space Transportation System; Duty-Free Entry of Space Articles.

OMB Number: 2700–0044.

Type of Request: Extension.

Frequency of Report: As required.

Type of Respondent: Individual or households, state or local governments, businesses or other for-profit, federal agencies or employees, non-profit institutions, small businesses or organizations.

Annual Responses: 8.

Annual Reporting Hours: 16.

Abstract-Needs/Uses: This collection of information will enable NASA to monitor and evaluate the extent of applications for benefits and the conformance of statutory requirements of Pub. L. 97–446 for duty-free entry of space materials into the U.S.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 7978 Filed 4–3–85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Licenses and Radiation Safety Requirements for Well-Logging Operations, 10 CFR Part 39.

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC licensees in oil and gas industry.

6. An estimate of the number of responses: 10 per year.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 14,539 hours per year.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: The Nuclear Regulatory Commission is proposing a new 10 CFR Part 39 that would provide a single source of application, recordkeeing, reporting, and radiation safety requirements for the use of licensed radioactive material in well-logging operations by the oil and gas industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 29th day of March 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–8049 Filed 4–3–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Connecticut Yankee Atomic Power Company (CYAPCo) (the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e)(3)(ii) to submit an updated Facility Description and Safety Analysis (FDSA) for the Haddam Neck Plant within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated July 20, 1983, the staff informed CYAPCo that the systematic evaluation program had been completed for the Haddam Neck Plant and that, pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FDSA. By letter dated February 4, 1985, the licensee requested an exemption to defer submittal of the updated FDSA for the Haddam Neck Plant. The deferral of the submittal of the updated FDSA is the proposed action being considered by the staff.

The Need For The Proposed Action

For most plants covered by 10 CFR 50.71(e)(3)(ii), ample time was available for updating the FDSA within the 24-month interval allowed in the regulations. However, the Haddam Neck Plant requested participation in an expanded assessment of outstanding regulatory requirements with the idea of establishing an integrated schedule for the completion of these issues in a resource efficient manner.

The licensee has other ongoing activities which would directly affect the quality and substance of an updated FDSA. For example, CYAPCo is contracting with Westinghouse to develop and document detailed information on the design and licensing bases for key systems at the Haddam Neck Plant. CYAPCo has also undertaken an extensive design bases reanalysis which will result in new analyses for all FDSA Chapter 10 transients and accidents for several systematic evaluation program topics. The licensee believes that these additional efforts will facilitate a better understanding of the plant design bases when the updated FDSA is submitted.

The staff is now implementing a limited Integrated Safety Assessment Program (ISAP) for the Haddam Neck Plant. Because the licensee had placed the updating of its FDSA into its original integrated assessment proposal, the staff will be reviewing this licensing action as part of its screening review of ISAP related topics. Consistent with the policy statement on ISAP (49 FR 45112), the Commission has authorized the staff to suspend specific existing implementation schedule requirements for the plants to be reviewed. The submittal date for the updated FDSA will therefore be determined by its safety significance in relation to other regulatory requirements that constitute the ISAP effort.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the required date for updating the FDSA and does not affect the risk of facility accidents. Thus, post-accident radiological release will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FDSA. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated February 4, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Bethesda, Maryland, this 28th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8054 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Northeast Nuclear Energy Company (NNECO) (the licensee) for Millstone Unit 1, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Safety Analysis Report (FSAR) for Millstone Unit 1 within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated March 16, 1983, the staff informed NNECO that the systematic evaluation program had been completed for Millstone Unit 1 and that pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FSAR. By letter dated February 4, 1985, the licensee requested an exemption to defer submittal of the updated FSAR for Millstone Unit 1. The deferral of the submittal of the updated FSAR is the proposed action being considered by the staff.

The Need for the Proposed Action

For most plants covered by 10 CFR 50.71(e)(3)(ii), ample time was available for updating the FSAR within the 24-month interval allowed in the regulations. However, Millstone Unit 1 requested participation in an expanded assessment of outstanding regulatory requirements with the idea of establishing an integrated schedule for the completion of these issues in a resource efficient manner. The staff is now implementing a limited Integrated Safety Assessment Program (ISAP) for Millstone Unit 1. Because the licensee had placed the updating of its FSAR into its original integrated assessment proposal, the staff will be reviewing the licensing action as part of its screening review of ISAP related topics. The submittal date for the updated FSAR would therefore be based upon its safety significance in relation to other regulatory requirements that comprise the ISAP effort.

Environmental Impact of the Proposed Action

The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FSAR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from other work of higher safety significance.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Unit 1.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated February 4, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 28th day of March 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-8053 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-59 issued to Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant (the facility), located in Oswego County, New York.

In accordance with the licensee's application dated March 21, 1985, the proposed amendment would change the Technical Specifications (TS) to support facility operation with a newly installed Analog Trip Transmitter System (ATTS). Plant modifications related to ATTS installation are scheduled for completion during the Reload 6/Cycle 7 refueling outage currently in progress. The modifications include replacement

of existing direct and differential pressure activated mechanical sensor switches with an analog system capable of more accurately monitoring certain Emergency Core Cooling System (ECCS) and Reactor Protection System (RPS) protection parameters. In addition, temperature elements associated with leak detection systems located in the steam tunnel and crescent areas are being replaced with nuclear qualified Class 1E Resistance Temperature Detectors (RTD). System components such as switches, racks, and accessories are also being replaced with equipment meeting more stringent codes and standards.

The proposed TS changes which support these modifications and implement use of the new ATTS would revise surveillance requirements to reduce functional test and calibration frequencies. In addition, the TS concerning functional and calibration testing would be clarified and the bases would be changed to clarify the use of "Non-ATTS and ATTS" analog devices.

Before issuance of the proposed license amendment, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The FitzPatrick plant currently uses mechanically operated sensors and relays in the design logic for the Reactor Protection System and in the aumomatic initiation logic for the Emergency Core Cooling System. Operating experience has shown that due that due to age and wear, mechanical sensors inherently drift out of tolerance and require frequent maintenance, testing, calibration and repair.

The ATTS is an all solid-state electronic trip system designed to provide stable and accurate monitoring of certain RPS and ECCS parameters. Changing to an analog system will improve overall sensor accuracy and reliability; reduce the time the RPS logic will be in a half scram condition and therefore reduce the potential for inadvertent plant scrams; reduce the functional test calibration frequency and simplify calibration procedures; reduce the number of Licensee Event Reports filed for setpoint drift; and reduce radiation exposure to plant personnel. The replacement of mechanical sensor switches with an analog trip transmitter system does not alter the requirements for instrument initiation, function, and operability that existed prior to the modifications. Therefore, implementation of the ATTS only effects the system at the sensor level, not the logic level.

The proposed TS changes would relax surveilliance requirements without reducing system availability, accuracy, and reliability below levels which existed prior to ATTS installation. This is attributed to the characteristically lower failure rates and higher accuracy associated with the electronic ATTS components, as compared to mechanical sensors.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed TS changes submitted in support of ATTS installation would not involve a significant increase in the probability or consequences of an accident previously evaluated because, as noted above, system reliability and availability would not be reduced below those levels existing prior to ATTS installation. Furthermore, the ATTS installation does not alter the requirements for instrument initiation, function, and operability which currently apply. For similar reasons, the proposed TS changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS changes also would not involve a significant reduction in the margin of safety since the reduced surveillance frequencies are consistent with the improved reliability and accuracy of the new ATTS components, and, again, instrument initiation function, and operability requirements are not changed as a result of ATTS installation.

On this basis, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By May 6, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A

petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, attorney for the licenses.

Nontimely filing of petitions for leave to intervene, amended petitions, supplemental petition and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balance of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment, dated March 21, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 29th day of March, 1985.

For the Nuclear Regulatory Commission.

Robert A. Hermann,

Acting Chief, Operating Rectors Branch No. 2, Division of Licensing.

[FR Doc. 85-8052 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance Meeting

The ACRS Subcommittee on Reliability Assurance will hold a meeting on April 23, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 23, 1985—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue discussions from the March 19 meeting regarding methods of enhance the reliability of air- and motor-operated valves.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call of the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 1, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 8050 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

Veterans Administration Medical Center; Order Modifying License

[Docket Nos. 30-0123, 30-01314, 70-2198; License Nos. 08-00942-04, 08-00942-05, SNM-1605, EA No. 85-31]

I.

The Veterans Administration Medical Center, Washington, DC, (the "licensee"), is the holder of specific byproduct Material License Nos. 08-00942-04 and 08-00942-05, and Special Nuclear Material License No. SNM-1605 issued by the Nuclear Regulatory Commission (the "NRC") pursuant to 10 CFR Parts 30, 33, 35 and 70, which

authorize the licensee to possess and use radioactive materials for medical diagnosis, therapy and research.

II.

On January 22, 1985, an NRC safety inspection of the licensee's program was conducted. During the inspection, six violations of NRC requirements were identified. The violations involved: Improper disposal of materials to a landfill; inadequate security of licensed material; failure to perform a survey; failure to implement certain training requirements; inadequate control of materials upon receipt; and failure to maintain the minimum number of survey instruments. The violations are described in greater detail in the Notice of Violation being issued concurrently with this Order, and the Notice of Violation is incorporated herein by reference as a basis for this Order.

The number of these violations and the fact that several of them had been identified previously by the licensee's Radiation Safety Committee, but had remained uncorrected, demonstrate inadequate management control of the radiation safety program. In view of the licensee's lack of follow-up to correct previously identified deficiencies, significant corrective measures to prevent similar violations in the future are necessary. Accordingly, I have determined that an assessment of the licensee's radiation safety program should be performed, including the licensee's management of the program, and a plan should be developed and implemented to upgrade the program to correct deficiencies identified during the assessment.

III.

In view of the foregoing, and pursuant to sections 53, 81, 161(b), 161(o), and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Parts 30, 33, 35 and 70, it is hereby ordered that:

A. Within 30 days from the effective date of this Order the licensee shall retain the services of an expert, independent of the licensee's staff, with extensive experience in the management and implementation of a broad scope licensed medical radiation safety program to perform an assessment of the licensee's radiation safety program. Within the same 30 days the licensee shall submit the name and qualifications of the expert to the Regional Administrator, Region I.

B. Within 60 days of the effective date of this Order, the assessment shall be performed. The assessment of the licensee's radiation safety program shall include, but need not be limited to, a review of:

1. The licensee's organization, and assigned responsibilities and authorities within that organization;

2. The licensee's program for training and retraining individuals working with NRC-licensed materials in NRC regulations, in the conditions of the licenses, and in safe practices for using licensed material;

3. The licensee's methods of approving individuals for the use of licensed materials and developing procedures for the safe use of licensed materials;

4. The licensee's program for training and qualifying all individuals involved in managing, supervising, inspecting and auditing licensed activities;

5. The licensee's program of surveillances and audits to determine compliance by individual users of licensed materials with NRC regulations, the conditions of the NRC licenses, and the licensee's own procedures for the safe use of radioactive materials; and,

6. The licensee's management of the radiation safety program, including the function of the Radiation Safety Committee and its methods of monitoring the program to ensure that problems are identified and that indentified problems are promptly corrected.

C. Within 90 days of the effective date of this Order, the expert performing the evaluaton shall provide the Hosptial Director a written report which describes any weaknesses identified during the assessment and recommendation for improvement. A copy of this report shall be provided to the Regional Administrator, NRC Region I, at the same time it is transmitted to the licensee.

D. Within 120 days of the effective date of this Order, the licensee shall submit a report to the Regional Administrator, NRC Region I, describing the methods of implementing the recommendations of the assessment report, or providing justification for alternative or no corrective action if any specific recommendations are not adopted. This report shall include:

1. Action items completed or to be performed;

2. Schedules for, or dates of, completion of each specific action item; and

3. A system for monitoring and tracking the status and completion of the action items.

Upon completion of all action items, a final report shall be submitted to the Regional Administrator, NRC Region I.

E. The Regional Administrator, NRC Region I, may relax or terminate any of the preceding conditions for good cause shown.

IV.

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the regional Administrator, NRC Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406.

If a hearing is to be held concerning this Order, the Commission will issue an Order deisgnating the time and place of the hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

This Order shall become effective upon expiration of the time during which a hearing may be requested or, in the event a hearing is requested, on the date specified in an Order issued following further proceedings on this Order.

Dated at Bethesda, Maryland, this 27th day of March 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-8051 Filed 4-3-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14439; 811-1513]

Centennial Growth Fund, Inc.; Application for an Order Declaring Applicant Has Ceased To Be an Investment Company

March 28, 1985.

Notice is hereby given that Centennial Growth Fund, Inc. ("Applicant"), 3410 South Galena Street, Denver, Colorado 80231, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on February 19, 1985, pursuant to section 8(f) of the Act, and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are

referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant states that it was organized under the laws of the State of Maryland on May 1, 1967, as International Growth Fund, Inc. On July 24, 1967, Applicant registered under the Act, filing a registration statement pursuant to section 8(b) of the Act on that date, as well. On July 9, 1968, Applicant changed its name to Hamilton Growth Fund, Inc., and on July 25, 1968, it filed a registration statement on Form S–5 under the Securities Act of 1933, declared effective December 6, 1968, to register 100,000,000 shares of capital stock (par value $1.00 per share) at an offering price of $10.97 per share. Applicant changed its name to Centennial Growth Fund, Inc. on September 18, 1981.

Applicant further states that it has been reorganized pursuant to section 368(a)(1)(C) of the Internal Revenue Code of 1954, through the acquisition by Oppenheimer Equity Income Fund, Inc. ("Equity Income"), registered under the Act as an open-end, diversified management company, of all the Applicant's assets in exchange for shares of the voting stock of Equity Income. The terms of this transaction were set forth in The Agreement and Plan of Reorganization ("Plan"), which was unanimously adopted by Applicant's board of directors on March 27, 1984, and subsequently approved by Applicant's shareholders at a special meeting held on October 3, 1984. The closing date for the acquisition was November 19, 1984, at which time all of Applicant's assets (other than a cash reserve of $9,950) were exchanged for Equity Income shares, with necessary valuation of assets and shares made as of the close of business of the New York Stock Exchange on November 16, 1984, the business day preceding the closing date ("valuation date"). Shares of Equity Income thus transferred were thereupon re-distributed, on a pro rate basis, by Applicant to its shareholders of record on the valuation date. It is represented that as of the close of business on November 16, 1984, Applicant had 1,813,131 shares of capital stock outstanding, representing an aggregate net asset value of $17,242,078, and a redemption value per share of $9.51. Applicant also states that it has retained a cash reserve of $9,950 for dissolution expenses and acquisition costs incurred, which were billed after the closing date. Said reserve will be fully expended, it is stated, and will not presently, nor will it in the future be, invested in securities. Applicant's only outstanding debts are the $9,950 of incurred expenses billed after the closing, and payable out of the cash reserve.

Applicant states, in addition, that First Interstate Bank of Denver, N.A., as Custodian for the Certificate Holders of Hamilton Growth Fund Periodic Investment Plan (a unit investment trust having Applicant's shares as one of its underlying portfolio securities), was the record owner as of October 31, 1984, of 47,148 Applicant's shares, or 2.5% of the total number of such shares outstanding on that date. In accordance with the aquisition of Applicant's assets by Equity Income, shares of the latter fund have been substituted for those of the former in the Hamilton Growth Periodic Investment Plan.

Applicant further represents that it is in the process of winding up its affairs with the objective of effecting its dissolution in accordance with the requirements of Maryland law. Pursuant to the express terms of the Plan, Applicant is to complete the process of dissolution within one year of the closing date, November 19, 1984; it is represented that Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary to the winding-up of its affairs. There are no securityholders of Applicant to whom distributions in complete liquidation of their interests have not been made. Applicant represents that although under Maryland law dissenting shareholders are accorded appraisal rights in connection with the transactions agreed to in the Plan, none of Applicants shareholders has sought to exercise such appraisal rights. Finally, Applicant represents that it is not a party to any litigation or administrative proceeding.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 22, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8086 Filed 4–3–85 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14440; 812–6038]

Colonial Government Securities Plus Trust; Application for an Order Granting Exemption

March 29, 1985.

Notice is hereby given that Colonial Government Securities Plus Trust ("Applicant"), 75 Federal Street, Boston, Massachusetts 02110, registered under the Investment Company Act of 1940 ("Act"), as an open-end, diversified, management investment company, filed an application on February 4, 1985, for an order of the Commission, pursuant to section 6(c) of the act exempting Applicant from the provisions of section 19(b) of the Act, and Rule 19b–1 thereunder, to permit Applicant to make quarterly distributions of long-term capital gains from certain options transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant is designed for investors who seek a high current return with frequent dividends. Applicant pursues its investment objectives by investing in U.S. Government securities, including Government National Mortgage Association mortgage-backed certificates ("GNMAs"), writing covered call options and covered put options and purchasing put options with respect to certain of such securities on national securities exhanges, and by entering into closing purchase and sale transactions with respect to certain of such options.

Applicant pays dividends from net investment income monthly. Distributions of net capital gains from options transactions and net short-term capital gains from other sources currently are made quarterly. Distributions of any net long-term capital gains realized on the sale of investment during a fiscal year are usually made with the first quarterly distribution after such fiscal year closes on September 30.

Applicant further states that the Tax Reform Act of 1984, amended section 1256 of the Internal Revenue Code of 1954, and thereby significantly altered

the tax treatment of capital gains from options on U.S. Government securities held and written by Applicant, all of which have become section 1256 contracts. Prior to the 1984 amendments to section 1256, gain or loss recognized with respect to options on U.S. Government securities was treated as short-term capital gain or loss, which Applicant distributes quarterly. Under the 1984 amendments to section 1256, 60% of the gain or loss recognized by Applicant with respect to options is treated as long-term capital gain or loss.

Applicant represents that its shareholders invest with expectation of receiving these distributions of gain from options transactions, which are an integral part of Applicant's investment objective and policies. Applicant believes that it is desirable to apply the tax treatment resulting from the 1984 amendments to section 1256 to its quarterly distributions of gains from option transactions in order to benefit its shareholders. Applicant notes that the purpose in amending section 1256 was to eliminate certain abuses related to the realization of short-term capital losses from options transactions; there is no evidence, Applicant asserts, that Congress intended the amendment to limit the frequency with which registered investment companies may distribute capital gains from options transactions. Precisely such a restriction obtains, however, from the characterization of 60% of the gain from options transactions as long-term capital gain under the recent amendment of section 1256, when this provision is read together with the limitation of section 19(b) of the act, and Rule 19b–1 promulgated thereunder, Applicant states.

Applicant argues that no purpose emobodied in section 19(b), or Rule 19b–1, would be served by a strict application of those provisions to 60% of the capital gains generated by Applicant's options transactions. Applicant asserts that the revised characterization of these gains as long-term gains will not make shareholders more likely to confuse them with dividends paid from net interest income, since shareholders have always received quarterly distributions of these gains, which were considered to be short-term gains until section 1256 was amended. Applicant represents that it will continue clearly to distinguish any distribution of capital gains from distributions out of net interest income in an accompanying notice to its shareholders.

Applicant states further that section 19(b) and Rule 19b–1 were also intended to prevent investment companies from excessive trading of their portfolios in contravention of a stated investment objective of long-term capital appreciation. Applicant explains that the revised treatment of 60% of the capital gain from options transactions as long-term is not expected to affect is investment decisions or distribution practices, as Applicant has as its investment objective high current return, rather than long-term capital appreciation. Applicant reiterates that one of its important policies has been to seek to realize such gains from options transactions and to distribute them quarterly to its shareholders. Therefore, Applicant concludes, ther is no need for the protective mechanisms of section 19(b) and Rule 19b–1.

Applicant represents that quarterly distribution of long-term capital gains from options transactions will not increase its administrative expenses, since Applicant heretofore has made, and expects to continue to make, quarterly distributions of short-term capital gains.

It is further stated that if Applicant were unable to designate the appropriate part of each quarterly distribution of gains from options transactions as long-term gains. Applicant would, in the alternative, designate its final distribution of gains with respect to a fiscal year, made shortly after the close of the fiscal year, as a distribution of long-term gains. Applicant believes, however, that this alternative would be disadvantageous to its shareholders because a portion of the long-term capital gain realized on options transactions may not be designated as such where such portion exceeds the amount of the year-end distribution, and because this method of distribution would not pass on the benefit of the lower capital gains tax rate to persons who are shareholders of Applicant at various points during the year, but who have ceased to be shareholders by the end of the year, or have reduced their investment by that time.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 23, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8087 Filed 4–3–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14442; File No. 811–3160]

IDS Ready Income Money Fund, Inc.; Application and Opportunity for Hearing

March 29, 1985.

Notice is hereby given that IDS Ready Income Money Fund, Inc. ("Applicant"), 2900 IDS Tower, Minneapolis, MN 55402, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 19, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to section 8(b) of the Act on March 31, 1981, has never made a public offering of its securities, has fewer than 100 securityholders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. The application further states that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant's charter has been revoked under Nevada state law.

Notice is futher given that any interested person wishing to request a hearing on the application may, not later than April 22, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific

issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8088 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14441; File No. 811-3588]

Sponsored Money Fund, Inc.; Application and Opportunity for Hearing

March 29, 1985.

Notice is hereby given that Sponsored Money Fund, Inc. ("Applicant"), 2900 IDS Tower, Minneapolis, MN 55402, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on February 19, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a notification of registration and registration statement pursuant to section 8(b) of the Act on October 27, 1982, has never made a public offering of its securities, has fewer than 100 securityholders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. The application further states that Applicant does not have any securityholders or assets, that it is not a party to any litigation or administrative proceeding and does not intend to engage in business activities other than those necessary for the winding up of its affairs. Finally, the application represents that the Applicant's charter has been revoked under Nevada state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 22, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or my mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8089 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21907; SR-CBOE-84-21, SR-Amex-84-30, SR-Phlx-84-25, and SR-PSE-85-1]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc., et al.; Order Approving Amended Proposed Rule Changes

March 29, 1985.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 A"Act") and Rule 19b-4 thereunder, the American ("Amex"), Chicago Board Options ("CBOE"), Pacific ("PSE") and Philadelphia ("Phlx") Stock Exchanges have filed with the Commission amended proposed rule changes to increase position and excercise limits for individual stock options.[1] The amended proposed rule changes would establish a three-tiered system of position and exercise limits of 3,000, 5,500 or 8,000 contracts. The limit applicable to a particular option contract would depend on certain criteria relating to the trading volume of the underlying stock or a combination of both the trading volume and the number of shares outstanding of the underlying stock.[2] Under current rules, a two-tiered limit of either 2,500 or 4,000 contracts applies to individual stock options.[3]

Notice of the proposed urle changes together with their terms of substance was given by publication of Commission

Notice of the proposed rule changes together with their terms of substance was given by publication of Commission releases and by publication in the **Federal Register.**[4] All written statements

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[1] Position limits impose a ceiling on the number of options contracts of each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than a specified number of puts or calls in a particular underlying security within five consecutive business days.

[2] Specifically, the exchange proposals establish position and exercise limits of:

(1) 8,000 contracts for options on an underlying stock that had either (a) trading volume of at least 40,000,000 shares during the most recent six month trading period, or (b) trading volume of at least 30,000,000 shares during the most recent six month trading period and at least 120,000,000 shares currently outstanding;

(2) 5,500 contracts for options on an underlying stock that had either (a) trading volume of at least 20,000,000 shares during the most recent six month trading period; or (b) trading volume of at least 15,000,000 shares during the most recent six month trading period and at least 40,000,000 shares currently outstanding; and

(3) 3,000 contracts for all other options classes.

[3] The eligibility criteria for the largest (8,000 contract) tier are double the eligibility criteria for the existing 4,000 contract tier. Specifically, trading volume of 40 million (rather than 20 million shares) or 30 million shares traded and 120 million shares outstanding (rather than 15 and 60 million shares) is required to qualify for the 8,000 contract limits. The eligibility criteria for the middle tier are identical to the current 4,000 contract tier, except that the 60 million float criterion has been reduced to 40 million shares. Under the proposals, the exchanges will continue to review the volume and outstanding share information of all underlying stocks,every six months to determine which limit should apply.

[4] *See* File No. SR-CBOE-84-21, Securities Exchange Act Release No. 21239, August 14, 1984, 49 FR 33073, August 20, 1984; File No. SR-Amex-84-30, Securities Exchange Act Release No. 21467, November 2, 1984, 49 FR 4469, November 13, 1984; File No. SR-Phlx-84-25, Securities Exchange Act Release No. 21528, November 29, 1984, 49 FR 47672, December 6, 1984; SR-PSE-85-1, Securities Exchange Act Release No. 21775, February 19, 1985, 50 FR 8040, February 27, 1985. The Amex, CBOE, PSE and Phlx submitted amendments to their proposed rule changes on November 29, 1984, December 11, 1984, January 18, 1985 and January 24, 1985, respectively. The Amex, CBOE, and Phlx submissions published for comment proposed position and exercise limits of 4,000, 6,000 and 8,000 contracts. Subsequently, these exchanges amended their filings to propose increases of only 3,000, 5,500 or 8,000 contracts. CBOE also amended the public float criterion that would apply to the middle tier of 5,500 contracts so that its proposal was consistent with the proposals of the other exchanges. The Commission published for comment PSE's proposed limits of 3,000, 5,500 or 8,000 contracts which references the amended proposals of the other three exchanges.

filed with the Commission and all written communications between the Commission and any person relating to the proposed rule changes were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.[5]

II. Background

Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of large options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. They also impose a ceiling on the maximum position an investor with inside corporate or market information can establish through the use of options. In addition, they serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.

In establishing position and exercise limits, the Commission always has been careful to balance two competing concerns. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market for the underlying security by acquiring and exercising a number of options contracts disproportionate to the deliverable supply and average trading volume of the underlying security. At the same time, the Commission has realized that the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.

In 1978, the Report of the Special Study of the Options Market, while recognizing the important functions served by position and exercise limit rules, set forth some of the deleterious effects of the 1,000 contract position and exercise limits then in effect.[6] In particular, the *Options Study* noted that those limits impeded market access by institutional investors interested in using options in connection with large securities portfolios and also might have served to impair market depth and liquidity by restricting, for example, proprietary trading by member firms. Thus, the *Options Study* suggested that position limit rules be completely reviewed and that their future relaxation or elimination be considered.

In October 1980, the Commission approved proposed rule changes by the four options exchanges to increase position and exercise limits from 1,000 to 2,000 contracts for all options classes.[7] In conjunction with the approval, the Commission received commitments from the options exchanges to study the effects of the increased limits. The Commission indicated that the experience gained under the increased limits, if coupled with adequate monitoring and surveillance procedures, could serve as a basis for considering further position and exercise limit modifications.[8]

In July 1983, the Commission approved a further increase in position and exercise limits for individual stock options based on a tiering approach.[9] Limits for options on stocks with the greatest trading volume and public float were increased to 4,000 contracts and limits on all other options classes were increased to 2,500 contracts.[10] In approving the increased limits under a two-tiered approach, the Commission recognized that securities with active and deep trading markets, as well as broad public ownership, are more difficult to manipulate or disrupt than securities having less active and deep markets and having smaller public floats.[11] Accordingly, the Commission believed that the tiering approach to position and exercise limits was appropriate because it would increase the depth and liquidity of the stock options markets without significantly increasing concerns regarding manipulation and disruption of the market for the underlying securities.[12] In addition, the Commission noted that tiering was consistent with the gradual, evolutionary approach that the Commission and the exchanges have adopted in increasing position and exercise limit.

As noted above, the Amex, COBE, PSE, and Phlx are currently proposing a three-tier structure that would establish position and exercise limits of either 3,000, 5,500 or 8,000 contracts depending on certain criteria related to the trading volume of the underlying stock or a combination of both the trading volume and the number of shares outstanding of the underlying stock.[13]

III. Discussion

The Commission has concluded that the proposed limits of 3,000, 5,500, or 8,000 contracts will further increase the potential depth and liquidity of the individual stock options market without significantly increasing concerns

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[5] The CBOE submitted two letters in connection with its proposed rule change. *See* letter from Anne Taylor, Secretary and Associate General Counsel, CBOE, to Richard T. Chase, Associate Director, Division of Market Regulation, dated July 26, 1984, which contains a list of the options that would fall within each tier under CBOE's initial proposal for limits of 4,000, 6,000 or 8,000 contracts. In addition, at the request of the Commission's staff, the CBOE submitted certain data on the stocks underlying CBOE traded options indicating their public float and trading volume from January through June 1984, along with the options trading volume on these stocks for the same six month trading period. Letter from Anne Taylor to Eneida Roca, Branch Chief, Division of Market Regulation, dated August 15, 1984. No other comments on the proposed rule changes were received.

[6] H.R. Rep. No. IFC–3, 96th Cong., 1st Sess at 189–91 (Comm. Print 1978) ("*Options Study*").

[7] Securities Exchange Act Release No. 17237, October 22, 1980; 45 FR 71453, October 28, 1980 ("1980 Release").

[8] The evaluation reports subsequently submitted by the options exchanges were, for the most part, inconclusive although it did not appear that the increases had any appreciable effect on the nature of the underlying stock market or any adverse effect on liquidity in the options market. *See* letter to George T. Simon, Associate Director, Division of Market Regulation, from Robert B. Gilmore, Senior Vice President, Phlx, dated August 31, 1981; letter to George T. Simon, from Paul G. Stevens, Senior Vice President, Options Division, Amex, dated September 17, 1981; letter to George T. Simon, from William J. Young, Senior Vice President, Regulatory Division, CBOE, dated September 22, 1981; letter to Richard T. Chase, Assistant Director, Division of Market Regulation, from Jerry M. Gluck, Vice President, PSE.

[9] *See* Securities Exchange Act Release No. 19975, July 15, 1983; 48 FR 33388, July 21, 1983.

[10] To be eligible for the 4,000 contract limit an underlying security must have either (i) trading volume of at least 20,000,000 shares during the most recent six month trading period; or (ii) trading volume of at least 15,000,000 shares during the most recent six month trading period and at least 60,000,000 shares currently outstanding. All other options not meeting these requirements are subject to the 2,500 contract limits.

[11] The initiatives of the options exchanges to relax position and exercise limits have been concurrent with exchange initiatives to relax the listing standards or eligibility criteria for underlying securities. As a result, while options are traded on some stocks with a public float of several hundred million shares, exchange rules authorize options to be traded on stocks with as few as seven million shares outstanding. Similarly, while some options stocks have average daily trading volume of up to a million or more shares, exchange rules authorize options trading on stocks with annual trading volume as low as 2.4 million shares. *See, e.g.*, CBOE Rule 5.1.

[12] In approving the higher two-tiered limits, the Commission also noted that the absence of discernible manipulation problems under the current limits were an indication that modest additional increases were justified.

[13] *See* note 2, *supra* for the specific qualifying criteria for each tier.

regarding intermarket manipulations or disruptions of the market for the options or underlying securities.

The Commission previously has noted that the markets for securities with active and deep trading markets, as well as broad public ownership, are more difficult to manipulate or disrupt than those securities that are less active with smaller public floats. The proposed increases, based on a three-tiered approach, recognize this by seeking to minimize the restraints on those options classes that can accommodate larger limits without raising increased manipulation concerns. In particular, the proposal to create a third-tier, with a limit of 8,000 contracts, for options on the most actively traded, widely held securities, permits the Commission to avoid placing unnecessary restraints on those options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, likely would be the greatest.[14]

Under the proposals, the current lowest tier of 2,500 contracts would be increased 20% to 3,000 contracts.[15] An increase of only 500 contracts for the lowest tier appears to be appropriate because the options that fall within this category raise the greatest manipulative concerns.[16] In addition, it appears from discussions with the exchanges and with institutional investors that market participants do not need a substantial increase in the limits for options in the lowest tier. A 500 contract increase for the lowest tier is consistent with the Commission's gradual approach in approving position and exercise limit increases.[17]

Finally, the absence of discernible manipulative problems under the current two-tiered limits leads the Commission to conclude that the increases being proposed by the exchanges are warranted. In this regard, the Commission has recognized that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concents. The exchanges and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under current limits as an indicator that additional increases can be safely considered. The Commission believes for these reasons that liberalization of the existing limits is now appropriate.[18]

The Commission does not believe that the addition of a third tier will have any significant adverse effects on the options markets. In approving the two-tiered system, the Commission stated that it did not believe requiring traders to keep track of two limits rather than one is burdensome or confusing or would lead to accidental violations. The Commission does not believe that a change from two tiers to three tiers should change this conclusion. We note that the exchanges have had experience monitoring the current two tiered system along with other position and exercise limits for various new options products.[19] We have not found that the differing position and exercise limits have created programming or monitoring problems for securities firms, or that they have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the transition from two to three tiers will not cause significant problems.

In addition, the position and exercise limit rules will continue to minimize any customer confusion or market impact caused by stock options that, after the six month evaluation,[20] move from the highest tier to the middle tier or the middle tier to the lowest tier. In this regard, because the rules provide that a decrease from a higher to a lower tier will only occur after the expiration of the last options series trading at the time an option ceases to meet the higher tier criteria, there should be little danger of inadvertent violations or forced liquidations.

In approving the current two-tiered limits, the Commission recommended that the options exchanges implement certain enhancements to their surveillance systems. In response, each options exchange adopted new or modified procedures or techniques to detect mini-manipulations.[21] To the extent the potential for manipulation increases because of the higher limits, the Commission believes the exchanges' surveillance programs will be adequate to detect as well as deter attempted manipulative activity. The Commission will, of course, continue to monitor the exchanges' surveillance programs to ensure that problems have not arisen due to increased position and exercise limits.

The Commission staff also has discussed with the exchanges the extent to which the addition of a third tier would present operational difficulties for surveillance. The exchanges have informed the staff that because surveillance systems are already in place, only minor system changes will need to be made to accommodate the monitoring of a third tier.

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[14] Options that would be eligible for the highest tier limit of 8,000 contracts currently have a 4,000 contract limit. Although a 4,000 contract limit increase for some options may appear to be substantial, the Commission believes that the qualifying criteria for the highest tier (*see* note 2, *supra*) ensure that only options on the most actively traded and heavily capitalized securities will be eligible for the 8,000 contract limit.

[15] Modifying the qualifying criteria for the middle tier by lowering the public float requirement from 60 to 40 million shares also would permit a 5,500 contract limit to apply to certain options that currently have a limit of 2,500 contracts. After carefully evaluating the proposed criteria for the middle tier, the Commission believes that this increase does not raise serious concerns. First, we note that the trading volume requirement (15 million shares over a 6 month period) that must be met in addition to the public float criteria has not been changed, thus insuring that options with a 5,500 contract limit overlie actively traded stocks. Second, the Commission believes that a public float of 40 million shares, rather than 60 million, is still substantial and should alleviate any possible corner or squeeze concerns while helping to prevent options on illiquid securities from receiving a 5,500 contract limit.

[16] These options are on the least active securities and have the smallest number of shares outstanding. The 3,000 contract limit would permit the establishment of liquidation of an options position equal to almost 5 percent of the public float, and over 12 percent of the annual trading volume, of an underlying security meeting the option exchanges' minimum eligibility criteria. *See* note 11, *supra*.

[17] We note that the current limit (adopted in 1983) of 2,500 contracts resulted in a 500 contract increase from the then existing levels of 2,000 contracts. In other words, the limits for the lowest tier will have increased by 50% over the last two years.

[18] The Commission continues to believe that proposals to increase position and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that exercise limit increases of 3,000, 5,500 or 8,000 contracts for the low, middle and high tier options classes, respectively, should not raise serious manipulation problems or increased concerns over market disruption in the underlying securities.

[19] Currently, for example, position and exercise limits for options on narrow-based indices are set at 4,000, 6,000 or 8,000 contracts, depending on the degree of concentration of a component stock of the index. At the same time, the exchanges administer different limits for broad-based index options. For example, the limits for broad-based index options are set at 10,000 contracts on Amex and 15,000 contracts on the PSE while CBOE and Phlx prohibits positions exceeding a value greater than $300 million in terms of aggregate price.

[20] *See* note 3, *supra*.

[21] In addition to the new surveillance techniques adopted at that time, the options exchanges have since enhanced their surveillance capabilities in various ways. For example, the CBOE (where most highest tier options will trade) is currently implementing new procedures that will substantially enhance its audit trail. The CBOE also is developing a sophisticated data base and retrieval system for surveillance purposes. Together these systems will permit quicker, more comprehensive and more precise surveillance procedures to detect possible manipulation and other trading abuse.

IV. Conclusion

For the foregoing reasons, the Commission finds that the amended proposed rule changes of Amex, CBOE, PSE, and Phlx to increase position and exercise limits for individual stock options to either 3,000 5,500 or 8,000 contracts (depending on certain market related criteria) are consistent with the requirements of the Act and the rules and regulations thereunder applicble to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above mentioned proposed rule changes be, and they hereby are, approved.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-8090 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21906; SR-MCC-84-7 and SR-MSTC-84-7]

Self-Regulatory Organizations; Midwest Clearing Corp. and Midwest Securities Trust Co.; Order Approving Proposed Rule Changes

Midwest Clearing Corporation and Midwest Securities Trust Company (together, "MCC/MSTC") on August 17, 1984, submitted proposed rule changes to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934. MCC/MSTC filed amendments to these proposals on October 12, 1984 and January 7, 1985. On February 27, 1985, the Commission published notice of the proposals to solicit public comment.[1] No comment has been received. This Order approves the proposals.

I. Description

The proposals, as amended, would permit MCC/MSTC Participants to secure the non-cash portion of their Participants Fund contributions with letters of credit. MCC/MSTC will continue to require Participants to make a minimum $5,000 cash contribution to their respective Participants Funds, plus additional contributions based on Participants' daily settling activity. Under current MCC/MSTC rules, these additional contributions must be in the form of cash or United States Government securities. Under the proposals MCC/MSTC Participants also could satisfy the additional contribution requirements with letters of credit issued in favor of MCC/MSTC on behalf of the Participant.

MCC/MSTC's proposals contain several safeguards to ensure the controlled use of letters of credit. These include criteria for approving letter of credit issuers, concentration limits for issuers, terms of acceptable letters of credit, and MCC/MSTC's authority to pledge letters of credit.

A. Issuer Criteria

Guidelines for issuers of letters of credit under the proposal would be as follows. MCC/MSTC may approve a domestic issuer if it is a bank or trust company whose long-term debt securities and commercial paper, or those of its parent, have received the first rating by Moody's Investors Service or by Standard and Poor's Corporation. Alternatively, a domestic issuer may be approved if: (1) Its lending limit to any individual borrower is at least $10 million, (2) its shareholder equity is at least $66 million, or (3) its total assets equal at least $1.3 billion. A foreign issuer may be approved if it is a bank or trust company having: (1) Long term debt securities or commercial paper that has received a first rating by Moody's Investors Service or Standard and Poor's Corporation, and (2) shareholder equity of at least $200 million or total assets of at least $1.3 billion. In addition, foreign issuers must issue letters of credit through a United States branch.

The proposals also would authorize MCC/MSTC's boards of directors to specially approve domestic or foreign issuers that do not meet the above criteria. In those instances, the issuer must meet alternative limiting terms and conditions that will be set by the MCC/MSTC boards of directors to protect MCC/MSTC and its participant community.

B. Concentration Limits

The proposals would establish concentration limits for issuers of letters of credit. Specifically, without a special decision by the board of directors, no single issuer's letters of credit, in the aggregate, may exceed 25% of either Participants Fund. However, letters of credit from a specially approved issuer, in the aggregate, may not exceed ½ of 1% of the appropriate Participants Fund.

C. Terms

The proposals would require letters of credit to be issued for terms of six months, expiring either on March 1 or September 1. This will enable MCC/MSTC to monitor letters of credit and ensure that Participants renew or substitute expiring letters of credit. At least 30 days prior to expiration of a letter of credit, the letter must either be replaced with other deposits, extended for another six months, or substituted with a new six month letter.

Letters of credit must be irrevocable. However, if an issuer gives five business days' notice of intention to revoke a letter of credit, MCC/MSTC may consent to revocation. Consent will be given only if the Participant's liability to MCC/MSTC has been discharged or satisfied by other means.

Under the proposals, MCC/MSTC may refuse or revoke approval of any issuer at any time, regardless of whether the issuer meets any of the above standards. MCC/MSTC would immediately notify Participants of any revocation of approval and would give Participants 48 hours to substitute a letter of credit from an approval issuer or any other acceptable deposit.

D. Pledge of Letters of Credit

MCC/MSTC's proposals would authorize MCC/MSTC to pledge letters of credit as security for loans made to MCC/MSTC for purposes allowable under MCC/MSTC Rules. Any loan to MCC/MSTC secured by letters of credit must be repaid within 30 days if the loan was taken to cover a loss or liability of MCC/MSTC.

II. MCC/MSTC's Rationale

MCC/MSTC believes the proposals are consistent with Section 17A of the Act. Specifically, MCC/MSTC believes the financial integrity of their Participants funds will be protected by the limits set by the proposals for acceptable issuers, issuer concentration limits, and letter of credit terms. Additionally, MCC/MSTC believes that the authority to plege letters of credit will ensure the liquidity of its Participants Funds. MCC/MSTC therefore believes the proposals will assure the safeguarding of securities and funds in their custody or control or for which they are responsible.

III. Discussion

For the reasons discussed below, the Commission believes that the proposals are consistent with MCC/MSTC's duties under the Act to safeguard funds and securities in their custody or control or for which they are responsible. The Commission therefore believes the proposals should be approved.

In prior Orders concerning letter of credit programs of registered clearing agencies, the Commission has looked at three primary factors in determining

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[1] 50 FR 8038.

whether a program should be approved.[2] These are the program's standards for the financial integrity of the issuing bank, the diversification of issuers of letters of credit, and the liquidity of financial protection systems that use letters of credit. After evaluating MCC/MSTC's proposals in light of these factors, the Commission is satisfied that the proposals will adequately control the use of letters of credit.

The Commission believes that a registered clearing agency should only accept letters of credit from financially secure banks. MCC/MSTC's proposal requires issuers to have either the highest rating by one of the two principal commercial rating services or a certain minimum asset size or sharesholder equity. The Commission has reviewed the precise standards chosen by MCC/MSTC, enumerated above, in relation to the universe of banks operating in the United States and believes that these standards should ensure that approved letter of credit issuers will be financially secure.

The Commission believes that a registered clearing agency should not become overly dependent on any one issuer. To prevent such dependence, the concentration of letter of credit issuers should be limited. MCC/MSTC's proposals limit any regularly approved issuer of 25% of the Participant Fund of each clearing agency. Specifically approved issuers are limited much more severely, to ½% of each Participants Fund. The Commission believes that these concentration limits are reasonable and should adequately diversify letter of credit issuers even if letter of credit use expands to a substantial part of MCC/MSTC's Participants Funds.

Finally, the Commission believes that registered clearing agencies must maintain sufficient liquidity in their financial safeguarding systems. Letters of credit, payment on which possibly may be delayed or refused, must not be allowed to impair the liquidity of these systems. In light of the several steps included in MCC/MSTC's proposals to ensure liquidity, the Commission is satisfied that the proposals will not jeopardize the liquidity of their financial safequarding systems. First, MCC/MSTC will continue to require minimum cash contributions to their Participants Funds. Second, letters of credit will be issued for standard six months terms, allowing MCC/MSTC to easily ensure that all letters of credit are current and can be drawn upon if necessary. Third, the proposals authorize MCC/MSTC to pledge letters of credit, on a short-term basis,[3] to secure bank loans. MCC/MSTC can pledge solvent participants' letters of credit in the remote chance that a letter of credit issuer delays in honoring MCC/MSTC's request to draw on an insolvent participant's letter of credit.[4] The Commission believes that this authority is critical to ensuring liquidity of clearing agency financial protection systems, especially since it is anticipated that letters of credit will comprise a substantial portion of Participants Funds. Additionally, the Commission notes that Participants Funds are only one level of financial protection within a larger safeguarding system. That system contains other financial protection mechanisms, such as activity and position monitoring and marketing to the market, that ordinarily should prevent financial losses to MCC/MSTC before Participants Funds need to be used.

In summary, the Commission believes that MCC/MSTC's proposals establish adequate standards for controlling the use of letters of credit and therefore that the proposals are consistent with the Act. The Commission recognizes that cost savings for participants can be achieved through use of letters of credit instead of cash or government securities for additional Participants Fund contributions. Therefore, the Commission believes that the proposals should be approved.

IV. Conclusion

On the basis of the foregoing, the Commission finds the proposed rule changes consistent with the Act and, in particular, with Section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule changes be, and they hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8091 Filed 4-3-85; 8:45 am]

BILLING CODE 8010-01-M

[2] *See, e.g.*, Securities Exchange Act Release No. 19422 (January 12, 1983), 48 FR 2481 (January 19, 1983), approving a proposed rule change of Options Clearing Corporation adopting criteria for issuers of letters of credit. Similar programs also have been approved for National Securities Clearing Corporation and for Pacific Clearing Corporation/Pacific Securities Depository Trust Company.

[3] As noted above, under the proposal any loan taken to cover a loss or liability of MCC/MSTC must be repaid within 30 days if the loan is secured by pledged letters of credit.

[4] In such an instance, pledges of letters of credit would be more desirable than immediate drawing on a letter. A pledge of a participant's letter of credit would not require that participant to make immediate repayment to the Participants Fund, as would drawing on that participant's letter of credit.

[Release No. 34-21899; SR-OCC-84-20]

Self-Regulatory Organizations; Options Clearing Corp.; Order Granting Accelerated Approval of Proposed Rule Change

Options Clearing Corporation ("OCC") on Janury 2, 1985, submitted a proposed rule change to the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). Notice of the proposal was published in Securities Exchange Act Release No. 21724 (February 6, 1985), 50 FR 8806 (March 5, 1985). The Commission received no letters of comment on the proposal. This Order approves the proposal.

The proposed rule change would modify substantially OCC's random exercise assignment procedures. Under OCC's current procedures, OCC calculates the total quantity of all short options positions for an options series. Each exercise notice for that series is assigned a random number between one and the number representing the total short options for the series being exercised.[1] OCC uses this random number as the starting point for the assignment process. OCC assigns only one random number per exercise notice regardless of how many contracts are to be exercised by the notice.

OCC lists the short options positions in Clearing Member order and within each Clearing Member by account origin. The first short position is assigned position 1 and the last short position is assigned position N, which represents the total number of the short options positions. If the random number is the number of a short position that has been assigned to a prior exercise notice, the assignment is paired with the next unassigned short position.

OCC's current random assignment process works as follows:

1st exercise notice is an ACY April 50, quantity 50
2nd exercise notice is an ACY April 50, quantity 29
3rd exercise notice is an ACY April 50, quantity 2

1. The total short positions for ACY April 50's is 192.

2. The random numbers generated by the algorithm are:
1st exercise notice random number 47
2nd exercise notice random number 180
3rd exercise notice random number 92

3. The first exercise notice will be assigned to short position 47–96 (quantity exercised was 50).

[1] The random number for each exercise notice is generated using an IBM algorithm.

The second exercise notice will be assigned to short positions 180–192 and short positions 1–17 (quantity exercised was 29).

The third exercise notice will be assigned to short positions 97–98 (quantity exercised was 2). Because the random number was 92 and short positions 92 through 96 had previously been assigned, the assignment is made to the next unassigned short position, number 97.

Upon completion of the assignment process, the data is available for printing. Each assigned Clearing Member is notified of the exercise assignment by a Delivery Advice Report which details the class, series and quantity of the assignment.

Under OCC's proposed procedures, all open short positions in a given options series are totalled, and then the number of exercised contracts for that series is totalled. If the number of exercised contracts equals the number of open short positions, the entire open interest for that series will be assigned automatically. However, if the number of exercised contracts is less than the number of open short positions, the number of exercised contracts is subdivided into standardized "assignment increments" of 25 contracts.[2] Next, OCC calculates a "skip interval."[3] The proposed system then chooses a random starting point for the first exercise assignment, and the first 25 contracts are assigned to the 25 positions beginning with the randomly selected starting position. The system then skips to that short options positions whose number equals the number of the randomly selected starting position plus the predetermined skip interval. At that point, another 25 contracts are assigned. This process continues until all exercised notices have been assigned to open short options positions.

The proposed system works as follows: Assuming the same quantities as the above example, and assuming the assignment increment is 25, T=192, S=81, and I=25, the skip interval would be calculated as follows:

$$\frac{192}{\frac{81+25-1}{25}} = 48$$

After calculating the skip interval, the system would choose a random starting point, *e.g.*, short position number 47. Twenty-five contracts would be assigned to short positions 47–71. The system would skip an interval of 48 (from position 47) and assign the next 25 contracts to positions 95–119. Skipping another 48 contracts (from position 95), the next 25 assignments would cover numbers 143–167. Skipping 48 contracts from position 143, positions 191 and 192 as well as positions 1–4 would be assigned, in order to total 81 contracts.

OCC believes that the proposed system will provide a more uniform exercise assignment procedure through the use of assignment increments and uniform skip intervals. Consequently, OCC states in its filing that the proposed system will not assign disproportionately large segments of open interest as a block. OCC further states that the proposed system will operate in a substantially more efficient manner and will result in significant savings in processing time and costs. OCC estimates that the proposed system should take only 20–30 minutes running time each day while the current system takes approximately 90 minutes.

For the following reasons, the Commission believes that the proposed rule change is consistent with section 17A of the Act and should be approved. The Commission agrees with OCC that the proposed system should provide more uniformity in OCC's exercise assignment process and should reduce the probability that disproportionately large segments of open interest will be assigned as a block. The Commission also believes that both OCC and its Clearing Members will benefit from the proposed system because the system will operate more efficiently and in turn will decrease substantially processing time and related costs.

The Commission is approving OCC's proposal prior to the thirteenth day after the publication date of notice of the proposed rule change. First, the Commission received no public comment on the proposal. Moreover, OCC has notified its clearing member community of the pending proposed rule change and has received favorable comments. Second, accelerated approval should enable OCC to implement the proposed system as planned on March 29, 1985, in more than enough time for the next expiration. Without accelerated approval, OCC would have to delay system implementation and realization of the proposal's benefits for at least a month.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that OCC's proposed rule change be, and thereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

March 27, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–8092 Filed 4–3–85; 8:45 am]

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[2] OCC has determined that initially the assignment increment for all option exercises will be 25 contracts. OCC, however, may subsequently determine to use different assignment increments for options on different underlying interests.

[3] OCC will calculate the skip interval as follows:

$$\text{Skip Interval} = \frac{\frac{S+I-1}{I}}{\text{(with decimal points truncated)}}$$

S = the total number of contracts exercised for the particular series.

T = the total number of contracts on the wheel for a particular series.

I = the assignment increment.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2167]

Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on March 29, 1985, I find that the Counties of Cass, Fulton, Morgan, Peoria, Taxewell, Will, Calhoun, Clark, Grundy, Mason, Pike, Rock Island, and Woodford constitute a disaster loan area because of damage from severe storms, flooding, and ice jams beginning on or about February 13, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on May 30, 1985, and for economic injury until December 30, 1985, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303.

or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (nonprofit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 216706 for physical damage and for economic injury the number is 629800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 1, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-8107 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area No. 6248]

[Amdt. #2]

Minnesota; Designation of Federal Action Economic Injury Loan Area

The above numbered Declaration (50 FR 2840) and amendment #1 (50 FR 4824) are amended to include the County of Cottonwood. All other information remains the same, i.e., the termination date for filing applications is the close of business on October 10, 1985.

(Catalog of Federal Domester Assistance Program Nos. 59002 and 59008)

Dated: March 29, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-8105 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, April 15, 1985, in the City Council Chamber, City Hall, 315 E. Kennedy Boulevard, Tampa, Florida 33630, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mrs. Maurine Fisher, Committee Coordinator, Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, NW., Washington, D.C. 29416 in writing no later than April 12, 1985.

Dated: March 29, 1985.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 85-8106 Filed 4-3-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Monterey County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of intent.

SUMMARY: The FHWA is issuing this Notice to advise the public that an Environmental Impact Statement (EIS) will not be prepared for the proposed highway project in Monterey County, CA.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, CA 95809. Telephone: (916) 440-2804.

SUPPLEMENTARY INFORMATION: The FHWA, California Division, issued a Notice of Intent to prepare an EIS on October 12, 1983 (48 FR 46465) for the proposal to improve the traffic flow and reduce cross traffic conflicts on 1.7 miles of State Highway 68 in the vicinity of Toro Regional Park. FHWA is withdrawing that Notice at this time because the California Department of Transportation, the project sponsor, has revised the scope of the project and studies have determined that there will be no significant adverse environmental effects from the proposed project. An Environmental Assessment has been circulated for the proposed project and a Finding of No Significant Impact was signed on February 6, 1985.

Questions concerning this proposed action should be directed to the FHWA at the address provided above.

Date issued: March 27, 1985.

C.G. Clinton,

District Engineer, Sacramento, California.

[FR Doc. 85-8012 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP 85-5; Notice 1]

Chrysler Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Chrysler Corporation, of Detroit, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.111, Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of Receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S7.1 of Federal Motor Vehicle Safety Standard No. 111 requires that multipurpose passenger vehicles with a GVWR of more than 10,000 and less than 25,000 pounds be fitted with mirrors with at least 50 square inches of reflective surface each, on both sides of vehicles.

Paragraph S6.1(b) states that similar vehicles with a GVWR of 10,000 pounds or less must have mirrors with surface areas of at least 19.5 square inches. Chrysler has produced 2,145 Dodge D-350 pickup trucks rated at 10,100 pounds GVW with outside rearview mirrors with reflective surface areas of either 43 (about 2,000 vehicles) or 35 (about 145 vehicles) square inches. These 1984 and 1985 model year vehicles were produced for sale in the United States from August 1983 through mid-December 1984.

The petitioner states that the configurations of the subject vehicles (conventional and crew cab pickup trucks with dual rear wheels) are the same as the 1981 to 1983 model year equivalent vehicles which were rated at 10,000 pounds. The petitioner claims that the difference in GVWR of 100 pounds is only a "paper change"; the requirement to increase the surface area of the mirrors was inadvertently overlooked. Chrysler states that the noncompliance was detected during a routine review of design release specifications for future model year vehicles rated at more than 10,000 pounds GVW, and took immediate steps to correct the problem on subsequent vehicles.

Chrysler claims that the mirrors provide the driver with rear views on both sides of the vehicle, adjust in both horizontal and vertical directions, and meet all other requirements of the Standard. Chrysler states that the vehicle model configurations are unchanged from previous model years and so the mirrors on the vehicles in question should still be adequate in all respects. Furthermore, Chrysler is unaware of any complaints or problems relating to the outside rearviews mirrors, and is willing to install new mirrors that exceed 50 square inches at no cost to the owner, should any complaints arise.

Interested persons are invited to submit written data, views and arguments on the petition of Chrysler Corporation described above.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition in granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 6, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 1, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8009 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

Managerial Training Grants for Transit Agencies

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of grant availability.

SUMMARY: To meet the growing demands for transit industry managerial, supervisory and technical personnel training, UMTA has initiated the section 10 Single Agency Grant Program. Training acquired through section 10 grants should contribute to the understanding and resolution of the problems confronting public transportation organizations and advance the efficient operation and quality of service provided by public transportation systems. The purpose of the program is to encourage the development and implementation of innovative training programs by public transportation organizations.

States, local public bodies, and agencies thereof, and operators of public transportation services may apply for the grants. Individual employees are not eligible applicants. Single agency grants support employee training activities for a period not to exceed 12 months. Instruction made possible by these grants should respond to the needs of the grantee's overall training/education plan. UMTA will give particular consideration to applications which provide for a variety of instructional activities that address the most pressing training needs of the total organization.

Training must encompass technical or managerial training courses having relevance to the field of public transportation. To be eligible for reimbursement, training for transportation agency employees must be provided by a training organization on a contract basis. Such training includes, but it is not limited to, the UMTA endorsed short course providers. Eligibility is limited to managerial, technical and supervisory personnel only. Blue collar training (operator and mechanical) is not eligible for funding under section 10 of the UMT Act. UMTA Circular 6300.1, dated October 24, 1984 contains guidance and specific details of the preparation of section 10 grant applications. Applications should be sent to UMTA's Regional Offices.

DATE: Open until further notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information, including copies of UMTA Circular 6300.1, "Section 10 Single Agency Training Grant Program Guidance and Application Instructions," can be obtained from UMTA Regional Administrators listed below:

Richard Doyle, URO-1, Transportation System Center, Kendall Square, Suite 921, 55 Broadway, Cambridge, MA 02142, (617) 494-2055

Richard T. Nasti, URO-2, 26 Federal Plaza, Suite 14-110, New York, NY 10278, (212) 264-8162

Peter N. Stowell, URO-3, 434 Walnut Street, Suite 1010, Philadelphia, PA 19106, (215) 597-8098

James A. O'Connor, URO-4, 1720 Peachtree Road, NW, Suite 400, Atlanta, GA 30309, (404) 881-3948

Joel Ettinger, URO-5, 300 S. Wacker Drive, Suite 1720, Chicage, IL 60606, (312) 353-2789

Wilbur E. Hare, URO-6, 819 Taylor Street, Suite 9A32, Ft. Worth, TX 76102, (817) 334-3787

Lee O. Waddleton, URO-7, 6301 Rockhill Road, Suite 100, Kansas City, MO 64131, (816) 926-5053

Louis Mraz, URO-8, 1050 17th Street, Suite 1822 Prudential Plaza, Denver, CO 80265, (303) 844-3242

Brigid Hynes-Cherin, URO-9, 211 Main Street, Room 1160, San Francisco, CA 94105, (415) 974-7313

Aubrey Davis, URO-10, 915 2nd Avenue, Suite 3142, Seattle, WA 98174, (206) 442-4210.

Issued on: March 26, 1985.

Ralph L. Stanley,

Urban Mass Transportation Administrator.

[FR Doc. 85-8007 Filed 4-3-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 29, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No. 1545-0021
Form No. IRS Form 709-A
Type of Review: Extension
Title: United States Short Form Gift Tax Return
OMB No. 1545-0202
Form No. IRS Forms 5310 and 6088
Type of Review: Revision
Title: (1) Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets and Liabilities; Notice of Intent to Terminate; and (2) Distributable Benefits from Employee Benefit Plans
Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of the Public Debt

OMB No. 1535-0019
Form No. PD 4733
Type of Review: Extension
Title: Tenders for Treasury Notes/Bonds at the Department of the Treasury
OMB No. 1535-0023
Form No. PD 4000
Type of Review: Extension
Title: Request by Owner for Reissue of U.S. Savings Bonds/Notes to Add Beneficiary or Coowner, Eliminate Beneficiary or Decedent, Show Change of Name, and/or Correct Error in Registration
OMB No. 1535-0024
Form No. PD 3905
Type of Review: Extension

Title: Request for Securities Transactions
Clearance Officer: Peter Lougesen, (202) 376–4902, Bureau of the Public Debt, Room 445, 999 E Street, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,
Departmental Reports Management Office.
[FR Doc. 85–7976 Filed 4–3–85; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting a three year extension of the approval for the use of our Form IAP–17, Application for Certificate of International Educational Character.

DATE: Comments must be received by May 3, 1985.

Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, telephone (202) 395–4814.

SUPPLEMENTARY INFORMATION: Application for Certificate of International Educational Character.

Abstract

This information collection is used to certify the international character of visual and auditory materials (motion pictures, videotapes, recordings, sound recordings, filmstrips, slides, maps, charts, posters, models, etc.) for producers and distributors who have an interest in exporting their materials abroad, in accordance with the provisions of Pub. L. 89–634.

Dated: April 1, 1985.
Charles N. Canestro,
Federal Register Liaison.
[FR Doc. 85–8016 Filed 4–3–85; 8:45 am]
BILLING CODE 8230-01-M

Culturally Significant Objects; Import For Exhibition; Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency is further modifying a notice found at 49 FR 2993 (January 24, 1984) and modified at 49 FR 20973 (May 17, 1984) and 49 FR 44585 (November 7, 1984) regarding immunity from judicial seizure for the art exhibit *Silk Roads, China Ships,* initially on loan to the American Museum of Natural History. The initial loan was subsequently extended to the Cincinnati Art Museum and further extended to the Center for the Fine Arts, Miami. The immunity is further extended to cover the exhibit of the items at the Baltimore Museum of Art from on or about May 20, 1985, to on or about August 30, 1985.

EFFECTIVE DATE: The modification is effective April 4, 1985.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Office of the General Counsel and Congressional Liaison, United States Information Agency, 301 4th Street, S.W., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is further modifying a notice published at 49 FR 2993 (January 24, 1984), as previously modified by notices published at 49 FR 20973 (May 17, 1984), and 49 FR 44585 (November 7, 1984). The notice rendered immune from judicial process the exhibit titled *Silk Roads, China Ships,* on loan to the American Museum of Natural History and due to terminate on or about May 30, 1984. The first modification of notice extended judicial immunity of the loan to the Cincinnati Art Museum, where the temporary exhibition of the items was due to terminate on or about August 31, 1984. The second modification further extended the judicial immunity of the temporary exhibition of the items to include display at the Center for the Fine Arts, Miami, from on or about November 10, 1984, to on or about February 3, 1985. This additional modification further extends immunity to include display at the Baltimore Museum of Art from on or about May 20, 1985, to on or about August 30, 1985.

Dated: March 28, 1985.
Thomas E. Harvey,
General Counsel and Congressional Liaison.
[FR Doc. 85–8015 Filed 4–3–85; 8:45 am]
BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Privacy Act of 1974; Amendment of Systems Notices Additional Routine Use Statements

Notice is hereby given that the VA (Veterans Administration) is considering adding new routine use statements for three VA systems of records. The systems are entitled "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA" (36VA00), "Veterans, Beneficiaries and Attorneys United States Government Insurance Award Records—VA" (46VA00), and "Veteran and Beneficiary Identification and Records Locator Subsystem—VA" (38VA23), respectively set forth on pages 29436 and 29438 of the **Federal Register** of July 6, 1982 and page 368 of the **Federal Register** of January 5, 1982.

The VA Office of Inspector General under the authority of the Inspector General's Act (Pub. L. 95–452, Section 4(a)), plans to conduct a series of computer matches to validate entitlement to benefits granted under Title 38, United States Code and prevent fraud and abuse. The matches will compare Federal, State, County and Municipal records with various VA veterans benefits records, including, but not limited to, compensation, pension, education, rehabilitation and insurance records, to determine if the eligibility of veterans for waivers of premiums based on disability has changed. Past computer matches by the VA involving other systems of records have revealed individuals who were receiving benefits to which they were not entitled.

Additionally, in some cases, the VA will disclose veterans' names and addresses to a Federal agency in order to obtain the necessary information from the agency if the agency cannot respond to our query without the veterans' names and addresses. Some State, County and Municipal agencies will be unable to respond to the VA's

request for information without veterans' names and addresses; however, the VA generally does not have statutory authority to release veterans' names and addresses to State, County and Municipal agencies.

In order to disclose identifying information, e.g., social security number and date of birth, to a Federal, State, County or Municipal agency and to use the information generated by the matches to detect unwarranted VA benefit payments and meet the requirements of due process, new routine uses must be added.

The proposed new routine uses will permit the disclosure of identifying information regarding veterans except for names and addresses, to a Federal, State, County or Municipal agency. The new routine uses will also permit the disclosure of the name and address of a veteran to a Federl agency when required by the Federal agency to respond to the VA inquiry.

The VA has determined that release of information for these purposes is a necessary and proper use of information in these systems of records and that specific routine uses for transfer of this information is appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed new routine use to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All relevant material received before May 6, 1985, will be considered. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 20, 1985. Any person visiting Central Office for the purpose of inspecting any such comments will be received by Central Office Veterans Service Unit in room 132. Visitors to any field station will be informed that the records are available only in Central Office and furnished the above address and room number.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by the Veterans Administration, the new routine use statements included herein are effective May 6, 1985.

Approved: March 28, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Notice of System of Records

In the system identified as 36VA00, "Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA," as set forth on page 29436 of the **Federal Register** of July 6, 1982, the following routine use statement is added to read as follows:

36VA00

SYSTEM NAME:

Veterans and Armed Forces Personnel United States Government Life Insurance Records—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

* * * * *

26. Identifying information, except for the name and address of a veteran, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran who is receiving or has received veterans insurance benefits under Title 38, United States Code. The name and address of a veteran may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

* * * * *

In the system identified as 46VA00, "Veterans, Beneficiaries and Attorneys United States Government Insurance Award Records—VA," as set forth on page 29438 of the **Federal Register** of July 6, 1982, the following routine use statement is added to read as follows:

46VA00

SYSTEM NAME:

Veterans Beneficiaries and Attorneys United States Government Insurance Award Records—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

* * * * *

12. Identifying information, except for the name and address of a veteran, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran who is receiving or has received veterans insurance benefits under Title 38, United States Code. The name and address of a veteran may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

* * * * *

In the system identified as 38VA00, "Veterans and Beneficiary Identification and Records Locator Subsystem—VA," as set forth on page 2368 of the **Federal Register** of January 5, 1982, the following routine use statement is added to read as follows:

38VA23

SYSTEM NAME:

Veterans and Beneficiary Identification and Records Locator Subsystem—VA

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USERS:

* * * * *

17. Identifying information, except for the name and address of a veteran, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a veteran who is receiving or has received veterans insurance benefits under Title 38, United States Code. The name and address of a veteran may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

* * * * *

[FR Doc. 85-8046 Filed 4-3-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 65
Thursday, April 4, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Legal Services Corporation	2
Uniformed Services University of the Health Sciences	3

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 1, 1985.

TIME AND DATE: 9:30 a.m., Wednesday, April 10, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. UMWA on behalf of James Rowe, et al. v. Peabody Coal Company, Docket No. KENT 82–103–D, etc.; Issues include the extent of the miners' right to training under section 115 of the Mine Act and the protection afforded by section 105(c)(1).

2. Secretary of Labor on behalf of I.B. Acton, et al. v. Jim Walter Resources, Inc., Docket No. SE 84–31–D, etc.; Issues are same as above.

TIME AND DATE: 2:30 p.m., Wednesday, April 10, 1985.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act on the above listed cases. It was determined by a unanimous vote of Commissioners that this meeting be closed.

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[FR Doc. 85–8157 Filed 4–2–85; 1:52 pm]

BILLING CODE 6735–01–M

2

LEGAL SERVICES CORPORATION SPECIAL COMMITTEE ON PRESIDENTIAL SEARCH

TIME AND DATE: Meeting will commence at 9:00 a.m. and continue until all official business is completed, Sunday, April 14, 1985.

PLACE: Hyatt Regency O'Hare, 9300 West Bryn Mawr Ave., Continental A Room, Rosemont, IL 60018.

STATUS OF MEETING: Closed by unanimous vote to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (6) and (9) (B) and (d)(1) and 45 CFR 1622.5(a), (e), and (g) and 1622.6(b).

MATTERS TO BE CONSIDERED:

1. Review of Resumes
2. Review of Procedures
3. Selection of Candidates for Interview

CONTRACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272–4010.

Date issued: April 1, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–8123 Filed 4–2–85; 10:10 am]

BILLING CODE 6820–35–M

3

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

TIME AND DATE: 8:00 a.m., April 15, 1985.

PLACE: Uniformed Services University of the Health Sciences, Room D3–001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" [5 U.S.C. 552(e)(3)].

MATTERS TO BE CONSIDERED:

8:00: Meeting—Board of Regents

(1) Approval of Minutes—18 January 1985: (2) Faculty Appointments; (3) Report: Admissions; (4) Report: Associate Dean for Operations—Budget; (5) Report—President, USUHS: (a) University Awards, (b) Graduate and Continuing Education: (1) Certification of Graduate Students, (2) Associate Dean for Continuing Education, (3) Accreditation Council for Continuing Medical Education and Military Residency Programs, (4) Allied Health Sciences Report, (c) F. Edward Hebert School of Medicine: (1) Recommendation of Fourth Year Students, (2) Admissions Requirements, (3) Defense Officer Personnel Management Act, (d) Henry M. Jackson Foundation for the Advancement of Military Medicine, (e) H.R. 917, (f) Informational Items, (g) Briefing: (1) Report on Preventive Medicine Cooperative Project, (2) Report on Military Medical Field Studies; (6) Comments: Members, Board of Regents; (7) Comments: Chairman, Board of Regents.

New Business

SCHEDULED MEETINGS: July 15, 1985.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3049.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 1, 1985.

[FR Doc. 85–8064 Filed 4–1–85; 4:25 p.m.]

BILLING CODE 3810–01–M

federal register

Thursday
April 4, 1985

Part II

Environmental Protection Agency

40 CFR Parts 117 and 302

Notification Requirements; Reportable Quantity Adjustments; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117 and 302

[SW H-FRL 2685-6(b)]

Notification Requirements; Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities immediately notify the National Response Center of the release. Section 102(b) sets a reportable quantity of one pound for hazardous substances, except those for which reportable quantities have been established pursuant to section 311(b)(4) of the Clean Water Act ("CWA").

Section 102(a) authorizes the Environmental Protection Agency ("EPA") to adjust reportable quantities for hazardous substances and to designate as hazardous substances, substances which when released into the environment may present substantial danger to the public health or welfare or the environment. This final rule adjusts many of the reportable quantities established in section 102(b). These reportable quantity adjustments are intended to reduce the burdens of reporting on the regulated community, allow EPA to focus its resources on the most serious releases, and protect public health and welfare and the environment more effectively. This rule also designates, under section 102(a) all substances listed under the various statutory provisions referenced in section 101(14) of CERCLA. This rule also revises reportable quantities established pursuant to section 311(b)(4) of the Clean Water Act for discharges of hazardous substances into navigable waters, so that the CWA section 311 reportable quantities will be identical to and therefore consistent with those promulgated under CERCLA.

To help implement these changes, today's rule clarifies requirements for notifying the National Response Center of a release of a hazardous substance in a quantity equal to or greater than its reportable quantity. The toll-free telephone number of the National Response Center is listed under "ADDRESSES."

EFFECTIVE DATE: July 3, 1985.

CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast doubt on the validity of the legislative veto, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register.**

ADDRESSES: The toll-free telephone number of the National Response Center is (800) 424–8802; in the Washington, D.C. metropolitan area (202) 426–2675.

The record supporting this rulemaking is available for public inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460 (Docket Number 102RQ). The docket may be inspected between 8:00 a.m. and 4:00 p.m. Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT:

Dr. K. Jack Kooyoomjian, Response Standards and Criteria Branch, Emergency Response Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington D.C. 20460,

or the

RCRA/Superfund Hotline (800) 424–9346, in Washington, D.C., (202) 382–3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
- A. Statutory Authority
- B. Background of this Rulemaking
- C. Organization of the Final Rule

II. Summary of Changes From the Proposed Rule

III. Issues Addressed in the Notice of Proposed Rulemaking But Not Resolved in This Rule
- A. Continuous Releases
- B. Federally Permitted Releases
- C. Radionuclide RQs
- D. Carcinogen RQs

IV. Notification
- A. Introduction
- B. Purposes and Mechanics of Notification
- C. Persons Covered by This Rule
- D. Releases Covered by This Rule
- E. Exemptions From the CERCLA Notification Requirements
- F. Duplicate Reporting
- G. Regulatory Consistency
- H. Penalties

V. Reportable Quantity Adjustments
- A. Introduction
- B. Number of Reportable Quanity Levels and Their Values
- C. Methodology Used To Adjust Reportable Quantities
- D. Criteria Used To Adjust Reportable Quantities
- E. Future RQ Adjustments
- F. Application of the Methodology and Criteria
- G. Summary of RQ Changes From the May 25, 1983 NPRM
- H. Retention of Statutory RQ for Methyl Isocyanate
- I. Table 302.4

VI. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

VII. Summary of Supporting Analyses
- A. Classification and Regulatory Impact Analysis
- B. Regulatory Flexibility Analysis
- C. Information Impact Analysis

I. Introduction

A. Statutory Authority

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [Pub. L. 96–510], 42 U.S.C. 9601 *et seq.*, enacted on December 11, 1980, establishes broad federal authority to deal with releases or threats of releases of hazardous substances from vessels and facilities. The Act defines a set of "hazardous substances" by reference to other environmental statutes (section 101(14)); this list currently contains 698 substances. The Environmental Protection Agency ("EPA") may designate additional hazardous substances (section 102).

The Act requires the person in charge of a vessel or facility to notify the National Response Center ("NRC") immediately when there is a release of a designated hazardous substance in an amount equal to or greater than the reportable quantity ("RQ") for that substance (sections 103(a) and (b)). Section 102(b) of CERCLA establishes RQs for releases of designated hazardous substances at one pound, unless other reportable quantities were assigned under section 311 of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"). Section 102 authorizes EPA to adjust all of these reportable quantities.

A major purpose of the section 103(a) and (b) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require rapid response to protect public health and welfare and the environment. Under the Act, the federal government may respond whenever there is a release or a substantial threat of a release into the environment of a hazardous substance or of other pollutants or contaminants which may present an imminent and

substantial danger to public health or welfare (section 104). Response activities are to be taken, to the extent possible, in accordance with the National Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA. EPA emphasizes that notification based on reportable quantities is merely a trigger for informing the government of a release so that the appropriate federal personnel can evaluate the need for a federal response action and undertake any necessary response (removal or remedial action) in a timely fashion. Reportable quantities serve no other purpose; for example, a reportable quantity need not be released before a claim for damages or cleanup costs may be filed against the Hazardous Substance Response Trust Fund. Federal personnel will evaluate all reported releases, but will not necessarily initiate a removal or remedial action in response to all reported releases, because the release of a reportable quantity will not necessarily pose a hazard to public health or welfare or the environment. Government personnel will assess each release on a case-by-case basis.

B. Background of This Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases and to adjust reportable quantities for 387 of the 698 CERCLA hazardous substances. That Notice of Proposed Rulemaking (NPRM) also listed, for the first time, the "hazardous substances" designated by section 101(14) of CERCLA. The NPRM discussed in detail the CERCLA notification provisions (including the persons required to notify the NRC of a release, the substances for which notification is required, the types of releases subject to the notification requirements, and the exemptions from these requirements), the methodology and criteria used to adjust the reportable quantity levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. That same day, EPA also published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the designation of hazardous substances in addition to those specified in section 101(14) of the Act (48 FR 23602). In response to requests, and to increase the public's opportunity to express its opinion on the NPRM and ANPRM, the original 60-day comment period for both notices was extended by 30 days, so that the comment period closed on August 25, 1983. EPA received 136 comment letters totalling over 1,000 pages; these comments represent the first formal statements of public opinion on the methodology developed for adjusting RQs, the actual RQ adjustments proposed, and various issues relating to notification. A summary of the comments received, together with the Agency's responses, is contained in the Responses to Comments on the Notice of Proposed Rulemaking on the Adjustment of Reportable Quantities ["Responses to Comments"], which is available for inspection at Room S-325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Today, the Agency is promulgating RQ adjustments and clarifications of reporting procedures. The RQs of 340 CERCLA hazardous substances (including 21 hazardous waste streams) are adjusted in this final rule. Today's **Federal Register** also contains an NPRM proposing RQ adjustments for 105 of the remaining 358 hazardous substances. All of these adjustments apply not only to CERCLA RQs, but to RQs established pursuant to section 311(b)(4) of the CWA. In preparing the final rule, EPA has carefully considered all of the public comments submitted on the proposals made in the May 25, 1983 NPRM.

Section II of this preamble notes the significant differences between today's rule and the NPRM and refers the reader to the detailed discussion of each change elsewhere in the preamble. Section III presents issues raised in the NPRM that are not resolved in today's rule. Sections IV, V, and VI discuss the operation of the rule, major public comments, and the Agency's responses to these comments. Section VII provides a summary of the analyses supporting the rule.

As was stated in the preamble to the proposed rule, other provisions of the Act may be applicable even where notification is not required. Therefore, nothing in this preamble or final rule should be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of the Act. For example, a party responsible for a release is liable for the costs of cleaning up that release and for any natural resource damages, even if the release is not subject to the notification requirements of sections 103 (a) and (b). Similarly, claims may be filed against the Hazardous Substance Response Trust Fund for cleanup costs and damages even if less than a reportable quantity has been released. Moreover, proper reporting of a release in accordance with sections 103 (a) and (b) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is properly reported or that it is not subject to the notification requirements of sections 103 (a) and (b) will not prevent EPA or other governmental agencies from taking response actions under section 104, seeking reimbursement from responsible parties under section 107, or pursuing an enforcement action against responsible parties. Note also that this rule does not affect hazardous substance reporting requirements imposed by certain other regulations and statutes. (See, e.g., the discussion of MARPOL 73/78 and TSCA section 8(e) in section IV.G. below.)

This final rule formally designates those substances which are listed under the statutes referred to in section 101(14). Substances listed under the Solid Waste Disposal Act, commonly known as the Resource Conservation and Recovery Act ("RCRA"), will now be "hazardous substances" under CERCLA, regardless of whether they are hazardous wastes under RCRA. This final rule does not otherwise address the designation of hazardous substances which are not already designated under the statutes listed in CERCLA section 101(14). The Agency has conducted several preliminary economic and technical analyses on this subject (see 48 FR 23603), and the May 25, 1983 ANPRM invited public comment. EPA has carefully reviewed the comments received and is in the process of further developing its designation policy. The Agency's designation policy will be the subject of a separate rulemaking.

C. Organization of the Final Rule

Today's final rule amends 40 CFR by adding Part 302. Section 302.1 describes the fourfold purpose of the new regulation, including (1) listing those substances designated as hazardous under section 101(14) of CERCLA; (2) identifying reportable quantities for these substances; (3) describing the notification requirements for releases of these substances; and (4) identifying reportable quantities for hazardous substances that were previously assigned RQs under section 311(b)(4) of the Clean Water Act.

Section 302.2 explains the abbreviations used in the rule. Section 302.3 defines the following terms:

1. "The Act," "CERCLA," and "Superfund"
2. "Administrator"
3. "Consumer product"
4. "Environment"
5. "Facility"
6. "Hazardous substance"
7. "Hazardous waste"
8. "Navigable waters"

9. "Offshore facility"
10. "Onshore facility"
11. "Person"
12. "Release"
13. "Reportable quantity"
14. "United States"
15. "Vessel"

Section 302.4 includes Table 302.4, which lists the substances designated as hazardous under section 101(14) (and now section 102) of CERCLA together with the RQ established for each substance. Section 302.4 also denotes the conditions whereby a solid waste not specifically listed as a hazardous substance can still be a hazardous substance if it exhibits any of certain characteristics. Section 302.5 provides that each quantity listed as the "Final RQ" in Table 302.4 is the reportable quantity for that listed hazardous substance. Section 302.5 also presents the RQs for unlisted hazardous wastes. Section 302.6 incorporates the statutory requirement that any person in charge of a vessel or facility must immediately notify the NRC whenever he or she has knowledge of any release of a hazardous substance from the vessel or facility in a quantity equal to or greater than the RQ; it also provides rules for determining when notification is required for releases of (1) mixtures or solutions that contain hazardous substances, and (2) releases of massive forms of metals. Section 302.7 incorporates by reference the statutory penalties for failure to notify the NRC of hazardous substance releases that equal or exceed the RQs. Today's rule also has an appendix that lists each hazardous substance in Chemical Abstracts Service Registry Number (CASRN) order.

Finally, this rule revises 40 CFR 117.3 to make the CWA RQs equal to those shown in Table 302.4 of 40 CFR 302.4.

II. Summary of Changes From the Proposed Rule

EPA has made the following changes from the proposed rule. Each change is discussed in detail in the preamble section noted.

1. Wastes classified as hazardous under RCRA that are properly delisted, deleted, or exempted by a state pursuant to an approved state program shall not be considered hazardous substances for purposes of CERCLA notification requirements so long as they do not contain any other listed CERCLA substances (see section IV.D.1.b.).

2. A supplement to Table 302.4 that lists CERCLA hazardous substances in CASRN order has been added as an appendix to today's rule to help users identify hazardous substances (see section IV.D.1.d.).

3. The exemption from notification requirements of releases of metal where the diameter of the particles of metal equals or exceeds 100 micrometers (0.004 inches) now appears both as a footnote to Table 302.4 and as part of 40 CFR 302.6 (see section IV.D.1.f.).

4. Proper disposal of hazardous substances in interim status facilities or facilities with final permits under RCRA need not be reported under CERCLA (see section IV.D.2.a.).

5. The rule for determining when notification is required for releases of mixtures and solutions containing hazardous substances is now stated in 40 CFR 302.6 (see section IV.D.3.b.).

6. "[N]ormal application of pesticides" is no longer defined in 40 CFR 302.3; instead, the preamble interprets the statutory phrase "application of pesticides" (see section IV.E.).

7. The specific penalties imposed by CERCLA Section 103(b) no longer appear in 40 CFR 302.7(a); instead, the section incorporates the statutory penalties by reference (see section IV.H.).

8. Language has been added to the 40 CFR 302.5(b) discussion of "Unlisted Hazardous Substances" to emphasize: (1) that the 100-pound RQ for unlisted hazardous wastes applies only to substances which are wastes prior to their initial release; and (2) that the RQ given in Table 302.4 for unlisted wastes that exhibit EP toxicity applies to the waste itself, not merely to the toxic contaminant (see sections IV.D.1. and V.F.4.).

9. Various RQ changes have been made (see section V.G.).

10. Retention of statutory RQ for methyl isocyanate (see section V.H.).

11. Various other changes have been made in Table 302.4 (see sections V.G. through V.I.).

III. Issues Addressed in the NPRM But Not Resolved in This Rule

A. Continuous Releases

Section 103(f)(2) of CERCLA exempts certain releases from the general notification requirements of CERCLA if they are "continuous," "stable in quantity and rate," and notification has been given either under sections 103(a) and (b) "for a period sufficient to establish the continuity, quantity, and regularity" of the release or under section 103(c) (which relates to notification of the existence of certain facilities that are or have been used for storage, treatment, or disposal of hazardous wastes). Notification of continuous releases must be given "annually, or at such time as there is any statistically significant increase" in the quantity of the hazardous substance being released.

In the May 25, 1983 NPRM, EPA requested comment on the types of releases that could qualify for the section 103(f)(2) exemption and on possible notification systems for such releases. Many comments on these issues were received. Due to the complexity of the issues involved, the Agency has decided to study the continuous release exemption further; today's rule does not resolve continuous release issues.

B. Federally Permitted Releases

One of the exemptions from section 103 reporting requirements is for "federally permitted releases." The definition of "federally permitted release" in CERCLA section 101(10) specifically identifies releases permitted under other environmental statutes.

In the NPRM, EPA explained the Agency's interpretation of each of the types of releases exempted by the definition of "federally permitted release." EPA received many comments on various aspects of the federally permitted release exemption, most of which urged a broader interpretation of one or more of the federally permitted releases. Due to the complexity of the issues involved, the Agency has decided to study the scope of this exemption further; today's rule does not resolve the "federally permitted release" issue.

C. Radionuclide RQs

Radionuclides are hazardous substances under CERCLA because they are designated as hazardous air pollutants under section 112 of the Clean Air Act. The NPRM noted that EPA is considering several issues for future adjustments to radionuclide RQs. Two major related issues are:

(1) The units the Agency should use to measure RQs; and

(2) Whether one RQ should be set for all radionuclides or whether different RQs for specific radionuclides should be used.

EPA received many comments on these issues. Today's final rule does not adjust the RQ for radionuclides; the issue is being evaluated for action in a future rulemaking. Until then, the one-pound (0.454 kilogram) RQ is applicable. As noted in the NPRM, the Agency recognizes that the pound or kilogram is not a suitable unit on which to base a notification requirement for radionuclides, because releases much smaller than one pound may pose a significant threat to public health or welfare or the environment. The Agency encourages releasers to report

radionuclide releases of less than one pound.

D. Carcinogen RQs

The May 25, 1983 NPRM noted that the Agency has been collecting and evaluating data on the relative activity of substances as potential carcinogens. The methodology for adjusting RQs on the basis of potential carcinogenicity will be presented for public comment in a future rulemaking, and adjusted RQs for potentially carcinogenic substances will be proposed at that time. Until these substances receive final adjusted RQs, their statutory RQs will apply.

The NPRM published elsewhere in today's **Federal Register** proposes adjusted RQs for 12 substances that were evaluated as potential carcinogens but for which EPA's Carcinogen Assessment Group (CAG) did not find any sound evidence of potential carcinogenicity.

IV. Notification

A. Introduction

CERCLA sections 103 (a) and (b) require any person in charge of an offshore or onshore facility or a vessel to report to the National Response Center as soon as he or she has knowledge of any release of a hazardous substance that is equal to or greater than the reportable quantity. In the preamble to the May 25, 1983 NPRM, EPA elaborated on the notification requirements established by CERCLA, addressing such issues as the mechanics of notification, the persons required to notify the NRC of a release, the substances for which notification is required, the types of releases subject to the notification requirements, the exemptions from these requirements, and duplicate reporting. The following sections discuss comments received on these and other notification issues.

B. Purposes and Mechanics of Notification

Notification based on RQs serves as a trigger for informing the government of a release so that the need for response can be evaluated and any necessary response undertaken in a timely fashion. Federal personnel will evaluate all reported releases, although the government will not necessarily respond to all reported releases with a removal or remedial action. The reportable quantities do not themselves represent any determination that releases of a particular quantity are actually harmful to public health or welfare or the environment.

Reporting of releases pursuant to CERCLA sections 103 (a) and (b) is to be made by telephone to the National Response Center. The toll-free number of the NRC is (800) 424–8802; in the Washington, D.C. metropolitan area the number is (202) 426–2675. Pursuant to the National Contingency Plan (NCP) (40 CFR Part 300), the duty officer at the NRC will record pertinent information about the release and relay this release information directly to an On-Scene Coordinator ("OSC") at either the relevant EPA regional office or the relevant U.S. Coast Guard district office. The OSC will then evaluate the circumstances of the release, give pertinent information to appropriate state and local officials, and decide whether and in what manner the federal government should respond to the release.

A few commenters stated that it is a misuse of time and money to report releases which do not result in a federal removal or remedial action; they argued that the probability of a federal response action should be an important consideration in designing the notification system. EPA disagrees. The government is not obligated to respond to every release to which it has authority to respond and therefore should not design a notification system on such a basis. Reportable quantities have been established so that the Agency is alerted promptly to situations that may warrant a government response. While EPA will not initiate a removal or remedial action for every release that is reported, EPA must obtain the information it needs to determine who has response authority, to assess whether there is a need for a federal response action, and to check that action is properly taken by others where appropriate.

C. Persons Covered by This Rule

The NPRM preamble considered the issue of which persons are required to notify the NRC of a release. In so doing, definitions of the key terms of the CERCLA notification requirements were presented. Responses to the major comments received are provided below.

1. Facility

Several commenters discussed the Agency's statement that "for notification purposes, EPA will consider the entire contiguous plant or installation and contiguous grounds under common ownership to be the reporting facility rather than each vent, pipe, or piece of equipment at such a plant" (48 FR 23553). Some of the commenters appeared to misinterpret EPA's intentions.

The Agency intended the statement to reflect its belief that numerous concurrent releases (releases occurring within the same 24-hour period) of the same hazardous substance from one contiguous plant or installation need not be reported individually, but should be reported in a single notification. This policy will avoid unnecessary and burdensome calls where a plant is experiencing more than one reportable release, because it allows the regulated community to consider multiple concurrent releases of the same substance as one release for reporting purposes.

The comments received favored this policy, although a few commenters suggested that EPA expand the definition of facility to include outdoor areas within the boundary of a plant. In addition, some commenters questioned whether a releaser must aggregate the total volume of concurrent releases in order to determine if a reportable quantity has been met or exceeded.

The "facility" from which a release has entered or may enter into the environment does not include outdoor areas. Rather, the definition of "environment" includes all outdoor (i.e., not completely enclosed) areas surrounding and within a given facility. All concurrent releases of the same substance from a particular facility into the environment must be aggregated to determine if an RQ has been exceeded. Releases from separate facilities, however, need not be aggregated. EPA intends for multiple concurrent releases of the same substance from a single facility to be reported in a single notification as a single release. Where multiple concurrent RQ releases are occurring at various parts of a contiguous plant or installation on contiguous grounds under common ownership (e.g., at a chemical manufacturing plant or an oil refinery), the person in charge should also report these multiple concurrent releases in a single notification. The policy of consolidating notifications also applies to concurrent releases from separate storage facilities, so long as the releases are at the same location, i.e., located on contiguous grounds under common ownership.

2. Person In Charge

The NPRM preamble discussion of "person in charge" stated that EPA would not seek to designate the specific individuals or positions within business entities who would be responsible for reporting hazardous substance releases. The Agency indicated that such decisions are better made by the management of the affected organization. Two commenters argued

that the lack of a clear definition of "person in charge" would result in responsible individuals being unaware of their duty to report releases and would lead to delayed reporting or failure to report. EPA was urged to define explicitly the term "person in charge."

EPA disagrees with these commenters. The proper assignment of reporting responsibilities depends on the specific operation involved, management structure, and other case-specific considerations. It would be unnecessary and unwise for the government to try to determine "persons in charge" at all entities affected by CERCLA.

D. Releases Covered by This Rule

The NPRM addressed the substances for which notification is required, the types of releases subject to the notification requirements, and the determination of when a reportable quantity has been released. Many comments were received on various topics under each of these issues.

1. Hazardous Substances Subject to This Rule

a. ICRE Substances. Any hazardous waste having the characteristics identified or listed pursuant to Section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act, or "RCRA"), but not including any waste the regulation of which has been suspended by Act of Congress, is considered a hazardous substance under section 101(14)(C) of CERCLA. These characteristics are commonly known as ICRE: ignitability, corrosivity, reactivity, and extraction procedure toxicity (see 40 CFR 261.21–261.24).

The obligation to report releases to the environment of substances exhibiting the characteristics of ignitability, corrosivity, or reactivity has been the subject of some confusion.[1] Under section 103(a) of CERCLA, persons in charge of a vessel or facility must notify the NRC of the release of a "hazardous substance." The term "hazardous substance" includes all substances designated in § 302.4 of today's rule as well as wastes exhibiting the ICR characteristics under RCRA. Therefore, the release of a non-designated substance exhibiting an ICR characteristic is the release of a hazardous substance only if the substance is a waste. If a non-designated ICR substance is spilled and immediately cleaned up for repackaging, reprocessing, recycling, or reuse, it is not a waste and the spill need not be reported (see 45 FR 78540, Nov. 25, 1980). However, if the substance is not cleaned up, or is cleaned up for eventual disposal, it is then a waste (and thus a hazardous substance) which has been released to the environment and must be reported if it exceeds the RQ.

The Agency acknowledges that the proposed rulemaking may not have been clear on this point. Accordingly, we are publishing elsewhere in today's Federal Register a proposal to set the RQ at 100 pounds for non-designated substances which are not wastes prior to their initial release but which exhibit an ICR characteristic.

Pending completion of final rulemaking on that proposal, notice given to the NRC pursuant to 49 CFR 171.15, if required under that section, of the release of a non-designated substance that is not a waste prior to its initial release, will be deemed to satisfy the reporting requirements of section 103(a) of CERCLA. Note that this policy does not apply to the release of non-designated substances which exhibit an ICR characteristic and which are wastes prior to their initial release. Such releases must be reported if they are equal to or in excess of the 100-pound RQ. Section 302.5(b) of today's final rule has been clarified to show the distinction between substances that are wastes prior to their initial release and substances that become wastes after their initial release.

b. State Delisting under RCRA. Several commenters disagreed with EPA's statement in the NPRM that reporting is required even for releases of hazardous waste which the state has properly delisted, deleted, or exempted from the state's RCRA program pursuant to authority granted by EPA. Upon further review of the RCRA regulations governing "delisting" of RCRA hazardous wastes, EPA has decided to alter its policy. Under 40 CFR 260.22, a person may petition for a regulatory amendment to exclude a waste at a particular generating facility from the lists of hazardous wastes in §§ 261.30–261.33. The petitioner must demonstrate that the waste produced by the particular facility does not meet any of the criteria under which the waste type was listed or characterized as a hazardous waste. Moreover, if granted, the exclusion applies only to the waste generated at the individual facility covered by the petitioner's demonstration. State RCRA regulations must be substantially equivalent to these federal regulations to obtain EPA approval of the state program.

Once a specific waste from a particular facility has been shown not to contain constituents or exhibit characteristics that are considered hazardous under RCRA, there appears to be no reason to require notification under CERCLA of a release of the exempted waste. By definition, exempted wastes lack the hazardous constituents or characteristics for which the waste type was listed as hazardous. Therefore, so long as a state-exempted waste does not contain any other listed CERCLA substances, EPA will not consider the exempted waste subject to CERCLA notification requirements.

c. Petroleum Exclusion. As defined in CERCLA section 101(14), the term "hazardous substance" under CERCLA does not include

> petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Some commenters raised questions about the limits of the exclusion of petroleum from the definition of hazardous substance. EPA interprets the petroleum exclusion to apply to materials such as crude oil, petroleum feedstocks, and refined petroleum products, even if a specifically listed or designated hazardous substance is present in such products. However, EPA does not consider materials such as waste oil to which listed CERCLA substances have been added to be within the petroleum exclusion. Similarly, pesticides are not within the petroleum exclusion, even though the active ingredients of the pesticide may be contained in a petroleum distillate; when an RQ of a listed pesticide is released, the release must be reported.

d. Nomenclature. The May 25, 1983 NPRM requested comments on several options for a nomenclature system that would be most useful for the promulgated list of CERCLA hazardous substances. The first option was that actually employed in Table 302.4 as it appeared in the NPRM, i.e., the names of the substances as they appear in the environmental statutes (and implementing regulations) that are incorporated in the CERCLA definition of a hazardous substance. A second alternative presented was to use only the Chemical Abstracts Collective Index System name, and a third was to list the

[1] Substances exhibiting the characteristic of extraction procedure (EP) toxicity are not at issue here, because the chemicals at which the EP toxicity test is aimed are all specifically designated as hazardous under Section 302.4 of today's regulation.

major synonyms for each hazardous substance.

Five commenters recommended use of the names provided by the Chemical Abstracts Service (CAS) in the Chemical Abstracts Collective Index System. Although use of the Collective Index names would avoid much of the confusion involved with using synonyms and would serve as positive identification of the material, many of the individuals who may need to report releases will not have easy access to Collective Index names for the substances under their control. Even among professional chemists, CAS Collective Index names are not yet widely used. For example, the term "chloroform" remains widely preferred over the Collective Index name "methane, trichloro-."

Several commenters recommended listing the "major" synonyms for each substance, pointing out that most individuals who must report releases are not chemists and therefore are familiar with the substance only by the name provided by the supplier. The commenters stated that the potential releaser cannot be expected to determine whether the substance he is dealing with is a CERCLA hazardous substance unless the name provided is also on the CERCLA list.

The Agency recognizes that listing major synonyms would, in some respects, simplify determining whether a particular named chemical is a hazardous substance. However, as several commenters pointed out, the difficulties involved in making such a list would be great. For some of the substances, more than 80 synonyms might be necessary, making Table 302.4 very unwieldy. The length of the table would be increased by a factor of at least five, increasing the difficulty of finding a named material on the list. Moreover, the choice of synonyms to be included would still be subjective, and constant updates would be needed as omitted names were found.

The names of the CERCLA hazardous substances that appeared in Table 302.4 are those that are already familiar to the regulated community under other statutes. The Agency has therefore determined that, in today's final rule, Table 302.4 will contain the same names as were listed in the NPRM, plus any other names not previously discovered by which a substance is identified in the other statutes listed in section 101(14) and their implementing regulations. Several commenters suggested that in addition to the list of names in Table 302.4, a supplementary list in CAS Registry Number order be provided. EPA has adopted this suggestion. The CAS Registry Number, when available, uniquely identifies the designated hazardous substance. Such a list appears as an appendix to the rule as a convenience to the regulated community.

e. Generic Classes of Organic and Metallic Compounds. EPA decided not to establish RQs for the many broad generic classes of organic and metallic compounds designated as toxic pollutants under section 307(a) of the Clean Water Act, such as "chlorinated phenols," "phthalate esters," "polynuclear aromatic hydrocarbons," and "zinc and compounds." The majority of the commenters who addressed this issue understood and supported this decision. It was recognized that to establish a single RQ for broad classes of hazardous substances would be inappropriate for many of the compounds within each class. Many of the generic classes of compounds encompass hundreds or even thousands of specific compounds. It would be virtually impossible for the Agency to develop a reportable quantity for a generic class of compounds that would take into account the varying characteristics of all of the specific compounds in the class. To establish reportable quantities for generic groups of chemicals would conflict with existing knowledge of individual chemicals and their properties.

Several commenters were unsure of the Agency's position on reporting and liability for generic classes. These commenters believed that if no other RQ is established for a generic class, then they must still use the statutory one pound RQ established under CERCLA section 102(b). EPA has determined that the notification requirements need apply only to those specific compounds for which RQs are listed in Table 302.4, rather than to the generic classes of compounds. However, as the Agency indicated in the NPRM preamble, this does not preclude liability with respect to releases of specific compounds which are within one of these generic listings but which are not listed in Table 302.4. In other words, a releaser is liable for the cleanup of releases of hazardous substances which fall under any of the broad, generic classes, but does not have to report such releases when the specific compounds, and hence the RQs, are not listed in Table 302.4.

f. Massive Forms of Metals. EPA proposed that it would not require notification of releases of massive forms of the twelve solid metals originally listed under CWA section 307(a) when the diameter of the pieces of metal released equals or exceeds 100 micrometers (0.004 inches). Eleven of fourteen commenters supported this approach, while three commenters suggested a smaller cutoff level. One of these commenters suggested that the cutoff be set at 10 micrometers rather than 100 micrometers, consistent with standards developed pursuant to the Occupational Safety and Health Act.

The cutoff size was deliberately set ten times larger than the maximum size considered by EPA to be respirable dust to ensure that releases containing small particles of metals would result in notification to the NRC. The Agency has determined that the 100-micrometer cutoff is sufficiently small to be the particle size below which notification of release of an RQ is required. The primary purpose of notification is to ensure that releasers notify the government so that the government, pursuant to the NCP, can assess the need to respond to the release. Although it is extremely unlikely that a release of solid metal particles of 100 micrometers or larger would require a response, the Agency wants to be notified of releases of smaller particles because, under some circumstances, releases of metal particles in the 10- to 100-micrometer range may require a response.

One of the eleven commenters supporting the 100-micrometer cutoff level suggested that this policy be more prominently displayed in the wording of the final rule. (In the NPRM, the 100-micrometer limitation appeared only as a footnote to Table 302.4.) 40 CFR 302.6 now states:

> Notification of the release of an RQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

A particle larger than 100 micrometers in diameter will not pass through an American Society for Testing and Materials standard 140-mesh sieve.

2. Definition of Releases Subject to This Rule

a. Disposal of Hazardous Substances in RCRA Facilities. The May 25, 1983 NPRM discussion of the term "release" did not specify whether the term included or excluded the proper disposal of hazardous substances at a disposal facility that has been accorded interim status or that has received a final permit under RCRA. Some commenters suggested clarification of the meaning of the term in this regard.

EPA agrees that disposal of hazardous substances at a disposal facility in accordance with EPA regulations is not subject to CERCLA notification

provisions. Where the disposal of wastes into permitted or interim status facilities is properly documented through the RCRA manifest system and RCRA regulations are followed, notification under CERCLA does not provide a significant additional benefit, so long as the facility is in substantial compliance with all applicable regulations and permit conditions. Where the disposer knows that the facility is not in substantial compliance, disposal of an RQ of a hazardous substance must be reported to the NRC. Of course, spills and accidents occurring during disposal that result in releases of reportable quantities of hazardous substances must also be reported to the NRC.

b. Releases "Into the Environment." A key element of the definition of "release" is the phrase "into the environment." As defined in CERCLA section 101(22), a hazardous substance must be released "into the environment" in a reportable quantity before notification of the release is required under CERCLA. Thus, the distinction between the "facility" (or "vessel") from which a substance is released and the "environment" into which a substance passes is the determining factor in requiring notification.

Hazardous substances may be released "into the environment" even if they remain on plant or installation grounds. Examples of such releases are spills from tanks or valves onto concrete pads or into lined ditches open to the outside air, releases from pipes into open lagoons or ponds, or any other discharges that are not wholly contained within buildings or structures. Such a release, if it occurs in a reportable quantity (e.g., evaporation of an RQ into the air from a dike or concrete pad), must be reported under CERCLA. On the other hand, hazardous substances may be spilled at a plant or installation but not enter the environment, e.g., when the substance spills onto the concrete floor of an enclosed manufacturing plant. Such a spill would need to be reported only if the substance were in some way to leave the building or structure in a reportable quantity. (Note, however, that the federal government may still respond and recover costs where there is a *threatened* release into the environment.)

Most of the commenters on this issue agreed with EPA's position that the distinction between "facility" and "environment" is central to determining when notification is required and that a release "into the environment" is a reportable event, but they disagreed with EPA on when a release reaches the environment. The most common suggestion was to exclude from the definition of "environment" all of the grounds surrounding a facility that are controlled by the facility's owners or operators. Several commenters suggested that reporting should not be required as long as the facility operators are in control of released substances and initiate swift and adequate response efforts to prevent the environment from being endangered, consistent with prudent management practices. It was also suggested that so long as a release remains on facility property it would be inaccessible to the public and thus would not be a public hazard.

While EPA recognizes and appreciates the caution exercised by the majority of handlers of hazardous substances, accepting this redefinition of "environment" would be inconsistent both with the broad definition of environment in CERCLA section 101(8) and with the purpose of reporting. A primary function of CERCLA is to ensure that the government is made aware of any potentially serious release of a hazardous substance, so that the government has the opportunity to determine whether and how it needs to act. To exclude releases occurring near handling and storage facilities from CERCLA notification requirements would keep the federal government unaware of a very common form of release that may require government action. Releases onto the grounds surrounding a plant can migrate off-site through ground water or through release into the air. Defining "environment" to begin at the property line of a manufacturing plant or other installation is thus unacceptable to the Agency.

Following this same reasoning, defining environment in terms of public access, as several commenters suggested, is also unacceptable. Lack of public access to the site of a release does not preclude adverse effects on public health or welfare or the environment from the release. The volatilization of substances or their migration via ground water are obvious examples of how releases can travel off-site and threaten adjacent areas. EPA does not believe a reinterpretation of when a release enters the environment is necessary. A release into the environment will be reportable whether or not it remains on the grounds of a facility site.

One commenter requested that EPA clarify the meaning of the term "ambient air" in the definition of "environment" provided in 40 CFR Section 302.3. For the purposes of CERCLA, "ambient air" shall refer to the air that is not completely enclosed in a building or structure and that is over and around the grounds of a facility.[2] A release into the air of a building or structure that does not reach the ambient air (either directly or via a ventilation system) is not a reportable event under CERCLA.

c. "Workplace Exposure" Exclusion. CERCLA section 101(22) excludes from the definition of release "any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons." In the May 25, 1983 NPRM preamble, EPA stated that the workplace exclusion was apparently intended to restrict the potential scope of third-party actions for personal injuries under the Act and that the limitation of hazardous substance exposure to persons within a workplace is not relevant in determining whether notification is appropriate.

Several commenters argued that the workplace exposure exclusion should be applied to workplace releases for purposes of CERCLA notification requirements. EPA disagrees. By its terms, the exclusion applies only to claims compensable through workers' compensation. The availability of workers' compensation does not appear to have any relation to the need for reporting of hazardous substance releases that threaten public health or welfare or the environment. While Congress intended to bar payment of Superfund monies to persons covered by workers' compensation systems, the legislative history clearly indicates that Congress did not intend to exclude all workplace releases of hazardous substances from CERCLA reporting requirements and response authorities. "For example, if a release occurring solely within a workplace created a hazard of damage to human life or to the environment, it is contemplated that the Fund would have the authority to respond with all of its authorities except for compensating workers whose employers are liable for their injuries under worker's compensation law" (S. Rep. 848, 96th Cong., 2d Sess. 94 (1980)). Thus, the need for notification must be determined by whether or not a release from a CERCLA "facility" or "vessel"

[2] The Agency's interpretation of "ambient air" for CERCLA reporting purposes differs from the definition of ambient air in the regulations promulgated pursuant to the Clean Air Act (CAA). These regulations define ambient air with reference to public access (see 40 CFR 50.1(e)). EPA believes that the CAA definition is inappropriate for CERCLA purposes, because the point of release for some potentially serious releases may be inaccessible to the general public, e.g., on private property.

enters "into the environment." If a release does not remain wholly contained within a building or structure, then it is a release into the environment for CERCLA purposes, whether or not it occurs within a workplace.

3. Determination of When a Reportable Quantity Has Been Released

Once it has been determined that a hazardous substance release is covered by CERCLA, the releaser must determine if the release is in a quantity equal to or greater than the reportable quantity of that substance. Two critical issues in making this determination are the period of release and the application of RQs to mixtures and solutions. This section discusses EPA's positions on these issues and responds to comments received on the NPRM.

a. Period of Release. EPA proposed to use a 24-hour period for measuring whether the reportable quantity of a substance has been released, noting that the 24-hour period has been used successfully under regulations implementing the CWA section 311. As soon as the person in charge knows that the amount of a release within that period equals or exceeds the applicable reportable quantity, the NRC must be notified. Eleven commenters concurred with the Agency's decision to use the 24-hour period, citing the consistency of the decision with the CWA section 311 regulations.

Three commenters misinterpreted the purpose of the 24-hour period as the time a person has in which to establish the knowledge that a release has occurred. EPA wants to clarify that when the amount of a CERCLA hazardous substance release equals or exceeds the reportable quantity, the person in charge, once he or she knows of the release, must immediately notify the National Response Center. The 24-hour period refers to the period within which a reportable quantity of a hazardous substance must be released for the release to be considered reportable; it does not refer to the time available for a person to report a release. Such reporting must occur immediately.

b. Mixtures of Hazardous Substances. When determining if notification is required for releases of mixtures and solutions containing hazardous substances, the Agency intends to apply the mixture rule developed in connection with the CWA section 311 regulations. This rule provides that "[d]ischarges of mixtures and solutions are subject to these regulations only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). RQs of different substances are not additive under the mixture rule, so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Most commenters supported using the CWA mixture rule. These commenters agreed with EPA that it is generally technically appropriate to consider the RQs of component hazardous substances of a mixture individually when determining if a report is required. They also note that applying the CWA mixture rule to CERCLA hazardous substances would allow the regulated community to continue with existing monitoring and notification procedures.

One commenter opposed use of the CWA mixture rule, arguing that EPA has no data to support the implicit assumption that toxic effects are not additive or synergistic. The commenter stated that additive or synergistic effects often occur.

EPA recognizes that the toxic effects of chemical mixtures may in some instances be additive, synergistic, or even antagonistic. Unfortunately, only limited data exist on the extent of such effects. Moreover, trying to incorporate such data into the mixture rule for CERCLA notification purposes would make the determination of whether an RQ had been released much more complex and confusing. The RQ would vary with each mixture, depending on whether the components of the mixture had additive, synergistic, or antagonistic effects. Thus, a different RQ would have to be determined for each potential release situation, a highly complex approach that EPA has consistently tried to avoid (see section V.C.2. below). To be effective, the CERCLA notification system must be simple to administer and apply. For this reason, the Agency will apply the CWA mixture rule—contained in § 302.6 of today's rule—to releases subject to CERCLA reporting requirements.

Several commenters were uncertain when to apply the mixture rule to the various RCRA regulated wastes (F and K lists) and to the unlisted ICRE wastes. The Agency emphasizes that, for CERCLA purposes, the CWA mixture rule applies to ICRE wastes and to the RCRA F and K waste streams (all of which tend to be mixtures), if the concentrations of all the hazardous substances in the waste are known. If the concentrations of the substances are unknown, the RQ of the waste stream or unlisted waste applies. In addition, if the person in charge knows that an RQ of a hazardous constituent of a waste has been released before the RQ for the waste stream or unlisted waste has been exceeded, he or she must report the release. However, CERCLA does not itself impose any testing reqirements.

Some commenters objected to application of the CWA mixture rule to waste streams, arguing that under-reporting could result if the components of the waste were incorrectly identified. The Agency, however, maintains that if the concentrations of the hazardous substances contained in the mixture are known, waste streams should be treated like any other mixture. If the releaser does not know the composition of the listed waste stream, EPA agrees that applying the RQ of the entire waste stream is the only reasonably conservative alternative.

For example, a mixture of spent (used) cresols and nitrobenzene is identified in the RCRA regulations (40 CFR 261.31) as a hazardous waste from a non-specific source, F004. F004 has an RQ of 100 pounds, because the RQ for cresols is 100 pounds, the RQ for nitrobenzene is 1000 pounds, and the lowest RQ for any of the hazardous substances in the mixture applies. If the person in charge knows only that a waste material contains unspecified amounts of cresols and nitrobenzene, then he or she would have to report if 100 pounds or more of the waste were released. The person in charge may, however, if sufficient data are available, apply the CWA mixture rule. If he or she knows that the F004 waste contains 50 percent cresols and 50 percent nitrobenzene, the releaser would have to report only when the total release equalled or exceeded 200 pounds, because at that point the 100-pound RQ of the cresol component would be equalled or exceeded. Because the concentrations of the hazardous substances in the waste stream are known, there is no reason to restrict the releaser to the F004 waste RQ of 100 pounds. In this case, for notification purposes, the waste stream is no different than a known mixture of pure substances.

A few commenters questioned whether the mixture rule applies to products where the active chemical ingredient for which it is named is present in less than 100 percent concentration. While the NPRM discussion of the mixture rule did not explicitly mention "formulations of less than 100 percent strength," such formulations are indeed mixtures or solutions and are covered by the mixture rule. Two commenters wanted EPA to waive the CERCLA notification requirements for mixtures containing very low concentrations of hazardous

substances. These commenters suggested assigning a concentration value to each hazardous substance below which notification would not be required. This approach would, in effect, result in two rules for each substance, making application of the mixture rule cumbersome for the regulated community. Moreover, determining each concentration value would require the use of specific release scenarios, a methodology that EPA has rejected (see 48 FR 23569 and Section V.C.3. of this preamble). For these reasons, EPA is retaining the mixture rule for all mixtures containing any concentration of a hazardous substance, no matter how low the concentration.

E. Exemptions From the CERCLA Notification Requirements

CERCLA provides four types of exemptions from the notification requirements applicable to releases of hazardous substances in reportable quantities. Each type of exemption was discussed in the May 25, 1983 NPRM preamble. Responses to major comments received on the exemption for the application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are provided below. Issues relating to the limited exemption for continuous releases and exemptions for "federally permitted releases" are not resolved in today's rule.

Section 103(e) of CERCLA exempts from the notification provisions of the Act "the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [and] the handling and storage of such a pesticide product by an agricultural producer." In the proposed rule, EPA interpreted the application of pesticides as the normal application of registered pesticides (and pesticides used in accordance with FIFRA section 5 experimental use permits or FIFRA section 18 emergency exemptions) in ways that are consistent with the labeling instructions.

Commenters objected to several aspects of EPA's pesticide exemption policy as stated in the NPRM. The first category of objections concerned the wording of the policy. Some commenters suggested that the phrase "pursuant to the label directions" as used in the definition of "normal application of pesticides" applies more to consumer goods than to industrial chemicals, because the label directions of the latter may not include complete application practices. Other commenters objected to the use of the term "normal" in the definition of "normal application of pesticides," because the term does not appear in CERCLA section 103(e) and constitutes a potentially unnecessary restriction on the exemption.

EPA agrees that the definition of "normal application of pesticides" is unnecessary, and the definition does not appear in today's final rule. The legislative history of CERCLA suggests that Congress intended that the pesticide exemption apply to the application of a pesticide generally in accordance with its purpose. S. Rep. No. 848, 96th Cong., 2d Sess. 45 (July 13, 1980). While strict compliance with labeling direction is not a prerequisite for the exemption, the extent of compliance will be a critical factor in determining whether the application was generally in accordance with the pesticide's purpose. EPA does not consider a spill of a pesticide to be either an "application" of the pesticide or in accordance with the pesticide's purpose. Consequently, such spills must be reported. Note, moreover, that use of a pesticide inconsistent with its labeling is a violation of FIFRA that is potentially subject to both civil and criminal penalties.

F. Duplicate Reporting

1. General

EPA is seeking to minimize unnecessary duplication between CERCLA reporting requirements and the reporting requirements of other environmental statutes. However, some commenters complained of the duplicative reporting burden created by CERCLA and of a lack of coordination among federal, state, and local agencies. Eight of these commenters suggested that one report to the NRC should suffice for all government agencies. Currently, one call to the NRC fulfills the requirement to report releases of hazardous substances under CERCLA and several other regulatory programs, including the Clean Water Act, the Resource Conservation and Recovery Act, and the Hazardous Materials Transportation Act, which is administered by the Department of Transportation. The May 25, 1983 NPRM preamble discussed the equivalence of compliance with certain RCRA reporting requirements and CERCLA notification requirements. Section 103(f)(1) of CERCLA exempts from the notification requirements of sections 103 (a) and (b) releases that are subject to reporting requirements (or specifically exempted from such reporting) under Subtitle C of RCRA and have been reported to the National Response Center. The Agency has reviewed all other areas of duplicate reporting created by CERCLA and has found that the burden imposed by CERCLA notification requirements is not great. At most, the duplication that exists may require that more than one telephone call concerning a release be made by the releaser and recorded by government agencies.

Today's final rule does not affect hazardous substance reporting requirements imposed by certain other regulations and statutes, as discussed in section IV.G. below.

2. Newspaper Notification Requirement

CERCLA section 111(g) requires that owners or operators of any vessel or facility "provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area" of any release of a hazardous substance. One commenter asked whether RQ notification requirements revoke section 111(g). The newspaper notification requirement established by section 111(g) of CERCLA is not affected by any of the notification requirements in today's rule.

G. Regulatory Consistency

EPA has always made every effort to coordinate its regulations of hazardous substances with other government agencies. For example, EPA and the Department of Transportation (DOT) (which includes the U.S. Coast Guard) have cooperated over the years in a series of regulatory actions, including the establishment of the centralized toll-free telephone number for reporting spills of hazardous substances to the NRC. EPA recognizes that cooperation with other agencies is vital to the development of clear and consistent regulatory policies in areas of complementary or shared responsibility. The Agency has carefully reviewed comments from other government agencies on the NPRM and does not believe that the CERCLA RQs or notification requirements create regulatory inconsistencies.

Many commenters questioned the extent of EPA–DOT coordination concerning CERCLA RQ regulations and regulations pursuant to the Hazardous Materials Transportation Act (HMTA). EPA recognizes the need for consistency between the RQ regulations and DOT's Hazardous Material Regulations (HMR). The Agency believes that the cooperative efforts of EPA and DOT will result in an RQ adjustment regulatory approach that will be consistent with any related regulations promulgated by DOT. EPA has promoted and will continue to promote coordination between the RQ adjustment regulation and the HMR. EPA wishes to clarify, however, that while it strongly supports

cooperation between EPA and DOT, it has no authority to revise the HMR. Any changes must be made by DOT.

The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), as implemented through the Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*), currently imposes reporting requirements concerning releases of harmful substances from U.S. ships wherever located and from foreign ships within the navigable waters of the United States. Under 33 U.S.C. 1906, as soon as a person in charge of a ship has knowledge of an event involving the actual or probable release into the sea of a harmful substance (broadly defined), he or she must report the incident to the Secretary of the department in which the Coast Guard is operating (currently DOT). No reportable quantities are specified. Thus, MARPOL 73/78, as implemented by 33 U.S.C. § 1906, may require reporting even where CERCLA does not.

Annex II of MARPOL 73/78 prohibits discharges of noxious liquid substances within 12 miles from shore. Beyond 12 miles, discharges are either prohibited or limited, depending on the nature of the cargo and compliance with several criteria. Annex II, scheduled to take effect in October 1986, applies to all ships carrying noxious liquid substances in bulk and limits operational discharges of these substances by setting minimum or maximum numerical values for distance from shore, depth of water, ship speed, concentration of substance in ship's wake, and maximum quantity of cargo residues that may be discharged. To improve regulatory consistency and enhance coordination with the U.S. Coast Guard, EPA intends to investigate the scope and intent of MARPOL 73/78 Annex II regulations (including a Coast Guard ANPRM (48 FR 1519–1521, Jan. 13, 1983) dealing with certain types of hazardous substances that are intended to be regulated in accord with MARPOL) and to examine regulatory and technical concerns arising from coordination between CERCLA and MARPOL.

Section 8(e) of the Toxic Substances Control Act (TSCA) may also require reporting where CERCLA does not. Pursuant to a Statement of Interpretation published March 16, 1978, 43 FR 11110, all emergency incidents of environmental contamination that present a "substantial risk of injury to health or the environment" must be reported to EPA under TSCA section 8(e). Section 8(e) could require notification even where no CERCLA hazardous substances or RQs have been released. Persons subject to the notification requirement include both natural persons and business entities engaged in the manufacturing, processing, or commercial distribution of chemical substances or mixtures. No notification is required if the manufacturer, processor, or distributor knows that EPA has been informed of the risk presented by the incident. For hazardous substance releases subject to CERCLA, a single notification to the NRC will satisfy both CERCLA and TSCA section 8(e) reporting requirements; the Agency will ensure that section 8(e) reports are passed to the proper authorities.

H. Penalties

Section 302.7(a) of the proposed rule set forth the penalties imposed by CERCLA Section 103(b) for failure to notify the NRC of a reportable release. Section 302.7(a) of today's final rule does not specify the penalties established by CERCLA section 103(b); rather, the rule incorporates the statutory penalties by reference. The regulation still informs responsible parties of the statutory sanctions for failure to notify, but the change will avoid the need to amend 40 CFR 302.7 should CERCLA section 103(b) be amended. Currently, CERCLA section 103(b) provides that any person in charge of a facility or vessel from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than the reportable quantity, who fails to notify the appropriate federal agency as soon as he has knowledge of the release, shall upon conviction be fined not more than $10,000 or imprisoned for not more than one year, or both. Notifications received under sections 103(a) or 103(b) or information obtained by such notice cannot be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

V. Reportable Quantity Adjustments

A. Introduction

The primary purpose of the CERCLA notification requirements, discussed above in section IV, is to ensure that releasers notify the government so that the need for a federal response can be evaluated and any necessary response undertaken in a timely fashion.

With this purpose in mind, EPA proposed adjustments to the statutory RQs of CERCLA hazardous substances based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance in a reportable quantity. The adjusted RQs do not reflect a determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA has not attempted to make such a determination because the actual hazard will vary with the unique circumstances of the release, and extensive data and analysis would be necessary to determine the hazard presented by each substance in a number of possible circumstances. Instead, the RQs reflect the Agency's judgment of which releases should trigger mandatory notification to the federal government so that the government may assess to what extent, if any, a federal removal or remedial action may be necessary.

Over forty commenters supported both the methodology EPA used in determining RQs and the results of this methodology. These commenters agreed that the RQ adjustments will:

(1) Increase the efficiency and certainty of the Superfund program;

(2) Reduce burdens on the regulated community; and

(3) Improve EPA's ability to concentrate its attention and resources on the releases that are potentially most threatening to public health or welfare or the environment.

In addition, EPA received many comments on various specific topics relating to the RQ adjustments that were discussed in the NPRM. Some commenters also discussed issues that were not explicitly addressed in the proposed rule. Responses to both types of comments are presented below.

B. Number of Reportable Quantity Levels and Their Values

1. Five RQ Levels

For purposes of making RQ adjustments under CERCLA, EPA has adopted the five RQ levels of 1, 10, 100, 1000, and 5000 pounds originally established pursuant to CWA section 311 (see 40 CFR Part 117). The Agency adopted the CWA five-level system primarily because (1) it has been successfully used pursuant to the CWA, (2) the regulated community is already familiar with these five levels, and (3) it provides a relatively high degree of discrimination among the potential hazards posed by different CERCLA hazardous substances. Many commenters voiced general support of the five-level system; however, as the next section discusses, some commenters criticized the use of one pound as the lowest RQ level.

2. One-Pound RQs

Several comments were received on the one-pound RQ level. A few commenters argued that a one-pound RQ is too small for reporting purposes. They reasoned that a one-pound release of a hazardous substance would have an inconsequential impact on public health and welfare and the environment and that federal agencies would not respond to such small releases.

The one-pound RQ is consistent with prior regulation under the Clean Water Act (see 40 CFR Part 117). One pound was selected under the Clean Water Act as the lowest reporting level because one pound is typically the smallest container size used in commerce for transporting moderately or extremely hazardous substances 40 FR 59989, December 30, 1975. Moreover, the Agency interviewed a large cross-section of field response personnel, and all of those interviewed indicated that they want to be notified of most releases, even at the one-pound level. In the interviews, the field response personnel recognized that the government may not institute removal or remedial actions for many one-pound releases, but they emphasized that notification was a prerequisite for determining (1) the need for a response under the circumstances, (2) the adequacy of any cleanup efforts, and (3) the degree to which post-release monitoring may be required. Furthermore, many releases tend to be escalating events, and early notification helps ensure an effective response.

Six commenters criticized the one-pound RQ level for posing an unreasonable burden on the regulated community. One commenter indicated that the adoption of one-pound RQs will require many companies to do extensive testing of raw materials in order to assure compliance with this regulation. CERCLA does not require any testing, and EPA does not intend to require any further testing beyond that which is already required by other statutes and their implementing regulations.

C. Methodology Used To Adjust Reportable Quantities

1. The Methodology Chosen

The selected strategy for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, and chronic toxicity. (For the purposes of this rule, chronic toxicity—referred to as "other toxic effects" in the May 25, 1983 NPRM—is defined as toxicity resulting from repeated or continuous exposure to either a single release or multiple releases of a hazardous substance.) In addition, substances that were identified as potential carcinogens have been evaluated for their relative activity as potential carcinogens; the RQs for these substances will be proposed in a separate rulemaking, and the methodology for adjusting RQs on the basis of potential carcinogenicity will at that time be presented for public comment.

The Agency ranks each intrinsic property on a five-tier scale, associating a specified range of values on each scale with a particular RQ value. Thus, each substance receives several tentative RQ values based on its particular properties.[3] The lowest of all of the tentative RQs becomes the "primary criteria RQ" for that substance. (See Section V.D.1. below for further detail.)

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain extrinsic degradation processes. These extrinsic processes (referred to as "secondary criteria" in the May 25, 1983 NPRM) are biodegradation, hydrolysis, and photolysis, or "BHP." If the analysis indicates that a substance degrades relatively rapidly to a less harmful compound through one or more of these processes when it is released into the environment, the primary criteria RQ is raised one level. (See section V.D.2. below for further detail.) The single RQ assigned to each substance on the basis of the primary criteria and BHP becomes the adjusted RQ for that substance.

2. Multiple RQs and Media-Specific RQs

Many commenters objected to the Agency's proposal to establish a single RQ for each hazardous substance. It was suggested that either (1) the Agency should develop several RQs for each hazardous substance, for example, one RQ for each of the various environmental media (air, water, soil) into which a release might occur, or (2) the Agency should base the adjusted RQ for each substance on the most likely medium of release rather than on the most sensitive environmental trigger (as is currently done).

Several of the objecting commenters believed that the RQs would be arbitrary if they did not reflect the varying degrees of risk presented by releases into different environmental media. For similar reasons, they argued that the RQs should vary depending on the form of the substance released (i.e., whether it is a solid, a liquid, or a gas) and its ability to dissipate into the environment. The objecting commenters believed that if the RQs were to reflect more accurately the hazards of given releases, the overall reporting burden would be reduced, because reports would not have to be made in situations where the government would be unlikely to respond.

As has been stated, the RQs are not intended to represent judgments by the Agency as to the specific degree of hazard associated with certain releases. The actual hazard will vary with the circumstances of the particular release, and many factors other than the size of the release will influence the government's response. The single RQ approach was adopted to provide a relatively simple reporting system that does not unduly burden either EPA or the regulated community. Since releases into more than one medium often occur, the single RQ approach will prevent confusion. Section 102(a) of CERCLA expressly authorizes the Administrator to set a single quantity for each hazardous substance, and the legislative history emphasizes the virtues of simplicity and administrative convenience (see Sen. Rep. 848, 96th Cong., 2d Sess. 29 (1980)). Moreover, the Agency simply does not have the resources to obtain the vast quantity of technical data required to develop RQs that, on the one hand, are tailored to fit every release situation, and that, on the other hand, are consistent, equitable, and adequately protective of public health and welfare and the environment.

EPA will be able to refine the single-RQ approach over time as more information becomes available, without having to expend substantial resources to develop a massive technical data base and undertake other burdensome rulemaking support. Radionuclides, because of their unique characteristics, are the one category of substances for which the Agency is considering deviation from the single RQ approach. As noted in section III.C. of this preamble, radionuclide RQs will be addressed in a separate rulemaking.

A number of commenters expressed the opinion that the RQ adjustment criteria should take particular release circumstances into consideration. The suggested circumstances included release into a sewer system, release near a public drinking water supply, release near a residential area, and air

[3] If available evidence shows that a substance hydrolyzes into a reaction product that is more hazardous than the original substance, the primary criteria are applied to the reaction product rather than to the original substance to determine the primary criteria RQ values for the original substance.

emissions from elevated sources (tall stacks). One commenter even stated that "determinations of actual harm" should be made for all substances with one- and ten-pound RQs by examining release potential, release history, the degree of hazard or risk of particular releases in various environmental media, and the likelihood that such releases would require federal action. The Agency position is that particular circumstances should not affect the RQ level; instead, they may influence the government's decisions concerning whether and how it should respond to a particular release.

Many commenters focused on the appropriateness of a single RQ governing emissions into the air as well as releases into other media. They argued as follows:

- Because the government cannot respond to most air emissions by containing or cleaning up the emissions, and because other government responses (e.g., evacuation of the nearby populace) are required only infrequently, requiring routine reporting of air emissions under a single-RQ approach would be wasteful and burdensome.
- The impacts of emissions into ambient air are substantially less than releases of similar size to water or soil, and the photolysis and degradation of many air emissions tend to be relatively rapid.
- Relatively few substances would be eligible for separate air release RQs, and EPA would not have to devote a substantial amount of effort and resources to make the appropriate adjustments.

The Agency believes that an exception to the single-RQ approach for air releases could not be restricted to air releases alone under the above reasoning. Several other types of releases exhibit certain of the characteristics of air releases, such as releases into large bodies of rapidly moving water. If the circumstances of particular releases were taken into account in setting RQs, the entire process would place an intolerable burden on Agency resources. The process would also become potentially inconsistent, inequitable, and subject to delay. Moreover, the resulting complexity in RQs would be likely to engender both confusion and further charges of arbitrariness.

One commenter believed that, for the most part, releases that would be affected by a separate air release RQ would be those which are "continuous" and released from facilities subject to Clean Air Act regulations. If an air release falls within the exemptions provided by CERCLA for "continuous" or "federally permitted" releases, of course, no notification is necessary (except as required for continuous releases); if many air releases are exempt, a separate air release RQ would provide very few benefits.

3. Alternative Methodologies Considered

In the May 25, 1983 NPRM, EPA described and solicited comments on three alternative methodologies for adjusting RQs: Hazard Index, Scenarios, and Fate and Effects. Most commenters agreed with the Agency that these methodologies would be impractical to implement and would introduce unnecessary complexities into the RQ adjustment process, although several commenters encouraged further research into the Hazard Index approach. No new data to facilitate a more complete evaluation of these methodologies have been submitted. Because these methodologies are complex and require much data that are unavailable at this time, EPA is not currently pursuing these methodologies further for RQ adjustment purposes.

D. Criteria Used To Adjust Reportable Quantities

1. Primary Criteria

a. Aquatic Toxicity. In adjusting RQs, EPA used the categories of aquatic toxicity that were established pursuant to section 311 of the CWA. As Exhibit 1 shows, each category is linked to one of the five RQ levels. The RQ value based on aquatic toxicity is identical to the RQ promulgated under the CWA section 311 except where the use of updated aquatic toxicity data has resulted in a different RQ (see section V.F.2. below).

EXHIBIT 1.—CATEGORIES FOR REPORTABLE QUANTITY ASSIGNMENTS PURSUANT TO CWA SECTION 311

RQ (pounds)	Aquatic toxicity	Category
1	LC_{50}* <0.1 mg/liter	X
10	0.1mg/liter <LC_{50} <1 mg/liter	A
100	1 mg/liter <LC_{50} <10 mg/liter	B
1000	10 mg/liter <LC_{50} <100 mg/liter	C
5000	100 mg/liter <LC_{50} <500 mg/liter	D

* "LC_{50}" refers to that concentration of material which is lethal to one-half of the test population of aquatic animals upon continuous exposure for 96 hours. (See 40 CFR 116.14).

Source: 43 FR 10492, March 13, 1978.

One commenter questioned the rationale for assigning one-pound RQs to substances in the highest aquatic toxicity category. The commenter indicated that an RQ of 10 pounds, or even 100 pounds, could be assigned just as easily. The five-level reportable quantity scale for aquatic toxicity was taken directly from section 311 of the Clean Water Act. The CWA section 311 reporting categories are being retained for CERCLA reporting purposes in order to ensure consistency between the two closely related acts. The aquatic toxicity RQ scale has been used successfully in implementing the Clean Water Act, and the regulated community is familiar with it. Moreover, as noted above in the section on one-pound RQs, many releases tend to be escalating events requiring prompt attention.

b. Mammalian Toxicity. EPA separately evaluated oral, dermal, and inhalation toxicity for the mammalian toxicity criterion. A five-level scale was devised for each type of toxicity. These scales are shown in Exhibit 2. The RQ chosen for mammalian toxicity represents the lowest of the values derived from the three scales. These scales were discussed in detail in the NPRM (48 FR 23562–23563).

One commenter believed that the Agency's mammalian toxicity scales assign RQs which are too high for some poisonous substances. The commenter therefore proposed new scales based on mammalian toxicity that would assign many more one-pound RQs than the Agency's scales. The Agency believes that the scales suggested by the commenter are overly broad and could lead to unnecessary reporting.

EXHIBIT 2.—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON MAMMALIAN TOXICITY [a]

RQ (pounds)	Mammalian toxicity (oral)	Mammalian toxicity (dermal)	Mammalian toxicity (inhalation)
1	LD_{50}[b] <0.1 mg/kg	LD_{50} <0.04 mg/kg	LC_{50}[c] <0.4 ppm.
10	0.1 mg/kg <LD_{50} <1 mg/kg	0.04 mg/kg <LD_{50} <0.4 mg/kg	0.4 ppm <LC_{50} <4 ppm.
100	1 mg/kg <LD_{50} <10 mg/kg	0.4 mg/kg <LD_{50} <4 mg/kg	4 ppm <LC_{50} <40 ppm.
1000	10 mg/kg <LD_{50} <100 mg/kg	4 mg/kg <LD_{50} <40 mg/kg	40 ppm <LC_{50} <400 ppm.
5000	100 mg/kg <LD_{50} <500 mg/kg	40 mg/kg <LD_{50} <200 mg/kg	400 ppm <LC_{50} <2000 ppm.

[a] For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102.
[b] "LD_{50}" refers to that dose of a substance expected to cause the death of 50 percent of a defined experimental mammalian population.
[c] "LC_{50}" refers to that concentration of a substance in the air that is expected to cause the death of 50 percent of a defined experimental mammalian population.

c. *Ignitability and Reactivity.* The Agency used a five-level scale to assign RQs based on ignitability. The NPRM discussed this scale in detail (48 FR 23563). Exhibit 3 shows the scale used. The Agency did not assign one-pound RQs based on ignitability because small releases of a flammable substance would generally be consumed so quickly that any federal government response action would be infeasible.

EXHIBIT 3.—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON IGNITABILITY [a]

RQ (pounds)	Ignitability (fire)
1	No 1-pound RQs on the basis of ignitability.
10	Pyrophoric or self-ignitable.
100	$FP_{[b]}$ < 100°F. BP [c] < 100°F.
1000	$FP_{[b]}$ < 100°F. BP > 100°F.
5000	$FP_{[b]}$ 100°F–140°F.

[a] For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102.
[b] "$FP_{[b]}$" refers to the flash point, the temperature at which a substance forms an ignitable mixture with the air at the surface of the substance, measured using the closed cup test.
[c] "BP" refers to the boiling point, the temperature at which a liquid boils.

The Agency also used five-level scales for assigning RQs based on two types of reactivity: reactivity with water and self-reaction. For reactivity, as for ignitability, no one-pound RQs were assigned. The NPRM discussed the reactivity scales and their development. Exhibit 4 shows the scales used.

One commenter requested that the minimum RQ level for the ignitability and reactivity RQ scales be set at 100 pounds instead of 10 pounds. The Agency has decided to retain the 10-pound minimum RQ level. As a result of interviews with federal government field response personnel, the Agency decided to remove the one-pound RQ level from the ignitability and reactivity RQ scales. Government response personnel indicated that releases of less than 10 pounds of ignitable and reactive substances normally would be adequately handled by appropriate local or state response personnel, and they concurred with the Agency's proposal to raise to 10 pounds the minimum reporting level for the ignitability and reactivity RQ scales. Government response personnel, however, objected to raising the minimum reporting level any further. They believed that reporting levels should be kept low to ensure timely reporting of releases and timely government response, if necessary.

EXHIBIT 4—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON REACTIVITY [a]

RQ (pounds)	Reactivity [b]	
	With water	Self-reaction
1	No 1-pound RQs on the basis of reactivity.	No 1-pound RQs on the basis of reactivity
10	Intermes (e.g., Na, CaC_2).	Extreme self-reaction; may cause explosion or detonation.
100	Extreme reaction (e.g., SO_3).	High; may polymerize; requires stabilizer.
1000	High reaction (e.g., oleum).	Moderate; contamination may cause polymerization; no inhibitor required.
5000	Moderate reaction (e.g., NH_4).	Slight; may polymerize with low heat release.

[a] For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102.
[b] Based on heat release.

d. *Chronic Toxicity.* The Agency used data on chronic toxicity (referred to as "other toxic effects" in the May 25, 1983 NPRM) to adjust the statutory RQs for some hazardous substances. For other hazardous substances, data on chronic toxicity were still being evaluated at the time of the May 25, 1983 NPRM. RQs were not adjusted for those substances undergoing evaluation; thus, the statutory RQ applies. In addition, there are a few substances for which an RQ was proposed in the NPRM but for which EPA subsequently determined that further evaluation was necessary. The statutory RQ applies for these substances until a final RQ is promulgated (see section V.F.2. below).

When analyzed for chronic toxicity, substances are assigned scores based on both the minimum effective dose (MED) levels for repeated exposures and the severity of the effects caused by repeated or continuous exposure. The scores are then used to assign RQs. The NPRM described the methodology used (48 FR 23564); Exhibit 5 shows the RQ levels based on chronic toxicity.

EXHIBIT 5.—CATEGORIES FOR REPORTABLE QUANTITY ADJUSTMENTS BASED ON CHRONIC TOXICITY [a]

RQ (pounds)	Composite score
1	81–100
10	41–80
100	21–40
1000	6–20
5000	1–5

[a] For a detailed explanation of the derivation of these categories, see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102.

A number of commenters suggested that chronic toxicity should not be used to determine RQs or should be used only with additional restrictions. These commenters believed that chronic toxicity, which is a function of prolonged exposure, should not be considered because the purpose of the RQ program is to monitor episodic releases. The Agency decided to use chronic toxicity as a criterion in setting RQs because episodic releases which are not rapidly and completely cleaned up may result in repeated or continuous exposure to a toxic substance. Moreover, CERCLA reporting requirements cover both episodic and continuous releases. Continuous releases may also lead to repeated or continuous exposure to toxic substances.

e. *Potential Carcinogenicity.* Today's rule does not use any measure of potential carcinogenicity to adjust RQs. EPA is in the process of developing adjusted RQs for substances which have been identified as potential carcinogens. The statutory RQs for these substances apply while they are being considered for RQ adjustment. Table 302.4 notes those substances which are being evaluated for their relative activity as potential carcinogens (but which may or may not be potential carcinogens).

2. Other Criteria Used to Adjust RQs (BHP)

a. *Use of BHP Criteria.* Twenty commenters supported the use of the natural degradation processes of biodegradation, hydrolysis, and photolysis ("BHP") as additional criteria for adjusting RQs. The BHP criteria are used, where appropriate, to raise RQ values one level from that suggested by the primary criteria analysis. Four commenters opposed the use of BHP to adjust RQs.

The supporting commenters agreed that the above degradation processes tend to reduce the relative potential for harm to public health and welfare and the environment of certain harzardous substance releases. It was seen that taking the environmental fate characteristics of particular substances into account in setting RQ levels was an appropriate method to reduce the overall reporting burden while still adequately protecting public health and welfare and the environment. However, one commenter emphasized that the BHP criteria are a useful RQ adjustment tool only where the associated analysis is not overly complex, expensive, or time-consuming.

Several commenters requested clarification of the methodology used in

applying BHP. The Technical Background Document supporting this rulemaking sets forth in detail the relatively simple, yet scientifically conservative methodology used to apply these criteria. First, several elimination criteria are used to limit the number of substances eligible for the one-level increase based on BHP. The elimination criteria include the following: tendency to bioaccumulate, environmental persistence, the presence of unusual hazards (e.g., high reactivity), the existence of hazardous degradation or transformation products, or a primary criteria RQ already at the maximum assignable level of 5000 pounds. The remaining substances are evaluated for their susceptibility to biodegradation, hydrolysis, and photolysis. As discussed below, the Agency uses ranges of degradation rates sufficient to ensure that the substances selected for the one-level increase in RQ (27 in today's final rule) are in fact relatively degradable.

Two commenters believed that the Agency's evaluation pursuant to the BHP criteria should lead to a downward adjustment if the risk posed by the release of a hazardous substance is increased as a result of biodegradation, hydrolysis, or photolysis (i.e., if the natural degradation processes produce materials in the environment that are more hazardous than the original substance released). The Agency agrees that consideration must be given to the toxicity of the degradation products. Where reaction products more hazardous than the original substance are readily known and identified, the Agency has based the primary criteria RQ of the original substance on the characteristics of the more hazardous reaction products, effectively resulting in a "downward adjustment."

Application of the primary criteria to the reaction products rather than to the original substances occurred in ten cases for the substances assigned final adjusted RQs in this rule. For example, substances known to generate hydrogen sulfide or phosphine upon hydrolysis have been assigned primary criteria RQs on the basis of these reaction products.

The few commenters opposing the use of BHP felt that biodegradation, hydrolysis, and photolysis should be considered by the On-Scene Coordinator in determining the government's response after a release has been reported, but that EPA should not use such processes to alter the initial reporting level suggested by the primary criteria. For the reasons given below, the Agency disagrees.

First, the commenters asserted that biodegradation, hydrolysis, and photolysis should not be applied in the setting of RQs because these processes may not affect the immediate hazard posed by a given release and instead may only reduce the potential long-term dangers of the release. However, EPA has used degradation measures that address both short- and long-term potential hazards. The RQ of a substance is not raised unless (1) the reported biological oxygen demand of the substance over a five-day period at 20 degrees Celsius is at least fifty percent of the theoretical oxygen demand (the stoichiometric quantity of oxygen needed to oxidize a substance completely to carbon dioxide and water), or (2) when subjected to hydrolysis, photolysis, or either process in conjunction with biodegradation, the estimated half-life of the substance is equal to or less than five days.

The primary criteria RQs of four substances (allyl chloride, butylamine, diazinon, and ethyl acrylate) were adjusted upwards in the May 25, 1983 NPRM on the basis of degradation data involving periods greater than five days, because data for shorter periods were unavailable. The Agency has since decided to adjust RQs according to the criteria stated above (i.e., evidence of degradation within five days), to ensure that all substances selected for the one-level increase will tend to degrade rapidly once they are released. Therefore, allyl chloride, butylamine, diazinon, and ethyl acrylate are assigned their primary criteria RQs in today's final rule.

The second major argument raised by the commenters opposed to the use of BHP was that the methods for measuring the occurrence and rate of biodegradation, hydrolysis, and photolysis do not take into account the entire range of environmental conditions that could potentially affect each process. The Agency acknowledges this limitation in its analysis. RQs cannot be designed to account for every environmental condition of each release of a hazardous substance. Instead, each RQ level represents the Agency's best judgment concerning the threshold at which the NRC should be notified.

Although environmental conditions are not considered in the RQ adjustment process, EPA has taken into account certain physical characteristics of substances in adjusting RQs on the basis of biodegradability. The test for biodegradability is performed using a closed container, which may provide misleading data for highly volatile substances that are unlikely to remain in microbe-bearing soil or water. The Agency has therefore elected not to apply the biodegradation criterion to any highly volatile substance (i.e., with a boiling point less than 100 degrees Fahrenheit) unless that substance is also highly water soluble. Highly water soluble substances will tend to be retained in water or in soil (by soil moisture). The primary criteria RQ of acetaldehyde was raised one level under these circumstances; even though the boiling point of acetaldehyde is less than 100 degrees Fahrenheit, the substance is also highly water soluble.

b. Other Criteria Considered and Rejected. In the NPRM preamble, EPA noted that it had considered using volatilization (the process by which a substance vaporizes into the air) as an additional criterion for adjusting RQs, but had rejected it because the hazard posed by a release of a hazardous substance does not necessarily decrease when the substance moves from soil or water into the air. One commenter disagreed with the Agency's decision not to use volatilization, arguing that where a compound is particularly volatile, no response action may be feasible. EPA maintains its earlier position that the movement of a substance between environmental media (from the soil or water into the air) does not necessarily affect the potential hazard. The feasibility of a response is a decision for the On-Scene Coordinator.

c. Broadening the Scope of the BHP Criteria. The NPRM noted, without discussion, that the criteria of biodegradation, hydrolysis, and photolysis were not used to raise RQs based on chronic toxicity, and it did not mention the application of BHP to substances being evaluated for potential carcinogenicity. Several commenters expressed the opinion that BHP should be applied to hazardous substances evaluated for chronic toxicity and/or potential carcinogenicity. They noted that the processes of biodegradation, hydrolysis, and photolysis may, in certain cases, reduce the potential hazard of such substances. EPA agrees that BHP should be applied to those hazardous substances evaluated for chronic toxicity, and the Agency is considering whether to apply BHP to substances evaluated for potential carcinogenicity.

In fact, the Agency has already evaluated BHP with respect to those substances that were analyzed for chronic toxicity. Two substances evaluted for chronic toxicity have had their primary criteria RQs increased one level on the basis of biodegradability: acetonitrile (1000 to 5000 pounds) and methyl ethyl ketone (1000 to 5000 pounds).

A number of commenters argued that RQs should be adjusted more than one RQ level on the basis of the BHP criteria to reflect the speed and completeness with which a substance degrades. In a related suggestion, several commenters requested that EPA develop formal ranking scales for these criteria.

The lack of extensive data and the uncertainty of much of the existing data concerning the environmental fate of various hazardous substances prevent adjustments of more than one level to reflect the speed and completeness with which a substance degrades. The Agency believes that an upward adjustment of one level adequately lessens the reporting burden on the regulated community regarding releases of the 27 substances involved and satisfactorily protects public health and welfare and the environment.

Similar data gaps hinder development of formal ranking scales for the BHP criteria. Moreover, even if adequate data were available, the BHP criteria could not be easily applied through a more formal multi-tier ranking system, for many of the same reasons a hazard index is currently impractical. For example, there is no objective way to determine the proper numerical weights for the different primary and BHP criteria that would be combined in a more formal ranking system. Therefore, the Agency has determined that more formal ranking scales for the application of BHP are not practical at this time. Further refinement of the use of BHP may be undertaken in connection with a future rulemaking.

For a more detailed discussion of the BHP criteria and the problems of combining different criteria ranking, see the discussion of hazard indices in the May 25, 1983 NPRM at 48 FR 23566–23569, and the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

d. Additional Data Suggested. Some commenters suggested specific data sources for analysis of BHP. EPA used one of these sources in making the adjustments proposed in the May 25, 1983 NPRM. On the basis of data contained in the other available sources, the RQs of acetonitrile and furfural have each been raised one level to 5000 pounds.

3. Additional Criteria Considered but Not Currently Used To Adjust RQs

a. Release History and Release Potential. Several comments were received on the use of release history and release potential as criteria for adjusting RQs. EPA agrees with those commenters who stated that the manner in which releases have been handled in the past under different circumstances is not directly related to whether a particular release in the future will pose a threat to public health or welfare or the environment. The potential hazards of each release must be considered on a case-by-case basis. For this reason, and because of the data problems mentioned in the NPRM, the Agency has decided not to adjust RQs on the basis of release history and release potential at this time.

b. Corrosivity. Two commenters supported the use of corrosivity as a criterion for adjusting RQs. A major difficulty in applying corrosivity as a criterion is developing a scale relating corrosivity to RQs that is useful for all CERCLA hazardous substances. None of the comments included a scale that the Agency considered adequate, and EPA has not identified a corrosivity scale that would be generally practicable. Therefore, corrosivity will not be used at this time as a criterion for adjusting RQs.

E. Future RQ Adjustments

1. Interim RQs

As noted below in section V.G., adjusted RQs for 358 of the 698 CERCLA hazardous substances do not appear in today's rule. One commenter urged EPA to publish proposed RQs for these substances as quickly as possible. Today's Federal Register contains an NPRM proposing RQs for 105 of the 358 substances not receiving an adjusted RQ in today's rule. EPA will propose RQ adjustments for the remaining substances as soon as sound technical evaluations for them are complete.

Another commenter indicated that potential delays in performing such evaluations could result in an unfair reporting burden for many substances that will temporarily retain their present RQs. The commenter therefore recommended that EPA propose interim RQ adjustments for such substances based on existing information and scientific judgments.

EPA disagrees. Proposing new temporary RQs for hazardous substances would be time-consuming in itself, and, because the temporary RQs would be based on incomplete analysis, they would be unfair to the regulated community and the general public. Interim levels would still need to be changed when RQ evaluations are completed. EPA will move expeditiously to complete its evaluations of the remaining CERCLA substances, but will not establish a set of interim RQs.

2. New Data

One commenter requested that provisions be specified for allowing RQ changes when new information relating to the primary criteria or BHP becomes available. This commenter felt that EPA should acknowledge the role of interested parties in effecting appropriate revisions to the final RQs and should clarify procedures for the submission of new data.

EPA welcomes the submission of new data concerning the primary criteria and BHP at any time. RQs are based on the best data available at the time of promulgation, but they are subject to change on the basis of new information. The Agency will periodically review submitted data to ensure that RQs are not based on superseded information.

F. Application of the Methodology and Criteria

1. Introduction

Many commenters voiced general support for EPA's choice of methodology and the results of the methodology. These commenters stated that the proposed RQ adjustments would increase the efficiency of the Superfund program, reduce burdens on the regulated community, and allow EPA to concentrate its resources on the releases which pose the potentially greatest threat to public health or welfare or the environment.

The remainder of this section responds briefly to comments received by the Agency concerning the RQs of various specific substances and discusses in greater detail the comments received concerning PCBs and unlisted hazardous wastes.

2. Comments on RQs of Specific Substances

The Agency received comments from over 100 commenters concerning the RQs of 90 individual substances and 12 groups of waste streams. The majority of these comments suggested raising the RQs for specific substances.

One commenter recommended several RQ changes on the basis of aquatic toxicity data recently compiled by the U.S. Department of the Interior. The Agency has reevaluated the RQs of several hazardous substances in light of these new data, and four of the substances singled out by the commenter have received new adjusted RQs. In addition, the new data were used to alter the proposed adjusted RQs of 12 other substances. Exhibit 6 lists the 16 substances which received new

adjusted RQs on the basis of the new aquatic toxicity data. Statements by the same commenter contributed to a reexamination of the mammalian toxicity data for phosgene and the lowering of the phosgene RQ from 1000 to 10 pounds.

EXHIBIT 6.—SUBSTANCES WHICH RECEIVED FINAL ADJUSTED RQS DIFFERENT FROM PROPOSED ADJUSTED RQS ON THE BASIS OF NEW AQUATIC TOXICITY DATA

Substance	Proposed RQ	Final RQ
Aldicarb	10	1
4-Bromophenyl phenyl ether	10	100
Butyl benzyl phthalate	5000	100
N-Butyl phthalate	100	10
Dichlobenil	1000	100
4,6-Dinitro-o-cresol and salts	100	10
Dinitrophenol (and 2,5- and 2,6-isomers)	100	10
2,4-Dinitrophenol	100	10
Diethyl phthalate	100	1000
Kelthane	5000	10
Methomyl	1000	100
Pyrethrins	1000	1
2,4,5-T	100	1000
2,4,5-T Amines	100	5000
2,4,5-T Esters	100	1000
2,4,5-T Salts	100	1000

Some commenters suggested RQ changes for particular substances on the basis of volatility or particular incidents. Similarly, one commenter proposed new RQs for several waste streams based on the public impact of past releases of these wastes. However, as discussed in previous sections, neither volatility nor release history are currently being used to adjust RQs. The RQs of these substances and waste streams will therefore not be changed.

Commenters suggested raising the RQs of four substances on the basis of biodegradability. Two of these substances—crotonaldehyde and pentachlorophenol—have already been examined for biodegradability and been found not to meet the criteria for an upward RQ adjustment. EPA has reexamined the third substance, ammonia, on the basis of both chronic toxicity and BHP (although ammonia is volatile, it is also highly water soluble) and has proposed for ammonia an adjusted RQ of 100 pounds in the NPRM published in today's **Federal Register**. EPA has adjusted the RQ of the fourth substance, methyl ethyl ketone, from 1000 pounds to 5000 pounds on the basis of biodegradability.

Several commenters suggested that the RQs of metals might be based on the metal compound RQs (for soluble salts) that were assigned under CWA section 311. However, solid metal powders do not necessarily have the same effects as their soluble salts, and, therefore, the same RQs would not necessarily apply.

Many commenters argued that the RQ of ammonia should be raised from its current level of 100 pounds under the CWA; they cited the volatility of ammonia, the fact that most ammonia releases occur into air, the fact that the aquatic toxicity of the ammonium ion is much lower than that of ammonia itself, and the biodegradability of ammonia. It was also suggested that the 100-pound RQ would create a burdensome reporting requirement. Ammonia has undergone reevaluation since the May 25, 1983 NPRM; based on this reevaluation, the NPRM in today's **Federal Register** proposes to retain the 100-pound RQ for ammonia under CERCLA. The 100-pound RQ established under the CWA applies until a final adjusted RQ is promulgated.

3. PCBs

In the May 25, 1983 NPRM, the Agency proposed to lower the RQ for PCBs to one pound from the original 10-pound level set under section 311 of the Clean Water Act. The lower RQ was based on more recent aquatic toxicity data. The Agency acknowledged that because of the ubiquitous use of PCBs, it was concerned about the increased notification burden that might result from this proposed reduction of the PCB RQ. Comments were requested on these issues.

All of the comments received on this issue objected to the Agency's proposal to reduce the PCB RQ to one pound. The major concern of the commenters was that the one-pound RQ would appreciably increase the number of reportable releases and the burden on the regulated community while negligibly improving the protection of public health or welfare or the environment. Most commenters argued that restrictions on the location of equipment containing PCBs, current PCB management regulations under TSCA, and existing industry good housekeeping practices with regard to PCBs make exposure to PCBs unlikely.

Several commenters also expressed concern that significant over-reporting may dramatically increase the government's administrative costs for the notification program. Other commenters suggested alternative methods for estimating the number of PCB releases of different quantities for the purpose of calculating the economic effects of changing the PCB RQ.

Several commenters questioned the validity of the aquatic toxicity data used by the Agency and the manner in which it was employed to set the proposed RQ. Also, two commenters cited data indicating that PCBs do not pose any serious threats to human health, even though the Agency had explained that the proposed PCB RQ was based on aquatic toxicity.

After considering the comments received on the PCB RQ, the Agency has decided to defer any promulgation of a final PCB RQ until a future rulemaking. The Agency is currently evaluating PCBs to determine whether the RQ should be based on the primary criterion of potential carcinogenicity. Until a final RQ is promulgated for PCBs, the existing RQ of 10 pounds (established under the CWA) will remain in effect.

4. Unlisted RCRA Wastes (ICRE Wastes)

CERCLA section 101(14)(c) includes in the definition of hazardous substances "any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act. . . ." Therefore, solid wastes, as defined by RCRA, which exhibit one or more of the characteristics of ignitability, corrosivity, reactivity, or extraction procedure toxicity (ICRE) are considered CERCLA hazardous substances, even though they are not specifically listed under RCRA. The RQs of ICRE wastes are listed in Table 302.4 under "Unlisted Hazardous Wastes." These RQs apply only to substances that are wastes prior to being released (see section IV.D.1. above). The RQ for ignitable, corrosive, or reactive unlisted wastes is 100 pounds, and unlisted hazardous wastes that exhibit extraction procedure (EP) toxicity have the reportable quantities listed in Table 302.4.

Some commenters suggested changing the RQ established for ignitable, corrosive, or reactive wastes. The comments that suggested raising the RQ for ICR wastes were based mainly on the assumption that a government response would seldom be required for releases of these wastes smaller than 1000 pounds. However, each of these suggestions assumes some specific scenario and ignores the fact that an RQ only reflects the Agency's judgment that the federal government should be notified of releases to which a response might be necessary. Especially when releases are of unknown mixtures, conservatism is a sensible approach; therefore, the RQ is designed to cover all hazardous substances potentially present. With this in mind, the RQ for ICR wastes will remain as proposed at 100 pounds.

Two commenters suggested that the releaser be given the opportunity to report releases of reactive or ignitable wastes based on the primary criteria RQ

scales of Exhibits 3 and 4 in the NPRM (48 FR 23563). However, simply testing for the reactivity or ignitability of the waste does not further identify the composition of the waste; therefore, the waste is still unlisted. The primary criteria are designed to apply only to specific substances. Moreover, the Agency has not determined that listed and unlisted wastes pose similar potential hazards.

If an unlisted ICRE waste is analyzed and the concentrations of all of its hazardous components are identified, the waste is no longer an unlisted waste, but one characterized by its components. The specific substances present will then determine the applicable RQ in accordance with the Clean Water Act mixture rule (see section IV.D.3.b. above). For example, if a waste is known to be corrosive because of its sulfuric acid content, and no other CERCLA hazardous substances or other ICRE characteristics are present, the RQ of the waste is reached when 1000 pounds of sulfuric acid is released. If the aforementioned waste is a 25 percent solution of sulfuric acid in water, the RQ of the waste is not reached until 4000 pounds of the waste is released.

Several commenters suggested that the RQ for an EP toxic waste should apply to the EP toxic constituents of the waste rather than to the waste itself. If the composition of the waste stream is completely known, the waste is no longer an unlisted waste, and the mixture rule will apply. If the hazardous constituents of the waste and their concentrations are not completely known, however, it is impossible to apply the mixture rule as these commenters suggested. Unlisted wastes that exhibit EP toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based; the RQ given applies to the waste itself, not merely to the toxic constituent. A sentence has been added to § 302.5(b) to clarify this point.

G. Summary of RQ Changes From the May 25, 1983 NPRM

The May 25, 1983 NPRM proposed raising the RQs for 177 CERCLA substances (including 15 waste streams) and lowering the RQs for 28 substances, leaving the RQs of 182 substances (including 11 waste streams) at their previous levels. On the basis of new aquatic toxicity data located by a commenter, the proposed adjusted RQs of 16 substances have been changed. Exhibit 6 lists these 16 substances. Similarly, new data on BHP has led to a one-level increase in the adjusted RQ of furfural, and a reevaluation of mammalian toxicity data has led to a decrease in the phosgene RQ from 1000 to 10 pounds. Applying BHP to substances exhibiting chronic toxicity has raised the adjusted RQs of two other substances. The decision not to apply BHP to substances for which five-day degradation rates are insufficient to justify a one-level increase in RQ has resulted in a lower RQ for four substances. The use of data overlooked at the time of the NPRM has affected the adjusted RQs of four additional substances.

The NPRM proposed adjusted RQs for 47 substances (including 6 waste streams) that were subsequently selected for chronic toxicity and/or potential carcinogenicity assessment; these 47 substances will therefore remain at their statutory RQ levels pending future RQ adjustments. Of these 47 substances, however, 23 (including 6 waste streams) already had RQs of one pound on the basis of one or more of the other primary criteria. Further evaluation of chronic toxicity or potential carcinogenicity is unlikely to change these one-pound RQs, because there is no RQ level less than one pound and the analysis of the other primary criteria indicates that a one-pound RQ is appropriate (although new data on the primary criteria or on BHP may suggest otherwise).

Table 302.4 in the May 25, 1983 NPRM incorrectly described eighteen substances as having one-pound statutory RQs under CERCLA; however, these substances had been assigned RQs under the Clean Water Act (40 CFR Parts 116 and 117.3). Exhibit 7 lists the eighteen substances and their correct statutory and (where appropriate) final RQs.

In sum, final adjusted RQs now appear for 319 of 606 specific substances and 21 of 90 waste streams. Statutory RQs appear for the remaining substances.[4]

For further information concerning these RQ changes, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, available for inspection at Room S-325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

[4] Adjustments have been proposed for 105 of these substances in an NPRM that appears in today's Federal Register. These substances are noted by two number symbols (**) in the "Pounds (Kg)" column of Table 302.4.

H. Retention of Statutory RQ for Methyl Isocyanate

The December 4, 1984 release of methyl isocyanate (MIC) in Bhopal, India caused major loss of human life. This event pointed out the extraordinarily serious nature of MIC's acute toxicity. At this point, EPA is withdrawing its proposal to amend the RQ for MIC and is requesting further data on its toxicity.

The one-pound statutory reporting requirement will continue to apply to releases of this hazardous substance until a rule adjusting its RQ is promulgated.

EXHIBIT 7.—SUBSTANCES WITH RQs ASSIGNED UNDER THE CLEAN WATER ACT THAT THE MAY 25, 1983 NPRM LISTED AS HAVING ONE-POUND STATUTORY RQs UNDER CERCLA

Substance	Correct CWA section 311 RQ	Final RQ
Aroclor 1016	10	*10
Aroclor 1221	10	*10
Aroclor 1232	10	*10
Aroclor 1242	10	*10
Aroclor 1248	10	*10
Aroclor 1254	10	*10
Aroclor 1260	10	*10
o-Dichlorobenzene	100	100
p-Dichlorobenzene	100	100
1,2-Dichloropropane	5000	1000
1,3-Dichloropropene	[illegible]	100
2,4-Dinitrophenol	1000	10
2,4-Dinitrotoluene	1000	*1000
2,6-Dinitrotoluene	1000	*1000
2-Nitrophenol	1000	100
4-Nitrophenol	1000	100
2,4,5-Trichlorophenol	10	*10
2,4,6-Trichlorophenol	10	*10

* These substances were selected for evaluation of chronic toxicity and/or potential carcinogenicity and adjusted RQs will be proposed for them in a future rulemaking.

I. Table 302.4

1. Introduction

Table 302.4 lists all of the CERCLA hazardous substances together with their adjusted and statutory RQs. The first part of the table lists the individual hazardous substances regulated under the statutes cited in CERCLA section 101(14). The generic groups of chemicals designated under CWA section 307(a), such as "SILVER AND COMPOUNDS," are printed in capital letters and have no RQ assigned to them. These generic groups of chemicals could potentially encompass hundreds of specific compounds with varying toxicities; it is therefore not appropriate to establish a single RQ for each generic group. Although CERCLA notification requirements apply only to specific compounds for which RQs are listed in Table 302.4, CERCLA liability may still attach to releases of specific compounds that are within one of the generic

listings but not specifically listed in Table 302.4.

The second part of the table contains the 90 hazardous waste streams designated under 40 CFR 261.31 and 261.32 (RCRA F and K lists). The Agency designated many of these waste streams as hazardous under RCRA because of the presence of specific hazardous constituents in the waste streams as set forth in Appendix VII of 40 CFR Part 261. The Agency is assigning RQs for these waste streams based on these hazardous constituents. The primary criteria and BHP, discussed above, were applied to each hazardous constituent in order to derive an RQ value. If a waste stream in 40 CFR 261.31 and 261.32 has more than one hazardous constituent, the RQ assigned to the particular waste stream represents the lowest RQ associated with the hazardous constituents present in that waste stream.

2. Minor Changes

In addition to the changes in proposed RQs described above in Section G, the following minor changes in Table 302.4 have been made:

(1) The listing for Chromium D007, one of the constituents of the characteristic of EP toxicity under the "Unlisted Hazardous Wastes," will now be "total chromium" (although it may be changed to hexavalent chromium at some time in the future under proposed amendments to RCRA). It was listed incorrectly as hexavalent chromium (VI) in Table 302.4 in the NPRM.

(2) The RCRA waste numbers for the characteristics of ignitability (D001), corrosivity (D002), and reactivity (D003) are now included in Table 302.4. They were omitted from Table 302.4 in the NPRM. In addition, the waste identification numbers for the constituents of the characteristic of EP toxicity, and the waste identification numbers for wastes F001 through K106, which were also omitted in the NPRM, are now properly included in the column for RCRA Waste Numbers in Table 302.4.

(3) In response to the suggestion of a commenter, the Table now notes that the RQ for asbestos is limited to friable forms of the substance; reporting of releases of other forms is not required, although other CERCLA liabilities may attach.

VI. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

In the May 25, 1983 NPRM, EPA requested comments on its proposal to make RQs adjusted under CERCLA the applicable RQs for purposes of reporting discharges of hazardous substances pursuant to section 311 of the Clean Water Act. Making RQs the same for substances listed under both statutes would make the notification requirements for the substances involved consistent and less confusing for the regulated community.

Of nine comments received on the issue of adjusting CWA RQs, five were completely in favor of the Agency's proposal and agreed that it would alleviate much confusion. However, four comments indicated that such adjustment should proceed only for those substances for which CWA RQs would be raised. These commenters claimed that CWA RQs are based on aquatic toxicity, while CERCLA RQs must consider releases into other media. Thus, they reasoned, lowering CWA RQs based on criteria used to set CERCLA RQs would be unfair.

EPA does not feel that different RQs under the two statutes would serve any purpose. Even if the CWA RQs were not lowered, releases of CWA substances would still be reportable when released at CERCLA RQ levels because CERCLA's scope and jurisdiction fully encompass all hazardous substance discharges reportable under CWA. The primary purpose of equalizing RQs under CERCLA and the CWA is to make the task of reporting releases less confusing for the regulated community.

VII. Summary of Supporting Analyses

A. Classification and Regulatory Impact Analysis

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget. According to the E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Regulatory Impact Analysis, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, shows that today's regulation is "non-major" because it results in a net cost savings of approximately $17 million annually, of which about $2.6 million annually will be saved by the regulated community (the remainder to be saved by the government).[5]

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." Chapter 7 of the Regulatory Impact Analysis estimates the potential impact of today's regulation on a model small chemical firm. The chapter first estimates an upper-bound total annual cost of compliance by a small firm at $5,604 (in 1983 dollars) and then compares this figure to other measures of a small firm's economic status. Even with this extremely conservative estimate, the total cost per year of compliance is a negligible percentage of both the pre-tax annual cash flow and equity of the model small firm—a fraction of one percent for both measures. EPA therefore certifies that this regulation will not have a significant impact on a substantial number of small entities, and thus no Regulatory Flexibility Analysis is needed.

C. Information Impact Analysis

EPA anticipates that RQ adjustments will change the paperwork burden imposed on the regulated community for information collection associated with reporting releases. As estimated in the Regulatory Impact Analysis, today's regulation will reduce the paperwork burden of notification and recordkeeping on private parties by almost 50,000 hours.

The information collection requirements contained in this rule are covered by the U.S. Coast Guard submission for information collection by the National Response Center. The requirements have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2115–0137.

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping

[5] These figures do not include the costs or benefits associated with the continuous release exemption.

requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: February 13, 1985.

Lee M. Thomas,

Administrator.

1. 40 CFR is amended by adding Part 302 as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

Sec.

302.1 Applicability.
302.2 Abbreviations.
302.3 Definitions.
302.4 Designation of hazardous substances.
302.5 Determination of reportable quantities.
302.6 Notification requirements.
302.7 Penalties.

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC 9602; Sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 USC 1321 and 1361.

§ 302.1 Applicability.

This regulation designates under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act") those substances in the statutes referred to in section 101(14) of the Act, identifies reportable quantities for these substances, and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act.

§ 302.2 Abbreviations.

CASRN = Chemical Abstracts Service Registry Number
RCRA = Resource Conservation and Recovery Act of 1976, as amended
lb = pound
kg = kilogram
RQ = reportable quantity

§ 302.3 Definitions.

As used in this part, all terms shall have the meaning set forth below:

"The Act", "CERCLA", or "Superfund" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96–510);

"Administrator" means the Administrator of the United States Environmental Protection Agency ("EPA");

"consumer product" shall have the meaning stated in 15 U.S.C. 2052;

"environment" means (1) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Fishery Conservation and Management Act of 1976, and (2) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States;

"facility" means (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (2) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel;

"hazardous substance" means any substance designated pursuant to 40 CFR 302;

"hazardous waste" shall have the meaning provided in 40 CFR 261.3;

"navigable waters" or "navigable waters of the United States means waters of the United States, including the territorial seas;

"offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

"onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or non-navigable waters within the United States;

"person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body;

"release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (1) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (2) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (3) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act, or for the purposes of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978, and (4) the normal application of fertilizer;

"reportable quantity" means that quantity, as set forth in this part, the release of which requires notification pursuant to this part;

"United States" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction; and

"vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

§ 302.4 Designation of hazardous substances.

(a) *Listed hazardous substances.* The elements and compounds and hazardous wastes appearing in Table 302.4 are designated as hazardous substances under section 102(a) of the Act.

(b) *Unlisted hazardous substances.* A solid waste, as defined in 40 CFR 261.2, which is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), is a hazardous substance under section 101(14) of the Act if it exhibits any of the characteristics identified in 40 CFR 261.20 through 261.24.

Table 302.4—List of Hazardous Substances and Reportable Quantities

Note—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The

"RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity for each hazardous substance in pounds and kilograms.

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Acenaphthene	83329		1*	2		X	1## (0.454)
Acenaphthylene	208968		1*	2		X	1## (0.454)
Acetaldehyde	75070	Ethanal	1000	1,4	U001	C	1000 (454)
Acetaldehyde, chloro-	107200	Chloroacetaldehyde	1*	4	P023	C	1000 (454)
Acetaldehyde, trichloro-	75876	Chloral	1*	4	U034	X	1#(0.454)
Acetamide, N-(aminothioxomethyl)-	591082	1-Acetyl-2-thiourea	1*	4	P002	C	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	62442	Phenacetin	1*	4	U187	X	1# (0.454)
Acetamide, N-9H-fluoren-2-yl-	53963	2-Acetylaminofluorene	1*	4	U005	X	1# (0.454)
Acetamide, 2-fluoro-	640197	Fluoroacetamide	1*	4	P057	B	100(45.4)
Acetic acid	64197		1000	1		D	5000 (2270)
Acetic acid, ethyl ester	141786	Ethyl acetate	1*	4	U112	D	5000 (2270)
Acetic acid, fluoro-, sodium salt	62748	Fluoroacetic acid, sodium salt	1*	4	P058	A	10 (4.54)
Acetic acid, lead salt	301042	Lead acetate	5000	1,4	U144	D	5000# (2270)
Acetic acid, thallium(I) salt	563688	Thallium(I) acetate	1*	4	U214	X	1## (0.454)
Acetic anhydride	108247		1000	1		D	5000 (2270)
Acetimidic acid,N-[(methylcarbamoyl) oxy]thio-, methyl ester.	16752775	Methomyl	1*	4	P066	B	100 (45.4)
Acetone	67641	2-Propanone	1*	4	U002	D	5000 (2270)
Acetone cyanohydrin	75865	2-Methyllactonitrile Propanenitrile, 2-hydroxy-2-methyl-	10	1,4	P069	A	10 (4.54)
Acetonitrile	75058	Ethanenitrile	1*	4	U003	D	5000 (2270)
3-(alpha-Acetonylbenzyl)- 4-hydroxycoumarin and salts	81812	Warfarin	1*	4	P001	B	100 (45.4)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	4	U005	X	1# (0.454)
Acetyl bromide	506967		5000	1		D	5000 (2270)
Acetyl chloride	75365	Ethanoyl chloride	5000	1,4	U006	D	5000 (2270)
1-Acetyl-2-thiourea	591082	Acetamide, N-(aminothioxomethyl)-	1*	4	P002	C	1000 (454)
Acrolein	107028	2-Propenal	1	1,2,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,4	U009	B	100# (45.4)
Adipic acid	124049		5000	1		D	5000 (2270)
Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-	148823	Melphalan	1*	4	U150	X	1# (0.454)
Aldicarb	116063	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino) carbonyl]oxime.	1*	4	P070	X	1 (0.454)
Aldrin	309002	1,2,3,4,10-10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, exo- dimethanonaphthalene.	1	1,2,4	P004	X	1# (0.454)
Allyl alcohol	107186	2-Propen-1-ol	100	1,4	P005	B	100 (45.4)
Allyl chloride	107051		1000	1		C	1000 (454)
Aluminum phosphide	20859738		1*	4	P006	B	100 (45.4)
Aluminum sulfate	10043013		5000	1		D	5000 (2270)
5-(Aminomethyl)-3-isoxazolol	2763964	3(2H)-Isoxazolone, 5-(aminomethyl)-	1*	4	P007	C	1000 (454)
4-Aminopyridine	504245	4-Pyridinamine	1*	4	P008	C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Amitrole	61825	1H-1,2,4-Triazol-3-amine	1*	4	U011	X	1# (0.454)
Ammonia	7664417		100	1		B	100## (45.4)
Ammonium acetate	631618		5000	1		D	5000 (2270)
Ammonium benzoate	1863634		5000	1		D	5000 (2270)
Ammonium bicarbonate	1066337		5000	1		D	5000 (2270)
Ammonium bichromate	7789095		1000	1		C	1000# (454)
Ammonium bifluoride	1341497		5000	1		D	5000## (2270)
Ammonium bisulfite	10192300		5000	1		D	5000 (2270)
Ammonium carbamate	1111780		5000	1		D	5000 (2270)
Ammonium carbonate	506876		5000	1		D	5000 (2270)
Ammonium chloride	12125029		5000	1		D	5000 (2270)
Ammonium chromate	7788989		1000	1		C	1000# (454)
Ammonium citrate, dibasic	3012655		5000	1		D	5000 (2270)
Ammonium fluoborate	13826830		5000	1		D	5000 (2270)
Ammonium fluoride	12125018		5000	1		B	100 (45.4)
Ammonium hydroxide	1336216		1000	1		C	1000 (454)
Ammonium oxalate	6009707 5972736 14258492		5000	1		D	5000 (2270)
Ammonium picrate	131748	Phenol, 2,4,6-trinitro-, ammonium salt	1*	4	P009	A	10 (4.54)
Ammonium silicofluoride	16919190		1000	1		C	1000 (454)
Ammonium sulfamate	7773060		5000	1		D	5000 (2270)
Ammonium sulfide	12135761		5000	1		B	100 (45.4)
Ammonium sulfite	10196040		5000	1		D	5000 (2270)
Ammonium tartrate	14307436 3164292		5000	1		D	5000 (2270)
Ammonium thiocyanate	1762954		5000	1		D	5000 (2270)
Ammonium thiosulfate	7783188		5000	1		D	5000 (2270)
Ammonium vanadate	7803556	Vanadic acid, ammonium salt	1*	4	P119	C	1000 (454)
Amyl acetate iso- sec- tert-	628637 123922 626380 625161		1000	1		D	5000 (2270)
Aniline	62533	Benzenamine	1000	1,4	U012	D	5000 (2270)
Anthracene	120127		1*	2		X	1## (0.454)
Antimony 11	7440360		1*	2		X	1## (0.454)
ANTIMONY AND COMPOUNDS			1*	2			••
Antimony pentachloride	7647189		1000	1		C	1000 (454)
Antimony potassium tartrate	28300745		1000	1		B	100 (45.4)
Antimony tribromide	7789619		1000	1		C	1000 (454)
Antimony trichloride	10025919		1000	1		C	1000(454)
Antimony trifluoride	7783564		1000	1		C	1000 (454)
Antimony trioxide	1309644		5000	1		C	1000 (454)
Aroclor 1016	12674112	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1221	11104282	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1232	11141165	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1242	53469219	PolychlorinatedBiphenyls (PCBs)	10	1,2		A	10# (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Aroclor 1248	12672296	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1254	11097691	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Aroclor 1260	11096825	Polychlorinated Biphenyls (PCBs)	10	1,2		A	10# (4.54)
Arsenic ††	7440382		1*	2,3		X	1#(0.454)
Arsenic acid	1327522 7778394		1*	4	P010	X	1# (0.454)
ARSENIC AND COMPOUNDS			1*	2			**
Arsenic disulfide	1303328		5000	1		D	5000# (2270)
Arsenic(III) oxide	1327533	Arsenic trioxide	5000	1,4	P012	D	5000# (2270)
Arsenic(V) oxide	1303282	Arsenic pentoxide	5000	1,4	P011	D	5000#(2270)
Arsenic pentoxide	1303282	Arsenic(V) oxide	5000	1,4	P011	D	5000# (2270)
Arsenic trichloride	7784341		5000	1		D	5000# (2270)
Arsenic trioxide	1327533	Arsenic(III) oxide	5000	1,4	P012	D	5000# (2270)
Arsenic trisulfide	1303339		5000	1		D	5000# (2270)
Arsine, diethyl-	692422	Diethylarsine	1*	4	P038	X	1# (0.454)
Asbestos †††	1332214		1*	2,3		X	1# (0.454)
Auramine	492808	Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-	1*	4	U014	X	1# (0.454)
Azaserine	115026	L-Serine, diazoacetate (ester)	1*	4	U015	X	1# (0.454)
Aziridine	151564	Ethylenimine	1*	4	P054	X	1# (0.454)
Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy)methyl]- 1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-.	50077	Mitomycin C	1*	4	U010	X	1# (0.454)
Barium cyanide	542621		10	1,4	P013	A	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56495	3-Methylcholanthrene	1*	4	U157	X	1# (0.454)
Benz[c]acridine	225514	3,4-Benzacridine	1*	4	U016	X	1# (0.454)
3,4-Benzacridine	225514	Benz[c]acridine	1*	4	U016	X	1# (0.454)
Benzal chloride	98873	Benzene, dichloromethyl-	1*	4	U017	D	5000 (2270)
Benz[a]anthracene	56553	1,2-Benzanthracene Benzo[a]anthracene	1*	2,4	U018	X	1# (0.454)
1,2-Benzanthracene	56553	Benz[a]anthracene Benzo[a]anthracene	1*	2,4	U018	X	1# (0.454)
1,2-Benzanthracene, 7,12-dimethyl-	57976	7,12-Dimethylbenz[a]anthracene	1*	4	U094	X	1# (0.454)
Benzenamine	62533	Aniline	1000	1,4	U012	D	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis(N,N-dimethyl-	492808	Auramine	1*	4	U014	X	1# (0.454)
Benzenamine, 4-chloro-	106478	p-Chloroaniline	1*	4	P024	C	1000 (454)
Benzenamine, 4-chloro-2-methyl-,hydrochloride	3165933	4-Chloro-o-toluidine, hydrochloride	1*	4	U049	X	1# (0.454)
Benzenamine, N,N-dimethyl-4-phenylazo-	60117	Dimethylaminoazobenzene	1*	4	U093	X	1# (0.454)
Benzenamine, 4,4'-methylenebis(2-chloro-	101144	4,4'-Methylenebis(2-chloroaniline)	1*	4	U158	X	1# (0.454)
Benzenamine, 2-methyl-, hydrochloride	636215	o-Toluidine hydrochloride	1*	4	U222	X	1# (0.454)
Benzenamine, 2-methyl-5-nitro-	99558	5-Nitro-o-toluidine	1*	4	U181	X	1# (0.454)
Benzenamine, 4-nitro-	100016	p-Nitroaniline	1*	4	P077	D	5000 (2270)
Benzene	71432		1000	1,2,3,4	U019	C	1000# (454)
Benzene, 1-bromo-4-phenoxy-	101553	4-Bromophenyl phenyl ether	1*	2,4	U030	B	100 (45.4)
Benzene, chloro-	108907	Chlorobenzene	100	1,2,4	U037	B	100 (45.4)
Benzene, chloromethyl-	100447	Benzyl chloride	100	1,4	P028	B	100# (45.4)
Benzene, 1,2-dichloro-	95501	1,2-Dichlorobenzene o-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Benzene, 1,3-dichloro-	541731	1,3-Dichlorobenzene m-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
Benzene, 1,4-dichloro-	106467	1,4-Dichlorobenzene p-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
Benzene, dichloromethyl-	98873	Benzal chloride	1*	4	U017	D	5000 (2270)
Benzene, 2,4-diisocyanatomethyl-	584849 91087 26471625	Toluene diisocyanate	1*	4	U223	B	100 (45.4)
Benzene, dimethyl-	1330207	Xylene	1000	1,4	U239	C	1000 (454)
m-	108383	m-					
o-	95476	o-					
p-	106423	p-					
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,4	U127	X	1# (0.454)
Benzene, hexahydro-	110827	Cyclohexane	1000	1,4	U056	C	1000 (454)
Benzene, hydroxy-	108952	Phenol	1000	1,2,4	U188	C	1000## (454)
Benzene, methyl-	108883	Toluene	1000	1,2,4	U220	C	1000 (454)
Benzene, 1-methyl-2,4-dinitro-	121142	2,4-Dinitrotoluene	1000	1,2,4	U105	C	1000# (454)
Benzene, 1-methyl-2,6-dinitro-	606202	2,6-Dinitrotoluene	1000	1,2,4	U106	C	1000# (454)
Benzene, 1,2-methylenedioxy-4-allyl-	94597	Safrole	1*	4	U203	X	1# (0.454)
Benzene, 1,2-methylenedioxy-4-propenyl-	120581	Isosafrole	1*	4	U141	X	1# (0.454)
Benzene, 1,2-methylenedioxy-4-propyl-	94586	Dihydrosafrole	1*	4	U090	X	1# (0.454)
Benzene, 1-methylethyl-	98828	Cumene	1*	4	U055	D	5000 (2270)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,4	U169	C	1000 (454)
Benzene, pentachloro-	608935	Pentachlorobenzene	1*	4	U183	X	1## (0.454)
Benzene, pentachloronitro-	82688	Pentachloronitrobenzene	1*	4	U185	X	1# (0.454)
Benzene, 1,2,4,5-tetrachloro-	95943	1,2,4,5-Tetrachlorobenzene	1*	4	U207	D	5000 (2270)
Benzene, trichloromethyl-	98077	Benzotrichloride	1*	4	U023	X	1# (0.454)
Benzene, 1,3,5-trinitro-	99354	sym-Trinitrobenzene	1*	4	U234	X	1## (0.454)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	510156	Ethyl 4,4'-dichlorobenzilate	1*	4	U038	X	1# (0.454)
1,2-Benzenedicarboxylic acid anhydride	85449	Phthalic anhydride	1*	4	U190	D	5000 (2270)
1,2-Benzenedicarboxylic acid,[bis(2-ethylhexyl)] ester	117817	Bis(2-ethylhexyl)phthalate	1*	2,4	U028	X	1# (0.454)
1,2-Benzenedicarboxylic acid,dibutyl ester	84742	n-Butyl phthalate Dibutyl phthalate Di-n-butyl phthalate	100	1,2,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid,diethyl ester	84662	Diethyl phthalate	1*	2,4	U088	C	1000 (454)
1,2-Benzenedicarboxylic acid,dimethyl ester	131113	Dimethyl phthalate	1*	2,4	U102	D	5000 (2270)
1,2-Benzenedicarboxylic acid,di-n-octyl ester	117840	Di-n-octyl phthalate	1*	2,4	U107	D	5000 (2270)
1,3-Benzenediol	108463	Resorcinol	1000	1,4	U201	D	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	51434	Epinephrine	1*	4	P042	C	1000 (454)
Benzenesulfonic acid chloride	98099	Benzenesulfonyl chloride	1*	4	U020	B	100 (45.4)
Benzenesulfonyl chloride	98099	Benzenesulfonic acid chloride	1*	4	U020	B	100 (45.4)
Benzenethiol	108985	Thiophenol	1*	4	P014	B	100 (45.4)
Benzidine	92875	(1,1'-Biphenyl)-4,4'diamine	1*	2,4	U021	X	1# (0.454)
1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	81072	Saccharin and salts	1*	4	U202	X	1# (0.454)
Benzo[a]anthracene	56553	Benz[a]anthracene 1,2-Benzanthracene	1*	2,4	U018	X	1# (0.454)
Benzo[b]fluoranthene	205992		1*	2		B	1# (0.454)
Benzo(k)fluoranthene	207089		1*	2		X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Benzo[j,k]fluorene	206440	Fluoranthene	1*	2,4	U120	X	1## (0.454)
Benzoic acid	65850		5000	1		D	5000 (2270)
Benzonitrile	100470		1000	1		D	5000 (2270)
Benzo[ghi]perylene	191242		1*	2		X	1## (0.454)
Benzo[a]pyrene	50328	3,4-Benzopyrene	1*	2,4	U022	X	1# (0.454)
3,4-Benzopyrene	50328	Benzo[a]pyrene	1*	2,4	U022	X	1# (0.454)
p-Benzoquinone	106514	1,4-Cyclohexadienedione	1*	4	U197	X	1## (0.454)
Benzotrichloride	98077	Benzene, trichloromethyl-	1*	4	U023	X	1# (0.454)
Benzoyl chloride	98884		1000	1		C	1000 (454)
1,2-Benzphenanthrene	218019	Chrysene	1*	2,4	U050	X	1# (0.454)
Benzyl chloride	100447	Benzene, chloromethyl-	100	1,4	P028	B	100# (45.4)
Beryllium ††	7440417	Beryllium dust	1*	2,3,4	P015	X	1# (0.454)
BERYLLIUM AND COMPOUNDS			1*	2			**
Beryllium chloride	7787475		5000	1		D	5000# (2270)
Beryllium dust	7440417	Beryllium	1*	2,3,4	P015	X	1# (0.454)
Beryllium fluoride	7787497		5000	1		D	5000# (2270)
Beryllium nitrate	13597994 7787555		5000	1		D	5000# (2270)
alpha - BHC	319846		1*	2		X	1# (0.454)
beta - BHC	319857		1*	2		X	1# (0.454)
gamma - BHC	58899	Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,4	U129	X	1# (0.454)
delta - BHC	319868		1*	2		X	1## (0.454)
2,2'-Bioxirane	1464535	1,2:3,4-Diepoxybutane	1*	4	U085	X	1# (0.454)
(1,1'-Biphenyl)-4,4'diamine	92875	Benzidine	1*	2,4	U021	X	1# (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	91941	3,3'-Dichlorobenzidine	1*	2,4	U073	X	1# (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	119904	3,3'-Dimethoxybenzidine	1*	4	U091	X	1# (0.454)
(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	119937	3,3'-Dimethylbenzidine	1*	4	U095	X	1# (0.454)
Bis(2-chloroethoxy) methane	111911	Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1*	2,4	U024	C	1000 (454)
Bis (2-chloroethyl) ether	111444	Dichloroethyl ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,4	U025	X	1# (0.454)
Bis(2-chloroisopropyl) ether	108601	Propane, 2,2'-oxybis(2-chloro-	1*	2,4	U027	C	1000 (454)
Bis(chloromethyl) ether	542881	Methane, oxybis(chloro-	1*	4	P016	X	1# (0.454)
Bis(dimethylthiocarbamoyl) disulfide	137268	Thiram	1*	4	U244	A	10 (4.54)
Bis(2-ethylhexyl)phthalate	117817	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	1*	2,4	U028	X	1# (0.454)
Bromine cyanide	506683	Cyanogen bromide	1*	4	U246	C	1000 (454)
Bromoacetone	598312	2-Propanone, 1-bromo-	1*	4	P017	C	1000 (454)
Bromoform	75252	Methane, tribromo-	1*	2,4	U225	B	100 (45.4)
4-Bromophenyl phenyl ether	101553	Benzene, 1-bromo-4-phenoxy-	1*	2,4	U030	B	100 (45.4)
Brucine	357573	Strychnidin-10-one, 2,3-dimethoxy-	1*	4	P018	B	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87683	Hexachlorobutadiene	1*	2,4	U128	X	1# (0.454)
1-Butanamine, N-butyl-N-nitroso-	924163	N-Nitrosodi-n-butylamine	1*	4	U172	X	1# (0.454)
Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	305033	Chlorambucil	1*	4	U035	X	1# (0.454)
1-Butanol	71363	n-Butyl alcohol	1*	4	U031	D	5000 (2270)
2-Butanone	78933	Methyl ethyl ketone	1*	4	U159	D	5000 (2270)

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TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2-Butanone peroxide	1338234	Methyl ethyl ketone peroxide	1*	4	U160	A	10 (4.54)
2-Butenal	123739 4170303	Crotonaldehyde	100	1,4	U053	B	100 (45.4)
2-Butene, 1,4-dichloro-	764410	1,4-Dichloro-2-butene	1*	4	U074	X	1 (0.454)
Butyl acetate	123864		5000	1		D	5000 (2270)
iso-	110190						
sec-	105464						
tert-	540885						
n-Butyl alcohol	71363	1-Butanol	1*	4	U031	D	5000 (2270)
Butylamine	109739		1000	1		C	1000 (454)
iso-	78819						
sec-	513495						
tert-	13952846 75649						
Butyl benzyl phthalate	85687		1*	2		B	100 (45.4)
n-Butyl phthalate	84742	1,2-Benzenedicarboxylic acid,dibutyl ester Dibutyl phthalate Di-n-butyl phthalate	100	1,2,4	U069	A	10 (4.54)
Butyric acid	107926		5000	1		D	5000 (2270)
iso-	79312						
Cacodylic acid	75605	Hydroxydimethylarsine oxide	1*	4	U136	X	1# (0.454)
Cadmium 11	7440439		1*	2		X	1# (0.454)
Cadmium acetate	543908		100	1		B	100# (45.4)
CADMIUM AND COMPOUNDS			1*	2			**
Cadmium bromide	7789426		100	1		B	100# (45.4)
Cadmium chloride	10108642		100	1		B	100# (45.4)
Calcium arsenate	7778441		1000	1		C	1000# (454)
Calcium arsenite	52740166		1000	1		C	1000# (454)
Calcium carbide	75207		5000	1		A	10 (4.54)
Calcium chromate	13765190	Chromic acid, calcium salt	1000	1,4	U032	C	1000# (454)
Calcium cyanide	592018		10	1,4	P021	A	10 (4.54)
Calcium dodecylbenzene sulfonate	26264062		1000	1		C	1000 (454)
Calcium hypochlorite	7778543		100	1		A	10(4.54)
Camphene, octachloro-	8001352	Toxaphene	1	1,2,4	P123	X	1# (0.454)
Captan	133062		10	1		A	10## (4.54)
Carbamic acid, ethyl ester	51796	Ethyl carbamate (Urethan)	1*	4	U238	X	1# (0.454)
Carbamic acid, methylnitroso-,ethyl ester	615532	N-Nitroso-N-methylurethane	1*	4	U178	X	1# (0.454)
Carbamide, N-ethyl-N-nitroso-	759739	N-Nitroso-N-ethylurea	1*	4	U176	X	1# (0.454)
Carbamide, N-methyl-N-nitroso-	684935	N-Nitroso-N-methylurea	1*	4	U177	X	1# (0.454)
Carbamide, thio-	62566	Thiourea	1*	4	U219	X	1# (0.454)
Carbamodiselenoic acid	630104	Selenourea	1*	4	P103	X	1## (0.454)
Carbamoyl chloride, dimethyl-	79447	Dimethylcarbamoyl chloride	1*	4	U097	X	1# (0.454)
Carbaryl	63252		100	1		B	100 (45.4)
Carbofuran	1563662		10	1		A	10 (4.54)
Carbon bisulfide	75150	Carbon disulfide	5000	1,4	P022	D	5000## (2270)
Carbon disulfide	75150	Carbon bisulfide	5000	1,4	P022	D	5000## (2270)
Carbonic acid, dithallium (I) salt	6533739	Thallium(I) carbonate	1*	4	U215	X	1## (0.454)
Carbonochloridic acid, methyl ester	79221	Methyl chlorocarbonate	1*	4	U156	C	1000 (454)
Carbon oxyfluoride	353504	Carbonyl fluoride	1*	4	U033	C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,4	U211	D	5000# (2270)
Carbonyl chloride	75445	Phosgene	5000	1,4	P095	A	10 (4.54)
Carbonyl fluoride	353504	Carbon oxyfluoride	1*	4	U033	C	1000 (454)
Chloral	75876	Acetaldehyde, trichloro-	1*	4	U034	X	1#(0.454)
Chlorambucil	305033	Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-	1*	4	U035	X	1# (0.454)
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES).			1*	2			**
Chlordane	57749	Chlordane, technical 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-	1	1,2,4	U036	X	1# (0.454)
Chlordane, technical	57749	Chlordane 4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-	1	1,2,4	U036	X	1# (0.454)
CHLORINATED BENZENES			1*	2			**
CHLORINATED ETHANES			1*	2			**
CHLORINATED NAPHTHALENE			1*	2			**
CHLORINATED PHENOLS			1*	2			**
Chlorine	7782505		10	1		A	10 (4.54)
Chlorine cyanide	506774	Cyanogen chloride	10	1,4	P033	A	10 (4.54)
Chlornaphazine	494031	2-Naphthylamine, N,N-bis(2-chloroethyl)-	1*	4	U026	X	1# (0.454)
Chloroacetaldehyde	107200	Acetaldehyde, chloro-	1*	4	P023	C	1000 (454)
CHLOROALKYL ETHERS			1*	2			**
p-Chloroaniline	106478	Benzenamine, 4-chloro-	1*	4	P024	C	1000 (454)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,4	U037	B	100 (45.4)
4-Chloro-m-cresol	59507	p-Chloro-m-cresol Phenol, 4-chloro-3-methyl-	1*	2,4	U039	D	5000 (2270)
p-Chloro-m-cresol	59507	4-Chloro-m-cresol Phenol, 4-chloro-3-methyl-	1*	2,4	U039	D	5000 (2270)
Chlorodibromomethane	124481		1*	2		B	100 (45.4)
1-Chloro-2,3-epoxypropane	106898	Epichlorohydrin Oxirane, 2-(chloromethyl)-	1000	1,4	U041	C	1000# (454)
Chloroethane	75003		1*	2		X	1## (0.454)
2-Chloroethyl vinyl ether	110758	Ethene, 2-chloroethoxy-	1*	2,4	U042	C	1000 (454)
Chloroform	67663	Methane, trichloro-	5000	1,2,4	U044	D	5000# (2270)
Chloromethyl methyl ether	107302	Methane, chloromethoxy-	1*	4	U046	X	1# (0.454)
beta-Chloronaphthalene	91587	2-Chloronaphthalene Naphthalene, 2-chloro-	1*	2,4	U047	D	5000 (2270)
2-Chloronaphthalene	91587	beta-Chloronaphthalene Naphthalene, 2-chloro-	1*	2,4	U047	D	5000 (2270)
2-Chlorophenol	95578	o-Chlorophenol Phenol, 2-chloro-	1*	2,4	U048	B	100 (45.4)
o-Chlorophenol	95578	2-Chlorophenol Phenol, 2-chloro-	1*	2,4	U048	B	100 (45.4)
4-Chlorophenyl phenyl ether	7005723		1*	2		D	5000 (2270)
1-(o-Chlorophenyl)thiourea	5344821	Thiourea, (2-chlorophenyl)-	1*	4	P026	B	100 (45.4)
3-Chloropropionitrile	542767	Propanenitrile, 3-chloro-	1*	4	P027	C	1000 (454)
Chlorosulfonic acid	7790945		1000	1		C	1000 (454)
4-Chloro-o-toluidine, hydrochloride	3165933	Benzenamine, 4-chloro-2-methyl-,hydrochloride	1*	4	U049	X	1# (0.454)
Chlorpyrifos	2921882		1	1		X	1 (0.454)
Chromic acetate	1066304		1000	1		C	1000## (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory RQ	Statutory Code †	Statutory RCRA Waste Number	Final RQ Category	Final RQ Pounds(Kg)
Chromic acid	11115745 7738945		1000	1		C	1000# (454)
Chromic acid, calcium salt	13765190	Calcium chromate	1000	1,4	U032	C	1000# (454)
Chromic sulfate	10101538		1000	1		C	1000## (454)
Chromium ††	7440473		1*	2		X	1# (0.454)
CHROMIUM AND COMPOUNDS			1*	2			**
Chromous chloride	10049055		1000	1		C	1000## (454)
Chrysene	218019	1,2-Benzophenanthrene	1*	2,4	U050	X	1# (0.454)
Cobaltous bromide	7789437		1000	1		C	1000(454)
Cobaltous formate	544183		1000	1		C	1000 (454)
Cobaltous sulfamate	14017415		1000	1		C	1000 (454)
Coke Oven Emissions	N.A.		1*	3		X	1# (0.454)
Copper ††	7440508		1*	2		X	1## (0.454)
COPPER AND COMPOUNDS			1*	2			**
Copper cyanide	544923		1*	4	P029	A	10 (4.54)
Coumaphos	56724		10	1		A	10 (4.54)
Cresols	8001589		1*	4	U051	X	1# (0.454)
Cresol(s) m- o- p-	1319773 108394 95487 106445	Cresylic acid	1000	1,4	U052	C	1000## (454)
Cresylic acid m- o- p-	1319773 108394 95487 106445	Cresol(s)	1000	1,4	U052	C	1000## (454)
Crotonaldehyde	123739 4170303	2-Butenal	100	1,4	U053	B	100 (45.4)
Cumene	98828	Benzene, 1-methylethyl-	1*	4	U055	D	5000 (2270)
Cupric acetate	142712		100	1		B	100 (45.4)
Cupric acetoarsenite	12002038		100	1		B	100# (45.4)
Cupric chloride	7447394		10	1		A	10## (4.54)
Cupric nitrate	3251238		100	1		B	100 (45.4)
Cupric oxalate	5893663		100	1		B	100 (45.4)
Cupric sulfate	7758987		10	1		A	10## (4.54)
Cupric sulfate ammoniated	10380297		100	1		B	100 (45.4)
Cupric tartrate	815827		100	1		B	100## (45.4)
CYANIDES			1*	2			**
Cyanides (soluble cyanide salts), not elsewhere specified.	57125		1*	4	P030	A	10 (4.54)
Cyanogen	460195		1*	4	P031	B	100 (45.4)
Cyanogen bromide	506683	Bromine cyanide	1*	4	U246	C	1000 (454)
Cyanogen chloride	506774	Chlorine cyanide	10	1,4	P033	A	10 (4.54)
1,4-Cyclohexadienedione	106514	p-Benzoquinone	1*	4	U197	X	1## (0.454)
Cyclohexane	110827	Benzene, hexahydro-	1000	1,4	U056	C	1000(454)
Cyclohexanone	108941		1*	4	U057	D	5000 (2270)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	Hexachlorocyclopentadiene	1*	1,2,4	U130	X	1# (0.454)
Cyclophosphamide	50180	2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide	1*	4	U058	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2,4-D Acid	94757	2,4-D, salts and esters 2,4-Dichlorophenoxyacetic acid, salts and esters	100	1,4	U240	B	100 (45.4)
2,4-D Esters	94111 94791 94804 1320189 1928387 1928616 1929733 2971382 25168267 53467111		100	1		B	100 (45.4)
2,4-D, salts and esters	94757	2,4-D Acid 2,4-Dichlorophenoxyacetic acid, salts and esters	100	1,4	U240	B	100 (45.4)
Daunomycin	20830813	5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy- alpha-L-lyxo- hexopyranosyl)oxy]-7,8,9,10-tetrahydro- 6,8,11-trihydroxy- 1-methoxy-	1*	4	U059	X	1# (0.454)
DDD	72548	4,4' DDD Dichlorodiphenyl dichloroethane TDE	1	1,2,4	U060	X	1# (0.454)
4,4' DDD	72548	DDD Dichlorodiphenyl dichloroethane TDE	1	1,2,4	U060	X	1# (0.454)
DDE	72559	4,4' DDE	1*	2		X	1# (0.454)
4,4' DDE	72559	DDE	1*	2		X	1# (0.454)
DDT	50293	4,4' DDT Dichlorodiphenyl trichloroethane	1	1,2,4	U061	X	1# (0.454)
4,4'DDT	50293	DDT Dichlorodiphenyl trichloroethane	1	1,2,4	U061	X	1# (0.454)
DDT AND METABOLITES			1*	2			**
Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one.	143500	Kepone	1	1,4	U142	X	1# (0.454)
Diallate	2303164	S-(2,3-Dichloroallyl) diisopropylthiocarbamate	1*	4	U062	X	1# (0.454)
Diamine	302012	Hydrazine	1*	4	U133	X	1# (0.454)
Diaminotoluene	95807 25376458 496720 823405	Toluenediamine	1*	4	U221	X	1# (0.454)
Diazinon	5333415		1	1		X	1 (0.454)
Dibenz[a,h]anthracene	53703	1,2:5,6-Dibenzanthracene Dibenzo[a,h]anthracene	1*	2,4	U063	X	1# (0.454)
1,2:5,6-Dibenzanthracene	53703	Dibenz[a,h]anthracene Dibenzo[a,h]anthracene	1*	2,4	U063	X	1# (0.454)
Dibenzo[a,h]anthracene	53703	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene	1*	2,4	U063	X	1# (0.454)
1,2:7,8-Dibenzopyrene	189559	Dibenz[a,i]pyrene	1*	4	U064	X	1# (0.454)
Dibenz[a,i]pyrene	189559	1,2:7,8-Dibenzopyrene	1*	4	U064	X	1#(0.454)
1,2-Dibromo-3-chloropropene	96128	Propane, 1,2-dibromo-3-chloro-	1*	4	U066	X	1# (0.454)
Dibutyl phthalate	84742	1,2-Benzenedicarboxylic acid,dibutyl ester Di-n-butyl phthalate n-Butyl phthalate	100	1,2,4	U069	A	10 (4.54)
Di-n-butyl phthalate	84742	1,2-Benzenedicarboxylic acid,dibutyl ester n-Butyl phthalate Dibutyl phthalate	100	1,2,4	U069	A	10 (4.54)
Dicamba	1918009		1000	1		C	1000 (454)
Dichlobenil	1194656		1000	1		B	100 (45.4)
Dichlone	117806		1	1		X	1 (0.454)
S-(2,3-Dichloroallyl) diisopropylthiocarbamate	2303164	Diallate	1*	4	U062	X	1# (0.454)
3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	23950585	Pronamide	1*	4	U192	D	[illegible]

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Dichlorobenzene (mixed)	25321226		100	1		B	100 (45.4)
1,2-Dichlorobenzene	95501	Benzene, 1,2-dichloro- o-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
1,3-Dichlorobenzene	541731	Benzene, 1,3-dichloro- m-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro- p-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
m-Dichlorobenzene	541731	Benzene, 1,3-dichloro- 1,3-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
o-Dichlorobenzene	95501	Benzene, 1,2-dichloro- 1,2-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
p-Dichlorobenzene	106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
DICHLOROBENZIDINE			1*	2			**
3,3'-Dichlorobenzidine	91941	(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	1*	2,4	U073	X	1# (0.454)
Dichlorodifluoroethane	75274		1*	2		D	5000 (2270)
1,4-Dichloro-2-butene	764410	2-Butene, 1,4-dichloro-	1*	4	U074	X	1 (0.454)
Dichlorodifluoromethane	75718	Methane, dichlorodifluoro-	1*	4	U075	D	5000 (2270)
Dichlorodiphenyl dichloroethane	72548	DDD 4,4' DDD TDE	1	1,2,4	U060	X	1# (0.454)
Dichlorodiphenyl trichloroethane	50293	DDT 4,4'DDT	1	1,2,4	U061	X	1# (0.454)
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,4	U077	D	5000# (2270)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro- Vinylidene chloride	5000	1,2,4	U078	D	5000# (2270)
1,2-trans-Dichloroethylene	156605	Ethene, trans-1,2-dichloro-	1*	2,4	U079	C	1000 (454)
Dichloroethyl ether	111444	Bis (2-chloroethyl) ether Ethane, 1,1'-oxybis(2-chloro-	1*	2,4	U025	X	1# (0.454)
2,4-Dichlorophenol	120832	Phenol, 2,4-dichloro-	1*	2,4	U081	B	100 (45.4)
2,6-Dichlorophenol	87650	Phenol, 2,6-dichloro-	1*	4	U082	B	100 (45.4)
2,4-Dichlorophenoxyacetic acid, salts and esters	94757	2,4-D Acid 2,4-D, salts and esters	100	1,4	U240	B	100 (45.4)
Dichlorophenylarsine	696286	Phenyl dichloroarsine	1*	4	P036	X	1# (0.454)
Dichloropropane 1,1-Dichloropropane 1,3-Dichloropropane	26638197 78999 142289		5000	1		C	1000 (454)
1,2-Dichloropropane	78875	Propylene dichloride	5000	1,2,4	U083	C	1000 (454)
Dichloropropane - Dichloropropene (mixture)	8003198		5000	1		D	5000## (2270)
Dichloropropene 2,3-Dichloropropene	26952238 78886		5000	1		D	5000## (2270)
1,3-Dichloropropene	542756	Propene, 1,3-dichloro-	5000	1,2,4	U084	D	5000## (2270)
2,2-Dichloropropionic acid	75990		5000	1		D	5000 (2270)
Dichlorvos	62737		10	1		A	10 (4.54)
Dieldrin	60571	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8- dimethanonaphthalene.	1	1,2,4	P037	X	1# (0.454)
1,2:3,4-Diepoxybutane	1464535	2,2'-Bioxirane	1*	4	U085	X	1# (0.454)
Diethylamine	109897		1000	1		C	1000## (454)
Diethylarsine	692422	Arsine, diethyl-	1*	4	P038	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
1,4-Diethylene dioxide	123911	1,4-Dioxane	1*	4	U108	X	1# (0.454)
N,N'-Diethylhydrazine	1615801	Hydrazine, 1,2-diethyl-	1*	4	U086	X	1# (0.454)
O,O-Diethyl S-[2-(ethylthio)ethyl]phosphorodithioate	298044	Disulfoton	1	1,4	P039	X	1 (0.454)
O,O-Diethyl S-methyl dithiophosphate	3288582	Phosphorodithioic acid, O,O-diethyl S-methylester	1*	4	U087	D	5000 (2270)
Diethyl-p-nitrophenyl phosphate	311455	Phosphoric acid,diethyl p-nitrophenyl ester	1*	4	P041	B	100 (45.4)
Diethyl phthalate	84662	1,2-Benzenedicarboxylic acid,diethyl ester	1*	2,4	U088	C	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	297972	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	1*	4	P040	B	100 (45.4)
Diethylstilbestrol	56531	4,4'-Stilbenediol, alpha,alpha'-diethyl-	1*	4	U089	X	1# (0.454)
1,2-Dihydro-3,6-pyridazinedione	123331	Maleic hydrazide	1*	4	U148	D	5000 (2270)
Dihydrosafrole	94586	Benzene, 1,2-methylenedioxy-4-propyl-	1*	4	U090	X	1# (0.454)
Diisopropyl fluorophosphate	55914	Phosphorofluoridic acid,bis(1-methylethyl) ester	1*	4	P043	B	100 (45.4)
Dimethoate	60515	Phosphorodithioic acid,O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.	1*	4	P044	A	10 (4.54)
3,3'-Dimethoxybenzidine	119904	(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	1*	4	U091	X	1# (0.454)
Dimethylamine	124403	Methanamine, N-methyl-	1000	1,4	U092	C	1000## (454)
Dimethylaminoazobenzene	60117	Benzenamine, N,N-dimethyl-4-phenylazo-	1*	4	U093	X	1# (0.454)
7,12-Dimethylbenz[a]anthracene	57976	1,2-Benzanthracene, 7,12-dimethyl-	1*	4	U094	X	1# (0.454)
3,3'-Dimethylbenzidine	119937	(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	1*	4	U095	X	1# (0.454)
alpha,alpha-Dimethylbenzylhydroperoxide	80159	Hydroperoxide, 1-methyl-1-phenylethyl-	1*	4	U096	A	10 (4.54)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime.	39196184	Thiofanox	1*	4	P045	B	100 (45.4)
Dimethylcarbamoyl chloride	79447	Carbamoyl chloride, dimethyl-	1*	4	U097	X	1# (0.454)
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	4	U098	X	1# (0.454)
1,2-Dimethylhydrazine	540738	Hydrazine, 1,2-dimethyl-	1*	4	U099	X	1# (0.454)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	298000	Methyl parathion	100	1,4	P071	B	100## (45.4)
Dimethylnitrosamine	62759	N-Nitrosodimethylamine	1*	2,4	P082	X	1# (0.454)
alpha,alpha-Dimethylphenethylamine	122098	Ethanamine, 1,1-dimethyl-2-phenyl-	1*	4	P046	D	5000 (2270)
2,4-Dimethylphenol	105679	Phenol, 2,4-dimethyl-	1*	2,4	U101	B	100 (45.4)
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid,dimethyl ester	1*	2,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester	1*	4	U103	X	1# (0.454)
Dinitrobenzene (mixed)	25154545		1000	1		B	100 (45.4)
m-	99650						
o-	528290						
p-	100254						
4,6-Dinitro-o-cresol and salts	534521	Phenol, 2,4-dinitro-6-methyl-, and salts	1*	2,4	P047	A	10 (4.54)
4,6-Dinitro-o-cyclohexylphenol	131895	Phenol, 2-cyclohexyl-4,6-dinitro-	1*	4	P034	B	100 (45.4)
Dinitrophenol	25550587		1000	1		A	10 (4.54)
2,5-	329715						
2,6-	573568						
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,4	P048	A	10 (4.54)
Dinitrotoluene	25321146		1000	1,2		C	1000# (454)
3,4-Dinitrotoluene	610399						
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,4	U105	C	1000# (454)
Dinoseb	88857	Phenol, 2,4-dinitro-6-(1-methylpropyl)-	1*	4	P020	C	1000 (454)
Di-n-octyl phthalate	117840	1,2-Benzenedicarboxylic acid,di-n-octyl ester	1*	2,4	U107	D	5000 (2270)
1,4-Dioxane	123911	1,4-Diethylene dioxide	1*	4	U108	X	1# (0.454)
DIPHENYLHYDRAZINE			1*	2			**
1,2-Diphenylhydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,4	U109	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Diphosphoramide, octamethyl-	152169	Octamethylpyrophosphoramide	1*	4	P085	B	100 (45.4)
Dipropylamine	142847	1-Propanamine, N-propyl-	1*	4	U110	D	5000 (2270)
Di-n-propylnitrosamine	621647	N-Nitrosodi-n-propylamine	1*	2,4	U111	X	1# (0.454)
Diquat	85007 2764729		1000	1		C	1000 (454)
Disulfoton	298044	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate	1	1,4	P039	X	1 (0.454)
2,4-Dithiobiuret	541537	Thioimidodicarbonic diamide	1*	4	P049	B	100 (45.4)
Dithiopyrophosphoric acid, tetraethyl ester	3689245	Tetraethyldithiopyrophosphate	1*	4	P109	B	100 (45.4)
Diuron	330541		100	1		B	100 (45.4)
Dodecylbenzenesulfonic acid	27176870		1000	1		C	1000 (454)
Endosulfan	115297	5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro, cyclic sulfite.	1	1,2,4	P050	X	1 (0.454)
alpha - Endosulfan	959988		1*	2		X	1 (0.454)
beta - Endosulfan	33213659		1*	2		X	1 (0.454)
ENDOSULFAN AND METABOLITES			1*	2			••
Endosulfan sulfate	1031078		1*	2		X	1 (0.454)
Endothall	145733	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1*	4	P088	C	1000 (454)
Endrin	72208	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo- 1,4:5,8-dimethanonaphthalene.	1	1,2,4	P051	X	1 (0.454)
Endrin aldehyde	7421934		1*	2		X	1 (0.454)
ENDRIN AND METABOLITES			1*	2			••
Epichlorohydrin	106898	1-Chloro-2,3-epoxypropane Oxirane, 2-(chloromethyl)-	1000	1,4	U041	C	1000# (454)
Epinephrine	51434	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-	1*	4	P042	C	1000 (454)
Ethanal	75070	Acetaldehyde	1000	1,4	U001	C	1000 (454)
Ethanamine, 1,1-dimethyl-2-phenyl-	122098	alpha,alpha-Dimethylphenethylamine	1*	4	P046	D	5000 (2270)
Ethanamine, N-ethyl-N-nitroso-	55185	N-Nitrosodiethylamine	1*	4	U174	X	1# (0.454)
Ethane, 1,2-dibromo-	106934	Ethylene dibromide	1000	1,4	U067	C	1000# (454)
Ethane, 1,1-dichloro-	75343	1,1-Dichloroethane Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
Ethane, 1,2-dichloro-	107062	1,2-Dichloroethane Ethylene dichloride	5000	1,2,4	U077	D	5000# (2270)
Ethane, 1,1,1,2,2,2-hexachloro-	67721	Hexachloroethane	1*	2,4	U131	X	1# (0.454)
Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	111911	Bis(2-chloroethoxy) methane	1*	2,4	U024	C	1000 (454)
Ethane, 1,1'-oxybis-	60297	Ethyl ether	1*	4	U117	B	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	Bis (2-chloroethyl) ether Dichloroethyl ether	1*	2,4	U025	X	1# (0.454)
Ethane, pentachloro-	76017	Pentachloroethane	1*	4	U184	X	1## (0.454)
Ethane, 1,1,1,2-tetrachloro-	630206	1,1,1,2-Tetrachloroethane	1*	4	U208	X	1# (0.454)
Ethane, 1,1,2,2-tetrachloro-	79345	1,1,2,2-Tetrachloroethane	1*	2,4	U209	X	1# (0.454)
Ethane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,4	U227	X	1# (0.454)
Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	72435	Methoxychlor	1	1,4	U247	X	1 (0.454)
1,2-Ethanediylbiscarbamodithioic acid	111546	Ethylenebis(dithiocarbamic acid)	1*	4	U114	D	5000 (2270)
Ethanenitrile	75058	Acetonitrile	1*	4	U003	D	5000 (2270)
Ethanethioamide	62555	Thioacetamide	1*	4	U218	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Ethanol, 2,2'-(nitrosoimino)bis-	1116547	N-Nitrosodiethanolamine	1*	4	U173	X	1# (0.454)
Ethanone, 1-phenyl-	98862	Acetophenone	1*	4	U004	D	5000 (2270)
Ethanoyl chloride	75365	Acetyl chloride	5000	1,4	U006	D	5000 (2270)
Ethenamine, N-methyl-N-nitroso-	4549400	N-Nitrosomethylvinylamine	1*	4	P084	X	1# (0.454)
Ethene, chloro-	75014	Vinyl chloride	1*	2,3,4	U043	X	1# (0.454)
Ethene, 2-chloroethoxy-	110758	2-Chloroethyl vinyl ether	1*	2,4	U042	C	1000 (454)
Ethene, 1,1-dichloro-	75354	1,1-Dichloroethylene Vinylidene chloride	5000	1,2,4	U078	D	5000# (2270)
Ethene, 1,1,2,2-tetrachloro-	127184	Tetrachloroethylene	1*	2,4	U210	X	1# (0.454)
Ethene, trans-1,2-dichloro-	156605	1,2-trans-Dichloroethylene	1*	2,4	U079	C	1000 (454)
Ethion	563122		10	1		A	10## (4.54)
Ethyl acetate	141786	Acetic acid, ethyl ester	1*	4	U112	D	5000 (2270)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester	1*	4	U113	C	1000 (454)
Ethylbenzene	100414		1000	1,2		C	1000 (454)
Ethyl carbamate (Urethan)	51796	Carbamic acid, ethyl ester	1*	4	U238	X	1# (0.454)
Ethyl cyanide	107120	Propanenitrile	1*	4	P101	A	10 (4.54)
Ethyl 4,4'-dichlorobenzilate	510156	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.	1*	4	U038	X	1# (0.454)
Ethylene dibromide	106934	Ethane, 1,2-dibromo-	1000	1,4	U067	C	1000# (454)
Ethylene dichloride	107062	1,2-Dichloroethane Ethane, 1,2-dichloro-	5000	1,2,4	U077	D	5000# (2270)
Ethylene oxide	75218	Oxirane	1*	4	U115	X	1# (0.454)
Ethylenebis(dithiocarbamic acid)	111546	1,2-Ethanediylbiscarbamodithioic acid	1*	4	U114	D	5000 (2270)
Ethylenediamine	107153		1000	1		D	5000 (2270)
Ethylenediamine tetraacetic acid (EDTA)	60004		5000	1		D	5000 (2270)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	4	U116	X	1# (0.454)
Ethylenimine	151564	Aziridine	1*	4	P054	X	1# (0.454)
Ethyl ether	60297	Ethane, 1,1'-oxybis-	1*	4	U117	B	100 (45.4)
Ethylidene dichloride	75343	1,1-Dichloroethane Ethane, 1,1-dichloro-	1*	2,4	U076	C	1000 (454)
Ethyl methacrylate	97632	2-Propenoic acid, 2-methyl-, ethyl ester	1*	4	U118	C	1000 (454)
Ethyl methanesulfonate	62500	Methanesulfonic acid, ethyl ester	1*	4	U119	X	1# (0.454)
Famphur	52857	Phosphorothioic acid, O,O-dimethyl-O-[p-[(dimethylamino)- sulfonyl]phenyl] ester.	1*	4	P097	C	1000 (454)
Ferric ammonium citrate	1185575		1000	1		C	1000 (454)
Ferric ammonium oxalate	2944674 55488874		1000	1		C	1000 (454)
Ferric chloride	7705080		1000	1		C	1000 (454)
Ferric dextran	9004664	Iron dextran	1*	4	U139	X	1## (0.454)
Ferric fluoride	7783508		100	1		B	100 (45.4)
Ferric nitrate	10421484		1000	1		C	1000 (454)
Ferric sulfate	10028225		1000	1		C	1000 (454)
Ferrous ammonium sulfate	10045893		1000	1		C	1000 (454)
Ferrous chloride	7758943		100	1		B	100 (45.4)
Ferrous sulfate	7720787 7782630		1000	1		C	1000 (454)
Fluoroacetic acid, sodium salt	62748	Acetic acid, fluoro-, sodium salt	1*	4	P058	A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Fluoranthene	206440	Benzo[j,k]fluorene	1*	2,4	U120	X	1## (0.454)
Fluorene	86737		1*	2		X	1## (0.454)
Fluorine	7782414		1*	4	P056	A	10 (4.54)
Fluoroacetamide	640197	Acetamide, 2-fluoro-	1*	4	P057	B	100 (45.4)
Formaldehyde	50000	Methylene oxide	1000	1,4	U122	C	1000# (454)
Formic acid	64186	Methanoic acid	5000	1,4	U123	D	5000 (2270)
Fulminic acid, mercury(II) salt	628864	Mercury fulminate	1*	4	P065	X	1## (0.454)
Fumaric acid	110178		5000	1		D	5000 (2270)
Furan	110009	Furfuran	1*	4	U124	B	100 (45.4)
Furan, tetrahydro-	109999	Tetrahydrofuran	1*	4	U213	C	1000 (454)
2-Furancarboxaldehyde	98011	Furfural	1000	1,4	U125	D	5000 (2270)
2,5-Furandione	108316	Maleic anhydride	5000	1,4	U147	D	5000 (2270)
Furfural	98011	2-Furancarboxaldehyde	1000	1,4	U125	D	5000 (2270)
Furfuran	110009	Furan	1*	4	U124	B	100 (45.4)
D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	18883664	Streptozotocin	1*	4	U206	X	1# (0.454)
Glycidylaldehyde	765344	1-Propenal, 2,3-epoxy-	1*	4	U126	X	1# (0.454)
Guanidine, N-nitroso-N-methyl-N'-nitro-	70257	N-Methyl-N'-nitro-N-nitrosoguanidine	1*	4	U163	X	1# (0.454)
Guthion	86500		1	1		X	1 (0.454)
HALOETHERS			1*	2			**
HALOMETHANES			1*	2			**
Heptachlor	76448	4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.	1	1,2,4	P059	X	1#(0.454)
HEPTACHLOR AND METABOLITES			1*	2			**
Heptachlor epoxide	1024573		1*	2		X	1# (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,4	U127	X	1# (0.454)
Hexachlorobutadiene	87683	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1*	2,4	U128	X	1# (0.454)
HEXACHLOROCYCLOHEXANE (all isomers)	608731		1*	2			**
Hexachlorocyclohexane (gamma isomer)	58899	gamma - BHC Lindane	1	1,2,4	U129	X	1# (0.454)
Hexachlorocyclopentadiene	77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	1	1,2,4	U130	X	1# (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo- 1,4:5,8-dimethanonaphthalene.	72208	Endrin	1	1,2,4	P051	X	1 (0.454)
1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo- 1,4:5,8-dimethanonaphthalene.	60571 +VA	Dieldrin	1	1,2,4	P037	X	1# (0.454)
Hexachloroethane	67721	Ethane, 1,1,1,2,2,2-hexachloro-	1*	2,4	U131	X	1# (0.454)
Hexachlorohexahydro-endo,endo-dimethanonaphthalene	465736	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo- dimethanonaphthalene.	1*	4	P060	X	1 (0.454)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-endo,endo- dimethanonaphthalene.	465736	Hexachlorohexahydro-endo,endo-dimethanonaphthalene	1*	4	P060	X	1 (0.454)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8- endo, exo-dimethanonaphthalene.	309002	Aldrin	1	1,2,4	P004	X	1# (0.454)
Hexachlorophene	70304	2,2'-Methylenebis(3,4,6-trichlorophenol)	1*	4	U132	X	1## (0.454)
Hexachloropropene	1888717	1-Propene, 1,1,2,3,3,3-hexachloro-	1*	4	U243	C	1000 (454)
Hexaethyl tetraphosphate	757584	Tetraphosphoric acid, hexaethyl ester	1*	4	P062	B	100 (45.4)
Hydrazine	302012	Diamine	1*	4	U133	X	1# (0.454)
Hydrazine, 1,2-diethyl-	1615801	N,N'-Diethylhydrazine	1*	4	U086	X	1# (0.454)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	4	U098	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Hydrazine, 1,2-dimethyl-	540738	1,2-Dimethylhydrazine	1*	4	U099	X	1# (0.454)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,4	U109	X	1# (0.454)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	4	P068	A	10 (4.54)
Hydrazinecarbothioamide	79196	Thiosemicarbazide	1*	4	P116	B	100 (45.4)
Hydrochloric acid	7647010		5000	1		D	5000 (2270)
Hydrocyanic acid	74908	Hydrogen cyanide	10	1,4	P063	A	10 (4.54)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,4	U134	B	100 (45.4)
Hydrogen cyanide	74908	Hydrocyanic acid	10	1,4	P063	A	10 (4.54)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,4	U134	B	100 (45.4)
Hydrogen phosphide	7803512	Phosphine	1*	4	P096	B	100 (45.4)
Hydrogen sulfide	7783064	Hydrosulfuric acid Sulfur hydride	100	1,4	U135	B	100## (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	80159	alpha,alpha-Dimethylbenzylhydroperoxide	1*	4	U096	A	10 (4.54)
Hydrosulfuric acid	7783064	Hydrogen sulfide Sulfur hydride	100	1,4	U135	B	100## (45.4)
Hydroxydimethylarsine oxide	75605	Cacodylic acid	1*	4	U136	X	1# (0.454)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	4	U116	X	1# (0.454)
Indeno(1,2,3-cd)pyrene	193395	1,10-(1,2-Phenylene)pyrene	1*	2,4	U137	X	1# (0.454)
Iron dextran	9004664	Ferric dextran	1*	4	U139	X	1## (0.454)
Isobutyl alcohol	78831	1-Propanol, 2-methyl-	1*	4	U140	D	5000 (2270)
Isocyanic acid, methyl ester	624839	Methyl isocyanate	1*	4	P064	X	1###(0.454)
Isophorone	78591		1*	2		D	5000 (2270)
Isoprene	78795		1000	1		C	1000## (454)
Isopropanolamine dodecylbenzenesulfonate	42504461		1000	1		C	1000 (454)
Isosafrole	120581	Benzene, 1,2-methylenedioxy-4-propenyl-	1*	4	U141	X	1# (0.454)
3(2H)-Isoxazolone, 5-(aminomethyl)-	2763964	5-(Aminomethyl)-3-isoxazolol	1*	4	P007	C	1000 (454)
Kelthane	115322		5000	1		A	10 (4.54)
Kepone	143500	Decachlorooctahydro-1,3,4-metheno-2H-cyclobuta[c,d]-pentalen-2-one.	1	1,4	U142	X	1# (0.454)
Lasiocarpine	303344		1*	4	U143	X	1# (0.454)
Lead ††	7439921		1*	2		X	1## (0.454)
Lead acetate	301042	Acetic acid, lead salt	5000	1,4	U144	D	5000# (2270)
LEAD AND COMPOUNDS			1*	II			**
Lead arsenate	7784409 7645252 10102484		5000	1		D	5000# (2270)
Lead chloride	7758954		5000	1		D	5000## (2270)
Lead fluoborate	13814965		5000	1		D	5000## (2270)
Lead fluoride	7783462		1000	1		C	1000## (454)
Lead iodide	10101630		5000	1		D	5000## (2270)
Lead nitrate	10099748		5000	1		D	5000## (2270)
Lead phosphate	7446277	Phosphoric acid, lead salt	1*	4	U145	X	1# (0.454)
Lead stearate	7428480 1072351 56189094 52652592		5000	1		D	5000## (2270)
Lead subacetate	1335326		1*	4	U146	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory RQ	Statutory Code †	Statutory RCRA Waste Number	Final RQ Category	Final RQ Pounds(Kg)
Lead sulfate	15739807 7446142		5000	1		D	5000## (2270)
Lead sulfide	1314870		5000	1		D	5000## (2270)
Lead thiocyanate	592870		5000	1		D	5000## (2270)
Lindane	58899	gamma - BHC Hexachlorocyclohexane (gamma isomer)	1	1,2,4	U129	X	1# (0.454)
Lithium chromate	14307358		1000	1		C	1000# (454)
Malathion	121755		10	1		B	10# (4.54)
Maleic acid	110167		5000	1		D	5000 (2270)
Maleic anhydride	108316	2,5-Furandione	5000	1,4	U147	D	5000 (2270)
Maleic hydrazide	123331	1,2-Dihydro-3,6-pyridazinedione	1*	4	U148	D	5000 (2270)
Malononitrile	109773	Propanedinitrile	1*	4	U149	C	1000 (454)
Melphalan	148823	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-	1*	4	U150	X	1# (0.454)
Mercaptodimethur	2032657		100	1		A	10 (4.54)
Mercuric cyanide	592041		1	1		X	1 (0.454)
Mercuric nitrate	10045940		10	1		B	10## (4.54)
Mercuric sulfate	7783359		10	1		A	10## (4.54)
Mercuric thiocyanate	592858		10	1		A	10## (4.54)
Mercurous nitrate	10415755 7782867		10	1		A	10## (4.54)
Mercury	7439976		1*	2,3,4	U151	X	1 (0.454)
MERCURY AND COMPOUNDS			1*	2			**
Mercury, (acetato-O)phenyl-	62384	Phenylmercuric acetate	1*	4	P092	X	1##(0.454)
Mercury fulminate	628864	Fulminic acid, mercury(II) salt	1*	4	P065	X	1## (0.454)
Methacrylonitrile	126987	2-Propenenitrile, 2-methyl	1*	4	U152	C	1000 (454)
Methanamine, N-methyl-	124403	Dimethylamine	1000	1,4	U092	C	1000## (454)
Methane, bromo-	74839	Methyl bromide	1*	2,4	U029	C	1000 (454)
Methane, chloro-	74873	Methyl chloride	1*	2,4	U045	X	1## (0.454)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether	1*	4	U046	X	1# (0.454)
Methane, dibromo-	74953	Methylene bromide	1*	4	U068	C	1000 (454)
Methane, dichloro-	75092	Methylene chloride	1*	2,4	U080	C	1000 (454)
Methane, dichlorodifluoro-	75718	Dichlorodifluoromethane	1*	4	U075	D	5000 (2270)
Methane, iodo-	74884	Methyl iodide	1*	4	U138	X	1# (0.454)
Methane, oxybis[chloro-	542881	Bis(chloromethyl) ether	1*	4	P016	X	1# (0.454)
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,4	U211	D	5000# (2270)
Methane, tetranitro-	509148	Tetranitromethane	1*	4	P112	A	10 (4.54)
Methane, tribromo-	75252	Bromoform	1*	2,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,4	U044	D	5000# (2270)
Methane, trichlorofluoro-	75694	Trichloromonofluoromethane	1*	4	U121	D	5000 (2270)
Methanesulfonic acid, ethyl ester	62500	Ethyl methanesulfonate	1*	4	U119	X	1# (0.454)
Methanethiol	74931	Methylmercaptan Thiomethanol	100	1,4	U153	B	100 (45.4)
Methanesulfonyl chloride, trichloro-	594423	Trichloromethanesulfonyl chloride	1*	4	P118	B	100 (45.4)
4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	Heptachlor	1	1,2,4	P059	X	1# (0.454)
Methanoic acid	64186	Formic acid	5000	1,4	U123	D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory RQ	Statutory Code †	RCRA Waste Number	Final RQ Category	Final RQ Pounds(Kg)
4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro- 3a,4,7,7a-tetrahydro-.	57749	Chlordane Chlordane, technical	1	1,2,4	U036	X	1# (0.454)
Methanol	67561	Methyl alcohol	1*	4	U154	D	5000 (2270)
Methapyrilene	91805	Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	1*	4	U155	D	5000 (2270)
Methomyl	16752775	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester.	1*	4	P066	B	100 (45.4)
Methoxychlor	72435	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)-	1	1,4	U247	X	1 (0.454)
Methyl alcohol	67561	Methanol	1*	4	U154	D	5000 (2270)
2-Methylaziridine	75558	1,2-Propylenimine	1*	4	P067	X	1# (0.454)
Methyl bromide	74839	Methane, bromo-	1*	2,4	U029	C	1000 (454)
1-Methylbutadiene	504609	1,3-Pentadiene	1*	4	U186	B	100 (45.4)
Methyl chloride	74873	Methane, chloro-	1*	2,4	U045	X	1## (0.454)
Methyl chlorocarbonate	79221	Carbonochloridic acid, methyl ester	1*	4	U156	C	1000 (454)
Methyl chloroform	71556	1,1,1-Trichloroethane	1*	2,4	U226	C	1000 (454)
4,4'-Methylenebis(2-chloroaniline)	101144	Benzenamine, 4,4'-methylenebis(2-chloro-	1*	4	U158	X	1# (0.454)
2,2'-Methylenebis(3,4,6-trichlorophenol)	70304	Hexachlorophene	1*	4	U132	X	1## (0.454)
3-Methylcholanthrene	56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	1*	4	U157	X	1# (0.454)
Methylene bromide	74953	Methane, dibromo-	1*	4	U068	C	1000 (454)
Methylene chloride	75092	Methane, dichloro-	1*	2,4	U080	C	1000 (454)
Methylene oxide	50000	Formaldehyde	1000	1,4	U122	C	1000# (454)
Methyl ethyl ketone	78933	2-Butanone	1*	4	U159	D	5000 (2270)
Methyl ethyl ketone peroxide	1338234	2-Butanone peroxide	1*	4	U160	A	10 (4.54)
Methyl hydrazine	60344	Hydrazine, methyl-	1*	4	P068	A	10 (4.54)
Methyl iodide	74884	Methane, iodo-	1*	4	U138	X	1# (0.454)
Methyl isobutyl ketone	108101	4-Methyl-2-pentanone	1*	4	U161	D	5000 (2270)
Methyl isocyanate	624839	Isocyanic acid, methyl ester	1*	4	P064	X	1###(0.454)
2-Methyllactonitrile	75865	Acetone cyanohydrin Propanenitrile, 2-hydroxy-2-methyl-	10	1,4	P069	A	10 (4.54)
Methylmercaptan	74931	Methanethiol Thiomethanol	100	1,4	U153	B	100 (45.4)
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester	5000	1,4	U162	C	1000 (454)
N-Methyl-N'-nitro-N-nitrosoguanidine	70257	Guanidine, N-nitroso-N-methyl-N'-nitro-	1*	4	U163	X	1# (0.454)
Methyl parathion	298000	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100	1,4	P071	B	100## (45.4)
4-Methyl-2-pentanone	108101	Methyl isobutyl ketone	1*	4	U161	D	5000 (2270)
Methylthiouracil	56042	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	1*	4	U164	X	1# (0.454)
Mevinphos	7786347		1	1		A	10 (4.54)
Mexacarbate	315184		1000	1		C	1000 (454)
Mitomycin C	50077	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy)methyl]- 1,1a,2,8,8a,8b- hexahydro-8a-methoxy- 5-methyl-.	1*	4	U010	X	1# (0.454)
Monoethylamine	75047		1000	1		C	1000## (454)
Monomethylamine	74895		1000	1		B	100 (45.4)
Naled	300765		10	1		A	10 (4.54)
5,12-Naphthacenedione, [8S-cis]-8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L- lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro- 6,8,11-trihydroxy- 1-methoxy-.	20830813	Daunomycin	1*	4	U059	X	1# (0.454)
Naphthalene	91203		5000	1,2,4	U165	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Naphthalene, 2-chloro-	91587	beta-Chloronaphthalene 2-Chloronaphthalene	1*	2,4	U047	D	5000 (2270)
1,4-Naphthalenedione	130154	1,4-Naphthoquinone	1*	4	U166	D	5000 (2270)
2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl- [1,1'-biphenyl]-4,4'-diyl)- bis(azo)]bis(5-amino- 4-hydroxy)- tetrasodium salt.	72571	Trypan blue	1*	4	U236	X	1# (0.454)
Naphthenic acid	1338245		100	1		B	100 (45.4)
1,4-Naphthoquinone	130154	1,4-Naphthalenedione	1*	4	U166	D	5000 (2270)
1-Naphthylamine	134327	alpha-Naphthylamine	1*	4	U167	X	1# (0.454)
2-Naphthylamine	91598	beta-Naphthylamine	1*	4	U168	X	1# (0.454)
alpha-Naphthylamine	134327	1-Naphthylamine	1*	4	U167	X	1# (0.454)
beta-Naphthylamine	91598	2-Naphthylamine	1*	4	U168	X	1# (0.454)
2-Naphthylamine, N,N-bis(2-chloroethyl)-	494031	Chlornaphazine	1*	4	U026	X	1# (0.454)
alpha-Naphthylthiourea	86884	Thiourea, 1-naphthalenyl-	1*	4	P072	B	100 (45.4)
Nickel ††	7440020		1*	2		X	1# (0.454)
NICKEL AND COMPOUNDS			1*	2			**
Nickel ammonium sulfate	15699180		5000	1		D	5000# (2270)
Nickel carbonyl	13463393	Nickel tetracarbonyl	1*	4	P073	X	1# (0.454)
Nickel chloride	7718549 37211055		5000	1		D	5000# (2270)
Nickel cyanide	557197	Nickel(II) cyanide	1*	4	P074	X	1# (0.454)
Nickel(II) cyanide	557197	Nickel cyanide	1*	4	P074	X	1# (0.454)
Nickel hydroxide	12054487		1000	1		C	1000# (454)
Nickel nitrate	14216752		5000	1		D	5000# (2270)
Nickel sulfate	7786814		5000	1		D	5000# (2270)
Nickel tetracarbonyl	13463393	Nickel carbonyl	1*	4	P073	X	1# (0.454)
Nicotine and salts	54115	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	1*	4	P075	B	100 (45.4)
Nitric acid	7697372		1000	1		C	1000 (454)
Nitric oxide	10102439	Nitrogen(II) oxide	1*	4	P076	A	10 (4.54)
p-Nitroaniline	100016	Benzenamine, 4-nitro-	1*	4	P077	D	5000 (2270)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,4	U169	C	1000 (454)
Nitrogen dioxide	10102440 10544726	Nitrogen(IV) oxide	1000	1,4	P078	A	10 (4.54)
Nitrogen(II) oxide	10102439	Nitric oxide	1*	4	P076	A	10 (4.54)
Nitrogen(IV) oxide	10102440 10544726	Nitrogen dioxide	1000	1,4	P078	A	10 (4.54)
Nitroglycerine	55630	1,2,3-Propanetriol, trinitrate-	1*	4	P081	A	10 (4.54)
Nitrophenol (mixed) m- o- p-	25154556 554847 88755 100027	2-Nitrophenol 4-Nitrophenol Phenol, 4-nitro-	1000	1		B	100 (45.4)
p-Nitrophenol	100027	4-Nitrophenol Phenol, 4-nitro-	1000	1,2,4	U170	B	100 (45.4)
2-Nitrophenol	88755	o-Nitrophenol	1000	1,2		B	100 (45.4)
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,4	U170	B	100 (45.4)
NITROPHENOLS			1*	2			**
2-Nitropropane	79469	Propane, 2-nitro-	1*	4	U171	X	1# (0.454)
NITROSAMINES			1*	2			**

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
N-Nitrosodi-n-butylamine	924163	1-Butanamine, N-butyl-N-nitroso-	1*	II	U172	X	1# (0.454)
N-Nitrosodiethanolamine	1116547	Ethanol, 2,2'-(nitrosoimino)bis-	1*	4	U173	X	1# (0.454)
N-Nitrosodiethylamine	55185	Ethanamine, N-ethyl-N-nitroso-	1*	4	U174	X	1# (0.454)
N-Nitrosodimethylamine	62759	Dimethylnitrosamine	1*	2,4	P082	X	1# (0.454)
N-Nitrosodiphenylamine	86306		1*	2		B	100 (45.4)
N-Nitrosodi-n-propylamine	621647	Di-n-propylnitrosamine	1*	2,4	U111	X	1# (0.454)
N-Nitroso-N-ethylurea	759739	Carbamide, N-ethyl-N-nitroso-	1*	4	U176	X	1# (0.454)
N-Nitroso-N-methylurea	684935	Carbamide, N-methyl-N-nitroso-	1*	4	U177	X	1# (0.454)
N-Nitroso-N-methylurethane	615532	Carbamic acid, methylnitroso-,ethyl ester	1*	4	U178	X	1# (0.454)
N-Nitrosomethylvinylamine	4549400	Ethenamine, N-methyl-N-nitroso-	1*	II	P084	X	1# (0.454)
N-Nitrosopiperidine	100754	Pyridine, hexahydro-N-nitroso-	1*	II	U179	X	1# (0.454)
N-Nitrosopyrrolidine	930552	Pyrrole, tetrahydro-N-nitroso-	1*	4	U180	X	1# (0.454)
Nitrotoluene m- o- p-	1321126 99081 88722 99990		1000	1		C	1000 (454)
5-Nitro-o-toluidine	99558	Benzenamine, 2-methyl-5-nitro-	1*	4	U181	X	1# (0.454)
5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro, cyclic sulfite.	115297	Endosulfan	1	1,2,4	P050	X	1 (0.454)
Octamethylpyrophosphoramide	152169	Diphosphoramide, octamethyl-	1*	4	P085	B	100 (45.4)
Osmium oxide	20816120	Osmium tetroxide	1*	II	P087	C	1000 (454)
Osmium tetroxide	20816120	Osmium oxide	1*	II	P087	C	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145733	Endothall	1*	II	P088	C	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1120714	1,3-Propane sultone	1*	4	U193	X	1# (0.454)
2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino] tetrahydro-2-oxide.	50180	Cyclophosphamide	1*	II	U058	X	1# (0.454)
Oxirane	75218	Ethyleneoxide	1*	4	U115	X	1# (0.454)
Oxirane, 2-(chloromethyl)-	106898	1-Chloro-2,3-epoxypropane Epichlorohydrin	1000	1,4	U041	C	1000# (454)
Paraformaldehyde	30525894		1000	1		C	1000 (454)
Paraldehyde	123637	1,3,5-Trioxane, 2,4,6-trimethyl-	1*	4	U182	C	1000 (454)
Parathion	56382	Phosphorothioic acid,O,O-diethyl O-(p-nitrophenyl) ester	1	1,4	P089	X	1# (0.454)
Pentachlorobenzene	608935	Benzene, pentachloro-	1*	II	U183	X	1## (0.454)
Pentachloroethane	76017	Ethane, pentachloro-	1*	II	U184	X	1## (0.454)
Pentachloronitrobenzene	82688	Benzene, pentachloronitro-	1*	4	U185	X	1# (0.454)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,4	U242	A	10# (4.54)
1,3-Pentadiene	504609	1-Methylbutadiene	1*	II	U186	B	100 (45.4)
Phenacetin	62442	Acetamide, N-(4-ethoxyphenyl)-	1*	4	U187	X	1# (0.454)
Phenanthrene	85018		1*	2		X	1## (0.454)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	U188	C	1000## (454)
Phenol, 2-chloro-	95578	2-Chlorophenol o-Chlorophenol	1*	2,4	U048	B	100 (45.4)
Phenol, 4-chloro-3-methyl-	59507	4-Chloro-m-cresol p-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	131895	4,6-Dinitro-o-cyclohexylphenol	1*	4	P034	B	100 (45.4)
Phenol, 2,4-dichloro-	120832	2,4-Dichlorophenol	1*	2,4	U081	B	100 (45.4)
Phenol, 2,6-dichloro-	87650	2,6-Dichlorophenol	1*	4	U082	B	100 (45.4)
Phenol, 2,4-dimethyl-	105679	2,4-Dimethylphenol	1*	2,4	U101	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Phenol, 2,6-dinitro-	573568	2,6-Dinitrophenol	1000	1,2,4	P048	A	10 (4.54)
Phenol, 2,4-dinitro-6-(1-methylpropyl)-	88857	Dinoseb	1*	4	P020	C	1000 (454)
Phenol, 2,4-dinitro-6-methyl-, and salts	534521	4,6-Dinitro-o-cresol and salts	1*	2,4	P047	A	10 (4.54)
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,4	U170	B	100 (45.4)
Phenol, pentachloro-	87865	Pentachlorophenol	10	1,2,4	U242	A	10# (4.54)
Phenol, 2,3,4,6-tetrachloro-	58902	2,3,4,6-Tetrachlorophenol	1*	4	U212	A	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	2,4,5-Trichlorophenol	10	1,4	U230	A	10# (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,4	U231	A	10# (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	131748	Ammonium picrate	1*	4	P009	A	10 (4.54)
Phenyl dichloroarsine	696286	Dichlorophenylarsine	1*	4	P036	X	1# (0.454)
1,10-(1,2-Phenylene)pyrene	193395	Indeno(1,2,3-cd)pyrene	1*	2,4	U137	X	1# (0.454)
Phenylmercuric acetate	62384	Mercury, (acetato-O)phenyl-	1*	4	P092	X	1## (0.454)
N-Phenylthiourea	103855	Thiourea, phenyl-	1*	4	P093	B	100 (45.4)
Phorate	298022	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester.	1*	4	P094	X	1## (0.454)
Phosgene	75445	Carbonyl chloride	5000	1,4	P095	A	10 (4.54)
Phosphine	7803512	Hydrogen phosphide	1*	4	P096	B	100 (45.4)
Phosphoric acid	7664382		5000	1		D	5000 (2270)
Phosphoric acid,diethyl p-nitrophenyl ester	311455	Diethyl-p-nitrophenyl phosphate	1*	4	P041	B	100 (45.4)
Phosphoric acid, lead salt	7446277	Lead phosphate	1*	4	U145	X	1# (0.454)
Phosphorodithioic acid, O,O-diethyl S-methylester	3288582	O,O-Diethyl S-methyl dithiophosphate	1*	4	U087	D	5000 (2270)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester.	298022	Phorate	1*	4	P094	X	1## (0.454)
Phosphorodithioic acid,O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.	60515	Dimethoate	1*	4	P044	A	10 (4.54)
Phosphorofluoridic acid,bis(1-methylethyl) ester	55914	Diisopropyl fluorophosphate	1*	4	P043	B	100 (45.4)
Phosphorothioic acid,O,O-diethyl O-(p-nitrophenyl) ester	56382	Parathion	1	1,4	P089	X	1# (0.454)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297972	O,O-Diethyl O-pyrazinyl phosphorothioate	1*	4	P040	B	100 (45.4)
Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)-sulfonyl]phenyl] ester.	52857	Famphur	1*	4	P097	C	1000 (454)
Phosphorus	7723140		1	1		X	1 (0.454)
Phosphorus oxychloride	10025873		5000	1		C	1000 (454)
Phosphorus pentasulfide	1314803	Phosphorus sulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus sulfide	1314803	Phosphorus pentasulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus trichloride	7719122		5000	1		C	1000 (454)
PHTHALATE ESTERS			1*	2			**
Phthalic anhydride	85449	1,2-Benzenedicarboxylic acid anhydride	1*	4	U190	D	5000 (2270)
2-Picoline	109068	Pyridine,2-methyl-	1*	4	U191	D	5000 (2270)
Plumbane, tetraethyl-	78002	Tetraethyl lead	100	1,4	P110	B	100## (45.4)
POLYCHLORINATED BIPHENYLS (PCBs)	1336363 12674112 11104282 11141165 53469219 12672296 11097691 11096825	Aroclors Aroclor 1016 Aroclor 1221 Aroclor 1232 Aroclor 1242 Aroclor 1248 Aroclor 1254 Aroclor 1260	10	1,2		A	10# (4.54)
POLYNUCLEAR AROMATIC HYDROCARBONS			1*	2			**

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Potassium arsenate	7784410		1000	1		C	1000# (454)
Potassium arsenite	10124502		1000	1		C	1000# (454)
Potassium bichromate	7778509		1000	1		C	1000# (454)
Potassium chromate	7789006		1000	1		C	1000# (454)
Potassium cyanide	151508		10	1,4	P098	A	10 (4.54)
Potassium hydroxide	1310583		1000	1		C	1000 (454)
Potassium permanganate	7722647		100	1		B	100 (45.4)
Potassium silver cyanide	506616		1*	4	P099	X	1 (0.454)
Pronamide	23950585	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide	1*	4	U192	D	5000 (2270)
1-Propanal, 2,3-epoxy-	765344	Glycidylaldehyde	1*	4	U126	X	1# (0.454)
Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino) carbonyl]oxime.	116063	Aldicarb	1*	4	P070	X	1 (0.454)
1-Propanamine	107108	n-Propylamine	1*	4	U194	D	5000 (2270)
1-Propanamine, N-propyl-	142847	Dipropylamine	1*	4	U110	D	5000 (2270)
Propane, 1,2-dibromo-3-chloro-	96128	1,2-Dibromo-3-chloropropane	1*	4	U066	X	1# (0.454)
Propane, 2-nitro-	79469	2-Nitropropane	1*	4	U171	X	1# (0.454)
Propane, 2,2'-oxybis[2-chloro-	108601	Bis(2-chloroisopropyl) ether	1*	2,4	U027	C	1000 (454)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide	1*	4	U193	X	1# (0.454)
Propanedinitrile	109773	Malononitrile	1*	4	U149	C	1000 (4.54)
Propanenitrile	107120	Ethyl cyanide	1*	4	P101	A	10 (4.54)
Propanenitrile, 3-chloro-	542767	3-Chloropropionitrile	1*	4	P027	C	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	75865	Acetone cyanohydrin 2-Methyllactonitrile	10	1,4	P069	A	10 (4.54)
1,2,3-Propanetriol, trinitrate-	55630	Nitroglycerine	1*	4	P081	A	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126727	Tris(2,3-dibromopropyl) phosphate	1*	4	U235	X	1# (0.454)
1-Propanol, 2-methyl-	78831	Isobutyl alcohol	1*	4	U140	D	5000 (2270)
2-Propanone	67641	Acetone	1*	4	U002	D	5000 (2270)
2-Propanone, 1-bromo-	598312	Bromoacetone	1*	4	P017	C	1000 (454)
Propargite	2312358		10	1		A	10 (4.54)
Propargyl alcohol	107197	2-Propyn-1-ol	1*	4	P102	C	1000 (454)
2-Propenal	107028	Acrolein	1	1,2,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	4	U007	D	5000 (2270)
Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,4	U084	D	5000## (2270)
1-Propene, 1,1,2,3,3,3-hexachloro-	1888717	Hexachloropropene	1*	4	U243	C	1000 (454)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,4	U009	B	100# (45.4)
2-Propenenitrile, 2-methyl-	126987	Methacrylonitrile	1*	4	U152	C	1000 (454)
2-Propenoic acid	79107	Acrylic acid	1*	4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester	140885	Ethyl acrylate	1*	4	U113	C	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	97632	Ethyl methacrylate	1*	4	U118	C	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80626	Methyl methacrylate	5000	1,4	U162	C	1000 (454)
2-Propen-1-ol	107186	Allyl alcohol	100	1,4	P005	B	100 (45.4)
Propionic acid	79094		5000	1		D	5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	93721	Silvex 2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Propionic anhydride	123626		5000	1		D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory RQ	Statutory Code †	Statutory RCRA Waste Number	Final RQ Category	Final RQ Pounds(Kg)
n-Propylamine	107108	1-Propanamine	1*	4	U194	D	5000 (2270)
Propylene dichloride	78875	1,2-Dichloropropane	5000	1,2,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1		B	100 (45.4)
1,2-Propylenimine	75558	2-Methylaziridine	1*	4	P067	X	1# (0.454)
2-Propyn-1-ol	107197	Propargyl alcohol	1*	4	P102	C	1000 (454)
Pyrene	129000		1*	2		X	1## (0.454)
Pyridine	121299 121211 8003347		1000	1		X	1 (0.454)
4-Pyridinamine	504245	4-Aminopyridine	1*	4	P008	C	1000 (454)
Pyridine	110861		1*	4	U196	X	1## (0.454)
Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-	91805	Methapyrilene	1*	4	U155	D	5000 (2270)
Pyridine, hexahydro-N-nitroso-	100754	N-Nitrosopiperidine	1*	4	U179	X	1# (0.454)
Pyridine,2-methyl-	109068	2-Picoline	1*	4	U191	D	5000 (2270)
Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts	54115	Nicotine and salts	1*	4	P075	B	100 (45.4)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56042	Methylthiouracil	1*	4	U164	X	1# (0.454)
Pyrophosphoric acid, tetraethyl ester	107493	Tetraethyl pyrophosphate	100	1,4	P111	B	100## (45.4)
Pyrrole, tetrahydro-N-nitroso-	930552	N-Nitrosopyrrolidine	1*	4	U180	X	1§ (0.454)
Quinoline	91225		1000	1		D	5000 (2270)
RADIONUCLIDES			1*	3		X	1§ (0.454)
Reserpine	50555	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5- trimethoxybenzoyl)oxy]-, methyl ester.	1*	4	U200	D	5000 (2270)
Resorcinol	108463	1,3-Benzenediol	1000	1,4	U201	D	5000 (2270)
Saccharin and salts	81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	1*	4	U202	X	1# (0.454)
Safrole	94597	Benzene, 1,2-methylenedioxy-4-allyl-	1*	4	U203	X	1# (0.454)
Selenious acid	7783008		1*	4	U204	X	1## (0.454)
Selenium ††	7782492		1*	2		X	1## (0.454)
SELENIUM AND COMPOUNDS			1*	2			**
Selenium dioxide	7446084	Selenium oxide	1000	1,4	U204	C	1000## (454)
Selenium disulfide	7488564	Sulfur selenide	1*	4	U205	X	1# (0.454)
Selenium oxide	7446084	Selenium dioxide	1000	1,4	U204	C	1000## (454)
Selenourea	630104	Carbamimidoselenoic acid	1*	4	P103	X	1## (0.454)
L-Serine, diazoacetate (ester)	115028	Azaserine	1*	4	U015	X	1# (0.454)
Silver ††	7440224		1*	2		C	1000 (454)
SILVER AND COMPOUNDS			1*	2			**
Silver cyanide	506649		1*	4	P104	X	1 (0.454)
Silver nitrate	7761888		1	1		X	1 (0.454)
Silvex	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)-2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Sodium	7440235		1000	1		A	10 (4.54)
Sodium arsenate	7631892		1000	1		C	1000# (454)
Sodium arsenite	7784465		1000	1		C	1000# (454)
Sodium azide	26628228		1*	4	P105	C	1000 (454)
Sodium bichromate	10588019		1000	1		C	1000# (454)
Sodium bifluoride	1333831		5000	1		D	5000## (2270)
Sodium bisulfite	7631905		5000	1		D	5000 (2270)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Sodium chromate	7775113		1000	1		C	1000# (454)
Sodium cyanide	143339		10	1,4	P106	A	10 (4.54)
Sodium dodecylbenzene sulfonate	25155300		1000	1		C	1000 (454)
Sodium fluoride	7681494		5000	1		C	1000 (454)
Sodium hydrosulfide	16721805		5000	1		D	5000 (2270)
Sodium hydroxide	1310732		1000	1		C	1000 (454)
Sodium hypochlorite	7681529 10022705		100	1		B	100 (45.4)
Sodium methylate	124414		1000	1		C	1000 (454)
Sodium nitrite	7632000		100	1		B	100## (45.4)
Sodium phosphate, dibasic	7558794 10039324 10140655		5000	1		D	5000 (2270)
Sodium phosphate, tribasic	7601549 7785844 10101890 10361894 7758294 10124568		5000	1		D	5000 (2270)
Sodium selenite	10102188 7782823		1000	1		C	1000## (454)
4,4'-Stilbenediol, alpha,alpha'-diethyl-	56531	Diethylstilbestrol	1*	4	U089	X	1# (0.454)
Streptozotocin	18883664	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1*	4	U206	X	1# (0.454)
Strontium chromate	7789062		1000	1		C	1000# (454)
Strontium sulfide	1314961		1*	4	P107	B	100 (45.4)
Strychnidin-10-one, and salts	57249	Strychnine and salts	10	1,4	P108	A	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	357573	Brucine	1*	4	P018	A	10 (4.54)
Strychnine and salts	57249	Strychnidin-10-one, and salts	10	1,4	P108	A	10 (4.54)
Styrene	100425		1000	1		C	1000 (454)
Sulfur hydride	7783064	Hydrogen sulfide Hydrosulfuric acid	100	1,4	U135	B	100## (45.4)
Sulfur monochloride	12771083		1000	1		C	1000 (454)
Sulfur phosphide	1314803	Phosphorus pentasulfide Phosphorus sulfide	100	1,4	U189	B	100 (45.4)
Sulfur selenide	7488564	Selenium disulfide	1*	4	U205	X	1# (0.454)
Sulfuric acid	7664939 8014957		1000	1		C	1000 (454)
Sulfuric acid, dimethyl ester	77781	Dimethyl sulfate	1*	4	U103	X	1# (0.454)
Sulfuric acid, thallium(I) salt	7446186 10031591	Thallium(I) sulfate	1000	1,4	P115	C	1000## (454)
2,4,5-T	93765	2,4,5-T acid 2,4,5-Trichlorophenoxyacetic acid	100	1,4	U232	C	1000 (454)
2,4,5-T acid	93765	2,4,5-T 2,4,5-Trichlorophenoxyacetic acid	100	1,4	U232	C	1000 (454)
2,4,5-T amines	2008460 6369966 6369977 1319728 3813147		100	1		D	5000 (2270)
2,4,5-T esters	93798 2545597 61792072 1928478 25168154		100	1		C	1000 (454)
2,4,5-T salts	13560991		100	1		C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
TDE	72548	DDD 4,4' DDD Dichlorodiphenyl dichloroethane	1	1,2,4	U060	X	1# (0.454)
1,2,4,5-Tetrachlorobenzene	95943	Benzene, 1,2,4,5-tetrachloro-	1*	4	U207	D	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD)	1746016		1*	2		X	1# (0.454)
1,1,1,2-Tetrachloroethane	630206	Ethane,1,1,1,2-tetrachloro-	1*	4	U208	X	1# (0.454)
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-	1*	2,4	U209	X	1# (0.454)
Tetrachloroethylene	127184	Ethene, 1,1,2,2-tetrachloro-	1*	2,4	U210	X	1# (0.454)
2,3,4,6-Tetrachlorophenol	58902	Phenol, 2,3,4,6-tetrachloro-	1*	4	U212	A	10 (4.54)
Tetraethyldithiopyrophosphate	3689245	Dithiopyrophosphoric acid,tetraethyl ester	1*	4	P109	B	100 (45.4)
Tetraethyl lead	78002	Plumbane, tetraethyl-	100	1,4	P110	B	100## (45.4)
Tetraethyl pyrophosphate	107493	Pyrophosphoric acid, tetraethyl ester	100	1,4	P111	B	100## (45.4)
Tetrahydrofuran	109999	Furan, tetrahydro-	1*	4	U213	C	1000 (454)
Tetranitromethane	509148	Methane, tetranitro-	1*	4	P112	A	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	757584	Hexaethyl tetraphosphate	1*	4	P062	B	100 (45.4)
Thallic oxide	1314325	Thallium(III) oxide	1*	4	P113	X	1## (0.454)
Thallium ††	7440280		1*	2		X	1## (0.454)
THALLIUM AND COMPOUNDS			1*	2			••
Thallium(I) acetate	563688	Acetic acid, thallium(I) salt	1*	4	U214	X	1## (0.454)
Thallium(I) carbonate	6533739	Carbonic acid, dithallium (I) salt	1*	4	U215	X	1## (0.454)
Thallium(I) chloride	7791120		1*	4	U216	X	1## (0.454)
Thallium(I) nitrate	10102451		1*	4	U217	X	1## (0.454)
Thallium(III) oxide	1314325	Thallic oxide	1*	4	P113	X	1## (0.454)
Thallium(I) selenide	12039520		1*	4	P114	X	1## (0.454)
Thallium(I) sulfate	7446186 10031591	Sulfuric acid, thallium(I) salt	1000	1,4	P115	C	1000## (454)
Thioacetamide	62555	Ethanethioamide	1*	4	U218	X	1# (0.454)
Thiofanox	39196184	3,3-Dimethyl-1-(methylthio)-2-butanone,O-[(methylamino) carbonyl] oxime.	1*	4	P045	B	100 (45.4)
Thioimidodicarbonic diamide	541537	2,4-Dithiobiuret	1*	4	P049	B	100 (45.4)
Thiomethanol	74931	Methanethiol Methylmercaptan	100	1,4	U153	B	100 (45.4)
Thiophenol	108985	Benzenethiol	1*	4	P014	B	100 (45.4)
Thiosemicarbazide	79196	Hydrazinecarbothioamide	1*	4	P116	B	100 (45.4)
Thiourea	62566	Carbamide, thio-	1*	4	U219	X	1# (0.454)
Thiourea, (2-chlorophenyl)-	5344821	1-(o-Chlorophenyl)thiourea	1*	4	P026	B	100 (45.4)
Thiourea, 1-naphthalenyl-	86884	alpha-Naphthylthiourea	1*	4	P072	B	100 (45.4)
Thiourea, phenyl-	103855	N-Phenylthiourea	1*	4	P093	B	100 (45.4)
Thiram	137268	Bis(dimethylthiocarbamoyl) disulfide	1*	4	U244	A	10 (4.54)
Toluene	108883	Benzene, methyl-	1000	1,2,4	U220	C	1000 (454)
Toluenediamine	95807 25376458 496720 823405	Diaminotoluene	1*	4	U221	X	1# (0.454)
Toluene diisocyanate	584849 91087 26471625	Benzene, 2,4-diisocyanatomethyl-	1*	4	U223	B	100 (45.4)
o-Toluidine hydrochloride	636215	Benzenamine, 2-methyl-, hydrochloride	1*	4	U222	X	1# (0.454)
Toxaphene	8001352	Camphene, octachloro-	1	1,2,4	P123	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2,4,5-TP acid	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex	100	1,4	U233	B	100 (45.4)
2,4,5-TP acid esters	32534955		100	1		B	100 (45.4)
1H-1,2,4-Triazol-3-amine	61825	Amitrole	1*	4	U011	X	1# (0.454)
Trichlorfon	52686		1000	1		C	1000## (454)
1,2,4-Trichlorobenzene	120821		1*	2		B	100 (45.4)
1,1,1-Trichloroethane	71556	Methyl chloroform	1*	2,4	U226	C	1000 (454)
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,4	U227	X	1# (0.454)
Trichloroethene	79016	Trichloroethylene	1000	1,2,4	U228	C	1000# (454)
Trichloroethylene	79016	Trichloroethene	1000	1,2,4	U228	C	1000# (454)
Trichloromethanesulfenyl chloride	594423	Methanesulfenyl chloride, trichloro-	1*	4	P118	B	100 (45.4)
Trichloromonofluoromethane	75694	Methane, trichlorofluoro-	1*	4	U121	D	5000 (2270)
Trichlorophenol	25167822		10	1		A	10# (4.54)
2,3,4-Trichlorophenol	15950660						
2,3,5-Trichlorophenol	933788						
2,3,6-Trichlorophenol	933755						
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-					
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-					
3,4,5-Trichlorophenol	609198						
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10	1,4	U230	A	10# (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,4	U231	A	10# (4.54)
2,4,5-Trichlorophenoxyacetic acid	93765	2,4,5-T 2,4,5-T acid	100	1,4	U232	C	1000 (454)
Triethanolamine dodecylbenzenesulfonate	27323417		1000	1		C	1000 (454)
Triethylamine	121448		5000	1		D	5000 (2270)
Trimethylamine	75503		1000	1		C	1000## (454)
sym-Trinitrobenzene	99354	Benzene, 1,3,5-trinitro-	1*	4	U234	X	1## (0.454)
1,3,5-Trioxane, 2,4,6-trimethyl-	123637	Paraldehyde	1*	4	U182	C	1000 (454)
Tris(2,3-dibromopropyl) phosphate	126727	1-Propanol, 2,3-dibromo-, phosphate (3:1)	1*	4	U235	X	1# (0.454)
Trypan blue	72571	2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl- [1,1'-biphenyl]-4,4'-diyl)- bis(azo)]bis(5-amino-4- hydroxy)-tetrasodium salt.	1*	4	U236	X	1# (0.454)
Unlisted Hazardous Wastes			1*	4			
Characteristic of Ignitability			1*	4	D001	B	100 (45.4)
Characteristic of Corrosivity			1*	4	D002	B	100 (45.4)
Characteristic of Reactivity			1*	4	D003	B	100 (45.4)
Characteristic of EP Toxicity			1*	4			
Arsenic			1*	4	D004	X	1# (0.454)
Barium			1*	4	D005	C	1000 (454)
Cadmium			1*	4	D006	X	1# (0.454)
Chromium			1*	4	D007	X	1# (0.454)
Lead			1*	4	D008	X	1## (0.454)
Mercury			1*	4	D009	X	1 (0.454)
Selenium			1*	4	D010	X	1## (0.454)
Silver			1*	4	D011	X	1 (0.454)
Endrin			1	1,4	D012	X	1 (0.454)
Lindane			1	1,4	D013	X	1# (0.454)
Methoxychlor			1	1,4	D014	X	1 (0.454)
Toxaphene			1	1,4	D015	X	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
2,4-D			100	1,4	D016	B	100 (46.4)
2,4,5-TP			100	1,4	D017	B	100 (46.4)
Uracil, 5-[bis(2-chloroethyl)amino]-	66751	Uracil mustard	1*	4	U237	X	1# (0.454)
Uracil mustard	66751	Uracil, 5-[bis(2-chloroethyl)amino]-	1*	4	U237	X	1# (0.454)
Uranyl acetate	541093		5000	1		D	5000## (2270)
Uranyl nitrate	10102064 36478769		5000	1		D	5000## (2270)
Vanadic acid, ammonium salt	7803556	Ammonium vanadate	1*	4	P119	C	1000 (454)
Vanadium(V) oxide	1314621	Vanadium pentoxide	1000	1,4	P120	C	1000## (454)
Vanadium pentoxide	1314621	Vanadium(V) oxide	1000	1,4	P120	C	1000## (454)
Vanadyl sulfate	27774136		1000	1		C	1000## (454)
Vinyl acetate	108054		1000	1		D	5000 (2270)
Vinyl chloride	75014	Ethene, chloro-	1*	2,3,4	U043	X	1# (0.454)
Vinylidene chloride	75354	1,1-Dichloroethylene Ethene, 1,1-dichloro-	5000	1,2,4	U078	D	5000# (2270)
Warfarin	81812	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts	1*	4	P001	E	100 (46.4)
Xylene (mixed) m- o- p-	1330207 108383 95476 106423	Benzene,dimethyl m- o- p-	1000	1,4	U239	C	1000 (454)
Xylenol	1300716		1000	1		C	1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy- 18-[(3,4,5- trimethoxybenzoyl)oxy]-, methylester.	50555	Reserpine	1*	4	U200	D	5000 (2270)
Zinc ††	7440666		1*	2		X	1## (0.454)
ZINC AND COMPOUNDS			1*	2			**
Zinc acetate	557346		1000	1		C	1000## (454)
Zinc ammonium chloride	52628258 14639975 14639986		5000	1		D	5000## (2270)
Zinc borate	1332076		1000	1		C	1000## (454)
Zinc bromide	7699458		5000	1		D	5000## (2270)
Zinc carbonate	3486359		1000	1		C	1000## (454)
Zinc chloride	7646857		5000	1		D	5000## (2270)
Zinc cyanide	557211		10	1,4	P121	A	10## (4.54)
Zinc fluoride	7783495		1000	1		C	1000## (454)
Zinc formate	557415		1000	1		C	1000## (454)
Zinc hydrosulfite	7779864		1000	1		C	1000## (454)
Zinc nitrate	7779886		5000	1		D	5000## (2270)
Zinc phenolsulfonate	127822		5000	1		D	5000## (2270)
Zinc phosphide	1314847		1000	1,4	P122	C	1000## (454)
Zinc silicofluoride	16871719		5000	1		D	5000##(2270)
Zinc sulfate	7733020		1000	1		C	1000## (454)
Zirconium nitrate	13746899		5000	1		D	5000 (2270)
Zirconium potassium fluoride	16923958		5000	1		C	1000 (454)
Zirconium sulfate	14644612		5000	1		D	5000 (2270)
Zirconium tetrachloride	10026116		5000	1		D	5000 (2270)
F001			1*	4	F001	E	1# (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
The following spent halogenated solvents used in degreasing and sludges from the recovery of these solvents in degreasing operations:							
(a) Tetrachloroethylene	127184					X	1# (0.454)
(b) Trichloroethylene	79016					C	1000# (454)
(c) Methylene chloride	75092					C	1000 (454)
(d) 1,1,1-Trichloroethane	71556					C	1000 (454)
(e) Carbon tetrachloride	56235					D	5000# (2270)
(f) Chlorinated fluorocarbons	(N.A.)					D	5000 (2270)
F002			1*	4	F002	X	1# (0.454)
The following spent halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Tetrachloroethylene	127184					X	1# (0.454)
(b) Methylene Chloride	75092					C	1000 (454)
(c) Trichloroethylene	79016					C	1000# (454)
(d) 1,1,1-Trichloroethane	71556					C	1000 (454)
(e) Chlorobenzene	108907					B	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	76131					D	5000 (2270)
(g) o-Dichlorobenzene	106467					B	100 (45.4)
(h) Trichlorofluoromethane	75694					D	5000 (2270)
F003			1*	4	F003	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Xylene	1330207					C	1000 (454)
(b) Acetone	67641					D	5000 (2270)
(c) Ethyl acetate	141786					D	5000 (2270)
(d) Ethylbenzene	100414					C	1000 (454)
(e) Ethyl ether	60297					B	100 (45.4)
(f) Methyl isobutyl ketone	108101					D	5000 (2270)
(g) n-Butyl alcohol	71363					D	5000 (2270)
(h) Cyclohexanone	108941					D	5000 (2270)
(i) Methanol	67561					D	5000 (2270)
F004			1*	4	F004	X	1## (0.454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid	1319773					C	1000# (454)
(b) Nitrobenzene	98953					C	1000 (454)
F005			1*	4	F005	X	1## (0.454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Toluene	108883					C	1000 (454)
(b) Methyl ethyl ketone	78933					D	5000 (2270)
(c) Carbon disulfide	75150					D	5000# (2270)
(d) Isobutanol	78831					D	5000 (2270)
(e) Pyridine	110861					X	1## (0.454)
F006			1*	4	F006	X	1# (0.454)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum							
F007			1*	4	F007	A	10 (4.54)
Spent cyanide plating bath solutions from electroplating operations (except for precious metals electroplating spent cyanide plating bath solutions)							
F008			1*	4	F008	A	10 (4.54)
Plating bath sludges from the bottom of plating baths from electroplating operations where cyanides are used in the process (except for precious metals electroplating plating bath sludges)							
F009			1*	4	F009	A	10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process (except for precious metals electroplating spent stripping and cleaning bath solutions)							
F010			1*	4	F010	A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Quenching bath sludge from oil baths from metal heat treating operations where cyanides are used in the process (except for precious metals heat-treating quenching bath sludges)							
F011			1*	4	F011	A	10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning)							
F012			1*	4	F012	A	10 (4.54)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process (except for precious metals heat treating quenching wastewater treatment sludges)							
F019			1*	4	F019	X	1# (0.454)
Wastewater treatment sludges from the chemical conversion coating of aluminum							
F024			1*	4	F024	X	1# (0.454)
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons,having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts,and wastes listed in Section 261.32.)							
K001			1*	.4	K001	X	1# (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol							
K002			1*	4	K002	X	1# (0.454)
Wastewater treatment sludge from the production of chrome yellow and orange pigments							
K003			1*	4	K003	X	1# (0.454)
Wastewater treatment sludge from the production of molybdate orange pigments							
K004			1*	4	K004	X	1# (0.454)
Wastewater treatment sludge from the production of zinc yellow pigments							
K005			1*	4	K005	X	1# (0.454)
Wastewater treatment sludge from the production of chrome green pigments							
K006			1*	4	K006	X	1# (0.454)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)							
K007			1*	4	K007	X	1# (0.454)
Wastewater treatment sludge from the production of iron blue pigments							
K008			1*	4	K008	X	1# (0.454)
Oven residue from the production of chrome oxide green pigments							
K009			1*	4	K009	X	1# (0.454)
Distillation bottoms from the production of acetaldehyde from ethylene							
K010			1*	4	K010	X	1# (0.454)
Distillation side cuts from the production of acetaldehyde from ethylene							
K011			1*	4	K011	X	1# (0.454)
Bottom stream from the wastewater stripper in the production of acrylonitrile							
K013			1*	4	K013	X	1# (0.454)
Bottom stream from the acetonitrile column in the production of acrylonitrile							
K014			1*	4	K014	D	5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile							

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
K015 Still bottoms from thedistillation of benzyl chloride			1*	4	K015	X	1# (0.454)
K016 Heavy ends or distillation residues from the productionof carbon tetrachloride			1*	4	K016	X	1# (0.454)
K017 Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin			1*	4	K017	X	1# (0.454)
K018 Heavy ends from the fractionation column in ethyl chloride production			1*	4	K018	X	1# (0.454)
K019 Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production			1*	4	K019	X	1# (0.454)
K020 Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production			1*	4	K020	X	1# (0.454)
K021 Aqueous spent antimony catalyst waste from fluoromethanes production			1*	4	K021	X	1# (0.454)
K022 Distillation bottom tars from the production of phenol/acetone from cumene			1*	4	K022	X	1# (0.454)
K023 Distillation light ends from the production of phthalic anhydride from naphthalene			1*	4	K023	D	5000 (2270)
K024 Distillation bottoms from the production of phthalic anhydride from naphthalene			1*	4	K024	D	5000 (2270)
K025 Distillation bottoms from the production of nitrobenzene by the nitration of benzene			1*	4	K025	X	1# (0.454)
K026 Stripping still tails from the production of methyl ethyl pyridines			1*	4	K026	X	1# (0.454)
K027 Centrifuge and distillation residues from toluene diisocyanate production			1*	4	K027	X	1# (0.454)
K028 Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane			1*	4	K028	X	1# (0.454)
K029 Waste from the product steam stripper in the production of 1,1,1-trichloroethane			1*	4	K029	X	1# (0.454)
K030 Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene			1*	4	K030	X	1# (0.454)
K031 By-product salts generated in the production of MSMA and cacodylic acid			1*	4	K031	X	1# (0.454)
K032 Wastewater treatment sludge from the production of chlordane			1*	4	K032	X	1# (0.454)
K033 Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane			1*	4	K033	X	1# (0.454)
K034 Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane			1*	4	K034	X	1# (0.454)
K035 Wastewater treatment sludges generated in the production of creosote			1*	4	K035	X	1# (0.454)
K036			1*	4	K036	X	1 (0.454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Still bottoms from toluene reclamation distillation in the production of disulfoton							
K037			1*	4	K037	X	1 (0.454)
Wastewater treatment sludges from the production of disulfoton							
K038			1*	4	K038	X	1# (0.454)
Wastewater from the washing and stripping of phorate production							
K039			1*	4	K039	X	1## (0.454)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate							
K040			1*	4	K040	X	1# (0.454)
Wastewater treatment sludge from the production of phorate							
K041			1*	4	K041	X	1# (0.454)
Wastewater treatment sludge from the production of toxaphene							
K042			1*	4	K042	X	1# (0.454)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T							
K043			1*	4	K043	X	1# (0.454)
2,6-Dichlorophenol waste from the production of 2,4-D							
K044			1*	4	K044	A	10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives							
K045			1*	4	K045	A	10 (4.54)
Spent carbon from the treatment of wastewater containing explosives							
K046			1*	4	K046	X	1## (0.454)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds							
K047			1*	4	K047	A	10 (4.54)
Pink/red water from TNT operations							
K048			1*	4	K048	X	1# (0.454)
Dissolved air flotation (DAF) float from the petroleum refining industry							
K049			1*	4	K049	X	1# (0.454)
Slop oil emulsion solids from the petroleum refining industry							
K050			1*	4	K050	X	1# (0.454)
Heat exchanger bundle cleaning sludge from the petroleum refining industry							
K051			1*	4	K051	X	1# (0.454)
API separator sludge from the petroleum refining industry							
K052			1*	4	K052	X	1## (0.454)
Tank bottoms (leaded) from the petroleum refining industry							
K060			1*	4	K060	X	1# (0.454)
Ammonia still lime sludge from coking operations							
K061			1*	4	K061	X	1# (0.454)
Emission control dust/sludge from the primary production of steel in electric furnaces							
K062			1*	4	K062	X	1# (0.454)
Spent pickle liquor from steel finishing operations							
K069			1*	4	K069	X	1# (0.454)
Emission control dust/sludge from secondary lead smelting							
K071			1*	4	K071	X	1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used							

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
K073 Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production			1*	4	K073	X	1# (0.454)
K083 Distillation bottoms from aniline extraction			1*	4	K083	B	100 (45.4)
K084 Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds			1*	4	K084	X	1# (0.454)
K085 Distillation or fractionation column bottoms from the production of chlorobenzenes			1*	4	K085	X	1# (0.454)
K086 Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead			1*	4	K086	X	1# (0.454)
K087 Decanter tank tar sludge from coking operations			1*	4	K087	X	1## (0.454)
K093 Distillation light ends from the production of phthalic anhydride from ortho-xylene			1*	4	K093	D	5000 (2270)
K094 Distillation bottoms from the production of phthalic anhydride from ortho-xylene			1*	4	K094	D	5000 (2270)
K095 Distillation bottoms from the production of 1,1,1-trichloroethane			1*	4	K095	X	1# (0.454)
K096 Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane			1*	4	K096	X	1# (0.454)
K097 Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane			1*	4	K097	X	1# (0.454)
K098 Untreated process wastewater from the production of toxaphene			1*	4	K098	X	1# (0.454)
K099 Untreated wastewater from the production of 2,4-D			1*	4	K099	X	1# (0.454)
K100 Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting (Components of this waste are identical with those of K069).			1*	4	K100	X	1# (0.454)
K101 Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds			1*	4	K101	X	1# (0.454)
K102 Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds			1*	4	K102	X	1# (0.454)
K103 Process residues from aniline extraction from the production of aniline			1*	4	K103	B	100 (45.4)
K104 Combined wastewater streams generated from nitrobenzene/aniline chlorobenzenes			1*	4	K104	X	1# (0.454)
K105 Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes			1*	4	K105	X	1# (0.454)
K106 Wastewater treatment sludge from the mercury cell process in chlorine production			1*	4	K106	X	1 (0.454)

See footnotes on following page.

† - indicates the statutory source as defined by 1, 2, 3, or 4 below
1 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3 - indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4 - indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
†† - no reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches)
††† - the RQ for asbestos is limited to friable forms only
§ - the Agency may adjust the RQ for radionuclides in a future rulemaking; until then the statutory 1-pound RQ applies
1° - indicates that the 1-pound RQ is a CERCLA statutory RQ
°° - indicates that no RQ is being assigned to the generic or broad class
- indicates that the RQ is subject to change when the assessment of potential carcinogenicity and/or chronic toxicity is completed
- indicates that an adjusted RQ is proposed in a separate NPRM in today's Federal Register
- the Agency may adjust the RQ for methyl isocyanate in a future rulemaking; until then the statutory 1-pound RQ applies

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous Substance
50000	Formaldehyde Methylene oxide
50077	Azirino(2',3':3,4)pyrrolo(1,2-a)indole-4,7-dione,6-amino-8-[((aminocarbonyl)oxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl- Mitomycin C
50180	Cyclophosphamide 2H-1,3,2-Oxazaphosphorine,2-[bis(2-chloroethyl)amino]tetrahydro-2-oxide
50293	DDT 4,4' DDT Dichlorodiphenyl trichloroethane
50328	Benzo[a]pyrene 3,4-Benzopyrene
50555	Reserpine Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-,methyl ester
51285	2,4-Dinitrophenol Phenol, 2,4-dinitro-
51434	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]- Epinephrine
51796	Carbamic acid, ethyl ester Ethyl carbamate (Urethan)
52686	Trichlorfon
52857	Famphur Phosphorothioic acid, O,O-dimethyl-O-[p-[(dimethylamino)-sulfonyl]phenyl] ester
53703	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene Dibenzo[a,h]anthracene
53963	Acetamide, N-9H-fluoren-2-yl- 2-Acetylaminofluorene
54115	Nicotine and salts Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-,and salts
55185	Ethanamine, N-ethyl-N-nitroso- N-Nitrosodiethylamine
55630	Nitroglycerine 1,2,3-Propanetriol, trinitrate-
55914	Diisopropyl fluorophosphate Phosphorofluoridic acid,bis(1-methylethyl) ester
56042	Methylthiouracil 4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
56235	Carbon tetrachloride Methane, tetrachloro-
56382	Parathion Phosphorothioic acid,O,O-diethyl O-(p-nitrophenyl)ester
56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl- 3-Methylcholanthrene
56531	Diethylstilbestrol 4,4'-Stilbenediol, alpha,alpha'-diethyl-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
56553	Benz[a]anthracene 1,2-Benzanthracene Benzo[a]anthracene
56724	Coumaphos
57125	Cyanides (soluble cyanide salts), not elsewhere-specified
57147	1,1-Dimethylhydrazine Hydrazine, 1,1-dimethyl-
57249	Strychnidin-10-one, and salts Strychnine and salts
57749	Chlordane Chlordane, technical 4,7-Methanoindin, 1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-
57976	1,2-Benzanthracene, 7,12-dimethyl- 7,12-Dimethylbenz[a]anthracene
58899	gamma - BHC Hexachlorocyclohexane (gamma isomer) Lindane
58902	Phenol, 2,3,4,6-tetrachloro- 2,3,4,6-Tetrachlorophenol
59507	4-Chloro-m-cresol p-Chloro-m-cresol Phenol, 4-chloro-3-methyl-
60004	Ethylenediamine tetraacetic acid (EDTA)
60117	Benzenamine, N,N-dimethyl-4-phenylazo- Dimethylaminoazobenzene
60297	Ethane, 1,1'-oxybis- Ethyl ether
60344	Hydrazine, methyl- Methyl hydrazine
60515	Dimethoate Phosphorodithioic acid,O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester
60571	Dieldrin 1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,exo-1,4:5,8-dimethanonaphthalene
61825	Amitrole 1H-1,2,4-Triazol-3-amine
62384	Mercury, (acetato-O)phenyl- Phenylmercuric acetate
62442	Acetamide, N-(4-ethoxyphenyl)- Phenacetin
62500	Ethyl methanesulfonate Methanesulfonic acid, ethyl ester
62533	Aniline Benzenamine
62555	Ethanethioamide Thioacetamide
62566	Carbamide, thio- Thiourea

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
62737	Dichlorvos
62748	Acetic acid, fluoro-, sodium salt Fluoroacetic acid, sodium salt
62759	Dimethylnitrosamine N-Nitrosodimethylamine
63252	Carbaryl
64186	Formic acid Methanoic acid
64197	Acetic acid
65850	Benzoic acid
66751	Uracil, 5-[bis(2-chloroethyl)amino]- Uracil mustard
67561	Methanol Methyl alcohol
67641	Acetone 2-Propanone
67663	Chloroform Methane, trichloro-
67721	Ethane, 1,1,1,2,2,2-hexachloro- Hexachloroethane
70257	Guanidine, N-nitroso-N-methyl-N'-nitro- N-Methyl-N'-nitro-N-nitrosoguanidine
70304	Hexachlorophene 2,2'-Methylenebis(3,4,6-trichlorophenol)
71363	1-Butanol n-Butyl alcohol
71432	Benzene
71556	Methyl chloroform 1,1,1-Trichloroethane
72208	Endrin 1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene
72435	Ethane, 1,1,1-trichloro-2,2-bis(p-methoxyphenyl)- Methoxychlor
72548	DDD 4,4' DDD Dichlorodiphenyl dichloroethane TDE
72559	DDE 4,4' DDE
72571	2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt Trypan blue
74839	Methane, bromo- Methyl bromide
74873	Methane, chloro- Methyl chloride
74884	Methane, iodo- Methyl iodide

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
74895	Monomethylamine
74908	Hydrocyanic acid Hydrogen cyanide
74931	Methanethiol Methylmercaptan Thiomethanol
74953	Methane, dibromo- Methylene bromide
75003	Chloroethane
75014	Ethene, chloro- Vinyl chloride
75047	Monoethylamine
75058	Acetonitrile Ethanenitrile
75070	Acetaldehyde Ethanal
75092	Methane, dichloro- Methylene chloride
75150	Carbon bisulfide Carbon disulfide
75207	Calcium carbide
75218	Ethylene oxide Oxirane
75252	Bromoform Methane, tribromo-
75274	Dichlorobromomethane
75343	1,1-Dichloroethane Ethane, 1,1-dichloro- Ethylidene dichloride
75354	1,1-Dichloroethylene Ethene, 1,1-dichloro- Vinylidene chloride
75365	Acetyl chloride Ethanoyl chloride
75445	Carbonyl chloride Phosgene
75503	Trimethylamine
75558	2-Methylaziridine 1,2-Propylenimine
75569	Propylene oxide
75605	Cacodylic acid Hydroxydimethylarsine oxide
75648	tert-Butylamine
75694	Methane, trichlorofluoro- Trichloromonofluoromethane
75718	Dichlorodifluoromethane Methane, dichlorodifluoro-
75865	Acetone cyanohydrin 2-Methyllactonitrile Propanenitrile, 2-hydroxy-2-methyl-
75876	Acetaldehyde, trichloro- Chloral
75990	2,2-Dichloropropionic acid
76017	Ethane, pentachloro- Pentachloroethane
76448	Heptachlor 4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
77474	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro- Hexachlorocyclopentadiene
77781	Dimethyl sulfate Sulfuric acid, dimethyl ester
78002	Plumbane, tetraethyl- Tetraethyl lead
78591	Isophorone
78795	Isoprene
78819	iso-Butylamine
78831	Isobutyl alcohol 1-Propanol, 2-methyl-
78875	1,2-Dichloropropane Propylene dichloride
78886	2,3-Dichloropropene
78933	2-Butanone Methyl ethyl ketone
78999	1,1-Dichloropropane
79005	Ethane, 1,1,2-trichloro- 1,1,2-Trichloroethane
79016	Trichloroethene Trichloroethylene
79061	Acrylamide 2-Propenamide
79094	Propionic acid
79107	Acrylic acid 2-Propenoic acid
79195	Hydrazinecarbothioamide Thiosemicarbazide
79221	Carbonochloridic acid, methyl ester Methyl chlorocarbonate
79312	iso-Butyric acid
79345	Ethane, 1,1,2,2-tetrachloro- 1,1,2,2-Tetrachloroethane
79447	Carbamoyl chloride, dimethyl- Dimethylcarbamoyl chloride
79469	2-Nitropropane Propane, 2-nitro-
80159	alpha,alpha-Dimethylbenzylhydroperoxide Hydroperoxide, 1-methyl-1-phenylethyl-
80626	Methyl methacrylate 2-Propenoic acid, 2-methyl-, methyl ester
81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts Saccharin and salts
81812	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts Warfarin
82688	Benzene, pentachloronitro- Pentachloronitrobenzene
83329	Acenaphthene
84662	1,2-Benzenedicarboxylic acid,diethyl ester Diethyl phthalate
84742	1,2-Benzenedicarboxylic acid,dibutyl ester n-Butyl phthalate Dibutyl phthalate Di-n-butyl phthalate
85007	Diquat
85018	Phenanthrene
85449	1,2-Benzenedicarboxylic acid anhydride Phthalic anhydride
85687	Butyl benzyl phthalate
86306	N-Nitrosodiphenylamine
86500	Guthion
86737	Fluorene
86884	alpha-Naphthylthiourea Thiourea, 1-naphthalenyl-
87650	2,6-Dichlorophenol Phenol, 2,6-dichloro-
87683	1,3-Butadiene, 1,1,2,3,4,4-hexachloro- Hexachlorobutadiene
87865	Pentachlorophenol Phenol, pentachloro-
88062	Phenol, 2,4,6-trichloro 2,4,6-Trichlorophenol
88722	p-Nitrotoluene
88755	o-Nitrophenol 2-Nitrophenol
88857	Dinoseb Phenol, 2,4-dinitro-6-(1-methylpropyl)-
91087	Benzene, 2,4-diisocyanatomethyl- Toluene diisocyanate
91203	Naphthalene
91225	Quinoline
91587	beta-Chloronaphthalene 2-Chloronaphthalene Naphthalene, 2-chloro-
91598	2-Naphthylamine beta-Naphthylamine
91805	Methapyrilene Pyridine, 2-[(2-(dimethylamino)ethyl)-2-thenylamino]-
91941	(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro- 3,3'-Dichlorobenzidine
92875	Benzidine (1,1'-Biphenyl)-4,4'diamine
93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex 2,4,5-TP acid
93765	2,4,5-T 2,4,5-T acid 2,4,5-Trichlorophenoxyacetic acid
93798	2,4,5-T esters
94111	2,4-D Esters
94586	Benzene, 1,2-methylenedioxy-4-propyl- Dihydrosafrole
94597	Benzene, 1,2-methylenedioxy-4-allyl- Safrole
94757	2,4-D Acid 2,4-D, salts and esters 2,4-Dichlorophenoxyacetic acid, salts and esters

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
94791	2,4-D Esters
94804	2,4-D Esters
95476	Benzene, o-dimethyl- o-Xylene
95487	o-Cresol o-Cresylic acid
95501	Benzene, 1,2-dichloro- 1,2-Dichlorobenzene o-Dichlorobenzene
95578	[illegible]-Chlorophenol o-Chlorophenol Phenol, 2-chloro-
95807	Diaminotoluene Toluenediamine
95943	Benzene, 1,2,4,5-tetrachloro- 1,2,4,5-Tetrachlorobenzene
95954	Phenol, 2,4,5-trichloro- 2,4,5-Trichlorophenol
96128	1,2-Dibromo-3-chloropropane Propane, 1,2-dibromo-3-chloro-
96457	Ethylenethiourea 2-Imidazolidinethione
97632	Ethyl methacrylate 2-Propenoic acid, 2-methyl-, ethyl ester
98011	2-Furancarboxaldehyde Furfural
98077	Benzene, trichloromethyl- Benzotrichloride
98088	Benzenesulfonic acid chloride Benzenesulfonyl chloride
98828	Benzene, 1-methylethyl- Cumene
98862	Acetophenone Ethanone, 1-phenyl-
98873	Benzal chloride Benzene, dichloromethyl-
98884	Benzoyl chloride
98953	Benzene, nitro- Nitrobenzene
99081	m-Nitrotoluene
99354	Benzene, 1,3,5-trinitro- sym-Trinitrobenzene
99558	Benzenamine, 2-methyl-5-nitro- 5-Nitro-o-toluidine
99650	m-Dinitrobenzene
99990	p-Nitrotoluene
100016	Benzenamine, 4-nitro- p-Nitroaniline
100027	p-Nitrophenol 4-Nitrophenol Phenol, 4-nitro-
100254	p-Dinitrobenzene
100414	Ethylbenzene
100425	Styrene
100447	Benzene, chloromethyl- Benzyl chloride

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
100470	Benzonitrile
100754	N-Nitrosopiperidine Pyridine, hexahydro-N-nitroso-
101144	Benzenamine, 4,4'-methylenebis(2-chloro- 4,4'-Methylenebis(2-chloroaniline)
101553	Benzene, 1-bromo-4-phenoxy- 4-Bromophenyl phenyl ether
103855	N-Phenylthiourea Thiourea, phenyl-
105464	sec-Butyl acetate
105679	2,4-Dimethylphenol Phenol, 2,4-dimethyl-
106423	Benzene, p-dimethyl- p-Xylene
106445	p-Cresol p-Cresylic acid
106467	Benzene, 1,4-dichloro- 1,4-Dichlorobenzene p-Dichlorobenzene
106478	Benzenamine, 4-chloro- p-Chloroaniline
106514	p-Benzoquinone 1,4-Cyclohexadienedione
106898	1-Chloro-2,3-epoxypropane Epichlorohydrin Oxirane, 2-(chloromethyl)-
106934	Ethane, 1,2-dibromo- Ethylene dibromide
107028	Acrolein 2-Propenal
107051	Allyl chloride
107062	1,2-Dichloroethene Ethane, 1,2-dichloro- Ethylene dichloride
107106	1-Propanamine n-Propylamine
107120	Ethyl cyanide Propanenitrile
107131	Acrylonitrile 2-Propenenitrile
107153	Ethylenediamine
107186	Allyl alcohol 2-Propen-1-ol
107197	Propargyl alcohol 2-Propyn-1-ol
107200	Acetaldehyde, chloro- Chloroacetaldehyde
107302	Chloromethyl methyl ether Methane, chloromethoxy-
107493	Pyrophosphoric acid, tetraethyl ester Tetraethyl pyrophosphate
107926	Butyric acid
108054	Vinyl acetate
108101	Methyl isobutyl ketone 4-Methyl-2-pentanone
108247	Acetic anhydride
108316	2,5-Furandione Maleic anhydride

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
108383	Benzene, m-dimethyl- m-Xylene
108394	m-Cresol m-Cresylic acid
108463	1,3-Benzenediol Resorcinol
108601	Bis(2-chloroisopropyl) ether Propane, 2,2'-oxybis(2-chloro-
108883	Benzene, methyl- Toluene
108907	Benzene, chloro- Chlorobenzene
108941	Cyclohexanone
108952	Benzene, hydroxy- Phenol
108985	Benzenethiol Thiophenol
109068	2-Picoline Pyridine, 2-methyl-
109739	Butylamine
109773	Malononitrile Propanedinitrile
109897	Diethylamine
109999	Furan, tetrahydro- Tetrahydrofuran
110009	Furan Furfuran
110167	Maleic acid
110178	Fumaric acid
110190	iso-Butyl acetate
110758	2-Chloroethyl vinyl ether Ethene, 2-chloroethoxy-
110827	Benzene, hexahydro- Cyclohexane
110861	Pyridine
111444	Bis (2-chloroethyl) ether Dichloroethyl ether Ethane, 1,1'-oxybis(2-chloro-
111546	1,2-Ethanediylbiscarbamodithioic acid Ethylenebis(dithiocarbamic acid)
111911	Bis(2-chloroethoxy) methane Ethane, 1,1'-(methylenebis(oxy))bis(2-chloro-
115026	Azaserine L-Serine, diazoacetate (ester)
115297	Endosulfan 5-Norbornene-2,3-dimethanol,1,4,5,6,7,7-hexachloro,cyclic sulfite
115322	Kelthane
116063	Aldicarb Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime
117806	Dichlone
117817	1,2-Benzenedicarboxylic acid,[bis(2-ethylhexyl)] ester Bis(2-ethylhexyl)phthalate
117840	1,2-Benzenedicarboxylic acid,di-n-octyl ester Di-n-octyl phthalate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
118741	Benzene, hexachloro- Hexachlorobenzene
119904	(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy- 3,3'-Dimethoxybenzidine
119937	(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl- 3,3'-Dimethylbenzidine
120127	Anthracene
120581	Benzene, 1,2-methylanedioxy-4-propenyl- Isosafrole
120821	1,2,4-Trichlorobenzene
120832	2,4-Dichlorophenol Phenol, 2,4-dichloro-
121142	Benzene, 1-methyl-2,4-dinitro- 2,4-Dinitrotoluene
121211	Pyrethrins
121299	Pyrethrins
121448	Triethylamine
121755	Malathion
122098	alpha,alpha-Dimethylphenethylamine Ethanamine, 1,1-dimethyl-2-phenyl-
122667	1,2-Diphenylhydrazine Hydrazine, 1,2-diphenyl-
123331	1,2-Dihydro-3,6-pyridazinedione Maleic hydrazide
123626	Propionic anhydride
123637	Paraldehyde 1,3,5-Trioxane, 2,4,6-trimethyl-
123739	2-Butenal Crotonaldehyde
123864	Butyl acetate
123911	1,4-Diethylene dioxide 1,4-Dioxane
123922	Iso-Amyl acetate
124049	Adipic acid
124403	Dimethylamine Methanamine, N-methyl-
124414	Sodium methylate
124481	Chlorodibromomethane
126727	1-Propanol, 2,3-dibromo-, phosphate (3:1) Tris(2,3-dibromopropyl) phosphate
126987	Methacrylonitrile 2-Propenenitrile, 2-methyl-
127184	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethylene
127822	Zinc phenolsulfonate
129000	Pyrene
130154	1,4-Naphthalenedione 1,4-Naphthoquinone
131113	1,2-Benzenedicarboxylic acid,dimethyl ester Dimethyl phthalate
131748	Ammonium picrate Phenol, 2,4,6-trinitro-, ammonium salt
131895	4,6-Dinitro-o-cyclohexylphenol Phenol, 2-cyclohexyl-4,6-dinitro-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
133062	Captan
134327	1-Naphthylamine alpha-Naphthylamine
137268	Bis(dimethylthiocarbamoyl) disulfide Thiram
140885	Ethyl acrylate 2-Propenoic acid, ethyl ester
141786	Acetic acid, ethyl ester Ethyl acetate
142289	1,3-Dichloropropane
142712	Cupric acetate
142847	Dipropylamine 1-Propanamine, N-propyl-
143339	Sodium cyanide
143500	Decachlorooctahydro-1,3,4-metheno-2H- cyclobuta[c,d]-pentalen-2-one Kepone
145733	Endothall 7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
148823	Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L- Melphalan
151508	Potassium cyanide
151564	Aziridine Ethylenimine
152169	Diphosphoramide, octamethyl- Octamethylpyrophosphoramide
156605	1,2-trans-Dichloroethylene Ethene, trans-1,2-dichloro-
189559	1,2:7,8-Dibenzopyrene Dibenz[a,i]pyrene
191242	Benzo[ghi]perylene
193395	Indeno(1,2,3-cd)pyrene 1,10-(1,2-Phenylene)pyrene
205992	Benzo[b]fluoranthene
206440	Benzo[j,k]fluorene Fluoranthene
207089	Benzo[k]fluoranthene
208968	Acenaphthylene
218019	1,2-Benzphenanthrene Chrysene
225514	Benz[c]acridine 3,4-Benzacridine
297972	O,O-Diethyl O-pyrazinyl phosphorothioate Phosphorothioic acid, O,O-diethyl, O-pyrazinyl ester
298000	O,O-Dimethyl O-p-nitrophenyl phosphorothioate Methyl parathion
298022	Phorate Phosphorodithioic acid, O,O-diethyl S-(ethylthio),methyl ester
298044	O,O-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate Disulfoton
300765	Naled
301042	Acetic acid, lead salt Lead acetate
302012	Diamine Hydrazine

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
303344	Lasiocarpine
305033	Butanoic acid, 4-[bis(2-chloroethyl)amino] benzene- Chlorambucil
309002	Aldrin 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,exo-dimethanonaphthalene
311455	Diethyl-p-nitrophenyl phosphate Phosphoric acid,diethyl,p-nitrophenyl ester
315184	Mexacarbate
319846	alpha - BHC
319857	beta - BHC
319868	delta - BHC
329715	2,5-Dinitrophenol
330541	Diuron
333415	Diazinon
353504	Carbon oxyfluoride Carbonyl fluoride
357573	Brucine Strychnidin-10-one, 2,3-dimethoxy-
460195	Cyanogen
465736	Hexachlorohexahydro-endo,endo-dimethanonaphthalene 1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene
492808	Auramine Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-
494031	Chlornaphazine 2-Naphthylamine, N,N-bis(2-chloroethyl)-
496720	Diaminotoluene Toluenediamine
504245	4-Aminopyridine 4-Pyridinamine
504609	1-Methylbutadiene 1,3-Pentadiene
506616	Potassium silver cyanide
506649	Silver cyanide
506683	Bromine cyanide Cyanogen bromide
506774	Chlorine cyanide Cyanogen chloride
506876	Ammonium carbonate
506967	Acetyl bromide
509148	Methane, tetranitro- Tetranitromethane
510156	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester Ethyl 4,4'-dichlorobenzilate
513495	sec-Butylamine
528290	o-Dinitrobenzene
534521	4,6-Dinitro-o-cresol and salts Phenol,2,4-dinitro-6-methyl-, and salts
540738	1,2-Dimethylhydrazine Hydrazine, 1,2-dimethyl-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
540885	tert-Butyl acetate
541093	Uranyl acetate
541537	2,4-Dithiobiuret Thioimidodicarbonic diamide
541731	Benzene, 1,3-dichloro- 1,3-Dichlorobenzene m-Dichlorobenzene
542621	Barium cyanide
542756	1,3-Dichloropropene Propene, 1,3-dichloro-
542767	3-Chloropropionitrile Propanenitrile, 3-chloro-
542881	Bis(chloromethyl) ether Methane, oxybis(chloro-
543908	Cadmium acetate
544183	Cobaltous formate
544923	Copper cyanide
554847	m-Nitrophenol
557197	Nickel cyanide Nickel(II) cyanide
557211	Zinc cyanide
557346	Zinc acetate
557415	Zinc borate
563122	Ethion
563688	Acetic acid, thallium(I) salt Thallium(I) acetate
573568	2,6-Dinitrophenol
584849	Benzene, 2,4-diisocyanatomethyl- Toluene diisocyanate
591082	Acetamide, N-(aminothioxomethyl)- 1-Acetyl-2-thiourea
592018	Calcium cyanide
592041	Mercuric cyanide
592858	Mercuric thiocyanate
592870	Lead thiocyanate
594423	Methanesulfenyl chloride, trichloro- Trichloromethanesulfenyl chloride
598312	Bromoacetone 2-Propanone, 1-bromo-
606202	Benzene, 1-methyl-2,6-dinitro- 2,6-Dinitrotoluene
608935	Benzene, pentachloro- Pentachlorobenzene
609198	3,4,5-Trichlorophenol
610399	3,4-Dinitrotoluene
615532	Carbamic acid, methylnitroso-,ethyl ester N-Nitroso-N-methylurethane
621647	Di-n-propylnitrosamine N-Nitroso-di-n-propylamine
624839	Isocyanic acid, methyl ester Methyl isocyanate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
625161	tert-Amyl acetate
626380	sec-Amyl acetate
628637	Amyl acetate
628864	Fulminic acid, mercury(II)salt Mercury fulminate
630104	Carbonimidoselenoic acid Selenourea
630206	Ethane, 1,1,1,2-tetrachloro- 1,1,1,2-Tetrachloroethane
631618	Ammonium acetate
636215	Benzenamine, 2-methyl-, hydrochloride o-Toluidine hydrochloride
640197	Acetamide, 2-fluoro- Fluoroacetamide
684935	Carbamide, N-methyl-N-nitroso- N-Nitroso-N-methylurea
692422	Arsine, diethyl- Diethylarsine
696286	Dichlorophenylarsine Phenyl dichloroarsine
757584	Hexaethyl tetraphosphate Tetraphosphoric acid, hexaethyl ester
759739	Carbamide, N-ethyl-N-nitroso- N-Nitroso-N-ethylurea
764410	2-Butene, 1,4-dichloro- 1,4-Dichloro-2-butene
765344	Glycidylaldehyde 1-Propanal, 2,3-epoxy-
815827	Cupric tartrate
823405	Diaminotoluene Toluenediamine
924163	1-Butanamine, N-butyl-N-nitroso- N-Nitrosodi-n-butylamine
930552	N-Nitrosopyrrolidine Pyrrole, tetrahydro-N-nitroso-
933755	2,3,6-Trichlorophenol
933788	2,3,5-Trichlorophenol
959988	alpha - Endosulfan
1024573	Heptachlor epoxide
1031078	Endosulfan sulfate
1066304	Chromic acetate
1066337	Ammonium bicarbonate
1072351	Lead stearate
1111780	Ammonium carbamate
1116547	Ethanol, 2,2'-(nitrosoimino)bis- N-Nitrosodiethanolamine
1120714	1,2-Oxathiolane, 2,2-dioxide 1,3-Propane sultone
1185575	Ferric ammonium citrate
1194656	Dichlobenil
1300716	Xylenol
1303282	Arsenic(V) oxide Arsenic pentoxide

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
1303328	Arsenic disulfide
1303339	Arsenic trisulfide
1309644	Antimony trioxide
1310583	Potassium hydroxide
1310732	Sodium hydroxide
1314325	Thallic oxide Thallium(III) oxide
1314621	Vanadium(V) oxide Vanadium pentoxide
1314803	Phosphorus pentasulfide Phosphorus sulfide Sulfur phosphide
1314847	Zinc phosphide
1314870	Lead sulfide
1314961	Strontium sulfide
1319726	2,4,5-T amines
1319773	Cresol(s) Cresylic acid
1320189	2,4-D Esters
1321126	Nitrotoluene
1327522	Arsenic acid
1327533	Arsenic(III) oxide Arsenic trioxide
1330207	Benzene, dimethyl- Xylene
1332076	Zinc borate
1332214	Asbestos
1333831	Sodium bifluoride
1335326	Lead subacetate
1336216	Ammonium hydroxide
1336363	POLYCHLORINATED BIPHENYLS (PCBs) Aroclors
1338234	2-Butanone peroxide Methyl ethyl ketone peroxide
1338245	Naphthenic acid
1341497	Ammonium bifluoride
1464535	2,2'-Bioxirane 1,2:3,4-Diepoxybutane
1563662	Carbofuran
1615801	N,N'-Diethylhydrazine Hydrazine, 1,2-diethyl-
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin(TCDD)
1762954	Ammonium thiocyanate
1863634	Ammonium benzoate
1888717	Hexachloropropene 1-Propene, 1,1,2,3,3,3-hexachloro-

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
1918009	Dicamba
1928387	2,4-D Esters
1928478	2,4,5-T esters
1928616	2,4-D Esters
1929733	2,4-D Esters
2008460	2,4,5-T amines
2032657	Mercaptodimethur
2303164	Diallate S-(2,3-Dichloroallyl) diisopropylthiocarbamate
2312358	Propargite
2545597	2,4,5-T esters
2763964	5-(Aminomethyl)-3-isoxazolol 3(2H)-Isoxazolone, 5-(aminomethyl)-
2764729	Diquat
2921882	Chlorpyrifos
2944674	Ferric ammonium oxalate
2971382	2,4-D Esters
3012655	Ammonium citrate, dibasic
3164292	Ammonium tartrate
3165933	Benzenamine, 4-chloro-2-methyl-,hydrochloride 4-Chloro-o-toluidine, hydrochloride
3251238	Cupric nitrate
3288582	O,O-Diethyl S-methyl dithiophosphate Phosphorodithioic acid, O,O-diethyl S-methylester
3486359	Zinc carbonate
3689245	Dithiopyrophosphoric acid,tetraethyl ester Tetraethyldithiopyrophosphate
3813147	2,4,5-T amines
4170303	2-Butenal Crotonaldehyde
4549400	Ethenamine, N-methyl-N-nitroso- N-Nitrosomethylvinylamine
5344821	1-(o-Chlorophenyl)thiourea Thiourea, (2-chlorophenyl)-
5893663	Cupric oxalate
5972736	Ammonium oxalate
6009707	Ammonium oxalate
6369966	2,4,5-T amines
6369977	2,4,5-T amines
6533739	Carbonic acid, dithallium (I) salt Thallium(I) carbonate
7005723	4-Chlorophenyl phenyl ether
7421934	Endrin aldehyde

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
7428480	Lead stearate
7439921	Lead
7439976	Mercury
7440020	Nickel
7440224	Silver
7440235	Sodium
7440280	Thallium
7440360	Antimony
7440382	Arsenic
7440417	Beryllium Beryllium dust
7440439	Cadmium
7440473	Chromium
7440508	Copper
7440666	Zinc
7446084	Selenium dioxide Selenium oxide
7446142	Lead sulfate
7446188	Sulfuric acid, thallium(I) salt Thallium(I) sulfate
7446277	Lead phosphate Phosphoric acid, lead salt
7447394	Cupric chloride
7488564	Selenium disulfide Sulfur selenide
7558794	Sodium phosphate, dibasic
7601549	Sodium phosphate, tribasic
7631892	Sodium arsenate
7631905	Sodium bisulfite
7632000	Sodium nitrite
7645252	Lead arsenate
7646857	Zinc chloride
7647010	Hydrochloric acid
7647189	Antimony pentachloride
7664382	Phosphoric acid
7664393	Hydrofluoric acid Hydrogen fluoride
7664417	Ammonia
7664939	Sulfuric acid
7681494	Sodium fluoride
7681529	Sodium hypochlorite

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
7697372	Nitric acid
7699458	Zinc bromide
7705080	Ferric chloride
7718549	Nickel chloride
7719122	Phosphorus trichloride
7720787	Ferrous sulfate
7722647	Potassium permanganate
7723140	Phosphorus
7733020	Zinc sulfate
7738945	Chromic acid
7758294	Sodium phosphate, tribasic
7758943	Ferrous chloride
7758954	Lead chloride
7758987	Cupric sulfate
7761888	Silver nitrate
7773060	Ammonium sulfamate
7775113	Sodium chromate
7778394	Arsenic acid
7778441	Calcium arsenate
7778509	Potassium bichromate
7778543	Calcium hypochlorite
7779864	Zinc hydrosulfite
7779886	Zinc nitrate
7782414	Fluorine
7782492	Selenium
7782505	Chlorine
7782630	Ferrous sulfate
7782823	Sodium selenite
7782867	Mercurous nitrate
7783008	Selenious acid
7783064	Hydrogen sulfide Hydrosulfuric acid Sulfur hydride
7783158	Ammonium thiosulfate
7783359	Mercuric sulfate
7783462	Lead fluoride
7783495	Zinc fluoride
7783508	Ferric fluoride
7783564	Antimony trifluoride

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
7784341	Arsenic trichloride
7784409	Lead arsenate
7784410	Potassium arsenate
7784465	Sodium arsenite
7785844	Sodium phosphate, tribasic
7786347	Mevinphos
7789814	Nickel sulfate
7787475	Beryllium chloride
7787497	Beryllium fluoride
7787555	Beryllium nitrate
7788989	Ammonium chromate
7789006	Potassium chromate
7789062	Strontium chromate
7789095	Ammonium bichromate
7789426	Cadmium bromide
7789437	Cobaltous bromide
7789619	Antimony tribromide
7790945	Chlorosulfonic acid
7791120	Thallium(I) chloride
7803512	Hydrogen phosphide Phosphine
7803556	Ammonium vanadate Vanadic acid, ammonium salt
8001352	Camphene, octachloro- Toxaphene
8001589	Creosote
8003198	Dichloropropene - Dichloropropene (mixture)
8003347	Pyrethrins
8014957	Sulfuric acid
9004664	Ferric dextran Iron dextran
10022705	Sodium hypochlorite
10025873	Phosphorus oxychloride
10026119	Antimony trichloride
10026116	Zirconium tetrachloride
10028225	Ferric sulfate
10031591	Sulfuric acid, thallium(I) salt Thallium(I) sulfate
10039324	Sodium phosphate, dibasic
10043013	Aluminum sulfate
10045893	Ferrous ammonium sulfate

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
10045940	Mercuric nitrate
10049055	Chromous chloride
10099748	Lead nitrate
10101538	Chromic sulfate
10101630	Lead iodide
10101890	Sodium phosphate, tribasic
10102064	Uranyl nitrate
10102188	Sodium selenite
10102439	Nitric oxide Nitrogen(II) oxide
10102440	Nitrogen dioxide Nitrogen(IV) oxide
10102451	Thallium(I) nitrate
10102484	Lead arsenate
10108642	Cadmium chloride
10124502	Potassium arsenite
10124568	Sodium phosphate, tribasic
10140655	Sodium phosphate, dibasic
10192300	Ammonium bisulfite
10196040	Ammonium sulfite
10361894	Sodium phosphate, tribasic
10380297	Cupric sulfate ammoniated
10415755	Mercurous nitrate
10421484	Ferric nitrate
10544726	Nitrogen dioxide Nitrogen(IV) oxide
10588019	Sodium bichromate
11096825	Aroclor 1260 Polychlorinated Biphenyls (PCBs)
11097691	Aroclor 1254 Polychlorinated Biphenyls (PCBs)
11104282	Aroclor 1221 Polychlorinated Biphenyls (PCBs)
11115745	Chromic acid
11141165	Aroclor 1232 Polychlorinated Biphenyls (PCBs)
12002038	Cupric acetoarsenite
12039520	Thallium(I) selenide
12054487	Nickel hydroxide
12125018	Ammonium fluoride
12125029	Ammonium chloride
12135761	Ammonium sulfide
12672296	Aroclor 1248 Polychlorinated Biphenyls (PCBs)
12674112	Aroclor 1016 Polychlorinated Biphenyls (PCBs)
12771083	Sulfur monochloride
13463393	Nickel carbonyl Nickel tetracarbonyl

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
13560991	2,4,5-T salts
13597994	Beryllium nitrate
13746899	Zirconium nitrate
13765190	Calcium chromate Chromic acid, calcium salt
13814965	Lead fluoborate
13826830	Ammonium fluoborate
13952846	sec-Butylamine
14017415	Cobaltous sulfamate
14216752	Nickel nitrate
14258492	Ammonium oxalate
14307358	Lithium chromate
14307438	Ammonium tartrate
14639975	Zinc ammonium chloride
14639986	Zinc ammonium chloride
14644612	Zirconium sulfate
15699180	Nickel ammonium sulfate
15739607	Lead sulfate
15950660	2,3,4-Trichlorophenol
16721805	Sodium hydrosulfide
16752775	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-,methyl ester Methomyl
16871719	Zinc silicofluoride
16919190	Ammonium silicofluoride
16923958	Zirconium potassium fluoride
18883664	D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)- Streptozotocin
20816120	Osmium oxide Osmium tetroxide
20830813	Daunomycin 5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-
20859738	Aluminum phosphide
23950585	3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide Pronamide
25154545	Dinitrobenzene (mixed)
25154556	Nitrophenol (mixed)
25155300	Sodium dodecylbenzene sulfonate
25167822	Trichlorophenol
25168154	2,4,5-T esters
25168267	2,4-D Esters
25321146	Dinitrotoluene
25321226	Dichlorobenzene (mixed)
25376458	Diaminotoluene Toluenediamine

APPENDIX A - SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous Substance
25550587	Dinitrophenol
26264062	Calcium dodecylbenzene sulfonate
26471625	Benzene, 2,4-diisocyanatomethyl- Toluene diisocyanate
26628228	Sodium azide
26638197	Dichloropropene
26952238	Dichloropropene
27176870	Dodecylbenzenesulfonic acid
27323417	Triethanolamine dodecylbenzene sulfonate
27774136	Vanadyl sulfate
28300745	Antimony potassium tartrate
30525894	Paraformaldehyde
32534955	2,4,5-TP acid esters
33213659	beta - Endosulfan
36478769	Uranyl nitrate
37211055	Nickel chloride
39196184	3,3-Dimethyl-1-(methylthio)-2-butanone,O- [(methylamino)carbonyl] oxime Thiofanox
42504461	Isopropanolamine dodecylbenzene sulfonate
52628258	Zinc ammonium chloride
52652592	Lead stearate
52740166	Calcium arsenite
53467111	2,4-D Esters
53469219	Aroclor 1242 Polychlorinated Biphenyls (PCBs)
55488874	Ferric ammonium oxalate
56189094	Lead stearate
61792072	2,4,5-T esters

§ 302.5 Determination of reportable quantities.

(a) *Listed hazardous substances.* The quantity listed in the column "Final RQ" for each substance in Table 302.4 is the reportable quantity for that substance.

(b) *Unlisted hazardous substances.* Unlisted hazardous substances designated by 40 CFR 302.4(b), which substances are wastes prior to their initial release into the environment, have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristic of extraction procedure (EP) toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit EP toxicity have the reportable quantities listed in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based. The reportable quantity applies to the waste itself, not merely to the toxic contaminant. If an unlisted hazardous waste exhibits EP toxicity on the basis of more than one contaminant, the reportable quantity for that waste shall be the lowest of the reportable quantities listed in Table 302.4 for those contaminants. If an unlisted hazardous waste exhibits the characteristic of EP toxicity and one or more of the other characteristics referenced in 40 CFR 302.4(b), the reportable quantity for that waste shall be the lowest of the applicable reportable quantities.

§ 302.6 Notification requirements.

(a) Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24-hour period, immediately notify the National Response Center ((800) 424–8802; in Washington, D.C. (202) 426–2675).

(b) Releases of mixtures and solutions are subject to these notification requirements only where a component hazardous substance of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

(c) Notification of the release of an RQ of solid particles of antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc is not required if the mean diameter of the particles released is larger than 100 micrometers (0.004 inches).

(Approved by the Office of Management and Budget under the control number 2115–0137)

§ 302.7 Penalties.

(a) Any person

(1) In charge of a vessel from which a hazardous substance is released, other than a federally permitted release, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone,

(2) In charge of a vessel from which a hazardous substance is released, other than a federally permitted release, which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), and who is otherwise subject to the jurisdiction of the United States at the time of the release, or

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he has knowledge of such release shall be subject to all of the sanctions, including criminal penalties, set forth in section 103 of the Act with respect to such failure to notify.

(b) Notification received pursuant to this section or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) This section shall not apply to the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act or to the handling and storage of such a pesticide product by an agricultural producer.

PART 117—[AMENDED]

2. 40 CFR Part 117 is amended by revising § 117.3 to read as follows:

§ 117.3 Determination of reportable quantities.

Each substance in Table 117.3 that is listed in Table 302.4, 40 CFR Part 302, is assigned the reportable quantity listed in Table 302.4 for that substance.

[FR Doc. 85–4238 Filed 4–3–85; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H-FRL 2806(a)]

Reportable Quantity Adjustments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Sections 103(a) and 103(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities ("RQs") immediately notify the National Response Center of the release. Section 102(b) sets a reportable quantity of one pound for hazardous substances, except those substances for which reportable quantities have been established pursuant to section 311(b)(4) of the Clean Water Act ("CWA").

Section 102(a) authorizes the Environmental Protection Agency ("EPA") to adjust reportable quantities for hazardous substances and to designate as hazardous substances, substances which when released into the environment may present substantial danger to the public health or welfare or the environment. A final rule published elsewhere in today's Federal Register adjusts many of the reportable quantities established in section 102(b). EPA is proposing in this rulemaking to adjust additional reportable quantities. These RQ adjustments are intended to reduce the burdens of reporting on the regulated community, allow EPA to focus its resources on the most serious releases, and protect public health and welfare and the environment more effectively. The RQ adjustments proposed in this rulemaking will affect both CERCLA RQs and corresponding RQs in regulations promulgated pursuant to section 311(b)(4) of the CWA.

Notification of a release of a hazardous substance in a quantity equal to or greater than its RQ is to be made by telephone to the National Response Center. The toll-free telephone number of the National Response Center is listed under the "Addresses".

DATES: Comments must be received on or before June 3, 1985.

ADDRESSES: The toll-free telephone number of the National Response Center is (800) 424–8802; in the Washington, D.C. metropolitan area (202) 426–2675.

Comments: Comments should be submitted in triplicate to: Emergency Response Division, Docket Clerk, Attention: Docket Number 102RQ, Room S–325, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Docket: Copies of materials relevant to this rulemaking are contained in Room S–325 at the U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for inspection between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Dr. K. Jack Kooyoomjian, Response Standards and Criteria Branch, Emergency Response Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, or the RCRA/Superfund Hotline (800) 424–9346, in Washington, D.C., (202) 382–3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
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I. Introduction

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [Pub. L. 96–510], 42 U.S.C. 9601 *et seq.* ("Superfund," "CERCLA," or "the Act"), enacted on December 11, 1980, establishes broad federal authority to deal with releases or threats of releases of hazardous substances from vessels and facilities into the environment. The Act defines a set of "hazardous substances" by reference to other environmental statutes (section 101(14)); this list currently contains 698 substances. The Environmental Protection Agency ("EPA") may designate additional hazardous substances (section 102).

The Act requires the person in charge of a vessel or facility to notify the National Response Center ("NRC") immediately when there is a release of a designated hazardous substance in an amount equal to or greater than the reportable quantity ("RQ") for that substance (sections 103 (a) and (b)). Section 102(b) of CERCLA establishes RQs for releases of designated hazardous substances at one pound, unless other reportable quantities were assigned under section 311 of the Federal Water Pollution Control Act ("Clean Water Act" or "CWA"). Section 102(a) authorizes EPA to adjust all of these reportable quantities.

A major purpose of the section 103(a) and (b) notification requirements is to alert the appropriate government officials to releases of hazardous substances that may require a rapid federal response to protect public health and welfare and the environment. Under the Act, the federal government may respond whenever there is a release or a substantial threat of a release into the environment of a hazardous substance or of other pollutants or contaminants which may present an imminent and substantial danger to public health or welfare (section 104). Response activities are to be taken, to the extent possible, in accordance with the National Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA. EPA emphasizes that notification based on reportable quantities is merely a trigger for informing the government of a release so that the need for a federal removal or remedial action can be evaluated by the appropriate federal personnel and any necessary action undertaken in a timely fashion. Federal personnel will evaluate all reported releases, but will not necessarily initiate a removal or remedial action in response to all reported releases, because the release of a reportable quantity will not necessarily pose a hazard to public health or welfare or the environment. Government personnel will assess each release on a case-by-case basis.

Section 103(b) establishes penalties, including criminal sanctions, for persons in charge of vessels or facilities who fail to report releases of hazardous substances which equal or exceed reportable quantities. Any person who, as soon as he has knowledge of a reportable release, fails to report the release pursuant to section 103(a) or (b) shall, upon conviction, be fined no more than $10,000 or imprisoned for not more than one year, or both. Notifications received under section 103(a) or information obtained by such notice cannot be used against any reporting person in any criminal case, except a prosecution for perjury or for giving a false statement.

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for

reporting releases and to adjust reportable quantities for 387 of the 698 CERCLA hazardous substances. That Notice of Proposed Rulemaking (NPRM) also listed, for the first time, the "hazardous substances" designated by section 101(14) of CERCLA. The NPRM discussed in detail the CERCLA notification provisions (including the persons required to notify the NRC of a release, the substances for which notification is required, the types of releases subject to the notification requirements, and the exemptions from these requirements), the methodology and criteria used to adjust the reportable quantity levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. Today's **Federal Register** contains a final rule that clarifies reporting procedures and promulgates most of the previously proposed RQ adjustments. The final rule contains adjusted RQs for 319 of the 606 specific substances and 21 of the 90 waste streams that are designated as hazardous substances under CERCLA. In preparing the final rule, EPA carefully considered all of the public comments submitted on the proposals made in the May 25, 1983 NPRM.

This NPRM proposes RQ adjustments for 105 additional CERCLA hazardous substances (including 7 waste streams) for which the Agency has now completed its analysis. These proposed adjustments would amend Table 302.4 of 40 CFR 302.4 and, consistent with 40 CFR 117.3 as amended in today's final rule, would apply not only to CERCLA RQs, but also to RQs established under section 311(b)(4) of the Clean Water Act. Section II of this preamble discusses the proposed RQ adjustments and the methodology used in making these adjustments. Section III addresses RQ adjustments under section 311 of the Clean Water Act. Section IV provides a summary of the analyses supporting this proposed rulemaking.

It should be noted that other provisions of the Act may apply even where CERCLA does not require notification. Therefore, nothing in this rulemaking should be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of the Act. For example, a party responsible for a release is liable for the costs of cleaning up that release and for any natural resource damages, even if the release is not subject to the notification requirements of sections 103 (a) and (b). Similarly, proper reporting of a release in accordance with sections 103(a) and (b) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is properly reported or that it is not subject to the notification requirements of section 103 (a) and (b) will not prevent EPA or other governmental agencies from taking response actions under section 104, seeking reimbursement from responsible parties under section 107, or pursuing an enforcement action against responsible parties. Note also that this rule does not affect hazardous substance reporting requirements imposed by other regulations and statutes (except the CWA—see Section III below).

Neither this rulemaking nor today's final rule addresses the designation of hazardous substances which are not designated under the statutes listed in CERCLA section 101(14). The Agency has conducted several preliminary economic and technical analyses on this subject (see 48 FR 23603), and an Advance Notice of Proposed Rulemaking (ANPRM), also published on May 25, 1983, invited public comment. EPA has carefully reviewed the comments received and is in the process of further developing its designation policy. The Agency's designation policy will be the subject of a separate rulemaking.

II. Reportable Quantity Adjustments

A. Introduction

Section 102(b) establishes a reportable quantity of one pound for all hazardous substances other than those with different RQs established under section 311 of the Clean Water Act; for these latter substances, section 102(b) adopts the CWA section 311 RQs. Congress enacted this provision in part to ensure that reporting of releases would begin immediately upon enactment of CERCLA, because reporting is essential for response.

The RQs established by CERCLA were intended to be temporary pending EPA review and adjustment of those RQs. EPA committed to Congress in late 1980 to revise those reportable quantities (126 Cong. Rec. H 11792 (December 3, 1980)). This rulemaking proposes adjustments to the statutory RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a substance in a reportable quantity. These revised RQs, therefore, enable the Agency to focus its resources on those releases which are most likely to pose potential threats to public health and welfare and the environment. Such RQ adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases which are unlikely to pose such threats.

This NPRM proposes adjusted RQs for 98 of the 289 specific substances and 7 of the 69 waste streams that are not assigned adjusted RQs by today's final rule. EPA is proposing to raise the RQs of 34 specific substances, lower the RQs of 31 specific substances, and leave the RQs of 33 specific substances at the levels originally established by CERCLA (or under CWA section 311). EPA is also proposing to raise the RQs of the 7 waste streams. In addition, this NPRM proposes a 100-pound RQ for releases of non-designated substances which exhibit the RCRA characteristics of ignitability, corrosivity, or reactivity but which are not "wastes" (and thus CERCLA hazardous substances) until after they are released and are not cleaned up for repackaging, recycling, or reuse. Adjusted RQs for the remaining 191 specific substances and 62 waste streams not addressed by this notice or today's final rule will be proposed, as appropriate, as soon as the RQ adjustment analysis for these substances (now ongoing) is complete.

The primary purpose of notification is to ensure that releasers notify the federal government so that federal personnel can assess the need to respond to the release. The different RQ levels do not reflect a determination that a release of a substance will be hazardous at the RQ level and not hazardous below that level. EPA has not attempted to make such a determination, because the actual hazard will vary with the unique circumstances of the release, and extensive scientific data and analysis would be necessary to determine the hazard presented by each substance under a number of possible circumstances. Instead, the RQs reflect the Agency's judgment that the federal government should be notified of releases to which a federal response might be necessary. The reportable quantities do not represent any determination that releases of a particular size are actually harmful to public health or welfare or the environment.

Many other considerations besides the quantity released affect the government's decision concerning whether and how it should conduct a removal or remedial action pursuant to the National Contingency Plan (40 CFR Part 300) with respect to a particular release. The location of the release, its proximity to drinking water supplies or other valuable resources, the likelihood of exposure or injury to nearby populations, and other factors must be

assessed by the federal On-Scene Coordinator on a case-by-case basis. The reporting requirement enables the government to learn when such assessments should be made.

Because CERCLA's RQ adjustment methodology differs from that used pursuant to section 311 of the Clean Water Act, some of the RQs being proposed today are not the same as those initially promulgated under the CWA. In the final rule published elsewhere in today's Federal Register, EPA has amended 40 CER 117.3 to make RQs adjusted under CERCLA the applicable RQs for purposes of CWA section 311. Thus, when made final, today's proposed RQ adjustments will apply to both CERCLA and CWA RQs. A person in charge need not report a release into navigable waters twice under CERCLA and the CWA; one report to the NRC suffices.

B. Summary of the Methodology Underlying the Reportable Quantity Adjustments

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA.[1] Administrative feasibility and convenience are important considerations. The Agency's selected strategy for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each designated hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. (For the purposes of this rule, chronic toxicity—referred to as "other toxic effects" in the May 25, 1983 NPRM—is defined as toxicity resulting from repeated or continuous exposure to either a single release or multiple releases of a hazardous substance.)

The Agency ranks each intrinsic property on a five-tier scale, associating a specific range of values on each scale with a particular RQ value. This five-tier scale uses the five RQ levels of 1, 10, 100, 1000, and 5000 pounds originally established pursuant to CWA section 311 (see 40 CFR Part 117). Each substance receives several tentative RQ values based on its particular properties.[2] The lowest of all of the tentative RQs becomes the "primary criteria RQ" for that substance.

For a more detailed discussion of the primary criteria, see the preamble of the May 25, 1983 NPRM (48 FR 23562–23565), the preamble of today's final rule adjusting reportable quantities (Section V.D.1), and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain extrinsic degradation processes. These extrinsic processes are biodegradation, hydrolysis, and photolysis, or "BHP." These processes of degradation tend to reduce the relative potential for harm to public health and welfare and the environment of many hazardous substance releases. If substances have primary criteria RQs already at the maximum assignable level of 5000 pounds or are found to be bioaccumulative, environmentally-persistent, highly reactive (or otherwise unusually hazardous), or degradable to more hazardous products, their susceptibility to degradation is considered only in relation to the primary criteria analysis (see footnote 2), and they are not eligible for a one-level RQ increase on the basis of BHP. On the other hand, if analysis indicates that an eligible substance degrades relatively rapidly to a less harmful substance or compound through one or more of these processes when it is released into the environment, the primary criteria RQ is raised on the basis of BHP. The single RQ assigned to each substance on the basis of the primary criteria and BHP becomes the adjusted RQ for the substance.

The portion of Table 302.4 (40 CFR 302.4) printed in this Notice lists only those CERCLA hazardous substances for which adjusted RQs are being proposed in this rulemaking. The table shows both the statutory RQ currently in effect and the proposed adjusted RQ for each substance.

For a more detailed discussion of the BHP criteria and their use in combination with the primary criteria, see the preamble of the May 25, 1983 NPRM (48 FR 23565), the preamble of today's final rule adjusting reportable quantities (Sections V.C.1. and V.D.2.), and the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

C. Substances for Which Adjusted RQs Are Being Proposed

The 105 substances for which this NPRM proposes adjusted RQs have all been evaluated for potential chronic toxicity and/or potential carcinogenicity. This section describes the process by which EPA selected these 105 substances for proposal in this NPRM.

Prior to the May 25, 1983 NPRM, EPA identified a number of CERCLA substances that potentially exhibited chronic toxicity or carcinogenicity (or both). Lists of these substances were submitted to EPA's Environmental Criteria and Assessment Office (ECAO) for further chronic toxicity analysis and to EPA's Carcinogen Assessment Group (CAG) for further carcinogenicity analysis. EPA identified the potentially chronically toxic substances using a variety of EPA background documents, reports prepared by state agencies, and other sources. EPA identified the potential carcinogens using the Monographs of the International Agency for Research on Cancer and the First and Second Annual Reports on Carcinogens of the National Toxicology Program, U.S. Department of Health and Human Services.

For further information concerning the selection of substances for ECAO and CAG review, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

Because all of the potential carcinogens and many of the potential chronic toxicants (as identified at that time) were undergoing evaluation when the May 1983 NPRM was published, these substances retain their statutory RQ levels in the final rule published in today's Federal Register. Analysis is now completed, however, for the substances that were being evaluated for chronic toxicity in May 1983. In addition, CAG has performed a more detailed and more critical review of available data than the initial review

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[1] As Senate Report No. 848, 96th Congress, Second Session (1980) notes at page 29: "In determining reportable quantities under this paragraph [section 3(a)(2) of S. 1480], the President may consider any factors deemed relevant to administering the reporting requirements or the President's other responsibilities under this Act."

[2] If available evidence shows that a substance hydrolyzes into a reaction product that is more hazardous than the original substance, the primary criteria are applied to the more hazardous reaction product rather than to the original substance to determine the tentative RQ values for the original substance. For example, substances known to generate hydrogen sulfide or phosphine upon hydrolysis are assigned primary criteria RQs on the basis of these degradation products. Application of the primary criteria to the reaction products rather than to the original substances occurred in four cases for the substances for which this NPRM proposes adjusted RQs.

used to place the substances on the CAG list. The CAG assessment determined that there is no sound evidence of potential carcinogenic effect for a number of the substances on the list.

The 105 substances in this NPRM consist of substances that have been evaluated for chronic toxicity and, where appropriate, assigned a chronic toxicity ranking, and substances for which CAG has determined that no sound evidence of potential carcinogenicity exists. Because assessments under all primary and BHP criteria have been completed for these 105 substances, proposing RQ adjustments is appropriate at this time. The portion of Table 302.4 printed in this NPRM lists only the CERCLA substances for which adjusted RQs are being proposed in this rulemaking. The table indicates both the RQ level originally established by CERCLA and the proposed adjusted RQ for each substance. EPA is proposing to raise the RQs of 34 specific substances and 7 waste streams, lower the RQs of 31 specific substances, and leave the RQs of 33 specific substances at their original levels.

D. ICR Substances

As noted in the preamble to the final rule on RQs published elsewhere in today's **Federal Register**, the obligation to report releases into the environment of substances exhibiting the RCRA characteristics of ignitability, corrosivity, or reactivity ("ICR") (see 40 CFR 261.21–261.23) [3] has been the subject of some confusion. Under section 103(a) of CERCLA, the person in charge of a vessel or facility must notify the NRC of the release of a "hazardous substance." The term "hazardous substance" includes all substances designated in § 302.4 of today's final rule as well as wastes exhibiting the ICR characteristics under RCRA. Therefore, the release of a non-designated substance exhibiting an ICR characteristic is the release of a hazardous substance only if the substance is a waste. If a non-designated ICR substance is spilled and immediately cleaned up for repackaging, reprocessing, recycling, or reuse, it is not a waste and the spill need not be reported (see 45 FR 78540, Nov. 25, 1980). However, if the substance is not cleaned up, or is cleaned up for eventual disposal, it is then a waste (and thus a hazardous substance) which has been released to the environment and must be reported if the release equals or exceeds the RQ.

The Agency acknowledges that the May 25, 1983 NPRM may not have been clear on this point. Accordingly, we are now proposing to create a separate RQ for releases of non-designated substances which are not wastes prior to their initial release but which exhibit an ICR characteristic. We propose to set an RQ of 100 pounds for such releases. This is the same RQ that has been established for ICR substances that are wastes prior to their initial release, as the environmental impact of a release of a substance exhibiting an ICR characteristic does not depend on whether that substance was a waste prior to its release. We hereby solicit public comment on whether a different RQ is warranted. Of course, if the substance is recovered for purposes of recycling or use as a product, it never becomes a waste (or a hazardous substance) and thus is not subject to reporting requirements.

EPA recognizes that transporters may not be aware that products they are carrying exhibit ICR characteristics. We acknowledge that in order for a criminal prosecution to be warranted, the person in charge must have known or reasonably should have known that the substance was a hazardous substance. Accordingly, EPA would enforce the reporting requirement for releases by transporters of non-designated substances exhibiting an ICR characteristic only if the substance was labeled as hazardous under DOT or State regulations or if other circumstances put the transporter on notice that a hazardous substance was released. If a product which is so labeled is spilled in excess of the reportable quantity of 100 pounds (or such other RQ as may be finally promulgated) the transporter will be liable for failure to report, if it turns out that the waste exhibiting an ICR characteristic was released to the environment in excess of the RQ.

As noted in the preamble to today's final rule, pending completion of final rulemaking on this proposal, notice given to the NRC pursuant to 49 CFR 171.15, if required under that section, of the release of a non-designated substance that is not a waste prior to its initial release, will be deemed to satisfy the reporting requirements of section 103(a) of CERCLA. Note that this policy does not apply to the release of non-designated substances which exhibit an ICR characteristic and which are wastes prior to their initial release. Such releases must be reported if they are equal to or in excess of the 100-pound RQ. See § 302.5(b) of today's final rule.

III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

The final rule published elsewhere in today's **Federal Register** amends 40 CFR § 117.3 to make reportable quantities adjusted under CERCLA the applicable reportable quantities for notification of discharges of hazardous substances pursuant to Clean Water Act section 311. Thus, when made final, the RQ adjustments proposed in this rulemaking will apply to both CERCLA and CWA section 311 RQs. Reportable quantities under both statutes are set forth in Table 302.4. A single report of a release into navigable waters to the National Response Center by the person in charge will satisy the notification requirements of both statutes. (For a further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the May 25, 1983 NPRM preamble at 48 FR 23569.)

IV. Summary of Supporting Analyses

Rulemaking protocol under Executive Order 12291 requires that proposed regulations be classified as major or non-major for purposes of review by the Office of Management and Budget. According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection at Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, shows that today's proposed regulation is non-major, because adoption of the proposed rule will result in additional net cost savings (beyond those provided by today's final rule) of approximately $1.3 million annually. Of this amount, about $200,000 annually will be saved by the regulated community (the remainder to be saved by government).

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact

[3] Substances exhibiting the characteristic of extraction procedure (EP) toxicity are not at issue here, because the chemicals at which the EP toxicity test is aimed are all specifically designated as hazardous under section 302.4 of today's final rule.

on a substantial number of small entities." This NPRM proposes adjusted RQs for substances that have a substantially lower total production volume than the substances receiving adjusted RQs in today's final rule. The economic effects as estimated in EPA's analysis are proportional to production volume. Thus, the impact of the proposed rule on small entities will be substantially less than the impact of the final rule. The analysis of the final rule demonstrated that the final rule will not have a significant impact on small entities. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under sections 102 and 103 of CERCLA, available for inspection in Room S–325, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Therefore, as with the final rule, EPA certifies that no Regulatory Flexibility Analysis is necessary for the proposed rule.

The Information Impact Analysis performed for the final rule indicated that the final rule would decrease the paperwork burden imposed on parties outside EPA by about 50,000 hours. A brief analysis indicates that the RQ adjustments proposed by this NPRM will provide a small additional reduction in the paperwork burden imposed on the regulated community for information collection associated with reporting releases. Because the effect of this proposed rule on the paperwork burden is not only minimal, but also a reduction, EPA has determined that no further Information Impact Analysis need be performed.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501 *et seq.*, and has assigned OMB control number 2115–0137. Submit comments on these requirements to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: February 13, 1985.

Lee M. Thomas,

Administrator.

PART 302—[AMENDED]

For the reasons set out in the preamble, it is proposed to amend 40 CFR Part 302 as follows:

1. The authority citation for Part 302 reads as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

2. In Part 302, Table 302.4 of § 302.4 is amended by revising certain hazardous substance entries to read as follows:

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Acenaphthene	83329		1*	2		B	100 (45.4)
Acenaphthylene	208968		1*	2		D	5000 (2270)
Acetic acid, thallium(I) salt	563688	Thallium(I) acetate	1*	4	U214	B	100 (45.4)
Ammonia	7664417		100	1		B	100 (45.4)
Ammonium bifluoride	1341497		5000	1		B	100 (45.4)
Anthracene	120127		1*	2		D	5000 (2270)
Antimony ††	7440360		1*	2		D	5000 (2270)
Benzene, hydroxy-	108952	Phenol	1000	1,2,4	U188	C	1000 (454)
Benzene, pentachloro-	608935	Pentachlorobenzene	1*	4	U183	C	1000 (454)
Benzene, 1,3,5-trinitro-	99354	sym-Trinitrobenzene	1*	4	U234	A	10 (4.54)
Benzo(j,k)fluorene	206440	Fluoranthene	1*	2,4	U120	B	100 (45.4)
Benzo(ghi)perylene	191242		1*	2		D	5000 (2270)
p-Benzoquinone	106514	1,4-Cyclohexadienedione	1*	4	U197	A	10 (4.54)
delta - BHC	319868		1*	2		X	1 (0.454)
Captan	133062		10	1		A	10 (4.54)
Carbamimidoselenoic acid	630104	Selenourea	1*	4	P103	C	1000 (454)
Carbon bisulfide	75150	Carbon disulfide	5000	1,4	P022	B	100 (45.4)
Carbon disulfide	75150	Carbon bisulfide	5000	1,4	P022	B	100 (45.4)
Carbonic acid, dithallium(I) salt	6533739	Thallium(I) carbonate	1*	4	U215	B	100 (45.4)
Chloroethane	75003		1*	2		B	100 (45.4)
Chromic acetate	1066304		1000	1		C	1000 (454)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Chromic sulfate	10101538		1000	1		C	1000 (454)
Chromous chloride	10049055		1000	1		C	1000 (454)
Copper ††	7440508		1*	2		D	5000 (2270)
Cresol (s)	1319773	Cresylic acid	1000	1,4	U052	C	1000 (454)
m-	108394	m-					
o-	95487	o-					
p-	106445	p-					
Cresylic acid	1319773	Cresol (s)	1000	1,4	U052	C	1000 (454)
m-	108394	m-					
o-	95487	o-					
p-	106445	p-					
Cupric chloride	7447394		10	1		A	10 (4.54)
Cupric sulfate	7758987		10	1		A	10 (4.54)
Cupric tartrate	815827		100	1		B	100 (45.4)
1,4-Cyclohexadienedione	106514	p-Benzoquinone	1*	4	U197	A	10 (4.54)
Dichloropropane - Dichloropropene (mixture)	8003198		5000	1		B	100 (45.4)
Dichloropropene(s)	26952238		5000	1		B	100 (45.4)
2,3-Dichloropropene (isomer)	78886						
1,3-Dichloropropene	542756	Propene, 1,3-dichloro-	5000	1,2,4	U084	B	100 (45.4)
Diethylamine	109897		1000	1		B	100 (45.4)
Dimethylamine	124403	Methanamine, N-methyl-	1000	1,4	U092	C	1000 (454)
O,O-Dimethyl O-p-nitrophenyl phosphorothioate	298000	Methyl parathion	100	1,4	P071	B	100 (45.4)
Ethane, pentachloro-	76017	Pentachloroethane	1*	4	U184	A	10 (4.54)
Ethion	563122		10	1		A	10 (4.54)
Ferric dextran	9004564	Iron dextran	1*	4	U139	D	5000 (2270)
Fluoranthene	206440	Benzo[j,k]fluorene	1*	2,4	U120	B	100 (45.4)
Fluorene	86737		1*	2		D	5000 (2270)
Fulminic acid, mercury(II) salt	628864	Mercury fulminate	1*	4	P065	A	10 (4.54)
Hexachlorophene	70304	2,2'-Methylenebis(3,4,6-trichlorophenol)	1*	4	U132	B	100 (45.4)
Hydrogen sulfide	7783064	Hydrosulfuric acid Sulfur hydride	100	1,4	U135	B	100 (45.4)
Hydrosulfuric acid	7783064	Hydrogen sulfide Sulfur hydride	100	1,4	U135	B	100 (45.4)
Iron dextran	9004664	Ferric dextran	1*	4	U139	D	5000 (2270)
Isoprene	78795		1000	1		B	100 (45.4)
Lead ††	7439921		1*	2		D	5000 (2270)
Lead chloride	7758954		5000	1		B	100 (45.4)
Lead fluoborate	13814965		5000	1		B	100 (45.4)
Lead fluoride	7783462		1000	1		B	100 (45.4)
Lead iodide	10101630		5000	1		B	100 (45.4)
Lead nitrate	10099748		5000	1		B	100 (45.4)
Lead stearate	7428480 1072351 56189094 52652592		5000	1		D	5000 (2270)
Lead sulfate	15739807 7446142		5000	1		B	100 (45.4)
Lead sulfide	1314870		5000	1		B	100 (45.4)
Lead thiocyanate	592870		5000	1		B	100 (45.4)
Mercuric nitrate	10045940		10	1		A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Mercuric sulfate	7783359		10	1		A	10 (4.54)
Mercuric thiocyanate	592858		10	1		A	10 (4.54)
Mercurous nitrate	10415755		10	1		A	10 (4.54)
Mercury fulminate	628864	Fulminic acid, mercury(II) salt	1*	4	P065	A	10 (4.54)
Mercury, (acetato-O)phenyl-	62384	Phenylmercuric acetate	1*	4	P092	B	100 (45.4)
Methanamine, N-methyl-	124403	Dimethylamine	1000	1,4	U092	C	1000 (454)
Methane, chloro-	74873	Methyl chloride	1*	2,4	U045	B	100 (45.4)
Methyl chloride	74873	Methane, chloro-	1*	2,4	U045	B	100 (45.4)
Methyl parathion	298000	O,O-Dimethyl O-p-nitrophenyl phosphorothioate	100	1,4	P071	B	100 (45.4)
2,2'-Methylenebis(3,4,6-trichlorophenol)	70304	Hexachlorophene	1*	4	U132	B	100 (45.4)
Monoethylamine	75047		1000	1		B	100 (45.4)
Pentachlorobenzene	608935	Benzene, pentachloro-	1*	4	U183	C	1000 (454)
Pentachloroethane	76017	Ethane, pentachloro-	1*	4	U184	A	10 (4.54)
Phenarsazine	85018		1*	2		D	5000 (2270)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	U188	C	1000 (454)
Phenylmercuric acetate	62384	Mercury, (acetato-O)phenyl-	1*	4	P092	B	100 (45.4)
Phorate	298022	Phosphorodithioic acid, O,O-diethyl S-(ethylthio)methyl ester.	1*	4	P094	C	1000 (454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio)methyl ester.	298022	Phorate	1*	4	P094	C	1000 (454)
Plumbane, tetraethyl-	78002	Tetraethyl lead	100	1,4	P110	A	10 (4.54)
Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,4	U084	B	100 (45.4)
Pyrene	129000		1*	2		D	5000 (2270)
Pyridine	110861		1*	4	U196	C	1000 (454)
Pyrophosphoric acid, tetraethyl ester	107493	Tetraethyl pyrophosphate	100	1,4	P111	A	10 (4.54)
Selenious acid	7783008		1*	4	U204	A	10 (4.54)
Selenium ††	7782492		1*	2		B	100 (45.4)
Selenium dioxide	7446084	Selenium oxide	1000	1,4	U204	A	10 (4.54)
Selenium oxide	7446084	Selenium dioxide	1000	1,4	U204	A	10 (4.54)
Selenourea	630104	Carbamimidoselenoic acid	1*	4	P103	C	1000 (454)
Sodium bifluoride	1333831		5000	1		B	100 (45.4)
Sodium nitrite	7632000		100	1		B	100 (45.4)
Sodium selenite	10102188		1000	1		B	100 (45.4)
Sulfur hydride	7783064	Hydrogen sulfide Hydrosulfuric acid	100	1,4	U135	B	100 (45.4)
Sulfuric acid, thallium(I) salt	10031591 7446186	Thallium(I) sulfate	1000	1,4	P115	B	100 (45.4)
Tetraethyl lead	78002	Plumbane, tetraethyl-	100	1,4	P110	A	10 (4.54)
Tetraethyl pyrophosphate	107493	Pyrophosphoric acid, tetraethyl ester	100	1,4	P111	A	10 (4.54)
Thallic oxide	1314325	Thallium(III) oxide	1*	4	P113	B	100 (45.4)
Thallium ††	7440280		1*	2		C	1000 (454)
Thallium(I) acetate	563688	Acetic acid, thallium(I) salt	1*	4	U214	B	100 (45.4)
Thallium(I) carbonate	6533739	Carbonic acid, dithallium(I) salt	1*	4	U215	B	100 (45.4)
Thallium(I) chloride	7791120		1*	4	U216	B	100 (45.4)
Thallium(I) nitrate	10102451		1*	4	U217	B	100 (45.4)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Thallium(III) oxide	1314325	Thallic oxide	1*	4	P113	B	100 (45.4)
Thallium(I) selenide	12039520		1*	4	P114	C	1000 (454)
Thallium(I) sulfate	10031591 7446186	Sulfuric acid, thallium(I) salt	1000	1,4	P115	B	100 (45.4)
Trichlorfon	52686		1000	1		B	100 (45.4)
Trimethylamine	75503		1000	1		B	100 (45.4)
sym-Trinitrobenzene	99354	Benzene, 1,3,5-trinitro-	1*	4	U234	A	10 (4.54)
Unlisted Hazardous Wastes	N.A.						
Characteristic of EP Toxicity							
Selenium			1*	4	D010	A	10 (4.54)
Uranyl acetate	541093		5000	1		B	100 (45.4)
Uranyl nitrate	10102064		5000	1		B	100 (45.4)
Vanadium(V) oxide	1314621	Vanadium pentoxide	1000	1,4	P120	C	1000 (454)
Vanadium pentoxide	1314621	Vanadium(V) oxide	1000	1,4	P120	C	1000 (454)
Vanadyl sulfate	27774136		1000	1		C	1000 (454)
Zinc ††	7440666		1*	2		C	1000 (454)
Zinc acetate	557346		1000	1		C	1000 (454)
Zinc ammonium chloride	52628258		5000	1		C	1000 (454)
Zinc borate	1332076		1000	1		C	1000 (454)
Zinc bromide	7699458		5000	1		C	1000 (454)
Zinc carbonate	3486359		1000	1		C	1000 (454)
Zinc chloride	7646857		5000	1		C	1000 (454)
Zinc cyanide	557211		10	1,4	P121	A	10 (4.54)
Zinc fluoride	7783495		1000	1		C	1000 (454)
Zinc formate	557415		1000	1		C	1000 (454)
Zinc hydrosulfite	7779864		1000	1		C	1000 (454)
Zinc nitrate	7779886		5000	1		C	1000 (454)
Zinc phenolsulfonate	127822		5000	1		D	5000 (2270)
Zinc phosphide	1314847		1000	1,4	P122	B	100 (45.4)
Zinc silicofluoride	16871719		5000	1		D	5000 (2270)
Zinc sulfate	7733020		1000	1		C	1000 (454)
F004			1*	4	F004	C	1000 (454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents: (a) Cresols/Cresylic acid (b) Nitrobenzene							
F005			1*	4	F005	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents: (a) Toluene (b) Methyl ethyl ketone (c) Carbon disulfide (d) Isobutanol (e) Pyridine							
K026			1*	4	K026	C	1000 (454)
Stripping still tails from the production of methyl ethyl pyridines							
K039			1*	4	K039	B	100 (45.4)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate							
K046			1*	4	K046	B	100 (45.4)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds							
K052			1*	4	K052	A	10 (4.54)

TABLE 302.4 - LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Proposed RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds(Kg)
Tank bottoms (leaded) from the petroleum refining industry			1°	4	K087	B	100 (45.4)
Decanter tank tar sludge from coking operations							

† - indicates the statutory source as defined by 1, 2, 3, or 4 below
†† - no reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches)
1 - Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2 - Indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3 - Indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4 - Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
1° - Indicates that the 1-pound RQ is a CERCLA statutory RQ

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April 4, 1985

Part III

Department of Commerce

Assistant Secretary for Productivity, Technology, and Innovation

37 CFR Ch. IV

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms; Proposed Rule

DEPARTMENT OF COMMERCE

Office of the Assistant Secretary for Productivity, Technology, and Innovation

37 CFR Part 401

[Docket No. 41278-4178]

Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

AGENCY: Assistant Secretary for Productivity, Technology, and Innovation, Commerce.

ACTION: Notice of proposed rule making.

SUMMARY: Pub. L. 98-620 amended Chapter 18 of Title 35, United States Code, dealing with patent rights in inventions made with Federal funding by nonprofit organizations and small business firms and reassigned responsibility for the promulgation of regulations implementing 35 U.S.C. 202-204 to the Secretary of Commerce. The proposed regulation, if adopted, will implement 35 U.S.C. 202-204.

DATE: Comments due by June 3, 1985.

ADDRESS: Send comments to Mr. Norman Latker, Director, Federal Technology Management Policy Division, Office of Productivity, Technology and Innovation, Department of Commerce, Rm. H4837, Washington, D.C. 20230. Phone: 202-377-0659.

FOR FURTHER INFORMATION CONTACT: Norman Latker at the address above or Jesse E. Lasken (202-377-6100) at the same address.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of Pub. L. 98-620 includes a series of amendments to chapter 18 of title 35, U.S.C., including the assignment of regulatory authority to the Secretary of Commerce. The Secretary has delegated his authority under 35 U.S.C. 206 to the Assistant Secretary for Productivity, Technology and Innovation. Since the amendments became effective on November 9, 1984 when Pub. L. 98-620 was signed, we are attempting to complete the rulemaking process in an expeditious manner. Pending the issuance of a final regulation, we believe that the provisions of OMB Circular A-124 continue to apply except to the extent that amendments to Chapter 18 are clearly inconsistent. We suggest that agencies use these proposed regulations as guidance in the modification of clauses and procedures that may be required pending the issuance of a final regulation.

Comparison of Proposed Regulation to OMB Circular A-124

The proposed regulation closely follows OMB Circular A-124. The following discussion compares the proposed regulation to OMB Circular A-124 with particular emphasis on the reasons for any substantive differences and additions.

Section 401.1 Scope.

This section contains provisions similar to those now found in parts 5, 7.c., 17, and 18 of OMB Circular A-124. Language has been included in section 401.1(a) giving recognition to the requirement of new 35 U.S.C. 212 that funding agreements made primarily for educational purposes would not be subject to the regulation and that agencies should not take any rights in inventions made under such agreements.

Section 401.1(b) is intended to make clear that the amended march-in rights procedures established by amended 35 U.S.C. 203 apply to proceedings initiated under existing funding agreements. We interpret the amended procedures to apply to all new march-in proceedings even if the funding agreement predates the amendment of chapter 18. This section takes the same approach to the various appeal rights established in part 14 of OMB Circular A-124, which are carried over in the proposed regulation with only minor revisions.

Section 401.1(c) directs agencies, at the request of the contractor, to amend outstanding funding agreements for the operation of Government-owned facilities by substituting the applicable clause at section 401.14 for the clause presently in such funding agreements. Pub. L. 98-620 has substantially narrowed the previous exception applicable to "GOCOs". Since these contracts are typically for extended terms (usually 5 years), we believe the intent of the Congress should not be delayed. Most of these contracts are routinely amended to adjust funds on a regular basis. As part of such an amendment the patent rights provisions should be amended if the contractor requests. A number of agencies have outstanding GOCO contracts in which the exception was not invoked and the contract includes the clause at Attachment A to OMB Circular A-124. Section 401.1(c) does not require that these contracts be amended unless the contractor so requests.

Section 401.1(f) is new and is intended to clarify the applicability of chapter 18 and the proposed regulations to arrangements for use of Government-owned facilities. Such arrangements, whether on a reimbursable or nonreimbursable basis, are not considered to fall under the Act's definition of "funding agreement" since the work is not being directly funded by the Government even though it is being assisted by the making available of facilities. Of course, if the Government were also funding the research through a grant or contract, the grant or contract transaction would make chapter 18 applicable if a small business firm or nonprofit organization was the recipient of the grant or contract.

Section 401.1(f) does point out, however, that in cases when the facility operator is a nonprofit organization or a small business firm, there is a possibility that the operator may be entitled to rights under its funding agreement if its employees make an invention in cooperation with a facility user. The regulation therefore notes the advisability of reaching advance agreements on the rights of the three parties if there is a liklihood that operator employees may be involved in the making of inventions by a facility user.

We have not attempted to state what the allocation of rights should be in such cases since this is beyond the scope of this regulation. However, we believe that consistency with chapter 18 of Title 35 U.S.C. and the President's Memorandum of February 18, 1983, would dictate that the user should normally retain title to its own inventions. If operator employees make an invention in cooperation with a facility user, then the operator-contractor should, perhaps, obtain some share of any income generated by the invention. However, absent the active cooperation and involvement of the operator in the project, title in any inventions may be assigned to the user as part of the initial arrangement and the agency should approve, in advance, the assignment of any rights in inventions made during a project from the operator to the user as authorized by 35 U.S.C. 202(c)(7)(A).

Section 401.2 Definitions.

Section 401.2 uses the same definitions as in part 6 of OMB Circular A-124 except that the definitions of "invention" and "subject invention" have been modified to accommodate Pub. L. 98-620 changes to the definitions at 35 U.S.C. 201. Definitions of "chapter 18" and "Assistant Secretary" have also been added.

Section 401.3 Use of the clauses at § 401.14.

Section 401.3(a) is based on part 7.a. of OMB Circular A-124 with some

modifications to reflect new 35 U.S.C. 212 and amended 35 U.S.C. 202(a).

Section 401.3(b) is new. In part it implements, in combination with § 401.14(b), language in amended 35 U.S.C. 202(a) concerning the exception for certain Department of Energy funding agreements. This section also prescribes for the first time certain guidelines in connection with the drafting of alternative provisions when certain of the exceptions at 35 U.S.C. 202(a) are used. We particularly encourage comments or suggestions regarding this proposed language.

Section 401.3(c) is new. It gives specific recognition that many contracts are of extended duration and may involve a variety of task orders. This section is intended to clarify that agencies have the flexibility to use the exceptions with respect to a specific task order, including one added after the original funding agreement is executed, even though the remainder of the contract is subject to one the clauses at § 401.14.

Section 401.3 (d) and (e) is equivalent to part 7.(b)(1) of OMB Circular A–124 except that it was necessary to make a number of changes because of amendments to 35 U.S.C. 202(b) (1) and (2). Section 401.3 (f) and (g) substantially follow parts 7. b.(2) and d. of the OMB Circular.

One issue that is not expressly addressed by these regulations on which we would like comments is whether agencies should be allowed to make class determinations to use exceptions. Commentators who favor this are asked to provide examples of when this might prove useful. We are seeking to determine whether we should generally authorize class determinations, generally bar them, or limit their use to specific types of situations.

Section 401.4 Contractor appeals of exceptions.

Section 401.4 is new and has no counterpart in the OMB Circular. It implements new 35 U.S.C. 202(b)(4) which allows a contractor certain rights to contest the use of the exceptions at 35 U.S.C. 202(a). We encourage comments on whether the proposed section carries out the statutory language and Congressional intent.

We interpret 35 U.S.C. 202(b)(4) as requiring an administrative procedure similar to that afforded under a march-in. The proposed procedure is intended to rapidly resolve contractor claims that agency authority to invoke the exceptions at 35 U.S.C. 202(a) was misused. The agency is authorized to execute the contract with alternative provisions pending the resolution of the issue. If the issue is resolved in the contractor's favor then the contract is to be amended retroactively. Of course, the contractor could refuse to sign a contract until the matter was resolved. However, in this case the agency could consider going to alternative sources. But the section provides, in effect, that if the contractor is willing to sign a contract subject to its retroactive amendment, the agency may not refuse to contract with the contractor on account of the contractor's exercise of its rights under 35 U.S.C. 202(b)(4).

We would also note that the contractors appeal is not to be handled under the Contract Disputes Act. We consider this a statutorily created right. Moreover, it cross references to 35 U.S.C. 203(2) which specifically states that determinations under that section are not subject to the Contracts Disputes Act.

Section 401.5 Modification and Tailoring of Clauses.

Sections 401.5(a)–(c) substantially follow parts 8.a.–c. of OMB Circular A–124.

Section 401.5(d) is based on part 8.d. of the OMB Circular. However, because of amendments to 35 U.S.C. 202(c)(4) it has been modified to require the listing of specific treaties or international agreements that will be applicable to the contractor. As amended, 35 U.S.C. 202(c)(4) no longer contains a reference to "future" treaties. Senator Dole's explanation of the bill at S14142 of the Congressional Record for October 10, 1984, states that the revised language was intended to require an agency "to tie its use of this right to a foreign treaty or agreement that is in existence at the time the contract is executed." However, in recognition of the fact that some funding agreements may extend over fairly long periods of time, we have included optional language that will allow an agency to add new treaties that go into effect after the date the contract is originally signed.

It should be noted that the provisions of § 401.5(d) should have application, albeit indirectly, to funding agreements with larger, commercial contractors as well as those with small businesses and nonprofit organizations. That is, 35 U.S.C. 210 was amended by Pub. L. 98–620 to provide "that all funding agreements, including those with other than small business firms and nonprofit organizations, shall include the requirements established in paragraph 202(c)(4) and section 203 of this title." Section 202(c)(4) establishes the minimum license rights of the Government, including its right to obtain rights to honor foreign agreements. We interpret this language as carrying with it the implementing language developed under 35 U.S.C. 203. Therefore, we believe that it will be necessary to amend the standard Federal Acquisition Regulation (FAR) patent rights clauses to conform to the language prescribed in § 401.5(d). Section 203 of Title 35 deals with march-in rights, and, thus, for the same reasons, for-profit contractors that are not small businesses should also review proposed § 401.6.

Section 401.5(e) is based on part 8.e. of the OMB Circular. However, two optional administrative requirements have been eliminated. The option to require periodic listing of invention reports has been dropped. This is considered an unjustified paperwork exercise. Agencies desiring this information can presently obtain it from their own files. The language concerning notification of R&D subcontracts has been dropped since such reporting is normally required under other FAR provisions or agency grant provisions.

Section 401.5(f) is new and implements the requirement of 35 U.S.C. 202(c)(7)(E) which was added by Pub. L. 98–620. The statutory language has been followed with some minor editorial revisions including some language to clarify that income is to be used "at the facility." This clarification was added to reflect the clear intent of the Congress as reflected on p. 21 of House Report 98–983 on HR 5003 that the income was to be in "a research account controlled by the facility."

One agency that informally reviewed this proposed rule suggested that another paragraph be added to section 401.5 advising agencies to supplement the clause in contracts for the operation of Government owned facilities with provisions dealing with the transfer of patent rights to successor contractors. We are considering including coverage in this area, and seek comments and suggestions concerning this. Any suggestions for specific language or particular concerns that should be addressed in either the regulatory guidance or the clause language are encouraged.

Section 401.6 Exercise of march-in rights.

Section 401.6 generally follows part 13 of OMB Circular A–124, except that language in the Circular authorizing the use of Boards of Contract Appeals to review appeals has been eliminated to reflect the amendment of 35 U.S.C. 203. Modifications have been made in § 401.6(e) to reflect the greater protection afforded utilization information by amended 35 U.S.C.

202(c)(5). 35 U.S.C. 401.6 (f) and (g) have been revised slightly to require the fact finder to transmit a proposed decision and to specifically give the contractor and agency representatives the right to prepare written arguments in response to these findings and recommendations. The contractor is also given the right to request oral arguments before the decision-maker. These changes are intended to reflect the fact that march-in decisions are policy as well as factual decisions.

Section 401.6(j) follows the principle of OMB Circular A–124 in requiring that march-in determinations be held in abeyance pending the exhaustion of all appeals. Previously 35 U.S.C. 203 did not cover this question. As amended, it now requires two of the four categories of march-ins be held in abeyance until exhaustion of appeals. However, we do not believe that the amended language precludes extending this requirement, as in the part, to all categories of march-ins.

Section 401.7 Small business preference.

Section 401.7, in combination with new language at paragraph (k)(4) of the clauses at § 401.14, implements the new requirement of amended 35 U.S.C. 202(c)(7) that funding agreements with nonprofit organizations contain provisions to effectuate a requirement that except where it proves infeasible after a reasonable inquiry that a preference in the licensing of subject inventions shall be given to small business firms. We encourage comments on these provisions.

It should be noted that there has been an inadvertent typographical error in the language of amended 35 U.S.C. 202(c)(7)(D) and that the words "a preference" should have been inserted between "inquiry," and "in the licensing . . ." Our implementation of this provision is based on the intended language, since without it the clause, at best, would be ambiguous.

We have attempted to develop a provision that will meet the objectives of the statute without interjecting agencies or this Department into the individual licensing negotiations and decisions of nonprofit contractors. The clause language and section 401.7 implement the preference in two ways. First, nonprofit organizations are required to make reasonable efforts under the circumstances to attract small business licensees. The regulations recognize that in some cases the nature of the development efforts may preclude seeking small business licensees. On the other hand, this will not always be the case, and the contractor would be expected to undertake efforts to seek small business licensees. It is not possible to say exactly what these efforts should consist of, but we would expect nonprofit organizations to ensure that their efforts to promote inventions are not exclusively focused on larger firms. If no other means are available, perhaps, in selected cases, a notice in a suitable trade journal might be satisfactory. We also think it is probably unreasonable and unrealistic for nonprofit organizations to be aware of the interests and capabilities of small businesses, especially those which they have not previously dealt with and which are not otherwise well known. Established small businesses that have an interest in developing university technology should let their interests be known to research universities and centers, particularly any local universities or centers.

The specific preference required by the clause is modeled after the language at 35 U.S.C. 209(c)(3) which requires a preference for small business firms in Government licensing programs. This appears to be consistent with Congressional intent as set forth in Senator Dole's statement at p. S14142 of the October 10, 1984, Congressional Record.

The clause language and section 401.7 provide that the Assistant Secretary of Commerce for Productivity, Technology, and Innovation will provide a forum to consider small businesses complaints that a particular contractor is not meeting his obligations under the clause. However, only an informal procedure is established. The Assistant Secretary will initiate further investigation and discussions with a particular institution when it appears warranted. Formal hearings and the like are not contemplated. In no event will the Assistant Secretary become involved in the negotiation of specific licenses or in attempts to have specific licenses terminated and renegotiated. We have not assigned this review function to the individual agency, since we believe that any review of the contractor's licensing efforts will have to focus on the full range of its program and not just on those subject inventions that may eminate from the support of a single agency. However, the Department will coordinate its activities in this area with the Small Business Administration and, as warranted, appropriate agencies. For example, if the complaint stems from the activities of a contractor operating a Government-owned facility, the funding agency will be consulted. The Department also anticipates working with university organizations such as the Society of University Patent Administrators and the Committee on Government Relations to foster compliance with the requirements of these provisions.

Section 401.8 Reporting on utilization of subject inventions.

Section 401.8 generally follows part 10 of OMB Circular A–124. However, subparagraph (b) has been revised to reflect changes made by Pub. L. 98–620. Marking of data is not required and agencies must protect all utilization information, since amended 35 U.S.C. 202(c)(5) has established an absolute requirement for confidentiality and a so-called "(b)(3)" exemption under the Freedom of Information Act. Section 401.8 requires that the revised requirement be also applied to information collected under funding agreements predating the new Part 401.

Section 401.9 Retention of rights by inventor.

Section 401.9 substantially follows part 11 of OMB Circular A–124.

Section 401.10 Government assignment to contractor of rights in invention of government employee.

Section 401.10 substantially follows part 12 of OMB Circular A–124, but some wording changes have been made to further clarify that contractor rights in the invention are subject only to the conditions in the standard patent rights clause that was included in the funding agreement. Agencies exercising the authority of 35 U.S.C. 202(e) to assign the rights of the agency derived through an agency employee co-inventor to the contractor are not to condition such an assignment with additional terms beyond those specified in the statute and applicable patent rights clause that was included in the funding agreement.

Section 401.11 Appeals.

Section 401.11 substantially follows part 14 of OMB Circular A–124. Because of certain revisions to the march-in procedures discussed above which are cross-referenced in this section, there are minor differences between the appeals procedures in the proposed regulation and those now prescribed by the OMB Circular. As provided at section 401.1(b), these procedures will apply to actions initiated under earlier funding agreements.

Section 401.12 Licensing of background patent rights to third parties.

Section 401.12 substantially follows part 15 of OMB Circular A–124.

Section 401.13 Administration of patent rights clauses.

Section 401.13 is, in part, derived from part 16 of OMB Circular A–124, but also contains new material.

Section 401.13(a) substantially follows part 16.c. of the OMB Circular. However, part 16.a. has been eliminated since the subject matter is covered in the clauses at § 401.14. Part 16.b. has been dropped since the Federal Procurement Regulations (FPR) references are obsolete and do not appear to have any counterparts in the FAR.

Section 401.13(b), coupled with the change to section 401.5(e) discussed earlier, further emphasizes that annual or other periodic listing of subject inventions, except at close-out of the funding agreement is not to be imposed on contractors.

Section 401.13(c) reflects Pub. L. 98–620 elimination of two limitations on the conditions under which nonprofit organizations may license or assign subject inventions. Since these limitations are included in many outstanding funding agreements which allow agencies to waive them, the proposed language advises agencies to normally make such waivers. This is consistent with the legislative history of the bill, as reflected in Senator Dole's answer at S14142, Congressional Record October 10, 1984, which indicates that agencies are expected to grant such waivers liberally.

Section 401.13(d) establishes requirements for agencies to treat certain contractor information on a confidential basis. It cross-references language in the standard clause that is based on part 9 of OMB Circular A–124. While modified, we believe that in combination with the clause language this section is substantially the same as part 9. of the OMB Circular.

Section 401.14 Standard clauses.

Section 401.14(a) contains the basic clause to be used in most contracts with small businesses and nonprofit organizations. Section 401.14(b) contains a standard clause for use in situations when the Department of Energy exercises the exception at 35 U.S.C. 202(a)(iv).

The clause at § 401.14(a) substantially follows the clause at Attachment A of OMB Circular A–124 with the following changes:

1. The definitions of "invention" and "subject invention" have been revised to conform to statutory changes.

2. The period for election of rights in paragraph (c)(2) has been lengthened to 2 years to conform to statutory changes.

3. The period for filing after election has been reduced from two years to one year because of the extended election period.

4. Subparagraphs (4) and (5) have been added to paragraph (e) which reflect the obligations of the agency to maintain certain records in confidence as required by 35 U.S.C. 205 and the President's Memorandum of February 18, 1983, on Government Patent Policy. We believe it will be helpful to both contractor and agency personnel if these obligations are clearly spelled out in the contract document.

5. The last sentence of paragraph (h) has been amended to conform to the revision of 35 U.S.C. 202(c)(5).

6. Paragraph (k), the special provisions for contracts with nonprofit organizations, has been revised to conform to the amendment of 35 U.S.C. 202(c)(7). Most of these changes are simply deletions of conditions that were removed by the amendment. However paragraph (k)(4) implements the new statutory language on small business preferences and we would encourage comments on this proposal.

The clause at § 401.14(b) is designed to be used by the Department of Energy in those cases in which it exercises 35 U.S.C. 202(a)(iv). The standard clause at § 401.14(a) is prescribed with two main changes.

First, paragraph (c) is amended to create a two tier system. Inventions falling under the naval nuclear propulsion and nuclear weapons programs of DOE will be subject to deferred determinations. Those that fall outside the programs will belong to the contractor under the standard clause provisions if the contract elects title. And a procedure is established for determining under which category individual inventions fall.

Second, paragraph (e) has been amended to guarantee the contractor an exclusive license in inventions to which the Government obtains title in fields of use outside of naval nuclear propulsion and nuclear weapons. This provision would not come into effect, of course, if DOE waives its right to obtain title. However, pending such waiver, this should provide the contractor with the ability and incentive to attempt to commercialize promising inventions.

Section 401.15 Deferred determinations.

Section 401.15 is new and contains guidance and procedures for the handling of contractor requests for greater rights in those cases when one of the exceptions at 35 U.S.C. 202(a) has been applied. As noted earlier § 401.3(b) requires that in most instances when an exception is used that the contractor be allowed at least the right to request greater rights. The proposed procedures are intended to foster the expeditious handling of these requests in a manner that is consistent with the reasons behind the original application of an exception and the policies and objectives of 35 U.S.C. 200. We encourage comments on these proposed procedures.

Applicability of E.O. 12291

This proposed rule is not considered a major rule as defined in Executive Order 12291. Its purposes, objectives, and basic substance are the same as OMB Circular A–124 which was not considered a major rule. Nevertheless a regulatory impact analysis was prepared for that rule which concluded that its benefits substantially outweighed any costs and that there should be a net cost savings. That continues to be true. Several years experience have now borne this out. This regulation adds no new paperwork burdens, and, in fact, reduces certain paperwork requirements of the current FAR and OMB Circular A–124.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a substantial economic impact on a substantial number of small entities. However, for these limited number of small business concerns in areas of high technology that deal with the Government, the proposed regulation, like OMB Circular A–124, makes it easier for small business firms to participate in Government R&D programs by guaranteeing the protection of their intellectual property. The small business preference provisions in § 401.7 and the clauses at § 401.14 should also prove of benefit to the limited number of small businesses that may be interested in obtaining licenses to university technology.

List of Subjects in 37 CFR Ch. IV

Inventions, Patents, Nonprofit Organizations, Small business firms.

Dated: March 28, 1985.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

Accordingly, it is proposed to add a new Chapter IV to title 37 of the Code of Federal Regulations consisting at this time of Part 401 to read as follows:

CHAPTER IV—ASSISTANT SECRETARY FOR PRODUCTIVITY, TECHNOLOGY, AND INNOVATION, DEPARTMENT OF COMMERCE

PART 401—RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Sec.
401.1 Scope.
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401.10 Government assignment to contractor of rights in invention of government employee.
401.11 Appeals.
401.12 Licensing of background patent rights to third parties.
401.13 Administration of patent rights clauses.
401.14 Standard clauses.
401.15 Deferred determinations.

Authority: 35 U.S.C. 206 and the delegation of authority by the Secretary of Commerce to the Assistant Secretary for Productivity, Technology and Innovation at section 3(g) of DOO 10-1.

§ 401.1 Scope.

(a) This part implements 35 U.S.C. 202–204 and is applicable to all Federal agencies. It applies to all funding agreements with small business firms and nonprofit organizations executed after the effective date of this part, except for a funding agreement made primarily for educational purposes. In accordance with 35 U.S.C. 212 no scholarship, fellowship, training grant, or other funding agreement made by a Federal agency primarily to an awardee for educational purposes will contain any provision giving the Federal agency any rights to inventions made by the awardee.

(b) The "march-in" and appeals procedures in §§ 401.6 and 401.11 shall apply with respect to any march-in or appeal proceeding initiated after the effective date of this part, under a funding agreement subject to chapter 18 of title 35, U.S.C., even if the funding agreement was executed prior to that date.

(c) At the request of the contractor, a funding agreement for the operation of a Government-owned facility which is in effect on the effective date of this part shall be promptly amended to include the provisions required by § 401.3(a) unless the Agency determines that one of the exceptions at 35 U.S.C. 202(a)(i)–(iv) (§ 401.3(a)(1)–(4) of this part) is applicable and will be applied. If the exception at § 401.3(a)(4) is determined to be applicable, the funding agreement will be promptly amended to include the provisions required by § 401.3(b).

(d) This regulation supercedes OMB Circular A–124 and shall take precedence over any agency regulations, including regulations issued under the FAR system, which are inconsistent with it. Existing agency regulations, including those under the FAR system, shall be promptly amended to conform to this part and amended Chapter 18 of title 35. No deviations from this regulation or the clauses prescribed in it shall be made except with the approval of the Assistant Secretary. Regulations supplementing this part shall be submitted to the Assistant Secretary for review for consistency with this part prior to their issuance.

(e) In the event an agency has outstanding prime funding agreements that do not contain patent flow-down provisions consistent with this part or earlier OFPP regulations (OMB Circular A–124 or OMB Bulletin 81–22), the agency shall take appropriate action to ensure that small business firms or nonprofit organizations that are subcontractors under any such agreements and that received their subcontracts after July 1, 1981, receive rights in their subject inventions that are consistent with chapter 18 and this part.

(f) This part is not intended to apply to arrangements under which nonprofit organizations, small business firms, or others are allowed to use Government-owned research facilities and normal technical assistance provided to users of those facilities, whether on a reimbursable or nonreimbursable basis. Such arrangements are not considered "funding agreements" as defined at 35 U.S.C. 201(b) and § 401.2(a) of this part. However, if such facilities are operated by nonprofit organizations or small business firms and if an employee of the operator is a co-inventor (along with a user's employee) or a sole inventor, then chapter 18 and this regulation will govern the rights of the operator in the invention as derived through its employee-inventor. It is therefore advisable, and especially so if collaborative research is contemplated, for the user, the operator, and the agency to reach advance agreement on how rights to inventions will be allocated under arrangements for use of Government-owned facilities being operated by nonprofit organizations or small business firms.

§ 401.2 Definitions.

As used in this part—

(a) The term "funding agreement" means any contact, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(b) The term "contractor" means any person, small business firm or nonprofit organization which is a party to a funding agreement.

(c) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(d) The term "subject invention" means any invention of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement; provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(e) The term "practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(f) The term "made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(g) The term "small business firm" means a small business concern as defined at Section 2 of Pub. L. 85536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purposes of this part, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 121.3–12, respectively, will be used.

(h) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(i) The term "chapter 18" means chapter 18 of title 35 of the United States Code.

(j) The term "Assistant Secretary" means the Assistant Secretary of Commerce for Productivity, Technology, and Innovation or his or her designee.

§ 401.3 Use of the standard clauses at § 401.14.

(a) Each funding agreement awarded to a small business firm or nonprofit organization (except those subject to 35 U.S.C. 212) shall contain the clause found in § 401.14(a) with such modifications and tailoring as authorized or required elsewhere in this part. However, a funding agreement may contain alternative provisions—

(1) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign Government; or

(2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of chapter 18 of Title 35 of the United States Code; or

(3) when it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities; or

(4) when the funding agreement includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(b) When the Department of Energy exercises the exception at § 401.3(a)(4), it shall use the clause prescribed at § 401.14(b) with such modification and tailoring as authorized or required elsewhere in this part. When any agency exercises the exceptions at § 401.3(a)(2) or (3), it shall use the standard clause at § 401.14(a) with only such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. For example, if the justification relates to a particular field of use or market, the clause might be modified along lines similar to those described in § 401.14(b). In any event, the clause should provide the contractor with an opportunity to receive greater rights in accordance with the procedures at § 401.15.

(c) When a funding agreement involves a series of separate task orders, an agency may apply the exceptions at § 401.3(a)(2) or (3) to individual task orders, and it may structure the contract so that modified patent rights provisions will apply to the task order even though the clauses at either § 401.14(a) or (b) are applicable to the remainder of the work. Agencies are authorized to negotiate such modified provisions with respect to task orders added to a funding agreement after its initial award.

(d) Before utilizing any of the exceptions in paragraph (a) the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. In cases when § 401.3(a)(2) is used the determination shall also include an analysis justifying the determination. This analysis should address with specificity how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. A copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or prospective contractor.

(e) Except for determinations under § 401.3(a)(3), the agency shall also provide copies of each determination, statement of fact, and analysis to Assistant Secretary. These shall be sent within 30 days after the award of the funding agreement to which they pertain. Copies shall also be sent to the Chief Counsel for Advocacy of the Small Business Administration if the funding agreement is with a small business firm.

(f) To assist the Comptroller General of the United States to accomplish his or her responsibilities under 35 U.S.C. 202, each Federal agency that enters into any funding agreements with nonprofit organizations or small business firms shall accumulate and, at the request of the Comptroller General, provide the Comptroller General or his or her duly authorized representative the total number of prime agreements entered into with small business firms or nonprofit organizations that contain the patent rights clause in this part or under OMB Circular A–124 for each period of October 1 through September 30, beginning with October 1, 1982.

(g) To qualify for the standard clause a prospective contractor may be required by an agency to certify that it is either a small business firm or a nonprofit organization. If the agency has reason to question the status of the prospective contractor as a small business firm or nonprofit organization, it may file a protest in accordance with 13 CFR 121.3–5 if small business firm status is questioned or require the prospective contractor to furnish evidence to establish its status as a nonprofit organization.

§ 401.4 Contractor appeals or exceptions.

(a) In accordance with 35 U.S.C. 202(b)(4) a contractor has the right to an administrative review of a determination to use one of the exceptions at §§ 401.3(a) (1)–(4) if the contractor believes that a determination is either contrary to the policies and objectives of this chapter or constitutes an abuse of discretion by the agency. Paragraph (b) of this section specifies the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a funding agreement or for suspending performance under an award. However, pending final resolution of the claim the contract may be issued with the patent rights provision proposed by the agency; but should the final decision be in favor of the contractor, the funding agreement will be amended accordingly and the amendment made retroactive to the effective date of the funding agreement.

(b)(1) A contractor may appeal a determination by providing written notice to the Agency within 30 working days from the time it receives a copy of the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(2) The appeal shall be decided by the head of the agency or by an official of the agency designated by the head of the agency who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or the designee shall undertake or refer the matter for fact-finding.

(3) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present

witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(4) The official conducting the fact-finding shall prepare written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail.

(5) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(6) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on the facts found, together with any argument submitted by the contractor, agency officials or any other information in the administrative record. In cases referred for fact-finding the agency head or the designee may reject only those facts that have been found that are clearly erroneous and the agency head or the designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make its own arguments and rebuttal. The decision of the agency head or the designee shall be in writing and include an explanation of the basis of the decision if it is unfavorable to the contractor. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice.

§ 401.5 Modification and tailoring of clauses.

(a) Agencies should complete the blank in paragraph (g)(2) of the clauses at § 401.14 in accordance with their own or applicable Government-wide regulations such as the Federal Acquisition Regulation.

(b) Agencies should complete paragraph (1), "Communications" at the end of the clauses at § 401.14 by designating a central point of contact for communications on matters relating to the clause. Additional instructions on communications may also be included in paragraph (1).

(c) Agencies may replace the underlined words and phrases in the clauses at § 401.14 with those appropriate to the particular funding agreement. For example, "contracts" could be replaced by "grant," "contractor" by "grantee," and "contracting officer" by "grants officer." Depending on its use, "Federal agency" can be replaced either by the identification of the agency or by the specification of the particular office or official within the agency.

(d)(1) When the agency head or duly authorized designee determines at the time of contracting with a small business firm or nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign Governments or international organizations pursuant to any existing treaty or international agreement, a sentence may be added at the end of paragraph (b) of the clauses at § 401.14 as follows:

> This license will include the right of the Government to sublicense foreign Governments and international organizations pursuant to the following treaties or international agreements: ————.

The blank above should be completed with the names of applicable existing treaties or international agreements, agreements of cooperation, memoranda of understanding, or similar arrangements including military agreements relating to weapons development and production. The above language is not intended to apply to treaties or other agreements that are in effect on the date of the award but which are not listed. Alternatively, agencies may use substantially similar language relating the Government's rights to specific treaties or other agreements identified elsewhere in the funding agreement. The language may also be modified to make clear that the rights granted to the foreign Government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even the assignment of title in the foreign country involved might be required. Agencies may also modify the language above to provide for the direct licensing by the contractor of the foreign Government or international organization.

(2) If the funding agreement is expected to involve a series of changing tasks over an extended period of time, such as the typical funding agreement for the operation of a Government-owned facility, the following language may also be added:

> The *agency* reserves the right to unilaterally amend this *funding agreement* to identify specific treaties or international agreements entered into by the Government after the effective date of this *funding agreement* pursuant to which the *contractor* shall grant the Government (or foreign Governments or international organizations designated by the *Agency*) with respect to subject inventions made after the date of the amendment those license or other rights which are necessary for the Government to meet its obligations to foreign Governments and international organizations under such treaties or international agreements.

(e) Agencies may add additional subparagraphs to paragraph (f) of the clauses at § 401.14 to require the contractor to do one or both of the following:

(1) Provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) Provide, upon request, the filing date, serial number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(f) If the contract is with a nonprofit organization and is for the operation of a Government-owned facility the following will be substituted for paragraph (k)(3) of the clause at § 401.14(a):

> (3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the *contractor* during any fiscal year on subject inventions under this or any successor *contract* containing the same requirement, up to any amount equal to five percent of the budget of the facility for that fiscal year, shall be used by the contractor for scientific research, development, and education at the facility consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds five percent, 75 percent of the excess above five percent shall be payed by the contractor to the Treasury of the United States and the remaining 25 percent shall be used by the *contractor* only for the same purposes as described above. To the extent it provides the most efficient technology transfer, the licensing of subject inventions shall be administered by *contractor* employees on location at the facility.

This paragraph shall not be used in contracts for the operation of or performance of work at facilities or laboratories that are not Government-owned regardless of what percentage of the work at the facility or laboratory is funded by the Government and regardless of whether or not the construction or equipping of the facility was paid for out of funds provided by the Government.

§ 401.6 Exercise of march-in rights.

(a) The following procedures shall govern the exercise of the march-in rights of the agencies set forth in 35 U.S.C. 203 and the clause at § 401.14.

(b) Whenever an agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor as well as information relevant to the matter. In the absence of any comments from the contractor within 30 days, the agency may, at its discretion proceed with the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(c) A march-in proceeding shall be initiated by the issuance of a written notice by the agency to the contractor and its assignee or exclusive licensee, as applicable, stating that the agency is considering the exercise of march-in rights. The notice shall state the reasons for the proposed march-in in terms sufficient to put the contractor on notice of the facts upon which the action would be based and shall specify the field or fields of use in which the agency is considering requiring licensing. The notice shall advise the contractor (assignee or exclusive licensee) of its rights, as set forth in this section and in any supplemental agency regulations. The determination to exercise march-in rights shall be made by the head of the agency or his or her designee.

(d) Within 30 days after the receipt of the written notice of march-in, the contractor (assignee or exclusive licensee) may submit in person, in writing, or through a representative, information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or disignee shall undertake or refer the matter to another official for fact-finding.

(e) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the contractor (assignee or licensee).

(f) The official conducting the fact-finding shall prepare written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor (assignee or exclusive licensee) by registered or certified mail. The contractor (assignee or exclusive licensee) and agency representatives will be given 30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor oral arguments will be held before the agency head or designee that will make the final determination.

(g) In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor (assignee or exclusive licensee) and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found that are clearly erroneous. Written notice of the determination whether march-in rights will be exercise shall be made by the head of the agency or designee and sent to the contractor (assignee or exclusive licensee) by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercise.

(h) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(i) The procedures of this part shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor" as used in this section shall be deemed to include the inventor.

(j) An agency determination unfavorable to the contractor (assignee or exclusive licensee) shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 206(2).

(k) Agencies are authorized to issue supplemental procedures not inconsistent with this part for the conduct of march-in proceedings.

§ 401.7 Small business preference.

(a) Paragraph (k)(4) of the clauses at § 401.14 implements the small business preference requirement of 35 U.S.C. 202(c)(7)(D). Contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market.

(b) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the Assistant Secretary. To the extent deemed appropriate, the Assistant Secretary will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meetings its obligations under the clause. However, in no event will the Assistant Secretary intervene in negotiations or contractor decisions concerning the licensing of a specific subject invention. As appropriate the investigations, discussions, and negotiations of the Assistant Secretary will be coordinated with other agencies, including the Small Business Administration; and in the case of a contract for the operation of a Government-owned, contractor operated research or production facility, the Assistant Secretary will coordinate with

the agency responsible for the facility prior to any discussions or negotiations with the contractor.

§ 401.8 Reporting on utilization of subject inventions.

(a) Paragraph (h) of the clauses at §401.14 and its counterpart in the clause at Attachment A to OMB Circular A–124 provides that agencies have the right to receive periodic reports from the contractor on utilization of inventions. In accordance with such instructions as may be issued by the Department of Commerce, agencies shall obtain such information from their contractors. Pending such instructions, agencies should not impose reporting requirements.

(b) In accordance with 35 U.S.C. 202(c)(5) and the terms of the clauses at § 401.14, agencies shall not disclose such information to persons outside the Government. Agencies should note that because of the amendment to 35 U.S.C. 202(c)(5), the clauses at § 401.14 do not require the contractor to mark the data as proprietary. This is a change from the clause prescribed by OMB Circular A–124 which requires the contractor to mark data if it wishes the agency to protect it. Agencies which obtain reports on utilization of subject inventions made under funding agreements with the marking requirements of the earlier OMB clause shall treat these reports in accordance with the provisions of amended 35 U.S.C. 202(c)(5) and shall not require them to be marked in order to afford them protection. The provisions of 35 U.S.C. 202(c)(5), as amended, shall take precedence over the conflicting language in the clause previously prescribed by OMB Circular A–124. Despite the lack of a formal requirement for contractors to mark reports on utilization, contractors are encouraged to include confidentiality markings to better insure that their reports will not be inadvertently released outside the agency.

§ 401.9 Retention of rights by contractor employee inventor.

Agencies which allow an employee/inventor of the contractor to retain rights to a subject invention made under a funding agreement with a small business firm or nonprofit organization contractor, as authorized by 35 U.S.C. 202(d), will impose upon the inventor at least those conditions that would apply to a small business firm contractor under paragraphs (d)(1) (i) and (iii); (f)(4); (h); (i); and (j) of the clause at § 401.14(a).

§ 401.10 Government assignment to contractor of rights in invention of government employee.

In any case when a Federal employee is a co-inventor of any invention made under a funding agreement with a small business firm or nonprofit organization and the Federal agency employing such co-inventor transfers or reassigns the right it has acquired in the subject invention from its employee to the contractor as authorized by 35 U.S.C. 202(e), the assignment will be made subject to the same conditions, but no others, as apply to the contractor under the patent rights clause of its funding agreement so that only one set of conditions applies to the subject invention.

§ 401.11 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for his or her action at the time the action is taken, including any relevant facts that were relied upon in taking the action.

(1) A refusal to grant an extension under paragraph (c)(4) of the standard clauses.

(2) A request for a conveyance of title under paragraph (d) of the standard clauses.

(3) A refusal to grant a waiver under paragraph (i) of the standard clauses.

(4) A refusal to approve an assignment under paragraph (k)(1) of the standard clauses.

(5) A refusal to grant an extension of the exclusive license period under paragraph k. (2) of the clauses prescribed by either OMB Circular A–124 or OMB Bulletin 81–22.

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) of this section may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the actions and its consistency with the policy and objectives of 35 U.S.C. 200–206.

(c) Appeals procedures established under paragraph (b) of this section shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in § 401.6(e)–(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under paragraph d. of the standard clauses, including any dispute as to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) of this section are subject to appeal under the Contracts Dispute Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) of this section.

(e) As used in this section the term "standard clause:" means the clauses of § 401.14 of this Part and the clauses previously prescribed by either OMB Circular A–124 or OMB Bulletin 81–22.

§ 401.12 Licensing of background patent rights to third parties.

(a) A funding agreement with a small business firm or a domestic nonprofit organization will not contain a provision allowing a Federal agency to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and a written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign the justification required for such provisions.

(b) A Federal agency will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the funding agreement and that such action is necessary to achieve practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for an agency hearing and the contractor shall be given prompt notification of the determination by certified or registered mail.

§ 401.13 Administration of patent rights clauses.

(a) In the event a subject invention is made under funding agreements of more than one agency at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

(b) Agencies shall not require yearly or other periodic reports by contractors listing subject inventions in any funding agreements entered into after the effective date of this Part. Close out reports are authorized at § 401.5(e).

(c) Agencies shall promptly grant, unless there is a significant reason not to, a request by a nonprofit organization under paragraph k. (2) of the clauses prescribed by either OMB Circular A–

124 or OMB Bulletin 81–22 since 35 U.S.C. 202(c)(7) has since been amended to eliminate the limitation on the duration of exclusive licenses. Similarly, unless there is a significant reason not to, agencies shall promptly approve an assignment by a nonprofit organization to an organization which has as one of its primary functions the management of inventions when a request for approval has been necessitated under paragraph k. (1) of the clauses prescribed by either OMB Circular A–124 or OMB Bulletin 81–22 because the patent management organization is engaged in or holds a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention. As amended, 35 U.S.C. 202(c)(7) no longer contains this limitation.

(d) Paragraph (e)(4)–(6) of the clauses at § 401.14 obligates agencies to treat contractor invention disclosures and other related documents as confidential. These requirements were in part 9 of OMB Circular A–124 and should also be followed with respect to funding agreements predating this Part 401.

§ 401.14 Standard patent rights clauses.

(a) The following is the standard patent rights clause to be used as specified in § 401.3(a).

Patent Rights (Small Business Firms and Nonprofit Organizations) (Mar 1984)

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.).

(2) "Subject invention" means any invention of the *contractor* conceived or first actually reduced to practice in the performance of work under this *contract*, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of *contract* performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) Allocation of Principal Rights.

The *contractor* may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the *contractor* retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, Election of Title and Filing of Patent Application by *Contractor*.

(1) The *contractor* will disclose each subject invention to the *Federal agency* within two months after the inventor discloses it in writing to *contractor* personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the *contract* under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time or the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the *agency*, the *contractor* will promptly notify the *agency* of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the *contractor*.

(2) The *contractor* will elect in writing whether or not to retain title to any such invention by notifying the *Federal agency* within two years of disclosure to the *Federal agency*. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the *agency* to a date that is no more than 60 days prior to the end of the statutory period.

(3) The *contractor* will file its initital patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The *contractor* will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosing and electing title under subparagraphs (1) and (2) may, at the discretion of the *agency*, be granted.

(d) Conditions When the Government May Obtain Title.

(1) The *contractor* will convey to the *Federal agency*, upon written request, title to any subject invention—

(i) If the *contractor* fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title.

(ii) In those countries in which the *contractor* fails to file patent applications within the times specified in (c) above; provided, however, that if the *Contractor* has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the *Federal agency*, the *contractor* shall continue to retain title in that country.

(iii) In any country in which the *contractor* decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to *Contractor* and Protection of the *Contractor* Right to File.

(1) The *contractor* will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the *contractor* fails to disclose the invention within the times specified in (c), above. The *contractor's* license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the *contractor* is a party and includes the right to grant sublicenses of the same scope to the extent the *contractor* was legally obligated to do so at the time the *contract* was awarded. The license is transferable only with the approval of the *Federal agency* except when transferred to the successor of that party of the *contractor's* business to which the invention pertains.

(2) the *contractor's* domestic license may be revoked or modified by the *funding Federal agency* to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which the *contractor* has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the *funding Federal agency* to the extent the *contractor*, its licensees, or the domestic

subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the *funding Federal agency* will furnish the *contractor* a written notice of its intention to revoke or modify the license, and the *contractor* will be allowed thirty days (or such other time as may be authorized by the *funding Federal agency* for good cause shown by the *contractor*) after the notice to show cause why the license should not be revoked or modified. The *contractor* has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(4) The *agency* agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise copies of any document which the *agency* obtained under this clause which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the *contractor* (or its assignees, licensees, or employees) on a subject invention to which the *contractor* has elected to retain title.

(5) The *agency* agrees that in accordance with 35 U.S.C. 205 it will not disclose or release to third parties pursuant to requests under the Freedom of Information Act or otherwise any information submitted under paragraph (c), above, disclosing a subject invention for a reasonable time in order for the *contractor* to file a patent application on any subject invention in which it has elected or retains the right to elect retention of title. For purposes of this paragraph, a reasonable time shall be the time during which an initial patent application may be filed under paragraph (c) of this clause; provided, however, that the *agency* may make disclosure at its discretion if it finds that the same information has been previously published by the inventor, *contractor*, or otherwise.

(6) Nothing in subparagraphs (4) and (5) of this paragraph shall preclude the *agency* publishing as part of its regular technical information dissemination programs materials describing a subject invention to the extent such materials were provided as part of a technical report or other submissions of the *contractor* which were submitted independently of the requirements of this clause. However, if the *contractor* notifies the *agency* that a particular report or submission contains a disclosure of a subject invention to which it has elected or may elect title, the *agency* will use reasonable efforts to restrict its publication of the material for at least six months from the date of its receipt of the report or submission or, if earlier, until the *contractor* has filed an initial patent application. Moreover, nothing in subparagraphs (4) and (5) of this paragraph shall preclude the *agency* from releasing the documents described in those subparagraphs to other contractors of the *agency* on a confidential basis if such documents are relevant to the work being performed by those contractors.

(f) *Contractor* Action to Protect the Government's Interest.

(1) The *contractor* agrees to execute or to have executed and promptly deliver to the *Federal agency* all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the *contractor* elects to retain title, and (ii) convey title to the *Federal agency* when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The *contractor* agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the *contractor* each subject invention made under *contract* in order that the *contractor* can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The *contractor* shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S or foreign statutory bars.

(3) The *contractor* will notify the *Federal agency* of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The *contractor* agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the *contract*) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) Subcontracts.

(1) The *contractor* will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the *contractor* in this clause, and the *contractor* will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The *contractor* will include in all other subcontracts, regardless of tier, for experimental, developmental or research work the patent rights clause required by (*cite section of agency implementing regulations or FAR*).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the *agency*, subcontractor, and the contractor agreed that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions.

The *contractor* agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the *contractor* or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the *agency* may reasonably specify. The *contractor* also agrees to provide additional reports as may be requested by the *agency* in connection with any march-in proceeding undertaken by the *agency* in accordance with paragraph (j) of this clause. As required by 35 U.S.C 202(c)(5), the *agency* agrees it will not disclose such information to persons outside the Government.

(i) Preference for United States Industry.

Notwithstanding any other provision of this clause, the *contractor* agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject inventions will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the *Federal agency* upon a showing by the *contractor* or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights.

The *contractor* agrees that with respect to any subject invention in which it has required title, the *Federal agency* has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the *agency* to require the *contractor*, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the *contractor*, assignee, or exclusive licensee refuses such a request the *Federal agency* has the right to grant such a license itself if the *Federal agency* determines that:

(1) Such action is necessary because the *contractor* or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the *contractor*, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the *contractor*, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for *Contracts* with Nonprofit Organizations. If the *contractor* is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the *Federal agency*, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the *contractor*;

(2) The *contractor* will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the *contractor* with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject invention will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the *contractor* determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the *contractor* is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the *contractor*. However, the *contractor* agrees that the Assistant Secretary of Commerce for Productivity, Technology, and Innovation or his or her designee may review the *contractor's* licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Assistant Secretary or designee when the Assistant Secretary's review discloses that the contractor could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) Communications. (Complete According to Instructions at 401.5(b))

(b) When the Department of Energy (DOE) determines to use alternative provisions under §401.3.(a)(4), the standard clause at § 401.14(a), above, shall be used with the following modifications:

(1) The title of the clause shall be changed to read as follows:

Patent Rights to Nonprofit DOE Facility Operators (Mar 1984)

(2) Add an "(A)" after "(1)" in paragraph (c)(1) and add subparagraphs (B) and (C) to paragraph (c)(1) as follows:

(B) If the invention was made under activities funded by the Naval Nuclear Propulsion or Nuclear Weapons Programs of *DOE*, then the provisions of this subparagraph (c)(1)(B) will apply in lieu of paragraph (c)(2) and (3). In such cases the contractor agrees to assign the Government the entire right, title, and interest thereto throughout the world in and to the subject invention except to the extent that rights are retained by the contractor through a greater rights determination or under paragraph (e), below. The contractor, or an employee-inventor, after consideration with the contractor, may submit a request for greater rights at the time the invention is disclosed and anytime thereafter. *DOE* agrees to process such a request in accordance with procedures at 37 CFR 401.15. Each determination of greater rights will be subject to paragraphs (b) and (g) of this clause and such additional conditions, if any, deemed to be appropriate by the *Department of Energy*.'

(C) At the time an invention is disclosed in accordance with (c)(1)(A) above, or within 90 days thereafter, the contractor will submit a written statement as to whether or not the invention was made under a naval nuclear propulsion or nuclear weapons related program of the Department of Energy. If this statement is not filed within this time, subparagraph (c)(1)(B) will apply in lieu of paragraphs (c) (2) and (3). The contractor statement will be deemed conclusive unless, within 60 days thereafter, the Contracting Officer disagrees in writing, in which case the matter will be handled as a dispute under the Contract Disputes Act. Pending resolution of the matter the invention will be subject to paragraph (c)(1)(B). Pending resolution of the dispute the Department will either allow the contractor to file for a patent or work with the contractor so that any patent application filed by the Department is adequately drawn to address potential commercial applications of the invention.

(3) Paragraph (e) of the clause will be modified by adding the following:

(7) In addition to the license rights provided by subparagraph (1), above, in subject inventions to which the Government obtains title, the contractor will retain in such inventions an exclusive, royalty-free license, with right to sublicense, throughout the world, except if the contractor fails to disclose the invention within the times specified in (c) above, for the practice of the subject invention in all fields of use other than naval nuclear propulsion or nuclear weapons. Contractor's rights under this subparagraph are subject to paragraphs (h)–(k) of this clause, but they are not subject to subparagraph (2) of this paragraph. The Department will work with the contractor, if the contractor requests, so that any patent application filed by the Department is adequately drawn to address potential commercial applications of the invention in fields of use of interest to the contractor.

4. Paragraph (k)(3) of the clause will be modified as prescribed at § 401.5(f).

§ 401.15 Deferred determinations.

(a) This section applies to requests for greater rights in subject inventions made by contractors when deferred determination provisions were included in the funding agreement because one of the exceptions at § 401.3(a) was applied. A contractor requesting greater rights should include with its request information on its plans and intentions to bring the invention to practical application. Within 90 days after receiving a request and supporting information, or sooner if a statutory bar to patenting is imminent, the agency should seek to make a determination. In any event if a bar to patenting is imminent, unless the agency plans to file on its own, it shall authorize the contractor to file a patent application pending a determination by the agency. Such a filing shall normally be at the contractor's own risk and expense. However, if the agency subsequently refuses to allow the contractor to retain title and elects to proceed with the patent application under Government ownership, it shall reimburse the contractor for the cost of preparing and filing the patent application.

(b) If the circumstances or concerns which originally led the agency to invoke an exception under § 401.3(a) are not applicable to the actual subject invention or are no longer valid because of subsequent events, the agency should allow the contractor to retain title to the invention on the same conditions as would have applied if the standard clause at § 401.14(a) had been used originally.

(c) If paragraph (b) is not applicable then the agency shall make its determination based on an assessment whether its own plans regarding the invention will better promote the policies and objectives of 35 U.S.C. 200 than will contractor ownership of the invention. Moreover, if the agency is concerned only about specific uses or applications of the invention, it shall consider leaving title in the contractor with additional conditions imposed upon the contractor's use of the invention for such applications or with expanded Government license rights in such applications.

(d) A determination not to allow the contractor to retain title to a subject invention or to restrict or condition its title with conditions differing from those in the clause at § 401.14(a), unless made by the head of the agency, shall be appealable by the contractor to an agency official at a level above the person who made the determination. This appeal shall be subject to the procedures applicable to appeals under § 401.11 of this part.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-307]

7 CFR Part 301

Gypsy Moth Regulated Areas; Michigan, et al.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the Federal Gypsy Moth and Browntail Moth Quarantine and Regulations by: (1) Redesignating areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas; (2) designating previously nonregulated areas in the District of Columbia and in Virginia as gypsy moth high-risk areas; (3) designating previously nonregulated areas in Michigan and Virginia as gypsy moth low-risk areas; (4) removing portions of regulated areas in Michigan, Oregon, and Washington, and removing all regulated areas in California, Illinois, Ohio, and Wisconsin from the list of gypsy moth regulated areas; (5) removing California, Illinois, Ohio, and Wisconsin from the list of States quarantined because of gypsy moth; and (7) adding District of Columbia to the list of States quarantined because of gypsy moth. The quarantine and regulations impose restrictions on the interstate movement of certain articles from gypsy moth high-risk areas and gypsy moth low-risk areas. This amendment is necessary as an emergency measure in order to prevent the artificial spread interstate of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

DATES: Effective date of this interim rule is April 5, 1985. Written comments concerning this interim rule must be received on or before June 4, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Gary E. Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Emergency Action

This interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of approximately $33,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim action. Due to the possibility that gypsy moths could be artificially spread interstate to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest. Also, where gypsy moth no longer occurs, or when there is reason to believe that the density of egg masses per acre has decreased sufficiently to remove the area from a gypsy moth high-risk area and gypsy moth low-risk area classification, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Certification Under the Regulatory Flexibility Act

The Administrator of the Aminal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in the District of Columbia and in the States of California, Illinois, Michigan, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, and Wisconsin. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are many hundreds of small entities that move regulated articles interstate from such States and the District of Columbia and many thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that only approximately 347 small entities move regulated articles interstate from the specified areas affected by this action. Further, the annual overall economic impact from this action is estimated to be less than $33,000.

Background

The gypsy moth, *Lymantria dispar* (Linnaeus) is a highly destructive pest of

forest trees. The Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45 *et seq.*) quarantine certain States because of the gypsy moth, and restrict the interstate movement from regulated areas of articles designated as regulated articles because of the gypsy moth. Such restrictions are necessary for the purpose of preventing the artificial spread of the gypsy moth.

Areas designated as gypsy moth regulated areas are areas in which a gypsy moth infestation has been found by an inspector, or areas which are necessary to regulate because of proximity to gypsy moth infestation or inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into high-risk areas and low-risk areas. Under the regulations there is a basis for designating an area as a high-risk area when an inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where an inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. Low-risk areas are those portions of regulated areas that are not designated as high-risk areas.

Paragraphs (a), (b), and (c) of § 301.45–3 of the "Domestic Quarantine" regulations [7 CFR 301.45–3 (a), (b), and (c)] impose the following conditions on the movement of regulated articles:

(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7.

(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth or browntail moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45–4 and 301.45–7.

(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth or browntail moth pursuant to paragraph (b) of this section, may be moved interstate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identity has been maintained, and they have been safeguarded against infestation while in any high-risk area.

These regulations are designed to restrict the interstate movement of regulated articles in those circumstances where there would be a significant risk of spread of the gypsy moth. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the gypsy moth.

Quarantined District and Designation of Areas as High-Risk Areas

This document, as an emergency measure, quarantines the District of Columbia and designates the entire District as a high-risk area because of gypsy moth. This document also redesignates the following areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas:

Michigan

Oakland County. Sec. 24 and 27, T. 2 N., R. 10 E., sec. 16 and 17, T. 2 N., R. 11 E.

New York

Cattaraugus County. The towns of Ashford, Conewango, Dayton, East Otto, Ellicottville, Leon, Mansfield, New Albion, Otto, Perrysburg, Persia, Randolph, and South Valley.

Chautauqua County. The entire county.

Erie County. The towns of Aurora, Boston, Brant, Cattaraugus, Colden, Collins, Concord, Eden, Evans, Hamburg, Holland, North Collins, Orchard Park, Sardinia, and Wales.

Jefferson County. The towns of Brownville and Clayton.

Livingston County. The towns of North Dansville, Sparta, and West Sparta.

Pennsylvania

Clarion County. The entire county.

Venango County. The entire county.

Virginia

Arlington County. The entire county.
City of Alexandria. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Manassas. The entire city.
City of Winchester. The entire city.
Clarke County. The entire county.
Fairfax County The entire county.
Frederick County The entire county.
Loudoun County. That portion of the county beginning at a point where State Highway 7 intersects the Clarke and Loudoun County line; then southwesterly along said line to its intersection with the Loudoun-Fauquier County line; then southeasterly along said line to its intersection with the Loudoun-Prince William County line; then southeasterly along said line to its intersection with the Loudoun-Fairfax County line; then northeast along said line to its intersection with the Potomac River; then northwesterly along said river to its intersection with State Highway 287; then southerly along said highway to its intersection with State Highway 7; then westerly along said highway to the point of beginning.

Based on recent surveys, inspectors have determined with respect to all of the areas added to the list of gypsy moth high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of such regulated articles. Therefore, as an emergency measure, it is necessary to designate such areas as gypsy moth high-risk areas and impose restrictions on the interstate movement of regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Designation of Areas as Low-Risk Areas

As an emergency measure, the following areas in Michigan and Virginia, which were previously nonregulated areas, are designated as gypsy moth low-risk areas:

Michigan

Branch County. The entire county.
Calhoun County. The entire county.
Clinton County. The entire county.
Eaton County. The entire county.
Huron County. The entire county.
Ingham County. The entire county.
Ionia County. The entire county.
Iosco County. The entire county.
Jackson County. The entire county.
Lapeer County. The entire county.
Lenawee County. The entire county.
Livingston County. The entire county *except* sec. 10, 11, 14, and 15, T. 1 N., R. 5 E., and sec. 13 and 14, T. 3 N., R 6 E.
Macomb County. The entire county.
Missaukee County. The entire county.
Monroe County. The entire county.
Newaygo County. The entire county.
Ogemaw County. The entire county.
Roscommon County. The entire county.
St. Clair County. The entire county.
Sanilac County. The entire county.
Shiawasee County. The entire county.
Tuscola County. The entire county.
Washtenaw County. The entire county.
Wayne County. The entire county.

Virginia

Accomack County. That portion of the county north of a line beginning at the intersection of State Road 695 and the Chesapeake Bay on the west; then easterly along State Road 695 to its intersection with State Road 679; then north along State Road 679 to its intersection with State Road 695; then easterly along State Road 695 to its intersection with Powells Bay; then east from said intersection along an imaginary line to its intersection with the Atlantic Ocean.

Culpeper County. That portion of the county beginning at a point where State Road 729 intersects the Rappahannock County line; then southwest along the Rappahannock-Culpeper County line to its intersection with Madison County line; then southeast along Madison-Culpeper County line to its intersection with Orange County line; then northeast along the Orange-Culpeper County line to its intersection with Spotsylvania County line; then east along Spotsylvania-Culpeper County line to its intersection with Stafford County line and Rappahannock River; then northwest along The Rappahannock River to its intersection with Hazel River; then west along Hazel River to its intersection with Muddy Run; then west along Muddy Run to its intersection with State Road 625; then south and west along State Road 625 to its intersection with State Road 729; then northwest along State Road 729 to the point of beginning.

Madison County. That portion of the county north of a line beginning at the intersection of State Route 615 and the Greene-Madison County line; then easterly along State Route 615 to its intersection with State Route 662; then northerly along State Route 662 to the boundary of the Shenandoah National Park; then northerly along the Shenandoah National Park Boundary to its intersection with State Route 672; then east along State Route 672 to its intersection with State Route 649; then northeast along State Route 649 to its intersection with State Route 670; then southeasterly along State Route 670 to its intersection with State Route 231; then southeasterly along State Route 231 to its intersection with State Route 609; then easterly along State Route 609 to its intersection with the Madison-Culpeper County line.

Page County. The entire county.

Rappahannock County. The entire county.

Based on recent surveys, inspectors have determined that infestations of gypsy moth occur in these areas designated as gypsy moth low-risk areas, but that the number of egg masses per acre is not high enough to meet the criteria referred to above for gypsy moth high-risk areas.

As noted above, restrictions concerning the gypsy moth are imposed on movements of regulated articles from gypsy moth low-risk areas only if it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7 of the regulations. In this connection, it is necessary as an emergency measure to designate such areas as gypsy moth low-risk areas in order to advise persons of the likelihood that inspectors would conduct inspections in such areas and that based on their findings of life stages of gypsy moth, restrictions could apply to the movement of regulated articles from such areas.

Removal of States From Quarantine and Deletion of Areas From List of Regulated Areas

Prior to the effective date of this document the following areas in California, Illinois, Michigan, Ohio, Oregon, Washington, and Wisconsin were designated as gypsy moth low-risk regulated areas. This document removes these areas from the list of gypsy moth low-risk regulated areas.

California

Alameda County. That portion of the county bounded by a line beginning at a point where Interstate Highway 680 and Bernal Avenue intersect; then northwesterly on Interstate Highway 680 to its intersection with Stoneridge Drive; then easterly along Stoneridge Drive to its intersection with Hopyard Road; then easterly along an imaginary line from said intersection to the intersection of West Las Positas Boulevard and Santa Rita Road; then southerly along said road to its intersection with Mohr Avenue; then easterly along said avenue to its intersection with Kolln Street; then southerly along said street to its intersection with Valley Avenue; then southerly from said intersection along an imaginary line to the end of Kolln Street; then southerly along Kolln Street to its intersection with Jensen Street; then westerly along Jensen Street to its intersection with Main Street; then southerly along Main Street to its intersection with Bernal Avenue; then westerly along said avenue to the point of beginning.

That portion of the county bounded by a line beginning at a point where 82nd Avenue intersects 14th Street; then northwesterly on said street to its intersection with 55th Avenue; then northeasterly on said avenue to its intersection with Fairfax Avenue; then northerly on said avenue to its intersection with High Street; then northeasterly on said street to its intersection with Brookdale Avenue; then northwesterly on said avenue to its intersection with 38th Avenue; then northeasterly on said avenue to its intersection with MacArthur Boulevard; then southerly on said boulevard to its intersection with 39th Avenue; then northeasterly on said avenue to its intersection with Aliso Avenue; then northwesterly on said avenue to its intersection with Redwood Road; then easterly on said road to its intersection with Skyline Boulevard; then southeasterly on said boulevard to its intersection with Lexford Place; then southerly along an imaginary line to its intersection with the intersection of Partridge Avenue and 82nd Avenue; then southwesterly on 82nd Avenue to the point of beginning.

Contra Costa County. "That portion of the county bounded by a line beginning at a point where Pine Hollow Road and Mitchell Canyon Road intersect; then southerly on Mitchell Canyon Road to its intersection with Mitchell Creek; then southerly from said intersection along an imaginary line to the peak of Mitchell Rock; then easterly from said rock along an imaginary line to the intersection off Trail Ride Road and East Trail; then due north from said intersection along an imaginary line to an unimproved and unnamed road through Irish Canyon; then northwesterly along said road to its intersection with Black Diamond Way; then westerly along Black Diamond Way to its junction with Main Street in the town of Clayton; then westerly on Main Street to its end; then westerly from the end of said street along an imaginary line to the east end of Pine Hollow Road; then westerly on Pine Hollow Road to the point of beginning.

That portion of the county bounded by a line beginning at a point where Greenbrook Drive intersects Interstate 680; then southeasterly on Interstate 680 to its intersection with Bollinger Canyon Road; then northeasterly on said road to its intersection with Alcosta Boulevard; then northeasterly from said intersection along an imaginary line to its intersection with Doughery Road and Camino Tassajara Road; then northwesterly from said intersection along an imaginary line to its intersection with Sycamore Freitas Valley Road and Greenbrook Drive;

then southerly on Greenbrook Drive to the point of beginning."

Marin County. "That portion of the county bounded by a line beginning at a point where San Marin Drive intersects Business U.S. Highway 101; then easterly on San Marin Drive to its junction with Atherton Avenue; then easterly on Atherton Avenue to its intersection with Binford Road; then northerly on Binford Road to Rush Creek; then northeasterly along the southern boundary of Rush Creek to the northern most corner of Marin Memorial Gardens (cemetery); then southeasterly along the eastern boundary of Marin Memorial Gardens to Bahia Drive; then easterly along an imaginary line to the west end of Laguna Vista Drive; then southeasterly from the west end of said drive along an imaginary line to the intersection of School Road and Atherton Avenue; then southeasterly on Atherton Avenue to State Highway 37; then southwesterly on State Highway 37 to its intersection with an Movato Creek; then northwesterly along Novato Creek to its intersection with unnamed tributary; then southwesterly and northwesterly along said tributary to its intersection with U.S. Highway 101; then northerly on U.S. Highway 101 to Rowland Boulevard; then westerly on Rowland Boulevard to Business U.S. Highway 101; then northerly on Business U.S. Highway 101 to the point of beginning."

San Mateo County. "That portion of the county bounded by a line beginning at a point where 27th Avenue and Alameda De Las Pulgas intersect; then northeasterly along 27th Avenue to its intersection with South El Camino Real; then northeasterly along an imaginary line from said intersection to the intersection of East Hillsdale Boulevard and South Norfolk Street; then southeasterly along South Norfolk Street to its intersection with Los Prados; then southeasterly along Los Prados to its intersection with Bahia; then southeasterly along an imaginary line from said intersection to the intersection of Winchester Court and Galveston Street; then southeasterly along Galveston Street to its intersection with Bodega Street; then southerly along said street to its intersection with Chesapeake Avenue; then easterly along said avenue to its intersection with Biscayne Avenue; then southerly along an imaginary line from said intersection to the intersection of U.S. Highway 101 and Ralston Avenue; then southwesterly along Ralston Avenue to its intersection with Alameda De Las Pulgas; then northerly along Alameda De Las Pulgas to its intersection with Sharon Avenue; then westerly along said avenue to its intersection with Coronet Boulevard; then southerly along said boulevard to its intersection with Casa Bona Avenue; then westerly along said avenue to its intersection with Semeria Avenue; then northwesterly along said avenue to its intersection with Cipriani Boulevard; then westerly along said boulevard to its intersection with Wooster Avenue; then westerly along said avenue to its intersection with Thurm Avenue; then northerly along said avenue to its intersection with Bettina Avenue; then northerly along said avenue to its intersection with 42nd Avenue; then easterly along said avenue to its intersection Kingridge Drive; then northwesterly along said drive to its merger with 36th Avenue; then northeasterly along said avenue to its intersection with Alameda De Las Pulgas; then northerly along Alameda De Las Pulgas to the point of beginning.

That portion of the county beginning at a point where El Camino Real (State Highway 82) intersects Encinal Avenue; then northwesterly along El Camino Real to its intersection with Charter; then northeasterly along Charter to its end; then northeasterly along an imaginary line from the end of Charter to the intersection of Middlefield and Charter Street; then northeasterly along Charter Street to its intersection with Broadway; then northwesterly along an imaginary line from said intersection to the intersection of Woodside Road (State Highway 84) and U.S. Highway 101; then easterly along an imaginary line from said intersection to the end of Marsh Road; then southerly along Marsh Road to its intersection with U.S. Highway 101; then southerly along an imaginary line from said intersection to the intersection of Acorn Way and Greenoaks Drive; then westerly along Acorn Way to its intersection with Catalpa Drive; then southerly along said drive to its intersection with Linden Avenue; then southerly along said avenue to its intersection with Middlefield; then westerly along Middlefield to its intersection with Encinal Avenue; then southerly along said avenue to the point of beginning."

Santa Clara County. "That portion of the county bounded by a line beginning at a point where East Charleston Road intersects Independence Avenue; then southerly along said avenue to its intersection with West Middlefield Road; then easterly along said road to its intersection with Thompson Avenue; then southwesterly along said avenue to its intersection with Central Expressway; then southwest from said intersection along an imaginary line to its intersection with the intersection of Gabriel Avenue and Showers Drive; then southerly along Showers Drive to its intersection with El Camino Real; then northwesterly along El Camino Real to its intersection with San Antonio Road; then southerly along said road to its intersection with Loucks Avenue; then westerly along said avenue to its intersection with Los Altos Avenue; then northwesterly along an imaginary line from said intersection to the end of Laguna Avenue; then northwesterly along said avenue to its intersection with Matadero Avenue; then northwesterly along said avenue to its intersection with El Camino Real; then northwesterly along El Camino Real to its intersection with Lambert Avenue; then northeasterly along said avenue to its intersection with Park Boulevard; then northwesterly along an imaginary line from said intersection to the intersection of Alma Street and El Dorado Avenue; then northeasterly along said avenue to its intersection with Cowper Street; then northwesterly along said street to its intersection with Colorado Avenue; then northeasterly along said avenue to its intersection with Middlefield Road; then southeasterly along said road to its intersection with Loma Verde Avenue; then northeasterly along said avenue to its intersection with Louis Road; then southeasterly along said road to its intersection with East Meadow Drive; then northeasterly along said drive to its intersection with Fabian Way; then southerly along said way to its intersection with East Charleston Road; then easterly along said road to the point of beginning.

That portion of the country beginning at a point where Blossom Hill Road intersects Cahalan Avenue; then southerly on Cahalan Avenue to its end; then southerly from the end of said avenue along an imaginary line to its intersection with Camden Avenue and Almaden Expressway; then southeasterly on Almaden Expressway to Almaden Road; then southeasterly on Almaden Road to its intersection with McKean Road; then northeasterly on said road to its intersection with Harry Road; then northeasterly on Harry Road to its intersection with Henwood Road; then northeasterly from said intersection along an imaginary line to its intersection with the intersection of Curie Drive and Cottle Road; then north on Cottle Road to its intersection with Santa Teresa Boulevard; then west on said boulevard to its intersection with Lean Avenue; then northerly on Lean Avenue to its intersection with Blossom

Hill Road; then westerly on said road to the point of beginning.

San Diego County. "That portion of the county bounded by a line beginning at a point where Interstate 805 crosses Friars Road; then southerly on Interstate 805 to its intersection with Adams Avenue; then east on Adams Avenue to its intersection with Aldine Drive; then northerly and easterly on Aldine Drive to its intersection with Fairmount Avenue; then north on said avenue to its intersection with Montezuma Road; then easterly on said road to its intersection with Yerba Santa Drive; then northwesterly on said road to its intersection with Mesquite Road; then northwesterly on said drive to its intersection with Yerba Anita Drive; then northerly on said drive to its end; then northerly along an imaginary line from the end of Yerba Anita Drive to its intersection with the intersection of Elsa Road and Fenmore Way; then westerly on Elsa Road to its intersection with Crawford Street; then north on Crawford Street to its intersection with Zion Avenue; then west on Zion Avenue to its intersection with Mission Gorge Road; then northwesterly from said intersection along an imaginary line to its intersection with the intersection of Taussig Street and Patriot Street; then westerly from said intersection along an imaginary line to its intersection with the intersection of Melbourne Drive and Irvington Avenue; then southerly on Melbourne Drive to its intersection with Ronda Avenue; then west and north on said avenue to its intersection with Bartel Place; then southerly from said intersection along an imaginary line to its intersection with the point of beginning."

Illinois

DuPage County. "SE¼ sec. 2, sec. 11, W½ sec. 12, NW¼ sec. 13, and N½ sec. 14, T. 38 N., R. 9 E.; secs. 8, 9, 10, 11, 16, 17, 18, 19, 20, 29, and 30, T. 39 N., R. 10 E.; SW¼ sec. 5, S½ sec. 6, sec. 7, W½ sec. 8, NW¼ sec. 17 and N½ sec. 18, T. 38 N., R. 11 E.; and secs. 10, 11, 13, 14, 15, 16, 21, 22, and 23, T. 40 N., R. 11 E."

Kane County. "SW¼ sec. 21, T. 40 N., R. 8 E."

Lake County. "SE¼ sec. 26, T. 43 N., R. 10 E.; NE¼ sec. 24, T. 45 N., R. 11 E.; and SW¼ sec. 6, T. 45 N., R. 11 E."

Michigan

Berrien County. "Sec. 1 and 2, T. 3 S., R. 18 W."

Grand Traverse County. "Sec. 36, T. 28 N., R. 11 W."

Kalamazoo County. "Sec. 1 and 2, T. 1 S., R. 11 W., and sec. 16 and 17, T. 3 S., R. 11 W."

Kent County. "Sec. 27, T. 5 N., R. 10 W."

Muskegon County. "Sec. 6 and 7, R. 16 W., T. 9 N., and sec. 1 and 2, R. 17 W., T. 9 N."

Ottawa County. "Secs. 23, 24, 25, and 26, T. 7 N., R. 16 W."

Van Buren County. "Sec. 15, 16, 21, and 22, T. 3 S., R. 13 W."

Ohio

Columbiana County. "That portion of the city of Salem and Perry Township bounded by a line beginning at a point where Painter Road and Brooklyn Avenue intersect, then south along Brooklyn Avenue to its intersection with 3rd Avenue, then west along 3rd Avenue to its intersection with Highland Avenue, then north along Highland Avenue to its intersection with Painter Road, then east along Painter Road to the point of beginning."

Franklin County. "That portion of the village of Blacklick bounded by a line beginning at a point where Blacklick Creek and Columbus-Newark Road intersect; then west along said road to its intersection with Taylor Station Road; then northerly along said road to its intersection with Taylor Road; then easterly along said road to its intersection with Reynoldsburg-New Albany Road; then due east from said intersection along an imaginary line to its intersection with Blacklick Creek; then southerly along said creek to the point of beginning.

"That portion of the city of Gahanna bounded by a line beginning at a point where Morse Road and Shull Road intersect; then southerly along said road to its intersection with Headley Road; then east along Headley Road to its intersection with Clark State Road; then southwesterly along said road to its intersection with Clofts Road; then northerly along said road to its intersection with Columbus-Millersburg Road; then northeasterly along said road to its intersection with Morse Road; then east along said road to the point of beginning."

Hamilton County. "That portion of the city of Cincinnati bounded by a line beginning at a point where Wasson Road intersects with Paxton Avenue; then south along said avenue to its intersection with Erie Avenue; then west along said avenue to its intersection with Edwards Road; then north along said road to its intersection with Wasson Road; then east along said road to the point of beginning."

"That portion of Anderson Township bounded by a line beginning at a point where Lawyer Road intersects with Hunley Road; then northeast along said road to its intersection with Wolfangle Road; then southerly along said road to its intersection with Clough Pike; then southwest, southwesterly, and northwest along said pike to its intersection with Newtown Road; then northeast along said road to its intersection with Lawyer Road; then southeast along said road to the point of beginning."

Knox County. "That portion of Clinton and Morris Townships bounded by a line beginning at a point where McKensie Road and the eastern boundary line of Morris Township intersect; then south along said township line to its intersection with the northern boundary line of the city limit line of the city of Mt. Vernon; then westerly, northerly, and westerly along said city limit line to its intersection with Mansfield Road; then northerly along said road to its intersection with McKensie Road; then easterly along said road to the point of beginning."

Lucas County. "That portion of the city of Sylvania bounded by a line beginning at a point where Monroe Street and Whiteford Road intersect; then south along said road to its intersection with Cory Road; then northwest along said road to its intersection with Monroe Street; then southeast along said street to the point of beginning."

Oregon

Marion County. "That portion of the city of Salem beginning at a point where Liberty Road S.E. intersects Salem Heights Avenue; then east along said avenue to Ratcliff Drive; then easterly along said drive to its intersection with Bluff Avenue; then due east from said intersection along an imaginary line to the Southern Pacific Railroad; then southeast along said railroad to its intersection with Madrona Avenue; then southwest along said avenue to its intersection with Strong Road; then southeast along said road to its intersection with Reed Road; then southwest along said road to its intersection with Battle Creek Road; then southeast along said road to its intersection with Boone Road; then east along said road to its intersection with Interstate Highway 5; then southerly along said highway to its intersection with Delaney Road; then westerly along said road to its intersection with Sunnyside Road; then north along said road to its intersection with Hylo Road; then west along said road to its intersection with Liberty Road; then north along said road to its intersection with Cole Road; then westerly along said road to its intersection with Moore Road; then northwesterly along said

road to its intersection with Skyline Road; then northeast along said road to its intersection with Liberty Road; then northeast along said road to the point of the beginning."

"Sec. 23, T. 7 S., R. 3 W."

"Secs. 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, 34, and 35, T. 6 S., R. 3 W."

"Secs. 6, 7, 17, 18, 19, 20, 28, 29, 30, and S½ of 21, T. 6 S., R. 2 W."

Washington

King County. "The entire county."

Kitsap County. "The entire county."

Snohomish County. "That portion of the county lying west of State Highway 9."

Wisconsin

Dane County. "That portion of the city of Monona beginning at a point where Lake Monona shoreline and Winnequah Road intersect; then easterly on said road to its intersection with Schluter Road; then northeasterly on said road to its intersection with Maywood Road; then northeasterly along said road to its intersection with Greenway Road; then east on said road to its intersection with Midmoor Road; then northerly on said road to its intersection with Outlook Street; then northwesterly on said street to its intersection with Lake Monona shoreline; then southeasterly along said shoreline to the point of beginning."

Waukesha County. "N½ sec. 2, and NE¼ sec. 3, T. 7 N., R. 17 E.; SE¼ sec. 34, and S½ sec. 35, T. 8 N., R. 17 E.

That portion of the city of Elm Grove bounded by a line beginning at a point where Juneau Boulevard and Highland Drive intersect; then north on Highland Drive to its intersection with North Avenue; then east on North Avenue to its intersection with CM ST P&P railroad tracks; then southeasterly along said tracks to their intersection with Juneau Boulevard; then west on Juneau Boulevard to the point of beginning."

Based on treatments with insecticides and subsequent negative surveys in accordance with the quarantine and regulations, it has been determined that the gypsy moth no longer occurs in the above-described areas. Accordingly, there is no longer a basis for continuing to list such areas as regulated areas for the purpose of preventing the artificial spread interstate of gypsy moth. Therefore, as an emergency measure, it is necessary to delete those areas from the list of regulated areas in order to delete unnecessary restrictions on the movement of gypsy moth regulated articles.

Further, the effect of deleting the above-described areas in California, Illinois, Ohio, and Wisconsin from the list of gypsy moth regulated areas is to remove all areas in California, Illinois, Ohio, and Wisconsin from the list of regulated areas. As a result, there is no longer a basis for quarantining California, Illinois, Ohio, and Wisconsin for gypsy moth. Therefore, this amendment also deletes the States of California, Illinois, Ohio, and Wisconsin from the list of States quarantined because of gypsy moth in § 301.45(a).

In addition, this document amends the regulations by making several nonsubstantive editorial changes.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Gypsy moth, Plant pests, Quarantine, Transportation.

PART 301—[AMENDED]

Under the circumstances referred to above, the Gypsy Moth and Browntail Moth Quarantine and Regulations (7 CFR 301.45 through 301.45–14) are amended as follows:

§ 301.45 [Amended]

1. Section 301.45(a) is amended by removing all references to "California", "Illinois", "Ohio", and "Wisconsin".

2. In § 301.45(a) is amended by adding (in alphabetical order) the reference to "District of Columbia".

3. In § 301.45–2a(a) is revised to read as follows:

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

(a) The areas described below are designated as gypsy moth regulated areas, and such regulated areas are divided into high-risk areas or low-risk areas as follows:

Connecticut

(1) *High-risk area.* The entire State.

(2) *Low-risk area.* None.

Delaware

(1) *High-risk area.*

Kent County. The entire county.

New Castle County. The entire county.

(2) *Low-risk area.*

Sussex County. The entire county.

District of Columbia

(1) *High-risk area.* The entire District.

(2) *Low-risk area.* None.

Maine

(1) *High-risk area.*

Androscoggin County. The entire county.

Cumberland County. The entire county.

Franklin County. The townships of Avon, Carthage, Chesterville, Farmington, Industry, Jay, New Sharon, New Vineyard, Perkins, Strong, Temple, Washington, Weld, and Wilton.

Hancock County. The entire county.

Kennebec County. The entire county.

Knox County. The entire county.

Lincoln County. The entire county.

Oxford County. The townships of Albany, Batchelders Grant, Bethel, Brownfield, Buckfield, Canton, Denmark, Dixfield, Fryeburg, Greenwood, Hanover, Hartford, Hebron, Hiram, Lovell, Mason Plantation, Mexico, Milton Plantation, Norway, Oxford, Paris, Peru, Porter, Rumford, Stoneham, Stow, Sumner, Sweden, Waterford, and Woodstock.

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Carmel, Charleston, Clifton, Corinna, Cornith, Dexter, Dixmont, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Hampden, Hermon, Holden, Howland, Hudson, Kendaskeag, La Grange, Levant, Lincoln, Lowell Mattamiscontta, Maxfield, Milford, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Plymouth, Stetson, Summit, Veazie-Eddington, and 1 ND.

Piscataquis County. The townships of Atkinson, Medford, Milo, and Orneville.

Sagadahoc County. The entire county.

Somerset County. The townships of Anson, Athens, Cambridge, Canaan, Cornville, Detroit, Embden, Fairfield, Harmony, Hartland, Madison, Mercer, New Portland, Norridgewock, Palmyra, Pittsfield, Ripley, Skowhegan, Smithfield, Solon, St. Albans, and Starks.

Waldo County. The entire county.

Washington County. The townships of Addison, Beals, Beddington, Centerville, Cherryfield, Columbia, Columbia Falls, Crawford, Deblois, East Machias, Harrington, Jonesborro, Jonesport, Machias, Machiasport, Marshfield, Milbridge, Northfield, Rogue Bluffs, Steuben, Wesley, Whitneyville, 5 ND, 18 ED, 18 MD, 19 ED, 19 MD, 24 MD, 25 MD, 26 ED, 27 ED, 29 MD, 30 MD, 31 MD, 36 MD, 37 MD, 42 MD, and 43 MD.

York County. The entire county.

(2) *Low-risk area.*

Aroostook County. Township of Molunkus.

Franklin County. The townships of Crockertown, Dallas Plantation, Freeman, Jerusalem, Kingfield, Madrid, Mount Abraham, Phillips, Rangeley Plantation, Redington, Salem, Sandy River Plantation, 6, E, and D.

Oxford County. The townships of Andover, Andover North, Andover West, Byron, Gilead, Grafton, Magalloway Plantation, Newry, Richardsontown, Riley, Roxbury, Upton, C, and C Surplus.

Penobscot County. The townships of Burlington, Chester, E. Millinocket, Hopkins Academy Grant, Indian Purchase, Lee, Long A, Mattawamkeag, Medway, Millinocket, Winn, Woodville, Veazie Gore, AR 7, AR 8 & 9, and 3 R 1.

Piscataquis County. The townships of Abbott, Dover-Foxcroft, Guilford, Kingsbury Plantation, Parkman, Sangeville, Sebec, Wellington, and 1 R 9.

Somerset County. The townships of Bingham, Brighton Plantation, Caratunk, Concord Plantation, Highland Plantation, Lexington Plantation, Mayfield, Moscow, and Pleasant Ridge Plantation.

Washington County. The townships of Alexander, Baileyville, Baring, Calais,

Cooper, Charlotte, Cutler, Dennysville, Eastport, Edmonds, Lubec, Marion, Meddybemps, Pembroke, Perry, Princeton, Robbinston, Trescott, Whiting, Plantation 14, and Plantation 21.

Maryland

(1) *High-risk area.*

Allegany County. The entire country.

Baltimore City. The entire city.

Baltimore County. The entire county.

Caroline County. That portion of the county bounded by a line beginning at a point where State Highway 404 intersects the Caroline County-Queen Annes County line; then northerly along said line to its intersection with the Maryland-Delaware State line; then southerly along said line to its intersection with State Highway 404; then northwesterly along said highway to the point of beginning.

Carroll County. The entire county.

Cecil County. The entire county.

Frederick County. The entire county.

Garrett County. That portion of the county where State Highway 669 intersects with the Maryland-Pennsylvania State line; then south along said highway to its intersection with U.S. Highway 40; then east along said highway to its intersection with State Highway 495; then southerly along said highway to its intersection with State Highway 135; then east along said highway to its intersection with the Garrett County-Allegany County line; then north along said line to its intersection with the Maryland-Pennsylvania State line; then west along the Maryland-Pennsylvania State line to the point of beginning.

Harford County. The entire county.

Howard County. The entire county.

Kent County. The entire county.

Queen Annes County. The entire county.

Washington County. The entire county.

(2) *Low-risk area.*

Anne Arundel County. The entire county.

Caroline County. That portion of the county bounded by a line beginning at a point where State Highway 404 intersects the Caroline County-Queen Annes County line; then southerly along said line to its intersection with the Caroline County-Talbot County line; then southerly along the Caroline County-Talbot County line to its intersection with the Caroline County-Dorchester County line; then easterly along the Caroline County-Dorchester County line to the Maryland-Delaware State line; then north along the Maryland-Delaware State line to its intersection with State Highway 404; then northwesterly along said highway to the point of beginning.

Dorchester County. The entire county.

Garrett County. That portion of the county bounded by a line beginning at a point where State Highway 669 intersects with the Maryland-Pennsylvania State line; then west along said line to its intersection with the Maryland-West Virginia State line; then south and northeasterly along said line to its intersection with the Garrett County-Allegany County line; then north along said line to its intersection with State Highway 135; then westerly along said highway to its intersection with U.S. Highway 40; then west along said highway to its intersection with State Highway 669; then north on said highway to the point of beginning.

Montgomery County. The entire county.

Prince Georges County. The entire county.

Talbot County. The entire county.

Wicomico County. The entire county.

Worcester County. The entire county.

Massachusetts

(1) *High-risk area.* The entire State.

(2) *Low-risk area.* None

Michigan

(1) *High-risk area.*

Isabella County. Sec. 11, 12, 13, and 14, T. 14 N., R. 3 W., sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.

Midland County. Sec. 5 and 6, T. 14 N., R. 2 W.

Oakland County. Sec. 18, T. 3 N., R. 7 E., sec. 24 and 27, T. 2 N., R. 10 E., sec. 16 and 17, T. 2 N., R. 11 E.

(2) *Low-risk area.*

Arenac County. The entire county.

Bay County. The entire county.

Branch County. The entire county.

Calhoun County. The entire county.

Clare County. The entire county.

Clinton County. The entire county.

Eaton County. The entire county.

Genesee County. The entire county.

Gladwin County. The entire county.

Gratiot County. The entire county.

Huron County. The entire county.

Ingham County. The entire county.

Ionia County. The entire county.

Iosco County. The entire county.

Isabella County. The entire county *except* sec. 11, 12, 13, and 14, T. 14 N., R. 3 W.; sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.

Jackson County. The entire county.

Lapeer County. The entire county.

Lenawee County. The entire county.

Livingston County. The entire county.

Macomb County. The entire county.

Mecosta County. The entire county.

Midland County. The entire county *except* sec. 5 and 6, T. 14 N., R. 2 W.

Missaukee County. The entire county.

Monroe County. The entire county.

Montcalm County. The entire county.

Newaygo County. The entire county.

Oakland County. The entire county *except* sec. 18, T. 3 N., R. 7 E., sec. 24 and 27, T. 2 N., R. 10 E., sec. 16 and 17, T. 2 N., R. 11 E.

Ogemaw County. The entire county.

Osceola County. The entire county.

Roscommon County. The entire county.

Saginaw County. The entire county.

St. Clair County. The entire county.

Sanilac County. The entire county.

Shiawasee County. The entire county.

Tuscola County. The entire county.

Washtenaw County. The entire county.

Wayne County. The entire county.

New Hampshire

(1) *High-risk area.*

Belknap County. The entire county.

Carroll County. The entire county.

Cheshire County. The entire county.

Grafton County. The entire county.

Hillsboro County. The entire county.

Merrimack County. The entire county.

Rockingham County. The entire county.

Strafford County. The entire county.

Sullivan County. The entire county.

(2) *Low-risk area.*

Coos County. The entire county.

New Jersey

(1) *High-risk area.* The entire State.

(2) *Low-risk area.* None.

New York

(1) *High-risk area.*

Albany County. The entire county.

Allegany County. The entire county.

Bronx County. The entire county.

Broome County. The entire county.

Cattaraugus County. The entire county.

Cayuga County. The towns of Fleming, Genoa, Ledyard, Locke, Moravia, Niles, Owasco, Scipio, Sempronius, Springport, Sterling, Summer Hill, and Venice.

Chautauqua County. The entire county.

Chemung County. The entire county.

Chenango County. The towns of Afton, Bainbridge, Coventry, German, Greene, Guilford, McDonough, New Berlin, North Norwich, Norwich, Oxford, Pharsalia, Pitcher, Plymouth, Preston, Smithville, and the city of Norwich.

Clinton County. The entire county.

Columbia County. The entire county.

Cortland County. The towns of Cincinnatus, Cortlandville, Freetown, Hartford, Lapeer, Marathon, Solon, Taylor, Virgil, Willet, and the city of Cortland.

Delaware County. The entire county.

Dutchess County. The entire county.

Erie County. The towns of Aurora, Boston, Brant, Cattaraugus, Colden, Collins, Concord, Eden, Evans, Hamburg, Holland, North Collins, Orchard Park, Sardinia, and Wales.

Essex County. The entire county.

Franklin County. The entire county.

Fulton County. The entire county.

Greene County. The entire county.

Hamilton County. The entire county.

Herkimer County. The entire county.

Jefferson County. The towns of Alexandria, Antwerp, Brownville, Cape Vincent, Clayton, and Theresa.

Kings County. The entire county.

Livingston County. The towns of Conesus, Lima, North Dansville, Ossian, Sparta, Springwater, and West Sparta.

Madison County. The town of Sullivan.

Monroe County. The entire county.

Montgomery County. The entire county.

Nassau County. The entire county.

New York County. The entire county.

Oneida County. The towns of Annsville, Camden, Deerfield, Lee, Marcy, New Hartford, Rome City, Utica City, Verona, Vienna, Western, Westmoreland, and Whitestown.

Onondaga County. The towns of Clay, Lafayette, and Otisco.

Ontario County. The towns of Naples and South Bristol.

Orange County. The entire county.

Otsego County. The entire county.

Oswego County. The towns of Constantia, Hastings, Palermo, Schroeppel, Volney, and West Monroe.

Putnam County. The entire county.

Queens County. The entire county.

Rensselaer County. The entire county.

Richmond County. The entire county.
Rockland County. The entire county.
Saratoga County. The entire county.
Schenectady County. The entire county.
Schoharie County. The entire county.
Schuyler County. The entire county.
Seneca County. The towns of Covert, Lodi, Ovid, Romulus, and Varick.
St. Lawrence County. The towns of Brasher, Hammond, Hopkinson, Lawrence, Louisville, Macomb, Massena, Norfolk, Rossie, and Stockholm.
Steuben County. The entire county.
Suffolk County. The entire county.
Sullivan County. The entire county.
Tioga County. The entire county.
Tompkins County. The entire county.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Westchester County. The entire county.
Yates County. The entire county.
(2) *Low-risk area.*
Cayuga County. The towns of Aurelius, Brutus, Cato, Conquest, Ira, Mentz, Montezuma, Sennett, Throop, and Victory.
Chenango County. The towns of Columbus, Lincklaen, Otselic, Smyrna, and Sherburne.
Cortland County. The towns of Cuyler, Homer, Preble, Scott, and Truxton.
Erie County. The towns of Amherst, Alden, Cheektowaga, Clarence, Elma, Grand Island, Lancaster, Marilla, New Stead, Tonawanda, West Seneca, and the cities of Buffalo, Lackawana, and Tonawanda.
Genesee County. The entire county.
Jefferson County. The towns of Adams, Champion, Ellisburg, Henderson, Hounsfield, LeRay, Lorraine, Lyme, Orleans, Pamelia, Philadelphia, Rodman, Rutland, Wilma, Worth, Watertown, and Watertown City.
Lewis County. The entire county.
Livingston County. The towns of Avon, Calendonia, Geneseo, Groveland, Leicester, Livonia, Mount Morris, Nunda, Portage, and York.
Madison County. The entire county *except* the town of Sullivan.
Niagara County. The entire county.
Oneida County. The towns of Augusta, Ava, Boonville, Bridgewater, Florence, Floyd, Forestport, Kirkland, Marshall, Paris, Remsen, Sangerfield, Steuben, Trenton, and Vernon.
Onondaga County. The entire county *except* the towns of Clay, Lafayette, and Otisco.
Ontario County. The entire county *except* the towns of Naples and South Bristol.
Orleans County. The entire county.
Oswego County. The entire county *except* the towns of Constantia, Hastings, Palermo, Schroeppel, Volney, and West Monroe.
Seneca County. The towns of Fayette, Junus, Seneca Falls, Tyre, and Waterloo.
St. Lawrence County. The entire county *except* the towns of Brasher, Hammond, Hopkinson, Lawrence, Louisville, Macomb, Massena, Norfolk, Rossie, and Stockholm.
Wayne County. The entire county.
Wyoming County. The entire county.

North Carolina

(1) *High-risk area.* None.
(2) *Low-risk area.*
Carteret County. That area bounded by a line beginning at a point on the northern shoreline of Taylors Creek and running north on an imaginary course to the intersection of State Secondary Road 1310 and State Secondary Road 1311; then northerly along State Secondary Road 1311 to its ending; then northerly along an imaginary line to its intersection with North River; then southwesterly along North River shoreline to its junction with Taylors Creek; then westerly along Taylors Creek to the point of beginning.

Oregon

(1) *High-risk area.*
Lane County. Beginning at the point where Interstate 5 intersects with Interstate 105; then easterly on Interstate 105 to its intersection with Highway 126; then easterly on said highway to its intersection with Deerhorn Road; then easterly on said road to its intersection with Booth Kelly Road; then easterly on Booth Kelly Road to its intersection with the north boundary of sec. 27, T. 17 S., R. 1 E.; then due east along an imaginary line to the northeast corner of sec. 26, T. 17 S., R. 3 E.; then due south along an imaginary line to the north boundary of sec. 1, T. 20 S., R. 4 E.; then due west along said boundary to the northwest corner of said section; then due south along an imaginary line to the southeast corner of sec. 26, T. 22 S., R. 3 E.; then due west along an imaginary line to the northwest corner of sec. 31, T. 22 S., R. 2 E.; then due south along the west boundary of said section to the northeast corner of sec. 36, T. 22 S., R. 1 E.; then due west along an imaginary line to the southwest corner of sec. 28, T. 22 S., R. 1 W.; then due north along an imaginary line to the northwest corner of said section; then due west along an imaginary line to the northwest corner of sec. 30, T. 22 S., R. 1 W.; then due south along the west boundary of said section to the northeast corner of sec. 25, T. 22 S., R. 2 W.; then due west along an imaginary line to the northwest corner of sec. 29, T. 22 S., R. 2 W.; then due north along an imaginary line to the northeast corner of sec. 17, T. 22 S., R. 2 W.; then due west along the north boundary of said section to the east boundary of sec. 13, T. 22 S., R. 3 W.; then due north along said boundary to the northeast corner of said section; then due west along an imaginary line to the northwest corner of sec. 18, T. 22 S., R. 3 W.; then due north along an imaginary line to the northwest corner of sec. 30, T. 21 S., R. 3 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the northwest corner of sec. 29, T. 20 S., R. 3 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the northwest corner of sec. 9, T. 20 S., R. 3 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the intersection of said line and Camas Swale Road; then westerly along said road to its intersection with the west boundary of sec. 13, T. 19 S., R. 4 W.; then due north along an imaginary line to its intersection with Fox Hollow Road; then westerly along said road to its intersection with McBeth Road; then northerly along McBeth Road to its intersection with the west boundary of sec. 23, T. 18 S., R. 4 W.; then due north along the west boundary of said section to the northwest corner of said section; then due west along an imaginary line to the southwest corner of sec. 16, T. 18 S., R. 4 W.; then due north along an imaginary line to the intersection of said line with Highway 126; then westerly along said highway to its intersection with Territorial Highway; then due south along Territorial Highway to its intersection with the south boundary of sec. 36, T. 17 S., R. 6 W.; then due west along an imaginary line to the southwest corner of sec. 34, T. 17 S., R. 6 W.; then due east along the north boundary of said section to the northeast corner of said section; then due north along an imaginary line to the northwest corner of sec. 14, T. 18 S., R. 6 W.; then due east along an imaginary line to its intersection with Siegman-Smyth Road; then northerly along said road to its intersection with High Pass Road; then easterly along High Pass Road to the northwest corner of sec. 1, T. 18 S., R. 5 W.; then due south along an imaginary line to the southwest corner of sec. 12, T. 18 S., R. 5 W.; then due east along the south boundary of said section to Vogt Road; then southerly along said road to its intersection with Meadowview Road West; then due east along Meadowview Road West to its intersection with Highway 99; then southeasterly along said highway to its intersection with Belt Line Highway; then easterly along Belt Line Highway to its intersection with the west boundary of sec. 18, T. 17 S., R. 3 W.; then due north along said boundary to the northwest corner of said section; then due east along an imaginary line to the northeast corner of sec. 17, T. 17 S., R. 3 W.; then due south along the east boundary of said section to its intersection with Belt Line Highway; then easterly along said highway to its intersection with Interstate 5; then southerly along Interstate 5 to the point of beginning.
(2) *Low-risk area.* None.

Pennsylvania

(1) *High-risk area.*
Adams County. The entire county.
Bedford County. The entire county.
Berks County. The entire county.
Blair County. The entire county.
Bradford County. The entire county.
Bucks County. The entire county.
Cambria County. The entire county.
Cameron County. The entire county.
Carbon County. The entire county.
Centre County. The entire county.
Chester County. The entire county.
Clarion County. The entire county.
Clearfield County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Cumberland County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Elk County. The entire county.
Forest County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Huntingdon County. The entire county.
Indiana County. The entire county.
Jefferson County. The entire county.

Juniata County. The entire county.
Lackawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Lycoming County. The entire county.
McKean County. The entire county.
Mifflin County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Perry County. The entire county.
Philadelphia County. The entire county.
Pike County. The entire county.
Potter County. The entire county.
Schuylkill County. The entire county.
Somerset County. The entire county.
Snyder County. The entire county.
Sullivan County. The entire county.
Susquehanna County. The entire county.
Tioga County. The entire county.
Union County. The entire county.
Venango County. The entire county.
Warren County. The entire county.
Wayne County. The entire county.
Westmoreland County. The entire county.
Wyoming County. The entire county.
York County. The entire county.
(2) *Low-risk area.* Counties not designated as high-risk area.

Rhode Island

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

Vermont

(1) *High-risk area.*
Addison County. The entire county.
Bennington County. The entire county.
Chittenden County. The entire county.
Franklin County. The entire county.
Grand Isle County. The entire county.
Rutland County. The entire county.
Windham County. The entire county.
Windsor County. The entire county.
(2) *Low-risk area.*
Caledonia County. The entire county.
Essex County. The entire county.
Lamoille County. The entire county.
Orange County. The entire county.
Orleans County. The entire county.
Washington County. The entire county.

Virginia

(1) *High-risk area.*
Arlington County. The entire county.
City of Alexandria. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Manassas. The entire city.
City of Winchester. The entire city.
Clarke County. The entire county.
Fairfax County. The entire county.
Frederick County. The entire county.
Loudoun County. The entire county.
(2) *Low-risk area.*
Accomack County. That portion of the county north of a line beginning at the intersection of State Road 695 and the Chesapeake Bay on the west; then easterly along State Road 695 to its intersection with State Road 679; then north along State Road 679 to its intersection with State Road 695; then easterly along State Road 695 to its intersection with Powells Bay; then east from said intersection along an imaginary line to its intersection with the Atlantic Ocean.
Culpeper County. The entire county.
Fauquier County. The entire county.
Madison County. That portion of the county north of a line beginning at the intersection of State Route 615 and the Greene-Madison County line; then easterly along State Route 615 to its intersection with State Route 662; then northerly along State Route 662 to the boundary of the Shenandoah National Park; then northerly along the Shenandoah National Park boundary to its intersection with State Route 672; then east along State Route 672 to its intersection with State Route 649; then northeast along State Route 649 to its intersection with State Route 670; then southeasterly along State Route 670 to its intersection with State Route 231; then southeasterly along State Route 231 to its intersection with State Route 609; then easterly along State Route 609 to its intersection with the Madison-Culpeper County line.
Page County. The entire county.
Prince William County. The entire county.
Rappahannock County. The entire county.
Shenandoah County. That portion of the county which lies north and east of State Route 675.
Stafford County. The entire county.
Warren County. The entire county.

Washington

(1) *High-risk area.* None.
(2) *Low-risk area.*
Pierce County. The entire county.
Whatcom County. That portion of the county bounded by a line beginning at a point where the Skagit-Whatcom County line intersects the Belingham-Samish Bays; then easterly along said line to its intersection with State Highway 9; then northerly along said highway to its intersection with State Highway 542; then westerly from said intersection along an imaginary line to its intersection with the easterly most point of Gushen Road; then westerly along Gushen Road to its intersection with Axton Road; then westerly along Axton Road to its intersection with the Nooksack River; then southerly along the Nooksack River to Bellingham Bay; then southerly along Bellingham Bay to the point of beginning.

West Virginia

(1) *High-risk area.*
Berkeley County. The entire county.
Jefferson County. The entire county.
Morgan County. The entire county.
(2) *Low-risk area.*
Grant County. That portion of the county lying north of State Highway 93 and west of State Highway 42 and U.S. Highway 50.
Hampshire County. The entire county.
Mineral County. The entire county.

Authority: 7 U.S.C. 161, 162; 7 U.S.C. 150dd, 150ee; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 2nd day of April 1985.

Harvey L. Ford,
Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-8160 Filed 4-4-85; 8:45 am]
BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 510]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 280,000 cartons during the period April 7–13, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period April 7–13, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on April 2, 1985, at Los Angeles, California, to consider

the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the lemon demand pattern continues to be good on larger sizes, steady on middle sizes, and easy on smaller sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.610 is added as follows:

§ 910.610 Lemon Regulation 510.

The quantity of lemons grown in California and Arizona which may be handled during the period April 7, 1985, through April 13, 1985, is established at 280,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674))

Dated: April 3, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–8364 Filed 4–4–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule removes Paralegal Specialist from the list of Service positions that have been designated to exercise the powers and duties of an immigration officer. This position was abolished by the Reorganization Act of 1983.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048

For Specific Information: Thomas E. Cook, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–5014

SUPPLEMENTARY INFORMATION: The Paralegal Program was begun in 1975 in recognition of the fact that there was much in the naturalization function that did not require the expertise of an attorney. The paralegal was an assistant to the general attorney empowered to administer oaths, take testimony, and recommend courses of action.

On January 1, 1983 the Service reorganization plan became effective. Included in the plan was the merger of the Naturalization and Adjudications Programs under a single Assistant Commissioner for Adjudications in the Examinations Division. As part of the merger, the paralegal position was abolished and existing paralegals were converted to Immigration Examiners in accordance with formal reduction-in-force proceedings. Paralegals who chose not to accept examiner positions were offered other positions at the same grade level and location where feasible. The position was formally abolished effective June 12, 1983.

Compliance with 5 U.S.C. 533 as to notice of proposed rulemaking and delayed effective date is unnecessary because this order relates to agency management or personnel.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not have a significant impact on a substantial number of small entities.

This order is not a rule within the definition of section 1(a) of E.O. 12291 because it relates to agency organization, management, or personnel.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegation (Government Agencies), Organization and functions (Government Agencies).

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

In § 103.1, paragraph (q) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(q) *Immigration Officer.* Any immigration inspector, immigration examiner, border patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention officer, detention service officer, detention guard, investigator, general attorney, applications adjudicator, contact representative, or supervisory officer of such employees is hereby designated an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

* * * * *

(Sec. 103 of the Immigration and Nationality; as amended, 8 U.S.C. 1103)

Dated: April 1, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 85–8183 Filed 4–4–85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85–027]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Georgia from Class B to Class A. This action is necessary because it has been determined that this State meets the standards for Class A status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the State of Georgia.

DATES: Effective date of the interim rule is April 5, 1985. Written comments must be received on or before June 4, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the State of Georgia from Class B to Class A.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions included testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Georgia was classified as a Class B State. It has been necessary to classify this State as Class B rather than Class A because of the herd infection rate. To attain and maintain Class A status, a State or Area must, among other things, maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 2.5 herds per 1,000 (0.25 percent) if the State has more than 10,000 herds. A review of brucellosis program records establishes that the brucellosis classification of the State of Georgia, which has approximately 43,000 herds of cattle, should be changed to Class A since this State now meets the criteria for classification as Class A.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Georgia reduces certain testing and other requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the State of Georgia.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal Diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for 9 CFR Part 78 is revised to read:

Authority: 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(b) is amended by adding "Georgia," immediately before "Idaho".

3. In § 78.20(c), "Georgia," is removed.

Done at Washington, D.C., this 1st day of April 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–8179 Filed 4–4–85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-83-AD; Amdt. 39-5033]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Airbus Industrie Model A300 B2 and B4 series airplanes which requires inspection and repairs, as necessary, of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks. Several cases of bonding delamination in these components have been reported. If this condition is not corrected, it has the potential of leading to rapid decompression of the airplane.

EFFECTIVE DATE: May 13, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) issued a Consigne de Navigabilité which requires correction of bonding delamination and corrosion on the fuselage structure of the Airbus Industrie Model A300 airplane. The DGAC has classified three Airbus Industrie service bulletins pertaining to the subject as mandatory. These service bulletins prescribe inspections and repairs, as necessary, of the fuselage structure.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the **Federal Register** on Sepember 11, 1984 (49 FR 35641). The comment period closed on October 29, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received. Since the NPRM was issued before the French DGAC airworthiness directive (AD) had been published, the manufacturer requested that the FAA postpone issuance of the final rule until after the DGAC had released its AD. This was done.

The other commenter indicated that the compliance time of six months after the effective date of the AD was too short, and requested that the compliance time be changed to twelve months or, at least, to June 30, 1985. The FAA has determined that this commenter's request has been satisfied, in light of the fact that issuance of this final rule has been held for a period of time pending the release of the French DGAC airworthiness directive. The FAA considers a six-month compliance time to be appropriate, without compromising safety.

After the NPRM was published, the manufacturer released later revisions of the pertinent service bulletins which contain minor changes and do not increase the burden on any operator. Accordingly, the final rule has been revised to:

1. Reference the later revisions to the service bulletins,

2. Incorporate an optional terminating action for certain inspections by accomplishing Airbus Industrie Modification 2904; and

3. Reduce the area which needs to be inspected according to the requirements of paragraph C. of the final rule.

It is estimated that 27 U.S. registered airplanes will be affected by this AD, that it will take approximately 550 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $594,000.

For reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes mentioned above.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156, certificated in all categories. To prevent rapid decompression of the aircraft, accomplish the following, unless already accomplished. Compliance is required within the time schedules indicated below, or within six months after the effective date of this AD, whichever occurs later:

A. Prior to the threshold limits specified in Table 1 of Airbus Industrie Service Bulletin A300-53-148, Revision 6, dated October 10, 1984, inspect the fuselage longitudinal lap joints and circumferential joints for bonding delamination in accordance with the accomplishment instructions of the service bulletin:

1. If no delamination is detected, repeat these inspections in accordance with the schedule shown in Table 1 of the service bulletin.

2. If delamination is detected in any of the inspections above, perform the actions indicated in Figure 3, Follow-up Action, of the service bulletin.

B. Prior to the threshold limits specified in Figure 1, Inspection Program, of Airbus Industrie Service Bulletin A300-53-178, Revision 4, dated October 10, 1984, visually inspect for corrosion and cracks, and repair if necessary, the bonded longitudinal lap joints and circumferential joints specified in Figure 1 of the service bulletin, in accordance with the accomplishment instructions of the service bulletin. Repeat the inspections in accordance with the schedule shown in Figure 1 of the service bulletin.

C. Prior to the threshold limits specified in Figure 1, Inspection Frequency, of Airbus Industrie Service Bulletin A300-53-149, Revision 6, dated October 10, 1984, inspect for debonding and repair, if necessary, bonded stringers and bonded doublers in the area between frame 1 and frame 18 and between frame 40 and frame 80 on all airplanes up to and including serial number 156, and in the area between frame 18 and frame 40 on all airplanes up to and including serial number 104, in accordance with the accomplishment instructions of the service bulletin.

The inspection of stringers is divided into three areas, as indicated in Figure 2 of the service bulletin with the following options:

(1) Inspection in Area 1 is not required if Modification No. 2904, described in Airbus

Industrie Service Bulletin A300–53–146, dated November 28, 1980, has been incorporated.

(2) Preventive riveting of stringers located in Area 2 in accordance with Airbus Industrie Service Bulletin A300–53–197, dated October 10, 1984, allows for an extension of the interval of subsequent repetitive inspections to the interval required for Area 3.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 13, 1985.

(Secs. 313(a), 314(A), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–8114 Filed 4–4–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–90–AD; Amdt. 39–5031]

Airworthiness Directives; Douglas Aircraft Company A–26/B–26 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Douglas Aircraft Company A–26/B–26 series airplanes by individual letters. The AD requires the inspection of the lower forward and aft wing spar cap, inboard and outboard of the engine nacelle. The AD is prompted by a report of loss of structural integrity of the wing spar cap, which subsequently led to wing failure and loss of the airplane.

DATES: Effective April 16, 1985. This AD was effective earlier to all recipients of priority mail AD 84–15–02, issued August 1, 1984. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be examined at the Western Aircraft Certification Office, FAA, Northwest Mountain Region, 15000 Aviation Boulevard, Hawthorne, California.

Note.—The Douglas Aircraft Company has never held a type certificate and has no service information available for the A–26/B–26.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Airframe Section, ANM–172W, Western Aircraft Certification Office, Northwest Mountain Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone (213) 536–6032.

SUPPLEMENTARY INFORMATION: On August 1, 1984, priority mail Airworthiness Directive (AD) 84–15–02 was issued and made effective immediately upon receipt to all known U.S. owners and operators of Douglas Aircraft Company A–26/B–26 series airplanes. [In 1948, the U.S. Air Force, through administrative action, redesignated the A–26 as B–26. Presently, there are approximately 81 airplanes of this type design operating under U.S. registry which are affected by this AD action.] The AD was prompted by a report of a fatal crash due to structural failure of the wing. The AD requires repetitive inspection of the lower wing spar caps for cracks or fretting, and repair as necessary.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority mail letters issued to all known U.S. owners and operators of Douglas Aircraft Company A–26/B–26 series airplanes.

Since the AD was issued on August 1, 1984, it has been determined that the spar failure occurred at a wing station approximately 3 to 4 inches outboard of the three bolt holes used for the outboard nacelle fitting to spar attachment at wing station 140. Photographs of the failed spar cap show that a pre-existing fatigue crack had penetrated from the lower surface upwards through approximately 25% of the spar cap section. These findings confirm the need for the AD.

The conditions which led to the initial issuance still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Reporting requirements of this AD are approved by the Office of Management and Budget under OMB No. 2120–0056.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Douglas Aircraft Company: Applies to Douglas Aircraft Model A–26/B–26 series airplanes certificated in all categories.

Compliance schedule as prescribed in the body of the AD, unless previously accomplished.

To prevent loss of wing structural integrity due to failure of a lower spar cap, accomplish the following:

A. Within ten (10) hours time in service after the effective date of this AD, perform a visual dye penetrant inspection of the lower forward and aft spar cap, outboard and inboard of each nacelle in the area where the nacelle fairing upper edge runs across the lower spar cap surface. Trim the fairing edge, if necessary, to ensure that the fairing edge is smooth and that there is a minimum of one-sixteenth inch (1/16") clearance between the fairing and spar cap surface.

B. If no cracking or fretting of the spar cap is detected, repeat the inspection for cracks, surface clearance, and condition in accordance with Paragraph A. of this AD at intervals not to exceed 500 hours time in service.

C. If any evidence of cracking or fretting is found in the spar caps, polish out to a machine finish not to exceed approximately 125 microinches on both sides of the damaged area to a maximum depth of 0.030 inches and repeat the inspection of Paragraph A., above. Continue to inspect in accordance with Paragraph A. at intervals not to exceed 30 hours time in service.

D. If cracking or fretting in excess of 0.030 inches in a spar cap is detected, repair in a manner approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, Hawthorne, California.

E. For those aircraft which have been modified to incorporate a steel or titanium

lower front spar cap strap (in the area where the nacelle fairing upper edge is in contact with the lower wing surface) in accordance with AD 84-12-03, the requirements of Paragraph A. of this AD are applicable only to the lower aft spar cap, outboard and inboard of each nacelle.

F. Within 72 hours after performing the inspections required by Paragraph A., above, report the results of the inspections to the Manager, Western Aircraft Certification Office, ANM-170W, FAA, Northwest Mountain Region, 15000 Aviation Blvd., Hawthorne, California. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. The reports should cite the airplane registration and serial number, crack location and extent of damage, total airplane operating hours, and time since last inspection.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

H. Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region, Hawthorne, California.

This amendment becomes effective April 16, 1985.

It was effective earlier to all recipients of priority mail AD 84-15-02, issued August 1, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8116 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-87-AD; Amdt. 39-5032]

Airworthiness Directives; British Aerospace Model HS/BH/DH 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model HS/BH/DH 125 series airplanes which requires modification of the electrical power supply system to ensure that electrical power is available to the audio communication system in the event of a principal electrical (PE) bus failure. This action is necessary to avoid loss of audio system communication between flight crew, ground personnel, and other aircraft. In certain weather conditions, this communication breakdown has the potential for creating a flight hazard.

EFFECTIVE DATES: May 13, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) notified the FAA of an unsafe condition on certain British Aerospace Model HS/BH/DH 125 series airplanes which must be corrected by complying with British Aerospace HS 125 Service Bulletin 23-21-(8765). In the event of a principal electrical (PE) bus failure, the audio system communication between the flight crew, ground personnel, and other aircraft would be lost. The service bulletin prescribes incorporation of fuse or circuit breaker linking changes so that electrical power for the audio communication system is transferred from the PE bus to the principal service (PS) electrical bus if a PE bus failure occurs.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring the action mentioned above was published in the Federal Register on September 20, 1984 (49 FR 36865). The comment period closed on November 9, 1984, and interested persons have been afforded an opportunity to participate in the making of this amendment. The only comment received was from the manufacturer, who indicated that only eleven U.S. registered airplanes require modification and not the entire U.S. fleet as stated in the proposal.

It is estimated that eleven U.S. registered airplanes will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $100 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $1,980.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model HS/BH/DH 125 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model HS/BH/DH 125 series airplanes with the serial numbers listed in the applicability statement of British Aerospace HS 125 Service Bulletin 23-21-(8765), dated March 22, 1983. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished. To prevent failure of the audio communication system, accomplish the following:

A. Modify the power supply system in accordance with the accomplishment instructions of British Aerospace HS 125 Service Bulletin 23-21-8765, dated March 22, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective May 13, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8113 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-99-AD; Amdt. 39-5034]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 through 855

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires rerouting of the toilet flush motor power wire harnesses in the forward and aft lavatories. This action is necessary to aid in eliminating a potential fire.

DATES: Effective May 13, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications, and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert L. Thompson or George Y. Mabuni, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) requiring rerouting of the toilet flush motor power wire harnesses in the forward and aft lavatories on certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on October 1, 1984 (49 FR 38643). The comment period for the proposal closed on December 20, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Seven comments were received. Two commenters had no objections to the issuance of the proposed AD. Another commenter had no objection provided there were no problems in obtaining parts. The FAA does not foresee a problem in obtaining the parts since they are normally stocked items.

The fourth commenter had not yet received a copy of McDonnell Douglas DC-9 Service Bulletin 24-76, but stated that he would have no objections to the proposed AD if the proposed harness routing is like that of fuselage number 855 and subsequent. The FAA has been assured by McDonnell Douglas that all affected operators received a copy of SB 24-76 which specifies routing the wire harness in a way that is similar to that on fuselage number 855 and subsequent.

The fifth commenter requested a 24-month compliance period. The FAA has determined that a 24-month compliance period is not commensurate with the potential impact on safety, considering parts availability and the maintenance tasks associated with the proposed wire harness rerouting. Therefore, the compliance period remains at 12 months, as proposed.

The sixth commenter suggested that the requirement of the proposed AD would be best served not by rerouting the wire as per McDonnell Douglas DC-9 Service Bulletin 24-76, but rather by relocating the toilet timer behind the lavatory outboard sidewall panel above the tank. This would remove the power wire harness from the top of the toilet tank, thereby satisfying the intent of the proposed AD. Further, the commenter advised that moving the timer from its current remote location and creating an appropriate access panel in the sidewall lining would greatly facilitate flush motor replacement because of shortened wire harness and simplified routings. The FAA concurs that relocating the toiler timer, as suggested, would provide an acceptable level of safety and would facilitate flush motor replacement. However, since the suggestion would not provide a greater level of safety than that proposed, the FAA has not adopted the suggestion. The commenter may elect to comply with the AD in accordance with paragraph B. of the AD.

The seventh commenter recommended that additional wording be added to the AD to: (1) Require that before rerouting the affected wiring an inspection of the wiring in the vicinity of the flush pump assembly be conducted for any degradation such as exposed wire or chafed/cut insulation, and (2) require that if any such degradation is detected, the affected wiring be refurbished or replaced in accordance with approved repair practices. The FAA agrees that the integrity of the rerouted wires should be inspected and refurbished or replaced as necessary; however, the FAA has concluded that this is a normal maintenance practice and, therefore, should not be added in the AD.

It is estimated that 462 U.S. registered airplanes will be affected by this AD. It will require approximately 6.6 manhours per airplane to accomplish the required modification at an average labor charge of $40 per manhour. The cost of parts necessary to accomplish the modification is estimated to be $450 per airplane. Based on these figures, the total cost impact of this AD on the U.S. fleet is estimated to be $329,868.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities since few, if any, small entities operate DC-9 airplanes. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, fuselage numbers 1 through 855, certificated in all categories. Compliance required as indicated unless previously accomplished.

To eliminate a potential ignition source from the forward and aft lavatories, accomplish the following:

A. Within 12 months after the effective date of this airworthiness directive (AD), reroute the toilet flush motor power wire harness in the forward and aft lavatories in accordance with the Accomplishment

Instructions of McDonnell Douglas DC-9 Service Bulletin 24-78, dated November 7, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective May 13, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8111 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-122-AD; Amdt. 39-5036]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive that requires replacement of the existing forward and aft cargo compartment blowout panels with new panels incorporating an improved retention system. The cargo compartment blowout panels are designed to blow out in case of a decompression in order to minimize the differential pressure on floor panels. Operators have reported blowout panels becoming dislodged. Missing blowout panels reduce fire containment and fire suppression capability of the cargo compartment.

DATE: Effective May 13, 1985. Compliance required within 120 days after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the FAA, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2947. Mailing address: FAA, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of cargo compartment blowout panels on Boeing 757 airplanes was published in the Federal Register on January 15, 1985 (50 FR 2063). This action is necessary to prevent degradation of fire protection capability in the cargo compartments.

The comment period for the NPRM, which ended February 2, 1985, afforded interested persons an opportunity to participate in the making of this amendment. The Air Transport Association of America, representing operators of Boeing 757 airplanes, noted that the operators have begun replacement of panels, and offered no substantive comments on the proposed rule.

It is estimated that 15 airplanes of U.S. registry are affected by this AD; that it will require approximately 4 manhours per airplane to accomplish the required replacement, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is $2400. Kits are available from the manufacturer at no cost.

After a careful review of all available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule.

For the reasons discussed above, the FAA has determined that this regulation (1) is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 757 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 757 airplanes listed in the Boeing Service Bulletin 757-25A0036, Revision 1, dated September 21, 1984. To prevent degradation of fire protection capability in the cargo compartments, accomplish the following within 120 days after the effective date of this AD, unless already accomplished:

A. Replace the existing cargo compartment blowout panels in accordance with Boeing Service Bulletin 757-25A0036, Revision 1, dated September 21, 1984, or later FAA approved revision.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents also may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 13, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8117 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-135-AD; Amdt. 39-5030]

Airworthiness Directives; DeHavilland Aircraft of Canada, Ltd., Model DHC-7 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On December 7, 1984, the FAA issued telegraphic Airworthiness Directive T84-24-51, effective upon receipt, to all known U.S. operators of DeHavilland DHC-7 airplanes. The airworthiness directive (AD) requires a change to the airplane flight manual to reflect a higher threshold temperature for the use of ice protection procedures. This action was prompted by reports of two engine flameouts occurring in icing conditions. This action amends and publishes telegraphic AD T84-24-51.

DATES: Effective April 16, 1985. This AD was effective earlier to all recipients of telegraphic AD T84-24-51 dated December 7, 1984. Compliance required within 10 days after the effective date of this AD.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to DeHavilland Aircraft of Canada, Ltd., Garratt Blvd., Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On December 7, 1984, telegraphic AD T84-24-51 was issued and made effective immediately to all known U.S. owners and operators of DeHavilland DHC-7 series airplanes. The AD requires a change to the airplane flight manual which specifies a higher temperature threshold for the use of ice protection procedures. The AD was prompted by recent reports of two engine flameouts on DHC-7 airplanes. The causes of these incidents have not been specifically identified; however, an increase in the threshold temperature will provide an added safety margin and is required pending further investigation. The telegraphic AD specified a 12° C threshold. Further evaluation showed that a 13° threshold is necessary and is specified in this final rule.

Since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd. Applies to all DeHavilland Model DHC-7 airplanes certificated in all categories. To prevent engine flameouts, accomplish the following, unless already accomplished. Within 10 days after the effective date of this AD, incorporate the following information into the airplane flight manual:

A. Increase the threshold temperature from 5 °C to 13° C on page 2-21-1, Paragraph 2.21 of the airplane flight manual and provide this information to flight crews.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Compliance with this directive may be effected by including a copy of this AD in the airplane flight manual and operating manual.

This amendment becomes effective April 16, 1985; and was effective, in part, earlier to those recipients of telegraphic AD T84-24-51, dated December 7, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8115 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-101-AD; Amdt. 39-5035]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing airworthiness directive (AD) 79-08-04, applicable to Lockheed-California Model L-1011-385 series airplanes, that requires inspection of the main landing gear (MLG) truck pivot pins and pivot pin journal bushings. This amendment requires the replacement of the MLG truck beam shock strut piston pivot pin and bushing. This amendment is prompted by additional reports of fractures in the truck beam pivot pin journal bores on airplanes which had been inspected. Such fractures, if not corrected, could result in collapse of the MLG upon landing.

DATES: Effective May 13, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commerical Support Contracts, Dept. 63-11, U-33, B-1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2626.

SUPPLEMENTARY INFORMATION: A proposal to amend an existing airworthiness directive (AD) requiring

the replacement of MLG truck beam shock strut piston pivot pin and bushing in Lockheed-California Model L-1011-385 series airplanes was published as Notice of Proposed Rulemaking (NPRM) in the Federal Register on October 25, 1984 (49 FR 42944). The comment period for the proposal closed December 14, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment.

All five Air Transport Association of America (ATA) member operators who commented had no objection to the proposed amendment.

Of the 142 U.S. registered airplanes affected, only 13 airplanes are yet to be modified. The necessary modification will require approximately 35 manhours per airplane at an average labor charge of $40 per manhour. The modification kits can be obtained at a cost of $37,000 each. Based upon these figures, the total economic impact of this AD on U.S. operators is estimated to be $499,200.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with minor editorial changes.

For these reasons, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Model L-1011 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending AD 79-08-04, Amendment 39-4097, (46 FR 24158; April 30, 1981), by revising paragraphs (d) and (f) to read as follows:

"(d) Within twelve (12) calendar months after the effective date of this AD, accomplish the installation or modification of the main landing gear uplock snubber, truck pivot pin and bushings using kits 1630462-101, -103, -105, and -107, or alternate Kits 1630842-109, -111, -113, and -115, in accordance with Lockheed-California L-1011 Service Bulletin 093-32-154, Revision 2, dated January 5, 1981, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region. Compliance with this paragraph constitutes terminating action for this AD."

"(f) Equivalent inspection procedures and truck pin retainer installation may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive, who have not already received these documents from the manufacturer, may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective May 13, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8112 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-5, Amdt. 39-5019]

Airworthiness Directives; Westland Helicopters Limited, Westland 30 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the replacement of the main rotor head sleeve tie-bar pins on all Westland 30 helicopters prior to obtaining 500 hours' time in service. The AD is needed to prevent cracking of the main rotor head tie-bar pin which could result in the loss of a main rotor blade and subsequent loss of the helicopter.

DATE: Effective April 9, 1985. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from the Customer Manager, Product Support Civil Business Group, Westland Helicopters Ltd., Yeovil, Somerset, England BA20 2YB.

A copy of the alert service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Thomas G. Horeff, Brussels Aircraft Certification Office, AEU-100, FAA, c/o American Embassy, APO NY 09667, telephone number 513.38.30, or Samuel E. Brodie, Helicopter Policy and Procedures Staff, Aircraft Certification Division, FAA, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2577.

SUPPLEMENTARY INFORMATION: There has been a reported crack in a main rotor blade sleeve tie-bar pin. Failure of the tie-bar pin, as a result of a possible crack, may cause loss of a main rotor blade. The tie-bar is an integral part of the main rotor blade retention system. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires the removal from service of main rotor head tie-bar pins prior to obtaining 500 hours' time in service.

Since a situation exists that reques the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation involves a reduction in life for parts installed on about nine helicopters and a cost of about $2,800 per helicopter. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Westland Helicopters Limited: Applies to Westland 30 helicopters certificated in all categories that are equipped with main rotor tie-bar pin Part Number (P/N) WK 3069-0020-101 or WK 3069-0016-101.

Compliance is required as indicated, unless already accomplished.

To prevent cracking of the main rotor blade sleeve tie-bar pin and possible loss of a main rotor blade, accomplish the following:

(a) Within 50 hours' time in service after the effective date of this AD or prior to attaining 500 hours' total time in service, whichever occurs later, remove tie-bar pins before further flight.

(b) An equivalent method of compliance with this AD may be used when approved by the Manager of the Brussels Aircraft Certification Office, Brussels, Belgium.

(c) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

Alert Service Bulletin W30-05-A36, Rev. 1 dated February 26, 1985, pertains to this subject.

This amendment becomes effective April 9, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983; 14 CFR 11.89)

Issued in Fort Worth, Texas, on March 19, 1985.

F.E. Whitfield

Acting Director, Southwest Region.

[FR Doc. 85-8118 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1030

Revision To Regulations on Ethics Counselor

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission is revising its regulation concerning the agency's Ethics Counselor to show that the General Counsel is the agency's Ethics Counselor and also serves as the designated ethics official under the Ethics in Government Act. The regulation now states that these functions are performed by the Assistant General Counsel for General Law.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Cindy Anderson, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: Part 1030 of Title 16 of the Code of Federal Regulations contains the Commission's regulations pertaining to employee standards of conduct. Section 1030.104 states that the official who serves as the Commission's Ethics Counselor for matters pertaining to standards of conduct for Commission employees, and as the designated ethics official under the Ethics in Government Act, is the Assistant General Counsel for General Law. The head of the agency has now appointed the General Counsel as the Commission's Ethics Counselor and the designated agency ethics official under the Ethics in Government Act. In addition, the Assistant General Counsel for General Law is to function as alternate designated ethics official under the Ethics in Government Act and as alternate Ethics Counselor in the absence of the Ethics Counselor.

Therefore, § 1030.104(a) has been revised to show that the General Counsel has been designated as Ethics Counselor for all matters pertaining to standards of conduct for Commission employees and is the designated agency ethics official under the Ethics in Government Act.

Section 1030.104(b) has been revised to show that the Assistant General Counsel for General Law is the alternate Ethics Counselor and alternate designated agency ethics official under the Ethics in Government Act and will act in these capacities in the absence of the Ethics Counselor.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553, the agency finds that notice and other public procedures with respect to this rule are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and thus is exempt from the provisions of that act.

List of Subjects in 16 CFR Part 1030

Government employees, and Conflict of interest.

PART 1030—[AMENDED]

Accordingly, Part 1030 of Title 16 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 1030 is as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964-1965 Comp., p. 306; 5 CFR Part 735; Pub. L. 95-521, 92 Stat. 1824, as amended by Pub. L. 96-19, 93 Stat. 37 (5 U.S.C. App.).

§ 1030.104 [Amended]

2. Section 1030.104(a) is amended by removing the words, "The Assistant General Counsel for General Law," and inserting in their place, "The General Counsel."

3. Section 1030.104(b) is amended by removing the words, "The Assistant General Counsel for Regulatory Affairs" and inserting in their place, "The Assistant General Counsel for General Law."

Dated: April 1, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-8204 Filed 4-4-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 105 and 107

[Docket No. 82N-0120]

Infant Formula; Labeling Requirements; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of the final rule that established labeling requirements for infant formula, including the label declaration of nutrients required by the Infant Formula Act of 1980; a "use by" date; a warning statement to inform consumers of consequences of improper preparation or use; a statement informing consumers that infant formula should be used as directed by a physician; and directions for preparation and use, including pictograms and a symbol to indicate the need for dilution.

DATE: Effective January 14, 1986, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204 202-245-3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 14, 1985 (50 FR 1833), FDA issued a final rule that established the labeling requirements for infant formulas in Subpart B of 21 CFR Part 107. The requirements include the label declaration of nutrients required by the Infant Formula Act of 1980; a "use by" date; a warning statement to inform consumers of consequences of improper preparation or use; a statement informing consumers

that infant formula should be used as directed by a physician; and directions for preparation and use, including pictograms and a symbol to indicate the need for dilution. An exemption from certain labeling requirements is provided for individual containers containing infant formula in a ready-to-feed form in multiunit packages.

Section 107.10, which contains nutrient labeling requirements, and the amendment to remove § 105.65 (c), (d), and (e) (21 CFR 105.65 (c), (d), and (e)) were the only portions of the final rule that were promulgated under the formal rulemaking procedures of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)) and therefore subject to objections and requests for a hearing. Any person who would be adversely affected by these provisions could have, at any time on or before February 13, 1985, filed written objections and requested a public hearing on the specific provisions to which there were objections. No objections or requests for a hearing were received.

List of Subjects

21 CFR Part 105

Dietary foods, Food labeling, Infant foods, Nutrition, Vitamins and minerals.

21 CFR Part 107

Food labeling, Infant formula, Nutrient information.

PART 105—FOOD FOR SPECIAL DIETARY USE

PART 107—INFANT FORMULA

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201 (n) and (aa), 403 (a) and (j), 412, 701 (a) and (e), 52 Stat. 1041 as amended, 1047 as amended, 1048, 1055, 70 Stat. 919 as amended, 94 Stat. 1190 (21 U.S.C. 321 (n) and (aa), 343 (a) and (j), 350a, 371(a) and (e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Food Safety and Applied Nutrition (21 CFR 5.62), notice is given that the removal of § 105.65 (c), (d), and (e) and the addition of § 107.10 published in the Federal Register of January 14, 1985 (50 FR 1833) will become effective January 14, 1986.

Dated: March 29, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8131 Filed 4-2-85; 3:19 pm]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 84F-0169]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-methyl acrylate copolymer resins as a food-contact surface in aseptic packaging systems employing hydrogen peroxide as a sterilizing agent. This action responds to a petition filed by the Gulf Oil Corp.

DATES: Effective April 5, 1985; objections by May 6, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of June 13, 1984 (49 FR 24446), FDA announced that a petition (FAP 4B3803) had been filed by Gulf Oil Corp., P.O. Box 1166, Pittsburgh, PA 15230, proposing that § 178.1005 (21 CFR 178.1005) be amended to provide for the safe use of ethylene-methyl acrylate copolymer resins as a food-contact surface in aseptic packaging systems employing hydrogen peroxide as a sterilizing agent. One comment was received in response to the notice of filing. It favored the proposed use.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended in § 178.1005 by revising paragraph (e)(1), to read as follows:

§ 178.1005 Hydrogen peroxide solution

* * * * *

(e) *Conditions of use.* (1) Hydrogen peroxide solution identified in and complying with the specifications in this section may be used by itself or in combination wiht other processes to treat food-contact surfaces prepared from ionomeric resins complying with § 177.1330 of this chapter, ethylene-methyl acrylate copolymer resins complying with § 177.1340 of this chapter, ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter, olefin polymers complying with § 177.1520 of this chapter, and polyethylene terephthalate polymers complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)) to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 6, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made.

Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective April 5, 1985.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: March 11, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8141 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 78N-0281]

GRAS Status of Magnesium Carbonate, Magnesium Chloride, Magnesium Hydroxide, Magnesium Oxide, Magnesium Phosphate, Magnesium Stearate, and Magnesium Sulfate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that certain magnesium salts are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective May 6, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1425, 184.1426, 184.1428, 184.1431, 184.1434, 184.1440, and 184.1443 effective on May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1983 (48 FR 2782), FDA published a proposal to affirm that magnesium carbonate, magnesium chloride, magnesium hydroxide, magnesium oxide, magnesium phosphate, magnesium stearate, and magnesium sulfate are GRAS for use as direct human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on magnesium salts are available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of magnesium carbonate, magnesium chloride, magnesium hydroxide, magnesium oxide, magnesium phosphate, magnesium stearate, and magnesium sulfate, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior-sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for these magnesium salts were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of these ingredients under conditions different from those set forth in this final rule has been waived.

Four comments were received in response to the agency's proposal on magnesium salts.

1. One comment indicated that all the magnesium salts are currently used in other food categories in addition to those reported in the proposal. The comment requested that the agency modify the regulations for all of the listed magnesium salts to affirm their use as GRAS with no food categories specified.

The agency has reviewed this comment. FDA has decided that it is not necessary to list the food categories in which these magnesium salts are used. Both the Select Committee and the agency have concluded that a large margin of safety exists for the use of magnesium salts. In addition, FDA has concluded that a reasonably foreseeable increase in the level of consumption of magnesium salts, including the increase that would result from not listing food categories, will not adversely affect human health. However, the GRAS affirmation regulations for magnesium carbonate, magnesium hydroxide, magnesium stearate, and magnesium sulfate do not state that these ingredients may be used in infant formulas because FDA has no specific information that these ingredients are used in these products, and the agency has not evaluated these uses.

The agency has therefore modified the regulations by removing the food categories and affirming the use of magnesium salts as GRAS when they are used in accordance with current good manufacturing practice under § 184.1(b)(1) (21 CFR 184.1(b)(1)). To make clear, however, that the affirmation of the GRAS status of magnesium salts is based on the evaluation of currently known uses, the regulations set forth the technical effects that FDA has evaluated.

2. The comment also reported that all the magnesium salts are used as nutrient supplements and requested that FDA modify the regulations for these substances to reflect this fact.

The agency points out that the proposal listed the technical effect of nutrient supplement in the regulations for all of the magnesium salts except magnesium stearate. The comment has reported that, in fact, magnesium stearate also is used for this technical effect. Based on its review of the report of the Select Committee and its own review of the relevant data, FDA is affirming this use of magnesium stearate as GRAS and has amended § 184.1440(c)(1) (21 CFR 184.1440(c)(1)) accordingly.

3. One comment reported use of magnesium carbonate, magnesium hydroxide, and magnesium oxide in a proprietary formulation that is used for color retention in canned peas. The comment supported FDA's proposed

rule and did not request any modifications because the proposal included use of all three of these ingredients in processed vegetables.

FDA has thoroughly reviewed this comment and finds that magnesium carbonate, magnesium hydroxide, and magnesium oxide contribute to color retention in this formulation because they may be used to adjust the pH of canned peas. This use was addressed in a recent regulation on the standard of identity for canned peas, published in the Federal Register of April 8, 1983 (48 FR 15241). FDA also included the use of these three ingredients as pH control agents in the GRAS affirmation proposal. Therefore, the agency is not modifying the proposal based upon this comment.

4. One comment reported the use of magnesium sulfate in the brewing of beer at a maximum level of 0.0068 percent. The comment reported that a substantial portion of the added magnesium sulfate is used by yeast in brewing the beer and is removed when the yeast is removed after fermentation. The comment requested that FDA modify the proposed rule for magnesium sulfate to include its use as a processing aid in alcoholic beverages.

FDA agrees that this use is best described by the technical effect "processing aid," as defined in 21 CFR 170.3(o)(24). The agency additionally notes that it listed the technical effect of processing aid for magnesium sulfate in the proposal. Moreover, it is unnecessary for the agency to include the food category alcoholic beverages in § 184.1443 (21 CFR 184.1443) because, as explained in paragraph 1, the agency has decided not to specify food categories in the GRAS affirmation regulations on magnesium salts. Thus, FDA has not modified § 184.1443 in response to this comment.

5. One comment reported use of magnesium oxide as an anticaking and free-flow agent in tea mixes at levels not to exceed current good manufacturing practice. The comment requested that FDA modify the proposed rule to include this use.

As discussed in paragraph 1 above, the additional listing of the food category tea mixes is no longer necessary. Although the proposed rule for magnesium oxide did not include its use as an anticaking and free-flow agent as defined in § 170.3(o)(1) (21 CFR 170.3(o)(1)), it did include its use for similar technical effects that require similar chemical properties. FDA has concluded that these chemical properties are consistent with the use of magnesium oxide as an anticaking and free-flow agent, and that this use is GRAS. Therefore, FDA has modified § 184.1431 (21 CFR 184.1431) to include this technical effect.

6. FDA has, on its own initiative, reconsidered the specifications for magnesium stearate set forth in proposed § 184.1440(b). The agency has concluded that the tests for chick-edema factor, which are described in § 172.860(b)(2) (21 CFR 172.860(b)(2)) and which are included by reference in proposed § 184.1440(b), are specific for free fatty acids and are not applicable to salts of fatty acids such as magnesium stearate. The agency notes that the food additive regulation for salts of fatty acids (21 CFR 172.863) requires that each fatty acid, rather than its salt, conform to the provisions of § 172.860.

Consequently, FDA has modified § 184.1440(a) (21 CFR 184.1440(a)) to require that sodium stearate be derived from stearic acid that conforms to § 172.860(b)(2) and has modified § 184.1440(b) by removing the requirement that magnesium stearate meet the specifications of § 172.860(b)(2).

The agency is making these changes to clarify the regulation. Therefore, the agency finds that further public procedure on this regulation is unnecessary.

Additionally, the agency has also made a minor editorial change in the proposed magnesium oxide regulation to correct the Chemical Abstracts Registry number in this final rule.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.90 [Amended]

a. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entries for "Magnesium carbonate," "Magnesium chloride," "Magnesium hydroxide," and "Magnesium sulfate."

§§ 182.1425, 182.1428, 182.1431, 182.1440, 182.8431, 182.8434, 182.8443 [Removed]

b. By removing § 182.1425 *Magnesium carbonate*, § 182.1428 *Magnesium hydroxide*, § 182.1431 *Magnesium oxide*, § 182.1440 *Magnesium stearate*, § 182.8431 *Magnesium oxide*, § 182.8434 *Magnesium phosphate*, and § 182.8443 *Magnesium sulfate*.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1425, to read as follows:

§ 184.1425 Magnesium carbonate.

(a) Magnesium carbonate (molecular formula approximately $(MgCO_3)_4.Mg(OH)_2.5H_2O$, CAS Reg. No. 39409-82-0) is also known as magnesium carbonate hydroxide. It is a white powder formed either by adding an alkaline carbonate (such as sodium carbonate) to a solution of magnesium sulfate or by carbonation of a slurry of

magnesium hydroxide followed by boiling of the resulting magnesium carbonate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 177, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an anticaking and free-flow agent as defined in § 170.3(o)(1) of this chapter; a flour treating agent as defined in § 170.3(o)(13) of this chapter; a lubricant and release agent as defined in § 180.3(o)(18) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a pH control agent as defined in § 170.3(o)(23) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; and a synergist as defined in § 170.3(o)(31) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1426, to read as follows:

§ 184.1426 Magnesium chloride.

(a) Magnesium chloride ($MgC1_2.6H_2O$, CAS Reg. No. 7786–30–3) is a colorless, deliquescent, crystalline material that occurs naturally as the mineral bischofite. It is prepared by dissolving magnesium oxide, hydroxide, or carbonate in aqueous hydrochloric acid solution and crystallizing out magnesium chloride hexahydrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 117, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter and a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient also may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

c. By adding new § 184.1428, to read as follows:

§ 184.1428 Magnesium hydroxide.

(a) Magnesium hydroxide ($Mg(OH)_2$, CAS Reg. No. 1309–42–8) occurs naturally as the colorless, crystalline mineral brucite. It is prepared as a white precipitate by the addition of sodium hydroxide to a water soluble magnesium salt or by hydration of reactive grades of magnesium oxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 178, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a pH control agent as defined in § 170.3(o)(23) of this chapter; and a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

d. By adding new § 184.1431, to read as follows:

§ 184.1431 Magnesium oxide.

(a) Magnesium oxide (MgO, CAS Reg. No. 1309–48–4) occurs naturally as the colorless, crystalline mineral periclase. It is produced either as a bulky white powder (light) or a relatively dense white powder (heavy) by heating magnesium hydroxide or carbonate. Heating these magnesium salts under moderate conditions (400° to 900° C for a few hours) produces light magnesium oxide. Heating the salts under more rigorous conditions (1200° C for 12 hours) produces heavy magnesium oxide. Light magnesium oxide is converted to heavy magnesium oxide by sustained heating at high temperatures.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 178, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an anticaking and free-flow agent as defined in § 170.3(o)(1) of this chapter; a firming agent as defined in § 170.3(o)(10) of this chapter; a lubricant and release agent as defined in § 170.3(o)(18) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in foods at levels not be exceed current good manufacturing practice. The ingredient also may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

e. By adding new § 184.1434, to read as follows:

§ 184.1434 Magnesium phosphate.

(a) Magnesium phosphate includes both magnesium phosphate, dibasic, and magnesium phosphate, tribasic. Magnesium phosphate, dibasic ($MgHPO_4 \cdot 3H_2O$, CAS Reg. No. 7782–75–4) occurs naturally as the white, crystalline mineral newberyite. It is prepared commercially as a precipitate formed by treating a solution of magnesium sulfate with disodium phosphate under controlled conditions. Magnesium phosphate, tribasic ($Mg_3(PO_4)_2 \cdot xH_2O$, CAS Reg. No. 7757–87–1) may contain 4, 5, or 8 molecules of water of hydration. It is produced as a precipitate from a solution of magnesite with phosphoric acid.

(b) Magnesium phosphate, dibasic, meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 179, which is incorporated by reference. Magnesium phosphate, tribasic, meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 180, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredients as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice. The ingredient also may be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the Act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

f. By adding new § 184.1440, to read as follows:

§ 184.1440 Magnesium stearate.

(a) Magnesium stearate ($Mg(C_{17}H_{35}COO)_2$, CAS Reg. No. 557–04–0) is the magnesium salt of stearic acid. It is produced as a white precipitate by the addition of an aqueous solution of magnesium chloride to an aqueous solution of sodium stearate derived from stearic acid that is obtained from edible sources and that conforms to the requirements of § 172.860(b)(2) of this chapter.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 182, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a lubricant and release agent as defined in § 170.3(o)(18) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

g. By adding new § 184.1443, to read as follows:

§ 184.1443 Magnesium sulfate.

(a) Magnesium sulfate ($MgSO_4 \cdot 7H_2O$, CAS Reg. No. 10034–99–8) occurs naturally as the mineral epsomite. It is prepared by neutralization of magnesium oxide, hydroxide, or carbonate with sulfuric acid and evaporating the solution to crystallization.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 183, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Avenue NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; and a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation shall be effective May 6, 1985.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: March 12, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–8142 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Phenylbutazone Gel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by International Multifoods Corp. providing for safe and effective oral use of phenylbutazone gel for relief of inflammatory conditions associated with the musculoskeletal system in horses.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: International Multifoods Corp., 8th and Marquette Sts., Minneapolis, MN 55402, filed NADA 118–979 providing for oral use in horses of phenylbutazone for relief of inflammatory conditions associated with the musculoskeletal system. The drug product consists of a calibrated plastic syringe containing 4 grams (g) of phenylbutazone in 30 g of gel. The drug is administered at a rate of 1 to 2 g of phenylbutazone per 500 pounds of body weight, not to exceed 4 g daily. Based on the data and information submitted, the NADA is approved and the regulations are

amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended by adding § 520.1720d, to read as follows:

§ 520.1720d Phenylbutazone gel.

(a) *Specifications.* Each 30 grams of gel contains 4 grams of phenylbutazone.

(b) *Sponsor.* See 012518 in § 510.600(c) of this chapter.

(c) *NAS/NRC status.* The conditions of use are NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Conditions of use in horses*—(1) *Amount.* 1 to 2 grams of phenylbutazone per 500 pounds of body weight, not to exceed 4 grams daily.

(2) *Indications for use.* For relief of inflammatory conditions associated with the musculoskeletal system of horses.

(3) *Limitations.* Use a relatively high dose for the first 48 hours, then gradually reduce to a maintenance level at the lowest level capable of producing the desired clinical response. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 18, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–8146 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor of a new animal drug application (NADA) from Ayerst Laboratories to Fort Dodge Laboratories.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Fort Dodge Laboratories, Fort Dodge, IA 50501, has informed FDA of a change in sponsor for NADA 30–416 from Ayerst Laboratories, Division of American Home Products Corp., 685 Third Ave., New York, NY 10017. Ayerst Laboratories has confirmed the change of sponsor. The NADA covers use of sulfamethizole and methenamine mandelate tablets for treatment of urinary tract infections of dogs and cats and as an aid in management of complications of urinary tract surgical manipulations and instrumentation of the urethra and bladder.

This is an administrative change that does not otherwise affect approval of the firm's NADA. The agency is amending the regulations to reflect the change.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2280 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 520 is amended in § 520.2280 *Sulfamethizole and methenamine mandelate tablets* in paragraph (b) by changing the phrase "No. 000046" to read "No. 000856."

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 28, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–8139 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Nicarbazin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Products Co. providing for safe and effective use of nicarbazin premix in manufacturing a chicken feed to be used as an aid in prevention of coccidiosis caused by certain *Eimeria* species.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Elanco Products Co., A Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46285, filed NADA 135–468 providing for use of a premix containing 25 percent nicarbazin in manufacturing a complete broiler feed containing 113.5 grams of nicarbazin per ton (0.0125 percent). The feed is indicated as an aid in preventing outbreaks of cecal *(Eimeria tenella)* and intestinal *(E. acervulina, E. maxima, E. necatrix,* and *E. brunetti)* coccidiosis. The NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers

Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(iii)), may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.366 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act [sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))] and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.366 *Nicarbazin* is amended by removing the phrase "No. 000006" and replacing it with "Nos. 000006 and 000986" in paragraph (a) and by adding "000986" under "000006" at the top of the "Sponsor" column in the table in paragraph (e).

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 11, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-8147 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for use of certain lasalocid premixes in manufacturing liquid feed supplements for use in sheep.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, filed a supplement to NADA 96-298 which covers Bovatec® Premixes (lasalocid sodium). The supplement provides for use of the premixes at levels of 15, 20, 33.1, and 50 percent lasalocid sodium activity to manufacture medicated liquid feed supplements for use in sheep. The supplements are intended for use in producing finished feeds for prevention of coccidiosis caused by *Eimeria ovina, E. crandallis, E. ovinoidalis (E. ninakohlyakimovae), E. parva,* and *E. intricata* in sheep maintained in confinement. The firm currently holds approval for use of the premixes to manufacture medicated dry feed supplements and finished feeds for use in sheep at the same dosage level and for the same indication. The supplement is approved and the regulations are amended accordingly.

Because this approval does not involve the submission of safety and effectiveness data, a freedom of information summary as described in Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) is not required.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.311 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.311 *Lasalocid* is amended in the introductory text of paragraph (e)(1) by changing the phrase "Finished cattle feeds" to read "Finished cattle and sheep feeds," in the introductory text of paragraph (e)(6)(i) by changing the parenthetical words "(cattle only)" to read "(cattle and sheep)," and at the end of the second sentence in paragraph (e)(6)(i) by changing the phrase "fatal to cattle" to read "fatal to cattle and sheep."

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-8136 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Roxarsone, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A.H. Robins Co., providing for safe and effective use of 4 to 50 grams per ton of bacitracin methylene disalicylate (bacitracin MD) in combination with salinomycin and roxarsone in making complete broiler feed.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: A. H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, is sponsor of NADA 135-321 which provides for combining separately approved salinomycin, roxarsone, and bacitracin MD premixes in making a complete broiler feed. The currently approved levels (i.e., grams per ton) of the drug components in the complete feed are salinomycin, 40 to 60 grams; roxarsone, 45.4 grams; and bacitracin MD, 4 to 30 grams. The feed is used for prevention of coccidiosis caused by certain *Eimeria* species and for increased rate of weight gain. The firm has filed a supplement to the NADA providing for increasing the complete feed use level of bacitracin MD to 4 to 50 grams per ton. With the exception of this change in use level, the conditions of use remain the same. The supplemental NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of

safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.550 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 558.550 *Salinomycin* is amended in paragraph (c)(1)(iv)(*a*) by changing "30 grams" to read "50 grams."

Effective date. April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 27, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–8135 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Music City Supplement Co., providing for manufacturing a 40-gram-per-pound tylosin premix. The premix is used to make finished feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Music City Supplement Co., 401 Cowan St., Nashville, TN 37202, is sponsor of a supplement to NADA 107–858 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of a 40-gram-per-pound tylosin premix subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.625 by revising paragraph (b)(51) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(51) *To 017519:* 10 grams per pound, paragraph (f)(1)(i), (iii), (iv), and (vi) of this section; 40 grams per pound, paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

Effective date: April 5, 1985.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 28, 1985.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 85–8140 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 1010

[Docket No. 85N–0033]

Performance Standards for Electronic Products; Number of Copies of an Exemption Application

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the required number of copies of applications that must be submitted to obtain exemptions from one or more provisions of a standard for electronic products. The agency has determined that it currently is receiving more copies of such applications than the agency needs.

DATES: Comments by May 6, 1985. The final rule is effective June 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under section 358 of the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), FDA is required to establish performance standards for electronic products to control the emission of radiation from such products. Section 1010.5 of the regulations governing the establishment of performance standards (21 CFR 1010.5) under the RCHSA provides the basis on which a manufacturer of an electronic product intended for U.S. Government use may apply for exemption from one or more provisions of a standard. Section 1010.5(c) requires that applications for exemption or for amendments or extensions thereof be submitted in quintuplicate (OMB control number 0910–0025).

In the Federal Register of March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) published a final rule (5 CFR Part 1320) implementing the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which established policies and procedures for

controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require submission to it of more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

FDA has reexamined § 1010.5(c) and has concluded that its existing requirement that a manufacturer applying for an exemption, or an amendment, or an extension of an existing exemption submit five copies of the application is not necessary to satisfy any requirement of the RCHSA. Furthermore, there is not any substantial need for the agency to receive more than three copies of such documents.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring an applicant to submit only an original and two copies of any application for exemption or for amendments or extensions of an existing exemption.

In accordance with the Administrative Procedures Act (5 U.S.C. 553(b)(B)), the Commissioner of Food and Drugs finds for good cause that notice and public procedure are unnecessary. This is because reducing the number of copies required to be submitted to FDA of an application for exemption or for amendments or extensions thereof will not affect the public health and will be less burdensome on, and less costly for, applicants. The agency, nevertheless, providing a 30-day period during which it will accept comments on this procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the **Federal Register**.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not be a major rule as defined by the Order. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because it was not subject to a notice of proposed rulemaking under 5 U.S.C. 553.

List of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exemptions, Exports, Radiation protection, Standards, Variances.

Therefore, under the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1010 is amended in § 1010.5 by revising the first sentence of paragraph (c), to read as follows:

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

§ 1010.5 Exemptions for products intended for United States Government use.

* * * * *

(c) *Application for exemption.* An original and two copies of any application for exemption, or for amendment or extension thereof, shall be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. * * * * * * * * * *

Interested persons may, on or before May 6, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1985.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263))

Dated: March 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–8143 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 1010

[Docket No. 85N–0013]

Performance Standards for Electronic Products; Number of Copies of an Application for Variance

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the required number of copies of applications that must be submitted in order to obtain variances from provisions of performance standards for electronic products. FDA has determined that it currently is receiving more copies of such applications than the agency needs.

DATES: Comments by May 6, 1985. The final rule is effective June 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under section 358 of the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), FDA is required to establish performance standards for electronic products to control the emission of radiation from such products. Section 1010.4 of the regulations governing establishment of performance standards (21 CFR 1010.4) under the RCHSA provides the basis on which a manufacturer of an electronic product may apply for a variance or for amendments or extension of an existing variance from one or more provisions of a standard. Section 1010.4(b) requires that applications for variances or for amendments or extensions thereof be submitted in quintuplicate (OMB approval number 0910–0025).

In the **Federal Register** of March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) published a final rule (5 CFR Part 1320) implementing the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which established policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require submission to it of more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

FDA has reexamined § 1010.4(b) and has concluded that its existing requirement that a manufacturer applying for a variance or an amendment or extension of an existing variance must submit five copies of the application is not necessary to satisfy any requirement of the RCHSA. Furthermore, there is not any substantial need for the agency to receive more than three copies of variance requests.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring an applicant to submit only an original and two copies of any application for variance or for amendments or extensions of an existing variance.

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the Commissioner of Food and Drugs finds for good cause that notice and public procedure are unnecessary. This is because reducing the number of copies required to be submitted to FDA of an application for variance or for amendments or extensions thereof will not affect the public health and will be less burdensome on, and less costly for, applicants. The agency, nevertheless, is providing a 30-day period during which it will accept comments on this procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the **Federal Register.**

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not be a major rule as defined by the Order. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because it was not subject to a notice of proposed rulemaking under 5 U.S.C. 553.

Lists of Subjects in 21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exemptions, Exports, Radiation protection, Standards, Variances.

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

Therefore, under the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1010 is amended in § 1010.4 by revising the introductory text of paragraph (b), to read as follows:

§ 1010.4 Variances.

* * * * *

(b) *Applications for variances.* Applications for variances or for amendments or extensions thereof shall be submitted in an original and two copies to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

Interested persons may, on or before May 6, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1985.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)).

Dated: March 12, 1985

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–8145 Filed 4–4–85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 1030

[Docket No. 85N–0005]

Performance Standards for Microwave and Radio Frequency Emitting Products; Number of Copies of an Exemption Application

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reducing the required number of copies of applications that must be submitted to obtain exemptions from one or more of the requirements to post radiation safety warnings on microwave ovens. FDA has determined that it currently is receiving more copies of such applications than the agency needs.

DATES: Comments by May 6, 1985. The final rule is effective June 4, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under section 358 of the Radiation Control for Health and Safety Act of 1968 (the RCHSA) (42 U.S.C. 263f), FDA is required to establish performance standards for electronic products to control the emission of radiation from such products. The performance standard for microwave and radio frequency emitting products is found in Part 1030 of the regulations governing establishment of performance standards under the RCHSA (21 CFR Part 1030). Section 1030.10(c)(6)(iv) of the standard provides the basis on which a manufacturer of a microwave oven may apply for exemption from one or more of the microwave oven radiation safety warnings specified in § 1030.10(c)(6)(i). Section 1030.10(c)(6)(iv) requires that applications for exemption be submitted in quintuplicate (OMB approval number 0910–0025).

In the **Federal Register** of March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) published a final rule (5 CFR Part 1320) implementing the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which established policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(c) of OMB's general information collection guidelines, which are codified as part of its final rule, provides that an agency should not require submission to it of more than one original and two copies of any document, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or some other substantial need.

FDA has reexamined § 1030.10(c)(6)(iv) and has concluded that its existing requirement that a manufacturer applying for an exemption submit five copies of the exemption application is not necessary to satisfy any requirement of the RCHSA. Furthermore, there is not any substantial need for the agency to receive more than three copies of such documents.

Therefore, FDA is changing its procedure to conform to OMB's guidelines by requiring an applicant to submit only an original and two copies of any application for exemption from one or more of the radiation safety warnings specified in § 1030.10(c)(6)(i).

In accordance with the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the Commissioner of Food and Drugs finds for good cause that notice and public procedure are unnecessary. This is because reducing the number of copies required to be submitted to FDA of an application for exemption from one or more provisions of the radiation safety warnings will not affect the public health and will be less burdensome on, and less costly for, applicants. The

agency, nevertheless, is providing a 30-day period during which it will accept comments on this procedural change. If FDA decides on the basis of comments received that the change should be modified or revoked, it will provide further notice in the Federal Register.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not be a major rule as defined by the Order. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because it was not subject to a notice of proposed rulemaking under 5 U.S.C. 553.

List of Subjects in 21 CFR Part 1030

Electronic products, Microwave ovens, Radiation protection, Standards.

Therefore, under the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263(f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1030 is amended in § 1030.10 by revising the third sentence of paragraph (c)(6)(iv), to read as follows:

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

§ 1030.10 Microwave ovens.

* * * * *

(c) * * *

(6) * * *

(iv) * * * An original and two copies of applications shall be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. * * *

* * * * *

Interested persons may, on or before May 6, 1985, submit to the Dockets Management Branch (address above) written comments on this final rule. Such comments will be considered in determining whether further amendments, modifications, or revisions to the final rule are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 4, 1985.

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f))

Dated: March 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–8144 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Availability of Final Draft Technical Report—Special Study Report, Texas Topsoil Substitution Practice

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability.

SUMMARY: The Office of Surface Mining (OSM) is making available to the public upon request a copy of the final draft technical report which pertains to the adequacy of information available to the Texas Railroad Commission (TRC), Surface Mining and Reclamation Division (SMRD) when it evaluates topsoil substitution practices permitted by Texas under the approved State program. A thorough evaluation of the information prepared for mining and reclamation plans under the Texas State program is completed, and OSM anticipated that it will be presented in the form of a final report in May 1985.

ADDRESSES: Technical reports are available at the following OSM offices:

Office of Surface Mining, U.S. Department of the Interior, Interior South Building, Technical Information Branch, Room 139, 1951 Constitution Avenue NW., Washington, D.C. 20240 (telephone: 202–343–5587)

Office of Surface Mining, Tulsa Field Office, 333 West Fourth St., Room 3014, Tulsa, Oklahoma 74103 (telephone: 918–581–7927)

Office of Surface Mining, Western Technical Service Center, Administrator's Office, Brooks Towers, 1020 15th Street, Denver, CO. 80202 (telephone: 303–844–5421).

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Office of Surface Mining, 1951 Constitution Avenue NW., Washington, D.C. 20240 (telephone: 202–343–1510) or Kenneth Wangerud, Office of Surface Mining, 1020 15th Street, Denver, Colorado 80202 (telephone: 303–844–2451)

SUPPLEMENTARY INFORMATION: A special study report has been prepared to evaluate the adequacy of information available to the Texas Railroad Commission (TRC) in approving mining and reclamation plans under the approved Texas State program. The primary focus of the study is to determine whether or not the information available to the TRC is adequate to make a finding that the applicant has demonstrated that surface coal mining and reclamation operations can be feasibly accomplished utilizing the topsoil substitution practice.

OSM previously released drafts of the study on December 18, 1984, 49 FR 49113. The study is entitled *Special Study Report: Technical Evaluation of Topsoil Substitution Practices and Handling of Potential Acid/Toxic-forming Materials in Texas.* Since release of these previous draft reports, OSM has completed a final draft report which is now being made available to the public. The final report is expected to be available on May 31, 1985. OSM is releasing this final draft report in response to requests from the public for this material, and because OSM believes that it is appropriate to make the material available to the public at large.

Dated: April 1, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85–8207 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Extension of Deadline for Submission of Program Amendments to the Indiana Permanent Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Indiana to (1) promulgate rules governing the training, examination and certification of blasters and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

On March 6, 1984, Indiana requested an extension of time for the development of a blaster certification program. On May 14, 1984, OSM announced its decision to extend Indiana's deadline to March 4, 1985 (49 FR 20285). On January 10, 1985, Indiana requested an additional six-month extension to submit a blaster training program and examination. All States with regulatory programs approved under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional six-month extension of time to submit a proposed blaster certification program.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. McNabb, Director, Indianapolis Field Office, Office of Surface Mining, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Indiana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On March 6, 1984, Indiana advised OSM that it would be unable to meet the March 4, 1984 deadline and requested an extension to develop and adopt a blaster certification program. On May 14, 1984, OSM granted Indiana an extension to March 4, 1985 (49 FR 20285).

On January 10, 1985, the Director of the Indiana Department of Natural Resources, Division of Reclamation, advised OSM that the State would require another extension of time to submit its blaster training and examination program. He stated that the Department's blasting expert resigned over a year ago and has not yet been replaced, and that the one remaining person with responsibility for the blasting program recently resigned. He stated that more time is necessary to hire individuals to fill these two vacant positions which are "paramount to our ability to submit the blasting program." An additional six-month extension was requested.

In the February 15, 1985 **Federal Register** (50 FR 6363), OSM proposed an additional six month extension for Indiana to submit to OSM a proposed blaster training program. Public comment on this proposal was sought for 30 days ending March 18, 1985. No comments were submitted to OSM during the comment period.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline for Indiana to submit a proposed blaster training program until September 4, 1985. This extension will allow the Director of the Indiana Department of Natural Resources to consider, develop and adopt an adequate blaster certification and training program consistent with Federal requirements.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

Dated: April, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 914—INDIANA

30 CFR Part 914 is amended by revising the introductory text and paragraph (a) of § 914.16 to read as follows:

§ 914.16 Required program amendments.

Pursuant to 30 CFR 732.17, Indiana is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By September 4, 1985, Indiana shall submit for OSM's approval:

(1) Rules governing the training, examination and certification of blasters, and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation.

* * * * *

[FR Doc. 85–8169 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 917

Extension of Staffing Deadlines for the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Interim final rule.

SUMMARY: OSM is announcing the extension of staffing deadlines established in the **Federal Register** dated December 31, 1984, "Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977" (SMCRA) (49 FR 50718). In that notice OSM announced the disapproval of Kentucky's proposed amendment to reduce budget and staffing levels and established required actions the State must take to bring staffing levels to the level previously approved in the State regulatory program. The State was required: To announce position vacancies by February 1, 1985; to have reached the approved permanent program staffing level (406) by May 1, 1985; and, by the fifth of each month beginning on February 5, 1985, to provide a report to OSM describing the actions taken to achieve the approved program staffing levels by May 1, 1985.

Since the publication of the rule denying the proposed amendment,

Kentucky has acted in good faith, making substantial effort to locate funds and personnel in order to comply with the Director's decision, but has indicated that the deadlines imposed will not be met. The Director has determined that the best interests of Kentucky's program will be served by extending the hiring period to August 31, 1985, to allow the State additional time to meet approved staffing levels so that qualified personnel can be recruited and selected.

Accordingly, the Director is granting an extension of time to allow Kentucky to reach the approved permanent program staffing level. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement this action.

EFFECTIVE DATE: April 5, 1985. Public comment is invited on the action set forth herein. Written comments not received before 4:00 p.m. May 6, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

A copy of the proposed amendment, the notice of disapproval and the subsequent grant agreement amendment to extend the deadline for State actions are available for review at the OSM offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m. excluding holidays. Each requestor may receive, free of charge, one single copy of the above material by contacting the OSM Lexington Field Office.

Office Of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C.

Office Of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Mr. W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982 **Federal Register** notice.

By a transmittal dated June 29, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to change approved levels of staffing and budget. Kentucky submitted a justification for proposed staffing levels by program area which gave an explanation of and reasons for the changes.

OSM published a notice in the **Federal Register** on July 24, 1984, announcing receipt of the amendment, and procedures for the public hearing on the adequacy of the amendment (49 FR 29804). The public comment period ended August 23, 1984. Since no one requested a public hearing, the hearing scheduled for August 20, 1984, was not held.

OSM subsequently published a notice in the **Federal Register** on December 31, 1984, (49 FR 50718) announcing disapproval of the proposed budget and staffing amendment based on the Director's finding that the proposal failed to meet the requirements of SMCRA and the Federal regulations. Section 503(a)(3) of SMCRA requires that the State regulatory authority have sufficient administrative and technical personnel and sufficient funding to regulate mining in accordance with the Act. The Federal regulations require sufficient legal, administrative, and technical staff and sufficient funding to implement the approved program. The State's justification for the reduced levels relied heavily on the assertion that it has been demonstrated that Kentucky has adequately administered all aspects of the State program with existing staff. However, OSM's oversight program previously documented that Kentucky was encountering problems with the Kentucky State Program and, therefore, the Director disapproved the amendment.

II. Extension of Deadline

Since publication of the notice of disapproval of Kentucky's proposed staffing agreement in the December 31, 1984 **Federal Register**, the Director, OSM and the Governor of Kentucky have engaged in meetings to discuss Kentucky's ability to meet staffing requirements imposed in that notice. The Governor made clear in these meetings that Kentucky wished to retain program primacy but would be unable to meet the deadlines imposed by the Director for staff increases. In a January 16, 1985 meeting, the Governor stated that 14 positions were available to be filled and would be acted upon as soon as possible. The State has also issued a promotional bulletin and has received numerous applications for inspector positions in response to that notice. The State expects to be able to achieve the required staffing level of 408 in the Kentucky Department of Surface Mining Reclamation and Enforcement by August 1, 1985.

On February 21, 1985, the Director, OSM and the Governor of Kentucky came to an agreement as to Kentucky's staffing. On that day, an Amendment to Agreement was signed to amend Grant Number G5143213, the Fiscal Year 1984 Administration and Enforcement Grant to Kentucky. Part of the Amendment was titled "Attainment of Approved Staffing Levels" wherein it was agreed that: the State shall meet and maintain by August 31, 1985, the approved program staffing levels; the State shall provide monthly progress reports to OSM on the fifth of each month, describing actions taken to achieve approved levels; and the State must complete advertisement and other recruitment actions for necessary positions to meet approved levels by May 1, 1985.

III. Director's Decision

Because Kentucky has shown good faith in its efforts to obtain necessary funding and staffing to meet approved levels, and because Kentucky has indicated that approved levels can be reached by August 31, 1985, but could not have been reached by the previously imposed deadline of May 1, 1985, the Director has decided to extend the deadlines imposed in the December 31, 1984 **Federal Register** notice. This action will allow Kentucky to obtain necessary funding and to recruit and select the best-qualified persons available.

This action is being made effective immediately to bring the required staffing actions previously imposed on Kentucky into agreement with the grant amendment agreement which was signed by the Governor and the Director on February 21, 1985. To satisfy the public participation requirements for State program approval actions, the

Director is inviting public comment for 30 days on the action set forth herein. Following OSM's review of the comments received OSM will issue a final decision on this action. In completing final action on this decision, the Director may clarify or modify the decision made effective with this notice based on the comments received in response to the action being announced today.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 1, 1985.

John D. Ward,

Director, Office of Surface Mining.

Accordingly, 30 CFR 917.16 is amended as set forth herein.

PART 917—KENTUCKY

30 CFR 917.16 is amended by revising paragraph (b) to read as follows:

§ 917.16 Required program amendments.

* * * * *

(b) Pursuant to 30 CFR 732.17, Kentucky is required to accomplish the following actions or termination of the program approval found in § 917.10 will be initiated on August 31, 1985.

(1) Action to recruit personnel to meet the approved program staffing levels of 408 must begin upon publication of this notice. No later than May 1, 1985, notices concerning vacant positions must be advertised.

(2) Kentucky must have employed sufficient personnel to reach the approved permanent program level (408) no later than August 31, 1985. Of the approved permanent program level of 408, a minimum of 156 must be inspection and enforcement personnel.

(3) By the fifth of each month, beginning on February 5, 1985, Kentucky will provide a report to OSM describing the actions taken to acohieve the approved program staffing levels by August 31, 1985, and of any additional vacancies which may have occurred during the month.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

[FR Doc. 85–8166 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 111

Combined Presort and ZIP+4 Presort First-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rulemaking eliminates, until at least April 6, 1986, the requirement that a combined Presort First-Class mailing must contain a minimum percentage of ZIP+4 coded mail pieces. This change is designed to assist Presort mailers in the conversion of their mailing lists to usage of ZIP+4 codes, by permitting these mailers to maintain the current level of presortation and Presort discounts during the conversion process. The change will also permit mailers to receive ZIP+4 discounts on any qualified ZIP+4 portion of a combined mailing, so long as the mailing contains at least 500 pieces addressed with complete ZIP+4 codes.

EFFECTIVE DATE: April 7, 1985.

FOR FURTHER INFORMATION CONTACT: Donald D. Dillman, (202) 245–5187.

SUPPLEMENTARY INFORMATION: On February 1, 1985, the Postal Service published in the **Federal Register**, for comment, a proposed rule concerning combined Presort and ZIP+4 Presort First-Class mailings. 50 FR 4709–11. The change was proposed to assist Presort mailers in the conversion of their mailing lists to ZIP+4 by eliminating, for at least a one-year period, the requirement that a minimum percentage of the pieces in a combined Presort and ZIP+4 Presort mailing include ZIP+4 codes in their addresses. The regulation, section 365.2 of the Domestic Mail Manual, currently requires that at least 85 percent of the addresses in such a combined mailing include ZIP+4 codes.

As explained more fully in the supplementary information accompanying the proposed rule, many mailers have found it difficult to achieve 85-percent ZIP+4 addressing levels through conventional computer matching techniques, and these mailers have been denied the benefits of ZIP+4 discounts as they undertake time-consuming efforts to improve addressing quality and to add ZIP+4 codes to address list entries unmatched by computer. Larger, multi-list mailers and presort service bureaus have found the 85-percent requirement particularly onerous, as they are unable to achieve a sufficient number of simultaneous, high-quality list conversions among their customers or constituent originators to achieve an overall 85-percent match rate.

The proposed rule would provide for a transition period extension of approximately one year, during which all mailers, as well as presort service bureaus, could qualify for ZIP+4 discounts without regard to the level of ZIP+4 addressing in combined Presort mailings presented to the Postal Service. Because the Postal Service intends to establish a permanent ZIP+4 addressing minimum at the end of the period, mailers could utilize the transition period for intensified efforts to achieve higher quality addressing and higher levels of ZIP+4 code utilization. After careful consideration of the comments received, as discussed below, the Postal Service has concluded that the proposed regulation should be adopted as a final rule, with a three-week delay in the expiration date provided.

In the notice of proposed rulemaking, the Postal Service also invited comments on several other changes contemplated for implementation not earlier than the end of the transition period. First, the Postal Service plans to establish a permanent minimum ZIP+4 addressing level on the basis of reasonable expectations of matching levels to be achieved on well-maintained lists, using state-of-the-art software. Second, as automation levels increase, the Postal Service plans to

alter the presortation requirements for ZIP+4 Presort mail, so as to require only separations by three-digit ZIP Code prefixes. Finally, the Postal Service announced its intention to work with presort service bureaus and mailers to devise appropriate verification procedures upon adoption of a final rule.

The Postal Service received 45 comments in response to the proposed rule. The commenters consisted of eleven firms in the mailing services field, an array of utility, retail and financial services firms, as well as three associations, a labor union and two government agencies, the Oregon Department of Revenue and the Postal Rate Commission. The following analysis of the comments is organized by subject raised in the notice of proposed rulemaking.

A. The Proposed Rule, Temporary Elimination of Minimum Addressing Level for Combined Mailings

Of the 45 commenters, 31 endorsed the temporary elimination of the minimum addressing level for combined ZIP+4 Presort and regular Presort mailings. These commenters indicated that the proposed rule would eliminate an obstacle to list conversion by providing discounts for mailers in the early stages of conversion, and for mailers which merge a number of mailing lists, only some of which have been converted to ZIP+4 coding.

Six commenters, five of whom endorsed a temporary elimination of the minimum ZIP+4 addressing level, requested that the transition period be extended beyond the one-year period contemplated in the proposed rule, by as much as two years. Another suggested that the Postal Service consider such an extension, noting that the existence of ZIP+4 discounts would itself promote high levels of ZIP+4 code utilization in combined mailings. Four commenters suggested that the Postal Service consider or implement a permanent elimination of the minimum addressing requirement; one of these commenters also suggested that the existence of ZIP+4 discounts would promote high utilization rates in the long run.

Most commenters addressing the length of the transition period raised general questions about the sufficiency of a one-year period, in view of difficulties encountered in the more advanced stages of the ZIP+4 coding process. Two commenters suggested that presort service bureaus might especially need a longer period; one of these considered a one-year period arbitrary. Two commenters, firms in the presort service industry, cited difficulties in achieving a high level of ZIP+4 usage among all their customers within one year; one projected that only a 75-percent ZIP+4 usage level in the mailings it presents could be achieved even over a two-year transition period.

As noted in the discussion of a permanent minimum ZIP+4 addressing level below, there are extra costs to the Postal Service associated with the processing of non-ZIP+4 mail in combined Presort mailings in an automated processing environment. These extra costs grow in proportion to the volumes of non-ZIP+4 mail in combined mailings. Thus, to the extent that the Postal Service is successful in utilizing its automated equipment more fully, and in promoting the growth of ZIP+4 volumes, allowing the combining of mailings without restriction could lead to the granting of discounts where combined mailings would provide insufficient offsetting cost benefits.

The proposed rule was designed to provide mailers with a full, one-year transition period; this purpose is being furthered in the final rule by setting the expiration date for the transition period one full year from the effective date of the regulation, April 6, 1986. Given the Postal Service's expectations of volume growth and equipment utilization, the costs associated with an extension of the transition period beyond one year could be unacceptably high. As the transition period progresses, the Postal Service will reassess both the costs and the benefits associated with an extension of the transition period beyond the April 6, 1986, expiration date.

One commenter, a utility association, opposed a temporary elimination of the minimum addressing level. This commenter asserted that the proposed change was not sufficiently substantial to address the problem, and that the proportions of ZIP+4 and non-ZIP+4 pieces in a combined mailing could not be verified. The proposed rule is not designed to be the final improvement to the ZIP+4 program; rather, it is designed to deal with one set of difficulties encountered by mailers in converting to ZIP+4 usage. The ideas advanced by the Postal Service in the notice deal with other issues related to the ZIP+4 program, and extraneous mailer comments, which are discussed briefly in section E below, reflect other concerns. The Postal Service does not agree that the split between ZIP+4 and non-ZIP+4 pieces in a combined mailing cannot be verified. While verification has proved a difficult issue, the Postal Service will work with customers and their associations to find practical approaches to the problem. At this point, the Postal Service is directing its efforts toward finding the most cost-effective way to do the job; this effort is discussed briefly in section D.

Another commenter opposed the extended transition period for other reasons. This commenter stated that elimination of the minimum addressing level would lead to higher costs and under-utilization of automated mail processing equipment, and that the relaxed rules combined with the relatively small ZIP+4 discount give the impression that the Postal Service is not serious about the ZIP+4 program. The Postal Service expects that the change in regulations will produce fuller utilization of the recently procured automated equipment. By promoting the use of ZIP+4 codes by presort mailers, the Postal Service can expect to utilize the equipment for greater quantities of presorted mail. There are costs associated with the non-ZIP+4 portion of combined mailings, and these are discussed below. The Postal Service has taken the steps of changing discount-related regulations and advancing further ideas on improvements in the program because it remains committed to the ZIP+4 program's success. The ZIP+4 discounts, while small in comparison to the discount offered for presorted mail, has provided an incentive to mailer participation in the ZIP+4 program; moreover, changes in the level of the discount would require action by the Postal Rate Commission and are beyond the scope of this rulemaking.

One commenter criticized the proposed relaxation of the combined mailing minimum as excessively liberal and excessively long. This commenter suggested that the minimum percentage be lowered no further than the rate of matching achieved in a typical first attempt to add ZIP+4 codes to an address list, perhaps 60 percent. This commenter rejected the difficulties encountered by presort service bureaus as a justification for a temporary elimination of the requirement, contending that the "combining of mail by presort bureaus violates the [P]rivate [E]xpress [S]tatutes." The commenter suggests that, if the temporary elimination is designed to accommodate multi-list mailers, the period of elimination should be considerably shorter than one year, so as to encourage rapid progress to full utilization of ZIP+4 codes.

The validity of this criticism hinges largely on a legal conclusion that the Postal Service does not accept as valid. The commenter cited no legal precedent for its conclusion that presort service bureaus, by combining mail, are in

violation of the Private Express Statutes. One federal district court has concluded that the Private Express Statutes are violated by the pickup and carriage of unstamped letters by a presort bureau before combining, and the carriage to a post office for mailing, after combining or aggregating, if each letter bears less than ordinary First-Class Mail postage. To the extent that the court's decision relates to any business activities of presort service bureaus, the Postal Service has appealed the district court's decision, and is awaiting a decision by the U.S. Court of Appeals for the Tenth Circuit.

As noted above, the commenter also suggested that any transition period allowed should be considerably shorter than one year, so as to induce quick action on the part of mailers to increase the level of ZIP+4 addressing in their mailing lists. The Postal Service believes that this commenter has underestimated the time required for the full process of list conversion for multi-list mailers.

Mailers which make a conversion decision today generally require substantial time for preparation, software development, and contracting for conversion-related services, in addition to the time required for actual matching operations. Only after this process has been completed can the mailer begin to give serious attention to the issues of improvements in addressing hygiene and ascertainment of further ZIP+4 codes. The proposed rule would provide mailers with a margin of time for decision-making, implementation and improvement, without the threat of imminent loss of discounts.

B. Establishment of a Permanent Minimum ZIP+4 Addressing Level

Several commenters addressed the Postal Service's plan to establish a permanent minimum level of ZIP+4 addressing in combined Presort mailings. One commenter suggested that an 85-percent minimum would be acceptable, but cautioned that attaining a 90-percent conversion level would entail far greater costs than achieving an 85-percent level; the higher cost of conversion would extend the payback period for the investment in conversion to ZIP+4 coding. Another commenter presented similar conclusions, and advocated that the permanent minimum be set at 80 percent, and another at 75–85 percent. Yet another commenter noted simply that a margin for error would be required to accommodate address changes and other situations.

Several commenters, firms in the business of mail preparation, opposed the establishment of a relatively high minimum ZIP+4 addressing level for combined mailings. The projection of a 75-percent ZIP+4 addressing level in two years, noted above, is relevant to the permanent minimum level, as well as to the length of the transition period. Another firm expressed concern about the expense associated with establishing separate processing streams for regular and ZIP+4 mail, which it believed would be required in its operations, in the event that a high minimum level were established. Another firm stated that conversion to an 85-percent level would be too costly to achieve.

In addition to comments addressing the Postal Service's plan to establish a permanent addressing minimum at the end of the transition period, commenters (noted above) that advocated permanent elimination of a minimum ZIP+4 addressing requirement were, by inference, opposed to the plan to establish a high, permanent minimum. One of these commenters suggested that a minimum ZIP+4 addressing level be established for mailers utilizing the 3-digit presortation option, when implemented.

The Postal Service is aware that many mailers encounter difficulties in achieving high levels of ZIP+4 coding, and that mail preparation firms face special difficulties by virtue of their role as consolidators of mail. Both the transition period originally proposed, and the extension and modification of the transition period accomplished in this rulemaking, are designed to aid mailers in dealing with these difficulties. However, as noted in section A above, the costs associated with handling the non-ZIP+4 portions of combined mailings increase as volumes grow. Indeed, the comments received included expressions of concern about the magnitude of these costs. A high but realistically achievable permanent addressing minimum will be required to contain these costs.

The Postal Rate Commission noted that the Postal Service's costs of processing ZIP+4 Presort mailings would be increased if non-ZIP+4 pieces were included in mailings. This increase in costs occurs because automated processing of mail that is presorted to five-digit destinations and does not bear ZIP+4 codes is of no benefit to the Postal Service. When such mail is presented to automated equipment as part of a combined mailing, it incurs the cost of two unproductive processing steps. The Postal Service plans to establish a minimum ZIP+4 addressing level that balances the Postal Service's interest in reducing these unproductive costs with the requirement that the difficulties of list conversion to ZIP+4 coding not present unwarranted obstacles to mailer participation in the program.

Two commenters suggested that the Postal Service consult with, or survey, users on ZIP+4 coding levels, before establishing a permanent minimum requirement. Another commenter suggested that a permanent percentage could be established through the Postal Service's "Operation M.A.I.L." During the extended transition period, the Postal Service will survey customers and ZIP+4 software vendors on their experience in adding ZIP+4 codes to address lists. In order to hold unproductive processing costs to a reasonable minimum, the Postal Service will base the permanent minimum requirement on mailers' experience with well-maintained lists, using state-of-the-art software.

The Postal Service intends to take the steps necessary to permit, on a permanent basis, a prescribed percentage of non-ZIP+4 pieces in combined mailings. This effort will be designed to implement a permanent allowance upon completion of the transition period. The Postal Service will provide an opportunity for comment on its proposal to establish a permanent ZIP+4 addressing minimum for combined mailings, as well as on the specific percentage level proposed.

C. Presortation of ZIP+4 Mail to 3-Digit Areas

The Postal Service's plan to implement a 3-digit presortation requirement for ZIP+4 mail at some point after the transition period received favorable response from 23 commenters. These commenters generally agreed that a 3-digit presortation requirement (as opposed to the current requirement of 5-digit and 3-digit separations) would greatly reduce the costs associated with preparing Presort mailings; one commenter noted that the Postal Service might also receive Presort mailings at an earlier time in the day. Several of these commenters urged that the Postal Service implement such a presortation system at the earliest possible time.

While not opposing a 3-digit presortation requirement categorically, eight commenters were concerned about the terms under which 3-digit presortation would be available, or about the impact of the change on discount levels. One commenter, a firm in the mail preparation business, suggested that the minimum number of pieces required to qualify for Presort discounts be increased substantially. On the other hand, one of the banking

associations which submitted comments suggested that the minimum quantities required for Presort eligibility be decreased. This is an area of competing considerations for the Postal Service as well. During the coming months, the Postal Service intends to evaluate this issue, in order to determine what minimum number of pieces per 3-digit destination would be best from an operational standpoint. Minimum requirements could then be established on the basis of operating efficiencies and volume considerations.

Seven commenters expressed concern that 3-digit presortation would lead to a decrease in the size of Presort discounts. Two others adverted to this issue, assuming that the discount would remain unchanged, or expressing a desire to know future discount levels. One of the seven commenters, a presort service bureau, stated that a reduction in the discount was a threat to the presort service bureau industry and its investments, and to presort mailers generally. This comment was echoed by a mailer association. Other commenters noted that presort mailers would be doing less preparation work for the Postal Service under a 3-digit presortation requirement. Although the Postal Service recognizes that such a change in presortation would reduce mailer workload, it is contemplating the change because finer presortation to 5-digit separations do not yield incremental benefits to the Postal Service in an automated mail processing environment. Nevertheless, the Postal Service will take cost consequences of the shift to 3-digit separations into consideration in determining the timing and terms of implementation.

Of the commenting presort service bureaus, four addressed the 3-digit presortation concept. Three of the bureaus addressed the issues of decreased discounts and possible changes in the minimum number of pieces required for Presort discounts; these issues are addressed above. One bureau opposed 3-digit presortation as discriminatory, since discounts would be granted for presorted mail requiring additional handlings. As noted above, in an automated environment, 3-digit presortation leads to fewer, not more, handlings. In the case of nonautomated processing, which would be the case for a small portion of the mailstream, there may be additional handlings. The offsetting costs associated with these handlings are discussed in the following paragraphs.

The Postal Rate Commission focused on the cost effects of a shift to 3-digit presortation for ZIP+4 mail. Other than the cost effect of combining ZIP+4 and non-ZIP+4 pieces in a Presort mailing, the negative cost consequences identified by this commenter arise in cases where ZIP+4 Presort mail destinates at facilities not equipped with optical character readers and bar code sorters. In such facilities, the presorted mail would generally require an additional sort, to 5-digit separations, in order to return the mail to the degree of sortation that is produced by mailers under the 3- and 5-digit requirements currently in effect. Under the assumptions employed by this commenter, the offsetting cost of this sortation would be substantial. However, in view of several factors, the effect is likely to be diminished greatly.

First, currently funded procurement of additional automated processing equipment will roughly halve the amount of First-Class Mail that can be expected to destinate at a postal facility not equipped with automated mail processing machinery. Second, not all ZIP+4 Presort mail would be affected by the change to a 3-digit requirement, as Presort mail today reflects a mixture of 3- and 5-digit separations. Third, if mailers shift from 5-digit to 3-digit separations for portions of their presorted mailings, the resulting 3-digit packages may still be prepared in 5-digit ZIP Code sequence; this could reduce the costs associated with additional distribution functions at nonautomated facilities. Finally, the adverse cost consequences occur only if mail presorted to 3-digit separations is processed at nonautomated facilities. This could be avoided through the routing of 3-digit Presort mail through automated facilities, or through a requirement that presorted ZIP+4 mail destined for nonautomated offices be presorted to 5-digit separations. These possibilities will be under study during the transition period.

In addition to further study of the topics noted above, the Postal Service will continue the operational tests to which it referred in the notice of proposed rulemaking. There will be further opportunity for public participation before a 3-digit presortation system is implemented. Upon development of any proposal to implement a 3-digit presortation requirement for ZIP+4 Presort mailings, an opportunity for public comment on all details of the proposal will be provided.

D. Verification Procedures

Seven commenters directed their comments to the issue of mail verification. Two of these commenters made general comments, noting that verification problems had interfered with growth in ZIP+4 volumes, and noting the need for the establishment of satisfactory procedures for combined mailings. Two commenters advocated the use of sampling techniques; one of these commenters also recommended that verification procedures be established on a national basis, and the other suggested that computer verification could be utilized.

Another commenter advocated verification on the mailer's premises, and suggested that the percentage of ZIP+4 addressing in combined mailings be established on a monthly basis, by recourse to the mailer's computer records. This mailer also noted several problems related to postage payment, including metering levels and decimal metering. Yet another commenter suggested that the Postal Service utilize a simple piece-count verification system. Finally, one commenter stated that compliance with current procedures is too expensive, while it feared that less exepensive procedures would not withstand the scrutiny of auditors.

When a mailer affixes ZIP+4 Presort postage to all pieces in a combined Presort mailing, additional postage must be paid for the 5-digit ZIP Code pieces which qualify for the Presort First-Class rate. Also, additional postage must be paid for all residual pieces; this amounts to an additional 3.6 cents for the ZIP+4 coded pieces; coded pieces and 4.5 cents for the 5-digit ZIP Code pieces. The Postal Service will continue to explore ways to verify postage for mailers who may wish to participate in the ZIP+4 program, but are unable to provide the Postal Service with a listing for verification of postage and commingling ratio.

The Postal Service has formed a working group, consisting of representatives from a number of its functional areas. Mailers will be invited to join the group in the near future. This group will develop workable and effective verification procedures, based on suggestions contained in the comments noted above, and on other information it gathers. Verification procedures currently in effect will continue to be used until the group's work results in the establishment of new procedures.

E. Comments on Other Subjects

Several comments addressed issues not directly related to the topics covered in the notice of proposed rulemaking. For example, two commenters proposed that a new subclass be created within First-Class Mail, and seven commenters suggested that the current discount of

0.5¢ for presorted ZIP+4 mail be increased. Other commenters advocated changes in the regulations defining the restricted "read area" required on discount eligible mailings, noted the importance of accurate ZIP+4 codes, or advanced ideas on the imprinting of bar codes by mailers. Another commenter proposed that Presort mailers be required to use ZIP+4 codes, while another proposed that ZIP+4 discounts be extended to business reply mail and third-class mail. Yet another commenter discussed the ratemaking process as it might be structured in the future, listing the categories of cost data that the Postal Service should generate. These comments are beyond the scope of this rulemaking; they have been forwarded to appropriate postal managers for their consideration.

The Postal Service has reviewed all the comments and, for the reasons set forth above, has determined that it is appropriate to implement the proposed rule without change, with the exception of a change in the section's expiration date. As noted above, the regulation change provides for a one-year elimination of the current addressing level requirement, measured from the effective date of April 7, 1985. It is the usual practice of the Postal Service to set effective dates 30 days after publication; however, because the instant change does not impose new requirements, but relieves restrictions, the change is being made effective immediately. Therefore, the Postal Service hereby adopts the following final regulation on this subject as an amendment to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

In 365, amend 365.2 to read as follows:

PART 365—COMBINED PRESORT MAILINGS

* * * * *

365.2 Transition Period.

Until April 6, 1986, mailers are permitted to fully combine ZIP+4 Presort First-Class Mail and regular PRESORT First-Class Mail. Except as provided in 365.31, no minimum number of ZIP+4 coded pieces is required. This section expires April 6, 1986, at which time it is expected that a permanent minimum percentage of ZIP+4 coded pieces in a combined Presort mailing will be implemented.

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. This change will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 101(d), 401, 403, 404)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-8198 Filed 4-4-85; 8:45 am]

BILLING CODE 7715-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ENF-84-15; ENF-84-19, et al; FCC 85-101]

Petitions for Waiver of Rules Filed by Pacific Bell, et al.

AGENCY: Federal Communications Commission.

ACTION: Waiver of rules.

SUMMARY: By this order, the FCC conditionally grants petitions by certain Bell Operating Companies for waiver of the structural separation requirements of the FCC's Second Computer Inquiry ("Computer II") rules so that they can perfom conversion from asynchronous protocols to standard X.25 packet-switched network protocols in facilities located in their central offices. Under the Computer II rules, services such as these ordinarily must be implemented in facilities outside of the Bell Operating Companies' central offices. The petitioning companies argued that this would result in inefficiency and higher data transport and other telephone costs to the public unless the requested waivers were granted. The FCC concludes that the public interest would be served by grant of the waivers, subject to three conditions to promote meaningful competition and to promote the carrier's obligation not to discriminate in the provision of basic services.

EFFECTIVE DATE: This decision is effective April 5, 1985. (Before the grants become final, the petitioners are required to furnish the Commission with specified additional information; no date is specified for such filings.)

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael S. Slomin, Legal Assistant to the Chief, Common Carrier Bureau (202-632-6910) or Jane E. Jackson (202-632-4887).

SUPPLEMENTARY INFORMATION: The rule provisions that are waived are in 47 CFR 64.702. *See also*, Second Computer Inquiry, 77 FCC2d 384 (1980), *aff'd on reconsideration*, 84 FCC2d 50 (1980) and 88 FCC2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.*, Louisiana v. United States, 103 S.Ct. 2109 (1983); Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC2d 1117 (1984), *aff'd sub nom.*, Illinois Bell Tel. Co. v. FCC, 740 F.2d 465 (7th Cir. 1984); Communications Protocols Inquiry, 95 FCC2d 584 (1983).

List of Subjects in 47 CFR Part 64

Communications common carriers, Telegraph, Telephone.

Memorandum Opinion and Order

In the matter of petitions for waiver of § 64.702 of the Commission's Rules (Computer II) filed by:

Pacific Bell	ENF-84-15.
Southern Bell Telephone & Telegraph Company and South Central Bell Telephone Company.	ENF-84-19.
Southwestern Bell Telephone Company.	ENF-84-20.
New York Telephone Company and New England Telephone & Telegraph Company.	ENF-84-21.
New Jersey Bell Telephone Company.	ENF-84-22.
Northwestern Bell Telephone Company.	ENF-84-23.
Pacific Northwest Bell Telephone Company.	ENF-84-24.
Ameritech Operating Companies	ENF-84-46.

Adopted: March 1, 1985.
Released March 28, 1985.

By the Commission. Commissioner Patrick issuing a separate statement.

I. Introduction

1. Before the Commission are eight petitions seeking waiver of the structural separation requirements of the *Second Computer Inquiry* (hereafter, "Computer II") governing the provision of certain protocol conversion offerings by the Bell Operating Companies ("BOCs"). Specifically, the petitioning BOCs seek to be able to perform conversion from asynchronous protocols to standard X.25 packet-switched network protocols (hereafter, ("asynchronous/X.25 conversion") in facilities located in their central offices.[1]

[1] Northwestern Bell Telephone Company also seeks to be able to offer resold basic services within the structurally separate affiliate, as an alternative to relaxation of the requirement that the facilities for enhanced services be separated and not collocated in the central offices of telephone

Continued

2. Protocol conversion, including asynchronous/X.25 conversion, is including within the definition of enhanced services under the Computer II rules, 47 CFR 64.702(a). The BOCs are permitted under Computer II to offer enhanced services, including protocol conversion, but only through a structurally separate affiliate utilizing its own separate processing facilities. Any communications channels necessary to the provision of an enhanced service must be acquired by the affiliate under tariff. As long as the affiliate conforms to the Computer II separation requirements, 47 CFR 64.702 (c) and (d), it need not obtain the approval of the Commission to offer any enhanced service.

3. The BOC separate affiliates are thus free to provide asynchronous/X.25 conversion, as well as other protocol conversions, in the same way that the "value added network" service providers (hereafter referred to as "VANs")[2] and other enhanced service vendors today provide similar services. The BOCs, however, seek to offer asynchronous/X.25 conversion through their operating companies' facilities, in conjunction with existing or proposed basic packet switching services. This approach is inconsistent with the structural separation requirements of Computer II. The BOCs therefore request that we waive § 64.702(c) of the Rules and allow provision of this particular protocol conversion service on an unseparated basis. Some BOCs go further, requesting that we allow the asynchronous/X.25 protocol conversion to be offered under tariff as a basic service. The BOCs claim that grant of their waiver requests will enable them to provide an inexpensive local data transport service to many customers who are not reached by, or who cannot afford to use, the services of the VANs.

4. An extensive record is available to us in our assessment of the merits of the petitions,[3] and of the effects of a grant or denial on the specific objectives of the Computer II proceedings [4] and on the broader statutory objectives upon which they were grounded.[5] It is clear, based on this record, that the BOCs would avoid some economic costs if they could collocate asynchronous/X.25 conversion in their central offices. Such economies should lower the rates that the BOCs would otherwise charge ffor transmission of data in the asynchronous format and potentially allow those rates to be set lower than those currently charged by the VANs for local data transport. Users of the millions of terminals and terminal-emulating personal computers in the United States which communicate only in the asynchronous format could thereby benefit from reduced cost data service. On the other hand, if these costs are unnecessarily required to be sustained by the public through denial of the requests, only the present vendors of services that include protocol conversion would be benefitted, a result which would be inconsistent with the objectives of the Act.[6]

5. However, it is also clear, based on this record, that a material portion of the savings that BOCs anticipate passing on to the public are not the result of "superior skill, foresight, and industry." [7] Instead, these "savings" result from the BOCs' assumption that waiver will enable them to use at cost the same inter-office transmission channels which competing packet switched service vendors must purchase from the BOCs at higher, tariffed rates. Even if this "price squeeze" by the monopoly provider of local transmission channels could be rationalized with respect to our Computer II rules and decisions, it is unacceptable to us on other grounds.[8]

6. First, it represents improper discrimination under the standards of Section 202(a) of the Act, 47 U.S.C. 202(a). The VANs and other enhanced service vendors, and their customers, would be improperly disadvantaged in that they would be paying a substantially different price than the BOCs' customers using identical transmission channels. The same channels are used in both cases. They are merely to be priced differently. In addition, if the BOCs' cost for transmission facilities is set too low, users of BOC asynchronous format data transmission services employing these underlying transmission channels could be improperly advantaged at the expense of other ratepayers who would sustain costs thereof not assumed by the data transmission users.

7. Second, the BOC proposals to wholesale inter-office channels to the VANs at prices substantially higher than the cost at which they themselves would include those same channels in their own packet services is a classic version of the price squeeze, a practice condemned under the antitrust laws. The FCC has authority to enforce certain of the antitrust laws directly,[9]

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companies subject to structural separation. We address Northwestern's alternative request in the course of our treatment of the petitions below. We use the phrases "BOCs" and "petitioners" when referring to the requests of all of the petitioners for relaxation of the collocation restriction, including Northwestern Bell.

[2] The term "VAN" is commonly used to refer to vendors of switched communications services that acquire common carrier facilities, add economic "value" to them by using them more efficiently than they are used when offered to the public by the underlying carrier, and themselves offer the reconfigured facilities to the public as new services. Traditionally, such value has been created through the use of packet switched technology, which for a long period was not employed by the underlying carriers. Initially, the Commission certificated as common carriers several such VANs, including Telenet and Tymnet, two commenting parties herein. Since these entities' services involved protocol conversion, after Computer II was adopted they were treated no differently than other enhanced service vendors. Since they offer data transport, rather than information services as such, many in the industry in the United States and in other nations have continued to term them "VANs" to distinguish them from information service providers. This is a distinction without effect under Computer II, and we use the term "VAN" and "enhanced service provider" interchangeably herein.

[3] First, we placed the petitions on public notice and solicited comments and replies thereon. Second, the staff transmitted comprehensive requests for information to each petitioning BOC. These questions sought detailed information not only on the specifics of the BOC's proposals, but also on the future effects of these proposals on competiton and on technological trends in telecommunications. Public comment was solicited on the responses filed by the BOCs. Third, a number of interested entities, including the petitioners, their supporters and their opponents, have made their views known to the Commission through informal filings on the petitions. These filings, which include letters from the public and summaries of oral presentations made to the Commission and its staff, are also part of the record of these proceedings. And fourth, the matters at issue herein were the subject of three years of proceedings in our *Communications Protocols Inquiry* in which a record was compiled on the broad policy issues surrounding structural seperation of all forms of protocol conversion, including, but not limited to, asynchronous/X.25 conversion. *See*, 95 FCC 2d 584 (1983) (Memorandum Opinion, Order, and Statement of Principles), 83 FCC 2d 319 (1980) (Notice of Inquiry). The record of that proceeding, which established principles under which requests of this nature will be analyzed, is part of the record herein.

[4] Second Computer Inquiry, 77 FCC 2d 384 (1980), *aff'd on reconsideration*, 84 FCC 2d 50 (1980) and 88 FCC 2d 512 (1981), *aff'd sub nom.*, C.C.I.A. v. FCC 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.*, Louisiana v. United States, 103 S. Ct. 2109 (1983) (applying structural separation to the then-integrated Bell System). *See also*, Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies, 95 FCC 2d 1117 (1984), *aff'd sub nom.*, Illinois Bell Tel. Co. v. FCC, 740 F.2d. 465 (7th Cir. 1984) (applying modified structural separation conditions to the BOCs divested pursuant to United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131 (1982), *aff'd sub nom.*, Maryland v. United States, 103 S. Ct. 1240 (1983)).

[5] *E.g.*, promotion of the availability "so for as possible, to all the people of the United States, a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *" Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. 151.

[6] *Id.*

[7] United States v. Aluminum Co. of America, 148 F.2d 416, 430 (2d Cir. 1945).

[8] *Id.* at 436–438.

[9] 15 U.S.C. 21 (enforcement of sections 2, 3, 7 and 8 of the Clayton Act).

and it weights in antitrust issues and concerns as part of its broader consideration of the public interest in reaching regulatory decisions.[10] One purpose of the structural separation rules we are asked to waive is to make it difficult for the BOCs to use their control over local transmission facilities to compete unfairly with other enhanced service providers. We must therefore be wary of any waiver request which appears to be premised in part on "benefits" to be derived by BOCs and their customers from squeezing out competitors. Consideration of such potential antitrust implications seems particularly appropriate in this context where pro-competitive decisions of this Commission authorized and promoted the competition among protocol-converted packet switched services that now exists, and that could be threatened by unconditional grant of the asynchronous/X.25 conversion petitions.

8. In view of these and other concerns discussed below, while we grant petitioners' requests that they be permitted to collocate at their central offices asynchronous/X.25 conversion capabilities, their authority to do so is contingent upon their accepting certain conditions. In the absence of such acceptance, their petitions are denied.

9. We recall that we commenced the Second Computer Inquiry because technological changes has so strained the lines drawn in the First Computer Inquiry the entire industry was unable to plan because of regulatory uncertainty. In our Protocols Inquiry, we continued to seek balance between telecommunications efficiency and the multi-faceted goals of Computer II. The record of that proceeding was compehensive on the efficiency and technological effects of limiting protocol conversion in the central offices of AT&T and the BOCs. However, that record completed only four years ago does not reflect the current state of the industry. Private and common carrier communications systems that might be used as alternatives to those of AT&T and the BOCs have grown, and AT&T has divested itself of the BOCs. We attempted to alleviate some of the uncertainties created by these and other changes in our November, 1983 *Memorandum Opinion, Order, and Statement of Principles* in the Protocols Inquiry, (hereafter *"Protocols Decision"*). In that Order we adoped principles under which requests such as those before us herein would be evaluated. The uncertainty which has prevailed during the pendency of this proceeding, however, suggests that the waiver process is insufficient to provide the stability needed by users, carriers, VANs and other enhanced service providers, whose business planning and decisionmaking are affected by our decisions.[11]

10. Our experience with this proceeding suggests the need for a different approach to treating problems of protocol conversion. We would be remiss if we did not use the record compiled here as a base to minimize or eliminate uncertainty for the future. Accordingly, in a forthcoming notice of proposed rulemaking we will seek to formulate general rules of future applicability to govern the treatment of protocol conversion and similar enhanced services. Our conclusions and conditions herein have been constructed so as not to foreclose the results of the rulemaking proceeding, and they are without prejudice to its outcome, but they will permit progress to be made during its pendency.

II. The Petitions

A. Background

11. *Asynchronous Protocols.* The requests before us address the conversion of asynchronous transmission protocols to the synchronous X.25 protocol, currently accepted as the standard interface between users' equipment and a packet network. Generally the requests are justified on the basis of a particular, existing asynchronous terminal population that is most commonly used for communications purposes. The particular terminal population, considered as the market of interest, are those transmitting an asynchronous data stream while using the ASCII code (infra) to encode characters and variants of the RS232 physical interface standard to control the ASCII encoded information. In common parlance these terminals are referred to as "ASCII" data terminals, although ASCII is merely a standard manner of encoding characters using binary symbols. The X.25 synchronous transmission protocol, to which the BOCs seek to convert asynchronous terminal transmissions, does not depend on the particular character encoding in use by a given terminal. It can be used for the transfer of ASCII-encoded data or data encoded using others codes.

12. For example the FBCDIC, Baudot, and Fieldata,[12] codes, which are different from the ASCII one, can also be transmitted using asynchronous protocols, and data using these codes can also be converted to the X.25 transmission protocol. The terminal at the other end of the connection must be able to accept and utilize the specifically-encoded data, but the fact that ASCII or any other is in use in a given call is irrelevant to the network transmission (although the packet network itself must be able to accept and utilize "header" and call set-up information in the code in which it is transmitted). Since, as noted, much of the BOCs' proffered justification for grant of the petitions is that there are literally millions of existing and potential ASCII terminals and personal computer data terminal devices that could use their protocol conversion capabilities if the waiver is granted, we describe in some detail why this format has become so common.

13. The American Standard Code for Information Interchange or ASCII, has been adopted as a voluntary standard by the American National Standards Institute (ANSI X.3) and is also the subject of international recommendations or standards (CCITT Recommendation V–3;[13] ISO standards 646–1973.[14] While it is, strictly speaking, a code for representing alphanumeric characters in terms of binary symbols, as noted the term "ASCII terminal" is often used more broadly to describe the combination of ASCII coding with other transmission attributes, i.e., serial ASCII coding in asynchronous format, and use of the RS–232C standard for access and transmission control.[15]

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[10] E.g., Satellite Business Systems, 62 FCC 2d 997, recon denied, 64 FCC 2d 872 (1977), aff'd sub nom United States v. FCC, 652 F.2d. 72 (1980) (en banc). See also Gulf States Utilities Corp. v. FPC 411 U.S. 747–760 (1972).

[11] Some ten months has elapsed since the petitions were filed, yet we have not been dilatory in addressing them. As filed, the petitions did not sufficiently particularize the details of what each petitioner was proposing. Comments point up the need for additional information on the scope of the waiver sought in each case; the extend to which alternative safeguards would secure the goals of Computer II if we waived structural separation for asynchronous/X.25 protocol conversion; and the short and long term effects of waiver on competition, technological trends, and the broad public interest. Information requests and a second round of pleadings produced that information. Without the comprehensive record now before us, it would be difficult to reach the conclusions and judgments that we make today.

[12] FBCDIC is an acronym for Extended Binary Coded Decimal Interexchange, a code commonly used in IBM systems. Baudot is a code name for Emile Baudot, the inventor of the printing telegraph. Fieldata is a code used in military systems.

[13] CCITT Recommendation on International Alphabet No. 5, Vol. VIII, Fascicle VIII–I–Rec. V–3.

[14] 7 Bit Coded Character Set for Information Processing Interexchange, ISO Standard 646–1973.

[15] EIA Standard RS–232C, Interface Between Data Terminal Equipment and Data Communications Equipment Employing Serial Binary Data Interexchange.

14. ASCII originated as the code for asynchronous communications used by TWX teletypewriters in the 1930s, and the RS–232–C interface similarly was developed as a method to control asynchronous teletypewriter transmissions. Teletypewriters often were (and are) used to transfer manually-typed information, and the typist might hit the keys at any time. Because of this, asynchronous transmission character coding normally contains patterns used, not for communications as such, but to permit the receiving device to accept that character whenever it is transmitted.[16]

15. When remote access data processing employing remote terminals with computers was developed, because this teletypewriter equipment was readily available (often incorporating the needed modulators/demodulators, or "modems", and interface to transmit over common carriers' voice circuits), it became common for computers to support the ASCII/RS–232-based asynchronous protocol for remote access by teletypewriters and teletypewriter-like devices in order that the available teletypewriters could be used for this purpose. As faster or more convenient data terminal alternatives to these traditional relatively low-speed teletypewriters were developed, these devices, too, often used the asynchronous ASCII/RS–232 format, although other more efficient protocols were also developed for network communication among terminals and computers. Included among these other protocols was the X.25 protocol, infra that currently characterizes the normal interfaces to packet-switched networks.

16. The result has been that while market and technological development created the broad variety of data terminals available today, many of them follow the established pattern of using or supporting the ASCII/RS–232 protocol. The distinction between a "terminal" and a "computer" has blurred, with terminals increasingly incorporating computing capabilities.[17] Contemporaneously, the small and relatively inexpensive personal computer was developed and deployed. These computers through the addition of a modem and appropriate software (or plug-ins containing hardware, software or firmware), can serve as (or emulate) terminals when connected with other computers or terminals. Also, since many peripheral devices that might be connected with personal computers, such as printers, use the RS–232 interface, it became very common for personal computers to support the RS–232 interface, to which a modem can also be connected. For these reasons, personal computers have generally followed the established pattern of supporting the ASCII or asynchronous protocol for data communications.

17. The result of these developments is that today there are literally millions of deployed terminals, mainframe computers and personal computers that support only ASCII/RS–232-based data communications with other such devices, or that support ASCII/RS–232–based data transmission for ubiquitous communications in addition to one or more protocols uniquely used for communications with other equipment supplied by the provider of the terminals. If there is a relatively common, non-proprietary terminal standard in use for data communications, it is this one.

18. *Packet Switched Communications.* When asynchronous data communications are carried solely on private lines or the conventional switched telephone network, the signals are passed through modems at each end of a channel to render them compatible with the carriers' transmission media. The channels simply replicate at the far end the signals received at the near end. If conventional MTS service is used, the user pays for the entire time the circuit is established, regardless of whether communications actually ensues. Thus, in a hypothetical interactive remote data access call which might last for an hour, during which actually communications might have occupied only five minutes, the user pays for an hour's communications service. If a private line is used, the user pays for full-period service, even if the line is actualy used for communications ("occupied") for a much shorter period. This pricing approach by the carriers is sensible, as their costs track the channels' availability, not the occupancy of the channels by actual communications. That is, when a channel is connected for the duration of an MTS call, or dedicated to a user full-time in private line service, it is unavailable for other use during these periods; the actual communications time is irrelevant to the costs imposed.

19. With packet switched data transmission, many users can share a single digital transmission channel. Each user's data is split up into small discrete packets. Each packet has attached to it address information indicating its destination. The packets are sent through the network separately, then re-assembled at their destination. During transmission, packets belonging to one user can be interspersed among packets belonging to other users, allowing the channel to be more fully occupied than it would be if it were dedicated to a single user.

20. Because of the technology employed, packet switched services are commonly priced differently than circuit switched and private line data transport.[18] It is common for various VANs' and enhanced service providers' packet switched offering to be priced wholly or largely based on actual communications time (occupancy) rather than connection time. In the hypothetical call lasting an hour, if actual communications occurs only during five minutes of that time the user is charged primarily or exclusively for the five minutes of usage and not for the hours of connection time.[19, 20]

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[16] In contrast, in asysnchronous protocol, procedures are used whereby this additional, time consuming transmission of electrical signals may be dispensed with, thereby improving "throughput" materially. Intermediate "buffering" (storage) is used to accumulate a block of typed information and send it forward. Memory devices to implement such storage are common and inexpensive today. But, in the 1930's when teletypewriters were first developed, such storage did not exist. Of necessity, networks and teletypewriters were designed to obviate the need for such storage.

[17] This is essentially the concept of distributed processing, where portions of processing that at one time was performed exclusively in large central computers accessed remotely by terminals with no processing capabilities have increasingly moved into the terminals themselves, and only those processes requiring accessing and updating of central data bases or greater computer capability than exists in the distributed processors, are performed centrally. An example of this might be a grocery chain's point-of-sale pricing and inventory control computing. If central processing alone were used each cash register in each store serving as a "dumb" terminal might have to communicate with the central computer to determine the price of each item read by a light pen at the register. The central computer could not only respond with the price but also keep track of the sale to determine inventory requirements. In distributed processing, the store itself would have one or more "smart" terminals or computers to generate the pricing information and inventory control for the store. These distributed processors might communicate occasionally with a central computer responsible for chain-wide ordering of stock and central price updating.

[18] They need not be. Since the offering of these largely enhanced sevices is unregulated, the vendors may price on any basis they deem appropriate including connection time pricing comparable to that used in the MTS-type alternatives. However, an important market advantage of packet switched offerings over circuit switched and private line alternatives available from the telephone companies has been the pricing discussed here. Another, discussed below, has been terminal compatibility.

[19] A large discrepancy between channel usage (occupancy) and connection time on a data call is not uncommon. In using a remote data base, for example, the use may type a few characters (usage), wait for a response (no usage while the accessed computer is processing the request), receive a response (usage), think for a while about the response (no usage), the type some more (usage) etc.

Continued

21. The X.25 interface protocol is an internationally recognized interface between packet switched networks and packet mode terminals. Some packet networks also use this protocol internally to their networks, while others merely generate the X.25 interface at their nodes. However, when vendors began to develop and deploy packet switched networks in the mid-1970's, they recognized that the majority of existing terminals and computers that might use such networks used the asynchronous interface, not the synchronous X.25 one. Thus, they built into their systems packet assembler/disassembler devices ("PADs") with inherent asynchronous/X.25 conversion capabilities, that form the signals from asynchronous terminals ito X.25 packets. Were the networks merely to perform such asynchronous to X.25 conversion at one end of a call, and perform the reverse conversion at the other end, the end-to-end service would be basic under Computer II because no net protocol conversion would occur.

22. However, many of the large computers with which asynchronous terminal users seek to communicate are able to accept and transmit data efficiently in the X.25 mode. A common configuration, therefore, has been that user terminals access the packet switched service using the asynchronous protocols they support; the PAD with which the terminal is connected converts that data to X.25 (or an internal network protocol) for transmission over the packet switched network; and at the other end the PAD with which a large computer is connected passes the data on to that large computer using the X.25 protocol. When a signal thus enters the packet network in asynchronous format and exits the network in X.25 format, a net protocol conversion occurs.

23. *The VANs' and Enhanced Service Providers' Packet Switched Services.* Most current and potential vendors of packet switched services purchase underlying transmission facilities from telephone companies, although it is possible for them to construct or use alternative transmission channels. Typically, ordinary switched exchange and long distance facilities are employed by user terminals to access the packet switched networks. Private lines connect the nodes of the packet switched networks to one another. Packet switches (which are, of course, computers) at these nodes create connections between the origination and destination nodes, a function involving protocol conversion, multiplexing, and switching. Finally, the X.25 destination node is connected to the called data equipment, often a large computer, by a leased private line.

24. As noted, most underlying transmission facilities involved are leased from telephone companies. Since the VANs and enhanced service providers have not been permitted to locate their packet switching equipment within telephone company central offices, loops are required between the central offices and the VAN nodes. To receive inputs to their packet switches from "dial up" uses, conventional switched telephone services are used.[21] Similarly, use of private lines to connect the nodes to form a network involves use of loops [22] to connect each node to a central office, where the loop is connected to inter-office private line facilities. If the VANs' packet switching equipment were located within the central offices of the telephone companies from whom they obtain transmission channels, they would not need to use all of these loops. Instead, necessary connections would be made using within-office wiring.

25. A VAN does not commonly send a bill to a terminal user who uses its packet switched network to access an information service such as, for example, Dow Jones News/Retrieval (a participant in this proceeding). Rather, the charges for that use of the packet network are billed to the information service provider. The information service provider in turn includes the communications charges within its total charges to the user for the information or central processing services offered. The only communications costs which the terminal us pays directly is the charge for the local or long distance telephone call between his premises and the VAN's access node. If this is a local call priced on a flat rate basis, or one that is otherwise not priced on a fully usage-sensitive basis, the user perceives that this call is "free."[23]

26. Therefore, from the perspective of many users of information services, there is little or no connection-time pricing associated with use of the VANs' packet switched services. A user may place a one hour call or a one minute call and if he types the same amount in both calls and receives the same information in both calls he will engender much the same charge.

B. The BOCs' Proposals To Offer Local Packet Switched Services

27. The BOCs assert that the VANs' networks use local exchange facilities inefficiently because they are designed to take maximum advantage of flat rate pricing of local calls. They say that VANs tend to locate their access nodes as close as possible to interstate private line facilities even if this means that local data calls may travel many miles through many central offices before reaching the packet network. They point out that data calls not only make inefficient use of circuit switched facilities, but also tend to last much longer than the voice calls for which the local circuit switched networks were originally designed. Increasing extensive use of local voice facilities for data transmission can thus overburden the circuit switched network, requiring new construction to avoid deterioration of service to all customers. BOCs claim that their own local packet switched networks, on the other hand, will conserve use of voice circuits by diverting local data traffic onto more efficient packet switched facilities at the earliest, rather than the latest opportunity. Thus, Pacific Northwest Bell estimates that it will spend $40 million in the next 6 years to expand the voice network to accommodate projected increases in data traffic, but that it will be able to accommodate the same increase in traffic on a local packet switched network for $22 million, for a savings to its ratepayers of $18 million.

28. The BOCs argue that they are uniquely able to bring to local data transport the efficiencies which the VANs have brought to long-haul data transportation through the use of packet

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Where distributed processing is involved, processing delays (during which the channel is not used) may occur at both ends of the connection.

[20] In practice, pricing practices vary. While pricing generally follows usage, connection time elements are also commonly included, but they are not the primary ones.

[21] Thus, if a VAN wishes to handle simultaneously calls from twenty terminals in a given local calling area, it will lease a block of twenty local lines, usually in rotary so that a single number may be published. Terminal users will simply dial that number, and the call is treated as any other telephone call, involving the user's local line at the calling end, the VAN's local line at the called end, and conventional telephone facilities to connect them.

[22] A "loop" is a channel, usually a pair of wires, between the telephone company's central office and a subcriber's premises.

[23] Local calls in some areas, and most long distance calls, are priced on a fully usage-sensitive basis, under which the user pays based on the duration and the distance of the call. In other areas, local calls are priced on a partially usage-sensitive basis, for example pricing per-call without regard to duration. Finally, there is flat-rate local service pricing, where the user pays the same regardless of the number, duration or distance of calls made in the exchange service area.

switching. However, like the VANs the BOCs realize that the overwhelming majority of existing terminals and especially the personal computers which would be used by most residential and small business users of data services, use asynchronous protocols. The central computers with which those terminals would communicate, on the other hand, use the X.25 protocol. Thus the BOCs wish to include asynchronous/X.25 protocol conversion in their packet switched services to make them useful to the large number of customers with asynchronous terminals.

29. Under Computer II, the BOCs are of course, free to offer enhanced services, including such protocol conversion through a structurally separated affiliate. That affiliate would have to obtain underlying communications channel services from the carrier on a tariff basis, just as the VANs and enhanced service vendors do today. The BOCs would have to locate their protocol conversion equipment outside their central offices under the structural separation, just as the VANs or enhanced service vendors today. On the other hand, no waiver or special approval by the Commission would be required if the BOCs were seeking to offer protocol conversion in the same manner as the existing VANs and enhanced service providers.

30. The BOCs however, claim that if they must provide local data service under the same conditions which apply to the VANs, they will be forced to configure their networks like those of the VANs and to charge prices similar to those charged by the VANs. They would thus miss many benefits they see flowing from a local packet switched data network. Rather, they seek to take advantage of potential economies unavailable to the VANs and other enhanced services providers by integrating protocol conversion equipment with basic packet switching facilities located in operating company central offices. Such mingling of basic and enhanced services is not permitted to carriers subject to structural separation under Computer II.

31. In addition to seeking waiver of the requirement that they provide protocol conversion only through a separate subsidiary which complies with the conditions set out in Section 64.702(c) of the Commission's Rules, the BOCs also seek, in varying degrees, to have us treat their packet switched services, including the protocol conversion feature, as basic service. All wish to avoid the requirement that carriers using their own transmission facilities to provide enhanced services obtain those transmission facilities under tariff. Some ask, in addition, to be allowed to offer protocol conversion under tariff rather than on an unregulated basis.

III. Standards for Analysis of the Petitions

32. In this section, we describe the procedural and substantive standards we are applying to the petitions.

A. Procedural Standards

33. We are presented here with similar waiver requests from a number of operating companies. Conceivably we could have conducted a series of separate proceedings to determine the merits of each individual petition. Instead, in order to utilize more efficiently the limited resources of both the interested parties and the Commission we chose to treat all of the petitions in a single proceeding. This procedure produced a record upon which the many issues common to all of the petitions could be identified and then consistently resolved.[24] Our use of notice and comment procedures similar to those used in rulemaking, and our consolidated disposition of the common issues, do not mean that we have not given attention to the individual merits of each petition. Indeed, as the parties make the further showings required to meet the conditions we are placing on these waivers, the waivers will be particularized appropriately to each company's circumstances.

34. While this proceeding on petitions for waiver is not a rulemaking one, we have employed procedures comparable to those required for informal rulemaking. Comments and responses were solicited on the petitions. The staff sought additional information from the petitioners in part based on the comments that were filed, and comment was solicited on the responses filed by the BOCs. Many informal letters and comments were filed by interested members of the public throughout the course of the proceedings, and these have been associated with the files of this proceeding and considered in reaching its results. Finally, ex parte presentations were made to the Commission and its staff by interested members of the public, both parties and non-parties to the proceeding. We required each maker of such ex parte presentation to comply with the provisions of § 1.1201 *et seq.* of our rules as if this were an informal rulemaking proceeding, to ensure that the substance of the presentations would be available as a matter of public record. The documentation of such presentations has also been associated with the files of this proceeding, and considered in reaching its results no differently than other informal comments that were filed.

35. In sum, we have gone to great length to ensure that the procedures we have employed are fair; that the interested public would have a fair opportunity to be heard; and that the respective views of the petitioners, their supporters, and their opponents, would be fully appreciated and addressed in our resolution of the requests. The Administrative Procedures Act does not prescribe a specific procedural format for informal adjudicatory procedures such as this waiver proceeding. It is the responsibility of the agency to employ procedures which ensure creation of an adequate record to support the results it reaches, and we have done so here. All arguments made have been carefully and fully considered and are, we believe, met in the result, even though we have not mentioned explicitly each of the many thoughtful comments received, nor elaborated on every variation of each argument.[25]

B. Substantive Standards

36. In our *Protocols Decision*, we thoroughly examined the nature of protocol conversion and its relationship to the goals and requirements of Computer II. We noted that the Computer II classification of enhanced services was predicated on two different types of offerings: those that are generally thought of as processing of data (the second and third major clauses of § 64.702(a) of the rules), and those that involve relatively simple alterations of subscribers' transmitted electrical signals (the first major clause of § 64.702(a) of the rules, i.e., protocol conversion), 95 FCC 2d at 585. We acknowledged that even when the enhanced service definition was adopted,[26] we recognized that a rigid

[24] This treatment is consistent with our authority to conduct our proceedings in such a manner as will best conduce to the proper dispatch of business and to the ends of justice. 47 U.S.C. 154(j). See, *e.g.* United States v. Storer Broadcasting, 351 U.S. 192 (1956); WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969).

[25] For example, much discussion in the comments filed on the BOCs' responses to the staff's information requests addressed claimed infirmities in the petitioners' proposals to allocate and account for the costs of functions sought to be performed on an unseparated basis by the telephone companies. Our decision below is not to waive the structural separation requirements for these functions unless new convincing showings are made, thereby obviating the need to address in any detail these arguments.

[26] *See* Final Decision, 77 FCC 2d at 422, n.37 ("In the near future we will consider a Notice of Inquiry

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treatment of all forms of protocol conversion as enhanced services, requiring full structural separation, could be problematic, as the structural limitations on inclusion of protocol conversion within carriers' communications facilities could impede *communications* efficiency. We noted, however, that the record of Computer II supported the inclusion of protocol conversion generally in the definition. 95 FCC 2d at 585–87.

37. In the *Protocols Decision*, we clarified that "protocol conversion" as used in the Computer II rules does not reach "network processing" in carriers' networks (setup, takedown and routing of calls or their subelements). We resolved to treat favorably carriers' requests to perform protocol conversion to maintain existing services where new technology (and different electrical signals) are employed to implement them (e.g., deployment of digital loops to implement traditional MTS).

38. The merits of retaining or dispensing with structural separation of other protocol conversions (such as those at issue herein) were less clear, however, and we adopted principles under which requests of this nature would be analyzed. 95 FCC 2d at 594–96.

39. First, we concluded that protocol conversion to create internetworking interfaces (e.g., creation of the X.75 interface for interconnection of packet switched networks) would be treated more favorably than other forms of protocol conversion, particularly where such interfaces cannot be created effectively except in integrated facilities.[27, 28]

40. Second, we resolved that waivers to permit protocol conversion in collocated facilities will be conditioned on the carriers maintaining the availability of unconverted service comparable in price, quality and conditions of service to that built into the offering to be associated with protocol conversion.[29] This unbundling requirement was intended to serve the multiple goals of ensuring: (1) That the carriers' protocol conversions would merely be an option available to users, and not a limitation on their ability to perform conversion differently or more efficiently (or to avoid it totally); (2) that general offerings of underlying services of utility to broad classes of users would remain available, and not be customized to a limited class of users' or manufacturers' equipment; and (3) that any necessary regulation of the underlying basic offering would be facilitated by ensuring that it remains priced separately from optional protocol conversion associated therewith.[30]

41. Third, we resolved to focus with particularity on specific proposals, to ensure that protocol conversion alone, and not subscriber interaction with stored information or information processing (the second and third major clauses of § 64.702(a) of the rules), is involved.[31]

42. And fourth, we indicated that we would be prepared to act more favorably on requests for waiver in circumstances where the performance of the basic network can be improved materially only by provision of protocol conversion in the network, and not where others can do so outside the network.[32] We exemplified a favorable circumstance by the X.75 to X.25 internetworking interface, which cannot be created effectively except when integrated with a packet switch; we exemplified a less favorable circumstance as conversion to facilitate communication among large numbers of users' disparate terminals.[33]

43. In sum, the *Protocols Decision* accepted the premise that led to institution of the protocols inquiry, that inflexible treatment of protocol conversion could impair communications efficiency, and it proceeded cautiously on that premise to establish a framework for analysis of specific proposed changes such as those before us.

IV. Principal Contentions of the Parties

A. The BOCs' Contentions

44. The BOCs are not contending that asynchronous/X.25 conversion cannot be performed in their own or others' facilities that are not collocated in central offices. They cannot do so. Various VANs and enhanced service providers have been providing such conversion on a separated basis, no differently than the BOCs would do if they conformed to the requirements of Computer II, for some time—in some cases for approximately ten years. Rather, the BOCs contend that through collocation the BOCs can perform such conversion materially more efficiently than the existing providers, leading to lower communications costs to the public and further development of "information age" data communications-based services. Since many such services involve fixed costs that are recovered from their users, the more users who employ them the lower the charges to each user. Thus, it is argued that promotion of the further development of markets for such services will benefit all: the existing users' charges will decline, and new users will receive the advantages of using such services.

45. All of the petitions claim that there would be collocation efficiencies. Many of them claim additional cost savings if Computer II structural separatin requirements in addition to the facilities

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to examine in detail the implications of forbidding all protocol translation . . . and whether the public interest requires some exceptions to this prohibition.") We instituted the Communications Protocols proceeding shortly thereafter. Notice of Inquiry, 83 FCC 2d 319 (1980).

[27] Protocols Decision, 95 FCC 2d at 590–94. Subsequently, we considered the merits of the requests of various BOCs to create the X75 internetworking packet switched network interface without structural separation, and granted them authority to do so. Since this interface in many circumstances would have been used only internally in Bell System facilities had there been no divestiture of the BOCs from AT&T, and would therefore have been an internal element of a basic service under the Computer II definition when it was adopted (pre-divestiture), we resolved to treat this interface as an element of basic service. Petitions for Waiver of § 64.702 of the Commission's Rules and Regulations to Provide Certain Types of Protocol Conversion Within Their Basic Network. FCC 2d FCC 84–561 (released November 28, 1984). See Final Decision, 77 FCC 2d at 421–22 aff'd on recon., 84 FCC 2d at 57–60; Protocols Decision, 95 FCC 2d at 585, p.2 (consistently holding that protocol conversions performed wholly within communications facilities but not manifested at the outputs, are not within the enhanced services definition).

[28] This factor is not seriously argued in the context of asynchronous/X.25 conversion requests as it is the X.75 internetworking interface, and not asynchronous conversion, that facilitates interconnection of BOC packet switched networks with those of others. As noted, the BOCs have been authorized to create the X.75 interface on networks otherwise using the X.25 protocol id. It may be noted that in view of our treatment of the X.75 interface as part of basic service grant of waiver to allow asynchronous/X.25 conversion also permits asynchronous /X.75 conversion as well.

[29] This principle was adhered to in the context of the X.25/X.75 waiver X.25–to-X.25 service remains generally available.

[30] As will be discussed, the BOCs' showings on this point are deficient with respect to the inter-office transmission channels proposed to be used with their protocol conversion offerings (if we grant the requested waivers), and for this reason we adopt appropriate conditions to achieve the desired results.

[31] The BOCs have adequately demonstrated that they are seeking solely to include protocol conversion in their central office facilities, and not other forms of enhanced services.

[32] As is discussed below, various parties today offer asynchronous/X.25 conversion outside the network. Thus, the BOCs and their opponents argue herein about whether collocation of asynchronous/X.25 conversion in central offices will improve the communications offerings "materially."

[33] It is unclear whether this circumstance arises in the context of the BOC's request to perform asynchronous/X.25 conversion. Communications will not be facilitated "among" large numbers of users' disparate terminals, as might be the case if communications "among" large numbers of users' terminals using different protocols were to be supported. The "large numbers of terminals" involved will not be disparate; they will use the asynchronous protocol. Communications would be facilitated here from users' terminals operating on the asynchronous protocol, to a much smaller number of terminals operating on the X.25 protocol.

collocation bar were also relaxed, e.g., saving of overhead if telephone company employees could support the asynchronous/X.25 services in addition to telephone services. However, there was considerable ambiguity as to just what cost would be avoided if waivers were granted. The staff therefore requested estimates of the ultimate cost savings the BOCs would achieve if they offered packet switched services with associated asynchronous/X.25 conversion if the waivers were granted, as compared to costs they would experience if it were denied. Some petitioners did not respond explicitly to this request.[34] Those that did estimated that savings could range around forty percent.[35, 36]

46. The savings claimed were in three principle categories. First, local loops connecting a central office with separately located protocol conversion equipment (or combined conversion and packet switching equipment) would be avoided through collocation. Instead of such local loops, intra-office wiring would be used to achieve connections with the exchange facilities. Second, inter-office circuits connecting the central office-located packet switching facilities would be acquired by the BOCs at the costs reflected in their regulatory accounts, essentially at net book cost. Comparable facilities acquired by fully separate Computer II subsidiaries would be acquired at tariffed rates, which are considerably higher than net book. And third, efficiencies would result if certain functions to support an asynchronous-compatible packet switching offering were performed by telephone company employees that can perform other duties. Under the modified form of Computer II structural separation applicable to the BOCs, many of these functions would be required to be performed by separate employees of the Computer II subsidiary, absent a waiver.

47. Price benefits in addition to those resulting from pure cost avoidance were also claimed by the BOCs. A number of the petitioners argue that existing packet switched services are directed primarily towards large business communications and not towards the mainly untapped market for data communications by small business and residential users. They note that because VAN pricing has tended to be distance-insensitive, and since the VANs' networks are long distance ones, their prices for even relatively local calls made over their networks has averaged-in costs of long distance facilities that the local caller does not use.[37] Since the BOC networks will be relatively local, their prices for relatively local data communications should be lower, reflecting the absence of long distance facilities.

48. Another claim made by several BOCs is that if the waivers were granted, they would offer service in sparsely-settled areas, whereas the VANs have concentrated their offerings in major metropolitan areas and have left users in other areas unserved by affordable packet switched services.[38] These BOCs propose to locate concentrating equipment in their central offices in the sparsely-settled areas to aggregate asynchronous digital transmissions from these areas. They would bring this aggregated traffic on inter-office circuits to more heavily-used packet switches. In essence, these access concentrators, which include PAD and statistical multiplexer devices, would be located in areas that will not have enough traffic to justify the deployment of full packet switches. They would serve as "satellites" of the more heavily used packet switches located elsewhere in the BOCs' service areas.[39] Such a technique is by no means limited to the BOCs. The VANs and other enhanced service providers can similarly deploy such satellite facilities in sparsely-settled regions. But, the BOCs claim that the VANs have not chosen to serve such markets effectively, while they will.[40]

49. Finally, the petitioners make overall claims that allowing asynchronous/X.25 conversion capabilities to be built into or collocated with central offices promotes the general objectives of the Communications Act of making services "widely available at reasonable charges", a universal service objective. These claims have two dimensions. First, it is claimed that packet switching technology is desirable for many forms of data transmission, and broader deployment and use than currently will promote communications efficiency. The ability to perform asynchronous/X.25 conversion is portrayed as an essential precondition to BOC deployment of ubiquitous local packet networks. Second, it is claimed that as we move further towards an "information age" where data communications will

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[34] For example, Pacific Bell offered no cost avoidance data on the ground that it does not plan to offer protocol conversion through a separate subsidiary, and therefore it had not developed a cost study for such an offering. Response of Pacific Bell, p. 33 (August 24, 1984) Southwestern Bell did not respond in percentage terms and offered only a preliminary estimate that the avoided costs amount to approximately $24 per customer per month. Response of Southwestern Bell, p. 47 (August 24, 1984). And Northwestern Bell failed to answer this and many other questions, averring that it had "not at this time actually architected a packet network with sufficient specificity to respond to the majority of the questions posed." Letter to Jack D. Smith, Chief, Common Carrier Bureau, from Northwestern Bell (August 24, 1984). We treat Northwestern Bell specially below, in view of its unique failure to make an effort to answer the staff's requests.

[35] E.g., thirty-four percent (BellSouth) and fifty percent (Bell Atlantic). NYNEX estimated 19 percent savings without use of DOV technology (see ¶53, *infra*.) and 42% with use of DOV. Ameritech claimed a 70% savings, a third of which it attributed to use of DOV.

[36] Our disposition of the petitions in this order does not depend upon estimates or quantification of the cost savings available. Therefore, the failure of a number of petitioners to come forward with data of this nature is not fatal. Nevertheless, in view of the unique failure of Northwestern Bell to proffer *any* data, on this or other points, relief will be denied that company in this order.

[37] Several BOCs have gone further and claimed that the VANs provide primarily long distance services, and not the relatively local ones the BOCs propose to provide, and that therefore the two groups would not be competing in the same market. The VANs have responded that a significant part of their business is relatively local. We need not decide which claims are correct. Given the distance-insensitive nature of current VAN pricing, information service providers connected with their networks today can use a single centralized computer to serve the entire nation, including access by those in proximity to such a computer and those at a considerable distance from it. If the BOCs offer significantly less expensive local communications, the information service providers might deploy multiple computers around the country. Thus, portions of this "long distance" market might be readily converted into a "local" one. Conversely, such a decision might change if the VANs responded with distance-sensitive rates. In any event, it is clear that the VANs' current distance-insensitive rates of necessity cause a higher price to be charged to relatively local communications over their facilities than would be the case if distance-sensitive pricing were employed.

[38] Telenet responds that it currently offers dial-up access in 146 of 166 local access and transport areas (LATAs) in the United States while Tymnet claims to offer dial-up access in 169 LATAs. These figures, while undoubtedly correct, can be somewhat misleading. A user of a VAN service dials the VAN switch as a conventional telephone call, and pays exchange or long distance rates for such a call. If the VAN switch is located in the user's exchange, such a call will cost little, or may be treated under flat rate local service pricing. If the VAN switch is at another location in the LATA, the call might be an expensive long distance one. In addition, as explained by Tymnet in informal presentations to staff, some sparsely-settled areas are served by means of Inward WATS of FX Service. Tymnet passes on to users in those areas its additional costs for these forms of access.

[39] For the purposes of this decision, we treat such "satellites" no differently than full packet switches. They are connected with the telephone exchange no differently than packet switches, and they use inter-office channels no differently than a packet switch.

[40] One of the questions posed by the staff in its information request asked when the BOCs would propose to serve these lower traffic areas, since it appeared from the petitions that they were planning to serve primarily metropolitan areas initially, not sparsely-settled ones. The responses varied. The BOCs with service areas encompassing primarily rural areas, such as Pacific Northwest Bell, indicated that they would serve lower traffic areas earlier than did, for example, New Jersey Bell, which serves a small densely populated area.

become as common as today's voice communications, universality of data service will become as important a policy objective as universal voice service is today. Unregulated offerings of VANs and enhanced service providers need not be universally available, and may be limited to a chosen few. The BOCs, as universal voice service providers, will similarly strive to be universal data transport providers.[41]

50. *Comments of the BOCs' Supporters.* A number of current and potential information service providers made formal and informal filings supporting the BOCs. Their contentions are simple. Those that today use the VANs' offerings (and in some cases their own private lines) for remote access by customers to their services believe that these means have been more costly than might be the case if the BOCs could participate directly in establishing packet switched connections between the information service providers' customers and the information services. These commentors support the BOCs' contention that the information services markets have not been fully tapped, and that less expensive communications will lead to less expensive information services, resulting ultimately in broader availability and use of such services by the public. Companies which would like to provide or participate in local offerings of services such as home banking, meter reading, and provision of locally-oriented data bases go further, arguing that truly local data services will never be possible unless the BOCs can provide the cheap, ubiquitous services they are promising.

51. One manufacturer of packet switching equipment that is affiliated with a carrier in Canada, Northern Telecom, argues strongly in support of the BOCs.[42] It notes that somewhat analogous issues have arisen in Canada where, in the absence of a Computer II treatment of protocol conversion as an enhanced service, there is no legal obstacle to associating protocol conversion with basic services. Bell Canada has been permitted to offer unconverted and asynchronous/X.25 packet switched data communications services under tariffed prices that reflect the respective operational efficiencies of both modes of transmission on a packet switched network. Northern Telecom acknowledges that the purchase price of packet switching equipment that does and does not incorporate asynchronous/X.25 conversion capabilities is virtually the same. It goes beyond this, however, and notes that when such equipment is used it is used more efficiently if asynchronous/X.25 conversion is not being performed on a call. Thus, Bell Canada's pricing of the two types of service reflects a not-insignificant surcharge on the rates for underlying X.25./X.25 transmission if a call involves asynchronous/X.25 conversion.[43]

52. Both Northern Telecom and BellSouth argue that this Canadian approach has not impeded the evolution of terminal design from the present less efficient asynchronous communications interfaces towards more efficient synchronous ones. Users and manufacturers clearly perceive a price advantage to use of synchronous equipment because of the differential in packet switched transmission pricing of the two modes. They are continuing to develop and use synchronous terminal devices notwithstanding that ubiquitous asynchronous-compatible transport services are available in Canada because of the asynchronous/X.25 conversion capabilities of the Canadian network.

53. *BOC Responses to Information Requests on the Relationship of the Petitions to DOV and ISDN.* In its information request, the staff asked the BOCs to relate their pending petitions to two changes in exchange technology that it was informed various BOCs were considering for implementation in the relatively near future: data over voice ("DOV") technology and integrated services digital networks ("ISDN").

54. DOV technology recognizes that while conventional telephone loops are normally used for nominal 4 KHz. bandwidth voice services, the actual bandwidth of these loops is considerably greater than this. When DOV is employed on these loops, the additional bandwidth of the underlying loops is used to carry one or more data channels in addition to the conventional 4 KHz. telephone one, on a "piggyback" basis, between the subscriber's premises and the telephone company's central office. A multiplexing device at the subscriber's end creates the additional channel(s) on the loop, and a demultiplexing device at the central office end separates the additional channel(s) from the voice one. The voice channel can then be routed to the circuit switch while the data channel(s) can be connected to a packet switch. In this manner, a subscriber can use a single loop to conduct both voice and data communications at the same time.[44] Ameritech and NYNEX, which plan to use DOV with their packet switched networks, claimed in their responses to staff questions that technological limitations make it infeasible to use a DOV channel to access any packet switch other than the one in the telephone company central office.

55. Several BOCs, on the other hand, made clear that they would not seek to foreclose use of DOV channels to access others' packet switched services. Bell Atlantic proposed making available to other vendors of packet switched services dedicated access concentrators to aggregate DOV traffic, and transmit that traffic to the other vendors in concentrated form. This would allow economical access by subscribers to other vendors' services over DOV channels. BellSouth indicated that it could, through special assembly, provide DOV access to another vendor's packet switch.

56. ISDN raises somewhat similar issues. ISDN is an evolving concept being planned largely in international forums, and in various nation's national standardization forums that support these nation's contributions to the international ones. Certain ISDN planning approaches have been adopted by the CCITT in the form of recommendations. *See, Integrated Systems Digital Networks* (ISDN), FCC 83–373 (August 10, 1983); *Integrated*

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[41] This argument is made more explicitly by those BOCs that propose that we treat asynchronous/X.25 conversion as a basic service. *See, e.g.,* NYNEX Petition (April 27, 1984). If it were basic, under conventional regulatory obligations it would have to be made generally available without unreasonable or unjust discrimination, thus the offering BOCs could not pick and choose their customers as the unregulated offerors may do.

[42] Certain of Northern Telecom's principal points, as an expansion of comments previously filed, were made orally and documented in subsequent informal letters. Thereafter, they were confirmed in letters filed by BellSouth.

[43] *See,* Letters from Theodore D. Frank to William J. Tricarico, January 16 and January 17, 1985; Letter from Roger Burge to Albert Halprin, January 23, 1985; Letter from Roger Burge to Albert Halprin, February 19, 1985.

[44] One BOC, Southern Bell, is currently offering the use of DOV channels for data communications as a part of local area data transport ("LADT") service. The particular Southern Bell offering is the subject of a pending petition for declaratory ruling in which the petitioner, IBM, claims it violates the requirements of Computer II by including protocol conversion and by including as part of the regulated offering certain terminating equipment at the subscribers' premises that, it is argued, should have been offered on an unregulated basis. *See* Request of IBM for Declaratory Ruling in the Matter of Southern Bell Telephone and Telegraph Company, Revisions to Florida P.S.C. Tariff No. A29, Local Area Data Transport Service (LADT) filed June 27, 1983 (resolution pending). Although both IBM and IDCMA urge us to resolve those issues here, we decline to do so. Rather, we simply acknowledge that the offering of a DOV channel itself, exclusive of functionality that may or may not be built into its subscriber premises or central office terminations, is a basic service no different than the offering of any other channel.

Systems Digital Networks (ISDN), —— FCC 2d ——, 84–131 (April 2, 1984). ISDN planning will continue during a four year period that began with the CCITT's Plenipotentiary Meeting in September, 1984 when the current recommendations were adopted, and these recommendations may evolve further. Nevertheless, certain concepts appear to be relatively stable at this point.

57. The overall concept of ISDN is to take the DOV approach some steps further. As noted, DOV "piggybacks" an additional channel (or additional channels) on existing conventional telephone loops. ISDN integrates the conventional telephone services with additional communications capabilities in a unified framework that includes the use of three subchannels on ordinary subscriber loops.[45]

58. As noted, para. 55 *supra*, some BOCs' responses to the staff's questions on DOV indicate that there are approaches under which DOV capabilities could be used for access to other telephone companies' data communications services or to those of others, whichever the subscriber desires. It is unclear, however, whether such an approach would be feasible in an ISDN. Certainly, ISDNs implemented in telephone companies' exchanges could be used to access others' local or long distance networks *in tandem* with the ISDN facilities in the exchange, but it may not be technologically feasible for the ISDN subchannels to be connected to another service vendor's facilities except after having traversed at least some of the switching and channelization capabilities anticipated in ISDN planning to be located in the exchange carriers' exchanges. While this may be a potential competitive ramification of ISDN, neither the BOCs nor their opponents argued explicitly about this potential result, nor whether it will present a problem.

59. For example, functionality to be built into ISDN will include the ability to select circuit-switched, packet-switched or what might be deemed "channel switched" connections of one or both of the "B" channels to be created on most users' loops, through call setup signals to be exchanged over the "D" channel. Circuit-switched connections are akin to today's switched telephone service: the dialing information informs the network of the desired destination of a call, and a channel is established from origin to destination for the duration thereof through equipment that selects and dedicates to the call physical channels during its duration. Packet-switched connections establish the equivalent of such channels, but they are not dedicated: any packet to be sent during the course of a given "call" may follow a different physical path than any other. "Channel switched" connections in principle would be comparable to the circuit-switched ones, but they would be set up and maintained for longer periods than the duration of a single call. For example, traditional full-period private line services could be configured on such a basis with the channel-switched connection remaining for a service ordering period, typically one or more months. Even if it is desirable for the BOCs' and others' packet-switched services to remain competitive in such an environment circuit-switched or channel-switched access to others' packet switched services through the exchange carriers' facilities may adequately promote such competition even if packet-switched access to their services would require use of some portion of the BOCs' packet switching facilities in tandem with those of others, rather than *in lieu* of them.

60. A more difficult potential problem is raised by the fact that the "D" channel has been planned to have two capabilities. First, it is to be used to control the use of the "B" channels (i.e., to set up circuit-switched, packet switched or channel switched connections thereof); this use raises no problems not addressed in the previous paragraph. Second, it is to be used optionally itself as an end-to-end packet switched communications channel (in essence, by setting itself up as a channel, rather than the two "B" channels). In such use, the very facilities that accept and utilize the control signals will also be the packet switching facilities. Others' services could only be accessible in tandem with these packet switching facilities.

61. We need not, and will not, decide these potential competitive and policy issues raised by ISDN in the context of the petitions now before us. The potential issues raised by ISDN-like integration are not before us yet, as ISDN will not be implemented for several years. In the rulemaking proceeding that we will soon institute, we intend to address them, to ensure that an appropriate framework is in place when (and if) ISDN is proposed to be deployed.[46]

62. Another ramification perceived by the staff was that if ISDN is to be implemented in the relatively near future, it might be undesirable for the telephone companies to engage now in significant investment in incompatible packet switching facilities that might soon be "stranded". Thus, the staff also asked whether the facilities the BOCs might implement if the waivers were granted could be used in the future if ISDN were to be implemented. Here the BOCs noted that ISDN planning has generally recognized that wholesale abandonment of existing non-ISDN facilities is not feasible in the United States or in other nations and that transitional approaches are being considered for compatible evolution toward ISDN. The BOCs are confident that while their planned packet switched networks will not be physically integrated into ISDNs, they will be needed well into the 1990s and will be fully depreciated before they are ultimately replaced by ISDNs.[47]

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[45] In ISDN, a conventional loop will carry two "B" channels of 64 kb/s bandwidth, and a "D" channel of 16 kb/s used either for communications with the network, or for end-to-end communications. The "B" channels may be used for conventional switched voice telephone services or for packet switched or dedicated services, under control of the "D" channel which is used to setup connections on the "B" channels. For example, in today's conventional telephone services the dialed number is sent on the same channel that will be used for voice communications after a call is established; in ISDN, the dialed number (called party address) is sent on the "D" channel separately from the "B" channel that will be used for voice communications after the call is established. Also, the "D" channel may be used itself as an end-to-end communications channel, typically for data communications. Alternative loop configurations have been planned for subscribers that have a multiplicity of loops to their premises, typically for private branch exchange services where multiple incoming and outgoing switched voice calls are to be handled. In such cases, high bandwidth loops that can carry 1.544 mb/s overall are configured with twenty-three "B" channels and a single "D" channel to control their use in incoming and outgoing call service.

[46] To ensure that the waivers we are granting, *infra*, will not prejudge ultimate disposition of these issues in the event that ISDN implementation proceeds more expeditiously than is currently anticipated in the United States and worldwide, we are expressly limiting these waivers to existing switching and loop technology and to the DOV technology. Asynchronous/X.25 protocol conversion is not authorized under this decision within ISDN loop facilities used for subscriber access in ISDN, without prejudice to further Commission action on this matter.

[47] In granting the waivers, *infra*., we require that the investment and expenses associated with protocol conversion be removed from regulatory accounts. Thus, even if these capabilities are "stranded" in the future, there will be no effect on rates for basic service. Conversely, while the facilities for unconverted packet switching service itself could be "stranded" the dollar involved are far lower than those invested in present exchange facilities that also would be "stranded" if there were incompatible growth of ISDN. Regulators and carriers will have to confront the major problem if it arises. Treatment of the far smaller dollar amounts potentially involved in packet switching need not drive resolution of this issue should it arise; and, based on the assurances of the BOCs that compatible evolution will occur, it likely never will arise.

B. Opponents' Contentions

63. The VANs and other existing providers of data communications services incorporating asynchronous/X.25 conversion generally oppose the BOCs' petitions. IBM also opposed the requests.[48] The opponents argue that Computer II drew the proper line between what may be collocated in the BOCs' central offices and what may not. While the *Protocols Decision* may properly have acknowledged that not all protocol conversion should be treated rigidly, it also established useful standards for evaluating what flexibility should be accorded. In their view, these standards have not been met by the BOCs in their requests to collocate asynchronous/X.25 conversion in their central offices.[49] They also oppose waiver of other Computer II structural separation requirements, and strenuously object to treating asynchronous/X.25 conversion as a basic service.

64. Telenet and others agree with the BOCs' contention that packet switched service is not a viable offering unless it includes protocol conversion. They insist, however, that the logical conclusion to be drawn from this is that packet switched services should be treated as enhanced services in their entirety. They urge us to require that the BOC packet services be offered only by the Computer II affiliates.

65. The VANs view the proposed use by the BOCs of inter-office communications channels at net book cost as wholly inconsistent with the goals of Computer II. They point out that Computer II requires *all* carriers offering enhanced services to acquire facilities at the tariffed rates which apply to the VANs and others. In the view of the opponents, the very fact that such an approach was proposed substantiates the wisdom of the Computer II separation requirements that automatically ensure that such disparate pricing is not possible.[50]

66. Furthermore, if the BOCs may collocate in their central offices asynchronous/X.25 conversion, they will use wiring in the office to connect such equipment to the exchange switches and to inter-office circuits,[51] while others that are not permitted similarly to collocate must use more costly local loops for this purpose. Initially, the VANs had argued that if waiver were granted, they too should be permitted to collocate equipment in the central office, in order to be able to acquire the same types of connections at the same prices as the BOCs. However, they also argued that the savings to be gained through collocation are far smaller than the BOCs believe them to be. Tymnet noted that the total cost of local access accounts for only nine percent of its overall costs of doing business.[52] IBM performed its own analysis of collocation savings and came up with six to nine percent.[53]

67. The staff requested information from the BOCs on whether collocation of others' equipment might be feasible. In response, the BOCs uniformly and strongly opposed making collocation available to others.[54] In the face of this strong opposition, Telenet subsequently argued that if the petitions are to be granted, transmission rate parity should be established between intraoffice wiring to be used by the BOCs and the relatively short local loops to be used for comparable purposes by the VANs, perhaps through an averaging approach. It was acknowledged, however, that this would nullify an efficiency that otherwise could flow from such collocation, namely, substitution of presumably less costly intraoffice wiring for local loops.

68. The VANs argued that the BOCs claims that lower costs would flow from a grant of the petitions, and that the public would enjoy lower data communications prices than currently, were impermissibly vague and did not constitute the type of cost/benefit analysis required for a Computer II waiver. The staff requested information from the BOCs on the particular savings that would flow from a grant of the asynchronous/X.25 petitions, and on related cost apportionment and accounting procedures that would be employed to ensure that the enhanced services would properly bear their costs, and concommitantly that subscribers to basic service would not improperly subsidize the BOCs' enhanced service offerings.

69. Telenet and Tymnet thereafter analyzed the BOCs' responses. They maintained that many of them still diclosed insufficient information to determine whether there would, or would not, be improper cost shifting. Citing an even more serious problem, they contended that those BOCs which had supplied accounting plans were proposing to underallocate significant costs to their enhanced services. In particular, they argued that marketing costs, which they say will be at least 25% of the total costs of a packet service, would be shifted disproportionately into regulated accounts under some of the accounting plans.

70. IBM's objections in formal and informal comments, while tending to support the principle ones of the VANs, were also directed to two other issues. First, IBM opposes any treatment that might reclassify asynchronous/X.25 conversion (or other protocol conversion except, perhaps, conversion to an intermediate internetworking protocol, e.g., X.25/X.75 conversion) as a basic service. In IBM's view, the existing definition draws a proper line between regulated basic services and unregulated enhanced ones, and it does not wish to see this line eroded, independent of whether structural

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[48] IBM has various interests. It is a computer and data terminal equipment manufacturer and an enhanced service provider. It manufacturers communications equipment (itself and through its affiliate, ROLM Corporation), and through its partial ownership of a specialized common carrier, Satellite Business Systems, it has a direct interest in the regulatory treatment of enhanced services generally and in the competitive and policy implications of our action on the waivers.

[49] In contrast, the petitions also requested flexibility in the treatment of X.25 to X.75 conversion, and while the opponents have opposed grant of the asynchronous/X.25 conversion requests, they did not oppose grant of the X.25/X.75 conversion request because these standards were met for the latter.

[50] In the absence of a waiver, the BOCs may only offer enhanced services, including asynchronous/X.25 conversion, through a separate affiliate that receives communications services no differently than any other subscriber, i.e., at tariffed rates. If inter-office communications channels are made available to the VANs by the BOCs, under such a structure they may be used to support the BOCs' enhanced services only on an identical basis.

[51] In the previous paragraph, they address the inter-office circuits themselves, which are used no differently regardless of whether the packet switching equipment is located in a central office or elsewhere. Here, they address the connections *between* the packet switches and those inter-office circuits and connections *between* packet service nodes and the carriers' telephone facilities. These groups of connections are different if there is collocation. The connections are relatively short wires within the office if there is collocation, while they physically are normal telephone loops that leave the office and are connected to another premises if there is no collocation.

[52] Comments of Tymnet, Inc., (Oct. 2, 1984) at 30.

[53] Comments of IBM (Oct. 2, 1984) at 20.

[54] The BOCs' responses raised a number of administrative, operational and security problems which, while not insurmountable, appear to justify our not ordering them at this time, and in the context of their asynchronous/X.25 conversion petitions, to make such an approach available. Our failure to do so in this context is without prejudice to our addressing this issue in the future. Furthermore, the BOCs' views on this may change. One of the effects of the technological revolution in telecommunications in the past two decades is that older electro-mechanical central office switches increasingly are being replaced by much smaller electronic ones, resulting in the freeing up of considerable central office space which is now unused. If collocation were permitted, presumably there would be a charge to others for use of such space, and a collocation offering potentially could become a new source of profits to exchange carriers. Thus, they may well have a motivation themselves to change long-held views against collocation, in their own self-interest.

separation of the enhanced services may be waived. Consistently with this view, it supports the Telenet position espoused here (and in other proceedings) that the entirety of packet switched services should be treated as unregulated enhanced services.

71. Second, IBM argues that the petitions should be denied as unnecessary in the long term and as disruptive of desirable terminal design evolution. In IBM's view, today's data terminals and computers can be adapted to conformance to synchronous protocols such as X.25 with relative ease, either through modification of existing software and/or hardware, or through use of external equipment. In many cases, external modems (or additional plug-in cards) are already required for such terminals to communicate using asynchronous protocols. "Smarter" modems incorporating asynchronous/X.25 conversion could be sold in the future at little more cost than modems without such conversion capabilities. The cost of including such capabilities is primarily a fixed one associated with masking new integrated circuits and developing programming for them. If many units are produced, the per-unit cost of such capabilities would be minimal. IBM acknowledges that few such devices exist today,[55] but it argues that if we hold fast on the present Computer II separation requirements, such equipment will be designed and deployed in the next few years.[56] Conversely, IBM argues that if we grant the petitions and asynchronous-compatible packet switched services are deployed ubiquitously by the BOCs, present incentives to develop such devices will be diminished, and the efficiencies of broadscale synchronous communications will not be realized.

72. More broadly, IBM argues that asynchronous/X.25 conversion can be accomplished either in centralized facilities shared by a multiplicity of terminals (e.g., by the VANs today in their packet switched network PADs, or the BOCs if they deploy similar capabilities with or without structural separation) or in data terminals, and that where such conversion is to be located should be determined competitively in the marketplace. If the existing Computer II structural separation is maintained, the BOCs' centralized conversion capabilites will be priced based on costs comparable to those sustained by others, including the VANs and other enhanced service providers. In IBM's view the "competition" between such centralized conversion and conversion at the terminals will be fair. If such separation is dispensed with, IBM argues that the BOCs' centralized conversion offerings may compete unfairly with terminal-based conversion because of potential improper cost-shifting, and the advantages of terminal-based conversion (if it otherwise were to "win" such "competition") would not be realized.

V. Discussion

A. Introduction

73. We start with several overriding principles. First, our purpose is to promote the public interest objectives of the Communications Act. The procompetitive and deregulatory policies of Computer II, and its structural and other safeguards, were not adopted for abstract purposes. They were adopted in the belief that they best would promote these objectives. We were fairly absolute in the Computer II decisions that deregulation of terminal equipment, and deregulation of information services (the second and third major clauses of § 64.702(a) of our rules), would promote these objectives. We were less absolute in our treatment of protocol conversion. Even when protocol conversion was first included in the definition, we concluded that flexibility could be required in the treatment of protocol conversion by carriers subject to structural separation to ensure that the efficiency of communications— a primary objective under the Communications Act—is not unacceptably impeded. *See*, 77 FCC 2d at 422, n.37.

74. Second, fair and effective competition best achieves the purposes of the Act in this and other areas. Others have offered asynchronous/X.25 conversion services for some time. Entry by the BOCs could enhance competition, and its benefits, in such offerings. We note that the BOCs are free to do so on a basis similar to that of these other firms today, without any Computer II waivers, but they have not chosen to do so. Rather, they have sought to offer such service on a basis that is not presently available to others, through equipment collocated in central offices that does not require loops between the central offices and remotely-located equipment, loops that are required by the existing vendors of such services. In these circumstances we must be vigilant to ensure that we do not, through a sanctioning of improper pricing or unwarranted disparate treatment by the BOCs of the loop and inter-office facilities used for their own and others' enhanced services, distort or adversely affect the competition that now exists for data communications services (and in the terminal market where, as argued by IBM, there is increasingly "competition" between terminal-implemented protocol conversion and centralized protocol conversion).

75. This is a particularly difficult matter. Clearly, the proposed treatment by the BOCs of their inter-office circuits is unwarranted, and, as is discussed below, is inconsistent with the principles adopted in the *Protocols Decision*. There are no efficiencies in the BOC's proposed use of these circuits over the existing uses of them by others. The *same* circuits are to be used. All that has been proposed is disparate pricing: net book if they are used by the BOCs, and higher tariffed rates if used for comparable purposes by others.[57]

76. However, the within-office wiring that can replace local loops if packet service nodes are collocated in the central offices may well represent a true economic efficiency. Installation, repair and use of short wires in the central office is probably less expensive than longer ones (i.e., loops) between the central office and a VAN's or enhanced service vendor's premises.[58] Denial to the BOCs of the ability to realize such efficiencies may promote the ability of others to continue to offer packet switched services at prices comparable to those of the BOCs (i.e., if these efficiencies were destroyed through an averaging technique), but it would result in BOC data communications prices to

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[55] One that has been identified in informal comments costs about $600.

[56] In informal comments, IBM quantified the fixed cost of adding such X.25 conversion capabilities to a modem at approximately $10 to $15 million. If all of today's over 10 million personal computers were to purchase such devices, the additional cost would be about one dollar per-unit. Since simple low-speed 300 baud modems today cost about $50 to $150, and the simple 1200 baud modems more commonly used for business applications (and increasingly for non-business applications) today cost about $250 to $500, it can be seen that even if IBM's numbers are off by an order of magnitude, potentially the additional cost still is not very significant.

[57] We foreclose such disparate pricing *infra*.

[58] But, the reason this efficiency is not available to others is that the BOCs do not propose to allow others to collocate in their central offices, not that the BOCs propose to offer an instrinsically more efficient service. Also, it must be emphasized that within-office wiring is not without cost. The conventional telephone facilities to which such wiring is connected are used the same whether a loop leaving the building or within-office wiring is connected to them. Installation and related expenses associated with making such connections similarly do not depend on the length of the wire connected. The real differences would appear limited solely to the cost of the wires themselves, and to the fact that installers need not be dispatched to another premises, and sustain travel costs, to complete installation of the premises end of a loop elsewhere.

the public that are higher than they would be if such economies were reflected. For this reason, an approach that might average the costs of loops actually used by others with the within-office wiring to be used for comparable purposes by the BOCs is problematical. We decline to do so herein, but note that the conditions we are adopting will ensure that only true cost differences between the loops and within-office wiring will be reflected.

77. Third, the actual proposals now before us are for implementation of packet switched services within the central offices that are largely no different than those of the VANs and enhanced service vendors. The BOCs would use PADs and similar devices obtained from essentially the same suppliers as those that the VANs and enhanced service vendors use. They would functionally connect them with the telephone facilities no differently than the VANs and enhanced service vendors do (except that within-office wiring would replace certain local loops required by others, as discussed *supra.*). However, in addressing these petitions we cannot ignore the technological trends in telecommunications. Packet switching is heading rapidly for integration with facilities for conventional telephone service. We probably can treat the present proposals independently of the state and federal regulatory treatment of conventional telephone service. We cannot realistically do so when both groups of services are integrated, given that local exchange telephone service and use of local exchange facilities for interstate access presently represents a near-monopoly. *See generally,* Bypass of the Public Switched Network, FCC 84–635 (released January 18, 1985). To do so might lead to premature deregulation of conventional telephone services not because there is effective competition therefor, but because they are to be integrated with packet switching technology. DOV represents a first step towards such integration; ISDN potentially represents its culmination.

78. For this reason, we must resist in the context of addressing the pending waiver requests the Telenet approach of treating the entirety of packet switched services, including those that involve no end-to-end protocol conversion, as unregulated enhanced services. Packet switching can be used, and is used, to implement conventional switched and unswitched basic telecommunications sevices. The addition of an asynchronous/X.25 conversion option, that may or may not be selected on a given call, does not change this. Shortly after Computer II was adopted, we gave VANs and enhanced service vendors offering their services on a resale basis the option of treating both unconverted and protocol-converted offerings as unregulated enhanced services. In a subsequent Bureau order, *In the Matter of Tymnet, Inc. and GTE Telenet Communications Corp.*, #3018, released March 18, 1983,[88] we made clear that this was only an option, not a requirement. Under this order, Telenet and Tymnet were permitted to maintain tariffs on file for the unconverted offerings that might be made on their packet switched networks, notwithstanding that offerings involving protocol conversion also were made outside of these tariffs. Similarly, in our *Basic Packet Switched Service* ("BPSS") decisions [89] we squarely rejected the notion that packet switched services involving no end-to-end protocol conversion must be treated as unregulated enhanced services.

79. As is developed below, we believe that there are sound reasons not to treat unconverted X.25/X.25 packet switched services as unregulated at this time, and we treat this offering as basic; but this is not an immutable decision. We will soon adopt a notice of proposed rulemaking in which we revisit the general treatment of protocol conversion under Computer II, and this will be an issue to be addressed in that proceeding. The treatment we are adopting herein is one to be employed *pendente lite,* and is fashioned to maintain our options in the rulemaking proceeding and to ensure that certain conditions we are adopting are carried out.

80. And fourth, there is validity to the arguments of IBM, Northern Telecom and BellSouth that there are differing efficiencies associated with packet switched services involving no protocol conversion, packet switched services involving asynchronous/X.25 conversion, and alternative terminal designs implementing the asynchronous or X.25 interfaces. Given that packet switched communications overall is more efficient if the asynchronous format is not used in conjunction with such communications, we will not allow the BOCs ubiquitously to deploy asynchronous-compatible packet switched data communications services priced no differently than ones using the X.25 format. To ensure that others' protocol conversion offerings (be they in terminals, or centrally located) can be compared with those of the BOCs, we adhere to the "unbundling" principle of the *Protocols Decision* which required that protocol conversion options be priced separately from the underlying basic services, and we require the impact of protocol conversion on the basic X.25/X.25 service to be reflected in the pricing of the latter.

B. Decision on the Petitions

81. We conclude generally that the BOCs have adequately demonstrated that the public interest would be served by allowing them to provide asynchronous/X.25 conversion in facilities collocated with their central offices. In areas where the VANs and existing enhanced service providers are currently offering comparable services, the benefits to the public of additional competition by the BOCs will be enjoyed, particularly in view of the conditions we are adopting to ensure that the BOCs' competition will be fair and not at the expense of subscribers to regulated services. Moreover, the BOCs propose, if the requested waivers are granted, to offer such services in areas that are not effectively served by existing vendors. Subscribers in such areas, and those that might wish to engage in efficient data communications with them, will receive the direct benefit of receiving such service for the first time from the BOCs.

82. Provision of such services by the BOCs promises to bring to the public lower prices for asynchronous format-compatible packet switched service than are available from existing providers of such services. There are efficiencies (and concommitant lower costs) that can be translated into lower prices when certain loops involved in these services are replaced by shorter wires. In the absence of the waivers, the BOCs would have to use loops, and could not employ within-office wiring. While we discuss below how some claimed "efficiencies" are merely pricing disparities, and we condition against maintenance of this disparate pricing, other claimed efficiencies seem real. In our view, the public should not be denied their benefit.

83. More importantly, provision of such services by the BOCs at the first central office to which an end-user is connected promises real efficiencies over time in the use of exchange and interexchange facilities, and will make unnecessary additional construction of facilities, the costs of which would raise local telephone rates. "Bursty" data communications today are inefficiently carried on circuit-switched telephone facilities, whether those facilities are used for end-to-end communications, or

[88] This order is reproduced in Appendix B of this decision.

[89] AT&T (BPSS), 91 FCC 2d 1 (1982); AT&T (BPSS), 94 FCC 2d 48 (1983).

to access the packet switched facilities of a VAN or other enhanced service vendor. A circuit-switched circuit is tied up and unavailable for others' use for the entire duration of a call, even if actually used for a small percentage of the connection time. Furthermore, data calls typically have durations far longer than the average ones for voice communications. Since current facilities are designed to handle peak loads based on average call durations, the increasing volume of lengthy data calls must be met with new construction or service quality will drop for both data and voice users. The record herein demonstrates that this effect is already occurring, and will accelerate in the future.

84. The BOCs argue that this need not and should not occur. If packet switched data communications facilities are available to which this type of traffic can be diverted, far less investment in additional facilities will be needed to trasnport the data.[61] Since, however, the overwhelming majority of current data terminals are asynchronous, there will be little diversion of data communications from circuit switched to packet switched facilities, unless the BOCs can efficiently and effectively interface with asynchronous-format traffic at the first central office accessed by these terminals. The packet switched services of the VANs and others mitigate this problem only to the extent that their ports connect to the same central office as their users' terminals. In most cases, however, they have a central port in each region they serve, particularly in regions where there are large exchange service areas. Every call accessing their packet switched facilities is carried inefficiently through multiple telephone company central offices and the inter-office facilities that connect them. These inefficiencies must ultimately result in additional construction and higher local telephone service rates. We conclude that the public interest reflected in our statutory mandate would best be served by ensuring that such inefficiency is avoided.

85. An additional basis for concluding that the waivers should be granted is provided by the BOCs' argument that "information age" enhanced services have not grown because communications costs have not been sufficiently low. The BOCs argue that if the communications costs inherent in these services drop, demand for these services will grow. Since many of the costs of these services are fixed, vendors can then drop unit prices to the public while maintaining adequate profits, further stimulating demand until a new equilibrium is reached. Larger segments of the public will receive the benefit of such "information services" and existing users thereof will have lower prices. Moreover, since these services tend to be more efficient than the manual information retrieval or other services they can replace, general efficiencies that can propagate through the economy will be created and encouraged. While this agrument is speculative, common sense indicates that it is possible that it is correct, and we accordingly weigh such potentially desirable results in assessing the public interest herein.

86. In this regard, it should be noted that while we conclude that the waivers should be granted, we do so on certain conditions. One of these is that the inter-office circuits the BOCs will use to support their packet switched services must be made available to the VANs and other enhanced service vendors on the same basis as used by the BOCs. If the BOCs are correct that lower prices can stimulate market growth to the benefit of the public, they will have strong incentives to promote the growth of their own packet switched services by bringing down the prices of the circuits. Because of our requirement for equal treatment of the other service vendors, the benefits of this will be available to the other service vendors as well.

87. Whether or not the BOCs' proposed offerings are more efficient than those of the VANs and other enhanced service vendors, there is a strong likelihood that the BOCs' offerings will be less expensive than those of others because their facilities will be more local. A VAN's offering unquestionably can be used for relatively local communications. However, the VANs have constructed nationwide networks that include costly long distance circuits. Since they have generally employed distance-insensitive pricing, users of relatively local transport defray part of the costs of the long distance circuits. In contrast, the BOCs are proposing to construct relatively local networks only. Indeed, under the present constraints of the MFJ, they cannot offer interLATA services. Thus, the BOCs' facilities will be less costly, and their use for relatively local data transport can be priced lower than comparable uses of the VANs' facilities.[62] We conclude that the potential benefits to the public of this support a grant of the waivers.

88. And finally, we approach the waivers more broadly under our statutory mandate to promote the wide availability of "rapid" and "efficient" services. Under our Computer II rules and decisions, asynchronous/X.25 conversion is an enhanced service, but it has a direct and immediate nexus with communications itself. It is clear that communications efficiency, and the efficiency of many goods and services produced in our economy, can be promoted by ensuring that a technology that can be deployed to create efficiencies in communications is so deployed. The limitation in Computer II on deployment by certain carriers in their central officers of processing that implements enhanced services was not intended to foreclose overall efficiency. It was intended to promote competition that itself would create efficiencies to counter-vail those that might be lost by limiting such deployment. On balance, and in view of the record of this proceeding and the conditions we are adopting, we conclude that this broader goal of Computer II will best be served by granting the waivers as is done herein.

C. Application of Protocols Decision Principles

89. We now apply specific principles of the *Protocols Decision*, under which requests of this nature are to be analyzed, to the petitions before us. First, since an intermediate internetworking protocol is not involved here, the main portion of the first principle of the *Protocols Decision*, 95 FCC 2d at 594, is irrelevant. Conversion of user terminal protocols is not the type of protocol conversion that would ultimately be limited in use to a few other carriers or enhanced service vendors, even if the X.25-compatible terminals could be considered "few" in this context. Ultimately, there will be many more X.25 terminals than presently, and we conclude that these petitions should not be treated under the

[61] Pacific Northwest Bell, for example, estimates that it would cost $40 milion to grow the circuit switched network to meet future data transmission demands, as compared to $22 million needed to accommodate those demands on packet switched network. Reply Comments (June 11, 1984) p. 25.

[62] This effect is not limited to the BOCs. Anyone is free today to offer a relatively local enhanced service that similarly uses only relatively local facilities, but we are not aware that such services are available. Existing service providers are also free to employ distance-sensitive pricing that similarly would cause relatively local transport not to sustain the costs of long distance facilities, but they presently do not do so. The BOCs argue that a market for such transport exists and can be stimulated, but is presently not served by vendors focusing on it. In part because of the MFJ restrictions, the BOCs are willing to develop such a market.

de minimis principle of the *Protocols Decision*, *Id.*, n.13. On the other hand, the second portion of the first principle, that the underlying basic offering remain a truly general one, will be satisfied. Not only do the BOCs propose to offer standard X.25/X.25 unconverted packet switched data communications services;[63] but also, via our "unbundling" conditions *infra.*, we are requiring that inter-office channels and subscribers' loop access remain available generally and unencumbered.

90. Second, the BOCs' showings under the second (unbundling) principle of the *Protocols Decision* are deficient. Underlying transparent transmission facilities that are "comparable in price, quality and conditions of service to [those] built into the offering to be associated with protocol processing" are not available generally. The BOCs propose to build into their offerings the use of inter-office channels at a preferential price that will not be available to others. They give limited, if any, assurances that subscribers accessing BOC protocol conversion capabilities and subscribers accessing those of the the VANs will do so on a comparable basis. They argue that the X.25/X.25 unconverted packet switched service is "the" underlying basic service for this purpose, and that the rates for facilities that are used to configure it should, therefore, not be unbundled any more that are other inter-office and loop facilities used to complete conventional telephone calls. For example, they note that just because inter-office channels are used to complete conventional local telephone calls between adjoining exchanges, use of these channels is not unbundled; their book costs are aggregated in the revenue requirements that determine rates for local calling. They argue for a similar treatment here.

91. This argument might have validity if the use of monopoly local exchange facilities by competing BOC and VAN packet services followed the familiar pattern set by long distance companies in their use of the local exchange. As long distance competition has evolved, most competitors have used monopoly exchange area switching and inter-office circuits *in tandem with* their long distance facilities. Under these circumstances, material concerns have not arisen about possible anticompetitive effects of allowing the BOCs to bundle the cost of inter-office circuits into their rates for basic local exchange service. All competitors receive local exchange service on the same terms, and under the MFJ, the BOCs providing that service are not themselves using the local circuits to compete in the long distance market.

92. When the existing packet service vendors began ten year ago to deploy their networks, there were no local packet networks analogous to the local exchanges used by the long distance companies for local access. The VANs therefore developed networks which included both local and long distance components. The BOCs, who until now have played the role of wholesalers supplying circuits needed to complete the VANs' networks, now wish to use those circuits to create services which would compete at the retail level with the VANs' local services. Those BOCs which appear to acknowledge the anticompetitive effects of allowing BOCs to pay lower prices for these circuits than those paid by their competitors candidly state [64] that they envision their local packet services as monopoly local data exchanges operating in tandem with the VANs and others' long distance packet services.[65]

93. We are not now prepared to acquiesce in an interpretation of our rules which allows the BOCs to use their monopoly position as the supplier of inter-office circuits to enter a currently competitive market and then unfairly eliminate local competition.[66] In analogous circumstances, when we determined not to apply structural separation to the one-way paging operations of wireline carriers, we recognized problems that could arise in areas where radio common carriers' paging services competed with those of the wireline carriers. We stated that, to avoid price squeeze effects, we would require any wireline carrier providing paging service to fix its charges to radio common carriers for wireline facilities on the identical basis that it uses to compute its own costs for its own paging service.[67]

94. Likewise, because disparate pricing of inter-office channels can directly affect competition between the BOCs and the existing packet service providers, and, importantly, with no gain in efficiency (since the *same* underlying communications channels are involved), we must require that these channels be available to others on a basis comparable in price, quality and conditions of service to that of their use by the BOCs in configuring their packet switched networks, as a condition on the grant of the requested waivers. This requirement does not depend upon whether the X.25/X.25 packet switched service is considered "the" basic one underlying the asynchronous/X.25 protocol conversion offering, or whether only the inter-office circuits themselves are so considered.[68] Because of the

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[63] The related concern, adverted to at 95 FCC 2d at 595, n.14, that protocol conversion could be tailored specifically for a given supplier's terminals, giving that supplier (or a BOC, if it were offering that supplier's terminals) an unwarranted advantage over others, does not arise here. The asynchronous protocols that the BOCs seek to support through asynchronous/X.25 conversion are the most common and ubiquitous ones available in the data communications market. It is precisely for this reason that the BOCs seek to support them.

[64] See, *e.g.*, Reply Comments of Pacific Northwest Bell (October 23, 1984) at 6; NYEX Petition for Declaratory Judgment, or Waiver (April 27, 1984) at 2.

[65] Since, under the MFJ, the BOCs may not offer interLATA communications, for interLATA data communications their local packet switched networks would have to be interconnected with services or facilities of an entity that is permitted to offer interLATA service. In many cases, such interconnection would be to a long distance packet switched network, using the X.75 intermediate internetworking protocol. In this type of service, the analogy to current forms of exchange access where local transport and switching costs are aggregated (without unbundling of inter-office circuits) in determining access rates would be more apt; here, the local exchange facilities would be used in tandem with the long distance ones. But, intraLATA end-to-end enhanced services are also possible and are provided over the networks of the VANs and other enhanced service providers. In such cases, use of the BOCs' packet switched facilities would be unnecessary, and aggregated pricing of the inter-office circuits when used in conjunction with the BOCs' packet switched services, but not those of the others, would be disparate.

[66] *See, e.g.*, United States v. Aluminum Company of America, 148 F.2d 416 (2d Cir. 1945). More recently, the Supreme Court ruled in Federal Power Commission v. Conway, 426 U.S.C. 271 (1976) that the FPC (now FERC) must consider, in setting wholesale electric rates, whether the rates it sets will interact with state-established retail rates to create price squeeze opportunities. Since that decision, price squeeze doctrine has been used by municipal utilities challenging the regulated rates charged by their suppliers. *See, e.g.*, Boroughs of Ellwood City v. FERC, 731 F.2d 969, 988–975, (D.C. Cir. 1984), and cases cited therein. FERC and the courts have evolved tests for determining whether a particular pair of wholesale and retail rates, just and reasonable in themselves, combine to create a price squeeze. *See id.* at 989. In the present context, however, we need not perform elaborate tests on proposed rates to determine whether the BOCs proposals could lead to a price squeeze. The BOCs themselves have averred that if they must acquire their inter-office circuits at the going wholesale price, that is, at the tariff price paid by the VANs, they themselves will not be able to offer packet service at the low retail prices which they propose and which they claim are necessary to stimulate the market for local data service. This is a price squeeze and, in our judgment, an inappropriate, anticompetitive use of their monopoly control of local exchange facilities.

[67] First Report and Order in Docket No. 80–183, 89 FCC 2d 1337, 1346 n.17 (May 13, 1982); *Cf.* Mobilefone of Northeastern Pennsylvania v. FCC, 682 F.2d 269, 272 (D.C. Cir. 1982).

[68] The second principle of the Protocols Decision was never so limited. It addresses "underlying transparent transmission facilities" (which these circuits undeniably are) being made available in a matter comparable to those "built into the offering to be associated with protocol processing." These circuits will be "built into" the BOCs' packet switched offerings to be associated (via the waiver) with asynchronous/X.25 conversion.

special considerations involved in the competition that will be facilitated between packet switched services of the BOCs and those of others that under present circumstances depend on the BOCs' inter-office circuits, we shall require this form of unbundling even if the X.25/X.25 unconverted packet switching service might otherwise be thought of as "the" basic one.[69]

95. An additional dimension of the unbundling requirement of the second principle of the *Protocols Decision* is that the protocol conversion itself must be priced separately. We explained that this requirement would maintain the ability of others to perform protocol conversion themselves, 95 FCC 2d at 595, and that would facilitate any necessary regulation of the underlying basic service, *Id.* at n.14. These goals are particularly important here, given IBM's assertion that unwarranted action on the petitions could arrest present trends in the terminal design towards more efficient synchronous terminals. Use of such terminals is an alternative to centralized protocol conversion, and is, therefore, a form of "competition" with both the centralized asynchronous/X.25 conversion capabilities of the existing VANs and enhanced service providers and with those the BOCs wish to provide.

96. As noted, it has been argued that if there were no price differential between the X.25/X.25 service used by a terminal communicating in the X.25 format and the asynchronous/X.25 service which would be used by most existing data terminals, neither users nor manufacturers would have significant incentives to substitute X.25 terminals for asynchronous ones. Even if the X.25 terminals are more efficient, manufacturers would have little incentive to sustain the "up front" costs of producing new terminals (or convertors for existing terminals) when they could continue to earn profits using existing designs. If they were nevertheless to produce such products, the benefits that users would perceive might be so limited that they would not choose to sustain the additional expense of purchasing such equipment. IBM's view is that widespread use of X.25 terminal equipment would rapidly bring down the pre-unit costs, since large fixed costs would be spread among the units produced. If users did not start to purchase them in large numbers, however, the per-unit costs would remain high. Were this the sole basis for a differential price, it would not be justifiable on policy grounds.

97. However, the record indicates that there is a cost basis for establishing an economic price difference between X.25/X.25 service and asynchronous/X.25 service. The additional investment cost of acquiring PADS that incorporate asynchronous/X.25 conversion capabilities, as compared with those that might not, might well be perceived by the BOCs as virtually zero, since only PADs with such capabilities are generally available in the market.[70] As was explained by Northern Telecom in informal comments herein, however, there are cost differences in the operation of a packet switched network that occur when the PADs are, or are not, used in the asynchronous/X.25 conversion mode.

98. Northern Telecom's analysis is complex, and depends upon whether or not users will accept delays in through transmission, a perception that in part depends upon the speed of transmission. The essence is that the processors implementing a packet switched network node have finite capacity, and more of that capacity is utilized by ports requiring asynchronous/X.25 protocol conversion than by ports not requiring such conversion, leaving less capacity available to handle communications at remaining ports. If asynchronous/X.25 conversion is proceeding at a port carried on that processor, less capacity remains available for handling transmissions from the other ports carried on the processor than would be the case if no asynchronous/X.25 conversion were being performed. Since the nodes have storage capabilities, and can also shut off an originating terminal when such storage is full through X-ON/X-OFF flow control (if the terminal supports flow control), transmissions from the other ports may not be lost if processing capacity is taken up by protocol conversion at other ports, but they will be delayed. The result is lower "throughput" of data on such ports than would be the case if protocol conversion were not being performed at other ones. In sum, communications efficiency is reduced for the user of all the terminals seeking to use the node simultaneously and for the packet switched network as a whole, when asynchronous/X.25 protocol conversion is being performed.

99. Specifically, Northern Telecom indicated, in a worst case analysis, that at 9600 baud its SL–10 processors could handle five asynchronous ports (i.e., with protocol conversion) as compared with thirty synchronous ones (i.e., with no protocol conversion) simultaneously.[71] Thus, in this worst case each asynchronous/X.25-converted input to the node reduces the potential communications capabilities of the node six times, a clearly less efficient result than would be the case if the node carried only synchronous (unconverted) communications. Stated another way, all other factors being equal a port used in the asynchronous/X.25 conversion mode is equivalent to six ports used in unconverted mode, worst case. This difference could conceivably justify a six-fold increase in the pricing of the switching component of a packet switched service in the protocols conversion mode, over the unconverted mode.

100. Northern Telecom indicated that this concern was weighed in by Bell Canada when it set its tariffed rates for packet switched data communications services that do and do not involve protocol conversion.[72] Its tariffed rates for asynchronous-compatible packet switched service are as much as fifty percent higher than for X.25-format service, according to an analysis submitted by BellSouth.[73] BellSouth

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[69] We address in the next section of this decision how this requirement might be satisfied by the BOCs. In formulating the second principle we stated that "we will require that if any waiver is to be granted, it be granted solely on condition" (to be imposed by this agency) that the underlying capabilities be generally available. We thus did not explicitly require an affirmative showing by the petitioners, but only indicated the nature of the conditions we would adopt. Thus, the failure of the BOCs to indicate how this principle will be served is not fatal. We can and will cure this deficiency through the adoption of appropriate conditions.

[70] We do not accept the implication that therefore there is no investment cost associated with protocol conversion. Such capabilities do not exist in virtually all PADs on the market, but they did not arise at no cost. Capital was expended to create such capabilities when the PADs were designed, and a detailed cost analysis could, at least in theory, identify separately the costs of such capabilities. In treating the requirement that the costs of the PADs associated with protocol conversion be removed from regulatory accounts, *infra.*, we suggest two bases for determining the proportion of the PAD investment that is related to protocol conversion. Our discussion in the next three paragraphs, however, addresses an *operational* cost difference, not an investment one.

[71] A "port" in this context is a single end-user connection to the packet switch. A "node" is the group of such ports at the location of the packet switch, the packet network's "node".

[72] In Canada, which has not adopted the Computer II treatment of protocol conversion, there is no impediment to the tariffing of protocol conversion, and it is treated there no differently than a basic service. Thus, conversion from asynchronous to X.25 protocols is treated as a separate element in Bell Canada's transport tariffs, to be applied in addition to the X.25/X.25 transport element if such protocol conversion is used.

[73] Also, it should be noted that the switching cost component is but one component of the costs of providing packet switched service. Other major components would include the costs of the circuits between these switches and the overheads associated with the offering. Thus, a given percent differential in overall pricing may reasonably reflect the much higher differential in expense that could

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asserted that there has been no adverse effect on the development of synchronous terminals in Canada under this pricing approach. We conclude that a similar technique is an appropriate one for us to employ here to achieve this second goal of the unbundling requirements of the *Protocols Decision*.[74]

101. The third principle of the *Protocols Decision*, 95 FCC 2d at 595, is conformed to by the petitions. The BOCs are proposing to collocate only protocol conversion capabilities in their central offices. Their proposals involve neither processing that creates, deletes or changes information itself, nor subscriber interaction with stored information.

102. And finally, we conclude that on balance, and as conditioned below, the proposals of the BOCs will be consistent with the fourth principle of the *Protocols Decision*, 95 FCC 2d at 595–96. We concluded there that requests would be treated "more favorably" in circumstances where "the performance of the basic network can be improved materially only by provision of protocol processing in the network, and not where others can do so outside the network." *Id.* Clearly, others can and do perform such conversion outside the network, seemingly placing the BOCs' petitions in the less favored category. The VANs and other enhanced service vendors do so centrally in facilities outside the network, and terminals themselves increasingly can and will do so, also outside the network. The BOCs themselves can perform asynchronous/X.25 conversion outside the network, either as an adjunct to a basic X.25/X.25 service offered on a regulated basis, or in packet switching facilities outside the network operated by a separate affiliate no differently than the VANs and other enhanced service providers.[75]

103. However, we did not conclude that proposals falling in the less favored category would or should automatically result in a denial. Rather, we established a balancing test. In the case at hand, the balance falls on the side of the improvements potentially available to the public if the BOCs are permitted to collocate asynchronous/X.25 conversion in their central offices subject to the conditions we are adopting herein.

104. Specifically, we conclude that the BOCs have shown that there will be a material improvement in local communications efficiency if data transport is shifted from inefficient circuit-switched uses of local exchange plant towards more efficient packet switched uses thereof. Only deployment of local packet switching capabilities can move towards this result.[76] Since the vast majority of terminals are not compatible with the X.25 format, local packet switching will not be used if the BOCs cannot deploy local packet switching capabilities that are compatible with the millions of asynchronous terminals now available. The conditions we are adopting herein are fashioned in part to seek to ensure that the VANs and other enhanced service vendors also can participate effectively in this movement towards communications efficiency. Denial of the petitions, however, would block such movement for the present.

105. Furthermore, we conclude that allowing the BOCs to provide local packet switched services, under the conditions we are adopting to ensure equality of treatment in the pricing of the inter-office channels and of access by end-users to such services, will create incentives for the BOCs to make available new, less expensive inter-office channel offerings and new subscriber loop service offerings that will foster the growth of data communications generally and "information age" data communications services specifically. We accept for the purposes of this decision the proposition put forth by various participants to this proceeding that such services may have been priced excessively. Overpricing may have inhibited growth that otherwise might have been possible. Our condition will promote such growth, to the public's benefit; and, it will ensure that existing and future packet switched service providers, including the BOCs, will participate in serving such growth, to their benefit.

106. In sum, under the fourth principle of the *Protocols Decision* we conclude that the public interest would be served by a grant of waivers of Computer II to permit collocation by the BOCs of asynchronous/X.25 protocol conversion in their central offices subject to the conditions detailed below.

D. Scope of the Waiver; Conditions

107. In this section, we adopt a waiver of the Computer II structural separation conditions to permit the BOCs to collocate asynchronous/X.25 protocol conversion capabilities with their central offices on three primary conditions: (1) That the BOCs treat equally the inter-office communications channels supporting their packet switching services involving the asynchronous/X.25 conversion, and those used by others; (2) that the asynchronous/X.25 conversion be priced separately in the form of a surcharge on the price for unconverted packet switched communications service; and (3) that the end-subscriber loop services that might access both groups of packet switching services [77] be available equally to users of both groups of services. We particularize this third condition for the DOV technology by requiring that any DOV services that are to be made available to the public for access to the BOCs' packet switching services be available for access to others' services on a comparably efficient basis. Each of these conditions is detailed and explained below. But first, we address the scope of the waiver we are granting, and certain information filing requirements that must additionally be conformed to prior to the waiver becoming effective.

108. *Scope of the Waiver.* Neither the *Notice of Inquiry* in the protocols proceeding nor the *Protocols Decision* itself held out the possibility of broadly dispensing with the classifications and protections of Computer II via waiver. The principles we set out therein were intended to apply to requests for waiver of the limitation on collocation at central offices of protocol conversion

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be justified in pricing the operation of the switches alone (as noted, as much as six to one).

[74] In the next section of this decision, we describe the condition that we are fomulating to reach a comparable result. It should be emphasized that we are not adopting the specific percent differential used by Bell Canada, which may be based on the characteristics of products of one manufacturer, Northern Telecom. Rather, we are adopting a more general approach.

[75] The VANs argue that Computer II appears to grant the BOCs the option of removing the entirety of packet switching service, with and without protocol conversion, from regulation. We are not as sanguine as the VANs on this point, since a major policy objective of Computer II was that innovation in communications capabilities should occur in the regulated network available to all, rather than in unregulated offerings available to a chosen few. Packet switching technology is such a technological innovation, and in our Basic Packet Switched Service decisions we concluded that AT&T's decision to include it in common carrier offerings available generally was in the public interest. In any event, we need not and do not in this decision reach the policy implications of the BOCs removing the entirety of packet switching service from regulation and offering it on a wholly separated unregulated basis. They are not seeking to do so. They are seeking to commingle facilities for the undeniably enhanced service of protocol conversion with their central offices, and in most cases to offer the X.25/X.25 service as basic.

[76] As explained above, the offerings of VANs and enhanced service providers do not move towards this result; they reach the contrary one.

[77] We address here only the end subscriber loops to which the data terminals themselves are connected at subscribers' premises, not the loops used by VANs and enhanced service vendors to connect their PADs and similar equipment with central offices in lieu of the within-office wiring that would be used if such equipment were collocated in the central offices.

equipment. We contemplated neither waiver of the requirement that enhanced services be marketed by a structurally separate affiliate, nor waiver of the classification of protocol conversion as an enhanced service.

109. The BOCs, on the other hand, seek waiver of all structural separation conditions; several, indeed, go further and ask us to treat asynchronous/X.25 conversion as an element of basic service. Their showings, however, while convincing with respect to the public benefits which may flow from waiver of collocation restrictions, are wholly inadequate to justify further waivers of structural separation. We are particularly concerned with the failure of the BOCs to offer any alternative safeguards to the joint marketing prohibitions which they ask us to waive. Telenet and Tymnet, two long-standing vendors of basic and enhanced packet switched services, point out in their pleadings that marketing costs represent as much as 25–30% of the total costs of doing business for a mature packet service vendor. It seems appropriate to assume that the BOCs, who claim to be developing new markets not yet exploited by the VANs, will incur marketing costs as high as or higher than those experienced by Tymnet and Telenet. To preserve the fundamental goals of Computer II with respect to preventing cross-subsidization of enhanced services by basic service ratepayers, it is essential that marketing costs for protocol conversion, an enhanced service, be separated from marketing costs for basic services, including basic packet switching. Some BOCs have not offered any proposals for exclusion from regulated accounts of costs for marketing unregulated services.[78] Others have put forth various formulas, some of which do not appear to guard against underallocation of marketing costs to the customers whom they expect to use their services.[79] No company has made a persuasive argument that there are any public benefits to be gained from allowing joint marketing which would counterbalance loss of the safeguards of structural separation. Because of the nature of the waivers we are granting herein, we need not address further the merits of the BOCs' filed plans. In the absence of probative additional showing, *infra*, at paras. ——, structural separation of marketing will not be waived.

110. Absent such additional showings, in this order we waive only the collocation restrictions. Incidental to this waiver we also waive the ban on joint installation and maintenance, but only to the limited extent necessary to allow installation and repair of the protocol conversion equipment itself by unseparated telephone company employees.[80] Furthermore, to ensure that subscribers to basic service do not cross-subsidize such installation and repair operations on behalf of the separated affiliate's enhanced protocol conversion offerings, we shall require that a contract be entered for compensation of the telephone company for such installation and repair, and that it be filed with the Commission and accepted prior to the waiver becoming effective.

111. Furthermore, we shall require each telephone company to apportion and remove from "above the line" regulatory accounts the investment and expense associated with protocol conversion. Where protocol conversion is performed in separate equipment not used otherwise for the provision of basic service, this requirement should be relatively simple to satisfy. The record, however, indicates that in many cases protocol conversion is to be performed in the same processors that create the packed switched channels and switch traffic. Since those processors are also used in providing unconverted transmission services that we are treating herein as basic, apportionment of costs may be difficult to accomplish. If the entirety of the packet switched service were treated as enhanced, apportionment would be unnecessary; the entirety of the investment and expenses associated with the equipment would be removed from "above the line" accounts. However, there is validity to the claim of those petitioners that argue that when X.25/X.25 service is being provided, all that is being provided is a basic service.

112. We do not decide here the fundamental question, raised directly by Telenet, of whether such X.25/X.25 service provided in facilities that also support the enhanced asynchronous/X.25 service (under the waivers we are granting herein) should ultimately be treated as basic. We need not decide that question here. It is clear that such service *can* be so treated, as it falls under none of the definitions of enhanced service in § 64.702(a) of our rules. We conclude that during the pendency of the rulemaking proceeding we will soon institute, the X.25/X.25 packet switched service (and any X.75 interfaces that might be made available thereon) should be treated no differently than other basic services. This determination is without prejudice to our resolution of this issue in the rulemaking proceeding. We reach this result, which should be regarded as one *pendente lite*, for two reasons. First, it preserves the options available in the rulemaking proceeding, one of which is a proposal that the current line between enhanced and basic services be refined. And second, it provides a vehicle for making effective the conditions we are adopting on unbundling of protocol conversion. But, given this treatment, it is important that an appropriate technique be employed by the BOCs to separate from the investment and expenses associated with the PADs and other packet switching equipment a realistic portion to be removed from "above the line" regulatory accounts.

113. For this purpose, we reject the notion that the protocol conversion capabilities of the PADs were created at no cost, and that therefore their purchase prices represent no economic value for protocol conversion. It is true that PADs probably are not available for purchase by the BOCs that do not have protocol conversion capabilities. Packet switching equipment is sold and deployed in worldwide markets where protocol conversion is treated no differently than unconverted packet switching services. Manufacturers competing on the world markets in the provision of such equipment must offer the full range of capabilities that there potential customers seek, including protocol conversion to support

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[78] NYNEX stated that it does not intend to utilize separate accounting procedures because protocol conversion is part of a basic service, but that it will adopt appropriate procedures if required to do so. NYNEX Responses at 11 (August 26, 1984). PNB and NWB have not offered accounting plans.

[79] Ameritech proposed to attribute to protocol conversion a portion of total operating company marketing expenses according to the ratio of protocol conversion revenues to total business and residence service revenues. Ameritech Petition, Exhibit F, p. 3 (August 8, 1984). Pacific Bell originally proposed a similar plan, then modified it in light of comments suggesting that this formula underallocated costs to protocol conversion. Pacific's revised formula applies to total packet switched service marketing costs, the ratio of protocol conversion revenues to total packet switching revenues. Pacific Bell Reply Comments, p. 29 (June 11, 1984). BellSouth proposes to track marketing costs for its packet switched services and allocate them according to the percentage of traffic which is converted or unconverted. That is, if 45% of all packets transported are converted from one protocol to another, then 45% of marketing costs will go below the line. BellSouth Accounting Plan, at 19–20 (August 27, 1984). Southwestern Bell's revised accounting plan stated that it would track costs incurred specifically for packet switching and allocate portions of common costs according to factors which it intends to identify at some future time. Southwestern Bell Reply Comments, Attachment 1, p. 9 (October 26, 1984).

[80] In view of the fact that in many cases the protocol conversion capabilities are integrated with the packet switches themselves, a contrary treatment of installation and repair would be inefficient and impracticable.

communications by the millions of asynchronous terminals available in other nations no differently than in the United States. The fact that the equipment is sold only with these capabilities does not imply, however, that protocol conversion capabilities were created or implemented without cost, or that such cost is not inherent in the purchase price of the equipment.

114. One technique for separately identifying the protocol conversion portion of the PAD might be to examine the actual resources available in the PAD, and to establish a ratio between the resources available for protocol conversion and X.25/X.25 (or X.75) transmission that can be applied to the overall investment and expenses associated with the PAD.[81] A second technique might be to establish a ratio based on an estimate of the nature of the traffic traversing the PAD.[82] We reach no decision on the particular technique to be employed. Each BOC will be required to make a submission that demonstrates acceptance of the conditions we are adopting below, and we shall require them each additionally to select and justify an appropriate technique for apportioning the investment and expenses associated with the PADs.

115. As noted, the showings heretofore made by those BOCs seeking to market asynchronous format-compatible packet switched services without structural separation are unconvincing, and we reject them. The waivers granted in this order will not permit such marketing to be done on an unseparated basis. An issue to be considered in the rulemaking proceeding we will be instituting is whether such structural separation will be required for the future, and one potential outcome is that it will not. In such event, this matter would become moot thereafter. Nevertheless, we are willing to grant the BOCs additional authority to perform marketing on an unseparated basis earlier if they make the showings required below.

116. Specifically, each BOC seeking approval of a specific marketing plan must make a probative and fully documented filing that demonstrates: (1) How the costs of marketing asynchronous format compatible packet services by unseparated telephone company personnel will be identified and excluded from "above the line" regulatory documents;[83] (2) what marketing information, if any, will be available (and on what basis) to other enhanced service vendors to give them an opportunity comparable to that of the BOCs' unseparated marketing personnel to vend asynchronous format-compatible packet switched services to the BOCs' basic telephone service subscribers; and (3) how the petitioner's marketing proposals relate to conditions #2 and #3 which we are adopting herein. Any such filings will be placed on public notice, and comment will be solicited thereupon. After an appropriate comment cycle, we anticipate that the Bureau will act expeditiously on any such filings.

117. In view of the foregoing, the concerns of the VANs and other opponents of the waiver about potential cost misallocation are satisfied. The protocol conversion equipment and its installation and maintenance will be properly apportioned under the conditions set forth herein. If any BOCs additionally wish to market these services on an unseparated basis, they will be required to demonstrate convincingly that the costs of such marketing will be separately identified, not included in revenue requirements for regulatory services, and be auditable. Finally, those cost issues not related to equipment costs or marketing are addressed in the conditions below.

118. *Condition #1: Treatment of the Inter-Office Channels.* We have already established why the BOCs must make available to other providers of asynchronous/X.25 packet switched services, the inter-office channels the BOCs will be using to support their own services, without discrimination. Under present circumstances, BOCs are monopoly or near-monopoly providers of these facilities. It appears that, in the absence of an explicit requirement of equal treatment, the BOCs may engage in a classic "price squeeze", unfairly competing at retail with those to whom they supply inter-office channels at wholesale.[84] As was emphasized previously, the same channels are to be used by the BOCs and others; all that would differ, in the absence of this condition, would be the price.

119. The vehicle for ensuring against this anticompetitive and discriminatory result is in the provisions of the Computer II decisions addressing those carriers that are not subject to structural separation under Computer II. In the *Final Decision* we stated:

> . . . an essential thrust of this proceeding has been to provide a mechanism whereby non-discriminatory access can be had to basic transmission services by all enhanced service providers. Because enhanced services are dependent upon the common carrier offering of basic service, a basic service is the building block upon which enhanced services are offered. Thus, *those carriers that own common carrier transmission facilities and provide enhanced services, but are not subject to the separate subsidiary requirement, must acquire transmission capacity pursuant to the same prices, terms and conditions reflected in their tariffs when their own facilities are utilized.* Other offerors of enhanced services would likewise be able to use such a carrier's facilities under the same terms and conditions.

77 FCC 2d at 475, emphasis added. Although this language was clear and unambiguous, we re-emphasized the same point on reconsideration:

> Those carriers not subject to the separate subsidiary requirement, when employing their own common carrier transmission facilities in the provision of enhanced services, *must obtain transmission capacity pursuant to the terms and conditions embodied in their tariff.*

84 FCC 2d at 75, n.19. We conclude that this Computer II treatment of carriers not subject to structural separation should apply to the inter-

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[81] PADs and packet switches, like any other processors, are implemented by software. Some of this software implements the protocol conversion involved in this proceeding; the remainder implements the packet switching, handling, routing and channel creation functions necessary to provide unconverted X.25/X.25 service. While the actual software implementing these processors ultimately is in a machine language form usable by a processor, since the functions are complex it most probably was created in a form more comprehensible to programmers, either an assembler or higher-order language. Source code for this software undoubtedly exists, to document the design and to facilitate modification or revision of the PAD functions. A ratio could be established between the source code implementing protocol conversion functions and the source code implementing X.25/X.25 packet switching functions using a gross measure, perhaps through a count of lines of code or individual commands. We recognize that such source code is ordinarily proprietary, and may well be retained solely by the manufacturers of the PADs and not furnished to their purchasers. If this technique were to be employed, therefore, we would expect the BOCs to obtain the ratios—but not the code itself—from their suppliers, perhaps through appropriate contractual provisions in their purchase contracts.

[82] That is, if 80 percent of the traffic to traverse a PAD will have its protocols converted at that PAD, 80 percent of the investment and expenses would be removed from "above the line" regulatory accounts under this approach. It would be important that a common measure of the traffic traversing the PAD be employed in establishing such a ratio, and seemingly a common measure of bits per unit time of "throughput" should be employed. This approach might have the effect of excessively reducing the amounts to be included in regulatory accounts, but it would appear to be relatively simple and without burden.

[83] As an aspect of demonstrating separation of costs, any BOC seeking this additional waiver should explain fully the assumptions on which its proposed cost allocation formulae are based and show how it intends to test and verify the validity of those assumptions in practice.

[84] This could change to the extent that VANs and enhanced service providers substitute their own facilities for ones obtained from the BOCs, but at present they are not doing so in a significant way.

office transmission capacity that will be used by the BOCs when providing asynchronous/X.25 conversion in facilities that are not structurally separated.[86]

120. The BOCs have argued that paying for inter-office circuits at the same private line and DDS tariffed rates that the VANs and other enhanced service providers presently pay will unnecessarily raise the prices of the BOCs' packet switched services and undermine achievement of the benefits of their provision of such services.[86] This may be correct if it is assumed that current private line and DDS offerings are the only offerings of inter-office channels that will ever be available. But, this need not immutably be the case. The BOCs themselves have considerable control over what offerings will be available. Consistent with the goals of the Communications Act, the Commission would look favorably upon changes in such offerings, if appropriately available, that would allow the BOCs more fully to exploit the efficiencies they might have in offering this service.

121. Carrier-initiated offerings are the norm in regulated industries, and the BOCs are free to propose new offerings that are structured to promote the growth of data communications that they seek.[87] Based on their assertions during the course of this proceeding, they have positive incentives to do so. Under the condition we are adopting here, the benefits of such new offerings will be available not only to the BOCs, but also to others. We reach no conclusions and adopt no conditions on the rates they might propose. Rather, we adhere to the Computer II principle cited above that whatever rates, terms and conditions are made available to others in the BOCs' tariffs for inter-office circuits of this nature must identically govern the uses by the BOCs of such circuits to support the asynchronous protocols-compatible packet switched services that will be marketed by their structurally separated affiliates.

122. We wish to emphasize that it is the achievement of equal treatment, and not the manner in which it is achieved, that is the subject of this condition. For example, some BOCs may be permitted under governing state or Federal regulatory policies to supply inter-office circuits of this nature to the VANs and other enhanced service providers on a special assembly or special construction basis, rather than under a general tariff offering of a new service category. Availability of such supply would satisfy this condition—provided that the end result is equality of treatment. Other approaches which we do not at this time perceive may also be available. In any event, we and the public will have an opportunity to determine how a particular BOC would propose to discharge the obligation of complying with this condition. The BOCs will be required to file with us their proposed means of satisfying the condition, including sample state and federal tariffs that will offer the inter-office circuits to others on the same basis that they will be taken by the BOCs. These may be tariffs for existing or proposed services, or sample contracts if contractual approaches are available. They will also be required to file with us their proposed tariffs for X.25/X.25 packet switched service and to demonstrate that the costs of inter-office channels used in deriving those rates are based on the tariffed (or other) offerings that will be available to the VANs and other enhanced service providers. In addition, they must demonstrate that the investment and expenses related to the protocol conversion functions of the PADs (as discussed earlier) are not included in the costs underlying these rates.

123. Furthermore, we wish to clarify just what we mean when we refer to "inter-office circuits" in this context. We are referring to actual inter-office circuits implemented on wire, radio, or optical facilities (and associated equipment that terminates such circuits), not to the PADs and statistical multiplexing equipment that might be associated therewith for their use in packet switched service. The BOCs, and the VANs and other enhanced service providers, should be free to compete on how they choose to implement their packet switched services, on what mixtures of full packet switches and "satellite" access nodes might best implement their networks, and on the packet switching or related technology that they might employ. We do not wish to perturb this competition by requiring piece parts of one group of competitors' implementations thereof, the BOC's to be made available to other service vendors except through normal network-to-network interconnection.[88]

124. *Condition #2: Unbundling; Network Utilization Rate Element.* We are adopting a second condition on the waivers. If this condition is not complied with by a petitioner, its waiver will terminate automatically. Specifically, the tariffed service of X.25/X.25 transmission must include a separate network utilization rate element to be applied to the use of any port operating on an asynchronous protocol. This element will be computed as a percentage of the usage-based X.25 transmission charge, and must be additive with the rate(s) for use of a port for X.25 transmission. Based on analyses to be submitted to this Commission, we shall specify a minimum percentage for each petitioner, and that specified percentage will be a condition on the waiver granted to each such petitioner. This condition will apply regardless of whether a tariff for X.25/X.25 service is federal or state.

125. We have discussed previously why we conclude that a condition of this nature is needed. Such pricing will properly recognize that while protocol conversion capabilities in PADS when they are purchased may not carry significant additional investment costs,[89] it does affect the operation of the packet switched network facilities themselves in a manner justifying a surcharge on unconverted transmission when the protocol conversion is performed. The Northern Telecom informal submissions on this point, and the related submissions by BellSouth explaining Bell Canada's use of rate element reflecting the impact of protocol conversion on packet network performance and discussing how BellSouth would determine a surcharge for asynchronous use of its packet service, have not been analyzed in the record. Thus, while BellSouth's analysis, which leads to an approximate 19.8 percent surchage on the X.25/X.25 rate for transmission, appears to be

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[86] If we were to dispense with all structural separation of enhanced services provided by the BOCs, this baseline requirement would still apply. It certainly should and must apply if we are waiving only a subset of these requirements to permit collocation of asynchronous/X.25 conversion.

[86] This argument appears overstated. As was argued by the BOCs, their offerings would include the costs only of relatively local channels, while those of the VANs and other enhanced service providers today include the costs of long distance, and in some cases nationwide, networks even when used for relatively local communications. Thus, even if the BOCs' costs were to be raised artificially, they still would probably be far lower than those of others. Of course, this result depends to some extent on the currently-common distance-insensitive pricing by the existing providers of packet switched service, which can and may change.

[87] Indeed, there is an evolving policy, at least at this Commission, that flexibility in the pricing of private line services such as nondiscriminatory bulk discount offerings is desirable, and that flexibility in this regard should be accorded dominant carriers, including the BOCs. *See generally*, Private Line Rate Structure and Volume Discount Practices, —— FCC 2d ——, FCC 84-147 (released April 24, 1984).

[88] Of course, we do not constrain the ability of the BOCs to make such capabilities available should they desire to do so, or others to take such offerings. We simply do not here *require* them to be made available.

[89] This is the case because virtually all packet switching equipment available to the BOCs already incorporates protocol conversion capabilities.

soundly based, we have no basis for concluding that the particular rate element used by Bell Canada, or the one derived by BellSouth, would be proper in all cases. Various suppliers' packet switching and protocol conversion devices may have different operational characteristics that could justify different magnitudes for this rate element. Furthermore, such a rate element might be justifiable on a distance-insensitive basis (as Bell Canada has done), but we have no reason to anticipate that the BOCs will tariff their X.25/X.25 services at distance-insensitive rates to which a simple surcharge can be applied, as suggested by BellSouth.

126. For these reasons, we are not in this decision stipulating the magnitude of the network utilization rate element. As a condition precedent to the waivers granted herein becoming effective, we shall require each BOC to make a submission to us analyzing the effect on their tariffed X.25/X.25 transmission services of performing protocol conversion at a port, and deriving an appropriate network utilization rate element based upon such analysis. We envision that such an element would be proportionate with network utilization, and that it would not be related to non-usage costs that often are recovered through fixed charges in carriers' tariffs, such as service initiation charges. By further order, we may, if necessary, establish an appropriate minimum percentage to be applied to each petitioner's X.25/X.25 tariffed transmission charges in formulating the network utilization rate element. It should be emphasized that the percentage once established will be only a minimum; each BOC will be free to set the network utilization rate element at any level it wishes so long as the level exceeds the stipulated minimum.

127. Absent additional probative showings, *supra*, at paras. 115–16, it is the structurally separated affiliate and not the telephone company that will receive underlying X.25/X.25 service from the carrier under its tariffs, and will vend asynchronous format-compatible packet transport services to end-users. The network utilization surcharge will be a component of the charges paid by the affiliate to the carrier, and one of the costs the affiliate will be including in its prices for asynchronous format-compatible packet transport service. The affiliate will also be sustaining other non-zero costs that should be included in its prices, for example the portions of investment and expenses of the collocated equipment which are allocated to protocol conversion and the repair and installation expenses associated with that equipment, none of which are to be included in "above-the-line" regulatory accounts. Therefore, it may be well that the differential in prices for asynchronous format-compatible packet transport to be vended by the affiliate, and X.25/X.25 service to be offered by the telephone company, in practice will exceed the differential established by the network utilization rate element alone.

128. If a petitioner wishes to make the showings necessary for a further waiver of the requirement that the affiliate market asynchronous format-compatible packet transport, it will be free to do so. However, it must demonstrate that the result of this condition—a result that ensures a price differential between the pricing of X.25/X.25 service and asynchronous/X.25 service—will be maintained. One technique might be that the asynchronous/X.25 service will still technically be offered to the public by the affiliate, but that the affiliate could by contract compensate the telephone company for the provision of marketing service to the affiliate. Another might be that the telephone company itself would offer asynchronous/X.25 service to the public on an unregulated basis, on condition that it agree to reflect in its prices therefore the pricing differential established under this condition. We are less concerned with form than substance; it is the result that remain important.

129. *Condition #3: Access by End Users to the Packet Switched Offerings of the BOCs and Those of Others; DOV Access.* In our third condition, we address access from end users to the protocol conversion capabilities of the BOCs and those of others. This access may not be bundled with the rates for asynchronous protocols-compatible transport. It must be available on a tariffed basis, without discrimination in access to the BOCs' protocol conversion facilities and those of others. The proposals before us for collocation in the central office of protocol conversion equipment comparable to that of the VANs and other enhanced service providers, reach this result. End-users will access these collocated facilities through the dialing of a conventional telephone call (pursuant to general telephone service tariffs) or through private line facilities (again, pursuant to tariff). But this may change in anticompetitive ways, and by this condition we foreclose such changes.

130. For example, special dialing procedures could be made available with relative ease for access by end users to the BOCs' protocol conversion facilities and not to those of others, e.g. dial "star" to access the BOCs' enhanced services but dial 7 or 10 digits (or more) to access those of others. Other forms of preferential access could also be made available including special price "packages" of local telephone and enhanced service, or higher quality or more expeditiously installed connections. As noted, we have no basis for concluding that the BOCs in fact would seek to discriminate in such manner, but we wish to establish now that it will not be permitted. We do not by this condition foreclose the use of abbreviated dialing or other potentially desirable subscriber options; we only require that they be made available without discrimination.

131. Another aspect of this potential problem relates to the basis on which the protocol conversion equipment to be collocated in the central office will receive connections to end users. As noted earlier, we reject the notion that the pricing for such connections should be based on an averaging of the costs of within-office wires and the loops that those that may not collocate equipment in the central offices must use. Such an approach would destroy an economic efficiency of collocation and minimize the benefits thereof to the public. But, even within-office wires and terminations engender costs, many of which are identical to those engendered by loops. Since it is the affiliate that will be offering asynchronous protocols-compatible packet switched service to the public (unless the marketing restrictions are waived, the affiliate will be acquiring connections to the carriers' exchange facilities for such service. Such connections to the basic service of transporting signals from end-users' premises to the central office, and through any central office circuit switching that may be involved, should be offered to and received by the affiliate on a tariffed basis that reflects the cost of such connections (including any economies arising from within-office wiring).

132. While this obviously is the preferable approach, the BOCs may wish initially to avoid preparing cost analyses of this nature. If they so choose, they may simply take such connections under the same tariffs that govern others, although this may be less efficient than otherwise. In analogous circumstances involving central office-located connections between interstate private lines and exchange switches for foreign exchange service, carriers long utilized local business rates for the exchange connection through intra-

office wiring, notwithstanding that such rates were predicated on the cost of loops that were not employed. Alternatively, if they wish to reflect any cost efficiencies that may be involved, they must file with us prior to the waiver becoming effective both sample state and Federal tariff provisions that will govern the availability of such connections and the tariff provisions that will govern comparable connections used by the VANs and enhanced service providers. These filings should be accompanied by information that identifies and justifies any differences between the two sets of rates.

133. Our concerns about potential discrimination become particularly important if and when a BOC that receives a waiver under this decision seeks to utilize DOV technology to create one or more additional channels on a "piggyback" basis on subscribers' loops. As discussed previously, there is a design option available that would foreclose effective access by subscribers using DOV facilities to the offerings of VANs and enhanced service vendors, i.e., the option of choosing to terminate the central office ends solely in the BOCs' packet switching facilities, making the DOV facilities unusable for access to VANs or other enhanced service vendors' offerings. Under the condition we are adopting here, a BOC will not have this option. End-users of DOV facilities must be able to access a VAN or other enhanced service vendor over them, at their option, on a basis comparable in price, terms and quality to their ability to access services of the BOCs' Computer II affiliates.

134. We are not by this condition foreclosing the possibility that the central office end of a DOV facility might be terminated at a BOCs' packet switch (or "satellite"). To do so would deny subscribers a potential benefit of the DOV technology. Rather, we are requiring that such termination be merely an option, and that access to others' enhanced services also be made available as a subscriber option. To ensure that VANs and other enhanced service vendors can access customers using DOV facilities for such access on an efficient basis, we are requiring not only that the connections of the BOCs' affiliates to such DOV facilities be made on a tariffed basis, but also that the offering under tariff of connections by VANs and other enhanced service vendors to subscribers' DOV facilities be comparable in price, terms, quality and efficiency to that which the BOCs' affiliates will have.

135. We believe that this result is implicit in the requirement that the BOCs' affiliates receive underlying services—in this case end users' communications over DOV-created channels—no differently than others. Since the DOV facilities will be used as an adjunct to conventional telephone service, and have not yet been deployed to any great extent, we are able to particularize our overall condition specially for DOV. Use of multiplexers and/or concentrators to bring subscribers' traffic in aggregated form to a VAN or other enhanced service provider would appear to be an appropriate way that this obligation might be discharged efficiently. Alternatively, the BOCs may simply choose to terminate all DOV facilities in circuit switching facilities, no differently than the conventional telephone channels on which they will be "piggybacked." In such case, the subscriber could access a BOC's packet switched services (or those of its Computer II affiliate) no differently than those of a VAN or other enhanced service vendor, i.e., by dialing. Multiplexing and concentrating techniques might also usefully be employed to implement efficient connections of the existing services of the VANs and other enhanced service providers to the BOCs' exchanges, but since the BOCs have not employed them, the others' networks have not been configured to interconnect on this basis, leading to our less particularized conditions for connection to current facilities.

VI. Conclusion and Ordering Clauses

136. In view of the foregoing, we conclude that the public interest would be served by our granting the subject petitions for waiver, as delineated and conditioned in this order. We are delegating authority to the Chief, Common Carrier Bureau to act on the additional filings required of the petitioners, and expect such action to occur expeditiously. Furthermore, carriers other than the petitioning ones are subject to structural separation under *Computer II* and may wish to receive authority similar to that granted herein to the petitioners. We are delegating to the Chief, Common Carrier Bureau authority to grant to other carriers, upon request, authority similar to that granted in this order, subject to the conditions adopted herein and to their making the showings required here of the petitioners.[90]

137. By our action herein we believe that we are striking an appropriate public interest balance. Subscribers will have the benefits of efficiencies promised by the petitioners (and, potentially, others similarly placed), while mere pricing disparities and other forms of unreasonably discriminatory and anticompetitive conduct will be foreclosed. We believe that such result is fully consistent with the objectives of our *Computer II* proceedings, and the statutory objectives they are grounded upon.

138. Moreover, granting the petitions should not disturb the overall goals of our *Computer II* decisions. It appears that the offerings which the BOCs contemplate may complement rather than displace the offerings of the VANs and other enhanced service providers. Therefore, a goal of *Computer II*, the promotion of vigorous competition in enhanced services, should be furthered by our decision. In addition, the conditions we are placing on the provision of protocol conversion by the BOCs should reduce their ability to use their positions as dominant providers of local exchange service to compete unfairly in providing packet switched services incorporating protocol conversion.

139. Accordingly, pursuant to sections 1, 4(i), 4(j), 201–05, 218 and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i), 154(j), 201–05, 218 and 303(r), and § 1.3 of the Commission's rules, 47 CFR Chapter I, § 1.3, it is hereby ordered, That the Petitions for Waiver filed by Pacific Bell, Southern Bell Telephone & Telegraph Company, South Central Bell Telephone Company, New York Telephone Company, New England Telephone & Telegraph Company, New Jersey Bell Telephone Company, Pacific Northwest Bell Telephone Company, and the Ameritech Operating Companies are granted to the extent indicated herein subject to the conditions and additional filing requirements established in this order, and are otherwise denied.

140. It is further ordered, pursuant section 5(c) of the Communications Act of 1934 as amended, 47 U.S.C. 155(c), That the Chief, Common Carrier Bureau is hereby delegated authority: (1) To act on the additional filings required in this decision; (2) to particularize the network utilization rate element condition based

[90] In view of Northwestern Bell's refusal to respond meaningfully to the staff's information request, its petition will be denied in its entirety. We strongly advise this company, and others, to respond in the future to requests for information. However, we do not wish to penalize Northwesten Bell's subscribers unnecessarily for the carrier's failings. Therefore, Northwestern Bell will be permitted, if it wishes, to file a properly supported new request for waiver under the procedures we are adopting herein for addressing asynchronous/X.25 waiver requests of non-petitioners.

on such filings; and (3) to act on requests by non-petitioners for asynchronous/X.25 protocol conversion waivers.

141. It is further ordered, That the Secretary shall cause a copy of this order to be published in the **Federal Register**.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Comments and Reply Comments To Petitions for Waiver of the Computer II Rules To Provide Protocol Conversion

Comments to the protocol waiver petitions were filed by the following parties:

Base 10 Systems, Inc.
Dow Jones and Company
Uninet Inc.
Northern Telecom Inc.
Tymnet Inc.
International Business Machines Corp. (IBM) (attachment—Central Services Organization, Inc. Technical Advisory Local Area Data Transport (LADT) Generic Requirements)
National Cable Television Association (NCTA)
International Communications Association (ICA)
American Newspaper Publishers Association (ANPA)
GTE Telenet Communications Corp.
Association of Data Processing Services Organizations (ADAPSO)
RCA Cylix Communications Network, Inc.
Access Engineering Corp.
American Telephone and Telegraph Company (AT&T)
Digital Equipment Corp. (DEC)
MCI Telecommunications Corp. (MCI)
Integrated Communications Systems, Inc. (ICS)
Independent Data Communications Manufacturers Association (IDCMA)

Reply Comments to the Protocol Waiver Petitions were filed by the following parties:

GTE Telenet Communications Corp. (TELENET)
American Telephone and Telegraph Company (AT&T)
Ameritech Operating Companies (Illinois Bell, Indiana Bell, Michigan Bell, Ohio Bell, Wisconsin Bell)
Rolm Corporation
New York Telephone and New England Telephone
Pacific Bell
Mountain States Telephone, Northwestern Bell, Pacific Northwest Bell
Tymnet, Inc.
Southwestern Bell
North American Telecommunications Association (NATA)
New Jersey Bell
Southern Bell and South Central Bell

Appendix B—Memorandum Opinion and Order

In the matter of Tymnet, Inc., Tariff F.C.C. No. 3, Transmittal Nos. 50 and 51; GTE Telenet Communications Corp., Tariff F.C.C. No. 1, Transmittal Nos. 42 and 43.

Adopted: March 16, 1983.
Released March 18, 1983.

By the Chief, Common Carrier Bureau.

1. We consider at this time the above-captioned tariff revisions filed by Tymnet, Inc. (Tymnet) and GTE Telenet Communications Corporation (Telenet). By these revisions, which are scheduled to become effective on March 17, 1983, Tymnet and Telenet would "detariff" their service offerings which they consider to be "enhanced" under the Commission's *Computer II* decision.[91] Telenet, whose own proposal is unopposed, filed a petition to reject Tymnet's filing.[92] However, by letter dated March 10, 1983, it requests permission to withdraw its petition without prejudice to addressing the issues it has raised in light of further Commission actions which may be taken in related proceedings. In this regard, Telenet states that it agrees with the suggestion of the Association of Data Processing Service Organizations, Inc., that the issues raised by Telenet's petition here should instead be resolved in the *Digital Communications Protocols Inquiry*, General Docket No. 80-756, 83 FCC 2d 318 (1980).

2. On the basis of Telenet's request and our own review of the tariff materials submitted, we have determined that that are no questions warranting rejection or suspension and investigation of the revisions at issue. Moreover, it appears that the services which Tymnet and Telenet would continue to offer under tariff are basic. For example, as we understand Tymnet's tariff, both synchronous communications and asynchronous communications between access ports would be offered separately. Moreover, as we understand it, although changes in network access transmission speed would be performed in both cases, the tariffed offering would not also include code conversions.

3. For its part, Telenet would continue to offer under tariff communications between access ports with the offering emcompassing the use of several accessing protocols.[93] However, as we understand the offering, the same terminal protocol would be employed at each end of a given connection under the tariff, with no net charge of protocol or code involved. Thus, this offering also appears to be basic and may also be offered under tariff.[94] Therefore, we will grant Telenet's request to withdraw its petition and will allow these revisions to take effect as scheduled.

4. Accordingly, it is ordered, pursuant to authority delegated under § 0.291 of the Commission's Rules, 47 CFR 0.291, That the request of GTE Telenet Communications Corporation to withdraw its petition to reject is granted.

5. It is further ordered, That this Memorandum Opinion and Order is effective upon adoption.

Federal Communications Commission.

Gary M. Epstein,

Chief, Common Carrier Bureau.

Separate Statement of Commissioner Dennis R. Patrick

In the matter of Petitions for Waiver of § 64.702 of the Commission's Rules (Computer II) filed by:

Pacific Bell
Southern Bell Telephone & Telegraph Company and South Central Bell Telephone Company
Southwestern Bell Telephone Company
New York Telephone Company and New England Telephone & Telegraph Company
Northwestern Bell Telephone Company
Pacific Northwest Bell Telephone Company
Ameritech Operating Companies

March 21, 1985.

The Bell Operating Companies listed above have requested that we waive the Computer II structural separation requirements to permit them to offer asynchronous to X.25 protocol conversion through facilities located within their central office. Today we find such a waiver, properly conditioned, will serve the public interest.

It has taken almost eleven months from the date of the first waiver request to reach this juncture.[95] The complexity

[91] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982). In addition, Tymnet's proposal would revise and add several definitions to clarify existing tariff provisions; it would also add several rates for new service offerings to points outside the continental United States.

[92] Also before us is Tymnet's reply.

[93] For example, Unbalanced or Balanced Link Access Procedures using High Level Data Link framing. See Telenet Tariff F.C.C. No. 1, Para. 3.1.1(A).

[94] Of course, in the case of both carriers' services, disparate protocols may be supported, but on an unregulated or non-tariffed basis.

[95] Pacific Bell filed this request on March 30, 1984.

of the issues raised by the waiver requests and the need to obtain additional information used to develop the analysis of these issues may have compelled such delay. The action we take today will necessarily result in further delay. The order we have adopted concludes—I believe correctly—that the BOCs must meet certain additional filing requirements before their separate subsidiaries may begin to offer asynchronous to X.25 protocol conversion through collocated facilities. I am concerned that this additional, albeit essential, step in the waiver process does not inadvertently become the vehicle for unnecessary further delay. Such a result would not be in the public interest.

There is no reason for substantial additional delay. The Order clarifies the showings and conditions we expect the BOCs to meet. The Commission's staff has committed itself to making every effort to minimize the time required to complete its review of the supplemental filings.

I have a second concern. Primary among the justifications for granting these waivers has been the promise that collocation of basic packet switched network facilities and asynchronous to X.25 protocol conversion facilities will reduce the costs associated with information services, thus bringing them within the means of a substantially larger segment of our society. I am concerned that we not lose sight of this primary goal. I urge the BOCs to identify more clearly the cost savings they hope to realize from collocation and to insure that these cost reductions are reflected in lower rates for users of their packet switched network. I shall work to insure that the Commission applies the safeguards announced today in such a way as to preclude the BOCs from realizing unfair (*i.e.*, non cost based) price advantages in the packet switching market, while simultaneously insuring that they are *allowed* to pass to the public any real efficiencies derived from collocation as expeditiously as possible.

[FR Doc. 85-8103 Filed 4-4-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket 84-279; FCC 85-96]

Amendments Authorizing Narrowband Technologies for Base and Mobile Communications in Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rules which permit the use of narrowband technologies in the Private Land Mobile Radio Services in the 150 MHz band. This action is taken to stimulate interest in the development of spectrum saving technologies and, to help alleviate some of the congestion being experienced by licensees in the Private Land Mobile Radio Services.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, Washington, D.C. 20554, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio, Radio.

Report and Order

In the matter of amendment of Part 90 of the Commission's rules and regulations to authorize narrowband technologies for base and mobile communications in the private land mobile radio services; PR Docket No. 84-279.

Adopted: March 1, 1985.
Released: March 29, 1985.

By the Commission. Commissioner Quello concurring and issuing a statement. Commissioner Rivera concurring in the result.

Introduction

1. In recognition of the fact that some of the accelerating private land mobile frequency congestion problems might be alleviated by the use of narrowband technologies, as well as in furtherance of our overall objective to encourage the development of new technologies, the Commission initiated this proceeding in May of 1984 to explore the creation of a mechanism to permit the introduction of narrowband technologies on a regularized basis in the Private Land Mobile Radio Services.[1] While Frequency Modulation (FM) communications systems currently in use in these radio services in the 150 MHz range use nominal 30 kHz channels, some new technologies now being developed by the private radio community operate in significantly narrower radio channels.[2] Based on its several years of experience with approximately 300 developmental narrowband systems, the Commission proposed a plan which would permit the interleaving of 5 kHz narrowband channels between existing FM channel assignments. Specifically, the Commission proposed to offset the center of the narrowband emission 2.5 kHz from the center of the FM emission and establish narrowband channels every 5 kHz referenced to the 2.5 kHz offset. While the 5 kHz channel size was a reflection of the Commission's existing experience with amplitude compandored single sideband (ACSB) operations, the Commission proposed to authorize under this channelization plan any technology meeting the proposed technical standards.

2. In all private radio services except the Business Radio Service, the channeling plan proposed resulted in three narrowband channels being created between every two existing FM channels. In the Business Radio Service six narrowband channels were proposed between each pair of FM channels. Additionally, the Commission proposed to require frequency coordination on these narrowband channels in all radio services in which there is presently a frequency coordination requirement.[3] Any specific mileage separation which might be required between narrowband and FM systems was to be left up to the individual coordinator. Finally, the Commission proposed to allow mobile relay operation in the Business Radio Service on the narrowband channels and requested comment on a plan which identified nine additional frequencies which provide sufficient separation for repeater operation.[4] In addition to the above proposals, the Commission requested comment on ways to ensure that the introduction of narrowband technologies would not disrupt existing systems.

Summary of Comments

3. The parties who filed comments or reply comments in response to the *Notice* in this proceeding are listed in Appendix A. In addition, the Land Mobile Communications Council (LMCC) submitted a study of narrowband technologies conducted by

[1] *Notice of Proposed Rule Making*, PR Docket No. 84-279, 49 FR 19074, May 4, 1984.

[2] In the 150 MHz private radio band, channels are generally spaced every 15 kHz. Because the FM emission commonly used in this band occupies somewhat more than 15 kHz, a mileage separation is required between adjacent channel assignments to prevent interference.

[3] In services where there currently is no frequency coordination, the Commission asked for comments on ways to minimize the potential disruption of existing users that could occur if narrowband systems were licensed too close to FM systems.

[4] The nine additional channels would be reserved for mobile operations and limited to a maximum output power of 25 watts peak envelope power.

Sachs/Freeman Associates, Inc.[5] [6] This report is considered a part of LMCC's comments.

4. All of the parties filing comments in this proceeding supported, in principle, the Commission's efforts to encourage the use of more efficient technologies in the Private Land Mobile Radio Services. There was general opposition, however, to the channel structure and licensing plan proposed in the *Notice*. In brief, parties (1) questioned whether reducing the channel spacing would significantly increase private land mobile communications capacity and, if so, whether 5 kHz was the optimum channel spacing; (2) maintained that the channel spacing proposed was incompatible with other narrowband technologies and, therefore, restricted rather than promoted the overall development of narrowband technologies; (3) questioned whether sufficient field testing had been done to propose a narrowband channel plan at this time; and (4) argued that the proposed channel spacing focused on voice communications to the detriment of digital communications.

5. To amplify, the LMCC, for example, questioned the actual amount of spectrum relief which would result from authorizing narrowband technologies under the Commission's proposal. They contended that it is necessary to take into account geographic spacing as well as frequency spacing when determining efficiency gains. Furthermore, it questioned whether 5 kHz is the optimum channel spacing. In this regard it stated that "[w]hile additional channels are created by the 5 kHz separation, fewer of these channels would actually be useable than if assignments were spaced further apart because of the necessity for maintaining adequate mileage separation between stations." LMCC claimed that a 7.5 kHz channelization plan could be expected to "produce greater urban-area channel availability than the 5 kHz plan." Furthermore, according to LMCC, a 7.5 kHz spacing plan has several advantages not available under a 5 kHz plan. The wider spacing would permit the use of a greater variety of narrowband technologies and permit the transmission of higher data rates, in addition to providing more useable channels in the urban areas.

6. NTIA also opposed the proposed 5 kHz narrowband channel spacing. It contended that 5 kHz was not the optimum channel spacing. According to NTIA, "[a] 6.25 kHz channel spacing for narrowband application provides increased adjacent channel protection. Indeed our analysis indicated that a 5 kHz channel spacing plan will result in fewer usable channels than a 6.25 kHz plan." Furthermore, NTIA argued that a wider channel spacing would more readily accommodate other narrowband technologies and faster digital transmission rates. NTIA maintained that "narrowband technologies other than ACSB cannot be efficiently accommodated by the proposed 5 kHz spacing. Although 5 kHz spacing seems appropriate for ACSB, its adoption may restrict, not promote, development of other narrowband technologies such as narrowband FM." In addition to these arguments, it emphasized the need for compatibility between federal government and non-government plans. It urged the Commission to adopt a 6.25 kHz channel spacing.[7]

7. Many organizations representing private land mobile users supported, in general, the introduction of spectrum saving technologies. They expressed the same concerns as LMCC, however, with regard to the Commission's proposed 5 kHz narrowband channeling plan. They were particularly concerned with the potential reduction in the adjacent channel interference protection and the corresponding potential for increased interference.[8] In general these organizations supported our proposal to require frequency coordination of the narrowband channels. However, they urged the Commission to adopt a 7.5 kHz channeling plan and to develop appropriate geographic mileage separation criteria for coordinators.

8. EIA also filed comments opposing the Commission's 5 kHz channel plan.[9] It questioned the number of useable channels provided under the proposed plan, and the plan's suitability for digital communications. It urged the Commission to proceed with caution due to the reduced level of adjacent channel interference protection resulting from reducing channel spacings and the lack of actual field tests to support such reductions. In EIA's view narrowband operations should be permitted only on the present FM channels and channel spacings less than 15 kHz should be permitted only on a developmental basis.[10] EIA argued its plan is superior to the Commission's proposal since it "provides full and orderly implementation of new technology, while offering appropriate and necessary safeguards for existing licensees."

9. A number of parties filed comments supporting the proposed 5 kHz channel spacing.[11] They argued, in general, that 5 kHz spacing results in the most spectrum efficient channel plan and that it is supported by the results of field tests of ACSB developmental systems over the past two years. Stephens stated that "[c]hannel spacings wider than 5 kHz are demonstrably unnecessary and inherently wasteful. It has been demonstrated beyond dispute that techniques such as ACSB provide superior communications in a 5 kHz channel."

10. Supporters of 5 kHz spacing also took exception with the argument that the proposed channel spacing precludes other narrowband technologies and that it is insufficient to accommodate digital communication. Stephens and STI argued that narrowband FM (NBFM) was not a narrowband technology in the same context as ACSB. They stated that ACSB technology only requires 5 kHz wide channels while NBFM requires spacings on the order of 12.5 kHz. Furthermore, they contended that there has been no testing of NBFM and no

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[5] *Final Report for Evaluation of the Use of New Narrowband Technologies in the Existing Private Land Mobile Radio Frequency Allocations*. Stanley I. Cohn and Ernest R. Freeman, Sachs/Freeman Associates, Inc. (August 31, 1984).

[6] The Notice in this proceeding was released April 4, 1984, with comments and reply comments due June 11, 1984 and July 11, 1984, respectively. At the request of LMCC, the Commission extended the comment period to August 10, 1984, and the reply period to September 10, 1984. Later, again at the request of LMCC, the Commission extended the reply comment period to October 1, 1984. Subsequently, on December 21, 1984, LMCC filed a motion to accept an additional pleading that it termed "Response to Reply Comments on Use of Narrowband Technology in the Private Land Mobile Radio Service." Due to the long period provided for comment on the *Notice*, we are hereby denying LMCC's request to accept that submission as a late filed comment. We believe there has been sufficient time allotted for filing comments in this proceeding, and that it would be unfair to those parties who had no opportunity to respond to the LMCC to accept this submission.

[7] Channel separation in the federal government VHF land mobile band is 25 kHz rather than the 15 kHz separation used in most private land mobile radio services.

[8] UTC's comments were typical of those received on this matter. UTC stated that its "concern is based on the absence of any conclusive evidence that the implementation of the Commission's proposal will alleviate the frequency congestion being experienced by UTC members, especially in large urban areas. While UTC members are interested in deploying narrowband technology, there is apprehension that the narrowband channelization plan outlined in the Commission's Notice will jeopardize the interference protection currently afforded land mobile licensees and thereby disrupt existing land mobile operations."

[9] GE and E.F. Johnson filed comments supporting EIA's position.

[10] EIA stated that "[t]he Section realizes that its plan does not appear to offer substantial opportunity for increase in spectral efficiency. It must point out, however, that the Commission's plan in reality offers no significant benefit over the Section's plan, as the Commission's 'additional' channels are all, for the most part, only co-channel to existing channels."

[11] Supporting comments were received from Stevenson, STI, IMM, Skylink, FIT, Stephens, LAOAD, and TII.

demonstration that it offers communications service sufficient for private radio licensees. While neither party opposed the use of NBFM as a modulation technique, they contend it should not be used as the basis for a narrowband regulatory structure.[12] As for the ability of 5 kHz channels to accommodate data transmissions, Stephens stated that "(s)ince analog voice systems will continue to be in greater demand than alternate digital-based techniques for the foreseeable future, channel spacing at 150 MHz must be predicated on the most spectrally efficient analog voice radio equipment. As previously discussed, this in no way precludes the transmission of data at very respectable throughput bit rates."[13] STI advanced similar arguments. IMM, stated that "[v]ery spectural-efficient radio systems using digitized voice combined with high level digital modulation are in current use with the United States Air Force using contiguous 5 kHz channels."

11. Most parties agreed that 5 kHz spacing does not at present provide sufficient adjacent channel protection for same area operation of narrowband systems. Proponents of the 5 kHz channel plan, however, argued narrowband equipment available today is first generation equipment and as refinements are made the interference protection between adjacent channel narrowband systems will improve to the point where same area operation is achievable. They pointed out that until equipment is available which will permit same area operation on adjacent channels, potential interference problems can be controlled through coordination. According to STI, "[n]o more coordination will be required for ACSB 5 kHz channels than is currently required in the coordinated services for 15 kHz FM channels, and spacing will be much smaller (one to two miles as opposed to 10 miles for FM)."

12. In its comments STI argued that the ACSB to FM adjacent channel protection ratios advanced by EIA and LMCC were "worst case" and therefore misleading. According to STI, protection ratios vary considerably depending on the ACSB and FM equipment tested. STI maintained the Commission should develop standards based on the average interference rejection of FM receivers in use in the private radio services. Telesciences also argued that the concerns expressed by opponents of 5 kHz channels are based on "worst case scenarios." In addition to supporting STI's position on receiver selectivity, Telesciences argued that ambient R.F. noise should be considered in determining separation requirements.[14]

Decision

13. We have carefully analyzed the comments and replies filed in this proceeding and have decided, for the reasons discussed below, to adopt the 5 kHz channel plan substantially as proposed.

14. As an initial point, we note that we received a number of comments addressing the issue of spectrum savings. It was apparent from these comments that many parties were under the impression that in the Commission's view authorizing narrowband operations in the 150 MHz band offered the potential for significant relief from congestion in the near future. The primary near term objective of our *Notice*, however, was to stimulate new spectrum efficient technologies. We anticipate only minimal relief from congestion in the near term as a result of authorizing narrowband technologies at 150 MHz. However, if substantial numbers of private land mobile licensees give up their present systems in favor of narrowband technology, significant relief could occur in the long term.[15]

15. Our proposed 5 kHz channel plan drew widespread opposition from the industry. Basically, those opposed to the channel plan favored a wider channel spacing. The major arguments advanced for wider spacing were that it would (1) permit the use of a greater variety of narrowband technologies, (2) increase digital communication capabilities, (3) reduce the potential for interference with existing FM users, and (4) increase channel availability. Each of these issues, as well as other matters of interest, are discussed below.

A. Other Narrowband Technologies

16. Several parties argued that the narrowband channel plan proposed in the *Notice* restricted use to ACSB and foreclosed other narrowband technologies, in particular narrowband FM. They contended that increasing the channel spacing would allow for NBFM as well as other narrowband technologies. Those supporting a 5 kHz channel spacing pointed out that the comments did not specify any technologies that were precluded other than NBFM. In regard to NBFM they maintained that there has been no testing of NBFM nor demonstration that it offers adequate communications service and therefore little reason to use this technology as a basis for a narrowband regulatory structure.

17. We have considered this matter in light of the comments and do not find the arguments advanced for a larger channel spacing convincing. First of all, the narrowband channel plan proposed does not restrict use to ACSB as some argued.[16] As stated in the *Notice*,

> [a]lthough we have based our channeling plan on compandored single sideband because it is the most prominent narrowband technology in use in the Private Land Mobile Radio Services to date, we do not intend to limit access to our new narrowband channels to these types of systems. We expect that the availability of narrowband channels in the Private Radio Services will stimulate interests in other narrowband technologies. To this end, our technical standards are designed to limit the interference potential of narrowband systems while allowing licensees maximum flexibility within their authorized channels. We will authorize any technology that complies with these technical standards.

See Notice of Proposed Rule Making, supra, at paragraph 20. Narrowband technologies which require channels greater than 5 kHz can be accommodated on the regularly assignable 15 kHz FM channels. The channel structure proposed in this proceeding will overlay 5 kHz channels on the existing FM channels, not eliminate them. Consequently, NBFM which cannot meet 5 kHz technical standards will still be permitted in the private radio 150 MHz band.[17]

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[12] Stephens stated that "proponents of [NBFM] have offered, at best, a speculation possibility that it may be a useful narrowband technique. What has been offered is not a basis on which to formulate allocation policy."

[13] Current ACSB equipment is capable of data rates of approximately 1500 bits per second using frequency shift keying.

[14] In this regard Telesciences stated that "[f]or example, at 150 MC/s, in urban areas, ambient R.F. noise, from such sources as automotive ignition and electrical machinery, results in a significant decrease in detection system sensitivity, thereby effectively limiting a system's dynamic range and raising its noise floor. This means that interferor signal powers at levels equal to or below the effective detection system noise floor will not affect system performance."

[15] As discussed later in this *Report and Order*, mileage separations are needed to compensate for the reduced level of adjacent channel interference protection between narrowband and FM assignments. Consequently, in areas where there is a high concentration of FM transmitters, such as in large urban centers, narrowband use will be necessarily limited.

[16] Comments filed by Carl R. Stevenson state that a new technique, "Digitally Processed Multi-Mode Modulation" (DPMM), generates a sideband signal that fits the proposed 5 kHz channel plan. Also IEEE, Telesciences, and SEA filed comments indicating the existence of other technologies which could operate within 5 kHz channels.

[17] NBFM meets the technical requirements for operating on the present FM channels and therefore could be licensed on those channels today. Depending upon the level of adjacent channel interference protection provided by NBFM

Continued

B. Data Capacity

18. Several parties argued that the channel plan proposed emphasizes the transmission of speech, not data, and therefore ignores the spectrum efficiency of data transmissions. They questioned the suitability of adopting a narrowband channel plan which is built on the transmission of voice at a time when the use of digital modulation techniques by land mobile licensees is fast increasing. Those in favor of 5 kHz channels responded that land mobile users predominantly use their systems for voice dispatch operations and the channel plan should be based on the most common use. Further, they maintained that 5 kHz spacing does not preclude the transmission of data at reasonable bit rates.

19. We are aware of the advantages of non-voice communications in many land mobile applications and that use of such systems by private land mobile licensees is likely to continue to increase in the future. We are not convinced, however, that we should increase channel spacing in this instance to handle additional data capacity. Most private land mobile users employ voice dispatch systems and will continue to do so in the 150 MHz band in the immediate future. Current narrowband equipment (ACSB) is capable of data rates of approximately 1500 bits per second using frequency shift keying. Data rates of 2400–3000 bps appear possible if more complex techniques are used. This data capacity should accommodate the majority of private land mobile data requirements. In cases where additional data capacity is needed, users are free to choose the FM channels which have larger bandwidths and can accommodate higher data rates. The existence of a 5 kHz channel plan will offer users more flexibility in their choice of a communications system, not stifle the development of digital communications.

C. Channel Availability

20. EIA, GE, and E.F. Johnson recommended the Commission proceed with caution in adopting a narrowband channel plan because of the reduced interference protection between adjacent channel ACSB and FM operations and the lack of adequate field tests on ACSB in congested environments. They argued that allowing narrowband operations only on regular FM channels would minimize the interference potential while still realizing the same number of useable channels provided by the Commission's 5 kHz plan.

21. We are not persuaded that it is necessary to limit narrowband operations to regularly assignable FM channels. We agree that the level of interference protection between narrowband assignments and adjacent channel FM assignments is significantly less than that provided between FM operations separated by 30 kHz.[18] We are convinced, however, that narrowband assignments can be made in accordance with our proposed plan without significantly affecting existing operations. We currently make FM assignments at 15 kHz spacings with a mileage separation between adjacent channels to compensate for the increased potential of interference. Experience has demonstrated that with careful planning such assignments can be made without destructive interference to other users. We expect coordinators to provide mileage separations to compensate for the reduction in interference protection between narrowband and FM systems.[19]

22. We have issued more than 300 developmental licenses for ACSB systems and believe this to be sufficient field testing of this narrowband technology. Developmental licensees, including large corporations, have independently conducted tests of ACSB equipment to determine its suitability for land mobile communications. These licensees have renewed their authorizations consistently and, in developmental reports, have indicated their satisfaction with ACSB in meeting their communication needs.

23. LMCC, MRFAC, UTC, API, SIRSA, and NABER claimed that increasing the spacing between narrowband assignments results in additional useable channels. They argued that there was no significant difference in channel availability between the 5 kHz and 7.5 kHz channel plans when considering the impact on conventional FM systems. However, due to the greater mileage separation needed between adjacent channel narrowband assignments under a 5 kHz plan as opposed to that needed when narrowband systems are spaced every 7.5 kHz, they argued that the 7.5 kHz plan would produce more useable channels. NTIA also argued that increasing spacing will result in additional useable channels but they urged a channel spacing of 6.25 kHz. Supporters of the 5 kHz plan argued that the proposed channel spacing provides more channels. As for the argument that a greater mileage separation is needed between adjacent channel narrowband assignments under a 5 kHz plan, they contended that the present narrowband equipment is "first generation." As improvements are made the amount of interference protection between adjacent channel narrowband assignments will increase, thereby permitting additional use. In the long term, they maintained a 5 kHz plan will provide more useable channels.

24. In the *Notice* we recognized that a narrowband channel spacing wider than 5 kHz would be required to maintain the level of interference protection presently afforded adjacent channel (30 kHz) co-located FM users. We assumed, however, that equipment design would improve and make 5 kHZ achievable.[20] The question, therefore, is whether we should base our channel plan on equipment which is available today or on equipment which we believe will be available in the near future. We believe the public interest would be best served by the latter, especially since we do not anticipate a significant number of interference problems even with equipment available today. To control interference between adjacent narrowband assignments, we expect coordinators to use mileage separations to compensate for the reduced interference protection.

25. We believe that it is necessary to provide 5 kHz channel spacing in the 150 MHz band to allow the potential for spectrum savings. We recognize that this action will provide minimum additional communications opportunities in the major markets where additional spectrum is necessary. We further recognize that additional narrowband equipment is necessary in these lower bands before off-the-shelf equipment is readily available at comparable cost to FM equipment. We are also concerned that data transmission may be limited with narrowband technologies. This action will allow us the opportunity to review the results of narrowband systems operating in congested land mobile spectrum.

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equipment, the geographic separation requirements on 15 kHz adjacent channel operation could be reduced.

[18] The interference protection levels between narrowband assignments and FM assignments are largely a function of broad FM receiver selectivity.

[19] The issue of mileage separations is further discussed in Subpart E.

[20] The level of protection provided between narrowband assignments is determined largely by equipment design rather than by modulation. As improvements are made in transmitter linearity and receiver selectivity the level of protection can be expected to increase.

D. 2.5 kHz Offset Plan

26. Our *Notice* proposed to offset the 5 kHz channel plan by 2.5 kHz from regularly assignable FM channels. Arguments against the proposal were centered around the potential for increasing the cost and complexity of frequency synthesis in narrowband equipment. Supporters of the offset plan contended that it maximizes the number of "drop in" channels available.

27. We have examined the arguments closely and it appears both plans have merit. On balance, however, we believe the public interest is best served by adopting the channel plan proposed. Offsetting the channel appears to offer an additional incentive for existing FM users to convert to more spectrum efficient narrowband operations. For example, if we do not offset, the narrowband plan 150 MHz FM licensees operating in areas where there are a large number of users would, in most instances, obtain only a one to one return if they chose to convert from FM to narrowband. That is because narrowband channels 5 kHz offset from the FM channel are only 10 kHz removed from an adjacent FM channel. In heavily congested areas these channels could not be used due to the mileage separation needed to minimize interference. By offsetting the channels 2.5 kHz from the FM assignment, however, licensees could use at a minimum two narrowband channels because they are at least 12.5 kHz removed from the adjacent FM channels. The geographic separation suggested in this case is 10 miles. The rules require FM stations operating on frequencies 15 kHz removed to be at least 10 miles separated. The offset plan is also comparable to the narrowband plan adopted for the broadcast remote pickup services. Adopting the same plan for private radio licensees would allow manufacturers to produce narrowband equipment for a larger market which should result in lower costs to the end user.[21]

E. Frequency Coordination

28. The amount of adjacent channel interference protection realized between radio systems is directly related to the frequency separation and geographical separation between them. The selectivity of present FM equipment separated by 30 kHz is sufficient to permit same area adjacent channel operation.[22] As previously discussed, however, the level of interference protection provided by the frequency separation between adjacent narrowband assignments and between narrowband and FM assignments is generally not sufficient to permit same area operation. In these cases geographic separation is needed in order not to degrade communications quality below that presently afforded land mobile licensees.[23] In our opinion, the best method to ensure that there is sufficient geographic separation between systems is frequency coordination. This has been an effective means of fitting in tertiary assignments. Accordingly, we are requiring frequency coordination of all narrowband channels. There are four private land mobile radio services, however, where there is currently no frequency coordinator. Without coordination the potential for seriously degrading the quality of service presently afforded existing FM users is too great to begin authorizing narrowband systems in these services. Therefore, pending the outcome of Docket 83-737, we will not authorize narrowband assignments on a regular basis in radio services where there is no frequency coordinator.[24] [25] In the interim, until a frequency coordinator has been appointed in these services, narrowband assignments will be made only on a developmental basis.

29. The exact mileage separation needed between transmitters depends upon a number of system parameters, such as power, antenna height, frequency separation, terrain, and the desired communications quality. These factors may vary substantially between systems just as the communications quality needed may vary between users. We believe coordinators, with their knowledge of user requirements and local conditions, are in a better position to determine the separation needed in each case. This approach, we believe will minimize the potential for interference and allow maximum spectrum efficiency. Consequently, we are not adopting any specific mileage separation requirements. We have, however, listed in Appendix B what we calculate as generally appropriate mileage separations for typical systems. Coordinators may use these as guidelines, but we expect coordinators to exercise their own judgement on a case-by-case basis.[26]

30. Under the rules we are adopting here, licensees have the option of satisfying their communication requirements by continuing to use FM equipment, converting their FM assignment to one of more narrowband channels, or supplementing their present FM communication system with a narrowband system. All new assignments will be subject to frequency coordination and we have provided coordinators the flexibility to engineer in systems. For example, while the table in Appendix B recommends a 5 to 8 mile separation between adjacent channel narrowband systems, coordinators are free to recommend closer distances if, in their opinion, the proposed system would not increase the interference potential or if the affected adjacent channel licensees agree to the assignment. As the characteristics of narrowband equipment improve, we expect closer spacings between adjacent channel narrowband systems to be realized. We believe that over time private land mobile users will make use of the closest feasible channel spacings and geographical separations in order to maximize their use of the limited spectrum available in the major metropolitan centers.

F. Mobile Relay Frequencies

31. The *Notice* proposed allowing mobile relay operations in the Business Radio Service on the narrowband channels. Further, it proposed to allocate nine frequencies to the Business Radio Service specifically for mobile relay operation.[27] A number of parties expressed concern that the frequencies were too close in frequency to other channels and would cause interference. They were particularly concerned about the six frequencies adjacent to channels set aside for one way paging operations. For example, EIA argued because of the samll size and low cost of paging receivers, they are relatively simple in design and exhibit poor selectivity resulting in greater susceptibility to interference than is found in traditional base and mobile transceivers.

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[21] *Report and Order*, Docket 84-280, 49 FR 45155, November 15, 1984.

[22] The protection provided is approximately 75-85 dB.

[23] Frequency modulation is the dominant technology employed in the private land mobile services today. As stated in the *Notice*, it provides a good quality of service and we expect the widespread use of FM to continue. Little would be gained by the land mobile community if we were to authorize narrowband technologies at the expense of present FM users.

[24] There is presently no coordinator in the Special Emergency, Relay Press, Business (150 MHz band), and Motion Picture Radio Services.

[25] *Notice of Proposed Rule Making*, Docket 83-737, 49 FR 45454, November 16, 1984. In this proceeding we proposed to require frequency coordination on all private land mobile frequencies and to appoint a frequency coordinator in each radio service.

[26] We will disregard geographic separations when affected licensees agree in writing to a proposed assignment. This will allow the development of short-spaced sites as demand increases in an area, if applicants feel that such use is technically and economically feasible.

[27] These frequencies were needed in order to provide channels with sufficient frequency separation between base and mobile transmit frequencies for repeater operation. Operation on these frequencies was limited to mobiles with an output power of 25 watts peak envelope power.

32. In recognition of the potential for adjacent channel interference with the use of these frequencies, we proposed to allow only mobile operations on them and to limit mobile output power to 25 watts. Based on the record before us, however, it appears that additional safeguards may be necessary to protect paging receivers. It is not clear at this time, however, what extra precautions may be required. Therefore, we are not allocating the six frequencies adjacent to frequencies available for paging operations at this time. We are, however, allocating the frequencies 154.5025, 154.5275, and 154.5525 MHz to the Business Radio Service for low power (25 watts) mobile and control station operation. We are also allowing mobile relay operations in the Business Radio Service on narrowband channels.

G. Technical Standards

33. Those opposed to the 5 kHz channel plan contended that insufficient information exists to determine the suitability of ACSB or other technologies for type acceptance. Some also expressed concern that the Commission's proposed frequency tolerance was inadequate for narrow channels. EIA argued that because of the basic differences between ACSB and other technologies, type acceptance of ACSB equipment should be delayed until measurement procedures and detailed technical standards are developed.

34. ACSB technology employs well-known radio techniques combined to generate a narrowed radio signal with communications quality and operational characteristics similar to more conventional communications systems. We do not intend to regulate the specifics of the ACSB signal, such as the degree of companding or the location of the pilot tone and carrier. We have proposed in the *Notice* an emission envelope which ACSB and any other technology that would be type accepted for the narrowband channels must meet. This should be sufficient to control adjacent channel interference. Therefore, we believe the technical standards we have proposed are adequate for purposes of type acceptance. Accordingly, we are adopting the narrowband technical rules as proposed.

H. Other Matters

35. AMST and NAB filed comments supporting the Commission's proposal to create additional channels in the 150 MHz land mobile band. In addition AMST and NAB urged the Commission to adopt what it termed advanced spectrum management techniques in order to ensure that the efficiency of narrowband technologies is maximized. They suggest that public safety 150 MHz FM operations be phased out and 5 kHz narrowband channels be used as replacement.[35] We are not willing to take such action at this time. However, since these proposals deal, in general, with satisfying public safety communications requirements, we will consider them further within the context of Docket 84-232.[36]

36. A number of comments urged the Commission to authorize narrowband technologies in other land mobile bands. Others suggested the Commission allocate virgin spectrum for narrowband operations. LAOAD, in its comments, recommended using 12.5 kHz offsets from Marine VHF frequencies for the mobile half of the repeater operations in the Business Radio Service. However, since this proceeding was initiated to authorize narrowband technologies in the 150 MHz band, we concluded these proposals are beyond the scope of this *Report and Order*.

37. We realize that some developmental licensees use equipment which will not meet the technical standards adopted herein and therefore cannot be type-accepted. Others may not be operating on the narrowband channels specified or in the service in which they are actually eligible. We are waiving the type-acceptance rules for licensees using this equipment, provided the station was authorized prior to the effective date of this *Report and Order*. We are also waiving the requirement that these licensees operate on the frequencies specified in § 90.271. These stations may continue to operate as licensed and with non type accepted equipment until March 1, 1995. We believe this provides sufficient time over which to amortize their equipment.

38. As a consequence of this rule making decision, applications to operate ACSB systems will no longer be granted developmental status, except in the Business, Special Emergency, Relay Press, and Motion Picture Radio Services until a coordinator is appointed. Therefore, current ACSB licensees wishing to renew at the time of the expiration of their developmental authorizations must apply for a regular license unless developmental status is justified for some other reason. Except for developmental licensees, all licensees of ACSB stations authorized on 5 kHz channels after the effective date of this decision must employ type-accepted equipment.

Final Regulatory Flexibility Analysis

39. This proceeding authorizes the use of narrowband technologies in the private land mobile radio services in the 150 MHz band. No comments were received which specifically addressed the Regulatory Flexibility Analysis put forth in the *Notice*. Further, no significant alternatives which would accomplish our stated objective were suggested nor are we aware of any. The rules adopted in this proceeding are intended to foster new technologies to help accommodate the ever increasing number of private land mobile users without significantly affecting the grade of service presently realized by existing licensees.

Paperwork Reduction Act Statement

40. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information, collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

41. Accordingly, it is ordered, effective May 6, 1985, that Part 90 of the Commission's Rules (47 CFR Part 90) is amended as set forth in Appendix C attached hereto. The authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). It is further ordered that this proceeding is terminated.

42. Further information on this matter may be obtained by contacting Herb Zeiler, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 634-2443.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Comments Filed In PR Docket No. 84-279

American Association of State Highway and Transportation Officials, Special Commission on Communications, AASHTO

Arkansas Louisiana Gas Co., ARKLA

Association of American Railroads, AAR

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[35] The specific techniques are outlined in "A Plan For Meeting Public Safety Community Mobile Communications Requirements Through New Technologies And Advanced Spectrum Management Techniques" (Hatfield II). Hatfield II was filed as a petition for rule making by a consortium of broadcasters (Joint) and submitted as comments in this proceeding.

[36] *Notice of Inquiry*, Docket 84-232, 49 FR 9754, March 15, 1984.

Association of Maximum Service Telecasters, AMST
Bell Telephone Co. of Pennsylvania et al., Penna. Bell
California Public-Safety Radio Association, Inc., CPRA
Central Committee on Telecommunications of the American Petroleum Institute, API
E.F. Johnson Co., EF Johnson
Forest Industries Telecommunications, FIT
General Electric Co., GE
International Mobile Machines Corporation, IMM
Joint Advance Comments, Joint
Kahn Communications, Inc., Kahn
Land Mobile Communications Council, LMCC
Land Mobile Section of the Telecommunications Group, Electronics Industries Association, EIA
Los Angeles County Sheriff's Department, LA County
Manufacturers Radio Frequency Advisory Committee, MRFAC
National Association of Broadcasters, NAB
National Association of Business and Educational Radio, NABER
National Telecommunications and Information Administration, NTIA
Operating Telephone Companies, OTC's
Sideband Technology, Inc., STI
Skylink Corporation, Skylink
Special Industrial Radio Service Association, SIRSA
Stevens Engineering Associates, SEA
Carl R. Stevenson, Stevenson
Utilities Telecommunications Council, UTC

Reply Comments Filed in PR Docket No. 84-279

Central Committee on Telecommunications of the American Petroleum Institute, API
Association of American Railroads, AAR
Association of Maximum Service Telecasters, AMST
Association of Public-Safety Communications Officers, APCO
Land Mobile Section of the Telecommunications Group, Electronics Industries Association, EIA
E.F. Johnson, EF Johnson
Technical Activities Board/United States Activities Board of the Institute of Electrical and Electronics Engineers, Inc., IEEE
LAOAD Radio and Microwave Communications Consultants, LAOAD
Los Angeles Sheriff, LA Sheriff
Manufacturers Radio Frequency Advisory Committee, MRFAC
National Telecommunications and Information Administration, NTIA
Sideband Technology, Inc., STI
Special Industrial Radio Services Association, SIRSA
Stevens Engineering Associates, SEA
Carl R. Stevenson, Stevenson .
T-Com, Inc., T-Com
Telesciences International Limited, TIL
Utilities Telecommunications Council, UTC

Appendix B

In the private land mobile 150 MHz band the majority of systems operate in the single frequency simplex mode, that is, base and mobile transmitters operate on the same frequency. In such systems, base to base interference in the mobile talk back mode is the limiting factor in coordinating close channel spacings.

There are a number of methods available to calculate the minimum geographical separation needed between base stations in order to compensate for the reduction in the level of adjacent channel interference protection. The separation distances outlined here are based on a desired mobile signal level at the existing base station (the station to be protected). This method eliminated complicated area contour and terrain considerations which occur when the separations are based on mobile service range. A mobile signal level of −125 dbW at the existing (protected) base station was assumed to be desirable.[30] An antenna height of 100 feet and an ERP of 150 watts were assumed for the proposed (potential interfering) station. For the existing base station we also assumed an antenna height of 100 feet. The propagation model used was plane earth except in the case of 7.5 kHz separation. In that case, a smooth earth model was used.

The following table shows the minimum separation calculated in order to reduce interference potential to acceptable levels between a proposed base station and an existing base station at various frequency spacings. These values are intended only to be guidelines. Depending on the exact operating parameters, the area of operation (urban, rural, etc.), and communications quality needed these values can be increased or decreased. There is no value listed for frequencies ±2.5 kHz removed since such frequencies are considered co-channel.

Also listed in the table are the levels of adjacent channel protection used to calculate the separations. The values here are derived from the Commission's lab tests.[31] They are an average of the D/U ratios obtained in measuring the upper undesired and lower undesired for the disruptive category.

[30] A −125 dBw received signal was selected because we believe it reflects a realistic mobile reception level in a noisy urban location.

[31] *Amplitude Compandored Sideband Compared to Conventional Frequency Modulation for VHF Mobile Radio, Laboratory and Field Testing Results*, Ralph Haller and Hank Van Deursen, Federal Communications Commission, Office of Science and Technology, Washington, D.C. 20554, October 1983, FCC/OST TM 83-7. The numbers in the table come from additional tests performed at the Commission's Laurel laboratory using the EIA recommended measurement procedures for FM receiver performance. A report of this work is included in the docket file for public reference.

	Frequency separation (kHz)	Protection (dB)	Distance separation (miles)
Narrowband/Narrowband [1]	5	−46	8
	5	−56	5
Narrowband/FM	7.5	−12	33
	12.5	−41	10
	17.5	−65	3

[1] In case of adjacent channel narrowband assignments we have listed two different protection values. The first is based on measurements done by the Commission. The second is based on alleged improvements in ACSB transmitters since the Commission conducted its tests.

Appendix C

PART 90—[AMENDED]

Part 90 of the Commission's Rules and Regulations is amended as follows:

1. Section 90.17(b) is amended by adding the band 150–170 MHz.

§ 90.17 Local government radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

LOCAL GOVERNMENT RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	5
150–170	Base or mobile	24
153.740	Mobile	
* * * * *		

2. Section 90.17(c) is amended by adding a new paragraph, limitation (24).

§ 90.17 Local government radio service.

* * * * *

(c) * * *

(24) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

3. Section 90.19(d) is amended by adding the band 150–170 MHz.

§ 90.19 Police radio service.

* * * * *

(d) *Frequencies available.*

* * * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	13
150–170	Base or mobile	25
154.650	Mobile	
* * * * *		

4. Section 90.19(e) is amended by adding a new paragraph, limitation (26).

§ 90.19 Police radio service.

* * * * *

(e) * * *

(26) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

5. Section 90.21(b) is amended by adding the band 150–170 MHz.

§ 90.21 Fire radio services.

* * * * *

(b) *Frequencies available.*

* * * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	3
150–170	Base or mobile	15
153.77	Mobile	
* * * * *		

6. Section 90.21(c) is amended by adding a new paragraph, limitation (16).

§ 90.21 Fire radio service.

* * * * *

(c) * * *

(16) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

7. Section 90.23(b) is amended by adding the band 150–170 MHz.

§ 90.23 Highway maintenance radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

HIGHWAY MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	3
150–170	Base or mobile	18
150.995	Base or Mobile	4
* * * * *		

8. Section 90.23(c) is amended by adding a new paragraph, limitation (18).

§ 90.23 Highway maintenance radio service.

* * * * *

(c) * * *

(18) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

9. Section 90.25(b) is amended by adding the band 150–170 MHz.

§ 90.25 Forestry-conservation radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

FORESTRY-CONSERVATION RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	5
150–170	Base or mobile	22
151.145	Base or Mobile	6
* * * * *		

10. Section 90.25(c) is amended by adding a new paragraph, limitation (22).

§ 90.25 Forestry-conservation radio service.

* * * * *

(c) * * *

(22) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

11. Section 90.53(a) is amended by adding the band 150–170 MHz.

§ 90.53 Frequencies available.

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	6
150–170 MHz	Base or mobile	30
150.775	Mobile	7
* * * * *		

12. Section 90.53(b) is amended by adding a new paragraph, limitation (30).

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(30) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

13. Section 90.63(c) is amended by adding the band 150–170 MHz.

§ 90.63 Power radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	3
150–170	Base or mobile	24
150.980	Base or mobile	
* * * * *		

14. Section 90.63(d) is amended by adding a new paragraph, limitation (24).

§ 90.63 Power radio service.

* * * * *

(d) * * *

(24) Rules concerning the use of this band of narrowband operations are set forth in § 90.271.

* * * * *

15. Section 90.65(b) is amended by adding the band 150–170 MHz.

§ 90.65 Petroleum radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	11
150–170	Base or mobile	41
150.980	Base or mobile	6
* * * * *		

16. Section 90.65(c) is amended by adding a new paragraph, limitation (41).

§ 90.65 Petroleum radio service.

* * * * *

(c) * * *

(41) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

17. Section 90.67(b) is amended by adding the band 150–170 MHz.

§ 90.67 Forest products radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72.00 to 76.00	Operational fixed	8
150–170	Base or mobile	36
152.465	Base or mobile	29
* * * * *		

18. Section 90.67(c) is amended by adding a new paragraph, limitation (36).

§ 90.67 Forest products radio service.

* * * * *

(c) * * *

(36) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

19. Section 90.69(b) is amended by adding the band 150–170 MHz.

§ 90.69 Motion picture radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

MOTION PICTURE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
72.00 to 76.00	Operational fixed	2
150–170	Base or mobile	12
152.87	Base or mobile	3

20. Section 90.69(c) is amended by adding a new paragraph, limitation (12).

§ 90.69 Motion picture radio service.

* * * * *

(c) * * *

(12) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

21. Section 90.73(c) is amended by adding the band 150–170 MHz.

§ 90.73 Special industrial radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
75.60	do	7
150–170	Base or mobile	35
151.490	Base or mobile	2, 8

22. Section 90.73(d) is amended by adding a new paragraph, limitation (35).

§ 90.73 Special industrial radio service.

* * * * *

(d) * * *

(35) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

23. Section 90.75(b) is amended by adding the band 150–170 MHz.

§ 90.75 Business radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
72 to 76	Operational fixed	7
150–170	Base or mobile	41
150.815	Base or mobile	8

24. Section 90.75(c) is amended by adding a new paragraph, limitation (41).

§ 90.75 Business radio service.

* * * * *

(c) * * *

(41) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

25. Section 90.79(c) is amended by adding the band 150–170 MHz.

§ 90.79 Manufacturers radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
75–80	do	2, 4
150–170	Base or mobile	23
153.050	Base or mobile	5, 21, 22

26. Section 90.79(d) is amended by adding a new paragraph, limitation (23).

§ 90.79 Manufacturers radio service.

* * * * *

(d) * * *

(23) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

27. Section 90.81(c) is amended by adding the band 150–170 MHz.

§ 90.81 Telephone maintenance radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

TELEPHONE MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
72–76	Operational fixed	13
150–170	Base or mobile	11
151.985	Base or mobile	1

28. Section 90.81(d) is amended by adding a new paragraph, limitation (11).

§ 90.81 Telephone maintenance radio service.

* * * * *

(d) * * *

(11) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

29. Section 90.89(b) is amended by adding the band 150–170 MHz.

§ 90.89 Motor carrier radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
72–76	Operational fixed	7
150–170	Base or mobile	21
159.495	Base or mobile	8

30. Section 90.89(c) is amended by adding a new paragraph, limitation (21).

§ 90.89 Motor carrier radio service.

* * * * *

(c) * * *

(21) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

31. Section 90.91(b) is amended by adding the band 150–170 MHz.

§ 90.91 Railroad radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
75.60	do	2
150–170	Base or mobile	18
160.215	Base or mobile	3, 4

32. Section 90.91(c) is amended by adding a new paragraph, limitation (18).

§ 90.91 Railroad radio service.

* * * * *

(c) * * *

(18) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

33. Section 90.93(b) is amended by adding the band 150–170 MHz.

§ 90.93 Taxicab radio service.

* * * * *

(b) *Frequencies available.*

* * * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72–76	Operational fixed	14
150–170	Base or mobile	15
152.270	Base or mobile	*
* * * * *		

34. Section 90.93(c) is amended by adding a new paragraph, limitation (15).

§ 90.93 Taxicab radio service.

* * * * *

(c) * * *

(15) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

35. Section 90.95(c) is amended by adding the band 150–170 MHz.

§ 90.95 Automobile emergency radio service.

* * * * *

(c) *Frequencies available.*

* * * * *

AUTOMOBILE EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
* * * * *		
72–76	Operational fixed	16
150–170	Base or mobile	18
150.815	Base or mobile	1, 2, 3
* * * * *		

36. Section 90.95(d) is amended by adding a new paragraph, limitation (18).

§ 90.95 Automobile emergency radio service.

* * * * *

(d) * * *

(18) Rules concerning the use of this band for narrowband operations are set forth in § 90.271.

* * * * *

37. Section 90.173 is amended by revising paragraph (f) as follows:

§ 90.173 Policies governing the assignment of frequencies.

* * * * *

(f) In the 150–170 MHz band, except in the Taxicab Radio Service and for narrowband operations authorized under § 90.271, applications will not ordinarily be granted in situations in which the proposed base station is located less than 16 km (10 miles) from an existing base station on a frequency 15 kHz removed, unless the application is accompanied by a signed letter of concurrence from the licensee of each base station located within 16 km (10 miles) of the proposed base station that is operated on a frequency 15 kHz removed from the proposed frequency assignment. In the Taxicab Radio Service, applications will not ordinarily be granted in situations in which the proposed base station is located less than 12 km (7 miles from an existing base station on a frequency 15 kHz removed, unless the application is accompanied by a signed letter of concurrence from the licensee of each base station located within 12 km (7 miles) of the proposed base station that is operated on a frequency 15 kHz removed from the proposed frequency assignment.

38. Section 90.175 is amended by revising paragraph (a) as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) For frequencies below 470 MHz: (1) A report based on field study indicating the degree of probable interference to all existing stations operating less than 5 kHz from the proposed station within 120 km (75 miles) of the proposed station, together with a statement that all such licensees have been notified of the applicant's intention to apply. In addition, for frequencies in the range 150–170 MHz, a report based on a field study indicating the degree of probable interference to existing stations located within 56 km (35 miles) of the proposed station operating on a frequency 17.5 kHz or less removed and a statement that the licensees of such stations have been notified of the applicant's intention to apply. The field study report required by this section need not address the degree of probable interference to existing stations 17.5 kHz or less removed within the prescribed mileage limits when evidence of consent set forth in § 90.173(f) is included with the application; however, all other provisions of the field study requirement must be satisfied. This second report is not needed, however, for narrowband stations proposed to operate more than 5 kHz removed from other narrowband stations; or,

(2) A statement from a frequency coordinating committee recommending the frequency which, in the opinion of the committee, will result in the least amount of interference to all existing stations operating in the particular area. The committee's recommendation may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any contemplated interference. Except for narrowband operations, the committee shall not recommend any adjacent channel frequency 15 kHz removed to existing stations which would result in a separation of less than 10 miles, 7 miles in the Taxicab Radio Service. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for radio facilities in the service concerned in the area the committee purports to serve. The functions of such committees are purely advisory in character, and their recommendations cannot be considered as binding upon either the applicant or the Commission, and must not contain statements which would imply that frequency advisory committees have any authority to grant or deny applications. If the frequency recommended is in the 150–170 MHz band, is 17.5 kHz or less removed from a frequency which is available to another radio service, and is assignable only after coordination, the committee's statement shall affirmatively show that coordination with a similar committee for the other service has been accomplished. Coordination with another service is not required, however, for narrowband assignments as applied to other narrowband assignments more than 5 kHz removed.

* * * * *

39. Section 90.176 is amended by revising paragraphs (a)(3) and (b)(3) as follows:

§ 90.176 Interservice sharing of frequencies in the 150–174 and 450–470 MHz bands.

(a) * * *

* * * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned. In uncoordinated services or bands, in lieu of the foregoing, a

statement from all users operating less than 5 kHz from the proposed station within 75 miles and in the 150–170 MHz band from all licensees within 35 miles of the proposed station on a frequency 17.5 kHz or less removed that they concur in the assignment of the requested frequency; and

* * * * *

(b) * * *

* * * * *

(3) A statement from the frequency coordinator(s) having responsibility for the coordination in the radio service(s) in which the frequency in question is assigned concurring in its assignment in the manner proposed and stating that it will not result in harmful interference to existing or planned systems in the service(s) in which the frequency is assigned. In uncoordinated services or bands, in lieu of the foregoing, a statement from all users operating less than 5 kHz from the proposed station within 75 miles and in the 150–170 MHz band from all licensees within 35 miles of the proposed station on a frequency 17.5 kHz or less removed that they concur in the assignment of the requested frequency (this statement is not needed for narrowband assignments proposed to operate more than 5 kHz removed from other narrowband assignments); and

* * * * *

40. Section 90.203(b) is amended by adding a new paragraph (6).

§ 90.203 Type acceptance required.

* * * * *

(b) * * *

(6) Until March 1, 1995 transmitters used in narrowband stations authorized prior to (effective date of rules) if they continue to be used at those stations.

* * * * *

41. In § 90.205, paragraph (b), the maximum authorized power table is amended by adding footnote 11 to the frequency range 100–216 MHz to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

[11] Stations with suppressed carrier emissions may be authorized up to 350 W peak envelope power.

* * * * *

42. Section 90.207 is amended by adding new paragraph (l) to read as follows:

§ 90.207 Types of emissions.

* * * * *

(l) For narrowband operations in a 3.6 kHz maximum authorized bandwith, any modulation type may be used which complies with the emission limitations of § 90.209.

43. In § 90.209, redesignate paragraph (b)(7), as (b)(8), add new paragraph (b)(7), revise paragraph (c) and add new paragraph (h) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

* * * * *

(7) For narrowband operations granted on 5 kHz channels, the maximum authorized bandwidth shall be 3.6 kHz.

* * * * *

(c) Except as noted in paragraphs (d), (f), (g), and (h) of this section, the mean power of any emission shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

(h) For transmitters that operate on channels spaced 5 kHz apart (See § 90.271) the power of any emission shall be attenuated below the peak envelope power (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kilohertz) of more than 2 kHz up to and including 5 kHz: At least 29 Log_{10} ((25/11) fd^2) decibels or 50 decibels, whichever is the lesser attenuation;

(2) On any frequency removed from the center of the authorized bandwidth by more than 5 kHz: At least 43 plus 10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

§ 90.211 [Amended]

44. Section 90.211(d)(2) is amended in the first and second sentences by revising "paragraphs (f) and (g)" to read "paragraphs (f), (g), and (h)".

45. Section 90.213(a) is amended in the Frequency Tolerance table by adding footnote 16 to the frequency range 50 to 450 to read:

§ 90.213 Frequency tolerance.

(a) * * *

FREQUENCY TOLERANCE

*	*	*	*	*
50 to 450..	[16] .0005	.0005	[16] .0005	[16] .005

[16] In the 150–170 MHz band, stations operating on 5 kHz channels shall maintain the carrier frequency to within .0002 per cent.

* * * * *

46. Section 90.243 is amended by revising paragraph (b)(2) as follows:

§ 90.243 Mobile relay stations.

* * * * *

(b) * * *

(2) In the Business Radio Service, mobile relay stations may be authorized on frequencies below 450 MHz when those frequencies are reserved for low power operation (2 watts or less) or for narrowband operation. (See § 90.271) For systems using low power frequencies the maximum output power shall not exceed 1 watt and the mobile relay antenna system shall not be more than 13 m (40 ft) above ground.

* * * * *

47. A new § 90.271 is added to read as follows:

§ 90.271 Narrowband operations.

(a) In all radio services except the Business Radio Service, frequencies removed by 2.5 or 7.5 kHz from regularly assignable frequencies in the 150–170 MHz band listed in the radio service's allocation table may be assigned to eligible users for narrowband operations in accordance with the following:

(1) Applications for narrowband operations must be accompanied by evidence of frequency coordination (§ 90.175). In the case of frequencies 7.5 kHz removed from FM channels the interference analysis should consider existing stations located within 60 miles.

(2) Operations on frequencies removed by 2.5 kHz from a frequency listed in a radio service's allocation table shall be licensed as the same class as that frequency and comply with any limitations on that frequency.

(3) Operations on frequencies removed by 7.5 kHz from a frequency listed in a radio service's allocation table are reserved for base or mobile operation.

(4) Frequencies 7.5 kHz removed from frequencies allocated to different radio services shall be available in both radio services.

(b) Frequencies removed by 2.5, 7.5, or 12.5 kHz from regularly assignable frequencies in the Business Radio Service 150 MHz band may be assigned to eligible users in that service in accordance with the following:

(1) Meets the provisions of paragraphs (a)(1) and (2) of this section.

(2) Frequencies 7.5 and 12.5 kHz removed from frequencies listed in the allocation table are reserved for base or mobile operations.

(3) Channels located between frequencies listed in the allocation table bound by limitation (8) also must comply with that limitation.

(4) The following frequencies may be used for mobile for control station

operation. Output power is limited to 25 watts peak envelope power. Operation must comply with the technical standards for narrowband operation.

154.5025
154.5275
154.5525

(c) Assignable frequencies represent the center of the authorized bandwidth.

(d) Until further notice narrowband operations will not be permitted on a regular basis in the Business, Special Emergency, Motion Picture, and Relay Press Radio Services.

Concurring Statement of Commissioner James H. Quello

In the matter of: Report and Order to authorize narrowband technologies for base and mobile communications in the Private Land Mobile Radio Services in the 150 MHz band.

March 1, 1985.

The past two presidential elections popularized the phrase "There you go again." Today, that phrase can be applied to Commission rules governing Private Land Mobile Radio Service in the 150 MHz band.

The Report and Order adopted today is a positive step to the extent that it presents a new channel plan to accommodate narrowband technologies. However, the Report and Order requires geographic spacing to compensate for the reduced level of adjacent channel interference protection, and thus many of the narrowband systems will have to be placed outside urban centers. This will greatly diminsh the potential for these systems to alleviate urban land mobile congestion. Accordingly, I question the significance of today's action in terms of providing an impetus for introducing narrowband technologies because such technologies will be essentially relegated to non-urban, non-congested areas where the need for efficient spectrum use is the least.

In my view, it is time for the Commission to make a bold move to announce a date on which base and mobile communications in the Private Land Mobile Radio Services in the 150 MHz band will be required to switch from the current inefficient FM technology to more spectrum efficient narrowband technologies. Clearly, a lengthy period is necessary, and the Commission should seek reasonable suggestions as to a specific date. Nevertheless, to allow for an orderly transition to the essential spectrum efficient technology permitted, it is necessary now to establish a date after which FM transmissions would be permitted only on a secondary basis.

While the prospect of a transition to any new technology is not without costs, in ten years we may expect that the demand for spectrum in the Private Land Mobile Radio Services will have reached crisis proportions and the costs of delaying change are far greater than providing for an orderly change. Failure to act now to remedy this clear problem is shirking our public interest responsibility.

The only alternative to maximizing the use of existing Private Land Mobile Radio frequencies is to permit encroachment upon the UHF or other spectrum, an approach that will impose serious interference problems with existing service as well as limit new video options to the public. A far better approach would be to recognize that the time is now for spectrum efficient technologies to be implemented in the Private Land Mobile Radio Services and to require switching from FM technologies to narrowband technologies under a reasonable time schedule. The Report and Order adopted by the Commission today lends some encouragement to spectrum efficiency and the use of narrowband technologies; however, here we go again missing the opportunity to implement efficient spectrum planning.

[FR Doc. 85-8075 Filed 4-4-85; 8:45 am]
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Proposed Rules

Federal Register
Vol. 50, No. 66
Friday, April 5, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Coordination of Public and Private Enforcement of Environmental Laws

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on coordination of public and private enforcement of environmental laws. Interested persons are invited to comment on the draft recommendation.

DATE: Comments due by Monday, April 22, 1985.

ADDRESS: Send comments to: David M. Pritzker, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: David M. Pritzker, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Governmental Processes has under consideration a draft recommendation on coordination of public and private enforcement of environmental laws. The draft recommendation is based on a study prepared for the Administrative Conference by Professors Barry B. Boyer and Errol E. Meidinger of the State University of New York at Buffalo. Copies of the report may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037. (Telephone: 202–254–7065).

The Clean Air Act, the Clean Water Act, and certain other environmental statutes contain provisions authorizing parties to bring enforcement actions in the Federal courts. The number of these "citizen suits" has been growing in recent years. Professors Boyer and Meidlinger have described and analyzed this phenomenon in their report to the Administrative Conference. The draft recommendation that follows notes the importance of a basic consistency between private and public enforcement activities. It suggests administrative steps that the Environmental Protection Agency can take to achieve better coordination and to provide better guidance to persons involved in the enforcement process.

The Committee on Governmental Processes invites comments on the proposed recommendation, and requests that they be submitted to the address given above, not later than Monday, April 22, 1985.

Draft Recommendation: Coordination of Public and Private Enforcement of Environmental Laws

Introduction

Congress has incorporated into the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and numerous other Federal environmental statutes provisions authorizing private parties to bring enforcement actions in the Federal courts. These "citizen suit" provisions generally permit any person or organization to seek injunctions abating activities that violate agency rules, standards, or permits. In addition, the Clean Water Act and the Hazardous and Solid Waste Amendments of 1984 permit plaintiffs to seek civil penalties in a private enforcement action.

As use of private enforcement actions has grown, issues related to coordinating public and private enforcement activities have arisen. Coordination, in the sense of maintaining basic consistency in the bringing of cases and the imposition of penalties, is important for several reasons. Inconsistencies in case selection or penalty policy may create actual and perceived unfairness to the regulated, as similarly situated parties receive varying treatment. Uncertainties about the likelihood or outcome of enforcement actions may increase litigation and decrease voluntary compliance. Lack of coordination may also make it difficult for the Environmental Protection Agency and cooperating state agencies to deploy their limited enforcement resources in the most efficient and effective manner. The recommendation that follows proposes administrative steps which the Environmental Protection Agency can take to provide better guidance to those involved in the enforcement process, and to achieve better coordination between public and private enforcement.

Recommendation

1. Articulation of Enforcement Policy

The Environmental Protection Agency should give high priority to clarifying its policies for selecting cases for enforcement, for calculating penalties, and for settling contested cases. Since these policies are likely to have a significant impact on the public and on the agency's performance of its mission, EPA should, consistently with Recommendation 76–5,[1] provide opportunities for public participation in the formulation of such policies whenever feasible. These policies should be published in the **Federal Register** and otherwise made freely available to interested persons, as the agency has begun to do in developing its Clean Water Act "significant noncompliance" regulations.

2. Improvement of Information Systems

The availability of accurate, complete, and current information about the compliance status of regulated persons and firms is essential both for the formulation and implementation of agency enforcement strategies, and for the effective use of private enforcement actions. When designing management information systems and reporting requirements, the Environmental Protection Agency should consider improving the quality of such information and its availability for private enforcement. The Office of Management and Budget should give similar consideration to the role of compliance information when reviewing EPA data-gathering proposals.

3. Notice of Private Actions

When the Environmental Protection Agency receives notice of an alleged violation from a private party, and the agency is not a party to a private enforcement action relating to that alleged violation, the EPA should request that the party giving the notice also provide the agency with copies of

[1] Interpretive Rules of General Applicability and Statements of General Policy, 4 ACUS Recommendations and Reports 62 (1979), 1 CFR 305.76–5.

all complaints [2] and other significant pleadings, settlement agreements, and judicial decrees relating to the alleged violation, which are subsequently filed in court.[3]

List of Subjects in 1 CFR Ch. III

Environmental protection.

(5 U.S.C. 574)

Dated: April 2, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85-7916 Filed 4-4-85; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

Grapes Grown in a Designated Area of Southeastern California, and Table Grapes Imported into the United States; Proposed Grade, Size, Quality, and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal which would, during the period May 1 through August 15 of each year, establish minimum requirements for shipments of table grapes grown in southeastern California, and for table grapes imported into the United States, except for the Emperor, Calmeria, Almeria, and Ribier varieties which are not grown in the production area in southeastern California. Such grapes would be required to meet the minimum grade and size requirements for U.S. No. 1 Table grade, as defined in the United States Standards for Grades of Table Grapes (European or Vinifera Type), and minimum maturity standards as defined in the California Administrative Code. For table grapes grown in southeastern California additional requirements would be effective, including container and pack, container marking, packing holidays, and a requirement to provide adequate facilities for inspection. These actions are designed to assure the shipment of ample supplies of table grapes of acceptable quality and to promote orderly marketing in the interests of producers and consumers.

DATES: California Desert Grape Regulation 5 and Table Grape Import Regulation 3 would be effective from May 1 through August 15 of each year. Comments must be submitted by April 22, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The California Desert Grape Administrative Committee met December 12, 1984, and unanimously recommended grade, size, maturity, container, pack, and other requirements for 1985 season table grapes grown in southeastern California, to be effective for the period May 1-August 15, 1985. The committee has projected that shipments of grapes regulated under the Federal marketing order will begin on or about May 1, 1985, and that the California desert grape regulation should become effective by that date. The Department proposes to make these dates effective each year during this time period. Grape producers vary their cultural practices early in the grape growing season in order to meet necessary requirements for grade and size at harvest time. This action would afford domestic producers and importers of table grapes with ample notice of such seasonal regulations. Similar requirements have been in effect for the past two marketing seasons.

The proposed California Desert Grape Regulation would require shipments of table grapes grown in the production area in southeastern California to meet the minimum grade and size requirements of U.S. No. 1 Table Grade as specified in the United States Standards for Grades of Table Grapes (European or Vinifera Type), except that grapes of the Flame Seedless variety would be required to meet the "other varieties" standard for berry size (ten-sixteenths of an inch). In addition, fresh shipments of grapes would be required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties would be exempted from regulation as they are not grown in the production area. The regulation would also establish certain container and pack requirements as well as container marking requirements in order to standardize packing practices. Experimental containers approved by the committee could also be used. A minimum of 22 pounds of grapes would be required to be packed in each of the authorized containers, except for certain packs and experimental containers. Containers would also be required to bear the minimum net weight of the grapes in the container, the name of the grape variety, the name of the shipper, and the lot stamp inspection number on the outside of the container. Such requirements are designed to facilitate identification of shipments and promote orderly marketing of these grapes. Packing holidays on Saturdays and Sundays and certain holidays during the regulation period would also be established and are designed to prevent an accumulation of excessive supplies of table grapes at distribution points during periods of reduced demand or market inactivity. The regulation would exempt "organically-grown" table grapes from the minimum individual berry size requirement. Table grapes for processing would be exempt from regulation if certain conditions and safeguards were met.

Also proposed are requirements for persons desiring inspection of grapes in the production area. All persons requesting such inspections would be required to provide adequate facilities, access to the grapes, and standard equipment and incidental supplies necessary for such inspections to be performed.

The proposed California Desert Grapes Regulation would be issued under the marketing agreement and Order No. 925 (7 CFR Part 925), regulating the handling of table grapes grown in a designated area of southeastern California. This marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

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[2] The Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, section 401 (to be codified at 42 U.S.C. 6972(b)(2)(F)), provide that a plaintiff bringing an action under the citizen suit provision of the Resource Conservation and Recovery Act must serve a copy of the complaint on the Attorney General and the Administrator of the EPA.

[3] Nothing in this recommendation is intended to suggest that a request for or receipt of any such notice or other information or document has or should have any preclusive effect upon the federal government's ability to take enforcement action against the alleged violator.

The proposed Table Grapes Import Regulation would require imports of table grapes to meet the same minimum grade, size, and maturity requirements as specified in the proposed California Desert Grape Regulation. The effective period of the import regulation would also be May 1 through August 15 of each year. Grapes of the Emperor, Calmeria, Almeria, and Ribier varieties would be exempt from import requirements as they would not be regulated under the California Desert Grape Regulation. The Table Grape Import Regulation is issued under section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Section 8e requires that when specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

List of Subjects

7 CFR Part 925

Marketing agreement and orders, Grapes, California, Incorporation by reference.

7 CFR Part 944

Fruits, Import regulations, Grapes, Incorporation by reference.

PARTS 925 AND 944—[AMENDED]

Therefore, new §§ 925.304 and 944.503 are proposed to be added to read as follows:

§925.304

California Desert Grape Regulation 5.

During the period May 1 through August 15 of each year, no person shall handle any variety of grapes, except Emperor, Calmeria, Almeria, and Ribier varieties unless such grapes meet the following requirements: *Provided,* That no person shall pack any such grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, unless approved in accordance with paragraph (e) of this section.

(a) *Grade, size, and maturity.* Such grapes shall meet the minimum grade and size requirements specified in §51.884 for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.8870 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code (Title 3).

(b) *Container and Pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and which otherwise meet the requirements of sections 1380.19(14), 1436.37, and 1436.38 of the California Administrative Code (Title 3):

(i) Sawdust pack with inside dimensions of 7¾ x 14 15/16 x 18⅝ inches, specified as container 28;

(ii) Polystyrene lug with inside dimensions of 6¾ x 12½ x 15⅜ inches, specified as container 38J;

(iii) Standard grape lug with dimensions in inches of 4½ to 8½ (inside) 13½ to 14½ (outside) x 16⅝ to 17½ (outside); specified as container 38K;

(iv) Polystyrene lug with inside dimensions of 6¼ or 8¼ × 11½ × 18⅛ inches, specified as container 38Q;

(v) Grape lug with dimensions in inches of 4 to 7 inches (inside) × 15¾ (outside) × 19 1/16 (outside), specified as container 38R;

(vi) Such other types and sizes of containers as may be approved by the committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material, and experimental containers, shall be 22 pounds based on the average net weight of grapes in a representative sample of containers.

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by a 3 box pallet configuration.

(c) *Organically grown grapes.* Organically grown grapes (defined to mean grapes which have been grown for market as natural grapes by performing all the normal cultural practices, but not using any inorganic fertilizers or agricultural chemicals including insecticides, herbicides, and growth regulators, except sulfur) need not meet the minimum individual berry size requirements of this section if the following conditions and safeguards are met: (1) The handler of such grapes has registered and certified with the committee on a date specified by the committee the location of the vineyard, the acreage and variety of grapes, and such other information as may be needed by the committee to carry out these provisions; (2) each container of organically grown grapes bears the words "organically grown" on one outside end of the container in plain letters in addition to requirements specified under paragraph (b)(3) of this section.

(d) *By-product grapes.* The handling of grapes for processing (raisins, crushing and other by-products) is exempt from requirements specified in paragraphs (a), (b), and (c) of this section if the committee determines that the person handling such grapes has secured the appropriate permit or order from the County Agricultural Commissioner, and the by-product plant or packing plant to which the grapes are shipped has adequate facilities for commercial processing, grading, packing or manufacturing of by-products for resale.

(e) *Suspension of packing holidays.* Upon approval of the committee, the prohibition against packing grapes on any Saturday or Sunday, or on the Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with producers and safeguards specified by the committee.

(f) Certain maturity, container, and pack requirements cited in this regulation are specified in the California Administrative Code (Title 3), and are incorporated by reference. Copies of such requirements are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(g) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes grown in the production area. The inspection and certification services will be available upon

application in accordance with the rules and regulations governing inspections and certification of fresh fruits, vegetables, and other products (7 CFR Part 51): *Provided,* That all persons who request such inspection and certification must provide: Adequate facilities in which the inspections may be conducted and: The necessary equipment and incidental supplies that are considered as standard requirements for providing fresh inspection under Federal or Federal-State inspection procedures.

§ 944.503 Table Grape Import Regulation 3.

(a) *Application to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period May 1 through August 15 of each year, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table grade, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880 through 51.912), except that grapes of the Flame Seedless variety shall meet the minimum berry requirement of ten-sixteenths of an inch, and minimum maturity standards in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6 1436.7, 1436.12, and 1436.17 of Article 25 of the California Administrative Code of California (Title 3).

Such minimum maturity standards are incorporated by reference, copies of which are available from William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. They are also available for inspection at the office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C. 20408. This incorporation by reference was approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register.**

(b) The Federal or Federal-State Inspections Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 2, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–8222 Filed 4–4–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–117–AD]

Airworthiness Directive; Dassault-Breguet Mystere Falcon 50 Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require inspection for proper installation of passenger oxygen mask presentation boxes on Dassault-Breguet Falcon 50 airplanes. The AD is prompted by a report of improper installation of the passenger oxygen mask presentation boxes in this airplane, which could cause the lanyard to hang up when pulled to initiate the flow of oxygen into the mask.

DATES: Comments must be received no later than May 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–117–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Walter Eierman, Aerospace Engineer, Systems & Equipment Section, ANM–173W, FAA, Northwest Mountain Region, Western Aircraft Certification Office; telephone (213) 536–6388. Mailing address: FAA, Northwest Mountain Region, Western Aircraft Certification Office, ANM–173W, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–117–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

It was reported that improperly installed passenger oxygen mask presentation boxes were discovered in one Falcon 50 aircraft with an interior

installed at AiResearch Aviation Company and field-approved (FAA Form 337). The problem occurred with boxes not mounted on the fuselage vertical center line.

These boxes were incorrectly installed in a manner where the lanyard, when pulled to initiate the flow of oxygen to the mask, could catch on the box lid tab and prevent the initiation of the oxygen flow. Since this condition is likely to exist on other Mystere Falcon 50 airplanes with the same installation, an airworthiness directive (AD) is being proposed which would require inspection of the passenger oxygen mask presentation box installation, and proper reorientation if necessary.

Cost Estimate

It is estimated that 20 U.S. registered airplanes would be affected by this proposed AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total economic impact of this AD on the U.S. fleet is estimated to be $2,000.

For these reasons, the FAA has determined that this document (1) involves a proposed reuglation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Dassault-Breguet Mystere Falcon 50 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Dassault-Breguet: Applies to Mystere Falcon 50 airplanes, serial numbers as follows: 014, 026, 035, 038, 039, 041, 045, 051, 053, 059, 069, 079, 081, 086, 087, 099, 105, 108, 124, 125; certificated in all categories. Compliance required within 90 days from the effective date of this AD, unless previously accomplished.

To prevent a lanyard hang-up when the lanyard is pulled to initiate the flow of oxygen into the oxygen mask, accomplish the following:

A. Each passenger emergency oxygen mask presentation box not located on the fuselage vertical center line must be inspected for orientation. Accomplish by manually opening the presentation box cover lids and inspecting to ensure that the presentation boxes are installed with the oxygen inlet fitting in the side of the oxygen box in the inboard position (pointed toward the fuselage center line). Any box not installed with this orientation must be removed and reinstalled in such a way that it is rotated 180° so that the inlet fitting is in the inboard position.

Note.—AiResearch Aviation Service Bulletin No. 9.1 pertains to this subject.

B. Alternate inspections, modifications, or other actions which provide an acceptable level of safety may be used when approved by the Manager, Western Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request from AiResearch Aviation, 4150 Donald Douglas Drive, Long Beach, California 90808. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, CA.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and CFR 11.85)

Issued in Seattle, Washington, on March 28, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8110 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21901; 40-14438; File No. S7-13-85]

Facilitating Shareholder Communications

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment proposed amendments to its shareholder communications rules which govern the process by which registrants communicate with the beneficial owners of securities registered in the name of a broker or other nominee. The proposed amendments are intended to allow for the most advantageous implementation of the system of direct communication provided under those rules.

DATE: Comments should be received on or before May 15, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-13-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Sarah A. Miller or JoAnn L. Zuercher, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed revisions to Rules 14b-1 [1] and 14c-7 [2] and a new proposed Rule 14a-13. These proposals are a direct result of the one-year deferral of the effective date (from January 1, 1985 to January 1, 1986) of Rule 14b-1(c) agreed to by industry representatives and authorized by the Commission in August 1984.[3] The deferral was intended to provide more time for the determination of reasonable costs and the implementation of a system to provide registrants with security holder information in an efficient, timely and effective manner. At the time it authorized the deferral, the Commission agreed to undertake certain steps to clarify the respective functions of brokers and registrants and to ensure the effective implementation of the system of direct communication. Accordingly, these proposed amendments delineate, in two separate rules, the respective obligations of brokers and registrants. In addition, the proposed amendments would provide, among other things, that: (1) If a registrant requests the list of non-objecting security holders, it must request the list from all brokers having customers who are beneficial owners of the registrant's securities; (2) a broker must provide the beneficial owner lists to registrants as often as they request the information, rather than only once a

[1] 17 CFR 240.14b-1.

[2] 17 CFR 240.14c-7.

[3] Release No. 34-21339 (September 21, 1984) [49 FR 38096].

year; and (3) a registrant may mail its annual report to security holders to its beneficial owners so long as the registrant notifies the broker at the time it submits a search card requesting beneficial owner information.

I. Background

Rule 14b-1 was revised substantially in 1983 pursuant to recommendations of the Advisory Committee on Shareholder Communications, contained in its report, *Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities.* Paragraph (c) was adopted to provide a means of direct communication between registrants and their beneficial owners by requiring brokers to provide registrants upon request with the names, addresses and securities positions of its customers who are beneficial owners of the registrant's securities and who have not objected to such disclosure.[4] In August 1984, the Commission deferred the effective date of paragraph (c) until January 1, 1986.[5] Representatives from the securities industry and the registrant community agreed that during this deferral period they would develop and establish both an efficient means of furnishing beneficial owner information to registrants and an appropriate schedule of reimbursement.

In September 1984, the Ad Hoc Committee on Identification of Beneficial Owners was appointed by the New York Stock Exchange (NYSE). The Committee, composed of members of both the securities industry and registrant community, was formed to resolve the cost issues and to develop a workable and effective system that would be of maximum use to registrants and not burdensome to brokers. The Committee has now largely resolved the problems which initially led to the deferral of the effective date of Rule 14b–1(c). First, the reimbursement of start-up costs issue has been resolved through NYSE rule changes that permit brokers to assess a $.20 per proxy surcharge for the first annual meeting proxy solicitation occurring subsequent to adoption of the NYSE's rule changes. This surcharge, together with an additional surcharge for the next annual meeting proxy solicitation, will fund the start-up costs associated with furnishing the beneficial owner information to registrants. The second surcharge will fund the balance of the costs not funded by the first, $.20, surcharge and will be the subject ot a separate NYSE rule change. The $.20 rule change was filed with the Commission in January 1985, published in the **Federal Register** on February 8, 1985,[6] and approved by the Commission on March 28, 1985.[7] It is anticipated that other self-regulatory organizations soon will adopt the surcharge as part of their proxy rules. The other cost issue—determination of reasonable costs for maintaining beneficial owner lists—is being addressed by the Ad Hoc Committee and also will be the subject of a separate NYSE rule change.

To make the system work and to ensure that registrants find the beneficial owner lists useful and meaningful, the Ad Hoc Committee also determined that an intermediary was necessary. By employing an intermediary to compile and to supply beneficial owner lists, registrants will be assured that the lists are compiled in a standardized manner. Moreover, brokers will be assured that the source of the lists will be kept confidential. In addition, economies of scale will be realized by maximizing cost savings while minimizing burdens on brokers by permitting them to delegate this function to an intermediary . The Ad Hoc Committee requested proposals and selected Independent Election Corporation of America (IECA) to serve as the intermediary between registrants and brokers in supplying lists of beneficial owners. IECA will be governed by a user board consisting of registrants, brokers and other industry representatives.

At the time of the deferral of the effective date of Rule 14b–1(c), the Commission agreed to clarify certain aspects of the shareholder communication rules and take certain additional steps which are the subject of this release.

Ultimate effectiveness and utility of the shareholder communications rules will require enactment of legislation authorizing the Commission to regulate the proxy processing activities of banks, associations and other entities. During the 98th Congress, legislation, entitled the Shareholder Communications Act of 1984, was introduced in both houses of Congress. The legislation was reported out of the House Energy and Commerce Committee on August 2, 1984. No other action was taken in either the House or Senate with respect to the legislation. On March 20, 1985, Representatives Wirth and Rinaldo introduced in the House of Representatives the Shareholder Communications Act of 1985 (H.R. 1603). It is anticipated that the legislation shortly will be reintroduced in the Senate.

II. Overview of Proposals

Currently, Rule 14a–3(d) requires registrants whose securities are held by beneficial owners to take certain steps to ensure proxy solicitation material is forwarded by brokers to beneficial owners. These steps include requesting, by the use of search cards, the number of proxies and other proxy soliciting material needed by record holders to forward the material to beneficial owners. The registrant must request this information 20 calendar days prior to the record date of the annual meeting.[8] The broker is required to respond to this request within seven business days of receipt of the request.[9] Upon receipt of the proxy, proxy soliciting material or annual reports, the broker is required to forward these materials to its customers who are beneficial owners within five business days of receipt.[10] Further, brokers are required to provide a requesting registrant with a list of its customers who are non-objecting beneficial owners of the registrant's securities. That list, which is to be compiled as of the registrant's record date for its latest annual meeting, must be provided to registrants only one time per year.

For simplicity, the Commission has set forth the registrant's obligations in proposed Rule 14a–13, and the proposed revisions to Rule 14b–1 would pertain only to brokers' obligations in connection with communicating information to beneficial owners. The system, as proposed to be changed, would require that, if the registrant requests a list of beneficial owners who do not object to the disclosure of their identity, it must make the request of all brokers having customers who are beneficial owners of the registrant's securities. Further, a registrant could request the beneficial owner information more often than once a year and the broker would be required to comply with any such request. The lists would be compiled at least as often as the record date for the registrant's latest annual or special meeting. If no meeting is scheduled and the registrant requests a list of beneficial owners from record holders, that list would be compiled as of a date not earlier than ten business days after the broker receives the registrant's request. For example, if no annual or special meeting is scheduled

[4] Release No. 34–20021 (July 28, 1983) [48 FR 35082].

[5] Release No. 34–21339 (September 21, 1984) [49 FR 38096].

[6] Release No. 34–21702 (February 1, 1985) [50 FR 5460].

[7] Release No. 34–21900 (March 28, 1985).

[8] 17 CFR 240.14a–3(d).

[9] 17 CFR 240.14b–1(a).

[10] 17 CFR 240.14b–1(b).

and the broker receives a registrant's request for the list of beneficial owners on April 10, 1983, the list would be compiled as of a date no earlier than ten business days later or April 24, 1985. This last requirement is necessitated by the fact that brokers' back office systems do not permit the retroactive establishment of beneficial owner lists, but rather, allow those lists to be established prospectively.

The proposed amendments further provide that, if it chooses, the registrant may mail annual reports directly to beneficial owners so long as the registrant notifies the broker when making its initial request for beneficial owner information that the registrant intends to mail the annual report directly to its non-objecting beneficial owners. The registrant would notify the broker of its intention at the time it submits a search card requesting the beneficial owner information. If so notified by the registrant, a broker would have no obligation in connection with that mailing to forward the annual report to non-objecting beneficial owners but would have, of course, the obligation to forward reports to those beneficial owners who objected to the disclosure of their identities.

Finally, the proposed amendments would provide that, without assurances of reimbursement of reasonable expenses associated with satisfying its obligations with respect to communications with the beneficial owners, a broker has no obligation to perform its obligations under Rule 14b–1. The registrant would have a corresponding obligation to pay a broker's reasonable expenses associated with providing beneficial owner information.

III. Discussion of Proposals

A. *Obligation of registrants in communicating with beneficial owners.* Proposed Rule 14a–13, a registrant-related corollary to Rule 14b–1, delineates a registrant's obligations in communicating with its beneficial owners and would work in tandem with present Rule 14b–1.

First, provisions of present Rule 14a–3(d) would be moved to new Rule 14a–13(a) in order to place all of the registrant-related provisions together. Paragraph (d) of Rule 14a–3(d) would become paragraph (a) of proposed Rule 14a–13 and would be amended to require registrants to request and to provide record holders with the number of copies of proxy, proxy soliciting material and annual reports to security holders necessary to supply beneficial owners. These proposed amendments recognize that record holders need not forward the annual report to those non-objecting beneficial owners with whom the registrant intends to communicate directly. Thus, if a registrant has indicated to the record holder that it wishes to communicate directly with non-objecting beneficial owners, then the record holder need only inform the registrant how many copies of the proxy soliciting material and annual reports are needed for forwarding to objecting beneficial owners. Similarly, if a registrant does not indicate that it intends to communicate directly with beneficial owners, the record holder then will inform the registrant of the number of copies needed for all beneficial owners.

Proposed paragraph (b)(1) would require a registrant to request the list of non-objecting beneficial owners from all brokers having customers who are beneficial owners of the registrant's securities. This requirement would ensure that registrants do not request the security holder lists only from the largest brokers thereby leaving the smaller brokers with no means of recouping expenses associated with maintaining the required information.

Proposed Rule 14a–13(b)(2) would continue unchanged the statement in present Rule 14b–1(c) regarding a registrant's exclusive use of the beneficial ownership lists for purposes of corporate communications. The Commission believes that this provision adequately addresses the securities industry's concerns regarding the issue of confidentiality. Moreover, the Commission notes that the identity of the individual brokers who provide the information to be compiled in the beneficial owner lists will be kept confidential by the intermediary's excision of all information identifying specific brokers.

In connection with registrants' use of beneficial owner lists for purposes of forwarding to security holders certain other corporate communications such as quarterly reports, the Commission wishes to encourage voluntary communication with security holders. In this regard, the Commission believes it would be desirable that, where registrants use the non-objecting beneficial owner lists to mail such communications directly to non-objecting beneficial owners, they also deliver to brokers for forwarding a sufficient number of copies of the corporate communication in order not to disadvantage those security holders who object to disclosure of their identities to registrants.

Finally, proposed paragraph (b)(3) would place on the registrant the obligation to pay the reasonable expenses of brokers associated with providing beneficial owner information.

Proposed paragraph (c) would allow registrants to mail directly the annual reports to security holders to those beneficial owners that have been identified to them. Any registrant choosing to do its own annual report mailing, however, would be required to so inform the broker at the time it submitted, pursuant to paragraph (a), a search card to the broker requesting the beneficial owner information, and, further, would have the responsibility of ensuring that the annual report precede the proxy statement.

The Commission is aware that, for reasons of economy, registrants may wish to engage in split mailing, *i.e.*, forwarding the annual report by bulk mail and mailing the proxies and other proxy soliciting material by first class mail. In this connection, questions have arisen concerning compliance with Rule 14a–3(b) which requires annual reports to accompany or precede the proxy statement.[11] The Commission does not wish to discourage the practice of split mailing which will result in savings to the registrant and ultimately redound to the benefit of security holders. Accordingly, compliance with the rule depends upon whether registrants take steps reasonably calculated [12] to guarantee that the annual report to security holders accompanies or precedes the proxy statement.[13] In this connection, the Commission solicits specific comment as to whether Rule 14a–5 [14] should be amended to provide that when annual reports to security holders are mailed separately from proxy material, all proxy statements shall disclose the date the mailing of the annual report to security holders was commended and shall contain instructions on how to obtain a copy of that annual report.

B. *14b–1 Obligation of registered brokers in connection with the prompt forwarding of certain communications to beneficial owners.* The Commission

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[11] In *Ash* v. *GAF Corp.*, 723 F.2d 1090, 1094 (3d Cir. 1983), the Third Circuit held that sending the annual report by third class mail 4 to 5 days prior to mailing the proxy statement by first class mail "did not reasonably guarantee that shareholders would receive the annual report at the same time or before the proxy materials. In fact, the procedure made it highly probable that shareholders would receive the annual report after they had received the proxy materials."

[12] The Commission is aware that, depending on the geographic location of specific post offices, the length of time in which it takes bulk mail to reach its intended destination may vary greatly.

[13] Registrants who request record holders to engage in split mailing retain responsibility for ensuring compliance with Rule 14a–3(b).

[14] 17 CFR 240.14a–5.

proposes to amend Rule 14b–1 in several respects. First, as noted above, registrant-related provisions have been moved to proposed Rule 14a–13. Second, proposed revisions to paragraph (c) relate to how often the broker's obligation to provide beneficial owner information to registrants arises. Under the present rule, a broker will be obligated to provide registrants only once a year a list of beneficial owners compiled as of the registrant's record date for its latest annual meeting of security holders.[15] As proposed, a registrant could request the beneficial owner list whenever it wants and the broker, in response to that request, would respond to the request. In light of this change, paragraph (c) also would provide, in addition to stating that the list of beneficial owners is to be compiled as of the registrant's record date for its latest annual or special meeting of security holders, that if the request is not made in connection with a meeting, the list is to be compiled as of a date no earlier than ten days after receipt of the registrant's request. In connection with a broker's obligation to provide beneficial owner lists to a registrant, the Commission solicits specific comment on whether a time limit should be specified within which a broker is to provide the registrant with the requested list.

Proposed paragraph (d) contains provisions relieving a broker of his obligations in two instances. The first instance relates to reimbursement. As the rule presently stands, brokers are neither obligated to forward proxy soliciting material and annual reports to beneficial owners nor to provide registrants with beneficial owner lists without assurances of reimbursement of reasonable expenses. At present, the reimbursement provisions are placed separately in paragraphs (b) and (c). Because all obligations pursuant to the Rule relate to brokers' obligations to aid registrants to communicate with beneficial owners of their securities, the Commission proposes to place the separate reimbursement provisions in one paragraph.[16] Accordingly, under proposed paragraph (d)(1), a broker's obligations under this Rule are contingent on assurances of reimbursement from the registrant of all reasonable expenses incurred in connection with the performance of those obligations.

[15] Release No. 34–20021 (July 23, 1983) [48 FR 35082].

[16] In this regard, see discussion on pp. 4–5, *supra*, concerning the NYSE proposed rule change permitting brokers to fund start-up costs by assessing a surcharge per proxy solicitation.

The second instance in which a broker would be relieved of his obligation relates to a broker's duty to deliver annual reports to security holders to beneficial owners. Proposed paragraph (d)(2) would relieve a broker of his obligation to mail the annual report to security holders identified by the broker and delivered in a list to the registrant so long as the registrant notifies the broker at the time it submits a search card, in accordance with Rule 14a–13(a), that it intends to mail the annual report directly to those beneficial owners whose identity is disclosed.

C. *14c–7 Providing copies of material for certain beneficial owners.* The Commission also proposes to amend, in several respects, Rule 14c–7, which governs the forwarding of information statements to security holders. First, obligations imposed by the Rule on the registrant would be separated into separate paragraphs similar to those contained in proposed Rule 14a–13(a). Paragraph (a) involves the registrant's obligation to inquire of record holders the number of copies of the information statement and annual report to security holders needed to forward the material to beneficial owners. Paragraph (b) concerns the registrant's obligation to supply sufficient quantities of the information statement and annual report to security holders. Paragraphs (a) and (b) and note 3 would be amended further to recognize that record holders need not forward material to those non-objecting beneficial owners with whom the registrant intends to communicate directly.

IV. Request for Comments

Any interested persons wishing to submit written comments on the proposed revisions to the shareholder communication rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so.

The Commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[17]

V. Statutory Basis and Text of Proposed Amendments

These amendments are being proposed pursuant to section 12, 14, 17 and 23(a) of the Securities Exchange Act of 1934.[18]

[17] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements Securities.

VI. Text of Proposals

In accordance with the foregoing Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a–3(d) [Amended]

1. By removing paragraph (d) including Notes 1 and 2 and redesignating paragraphs (e) and (f) as paragraphs (d) and (e) of § 240.14a–3(d).

2. By adding § 240.14a–13 to read as follows:

§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting with respect to which the registrant intends to solicit proxies, consents or authorization are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(1) By first class mail or other equally prompt means, inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the proxy and other soliciting material necessary to supply such material to beneficial owners; and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such material to beneficial owners if such reports are to be distributed by the broker, dealer, bank, voting trustee or their nominees;

(2) Make the inquiry at least 20 calendar days prior to the record date of the meeting of security holders, or (i) if such inquiry is impracticable 20 calendar days prior to the record date of a special meeting, as many days before such meeting as is practicable or (ii) at such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; and

(3) Shall supply the record holders of whom the inquiry is made with additional copies of the proxy, other proxy soliciting material, and/or the annual report to security holders if such report is to be distributed by the broker, dealer, bank, voting trustee or their

[18] 15 U.S.C. 78*l*, 78n, 78q, and 78w(a).

nominees, in a timely manner, in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to record holders to whom the material is sent.

Note 1.— If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act, the registrant shall make appropriate inquiry of the agency and thereafter of the participants in such agency who may hold on behalf of a beneficial owner, and shall comply with the above paragraph with respect to any such participant.

Note 2.— The attention of registrants is called to the fact that broker-dealers have an obligation pursuant to § 240.14b–1 and applicable self-regulatory requirements to obtain and forward (a) proxy soliciting materials, and (b) when requested by the registrant, annual reports to record holders, to beneficial owners to whom such brokers hold securities.

(b) Any registrant requesting pursuant to § 240.14b–1(c) a list of names, addresses and securities positions of beneficial owners of its securities who have not objected to disclosure of such information shall:

(1) Request such list from all brokers having customers who are beneficial owners of the registrant's securities;

(2) Use the information so furnished exclusively for purposes of corporate communications; and

(3) Upon the request of such brokers, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by brokers holders pursuant to § 240.14b–1(c), provided that such registrant notifies the brokers, at the time a search card requesting the beneficial owner information in compliance with paragraph (a) of this section is sent that the registrant will mail the annual report to security holders to the beneficial owners so identified.

3. By revising § 240.14b–1 to read as follows:

§ 240.14b–1 Obligation of registered brokers in connection with the prompt forwarding of certain communications to beneficial owners.

A broker registered under section 15 of the Act shall:

(a) Respond no later than seven business days after receipt of an inquiry made in accordance with § 240.14a–13(a) by or on behalf of a registrant soliciting proxies, consents or authorization by indicating, by means of a search card or otherwise, the approximate number of its customers who are beneficial owners of the registrant's securities that are held of record by the broker or its nominees;

(b) Upon receipt of the proxy, other proxy soliciting material, and/or annual reports to security holders, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after the receipt of the proxy material or annual reports; and

(c) Provide the registrant, upon its request, with the names, addresses and securities positions, compiled at least as often as of the registrant's record date for its latest annual or special meeting of security holders, or, if not in connection with a meeting, no earlier than ten business days after receipt of the registrant's request of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information.

(d) A broker need not satisfy (1) its obligations under this section if a registrant does not provide assurance of reimbursement of the broker's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by this section section; or (2) its obligation under paragraph (b) of this section to forward annual reports to beneficial owners if a registrant notifies the broker pursuant to § 240.14a–13(c) that the registrant will mail the annual report to non-objecting beneficial owners, identified by the broker and delivered in a list to the registrant pursuant to paragraph (c) of this section.

4. By revising § 240.14c–7 to read as follows:

§ 240.14c–7 Providing copies of material for certain beneficial owners.

If the registrant knows that securities of any class entitled to vote at a meeting are held of record by a broker, dealer, bank or voting trustee, or their nominees, the registrant shall:

(a) Inquire of such record holder whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to beneficial owners and, in the case of an annual meeting at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such material to such beneficial owners for whom proxy material has not been and is not to be made available if such reports are to be distributed by the brokers, dealer, bank, voting trustee or their nominees; and

(b) Supply such record holder with additional copies of the information statement and the annual report to security holders, if such report is to be distributed by the broker, dealer, bank, voting trustee or their nominees, in such quantities, assembled in such form and at such a place, as the record holder may reasonably request in order to address and send one copy of each to each beneficial owner of securities so held and shall, upon the request of such record holder, pay its reasonable expenses for completing the mailing of such material to security holders to whom the material is sent.

Note 1.—If the registrant's list of security holders indicates that some of its securities are registered in the name of "Cede & Co.", a nominee for the Depository Trust Company, or in the name of a nominee for any central certificate depository system, a registrant shall make appropriate inquiry of the central depository system and thereafter of the participants in such a system whom may hold on behalf of a beneficial owner, and to comply with the above rule with respect to any such participant.

Note 2.—The requirement for sending and annual report to security holders of record having the same address will be satisfied by sending a least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available to registrants, however, where banks, broker-dealers and other persons hold securities in nominee accounts or "street names" on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

Note 3.— The attention of registrants is called to the fact that brokers have an obligation pursuant to § 240.14b–1 and applicable self-regulatory requirements to obtain and forward, in a timely manner, (a) information statements, and (b) when requested by the registrant, annual reports to security holders to beneficial owners for whom such brokers hold securities.

(Secs. 3, 12, 14, 15(d), 17, 23(a), 48 Stat. 882, 892, 894, 895, 897, 901; secs. 6, 7, 8, 10, 19a, 48 Stat. 906, 906; sec. 203(a), 49 Stat. 704; secs. 5, 52 Stat. 1076; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 10, 78 Stat. 565–68, 569, 570–74, 580; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28c, 84 Stat. 1435, 1497; sec 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 14, 18, 89 Stat. 117, 118, 119, 121, 137, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c, 78*l*, 78m, 78n, 78g, 78w(a))

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

March 28, 1985.

Securities and Exchange Commission

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that proposed Rules 14a–13 and proposed amendments to Rule 14b–1 and 14c–7, if promulgated, will not have a significant impact on a substantial number of small entities. The reasons for this certification are as follows: Proposed Rule 14a–13 provides guidance to, and establishes obligations of, registrants who wish to communicate directly with beneficial owners. Proposed Rule 14a–13(a), (present Rule 14a–13(d)), and Rule 14c–7 require a registrant to inquire of its record holders the number of proxies, other proxy soliciting material, or information statements necessary to forward to beneficial owners and to supply its record holders with the appropriate number of copies. This amendment neither increases nor decreases the cost or burden on a small entity registrant associated with complying with these obligations. Compliance with Rule 14a–13 (b) and (c) is voluntary in the sense that only registrants who choose to communicate directly with beneficial owners need comply with the Rule's requirements to request security holder lists from all brokers and to pay the reasonable expenses of brokers associated with providing beneficial owner lists. Accordingly, only those small entities who wish to communicate directly with their beneficial owners need incur the direct costs associated with Rule 14a–13 (b) and (c). Small entity registrants will be required, however, to reimburse brokers for start-up costs associated with furnishing the beneficial owner informaiton, at the rate of $.20 per proxy for this year's annual proxy solicitation and at a rate sufficient to cover the remaining start-up costs for next year's annual meeting proxy solicitation.

Rule 14b–1 establishes the obligations of brokers in connection with forwarding communications to beneficial owners. Proposed amendments to paragraph (c) would require a broker, at the registrant's request, to compile the list of beneficial owners more often than one time per year. This amendment will impose no additional cost on small entities. Proposed paragraph (d) provides that a broker's performance of obligations imposed by the Rule is contingent on assurances of reimbursement from the registrant of all reasonable expenses incurred in connection with performing the obligations imposed by the Rule. Proposed paragraph (d) which also specifies that a broker has no obligation to mail the annual report to security holders if the registrant notifies the broker that it intends to mail the annual report directly to those beneficial owners whose identity is disclosed to the registrant, will impose no additional cost on small brokers subject to the Rule.

Dated: March 28, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–7954 Filed 4–4–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 104

Pattern of Violations; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comments.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding its advance notice of proposed rulemaking concerning criteria and procedures for identifying mines with a pattern of violations.

DATE: Written comments should be submitted by May 10, 1985.

ADDRESS: Comments should be sent to: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances; MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION: On February 8, 1985, MSHA published an advanced notice of proposed rulemaking (50 FR 5470) inviting public participation in the Agency's formulation of criteria and procedures to be used for the issuance of a pattern of violations notice. In that notice, the Agency also withdrew an August 15, 1980 (45 FR 54656) proposal regarding pattern of violations. The comment period was scheduled to end on April 9, 1985.

Due to requests from the public, MSHA is extending the period for public comment to May 10, 1985. The Agency would like to emphasize that anyone submitting comments by the April 9, 1985 date may file additional comments by May 10, 1985, if they so desire. All interested members of the mining community are encouraged to submit comments by May 10, 1985.

Dated: April 2, 1985.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 85–8223 Filed 4–4–85; 8:45 am]

BILLING CODE 4510–43–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 516, 580 and 572

[Docket No. 85–10]

Marine Terminal Agreements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rulemaking.

SUMMARY: This proposes the exemption of certain classes of marine terminal agreements from the filing and/or waiting period requirements of the Shipping Act of 1984 and from the filing and/or approval requirements of the Shipping Act, 1916. Two types of exemptions are proposed. An exemption from both acts' filing requirements would be granted to landlord-tenant marine terminal facility leases, agreements relating to marine terminal facilities or services used in connection with the handling of proprietary cargo, agreements relating to the financing or construction of marine terminal facilities and agreements relating to off-dock container freight station facilities or services. All other classes of marine terminal agreements, with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, would be exempted from applicable waiting period/approval requirements, on condition that they be filed for informational purposes and Federal Register publication.

DATE: Comments on or before June 4, 1985.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission,

Washington, D.C. 20573, (202) 523–5787
John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, Washington, D.C. 20573, (202) 523–5860.

SUPPLEMENTARY INFORMATION:

I. Background

The Shipping Act of 1984, (1984 Act) (46 U.S.C. app. 1701–1720) and the Shipping Act, 1916, (1916 Act) (46 U.S.C. app. 801 et seq.), together, set forth the regulatory regime governing certain agreements by or among common carriers and marine terminal operators subject to the 1984 and 1916 Acts in the foreign and domestic offshore commerce of the United States, including agreements relating to marine terminal facilities and services.

Insofar as agreements relating to the foreign oceanborne commerce of the United States are concerned, section 3 of the 1984 Act (46 U.S.C. app. 1702) defines an "agreement" and certain other terms; section 4 (46 U.S.C. app. 1703) sets forth those types of agreements that are within the scope of that Act; section 5 (46 U.S.C. app. 1704) requires parties to an agreement to file a true copy of the agreement together with relevant information; section 6 (46 U.S.C. app. 1705) sets forth procedures under which the Commission reviews and takes action upon an agreement; and section 16 (46 U.S.C. app. 1715) sets forth the authority of the Commission to exempt any class of agreements from any requirement of the 1984 Act. Under section 7 of the 1984 Act (46 U.S.C. app. 1706), agreements which have been filed and become effective, or which are exempt from filing, are not subject to the United States antitrust laws. The Commission's rules implementing those provisions of the 1984 Act which govern ocean common carrier agreements and marine terminal operator agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) are set forth in 46 CFR Part 572, *Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984* (49 FR 45320 (November 15, 1984); 49 FR 48927 (December 17, 1984)).

Insofar as agreements relating to domestic offshore commerce are concerned, section 1 of the 1916 Act (46 U.S.C. app. 801) defines "common carrier by water in interstate commerce", "other person" and certain other terms; section 15 (46 U.S.C. app. 814 defines the term "agreement"; sets forth those types of agreements that are within the scope of the 1916 Act; requires parties to an agreement to file a true copy of the agreement; requires Commission approval of such agreements prior to implementation; and, excepts agreements which are lawful thereunder from the antitrust laws. Section 35 of the 1916 Act (46 U.S.C. app. 833a) sets forth authority for the Commission to exempt any class of agreements from any requirement of the 1916 Act. The Commission's rules implementing those provisions of the 1916 Act which govern agreements involving common carriers by water in interstate commerce and marine terminal operator agreements (to the extent the agreements involve ocean transportation in the domestic offshore commerce of the United States) are set forth in 46 CFR Part 560, *Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916* (49 FR 39836 (October 1, 1984); 49 FR 42924 (October 25, 1984)).

This proceeding proposes the exemption of marine terminal agreements, other than marine terminal conference, marine terminal interconference and marine terminal discussion agreements, from the filing and/or waiting period requirements of the 1984 Act and from the filing and/or approval requirements of the 1916 Act, depending on which act applies to the agreement in question. This proposal implements recommendations made by Commissioner Robert Setrakian, the Inquiry Officer in Federal Maritime Commission Docket No. 83–38, *Notice of Inquiry and Intent to Review Regulation of Ports and Marine Terminal Operators*, which was instituted on September 14, 1983 (48 FR 41199) for the purpose of identifying and soliciting public comment on a number of issues in this area, including the filing and approval of marine terminal agreements. A wide variety of commentators from industry, labor, government, academia and the press filed written submissions on these issues, and oral hearings were held in New Orleans, San Francisco and New York City. The *Report of Inquiry Officer—Part I*, which was served September 26, 1984 (49 FR 38987), recommends the exemption of certain marine terminal agreements.

The Commission's rules governing agreements set forth the procedures to be followed by the Commission in exempting agreements falling within the scope of the 1984 Act from filing or other requirements pursuant to section 16 of that Act (46 CFR 572.301). This proceeding is being conducted under those procedures insofar as the exemption of marine terminal agreements involving foreign commerce is concerned.[1] This proceeding is also being conducted pursuant to the exemption authority set forth under section 35 of the 1916 Act with regard to marine terminal agreements involving transportation in the domestic offshore commerce of the United States.[2]

Since this proceeding proposes exemptions under both the 1916 and 1984 Acts and primarily impacts on marine terminal operations, the exemptions will be located in a new Part 516 in Subchapter B of 46 CFR *(Regulations Affecting Ocean Freight Forwarders, Terminal Operations and Passenger Vessels)*, with appropriate cross-references in Part 560 of Subchapter C *(Regulations Affecting Maritime Carriers and Related Activities in Domestic Offshore Commerce)* and Part 572 of Subchapter D *(Regulations Affecting Maritime Carriers and Related Activities in Foreign Commerce)*.

The Inquiry Officer in Docket No. 83–38 recommended two types of exemptions for terminal agreements, differentiated on the basis of the likely anticompetitive impact of the class of agreements involved.

The first is a full exemption from all filing requirements for any class of terminal agreements which historically was not found to have anticompetitive consequences. Specifically, Commissioner Setrakian recommended the exemption of: (1) Leases of on-dock or off-dock facilities which are strictly "landlord-tenant" in nature (e.g., in which the lessor maintains no control either over property for which the user rights are conferred to the lessee or over charges to be assessed by the lessee); and (2) agreements detailing arrangements limited to facilities and services used in connection with the handling of proprietary cargo (e.g., facilities and services provided by a manufacturer or distributor which operates a terminal handling cargo solely for its own business and not for others).[3]

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[1] These procedures include a requirement that exempted agreements shall be retained by the parties and furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

[2] Similarly, the Commission will require that such agreements exempted under this part shall be retained by the parties and furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

[3] Subsequent to the publication of Part I of the Inquiry Officer's Report, the Commission's Final Rule under Part 572, published November 15, 1984 (49 FR 45320), clarified the definition of the term "marine terminal operator" under § 572.104 (p) to conform it with the definition of the term in the 1984

Continued

The Inquiry Officer also suggested that the Commission identify other possible classes of marine terminal agreements which might not have anticompetitive consequences for inclusion in an exemption from all filing requirements. In this connection, the Commission believes that such an exemption would also be appropriate for agreements which relate solely to the financing and/or construction of marine terminal facilities and for agreements which relate to off-dock container freight station facilities and/or services.

The second type of exemption recommended by Commissioner Setrakian would apply to all other classes of marine terminal agreements (with the exception of terminal conference and terminal interconference agreements,[4] which would be exempted from the 45-day waiting period of the 1984 Act on condition that they be filed for informational purposes and **Federal Register** publication.

Although the Inquiry Officer's exemption recommendations were framed in the context of 1984 Act filing and effectiveness requirements, marine terminal agreements involving solely transportation in the interstate commerce of the United States remain within the scope of the 1916 Act, and are required to be filed for approval pursuant to section 15 of the 1916 Act. The considerations prompting the exemption of certain classes of terminal agreements falling under the 1984 Act are equally applicable to similar agreements falling under the 1916 Act. It should be noted, however, that exemptions under section 16 of the 1984 Act do differ somewhat from exemptions under section 35 of the 1916 Act in terms of the findings that have to be made by the Commission to support the adoption of such exemptions and in terms of the effect that such exemptions may have on an agreement's status under the antitrust laws. Under the 1984 Act, the Commission is required to find that an exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce. Agreements that are exempted from filing under the 1984 Act are not subject to the antitrust laws. Under the 1916 Act, on the other hand, the Commission is required to make the same findings as under the 1984 Act, with the exception of the finding concerning substantial reduction in competition. Moreover, a 1916 Act exemption does not carry with it immunity from the antitrust laws.[5]

The exemptions contained in Part 516 are intended to implement Commissioner Setrakian's recommendations with regard to future Commission policy and procedures concerning agreements in the marine terminal area. Approximately 140 marine terminal agreements were filed with the Commission in Fiscal Year 1984 and the exemptions proposed herein would apply to the vast majority of such filings.

In short, classes of marine terminal agreements which historically have not had anticompetitive or other adverse consequences, such as landlord-tenant leases, proprietary arrangements, financing/construction agreements and off-dock container freight station facilities and services agreements, would be fully exempted under § 516.5(a) and (b), respectively, from all filing requirements under the 1984 and 1916 Acts. Such an approach would relieve the Commission of laborious processing of such agreements and relieve the industry of the delays concomitant with such processing, yet would not cause loss to the Commission or other parties of relevant information. However, as an alternative to the procedure proposed in § 516.5(a), the Commission will give consideration to exempting these classes of agreements from only the waiting period/approval requirements, on condition that they be filed for informational purposes and **Federal Register** publication. The Commission invites comment on this alternative.

The exemption from the waiting period/approval requirements under § 516.5(d) affords interested parties the opportunity to learn of the existence of agreements which might affect them, yet permits such agreements to take effect without significant delay to the parties and without the need for the burdens of nonproductive review and processing by the Commission. Should an agreement raise valid concerns under the general standard (section 6(g)) or the prohibited acts (section 10) provisions of the 1984 Act (46 U.S.C. app. 1705, 1709) or under any of the applicable provisions of the 1916 Act, the informational filing and **Federal Register** publication procedure would allow the Commission an opportunity for *sua sponte* review, if necessary, and provide interested parties with the information necessary for filing a 1984 Act complaint or a 1916 Act protest or complaint with the Commission.

As an alternaitve to the procedure proposed in § 516.5(b), the Commission will give consideration to subjecting this class of agreements to a substantive pre-effectiveness review procedure to ensure conformity with the standards discussed in the following paragraph before an exemption takes effect. This alternative would involve a procedure whereby, to afford it an adequate opportunity to review agreements filed for exemption pursuant to § 516.5(d) for conformity with these standards, the exemption would take effect on the earlier of (1) twenty-one days after the filing of the agreement; or (2) the date of the letter from the Commission advising that the agreement has been accepted for exemption. Under this alternative, an agreement that is not accepted for exemption pursuant to § 516.5(d) would be instead processed for effectiveness or approval under Part 572 or 560, as appropriate for the class of agreement involved. Comments on the desirability of such an alternative exemption procedure are requested.

To ensure that the exemptions do not substantially impair effective regulation by the Commission or sanction activities which would otherwise be unlawful, the exemptions are applicable only to agreements that are limited to prospective, future activity between the parties involved. They do not apply to agreement provisions that relate back to activity or events, or cover a time period, occurring prior to the agreement's execution. Also, agreements entitled to these exemptions are relieved only from the filing and/or waiting period/approval requirements (depending on the class of agreement involved) of 1984 and 1916 Acts. All other requirements of these Acts and the Commission's rules will continue to apply to such agreements, and parties entering into such agreements should be particularly mindful of the Commission's requirements on clarity, completeness and interstitial authority set forth in §§ 572.103(g) and 572.406. Implementation of agreements which are entered into or filed for exemption which do not fully meet the foregoing standards is at the parties' peril.

Act and to make it clear that shippers, or consignees, as well as their facilities, are not made subject to Part 572 and the Commission's jurisdiction merely because the shippers' or consignees' facilities are used to tender or receive proprietary cargo. Therefore, there is no need to exempt proprietary arrangements under the 1984 Act. This rulemaking does, however, propose the exemption of this class of agreements from the filing and approval requirements of the 1916 Act.

[4] These would continue to be filed and processed under the 1984 Act, as would agreements authorizing the *discussion* of marine terminal rates, charges and competitive practices.

[5] Parties to 1916 Act marine terminal agreements who are concerned about possible antitrust implications are free, however, to continue to file such agreements for approval pursuant to section 15 of the 1916 Act and 46 CFR Part 560.

The Commission agrees with Commissioner Setrakian that marine terminal conference and marine terminal interconference agreements (together with related marine terminal discussion agreements) should not be exempted for the reasons cited in his Report, i.e.: (1) They are the most likely to have substantive anticompetitive consequences, therefore, processing under the requirements and standards of sections 5 and 6 of the 1984 Act (or section 15 of the 1916 Act, if applicable) is appropriate; (2) the 45-day review period under the 1984 Act (which applies to all such agreements currently on file or likely to be filed in the forseeable future) should not ordinarily be a burden to the agreements' proponents, as time does not appear to be of the essence in these types of agreements; and (3) there are few enough of these agreements that pre-implementation review (or approval) will not constitute a drain on the Commission's resources.

In light of the foregoing, and based on information now before the Commission, it appears that these proposed exemptions would not substantially impair effective regulation by the Commission, be unjustly discriminatory or be detrimental to commerce within the meaning of section 16 of the 1984 Act and section 35 of the 1916 Act; nor result in a substantial reduction in competition within the meaning of section 16 of the 1984 Act.

II. Section-by-Section Discussion of Part 516

Section 516.1 Authority

This section recites the statutory authority for Part 516.

Section 516.2 Purpose

This section states the purpose of this part, namely to exempt certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act and from the filing and/or approval requirements of the 1916 Act.

Section 516.3 Policy

The policy underlying this part is set forth in this section.

Section 516.4 Definitions

This section includes definitions of the terms used in the Act and this part which are relevant to the exemption of certain classes of marine terminal agreements.

Section 516.4(a) Agreement

The definition of the term "agreement" is based on the definition contained in section 3(1) of the 1984 Act, modified to include common carriers by water in interstate commerce and to reflect the exception from the scope of the 1984 Act of agreements among ocean common carriers to establish, operate or maintain a marine terminal in the United States under section 5(a) of the 1984 Act. To ensure that the exemptions in this part do not substantially impair effective regulation by the Commission, the definition of the term "agreement" is limited to prospective, future activity between the parties involved.

Section 516.4(b) Assessment Agreement

The term "assessment agreement" is defined in section 3(3) of the 1984 Act.

Section 516.4(c) Common Carrier

The term "common carrier", for the limited purposes of this part, is new. It is derived from a combination of the definition of "ocean comon carrier" in section 3(6) of the 1984 Act with the difinition of "common carrier by water in interstate commerce" in section 1 of the 1916 Act.

Section 516.4(d) Common Carrier by Water in Interstate Commerce

The term "common carrier by water in interstate commerce" is defined in section 1 of the 1916 Act.

Section 516.4(e) Marine Terminal Agreement

The term "marine terminal agreement" is new.

Section 516.4(f) Marine Terminal Conference Agreement

The term "marine terminal conference agreement" is new, and is based on and further clarifies the definition of "conference" contained in section 3(7) of the 1984 Act.

Section 516.4(g) Marine Terminal Discussion Agreement

The definition of the term "marine terminal discussion agreement" is new

Section 516.4(h) Marine Terminal Interconference Agreement

The definition of the term "marine terminal interconference agreement" is new.

Section 516.4(i) Marine Terminal Facilities

The definition of the term "marine terminal facilities" is taken from 46 CFR 572.104(o), modified as appropriate to include the term "common carrier by water in interstate commerce."

Section 516.4(j) Marine terminal Lease

The definition of the term "marine terminal lease" is new.

Section 516.4(k) Marine Terminal Operator

The term "marine terminal operator" is defined in section 3(15) of the 1984 Act and under 46 CFR 572.104 (p) and also partially incorporates the definition of "other person subject to this act" set forth in section 1 of the 1916 Act. The term includes any person, firm, company, corporation or government subdivision furnishing marine terminal facilities or marine terminal services, or which owns, leases or operates property used as a marine terminal facility. The term "marine terminal operator" includes but is not limited, to:

(i) Ports;

(ii) Commercial operators of public general cargo marine terminal facilities;

(iii) Operators of shipside grain elevators, bulk loaders, tank farms and lumberyard facilities handling cargo in connection with common carriers;

(iv) Stevedores when engaged in performing any of the duties of a marine terminal operator;

(v) Operators of off-dock container freight stations handling cargo in connection with common carriers, even when such facilities are not located at or proximate to the waterfront;

(vi) Carloaders and unloadings truckloaders and unloaders, when furnishing equipment or labor;

(vii) Railroads which provide marine terminal facilities; and

(viii) Any other person subject to the Commission's marine terminal tariff filing requirements under Part 515.

The term marine terminal operator does not include persons engaged solely in the business of stevedoring and which furnish no marine terminal facilities or services, nor does it include, insofar as the 1984 Act is concerned, shippers or consignees which exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from an ocean common carrier.

Section 516.4(l) Maritime Labor Agreement

The term "maritime labor agreement" is defined in section 3(16) of the 1984 Act.

Section 516.4(m) Ocean Common Carrier

The term "ocean common carrier" is defined in section 3(18) of the 1984 Act.

Section 516.4(n) Person

The term "person" is defined in section 3(20) of the 1984 Act.

Section 516.4(o) Proprietary Marine Terminal Agreement

The definition of the term "proprietary marine terminal agreement" is new.

Section 516.5 Marine Terminal Agreements—Exemption

This section contains the rules exempting certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act, or from the filing and/or approval requirements of the 1916 Act, depending on which Act applies to the agreement in question.

Section 516.5(a)

This section exempts marine terminal leases, agreements other than terminal leases which relate solely to the financing and/or construction of marine terminal facilities and agreements which relate to off-dock container freight station facilities and/or services from the filing and effectiveness/approval requirements of both the 1984 and 1916 Acts and 46 CFR Parts 572 and 560.

Section 516.5(b)

This section exempts proprietary marine terminal agreements from the filing and approval requirements of the 1916 Act and 46 CFR Part 560.

Section 516.5(c)

This section requires that agreements exempted under 46 CFR 516.5 (a) and (b) be retained by the parties and furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

Section 516.5(d)

This section exempts all other marine terminal agreements, with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, from the waiting period requirements of the 1984 Act and 46 CFR Part 572 and the approval requirements of the 1916 Act and 46 CFR Part 560, on condition that they be filed for information purposes and **Federal Register** publication. This section also sets forth the procedures governing the filing of such agreements for exemption.

The Federal Maritime Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies that his rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of these rules would be on marine terminal operators and common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities but that impact is not considered to be significant.

The collection of information requirements in these rules have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Secretary. Comments on the information collection aspects of the rules should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20573, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 516, 560 and 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and recordkeeping requirements.

Therefore, in order to exempt certain marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act, and the filing and/or approval requirements of the 1916 Act, the Commission, pursuant to 5 U.S.C. 553, sections 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1715, 1716) and sections 35 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 833a and 841a), hereby proposes to amend Title 46 of the Code of Federal Regulations as follows:

1. A new Part 516 to Subchapter.B is added to read as follows:

PART 516—MARINE TERMINAL AGREEMENTS

Sec.
516.1 Authority.
516.2 Purpose.
516.3 Policy and scope.
516.4 Definitions.
516.5 Marine terminal agreements—exemptions.

Authority: 5 U.S.C. 553; 46 U.S.C. app. 801, 814, 833a, 841a 1701-1706, 1715 and 1716.

§ 516.1 Authority.

This part is issued pursuant to the authority of section 4 of 5 U.S.C. 553, sections 2, 3, 4, 5, 6, 7, 16, and 17 of the Shipping Act of 1984 (1984 Act) and sections 1, 15, 35, and 43 of the Shipping Act, 1916 (1916 Act).

§ 516.2 Purpose.

This part exempts certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act or from the filing and/or approval requirements of the 1916 Act, depending on the act applying to the agreement in question. To ensure that the exemptions do not substantially impair effective regulation by the Commission or sanction activities which would otherwise be unlawful, the exemptions are applicable only to agreements that are limited to prospective, future activity between the parties involved. Neither the exemption nor the antitrust immunity that is applicable to exempted agreements applies to provisions that relate back to activity or events that occurred prior to the agreement's execution.

§ 516.3 Policy and scope.

(a) The 1984 and 1916 Acts authorize the Commission to exempt any class of agreements from any requirement of either act. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of marine terminal facility and service agreements from the filing and/or effectiveness requirements of the 1984 Act (see Part 572 of this chapter) and the filing and/or approval requirements of the 1916 Act (see Part 560 of this chapter).

(b) The exemptions in this part apply only to prospective activity of the parties, and only to agreements to the extent they are included within the classes of agreements described in § 516.5.

(c) Agreements entitled to these exemptions are relieved only from the filing and/or waiting period/approval requirements (depending on the class of agreement involved) of the 1984 and 1916 Acts. All other requirements of these Acts and the Commission's rules will continue to apply to such agreements, including, but not limited to,

the Commission's requirements on clarity, completeness and interstitial authority set forth in §§ 572.103(g) and 572.408.

(d) Implementation of agreements which are entered into or filed for exemption pursuant to this part which do not fully meet the foregoing standards is at the parties' peril.

(e) The exemptions in this part do not in any way exempt marine terminal operators from the tariff filing and content requirements of Part 515 of this chapter.

§ 515.4 Definitions.

When used in this part:

(a) *Agreement* means an understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) that relates exclusively to activities subsequent to its execution, entered into by or among common carriers and marine terminal operators, but does not include a maritime labor agreement or any agreement among ocean common carriers to establish, operate or maintain a marine terminal in the United States. The term excludes any provisions of an agreement that relate back to activity or events that occurred prior to the agreement's execution.

(b) *Assessment agreement* means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent that it provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized.

(c) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—

(1) (i) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(ii) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country; or

(2) A common carrier by water in interstate commerce.

(d) *Common carrier by water in interstate commerce* means a person engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District or possession.

(e) *Marine terminal agreement* means an agreement relating solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more common carriers.

(f) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or common carriers for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the foreign and/or domestic offshore commerce of the United States and which:

(1)(i) Provides solely for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides solely for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(g) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(h) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(i) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to, docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and ocean common carriers and/or common carriers by water in interstate commerce, or between two ocean common carriers in foreign commerce and/or common carriers by water in interstate commerce. This term is not limited to waterfront port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to consignees or at which outbound cargo may be received from shippers for vessel or container loading.

(j) *Marine terminal lease* means an agreement which excludes arrangements authorizing the use of marine terminal facilities on a license, assignment, permit or franchise basis and arrangements for marine terminal services, but which provides for the lease of on-dock or off-dock marine terminal facilities between or among marine terminal operators and/or common carriers on a strictly "landlord-tenant" basis, in which:

(1) The lessor leases the facility outright to the lessee and maintains no control whatsoever over the leased property, such as:

(i) The lessor's retention of preferential/non-preferential secondary or tertiary assignment rights;

(ii) The exclusion of certain carriers or shippers or classes of carriers or shippers from being handled at the facility;

(iii) Obligating the lessee to discriminate against one carrier or shipper in favor of another; or

(iv) Restricting or limiting the lessee's right to handle cargo;

(2) The lessee is not conveyed any preferential or exclusive right to operate within an area beyond the leased area, to the exclusion of competitors; and

(3) The lessor retains no control over the lessee's rates, charges or competitive practices.

(k) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier.

(l) *Maritime labor agreement* means a collective-bargaining agreement between an employer subject to the 1916 or 1984 Act or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(m) *Ocean common carrier* means a vessel-operating common carrier that

operates between the United States and a foreign country; but the term does not include one engaged in ocean transportation by ferry boat or an ocean tramp.

(n) *Person* means individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(o) *Proprietary marine terminal agreement* means a marine terminal facility and/or services agreement under which a shipper or consignee exclusively furnishes marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier, such as a manufacturer or distributor which operates a terminal that handles cargo solely for its own business and not for others.

§ 516.5 Marine terminal agreements-exemptions.

(a) *Exemption from filing.* (1) Marine terminal leases, agreements other than terminal leases which relate solely to the financing and/or construction of marine terminal facilities and agreements which relate to off-dock container freight station facilities and/or services are exempt from the filing and effectiveness requirements of section 5 of the 1984 Act (46 U.S.C. app. 1704) and Part 572 of this chapter and from the filing and approval requirements of section 15 of the 1916 Act (46 U.S.C. app. 814) and Part 560 of this chapter.

(2) Proprietary marine terminal agreements are exempt from the filing and approval requirements of section 15 of the 1916 Act and Part 560 of this chapter.

(3) Agreements exempted under paragraphs (a)(1) and (a)(2) of this section shall be retained by the parties and shall be furnished upon request to any interested party during the term of the agreement and for a period of three years after its termination.

(b) *Exemption from waiting period or approval requirements.* (1) All marine terminal agreements, other than those described in paragraph (a) of this section and with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, are exempt from the waiting period requirements of section 6 of the 1984 Act and Part 572 of this chapter and the approval requirements of section 15 of the 1916 Act and Part 560 of this chapter, on condition that they be filed for informational purposes. Notice of the filing of such agreements will be published in the **Federal Register**.

(2) Agreements (including oral agreements reduced to writing in accordance with the 1984 and 1916 Acts) filed for exemption under this paragraph shall be submitted during regular business hours to the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Such filing shall consist of:

(i) A true copy and 15 additional copies of the filed agreement;

(ii) A letter of transmittal, which shall:

(A) Clearly state that the agreement is being filed for exemption pursuant to this paragraph;

(B) Identify all of the documents being transmitted including, in the instance of a modification to an effective, approved or exempted agreement, the full name of the effective, approved or exempted agreement; the Commission-assigned agreement number of the effective, approved or exempted agreement and the revision, page and/or appendix number of the modification being filed;

(C) Provide a concise summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(D) Clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the forwarding party; and

(E) Be signed in the original by the forwarding party or on the forwarding party's behalf by an authorized employee or agent of the forwarding party.

(iii) To facilitate the timely and accurate publication of the **Federal Register** Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(3) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period/approval requirements effective on the date of their filing with the Commission.

PART 560—[AMENDED]

2. The authority citation to Part 560 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 820, 821 and 841a.

3. A new § 560.9 to Part 560 in Subchapter C, *Exemption of Certain Marine Terminal Agreements*, is added to read as follows:

§ 560.9 Exemption of certain marine terminal agreements.

Part 516 of this chapter exempts certain marine terminal agreements from the filing and/or approval requirements of section 15, Shipping Act, 1916.

PART 572—[AMENDED]

4. The authority citation to Part 572 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710; 1712; 1714–1717.

5. A new § 572.308 to Part 572 in Subpart C of Subchapter D, *Marine Terminal Agreements-Exemption*, is added to read as follows:

§ 572.308 Marine terminal agreements-exemption.

Part 516 of this chapter exempts certain marine terminal agreements from the filing and/or waiting period requirements of this part.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8184 Filed 4-4-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 81-343; FCC 85-121]

Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet Pacific Telecommunications Needs During the Period 1981-95

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: On March 14, 1985, the Commission adopted a Further Notice of Proposed Rulemaking for facility requirements for the Pacific Basin region for the 1987–1995 period. This action taken to provide U.S. carriers with guidelines for their facility construction activities for the Pacific Region for the 1987–1995 time period; previous phases of this docket focused on 1981–1986 time period. In the Further Notice the Commission analyzes demand, existing facilities, costs, technological risks, correspondent acceptance, U.S. industrial interests, promotion of intermodal and intramodal competition, development of new technology, service quality and national security factors. The Commission tentatively concludes in the Further Notice that a fiber optic transPacific cable as early as 1988 would be in the public interest.

DATES: Updated traffic forecasts due April 12, 1985. Circuit distribution plans due April 22, 1985. Analysis and comments due May 6, 1985. Replies due May 17, 1985.

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Chief, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

Further Notice of Proposed Rulemaking

In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet pacific telecommunications need during the period 1981–1995; CC Docket No. 81-343.

Adopted: March 14, 1985.
Released: March 28, 1985.

By the Commission:

I. Introduction

1. On November 21, 1983, we released a Notice of Inquiry (NOI) which initiated the second phase (Phase II) of the comprehensive facilities planning process in the Pacific Ocean Region (POR).[1] The first phase of this process focused on facilities needs in the POR for the 1982–1986 time period and was concluded in December, 1982.[2] Phase II of this process focuses on facilities needs in the POR during the 1987–1995 time frame.

2. In the NOI initiating Phase II of the planning process, we stated that the proceeding would include an assessment of capacities and design lives of currently operating and proposed facilities in the region. We also indicated that we would consider a full range of facilities alternatives capable of meeting forecasted demand in the region during the planning period. We further stated that we would consider all available transmission media and viable technological designs as well as techniques for circuit multiplication. The issues of facilities use and restoration of service were also identified for consideration. Finally, the need, timing and configuration for the proposed fiber optic TRANSPAC–3 (TPC–3) cable were particularly raised.[3]

3. After release of the NOI, comments and reply comments were filed and a series of public meetings were held between members of the bureau staff and interested parties for the purpose of obtaining the necessary planning information and compiling a comprehensive record. Alternative facilities plans and traffic forecasts have been submitted and evaluated by the United States International Service Carriers (USISCs) [4] and Comsat. The task of assembling a comprehensive planning data base along the lines outlined in the NOI is complete. Therefore, in accordance with the procedures outlined in the NOI we are hereby entering the rulemaking stage of this proceeding.

4. The purpose of this Further Notice of Proposed Rulemaking (FNPRM or Further Notice) is to: (a) Evaluate facilities alternatives available for service in the POR during the 1987-1995 time period; (b) issue tentative findings regarding the acquisition and use of such facilities; and (c) request public comment on these tentative findings and the record compiled. In this Further Notice, we describe in Section II the facilities that now provide service in the POR and identify the major markets. In Section III the comments and replies received in response to the NOI are summarized. We then outline in Section IV the record compiled including basic planning data and information, the alternative plans submitted by the USISCs and Comsat, and the parties' evaluation of these plans. Finally, in Sections V and VI, we will discuss and evaluate the record before us and issue tentative findings (or identify options) governing future facilities alternatives during the 1987–1995 time period.

II. Major Markets and Current Facilities

5. Commercial communications between the United States and countries in the POR are transmitted via satellite and submarine cable. Seven jurisdictions, namely Japan, Australia, Philippines, Korea, Taiwan, Hong Kong and Singapore account for approximately 85% of total U.S.-POR traffic. Three of these countries, Japan, Australia and the Philippines account for over 50% of this traffic.

6. Satellite capacity in the POR is currently provided by an INTELSAT IV-A Primary satellite and an INTELSAT IV-A Operational Spare.[5] In 1986 the two INTELSAT IV-A's will be replaced by an INTELSAT V Primary satellite and an INTELSAT V Operational Spare. In 1987 the INTELSAT V Primary will be replaced by an INTELSAT V-A satellite. Also in 1987 the INTELSAT V Operational Spare will become solely a spare satellite and an INTELSAT V-A satellite will be introduced into the region as the Major Path satellite. In 1991 the Primary and Spare are scheduled to be replaced by INTELSAT VI (or INTELSAT VI follow-on) satellites. The Major Path satellite is scheduled to be replaced by an INTELSAT VI (or INTELSAT VI follow-on) satellite in 1993.[6] Currently, approximately 70% of U.S. traffic in the POR is routed over satellite. Ten POR countries[7] are currently served solely by satellite for U.S. traffic.

7. Two transpacific cable systems (TPC–1 and TPC–2) together with various regional cable systems connect the U.S. Mainland/Hawaii with twenty-eight POR jurisdictions. (See Appendix 1 for diagram of existing POR cables.) [8] Hawaii and the U.S. Mainland are connected by three major cables (HAW 1, 2 and 3). Cable circuits providing voice service to all major markets with the exception of U.S.-Australia, Fiji, and New Zealand via the ANZCAN cable are currently saturated. Limited growth

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[1] Pacific Planning (Notice of Inquiry, Phase II), FCC No. 83-515 (released November 21, 1983).

[2] Pacific Planning (Report and Order, Phase I) 47 FR 57040 (December 22, 1982). The first phase focused on the issue of the Australia-New Zealand-Canada submarine cable (ANZCAN). ANZCAN is a joint venture of the communications entities of eight foreign governments linking Vancouver, Canada to Australia and New Zealand, with intermediate landing points in Hawaii, Norfolk Island and Fiji. We approved U.S. carrier participation in ANZCAN with a mix of both permanent (ownership) and temporary indefeasible right of user (IRU) interests. In the *Report and Order*, we contemplated based on existing demand forecast that the temporary interests (short term IRUs) held by U.S. carriers in ANZCAN North (Canada to Hawaii segment) would terminate in the late 1980's and the traffic routed over those IRU-owned circuits would be rerouted over a fiber optic HAW–4 cable. We stated that authorizing a combination of permanent and temporary interests in ANZCAN North rather than authorizing the same number of permanent interests would encourage the introduction of fiber optic cables into the POR at the earliest purdent date. The *Report and Order* found that the construction of analog HAW–4 and TPC–3 cables in the late 1980's was not in the public interest.

[3] During the first phase, the Department of Defense (DoD) and the National Telecommunications and Information Agency (NTIA) strongly supported the introduction of a fiber optic TPC–3 cable which would be routed from Hawaii to Guam and then to Japan. Both parties asserted that the national security and commercial interests of the United States would best be served by the routing of the TPC–3 cable system through Guam.

[4] The USISCs include AT&T and the International Record Carriers (IRCs).

[5] In an operational spare configuration, both the primary and spare satellites are used to carry traffic. However, the sum of the traffic on the primary and operational spare does not exceed the capacity of either satellite. The advantage of splitting traffic between two satellites is that path diversity is increased.

[6] We previously authorized Comsat to participate in an INTELSAT procurement program for nine INTELSAT V, six INTELSAT V-A, and five INTELSAT VI satellites.

[7] The ten countries served solely by satellite are: Brunei, Peoples Republic of China, French Polynesia, Marshall Island, Micronesia, New Caledonia, Tonga, American Samoa, Saipan, and Western Samoa.

[8] Direct cable service is provided to twelve POR countries. The remaining sixteen countries are served by transiting those countries served directly.

remains for cable circuits providing non-voice traffic over these routes. Furthermore, many of the major cable systems in the POR will reach the end of their design life during the planning period.[9] Cables carry approximately 30% of the U.S.-Pacific Basin traffic.

III. Summary of Comments and Replies

8. Comments to our NOI were filed on January 4, 1984 by State of Hawaii, GTE Sprint and Comsat. Joint comments were filed by the following USISCs: American Telephone and Telegraph Co. (AT&T), Hawaiian Telephone Co. (HTC), FTC Communications, Inc. (FTCC), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCA), TRT Telecommunications Corporation (TRT), The Western Union Telegraph Company (WU), and Western Union International, Inc. (WUI).[10] Reply comments were filed on January 18, 1984 by AT&T, Comsat, State of Hawaii, GTE Sprint, RCA, ITTWC, and the Department of Defense (DoD).

9. *Comments.* All the commenters supported our commencement of the second phase of the planning process in the POR. In joint comments filed on behalf of itself and seven other USICs, AT&T indicated that the USICs and their foreign correspondents view a fiber optic TPC–3 cable with a ready for service (RFS) date of 1988 as desirable. AT&T also noted the comments of NTIA and DoD during Phase I of the planning process urging that any such cable system include a Guam landing point and stated that some of the alternative facility plans being discussed and evaluated by the USICs and their foreign correspondents include a Guam landing point.

10. In its comments, Comsat stated that the first priority in Phase II should be a demonstration of the need for, and attendant timing of, additional facilities during the 1987–1995 planning period. In this regard, Comsat stated that the possible introduction of a fiber optic TPC–3 cable later than in 1988 must be considered and evaluated against forecasted demand and capacity available on other existing and planned facilities. Comsat also stated that a Master Plan for facilities utilization should be developed even if such a plan only has the status of a "guideline." Comsat further suggested that in Phase II the Commission should only consider facilities deployed through 1991 although forecasts should be provided through 1995. Comsat believes that we do not have sufficient information to recommend facilities alternatives beyond 1991.

11. The State of Hawaii urged us to require a "showing of full, effective, and efficient utilization of available and authorized facilities before authorizing additional facilities," noting that it believes there is a "serious question" about whether the U.S. carriers and their foreign correspondents are fully using modern circuit multiplication technology. Hawaii said the U.S. carriers' own information filed with the Commission "shows the very significant difference in revenue requirements of submarine cable and satellite facilities; the cost of satellite facilities is dramatically lower." Hawaii requests that we consider the revenue requirements which may be imposed upon users through the authorization of additional facilities that may not be required. Hawaii desires that we carefully examine the revenue requirements of the carriers and not authorize acquisition of a new facility out of considerations of international comity—that is, because the U.S. carriers' foreign correspondents desire it—unless such facilities are actually needed.

12. GTE Sprint supported the construction of a fiber optic TPC–3 cable system in 1988 and said it plans to offer "international voice and other services" in the Pacific region in the near future. GTE Sprint supplied estimated circuit needs for countries with which it desires to obtain operating agreements for the provision of voice and other services over the next 10-year period.

13. *Replies.* In its reply comments, AT&T stated that it believed it appropriate to examine in Phase II all facilities to be deployed through 1995. AT&T also stated, in response to the State of Hawaii, that full utilization of existing facilities and the most up-to-date technologies will be considered in the development of the alternative plans. AT&T further stated its belief that the concept of a Master Plan should not be permitted to frustrate the Commission's intent to permit market forces to regulate circuit activations. AT&T stated that it would supply implementation schedules with its alternative plans disclosing proposed facility utilization. AT&T indicated that the facilities utilization information supporting each plan would be sufficient to allow the Commission to evaluate the plans and to monitor facilities usage without adopting a detailed Master Plan. AT&T strongly disagreed with Hawaii's position that we should disregard international comity in developing policies and guidelines for POR facilities planning. AT&T stated that international comity should be an essential element in the development of policies and guidelines for POR facilities.

14. GTE Sprint, in its reply, stated that the TPC–3 cable should be introduced in 1988. GTE Sprint indicated that a new facility is critical because of the size of the USISC circuit forecasts and the possibility of additional carriers entering the market. GTE Sprint further stated that circuit forecasts supplied by the carriers in the instant proceeding be viewed as a rough gauge rather than an exact determination of future circuit needs. GTE Sprint indicated some apprehension that a limitation of authorized circuits strictly to the number proposed by those participants in the planning process could constrain the ability of new carriers to acquire circuits. GTE Sprint also agreed with Comsat that the planning process should only consider facilities that are to be deployed in the 1987–1991 timeframe because it would be difficult to gauge what facilities will be needed in the years 1922–1995.

15. RCA replied that the State of Hawaii is misguided in suggesting that we include revenue requirements as part of our analysis. Such an approach, argued RCA, "disregards the Commission policy which considers factors such as diversity, redundancy, restoration and economy to assure that future requirements for communications services are met." According to RCA, we have looked at only "historical and/or projected investment and operating expenses as opposed to tariff rates as proposed by the State of Hawaii." RCA further states that a requirement to show full and efficient use of existing facilities as proposed by Hawaii would limit competition and competitive options.

16. In its reply, the State of Hawaii reiterated its position regarding revenue requirements and full, efficient use of existing facilities. The State maintained that more specific information was required from the USISCs and Comsat so that the public would not be saddled with additional and unnecessary revenue requirements. The State declared that the information heretofore submitted by the USISCs in their comments did not provide a sufficient showing of the extent to which all

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[9] The following cables have reached the end of their design life or will reach the end of their design life during the planning period. COMPAC-1964 (61 basic voice grade circuits); HAW-1-1964 (51 basic voice grade circuits, 37 derived); HAW-2-1969 (143 basic voice grade circuits, 37 derived); SEACOM–1–1987 (82 basic voice grade circuits); SEACOM–2–1990 (166 basic voice grade circuits); TPC–1–1989 (142 basic and 29 derived voice-grade circuits between Hawaii and Guam and 138 basic voice-grade circuits between Guam and Japan.

[10] The parties filing joint comments also plan to be joint owners of the proposed cable system.

current and authorized facilities are projected to be fully, effectively, and efficiently utilized during the 1987–1995 period.

17. ITT stated in its reply that a Master Plan is at best a planning tool which provides a mechanism for evaluating whether a need exists for additional facilities. ITT believes that such a plan should not be used to specify loading criteria. However, ITT agreed with Comsat that the Commission should focus only on those facilities planned for deployment through the end of 1991 because of the uncertainty as to what facilities will be needed from 1992 to 1995.

18. In its reply, Comsat reiterated the position presented in its initial comments that sufficient capacity exists in the POR to handle forecasted demand at least through 1991 and that construction of TPC–3 prior to this date unnecessarily burdens ratepayers. Comsat further stated that the April, 1983 traffic forecast submitted by the USISCs in their comments be reviewd as a first step in the process to make certain it is not outdated. Comsat also expressed its concern that the alternative plans which have been developed by the USISCs and their foreign correspondents do not represent the full range of alternatives which should be addressed. Comsat believes that we are engaged in a process which should concern itself with the furtherance of the U.S. public interest as opposed to the interests of our foreign correspondents. Comsat does not want the interests of our foreign correspondents to be applied "a priori" to screen alternative plans.

19. DoD's reply stressed that national defense and security interests require a fiber optic TPC–3 cable linking the U.S. mainland with Guam and Japan. DoD maintains that the diversity and redundancy provided by such a cable system is necessary for critical U.S. government and private sector communications. DoD believes that cost and technology are not the only significant concerns in assessing the quality of service of any facilities plans. DoD further believes that from a national defense and security standpoint service reliability during the period after a facility failure is an extremely important factor in considering the deployment of a fiber optic cable in 1988.

IV. Summary of the Record Compiled

20. The record compiled contains three major segments: (a) Basic planning data and information (i.e., demand forecasts, facility data, and cost elements); (b) alternative facilities plans; and (c) carrier analysis and evaluation of plans. The basic planning data is used by the carriers and Comsat to generate alternative plans designed to meet traffic demands throughout the planning period. The plans consist of various combinations of new facilities introduced in the Pacific region at various times.

A. Basic Planning Data and Information

21. *Demand.* The demand forecasts for voice and non-voice traffic used in the preparation and evaluation of all the alternative plans were prepared by AT&T and the IRCs. A March 1984 traffic forecast was submitted by the USISCs to update their April 1983 forecast. The updated forecast reflects the base information available using individual country econometric models and historical growth trends in traffic. Comsat independently forecasts international television traffic demand but does not do any forecasting of message telephone and record service. The forecast of traffic demand on international satellites is obtained by Comsat and INTELSAT directly from the carriers and their foreign correspondents annually at the INTELSAT global traffic meeting. The March 1984 forecast shows an average annual growth rate of approximately 16% during the 1985–1995 time period from 5800 circuits in 1985 to approximately 26,000 circuits by 1995.[11] The four alternative plans proposed different ways of accommodating this growth.

22. *Facility capacity data.* Comsat submitted data regarding facility capacity available for U.S. Mainland/Hawaii-Pacific basin traffic for the three INTELSAT spacecraft series that are proposed to be deployed during the planning period. The capacity estimates are given in 6/4-GHz band with various modulation/access techniques including FDMA/FDM/FM, CFDM with 32 or 64 Kbps TDMA/DSI,[12] and ACSSB with 32 or 64 Kbps TDMA/DSI.

The facility capacities for the satellites are as follows:

	FM (no circuit multiplication)	CFDM + 64 Kbps TDMA/DSI	CFDM + 32 Kbps TDMA/DSI	ACSSB + 64 Kbps TDMA/DSI	ACSSB + 32 Kbps TDMA/DSI
INTELSAT V Primary (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1986)	4,350	7,990	N/A	N/A	N/A
INTELSAT V–A Primary (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1987)	4,950	8,910	11,280	13,920	16,290
INTELSAT V–A Major Path (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1987)	4,840	8,590	11,010	13,310	15,720
INTELSAT VI (Mainland/Hawaii—Pacific Correspondents) to be deployed year-end (1991)	7,450	15,800	25,280	20,640	30,120

23. Two major cable systems (TPC–1 and TPC–2) currently carry traffic in an east-west direction across the Pacific Ocean. TPC–1, which is scheduled to be retired in 1989, has 171 voice grade circuits from Hawaii to Guam and 138 voice grade circuits from Guam to Japan. TPC–2, which is scheduled to be retired in 2000, has 845 basic voice grade circuits from Hawaii to Guam and 845 basic voice grade circuits from Guam to Okinawa. Circuits in TPC–1 and TPC–2 which are used to provide voice services are presently multiplexed with TASI equipment which doubles the capacity of these circuits. The USISCs submitted data regarding the assumptions used to evaluate existing and projected cable capacities during the planning period. Anticipating the use of circuit multiplication equipment, the USISCs utilized a 2:1 ratio on analog cables and a 5:1 ratio for voice circuits on fiber optic cables. Fiber optic cable capacity was estimated as follows: a 140 mb/s cable is assumed to be equal to 10,000

[11] This forecast does not include international television or domestic transponder requirements. It appears that the demand for occasional use international television services in the POR during the planning period is relatively small and can be carried by the two designated TV transponders on the Primary satellite. At the present time INTELSAT leases on a pre-emptible basis 4.5 (36 MHz bandwidth) transponders in the POR. While the number of transponder leases for the POR for the 1985–1995 period may increase, the pre-emptible nature of these leases makes their inclusion into a demand forecast problematic.

[12] TDMA and DSI are acronyms for time division multiple access and digital speech interpolation, respectively. Use of TDMA, rather than the frequency division multiple access currently used will increase the number of circuits on a given satellite transponder by 50–60 percent. DSI equipment operates in much the same fashion as circuit multiplication equipment used on cables and approximately doubles the number of circuits used for message telephone services. TDMA/DSI should be available in the POR in 1987–88.

equivalent voice circuits (with digital circuit multiplication equipment) and a 280 mb/s cable is assumed to be equal to 20,000 equivalent voice circuits (with digital circuit multiplication equipment).[13]

24. *Cost Elements.* The fiber optic cable systems costs are based on the TAT–8 cable costs [14] (adjusted to 1983 dollars) and include the cost of Dynamic Bit Compression Multiplex (DBCM) equipment. Depending on the particular plan, these costs range from about $500 million to nearly $800 million.

25. Unbundled space segment and earth station charges are currently found in Comsat's tariff. The unbundled space segment rate is $655 per half circuit per month. The unbundled earth station rate is $405 per circuit month.[15]

26. Comsat submitted the following cost elements for satellite facilities during the 1987–1995 period: each INTELSAT VI spacecraft is estimated to cost $69 million (in year-end 1983 dollars). Comsat estimates the launch cost to be $50.7 million per spacecraft. The capital cost of each TDMA reference station entering service in the POR after January 1, 1987 is expected to cost $1.45 million. Comsat believes that existing U.S. earth stations and antennas are sufficient to meet forecasted traffic. If another Standard A earth station were added, its cost is estimated at $4.0 million.

B. Alternative Plans

27. Four alternative plans were presented by the parties, two submitted by the USISCs and two submitted by Comsat. All the plans submitted take into account: (a) Currently operating facilities in the region; (b) available transmission media, including techniques for circuit multiplication [16]; (c) a comparison of actual use relative to available capacity and design life; and (d) criteria for maintenance of service reliability. All four plans assume that INTELSAT V–A satellites will be deployed in the POR as the primary and major path satellites in 1987. The third and fourth INTELSAT VI spacecraft successfully placed in orbit will be deployed to the Indian Ocean Region to replace the INTELSAT V–A spacecraft serving as the Indian Primary and Spare satellites.[17] It is these INTELSAT V–A spacecraft that are currently planned to be relocated to the POR in 1987. The plans also assume that an INTELSAT VI or follow-on satellite will be deployed as a Primary Path and Spare satellites in the POR in 1991.[18] Following is a description of plans submitted.

1. USISCs Plans

28. The USISCs and their foreign correspondents in the Pacific have engaged in a planning effort and have evaluated various facilities alternatives for the 1987–1995 time period. The USISCs and their foreign correspondents developed ten facility plans [19] based on a bilaterally negotiated forecast obtained from the April 1983 Data Gathering Meeting. Further analysis and meetings reduced the number of plans to two: Plan II–A (Mod. 4) and Plan III Modified. (See Appendices 2 and 3 for diagrams of the proposed plans.)

Plan II–A(Mod.4) [20]

29. This plan introduces fiber optic cable systems in the POR starting in 1988 linking the U.S. Mainland and Hawaii to Japan and Guam via an underwater branching unit located near Guam. Additional cable systems would then be deployed west of Guam and Japan to Korea, Hong Kong, Taiwan and the Philippines. These cables would form a ring from Japan to Korea to Hong Kong to the Philippines to Guam and back to Japan. According to the record submitted, this plan is preferred by the USISCs and their foreign correspondents.

30. The total first cost of this proposed cable system is approximately $733 million.[21] The U.S. share is approximately $320 million.[22] The total first cost of landing in Guam is $67 million.[23]

The following cable systems comprise Plan II–A(Mod. 4):

From-to	Cable name	Service date	Capacity	
			Mb/s	Mauo [24]
Mainland-Hawaii	MA-HA (HAW-4).	1988	2 x 280	7,560
Hawaii-Japan*	HA-JA	1988	1 x 280	3,780
Hawaii-Guam*	GU-HA	1988	1 x 280	3,780
Guam-Philippines	GU-PH	1988	1 x 140	1,890
Japan-Korea*	JA-KO	1990	1 x 140	1,890
Japan-Hong Kong*.	JA-HK	1990	1 x 140	1,890
Hong Kong-Philippines.	HK-PH	1990	1 x 140	1,890
Philippines-Taiwan.	PH-TA	1994	1 x 140	1,890
Guam-Japan	GU-JA	1988	1 x 280	3,780

*Indicates fiber in a Branching Unit cable.
[24] A MAUO represents the unit of measure for ownership purposes similar to the single circuit of analog cables.

31. According to the USISCs, Plan II–A(Mod 4) allows greater flexibility for routing and the ability to restore via digital cables most links in the network. According to the USISCs, this configuration also promotes service reliability in terms of improved media and route diversity. The USISCs further maintain that this plan provides for a network which can easily be expanded at minimal cost to connect Australia and Singapore in the mid 1990's. This plan also reflects the increased participation of Hong Kong in the overall project.

Plan III Modified

32. Plan III Modified introduces fiber optic cable systems starting in 1988 linking the U.S. Mainland with Hawaii and Japan. Additional cable systems would then be deployed west of Japan to Korea, Hong Kong, Taiwan and the Philippines. This "non-ring plan" does not provide for a Guam landing point. The total first cost of this plan is $588 million.

The following cable systems comprise Plan III-Modified:

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[13] These figures are based upon the TAT–8 project. A maximum of two working fiber pairs has been assumed for planning purposes. It should be noted that capacity employed for the transmission of record/data cannot be multiplied in the same manner or to the same extent as capacity used for voice services.

[14] American Telephone and Telegraph Co., FCC 84–240 (released June 8, 1984).

[15] *See* Comsat Tariff F.C.C. No. 101.

[16] Circuit multiplication equipment exploits the fact that pauses occur in normal conversation between persons. This equipment senses these pauses and routes portions of other calls to the momentarily idle circuits so as to derive the most efficient use of all available circuits.

[17] The first two INTELSAT VI spacecraft are scheduled to be deployed in the North Atlantic in 1986/87.

[18] We have authorized Comsat to participate in the procurement of five INTELSAT VI satellites. However, it is not clear that these particular satellites will be the ones used in the POR or if a VI follow-on will be used. *See*, Communications Satellite Corporation, FCC 84–236 (released May 25, 1984). Several satellite configurations are under consideration by INTELSAT as INTELSAT VI follow-on spacecrafts.

[19] There were six plans and four variations of these plans.

[20] Plan II–A (Mod 4) has undergone two major changes. The USISCs first submitted as part of the record a similar plan, Plan II–A (Mod.) This plan differed from the present plan in two respects: First, the entire plan was more expensive ($786 million as opposed to $733 million). Second, the Hong Kong-Philippines cable was planned for 1988 (not 1990). The USISCs withdrew this plan and submitted a new plan, Plan II–A (Mod. 2) which connected Japan with the Philippines in a self-protecting ring. This plan cost $719 million. On November 15, 1984, the USISCs submitted the present Plan II–A (Mod. 4) which reflects the increased participation of Hong Kong and will be discussed in detail below. *See*, letter of J.A. McEntee, Deputy Director, International Long Range Planning ATT — Communications to Stuart Z. Chiron, Chief, International Policy Division, November 15, 1984.

[21] First cost is the capital investment associated with a new facility. The USISCs computed first cost in 1983 dollars.

[22] The cost to Japan is approximately $129 million (in 1983 dollars).

[23] That is, it would cost approximately $67 million less to deploy a ring configuration with a Guam landing point.

From-to	Cable name	Service date	Capacity	
			Mbit/s	Mbit/s
Mainland-Hawaii	HA-MA (HAW-4).	1988	2 x 280	7,560
Hawaii-Japan	HA-JA	1988	2 x 280	7,560
Japan-Philippines*.	JA-PH	1988	1 x 280	3,780
Japan-Korea*	JA-KO	1988	1 x 280	3,780
Philippines-Taiwan.	PH-TA	1994	1 x 140	1,890
Philippines-Hong Kong.	PH-HK	1988	1 x 140	1,890

*Indicates fiber in a Branching Unit cable

33. According to the record, Plan III Modified is acceptable but not preferred by the USISCs or their foreign correspondents. Although cheaper than Plan II–A(Mod 4) the USISCs maintain that this plan does not provide comparable flexibility in routing. It also does not offer the ability to restore via digital cables any portion of the network.

2. Comsat's Plans

34. Comsat submitted two plans. Comsat Plan 1A is based on the lightguide network proposed by the USISCs in Plan II–A(Mod 4).[25] Comsat Plan 2A is based on the lightguide network proposed by the USISC in Plan III Modified. Comsat proposes to defer implementation of the fiber optic cable systems proposed in both plans for three years until 1991. Comsat maintains that existing cables and satellites will provide sufficient capacity to accommodate growth from 1988–1991. Comsat states that a three year delay would keep TPC–3 out of AT&T's rate base for three years and would save ratepayers $120 million (in 1983 dollars).

35. In its filings, Comsat argues that more than adequate satellite capacity will exist in the planning period to accommodate expected traffic growth. Comsat submitted data to show that existing and proposed satellite configurations for the region can provide sufficient capacity at least through 1991 and may provide an aggregate capacity of over 60,000 U.S. Mainland/Hawaii Pacific channels by 1995.[26] Comsat also maintains that quality of service will not suffer if the cable system is delayed for three years and that services that can be provided over digital cables can also be provided over satellites.

C. The Parties Evaluation of the Alternative Plans

36. The U.S. International Service Carriers and Comsat analyzed the four alternative plans from the standpoint of forecasted demand, facility capacity and demand flexibility, service quality, costs, technological risk, and correspondent acceptance. The USISCs prefer Plan II-A (Mod. 4) and state that this plan best accommodates forecasted traffic in the region during the planning period. On the other hand, Comsat believes that existing cable and satellite facilities can accommodate growth in the region until at least 1991. Comsat asserts that its plans, which defer the USISCs plans for three years are the preferred way to accommodate traffic in the POR during the planning period.

1. Forecasted Demand, Capacity and Demand Flexibility

37. The USISCs and Comsat agree on the traffic forecasts compiled by the USISCs and Comsat as well as the capacities of existing and proposed facilities. They also agree that an abundance of satellite capacity will exist throughout the planning period.[27] Comsat calculates that there is adequate capacity on the primary and major path satellites to accommodate all forecasted traffic during the planning period without the deployment of circuit multiplication techniques such as TDMA/DSI. Comsat also states that with the deployment of TDMA/DSI there is the potential for at least twice and perhaps three times the capacity needed to accommodate growth in the region.

38. Demand flexibility means that capacity is available or could be derived to accommodate unforeseen changes in demand. Both the USISCs and Comsat conclude that under any of the four alternative plans, there will be more than ample capacity to accommodate projected traffic requirements and any unforeseen changes in demand throughout the planning period.

39. The USISCs state that this excess satellite capacity demonstrates that the satellite planning engaged in by Comsat and INTELSAT is deficient. The USISCs also state that since so much excess satellite capacity is projected during the planning period, a relatively low traffic forecast and demand flexibility are essentially meaningless and should not be reasons for delaying the implementation of the cable system. On the other hand, Comsat argues that if the USISCs' preferred plan is approved in 1988, satellite capacity would be "underutilized and lie fallow."

2. Service Quality

40. The USISCs and Comsat analyzed the service quality provided by the plans in terms of media (cable and satellite) diversity, path diversity restoration and loading. Media diversity is provided by the use of more than one transmission medium to carry a correspondent's traffic. Media diversity protects against the systemic failure of one medium. Path diversity is obtained through the use of a number of independent routes to carry traffic to a given correspondent and is one means to maintain an adequate grade of service if any one path fails.

41. The USISCs maintain that their preferred Plan II-A (Mod. 4) significantly enhances both media and path diversity. The USISCs state that a new cable route will increase path diversity regardless of the satellite configuration in Comsat's plans. The USISCs also maintain that the cable/satellite radio of its plans is 61/39 in 1995 if the countries served solely by satellite are excluded from the analysis. If the countries served solely by satellite are included, then the satellite share in the mid-to-late 90's is 48 percent. Comsat claims that the path diversity provided in the USISC plans is no better than the path diversity provided in its own plans and that the media diversity in the USISC preferred plan is unacceptable because the satellite ratio in this plan declines from 70% to 30%.

42. The USISCs and Comsat also analyzed the plans in terms of their ability to restore circuits in case of a facility outage. The USISCs state that the preferred Plan II-A (Mod. 4) is best able to restore failed circuits since it provides for a self-restoring ring from the branching unit to Japan, Hong Kong, the Philippines, Guam and back to the branching unit. The USISCs maintain that their non-ring Plan III-Mod. has no inherent restoration capabilities and must rely solely on restoration by satellites in case of a facilities outage. Under the USISC plans, satellite facility outages can be restored via the operational spare satellite and for the first time by digital cables, although coverage is limited. Comsat maintains that its plan provide the same ability as the USISC plans to restore circuits in case of a facilities failure because of the

[25] Comsat Plan 1A is actually based on the originally submitted USISC Plan II–A (Mod.) Since this plan is closely related to the USISC Plan II–A (Mod. 4), Comsat's comments on Plan II–A (Mod.) will be considered as applying to Plan II–A (Mod. 4).

[26] Comsat's plan show that the INTELSAT V satellite will function as a Primary Path and Operational Spare in 1988. In 1987, the INTELSAT V Primary Path will be replaced by the INTELSAT V–A. In addition, a V–A will also serve as a Major Path satellite. This configuration remains intact until 1991, when INTELSAT VI or follow-on satellites are planned to be deployed as the Primary Path and Spare satellites.

[27] The carriers estimate that if all POR traffic were to be placed on satellites, including the off-loading of all existing cables, satellite utilization would never exceed 36% through 1991.

presence in the region of an operational spare satellite throughout the planning period. Comsat also states that such capability is necessary to restore service to countries not served by the proposed fiber optic network.

43. Loading is the manner by which circuits are distributed among available transmission paths, both cable and satellite. A balanced loading methodology is now used in the Pacific Region and Comsat supports the continued use of this loading policy. Under a balanced loading approach, circuits are distributed among satellite and cable facilities in a manner which results in non-saturated facilities carrying equal numbers of circuits.[28] The USISCs propose using a loading methodology based on a mix of satellite and cable circuits bilaterally negotiated between the USISCs and their foreign correspondents. Comsat objects to the loading approach proposed by the USISCs. Comsat believes that such a cable/satellite mix will be formulated without consideration of relative economics and without its participation. Comsat also is concerned that the market power of the USISCs, particularly AT&T, will work to Comsat's disadvantage. In response, the USISCs state that the bilaterally negotiated loading scheme they propose is based upon economic criteria that look at each correspondent pair's relative costs of satellite and cable. The USISCs further maintain that the process they will employ with their foreign correspondents is similar to that employed at the INTELSAT Global Traffic Meeting in which all signatories meet and decide the number of circuits to be placed on satellite for five or more years in the future.

3. Cost Analysis

44. The cost of each of the alternative facilities plans was estimated by AT&T and Comsat. Both parties express the individual cost of a plan in terms of the discounted present worth of expenditures.[29] However, the parties employ different methods and assumptions for estimating the cost of the various plans. AT&T uses two methods for estimating cost—a "use" and an "investment" method. The AT&T "use" method includes the USISC portion of the total investment and operating cost outlays for new cable systems introduced during the planning period, together with the estimated annual per circuit Comsat lease (tariff) charge for international satellite circuits. The AT&T "investment" method also includes the USISC portion of total investment and operating cost outlay for new cable systems. For satellites, an allocated portion of the total investment and operating cost associated with all the satellites of the various satellite series introduced into the region during the plannning period is included. The portion of total INTELSAT satellite costs allocated to the U.S. in the Pacific region is determined by the planned use of a given satellite facility by the U.S. carriers in the Pacific region relative to its use by the foreign entities ifi the Pacific and its use in other ocean basin regions. Both the use and investment method employed by AT&T include all cable costs associated with providing U.S. Mainland/Hawaii service for those cable systems that are newly introduced into the Pacific Ocean Region during the planning period.

45. Comsat's cost estimates for the plans are based upon a single investment related methodology. The Comsat approach includes the USISC portion of total investment and operating costs for new cable systems in a similar manner to that employed by AT&T in both its methods. In calculating the satellite portion of the cost associated with an individual facility plan, Comsat includes an allocated portion of only the total incremental investment and operating costs associated with satellite facilities serving the Pacific region. Comsat assumes that the only relevant incremental satellite costs are those associated with satellite facilities for which investment decisions by INTELSAT have not already been made as of the beginning of the planning period. This means that any satellite series prior to the INTELSAT VI (scheduled to be introduced in the Pacific region in 1991) is not included in the Comsat cost analysis. This differs significantly from the AT&T investment method approach in that AT&T includes an allocated portion of INTELSAT satellite costs (based upon relative use) for the INTELSAT series, V, VA, and VI- in its analysis. For the INTELSAT VI satellite series that is included in the Comsat analysis, an allocation mechanism based upon relative use of the satellite by U.S. carriers in the Pacific region is employed by Comsat to allocate a portion of the overall satellite system cost to the Pacific plan.[30]

46. As a result of these different cost methodologies, the USISC cost of the plans and the Comsat cost of the same plans are very different. The AT&T and Comsat cost analyses for the USISCs' preferred plan are presented in the following table. The costs shown are the U.S. carriers' share of the total costs of the proposed cable system.

	Cable	Satellite	Total
Comsat investment related method:			
Comsat plan 1A	$136.75M	$99.32M	$236.07M
Plan IIA modified	$250.00M	$94.63M	$354.63M
USISC investment related method with residuals:[31]			
Comsat plan 1A	$66.6M	$100.8M	$167.4M
USISC plan IIA modified	$156.2M	$44.9M	$200.1M
USISC use related method with residuals:			
Comsat plan 1A	$66.6M	$155.6M	$222.2M
USISC plan IIA modified	$155.2M	$52.9M	$208.1M

[31] Residuals are costs allocated to facilities beyond the end of the planning period (i.e.—after 1995).

47. Utilizing Comsat's investment related method the USISC preferred plan costs $354.63M (net present value of incremental expenditures) while Comsat's Plan 1A (the USISC preferred plan deferred by three years) costs $238.07M. Utilizing the USISC investment method, their preferred plan costs $200.1M (incremental investment with residuals) while Comsat's Plan 1A costs $167.4M. In both Comsat's "investment" analyses and the USISC "investment" analysis, Comsat's plan is cheaper. However, according to the USISC "use related" method, the USISC preferred plan is cheaper than Comsat's Plan 1A. (The USISC preferred plan cost is $208.1M and Comsat's Plan 1A is $222.2M).

4. Technological Risk

48. The carriers assessed the alternative plans with respect to the risks arising from utilizing a new technology. The major risks arising from plans which incorporate new technology are that: (a) The technology will not be

[28] The policy was developed in Docket 18875 planning proceedings as a result of negotiations between the U.S. and European PTT's. The policy expires by its own terms at year-end 1985 in the North Atlantic. *See*, Policies for Overseas Common Carriers, 82 FCC 2d 407, 431 n. 18 (1980).

[29] In the USISC analysis, the Present Worth of Expenditures (PWE) represents the sum of the present worth of future capital investments (PWFC) and the present worth of future annual expenses (lease costs are used for satellites, capital investments are used for new cables). PWFC represents the worth of some future capital investment adjusted back to 1983 dollars. The discount rate (the percentage used to discount expenses) is stated in real terms. A real discount rate of 4% is used to calculate PWE. In Comsat's analysis, the PWE also includes the net present value of incremental costs for cable and satellite facilities of associated operational and maintenance charges (O & M), incremental purchases of IRUs in foreign cables, appropriate transit charges and O & M on existing facilities.

[30] Other minor differences in cost assumptions also exist between the AT&T and Comsat methods. See the respective cost submissions of the carriers in the record for details.

available when required; and (b) the technology will not perform as specified. The USISCs state that any unforeseen delay in the service date of the HAW–4/TPC–3 cable will not affect the customer because existing satellite capacity is sufficient to accommodate traffic growth up to 1991 and beyond. Thus, the USISCs see no technological risk associated with their preferred plan.

49. Comsat believes that the USISC plans are technologically risky. Unforeseen delay could arise because TAT–8, the first major transoceanic lightguide cable, is to be constructed and placed in operation in the North Atlantic in 1988, the same year as the proposed HAW–4/TPC–3 cable. If a problem is uncovered during the construction, testing or implementation of TAT–8 necessitating a delay in the service date of that cable, such a delay would affect the design, construction, price and service date of the HAW–4/TPC–3 cable as well. Comsat also notes that the lightguide cable proposed for the POR spans more nautical miles than TAT–8. Comsat thus suggests that a delay until 1991 would permit the co-owners to gain important service, design and construction experience.

50. Comsat sees no technological risk associated with the deployment of INTELSAT V, V–A, VI or follow-on spacecraft in the region in 1991. Comsat states that modifications in the INTELSAT VI follow-on program currently under consideration are relatively simple extensions of current technology and should not interfere with the timely delivery of modified spacecraft to the region. According to Comsat, the INTELSAT VI program is continuing on schedule calling for the availability of two INTELSAT VI's in late 1986/early 1987 in the North Atlantic. Launch vehicle availability for the first three INTELSAT VI spacecraft is also assured. Negotiations are currently underway for the launch of the fourth and fifth INTELSAT VI spacecraft. Comsat believes there is no reason to question the viability of the new technologies associated with the INTELSAT VI: dynamic satellite switch and a high performance multi-beam antenna.

5. Correspondent Acceptance (International Comity)

51. Correspondent acceptance is a factor which has traditionally been taken into account in the planning process when evaluating alternative plans. The USISCs emphasize that they have been involved in a planning effort with their foreign correspondents in the POR for the past several years and that this effort has included the periodic updating of traffic forecasts, the review of available technology and cost elements, and the analysis and evaluation of facility alternatives which would satisfy traffic demand in a timely and economic manner. The USISC pleadings recount in detail the various meetings, the development of various plans and the analysis that these plans have received by all interested parties and administrations. The USISCs state that the two plans they have submitted (particularly their preferred plan) are the ones that were found to be acceptable to their foreign correspondents. The USISCs generally conclude that international comity is an important factor and that the results of a negotiated process should be given substantial consideration.

52. Comsat states that our foreign correspondents have individual interests in expanding the cable network and avers that correspondent acceptance cannot be the sole basis for either eliminating plans or selecting a preferred facilities plan. Comsat argues that this is an internal U.S. proceeding and that we must evaluate facilities authorization from the perspective of the U.S. ratepayer. Comsat further states that there is no information to indicate that the foreign correspondents have been able to consider delaying the lightguide system by three years.

6. Evaluation by DoD, NTIA and Simplex

53. DoD, NTIA and Simplex filed comments relating the the particular plans. Both NTIA and DoD support AT&T's Plan II–A (Mod. 4) which introduces a fiber optic TPC–3 cable in 1988 that is routed through Guam via an underwater branch. DoD believes that this plan best meets the defense and security interests of the United States. NTIA also supports a Guam landing point for defense and commercial reasons. NTIA further believes that the need for competition between the cable and satellite media outweighs any short run overcapacity which may develop; that delay in implementing a fiber optic cable plan will give foreign manufacturers the opportunity to produce a greater number of fiber optic cables and improve their competitive position; and that by deferring the cable until 1991, competitive incentives for lowering satellite rates will be deferred.

54. Simplex Wire and Cable Company, a cable manufacturer, also supports the AT&T preferred plan. Simplex avers that the protection of U.S. ratepayers' interests demands that indirect pressures be brought to bear on INTELSAT to assure that in the future its construction program is more moderate and prudent. Simplex believes that to delay cable construction in the Pacific to help bail INTELSAT out of its substantial excess capacity problem can only have the effect of encouraging INTELSAT's continued overly optimistic construction plans. Thus, a U.S. decision to implement a new fiber optic system by 1988 would send a clear signal that INTELSAT must become more cost and demand conscious in its construction plans.

55. NTIA also proposed that we initiate consideration of a new loading methodology which would be characterized by greater reliance on market forces. It stated that such a policy would promote both cable and satellite technologies, increase intermodal competition and encourage the efficient provision of international telecommunications services. Under the broad NTIA approach, which would apply only to incremental or growth traffic, the facilities which are shown to be the most cost effective on a per circuit basis would receive a proportionally greater share of the traffic. Calculations would be made periodically and traffic would be allocated between the two mediums accordingly.

V. Discussion

56. We shall evaluate the alternative plans in terms of the traditional five criteria discussed above and used by the parties in their evaluation of the plans. We shall also assess these plans in terms of other factors such as the promotion of a new technology and U.S. industrial capability, augmenting intermodal and intramodal competition, and defense and commercial considerations. We shall also address the questions raised in the comments to our NOI such as the need for a Master Plan for facilities utilization and the bifurcation of this phase of the process to include only those facilities to be utilized until 1991. We shall then issue tentative findings and request additional information from the parties. While we tentatively conclude here that a fiber optic TPC–3 as early as 1988 will be in the public interest and that this cable should reflect the Plan II–A (Mod. 4) configuration, we emphasize that this is only a tentative decision reached after weighing all the relevant factors. As the following discussion and analysis indicates, most but not all relevant factors favor a fiber optic cable as early as 1988.

A. Forecasted Demand, Capacity and Demand Flexibility

57. Traditionally, demand forecasts drive the entire planning process and establish the parameters of viable facilities alternatives. The demand forecast determines the capacity needed and the time period in which facilities that provide that capacity must be introduced into the region. It appears from the filings of the parties that total capacity exceeds demand without a TPC–3 cable through the use of existing cables and already procured satellites at least until 1991. If we look at overall capacity for U.S./Hawaii to Pacific Basin countries, there is little question that satellites committed to the region for East-West traffic when equipped with circuit multiplication techniques can handle the projected traffic and any unanticipated increase in traffic volume without the introduction of a lightguide cable system until at least 1991. The capacity of the INTELSAT V–A primary satellite transponders used for U.S./Hawaii to Pacific Basin countries in 1989 utilizing TDMA/DSI in 8910 circuits,[32] more than enough capacity to accommodate total demand and provide for demand flexibility. If INTELSAT deploys an "extra" INTELSAT V–A satellite into the POR as a major path satellite, as it is now scheduled to do, then total capacity will increase substantially to about 17,500 circuits while demand, according to the submitted forecasts, remains constant at 7965 circuits. Even AT&T acknowledges that if all Pacific traffic were to be placed on satellites, assuming a major path satellite in 1987, including the offloading of all existing cables, satellite utilization would never exceed 36% through 1991.

58. However, the question of whether demand exists for a lightguide system in 1988 depends on how much importance is attached to overall gross capacity in the POR as opposed to replacing saturated and expired cable systems with new cable systems. TPC–1 and TPC–2 circuits providing voice service are currently saturated and several major cables in the region will reach the end of their design life during the planning period. All new growth in the region is being carried on satellite with 70% of services provided over satellite at this time. This figure will only increase over the next several years. The cable systems proposed by the USISCs will replace these saturated and expired cables in the region so that new growth could be placed on cables as well as on satellites.

59. Thus, we reach two tentative findings as to whether demand exists for a lightguide cable system. First, we tentatively find that projected gross capacity in the region without TPC–3 substantially exceeds demand at least until 1991 and provides for adequate demand flexibility. Second, we tentatively find that a dearth of cable capacity currently exists in the POR. However, since satellite and cable facilities are generally fungible, we tentatively conclude that purely on a demand analysis the TPC–3 cable could be deferred until at least 1991.

B. Introduction of a New Technology

60. One of the goals of the planning processes in general has been the promotion of new technologies, both cable and satellite.[33] The introduction of a lightguide cable system in the region in 1988 means the introduction of digital fiber optic technology with its attendant service benefits. A lightguide cable system in the POR will become an integral part of a globally interconnected digital network. With the authorization of the first transatlantic fiber optic cable in May, 1984 (TAT–8), we have begun the move toward an era of fiber optic cable systems in all regions of the world. Fiber optic cable circuits may be cheaper and can provide more and different services than the traditional analog cables. For example, a digital fiber optic system has low noise levels, low data error rates and can provide services previously provided only by satellite such as wideband data and video services.[34] By accommodating these new services, international digital capability will spur the development of domestic digital systems in all the POR countries interconnected by this lightguide system as well as in countries in other regions of the world. The development and demand for these new digital services could stimulate circuit demand beyond that projected in the traffic forecasts submitted by the USISCs. Consideration of this factor would support the introduction of a fiber optic TPC–3 cable at the earliest practical date, i.e., 1988.

C. Intermodal and Intramodal Competition

61. We believe that the lower circuit costs of a lightguide cable system relative to conventional analog systems will exert a beneficial pressure on INTELSAT to be more cost conscious in its construction plans and to continue its efforts to shape its service offerings to meet user requirements. Thus, within certain parameters which recognize existing biases in facility selection and the lead times necessary to deploy new facilities, we tentatively conclude that introduction and use of a fiber optic TPC–3 in 1988 will promote intermodal competition. To the extent that carriers prefer cables to satellite, for operational or other reasons, we tentatively conclude that a fiber optic TPC–3 will also promote intramodal competition. That is, carriers employing cable technology will have additional capacity over which they may provide competing services.

D. Service Quality

62. We tentatively find that the plans submitted by the USISCs for a 1988 fiber optic cable are more advantageous from a service reliability standpoint than Comsat's plans to defer the cables until 1991. Furthermore, we believe that the USISC preferred plan (Plan II–A (Mod. 4)) is more advantageous from a service reliability standpoint than the USISC Plan III Modified. This is particularly true with respect to its restoration capabilities. Our tentative findings on these issues are discussed in detail below.

63. *Path Diversity.* Path diversity is obtained through the use of a number of independent routes to carry traffic to a given correspondent. Path diversity is closely related to the ability of a facility to restore circuits in case of a facilites failure. From an operational perspective, if any one path fails it is desirable to have additional paths available to provide routing options and prevent loss of service. At the present time there are two (primary and operational spare/major path) satellites and three cables (TPC 1 and 2 and ANZCAN) providing east-west service in the POR. While we would not characterize this arrangement as deficient, it is clear that another cable, particularly one with a ring configuration and substantial capacity, would augment path diversity. Thus, path diversity is enhanced by the USISCs proposal to introduce lightguide cables in 1988 and maximized by the construction of Plan IIA (Mod. 4).

[32] The capacity of the INTELSAT V–A satellite allocated for U.S/Hawaii to Pacific Basin countries without the utiliztion of circuit multiplication techniques is 4350 circuits.

[33] In Docket No. 18875, we released a Statement of Policies and Guidelines which set forth general policies in our licensing of facilities in the North Atlantic. These guidelines have also been applied to our planning processes in the Pacific and Caribbean regions. The first guideline states that "the public interest requires that we promote the continued development of both cable and satellite technologies and their most effective and timely applications to meet future requirements for international communications services." *See* Overseas Communications, 30 FCC 2d 571 (1971).

[34] *See*, Policies for Overseas Common Carriers, 84 FCC 2d 760, 766–768 (1981).

64. *Restoration.* The ability to maintain service in case of a facilities outrage is crucial to the success of any facilities plan. We are presented with two questions regarding the restoration abilities of the facilities alternatives presented. The first question is whether a fiber optic TPC–3 would enhance the restoration of existing facilities. The answer to this question is clearly "yes". A TPC–3 would be able to restore TPC–1 and TPC–2 traffic. Further, digital cables such as TPC–3 have the ability to restore satellite services, although the coverage is geographically limited. Depending on traffic flows within the region and on TPC–3, it would appear that the Plan IIA (Mod. 4) ring configuration would provide better restoration capabilities than the non-ring Plan III Modified configuration.

65. The second question relates to how a fiber optic TPC–3 would be restored. It would appear that Plan III Modified, the non-ring proposal, would be restored entirely by satellite while restoration of Plan IIA (Mod. 4) would be provided by satellite (east of the branching unit) and the TPC–3 cable or satellite (west of the branching unit). We can therefore tentatively conclude that the introduction of a fiber optic TPC–3 would enhance the restoration options available in the POR for existing facilities. We can also tentatively conclude that a ring design which permits partial self-restoration provides an additional restoration option although 100% satellite restoration of either alternative would be satisfactory. However, we shall require the USISCs in their comments to this FNPRM to present specific plans as to how TPC–3 (both plans) would be restored. We are particularly concerned whether satellite restoration via the POR Spare satellite will be employed, in part or in whole, or whether the carriers anticipate a fourth transpacific cable. In other words, will a future TPC–4 be substantially justified on restoration grounds?

66. *Media Diversity.* A dearth of cable capacity exists in the region and approximately 70% of all POR traffic including all new growth is currently routed over satellite. Under the USISC plans, these percentages would eventually be reversed so that a greater percentage of all traffic in the region would be routed over cable. While we take no position here on whether any particular cable/satellite ratio is desirable, we do believe that media diversity would be generally enhanced by the introduction of a fiber optic TPC–3. This is particularly so because, for the first time, users of high speed data and other wideband services in the POR would have the option of using cable.

67. *Loading.* Comsat and the USISCs used different loading approaches in analyzing their plans. AT&T and the other USISCs used a loading approach bilaterally negotiated with their foreign correspondents, while Comsat used a traditional balanced loading approach. In our *Report and Order* in the first phase of the process, we found a Master Plan for circuit activation proposed by AT&T and Comsat reasonable.[35] This Master Plan governs the activation of circuits from 1982–1986 and is based upon the principle of balanced loading.

68. We are now faced with deciding how to efficiently utilize facilities for the 1987–1995 period. As competition develops internationally we hope to move away from specifying any loading criteria. However, we are not yet at a point where we can totally rely on market forces to govern circuit activation decisions. Until such time that effective carrier and facility competition exists, we still must monitor circuit activation decisions to assure that both media are reasonably used. We also believe that the carriers who invest in this cable system have the right to know under what criteria it will be loaded, if any. The same holds true for those who will plan and invest in the next INTELSAT series of satellites. For this reason, we support the notion of a Master Plan as a useful means of arraying projected circuit requirements. A Master Plan also assists us in monitoring the international market in facilities planning and in considering section 214 applications.

69. In considering what loading criteria shall be used in the POR, we note that several options exist. Balanced loading could be continued. Loading could be left up to the USISCs and their foreign correspondents. A phased-in plan, moving away from balanced loading, with yearly or planning period caps could also be developed.[36] Since the parties analyzed their plans using different loading approaches, we will require the USISCs to submit more detailed information regarding their loading preferences. We would also like the parties to submit other loading options for our consideration.[37] We also request that the parties submit a master plan with each loading option for our consideration. Finally, we specifically request interested parties to comment on NTIA's broad proposal. This proposal attempts to simulate a market free from existing facility biases and to eventually lessen the need for government involvement in facilities planning. To this extent we find it to be a useful proposal. On the other hand, this proposal may require continued Commission involvement in loading activities as the arbiter of formula-cost disagreements and may not be well received by our carriers' foreign correspondents.[38] We shall reach no tentative conclusion on loading, although we shall require the carriers to submit forecasts and AT&T to submit distribution for the two major facility options for both 1988 and 1991.[39] However, we will look favorably on those options which move away from a rigid methodology and rely on market forces while recognizing the existing realities of the market place.[40]

E. Cost Analysis

70. The number of different cost estimates supplied by AT&T and Comsat, and the range over which these estimates vary, reflect unresolved methodology controversies concerning the appropriate way to measure cost. In addition, comments filed on behalf of the State of Hawaii suggest use of yet another method for comparing the costs of the alternative plans.

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[35] Although we found this plan reasonable, we did not authorize a specfic Master Plan because we believed it would frustrate our decision to rely upon the carriers and market forces to efficiently activate circuits.

[36] *See* joint submission of AT&T and Comsat to the North Atlantic Consultative Working Group meeting. CC Docket 79–184. January, 1985.

[37] We are currently involved in an investigation of future loading policies in the North Atlantic. Parties have submitted a series of loading options in that docket for our consideration. *See* CC Docket 79–184.

[38] We note NTIA's general proposal was not particularly favored by European administrations at the recent North Atlantic Consultative Working Group meeting in Orlando, Florida, in January, 1985.

[39] Carriers should analyze the circuit methodologies they submit in terms of: (a) their cost to users; (b) effect on service quality; (c) the predictability of circuit distribution in the event actual circuit demand varies from the level forecast; and (d) the cost to users and the effect on service quality in the event actual circuit demand varies from the level forecast. The results of the analyses of their preferred distribution methodology should be compared with that for the balanced loading circuit distribution they submit.

[40] While we have not yet received these options, we would anticipate continuing the existing exemption from any methodology for providers of record services and extending this exemption to new entrants as well as IMTS providers other than AT&T. Thus, any methodology might apply only to AT&T's provision of IMTS. New entrants and IMTS providers other than AT&T use relatively few circuits and total flexibility would facilitate their economic provision of service. As to record service providers, we note that the vast majority of their circuits are used for private line service (a service where users generally select the medium), several carriers now compete for customers, and, again relatively few circuits are involved. Thus, it is arguable that market forces already determine loading for these services and carriers.

71. One of the major differences in approach is the method used to measure the cost of satellite facilites to be incorporated in the plans. AT&T uses two methods to estimate satellite costs: a use related approach, which estimates annual Comsat lease (tariff) rate charges for the use of international satellite circuits; and an investment related method, which allocates a portion of the total investment and operating cost for satellite facilities to the Pacific region plans.

72. Comsat's cost analysis uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. Comsat defines as new satellite facilities only those satellites for which INTELSAT has not made a final investment commitment. The costs associated with all other satellites are treated as sunk costs and not included in Comsat's cost analysis.

73. None of these methodologies accurately reflects costs. First, Comsat views the INTELSAT VI satellites being the first satellites projected for use in the Pacific Ocean region for which INTELSAT has not made a final investment decision and thus the only satellite the cost of which would be computed into its costing equation. However, other satellites (INTELSAT V and VA) will be used in the region. Second, AT&T's investment based cost analysis uses investment and operating costs for new cable and satellite facilities to compare the costs of the alternative plans. In so doing, AT&T accounts for the fact that Comsat's investment in INTELSAT satellites varies with use by including an allocated portion of the investment and operating costs for all INTELSAT satellites used in the Pacific Ocean region during the planning period. While including all satellites used in the POR during the planning period may be appropriate; AT&T allocates Comsat's share of the costs of these facilities according to Comsat's regional use. This results in a higher figure than if just Comsat's overall percentage of ownership in the INTELSAT system is used.

74. Third, AT&T's use related cost analysis also uses the investment and operating costs of new cable facilities to compare cost of the alternative plans. However, AT&T uses its projections of Comsat's future tariff charges to the U.S. carriers for lease of satellite circuits as the measure of satellite costs for the plans. Use of projected Comsat tariff charges is based on the fact that it is these costs which carriers must pay for service. This method has a fundamental inconsistency in that it compares investment and operating costs for new cable facilities (which does not include return on investment or taxes for cable facilities) with Comsat's tariff rates (which does include return on investment and taxes). Thus, AT&T's approach may make satellite use appear more costly in relation to cable use. Fourth, neither AT&T nor Comsat has attempted to take into consideration the costs of terrestrial hauls or transiting facilities.[41]

75. The State of Hawaii asserts that cost comparisons of the alternative plans should be based on revenue requirements at a stated rate of return for both cables and satellite facilities. Such cost comparisons would include revenue requirements for both existing and new facilities. Under this analysis, the most important factors are facility costs and forecasted demand and facility would not be constructed (and a revenue requirement not increased) unless a proposed facility was required to meet demand requirements.

76. There is no question that TPC–3 is an expensive facility and that deferral would delay an increase to AT&T's rate base. Comsat calculates that a three year deferral would save ratepayers $120 million while the USISC costs estimates show a savings of $33 million for a similar deferral. Because there is no agreement as to a costing methodology, and because we have never prescribed a particular methodology, we can each no tentative conclusion as to exactly how much ratepayers would save by a deferral of TPC–3. In this regard, the State of Hawaii's approach has a certain appeal: forget past investments as simply sunk and look only to revenue requirements which ratepayers must support. Using any approach, however, we can tentatively conclude that deferral would delay an increase in the overall (Comsat plus AT&T) rate base that users must support. Thus, deferral would, under a rate base regulation approach, lead to lower international rates for users. Of course, the savings of any deferral would partially be offset by the continued ownership expenses of several hundred circuits in the ANZCAN North cable between Hawaii and Canada.[42] We estimate these expenses to approximately $11 million dollars per year. Additionally, the savings of any deferral would be partially offset by transiting fees paid by foreign administrations employing the domestic facilities of U.S. carriers to carry traffic to or from TPC-3.

F. Technological Risk

77. The plans proposed by the USISCs and Comsat both introduce a new technology into the region. The USISC plans provide for the introduction of a lightguide cable system in 1988 and an INTELSAT VI series satellite in 1991. Comsat's plans provide for both these new systems to be introduced in 1991. The question that we must consider is whether the introduction of these new technologies in the region presents a risk to continuation of service if the technology is not available when required or if the technology will not perform as specified.

78. We believe, based on the record before us, that service to the customer will not be interrupted regardless of the plan chosen because of the amount of existing satellite capacity present in all of the proposed plans. The satellite capacity to be deployed beginning in 1986 can provide service in the region even if the lightguide cable system were delayed for more than three years or if the system did not perform as expected. The INTELSAT VI satellite planned for introduction in the POR in the early 1990's will be introduced in other regions of the world at earlier dates so that any problems associated with the new technologies it offers should be ironed out before its introduction in the POR. On the other hand, a delay in the TPC–3 would enable the owners to gain what could be valuable experience from TAT–8's introduction in 1988. Additionally, as frequently occurs with a new technology, a delay could result in a lower price to carriers and a lower revenue requirement to users. Thus, while we tentatively find that none of the proposed plans poses a technological risk to the continuation of service, we note that deferral of TPC–3 does have some potential benefits.

G. Correspondent Acceptance

79. International comity is a factor which should and must be taken into account when assessing facility plans submitted in the planning process. Although international comity must be balanced against our public interest mandate, it would be short-sighted to view U.S. participation in any cable

[41] AT&T indicates that it did not include taxes or the effects of inflation in its projection of future Comsat tariff charges. Additionally, Comsat's recent unbundling of its tariff and estimates on cost overruns for both cables and satellites would also impact a cost comparison.

[42] Traditionally, investments are placed in a carrier's ratebase pursuant to our uniform system of accounts. In view of the relationship here between forecasted demand and cost, interested parties may wish to comment on the appropriateness of the carriers phasing their investment in TPC–3 into their ratebases over a specific period of time, perhaps two or three years.

system without taking into account the effect our decision will have on relations with international telecommunications entities in the region. Although there have been no Consultative meetings similar to the multilateral carrier/government meetings held in conjunction with North Atlantic facilities planning, it appears that various alternatives have been subjected to long and extensive analysis by both the USISCs and their foreign correspondents. A TPC–3 in 1988 as described in Plan IIA (Mod. 4) was found to be preferable by the USISCs and their foreign correspondents. It appears that our foreign correspondents are also very anxious to implement the new digital technology as soon as possible. The record before us gives no indication as to whether any support exists among our foreign correspondents for delaying the construction of the cable system until 1991. We tentatively find, therefore, that the USISC Plan II–A (Mod–4) is the plan preferred by our foreign correspondents and that international comity would be furthered by the construction of this cable as early as 1988.

H. Other Issues

80. *National Defense Security and Commercial Considerations.* DoD desires that for defense and security considerations, a fiber optic cable system routed through Guam be constructed in 1988. NTIA emphasizes both national security and commercial reasons for constructing such a system in 1988. Although not reason alone to support a particular facilities alternative, we must give national security considerations weight in arriving at a facilities plan.[43] Thus, from the perspective of DoD and NTIA, the USISC Plan II–A (Mod. 4) which is routed through Guam is the preferred alternative. However, we must note that a Guam landing point necessitates the expenditure of approximately 67 million additional dollars. In view of the small number of circuits that DoD requires to Guam, we must inquire as to whether it is appropriate for the general ratepayer to subsidize service to Guam.[44] Parties are asked to comment on whether construction of the Guam route will result in an unnecessary burden on ratepayers and, if so, whether the burden is justified by national security considerations. Parties may also wish to comment on whether a special rate designed to recover the cost of the Guam route should be imposed as a condition on the cable authorization.

81. *Further Bifurcation of the Process.* In their comments and reply comments to the NOI, Comsat, GTE and ITT proposed that we should only consider facilities that are to be deployed from 1987–1991. However, these parties state that forecasts should be submitted through 1995. The parties believe that insufficient information exists to recommend facilities beyond 1991. AT&T believes that the record is sufficient for this proceeding to cover facilities through 1995. We find that the plans and traffic forecasts submitted by the parties are comprehensive and give us sufficient information to recommend facilities alternatives for the entire planning period. Thus, we tentatively conclude that Phase II of the process shall include facilities to be deployed for the 1987–1995 time period and that the facilities discussed herein, the INTELSAT V, V–A and VI satellites and a fiber optic TPC–3, are the appropriate facilities for the POR for the 1987–1995 time period.

82. *U.S. Industrial Capability.* NTIA espouses the view that if the cable plan is implemented in 1988, U.S. firms would be in an excellent position to construct at least 50% of the TPC–3 cable and construct a large share of the other cables extending the system to Far East points. Delay, according to NTIA, could compromise the lead of the U.S. in the international telecommunications industry. NTIA's point is a valid one to the extent that portions of the cable system would be put out for bids. However, to the extent that the construction of the cable system is a negotiated arrangement between U.S. firms and their foreign correspondents, this view would not be entirely correct.

83. The recently initialed draft Construction and Maintenance Agreement reflects a negotiated construction agreement. Pursuant to this draft agreement, U.S. companies will construct the HAW–4 cable (2246 miles) as well as the portion of TPC–3 from Hawaii to the branching unit (2869 miles). Japan, through KDD, will construct the branching unit as well as branches to Guam (833 miles) and Japan (1201 miles). The remaining cables in the TPC–3 system have not yet been procured. The total length of the cable system contracted for is therefore 7149 miles, of which 5115 miles (71.5%) will be constructed by U.S. companies. The construction contract is allocated by approximately the same percentages: 72.5% ($430 million of $593 million total) allocated to U.S. firms and 29.5% ($163 million) allocated to KDD. These percentages are comparable to those derived for TAT–8 and do substantially exceed 50%. Although we cannot predict what a negotiated contract would look like if TPC–3 were to be delayed, we tentatively conclude that the present arrangement is of considerable value and importance to U.S. manufacturers.

VI. Summary and Tentative Conclusions

84. Although overall gross capacity exceeds demand in the POR without the introduction of a lightguide cable system at least until 1991, and although any TPC is an expensive undertaking, there are several countervailing considerations favoring introduction of a cable system in 1988. First, although excess satellite capacity exists throughout the time period, cable circuits providing voice service to all major markets with the exception of U.S.-Australia, New Zealand and Fiji are currently saturated. Second, the introduction of a lightguide cable system in the region in 1988 means the introduction of digital fiber optic technology with its attendant service benefits. Fiber optic cable circuits can provide services that could previously be provided only over satellite. Third, sevice quality, correspondent acceptance, U.S. industrial interests, the promotion of intermodal and intramodal competition, and national security considerations all argue for a 1988 fiber optic TPC–3. Further, the factors of service quality, correspondent acceptance and national security argue for Plan IIA (Mod. 4) and appear to outweigh the lower cost of Plan III Modified. For these reasons we tentatively conclude that a lightguide cable system should be constructed in 1988 and should reflect the configuration found in Plan IIA (Mod. 4).

85. We request interested parties to comment on our various tentative conclusions and the alternative considered by us in reaching these tentative conclusions. We also request interested parties to provide the additional information requested herein and any other data or views which they deem useful to our deliberations.

86. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication

[43] *See* National Security Decision Directive 97, National Security Telecommunications Policy.

[44] See Communications Satellite Corporation, 80, FCC 2d 170, 180 (1980), and 97 FCC 2d 82 (1984).

(other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an *oral parte* presentation addressing matters not fully covered in any previously-file written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

VI. Ordering Clauses

87. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 214 and 403 (1970), and pursuant to section 201(c) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 721(c) (1970), that a rulemaking looking toward development of the policy we shall apply in acting upon applications by the United States international service carriers and the Communications Satellite Corporation for authorization to construct and operate new cable and satellite transmission facilities to meet traffic demands in the Pacific Ocean region during the 1987–1995 period is hereby instituted.

88. It is further ordered that:

A. Updated country-by-country traffic forecasts for the Pacific Ocean Region for the period 1987–1995 shall be filed by all carriers on April 12, 1985;

B. AT&T shall file four circuit distributions based on the balanced loading methodology and on the circuit distributions negotiated with its correspondents for Plan II–A (Mod. 4) and Plan III Modified on April 22, 1985 assuming Plan II–A (Mod. 4) and Plan III Modified in 1988 as well as in 1991;

C. Any other interested party may file proposed circuit distributions for Plan II–A (Mod. 4) and Plan III Modified on April 22, 1985;

D. Interested persons may file analyses of the submitted circuit distributions and comments on the tentative conclusions reached herein on May 6, 1985; and

E. Reply Comments shall be filed on May 17, 1985.

In reaching its decisions, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

89. It is hereby certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that section 603 and 604 of that Act do not apply to this rulemaking since the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The primary economic impact of these rules, if promulgated, will be on the U.S. international carriers and the Communications Satellite Corporation.

90. It is further ordered that the Secretary shall provide a copy of the above certification and statement to the Chief Counsel for Advocacy of the Small Business Administration and shall cause said certification and statement to be published in the **Federal Register.**

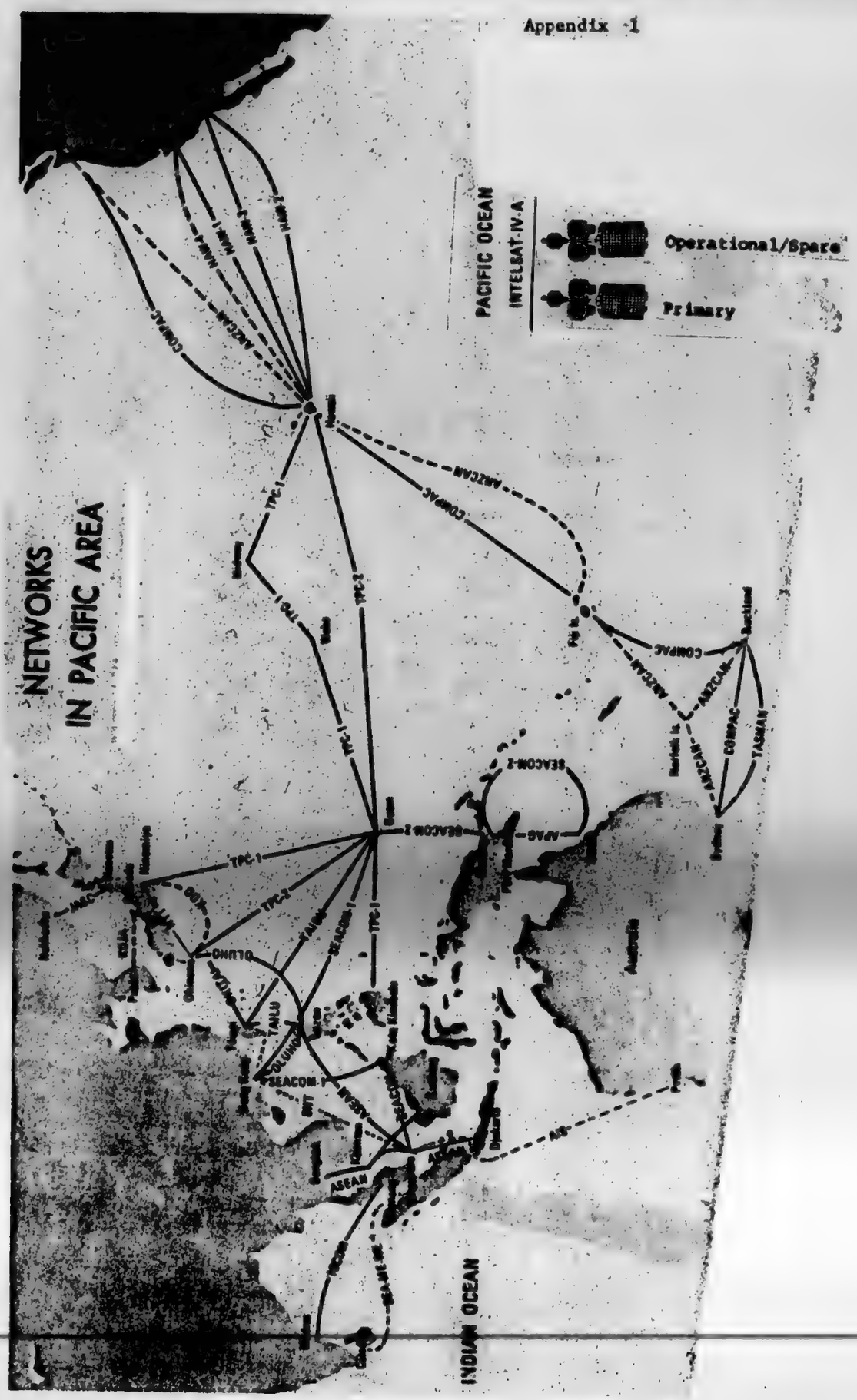
Federal Communications Commission.

William J. Tricarico,

Secretary.

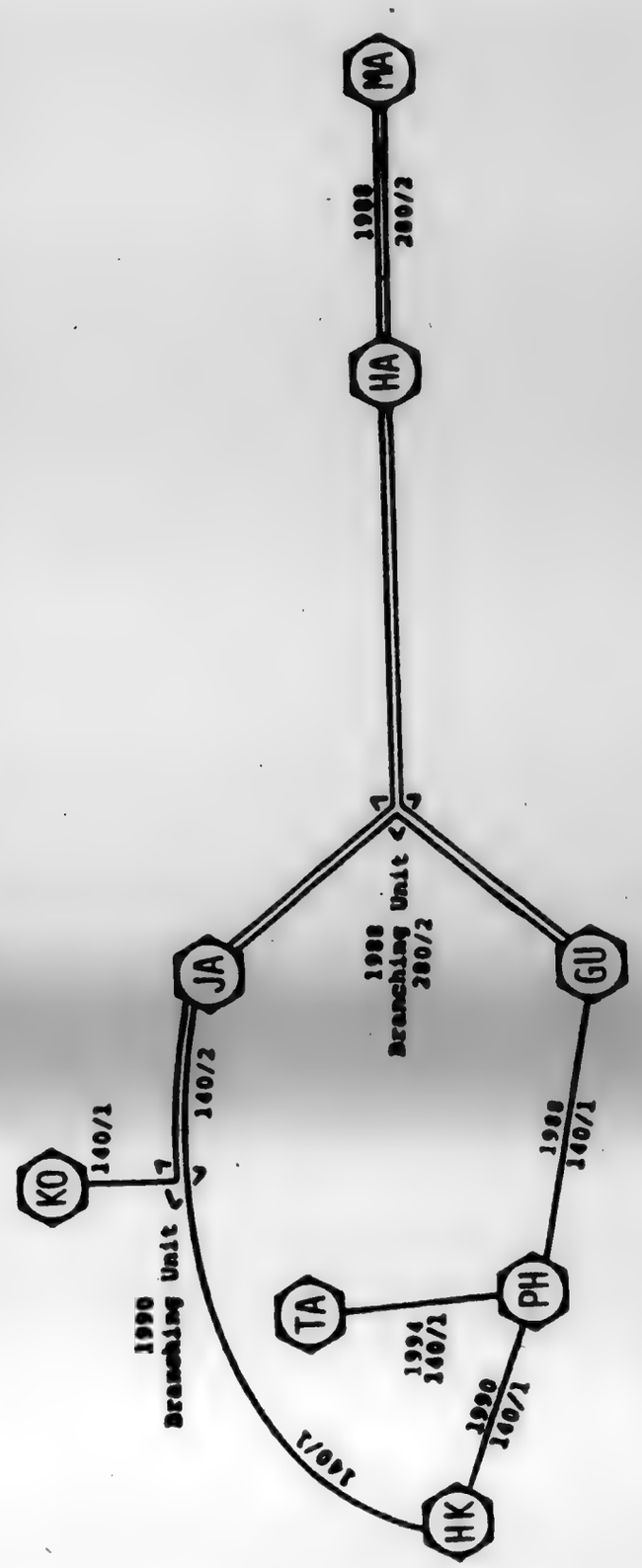
BILLING CODE 6712-01-M

Appendix 1


NETWORKS
IN PACIFIC AREA
PACIFIC OCEAN
INTELSAT-IV-A
Operational/Spare
Primary
INDIAN OCEAN

Appendix 2

PLAN II-A MOD (4)



LEGEND

GU - Guam

HA - Hawaii

HK - Hong Kong

JA - Japan

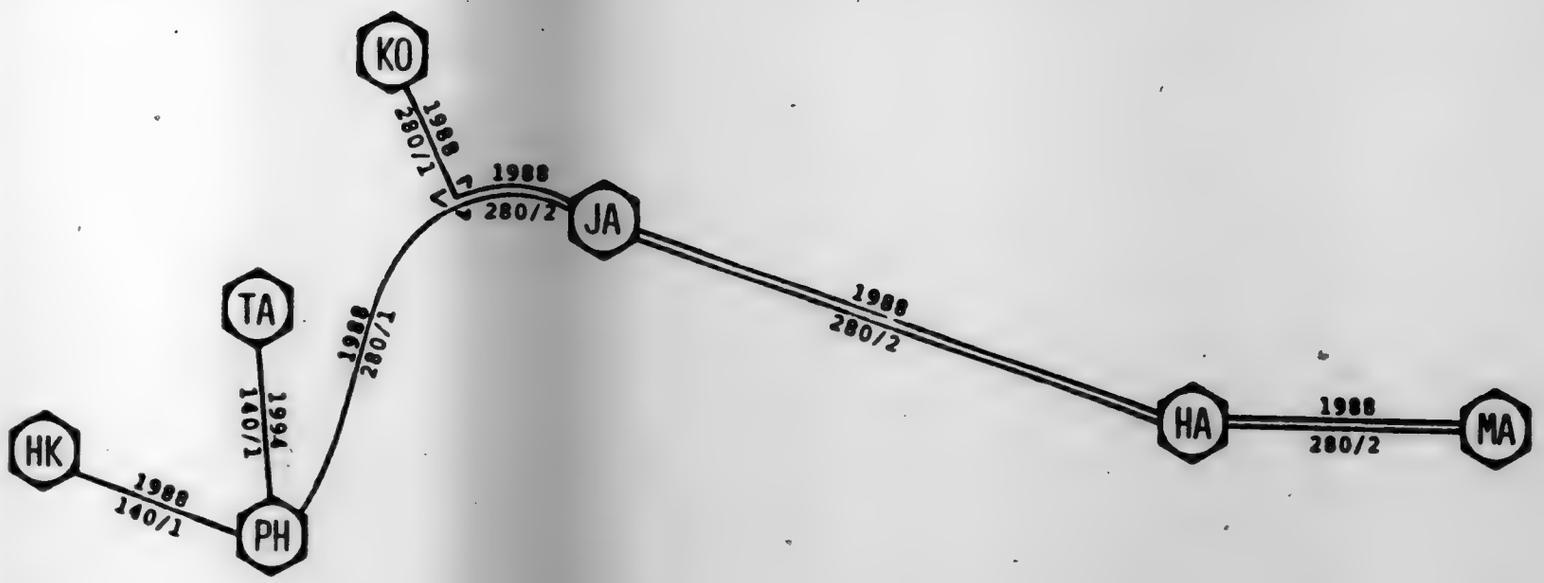
KO - Korea

MA - U.S. Mainland

PH - Philippines

TA - Taiwan

Appendix 3



PLAN III MODIFIED

LEGEND

HA = Hawaii

HK = Hong Kong

JA = Japan

KO = Korea

MA = U.S. Mainland

PH = Philippines

TA = Taiwan

[FR Doc. 85-8076 Filed 4-4-85; 8:45 am]
BILLING CODE 6712-01-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 50330-5030]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP) contains a management measure requiring that fish traps and fish trap buoys be identified with the boat or vessel fishing them. Regulations to implement this provision of the FMP were reserved pending development of the identification system by NMFS and approval by the South Atlantic Fishery Management Council. The identification system has been developed and approved, and this regulation is proposed to implement it. This rule also includes requirements for fish trap buoy lines used in specific areas and identifies materials which must be used in the construction of degradable panels or door fastening devices on traps. The intent of this regulation is to enhance enforcement of measures designed to prevent trap poaching and theft, and provide for escapement of fish from lost or abandoned traps.

DATE: Comments on the FMP and proposed rule must be received on or before May 3, 1985.

ADDRESS: Comments and requests for copies of the FMP and the supplemental regulatory impact review should be sent to Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was approved on July 28, 1983, under authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The FMP contains a provision for identifying traps and trap buoys with the boat or vessel fishing the traps except for black sea bass traps. Final regulations implementing the FMP were published on August 31, 1983 (48 FR 39466); however, §646.5 of the regulations pertaining to gear identification was reserved pending development of the identification system. NMFS has now developed and the Council has approved the gear and vessel identification system.

Implementation of this identification system is necessary to deter trap poaching and theft, and to enhance enforcement of fish trap measures. Serious theft problems have been experienced in other trap fisheries, e.g., spiny lobster, where traps are left unattended, but gear marking systems have proven beneficial in minimizing the problem. The proposed system would require all owners or operators of vessels fishing snapper-grouper fish traps in the fishery conservation zone to apply to the Regional Director for a vessel and gear identification number and color code. The Regional Director will issue numbered tags which must be permanently attached to each fish trap. The corresponding number must be permanently displayed on the vessels fishing those traps. Use of buoys to mark traps is not required. However, if buoys are used, they must display the number and color code assigned by the Regional Director. Since traps are not left unattended when fishing black sea bass, poaching and theft problems do not occur in this sector of the fishery. therefore, the Council has determined that the trap fishery for black sea bass should be excluded from the vessel and gear requirements. A definition for this trap fishery is included to differentiate this gear from other fish traps.

The proposed rule specifies materials for the construction of degradable panels or door fastening devices on fish traps as required at §646.22. This specification aids enforcement of the degradable panel requirements and assures compliance with the intent of the Council that fish will be able to escape from lost or abandoned traps. Line limitations for trap buoys used in a particular area are also included to aid enforcement.

Classification

The Assistant Administrator has determined that this proposed rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) that rules to implement the FMP are not major under Executive Order 12291 (see 48 FR 39466, August 31, 1983). The RIR/RFA was summarized in the preamble to the final rules for the FMP (see 48 FR 39466). A supplemental regulatory impact review for this proposed rule was prepared, and it indicated that the anticipated benefits exceed the compliance cost to the public.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed rule simply adds gear and vessel identification, and gear construction requirements resulting in minimal economic impacts. Cost to fishermen for color coding and numbering buoys and vessels is not expected to exceed $10.00 per vessel. The cost of requiring degradable materials for fish traps is estimated to be approximately $0.65 per trap per year. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

These measures are part of the Federal action for which an environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

It was determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 646

Fish, Fisheries, Fishing.

Dated: April 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 646, the Table of Contents is amended by revising the heading for § 646.5 from "Gear identification [Reserved]" to read as follows: "Vessel and gear identification."

3. In § 646.2 the definitions of "Black sea bass trap" and "Official number" are added in alphabetical order to read as follows:

§ 646.2 Definitions.

* * * * *

Black sea bass trap means a fish trap that harvests or contains at any time no more than 25 percent by number of fishes in the management unit other than black sea bass.

* * * * *

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or the U.S. Coast Guard for undocumented vessels.

* * * * *

4. A new § 646.5 is added to read as follows:

§ 646.5 Vessel and gear identification.

(a) *Applicability.* Fishing vessels from which fish traps, other than black sea bass traps, are deployed in the FCZ are required to obtain a vessel and gear identification number and color code from the Regional Director.

(b) *Application.* (1) An application for a vessel and gear identification number and color code under this part must be signed by the owner or operator of the vessel and submitted on an appropriate form obtained from the Regional Director. Fishermen who have an existing number and color code from another fishery may indicate on the application their preference to use that same identification system for the fish trap fishery. Whenever possible, the Regional Director will reissue the requested number and color code adding only a single digit prefix to indicate that the vessel and gear are engaged in the fish trap fishery. The application must be submitted to the Regional Director 30 days prior to the date on which the applicant desires receipt of the vessel and gear identification number and color code.

(2) Applicants must provide all of the following information:

(i) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port or principal port of landing, gross tonnage, radio call sign, and length of the vessel,

(v) Engine horsepower and year the vessel was built;

(vi) Number dimensions and estimated cubic volume of the fish traps that will be fished

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(viii) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in this paragraph must be submitted in writing to the Regional Director by the applicant within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* The Regional Director will issue a color code, vessel and gear identification number, and fish trap tags imprinted with the vessel and gear identification number to the applicant not later than 30 days from the date of receipt of a completed application.

(d) *Display.* Vessels from which fish traps, other than black sea bass traps, are fished, fish traps and buoys must display the identification number and color code designated by the Regional Director.

(1) *Vessels.* Vessels must permanently and conspicuously display the identification number and color code designated by the Regional Director under paragraph (c) of this section in a manner as to be readily identifiable from the air and water.

(i) To be visible from the air, the identification number and color code must be permanently affixed to the uppermost structural portion of the vessel or other similar area. The color code must be in the form of a circle at least 20 inches in diameter, and the area surrounding the circle must be of a contrasting color. The identification number must be at least 10 inches in height and must be affixed adjacent to the 20-inch diameter circle.

(ii) To be visible from the water, the identification number and color code must be permanently affixed to both starboard and port sides of the vessel near amidship. The color code must be in the form of a circle at least 8 inches in diameter, and the area surrounding the circle must be of a contrasting color. The identification number must be at least 4 inches in height and must be affixed adjacent to the 8-inch diameter circle.

(2) *Fish traps.* Each fish trap must have affixed to it permanently the numbered identification tag supplied by the Regional Director.

(3) *Buoys* The use of buoys to identify fish traps is not required. If buoys are used, they must display the identification number and color code so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches in height and affixed to each buoy

(e) Fish traps fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(f) Unmarked fish traps deployed in the FCZ, other than black sea bass traps, are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked trap can be ascertained, those owners remain subject to appropriate civil penalties.

5. In § 646.6, paragraphs (b) through (i) and (j) through (p) are redesignated as (c) through (j), and (l) through (r), respectively, and new paragraphs (b) and (k) are added to read as follows:

§ 646.6 Prohibitions

* * * * *

(b) Fish with fish traps, except black sea bass traps, without an assigned vessel and gear identification number and color code, as specified in § 646.5; possess aboard a fishing vessel unmarked fish traps or buoys, except black sea bass traps; or falsify or fail to affix and maintain vessel or gear markings as required by § 646.5;

* * * * *

(k) Possess fish traps shoreward of the outer boundary of the FCZ and south of 25°35.5'N. latitude (Fowey Rocks Light, Florida) except as specified in § 646.22(b)(5);

* * * * *

6. In § 646.22 paragraph (b)(1) is revised and a new paragraph (b)(5) is added to read as follows:

§ 646.22 Gear limitations.

* * * * *

(b)(1) Fish traps are required to have panels or door-hinging devices or door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, time float releases (pop-up devices), or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(iv) The diameter of the panel opening must be at least equal to or larger than the interior axis of the trap's throat (funnel).

* * * * *

(5) Buoy lines attached to fish traps possessed or fished shoreward of the outer boundary of the FCZ and south of 25°35.5'N. latitude must be a minimum of 125 feet in length.

* * * * *

[FR Doc. 85-8351 Filed 4-3-85, 3:57 pm]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 66
Friday, April 5, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Voluntary Cancellation; Interim Assignment of Designation to Denver Grain Exchange Association, and Request for Designation Applicants (CO)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the Denver Grain Exchange Association is voluntarily cancelling its designation effective April 1, 1985. A new corporation with the same name will be incorporated and will request that a designation be granted to that agency. That agency will provide official inspection services on an interim basis in the geographic area specified below, from April 1, 1985, until a final decision is made in this matter. This notice also requests designation applicants.

DATE: Applications to be postmarked on or before May 6, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The November 1, 1984, issue of the **Federal Register** (49 FR 43980) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Denver Grain Exchange Association's (Exchange) designation terminates on April 30, 1985, and requesting applications for designation as the agency to provide official services within its specified geographic area. Applications were to be postmarked by December 3, 1984; the Exchange was the only applicant for designation.

FGIS announced that the Exchange had applied for designation renewal and requested comments on same in the January 1, 1985, issue of the **Federal Register** (50 FR 135). Comments were to be postmarked by February 19, 1985; one favorable comment was received.

The Exchange subsequently notified us that it will not seek a designation renewal and requested voluntary cancellation of its designation effective April 1, 1985. The Exchange's designation will be cancelled effective April 1, 1985. William Hutchings, Manager and Chief Inspector of the Exchange, will form a new corporation with the same name, Denver Grain Exchange Association (Denver), and has requested that a designation be granted to that agency. Denver will purchase the Exchange's assets and will provide official inspection services on an interim basis, in the geographic area specified below, from April 1, 1985, until a final decision is made in this matter.

The Administrator of the Federal Grain Inspection Service (FGIS) has determined that interim assignment of this geographic area to Denver is consistent with the provisions and objectives of the U.S. Grain Standards Act, as amended (Act) and that this action will facilitate providing official inspection services in the specified geographic area.

Section 7(F)(1) of the Act (7 U.S.C. 71 *et seq.*) specifies that the FGIS Administrator is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in Colorado, Nebraska, and Wyoming, to be provided service by Denver, on an interim basis, and which is available to the applicant selected for the new designation is as follows:

In Colorado, the entire State.

In Nebraska, the area shall be:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385;

Bounded on the East by Highway 385 south to the northern Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

In Wyoming, Goshen and Platte Counties.

The following locations, outside of the foregoing contiguous geographic area will be serviced by Denver and are part of this geographic area assignment: Albin Elevator, Albin; Farmers Coop, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and Grain, Pine Bluffs; all in Laramie County, Wyoming.

Exceptions to the described geographic area are the following locations situated inside Denver's area which have been and will continue to be serviced by Hastings Grain Inspection, Inc.: Farmers Coop and Dayton Dorn Grain Company, Big Springs, Deuel County, Nebraska.

Interested parties, including Denver, are hereby given opportunity to apply for designation as the official agency to perform the official services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning October 1, 1985, and ending August 31, 1988. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in the specified geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: March 29, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85-8058 Filed 4-4-85; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Determining Eligibility for Free and Reduced Price Meals and Free Milk; Income Eligibility Guidelines

Correction

In FR Doc 85-7328 beginning on page 12351, in the issue of Thursday, March 28, 1985, make the following corrections:

1. On page 12352, in the table, under the heading "48 Contiguous United States, District of Columbia, Guam and Territories", ninth column, the sixth line now reading "1,197" should read "2,197". The eighth line now reading "2,725" should read "2,752", in the tenth column, the sixth line now reading "506" should read "507".

2. Under the heading "Alaska" ninth column, the fifth line now reading "2,339" should read "2,399".

BILLING CODE 1505-01-M

CIVIL RIGHTS COMMISSION

Florida Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon on April 26, 1985, at the Biscayne Marriott Hotel, 1633 North Bayshore Drive, the Hibiscus Room, Miami, Florida. The purpose of the meeting is to orientate the newly rechartered committee and to plan SAC projects for 1985-86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Porter, or Bobby Doctor of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8187 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

Idaho Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 5:00 p.m. on April 26, 1985, at the Tapadera Motor Inn, 1325 Main Street, Lewiston, Idaho. The purpose of the meeting is to discuss program plans for 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Rudy Pena or Susan McDuffie in the Northwestern Regional Office (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8188 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convenue at 8:00 p.m. and will end at 9:30 p.m., on May 20, 1985 and on May 21, 1985, at 9:00 a.m. and will end at 6:00 p.m. at the Hyatt Regency Lexington, 400 West Vine Street, Lexington, Kentucky. The purpose of the meeting is to conduct a SAC briefing session for a housing forum and to hold a public housing forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Paul Oberst or Bobby Doctor of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 29, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8189 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 1:30 p.m. and will end at 4:00 p.m. on April 26, 1985, at the William J. Green Federal Building, 600 Arch Street, Room 2428-A, Philadephia Pennsylvania. The purpose of the meeting is to provide an orientation for new Committee members and review suggested topics for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Murray Friedman or Edward Rutledge in the Mid-Atlantic Regional Office (202) 254-6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 26, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-8190 Filed 4-4-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 4-85]

Proposed Zone—South Bend, IN; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Joseph County Airport Authority, a municipal corporation, to establish a general-purpose foreign-trade zone in South Bend, adjacent to the Chicago Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 27, 1985. The applicant is authorized to make this proposal under Section 8-10-3-2 of the Indiana Code.

The proposed foreign-trade zone involves two sites totalling 103 acres at the Michiana Regional Airport and planned Multi-Modal Transportation Complex. Site 1 covers 7 acres at 2809 North Foundation Drive within the Airport Industrial Park. It has an existing warehouse and space available for additional structures. The facility is owned by Material Trans Action, Inc., the proposed zone operator. Site 2 is a

95-acre parcel of airport property which is available for future zone development.

The application contains evidence of the need for zone services in the South Bend area. A number of firms have indicated an interest in using zone procedures for warehouse/distribution and manipulation of products such as auto components and parts, jet engine castings, hardware, plumbing supplies, valves, computer printers, temperature controls and electronic products. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Richard Roster, District Director, U.S. Customs Service, North Central Region, 610 S. Canal St., Chicago, IL 60607; and Colonel Raymond T. Beurket, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, MI 48231.

As part of its investigation, the examiners committee will hold a public hearing on May 1, 1985, beginning at 10:00 a.m., in the St. Joseph County Airport Authority Hearing Room, 2nd Floor, Michiana Regional Airport, 4535 Terminal Drive, South Bend.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by April 25, 1985. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through May 31, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

St. Joseph County Airport Authority Offices, Michiana Regional Airport, 4535 Terminal Drive, 2nd Floor, South Bend, IN 46628

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: April 1, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–8196 Filed 4–4–85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held April 26, 1985, 12:00 p.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The Committee advise the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Chairman's report on 1565 definitions.
4. Report on current work program of the subcommittees:
   a. Foreign Availability,
   b. Licensing Procedures.
   c. Software, and
   d. Hardware.
5. New Business.
6. Action items underway.
7. Action items due at next meeting.

The General Session of the meeting will be open to the public and a limited number of seats will be available. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–8220 Filed 4–4–85; 8:45 am]

BILLING CODE 3510-DT-M

Closed Joint Meeting of the Computer Systems Technical Advisory Committee, Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee, Electronic Instrumentation Technical Advisory Committee, and Automated Manufacturing Equipment Technical Advisory Committee

A joint meeting of the Electronic Instrumentation Technical Advisory Committee, the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; the Automated Manufacturing Equipment Technical Advisory Committe and the Computer Systems Technical Advisory Committee will be held April 25, 1985, 3:00 p.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington, D.C. The Committees advise the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to electronic instrumentation, computer systems, computer peripherals components and related test equipment, automated manufacturing equipment or technology.

The Committees will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

Copies of the Notice of Determination to close meetings or portions thereof are available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–8221 Filed 4–4–85; 8:45 am]

BILLING CODE 3510-DT-M

Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee will be held April 26, 1985, 10:00 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington , D.C. The Foreign Availability Subcommittee was formed

to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentaiton of papers or comments by the public.
4. Discussion of the proposed foreign availability regulations.
5. Discussion of the 1985 annual plan.
6. New Business.
7. Action items underway.
8. Action items due at next meeting.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting

For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: April 2, 1985.

Miltun M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–8219 Filed 4–4–85; 8:45 am]

BILLING CODE 3510-DT-M

[A–351–409]

12-Hydroxystearic Acid From Brazil; Postponement of Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving 12-hydroxysteanic acid from Brazil is being postponed until not later than July 25, 1985.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–1766.

SUPPLEMENTARY INFORMATION: On January 17, 1985, we announced the initiation of an antidumping investigation to determine whether 12-hydroxystearic acid from Brazil is being, or is likely to be, sold in the United States at less than fair value (49 FR 47076). The notice stated that we would issue a preliminary determination by May 9, 1985. The notice should have stated that we would issue a preliminary determination by June 5, 1985.

As detailed in that notice, the petition alleged that imports from Brazil of 12-hydroxystearic acid are being, or are likely to be, sold in the United States at less than fair value.

On March 13, 1985, counsel for petitioner, Union Camp, requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than July 25, 1985.

The United States International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

April 1, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–8215 Filed 4–4–85; 8:45 am]

BILLING CODE 3510-DS-M

[A–351–410]

Hydrogenated Castor Oil From Brazil; Postponement Preliminary Antidumping Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping determination involving hydrogenated castor oil from Brazil is being postponed until not later than July 25, 1985.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230: telephone (202) 377–1776.

SUPPLEMENTARY INFORMATION: On January 17, 1985, we announced the initiation of an antidumping investigation to determine whether hydrogenated castor oil from Brazil is being, or is likely to be, sold in the United States at less than fair value. The notice stated that we would issue a preliminary determination by May 9, 1985. The notice should have stated that we would issue a preliminary determination by June 5, 1985.

As detailed in that notice, the petition alleged that imports from Brazil of hydrogenated castor oil are being, or are likely to be, sold in the United States at less than fair value.

On March 13, 1985, counsel for petitioner, Union Camp, requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, the period for determination in the case is hereby extended. We intend to issue a preliminary determination not later than July 25, 1985.

The United States International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

April 1, 1985

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–8216 Filed 4–4–85; 8:45 am]

BILLING CODE 3510-DS-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held April 25, 1985, 1:30 p.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C. The Software subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of new Commodity Control List item 1566, software.
5. Establishment of tasks and issues to be addressed.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, P.L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–8218 Filed 4–4–85; 8:45 am]

BILLING CODE 3510–DT–M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held April 25, 1985, 9:00 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C. The Hardware Subcommittee was formed to focus on manufacturing and performance characteristics of main frames and other computer hardware.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Plans to develop a new measure of computer horsepower.
4. Discussion of possible decontrol of lower-end technology items.
5. Discussion of compressed critical technical data list for 1565.
6. Action items underway.
7. Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statement may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: April 2, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–8217 Filed 4–4–85; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

National Advisory Committee on Ocean and Atmosphere; Meeting Change

April 2, 1985.

Changes have been made to the agenda for the April 17–18, 1985 National Advisory Committee on Oceans and Atmosphere (NACOA) meeting published Monday, April 1, 1985 (50 FR 12844–12845). The revised tenative agenda is as follows:

Wednesday, April 17, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B–100, Washington, DC

9:00 a.m.–10:30 a.m. PLENARY
Room 416
- Introductory Remarks
- Guest Speaker: Congressman Mike Lowry

10:30 a.m.–12:30 p.m. PANEL MEETING
- Federal/State Relationship, Chairman: John Norton Moore, Room 416

Topic: Work Session on CZMA, Reauthorization/Consistency
Speakers: None

12:30 p.m.–1:30 p.m. LUNCH

1:30 p.m.–4:00 p.m. PANEL MEETINGS
- Exclusive Economic Zone, Chairman: Lee Gerhard, Room 416

Topic: Elements of a National Plan
Speakers:
Harris B. Stewart, Jr., Professor of Marine Studies, Director, Center of Marine Studies, Old Dominion University
George Zahn, President, Deep Sea Ventures, Inc.
Juan Carlos Torres, President, Sea Pharm
- Atomospheric Affairs, Chairman: S. Fred Singer, Room B–100

Topic: Acid Rain
Speakers: TBA

4:00 p.m.–5:00 p.m. PLENARY
- Federal/State Relationships

Topic: CZMA Reauthorization/Consistency

5:00 p.m. RECESS

Thursday, April 18, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

8:30 a.m.–10:00 a.m. PLENARY
Room 416
- Shipbuilding Presentation by Panel Chairman

10:30 a.m.–12:30 p.m. PLENARY
Intelligence Commission Headquarters, 1724 F Street, NW., Washington, DC
- Closed Session, Presentation by the Department of Defense on Data Protection

12:30 p.m.–1:30 p.m. LUNCH
2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

2:00 p.m.–4:00 p.m. PLENARY
Room 416
- Panel Reports
- Other Business

4:00 p.m. ADJOURN

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street, NW., Washington, DC 20235. The telephone number is 202/653-7818.

Dated: April 2, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85-8166 Filed 4-4-85; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Request for Verification of Birth

Title 10, section 505, US Code restricts enlistment into the US Armed Services, to able bodied persons not less than 17 years of age and not more than 35 years of age. If an applicant is unable to provide a birth certificate the "Verification of Birth" form is dispatched to the respective bureaus of vital statistics. This occurs for approximately 1 of every 2 applicants for enlistment into the US Armed Services.

State and local governments
Responses: 265,000
Burden hours: 22,000 hours

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jeferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L (PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1985.

[FR Doc. 85-8229 Filed 4-4-85; 8:45 am]

BILLING CODE 3810-01-M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet in closed session April 18, 1985 in the Pentagon, Arlington, Virginia.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effect Special Operations Forces.

A meeting of the SOPAG has been scheduled for April 18, 1985 to discuss sensitive, classified topics.

In accordance with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Patricia Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 2, 1985.

[FR Doc. 85-8230 Filed 4-4-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Sensors and Signatures Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets; Meeting

March 28, 1985.

The USAF Scientific Advisory Board Sensors and Signatures Subcommittee of the Ad Hoc Committee on Options for Attack of Strategic Relocatable Targets will meet in the Pentagon on April 26, 1985 from 9:00 a.m. to 4:00 p.m.

The purpose of the meeting will be to receive classified briefings and hold classified discussions on ways in which existing and programmed systems may be effectively applied to attack of mobile ballistic missiles. The meeting will be closed to the public in accordance with section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-8250 Filed 4-4-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting; Ad Hoc Subgroup on Nondevelopmental C³I Items

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday and Friday, April 25, 26, 1985.

Times of meeting: 0830-1700 hours on both days (Closed).

Place: Science and Technology Associates, Inc.—Arlington, VA.

AGENDA

The Army Science Board Ad Hoc Subgroup on Nondevelopmental C³I Items will meet in an Executive Session for finalizing the draft report. The study purpose is to effect an increase in "off the shelf" equipment purchases for the Army. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-8227 Filed 4-4-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting; Functional Subgroup on Planning, Concepts and Management Support

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday and Thursday, April 24 and 25, 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: The Pentagon, Washington, D.C.

Agenda

The Army Science Board Functional Subgroup on Planning, Concepts, and Management Support will meet for classified briefings and discussions on the functional responsibilities and programs of the Army Corps of Engineers and the Office of the Surgeon General. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–8225 Filed 4–4–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting; Ad Hoc Subgroup on U.S. Army Training and Doctrine Command Operations Research Activity

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday and Thursday, April 24 and 25, 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: Fort Leavenworth, Kansas.

Agenda

The Army Science Board Ad Hoc Subgroup on U.S. Army TRADOC (U.S. Army Training and Doctrine Command) Operations Research Activity (TORA) will meet for classified briefings and discussions with the Commander of the Combined Arms Operations Research Activity (CAORA) and TRADOC center commanders. Also, CAORA study efforts will be examined in depth. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–8226 Filed 4–4–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting; Functional Subgroup on Weapons Systems

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday and Wednesday, April 30, and May 1, 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: Aberdeen Proving Ground, Maryland.

Agenda

The ASB Functional Subgroup on Weapons Systems will meet for weapons systems demonstrations, small arms member participation demonstration and briefings by Ballistic Research Lab, US Army Material Systems Analysis Activity, US Army Test and Evaluation Command, and Human Engineering Lab on subjects including smart munitions, materiel analysis, anti-armor, vulnerability, and precision aiming techniques. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–8228 Filed 4–4–85; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Makaha Beach Erosion Control, Makaha, Oahu, HI

AGENCY: US Army Corps of Engineers, POD Honolulu District, Defense.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. The US Army Corps of Engineers, Honolulu District is studying the feasibility of providing beach erosion control measures for Makaha Beach, Makaha, Oahu, Hawaii.

2. The study is investigating alternative structural measures such as a revetment, groins, concrete rubble masonry seawall, reinforced concrete seawall and beach restoration. Nonstructural alternatives and measures include relocating Farrington Highway.

3. On 27 October 1983, a public meeting was held at Waianae Library to discuss the proposed action. Another meeting is planned for June 1985. Local, State and Federal agencies will be contacted as well as local interest groups and private organizations and parties. At this time, the draft EIS will address the impacts of the project on fish and wildlife resources, historic sites, water resources, recreation, cultural resources, social resources, aesthetic values and lifestyles. Coordination with the US Fish and Wildlife Service, National Marine Fisheries Service, US Environmental Protection Agency, State Department of Health, State Department of Land and Natural Resources, State Department of Planning and Economic Development, State Department of Transportation and other local agencies will be done.

4. A scoping meeting is not planned at this time.

If there are any questions regarding the draft EIS, please contract: Dr. James E. Maragos, Chief, Environmental Resources Section, US Army Engineer District, Honolulu, Building T–1, Fort Shafter, Hawaii 96858–5440, Telephone: (808) 438–2263/2264.

Michael M. Jenks,

Colonel, Corps of Engineers, District Engineers.

[FR Doc. 85–8156 Filed 4–4–85; 8:45 am]

BILLING CODE 3710–NN–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a current approved information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition and Regulatory Policy, 202–523–4799.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers recordkeeping requirements and the collection of information from architect-engineer (A–E) firms interested in a specific project, in accordance with 40 U.S.C. 541–555. The Standard Form (SF) 255 is designed to provide a uniform method of submitting information regarding experience, personnel, and capabilities of A–E firms.

b. Annual reporting burden

This is estimated as follows: Respondents, 5,000; responses, 20,000; and reporting and recordkeeping hours, 22,000.

Obtaining Copies of Proposals

Requestors may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC 20405, telephone 202–523–4755. Please cite OMB Control No. 9000–0005.

Dated: April 1, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–8129 Filed 4–4–85; 8:45 am]

BILLING CODE 6820-61-M

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESSES: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition and Regulatory Policy, 202–523–4799.

SUPPLEMENTARY INFORMATION:

a. Purpose

This request covers recordkeeping requirements and the collection of information regarding data by which private architect-engineer firms obtain government contracts for procurement of architectural and/or engineering services. The Standard Form (SF) 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541–544 by firms wishing to be considered for government A–E contracts.

b. Annual Reporting Burden

This is estimated as follows: Respondents, 5,000; responses, 35,000; and reporting and recordkeeping hours, 35,000.

Obtaining Copies of Proposals

Requestors may obtain copies from the FAR Secretariat (VR), Room 4041, GS Building, Washington, DC 20405, telephone 202–523–4755. Please cite OMB Control No. 9000–0004.

Dated: April 1, 1985.

Roger M. Schwartz,

Director, FAR Secretariat.

[FR Doc. 85–8130 Filed 4–4–85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and time:
Wednesday, April 24, 1985, 1:30 p.m.–5:00 p.m.
Thursday, April 25, 1985, 8:00 a.m.–5:00 p.m.
Friday, April 26, 1985, 8:00 a.m.–2:00 p.m.

Place: The Henley Park Hotel, 926 Massachusetts Avenue, NW, Washington, DC 20001.

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: 202–252–8292.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs.

Tentative Agenda

Wednesday, April 24, 1985

- Energy Extension Service Overview.
- Review of State Energy Conservation Program.
- Presentation of Energy Extension Service Projects.
- Public Comment (10 minute rule).

Thursday, April 25, 1985

- Review of State Programs Branch Budget.
- Overview of Low Income Home Energy Assistance.

Program, Weatherization Assistance Program, and Petroleum Violation Escrow.

- Review Draft of Sixth Annual Report.
- Public Comment (10 minute rule).

Friday, April 26, 1985

- Review and finalize Sixth Annual Report.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statement pertaining to agenda items should contact Susan D. Heard at 202–252–8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, D.C., on April 2, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–8191 Filed 4–4–85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

American Statistical Association Committee on Energy Statistics; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: American Statistical Association's Committee on Energy Statistics, a utilized Federal Advisory Committee.

Date and Time:

Thursday, April 25, 1985, 1:30 p.m.–5:00 p.m.
Friday, April 26, 1985, 9:00 a.m.–3:30 p.m.

Place: Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact: Dr. Morris Gold, EIA Committee Liaison, U.S. Department of Energy, Energy Information Administration, EI–72, Washington, DC 20585, Telephone: (202) 252–8312.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's expertise concerning other energy statistical matters.

Tentative Agenda

Thursday, April 25, 1985

A. Opening Remarks
B. Major Topics:
1. Estimating Additions to Capacity of Coal-Fired Power Plants
2. Update: Supply and Disposition of Natural Gas Distributors, EIA–176
3. The Status of Exploration Statistics
4. Update: Confidentiality Issues (Public Comments)

Friday, April 26, 1985

5. Graphical Estimation of Strippable Coal Reserves
6. The Annual Quality Control Plan
7. Preparing the Annual Operating Plan
8. Long Range Planning for the Office of Energy Markets and End Use
9. Professional Audit Review Team (PART) Objectives and Methodologies
10. Summarizing Contract Information
11. Cumulative Sums (CUSUMs) and Their Relevance to EIA (Public Comments)

C. Topics for Future Meetings

Public Participation

The meeting is open to the public. The chairperson of the panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Dr. Morris S. Gold, EIA Committee Liaison, at the address or telephone number listed above. Requests must be received at least five days prior to the meeting. Reasonable provisions will be made to include such presentations on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room (Room 1E–190), 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6460, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, D.C. on April 2, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–8192 Filed 4–4–85; 8:45 am]

BILLING CODE 6450–01–M

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office; (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, February 26, 1985 (50 FR 7814).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., April 1, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response to obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA–194	Monthly alternate Fuel/Incremental Price Monitoring Report.	Extension	Monthly	Mandatory	120 firms which sell No. 2 and No. 6 fuel oil.	120	18,000	This form is required to collect data necessary for the publication of alternate fuel costs as mandated by Congress in the Natural Gas Policy Act of 1978 (Title II).

[FR Doc. 85–8244 Filed 4–4–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER85-383-000, et al.]

Indiana & Michigan Electric Co., et al.; Electric Rate and Corporate Regulation Filings

April 1, 1985.

Take notice that the following filings have been made with the Commission:

1. Indiana & Michigan Electric Company

[Docket No. ER85-383-000]

Take notice that American Electric Power Service Corporation (AEP) on March 22, 1985, tendered for filing on behalf of its affiliates Indiana & Michigan Electric Company (I&M), which is an AEP affiliated operating subsidiary, Amendment No. 26 dated January 30, 1985 to the Operating Agreement dated March 1, 1966 among Consumers Power Company (Consumers), The Detroit Edison Company (Detroit) sometimes collectively referred to as the Michigan Companies, and I&ME. The Commission has previously designated the 1966 Agreement as I&ME's Rate Schedule FERC No. 66 and Michigan Companies Rate Schedule FERC No. 12.

Section 1 and Section 2 of Amendment No. 26 provides for an increase in the transmission demand rate for Short Term Power, when I&ME is the supplying party, to $0.46 per kilowatt per week and to $0.92 per kilowatt per day. Section 3 increases the Limited Term Power transmission demand rate, when I&ME is the supplying party, to $2.00 per kilowatt per month. The proposed rates included in this Amendment No. 26 for Short Term and Limited Term Power are similar to the rates for Transmission Service provided by the AEP System which have been filed and accepted for filing by the Commission and are the same as the rates for Short Term and Limited Term Power transmission demand rates which have been filed with the Commission on behalf of I&ME. AEP requests an effective date of April 15, 1985, which will allow AEP to offer similar services at similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries as established in previous AEP filings, and therefore requests waiver of this Commission's Notice requirements.

Copies of the filing were served upon Consumers Power Company, The Detroit Edison Company, Public Service Commission of Indiana, and Michigan Public Service Public Service Commission.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas and Electric Company

[Docket No. ER85-386-000]

Take notice that Kansas Gas and Electric Company (KG&E) on March 25, 1985, tendered for filing a Lease Agreement between the Company and Kansas City Power & Light Company (KCP&L).

Kansas Gas and Electric Company states that the filing represents the result of negotiations with KCP&L toward a lease of a KG&E transmission line between jointly owned facilities for KCP&L's use. This filing will provide KCP&L the necessary transmission path to deliver its share of power and energy generated at the Wolf Creek Generating Station to its transmission system.

Copies of the filing were served upon KCP&L and the Utilities Division of the Kansas Corporation Commission.

KG&E requests waiver of the Commission's notice requirements in order to allow an effective date to be determined under the Lease Agreement.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Minnesota Power & Light Company

[Docket No. ER85-388-000]

Take notice that on March 26, 1985, Minnesota Power & Light Company tendered for filing a Capacity and Energy Sales Agreement between Minnesota Power & Light Company and Northern States Power Company. Under this Agreement, Minnesota Power & Light Company will sell peaking capacity energy to Northern States Power Company on a participation power interchange basis in accordance with the Mid-Continent Area Power Pool Agreement, Service Schedule A. This Agreement provides for energy sales only during the period from May 1, 1985 through October 31, 1985 inclusive. Therefore, the parties request an effective date of not later than May 1, 1985 for this Agreement.

Comment date: April 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER85-390-000]

Take notice that on March 26, 1985, Montaup Electric Company filed a service agreement for the transmission of energy through Montaup's system to Braintree, Massachusetts, under Montaup's non-firm transmission tariff (Original Volume No. II). Montaup also filed an Exhibit A to the service agreement for transmission of a life-of-unit entitlement from Taunton to Braintree. The amount of the entitlement can range from 0–10,000 KW. At present, EUA is wheeling 4,000 KW from November 1, 1984 through April 30, 1985, and this amount is expected to continue through October 31, 1985.

Montaup requests waiver of the 60-day notice requirement in order to permit the enclosed service agreement to become effective on November 1, 1984 when the Taunton and Braintree transaction commenced. Montaup did not receive notice of the transactions until too late to comply with that requirement.

Montaup has indicated that it has served copies of the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER85-391-000]

Take notice that on March 26, 1985, Montaup Electric Company filed an Exhibit A designated Series No. II, Newport No. 3, specifying electric power to be transmitted under the Service Agreement with Newport dated September 30, 1980.

Newport began purchasing 8 MW from the McNeil Woodburning Facility, located in Burlington, Vermont, on March 1, 1985. The purchases are under a Life-of-Unit contract.

Montaup requests waiver of the 60-day notice requirement to permit the service to begin on March 1, 1985. Montaup was not notified by the parties to the transaction until too late to comply with that requirement.

Montaup indicates that it has served copies of the filing on Newport Electric Corporation and the Massachusetts and Rhode Island Commissions.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Ohio Power Company

[Docket No. ER85-384-000]

Take notice that American Electric Power Service Corporation (AEP) on March 22, 1985, tendered for filing on behalf of its affiliate Ohio Power Company (OPCO) Supplement No. 9 dated January 30, 1985 to the Agreement dated April 1, 1974 between American Municipal Popwer-Ohio, Inc. (AMPO) and OPCO. The Commission has previously designated this Agreement as

OPCO Rate Schedule FERC No. 74 and AMPO Rate Schedule FERC No. 1.

Section 1 of Supplement No. 9 replaces Service Schedule C—Short Term Power to make provision for the sale of Daily Short Term Power and provides for an increase in the transmission demand rate for Short Term Power to $0.46 per kilowatt per week and $0.092 per kilowatt per day. Sections 2 and 3 increases the Limited Term Power and Transmission Service transmission demand rates to $2.00 per kilowatt per month. The proposed rates included in this Supplement No. 9 are the same as the rates for the transmission of Short Term Power, Limited Term Power, and Transmission Service which have filed with the Commission on behalf of the AEP System.

AEP requests an effective date of April 15, 1985, which will allow AEP to offer similar services at similar rates to electric utility systems interconnected with AEP affiliated operating subsidiaries as established in the previous AEP filings, and therefore requests waiver of this Commission's Notice requirements.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER85-385-000]

Take notice that on March 22, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during February of 1985, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commissioner.

Comment date: April 15, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. San Diego Gas & Electric Company

[Docket No. ER85-382-000]

Take notice that on March 21, 1985, San Diego Gas & Electric ("SDG&E") tendered for filing Service Schedule B of the Interchange Agreement between San Diego Gas & Electric and City of Anaheim, California, (Anaheim).

Service Schedule B provides for the terms and conditions for the exchange of short term firm capacity and associated energy.

Copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment date: April 12, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Electric Power Company

[Docket No. ER85-389-000]

Take notice that on March 26, 1985, Southwestern Electric Power Company ("SWEPCO") tendered for filing a Letter Agreement between SWEPCO and the City of Lafayette, Louisiana ("Lafayette"), dated December 21, 1984, which provides for SWEPCO to furnish transmission service through its system for up to 26 megawatts of capacity and associated energy from the Southwestern Power Administration ("SWPA") to SWEPCO's interconnections with Central Louisiana Electric Company and with Gulf States Utilities Company for the benefit of Lafayette. The term of the agreement is from January 1, 1985 through December 31, 1988.

SWEPCO requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Public Utility Commission of Texas, Central Louisiana Electric Company, Gulf States Utilities Company, the Southwestern Power Administration and the City of Lafayette, Louisiana.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8123 Filed 4-4-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-53-002]

Ozark Gas Transmission System; Filing

April 1, 1985.

Take notice that on March 29, 1985, Ozark Gas Transmission System (Ozark) tendered for filing supplemental materials supporting its February 6, 1985 request to reduce its then effective, subject to refund, gas transportation rate under Rate Schedule T-1. Ozark proposes to place its reduced rate into effect retroactively as of March 1, 1984, and to collect said reduced rate, subject to refund, pending issuance of a final Commission decision in this docket.

Copies of the filing were served upon Ozark's jurisdictional customers, parties to this proceeding and the appropriate state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8127 Filed 4-4-85; 8:45am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51565; TSH-FRL 2812-1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture

or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-five PMNs and provides a summary of each.

DATES:

Close of Review Period:

P 85-698, 85-700, 85-701, 85-702, 85-703, 85-704, 85-705, 85-706, 85-707, 85-708 and 85-709—June 19, 1985.

P 85-710—June 22, 1985.

P 85-711, 85-712, 85-713, 85-714 and 85-715—June 23, 1985

P 85-716, 85-717 and 85-718—June 24, 1985.

P 85-719, 85-720, 85-721, 85-722 and 85-723—June 25, 1985.

Written comments by:

P 85-698, 85-700, 85-701, 85-702, 85-703, 85-704, 85-705, 85-706, 85-707, 85-708 and 85-709—May 20, 1985.

P 85-710—May 23, 1985.

P 85-711, 85-712 85-713, 85-714 and 85-715—May 24, 1985.

P 85-716, 85-717, and 85-718—May 25, 1985.

P 85-719, 85-720, 85-721, 85-722 and 85-723—May 26, 1985.

ADDRESS: Written comments, identified by the Document control number "[OPTS-51565]" and the specific PMN number should be sent to: document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Divsions (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" (PMN), "T" (TMEA) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-698

Manufacturer. Confidential.
Chemical. (G) Polymer of styrene with acrylate and methacrylates.
Use/Production. (G) Paint additive. Prod. range: 150,000-256,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 59 workers, up to 8 hrs/da, up to 260 da/yr.
Environmental Release/Disposal. 2 to 45 kg/batch released to land. Disposal by incineration and landfill.

P 85-700

Manufacturer. Confidential.
Chemical. (G) Mixed acrylate/methacrylate polymer.
Use/Production. (G) Polymeric component of paint. Prod. range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 36 workers, up to 8 hrs/da, up to 150 da/yr.
Environmental Release/Disposal. 1 to 31 kg/batch released to land. Disposal by incineration and landfill.

P 85-701

Manufacturer. Confidential.
Chemical. (G) Polyester derivative.
Use/Production. (G) Industrial polymer. Prod. range: 50,000-303,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 32 workers, up to 8 hrs/da, up to 260 da/yr.
Environmental Release/Disposal. 2 to 120 kg/batch released to land. Disposal by incineration and landfill.

P 85-702

Manufacturer. Confidential.
Chemical. (G) Acrylic terpolymer resin.
Use/Production. (G) Pressure sensitive adhesive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85-703

Manufacturer. Confidential.
Chemical. (S) Polymer of hydroxy ethyl acrylate, isophorone diisocyanate and melpol 125.
Use/Production. (G) Used in a closed system. Prod. range: 250-12,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 6 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. Minimal released to air. Disposal by biological treatment system and licensed landfill.

P 85-704

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified trisphenol novolac.
Use/Production. (S) Site-limited intermediate for epoxy resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and use: Dermal, a total of 5 workers.
Environmental Release/Disposal. Up to 1 lb sample batch released to air and land with 0.01 kg/batch to water. Disposal by incineration, landfill and navigable waterway after treatment.

P 85-705

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted polyglycol.
Use/Production. (S) Industrial polyol for use in polyurethane resins. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 48 workers.
Environmental Release/Disposal. Estimate of less than 100 parts per million (ppm) of the PMN chemical in 2 kg H_2O batch released to air. Disposal by incineration.

P 85-706

Manufacturer. The Dow Chemical Company.
Chemical. (G) Substituted pyridine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range Confidential.
Toxicity Data. Acute oral: >1,000 mg/kg; Irritation: Skin—Slight, Eye—Slight.
Exposure. Confidential.
Environmental Release/Disposal. Release to air. Disposal by incineration.

P 85-707

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Saturated polyester.
Use/Production. (S) Industrial and commercial polyester vehicle for use in pigmented synthetic coatings. Prod. range: 65,000-90,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2.5 hrs/da, up to 55 da/yr.

Environmental Release/Disposal. .30 to 1.5 kg/batch released to air with 1 to 10 kg/batch to land. Disposal by landfill.

P 85–708

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Saturated polyester, silicone modified.
Use/Production. (S) Industrial and commercial polyester vehicle for use in pigmented synthetic coatings. Prod. range: 20,000–80,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. .3 to 1.35 kg/batch released to air with 1 to 9.4 kg/batch to land. Disposal by landfill.

P 85–709

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Styrene-acrylic modified oil.
Use/Production. (S) Industrial and commercial vehicle for use in pigmented synthetic coatings. Prod. range: 50,000–80,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 2 hrs/da, up to 29 da/yr.
Environmental Release/Disposal. .3 to 1.35 kg/batch released to air with 1 to 9.4 kg/batch to land. Disposal by landfill.

P 85–710

Manufacturer. Confidential.
Chemical. (G) Poly acrylate/methacrylate ester.
Use/Production. (G) Component of a coating formulation. Prod. range: 100,000–600,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 60 workers, up to 8 hrs/da, up to 63 da/yr.
Environmental Release/Disposal. 3 to 104 kg/batch released to land. Disposal by landfill.

P 85–711

Manufacturer. Confidential.
Chemical. (G) Metal alkoxide.
Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: A total of 12 workers, up to 8 hrs/da, up to 150 da/yr.
Environmental Release/Disposal. 0.8 kg/batch released to water. Disposal by industrial waste water treatment facility.

P 85–712

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Acrylic polymer substituted amine reaction product.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. No release. Disposal by EPA approved incineration and approved landfill.

P 85–713

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Styrene acrylic copolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 1 worker.
Environmental Release/Disposal. Release to land. Disposal by EPA approved landfill.

P 85–714

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Disubstituted urea.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 5 workers.
Environmental Release/Disposal. No release. Disposal by EPA approved incineration.

P 85–715

Manufacturer. The Upjohn Company.
Chemical. Polycarbodiimide.
Use/Production. (S) Stabilizer for polyurethanes (castable polyurethanes, thermoplastics etc.) and polyesters. Prod. range: 600–1,250 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 2 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. 14 kg/batch released to land. Disposal at an area approved for hazardous waste.

P 85–716

Importer. CDF Chimie North America Inc.
Chemical. (S) Poly(ethylene-butyl acrylate-maleic anhydride).
Use/Import. (S) Industrial bonding layer in coextrusion and coating adhesive polymer in manufacture of hot-melts, thermal adhesive film for bonding tissues and other non-extrudable materials and an additive in synthetic rubber and plastic material as processing aid or impact modifier. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing and use: Dermal, a total of 1,000 workers.
Environmental Release/Disposal. No release.

P 85–717

Importer Nagase America Corporation.
Chemical. (S) Polyglycidyl ether of polyglycerol.
Use/Import. (G) Pre-treat agent for polyester and polyamide yarn. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–718

Manufacturer. Confidential.
Chemical. (G) Polyol polyacrylate.
Use/Production. (S) Commercial inks and coatings. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 gm/kg; Irritation; Skin—Slight, Eye—Slight; Ames Test: Negative.
Exposure. Manufacture: Dermal, a total of 8 workers, up to 6 hrs/da, up to 95 da/yr.
Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

P 85–719

Manufacturer. Confidential.
Chemical. (G) Polymer of styrene and methacrylates.
Use/Production. (G) Industrial paint ingredient. Prod. range: 212,000–250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: Dermal, a total of 40 workers, up to 8 hrs/da, up to 71 da/yr.
Environmental Release/Disposal. 6 to 104 kg/batch released to land. Disposal by incineration and landfill.

P 85–720

Manufacturer. National Starch and Chemical Corporation.
Chemical. (G) Polyacrylate.
Use/Production. (G) Printing vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 85–721

Manufacturer. Formica Corporation.

Chemical. (G) Melamine, hydroxypropylmelamine polymer with formaldehyde.
Use/Production. (S) Site-limited thermosetting laminating resin for decorative heat and pressure consolidated laminates. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 gm/kg; Acute dermal: >2 gm/kg; Irritation: Skin—Minimal, Eye—Non-irritant; Ames Test: Not active.
Exposure. Manufacture, processing and use: Dermal.
Environmental Release/Disposal. No release.

P 85-723

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (S) C_{16} and C_{18} unsaturated alkyl nitriles.
Use/Production. (S) Site-limited fatty amine precursor. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: Dermal, a total of 21 workers, up to 1 hr/da, up to 300 da/yr.
Environmental Release/Disposal. Confidential.

P 85-724

Manufacturer. Sherex Chemical Company, Inc.
Chemical. (S) Distillation residue from C_{16}-C_{18} unsaturated alkyl nitriles.
Use/Production. (S) Industrial burn for fuel. Prod. range: 800,000–1,400,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: Dermal, a total of 21 workers, up to 1 hr/da, up to 300 da/yr.
Environmental Release/Disposal. No release.

Dated: March 29, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc 85-8022 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59189; TSH-FRC 2812-2]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of four applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 22, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59189]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-4201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "T" (TMEA), "P" (PMN) "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-33

Close of Review Period. May 9, 1985.
Manufacturer. Confidential.
Chemical. (G) Phosphonic acid.
Use/Production. (G) Used as an industrial cooling system. Prod. range: 200 lbs/day for 120-180 days.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 18 workers.
Environmental Release/Disposal. Release to water. Disposal by an external waste treatment system.

T 85-34

Close of Review Period. May 9, 1985.
Manufacturer. Confidential.
Chemical. (G) Phosphonic acid.
Use/Production. (G) Used as an industrial cooling system. Prod. range: 200 lbs/day for 120-180 days.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe.
Exposure. Manufacture: Dermal, a total of 18 workers.
Environmental Release/Disposal. Release to water. Disposal by an external waste treatment system.

T 85-35

Close of Review Period. May 9, 1985.
Manufacturer. Confidential.
Chemical. (G) Cycloaliphatic amine adducted with an epoxy resin.
Use/Production. (S) Casting and potting compound. Prod. range: Confidential.
Toxicity Data. Acute oral: >10,000 mg/kg; Acute dermal: >6,000 mg/kg; Irritation: Skin—Moderate, Eye—Slight.
Exposure. Manufacture: Dermal and inhalation, a total of 20 workers, up to 1 hr/da.
Environmental Release/Disposal. No data submitted.

T 85-36

Close of Review Period. May 10, 1985.
Manufacturer. Confidential.
Chemical. (G) Polyol polyacrylate.
Use/Production. (S) Commercial inks and coating. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 mg/kg; Irritation: Skin—Slight, Eye—Slight; Ames Test: Negative.
Exposure. Manufacture and processing: Dermal, a total of 8 workers, up to 6 hrs/da, up to 95 da/yr.
Environmental Release/Disposal. 1 kg/batch to 1 liter/batch released to air. Disposal by publicly owned treatment works (POTW).

Dated: March 29, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-8021 Filed 4-4-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2813-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 18, 1985 through March 22, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DS–AFS–J65132–WY, Rating LO, Bighorn Nat'l Forest Land and Resource Mgmt. Plan, WY.

Summary: EPA concurs with the revisions to the proposed forest plan and DEIS.

Final EISs

ERP No. F–BLM–J03008–00, Rangely Carbon Dioxide Pipeline, Construction and Operation, Approval and Right-of-Way Permits, CO and UT and WY. SUMMARY: EPA made no formal comments. EPA feels the proposed pipeline route is environmentally acceptable with proper construction mitigation measures.

ERP No. F–COE–F36119–WI, Wisconsin R. Flood Control Plan, WI. SUMMARY: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FB–COE–K35013–CA, Sacramento R. Bank Protection Project, Construction, CA. SUMMARY: EPA noted that this document is an improvement over the previous Supplemental EIS, however, it expressed these concerns: (1) Adequate mitigation must be provided to protect the Sacramento River's designated beneficial uses such as fish/wildlife habitat and fish migration/spawning; and (2) other uses besides agricultural conversion displace riparian habitat (housing and commercial/recreational developments) but were not fully considered in the FSupp. II.

ERP No. F–FHW–E40202–AL, Lakeshore Drive Extension, Green Springs Highway to Osmoor Rd. AL. SUMMARY: EPA has some concerns regarding noise assessment and abatement. It is not clear if all affected noise receptors were assessed. EPA believes that feasible forms of abatement should be reconsidered for those receptor sites that will experience a 13 dBA increase.

Regulations.

ERP No. R–FHW–A59006–00, 23 CFR Part 650, Erosion and Sediment Control on Highway Construction Projects (FHWA Docket No. 84–12) (50 FR 2694). SUMMARY: EPA does not object to the adoption of the AASHTO Specifications.

Dated: April 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–8241 Filed 4–4–85; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-2813-1]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed March 25, 1985 through March 29, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850093, Final, FHW, KY, US 27/ Nicholasville Bypass Construction, Jessamine County, Due: May 6, 1985, Contact: Robert Johnson, (502) 227–7321.

EIS No. 850115, Draft, AFS, MT, Gallatin National Forest, Land and Resource Management Plan, Due: July 15, 1985, Contact: Robert Breazeale, (406) 587–6700.

EIS No. 850116, Report, COE, NY, Ogdensburg Harbor Navigation Improvements, Ogdensburg Bridge and Port Terminal, 1985 Spring Dredging Operation, St. Lawrence County, Tod Smith, (716) 876–5454.

EIS No. 850117, Draft, COE, HI, Waikoloa Beach Resort Anchialine Ponds Construction and Development, Permit, Due: May 20, 1985, Contact: Michael Lee, (808) 438–9258.

EIS No. 850118, Draft, AFS, MO, Mark Twain National Forest, Land and Resource Management Plan, Due: July 7, 1985, Contact: Leon Cambre, (314) 364–4621.

EIS No. 850119, Final, COE, LA, Louisiana Coastal Area, Freshwater Diversion to Barataria and Brenton Sound Basins, Due: May 6, 1985, Contact: Dennis Chen, (504) 838–2523.

EIS No. 850120, Draft, BLM, NM, Rio Puerco Resource Area, Land and Resource Management Plan, Due: July 1, 1985, Contact: Herrick Hanks, (505) 766–3114.

EIS No. 850121, Draft, AFS, CA, Cleveland National Forest, Land and Resource Management Plan, San Diego, Riverside, and Orange Counties, Due: July 5, 1985, Contact: Ralph Cisco (619) 293–5050.

EIS No. 850122, Draft, SCS, TN, MS, Wolf and Loosahatchie River Basins Multipurpose Water Management, Due: May 20, 1985, Contact: Donald Bivens, (615) 251–5471.

EIS No. 850123, Draft, EPA, MO, Eastern St. Charles County Wastewater Treatment Facilities Improvements, Grant, St. Charles County, Due: May 20, 1985, Contact: Thomas Lorenz, (913) 236–2823.

EIS No. 850124, Draft, BLM, CA, Chemise Mountain and King Range Wilderness Study Areas, Designation, Arcata Resource Area, Humboldt and Mendocino Counties, Due: July 1, 1985, Contact: Van Manning, (707) 462–3873.

EIS No. 850125, FSuppl, FHW, IA, I–380 Extension, US 218 to US 20, Waterloo and Cedar Falls, New Alignment Alternative, Black Hawk County, Due: May 6, 1985, Contact: H.A. Willard, (515) 233–1664.

EIS No. 850126, Final, BLM, WY, North Fork Well Oil and Gas Exploration, Permit, Shoshone National Forest, Park County, Due: May 6, 1985, Contact: John Thompson, (307) 347–9871.

EIS No. 850127, Draft, BLM, CO, Grand Junction Resource Area, Resource Management Plan, Garfield and Mesa Counties, Due: July 3, 1985, Contact: Forest Litterell, (303) 243–6552.

EIS No. 850128, Final, FHW, MI, US 27 Freeway Construction, Lansing to Ithica, Clinton and Gratiot Counties, Due: May 6, 1985, Contact: Ronald Jones, (518) 377–1838.

Amended Notices

EIS No. 850057, DSuppl, BLM, PRO, MT, ND, WY, CO, UT, NM, AL, Federal Coal Management Progam, Continuation or Implementation of a New Program, Due: May 9, 1985, Published FR 2–15–85—Review extended.

Dated: April 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–8240 Filed 4–4–85; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-2812-8]

Intent To Prepare an Environmental Impact Statement

Responsible Office: U.S. Environmental Protection Agency, Region IV, Atlanta, Georgia.

Action: Preparation of Environmental Impact Statement (EIS) on Gulf Shores, Alabama 201 Plan.

Purpose: In accordance with section 511(c) of the Clean Water Act and section 102(2)(C) of the National Environmental Policy Act, EPA is notifying government agencies and the public that an EIS will be prepared to address wastewater management in the Gulf Shores area of coastal Alabama.

For Further Information Contact: Mr. Ted Blatterfeld, Environmental Assessment Branch, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone (404) 881–3776, (FTS) 257–3776.

Summary

1. Description of Proposed Action

EPA and the Alabama Department of Environmental Management (ADEM) have determined a need to assess future wastewater management options in the Gulf Shores area. Application for EPA administered 201 construction grant funds is anticipated. This coastal area is experiencing accelerated development which has taxed the local utility infrastructure. EPA's Regional Administrator has determined that granting of funds in this area would be a major federal action significantly affecting the quality of the human environment.

All feasible alternatives for long-term wastewater management will be considered in the EIS, including discharges to surface waters (including the Gulf of Mexico), land application, deep well injection and wastewater reuse.

Collection of information on the nearshore Gulf environment will be a major effort of the EIS. The suitability of a Gulf outfall cannot be determined at this time.

Wastewater management evaluations in the EIS will consider the entire coastal area from Fort Morgan eastward to and including Orange Beach.

2. Significant Issues

- Suitability of a Gulf outfall.
- Maintenance of estuarine water quality.
- Secondary environmental impacts related to accelerated barrier island development.
- Water quality standards.

3. Public Participation Program

Participation in the EIS process is invited from individuals, organizations and government agencies. Project scoping has begun to involve key government agencies and to obtain initial input from interested parties.

A public scoping meeting will be held jointly with the Alabama Department of Environmental Management on May 13 at 7:30 p.m. in the Galaxy Room of the Gulf State Park Resort, Highway 182 east from Gulf Shores, Alabama. Input to the EIS may also be given by writing the EPA Regional Office. Persons wishing to be included on the draft EIS mailing list should also write to the Regional Office.

4. EIS Schedule

A draft EIS is projected to be available in December of 1986.

Dated: April 2, 1985.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 85–8242 Filed 4–4–85; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Productivity Review List and Schedule

ACTION: Notice of productivity review list and schedule.

SUMMARY: In compliance with the Office of Management and Budget (OMB) Circular Number A–76, subject, "Performance of Commercial Activities," and its Supplement, Part I, Chapter 1, paragraph C1b, the Equal Employment Opportunity Commission hereby publishes its productivity review list and schedule (all located at the Headquarters, 2401 E Street, NW., Washington, D.C.) as follows:

Organization	Function	Review start date
Office of Management.	Personal Property, Office Supplies, Directives, Forms, and Publications Stockage and Distribution.[1]	May 1985.
Do.	Real Property Plans, Designs, and Acquisitions.[1]	May 1985
Office of Public Affairs.	Audiovisual and Graphic Services.[2]	Fiscal Year 1986.
Office of Management.	Automated Data Processing Operations.[2]	Do.
Do.	Library Services [1]	Do.
Do.	Mail Room Operations [1]	Do.
Do.	Records and Forms Analysis and Design and Office Equipment Evaluation Operations.[1]	Do.
Do.	Training Operations [2]	Do.

[1] Less than 10 FTEs.
[2] More than 10 FTEs.

This announcement is *not* a solicitation for bid but rather is an advance notification to alert interested persons and businesses of our plans. More specific information relating to this announcement will *not* be furnished until the solicitation for bid is synopsized in the Commercial Business Daily.

FOR FURTHER INFORMATION CONTACT: Robert P. Hill (202) 634–6971 or Natalie Werber, (202) 634–7661, Equal Employment Opportunity Commission, Office of Managment, Performance Management Division, Room 210, 2401 E Street, NW., Washington, D.C. 20507.

John Seal,

Management Director.

April 1, 1985.

[FR Doc. 8200 Filed 4–4–85; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Proposed Form Revision

AGENCY: Federal Financial Institutions Examination Council (Examination Council).

ACTION: Proposed revisions to annual report of trust assets (FFIEC Form 001).

SUMMARY: The Examination Council is proposing to revise FFIEC Form 001 for reporting year 1985. The form has been used to gather information on the trust services of depository institutions and trust companies.

DATE: Comments must be received by May 20, 1985.

ADDRESS: Comments may be mailed to Robert J. Lawrence, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street NW., Suite 701, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Donald R. Vinnedge, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202/452–2717); William L. Granovsky, Office of the Comptroller of the Currency, Washington, DC 20219, (202/447–1731); John F. Harvey, Federal Deposit Insurance Corporation, Washington, DC 20429, (202/389–4295); Cynthia N. Graae, Federal Home Loan Bank Board, Washington, DC 20552, (202/377–6886).

SUPPLEMENTARY INFORMATION: The Examination Council, pursuant to section 1006(c) of Title 10 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3305), proposes that the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board and Office of the Comptroller of the Currency adopt revisions to the Annual Report of Trust Assets (FFIEC Form 001) to become effective with the December 31, 1985 report date. Since 1979, the FFIEC Form 001 has been used by the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation. The

Federal Home Loan Bank Board also used the form during 1984. All insured commercial banks, savings banks, and savings and loan associations that exercise fiduciary powers, or have been authorized to exercise fiduciary powers, are required to complete FFIEC 001. Also required to complete the form are trust companies that, while not insured by the Federal Deposit Insurance Corporation, are member of the Federal Reserve System, are subsidiaries of bank holding companies, or are affiliated with savings and loan associations.

The above institutions currently are required to report the following:

1. Market value of certain trust assets over which they exercise investment discretion, as defined in the instructions accompaning the form, further broken down into five categories of accounts and thirteen categories of assets;

2. The number of accounts administered in each of the five account categories; and

3. The value of collective investment funds administered in a fiduciary capacity.

For reporting year 1985, it is proposed that the Annual Report of Trust Assests be modified to give a more comprehensive overview of an institution's fiduciary activities and to enhance off-site analysis. The data obtained would be the minimum amount considered necesary for monitoring the nature and volume of trust services each institution provides. The items listed below are proposed for addition to the form.

1. Schedule A, items 17 and 18: Nondiscretionary assets and accounts, respectively. The addition of nondiscretionary asset and account information to the form is proposed to present more accurately the volume and character of fiduciary assets under administration and for supervisory and liquidation purposes.

2. *Schedule C:* Corporate Trust Schedule. This schedule is proposed in order to allow for more accurate monitoring and analysis of the volume and types of corporate trust business being performed by supervised trust institutions.

3. *Schedule D:* Investment Advisor Schedule. The addition of this schedule is proposed in view of the recent trend in some large institutions to use investment advisor affiliates to manage the investment portfolios of certain discretionary accounts, such as employee benefit plans, for which banks and other institutions have fiduciary responsibility. It is believed necessary for supervisory purposes to obtain information concerning the extent of such portfolio management.

In addition to soliciting comments on the proposed revisions noted above, comments are also specifically solicited on two related reporting issues. First, the Examination Council is asking for comments on whether consideration should be given to establishing a cut-off size (i.e., discretionary assets with a total market value of some amount) below which less detailed reporting would be required and, if so, what such minimum reporting size and information should be. Second, comments are sought on whether asset categories should be added to reflect investments in money market mutual funds, other mutual funds, and securities issued by foreign companies and governments, or whether certain of the existing asset categories should be deleted.

Copies of the proposed report form and instructions are being mailed to all affected institutions. Copies may also be requested from Robert J. Lawrence, the Examination Council's Executive Secretary.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and 5 CFR 1320.12, the proposed Annual Report of Trust Assets (FFIEC Form 001) will be submitted to the Office of Management and Budget for review by each agency that requires submission of the report, if the proposed report is adopted by the Examination Council after consideration of comments received during the 45-day comment period.

Dated: April 2, 1985.

Robert J. Lawrence,

Executive Secretary, FFIEC.

[FR Doc. 85-8199 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-428]

Final Action Approval of Conversion Application; Progressive Federal Savings Bank, Natchitoches, LA

Dated: March 29, 1985.

Notice is hereby given that on March 8, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Progressive Federal Savings Bank, Natchitoches, Louisiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Dallas, Post Office Box 619026, Dallas, Texas 75261-9026.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85-8213 Filed 4-4-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207-010737.

Title: Italia/Trasatlantica Joint Service Agreement.

Parties:

"ITALIA" di Navigazione, S.p.A.

Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed agreement would establish a joint service between the parties in the trade between the Atlantic Coast of the United States (from Eastport, Maine to, but not including, Jacksonville, Florida) and Canada, and ports on the Mediterranean Sea, the Iberian Peninsula, the Atlantic Coast of Africa, India and Pakistan. The parties' operations in the trade would initially be conducted under the name of Med America Express Service.

By Order of the Federal Maritime Commission.

Dated: April 2, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8232 Filed 4-4-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003967–003.
Title: New Orleans Terminal.
Parties:
Board of Commissioners of the Port of New Orleans (Board)
The Ryan-Walsh Stevedoring Co., Inc. (Ryan-Walsh)

Synopsis: This agreement amends the basic agreement between the Board and Ryan-Walsh which provides for the lease of the bulk terminal facility in the Mississippi River-Gulf Outlet, New Orleans. The amendment provides that Ryan-Walsh shall receive a credit of $1,169,260.59, to be applied against the annual rent of the facility and in consideration thereof Ryan-Walsh agrees to continue to operate the facility until June 22, 1986. In addition, Ryan-Walsh agrees to return 27.55 acres comprising Tract II of the premises to the Board for other public uses. The parties requested a shortened review period for the agreement.

Agreement No.: 224–004093–001.
Title: Los Angeles Terminal Agreement.
Parties:
City of Los Angeles (City)
Metropolitan Stevedore Company (Metropolitan)

Synopsis: This agreement amends the basic agreement in which the City grants to Metropolitan use of Berths 142–146 in the Port of Los Angeles, and provides that the City shall perform wharf modifications to said berths necessary to Metropolitan's operation. During the modification Berths 142–146 will be unavailable for use. This amendment grants Metropolitan a Secondary Berth Assignment to Berths 130–131 currently covered in FMC Agreement No. T–3071–3. This arrangement will provide temporary replacememt space needed for Metropolitan's operations while modifications are being made to Berths 142–146.

Agreement No.: 202–009474–012.
Title: Thailand/North America Conference Agreement.
Parties:
American President Lines, Ltd.
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would delete United States Lines, Inc. as a party to the agreement. The parties have requested a waiver of the format requirements of the Commission's regulations and a shortened review period.

Agreement No.: 212–010027–014.
Title: Brazil/U.S. Atlantic Coast Agreement.
Parties:
United States Lines (S.A.) Inc.
Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
A/S Iverans Rederi
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co., B.V.
Cylanco S.A.

Synopsis: The proposed amendment would modify and partially reformat the agreement to comply with earlier Commission requests. The parties have requested a shortened review period.

Agreement No.: 202–010636–007.
Title: U.S. Atlantic-North Europe Conference Agreement.
Parties:
Atlantic Container Line (G.I.E.)
Compagnie Generale Maritime (CGM)
Dart-ML Limited
Double Eagle Lines, Inc.
Hapag-Lloyd AG
Intercontinental Transport (ICT)
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would more precisely express the intent of the parties to include cargo moving in shipper provided container equipment, as well as that moving in carrier provided equipment, within the scope of the agreement. The parties have requested a shortened review period.

Agreement No.: 213–010703–001.
Title: Korea Marine Transport Co., Ltd./Hanjin Container Lines, Ltd., Space Charter and Sailing Agreement.
Parties:
Hanjin Container Lines, Ltd. (HCL)
Korea Marine Transport Co., Ltd.

Synopsis: The proposed amendment would authorize the parties to coordinate and integrate their vessel schedules in addition to their present authorization to cross-charter vessel slots. This proposed new authority necessitates changing the agreement's three digit prefix from 217, designating it as a chartering agreement, to 213, the Commission's designation for sailing agreements. The parties also propose to make allocated, but unbooked space available to third party carriers should the occasion arise. Further the parties state that HCL's Korea/Japan TEU commitment of 3669 slots is "estimated" because the third vessel of its fleet on this route has not been definitely selected. The parties have requested a shortened review period.

Agreement No.: 217–010738.
Title: Barber Blue Sea/Open Bulk Carriers Chartering Agreement.
Parties:
Barber Blue Sea (BBS)
Open Bulk Carriers Limited (OBC)

Synopsis: The proposed agreement would establish a chartering arrangement authorizing BBS to charter vessels to OBC in the trade from United States Atlantic and Gulf ports and East Canada ports to ports in the United Kingdom and North Europe. It would also permit the chartering of deck space on the vessels.

Agreement No.: 213–010739
Title: Nedlloyd/Barber Blue Sea North America-Middle East Reciprocal Space Charter and Coordinated Sailing Agreeement
Parties:
Nedlloyd Lijnen BV
Barber Blue Sea Line

Synopsis: The proposed agreement would permit the parties to schedule sailings and port rotations, charter space on each other's vessels and jointly charter vessels, in the trade from United States Atlantic and Gulf ports and Eastern Canada ports to ports in Portugal, the Mediterranean, the Red Sea, Gulf of Aden, Arabian Gulf, India, Pakistan and Sri Lanka including U.S. and foreign inland and coastal points.

By Order of the Federal Maritime Commission.

Dated: April 2, 1985.

Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 85–8231 Filed 4–4–85; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bankamerica Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank

Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activities that have been approved by Board Order, but are not on the list of permissible activities in Regulation Y. Unles otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application have been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, orgains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **BankAmerica Corporation**, San Francisco, California; to engage *de novo* through its subsidiary, BA Futures, Incorporated, San Francisco, California, in providing futures commission merchant and futures advisory services to non-affiliates with respect to municipal bond index futures contracts and stock index futures contracts and options.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8160 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

First Bank Shares of the South East, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 29, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Bank Shares of the South East, Inc.*, Alma, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Alma, Alma, Georgia.

2. *The Nashville Holding Company*, Nashville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Bank, Nashville, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FCN Banc Corp.*, Brookville, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of the Franklin County National Bank of Brookville, Brookville, Indiana.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Independent Investment Group, Inc.*, Vancouver, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Independent Bank, Vancouver, Washington.

2. *Republic National Bancorp, Inc.*, Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Republic National Bank, Phoenix, Arizona, in organization.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8161 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

Mansura Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, commented regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than April 27, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georiga 30303:

1. *Mansura Bancshares, Inc.*, Mansura, Louisiana; to engage *de novo* through its subsidiary, Cypress Data Processing Co., Mansura, Louisiana, in data processing activities in the State of Louisiana.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *North Valley Bancorp*, Redding, California; to engage *de novo* through its subsidiary North Valley Consulting Services, Redding, California, in providing management consulting services to depository institutions.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8162 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

Rainier National Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for the notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than April 29, 1985.

A. Board of Governors of the Federal Reserve System, (Willian W. Wiles, Secretary) Washington, D.C. 20551:

Rainier National Bank, Seattle, Washington: to establish a corporation to be known as Rainier Bank International, New York, New York. Rainier Bank International would operate as a subsidiary of Rainier National Bank. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, April 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8163 Filed 4-4-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 29, 1905.

Public Health Services

Health Resources and Service Administration

Subject: Collection of Information Under the Health Education Assistance Loan Program (HEAL)—Rxisting Collection
Respondents: Individuals, businesses, non-profit institutions

National Institutes of Health

Subject: Individual National Research Service Award Application—Revision (0925-0002)
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Food and Drug Administration

Subject: Product License Application the Manufacturing of Human T-Lymphotropic Virus for In-Vitro Diagnostic Use—new
Respondents: Businesses, small businesses, non-profit institutions
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Recalculation of Case Mix Index Based on Total Medicare Discharges—HCFA 9043—Extension (0938-0312)
Respondents: State/local governments, businesses, or other for-profit, non-profit institutions
Subject: Statistical Report on Medical Care: (Eligibles, Recipients, Payments and Services) HCFA—2082—Extension (0938-0345)
Respondents: State/local governments, Medicaid agents
Subject: Preclearance: Design and Evaluation of the Home Health Agency Prospective Payment Demonstration—New
Respondents: Businesses, for-profit, non-profit institutions
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: April 1, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-8203 Filed 4-4-85; 8:45 a.m.]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Rape Prevention and Control Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory body scheduled to assemble during the month of April 1985.

Rape Prevention and Control Advisory Committee

April 15-16; 9:00 a.m., Parklawn Building, Conference Rooms "O" and "H", 5600 Fishers Lane, Rockville, Maryland 20857

Open

Contact: Ann Maney, Ph.D., Executive Secretary, Rape Prevention and Control Advisory Committee, 5600 Fishers Lane, Room 6C-12, Rockville, Maryland 20857, (301) 443-1910

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health through the National Center for the Prevention and Control of Rape (NCPCR), on matters regarding the needs and concerns associated with rape in the United States and makes recommendations pertaining to activities to be undertaken by the Department to address the problems of rape.

Agenda: The entire meeting will be open to the public. It will include discussions of

emergency service training materials by NCPCR, the state-of-the-art in research in emergency services to rape victims, and strategies for dissemination of existing materials as well as for the development of future studies.

Substantive program information may be obtained from the contact person listed above. Summaries of the meetings and roster of Committee members may be obtained from Ms. Helen W. Garrett, Committee Management Officer, National Institute of Mental Health, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: April 1, 1985.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Heath Administration.

[FR Doc. 85–8134 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 85N–0139]

Riker Laboratories, Inc., et al; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 72 new drug applications (NDAs) based on the written request of the applicants.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drugs and Biologics, Product Information Coordination Staff (HFN–105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

SUPPLEMENTARY INFORMATION: The holders of the NDAs listed below have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the NDAs. The applicants have also, by their request, waived their opportunity for hearing.

NDA	Drug name	Applicant's name and address
16–A	Isophrin	Riker Laboratories, Inc., 270–3A 3M Center, St. Paul, MN 55144.
3–234	Neo-Hombreol (M) Tablets.	Organon, Inc., West Orange, NJ 07052.
4–508	Tedral Enteric Coated Tablets.	Parke-Davis, 201 Tabor Rd., Morris Plains, NJ 07950.
5–237	Glysennid Tablets	Dorsey Laboratories, Division of Sandoz, Inc., Box 83268, Lincoln, NE 68501.
5–509	Dicumarol Capsules	Eli Lilly Co., 307 East McCarty St., Indianapolis, IN 46285.
6–374	Glynazan (Theophylline Sodium Glycinate) Tablets and Elixir.	Scherer Laboratories, Inc., 14335 Gillis Rd., Dallas, TX 75234.
6–432	Nordihydroguaaretic Acid.	Abbott Laboratories, North Chicago, IL 60064.
6–544	Johnson's Baby Lotion with Hexachlorophene.	Johnson & Johnson, New Brunswick, NJ 08903.
6–726	CPH Protein Hydrolysate Injection.	Cutter Laboratories, Inc., Div. Miles Labs, Inc., 2200 Powell St., Emeryville, CA 94608.
6–937	Gustamine Powder	USV Laboratories, Inc., USV Pharmaceutical Corp., 1 Scarsdale Rd., Tuckahoe, NY 10707.
7–018	Theriladi HCl Tablets and Synephricol Syrup.	Sterling Drugs, Inc., 90 Park Ave., New York, NY 10016.
7–071	Kriptin Tablets	Whitehall Laboratories, 685 Third Ave., New York, NY 10017.
7–103	Allko-Hist Tablets and Pyrilamine Maleate Tablets.	American Pharm. Co., 245 Fourth St., Passaic, NJ 07055.
7–111	Antihistamine Tablets.	Rexall Corp., 3901 North Kingshighway Blvd., St. Louis, MO 63115.
7–150	Co-Salt	USV Laboratories.
7–336	Veriloid Tablets	Riker Laboratories, Inc.
7–735	Turicum Gel	A. H. Robins Co., 1211 Sherwood Ave., Richmond, VA 23220.
8–001	Banthine Injection	Searle, Division of G. D. Searle & Co., 4901 Searle Pkwy., Skokie, IL 60077.
8–135	Tryptar Powder for Inhalation.	Armour Pharm. Co., Box 511, Kankakee, IL 60901.
8–500	Isoniazid Tablets	American Pharm. Co.
8–579	Vallestril Tablets	Searle.
8–700	Danilone Tablets	Almay, Inc., Apex, NC 27502.
8–856	Clistin Elixir	McNeil Pharm., Spring House, PA 19477.
8–977	Sel-O-Rinse Cream	USV Laboratories, Inc.
9–159	Rauwolfia Serpentina Tablets.	Do.
9–244	Cortisone Acetate Tablets.	USV Laboratories, Inc.
9–289	Brompheniramine Maleate Bulk.	Schering Corp., 60 Orange St., Bloomfield, NJ 07003.
9–304	Ambodryl HCl Injection.	Parke-Davis.
9–573	Reserpine Alkaloid Tablets.	USV Laboratories, Inc.
9–587	Protoveratrine A & B Maleate Tablets.	D.
9–861	Alkaran Tablets	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
9–875	Astrofer Injection	Astra Pharmaceutical Products, Inc., 7 Neponset St., Worcester, MA 01606.
9–894	Depo-ACTH Sterile Solution.	The Upjohn Co., Kalamazoo, MI 49001.
9–726	Sertabs Tablets	Bell Pharmamacol Corp., Box 1968, Greenville, SC 29602.
9–790	Cytellin Suspension	Eli Lilly & Co.
9–794	Toclase Tablets	Pfizer, Inc., 235 East 42nd St., New York, NY 10017.
9–850	Reserpoid Elixir	The Upjohn Co.
9–872	Pyrilamine Maleate Sustained Release Capsules.	USV Laboratories, Inc.
10–365	Neomycin Sulfate Capsules and Tablets.	USV Laboratories, Inc.
10–579	Terpin Hydrate and Methorate Hydrobromide.	The Upjohn Co.
10–759	Sintrom Tablets	Ciba-Geigy Corp., Summit, NJ 07901.
10–766	Ultra Feminine Estrogenic Hormone Cream with Progesterone.	Helena Rubenstein, 55 Hartz Way, Secaucus, NJ 07094.
10–782	Phenylpropanolamine HCl Sustained Release Capsules.	USV Laboratories, Inc.
10–801	Ferrous Fumarate Tablets.	Do.
11–020	Dartal Tablets	Searle.
11–424	Ultandren Tablets	Ciba-Geigy Corp.
11–560	Candettes Cough Lozenges.	Pfizer Inc.
11–561	Candettes Cough Syrup.	Do.
11–814	Disomer Syrup and Tablets.	Sherng Corp.
11–874	Carbetapentane Citrate Tablets.	USV Laboratories, Inc.
11–922	Carbetapentane Citrate Capsules.	Do.
12–207	Quadrin Tablets	Norwich Eaton Pharm., Inc., P.O. Box 191, Norwich, NY 13815.
12–233	Micrin Mouthwash and Gargle.	Johnson & Johnson.
12–458	Nactone Tablets	McNeil Pharm.
12–519	Corodyl Forte Capsules.	Bock Pharmacol Co., 5435 Highland Park Dr., St. Louis, MO 63110.
13–303	Tetrase 80 Capsules.	Pasadena Research Laboratories, Inc., 2107 East Villa, Pasadena, CA 91107.
13–644	Asthmanefrin/ Vaponefrin Automatic Aerosol Mist.	USV Laboratories, Inc.
13–992	First Aid Spray (Formula No. 511).	Johnson & Johnson.
14–162	Neponefrin Metermatic/ Asthmanefrin Automatic Aerosol Mist.	USV Laboratories, Inc.
14–766	Metraspray Aerosol	Riker Laboratories, Inc.
15–844	Betaline 12 Tablets	Eli Lilly & Co.
16–053	Betapred Tablets	Schering Corp.
16–054	Intersept Antiseptic Foam.	Johnson & Johnson.
16–066	Chemestrogen	T.E. Watson Co., P.O. Box 3629, Sarasota, FL 33578.
16–531	Tybatran Capsules	A.H. Robins Co.
16–665	Rose Bengal Sodium I 131 Injection.	Mallinckrodt, Inc., P.O. Box 5840, St. Louis, MO 63134.
16–814	Nonsedrine Aerotrol	Abbott Laboratories.
16–991	Aarane Capsules	Fisons Corp., Two Preston Ct., Bedford, MA 01730.
17–278	Sodium Iodide I 125 Solution.	Mallinckrodt, Inc.
17–359	2% Sodium Chloride for Therapeutic Abortion.	Cutter Laboratories, Inc.
17–846	Radio-Iodinated (I 125) Human Serum Albumins.	Miles Laboratories, Inc., P.O. Box 40, Elkhart, IN 46515
17–847	Radio-Iodinated (I 131) Human Serum Albumins.	Do.

The agency has determined that, in accordance with 21 CFR 25.24(d)(2) (proposed in the **Federal Register** of December 11, 1979 (44 FR 71742)), this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 76 Stat. 782 as amended (21 U.S.C. 355(e))), and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.82), approval of the new drug applications listed above, and supplements thereto, is hereby withdrawn.

This order becomes effective on May 6, 1985.

Dated: March 28, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85-8137 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Maternal and Child Health Research Grants Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1985:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: June 12-14, 1985, 9:00 a.m.-5:00 p.m.

Place: Conference Room M, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; open on June 12, 1985, 9:00 a.m. to 10:00 a.m.; closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 12, 1985, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the Provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant of Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6-17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443-2190.

Agenda items are subject to change as priorities dictate.

Dated: April 1, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-8132 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-15-M

Advisory Committee; Meeting; Task Force on Organ Transplantation

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory bodies scheduled to meet during the month of April 1985:

Name: Task Force on Organ Transplantation.

Date and Time: April 29, 1985 8:00 a.m.-4:00 p.m.

Place: Shoreham Hotel, 2500 Calvert Street and Connecticut Avenue NW., Washington, D.C. 20008; the entire meeting is open to the public

Purpose: The Task Force on Organ Transplantation is required to conduct comprehensive examinations of the medical, legal, ethical economic, and social issues presented by human organ procurement and transplantation; including an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients. Reports on these issues are required to be submitted to the Department of Health and Human Services and the Congress later this year.

Agenda: During the morning session, the Task Force will discuss data collection efforts relating to immunosuppressive therapies, networking, organ donation/procurement, research and reimbursement. The afternoon session will be devoted to discussion of issues relating to access to organ transplantation procedures.

The entire meeting is open to the public. Anyone wishing to make a statement may do so between 3:00-4:00 p.m. Please notify Linda D. Sheaffer, Acting Executive Director, if you wish to be scheduled during this session.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Linda D. Sheaffer, Acting Executive Director, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17-60, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443-5911.

* * * * *

Name: National Council on Health Planning and Development.

Date and Time: April 25-26, 1985, 9:00 a.m.

Place: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201; the entire meeting is open.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93-641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93-641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: The Council will continue its discussion of the public policy issues of providing health care for those unable to pay for such services. The focus of this meeting, entitled "Uncompensated Care: Identifying Viable Short and Long-Term Strategies," will be on feasible ideas to address the immediate problem as well as on the most efficient and effective alternative strategies over the long-term. Keynote speaker is Senator David Durenberger, Chairman of the Senate Finance Subcommittee on Health.

A public comment period will be held each day. A detailed agenda may be obtained after April 5 by writing or telephoning Mrs. Diane A. McMenamin.

Anyone requiring information regarding the subject Council should contact Ms. Diane McMenamin, Executive Secretary, National Council on Health Planning and Development, Bureau of Health Maintenance Organizations and Resources Development, Room 9A-18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6377.

Agenda items are subject to change as priorities dictate.

Dated: April 1, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-8133 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Biology and Diagnosis; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCBD, National Cancer Institute, May 29, 1985, at the National Institutes of Health, Building 31, Conference Room 9, Bethesda, Maryland. This meeting will be open to the public on May 29, from 9:00 a.m. to 11:00 a.m. for concept review of proposed DCBD research projects. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 29, from 11:00 a.m. to 12 noon, for the review, discussion, and evaluation of individual programs and projects conducted by DCBD, National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Ihor J. Masnyk, Deputy Director, Division of Cancer Biology and Diagnosis, National Cancer Institute, Building 31, Room 3A–04, National Institutes of Health, Bethesda, Maryland 20205 (301/496–4345) will furnish substantive program information.

Dated: March 25, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–8176 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institutes; Cancer Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, May 16–17, 1985, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814. This meeting will be open to the public on May 16, from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 16 from approximately 9:00 a.m. to recess; and on May 17 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Leon J. Niemiec, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, Room 832, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7978) will furnish substantive program information.

Dated: March 26, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–8171 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, April 29–30, and May 1, 1985, to be held at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. The meeting will be open to the public from 8:30 a.m. on Monday, April 29 until approximately 4:00 p.m. and will again be open to the public from 8:30 a.m. on Tuesday, April 30 until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 29 from 4:00 p.m. until recess, and again on April 30 from 4:00 p.m. until adjournment on May 1 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and peformance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20205, (telephone: 301/496–5898) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research. National Institutes of Health)

Dated: March 25, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–8175 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on May 24, 1985, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Friday, May 24, from 9:00 a.m. until 10:30 a.m. for a status report by the Director, National Institute on Aging, and administrative details relating to Council business. Attendance by the public will be limb ited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on May 24 from 10:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you

contact Mrs. June C. McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland, 20205 (301/496–5898), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: March 25, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–8167 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; National Advisory Dental Research Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on May 14–15, 1985, in Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to recess on May 14 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on May 15 from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Susan Woo, Council Secretary for the National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20205, (phone 301 496–7723) will furnish roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: March 26, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–8173 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Advisory General Medical Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on May 22, 23, and 24, 1985, Building 1, Wilson Hall, Bethesda, Maryland.

This meeting will be open to the public on May 22, 1985, from 12:30 p.m. to 5:00 p.m. for opening remarks; report of the Director, NIGMS; a scientific presentation; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 23 from 8:30 a.m. to 6:00 p.m., and on May 24, 1985, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205, Telephone: 301, 496–7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 926, Bethesda, Maryland 20205, Telephone: 301, 496–7891 will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Physiology and Biomedical Engineering; 13–859, Pharmacology-Toxicology Research; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of Disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: March 26, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–8170 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on April 29–May 1, 1985, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on April 29 and from 9:00 a.m. to 12:00 Noon on April 30, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:00 p.m. to recess on April 30 and from 9:00 a.m. to adjournment on May 1 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Acting Director of Intramural Research, NIDR, NIH, Building 30, Room 132, Bethesda, MD 20205, (telephone 301 496–1483) will provide summary of the meeting, roster of committee members and substantive program information.

Dated: March 25, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–8174 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 93–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Dates: May 15–17, 1985.

Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20205.

Open: May 15, 1:00 p.m.–3:00 p.m. (Planning Subcommittee). May 16, 9:00 a.m.–3:00 p.m. (Council).

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: May 15, 3:00 p.m.–5:00 p.m. (Planning Subcommittee). May 16, 3:00 p.m.–4:00 p.m. (Council). May 17, 8:30 a.m.–adjournment (Council).

Closure reason: For review of grant applications.

Executive secretary: John C. Dalton, Ph.D, Director, NINCDS–EAP, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9248.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: May 29–June 1, 1985.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, D.C. 20007.

Open: May 29, 8:00 p.m.–8:30 p.m.

Closed: May 29, 8:30 p.m.–recess. May 30, 8:30 a.m.–recess. May 31, 8:30 a.m.–recess. June 1, 8:00 a.m.–adjournment.

Closure reason: To review grant applications.

Executive secretary: Dr. Leon Jack Greenbaum, Jr., Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: June 20–22, 1985.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW., Washington, D.C. 20007.

Open: June 20, 8:30 a.m.–9:00 a.m.

Closed: June 20, 9:00 a.m.–recess. June 21, 8:30 a.m.–recess. June 22, 8:00 a.m.–adjournment.

Closure reason: To review grant applications.

Acting executive secretary: Dr. A. Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9223.

Name of Committee: Communicative Disorders Review Committee.

Dates: June 6–7, 1985.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

Open: June 6, 8:00 a.m.–8:30 a.m.

Closed: June 6, 8:30 a.m.–recess. June 7, 8:00 a.m.–adjournment.

Closure reason: To review grant applications.

Executive secretary: Dr. Marilyn Semmes, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20205, Telephone: 301/496–9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 26, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–8172 Filed 4–4–85; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Smoking and Health Interagency Committee; Establishment of Advisory Committee

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463 (5 U.S.C. Appendix I), the Office of the Assistant Secretary for Health announces the establishment by the Secretary, Health and Human Services, of the Interagency Committee on Smoking and Health, pursuant to Pub. L. 98–474, the Comprehensive Smoking Education Act.

Designation: Interagency Committee on Smoking and Health.

Purpose: The Committee shall advise the Secretary and the Assistant Secretary for Health on (a) coordination of research, and educational programs and other activities within DHHS, and coordination of such activities with other Federal, State, local, and private agencies, (b) establishment and maintenance of liaison with appropriate private entities, other Federal agencies, and State and local public health agencies, respecting the dangers of smoking on health, and (c) development of materials for biennial reports by the Secretary to Congress.

Expiration Date: Authority for the Interagency Committee on Smoking and Health will expire March 20, 1987, unless the Secretary formally determines that continuance is in the public interest.

Dated: April 1, 1985.

John L. Bagrosky,

Associate Director for Program Operations, Office on Smoking and Health.

[FR Doc. 85–8201 Filed 4–4–85; 8:45 am]

BILLING CODE 4160–17–M

National Toxicology Program; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on April 30 and May 1, 1985.

The meeting will be open to the public on April 30 and May 1. The preliminary agenda with *approximate* times are:

April 30

9:00 a.m.–12:00 p.m., 1:00 p.m.–3:00 p.m.—NTP Response to Recommendation in the Report of the NTP Board of Scientific Counselor's *Ad Hoc* Panel on Chemical Carcinogenesis Testing and Evaluation.

3:15 p.m.–4:15 p.m.—Status Reports on NIEHS/NTP Research Projects:

(1) Current Collaborative Studies on Oncogene Activation and Expression.

(2) Applications of Nuclear Magnetic Resonance Imaging in Toxicologic Testing.

May 1

8:30 a.m.–8:45 a.m.—Report of the Director, NTP

8:45 a.m.–10:15 a.m.—NIEHS/NTP Concept Reviews

10:30 a.m.–12:30 p.m.—Peer Review and Priority Ranking of Chemicals Nominated for NTP Testing. These four chemicals to be reviewed by the Board were listed in the **Federal Register**, Volume 49, No. 72, pp. 14589–14590, April 1984: (1) Atrazine; (2) Ordram; (3) 2,3,4,6–Tetrachlorophenol; and (4) p–Chloro–alpha, alpha, alpha–trifluorotoluene. These eight additional chemicals to be reveiwed were listed in the **Federal Register**, Volume 49, No. 242, pp. 48807–48808, December 14, 1984: (1) Carbenoxolone; (2) Dimethylheptylpyran; (3) Emodin; (4) 5–Methoxypsoralen; (5) Phencyclidine; (6) 2,6–Xylidine; (7) Malathion; and (8) Picloram. Further, the Board will review the mononitrotoluene class study which was reviewed by the NTP Chemical Evaluation Committee at their meeting on February 5, 1985.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FTS 629–3971, will furnish a roster of Board members and other program informatoin prior to the meeting, and summary minutes subsequent to the meeting.

Dated: March 25, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-7479 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Chemicals (8) Nominated for Toxicological Testing; Request for Comments

Summary: On February 5, 1985, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eight chemicals nominated for toxicology testing and to recommend the types of testing to be performed. With this notice, the NTP solicits public comment on the eight chemicals listed herein.

For further information and submission of comments, contact: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-3511.

Supplementary information: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register.** This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decisionmaking about testing. The NTP chemical selection process is summarized in the **Federal Register,** April 14, 1981 (46 FR 21818), and also in the NTP FY 1984 *Annual Plan,* pages 165-168.

Chemical	CAS No.	Committee recommendation
1. Ellagic acid	476-66-4	*In vitro* cytogenetics assay
2. Kaempferol	520-18-3	Deferred.
3. Lapachol	84-79-7	No testing.
4. α-Terpineol	98-55-5	Carcinogenicity. Mouse skin tumor initiation-promotion assay.
5. m-Nitrotoluene	99-72-2	Carcinogenicity.
6. o-Nitrotoluene	99-08-1	Carcinogenicity.
7. p-Nitrotoluene	99-99-0	Carcinogenicity.
8. 2-Butoxyethanol	111-76-2	Genotoxicity. Teratology. Chemical disposition. Subchronic studies, including immunotoxicity. Carcinogenicity.

Four of the eight compounds have been previously selected for some type of toxicological testing by the NTP. The three mononitrotoluenes, which were considered as a class study, gave negative results in *Salmonella* strains TA98, TA100, TA1535, and TA1537, with and without metabolic activation. In the *in vitro* cytogenetics assay using Chinese hamster ovary cells, o-nitrotoluene was negative for chromosomal aberrations and sister chromatid exchanges; m-nitrotoluene was negative for chromosomal aberrations and weakly positive for sister chromatid exchanges; p-nitrotoluene was positive for both chromosomal aberrations and sister chromatid exchanges. p-Nitrotoluene gave negative results in the BALB/c-3T3 cell transformation assay, and is currently being tested in the mouse lymphoma assay by the NTP.

In a short-term *in vitro* reproductive study in CD-1 mice, 2-butoxyethanol caused an increase in intrauterine mortality, and produced twenty percent maternal mortality. In a conventional teratology study, 2-butoxyethanol produced negative results when applied to the skin of Sprague-Dawley rats at a dose of 432 mg/kg/day for ten days. A fertility assessment by continuous breeding using CD-1 mice is being performed on 2-butoxyethanol by the NTP.

In action on chemicals proposed to the NTP for genotoxicity testing, the CEC selected 6-methylquinoline, 7-methylquinoline, and 8-methylquinoline for testing in the *in vitro* cytogenetics assays in Chinese hamster ovary cells. These methylquinoline compounds were nominated by the EPA. The CEC also approved a proposal to test in the *Salmonella* assay 121 chemicals that have been identified as being associated with waste dump sites.

Interested parties are requested to submit pertinent information.

The following types of data are of particular relevance:

(1) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and, results in the case of completed studies.

(2) Modes of production, present production levels, and occupational exposure potential.

(3) Uses and resulting exposure levels, where known.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by May 6, 1985. Any submissions received after the above date will be accepted and utilized where possible.

Dated: April 1, 1985.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 85-8177 Filed 4-4-85; 8:45 am]

BILLING CODE 4140-01-M

Office of the Assistant Secretary for Health

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 49 FR 50478, December 28, 1984), is amended to reflect a reorganization within the National Center for Health Services Research and Health Care Technology Assessment, Office of the Assistant Secretary for Health. Specifically: grants review activities are transferred to the Division of Extramural Research, the Division of Academic and External Liaison is retitled Division of Research Dissemination and External Liaison, and grants administration and contract liaison activities are transferred to the newly titled Division of Research Dissemination and External Liaison.

Under Part H, Chapter HA, Office of the Assistant Secretary for Health (OASH), Section HA-20 Functions, under the heading for the *National Center for Health Services Research and Health Care Technology Assessment (HAR),* revise the functional statement for the *Office of Program Support (HAR13)* by deleting the words "grants and contracts processes" on the eleventh line of statement; delete item (6) and renumber item (7) as item (6).

Delete the title and statement for the *Division of Academic and External Liaison (HAR2)* and insert the following:

Division of Research Dissemination and External Liaison (HAR2) provides leadership and direction for the activities designed to disseminate the results of research supported by the Center, and supervises the general effort to coordinate the program of the Center, with the programs and concerns of other Governmental, private, and academic

institutions. Specifically: (1) Administers and sets policies for the program to publish and disseminate research findings prepared by or with the support of the Center; (2) participates with the Office of Program Development and Health Technology Assessment in coordinating the research programs of the Center with the research programs being conducted in other parts of PHS and the Department; (3) serves as the principal liaison with academic institutions, private foundations, and other organizations conducting or supporting health services research programs; (4) maintains a computerized system of Center grants and contracts for information retrieval and dissemination; (5) directs and conducts the Center's grants and contracts process; (6) implements the award processes of grants and contracts proposals; (7) informs the Center Director of general administrative policy and program concerns which exist in the research institutions, private foundations, the Department and other government agencies; and (8) assists in developing policies for and overseas activities of the Center pertaining to the Regional Offices.

Revise the functional statement for the *Division of Extramural Research (HAR3)* by deleting item (4) and inserting the following: (4) Manages operations responsible for an effective peer review system.

Effective Date: March 28, 1985.

Dated: April 1, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-8202 Filed 4-4-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D-85-796; FR-2099]

Redelegation of Authority To Execute Legal Instruments in the Name of the Secretary

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Amendment of notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development, on July 28, 1982 redelegated authority to execute written instruments relating to section 312 Rehabilitation Loans to certain officials, 47 FR 33324, August 2, 1982. This amendment adds the Deputy Director of the Office of Urban Rehabilitation to those officials.

FOR FURTHER INFORMATION CONTACT: Michael Ehrmann, Deputy Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5685 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 312 of the Housing Act of 1964, 42 U.S.C. 1452b, the authority to execute legal instruments under the section 312 loan program has been delegated to the Assistant Secretary for Community Planning and Development, except for those legal instruments which relate to property management and disposition functions delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980). In order to expedite property foreclosures and judgments against section 312 borrowers in default, the General Deputy Assistant Secretary, currently acting as Assistant Secretary for Community Planning and Development, has determined that his authority to execute legal instruments should be redelegated to the Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director, and the Deputy Director, Office of Urban Rehabilitation; and the Director, Relocation and Real Estate Division.

Accordingly, the Assistant Secretary's delegation of July 28, 1982, 47 FR 33324, is amended as follows:

A. Authority Redelegated

The Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director and the Deputy Director of the Office of Urban Rehabilitation; and the Director of the Relocation and Real Estate Division, are each hereby redelegated the authority to execute in the name of the Secretary written instruments relating to section 312 Rehabilitation Loans, including deeds of release, substitutions of trustees, assignments, and satisfactions of mortgages and deeds of trust. However, this redelegation does not cover the execution of written instruments that relate to certain section 312 loan-related property management and disposition functions that have been delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980).

B. Effect

This redelegation adds to, and does not modify or supersede, the redelegation of authority to field officials at 46 FR 21244 (April 9, 1981).

Authority: Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b.

Dated: March 19, 1985.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 85-8233 Filed 4-4-85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Draft Environmental Impact Statement for the Preliminary Wilderness Recommendations for the King Range and Chemise Mountain Wilderness Study Areas, CA; Public Hearings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental impact statement on the preliminary wilderness recommendations for the King Range Wilderness Study Area (WSA) (CA-050-112) and the Chemise Mountain WSA (CA-050-111), in Humboldt and Mendocino Counties, California.

Alternatives analyzed were (1) All Wilderness, (2) No Action, which is continuation of present management, and for King Range, several partial wilderness alternatives. The preliminary recommendation for King Range is a partial wilderness of 21,200 acres; the preliminary recommendation for Chemise Mountain is continued management as a primative area.

DATES: Comments on the draft environmental impact statement are being solicited from public agencies and interested individuals and organizations. Written comments should be submitted by July 3, 1985 to the Ukiah District Manager, P.O. Box 940, Ukiah, California, 95482, in order to be considered in the final impact statement. The following public hearings on the adequacy of the EIS and on the preliminary wilderness recommendations are scheduled: (1) Red Lion Inn, 1929 4th Street, Eureka, California on May 8, 1985, beginning 7:00 pm, and (2) Redway School Auditorium, 344 Humboldt Avenue, Redway, California on May 9, 1985, beginning 7:00 pm.

ADDRESSES: Copies of the statement are available for review at all local libraries, and a limited number of copies can be obtained from the District Office in Ukiah, the Arcata Resource Area Office, 1585 J Street, Arcata, California, the California State Office, 2800 Cottage Way, Sacramento, California, and the Washington Office, 18th and C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, Planning and Environmental Coordinator, Ukiah District Office, P.O. Box 940, 555 Leslie Street, Ukiah, California, 95482, telephone (707) 462–3873.

Dated: March 22, 1985.

Edwin Kallea,

Acting District Manager.

[FR Doc. 7894 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Land Management

Availability of Draft Resource Management Plan and Environmental Impact Statement; Two Rivers Planning Area, Prineville District, OR

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of the availability of the Draft Two Rivers Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) for 324,705 acres of public land administered by BLM within Crook, Gilliam, Hood River, Jefferson, Sherman, Wasco and Wheeler Counties in North Central Oregon.

SUPPLEMENTARY INFORMATION: The issues and concerns addressed in the RMP/EIS are: riparian management, wildlife habital management, livestock grazing management, forestry, minerals management, land tenure and access, recreation management (excluding recreation river use and wilderness), and designation of special management areas.

The preferred alternative emphasizes the management, production and use of renewable resources on the majority of the public lands in the Two Rivers Planning Area. Management would be directed toward providing a flow of renewable resources from the public lands on a sustained yield basis while protecting or enhancing natural values. Management under the preferred alternative would resolve the identified issues as follows: (1) All riparian area along the Deschutes and John Day rivers and their major tributaries would be managed to full potential with a minimum of 60% of the vegetative potential to be achieved in 20 years. High mid-seral to low late-seral ecological condition would be managed for on upland vegetation except when wildlife needs would dictate otherwise; (2) forage requirements for deer and elk on public lands would be met. Upland vegetation would be managed to achieve maximum wildlife habitat diversity. All streams with fisheries or fisheries potential would be managed to achieve a good to excellent aquatic habitat condition; (3) forage available for livestock would remain at 17,778 AUMs in the short term and would be increased to 19,920 AUMs in the long term. Projects would be implemented as necessary to maintain current livestock grazing levels and to meet riparian and upland vegetation management objectives; (4) a total of 33,600 acres would receive additional study to determine whether they should be sold or otherwise disposed of. Approximately 1,000 acres of land would be sold annually; (5) there would be 10,715 acres of commercial forest land on which 1.41 million board feet per year sustained timber harvest level would be based; (6) public lands would remain open for exploration and development of mineral resources. No surface occupancy stipulations for oil and gas exploration and development would remain in effect on 132,000 acreas of public land to protect areas with high visual quality; (7) approximately 20,000 acres would be limited or closed to off road vehicle use.

Thirteen special management areas have been identified. They are as follows: The Island in the Cove Palisades State Park, The Deschute and John Day river canyons, the John Day River State Wildlife Refuge, the Horn Butte curlew area, the White River Wildlife Area, The Dalles Watershed, the Historic Spanish Gulch Mining District, the Governor Tom McCall Preserve at Rowena, two botanical/ scenic areas within the Columbia Gorge, the Oregon Trail Historic Sites at Fourmile Canyon and McDonald, and the Macks Canyon Archaeological Site. Under the preferred alternative, five areas with identified outstanding natural or cultural values would be designated as research natural areas, areas of critical environmental concern or outstanding natural areas. Other unique wildlife or ecological values would be maintained or enhanced. Designation of these special management areas under the Preferred Alternative would be as follows: The Island in the Cove Palisades State Park would be designated as a research natural area (250 acreas); the Horn Butte curlew area would be designated as an area of critical environmental concern (4,300 acres); the 12.5 acres of public land within the Governor Tom McCall Preserve at Rowena would be designated as a research natural area; the two botanical/scenic areas within the Columbia Gorge would be designated as outstanding natural areas (76 acres); the Historic Spanish Gulch Mining District would be designated as an area of critical environmental concern (335 acres).

Four alternatives are considered in addition to the preferred alternative. They are: Emphasize Commodity Production and Enhancement of Economic Benefits; Continue Existing Management-No Action; Emphasize Natural Values While Accommodating Commodity Production and Emphasize Natural Values. A discussion of the affected environment is summarized and the environmental consequences occurring from the preferred alternatives and each of the other alternatives are documented in the EIS.

DATES AND ADDRESSES: The public comment period will end July 1, 1985. Written comments may be submitted at any time during the comment period to the Prineville District Manager located at 185 E. Fourth Street, P.O. Box 550, Prineville, Oregon 97754.

Two informal public meetings have been scheduled to receive comments on the Draft RMP/EIS. They will be held at Condon, Oregon, on May 21, 1985, at 7:00 PM at the Gilliam County Courthouse and at Grass Valley, Oregon, on May 22, 1985, at 7:00 PM at the South Sherman Elementary School for individuals wishing to ask questions or to present comments.

All comments received during the comment period will be considered in preparation of the Proposed RMP/Final EIS.

FOR FURTHER INFORMATION CONTACT: Brian Cunninghame, Team Leader, Bureau of Land Management, Prineville District, telephone (503) 447–4115.

Dated: April 1, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85–8120 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–84–M

[OR 38000 (WA)]

Realty Action; Sale; Public Land in Okanogan County, WA

The following described land has been identified as suitable for sale under Section 203 of the Federal Land Policy and Management Act of 1976, (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713),

at no less than the appraised fair market value:

WILLAMETTE MERIDIAN, OKANOGAN COUNTY, WASHINGTON

Parcel No.	Legal Description	Acreage	Value
1	T. 36 N., R. 27 E., Sec. 5, Lot 4, and	4.55	$7,000
	Sec. 6, Lot 9	2.55	

Except for the provisions of section 203 of the FLPMA, the above described lands are hereby segregated from appropriation under the public land laws, including the mining laws.

The isolated parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another federal agency. There are no significant resource values which will be affected by this disposal. Legal access is available to the parcel by State Highway and country road. The sale is consistent with the BLM's planning for the land involved and the public interest would be served by offering this land for sale.

The patent issued will be subject to:

1. A reservation to the United States for ditches and canals (43 U.S.C. 945).

2. A reservation to the United States for all mineral rights (43 U.S.C. 1719).

3. Road and Powerline right-of-way OR 24275 (WA) granted to the Bonneville Power Administration.

4. Road rights-of-way for State Route 97 and Okanogan County Road No. 9437 authorized under R.S. 2477, (43 U.S.C. 932).

5. All other easements, encumbrances, reservations, and rights of record.

The parcel will be offered for sale, by non-competitive bid, to SAFECO Title Insurance Company on June 19, 1985. Direct Sale of the parcel is necessary to resolve boundary and title problems of adjacent landowners. Sale to the title company will facilitate the equitable disposition of the property among the several adjacent landowners involved.

The designated purchaser will be required to submit payment in the amount of 30% of the appraised value within 30 days of the offer; and, must pay the balance of the sale price within 180 days. Failure to submit payments within the time frames specified, shall constitute a waiver of the preference consideration and shall cancel the sale.

Detailed information concerning the sale, including the planning documents, environmental assessment, land report, and fair market appraisal, is available for review at the BLM, at the above address.

For a period of 45 days after the date of issuance of this notice, the public and interested parties amy submit comments to the Spokane District Manager, at the above address. Any adverse comments received will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Date of Issue: March 28, 1985.

Lee V. Larson,

Acting District Manager.

[FR Doc. 85-8149 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-33-M

[Group 704; 4-19952-ILM-940]

Filing of Plat of Survey; California

March 28, 1985.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Kern County

T. 30 S., R. 34 E.
T. 31 S., R. 34 E.
T. 32 S., R. 34 E.
T. 30 S., R. 35 E.
T. 31 S., R. 35 E.
T. 32 S., R. 35 E.

2. The following plats, under Group 704, California, were accepted February 12, 1985:

(a) Representing the dependent resurvey of the south and east boundaries, a portion of the west and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 2, 6, 20, 24, 26, and 32, Township 30 South, Range 34 East, Mount Diablo Meridian;

(b) Representing the dependent resurvey of a portion of the south, east, and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of sections 2, 10, 14, and 28, Township 30 South, Range 35 East, Mount Diablo Meridian;

(c) Representing the dependent resurvey of the north boundary, Township 32 South, Range 35 East, a portion of the east boundary, Township 31 South, Range 34 East, a portion of the east boundary, a portion of the subdivisional lines, Township 31 South, Range 35 East, and the survey of the subdivision of section 30, Township 31 South, Range 35 East, Mount Diablo Meridian;

(d) Representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of sections 14, 22, and 24, Township 32 South, Range 34 East, Mount Diablo Meridian.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-8158 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 804; 4-19952-ILM-940]

Filing of Plat of Survey; California

March 28, 1985.

1. This Plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Shasta County

T. 33 N., R. 7 W.

2. This plat, representing the dependent resurvey of portions of the west and north boundaries and subdivisional lines, and certain boundaries of mineral surveys, Township 33 North, Range 7 West, Mount Diablo Meridian, California, under Group No. 804, California, was accepted February 26, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-8159 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-40-M

Availability of Planning Criteria for an Amendment to the East Mendocino Planning Unit Management Framework Plan, CA

AGENCY: Bureau of Land Management: Interior Department.

ACTION: Notice of availability.

SUMMARY: Pursuant to 43 CFR 1610.4–2 notice is given that draft planning criteria for the amendment to the East Mendocino Management Framework Plan (MFP) are available for public review and comment.

DATES: Comments will be accepted from the public on or before May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Earle G. Curran, Wilderness Coordinator, Ukiah District Office, P.O. Box 940, Ukiah, California, 95482. Telephone (707) 462–3873.

SUPPLEMENTARY INFORMATION: This amendment to the East Mendocino MFP will evaluate wilderness suitablity of the Eden Valley Wilderness Study Area (WSA) (CA–050–214) and the Thatcher Ridge WSA (CA–050–212). The planning amendment will be done according to the study criteria specified in the Bureau of Land Management's Wilderness Study Policy.

Dated: March 25, 1985.

Van W. Manning,

District Manager.

[FR Doc. 85–8150 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–84–M

Notice of Realty Action—Sale CA 16504, Public Lands in Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 40 U.S.C. 1713), at no less than the appraised fair market value.

Legal Description

T. 32 N., R. 5 W., Mount Diablo Meridian
Sec. 15, Lot 19
Containing 0.89 Acre.

The above described land is being offered as a direct, noncompetitive sale to Annabell Pettis, owner of contiguous land and improvements inadvertently located on this tract. The improvements have been used as a principal place of residence by the family since the late 1950's. The parcel has been examined and found suitable for disposal under the criteria of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713, 1740). Sale of this difficult and uneconomic remnant tract would serve public objectives and the land is not suitable for management by another Federal department or agency. This action is consistent with Bureau and local plans.

It has been determined that Lot 19 contains no known mineral values, however, it does contain mining claims. Therefore, as a condition of sale, a $50.00 nonrefundable filing fee for conveyance of the mineral estate is required. The prospective surface and subsurface patentee is willing to accept defeasible title and this tract would be subject to existing mining claims. The miners would have the right to continue to prospect for, mine, and remove locatable minerals under applicable laws; and the right to obtain mineral patent to both the surface and mineral estates within the mining claims if valid discovery was made prior to the date of FLPMA patent, or the right to obtain patent to the mineral estate only if discovery is made subsequent to the date of FLPMA patent. Affected mining claims include: CAMC 129149, 129156, plus unserialized claim "XT–7".

Sixty (60) days after publication of this notice the subject parcel will be offered by direct sale to Annabell Pettis for the fair market value. Failure to accept this offer of sale within 15 days shall constitute a waiver of this preference consideration. The lands would then be offered for competitive sale until sold pursuant to 43 CFR 2711.3–1 procedures. An appraisal for this tract will be available prior to sale, in the Redding BLM office.

The patent, when issued, will be subject to the following reservations:

1. A right-of-way shall be reserved for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All valid existing rights and reservations of record.

3. The following mining claims of record: CAMC 129149, 129156, plus unserialized claim "XT–7".

4. Excepting and reserving to the United States S 3668, a right-of-way for transmission powerline and all appurtenances thereto, constructed by the United States, Bureau of Reclamation pursuant to Section 4 of subsection P of the Act of December 5, 1924, through, over, or upon the land herein described and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

Publication of this Notice of Realty Action in the **Federal Register** shall segregate the subject lands from the public land laws, including the mining laws. The segregative effect of this Notice of Realty Action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

DATE: For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the Area Manager, at the address below, or call (916) 246–5325.

ADDRESS: Detailed information concerning this Sale Notice including the land report, environmental documentation, and mineral report is available for review at the below listed address: Bureau of Land Management, Redding Area Office, 355 Hemsted Drive, Redding, California 96002.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 85–8153 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–84–M

[I–20390; I–20595; 4–20452–ILM]

Realty Action; Public Lands in Blaine County ID; Competitive Sales

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reality action, I–20390 and I–20595, competitive sales of public lands in Blaine County, Idaho.

SUMMARY: The following described lands have been examined, and through land use planning and public input have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976. Fair market value will be available no less than 30 days prior to the sale date. Only sealed bids will be accepted.

Parcel	Case file	Legal description	Acres
3	I–20390	T. 2 N., R. 18 E., Sec. 23: SW¼ NE¼	40.00
26	I–20595	T. 1 N., R. 22 E., Sec. 34: Lots 1,2	73.32

The lands when patented will be subject to the following reservations to the United States:

Parcel 3

1. Ditches and canals.
2. All minerals.

3. All valid existing rights and reservations of record.

Parcel 26

1. Ditches and canals.
2. Oil and Gas and Geothermal Resources.
3. All valid existing rights and reservations of record.

The lands are hereby segregated from all appropriation under the public land laws including the mining laws until sold or this sale is suspended.

Sealed bids must be received in this office no later than 10:00 A.M. on July 26, 1985. Bids for less than the fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value for Parcel 26 only. A $50 nonreturnable filing fee for processing such conveyance, along with one fifth of the full bid price must accompany each bid.

If neither parcel is sold at this time, the parcel will be offered the fourth Friday of each month at the same time and place until sold or sale is suspended.

DATE AND ADDRESSES: The sale offering will be held on July 26, 1985 at 10:00 A.M. in the Shoshone District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, bidding procedures, and other details can be obtained by contacting Mike Austin at (208) 886–2206 or writing to BLM, P.O. Box 2B, Shoshone, ID 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

Dated: March 29, 1985.

Charles J. Haszler,

District Manager.

[FR Doc. 85–8154 Filed 4–4–85 8:45 am]

BILLING CODE 4310–84–M

Sale of Public Lands; Power County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Lands in Power County, Idaho—Amendment.

SUMMARY: This publication will amend the original Notice of Realty Action published June 1, 1984 (49 FR 22889) and January 6, 1984 (49 FR 943) to reflect recent amendments to the 43 CFR Part 2710 Sale Regulations (49 FR 29112) and modifications to the bidding procedures for this sale.

The following described land will again be offered for sale using competitive (43 CFR 2711.3–1) or modified competitive bidding procedures (43 CFR 2711.3–2). These lands are hereby segregated from appropriation under the public land laws including the mining laws as provided by 43 CFR 2711.1–2(d).

BOISE MERIDIAN, IDAHO

Name	Legal description	Acres	Appraised fair market value	Type of bidding
Boundary (I–19670)	T. 7 S., R. 32 E., Sec. 29: Lot 4, Sec. 32: Lot 1	85.66	$4,900.00	Competitive
G.K. (I–19675)	T. 8 S., R. 32 E., Sec. 6: NE¼NW¼	40.00	3,000.00	Modified
Sunbeam (I–20813)	T. 8 S., R. 31 E., Sec. 12: W½E½, E½W½	320.00	16,000	Competitive

The patent when issued will contain the following reservations to the United States.

1. A right-of-way for ditches and canals constructed under the Act of August 30, 1890 (43 U.S.C. 945).

2. All oil and gas rights (43 U.S.C. 1719).

In addition, the patents will be subject to the following reservations.

1. All valid existing rights and reservations of record.

2. For parcel I–19670, a 60 foot (30 feet each side of center) road right-of-way to Power County for the County road crossing lot 1 of section 32, T. 7 S., R. 32 E., B.M. as shown on the 1971 Wheatgrass Bench, Idaho 7.5 minute Quadrangle map published by the U.S. Geological Survey.

Bidding Procedures: The designated or preference right bidder on parcel I–19675 will be George Kopp of American Falls, Idaho. This right is offered to protect existing uses and prevent inequities to this adjoining landowner. Failure to accept this offer to purchase within 15 days after the specified sale date or succeeding sale dates shall constitute a waiver of his preference right consideration.

Only sealed bids for no less than the appraised fair market value will be accepted. A bid will also constitute an application for the conveyance of the mineral rights except oil and gas. Each bidder must submit a fifty dollar ($50.00) (non-returnable for the high bidder) filing fee for the mineral conveyance (43 CFR 2720.1–2(c)). Each bid shall be accompanied by certified check, postal money order, bank draft, or cashiers check made payable to the Bureau of Land Management for 30 percent (30%) of the bid price. Failure to submit these sums shall result in disqualification of the bid.

DATES: The above described lands will be offered for sale on June 19, 1985. If unsold on this date, they will be re-offered the first Wednesday of each month for three consecutive months until sold or the sale is otherwise suspended. All sealed bids (with the parcel name and serial number CLEARLY marked in the lower left hand corner of the envelope) must be received by 1:30 p.m. on the designated sale dates at the Burley District Office.

ADDRESSES: Sealed bids will be accepted at the Burley District Office, Rt. 3, Box 1, 200 South Oakley Highway, Burley, Idaho, 83318. Additional information concerning the land, terms and conditions of the sale, and bidding instructions may be obtained from Terrance M. Costello, Deep Creek Area Manager, at the above address, or by calling (208) 678–5514.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this notice of realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sales would not be fully consistent with sections 203(g) of FLPMA or other applicable laws.

Dated: March 29, 1985.

John S. Davis,

District Manager.

[FR Doc. 85–8155 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–84–M

[Lease M 48088]

Lake County, MT; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease M 48088, Lake County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, February 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms of rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 88), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: March 28, 1985.

Judith I. Reed,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 85–8152 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–84–M

[C–36674K]

Realty Action; Competitive Sale of Public Land in Delta County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action C–36674K. Competitive sale of public land in Delta County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for disposal by sale under seciton 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value of $4,500.00

6th Principal Meridian, Colorado

T. 15 S., R. 95 W.,
Sec 33, N½NW¼NE¼SE¼, N½NW¼NE¼NE¼SE¼.

Containing 6.25 acres.

This parcel was offered unsuccessfully by direct sale to an adjacent landowner in December 1983 (48 FR 46629). It is now being offered for sale by unrestricted competitive bidding. Unauthorized farming of the parcel has occurred in past years, and settlement of the unauthorized activity is pending. Therefore, if the high bidder is the past user, patent to the parcel will not issue until the unauthorized use case has been closed. There is no legal access to the parcel.

The Federal Land Policy and Management Act requires that bidders must be citizens of the United States, 18 years of age or over, or in the case of a corporation, be subject to the laws of any state of the United States. Bids may be made by a principal (the one desiring to purchase the land) or his duly qualified agent. Each bid must be for all the land in a specified parcel.

Bidding will be sealed bid only. To be considered, bids must be received in the Montrose District Office on or before 10:00 a.m. the day of the sale which will be June 19, 1985. Bids accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the "Department of the Interior—Bureau of Land Management" for not less than one-fifth (20%) of the amount of the bid, must be in a separate sealed envelope within the transmittal envelope. The sealed envelope must be marked in the lower left-hand corner "Sealed Bid, Public Land Sale, Parcel Number C–36674K, Sale to be June 19, 1985." All sealed bids will be opened at 1:00 p.m. on the day of the sale. If two or more envelopes are received containing valid bids of the same amount for the same parcel, the successful bid shall be determined by drawing. The successful high bidder will be required to submit the remainder of the bid price in cash, by certified check, bank draft, money order, or any combination of these within 180 days after the determination of the highest bid.

Further, the successful high bidder will be required to file an application for the mineral estate except the oil, gas and coal of the parcel. This application must be filed with the Montrose District Office within 30 days of the sale date, and be accompanied by a $50.00 filing fee.

The patent issued for this land will contain a reservation to the United States of rights-of-way for the construction of ditches and canals (26 Stat. 391; 43 U.S.C. 945), a reservation of the oil, gas and coal with the right to explore, prospect for, mine, and remove under applicable law and regulations (43 U.S.C. 1719), and be subject to valid existing rights.

If the parcel does not sell at the June 19, 1985, sale the parcel will be offered the second Wednesday of every month beginning on July 10, 1985, and continuing until the parcel is sold or withdrawn. Detailed information regarding this sale, including the planning documents and Environmental Assessment, is available for review in the Montrose District Office.

DATE: For a period on or before May 20, 1985, interested parties may submit comments to the District Manager, Montrose District Office.

ADDRESS: Comments should be sent to: Montrose District Manager, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado 81401.

Any adverse comments will be evaluated by the District Manager, who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Donley M. Lotvedt,

Acting Montrose District Manager.

[FR Doc. 85–8246 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–JB–M

[M 59616]

Conveyance and Order Providing for Opening of Public Lands; Garfield County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of conveyance and order providing for opening of public lands in Garfield County, Montana—M 59616.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Managment Act of 1976, 43 U.S.C. 1701, et seq., to the operation of the public land laws. No minerals were transferred by either party in the exchange. This notice also informs the public and interested state and local govermental officials of the issuance of the conveyance document.

DATE: At 9 a.m. on May 20, 1985, the lands reconveyed to the United States shall be open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. The lands described in paragraph 1 below were segregated from settlement, sale, location and entry, including minig laws, but not from exchange, by the Notice of Realty Action publised in the **Federal Register** on February 23, 1984 (49 FR 6801). The segregation terminated on issuance of the patent on December 12, 1984.

ADDRESSES: For Further Information Contact: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), the following described surface estate was conveyed to Phipps Ranch, Inc., a Montana corporation:

Principal Meridian, Montana

T. 20 N., R. 33 E.,
Sec. 6, NE¼SW¼; and
Sec. 9, NW¼SW¼;
T. 18 N., R. 35 E.,
Sec. 1, lots 1 and 2, SE¼NE¼, NE¼SE¼.
T. 18 N., R. 36 E.,
Sec. 17, SE¼NE¼.
Aggregating 280.07 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following lands in Garfield County, Montana:

Principal Meridian, Montana

T. 20 N., R. 33 E.,
Sec. 6, lot 3.
T. 21 N., R. 33 E.,
Sec. 30, lots 1, 2, 3, 4 and E½NW¼.
Aggregating 280.74 acres.

3. The values of Federal public land and the non-Federal land in the exchange were appraised at $17,600 and $14,000, respectively. A $3,600 cash equalization payment was made to the United States.

4. At 9 a.m. on May 20, 1985, the lands described in paragraph 2 above that were conveyed to the United States will be open to the operation of the public land laws.

March 26, 1985.

John A Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 85-8248 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

TITLE: Woodcock Wing Collection Envelope

Abstract: The woodcock wing collection survey provides data on the annual population, distribution and chronology of the woodcock harvest, and hunter success. This information is compiled and analyzed and is used primarily by the Service to develop annual hunting regulations.

Service Form Number: 3-156a

Frequency: Annually

Description of Respondents: Woodcock hunters

Annual Responses: 10,000

Annual Burden Hours: 670

Service Clearance Officer: Authur J. Ferguson, 202-653-7499

Dated: March 18, 1985.

Don W. Minnich,

Acting Associate Director, Wildlife Resources.

[FR Doc. 85-8214 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Intent To Prepare an Environmental Impact Statement for Proposed Lease Sale of Cobalt-Rich Manganese Crusts in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On March 5, 1984, the Minerals Management Service (MMS) published a Notice of Intent to Prepare an Environmental Impact Statement (EIS) for a proposed lease sale of cobalt-rich manganese crusts on the Outer Continental Shelf in the **Federal Register** (49 FR 8089). The March 5 Notice pertained to portions of the Exclusive Economic Zone (EEZ) adjacent to the State of Hawaii. This Notice reopens the comment period and amends the March 5 Notice to include portions of the EEZ adjacent to Johnston Island. Comments are requested from interested parties concerning the EIS for portions of the EEZ adjacent to Johnston Island.

Additionally, scoping meetings relative to Johnston Island will be conducted on the Islands of Oahu, Kauai, Maui, and Hawaii during the week of May 6-10, 1985. Written and oral comments will be accepted at that time. Further notice on dates and times of these meetings will be locally published.

DATE: Comments and information in response to this request should be postmarked or hand-delivered no later than June 4, 1985.

ADDRESSES: Comments and information may be mailed or delivered to Program Director, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 280, Long Beach, California 90802.

For further information or for copies of a map of area of interest contact: Dr. John Wilshire, Department of Planning and Economic Development, Post Office Box 2359, Honolulu, Hawaii 96804; telephone (808) 548-6262; or Mr. Robert G. Paul, Office of Strategic and International Minerals, Minerals Management Service, 11 Golden Shore, Suite 280, Long Beach, California 90802; telephone (213) 548-2901

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior, in conjunction with the State of Hawaii, is considering the potential economic and environmental impact resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. On March 5, 1984, MMS announced in the **Federal Register** its intent to prepare an EIS on exploration and possible recovery of cobalt-rich manganese crusts. Public hearings were held in Honolulu, Hawaii, on April 30, 1984, and in Hilo, Hawaii, on May 1, 1984, to asist in determining the scope of the EIS. On August 28, 1984, a Call for Information was published in the **Federal Register** (49 FR 34099) to obtain information needed to delineate areas of interest to be addressed in the EIS.

The area surrounding Johnston Island, a possession of the United States, approximately 700 miles southwest of Honolulu, is a prime prospecting area for cobalt-rich manganese crusts. Recent samplings of thicknesses and grades of the manganese crusts near Johnston Island have produced results which are encouraging for possible commercial discoveries in the future.

A working group jointly formed by the State of Hawaii and the Federal Government has been considering the economic potential and the environmental impact related to ocean mining in portions of the EEZ near Hawaii. This working group recommended that the impact of ocean mining in portions of the EEZ adjacent to Johnston Island be considered concurrently with impacts due to ocean mining of portions of the EEZ adjacent to Hawaii.

Amendment to Previous Notice

The March 5, 1984, Notice of Intent to Prepare an Environmental Impact Statement (49 FR 8089) is amended to reopen the comment period until June 4, 1985 and to change the area of interest to also include an area adjacent to Johnston Island. The specific area is depicted on a map available from MMS or the Hawaiian Department of Planning and Economic Development at the addresses and telephone numbers listed above. Other information concerning the scope of the EIS is unchanged from the March 5, 1984, Notice.

Dated: March 29, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-8185 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Call for Information To Delineate Areas of Interest for Preparation of an Environmental Impact Statement on the Exploration for and Possible Recovery of Cobalt-Rich Manganese Crusts in the Exclusive Economic Zone Adjacent to Hawaii

ACTION: Expansion of applicable area for call for information.

SUMMARY: To delineate areas of interest to be addressed in an Environmental Impact Statement (EIS) on the exploration and possible recovery of cobalt-rich manganese crusts in the Exclusive Economic Zone (EEZ) surrounding the Hawaiian Archipelago, the joint Federal/State of Hawaii Task Force on cobalt-rich manganese crusts requested information on areas to b included in or excluded from the study (49 FR 34099). This Notice amends the Call for Information to reopen the comment period and to expand the applicable area to include portions of the EEZ adjacent to Johnston Island.

DATE: Comments and information in response to this request should be postmarked or hand-delivered no later than June 4, 1985.

ADDRESSES: Comments and information may be mailed or delivered to Program Director, Office of Strategic Minerals and International Programs, 11 Golden Shore, Suite 260, Long Beach, California 90802. If information of a priviledged or confidential nature is submitted, it should be enclosed in a separately sealed envelope and marked CONFIDENTIAL. This information will be exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552). Indications of interest are considered privileged and confidential. However, the names of persons or entities indicating interest or submitting comments will be of public record.

For further information or for copies of call for information map contact: Dr. John C. Wilshire, Department of Planning and Economic Development, Post Office Box 2359, Honolulu, Hawaii 96804, telephone (808) 548-6262; or Mr. Robert C. Paul, Office of Strategic Minerals and International Programs, 11 Golden Shore, Suite 260, Long Beach, California 90802; telephone (213) 548-2901

SUPPLEMENTARY INFORMATION:

Background

The Department of the Interior, in conjunction with the State of Hawaii, is considering the potential economic and environmental impacts resulting from the recovery of cobalt-rich manganese crusts found in the EEZ surrounding the Hawaiian Archipelago. On March 5, 1984, the Minerals Management Service (MMS) announced in the Federal Register (49 FR 8089) its intent to prepare an EIS on exploration and possible recovery of cobalt-rich manganese crusts. Public hearings were held in Honolulu, Hawaii, on April 30, 1984, and in Hilo, Hawaii, on May 1, 1984, to assist in determining the scope of the EIS. To further delineate the areas of interest for recovery of cobalt-rich manganese crusts, a Call for Information was published in the Federal Register on August 28, 1984 (49 FR 46509).

The area surrounding Johnston Island, a possession of the United States approximately 700 miles southwest of Honolulu, is a prime prospecting area for cobalt-rich manganese crusts. Recent samplings of thicknesses and grades of the manganese crusts near Johnston Island have produced results which are encouraging for possible commercial discoveries in the future.

A working group jointly formed by the State of Hawaii and the Federal Government has been considering the economic potential and the environmental impact related to ocean mining in portions of the EEZ near Hawaii. This working group recommended that the impact of ocean mining in portions of the EEZ adjacent to Johnston Island be considered concurrently with impacts due to ocean mining of portions of the EEZ adjacent to Hawaii.

Purpose of This Notice

The purpose of this Notice is to obtain information concerning the specific areas of the EEZ adjacent to Johnston Island for which there is interest in recovering cobalt-rich manganese crusts.

Amendment to Previous Notice

The August 28, 1984, Call for Information (49 FR 34099), as amended November 26, 1984 (49 FR 46509), is further amended to reopen the comment period until June 4, 1985 and to change the area of interest to also include an area adjacent to Johnston Island. The specific area is depicted on a Call for Information Map available from MMS or the Hawaiian Department of Planning and Economic Development at the addresses and telephone numbers listed above. All other conditions of the Call for Information are unchanged.

Dated: March 29, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-8186 Filed 4-4-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4131, Block 19, Green Canyon Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbon with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 28, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Officer located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the

Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 28, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–8151 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Katmai National Park and Preserve; Availability of Draft General Management Plan/Environmental Assessment, Land Protection Plan and Wilderness Suitability Review

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of avaiability of draft general management plan/environment assessment, land protection plan, and wilderness suitability review.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Katmai National Park and Preserve, Alaska. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, King Salmon, and local communities (see schedule below).

This document proposes management actions addressing issues and problems facing Katmai National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing natural and cultural resources and visitors uses, general development within and adjacent to the park/preserve, and National Park Service facilities and level of operations. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the resource values for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park/preserve for designation as wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability reveiw will be developed.

Dates and Addresses: Comments on the draft document should be received no later than July 8, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regional Office, 2525 Gambell Stree,t Rm 107, Anchorage, Alaska 99503–2892.

Public reading copies of the draft document will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240

Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892

Alaska Resources Library, Federal Building, 701 C Street, Anchoarage, AK 99502

Loussac Library, 524 W. 6th Avenue, Anchorage, AK 99502

Noel Wien Library, 1215 Cowles, Fairbanks, AK

Juneau Memorial Library, 114 W. 4th, Juneau, AK

Consortium Library, University of Alaska, 3211 Providence Ave., Anchorage, AK 99507

Katmai National Park and Preserve Headquarters, King Salmon, Alaska 99613

Elmer Rasmuson Library, University of Alaska, Fairbanks, AK.

Reading copies will also be available at community libraries in King Salmon, Naknek, and South Naknek and village council offices in Levelock and Igiugig.

Public Meetings: Public meetings will be held at the following locations:

Com-Ser-Fac, King Salmon, AK, Monday, April 29, 1985, 7:30 p.m.

Community Building, Levelock, AK, Wednesday, May 1, 1985, 1:00 p.m.

Community Building, Igiugig, AK, Thursday, May 2, 1985, 7:30 p.m.

Bristol Bay Borough Building, Naknek, AK, Tuesday, April 30, 1985, 7:30 p.m.

Recreation Hall, South Naknek, AK, Wednesday, May 1, 1985, 7:30 p.m.

Regional Office, National Park Service, 2525 Gambell Street, Rm 110, Anchorage, AK, Monday, June 3, 1985, 7:00 p.m.

A limited number of copies of the full document are available upon request from: Chief of Planning National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, (907) 271–4366.

Dated: March 28, 1985.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85–8206 Filed 4–4–85; 8:45 am]

BILLING CODE 4310–70–M

Wrangell-St. Elias National Park and Preserve; Availability of Draft General Management Plan/Environmental Assessment, Land Protection Plan and Wilderness Suitability Review

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of availability of a Draft General Management Plan/ Environmental Assessment, Land Protection Plan, and Wilderness Suitability Review.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Wrangell-St. Elias National Park and Preserve, Alaska. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, Fairbanks, and local communities (see schedule below).

This document proposes management actions addressing issues and problems facing Wrangell-St. Elias National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing natural and cultural resources and visitor uses, general development within and

adjacent to the park/preserve, and National Park Service facilities and level of operations. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the purposes for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park/preserve for designation as wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability review will be developed.

Dates and Addresses: Comments on the draft document should be received no later than July 8, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regional Office, 2525 Gambell Street, Rm 107, Anchorage, Alaska 99503–2892.

Public reading copies of the draft document will be be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240

Alaska Resources Library, Federal Building, 701 C Street, Anchorage, AK 99502

Alaska Regional Office National Park Service, 2525 Gambell Street, Anchorage, AK 99503-2892

Consortium Library, University of Alaska, 3211 Providence Ave., Anchorage AK 99507

Loussac Library, 524 W. 6th Avenue, Anchorage, AK 99502

Noel Wien Library, 1215 Cowles, Fairbanks, AK

Juneau Memorial Library, 114 W. 4th Juneau, AK

Wrangell-St. Elias National Park and Preserve Headquarters, Mile 105.5 Richardson Hwy. South of Glennallen, AK

Elmer Rasmuson Library, University of Alaska, Fairbank, AK.

Community libraries in Glennallen, Tok, Valdez, and Cordova.

National Park Service Ranger Stations at Chitina, Slana, and Yakutat.

Public meetings: Public meetings will be held at the following locations:

City Hall, Yakutat, AK, Monday, June 3, 1985, 7 p.m.

Regional Office, National Park Service, 2525 Gambell Street Rm 110 Anchorage, AK, Tuesday, June 4, 1985, 7 p.m.

High School, Rm 3, Glennallen, AK, Thursday, June 6, 1985, 7 p.m.

Duffy's Roadhouse, Slana, AK, Friday, June 7, 1985, 3 p.m.

Community Hall, Kenny Lake, AK Monday, June 10, 1985, 7 p.m.

Old Hardware Store, McCarthy, AK, Tuesday, June 11, 1985, 11 a.m.

Auditorium, Noel Wien Library, Fairbanks, AK, Wednesday, June 12, 1985, 6 p.m.

Tok Lodge, Tok, AK, Friday, June 14, 1985, 6 p.m.

Top Deck, Sheffield House, Valdez, AK, Saturday, June 8, 1985, 7 p.m.

Copies of a summary and a limited number of copies of the full document are available upon request from: Chief of Planning, National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, (907) 271–4366.

For further information contact Vaughn Baker at the above address and telephone number.

Dated: March 22, 1985.

Robert Peterson

Acting Regional Director, Alaska Region.

[FR Doc. 85–8205 Filed 4–4–85; 8:45 am]

BILLING CODE 4310-70-M

Denali National Park and Preserve; AK Interior.

AGENCY: National Park Service, Alaska Regional Office, Interior.

ACTION: Notice of availability of a draft general management plan/environmental assessment, land protection plan, and wilderness suitability review.

SUMMARY: This notice announces the availability of the draft general management plan/environmental assessment, land protection plan, and wilderness suitability review for Denali National Park and Preserve, Alaska. The document will be available for public review and comment for 90 days, and public meetings will be held in Anchorage, Fairbanks, Healy, and Talkeetna (see schedule below).

This document proposes management actions addressing issues and problems facing Denali National Park and Preserve for the next 10 years. There are three major elements within this document. The first element is the draft general management plan, which includes proposals for managing natural and cultural resources and visitor uses, general development within and adjacent to the park/preserce, and National Park Service facilities and level of operations. The draft general management plan also includes alternatives considered and environmental consequences of the proposal and alternatives. The second element is the land protection plan, which discusses nonfederal lands and other interests in and around the unit and methods to protect the purposes for which the unit was created. The third element is the wilderness suitability review which evaluates the suitability of nonwilderness lands within the park/preserve for designation as wilderness.

Following consideration of public comments, a final general management plan, land protection plan, and wilderness suitability review will be developed.

Dates and addresses: Comments on the draft document should be received no later than July 15, 1985, and should be submitted to: Regional Director, National Park Service, Alaska Regiohal Office, 2525 Gambell St., Rm 107, Anchorage, Alaska 99503–2892.

Public reading copies of the draft document will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets, NW., Washington, D.C. 20240

Alaska Resources Library, Federal Building, 701 C Street, Anchorage AK 99502

Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892

Consortium Library, Univesity of Alaska, 3211 Providence Ave., Anchorage, AK 99507

Loussac Library, 524 W. 6th Avenue, Anchorage, AK 99502

Noel Wien Library, 1215 Cowles, Fairbanks, AK

Juneau Memorial Library, 114 W. 4th, Juneau, AK

Denali National Park and Preserve Headquarters, McKinley Park, AK

Elmer Rasmuson Library, University of Alaska, Fairbanks, AK

Public meetings: Public meetings will be held at the following locations:

Monday, June 3, 1985, 6:30 P.M., Auditorium, Fairbanks North Star Borough Library, Fairbanks, AK

Tuesday, June 4, 1985, 7 P.M., Sugarloaf Room, Healy Community Center, Healy, AK

Thursday, June 6, 1985, 7 P.M., Gym, Talkeetna Elementary School, Talkeetna, AK

Wednesday, June 12, 1985, 7:30 P.M., Auditorium, Anchorage Historical and Fine Arts Museum, 121 WE. 7th Ave., Anchorage, AK

A limited number of copies of the full document are available upon request from: Chief of Planning, National Park

Service, Alaska Regional Office, 2525 Gambell St., Room 107, Anchorage, Alaska 99503–2892, (907) 271–4366.

For further information contact Linda Nevel at the above address and telephone number.

Dated: March 28, 1985.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85–8271 Filed 4–4–85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Delegation of Authority 135]

Assistant to the Administrator for Management, AID; Delegation of Authority

AGENCY: Agency for International Development, IDCA.

ACTION: Delegation of authority amendment.

SUMMARY: This document amends the authority delegated to the Controller by Delegation of Authority No. 135.

EFFECTIVE DATE: February 26, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce K. Birnberg, Accounting Systems Division, Office of Financial Management, Agency for International Development, 1875 Connecticut Avenue, Washington, D.C. 20523, (202) 632–1062.

The Agency for International Development is amending Delegation of Authority 135 Section 1 to read as follows:

1. Authority To Sign the Following

(a) * * *
(h) * * *

(i) Letters of commitment to U.S. banking institutions;

(j) Letters of commitment to suppliers; and

(k) Applications for letters of credit.

Dated: February 26, 1985.

James A. Norris,

Counselor to the Agency.

[FR Doc. 85–8247 Filed 4–4–85; 8:45 am]

BILLING CODE 8116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332–208, Flat Goods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)).

Summary of Proposals

(1) Number of forms submitted: two
(2) Title of forms: (1) Questionnaire for Producers of Flatgoods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers and (2) Questionnaire for Importers of Flat Goods of Manmade Fibers, Luggage of Manmade Fibers, and Handbags of Manmade Fibers
(3) Type of request: new
(4) Frequency of use: nonrecurring
(5) Description of respondents: U.S. producers and importers of flat goods of manmade fibers, luggage of manmade fibers, and handbags of manmade fibers
(6) Estimated number of respondents: 600
(7) Estimated total number of hours to complete the forms: 10,500
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from William Fry, the USITC agency clearance officer (tel. no. 202–523–4463). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, D.C. 20503, Attention: Ms. Francine Picoult, Desk Officer for the U.S. International Trade Commission (202–395–7231). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them pormptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to William Fry (United States International Trade Commission, 701 E. Street, NW, Washington, D.C. 20436).

Issued: April 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–8148 Filed 4–4–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Cargill Limited, 300 240 Graham Avenue P.O. Box 5900, Winnipeg, Manitoba R3C 4C5.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: (i) Mighty Peace Shipping & Transportation Ltd., a company incorporated under the laws of Canada.

(1) The parent corporation and address of its principal office is as follows:

Farm House Foods Corporation, 111 East Wisconsin Avenue, Suite 1900, Milwaukee, Wisconsin 53202
State of Incorporation—Wisconsin

(2) The wholly-owned subsidiaries which will participate in the operations, addresses of their respective principal offices and the States of their incorporation are as follows:

(a) Carpenter Cook Company, 1230 48th Avenue, Menominee, Michigan 49858
State of Incorporation—Michigan
(b) Don-Lou Artesian Wells, Ltd., Route 1, Hillview Road, Mishicot, Wisconsin 54228
State of Incorporation—Wisconsin
(c) Fairbank Farms, Inc., R.D. No. 1, Ashville, New York 14710
State of Incorporation—New York
(d) Farm House Wholesale Corporation, 2951 South First Street, Eldridge, Iowa 52748
State of Incorporation—Wisconsin
(e) Ben Kozloff, Inc., 35 East Wacker Drive, Chicago, Illinois 60601
State of Incorporation—Illinois
(f) Roberts Farm House Foods Corporation, 575 Cameron Street, Eau Claire, Wisconsin 54701
State of Incorporation—Wisconsin
(g) Seamark Corp., 64 Long Wharf, Boston, Massachusetts 02110
State of Incorporation—Massachusetts
(h) Worcester Quality Foods, Inc., 512 Southbridge, Worcester, Massachusetts 01610

State of Incorporation—
Massachusetts

1. Parent corporation and address of principal office: Fort Howard Paper Company, 1919 South Broadway, Green Bay, WI 54304.

2. Wholly owned subsidiaries which will participate in the operations, and address of their respective principal office:

(a) HAC Holding Corp., 1919 South Broadway, Green Bay, WI 54304
(b) Harmon Assoc., Corp. 86 Garden Street, Westbury, NY 11590
(c) Harco Trucking Corp., 86 Garden Street, Westbury, NY 11590
(d) Harmon International Paper Corp., 86 Garden Street, Westbury, NY 11590
(e) Maryland Cup Corporation, 10100 Reisterstown Road, Owings Mills, MD 21117.

James H. Bayne,
Secretary.

[FR Doc. 85-8181 Filed 4-4-85; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 30534]

Union Pacific Railroad Co., et al.; Trackage Rights Exemption

On March 6, 1985, Union Pacific Railroad Company (UP) and its lessor, Oregon-Washington Railroad & Navigation Company, filed a notice of exemption for trackage rights over a line of track of Burlington Northern Railroad Company (BN) between milepost 54.228 and milepost 56.69 in Grays County, WA.

UP operates over a line adjacent to the line of BN. UP's trackage at times is under water due to flooding. Because BN's parallel trackage is higher, it does not incur the same water problem. Operations over the BN trackage and construction of the necessary connections will permit continued service to all of the active industries that presently are being served by UP.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers and falls within the class of transactions identified at 49 CFR 1180.2(d)(5) that the Commission has found to be exempt under 49 U.S.C. 10505. See *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. See *D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: March 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,
Secretary.

[FR Doc. 85-8182 Filed 4-4-85; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-83X)]

Southern Pacific Transportation Co.; Abandonment Exemption; Los Angeles County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 the abandonment of 5.18 miles of line by Southern Pacific Transportation Company from milepost 498.00 at or near Cota, CA to milepost 503.184 at or near East Long Beach, CA, subject to labor protection.

DATES: This exemption is effective on May 6, 1985. Petitions for reconsideration must be filed by April 25, 1985. Petitions for stay must be filed by April 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. AB-12 (83X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and
(2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: March 29, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,
Secretary.

[FR Doc. 85-8321 Filed 4-4-85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment

Notice is hereby given that Halliburton Co. ("Halliburton;;) and Jet Research Center, Inc. ("JRC") have filed with the United States District Court for the Southern District of Texas a motion to terminate the Final Judgment ("Judgment") in *United States v. Borg-Warner Corporation, et al.*, Civil Action No. 13772; and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The Complaint in this case (filed on July 27, 1961) alleged that defendants unlawfully combined and conspired to restrain and to monopolize, and attempted to monopolize, interstate trade and commerce in jet perforating in oil well servicing and in jet charges and other supplies used in jet perforating. While most provisions of the Judgment, entered by the Court in Houston on October 22, 1962, are no longer effective, it still requires Halliburton and JRC to sell to any customer, upon request, any jet process products they manufacture that at any time since entry of the Judgment they have sold to any person other than a government or government agency.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public's interest. Copies of the Complaint, Final Judgment, Halliburton's and JRC's motion papers, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW, Washington, DC, 20530 (Telephone: (202) 633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of Texas, Houston Division, Federal Courthouse, 515 Rusk, Houston, Texas 77002. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be

received within sixty days and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, United States Department of Justice, Washingtonk DC, 20530 (Telephone: (202) 724–7966).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–8125 Filed 4–4–85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Final Judgment and Competitive Impact Statement; United States v. Anthony J. Bertucci Construction Company, Inc., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement (CIS) have been filed with the United States District Court for the Eastern District of Louisiana, in *United States of America v. Anthony J. Bertucci Construction Company, Inc., et al.*, Civil No. 78–3165, Section H.

The Complaint in this case alleged that the defendants and other co-conspirators engaged in a combination and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. 1), the substantial terms of which were: (1) To allocate among themselves bank stabilization jobs in six United States Army Corps of Engineers Districts; and (2) to submit collusive, noncompetitive and rigged bids on bank stabilization jobs in the Corps of Engineers Districts. Count Two of the Amended Complaint stated a claim under section 4A of the Clayton Act (15 U.S.C. 15A) for the recovery of damages allegedly suffered by the United States as a result of the defendant's illegal conspiracy. Count Three alleged that the defendants knowingly submitted false, fictitious or fraudulent claims to the Corps of Engineers, which were paid by the government without knowledge that these claims were false or fraudulent. Count Three demanded judgment against the defendants under 31 U.S.C. 231–233, for each false claim as well as double the damages suffered by the government. Counts Two and There have been settled with each defendant.

The proposed Final Judgment will terminate the proceedings with regard to Count One of the Complaint. The proposed Final Judgment would enjoin any direct or indirect renewal of the type of conspiracy alleged in Count One of the Complaint. To facilitate monitoring of complaince with the provisions relating to competitive bidding, the proposed Final Judgment would require each defendant to preserve all written price computations, estimating sheets, worksheets or similar calculations actually performed or used by it in connection with the preparation of a bid. The proposed Final Judgment also contains provisions to ensure that the necessary employees of each defendant are made aware of their and the defendant's obligations under the antitrust laws and the Final Judgment, and to prompt each defendant to establish or continue an antitrust compliance program. The proposed Final Judgment would give the Department of Justice access to the files and records of each defendant to ensure compliance.

Public comment is invited within the statutory 60-day waiting period. Such comments, and responses thereto, will be published in the **Federal Register** and will be filed with the Court. Comments should be directed to James A. Backstrom, Jr., Chief, Dallas Field Office, Department of Justice, 1100 Commerce Street, Room 8C8 Dallas, Texas 75242, telephone number (214) 767–8051.

Joseph H. Widmar,

Director of Operations Antitrust Division.

U.S. District Court for the Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. Anthony J. Bertucci Construction Company, Inc.; W. H. Carder, Inc.; Davis Construction Company; Ford Construction Company; Luhr Bros., Inc.; Markham & Brown, Inc.; Massman Construction Co.; McAlister Construction Company, Inc.; Midwest Construction Company; Patton-Tully Transportation Company; Pensacola Construction Co.; Peter Kiewit Sons' Co.; Pine Bluff Sand & Gravel Company; Souter Construction Co., Inc.; and Southern River Rock Co., Defendants.

[Civil No. 78–3165, Section H]

Filed: March 27, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act [15 U.S.C. 16], and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to the plaintiff and defendants in this or any other proceeding.

Dated:

For the Plaintiff: J. Paul McGrath, *Assistant Attorney General;* Joseph H. Widmar, James A. Backstrom, Jr., *Attorneys, Antitrust Division, United States Department of Justice.*

Mary Coleen T. Sewell, *Attorney, Antitrust Division, United States Department of Justice, 1100 Commerce Street, Room 8C6, Dallas, Texas 75242, (214) 767–8051.*

For the defendants: Charles K. Reasonover, *for Anthony J. Bertucci Construction Company, Inc.;* Robert G. Pugh, *for W. H. Carder, Inc. [Documentation in VI (A) limited to items on hand on December 13th, 1983.];* W. Stuart McCloy, Jr., *for Davis Construction Company;* Barrett Ashley, *for Ford Construction Company;* Bruce C. Rohde, *for Luhr Bros., Inc.;* Lehman Finch, *for Markham & Brown, Inc.;* Abraham E. Margolin, *for Massman Construction Co.;* J. Brooke Lathram, *for McAlister Construction Company, Inc.;* Bruce C. Rohde, *for Midwest Construction Company;* John D. Martin, Jr., *for Patton-Tully Transportation Company;* Abraham E. Margolin, *for Pensacola Construction Co.;* Jill Jelinek, *for Peter Kiewit Sons' Co.;* E. Harley Cox, Jr., *for Pine Bluff Sand & Gravel Company;* Steve G. Napper, *for Souter Construction Co., Inc.;* William E. McCurdy, Jr., *for Southern River Rock Co.*

U.S. District Court; for the Eastern District of Louisiana, New Orleans Division

United States of America, Plantiff, v. Anthony J. Bertucci Construction Company, Inc.; W. H. Carder, Inc., Davis Construction Company; Ford Construction Company; Luhr Bros., Inc.; Markham & Brown Inc.; Massman Construction Co.; McAlister Construction Company, Inc.; Midwest Construction Company; Patton-Tully Transportation Company; Pensacola Construction Co.; Peter Kiewit Sons' Co.; Pine Bluff Sand & Gravel Company; Souter Construction Co., Inc.; and Southern River Rock Co., Defendants.

[Civil No. 78–3165, Section H]

Filed: March 27, 1985.

Final judgment

Plaintiff, United States of America, having filed its Complaint herein on September 27, 1978, and its Amended Complaint on January 30, 1979, and plaintiff and defedants having reached separate agreements with regard to Counts Two and Three of the Amended Complaint, and plaintiff and defendants, by their respective attorneys, having consented to the making and entry of this Final Judgment, without trial or adjudication of any issue of fact or law

herein and without this Final Judgment constituting any evidence against or an admission by any party hereto with respect to any such issue;

Now, therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby,

Ordered, adjudged and decreed with respect to Count One of plaintiff's Amended Complaint as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Count One of the Amended Complaint states a claim upon which relief may be granted against each defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "Bank stabilization construction" means the construction, reconstruction, repair or maintenance of bank stabilization structures such as, but not limited to, the various types of dikes and revetments and similar construction—but excluding such principally earthen structures as levee set-backs and retention dikes—and such other related or allied construction performed in connection therewith.

(B) "Bank stabilization contractor" means any person engaged directly or indirecty in bank stabilization construction.

(C) "Bank stabilization job" means actual or prospective bank stabilization construction in accordance with plans and specifications, terms and conditions of any soliciation for bids issued, or contract awarded by the Corps of Engineers, and financed or to be financed in whole or in part by the federal government through the Corps of Engineers.

(D) "Corps of Engineers" means the Department of the Army, Corps of Engineers, an agency of the United States of America, including the office of the Chief of Engineers, and all constitutent Divisions and Districts.

(E) "Person" means any individual, partnership, firm, corporation, association or other business or legal entity.

III

The provisions of this Final Judgment apply to the defendants and to each of their officers, directors, partners, agents, employees, subsidiaries, affiliates, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, participating in, maintaining, furthering or enforceing, either directy or indirectly, any contract, agreement, understanding, arrangement, plan, combination or conspiracy with any other bank stabilization contractor to:

(A) Submit or solicit any noncompetitive, collusive or complementary bid for any bank stabilization job;

(B) Fix, determine, establish, maintain or stabilize the prices, or any term, condition, component or part thereof, for any bank stabilization job;

(C) Refrain from bidding on a bank stabilization job;

(D) Compensate, by any means, unsuccessful bidders or persons who refrained from bidding on a bank stabilization job;

(E) Allocate contracts or rotate or divide territories with respect to any bank stabilization job; or

(F) Communicate to, furnish to, or exchange with any bank stabilization contractor, either directly or through other persons, information concerning bids, or any term, condition, component or part thereof, or any bid range, with regard to any bid the defendant or other bank stabilization contractor has submitted, intends to submit, or is considering submitting on any bank stabilization job prior to the release of such information to the public or to the trade generally.

V.

Nothing in this Final Judgment shall:

(A) Apply to any prices, terms or other conditions of a *bona fide* sale, lease or rental offered by a defendant to any other bank stabilization contractor, or offered by any other bank stabilization contractor to a defendant in negotiating between that defendant and such other bank stabilization contractor any proposed purchase, sale, lease or rental of equipment, supplies or services used in bank stabilization construction; or

(B) Prohibit a defendant from negotiating concerning, entering into, participating in, or maintaining, with any other person, a *bona fide* joint venture or subcontract agreement whereby a single bid will be submitted, and the assets and facilities of each of the parties will be utilized for performing the bank stabilization job, provided that such joint venture or subcontract agreement does not represent compensation prohibited by section IV(D) of this Final Judgment, and provided further that any joint venture is denominated as a joint venture in the bid submitted.

VI

From the date of entry of this Final Judgment until September 1, 1991, each defendant shall:

(A) Preserve all written bid computations, estimates, worksheets and similar documents prepared or used by it in the preparation of any bid, joint venture or subcontract, whether submitted or not and whether successful or not, for any bank stabilization job let after September 27, 1978;

(B) Affix to every bid for a bank stabilization job let by the Corps of Engineers, a written certification, signed by an officer of such defendant, or officers of each company in the case of a joint venture, responsible for the preparation of bids, that such bid was not in any way the result, directly or indirectly, of any discussion, communication, agreement, understanding, plan or program, whether formal or informal, between such defendant and any bank stabilization contractor, except as specifically permitted by Section V of this Final Judgment. When a defendant enters into a subcontract agreement either before the submission of the bid, or subsequent thereto a written certification must be executed by the contractor and the subcontractor and submitted to the Corps of Engineers within ten (10) days after the subcontract is formally established.

VII.

Each defendant is ordered and directed to:

(A) Furnish, within thirty (30) days after the entry of this Final Judgment, a copy of this Final Judgment to each of its officers, directors and partners, and to each of its employees and agents who have any authority or responsibility for preparing, estimating, reviewing or submitting bids for bank stabilization jobs;

(B) Furnish a copy of this Final Judgment to each successor to such officers, directors, partners, employees or agents described in section VII(A) within thirty (30) days after such individual becomes employed or associated with defendant;

(C) Obtain a receipt from each person to whom a copy of this Final Judgment has been furnished, pursuant to sections VII(A) and (B), stating that the person has received and read the Final Judgment, and to maintain said receipts

so long as the Final Judgment is effective:

(D) Establish or continue a program for dissemination of, explanation of, and compliance with, this Final Judgment, for each officer, director, partner, employee and agent described in section VII(A), advising them of their obligations under this Final Judgment. This program shall include, at a minimum, an explanation of the Final Judgment and a statement of the company's compliance policy regarding it as well as an explanation of the criminal and civil penalties and other liabilities that may be imposed upon them and the defendant for violation of the antitrust laws.

(E) File with this Court and serve upon the plaintiff within sixty (60) days of the entry of this Final Judgment, and thereafter upon request by plaintiff for a period of five (5) consecutive years from the date of its entry, an annual affidavit detailing all steps defendant has taken since the prior affidavit to discharge its obligations under this Section VII and to include with said affidavit copies of all written directives issued during the prior year with respect to compliance with the terms of this Final Judgment.

VIII

Each defendant shall be required, prior to a sale or other disposition of all, or substantially all, of the assets used by it for bank stabilization construction, to submit a letter of intent to the plaintiff. This letter should include information sufficient to demonstrate that the proposed transaction is not a sham or a fraud intended to avoid the terms of this Final Judgment, nor a device to facilitate collusion among bank stabilization contractors. Within 15 days after defendant presents such a letter of intent to the plaintiff at the offices of the Antitrust Division in Dallas, Texas, the plaintiff shall indicate its approval or disapproval in writing to defendant. If plaintiff requires supplementary information concerning the proposed transaction, it shall request such information within seven days after receipt of said letter of intent and must indicate its approval or disapproval in writing within 15 days after receipt of the supplementary information. Failure to respond within the required time under either circumstance shall be deemed to be approval by the plaintiff. If plaintiff objects to the proposed transaction, the transaction shall not be consummated unless the acquiring person agrees to be bound by the terms of this Final Judgment, the transaction is approved by the Court, or plaintiff notifies defendant in writing that its objection has been withdrawn.

IX

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during office hours of such defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview under oath officers, employees and agents of such defendant, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendant's principal office, such defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested. No information or documents obtained by the means provided in this Section IX shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C) If, at the time information or documents are furnished by defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

X

This Final Judgment shall continue in effect from the date of its entry by this Court until September 1, 1991.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith and for the punishment of violation hereof.

XII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge.

U.S. District Court, for the Eastern District of Louisiana, New Orleans Division

United States of America, Plaintiff, v. Anthony J. Bertucci Construction Company, Inc.; W. H. Carder, Inc.; Davis Construction Company; Ford Construction Company; Luhr Bros., Inc.; Massman Construction Co.; McAlister Construction Company, Inc.; Midwest Construction Company; Patton-Tully Transportation Company; Pensacola Construction Co.; Peter Kiewit Sons' Co.; Pine Bluff Sand & Gravel Company; Souter Construction Co., Inc.; and Southern River Rock Co., Defendants.

[Civil No. 78-3165, Section H]

Filed: March 27, 1985.

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. 16(d)-(h)], the United States of America hereby submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I—Nature and Purpose of the Proceeding

On September 27, 1978, the government filed a three-count civil complaint against the defendants herein as well as against Gibbar Bros., Inc. and Markham and Brown, Inc. which were dismissed from the civil case by mutual agreement in June 1981 and October 1984 respectively. An amended complaint, filed on January 30, 1979, alleged the same counts against the defendants and specified the amount of monetary damages allegedly suffered by

the United States from the defendants' conduct.

The first count of the amended complaint charged that, from around 1964 until approximately September 1978, the defendants and other co-conspirators engaged in a combination and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. 1), the substantial terms of which were: (a) To allocate among themselves bank stabilization jobs in the New Orleans, Vicksburg, Memphis, St. Louis, Kansas City and Omaha United States Army Corps of Engineers Districts; and (b) to submit collusive, noncompetitive and rigged bids on bank stabilization jobs in the six aforementioned Corps of Engineers Districts. Count One of the amended complaint sought a judgment declaring that the defendants had engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also sought an order enjoining the defendants, and their respective officers and employees, from directly or indirectly continuing or renewing the unlawful conspiracy.

Count Two of the amended complaint stated a claim under Section 4A of the Clayton Act (15 U.S.C. 15A), for the recovery of damages in the amount of $11,970,403 allegedly suffered by the United States as a result of defendants' illegal conspiracy. The government claimed that the United States, through its Corps of Engineers, had to pay substantially higher prices for bank stabilization jobs during the period of September 27, 1978, through September 27, 1979, because of the defendants' bid rigging.

In Count Three of the amended complaint, the government alleged that, between September 27, 1972, and September 27, 1978, the defendants knowingly sumitted 1,253 payment claims to the Corps of Engineers totalling approximately $192,663,212, which were false, fictitious or fraudulent, and which the government paid without knowledge that these claims were false or fraudulent. The government alleged that the claims were false or fraudulent because the consipracy resulted in the defendants being awarded bank stabilization contracts on the basis of Engineers, in that the defendants attested that the bids were submitted competitively and without collusion when they knew such was not the case. Count Three of the amended complaint demanded judgment against the defendants [under 31 U.S.C. 231–233, commonly known as the False Claims Act] for $2,000 for each of the 1,253 claims as well as double the $23,119,585 damages suffered by the government in the form of higher bank stabilization prices that resulted from the defendants' unlawful conspiracy. The claim alleged in Count Three were asserted as alternatives to those alleged in Count Two to the extent that any transaction complained of gave rise to liability under both counts.

Counts Two and Three of the amended complaint have been compromised by the government in a series of separate settlements with each of the defendants between March 27, 1979 and July 1981. In all cases, the damages recovered, which totalled $7,179,492, were paid in full satisfaction of Count Two of the amended complaint, Count Three being dismissed as part of the settlement agreement. The disposition of these counts with regard to each party to the proposed Final Judgment are set forth below:

Defendant	Damages
Anthony J. Bertucci Construction Company, Inc.	$550,000
W.H. Carder, Inc.	78,111
Davis Construction Company	360,000
Ford Construction Company	275,000
Luhr Bros., Inc.	1,350,000
Markham & Brown, Inc.	1,006,000
Massman Construction Co.	721,000
McAlister Construction Company, Inc.	450,000
Midwest Construction Company	94,270
Patton-Tully Transportation Company	420,000
Pensacola Construction Co.	665,000
Peter Kiewit Sons' Co.	300,000
Pine Bluff Sand & Gravel Co.	800,000
Souter Construction Co., Inc.	78,111
Southern River Rock Co.	30,000

In some instances, provision was made in the Partial Settlement Agreement for payment of the damages in yearly installments until October 1, 1983. In these settlement agreements the parties also agreed to work for a mutually acceptable resolution of Count One of the amended complaint.

Entry by the Court of the proposed Final Judgment will terminate the proceedings with regard to Count One of this action, except insofar as the Court will retain jurisdiction for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish alleged violations of any of its provisions.

On September 27, 1978, the day the original civil complaint was filed, a grant jury in the Eastern District of Louisiana returned a fifty-four count indictment against the fourteen companies which are parties to this proposed Final Judgment, as well as against Gibbar Bros., Inc. and Markham and Brown, Inc., and, in addition, against ten of the principal officials of some of the defendant companies. Count One of the indictment charged the defendants with a felony violation of the Sherman Act (15 U.S.C. 1) for engaging in a combination and conspiracy, the substantial terms of which were to allocate bank stabilization jobs among themselves and to submit collusive, noncompetitive and rigged bids on bank stabilization jobs to the U.S. Army Corps of Engineers. Counts Two through Thirty of the indictment charged a number of the criminal defendants with mail fraud in violation of 18 U.S.C. 1341, and the remaining twenty-four counts alleged violations of 18 U.S.C. 1001 (False Statements).

A number of the criminal defendants entered into plea agreements with the government disposing of the charges. At the time of sentencing, the government ordinarily refrained from making sentencing recommendations. The Court imposed a three-year suspended sentence with three years of supervised probation on most of the individual defendants; in addition, each defendant was ordered to engage in public service one day per week for two years and was fined between $5,000 and $36,000. Pursuant to the plea agreements, the agreed fines for the corporate defendants ranged from $25,000 to $200,000.

Four individuals and three defendant corporations, Anthony J. Bertucci Construction Company, Ford Construction Company and Luhr Bros. Inc., went to trial in May 1979 on the mail fraud and false statement counts, which the Court had earlier severed from the Sherman Act count. The jury rendered verdicts of guilty on all counts as to these defendants on May 24, 1979. At sentencing, the Court levied fines of from $40,000 to $50,000 on the corporate defendants and sentenced the individual defendants in the same manner described earlier, except that the fines levied ranged from $14,500 to $48,000. No separate trial was held on the Sherman Act count, as all defendants had entered pleas of guilty by the time trial was scheduled to begin in May 1981. Fines were imposed ranging from $25,000 to $200,000.

II—Description of the Alleged Violation

The defendants in this case are bank stablization contractors who do contracting work along the Mississippi, Missouri and Red Rivers. Their work consists primarily of building and maintaining dikes, revetments and associated structures. Dikes, though of numerous kinds and designs, are typically rock structures which extend at right angles into a river to control its flow, to prevent undesirable channels and to encourage the river to maintain a desired depth and width; revetments are a form of retaining wall, usually made of

stone, which prevents erosion and helps the river stay in desired alignment.

All bank stabilization work is commissioned by the United States Army Corps of Engineers, which determines where stabilizing structures are needed, what type of work will best suit the need and when the work must be done. To commission and supervise work on the rivers, the Corps operates from six United States Army Engineer Districts: New Orleans, Vicksburg, Memphis, St. Louis, Kansas City and Omaha. Each district has a chief engineer responsible for preparing plans and specifications for jobs within its control, advertising those jobs and finally awarding the work to the lowest qualified bidder, pursuant to sealed, competitive bidding.

All bank stabilization work is competitively advertised and bid, pursuant to federal law and regulations. This procedure ensures that all interested and qualified companies are made aware of the work and that the award is made at the lowest cost to the government, consistent with performance standards. Normally, about thirty days prior to the bid opening, plans and specifications for the project and an invitation to bid are sent to interested firms. Before the bid opening, the Corps makes a detailed estimate of what the construction of the job, excluding profit, should cost; but the Corps does not reveal this estimate until all bids are opened, and the award is made. A bank stabilization contractor wishing to submit a bid does so by completing, executing and forwarding to the Corps of Engineers a standard "Bid Form" ("Standard Form 21") provided by the Corps. By executing and returning the "Bid Form", a bank stabilization contractor provides the Corps of Engineers with its proposed price for completing a job and certifies that the amount was arrived at independently and without consulting or agreeing with any other contractor.

The Contractor who submits lowest bid is awarded the contract, except if the lowest bid exceeds the Corps estimate by twenty-five percent, in which cae all bids are rejected, and the job is readvertised.

There are seventeen companies that perform work on the Mississippi, Missouri and Red Rivers, and sixteen were made defendants in the amended complaint. Most of the companies have either been awarded, or bid on, work in several Corps districts, and a few perform or bid on work in all the districts. From September 27, 1974, through September 27, 1978, the United States of America made payments totaling approximately $99,753,360 to these sixteen defendants for bank stabilization work.

The government was prepared to provide that bib rigging on Corps jobs began as long ago as the early 1960's in some districts and was common practice in all other districts by the late 1960's or early 1970's. The government further was prepared to prove as follows: The bid rigging was accomplished by the principals of the defendant companies through various types of conversations; sometimes the illegal discussions took place in meetings, cometimes in telephone calls, and at other times both types of communications were utilized; meetings took place in cities such as Memphis, Omaha, Kansas City and St. Louis, the actual sites of the meeting depending on the district and the river involved in the proposed project; in some districts, the discussions took place annually, after the Corps announced all upcoming work for the year; in other districts discussions were on an as-needed basis; and in these meetings or telephone calls and other encounters, bank stabilization jobs would be discussed, the low bidder would be selected, information would be exchanged concerning bid amounts or bid ranges, and the defendants would agree to submit intentionally high bids, or to withhold bids, on projects on which another defendant had been designated as the low bidder. The government would have been prepared to demonstrate that, in most cases, by the time the Corps received all sealed bids, the winning contractor had already been selected.

The amended complaint alleged that the combination and conspiracy had the following effects, among others:

(a) Price of bank stabilization jobs were fixed, maintained, and established at artificial and noncompetitive levels;

(b) Competition in the construction of bank stabilization jobs was restrained, suppressed and eliminated; and

(c) The United States and the Corps of Engineers were denied the benefits of free and open competition in contracting for the performance of bank stabilization jobs.

III —Explanation of the Proposed Final Judgment

The government and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation provides that there is no admission by any party with respect to any issue of fact or law. Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that it is in the public interest.

A. *Prohibited Conduct.* The proposed Final Judgment would enjoin any direct or indirect renewal of the type of conspiracy alleged in Count One of the amended complaint. Specifically, Paragraph IV of the proposed Final Judgment enjoins any defendant from entering into, or adhering to, any agreement or plan with another bank stabilization contractor to submit or to solicit any noncompetitve, collusive or complementary bid for any bank stabilization job, or to refrain from bidding on such a job, or to fix or determine any bid, including any part of a bid, submitted for any bank stabilization job. Any agreement or plan between a defendant and a bank stabilization contractor to allocate contracts or to rotate or divide markets or territories with respect to bank stabilization jobs is also forbidden. The proposed Final Judgment also would prohibit any agreement by a defendant to compensate unsuccessful bidders or those who refrain from bidding on a bank stabilization job, whether the compensation is money, a subcontract or some other thing of value. Paragraph IV further prohibits any agreement or plan to communicate to, or exchange with, any bank stabilization contractor information concerning bids, or any term, condition, component or part thereof, with regard to any bid the defendant or other bank stabilization contractor has submitted, intends to submit or is considering submitting.

There are limited expections to the prohibitions contained in Paragraph IV, particularly with regard to the exchange-of-information provisions. First, as Paragraph V(A) states, the Final Judgment is not applicable to a *bona fide* sale, lease, purchase or rental of equipment or supplies used in bank stabilization construction between a defendant and any other bank stabilization contractor. Second, the Final Judgment would not prohibit a *bona fide* joint venture arrangement or subcontract agreement between a defendant and any other person, so long as such *bona fide* joint venture or subcontract is not a subterfuge to avoid the injuction against compensation unsuccessful bidders or nonbidders on bank stabilization jobs. (See Paragraph V(B).)

B. *Required Conduct.* To facilitate monitoring of compliance with the provisions relating to competitive bidding, under Paragraph VI each defendant would be required, until September 1, 1991, to perserve all written price computations, estimating

sheets, worksheets and similar calculations actually performed or used by it in connection with the preparation of a bid, whether submitted or not and whether successful or not, for any bank stabilization job.

Paragraph VII of the proposed Final Judgment contains several provisions to ensure that the necessary employees of each defendant are made aware of their and the defendant's obligations under the antitrust laws and the Final Judgment and to prompt each defendant to establish or continue an antitrust compliance program to prevent future bid rigging. In addition, each defendant would be required, within 30 days, to serve a copy of the Final Judgment on each of its directors and officers, and upon each of its employees or agents who have any responsibility or authority for preparing, estimating, reviewing or submitting bids for bank stabilization jobs. Each defendant also would be required to serve a copy of the Final Judgment on new employees within 30 days of their being employed by the defendant. Each defendant would be obligated to obtain and keep receipts reflecting the service of the Final Judgment on corporate personnel and to establish a reasonable antitrust compliance program to advise those persons having duties in regard to the establishment or estimating of bids or parts of bids for bank stabilization jobs of the company's obligations under the Final Judgment and the criminal and other penalties for violation of the Final Judgment.

Paragraph VIII would require each defendant to submit a letter of intent to the plaintiff providing information sufficient to demonstrate that a proposed sale or disposition of all or substantially all of a defendant's assets that are used in bank stabilization construction is not for the purpose of avoiding the terms of the Final Judgment. The plaintiff has fifteen (15) days in which to indicate in writing its approval or disapproval of the proposed transaction. The plaintiff has seven (7) days in which to request supplementary information concerning the transaction. If the plaintiff objects to the proposed transaction, the transaction may not proceed unless the acquiring person agrees to be bound by the terms of the Final Judgment, the Court approves the transaction or the plaintiff withdraws its objection.

Under Paragraph IX of the proposed Final Judgment, the Department of Justice would be given access to the files and records of each defendant in order to examine such records for compliance. The Department also would be granted access to interview employees of each defendant to determine whether it and its employees are complying with the Judgment. Suitable provisions protecting the confidentiality of defendant's records are incorporated in the proposed Final Judgment.

The proposed Final Judgment is applicable to each of the defendants and to its affiliates, subsidiaries, officers, directors, partners, employees and to all persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

The Court would retain jurisdiction of this case for the purpose of ensuring compliance with the Final Judgment.

IV—Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act [15 U.S.C. 15] provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney fees. As the United States Army Corps of Engineers, an agency of the United States Department of Defense, was the only purchaser of bank stabilization construction in this case, there are no potential private plaintiffs who have suffered any equitable or monetary damage as a result of the alleged violation. Hence, there appear to be no potential private litigants who have standing to sue under section 4 of the Clayton Act in this matter.

V—Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments to James A. Backstrom, Jr., Department of Justice, Antitrust Division, Room 8C6, 1100 Commerce, Dallas, Texas 75242, within the 60-day period provided by the Act. The comments and the government's responses to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry should the government determine that some modification of the Final Judgment is necessary. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Final Judgment.

VI—Alternatives to the Proposed Final Judgment

The relief in the proposed Final Judgment is designed to prevent a recurrence of any of the activities alleged in the amended complaint. The prohibitory language of the Final Judgment will ensure that all bidders' decisions on bank stabilization jobs are made independently by the individual competitors. The proposed Final Judgment contains sufficient record-keeping requirements and access to defendants' records to allow the Department to adequately monitor defendants' activities in the future.

Accordingly, it is the view of the Department of Justice that the proposed Final Judgment is fully adequate to prevent any future antitrust violations by the defendants. Disposition of the case without additional litigation, the only alternative to the proposed Final Judgment considered by the Department, is appropriate in view of the fact that the proposed Final Judgment includes the form and scope of relief equal to that which might have been obtained after a full hearing on the issues at trial.

VII—Determinative Documents

Attached as Exhibits 1 through 14 are Agreements of partial Settlement between the parties affecting Counts I and II of the amended complaint. The government considers these documents determinative in formulating the proposed Final Judgment.

Dated:

Mary Coleen T. Sewell, *Attorney, U.S. Department of Justice, Antitrust Division, 1100 Commerce, Room 8C6, Dallas, TX 75242.*

[FR Doc. 85-8126 Filed 4-4-85; 8:45 am]

BILLING CODE 4410-01-M

The National Cooperative Research Act of 1984; United Technologies Corporation and Toshiba Corporation

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), Toshiba Corporation has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) that United Technologies Corporation and Toshiba Corporation have entered into a joint venture in the form of a Maryland close corporation, International Fuel Cells Corporation, and (2) the nature and

objectives of International Fuel Cells Corporation related to research and development. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The shareholders of International Fuel Cells Corporation are:

United Technologies Corporation, United Technologies Building, Hartford, Connecticut 06101 (through its Power Systems Division, Fuel Cell Operations); and

Toshiba Corporation, 1–1, Shibaura 1-Chome, Minato-ku, Tokyo 105, Japan (through its Heavy Apparatus Group)

International Fuel Cells Corporation will engage in research and development in the following areas:

1. Developing and testing basic techniques, new designs, and manufacturing technologies for the production of fuel cell power plants and fuel cell systems;

2. Extending into practical applications the scientific and technical findings and theories related to fuel cell power plants and systems including the experimental production and testing of such power plants and systems; and

3. Collecting, exchanging, and analyzing research related to and possible licensing of fuel cell power plants and systems and their applications.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–8121 Filed 4–4–85; 8:45 am]

BILLING CODE 4410–01–M

United States v. Standard Oil Company (New Jersey), et al., Proposed Termination of Final and Supplemental Judgments

Notice is hereby given that Exxon Corporation ("Exxon"), as Standard Oil Company (New Jersey) is now called, has filed with the United States District Court for the District of New Jersey a motion to terminate the Final and Supplemental Judgments in *United States* v. *Standard Oil Company (New Jersey) et al.*, Civil No. 2091. The Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgments, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on March 25, 1942) alleged that defendants had conspired with I.G. Farbenindustrie Aktiengesellschaft ("I.G. Farben"), a German chemical company, to restrain interstate and foreign commerce in petroleum products and chemicals by entering into cartel agreements to allocate products between them and to use their combined present and future patents to prevent others from manufacturing and selling oil and chemical products. The Final Judgment (entered on March 25, 1942) and Supplemental Judgment (entered on April 7, 1943) require Exxon to discontinue all existing relations and agreements with I.G. Faren, set forth numerous provisions to ensure the competitive licensing and sublicensing of Exxon's patents, and enjoin Exxon from engaging in a wide range of activities to prevent further anticompetitive conduct.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgments would serve the public interest. Copies of the complaint and Judgments, Exxon's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone (202) 633–2481), and at the Office of the Clerk of the United States for the District Court of New Jersey, U.S. Post Office in Court House Building, Federal Square, Newark, New Jersey 07102. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the propoosed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Melanie Steward Cutler, Chief, Energy Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone (202) 724–6410).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–8124 Filed 4–4–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Archaeology/Physical Anthropology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/Physical Anthropology.

Date and Time: April 22–23, 1985, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 628.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director for Anthropology, Room 320, National Science Foundation, Washington, DC 20550, (202) 357–7804.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

April 2, 1985.

[FR Doc. 85–8200 Filed 4–4–85; 8:45 am]

BILLING CODE 7555–01–M

Panel for Political Science; Advisory Panel for Social and Economic Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–46, as amended, the National Science Foundation announces the following meeting:

Name: Panel for Political Science.

Date and Time: April 22 & 23, 1985, 9:00 a.m. to 5:00 p.m.

Place: Room 1242–B, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact: Drs. Frank P. Scioli, Jr. and Lee P. Sigelman, Program Directors, Social and Economic Science, Room 312, National Science Foundation, Washington, D.C 20550. Telephone (202) 357–7534.

Purpose of Subcommittee: To provide advice and recommendations concerning Political Science research.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 2, 1985.

[FR Doc. 85-8208 Filed 4-4-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regional State Liaison Officers' Meeting

On April 30 and May 1, 1985, the Nuclear Regulatory Commission (NRC) will sponsor a regional meeting with the Governor-appointed State Liaison Officers from Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington. The subjects which will be discussed include emergency response, waste management and regional issues as well as other items of mutual regulatory interest.

The meeting will be conducted at the NRC Region V Office, 1450 Maria Lane, Walnut Creek, California. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. until 5:30 p.m. on Tuesday, April 30 and from 8:30 a.m. until 12:30 p.m. on Wednesday, May 1, 1985.

Questins regarding this meeting should be directed to Dean Kunihiro at (415) 943-3714.

Dated at Walnut Creek, California this 29th day of March 1985.

For the Nuclear regulatory Commission.

John B. Martin,

Regional Administrator, Region V.

[FR Doc. 85-8212 Filed 4-4-85; 8:45 am]

BILLING CODE 7590-01-M

[License Nos. SNM-362, SMB-405, 08-00566-05, 08-00566-10, and 08-00566-12; Docket No. 70-398]

Finding of No Significant Impact; Renewal and Consolidation of Materials; U.S. Department of Commerce, National Bureau of Standards, Gaithersburg, MD

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal and consolidation of Materials License Nos. SNM-362, SMB-405, 08-00566-05, 08-00566-10, and 08-00566-12 for the continued operation of the National Bureau of Standards facility at Gaithersburg, Maryland.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the renewal and consolidation of the above Materials Licenses. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed license renewal action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment (NUREG-1130) is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of NUREG-1130 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfields, Virginia 22161.

Dated at Silver Spring, Maryland, this 27th day of March 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-8210 Filed 4-4-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-528]

Arizona Public Service Co., et al.; Order

In the matter of Arizona Public Service Co., Salt River Project Agricultural Improvement and Power District, Southern California Edison Co., El Paso Electric Co., Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

The Arizona Public Service Company, et al.[1] (the licensees and co-owners) are the holders of Facility Operating License No. NPF-34, dated December 31, 1984, which authorizes operation of the Palo Verde Nuclear Generating Station, Unit 1 at 3800 megawatts thermal. However, pending Commission approval, operation is restricted to five percent of rated power (190 megawatts thermal). One of the utilities included as a co-owner on the license is the Los Angeles Department of Water and Power.

The Los Angeles Department of Water and Power (LADWP) was identified as a co-owner for the facility in Amendment No. 5 to the Palo Verde Final Safety Analysis Report (FSAR) dated August 1981. Amendment No. 5 to the FSAR states that LADWP will acquire an "* * * undivided ownership interest as a tenant in common with the other Participants in the Palo Verde Nuclear Generating Station, including each of Palo Verde Units 1, 2 and 3, at rush time as Palo Verde Unit 1 is placed into commerical operation * * *"

Because LADWP is not offically a co-owner at this time, Facility Operating License No. NPF-34 is amended to include the following footnote on page 1 of the license:

Los Angeles Department of Water and Power will be included as an owner in this license on the date it officially acquires an ownership interest in the facility which is expected to occur shortly after Palo Verde Unit 1 achieves commerical operation.

Dated at Bethesda, Maryland, this 29th day of March, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8211 Filed 4-4-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

Robert McInerney, Petitioner Ranchita, CA; Order Accepting Appeal and Establishing Procedural Schedule

[Order No. 607; Docket No. A85-17]

Issued: April 1, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

[1] The other owners are: Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority.

Docket Number: A85–17.

Name of Affected Post Office: Ranchita, California 92066 (Community Post Office).

Name of Petitioner: Robert McInerney.

Type of Determination: Discontinuance of community post office.

Date of Filing of Appeal Papers: March 25, 1985.

Categories of Issues Apparently Raised:

Whether opportunity to be heard or other procedural steps to which Petitioner claims entitlement under 39 U.S.C. 404(b), were improperly omitted.[1]

Effect on adequacy of postal services of the discontinuance of the facility [39 U.S.C. § 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders: The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Mar 25, 1985	Filing of Petition
Apr 1, 1985	Notice and Order of Filing of Appeal
Apr 19, 1985	Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
Apr 29, 1985	Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)]
May 20, 1985	Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
June 4, 1985	(1) Petitioner's Reply Brief should Petitioner choose to file one [*see* CFR 3001.115(d)].
June 11, 1985	(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
July 23, 1985	Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 85–8249 Filed 4–4–85; 8:45 am]

BILLING CODE 7715-01-M

[1] *See* PRC Op. A83–30, Knob Fork, West Virginia. *Compare* PRC Op. A82–10, Oceana Station, Virginia.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85–3–85; Docket 43006]

Application of Pan Aviation, Inc. for Certificate Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order instituting fitness investigation, Order 85–3–85, Docket 43006.

SUMMARY: The Department is instituting the *Pan Aviation, Inc. Fitness Investigation* to determine if Pan Aviation is fit to provide interstate and overseas scheduled air transportation of property and mail and foreign scheduled air transportation of property and mail between Miami, Florida and Basel, Switzerland.

DATES: Persons wishing to file requests for additional evidence should do so in Docket 43006 by April 15, 1985.

ADDRESSES: Requests for additional evidence and requests to intervene should be filed in Docket 43006 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Office of Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–3–85 is available for inspection at our Documentary Services Division, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590.

Dated: March 29, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–8238 Filed 4–4–85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 42987; Order 85–4–5]

Southwest Airlines Co.; Muse Air Corporation, et al. Application; for Exemption or Approval; Order

Issued by the Department of Transportation on the 3rd day of April, 1985.

By application dated March 25, 1985, Southwest Airlines Co., Southwest Acquisition, Inc., Muse Air Corporation, the Amalgamated Sugar Company and Harold C. Simmons (together, "the Applicants") have requested that the Department approve or exempt under section 408 of the Federal Aviation Act of 1958, as amended, ("the Act"), the acquisition of control of Muse Air Corporation ("Muse Air") by Southwest Airlines Co. ("Southwest"). Because of Muse's financial condition, the parties to the transaction have also requested that the Department grant their application on an expedited basis.

Southwest and Muse Air are both certificated air carriers with headquarters in Dallas, Texas. Both operate primarily in markts in Texas and the southwestern United States. Southwest has established Southwest Acquisition, Inc. as a shell corporation to acquire the outstanding stock of Muse Air. Under the terms of the acquisition agreement, Muse Air shareholders would receive a combination of cash and Southwest securities in exchange for their Muse Air stock, and Muse Air would continue to be operated as a separate company after the acquisition. Amalgamated Sugar Company ("Amalgamated"), one of the other applicants, currently holds a controlling interest in Muse Air. Mr. Harold Simmons, the remaining applicant, is a principal in Amalgamated.

Under the Department's Regulations, §§ 303.23(g)–(i), 14 CFR 303.23(g)–(i), the Department may, within 10 days after a section 408 application is filed, dismiss the application on the grounds that it is incomplete. An application is incomplete if it is not in substantial compliance with §§ 303.30–303.38 of the Department's Regulations, 14 CFR 303.23(g). Interested persons may also object to the application on the grounds that it is incomplete within 10 days after the application is filed. 14 CFR 303.23(g). The period for the filing of objections to the completeness of the application has not expired, and the Department has not yet reached a decision on this issue. However, in order to facilitate a timely review of the application, the Department has determined to establish further preliminary procedures at this time, while reserving a decision on the completeness of the application.

Section 408 establishes two distinct texts for approval of acquisitions of control. The first is a general public interest test: The Department may not approve an acquisition that will not be consistent with the public interest. The second test focuses on the competitive impact of the section 408 transaction: The Department may not approve a transaction that would result in a monopoly, or further an attempted monopoly, or that would be likely to lessen competition substantially in any region of the country, unless the anticompetitive effects of the transaction are outweighed in the public

interest by the significant transportation conveniences and needs it is likely to meet, which needs cannot be met by reasonably available alternatives with materially less anticompetitive impact. If an acquisition passes these public interest and competitive tests, then the Department must approve it. Section 408(b)(1), 49 U.S.C. 1378(b))(1). In addition, the Department may exempt any person from the requirements of section 408 if the exemption is consistent with the public interest. Section 416 (b)(1), 49 U.S.C. 1386(b)(1).

The Applicants have requested an exemption from section 408 to permit the transaction and, as previously noted, have asked for expedited consideration. Answers to the exemption request are due on April 9, 1985. The Department has not yet decided whether to grant the requested exemption or to dispose of the application under the procedures of sectin 408(b). However, the Department has determined that interested persons should comment on the type of procedures that may be used under section 408(b), if the exemption is denied. These comments should be filed on April 9, 1985, the same date as answers to the exemption request.[1]

Section 408(b) provides for the Department to render a decision after notice and a hearing (49 U.S.C. 1378(b)(1)), but does not require by its terms an oral evidentiary hearing. In the absence of such an explicit requirement, an oral evidentiary hearing is not required unless there are disputed material issues of fact the resolution of which would be assisted by such procedures. *Sea-Land Service* v. *United States*, 683 f. 2d 491 (D.C. Cir. 1982), *United States* v. *CAB*, 511 F.2d 1315 (D.C. Cir. 1975). By this order, the Department is directing persons who believe an oral evidentiary hearing is required, to submit a request for such a hering by April 9, 1985. The requests should include list of specific issues for which it is asserted that an oral hearing is required, a statement of the disputed material issues of fact the resolution of which require an oral evidentiary hearing, and a description of the nature of the evidence that the submitter would develop at an oral evidentiary hearing that could not be developed in a documentary proceeding. Any person opposed to the use of oral evidentiary hearing procedures will be permitted to file a response by April 12, 1985.

In the course of its administration of section 408, the Department's predecessor, the Civil Aeronautics Board ("Board") developed policies and standards for the evaluation of air carrier mergers in a post-deregulation industry, emphasizing competition rather than public utility type regulation.[2] Although the Department is not bound to apply those policies and standards, persons requesting an oral evidentiary hearing should take them into account in identifying the issues for which a hearing is required, and in identifying the nature of any material facts in dispute.

On March 27, 1985, the Applicants filed a supplement to their application which included, *inter alia*, more detailed information concerning the availability of airport terminal facilities at Houston Hobby Airport and Dallas Love Field. Supplemental information was also filed regarding the policies of those airport operators on accommodating new entrants. Similar information on current allocation of facilities and utilization rates, with respect to all of the airports listed in Exh. J.A.–505, will be useful to the Department in evaluating the application. In addition, the Applicants should also provide comparable information on other airports in the same metropolitan areas, *e.g.*, Houston Intercontinental, DFW Regional Airport, and the airports in the Los Angeles metropolitan area. Information concerning local airport operator policies on new entrant access is particularly relevant where there are currently no additional facilities directly available. The Department is therefore directing the Applicants to provide this additional information by April 9, 1985.

Accordingly

1. The Department directs that all persons seeking an oral evidentiary hearing in this proceeding shall file such requests on or before April 9, 1985. Such requests shall identify specifically the issues on which an oral evidentiary hearing is requested, the nature of the material issues of fact believed to be in dispute, and the nature of the evidence that would be adduced by an oral hearing that could not be obtained through a documentary proceeding;

2. Any person objecting to the use of oral evidentiary hearing proceedings shall file responses to the requests specified in the preceding paragraph on or before April 12, 1985;

3. The Department directs the Applicants in this proceeding to submit supplemental information on airport access, as outlined in this order, on or before April 9, 1985;

4. The Department denies the Applicants' request to accelerate the due date for the filing of answers to their request for an exemption under section 416(b) of the Act. Answers shall be filed on or before April 9, 1985;

5. The Department shall publish a copy of this order in the **Federal Register**, and

6. The Department shall serve a copy of this Order on all air carriers holding certificates of Public Convenience and Necessity, the Attorney General of the State of Texas, and the United States Department of Justice.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-8306 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Department of Transportation's Procedural Regulations, Week Ended March 29, 1985.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

[1] The applicants had requested that the due date for answers to the exemption request be accelerated to April 4th, the due date for objections to the completeness of their application. In light of the decision to receive comments on the procedural issues under section 408(b) on April 9, this request will be denied.

[2] *See, e.g. Continental Western Merger Case*, Orders 81-6-1.2 (March 31, 1981); *Texas International-Continental Acquisition Case*, Order 81-10-66 (August 14, 1981); *Bergt-AIA-Wien Acquisition and Control Case*, Order 82-7-121 (August 5, 1982), and the Board decisions cited therein.

Date filed	Docket No.	Description
Mar. 25, 1985	42996	LeasExpress Air, Inc., c/o Joseph R. Haley, 116 West Grand Avenue, El Segundo, California 90245. Application of LeasExpress Air, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in permanent interstate and oversees charter air transportation of passengers, freight, property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 22, 1985.
Mar. 26, 1985	42996	Hawaiian Airlines, Inc., c/o Jonathan B. Hill, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Suite 500, Washington, D.C. 20037. Application of Hawaiian Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amended certificate of public transportation of persons, property and mail between Honolulu, Hawaii and Tokyo, Japan and Honolulu, Hawaii and Nagoya, Japan. Conforming Applications, Motions to Modify Scope and answers may be filed by April 23, 1985.
Mar. 27, 1985	42997	Florida West Airlines, Inc., c/o Harry A. Bowen, Bowen and Atkin, 2020 K Street, NW., Suite 350, Washington, D.C. 20006. Application of Florida West Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate to engage in scheduled foreign air transportation of property and mail between a point or points in the United States and an intermediate point or points in the Dominican Republic, Venezuela, Trinidad and Tobago, Guatemala, El Salvador, Honduras, Belize, Costa Rica, Panama, Ecuador, Colombia, and a terminal point in Peru. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 24, 1985.
Mar. 29, 1985	43004	Barth's Aviation SARL/TA Air St-Barthelemy, c/o Virginia Deardorff, 16924 Flickerwood Road, Parkton, Maryland 21120. Application of Barth's Aviation SARL/TA Air St-Barthelemy pursuant to section 402 of the Act and Subpart Q of the Regulations applies, as a foreign air carrier, for a permit authorizing it to conduct chartered and scheduled air transportation of passengers and cargo between St. Barthelemy, French West Indies, and the co-terminal points of St. Thomas, U.S. Virgin Islands, and San Juan, Puerto Rico. Answers may be filed by April 29, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-8239 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43006]

Pan Aviation Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him at Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated: Washington, D.C., April 1, 1985

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-8237 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 149; Airborne Distance Measuring Equipment (DME); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 149 on Airborne Distance Measuring Equipment (DME) to be held on May 1-3, 1985 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eleventh Meeting Held on March 11-13, 1985; (3) Report on Coordination with the European Organization for Civil Aviation Electronics (EUROCAE) Working Group 25; (4) Report on Coordination with RTCA Special Committee 151 on Airborne MLS Area Navigation Equipment; (5) Review Task Assignments From Previous Meeting; (6) Review of the Twelfth Draft Committee Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on March 27, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-8119 Filed 85-4-4; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[Q-84-2]

The Atchison, Topeka and Santa Fe Railway Co.; Proposed Construction; Barstow, CA

The Atchison, Topeka and Santa Fe Railway Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed construction of an employee sleeping quarters facility within one-third mile of the receiving yard at Barstow, California. This proceeding is identified as FRA employee sleeping quarters petition No. Q-84-2.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 16, 1985, in the City Council Chambers at 220 East Mountain View Avenue in Barstow, California.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlinging the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebutal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on April 1, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-8236 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-06-M

[RS-Ap-No. 2388]

The Baltimore and Ohio Chicago Terminal Railroad Co. and Indiana Harbor Belt Railroad Co.; Proposed Modification

The Baltimore and Ohio Chicago Terminal Railroad Company (BOCT) and the Indiana Harbor Belt Railroad Company (IHB) have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed modification of Harvey Junction and North Harvey Junction Interlockings on the Chicago Heights Subdivision, Chicago Terminal Division, Western Region, of the BOCT, and on the Main Line, Ivanhoe to Franklin, of the IHB, near Harvey, Illinois. This proceeding is identified as FRA Block Signal Application No. 2388.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on May 21, 1985, in the 14th Floor Conference Room of the One North Western Building at 165 North Canal Street in Chicago, Illinois.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on April 1, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-8235 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

First Article Bus Test Plan

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Urban Mass Transportation Administration (UMTA) announces in this notice the availability of a First Article Bus Test Plan. The Test Plan is for standard heavy duty 35–40 foot transit buses, but can be modified or used in part for procurement of either small or articulated buses. Any tests made part of the grantee's specification must be compatible with the maximum competition requirements of OMB Circular A–102, Attachment O. The use of the First Article Bus Test Plan is completely voluntary.

ADDRESSES: Copies of the First Article Bus Test Plan may be obtained from the American Public Transit Association, 1225 Connecticut Avenue, NW., Washington, D.C. 20036, telephone (202) 828–2800.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to: U.S. Department of Transportation, Urban Mass Transportation Administration, Office of Technical Assistance, 400 7th Street, SW., Room 6432, Washington, D.C. 20590. Contact: Ramon Lopez, (202) 426–0483.

SUPPLEMENTARY INFORMATION:

Introduction and Program Objective

Concerns have been raised by the transit industry regarding the life, safety, and performance of "new" buses being delivered to U.S. transit authorities. Recognizing these concerns, UMTA prepared this bus test plan to aid transit authorities and bus manufacturers in recognizing and dealing with the problems associated with purchase and introduction of a "new" or First Article Bus into revenue service. The Test Plan was initiated by the American Public Transit Association (APTA) Bus Technology Liaison Board's (BTLB) detailed discussion of bus and bus subsystem testing and its desire to establish criteria for acceptance of new equipment.

First Article Buses are defined as the first ten buses off the production line that are built for and delivered to a U.S. transit authority and:

1. Are of a new design that has not been used in revenue service in the U.S.; or

2. Include any major change in configuration or components critical to sustained service operation that has not been evaluated and proven acceptable in U.S. transit service.

The final decision on whether or not a bus is a First Article Bus and what tests should be performed should be reached by agreement between the transit bus manufacturer and the transit authority purchasing the bus. It is not intended that these be new performance specifications for buses and the inclusion of any of these First Article Bus tests in a purchase contract would not replace any present legal, safety, performance or other requirements specified in the procurement package. Revenue service tests are eligible project costs under Sections 3 and 9 of the UMT Act.

For example, when a transit authority is purchasing buses and there is a reasonable possibility that one or more bids may be from a manufacturer of First Article Buses, then this test plan could be included in the Request For Proposals (RFP). this would also be the case if major new bus equipment was being requested in the RFP. In both of these cases, the manufacturer would test the bus in accordance with the nonrevenue tests and provide the results to the transit authority. Upon acceptance of these results, the transit authority would evaluate the buses in accordance with the revenue service tests described in the test plan.

The tests described in the Plan are classified into three types—safety, performance evaluation, and revenue operations.

- Safety tests address braking, handling and stability, and structural stength and distortion.
- Performance evaluation tests address acceleration, gradeability, fuel economy, and, to a limited degree, noise and vibration.
- Revenue operation tests for a period of 1 to 2 years address structural durability, service reliability, equipment reliability, maintainability and life.

The final Test Plan was developed by an UMTA funded contractor with extensive cooperation from the BTLB and the following agencies:

Central Ohio Transit Authority
Chicago Transit Authority
Metropolitan Atlanta Rapid Transit Authority
New York City Transit Authority
Southeastern Michigan Transit Authority
General Motors Corporation
Grumman Flexible Corporation
Neoplan USA

Issued on: March 23, 1985.

Ralph L. Stanley,

Urban Mass Transportation Administrator.

[FR Doc. 85-8164 Filed 4-4-85; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register**.

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954].

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Ronald A. Pearlman,

Assistant Secretary for Tax Policy.

[FR Doc. 85-8165 Filed 4-4-85; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 66
Friday, April 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, April 15, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual section 13—Requests for Litigation for Temporary and Preliminary Relief
4. Request for Opinion Letter Concerning Section 83 Disclosure of a Title VII Charge File to the Spouse of a Charging Party

Closed

1. Litigation Authorization; GC Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

This Notice Issued April 3, 1985.

Cynthia C. Matthews,
Executive Officer.

[FR Doc. 8352 Filed 4–3–85; 3:50 pm]
BILLING CODE 6750–06–M

2

FEDERAL COMMUNICATIONS COMMISSION

April 4, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 11, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—1—Title: Inquiry into the Policies to be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Needs During the 1985–1995 Period. Summary: The Commission will consider the adoption of a Second Notice of Proposed Rulemaking in CC Docket No. 79–184 addressing policies for the distribution of circuits among North Atlantic facilities for the 1986–1995 period.

Common Carrier—2—Title: Notice of Proposed Rulemaking In the Matter of International Competitive Carrier Policies Summary: The Commission will consider adopting a Notice of Proposed Rulemaking to reduce tariff and facility authorization requiremens for international non-dominant carriers.

Common Carrier—3—Title: Changes in the Corporate Structure and Operations of the Communications Satellite Corporation. Summary: In this Report and Order in CC Docket No. 80–634 the Commission adopts modifications to Comsat's Form M and Form 901 reporting requirements.

Common Carrier—4—Title: American Telephone & Telegraph Company, AT&T Communications Tariff F.C.C. Nos. 9, 10, and 11. (Transmittal Nos. 285, 318). Summary: The Commission will consider AT&T's proposed private line tariffs, scheduled to take effect April 12, 1985.

Mass Media—1—Title: Application for review and petition for reconsideration of Bureau's actions dismissing the applications of Way of the Cross of Utah, Inc. and Way of the Cross of Odessa, Inc. for non-commercial educational television stations to operate in Ogden, Utah, and Big Spring, Texas, respectively. Summary: The Commission will determine whether the applicants are either educational institutions or educational organizations eligible to apply for reserved broadcast channels.

Mass Media—2—Title: Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1984. Summary: The Commission will consider proposed rule changes to implement the provisions of the Cable Communications Policy Act of 1984.

Mass Media—3—Title: Complaints filed by Action for Children's Television and National Association for Better Broadcasting. Summary: The Commission will consider these complaints on a consolidated basis to determine whether any violations of Commission rules or policy in the area of children's advertising have been identified.

Mass Media—4—Title: Petition for Rule Making to prohibit profit-sharing arrangements in the broadcasting of children's programming. Summary: The Commission will consider whether to initiate a rule making proceeding to prohibit independent producers and syndicators of children's broadcast television programming from using profit-sharing arrangements as the financial mechanism for their productions. By the profit-sharing technique producers obtain advertising time from broadcast stations, without payment in advance, in exchange for a percentage ot the profits from the sale of products bearing the name of the program, its characters, or program devices.

Mass Media—5—Title: Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities (MM Docket No. 83–46, incorporating Docket Nos. 20521, 20548 and BC 78–239). Summary: By this *Memorandum Opinion and Order*, the Commission will consider, on reconsideration, whether or not to revise the standards governing the means by which it attributes interests in broadcast, cable television and newspaper properties and the manner in which these interests are reported.

Mass Media—6—Title: Compatibility Between the Broadcasting Services and VHF Aeronautical Mobile Radio Services. Summary: The Commission will consider whether to adopt a Notice of Proposed Rule Making to establish interference protection criteria in the matter.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

William J. Tricarico,
Secretary, Federal Communications Commission.

[FR Doc. 85–8349 Filed 4–3–85; 3:50 pm]
BILLING CODE 6712–01–M

3

FEDERAL COMMUNICATIONS COMMISSION

April 4, 1985.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, April 11, 1985, following the Open Meeting, which is scheduled to commence at 9:30, A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Mass Media—1—Investigation into: (1) Unauthorized operation of a radio station on the frequency 1616 kHz; (2) refusal to allow inspection of a radio station; (3) unauthorized location of the main studio of a radio station; (4) unauthorized use of a remote pickup base station; (5) misrepresentation that the transmitter to be used for a remote pickup base station would comply with the type acceptance criteria; (6) whether Allen H. Weiner, President and majority stockholder of Weiner Broadcasting Company, possesses the qualifications to be or to remain a licensee of the Commission; and (7) whether the licenses for Radio Station WOZW(AM), Monticello, ME, WOZI(FM), Presque Isle, ME, and Remote Pickup Base Station KPF–941, Yonkers, NY, should be revoked.

This item is closed to the public because it concerns Investigatory Records Matters See 47 CFR 0.603 (g)).

The following perons are expected to attend:

Comissioners and their Assistants
Managing Director and members of his staff
General Counsel and members of his staff
Chief, Mass Media Bureau and members of his staff
Chief, Office of Congressional and Public Affairs and members of his staff

Action by the commission March 26, 1985. Commissioners Fowler, Chairman; Quello, Dawson, Rivera, and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, Telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–8350 Filed 4–3–85; 3:50 pm]

BILLING CODE 6712–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 1, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First Safety Bank, an operating noninsured institution located at 4901 Vine Street, St. Bernard, Ohio, for Federal deposit insurance.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: Abilene National Bank, Abilene, Texas (now known as MBank Abilene, National Association)

Determination relating to deposit insurance coverage of public unit funds.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: April 2, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–8322 Filed 4–3–85; 1:09 pm]

BILLING CODE 6714–01–M

5

FEDERAL MARITIME COMMISSION

TIME AND DATE: 11:00 a.m., April 3, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTER TO BE CONSIDERED: Agreement No. 202–010689: Actions of the Transpacific Westbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523–5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8324 Filed 4–3–85; 1:07 pm]

BILLING CODE 6730–01–M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., April 10, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting open to the public. The rest of the meeting closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Consideration of a Proposed Rule Concerning the Contract Practices (other than Service Contracts) of Carriers Operating as Ocean Common Carriers.

Portions closed to the public:

1. Agreement No. 008900–026: Various Revisions to the "8900" Lines Agreement
2. Agreement No. 10464—Armada/GLTL East Africa Service: Status of claim for civil penalty.
3. Dockets Nos. 82–1 and 82–10—California Cartage Company, Inc. et al. v. Pacific Maritime Association and ILWU: Consideration of Motion to Dismiss and certain other pleadings.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523–5725..

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8325 Filed 4–3–85; 1:07 pm]

BILLING CODE 6730–01–M

7

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 4–85]

Announcement in Regard to Commission Meetings and Hearings: Meetings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time:
Monday, April 22, 1985 at 10:30 a.m.
Subject Matter:
Consideration of Proposed Decisions issued under the Vietnam Claims Program (Pub. L. 96–606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, D.C. Requests for information, or advance notices of intention to observe a

meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 408, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C. on April 1, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 7835 Filed 4-3-85; 9:28 am]

BILLING CODE 4410-01-M

8

LEGAL SERVICES CORPORATION

Notice of Tentative Meeting Schedule

SUMMARY: This notice sets forth the tentative schedule of meetings of the Board of Directors of the Legal Services Corporation through December 1985. This schedule is tentative and subject to change. Formal notice as required by the Government in the Sunshine Act (5 U.S.C. 552b) will be published in the **Federal Register** no less than seven days prior to a meeting.

Board of Directors:
April 25–26—Washington, D.C.
May 23–25—Washington, D.C.
June 27–28—Detroit, Michigan
August 1–2—Salt Lake City, Utah
September 5–6—Santa Ana, Calif.
October 3–4—Boston, Mass.
November 7–8—El Paso, Texas
December 12–13—New Orleans, La.

Special Committee on Presidential Search:
March 29—Dallas, Texas
April 14—Chicago, Illinois

FOR FURTHER INFORMATION CONTACT: Dennis Daugherty, Acting Secretary, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202/272-4040).

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is a District of Columbia nonprofit corporation created and funded by Congress pursuant to the Legal Services Corporation Act as amended, 42 U.S.C. 2996. The Board of Directors has established three standing committees and one special committee. The three standing committees are those on Appropriations and Audit, Operations and Regulations, and Provision for the Delivery of Legal Services. A Special Committee on Presidential Search has been established. Meetings of committees of the Board will usually be scheduled during the time periods set aside for Board business on this tentative schedule, but additional meetings may be scheduled as necessary. This schedule is a tentative one and is subject to change. It is being published for the convenience of the public and not pursuant to statutory requirement.

Date issued: March 20, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-8353 Filed 4-3-85; 3:47 pm]

BILLING CODE 6820-35-M

federal register

Friday
April 5, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amendeds 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Connecticut:	
CT84–3016	June 8, 1984.
CT84–3016	June 8, 1984.
Illinois: IL83–2037	Apr. 29, 1983.
New York: NY81–3061	Sept. 11, 1981.
Oklahoma: OK84–4049	Sept. 3, 1984.
Pennsylvania:	
PA83–3001	Aug. 19, 1983.
PA83–3053	Nov. 25, 1983.
PA85–3012	Mar. 8, 1985.
PA84–3017	June 15, 1984.
PA84–3042	Dec. 14, 1984.
Rhode Island: RI84–3043	Nov. 30, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Illinois: IL83–5020 (IL85–5020)	July 1, 1983.
Pennsylvania: PA79–3020 (PA85–3017)	July 20, 1979.
Virginia: VA82–3033 (VA85–3020)	Dec. 3, 1982.

Signed at Washington, D.C., this 29th day of March 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #CT84-3016 - MOD #12
(49 FR 23980 - June 8, 1984)
Statewide Connecticut

CHANGE:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS:		
Building Construction		
Area 4	17.60	3.25+a
Heavy & Highway Constr.		
Area 1	14.30	2.10
Area 2	14.57	2.58
Area 3	13.80	2.70
Area 4	14.30	2.35
CARPENTERS:		
Building Construction		
Carpenters	16.35	2.43
Millwrights	16.85	2.43
Heavy & Highway		
Carpenters		
Area 1 & 2	15.95	1.80+d
ELECTRICIANS:		
Area 2	16.86	3.05+ 9.25%
Area 3	18.15	3.05+ 9.25%
Area 5	16.80	3.78+ 3%
PAINTERS:		
Area 2		
Painters & Sandblasters	16.00	2.21+k
Structural Steel	17.00	2.21+k
Spray	20.00	2.21+k
BRIDGE (Statewide):		
Journeyman Brush & Roller	22.20	
Journeyman Blasting (Sand, Water, etc.)	23.20	
Journeyman Spray	25.70	

DECISION #IL83-2037-MOD#5
(48 FR19583-April 29, 1983)
Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

CHANGE:

	Basic Hourly Rates	Fringe Benefits
TUG ENGINEER - OPERATOR	$19.90	$1.05+h
TUG OPERATOR-On Launch	19.35	1.05+h

Footnote h: Delete Association Day from holidays

DECISION NO. NY81-3061 - MOD #7
(46 FR 45525 - September 11, 1981)
Clinton County, New York

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.10	2.36
ELECTRICIANS:		
Zone I - City of Plattsburg and 5 mile radius		
Electricians	14.10	2.60+ 4%+b
Cable Splicers	14.40	2.60+ 4%+b
Light Commerical up to a Maximum of $75.000 in stores, gas stations, motels and hotels	6.50	2.60+ 4%+b
Zone II - From Zone I to a 20 mile radius of Plattsburg		
Electricians	14.30	2.60+ 4%+b
Cable Splicers	14.60	2.60+ 4%+b
Light Commercial up to a Maximum of $75.000 in stores, gas stations, motels and hotels	6.50	2.60+ 4%+b
Zone III - Beyond Zone II		
Electricians	14.50	2.60+ 4%+b
Cable Splicers	14.80	2.60+ 4%+b
Light Commercial up to a Maximum of $75.000 in stores, gas stations, motels and hotels	6.50	2.60+ 4%+b
LABORERS, Building		
Common Laborers and self-propelled Equipment Ops.	11.00	2.00+f
Concrete or plaster pump Operator, All men on building demolition and wrecking	11.15	2.00+f
Sandblasters and construction clean-up, Driller, Wagon Jack or Wagon Drill Operator, Metal Form and Curb Setter, Asphalt Raker, Tail or Screw man on paving Machine	11.30	2.00+f
Acetylene Torch Operator on Demolition work and cutting of pipes	11.45	2.00+f
Blasters		
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+h +6.25%
Cable splicer	19.525	4.35+h +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+h +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+h +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+h +6.25%
Groundman	10.098	4.35+h +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+h +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+h +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+h +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+h +6.25%
Groundman	10.098	4.35+h +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+h +6.25%

MODIFICATIONS P. 3

DECISION NO. NY81-3061
MOD#7 (Cont'd):

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Cont'd)		
Groundman digging machine operator; dynamite man	17.64§	4.35+h +6.25§
Groundmen truck driver (tractor trailer unit)	16.66§	4.35+h +6.25§
Mobile equipment operator; Groundman truck driver; mechanic	15.68§	4.35+h +6.25§
Groundman	10.09§	4.35+h +6.25§
PLUMBERS & STEAMFITTERS	15.15	2.60
ROOFERS		
Roofer	14.00	3.37
Pitch and Asbestos	14.50	3.37
SHEET METAL WORKERS	16.87	1.04+g
SPRINKLER FITTERS	16.92	3.23
POWER EQUIPMENT OPERATORS		
Building Construction		
Class I	14.91	4.75+a
Class II	15.80	4.75+a
Class III	16.31	4.75+a
Class IV	16.50	4.75+a
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration, and repair on any existing structure which is intended for predominantly residential use		
Class I	11.18	4.75+1
Class II	11.85	4.75+1
Class III	12.23	4.75+1
Class IV	12.38	4.75+1
Heavy & Highway		
Group I	15.86	4.25+k
Group II	15.32	4.25+k
Group III	13.79	4.25+k
Group IV	12.44	4.25+k
TRUCK DRIVERS		
Heavy & Highway Construction		
Class I	13.49	2.45+m
Class II	13.54	2.45+m
Class III	13.59	2.45+m
Class IV	13.74	2.45+m
Class V	13.69	2.45+m

ADD:

	Basic Hourly Rates	Fringe Benefits

FOOTNOTE:

N. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

DECISION #OK84-4049-Mod. #7
49FR35473-September 3, 1984
Adair, Atoka, Bryan, Coal, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa, Sequoyah, Wagoner and Washington Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS (AREA IV)		
Carpenters	$14.08	2.02
Millwrights-Piledrivermen	14.38	2.02
CARPENTERS (AREA VI)		
Carpenters	12.19	1.87
Millwrights-Piledrivermen	12.69	1.87

MODIFICATIONS P. 4

DECISION NO. PA84-3017
MOD. NO. 2
(49 FR 24659 - June 15, 1984)
Berks, Lehigh & Northampton Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$17.91	2.04
Carpenters		
Zone 2	15.81	3.71
Cement masons		
Zone 1	13.79	1.65
Electricians		
Zone 1	17.00	1.94+ 3%
Zone 4	17.61	1.54+ 10%
Elevator Constructors	16.92	3.24+ a+b
Elevator Constructor Helpers	11.84	3.24+ a+b
Elevator Constructors Helpers (Prob.)	9.46	
Ironworkers:		
Zone 1	17.40	4.25
Zone 2	18.45	4.20
LINE CONSTRUCTION		
Zone 1		
Journeyman Lineman	16.88	.80+ 3 3/8%
Winch truck operator	11.82	.80+ 3 3/8%
Truck Drivers	10.97	.80+ 3 3/8%
Groundman	10.13	.80+ 3 3/8%
Zone 2		
Lineman & Cable splicers	17.61	1.55+ 10 3/8%
Line truck operator & Equipment operator	17.61	1.55+ 10 3/8%
Groundman	10.57	1.55+ 10 3/8%
Millwrights		
Zone 1	16.21	3.71
Zone 2	13.70	2.22
Painters		
Zone 2		
Brush	15.25	3.94
Steel	17.25	3.94
Spray	16.25	3.94
Piledrivermen	15.97	6.91+d
Plasterers		
Zone 1	13.81	1.66
Plumbers	16.65	3.94
Steamfitters		
Zone 1	19.56	4.16
Soft floor layers		
Zone 2	14.39	4.36

ADD:
Area covered by Millwrights Zone 2, to read Berks County

DECISION NO. PA84-3012
MOD. NO. 3
(49 FR 48889 - December 14, 1984)
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Laborers		
Zone 6		
Class 5	11.99	2.86

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA83-3001 - MOD. NO. 10 (48 FR 37809 - August 19, 1983) Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming and York Counties, Pennsylvania		
CHANGE:		
LINE CONSTRUCTION:		
BERKS & LEHIGH COS.		
Linemen	$16.88	.80+ 3 3/8%
Winch truck operator	11.82	.80+ 3 3/8%
Truck Drivers	10.97	.80+ 3 3/8%
Groundman	10.13	.80+ 3 3/8%
NORTHAMPTON COUNTY		
Lineman & Cable splicer	17.61	1.55+ 10 3/8%
Line Truck Operator	17.61	1.55+ 10 3/8%
Groundman	10.57	1.55+ 10 3/8%
IRONWORKERS:		
Carbon, Lehigh, Northampton, Counties (Monroe County entire County except Tobyhanna Army Depot)		
Structural, Ornamental & Reinforcing	18.45	+.20
DECISION NO. PA83-3053		
MOD. #5		
(48 FR 53264 - November 25, 1983)		
Blair County, Pennsylvania		
CHANGE:		
Plasterers	15.35	...

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA85-3012 MOD. NO. 2 (50 FR 9568 - March 8, 1985) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
Cement masons		
Zone 3	13.79	1.65
Electricians		
Zone 6		
Commercial	17.61	1.59+ 10%
Zone 7		
Commercial	17.00	1.94+3%
Residential up to and incl 4 stories	9.08	1.94+3%
Zone 9		
Commercial	13.70	1.49+ 3%
Piledrivermen	15.97	6.91+g
Plasterers		
Zone 2	13.81	1.66
Plumbers		
Zone 2	18.68	3.9-
DECISION NO. RI84-3043 - MOD. 43 (49 FR 47171 - November 30, 1984) Statewide Rhode Island		
CHANGE:		
ROOFERS:		
Compositions; Waterproofers	15.30	4.25
Slate, Tile, Pre-cast Concrete	15.50	4.25

STATE: ILLINOIS COUNTY: COOK
DECISION NUMBER: IL85-5020 DATE: Date of Publication
Supersedes Decision Number IL83-5020, dated July 1, 1983, in 48 FR 30571
DESCRIPTION OF WORK: Building, Residential, Heavy, and Highway Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.00	$3.28
BOILERMAKERS	16.40	4.53+5%
BRICKLAYERS:		
Bricklayers, Stonemasons	16.86	2.99
Caulkers, Cleaners & Pointers	17.01	3.35
CARPENTERS:		
Carpenters, Millwrights, Pile-drivermen & Soft Floor Layers	16.75	3.78
Residential Carpenter	16.25	3.78
CEMENT MASONS	15.05	4.68
ELECTRICIANS	17.55	3.85+3%
ELEVATOR CONSTRUCTORS		
Mechanics	18.66	3.00+sb
Helpers	70%JR	3.00+sb
Probationary Helpers	50%JR	
GLAZIERS	16.30	2.87
IRONWORKERS:		
Structural & Reinforcing	17.68	5.58
Ornamental	17.62	3.92
Riggers & Machine Movers	15.055	7.52
Metal Fence Erectors:		
Black Book	17.62	3.92
Red Book	12.31	3.92
LATHERS	13.82	1.29
LINE CONSTRUCTION:		
Lineman, Equipment Operator	17.50	20.65%
Groundman	12.50	20.65%
MARBLE SETTERS	18.66	2.70
MARBLE SETTERS FINISHERS	13.20	2.15
PAINTERS:		
Brush, Decorator, Paperhanger, Taper	15.75	2.40
PIPEFITTERS; STEAMFITTERS	18.00	3.60
PLASTERERS	15.95	3.10
PLUMBERS:		
Plumbers	17.25	3.40
Layout Technician	17.25	2.30
ROOFERS	17.00	3.00
SHEET METAL WORKERS:		
Commercial Building	16.50	+.24
Residential Aluminum Gutter	8.00	4.24
SPRINKLER FITTERS	17.78	3.85
TERRAZZO WORKER, TILE SETTER	16.16	2.97
TERRAZZO WORKER FINISHERS	13.80	1.75
TERRAZZO BASE MACHINE	12.35	1.50
TILE SETTER FINISHER	14.20	2.53
TRUCK DRIVERS:		
Building & Residential:		
2-3 Axles	15.175	d,e,f
4 Axles	15.425	d,e,f
5 Axles	15.625	d,e,f
6 Axles	15.825	d,e,f
Heavy & Highway:		
2-3 Axles	15.15	3.40e,f
4 Axles	15.40	3.40e,f
5 Axles	15.60	3.40e,f
6 Axles	15.80	3.40e,f
LABORERS (WRECKING):		
General	13.40	1.92
Wallmen, Wreckers, Burners & Hammermen	13.90	1.92
Smokestack or High Man	14.25	1.92
LANDSCAPE:		
Landscape Plantsmen	8.85	g,h
Truck Driver, 2 axles	8.90	g,h
Truck Driver, 3 axles, and Equipment Operator	9.35	g,h
LABORERS (BUILDING & RESIDENTIAL)		
Group 1	13.65	2.17
Group 2	13.725	2.17
Group 3	13.75	2.17
Group 4	13.80	2.17
Group 5	13.85	2.17
Group 6	13.875	2.17
Group 7	13.975	2.17
Group 8	14.00	2.17
Group 9	14.10	2.17
Group 10	14.225	2.17
LABORERS (HEAVY & HIGHWAY):		
Group 1	13.90	1.92
Group 2	13.975	1.92
Group 3	14.05	1.92
Group 4	14.175	1.92
LABORERS (Sewer & Tunnel)		
Group 1	13.90	1.92
Group 2	14.025	1.92
Group 3	14.125	1.92
Group 4	14.25	1.92

POWER EQUIPMENT OPERATORS Building & Residential Construction	Basic Hourly Rates	Fringe Benefits
GROUP 1	$ 18.40	5.25
GROUP 2	17.10	5.25
GROUP 3	15.45	5.25
GROUP 4	13.70	5.25

GROUP 1 - Mechanic; Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto; Boiler and Throttle Valve; Caisson Rigs; Central Redi-Mix Plant; Combination Back Hoe Front Endloader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Paver 27E cu. ft.-and under; Concrete Placer; Concrete Pump (Truck Mounted); Concrete Tower; Cranes; Cranes, Hammerhead; Creter Crane; Crusher, Stone, etc; Derricks; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Highlift Shovels or Front Endloader 2¼ yd. and Over; Hoists, Elevators, Outside Type Rack and Pinion and Similar Machines; Hoists, One, Two, and Three Drum; Hoists, Two Tugger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Locomotive; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes Dual Ram; Pump Cretes: squeeze cretes-screw type pumps Gypsum bulker and pump; Raised and Blind Hole Drill; Rock Drill (self-propelled); Rock Drill (truck mounted); Roto Mill Grinder (36")and over); Roto Mill Grinder (less than 36"); Scoops-Tractor Drawn; Slip-Form Paver; Straddle Buggies; Tournapull; Tractor with Boom, and side boom; & Trenching Machines

GROUP 2 - Bobcat (over 3/4 cu. yd.); Boiler; Brick Forklift; Broom, Power Propelled; Bulldozers; Concrete Mixer (Two Bag and over); Conveyor, Portable; Forklift Trucks; Greaser Engineer; Highlift Shovels or Front Endloaders under 2¼ yd.; Hoists, Automatic; Hoists, Inside Freight Elevators; Hoists, Sewer Dragging Machine; Hoists, Tugger Single Drum; Rollers; Steam Generators; Tractors; Tractor Drawn Vibratory Roller (Receives an additional $.50 per hour); & Winch Trucks with "A" Frame

GROUP 3 - Air Compressor-Small 150 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-Large over 150; Combination-Small equipment operator; Generator-Small 50 kw and under; Generator-Large over 50kw; Heaters, Mechanical; Hoists, Inside Elevators (rheostat manual controlled); Hydraulic Power units (Pile driving and extracting); Pumps over 3" (1 to 3 not to exceed a total of 300 ft); Pumps, well points; Welding machines (2 through 5); Winches, 4 small electric drill winches; Bobcat (up to and including 3/4 cu yd) and Brick Forklift

GROUP 4 - Oilers; Hoists; Inside elevators (Pushbutton with automatic doors)

POWER EQUIPMENT OPERATORS Sewer, Heavy & Highway Construction	Basic Hourly Rates	Fringe Benefits
GROUP 1	$18.30	$5.25
GROUP 2	17.75	5.25
GROUP 3	16.60	5.25
GROUP 4	15.20	5.25
GROUP 5	14.00	5.25

GROUP 1 - Asphalt Plant; Asphalt Heater and Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front Endloader Machine (1 cu. yd. backhoe bucket or over or with attachment); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu.ft.; Concrete Placer; Concrete Tube Float; Cranes, all Attachments; Cranes, Hammerhead, Linden, Peco & machines of a like nature; Creter Crane; Crusher, Stone, etc.; Derricks; Derrick Boats; Derricks, Traveling; Dredges; Field Mechanic-Welder; Formless Curb and Gutter Machine; Gradall and machines of a like nature; Grader, Elevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Mounted; Hoists, One, Two, and Three Drum; Hydraulic Backhoes; Locomotive; Mucking Machine; Pile Drivers and Skid Rig; Pre-Stress Machine; Pump Cretes Dual Ram; Rock Drill-Crawler or Skid Rig; Rock Drill-Truck Mounted; Roto Mill Grinder (36" and over); Roto Mill Grinder (less than 36"); Slip-Form Paver; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping form (tunnel); Tractor Drawn Belt Loader; Tractor Drawn Belt Loader with attach pusher; Tractor with Boom; Tractaire with Attachment; Trenching Machine; Truck Mounted Concrete Pump with boom; Underground Boring and/or Mining Machines under 5 ft.; Wheel Excavator; & Widener (Apsco)

GROUP 2 - Batch Plant; Bituminous Mixer; Bobcats (over 3/4 cu. yd.); Boiler and Throttle Valve; Bulldozer; Car Loader Trailing Conveyors; Combination Backhoe Front Endloader Machine (less than 1 cu. yd. backhoe bucket or over or with attachments); Compressor and Throttle Valve; Compressor, common receiver (3); Concrete Breaker or Hydro Hammer; Concrete Grinding Machine; Concrete Mixer or Paver 7S series to and including 27 cu. ft.; Concrete Spreader; Concrete Curing Machine; Burlap Machine; Belting Machine and Sealing Machine; Conveyor Muck Cars (Haglund or similar type); Finishing Machine-Concrete; Greaser Engineer; Highlift Shovels or Front Endloader; Hoist-Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinkey; Pump Cretes: Squeeze cretes-screw type pumps Gypsum Bulker and pump; Roller Asphalt; Rotary Snow Plows; Rototiller, seaman, etc. Self-propelled; Scoops-Tractor Drawn; Self-propelled Compactor; Spreader-Chip-Stone, etc.; Scraper; Scraper-prime mover in tandem (Add $1.00 to Class 2 hourly rate for each hour and for each machine attached thereto); Tank Car Heater; Tractors, Push, Pulling sheeps foot, Disc, Compactor, etc.; & Tug Boats

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Boilers; Brooms, All Power Propelled; Cement Supply Tender; Compressor, Common receiver (2); Concrete Mixer (Two Bag and Over); Conveyor, Portable; Farm-type Tractors used for mowing, seeding, etc.; Fireman on Boilers; Forklift Trucks; Grouting Machines; Hoists, Automatic; Hoists, All Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post-Hole Digger; Power Saw, Concrete, Power Driven; Pug Mills; Rollers, other than Asphalt; Seed and Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper-form-motor driven

GROUP 4 - Air Compressor-small 170 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-large over 170; Asphalt Spreader Backend Man; Combination-Small Equipment Operator; Generators-Small 50kw and under; Generators-Large over 50 kw; Heaters, Mechanical; Hydraulic Power Unit (pile driving or extracting); Light Plants (1 through 5); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4 small electric drill winches; & Bobcats (up to and including 3/4 cu. yd.)

GROUP 5 - Oilers

LABORERS CLASSIFICATIONS (Building & Residential):
Group 1 - Construction; Plasterers' Tenders; & Pumps for Dewatering & other Power Equipment
Group 2 - Cement Gun
Group 3 - Chimney over 40 ft.; Scaffold
Group 4 - Cement Gun Nozzle (Gunite)
Group 5 - Stone Derrickmen & Handlers
Group 6 - Jackhammermen; & Power Driven Concrete Saws & Other Power Equipment
Group 7 - Firebrick & Boiler Setters
Group 8 - Chimney on Fire Brick; Caisson Diggers; & Well Point System Men
Group 9 - Boiler Setter Plastic
Group 10 - Jackhammermen on Fire Brick

LABORERS CLASSIFICATIONS (Heavy & Highway):
Group 1 - Construction; Tenders; Material Expeditor (Asphalt Plant); Street Paving, Grade Seperation, Sidewalk, Curb & Gutter, Stripers & All Laborers not Otherwise Mentioned
Group 2 - Asphalt Tampers & Smoothers; Cement Gun
Group 3 - Cement Gun Nozzle (Laborers) Gunite
Group 4 - Rakers & Lutemen; Machine-Screwmen; Kettlemen; Mixermen; Drum-Men; Jackhammermen (Asphalt); Paintmen; Mitre Box Spreaders; Laborers on Birch, Overman & Similar Spreader Equipment; Laborers on Apsco; Laborers on Air Compressors; Paving Form Setters; Jackhammermen (Concrete); Power Driven Concrete Saws; Other Power Equipment

LABORERS CLASSIFICATIONS (SEWER & TUNNEL):
GROUP 1 - Top laborers, and all laborers not otherwise mentioned
GROUP 2 - Concrete laborers; steel setters
GROUP 3 - Cement carriers; Cement mixers; Concrete repairmen; Mortar men; Scaffold men; and Second bottom men
GROUP 4 - Air trac drill operations; Bottom men; Bracers-bracing; Brick-layer's tender; Catch basin digger; Drainlayer; Dynamiter; Form men; Jackhammermen; Pipelayers; Rodders; Welders & burners; Well point system men

PAID HOLIDAYS: (Where Applicable)
A-New Year's Day B-Memorial Day C-Independence Day
D-Labor Day E-Thanksgiving Day F-Day after Thanksgiving
G-Christmas Day

FOOTNOTES:
a. Paid Holidays: A through G
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have more than five years of service and 6% for those with less than five years of service
c. Employees who are required to wear a dosimeter radiation detection device will have an additional 50c per hour added to thier hourly rate of pay
d. $117.00 per week
e. Paid Holidays: A, B, C, D, E, G, and Decoration Day
f. 900 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation
g. Paid Holidays: A, B, C, D, E, G
h. 1 year's service - 1 week paid vacation; 3 or more years service - 2 weeks paid vacation

SUPERSEDEAS DECISION

STATE: Pennsylvania

Counties: Carbon, Monroe Counties, including Tobyhanna Army Depot and Pike County

DECISION NO. PA85-3017

Date of Publication

Supersedes Decision No. PA79-3020 dated July 20, 1979, in 44 FR42880.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$16.33	$2.66
BOILERMAKERS	18.88	2.865
BRICKLAYERS & STONEMASONS:		
Zone 1	14.95	4.02
Zone 2	15.70	2.00
Zone 3	15.00	2.86
Zone 4	16.31	2.55
CARPENTERS:		
Zone 1	14.50	2.55
Zone 2	15.81	3.71
Zone 3	14.46	2.70
CEMENT MASONS:		
Zone 1	13.50	.01
Zone 2	15.65	
Zone 3	16.31	2.55
ELECTRICIANS:		
Zone 1	17.00	1.94+ 3%
Zone 2		
Zone A- Form 20 - 1/10 miles to 30 miles from Public Square	16.54	2.70+ 3%
Zone B- All distance from 30- 1/10 miles & over	16.84	2.70+ 3%
Zone 3	15.93	2.50+ a+3%
Zone 4	17.61	1.59+ 3%
Zone 5		
Zone A- From 0 to 50 miles from Zero milestone marker	15.25	3.30+ 3%
Zone B- All distance over 50 miles	16.25	3.30+ 3%
ELEVATOR CONSTRUCTORS	15.585	1.29 c+d
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.29+ c+d
ELEVATORS CONSTRUCTORS' HELPERS (PROB.)	50%JR	
GLAIZERS:		
Zone 1	14.04	1.465
Zone 2	13.04	2.90
Structural Steel	17.75	4.30
Reinforcing	17.50	4.30
LABORERS:		
Zone 1		
Class 1	12.80	2.87
Class 2	12.95	2.87
Class 3	13.20	2.87
Zone 2		
Class 1	10.88	2.51
Class 2	11.13	2.51
Class 3	11.38	2.51
Class 4	11.90	2.51
Class 5	11.63	2.51
LATHERS:		
Zone 1	12.04	.11
Zone 2	14.50	2.55
Zone 3	15.81	3.71
Read Burners	10.75	.66+f
LINE CONSTRUCTION		
Lineman, dynamite man, heavy equipment operator	16.29	1.00+ 3 3/8%
Winch truck operator	11.59	1.00+ 3 3/8%
Groundman	10.30	1.00+ 3 3/8%
MARBLE SETTERS:		
Zone 1	14.45	3.40
Zone 2	13.60	2.50
Zone 3	16.31	2.55
MILLWRIGHTS		
Zone 1	15.04	2.70
Zone 2	16.57	2.55

DECISION NO. PA85-3017

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Zone 1		
Brush	12.30	2.70
Tapers	12.96	2.70
Steel	13.96	2.70
Zone 2		
Brush & Roller	13.65	1.45
Structural Steel	14.65	1.45
Spray	15.15	1.45
Zone 3		
Brush	15.25	3.98
Spray	16.25	3.98
Steel	17.25	3.98
PLUMBERS		
Zone 1	15.24	4.45
Zone 2	18.68	3.94
PLASTERERS		
Zone 1	15.70	2.00
Zone 2	12.78	
Zone 3	16.76	1.91
Zone 4	16.73	
Zone 5	16.31	2.55
PILEDRIVERMEN	15.97	6.91+g
ROOFERS:		
Zone 1		
Shingle, slate, and tile Mechanic II (for shingle, slate, or tile work)- handles and transports all materials, tools & equipment; clean-up debris	13.92	2.25
All other work	6.25	2.25
Mechanic II (for all other work) - Handles and transports all materials, tools and equipment; clean-up debris	19.57	2.93+h
Zone 2	8.25	2.93+h
Composition & Kettleman	14.55	2.10
Zone 3		
Composition & Kettleman	14 42	2 53
SHEET METAL WORKERS	15.92	2.00
SOFT FLOOR LAYERS		
Zone 1	12.20	2.55
Zone 2	14.46	2.70
Zone 3	15.81	3.71
SPRINKLER FITTERS	16.92	3.23

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
Zone 1		
Group 1	15.89	26.6% +j
Group 2	15.60	26.6%+j
Group 3	14.72	26.6%+j
Group 4	13.95	26.6%+j
Group 5	13.47	26.6%+j
Group 6	12.55	26.6%+j
Group 7	16.14	26.6%+j
Group 7-A	16.41	26.6%+j
Group 7-B	16.64	26.6%+j
Zone 2		
Group 1	16.52	26.6%+j
Group 2	16.23	26.6%+j
Group 3	15.17	26.6%+j
Group 4	14.52	26.6%+j
Group 5	13.26	26.6%+j
Group 6	12.36	26.6%+j
TERRAZZO WORKERS		
Zone 1	14.70	2.40
Zone 2	15.15	.95
TILE SETTERS		
Zone 1	14.70	2.40
Zone 2	13.60	2.50
Zone 3	16.31	2.55
CLASS I - Helper, stake body truck (single axle), dumpster	12.77	
CLASS II- Dump trucks, tandem & batch trucks, semi trailer, agitator mixer trucks, ready mix and dumpcrete type vehicles, asphalt distributor when used for transportation, stake body truck (tandem)	12.84	
CLASS III - Euclid type, off-highway equipment back or belly dump truck, and double hitched equipment, straddle (Ross) carrier, lowbed trailer	13.33	

PAID HOLIDAYS: Where Applicable

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays; Independence Day and Labor Day

c. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

d. Paid Holidays: A through F, plus Friday after Thanksgiving Day.

f. Nine paid holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer.

g. Paid Holidays: Washington's Birthday, Good Friday, Memorial Day; Labor Day; Presidential Election Day; Veterans Day; Thanksgiving Day & Christmas Day.

h. Paid Holiday: Election Day.

j. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided the employee works the day before and after the holiday.

WELDERS - Rate of craft

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided on the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREA COVERED BY BRICKLAYERS & STONEMASONS

ZONE 1 - Remainder of Carbon County
ZONE 2 - Kidder Township in Carbon County
ZONE 3 - Tobyhanna Army Depot in Monroe County
ZONE 4 - Pike County & Remainder of Monroe County

AREA COVERED BY CARPENTERS ZONES

ZONE 1 - Carbon County; including Twps. of Banks, Lausanna, Lehigh, Packer and Kidder
ZONE 2 - Remainder of Carbon County & Remainder of Monroe County
ZONE 3 - Tobyhanna Army Depot in Monroe County, Pike County in its entirety

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County & Pike County
ZONE 3 - Remainder of Monroe County

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Lausane, Penn. Forest, Towamensing, Lower Towamensing, Palmerton, E. Penn., Franklin, Mahoning, Packer, Lehigh, Banks Twps., in Carbon County
ZONE 2 - Remainder of Carbon County, Monroe County, including Tobyhanna Army Depot and Pike County in its entirety

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1 - Carbon County: Towamensing Lower Towamensing, East Penn Township and the Borough of Parryville in their entierty
Zone 2 - Carbon County: That portion of Kidder Twps., excluding Eastside Borough, north of State Highway 940 from that Borough to Monroe County: Monroe County: That portion of Tobyhanna and Tunkhannock Townships west of State Highway 115.
ZONE 3 - Carbon County: Penn Forest, Lehigh, Lausane, Banks, Packer, Hauch Chunk, Franklin, Mahoning Townships and East Side Borough in their entirety and that portion of Kidder Township south of State Highway 940, but excluding Perryville Borough:
ZONE 4 - Monroe County: Polk, Eldred, Chestnut Hill, Ross, Hamilton, Jackson, Pocono, Stroud, Smithfield and Middle Smithfield Townships: Pike County: Porter, Delaware and Lehamn Townships in their entirety;
ZONE 5 - Monroe County: Barrett, Coolbaugh, Pardise and Price Township, and that portion of Tobyhannock Townships east of State Highway 115: Remainder of Pike County:

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Carbon County, Remainder of Monroe County
ZONE 2 - Pike County in its entirety; Tobyhanna Army Depot in Monroe County

AREA COVERED BY LABORERS ZONES

ZONE 1 - Pike County and Tobyhanna Army Depot in Monroe County
ZONE 2 - Carbon County and Remainder of Monroe County.

AREA COVERED BY LATHERS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot and Pike County
ZONE 2 - Carbon County; including Twps. of Banks, Lousanna, Lehigh, Packer and Kidder.
ZONE 3 - Remainder of Carbon County

AREA COVERED BY MARBLE SETTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot & Pike County
ZONE 3 - Remainder of Monroe County

AREA COVERED BY MILLWRIGHTS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot, and Pike County in its entirety

ZONE 1 - Carbon County

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Summit Hill, Mauch Chunck, Mahoning, Palmerton, Franklin, Towamensing, Lansford & Lower Towamensing Twps., in Carbon County
ZONE 2 - Kidder Township in Carbon County
ZONE 3 - Remainder of Carbon County
ZONE 4 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 5 - Remainder of Monroe County

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot, Remainder of Carbon County; Pike County in its entirety
ZONE 2 - Carbon County: (Township of Franklin, Eas Penn, Lower Towamensing, Upper Towamensing & Palmerton)

AREA COVERED BY PWOER EQUIPMENT OPERATORS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot, and Pike County
ZONE 2 - Carbon County

AREA COVERED BY ROOFERS ZONES

ZONE 1 - East Penn, Franklin, Lower Towamensing, Machoning and Towamensing Townships in Carbon County, Remainder of Monroe County
ZONE 2 - Remainder of Carbon County
ZONE 3 - Tobyhanna Army Depot in Monroe County & Pike County in its entirety

AREA COVERED BY SOFT FLOOR LAYERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

AREA COVERED BY TERRAZZO WORKERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Monroe County, including Tobyhanna Army Depot & Pike County

AREA COVERED BY TILE SETTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

LABORERS CLASSIFICATIONS DEFINITIONS

ZONE 1
CLASS 1 - Unskilled and window cleaners
CLASS 2 - Semi skilled laboers; jackhammer iperators, (each man when two required for operation of jackhammer) vibrator and buster man, wagon drill and all men handling dynamite, gas buggies 2" pumps and concrete mixers (up to 2 bags) and all pneumatic tools, non-metallic pipe layers and making of joints, clay, terra cotta ironston, vitrified concrete handling of burning torches, asphalt or other material
CLASS 3 - Plasterer tenders and mason tenders and handling of all material to be used - masons & scaffold builders
ZONE 2 -
CLASS 1 - Unskilled laborers & window cleaners
CLASS 2 - Operator of jackhammer, paving breaking & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drills & men handling burning torches in the wrecking of buildings, laying of all clay, terra cotta, ironstone, vitrified concrete or non metallic pipe & the making of joints for the same & cofferdams (below 10')
CLASS 3 - Plasterer & mason tenders, scaffold builders & handling of all materials to be used by palsterers & masons, brick & block loaded on pallets, cement finisher tenders, gunniting & molded-D & sandblaster helpers, power buggies, to get mason tender rates, all floor hardener & "cure" application shall be the work of the mason tender. All pumps, such as the concrete, plasterer, mortar & water, installing plastic or other non-solid refactory materials in connection with boiler work
CLASS 4 - Barko tamper operator
CLASS 5 - Wagon drills and men handling burning torches in the wrecking of buildings

CLASSIFICATIONS DEFINITION POWER EQUIPMENT OPERATORS ZONES

ZONE 1

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above

GROUP 2: All types of cranes, backhoes, cableways, draglines, keystones, all types of shovels, derricks. trench shovels, trenching machines, hoist with two towers, paver 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, poppin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapull spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechar welders, motor patrols, drill helper-self contained rotary drills, core drill operator, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heater, farm tractors, form lift graders, fine grade machines, road finishing machines, concrete breaking machines, roller, seaman pulverizing mixer, power broom, seeding spreader, tireman, (for power equipment), machines similar to above

GROUP 5: Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

GROUP 7: All machines with booms (including jib, masts, leads, etc.) 100 ft. and over

GROUP 7-A: 150 ft. and over

GROUP 8-B: 200 ft. and over

CLASSIFICATIONS DEFINITION POWER EQUIPMENT OPERATORS ZONES (Cont'd)

ZONE 2

GROUP 1: Machines doing hook work, any machine handling machinery, cable spinning machines, helocopters, machines similar to the above

GROUP 2 : All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lifts, 20 ft. lift and over machine to the above

GROUP 3: Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt palnt engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operater, forklift trucks under 20 ft. lift, machines similar to the above

GROUP 4: Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishingmachines concrete breaking machines, rollers, seaman pulverzing mixer, power broom, seeding spreader, tireman (for power equipment) machines similar to above

GROUP 5: - Fireman, grease truck

GROUP 6: Oilers and deck hands (personnel boats), core drill helper

SUPERSEDEAS DECISION

STATE: VIRGINIA

COUNTIES: Henrico and the Independent City of Richmond

DECISION NO.: VA85-3020

DATE: Date of Publication

Supersedes Decision No. VA82-3033 dated December 3, 1982 in 47 FR p. 54744

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	13.78	2.07
BOILERMAKERS	16.625	3.54
BRICKLAYERS & STONEMASONS	13.50	1.47
CARPENTERS & SOFT FLOOR LAYERS	12.05	1.70
CEMENT MASONS	11.25	
CEMENT MASONS MACHINE MEN	11.35	
ELECTRICIANS	14.35	13%b
ELEVATOR CONSTRUCTORS	13.01	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS	9.11	2.69+ a+b
ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY	6.505	
GLAZIERS	12.05	1.32
IRONWORKERS-Structural Reinforcing and Ornamental	13.75	2.40
LABORERS:		
Unskilled Tenders (excluding brick masons tenders) Motorized Georgia Buggy Operators, Nozzleman (gunite or Sandblasting), Concrete Saw Operator, Air Tool and Vibrator Operators	8.05	.71
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble and Tile and Terrazzo Workers Helpers	8.20	.71
Burners (wrecking)	8.30	.71
Floor, Base & Terrazzo Grinders	8.35	.71
Wagon Drill Air Trac	8.45	.71
Powderman	8.70	.71
LINEMEN & CABLE SPLICERS	14.00	.85+3 1/2%
CABLE SPLICERS	14.71	.85+3 1/2%
MARBLE, TILE & TERRAZZO WORKERS	10.10	
MILLWRIGHTS	13.95	1.61
PAINTERS:		
Brush, Paperhanders, Tapers, and Finishers	11.20	
Structural Steel, Swing State and Bosun Chair	11.45	
Scaffold or Other Hazard Work over 50 feet	11.45	
Spray	11.70	
Sandblasting, Elevated Tanks, Smoke Stacks and all Towers	11.85	
PILEDRIVERMEN AND DOCK-BUILDERS	12.45	1.70
PLASTERERS	13.00	
PLUMBERS & STEAMFITTERS	14.80	2.10
ROOFERS COMPOSITION	8.40	
ROOFERS HELPERS (Tearing off old roofing, Carrying materials & Cleanup)	6.50	
SHEET METAL WORKERS:		
City of Richmond	11.32	.81
Remainder of County	11.57	.81
SOUND AND SIGNAL INSTALLER	6.00	
SPRINKLER FITTERS	13.47	3.23
POWER EQUIPMENT OPERATORS		
Building Construction		
Group 1	12.80	1.875
Group 2	10.25	1.875
Group 3	8.25	1.875
Group 4	8.05	1.875
Group 5	7.86	1.875

See classification definitions on page 2

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

b. Paid Holidays: A through F, Day after Thanksgiving.

c. Paid Holidays: A through F; Washington's Birthday; Good Friday and Christmas Eve, provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

PEC DEFINITIONS:

GROUP 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2 - Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16S, fork lift

GROUP 3 - Compressor over 125 cu. ft., bottom and end dumps, tractor without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helpers

GROUP 4 - Firemen

GROUP 5 - Oilers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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Friday
April 5, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 10
Revised List of Migratory Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

Revised List of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking revises the List of Migratory Birds contained in 50 CFR 10.13. As revised, the List contains all species covered by the four treaties between the United States and other nations that are implemented by the Migratory Bird Treaty Act. The List of Migratory Birds was last revised on November 16, 1977 (42 FR 59258), with subsequent corrections (March 14, 1978, 43 FR 10565; April 10, 1978, 43 FR 14988). A revision is necessary to bring the List up to date. This rulemaking revises the scientific names of groups listed in two of the four migratory bird treaties. This rulemaking also adds certain species to and deletes others from the current List of Migratory Birds, and revises the English (common) and/or scientific names of previously listed species as necessary to conform with the most recent *Check-list of North American Birds* (American Ornithologists' Union, 6th ed., 1983). The full, revised List of Migratory Birds is presented here in two formats: alphabetically by English (common) name and in taxonomic order by scientific name.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, telephone 202–254–3207. Reprints of this final rule, including the List of Migratory Birds, will be available from the above Office within 60 days after the effective date.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (16 U.S.C. 703–712) [hereinafter referred to as MBTA] expressly protects any migratory bird included in the terms of the Convention for the Protection of Migratory Birds, August 16, 1916, United States—Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628, the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States—Mexico, 50 Stat. 1311, T.S. No. 912, the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990 (16 U.S.C. 703), and the Convention Between the United States of America and the Union of Soviet Socialist Republics Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, (16 U.S.C. 703, 712).

The Fish and Wildlife Service regulates most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds under the terms of the MBTA. Regulations implementing the MBTA, which are found principally in Title 50 Code of Federal Regulations (CFR), Parts 10, 20, and 21, may be applied to any bird covered by one of the four treaties (16 U.S.C. 712).

Because of taxonomic changes over the years, there is need to better define and interpret the species intended to be afforded protection under the various migratory bird treaties. Many of the scientific group and species names appearing in the treaties are no longer in use. Lists of equivalent nomenclature are provided here to document the intended coverage of the wording appearing in the original treaties.

A list of birds protected under the Canadian, Mexican, and Japanese treaties is currently contained in 50 CFR 10.13. The revisions made here are necessary to:

(i) Include those birds protected under the Soviet treaty that are not presently listed;

(ii) Bring the list into accord with the English (common) and scientific names given in the 6th Edition of the American Ornithologists' Union's *Check-list of North American Birds* (1983);

(iii) Add species that are of regular occurrence in the United States that were not included on the last List;

(iv) Delete species formerly thought to occur in the United States but for which records have been disavowed;

(v) Delete species whose occurrence in the United States is deemed accidental, i.e., the U.S. is outside the species' normal range and occurrence is infrequent and irregular.

Changes in categories (iii), (iv), and (v) affect only certain species covered only by terms of the treaties with Canada and/or Mexico.

The first treaty offering protection to migratory birds, with Canada, was signed 69 years ago. That treaty indicated, by scientific names of families or groups or by the English names of species or groups of species, which birds were intended to be protected by the treaty. One subordinal group name, Limicolae, has gone out of usage in the intervening years. The equivalent current scientific names of the groups and species incorporated by scientific and English names in the treaty with Canada are presented here. Family names end in -idae, while subfamily names end in -inae.

Birds protected by U.S.–Canada treaty, 1916 with present equivalent scientific terminology:

1. Migratory Game Birds

Anatidae—no change
Gruidae—no change
Rallidae—no change
Limicolae or shorebirds=Charadriidae, Haematopodidae, Recurvirostridae, Scolopacidae
Columbidae—no change

2. Migratory Insectivorous Birds

Bobolinks, meadowlarks, orioles=Emberizidae/Icterinae, part
Catbirds=Mimidae, part
Chickadees, titmice=Paridae
Cuckoos=Cuculidae
Flickers, woodpeckers=Picidae, part or all
Flycatchers=Tyrannidae, part or all (interpreted as family group name and not meant to include Old World flycatchers in the family Muscicapidae)
Grosbeaks=Emberizidae/Cardinalinae, part, and Fringillidae/Carduelinae, part
Hummingbirds=Trochilidae
Kinglets=Muscicapidae/Sylviinae, part
Martins, swallows=Hirundinidae
Nighthawks, whip-poor-wills=Caprimulgidae, part or all
Nuthatches=Sittidae
Robins, thrushes=Muscicapidae/Turdinae, part or all
Shrikes=Laniidae
Swifts=Apodidae
Tanagers=Emberizidae/Thraupinae
Vireos=Vireonidae
Warblers=Emberizidae/Parulinae, part or all (like flycatchers, interpreted as group family name meant to include species whose common name does not include warbler; not meant to include Old World warblers)
Waxwings=Bombycillidae
Wrens=Troglodytidae
"All other perching birds which feed entirely or chiefly on insects"=Larks, Alaudidae; Creepers, Certhiidae; Dipper, Cinclidae; Gnatcatchers, Muscicapidae/Sylviinae, part; Thrashers, Mimidae, part; Pipits and wagtails, Motacillidae

3. Other Migratory Non-Game Birds

Auks, auklets, guillemots, murres, puffins=Alcidae, part or all
Bitterns, herons=Ardeidae, part or all

Fulmars, petrels, shearwaters=Procellariidae and Hydrobatidae
Gannets=Sulidae, part
Grebes=Podicipedidae
Gulls, jaegers, terns=Laridae/Stercorariinae, Larinae, Sterninae
Loons=Gaviidae

The treaty with Mexico, signed in 1937, listed birds by scientific family names, with the intent that birds in those families which were known to occur in both nations were to be covered by the treaty. Additional families were added by an amendment to the treaty in 1972. For technical reasons, some family names have changed and the composition of some families is now different from the listings used when the treaty or amendment was signed. Family names that have changed are given here followed by their present equivalent scientific name.

Compsothlypidae=Emberizidae/Parulinae, part
Fringillidae=Emberizidae/Emberizinae, Cardinalinae and Fringillidae/Fringillinae, Carduelinae, part
Icteridae=Emberizidae/Icterinae
Laridae=Laridae/Larinae, Sterninae
Micropodidae=Apodidae
Pandionidae=Accipitridae/Pandionae
Paridae=Paridae, Aegithalidae
Phalaropodidae=Scolopacidae, part
Rynchopidae=Laridae/Rhynchopinae
Stercorariidae=Laridae/Stercorariinae
Sylviidae=Muscicapidae/Sylviinae
Thraupidae=Emberizidae/Thraupinae, part
Turdidae=Muscicapidae/Turdinae

The treaties for the protection of migratory birds signed with Japan in 1972 and the Soviet Union in 1976 listed in appendices individual species of birds to be protected, these being species found in the United States, including its territories and possessions, and either Japan or the Soviet Union. One species was added to the Japanese treaty by amendment. Certain entries incorporated in this rulemaking differ from entries in the lists appended to one or both of those treaties. This presents a nomenclatural problem in listing species that are in the appendices of both the Japanese and Russian treaties, but under slightly different names or where the American Ornithologists' Union has adopted a name that is different from that formerly used for a species. For example, the species listed as "Dusky Thrush, *Turdus pallidus* (=*obscurus*)" is already listed by virtue of the Japanese treaty as "Eye-browed Thrush, *Turdus osbcurus.*" In such cases, the revisions made here follow the nomenclature used or recognized by the American Ornithologists' Union. This does not change the protection afforded these species nor does it revise the appendices to either the Japanese or Soviet treaty. Entries on the treaties' appendices which have changed are presented here first followed by the present equivalent scientific name which appears in § 10.13, as revised by this rulemaking.

Gorsachius goisagi is listed as *Nycticorax goisagi;*
Cygnus bewickii is included in *Cygnus columbianus;*
Anser canagicus and *caerulescens* are listed in the genus *Chen;*
Branta nigricans is included in *Branta bernicla;*
Species in the genera *Mareca* and *Spatula* are listed in the genus *Anas;*
Melanitta deglandi is incorporated into *Melanitta fusca;*
Mergus albellus is listed as *Mergellus albellus;*
Accipiter virgatus is listed as *Accipiter gularis;*
Eudromias morinellus is listed in *Charadrius;*
Tringa incana and *brevipes* are listed as separate species in the genus *Heteroscelus;*
Tringa hypoleucos is listed as *Actitis hypoleucos;*
Numenius minutus and *Numenius borealis* are listed as separate species;
Crocethia alba is listed as *Calidris alba;*
Calidris minutilla and *subminuta* are listed as separate species;
Lobipes lobatus is listed in the genus *Phalaropus;*
Lunda cirrhata is listed in the genus *Fratercula;*
Petrochelidon pyrrhonota is listed as *Hirundo pyrrhonota;*
Motacilla alba has been divided into *Motacilla alba* and *Motacilla lugens;*
Carduelis flammea and *hornemanni* are listed as separate species.

This rulemaking adds forty-six species to the list of protected birds.

Ten of these result from taxonomic changes; what had been considered a single species is now listed as two or more species. There is no change in protection because of the change of listing. EXAMPLE—what was formerly considered to be the Western Gull, *Larus occidentialis,* is now considered to be two species, the Western Gull, *L. occidentalis,* and the Yellow-footed Gull, *Larus livens.*

Ten species are added because they are listed in the appendix to the Soviet treaty. Several of these would have been eligible for addition under the Canadian/Mexican treaty provisions.

Twenty-six species are added because of recent distributional records that indicate they are a part of the avifauna of the United States on a regular basis. This category includes one species recently transferred into a protected family (the Becard) and several that should have been listed previously that, for some unknown reason, were not.

This rulemaking removes twenty-five species from the list of protected birds.

Seven of these result from taxonomic changes; what were formerly considered to be two or more species have been combined into a single species and so listed. There is no change in protected status because of the change of name under which some populations are listed. EXAMPLE—the Mexican Duck, *Anas diazi,* is now included with the Mallard, *A. platyrhynchos.*

Four species are deleted because the record that was the basis for their former listing is no longer considered to be valid. EXAMPLE—Gull, Black-tailed. These four could also be deleted as being of only accidental occurrence (see below).

Three species are removed because they do not belong to groups covered by any treaty; they should not have been listed previously. EXAMPLE—Elepaio.

Eleven species are deleted because their occurrence in the United States is "accidental". They are not a normal part of the avifauna of the United States.

Excluding the changes made for taxonomic purposes, which do not change protection, this rulemaking results in a net addition of 18 species to the List.

To make the necessary changes described above, the Service proposed in June 1984 to revise the List of Migratory Birds (49 FR 23197–23202, June 5, 1984).

Public comment on the June proposal was limited (4 letters) and focused primarily on the introductory text to § 10.13 of 50 CFR; the deletion of certain species (specifically the Bahama Honeycreeper, *Coereba bahamensis* and the Eurasian Kestrel, *Falco tinnunculus*) from the List and the name change of the American Flamingo to the Greater Flamingo. The introductory text to § 10.13 has been rewritten to explicitly cite the treaties giving authority for the List. Records of occurrence for the Eurasian Kestrel have been reviewed and the species has been retained on the List. The Bahama Honeycreeper will be deleted, not because of occurrence/non-occurrence but because it does not belong to a taxonomic group covered by any of the four migratory bird treaties.

Because the List of Migratory Birds follows the taxonomy and nomenclature of the American Ornithologists Union's Check-list of North American Birds (6th

Edition, 1983) the English (common) name change from American Flamingo to Greater Flamingo also entails recognizing the reclassification of these two species. Formerly, the American Flamingo was *Phoenicopterus ruber* and the Greater Flamingo of Europe and Africa was *Phoenicopterus roseus*. Now, both are known as the Greater Flamingo: *Phoenicopterus ruber* irrespective of geographical origin. Thus, both New and Old World Greater Flamingos are now protected under the Migratory Bird Treaty Act.

Internal review of the proposed rule revealed certain changes that were inadvertently omitted. These changes, and the reasons for them, are listed here:

1. Species that should have been added due to new records or inclusion on the appendix to the Soviet Treaty (3):

Reed-Bunting, Common, *Emberiza schoeniculus*

Reed-Bunting, Pallas', *Emberiza pallasi*

Starthroat, Plain-capped, *Heliomaster constanti*

2. Species that should have been deleted due to accidental status (1):

Swift, Short-tailed, *Chaetura brachyura*

3. Change made erroneously (1):

Least Tern, *Sterna albifrons*, was changed to *Sterna antillarum*. This should have been Least Tern, *S. albifrons*, changed to Little Tern, and Least Tern, *Sterna antillarum*, added. That is, both species should be listed.

The listing of Least (or Little) Tern, *S. albifrons*, in the Japanese treaty referred to the Old World form which retains the English name Little and the scientific name *albifrons* while the New World form (Least) is split off as a species, *antillarum*.

4. Changes in generic or English names that should have been made (12):

Kingfisher, Belted, *Megaceryle alcyon*, will be *Ceryle alcyon*

Kingfisher, Ringed, *Megaceryle torquata*, will be *Ceryle torquata*

Puffin, Tufted, *Lunda cirrhata*, will be *Fratercula cirrhata*

Sandpiper, Stilt, *Micropalama himantopus*, will be *Calidris himantopus*

Sparrow, Five-striped, *Aimophila quinquestriata*, will be *Amphispiza quinquestriata*

Sparrow, LeConte's, *Ammospiza leconteii*, will be *Ammodramus leconteii*

Sparrow, Seaside, *Ammospiza maritima*, will be *Ammodramus maritimus*

Sparrow, Sharp-tailed, *Ammospiza caudacuta*, will be *Ammodramus caudacutus*

Storm-Petrel, Least, *Halocyptena microsoma*, will be *Oceanodroma microsoma*

Warbler, Parula, *Parula americana*, reinserted in list as Parula, Northern

Warbler, Tropical Parula, will be Parula, Tropical

Woodcock, American, *Philohela minor*, will be *Scolopax minor*

5. New changes due to action of the American Ornithologists Union (2):

Crissal Thrasher, *Toxostoma dorsale*, will be *Toxostoma crissale*

Oystercatcher, Black, proposed to be changed to Oystercatcher, American Black, will remain Oystercatcher, Black

These are modifications to the 6th edition that were published in the *Auk* 101:348, 1984. The first is mandated by a decision of the International Commission on Zoological Nomenclature.

These changes are incorporated in the full, revised List of Migratory Birds contained in this final rule.

Statement of Effects

Because the proposed revision of the List of Migratory Birds merely redescribes the birds already protected by the Federal treaties with Canada, Mexico, Japan and the Soviet Union, the Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Information Collection Requirements

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

Based on the fact that such regulations merely redescribe the birds already protected by the Federal treaties with Canada, Mexico, Japan and the Soviet Union, the Service has determined that revision of the List of Migratory Birds in 50 CFR 10.13 is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on such regulations is not required.

Endangered Species Act Consideration

A number of species appearing on the List of Migratory Birds are also designated as Endangered or Threatened under provisions of the Endangered Species Act (16 U.S.C. 1531–1543). No legal complications arise from the dual listing inasmuch as the two lists are developed by separate authorities and for different purposes.

Primary Authors

The primary authors of this final rule are Mark L. Shaffer, Office of Migratory Bird Management; and Richard C. Banks, Division of Wildlife Research.

List of Subjects in 50 CFR Part 10

Exports, Birds, Imports, Law enforcement officers, Wildlife.

Regulation Promulgation

Accordingly, Part 10, Subpart B of Chapter I, Title 50 of the Code of Federal Regulations, is hereby amended as set forth below.

PART 10—[AMENDED]

The authority for 50 CFR 10 reads as follows:

Authority: Lacey Act, 62 Stat. 687, as amended, 63 Stat. 89, 74 Stat. 753, and 83 Stat. 281; Black Bass Act, sec. 5, 44 Stat. 576, as amended, 46 Stat. 846; Migratory Bird Treaty Act, sec. 3, 40 Stat. 755, Bald Eagle Protection Act, sec. 2, 54 Stat. 251; Tariff Classification Act of 1962, sec. 102, 76 Stat. 73–74, 19 U.S.C. 1202, Schedule 1, Part 15D, Headnote. 2(d), "Tariff Schedules of the United States"; Endangered Species Act of 1973, sec. 11(f), 87 Stat. 884; Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042.

Section 10.13 is revised to read as follows:

§ 10.13 List of Migratory Birds.

The following is a list of all species of migratory birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703–711) and subject to the regulations on migratory birds contained in this Subchapter B of Title 50 Code of Federal Regulations. The species listed are those protected by the Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628; the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, 50 Stat. 1311, T.S. No. 912; the Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and the Convention for the Conservation of Migratory Birds and Their Environment, United States–U.S.S.R., November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16

U.S.C. 703, 712. The species are listed two ways. In the first part of the List species are arranged alphabetically by English (common) name groups, with the scientific name following the English (common) name. All species of ducks are listed together under the heading "Ducks". In the second part of the List, species are listed by scientific name arranged in taxonomic order. Taxonomy and nomenclature follows the American Ornithologists' Union's Check-list of North American Birds (6th Edition, 1983).

I. Alphabetical Listing

Accentor, Siberian, *Prunella montanella*
Albatross:
  Black-footed, *Diomedea nigripes*
  Laysan, *Diomedea immutabilis*
  Short-tailed, *Diomedea albatrus*
  Yellow-nosed, *Diomedea chlororhynchos*
Anhinga, *Anhinga anhinga*
Ani:
  Groove-billed, *Crotophaga sulcirostris*
  Smooth-billed, *Crotophaga ani*
Auklet:
  Cassin's, *Ptychoramphus aleuticus*
  Crested, *Aethia cristatella*
  Least, *Aethia pusilla*
  Parakeet, *Cyclorrhynchus psittacula*
  Rhinoceros, *Cerorhinca monocerata*
  Whiskered, *Aethia pygmaea*
Avocet, American, *Recurvirostra americana*
Barn-Owl, Common, *Tyto alba*
Beardless-Tyrannulet, Northern, *Camptostoma imberbe*
Becard, Rose-throated, *Pachyramphus aglaiae*
Bittern:
  American, *Botaurus lentiginosus*
  Chinese, *Ixobrychus sinensis*
  Least, *Ixobrychus exilis*
  Schrenk's, *Ixobrychus eurhythmus*
Black-Hawk, Common, *Buteogallus anthracinus*
Blackbird:
  Brewer's, *Euphagus cyanocephalus*
  Red-winged, *Agelaius phoeniceus*
  Rusty, *Euphagus carolinus*
  Tawny-shouldered, *Agelaius humeralis*
  Tricolored, *Agelaius tricolor*
  Yellow-headed, *Xanthocephalus xanthocephalus*
  Yellow-shouldered, *Agelaius xanthomus*
Bluebird:
  Eastern, *Sialia sialis*
  Mountain, *Sialia currucoides*
  Western, *Sialia mexicana*
Bluethroat, *Luscinia svecica*
Bobolink, *Dolichonyx oryzivorus*
Booby:
  Blue-footed, *Sula nebouxii*
  Brown, *Sula leucogaster*
  Masked, *Sula dactylatra*
  Red-footed, *Sula sula*
Brambling, *Fringilla montifringilla*
Brant, *Branta bernicla*
Bufflehead (see DUCKS)
Bullfinch:
  Eurasian, *Pyrrhula pyrrhula*
  Puerto Rican, *Loxigilla portoricensis*
Bunting:
  Indigo, *Passerina cyanea*
  Lark, *Calamospiza melanocorys*
  Lazuli, *Passerina amoena*
  McKay's, *Plectrophenax hyperboreus*
  Painted, *Passerina ciris*
  Reed (see Reed-Bunting)
  Rustic, *Emberiza rustica*
  Snow, *Plectrophenax nivalis*
  Varied, *Passerina versicolor*
Bushtit, *Psaltriparus minimus*
Canvasback (see DUCKS)
Caracara, Crested, *Polyborus plancus*
Cardinal, Northern, *Cardinalis cardinalis*
Carib, Green-throated, *Eulampis holosericeus*
Catbird, Gray, *Dumetella carolinensis*
Chat, Yellow-breasted, *Icteria virens*
Chickadee (see Tit):
  Black-capped, *Parus atricapillus*
  Boreal, *Parus hudsonicus*
  Carolina, *Parus carolinensis*
  Chestnut-backed, *Parus rufescens*
  Mexican, *Parus sclateri*
  Mountain, *Parus gambeli*
Chuck-will's-widow, *Caprimulgus carolinensis*
Condor, California, *Gymnogyps californianus*
Coot:
  American, *Fulica americana*
  Caribbean, *Fulica caribaea*
  Eurasian, *Fulica atra*
Cormorant:
  Brandt's, *Phalacrocorax penicillatus*
  Double-crested, *Phalacrocorax auritus*
  Great, *Phalacrocorax carbo*
  Olivaceous, *Phalacrocorax olivaceus*
  Pelagic, *Phalacrocorax pelagicus*
  Red-faced, *Phalacrocorax urile*
Cowbird:
  Bronzed, *Molothrus aeneus*
  Brown-headed, *Molothrus ater*
  Shiny, *Molothrus bonariensis*
Crake:
  Corn, *Crex crex*
  Yellow-breasted, *Porzana flaviventer*
Crane:
  Common, *Grus grus*
  Sandhill, *Grus canadensis*
  Whooping, *Grus americana*
Creeper, Brown, *Certhia americana*
Crossbill:
  Red, *Loxia curvirostra*
  White-winged, *Loxia leucoptera*
Crow:
  American, *Corvus brachyrhynchos*
  Fish, *Corvus ossifragus*
  Hawaiian, *Corvus hawaiiensis*
  Mexican, *Corvus imparatus*
  Northwestern, *Corvus caurinus*
  White-necked, *Corvus leucognaphalus*
Cuckoo:
  Black-billed, *Coccyzus erythropthalmus*
  Common, *Cuculus canorus*
  Hawk (see Hawk-Cuckoo)
  Lizard (see Lizard-Cuckoo)
  Mangrove, *Coccyzus minor*
  Oriental, *Cuculus saturatus*
  Yellow-billed, *Coccyzus americanus*
Curlew (see Whimbrel):
  Bristle-thighed, *Numenius tahitiensis*
  Eskimo, *Numenius borealis*
  Far Eastern, *Numenius madagascariensis*
  Least, *Numenius minutus*
  Long-billed, *Numenius americanus*
Dickcissel, *Spiza americana*
Dipper, American, *Cinclus mexicanus*
Dotterel, Eurasian, *Charadrius morinellus*
Dove:
  Ground (see Ground-Dove)
  Inca, *Columbina inca*
  Mourning, *Zenaida macroura*
  Quail (see Quail-Dove)
  White-tipped, *Leptotila verreauxi*
  White-winged, *Zenaida asiatica*
  Zenaida, *Zenaida aurita*
Dovekie, *Alle alle*
Dowitcher:
  Long-billed, *Limnodromus scolopaceus*
  Short-billed, *Limnodromus griseus*

DUCKS

American Black Duck, *Anas rubripes*
Bufflehead, *Bucephala albeola*
Canvasback, *Aythya valisineria*
Eider:
  Common, *Somateria mollissima*
  King, *Somateria spectabilis*
  Spectacled, *Somateria fischeri*
  Steller's, *Polysticta stelleri*
Gadwall, *Anas strepera*
Garganey, *Anas querquedula*
Goldeneye:
  Barrow's, *Bucephala islandica*
  Common, *Bucephala clangula*
Harlequin Duck, *Histrionicus histrionicus*
Hawaiian Duck, *Anas wyvilliana*
Laysan Duck, *Anas laysanensis*
Mallard, *Anas platyrhynchos*
Masked Duck, *Oxyura dominica*
Merganser:
  Common, *Mergus merganser*
  Hooded, *Lophodytes cucullatus*
  Red-breasted, *Mergus serrator*
Mottled Duck, *Anas fulvigula*
Oldsquaw, *Clangula hyemalis*
Pintail:
  Northern, *Anas acuta*
  White-cheeked, *Anas bahamensis*
Pochard:
  Baer's, *Aythya baeri*
  Common, *Aythya ferina*

Redhead, *Aythya americana*
Ring-necked Duck, *Aythya collaris*
Ruddy Duck, *Oxyura jamaicensis*
Scaup:
  Greater, *Aythya marila*
  Lesser, *Aythya affinis*
Scoter:
  Black, *Melanitta nigra*
  Surf, *Melanitta perspicillata*
  White-winged, *Melanitta fusca*
Shoveler, Northern, *Anas clypeata*
Smew, *Mergellus albellus*
Teal:
  Baikal, *Anas formosa*
  Blue-winged, *Anas discors*
  Cinnamon, *Anas cyanoptera*
  Falcated, *Anas falcata*
  Green-winged, *Anas crecca*
Tufted Duck, *Aythya fuligula*
Whistling-Duck:
  Black-bellied, *Dendrocygna autumnalis*
  Fulvous, *Dendrocygna bicolor*
  West Indian, *Dendrocygna arborea*
Wigeon:
  American, *Anas americana*
  Eurasian, *Anas penelope*
Wood Duck, *Aix sponsa*

END OF DUCKS

Dunlin, *Calidris alpina*
Eagle:
  Bald, *Haliaeetus leucocephalus*
  Golden, *Aquila chrysaetos*
  Sea (see Sea-Eagle)
  White-tailed, *Haliaeetus albicilla*
Egret:
  Cattle, *Bubulcus ibis*
  Chinese, *Egretta eulophotes*
  Great, *Casmerodius albus*
  Plumed, *Egretta intermedia*
  Reddish, *Egretta rufescens*
  Snowy, *Egretta thula*
Eider (see DUCKS)
Elaenia, Caribbean, *Elaenia martinica*
Emerald, Puerto Rican, *Chlorostilbon maugaeus*
Euphonia, Antillean, *Euphonia musica*
Falcon:
  Aplomado, *Falco femoralis*
  Peregrine, *Falco peregrinus*
  Prairie, *Falco mexicanus*
Fieldfare, *Turdus pilaris*
Finch:
  Cassin's, *Carpodacus cassinii*
  House, *Carpodacus mexicanus*
  Purple, *Carpodacus purpureus*
  Rosy, *Leucosticte arctoa*
Flamingo, Greater, *Phoenicopterus ruber*
Flicker, Northern, *Colaptes auratus*
Flycatcher:
  Acadian, *Empidonax virescens*
  Alder, *Empidonax alnorum*
  Ash-throated, *Myiarchus cinerascens*
  Brown-crested, *Myiarchus tyrannulus*
  Buff-breasted, *Empidonax fulvifrons*
  Dusky, *Empidonax oberholseri*
  Dusky-capped, *Myiarchus tuberculifer*
  Fork-tailed, *Tyrannus savana*
  Gray, *Empidonax wrightii*
  Gray-spotted, *Muscicapa griseisticta*
  Great Crested, *Myiarchus crinitus*
  Hammond's, *Empidonax hammondii*
  Least, *Empidonax minimus*
  Narcissus, *Muscicapa narcissina*
  Nutting's, *Myiarchus nuttingi*
  Olive-sided, *Contopus borealis*
  Puerto Rican, *Myiarchus antillarum*
  Scissor-tailed, *Tyrannus forficatus*
  Sulphur-bellied, *Myiodynastes luteiventris*
  Vermilion, *Pyrocephalus rubinus*
  Western, *Empidonax difficilis*
  Willow, *Empidonax traillii*
  Yellow-bellied, *Empidonax flaviventris*
Frigatebird:
  Great, *Fregata minor*
  Magnificent, *Fregata magnificens*
  Lesser, *Fregata ariel*
Fulmar, Northern, *Fulmarus glacialis*
Gadwall (see DUCKS)
Gallinule, Purple, *Porphyrula martinica*
Gannet, Northern, *Sula bassanus*
Garganey (see DUCKS)
Gnatcatcher:
  Black-capped, *Polioptila nigriceps*
  Black-tailed, *Polioptila melanura*
  Blue-gray, *Polioptila caerulea*
Godwit:
  Bar-tailed, *Limosa lapponica*
  Black-tailed, *Limosa limosa*
  Hudsonian, *Limosa haemastica*
  Marbled, *Limosa fedoa*
Golden-Plover, Lesser, *Pluvialis dominica*
Goldeneye (see DUCKS)
Goldfinch:
  American, *Carduelis tristis*
  Lawrence's, *Carduelis lawrencei*
  Lesser, *Carduelis psaltria*
Goose:
  Barnacle, *Branta leucopsis*
  Bean, *Anser fabalis*
  Canada, *Branta canadensis*
  Emperor, *Chen canagica*
  Greater White-fronted, *Anser albifrons*
  Hawaiian, *Nesochen sandvicensis*
  Ross', *Chen rossii*
  Snow, *Chen caerulescens*
Goshawk, Northern, *Accipiter gentilis*
Grackle:
  Boat-tailed, *Quiscalus major*
  Common, *Quiscalus quiscula*
  Great-tailed, *Quiscalus mexicanus*
  Greater Antillean, *Quiscalus niger*
Grasshopper-Warbler, Middendorff's, *Locustella ochotensis*
Grassquit:
  Black-faced, *Tiaris bicolor*
  Yellow-faced, *Tiaris olivacea*
Grebe:
  Eared, *Podiceps nigricollis*
  Horned, *Podiceps auritus*
  Least, *Tachybaptus dominicus*
  Pied-billed, *Podilymbus podiceps*
  Red-necked, *Podiceps grisegena*
  Western, *Aechmophorus occidentalis*
Greenfinch, Oriental, *Carduelis sinica*
Greenshank, Common, *Tringa nebularia*

Grosbeak:
  Black-headed, *Pheucticus melanocephalus*
  Blue, *Guiraca caerulea*
  Crimson-collared, *Rhodothraupis celaeno*
  Evening, *Coccothraustes vespertinus*
  Pine, *Pinicola enucleator*
  Rose-breasted, *Pheucticus ludovicianus*
  Yellow, *Pheucticus chrysopeplus*
Ground-Dove:
  Common, *Columbina passerina*
  Ruddy, *Columbina talpacoti*
Guillemot:
  Black, *Cepphus grylle*
  Pigeon, *Cepphus columba*
Gull:
  Bonaparte's, *Larus philadelphia*
  California, *Larus californicus*
  Common Black-headed, *Larus ridibundus*
  Franklin's, *Larus pipixcan*
  Glaucous, *Larus hyperboreus*
  Glaucous-winged, *Larus glaucescens*
  Great Black-backed, *Larus marinus*
  Heermann's, *Larus heermanni*
  Herring, *Larus argentatus*
  Iceland, *Larus glaucoides*
  Ivory, *Pagophila eburnea*
  Laughing, *Larus atricilla*
  Lesser Black-backed, *Larus fuscus*
  Little, *Larus minutus*
  Mew, *Larus canus*
  Ring-billed, *Larus delawarensis*
  Ross', *Rhodostethia rosea*
  Sabine's, *Xema sabini*
  Slaty-backed, *Larus schistisagus*
  Thayer's, *Larus thayeri*
  Western, *Larus occidentalis*
  Yellow-footed, *Larus livens*
Gyrfalcon, *Falco rusticolus*
Harrier, Northern, *Circus cyaneus*
Hawfinch, *Coccothraustes coccothraustes*
Hawk:
  Asiatic Sparrow, *Accipiter gularis*
  Black (see Black-Hawk)
  Broad-winged, *Buteo platypterus*
  Cooper's, *Accipiter cooperii*
  Ferruginous, *Buteo regalis*
  Gray, *Buteo nitidus*
  Harris', *Parabuteo unicinctus*
  Hawaiian, *Buteo solitarius*
  Red-shouldered, *Buteo lineatus*
  Red-tailed, *Buteo jamaicensis*
  Rough-legged, *Buteo lagopus*
  Sharp-shinned, *Accipiter striatus*
  Short-tailed, *Buteo brachyurus*
  Swainson's, *Buteo swainsoni*
  White-tailed, *Buteo albicaudatus*
  Zone-tailed, *Buteo albonotatus*

Hawk-Cuckoo, Hodgson's, *Cuculus fugax*
Hawk-Owl, Northern, *Surnia ulula*
Heron:
  Great Blue, *Ardea herodias*
  Green-backed, *Butorides striatus*
  Little Blue, *Egretta caerulea*
  Night (see Night-Heron)
  Pacific Reef, *Egretta sacra*
  Tricolored, *Egretta tricolor*
Hoopoe, *Upupa epops*
House-Martin, Common, *Delichon urbica*
Hummingbird (see Carib, Emerald, Mango, Starthroat, Woodstar, Violet-ear):
  Allen's, *Selasphorus sasin*
  Anna's, *Calypte anna*
  Antillean Crested, *Orthorhynchus cristatus*
  Berylline, *Amazilia beryllina*
  Black-chinned, *Archilochus alexandri*
  Blue-throated, *Lampornis clemenciae*
  Broad-billed, *Cynanthus latirostris*
  Broad-tailed, *Selasphorus platycercus*
  Buff-bellied, *Amazilia yucatanensis*
  Calliope, *Stellula calliope*
  Costa's, *Calypte costae*
  Lucifer, *Calothorax lucifer*
  Magnificent, *Eugenes fulgens*
  Ruby-throated, *Archilochus colubris*
  Rufous, *Selasphorus rufus*
  Violet-crowned, *Amazilia violiceps*
  White-eared, *Hylocharis leucotis*
Ibis:
  Glossy, *Plegadis falcinellus*
  Scarlet, *Eudocimus ruber*
  White, *Eudocimus albus*
  White-faced, *Plegadis chihi*
Jabiru, *Jabiru mycteria*
Jacana, Northern, *Jacana spinosa*
Jaeger:
  Long-tailed, *Stercorarius longicaudus*
  Parasitic, *Stercorarius parasiticus*
  Pomarine, *Stercorarius pomarinus*
Jay:
  Blue, *Cyanocitta cristata*
  Brown, *Cyanocorax morio*
  Gray, *Perisoreus canadensis*
  Gray-breasted, *Aphelocoma ultramarina*
  Green, *Cyanocorax yncas*
  Pinyon, *Gymnorhinus cyanocephalus*
  Scrub, *Aphelocoma coerulescens*
  Steller's, *Cyanocitta stelleri*
Junco:
  Dark-eyed, *Junco hyemalis*
  Yellow-eyed, *Junco phaeonotus*
Kestrel:
  American, *Falco sparverius*
  Eurasian, *Falco tinnunculus*
Killdeer, *Charadrius vociferus*
Kingbird:
  Cassin's, *Tyrannus vociferans*
  Couch's, *Tyrannus couchii*
  Eastern, *Tyrannus tyrannus*
  Gray, *Tyrannus dominicensis*
  Loggerhead, *Tyrannus caudifasciatus*
  Thick-billed, *Tyrannus crassirostris*
  Tropical, *Tyrannus melancholicus*
  Western, *Tyrannus verticalis*
Kingfisher:
  Belted, *Ceryle alcyon*
  Green, *Chloroceryle americana*
  Ringed, *Cyeryle torquata*
Kinglet:
  Golden-crowned, *Regulus satrapa*
  Ruby-crowned, *Regulus calendula*
Kiskadee, Great, *Pitangus sulphuratus*
Kite:
  American Swallow-tailed, *Elanoides forficatus*
  Black, *Milvus migrans*
  Black-shouldered, *Elanus caeruleus*
  Hook-billed, *Chondrohierax uncinatus*
  Mississippi, *Ictinia mississippiensis*
  Snail, *Rostrhamus sociabilis*
Kittiwake:
  Black-legged, *Larus tridactyla*
  Red-legged, *Larus brevirostris*
Knot:
  Great, *Calidris tenuirostris*
  Red, *Calidris canutus*
Lapwing, Northern, *Vanellus vanellus*
Lark, Horned, *Eremophila alpestris*
Limpkin, *Aramus guarauna*
Lizard-Cuckoo, Puerto Rican, *Saurothera vieilloti*
Longspur:
  Chestnut-collared, *Calcarius ornatus*
  Lapland, *Calcarius lapponicus*
  McCown's, *Calcarius mccownii*
  Smith's *Calcarius pictus*
Loon:
  Arctic, *Gavia arctica*
  Common, *Gavia immer*
  Red-throated, *Gavia stellata*
  Yellow-billed, *Gavia adamsii*
Magpie:
  Black-billed, *Pica pica*
  Yellow-billed, *Pica nuttalli*
Mallard (see DUCKS)
Mango:
  Antillean, *Anthracothorax dominicus*
  Green, *Anthracothorax viridis*
Martin:
  Caribbean, *Progne dominicensis*
  Cuban, *Progne cryptoleuca*
  Gray-breasted, *Progne chalybea*
  House (see House-Martin)
  Purple, *Progne subis*
Meadowlark:
  Eastern, *Sturnella magna*
  Western, *Sturnella neglecta*
Merganser (see DUCKS)
Merlin, *Falco columbarius*
Mockingbird, Northern, *Mimus polyglottos*
Moorhen, Common, *Gallinula chloropus*
Murre:
  Common, *Uria aalge*
  Thick-billed, *Uria lomvia*
Murrelet:
  Ancient, *Synthliboramphus antiquus*
  Craveri's, *Synthliboramphus craveri*
  Kittlitz's, *Brachyramphus brevirostris*
  Marbled, *Brachyramphus marmoratus*
  Xantus', *Synthliboramphus*
hypoleucus
Needletail, White-throated, *Hirundapus caudacutus*
Night-Heron:
  Black-crowned, *Nycticorax nycticorax*
  Japanese, *Nycticorax goisagi*
  Malay, *Nycticorax melanolophus*
  Yellow-crowned, *Nycticorax violaceus*
Nighthawk:
  Antillean, *Chordeiles gundlachii*
  Common, *Chordeiles minor*
  Lesser, *Chordeiles acutipennis*
Nightjar:
  Buff-collared, *Caprimulgus ridgwayi*
  Jungle, *Caprimulgus indicus*
  Puerto Rican, *Caprimulgus noctitherus*
Noddy:
  Black, *Anous minutus*
  Blue-gray, *Procelsterna cerulea*
  Brown, *Anous stolidus*
  Lesser, *Anous tenuirostris*
Nutcracker, Clark's, *Nucifraga columbiana*
Nuthatch:
  Brown-headed, *Sitta pusilla*
  Pygmy, *Sitta pygmaea*
  Red-breasted, *Sitta canadensis*
  White-breasted, *Sitta carolinensis*
Oldsquaw (see DUCKS)
Oriole:
  Altamira, *Icterus gularis*
  Audubon's, *Icterus graduacauda*
  Black-cowled, *Icterus dominicensis*
  Black-vented, *Icterus wagleri*
  Hooded, *Icterus cucullatus*
  Northern, *Icterus galbula*
  Orchard, *Icterus spurius*
  Scott's, *Icterus parisorum*
  Streak-backed, *Icterus pustulatus*
Osprey, *Pandion haliaetus*
Ovenbird, *Seiurus aurocapillus*
Owl:
  Barn (see Barn-Owl)
  Barred, *Strix varia*
  Boreal, *Aegolius funereus*
  Burrowing, *Athene cunicularia*
  Elf, *Micrathene whitneyi*
  Flammulated, *Otus flammeolus*
  Great Gray, *Strix nebulosa*
  Great Horned, *Bubo virginianus*
  Hawk (see Hawk-Owl)
  Long-eared, *Asio otus*
  Pygmy (see Pygmy-Owl)
  Saw-whet (see Saw-Whet Owl)
  Screech (see Screech-Owl)
  Short-eared, *Asio flammeus*
  Snowy, *Nyctea scandiaca*
  Spotted, *Strix occidentalis*
Oystercatcher:
  American, *Haematopus palliatus*
  Black, *Haematopus bachmani*
Parula:
  Northern, *Parula americana*
  Tropical, *Parula pitiayumi*
Pauraque, Common, *Nyctidromus albicollis*

Pelican:
American White, *Pelecanus erythrorhynchos*
Brown, *Pelecanus occidentalis*
Petrel:
Black-capped, *Pterodroma hasitata*
Bonin, *Pterodroma hypoleuca*
Bulwer's, *Bulweria bulwerii*
Cook's, *Pterodroma cookii*
Dark-rumped, *Pterodroma phaeopygia*
Herald, *Pterodroma arminjoniana*
Kermadec, *Pterodroma neglecta*
Mottled, *Pterodroma inexpectata*
Murphy's, *Pterodroma ultima*
Storm (see Storm-Petrel)
White-necked, *Pterodroma externa*
Pewee:
Greater, *Contopus pertinax*
Lesser Antillean, *Contopus latirostris*
Wood (see Wood-Pewee)
Phainopepla, *Phainopepla nitens*
Phalarope:
Red, *Phalaropus fulicaria*
Red-necked, *Phalaropus lobatus*
Wilson's, *Phalaropus tricolor*
Phoebe:
Black, *Sayornis nigricans*
Eastern, *Sayornis phoebe*
Say's, *Sayornis saya*
Pigeon:
Band-tailed, *Columba fasciata*
Plain, *Columba inornata*
Red-billed, *Columba flavirostris*
Scaly-naped, *Columba squamosa*
White-crowned, *Columba leucocephala*
Pintail (see DUCKS)
Pipit:
Pechora, *Anthus gustavi*
Red-throated, *Anthus cervinus*
Sprague's, *Anthus spragueii*
Tree (see Tree-Pipit)
Water, *Anthus spinoletta*
Plover:
Black-bellied, *Pluvialis squatarola*
Common Ringed, *Charadrius hiaticula*
Golden (see Golden-Plover)
Great Sand, *Charadrius leschenaultii*
Little Ringed, *Charadrius dubius*
Mongolian, *Charadrius mongolus*
Mountain, *Charadrius montanus*
Piping, *Charadrius melodus*
Semipalmated, *Charadrius semipalmatus*
Snowy, *Charadrius alexandrinus*
Wilson's, *Charadrius wilsonia*
Pochard (see DUCKS)
Poorwill, Common, *Phalaenoptilus nuttallii*
Puffin:
Atlantic, *Fratercula arctica*
Horned, *Fratercula corniculata*
Tufted, *Fratercula cirrhata*
Pygmy-Owl:
Ferruginous, *Glaucidium brasilianum*
Northern, *Glaucidium gnoma*
Pyrrhuloxia, *Cardinalis sinuatus*
Quail-Dove:
Bridled, *Geotrygon mystacea*
Key West, *Geotrygon chrysia*
Ruddy, *Geotrygon montana*
Rail:
Black, *Laterallus jamaicensis*
Clapper, *Rallus longirostris*
King, *Rallus elegans*
Sora (see Sora)
Virginia, *Rallus limicola*
Yellow, *Coturnicops noveboracensis*
Raven:
Chihuahuan, *Corvus cryptoleucus*
Common, *Corvus corax*
Razorbill, *Alca torda*
Redhead (see DUCKS)
Redpoll:
Common, *Carduelis flammea*
Hoary, *Carduelis hornemanni*
Redshank, Spotted, *Tringa erythropus*
Redstart:
American, *Setophaga ruticilla*
Painted, *Myioborus pictus*
Slaty-throated, *Myioborus miniatus*
Reed-Bunting:
Common, *Emberiza schoeniculus*
Pallas', *Emberiza pallasi*
Roadrunner, Greater, *Geococcyx californianus*
Robin:
American, *Turdus migratorius*
Clay-colored, *Turdus grayi*
Rufous-backed, *Turdus rufopalliatus*
Rosefinch, Common, *Carpodacus erythrinus*
Rough-winged Swallow, Northern, *Stelgidopteryx serripennis*
Rubythroat, Siberian, *Luscinia calliope*
Ruff, *Philomachus pugnax*
Sanderling, *Calidris alba*
Sandpiper:
Baird's, *Calidris bairdii*
Broad-billed, *Limicola falcinellus*
Buff-breasted, *Tryngites subruficollis*
Common, *Actitis hypoleucos*
Curlew, *Calidris ferruginea*
Least, *Calidris minutilla*
Marsh, *Tringa stagnatilis*
Pectoral, *Calidris melanotos*
Purple, *Calidris maritima*
Rock, *Calidris ptilocnemis*
Semipalmated, *Calidris pusilla*
Sharp-tailed, *Calidris acuminata*
Solitary, *Tringa solitaria*
Spoonbill, *Eurynorhynchus pygmeus*
Spotted, *Actitis macularia*
Stilt, *Calidris himantopus*
Terek, *Xenus cinereus*
Upland, *Bartramia longicauda*
Western, *Calidris mauri*
White-rumped, *Calidris fuscicollis*
Wood, *Tringa glareola*
Sapsucker:
Red-breasted, *Sphyrapicus ruber*
Williamson's, *Sphyrapicus thyroideus*
Yellow-bellied, *Sphyrapicus varius*
Saw-whet Owl, Northern, *Aegolius acadicus*
Scaup (see DUCKS)
Scoter (see DUCKS)
Screech-Owl:
Eastern, *Otus asio*
Puerto Rican, *Otus nudipes*
Western, *Otus kennicottii*
Whiskered, *Otus trichopsis*
Sea-Eagle, Steller's, *Haliaeetus pelagicus*
Seedeater, White-collared, *Sporophila torqueola*
Shearwater:
Audubon's, *Puffinus lherminieri*
Black-vented, *Puffinus opisthomelas*
Buller's, *Puffinus bulleri*
Christmas, *Puffinus nativitatus*
Cory's, *Calonectris diomedea*
Flesh-footed, *Puffinus carneipes*
Greater, *Puffinus gravis*
Little, *Puffinus assimilis*
Manx, *Puffinus puffinus*
Pink-footed, *Puffinus creatopus*
Short-tailed, *Puffinus tenuirostris*
Sooty, *Puffinus griseus*
Townsend's, *Puffinus auricularis*
Wedge-tailed, *Puffinus pacificus*
Shoveler (see DUCKS)
Shrike:
Loggerhead, *Lanius ludovicianus*
Northern, *Lanius excubitor*
Siskin, Pine, *Carduelis pinus*
Skimmer, Black, *Rhynchops niger*
Skua:
Great, *Catharacta skua*
South Polar, *Catharacta maccormicki*
Skylark, Eurasian, *Alauda arvensis*
Smew (see DUCKS)
Snipe:
Common, *Gallinago gallinago*
Jack, *Lymnocryptes minimus*
Pin-tailed, *Gallinago stenura*
Swinhoe's, *Gallinago megala*
Solitaire, Townsend's, *Myadestes townsendi*
Sora, *Porzana carolina*
Sparrow:
American Tree, *Spizella arborea*
Bachman's, *Aimophila aestivalis*
Baird's, *Ammodramus bairdii*
Black-chinned, *Spizella atrogularis*
Black-throated, *Amphispiza bilineata*
Botteri's, *Aimophila botterii*
Brewer's, *Spizella breweri*
Cassin's, *Aimophila cassinii*
Chipping, *Spizella passerina*
Clay-colored, *Spizella pallida*
Field, *Spizella pusilla*
Five-striped, *Amphispiza quinquestriata*
Fox, *Passerella iliaca*
Golden-crowned, *Zonotrichia atricapilla*
Grasshopper, *Ammodramus savannarum*
Harris', *Zonotrichia querula*
Henslow's, *Ammodramus henslowii*
Lark, *Chondestes grammacus*
Le Conte's, *Ammodramus leconteii*
Lincoln's, *Melospiza lincolnii*
Olive, *Arremenops rufivirgatus*

Rufous-crowned, *Aimophila ruificeps*
Rufous-winged, *Aimophila carpalis*
Sage, *Amphispiza belli*
Savannah, *Passerculus sandwichensis*
Seaside, *Ammodramus maritimus*
Sharp-tailed, *Ammodramus caudacutus*
Song, *Melospiza melodia*
Swamp, *Melospiza georgiana*
Vesper, *Pooecetes gramineus*
White-crowned, *Zonotrichia leucophrys*
White-throated, *Zonotrichia albicollis*
Worthen's, *Spizella wortheni*

Spoonbill, Roseate, *Ajaia ajaja*

Starling:
Ashy, *Sturnus cineraceus*
Violet-backed, *Sturnus philippensis*

Starthroat, Plain-capped *Heliomaster constantii*,

Stilt, Black-necked, *Himantopus mexicanus*

Stint:
Little, *Calidris minuta*
Long-toed, *Calidris subminuta*
Rufous-necked, *Calidris ruficollis*
Temminck's, *Calidris temminckii*

Stork, Wood, *Mycteria americana*

Storm-Petrel:
Ashy, *Oceanodroma homochroa*
Band-rumped, *Oceanodroma castro*
Black, *Oceanodroma melania*
Fork-tailed, *Oceanodroma furcata*
Leach's, *Oceanodroma leucorhoa*
Least, *Oceanodroma microsoma*
Sooty, *Oceanodroma tristrami*
Wedge-rumped, *Oceanodroma tethys*
White-faced, *Pelagadroma marina*
Wilson's, *Oceanites oceanicus*

Surfbird, *Aphriza virgata*

Swallow:
Bahama, *Tachycineta cyaneoviridis*
Bank, *Riparia riparia*
Barn, *Hirundo rustica*
Cave, *Hirundo fulva*
Cliff, *Hirundo pyrrhonota*
Rough-winged (see Rough-winged Swallow)
Tree, *Tachycineta bicolor*
Violet-green, *Tachycineta thalassina*

Swan:
Trumpeter, *Cygnus buccinator*
Tundra, *Cygnus columbianus*
Whooper, *Cygnus cygnus*

Swift:
Antillean Palm, *Tachornis pheonicobia*
Black, *Cypseloides niger*
Chimney, *Chaetura pelagica*
Common, *Apus apus*
Fork-tailed, *Apus pacificus*
Needle-tailed (see Needletail)
Vaux's, *Chaetura vauxi*
White-collared, *Streptoprocne zonaris*
White-throated, *Aeronautes saxatalis*

Tanager:
Hepatic, *Piranga flava*
Puerto Rican, *Neospingus speculiferus*
Scarlet, *Piranga olivacea*
Stripe-headed, *Spindalis zena*
Summer, *Piranga rubra*
Western, *Piranga ludoviciana*

Tattler:
Gray-tailed, *Heteroscelus brevipes*
Wandering, *Heteroscelus incanus*

Teal (see DUCKS)

Tern:
Aleutian, *Sterna aleutica*
Arctic, *Sterna paradisaea*
Black, *Chlidonias niger*
Black-naped, *Sterna sumatrana*
Bridled, *Sterna anaethetus*
Caspian, *Sterna caspia*
Common, *Sterna hirundo*
Elegant, *Sterna elegans*
Forster's, *Sterna forsteri*
Gray-backed, *Sterna lunata*
Gull-billed, *Sterna nilotica*
Least, *Sterna antillarum*
Little, *Sterna albifrons*
Roseate, *Sterna dougallii*
Royal, *Sterna maxima*
Sandwich, *Sterna sandvicensis*
Sooty, *Sterna fuscata*
White, *Gygis alba*
White-winged, *Chlidonias leucopterus*

Thrasher:
Bendire's, *Toxostoma bendirei*
Brown, *Toxostoma rufum*
California, *Toxostoma redivivum*
Crissal, *Toxostoma crissale*
Curve-billed, *Toxostoma curvirostre*
Le Conte's, *Toxostoma lecontei*
Long-billed, *Toxostoma longirostre*
Pearly-eyed, *Margarops fuscatus*
Sage, *Oreoscoptes montanus*

Thrush:
Aztec, *Ridgwayia pinicola*
Blue Rock, *Monticola solitarius*
Dusky, *Turdus naumanni*
Eye-browed, *Turdus obscurus*
Gray-cheeked, *Catharus minimus*
Hawaiian, *Phaeornis obscurus*
Hermit, *Catharus guttatus*
Red-legged, *Turdus plumbeus*
Small Kauai, *Phaeornis palmeri*
Swainson's, *Catharus ustulatus*
Varied, *Ixoreus naevius*
Wood, *Hylocichla minima*

Tit, Siberian, *Parus cinctus*

Titmouse:
Bridled, *Parus wollweberi*
Plain, *Parus inornatus*
Tufted, *Parus bicolor*

Towhee:
Abert's, *Pipilo aberti*
Brown, *Pipilo fuscus*
Green-tailed, *Pipilo chlorurus*
Rufous-sided, *Pipilo erythrophthalmus*

Tree-Pipit, Olive, *Anthus hodgsoni*

Trogon:
Eared, *Euptilotus neoxenus*
Elegant, *Trogon elegans*

Tropicbird:
Red-billed, *Phaethon aethereus*
Red-tailed, *Phaethon rubricauda*
White-tailed, *Phaethon lepturus*

Turnstone:
Black, *Arenaria melanocephala*
Ruddy, *Arenaria interpres*

Veery, *Catharus fuscescens*

Verdin, *Auriparus flaviceps*

Violet-Ear, Green, *Colibri thalassinus*

Vireo:
Bell's *Vireo bellii*
Black-capped, *Vireo atricapillus*
Black-whiskered, *Vireo altiloquus*
Gray, *Vireo vicinior*
Hutton's, *Vireo huttoni*
Philadelphia, *Vireo philadelphicus*
Puerto Rican, *Vireo latimeri*
Red-eyed, *Vireo olivaceus*
Solitary, *Vireo solitarius*
Warbling, *Vireo gilvus*
White-eyed, *Vireo griseus*
Yellow-throated, *Vireo flavifrons*

Vulture:
Black, *Coragyps atratus*
Turkey, *Cathartes aura*

Wagtail:
Black-backed, *Motacilla lugens*
Gray, *Motacilla cinerea*
White, *Motacilla alba*
Yellow, *Motacilla flava*

Warbler:
Adelaide's, *Dendroica adelaidae*
Arctic, *Phylloscopus borealis*
Bachman's *Vermivora bachmanii*
Bay-breasted, *Dendroica castanea*
Black-and-white, *Mniotilta varia*
Black-throated Blue, *Dendroica caerulescens*
Black-throated Gray, *Dendroica nigrescens*
Black-throated Green, *Dendroica virens*
Blackburnian, *Dendroica fusca*
Blackpoll, *Dendroica striata*
Blue-winged, *Vermivora pinus*
Canada, *Wilsonia canadensis*
Cape May, *Dendroica tigrina*
Cerulean, *Dendroica cerulea*
Chestnut-sided, *Dendroica pensylvanica*
Colima, *Vermivora crissalis*
Connecticut, *Oporornis agilis*
Elfin Woods, *Dendroica angelae*
Golden-cheeked, *Dendroica chrysoparia*
Golden-crowned, *Basileuterus culicivorus*
Golden-winged, *Vermivora chrysoptera*
Grace's, *Dendroica graciae*
Grasshopper (see Grasshopper-Warbler)
Hermit, *Dendroica occidentalis*
Hooded, *Wilsonia citrina*
Kentucky, *Oporornis formosus*
Kirtland's, *Dendroica kirtlandii*
Lucy's, *Vermivora luciae*
MacGillivray's, *Oporornis tolmiei*
Magnolia, *Dendroica magnolia*
Mourning, *Oporornis philadelphia*
Nashville, *Vermivora ruficapilla*
Olive, *Peucedramus taeniatus*

Orange-crowned, *Vermivora celata*
Palm, *Dendroica palmarum*
Parula (see Parula)
Pine, *Dendroica pinus*
Prairie, *Dendroica discolor*
Prothonotary, *Protonotaria citrea*
Red-faced, *Cardellina rubrifrons*
Rufous-capped, *Basileuterus rufifrons*
Swainson's, *Limnothlypis swainsonii*
Tennessee, *Vermivora peregrina*
Townsend's, *Dendroica townsendi*
Virgina's, *Vermivora virginiae*
Willow, *Phylloscopus trochilus*
Wilson's, *Wilsonia pusilla*
Worm-eating, *Helmitheros vermivorus*
Yellow, *Dendroica petechia*
Yellow-rumped, *Dendroica coronata*
Yellow-throated, *Dendroica dominica*
Waterthrush:
Louisiana, *Seiurus motacilla*
Northern, *Seiurus noveboracensis*
Waxwing:
Bohemian, *Bombycilla garrulus*
Cedar, *Bombycilla cedrorum*
Wheatear, Northern, *Oenanthe oenanthe*
Whimbrel, *Numenius phaeopus*
Whip-poor-will, *Caprimulgus vociferus*
Whistling-Duck (see DUCKS)
Wigeon (see DUCKS)
Willet, *Catoptrophorus semipalmatus*
Wood-Pewee:
Eastern, *Contopus virens*
Western, *Contopus sordidulus*
Woodcock:
American, *Scolopax minor*
Eurasian, *Scolopax rusticola*
Woodpecker:
Acorn, *Melanerpes formicivorus*
Black-backed, *Picoides arcticus*
Downy, *Picoides pubescens*
Gila, *Melanerpes uropygialis*
Golden-fronted, *Melanerpes aurifrons*
Hairy, *Picoides villosus*
Ivory-billed, *Campephilus principalis*
Ladder-backed, *Picoides scalaris*
Lewis', *Melanerpes lewis*
Nuttall's, *Picoides nuttallii*
Pileated, *Dryocopus pileatus*
Puerto Rican, *Melanerpes portoricensis*
Red-bellied, *Melanerpes carolinus*
Red-cockaded, *Picoides borealis*
Red-headed, *Melanerpes erythrocephalus*
Strickland's, *Picoides stricklandi*
Three-toed, *Picoides tridactylus*
White-headed, *Picoides albolarvatus*
Woodstar, Bahama, *Calliphlox evelynae*
Wren:
Bewick's *Thryomanes bewickii*
Cactus, *Campylorhynchus brunneicapillus*
Canyon, *Catherpes mexicanus*
Carolina, *Thryothorus ludovicianus*
House, *Troglodytes aedon*
Marsh, *Cistothorus palustris*
Rock, *Salpinctes obsoletus*
Sedge, *Cistothorus platensis*
Winter, *Troglodytes troglodytes*
Wryneck, Eurasian, *Jynx torquilla*
Yellowlegs:
Greater, *Tringa melanoleuca*
Lesser, *Tringa flavipes*
Yellowthroat:
Common, *Geothlypis trichas*
Gray-crowned, *Geothlypis poliocephala*

II. Taxonomic Listing

Order GAVIIFORMES

Family GAVIIDAE

Gavia stellata, Red-throated Loon
Gavia arctica, Arctic Loon
Gavia immer, Common Loon
Gavia adamsii, Yellow-billed Loon

Order PODICIPEDIFORMES

Family PODICIPEDIDAE

Tachybaptus dominicus, Least Grebe
Podilymbus podiceps, Pied-billed Grebe
Podiceps auritus, Horned Grebe
Podiceps grisegena, Red-necked Grebe
Podiceps nigricollis, Eared Grebe
Aechmophorus occidentalis, Western Grebe

Order PROCELLARIIFORMES

Family DIOMEDEIDAE

Diomedea albatrus, Short-tailed Albatross
Diomedea nigripes, Black-footed Albatross
Diomedea immutabilis, Laysan Albatross
Diomedea chlororhynchos, Yellow-nosed Albatross

Family PROCELLARIIDAE

Fulmarus glacialis, Northern Fulmar
Pterodroma hasitata, Black-capped Petrel
Pterodroma phaeopygia, Dark-rumped Petrel
Pterodroma externa, White-necked Petrel
Pterodroma inexpectata, Mottled Petrel
Pterodroma ultima, Murphy's Petrel
Pterodroma neglecta, Kermadec Petrel
Pterodroma arminjoniana, Herald Petrel
Pterodroma cookii, Cook's Petrel
Pterodroma hypoleuca, Bonin Petrel
Bulweria bulwerii, Bulwer's Petrel
Calonectris diomedea, Cory's Shearwater
Puffinus creatopus, Pink-footed Shearwater
Puffinus carneipes, Flesh-footed Shearwater
Puffinus gravis, Greater Shearwater
Puffinus pacificus, Wedge-tailed Shearwater
Puffinus bulleri, Buller's Shearwater
Puffinus griseus, Sooty Shearwater
Puffinus tenuirostris, Short-tailed Shearwater
Puffinus nativitatis, Christmas Shearwater
Puffinus puffinus, Manx Shearwater
Puffinus opisthomelas, Black-vented Shearwater
Puffinus auricularis, Townsend's Shearwater
Puffinus assimilis, Little Shearwater
Puffinus lherminieri, Audubon's Shearwater

Family HYDROBATIDAE

Oceanites oceanicus, Wilson's Storm-Petrel
Pelagodroma marina, White-faced Storm-Petrel
Oceanodroma furcata, Fork-tailed Storm-Petrel
Oceanodroma leucorhoa, Leach's Storm-Petrel
Oceanodroma homochroa, Ashy Storm-Petrel
Oceanodroma castro, Band-rumped Storm-Petrel
Oceanodroma tethys, Wedge-rumped Storm-Petrel
Oceanodroma melania, Black Storm-Petrel
Oceanodroma tristrami, Sooty Storm-Petrel
Oceanodroma microsoma, Least Storm-Petrel

Order PELECANIFORMES

Family PHAETHONTIDAE

Phaethon lepturus, White-tailed Tropicbird
Phaethon aethereus, Red-billed Tropicbird
Phaethon rubricauda, Red-tailed Tropicbird

Family SULIDAE

Sula dactylatra, Masked Booby
Sula nebouxii, Blue-footed Booby
Sula leucogaster, Brown Booby
Sula sula, Red-footed Booby
Sula bassanus, Northern Gannet

Family PELECANIDAE

Pelecanus erythrorhynchos, American White Pelican
Pelecanus occidentalis, Brown Pelican

Family PHALACROCORACIDAE

Phalacrocorax carbo, Great Cormorant
Phalacrocorax auritus, Double-crested Cormorant
Phalacrocorax olivaceus, Olivaceous Cormorant
Phalacrocorax penicillatus, Brandt's Cormorant
Phalacrocorax pelagicus, Pelagic Cormorant
Phalacrocorax urile, Red-faced Cormorant

Family ANHINGIDAE

Anhinga anhinga, Anhinga

Family FREGATIDAE

Fregata magnificens, Magnificent Frigatebird
Fregata minor, Great Frigatebird
Fregata ariel, Lesser Frigatebird

Order CICONIIFORMES

Family ARDEIDAE

Botaurus lentiginosus, American Bittern
Ixobrychus exilis, Least Bittern
Ixobrychus sinensis, Chinese Bittern
Ixobrychus eurhythmus, Schrenk's Bittern
Ardea herodias, Great Blue Heron
Casmerodius albus, Great Egret
Egretta eulophotes, Chinese Egret
Egretta sacra, Pacific Reef Heron
Egretta intermedia, Plumed Egret
Egretta thula, Snowy Egret
Egretta caerulea, Little Blue Heron
Egretta tricolor, Tricolored Heron
Egretta rufescens, Reddish Egret
Bubulcus ibis, Cattle Egret
Butorides striatus, Green-backed Heron
Nycticorax nycticorax, Black-crowned Night-Heron
Nycticorax melanolophus, Malay Night-Heron
Nycticorax goisagi, Japanese Night-Heron
Nycticorax violaceus, Yellow-crowned Night-Heron

Family THRESKIORNITHIDAE

Eudocimus albus, White Ibis
Eudocimus ruber, Scarlet Ibis
Plegadis falcinellus, Glossy Ibis
Plegadis chihi, White-faced Ibis
Ajaia ajaja, Roseate Spoonbill

Family CICONIIDAE

Jabiru mycteria, Jabiru
Mycteria americana, Wood Stork

Order PHOENICOPTERIFORMES

Family PHOENICOPTERIDAE

Phoenicopterus ruber, Greater Flamingo

Order ANSERIFORMES

Family ANATIDAE

Dendrocygna bicolor, Fulvous Whistling-Duck
Dendrocygna autumnalis, Black-bellied Whistling-Duck
Dendrocygna arborea, West Indian Whistling-Duck
Cygnus columbianus, Tundra Swan
Cygnus cygnus, Whooper Swan
Cygnus buccinator, Trumpeter Swan
Anser fabalis, Bean Goose
Anser albifrons, Greater White-fronted Goose
Chen caerulescens, Snow Goose
Chen rossii, Ross' Goose
Chen canagica, Emperor Goose
Branta bernicla, Brant
Branta leucopsis, Barnacle Goose
Branta canadensis, Canada Goose
Nesochen sandvicensis, Hawaiian Goose
Aix sponsa, Wood Duck
Anas crecca, Green-winged Teal
Anas formosa, Baikal Teal
Anas falcata, Falcated Teal
Anas rubripes, American Black Duck
Anas fulvigula, Mottled Duck
Anas platyrhynchos, Mallard
Anas wyvilliana, Hawaiian Duck
Anas laysanensis, Laysan Duck
Anas bahamensis, White-cheeked Pintail
Anas acuta, Northern Pintail
Anas querquedula, Garganey
Anas discors, Blue-winged Teal
Anas cyanoptera, Cinnamon Teal
Anas clypeata, Northern Shoveler
Anas strepera, Gadwall
Anas penelope, Eurasian Wigeon
Anas americana, American Wigeon
Aythya ferina, Common Pochard
Aythya valisineria, Canvasback
Aythya americana, Redhead
Aythya baeri, Baer's Pochard
Aythya collaris, Ring-necked Duck
Aythya fuligula, Tufted Duck
Aythya marila, Greater Scaup
Aythya affinis, Lesser Scaup
Somateria mollissima, Common Eider
Somateria spectabilis, King Eider
Somateria fischeri, Spectacled Eider
Polysticta stelleri, Steller's Eider
Histrionicus histrionicus, Harlequin Duck
Clangula hyemalis, Oldsquaw
Melanitta nigra, Black Scoter
Melanitta perspicillata, Surf Scoter
Melanitta fusca, White-winged Scoter
Bucephala clangula, Common Goldeneye
Bucephala islandica, Barrow's Goldeneye
Bucephala albeola, Bufflehead
Mergellus albellus, Smew
Lophodytes cucullatus, Hooded Merganser
Mergus merganser, Common Merganser
Mergus serrator, Red-breasted Merganser
Oxyura jamaicensis, Ruddy Duck
Oxyura dominica, Masked Duck

Order FALCONIFORMES

Family CATHARTIDAE

Coragyps atratus, Black Vulture
Cathartes aura, Turkey Vulture
Gymnogyps californianus, California Condor

Family ACCIPITRIDAE

Pandion haliaetus, Osprey
Chondrohierax uncinatus, Hook-billed Kite
Elanoides forficatus, American Swallow-tailed Kite
Elanus caeruleus, Black-shouldered Kite
Rostrhamus sociabilis, Snail Kite
Ictinia mississippiensis, Mississippi Kite
Milvus migrans, Black Kite
Haliaeetus leucocephalus, Bald Eagle
Haliaeetus albicilla, White-tailed Eagle
Haliaeetus pelagicus, Steller's Sea-Eagle
Circus cyaneus, Northern Harrier
Accipiter gularis, Asiatic Sparrow Hawk
Accipiter striatus, Sharp-shinned Hawk
Accipiter cooperii, Cooper's Hawk
Accipiter gentilis, Northern Goshawk
Buteogallus anthracinus, Common Black-Hawk
Parabuteo unicinctus, Harris' Hawk
Buteo nitidus, Gray Hawk
Buteo lineatus, Red-shouldered Hawk
Buteo platypterus, Broad-winged Hawk
Buteo brachyurus, Short-tailed Hawk
Buteo swainsoni, Swainson's Hawk
Buteo albicaudatus, White-tailed Hawk
Buteo albonotatus, Zone-tailed Hawk
Buteo solitarius, Hawaiian Hawk
Buteo jamaicensis, Red-tailed Hawk
Buteo regalis, Ferruginous Hawk
Buteo lagopus, Rough-legged Hawk
Aquila chrysaetos, Golden Eagle

Family FALCONIDAE

Polyborus plancus, Crested Caracara
Falco tinnunculus, Eurasian Kestrel
Falco sparverius, American Kestrel
Falco columbarius, Merlin
Falco femoralis, Aplomado Falcon
Falco peregrinus, Peregrine Falcon
Falco rusticolus, Gyrfalcon
Falco mexicanus, Prairie Falcon

Order GRUIFORMES

Family RALLIDAE

Coturnicops noveboracensis, Yellow Rail
Laterallus jamaicensis, Black Rail
Crex crex, Corn Crake
Rallus longirostris, Clapper Rail
Rallus elegans, King Rail
Rallus limicola, Virginia Rail
Porzana carolina, Sora
Porzana flaviventer, Yellow-breasted Crake
Porphyrula martinica, Purple Gallinule
Gallinula chloropus, Common Moorhen
Fulica atra, Eurasian Coot
Fulica americana, American Coot
Fulica caribaea, Caribbean Coot

Family ARAMIDAE

Aramus guarauna, Limpkin

Family GRUIDAE

Grus canadensis, Sandhill Crane
Grus grus, Common Crane
Grus americana, Whooping Crane

Order CHARADRIIFORMES

Family CHARADRIIDAE

Vanellus vanellus, Northern Lapwing
Pluvialis squatarola, Black-bellied Plover
Pluvialis dominica, Lesser Golden-Plover
Charadrius mongolus, Mongolian Plover
Charadrius leschenaultii, Great Sand Plover
Charadrius alexandrinus, Snowy Plover
Charadrius wilsonia, Wilson's Plover
Charadrius hiaticula, Common Ringed Plover
Charadrius semipalmatus, Semipalmated Plover
Charadrius melodus, Piping Plover
Charadrius dubius, Little Ringed Plover
Charadrius vociferus, Killdeer
Charadrius montanus, Mountain Plover
Charadrius morinellus, Eurasian Dotterel

Family HAEMATOPODIDAE

Haematopus palliatus, American Oystercatcher
Haematopus bachmani, Black Oystercatcher

Family RECURVIROSTRIDAE

Himantopus mexicanus, Black-necked Stilt
Recurvirostra americana, American Avocet

Family JACANIDAE

Jacana spinosa, Northern Jacana

Family, SCOLOPACIDAE

Tringa nebularia, Common Greenshank
Tringa melanoleuca, Greater Yellowlegs
Tringa flavipes, Lesser Yellowlegs
Tringa stagnatilis, Marsh Sandpiper
Tringa erythropus, Spotted Redshank
Tringa glareola, Wood Sandpiper
Tringa solitaria, Solitary Sandpiper
Catoptrophorus semipalmatus, Willet
Heteroscelus incanus, Wandering Tattler
Heteroscelus brevipes, Gray-tailed Tattler
Actitis hypoleucos, Common Sandpiper
Actitis macularia, Spotted Sandpiper
Xenus cinereus, Terek Sandpiper
Bartramia longicauda, Upland Sandpiper
Numenius minutus, Least Curlew
Numenius borealis, Eskimo Curlew
Numenius phaeopus, Whimbrel
Numenius tahitiensis, Bristle-thighed Curlew
Numenius madagascariensis, Far Eastern Curlew
Numenius americanus, Long-billed Curlew
Limosa limosa, Black-tailed Godwit
Limosa haemastica, Hudsonian Godwit
Limosa lapponica, Bar-tailed Godwit
Limosa fedoa, Marbled Godwit
Arenaria interpres, Ruddy Turnstone
Arenaria melanocephala, Black Turnstone
Aphriza virgata, Surfbird
Calidris tenuirostris, Great Knot
Calidris canutus, Red Knot
Calidris alba, Sanderling
Calidris pusilla, Semipalmated Sandpiper
Calidris mauri, Western Sandpiper
Calidris ruficollis, Rufous-necked Stint
Calidris minuta, Little Stint
Calidris temminckii, Temminck's Stint
Calidris subminuta, Long-toed Stint
Calidris minutilla, Least Sandpiper
Calidris fuscicollis, White-rumped Sandpiper
Calidris bairdii, Baird's Sandpiper
Calidris melanotos, Pectoral Sandpiper
Calidris acuminata, Sharp-tailed Sandpiper
Calidris maritima, Purple Sandpiper
Calidris ptilocnemis, Rock Sandpiper
Calidris alpina, Dunlin
Calidris ferruginea, Curlew Sandpiper
Calidris himantopus, Stilt Sandpiper
Eurynorhynchus pygmeus, Spoonbill Sandpiper
Limicola falcinellus, Broad-billed Sandpiper
Tryngites subruficollis, Buff-breasted Sandpiper
Philomachus pugnax, Ruff
Limnodromus griseus, Short-billed Dowitcher
Limnodromus scolopaceus, Long-billed Dowitcher
Lymnocryptes minimus, Jack Snipe
Gallinago gallinago, Common Snipe
Gallinago stenura, Pin-tailed Snipe
Gallinago megala, Swinhoe's Snipe
Scolopax rusticola, Eurasian Woodcock
Scolopax minor, American Woodcock
Phalaropus tricolor, Wilson's Phalarope
Phalaropus lobatus, Red-necked Phalarope
Phalaropus fulicaria, Red Phalarope

Family LARIDAE

Stercorarius pomarinus, Pomarine Jaeger
Stercorarius parasiticus, Parasitic Jaeger
Stercorarius longicaudus, Long-tailed Jaeger
Catharacta skua, Great Skua
Catharacta maccormicki, South Polar Skua
Larus atricilla, Laughing Gull
Larus pipixcan, Franklin's Gull
Larus minutus, Little Gull
Larus ridibundus, Common Black-headed Gull
Larus philadelphia, Bonaparte's Gull
Larus heermanni, Heermann's Gull
Larus canus, Mew Gull
Larus delawarensis, Ring-billed Gull
Larus californicus, California Gull
Larus argentatus, Herring Gull
Larus thayeri, Thayer's Gull
Larus glaucoides, Iceland Gull
Larus fuscus, Lesser Black-backed Gull
Larus schistisagus, Slaty-backed Gull
Larus livens, Yellow-footed Gull
Larus occidentalis, Western Gull
Larus glaucescens, Glaucous-winged Gull
Larus hyperboreus, Glaucous Gull
Larus marinus, Great Black-backed Gull
Rissa tridactyla, Black-legged Kittiwake
Rissa brevirostris, Red-legged Kittiwake
Rhodostethia rosea, Ross' Gull
Xema sabini, Sabine's Gull
Pagophila eburnea, Ivory Gull
Sterna nilotica, Gull-billed Tern
Sterna caspia, Caspian Tern
Sterna maxima, Royal Tern
Sterna elegans, Elegant Tern
Sterna sandvicensis, Sandwich Tern
Sterna dougallii, Roseate Tern
Sterna hirundo, Common Tern
Sterna paradisaea, Arctic Tern
Sterna aleutica, Aleutian Tern
Sterna forsteri, Forster's Tern
Sterna antillarum, Least Tern
Sterna albifrons, Little Tern
Sterna sumatrana, Black-naped Tern
Sterna lunata, Gray-backed Tern
Sterna anaethetus, Bridled Tern
Sterna fuscata, Sooty Tern
Chlidonias leucopterus, White-winged Tern
Chlidonias niger, Black Tern
Anous stolidus, Brown Noddy
Anous minutus, Black Noddy
Anous tenuirostris, Lesser Noddy
Procelsterna cerulea, Blue-Gray Noddy
Gygis alba, White Tern
Rynchops niger, Black Skimmer

Family ALCIDAE

Alle alle, Dovekie
Uria aalge, Common Murre
Uria lomvia, Thick-billed Murre
Alca torda, Razorbill
Cepphus grylle, Black Guillemot
Cepphus columba, Pigeon Guillemot
Brachyramphus marmoratus, Marbled Murrelet
Brachyramphus brevirostris, Kittlitz's Murrelet
Synthliboramphus hypoleucus, Xantus' Murrelet
Synthliboramphus craveri, Craveri's Murrelet
Synthliboramphus antiquus, Ancient Murrelet
Ptychoramphus aleuticus, Cassin's Auklet
Cyclorrhynchus psittacula, Parakeet Auklet
Aethia pusilla, Least Auklet
Aethia pygmaea, Whiskered Auklet
Aethia cristatella, Crested Auklet
Cerorhinca monocerata, Rhinoceros Auklet

Fratercula cirrhata, Tufted Puffin
Fratercula arctica, Atlantic Puffin
Fratercula corniculata, Horned Puffin

Order COLUMBIFORMES

Family COLUMBIDAE

Columba squamosa, Scaly-naped Pigeon
Columba leucocephala, White-crowned Pigeon
Columba flavirostris, Red-billed Pigeon
Columba inornata, Plain Pigeon
Columba fasciata, Band-tailed Pigeon
Zenaida asiatica, White-winged Dove
Zenaida aurita, Zenaida Dove
Zenaida macroura, Mourning Dove
Columbina inca, Inca Dove
Columbina passerina, Common Ground-Dove
Columbina talpacoti, Ruddy Ground-Dove
Leptotila verreauxi, White-tipped Dove
Geotrygon chrysia, Key West Quail-Dove
Geotrygon mystacea, Bridled Quail-Dove
Geotrygon montana, Ruddy Quail-Dove

Order CUCULIFORMES

Family CUCULIDAE

Cuculus canorus, Common Cuckoo
Cuculus saturatus, Oriental Cuckoo
Cuculus fugax, Hodgson's Hawk-Cuckoo
Coccyzus erythropthalmus, Black-billed Cuckoo
Coccyzus americanus, Yellow-billed Cuckoo
Coccyzus minor, Mangrove Cuckoo
Geococcyx californianus, Greater Roadrunner
Saurothera vieilloti, Puerto Rican Lizard-Cuckoo
Crotophaga ani, Smooth-billed Ani
Crotophaga sulcirostris, Groove-billed Ani

Order STRIGIFORMES

Family TYTONIDAE

Tyto alba, Common Barn-Owl

Family STRIGIDAE

Otus flammeolus, Flammulated Owl
Otus asio, Eastern Screech-Owl
Otus kennicottii, Western Screech-Owl
Otus trichopsis, Whiskered Screech-Owl
Otus nudipes, Puerto Rican Screech-Owl
Bubo virginianus, Great Horned Owl
Nyctea scandiaca, Snowy Owl
Surnia ulula, Northern Hawk-Owl
Glaucidium gnoma, Northern Pygmy-Owl
Glaucidium brasilianum, Ferruginous Pygmy-Owl
Micrathene whitneyi, Elf Owl
Athene cunicularia, Burrowing Owl
Strix occidentalis, Spotted Owl
Strix varia, Barred Owl
Strix nebulosa, Great Gray Owl
Asio otus, Long-eared Owl
Asio flammeus, Short-eared Owl
Aegolius funereus, Boreal Owl
Aegolius acadicus, Northern Saw-whet Owl

Order CAPRIMULGIFORMES

Family CAPRIMULGIDAE

Chordeiles acutipennis, Lesser Nighthawk
Chordeiles minor, Common Nighthawk
Chordeiles gundlachii, Antillean Nighthawk
Nyctidromus albicollis, Common Pauraque
Phalaenoptilus nuttallii, Common Poorwill
Caprimulgus carolinensis, Chuck-will's-widow
Caprimulgus ridgwayi, Buff-collared Nightjar
Caprimulgus vociferus, Whip-poor-will
Caprimulgus noctitherus, Puerto Rican Nightjar
Caprimulgus indicus, Jungle Nightjar

Order APODIFORMES

Family APODIDAE

Cypseloides niger, Black Swift
Streptoprocne zonaris, White-collared Swift
Chaetura pelagica, Chimney Swift
Chaetura vauxi, Vaux's Swift
Hirundapus caudacutus, White-throated Needletail
Apus apus, Common Swift
Apus pacificus, Fork-tailed Swift
Aeronautes saxatalis, White-throated Swift
Tachornis phoenicobia, Antillean Palm Swift

Family TROCHILIDAE

Colibri thalassinus, Green Violet-ear
Anthracothorax dominicus, Antillean Mango
Anthracothorax viridis, Green Mango
Eulampis holosericeus, Green-throated Carib
Orthorhynchus cristatus, Antillean Crested Hummingbird
Chlorostilbon maugaeus, Puerto Rican Emerald
Cynanthus latirostris, Broad-billed Hummingbird
Hylocharis leucotis, White-eared Hummingbird
Amazilia beryllina, Berylline Hummingbird
Amazilia yucatanensis, Buff-bellied Hummingbird
Amazilia violiceps, Violet-crowned Hummingbird
Lampornis clemenciae, Blue-throated Hummingbird
Eugenes fulgens, Magnificent Hummingbird
Heliomaster constantii, Plain-capped Starthroat
Calliphlox evelynae, Bahama Woodstar
Calothorax lucifer, Lucifer Hummingbird
Archilochus colubris, Ruby-throated Hummingbird
Archilochus alexandri, Black-chinned Hummingbird
Calypte anna, Anna's Hummingbird
Calypte costae, Costa's Hummingbird
Stellula calliope, Calliope Hummingbird
Selasphorus platycercus, Broad-tailed Hummingbird
Selasphorus rufus, Rufous Hummingbird
Selasphorus sasin, Allen's Hummingbird

Order TROGONIFORMES

Family TROGONIDAE

Trogon elegans, Elegant Trogon
Euptilotus neoxenus, Eared Trogon

Order CORACIIFORMES

Family UPUPIDAE

Upupa epops, Hoopoe

Family ALCEDINIDAE

Ceryle torquata, Ringed Kingfisher
Ceryle alcyon, Belted Kingfisher
Chloroceryle americana, Green Kingfisher

Order PICIFORMES

Family PICIDAE

Jynx torquilla, Eurasian Wryneck
Melanerpes lewis, Lewis' Woodpecker
Melanerpes erythrocephalus, Red-headed Woodpecker
Melanerpes formicivorus, Acorn Woodpecker
Melanerpes uropygialis, Gila Woodpecker
Melanerpes aurifrons, Golden-fronted Woodpecker
Melanerpes carolinus, Red-bellied Woodpecker
Melanerpes portoricensis, Puerto Rican Woodpecker
Sphyrapicus varius, Yellow-bellied Sapsucker
Sphyrapicus ruber, Red-breasted Sapsucker
Sphyrapicus thyroideus, Williamson's Sapsucker
Picoides scalaris, Ladder-Backed Woodpecker
Picoides nuttallii, Nuttall's Woodpecker
Picoides pubescens, Downy Woodpecker
Picoides villosus, Hairy Woodpecker
Picoides stricklandi, Strickland's Woodpecker
Picoides borealis, Red-cockaded Woodpecker
Picoides albolarvatus, White-headed Woodpecker
Picoides tridactylus, Three-toed Woodpecker

Picoides arcticus, Black-backed Woodpecker
Colaptes auratus, Northern Flicker
Dryocopus pileatus, Pileated Woodpecker
Campephilus principalis, Ivory-billed Woodpecker

Order PASSERIFORMES

Family TYRANNIDAE

Elaenia martinica, Caribbean Elaenia
Camptostoma imberbe, Northern Beardless-Tyrannulet
Contopus borealis, Olive-sided Flycatcher
Contopus pertinax, Greater Pewee
Contopus sordidulus, Western Wood-Pewee
Contopus virens, Eastern Wood-Pewee
Contopus latirostris, Lesser Antillean Pewee
Empidonax flaviventris, Yellow-bellied Flycatcher
Empidonax virescens, Acadian Flycatcher
Empidonax alnorum, Alder Flycatcher
Empidonax traillii, Willow Flycatcher
Empidonax minimus, Least Flycatcher
Empidonax hammondii, Hammond's Flycatcher
Empidonax oberholseri, Dusky Flycatcher
Empidonax wrightii, Gray Flycatcher
Empidonax difficilis, Western Flycatcher
Empidonax fulvifrons, Buff-breasted Flycatcher
Sayornis nigricans, Black Phoebe
Sayornis phoebe, Eastern Phoebe
Sayornis saya, Say's Phoebe
Pyrocephalus rubinus, Vermilion Flycatcher
Myiarchus tuberculifer, Dusky-capped Flycatcher
Myiarchus cinerascens, Ash-throated Flycatcher
Myiarchus nuttingi, Nutting's Flycatcher
Myiarchus crinitus, Great Crested Flycatcher
Myiarchus tyrannulus, Brown-crested Flycatcher
Myiarchus antillarum, Puerto Rican Flycatcher
Pitangus sulphuratus, Great Kiskadee
Myiodynastes luteiventris, Sulpher-bellied Flycatcher
Tyrannus melancholicus, Tropical Kingbird
Tyrannus couchii, Couch's Kingbird
Tyrannus vociferans, Cassin's Kingbird
Tyrannus crassirostris, Thick-billed Kingbird
Tyrannus verticalis, Western Kingbird
Tyrannus tyrannus, Eastern Kingbird
Tyrannus dominicensis, Gray Kingbird
Tyrannus caudifasciatus, Loggerhead Kingbird
Tyrannus forficatus, Scissor-tailed Flycatcher
Tyrannus savana, Fork-tailed Flycatcher
Pachyramphus aglaiae, Rose-throated Becard

Family ALAUDIDAE

Alauda arvensis, Eurasian Skylark
Eremophila alpestris, Horned Lark

Family HIRUNDINIDAE

Progne subis, Purple Martin
Progne cryptoleuca, Cuban Martin
Progne dominicensis, Caribbean Martin
Progne chalybea, Gray-breasted Martin
Tachycineta bicolor, Tree Swallow
Tachycineta thalassina, Violet-green Swallow
Tachycineta cyaneoviridis, Bahama Swallow
Stelgidopteryx serripennis, Northern Rough-winged Swallow
Riparia riparia, Bank Swallow
Hirundo pyrrhonota, Cliff Swallow
Hirundo fulva, Cave Swallow
Hirundo rustica, Barn Swallow
Delichon urbica, Common House-Martin

Family CORVIDAE

Perisoreus canadensis, Gray Jay
Cyanocitta stelleri, Steller's Jay
Cyanocitta cristata, Blue Jay
Cyanocorax yncas, Green Jay
Cyanocorax morio, Brown Jay
Aphelocoma coerulescens, Scrub Jay
Aphelocoma ultramarina, Gray-breasted Jay
Gymnorhinus cyanocephalus, Pinyon Jay
Nucifraga columbiana, Clark's Nutcracker
Pica pica, Black-billed Magpie
Pica nuttalli, Yellow-billed Magpie
Corvus brachyrhynchos, American Crow
Corvus caurinus, Northwestern Crow
Corvus leucognaphalus, White-necked Crow
Corvus imparatus, Mexican Crow
Corvus ossifragus, Fish Crow
Corvus hawaiiensis, Hawaiian Crow
Corvus cryptoleucus, Chihuahuan Raven
Corvus corax, Common Raven

Family PARIDAE

Parus atricapillus, Black-capped Chickadee
Parus carolinensis, Carolina Chickadee
Parus sclateri, Mexican Chickadee
Parus gambeli, Mountain Chickadee
Parus cinctus, Siberian Tit
Parus hudsonicus, Boreal Chickadee
Parus rufescens, Chestnut-backed Chickadee
Parus wollweberi, Bridled Titmouse
Parus inornatus, Plain Titmouse
Parus bicolor, Tufted Titmouse

Family REMIZIDAE

Auriparus flaviceps, Verdin

Family AEGITHALIDAE

Psaltriparus minimus, Bushtit

Family SITTIDAE

Sitta canadensis, Red-breasted Nuthatch
Sitta carolinensis, White-breasted Nuthatch
Sitta pygmaea, Pygmy Nuthatch
Sitta pusilla, Brown-headed Nuthatch

Family CERTHIIDAE

Certhia americana, Brown Creeper

Family TROGLODYTIDAE

Campylorhynchus brunneicapillus, Cactus Wren
Salpinctes obsoletus, Rock Wren
Catherpes mexicanus, Canyon Wren
Thryothorus ludovicianus, Carolina Wren
Thryomanes bewickii, Bewick's Wren
Troglodytes aedon, House Wren
Troglodytes troglodytes, Winter Wren
Cistothorus platensis, Sedge Wren
Cistothorus palustris, Marsh Wren

Family CINCLIDAE

Cinclus mexicanus, American Dipper

Family MUSCICAPIDAE

Subfamily SYLVIINAE

Locustella ochotensis, Middendorff's Grasshopper-Warbler
Phylloscopus borealis, Arctic Warbler
Phylloscopus trochilus, Willow Warbler
Regulus satrapa, Golden-crowned Kinglet
Regulus calendula, Ruby-crowned Kinglet
Polioptila caerulea, Blue-gray Gnatcatcher
Polioptila melanura, Black-tailed Gnatcatcher
Polioptila nigriceps, Black-capped Gnatcatcher

Subfamily MUSCICAPINAE

Muscicapa griseisticta, Gray-spotted Flycatcher
Muscicapa narcissina, Narcissus Flycatcher

Subfamily TURDINAE

Luscinia calliope, Siberian Rubythroat
Luscinia svecica, Bluethroat
Monticola solitarius, Blue Rock Thrush
Oenanthe oenanthe, Northern Wheatear
Sialis sialis, Eastern Bluebird
Sialis mexicana, Western Bluebird
Sialis currucoides, Mountain Bluebird
Myadestes townsendi, Townsend's Solitaire
Phaeornis obscurus, Hawaiian Thrush
Phaeornis palmeri, Small Kauai Thrush
Catharus fuscescens, Veery
Catharus minimus, Gray-cheeked Thrush
Catharus ustulatus, Swainson's Thrush
Catharus guttatus, Hermit Thrush
Hylocichla mustelina, Wood Thrush

Turdus plumbeus, Red-legged Thrush
Turdus obscurus, Eye-browed Thrush
Turdus naumanni, Dusky Thrush
Turdus pilaris, Fieldfare
Turdus grayi, Clay-colored Robin
Turdus rufopalliatus, Rufous-backed Robin
Turdus migratorius, American Robin
Ixoreus naevius, Varied Thrush
Ridgwayia pinicola, Aztec Thrush

Family MIMIDAE

Dumetella carolinensis, Gray Catbird
Mimus polyglottos, Northern Mockingbird
Oreoscoptes montanus, Sage Thrasher
Toxostoma rufum, Brown Thrasher
Toxostoma longirostre, Long-billed Thrasher
Toxostoma bendirei, Bendire's Thrasher
Toxostoma curvirostre, Curve-billed Thrasher
Toxostoma redivivum, California Thrasher
Toxostoma crissale, Crissal Thrasher
Toxostoma lecontei, Le Conte's Thrasher
Margarops fuscatus, Pearly-eyed Thrasher

Family PRUNELLIDAE

Prunella montanella, Siberian Accentor

Family MOTACILLIDAE

Motacilla flava, Yellow Wagtail
Motacilla cinerea, Gray Wagtail
Motacilla alba, White Wagtail
Motacilla lugens, Black-backed Wagtail
Anthur hodgsoni, Olive Tree-Pipit
Anthus gustavi, Pechora Pipit
Anthus cervinus, Red-throated Pipit
Anthus spinoletta, Water Pipit
Anthus spragueii, Sprague's Pipit

Family BOMBYCILLIDAE

Bombycilla garrulus, Bohemian Waxwing
Bombycilla cedrorum, Cedar Waxwing

Family PTILOGONATIDAE

Phainopepla nitens, Phainopepla

Family LANIIDAE

Lanius excubitor, Northern Shrike
Lanius ludovicianus, Loggerhead Shrike

Family STURNIDAE

Sturnus philippensis, Violet-backed Starling
Sturnus cineraceus, Ashy Starling

Family VIREONIDAE

Vireo griseus, White-eyed Vireo
Vireo latimeri, Puerto Rican Vireo
Vireo bellii, Bells' Vireo
Vireo atricapillus, Black-capped Vireo
Vireo vicinior, Gray Vireo
Vireo solitarius, Solitary Vireo
Vireo flavifrons, Yellow-throated Vireo
Vireo huttoni, Hutton's Vireo
Vireo gilvus, Warbling Vireo
Vireo philadelphicus, Philadelphia Vireo
Vireo olivaceus, Red-eyed Vireo
Vireo altiloquus, Black-whiskered Vireo

Family EMBERIZIDAE

Subfamily PARULINAE

Vermivora bachmanii, Bachman's Warbler
Vermivora pinus, Blue-winged Warbler
Vermivora chrysoptera, Golden-winged Warbler
Vermivora peregrina, Tennessee Warbler
Vermivora celata, Orange-crowned Warbler
Vermivora ruficapilla, Nashville Warbler
Vermivora virginiae, Virginia's Warbler
Vermivora crissalis, Colima Warbler
Vermivora luciae, Lucy's Warbler
Parula americana, Northern Parula
Parula pitiayumi, Tropical Parula
Dendroica petechia, Yellow Warbler
Dendroica pensylvanica, Chestnut-sided Warbler
Dendroica magnolia, Magnolia Warbler
Dendroica tigrina, Cape May Warbler
Dendroica caerulescens, Black-throated Blue Warbler
Dendroica coronata, Yellow-rumped Warbler
Dendroica nigrescens, Black-throated Gray Warbler
Dendroica townsendi, Townsend's Warbler
Dendroica occidentalis, Hermit Warbler
Dendroica virens, Black-throated Green Warbler
Dendroica chrysoparia, Golden-cheeked Warbler
Dendroica fusca, Blackburnian Warbler
Dendroica dominica, Yellow-throated Warbler
Dendroica graciae, Grace's Warbler
Dendroica adelaidae, Adelaide's Warbler
Dendroica pinus, Pine Warbler
Dendroica kirtlandii, Kirtland's Warbler
Dendroica discolor, Prairie Warbler
Dendroica palmarum, Palm Warbler
Dendroica castanea, Bay-breasted Warbler
Dendroica striata, Blackpoll Warbler
Dendroica cerulea, Cerulean Warbler
Dendroica angelae, Elfin Woods Warbler
Mniotilta varia, Black-and-White Warbler
Setophaga ruticilla, American Redstart
Protonotaria citrea, Prothonotary Warbler
Helmitheros vermivorus, Worm-eating Warbler
Limnothlypis swainsonii, Swainson's Warbler
Seiurus aurocapillus, Ovenbird
Seiurus noveboracensis, Northern Waterthrush
Seiurus motacilla, Louisiana Waterthrush
Oporornis formosus, Kentucky Warbler
Oporornis agilis, Connecticut Warbler
Oporornis philadelphia, Mourning Warbler
Oporornis tolmiei, MacGillivray's Warbler
Geothlypis trichas, Common Yellowthroat
Geothlypis poliocephala, Gray-crowned Yellowthroat
Wilsonia citrina, Hooded Warbler
Wilsonia pusilla, Wilson's Warbler
Wilsonia canadensis, Canada Warbler
Cardellina rubrifrons, Red-faced Warbler
Myioborus pictus, Painted Redstart
Myioborus miniatus, Slaty-throated Redstart
Basileuterus culicivorus, Golden-crowned Warbler
Basileuterus rufifrons, Rufous-capped Warbler
Icteria virens, Yellow-breasted Chat
Peucedramus taeniatus, Olive Warbler

Subfamily THRAUPINAE

Spindalis zena, Stripe-headed Tanager
Neospingus speculiferus, Puerto Rican Tanager
Piranga flava, Hepatic Tanager
Piranga rubra, Summer Tanager
Piranga olivacea, Scarlet Tanager
Piranga ludoviciana, Western Tanager
Euphonia musica, Antillean Euphonia

Subfamily CARDINALINAE

Rhodothraupis celaeno, Crimson-collared Grosbeak
Cardinalis cardinals, Northern Cardinal
Cardinalis sinuatus, Pyrrhuloxia
Pheucticus chrysopeplus, Yellow Grosbeak
Pheucticus ludovicianus, Rose-breasted Grosbeak
Pheucticus melanocephalus, Black-headed Grosbeak
Guiraca caerulea, Blue Grosbeak
Passerina amoena, Lazuli Bunting
Passerina cyanea, Indigo Bunting
Passerina versicolor, Varied Bunting
Passerina ciris, Painted Bunting
Spiza americana, Dickcissel

Subfamily EMBERIZINAE

Arremonops rufivirgatus, Olive Sparrow
Pipilo chlorurus, Green-tailed Towhee
Pipilo erythrophthalmus, Rufous-sided Towhee
Pipilo fuscus, Brown Towhee
Pipilo aberti, Abert's Towhee
Sporophila torqueola, White-collared Seedeater
Tiaris olivacea, Yellow-faced Grassquit

Tiaris bicolor, Black-faced Grassquit
Loxigilla portoricensis, Puerto Rican Bullfinch
Aimophila aestivalis, Bachman's Sparrow
Aimophila botterii, Botteri's Sparrow
Aimophila cassinii, Cassin's Sparrow
Aimophila carpalis, Rufous-winged Sparrow
Aimophila ruficeps, Rufous-crowned Sparrow
Spizella arborea, American Tree Sparrow
Spizella passerina, Chipping Sparrow
Spizella pallida, Clay-colored Sparrow
Spizella breweri, Brewer's Sparrow
Spizella pusilla, Field Sparrow
Spizella wortheni, Worthen's Sparrow
Spizella atrogularis, Black-chinned Sparrow
Pooecetes gramineus, Vesper Sparrow
Chondestes grammacus, Lark Sparrow
Amphispiza bilineata, Black-throated Sparrow
Amphispiza belli, Sage Sparrow
Amphispiza quinquestriata, Five-striped Sparrow
Calamospiza melanocorys, Lark Bunting
Passerculus sandwichensis, Savannah Sparrow
Ammodramus bairdii, Baird's Sparrow
Ammodramus savannarum, Grasshopper Sparrow
Ammodramus henslowii, Henslow's Sparrow
Ammodramus leconteii, Le Conte's Sparrow
Ammodramus caudacutus, Sharp-tailed Sparrow
Ammodramus maritimus, Seaside Sparrow
Passerella iliaca, Fox Sparrow
Melosipza melodia, Song Sparrow
Melospiza lincolnii, Lincoln's Sparrow
Melospiza georgiana, Swamp Sparrow
Zonotrichia albicollis, White-throated Sparrow
Zonotrichia atricapilla, Golden-crowned Sparrow
Zonotrichia leucophrys, White-crowned Sparrow
Zonotrichia querula, Harris' Sparrow
Junco hyemalis, Dark-eyed Junco
Junco phaeonotus, Yellow-eyed Junco
Emberiza rustica, Rustic Bunting
Emberiza pallasi, Pallas' Reed-Bunting
Emberiza schoeniculus, Common Reed-Bunting
Calcarius mccownii, McCown's Longspur
Calcarius lapponicus, Lapland Longspur
Calcarius pictus, Smith's Longspur
Calcarius ornatus, Chestnut-collared Longspur
Plectrophenax nivalis, Snow Bunting
Plectrophenax hyperboreus, McKay's Bunting

Subfamily ICTERINAE

Dolichonyx oryzivorus, Bobolink
Agelaius phoeniceus, Red-winged Blackbird
Agelaius tricolor, Tricolored Blackbird
Agelaius humeralis, Tawny-shouldered Blackbird
Agelaius xanthomus, Yellow-shouldered Blackbird
Sturnella magna, Eastern Meadowlark
Sturnella neglecta, Western Meadowlark
Xanthocephalus xanthocephalus, Yellow-headed Blackbird
Euphagus carolinus, Rusty Blackbird
Euphagus cyanocephalus, Brewer's Blackbird
Quiscalus mexicanus, Great-tailed Grackle
Quiscalus major, Boat-tailed Grackle
Quiscalus quiscula, Common Grackle
Quiscalus niger, Greater Antillean Grackle
Molothrus bonariensis, Shiny Cowbird
Molothrus aeneus, Bronzed Cowbird
Molothrus ater, Brown-headed Cowbird
Icterus dominicensis, Black-cowled Oriole
Icterus wagleri, Black-vented Oriole
Icterus spurius, Orchard Oriole
Icterus cucullatus, Hooded Oriole
Icterus pustulatus, Streak-backed Oriole
Icterus gularis, Altamira Oriole
Icterus graduacauda, Audubon's Oriole
Icterus galbula, Northern Oriole
Icterus parisorum, Scott's Oriole

Family FRINGILLIDAE

Subfamily FRINGILLINAE

Fringilla montifringilla, Brambling

Subfamily CARDUELINAE

Leucosticte arctoa, Rosy Finch
Pinicola enucleator, Pine Grosbeak
Carpodacus erythrinus, Common Rosefinch
Carpodacus purpureus, Purple Finch
Carpodacus cassinii, Cassin's Finch
Carpodacus mexicanus, House Finch
Loxia curvirostra, Red Crossbill
Loxia leucoptera, White-winged Crossbill
Carduelis flammea, Common Redpoll
Carduelis hornemanni, Hoary Redpoll
Carduelis pinus, Pine Siskin
Carduelis psaltria, Lesser Goldfinch
Carduelis lawrencei, Lawrence's Goldfinch
Carduelis tristis, American Goldfinch
Carduelis sinica, Oriental Greenfinch
Pyrrhula pyrrhula, Eurasian Bullfinch
Coccothraustes vespertinus, Evening Grosbeak
Coccothraustes coccothraustes, Hawfinch

Dated: February 28, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval: Ownership and Control; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval: Ownership and Control

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its regulations having to do with the permit approval process by adding definitions for the terms "ownership" and "control," and expanding the scope of the findings required prior to permit approval. A clear explanation of the meaning of "ownership" and "control," along with a corresponding expansion of the findings required prior to permit approval is needed to eliminate or greatly reduce the possibility of persons obtaining and/or holding permits in violation of the permit approval provisions of section 510(c) of the Surface Mining Control and Reclamation Act.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. eastern time on June 14, 1985.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on June 7, 1985. Upon request, OSM also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSM will accept requests for public hearings until 5:00 p.m. eastern time on May 24, 1985.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C., Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearing scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Murray Newton, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: 202–343–5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES") The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearing which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr Newton (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. eastern time on May 24, 1985. If no one has contacted Mr. Newton to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

II. Background

A significant number of operators who have unabated violations of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), at one mine, or who have not paid civil penalties or AML fees, are applying for permits for other sites. In some instances, individuals involved in operations which have unabated violations or outstanding fees or penalties have formed new corporations, partnerships, or other business entities and have applied for permits for new operations without correcting the violations or paying the fees and penalties resulting from the first operation. Frequently, the person or entity named as the applicant for a permit has no previous record of violations. However, because of the relationships involving the applicant, it appears that the applicant is, in fact, owned or controlled by persons who do have outstanding violations. Such practices have enabled operators to avoid the requirements of the Act first by operating a mine in violation of the Act until the regulatory authority issues a cessation order, and then by abandoning the site of the violation and starting a new operation under a new name or a new business organization and continuing the same practices. Similar practices occur with respect to civil penalties and AML fees which have not been paid when due. If allowed to persist, these practices could seriously weaken enforcement of the Act. The regulatory changes proposed by this rule will aid OSM in dealing with these problems.

In addition, these rules would assist OSM in implementing a court order in the case of *Save Our Cumberland Mountains, Inc., et al.* v. *Clark*, Civil Action No. 79–1521 (D.D.C. 1985) (Parker J.), relating to enforcement measures that can be taken against operators with unabated cessation orders and unpaid civil penalties. Under the February 1, 1985 Order, the Secretary of the Interior is required to improve the enforcement and implementation of section 510(c) of the Act.

Section 510(c) of the Act states that the regulatory authority shall not issue an applicant a permit "if any surface

coal mining operation *owned or controlled by the applicant* is currently in violation of the Act" or other specified environmental laws, until the applicant submits proof to the regulatory authority that the violation has been corrected or is in the process of being corrected to the satisfaction of the issuing agency. (Emphasis added.) OSM has implemented this provision in 30 CFR 773.15(b)(1), which essentially repeats the statutory language, and adds a second exception if the applicant demonstrates that it is pursuing, in good faith, a direct administrative or judicial appeal contesting the violations.[1] 48 FR 44344, September 28, 1983.

The phrase "owned or controlled by the applicant" as used in section 510(c) of the Act is not specifically defined in the Act. Promulgating a rule defining "ownership" and "control" will assist OSM in establishing standards for permit denial under section 510(c).

The findings and decisions required to be made under section 510 of the Act must be made on the basis of a complete permit application, the requirements for which are largely set out in sections 507 and 508 of the Act. Section 507(b)(4) of the Act requires any applicant which is a partnership, corporation, association or other business entity to include in its permit application:

> the name and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and addresses of any person owning, of record 10 percentum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation * * * within the five-year period preceding the date of submission of the application; * * *. 30 U.S.C. 1257(b)(4).

The legislative history of this section establishes the connection between this informational requirement and the permit approval or denial provisions in section 510(c) of the Act. As stated by the drafters of the Act:

> [t]he information required by [section 507(b)(4)] is *a key element of the operator's affirmative demonstration* that the environmental protection provisions of the Act can be met as stipulated in Section 510 and includes: (1) *Identification of all parties*, corporations, and officials involved to allow identification of parties *ultimately responsible for and most directly affected by the operation* as well as to cross-check the mining application with other applications in the same State or other States * * *.

H.R. Rep. No. 94–896, 94th Cong., 2d Sess. 111 (1976). (Emphasis added.) *See also*, S. Rep. No. 94–28, 94th Cong., 1st Sess. 206 (1975).

The purpose of the information required by section 507(b)(4) concerning persons who have some degree of ownership or control of the applicant is to provide the regulatory authority with information on which it can base its findings as required by section 510(c) of the Act. Because of the direct relationship between the informational requirement of section 507(b)(4) and the finding requirement of section 510(c), OSM has concluded that officers, partners, and directors of the applicant, and holders of 10 percent or more of any class of voting stock of the applicant should be considered to have "ownership or control" of a permit applicant.

Broadly defining "ownership" and "control" will limit the circumvention of the requirements of 510(c) through manipulation of business organizations by which the "applicant" would always be the lowest rung on the "ownership" or "control" ladder. Under such manipulations, the "applicant" would be found to be without violation and could receive a permit even though those persons who owned or controlled the applicant may have current violations.

Certainly, Congress did not intend that manipulations solely for the purpose of circumventing the Act's requirements be successful. Section 201(c)(1) of the Act provides that "[t]he Secretary acting through the Office [OSM], shall * * * order the suspension, revocation, or *witholding* of any permit for failure to comply with any of the provisions of this Act or any rules and regulations adopted pursuant thereto * * *." (Emphasis added.) Thus, it is proper for the Secretary to use every means at his disposal to insure that all persons comply with the Act.

This mandate may be implemented by denying permits where applicants are owned or controlled by persons who own or control surface coal mining and reclamation operations which are in violation of environmental laws, in addition to denying permits where the applicant itself owns or controls operations which are in violation of such laws. In order to accomplish this OSM is proposing to amend 30 CFR 773.15(b)(1), whch implements the finding requirement of section 510(c). A discussion of the specific regulatory changes is provided in the following section.

III. Discussion of Proposed Rule

The proposed rule would define separately the terms "ownership" and "control" as used in section 510(c) of the Act. The correct application of these terms is an essential part of the permit approval procedure set forth in section 510(c) and its implementing regulations at 30 CFR 773.15(b). OSM has decided to define these terms separately because, although clearly related, each term has its own discrete meaning.

Definition of "Ownership"

The proposed definition of "ownership" in 30 CFR 773.5 would describe the various ways in which a person or entity could be considered to have "ownership" of another entity.

Under the proposed definition, the person holding the proprietary interest in a sole proprietorship would be considered the owner of that entity.

For businesses organized as partnerships, general partnership in the entity would always establish ownership. This standard of ownership is in accord with the legal nature of a partnership which makes each general partner liable for the actions of the partnership. A joint venture, which is simply a partnership organized for a specific purpose, would be treated like a general partnership, with each person who contributes services or capital to the joint venture or enterprise considered an owner. A rebuttable presumption of "ownership" would be created where a limited partner holds 10 percent or more of the assets of the partnership. A person could rebut the presumption by showing that even though he or she has financial interest in the partnership, he or she does not have any express or implied authority to direct, or to assist in directing, partnership actions.

For businesses organized as corporations, the standard proposed for determining ownership would be record or beneficial ownership of 10 percent or more of any class of voting stock in the corporation. Stock ownership would exist whether the stock was actually held in the owner's name or by a broker or other person for the benefit of the owner. The 10 percent standard is proposed for this rule because OSM has concluded that Congress intended the information collected concerning 10 percent shareholders under section 507(b)(4) of the Act is to be used in this manner.

Under this proposed rule it is possible that person or entities would be determined to "own" a corporation even if such person or entity did not directly

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[1] The second exception implements Congressional intent as expressed in the following passage of S. Rep. No. 95–128, 95th Cong., 1st Sess. 79 (1977): It is not the intention of the Committee that an operator who is charged with the types of violation described in section (510(c)) be collaterally penalized through denial of a mining permit if he is availing himself, in good faith, or whatever administrative and judicial remedies may be available to him . . .

own any of the stock of the corporation. Indirect ownership through a holding company or other entity would not shield a person from the applicability of this rule. Ownership of an entity which in turns owns 10 percent or more of any class of the voting stock in a corporation would be considered as ownership of such corporation. This vertical chain of "ownership" would occur most often with parent and subsidiary relationships where the subsidiary itself owns a separate corporation. Theoretically, this vertical linkage could go on beyond the three levels as described in the example above. OSM requests comments concerning the specific issue of how far up or down this vertical chain of "ownership" the definition should go, and whether, for instance, a minimum attributible ownership percentage of the applicant should be imposed. In addition, comments are specifically requested as to whether parent corporations which acquire subsidiaries should be responsible for actions of the subsidiaries prior to their acquisition. OSM is considering creating an exception in the final rule to account for such circumstances.

Other standards, such as the "50 percent or greater" test used in the "two-acre" rule (30 CFR 700.11(b)), are being considered by OSM and comment is specifically requested on any such alternative standards. The most useful comments would include statements of the legal and factual basis for using a particular standard. However, because of the differing purposes and statutory bases for the use of an "ownership" or "control" standard in different regulations, the standards may be different without necessarily being inconsistent with each other.

Definition of Control

The proposed definition of "control" in 30 CFR 773.5 would provide that in every case "ownership" would mean "control." OSM believes that it is correct to state that persons having "ownership" in an entity also "control" it. General partners clearly "control" the actions of the partnership. Likewise the partners in a joint venture "control" the actions of the joint venture. In addition, OSM's experience suggests that owners of 10 percent or more of a corporation's voting stock exercise sufficient practical control of the business to meet the general standard of "control."

The proposed definition also would provide that there may be instances where a person with no financial interest in an entity may, through his or her relationship to such entity, have the express or implied authority to determine the manner in which such entity carries out its day-to-day business affairs. Specifically, the proposed definition would describe control as ownership or any other relationship which gives one person express or implied authority to determine the manner in which that person or another person mines, handles, sells or disposes of coal.

The proposed definition, would state that if a person is an officer or director of a corporation such a relationship shall constitute "control." This express designation of authority in a person to direct the affairs of the corporation is sufficient evidence of "control" of such corporation.

In addition, the proposed definition would create a rebuttable presumption of "control" where a person owning or controlling coal arranges to have another entity mine such coal but retains the right to receive such coal after it is mined. This situation commonly occurs in what has become known as "contract mining." A person could rebut this presumption of "control" by showing that he or she did not exercise express or implied control over the operation that actually extracted the coal. This would have to be determined on a case-specific basis. Contractual arrangements between the owner of the coal and the operation mining such coal, wherein the owner disclaims responsibility for the actions of the operation mining the coal, would not necessarily be conclusive evidence of the absence of "control."

Comments are requested as to what specific kinds of business or other relationships could be presumed to establish control. For example, should the final rule contain an express presumption that agents, subcontractors, general managers, foremen, or others who exercise independent discretion for directing the day-to-day operations at a mine have control within the meaning of section 510(c).

Section 773.15(b)(1)

As discussed earlier, § 773.15(b)(1) implements section 510(c) of the Act. In its present form, § 773.15(b)(1) prohibits the regulatory authority from issuing a permit when the permit applicant owns or controls any surface coal mining and reclamation operation currently in violation of the Act or other environmental protection laws. It does not, in its present form, expressly require the witholding of a permit if those who own or control the applicant are currently in violation of the Act or other environmental protection laws.

OSM proposes to amend 30 CFR 773.15(b)(1) by expanding the scope of the regulatory authority's required finding to include a determination that any surface coal mining and reclamation operation owned or controlled by those persons who own or control the applicant is not currently in violation of the Act or other environmental protection laws. By so doing, OSM would gain an effective tool to ensure that persons who own or control an operation in violation of the Act will have to have corrected or be in the process of correcting those violations before any operation of which they have "ownership" or "control" can be issued a permit to conduct surface coal mining and reclamation operations.

It should be recognized that if the proposed change is adopted, OSM may amend permit application requirements to receive additional information. OSM requests comments on the specific additional items of information that would be necessary to conform permit application requirements to the final revision to § 773.15(b). Comments are requested on whether it is feasible for applicants to obtain and submit violation information concerning persons who own or control them.

Instead of such an expansive change to § 773.15(b)(1), OSM is considering a more manageable option which, in addition to the requirement of existing § 773.15(b)(1), would require the regulatory authority to make a finding that persons who owned or controlled the applicant only did not own or control operations which had outstanding failure-to-abate cessation orders, unpaid civil penalties imposed by OSM, or unpaid AML fees. This option would be a less expansive change to the scope of the findings than is contained in the regulatory language in this rule, but could be implemented more easily with information currently available. Public comment is requested on this option as an alternative to the regulatory revision proposed.

IV. Procedural Matters

Federal Paperwork Reduction Act

This proposed rule contains no information collection requirements requiring submittal to the Office of Management and Budget under the provisions of the Federal Paper Work Reduction Act.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that this proposed rule is not a major rule and does not require a regulatory impact analysis because it will impose only

minor costs on the coal industry and coal consumers. This rule would not add new regulatory burdens to operators. It would provide regulatory authorities with another mechanism for ensuring that operators are in full compliance with existing regulations. Therefore, it should not add appreciably to the cost of operating a mine in compliance with an approved regulatory program.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities for the same reasons as discussed in the previous paragraph.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA), and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

List of Subjects in 30 CFR Part 773

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Part 773 as follows:

Dated: March 18, 1985.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 reads as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

2. Section 773.5 is added to read as follows:

§ 773.5 Definitions.

For purposes of this subchapter:

Control means ownership or any other relationship which gives one person express or implied authority to determine the manner in which that person or another person mines, handles, sells, or disposes of coal. Being an officer or director of a corporation shall consititute control. Owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining shall establish a rebuttable presumption of control of such other person.

Ownership means holding the proprietary interest in a sole proprietorship, being a general partner in a partnership, being a contributor of capital or services in a joint venture, or having record or beneficial ownership of 10 percent or more of any class of voting stock in a corporation. In addition, being a limited partner owning 10 percent or more of the assests in a partnership, creates a rebuttable presumption of ownership.

3. Section 773.15 is amended by revising paragraph (b)(1) to read as follows:

§ 773.15 Review of permit applications.

* * * * *

(b) *Review of violations.* (1) The regulatory authority shall make a finding that any surface coal mining and reclamation operation owned or controlled by either the applicant or by any person who owns or controls the applicant is not currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If such a finding cannot be made the regulatory authority shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either—

* * * * *

[FR Doc. 85–8178 Filed 4–4–85; 8:45 am]
BILLING CODE 4310–05–M

federal register

Friday
April 5, 1985

Part V

Department of Education

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children; Proposed Annual Funding Priority and Closing Date, Transmittal of Applications, Fiscal Year 1985 Awards, Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of New Applications for Fiscal Year 1985 Awards.

Applications are invited for new projects under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program.

Authority for this program is contained in section 624 of Part C of the Education of the Handicapped Act.

(20 U.S.C. 1424)

Applications may be submitted by public or private, profit or non-profit organizations and institutions.

The Auxiliary Activities program supports research, development or demonstration, training, and dissemination activities consistent with Part C of the Act that meet the unique educational needs of handicapped children and youth, including those who are severely handicapped. An announcement of the closing date for applications addressing seven other priorities under this program was published on January 4, 1985 (50 FR 700). This application notice addresses one additional priority under section 624 of the Act proposed by the Secretary for fiscal year 1985 awards under the Auxiliary Activities—Innovative Programs for Severely Handicapped Children and Youth program.

Closing Date For Transmittal of Applications: An application for a new project must be mailed or hand delivered on or before June 7, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.086, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An application should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available Funds: It is estimated that approximately $880,000 will be available for support of 9 new projects under this priority in fiscal year 1985. This estimate does not bind the Department of Education to a specific number of grants or cooperative agreements or to the amount of any grant or cooperative agreement unless that amount is otherwise specified by statute or regulation. Funding beyond the first year period is subject to an annual review of progress, availability of funds, and other factors (see 34 CFR 75.251–75.253).

Priority

INNOVATIVE PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN, FISCAL YEAR 1985

Priority No.	Priority area	Anticipated	
		Funding level	Number of awards
84.086N...	Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment	$880,000	9

Application Forms: Application forms and program information packages are expected to be available on April 8, 1985. These materials may be obtained by writing to the Special Needs Section, Special Education Programs, Department of Education, 400 Maryland Avenue SW., (M/S 2313, Room 3511), Washington, D.C. 20202. Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under control number 1820–0028)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Auxiliary Activities program (34 CFR Part 315). Final regulations for this program were published on July 9, 1984 (49 FR 28020). A notice of proposed annual funding priority for this program is published in this issue of the Federal Register. Prospective applicants are advised that the proposed annual funding priority is subject to modification in response to public comments submitted within 30 days of publication. In the event any substantive changes are made in the priority or other requirements for new projects, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

For further Information contact: R. Paul Thompson, Special Needs Section, Special Education Programs, Department of Education, 330 C Street, SW. (Switzer Building, Room 4615), Washington, D.C. 20202. Telephone: (202) 732–1161.

(Catalog of Federal Domestic Assistance No. 84.086; Auxiliary Activities—Innovative Programs for Severely Handicapped Children)

(20 U.S.C. 1424)

Dated: April 2, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8194 Filed 4–4–85; 8:45 am]

BILLING CODE 4000–01–M

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposes an annual funding priority for the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program. The Secretary proposes to add to the priorities previously announced a priority addressing the need for exemplary models of educational projects in the least restrictive environment to the seven proposed annual funding priorities for this program which have recently been announced in the **Federal Register**.

DATE: Comments must be received on or before April 5, 1985.

ADDRESS: Comments should be addressed to: R. Paul Thompson, Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (M/S 2313–3511), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Auxiliary Activities program, authorized by Section 624 of the Education of Handicapped Act, supports research, development or demonstration, training, and dissemination activities which meet the unique educational needs of handicapped children and youth, and are consistent with the purposes of Part C of the Act (20 U.S.C. 1424).

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to the provisions of Section 624. In accordance with this authority, the Secretary proposes to fund projects under the following priority for fiscal year 1985.

The selection of this proposed priority is based upon: (1) A comprehensive review of the program's history, including the number of responses to various requests for proposals and responses to the 1982, 1983, and 1984 grant competitions; and (2) an analysis of comments from professionals serving severely handicapped and deaf-blind children as to perceived needs in the field.

The Secretary announced seven other proposed annual funding priorities under this program which were published on January 4, 1985 (50 FR 700). Projects under this priority will be funded for up to 36 months, subject to annual review of progress, the availability of Federal funds, and other factors (see 34 CFR 75.251–75.253).

Priority

Education of Severely Handicapped (Including Deaf-Blind) Children and Youth in the Least Restrictive Environment

This priority supports projects which, on a district-wide basis (local educational agency) or cross district basis, design, implement, and evaluate innovative approaches for the education of severely handicapped (including deaf-blind) children and youth in the least restrictive and least segregated environment. Projects under this priority must:

1. Develop new models for delivery of integrated educational services, including changes in the location of instructional areas for provision of these services, for severely handicapped children who currently are being educated in segregated environments;

2. Demonstrate through the provision of project services, the clear movement of participating children and youth to and integration into less segregated environments, with the objective of facilitating the placement of these children in appropriate, regular school settings;

3. Provide inservice training of personnel in local educational agencies including principals, assistant principals and teaching staff which are planning to provide educational services to handicapped children of the project in the least restrictive and least segregated environments; and

4. Provide components which promote acceptance of these children and youth by administrators, teachers, parents, and other children and youth in the least restrictive and least segregated environment.

It is estimated that approximately $880,000 is available for issuing up to 9 grants with each grant averaging approximately $98,000 annually. These grants will be awarded for 36 months or less.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 4615, Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.086; Innovative Programs for Severely Handicapped Children)

(20 U.S.C. 1424)

Dated: April 2, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8193 Filed 4–4–85; 8:45 am]

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federal register

Friday
April 5, 1985

Part VI

Department of Education

Office of Special Education and Rehabilitative Services

Research in Education of the Handicapped; Notice of Final Biennial Funding Priorities

DEPARTMENT OF EDUCATION

Research in Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of Final Biennial Funding Priorities.

SUMMARY: The Secretary announces biennial funding priorities for the Research in Education of the Handicapped program. To ensure wide and effective use of program funds, the Secretary selects from among 12 priorities in order to direct funds to the areas of greatest need for fiscal years 1985 and 1986. A separate competition will be established for each selected priority.

EFFECTIVE DATE: This notice of priorities will take effect either on or before May 20, 1985, or later if Congress takes certain adjournments. If you want to know the effective date of this notice of priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Nancy Safer, Research Projects Branch, Division of Educational Services, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Room 3511–M/S 2313), Washington, D.C. 20202. Telephone: (202) 732–1123.

SUPPLEMENTARY INFORMATION: The Research in Education of the Handicapped program, authorized by sections 641–644 of Part E of the Education of the Handicapped Act (20 U.S.C. 1441–1444), supports research, surveys or demonstration projects relating to the educational needs of handicapped children. Under this program, the Secretary makes awards to eligible parties to conduct research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities supported under this program shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth, including physical education or recreation.

The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to section 641 of the Act. Under section 641(c) of the Act, the Secretary is required to publish proposed research priorities in the **Federal Register** every two years, analyze and consider any public comments received, and then publish final research priorities. In accordance with this requirement, a Notice of Proposed Biennial Funding Priorities was published in the **Federal Register** on November 16, 1984 (49 FR 45478) for the Research in Education of the Handicapped program.

Summary of Comments and Responses

A total of eight comments were received concerning the proposed eleven funding priorities. In general, the comments supported the proposed priorities. The comments and the Department's responses are summarized below:

Comment. Two commenters recommended adding additional groups to the populations considered under Special Population/Handicapped Projects. The suggested additional populations were minority, limited English proficient, and multihandicapped students.

Response. No change has been made. Multihandicapped students already receive attention in the severely handicapped programs, and the research institutes supported under Part E of the Act focus on handicapped minority and limited English proficient students. Moreover, research interests related to those populations could also be submitted under any of the other proposed priorities, providing a broad range of research opportunities relating to these populations.

Comment. One commenter suggested that the extant data base projects be expanded to permit researchers to build upon or expand an existing data base.

Response. A change has been made. The proposed priority was revised to permit not only use of, but building or expanding on an existing data base. Under this priority, investigators may obtain new information only if it is integral to utilizing and interpreting an extant data base.

Comment. One commenter questioned the relationship of the proposed priority on "Educational Progress of Handicapped Students" in the Special Studies funding priorities and with the priorities for Research in Education of the Handicapped.

Response. No change has been made. Section 618 of the Act, as amended by Pub. L. 98–199, requires the Secretary to evaluate the impact and effectiveness of the Act, and the progress being made to implement its requirements. Thus, the proposed Special Studies priorities under section 618, published on October 26, 1984 (49 FR 43090), were selected for evaluation activities, whereas the funding priorities for Research in Education of the Handicapped are responsive to a broader mandate to contribute to the process of innovative change and program improvement. The priorities under this program support research for: Enhancing new knowledge and understanding, developing and verifying effective practices, reviewing and analyzing current research, developing new or improved approaches and products based on research findings, and contributing to information exchange.

Comment. One commenter suggested that the priority for Comparative Research Projects be expanded to permit research on children initially entering school.

Response. A change has been made. Though continuing efforts are being made by State and local educational agencies to ensure early screening, identification and diagnosis, many handicapped children are not identified and do not receive services until they enter school. The priority has been revised to permit studies targeted at primary age children in recognition of this concern.

Comment. One commenter raised the concern that the proposed priority on standards and criteria was overly restrictive in its focus on effect and impact because it appears to exclude studies describing the current status of personnel-related standards and criteria among the States.

Response. No change has been made. The priority as currently stated would not exclude research projects which describe the current status but would require that the research include investigation into the effect or impact related to such status descriptions. Research designed only to describe the current status related to standards and criteria could be submitted in fiscal years 1985 and 1986 in response to the Field-Initiated Research priority.

Comment. One commenter recommended that an additional priority be included to address early childhood program evaluation.

Response. No change has been made. This area is currently the focus of both a current and proposed research institute under the Handicapped Children's Early Education Program. In addition, program evaluation is a component of all early childhood demonstration projects supported under section 623 of the Act. Further, projects designed to study the efficacy of early intervention could be submitted in respose to either the Field-

Initiated or Comparative Research Projects priorities.

Comment. One commenter recommended that the proposed priorities be expanded to include research on parents and families having handicapped children and youth.

Response. A change has been made. An additional priority has been added for parent research projects. The significance of the role of the parent and the family in the education of handicapped children and youth has been and continues to be a priority concern. The addition of this priority will facilitate research directed to increase the effect of parent and family participation in the education of their handicapped children and youth.

Comment. One commenter requested clarification of the statement that information collection requirements associated with the priorities had been approved by the Office of Management and Budget, and wanted to know what new data would be required of State or local educational agencies.

Response. No change has been made. The reference to approval of information collection requirements by the Office of Management and Budget related only to the approved standard grant application form to be completed as part of the application submission. Thus, there are no data requirements for State or local educational agencies unless they submit a proposal for a project using the standard application form.

Priorities

Field-Initiated Research Projects

This priority provides support for a broad range of field-initiated research projects focusing on the education of handicapped children and youth. The appropriate areas of interest for projects are limited only by the mission of the research program—support of applied research relating to the education of handicapped children and youth. (Fiscal Years 1985 and 1986)

Student-Initiated Research Projects

This priority provides support to postsecondary students to initiate and direct a broad range of research and research related projects focusing on the education of handicapped children. Content of the research projects is limited only by the mission of the research program—the support of applied research relating to the education of handicapped children and youth. (Fiscal Years 1985 and 1986)

Program Organization Option Projects

This priority supports projects dealing with solutions to the unique instructional, management, personnel, and financial problems associated with educating children and youth with different handicapping conditions within the same special educational placement option. (*See* 34 CFR 300.551, *Continuum of alternative placements.*) (Fiscal Year 1986)

Implementation of Research Projects

This priority supports projects that use the results of education related research studies to develop and field-test improved practices in educating handicapped students. (Fiscal Year 1986)

Enhancing Instructional Program Options

This priority provides support for projects to enhance the capacity of local educational agencies to provide a variety of instructional options and screening procedures prior to evaluation and placement of children with learning problems in special education. (Fiscal Years 1985 and 1986)

Special Population/Handicapped Projects

This priority supports projects dealing with the unique educational problems resulting from a combination of membership in a particular special population and having (a) handicapping condition(s). The Secretary will give an absolute preference to projects that identify and analyze intervention strategies for serving secondary-aged handicapped students who are also youthful offenders, children of migrant families, school dropouts, or substance abusers. (Fiscal Years 1985 and 1986)

Extant Data Base Projects

This priority supports projects related to the education of handicapped children that use, build on, or expand existing data files or records and information as the data source of research focusing on issues related to the education of handicapped children. (Fiscal Year 1986)

Research Integration Projects

This priority supports projects that review and synthesize existing research related to education of the handicapped, examine the implications of that research for practice in the education of the handicapped, and that determine future research needs. (Fiscal Years 1985 and 1986)

Increasing Teaching/Learning Efficiency Projects

This priority supports projects that focus on teacher and school variables associated with improved performance of handicapped students as shown by a variety of educational outcome measures. (Fiscal Year 1986)

Comparative Research Projects

This priority supports projects which systematically, through experimental or quasi-experimental designs, compare the effectiveness and efficiency of alternative interventions for educating preschool, primary, or secondary-aged handicapped children and youth. (Fiscal Year 1986)

Standards and Criteria Projects

This priority supports projects to study—(a) The effect and impact of standards and criteria used to provide credentials, employ, and promote school personnel; or (b) the effect and impact of standards and criteria used for determining placement, promotion, graduation, or programming of handicapped students. (Fiscal Year 1986)

Parent Research Projects

This priority supports research projects to provide new information relating to parents and families of handicapped children and youth to increase the effect of their participation in the education of their handicapped children and youth. (Fiscal Year 1986)

(Catalog of Federal Domestic Assistance Number 84.023; Research in Education of the Handicapped)

(20 U.S.C. 1441–1444)

Dated: April 2, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8195 Filed 4–4–85; 8:45 am]

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federal register

Friday
April 5, 1985

Part VII

Department of Energy Nuclear Regulatory Commission

Compliance With Section 223 of the Nuclear Waste Policy Act of 1982; Notice

DEPARTMENT OF ENERGY

NUCLEAR REGULATORY COMMISSION

Compliance With Section 223 of the Nuclear Waste Policy Act of 1982

AGENCIES: Department of Energy and Nuclear Regulatory Commission.

ACTION: Update of the previously published notice of offer to cooperate with and provide technical assistance to nonnuclear weapon states in the field of spent nuclear fuel storage and disposal.

SUMMARY: The Department of Energy and the Nuclear Regulatory Commission, in accordance with section 223 of the Nuclear Waste Policy Act of 1982 Pub.L. 97–425), January 7, 1983 (the Act), published in the **Federal Register** on March 30, 1983 (48 FR 13253, corrected on April 20, 1983 by notice 48 FR 16980) and updated and reissued in the **Federal Register** on April 6, 1984 (49 FR 13858) an offer to cooperate with and provide technical assistance to nonnuclear weapon states for alleviating problems that may develop from accumulation of spent nuclear fuel. This notice is the second update and again tenders this offer as provided by the Act. Available resources, scope, criteria, and modes of cooperation are described in this offer, which will be further updated and reissued annually for the next 3 years.

Background

Section 223 of the Act provides that "it shall be the policy of the United States to cooperate with and provide technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal."

Section 223 (b) (1) of the Act required that within 90 days of enactment of the Act the Department of Energy and the Nuclear Regulatory Commission would:

> * * * Publish a joint notice in the **Federal Register** stating that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of at-reactor spent fuel storage; away-from-reactor spent fuel storage; monitored, retrievable spent fuel storage; geologic disposal of spent fuel; and the health, safety, and environmental regulation of such activities. The notice shall summarize the resources that can be made available for international cooperation and assistance in these fields through existing programs of the Department and the Commission, including the availability of: (i) Data from past or ongoing research and development projects; (ii) consultations with expert Department or Commission personnel or contractors; and (iii) liaison with private business entities and organizations working in these fields.

It is the intention of the Department of Energy and the Nuclear Regulatory Commission to offer to provide cooperation and technical assistance to other nations to improve spent fuel storage conditions as deemed necessary. It is not the intention of this offer to include transfer to the United States of spent fuel from foreign nuclear power reactors.

Section 223(c) of the Act specifies:

> Following publication of the annual joint notice referred to in paragraph (2), the Secretary of State shall inform the governments of non-nuclear weapon states and, as feasible, the organizations operating nuclear powerplants in such states, that the United States is prepared to cooperate with and provide technical assistance to non-nuclear weapon states in the fields of spent fuel storage and disposal, as set forth in the joint notice. The Secretary of State shall also solicit expressions of interest from non-nuclear weapon state governments and non-nuclear weapon state nuclear power reactor operators concerning their participation in expanded United States cooperation and technical assistance programs in these fields. The Secretary of State shall transmit any such expressions of interest to the Department and the Commission.

Response to the Offers

This notice was first published in the **Federal Register** on March 30, 1983 and was updated and reissued in the **Federal Register** on April 6, 1984. To date, seven countries have accepted this offer and substantive exchanges have occurred with three countries.

Discussion and Description or Proposed Cooperative Activities and Programs

For several years the United States has been cooperating with other nations as well as international organizations in areas related to spend fuel handling, storage, and disposition. The Department of Energy and the Nuclear Regulatory Commission have adhered to policies of sharing the results of their studies and programs in these areas with other nations and they have sought to establish a framework to permit U.S. private organizations working in these fields to cooperate with their counterparts in the other nations. To the extent feasible, it is the intention of the Department of Energy and the Nuclear Regulatory Commission to augment their international cooperative ties in these areas. Any arrangements relative to funding of joint research and development projects will be developed on a case by case basis subject to program demands and the authorization and appropriation of funds by Congress.

In the course of developing the proposed new arrangements with other governments of foreign institutions, both the Department of Energy and the Nuclear Regulatory Commission will be guided by a number of factors and criteria, including the following:

—Whether the proposed program of cooperation will be useful in assisting a nonnuclear weapon state in overcoming significant and timely spent fuel storage or handling problems;

—Whether the arrangements will serve to advance knowledge in the field;

—Whether the arrangements will help solve common spent fuel handling problems; and

—Whether the arrangements will contribute to more predictability in fuel cycle operations.

While it is anticipated that in the near future most nations will be able to solve their spent fuel storage problems on a national basis, this is an area that could benefit from enhanced international cooperation. As noted by the Final Report of the International Atomic Energy Agency's Expert Group on International Spent Fuel Management (IAEA–ISFM/EG/26, Rev. 1, page 4, July 1982), prior to 1990 there is reasonably good assurance that adequate provision for dealing with spent fuel will exist. During the 1990s, however, the Report states that greater reliance must be placed on spent fuel management options which are now mainly in the planning stage, and further states that "By the year 2000 additional capacity remains to be identified and eventually provided. As greater reliance is placed upon planned facilities, some international cooperation could provide greater assurances that adequate means to deal with the spent fuel arisings would be provided."

Some new storage technologies now under development hold promise for achieving further economies in storage arrangements. Also, there are incentives for developing common standards and guidelines between nations relating to the conditions for shipping spent fuel, nations can benefit from comparing information on the applicable regulatory practices and, in some cases, it may be productive for nations sharing common spent fuel storage problems to explore new institutional mechanisms designed to facilitate joint action.

The following paragraphs in this notice briefly summarize the nature of the activities of the Department of Energy and the Nuclear Regulatory Commission in these areas as well as the major cooperative activities that these agencies would propose to explore or engage in, as circumstances warrant.

The U.S. Department of Energy

The Department of Energy is now working with industry and utilities to assure that sufficient spent fuel storage capacity will be available for meeting U.S. domestic needs. U.S. utilities operating power reactors are presently storing spent fuel in water-filled pools at their reactor sites. In the next few years, additional capacity will be needed at some sites and the gravity of this problem could increase rapidly unless additional storage capacities are made available on a timely basis. Accordingly, the Department of Energy, industry, and utilities are now actively developing alternative methods for consolidating, transporting, and storing spent light water reactor fuel in order to increase at-reactor storage capacity.

The emphasis of this domestic program is to work jointly with industry for developing and licensing alternative storage technologies. Within this context, the Department of Energy is now in the process of working with industry and utilities in developing and demonstrating spent fuel rod consolidation and dry storage equipment and technology in support of utility license applications and is participating in efforts to assure the licensability of the entire system for handling, packaging, transportation, and storage. In addition, monitored retrievable storage facilities are being evaluated as integral components of the nuclear waste management system.

With these considerations in mind, and considering the criteria cited above, the Department of Energy is prepared to engage in the following kinds of cooperative activities with nonnuclear weapon states and international organizations:

—To provide information, in the form of exchanges of documents and reports, on Department of Energy funded research and development projects in the specific areas of spent fuel handling and storage; pool storage; spent fuel packaging for storage or disposal; dry storage in metal casks, drywells, vaults and concrete silos; and on the technology of away-from-reactor and monitored retrievable storage;

—To arrange, on an appropriate basis, visits and briefings between foreign representatives and Department of Energy and contractor personnel in those areas and to facilitate, within the terms of applicable U.S. laws, regulations and policies, contacts with private U.S. business entities and organizations with specialized capabilities in these fields;

—To arrange consultations between foreign representatives and expert Department of Energy and contractor personnel to review and comment on, as appropriate, other nations' proposed development program plans and facility designs;

—To furnish, under mutually agreed terms, information on certain U.S. standards and verified computer codes that may be used for equipment, component and facility design; and

—To cooperate, as appropriate, with international organizations to disseminate information to nonnuclear weapon states.

As U.S. program demands and the authorization and appropriation of funds by Congress permit, the Department of Energy also is prepared to participate in jointly funded development and demonstration activities such as:

—The demonstration of concepts for disassembling spent fuel assemblies and for consolidating fuel rods in operating reactor pools;

—The development and demonstration of technology for packaging spent fuel for storage and disposal;

—Activities related to assessing the feasibility of away-from-reactor storage, including foreign participation in, or observation of, U.S. tests and demonstrations of equipment and technology for dry storage of spent fuels; and

—The conduct of joint studies to evaluate monitored retrievable spent fuel storage.

In addition to the management of spent fuel in retrievable modes, the Department of Energy also is conducting extensive research and development on the geologic disposal of nuclear waste, including the spent fuel option. Where there is mutual interest, information in these areas can be exchanged through:

—The transmittal of published information;

—Arrangement of visits and consultations with the Department of Energy and contractor experts on spent fuel disposal methodology;

—Program planning; and

—Systems analyses.

The research and development activities conducted under the Department of Energy geologic isolation program include:

—The detailed characterization of spent fuel;

—Research and systems studies on spent fuel disposal packages and containers, and their materials;

—Safety analyses; and

—Disposal repository designs, including their performance evaluations in various host rock media.

As part of these activities, the U.S. Geological Survey is also available through the Department of Energy for discussions on the earth science characteristics of disposal sites.

Under the cooperative activities that have been described above, the information to be provided could possibly include exchanges of documents and reports, visits between specialists, short- or long-term assignments, the undertaking of joint seminars and meetings, and jointly supported research and development projects.

The Nuclear Regulatory Commission

In regard to the issue at hand, the Nuclear Regulatory Commission is responsible for safety and environmental reviews, licensing, inspection and enforcement, and the conduct of research on the safety and environmental regulation of reactor waste in the United States, including the handling, storage, treatment, and disposal of spent reactor fuel. These responsibilities include licensing dry and wet at-reactor and away-from-reactor storage, monitored retrievable storage, and spent fuel and waste disposal (including geological disposal) at permanent repositories.

The Nuclear Regulatory Commission is prepared to cooperate with, and provide technical assistance to, nonnuclear weapon states in the areas of the health, safety, and environmental regulation of spent fuel management and disposal activities. Cooperation could include the following:

—Making available data from past and ongoing research and regulatory efforts: These data consist of evaluated and documented experimental results, validated and fully documented computer codes, and research results for which documentation and evaluation are complete. These data are primarily documented as written reports, which the Nuclear Regulatory Commission can provide in specific technical subject areas, as agreed. State-of-the-art information on ongoing safety research programs can be acquired through attendance by representatives from participating countries at the annual Water Reactor Safety Research Information Meeting and other occasional topical meetings. Additional data more directly related to regulatory activities, such as regulations, standards, and guides, can also be provided as appropriate in specific subject areas as requested;

—Consulting with expert Nuclear Regulatory Commission personnel and Nuclear Regulatory Commission

contractor staff. As arranged by specific agreement with the Nuclear Regulatory Commission, expert technical consultation can be provided by Nuclear Regulatory Commission personnel and, as needed, by contractor employees in the regulatory areas within the Commission's purview;

—Helping (to the extent permitted by U.S. laws, regulations, and policies) foreign governments to establish initial contacts with private U.S. entities that conduct business in the applicable waste management activities;

—Cooperating, as appropriate, with international organizations to disseminate information to nonnuclear weapon states; and

—Participating in joint research programs. The Nuclear Regulatory Commission is ready to negotiate and engage in jointly funded research programs, consistent with the Agency's mission, with appropriate foreign entities, subject to the authorization and appropriation of funds by the Congress.

Relationships With Multinational Organizations and International Scientific Bodies

In addition to the foregoing activities, and within the framework of such foreign policy guidance as may be provided by the U.S. Department of State, it is expected that the Nuclear Regulatory Commission and Department of Energy will continue to participate in activities related to spent fuel handling that are undertaken by international organizations, if appropriate. These organizations have sponsored a range of activities relevant to this subject, and it is recognized that some nonnuclear weapon states may wish to avail themselves of the services of these bodies as well as the cooperative programs that are available bilaterally. The Nuclear Energy Agency of the Organization for Economic Cooperation and Development, for example, has been actively involved in studies related to the disposal of nuclear wastes. Also, as mentioned above, through the efforts of an Expert Group on International Spent Fuel Management, the International Atomic Energy Agency in 1982 completed a study on the potential for international cooperation in the management of spent fuel, giving emphasis to technical, economic, institutional, and legal considerations. Several of the recommendations of the International Atomic Energy Agency Expert Group could serve as a stimulus for further cooperative initiatives. Areas that may merit further study include the establishment of nuclear safety standards recommended by the International Atomic Energy Agency for spent fuel storage and transport, and possible further studies, as the interests of the international community dictate, such as multinational or regional approaches to spent fuel management and disposal.

Storage and Disposition of Research Reactor Spent Fuels

The cooperative programs described in this announcement are addressed to the problems associated with the storage and handling of power reactor spent fuel that originates primarily in light water reactors. As such, they do not address any issues associated with the accumulation of foreign research reactor fuels.

Solicitation of Expressions of Interest From Nonnuclear Weapon States

As the next step in developing this offer of cooperation and technical assistance, nonnuclear weapon states will again be contacted through diplomatic channels to acquaint them with this proposal and to solicit expressions of interest. The Department of State will transmit any such expressions of interest to the Department of Energy and the Nuclear Regulatory Commission.

Requests for Information

Inquiries about this notice may be sent to the following:

Ben C. Rusche, Director, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, Washington, D.C. 20585 (Tel. No. 202/252–6850)

James R. Shea, Director, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Tel. No. 301/492–7886)

Dated: April 1, 1985.

Approval:

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management, Department of Energy.

Dated: March 29, 1985.

William J. Dircks,

Executive Director for Operations, Nuclear Regulatory Commisssion.

[FR Doc. 85–8245 Filed 4–4–85; 8:45 am]

BILLING CODE 6450–01–M

federal register

Friday
April 5, 1985

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Coverage of Oxygen for Use in a Patient's Home; Final Notice With Request for Comments

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-024-FNC]

Medicare Program; Coverage of Oxygen for Use in a Patient's Home

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with request for comments.

SUMMARY: This notice announces Medicare policy concerning coverage for oxygen and oxygen equipment used at home by beneficiaries under the Medicare Part B durable medical equipment benefit. The policy states criteria for Medicare carriers to use in processing claims for reimbursement of oxygen services provided at home and is intended to ensure consistent coverage determinations by Medicare carriers nationwide. We are also using this notice to inform patients, physicians, suppliers of oxygen and oxygen-related equipment, and the general public of our policy.

DATES: *Effective date:* This notice is effective September 1, 1985. For additional information regarding the effective date, refer to section VII under "SUPPLEMENTARY INFORMATION".

Section V. of this notice contains information collection requirements. The public is not required to comply with the information collection requirements other than those currently required until OMB approves these additional requirements under section 3507 of the Paperwork Reduction Act. A notice will be published in the **Federal Register** when approval is obtained.

Comment Date: Although this notice is final, comments may be submitted as described below. To assure consideration, comments must be mailed by May 6, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-24-FNC, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code: BERC-24-FNC.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 320B, New Executive Office Building, Washington, D.C. 20503, Attention: Fay Iudicello.

FOR FURTHER INFORMATION CONTACT: William Larson, (301) 594-8569.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(s)(6) of the Social Security Act provides for payment under Part B of Medicare for durable medical equipment (DME) used in the patient's home. However, section 1862(a)(1)(A) of the Act excludes from coverage items and services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

Medicare has been paying for oxygen services in a patient's home under the DME authority, and carriers have been providing reimbursement according to general criteria regarding coverage of DME. (See the Medicare *Carriers Manual*, Chapter II, Coverage and Limitations, sections 2100 and 2105.) A physician's prescription is required to determine the medical need for DME items under Medicare, including oxygen services. In addition, Medicare carriers evaluate the factors involved in each case, as they do with all Medicare claims for payment, to determine whether the "reasonable and necessary" rule is met. The only detailed criteria concerning coverage of home use of oxygen relate to portable oxygen (*Carriers Manual*, Chapter II, Coverage Issues Appendix, section 60-4). These criteria, however, address only in part the issue of medical need for oxygen. They state that portable oxygen is appropriate for ambulatory patients who suffer from hypoxemia (deficiency of oxygen) either constantly or with exercise, and that the hypoxemia can be demonstrated by arterial blood gas studies. The criteria also state that some patients, e.g., those with a diagnosis of chronic interstitial pneumonia or of pulmonary hypertension, are able to benefit from oxygen on an ambulatory basis and that coverage is afforded. Finally, the criteria require a physician's prescription that should indicate the flow rate and circumstances under which oxygen is used.

HCFA has lacked uniform criteria to determine when a valid medical need for oxygen exists. Therefore, situations have developed in which patients receive oxygen instead of a more desirable alternative therapy or continue to receive the services after the need has passed. This is confirmed by a 1981 HCFA Regional Office study which identified a number of situations in which the patient's need for services billed under Medicare was not supported by the patient's own attending physician. Receiving an unneeded or a less desirable therapy is not only wasteful of program funds, but may also harm the patient. We have concluded that more refined criteria are necessary to ensure that oxygen services are provided only when "reasonable and necessary" to accomplish a medical purpose. This would assure that funds are not being expended unnecessarily and that Medicare is not paying for services that could possibly be harmful to beneficiaries.

In addition, the lack of uniform criteria has led to widely varying determinations by Medicare carriers on beneficiaries' claims for reimbursement for the expenses involved in use of oxygen at home.

The lack of uniform criteria has resulted in complaints to Congress from beneficiaries, physicians, and suppliers of oxygen and related equipment. As a result of these complaints (and otherr about Medicare reimbursement for durable medical equipment), Congress asked the General Accounting Office (GAO) to review Medicare's payment practices for durable medical equipment.

In a September 10, 1981 report, "Medicare's Reimbursement Policies for Durable Medical Equipment Should be Modified and Made More Consistent," HRD-81-140, GAO found that both beneficiaries and suppliers of home oxygen services are subject to a wide degree of variation for reimbursement, coverage, and utilization criteria, based on their locality.

Although GAO recognized that some variation among Medicare carriers in reimbursement, coverage, and other medical policy is neither unusual nor necessarily inappropriate, the amount of variation in different localities was cause for GAO concern. Finding that a uniform policy for home oxygen services is needed, GAO recommended (pp. iv, 28) that HCFA guarantee that reimbursement, coverage, and utilization criteria be consistently applied in all regions.

Our revised policy ensures consistent coverage determinations by Medicare carriers nationwide, as well as ensuring that patients with a medical need for home oxygen receive Medicare coverage for it. Our revised policy applies to oxygen services furnished in a patient's home by DME suppliers reimbursed under the Medicare Part B DME benefit.

II. Proposed Federal Register Notice

In order to develop a uniform national policy on coverage of home use of oxygen, while meeting the "reasonable and necessary" requirements of the Medicare statute, we published a proposed policy in the **Federal Register** on December 14, 1979 (44 FR 72653). That proposal included the following criteria for Medicare coverage of oxygen services in the home:

1. Prescription

A physician would have to write a prescription that specifies: Diagnosis of the disease requiring oxygen; the flow rate, frequency, and duration of use of oxygen; method of delivery of oxygen; and an estimate of how long the patient would require oxygen services. In addition, the prescription would have to include sufficient information for the carrier to make a determination of the medical necessity for oxygen. In connection with the prescription requirements, carriers would also review cases periodically to determine whether the medical need continues.

2. Laboratory Report

The beneficiary's claim would have to include a laboratory report of a blood gas study (oxygen partial pressure expressed as an arterial PO_2 value) as evidence of oxygen deficiency that requires administration of oxygen in the home. We also specifically requested comments on whether we should adopt, as a criterion for coverage of oxygen, a single arterial PO_2 value, for example, at or less than 55 mm Hg, or a range of acceptable PO_2 values, such as 55 to 60 mm Hg. Carriers would be required to review each case not meeting the adopted criterion to determine whether other factors support a finding of medical need. In order to avoid unnecessary medical expense and because blood gas studies are not without risk to the patient, we specified that carriers must not request a repeat blood gas study unless evidence requested from or provided by the patient's physician leads the carrier to conclude that a further study is needed.

3. Health Conditions

Coverage would be considered appropriate for patients with severe chronic obstructive pulmonary disease who demonstrate severe hypoxemia in the stable chronic state. Commonly associated with this condition are: (a) Recurring congestive heart failure due to chronic cor pulmonale (heart disease due to pulmonary hypertension secondary to disease of the blood vessels of the lungs), (b) erythrocytosis (increase in the total red cell mass) requiring repeated phlebotomy (removal of excess blood), (c) impairment of cognitive (thinking) processes, and (d) restlessness or insomnia. Coverage would also be appropriate for patients who demonstrate severe hypoxemia only during activities or during periods of dyspnea (difficult or labored breathing).

Coverage would not be appropriate for (a) patients with angina pectoris in the absence of hypoxemia, (b) patients who experience breathlessness without cor pulmonale or evidence of hypoxemia, (c) patients with severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities, and (d) patients with terminal illnesses that do not affect the lungs.

4. Portable Oxygen System

A portable oxygen system would be covered only when necessary to complement a stationary system needed by the patient. The physician's prescription would have to define the circumstances under which the portable system would be used and its medically therapeutic purpose.

5. Limitations of DME Coverage

Oxygen and oxygen equipment are covered under the DME benefit. There is no statutory authority for covering the professional services of a respiratory therapist furnished in a patient's home, unless they are furnished as "incident to" a physician's service.

Therefore, the notice provided that the services of a respiratory therapist would not be reimbursed under the DME benefit.

The proposed notice also specifically requested the public's comments regarding—

a. Objective evidence or other indicators that could be used in establishing a patient's medical need for a home program of supplemental oxygen;

b. The use of PO_2 standard, or other evidence of oxygen deficiency, as an absolute norm or as a screening guide to be considered along with other factors in determining the need for oxygen;

c. Special accommodations for patients not meeting the criteria who may have developed a psychological dependence on oxygen; and

d. The possibility of establishing flow meter limitations on oxygen equipment.

III. Summary of Changes

After consideration of comments, consultation with medical specialists, and our own additional review, we have made the following changes from the proposed policy. Except for the change relating to electronic billing which is explained below, our reasons for each change are explained in section IV.B. in the discussion of comments.

A. The prescription criteria have been made more flexible by explicitly stating that the physician can (a) give an estimate of the frequency and duration of oxygen use and (b) adjust the prescription if the patient's condition changes. The final criteria enable the physician to furnish medical documentation to the carrier in a form other than a prescription. Additionally, the final criteria have been changed to allow separate medical documentation when the claim is sent by an electronic billing system. The proposed criteria required that the documentation be included with the claim for oxygen and would have restricted the use of electronic billing.

B. The proposed notice recommended a single arterial blood gas standard, specifically a PO_2 level of up to 55 mm Hg, as the criterion for coverage of oxygen. The final notice provides more flexible arterial blood gas standards, including a conditional standard of a PO_2 level of 55 to 59 mm Hg and a rebuttable presumption against coverage above that level. However, the notice also provides for coverage of oxygen for persons with higher levels under certain limited conditions. Also, the notice provides that the beneficiary's claim may contain a statement of the results of the blood gas study that determined the PO_2 level, rather than the laboratory report itself as required in the proposed notice.

C. Ear oximetry is now an acceptable means for determining blood oxygen levels. (Ear oximetry is a procedure in which a photoelectric device is used to measure the oxygen saturation of blood flowing through the ear.)

D. The final notice describes the circumstances when it is appropriate for the carrier to request documentation of a repeat blood gas study.

E. The health conditions indicating a need for oxygen therapy are expanded to include restrictive and other lung diseases, pulmonary hypertension associated with hypoxemia, and

significant hypoxemia demonstrated by sleep or exercise studies.

F. Coverage of a portable oxygen system is provided for, alone as well as when necessary to complement a stationary system.

G. For patients who are currently on oxygen and for whom the carrier does not have medical documentation of the need for oxygen, there is a 12-month grace period for submittal of that documentation. Provision is also made for reimbursement for oxygen services beyond the 12-month period if the attending physician certifies that the patient has a continuing need for oxygen.

H. There are no flow meter limitations on oxygen equipment; however, the physician must specify the flow rate and oxygen concentration when prescribing oxygen.

IV. Discussion of Comments

A. Commenters

This section is an overview of the categories of commenters who responded to the notice, and their more general concerns. In section IV.B, we discuss their significant comments on specific provisions of the oxygen policy.

1. *Beneficiaries.* We received comments from over 4,000 patients on oxygen therapy, their physicians or relatives writing on their behalf, and Medicare beneficiaries in general, most of whom expressed opposition to the proposed criteria. Their opposition appears to be based on a misunderstanding that the proposed policy would mean that many patients now receiving oxygen therapy would no longer be reimbursed for it under Medicare.

We wish to assure these commenters and others interested in this issue that under these criteria qualified Medicare patients who have a medical need for home oxygen therapy will be reimbursed for it under the program. In addition, we have made specific changes to assure that beneficiaries currently receiving oxygen are assured of continued Medicare coverage on a medically appropriate basis. Our intent in publishing the proposed policy was not to discontinue Medicare coverage of this service. Rather, our primary concern was to establish medical criteria for determining appropriate coverage of oxygen, in addition to related requirements such as information to be included in the physician's prescription for oxygen. These criteria are necessary to ensure uniform coverage determinations by Medicare carriers nationwide, and appropriate use of Medicare funds.

As a result of specific comments received, we have revised the final criteria to make them more flexible. For example, we now provide coverage for a range of PO_2 levels rather than a single arterial blood gas standard and we have expended the list of health conditions that indicate a need for oxygen. Also, we have added a specific provision for patients currently receiving oxygen who do not meet the medical criteria, but who have a continuing medical need for oxygen. Further changes made are discussed in section III. of this preamble. We want to emphasize our belief that Medicare beneficiaries who have a medical need for home oxygen should not be adversely affected by our development of a uniform coverage policy.

2. *Physicians.* We received comments from 181 physicians specializing in pulmonary diseases and from 197 physicians who are general or other practitioners. Overall, the pulmonary specialists' comments were decisively supportive of the proposed policy. One hundred sixty-three specialists stated they generally endorse the criteria; a number of them offered constructive suggestions and comments on the proposed criteria. Eleven specialists disagreed with the notice as too strict; seven of these expressed the opinion that the proposal was an unnecessary interference in the practice of medicine. The other physicians' comments ranged from 49 who were generally supportive of the criteria to 55 who disagreed with them, indicating that the physician's judgment should suffice to establish oxygen coverage.

We do not agree that Medicare is interfering in the practice of medicine by issuing the oxygen criteria. We believe that the issuance of criteria to determine when payment should be made is both appropriate and necessary. Both the proposed and final criteria on oxygen services have maintained the physician's role by requiring documentation, such as a prescription, for home use of oxygen. However, section 1862(a)(1)(A) of the Act precludes Medicare from paying for any items or services, including oxygen therapy and equipment, that are not "reasonable and necessary". These criteria are intended to enable Medicare carriers nationwide to determine, based on uniform criteria, whether those oxygen services are reimbursable under the criteria.

3. *DME Suppliers.* Comments were received from 270 DME suppliers. The majority were opposed to the proposed policy, although many agreed with the need for uniform coverage criteria.

a. A number stated that the criteria could have serious economic consequences. They believe that certain physicians are likely to hospitalize patients who do not qualify for home oxygen as a result of the criteria, thereby resulting in greater health care costs.

We agree that improper restrictions on coverage of home oxygen could contribute to unnecessary hospital and skilled nursing facility (SNF) stays. However, our national criteria have been carefully developed with the help of comments received from pulmonary specialists and other physicians to assure that this will not happen. The criteria are designed to provide coverage for all medically appropriate uses of oxygen in the home, and thereby should help to limit the use of institutions to the conditions and cases requiring that type of care.

b. Some DME suppliers inquired whether they would be reimbursed by Medicare if, acting in good faith, they provided oxygen to a beneficiary and accepted an assignment of the beneficiary's Medicare claim for payments, but the beneficiary was later determined not to meet these criteria. ("Accepting assignment" means that the supplier agrees to accept the direct payment by Medicare as payment in full, except for any applicable deductible or coinsurance from the beneficiary. This is in contrast to the supplier being paid by the beneficiary, who in turn would be reimbursed by the program.)

There is always some degree of risk whenever a physician or supplier accepts assignment of a Medicare claim because there is no guarantee of payment before a carrier's review of the reasonableness and medical necessity for the oxygen. However, the Medicare statute at section 1879 of the Act contains a limitation of liability provision that protects DME suppliers and others when claims, including those for which they have accepted assignments, are denied on the basis that the items or services were not medically necessary. Section 1879 of the Act permits payments despite a decision to deny a claim, if the reason for denial is that the service is judged not reasonable and necessary and if both the beneficiary and supplier did not know, and could not reasonably have been expected to know, that payment would not be made. (The regulations relating to this provision are located at 42 CFR 405.330 through 405.332.)

The national criteria that are set forth in this notice and that will be used by carriers when reviewing claims specify

what evidence is required to establish medical necessity for home use of oxygen. If an assigned claim documented in accordance with the criteria is denied for lack of medical necessity, the limitation of liability provision may apply, and the supplier would receive payment (in cases where neither the beneficiary nor the supplier knew or could reasonably have been expected to have known that the services were noncovered). The limitation of liability provision could not, however, apply to claims with incomplete documentation (e.g., a physician's prescription without the diagnosis or other required information), since the carriers would not have all the evidence needed to make the medical necessity determinations.

In addition to the protection afforded by the limitation of liability provisions to a beneficiary and supplier, the national criteria should eliminate uncertainty that previously may have existed about Medicare coverage requirements for oxygen services. This uncertainty may have been partially responsible for the concern about denial of payments expressed by many DME suppliers.

4. *Respiratory Therapists and Other Respondents.* a. One hundred and ten registered respiratory therapists submitted comments. The majority generally favored the overall policy, although a number expressed opposition to that part of the policy that indicated the DME benefit does not cover home care by respiratory therapists.

There is no statutory authority under Part B of the program to cover the professional services of a respiratory therapist furnished in the home, in connection with the durable medical equipment benefit. Section 1861(s)(6) of the Act, that provides for Medicare coverage of durable medical equipment used in the patient's home, covers only the equipment. If a patient requires respiratory therapy services, these can be covered under Part B of the program if furnished in a hospital outpatient setting or at a comprehensive outpatient rehabilitation facility, if the appropriate requirements are met.

b. We received comments from 164 other sources, such as registered nurses, third-party payers, social and welfare agencies, oxygen-equipment manufacturers, and hospital administrators. Their principal concern is the possible increase in health care costs (discussed in section IV.A.3, "DME Suppliers") and the cost to patients whose present oxygen services may not be reimbursed by Medicare because of the new criteria (discussed in section IV.B.5, "Patients Currently on Oxygen").

B. Comments on Specific Provisions

Our primary intent is to establish medical criteria for coverage of home use of oxygen, in addition to requirements for documentation to be included in the physician's prescription for oxygen. Therefore, we were particularly interested in comments from pulmonary specialists because of their medical expertise in the area of oxygen therapy, and explicitly invited recommendations from them in the notice of proposed policy. In addition, we obtained advice from the Public Health Service (PHS) through the National Center for Health Care Technology (NCHCT), now the Office of Health Technology Assessment. We have relied heavily on input from these specialists in our analysis and discussion of comments and in the formulation of the final criteria for coverage of oxygen therapy in the home.

1. Prescription—Medical Documentation

Comment: Several commenters expressed concern regarding the statement in the proposed criteria that Medicare carriers would periodically review individual cases to determine whether there is a continuing medical need for oxygen. Apparently, the commenters believe that these periodic reviews would require the attending physician to do additional testing or paperwork in order for the patient to continue to qualify for coverage of home oxygen.

Response: Continuing reviews for medical necessity means that carriers must periodically confirm the appropriateness of continuing the payment for DME, including oxygen in cases where there is a possibility the patient is no longer residing at home, or has improved to the point where the equipment is no longer medically necessary. (See § 4105.2 of the Medicare *Carriers Manual* for guidelines regarding these reviews.) Most, if not all, of these reevaluations would generally occur as infrequently as once or twice a year, and can be made by telephone contact with the physician or a member of the physician's office staff who the physician has designated to relay that information. We believe that a reevaluation is not unreasonable and that oversight of the need for these services is necessary in order to assure that the program's coverage requirements are being met and that Federal payments are not being made incorrectly.

Comment: A number of commenters believe it would be difficult or impossible, in some cases, to predict initially how much, how long or how frequently oxygen therapy would be needed for certain patients. They suggested that the prescription requirements be made more flexible to permit periodic prescription adjustment by the physician.

Response: We agree and have made the prescription requirements flexible in the following manner:

(a) The initial prescription, or other medical documentation, must give an *estimate* of the frequency and duration of use of oxygen.

(b) The criteria specifically provide for subsequent adjustments in the frequency of use and the rate of flow if the patient's condition, and need for oxygen changes.

2. Laboratory Report: Blood Gas Study

Comment: In the proposed criteria, we specifically requested comments on whether a PO_2 standard, or other evidence of oxygen deficiency that we adopt, should be an absolute requirement or should be used as a screening guide along with other factors.

Many commenters suggested that, rather than applying a strict arterial blood gas standard for coverage of oxygen therapy services as specified in the proposed guidelines, the evidence requirements for demonstrating the medical need for oxygen should be more flexible. A number of commenters pointed out that blood gas determinations for a particular patient will vary depending on the patient's body position, age, and activity level, as well as the altitude where the patient lives. Almost half of the pulmonary specialists recommended that we use a range of PO_2 levels as acceptable evidence of oxygen insufficiency. Specifically, 46 specialists stated a PO_2 level of up to 60 would be acceptable evidence of oxygen insufficiency, and 10 specialists stated a PO_2 level of up to 65 would be acceptable. In addition, eight specialists stated that a PO_2 level of over 60 should be referred to a pulmonary specialist for a determination as to the medical need for oxygen.

Response: We have revised the laboratory report requirements to reflect the many suggestions that we establish a flexible arterial blood gas standard. Rather than limiting coverage to a single arterial PO_2 level, we now provide for coverage of oxygen at arterial PO_2 levels below, at, or above 55 mm Hg, as specified below. Our final specifications are based on comments received from the pulmonary specialists and on advice from PHS/NCHCT as to when significant hypoxemia exists and supplemental oxygen is appropriate. PHS/NCHCT consulted with the

National Institute of Health's National Heart, Lung, and Blood Institute, Division of Lung Diseases in developing its recommendations. (A copy of the PHS/NCHCT recommendations can be obtained from Robert A. Streimer, Director, Office of Coverage Policy, Bureau of Eligibility, Reimbursement and Coverage, HCFA, 401 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.)

The final criteria are as follows:

(1) A PO_2 level at or below 55 mm Hg, taken during the day while at rest, is the level at which the Medicare carrier may assume that there is a medical necessity for oxygen. In adopting a PO_2 level for this criterion, we intended to provide for reasonable variations in test results. The reliability of tests for PO levels is affected by such factors as the precision of the instruments, and physiological changes in the patient that can occur minute-by-minute. By adopting this PO_2 level, rather than a more restrictive one, we believe that we have adequately provided for normal fluctuations in the results of tests for PO_2 levels.

(2) Coverage is provided for nocturnal use of oxygen (during the night only) if the patient demonstrates significant hypoxemia during the night. In this case, significant hypoxemia means a decrease in arterial PO_2 of more than 10 mm Hg, if the decrease is associated with symptoms reasonably attributable to hypoxemia, such as nocturnal restlessness. This requires two test results: the arterial PO_2 level while sleeping and while awake and at rest.

(3) If the patient demonstrates PO_2 at or below 55 mm Hg taken during sleep or exercise, and a PO_2 at or above 56 mm Hg taken during the day while at rest, supplemental oxygen is provided for only during the sleep or exercise. In these cases, however, there must also be evidence that the hypoxemia during sleep or exercise is improved by the oxygen therapy.

(4) The medical need for oxygen is doubtful in the case of a PO_2 level of 56–59 mm Hg, taken during the day while at rest, with no demonstration of a lower level during sleep or exercise. However, coverage is provided if there is additional evidence to establish medical necessity for oxygen, such as dependent edema suggesting congestive heart failure, "P" pulmonale on EKG, or erythrocythemia with a hematocrit greater than 56 percent.

(5) The carrier will apply a rebuttable presumption of noncoverage in the case of a patient with a PO_2 level of 60 or over. That is, the carrier will deny payment, but the beneficiary or physician may submit evidence to support a finding that medical necessity exists despite the PO_2 level and payment should be made.

The final policy regarding laboratory reports also takes into account variations in oxygen measurement due to such factors as the altitude level, and the age and activity of the patient. We believe that all of the revisions in the final criteria will allow sufficient flexibility in the standards of acceptable evidence to enable carriers to make appropriate decisions as to whether supplemental oxygen is warranted in each case.

Comment: In the proposed policy, we specifically asked for comments on what objective evidence, other than an arterial PO_2 value, could demonstrate desaturation. Sixty-nine specialists, 30 other physicians, 52 respiratory therapists, 40 DME suppliers, and 10 other commenters suggested ear oximetry, a procedure to measure arterial blood saturation. Ten specialists, 9 other physicians, 23 respiratory therapists, and 10 DME suppliers recommended transcutaneous electrode monitoring for determining the PO_2 level.

Response: Based on the medical advice we have received, we have provided for ear oximetry as an acceptable means for determining blood oxygen levels (arterial blood saturation). For purposes of these criteria, a saturation of 85 percent is considered the equivalent of a PO_2 of 55, and a saturation of 90 percent is the equivalent of a PO_2 of 60. Also, for purposes of determining the need for oxygen because of a decrease in the oxygen level during sleep, a decrease in saturation of more than 5 percent and a decrease in PO_2 of more than 10 mm are comparable indicators of the need for oxygen. We are not able to accept the suggestion that measurements of arterial partial pressure of oxygen by transcutaneous oxygen electrodes be considered an acceptable method of determining the need for oxygen, because there is a lack of documentation of the safety and efficacy of this technology.

Comment: A number of commenters stated that the requirement of submission of a laboratory report to document the medical need for oxygen would be impractical in cases where the testing has been done at some hospitals. Apparently, certain hospitals require written releases from the patient as well as the attending physician before they will provide a copy of the laboratory report. The commenters pointed out, however, that the submission of the results of the laboratory tests, rather than the reports themselves, would be possible in virtually all cases.

Response: We have revised the final policy to provide that the results of a blood gas study, rather than the laboratory report itself, may be included in the submission of a Medicare claim for home oxygen services. Accordingly, the proposed section title "Laboratory Report" has been changed to read "Laboratory Evidence".

Comment: Several commenters stated that the proposed guidelines were unclear as to the meaning of the prohibition against carriers requesting repeated PO_2 determinations unless there was convincing evidence of the medical need for them.

Response: We agree that the criteria were unclear with respect to this issue. We have included examples of situations where repeat arterial blood gas studies are normally appropriate. For example, a repeat arterial blood gas study would be appropriate if the carrier finds in the course of its periodic continuing medical necessity review (where the patient's condition may change enough to warrant this review) that the patient has undergone a major change in his or her physical condition or work status that may have a significant impact upon the medical need for supplemental oxygen. Thus, in these situations, carriers may request documentation of a repeat arterial blood gas study.

3. Health Conditions

Comment: Nearly one-third of the pulmonary specialists suggested that we expand the list of health conditions for which home oxygen services are medically appropriate to include other conditions, e.g., restrictive lung disease, cardiac problems, pulmonary hypertension, interstitial fibrosis, asthma, and cor pulmonale. Several commenters disagreed with the proposed exclusion of coverage of home oxygen services for patients with angina pectoris in the absence of hypoxemia or terminal cancer that does not affect the lungs.

Response: We have consulted with PHS regarding the additional medical indications for oxygen therapy, and we concluded that certain indications are appropriate and should be included in the final criteria. Accordingly, we have expanded the covered medical indications to include restrictive and other lung diseases, and to include pulmonary hypertension as one of the conditions associated with significant hypoxemia. However, we have not accepted the suggestion that we provide coverage of home oxygen for patients with angina pectoris, or terminal cancer that does not affect the lungs, in the

absence of hypoxemia. Our decision is based on the supporting views of a majority of the pulmonary specialists submitting comments as well as the medical advice obtained within the Department.

Comment: The proposed notice states that patients with certain conditions can be expected to improve with oxygen therapy when used at least 12 hours a day. A number of respiratory therapists and DME suppliers understood this to mean that we were proposing that oxygen therapy would have to be necessary for at least 12 hours a day in order to be covered. With that understanding, those commenters suggested that the 12-hour day usage standard would be too rigid. They also pointed out an apparent inconsistency between the 12-hour standard and another provision in the proposed policy. That provision specified that coverage of oxygen therapy is appropriate for patients who demonstrate severe hypoxemia only during activities or during periods of dyspnea. These activities and periods do not last 12 hours.

Response: We agree that a 12-hour day usage would be too strict a standard. The final criteria do not require that oxygen usage be required for any specified minimum number of hours a day. To avoid possible misunderstanding, we have deleted the reference to the 12-hour a day usage.

Comment: In the proposed criteria, we refer to the treatment modality in which oxygen is prescribed for use only during the night for the patient who has a chronic obstructive pulmonary disease and demonstrates, during the day while at rest, a PO_2 level at or below 55 mm Hg. Commenters maintain that research studies have demonstrated that this treatment modality is not optimally effective and that oxygen should be prescribed for use during the day and night for the patient described.

Response: Based on medical advice that this treatment modality is not optimally effective, we have deleted references to it from the criteria.

Comment: A number of commenters suggested that coverage is appropriate for patients who do not show significant desaturation during the day, but who demonstrate significant hypoxemia based on sleep studies. This provision was not in the proposed criteria.

Response: We have revised the criteria to provide for oxygen when there is a greater than normal fall in oxygen level during sleep (discussed in section IV.B.2, "Laboratory Report: Blood Gas Study").

4. Portable Oxygen Systems

Comment: Twenty pulmonary specialists as well as other physicians and practitioners objected to the proposed requirement that a patient need a stationary oxygen system to qualify for a portable system, and said that such a policy would preclude from coverage many patients who have a medical need for a portable system.

Reponse: We agree with the commenters and have revised the criteria to provide for coverage of home use of portable oxygen services—whether standing alone or as a complement to a stationary system—that have been demonstrated to be needed by a patient. However, section 1861(s)(6) of the Act does not specifically cover the use of portable oxygen systems under the DME benefit. It provides for coverage of equipment that is "used in a patient's home". This raises the question of the authority to provide coverage of a portable oxygen system (especially one that does not complement a stationary system) since the system, by its nature, may be used outside of a patient's home. We believe that a portable oxygen system that is appropriate for use in a patient's home may be a covered item under the DME benefit when it is used in a patient's home and when it is medically reasonable and necessary for the patient given his or her symptoms and medical diagnosis. A patient may have an intermittent need for oxygen that cannot be met by a stationary system. That intermittent need might be present during exercise performed by a patient who has a medical diagnosis of exercise-induced hypoxemia. The final criteria provide that portable oxygen services for use in a patient's home—whether standing alone or as a complement to a stationary system—may be covered under the program if (a) a physician's prescription or other documentation and laboratory evidence document the medical need for the portable system for use in the patient's home, (b) the physician's order describes a specified activity or exercise program, and (c) it is demonstrated that the use of the portable system during the activity or exercise results in an improvement in the patient's ability to exercise or perform various activities. If these criteria are met, portable oxygen services are covered even if the equipment is sometimes used outside the patient's home. As in the case of all DME (for example, wheelchairs), coverage depends on the equipment's suitability and need for use in the patient's home, not on whether it is used there exclusively.

5. Patients Currently on Oxygen

Comment: In the proposed criteria, we asked what special provisions would be necessary to accommodate the needs of patients who are now receiving oxygen and (a) would not meet the proposed criteria, or (b) would not meet the criteria and have developed a psychological dependence on oxygen.

Commenters other than patients who addressed this issue were fairly evenly split between those favoring continuing coverage for oxygen indefinitely for patients now reimbursed under Medicare, and those supporting phasing out coverage for these patients over a reasonable period of six to twelve months. The second approach would permit patients and their physicians time either to submit evidence demonstrating that the coverage criteria were being met or, if they do not meet the criteria, to help patients phase out their dependence on supplemental oxygen.

Response: This is a very important and sensitive issue which must be considered from a professional, realistic and humanitarian point of view. Many Medicare beneficiaries currently receiving covered oxygen therapy in their homes are either homebound or bed confined. HCFA does not intend to trigger a mass program of transporting these persons for the sole purpose of obtaining arterial blood gas or other documentation of the medical need for oxygen. On the other hand, we do not believe we can continue coverage of this modality indefinitely in the absence of evidence establishing a medical need for oxygen.

We have adopted the suggestion for a phasing-out period. The final guidelines provide that patients currently being reimbursed under Medicare for home oxygen use, for whom carriers do not have medical documentation of a need for oxygen, as required in the final criteria, have a grace period of 12 calendar months from the effective date of the final criteria. During this time evidence of the need for oxygen may be submitted to the Medicare carrier. Patients currently being reimbursed for home oxygen for whom carriers now have the medical documentation of the need for oxygen are not required to submit new medical evidence, regardless of when the existing medical evidence was established. Carriers will verify the patient's continuing need periodically, as explained in sections IV.B.1 and 2 concerning medical documentation and blood gas studies.

However, if there is a medical risk that the patient's condition could be

complicated by his or her withdrawal from oxygen, but he or she does not meet the medical criteria of this notice, we are providing for the reimbursement for oxygen services beyond the 12-month period if the attending physician certifies that the patient has a continuing need for oxygen.

6. Flow-Meter Limitations

Comment: In the proposed criteria, on the assumption that flow rates greater than 8 liters per minute (LPM) are potentially hazardous for home users of oxygen, we asked if we should set flow meter limitations on oxygen and, if so, what they should be. A number of commenters recommended that we not set flow meter limitations. They noted that the determination of what is a potentially hazardous flow rate varies from patient to patient. While 8 LPM is potentially hazardous for some patients, 5 LPM is dangerous for others. Also, they commented that most patients would not require more than 2 LPM, and that physicians should document the need for greater flows.

Response: In response to the above recommendations and in view of the scarcity of evidence that Medicare beneficiaries have been endangered by utilizing excessive oxygen flow rates, we have decided not to apply specific limitations on flow rates at this time. However, in view of the comments received and medical advice that a high percentage of patients do not require more oxygen than 2 LPM, Medicare carriers will be instructed that all claims involving flow rates of more than 2 LPM must be reviewed by their medical staff. The final criteria require the patient's physician to give the flow rate, frequency and duration of use of oxygen, and the patient's health conditions. These data will enable the carrier's medical staff to determine whether the prescribed flow rate is reasonable and necessary for the patient and thus, covered under the program.

Upon further review of the proposed notice, we are also requiring the physician to specify the oxygen concentration to be used. Concentrations of oxygen can vary from 20 percent to 100 percent. Medicare carriers will need this information in order to ensure that patients who require high flow rates are furnished oxygen equipment that delivers the appropriate oxygen concentration levels.

V. Criteria for Medicare Coverage of Oxygen Services in the Home

In order to be reimbursed under Medicare, oxygen services in the home must be furnished in accordance with the conditions listed below.

A. Medical Documentation

1. The initial claim must include medical documentation, or in situations where electronic billing is used, separate medical documentation must be furnished. This documentation, which could be a prescription, must be written by a physician who has recently examined the patient, and must specify—

a. A diagnosis of the disease requiring home use of oxygen;

b. The flow rate and oxygen concentration; and

c. An estimate of the frequency and duration of use. A prescription for "Oxygen PRN" or "Oxygen as needed" is not acceptable.

2. If the patient's condition and the need for oxygen services change, the attending physician must adjust the medical documentation accordingly; and the revisions must be submitted to the carrier.

3. Carriers are required to conduct periodic, continuing medical necessity reviews (on patients whose conditions warrant these reviews) to determine whether the patient has improved to the point where oxygen is no longer necessary. These reevaluations can be initiated by telephone contact with the physician or with a member of the physician's staff who has been designated by the physician to relay the necessary information. Where indicated, a repeated arterial blood gas study may be requested by the carrier (see section B, paragraph 2, which follows). This periodic review is standard procedure in all cases where DME, including oxygen equipment, is being provided for under Medicare. See § 4105.2 of the *Medicare Carriers Manual.*

B. Laboratory Evidence

1. The initial claim must also include the results of a blood gas study as evidence of the need for administration of oxygen in the home. This will usually be in the form of a measurement of the partial pressure of oxygen (PO_2) in arterial blood. A measurement of arterial oxygen saturation obtained by ear oximetry will also be acceptable. The conditions under which the studies are performed must be stated, i.e., at rest, while sleeping, while exercising, on room air or, if while on oxygen, the amount, body position during testing, and similar information necessary for interpreting the evidence.

2. A repeat arterial blood gas study will normally be necessary only where evidence indicates that an oxygen recipient has undergone a major change relevant to home use of oxygen. A major change, for example, in the patient's physical condition or work status requires a repeat blood gas study.

C. Health Conditions for Coverage of Home Oxygen Therapy

1. Coverage is provided for patients with significant hypoxemia in the chronic stable state, if the following conditions are met:

a. The patient has appropriately tried other treatment measures without success.

b. The patient has—

(1) A severe lung disease, such as—

(a) Chronic obstructive pulmonary disease;

(b) Diffuse interstitial lung disease, whether of known or unknown etiology;

(c) Cystic fibrosis;

(d) Bronchiectasis; or

(e) Widespread pulmonary neoplasm; or

(2) Hypoxia-related symptoms or findings that might be expected to improve with oxygen therapy. Examples of these symptoms and findings are—

(a) Pulmonary hypertension;

(b) Recurring congestive heart failure due to chronic cor pulmonale;

(c) Erythrocytosis;

(d) Impairment of the cognitive process;

(e) Nocturnal restlessness; and

(f) Morning headache.

c. Except as modified in paragraph 1.d. of this section, the patient has significant hypoxemia, evidenced by any of the following:

(1) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 85 percent, taken at rest, breathing room air.

(2) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 85 percent taken during sleep for a patient who demonstrates an arterial PO_2 at or above 56 mm Hg, or an arterial oxygen saturation at or above 86 percent, while awake, or a greater than normal fall in oxygen level during sleep (a decrease in arterial PO_2 more than 10 mm Hg, or decrease in arterial oxygen saturation more than 5 percent), associated with symptoms or signs reasonably attributable to hypoxemia (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia). In either of these cases, coverage is provided only for nocturnal use of oxygen.

(3) An arterial PO_2 at or below 55 mm Hg, or an arterial oxygen saturation at or below 85 percent, taken during exercise for a patient who demonstrates an arterial PO_2 at or above 56 mm Hg, or an arterial oxygen saturation at or

above 88 percent, during the day while at rest. In this case, supplemental oxygen is provided during exercise if there is evidence the use of oxygen improves the hypoxemia that was demonstrated during exercise when the patient was breathing room air.

d. In reviewing the arterial PO_2 levels and the arterial oxygen saturation percentages, specified in paragraph c. of this section, the carrier's medical staff must take into account variations in PO_2 levels that may result from deviations due to the patient's age, the altitude level, or the patient's decreased oxygen carrying capacity.

2. Coverage is provided for patients whose arterial PO_2 is 56–59 mm Hg or whose arterial blood oxygen saturation is 86–89 percent, if there is evidence of—

a. Dependent edema suggesting congestive heart failure;

b. "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF); or

c. Erythrocythemia with a hematocrit greater than 56 percent.

3. For patients with arterial PO_2 levels at or above 60 mm Hg, or arterial blood oxygen saturation at or above 90 percent, carriers must apply a rebuttable presumption that a home program of oxygen use is not medically necessary. In order for claims for home use of oxygen to be reimbursed, the carrier's reviewing physician must—

a. Review documentation submitted in rebuttal of this presumption; and

b. Grant specific approval of the claims.

4. Coverage is not provided for the following:

a. Patients with angina pectoris in the absence of hypoxemia. Since this condition is generally not the result of a low oxygen level in the blood and since other treatments are preferred, home oxygen use is not recommended and is not covered.

b. Patients who experience breathlessness without cor pulmonale or evidence of hypoxemia. Although intermittent oxygen use is sometimes prescribed to relieve this condition, we consider this potentially harmful and psychologically addicting. We do not believe there is medical need for oxygen use in these cases; therefore, Medicare coverage is not supportable.

c. Patients with severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities. There is no evidence that increased PO_2 will improve the oxygenation of tissues with impaired circulation.

d. Patients with terminal illnesses that do not affect the lungs. The use of oxygen is not medically necessary and therefore is not covered.

D. Portable Oxygen

1. A portable oxygen system may be provided, either—

a. To complement a stationary system if necessary; or

b. By itself to provide an intermittent supply of oxygen for use during exercise by a patient who has a medical diagnosis of exercise-induced hypoxemia.

2. A portable oxygen system is covered if the following conditions are met:

a. The claim for reimbursement must meet requirements, specified above, in sections A–C.

b. The medical documentation must include a description of the activities or exercise routine that the patient undertakes on a regular basis and that require the portable oxygen system in the home. That is, the documentation must describe the medically therapeutic purpose to be served by the portable system that cannot be met by a stationary system.

c. The claim must include documentation that use of the portable oxygen system during the prescribed activities or exercise results in clinical improvement in the patient's condition, as evidenced by an increase in the patient's ability to exercise and perform various activities.

E. Respiratory Therapists

Respiratory therapists' services are not covered under provisions for coverage of oxygen services in the home. The DME benefit (section 1861(s)(6) of the Act) provides for coverage of home use of oxygen but does not include a professional component in the delivery of such services.

F. Patients Currently Under a Program of Home Oxygen

1. If the carrier has received the documentation of the need for oxygen as specified in sections A–D, new documentation is not required, regardless of when the existing data were submitted. The carrier will periodically verify the patient's continuing need as specified in section A.3.

2. If the documentation of the need for oxygen, as specified in sections A–D, has not been submitted to the carrier, the following provisions apply:

a. The carrier will continue to reimburse for oxygen services furnished up to 12 months after the effective date of these criteria. During this period, the carrier will continue to implement the standards followed before these criteria became effective, and will continue to verify the patient's use of oxygen according to review procedures specified in § 4105.2 of the Medicare *Carriers Manual*.

b. Except as provided for in paragraph c. of this section, the carrier will not reimburse for oxygen services furnished more than 12 months after the effective date of these criteria, unless—

(1) The documentation specified in sections A–D is submitted to the carrier; and

(2) The carrier makes a determination that the services are covered.

c. If the patient does not meet the criteria specified in sections A–D, the carrier will reimburse for oxygen services furnished more than 12 months after the effective date of these criteria, if—

(1) The attending physician certifies that there is a continuing medical need for the patient to receive oxygen; and

(2) The Medicare carrier makes a determination that the services are covered.

VI. Comments

We have requested comments on this final notice due to the amount of time that has elapsed since we issued the proposal.

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, we will consider any comments that are mailed by the date specified in the "DATES" section. If, as a result of public comments, we conclude that changes in this notice are needed, we will publish the changes in the **Federal Register**.

VII. Effective Date

This notice is effective September 1, 1985. This will provide lead time for HCFA to issue instructions to Medicare carriers for processing claims under this policy. It will also give carriers time to inform, and meet with, oxygen suppliers and interested persons before the policy becomes effective. This should facilitate proper implementation of the policy and avoid future misunderstandings since it will afford an opportunity for discussion of the specific requirements and the procedures carriers plan to follow.

VIII. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices

for consumers, individual industries, government agencies, or geographic regions, or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or import markets.

The intent of this notice is to ensure consistent coverage determinations by Medicare carriers nationwide. Implementation will result in some adjustments in the amount and degree of coverage (that is, there will be some increases and some decreases). However, we do not have data available to estimate the amounts involved. Also, we do not expect program expenditures to be affected by this notice. Because the annual impact in each of the first five years will not exceed the $100 million threshold, and because no other threshold criteria under Executive Order 12291 would be exceeded, this final notice is not considered a major rule and an impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. We believe that the Regulatory Flexibility Act (RFA) does not apply to this document. However, we are voluntarily applying the same criteria and degree of analysis.

As previously discussed, there will be some increases and decreases in coverage as a result of this notice. Additionally, there will be a slight increase in paperwork by attending physicians as claims will require more documentation regarding the patients' needs than is presently required. While we have no data available to estimate the actual effects on each supplier, we believe that they will be minimal relative to their total practice or business. Given the statutory requirements, explained previously in this notice, we believe that we have afforded maximum flexibility in each of the requirements. Therefore, we have determined, and the Administrator certifies that this notice will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis would not be required under the RFA.

(Secs. 1102, 1832(a)(1), 1833(a)(1), 1842(b)(3), 1861(s)(6), 1862(a)(1)(A) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(1), 1395l(a)(1), 1395u(b)(3), 1395x(s)(6), 1395y(a)(1)(A), and 1395hh)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 1, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-8338 Filed 4-4-85; 8:45 am]

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S. 689 Pub. L. 99-8

African Famine Relief and Recovery Act of 1985. (Apr. 2, 1985; 99 Stat. 21) Price $1.00

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Monday, April 8, 1985

Presidential Documents

Title 3—

The President

Proclamation 5314 of April 4, 1985

National Weather Satellite Week, 1985

By the President of the United States of America

A Proclamation

The United States' weather satellites have tracked the Earth's weather since April 1, 1960, and have brought unique benefits to the American people and to the world.

Weather satellites have proven exceptionally valuable in detecting, monitoring, and giving early warning of hurricanes, severe storms, flash floods, and other life-threatening natural hazards, on a local, national, and international basis.

The international weather satellite search-and-rescue program has saved over three hundred lives since 1982. The achievements of the scientific and aerospace communities in developing weather satellites have contributed significantly to the United States' leadership in satellite technology, international cooperation in space, and an integrated global weather forecasting system.

Weather satellites have evolved into environmental satellites that also monitor snow and ice cover, forest damage, vegetation, forest fires, volcanic eruptions, sea surface temperatures, and ocean currents.

Environmental satellite data are used for research and for commercial purposes in meteorology, hydrology, agriculture, oceanography, forestry, and fisheries. The United States' prestige is enhanced by the direct dissemination of environmental satellite data to more than one hundred and twenty countries.

The National Aeronautics and Space Administration has been the world leader in the development of experimental and prototypical weather and environmental satellites. The National Oceanic and Atmospheric Administration of the Department of Commerce has demonstrated outstanding leadership in the management of operational weather and environmental satellite systems and programs.

The Congress, by Senate Joint Resolution 62, has designated the week of March 31, 1985 through April 6, 1985, as "National Weather Satellite Week," and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning March 31, 1985 through April 6, 1985, as National Weather Satellite Week. In recognition of the twenty-fifth anniversary of weather satellites, I call upon the people of the United States to observe such week with appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-8548
Filed 4-5-85; 11:45 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5315 of April 4, 1985

National Child Abuse Prevention Month, 1985

By the President of the United States of America

A Proclamation

There is no more important test of a society than how it treats its children. Children are not only a joy to the parents who raise them; they also represent a society's future. It is imperative for American society to protect its children and nurture them.

More and more Americans are turning once again to strong and loving families as the best way to provide a nurturing environment for children. This is as it should be, but there are still many indications that we must do more to protect our children and show that we love each and every one of them. One of the most disturbing of these indications is the fact that more than 1.5 million children will be reported to local child protective agencies this year as suspected victims of child abuse or neglect. As a direct result of their maltreatment, many of these children will suffer diminished opportunity to develop physically, intellectually, emotionally, and socially, or to become fully contributing citizens.

Their loss is our Nation's loss. In the past decade, our knowledge of how to prevent and treat child abuse has grown substantially. The most important thing we have learned is that the active involvement of neighbors and friends—indeed of everyone in a community—is the key to success. Community child protection agencies cannot do the job alone but must rely on neighbors, friends, teachers, relatives, doctors, and volunteers to provide critical support, information, and guidance to families in which child maltreatment may occur.

Beyond these efforts, we should all consider every day the kind of society we want to create. Problems such as child pornography, violence on television, teenage suicide, missing children, and child abuse are all related to the strength or weakness of our society's values. We should resolve to strengthen the fundamental values of family and community on which our Nation was founded and which can alone provide it with a good future for all our children.

In recognition of our shared responsibility to reduce the occurrence of child abuse and neglect, the Congress, by House Joint Resolution 121, has designated the month of April 1985 as "National Child Abuse Prevention Month," and has authorized and requested the President to issue a proclamation in observance of this period.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1985 as National Child Abuse Prevention Month. As we observe this time, let us all consider the wholesome and secure development of our children on whom we depend to advance our national character and values.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-8567
Filed 4-5-85; 11:48 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5316 of April 4, 1985

World Health Week and World Health Day, 1985

By the President of the United States of America

A Proclamation

World Health Day, which marks the founding of the World Health Organization, serves to remind us that good health is a priceless commodity, which all the world's people should have the opportunity to enjoy throughout their life span.

The theme for World Health Day, 1985, "Healthy Youth: Our Best Resource," is particularly appropriate this year, which has been selected by the United Nations as International Youth Year. Today's youth represent a tremendous potential for society. In all countries, rich and poor, this group is the healthiest age group of all and is far better educated than preceding generations. They have survived the infectious diseases of childhood, such as measles, whooping cough, and polio. But they are also the most vulnerable to lifestyle practices that threaten later adulthood—poor food habits, cigarette smoking, abuse of alcohol and drugs, and inadequate exercise. It is our responsibility as parents and teachers to educate our youth on the importance of avoiding harmful drugs, practicing good safety measures, maintaining a proper diet, and getting regular exercise.

Furthermore, on World Health Day, the United States is pleased to join its fellow members of the World Health Organization in promoting healthy growth, and in pledging our continued support for efforts to improve the health of people throughout the world.

The Congress, by Senate Joint Resolution 50, has designated the week of April 1 through April 7, 1985 as "World Health Week" and designated April 7, 1985 as "World Health Day," and authorized and requested the President to issue a proclamation in observance of these events.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning April 1 through April 7, 1985, as World Health Week, and April 7, 1985 as World Health Day. I call upon all of the people of the United States to observe this week with appropriate programs, ceremonies, and activities and by practicing the lifestyles that promote good health.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-8548
Filed 4-5-85; 11:47 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5317 of April 4, 1985

Education Day, U.S.A., 1985

By the President of the United States of America

A Proclamation

In order to achieve its highest goals, education must be more than just a training in facts and figures, or even in basic skills, as important as they are. It must also include instruction in the deepest ethical values of our civilization.

Very few Americans have done more to promote these ethical values as the basis of civilization than Rabbi Menachem Mendel Schneerson, the leader of the worldwide Lubavitch movement. The word "Lubavitch" comes from the name of a Russian city and means city of love. That is very appropriate because, of all the ethical values which inform our civilization, none is more important than love—love of wisdom, love of our fellowman, and love of our Creator.

These are the values which Rabbi Menachem Mendel Schneerson exemplifies. And they are the values, with their roots in the Seven Noahide Laws, which have guided the Lubavitch movement throughout its history. They are the essence of education at its best, and we should be certain that we pass on this precious heritage to all young Americans.

In recognition of Rabbi Schneerson's contributions and in honor of his 83rd birthday, which falls this year on April 2, the Congress, by House Joint Resolution 186, has designated April 2, 1985, as "Education Day, U.S.A." and authorized and requested the President to issue an appropriate proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Tuesday, April 2, 1985, as Education Day, U.S.A., and I call upon the people of the United States, and in particular our teachers and other educational leaders, to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-8549
Filed 4-5-85; 11:48 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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Monday, April 8, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1a

Law Enforcement Authorities

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document amends the regulations governing the law enforcement authorities granted to the Office of Inspector General of the Department of Agriculture by the Agriculture and Food Act of 1981, Pub. L. 97–98.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: L.L. Free, Assistant Inspector General, Administration, Office of Inspector General, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6915.

SUPPLEMENTARY INFORMATION: In order to provide needed law enforcement authorities to agents of the Office of Inspector General of the Department of Agriculture, Congress granted arrest, search and seizure, and firearms authorities to the Office of Inspector General. These authorities have been implemented in accordance with rules issued by the Secretary of Agriculture. The authorities are exercised by designated agents who are engaged in the investigation of alleged or suspected criminal violations of the various statutes administered by the Department under the authority provided in section 6, or described in section 9, of the Inspector General Act of 1978 (5 U.S.C. App.).

This amendment makes the limitation on the exercise of these authorities consistent with the necessities of carrying firearms in the performance of the agents' duties.

This rule is a rule of agency procedure and practice and related to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act and thus is exempt from the provisions of the Act.

List of Subjects in 7 CFR Part 1a

Law enforcement.

PART 1a—[AMENDED]

Accordingly, 7 CFR Part 1a is amended as follows:

1. The authority citation for Part 1a reads as follows:

Authority: Section 1337, Pub. L. 97–98; 5 U.S.C. 301; 5 U.S.C. App. I.

2. Sections 1a.2 and 1a.4 of Part 1a, Title 7, Code of Federal Regulations are revised to read as follows:

§ 1a.2 Authorization.

Any official of the Office of Inspector General who is designated by the Inspector General according to §§ 1a.3 and 1a.5 of this part and who is engaged in the performance of his/her official duties under the authority provided in section 6, or described in section 9, of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized to—

(a) Make an arrest without a warrant for any criminal felony violation subject to § 1a.4, if such violation is committed, or if the official has probable cause to believe that such violation is being committed, in his/her presence;

(b) Execute and serve a warrant for an arrest, for the search of premises, or the seizure of evidence if such warrant is issued under authority of the United States upon probable cause to believe that any criminal felony violation, subject to § 1a.4, has been committed; and

(c) Carry a firearm.

§ 1a.4 Limitations.

The powers granted by §§ 1a.2(a) and 1a.2(b) shall be exercised only when a designated official is engaged in an investigation of alleged or suspected felony violations of statutes administered by the Secretary of Agriculture or any agency of the Department.

Dated: April 2, 1985.

John R. Block,
Secretary of Agriculture.

[FR Doc. 85–8310 Filed 4–5–85; 8:45 am]
BILLING CODE 3410-23-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 251]

Food Stamp Program; Alaska Thrifty Food Plan

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On May 1, 1984, the Department issued an interim rule establishing separate food stamp allotment levels for rural and urban Alaska. Comments were solicited from interested parties through July 2, 1984. This action announces that the method for establishing Alaska rural and urban allotments remains unchanged. This action also addresses the comments received and explains the Department's analysis of those comments.

EFFECTIVE DATE: This rule is effective May 8, 1985. The interim final rule was effective May 1, 1984; and revised food stamp allotments, to take into account food cost differentials in rural and urban areas, were implemented on August 1. These rural and urban allotments were updated on October 1, 1984. This update took into account changes in the cost of food, reduced by one percent, in accordance with the Food Stamp Act of 1977, as amended. Allotments were further adjusted on November 1, 1984, to eliminate the one percent reduction, in accordance with Pub. L. 98–473. The next adjustment in rural and urban allotments will be effective October 1, 1985, based on changes in the cost of food.

FOR FURTHER INFORMATION CONTACT: Thomas O'Connor, Supervisor, Issuance and Benefit Delivery Section, Program Design and Rulemaking Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA,

Alexandria, Virginia 22302, (703) 756–3427.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1. There is no cost involved in this action. It simply makes final an interim rule which is already in effect, and the interim rule had minimal costs. This rule will not have significant adverse effects upon competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major".

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act, of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. These provisions have been in effect in the State of Alaska since August 1, 1984, and this action makes no changes in current procedures.

Paperwork Reduction Act

This regulation does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

Background

The Agriculture and Food Act of 1981 (Pub. L. 97–98), enacted on December 22, 1981, provides, in part, for differing allotment levels for rural and urban Alaska to recognize significantly higher food costs in rural Alaska. On May 1, 1984, the Department issued an interim rule implementing this provision of law.

A full explanation of the rationale and purposes of that interim rule was provided when it was published at 49 FR 18458–18463 May 1, 1984. This action announces that the Department is making no changes to the interim rule, which is currently in effect. This final rule explains the Department's rationale in maintaining the current rule, as well as the Department's response to public comments on it.

Unless otherwise stated, the rationale contained in the interim rule should be regarded as a basis for the final action. Thus, a thorough understanding of the grounds for the final action may require reference to the interim rule.

Nine individuals or organizations commented on the interim rule. All comments were carefully considered. Three comments were received from Governmental offices, five comments were received from advocate groups, and one private citizen commented. This action addresses comments received by the Department.

Data Base

The Department used data from the State Division of Personnel (SDP) to establish food costs in the State's county equivalent areas. Many commenters objected to the use of these data. Three commenters objected that the data were out of date. One commenter stated that the SDP data were inappropriate to establish rural and urban allotments, and two commenters said these data were insufficient and unrepresentative. One commenter noted that many changes have occurred in Alaska since 1976, which are not reflected in the SDP data. Commenters noted that as a result of the problems with the SDP data, certain areas were misclassified as urban which should have been rural.

Some commenters suggested alternate data bases. These were more up-to-date than the SDP data base, but they did not cover as many areas of the State. One alternate data base provided detailed results of the commenter's own survey of food prices in 15 places in the Aleutian Islands, Kodiak Island Borough, and Skagway-Yakutat-Angoon. (These areas are currently classified as urban.) This data base suggests greater price variations in some places classified as urban than are shown in the SDP data. However, this 15-place survey did not provide sufficient information to redesign the rule, because there was no comparable information for most of the State. There was also no information on how the places surveyed were selected.

As a result of comments, the Department reconsidered its use of the SDP data. Comments did not indicate that a more up-to-date and comprehensive data base existed. Thus, the Department's reconsideration resulted in a reconfirmation of the SDP data, because the reasons for which it was selected are still valid. That is, the SDP data base has several advantages. This data base contained food cost data for county equivalent areas which represented 95 percent of the population within the State. For the remaining 5 percent, there is a compatible data base available from the Alaska Department of Commerce. After considering all relevant factors, the SDP data continue to be preferable to any other data base because they are from a single point in time and because they provide broader coverage. Therefore, the Department is retaining the SDP data base used in the interim rule.

The Department is aware, however, that efforts are being undertaken by the State agency, and others, to supply more up-to-date data for many areas of the State. These data may ultimately provide sufficient information to warrant a reconsideration of the Department's earlier decision. Therefore, when these data are available and provided to the Department, they will be reviewed carefully to determine the need for a reassessment.

County Equivalent Concept

In the May 1 rule, the Department used the 23 county equivalents in Alaska as the geographic units upon which to base the designations of urban and rural. Each county equivalent was designated as either urban or rural based on its geographic locale and whether its food costs (weighted by food stamp participants) were comparatively high or low.

Two commenters explicitly disagreed with the concept of county equivalents because it resulted in designating all places in a county equivalent area with the same urban or rural designation. Commenters stated that this approach hurt people residing in places with high food prices and small populations since these places count for less in the Department's equation. This is so because their smaller populations provide them with a lower weight than high population areas. The result is that an entire county equivalent area might be designated urban, even though a small place within that area had very high prices. Likewise a small place within a rural area could have relatively low food prices, but it would still be considered rural if most of the food stamp participants in that county equivalent lived in places with high food prices.

To use smaller entities than county equivalents, a place-by-place designation of urban or rural would have to be made. To accomplish this, the Department would have to have food prices for each place. Such comprehensive data on food prices do not exist. In addition, the Department does not consider a place-by-place designation as desirable because it could encourage fraud and abuse. The Department's urban-rural definition minimizes the extent to which there is a patchwork quilt of urban and rural areas

throughout the State. Thus the definition eases the administrative burden of administering the dual allotment system since it results in a clearer and simpler demarcation of urban and rural.

Because of these reasons, the Department decided to retain the use of the county equivalent concept.

Urban-Rural Definition

The Department's designation of each county equivalent area as urban or rural was based upon each area's food prices. The urban differential of 6.04 percent and the rural differential of 50.7 percent were obtained by taking a weighted average of the food prices in urban and rural areas, respectively. Rural areas were those areas with food prices greater than 130 percent of Anchorage costs.

Many commenters raised objections to the results of the use of the Department's methodology. That is, they suggested that certain areas which the Department had classified as urban be reclassified as rural. However, there was no objection to, or alternative proposed to, the actual approach or to the use of 130 percent as the dividing line. Essentially, commenters wanted the definition applied to smaller entities within county equivalent areas (see above discussion). Therefore, the Department did not change the urban-rural definition.

Conclusion

After a careful review and analysis of the comments received, the Department does not find cause to change the interim rule. Therefore, the Department is adopting the interim rule published at 49 FR 18458, May 1, 1984.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

(91 Stat. 958 (7 U.S.C. 2011–2029))

Dated: April 2, 1985.

Mary C. Jarratt,

Assistant Secretary.

[FR Doc. 85–8363 Filed 4–5–85; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 905

[Oranges, Grapefruit, Tangerine, and Tangelo Reg. 6, Admt. 35]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action lowers the minimum grade requirement for domestic and export shipments of Florida Honey tangerines from Florida No. 1 Golden to U.S. No. 2 Russet during the period April 3, 1985 to August 18, 1985. The change in minimum grade of such fruit recognizes the grade composition of the available fruit supply and is in the interest of growers and consumers.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This action is based upon recommendations and information submitted by the Citrus Administrative Committee, and upon other available information. Shipments of Honey tangerines are currently regulated by grade and size under Orange, Grapefruit, Tangerine and Tangelo Regulation 6, which is effective on a continuing basis. It is hereby determined that it is necessary to continue for the remainder of the current season the regulation of Honey tangerines to avoid a disruption of the orderly marketing of such fruit in the public interest.

Relaxation of the current minimum grade requirement for April 3, 1985 to August 18, 1985, specified herein, reflects the committee's and the Department's appraisal of the need to revise the grade requirement applicable to fresh shipments of Florida Honey tangerines in recognition of the current and prospective supply and demand for such fruit. The committee reports increased amounts of rind discoloration of Honey tangerines. Some handlers are having difficulty packing fruit to meet current quality requirements causing a reduction in the supply of Honey tangerines for fresh market. For the season through March 24 disposition of Honey tangerines totaled 740,000 boxes or about 94 percent of the crop. This amendment is necessary to provide consumers with an adequate supply of acceptable quality fruit. On and after August 19, 1985 the grade regulation for Honey tangerines would change to Florida No. 1.

It is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. This amendment relieves restrictions on shipments of Florida Honey tangerines. Handlers have been apprised of such provisions and the effective date.

List of Subjects in 7 CFR Part 905

Marketing Agreements and Orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

Accordingly, the provisions of § 905.306 are amended by revising the following entry in Table I, paragraph (a), applicable to domestic shipments, and Table II paragraph (b), applicable to export shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
*	* *	* *	*
Tangerines: Honey	4/3/85–8/18/85.	U.S. No. 2 Russet.	2⅛
	On and after 8/19/85.	Florida No. 1	2⅛
*	* *	* *	*

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
*	* *	* *	*
Tangerines: Honey	4/3/85–8/18/85.	U.S. No. 2 Russet.	2⅛

TABLE II—Continued

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* *	On and after 8/19/85.	Florida No. 1	2⅜

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 3, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-8374 Filed 4-5-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 85-4]

Rules, Policies and Procedures for Corporate Activities—Capital Changes (Equity Capital and Subordinated Debt)

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is simplifying the process for a bank seeking approval to change its equity capital accounts or to issue subordinated notes or debentures. These revisions are needed to eliminate unnecessary regulatory requirements. The revisions benefit national banks and the Office by removing burdensome and costly regulatory requirements, while maintaining the Office's ability to render decisions based on the condition of the bank and the bank's adherence to statutory requirements and Office policy.

EFFECTIVE DATE: May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, Bank Organization and Structure, Office of the Comptroller of the Currency, (202) 447–1184.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this final rule is to minimize costs and burdens on national banks and the Office by clarifying policies and streamlining the procedures for a national bank applying to increase, reduce, or change its equity capital accounts or to issue subordinated debt.

Background

This final rule is part of the Office's Corporate Activities Review and Evaluation (CARE) Program. That program is described in the **Federal Register** (45 FR 68586), dated October 15, 1980, and involves a comprehensive review of Office rules, policies, procedures, and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE Program are to minimize the costs and burdens on applicants, the agency and the public; to provide a better understanding of policies; to modify or eliminate rules, policies, procedures, and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Summary of the Comments

On April 25, 1984, the Office published a notice of proposed rulemaking (49 FR 17764) to amend its policies and procedures concerning the filing and processing of applications to change equity capital or issue subordinated debt. Three commenters submitted remarks which generally supported the proposal. One commenter suggested only that the simplified procedures extend to issuances of previously authorized but unissued preferred stock. Another commenter suggested that the proposed rule could be streamlined further for almost all types of increases in capital. The third commenter urged adoption of the changes as proposed. The issues raised by the commenters are discussed in the following paragraphs.

A commenter suggested that the simplified procedures for common stock should also apply to issuances of preferred stock and increases in capital connected with an employee stock option plan. Another commenter similarly suggested that the simplified procedures for common stock should extend to issuances of previously authorized but unissued preferred stock. Under the simplified procedures for common stock a bank must notify the Office that the sale is completed and meets the statutory requirements. The Office will certify the increase in common stock, provided it is legal, and will not review for supervisory concerns since all issuances of common stock generally are considered permanent capital. This simplified procedure is not feasible for other issuances such as preferred stock. Other issuances raise considerations requiring review under the Office's capital adequacy requirements. For example, preferred stock may have characteristics which preclude it from being defined under the Office's requirements as permanent capital. Also, dividends required on a preferred stock issuance may not conform to a capital plan a bank may have with the Office. For these reasons, the Office desires to review all proposed changes in capital, except issuances of common stock, prior to granting final approval. The review is needed to determine if a bank is subject to a capital adequacy agreement and, if applicable, to assure that the proposed issue conforms to the terms of the agreement. The Office will also review proposed issues to determine that the issue can be considered capital under the definitions adopted by the Office and will meet the general requirements imposed by the Office relating to capital adequacy.

The Office has eliminated approval of all types of authorized but unissued stock. Shareholders may authorize any amount or type of unissued stock without Office approval. However, statutes require that a bank must receive Office approval and certification prior to issuing the stock. In cases where the bank decides to create authorized but unissued preferred stock, it is advantageous for the bank to notify the Office of such plans and receive preliminary approval to issue capital prior to requesting shareholder approval.

One of the commenters further suggested that only notification should be required any time additional capital is being issued in the form of common stock or perpetual preferred stock, unless the bank is subject to special supervisory attention. The Office has chosen not to deregulate perpetual preferred stock in the same manner as common stock for the reasons stated above. In addition, there are some banks which are subject to capital adequacy agreements with the Office, but are not subject to special supervisory attention.

The same commenter suggested that the procedures should differ for subsidiary banks of major bank holding companies. The Office has reduced the processing requirements for equity and debt capital changes to the minimum amount for all banks regardless of size or affiliation while preserving the Office's ability to review for compliance with laws, regulations and supervisory concerns. All banks and the Office benefit from the uniform and streamlined notification and review process.

The commenter also suggested that automatic approval of subordinated debt issues should include automatic approval of the note format and note agreement. The note format and appended agreements are a supervisory

concern and currently are subject to a separate regulatory review by the Washington Office. The Office is reviewing its policies and procedures concerning the note format and appended agreements and will consider this suggestion during the review.

Lastly, the commenter stated that an increase in capital that is connected with an employee stock option plan should require nothing more than notification to the Office. This final rule requires that if an increase is by means of common stock then the bank would only notify the Office prior to issuance. However, if the increase is by any means other than common stock, the bank is required to request preliminary approval for the proposed issuance. The Office will review and treat all proposed capital increases associated with an employee stock option plan in the same manner it reviews all capital increases to assure conformity to law and Office policy. While the Office does not approve employee stock option plans, the statutes require that a bank receive Office approval prior to issuing capital. To avoid possible unnecessary expense, a bank should submit a letter of intent concerning the proposed issue and receive the Office's preliminary approval (except for increases in common stock) prior to seeking shareholder approval of the plan.

For the reasons stated above the final rule is adopted as proposed. A few technical changes have been made for clarification purposes, including the addition of language under the subordinated debt provisions relating to shareholder approval. The regulation clarifies that the issuance of subordinated debt is permissible when authorized by the bank's articles of association or with approval by stockholders owning a majority of stock entitled to vote. While this was the intent in the language as proposed, the added provision eliminates any potential ambiguity in this regard. Other technical changes were made to delegate approvals for all types of changes in capital to the district offices. Since new delegations are internal procedural matters of the Office, they are adopted as final rules without prior notice and comment.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612) the Secretary of the Treasury has certified that this final rule does not have a significant economic impact on a substantial number of small entities. This final rule would ease the burden of the existing regulations. The effect of this final rule is expected to be beneficial rather than adverse, and small entities are generally expected to share the benefits of the amendments as well as larger institutions.

Paperwork Reduction Act

The collection of information requirements contained in this final rule have been reviewed and approved by the Office of Management and Budget pursuant to section 3504(h) of the Paperwork Reduction Act (OMB Control # 1557-0162)

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, Securities, National banks, Capital, Equity capital, Subordinated debt.

Authority and Issuance

Accordingly the Comptroller of the Currency is amending 12 CFR Part 5 as follows.

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

2. In § 5.3 the paragraph heading of (c), paragraph (c)(1), introductory text of (c)(2), and (c)(2)(i) are revised to read as follows:

§ 5.3 Corporate activities processing and delegations.

* * * * *

(c) *District Offices and Multinational Banking.* (1) The Deputy Comptrollers for the district offices and the Deputy Comptroller for Multinational Banking are delegated by the Comptroller of the Currency the authority to act in any matter delegated to District Administrators under § 5.3(c) of this part.

(2) Each District Administrator is delegated the authority to act for the Comptroller of the Currency in the following matters:

(i) Approval (but not disapproval) of capital increases through sales of additional common stock;

* * * * *

3. Section 5.3 is further amended by removing paragraph (c)(2)(ii) and by redesignating paragraphs (c)(2)(iii) through (v) as (c)(2)(ii) through (iv) respectively.

4. In § 5.3 a new paragraph (c)(3)(i)(F) is added, and paragraph (c)(3)(ii)(F) is revised to read as follows:

§ 5.3 Corporate activities processing and delegations.

* * * * *

(c) * * *

(3)(i) * * *

(F) Approval of all other changes through increases or decreases in capital accounts not listed in paragraph (c)(2) of this section.

(ii) * * *

(F) Any additional requirements imposed by §§ 5.28, 5.30, 5.31, 5.40, 5.42, 5.46 and 5.47 of this part have been satisfied.

* * * * *

5. Section 5.46 is revised to read as follows:

§ 5.46 Changes in equity capital.

(a) *Authority* 12 U.S.C. 1 *et seq.*, 21a, 51, 51a, 51b, 51b-1, 52, 56, 57, 59, 60 and 93a.

(b) *Rules of general applicability* Sections 5.8, 5.9, 5.10 and 5.11 of this part do not apply to changes in equity capital.

(c) *Office approval.* All changes in outstanding equity capital are subject to approval by the Comptroller or an authorized delegate. All offers or sales of equity securities are subject to the requirements of Part 16 of this chapter.

(d) *Shareholder approval.* When shareholder approval is required, the bank should submit the letter of intent to change capital prior to seeking shareholder approval. The following capital changes require shareholder approval:

(1) *Increases in common stock.* A bank's Articles of Association must state a specific level of authorized common stock. Amendments to the Articles of Association changing the authorized common stock level require the approval of the holders of two-thirds of the stock entitled to vote.

(2) *Increases in preferred stock.* An amendment to the Articles of Association to authorize preferred stock or to change the amount of authorized preferred stock, requires the approval of the holders of a majority of the stock entitled to vote.

(3) *Changes in par value.* A change in par value of common or preferred stock requires an amendment to the Articles of Association and the approval of the holders of a majority of the stock entitled to vote except as noted in paragraph (d)(4) of this section.

(4) *Reduction of capital.* (i) A reduction of the aggregate amount in a bank's common or preferred stock account, through a change in par value or otherwise, requires an amendment to the Articles of Association by a vote of

the holders of two-thirds of the stock entitled to vote.

(ii) A distribution of cash or assets resulting from a reduction of capital requires the approval of the holders of two-thirds of the shares of each class of stock outstanding, voting as classes.

(5) *Employee Stock Option and Stock Purchase Plans.* An increase in capital through employee stock option and stock purchase plans generally requires the approval of two-thirds of the shareholders entitled to vote and the approval of this Office. In addition, the terms of such plans must be approved by a majority of the shareholders entitled to vote or two-thirds of the shareholders if pre-emptive rights exist.

(e) *Amendments to the Articles of Association.* A certified copy of every amendment to the Articles of Association involving a change in equity capital structure shall be sent to the appropriate district office.

(f) *Office Policy.*—(1) *General.* The Office will generally approve a change in capital provided that the change complies with applicable statutes and regulations and the bank has provided the information requested by the Office.

(i) A bank may consider a change in capital preliminarily approved 30 days after the day on which the Office receives the letter of intent to change capital unless the bank is notified by the Office that preliminary approval is delayed, conditioned or denied. The Office may delay preliminary approval if it requires additional information. Preliminary approval also may be delayed pending the bank's submission of a capital plan acceptable to the Office whenever such a plan is required under terms of any statute, regulation, decision, order, directive or written agreement. For banks in satisfactory condition, the Office may condition or deny preliminary approval only if the bank's present or proposed capital structure is not, or would not be, in compliance with the minimum capital requirements applicable to the bank, or if the bank is not, or would not be, in compliance with a required capital plan. For banks not in satisfactory condition, the Office may condition or deny preliminary approval for any reason it deems appropriate. Examples of such reasons include: The change would weaken the bank's capital position; there is a violation of law or a pattern or practice of violations which may have a significant impact on the bank; conditions exist which could undermine the safety and soundness of the bank; or the Office does not consider the bank's present or proposed capital structure adequate. If preliminary approval is delayed, conditioned or denied, the Office will provide the reasons for the decision in writing.

(ii) The Office will grant final approval and (if necessary) certification after receipt of written notice as described in paragraph (g)(2) of this section and provided all the conditions required by the Office have been met. A bank may consider the proposed change approved and certified seven days after the day on which the Office receives the letter of notification, unless the bank is advised otherwise. If approval is granted, the Office will send a letter of certification to the bank. The Office may shorten either of the time periods described above.

(2) *Common stock.* The Office will always approve sales of common stock after a bank has notified the Office of its compliance with the requirements of 12 U.S.C. 57 and paragraph (g)(2) of this section. No letter of intent or 30-day review period is required for sales of common stock.

(3) *Stock dividends.* The Office will consider a bank's request for a declaration of stock dividends in accordance with 12 U.S.C. 51 and 57. Fractional shares created by stock dividends should be treated in accordance with § 7.6040 of this chapter.

(4) *Preferred stock.* The Office will consider a bank's request for the issuance of preferred stock (including limited life preferred stock) in accordance with 12 U.S.C. 51a and 51b and § 3 of this chapter or such related rules as may be promulgated by the Office. Under 12 U.S.C. 51b, provisions in the Articles of Association concerning preferred stock dividends, voting and conversion rights, retirement and rights to exercise control over management require Office approval.

(5) *Changes in par value.* Changes in par value which do not change the aggregate amount in a bank's common stock account do not require Office approval. Changes in par value of preferred stock do require Office approval.

(6) *Reduction of capital.* The Office will consider a bank's request for a reduction of the common or preferred stock account, through a change in par value or otherwise, in accordance with the requirements of 12 U.S.C. 59. When submitting a letter of intent to reduce capital, the bank must include a schedule detailing the present and proposed capital structure, explain the reasons for the request and give details on any cash or asset distribution. Distributions resulting from the proposed reduction of capital must also be approved by the Office.

(g) *Procedures.* (1) A bank must submit to the appropriate district office by hand or by mail, return receipt requested, a letter of intent to change capital. The bank must receive preliminary approval for any change in capital except for a sale of common stock. A sale of common stock is subject only to the notification process described in paragraph (g)(2) of this section. The bank must describe in its letter of intent the type and amount of the proposed change, and state if it is subject to a capital plan with the Office. If a capital plan is required, the bank must state how the proposed change conforms to the plan. The bank may consider its proposed change preliminary approved 30 days after the day on which the Office receives the letter of intent, unless the bank is notified that preliminary approval is delayed, conditioned or denied. The bank should submit the letter of intent and receive preliminary approval prior to seeking shareholder approval. The bank may proceed with an increase in capital after preliminary approval is received; however, it may not reduce its capital or make a distribution until the Office has given final approval as specified in paragraph (g)(2) of this section.

(2) After the bank completes the increase in capital or the reduction in capital is preliminarily approved, the bank must submit a letter of notification to the district office by hand or by mail, return receipt requested, in order to obtain final approval and (if necessary) certification. The letter of notification must be acknowledged before a notary public by the bank's president, vice president or cashier and contain: (i) the amount and effective date of the increase or decrease; (ii) certification that the funds have been paid in, if applicable; (iii) certification of shareholder approval, if not previously filed; (iv) a certified copy of the amendment to the Articles of Association, if required; and (v) a statement that the bank has complied with all laws, regulations and conditions imposed by the Office.

(h) *Fees.* [Reserved]

(i) *Forms.* None.

(Approved by the Office of Management and Budget under control number 1557–0162)

6. Section 5.47 is revised to read as follows:

§ 5.47 Subordinated debt as capital.

(a) *Authority.* 12 U.S.C. 1 *et seq.*

(b) *Rules of general applicability.* Sections 5.8, 5.9, 5.10 and 5.11 of this part do not apply to the issuance of subordinated debt.

(c) *Office approval.* Subordinated debt is subject to Office approval if it is to be considered a part of the bank's capital structure for the purpose of computing capital adequacy or statutory limitations in accordance with 12 CFR Part 3 or such related rules as may be promulgated by the Office. Offers or sales of subordinated notes and debentures are also subject to the requirements of Part 16 of this chapter.

(d) *Shareholder approval.* The issuance of convertible or nonconvertible subordinated notes or debentures by a bank is permissible if authorized in its Articles of Association or by approval of the stockholders owning a majority of the stock entitled to vote. Amendments to the Articles of Association to authorize or to change the amount of authorized convertible or nonconvertible subordinated notes or debentures, require approval of the stockholders owning a majority of the stock entitled to vote. Amendments to the Articles of Association changing the authorized common stock level to permit the conversion of subordinated notes or debentures must be made in accordance with the procedures set forth in § 5.46 of this part.

(e) *Amendments to the Articles of Association.* If an issuance of subordinated debt requires an amendment to the Articles of Association, a certified copy of the amendment shall be sent to the appropriate district office.

(f) *Office policy.*—(1) *General.* The Office will generally approve issues of convertible and nonconvertible subordinated notes or debentures as capital provided that the issue complies with applicable statutes and regulations, including the requirements of paragraphs (f) (2) and (3) of this section, and the bank has provided the information requested by the Office.

(i) A bank may consider the issue of subordinated debt preliminarily approved as capital 30 days after the day on which the Office receives the letter of intent to issue subordinated debt, unless the bank is notified by the Office that preliminary approval is delayed, conditioned or denied. The Office may delay preliminary approval if it requires additional information. Preliminary approval also may be delayed pending the bank's submission of a capital plan acceptable to the Office whenever such a plan is required under the terms of any statute, regulation, decision, order, directive or written agreement. For banks in satisfactory condition, the Office may condition or deny preliminary approval only if the bank's present or proposed capital structure is not, or would not be, in compliance with the minimum capital requirements applicable to the bank, or if the bank is not, or would not be, in compliance with a required plan. For banks not in satisfactory condition, the Office may condition or deny preliminary approval for any reason it deems appropriate. Examples of such reasons include: The debt issue would weaken the bank's capital position; there is a violation of law or pattern or practice of violations which may have a significant impact on the bank; conditions exist which could undermine the safety and soundness of the bank; or the Office does not consider the bank's present or proposed capital structure adequate. If preliminary approval is delayed, conditioned or denied, the Office will provide the reasons for the decision in writing.

(ii) The Office will grant final approval after receipt of written notice described in paragraph (g)(2) of this section and provided all the conditions required by the Office have been met. A bank may consider the proposed issue legally approved seven days after the day on which the Office receives the letter of notification, unless the bank is advised otherwise. A letter evidencing approval will be forwarded to the bank. The Office may shorten either of the time periods described above.

(2) *Requirements.* In order for an issue of subordinated debt to be considered as capital it must meet the definitional and other requirements contained in 12 CFR Part 3 or any other rules, regulations, or policies promulgated by the Office.

(3) *Provisions.* In assessing a proposed debt instrument's compliance with the above policies, the Office will pay particular attention to:

(i) Provisions which may have the effect of accelerating the repayment date of the indebtedness. The instrument must provide that no repayment prior to maturity (other than a regularly scheduled repayment already approved by the Office) either pursuant to an acceleration in the event of default or otherwise, may be made without the prior written approval of the Office.

(ii) Provisions which may restrict the bank from engaging in activities which would otherwise be permissible. The terms of the debt instrument shall not unreasonably impair the bank's flexibility in conducting its operations.

(iii) Provisions which may place note holders in a secured creditor status or give such holders priority over other creditors. Subordinated note holders may not obtain secured creditor status.

(g) *Procedures.* (1) A bank must submit to the appropriate district office by hand or by mail, return receipt requested, a letter of intent to issue subordinated debt and receive preliminary approval prior to any issuance. The bank must describe in its letter of intent the type and amount of the proposed issuance, and state if it is subject to a capital plan with the Office. If a capital plan is required, the bank must state how the proposed change conforms to the plan. The proposed subordinated note format and note agreement should be enclosed with the letter. A bank must receive preliminary approval of the issuance as capital and a letter of no objection to the note format and note agreement prior to the issuance of the subordinated debt. The bank may consider its proposed issue preliminarily approved after 30 days from the day on which the Office receives the letter of intent, unless the bank is notified that preliminary approval is delayed, conditioned or denied. The Office's letter of no objection or comments relating to the terms and conditions of the note format and agreement will be sent separately. The bank may proceed with the transaction after obtaining preliminary approval of the debt issuance, a letter of no objection to the note format and note agreement, and, if necessary, shareholder approval. The bank should submit the letter of intent and receive preliminary approval prior to seeking shareholder approval.

(2) After the bank completes the sale of subordinated debt, it must submit a letter of notification to the district office by hand or by mail, return receipt requested, in order to obtain final approval. The letter of notification must include: (i) the amount and date of receipt of funds; (ii) a certification that funds have been paid in; (iii) a certification of shareholder approval, if necessary; (iv) a certified copy of the amendment to the Articles of Association, if required; and (v) a statement that the issue complies with all laws, regulations, conditions imposed by the Office, and the requirements of paragraph (f)(2) of this section.

(h) *Fees.* [Reserved]

(i) *Forms.* None.

(Approved by the Office of Management and Budget under control number 1557–0162)

Dated: January 25, 1985.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85–8224 Filed 4–5–85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-19-AD; Amdt. 39-5022]

Airworthiness Directives; Cessna Models 552 and 650 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On February 6, 1985, the FAA issued a telegraphic airworthiness directive (AD) that requires, prior to further flight, inspection of certain SAFT nickel cadmium batteries and the installation of battery cover insulators on certain Cessna 552 and 650 series airplanes. This action was prompted by reports of battery cell terminal screws being pushed through the molded rubber battery lid insulation when the holddown mount thumbscrews were overtorqued; this allowed the terminal to make contact with aircraft structure and short and battery to ground. If allowed to go undetected, this condition could discharge the battery and could result in an electrical fire on board the airplane. This document publishes the telegraphic AD in the Federal Register, making it effective to all persons.

DATES: Effective April 11, 1985. This AD was effective earlier to all recipients of Telegraphic AD T85-03-51 dated February 6, 1985.

ADDRESSES: The applicable service information may be obtained upon request to the Cessna Marketing Division, Cessna Aircraft Company, P.O. Box 7706, Wichita Kansas 67277, or may be examined either at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas, or at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr E.N. (Ed) Mosman, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: Two occurrences have recently been reported of the battery making contact with aircraft structure on Cessna 552 airplanes.

The affected Model 552 airplanes require the SAFT battery, which is installed, to provide the required engine cranking capacity. The affected Model 650 airplanes require a close battery height tolerance to ensure clearance of the baggage floor cover by the battery compartment.

In attempting to meet both these requirements, SAFT supplied a battery with reduced height. However, this shorter SAFT battery permitted the lid rubber insulators to be penetrated by the battery cell terminals if the battery holddown mount thumbscrews were overtorqued.

As a two-phase corrective action, SAFT America, Inc., issued Service Bulletin 0005, dated January 17, 1985, which:

a. Announced availability of battery insulators and adhesive.

b. Provided instructions for field fabrication and insulation instructions.

c. Specified the holddown mount torque limit of hand tight plus one turn for wingnuts or 20±5 inch pounds.

d. Recommended that operators mark cover and case with a "Mod A."

e. Recommended inspection and replacement of these insulators, as required, each 100 flight hours.

Cessna followed this action with the issue of Cessna Service Letter SL650-25-03, dated January 21, 1985.

The FAA then issued telegraphic AD T85-03-15 on February 6, 1985, which requires the actions listed above and requires continued insulator inspections every 100 flight hours until these batteries have been replaced with approved replacement batteries.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued February 6, 1985, to all known U.S. owners and operators of certain Cessna Model 552 and 650 series airplanes. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to Part 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The Federal Aviation Administration has determined that this is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Cessna: Applies to Cessna Model 552 series airplanes, serial numbers 552-0001, 552-0003 through 552-0006 and 552-0008; and Model 650 series airplanes, serial numbers 650-0001 through 650-0072; certificated in all categories. Compliance required as indicated unless previously accomplished.

To prevent short-to-ground of the nickel cadmium battery which could result in an electrical fire, accomplish the following:

A. Prior to further flight, inspect the aircraft battery to determine if a SAFT type 40976, P/N 18585, is installed:

1. If SAFT type 40976 battery P/N 18585, is not installed, no other action is necessary

2. If SAFT type 40976 battery P/N 18585, is installed: for Model 650 airplanes, modify the battery in accordance with Cessna Service Letter SL650-24-03, dated January 21, 1985, and SAFT Service Bulletin 0005, dated January 17 1985, referenced therein; for Model 552 airplanes, modify in accordance with SAFT Service Bulletin 0005, dated January 17, 1985.

a. Thereafter, reinspect the insulators installed on the SAFT type 40976 batteries every 100 flight hours.

b. These inspections may be terminated upon installation of an approved Marathon battery, Cessna P/N 9914058-2, or SAFT battery, Cessna P/N 9914058-5, on the Model 650 airplanes; or SAFT battery Cessna P/N 9914058-5, on the Model 552 airplanes.

B. Alternate means of compliance with this AD which provide an acceptable level of safety may be used if approved by the Manager Wichita Aircraft Certification Office, FAA Central Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Cessna Marketing Division, Cessna Aircraft Company, P.O Box 7706, Wichita, Kansas 67277, or may be examined either at the FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas, or at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective April 11, 1985.

It was effective earlier to all recipients of Telegraphic AD T85-03-51, dated February 6, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; Jan. 12, 1983); 14 CFR 11.89)

Issued in Seattle, Washington, on March 22, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-8288 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AAL-1]

Revision of Transition Area, Farewell, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revises the transition area at Farewell, AK, to provide aircraft conducting flight under Instrument Flight Rules (IFR) with exclusive use of that airspace when the flight visibility is less than 3 miles, thereby enhancing the safety of such operations. The circumstances which created the need for this action were the revocation of the Farewell, AK, control zone and the development of new instrument approach procedures to the Farewell, AK, Airport from the Farewell Lake, AK, Nondirectional Radio Beacon (NDB).

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Procedures and Airspace Specialist (AAL-536), Air Traffic Division, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513, telephone (907) 271-5902.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Farewell, AK (50 FR 4229). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will establish the base of controlled airspace at 700 feet above the surface in a circular area 7.5 statute mile radius of a point 7.5 statute miles from the Farewell Lake, AK, RBN on the 254° T (230° M) bearing and 1,200 feet above the surface in a rectangular area 18.5 statute miles long by 14 statute miles wide, north of the Farewell Lake, AK, RBN on the 044° T (020° M) bearing. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under Instrument Flight Rules (IFR).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

§ 71.181 Farewell, AK [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of a point 7.5 miles from the Farewell Lake NDB on the 254° T (230° M) bearing and from 1,200 feet above the surface within 9.5 miles west and 4.5 miles east of the 044° T (020° M) bearing from the Farewell Lake NDB (lat. 62°32'37.18" N., long. 153°37'03.63" W.) extending from the NDB to 18.5 miles north.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, Jan. 12, 1983)); and 14 CFR 11.69)

Issued in Anchorage, Alaska, on March 28, 1985.

Franklin L. Cunningham,

Director, Alaskan Region.

[FR Doc. 85-8274 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-2]

Alteration of Transition Area, Holland, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Holland, Michigan, transition area to accommodate a new RNAV Runway 8 instrument approach procedure to Tulip City Airport. The intended effect of this action is to ensure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 G.m.t., June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new RNAV Runway 8 instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 1-mile expansion to the southwest of the existing transition area. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On January 29, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Holland, Michigan, transition area (49 FR 3921).

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Holland, Michigan, transition area to accommodate a new RNAV Runway 8 instrument approach procedure to Tulip City Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Holland, MI

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Park Township Airport (latitude 42°48'00" N., longitude 86°10'00" W.); within a 6-mile radius of Tulip City Airport (latitude 42°45'00" N., longitude 86°07'00" W.); within 3 miles each side of the 175° bearing from Park Township Airport, extending from the 6-mile radius area to 8 miles south of the airport; and within 3 miles northwest and 5 miles southeast of the 237° bearing from Park Township Airport, extending from the 6-mile radius area to 9.5 miles southwest of the airport; and within 3 miles each side of the 040° bearing from Park Township Airport, extending from the 6-mile radius area to 8.5 miles northeast of the airport; and within 2 miles each side of the Pullman, Michigan, VORTAC 359° radial, extending from the 6-mile radius area to 12 miles north of the VORTAC.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Des Plaines, Illinois, on March 22, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-8283 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-ACE-12]

Alteration of Transition Area, Kennett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Kennett, Missouri, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Kennett Memorial Airport, Kennett, Missouri, utilizing the Kennett Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Kennett, Missouri, Memorial Airport is being established utilizing the Kennett NDB as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Kennett, Missouri, at and above 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On pages 2825 and 2826 of the Federal Register dated January 22, 1985, the FAA published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Kennett, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received as a result of the proposed rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, by altering the following transition area:

Kennett, Missouri

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Kennett Memorial Airport (latitude 36°13'50'' N., longitude 90°02'05'' W.); and within 3 miles either side of the 360° bearing from Kennett NDB (latitude 36°13'44'' N., longitude 90°02'10'' W.), extending from the 7 mile radius to 8.5 miles north of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.69 of the Federal Aviation Regulations (14 CFR 11.69). This amendment becomes effective at 0901 G.M.T. June 6, 1985.

Issued in Kansas City, Missouri, on March 29, 1985

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-8282 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AGL-1]

Alteration of Transition Area, Madison, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Madison, South Dakota, transition area to accommodate a new VOR Runway 32 instrument approach procedure to Madison Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using this approach procedure in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 G.m.t., June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new VOR Runway 32 instrument approach procedure requires that the FAA alter the designated airspace to ensure that the procedure will be contained within controlled airspace. The additional airspace designated will be approximately a 1.5-mile expansion to the southeast of the existing transition area. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

History

On January 29, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Madison, South Dakota, transition area (49 FR 3920).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Madison, South Dakota, transition area to accommodate a VOR Runway 32 instrument approach procedure for Madison, South Dakota, Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. If, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), is amended as follows:

Madison, SD

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Madison municipal area (latitude 44°01'00" N., longitude 97°05'00" W.); within 3 miles each side of the 346° bearing from the Madison Municipal Airport, extending from the 5-mile radius to 8½ miles north of the airport; within 2½ miles each side of the 320° Radial True from the PSD VORTAC, extending from the 5-mile radius to 6½ miles southeast of the airport.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 [49 U.S.C. 1348(a) and 1354(a)]; [49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)]; and 14 CFR 11.65)

Issued in Des Plaines, Illinois, on March 22, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-8284 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-27]

Alteration of VOR Federal Airways—Badger, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters three Federal Airways in the vicinity of Badger, WI, to improve flight planning and traffic flow management. Due to numerous technical problems which preclude the commissioning of the Timmerman, WI, very high frequency omni-directional radio range tactical air navigational aid (VORTAC), airways and jet routes that were proposed to utilize the new Timmerman VORTAC have not been adopted.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

History

On March 5, 1984, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to alter the descriptions of several VOR Federal Airways and Jet Routes located in the vicinity of Badger, WI (49 FR 8005). Four airway and nine jet route descriptions were proposed to be based on the new Timmerman, WI, VORTAC. The Timmerman VORTAC would have been located east of Badger, on the Lawrence J. Airport, Milwaukee, WI. However, because of technical problems the Timmerman, WI, VORTAC was not commissioned. FAA is not certain the problems with Timmerman can be resolved at its current location. Therefore, the airways/jet routes that have been proposed for establishment based on the Timmerman VORTAC have not been adopted in this final rule. No comments objecting to the proposal were received. Except for the foregoing, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters three VOR Federal Airways in the vicinity of Badger, WI. V–177. V–262 and V–341.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It. therefore—(1) is not a "major rule" under Executive Order 12291. (2 is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034: February 26. 1979): and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation. it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

V–177 [Amended]

By removing the words "Stevens Point, WI, including a west alternate via Dells, WI; Wausau. WI:" and substituting the words "Stevens Point, WI, Wausau, WI;"

V–262 [Revised]

From Peoria, IL, via Bradford, IL; to Joliet, IL., INT Joliet 067° and Du Page, IL, 129° radials.

V–341 [Revised]

From Cedar Rapids, IA, via Dubuque, IA; Madison, WI; to Oshkosh, WI.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on April 1, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–8276 Filed 4–5–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 50446–5046]

Amendments to the Commodity Control List

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule revises the CCL entry 1203A for electric vacuum furnaces: deletes electric furnaces in CCL 4203B, replacing such furnaces with induction furnaces; and revises entry CCL1312A for presses.

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Nick Maddage. Capital Goods Division, Office of Export Administration. Telephone (202 377–3206.

SUPPLEMENTARY INFORMATION: The new COCOM agreement requires that certain changes to the Commodity Control List (CCL) be made. Accordingly the Department of Commerce in consultation with the Department of Defense. is amending the CCL to implement these changes. These items are controlled for national security reasons. and controls are being enacted thereon notwithstanding any foreign availability.

- Replaces units of weight expressed in tons with kilograms.
- Includes controls for specially designs software for electric vacuum furnaces, components and controls.
- Releases controls for electric furnaces for producing pyrolytic graphite.
- Adds controls for induction furnaces used to graphitize carbon.
- Releases controls for hot forming presses and hydraulic presses.
- Releases all hot isostatic presses with less than 5 inches inside diameter.
- Adds controls for isostatic presses with a controlled thermal environment regardless of pressure.

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. The collection of this information has been approved by the Office of Management and Budget under control number 0625–0001.

3. Because a notice of proposed rulemaking is not required to be published for this rule it is not a rule within the meaning of section 601(2) of the Reguiatory Flexibility Act and is not subject to the requirements of that Act. Accordingly no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or reguiation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Flexibility Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. In Supplement No. 1 to section 399.1 (the Commodity Control List), Commodity Group 2 (Electrical and Power-Generating Equipment), ECCN 1203A is revised to read as follows:

1203A Electric vacuum furnaces, specially designed components and controls therefor, and "specially designed software" for the use of such furnaces, components or controls.

Controls for ECCN 1203A

Unit: Report in "$ value"

Validated License Required: Country Groups QSTVWYZ

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations

Processing Code: TE

Reason for Control: National security

Special Licenses Available: See Part 373

List of Equipment Controlled by ECCN 1203A:

(a) Consumable electrode vacuum arc furnaces with a capacity in excess of 20,000 kg (44,092 lb);

(b) Skull type vacuum arc furnaces; and

(c) "Vacuum induction furnaces" with a capacity in excess of 2,273 kg (5,000 lb) designed to operate at pressures lower than 0.05 mm of mercury, at temperatures higher than 1,375 K (1,100 °C, 2,012 °F), from which the molten metal may be poured into a mold within the same vacuum chamber without breaking the vacuum.

Note.—"Vacuum induction furnaces" include all portions of the furnace system within the vacuum chamber. (See also ECCNs 1060 and 1301.)

Advisory Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups Q W Y of electric furnaces with a capacity up to 400 tons.

2. In supplement No. 1 to Section 399.1 (The Commodity Control List) Commodity Group 2 (Electrical and Power Generating Equipment) is amended by deleting the existing ECCN *4203B* and replacing it with *ECCN* 4203B to read as follows:

4203B Induction furnaces incorporating susceptors designed to operate at temperatures in excess of 2,273 K (2,000 °C, 3,632 °F) and having a working diameter greater than 100 mm (4.0 in), and specialized parts, components and controls for the equipment specified.

Controls for ECCN 4203B

Unit: Report in "$ Value"

Validated License Required: Country Groups QSTVWYZ

GLV $ Value Limit: $2,000 for Country Groups T & V except $9 for the Peoples Republic of China; $0 for all other destinations

Processing Code: TE

Reason for Control: National Security

Special Licenses Available: See Part 373

3. In Supplement No. 1 to section 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is revised to read as follows:

1312A Isostatic presses; specially designed dies and molds (*except* those used in isostatic presses operating at ambient temperatures), components, accessories and controls therefor; and "specially designed software" therefor.

Controls for ECCN 1312A

Unit: Report machines in "number", parts and accessories in "$ value"

Validated License Required: Country Groups QSTVWYZ

GLV $ Value Limit: $2,000 for Country Groups T & V, except $0 for the People's Republic of China; $0 for all other destinations

Processing Code: National security; paragraph (b) of the List below is also controlled for nuclear non-proliferation

Special Licenses Available: None for commodities in paragraph (b) of the List below. See Part 373 for special licenses that may be available for other commodities

List of Equipment controlled by ECCN 1312A Isostatic presses, as follows:

(a) Capable of achieving a maximum working pressure of 138 MPa (20,000 p.s.i.) or greater and possessing a chamber cavity with an inside diameter in excess of 406 mm (16 inches); or

(b) Having a controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 127 mm (5 inches) or more.

Note.—Isostatic presses are those capable of pressurizing a closed cavity through various media (gas, liquid, solid particles, etc.) to create equal pressure in all directions within the cavity upon a workpiece or material.

Advisory Note.—Licenses are likely to be approved for export to satisfactory end-users in Country Groups QWY of isostatic presses controlled by sub-paragraphs (a) and (b) above, provided that the equipment will be used for non-strategic applications and not for any nuclear or aerospace applications *and* provided that:

(a) Isostatic presses having a controlled thermal environment within the closed cavity are limited as follows:

(1) Maximum working pressure not exceeding 207 MPA (30,000 p.s.i.); *and*

(2) Chamber cavity with an inside diameter of the working chamber) not exceeding 406 mm (16 inches), when the controlled thermal environmental that can be achieved and maintained does not exceed 1,500°C;

(b) Isostatic presses other than those covered by sub-paragraph (a) above are limited as follows:

(1) Maximum working pressure not exceeding 414 MPa (60,000 p.s.i.); *and*

(2) Chamber cavity with an inside diameter (i.e., the maximum inside diameter of the working chamber) not exceeding 508 mm (20 inches).

Note—The inside chamber dimension referenced in sub-paragraphs (a)(2) and (b)(2) above is the chamber in which both the working temperature and the working pressure are achieved. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other. For isostatic presses having a controlled thermal environment, the insertion of fixturing leaves a diameter of less than 406 mm (16 inches) in the chamber for the piece to be pressed. For isostatic presses operating at ambient temperatures, the insertion of fixturing leaves a diameter of less than 508 mm (20 inches) in the chamber for the piece to be pressed.

Authority: Secs. 203, 208, Pub. L. 96-223, Title II, 94 Stat. 1828, 1830 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated April 3, 1985.

John K. Boldock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85-8407 Filed 4-4-85; 10:53 am]

BILLING CODE 3510-07-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 178

[T.D. 85-53]

OMB Approval of Information Collections in Customs Regulations

Correction

In FR Doc. 85-7100 beginning on page 11849 in the issue of Tuesday, March 26, 1985, on page 11850, twenty second line down in the table, the first section number reading "113.32" should read "133.32".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 544

National Marksmanship Matches and Excellence-in-Competition (EIC) Matches

AGENCY: Department of the Army, DOD.

ACTION: Interim final rule.

SUMMARY: This regulation on the rules and regulations for National Marksmanship Matches and Excellence-in-Competition [EIC] matches has been added. It gives responsibilities for the National Matches, eligibility criteria and categories for the competitors, and the program for the National Trophy Matches. It also describes the awards for the National Matches. This regulation has been added to change the staff organization of the National Matches, show new eligibility requirements and programs for the National Trophy Matches, and introduce new awards.

EFFECTIVE DATE: April 8, 1985.

ADDRESS: Director of Civilian Marksmanship, Attention: Lieutenant Colonel William Creech, 20 Massachusetts Avenue, NW, Room 1305, Pulaski Building, Washington, D.C. 20314-0100.

FOR FURTHER INFORMATION CONTACT: LTC William Creech at (202) 272–0810 at the above address.

SUPPLEMENTARY INFORMATION: This regulation promotes the maintenance of National defense through the promotion of nationally held rifle and pistol matches. The only comment the Proposed Rule related to the clarity of the Regulatory Flexibility Act statement and this has been amended.

Executive Order 12291

The Secretary of the Army has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291 because the rule is administrative and has no economic effect on the public.

Regulatory Flexibility Act

The Secretary of the Army has determined that this rule does not have a significant economic effect on a substantial number of small entities and does not require a flexibility analysis under the Regulatory Flexibility Act (J.U.S.C. 601 et seq.). It is an administrative and procedural rule.

Paperwork Reduction Act

This rule does not contain information collection requirements which would require approach by the Office of Management and Budget under 44 U.S.C. 350 et seq.

List of Subjects in 32 CFR Part 544

Armed forces, National defense, Awards, Nonprofit organizations.

Accordingly, a new Part 544 is added to read as follows:

PART 544—CIVILIAN MARKSMANSHIP

Subpart A—General

Sec.
544.1 Purpose.
544.2 References.
544.3 Explanation of abbreviations and terms.
544.4 The intent of the National Matches.
544.5 Composition of the National Matches.
544.6 National Match Staff.
544.7 Armed Forces involvement.
544.8 Role of the NRA.
544.9 Places and dates.
544.10 Fees.
544.11 Subsistence and travel allowances.

Subpart B—Responsibilities

544.12 Secretary of the Army (SA).
544.13 President, National Board for the Promotion of Rifle Practice (NBPRP).
544.14 Director of Civilian Marksmanship (DCM).
544.15 Executive Officer, National Matches (XO, NM).
544.16 Executive Officer, Civilian Marksmanship Program (Support) (XO, CMP (SPT)).
544.17 National Match Support Coordinator (NMSC).
544.18 Match Directors.
544.19 Range Director.
544.20 Statistical Director.
544.21 Director, Small Arms Firing Schools (SAFS).
544.22 The Commanding General, US Army Materiel Command (CG, AMC).
544.23 Chief of Public Affairs (CPA).
544.24 Chief, National Matches Support Detachment (NMSD).
544.25 Ordnance Safety Officer (OSO).
544.26 Commanding General, US Army Forces Command (CG, FORSCOM).
544.27 Commanding General, US Army Training and Doctrine Command (CG, TRADOC).
544.28 Commanding General, US Army Communications-Electronics Command (CG, CECOM).
544.29 Adjutant General, Ohio National Guard.

Subpart C—Competitor Eligibility, Requirements, Categories, and Teams

544.30 Eligibility for the matches.
544.31 Requirements for competitors in individual matches.
544.32 Requirements for military competitors.
544.33 Requirements for certain civilian competitors.
544.34 Competitor categories for National Trophy Matches.
544.35 Team member eligibility.
544.36 Authorized teams in National Trophy Team Matches.
544.37 Requirements for new shooters in National Trophy Team Matches.

Subpart D—General Rules for National Trophy Matches

General Match Rules

544.38 National Trophy and EIC match rules.
544.39 Entries.
544.40 Directives competitors must follow.
544.41 Coaching.
544.42 Elimination of teams or individuals.
544.43 Penalties.
544.44 Competitors verifying their scores.
544.45 Referees, scoring, and challenge procedures.
544.46 Protests.
544.47 Bulletins.

Team Match Rules

544.48 Team composition.
544.49 Team squadding.
544.50 Station and duties of team coaches.
544.51 Station of team captain.

Types of Firearms, Ammunition, and Other Equipment

544.52 Description of arms to be used.
544.53 Rifles and pistols available.
544.54 Checking firearm characteristics.
544.55 Use of the same firearm by more than one competitor.
544.56 Disabled firearm.
544.57 Ammunition.
544.58 Targets.
544.59 Field glasses and binoculars.

Firing

544.60 Safety precautions.
544.61 Organization of firing areas.
544.62 Station of competitors.
544.63 Target assignments and operations in rifle matches.
544.64 Slow target operation in rifle matches.
544.65 Practice firing.
544.66 Firing procedure and punctuality.
544.67 Firing positions.
544.68 Loading and reloading the rifle in rapid fire.
544.69 Unauthorized firing.
544.70 Time limits and extensions.
544.71 Sighting shots.
544.72 Competitors serving as range officials.

Subpart E—Program for the National Trophy Matches

544.73 The President's Pistol Match.
544.74 National Trophy Individual Pistol Match.
544.75 National Trophy Pistol Team Match.
544.76 The President's Rifle Match.
544.77 National Individual Trophy Rifle Match.
544.78 National Trophy Rifle Team Match.
544.79 National Trophy Infantry Team Match.

Subpart F—Awards

544.80 General.
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Authority: 10 U.S.C. 4307 through 4313.

Subpart A—General

§ 544.1 Purpose.

This regulation prescribes the policies, procedures, and responsibilities for the National Matches and other excellence-in-competition (EIC) matches.

§ 544.2 References.

Related publications are listed in Appendix A of this part.

§ 544.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in Appendix D—Glossary.

§ 544.4 The intent of the National Matches.

(a) The national Matches and included competitions are part of the Civilian Marksmanship Program (CMP). Sections 4307 through 4313, title 10, United States Code (U.S.C.), establish the CMP to be conducted under rules approved by the Secretary of the Army (SA).

(b) As part of the CMP, these matches are intended to promote the national defense. The CMP provides and encourages voluntary marksmanship traning for persons who are not reached by training programs of the Armed Forces and who might be called into service in an emergency. The National Matches enhance this training by offering open competition at the highest national level. Further, the statutes in paragraph (a) of this section provide that marksmanship competitions sponsored by the National Rifle Association (NRA) may be held in connection with the National Matches.

(c) The Services have established individual rifle and pistol matches at major command levels in which civilians may participate. The Services will conduct these matches according to the parts of this regulation that apply.

(d) Upon approval by the Director of Civilian Marksmanship (DCM), recognized civilian rifle and pistol clubs and State rifle and pistol associations may conduct similar matches in conjunction with NRA Regional and State Championships. The intention of all of these matches is to promote civilian marksmanship training.

§ 544.5 Composition of the National Matches.

The National Matches are composed of paragraphs (a) through (e) of this section.

(a) *Small Arms Firing Schools (SAFS).* The SAFS give instruction in the service rifle and pistol, particularly the current service rifle with which civilians may not be familiar. The SAFS also introduce the latest approved training concepts for these arms. The Army will conduct the schools and provide the Director, SAFS. Other Services, including Reserve Components, will assist at the schools. The Director, SAFS, may request Armed Forces shooting teams participating in the National Matches to provide qualified persons to serve as assistant instructors and coaches. The SA will prescribe the curriculum based on the recommendation of the National Board for the Promotion of Rifle Practice (NBPRP). The Director, SAFS, will give a certificate of satisfactory completion to those who meet the qualifications set by the NBPRP.

(b) *National Trophy Match.* The National Trophy Matches are listed as follows:

(1) The President's Pistol Match.

(2) National Trophy Individual Pistol Match.

(3) National Trophy Pistol Team Match.

(4) The President's Rifle Match.

(5) National Trophy Individual Rifle Match.

(6) National Trophy Rifle Team Match.

(7) National Trophy Infantry Team Match.

(c) *NRA National Rifle and Pistol Championships.* The NRA National Rifle and Pistol Championships are conducted according to the NRA's rules and regulations. These championships are listed as follows:

(1) National Pistol Championships.

(2) National Smallbore Rifle Position Championships.

(3) National Smallbore Rifle Prone Championships.

(4) National Highpower Rifle Championships.

(d) *Additional events.* The National Matches also include events sponsored by the SA or sponsored by the NRA and arranged in coordination with the SA, such as the NRA Junior Smallbore Camp and Whistler Boy Smallbore and Highpower Matches.

(e) *Ceremonies.* As approved by the DXM, (who is also the National Matches Installation Commander (NMIC)), the appropriate opening, closing, award, and other ceremonies are conducted as official parts of the National Matches.

§ 544.6 National Match Staff.

(a) The organization of the National Match Staff is shown in figure 1–1.

(b) The specific duties of the National Match Staff are set by the DCM/NMIC and the NRA National Match Coordinator.

(c) Key members of the National Match Staff are listed as follows. Their responsibilities are explained in the sections cited after their titles.

(1) DCM/NMIC (§ 544.3).

(2) Executive Officer, National Matches (XO,NM)/Deputy Installation Commander (Operations/Services) (DNMIC (Ops/Svcs)) (§ 544.14 and 544.15).

(3) Executive Officer, Civilian Marksmanship Program (Support) (XO,CMP (SPT)) (§ 544.15).

(4) NRA National Matches Coordinator (§ 544.81).

(5) Match Directors (§ 544.17).

(6) Deputy Match Directors (§ 544.8).

(7) Range Director (§ 544.18).

(8) Statistical Director (§ 544.19).

(9) Director, SAFS (§ 544.20).

(10) National Matches Support Coordinator (§ 544.6).

(11) Chief, National Matches Support Detachment (NMSD) (§ 544.23).

(12) Ohio Army National Guard Facilities Manager (§ 544.23).

(13) Billeting Officer. (§ 544.28)

(14) US Army Reserve Command and Liaison Group Commander. (§ 544.26)

(15) Active Army Food Service Advisor. (§ 544.28)

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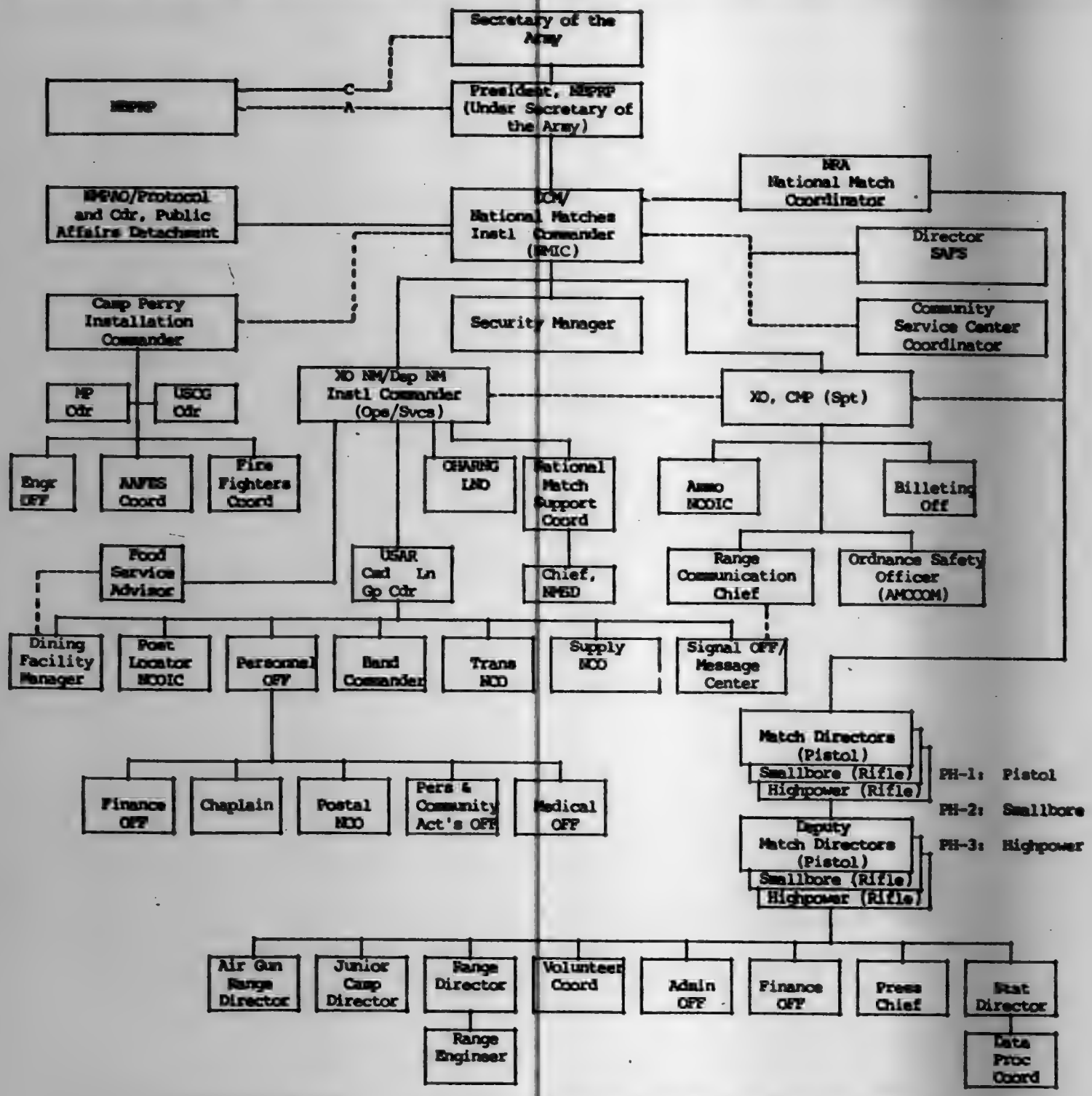


Figure 1-1. National Matches Organization Chart

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§ 544.7 Armed Forces involvement.

The US military services will support the National Matches as follows:

(a) The Army will conduct the SAFS.

(b) As approved by the SA and subject to the availability of resources, the Army will also supply the personnel, equipment, and supplies needed to conduct the National Matches.

(c) Subject to the availability of resources, all Services will furnish personnel as requsted by the DCM and approved by their respective departments. The number of personnel furnished should be proportional to the number of competitors that the particular Service furnished in the most recent National Matches.

§ 544.8 Role of the NRA.

(a) The NRA sponsors and regulates the conduct of the NRA National Rifle and Pistol Championships. The NRA advises the NBPRP on NRA participation in the National Matches. It also coordinates with the DCM and the XO,NM, on National Match matters.

(b) Unless the SA determines otherwise, the NRA will be invited to assist in the conduct of the National Matches. The NRA assists the DCM/NMIC in the conduct of the schools related to the matches and provides, administers, and funds the NRA Match Coordinator, Match Director, Deputy Match Director, Range Director, Range Engineer, and Statistical Director and staff. (Their responsibilities are outlined in Subpart B.) The NRA also provides other personnel needed to conduct the shooting events and NRA-sponsored schools.

(c) The NRA National Match Coordinator is the principal representative of the NRA at the National Matches and conducts the NRA-sponsored events of the matches. When the NRA is requested to conduct the shooting events related to the National Matches, the NRA National Match Coordinator will also—

(1) Conduct the National Trophy Matches.

(2) Coordinate match operations with the DCM/NMIC.

(d) The NRA Match Directors will follow § 544.18.

(e) The NRA Deputy Match Directors will assist their NRA Match Director in conducting specific shooting events, groups of events, or championships.

§ 544.9 Places and dates.

The National Matches will be held each year at Camp Perry, Ohio, or at other places. The DCM will recommend the places and dates for the matches, and the SA will approve and publish them in advance. The National Matches Program, approved by the DCM and NRA, gives additional details on the matches.

§ 544.10 Fees.

When approved by the DCM, nominal administrative fees may be charged for the National Trophy Matches, the SAFS, and EIC matches approved by the DCM. The NRA prescribes fees for its NRA National Championships and its other events.

§ 544.11 Subsistence and travel allowances.

Civilian competitors at the National Matches may be reimbursed for subsistence and travel expenses at rates set forth in Invitational Travel Orders. The payment of subsistence and travel allowances for civilian competitors is authorized by section 4313, title 10, United States Code (USC), and Joint Travel Regulations (JTR), Volume 2, para C–6002–6. General qualifications and criteria for reimbursement are as follows:

(a) Civilian competitors must be members of DCM-enrolled clubs or State Associations. Competitors must have Invitational Travel Orders issued by the Office of the Secretary of the Army.

(b) The rate of payment for travel (mileage) will be announced in the Invitational Travel Orders. The rate of payment for the mileage allowance will be based on travel from the place of residence, as stated in the orders, to the National Matches and return regardless of the actual location of the competitor when travel commences. The mileage will be determined from the Official Table of Distance (AR 55–60).

(c) The authorized subsistence and mileage allowance rates payable to civilian competitors may not exceed the amount paid to military members and Federal Government employees under the JTR.

(d) Subsistence is not payable to competitors while they are traveling to and from the National Matches.

(e) Subsistence will be prorated, meal by meal, on the days of arrival and departure. Subsistence for full days is authorized when a competitor is present for an event during an entire day, from 0001 hours through 2400 hours (midnight to midnight). The rate of reimbursement for each meal will be published in the Invitational Travel Orders for each competitor and will be used for proration of entitlement to the authorized subsistence allowance.

(f) Constructive payment of allowances for the return trip may be made before departure from the National Matches. Payment will be made only for return to place of residence, without regard to the actual destination of the competitor.

(g) Competitors may travel by any method desired; however, reimbursement will be based on the mileage rate for travel by privately owned vehicle.

(h) If a competitor provides a substantiating document (such as an airline ticket) and claims reimbursement for travel by air or other mode, reimbursement will be made for the mode of travel claimed but will not exceed the amount which would have been payable for travel by privately owned vehicle.

(i) Each competitor is entitled to reimbursement for mileage from the residence to the National Matches and return, regardless of the ownership of the vehicles used or the number of occupants.

(j) All substantiating documents (receipts) accompanying travel claims must be originals.

(k) Firearms for marksmanship or rifle practice are authorized to be carried incident to travel performed by DCM-sponsored competitors.

(l) Payment of entry fees and other administrative fees will be authorized only to the extent they are indicated in Invitational Travel Orders.

(m) Collection for meals in Government-sponsored or Government-affiliated messes will be made at the time of consumption of each meal.

(n) Civilian competitors or support personnel, traveling under Invitational Travel Orders published by Office of the Secretary of the Army, are not required to pay surcharges in Government-sponsored or Government-affiliated messes.

Subpart B—Responsibilities

§ 544.12 Secretary of the Army (SA).

The SA shall conduct the National Matches each year. The SA may delegate this authority to the President, NBPRP.

§ 544.13 President, National Board for the Promotion of Rifle Practice (NBPRP).

The President, NBPRP, will—

(a) Act for the SA in the conduct of the National Matches.

(b) Advise the SA on the conduct of the National Matches.

(c) Receive advice of the NBPRP concerning the conduct of the National Matches.

(d) Provide guidance to the DCM governing the conduct of National Matches and approve the annual National Matches plan and expenditures.

§ 544.14 Director of Civilian Marksmanship (DCM).

The DCM, a statutory official, will—

(a) Direct and implement the National Matches as approved by the President, NBPRP, for the SA.

(b) Serve as the NMIC according to AR 600–20.

(c) When the National Match Staff (§ 544.6) is assembled for duty at the site of the National Matches, the NMIC will assign duties to the National Match Staff and be responsible to the President, NBPRP, for all National Match matters. However, when the NRA is requested to conduct the National Matches, the NMIC will not conduct the shooting events. Further, the NMIC will supervise personnel involved in conducting base operations associated with the National Matches. This supervision does not include courts martial jurisdiction.

§ 544.15 Executive Officer, National Matches (XO, NM).

The XO, NM, will—

(a) Perform the year-round planning and operations needed to conduct the National Matches. This responsibility includes recommending support requirements.

(b) Serve as the Deputy National Matches Installation Commander (Operations and Services) (DNMIC (Ops/Svcs)).

§ 544.16 Executive Officer, Civilian Marksmanship Program (Support) (XO, CMP (SPT))

The XO, CMP (SPT) will—

(a) Provide technical assistance and operational advice to all DCM-affiliated clubs and State associations that participate in the National Matches.

(b) Provide communications, supply and billeting (logistics), ammunition, and the ordnance safety officer (OSO) support to the NRA National Match Coordinator as required and directed.

(c) Insure the NBPRP trophies, medals, brassards, and prizes are available.

(d) Arrange for NBPRP awards ceremonies and receptions. Coordinate combined ceremonies.

(e) Supervise the in and out processing of DCM-supported State association and club teams.

§ 544.17 National Match Support Coordinator (NMSC).

The NMSC will be designated by the Commanding General, US Army Forces Command (CG, FORSCOM). The NMSC will—

(a) Coordinate the activities of the National Match Support Detachment during the National Matches.

(b) Assist the XO, NM/DNMIC (Ops/Svce) with year-round planning and coordination for the National Matches.

(c) Attend meetings, conferences, and briefings concerning logistics support for the National Matches.

§ 544.18 Match Directors.

The Match Directors for Pistol, Smallbore rifle, and Highpower rifle will conduct specific shooting events, groups of events, or championships. When the Army conducts the matches, the Match Directors are responsible to the DCM/NMIC. When the NRA conducts the shooting events of the National Matches, the Match Directors are responsible to the NRA National Match Coordinator (§ 544.8(c)).

§ 544.19 Range Director.

The Range Director is responsible to the respective Deputy Match Director. The Range Director will prepare, maintain, and operate the firing ranges. Operating the ranges includes controlling and directing all personnel, competitors, and spectators on the ranges. Normally, the Range Director is assisted by and is responsible for the functions of the following officials and others as designated:

(a) Range Safety Officer.

(b) Range Communications Officer (normally provided from the military).

(c) Range Engineer Officer.

(d) Chief Range Officer (usually one for each range).

(e) Chief Pit Officer (usually one each operating rifle range).

§ 544.20 Statistical Director.

The Statistical Director is responsible to the Match Director and will perform the statistical operations. These operations include—

(a) Insuring that entries are correct.

(b) Checking the eligibility of competitors and teams. The Statistical Director will work with the Range Director in assigning these people to relays and targets.

(c) Verifying scores.

(d) Listing participants in order of excellence.

(e) Publishing match results in official bulletins.

§ 544.21 Director, Small Arms Firing Schools (SAFS).

The Director, SAFS, will organize and conduct the SAFS.

§ 544.22 The Commanding General, US Army Material Command (CG, AMC).

CG, AMC, will act as the procurement agent for small arms and related equipment used to support the National Matches. Also, CG, AMC, will budget for and provide—

(a) The personnel, supplies, and equipment needed for the onsite repair of service-type small arms. Such repair will be provided only if required and authorized.

(b) Technical assistance and advice regarding National Match arms, ammunition, target materiel, and related equipment.

(c) Limited logistical support as required.

(d) The OSO (§ 544.25).

§ 544.23 Chief of Public Affairs (CPA).

(a) The CPA will—

(1) Arrange for appropriate public affairs support to the National Matches and other Excellence-in-Competition (EIC) matches. Such support will be provided within available resources.

(2) Designate a qualified individual to serve as the National Matches Public Affairs Officer (NMPAO) for a period not to exceed three weeks before and one week after the competitions.

(b) The NMPAO will work with the public information activities conducted by the Services and directed by the NMIC.

§ 544.24 Chief, National Matches Support Detachment (NMSD).

The Chief, NMSD, will, through the NMSC, act as the logistics coordinator for the National Matches, supervise all National Match supply activities, and coordinate service activities. The Chief, NMSD, will—

(a) Procure, control, and issue Army-furnished supplies and equipment.

(b) Provide repair and utilities activities.

(c) Issue and/or sell ammunition or arms that are provided by the DXM and that are required and authorized.

(d) Coordinate logistical matters between National Match activities and match support organizations.

§ 544.25 Ordnance Safety Officer (OSO).

The OSO will—

(a) Investigate the circumstances leading to any weapon or ammunition malfunction that results in an accident or creates a hazardous condition at the match site.

(b) Determine the probable cause of a malfunction and insure the problem has been resolved before the weapon or ammunition is returned to the firing line.

(c) Report to the Match Director, in writing, about an incident or malfunction that called for his or her services.

§544.26 Commanding General, US Army Forces Command (CG, FORSCOM).

The CG, FORSCOM, will—

(a) Appoint the NMSC.

(b) Budget for and provide personnel and other support and services as required by the National Matches Support and Operations Plan.

§ 544.27 Commanding General, US Army Training and Doctrine Command (CG, TRADOC).

The CG, TRADOC, will budget for and provide services and equipment in the areas of communications, facilities engineering, food service, medicine, maintenance, supply, transportation, procurement and contracting, and other areas as may be required by the National Matches Support and Operations Plan. The CG, TRADOC, will also provide comptroller assistance as requried.

§ 544.28 Commanding General, US Army Communications-Electronics Command (CG, CECOM).

The CG, CECOM, will budget for and provide selected items of signal equipment as set forth in the National Matches Support and Operations Plan.

§ 544.29 Adjutant General, Ohio National Guard.

(a) Per existing leases and contracts, the Adjutant General, Ohio National Guard, will provide personnel, services, facilities, and equipment to the maximum extent possible to support and conduct the National Matches.

(b) Additional support that may be requested that is not provided for elsewhere, may be provided for when concurred in by the Adjutant General, Ohio National Guard, and approved by the National Guard Bureau as appropriate.

Subpart C—Competitor Eligibility, Requirements, Categories, and Teams

§ 544.30 Eligibility for the matches.

(a) The National Trophy matches are open to all US citizens 16 years of age or older, any other persons subject to induction in the US Armed Forces, and all members of the US Armed Forces, both Regular and Reserve Components. The minimum age may be waived. (Requests for waivers, with justification, must be submitted to the DCM before the opening date of the National Matches.)

(b) Other EIC matches noted in § 544.31 are open as described in paragraph (a) of this section. However, there are restrictions for these matches. These restrictions are described in §§ 544.31(c) and (d) and 544.94. Further restrictions for Service personnel are described in the regulations of their own Service. The match sponsor may waive the minimum age requirement. Request for waiver will be submitted to the sponsor as explained in the match program. These requests must include a justification. For example, an acceptable justification is that the person is classified by the NRA as a Sharpshooter or higher or has completed an EIC match with the arm concerned.

(c) Competitors designated Distinguished with the arm concerned may enter the National Trophy Matches and other EIC matches. Non-Distinguished competitors cannot enter any EIC match on a noncredit basis (such as entering for practice).

(d) Non-Distinguished military competitors may not enter EIC matches at NRA Regional or State championship matches if these competitors have earned, with the arm concerned, the maximum credit points their Service allows for such matches.

(e) The SAFS are open to all US citizens, any other persons subject to induction in the US Armed Forces, and all members of the US Armed Forces, both Regular and Reserve Components. To attend the SAFS, a person must not necessarily compete in the National Matches. For pistol instruction, a person must be 16 years old or older; for rifle instruction, 12 years old or older.

§ 544.31 Requirements for competitors in individual matches.

(a) All competitors must state on their entry forms whether their status is Distinguished or non-Distinguished.

(b) For the National Trophy Matches, non-Distinguished military competitors must advise the DCM when, per their Service's regulations, they cannot be credited with points earned in National Trophy Matches. Competitors must advise the DCM before the matches and in writing.

§ 544.32 Requirements for military competitors.

Military competitors (Regular and Reserve Components) who compete in the National Matches and whose transportation or other expenses connected with the matches are paid, wholly or in part, from appropriated or non-appropriated funds (NAF) must meet special requirements. (Examples of NAF are funds for exchanges, recreation, and morale.) These competitors will—

(a) Participate in the appropriate SAFS.

(b) Enter and complete the appropriate National Trophy Individual Team Match and President's Match if eligible under this regulation, unless eliminated from the match.

(c) Enter and complete the appropriate National Trophy Matches if eligible under this regulation and selected by the team captain, unless eliminated from the match.

(d) Fire a service rifle (authorized by § 554.52) at ranges of 200 through 600 yards in both the NRA and the National Trophy Rifle Matches, unless exempted in the current match program. These military competitors may also use other rifles at greater ranges.

§ 544.33 Requirements for certain civilian competitors.

Civilian competitors in the National Trophy Matches whose transportation or other expenses connected with these matches are paid, wholly or in part, by the DCM must meet special requirements. These competitors will—

(a) Attend the appropriate SAFS.

(b) Enter and complete the appropriate National Trophy Individual Match and President's Match, unless eliminated according to § 544.42.

(c) Enter and complete the appropriate National Trophy Team Matches if eliminated according to § 544.42.

§ 544.34 Competitor categories for National Trophy Matches.

Competitors may register and participate in only one of the following categories:

(a) *Regular Service.* (1) This category consists of—

(i) Regular Service personnel on active duty.

(ii) National Guard and Reserve personnel on extended active duty with active forces of 90 days or more with a Regular Service status under Title 10 USC.

(2) This category does not include enrolled undergraduates of the Service academies.

(b) *Reserve.* This category consist of members of any Reserve branch of the US Armed Forces who are not on extended active duty as in § 554.34(a) of this section above. It includes Fleet Reserve but excludes Fleet Marine Corps Reserve. This category also excludes Army or Air National Guard and ROTC. If also qualified under § 544.84 (e) and (f)(3), Reserve members may instead register and participate in one of those categories.

(c) *National Guard.* This category consists of members of the Army or Air National Guard who are not on extended active duty as in paragraph (a)(i)(ii) of this section. If also qualified under paragraph (e) or (f)(3) of this section, National Guard members may instead register and participate in one of those categories.

(d) *Service Academy and Reserve Officers Training Center (ROTC).* (1)

This category consists of enrolled undergraduate members of—

(i) The Service academies of the Armed Forces.

(ii) Any high school or college Army, Navy, or Air Force ROTC unit.

(2) If also qualified under paragraph (f)(3) of this section. Service Academy and ROTC members may instead register and participate in that category.

(e) *Police.* This category is defined in NRA Rule 2.4. If also qualified in the Reserve, National Guard, or Civilian categories, police may instead register and participate in one of those categories.

(f) *Civilian.* This category consists of competitors listed in paragraphs (f)(1) through (f)(3) of this section. Reserve or National Guard category personnel who elect to compete as civilians under paragraph (f)(3) of this section may not revert to a Reserve or National Guard category later, unless the proper authority orders them to active duty for a purpose other than marksmanship competition. The penalty for noncompliance will be determined by the DCM.

(1) Individuals who are not in the Regular Service, Reserve, National Guard, Service Academy and ROTC, or Police categories.

(2) Retired service (Regular, Reserve, or National Guard) and Fleet Marine Corps Reserve personnel. However, if qualified in the Police category, they may instead register and participate as police.

(3) Members of the Reserve, National Guard, Service Academy and ROTC, or Police categories who, during the current calendar year.

(i) Have not competed with the arm concerned in any of the Reserve, National Guard, Service Academy and ROTC, or Police categories.

(ii) Received support for any competition in the form of arms, ammunition, or travel expenses, wholly or in part, from organizations in the Reserve, National Guard, and Service Academy and ROTC categories. Do not include as support the arms or ammunition provided for a specific competition (such as National Trophy or other EIC matches) when such items are available to all competitors within the calendar year.

(g) *Junior.* This category consists of civilians who will not reach 20 years old by the end of the calendar year. Juniors may compete on Civilian teams if they are eligible. Individuals who have National Guard, Reserve, or Regular Service status may not compete as juniors.

§ 544.35 Team member eligibility.

For teams to be eligible to compete, the following requirements must be met:

(a) No person may be a team captain, firing member, or alternate member of a team unless he or she is qualified in the category the team represents. (Categories are listed in § 544.34) This rule does not apply to police on State Civilian teams as authorized in paragraph (f)(1) of this section. Nor does it apply to qualified juniors on Civilian teams.

(b) Individuals must be bona fide members of the organization and category represented for at least 30 days before the opening date of the matches.

(c) Members of State Civilian, State Junior, State fraternal-type Police organization, or club teams must be bona fide residents of the State that the team represents or in which the club is located. Further, they must have lived in that State for at least 30 days before the opening date of the matches.

§ 544.36 Authorized teams in National Trophy Team Matches.

The categories of teams that may enter the National Trophy Team Matches and the number that may enter in each category are listed below.

(a) *Regular Service.* Two teams may represent each Service (the Army, Navy, Marine Corps, Air Force, and Coast Guard).

(b) *Reserve.* Two teams may represent the Reserve branch of each Service (the Army, Navy, Air Force, Marine Corps, and Coast Guard).

(c) *National Guard.* Two teams may represent the National Guard at large. Such teams may be composed of both Army National Guard and Air National Guard personnel.

(d) *Service Academy and ROTC.* One team from each Service academy may participate in the match. One team from each Army ROTC region, Naval Base Command, and Air Force ROTC Liaison Area within the continental United States (CONUS) may participate. ROTC members from units outside CONUS will compete on ROTC teams as authorized by the DCM.

(e) *Police.* One or more teams may represent each bona fide organized Federal, State, county, or municipal agency having law enforcement police powers. Also, one or more teams may represent a State, Commonwealth, Territory, or District of Columbia police organization of a fraternal nature. Fraternal organizations may enter only if they are organized according to AR 920–20 and affiliated with the DCM, or they are organized as a club and in good standing under the rules of the NRA. However, the entry of more than one team per fraternal organization will be subject to the availability of range facilities.

(f) *Civilian and Junior.* (1) One or more State Civilian Teams and one or more State Junior teams may represent the DXM-affiliated State association of each State, Commonwealth, Territory, and the District of Columbia. However, the entry of more than one team per organization will be subject to the availability of range facilities. Also, only one State Civilian team and State Junior team may be supported by the DCM through payment of travel and subsistence expenses on a cost sharing basis. Each State Civilian team in the National Trophy Pistol Team Match may include two police officers; however, the officers must not be members of a police organization that enters a team in the same match.

(2) One or more Civilian teams and one or more Junior teams may represent a club. The club must be organized according to AR 920–20 and in good standing on the rolls of the DCM, or it must be organized and in good standing under the rules of the NRA. The entry of more than one team per club will be subject to the availability of range facilities.

§ 544.37 Requirements for new shooters in National Trophy Team Matches.

(a) *Regular Service, Reserve, and National Guard Teams.* Pistol teams will have at least one firing member who has never fired before as a member of any team that has competed in the particular event. Rifle teams will have at least two such firing members.

(b) *Civilian and Police teams.* These teams will have at least one firing member who has never fired before as a member of any team that has competed in the particular event.

(c) *Service Academy, ROTC, and Junior teams.* There are no requirements for new shooters on these teams. Having fired as a member of a Service Academy ROTC or Junior team or as a junior member of a Civilian team is not considered previous participation. It will not disqualify a competitor from being a member of teams in paragraphs (a) and (b) of this section.

Subpart D—General Rules for National Trophy Matches

General Match Rules

§ 544.38 National Trophy and EIC match rules.

(a) NRA rules will apply unless changed by this regulation or as stated in paragraph (b) of this section.

(b) The XO, NM, or the corresponding official in another EIC match, may alter, the NRA rules for a particular match only if such action is needed to complete the match successfully. If any alterations are made, the XO, NM, or the corresponding official must immediately report the details in writing to the President, NBPRP (ATTN: DCM).

§ 544.30 Entries.

(a) Individual entries will be made in advance as prescribed in the match program. Post entries will be accepted if the established post entry fee is paid, range space is available, and the acceptance of the post entry will not interfere with match operations. The following individual entry forms may be obtained by request to the Statistical Director or the DCM. Forms that require personal information must be accompanied by a Privacy Act statement (AR 340–21, para 4–3 and 5 U.S.C. 552a(e)(3)).

(1) DA Form 1342 (Entry and Score Card for Individual Pistol Match) or a substitute form approved by the DCM.

(2) DA Form 1344 (Entry and Score Card for Individual Rifle Match) or a substitute form approved by the DCM.

(b) Team match entries will be made by team captains using official forms provided by the Statistical Director. Team captains will—

(1) Enter the following data on the team entry form:

(i) The full official name and address of the organization their team represents. Civilian, Junior, and Police teams will be recognized as representing a particular State, Commonwealth Territory, the District of Columbia, or DCM or NRA-affiliated organization only if attested to on the form by an official of the organization represented.

(ii) The category under which the team will enter according to § 544.34.

(iii) Further identification of the organization's team name (such as "Blue," "Jones," or the like) if the organization enters more than one team.

(iv) The designations of team officials and other members.

(v) Each member's correct first name, middle initial, last name, home address, and if applicable, the member's grade and official military mailing address.

(vi) A statement by the team captain that the team is certified under this regulation.

(2) Submit entry forms at the match site as prescribed in the match program. Entries by mail will not be accepted.

(c) Incomplete or inaccurate entry forms or the use of the wrong form may cause the entries to be refused or the individual or team entrant to be disqualified.

(d) Entries will be accepted on a first-come, first-served basis until range capacity is filled.

§ 544.40 Directives competitors must follow.

(a) The competitor must know and comply with this regulation, the Official Match Program, and the NRA rules and Match bulletins that apply.

(b) In team matches, the team captain will insure that team members comply with paragraph (a) of this section.

§ 544.41 Coaching.

Coaching is not permitted in individual matches, it is permitted only in team matches. Usually, coaching is permitted only within the team, but there are exceptions to this rule:

(a) Service members will coach teams of their respective Service, and only Service members may coach Service Academy and ROTC teams. They may also coach Police, Civilian, and Junior teams.

(b) Upon request by a Civilian, Junior, or Police team, the XO, NM, will assign a coach from among qualified and available Service personnel.

§ 544.42 Elimination of teams or individuals.

The XO, NM, or the corresponding official in matches may establish standards by which individuals and teams of the lowest standing may be eliminated after the first stage of a match is completed.

§ 544.43 Penalties.

(a) Any person interfering with or annoying a competitor on the firing line will be warned by a range official to stop. If the offender does not stop, he or she will be disqualified from that match and ordered off the range immediately.

(b) If the XO, NM, finds a competitor guilty of any of the offenses below, the competitor may be disqualified from competing further in the current National Trophy Matches. Further, the competitor may be denied any award won during the current matches. However, these penalties will be imposed only if the competitor is found guilty. The offenses are—

(1) Violating range safety regulations or the safety precautions prescribed in this regulation.

(2) Firing under an assumed name.

(3) Firing under a name other than the one on the entry form.

(4) Firing more than once for the same award.

(5) Falsifying scores or being an accessory to falsifying scores.

(6) Offering any person a bribe relating to a match.

(7) Evading the conditions prescribed for a match.

(8) Refusing to obey the instructions of a match official.

(9) Disorderly conduct.

(10) Being guilty of conduct that the XO, NM, considers a discredit to the National Matches, their sponsors, or the intended purposes of the matches.

§ 544.44 Competitors verifying their scores.

The competitor in individual matches and the team captain in team matches must verify the score card. Verification includes checking the names on the card, the value of each shot, and all other data and then signing the card. The signature acknowledges the card is correct. Should a competitor or team captain sign an incorrect score card or leave the firing line without signing the card, no challenge or protest concerning data recorded on the card will be allowed. If the competitor or team captain wants to protest data recorded on the card, he or she will write the word "Protested" above the signature and follow the procedure prescribed in § 544.46.

§ 544.45 Referees, scoring, and challenge procedures.

NRA rules cover the use of referees and scoring and challenge procedures. Exceptions are listed below.

(a) The Match Director will appoint an Official Referee and Assistant Referees are required, including Scoring Referees for Pistol matches.

(b) If a competitor (in individual matches) or a team captain (in team matches) is not satisfied with the score announced by the scorer, the competitor or team captain may challenge it. They must pay a challenge fee (paragraph (c) of this section) to have the Referee settle the disputed score. The Referee's decision wil be final. For pistol matches, the decision of the Scoring Referee is final. For rifle matches, the decision of the Pit Officer is final.

(c) The XO, NM, will establish the challenge fee. When the Referee's decision is not in favor of the competitor or team member, the challenge fee will be delivered to the XO, NM, for deposit into the National Match Fund. If the decision is in favor of the competitor, the challenge fee will be returned.

§ 544.46 Protests.

(a) Competitors (individual matches) or team captains (in team matches) may protest any decision or injustice that they believe unfairly affects the competition. Protests may be in such areas as competitor or team eligibility, the conditions of firing (including the

conditions under which another competitor is permitted to fire), or the equipment allowed. However, competitors or team captains may not protest the score of a target. In this case, they must challenge the score according to § 544.45.

(b) A protest must be made when the incident occurs and according to the steps below. Failure to comply with these steps may void a protest.

(1) State the complaint orally to the Chief Range Officer or to the Statistical Director, as appropriate, for a decision. If not satisfied with the decision, then follow paragraph (b)(2) of this section.

(2) State the complaint orally to the Official Referee for a decision. If not satisfied with that decision, carry out paragraph (b)(3) of this section within 2 hours after completing the match.

(3) File a formal, written protest with the Official Referee. State all the facts the protest is based on. As quickly as possible, the Official Referee must send this protest to the National Trophy Match Protest Committee. The Official Referee will include his or her own statement concerning the alleged facts, any other facts considered pertinent to the case, and copies of related documents such as entry forms and score cards.

(c) The National Trophy Match Protest Committee will sit at the match site. The committee will consist of three or more members appointed by the Match Director. The Match Director will not appoint competitors or team or match officials participating in the match being protested. The decision of the committee will be final.

§ 544.47 Bulletins.

Preliminary bulletins showing award winners will be published at the match site. Complete, final official bulletins showing the scores for all competitors, including all firing members of teams, will be published by the Statistical Director in coordination with the DCM/NMIC. The bulletins will be published as soon as possible after the matches are completed.

Team Match Rules

§ 544.48 Team composition.

Each team will include the number of firing members required by the match conditions to fire for score. A team may include up to two alternate firing members who are eligible to fire as substitutes. (Follow NRA Rule 12.4 when using substitutes.) Each team will have a designated team captain and may have a designated team coach. (See § 544.41 on when coaches are allowed and who may serve as a coach.) The captain and coach may be firing members or alternates if eligible, and must be listed as such on the team entry form. (§§ 544.37 and 544.38 discuss new shooter requirements and team member eligibility.)

§ 544.49 Team squadding.

(a) All teams will be assigned the same number of targets.

(b) In rifle team matches, slow fire will be conducted with two firers assigned to a single target. This is known as pair firing. If firing points are too narrow to permit this procedure, each team may be assigned one or more adjoining firing points, provided all teams fire concurrently. When enough targets are available, each team may be assigned more than one target. However, in this case, each team must be assigned the same number of targets.

(c) When two competitors are assigned to a single target (pair firing), they will fire alternately. The competitor on the right will fire first. A shot fired out of turn will be scored as a miss. A range official may require a left-handed competitor to be on the left of a pair.

(d) Team captains may place team members on assigned targets in any order they choose. They may change the order of a team member firing between stages, in each case notifying the scorer.

§ 544.50 Station and duties of team coaches.

(a) In the slow fire stages of rifle matches, the team coach's station will be between the pair on the firing line. If only one member is firing, the station will be directly behind the member. In rapid fire stages, the station will be directly behind the member firing.

(b) In pistol team matches, one coach is allowed for each target assigned the team. When the team is on the firing line, the team coach's station will be directly behind the team member or members firing. The team captain may act as a coach on the second target.

(c) In pair firing, the positions of the coach or competitors may not be shifted to form a windshield for a firer.

(d) When the team is on the firing line, coaches will be confined to the prescribed station and to the activities normally expected of a coach. Coaches may assist team members by calling shots, checking time and scores, ordering sight changes, and so on. However, coaches may not physically assist in loading, making sight changes, or in assuming positions. Also, they must control their voices and actions so as not to distrub other competitors. In communicating with the team, coaches will not use electrical or mechanical means.

§ 544.51 Stations of team captain.

When a team is on the firing line, the team captain and one assistant may be stationed in front of the ready line and slightly behind the coach. The captain is positioned there to observe team operations and the scorekeeping. The team captain may not assist in coaching unless occupying the coach's station. The captain may talk with the coach if it does not distract firers on the firing line. The captain may not talk to the firer.

Types of Firearms, Ammunition, and Other Equipment

§ 544.52 Description of arms to be used.

(a) US rifle, caliber .30 M1 as issued by the US Army, a commercial rifle of the same type and caliber, or either rifle if chambered for 7.62mm. The requirements for these rifles are listed below.

(1) The trigger pull must be at least 4½ pounds.

(2) A standard issue type wood or synthetic material stock and standard issue type leather or web sling must be used.

(3) Sling cuffs and sling pads are not permitted. Hooks, buttons, straps, or other similar devices fastened to the shooting coat for the purpose of holding the sling in place are prohibited.

(4) The gas system must be fully operational.

(5) The front and rear sights must be of US Army design for this rifle, but the dimensions of the rear sight aperture and front sight blade may vary.

(6) External alterations to the assembled arm are not allowed.

(7) These rifles may be modified internally to improve functioning and accuracy. A special match barrel may be installed. Synthetic materials may be applied to the interior of the stock to improve the bedding. Modifications must not interfere with the functioning of the rifle and safety devices as manufactured. Also, modifications must not change the configuration or appearance of the assembled arm.

(b) US rifle, caliber 7.62mm M14 series. Competitors may use the caliber 7.62mm M14 series as issued by the US Army or a commercial rifle of the same type and caliber. The requirements for these rifles are listed below.

(1) The trigger pull must be at least 4½ pounds.

(2) A standard issue type wood or synthetic material stock must be used. The stock must not be more than 2 inches wide at a point immediately to the rear of the front band and not more than 2.5 inches wide at the front and rear of the receiver. The width at the

receiver may be carried through to the butt plate. The stock must have a continuous taper from receiver to front band.

(3) A standard issue type leather or web sling must be used. Sling cuffs and sling pads are not permitted. Hooks, buttons, straps, or other similar devices fastened to the shooting coat for the purpose of holding the sling in place are prohibited.

(4) The gas system must be fully operational. To improve operation, the gas cylinder plug may be altered by making an axial hole that is approximately 1/64th inch in diameter in the center of the plug.

(5) The front and rear sights must be of US Army design for this rifle, but the rear sight aperture and front sight blade may vary in dimensions.

(6) The rifle must be adjusted so that automatic fire is impossible without removing the stock and changing or altering parts.

(7) The standard 20 or 30 round box magazine must be attached during the firing of all courses and in all positions.

(8) The hinged butt plate will be used only in the folded position.

(9) External alterations to the assembled arm are not allowed.

(10) The rifle may be modified internally to improve functioning and accuracy. A special match barrel may be installed. Synthetic materials may be applied to the interior of the stock to improve the bedding. Modifications must not interfere with the proper functioning of the rifle or safety devices as manufactured. Modifications must not change the configuration or appearance of the assembled arm.

(c) US rifle, caliber 5.56mm M16 series. Competitors may use the caliber 5.56mm M16 series as issued by the US Armed Forces or a commercial rifle of the same type and caliber. (The US rifle caliber 5.56mm M16 AZ or its commercial equivalents are not authorized under this regulation.) The requirements for these rifles are listed below.

(1) A bipod or grenade launcher will not be used.

(2) The trigger pull must be at least 5 pounds.

(3) A standard issue type stock, pistol grip, handguard, and web sling must be used.

(4) The rifle must be modified so that automatic fire is impossible without removing, replacing, or altering parts.

(5) The standard 20 or 30 round box magazine must be attached during the firing of all courses and in all positions.

(6) The gas system must be fully operational.

(7) External alterations to any part of the assembled arm are not allowed. However, an external device may be attached to prevent selector level movement to the auto position.

(8) The front and rear sights must be the standard design for this rifle as issued by the US Armed Forces.

(9) Hooks, buttons, straps, or other similar devices fastened to the shooting coat for the purpose of holding the sling in place are prohibited.

(d) US pistol, caliber .45M1911 or M1911A1. Competitors may use the caliber. 45M1911 or M1911A1 as issued by the US Armed Forces or a commercial pistol of the same type and caliber. The requirements for these pistols are listed below.

(1) A standard issue stock or wood or synthetic material, a similar stock of commercial manufacture, or another comparable design that does not interfere with the functional or maintenance features of the pistol must be used. The stock must be functionally identical for right or left hand use. It must not—

(i) Be more than 1½ inches thick between the right and left side extremities.

(ii) Cover the mainspring housing.

(iii) Prevent holstering in the standard service holster.

(2) The trigger pull must be at least 4 pounds.

(3) The pistol will have open sights only. The front sight must be non-adjustable. The rear sight may be adjustable and must have an open "U" or rectangular notch. The distance between sights, measured from the apex of the front sight to the rear face of the rear sight, must not be more than 7¼ inches.

(4) The forestrap of the grip may be checkered or stippled.

(5) The mainspring housing may be either the straight or the arched type, and may be checkered or stippled.

(6) Trigger shoes and trigger stops, internal or external, may be used.

(7) External finishes may be blued, parkerized, or bright. All other external alterations, additions, or changes to the appearance or configuration of the assembled arm are prohibited, except that the ejection part may be lowered to aid in ejection.

(8) The pistol may be modified internally to improve functioning and accuracy. (For example, a special match barrel may be fitted.) However, the modifications may not interfere with the proper functioning or safety devices of the arm as issued by the US Armed Forces. All safety features must operate properly.

§ 544.53 Rifles and pistols available.

Under rules announced by the DCM, National Match-grade rifles M14 and M1 and pistols M1911 series will be made available at the National Matches for temporary loan to participants.

§ 544.54 Checking firearm characteristics.

The competitor will insure that his or her firearm is safe and meets the requirements of § 544.52. At any time, the XO, NM, may direct the weighing of triggers with official test weights and may check other functions and component parts.

§ 544.55 Use of the same firearm by more than one competitor.

More than one competitor may use the same firearm in a match if squadding permits, but special squadding for this purpose is not authorized.

§ 544.56 Disabled firearm.

Within 30 minutes of the time the appropriate range official declares a firearm disabled, the competitor must repair or replace the firearm and report with it to a range official. A replacement firearm, if authorized, must be of the same type and caliber as the disabled firearm.

§ 544.57 Ammunition.

Range personnel will issue Government special match, match-grade, or service-grade service ammunition at the firing line. A single lot will be used if feasible, but more than one lot may be used if circumstances require. Competitors will fire only this ammunition and none other. Competitors will be disqualified if ammunition issued to them is altered in any way. Competitors will also be disqualified if any other ammunition is found about their person or equipment while they are on the firing line. However, if the match sponsor does not make 5.56mm ammunition available, competitors using the M–16 series rifle or commercial equivalent will use their own safe ammunition.

§ 544.58 Targets.

The following targets will be used:

(a) Pistol targets.

(1) For firing at 50 yards, use the Standard American 50-yard pistol target with the X, 10, 9, and 8 rings black (NRA B–6 target).

(2) For firing at 25 yards, use the Standard American 25-yard, rapid fire pistol target. Use the same dimensions as 544.5(a)(1) of this section, but with only the X, 10, and 9, rings black (NRA B–8 target).

(b) Rifle targets (except in the National Trophy Infantry Team Match).

(1) For firing at 200 yards or meters, use the standard US Army, short range (200 to 300 yards or meters), competitive rifle target with the X, 10, and 9 rings black (NRA SR target).

(2) For firing at 300 yards or meters, use the same target and distance as in 544.5(b)(1) of this section, except the aiming black is enlarged to include the 8 rings (NRC SR–3 target).

(3) For firing at 500 yards or meters, use the standard US Army target, midrange (500 yards or meters), competitive rifle target with the X, 10, 9, and 8 rings black (NRA MR target).

(4) For firing at 600 yards or meters, used the standard U.S. Army target, midrange (600 yards or meters), competitive rifle target with the X, 10, 9, 8, and 7 rings black (NRA MR–1 target).

(c) For the National Trophy Infantry Team Match, use the targets described in § 544.80(c)(4).

§ 544.59 Field glasses, and binoculars.

In the Infantry Match, the team captain and coach will not be permitted to use field glasses or binoculars of greater power or objective lens diameter than 10 x 50. Binoculars will be provided on the firing line for teams requiring them. The team captain and coach may use a telescope behind the assembly line for the purpose of reading the wind before the start of their team relay. These telescopes will not be used for coaching after the targets have appeared for the team and may not be displaced forward of the assembly line.

Firing

§ 544.60 Safety precautions.

(a) Arms will be loaded only at a firing point and only when directed by a range official for authorized firing.

(b) Unless competitors are at a firing point and the range official has given the order to load, they must keep—

(1) The magazines must be removed from the firearm.

(2) The slides or bolts locked back.

(3) The safeties of rifles on.

(c) During and until their arms are unloaded, competitors will—

(1) Keep their pistols at the raised (or ready) pistol position or hold them on the bench and pointed downrange at the target.

(2) Keep their rifles pointed downrange at the target.

§ 544.61 Organization of firing areas.

The firing areas on each range will be organized into a firing line, a ready line, and an assembly line.

§ 544.62 Station of competitors.

Each competitor will remain on or behind the assembly line until the competitor's assigned relay is called to the ready line or firing line. Without the Range Director's permission, only the following people will be allowed forward of the assembly line:

(a) The officials of the matches.

(b) NBPRP members.

(c) Team officials.

(d) Competitors on the ready line and on the firing line.

(e) Scorers.

(f) Others on duty.

§ 544.63 Target assignments and operations in the rifle matches.

(a) The Statistical Director will assign targets and relays. Competitors may obtain these assignments at times announced by the Statistical Director. Before the matches start, target assignments will be posted at a convenient location.

(b) Each team will assign two target pullers to work in the pits. Target pullers must be physically able and experienced in handling targets for high power rifles. Failure to provide capable target pullers may disqualify the team involved. Both target pullers will go to the target assigned to their team. Before the firing starts, one puller will be reassigned at random by the chief pit officer.

(c) Firing will not be interrupted for changes of pit personnel. Once firing has started, and if other conditions permit, the match will continue until all firing is completed.

§ 544.64 Slow target operation in rifle matches.

In individual matches, if a competitor believes a target is operating slowly he or she must complain to a line official. In team matches, the team captain makes the complaint. Complaints must be made before completing a firing stage and in ample time to enable the line official to check the time used. The line official will check the time used. The line official will check the time used by the competitor and by the target operators and make adjustments as needed. When there is no complaint to a line official by the competitor or team captain, it will be assumed the target was operated satisfactorily.

§ 544.65 Practice firing.

During the SAFS, the only firing permitted is that scheduled in the school curriculum. At other times, practice firing may be allowed if the match program states that it is allowed at the range and range personnel are available.

§ 544.66 Firing procedure and punctuality.

(a) Matches will be fired in relays. The XO, NM, may decide whether to allow infiltration squadding in slow fire stages of rifle matches.

(b) After a relay is called to the firing line, competitors on that relay will be allowed 3 minutes in which to prepare to fire. competitors will not be allowed to take positions on the firing line after the 3-minute preparation time expires, and they will lose their right to fire if they arrive after that time. They may regain their right to fire only if they present satisfactory evidence to the XO, NM, that the delay was the fault of the range operating personnel.

(c) In team matches, only the first pair of competitors for a team need to be present at the time the firing is scheduled to commence.

§ 544.67 Firing positions.

NRA Rule 5.5 on firing positions will apply. The rules for rifles are as follows:

(a) *Standing.* The sling must be attached to the rifle at both standard attachment points, in the parade position. On the M–14 rifle, the sling may rest along either the side or the bottom of the magazine. The sling may not be used for support, except as provided for in the National Trophy Infantry Team Match rules.

(b) *Kneeling.* Use of a kneeling roll or pad is prohibited.

(c) *Using ground cloths or ground pads.* Ground cloths or ground pads may be used if they do not provide artificial support. They may not be used in the National Trophy Infantry Team Match.

§ 544.68 Loading and reloading the rifle in rapid fire.

NRA Rule 9.22 applies in all matches except the National Trophy Infantry Team Match. In this match, team captains will direct loading and reloading.

§ 544.69 Unauthorized firing.

No firing is allowed except at authorized targets in prescribed practice or competition and under the supervision of assigned officials. Violation of this rule may disqualify the offender for the rest of the matches.

§ 544.70 Time limits and extensions.

(a) Time limits are prescribed in NRA Rules, section 8.

(b) The range official may extend the time in the slow fire stages if delays are caused by—

(1) Target malfunctions.

(2) Slow or improper target operation.

(3) Reasons over which the competitor or team has no control.

§ 544.71 Sighting shots.

Sighting shots are not allowed in any National Trophy Matches.

§ 544.72 Competitors serving as range officials.

In the match program, the Match Director or the Range Director may require competitors to score, operate, or mark targets or serve as range officials; in team matches, they may require a team of furnish scorers for teams firing on adjacent targets. The XO, NM, may disqualify from further participation a competitor who is detailed to perform such duties and fails to do so satisfactorily.

Subpart E—Program for the National Trophy Matches

§ 544.73 The President's Pistol Match.

Table 5–1 in Appendix D of this part gives the course of fire for this match.

§ 544.74 National Trophy Individual Pistol Match.

Competitors will use the National Match Pistol Course as the course of fire. Table 5.2 in Appendix D of this part gives this course of fire.

Other EIC individual pistol matches will schedule this course of fire.

§ 544.75 National Trophy Pistol Team Match.

(a) *Team composition.* Four members fire for the team's score.

The team will consist of a team captain, team coach, four firing members, and up to two alternates.

(b) *Course of fire.* Each firing member will use the National Match Pistol Course (table 5–2 in Appendix D of this part).

§ 544.76 The President's Rifle Match.

Table 5–3 in Appendix D of this part gives the course of fire for the President's Rifle Match.

§ 544.77 National Trophy Individual Rifle Match.

(a) Course A is the National Match Rifle Course. Only Course A will be scheduled in the National Trophy Matches. Table 5–4 in Appendix D of this part gives this course of fire. Other EIC individual rifle matches will consist of the National Match Rifle Course A except as described in paragraph (b) of this section.

(b) Course B is restricted to the M16-series rifle or commercial rifle of the same type and caliber (§544.51). This course may be scheduled for EIC individual rifle matches other than those in the National Trophy Matches. Table 5–5 in Appendix D of this part gives this course of fire.

§ 544.78 National Trophy Rifle Team Match.

(a) *Team composition.* Six member fire for the team's score. The team will consist of a team captain, a team coach, six firing members, and two alternates.

(b) *Course of fire.* Course A of the National Match Rifle Course will be used for each firing member. Table 5–4 in Appendix D of this part gives this course of fire.

§ 544.79 National Trophy Infantry Team Match.

(a) *Team composition.* Six members fire for the team's score. The team will consist of a team captain, team coach, six firing members, and two alternates.

(b) *Course of fire.* Table 5–6 in Appendix D of this part gives the course of fire for this match.

(c) *Conditions.* (1) A sling may be used for support in all positions.

(2) On the 600-yard firing line, 384 rounds of ammunition of one caliber will be issued to each team. This ammunition is the team's total for the match. The team captain will divide the ammunition among firing members and stages and decide the number of rounds to be loaded into clips or magazines.

(3) Each team will use eight adjoining targets. Gaps in the target line will separate one team's targets from another.

(4) For firing at 600 and 500 yards, a standard 600-yard target will be pasted on a standard competitive target frame. The face of the target will be reversed to display a solid white background. The Army "E" silhouette target will be pasted on this background and centered horizontally, with the top of the silhouette 13 inches below the top of the frame. For firing at 300 and 200 yards, the Army "F" silhouette target will l pasted over the face of a standard 200-yard target, with the top of the silhouette located at the top of the 8 ring.

(5) Teams will take firing positions on the 600-yard firing line as directed by the team officials. Only the captain, coach, and firing members will be permitted on the firing line during the match. After teams are in firing position with rifles loaded and locked, they may start firing when the targets appear. The targets will be withdrawn after 50 seconds. Between stages, teams will move forward abreast in a line. Their rifles will be unloaded, magazines removed, bolts open, and muzzles elevated and pointed downrange. The firing procedure at each range will be the same as those at 600 yards. Each relay will complete the match before the next relay is called to the 600-yard firing line.

(6) Scoring. (i) All scores will be recorded on the firing line at the end of each stage. Spotters will indicate hits on the silhouettes only.

(ii) Hits on the silhouettes will count 4 points at 600 yards, 3 points at 500 yards, 2 points at 300 yards, and 1 point at 200 yards. Hits outside the silhouettes will not be scored or marked.

(iii) A bonus for distribution will be computed. At each range, count the number of silhouette targets that contain six or more hits each. Square that number, then add the square to the total hit score for that range.

(iv) Ties will be broken by the highest team score at the longest range. If the tie cannot be broken by that score, use the highest team score at the next longest range, and so on.

(7) No alibis will be allowed for misfires, disabled pieces, or other failures of range or team equipment or personnel.

(8) Telescopes and field glasses may be used as follows:

(i) Before the start of the team's relay, the team captain and coach may use a telescope behind the assembly line. These telescopes will neither be moved forward of the 600-yard assembly line nor be used for coaching after the team's preparation period starts.

(ii) After the team's preparation period starts, the captain and coach may use field glasses. However, the power and objective lens diameter of the glasses must not be more than 10 x 50mm. Field glasses will be provided on the firing line for teams requiring them.

(9) An assistant range officer will be assigned for each team to enforce safety regulations and supervise the scoring.

Subpart F—Awards

§ 544.80 General.

(a) *All EIC matches.* The providing of awards that are prescribed and earned always depends on whether funds are available.

(b) *National Trophy Matches.* (1) Awards for the National Trophy Matches will normally be given at the time and place of the National Matches.

(i) Permanent trophies will remain in the DCM's custody. They will be engraved with the names of the winners.

(ii) Winners will be awarded plaques or miniatures of the trophies. These plaques and miniatures will be engraved at the DCM's expense and according to the DCM's instructions.

(iii) In certain matches, categories, or award groups, a Secretary of the Army Trophy Firearm award will be given to the highest scoring competitor who has never received this award before. No competitor may receive more than one of these awards for a match. This award is subject to restrictions of law.

(iv) Further match awards may be authorized from time to time. Such awards and the conditions for receiving them will be published in the Match Program or in the Match Director's Bulletins.

(2) Correspondence concerning awards for the National Trophy Matches will be addressed to the Director of Civilian Marksmanship, Office of the Secretary of the Army, HQDA(SFDM), Washington, DC 20314–0100.

§ 544.81 Participation requirements for certain National Trophy Match awards.

In certain National Trophy Matches, awards are given for a named category or special awards group (such as Navy, Women, Infantry, Junior, or Police). These awards will be given only if the required number of competitors from the category or award group fire in the match. The required number are listed below.

(a) *Individual matches.* (1) Winner: At least 5 competitors.

(2) Second place: At least 8 competitors.

(3) Third place: At least 12 competitors.

(b) *Team matches.*

(1) Winner: At least 3 teams.

(2) Second place: At least 5 teams.

(3) Third place: At least 7 teams.

§ 544.82 Awards for the President's Pistol Match.

(a) The match winner will be awarded the President's Trophy Plaque, a congratulatory letter from the President of the United States, and a President's Hundred Metallic Brassard.

(b) The match winner may also be awarded a Secretary of the Army Trophy Firearm if the requirements in § 544.80(b)(i)(ii) are met.

(c) The highest scoring 15 percent of all competitors who fire in the match will be designated "The President's Hundred." They will be awarded a "President's Hundred" metallic brassard. Not more than 100 of these awards will be given.

§ 544.83 Awards for the National Trophy Individual Pistol Match.

(a) The match winner will be awarded the Custer Trophy Plaque and a gold medal.

(b) The highest scoring Reserve competitor will be awarded the U.S. Army Reserve Memorial Trophy Plaque.

(c) The highest scoring National Guard competitor will be awarded the National Guard Association Trophy Plaque.

(d) The highest scoring Service Academy and ROTC competitor will be awarded the Intercollegiate Trophy Plaque.

(e) The highest scoring Police competitor will be awarded the Ancient Archer Trophy Plaque.

(f) The highest scoring Civilian competitor will be awarded the Silver Bowl Trophy Plaque.

(g) The highest scoring Junior competitor and Women competitor will be awarded a trophy plaque. These plaques will be named at a later date.

(h) Per § 544.80(b)(i)(ii), a Secretary of the Army Trophy Firearm award may be awarded to the highest scoring competitor in—

(1) The match (match winner).

(2) Each of the Regular Service, Reserve, National Guard, Service Academy and ROTC, Police, Civilian, Junior, and Woman competitor categories (if not the match winner).

§ 544.84 Awards for the National Trophy Pistol Team Match.

Listed in this section are the trophy awards following the type of category. Also listed are what second and third place teams and designated competitors will receive.

(a) *Winning team awards—The Gold Cup Trophy.*

(1) The winning team will be awarded Gold Cup Trophy Plaques and gold metals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(b) *Reserve Components awards—The U.S. Coast Guard Memorial Trophy.*

(1) The highest scoring Reserve Component team will be awarded U.S. Coast Guard Memorial Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(c) *Service Academy and ROTC awards—The Alden Partridge Trophy.*

(1) The highest scoring Service Academy and ROTC team will be awarded Alden Partridge Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(d) *Police awards—The American Indian Trophy.*

(1) The highest scoring Police team will be awarded American Indian Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(e) *Civilian awards—The Oglethorpe Trophy.*

(1) The highest scoring Civilian team will be awarded Oglethorpe Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(f) *Junior awards—(trophy to be named).*

(1) The highest scoring Junior team will be awarded trophy plaques (to be named at a later date) and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(g) *Awards for highest scoring competitors.*

(1) The highest scoring competitor will be awarded the Military Police Corps Trophy Plaque.

(2) The highest scoring Army competitor (Regular, A Reserve, or Army National Guard) will be awarded the General Mellon Trophy Plaque.

(3) The highest scoring Air Force competitor (Regular, Reserve, or Air National Guard) will be awarded the General Carl Spaatz Trophy Plaque.

(h) *Awards for the National Civilian Pistol Team.* The National Civilian Pistol Team will be awarded Elihu Root gold medals. This team will consist of the four highest scoring individual Civilian competitors in this match and the coach and captain of the highest scoring Civilian team.

§ 544.85 Additional National Trophy Pistol Match awards.

The competitors with the highest aggregate score in the National Trophy Individual Pistol Match and the National Trophy Pistol Team Match will receive the following awards:

(a) The Regular Army competitor will be awarded the FORSCOM Pistol Trophy Plaque.

(b) The Navy competitor (Regular or Reserve) will be awarded the Fleet Admiral Nimitz Trophy.

(c) The Marine competitor (Regular or Reserve) will be awarded the McMillan Trophy Plaque.

(d) The Civilian competitor will be awarded the Anheuser-Busch Trophy Miniature.

§ 544.86 Awards for the President's Rifle Match.

(a) The match winner will be awarded a President's Trophy Plaque, a congratulatory letter from the President of the United States, and a President's Hundred Metallic Brassard.

(b) The match winner may also be awarded a Secretary of the Army

Trophy Firearm, subject to the conditions in § 544.81(b)(1)(iii).

(c) The highest scoring 15 percent of all competitors who fire in the match will be awarded the "President's Hundred" metallic brassard. This group will be designated "The President's Hundred." Not more than 100 of these awards will be given.

§ 544.87 Awards for the National Trophy Individual Rifle Match.

The following awards are for Course A:

(a) The match winner will be awarded the Daniel Boone Trophy Plaque and a gold medal.

(b) The highest scoring Reserve competitor will be awarded the Citizen Soldier Trophy Plaque.

(c) The highest scoring National Guard competitor will be awarded the National Guard Association Trophy Plaque.

(d) The highest scoring Service Academy and ROTC competitor will be awarded the Hearst Rifle Trophy Plaque.

(e) The highest scoring Police competitor will be awarded a trophy plaque to be named later.

(f) The highest scoring Civilian competitor will be awarded the Nathan Hale Trophy Plaque.

(g) The highest scoring Junior competitor will be awarded the Golden Eagle Trophy Plaque.

(h) The highest scoring Woman competitor will be awarded a trophy plaque to be named later.

(i) The highest scoring Army competitor (Regular, Reserve, or National Guard) will be awarded the Association of the United States Army Trophy Plaque.

(j) The highest scoring Marine competitor (Regular or Reserve) will be awarded the Coast Artillery Trophy Plaque.

(k) The highest scoring Air Force competitor (Regular, Reserve, or National Guard) will be awarded the Lieutenant Paul J. Roberts, Jr. Memorial Trophy Plaque.

(l) The highest scoring Infantry competitor (Regular Army, Army Reserve, or Army National Guard) will be awarded the 25th Infantry Division Trophy Plaque.

(m) Per a Secretary of § 544.80(b)(iii) the Army Trophy Firearm may be awarded to—

(1) The match winner.

(2) The highest scoring competitor in each of the Regular Service, Reserve National Guard, Service Academy and ROTC, Police, Civilian, Junior, and Woman categories.

§ 544.88 Awards for the National Trophy Rifle Team Match.

Listed in this section are the trophy awards following the type of category. Also listed are what second and third place teams and designated competitors will receive.

(a) *Awards for the winning team—The National Trophy.*

(1) The winning team will be awarded National Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(b) *Reserve Component awards—The Hilton Trophy.*

(1) The highest scoring Reserve Component team will be awarded Hilton Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(c) *Service Academy and ROTC awards.* (1) The highest scoring Service Academy and ROTC team will be awarded NBPRP Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(d) *Civilian awards—The Soldier of Marathon Trophy.*

(1) The highest scoring Civilian team will be awarded Soldier of Marathon Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(e) *Junior awards—The Minuteman Trophy.*

(1) The highest scoring Junior team will be awarded Minuteman Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(f) *Awards for highest scoring individual competitors.*

(1) The highest scoring competitor will be awarded the Pershing Trophy Plaque.

(2) The highest scoring Army competitor (Regular, Reserve, or National Guard) will be awarded the Rattlesnake Trophy Plaque.

(3) The highest scoring Air Force competitor (Regular, Reserve, or National Guard) will be awarded the General Thomas D. White Trophy Plaque.

(g) *Awards for the National Civilian Rifle Team.* The National Civilian Rifle Team will be awarded Elihu Root gold medals. This team will consist of the six highest scoring individual Civilian competitors and the coach and captain of the highest scoring Civilian team.

§ 544.89 Additional National Trophy Rifle Match awards.

The competitors with the highest aggregate score in the National Trophy Individual Rifle Match and the National Trophy Rifle Team Match will receive the following awards:

(a) The Regular Army competitor will be awarded the FORSCOM Rifle Trophy Plaque.

(b) The Navy competitor (Regular or Reserve) will be awarded the Admiral Arleigh A. Burke Trophy Plaque.

(c) The Marine competitors (Regular or Reserve) will be awarded the General Shepherd Trophy Plaque.

(d) The Civilian competitor will be awarded the Pietroforte Trophy Plaque.

§ 544.90 Awards for the National Trophy Infantry Team Match.

Listed in this section are the trophy awards following the type of category. Also listed are what second and third place teams and designated competitors will receive.

(a) *Winning team awards—The Infantry Trophy.*

(1) The winning team will be awarded Infantry Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(b) *Reserve Component/team awards—The Celtic Chieftain Trophy.*

(1) The highest scoring Reserve Component team will be awarded Celtic Chieftain Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(c) *Civilian team awards—The Leatherneck Trophy.*

(1) The highest scoring Civilian team will be awarded Leatherneck Trophy Plaques and gold medals.

(2) The second place team will be awarded silver medals.

(3) The third place team will be awarded bronze medals.

(d) *Junior team awards—Junior Infantry Team Trophy.*

(1) The highest scoring Junior team will be awarded trophy plaques (to be named at a later date) and gold medals.

(2) The second place team will be award silver medals.

(3) The third place team will be awarded bronze medals.

§ 544.91 Special medals in National Trophy Individual Pistol and Rifle Matches.

(a) The highest 10 percent of Civilians who fire in the National Trophy Individual Pistol or National Trophy Individual Rifle Match, but who do not receive match awards or the place medals prescribed in § 544.95 below, will be given bronze medals. The medal for the pistol match will depict the Silver Bowl Trophy and the medal for the rifle match will depict the Nathan Hale Trophy.

(b) The highest 10 percent of Juniors who fire in the National Trophy Individual Pistol or National Trophy Individual Rifle Match, but who do not receive match awards or the place medals prescribed in § 544.95, will be given bronze medals. The medal for the pistol match will depict the Junior Pistol Trophy and the medal for the rifle match will depict the Golden Eagle Trophy.

(c) The highest 10 percent of Women who fire in the National Trophy Individual Pistol Match or the National Trophy Individual Rifle Match, but who do not receive match awards or the place medals prescribed in § 544.95, will be given bronze medals. The medal for the pistol match will depict the Women's Pistol Trophy and the medal for the rifle match will depict the Women's Rifle Trophy.

(d) The highest 10 percent of Police competitors who fire in the National Trophy Individual Pistol Match or the National Trophy Individual Rifle Match, but who do not receive match awards or the place medals prescribed in § 544.95, will be given bronze medals. The medal for the pistol match will depict the Ancient Archer Trophy and the medal for the rifle match will depict the Police Rifle Trophy.

§ 544.92 Place medals in National Trophy team matches.

Place medals will be given to the captain, coach, and firing members of the highest 15 percent of all teams firing in the match. Medals will be given as follows:

(a) The winning team will be awarded gold medals.

(b) The second place team will be awarded silver medals.

(c) The third place team will be awarded bronze medals.

(d) The remainder of the 15 percent will be awarded bronze medals.

§ 544.93 Place medals in individual EIC matches.

(a) For the EIC matches listed in § 544.94, place medals will be awarded to the highest scoring 10 percent of all non-Distinguished competitors competing in the match. These medals will be awarded as follows:

(1) The highest one-sixth of the 10 percent will be gold.

(2) The next highest one-third of the 10 percent will be silver.

(3) The remainder of the 10 percent will be bronze.

(b) Competitors who have attained or are qualified for Distinguished designation with the arm concerned will be ranked among the non-Distinguished competitors according to score. Each will be awarded a medal of the same type (gold, silver or bronze) as the non-Distinguished competitor next below him or her.

(1) For rifle, Daniel Boone Trophy medals, will be awarded.

(2) For pistol, General Custer Trophy medals, will be awarded.

§ 544.94 Distinguished designation and badge awards.

(a) Competitions in which credits toward Distinguished designation may be earned and for which EIC badges may be awarded are—

(1) The National Trophy Individual Pistol and National Trophy Individual Rifle Matches.

(2) Certain Service matches not open to civilians.

(3) NRA Regional and State Championships.

(b) For credits earned in an EIC match to be recognized, the match must—

(1) Conform to all parts of this regulation that apply.

(2) Include at least 10 non-Distinguished competitors eligible according to this regulation.

(3) Be completed.

(c) The following rules apply to Civilian competitors competing for the Distinguished Designation and Badge award:

(1) In any calendar year, these competitors may compete in not more than four EIC matches for pistol and not more than four for rifle. The matches they may enter are listed as follows:

(i) The National Trophy Individual Match.

(ii) NRA Regional or State championships. Civilian competitors may not compete in more than three NRA Regional or State championship EIC matches a year.

(iii) A Service-sponsored match. If entry in such a match is possible, the match will constitute as one of the three matches authorized in 544.94(b) of this section.

(2) The DCM will award credit points toward Distinguished designation to competitors who earn place medals according to paragraph (b) of this section. Points will be awarded as follows:

(i) For any place medal in a National Trophy Individual Match, 10 points will be awarded. These points will be awarded to civilians only.

(ii) For place medals in other EIC matches listed in paragraph (a)(1) of this section, 10 points will be awarded for gold medals, 8 points will be awarded for silver medals, and 6 points will be awarded for bronze medals.

(3) The DCM will award the Distinguished Badge when a competitor has earned 30 or more credit points with the arm concerned.

(d) Competitors in the Regular Service, Reserve, National Guard, and Service Academy categories can earn credits toward the Distinguished designation and will be awarded the appropriate badges according to the regulations of their Service.

§ 544.95 EIC badges.

(a) The DCM will award a bronze EIC badge to Civilian competitors when they first earn credit points toward the Distinguished designation. They must earn their points according to § 544.94. The DCM will award a silver EIC badge to these competitors when they have earned a total of 20 or more credit points.

(b) Competitors in the Regular Service, Reserve, National Guard, and Service Academy categories will be awarded EIC badges according to the regulations of their Service.

§ 544.96 Marksmanship qualification awards.

(a) The DCM will award the Basic Marksmanship Qualification Badge to ROTC, Police, Civilian, Junior and Woman competitors who fire qualifying scores in the National Trophy Individual Pistol or Rifle Matches. The badge will show qualification as Expert, Sharpshooter, or Marksman. The DCM may also award, separately or along with the badge, a bar that will show whether a rifle or pistol was used. Qualifying scores for these awards are listed below:

(1) Pistol awards—possible 300 points.

(i) Pistol Expert—270 points.

(ii) Pistol Sharpshooter—240 points.

(iii) Pistol Marksman—210 points.

(2) Rifle awards—possible 500 points.

(i) Expert Rifleman—450 points.

(ii) Rifle Sharpshooter—400 points.

(iii) Rifle Marksman—350 points.

(b) The DCM will present these awards after the close of the matches.

§ 544.97 Scores allowed for club qualification firing.

To meet the requirements in AR 920–20 on clubs' yearly qualification firing, clubs enrolled by the DCM may count their members' scores from the National Matches and/or EIC matches (§ 544.95).

Appendix A—Related Publications

Approved courses of fire for civilian marksmanship training for clubs and schools enrolled with the DCM (These courses are available from HQDA(SADM), WASH DC 20314.)

AR 5–9 (Intraservice Support Installation Area Coordination)
AR 140–125 (Marksmanship Training and Competitive Program)
AR 145–1 (Senior ROTC Program: Organization, Administration, and Training)
AR145–2 (Junior Program and National Defense Cadet Corps: Organization, Administration, Operations, and Support)
AR 340–21 (The Army Privacy Program)
AR 350–6 (Army-Wide Small Arms Competitive Marksmanship)
AR 600–20 (Army Command Policy and Procedures)
AR 600–23 (Nondiscrimination in Federally Assisted Programs)
AR 622–10 (Competition in Small Arms)
AR 672–5–1 (Military Awards)
AR 700–131 (Loan of Army Materiel)
AR 725–1 (Special Authorization and Procedures for Issues, Sales and Loans)
AR 735–5 (Basic Policy and Procedures for Policy Accounting)
AR 735–11 (Accounting for Lost, Damaged and Destroyed Property)
AR 920–15 (National Board for the Promotion of Rifle Practice and Office of Director of Civilian Marksmanship)
AR 920–20 (Promotion of Practice with Rifled Arms)
AR 920–25 (Rifles M14M and M14NM, for Civilian Marksmanship Use)
AR 900–35 (National Match Fund) DODD 1025.1 (DOD Civilian Rifle and Pistol Marksmanship Training Program) (This DODD can be obtained from HQDA (SADM), WASH DC 20314 0100)

NRA Official Rule Books for Pistol and Highpower Rifle (These books can be obtained from the National Rifle Association, 1600 Rhode Island Avenue, NW., Washington, DC 20036).

Appendix B—Trophies of the National Board for the Promotion of Rifle Practice B-1. The President's Pistol Trophy

This trophy was purchased by the NBPRP in 1981. It consists of a disc of white New England marble on a hardwood base. The Presidential Seal is carved, gilded, and mounted on the disc. This trophy is awarded to the winner of the President's Pistol Match.

B–2. The General Custer Trophy

The General Custer Trophy was purchased by the NBPRP in 1926. It is a bronze statuette of General George Armstrong Custer (1828–1876) firing a pistol Match. The trophy is awarded to the winner of the National Trophy Individual Pistol Match.

B–3. The US Army Reserve Memorial Trophy

The US Army Reserve Memorial Trophy was donated to the NBPRP by the US Army Reserve in 1969. The trophy depicts the citizen soldier leaving his civilian occupation to take up arms in defense of his country, and is in memory of those who have given their lives in this duty. It is awarded to the highest scoring Reserve competitor in the National Trophy Individual Pistol Match.

B–4. The National Guard Association Trophy (Pistol)

The National Guard Association Trophy (Pistol) was presented to the NBPRP in 1983, replacing the original trophy that was established in 1979. The trophy depicts a helmeted Guardsman in bronze, mounted on a two-tiered walnut base. This trophy is awarded to the highest scoring National Guard competitor in the National Trophy Individual Pistol Match.

B–5. The Intercollegiate Trophy

The Intercollegiate Trophy was purchased by the NBPRP in 1958. The trophy is a sterling siver urn, depicting a battle scene in what is believed to be the war between the Romans and Celts in A.D. 43–44. It is awarded to the highest scoring Service Academy or ROTC competitor in the National Trophy Individual Pistol Match.

B–6. The Ancient Archer Trophy

The Ancient Archer Trophy was purchased by the NBPRP in 1962. The trophy is made of bronze and depicts an ancient archer stringing his bow. It is awarded to the highest scoring Police competitor in the National Trophy Individual Pistol Match.

B–7. The Silver Bowl Trophy

The Silver Bowl Trophy was designed and purchased by the NRA in 1956 and presented to the NBPRP for award that year. It is a large, sterling silver bowl, embossed on the rim and pedestal with floral leaf design. It is awarded to the highest scoring Civilian competitor in the National Trophy Individual Pistol Match.

B–8. The Gold Cup Trophy

The Gold Cup Trophy was presented to General Jonh J. Pershing by the minister of War of the Republic of China as the award for first place in the pistol shooting match among the Allies at Le Mans, France in 1919. It was won by the American Expeditionary Force (AEF) Pistol Team. The team then presented it for annual competition in the National Trophy Pistol Team Match. The trophy is a helment-shaped gold cup, engraved and mounted on an ebony base. The Gold Cup Trophy is awarded to the winning team in the National Trophy Pistol Team Match.

B–9. The US Coast Guard Memorial Trophy

The U.S. Coast Guard Memorial Trophy was presented to the NBPRP in 1957 by the Coast Guard. This trophy commemorates Coast Guard personnel who lost their lives while in that Service. It is a replica of the Coast Guard Memorial located in Arlington Cemetery, with statuettes of Coast Guard personnel holding service pistols on either side of the central pyramid. The central pyramid is cast in bronze and heavily plated in silver with an oxidized finish. It is awarded to the highest scoring Reserve Component team in the National Trophy Pistol Team Match.

B–10. The Alden Partridge Trophy

The Alden Partridge Trophy was presented to the NBPRP in 1971 by the president of Norwich University, Northfield, Vermont. The trophy is a bronze bust of General Alden Partridge, founder and first president of Norwich University. This university was the first institution of higher learning to include military training as a part of its curriculum and is credited as the founding school of what is now known as the ROTC program. This trophy is awarded to the highest scoring Service Academy or ROTC team in the National Trophy Pistol Team Match.

B–11. The American Indian Trophy

The trophy was donated to the NBPRP in 1962 by the YMCA of Greenwich, Connecticut. It is a bronze of Sinte Maza, "Iron Tail," an Oglala Sioux Indian. It is awarded to the highest scoring Police team in the National Pistol Team Match.

B–12. The Oglethorpe Trophy

The Oglethorpe Trophy was presented to the NBPRP in 1962 by the River Bend Rifle and Gun Club of Atlanta. The trophy is a sterling silver bowl mounted on a walnut base and was named in honor of the founder and first Governor of Georgia, James Oglethorpe. The trophy is awarded to the highest scoring Civilian team in the National Trophy Pistol Team Match.

B–13. The Military Police Corps Pistol Trophy

The Military Police Corps Trophy was presented to the NBPRP in 1956 through private subscription among the officers and enlisted members of the Military Police Corps. This trophy is a specially designed bronze relief depicting the worldwide mission of the Military Police Corps. Crossed pistols are mounted at the apex of the trophy and are exact duplicates of the original pistols used in the design of the Corps insignia. The trophy is awarded to the highest scoring competitor in the National Trophy Pistol Team Match.

B–14. The General Mellon Trophy

The General Mellon Trophy was presented to the NBPRP in 1958 by General Richard K. Mellon, Deputy Adjutant General, Commonwealth of Pennsylvania. The Mellon Trophy is a miniature of a giant Kodiak bear in an upright and alert pose. This trophy is awarded to the highest scoring Army Competitor (Regular or Reserve) in the National Trophy Pistol Team Match.

B–15. The General Carl Spaatz Trophy

This trophy was presented to the NBPRP in 1961 by the US Air Force in honor of General Carl Spaatz, Chief of Staff of the Air Force from 1947 to 1948. It is a large silver globe mounted on an ebony base and surrounded by four silver eagles. This trophy is awarded to the highest scoring Air Force competitor

(Regular, Reserve, or Air National Guard) in the National Trophy Pistol Team Match.

B–16. The US Army Forces Command Pistol Trophy

The US Army Forces Command Pistol Trophy was presented to the NBPRP by the Commanding General, US Army Forces Command. The mounted brace of pistols are circa 1900 Colt Army special caliber .38 revolvers. The trophy was designed and constructed by artisans of Rock Island Arsenal and is awarded to the Regular Army competitor making the highest aggregate score in the National Individual Pistol Match and National Trophy Pistol Team Match.

B–17. The Fleet Admiral Nimitz Trophy

The Fleet Admiral Nimitz Trophy was presented to the NBPRP in 1978 by the US Navy through private subscription among the officers and enlisted members of the Navy and Naval Reserve. The trophy is the pistol presented to Fleet Admiral Chester W. Nimitz in 1921 by his classmates at the US Naval Academy. It is awarded to the Navy competitor (Regular or Reserve) making the highest aggregate score in the National Trophy Individual Pistol Match and National Trophy Pistol Team Match.

B–18. The McMillan Trophy

The McMillan Trophy was presented by the US Marine Corps to the NBPRP in 1978 for award in the Service pistol competitions sponsored by the NBPRP. The trophy honors Lieutenant Colonel William W. McMillan, an outstanding Marine Corps shooter for over 20 years. It is awarded to the Marine competitor (Regular or Reserve) making the highest aggregate score in the National Trophy Individual Pistol Match and National Trophy Pistol Team Match.

B–19. The Anheuser-Busch Trophy

This trophy is a sterling silver bowl, emblazoned with the Anheuser-Busch eagle and mounted on a hardwood base. It is awarded to the Civilian competitor making the highest aggregate score in the National Trophy Individual Pistol Match and the National Trophy Pistol Team Match.

B–20. The President's Rifle Trophy

This trophy was purchased by the NBPRP in 1977. It consists of a disc of black New England slate mounted on a hardwood base. On the disc, the Presidential Seal is carved and gilded. The President's Trophy is awarded to the winner of the President's Rifle Match.

B–21. The Daniel Boone Trophy

The Daniel Boone Trophy was purchased by the NBPRP in 1925. The trophy is a bronze statue of the marksman Daniel Boone, American Pioneer in Kentucky and Missouri (1734–1820), with his rifle. The trophy is awarded to the winner of the National Trophy Individual Rifle Match.

B–22. The Citizen Soldier Trophy

The Citizen Soldier Trophy was presented to the NBPRP in 1984 by the Reserve Officers' Association of the United States. The trophy is flanked by miniature replicas of the Liberty Bell. Affixed to the front of the trophy, encompassing a large Reserve Officers' Association seal, are the five insignia of the Armed Services. The trophy is awarded to the highest scoring Reserve competitor in the National Trophy Individual Rifle Match.

B–23. The Hearst Rifle Trophy

The present Hearst Rifle Trophy was donated by William Randolph Hearst to the National Matches in 1930. The Hearst Rifle Trophy is a 17 century Spanish flintlock carbine in blunderbuss style, inlaid with ivory and mother of pearl and having a chased lock. This trophy is awarded to the highest scoring Service Academy or ROTC competitor in the National Trophy Individual Rifle Match.

B–24. The Nathan Hale Trophy

The Nathan Hale Trophy was presented to the NBPRP by the NRA in 1956. It is a bronze figure created in 1890, of the Revolutionary War hero, Captain Nathan Hale. It is awarded to the highest scoring Civilian in the National Trophy Individual Rifle Match.

B–25. The Golder Eagle Trophy

The Golder Eagle Trophy was purchased by the NBPRP in 1963. The trophy is a golden eagle, ascending, with wings elevated and displayed. The eagle is mounted on a walnut base. The trophy is awarded to the highest scoring Junior competitor in the National Trophy Individual Rifle Match.

B–26. The Association of the United States Army Trophy

The Association of the US Army Trophy was presented to the NBPRP in 1962 by the Association of the United States Army. The trophy is a 16-inch bronze statuette of a US Army soldier mounted on a wooden base. The trophy is awarded to the highest scoring Army competitor (Regular, Reserve, or National Guard) in the National Trophy Individual Rifle Match.

B–27. The Coast Artillery Trophy

The Coast Artillery Trophy was presented to the NBPRP by the Commandant, United States Marine Corps, in 1961. The trophy is a sterling silver cup with figures of Marines in standing and kneeling positions firing a rifle. In 1923, officers and enlisted members of the Coast Artillery Corps presented the trophy to the Marine Corps in appreciation of the Marine Corps Team training the Coast Artillery Team for the National Matches. (This training was from 1910 to 1922.) This trophy is awarded to the highest scoring Marine competitor (Regular or Reserve) in the National Trophy Individual Rifle Match.

B–28. The Lieutenant Paul J. Roberts, Jr., Memorial Trophy

The Lieutenant Paul J. Roberts, Jr., Memorial Trophy was presented to the NBPRP in 1958. It is a sterling silver globe, designated by the US Air Forces as a memorial to Lieutenant Paul J. Roberts, Jr., a fighter pilot who was killed during combat in World War II in Germany. The trophy was presented to the NBPRP by his father. It is awarded to the highest scoring Air Force competitor (Regular, Reserve, or National Guard) in the National Trophy Individual Rifle Match.

B–29. The 25th Infantry Division Trophy

The 25th Infantry Division Trophy was presented to the NBPRP in 1955 by the 25th Infantry Division Association. It illustrates the World War II area in which the division saw combat and lists the campaigns in which the division participated. This trophy is awarded to the highest scoring Infantry competitor (Regular Army, Army Reserve, or Army National Guard) in the National Trophy Individual Rifle Match.

B–30. The National Trophy

The National Trophy was provided by Congress in 1903 in the law that established the National Matches. Commonly referred to as the "Dogs of War Trophy," it is a bronze plaque depicting a warrior of ancient times with four dogs of war on a leash. The trophy is awarded to the winning team in the National Trophy Rifle Team Match.

B–31. The Hilton Trophy

The Hilton Trophy was presented to the NRA by the Honorable Henry Hilton of New York in 1878, and the NRA presented the trophy to the NBPRP in 1903. The silver-plated bronze plaque depicts an Indian buffalo hunt. Also on the plaque are figures of eagles, oak boughs, and war trophies. It is awarded to the highest scoring Reserve Component team in the National Trophy Rifle Team Match.

B–32. The Soldier of Marathon Trophy

The Soldier of Marathon Trophy is the oldest NBPRP trophy. It has been in shooting competitions since 1875. The NRA presented the trophy to the US Government for competition in the National Trophy Rifle Team Match in 1903. The trophy is a bronze figure of the runner, Pheidippides who, though exhausted and fallen to a reclining position, still holds high the torch he is carrying to announce the Greek victory at Marathon. The trophy is now awarded to the highest scoring Civilian team in the National Trophy Rifle Team Match.

B–33. The Minuteman Trophy

The Minuteman Trophy was placed in competition in 1925. The trophy is a bronze statuette of the "Minuteman of Concord." (The original life-sized monument stands in Concord, Massachusetts.) The trophy is awarded to the highest scoring Junior team in the National Trophy Rifle Team Match.

B–34. The Pershing Trophy

The Pershing Trophy was presented by General John J. Pershing (1860–1948), Commander of the AEF of World War I, for team competition at the Inter-Allied Games in Paris in 1919. Won by the AEF, it was brought to the United States and placed in the custody of the NBPRP with General Pershing's concurrence. The trophy is a bronze figure of a World War I soldier firing the service pistol. It is awarded to the highest scoring individual competitor in the National Trophy Rifle Team Match.

B–35. The Rattlesnake Trophy

The Rattlesnake Trophy was purchased by the NBPRP in 1938. This statuette depicts a cowboy and his horse at the moment a

rattlesnake strikes at the horse's front feet. It is awarded to the highest scoring Army competitor (Regular, Reserve, or National Guard) in the National Trophy Rifle Team Match.

B–36. The General Thomas D. White Trophy

The General Thomas D. White Trophy was presented to the NBPRP in 1960 by the US Air Force in honor of General Thomas D. White, Chief of Staff of the Air Force from 1957 to 1961. The trophy is a large silver bowl mounted on an ebony base. It is awarded to the highest scoring Air Force competitor (Regular, Reserve, or National Guard) in the National Trophy Rifle Team Match.

B–37. The US Army Forces Command Rifle Trophy

The US Army Forces Command Rifle Trophy was presented to the NBPRP by the Commanding General, US Army Forces Command. The mounted rifles are circa 1900 Winchester low wall muskets, caliber .22 short, with consecutive serial numbers, the highest of which was the last musket chambered for the .22 short cartridge. The trophy was designed and constructed by artisans of Rock Island for award to the Regular Army competitor making the highest aggregate score in the National Trophy Individual Rifle Match and National Trophy Rifle Team Match.

B–38. The Admiral Arleigh A. Burke Trophy

The Admiral Arleigh A. Burke Trophy was presented to the NBPRP by the US Navy through private subscription among the officers and enlisted members of the Navy and Navy Reserve. The trophy is the steel helmet worn by Admiral Burke through the entire Atlantic Campaign of World War II. The trophy is awarded to the Navy competitor (Regular or Reserve) making the highest aggregate score in the National Trophy Individual Rifle Match and the National Trophy Rifle Team Match.

B–39. The General Shepherd Trophy

The General Shepherd Trophy was presented to the NBPRP in 1956 by General Lemuel C. Shepherd, Jr., Commandant of the Marine Corps from 1952 to 1956. The trophy is a bronze replica of the Marine Corps War Memorial depicting the flag-raising on Mount Suribachi during the battle of Iwo Jima in World War II. This trophy is awarded to the Marine competitor (Regular or Reserve) making the highest aggregate score in the National Trophy Individual Rifle Match and the National Trophy Rifle Team Match.

B–40. The Pietroforte Trophy

The Pietroforte Trophy was donated to the NBPRP by private subscription among members of the US Marine Corps Distinguished Shooters' Association. This trophy honors Warrant Officer Michael Pietroforte, who distinguished himself as one of the finest marksmen in Marine Corps history during his 30 years of service. It is awarded to the Civilian competitor making the highest aggregate score in the National Trophy Individual Rifle Match and the National Trophy Rifle Team Match.

B–41. The Infantry Trophy

The Infantry Trophy was presented to the NRA in 1922 by the US Army Infantry through private subscription among its members (officer and enlisted and Regular, Reserve, and National Guard). The NRA placed the trophy in the custody of the NBPRP in 1936. This trophy depicts the combat Infantryman in action and is awarded to the winning team in the National Trophy Infantry Team Match.

B–42. The Celtic Chieftain Trophy

The Celtic Chieftain Trophy was purchased by the NBPRP in 1958. The statue represents a bronze figure of Caractacus, British chieftain of the tribe of Cateveillauni, who led the native resistance against the Roman, Aulus Plautus (A.D. 43–47). This trophy is awarded to the highest scoring Reserve Component team in the National Trophy Infantry Team Match.

B–43. The Leatherneck Trophy

In 1957, the Marine Corps presented this trophy to the NBPRP in the name of the officers and enlisted members of the Marine Corps. The Leatherneck Trophy is a replica of the life-size "Iron Mike" statue that has stood at the Quantico Marine Corps Base, Virginia, since 1921. It is awarded to the highest scoring Civilian team in the National Trophy Infantry Team Match.

B–44. The Woman's Rifle Trophy

This trophy was authorized by the NBPRP in 1983 and first presented in 1984. It consists of a pair of Winchester Low Wall, single shot, caliber .22 muskets mounted on a polished hardwood base. This trophy is awarded to the highest scoring Woman competitor in the National Trophy Individual Rifle Match.

B–45. The Woman's Pistol Trophy

This trophy was authorized by the NBPRP in 1983 and first presented in 1984. It consists of two Colt Army Special caliber .38 revolvers mounted on a polished hardwood base. This trophy is awarded to the highest scoring Woman competitor in the National Trophy Individual Pistol Match.

B–46. The Police Rifle Trophy

This trophy was authorized by the NBPRP in 1983 and first presented in 1984. It consists of three Springfield M1903 rifles mounted on a polished hardwood base. This trophy is awarded to the highest scoring Police competitor in the National Trophy Individual Rifle Match.

B–47. The Junior Pistol Team Trophy

This trophy was authorized by the NBPRP in 1983 and first presented in 1984. It consists of four caliber .45 pistol facsimiles mounted on a polished hardwood base. This trophy is awarded to the highest scoring Junior team in the National Trophy Pistol Team Match.

B–48. The Junior Pistol Trophy

This trophy was authorized by the NBPRP in 1983 and first presented in 1984. It consists of two Colt Ace caliber .22 pistols mounted on a polished hardwood base. The trophy is awarded to the highest scoring Junior competitor in the National Trophy Individual Pistol Match.

B–49. The Junior Infantry Team Trophy

This trophy was recommended by the NBPRP in 1983 and first presented in 1984. It consists of three Springfield M1903 rifles mounted on a polished hardwood base. The Springfield rifles were used in the design because of their prominence in the Infantry Trophy; the fact that a distinctive award has been established to promote junior participation in a singularly military type of marksmanship competition is considered most appropriate. The trophy is awarded to the highest scoring Junior team in the National Infantry Trophy Team match.

B–50. The National Guard Association Trophy (Rifle)

The National Guard Association Trophy (Rifle) was presented to the NBPRP in 1983, replacing the original trophy that was established in 1979. The trophy depicts a helmeted Guardsman in bronze, mounted on a two-tiered walnut base. This trophy is awarded to the highest scoring National Guard competitor in the National Trophy Individual Rifle Match.

Appendix C—Glossary

Section I—Abbreviations

AEF—American Expeditionary Forces
AG—adjutant general
AMC—US Army Material Command
CECOM—US Army Communications-Electronics Command
CG—commanding general
CMP—Civilian Marksmanship Program
CONUS—continential United States
DARCOM—US Army Material Development and Readiness Command
DCM—Director of Civilian Marksmanship
DNMIC (Ops/Svcs)—Deputy National Matches Installation Commander (Operations and Services)
EIC—excellence-in-competition
FORSCOM—US Army Forces Command
LNO—Liaison officer
MR—midrange
NBPRP—National Board of the Promotion of Rifle Practice
NGB—National Guard Bureau
NMIC—National Matches Installation Commander
NMPAO—National Matches Public Affairs Officer
NMSC—National Matches Support Coordinator
NMSD—National Matches Support Detachment
NRA—National Rifle Association
OHARNG—Ohio Army National Guard
OSO—Ordnance Safety Officer
ROTC—Reserve Officers' Training Corps
SA—Secretary of the Army
SAFS—Small Arms Firing Schools
SPT—Support
SR—short range
TRADOC—US Army Training and Doctrine Command
USC—US Code
XO, NM—Executive Officer, National Matches
OX, CMP (SPT)—Executive Officer, Civilian Marksmanship Program (Support)

Section II—Terms

Complete the Match

To fire recorded shots in all stages of a match. For team matches, this term means that all firing members fire recorded shots in all stages of the match.

Completed Match

A match in which all competitors have had the opportunity to fire in all stages of the match.

Distinguished Designation

Award of the Distinguished Pistol Shot or Distinguished Rifleman Badge. These awards are made to individuals who have earned the required number of credit points.

Excellence-in-Competition (EIC) Matches

Matches in which credit toward the Distinguished designation may be earned and EIC badges awarded.

Fire in the Match

To fire one or more recorded shots in any stage of the match. For team matches, this term means that one or more team members fire one or more recorded shots in any stage of the match.

Appendix D—Tables 5–1 through 5–6

TABLE 5–1.—COURSE OF FIRE—THE PRESIDENT'S PISTOL MATCH

Stage	Distance (yards)	Type of fire	Firing position	Number of shots	Time limit	Scoring
First	50	Slow	Standing	2 strings of 10 shots each	10 minutes per string	After each string.
Second	25	Timed	do	2 strings of 5 shots each	20 seconds per string	After 1 or 2 strings as announced by the Match Director.
Third	25	Rapid	do	do	10 seconds per string	After 1 or 2 strings as announced by the Match Director.

TABLE 5–2.—COURSE OF FIRE—NATIONAL MATCH PISTOL COURSE

Stage	Distance (yards)	Type of fire	Firing position	Number of shots	Time limit	Scoring
First	50	Slow	Standing	10	10 minutes	After 10 shots.
Second	25	Timed	do	2 strings, 5 shots each	20 second per string	After 1 or 2 strings as announced by the Match Director.
Third	25	Rapid	do	do	10 seconds per string	After 1 or 2 strings as announced by the Match Director.

TABLE 5–3.—COURSE OF FIRE—THE PRESIDENT'S RIFLE MATCH

Stage	Distance (yards)	Type of fire	Firing position	Number of shots	Time shot
First	200	Slow	Standing	10	10 minutes.
Second	300	Rapid	Prone from standing	10	70 seconds.
Third	600	Slow	Prone	10	10 minutes.

TABLE 5–4.—COURSE OF FIRE, COURSE A—NATIONAL RIFLE MATCH COURSE

Stage	Distance (yards)	Type of fire	Firing position	Number of shots	Time limit
First	200	Slow	Standing	10	10 minutes.
Second	200	Rapid	Sitting or kneeling from standing	10	60 seconds.
Third	300	do	Prone form standing	10	70 seconds.
Fourth [1]	600	Slow	Prone	20	20 minutes.

[1] The DCM may authorize the fourth stage to be fired at 500 yards for EIC matches other than the National Trophy Matches.

TABLE 5–5.—Course of Fire, Course B—Competitive Rifle Course, M–16 RIFLE ONLY

Stage	Distance (yards or meters)	Type of fire	Firing position	Number of shots	Time limit
First	200	Rapid fire	Rapid fire—sitting from standing	Rapid fire—10 shots	Rapid fire—50 seconds.
Second	200	Rapid	Kneeling from standing	do	60 seconds.
Third	200	Slow	Standing	do	10 minutes.
Fourth	300	do	Prone	do	Do.
Fifth	300	Rapid	Prone from standing	do	50 seconds.

TABLE 5–6.—COURSE OF FIRE—NATIONAL TROPHY INFANTRY TEAM MATCH

Stage	Distance (yards)	Firing position	Time limit (seconds)
First	600	Prone	50
Second	500	Prone, sitting, or kneeling	50
Third	300	Sitting or kneeling	50
Fourth	200	Standing	50

John O. Roach II

Army Liaison Officer with the Federal Register.

[FR Doc. 85–7945 Filed 4–5–85; 8:45 am]

BILLING CODE 3710–08–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 20403; FCC 85-153]

Use of Automatic Transmission Systems at AM, FM, and TV Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proceeding Termination.

SUMMARY: The Commission terminates the proceeding concerning the use of Automatic Transmission Systems at AM, FM, and TV Broadcast Stations. The *First Report and Order* in this proceeding was published at 42 FR 1233, on January 6, 1977. This action is based on the advancement of technology (particularly data processing and computer technology) rendering the remaining issues and comments in this proceeding outdated.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, Technical and International Branch, Washington, D.C. 20554, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast services.

Memorandum Opinion and Order

In the matter of Use of Automatic Transmission Systems at AM, FM, and TV Broadcast Stations, MM Docket No. 20403.

Adopted: March 28, 1985.
Released: April 2, 1985.

By the Commission:

1. In December 1976, the Commission adopted the *First Report and Order* in this Docket. Since that time, technology, particularly data processing and computer technology, has advanced to the point that the remaining issues and comments in this Docket are now outdated. In view of the passage of time, this proceeding terminates Docket 20403, Use of Automatic Transmission Systems at AM, FM, and TV Broadcast Stations. A new proceeding will be concurrently opened to receive fresh information in this area, looking toward deregulation of the Automatic Transmission System rules.

2. Accordingly, it is ordered that Docket No. 20403 is terminated.

3. This action is taken pursuant to authority contained in sections 4(i), 4(j), and 303 of the Communications Act of 1934, as amended.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 85-8345 Filed 4-5-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-792; RM-4634]

FM Broadcast Stations in Atlantic City, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein deletes FM Channel 240A from Atlantic City, New Jersey, in response to a request filed by Franklin Broadcasting Company, for failure of any applicant to specify a transmitter site in accordance with the Commission's mileage separation requirements.

EFFECTIVE DATE: May 6, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Atlantic City, New Jersey), MM Docket No. 84-792, RM-4634.

Adopted: March 13, 1985.
Released: March 28, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 33462, published August 23, 1984, issued in response to a petition filed by Franklin Broadcasting Company ("Franklin"), proposing the deletion of FM Channel 240A from Atlantic City, New Jersey. Comments in support of the *Notice* were filed by Franklin and by Pleasant Broadcasters, Inc. ("Pleasant"). Dean Lewis ("Lewis")[1] filed an opposition. Both Franklin and Pleasant filed reply comments,[2] as did Lewis.

2. Channel 240A was allocated to Atlantic City, New Jersey by a *Report and Order* in BC Docket 81-725, 47 FR 43385, published October 1, 1982, in response to a petition filed by Doctor R. Crants, Jr. ("Crants"). Crants had requested a waiver of the Commission's minimum distance separation requirements with respect to Station WFLN-FM, to permit placing his transmitter at a site on the southwest tip of Atlantic City. Alternatively, Crants proposed the use of a site one mile offshore to overcome the mileage separation deficiency. The Commission denied the waiver request, but acknowledged that the offshore proposal could solve the mileage separation conflict. In the *Notice* the petitioner was requested to indicate in his comments, to what extent he had investigated Federal, State and local requirements, if any, which would have to be complied with in order to obtain approval for an offshore site. Petitioner submitted comments, based upon his investigation, that he should be able to obtain an offshore site. The state of New Jersey required a Waterfront Development permit prior to construction and an application for Grant in Conveyance to occupy the site. Petitioner indicated no unusual problems involved after consultation with the state agencies. The U.S. Army Corps of Engineers, concerned with the navigational issue, required a formal application for a construction permit. After a review of the form, petitioner anticipated no difficulty in meeting the requirements. After a review of the U.S. Coast Guard regulations pertaining to marking and lighting of the proposed antenna structure, petitioner concluded that he could satisfy those requirements. Petitioner added that he was aware of the Federal Aviation Administration's requirements for marking and lighting the structure and would apply for an FAA No Hazard determination before construction. The petitioner also submitted an engineering affidavit showing the required 3.16 mV/m contour would cover the entire developed and inhabited portion of the city and would fail only by "a few tenths of a mile" to include the southernmost tip of the area (uninhabited) within the city limits. Channel 240A was assigned to Atlantic City based upon the above statements submitted by Crants.

3. Franklin, licensee of Station WFLN-FM, Channel 239, Philadelphia, Pennsylvania, filed comments

[1] Lewis is one of the four applicants for Channel 240A at Atlantic City.

[2] Franklin and Pleasant filed a Joint Motion to Strike Lewis' Reply Comments and Lewis filed an Opposition to the Joint Motion. In its reply Lewis challenged the acceptability of the initial comments of Franklin and Pleasant on the grounds that he was not served. The Commission's Rules do not require service of initial comments except to the petitioner. Thus, we have considered the reply comment filed by Lewis as to this procedural matter and find that the initial comments in question are acceptable. See § 1.420(a) of the Commission's Rules.

supporting its petition to delete Channel 240A, as all applications which have been filed propose sites onshore which do not meet the spacing requirements. It further states that no site on land can meet the spacing requirements and that an offshore site would be prohibitively expensive and would not provide the required city grade signal.

4. Pleasant, licensee of Station WADB (FM), Channel 240A, Point Pleasant, New Jersey, also filed supporting comments. They state that the Commission expressly conditioned the allocation of Channel 240A to Atlantic City on the use of a site that would give full protection to WADB and so far, the applications for that channel have been for sites short spaced to WADB. The state of New Jersey has selected WADB as its means of alerting the population within a ten-mile radius of the Oyster Creek Nuclear Generating Station of any type of nuclear emergency. The importance of preserving WADB's current signal on a non-interference basis should not be underestimated. Since the allocation of Channel 240A to Atlantic City, Station WADB has increased its antenna height to a full 300 feet to assure good coverage of the area surrounding the Oyster Creek Nuclear Generating Station.

5. Lewis filed opposing comments, stating that the original assignment was unrealistic if it is assumed that the siting would be offshore. Lewis argues that additional service is needed for year-round residents and also for the traveling public visiting Atlantic City. He further states that the short spacing would be less than a mile to both WFLN and WADB.

6. Reply comments were filed by Franklin and Pleasant restating that assignment of Channel 240A was made with the understanding that the site location would be one mile offshore, in compliance with the Commission's spacing requirements. Since the applications filed for Channel 240A have not complied with Section 73.207 of the Rules, the channel should be deleted. Franklin points out that the Commission has allocated FM Channel 297B1 to Atlantic City in MM Docket 84–231. Although channel 240A would be deleted, the citizens of Atlantic City would still have an additional FM service available, serving a larger area.

7. Lewis, in reply comments, urges that this proceeding be terminated and the four applications pending for Channel 240A at Atlantic City be designated for hearing in a consolidated proceeding with the renewal applications for WFLN (FM) and WADB (FM).

8. After consideration of the above, the Commission has determined that the public interest would best be served by deleting FM Channel 240A from Atlantic City. The channel was assigned to Atlantic City at the request of Doctor R. Crants, who provided extensive information to the Commission showing that he should be able to obtain an offshore site and that he would apply for the channel, if assigned. The Commission records indicate that Doctor Crants has failed to file an application for the channel and did not file comments in this proceeding. Doctor Crants has been the only party to express interest in an offshore site for Channel 240A at Atlantic City. There has been more than adequate time for Crants to either file his application or to file comments in this proceeding. Four applications are on file at the Commission for the channel at land based sites.[3] A land based site for Channel 240A is not available that meets the Commission spacing requirements and it was not our intention to allot this channel with a short spacing, particularly now that an alternative channel is available for use at Atlantic City. Interest in additional radio service for the community can be satisfied by the recent allocation of Channel 297B1 in MM Docket 84–231, 50 FR 3514, published January 25, 1985.

9. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b), and 0.283 of the Commission's Rules, it is ordered, that effective May 6, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended as follows:

City	Channel No.
Atlantic City, NJ	236, 245, 279, and 297B1.

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85–8348 Filed 4–5–85; 8:45 am]

BILLING CODE 6712–01–M

[3] The applicants are High Tech Industries, Inc. (BPH830825AF), Dean Lewis (BPH830823AF), Starlight Broadcasting Corp. (BPH831003AD) and Star Broadcasting (841001ID).

47 CFR Part 97

Change in Format of Frequency and Emission Tables in the Amateur Radio Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action arranges the complex frequency and emission tables in more usable formats in Part 97 of the rules. This action is necessary to make these rules easier to read.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: John Small, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Order

In the matter of Amendment of Part 97, Amateur Radio Service Rules to Change the Frequency and Emission Tables to More Usable Formats.

Adopted: March 25, 1985.
Released: March 29, 1985.

1. This Order amends Part 97 by arranging the frequency and emission tables in more usable formats.

2. Since these amendments clarify our rules and are non-substantive, the notice and comment provisions and the effective date requirements of the Administrative Procedure Act are not applicable.

3. In the Commission's *Report and Order* in PR Docket No. 82–726, FCC 83–249 (June 6, 1983) logging requirements for amateur radio operators were eliminated from Part 97 of the Commission's Rules. However, § 97.69(a)(3) still references this obsolete logging requirement. We are taking this opportunity to delete that reference.

4. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)), and § 0.231(d) of the Commission's Rules (47 CFR 0.231(d)).

5. Accordingly, it is ordered, that Part 97 of the Commission's Rules (47 CFR Part 97) is amended as set forth in the attached Appendix.

6. These rule amendments shall become effective upon publication in the **Federal Register.**

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission
Edward J. Minkel,
Managing Director.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. In the Table of Contents, change the entry for § 97.7 to read:

Sec.
97.7 Control operator frequency privileges.

2. Section 97.7 is revised to read as follows:

§ 97.7 Control operator frequency privileges.

(a) The following transmitting frequency bands are available to amateur radio stations having a control operator of the license class designated, subject to the limitations of paragraph (b) of this section:

Control operator license class	Meter band	Terrestrial location of the amateur radio station			Limitations (see paragraph (b))
		ITU region 1	ITU region 2	ITU region 3	
		Kilohertz			
Novice	80	3700–3750	3700–3750 5167.5	3700–3750	2 9
	40	7050–7075	7100–7150	7050–7075	1, 2
	15	21100–21200	21100–21200	21100–21200	2
	10	28100–28200	28100–28200	28100–28200	2
		Kilohertz			
Technician	80	3700–3750	3700–3750 5167.5	3700–3750	2 9
	40	7050–7075	7100–7150	7050–7075	1, 2
	15	21100–21200	21100–21200	21100–21200	2
	10	28100–28200	28100–28200	28100–28200	2
		Megahertz			
	6		50–54	50–54	
	2	144–148	144–148	144–148	
	1.25		220–225		3
	0.70	430–440	420–450	420–450	3, 4
	0.23	1215–1300	1215–1300	1215–1300	3
		2300–2310	2300–2310	2300–2310	3
		2390–2450	2390–2450	2390–2450	3, 5
		Gigahertz			
			3.300–3.500		3, 8, 10
			5.650–5.925		3, 6, 10
			10.00–10.50		3, 10
			24.00–24.25		3, 7, 10
			48–50		10
			71–76		10
			165–170		10
			240–250		10
			above 300		10
		Kilohertz			
General	160		1800–2000	1800–2000	
	80	3525–3750	3525–3750	3525–3750	
	75		3850–4000 5167.5	3850–3900	9
	40	7025–7100	7025–7150	7025–7100	1
	40		7225–7300		1
	20	14025–14150	14025–14150	14025–14150	
	20	14225–14350	14225–14350	14225–14350	
	15	21025–21200	21025–21200	21025–21200	
	15	21300–21450	21300–21450	21300–21450	
	10	28000–29700	28000–29700	28000–29700	
		Megahertz			
	6		50–54	50–54	
	2	144–148	144–148	144–148	
	1.25		220–225		3
	0.70	430–440	420–450	420–450	3, 4
	0.23	1215–1300	1215–1300	1215–1300	3
		2300–2310	2300–2310	2300–2310	3
		2390–2450	2390–2450	2390–2450	3, 5
		Gigahertz			
			3.300–3.500		3, 8, 10
			5.650–5.925		3, 6, 10
			10.00–10.50		3, 10
			24.00–24.25		3, 7, 10
			48–50		10
			71–76		10
			165–170		10
			240–250		10
			above 300		10

Control operator license class	Meter band	Terrestrial location of the amateur radio station			Limitations (see paragraph (b))
		ITU region 1	ITU region 2	ITU region 3	
		Kilohertz			
Advanced	160		1800-2000	1800-2000	
	80	3525-3750	3525-3750	3525-3750	
	75	3775-3800	3775-4000	3775-3900	
			5167.5		9
	40	7025-7100	7025-7300	7025-7100	1
	20	14025-14150	14025-14150	14025-14150	
	20	14175-14350	14175-14350	14175-14350	
	15	21025-21200	21025-21200	21025-21200	
	15	21225-21450	21225-21450	21225-21450	
	10	28000-29700	28000-29700	28000-29700	
		Megahertz			
	6		50-54	50-54	
	2	144-148	144-148	144-148	
	1.25		220-225		3
	0.70	430-440	420-450	420-450	3, 4
	0.23	1215-1300	1215-1300	1215-1300	3
		2300-2310	2300-2310	2300-2310	3
		2390-2450	2390-2450	2390-2450	3, 5
		Gigahertz			
			3.300-3.500		3, 8, 10
			5.650-5.925		3, 6, 10
			10.00-10.50		3, 10
			24.00-24.25		3, 7, 10
			48-50		10
			71-76		10
			165-170		10
			240-250		10
			above 300		10
		Kilohertz			
Amateur Extra	160		1800-2000	1800-2000	
	80/75	3500-3800	3500-4000	3500-3900	
			5167.5		9
	40	7000-7100	7000-7300	7000-7100	1
	20	14000-14350	14000-14350	14000-14350	
	15	21000-21450	21000-21450	21000-21450	
	10	28000-29700	28000-29700	28000-29700	
		Megahertz			
	6		50-54	50-54	
	2	144-148	144-148	144-148	
	1.25		220-225		3
	0.70	430-440	420-450	420-450	3, 4
	0.23	1215-1300	1215-1300	1215-1300	3
		2300-2310	2300-2310	2300-2310	3
		2390-2450	2390-2450	2390-2450	3, 5
		Gigahertz			
			3.300-3.500		3, 8, 10
			5.650-5.925		3, 6, 10
			10.00-10.50		3, 10
			24.00-24.25		3, 7, 10
			48-50		10
			71-76		10
			165-170		10
			240-250		10
			above 300		10

(b) Limitations:

(1) Where, in adjacent regions or subregions, a band of frequencies is allocated to different services of the same category, the basic principle is the equality of right to operate. Accordingly, the stations of each service in one region or subregion must operate so as not to cause harmful interference to services in the other regions or subregions (No. 346, the Radio Regulations, Geneva, 1979).

(2) Novice and Technician class radio operators are required to use international Morse code when communicating in this band.

(3) Amateur stations shall not cause interference to the Government radiolocation service.

(4) In the following areas, the peak envelope power output of a transmitter used in the Amateur Radio Service shall not exceed 50 watts, except when authorized by the appropriate Commission Engineer-in-Charge and the appropriate Military Area Frequency Coordinator:

(i) Those portions of Texas and New Mexico bounded by latitudes 33°24′ N. and 31°53′ N., and longitudes 105°40′ W. and 106°40′ W.

(ii) The State of Florida, including the Key West area and the areas enclosed within circles of 200-mile radius centered at 28°21′ N., 80°43′ W. and 30°30′ N., 86°30′ W.

(iii) The State of Arizona.

(iv) Those portions of California and Nevada south of latitude 37°10′ N. and the area within a 200-mile radius of 34°09′ N., 119°11′ W.

(v) In the State of Massachusetts within a 160-kilometer (100 mile) radius of 41°45′ N., 70°32′ W.

(vi) In the State of California within a 240-kilometer (150 mile) radius of 39°08′ N., 121°26′ W.

(vii) In the State of Alaska within a 160 kilometer (100 mile) radius of 64°17′ N., 149°10′ W. (The Military Area Frequency Coordinator for this area is located at Elmendorf Air Force Base, Alaska.)

(viii) In the State of North Dakota within a 160-kilometer (100 mile) radius of 48°43′ N., 97°54′ W. (The Military Area Frequency Coordinator for this area can be contacted at: HQ SAC/SXOE, Offutt Air Force Base, Nebraska 68113.)

(ix) In the States of Alabama, Florida, Georgia and South Carolina within a 200 kilometer (124 mile) radius of Warner Robins Air Force Base, Georgia (latitude 32°38′ N., longitude 83°35′ W.).

(x) In the State of Texas within a 200 kilometer (124 mile) radius of Goodfellow Air Force Base, Texas (latitude 31°25′ N., longitude 100°24′ W.).

(5) No protection in the band 2400–2500 MHz is afforded from interference due to the operation of industrial, scientific and medical devices on 2450 MHz.

(6) No protection in the band 5725–5875 MHz is afforded from interference due to the operation of industrial, scientific and medical devices on 5800 MHz.

(7) No protection in the band 24.00–24.25 GHz is afforded from industrial, scientific and medical devices on 24.125 GHz.

(8) Amateur stations shall not cause interference to the Fixed-Satellite Service operating in the band 3.4–3.5 GHz.

(9) The frequency 5167.5 kHz, maximum power 150 watts, may be used by any station authorized under this part to communicate with any other station authorized in the State of Alaska for emergency communications. All stations operating on this frequency must be located in or within 50 nautical miles of the State of Alaska. The frequency 5167.5 kHz may be used by licensees in the Alaska-private fixed service for calling and listening, but only for establishing communication before switching to another frequency.

(10) In International Telecommunication Union Regions 1 and 3, operations on frequency bands above 2450 MHz may be conducted subject to the limitations and provisions of Section IV of Article 8 of the Radio Regulations of the ITU.

3. Section 97.61 is revised to read as follows:

§ 97.61 Authorized emissions.

Frequency band	Emissions	Limitations (see paragraph (b))
Kilohertz		
1800–2000	A1A, A3E	3
3500–4000	A1A	
3500–3750	F1B	4
3750–4000	A3E, F3E, G3E, A3C, A3F, F3C, F3F	3
5167.5	R3E, J3E	
7000–7300	A1A	
7000–7100	F1B	4
7075–7100	A3E, F3E, G3E	1, 3
7150–7300	A3E, F3E, G3E, A3C, F3C, A3F, F3F	3
14000–14350	A1A	
14000–14150	F1B	
14150–14350	A3E, F3E, A3C, F3C, A3F, F3F	3
21000–21450	A1A	
21000–21200	F1B	4
21200–21450	A3E, F3E, A3C, F3C, A3F, F3F	3
28000–29700	A1A	
28000–28300	F1B	4
28300–29700	A3E, F3E, G3E, A3C, F3C, A3F, F3F	3
Megahertz		
50.0–54.0	A1A	
50.1–54.0	A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F	3
51.0–54.0	N0N	
144.0–148.0	A1A	
144.1–148.0	N0N, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F	3
220–225	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F	3
420–450	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F	3
1215–1300	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F	3
2300–2310	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
2390–2450	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
Gigahertz		
3.300–3.500	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
5.650–5.925	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
10.000–10.500	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F	3
24.000–24.250	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, G3E, F3C, F3F, P0N	2, 3
48.000–50.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
71.000–76.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
165.000–170.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
240.000–250.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3
Above 300.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N	2, 3

(b) Limitations:

(1) The use of emissions A3E, F3E, and G3E in this band is limited to amateur radio stations located in Regions 1 and 3, and amateur radio stations located within Region 2 which are west of 130 degrees West longitude.

(2) The emission letters "K, L, M, Q, V, W and X" may also be used in place of the letter "p" for pulsed radars.

(3) The use of J3E, R3E, and H3E may also be used.

(4) Novice and Technician class radio operators may not use F1B emissions in this band.

§ 97.69 [Amended]

4. Paragraph (3) of paragraph (c) of § 97.69 is removed and reserved.

5. Section 97.85 is amended to add a new paragraph (h), as follows:

§ 97.85 Repeater operation.

* * * * *

(h) All amateur frequency bands above 29.5 MHz are available for repeater operation, except 50.0–52.0 MHz, 144.0–144.5 MHz, 145.5–146.0 Mhz, 220.0–220.5 MHz, 431.0–433.0 MHz, and 435.0–438.0 MHz. Both the input (receiving) and output (transmitting) frequency of a station in repeater operation shall be frequencies available for repeater operation.

6. Section 97.86 is amended to add a new paragraph (d) as follows:

§ 97.86 Auxiliary operation.

* * * * *

(d) All amateur frequency bands above 220.5 MHz, except 431–433 MHz and 435–438 MHz, are available for auxiliary operation.

7. Section 97.87 is amended to add a new paragraph (e) as follows:

§ 97.87 Beacon operation.

* * * * *

(e) The following amateur frequency bands and emissions are available for automatically-controlled beacon operation: 28.20–28.30 MHz, 50.06–50.08 MHz, 144.05–144.06 MHz, 220.05–220.06 MHz, 222.05–222.06 MHz, and 432.07–432.08 MHz using type N0N, A1A, F1B or J2A emissions (when type F1B or J2A emissions are employed in these bands, the radio or audio frequency shift, as appropriate, shall not exceed 1000 Hz). Additionally, all amateur frequency bands above 450 MHz are available for automatically-controlled beacon operation using emission types authorized under §97.61, provided that the licensee is authorized to operate on the frequency under § 97.7.

§ 97.95 [Amended]

8. Paragraphs (b) (2) and (3) of § 97.95 are removed and reserved.

[FR Doc. 85-8347 Filed 4-5-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 296

[Docket No. 50334-5034]

Fishermen's Contingency Fund

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: These rules revise the Fishermen's Contingency Fund Program regulations by (1) extending the period for filing claims from 60 days to 90 days and (2) increasing compensation for economic loss from 25 percent to 50 percent. These revisions were authorized by Pub. L. 98-498, a recent amendment to Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

EFFECTIVE DATE: April 5, 1985.

ADDRESS: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Page Building 2, Room 309, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Charles L. Cooper (Program Leader, NMFS), 202-634-4688.

SUPPLEMENTARY INFORMATION: Title IV of the Outer Continental Shelf Lands Act Amendments (43 U.S.C. 1841 *et seq.*) established the Fishermen's Contingency Fund (the Fund) to compensate commercial fishermen for property or economic loss caused by oil and gas obstructions on the U.S Outer Continental Shelf (OCS). The Fund is comprised of assessments collected from offshore energy interests.

Title IV was amended by the Marine Sanctuaries Act (Pub. L. 98-498, enacted October 19, 1984). The amendment (1) extends the period for filing claims from 60 days to 90 days; (2) increases compensation for economic loss from 25 percent to 50 percent; and (3) allows the Secretary to specify the time, form, and manner in which claims must be filed. This final rulemaking implements this amendment of Title IV.

Classification

The NOAA Administrator determined that this final rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. It is not major within that context because it does not significantly affect the economy, costs or prices, competition, employment, investment or productivity.

This rule is not subject to the notice and comment requirements, or the 30-day delayed effectiveness requirement, of the Administrative Procedure Act (APA), because it relates to benefits or contracts. Matters "relating to . . . benefits, or contracts" are exempted from the APA [5 U.S.C. 553, (a)(2)].

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the Administrative Procedure Act or by any other law. Neither an initial nor final Regulatory Flexibility Analysis was prepared.

This revised rule contains no new information collection requirements. The existing information collection requirements contained in this rule were approved by Office of Management and Budget under control number 0648-0082.

This action does not require an environmental impact analysis because it is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The Agency has determined that this rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

(The Catalog of Federal Domestic Assistance number is 11.408)

List of Subjects in 50 CFR Part 296

Claims, Outer continental shelf, Fisheries, Fishing vessels, Oil and gas production.

Dated: April 3, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 296—[AMENDED]

For the reasons stated in the preamble, 50 CFR Part 296 is amended as follows:

1. The Authority citation for Part 296 reads as follows:

Authority: 43 U.S.C. 1841 *et seq.*

2. In § 296.4, paragraph (e)(5) is revised to read as follows:

§ 296.4 Claims eligible for compensation.

* * * * *

(e) * * *

(5) If the claim is not filed within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss (or such longer period as the Secretary may allow under unusual and extenuating circumstances); or

* * * * *

3. In § 296.5, paragraph (c) is revised to read as follows:

§ 296.5 Instructions for filing claims.

* * * * *

(c) *Who must file and when and where to file claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must submit a claim application to the Chief, Financial Services Division, within 90 calendar days of the date the claimant or the claimant's agent first became aware of the damage or loss. The Chief, FSD, may allow a longer period for filing claims if, in his discretion, unusual and extenuating circumstances justify a longer period. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

4. In § 296.8, paragraph (c) is revised to read as follows:

§ 296.8 Amount of award.

* * * * *

(c) *Resulting economic loss.* An award may also include 50 percent of the resulting economic loss from damage to or loss of fishing vessels and gear.

* * * * *

[FR Doc. 85-8326 Filed 4-5-85; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 67
Monday, April 8, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 21, 30, 39, 40, 51, 70, 71, and 150

Licenses and Radiation Safety Requirements for Well-Logging Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing a regulation that would specify radiation safety requirements for the use of licensed material in well-logging operations. The proposed regulation would provide: (1) Comprehensive and consistent regulations applicable to well-logging operations by consolidating essential radiation safety requirements in a new Part 39, (2) uniform safety requirements in NRC and Agreement States regulations, and (3) safety requirements designed to reduce the risks of accidents involving the rupture of radioactive sources in well-logging operations.

DATE: Submit comments by July 8, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received on the proposed rule may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the technical documents referred to in this document may be obtained from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–443–7901).

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 443–7901.

SUPPLEMENTARY INFORMATION:

1. Introduction

Uses of Licensed Material in Well-Logging Operations

The oil and gas industry often needs to determine the types and characteristics of the underground formations in a new or existing well. Licensed materials are used to obtain information on certain properties of an underground formation, such as type of rocks, porosity, hydrocarbon content, and density. Licensed materials are also used for similar purposes in coal or mineral exploration.

In well-logging, sealed radioactive sources with associated radiation detectors, known as logging tools, are lowered into a well on a wireline. The depth of the well could range from several hundred feet to greater than 30,000 feet. Information collected by the detectors is sent to the surface through the wireline and plotted on a chart as the logging tool is slowly raised from the bottom of the well. Americium-241 (typically 0.25 curie to 20 curies) and cesium-137 (typically 2 to 3 curies) are the radioactive materials most frequently used for this purpose.

In subsurface tracer studies, a small amount of radioactive material in liquid or gaseous form is used. After the liquid of gas tracer is injected into the well, a detector is used in the well to monitor the dispersion of the tracer material. This information will help determine certain underground characteristics such as fluid flow rate and the channeling effect. Iodine-131 (typically 5 to 20 millicuries) is the material most frequently used in subsurface tracer studies.

Other licensed materials used in well-logging operations include cobalt-60 used in collar markers, radioactive iron used in nails, depleted uranium used in sinker bars, and iridium-192 used in sands. Collar markers use Co-60 wire (about 1 to 5 microcuries) to mark collars between two sections of casing and provide positive depth measurement. Radioactive iron nails are used to indicate locations of perforations. Sinker bars are constructed of solid depleted uranium (usually weighing 50 to 100 pounds) and are used to provide additional weight to help push a light weight logging tool through the drilling fluid, called mud by the drilling industry, down to the bottom of the well. Sands mixed with small amount of iridium-192 are used to determine the extent of underground hydraulic fracturing.

NRC and Agreement States' Roles

Twenty-seven Agreement States, including most major oil producing States, have assumed responsibility for regulating certain activities, including the use of radioactive materials in well-logging operations, by agreements with the NRC. Each Agreement State issues licenses to persons who use radioactive material in well-logging operations in the State.

The NRC issues licenses to persons using radioactive materials in well-logging operations in non-Agreement States. These licenses specify the radiation safety requirements applicable to well-logging operations that the licensee must follow. The NRC has, as of November 1984, 173 licensees authorized to use radioactive materials in well-logging operations. The Agreement States have approximately 400 licensees involved in well-logging operations.

Well-logging licensees from one State frequently perform well-logging jobs in other States. To avoid duplication of licensing effort, NRC permits, under reciprocity, Agreement States licensees to operate in non-Agreement States according to the conditions of the license issued by their home State. Reciprocity also applies to licensees of the NRC that wish to operate in Agreement States as well as between the different Agreement States. Therefore, compatibility between NRC regulations and Agreement State regulations is essential to permit licensees to conduct well-logging operations in various States while maintaining a consistent and effective level of protection necessary to ensure public health and safety.

NRC's Current Regulatory Practices

Except for requirements concerning the abandoment of irretrievable well-logging sources set forth in 10 CFR 30.56 and 70.60, current NRC regulations, do not provide radiation safety requirements specific to the use of licensed material in well-logging operations. General safety requirements, however, are contained in 10 CFR Parts

20, 30, 40, and 70. At present, NRC reviews a licensee's specific safety program as part of the license application, and incorporates the safety program into the license as license conditions.

Problems with the Current Practice

A major problem with the current practice is that radiation safety requirements applicable to the industry are specified as license conditions on a case-by-case basis rather than spelled out in uniform regulations that are applicable to all licensees. This requires duplication of effort and allows for discrepancies in requirements among specific licenses issued by NRC and the Agreement States. Problems in the consistent and uniform application of these requirements could become a greater concern because, under the NRC's program for the decentralization of material licensing actions, well-logging licenses are issued by the five NRC Regional Offices instead of NRC Headquarters.

Though there are about 50,000 well-logging operations each year, the probability of an accident is small. Nonetheless, accidents have occurred and additional safety requirements are needed to reduce even further the risk of an accident.

There were five incidents which occurred between August 1982 and September 1983 involving radioactive sources used in well-logging operations. Three incidents involved the reputure of sources in uncontrolled workshop environments by workers performing machining or drilling operations. Two incidents involved the rupture of sources in well holes during logging-tool recovery operations. The cost associated with the Cleanup of radioactive contamination from these incidents is estimated to be in excess of $1.5 million

Actions taken by Agreement States

Recognizing the need for comprehensive and consistent radiation safety standards, the Conference of Radiation Control Program Directors established a task force in 1974 to develop necessary standards for well-logging operations. The task force was composed of representatives from States, industry, and Federal agencies, including NRC. By 1981, a set of model regulations was proposed to the Conference by the task force. In keeping with previous practices of the organization, the Conference adopted the well-logging requirements as Part W of the "Suggested State Regulations for Control of Radiation." Four Agreement States (Arkansas, Kentucky, Oregon, and Texas) have already adopted Part W requirements as State regulations without significant changes. Several other Agreement States are considering adopting Part W requirements.

NRC's Proposed Approach

The NRC is proposing to amend its regulations to include specific radiation safety requirements for well-logging operations. These requirements are included in the proposed 10 CFR Part 39, a new part exclusively dedicated to well-logging operations.

The proposed rule is needed for the following reasons:

(1) The proposed rule would provide comprehensive and consistent regulations applicable to well-logging operations. Current NRC regulations do not provide specific requirements. Specific requirements pertaining to well-logging operations are imposed as licensing conditions.

(2) The proposed rule would incorporate requirements similar to Part W of the Suggested State Regulations. Four Agreement States have adopted Part W as State regulations and others are considering its adoption. Consistency between NRC and Agreement State regulations is essential for well-logging operations because many companies operate in both Agreement and Non-Agreement States.

(3) The proposed rule includes safety requirements designed to reduce the risks of accidents involving the rupture of radioactive sources and the spread of radioactive contamination. These incidents may result from operations conducted to remove a stuck source from a well-logging device or to retrieve a well-logging device lodged in a well.

(4) The proposed rule also includes safety requirements involving the use of radioactive collar markers, uranium sinker bars, and of a sealed source in a well without surface casing.

If these requirements are adopted as final regulations, NRC would encourage the Conference of Radiation Control Program Directors and the Agreement States to adopt similar requirements in order to achieve compatible regulations.

A new part (10 CFR Part 39), dedicated exclusively to well-logging operations, is proposed to specify the various safety requirements. The proposed new part parallels the existing Part 34 which is dedicated exclusively to radiographic operations. A new part is needed because these operations use byproduct material, source material, and special nuclear material. If these safety requirements were not included in one part, they would have to be repeated in Parts 30 (byproduct material), 40 (source material) and 70 (special nuclear material). For instance, the existing regulation on irretrievable well-logging sources is repeated in Parts 30 and 70 for sources containing byproduct material and special nuclear material, respectively. Furthermore, if the safety requirements were fragmented throughout Parts 30, 40, and 70, licensees, NRC licensing reviewers, and NRC inspectors could have difficulty in determining the regulations applicable to a specific situation.

2. Discussion of the Proposed Rule

The proposed Part 39 would prescribe specific safety requirements for well-logging operations that use licensed materials. General provisions in Parts 30, 40 and 70, such as renewal, amendment or termination of licenses, would also be applicable to well-logging licensees. The following sections provide a discussion of the major provisions of the proposed Part 39.

A. Agreement With Well Owner or Operator

The proposed rule (§ 39.15) would require that a license (a well-logging company) enter into a written agreement with a well owner or operator, whichever engaged the licensee to perform the well-logging operations, before the licensee could use sealed sources in well-logging. The requirement to enter into a written agreement on abandonment procedures for irretrievable well-logging sources was published as a final rule in the **Federal Register** (10 CFR 30.56, 70.60, and 150.20) on August 29, 1983 (48 FR 39036). The proposed Part 39 has incorporated the existing requirement for an agreement and proposes to remove §§ 30.56 and 70.60 and to modify § 150.20.

The proposed rule specifies the terms of this agreement. The well owner or operator would agree, if a sealed source is lodged in the well, to: (1) Make a reasonable effort to recover the sealed source; (2) not permit specific types of recovery operations that could endanger the integrity of the sealed source; (3) not release contaminated equipment or areas, such as areas surrounding the well, for unrestricted use unless the equipment or the area has been decontaminated (Guidance on release of equipment or areas for unrestricted use is available on a case-by-case basis from the NRC staff. In general, limits for equipment are similar to those in Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors."); and (4) implement specified abandonment procedures when a sealed source is deemed irretrievable. The sealed source lodged in the well must be

retrieved or properly abandoned to avoid possible source rupture by subsequent re-entry into the well.

This requirement is needed because the licensee (the well-logging company) may not have the legal authority or resources to recover a tool and its sealed source if it becomes lost in a well. The well owner or operator controls the activities at the well. When a tool containing sealed source is lost in the well, the well owner or operator could engage a "fishing company" to recover it. The fishing company is usually responsible directly to the well owner or operator. The licensed well-logging company has no legal right to direct or control the activity of the fishing compay. Therefore, the contractual agreement between the licensee and the well owner or operator is necessary to obligate the well owner or operator to (1) recover the sealed source in a safe manner, (2) properly abandon an irretrievable source, and (3) prevent release of contaminated equipment or areas until they have been decontaminated.

It should be noted that the NRC is making the licensee responsible for the sealed source during well-logging until the sealed source is removed from the temporary jobsite or the completion of the abandonment procedures, if the source is determined to be irretrievable. Thus, NRC is making the licensee responsible for ensuring compliance with the regulations or for pursuing every legal avenue, based on the written agreement, to achieve compliance. The written agreement could assign to the well owner or operator, under the supervision of the licensee in areas of radiation safety, the responsibility for carrying out the recovery operations or abandonment procedures. However, the written agreement could not transfer the possession of the sealed source from one pary to another without specific NRC approval.

The Commission considered another approach to allocate responsibility among the various parties involved in the well-logging operations. It would have provided a general license to the well owner or operator, whichever engaged the well-logging company. Under this approach, NRC would have imposed the same safety requirements as would be contained in the written agreement directly on the party that had the authority to fulfill these requirements. This alternative was not pursued for the following reasons:

(1) Current industry practice, of having written agreements between licensees and well owners or operators, has worked satisfactorily for the last 20 years;

(2) The well-logging company is in a better position to handle radiological problems than the well owner or operator, unless the latter's personnel are also properly trained, which would be duplicative and costly;

(3) Licensing well owners or operators as well as well-loggers may create confusion about who is responsible for radiological safety when the sealed source enters or leaves the well.

The Commission is interested in comments on the costs, advantages, and disavantages of the proposed approach and on the alternative.

B. Radiation Detection Instruments

The proposed rule (§ 39.33(a)) would require that a licensee have a radiation survey instrument at each field station and at each temporary jobsite. These survey instruments are needed to perform routine radiation surveys and to measure for any potential radioactive contamination. Each survey instrument would have to be capable of measuring 0.1 milliroentgen per hour through at least 100 milliroentgens per hour. The requirement of 10 milliroentgens per hour is proposed because a licensee occasionally needs to define the boundaries of a high radiation area as required by 10 CFR 20.203(c)(2). A grandfather clause (for a period of 5 years) is provided for existing survey instruments capable of measuring 0.1 milliroentgen per hour through at least 20 milliroentgens per hour to reduce the economic impact on licensees. A 5-year period is proposed because the average life of a field-use survey intrument is estimated to be 5 years.

Although the required radiation survey instruments are adequate for routine radiation surveys, they are not designed to handle unlikely events such as the rupture of a sealed source resulting in low-level contamination of americium–241 in the drilling fluid or mud. Therefore, the proposed rule would also require that a licensee have available, when needed, radiation detection instruments (for example, a high range survey meter or a sodium iodide crystal detector) that are capable of measuring radiation levels or contamination levels which could be encountered during an acccident. For example, before the initiation of recovery of an americium–241 source from a well, the licensee would have to have an instrument present at the jobsite that is sensitive enough to detect americium–241 contamination. Other types of accidents could also result in high radiation levels; thus, a high range survey meter may be needed. The licensee could own the instrument or use a consulting service that has such an instrument.

A 6-month calibration interval would be specified for each survey instrument. This interval is adequate, based on licensing experience, to ensure the proper operation of the instrument and is consistent with practices presently required in well-logging licenses.

C. Leak Testing of Sealed Sources

The proposed rule (§ 39.35) would require that sealed sources be leak tested at least every 6 months. Because these sources are subjected to rough handling and servere environmental conditions in a well, it is necessary that they maintain their integrity. A leaking sealed source, if undetected, could cause extensive radioactive contamination to the well, equipment, personnel, environment. The leak test requirement is consistent with the current requirement for well-loggers and many other types licensees.

Several exemptions are provided in the proposed rule to reduce the burden of leak testing on the industry. The sealed sources exempted from leak testing requirements are those that would present essentially no hazard to the public or the environment in the event of a leak because they contain either gaseous, short lived, or small quantities of radioactive materials.

D. Physical Inventory

The proposed rule (§ 39.37) would require that a semi-annual physical inventory be made to account for sources of licensed material. This requirement is needed because the source used in well-logging operations are frequently transported to and from temporary jobsites. An accurate account of each of the sources would ensure that no source has been lost. The 6-month period is proposed because a licensee could conduct a physical inventory and leak testing at the same time, thus, reducing its burdens.

E. Design and Performance Criteria for Sealed Sources

Design and performance criteria are proposed in § 39.41(a) for all sealed sources except those containing gaseous licensed material. These have been proposed as minimum requirements, and are the same (except for the pressure test) as the requirements for well-logging sources in industry standard ANSI N542, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards (NBS Handbook 126) in 1978.

However, sealed sources used in well-logging are subject to more severe

environmental conditions, such as high pressure and high temperature. Therefore, several additional requirements are proposed to provide further assurances that, under accident conditions, the source is unlikely to lose its integrity. These requirements would specify that each individual sealed source would have to (1) pass a pressure test; (2) be doubly encapsulated; and (3) contain licensed material in chemical and physical forms which are as insoluble and nondispersible as practical (for example, cesium chloride would not satisfy this requirement because it is soluble in water). A single encapsulated source has a greater change of causing radioactive contamination than a doubly encapsulated source, and soluble or dispersible material from a ruptured source could cause more radioactive contamination than less soluble, less dispersible material. These requirements would (1) phase out the use of substandard sources in well-logging, (2) result in lower probability of source rupture in the well, and (3) mitigate the consequence of contamination in the event of a rupture.

The proposed rule would require that a license not use a new sealed source manufactured after [1 year after the effective date of the final rule] unless it is designed and manufactured in accordance with proposed § 39.41(a). The 1-year grace period is proposed to provide sealed source manufacturers sufficient time to produce sources complying with NRC's requirements.

Sealed sources manufactured before [1 year after the effective date of the final rule] could be used by a licensee until [2 years after the effective date of the final rule]. After this 2-year period, however, these sources could no longer be used unless they were certified, by the manufacturer or other testing organization, as having satisfied the requirements specified in § 39.41(b).

Any source that could not meet the performance criteria proposed in § 39.41(b) would have to be phased out of well-logging. Most sealed sources manufactured after 1978 have complied with the ANSI Standard and there should not be a problem in their ability to comply with the requirements specified in § 39.41(b).

F. Inspection, Maintenance, and Opening of Source or Source Holder

The proposed rule (§ 39.43(a)) would require that each licensee inspect equipment and tools for obvious defects before the equipment is used each day. Furthermore, paragraph (b) would require that each licensee inspect and maintain equipment and tools at intervals not to exceed 6 months. The licensee would be required to check the equipment and tools for label legibility and for the absence of physical damage. If any equipment or tools critical to radiation safety were found to be worn or damaged, paragraph (c) would require that the licensee remove them from service until repairs were made.

Paragraph (d) of this section would prohibit the licensee from performing maintenance on a sealed source or a source holder containing a source, unless the licensee has a written instruction approved by NRC. This maintenance may include changing the O-ring on the source holder containing a source or changing the sealed source from one source holder to another source holder. This requirement is needed because the worker is very close to the sealed source during this maintenance, and thus, could receive a significant radiation dose.

This section would also prohibit a licensee from forcing a stuck sealed source out of the source holder or out of the logging tool by operations that could endanger its integrity unless specifically authorized by the NRC. Prohibited operations could include, but would not be limited to: drilling, cuttng, or chiseling. These operations would be prohibited because they could accidently rupture the sealed source and could cause radioactive contamination of the facility, personnel and environment. For similar reasons, a licensee would be prohibited from repairing, opening, or modifying a sealed source unless specifically authorized by NRC to perform these operations.

G. Subsurface Tracer Studies

Radioactive materials in liquid or gaseous forms and other materials, such as sand labeled with radionuclides, are used as tracer materials in subsurface tracer studies. These materials could accidently spill on clothing, contaminate hands, be ingested, or, in the case of gaseous or volatile material, be inhaled by personnel. The proposed rule (§ 39.45) would require that protective gloves, clothing, and other equipment be used by individuals who handle tracer materials. When volatile materials such as iodine are handled by employees of licensees who have bioassay requirements incorporated in their licenses in accordance with § 20.108, a bioassay could be required when those employees work in field operations with more than 50 millicuries of I–125 or I–131. A licensee would also be required to maintain the temporary jobsite and the field station free from contamination from licensed materials.

In addition, a licensee would not be allowed to inject any licensed material into a fresh water aquifer as part of a subsurface tracer study unless specifically authorized to do so by the Commission, because the water could be used for human or animal consumption or to irrigate crops.

H. Radioactive Markers

The proposed rule (§ 39.47) would prohibit the use of radioactive markers (used for determining the depth of a well), unless the radioactivity of each marker, at the time of installation, is less than the quantity specified in § 30.71, Schedule B. This limitation in the amount of radioactivity is necessary because it is impracticable for the licensee that installs the radioactive marker to recover the marker when the well owner or operator removes the well casings from the well at a later date.

I. Uranium Sinker Bars

The proposed rule (§ 39.49) would require that after [one year from effective data of the final rule] each uranium sinker bar (used as a weight to pull a logging tool toward the bottom of a well) bear a legend: "CAUTION–RADIOACTIVE–DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND." This requirement is needed to ensure that, if a uranium sinker bar is lost, someone who finds the bar could identify it as radioactive and would return it to the company. (Because uranium is source material, the licensee must also comply, as necessary, with requirements in 10 CFR Part 40, "Domestic Licensing of Source Materials.")

J. Use of Sealed Source in a Well Without Surface Casing

The proposed rule (§ 39.51) would prohibit the use of a sealed source in a well without surface casing unless procedures for protecting fresh water aquifer zones are specifically approved by NRC. (A surface casing is a pipe or tube used as lining in the well to isolate the fresh water zone from the well). The purpose of this requirement is to minimize the possibility of contamination of fresh water aquifer zones by accidental rupture of a sealed source. In general, most wells have surface casings to prevent oil or other particulates from entering these zones. However, if surface casings cannot be placed, a licensee may not use a sealed source in an uncased well, uless NRC has specifically approved the licensee's procedures for providing adequate

protection of the fresh water aquifer from radioactive contamination.

Because most uncased wells are primarily encountered in mineral logging, licensees performing mineral logging operations may want to provide specific comments on this requirement, especially on the feasiblity of protective alternatives.

K. Training

Although general requirements on instruction and training are specified in 10 CFR 19.12 and 30.33(a)(3), the proposed rule (§ 39.61) would establish specific training requirements for logging supervisors and logging assistants. Licensees would be prohibited from permitting an individual to perform well-logging operations unless the individual has been properly trained in accordance with the requirements specified in this section. Training is needed to provide radiation workers with sufficient knowledge and practical experience on radiation safety to ensure safe use of licensed materials. The level of knowledge they would need would depend, of course, on their responsibilities.

For logging supervisors, the proposed rule would require, at a minimum, 40 hours of formal classroom training in the subjects listed under § 39.61(e). Furthermore, it would require that an individual must have, at a minimum , 3 months of on-the-job training. This requirement is needed to ensure that a logging supervisor has sufficient practical experience on radiation safety procedures to handle routine operations and unanticipated emergencies in a safe manner.

Because logging assistants work under the personal supervision of a logging supervisor, their training requirements can be less stringent than those for the logging supervisors. The proposed rule would require that an assistant be instructed on applicable sections of Parts 19, 20, and 21, and on the licensee's operating and emergency procedures. It would also require that the individual be able to use remote tools, survey instruments, etc., to perform work properly under the supervision of the logging supervisor.

The proposed rule would also require that logging supervisors and logging assistants be retained annually after their initial training. This periodic retraining is needed to: (1) Refresh their understanding of basic radiation safety practices, (2) instruct them on any new procedures or on the use of new radiation detection instruments and new tools, and (3) review regulatory requirements or new regulations which may affect their work.

L. Operating and Emergency Procedures

The proposed rule (§ 39.63) would require that each licensee develop and follow written procedures for well-logging operations and for dealing with emergencies. These written procedures would also be used as: (1) training materials for instructing logging supervisors and logging assistants, (2) reference materials at a field station and at a temporary jobsite, and (3) supporting documents in licensing applications.

M. Personnel Monitoring and Radiation Surveys

The proposed rule (§ 39.65) would require that logging supervisors and logging assistants wear personnel monitoring equipment at all times during the well-logging operation. The requirements in § 39.65 (a), (b), and (c) are specific applications of the existing broader requirements in §§ 20.108, 20.202, and 20.401, respectively. These requirements are repeated in this part because they constitute key features of a radiation protection program.

Similarly, the proposed rule (§ 39.67) would also require that the licensee conduct radiation surveys. This requirement is a specific application of the existing broader requirement in § 20.201, "Surveys." Instead of the 2 years retention for survey records as specified in § 20.401, a 3-year retention period is proposed because the NRC inspection period is every 3 years for well-logging licensees.

If gaseous or volatile tracer materials are used, the licensee may be required to provide bioassay service to individuals handling the tracer materials (§ 39.65(b)). Whether a bioassay is needed depends on the type of radioactive materials and quantity used. For example, Regulatory Guide 8.20, "Applications of Bioassay for I–125 and I–131," states that bioassays should be performed when individuals work in field operations with more than 50 millicuries of I–125 or I–131.

N. Contamination Control

The proposed rule (§ 39.69) would require that licensees monitor for radioactive contamination during fishing or source recovery operations, initiate emergency procedures if a sealed source ruptures, and decontaminate any equipment, personnel, or environment that is contaminated. This requirement is needed to assure that any rupture of a sealed source in a well during a fishing operation is detected and reported and that emergency procedures are initiated. Also, paragraph (c) would require that the licensee decontaminate any contaminated equipment, areas, or personnel. Guidance on release of equipment or areas for unrestricted use is available case-by-case from the NRC. In general, limits similar to those in Regulatory Guide 1.86 should be met. The licensee may perform the decontamination or use a contracting or consulting service to perform it. These requirements are important to avoid the possibility of unnecessary wide-spread contamination if a sealed source is ruptured. The monitoring would detect contamination from a source rupture and the initiation of emergency procedures would limit the spread of contamination. Furthermore, decontamination would prevent contaminated objects from leaving the site and thus further prevent wide-spread contamination to public areas.

O. Security

The proposed rule (§ 39.71) would require that the licensee maintain surveillance and control of the jobsite's restricted areas (as defined in Part 20) and prevent unauthorized personnel, such as employees of an oil company or drilling company, from entering a restricted area. This requirement is needed to avoid the inadvertent exposure of these personnel to radiation.

P. Documents and Records Required at Field Stations and Temporary Jobsites

The proposed rule (§§ 39.73 and 39.75) would require that certain documents and records be kept at a field station or a temporary jobsite. These records are needed so that operating personnel can have easy access to the documents they need to perform the job, to follow any operational restrictions, or to use emergency procedures if an accident occurs. Records of radiation surveys, instrument calibrations, sealed source leak tests, etc., are needed for the licensee to make safety checks or to check schedules for maintenance. The recordkeeping requirement would also enable NRC inspectors to determine whether the requirements have been met.

Q. Notification of Incidents and Lost Sources and Abandonment Procedures for Irretrievable Sources

The proposed rule (§ 39.77(a)) would require, in addition to general reporting requirements in Part 20, immediate notification if (1) licensed material has been lost in or near freshwater aquifers or (2) a sealed source has been ruptured at the licensee's facility or temporary jobsite. This requirement is needed

because these conditions could cause radioactive contamination.

Paragraph (b) would also require that the licensee notify NRC of incidents and lost sources. (This does not include loss of a sealed source lodged in a well because it is covered by paragraph (c) of this section.) The requirements are presently contained in a more general form in §§ 20.402, 20.403, and 20.405 and are repeated in specific form for the sake of completeness.

Paragraphs (c) and (d) consolidate the existing regulations, 10 CFR 30.56 and 70.60, on irretrievable well-logging sources into one section in Part 39. The consolidation would be beneficial because it would put all requirements for well-logging operations in a single part. The proposed text is essentially the same as the existing text under §§ 30.56 and 70.60, which would be deleted.

R. Application for Exemption

The proposed rule (§ 39.91) would permit a licensee to apply for an exemption from the requirements in this part. This section is needed to allow NRC to judge on a case-by-case basis whether certain requirements can be waived if it determines that the exemption will not result in undue hazard to life or property.

3. Summary

The Commission believes that the proposed rule, if adopted, would provide a comprehensive and consistent set of regulations that would help maintain compatibility between NRC's and Agreement States' regulations. Furthermore, the proposed rule would also establish additional requirements that would reduce the potential for and severity of an accident. The Commission also believes that the economic impact of the rule would be small. The economic impact is analyzed in detail in a draft regulatory analysis prepared on this proposed rule.

Interested persons are encouraged to comment on the proposed rule, on its impact on the public and the industry, and on the draft regulatory analysis.

Finding of No Significant Environmental Impact: Availability

The Commission has detemined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This rule would not significantly affect the quality of the human environment because the proposed requirements are designed to control the use of licensed materials in well-logging operations. On the other hand, these requirements, if adopted, would reduce occupational radiation exposures and would also reduce the chances for and consequences of accidents involving licensed materials. Furthermore, most of these requirements are already being complied with by licensees as licensing conditions. Therefore, the proposed rule would have no measurable negative environmental impact. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–443–7901).

Paperwork Reduction Act Statement

This proposed rule contains new information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). It has been submitted to the Office of Management and Budget for reveiw and approval of the paperwork requirements.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, D.C. Single copies of the analysis may be obtained from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–443–7901).

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certified that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule would provide radiation safety requirements, uniformity in the NRC and Agreement States regulations, and requirements that would reduce the risks of accidents involving radiation or radioactive materials. The proposed rule affects about 173 specific licensees of which approximately 60% are small entities based on the size standards of the Small Business Administration set out in 13 CFR Part 121 (February 9, 1984, 49 FR 5024). These licenses are issued to companies performing well-logging operations.

The Commission estimates that the total cost of compliance with the requirements contained in this proposed regulation would be approximately $7,400 a year for an average well-logging licensee. However, many well-logging licensees are already complying with most of these requirements because the requirements are currently imposed as conditions of the license under which they operate. Therefore, the acutal increases in the compliance cost to most licensees would be considerably smaller. The cost to an average well-logging licensee for those requirements not already imposed under a license condition would be approximately $2,000 a year.

The Commission does not believe that this regulation would impose a significant economic impact on most licensees. A detailed analysis of the cost of each individual requirement imposed by the regulation appears in the Regulatory Analysis prepared for this action. The Commission is particularly interested in receiving comment from well-logging licensees on the cost estimates contained in the Regulatory Analysis and on the assumptions on which these estimates are based. The Commission is also interested in receiving comment from small licensees about the potential impact of the proposed regulation and the resultant cost of these requirements on their operations.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size in terms of annual income or revenue, number of employees, number of well-logging trucks, and average number of wells logged or serviced annually;

(b) How the proposed regulations would result in a significant economic burden upon the licensee as compared to that on a larger licensee; and

(c) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

List of Subjects

10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discriminination.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 39

Byproduct material, Nuclear material, Oil and gas exploration—well logging, Penalty, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Hazardous mateirials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 71

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Reporting and recordkeeping requirements.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt 10 CFR Part 39.

It is proposed to amend 10 CFR as follows:

1. Part 39 is added to 10 CFR Chapter I to read as follows:

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL-LOGGING OPERATIONS

Subpart A—General Provisions

Sec.
39.1 Purpose and scope.
39.2 Definitions.
39.5 Interpretations.
39.8 Information collection requirements: OMB approval.

Subpart B—Specific Licensing Requirements

39.11 Application for a specific license.
39.13 Specific licenses for well-logging operations.
39.15 Requirement for an agreement with well owner or operator.
39.17 Request for written statements.

Subpart C—Equipment Control

39.31 Labels, security and transportation precautions.
39.33 Radiation detection instruments.
39.35 Leak testing of sealed sources.
39.37 Physical inventory.
39.39 Utilization records.
39.41 Design and performance criteria for sealed sources.
39.43 Inspection, maintenance, and opening of a source or source holder.
39.45 Subsurface tracer studies.
39.47 Radioactive markers.
39.49 Uranium sinker bars.
39.51 Use of a sealed source in a well without surface casing.

Subpart D—Radiation Safety Requirements

39.61 Training.
39.63 Operating and emergency procedures.
39.65 Personnel monitoring.
39.67 Radiation surveys.
39.69 Radioactive contamination control.

Subpart E—Security, Records, Notifications

39.71 Security.
39.73 Documents and records required at field stations.
39.75 Documents and records required at temporary jobsites.
39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

Subpart F—Exemptions

Sec.
39.91 Applications for exemptions.

Subpart G—Enforcement

39.101 Violations.

Authority: Sections 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For purposes of sec. 223, 68 Stat. 958 as amended (42 U.S.C. 2273); §§ 39.15, 39.31–39.51, 39.61–39.77 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 39.15, 39.33–39.43, 39.61–39.67, 39.73–39.77 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 39.1 Purpose and scope.

(a) This part prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers, and uranium sinker bars in well-logging operations in a single well. This part also prescribes radiation safety requirements for persons using licensed materials in these operations. The provisions and requirements of this part are in addition to, and not in substitution for, other requirments of this chapter. In particular, the provisions of Parts 19, 20, 21, 30, 40, 70, 71, and 150 of this chapter apply to applicants and licensees subject to this part.

(b) The requirements set out in this part do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, e.g., field flooding studies.

§ 39.2 Definitions.

"Casing" means a metal pipe or tube used as a lining for oil or gas wells to prevent collapse of the well-bore.

"Field station" means a facility where licensed material may be stored or used and from which equipment is dispatched to temporary jobsites.

"Fresh water aquifer," for the purpose of this part, means a geological formation that is capable of yielding a significant amount of fresh water to a well or spring.

"Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

"Irretrievable well-logging source" means any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all

reasonable effort at recovery has been expended.

"Licensed material" means byproduct material, source material, or special nuclear material received, possessed, used, or transferred under a license issued by the Commission under the regulations in this chapter.

"Logging assistant" means an individual who assists the logging supervisor in performing the well-logging operations.

"Logging supervisor" means an individual who provides personal supervision of the use of licensed material at the temporary jobsite and who is responsible to the licensee for assuring compliance with the requirements of the Commission's regulations and the conditions of the license.

"Logging tool" means a device used subsurface to perform well-logging.

"Mineral logging" means any logging performed for the purpose of mineral exploration other than oil or gas.

"Personal supervision" means guidance and instruction by a logging supervisor who is physically present at the temporary jobsite and in such proximity that personal contact with the logging assistants is maintained and that immediate assistance can be given.

"Radioactive marker" means licensed material used for the purpose of depth determination or direction orientation. This term includes radioactive collar markers and radioactive iron nails.

"Sealed source" means any licensed material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

"Source holder" means a housing or assembly into which a sealed source is placed for the purpose of facilitating the handling and use of the source in well-logging operations.

"Subsurface tracer study" means, for the purpose of this part, the release of unsealed license material or a substance labeled with licensed material in a single well for the purpose of tracing the movement or position of the material or substance in the well-bore or adjacent formation (this term does not include the use of licensed material in field flooding studies).

"Surface casing" means a pipe or tube used as a lining in a well to isolate the fresh water zone from the well.

"Temporary jobsite" means a place to which licensed materials are dispatched to perform well-logging operations or subsurface tracer studies.

"Uranium sinker bar," for the purpose of this part, means a weight containing depleted uranium used for the purpose of providing additional force to pull a logging tool down toward the bottom of a well.

"Well-bore" means a drilled hole in which well-logging operations and subsurface tracer studies are performed.

"Well-logging" or "wireline service operation," for the purpose of this part, means the lowering and raising of measuring devices or tools which contain licensed material into well-bores or cavities for the purpose of obtaining information about the well or adjacent formations which may be used in oil, gas, mineral, or geological exploration.

"Well-logging operation" means any activity involving licensed material performed in a well, including well-logging, mineral logging, subsurface tracer studies, use of radioactive markets, radioactive iron nails, uranium sinker bars, and radioactive sands.

"Wireline" means a cable containing one or more electrical conductors which is used to lower and raise logging tools in the well-bore.

§ 39.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 39.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150-____.

(b) The approved information collection requirements contained in this part appear in §§ 39.11, 39.13, 39.15, 39.31, 39.33, 39.35, 39.37, 39.39, 39.41, 39.43, 39.49, 39.61, 39.65, 39.67, 39.73, 39.75, and 39.77.

Subpart B—Specific Licensing Requirements

§ 39.11 Application for a specific license.

A person, as defined in § 30.4(k) of this chapter, shall file an application for a specific license authorizing the use of licensed material in well-logging operations on Form NRC 313, "Application for Material License." Each application for a license, other than a license exempted from Part 170 of this chapter, must be accompanied by the fee prescribed in § 170.31 of this chapter. The application must be sent to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter.

§ 39.13 Specific licenses for well-logging operations.

The Commission will approve an application for a specific license for the use of licensed material in well-logging operations if the applicant meets the following requirements:

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter for byproduct material, in § 40.32 of this chapter for source material, and in § 70.33 of this chapter for special nuclear material, as appropriate, and any special requirements contained in this part.

(b) The applicant shall develop a program for training logging supervisors and logging assistants and submit to the Commission a schedule or description of this program which specifies the—

(1) Initial training;

(2) Annual retraining;

(3) On-the-job training;

(4) Means the applicant will use, including a copy of the written test, to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the Commission's regulations and licensing requirements, and the applicant's operating and emergency procedures; and

(5) Means the applicant will use, including a copy of the written test or an outline of the oral test, to demonstrate the logging assistant's knowledge and understanding of and ability to comply with, the applicant's operating and emergency procedures.

(c) The applicant shall establish and submit to the Commission written operating and emergency procedures as described in § 39.63.

(d) The applicant shall establish and submit to the Commission a program for annual internal inspections of the performance of each logging supervisor and assistant to ensure that the Commission's regulations, license requirements, and the applicant's operating and emergency procedures are followed by these personnel. Inspection records must be retained for 3 years after each annual internal inspection.

(e) The applicant shall submit a description of its overall organizational structure pertaining to the well-logging operations, including specified delegations of authority and responsibility.

(f) (1) If the applicant wants to conduct and evaluate its own leak tests, it shall establish procedures to be followed in leak testing sealed sources

for possible leakage and contamination and submit a description of these procedures to the Commission. The description must include the—

(i) Instrumentation to be used;

(ii) Method of performing test; and

(iii) Pertinent experience of the person who will perform the test.

(2) If an applicant wants to use a leak test kit, it shall identify the manufacturer and the model number of the kit.

§ 39.15 Requirement for an agreement with well owner or operator.

(a) A licensee shall not perform well-logging with a sealed source unless it executes a written agreement with the well owner or operator, whichever engaged the licensee to perform the well-logging operation. The licensee shall retain a copy of the written agreement for 3 years after the completion of the well-logging operation.

(b) This written agreement must specify that:

(1) If a sealed source becomes lodged in the well, a reasonable effort will be made to recover it;

(2) A person may not attempt to recover a sealed source in a manner which, in the licensee's opinion, could result in its rupture;

(3) If the environment or if any equipment or personnel are contaminated with licensed material, they must be decontaminated before release from the site or release for unrestricted use; and

(4) If, after reasonable efforts at recovery have been expended, the sealed source is classified as irretrievable, the following requirements must be implemented within 30 days after a sealed source is classified as irretrievable:

(i) Each irretrievable well-logging source must be immobilized and sealed in place with a cement plug;

(ii) A whipstock or other deflection device must be set at some point in the well above the cement plug, unless the cement plug and source are not accessible to any subsequent drilling operations; and

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 7-inches square and ⅛-inch thick. The plaque must contain—

(A) The word "CAUTION";

(B) The radiation symbol (the color requirement in § 20.203 of this chapter need not be met);

(C) The date the source was abandoned;

(D) The name of the well owner or well operator, as appropriate;

(E) The well name and well identification number(s) or other designation;

(F) An identification of the sealed source(s) by radionuclide and quantity;

(G) The depth of the source and depth to the top of the plug; and

(H) An appropriate warning such as "DO NOT RE-ENTER THIS WELL."

(c) A licensee may apply under § 39.91 for Commission case-by-case approval of proposed procedures to abandon an irretrievable well-logging source in a manner not otherwise authorized in paragraph (b)(4) of this section.

§ 39.17 Request for written statements.

Each license is deemed to contain the condition that the licensee will, at any time before expiration of the license, upon the Commission's request, submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended, or revoked.

Subpart C—Equipment Control

§ 39.31 Labels, security and transportation precautions.

(a) *Labels.* (1) The licensee may not use a source, source holder, or logging tool containing licensed material unless it bears a durable, legible, and clearly visible marking or label. The label must contain the radiation symbol specified in § 20.203 of this chapter, without the conventional color requirements, and the wording "DANGER (or CAUTION) RADIOACTIVE MATERIAL." The label must be on the smallest component that contains the licensed material transported as a separate piece of equipment.

(2) The licensee may not use a storage or transport container to store or transport licensed material unless it has permanently attached to it a durable, legible, and clearly visible label. The label must contain the radiation symbol, in conventional colors, and the wording "CAUTION (or DANGER), RADIOACTIVE MATERIAL, NOTIFY CIVIL AUTHORITIES (or NAME OF COMPANY)."

(b) *Security precautions during storage and transportation.* (1) The licensee shall store each source containing licensed material in a storage container or transportation package. The container or package must be locked and physically secured to prevent tampering or removal of licensed material from storage by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(2) The licensee shall lock and physically secure the transport package containing licensed material to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

(c) *Transportation precautions.* The licensee shall comply with the applicable provisions of the transportation regulations prescribed in Part 71 of this chapter. (Transportation of radioactive material is also subject to the Department of Transportation's regulations in 49 CFR Parts 171 through 178 which include provisions for proper packaging, marking and labeling, placarding of the transport vehicle, monitoring, accident reporting and for shipping papers.)

§ 39.33 Radiation detection instruments.

(a) The licensee shall keep a calibrated and operable radiation survey instrument at each field station and temporary jobsite to make the radiation surveys that are required by this part and by Part 20 of this chapter. To satisfy this requirement, the radiation survey instrument must be capable of measuring 0.1 milliroentgen per hour through at least 100 milliroentgens per hour. Survey instruments acquired before [one year after the effective date] and capable of measuring 0.1 milliroentgen per hour through at least 20 milliroentgens per hour also satisfy this requirement until [5 years after the effective date].

(b) the licensee shall have available additional calibrated and operable radiation detection instruments capable of detecting radiation and contamination levels that could be encountered during well-logging operations or in the event of an accident. The licensee may own the instruments or may arrange to obtain them from a second party.

(c) The licensee shall have each radiation survey instrument required under paragraph (a) of this section calibrated—

(1) At intervals not to exceed 6 months and after instrument servicing;

(2) At two points located approximately 1/3 and 2/3 of full scale on each scale (for logarithmic scale, at mid range of each decade, and at two points of at least one decade); and

(3) So that accuracy within plus or minus 20 percent of the true radiation level can be demonstrated on each scale.

(d) The licensee shall maintain calibration records for a period of 3 years after the date of calibration for inspection by the Commission.

§ 39.35 Leak testing of sealed sources.

(a) *Testing and recordkeeping requirements.* Each licensee using a sealed source shall have the source tested for leakage. The licensee shall keep a record of the leak test result in units of microcuries and maintain the record for inspection by the Commission for 3 years after the leak test is performed.

(b) *Method of testing.* A test for leakage must be performed only by a person specifically authorized by the Commission or an Agreement State to perform the test. The test sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The test sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 0.005 microcurie of radioactive material on the test sample.

(c) *Test frequency.* Each sealed source must be tested for leakage at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(d) *Removal of leaking source from service.* (1) If the test conducted pursuant to paragraph (a) and (b) of this section reveals the presence of 0.005 microcurie or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by an authorized licensee.

(2) The licensee shall file a report with the appropriate NRC Regional Office listed in Appendic D of Part 20 of this chapter, within 5 days of the test. The report must describe the equipment involved in the leakage, the test results, any contamination which resulted from the leaking source, and the corrective action taken.

(e) *Exemptions from testing requirements:* The following sealed sources are exempt from periodic leak test requirements in paragraphs (a) through (d) of this section:

(1) Hydrogen-3 sources;

(2) Sources containing licensed material with a half-life of 30 days or less;

(3) Sealed sources containing licensed material in gaseous form;

(4) Sources of beta- and/or gamma-emitting radioactive material with an activity of 100 microcuries or less; and

(5) Sources of alpha-emitting radioactive material with an activity of 10 microcuries or less.

§ 39.37 Physical inventory.

Each licensee shall conduct a semiannual physical inventory to account for all licensed material received and possessed under the license. The licensee shall maintain records of the inventory for 3 years from the date of the inventory for inspection by the Commission. The inventory must indicate the quantity and kind of licensed material, location of the licensed material, the date of the inventory, and the name of the individual conducting the inventory.

§ 39.39 Utilization records.

(a) Each licensee shall maintain a record showing the following information for each utilization of licensed material:

(1) The make, model number, and a serial number or a description of each sealed source used;

(2) In the case of a radioactive marker or unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well;

(3) The identity of the logging supervisor and logging assistants to whom the licensed material is assigned; and

(4) Location and date of use of the licensed material.

(b) The licensee shall maintain the records required by paragraph (a) of this section available for inspection by the Commission and shall retain the record for 3 years from the date of the recorded event.

§ 39.41 Design and performance criteria for sealed sources.

(a) A licensee may not use a sealed source, except one containing licensed material in gaseous form, manufactured after [one year after the affective date of the final rule] in well-logging unless the manufacturer certifies to licensee that the sealed source meets the following criteria:

(1) It is doubly encapsulated construction;

(2) It contains licensed material whose chemical and physical forms are as insoluble and non-dispersible as practical;

(3) It has individually passed pressure testing to 24,600 pounds per square inch absolute without leakage; and

(4) It meets the following performance requirements by prototype testing. Compliance with the tests is determined by the ability of the protoype to maintain its integrity after each of the following tests:

(i) *Temperature*—the test source must be held at −40°C for 20 minutes, 600°C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds;

(ii) *Impact test*—a 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source;

(iii) *Vibration test*—the test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes; and

(iv) *Puncture test*—a 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(b) After [2 years after the effective date of this rule], a licensee may not use a sealed source manufactured before [one year after the effective date of this rule], except one containing licensed material in gaseous form, unless the manufacturer, or a qualified testing organization, certifies to the licensee that the sealed source meets:

(1) The criteria of paragraphs (a)(1), (a)(2), and (a)(3) of this section; or

(2) The criteria of paragraphs (a)(1), (a)(2), (a)(3) of this section by prototype test, and the performance requirement of paragraph (a)(4) of this section.

(c) The licensee shall keep the certification documents described by paragraphs (a) and (b) of this section for inspection by the Commission for 3 years after transfer or disposal of the source or its abandonment in a well.

§ 39.43 Inspection, maintenance, and opening of a source or source holder.

(a) Each licensee shall inspect the source holders, logging tools, and source handling tools for obvious defects before the equipment is used each day to ensure that the equipment is in good working condition.

(b) Each licensee shall conduct a program of visual inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, injection tools, and sinker bars to ensure that the required labeling is legible and that visual physical damage is absent. The licensee shall perform the visual inspection and maintenance at least every 6 months. The licensee shall maintain records of inspection and

maintenance for 3 years for inspection by the Commission.

(c) If the inspection conducted under paragraph (a) of this section reveals damage to the labeling or to components critical for radiation safety, the licensee shall remove the item from service until repairs are made.

(d) Removal of a sealed source from a source holder, and maintenance on sealed sources, holders or pressure housings in which sealed sources are placed, or on other equipment containing a sealed source may not be performed unless a written instruction has been approved by the Commission as part of the license application.

(e) If a sealed source is stuck in the source holder or logging tool, the licensee may not perform any operation, such as drilling, cutting, or chiseling, on the source holder or logging tool, unless it is specifically licensed by the Commission to perform this operation.

(f) The repair, opening, or modification of any sealed source must be performed only by persons specifically licensed to do so by the Commission.

§ 39.45 Subsurface tracer studies.

(a) The licensee shall require all personnel handling radioactive tracer material to use protective gloves and clothing and other appropriate equipment. The licensee shall take precautions to avoid ingestion or inhalation of radioactive trace material and to avoid contamination of field stations and temporary jobsites. (Bioassay services may be required by § 39.65(b).)

(b) A licensee may not inject licensed material into fresh water aquifers unless specifically authorized to do so by the Commission.

§ 39.47 Radioactive markers.

The licensee may not use a radioactive marker in wells, unless the individual marker contains quantities of licensed material not exceeding the specified quantities in § 30.71 of this chapter.

§ 39.49 Uranium sinker bars.

The licensee may not use a uranium sinker bar in well-logging operations after [one year from the effective date of the rule], unless it is legibly impressed with the words "CAUTION-RADIOACTIVE-DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

§ 39.51 Use of a sealed source in a well without surface casing.

The licensee may not use a sealed source in a well without a surface casing designed to protect fresh water aquifer zones, unless procedures for protecting these zones are specifically approved by the Commission.

Subpart D—Radiation Safety Requirements

§ 39.61 Training.

(a) The licensee may not permit an individual to act as a logging supervisor until that person:

(1) Has completed at least 40 hours of formal training in the subjects outlined in paragraph (e) of this section;

(2) Has received copies of and instruction in:

(i) NRC regulations contained in this part and in the applicable section of Parts 19, 20, 21, 30, 40, 70, and 71 of this chapter;

(ii) The NRC license under which the logging supervisor will perform well-logging operations; and

(iii) The licensee's operating, recordkeeping, and emergency procedures;

(3) Has completed 3 months of on-the-job training and demonstrated competence in the use of licensed materials, remote handling tools, and radiation survey instruments by a field evaluation; and

(4) Has demonstrated understanding of the requirements in paragraphs (a) (1) and (2) of this section by successfully completing a written test.

(b) The licensee may not permit an individual to act as a logging assistant until that person:

(1) Has received instruction in applicable sections of Parts 19, 20, and 21 of this chapter;

(2) Has received copies of and instruction in the licensee's operating and emergency procedures;

(3) Has demonstrated uderstanding of the materials listed in paragraphs (b) (1) and (2) of this section by successfully completing a written or oral test; and

(4) Has received instruction in the use, under the personal supervision of the logging supervisor, of tracer material, sealed sources, remote handling tools, and radiation survey instruments.

(c) The licensee shall provide for the annual retraining of logging supervisors and logging assistants.

(d) The licensee shall maintain a record of each logging supervisor's and logging assistant's training, including copies of written tests and dates of oral tests, for 3 years following the termination of employment.

(e) The licensee shall include the following subjects in the formal training required in paragraph (a)(1) of this section:

(1) Fundamentals of radiation safety:

(i) Characteristics of radiation;

(ii) Units of radiation dose and quantity of radioactivity;

(iii) Hazards of exposure to radiation;

(iv) Levels of radiation from licensed material;

(v) Methods of controlling radiation dose:

(A) Working time;

(B) Working distances;

(C) Shielding;

(vi) Radiation safety practices, including prevention of contamination, and methods of decontamination;

(2) Radiation detection instrumentation to be used:

(i) Use of radiation survey instruments:

(A) Operation;

(B) Calibration;

(C) Limitations;

(ii) Survey techniques;

(iii) Use of personnel monitoring equipment;

(3) Equipment to be used:

(i) Handling equipment and remote handling tools:

(ii) Licensed materials;

(iii) Storage, control, and disposal of equipment and licensed material;

(iv) Operation and control of equipment and licensed materials;

(v) Maintenance of equipment;

(4) The requirements of pertinent Federal and State regulations; and

(5) Case histories and potential consequences of accidents in well-logging operations.

§ 39.63 Operating and emergency procedures.

Each licensee shall develop and follow written operating and emergency procedures that cover instruction in—

(a) The handling and use of licensed materials to be employed so that no individual is likely to be exposed to radiation doses in excess of the limits established in Part 20 of this chapter;

(b) Methods and occasions for conducting radiation surveys;

(c) Methods and occasions for locking and securing licensed materials;

(d) Personnel monitoring and the use of personnel monitoring equipment;

(e) Transportation of licensed materials to field stations or temporary jobsites, including packing of licensed materials in vehicles, placarding of vehicles when needed, and physically securing licensed materials to transport vehicles during transportation to prevent accidential loss, tampering, or unauthorized removal;

(f) Minimizing personnel exposure, including that from inhalation and ingestion of licensed materials, during well-logging operations and in the event of an accident;

(g) The procedure for notifying proper persons in the event of an accident;

(h) Maintenance of records;

(i) The inspection of maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;

(j) The procedure to be followed if a sealed source is lodged in a well or ruptured;

(k) The procedure to be used for picking up, receiving, and opening packages containing licensed materials;

(l) The procedure for identifying and reporting to NRC defects and noncompliance, as required by Part 21 of this chapter;

(m) The procedure and the use of tools for remote handling of sealed sources and radioactive tracer material, except low-activity calibration sources;

(n) The procedure to be used for detecting contamination, required by §§ 39.67(c) through (e), and for preventing the spread of contamination; and

(o) The procedure to be used to decontaminate the environment, equipment or personnel if any or all are contaminated.

§ 39.65 Personnel monitoring.

(a) The licensee may not permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during well-logging operations, either a film badge or a thermoluminescent dosimeter (TLD). Each film badge or TLD must be assigned to and worn by only one individual. The film badge must be replaced at least monthly and TLD badges replaced at least quarterly. The licensee shall have each badge or dosimeter processed.

(b) The licensee shall provide appropriate bioassay services to individuals using licensed materials in subsurface tracer studies.

(c) The licensee shall keep reports received from the badge or TLD processor and from the bioassay service laboratory for inspection until the Commission authorizes disposition or terminates the license.

§ 39.67 Radiation surveys.

(a) The licensee shall make radiation surveys, including but not limited to paragraphs (b) through (e) of this section, of each area where licensed materials are used and stored.

(b) Before transporting the licensed materials, the licensee shall make a radiation survey of the position occupied by each individual in the vehicle and of the exterior of each vehicle used to transport the licensed materials.

(c) After removing the sealed source assembly from the logging tool and before departing from the temporary jobsite, the licensee shall confirm that the logging tool is free of contamination by energizing the logging tool detector or by using a survey meter.

(d) If the licensee suspects that, as a result of operations involving a sealed source, the encapsulation of the sealed source could be damaged by the operation, it shall conduct a radiation survey, including a contamination survey, during and after the operation.

(e) The licensee shall make a radiation survey at the temporary jobsite for each subsurface tracer study. The survey must include a measurement of radiation levels before and after the operation, and a measurement of contamination levels after the subsurface tracer study.

(f) The results of surveys required under paragraphs (a) through (e) of this section must be recorded and must include the date the survey took place, the name of the individual making the survey, the identification of the survey instrument used, and the location of the survey. The licensee shall maintain records of surveys for inspection by the Commission for 3 years after they are made.

§ 39.69 Radioactive contamination control.

(a) During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well to check for contamination resulting from damage to the sealed source.

(b) If the licensee detects evidence that the sealed source has ruptured or licensed materials have caused contamination, it shall initiate the emergency procedures required by § 39.63 immediately.

(c) If contamination results from the use of licensed material in well-logging operations, the licensee shall decontaminate all work areas, equipment, and unrestricted areas.

Subpart E—Security, Records, Notifications

§ 39.71 Security.

During each well-logging operation, the logging supervisor or other licensee employee designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in § 20.3(a)(14) of this chapter.

§ 39.73 Documents and records required at field stations.

(a) Each licensee shall maintain the following documents and records at the field station:

(1) A copy of applicable NRC regulations;

(2) The license authorizing the use of licensed material;

(3) Operating and emergency procedures;

(4) The record of the radiation survey instrument calibration required by § 39.33;

(5) The record of the leak test results required by §39.35;

(6) Physical inventory records required by § 39.37;

(7) Utilization records required by § 39.39;

(8) Records of inspection and maintenance required by § 39.43;

(9) Training records required by § 39.61(d); and

(10) Survey records required by § 36.67.

(b) Records required by paragraphs (a)(1) through (3) of this section must be kept until the licensee terminates its well-logging operations at the field station. Records required by paragraphs (a)(4) through (10) of this section must be kept for 3 years.

§ 39.75 Documents and records required at temporary jobsites.

Each licensee conducting operations at a temporary jobsite shall maintain the following documents and records at the temporary jobsite until the well-logging operation is completed:

(a) Operating and emergency procedures;

(b) Evidence of latest calibration of the radiation survey instruments in use at the site required by § 39.33;

(c) Latest survey records required by § 39.67;

(d) The shipping papers for the transportation of radioactive materials required by § 71.5 of this chapter; and

(e) A copy of the NRC license authorizing use of licensed materials, or a copy of the Agreement State license when operating under reciprocity pursuant to § 150.20 of this chapter.

§ 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(a) The licensee shall immediately notify the appropriate NRC Regional Office by telephone and subsequently within 5 days by confirmatory letter if it knows or has reason to believe that (1) licensed material has been lost in or near a fresh water aquifer; or (2) a sealed source has been ruptured. This

notice must designate the well or other location and describe the magnitude and extent of licensed materials, assess the consequences of the loss or rupture, and explain efforts planned or being taken to mitigate these consequences.

(b) The licensee shall notify the Commission of incidents and sources lost, other than in the well, in accordance with §§ 20.402, 20.403, and 20.405 of this chapter.

(c) If a sealed source becomes lodged in a well, and when it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall—

(1) Advise the well owner or operator, as appropriate, of the abandonment procedures under § 29.15 (b) or (c) and ensure that these procedures are implemented within 30 days after the sealed source has been classified as irretrievable; and

(2) Notify the appropriate NRC Regional Office by telephone of the circumstances of the loss, and request approval to implement abandonment procedures.

(d) The licensee shall, within 30 days after a sealed source has been classified as irretrievable, make a report in writting to the appropriate NRC Regional Office. The licensee shall send a copy of the report to each appropriate State agency that has authority over the particular well-drilling operation. The report must contain the following information:

(1) Date of occurrence;

(2) A description of the irretrievable well-logging source involved, including radionuclide, quantity, chemical and physical form;

(3) Surface location and identification of the well;

(4) Results of efforts to immobilize and seal the source in place;

(5) Depth of the source;

(6) Depth of the top of the cement plug;

(7) Depth of the well;

(8) Any other information (e.g., warning statement) contained on the permanent identification plaque;

(9) Notifications made to State agencies; and

(10) A brief description of the attempted recovery effort.

Subpart F—Exemptions

§ 39.91 Applications for exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

Subpart G—Enforcement

§ 39.101 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of this part.

(b) A court order may be obtained for the payment of a civil penalty imposed for violation of this part.

(c) Any person who willfully violates any provision of this part issued under section 161 b., i., or o. of the Atomic Energy Act of 1954, as amended, or the provisions cited in the authority citation at the beginning of this part may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment, or both, as provided by law.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

§ 19.2 [Amended]

2. Section 19.2 is amended by adding "39," after "Parts 30 through 35," in the first sentence.

§ 19.3 [Amended]

3. Section 19.3(d) is amended by adding "39," after "Parts 30 through 35," in the first sentence.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

§ 20.2 [Amended]

4. Section 20.2 is amended by adding "39," after "Parts 30 through 35," in the first sentence.

§ 20.3 [Amended]

5. Section 20.3(a)(9) is amended by adding "39," after "Parts 30 through 35," in the first sentence.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

§ 21.2 [Amended]

6. Section 21.2 is amended by adding "39," after "34, 35," in the first sentence.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

§ 30.4 [Amended]

7. In §30.4, paragraph (b) and (i) are amended by adding "and 39" after "31 through 35", and paragraph (x) is removed.

§ 30.5 [Amended]

8. Section 30.5 is amended by adding "and 39" after "31 through 35".

§ 30.6 [Amended]

9. In § 30.6, paragraph (b)(1) is amended by adding "39" after "30 through 35" in the first sentence.

§ 30.11 [Amended]

10. In § 30.11, paragraph (a) is amended by adding "and 39" after "31 through 35".

§ 30.13 [Amended]

11. Section 30.13 is amended by adding "and 39" after "31 through 35".

§ 30.14 [Amended]

12. In § 30.14, paragraph (a) is amended by adding "and 39" after "31 through 35" and paragraph (c) is amended by removing "and 34" and adding "34 and 39" after "32, 33".

§ 30.15 [Amended]

13. In § 30.15, paragraph (a) is amended by adding "and 39" after "31 through 35".

§ 30.18 [Amended]

14. In § 30.18, paragraph (a) is amended by adding "and 39" after "30 through 34".

§ 30.31 [Amended]

15. Section 30.31 is amended by adding "and 39" after "32 through 35".

§ 30.33 [Amended]

16. Section 30.33, paragraph (a)(4) is amended by adding "and 39" after "32 through 35".

§ 30.34 [Amended]

17. Section 30.34, paragraph (a) and (b) are amended by adding "and 39" after "31 through 35"; paragraph (c) is amended by adding "and 39" after "31 through 35" in the first and the second sentences; paragraphs (d) and (e) are amended by adding "and 39" after "31 through 35".

§ 30.39 [Amended]

18. Section 30.39 is amended by adding "and 39" after "32 through 35".

§ 30.56 [Removed]

19. Section 30.56 is removed.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

§ 40.5 [Amended]

20. In § 40.5, paragraph (b)(1) is amended by adding "39," after "30 through 35," in the first sentence.

PART 51—ENVIRONMENTAL REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

§ 51.22 [Amended]

21. In § 51.22, paragraphs (c)(3), (c)(10) and (c)(14) are amended by adding "39," after "34, 35," in the first sentence of each paragraph.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

§ 70.4 [Amended]

22. In § 70.4, paragraph (w) is removed.

§ 70.5 [Amended]

23. In § 70.5, paragraph (b)(1) is amended by adding "39" after "30 through 35."

§ 70.60 [Removed]

24. Section 70.60 is removed.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

§ 71.0 [Amended]

25. In § 71.0, paragraph (b) is amended by adding "39," after "21, 30," in the first sentence.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

§ 150.20 [Amended]

26. In § 150.20, paragraph (b) is amended by removing "70.60, to 70.62, inclusive," and adding "70.61, 70.62," after "70.51 to 70.56, inclusive,"; and by adding "§ 39.15 and Subparts C, D, E, F, and G of Part 39" after "and to the provisions of Parts 19, 20, and 71" of the first sentence.

The conforming amendments to Parts 19, 20, 21, 30, 40, 51, 70, 71, and 150 are issued under the following authority:

(Sec. 161, Pub. L. 83-703, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, Pub. L. 93-438, 82 Stat. 1242, as amended (42 U.S.C. 5841))

Dated at Washington, D.C. this 2nd day of April, 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85-8340 Filed 4-5-85; 8:45 am]

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10 CFR Part 50

Proposed Policy for Regulation of Advanced Nuclear Power Plants; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Policy Statement; correction.

SUMMARY: This document corrects a proposed policy statement.

FOR FURTHER INFORMATION CONTACT: Dennis K. Rathbun or James G. Beckerley, (202-634-3295).

SUPPLEMENTARY INFORMATION: In FR Doc. 85-7136 appearing on page 11882 in the issue of Tuesday, March 26, 1985, make the following correction:

Page 11882, third column, under the "**DATES**" caption change the comment expiration date to May 28, 1985.

Approved: April 2, 1985.

John C. Hoyle,

Acting Secretary.

[FR Doc. 85-8342 Filed 4-5-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. CE-2, Notice No. 23-ACE-10A]

Special Conditions; Soloy Conversions, Ltd., Modified Cessna Model 207 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of proposed special conditions.

SUMMARY: This notice withdraws Notice No. 23-ACE-10, published in the **Federal Register** on October 15, 1984, [49 FR 40184]. That notice proposed special conditions for the supplemental type certification of Soloy Conversions, Ltd. turbine-powered Cessna Models 207, T207, 207A and T207A airplanes. That notice is being withdrawn because Part 23 of the Federal Aviation Regulations (FAR) has been amended to include the standards proposed in these special conditions (Amendment 23-31). The certification basis for these Soloy Conversions, Ltd. turbine-powered Cessna 207 Series airplanes is being revised to include Amendment 23-31.

FOR FURTHER INFORMATION CONTACT: William L. Olson, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1983, Soloy Conversions, Ltd., 450 Pat Kennedy Way, SW., Olympia, Washington 98502, submitted an application for supplemental type certification of turbine-powered Cessna Model 207 Series airplanes which are single-engine, unpressurized, seven-place, highwing monoplanes. The existing propulsion system is a single, 284-continuous-horsepower, reciprocating engine. The airplane's maximum gross takeoff weight is 3800 pounds.

This modification of the Cessna 207 Series airplanes places a turbine engine substantially forward from the original reciprocating engine location which, in turn, makes the engine installation more critical with regard to engine mount flexibility. A flexible engine installation can cause an aeroelastic instability commonly known as propeller whirl flutter.

Now that the final rule has been published in the **Federal Register** (49 FR 46866; November 28, 1984) and Soloy has agreed to comply with Amendment 23-31 to Part 23 of the FAR in their January 15, 1985, letter, this notice can be withdrawn.

The Decision and Withdrawal

Accordingly, Notice No. 23-ACE-10 is withdrawn.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983)))

Issued in Kansas City, Missouri on March 26, 1985.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 85-8272 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-39-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that

would require repetitive inspections, functional tests, and replacement of components, if necessary, of the spoiler activating mechanism on British Aerospace BAC 1-11 400 series airplanes. There have been two incidents reported where one spoiler deployed during approach, causing an uncommanded roll.

DATES: Comments must be received on or before May 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-39-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-39-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has classified British Aerospace BAC 1-11 Service Bulletin 27-A-PM5890 as mandatory. Two incidents have occurred in service where, following depressurization of the No. 1 hydraulic system, one spoiler deployed during approach, causing the aircraft to roll. Spoilers are normaly held in position by No. 1 hydraulic system pressure. In the event of a pressure loss, the spoilers are held in place by mechanical locks. Excessive wear or corrosion can degrade the mechanical locks so that reservoir pressure on the full area side of the actuator piston is sufficient to extend the spoiler.

The service bulletin prescribes repetitive inspections and, if necessary, repetitive operational checks of the spoiler actuating mechanisms. Components which do not pass the service bulletin operational checks must be replaced.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exists or develop on airplanes of this model registered in the United States, an AD is proposed that would require the action mentioned above.

It is estimated that 25 U.S. registered airplanes would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $300 per airplane. Based on these figures, the toal cost impact of this AD to U.S. operators is estimated to be $13,500.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a subtantial number of small entities because few, if any, British Aerospace Model BAC 1-11 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 series 400 airplanes certificated in all categories. Compliance is required as indicated. To prevent asymmetrical deployment of spoilers accomplish the following, unless previously accomplished within the last 1000 landings or one year, whichever occurred earlier:

A. Within the next 100 landings or 30 days after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 5,000 landings from the last inspection, inspect the spoiler mechanical locks for misalignment, and adjust if necessary, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 27-A-PM5890, dated December 21, 1983.

From the results of the inspection above:

1. If two or more mechanical locks out of the four per spoiler are found unserviceable, perform an operational check of the spoilers prior to further flight and thereafter at intervals not to exceed 600 landings or 150 days, whichever occurs earlier, until defective components are replaced in accordance with the accomplishment instructions of the service bulletin.

2. If one mechanical lock out of the four per spoiler is found unserviceable, perform an operational check of the spoilers prior to further flight and thereafter at intervals not to exceed 2,500 landings in accordance with the accomplishment instructions of the service bulletin until defective components are replaced.

3. If the mechanical lock system fails the operational check conducted in accordance with pargraphs A.1. or A.2., above, the locks must be repaired or the spoilers rendered inoperative in accordance with the accomplishment instructions of the service bulletin prior to further flight.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special Flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8286 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-16-AD]

Airworthiness Directives; Gates Learjet Model 35 and Model 36 Airplanes Modified by Raisbeck STC SA766NW

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Gates Learjet Models 35 and 36 aircraft modified in accordance with Raisbeck Supplemental Type Certificate (STC) SA766NW, which would reduce the maximum operating limit speed on affected airplanes to prevent encountering certain potentially hazardous conditions. This action is the result of several reported incidents of aileron buffet or buzz experienced during high speed cruise. The aileron buffet or buzz can result in deterioration of the aircraft lateral control system characteristics to an unacceptable level.

DATES: Comments must be received no later than May 21, 1985.

ADDRESSES: Send comments on the proposal in duplicative to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service documents may be obtained upon request from the Jet Air Corporation, P.O. Box 245, Bellevue, Washington, 98009. This information also may be examined at Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Les Berven, Flight Test Branch, ANM-160S, telephone (206) 431-2889; or Mr. Stanton Wood, Airframe Branch, ANM-120S, telephone (206) 431-2924. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substances of this proposal will be filed in the rules docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reported incidents of aileron buffet or buzz involving Gates Learjet Models 35 and 36 aircraft modified in accordance with Raisbeck STC SA766NW. This aileron buffet or buzz may be of a severity that requires an immediate speed reduction to prevent an unacceptable deterioration in aircraft lateral control characteristics.

This proposed AD requires the operator to permanently reduce the maximum operating Mach limit (M_{MO}) to eliminate the probability of encountering this aileron instability within the allowable operating Mach envelope. This reduction in M_{MO} will necessitate removal and modification of the airspeed indicators to reset both the maximum airspeed/Mach indicator (Barber Pole), and the Mach overspeed warning switch. Additionally, the Airplane Flight Manual Supplement for Mark IV equipped airplanes must be changed to reflect the new Mach limits.

The aileron instability is affected by the wing leading edge contour, which is a function of manufacturing tolerances. In light of this, not all aircraft modified in accordance with STC SA 766NW may exhibit the aileron buffet or buzz below .83 Mach indicated. Therefore, certain operators may petition for an exemption from the requirements of this AD, under the provisions of Part II of the Federal Aviation Regulations (FAR). The reported aileron instability occurs during flight at the higher gross weights above 42,000 feet at Mach Numbers .80 to .83. Petitions for exemption should state the number of flights in these conditions and describe any incidents of buffet or buzz observed. Based upon the data contained in the petition, the FAA will then determine if a flight evaluation or other data is necessary to determine safety acceptability.

Other alternatives to compliance with this AD include removing the Raisbeck STC Number SA766NW modification and returning the airplane to the original configuration, or to the Gates Learjet "Softflite" configuration.

There are 29 U.S. registered aircraft that would be affected by this AD. It would take approximately 5 hours to accomplish the removal and recalibration of the airspeed indicators and Mach overspeed warning switch, and to revise the FAA approved Airplane Flight Manual Supplement. Average labor costs are estimated to be $40 per manhour. It is estimated that it would cost $950 to reset the airspeed indicators and Mach overspeed warning switch. Based on this information, the total cost impact of this AD on U.S. operators would be approximately $33,350.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Learjet Model 35/36 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation

Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Gates Learjet: Applies to Model 35, 35A, 36, and 36A series airplanes modified by Raisbeck Group Supplemental Type Certificate (STC) SA766NW and certificated in all categories. The affected airplane serial numbers are: 35–023, 35–034, 35–042, 35–044, 35–047, 35A–068, 35A–073, 35A–075, 35A–076, 35A–086, 35A–092, 35A–093, 35A–095, 35A–118, 35A–127, 35A–132, 35A–135, 35A–145, 35A–172, 35A–185, 35A–192, 35A–203, 35A–206, 35A–207, 35A–209, 35A–228, 35A–231, 35A–244, 35A–245, 36–003, 36–004, 36–017, 36A–028, 36A–029, 36A–031, 36A–036, 36A–043 and 36A–044.

To prevent deterioration of the aircraft lateral control characteristics as a result of aileron buffet or buzz accomplish the following, unless previously accomplished:

A. Within the next 200 hours time in service or six months after the effective date of this AD, whichever comes first, accomplish one of the following:

1. Reduce M_{MO}:

a. Submit the FAA approved STC SA766NW Airplane Flight Manual Supplement to the Manager, Flight Test Branch, ANM–160S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, to change the limit Mach number from .83 to .80.

b. Remove the "Mach Overspeed Warning Switch" and have it reset from Mach .83 to .80. Contact PRECISION SENSOR, P.O. Box 509, Milford, Connecticut 06460, telephone number (203) 877–2795, to have the instrument recalibrated. Reinstall the "Mach Overspeed Warning Switch" after it has been recalibrated.

c. Remove pilot's and copilot's airspeed indicators and have them modified by changing the "Barber Pole" from Mach number .83 to .80. The instrument must be recalibrated by the instrument manufacturer or a certified repair station. Reinstall the pilot's and copilot's airspeed indicators after they have been recalibrated.

2. Remove the modifications installed by Raiseback Group STC SA776NW. The aircraft should be returned to the original type design configuration or to the Gates Learjet "Softflite" configuration.

B. Aircraft may be ferried to a maintenance base for repair in accordance with FAR 21.197 and 21.199.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on March 22, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–8287 Filed 4–5–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–NM–27–AD]

Airworthiness Directives; Lockheed-California Company Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require periodic holding torque checks on the slat asymmetry brakes on Lockheed-California Company Model L–1011–385 series airplanes. This AD is required because a reduction in the restraining torque capacity due to inherent brake degradation may preclude locking the slats in their proper position, which may result in loss of control of the airplane.

DATES: Comments must be received on or before May 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–27–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808, telephone (213) 548–2824.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–27–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

As a result of reports of low holding torque values on the slat asymmetry brakes, Lockheed-California Company issued L–1011 Service Bulletin 093–27–216, dated April 30, 1981, which required that operators: (1) Have the P/N 672157–111 or prior part number brake assemblies torque checked annually or every 3000 flight hours; or (2) replace the P/N 672157–111 or prior part number brake assemblies with P/N 672157–113 brake assemblies.

Installation of P/N 672157–113 brake assemblies was originally thought to provide terminating action, and to permit return to standard maintenance action by the airline. However, it was later discovered that a significant percentage of the new P/N 672157–113 brakes were below the required minimum holding torque. On May 13, 1982, the Service Bulletin was revised (Revision 1) to include the same inspection requirements on the P/N 672157–113 brake assemblies.

On July 19, 1983, Revision 2 to Lockheed Service Bulletin 093–27–216 was issued to increase minimum holding torque of the brake test from 1200 to 1500 inch-pounds; to revise the periodic test period from annually or 3000 flight hours, whichever came first, to 3000 flight hours only; and to establish an alternative test for a repetitive 4000 flight hours period with a 1700 inch-pounds minimum holding torque.

Concurrently, Lockheed issued Service Bulletin 093–27–269 on July 19, 1983, which required replacement of the brake linings with fully qualified brake linings, creating the P/N 672157–115 configuration.

The manufacturer's analyses of disassembled slat asymmetry brakes which had not met minimum holding torque requirements after various

periods of service revealed that, in many cases, the lubricant had migrated past the shaft "O-ring" seal and had contaminated the surfaces of the brake linings. Lockheed Service Bulletin 093–27–274, dated July 19, 1983, incorporates, as a modification, the replacement of the "O-ring" shaft seal with a more suitable "lip seal." This seal change upgrades the brake from the P/N 672157–115 to the P/N 672157–117 configuration.

Due to the hazardous consequences which may result from inadequate holding torque on the slat asymmetry brakes, an AD is being proposed which would incorporate the inspections and modifications called for in the manufacturer's service bulletins mentioned above. Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require periodic holding torque checks on the slat asymmetry brakes and eventual replacement of brakes having certain part numbers.

It is estimated that 142 airplanes of U.S. registry would be affected by the proposed AD. It would require approximately 6 hours to perform the functional test and approximately 10 hours to install the replacement part; the average labor charge is estimated to be $40 per manhour. Based on these figures, the total cost impact on this proposed AD to U.S. operators is estimated to be $90,880.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model L–1011 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L–1011–385 series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To preclude inadequate holding torque on slate asymmetry brakes installed on both LH and RH wings, accomplish the following:

A. On aircraft having P/N 672157–115 or prior part number brakes:

(1) Conduct a functional test of each P/N 672157–115 or prior part number slat control system brake assembly within 300 flight hours after the effective date of this AD, or 3000 flight hours from the last test, whichever is later. Thereafter, conduct the same test at intervals not to exceed 3000 flight hours from the last test.

(2) If the left and right slat asymmetry brake holding torque measures 1500 to 2400 inch-pounds, the airplanes may continue in service.

(3) If the left or right slat asymmetry brake holding torque measures less than 1500 inch-pounds but more than 1300 inch-pounds, the aircraft may be flown in the condition for the minimal time necessary to replace the brake assembly, but not more than 500 flight hours from the time the deficient brake was found.

(4) If the left or right slat asymmetry brake holding torque measures less than 1300 inch-pounds, before further flight replace the brake assembly with one having 1700 to 2400 inch-pounds of slip torque.

B. The following alternate procedure may be applied to P/N 672157–115 or prior part number brakes:

(1) Conduct a functional test within 300 flight hours after the effective date of this AD, or 4000 flight hours from the last test, whichever is later, if the last test substantiated that the brake holding torque was at least 1700 inch-pounds. Thereafter, conduct the same test at intervals not to exceed 4000 flight hours from the last test.

(2) If the left and right asymmetry brake holding torque measures 1700 to 2400 inch-pounds, the airplane may continue in service.

(3) If the left or right slat asymmetry brake holding torque measures less than 1700 inch-pounds, before further flight replace the brake assembly with one having 1700 to 2400 inch-pounds of slip torque.

C. Replace P/N 672157–113 or prior part number brakes with P/N 672157–115 or later part number within one year after the effective date of this AD.

D. On aircraft having P/N 672157–117 (with "lip seal" instead of "O-ring" seal) or later part number brakes:

(1) Conduct a functional test of each P/N 672157–117 or later part number brake assembly within 300 flight hours after the effective date of this AD, or 4000 flight hours from the last test, whichever is later. Thereafter, conduct the same test at intervals not to exceed 4000 flight-hours from the last test.

(2) If the left or right slat asymmetry brake holding torque measures 1700 to 2400 inch-pounds, the airplane may continue in service.

(3) If the left or right slat asymmetry brake holding torque measures less than 1700 inch-pounds but more than 1300 inch-pounds, the aircraft may be flown in that condition for the minimal time necessary to replace the brake assembly, but not more than 500 flight hours from the time the deficient brake was found.

(4) If the left or right slat asymmetry brake holding measures less than 1300 inch-pounds, before further flight replace the brake assembly with one having 1700 to 2400 inch-pounds of slip torque.

E. Alternate means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(F.) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a base for accomplishment of tests or modifications required by this AD.

Note.—Instructions to accomplish these tests and modifications are found in these Lockheed Service Bulletins:

(1) S/B 093–27–216, Revision 2, dated July 19, 1983, or later revisions approved by Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(2) S/B 093–27–269, dated July 19, 1983, or later revisions approved by Manager, Los Angeles Aircraft Certification Office, FAA, Northewest Mountain Region.

(3) S/B 093–27–274, dated July 19, 1983, or later revisions approved by Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commericial Support Contracts, Dept. 63–11, U–33, B–1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–8280 Filed 4–5–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–04–AD]

Airworthiness Directives; Short Brothers Ltd. Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3-30 series airplanes which would require the installation of a new torsion spring on the flight crew seat harness inertia reel assemblies. Cases of spring failures have occurred which caused failure of the rewind function. This function is necessary to ensure that the crew member is properly restrained by the harness.

DATES: Comments must be received no later than May 28, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-04-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-04-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD3-25-37 as mandatory. Service experience has demonstrated that the torsion spring which controls the rewind function on the crew seat harness may break. If the rewind function is not available, the crew member will not be properly restrained. The service bulletin requires the installation of a new torsion spring of an improved design.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of the new parts in accordance with the service bulletin.

It is estimated that approximately 57 airplanes of U.S. Registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $80 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,840.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Ltd. Model SD3-30 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3-30 airplanes as listed in Short Brothers Service Bulletin SD3-25-37, dated June 1984, certificated in all categories. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished. To assure proper operation of the crew seat harness, accomplish the following:

A. Install the improved crew seat harness torsion spring assembly in accordance with Short Brothers Ltd. Service Bulletin SD3-25-37, dated June, 1984.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on March 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8285 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-CE-12-AD]

Airworthiness Directives; SIAI-Marchetti Models F260, F260B and F260C (Including SF260) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes which would require inspection of the tip tank fuel tube to determine the affixation of the fuel tube and requires repetitive inspections or modification ot unwelded tip tank fuel tubes. SIAI-Marchetti has reported movement due to vibration of unwelded fuel tubes which could result in the obstruction of fuel from the tip tanks, engine fuel starvation and engine

stoppage. This action would preclude engine failure.

DATES: Comments must be received on or before May 13, 1985. Compliance: As prescribed in the body of the AD.

ADDRESSES: SIAI-Marchetti Mandatory Service Bulletin (S/B) Number 206B39, dated June 8, 1984, applicable to this AD may be obtained from SIAI-Marchetti S.p.A., V–12070 via Indipendenza, 2,2108 Sesto Calenda, Italy; Telephone 0331 924842/923598 or the Rules Docket at the address below.

Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–12–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. M. Dearing, Brussels Aircraft Certification Office, AEU–100, Europe, Africa and Middle East Office, FAA, C/O American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30; or Mr. B. Sexton, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–CE–12–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

SIAI-Marchetti has reported that on its Models F260, F260B and F260C (including SF260) airplanes, vibration can cause movement of unwelded tip tank fuel tubes. This movement could result in obstruction of the fuel tube, interruption of fuel flow and subsequent engine fuel starvation. As a result, SIAI-Marchetti has issued S/B No. 250B39, dated June 8, 1984, which specifies (1) an initial visual inspection of the tip tank fuel tube to determine if it is affixed by welding, and (2) initial and repetitive inspection of unwelded tip tank fuel tubes for proper clearance, unless modified in accordance with paragraph (c) of the service bulletin. The Registro Aeronautio Italiano (RAI) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the RAI combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Service Bulletin Number 260B39, dated June 8, 1984, and the mandatory classification of this service bulletin by the RAI. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 260B39, dated June 8, 1984, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD is applicable to SIAI-Marchetti Models F260, F260B and F260C (including SF260) airplanes and would require visual inspection of the tip tank fuel tube within 100 hours time-in-service and, if appropriate, periodic inspections or modification of the tip tank fuel tube assembly as defined in the AD.

There are approximately 23 aircraft currently on the U.S. Register affected by the proposed AD. The cost of complying with the proposed AD is estimated to be $1,725 to the private sector. The cost of compliance with the proposed AD is so small that the expense of compliance will not be a signficant financial impact on any small entities operating these airplanes.

Therefore, I certify that this section (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location identified under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

SIAI-Marchetti: Applies to Model F260, F260B, and F260C (including SF260), (Serial Numbers 101 thru 125, 235, 286, 287, 302, 303, 305, 369, 374, 502, 563, 566 thru 568, 570, 635 thru 637, 712 thru 729, 2–26 thru 2–75, 3–76 thru 3–84, 10–09, 17–01, and 20–01) airplanes certificated in any category.

Compliance: Required within 100 hours time-in-service after the effective date of this AD unless already accomplished.

To determine the fixing condition of the tip tank fuel tube accomplish the following:

(a) Visual inspect the tip tank fuel tube, Part Number (P/N) SF260–16–05–33, to determine if it is welded to the fuel tube support P/N SF260–16–05–29, in accordance with figure 1 of SIAI-Marchetti Service Bulletin (S/B) Number 260B39, dated June 8, 1984.

(1) If the tip tank fuel tube is welded to the fuel tube support, no further action is required. Record compliance with this AD in the aircraft maintenance records in accordance with FAR 91.173.

(2) If the tip tank fuel tube is not welded to the fuel tube support, check for clearance between the fuel tube, P/N SF260–16–05–33 and insert, P/N SF260–16–19–1.

(A) If the clearance measured in paragraph (a)(2) of this AD is 18mm (.7 inches) or greater, reinspect the clearance at intervals not to exceed 25 hours time-in-service until the modification listed in paragraph (c) of S/B Number 260B39, dated June 8, 1984, has been accomplished.

(B) If the clearance measured in paragraph (a)(2) of this AD is less than 18mm (.7 inches), prior to further flight, modify the airplane in accordance with the procedures listed in paragraph (c) of S/B Number 260B39, dated June 8, 1984.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and section 11.85 of the Federal Aviation Regulations (14 CFR 11.85)

Issued in Kansas City, Missouri, on March 27, 1985.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 85-8281 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ACE-04]

Proposed Designation of Transition Area—Sibley, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to designate a 700-foot transition area at Sibley, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Sibley Municipal Airport, Sibley, Iowa, utilizing the Sibley Non-Directional Radio Beacon (NDB) as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATES: Comments must be received on or before May 13, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Sibley, Iowa. To enhance airport usage, a new instrument approach procedure is being developed for the Sibley Municipal Airport, Sibley, Iowa, utilizing the Sibley NDB as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Sibley, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by designating the following transition area:

Sibley, Iowa

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Sibley Municipal Airport (latitude 43°22'30" N, longitude 95°45'15" W) and within 3 miles each side of the Sibley NDB (ISB) 188° bearing extending from the 5 miles radius to 8.5 miles southwest of the Sibley NDB and within 3 miles each side of the Sibley NDB 334° bearing extending from the 5 mile radius to 8.5 northwest of Sibley NDB, excluding the portion which overlies the Sheldon, Iowa transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)

Issued in Kansas City, Missouri on March 29, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-8279 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ACE-03]

Proposed Designation of Transition Area—York, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at York, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the York Municipal Airport, York, Nebraska, utilizing the York, Nebraska, Non-Directional Radio Beacon (NDB) as a navigational aid. This proposed action will change the airport status from VFR to IFR.

DATE: Comments must be received on or before May 13, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12the Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at York, Nebraska. To enhance airport usage a new instrument approach procedure is being developed for the York, Nebraska, Municipal Airport utilizing the York NDS as a navigational aid. This navigational aid will provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at York, Nebraska, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airports status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71), by designating the following transition area:

York, Nebraska

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the York Municipal Airport (latitude 40°53'47" N, longitude 97°37'26" W,) within 3 miles each side of the York NDB (JYR) (latitude 40°53'51" N, longitude 97°37'01" W) 188° bearing extending from the 5 mile radius to 8.5 miles southwest of the York NDB and within 3 miles each side of the York NDB 320° bearing extending from the 5 mile radius to 8.5 northwest of the York NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)

Issued in Kansas City, Missouri on March 29, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-8278 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASW-11]

Proposed Designation of Transition Area: Ennis, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Ennis, TX. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Ennis Municipal Airport. This action is necessary since there is a proposed VOR/DME-A SIAP to the Ennis Municipal Airport using the Scurry Vortac. Coincident with this proposed action, the airport will be changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received by May 23, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 85-ASW-11, Federal

Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW-534, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2463.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASW-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Ennis Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regualtions (14 CFR Part 71) as follows:

Ennis, TX New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ennis Municipal Airport, (latitude 32°19'43" N., longitutude 96°39'47" W.), and within 2 miles each side of the 244-degree radial of the Scurry Vortac, extending from the 6.5-mile radius to 13 miles southwest of the vortac.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Fort Worth, TX, on March 27, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-8273 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANE-06]

Amend the Description of the Portsmouth, NH, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to amend the description of the Portsmouth, New Hampshire Control Zone so as to provide protected airspace for aircraft executing a new Nondirectional Radio Beacon (NDB) Approach to the Littlebrook Airpark, Elliot, Maine.

DATES: Comments must be received on or before May 27, 1985.

ADDRESSES: Send comments to the Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 85-ANE-06.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts.

An informal docket may also be examined during normal business hours in the: Air Traffic Division, ANE-500 Room 304, 12 New England Executive Park, Burlington, MA 01803.

FOR FURTHER INFORMATION CONTACT: John Boyce, Acting Manager, Operations, Procedures and Airspace, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts; telephone (617) 273-7141.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: "Comments to Airspace Docket No. 85–ANE–06." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, ANE–7, 12 New England Executive Park, Burlington, Massachusetts 01803, both before and after the closing date for comments.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426–8985.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Portsmouth, New Hampshire Control Zone so as to provide protected airspace for instrument flight rules aircraft executing a new NDB approach to the Littlebrook Airpark, Elliot, Maine.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined thta this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following to the description of the Portsmouth, New Hampshire Control Zone:

[Amended]

"within a 5-mile radius of the Littlebrook Airpark, Elliot, ME. (Lat. 43°08'35" N., Long. 70°46'22" W.) and within 2 miles each side of the 152° True (168° Mag.) bearing of the Rollings NDB (Lat. 43°13'12" N., Long. 70°49'43" W.) extending from the 5 mile radius of Littlebrook Airpark to the Rollings NDB."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Burlington, Massachusetts, on March 28, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85–8277 Filed 4–5–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Regulatory Flexibility Act Review of Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Request for comments.

SUMMARY: The Federal Trade Commission ("FTC"), in accordance with the Regulatory Flexibility Act and publication of a Plan for the Periodic Review of Commission Rules, 46 FR 35118 (July 7, 1981), is soliciting comments and data on whether the Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act, 16 CFR Part 305 (the "Rule"), has had a significant economic impact on small entities, and if it has, whether the Rule should be amended to minimize any such significant economic impact on small entities.

DATE: All comments and data should be received by the Commission no later than May 8, 1985.

ADDRESS: Comments and data should be sent to Secretary, Federal Trade Commission, Washington, D.C. 20580. Submissions should be identified as "Appliance Labeling Rule—RFA Comment".

FOR FURTHER INFORMATION CONTACT: James G. Mills, or Don Winfrey, (202) 376–8934, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the FTC conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.

Secton 324 of the Energy Policy and Conservation Act (EPCA)[1] required the Federal Trade Commission to consider issuing labeling rules for the disclosure of estimated annual energy costs or alternative energy consumption information for at least 13 categories of major household appliances. The statute also requried that the disclosures be based on standard test procedures prescribed by the Department of Energy (DOR). On November 19, 1979, the Commission issued a final rule [2] of seven appliance categories: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes washers; (5) water heaters; (6) room air conditioners; and (7) furnaces. The Commission exempted five other categories of appliances,[3] either because the cost difference between the least and most efficient appliances was not large enough to be likely to affect consumer purchase decisions, or because the appliances were already highly efficient.

The Rule requires that energy information, including energy costs (in dollars) or energy efficiency information (disclosed as energy efficiency ratings (EER)), based on the DOE test procedures, be disclosed on labels and in retail sales catalogs for all covered products except furnances. The yellow and black labels must include a highlighted energy cost or efficiency disclosure, a range indicating the highest and lowest energy costs or efficiencies

[1] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6294 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305.

[3] The Appliances exempted were clothes dryers, home heating equipment (other than furnaces), television sets, kitchen ranges and ovens, and humidifiers and dehumidifiers.

for all similar appliance models, and a chart that permits an individual to estimate how much it will cost to run the appliance each year. For furnances, the energy usage information must be disclosed on separate fact sheets, while the labels on the products disclose energy-saving tips and direct consumers to the fact sheets.

Certain point-of-sale promotional materials must disclose the availablilty of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisments must be based on the results of the DOE test procedures.

The statute and the Rule both place responsibility for testing and labeling on manufacturers. The responsibility of retailers is limited to refraining from removing labels or rending them illegible. Violations are punishable by fines of $100 for each unit in violation.

For the purpose of this view under the RFA, the term "small entity" is defined under the Small Business Size Standards, codified at 13 CFR Part 121, and recently revised by the Small Business Administration (49 FR 5024 *et seq.* Feb. 9, 1984). The definitions of "small entity" applicable to those business entities covered by the Rule are: For manufacturers of air-conditioning and warm-air heating equipment, fewer than 750 employees; for manufacturers of refrigerators, freezers, and clothes washers, fewer than 1,000 employees; for manufacturers of other covered appliances, fewer than 500 employees; for wholesalers of electrical appliance, fewer than 500 employees; for department stores, under $13.5 million in annual sales; for retailers of household appliances, under $4.5 million in annual sales; for mail order houses, under $12.5 million in annual sales; and, for plumbing, heating and air-conditioning contractors, under $7 milion is annual sales.

The purpose of this review is limited to determining whether the Rule should be continued without change, or should be amended or rescinded, consisent with the stated objectives of applicable statutes, to minmize any significant economic impact of the Rule upon a substantial number of small entities.

In order to conduct the periodic review of this Rule pursuant to the RFA, the FTC poses the following guestions for comment. The Commission requests that the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, etc.) upon which submitted comments are based be included with the comments.

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive impact.

(2) Is there a continued need for the Rule and all of its requirements?

(3) (a) What burdens, if any, does compliance with the Rule place on small entities?

(b) To what extent are these burdens that small entities would also experience under standard and purdent business practice?

(4) What changes, if any, should be made to the Rule that would minimize the economic effect on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other federal, state and local government rules?

(6) Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation in 1979 and, if so, what effect do these changes have on the Rule or those covered by it?

List of Subjects in 16 CFR Part 305

Advertising, energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirement.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 et seq. (1980).

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-8336 Filed 4-5-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83-14]

Truck Size and Weight; Advance Notice of Proposed Rulemaking

Correction

In FR Doc. 85-7631, beginning on page 12825, in the issue of Monday, April 1, 1985, make the following corrections:

1. On page 12826, second column, in the table, under **North Carolina**, in Posted route No. "NC 11" in column two, "760" should read "70".

2. On the same page, same column between lines one and two under **Puerto Rico** insert the heading **South Carolina**, and

3. In the third column, same page, under **Virginia**, under "Posted route No.", "Route 460" should read "U.S. 460".

4. On page 12827, in column one, after the third paragraph, the heading should read:

List of Subjects in 23 CFR Part 658

BILLING CODE 4910-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-14-81]

Deduction for Certain Foreign Deferred Compensation Plans; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the limitations on deductions and adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans. Changes to the applicable tax law were made by section 2 of the Act of December 28, 1980, [Pub. L. No. 96-603, 1980-2 C.B. 684], as amended by section 305 of Pub. L. No. 97-448. These regulations provide necessary guidance to the public for compliance with that Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 7, 1985. The regulations are proposed to apply, if an election is made, for taxable years beginning after December 31, 1979, but may apply earlier if a retroactive election is made as provided under the Act.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-14-81), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Calder L. Robertson, Jr. of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3544, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 404A of the Internal Revenue Code of 1954. The proposed regulations would be issued under the authority of

sections 404(h) and 7805 of the Internal Revenue Code of 1954 (94 Stat. 3508; 68A Stat. 917; 1 U.S.C. 404A, 7805).

Scope

Although the proposed regulations includes a discussion of the tax treatment with respect to plans for which no election is made under section 404A, this discussion does not reflect the changes made by section 91(a) of the Tax Reform Act of 1984 (Pub. L. No. 98–369) to section 461(h). It is anticipated that guidance on this subject will be issued in the near future.

General Explanation of Provisions

The proposed regulations provide guidance with respect to section 404A, which allows deductions or reductions of earnings and profits or accumulated profits for amounts paid or accrued by an employer under a qualified foreign plan. The two types of qualified foreign plans are qualified funded plans and qualified reserve plans. In order to take advantage of this provision, an election must be made by the taxpayer. The provision generally applies for taxable years commencing after December 31, 1979. However, a retroactive election may be made for certain taxable years.

Qualified Foreign Plan Election

The proposed regulations provide that the election under which a plan is to be treated as a qualified foreign plan for a particular taxable year may be made by the taxpayer by claiming a deduction or reduction of earnings and profits or accumulated profits not later than the time prescribed by law for filing the United States income tax return (including extensions) for the taxable year. In addition, a statement of election must be attached to the taxpayer's United States return. This statement must be accompanied by the documents described in § 1.404A–6(b). Electing taxpayers are not required to file Form 5500. However, it is anticipated that a substitute form will be developed which will require substantially less information from the taxpayer than does the Form 5500.

For those taxpayers who made the "method (2) election" described in Announcement 81–114, 1981–28 I.R.B. 21, adjustments to the United States return required by section 404A must be made on an amended return not later than 90 days after final regulations are issued. That method required only that a statement of election be attached to the taxpayer's income tax return without either including deductions or taking into account reductions in earnings and profits or accumulated profits. Taxpayers wishing to revoke an election that was made before the date of issuance of final regulations may do so without the consent of the Commissioner until 90 days after final regulations are issued. Otherwise, an election may be revoked only in accordance with the proposed regulations. Under the proposed regulations, elections generally may be made on an individualized plan basis. However, the retroactive plan elections with respect to foreign subsidiaries will not be effective unless the election applies to all written plans of every foreign subsidiary of the taxpayer which defer the receipt of compensation and which satisfy the requirements of section 404A(e) (1) and (2).

Effect of No Election

In the event that a qualified foreign plan election is not made, deductions for amounts paid by an employer to a funded deferred compensation plan are governed by section 404. Similarly, if a qualified foreign plan election is not made, reductions of earnings and profits or accumulated profits with respect to amounts paid to a funded deferred compensation plan are governed by sections 312, 901, 902, 960 and 964 provided that reasonable funding methods and actuarial assumptions are used. Conversely, for unfunded deferred compensation plans where no qualified foreign plan election is made, an unpaid accrued liability may not be deducted under section 404 and it also may not reduce earnings and profits or accumulated profits under sections 312, 901, 902, 960 and 964.

Qualified Funded Plans

The determination of amounts that may be taken into account for a qualified funded plan generally follows the deduction limits for domestic defined benefit and defined contribution plans. Generally, qualified funded plan contributions are taken into account for the taxable year in which paid.

Qualified Reserve Plans

In general, the amount that may be taken into account under a qualified reserve plan for a taxable year may not exceed the reasonable addition to the reserve for the employer's liability under the plan. The proposed regulations describe the manner in which the reasonable addition to the reserve is calculated. In calulating the reserve for purposes of section 404A, taxpayers may not use any actuarial cost method other than the unit credit method as described in the proposed regulations. In addition, the reasonable addition to the reserve does not include salary scale assumptions and anticipated benefit changes. Moreover, amounts may not be taken into account unless the benefits accrued by an employee are not subject to a substantial risk of forfeiture. Finally, any increase or decrease to the reserve on account of the adoption of the plan, or a plan amendment, experience gains and losses, vesting of benefits accrued in prior years, change in actuarial assumptions, and change in interest rates must be amortized over 10 years. The proposed regulations also contain a special interim rule for the amortization of cost-of-living adjustments for qualified reserve plans maintained by a foreign subsidiary. Otherwise, cost-of-living adjustments must also be amortized over 10 years. The only exception to the rule contained in the preceding sentence relates to benefits that are in pay status. In such a case, such amounts may be amortized in the year or years permitted under foreign law or over 10 years, whichever is fewer.

United States and Foreign Law Limitations

Generally, the maximum amount that may be taken into account under section 404A for any taxable year is equal to the lesser of the cumulative United States amount or the cumulative foreign amount, reduced in either case by the aggregate amount determined under section 404A for all prior taxable years. The cumulative foreign amount is determined without regard to the provisions of section 404A. Deductions described in section 404A(g)(1) and adjustments described in section 404A(g)(5) are also taken into account without regard to the computation described above.

Limitations Applicable to all Qualified Foreign Plans

Proposed § 1.404A–6 contained additional limitations on amounts that may be taken into account for a taxable year with respect to any qualified foreign plan. For example, no amounts may be taken into account under section 404A for a qualified funded plan to the extent that a contribution would cause the fair market value of the plan's assets to exceed the accrued liability under the plan.

In addition, an election under section 404A is treated as a change in the taxpayers's method of accounting for purposes of section 481. The proposed regulations provide the manner in which the section 481 adjustment is to be made for a qualified funded branch plan, qualified funded subsidiary plan, qualified reserve branch plan and qualified reserve subsidiary plan. The

section 481 adjustment is based, in part, upon plan participant information. The proposed regulations provide that "best guess" estimates or actuarial projections are not permitted for purposes of calculating the section 481 adjustment. Consequently, the proposed regulations provide that a retroactive election is prohibited if the taxpayer is unable to calculate the section 481 adjustment because actual data is not available. Comments are requested as to the appropriateness of requiring that the 481 adjustment be based on actual participant data. Comments are also requested as to any limitations on the section 481 adjustment that should be required as a condition of making a retroactive election if the actual data requirement is not adopted when final regulations are promulgated.

Executive Order 12291 and Regulatory Flexibility Act

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291.

The Secretary of the Treasury has certified that these regulations will not have a significant economic impact on a substantial number of small entities and are, therefore, not subject to the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). These regulations will generally only affect United States businesses that have foreign operations that are conducted through a branch of a United States corporation or through a foreign subsidiary of a United States parent corporation.

Comments and Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eitht copies) to the Commissioner of Internal Revenue. All comments are available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OBM) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OBM, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copis of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Eric A. Raps of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1.401–0–1.425–1

Income taxes, Foreign retirement plans, Pensions, Aliens, Foreign tax credit.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The Income Tax Regulations, 26 CFR Part 1, are amended by adding the following new sections immediately after § 1.404(e)–1A:

§ 1.404A–1 General rules concerning deductions and adjustments to earnings and profits for foreign deferred compensation plans.

(a) *In general.* Except as provided in this section, no deductions or reductions of earnings and profits (or accumulated profits) are permitted for amounts paid or accrued by an employer under a foreign deferred compensation plan unless the following requirements are satisfied:

(1) A written plan for deferring the receipt of compensation is maintained by the employer.

(2) The plan is maintained for the exclusive benefit of the employer's employees or their beneficiaries.

(3) 90 percent or more of the amounts taken into account under the plan must be attributable to services performed by nonresident aliens, the compensation for which is not subject to federal income tax.

(4) An election under § 1.404A–2 is made as a qualified funded plan or a qualified reserve plan.

Deductions, or reductions of earnings and profits (or accumulated profits) with respect to amounts paid or accured by an employer to a plan described in this paragraph (a) are allowed for the taxable year in which such amounts are properly taken into account under §§ 1.404A–1 through 1.404A–6.

(b) *90 percent test.*—(1) *Reserve plans.* For purposes of determining whether § 1.404A–1(a)(3) is satisfied when a reserve plan is maintained by an employer, 90 percent or more of the present value of the total benefits accrued under the plan must be attributable to services performed by nonresident aliens, the compensation for which is not subject to federal income tax.

(2) *Funded plans.* (i) *Individual account plans.* For purposes of determining whether § 1.404A–1(a)(3) is satisfied when a funded plan with individual accounts is maintained by an employer, 90 percent or more of the amounts allocated to individual accounts under the plan must be allocated to the accounts of nonresident aliens who perform services for the employer, the compensation for which is not subject to federal income tax.

(ii) *Plans without individual accounts.* For purposes of determining whether § 1.404A–1(a)(3) is satisfied when a funded plan without individual accounts is maintained by an employer, 90 percent or more of the present value of the total benefits accrued under the plan must be attributable to services performed by nonresident aliens, the compensation for which is not subject to federal income tax.

(c) *Calculation of 90 percent amounts.* For purposes of determining whether the tests described in paragraphs (b)(1), b(2)(i) and (b)(2)(ii) are satisfied, accrued benefits may be calculated under a reasonable method. The rules provided for calculating the present value of accrued benefits at normal retirement age (except for the actuarial assumption safe harbor) under Treas. Reg. § 1.416–1 (concerning the determination whether a retirement plan is top-heavy) are presumed to be reasonable for purposes of this paragraph. See § 1.404A–6(a) (3) and (5) for rules describing the calculation of accrued benefits attributable to services for which the compensation thereof is subject to federal income tax.

(d) *Deductions.* Deductions for amounts paid by an employer to a foreign deferred compensation plan that does not meet the requirements of paragraph (a) are governed by section 404.

(e) *Reductions of earnings and profits.* Reductions of earning and profits (or accumulated profits) with respect to amounts paid by an employer to a funded foreign deferred compensation plan that does not meet the

requirements of paragraph (a) are governed by sections 312, 901, 902, 960, and 964. Thus employers using the cash basis method of accounting with respect to deferred compensation expenses may reduce earnings and profits (or accumulated profits) when that expense is properly paid to an irrevocable trust (or the equivalent of a trust) that does not satisfy the requirements of section 404(a). Amounts shall not be considered properly paid unless reasonable funding methods and actuarial assumptions are used. See § 1.404A–3(b) for the requirements that a trust or the equivalent of a trust must satisfy. Conversely, reductions of earnings and profits (or accumulated profits) shall not be made with respect to amounts accrued by an employer under a foreign deferred compensation plan that does not meet the requirements of paragraph (a).

(f) *Applicable rules.* See § 1.404A–2 for rules relating to the manner in which the qualified foreign plan election is to be made; see § 1.404A–3 for rules relating solely to qualified funded plans; see § 1.404A–4 for rules relating solely to qualified reserve plans; See §§ 1.404A–5 and 1–404A–6 for rules relating to both qualified funded and reserve plans.

(g) *Definitions.* The following definitions apply for purposes of section 404A and §§ 1.404A–1 through 1.404A–6.

(1) *Written plan.* A "written plan" is one which is defined by plan instruments or required under the law of a foreign country, or both. An insurance contract may constitute a written plan. See § 1.404A–3(b) for the definition of a retirement annuity.

(2) *Qualified foreign plan.* The term "qualified foreign plan" means a deferred compensation plan that meets the requirements of § 1.404A–1(a). A qualified foreign plan may be a qualified funded plan or a qualified reserve plan.

(3) *Qualified funded plan.* The term "qualified funded plan" means a qualified foreign plan for which no election has been made by the taxpayer to treat such plan as a qualified reserve plan.

(4) *Qualified reserve plan.* The term "qualified reserve plan" means a qualified foreign plan for which an election has been made by the taxpayer to treat such plan as a qualified reserve plan.

(5) *Deferred compensation plan.* For purposes of §§ 1.404A–1 through 1.404A–6, "deferred compensation" means any item for which the deductibility is determined by reference to section 404 without regard to whether section 404 permits a deduction and without regard to whether an election is made under § 1.404A–2. However, a deferred compensation plan, as described above, does not include a plan providing for deferred benefits (as described in section 404(b)(2)). A plan under which a foreign government (including a political subdivision, agency or instrumentality thereof) makes a contribution or a direct payment to a participant (or the participant's beneficiary) is not a deferred compensation plan. Thus for example, a foreign country's social security system shall not be considered a deferred compensation plan. However, a plan may be a deferred compensation plan even though employers are required to maintain the plan by reason of foreign law, or such plan supplements social security benefits provided by a foreign country.

(6) *Exclusive benefit.* The term "exclusive benefit" has the same meaning as in §§ 1.401–2 and 1.413–1(d).

(7) *Taxpayer.* For the definition of the term "taxpayer," see section 7701(a)(14).

(8) *Employer.* The term "employer" means a person that maintain a qualified foreign plan.

(9) *Equivalent of a trust.* The term "equivalent of a trust" means a funds:

(i) Whose corpus and income is separately identifiable and segregated, through a separately incorporated entity, from the general asssets of the employer,

(ii) Whose corpus and income is not subject to the claims of the emloyer's creditors,

(iii) Whose corpus and income do not at any time prior to the satisfaction of all liabilities with respect to employees under a qualified funded plan be used for, or diverted to, any purpose other than the providing of benefits under the plan, and

(iv) Where the legal rights to the corpus and income is held by a person who has a fiduciary duty to prudently operate the fund.

(h) *Section 162 requirements.* Except as provided in § 1.404A–6(a)(2), no deductions or reductions of earnings and profits (or accumulated profits) are permissible under sections 162, 212, 312, 404, 902, 960, or 964 for amounts paid or accrued under a qualified foreign plan. In order to deduct amounts or reduce earnings and profits (or accumulated profits) under section 404A, amounts contributed to a qualified funded plan or properly added to a reserve with respect to a qualified reserve plan must satisfy the conditions under section 162. Thus, amounts may be taken into accounts under section 404A only to the extent that they are ordinary and necessary expenses during the taxable year in carrying on a trade or business and are compensation for personal services actually rendered.

§ 1.404A–2 Election to be treated as a qualified funded or reserve plan.

(a) *In general.* An election which meets the requirements of this section shall be made as a condition for claiming a deduction or reduction of earnings and profits (or accumulated profits) under section 404A because of amounts taken into account under a qualified foreign plan.

(b) *Procedure for making election*—(1) *Time of election.* Except as provided in this section, an election under this section shall only be made for taxable years beginning after December 31, 1979.

(2) *Manner in which election is to be made.* Subject to the provisions of this paragraph, the election shall be made by the taxpayer by attaching to its federal income tax return a statement containing a list of plans for which section 404A treatment is desired. For each plan listed, the taxpayer shall designate whether it is a qualified funded or qualified reserve plan. See § 1.404A–6(b) concerning additional information that shall be included in the statement described in this paragraph (b)(2).

(3) *Plan maintained by a controlled foreign corporation*—(i) *In general.* In the event that a qualified foreign plan is maintained by a controlled foreign corporation (as defined in section 957) the election under this section shall be considered made only if its controlling United States shareholders (as defined in § 1.964–1(c)(5)):

(A) File the written statement described in subdivision (ii) of this subparagraph at the time and in the manner prescribed therein, and

(B) Provide the written notice required by subdivision (iii) of this subparagraph at the time and in the manner prescribed therein.

(ii) *Written statement required by controlling United States shareholders.* The written statement required by subdivision (ii) of this subparagraph shall be jointly executed by the controlling United States shareholders, and attached to each of the controlling shareholders' returns for the taxable year. The written statement shall set forth the name and country of organization of the foreign corporation, the names, addresses, and stock interests in the controlled foreign corporation of the controlling United States shareholders, the nature of the action taken, the names and addresses of all other United States shareholders notified of the election, and such other

information as the Commissioner may require.

(iii) *Notice to shareholders.* Prior to the filing of the written statement described in subdivision (ii) of this subparagraph, the controlling United States shareholders shall provide written notice of the election to all other persons known by them to be United States shareholders who own (within the meaning of section 958(a)) stock of the foreign corporation. Such notice shall set forth the name and country of organization of the foreign corporation, the names, addresses, and stock interests of the controlling United States shareholders, the nature of the action taken, and such other information as the Commission may require. However, the failure of the controlling United States shareholders to provide such notice to a person required to be notified thereunder shall not invalidate the election, if it is established to the satisfaction of the Commissioner that reasonable cause existed for such failure.

(iv) *Effect of action by controlling United States shareholders.* Any election made by the controlling United States shareholders under this section pursuant to paragraph (b)(2) shall be reflected in the adjustment of earnings and profits of such corporation under section 404A, to the extent it bears upon the tax liability of a United States shareholder who either—

(A) Was a controlling United States shareholder with respect to the action taken,

(B) Received the written notice provided by subparagraph (2)(iii) of this paragraph,

(C) Failed to file any of the returns required by section 6046 and the regulations thereunder within the period prescribed by section 6046(d), or

(D) Was notified by the Commissioner of the election made within the time prescribed by subparagraph (5) of this paragraph.

(4) *Plan maintained by foreign corporation other than a controlled foreign corporation.* In the event that a qualified foreign plan is maintained by a foreign corporation other than a controlled foreign corporation, the elections under this section may be made by each United States person (as defined in section 7701(a)((30)) that owns stock in the foreign corporation.

(5) *Period during which election may be made*—(i) *In general.* The taxpayer may make the election under section 404A not later than the time prescribed by law for filing the United States return for the taxable year (including extensions thereof).

(ii) *Transitional rule.* In lieu of paragraph (b)(5)(i), taxpayers may rely on the prior published position of the Internal Revenue Service with respect to the period during which the election may be made for taxable years beginning before [60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Thus, for taxable years described in the preceding sentence, taxpayers may make the election for the appropriate taxable year on an amended return that is filed no later than the end of the extended time period prescribed in section 6081, whether or not such time is actually extended for filing the taxpayer's return.

(iii) *Special rule for protective elections.* For those taxpayers who have relied on the prior position of the Internal Revenue Service by making a protective or method (2) election, adjustments to the United States return required by section 404A shall be made on an amended return no later than [90 DAYS AFTER THE DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. Otherwise, the protective election shall have no effect.

(6) *Revocation of election*—(i) *Qualified funded plans.* Assumptions and methods under a qualified funded plan are established in the first income tax return that is filed with respect to a taxable year and may not be changed for that taxable year. Once an election has been made for a taxable year with respect to a qualified funded plan it may not be changed for such taxable year, except when the Commissioner determines that the methods, factors, assumptions or limitations were not proper. The mere fact that an election has been made in one taxable year, however, does not bind the taxpayer for a subsequent taxable year. However, in such a case, see paragraph (b)(6)(iv) of this section and § 1.404A–6(f)(5) concerning a change of the taxpayer's method of accounting.

(ii) *Qualified reserve plans.* Assumptions under a qualified reserve plan are established in the first income tax return that is filed with respect to a taxable year and may not be changed for that taxable year. With respect to a qualified reserve plan, except as provided by § 1.404A–2(b)(6)(iii) and this subdivision, an election once made is irrevocable for such taxable year and all succeeding taxable years. However, upon application of the taxpayer, an election to be treated as a qualified reserve plan may be revoked for succeeding taxable years subject to the approval of the Commissioner. Approval will not be granted unless a material and substantial change in circumstances occurs which could not have been anticipated when the election was made. Such approval will be granted only in rare and unusual circumstances. A change in interest rates, described in § 1.404A–6(d)(2), will not be considered a rare and unusual change in circumstance. A failure to satisfy the 90 percent requirement (described in § 1.404A–1(a)(3)), however, shall be considerd a rare and unusual change in circumstance. See paragraph (b)(6)(iv) of this section concerning a change of the taxpayer's method of accounting.

(iii) *Transitional rule.* Any qualified foreign plan election, including any retroactive election described in section 2(e) of Pub. L. 96–603, that was made before [THE DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER] may be revoked without the consent of the Commissioner until [90 DAYS AFTER DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER]. If any qualified foreign plan election is revoked pursuant to paragraph (b)(6)(iii) of this section, taxpayers shall amend their income tax returns for all taxable years in which an election under section 404A had been in effect to the extent that deductions or credits claimed are inconsistent with the tax treatment accorded to taxpayers that fail to make an election under section 404A. Such amended returns shall be accompanied by a statement indicating that the qualified foreign plan election is revoked pursuant to the authority contained in § 1.404A–2(b)(6)(iii). See § 1.404A–2(b)(5)(iii) concerning the manner in which a protective election shall be revoked.

(iv) *Revocation and change in method of accounting.* In the event that a revocation of the election would result in a change of method of accounting for the taxpayer, the request for a change in accounting method for taxable years affected by the revocation must be filed within 180 days after the close of the taxable year in which the revocation is made.

(7) *Extent of election.* (1)—In general. Except as provided in this section, the election shall be made with respect to each plan that qualifies as a single plan. See § 1.414(l)–1(b) for the definition of the term "single plan". For purposes of this section, an employer's reserve for its liability under the plan will be considered a plan asset. Although a plan may be treated as a reserve plan under foreign law, this treatment shall not be binding for purposes of section 404A and this section. See example (2) of

§ 1.404A–4(e) for an illustration of this principle. See § 1.404A–4(b)(1) as to the calculation of the reasonable addition to a qualified reserve plan when the liabilities of the plan are reinsured.

(ii) *Effect on earnings and profits.* Except as provided in paragraph (c)(2) of this section, reductions in earnings and profits (or accumulated profits) that relate to the maintenance of a qualified foreign plan shall only be made for those taxable years for which an election under this paragraph (b) is in effect.

(8) The principles of paragraph (b) of this section is illustrated by the following example.

Example. M, a domestic corporation, wholly owns *R*, a foreign corporation. *R* has maintained an unfunded pension plan for its employees since 1978. In 1980, *M* makes an election to have *R*'s plan to be treated as a qualified reserve plan for taxable years beginning after December 31, 1979. *R*'s accumulated profits (before taking into account its pension liabilities) in excess of foreign income taxes for the years 1978–1980 are as follows.
manner in which a protective election

Year	Accumulated profits
1978	$200,000
1979	150,000
1980	50,000

The amount that is required to be taken into account under section 404A for 1980 is $115,000. Because no retroactive election was made, reductions in accumulated profits cannot be applied against the earnings and profits accumulated prior to 1980. Thus, *R*'s accumulated profits shall only be reduced by $50,000.

(c) *Retroactive election*—(1) *In general.* Notwithstanding any provision contained in the Code or regulations, the provisions contained in this paragraph (c) (as well as paragraphs (a) and (b) of this section to the extent applicable) are the only rules that apply for purposes of making the retroactive elections described in section 2(e) of Pub. L. 96–603. Subparagraph (2) of this paragraph describes the rules applicable to retroactive elections for certain foreign subsidiaries of taxpayers that maintain qualified foreign plans.

Subparagraph (3) of this paragraph describes the rules applicable to retroactive elections for certain foreign branches of domestic corporations that maintain qualified funded plans. Subparagraph (4) of this paragraph provides rules governing the time and manner for making a retroactive election. Subparagraph (5) of this paragraph provides special rules relating to the retroactive election.

(2) *Retroactive election for foreign subsidiaries*—(1) *In general.* Subject to the requirement of § 1.404A–2(c)(4)(iii), an election may be made with respect to a qualified foreign plan maintained by a foreign subsidiary to have section 404A apply for the taxpayer's "open period" as defined in this paragraph (c). See § 1.404A–2(c)(5) for the definition of open period.

(ii) *Scope of election.* As a condition of making the election described in paragraph (c)(2)(i), the election shall be made with respect to all written plans of every foreign subsidiary (whether or not wholly owned) of the taxpayer which defer the receipt of compensation and which satisfy the requirements of section 404A(e) (1) and (2). This election may be made without regard to whether an election is made under section 404A for taxable years beginning after December 31, 1979.

(iii) *Effect on earnings and profits.* The election described in paragraph (c)(2)(i) shall only apply to distributions made out of earnings and profits (or accumulated profits) earned after December 31, 1970.

(iv) *Revocation of retroactive election.* Except as provided in paragraph (b) of this section, the election described in paragraph (c)(2)(i) may not be revoked.

(3) *Retroactive election for foreign branches*—(i) *In general.* Subject to the requirement of § 1.404A–2(c)(4)(iii), an election may be made with respect to a qualified funded plan maintained by a foreign branch of a domestic corporation to have section 404A apply with respect to the taxpayer's "prior deduction" to the extent provided in subdivision (iii) of this subparagraph. See § 1.404-2(c)(5) for the definition of "prior deduction".

(ii) *Scope of election.* As a condition of making the election described in subdivision (i) of this subparagraph (3), the taxpayer shall agree to the assessment of all deficiencies (including interest thereon) arising during those taxable years falling within the open period (without regard to whether the taxable year has closed) to the extent that the deficiencies arise from "erroneous deductions" claimed by the taxpayer with respect to each of the taxpayer's foreign branches that maintained a plan deferring the receipt of compensation. This election may be made without regard to whether an election is made under section 404A for taxable years beginning after December 31, 1979. See § 1.404A–2(c)(5) for the definition of "erroneous deduction" and see § 1.404A–6(f) for adjustments required by section 481.

(iii) *Amounts allowed as a deduction.* If the requirements of subdivisions (i) and (ii) of this subparagraph (3) have been satisfied, an amount equal to 1/15th of the aggregate of the "prior deductions" shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

(iv) *Revocation of retroactive election.* Except as provided in paragraph (b) of this section, the election described in paragraph (c)(3)(i) may not be revoked.

(4) *Period during which election can be made*—(i) *Time.* (A) *General rule.* Except as provided in subdivision (B), an election under this paragraph shall be made not later than time prescribed by law for filing the United States return for the first taxable year ending on or after December 31, 1980, including extensions (whether or not such time is actually extended for filing the taxpayer's return).

(B) *Special rule for protective elections.* For those taxpayers who have relied on the prior published position of the Internal Revenue Service by making a protective (method (2)) election, adjustments to the United States return required by section 2(e) of Pub. L. 96–603 shall be made on an amended return no later than [90 DAYS AFTER DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER].

(ii) *Manner.* (A) *Foreign subsidiaries.* An election under this paragraph that relates to a qualified foreign plan maintained by a foreign subsidiary shall be made in the same manner as provided in § 1.404A–2(b). Alternatively, an election under this paragraph may be made by a taxpayer upon agreement to an assessment of a deficiency to the extent it is attributable to a qualified foreign plan maintained by a foreign subsidiary. Such agreement shall be entered into by the later of September 23, 1981, or the time prescribed by paragraph (c)(4)(i).

(B) *Foreign branches.* An election under this paragraph that relates to a qualified funded plan maintained by a foreign branch of a domestic corporation shall be made in the same manner as provided in § 1.404A–2(b) except that the taxpayer must agree to the assessment of a deficiency for any closed year falling within the "open period" to the extent such deficiency is attributable to the operation of a retroactive election. Alternatively, an election under this paragraph may be made by a taxpayer upon agreement to an assessment of a deficiency to the extent it is attributable to a qualified foreign plan maintained by a foreign

branch of a domestic corporation. Such agreement shall be entered into by the later of September 23, 1981, or the time prescribed by paragraph (c)(4)(i).

(iii) *Circumstances where retroactive election prohibited.* A retroactive election shall be prohibited if the taxpayer is unable to calculate based upon actual data the section 481(a) adjustment required by § 1.404A–6(f)(6). Thus, an estimate (based upon either projected actuarial data or any other method of the section 481(a) adjustment is not permitted.

(5) *Definitions and special rules.* (i) *Open period.* For purposes of paragraph (c) of this section, the term "open period" means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

(ii) *Protective or method (2) election.* The term "protective or method (2) election" means an election that is in conformance with the prior published position of the Internal Revenue Service and that is made without claiming deductions (or in the case of foreign subsidiaries taking into account reductions of earnings and profits or accumulated profits) on a taxpayer's income tax return that relates to a qualified foreign plan.

(iii) *Erroneous deduction.* The term "erroneous deduction" means a deduction claimed on a taxpayer's income tax return with respect to contributions to a deferred compensation plan which are not deductible under section 404.

(iv) *Prior deduction.* The term "prior deduction" means a deduction with respect to a qualified funded plan maintained by a foreign branch of a taxpayer—

(A) Which the taxpayer claimed for a taxable year (or could have claimed if section 404A applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

(B) Which was not allowable, and

(C) With respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

The computation of the prior deduction for the taxable year to which it relates is subject to the limitations described in section 404A(d). However, once the prior deduction is calculated, the deductibility of the prior deduction (in accordance with paragraph (c)(3)(iii) of this section) is no longer subject to the limitations prescribed by section 404A(d)(1).

§ 1.404A–3 Rules for qualified funded plans.

(a) *In general.* Except as provided in this section, contributions are properly taken into account under a qualified funded plan for the taxable year in which paid (regardless of whether the taxpayer's or employer's return is prepared on the accrual method of accounting). Accretions to the trust (or the equivalent of a trust) shall not be considered a contribution to a plan.

(b) *Payment to certain entities.* Contributions made under a qualified funded plan may not be taken into account unless paid—

(1) To a trust (or the equivalent of a trust) which is operated in accordance with the requirements of section 401(a)(2),

(2) For a retirement annuity under which retirement benefits are provided under an annuity which is for the exclusive benefit of the employer's employees or their beneficiaries, or

(3) Directly to a participant or beneficiary (in lieu of the entities described above).

A trust (or the equivalent of a trust) must have substantiality. It must provide for the accumulation of employer contributions for the purposes of distributing benefits under a deferred compensation plan. For example, a trust may not merely serve as a conduit for a promissory note. Whether a trust (or the equivalent of a trust) provides for the accumulation of employer contributions for the purpose of distributing benefits depends on the facts and circumstances. A retirement annuity has the same meaning as that term is used in section 404(a)(2) except that the retirement annuity need not be part of a plan that meets the requirements of section 401(a) or 401(d). Notwithstanding the preceding sentence, the retirement annuity described therein need not be issued by an insurance company qualified to do business in a State if the taxpayer(s) and/or sponsoring employer(s) of the plan have shifted the risk of making payments under the plan to an entity that is qualified to do business in the country (or countries) where the plan is maintained.

(c) *Time when contributions deemed made.* (1) *In general.* For purposes of this section a payment made after the close of a shareholder's taxable year shall be deemed to have been made on the last day of the shareholder's preceding taxable year if:

(i) The payment is made on account of the taxable year of the employer and is made not later than the time prescribed by law for filing the appropriate United States return for the shareholder's taxable year (including extensions thereof) in which or with which the employer's taxable year ends, and

(ii) The requirements of paragraph (c)(2) of this section are satisfied.

The appropriate United States return in the case of a qualified funded plan maintained by a controlled foreign corporation is the return of any controlling United States shareholder. The appropriate United States return in the case of a qualified funded plan maintained by a foreign corporation other than a controlled foreign corporation is the return of any United States shareholder. The appropriate United States return in the case of a qualified funded plan maintained by a foreign branch of a United States person is the return of the United States person. In such a case, the term "taxpayer" shall be substituted for the term "shareholder" as it appears in this paragraph (c)(1).

(2) *Requirements.* Whether an employer or a taxpayer is on the cash or accrual method of accounting, and whether the conditions for accrual have been met, a payment made after the close of the taxpayer's taxable year shall be considered to be on account of such taxable year if the requirements of subdivisions (i) and (ii) of this paragraph are satisfied.

(i) The payment must be treated by the plan in the same manner that the plan would treat a payment actually received on the last day of such taxable year, and

(ii) Either the employer designates the payment in writing to the plan administrator or trustee as a payment on account of the taxpayer's preceding taxable year, or the taxpayer claims such a payment as a deduction on its tax return for such taxable year, or the taxpayer reduces earnings and profits or accumulated profits with respect to such payment.

(3) *Time of designation.* A payment shall be designated as a payment on account of the preceding taxable year in the manner provided in paragraph (c)(2) of this section not later than the time described in paragraph (c)(1).

(4) *Irrevocable designation.* After a payment has been designated or claimed on a return in the manner provided in paragraph (c)(2) of this section as being on account of a preceding taxable year such designation or claim may not be retracted or changed.

(5) *Examples.* The principles of this section are illustrated by the following examples:

Example (1). *P*, a domestic corporation, owns all of the one class of stock of foreign corporation *S*. The taxable year for *P* is the calendar year and its United States return for the 1982 taxable year was filed on March 15, 1983. The taxable year for *S* is the fiscal year beginning on June 1. *S* makes a contribution to its qualified funded plan on March 1, 1983, and designates in writing to the plan's trustee that the payment should be treated as a payment on account of *P*'s preceding taxable year. For purposes of this section, the contribution is taken into account by *P* for the 1982 taxable year.

Example (2). Assume the same facts as example (1), except that the contribution made by *S* to the qualified funded plan was made on April 1, 1983. In this case, the contribution was made after *P* filed its United States tax return, and therefore, the contribution may not be taken into account for the 1982 taxable year.

Example (3). A foreign subsidiary of a domestic corporaton maintains a deferred compensation plan for its employees. The foreign subsidiary makes annual contributions under the plan to a trust. Each year after the contribution is paid into the trust, the trustee lends the entire contribution back to the foreign subsidiary maintaining the plan. The foreign subsidiary executes promissory notes obligating it to pay back the borrowed funds (including a reasonable rate of interest) to the trust and to pay any benefits that are due under the plan. Notwithstanding that the taxpayer may have designated the plan as a qualified funded plan, amounts may not be taken into account under section 404A with respect to contributions paid to the trust because the trust lacks substance and does not provide for the accumulation of employer contributions. Similarly, even if a qualified funded plan election was not made under aforementioned circumstances, no reductions of earning (or accumulated profits) would be permitted under sections 312, 902, 960, and 964.

(d) *Limitation for qualified funded plans under which benefits are fixed or determinable*—(1) *Computation of deductible limit.* Execpt as provided in §§ 1.404A–5 and 1.404A–6 and this section, contributions made to a qualified funded plan for which benefits are fixed or determinable shall be taken into account under this section. However, the amount taken into account may not exceed the amount that would be taken into account under section 404(a)(1)(A) (ii) and (iii) and the regulations thereunder (determined without regard to the last sentence of that subparagraph). The deductible limit described in the preceding sentence is determined on the basis of the accounting period of the qualified foreign plan, (i.e.) its plan year. If the employer's taxable year coincides with the plan year, the deductible limit for the employer's taxable year is the deductible limit for the plan year that coincides with that year. If the employer's taxable year does not coincide with the plan year, the deductible limit for a given taxable year of the empoyer shall be one of the alternatives described in § 1.404(a)–14(c). In the event the qualified funded plan is maintained by a foreign corporation the deductible amount shall be taken into account for the shareholder's taxable year in which or with which the employer's taxable year ends. If the qualified foreign plan does not have its own separate accounting period, the deductible limit is determined on the accounting period of the employer. For purposes of section 404A and this section, benefits are considered fixed or determinable if either benefits or contributions are definitely determinable within the meaning of § 1.401–1(b)(1)(i).

(2) *Certain limitations of section 404(a)(1)(A) not applicable.* The amount that is taken into account under paragraph (d)(1) is determined without regard to whether the payment is made to a trust that is exempt under section 501(a).

(3) *Permissible actuarial assumptions, etc.* Actuarial assumptions and methods selected for determining the amount to be taken into account under paragraph (d)(1) must conform with § 1.404A–6(c)(1). In determining the amount to be taken into account under this section an actuarial valuation shall be made not less frequently than once every three years. However, an actuarial valuation shall be made for the first plan year or annual accounting period of the plan for which an election under § 1.404A–2 is in effect. See § 1.412(c)(9)–1 concerning applicable rules for actuarial valuations.

(4) *Additional rules.* The Commissioner may prescribe additional rules for determining the amount that may be taken into account under this section for qualified funded plans under which benefits are fixed or determinable.

(e) *Limitation for qualified funded plans under which benefits are not fixed or determinable*—(1) *Computation of deductible limit.* Except as provided in §§ 1.404A–5 and 1.404A–6 and this section, if contributions are made by an employer for a taxable year to a qualified funded plan under which benefits are not fixed or determinable, the amounts that may be taken into account for such year under this section shall be subject to the limitations of section 404(a)(3).

(2) *Certain limitations of section 404(a)(3) not applicable.* The amount that is taken into account under paragraph (e)(1) is determined without regard to whether the payment is made to a trust that is exempt under section 501(a).

(3) *Additional rules.* The Commissioner may prescribe additional rules modifying the provisions of section 404(a)(3) for purposes of determining the amount that may be taken into account under this section with respect to a qualified funded plan under which benefits are not fixed or determinable.

(f) *Limitations where more than one type of plan is maintained*—(1) *In general.* Except as provided in §§ 1.404A–5 and 1.404A–6 and this paragraph, where payments are made for a taxable year to more than one qualified funded plan (where at least one plan is described in paragraph (d)(1) and at least one plan is described in paragraph (e)(1)) the amounts that may be taken into account for the taxable year with respect to such payments are subject to the limitations of section 404(a)(7).

(2) *Certain limitations of section 404(a)(7) not applicable.* The amount that is taken into account under paragraph (f)(1) is determined without regard to whether the payment satisfies the minimum funding standard described in section 412.

(3) *Additional rules.* The Commissioner may prescribe additional rules modifying the provisions of section 404(a)(7) for purposes of determining the amount that may be taken into account under this paragraph.

(g) *Carryforward contributions.* (1) *General rule.* Except as provided in this paragraph, if (i) the aggregate amount of contributions paid during a taxable year in which an election under section 404A is in effect (reduced by an amount described in section 404A(g) (1) and (2)) exceeds (ii) the amount that may be taken into account under section 404A(a) and this section, the excess (carryforward contribution) shall be treated as an amount paid in the succeeding taxable year.

(2) *Application of section 404A(d).* For purposes of paragraph (g)(1) of this section, the amount of the carryforward contribution shall be computed without regard to sections 404A(d) and 1.404A–5.

(3) *When carryforward contributions may be taken into account.* Carryforward contributions are taken into account in succeeding taxable years in order of time pursuant to the following rules:

(i) In the case of a succeeding taxable year during which the plan meets the requirements of section 404A(e), such excess contributions are taken into account subject to the limitations of section 404A(d).

(ii) In the case of a succeeding taxable year during which the plan does not meet the requirements of section 404A(e), such excess contributions may be taken into account subject to the limitations of section 404.

(4) The principles of this section are illustrated by the following examples.

Example (1). A qualified funded plan under which benefits are not fixed or determinable is maintained by a foreign branch of a domestic corporation. The taxpayer's taxable year and the plan year are coterminous with the calendar year. The plan was established in 1985 and the taxpayer makes the election described in § 1.404A–2. The employer for the 1985 taxable year makes a $25,000 contribution under the plan and $15,000 of that contribution may be taken into account under paragraph (e) of this section. The cumulative foreign amount for the 1985 taxable year is $20,000. The amount of the carryforward contribution is $10,000 or $25,000—$15,000 because the amount of the carryforward contribution is determined without regard to section 404A(d).

Example (2). Assume the same facts as example (1), except that the entire $25,000 contribution made under the plan may be taken into account under paragraph (e) of this section. The amount of the carryover is 0, even though the cumulative United States amount may exceed the cumulative foreign amount for the taxable year because the amount of the carryforward contribution is determined without regard to section 404A(d).

§ 1.404A–4 Rules for qualified reserve plans.

(a) *In general.* Except as provided in §§ 1.404A–5 and 1.404A–6, the amount that is taken into account under a qualified reserve plan for a taxable year is the reasonable addition to the reserve for the taxpayer's liability under the plan. The reasonable addition to the reserve for a taxable year shall be taken into account only in the first year that it becomes available. Thus, the reasonable addition to the reserve is first calculated without regard to section 404A(d) and § 1.404A–5, and such amounts are then subject to the foregoing provisions without carryover. All benefits paid under a plan which is or has been a qualified reserve plan shall be charged to the reserve.

(b) *Determination of reasonable addition*—(1) *Funding method.* The reserve for the taxpayer's liability shall be determined under the unit credit method as further described in this section. The reasonable addition (subject to the other requirements provided in this section) shall be the excess of the sum of the reserve for the current plan year and the benefit payments for the year over the reserve for the prior plan year. Thus, an actuarial valuation must be made for each plan year, and a comparison of the results of the actuarial valuation must be made for the plan year and the preceding plan year. See § 1.412(c)(9)–1(b) for applicable rules concerning actuarial valuations. Notwithstanding any provision contained in this section, the addition to the reserve for the current plan year shall be reduced by any payments made by the employer which are used to either reinsure the liabilities or benefits under a qualified reserve plan, or to separately fund all or a portion of the benefits under a qualified reserve plan, if the employer separately deducts amounts or reduces earnings and profits (or accumulated profits) with respect to those payments without regard to this section. See § 1.404A–1(e) as to the requirements for reducing earnings and profits (or accumulated profits) when payments are made to a foreign deferred compensation plan for which an election under section 404A is not made. If the employer's taxable year coincides with the plan year, the deductible limit for the employer's taxable year is the deductible limit for the plan year that coincides with that year. If the employer's taxable year does not coincide with the plan year, the deductible limit for a given taxable year of the employer shall be one of the alternatives described in § 1.404(a)–14(c). In the event the qualified reserve plan is maintained by a foreign corporation the deductible amount shall be taken into account for the shareholder's taxable year in which or with which the employer's taxable year ends. See § 1.404A–3(d)(1) when the qualified foreign plan does not have its own separate accounting period.

(2) *Timing of reasonable addition.* The reasonable addition to the reserve shall be calculated on the last day of each plan year.

(3) *Permissible actuarial assumptions.* Except as provided in this section, actuarial assumptions used in determining the reasonable addition to the reserve under paragraph (b)(1) of this section are based on the plan being an ongoing plan. Thus, mortality assumptions may be used. However, interest rate assumptions shall conform to the requirements of §1.404A–6(d). Subject to the requirements of § 404A–4(d), only cost-of-living adjustments that are part of the accrued benefits, without regard to future service of employees, may be assumed.

(4) *Prohibited considerations for reserve plans*—(i) *Substantial risk of forfeiture.* In determining the reasonable addition to the reserve under this paragraph, amounts shall not be taken into account unless the benefits accrued by an employee are not subject to a substantial risk of forfeiture. The term "substantial risk of forfeiture" has the meaning stated in § 1.83–3(c)(1). However, a benefit earned under a qualified reserve plan will not be subject to a substantial risk of forfeiture merely because it will not be paid or distributed to the participant's beneficiary upon the death of the participant. For purposes of this paragraph (b)(4)(i), the term "property" as defined in § 1.83–1(e) shall also include benefits accured under a qualified reserve plan by a nonresident alien with respect to services performed, the compensation for which is not subject to federal income tax.

(ii) *Use of salary scale.* Salary scale assumptions shall not be used for purposes of determining the reasonable addition to the reserve under this paragraph.

(iii) *Anticipated benefit changes.* Except as otherwise provided by the Commissioner, changes in plan benefits or appropriate foreign law that become effective (whether or not retroactively) in a future taxable year shall not be used for purposes of determining the reasonable addition to the reserve under this paragraph.

(iv) *Additional service performed by employee.* Assumptions that employees shall perform additional service in a future taxable year shall not be used for purposes of determining the reasonable addition to the reserve under this paragraph.

(c) *Certain reserve decreases*—(1) *Reserve plans maintained by foreign subsidiary.* Except as provided in paragraph (d) of this section, in the case of a plan which is maintained by a foreign subsidiary and which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in the foreign subsidiary's earnings and profits or accumulated profits for such taxable year.

(2) *Reserve plans maintained by foreign branch.* Except as provided in paragraph (d) of this section, in the case of a plan which is maintained by a foreign branch and which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in the taxpayer's income for such taxable year.

(d) *10-year amortization of certain increases and decreases in reserve*—(1) *Adoption or amendment of plan.* Increases or decreases to the reserve on

account of adoption or amendment to a reserve plan shall be amortized over 10 years. An amendment to a plan includes a change in the level of compensation upon which plan benefits depend.

(2) *Experience gains and losses.* Increases or decreases to the reserve on account of experience gains or losses shall be amortized over 10 years.

(3) *Change in actuarial assumptions.* Increases or decreases to the reserve on account of any change in actuarial assumptions shall be amortized over 10 years. Thus, increases or decreases to the reserve on account of a change in the interest rate determined under section 404A(g)(3) and § 1.404A–6(d) shall be amortized over 10 years.

(4) *Cost of living adjustments for foreign subsidiaries*—(i) *Taxable years beginning before [90 DAYS AFTER DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE* FEDERAL REGISTER]. For taxable years beginning before [90 DAYS AFTER DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER], increases or decreases to the reserve of a plan maintained by a foreign subsidiary on account of cost-of-living adjustments described in paragraph (b)(3) of this section shall be amortized in the year or years permitted under foreign law or over 10 years, which ever is less.

(ii) *Taxable years beginning on or after [90 DAYS AFTER DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE* FEDERAL REGISTER]. Except as provided in paragraph (d)(4)(iii) of this section, for taxable years beginning on or after [90 DAYS AFTER DATE ON WHICH FINAL REGULATIONS ARE PUBLISHED IN THE FEDERAL REGISTER] increases or decreases to the reserve of a foreign subsidiary on account of cost-of-living adjustments described in paragraph (b)(3) of this section shall be amortized over 10 years.

(iii) *Special rule for retirees.* Cost-of-living adjustments described in paragraph (b)(3) of this section that relate to retirees in pay status under a qualified reserve plan maintained by a foreign subsidiary shall be amortized (A) in the year or over the number of years permitted under foreign law or (B) over 10 years, whichever is less.

(5) *Cost of Living adjustments for foreign branches.* (i) *In general.* Except as provided in paragraph (d)(5)(ii) of this section, increases or decreases to the reserve of a foreign branch on account of cost-of-living adjustments described in paragraph (b)(3) of this section shall be amortized over 10 years.

(ii) *Special rule for retirees.* Cost-of-living adjustments described in paragraph (b)(3) of this section that relate to retirees in pay status under a qualified reserve plan maintained by a foreign branch shall be amortized (A) in the year or over the number of years permitted under foreign law or (B) over 10 years, whichever is less.

(6) *Vesting of benefits accrued in prior years.* Increases or decreases to the reserve on account of benefits which accrued in a prior taxable year which cease to be subject to a substantial risk of forfeiture (within the meanings of § 1.404A–4(b)(4)) shall be amortized over 10 years.

(e) The principles of this section are illustrated by the following examples.

Example (1). A qualified reserve plan is maintained by a foreign subsidiary of a domestic corporation. The taxpayer's taxable year, the subsidiary's taxable year and the plan year are coterminous with the calendar year. The foreign subsidiary established the qualified reserve plan in 2001 and the taxpayer makes the election described in § 1.404A–2. The reasonable addition to the plan in 2001 determined under this section is $750,000. However, the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year is $650,000. The difference between the reasonable addition determined under this section and the deduction under the appropriate foreign tax laws or $100,000, may not be taken into account for any succeeding taxable year because the reasonable addition to the reserve for any taxable year may not be carried forward from one taxable year to another.

Example (2). A foreign subsidiary of a U.S. Company contributes funds to an irrevocable trust which is used to pay benefits provided under its reserve plan. The trust does not satisfy the requirements of sections 401(a), 404(a)(4) or 404(a)(5). The funds are not used to provide benefits in addition to those provided by the reserve plan. An election for the subsidiary's reserve plan to be treated as a qualified reserve plan is made in 1984. In 1984, the subsidiary also reduces its earnings and profits (or accumulated profits) by the amount contributed to the trust. The amount taken into account under this section must be reduced by the funds contributed to the trust in 1984.

Example (3). Employer Y hires 10,000 employees in 1980, each of whom is age 40 at the beginning of the year. The employees immediately commence participation in the plan and have the salary history set forth below. The plan provides that the accrued benefit at the end of X years is X times 1%, times the highest 1 year's compensation. The plan vesting is 20% per year starting after 2 years of service with the employer. Under the plan, once an employee is vested in a benefit, the benefit may not be forfeited for any reason other than the death of the employee. Relevant data is set forth below:

Year	End of year age	Number of EEs remaining	Comp/EE	End of year All/EE	End of year vested All/EE	End of year actuarial factor [1]	End of year reserve (3)×(5)×(7)
(1)	2	3	4	5	6	7	8
1980	41	9,979	10,000	100	0	2.527436	0
1981	41	9,956	10,000	200	0	2.660000	0
1982	43	9,931	10,000	300	60	2.800157	1,668,502
1983	44	9,903	10,000	400	160	2.948474	4,671,798
1984	45	9,900	15,000	750	450	3.105509	13,835,043

[1] Present worth at attained age of deferred annuity of $1 commencing at age 65 payable monthly based on UP–1984 mortality table with interest at 5 pct.

(a) *Computation of amounts taken into account for 1980 and 1981.* The amount taken into account for 1980 and 1981 is 0 because there is no reserve at the end of those years.

(b) *Computation of amount taken into account for 1982.* The reserve at the end of 1982 is $1,668,502. Of this amount $556,167 (9,931 ×100×2.800157×.20) is attributable to benefits accruing in the year. The remaining part of the reserve, $1,112,335 is attributable to increases in the vesting of benefits that accrued in prior years. This amount is taken into account over 10 years and $111,233.50 is the amount for each of the 10 years 1982 through 1991. The total amount taken into account for 1982 is $667,400.50 ($556,167 plus $111,233.50).

(c) *Computation of amount taken into account for 1983.* The increase in the reserve is $3,003,296 (4,671,798 less $1,668,502). Of this increase $1,167,950 (9,903×100×.40×2.948 474) is attributable to benefits accruing in the year. $1,751,924 (9,903×100×.20×3×2.948474) is attributable to additional vesting of benefits that accrued in prior years and is taken into account over 10 years. The balance of the increase in the reserve is $83,422. This amount consists of $83,425 (.05×$1,668,502) which is the interest on the reserve from the beginning of the year, and an actuarial gain of $3. The $3 is spread over 10 years. The amortization base that is established is $1,751,921 ($1,751,924 less $3).

The total amount taken into account for the year is $1,537,800.60 or $1,167,950 (relating to increases in the reserve attributable to benefits accruing in 1983), plus $83,425 (relating to interest on the reserve from the beginning of the year) plus $111,233.50 (relating to the 10 year amortization of the base from 1982) plus $175,192.10 (relating to the 10 year amortization of the base for 1983).

(d) *Computation of amount taken into account for 1984.* The increase in the reserve is $9,163,245 ($13,835,043 less $4,671,798). Of this increase $2,767,009 (9,900×150×.60×3.105509) is attributable to benefits accruing in the year. $2,458,563 (9,900×100×.20×4×3.105509) is attributable to benefits that accrued in prior years and is taken into account over 10 years. The amount attributable to the increase in accrued

benefits from prior years because of the salary increase is $3,669,345 (5,000×.01×9,900×4×3.105509×.80). The balance of the increase in reserve is $247,328. This amount consists of $233,590 (.05×4,671,798) which is the interest on the reserve at the beginning of the year, and an actuarial loss of $13,738 from mortality. The amortization base is $6,162,646 (2,459,563+3,689,345+13,738).

The total amount taken into account for the year is $3,903,289.20 or $2,767,009 (relating to increases in the reserve attributable to benefits accruing in 1984), plus $233,590 (relating to interest on the reserve from the beginning of the year) plus $111,233.50 (relating to the 10 year amortization of the base from 1982), plus $175,192.10 (relating to the 10 year amortization of the base from (1983), plus $616,284.60 (relating to the 10 year amortization of the base from 1984).

(e) *Alternative computation method.* The amounts taken into account for 1982, 1983 and 1984 may also be illustrated as follows:

1982—Worksheet for Calculating Amount Taken Into for Qualified Reserve Plans Under 404A

(1) Vested accrued benefits at end of current year for current employees using service through end of previous year	$387,240
(2) Vested accrued benefits at end of current year	585,860
(3) (2)−(1)	198,620
(4) Present value of vested accrued benefit at end of previous year (item (5) from previous year)	0
(5) Present value of (2) at end of current year	1,666,502
(6) Benefit payments during current year	0
(7) Increase (decrease) in reserve [(5)+(6)−(4)]	1,666,502
(8) Interest on (4) for current year at valuation rate	0
(9) Interest on benefit payments from date paid to end of current year at valuation rate	0
(10) Present value of (3) at end of current year	556,167
(11) Increase (decrease) in reserve to be spread over 10 years (7)−(10)−(8)+(9)	1,112,335
(12) Remaining 10 percent bases from prior years (original amounts) (item 14 from prior year)	0
(13) 10 percent bases whose 10 years ended last year	0
(14) (12)−(13)+(11)	1,112,335
(15) 10 percent of (14)	111,233.50
(16) Amount taken into account for current year (10)+(8)−(9)+(15)	667,400.50

1983—Worksheet for Calculating Amount Taken Into for Qualified Reserve Plans Under 404A

(1) Vested accrued benefits at end of current year for current employees using service through end of previous year	$1,188,360
(2) Vested accrued benefits at end of current year	1,584,480
(3) (2)—(1)	396,120
(4) Present value of vested accrued benefit at end of previous year (item (5) from previous year)	1,666,502
(5) Present value of (2) at end of current year	4,671,798
(6) Benefit payments during current year	0
(7) Increase (decrease) in reserve [(5)+(6)−(4)]	3,003,296
(8) Interest on (4) for current year at valuation rate	83,425
(9) Interest on benefit payments from date paid to end of current year at valuation rate	0
(10) Present value of (3) at end of current year	1,167,850
(11) Increase (decrease) in reserve to be spread over 10 years (7)−(10)−(8)+(9)	1,751,921
(12) Remaining 10 percent bases from prior years (original amounts) (item 14 from prior year)	1,112,335
(13) 10 percent bases whose 10 years ended last year	0
(14) (12)−(13)+(11)	2,864,256
(15) 10 percent of (14)	286,425.60
(16) Amount taken into account for current year (10)+(8)−(9)+(15)	1,537,800.60

1984—Worksheet for Calculating Amount Taken Into for Qualified Reserve Plans Under 404A

(1) Vested accrued benefits at end of current year for current employees using service through end of previous year	$3,564,000
(2) Vested accrued benefits at end of current year	4,455,000
(3) (2)−(1)	891,000
(4) Present value of vested accrued benefit at end of previous year (item (5) from previous year)	4,671,798
(5) Present value of (2) at end of current year	13,835,043
(6) Benefit payments during current year	0
(7) Increase (Decrease) in reserve [(5)+(6)−(4)]	9,163,245
(8) Interest on (4) for current year at valuation rate	233,590
(9) Interest on benefit payments from date paid to end of current year at valuation rate	0
(10) Present value of (3) at end of current year	2,767,009
(11) Increase (decrease) in reserve to be spread over 10 years (7)−(10)−(8)+(9)	6,162,646
(12) Remaining 10 percent bases from prior years (original amounts) (item 14 from prior year)	2,864,256
(13) 10 percent bases whose 10 years ended last year	0
(14) (2)−(13)+(11)	9,026,902
(15) 10 percent of (14)	902,690.20
(16) Amount taken into account for current year (10+(8)−(9)+(15)	3,903,289.20

§ 1.404A–5 United States and foreign law limitations on amounts taken into account for qualified foreign plans.

(a) *In general.* Except as provided in § 1.404A–6, deductions or reductions in earnings and profits (or accumulated profits) with respect to a qualified foreign plan for any taxable year may not exceed:

(1) The lesser of:

(i) The cumulative United States amount, or

(ii) The cumulative foreign amount,

(2) Reduced by the aggregate amount.

(b) *Special rule for foreign subsidiaries.* The deduction in computing taxable income and the reduction in earnings and profits or accumulated profits of any foreign subsidiary with respect to a qualified foreign plan shall not exceed the amount allowed as a decuction under the appropriate foreign tax laws for such taxable year. See example (1) of paragraph (f) of this section for an illustration of this rule.

(c) *Maintenance of more than one type of qualified foreign plan by an employer.* In determining the deduction or reduction in earnings and profits (or accumulated profits) when an employer maintains one plan for purposes of foreign law that is treated as two separate plans for purposes of § 1.404A–2(b)(7), the cumulative United States amount for each plan shall be combined for purposes of paragraph (a) of this section. See example (4) of paragraph (f) of this section for an illustration of this principle.

(d) *United States and foreign law limitations not applicable.* Amounts may be taken into account with respect to items described in section 404A(g)(1) and adjustments required by section 404A(g) (4) and (5) and section 2(e)(3)(ii) of Pub. L. 98–603 without regard to the limitation set forth in paragraph (a) of this section.

(e) *Definitions*—(1) *Cumulative United States amount.* The term "cumulative United States amount" means the amount determined under section 404A (without regard to section 404A(d)) for the taxable year of the employer ending with or within the taxable year of the taxpayer, and all prior taxable years to which an election under section 404A was in effect.

(2) *Cumulative foreign amount.* The term "cumulative foreign amount" means the sum of the amount allowed as a deduction under the appropriate foreign tax law for the taxable year of the employer ending with or within the taxable year of the taxpayer and the total amount allowed as a deduction under the appropriate foreign tax laws for those prior taxable years to which section 404A was in effect.

(3) *Aggregate amount.* The term "aggregate amount" refers to amounts actually taken into account under section 404A(d)(1) for all prior taxable years to which section 404A applies. Thus, the aggregate amount includes amounts described in § 1.404A–2(c)(5)(iv) and section 2(e)(3) of Pub. L. 98–603 even though these amounts have not been deducted in the current taxable year or prior taxable years by reason of section 404A. However, such amounts are deductable without regard to the restrictions of this paragraph (e). See § 1.404A–2(c)(5)(iv) as to the computation of the prior deduction.

(4) *Appropriate foreign tax law.* The appropriate foreign tax law is the tax law of the country (other than the United States) in which deductions are allowed in computing taxable income with respect to the employer maintaining the plan. If deductions for the same plan is allowed in more than

one country (other than the United States), the amount allowed as a deduction under appropriate foreign tax law for that taxable year is the combined amount deducted in each country.

(f) *Example.* The principles of this section are illustrated by the following examples.

Example (1). A qualified reserve plan is maintained by a foreign subsidiary of a domestic corporation. The foreign subsidiary established the qualified reserve plan in 1985 and the taxpayer makes the election described in § 1.404A–2. The taxpayer's taxable year, the subsidiary's taxable year and the plan year are coterminous with the calendar year. The assumed deductions under section 404A and appropriate foreign law for selected years, and the computations under this section which follow from such deductions, are shown in the following table:

	1985	1986	1987	1988
(1) Amount determined with respect to the plan under section 404A for the taxable year without regard to section 404A(d)	$800,000	$800,000	$300,000	$1,000,000
(2) Amount allowed as a deduction under the appropriate foreign tax laws for the taxable year	1,000,000	600,000	400,000	0
(3) Aggregate amount	0	800,000	1,400,000	1,800,000
(4) Cumulative United States amount	800,00	1,700,000	2,000,000	3,000,000
(5) Cumulative foreign amount	1,000,000	1,600,000	2,000,000	2,000,000
(6) Lesser of cumulative United States or foreign amount, reduced by aggregate amount	800,000	800,000	600,000	200,000
(7) Amount taken into account for the taxable year (lesser of (2) or (6))	800,000	800,000	400,000	0

Example (2). Assume the same facts as example (1) for all taxable years, except that the qualified reserve plan is maintained by a foreign branch. In this case, the computations under this section which follow from such deductions are shown in the following table.

	1985	1986	1987	1988
(1) Amount determined with respect to the plan under section 404A for the taxable year without regard to section 404A(d)	$800,000	$800,000	$300,000	$1,000,000
(2) Amount allowed as a deduction under the appropriate foreign tax laws for the taxable year	1,000,000	600,000	400,000	0
(3) Aggregate amount	0	800,000	1,600,000	2,000,000
(4) Cumulative United States amount	800,000	1,700,000	2,000,000	3,000,000
(5) Cumulative foreign amount	1,000,000	1,600,000	2,000,000	2,000,000
(6) Lesser of cumulative United States or foreign amount, reduced by aggregate amount	800,000	800,000	400,000	0
(7) Amount taken into account for the taxable year	800,000	800,000	400,000	0

Example (3). A foreign branch maintains a qualified funded plan. In 1980, the taxpayer is eligible to make the elections described in § 1.404A–2 (a) and (c), and does so during the 1980 taxable year. The amount determined under § 1.404A–2(c)(5)(iv) after taking into account the limitations prescribed by paragraph (a) of this section for the open period is $1,500,000. For the 1980 taxable year, $100,000 of the prior deductions may be deducted without regard to the limitations prescribed by paragraph (a) of this section that apply for the 1980 taxable year.

Example (4). *Z*, a domestic corporation maintains a retirement plan for employees employed in its foreign branch office. The plan is a combination book reserve and funded plan, but is considered a single plan under foreign law. The total retirement benefits that a participant is eligible to receive is the sum of the benefits provided by the qualified reserve plan and the qualified funded plan. Pursuant to § 1.404A–2, *Z* makes a separate qualified reserve plan and funded plan election with respect to each portion of the foreign plan. The assumed deductions under section 404A and appropriate foreign law for selected years, and the computations under this section which follow from such deductions, are shown in the following table:

	1984	1985
(1) Amount determined with respect to the qualified funded plan under section 404A for the taxable year without regard to section 404A(d)	$40,000	$90,000
(2) Amount determined with respect to the qualified reserve plan under section 404A for the taxable year	30,000	80,000
(3) Amount allowed as a deduction under the appropriate foreign tax laws for the taxable year	50,000	185,000
(4) Aggregate amount for the qualified funded and reserve plan	0	60,000
(5) Cumulative United States amount for the qualified funded plan	40,000	130,000
(6) Cumulative United States amount for the qualified reserve plan	30,000	110,000
(7) Combined cumulative United States amount	70,000	240,000
(8) Cumulative foreign amount	60,000	245,000
(9) Lesser of combined cumulative United States amount or cumulative foreign amount reduced by aggregate amount	60,000	185,000
(10) Amount taken into account for taxable year	60,000	180,000

(g) *Special rules relating to foreign currency.* If a foreign branch or subsidiary keeps its books in foreign currency the cumulative United States amount, the cumulative foreign amount, and the aggregate amount shall be calculated in that foreign currency. If a foreign branch or subsidiary keeps its books in U.S. dollars, the cumulative United States amount, the cumulative foreign amount and the aggregate amount shall be calculated in U.S. dollars.

§ 1.404A–6 Additional limitations on amounts taken into account for qualified foreign plans.

(a) *Restrictions for nonqualified individuals*—(1) *In general.* No amounts shall be taken into account under section 404A for any contribution or amount accrued attributable to services either—

(i) Performed by a citizen or resident of the United States who is an officer, shareholder, or highly compensated, or

(ii) Performed in the United States, the compensation for which is subject to tax under chapter 1 of subtitle A of the Internal Revenue Code.

(2) *Special rule.* Amounts described in subparagraph (1) of this paragraph are taken into account under the rules of section 404(a)(5).

(3) *Prior service performed in the United States.* No amounts shall be taken into account under section 404A for any contribution or amount accrued under a qualified foreign plan that was attributable to services described in paragraph (a)(1) that were performed during a prior taxable year. For purposes of this paragraph the accrued benefit attributable to services described in paragraph (a)(1) is the sum of (1) the accrued benefit determined without regard to vesting provisions and provisions relating to forfeitures of accrual (break in service that did not actually occur) that would be provided based only on the compensation and services described in paragraph (a)(1) plus (2) the excess, if any, of the accrued benefit attributable to services not described in paragraph (a)(1) over the accrued benefit that would be provided for services not described in paragraph (a)(1) if the individual's compensation taken into account under the plan only considered service not described in paragraph (a)(1). The accrued benefit attributable to services not described in paragraph (a)(1) is the excess, if any, of the total accrued benefit over the accrued benefit attributable to services described in paragraph (a)(1).

(4) *Highly compensated.* The term "highly compensated" has the same meaning as under § 1.410 (b)–1(d).

(5) The principles of this section are illustrated by the following example.

Example. ABC Company maintains a qualified foreign plan for employees of its foreign subsidiary. *P*, and employee of ABC, became a participant in the plan on January 1, 1985. *P* was employed by ABC in the United States from January 1, 1980, through

December 31, 1984. The benefit formula of the plan provides a benefit with respect to years of service both with the subsidiary and with ABC including service performed in the United States. The benefit is 2 percent of average compensation per year of service. Average compensation is defined as the average of compensation for the five consecutive years producing the highest average compensation. The plan year is the calendar year. For the years 1980 through 1989, *P* had compensation as shown below:

Year	Compensation
1980	$20,000
1981	20,000
1982	30,000
1983	30,000
1984	35,800
1985	30,000
1986	32,000
1987	40,000
1988	30,000
1989	30,000

P's accrued benefit on December 31, 1989 is $6,680 (.02×$33,400×10 years, where 33,400 is the average for the years 1984–1988 and is the highest average for the 10 years). The accrued benefit as of December 31, 1989, that is attributable to service described in paragraph (a)(1) is $2,800 which is the sum of:

(1) 2,700, which is .02×$27,000×5 ($27,000 is the average compensation for 1980 through 1984) plus,

(2) 100, the excess of $3,340 (.02×$33,400×5) over $3,240 (.02×$32,400×5, where $32,400 is the average of compensation for the years 1985–1989).

The accrued benefit attributable to services not described in paragraph (a)(1) is $6,680 less $2,800 or $3,880.

(b) *Records to be provided by taxpayer*—(1) *In general.* The taxpayer whose tax liability is affected by a qualified foreign plan maintained by an employer shall attach a statement to its United States income tax return. Such statement must specify the name and type of qualified foreign plan maintained by each employer which affects the taxpayer's tax liability, the cumulative United States and foreign amounts as well as the aggregate amount with respect to each plan. The statement shall also set forth the name and country of organization of the employer as well as such further information as the Commissioner may prescribe by forms and accompanying instructions.

(2) *Primary evidence.* The statement and/or form described in paragraph (b)(1) must be completed in good faith with all the information called for and with the calculations indicated. Except as provided in paragraph (b)(3) the statement and/or form must have attached to it (i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for the appropriate year or years with respect to the qualified foreign plan, or (ii) if the return under foreign tax laws shows the deduction for plan contributions or plan reserves as a separate identifiable item, a copy of the foreign tax return for the appropriate year or years with respect to the qualified foreign plan. The statement or return so attached must be either the original, a duplicate original, a duly certified or authenticated copy, or a sworn copy. In case only a sworn copy of a receipt or return is attached, there must be kept readily available for comparison on request the original, a duplicate original, or a duly certified or authenticated copy.

(3) *Secondary evidence.* Where the statement or return described in paragraph (b)(2) (i) or (ii) is not available the following information shall be submitted:

(i) A certified statement setting forth the cumulative foreign amount for each taxable year to which section 404A applies,

(ii) Excerpts from the employer's books and records showing either the change in the reserve or contributions made with respect to the plan for the taxable year to which section 404A applies, and

(iii) Computations of the foreign deduction relating to the plan to be established by data such as excerpts from the foreign law, assessment notices, or other documentary evidence thereof.

(4) *Foreign language.* If such returns, books, records or computations are not maintained in the English language, the taxpayer shall furnish a certified translation that is satisfactory to the District Director.

(5) *Information required by this section.* No amounts shall be taken into account under section 404A unless the information described in this section is furnished by the taxpayer. In addition, if the taxpayer upon request of the District Director fails without justification to furnish any such additional information which is significant, the District Director may disallow the amounts that are claimed under section 404A.

(6) *Individual eligible to complete statements.* The statements and/or forms that are required by § 1.404A–2 and this section shall be signed by a responsible corporate officer or individual who must verify under penalty of perjury that the statement and all other documents submitted are true and correct to his knowledge and belief.

(7) *Transitional rule.* In lieu of the provisions of this paragraph, taxpayers may rely on the prior published position of the Interal Revenue Service for taxable years beginning before [60 DAYS AFTER PUBLICATION OF FINAL REGULATIONS IN THE FEDERAL REGISTER].

(c) *Certain defined benefit limitations applicable*—(1) *Acturial assumptions.* Except as provided in §§ 1.404A–3 and 1.404A–4, and paragraph (d) of this section, in the case of a qualified reserve plan, or a qualified funded plan under which benefits are fixed or determinable, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of acturial assumption and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the acturary's best estimate of anticipated experience under the plan. Notwithstanding the preceding sentence, in the case of a qualified reserve plan the interest rate determined under section 404A(g)(3)(B) and § 1.404A–6(d) shall not be considered in determining whether other acturial assumptions are reasonable in the aggregate. For guidelines as to reasonable funding methods for qualified funded plans, see § 1.412(c)(3)–1.

(2) *Maximum amount to be taken into account for qualified foreign plans*—(i) *Qualified funded plans.* In the case of a qualified funded plan under which benefits are fixed or determinable, amounts shall not be taken into account to the extent that, if contributed, would cause the lesser of the fair market value or the actuarial value of the plan's assets to exceed the accrued liability under the plan for the taxable year. In the event that the accrued liability cannot be directly calculated under the funding method normally used, such accrued liability shall be determined using the entry age normal cost method.

(ii) *Qualified reserve plans.* See § 1.404A–4 for amounts that may be taken into account with respect to a qualified reserve plan.

(d) *Interest rate for reserve plan*—(1) *In general.* In the case of a qualified reserve plan, the rate of interest for the plan shall be selected by the taxpayer from within the permissible range.

(2) *Change of interest rate.* The rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is within the permissible range applicable at such time.

(3) *Permissible range.* For purposes of this paragraph, the term permissible range means a rate of interest which is

not more than the product of 1.2 multiplied by the average rate of interest, and not less than the product of .8 multiplied by the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxpayer's taxable year.

(4) *Special rules*—(i) *Foreign country with no long-term corporate bond market.* In the event that the appropriate country does not have a long-term corporate bond market, the long-term corporate bond interest rates in effect in the United States for the appropriate years may be used.

(ii) *Foreign country with different quality bonds.* In the event that the appropriate country's long-term corporate bond market consists of different quality bonds, the average interest rate on the highest quality bonds shall be used.

(iii) *Appropriate country.* The appropriate country is the country (other than the United States) in which deductions are allowed in computing taxable income with respect to the employer maintaining the plan. If deductions with respect to the same plan is allowed in more than one country (other than the United States) the taxpayer shall use a separate rate of interest (in accordance with this paragraph (d)) for participants employed in such countries. In the event that a participant is employed in more than one country the appropriate country with respect to that individual shall be the country in which the participant was employed for the highest number of days during the accounting period of the plan.

(e) *Requirement respecting the adoption or change of method*—(1) *Consent not required.* Except as otherwise provided in this paragraph, any actuarial cost method, described in § 1.412(c)(1)–1(a) that is consistent with section 404A and the regulations thereunder, may be used to determine the amount to be taken into account under section 404A for a qualified funded plan.

(2) *Consent required.* After an initial election to have section 404A apply for a taxable year has been made with respect to a particular plan, any change in the method used to determine the amount to be taken into account under section 404A for a subsequent taxable year shall not be permitted unless the consent of the Commissioner is obtained by the taxpayer before such change is adopted. In such a case, consent must be secured whether or not the new method is proper or permitted under the Internal Revenue Code and regulations thereunder.

(3) *Change in method.* A change in the method used to determine the amount to be taken into account under section 404A does include items described in § 1.446–1(e)(2)(ii)(b) or a change of actuarial assumptions.

(4) *Examples.* A change in the method used to determine the amount to be taken into account under section 404A requiring the consent of the Commissioner may be illustrated by the following examples:

Examples (1). D, a domestic corporation maintains a funded foreign deferred compensation plan for employees employed in its foreign branch office. The plan does not meet the requirements of § 1.404A–1(a). In 1984, *D* establishes a qualified reserve plan (which is intended to replace its former plan) and the election described in § 1.404A–2 is made. Because prior to 1984 the corporation did not elect to have its plan treated as a qualified foreign plan, there is no change in the method used to determine the amount to be taken into account under section 404A. However, see paragraph (f) of this section, with regard to an election being treated as a change in accounting method.

Example (2). Assume the same facts as in example (1), except that the funded foreign deferred compensation plan was a qualified funded plan for taxable years beginning in 1980 through 1983 and the appropriate elections had been made with respect to the plan. Because prior to 1984 the corporation had elected to have the plan treated as a qualified foreign plan, a change in the method used to determine the amount to be taken into account under section 404A has occurred.

Example (3). P, a domestic corporation owns all of the one class of stock of foreign corporation *S*. *S* maintains a qualified funded plan and *P* makes the election described in § 1.404A–2 for the 1980 taxable year. In computing the amount to be taken into account under section 404A, the plan uses the unit credit actuarial cost method. *S* continues to maintain the plan, except that *P* does not make the election described in § 1.404A–2 for taxable years 1981 through 1986. In 1985, the method used to determine costs and liabilities under the plan is changed from the unit credit method to the aggregate cost method. In 1986, *P* makes the election described in § 1.404A–2. Because prior to 1986 the corporation elected to have the plan treated as a qualified foreign plan, the use of the aggregate cost method to determine the amount taken into account under section 404A in 1986 constitutes a change in method.

(5) *Procedure for obtaining consent.* Written requests for approval are to be submitted, as directed by the Commissioner, to Commissioner of Internal Revenue Attention: OP:E:EP 1111 Constitution Avenue, NW., Washington, D.C. 20224. Such a request must be submitted before the close of the taxable year for which the change is to be effective unless an extension of time for filing the request is granted.

(f) *Election as a change of accounting method*—(1) *In general.* The making of elections under section 404 (e) and (f), and section 2(e) of Pub. L. 98–603, and § 1.404A–2 constitutes a change in method of accounting to which section 481 applies. Except as otherwise provided in this paragraph (f), an adjustment shall be made in accordance with section 481 and the regulations thereunder.

(2) *Period of adjustment.* The adjustment required by this paragraph and section 481 shall be taken into account on a pro rata basis for the year for which the election is made and the 14 succeeding taxable years without regard to whether an election is made for the 14 succeeding taxable years.

(3) *Effect of adjustment.* The adjustment required by this paragraph shall take into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2).

(4) *Voluntary change.* The election described in subparagraph (1) of this paragraph shall be considered a change in method of accounting initiated by the taxpayer.

(5) *No election in subsequent year.* The failure to make an election (in the case of a qualified funded plan) or the revocation of an election with the permission of the Commissioner (in the case of a qualified reserve plan) in the taxable year subsequent to a taxable year which an election has been made constitutes a change in the taxpayer's method of accounting for purposes of section 481. See § 1.404A–2(b)(6) as to the circumstances when an election may be revoked.

(6) *Computation of 481 adjustment*—(i) *Qualified funded branch plans.* The section 481 adjustment with respect to a qualified funded plan maintained by a foreign branch of a domestic corporation shall be the difference between the contributions to the plan that were previously deducted by the taxpayer and the contributions that would have been deductible by the taxpayer under section 404A for all taxable years prior to which an election described in § 1.404A–2 is made (during which the plan was maintained) had section 404A been in effect for those taxable years. Contributions made to the plan, during a taxable year prior to which an election under section 404A was in effect, that have not been previously deducted by the taxpayer may be taken into account pursuant to the rules contained in § 1.404A–3(g). The amount described in the preceding sentence shall not exceed the lesser of:

- (A) The difference between the total contributions to the plan since the date of its establishment and the contributions to the plan that were previously deducted by the taxpayer, or

(B) The difference between the total contributions to the plan since the date of its establishment and the contributions that would have been deductible by the taxpayer for all taxable years prior to which an election described in § 1.404A–2 is made had section 404A been in effect for those taxable years.

(ii) *Qualified funded subsidiary plans.* The section 481 adjustment with respect to a qualified funded plan maintained by a foreign subsidiary shall be the difference between the contributions to the plan that previously reduced the subsidiary's earnings and profits (or accumulated profits), and the contributions that would have reduced the subsidiary's earnings and profits (or accumulated profits) under section 404A for all taxable years prior to which an election described in § 1.404A–2 is made (during which the plan was maintained) had section 404A been in effect for those taxable years. Contributions made to the plan, during a taxable year prior to which an election under section 404A was in effect, that have not previously reduced the subsidiary's earnings and profits (or accumulated profits), may be taken into account pursuant to the rules contained in § 1.404A–3(g). The amount described in the preceding sentence shall not exceed the lesser of:

(A) The difference between the total contributions to the plan since the date of its establishment and the contributions to the plan that previously reduced the subsidiary's earnings and profits (or accumulated profits), or

(B) The difference between the total contributions to the plan since the date of its establishment and the contributions that would have reduced the subsidiary's earnings and profits (or accumulated profits) under section 404A for all taxable years prior to which an election described in § 1.404A–2 is made had section 404A been in effect for those taxable years.

(iii) *Qualified reserve branch plans.* The section 481 adjustment with respect to a qualified reserve plan maintained by a foreign branch of a domestic corporation shall be the difference between the reserve previously deducted by the taxpayer (reduced by payments made under the plan) and the reserve calculated under section 404A (as of the first day of the first year in which an election described in § 1.404A–2 is made).

(iv) *Qualified reserve subsidiary plans.* The section 481 adjustment with respect to a qualified reserve plan maintained by a foreign subsidiary shall be the difference between the reserve previously claimed by the taxpayer (reduced by payments under the plan) and the reserve calculated under section 404A (as of the first day of the first year in which an election described in § 1.404A–2 is made).

(7) *Timing of section 481 adjustment.* If a taxpayer makes a retroactive election described in § 1.404A–2(c), the section 481 adjustment shall be determined as of the beginning of the earliest open year for which the retroactive election is effective.

(8) *Calculation of opening reserve under section 404A.* For purposes of calculating the section 481 adjustment when qualified reserve plan treatment is elected for the first time, the reserve, calculated under section 404A as of the first day of the first year in which the election described in § 1.404A–2 is made, shall be determined on the basis of reasonable actuarial assumptions and in a manner consistent with the provisions of section 404A.

(9) *Effect of cumulative United States and foreign amount, etc.* The section 481 adjustment shall be determined without regard to the cumulative United States and foreign amounts, and the foreign law limitation of section 404A(d)(3). The section 481 adjustment shall also be determined without regard to whether the plan satisfied section 404A(e) prior to the making of an election under section 404A.

(10) *Estimations prohibited.* See § 1.404A–2(c)(4)(iii) as to those circumstances where a retroactive election is prohibited.

(11) *Examples.* The principles of paragraph (f) of this section are illustrated by the following examples:

Example (1). X, a domestic corporation maintains a funded defined benefit plan, which does not meet the requirements for qualification under section 401(a), for employees employed in its foreign branch office. The plan was first established during the 1976 taxable year. Since the date of its establishment contributions to the plan have totalled $150,000. However, only $100,000 of the total amount has been deducted by the taxpayer. For the 1980 taxable year, *X* makes a prospective election for its plan to be treated as a qualified funded plan. The total amount that would have been deductible by the taxpayer under section have 404A for the 1976, 1977, 1978, and 1979 taxable years, had section 404A been in effect for each of those years, is $80,000. The section 481 adjustment is a positive $20,000 or $100,000 − $80,000. The $50,000 which was previously contributed to the plan but not deducted by the taxpayer would be treated as a contribution carry forward under § 1.404A–3(g) and would be taken into account pursuant to the rules described therein.

Example (2). Assume the same facts as in example (1), except that only $60,000 of the total amount has been deducted by the taxpayer. Further assume that the total amount that would have been deductible by the taxpayer under section 404A for the 1976, 1977, 1978 and 1979 taxable years, had section 404A been in effect for each of those years, is $100,000. The section 481 adjustment is a negative $20,000, or $100,000 − $80,000. Only $50,000 of the $70,000 which was previously contributed to the plan but not deducted by the taxpayer would be treated as a contribution carry forward under § 1.404A–3(g) and would be taken into account pursuant to the rules described therein.

Example (3). A foreign subsidiary of a domestic corporation established an irrevocable balance sheet reserve for pension expenses in 1971. From 1971 through 1979 the taxpayer reduced earnings and profits of the foreign subsidiary by $700,000, the amount of the pension liability which had accrued under the plan. Through December 31, 1979, actual pension payments under the plan totalled $100,000. For the 1980 taxable year, the taxpayer makes an election for the plan to be treated as a qualified reserve plan. The reserve calculated under section 404A as of the first day of the 1980 taxable year is $200,000. The section 481 adjustment in this example is a positive $400,000 or $600,000 − $200,000.

Example (4). A foreign subsidiary of a domestic corporation established an irrevocable balance sheet reserve for pension expenses in 1973. From 1973 through 1979, the taxpayer reduced earnings and profits of the foreign subsidiary by $150,000, the amount of the pension liability which had accrued under the plan. Through December 31, 1979, actual pension payments totalled $15,000. For the 1980 taxable year, the taxpayer makes an election for the plan to be treated as a qualified reserve plan. The reserve calculated under section 404A as of the first day of the 1980 taxable year is $175,000. This section 481 adjustment is a negative $40,000 or $175,000 − $135,000.

Example (5). Assume the same facts as in example (4), except that the reserve calculated under section 404A as of the first day of the 1980 taxable year is $75,000. The section 481 adjustment is a positive $60,000 or $135,000 − $75,000.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–8234 Filed 4–5–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[GCD8–85–07]

Drawbridge Operation Regulations; Blackwater River, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is considering a change in the regulation governing the operation of the swing span railroad bridge over the Blackwater River, mile 2.8, near Milton, Santa Rosa County, Florida, by requiring that at least eight hours advance notice be given for an opening of the draw from 5 p.m. to 9 a.m. The Bridge would open on signal outside of these hours. Presently, the draw is required to open on eight hours advance notice from 8 p.m. to 4 a.m. and to open on signal from 4 a.m. to 8 p.m. This proposal is being made because of infrequent requests to open the draw during the proposed advanced notice period. This action should accommodate the nees of the railroad's schedule and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before May 23, 1985.

ADDRESS: Comments should be mailed to Commandar (obr), Eight Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments , data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard of envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regualtion may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 5.5 feet above high water and 7.0 feet above low water. Navigation through the bridge consists exclusively of pleasure boats. Data submitted by Seaboard System Railroad for the ten-month period from March 1984 through December 1984 shown that this traffic through the bridge is as follows:

(1) During the proposed eight hours advance notice period of 5 p.m. to 9 a.m, there were 46 bridge openings—an average of 4.6 openings per month or an average of one opening about every six days.

(2) During the existing eight hours advance notice period of 8 p.m. to 4 a.m., there was one bridge opening.

(3) During the remaining hours when the bridge opens on signal, there were 130 bridge openings—an average of 13.0 openings per month or an average of two openings every five days.

The eight hours advance notice for an opening of the draw would continue to be given to the railroad Train Master's office in Pensacola, Florida, by placing a collect call at any time, telephone (904) 434–3183.

To provide for leeway in the appointed arrival time, Seaboard System Railroad would have a bridge tender at the bridge at least one-half hour before the appointed time who would remain at least one-half hour after that time for a late arriving vessel.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory polices and procedures (44 FR 11034, February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the the number of vessels passing this bridge during the proposed advance notice period, 5 p.m. to 9 a.m., is one vessel every six days. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.271(a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.271(a) Blackwater River.

The draw of the Seaboard System Railroad bridge, mile 2.8 at Milton, shall open on signal; except that, from 5 p.m. to 9 a.m., the draw shall open on signal if at least eight hours notice is given.

* * * * *

(33 U.S.C. 499; 49 CFR 1.46(C)(5); 33 CFR 1.05–1(g)(3))

Dated: March 22, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 85–8366 Filed 4–5–85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Cancellation of Unnecessary Regulations

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA proposes to cancel several paragraphs in some sections of its education regulations dealing with the G.I. Bill. These paragraphs are redundant. No purpose is served by repeating the same information in more than one section. In fact, this sometimes causes confusion. Canceling redundant paragraphs will make 38 CFR Part 21 easier to use. The agency also proposes to amend a paragraph dealing with advance payment so that it is in agreement with other paragraphs on the same subject. If all paragraphs concerning advance payment are in agreement, confusion among users of these regulations will be eliminated.

DATES: Comments must be received on or before May 6, 1985.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until May 20, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration,

Education Service, Department of Veterans Benefits, (202) 389–2092.

SUPPLEMENTARY INFORMATION: Various paragraphs in 38 CFR 21.4136, 21.4137, 21.4235, and 21.4237 are canceled because they are redundant. Provisions of 38 CFR 21.4137 dealing with advance payments of educational assistance allowance are amended to bring them into agreement with other paragraphs dealing with the same subject.

The Veterans Administration has determined that the paragraphs in the regulations it proposes to cancel are not major rules as that term is defined by E.O. 12291, entitled Federal Regulation. The agency has determined that the paragraph it proposes to amend is not a major rule. The proposal will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs has certified that cancellation and amendment of these regulations, if made final, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed cancellation and amendment of these regulations, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because this is a technical change. The material contained in these canceled regulations is retained in other regulations which are not being canceled. For example, the canceled portions of 38 CFR 21.4136 and 21.4137 are covered adequately in 38 CFR 21.4138. Similarly, the material being deleted from 38 CFR 21.4235 and 21.4237 is retained in 38 CFR 21.4200. The material in the amended regulation is not new. It merely brings 38 CFR 21.4137 into agreement with other similar regulations.

(The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed cancellation and amendment of regulations are §§ 64.111 and 64.117)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21 [AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION is amended as follows:

§ 21.4136 [Amended]

1. Section 21.4136 is amended by removing and reserving paragraph (h).

2. Section 21.4137 is amended by removing and reserving paragraph (e), and by revising paragraph (g)(2) and the introductory portion of paragraph (g)(3) to read as follows:

§ 21.4137 Rates; educational assistance allowance—38 U.S.C. chapter 35.

* * * * *

(e) [Reserved]

* * * * *

(g) *Advance payment.* * * *

(2) *Payment.* (i) The amount of payment is the allowance for the month or fraction thereof in which the course will begin plus the allowance for the following month.

(ii) The VA will mail an advance payment check to the institution for delivery to the eligible person upon registration when—

(A) The VA has received an application, together with an enrollment certification or other information as required by paragraph (g)(3) of this section.

(B) The provisions of subparagraph (2)(v) of this paragraph do not prevent making an advance payment to the eligible person.

(C) The provisions of paragraph (g)(4) of this section are met, and

(D) This is not evidence in the eligible person's file showing that he or she is not eligible for an advance.

(iii) The educational institution shall not deliver the advance payment check more than 30 days in advance of commencement of the program.

(iv) The VA shall make subsequent payments each month subject to the certification requirements set out in §§ 21.4138, 21.4203, 21.4204, and 21.4205. The VA will withhold final payment if absence reporting is required, until the VA receives the required certification and makes any necessary adjustments.

(v) The Director of the VA field station of jurisdiction may direct that advance payments not be made to eligible persons attending an educational institution if—

(A) The educational institution demonstrates an inability to comply with the requirements of subparagraph (2)(iii) of this paragraph, or

(B) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the eligible person or return to the VA, or

(C) The Director determines, based on compelling evidence, that the institution demonstrates its inability to discharge its responsibilites under the advance payment program.

(3) *Certification.* Advance payment will be authorized at the beginning of each term preceded by an interval of nonpayment for 30 days or more, provided the application, enrollment certification or other document signed either by an authorized official of the institution or the eligible person contains the following information: (38 U.S.C. 1780(d))

* * * * *

§ 21.4235 [Amended]

3. In § 21.4235, paragraphs (g), (h) and (i) are removed.

§ 21.4237 [Amended]

4. In § 21.4237, paragraphs (g), (h) and (i) are removed.

(38 U.S.C. 210(c))

[FR Doc. 85–8299 Filed 4–5–85; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 175, 176, 177, 180, 181, 182, 183, 184, 185, 186, and 187

[CGD 85–021]

Standards for Small Passenger Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comment; notice of meeting.

SUMMARY: The Coast Guard has made the determination that there are many small passenger vessels embodying features of a novel kind not totally envisioned in the regulations. Some of the provisions of the 46 CFR Subchapter T—Small Passenger Vessels (Under 100 gross tons), which then refer to 46 CFR Subchapter H— Passenger Vessels, appear to be too onerous. In cases when more than 150 passengers are carried, we are applying large ocean liner standards to small short duration, protected route vessels. The Coast Guard is prepared to reevaluate its position and consider relaxing the more onerous requirements to take account of the vessel type, operation and construction features.

DATES: Comments may be submitted on or before June 7, 1985. A public meeting is scheduled for 10:00 am on April 17, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44) U.S. Coast Guard, Washington, DC 20593.

The public meeting will be held in Room 3317, U.S. Coast Guard Headquarters, 2100 2nd St. SW, Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Kerlin, Office of Merchant Marine Safety, U.S. Coast Guard, (G-MTH-4/13), Room 1304, 2100 Second Street, SW, Washington, D.C. 20593. Telephone (202) 426-2197.

SUPPLEMENTARY INFORMATION: Over the last several years many appeals and discussions have resulted over the growing concern amongst the industry that the standards being applied to "small" passenger vessels are too onerous. The majority of concern has been expressed in the area of structural fire protection, although other concerns have been expressed as well.

The National Association of Passenger Vessel Owners (NAPVO) as well as other owner groups have expressed an interest in providing the Coast Guard background information on these areas of concern and making suggestions for improvement. The purpose of this notice is to provide an early opportunity for others to indicate their interests and areas of concern and to solicit comments/suggestions. The basic parameters from which we will be operating in developing our potential future regulatory package are as follows:

a. No overnight accommodations;

b. Short duration voyages;

c. Limited combustibles (furnishings, etc.);

d. Isolation of ignition sources;

e. Operation in close proximity to shore;

f. Steel or steel equivalent construction;

g. More than adequate access/egress arrangements; and

h. Area of safe refuge.

The vessels in question are daytime excursion vessels, ferry vessels, charter fishing vessels, dinner cruise vessels, to name just a few.

The public meeting will be informal and is intended to provide a preliminary indication of the extent of interest in revisions to the small passenger vessel standards and to further identify areas of concern.

Dated: April 3, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-8367 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-91; FCC 85-152]

Amendment of the Rules To Expand the Use of Automatic Transmission Systems at AM, FM and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes rule amendments to permit the use of automatic transmission systems (ATS) at directional AM stations and television stations. The FCC further proposes to delete, for all broadcast stations, certain ATS design requirements that are no longer necessary. This action is based on advancements in broadcast and electronic automatic control system technology.

DATES: Comments must be submitted on or before June 10, 1985 and reply comments on or before July 10, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gordon, Mass Media Bureau, Technical and International Branch, Washington, D.C. 20554, (202) 632-9660

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of the Commission's Rules to Expand the Use of Automatic Transmission Systems at AM, FM and Television Broadcast Stations; MM Docket No. 85-91.

Adopted: March 28, 1985.
Released: April 2, 1985.

Introduction

1. The action under consideration proposes to extend the permitted use of automatic transmission systems (ATS) to include directional AM stations and television broadcast stations. Currently, ATS use is permitted for FM and non-directional AM stations only. Our action herein also updates the ATS provisions with certain changes, deletions, and consolidations in keeping with other deregulatory rule amendments and advances in broadcast technology.

2. In the context of this proceeding an automatic transmission system consists of monitoring devices, and control and alarm circuitry, arranged so that they interact automatically to operate a broadcast station's transmitter. For example, such an ATS automatically makes the necessary adjustments to maintain authorized transmitter parameters, and immediately alerts station operators if and when any malfunction of the system's control features occurs. It also alerts station operating personnel if the transmitter does not respond appropriately to the commands of the ATS. ATS can also automatically switch the transmitter to critical modes of operation to prevent interference conditions, such as in the different day and night-time operating parameters of many AM stations. In addition, ATS can terminate the transmitter operation in the event of some catastrophic occurrence or if critical maximum operating limits are exceeded for some sustained period of time.

Background

3. On December 21, 1976, the Commission adopted a *First Report and Order (First Report)*, Docket 20403, published in the **Federal Register** at 42 FR 1233, January 6, 1977.[1] The *First Report* amended the rules to permit the use of ATS at FM broadcast stations and AM broadcast stations operating with nondirectional antenna systems. Initially, the Commission had envisioned that all AM, FM, and TV stations, regardless of complexity, could use automatic transmission systems. However, the comments received early in the course of this proceeding raised a number of technical questions concerning TV broadcast signal processing equipment availability. Additionally, the Commission in a separate proceeding, was working toward finding a resolution of the appropriate AM directional antenna electric current phase tolerance factor.

Discussion

4. In permitting FM and non-directional AM stations to use ATS, the Commission expected work to proceed in resolving those remaining technical considerations applicable to ATS

[1] The original proceeding on automatic transmission systems in Docket 20403 is being terminated by a concurrent Memorandum Opinion and Order. The remaining issues and comments of that proceeding are outdated and no longer relevant to the proposals set forth herein.

operation for television stations and AM stations using directional antenna systems. In BC Docket No. 78–28, *Report and Order*, Adopted December 1, 1983, the Commission resolved the AM directional antenna phase tolerance issue.[2] We also now believe that in view of today's advanced technology, sufficient automation techniques are available to television broadcast licensees for efficient ATS operation.

5. Although beyond the immediate scope of this proceeding to propose rule changes, a fully automatic transmission system holds the potential of permitting a completely unattended automated broadcast station. Early comments in this proceeding suggested this would be one of the chief advantages of ATS. For example, a station's employee would no longer be required to be in attendance to monitor the transmitter facilities. However, this aspect of unattended ATS operation is not considered in this proceeding because of section 318 of the Communications Act (47 U.S.C. 318), which we believe requires that an FCC licensed operator be on duty at the broadcast transmitter. Thus, the Commission is bound to maintain requirements that operation of broadcast and certain other types of non-broadcast stations must be attended at all periods of operation by persons holding radio operator licenses (or permits).[3] This proceeding is, however, directed at eliminating the workload of the duty operator.

6. The statutory requirement that a licensed operator be on duty in charge of the broadcast station transmitting equipment originated at a time when nearly constant observation and adjustment of the transmitter was required to ensure operation in conformance with the Commission's Rules. Over the years, the reliability and stability of the transmitting apparatus has developed to the point where station transmitters can operate for long periods without frequent observation or adjustments by a skilled technician. During the past ten years, the Commission has made a series of adjustments in its Rules to reflect the improvements in station equipment by removing many of the operator licensing, monitoring, measurement, inspection, and record keeping requirements that originated nearly 50 years ago. However, the present ATS rules remain essentially the same as originally adopted in 1977. Although stations can implement many recent advances in broadcast transmitter technology, our present ATS rules restrict the uses of many of these new techniques. We request comments on the benefits and drawbacks to allowing unattended operation.

7. Moreover, the Commission recently deregulated its rules governing remote control systems. The Rules previously specified many features that had to be included, such as specific metering and control circuits.[4] In that proceeding, the judgements and responsibilities for remote control implementation were placed on the station licensees. Thus, licensees were allowed to operate their stations by remote control using any methods that assure that: (1) An operator is on duty, (2) the transmitting system is operating properly, and (3) the Commission can contact station personnel during hours of operation. Remote control system Rules also require that the operator be able to determine that the station is operating within the terms of its authorization, and that he or she be able to terminate the transmissions if an out of tolerance condition is not or cannot be corrected. By comparison, ATS rules currently require (1) automatic adjustments of all critical operating parameters, (2) warnings of system failures that *impair* station operation, and (3) automatic termination of transmissions if there is a continued and uncorrected condition that may cause interference to other stations. With ATS, all monitoring or meter readings and adjustment of parameters are done automatically. The existing rules contain detailed ATS design requirements for the monitoring, control, and alarm functions. Because other appropriate rule sections already specify operating tolerances for various parameters considered necessary for avoiding interference, the Commission now proposes to delete the "how to" or detailed methodology requirements from the ATS rules. Rather, the proposed rules would merely place full responsibility on each licensee to assure compliance with all station operation requirements.

8. As the Commission concluded in Docket No. 84–110, the Communication Act requires that a licensed operator have supervisory control over the station's transmitter during all periods of operation. Therefore, at a minimum, that operator must be able to terminate the station's operation should it be the source of harmful interference or be operating inconsistently with law or treaty. To facilitate this level or control, automatic systems may be utilized. Moreover, advancements in broadcast technology may have now obviated the need for many of the prescriptive ATS details as provided by the *First Report*. Thus, we propose to remove many of the original specifications for use of ATS and further to allow its use at AM directional and TV broadcast stations. In recent proceedings, the Commission has held that licensees should have flexibility in operating their stations. Therefore, we are proposing an approach that meets the basic requirements of the Communications Act while allowing licensees maximum flexibility in meeting the transmitter operating requirements.

Other Considerations

9. In making the above described changes to the Rules, it is appropriate to make certain other editorial changes. Thus, we propose to delete the twelve separate ATS rules for AM, FM, and Non-commercial FM and combine the provisions in one rule common to all services. The provisions of the referenced rule sections will be condensed and rewritten in a new section to include all information relating to use of facilities, monitoring and alarm points, and fail-safe transmitter control of automatic transmitter systems. The Appendix reflects these ediorials.

10. Regulatory Flexibility Act—Initial Analysis.

I. *Reason for Action.* The Rules currently prescribe standards for automatic transmission systems for FM stations and nondirectional AM stations. This action extends the provision to allow ATS operation at directional antenna AM stations and television stations. The proposed rule amendments would also editorially update the existing provisions by replacing them with a common rule applicable to all types of broadcast stations.

II. *The Objective.* The objective of this action is to provide broadcasters with more flexibility in the operation of their stations.

III. *Legal Basis.* This action is in accordance with section 4(i) and 303 of the Communications Act of 1934, as amended.

IV. *Description, potential impact, and number of small entities affected.* The proposed rule amendments would favorably affect all AM, FM, and television broadcast stations by

[2] 49 FR 1373, January 11, 1984.

[3] It has been determined that the term "operator's license" as mentioned in the Communications Act, refers to any and all classes of operator permits issued by the Commission. Also, section 318 of the Act authorizes the Commission to waive the duty operator requirements for some types of stations including translators that retransmit the signals of broadcast stations.

[4] MM Docket No. 84–110, *Report and Order*, 49 FR 47508, December 6, 1984.

allowing them increased flexibility in automating their transmitter operations. Further, broadcast related equipment manufacturers would be able to market ATS devices using advanced technology that the present rules do not provide for, particulary in television systems and AM directional antenna systems.

V. *Recording, recordkeeping, and other compliance requirements.* The proposed rule amendments would impose no recordkeeping requirements, nor would they require any additional application or notification procedures.

VI. *Federal Rules which overlap, duplicate, or conflict with this proposed rule amendment.* None.

VII. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective.* None.

Paperwork Reduction Act Implications

11. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Presentations

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communications (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, §1.1231 of the Commission's rules, 47 CFR 1.1231.

Comment Period

13. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 10, 1985, and reply comments on or before July 10, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Actions

14. The Secretary shall cause a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. et seq.).

15. Authority for this action is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

16. For further information on this matter, contact Bernard Gorden, Mass Media Bureau, at (202) 632-9660.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 73—[AMENDED]

Appendix

1. 47 CFR Part 73 would be amended by removing the following Rule Sections in their entirety:

(1) 47 CFR 73.140 Use of automatic transmission systems (ATS).
(2) 47 CFR 73.142 Automatic transmission system facilities.
(3) 47 CFR 73.144 Fail-safe transmitter control for automatic transmission systems.
(4) 47 CFR 73.146 Automatic transmission system monitoring and alarm points.
(5) 47 CFR 73.340 Use of automatic transmission systems (ATS).
(6) 47 CFR 73.342 Automatic transmission system facilities.
(7) 47 CFR 73.344 Fail-safe transmitter control for automatic transmission systems.
(8) 47 CFR 73.346 Automatic transmission system monitoring and alarm points.
(9) 47 CFR 73.540 Use of automatic transmission systems (ATS).
(10) 47 CFR 73.542 Automatic transmission system facilities.
(11) 47 CFR 73.544 Fail-safe transmitter control for automatic transmission systems.
(12) 47 CFR 73.546 Automatic transmission system monitoring and alarm points.

2. 47 CFR 73.1500 would be added to read as follows:

§ 73.1500 Automatic Transmission System (ATS).

(a) Licensees of AM, FM, or TV broadcast stations may utilize an automatic transmission system (ATS) in lieu of either direct or remote control of the station transmitting system.

(b) No authorization from the FCC is required to operate the transmitter using an automatic transmission system. Prior to commencing use of the ATS, the station chief operator, technical director, or consulting engineer shall certify to the station licensees that the system has been installed, tested, and fully complies with all prescribed technical standards of the ATS Rules applicable to the particular class of station.

(c) Broadcast stations operating automatic transmission systems must be provided with one or more ATS duty operator points. Each such point shall have a means to turn the transmitting apparatus off at all times.

(d) Whenever an automatic transmission system duty operator point is established at a location other than at the main studio or transmitter, notification of that location must be sent to the FCC in Washington, DC, within 3 days of initial use of that point. This notification is not required if responsible station personnel may be contacted at the transmitter or studio site during hours of operation when the ATS duty operator is elsewhere.

(e) The ATS control system for a broadcast station must incorporate circuits that will terminate the

radiations of the station if its automatic power adjustment, operating mode, or directional antenna monitoring controls do not correct an over power or antenna malfunction condition exceeding 3 minutes.

(f) A station employee holding at least a Restricted Radiotelephone Operator Permit shall be at the duty operator point at all times when the station is in operation.

(g) The station employees on duty at the ATS duty operator points shall be fully instructed in procedures to take in the event of a malfunction of the transmission system and must also be able to observe and respond to an EBS alert as required by Subpart G of this part.

[FR Doc. 85-8346 Filed 4-5-85; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CRF Part 1175

[Ex Parte No. 397]

Exemption of Railroads From Securities Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules and exemption.

SUMMARY: Currently, all railroads and corporations organized to become railroads must file an application for authority to issue securities or to assume an obligation or liability with respect to the securities of another, including equipment trust certificates (49 U.S.C. 11301). This requirement was enacted in 1920 to reduce manipulation of rail securities that, among other things, often led to a diversion of funds needed for productive railroad purposes to other use, resulting in a deterioration of essential service to the public and substantial losses to *bona fide* investors. The need for our oversight of railroad securities has decreased as a result of changed circumstances and recent Congressional action.

We preliminarily find that our continued regulation of the majority of securities transactions is not necessary to carry out the national rail transportation policy.

We propose to exempt from regulation a substantial number of the securities issued or assumed by railroads. We also propose to eliminate the security application and competitive bidding requirements of 49 CFR Part 1175 and the forms used to implement Part 1175 are proposed to be discontinued.

DATES: Comments are due May 8, 1985.

ADDRESSES: All interested persons are invited to comment. Comments (an original and 15 copies) referring to Ex Parte No. 397 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The Interstate Commerce Commission proposes to exempt the following transactions from the requirements of 49 U.S.C. 11301: (1) Equipment trust certificates; (2) securities issued or guaranteed in connection with proceedings filed under 49 U.S.C. 10905; and (3) issuance or guaranty of securities by Class II and Class III railroads. The Commission also proposes to exempt security issuances by Class I railroads, subject to notice and comment procedures in individual cases. Finally, the Commission proposes to remove 49 CFR Part 1175 and discontinue use of forms OP-F-200, OP-F-210, OP-F-220, OP-F-230, and OP-F-240.

Additional information is contained in the Commission's decision proposing the exemption. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

Initial Regulatory Flexibility Analysis

Section 604 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 19, 1980), requires us to analyze the impact of the proposed exemption on small entities (*e.g.*, small businesses, not-for-profit organizations, and small governmental bodies).

The Commission is considering the proposed exemption to give carriers the flexibility to negotiate financing without undue delay and to eliminate costs incidental to the filing of securities applications or individual exemptions. The basis of the proposed exemption lies in a lessening need for oversight of these types of transactions as embodied in both the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, and the Staggers Rail Act of 1980, Pub. L. No. 96-448.

Although the precise impact on carriers cannot be measured, a significant number of small carriers could be beneficially affected by exempting rail security issuances from regulation. No Commission reporting or record-keeping requirements are anticipated if the proposed exemption is adopted, and no other potentially relevant Federal regulations appear to conflict. There are no significant alternatives to the proposed exemption.

An original and 15 copies of any comments should be filed by May 8, 1985.

Energy and Environment

We conclude preliminarily that this action will not significantly affect either the quality of the human environment or energy conservation.

This proceeding is instituted pursuant to 5 U.S.C. 553 and 559 and 49 U.S.C. 10505, 10321, and 11301.

List of Subjects in 49 CFR Part 1175

Administrative practice and procedures, Motor carriers, Railroads, Reporting and recordkeeping requirements, Securities.

Decided: April 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-8318 Filed 4-5-84; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 67
Monday, April 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Diamond Tips for Phonograph Needles From the United Kingdom; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding.

SUMMARY: On November 30, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on diamond tips for phonograph needles from the United Kingdom. The review covers the two known exporters of this merchandise to the United States currently covered by the finding and the period April 1, 1983, through March 31, 1984.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47077) the preliminary results of its administrative review of the antidumping finding on diamond tips for phonograph needles from the United Kingdom (37 FR 6665, April 1, 1972). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of diamond tips for phonograph needles consisting individually of an almost microscopic chip of diamond bonded to steel and shaped to fit into the grooves of a phonograph record. Diamond tips for phonograph needles are currently classifiable under item 685.3400 of the Tariff Schedules of the United States Annotated.

The review covers the two known exporters of British diamond tips to the United States currently covered by the finding and the period April 1, 1983, through March 31, 1984.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review remain unchanged from the preliminary results of review, and we determine that the following margins exist for the period April 1, 1983, through March 31, 1984:

Manufacturer/exporter	Margin (percent)
Bauden Precision Diamonds, Ltd.	[1]0
Diamond Stylus Ltd.	0

[1] No shipments during the period.

The Department shall instruct the Customs Service not to assess dumping duties on appropriate entries. Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on shipments of British diamond tips for phonograph needles entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

April 3, 1985.

[FR Doc. 85–8375 Filed 4–5–85; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instumentation technical Advisory Committee was initially established on October 23, 1973, and rechartered on January 5, 1984, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: April 25, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3708, 14th and Constitution Avenue NW., Washington, D.C. The meeting will continue to its conclusion on April 26, 1985, in Room 3708, the Herbert C. Hoover Building.

Agenda: The Committee will begin with an open meeting to invite public comments with regards to existing commodity or technology controls. The commodities and technologies that falls under the responsibilities of the Committee are those relating to the following Commodity Control List (CCL) entries:

1510	1533	1566
1516	1534	1572
1522	1541	1584
1529	1560	1585
4529	1561	1587
1531	1521	6598

Invited comments will be restricted to these or substantially related items.

In particular the Committee would like to invite public comments in two areas:

1. The effect of the new regulations for CCL 1565, 1566, and 1567 as published in the **Federal Register** December 31, 1984 and effective January 1, 1985, on export of electronic instrumentation and other products that are controlled by the CCL items listed above.

2. Evidence relating to CCL 1522 lasers and laser systems that:

a. Establishes technology levels in non-COCOM countries

b. Establishes equipment levels available from one or more non-COCOM countries,

c. Indicates impact upon competitiveness of U.S. products abroad (include any impact within the COCOM countries).

In presenting evidence please submit as much detail as possible indicating a foreign produced product's capabilities, features, price, production, quantity and quality. The Committee wishes to justifiy decontrol of those products where proof can be provided that U.S. control or COCOM control levels are no longer necessary.

If you wish to attend this open meeting of the Electronic Instrumentation Technical Advisory Committee, please call or write Jess Bratton at (202) 377–4959, U.S. Department of Commerce 14th & Constitution Avenue NW., Washington, D.C. at least five working days in advance in order to reserve a seat as there is limited space available. With this advance notice, arrangment can be made for more space, should that be necessary.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meeting or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act.

A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information contact Mr. Jess M. Bratton 202–377–4959.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–8376 Filed 4–5–85; 8:45 am]

BILLING CODE 3510-DT-M

Microelectronics Center of North Carolina et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–114. Applicant: Microelectronics Center of North Carolina, 3021 Cornwallis Road, Research Triangle Park, NC 27709. Instrument: Scanning Electron Microscope with Facilities/Auger Electron Spectroscopy, Model HB501A. Manufacturer: Vacuum Generators, United Kingdom. Intended use: Experiments involving high resolution studies of semiconductor defects, segregation of dopants, identification of undesirable impurities, electron beam lithography studies, oxidation studies, Silicide formation studies and contact metallurgy, silicon on insular studies and ion implantation induced defect investigations. The objectives pursued in the course of the investigations are the understanding and development of advanced semiconductor devices by the manipulation of defects and microstructural characteristics and parameters that will allow their fabrication. In addition, the instrument will be used for educational purposes in the courses: MAT 610 X-Ray Diffraction, MAT 615 Electron Microscopy and MAT 503 Ceramic Microscopy. Application Received by Commissioner of Customs: March 13, 1985.

Docket No. 85–115. Applicant: Michigan Technological University, Department of Metallurgical Engineering, Houghton, MI 49931. Instrument: Automated X-ray Diffractometer, Model D 500 and Accessories. Manufacturer: Siemens AG, West Germany. Intended use: Research involving structural and chemical characterization with a variety of X-ray and electron techniques. The research will include but is not limited to the following programs.

1. Interphase Boundary Related Fracture;
2. Microstructural Development and Control in Liquid Phase Sintering;
3. Effects of Flotation Machine and Froth Characteristics on Cationic Flotation of Finely Ground Iron Ores and Concentrates;
4. Fine Particle Flotation Advancement;
5. Structure—Property Effects of Tantalum Additions to Nickel-Base Superalloys;
6. Combined Effects of Surface Oxidation and Coating/Substrate Interdiffusion on Coating Performance;
7. Environment-Induced Embrittlement: Effects of Impurity Segregation and State of Stress; and
8. Solidification and Microstructure of Aluminum-Base Alloys.

In addition the instrument will be used for educational purposes in a variety of courses dealing with structural and chemical characterization. Application received by Commissioner of Customs: March 11, 1985.

Docket No. 85–116. Applicant: Emory University, Department of Chemistry, Atlanta, GA 30322. Instrument: Fluorescence Lifetime Instrumentation. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Studies of the fluorescence lifetime of molecules in solution. The initial research interest involves the effect of electric field on the fluorescence lifetime of various compounds. If it is found that electric fields have a useful effect on the lifetime, a deeper study of the mechanism of interaction and applications in the analysis of mixtures will be conducted. Other useful research will be in investigating mathematical techniques for extracting accurate information from the experimentally collected data. Application received by Commissioner of Customs: March 13, 1985.

Docket No. 85–117. Applicant: Auburn University, Department of Chemical Engineering, 230 Ross Hall, Auburn, AL 36849. Instrument: Secondary Ion Mass Spectrometer with Accessories. Manufacturer: Leybold Heraeus GmbH & Company, West Germany. Intended use: Identification of adsorbed gases on the surface of catalysts and thin films. Experiments to be conducted include preparation and reaction of materials in selected gaseous environments at pressures up to 30 atmospheres followed by transfer to the instrument for analysis. The samples are then analyzed further with additional surface science techniques in the same ultra high vacuum chamber as the instrument. In addition, the instrument will be used in the training of M.S. and Ph.D. students during the course of their research in Chemical Engineering, Chemistry, Physics and Geology. Application received by Commissioner of Customs: March 14, 1985.

Docket No. 85–118. Applicant: Auburn University, Department of Chemical Engineering, 230 Ross Hall, Auburn, AL 36849. Instrument: Thermomolecular Pump, Model TMP 360. Manufacturer: Leybold Heraeus GmbH & Company, West Germany. Intended use: Studies of surfaces, thin films, organic/inorganic compounds and adsorbed gases, particularly heterogeneous catalysts and multilayered thin films. Experiments to be conducted include: reaction of

catalysts and multicomponent thin films in selected gaseous atmospheres followed by surface characterization and depth profiling using secondary ion mass spectroscopy, electron energy loss spectroscopy, electron spectroscopy for chemical analysis, and other available techniques. In addition, the instrument will be used in the training of M.S. and Ph.D. students during the course of their research in Chemical Engineering, Chemistry, Physics and Geology. Application received by Commissioner of Customs: March 14, 1985.

Docket No. 85–120. Applicant: Stanford University, Stanford, CA 94305. Instrument: Streak Camera, Model C 1587 with Accessories. Manufacturer: Hamamatsu, Japan. Intended use: The instrument is to be used as a diagnostic in a short pulse tunable dye laser system which will be used for studies in atomic and extreme ultraviolet (XUV) physics involving the generation of XUV radiation. The objective of the investigations is to study the physics of innershell atomic transitions with the long term aim of generating new sources of coherent radiation in the 10–1000 V range. Application received by Commissioner of Customs: March 14, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–8377 Filed 4–5–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Nebraska Medical Center; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket No. 85–121. Applicant: University of Nebraska Medical Center, 42nd and Dewey Avenue, Omaha, NE 68105. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: Philips, The Netherlands. Intended use: The instrument will be used to identify and measure the damage to cardiac muscle after an infarct, the development and segregation of cells in the anterior pituitary gland, the ultrastructure of the microvasculature of the cerebral cortex and the alterations that occur during hemorrhage, the development of lymphocytes and of new antibodies, the formation of new synaptic connections after brain damage or after hormonal treatments, the process of neurodegeneration after neurotoxicity, the identification of peptides of proteins in the central nervous system and glands of the body. Application received by Commissioner of Customs: March 14, 1985.

Docket No. 85–124. Applicant: Worcester Foundation for Experimental Biology, 222 Maple Avenue, Shrewsbury, MA 01545. Instrument: Nanosecond Fluorometer System, Model 2000. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended use: Lifetime measurements, lifetime heterogeneity analysis and fluorescence energy transfer measurements to study the organization of lipid and proteins in membranes and the interaction of proteins with membranes. The objectives of the experiments are to achieve a basic understanding of molecular processes in the above experiments. Application received by Commissioner of Customs: March 13, 1985.

Docket No. 85–125. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 S. Wright Street, Urbana, IL 61801. Instrument: Electron Beam Microfabrication System, Model 6.5–AL10B. Manufacturer: Cambridge Instruments, Inc., United Kingdom. Intended use: The instrument will be used in semiconductor device research, primarily on compound semiconductor devices. Experiments to be conducted will include optical emission, high field conductivity, and small geometry device effects. In addition, the instrument will be used for the training of advanced graduate students in electron beam fabrication techniques. Application received by Commissioner of Customs: March 13, 1985.

Docket No. 85–126. Applicant: National Oceanic & Atmospheric Administration, National Geophysical Data Center, 325 Broadway, Boulder, CO 80303. Instrument: Ionosonde Data Recorder, Model KEL–46 & Analyzer. Manufacturer: KEL Aerospace, Australia. Intended use: Frequent and specialized observations to derive a high-resolution display of changes in various properties of the ionosphere in order to better understand the interaction between geomagnetic fields, solar-terrestrial activity, and radio communications using ionospheric properties. Application received by Commissioner of Customs: March 13, 1985.

Docket No. 85–128. Applicant: University of California, Irvine, Irvine, CA 92717. Instrument: NMR–FT Spectrometer, Model SMH 300 with Accessories. Manufacturer: Bruker Instruments, Inc., West Germany. Intended use: The instrument will be used in research aimed at:

(1) Mapping out the architecture of the active site of the cytochrome P450–SCC enzyme.

(2) Determining the conformations of peptides in aqueous solution and in the lipid bilayer.

(3) Investigating the biochemical events associated with light-driven ion transport in H. Halobrium.

In each project the NMR studies represent a unique way of obtaining structural and dynamical information which is extremely difficult if not impossible to obtain by any other method. The research projects to be conducted will include:

(1) Studies of the Chloride Binding Sites in Halorhodopsin with Cl^{35}NMR.

(2) NMR Studies of Pulmonary Surfactant.

(3) NMR of Cytochrome P–450scc.

(4) Peptide-Lipid Bilayer Interactions.

In addition, the instrument will be used to acquaint undergraduate, graduate and medical students with state of the art technology in NMR spectrometry as applied to *in vivo* and *in vitro* systems. Applications received by Commissioner of Customs: March 13, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–8378 Filed 4–5–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Application for Approval To Transfer Ownership of a U.S. Fishing Vessel to a U.S. Corporation Under Foreign Control

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed fishing vessel transfer, and request for comments.

SUMMARY: The Maritime Administration (MarAd), has received an application to transfer ownership of the vessel NICOLLE N to C. N. Holding, Inc. This would subject the vessel to foreign control since Carl C. Nordman, a Canadian citizen, owns 100 percent of C.N. Holding, Inc. Written comments are requested.

DATE: All comments must be postmarked no later than May 8, 1985.

ADDRESSES: Comments should be mailed to Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: John A. Kelly, Jr., (Financial Assistance Specialist), 202 634–7496.

SUPPLEMENTARY INFORMATION: Application for approval of the transfer of vessel NICOLLE N (O.N. 587265, built 1945, reg. length 166.5') owned by Equico Lessors, Inc., was received by MarAd on February 11, 1985. If the transfer is approved, the vessel will remain documented in the fisheries of the United States and continue to be operated out of Seattle as a processing vessel for salmon and bottomfish off the coast of Alaska. Mr. Charles N. Perkins is and will remain captain of the vessel. He is also President and Director of C.N. Holding, Inc. Approval of the transfer is required by Section 9 of the Shipping Act, 1916 (the Act) as amended (46 U.S.C. 808) because although C.N. Holding, Inc. a Washington corporation, meets the citizenship requirements for Federal documentation of a vessel in the fisheries of the United States, it is not a citizen of the United States within the meaning of Section 2 of the Act because 100 percent of its stock is owned by a Canadian citizen. The MarAd is the Federal Agency responsible for the approval or disapproval of applications submitted under the Act. Where a foreign transfer involves a fishing vessel, MarAd customarily requests NMFS to review the application. In turn, we are soliciting the views of interested persons in this regard.

All written comments received on time will be considered before we respond to MarAd. However, since the Shipping Act provides little basis for disapproving the transfer of a fishing vessel, our response to MarAd will indicate no objection unless information received supports a conclusion that this sale would significantly affect the fishery F/V NICOLLE N will engage in. No public hearing is contemplated at this time.

Dated: April 1, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–8289 Filed 4–5–85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Southwest Technologies Inc., et al.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant partial exclusive licenses to the following three companies to practice the invention embodied in U.S. Patent 4,483,950, "Modified Starches as Extenders for Absorbent Polymers": Southwest Technologies, Inc. of Kansas City, Missouri, Polysorb, Inc. of Smeltville, Idaho, and Garza Agrochem Ltd. of Wilsonville, Oregon. The patent rights in this invention have been assigned to the United States of America, represented by the Secretary of Commerce.

The proposed partial exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries, comments and other materials relating to the proposed licenses must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, Department of Commerce, National Technical Information Service.

[FR Doc. 85–8307 Filed 4–5–85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products From Taiwan Effective on January 1, 1985

Correction

In FR Doc. 84–33675 beginning on page 50233 in the issue of Thursday, December 27, 1984, make the following correction: On page 50233, in the third column, footnote 1, third line, "383.4220" should read "383.4320".

BILLING CODE 1505-01-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 84–1–83CD]

Notice Commencing 1983 Cable Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of commencement of proceeding; Notice of adoption of procedures.

SUMMARY: The Copyright Royalty tribunal announces that a controversy exists regarding the distribution of the royalties paid by cable operators for the calendar year 1983. The Tribunal also announces that it has adopted certain procedures and a schedule which will govern the 1983 Cable Distribution Proceding. The Tribunal has derived the schedule and procedures from recommendations from interested parties and an outside consulting law firm.

EFFECTIVE DATE: The 1983 Cable Distribution controversy is declared as of April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Marianne Mele Hall, Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Room 450, Washington, D.C. 20036, (202) 653–5175.

SUPPLEMENTARY INFORMATION: Notice Commencing 1983 Cable Distribution Proceeding.

On October 1, 1984, the Copyright Royalty Tribunal solicited public comments on (1) whether a controversy existed with regard to the distribution of 1983 cable royalties; (2) the scheduling of the 1983 royalty distribution proceedings; and (3) the procedures to be followed in the proceeding. Comments were submitted by interested copyright owners on November 15, 1984. Earlier, the Tribunal had retained outside counsel to prepare a report analyzing the Tribunal's past

procedures, which report was made available, in part, to all interested parties. Upon direction by the Tribunal the interested parties filed a single joint memorandum on March 19, 1985 identifying the procedures and the schedule that they believed the tribunal should adopt. On March 26, 1985, the Tribunal held a prehearing conference to discuss the recommendations and schedule proposal of the parties.

Based upon the written and oral comments, the Tribunal concludes that a controversy exists on the distribution of the 1983 cable royalty fund, effective April 15, 1985.

The Tribunal also considered the scheduling of the 1983 Cable Distribution Proceeding. Counsel for NAB, joined by Counsel for Canadian, Devotional and Multimedia claimants recommended a two month delay in the schedule, based upon their belief that guidance from the Court of Appeals might be forthcoming later in the year. they also asserted the hardship of obtaining witnesses to appear before the Tribunal during the summer months and their concern for the possible addition of commissioners to the Tribunal. Counsel for MPAA, and for the Joint Sports claimants asserted that the delay violates the spirit and letter of the Copyright Act of 1976 which requires as early a distribution of the 1983 funds as possible. The Tribunal agrees with counsel for MPAA, and Joint Sports claimants for the reasons they state, and also acknowledges the possibility of cable-rate adjustment hearings which may be scheduled in 1985. The Tribunal also believes that it would be beneficial to conclude as much of the hearing phases of both cases before the December 1 change of chairmanship. Therefore, the Tribunal issues the following schedule for the 1983 Cable Distribution Proceeding.

April 22, 1985—Parties submit Prehearing Statements. Parties recommend that statements must include: (1) Notice of Intent to Participate in Phase I, Phase II or both; (2) A brief description of the nature of the works for which claims are made; (3) Identification of Phase I categories against which any Phase II Claims are asserted; (4) Identification of Parties encompassed within a claimant group; and (5) Identification of no more than three counsel within a claimant group to receive service of all documents filed with CRT.

The Tribunal adopts these recommendations. The Tribunal cautions that said statements are strictly for notice purposes and should contain no advocacy or explanation. The Tribunal also advises that failure to state intentions to participate in either Phase I or Phase II proceedings at this time will preclude participation. The list of participants for each phase will be published.

April 24, 1985—CRT Makes Available At Its Office The Service List Of All Parties Filing Prehearing Statements.

Parties recommend that the service list will include each counsel identified in the prehearing statements. See (5) above.

The Tribunal adopts this recommendation.

May 13, 1985—Parties Exchange And File With CRT Their Written Direct Case.

Parties recommend that:

(1) all direct testimony, including each witness' background and qualifications, must be reduced to writing and filed with the CRT along with all exhibits to be presented in the direct case,

(2) one copy of such direct evidence must also be served upon each counsel identified in the CRT's service list. (Demonstrative evidence which is not readily duplicated need not be exchanged with the parties; however, at least two copies of such evidence must be filed with the CRT),

(3) each party may choose the format for presenting its witnesses' direct testimony,

(4) each party may designate a portion of past records which it wants included in its direct case. Complete testimony of each witness whose testimony is designated (*i.e.*, direct, cross and redirect) must be referenced,

(5) each claimant group must state its Phase I percentage claim. (No party would be precluded from revising its percentage claim at the conclusion of the hearings),

(6) no evidence, including exhibits, may be submitted without a sponsoring witness, except where official notice is proper. This requirement shall not apply to evidence designated pursuant to paragraph (4) above.

The Tribunal adopts these recommendations. The Tribunal advises that only the original and four copies of evidence need be provided to the present Tribunal. The Tribunal cautions that witnesses' backgrounds should contain self-limitations as to qualifications. It is hoped that parties will update qualifications of all witnesses. References to past records should be clear. Formats for direct testimony should be designed for clarity and simplicity. Issues in dispute and evidence in support of positions should be readily discernible and clearly exposed. Technical, statistical and economic information should be explained in lay terminology. Use of subheadings, tables of contents and any other editorial tools that promote simple display of issues and positions is highly encouraged.

May 13–23, 1985—Parties Seek To Resolve Among Themselves Requests For Underlying Documentation And Objections To Direct Evidence.

Parties recommend that:

(1) parties shall, upon request, furnish to an opposing party non-privileged underlying documents related to the direct exhibits and testimony. The nature and extent to which underlying documentation is to be furnished shall be reasonable under the circumstances,

(2) any party may object to any portion of another party's direct case (including prior record designations) on any proper ground, including without limitation, relevance, materiality, competency, failure to provide underlying documentation, etc.,

(3) within this period each party may amend its direct evidence solely to meet objections raised by other parties. Such amendments must be filed with CRT and exchanged with all parties.

The Tribunal adopts these recommendations.

May 29, 1985—Parties Submit In Writing To CRT And Serve Upon All Parties Any Objections To Direct Evidence, Including Any Objections Based Upon Failure To Provide Underlying Documents.

June 3, 1985—Parties Submit To CRT And Serve Upon All Parties Written Replies To May 29 Submissions.

June 7, 1985—CRT Holds Prehearing Conference For Purpose Of Resolving Objections Raised By May 29 Written Submissions. Parties recommend that the CRT may request further argument or information from the parties concerning the disputed issues.

The Tribunal adopts these recommendations.

June 14, 1985—CRT Issues Ruling On All Objections Raised By May 29 Submissions.

Parties recommend that the CRT may not order the production of any documents but shall refuse to admit into evidence any testimony or exhibits or portions thereof to which it sustains an objection.

The Tribunal adopts these recommendations.

June 17, 1985—MPAA May Amend Its Direct Case Solely To Meet Objections Sustained By CRT.

June 19, 1985—Remaining Parties May Amend Their Direct Cases Solely To Meet Objections Sustained By CRT.

Phase I Evidentiary Hearings On Direct Cases Commence. Parties recommend that:

(1) Parties will present their direct cases in the following order, subject to any necessary accommodations which arise during the hearings: (a) MPAA; (b) Sports; (c) PBS; (d) NAB; (e) Music; (f) Devotionals; (g) Canadians; (h) NPR,

(2) Witnesses may summarize, highlight or read their written direct testimony. However, they may not materially supplement or alter this testimony except to correct it,

(3) No exhibit may be introduced on direct examination unless previously exchanged. However, documents used during cross examination or redirect examination need not be exchanged in advance,

(4) All direct testimony and exhibits will be received into evidence except that to which the CRT sustains an objection, including an objection based upon the failure to provide underlying documentation,

(5) Any party is entitled to make an offer of proof with respect to that evidence to which the CRT sustains an objection,

(6) Parties are entitled to raise objections to evidence on any proper ground during the course of the evidentiary hearing, including that an opposing party has not furnished non-privileged underlying documentation. However, they may not raise objections which could have been raised prior to the evidentiary hearing in accordance with the above schedule,

(7) No documents or exhibits may be received into evidence during cross-examination or redirect examination without a sponsoring witness, except where official notice is proper. However, this shall not preclude any party from examining a witness with regard to any relevant and material document or exhibit,

(8) Parties are entitled to cross-examination and redirect examination. Cross-examination is limited to matters raised on direct. Redirect is limited to matters raise on cross,

(9) Each claimant group may present an opening statement during the evidentiary hearings in connection with the presentation of its direct case.

The Tribunal adopts these recommendations. Tribunal cautions that the presentation of the direct case should be clear, concise and precisely reflect the direct written case. The Tribunal reserves the right to limit direct cases to a question and answer format or any other format to curb abuse.

August 10—September 3, 1985—Recess.

Parties recommend that at the conclusion of the recess the proceeding will resume with the remainder of the parties' direct cases. If the direct cases are completed prior to the August recess, the proceeding will resume with the rebuttal portion of Phase I. A schedule for rebuttal similar to the above schedule for direct shall be worked out with the CRT and among the parties at the conclusion of the direct case.

The Tribunal adopts these recommendations. The Tribunal further recommends that each claimant shall have an allotment of 30 minutes time for closing arguments which 30 minutes may be used at various breaks in testimony or in total at the end of all testimony.

Dated: April 3, 1985.

Marianne Mele Hall,

Chairman.

[FR Doc. 85-8337 Filed 4-5-85; 8:45 am]

BILLING CODE 1410-15-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Requirement for Foreign Currency Agreement; Services Sought

The U.S. Air Force has a continuing requirement for a foreign currency arrangement to fulfill agreements for European coproduction of the F-16 aircraft. The agreement with the current operator expires August 31, 1985, and there is a requirement to execute a new agreement for a five-year period commencing September 1, 1985.

The agreement involves the Air Force Accounting and Finance Center, Denver, Colorado and the countries of Belgium, Denmark, the Netherlands and Norway. Currencies involved in the arrangement will be the respective currencies of the said four countries. There will be one or more accounts established for each foreign currency and maintained in the respective country. The foreign currency accounts will be used to accept deposits from the European governments and contractors and the U.S. Government to make disbursements to European subcontractors and vendors, and to make currency exchanges for European contractors. A qualified financial institution will have:

a. Correspondent relationships and communication networks to permit execution and reporting of banking transitions in Belgium, Denmark, the Netherlands, Norway, and the U.S.;

b. Capability to promptly record and confirm foreign currency deposits and disbursements; and

c. Capability of centrally accounting and reporting for all transactions.

Interested financial institutions may obtain additional information, including specifications and requirements for maintaining the accounts, projected deposits, and procedures for submitting bid proposals by contacting Mr. James B. Sandidge, Assistant for Banking and Contract Financing (SAF/FMB), Department of the Air Force, telephone: (202) 697-2647, not later than May 1, 1985.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-8309 Filed 4-5-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Navigation Safety Project at Lock and Dam 3 on the Upper Mississippi River

AGENCY: U.S. Army Corps of Engineers, St. Paul District, DoD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: *1. Proposed Action.* Lock and dam 3 (L/D 3) is on the Upper Mississippi River, approximately 797 miles above the mouth of the Ohio River, 6 miles above Red Wing, Minnesota, and 42 miles below St. Paul, Minnesota. The upper approach to the lock is on the outside of a sharp bend, which creates a crosscurrent in the navigation channel. Navigation conditions for downbound tow boats approaching the lock are difficult and hazardous, because of the crosscurrent, which pushes tow boats away from the lock and towards the dam.

Accidents have occurred as a result of barge tows losing control while maneuvering for the approach to the lock. The proposed action is to develop a solution to the navigation safety problem at L/D 3.

2. Alternatives. Both structural and nonstructural alternatives will be evaluated. During the 1970's, 20 alternatives were evaluated by hydraulic model studies at the Corps of Engineers Waterways Experiment Station in Vicksburg, Mississippi. These hydraulic model studies identified a parted cell-type guardwell or a rock guard dike as the most practical alternatives studied. Additional alternatives will likely be identified and, along with the "no action" alternative, will be addressed during the scoping and planning of the project.

3. Significant Issues. Significant issues identified to date include the following: the effect of the project on the regionally

important tailwater fishery at L/D 3, the effect of the project on riverine and floodplain habitats in the project area, and the benefits of the project to the structural integrity of L/D 3 and to navigation.

4. Scoping. An agency scoping meeting will be held at a time and a place to be announced. A public scoping meeting would be held if sufficient justification for one develops.

5. Public Involvement. A public notice will be prepared for the project early in the planning process. Public meetings would be held if public concern indicates the need for them.

6. Review and Coordination. Review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality regulations (40 CFR Parts 1500–1508), and applicable Corps of Engineers regulations and guidelines. There will be no cooperating agencies (as defined in 40 CFR 1508.5) for the DEIS. The St. Paul District will request information for the DEIS from the U.S. Fish and Wildlife Service, the Wisconsin Department of Natural Resources, the Minnesota Department of Natural Resources, and the Minnesota Pollution Control Agency.

7. Schedule. The DEIS is currently scheduled to be available for public distribution in January 1986.

8. Distribution. Copies of the DEIS will be provided to all concerned Federal, State, and local agencies; affected Indian tribes; private organizations; and individuals. Anyone else who is interested in reviewing this DEIS is invited to do so. They should contact the St. Paul District, Corps of Engineers, to assure that they are included on the mailing list.

9. Inquiries. Questions concerning the proposed action and DEIS can be directed to Colonel Edward G. Rapp, District Engineer, St. Paul District, Corps of Engineers, 1135 U.S. Post Office and Customs House, St. Paul, Minnesota 55101–1479.

John O. Roach,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 85–7778 Filed 4–5–85; 8:45 am]

BILLING CODE 3710-CV-M

Intent To Prepare a Regulatory Permit Draft Environmental Impact Statement (DEIS) for the Virgin Islands Port Authority Third Port Project, Limetree Bay, St. Croix, VI

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS, a regulatory permit action.

SUMMARY: *1. Proposed Action:* The Jacksonville District, U.S. Army Corps of Engineers, intends to prepare an Environmental Impact Statement (EIS) on the permit application of the Virgin Islands Port Authority to construct deepwater port facilities and channels at Limetree Bay on St. Croix. This regulatory action is pursuant to authorities found in section 10 of the River and Harbor Act of 1899 and section 404 of the Clean Water Water Act.

2. Alternatives: The following alternatives are being considered:

a. No action (denial of permit);

b. Granting of permit;

c. Granting of permit with conditions;

d. Proposed port facilities at another site on St. Croix;

e. Proposed port facilities located at existing facilities in the area.

3. Scoping: a. The scoping process as outlined by the Council on Environmental Quality will be utilized to involve Federal, Territory, local agencies and other interested persons and organizations. A scoping letter (December 31, 1984) has been sent to interested Federal, Territory, and local agencies requesting their comments and concerns. Other interested persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the address below. Significant issues anticipated include concern for:

Coral reefs
Marine seagrasses
Mangroves
Freshwater wetlands
Endangered and threatened species
Water quality
Navigation channels

Identification of significant issues to be addressed in the EIS will be determined through the scoping process.

b. Coordination with the U.S. Fish and Wildlife Service and National Marine Fisheries Service will be accomplished with section 7 of the Endangered Species Act. Coordination required by applicable Federal and Territory laws and policies will be conducted. If discharge of material into waters of the United States is involved, the discharge will be specified by application of the criteria of section 404(b) of the Clean Water Act.

4. DEIS Preparation: It is estimated that the DEIS will be available to the public in August 1985.

ADDRESS: Questions concerning the proposed DEIS can be answered by: Mr. Paul Schmidt, Environmental Resources Branch, U.S. Army Engineer District, Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232–0019; telephone (904) 791–1691 (FTS 946–1691).

John O. Roach,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 85–8243 Filed 4–5–85; 8:45 am]

BILLING CODE 3710-AJ-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85–04–NG]

Northern Natural Gas Co., Division of Internorth; Order Granting Authorization to Temporarily Increase Daily Import of Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on March 26, 1985, the ERA Administrator issued an Opinion and Order granting Northern Natural Gas Company, Division of Internorth, Inc. (Northern) authority to temporarily increase its daily imports of natural gas from Canada. The approval authorizies Northern to import up to 100,000 Mcf of natural gas per day during the period March 1, 1985 through March 31, 1985, in addition to the 200,000 Mcf per day currently authorized for import from Consolidated Natural Gas Limited. Beginning April 1, 1985, imports will revert to the daily rate previously authorized.

FOR FURTHER INFORMATION CONTACT:

Olga T. Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9482

Diane J. Stubbs (Office of General Counsel), Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6667

Issued in Washington D.C. on March 28, 1985.

James W. Workman,

Director, Office of Fuels Programs Economic Regulatory Administration.

Order Granting Authorization to Temporarily Increase Daily Import of Natural Gas From Canada

In the matter of Northern Natural Gas Co. Division of Internorth, Inc., ERA Docket No. 85-04-NG, DOE/ERA Opinion and Order No. 75A.
March 28 1985.

I. Background

On February 25, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, for emergency interim authorization to import up to 100,000 Mcf of natural gas per day during the period March 1, 1985, through March 31, 1985, in addition to the 200,000 Mcf per day currently authorized for import from Consolidated Natural Gas Limited (Consolidated). The additional volumes were to be imported on a best-efforts, interruptible basis, at a price of not more than $3.50 (U.S.) nor less than $2.70 (U.S.) per MMBtu in accordance with the terms of Northern's gas purchase contract, as amended November 1, 1984.

According to the application, the emergency authorization of these increased volumes would allow Northern to minimize its take-and-pay and take-or-pay exposure with its Canadian suppliers and to reduce the chance of a related, possible shutdown of its domestic gas production fields in the summer, thereby avoiding the negative impacts of these situations on the cost of its gas supplies in 1985.

In an import authorization issued August 29, 1980,[1] the ERA authorized Northern to import from Canada for the period November 1, 1981, through October 31, 1987, up to 200,000 Mcf of natural gas per day and up to 73,000,000 Mcf of natural gas per year through pipeline facilities near Emerson, Manitoba, minus whatever volumes Northern elected to import through pipeline facilities at Monchy, Saskatchewan, under a separate order issued by the Federal Energy Regulatory Commission (FERC) on June 27, 1980, in Docket No. CP80-22.[2] The additional volumes requested were to be imported at Emerson through facilities of Northern's transporter of the gas, Great Lakes Gas Transmission Company.

In support of its application, Northern stated that it serves a temperature-sensitive market with significantly greater winter requirements than summer requirements. The company stated that because of annual contract obligations, it was necessary for them to be able to import maximum volumes during the heating period (November through March) so that summer production cut-backs can be managed to avoid operational problems such as possible shut-ins of domestic producing fields, while still enabling Northern to meet minimum purchase requirements. Under its contract with Consolidated, Northern has a minimum purchase obligation of 40.15 Bcf of natural gas for the 1984-85 contract year. The mid-January approval by the Canadian National Energy Board of Northern's renegotiated contract with Consolidated precluded Northern from maximizing its imports under the contract during the early part of the winter heating season and thus jeopardized its ability to fulfill its minimum purchase obligation for the 1984-85 contract year. The proposed increase would enable Northern to accelerate its daily purchases of Canadian gas under the authorization without increasing the annual authorized volumes. As of April 1, 1985, imports were to revert to the daily rate previously authorized.

Based on the above facts, the ERA issued an order on February 28, 1985, authorizing on an emergency interim basis the requested increase in volumes during the month of March 1985 in advance of public notice.[3]

II. Interventions and Comments

A notice of the application and the emergency order was also issued on February 28, 1985.[4] The notice invited protests and petitions to intervene, which were to be filed by March 20, 1985. A joint motion to intervene was filed late by Northern States Power Company of Minnesota, Northern States Power Company of Wisconsin and Lake Superior District Power Company which neither opposed the application nor requested the right to be heard further. Since this late filing does not delay the proceeding, prejudice Northern's rights, or otherwise adversely affect the issuance of a decision in this docket, the ERA accepts the late filing and grants intervention to the movants.

III. Decision

Northern's application has been evaluated in accordance with the Administrator's authority to determine if the proposed import meets the public interest requirements of Section 3 of the Natural Gas Act. The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports.[5] Under this policy the competitiveness of the arrangement is the primary consideration for meeting the public interest test, with security of the supply and need being other considerations.

It has been determined that approval of Northern's request to increase its daily imports, on a temporary basis, is not inconsistent with the public interest. The authorization for an increased daily volumetric rate is for a short period of time on a best efforts, interruptible basis, with no change in the annual or the total volumes under the existing import authorization. This decision rests primarily on the finding that increasing the daily volumes enables Northern to minimize its take-and-pay and take-or-pay exposure with its Canadian supplier while at the same time permitting it operational flexibility to manage its overall gas supply. Further, it appears that the additional imports at this time may lower the overall cost of gas to Northern's customers in 1985. Finally, no one objected to the proposed amendment.

Accordingly, I find that approving Northern's application to increase its daily volume limitation to 300,000 Mcf for the limited term of March 1, 1985, to March 31, 1985, is not inconsistent with the public interest and should be granted.[6]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered:

A. Ordering Paragraph A of DOE/ERA Opinion and Order No. 19 (Order 19) is hereby amended to authorize Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), to import up to 300,000 Mcf per day of Canadian

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[1] *Northern Natural Gas Company*, DOE/ERA Opinion and Order 19, issued August 29, 1980 (1 ERA ¶ 70,518).

[2] *See* FERC order issued June 27, 1980 (11 FERC ¶ 61,340). In DOE Delegation Order No. 0204-8 (42 FR 61491, December 5, 1977), the Secretary of Energy delegated to the FERC authority under Section 3 of the Natural Gas Act to approve importation of natural gas in connection with the construction and operation of the Alaska Natural Gas Transportation System (ANGTS). The pipeline facilities at Monchy connect the Canadian segment of the ANGTS prebuilt system with pipelines in the United States. That authority was redelegated to the ERA in DOE Delegation Order No. 0204-111 (49 FR 6680, February 22, 1984).

[3] *Northern Natural Gas Company*, DOE/ERA Opinion and Order No. 75, issued February 28, 1985, in ERA Docket No. 85-04-NG.

[4] 50 FR 8772, March 5, 1985.

[5] 49 FR 6684, February 22, 1984.

[6] Because the additional volumes will be transported through existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

natural gas at a point near Emerson, Manitoba, for the period March 1 to March 31, 1985, consistent with the pricing and the other terms of the amending agreement.

B. Except as modified by Ordering Paragraph A, all other terms and conditions in Order 19 shall continue to apply to the imports authorized herein.

C. The motion for leave to intervene by Northern States Power Company of Minnesota, Northern States Power Company of Wisconsin and Lake Superior District Power Company, is hereby granted, subject to such rules of practice and procedures as may be in effect, provided that participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their motion for leave to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., March 28, 1985.

Raybura Hanalik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-8312 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order to United Refining Co., United Refining Co. of Pennsylvania and United Refining, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to United Refining Company, United Refining Company of Pennsylvania, and United Refining, Inc.—ERA Case No. 340S00445.

SUMMARY:

I. Introduction

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order (PRO) which was issued to United Refining Company, United Refining Company of Pennsylvania and United Refining, Inc. (hereinafter referred to collectively as "United"), Bradley Street and Dobson Avenue, Warren, Pennsylvania 16365.

II. Issuance of Proposed Remedial Order

ERA has completed an audit of United's compliance with the mandatory petroleum price regulations formerly contained in 6 CFR Part 150, Subpart L and now contained in 10 CFR Part 212 (the regulations) during the period August 1973 through December 1974 (audit period). Specifically, ERA audited the increased costs which United reported as being available for pass-through in the audit period. ERA's audit revealed that during the audit period United violated the regulations in four material respects: (1) United improperly calculated its increased costs for imported Canadian crude oil, resulting in an overstatement of crude costs for the months of August 1973 through December 1974; (2) United improperly retroactively reallocated certain costs associated with distillates and gasoline to other covered products, which had the effect of masking an overrecovery in the other covered products category during November and December 1974; (3) United improperly included unsubstantiated crude costs in its other covered products category for 1974, resulting in an overstatement of such costs; and (4) United improperly recovered increased non-product costs for the month of December 1974. As a result of the above-discussed regulatory violations, the PRO alleges that United overcharged its customers during the period August 1973 through June 1976 by $12,880,191. Interest through August 1983 totalling $16,190,060 is computed in the PRO.

III. Proposed Remedy

ERA has proposed that within thirty (30) days after the effective date of a final Remedial Order, United shall deliver a certified check, made payable to the United States Department of Energy, in the amount of the overcharge plus interest. Delivery shall be to the Controller, Office of Washington Financial Services, Cash Management Division, P.O. Box 500, Germantown, Maryland 20874-0500. The ERA shall direct that these monies be deposited in a suitable account in order that the monies may be distributed in a just and equitable manner.

IV. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to any or all aspects of the proposed Remedial Order described above with DOE's Office of Hearings and Appeals, within 15 days after the date of this publication. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the proposed order may be issued as a final Remedial Order. The Notice must be filed, in duplicate, by 4:30 p.m. e.s.t. on or before the fifteenth day after publication of this Notice, or the first federal workday thereafter. No data or information which is confidential shall be included in any Notice of Objection.

All Notices of Objection, Statements of Objections, Responses, Replies, Motions, and other documents required to be filed with the Office of Hearings and Appeals shall be sent to: Office of Hearings and Appeals, U.S. Department of Energy, Room 6F-055, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participants shall be served on the same day as filed, on the following person pursuant to 10 CFR 205.193(c): Carl A. Corrallo, Chief Counsel for Administrative Litigation, Economic Regulatory Administration, United States Department of Energy, 1000 Independence Avenue, S.W., Room 3H-017, Washington, D.C. 20585.

Requests for a copy of the proposed order with confidential information deleted, should be identified by ERA Case No. and be directed to: Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585.

Issued in Washington, D.C. this 26th day of March 1985.

Carl A. Corrallo,

Chief Counsel for Administrative Litigation, Economic Regulatory Administration.

[FR Doc. 85-8311 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 4 Through February 8, 1985

During the week of February 4 through February 8, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Motion for Discovery

Transco Trading Company, Billy Ray Jones, 2/4/85; HRD-0125; HRD-0206

On December 21, 1982, the Economic Regulatory Administration (ERA) issued a Proposed Remedial Order (PRO) to Transco Trading Company (Transco) alleging that the firm violated the anti-layering provisions of 10 CFR Part 212, Subpart L. That regulation prohibits a reseller from charging a price for crude oil in excess of its actual purchase price unless the reseller provided some

service or other function traditionally and historically associated with the resale of crude oil. In a Motion for Discovery, Transco sought contemporaneous construction and administrative record discovery to support its claims that the layering regulation is ambiguous, has not been interpreted in a consistent manner, and is procedurally and substantively invalid. Transco also sought audit workpapers in order to support its claim that ERA had not supplied it with sufficient information to understand the PRO.

The Office of Hearings and Appeals (OHA) examined the attachments to the PRO and found that they contained all the information necessary to understand and challenge the allegations made in the PRO. OHA denied administrative record and contemporaneous construction discovery because Transco failed to present any basis for the grant of such discovery. However, OHA did grant discovery of those portions of the official record that were unavailable to Transco, and allowed Transco to submit documentation to support its claim that it provided historical and traditional reseller services. The Motion for Discovery submitted by Billy Ray Jones was denied, since the request for discovery set forth no issues and did not specify what information was sought.

Supplemental orders

Vickers Energy Corporation, 2/5/85; *HFX–0115*

The Office of Hearings and Appeals (OHA) issued a Supplemental Decision and Order in which it found that the State of Mississippi was twice inadvertently listed, in lieu of the State of Michigan, as one of the 16 states where Vickers Energy Corportion (Vickers) marketed motor gasoline. *See Vickers Energy Corporation*, 12 DOE ¶ 85,164 (1985). The earlier Vickers decision established procedures for distribution of the consent order funds remitted to DOE by Vickers that remained after the conclusion of the first stage of the refund proceeding. Since OHA will apportion the remaining funds among the 16 states where Vickers sold motor gasoline, and since each state must submit a plan that will provide restitutionary benefits to consumers within its jurisdiction, the State of Michigan will be substituted for the State of Mississippi to correct the error.

Webster Oil Company, Inc., 2/5/85; *HFX–0114*

A supplemental order was issued amending the Decision and Order in *Webster Oil Co., Inc.* (Case No HFX–0561), January 28, 1985, to reflect the modified terms of a consent order which requires the firm to remit $40,566.30, rather than $110,304, in settlement of alleged overcharges. Webster has now paid the consent order amount in full.

Implementation of Special Refund Procedures

Westates Petroleum Liquidation Trust, 2/5/85; *HEF–0457*

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund for a portion of the funds obtained as the result of the consent order which DOE entered into with Westates Petroleum Liquidation Trust. The funds will be available to identifiable purchasers of crude oil who were injured by Westates Petroleum Company's alleged violations. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register**. Specific information to be included in refund applications is discussed in the decision.

Refund Applications

Conoco, Inc./FISCA Oil Company, et al., 2/7/85; *RF34–00024 et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by five resellers of motor gasoline. The applicants purchased Conoco products directly from M&A Petroleum Company or Foremost Petroleum Company, and applied for refund procedures. *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984). Each of the claimants submitted evidence to establish injury by Conoco's alleged overcharges. After examining the statements and supporting information submitted by the applicants, the DOE approved refunds totalling $347,499, including interest.

Colonial Car Wash Standard, Northpoint Car Wash Standard, 2/4/85; *RF21–12371; RF21–12372*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Louis Bosco, a retailer of Amoco motor gasoline. Bosco elected to apply for a refund based upon the presumption of injury and the formulae outlined in *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). In considering the Bosco applications, the DOE concluded that the applicant should receive a refund based upon the total volume of Amoco motor gasoline purchased. The refunds granted in this proceeding total $486.02.

Standard Oil Co. (Indiana)/North Carolina, et al. 2/6/85; *RQ21–145 et al.*

The states of North Carolina and Michigan and the Inter-Tribal Council of Michigan, Incorporated (Inter-Tribal Council) filed proposed second-stage refund plans with respect to funds remitted to DOE escrow accounts pursuant to consent orders with Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company (Belridge). North Carolina proposes to use $753,034, plus accrued interest, from the Amoco and Belridge refunds for car care clinics, traffic light synchronization and van-pool, furnace tune-up, and passenger marketing programs. Michigan plans to use $4,125, plus interest, from the Belridge fund to expand its used motor oil recycling program. The Inter-Tribal Council proposes to spend $3,561 of the Amoco fund to build bus stop shelters and to clear roadways of snow at the four reservations represented by the Council. The OHA found that the beneficiaries of these plans would be those consumers that were injured as a result of their purchases of motor gasoline and middle distillates sold by the consent order firms. Accordingly, the refund applications were granted.

Dismissals

The following submissions were dismissed:

Company name and Case No.

Cloverleaf Gulf—RF40–602
Pembroke Gulf, Inc.—RF40–625
Ute Indiana Tribe—RQ21–54

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 29, 1985.

[FR Doc. 85–8314 Filed 4–5–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of February 11 Through February 15, 1985

During the week of February 11 through February 15, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Dickstein, Shapiro & Morin, 2/15/85; *HFA–0270*

Dickstein, Shapiro & Morin (DSM) filed an Appeal from a determination issued by the Director of the Program Support Division of the DOE Office of Military Application in response to a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). DSM had submitted the initial request to the FBI which had referred a document to DOE for evaluation. In considering the Appeal, the DOE found that a search for the requested documents had never been conducted by the DOE since DSM had never filed a FOIA request directly with the DOE. Accordingly, the DOE found that the Appeal should be treated as an initial FOIA request and that the Program Support Division should conduct a search for the requested documents.

Z. Reytblatt, 2/15/85; *HFA–0269*

Z. Reytblatt filed an Appeal from a denial by the Assistant Manager of the Oak Ridge Operations Office of a request for information which Reytblatt had submitted under the Freedom of Information Act. In his Appeal, he challenged the Assistant Manager's determination that the DOE does not possess any documents responsive to his request. In considering the Appeal, the DOE found that the search conducted by the Assistant Manager was thorough, and that Reytblatt had not presented any evidence that the Assistant Manager's determination

was incorrect. Accordingly, the Appeal was denied.

Remedial Orders

Pester Derby Oil Company, 2/11/85; BRO-1329

Pester Derby Oil Company (Pester) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on September 12, 1980. In the PRO, the ERA found that Pester had violated the pricing regulations applicable to motor gasoline and No. 2 diesel fuel. The ERA alleged that during the audit period the firm incorrectly increased its prices based upon increased costs of product which the firm had ordered from its supplier but had not yet received. The ERA also alleged that Pester incorrectly imputed May 15, 1973 prices for a blend of gasoline called "Super Bonus" which the firm had not sold on that date. In addition, the ERA alleged that Pester had not justified increases in prices that the firm claimed reflected increased non-product costs. Subsequently, the ERA determined that the firm could justify some increased prices based upon increased non-product costs, but not to the maximum extent permitted by the regulations in effect during the audit period. Finally, the ERA alleged that Pester had overcharged certain wholesale customers. In its Statement of Objections, the firm primarily asserted that: (1) Pester was allowed to raise prices based on the product which it had not yet taken into inventory, (2) the firm's method for imputing May 15, 1973 prices for "Super Bonus" was correct, (3) the regulations did not require that the firm actually incur non-product costs in order to pass them through up to the maximums allowed, and (4) the ERA incorrectly determined overcharges regarding wholesale sale. The firm's arguments concerning the recovery of both product and non-product cost increases were rejected, as was Pester's contentions regarding overcharges to wholesale customers. However, the firm's objections to the allegations of overcharges in the pricing of "Super Bonus" gasoline were sustained as its pricing methodology was found to be acceptable. The PRO ws remanded to the ERA for action consistent with the Decision and Order.

Placid Oil Company, 2/11/85; BRO-1433

Placid Oil Company filed a Statement of Objections to a Proposed Remedial Order (PRO) which the Southwest District Office of the Economic Regulatory Administration of the DOE issued to the firm on March 30, 1981. In considering the firm's objections to the PRO, the DOE found that the Base Production Control Level (BPCL) for a crude oil producing property unitized after 1972 must be calculated by adding together the actual 1972 monthly production figures for each of the constituent tracts of the unit, and that the unit BPCL could not be recalculated based upon a regulatory amendment to 10 CFR 212.75(b), effective September 1, 1976, since that amendment was prospective only. The DOE also determined that a single property could not be segregated or subdivided to create more than one property on the basis of state-mandated drilling units. In addition, the DOE found that historical down time for purposes of calculating average daily production (ADP) in applying the stripper well exemption must be measured using figures from producing years prior to the year of measurement and not during or subsequent to the measuring year, and that the firm has the burden of presenting base sediment and water calculations in order to contest production figures used by the agency in calculating ADP. Placid was also found to have violated the crude oil price regulations by adding a gathering fee to the posted price of crude oil which the firm produced from its own properties and moved through its pipeline before selling the crude oil at its pipeline terminal. Lastly, the DOE determined that the royalty interest owner and severance tax exemptions were applicable to Placid's Louisiana Central property, and rescinded the portion of the PRO concerning this property. The remedial portions of the PRO were amended to provide that the overcharge funds remitted by Placid will be distributed pursuant to the special refund procedures of 10 CFR Part 205, Subpart V. Accordingly, Placid's Statement of Objections was granted in part, and the Proposed Remedial Order, as modified, was issued as a final Remedial Order.

Request for Modification and/or Rescission

Lunday-Thagard Oil Company, 2/15/85; BYR-0142

The Lunday-Thagard Oil Company filed a Motion for Reconsideration of a Supplemental Order which was issued to the firm on May 20, 1981. In the Supplemental Order we determined that on the basis of the *Delta-Beacon* standards for entitlements exception relief, Lunday-Thagard had received excessive entitlements relief for its 1979 fiscal year. As a result, the decision required Lunday-Thagard to purchase entitlements in order to restore the excessive relief. In its Motion, Lunday-Thagard argued on equitable grounds that the Supplemental Order should be rescinded. The Motion was denied, since the firm did not satisfy the procedural requirements applicable to Motions for Reconsideration and because the firm was a net seller of entitlements during its 1979 fiscal year and thus not eligible for relief under the *Delta-Beacon* standards. Important issues discussed in this case include (i) the procedural requirements for a Motion for Reconsideration, and (ii) the application of *Delta-Beacon* exception relief for a refiner which was a net seller of entitlements for a fiscal year.

Interlocutory Order

Economic Regulatory Administration, 2/11/85; HRZ-0198

The Economic Regulatory Administration (ERA) filed a motion to join Donald W. Dalziel as a party to the enforcement proceeding originally initiated against John M. Holland, Jr., Jack Holland & Son, Inc., John M. Holland Jr. d/b/a Jack Holland & Son, and P.H.D. Corp., Inc., Case Nos. HRO-0155 and HRO-0178. ERA sought to join Dalziel as a party to this proceeding because of his active role in the domination and control of the allegedly illegal corporate activities that were the subject of the original Proposed Remedial Orders (PROs). In granting ERA's motion, the Office of Hearings and Appeals found that the ERA has asserted a *prima facie* case of liability against Dalziel that arose out of the same regulatory violations alleged in the original PROs, thus satisfying the applicable standard for joinder.

Supplemental Orders

Navajo Refining Company, 2/13/85; BYX-0204

In the Decision and Order, the DOE took account of outstanding entitlements exception orders issued to Navajo Refining Company, and established the firm's final position under the Crude Oil Entitlements Program. Accounting to this determination, Navajo has a net entitlements sales obligation of $4,072,222. The DOE stated that this obligation shall be satisfied in accordance with the policies enunciated by the DOE in its Notice issued on January 9, 1985.

Oasis Petroleum Corporation/Research Fuels, Inc., 2/12/85; HEX-0110

Oasis Petroleum Corporation (Oasis) and Research Fuels, Inc. (RFI) filed a number of motions and requests relating to two Petitions for Special Redress pending before the Office of Hearings and Appeals (OHA). In considering the motions and requests, the DOE determined that the parties' requests for modification of previously established briefing schedules should be granted in part; that RFI's motion alleging that Oasis has made material misrepresentations of fact before OHA and other federal courts should be dismissed (except insofar as the motion relates to the manner in which Oasis utilized the base period asset purchase agreements); and that Oasis should be compelled to furnish OHA with complete copies of certain designated depositions. In addition, DOE concluded after an examination of the record generated in this proceeding that several relevant and material factual issues remain in dispute. Accordingly, DOE will convene an evidentiary hearing on a *sua sponte* motion.

Implementation of Special Refund Procedures

Pennzoil Company, 2/12/85; HQF-0024

The Department of Energy issued a Decision and Order providing for the second-stage disbursement of $2,037,328 in consent order funds made available by Pennzoil Company. The DOE found that the adverse effects of Pennzoil's pricing practices of refined products were regional in nature, because the firm sold refined products largely within 11 states and the Commonwealth of Puerto Rico. The DOE determined that the remaining consent order funds should therefore be channeled to the governments of those jurisdictions, whose citizens would have experienced the effects of the Pennzoil pricing practices. The DOE decided that the funds should be apportioned among the jurisdictions based on the proportion of Pennzoil product consumed. The DOE concluded that upon submission of an appropriate plan by an eligible jurisdiction for use of its share of the funds, the proportionate share of the Pennzoil fund would be disbursed.

Refund Applications

Standard Oil Company, (Indiana) South Dakota Belridge Oil Company/South Dakota, 2/12/85; RQ21-150; RQ9-149

The State of South Dakota filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA), pursuant to DOE consent orders entered into with Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company (Belridge). South Dakota proposed to use its share of the Amoco Belridge refunds to purchase equipment for the testing of overweight commercial haulers and the monitoring of gasoline pump meters and air leakage in weatherized residential buildings. The State also proposed to promote energy conservation techniques through public service announcements and to provide furnace tune-ups in residential buildings. The OHA found that the beneficiaries of this plan would be those consumers that were injured as a result of their purchases of motor gasoline and middle distillates sold by the consent order firms. Accordingly, the refund applications were granted. A portion of the refunds allotted to South Dakota were set aside for later distribution to federally-recognized Indian tribal reservations within the State.

Standard Oil Company (Indiana)/State of Iowa; Northwest Webster Community School District, 2/15/85; RF21-8352; RF21-11664

The DOE issued a Decision and Order concerning Applications for Refund filed by the State of Iowa and Northwest Webster Community School District in the Standard Oil Company (Indiana) special refund proceeding. Both applications concerned purchases of Amoco natural gas liquids from resellers for consumption by governmental entities. In considering the applications, the DOE concluded that the applicants should receive a refund based upon the total volume of their Amoco natural gas liquids purchases. The refunds granted in this proceeding total $511.

Standard Oil Company (Indiana)/Will Oil Company, 2/15/85; RF21-12375; RF21-12376

Will Oil Company, a wholesaler of Amoco motor gasoline and middle distillates, filed duplicate Applications for Refund and received duplicate refunds. The DOE determined that the second refund plus accrued interest totaling $1,144 should immediately be remitted to the DOE. The DOE also directed Will to explain the reason for the duplicate submissions and to submit purchase verification for the volumes of motor gasoline and middle distillates claimed in its application within 30 days. The DOE stated that failure to provide this additional information would result in the total rescission of Will's refund.

Dismissal

The following submission was dismissed:

Company name and Case No.

Victor & Mildred Calvert—RF40-1692

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 29, 1985.

[FR Doc. 85-8315 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 18 Through February 22, 1985

During the week of February 18 through February 22, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Utex Oil Company, 2/19/85; HRO-0061

Utex Oil Company objected to a Proposed Remedial Order issued to the firm by the Economic Regulatory Administration (ERA) on June 16, 1982. In the Proposed Remedial Order, the ERA found that during the period from October 1975 through April 1980, Utex, as a producer of crude oil, had sold crude oil at prices exceeding the applicable ceiling prices under the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart D. The ERA also found that Utex had erroneously classified crude oil as stripper well crude oil, and had sold it at exempt prices. After considering Utex's objections, the DOE concluded that the ERA had miscalculated the violation amount by using an erroneous posted price. The DOE overruled the remaining objections, and revised the violation amount accordingly.

Request for Exception

Whitaker Oil Company, 2/22/85, HEE-0020

Whitaker Oil Company filed an Application for Exception which, if granted, would permit the firm to increase retroactively the selling prices for the refined petroleum products that it sold during the period November 1973 through March 1974. If the exception relief were granted, Whitaker would be relieved of an obligation to refund the excessive revenues that it received as a result of its resales of a number of refined petroleum products including motor gasoline. In a Proposed Order issued on July 6, 1983, the DOE tentatively determined that the firm was entitled to retroactive exception relief with respect to its sales of motor gasoline. In the July 6 Proposed Decision, the DOE also tentatively determined that exception relief was not warranted with respect to the other refined petroleum products. In its Statement of Objections, Whitaker maintained that the doctrine of laches is applicable in this case and, as a result, the firm should be relieved of any potential refund obligations for all of the refined petroleum products. In addition, Whitaker claimed that it had met the standards for the approval of retroactive relief with respect to all of its petroleum product resales. In considering Whitaker's Statement of Objections, the DOE found that the firm had not established a case for the approval of exception relief on the basis of laches. In addition, the DOE determined that Whitaker had not demonstrated any other reason for the approval of additional exception relief. The DOE concluded that the exception relief approved in the July 6 Proposed Order was appropriate. Accordingly, Whitaker's Statement of Objections was denied.

Motion for Discovery

Petrade International, Inc., 2/22/85; HRD-0208, HRH-0208

The PRO recipient, charged with violating the anti-layering regulation, 10 CFR 212.186, sought extensive administrative record and contemporaneous construction discovery concerning the promulgation and interpretation of that regulation. The firm also sought discovery of the opinion of the crude oil industry as to what services were traditionally and historically associated with the resale of crude oil. In view of the fact that the official administrative record of § 212.186 clearly reveals the regulations's meaning, all of the discovery sought was denied.

Petrade's request for an evidentiary hearing was denied, because the firm had failed to indicate either what evidence it wished to present, or why a hearing was necessary for its presentation.

Interlocutory Orders

Kenneth Walker, 2/21/85; HRZ-0234

On January 28, 1985, Kenneth Walker filed a Motion to Dismiss or Remand the Proposed Remedial Order (PRO) that the Economic Regulatory Administration issued jointly to Southwestern States Marketing Corporation (Southwestern) and Mr. Walker. In considering the request, the DOE found that (1) the PRO contained sufficient factual and legal findings to establish a *prima facie* case of a regulatory violation and liability therefor in accordance with 10 CFR Part 205, (2) that the proper forum for considering the legal bases of the PRO's findings is the administrative objection proceeding, and (3) that it was not necessary to making any determinations concerning the differences that may exist between the Notice of Probable Violation issued to Southwestern and the PRO issued jointly to Southwestern and Mr. Walker. Accordingly, the DOE denied Walker's Motion to Dismiss or Remand.

Office of Special Counsel/Texaco Inc., 2/21/85; HRZ-0232

Texaco Inc. filed a motion requesting that the Office of Special Counsel be deemed to have admitted certain factual contentions made by the firm in connection with its

objections to a May 1, 1979 Proposed Remedial Order. On December 18, 1984, the Office of Hearings & Appeals (OHA) issued a Decision and Order granting the motion in part. *Texaco Inc.*, 12 DOE ¶82,541 (1984). In the December 18 decision, the OHA deferred 32 of the admissions sought by Texaco and directed the parties to submit further briefs concerning those admissions. After consideration of these briefs, the OHA granted the majority of the deferred admissions.

Supplemental Order

Economic Regulatory Administration/ Marathon Oil Company, 2/22/85; HRX-0186

The Economic Regulatory Administration filed supplemental information pertaining to, and as directed in, a June 22, 1984 Remedial Order issued to Marathon Petroleum Company/Marathon Oil Company. *Marathon Petroleum Co./ Marathon Oil Co.*, 12 DOE ¶85,010 (1984). After considering the ERA's submission, the DOE determined that a Supplemental Remedial Order should be issued to Marathon based upon the firm's improper designation of a crude oil producing property as a stripper well property during the period September 1978 through December 1978.

Implementation of Special Refund Procedures

Seminole Refining, Inc., et al., 2/22/85; HEF-0221, et al.

The DOE issued a Decision and Order establishing special refund procedures for distributing a fund totaling $16,520,152.24, obtained through consent orders entered into with 26 firms. These firms engaged in diverse operations including production, refining and sale of natural gas liquids and crude oil, as well as sale of refined petroleum products. The DOE found that refunds should be granted to applicants that demonstrate that they made purchases from any of the consent order firms during the period covered by the relevant consent order, and establish that they were injured as a result of those purchases. However, the DOE found that applicants requesting refunds of $5000 or less would not be required to provide a separate, detailed showing of injury. The Decision discussed specific information to be included in refund applications.

Refund Applications

Conoco Inc. /Hadley Paul and Paul Investments/Martin Oil Marketing, Inc., 2/20/85; RF21-10027,RF21-10032

The DOE issued a Decision and Order concerning Applications for Refund filed by two resellers of motor gasoline. The applicants purchased to Conoco products directly from M&A Petroleum Company or Foremost Petroleum Company, and applied for refunds in accordance with the Conoco special refund procedures. *Office of Special Council*, 11 DOE ¶ 85,226 (1984). Martin submitted evidence to establish that it was injured by Conoco's alleged overcharges, while Hadley Paul and Paul applied for a threshold level refund. After examining the statements and supporting information submitted by the applicants, the DOE decided to approve refunds totalling $18,362 including interest.

Standard Oil Co. (Indiana)/Three Affiliated Tribes; Belridge Oil Co./Three affiliated Tribes, 2/20/85; RQ21-153, RQ8-154

The Three Affiliated Tribes (Tribes) of North Dakota requested permission to change their OHA approved plan for $780 allotted to them pursuant to the *Amoco* and *Belridge* second-stage refund decisions. *Standard Oil Co. (Indiana)/Three Affiliated Tribes; Belridge Oil Co./Three Affiliated Tribes*, 12 DOE § 85,115 (1984). The Tribes sought to change their utilization plan from snow removal services to emergency services for low-income and homeless tribal members. The OHA issued a Supplemental Order approving the revised plan.

Dismissals

The following submissions were dismissed

Name	Case No.
Bob Ross, Inc.	RF1-376.
Dept. of Interior (Gladieux)	HEE-0077.
Environmental Policy Institute	HFA-0278.
Maryland State Penitentiary	RF78-0002.
Midway Oil Company	RF83-2

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 25, 1985.

[FR Doc. 85-8316 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of March 4 Through March 8, 1985

During the week of March 4 through March 8, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Refund Applications

Crystal Oil Co./Farmland Industries, Inc., 03/05/85; RF62-2

The DOE issued a Decision and Order concerning an Application for Refund filed by an agricultural cooperative, Farmland Industries, Inc., in connection with the Crystal Oil Co. refund proceeding. In considering the application, the DOE found that Farmland purchased propane from Crystal. The DOE further found that since Farmland is an agricultural cooperative, it should not be required to provide a detailed demonstration of injury, as long as it certified that it would pass through to its member-customers the refunds received. The DOE therefore granted Farmland a refund based on 100 percent of its allocable share as determined by the volumetric methodology. The total refund granted to Farmland was $2,057.

Request for Exception

Adobe Refining Company, 03/05/85; BEE-1684

Adobe Refining Company filed an Application for Exception from the provisions of 10 CFR 211.69 (the Entitlements Program clean-up rule) in which the firm sought to file amended entitlements reports for several months prior to the October 1, 1980 through January 27, 1981 "reporting period" established by the clean-up rule. The firm claimed that it had overstated its crude oil receipts in the entitlements reports it filed for September 1979 and for January 1980 through September 1980 and that it was prevented by the clean-up rule from filing amended entitlements reports for that period. The DOE found that Adobe was not uniquely and unfairly affected by the application of the clean-up rule and that the firm had not demonstrated that it was experiencing any financial difficulties as a result of that provision. Accordingly, exception relief from the provisions of § 211.69 was denied.

Planet Engineers, Inc./ Farmland Industries, Inc., 03/08/85; RF65-1

The DOE issued a Decision and Order concerning an Application for Refund filed by an agricultural cooperative, Farmland Industries, Inc., in connection with the Planet Engineers, Inc. refund proceeding. In considering the application, the DOE found that Farmland purchased propane from Planet. The DOE further found that since Farmland is an agricultural cooperative, it should not be required to provide a detailed demonstration of injury, as long as it certified that it would pass through to its member-customers the refunds received. The DOE therefore granted Farmland a refund based on 100 percent of its allocable share as determined by the volumetric methodology. The total refund granted to Farmland was $22,442.

Standard Oil Company (Indiana / Elston-Kostner Standard, Inc., 03/06/85; RF21-12384

The DOE issued a Decision and Order concerning duplicate refunds received by Elston-Kostner Standard, Inc., a retailer of motor gasoline that applied for a refund in the Standard Oil Company (Indiana) refund proceedings. The DOE directed that Elston-Kostner return the second refund and accured interest, totaling $396, and also submit a written explanation of why it had not notified the DOE of the error. The DOE further provided that failure to file this additional information within 30 days would result in rescission of the original refund.

Standard Oil Company (Indiana)/Mayfair Amoco, 03/07/85; RF21-12389

The DOE issued a Decision and Order concerning duplicate refund applications filed by the owners of Mayfair Amoco, a retail gasoline outlet, in connection with the Standard Oil Company (Indiana) refund proceeding. The DOE determined that the owners of Mayfair Amoco should immediately remit $1,222, the sum of the duplicate refund received plus interest. The DOE further determined that unless an adequate explanation for the double filing was submitted to OHA, as well as records documenting the claimed volumes of Amoco motor gasoline purchases, the original refund would be rescinded. The DOE also indicated that after reviewing the information submitted, it might find it appropriate to refer the matter of the duplicate applications to the U.S. Department of Justice for further investigation.

Dismissals

The following submissions were dismissed:

Name	Case No.
Government Accountability Project	HFA-0279.
International Petroleum Refining and Supply	HRO-0243.
Paul Investments, Inc. and A.B. Holding Co.	HRO-0096.
	HRO-0222.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 27, 1985.

[FR Doc. 85–8317 Filed 4–5–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures; Aminoil U.S.A., Inc. et al.

AGENCY: Office of Hearing and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $16,500,000 obtained as a result of a consent order which the DOE entered into with Aminoil U.S.A., Inc. and its subsidiaries, affiliates, and predecessors in interest, including Signal Oil & Gas Co., Amtane, Inc., Solar Gas, Inc. and the Burmah Oil Co., Ltd. During the consent order period Aminoil owned, operated, or had an interest in the production of natural gas liquids from plants in California, Louisiana, North Dakota, Oklahoma, and Texas.

DATE AND ADDRESS: Application for refund of a portion of the Aminoil consent order funds must be received within 90 days of publication of this notice in the Federal Register. All applications should conspicuously display a reference to Case Number HEF-0007 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Lawrence Rudolph, Deputy Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Aminoil U.S.A., Inc. The Aminoil consent order settled possible pricing violations in the firm's sales of natural gas liquid products to customers during the period September 1, 1973 through January 28, 1981. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from public concerning the distribution of the Aminoil consent order funds was issued on June 27, 1983. *See* 48 FR 30248 (July 1, 1983).

Today's Decision sets forth final procedures and standards that the DOE formulated to distribute the contents of the escrow account funded by Aminoil. The DOE has decided that Applications for Refund should be accepted from firms and individuals that were direct or indirect purchasers of natural gas liquid products (NGLPs) sold by Aminoil and its subsidiaries, affiliates, and predecessors in interest during the relevant consent order period, September 1, 1973 through January 28, 1981. This Decision and Order provides that it in order to receive a portion of the settlement funds, a purchaser must furnish the DOE with evidence that it was injured by the allegedly unlawful prices for NGLPs charged by Aminoil. This evidence should include specific documentation concerning the date, place, price, and volume of product purchased, indicate whether the increased costs were absorbed by the claimant or passed through to other purchasers, and state the extend of any injury alleged to have been suffered. However, the Decision indicates that no separate, detailed showing of injury will be required of end-users of the relevant product, or of firms which file refund claims amounting to $5,000 of less. According to the Decision and Order, the amount of the refund will generally be a pro rata share of the funds made available by Aminoil, plus a pro rata share of any interest accrued on those funds. The DOE further indicated that it would determine at a future date the proper disposition of any funds remaining after all meritorious claims of purchasers has been paid.

Applications for refund must be filed within 90 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. Refund applicants should file two copies of their submission. All applications received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Ave., SW., Washington, D.C. 20585.

Dated: March 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

March 29, 1985.

Name of Firm: Aminoil U.S.A., Inc.

Date of Filing: October 27, 1982.

Case Number: HEF–0007.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds, in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V.

In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Aminoil U.S.A., Inc. (Aminoil) and its subsidiaries, affiliates, and predecessors in interest.[1] Pursuant to the consent order, Aminoil agreed to make refunds for alleged violations of the DOE price regulations in the amount of $16,500,000. The funds have been paid to the DOE and are now

[1] For purposes of this proceeding, any reference to Aminoil includes its subsidiaries, affiliates, and predecessors in interest.

being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.[2]

I. Background

Aminoil is a "gas plant operator" and "gas plant owner" as those terms are defined in 10 CFR 212.162. During the relevant time periods, Aminoil was therefore subject to the Mandatory Petroleum Price Regulations set forth in 2 CFR. Part 150, Subpart L and 10 CFR Part 212, Supbarts E and K. Those regulations governed the maximum lawful prices that could be charged in the first sales of natural gas liquid (NGLs) and products (NGLPs). The funds involved in this proceeding were obtained as a result of a consent order agreed to in settlement of alleged overcharges in the sales of NGLPs by Aminoil.

In its audit of Aminoil, the Office of Enforcement (OE) (now the Office of Special Counsel) found possible overcharges with respect to the first sales of NGLPs during the period from September 1, 1973 through October 31, 1978. During this period Aminoil owned, operated, or had an interest in the production of NGLs from plants located in California, Louisiana, North Dakota, Oklahoma, and Texas. In order to settle all claims and disputes between the parties during the period September 1, 1973 and through January 28, 1981, Aminoil and OE entered into a Proposed Consent Order on April 6, 1981, whereby Aminoil agreed to pay $16,500,000 to DOE. The parties further agreed that the funds were to be distributed by the DOE pursuant to 10 CFR Part 205, Subpart V. Notice of the Proposed Consent Order was published in the Federal Register at 46 FR 23,970 (April 29, 1981), and it was finalized without modification and published in the Federal Register at 46 FR 31,321 (June 15, 1981).

II. Jurisdiction and Authority To Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured as a result of alleged regulatory violations resolved by a DOE consent order or remedial order or where the DOE is unable to readily ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement* 9 DOE ¶82,553 (1982); *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981).

On June 27, 1983, the Office of Hearings and Appeals issued a Proposed Decision and Order in which we concluded that the implementation of a Subpart V proceeding was appropriate with respect to Aminoil. *Office of Special Counsel*, No. HEF–0007 (June 27, 1983) (proposed decision); 48 FR 30,428 (July 1, 1983). We found that there was a significant degree of difficulty in locating most of the persons who were injured by the alleged overcharges. Since we have received no comments challenging our authority to fashion special refund procedures with respect to the funds provided by Aminoil, the ERA Petition will be granted.

III. Proposed Refund Procedures

In the June 27, Proposed Decision we stated that, to the maximum extent practicable, the available funds should be distributed to direct or indirect purchasers of product sold by Aminoil. We tentatively determined that successful refund applicants would generally be entitled to a pro rata share of the refund pool. We indicated that we would multiply the number of gallons of product purchased by a successful applicant by a factor using the total amount of the consent order fund provided by the gas plant operator as the numerator and using the total sales in gallons of all products covered by the consent order as the denominator (the volumetric amount).

We further indicated that all successful applicants must establish that they have experienced some economic harm as a result of the alleged overcharges. However, we suggested in the Proposed Order that a separate, detailed showing of injury would not be necessary with respect to applicants who were ultimate consumers of the relevant product. We stated that these applicants would be required to demonstrate that they purchased a specific volume of product sold by Aminoil during the relevant time period. We also stated that a detailed showing of injury would not be necessary for reseller applicants claiming refunds based on relatively small purchases of product, *i.e.*, less than 600,000 gallons per year. We have successfully utilized a small claim threshold of this type in many other cases. *E.g., Office of Enforcement*, 10 DOE ¶85,058 (1983); Office of Enforcement, 8 DOE ¶82,597 (1981). Its use was based on our concern that the cost to the applicant in preparing and submitting information demonstrating injury not be out of proportion to the benefit obtained. We specifically requested comments on this issue in the Proposed Decision.

The purpose of this Decision is to address the comments received regarding the June 27 Proposed Order and to establish procedures to be used for filing and processing claims in the first stage of the refund process relating to Aminoil. The Decision sets forth the information that a purchaser must submit in order to establish eligibility for a portion of the available fund.

IV. Analysis of Comments

We have received a number of comments from NGL purchasers regarding our proposed refund mechanism.[3] Several states and a trade association also filed comments regarding the June 17 Proposed Decision.[4] We shall address in turn the issues raised in the comments.

As previously noted, we suggested in our proposed Decision that a separate, detailed showing of injury would not be necessary for any firm claiming a refund based on purchases of 50,000 gallons per month, or 600,000 gallons annually. Pennington LP-Gas, Inc. submitted specific and thorough comments regarding the threshold levels and per gallon amounts that should apply to purchases of Aminoil products.[5] Initially, the firm asserts that the volumetric amounts of refund should be based on the comparative significance of alleged overcharges with respect to each NGL product sold by Aminoil, *.ie.*, propane, butane and natural gasoline, and that threshold levels of purchases for which a firm need not make a detailed showing of injury should also be applied with respect to each product. Pennington argues that such a product-

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[2] As of March 1, 1985, the $16,500,000 principal deposited in Aminoil's Consent Order account had accrued $7,943,283.09 in interest, bring the total amount in the account to $24,443,283.09.

[3] Comments were received from Pennington LP-Gas, Inc., Gengnagel Fuel Co., Small's LP Gas Co., Bootheel LP-Gas Co., Inc., The Rural Natural Gas Co., Michael O'N. Barron, and Gulf Oil Corporation.

[4] The states which filed comments, either through their energy departments or Attorneys General, are Delaware, Florida, Iowa, Kansas, Louisiana, Minnesota, New Mexico, North Dakota, Oregon, Rhode Island, Texas, Virginia, and West Virginia. Comments were also received from the National LP-Gas Association.

[5] Pennington LP-Gas, Inc. filed comments on July 28, 1983 and February 14, 1984. References to its comments in this Decision are directed to the second submission.

by-product analysis of refund applications recognizes the different markets and historical margins for each of the involved products, and that "OHA would not be burdened with any particular difficulties in utilizing a procedure that segregated the three products for Subpart V refund procedures." Pennington also argues that a flat 5 million gallon annual threshold level for propane is a more appropriate threshold for small NGL purchasers or, in the alternative, that a seasonally adjusted monthly threshold for propane equalling an annual threshold of 5 million gallons be adopted.

The National LP-Gas Association (NLPGA) supports these recommendations made by Pennington. NLPGA similarly argues that a 50,000 gallon per month threshold, as discussed in the Proposed Decision, has little relationship to the relative size differences between small and large propane resellers. Gengnagel Fuel Co., on the other hand, does not object to the proposed threshold level of purchases of 50,000 gallons per month or 600,000 gallons per year for smaller firms and individuals.

In our Proposed Decision, we suggested the threshold approach in order to facilitate the refund process for firms claiming relatively small refunds. We believe that in such cases, a complex refund process might discourage small firms from applying for refunds, because the amount of the refund they could expect to receive might be less than the cost of preparing a complex and detailed submission supporting their claims of injury. Thus, the benefits of the refund would be outweighed by the cost of preparing the application. These considerations are present with respect to this proceeding, and we continue to believe that it is appropriate to adopt a presumption of injury for smaller firms and to establish a threshold refund level below which an applicant will not be required to submit a further detailed showing of injury. 10 CFR 205.282(e).

However, it appears that using the gallon threshold as described in the Proposed Order may not enable us to effectuate our goal of facilitating disbursements to applicants applying for relatively small refunds. We no longer believe that a threshold based on gallons—regardless of how many—is now appropriate. Consequently, we have decided that an adjustment in that approach is warranted.

We have determined that it would best promote the above-stated goal to base our threshold for a detailed demonstration of injury on a dollar amount, rather than on a volumetric amount. Therefore, applicants who are claiming a refund of $5,000 or less will not be required to provide a separate detailed showing that they were injured by the alleged overcharges. *See Marion*, 12 DOE at 88,032. This approach was also adopted in several recent NGL Subpart V proceedings. *Seminole Refining, Inc.*, 12 DOE ¶ ——, No. HEF-0221 (February 22, 1985); *Peoples Energy Corp.*, 12 DOE ¶ 85,129 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1985). Applicants must, of course, still provide detailed documentation regarding purchase volumes and dates of purchase.

Pennington also argues that threshold levels, as well as the calculation of the per gallon volumetric amount of refund, should be based on each individual product. We do not agree. The consent order reflects a settlement reached with respect to the sales of all NGLPs sold by Aminoil. There is nothing in the consent order or Petition which suggests that the consent order was negotiated on the basis of separate amounts attributable to alleged overcharges of individual product sales, and NGLPs have consistently been treated in Subpart V proceedings as a singular group of products derived from natural gas liquids. Even though the audit papers do indicate a breakdown of alleged overcharge violations based on sales of propane, butane, and natural gasoline, it must be reiterated that such data are based on allegations only, and do not constitute any finding that violations occurred in the stated amounts. Since there is nothing in the record to allow us to determine that a specific portion of the consent order funds was, in fact, attributable to the sales of either propane or one of the other NGLPs, we will not necessarily presume that a relationship between the amount of alleged overcharges and the amount of the consent order funds exists. This is particularly true when the consent order period is greater than the underlying audit period, and no formal enforcement document, such as a Notice of Probable Violation or Proposed Remedial Order, was issued. Accordingly, the threshold level and volumetric calculation that will be applied to refund applications will be based on the total sales of Aminoil NGLPs during the consent order period.[6]

[6] The volumetric amount has been calculated from information contained in the audit workpapers. During the audit period, Aminoil's sales of covered products totalled 424,454,249 gallons. We extrapolated the sales of covered products during the entire consent order period, and divided the consent order funds ($16.5 million) by that number (1,111,071,416.5 gallons). The volumetric amount for purposes of this proceeding, therefore, is $.014851 per gallon.

Several commenters, including Small's LP Gas Company, Bootheel LP-Gas Company, and Michael O'N. Barron, object to any procedure which uses a volumetric calculation to determine the amount of per gallon refund. They argue that applicants should receive refunds based on 100 percent of the amount of actual injury.

It has been our consistent position that refund applicants are not limited to a refund based on the presumption that alleged overcharges were distributed on a pro rata basis over all gallons of covered products sold, *i.e.*, volumetrically, in instances in which there is a reasonable basis for establishing alleged overcharges at a greater level. *E.g., Pennzoil Co./Gulf Oil Corp.*, 12 DOE ¶ 85,057 (984); *Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Accordingly, such customers may submit information establishing alleged overcharges in an amount greater than the volumetric level. These applicants will, of course, be required to establish injury in accordance with the principles discussed in this decision. No applicant is precluded, therefore, from proving that it incurred injury and should be refunded 100 percent of its claim.[7]

In this regard, we stated in our proposed decision that unless the applicant was an ultimate consumer, a party claiming that it is entitled to a refund must demonstrate that it was injured by an increase in costs resulting from the alleged overcharges. We further suggest that such injury could be demonstrated in a number of ways, *e.g.*, lost customers, decreased market share, decreased profit margins on the product resold or manufactured from the NGLs, or any other showing that may substantiate a claim of injury related to the alleged overcharges.

The State of Minnesota expressed some concern with our description of the types of evidence that could demonstrate injury. It stated that a number of factors not related to the overcharges may result in a firm's

[7] We reject the idea, however, that all of the consent order funds should be distributed only to those applicants who file claims. To distribute all of the consent order funds to first-stage claimants would create a windfall to those applicants at the expense of injured parties who did not apply, particularly since some parties may choose not to file because of the small amounts of refund involved, lack of resources, or other reasons. Our use of a volumetric methodology in those instances where the injured claimants cannot be determined, therefore, is fair to all purchasers in the distribution chain. *See* Klepper Oil Co. v. DOE, 2 Fed. Energy Guidelines ¶ 28,512 at 28,704 (1984).

reduced market share or lost customers, and that permitting such evidence would create a significantly weaker standard for proof of damages than has been established in previous cases. Minnesota urges that reduced profit margins is the only reliable evidence of injury that can be directly attributed to the alleged overcharges. In view of these comments, we set forth below more specific information as to what type of data will be required for a showing of injury.

We have decided to adopt the approach used in several prior Subpart V proceedings involving consent order funds related to NGLs. *National Helium Corp./Farmland Industries, Inc.*, 11 DOE ¶ 85,257 (1984); *Aluminum Co. of America/Tenneco Oil Co.* 11 DOE ¶ 85,253 (1984); *Palo Pinto Oil & Gas/Gulf Oil Corp.*, 10 DOE ¶ 85,049 (1983). In these cases we used a three-step competitive disadvantage analysis, in which we first examined whether the applicant was charged prices by the consent order firm which were above prices paid by the applicant's competitors. If so, we inferred that the applicant was at a competitive disadvantage with respect to those purchases and was therefore injured. In order to enable us to perform this type of analysis, refund applicants in the present proceeding should submit quarterly prices and purchase locations for the entire period for each product for which a refund is claimed. In addition, resellers will be expected to demonstrate that they maintained a bank of unrecovered costs, in order to establish that the alleged overcharges were not subsequently recovered through price increases.

As we stated above, we suggested in our Proposed Decision that a separate, detailed showing of injury would not be required of refund applicants who were ultimate consumers of the product involved. However, crude oil refiners that purchased NGLs or NGLPs consumed as fuel or as raw material in a refining process will not be considered as "consumers" for this purpose. Rather, the exception from the requirement of a separate, detailed showing of injury for end-users or ultimate consumers will be limited to those whose business operations were unrelated to the petroleum industry and whose prices were therefore not subject to the DOE regulatory scheme. The fuel costs of this group are only one, indistinguishable component of their prices for goods and services. Further, this group was generally not subject to price controls during the consent order periods. Therefore, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Marion Corp.* 12 DOE ¶ 85,014 (1984); *Ada Resources, Inc./Rapid Transit Lines, Inc.*, 11 DOE ¶ 85,047 (1983). On the other hand, a refund applicant that was subject to the DOE regulatory program will re required to provide a detailed demonstration of injury with respect to the purchase of NGLPs of which it was an end-user, with the exception for small claims discussed above.[8]

V. Application for Refund Procedures

After having considered all of the comments received concerning the proposed procedures tentatively adopted in our June 27 Proposed Decision, we have concluded that applications for refunds should now be accepted from parties that purchased NGLPs sold to them either directly or indirectly by Aminoil or its subsidiaries, affiliates, or predecessors in interest, during the relevant consent order period, September 1, 1973 through January 28, 1981.[9] Applications must be filed within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.283. An application must be in writing, signed by the applicant, and specify the name and case number of the consent order firm, *i.e., Aminoil U.S.A., Inc.*, No. HEF–0007.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must indicate whether the applicant or any person acting on its instructions has filed or intends to file any other application or claim of whatever nature regarding the matters at issue in the underlying enforcement proceeding. Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the consent order funds, the following subjects should be covered in each application:

A. Each applicant should provide data establishing the volumes of product that it purchased which were sold by Aminoil and the dates of those purchases. The applicant should indicate the types of business records currently in existence from which the figures were derived, and should also indicate the gas plant from which the product originated. However, if this latter data is unavailable, the applicant shall explain why it is unable to retrieve this information. If the product was not purchased directly from the consent order firm, the applicant should state the manner in which it determined that the product originated from the consent order firm.

B. Each applicant should specify the type of business it operated, including how it used the products—*e.g.*, whether it was reseller, a refiner using the products in its own operations, or an ultimate consumer.

C. If the applicant is a reseller or refiner that wishes to claim a refund in excess of $5,000, it must also provide the following information:

(i) The applicant shall state whether it maintained banks of unrecouped product cost increases from the date of

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[8] Gulf Oil Corporation's objection to these procedures was previously rejected in Palo Pinto Oil and Gas/Gulf Oil Corp., 10 DOE ¶ 85,049 (1983), and nothing further has been submitted that warrants reconsideration of Gulf's arguments here.

[9] The following firms were subsidiaries, affiliates, or predecessors in interest of Aminoil during the audit period September 1, 1973 through October 31, 1978: Signal Oil & Gas Co.; Amtane, Inc.; and Solar Gas, Inc. In addition, Aminoil acquired the U.S. properties of The Burmah Oil Co., LTD. in June of 1976, which earlier had purchased Signal Oil & Gas Co. in January of 1974. Consequently, purchases of NGLPs from any of these firms during the consent order period shall qualify refund applicants to be eligible for a refund in this proceeding. NGLPs include propane, butane, and natural gasoline. In some instances a gas plant operator may have sold small quantities of other products, such as condensate. We will also consider Applications for Refund filed by purchasers of these other products. We note, however, that applicants cannot claim a refund for any butane purchases subsequent to January 1, 1980, the date butane was decontrolled.

the alleged violation until the product was decontrolled and, if so, furnish OHA with quarterly bank calculations. If a claimant is unable to develop bank data, it may submit other persuasive evidence that it was unable to pass through the alleged overcharges. Specifically, an applicant shall submit evidence of the quarterly prices it paid during the applicable periods for the products for which it is claiming a refund and locations of such purchases.

(ii) The applicant shall provide sufficient corporate information to identify its parent corporation, the corporation selling or processing the product, and the corporation actually purchasing the product, and describe their corporate relationship.

(iii) The applicant shall state whether it or any of its affiliates filed any other applications for refund in which it has referred to its banks to demonstrate injury.

D. The applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

We will also establish a minimum amount of $15 for first stage refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds of less than $15 are sought outweighs the modest benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). Successful applicants will also receive a pro rata portion of any interest accrued on the consent order fund.

V. Second Stage Refund Procedures

As a final matter, in the Proposed Order we stated that we would consider at a future date the appropriate disposition of any funds remaining after refunds to all successful purchasers have been effected. Several states filed comments regarding the Proposed Order and have suggested methods for distributing any funds remaining after refunds to identifiable purchasers have been completed. These comments generally advocate that state governments, rather than the United States Treasury, are the appropriate recipients of these funds. In several refund proceedings we have adopted just such an approach. *E.g., Belridge Oil Co.*, 11 DOE ¶ 85,197 (1983); *Palo Pinto Oil & Gas*, 11 DOE ¶ 85,034 (1983). However, it is the DOE's position currently that legislative guidance should be sought from the Congress on the question of ultimate disposition of second-stage consent order funds, provided the impact of the alleged overcharges was national rather than local or regional in scope. In any case, it would be premature at this time to reach a determination regarding disbursement of second state refund monies, since we cannot foresee the size of the pool available for refund after all meritorious refund claims of purchasers have been satisfied. Consequently, we will not adopt the states' suggestion at this time.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Aminoil U.S.A., Inc. may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: March 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-8388 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of February 25 through March 8, 1985

During the period of February 25 through March 8, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in finals form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

March 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Northrup Oil Company, Chillicothe, Illinois; HEE-0112, Reporting Requirements

On January 15, 1985, Northrup Oil Company (Northrup), a reseller, retailer of refined petroleum products, filed an Application for Exception from the requirement to file Form EIA-782B each month. On March 6, 1985, the Department of Energy issued a Proposed Decision and Order which determined that Northrup be granted modified exception relief to allow the firm to file Form EIA-782B using estimated data.

[FR Doc. 85-8329 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of March 11 through March 15, 1985

During the week of March 11 through March 15, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wished to contest a determination made in a

proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 27, 1985.

Ozona Gas Processing Plant, Dallas, Texas; HEE-0088, crude oil

Ozona Gas Processing Plant filed an Application for Exception from the provisions of 10 CFR 212.131. The exception request, if granted, would permit Ozona to retroactively increase the price of certain quantities of crude oil produced during the months of December 1980 and January 1981. On March 15, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-8330 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of March 18 Through March 22, 1985

During the week of March 18 through March 22, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except Federal holidays.

Dated: March 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Delaware County Oil Company, Manchester, Iowa; HEE-0118

Delaware County Oil Company filed an Application for Exception from the provisions of the EIA reporting requirement for the Form EIA-782B. If granted, the exception request would relieve Delaware of its responsibility to file Form EIA-782B. On March 20, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

Dell Oil Ltd., Des Moines, Iowa; HEE-0120

Dell Oil Ltd. filed an Application for exception from the Provisions of the EIA reporting requirement for the Form EIA-782B. If granted, the exception request would relieve Dell of its responsibility to file Form EIA-782B. On March 20, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-8367 Filed 4-5-85; 8:45 am]

BILLING CODE 6450-01-M

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $499,097 (plus accured interest) obtained as the result of Consent Orders which the DOE entered into with 48 California gasoline retailers. The funds will be available to customers who purchased gasoline from any of these retailers during periods ranging from August 1, 1979 through January 6, 1981. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public was issued on December 18, 1984, 50 FR 147 (January 2, 1985).

DATE AND ADDRESS: Applications for refund must be filed on or before July 8, 1985 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000. Independence Avenue SW., Washington, D.C. 20585. Each application should refer to the Case Number from HEF-0509 to HEF-0556 which has been assigned to the gasoline retailer from which the applicant is claiming a refund (See Appendices).

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision and Order relates to Consent Orders entered into by 48 gasoline service station owners who settled possible pricing violations with respect to their sales of gasoline during the periods ranging from August 1, 1979 to January 6, 1981. Under the terms of the Consent Order, $499,097 has been remitted by the service station owners and is being held in an interest-bearing escrow account.

The Decision and Order published with this Notice sets forth the final procedures and standards that the DOE has formulated to distribute funds remitted by the gasoline retailers and being held in escrow pursuant to the consent orders. The DOE has decided that the funds should be distributed in a two step refund proceeding. The first stage will attempt to refund moneys to customers of any of the 48 gasoline retailers who can document their purchases. The Decision and Order provides for the general allocation of funds among successful claimants using a volumetric distribution based on the number of gallons of product purchased. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund may now be filed by customers who purchased motor gaoline from any of the 48 retailers listed in the Appendices to the Decision and Order. Applications will be accepted provided they are received no later than 90 days after the Appendices to the Decison and Order. Applications will be accepted provided they are received no later than 90 days after

publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: March 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Petitioner: Edward Mantz, d/b/a/ A–1, Arco, *et al.*

Date of Filing: September 18, 1984.

Case Numbers: HEF–0509 through HEF–0556.

On September 18, 1984, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) pursuant to 10 CFR Part 205, Subpart V. The Petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to consent orders entered into with 48 motor gasoline retailers.

Each of the 48 retailers operated one or more [1] retail gasoline service stations in the State of California during the settlement period and was a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31. The firms were therefore subject to the Mandatory Petroleum Price Regulations set forth in 10 CFR, Part 212, Subpart F. An ERA audit of each firm's operations revealed possible pricing violations by each firm in sales of motor gasoline during the period from August 1, 1979 through January 6, 1981. (See Appendix B). Each of the retailers and the Department of Energy (DOE) entered into consent orders to settle all claims and disputes between them regarding the prices which they charged in sales of motor gasoline. Pursuant to these consent orders, each retailer agreed to pay a sum of money to the DOE. These payments total $499,097 and were deposited in an escrow account for ultimate distribution to parties who may have been injured by the alleged overcharges.

[1] Bubble Machine, Montclair Chevron, Ken Betts Towing Service and Pinole Valley Chevron, Case Number HEF–0514, are all owned by the same person. Pacifica Shell and Pacifica Manor Shell, Case Number HEF–0540, are also under common ownership. CP Marketing Chevron Car Wash was sold by one owner to another during the audit period. (Case Numbers HEF–0518 and HEF–0519). Therefore, although this Decision and Order involves 48 consent orders with 48 retailers, these consent orders actually affect 51 gasoline service stations.

I. Jurisdiction and Authority To Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain readily the amount of each person's injuires. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtains as a part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On December 18, 1984, the OHA issued a Proposed Decision and Order tentatively setting forth procedures for distributing refunds to parties who were injured by any of the 48 retailers' alleged pricing violations during the consent order period. *Edward Mantz, d/b/a A–1 Arco, et al.*, 6 Fed. Energy Guidelines ¶ 90,067, 50 Fed. Reg. 147 (January 2, 1985) (Proposed Decision). In addition to publishing the Proposed Decision in the Federal Register, we sent copies to various organizations which represent small California businesses, including Chambers of Commerce, and to each of the 48 retailers.

In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the 48 consent orders. Specifically, we proposed to disburse funds in the first stage to eligible claimants who were injured by the alleged overcharges of any of the 48 gasoline retailers. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process and that the ultimate disposition of those second-stage funds will not be determined until after completion of the first stage.

The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the refund process. This Decision sets forth the information that a purchaser of motor gasoline from any of the 48 retailers should submit in order to establish eligibility for a portion of the consent order funds. This Decision will not address the final disposition of any funds remaining after the first stage is completed. Procedures for that dispositon will necessarily depend on the size of the fund. *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

II. Comments by Interested Parties

In response to a summary of the Proposed Decision which appeared in a trucking industry newsletter, we were contacted by truckers who wanted to determine whether they had purchased gasoline from any of the 48 retailers. Many of the truckers who contacted us regularly purchased gasoline from large suppliers. In this regard we believe that it is necessary to clarify that the 48 retailers in this case operated small retail service stations. We also were contacted by one of the service station owners who stated that the United States Post Office in Almo, California purchased gasoline from him on a regular basis and may therefore be entitled to a refund.

In addition, we received comments from the Controller of the State of California and the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments generally advocate that state governments, rather than the United States Treasury, are the appropriate recipients of any funds remaining after refunds to identifiable purchasers have been completed. It would be premature to establish second stage refund procedures at this time. Therefore, we will not adopt the states' suggestion at this time.

III. First-Stage Refund Procedures

A. Method for Calculating Refund Amounts

In the Proposed Decision, we proposed that refunds be calculated according to a volumetric method. Under this method, refunds would be computed by multiplying an applicant's total purchase volumes by a per gallon volumetric refund amount contained in the Appendices to this Decision. The volumetric refund amount was computed by dividing the consent amount for a particular service station by the number of gallons which that firm sold during the period covered by the consent order.[2] Successful claimants

[2] As we pointed out in footnote 1 above, the 48 consent orders in this case affect 51 gasoline service stations. To derive the consent order fund for CP Marketing Chevron Car Wash, which had two owners during the audit period, we added the amounts of the consent orders entered into with each owner. (Case Numbers HEF–0518 and HEF–0519). To determine the consent order fund for a single station whose owner entered into a consent order covering more than one service station, we divided the consent order amount equally among the owner's stations. (Case Numbers HEF–0514 and HEF–0540).

will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus accrued interest. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater. Any purchaser may file a refund application based on a claim that he suffered a disproportionate share of the overcharges. In this situation the purchaser will have the burden of demonstrating a larger than volumetric proportion of the alleged overcharges.

As in previous cases, we will establish a minimum refund amount of $15.00. We have found through our experience in prior refund cases that the cost of processing refund applications for less than that amount outweighs the benefits of distributing those refunds. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

B. Injury Requirement

In the Proposed Decision, we stated that persons claiming refunds must show that they were injured by the alleged pricing violations (e.g., that they did not pass the increased costs along to others). However, we proposed that customers who were ultimate consumers (end-users) of the motor gasoline purchased from the 48 retailers should be presumed to have been injured by the retailers' pricing practices and would only be required to submit documentation of purchase volumes to be eligible for a refund. *See* 10 CFR 205.282(e). In contrast, we proposed that resellers (e.g., car rental companies) who purchased gasoline from any of the 48 retailers, would be required to establish that they absorbed the alleged overcharges. Under the proposed procedures, resellers seeking refunds of up to $5,000.00 would not be required to document the extent of injury, and would be presumed to have incurred injury as a result of the alleged overcharges.

Our experience in prior refund proceedings has convinced us that it is not appropriate to require end-users to provide the same documentation of injury that we generally require of resellers. *See, e.g., Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984) (*Thornton*). Consumers of petroleum products generally fall into four categories: commercial end-users, regulated entities (e.g., public utilities), governmental agencies, and the general public (e.g., motorists). As we have stated recently, each of these categories of end-users should not be required to prove injury:

> Commercial end-users which use petroleum products to manufacture and provide other goods and services do not resell the petroleum products in the same form. Their fuel costs are only one indistinguishable component of their prices for goods and services. Furthermore, these commercial end-users of petroleum products were not under price controls during the consent order period and were not required to maintain records showing the petroleum product cost justification for their prices. In the past we have found that an analysis of the impact of the increased cost of petroleum products in the final prices of products and services sold outside the petroleum industry would be beyond the scope of DOE refund proceedings, *Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*), and also that there is no practicable method for determining the extent to which individual end-users may have passed through any alleged overcharges to their own customers. *See Marion*, 12 DOE at 88,030, and cases cited therein. In the case of regulated entities we have stated that these types of end-users would not be required to demonstrate that they absorbed alleged overcharges on the grounds that they are generally required to pass on to their customers the benefits of any refund received. *See PVM*, 10 DOE at 88,387. With respect to governmental purchasers of petroleum products, we presumed that the taxpayers who would have been ultimately injured by the consent order firm's pricing practices would correspondingly benefit from a refund to the governmental body. In the case of individuals who purchase refined petroleum products for their own use (motoring, home heating), these ultimate consumers' inability to pass through any overcharges is obvious, since there are no down-stream purchasers from whom such a consumer could recover increased costs.

Thornton, 12 DOE at 88,330. In view of the foregoing, we have determined that end-users absorbed the full impact of any overcharges. Therefore, end-users will only need to document the specific quantities of motor gasoline they purchased from any of the 48 retailers during the consent order period.

We also recognize that the expensive and time consuming process of gathering the types of data needed to support a claim of injury may discourage many small claimants from filing refund applications. Failure to allow simplified application procedures for small claims could operate to deprive injured parties of the opportunity to obtain a refund. Therefore, we will adopt a presumption in this case, as we have in the past, that claimants seeking refunds up to $5,000.00 were injured by the alleged overcharges. *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984).

IV. First Stage Refund Application Procedures

We have determined that the first stage procedures described above are the best means of distributing the consent order funds obtained from the 48 gasoline retailers. Accordingly, we shall now accept applications for refunds from customers who purchased motor gasoline during the consent order period from any of the 48 retailers listed in the Appendix.

Each application should include a statement detailing the applicant's motor gasoline purchases from one of the 48 retailers during the consent order period. Although the best forms of documentation are receipts showing the number of gallons purchased, we recognize that many customers may not have such receipts. If a customer has receipts but no gallonage is recorded on them, the customer can extrapolate purchase volumes by estimating per gallon prices. If the customer does not have receipts, the customer may submit an estimate of purchase volumes accompanied by an explanation of how the estimate was derived. This explanation should include any pertinent information which supports the application claim, e.g., the type and number of vehicles owned, the number of miles driven, the location of the retailers from which gasoline was purchased, etc.

All first stage applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the OHA. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. 10 CFR 205.283(a). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish the name and telephone number of a person whom this Office may contact for additional information concerning the application. If an applicant is claiming a refund based on purchases from more than one retailer, the applicant must file a separate application for each retailer. Each application should refer to the case number assigned to the particular retailer from which the applicant purchased gasoline. (*See* Appendices). Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

V. Second Stage Refunds

We will use second-stage refund procedures to distribute any money remaining after first-stage refund procedures are completed. However, we will not establish second-stage procedures at this time because such procedures will depend on the size of the fund remaining.

It Is Therefore Ordered That:

(1) First stage Applications for Refund may now be filed to claim a portion of the funds which the Department of Energy received pursuant to consent orders with the 48 California gasoline retailers listed in the Appendices.

(2) All first stage applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

(3) If second stage refund procedures become necessary, the DOE will determine appropriate second stage procedures and notify the public of these procedures.

Dated: March 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A.—CASES HEF-0509 THROUGH HEF-0556

City, state and ZIP	Street address	Business name	Case no.	Dollar refund per gallon
Almo, CA 94507	3177 Danville Blvd	Hal Abel's Chevron	HEF-0510	.016799
Concord, CA 94520	2484 Olivera Rd	Terry McGovern's Shell	HEF-0552	.026749
Danville, CA 94526	485 San Ramon Valley Rd	CP Marketing Chevron Car Wash	HEF-0518 & HEF-0519	.021402
Danville, CA 94526	530 San Ramon Valley Blvd	Walt's Danville Chevron, Inc	HEF-0555	.031748
Fairfax, CA 94930	1942 Sir FFrancis Drake Blvd	Robert J. Heald Shell	HEF-0529	.005267
Fremont, CA 94538	5300 Mowry Ave	Mowry Chevron	HEF-0508	.026362
Half Moon Bay, CA 94019	375 Cabrillo Hwy	Ken's Chevron Service	HEF-0532	.037180
Hayward, CA 94544	26115 Hesperian Blvd	Bud's Exxon Service	HEF-0511	.039256
Jamestown, CA 95327	18151 Highway 108	Chip's Chevron Service	HEF-0517	.029607
Labec, CA 93243	Star Route, Box 23	Grapevine Shell	HEF-0526	.029673
Labec, CA 93243	Int. Hwy 5 & Grapevine	Grapevine Texaco	HEF-0527	.020084
Livermore,, CA 94550	1253 Portola Ave	Steve's Exxon	HEF-0550	.015827
Menlo Park, CA 94025	125 Sharon Park Dr	Sharon Heights Shell	HEF-0545	.003891
Mill Valley, CA 94941	105 Tiburon Blvd	Don Skilling Chevron Service	HEF-0547	.034252
Milpitas, CA	1490 S. Park Victoria	Parktown Chevron	HEF-0541	.026867
Milpitas, CA 95035	12 N. Park Victoria	Jerry's Shell Service	HEF-0536	.023351
Milpitas, CA 95035	27 S. Park Victoria	Union Park Service	HEF-0553	.051805
Oakland, CA 94605	3101 98th Ave	Kim's Mobil	HEF-0523	.009730
Oakland, CA 94607	889 W. Grand Ave	A-1 Arco	HEF-0506	.024008
Oakland, CA 94607	10th and Webster	Ken Betts Towing Service	HEF-0514	.039755
Oakland, CA 94610	3500 Lakeshore Ave	Steve Horner Chevron Service	HEF-0549	.011981
Oakland, CA 94611	6550 Moraga Blvd	Montclair Chevron	HEF-0514	.024283
Oakland, CA 94607	609 Oak St	Bubble Machine	HEF-0514	.026178
Orinda, CA 94563	9 Orinda Way	Dietrich Orinda Shell	HEF-0522	.015486
Pacifica, CA 94044	Aura Vista & Palmetto	Pacific Manor Shell	HEF-0540	.003628
Pacifica, CA 94044	4475 Court Highway	Pacifica Shell	HEF-0540	.019862
Petaluma, CA 94952	5153 Old Redwood Hwy	Jim's Texaco Service	HEF-0521	.001531
Pinole, CA 94564	2895 Pinole Valley Rd	Pinole Valley Chevron	HEF-0514	.026198
Pinole, CA 94564	700 Tennent Ave	Ye Olde Pump House	HEF-0558	.030728
Pleasant Hill, CA	2252 Morello Ave	Suds Machine Chevron Car Wash	HEF-0551	.021486
Sacramento, CA 93454	8099 Folsom Blvd	Walt Freeman Chevron	HEF-0524	.018734
Sacramento, CA 95825	2105 Arden Way	Harv's Sacramento Car Wash	HEF-0528	.014304
Sacramento, CA 95827	3300 Bradshaw Rd	Jerry Bullard Chevron	HEF-0515	.034086
Salina, CA 94560	151 N. Kern	Paul Provost Chevron	HEF-0542	.016544
San Bruno, CA 94066	2901 Sneath Lane	George's Circle Service	HEF-0535	.012918
San Bruno, CA 94066	2101 San Bruno Ave	Shelter Creek Chevron	HEF-0546	.024085
San Francisco, CA 94123	377 6th St	Lazar Super Shell	HEF-0538	.015860
San Fmacisco, CA 94123	1790 Lombard St	Lombard Chevron Service	HEF-0528	.033618
San Francisco, CA 94123	2301 Lombard St	Marina Chevron Service Center	HEF-0537	.015559
San Jose, CA 95111	3151 Senter Rd	San Solbesi's Chevron Service	HEF-0512	.028082
San Jose, CA 95129	1599 Saratoga-Sunnyvale Rd	Lee Kreger's Chevron	HEF-0534	.026929
San Lorenzo, CA 94580	15526 Hesperian Blvd	Car Wash Services	HEF-0516	.025501
San Ramon, CA 94583	2735 Crow Canyon Rd	Crow Canyon Shell	HEF-0520	.011278
San Ramon, CA 94583	2747 Crow Canyon Rd	Nelson's Service Center, Inc	HEF-0539	.017601
Santa Cruz, CA 95060	805 Ocean St	Bob's Chevron Service	HEF-0513	.030796
Santa Maria, CA 93454	734 E. Main St	Doug Meyers Chevron Service	HEF-0523	.025572
Santa Maria, CA 93454	16111 S. Broadway	Santa Maria Chevron	HEF-0544	.033980
Santa Rosa, CA 95406	164 Calletoga Rd	St. Francis Texaco	HEF-0548	.010101
Vallejo, CA 94590	4375 Sonoma Blvd	Bill Pendergast & Son Chevron	HEF-0543	.067186
Vallejo, CA 94590	3298 Sonoma Blvd	Vale Vista Chevron	HEF-0554	.014194
Walnut Creek, CA94596	2900 N. Main St	Howard DeRoven Shell	HEF-0521	.021173

APPENDIX B

Case No.	Proprietor	Audit period	Consent order	Gallons sold	Per gallon refund amount
HEF-0509	Mantz, Edward G	8/1/79-7/31/80	$6,500	270,797	.024008
HEF-0510	Abel, Harold J	8/1/79-4/14/80	7,000	474,702	.015799
HEF-0511	Adams, Bud	8/1/79-11/13/79	5,165	157,001	.039255
HEF-0512	Soebee, Ben	8/1/80-10/30/80	8,700	345,286	.028082
HEF-0513	DiCiano, Robert J	8-1-79-1/31/80	9,950	323,406	.030796
HEF-0514	Betts, Ken	8/1/79-8/25/80	34,500	816,281	.039755
HEF-0514	Betts, Ken	8/1/79-7/18/80	34,500	868,895	.026198
HEF-0514	Betts, Ken	8/1/79-6/29/80	34,500	1,006,849	.024283
HEF-0514	Betts, Ken	8/13/79-7/17/80	34,500	885,884	.026178
HEF-0515	Bullard, Jerry	8/1/79-8/21/80	30,000	879,885	.034086
HEF-0516	Brooke, Richard E	8/1/79-1/31/80	12,500	490,172	.025501
HEF-0517	Scoter, Cecil	8/1/79-1/6/81	16,700	931,807	.029607

APPENDIX B—Continued

Case No.	Proprietor	Audit period	Consent order	Gallons sold	Per gallon refund amount
HEF-0518 & 0519	Stuart, James & Vernon, Inc	9/20/79-5/31/80	12,100	565,542	.021403
HEF-0520	Krisovich, Andrew R	8/1/79-4/11/80	4,500	399,077	.011276
HEF-0521	DeRoven, Howard	12/15/79-6/10/80	5,400	255,039	.021173
HEF-0522	Dietrich, Burl	8/1/79-9/18/79	3,800	245,852	.015456
HEF-0523	Myers, Doug	8/1/79-4/24-80	6,000	294,521	.020372
HEF-0524	Freeman, Walter	5/1/80-9/30/80	5,456	291,246	.018734
HEF-0525	Crawines, George D	8/1/79-11/13/79	1,000	71,963	.013915
HEF-0526	Myrik, Robert	8/1/79-8/9/80	15,200	512,256	.029673
HEF-0527	Beagley, Steven	8/1/79-1/29-80	14,883	741,784	.020064
HEF-0528	Miller, Harvey M	8/1/79-7/31/80	4,000	278,644	.014354
HEF-0529	Gregory, Robert	7/1/80-11/30/80	1,000	189,072	.005287
HEF-0530	Anderson, Jerry	8/1/79-11/8/79	4,300	184,147	.023351
HEF-0531	Daniels, Jim	12/15/79-6/10/80	200	130,838	.001531
HEF-0532	Lord, Kenner G	8/1/79-11/8/79	11,000	295,856	.037180
HEF-0533	Kim, Young H	8/1/79-4/10/80	3,500	360,000	.009720
HEF-0534	Kreger, Lee	6/1/80-11/26/80	6,800	245,069	.026929
HEF-0535	Lazar, Sam	8/1/79-1/11/80	3,500	219,298	.015960
HEF-0536	Kim, Sun S	8/1/79-1/11/80	2,800	82,796	.033818
HEF-0537	Pietsch, Don	8/1/79-1/11/80	3,150	202,479	.015559
HEF-0538	Hasiuto, Vincent J	12/15/79-5/21/80	17,500	663,329	.026382
HEF-0539	Nelson, William L	8/1/79-4/11/80	18,500	1,051,072	.017601
HEF-0540	Sosalkian, Vacane	8/1/79-11/13/79	2,550	128,389	.019862
HEF-0540	Sosalkian, Vacane	8/1/79-3/31/80	2,550	666,495	.003826
HEF-0541	Bushman, Gerald	8/1/79-9/26/80	36,000	1,348,906	.026687
HEF-0542	Provost, Paul	8/1/79-1/30/80	4,700	323,184	.014544
HEF-0543	Pendergast, Bill	8/1/79-1/30/80	9,450	165,254	.057185
HEF-0544	Agergaard, Jens	8/1/79-4/25/80	9,700	305,462	.033980
HEF-0545	Dyster, Robert	8/1/79-11/8/79	1,112	295,811	.003891
HEF-0546	Tuite, Bud	8/1/79-11/13/79	7,800	323,851	.024085
HEF-0547	Skilling, Don	8/1/79-11/13/79	16,200	472,986	.034252
HEF-0548	Donahoe, Carl	4/1/80-9/30/80	750	74,252	.010101
HEF-0549	Horner, Steve	8/1/79-10/19/79	3,450	295,859	.011981
HEF-0550	Asman, Steve	8/1/79-11/13/79	2,000	127,982	.015627
HEF-0551	Campbell, James	8/1/79-8/10/80	24,000	1,116,899	.021486
HEF-0552	McGovern, Terry	12/15/79-7/7/80	6,293	218,844	.028749
HEF-0553	Nelsen, Edward	8/1/79-11/8/79	9,300	179,174	.051905
HEF-0554	Terrazas, Frank	8/1/79-1/30/80	2,500	176,126	.014194
HEF-0555	Macor, Walter	12/1/79-5/22/80	5,240	250,533	.021749
HEF-0556	Torrella, Al	8/1/79-12/7/79	9,100	269,653	.033722

[FR Doc. 85-8369 Filed 4-5-85; 8:45 am]
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Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $5,577.96 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Crystal Petroleum of Corpus Christi, Texas. (Case Number HEF-0050).

DATE AND ADDRESS: Comments must be filed on or before May 8, 1985 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to the above case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Crystal Petroleum (Crystal) of Corpus Christi, Texas. The consent order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The consent order settled possible pricing violations in Crystal's sales of refined petroleum products to customers during the period June 13, 1973 through March 31, 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Crystal pursuant to the consent order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Crystal who establish that they were injured by Crystal's alleged overcharges. Such customers will receive refunds proportionate to the volume of petroleum products they purchased from Crystal. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: March 28, 1985.

George B. Breznay,

Director Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Crystal Petroleum.
Date of Filing: October 13, 1983.
Case Number: HEF-0059.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Crystal Petroleum (Crystal) of Corpus Christi, Texas.

I. Background

Crystal is a "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. An ERA audit of Crystal's operations during the period June 13, 1973 through March 31, 1980 (the audit period) revealed possible violations of the price regulations promulgated under the Economic Stabilization Act of 1970 and of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Crystal and the DOE regarding sales of motor gasoline and No. 2 diesel fuel during the audit period, the firm entered into a Consent Order with the DOE on September 29, 1981. Under the terms of the Consent Order, the firm agreed to refund $98,603.33 directly to its end-user customers by cash payments or credit memoranda and $4,998.01 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Crystal does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Crystal consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers who were injured by Crystal's alleged price violations. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any overcharges made by Crystal during the consent order period.[1] Since the end-user customers who were injured by Crystal's alleged overcharges were to receive direct refunds from Crystal under the terms of the Consent Order, we believe that all of the customers who will be eligible for refunds in the present proceeding are petroleum product resellers, i.e., retailers and wholesalers.

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges on which the Consent Order fund is based were dispersed equally in all of Crystal's sales of motor gasoline and No. 2 diesel fuel to resellers during the Consent Order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

In the present case, although the ERA's audit records identify some resellers who purchased motor gasoline or No. 2 diesel fuel from Crystal, it is impossible from those records to identify all of Crystal's reseller customers. Moreover, the audit records do not list any alleged overcharge amounts by customer. Consequently, the available information in this case is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. We therefore propose to use the volumetirc method to allocate the consent order fund. To determine the volumetric factor, the escrowed consent order funds ($5,577.98) will be divided by the estimated total volume of motor gasoline and No. 2 diesel fuel sold by Crystal to resellers during the audit period (6,955,444 gallons), resulting in a per gallon refund amount of $0.0008020.[2]

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[1] In the present case, the consent order period is coterminous with the audit period (June 13, 1973 through Mar. 31, 1980).

[2] Although the Consent Order required Crystal to pay $4,998.01 to the DOE, Crystal paid a total of $5,577.98 to the DOE escrow account as a result of interest which had accrued on that amount prior to payment. The volumetric factor has been calculated based on this figure. In addition, since the ERA audit files do not list the volumes of motor gasoline and No. 2 diesel fuel sold by Crystal to resellers during the entire consent order period, we have

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The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

The second presumption we propose to establish involves small claims made by resellers. In general, resellers who file refund claims in Subpart V proceedings are required to demonstrate that they absorbed the alleged overcharges. *See, e.g., Vickers.* While there are a variety of ways to make this showing, they must generally demonstrate that at the time they purchased petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. *Vickers Energy Corp./ Standard Oil Co. (Indiana),* 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./ Koch Industries, Inc.,* 10 DOE ¶ 85,038 (1982). However, in this case, as in prior refund proceedings, we will adopt a presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Order. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered petroleum products from Crystal and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below $5,000.[3] *See Marion Corp.,* 12 DOE ¶ 85,014 (1984). Since the entire consent order amount to be distributed in the present proceeding is only slightly more than $5,000, we find it extremely likely that all reseller claimants will fail within the threshold level.

We further proposed to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. We will publish copies of the proposed and final Decisions in the **Federal Register.** If appropriate, we also intend to publicize this proceeding in local newspapers in the areas wher Crystal conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Crystal Petroleum pursuant to a Consent Order executed on September 29, 1981 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-8385 Filed 4-5-85; 8:45 am]

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calculated the total sales volume figure by extrapolating sales figures from the available audit data.

[3] We also propose that resellers who made only spot purchases from Crystal be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased price unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97. *See Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claims are based.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $14,450.18 (plus accrued interest) obtained as the result of Consent Orders which the DOE entered into with J.E. DeWitt, Inc. (DeWitt) of South El Monte, California, and Hines Oil Company (Hines) of Murphysboro, Illinois. The funds will be available to customers who purchased motor gasoline from DeWitt or Hines during the relevant consent order period.

DATE AND ADDRESS: Applications for refund must be postmarked on or before July 8, 1985 and should be addressed to either DeWitt Consent Order Refund Proceeding (Case No. HEF-0082) or Hines Consent Order Refund Proceeding (Case No. HEF-0092), Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to Consent Orders entered into by J.E. DeWitt, Inc. (DeWitt) of South El Monte, California and Hines Oil Company (Hines) of Murphysboro, Illinois. The Consent Orders settled possible pricing and allocation violations with respect to sales of motor gasoline by DeWitt and Hines during the relevant consent order periods. Under the terms of the Consent Orders, $13,450.18 has been remitted to the DOE

by DeWitt, and $1,000.00 has been remitted to the DOE by Hines. These funds are being held in interest-bearing escrow accounts pending determination of their proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the two consent order funds. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on January 10, 1985. 50 FR 4782 (February 1, 1985).

As the Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased motor gasoline from DeWitt during the period May 1, 1979 through July 31, 1979, or from Hines during the period March 1, 1979 through July 31, 1979. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: March 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: J.E. DeWitt, Inc.; and Hines Oil Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0062; and HEF-0082

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to Consent Orders entered into by the DOE and the following parties: J.E. DeWitt, Inc. (DeWitt) of South El Monte, California and Hines Oil Company (Hines) of Murphysboro, Illinois (hereinafter collectively referred to as the consent order firms).

I. Background

Each of the consent order firms is a "reseller-retailer" of motor gasoline, as this term was defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes with the DOE concerning certain sales of refined petroleum products. Each Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, each Consent Order states that the consent order firm does not admit that it committed such violations.

Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability regarding sales to their respective customers during the consent order periods. The firms' payments are currently being held by the DOE in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the settlement amounts, the products covered by the Consent Orders, and the dates of the consent order periods are set forth in Appendix A to this Decision and Order.

On January 10, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order funds. 50 FR 4782 (February 1, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any overcharges made by one of the consent order firms during the relevant consent order period.

A copy of the PD&O was published in the **Federal Register** on February 1, 1985, and comments were solicited regarding the proposed refund procedures. While none of the consent order firms' customers filed comments on the proposed procedures, comments were filed on behalf of the State of California. These comments, however, discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceedings. This Decision sets forth the information that a purchaser of petroleum products from one of the consent order firms should submit in an Application for Refund in order to establish eligibility for a portion of the consent order funds. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by California's comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid. Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amount of such person's injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the two consent order funds. We will therefore grant the ERA's petition and assume jurisdiction over the distribution of these funds.

III. Determination of Injury and Refund Amounts

As proposed in the PD&O, reseller claimants will be required to demonstrate that they did not pass on to their customers the price increases implemented by one of the consent order firms. *See, e.g., Vickers.* Accordingly, in order to qualify for a refund, resellers of refined petroleum products purchased from one of the consent order firms must show that

during the consent order period market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices.[1] As we noted in the PD&O, however, the maintenance of a bank will not, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

We will also adopt certain presumptions proposed in the PS&O which have been used in many prior refund cases. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by the consent order firms during the relevant consent order periods. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[2]

In the PD&O, we stated that the information available in the ERA audit files is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. In the case of DeWitt, the ERA audit files do not identify any customers who purchased motor gasoline from DeWitt during the consent order period. In the case of Hines, the ERA audit files identify a number of customers who purchased motor gasoline directly from Hines during the audit period (*see* Appendix B), but do not set forth any specific alleged overcharge amounts for these customers. Accordingly, we will use the volumetric method to allocate the consent order funds. The volumetric refund amounts, determined by dividing each consent order fund by the estimated total volume of petroleum products sold by the consent order firm during the relevant consent order period, are set forth in Appendix A. In each case, a successful applicant will receive a volumetric refund amount for each gallon of motor gasoline which it purchased from the consent order firm.[3] The interest which has accrued on the money in each escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in each Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase motor gasoline from one of the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[4] Previous OHA refund decisions

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[1] Some of the motor gasoline sales covered by the Consent Orders occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for motor gasoline retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers will not be required to submit bank information concerning any purchases of motor gasoline they may have made after July 15, 1979.

[2] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of the pricing practices of one of the consent order firms during the relevant audit period. A refund application for an amount greater than that calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶85,073 at 88,235-34 (1984).

[3] The Hines Consent Order required Hines to refund $6,697.69 to its end-user (consumer) customers through price rollbacks. The monies to be paid to the DOE by Hines were designated for distribution to resellers. Accordingly, we have based the volumetric refund level for Hines solely on Hines' sales volumes to resellers, which we have extrapolated from total sales volumes shown in the ERA audit files. In view of the elimination of motor gasoline price controls less than a month after the Hines Consent Order was executed, it is unlikely that Hines' end-user customers received significant refunds through the price rollbacks provided for in the Consent Order. We are therefore permitting end-users to apply for refunds in this proceeding. We will not, however, make any adjustments to the per gallon volumetric level, since we expect that few, if any, end-users will be eligible for refunds, (*see* footnote 6).

[4] Resellers who made only spot purchases from one of the consent order firms will be presumed to have suffered no injury. Accordingly, they will be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 88,398-97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claims are based.

have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. As proposed in the PD&O, the same approach will be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the volumetric refund amounts are fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.[5] *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of motor gasoline purchased from one of the consent order firms need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We shall also adopt our proposal to establish a minimum amount of $15 for refund claims.[6] We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the two consent order funds. Accordingly, we shall now accept applications for refunds from customers who purchased motor gasoline from one of the consent order firms during the relevant consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of motor gasoline purchased from one of the consent order firms for which it is claiming a refund. The applicant must also state how it used the motor gasoline, i.e., whether it was a reseller or an ultimate consumer. Retailers and resellers who request refunds in excess of the $5,000 threshold amount must submit evidence to establish that they did not pass on the alleged overcharges to their customers. In addition, each applicant must state whether there has been a change in ownership of the firm since the relevant audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Applicants should also report any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to either the DeWitt Consent Order Fund, Case No. HEF-0062 or the Hines Consent Order Fund, Case No. HEF-0092. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from funds remitted to the Department of Energy by the consent order firms listed in Appendix A to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: March 27, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

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[5] In the case of Hines, the entire consent order amount is less than $5,000. We will therefore presume that all reseller customers of Hines gasoline during the consent order period were injured by the pricing practices settled in the Hines Consent Order. Accordingly, these customers will not be required to submit additional evidence of injury beyond purchase volumes in order to qualify for a refund. In the case of DeWitt, any reseller whose potential refund exceeds the threshold level may elect to apply for a refund based on the threshold amount.

[6] Under the volumetric refund level set forth in Appendix A, a customer of Hines gasoline would have to have purchased more than 6,000 gallons of motor gasoline during the Hines consent order period in order to be eligible for a refund above the $15 minimum refund amount. It is therefore unlikely that any end-user will be eligible for a refund. However, any end-user who purchased more than 6,000 gallons of Hines gasoline during the House consent order period may apply for a refund.

APPENDIX A

Name of firm	Consent order period	Consent order amount	Product covered	Volumetric amount
J.E. DeWitt, Inc., P.O. Box 3867, South El Monte, CA 91733	May 1, 1979 to July 31, 1979	$13,450.18	Motor gasoline	80.031414
Hines Oil Co., 207 23d St., Murphysboro, IL 62966	May 19, 1979 to July 31, 1979	$1,000.00	Operation by periods	0.002487

Appendix B.—List of Customers

DeWitt Oil, Inc.

No identified customers

Hines Oil Company

Hill's Sunoco, Walnut Street, Murphysboro, IL 62966
Kincaid Boat & Motor, Walnut Street, Murphysboro, IL 62966
Kincaid Village Marina, Linkaid Lake, Murphysboro, IL 62966
Interstate Shell,[1] Interstate 57 & Youngs Street Exit, Marion, IL 62959
Mark-Jerry's Sunoco, [1] Route 51, Tamaroa, IL 62888
Rod's-Stern's S.S., Route 51, Elkville, IL 62932
Royal's Sunoco, Route 149, Royalton, IL 62983
Ted Brown's S.S., Route 149, Hurst, IL 62949
Vergennes Petroleum, Route 13 & 127, Vergennes, IL 62994
West End Sunoco, Route 51, Dubois, IL 62831
Westown Shell, Route 13, Carbondale, IL 62901
White's Sunoco, 127 South, Murphysboro, IL 62966
Wright Tire S.S., 14 Street, Murphysboro, IL 62966

[FR Doc. 85-8388 Filed 4-5-85; 8:45 am]
BILLING CODE 6450-01-M

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment for Georgia-Alabama System of Projects, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama System of Projects effective for a five-year period, October 1, 1985, through September 30, 1990.

Opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before July 9, 1985. A public information and comment forum will be held in East Point, Georgia, on May 16, 1985. Persons desiring to speak at the forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum for the Georgia-Alabama System of Projects will begin at 10 a.m. on May 16, 1985, in the Hartsfield Conference Room at the Holiday Inn, North Atlanta Airport, 1380 Virginia Avenue, East Point, Georgia 30344.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-3261.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) by order issued December 17, 1984, in Docket No. EF84-3011, confirmed and approved Wholesale Power Rate Schedules GAMF-1-D, GAMF-2-D, ALA-1-D, MISS-1-D, SC-1-D, SC-2-D, CAR-1-E, and CAR-2-D applicable to Georgia-Alabama System of Projects' power for a period ending September 30, 1985.

Southeastern is proposing to establish long-term rates which adhere to the principles contained in the negotiated contracts that implement the written power marketing policy for the Georgia-Alabama System of Projects which was issued October 1, 1980, 45 FR 65140.

Discussion

Existing rate schedules are predicated upon a June 1984 repayment study and other supporting data all of which are contained in FERC Docket No. EF84-3011. The current repayment study prepared in March of 1985 shows that existing rates are not adequate to recover all costs required by present repayment criteria.

A revised repayment study with revenue increases varying from $16,230,000 in FY 1986 to $41,559,000 in FY 1990 and future years over the current repayment study demonstrates that all costs are paid within their repayment life. Therefore, Southeastern is proposing to revise existing rates so as to recover these additional increases which average $26,444,000 for the 5-year evaluation period. The increase is primarily due to escalated costs at the generating projects, the inclusion of the conventional units of the Richard B. Russell Project, and increased wheeling costs. The overall increase in rates averages 44 percent. Southeastern is proposing to establish a capacity charge and an energy charge which collectively recover the costs at the generating projects, a transmission charge which passes the transmission costs directly to affected customers, and an integration charge which spreads the cost of tandem transmission over all of the preference customers. It is proposed that revised rate schedules applicable to customers purchasing power from the Georgia-Alabama System of Projects contain the following unit rates:

PROPOSED UNIT RATES

[Capacity charge per kilowatt per month]

Preference Customers in:	
—Duke area	$1.94
—South Carolina Electric and Gas Area (this rate may be adjusted for reserves or losses if necessary)	1.56
—Southern Company area for the period:	
Oct. 1985 through May 1986	1.58
June 1986 through Sept. 1990	1.74
—Alabama Electric Cooperative, South Mississippi Electric Power Agency and South Carolina Public Service Authority	1.52
—South Carolina Public Service Authority area	1.56
Investor owned utilities	1.59
Energy charge mills/kWh	4.66
Integration charge per kilowatt per month	.22

[1] Copies of the PD&O were sent to these firms at the above addresses, but were returned to this Office unclaimed. Accordingly, we will not send copies of the final Decision and Order to these firms, but they may still submit an application for refund in the present proceeding.

TRANSMISSION CHARGES

	Sept. 1985 through May 1986	June 1986 through May 1987	June 1987 through May 1988	June 1988 through May 1989
Preference Customers in:				
Georgia Power Co. area	$0.50	$0.79	$1.05	$1.33
Alabama Power Co. area	.29	.46	.58	.78
Mississippi Power Co. area	.19	.29	.37	.49
Gulf Power Co. area	.36	.56	.72	.95
SMEPA	.14	.23	.31	.42

Transmission rates for the Georgia Power, Alabama Power, Mississippi Power, Gulf Power areas and SMEPA for the period June 1989 through September 1990 will be the "cost of service" charge that the wheeling utility charges SEPA, less $.11 per kilowatt for use of facilities revenues from the Southern Companies.

Transmission rates for the other preference customers in the South Carolina Public Service Authority area, and for the preference customers in the Duke area and the South Carolina Electric and Gas area will be the "cost of service" charge that the wheeling utility charges SEPA. These rates will be subject to revision periodically and will be passed directly to the preference customer at the time that the utility increases the charge to SEPA.

The referenced March 1985 current repayment study along with a revised repayment study dated March 1985 and previous system repayment studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635. Proposed Rate Schedules GA–1–A, GA–2–A, ALA–3–A, MISS–2–A, GU–1–A, GAMF–2–E, ALA–1–E, MISS–1–E, SC–1–E, SC–2–E, CAR–1–F, and SCE–1–A are also available.

Issued at Elberton, Georgia, March 28, 1985.

Kenelm E. Rucker,

Acting Administrator.

[FR Doc. 85–8313 Filed 4–5–85; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Mead-Northwest Intertie; Discussion on Study Report Entitled Completing the Intertie; Correction

AGENCY: Western Area Power Administration, DOE.

ACTION: Correction to date of public information forum on Spring Canyon Pumped Storage Project, mentioned in 50 FR 12619, March 29, 1985 (FR Doc. 85–7487).

SUMMARY: In the referenced **Federal Register** notice, reference was made to a public information forum to be held by the Bureau of Reclamation and the Western Area Power Administration on the transmission and marketing of the Bureau's Spring Canyon Pumped Storage Project. In the third column, second paragraph, fourth line, change "April 15, 1985" to "April 23, 1985."

Further information about that forum can be found in the **Federal Register** of March 29, 1985 (50 FR 12622).

Issued in Washington, D.C., April 1, 1985.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 85–8392 Filed 4–5–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OW–2–FRI–2813–7]

Draft General NPDES Permit for Individual Dischargers into La Parguera Bay, PR

AGENCY: Environmental Protection Agency.

ACTION: Notice of Draft General NPDES Permit.

SUMMARY: The Regional Administrator of Region II is today giving Notice of a Draft General NPDES Permit for certain dischargers of domestic waste into La Parguera Bay in Lajas, Puerto Rico.

Activities covered by a draft general permit involves similar types of operations which discharge the same types of wastes and require the same discharge (effluent) limitations and monitoring requirements. In the La Parguera area of Puerto Rico, Region II, there are currently over 175 private dwellings discharging untreated wastewater without an NPDES permit.

For these reasons, Region II believes that discharges from these activities are more appropriately controlled under a general permit than under individual permits. To obtain approval to discharge under this general permit Region II is requiring owner/operators to submit an NPDES permit application or a notice of intent to be covered.

DATES: Public comments on this general permit may be sent to the address below no later than May 23, 1985. During this time, any interested person may request a public hearing on the draft general permit. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

ADDRESS: Public comments and hearing requests, if any, should be sent to: Dr. Richard A. Baker, Chief, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: For further information and copies of the draft general permit and fact sheets contact: Mr. Weems L. Clevenger, Director, Caribbean Field Office, U.S. Environmental Protection Agency, P.O. Box 792, San Juan, Puerto Rico 00902–0792, or by telephone at, (809) 725–7825.

The fact sheet sets forth the principal facts and the significant factual, legal, and policy questions considered in the development of the draft general permit. A copy of the proposed permit is reprinted as required in this Notice.

FACT SHEET

I. Background Information

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits to date have generally been issued to individual dischargers, EPA's regulations authorize the issuance of "general permits" to categories of discharges. See 40 CFR 122.59 (45 FR 33447, May 19, 1980). EPA may issue a single general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollutant control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same type of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Regional Administrator, are more appropriately controlled under a general permit than under individual permits.

Violation of a condition of a general permit constitutes a violation of the Clean Water Act and subjects the discharger to the penalties specified in section 309 of the Act.

Any owner or operator authorized by a general permit may be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting an NPDES permit application, together with reasons supporting the request, no later than 90 days after publication by EPA of the final general permit in the Federal Register. The Regional Administrator may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Regional Administrator to take this action. However, individual permits will not be issued for direct dischargers into La Parguera Bay covered by a general permit unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Regional Administrator may consider the issuance of individual permits when:

1. The discharge(s) is a significant contributor of pollutants;
2. The discharge(s) is not in compliance with the terms and conditions of the general permit;
3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
4. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;
5. A Water Quality Management plan containing requirements applicable to such point sources is approved; or
6. The requirements listed in the previous paragraphs are not met.

B. General Permit Covering Individual Homes

In the La Parguera area of Puerto Rico there are currently approximately 175 dwellings built along the shore discharging untreated wastewater without an NPDES permit. The large number of existing unpermitted dischargers into La Parguera Bay with similar effluent characteristics has prompted EPA to prepare this draft general permit for public review and comment. When issued, this permit will enable those facilities to maintain compliance with the Act and will extend environmental and regulatory controls to a larger number of dischargers. This permit does not allow discharges into the bioluminescent bays adjacent to the La Parguera Bay. The discharge limitations in this permit are mandated by approved Commonwealth Water Quality Standards. La Parguera Bay has been designated as SB waters.

II. Nature and Effect of Discharge

This permit will not allow any discharge which would violate State Water Quality Standards. Section 309(a)(5)(A) Administrative Orders will be issued to individual dischargers which will include a schedule for ceasing discharge or providing treatment and complying with the permit within one year of issuance.

Presently, the "Casetas" ("Casetas" are defined as the homes along the shore of La Parguera Bay) discharge untreated domestic wastewater. Depending whether the discharge is "grey water" (i.e., bath, shower and galley waste) or black water (i.e., sanitary waste) the BOD_5, total suspended solids and settleable solids would range from very low to relatively high.

III. Ocean Discharge Criteria

Section 403 of the Act requires that an NPDES permit for a discharge into ocean waters be issued in compliance with EPA's guidelines for determining the degradation of marine waters. The final 403(c) Ocean Discharge Criteria guidelines published on October 3, 1980, set forth specific criteria for a determination of unreasonable degradation that must be addressed prior to the issuance of an NPDES permit.

The Regional Administrator has determined that the discharges authorized by this permit will not cause unreasonble degradation of the marine environment. The majority of the discharges are inside the baseline of the territorial sea and are therefore not subject to section 403(c) review. Those discharges outside of the baseline meeting the terms and conditions of this permit will meet Commonwealth water quality standards, therefore, these discharges will not cause unreasonable degradation of the marine environment.

IV. Environmental Fate and Effects

The discharge of untreated domestic waste results in increased suspended solids, turbidity, settleable solids, floating solids, oil and grease which is presently causing local water quality deterioration and may also have adverse impact on the neighboring bioluminescent bay. In order to comply with local water quality standards the current untreated discharges must cease.

V. Conditions in the General Permit

Facilities which are not covered by either a general permit or an individual permit are not authorized to discharge into navigable waters, and enforcement action may ensue for discharging without an NPDES permit under the Clean Water Act.

A. Geographic Area

The proposed general permit will authorize discharges from Casetas within the area defined on page 1 of the permit to the "waters of the United States" as defined at 40 CFR 122.2.

B. Request To Be Covered by General Permit

Owners or operators of Casetas located in the permit area must make a written request to the Regional Administrator for authorization to discharge under the general permit. Unless otherwise notified in writing by the Regional Administrator within 45 days after submission of their request, these owners or operators will be authorized to discharge under the general permit.

Owners or operators of existing Casetas must submit their written request within 45 days of issuance of the final general permit. Those owners or operators which have already submitted an NPDES permit application will be covered under the general permit and therefore need not submit a written request. Facilities constructed after the effective date of the permit will not be covered under the general permit. Facilities constructed after the effective date of the general permit must apply for an individual NPDES permit. All requests shall include the name and legal address of the owner or operator, the name and location of the Caseta and a description of sewage disposal method proposed to be used.

C. Effluent Limitations and Best Management Practices

All permits issued or effective after July 1, 1984, are required by section 301(b)(2) of the Act to contain effluent limitations representing Best Conventional Pollutant Control Technology (BCT) for all categories and classes of point sources. BCT effluent limits apply to conventional pollutants (pH, BOD, oil and grease, suspended solids, and fecal coliform). Permits effective or issued after July 1, 1984, are also required to contain effluent limitations which control toxic (40 CFR 401.15) pollutants to the level achievable by means of the Best Available Technology Economically Achievable (BAT).

D. Monitoring and Reporting Requirements

The general permit will require annual monitoring of the discharge when the Caseta is in use. Discharge Monitoring reports are due on January 15 of each year. A report notifying EPA of the method used to comply with the permit is due 45 days after the effective date of the permit.

VI. Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the state in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law, including water quality standards.

B. Water Quality Standards

Section 301(b)(1)(c) of the Act requires that NPDES permits contain limitations necessary to ensure compliance with water quality standards established pursuant to State law or regulations, or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. This proposed general permit contains effluent limitations which, in EPA's opinion, meet the requirement of section 301(b)(1)(c) including the water quality standards of the Commonwealth of Puerto Rico.

The Puerto Rico Environmental Quality Board (EQB) has determined that most if not all of the discharges covered by this general permit are Class SB waters. Although the EQB has declined to provide a water quality certificate for this general permit the effluent limitations included in the general permit are identical to effluent limitations for other permits for discharge to Class SB waters. These effluent limitations are consistent with Article 2 of EQB's recently revised water quality standards.

C. Endangered Species

The Endangered Species Act (ESA) requires that each Federal Agency shall ensure that any of its actions, such as permit issuance, do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modifications of their habitat.

Based on available information on endangered species to be found in the geographic area of this permit, including environmental impact statements for other activities in the area, EPA has determined that this action will not endanger the species involved, nor result in destruction of their habitats. The following rare and endangered species are known to occur in La Parguera: the West Indian Manatee, the hawksbill sea turtle, the leatherback sea turtle and the brown pelican.

EPA is requesting comments from the National Marine Fisheries Service and the U.S. Fish and Wildlife Service and will consider all comments received in making the final permit decision. EPA will initiate consultation should new information reveal impacts not previously considered, should the activities be modified in a manner beyond the scope of the original consultations, or should the activities affect a newly listed endangered species.

D. Coastal Zone Management

The Coastal Zone Management Act (CZMA) and its implementing regulations (15 CFR Part 930) require that any Federally licensed or permitted activity affecting the coastal zone of a State with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with that CZMP (section 307(c)(3)(A) Subpart D).

EPA has determined that the activities authorized by this general NPDES permit are consistent with the Puerto Rico Coastal Zone Management Plan. The proposed permit and consistency certification will be submitted to the Commonwealth of Puerto Rico for review at the time of public notice issuance. The requirements for State Coastal Zone Management review and approval must be satisfied before this general permit may be issued.

E. The Marine Protection, Research, and Sanctuaries Act

The Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. The discharges authorized by this permit are Clean Water Act section 402 point source discharges, not discharges covered by the MPRSA. In addition, the MPRSA establishes the Marine Sanctuaries Program implemented by the National Oceanic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological, or aesthetic values.

The Agency has contacted the appropriate NOAA office and has been informed that the proposed permit area is an active candidate for marine sanctuary designation. EPA has determined that the activities authorized by this general NPDES permit are consistent with NOAA regulations concerning marine sanctuaries. NOAA has indicated to EPA that as long as the permit is consistent with state water quality standards it has no objections to the issuance of the permit.

F. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general NPDES permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection and notification requirements of this permit have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program under provisions of the Act. The final general NPDES permit determination will include a response to any OMB or public comments on information collection requirements in the permit.

The final general NPDES permit determination will include a response to any OMB or public comments on information collection requirements in the permit.

G. Executive Order 12291

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

H. Regulatory Flexibility Act

The general permit is for private dwellings. The private dwellings are not small entities under the Small Business regulations for the purpose of the Regulatory Flexibility Act. Therefore, the provisions of that Act do not apply to this permit.

Dated: March 8, 1985.

Christopher J. Daggett,

Regional Administrator, U.S. Environmental Protection Agency Region II.

[FR Doc. 85-8332 Filed 4-5-85; 8:45 am]

BILLING CODE 6560-50-M

[OSWER-FRL-2813-8]

Supplemental Procedures for Establishing Start Dates of Comment Period for Superfund Activities Subject to Executive Order 12372

On December 6, 1983, EPA published a notice (48 FR 54692) stating that documents to be reviewed under the intergovernmental review process for activities under the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980 (CERCLA) would differ from those reviewed for other EPA programs. EPA identified the major activities under the CERCLA program that were to be subject to those procedures. The activities identified were Remedial Investigation/Feasibility Study (RI/FS), and Remedial Design/Remedial Action (RD/RA). This notice advises affected parties that EPA is adding Preliminary Assessments (PAs) and Site Inspections (SIs) to the list of activities subject to the procedures. This notice also identifies the documents to be reviewed under the intergovernmental review process for PA and SI activities.

The procedures for intergovernmental review of PA/SI will be the same as those detailed in the **Federal Register** notice of December 6, 1983, for RI/FS: As is the case for RI/FSs, the sixty (60) day comment period for the PA/SI program will begin five (5) days after the date that the appropriate State pollution control agency or EPA Regional Office sends a letter to the State Process explaining the proposed activity. The letter will describe the purpose and the tasks involved in conducting the activity, the number of PAs and/or SIs to be undertaken, and the estimated cost of each activity. In situations where a State Process does not exist or the State Process does not include the CERCLA activities, the letter must be sent to officials of directly affected government entities (i.e., the Governor of the State, officials of directly affected areawide and Regional planning agencies and officials of directly affected local governments). If there are substantial differences between the work described in the letter and the work described in the State's application or in the EPA field investigation team's PA/SI accomplishment plan for the year, either the State agency or EPA will provide another 60-day comment period for intergovernmental review.

For Further Information Contact: Ms. Cristina Griffin, Office of Emergency and Remedial Response, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Phone: (202) 382-2443.

Dated: March 29, 1985.

Jack W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 85-8328 Filed 4-5-85; 8:45 am]

BILLING CODE 6560-50-M

[A-2-FRL-2813-6]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that between July 1, 1984, and January 31, 1985, the United States Environmental Protection Agency (EPA), Region II Office issued two final determinations relative to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. this notice also announces final actions taken by PSD delegated states of New York and New Jersey with respect to the PSD program for the same period. The New York State Department of Environmental Conservation (NYSDEC) issued thirteen final PSD determinations and the New Jersey Department of Environmental Protection (NJDEP) issued three final PSD determinations.

DATES: The effective dates for the above determinations are delineated in the chart below (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT:

EPA Actions

Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, United States Environmental Protection Agency, Region II Office, 26 Federal Plaza—Room 432, New York, NY 10278, (212) 264-4711

NYSDEC Actions

Mr. James B. Harrington, P.E., Senior Sanitary Engineer, Source Review and Regional Support Section, Division of Air Resources, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-0001, (518) 457-2018

NJDEP Actions

Mr. William O'Sullivan, Bureau of Engineering and Technology, Division of Environmental Quality, New Jersey Department of Environmental Protection, John Fitch Plaza, CN 027, Trenton, New Jersey 08625, (609) 984-6721.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA NYSDEC, and NJDEP have made final determinations relative to the sources listed below:

Name of applicant	Location	Project proposal	Reviewing agency	Final action	Date of final action
E I. duPont De Nemours & Company, Inc..	Gibbstown, New Jersey	Installation of two Babcock and Wilcox boilers.	NJDEP[1]	PSD non-applicability determination.	July 12, 1984.
Corps of Engineers	Fort Drum Jefferson, New York	Construction of 3 wood/oil-fired stationary combustion sources.	NYSDEC	do	July 18, 1984.
Joseph L. Mancuso and Sons, Inc.	Batavia, New York	Construction of a new coal/oil/gas-fired boiler.	NYSDEC	do	Sept. 5, 1984.
Buffalo General Hospital	Buffalo, New York	Installation of a coal-fired boiler	NYSDEC	do	Sept. 19, 1984.
Foster Wheeler Energy Corp	North Dansville, New York	Construction of a petroleum coke and a coal-fired combustion test facility.	NYSDEC	do	Sept. 26, 1984.
Crucible Specialty Metals	Geddes, New York	Installation of control devices to reduce fugitive emissions.	NYSDEC	do	Oct. 10, 1984.
Gernatt Asphalt Products, Inc.	Collins, New York	Construction of a drum-mix asphalt plant.	NYSDEC	do	Oct.
Westchester County Industrial Development Agency.	Charles Point Peekskill, New York	Construction of 3 mass burning refuse incinerators.	EPA Region II	PSD permit modification approval	Oct. 16, 1984.
General Electric Research and Development Center.	Schenectady, New York	Construction of 1 oil-fired boiler	NYSDEC	Final PSD permit approval	Nov. 25, 1984.
Islip Resource Recovery Project	Islip, New York	Resource recovery facility (2 incinerators)	NYSDEC	do	Dec. 4, 1984.
Buffalo Crushed Stone, Inc.	Cheektowaga, New York	Operation of an additional aggregate separator screen at the existing stone crushing facility.	NYSDEC	PSD non-applicability determination.	Dec. 5, 1984.
IBM Corporation	Poughkeepsie, New York	Installation of an emergency generator	NYSDEC	do	Dec. 26, 1984.
Dutchess County	do	Construction of a resource recovery facility (2 incinerators).	NYSDEC	Final PSD permit approval determination.	Jan. 2, 1985.
Ciba-Giegy Corporation	Summit, New Jersey	Cogeneration system (gas turbine)	NJDEP	PSD non-applicability Determination.	Jan. 3, 1985
City of Vineland	Vineland, New Jersey	Conversion from oil burning to coal burning in Unit 9, Howard Down Station.	NJDEP	do	Jan. 4, 1985.
Seneca Foods, Corp.	East Williamson, New York	Operation of an existing No. 6 oil-fired boiler.	NYSDEC	do	Jan. 16, 1985.
Jamestown Macadam, Inc.	Cassadaga, New York	Construction of a drum-mix asphalt plant	NYSDEC	do	Jan. 23, 1985.
American Motor Inns, Inc. (Frenchman's Reef Holiday Inn Beach Resort).	St. Thomas, U.S. Virgin Islands	Construction/operation of several diesel engines.	EPA Region II	Final PSD permit approval	Jan. 25, 1985.

[1] The NYSDEC issued a PSD permit to Dutchess County on January 6, 1984. This permit was subsequently appealed to the EPA Administrator by Ms. Joan Ferretti on behalf of the South Road Civic Association on January 19, 1984. The appeal stayed the "effectiveness" of the permit. The Office of the Administrator reviewed the issues raised by the petitioners and on December 4, 1984, the Administrator issued an order denying the petition on all grounds. The order directed the NYSDEC to issue the final permit decision and the EPA Region II Office to publish the final permit decision in the FEDERAL REGISTER. On January 2, 1985, the NYSDEC issued the final permit decision thereby making the permit immediately effective (Reference: Letter from Ralph Manner Jr., Regional Permit Administrator, [NYSDEC] Region 3, to Ms. Lucille Pattison, County Executive, Dutchess County, Office of the Executive). This FEDERAL REGISTER notice announces the final NYSDEC permit decision on Dutchess County.

This notice lists only the sources that have received final PSD determinations. Copies of these determinations and related materials are available for public inspection at the aforementioned reviewing agencies/locations.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these deteminations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: March 22, 1985.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 85-8333 Filed 4-5-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee for the 1987 ITU World Administrative Radio Conference for the Mobile Service; Meeting

April 2, 1985.

The second meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Tuesday, May 28, 1985, at 9:30 a.m., in the Theater of COMSAT Headquarters, 950 L'Enfant Plaza South, SW, Washington, D.C.

The meeting agenda is:

1. Approval of meeting agenda.
2. Approval of the summary record of May 7, 1985 meeting.
3. Prepare and approve comments relative to items recommended for inclusion on the 1987 Mobile WARC agenda.
4. Other business.
5. Selection of next meeting date.

Anyone desiring further information should contract Gordon Hempton, FCC/OST at (202) 632-7073. These meetings are open to the public.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-8344 Filed 4-5-85; 8:45 am]

BILLING CODE 6712-01-M

Technical Subgroup of Radio Advisory Committee Resumes Meeting April 2, 1985

The technical subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting Tuesday April 2, 1985, at 10:45 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW., Washington, D.C.

The subgroup will continue its consideration of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band.

The subgroup also may discuss matters relating to the ongoing discussions between the United States and Mexico looking toward the development of a new bilateral AM Agreement. In addition, the Subgroup also may consider other relevant matters of concern to the participants at the meeting.

The meeting, a continuing one, will be resumed after the April 2, 1985, session at such time and place as is decided at that session.

All meetings of the Technical Subgroup are open to the public. All interested parties are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Mr. Wallace E. Johnson, at (703) 841–0500.

William J. Tricarico,

Secretary, Federal Communication Commission.

[FR Doc. 85–8343 Filed 4–5–85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC–429]

Worth Federal Savings & Loan Association, Sylvester, GA; Final Action Approval of Conversion Application

Date: March 29, 1985.

Notice is hereby given that on January 29, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Worth Federal Savings and Loan Association, Sylvester, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85–8296 Filed 4–5–85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

BNH Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14) of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 2, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BNH Bancshares, Inc.*, New Haven, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of New Haven, New Haven, Connecticut.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *CNB Corporation*, Conway, South Carolina; to become a bank holding company by acquiring 95 percent or more of the voting shares of The Conway National Bank, Conway, South Carolina.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Cumberland Bancorp, Inc.*, Crossville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Cumberland County Bank, Crossville, Tennessee.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Desoto Banschares, Inc.*, Desoto, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Desoto, Desoto, Illinois.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Independent Investment Group, Inc.*, Vancouver, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of First Independent Bank, Vancouver, Washington.

Board of Governors of the Federal Reserve System.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8304 Filed 4-5-85; 8:45 am]

BILLING CODE 6201-01-M

Baybanks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activites will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting woud be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *BayBanks, Inc.*, Boston, Massachusetts; to engage *de novo* through its subsidiary, BayBanks Life Insurance Company, Phoenix, Arizona, in the activity of underwriting, as a reinsurer, credit, life insurance that is directly related to extensions of credit by the banking subsidiaries of BayBanks, Inc. This activity would be conducted in the Commonwealth of Massachusetts.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle, Chicago, Illinois 60690:

1. *Republic Bancorp Co.*, Chicago, Illinois; to engage *de novo* directly in the activities of making, acquiring and servicing commercial loans or other extensions of commercial credit to others, including the Bank, for the Applicant's account or for the account of others, including issuing letters of credit and accepting drafts; offering commercial mortgage services; and purchasing and selling of participations in commercial loans and extensions of commercial credit and letter of credit.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Pacific Financial Corporation*, Bremerton, Washigton; to engage *de novo* through its subsidiary, First Pacific Mortgage Corporation, Bremerton, Washington, in the activity of making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by mortgage companies.

Board of Governors of the Federal Reserve System, April 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8301 Filed 4-5-85; 8:45 am]

BILLING CODE 6210-01-M

Barclays PLC and Barclays Bank PLC, Barclays USA Inc., Barclays U.S. Holdings, Inc. and Barclays American Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted troughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Barclays PLC* and *Barclays Bank, PLC*, both of London, England and *Barclays USA Inc.*, New York, New York, to acquire 100 percent of the voting shares of Barclays Bank of Delaware, N.A., Wilmington, Delaware. In connection with this application, Applicant has also applied to establish *Barclays U.S. Holdings, Inc.*, New York, New York and *Barclays American Corporation*, Charlotte, North Carolina; which will become bank holding companies by acquiring 100 percent of Bank.

Additionally, Barclays U.S. Holdings, Inc., New York ("BUSH"), and Barclays American Corporation, Charlotte, North Carolina ("BAC"), to engage inthe activities of making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others, such as would be made by a consumer finance, credit card, mortgage, commercial finance, or factoring company; the sale as agent through offices of BAC and its subsidiaries of credit insurance directly related to extensions of credit by BAC and its subsidiaries, including decreasing term credit life insurance, credit accident and health insurance, credit employment insurance and credit property insurance designed to protect the borrower's property which serves as collateral for loans from BAC and its subsidiaries. The expansion of BAC's insurance agency business will be limited by applicable laws, including the Garn-St Germain Depository Institutions Act of 1982; underwriting or reinsuring credit life and credit accident and health insurance sold by BAC and its subsidiaries as agent; the issuance and sale at retail of money orders having a face value not exceeding $1,000 (or such other amount as may from time to time be permitted by the Federal Reserve Board) through consumer finance offices of BAC and its subsidiaries; the issuance and sale at retail of travelers checks at consumer finance offices of BAC and its subsidiaries; and the planning, development, establishment, administration and marketing of an electronic data processing and communications systems for interchanging financial transactions inititated at automated teller machines operated by participating depository institutions through BUSH's direct investment in the New York Switch Corporation.

Board of Governors of the Federal Reserve System, April 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8302 Filed 4-5-85; 8:45 am]

BILLING CODE 6210-01-M

Commercial Bancshares Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 2, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Commercial Bancshares Inc.*, Jersey City, New Jersey; to acquire NA Home Investors Mortgage Corporation, Hackensack, New Jersey, thereby engaging in the activities of making, acquiring and servicing loans and other extensions of credit such as would be made by a mortgage banking company. These activities would be conducted in the States of New York, New Jersey, and Delaware, and the Commonwealth of Pennsylvania.

2. *Manufacturers Hanover Corporation*, New York, New York; to acquire Rainier Equipment Finance, Inc., Seattle, Washington, thereby engaging in the activity of commercial financing and leasing of personal property.

Board of Governors of the Federal Reserve System, April 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8303 Filed 4-5-85; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp; Proposal To Engage in the Purchase and Sale of Gold and Silver Upon Order of and for the Account of Customers

PNC Financial Corp., Pittsburgh, Pennsylvania, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage in the purchase and sale of gold and silver upon the order of and as nominee for the account of customers. These activities would be performed through Applicant's subsidiary, BHC Securities Inc.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined by order that activities similar to those proposed by the applicant are closely related to banking. *Standard and Chartered Banking Group Ltd.*, September 27, 1973 (38 FR 27,552, October 4, 1973). Applicant believes that its proposed activities are so closely related to banking or managing or controlling banks as to be a proper incident thereto.

Interested persons may express their views on whether the proposed activities or purchasing and selling precious metals for nonaffiliated customers are "so closely related to

banking or managing or controlling banks as to be a proper incident thereto," and whether the proposal as a whole can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on these questions must be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than April 24, 1985.

Board of Governors of the Federal Reserve System, April 24, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-8305 Filed 4-5-85; 8:45 am]

BILLING CODE 6210-01-M

FCS Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Banking Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 1, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *FCS Financial Corporation,* Martinez, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Columbia Bank (formerly First Columbia Savings and Loan Association), Martinez, Georgia.

2. *Louisiana Bancshares, Inc.,* Baton Rouge, Louisiana; to merge with Guaranty Bancshares Inc., Lafayette, Louisiana, thereby indirectly Guaranty Bank & Trust Company, Lafayette, Louisiana.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Cynthiana Bancorporation,* Cynthiana, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of the Cynthiana State Bank, Cynthiana, Indiana.

2. *United Community Bancorp, Inc.,* Greenfield, Illinois; to merge with First Bunker Hill Bancshares, Inc., Bunker Hill, Illinois, thereby indirectly acquiring First National Bank of Bunker Hill, Bunker Hill, Illinois. Applicant also proposed to acquire at least 51 percent of the voting shares of Chatham Community Bank, Chatham, Illinois.

Board of Governors of the Federal Reserve System, April 2, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8369 Filed 4-5-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Criteria for Conversion of Items From Multiple Award to Single Award

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Special notice.

The General Services Administration, Office of Federal Supply and Services (GSA/FSS) has developed the following draft procedures for the criteria for conversion of items from Multiple Award to Single Award. These are internal GSA/FSS guidelines. The procedures are to be implemented by GSA/FSS personnel. The purpose of issuing these draft procedures in a special notice is to solicit comments from interested Federal agencies and industry.

Conversion Procedures

a. To the maximum extent feasible, items will be removed from Multiple Award Schedules and procured through use of Single Award Schedules, Stock Program or Special Order Program.

b. GSA technical support staffs for contracting offices having responsibility for Multiple Award Schedules should continuously examine the Special Item Numbers (SIN's) for development of specifications, purchase descriptions, Commercial Items Descriptions, or such other purchase documents that are suitable for single award procurement. GSA procuring directors shall establish management goals which will identify a percentage of reduction in the number of Special Item Numbers and/or basic equipment included in assigned Multiple Award Schedules. These potential conversions shall be coordinated within GSA/FSS by the Office of Procurement.

c. When the decision has been made to review a Multiple Award Schedule for possible conversion to a single award, a notice will appear in the **Federal Register** and the Commerce Business Daily (CBD). The CBD notice will be sent to 433 West Van Buren St., Room 1304, Chicago, IL 60607. Thirty (30) days will be allowed for comments from interested parties.

d. The **Federal Register** Notice will allow 30 days for comment.

e. The following criteria shall be used in selecting items for consideration of conversion to single award:

(1) SINs with a dollar value over $25,000.

(2) SINs that already have matrices developed.

(3) SINs with two or more contractors where design/technology is stable.

(4) Where there are two or more vendors offering similar items and where sales are not dominated by one vendor.

(5) Items where there has not been a previous attempt to write a Commercial Item Description (CID).

(6) Items with two or more vendors which have models with common characteristics and selectivity among users is not important.

f. Priority for developing CID's will be given to the highest dollar potential and ease of CID development.

g. Coordination with agency and industry should be to the maximum extent feasible. After GSA's technical staff has developed a draft commercial item description, a notice will appear in the **Federal Register** and the Commerce

Business Daily making the draft available to industry. It is recommended that user panels be established to provide an exchange of information prior to the implementation of the new CID.

h. Contracting offices shall document on GSA Form 1649 the results of efforts expended to identify potential conversion candidates and the actions taken to accomplish the conversion. This documentation will be made on the Advance Procurement Plan. The Advance Procurement Plan will state the particular actions taken since issuance of previous solicitations to comply with requirements to reduce the Multiple Award Schedule (MAS) items.

FOR FURTHER INFORMATION CONTACT: Comments may be sent to: Walter L. Eckbreth, Director, Policy and Review Division (FCP), Washington, DC 20406.

Dated: March 27, 1985.

W.L. Eckbreth,

Director, Policy and Review Division.

[FR Doc. 85-8358 Filed 4-5-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85M-0054]

Barnes-Hind, Inc., Premarket Approval of HYDROCURVE II® Bifocal (Bufilcon A) Soft (Hydrophilic) Contact Lens

Correction

In FR Doc. 85-6788 beginning on page 11569 in the issue of Friday, March 22, 1985, make the following corrections:

On page 11569, second column:

1. In the twelfth line of the **SUMMARY**, "Station" should have read "Section".

2. In the second line of the **DATE** paragraph, "April 2, 1985" should have read "April 22, 1985".

BILLING CODE 1505-01-M

[Docket No. 85M-0055]

Precision-Cosmet Co., Inc.; Premarket Approval of SATURN II™ (Synergicon A) Rigid Center/Soft Hydrophilic Skirt Contact Lens

Correction

In FR Doc. 85-6792 beginning on page 11571 in the issue of Friday, March 22, 1985, make the following corrections:

1. On page 11571, third column, sixth line, "(21 U.S.C. 360(e)(F))" should have read (21 U.S.C. 360e(e)(1)(F))".

2. On the same page, in the third column, under the heading **Opportunity for Administrative Review**, in the second line, "360(e)(3)" should have read "360e(d)(3)"; and in the tenth line, "regulations of" should have read "regulations or".

BILLING CODE 1505-01-M

[Docket No. 84N-0102]

Cumulative List of Orphan Products Designations; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that published a cumulative list of designated orphan drugs and biological products (50 FR 4914; Feb. 4, 1985). An "and" was inadvertenly omitted in the table. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-2736, appearing on page 4914 in the Federal Register of Monday, February 4, 1985, the following correction is made: On page 4915 in the second column under "DRUG PRODUCT DESIGNATIONS—Continued," in the last entry under "Proposed use," and "and" should appear after the word "hypocitraturia."

Dated: March 28, 1985.

Marvin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8293 Filed 4-5-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81D-0148]

Defect Action Levels for Canned Tomato Products; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of FDA Compliance Policy Guide 7114.30 which revises the defect action level (DAL) for catsup contaminated with mold and deletes the criteria for rot fragment counts for all tomato products.

ADDRESS: Written comments on these defect action levels and requests for single copies of FDA Compliance Policy Guide 7114.30 should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0175.

SUPPLEMENTARY INFORMATION: In 1983 in response to comments from small tomato catsup producers, FDA initiated a national survey of tomato catsup producers. This survey was conducted during fiscal year 1983 (FY-83) and was designed to assess the effects of various types of comminution on mold and rot levels in catsup and to determine an appropriate DAL for mold and rot in finished tomato catsup. The FY-83 survey was designed to take into account the geographic distribution of the proceeding plants as well as climatic factors that might contribute to the mold contamination of the fresh tomatoes used for making the catsup.

The survey results showed that the rot fragment counts, thought to be an indicator of whether or not a product had been milled, were not fulfilling that purpose. It had been assumed in the past that milling decreased the rot count, when, in fact, the survey showed that milling actually increased the rot count. Because the rot count DAL is not an indicator of milling as previously thought, it is being eliminated from the DAL for all tomato products.

The results of the FY-83 survey confirmed that, of the equipment used to process tomatoes into catsup, the mill caused the greatest increase in mold counts. The survey revealed that the mold count criterion for tomato catsup should be based on the assumption that all catsup samples are milled. Therefore, based on the survey data and assuming all samples are milled, the mold count DAL is raised from 35 to 55 percent. The new compliance policy guide does not contain a requirement that the analyst examine 12 subsamples to assess the Howard Mold Count. The DAL criterion for six subsamples, based on this survey, would provide comparable regulatory stringency. Updated Compliance Policy Guide 7114.30 contains the revised mold count DAL for tomato catsup and eliminates the limit for rot fragment count for all tomato products.

Background data supporting the revised DAL's are on file in the Dockets Management Branch. Requests for single copies of FDA Compliance Policy Guide 7114.30 should reference the docket number found in brackets in the heading of this document and should be

submitted in writing to the Dockets Management Branch (address above).

In accordance with the revised procedure for establishing and evaluation all new or revised DAL's (published in the **Federal Register** of September 21, 1982; 47 FR 41637), this DAL will remain in effect for an interim period following publication in the **Federal Register** or notification to the field. During the year following publication of this notice, FDA invites interested persons to submit relevant comments, data, and information showing why this DAL should be revised. FDA emphasizes that DAL's will be revised only on the basis of data and information that adequately support such changes. This DAL will remain in effect until FDA has evaluated all the available data and has published its decision in the **Federal Register.**

Interested persons may submit written comments (preferably two copies and identified with the docket number found in brackets in the heading of this document) regarding these DAL's. Received comments are available for examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 25, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8295 Filed 4-5-85; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), in concert with the Office of U.S. Senator David Durenberger, is announcing a forthcoming small business exchange meeting to be chaired by John Feldman, Director, FDA Minneapolis District.

DATE: Thursday, May 16, 1985, at 1 p.m.

ADDRESS: The meeting will be held at the University of Minnesota, Coffman Memorial Union, Rms. 307-8, 300 Washington Avenue SE., Minneapolis, MN.

FOR FURTHER INFORMATION CONTACT: Phillip Sheeler, Acting Small Business Representative, Food and Drug Administration, Rm. 1410, CNA Building, 55 East Jackson Boulevard, Chicago, IL 60604, 312-353-9406.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between FDA officials and small businesses involved in the manufacture and distribution of drugs, biologics, and medical devices. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: March 28, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 8294 Filed 4-5-85; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 84N-0418]

Determination of Regulatory Review Period for Purposes of Patent Extension; Amrinone Lactate

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revising a notice on the determination of the regulatory review period for the human drug product, amrinone lactate (49 FR 50112; December 26, 1984).

ADDRESS: Petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Frank Sasinowski, Officer of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (the act) (Pub. L. 98-417) generally provides that a patent may be extended for up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed.

Under the act, a product's "regulatory review period" forms the baisis for determining the amount of extension an applicant may receive. A regulatory review period consists of two periods of time: a period during which the product is being tested (testing phase), followed by a period during which an application or petition for marketing approval is pending before FDA (approval phase). This latter period starts with the initial submission of the application or petition to FDA. For a human drug product, the approval phase begins when an application is initially submitted with relatively complete safety and effectiveness data.

In the original determination of the regulatory review period for amrinone lactate (49 FR 50112), the application for marketing approval was listed as having been initially submitted on November 2, 1981. Although manufacturing and controls information was submitted to FDA on that date, FDA does not regard an application for a human drug product as having been initially submitted for purposes of measuring the regulatory review period until relatively complete safety and effectiveness data have been submitted to and accepted by FDA. For amrinone lactate, that date was December 29, 1981. Consequently, the regulatory review period for amrinone lactate is being revised, as follows:

The total length of the regulatory review period was 2,462 days. Of this time, 1,516 days occurred during the testing phase of the regulatory review period while 946 days occurred during the approval phase. These periods of time derive from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 4, 1977.

2. *The date the application was initially submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 29, 1981.

3. *The date the application was approved:* July 31, 1984.

The publication of this correction notice does not extend or otherwise alter the 180-day period for due diligence petitions which began when the original notice was published on December 26, 1984. Consequently, an interested person may petition FDA, on or before June 24, 1985, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an investigation by FDA. (See H. Rept. No. 98-857, Part 1, 98 Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format described in 21 CFR 10.30.

Petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Received petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1985.
Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 85-8292 Filed 4-5-85; 8:45 am]
BILLING CODE 4160-01-M

National Institutes of Health

Blood Diseases and Resources Advisory Committee; Amended Notice of Meeting

Notice is hereby given of a change in the meeting, May 2-3, 1985, of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, which was published in the **Federal Register** on March 15, 1985, 50 FR 10545.

The Blood Diseases and Resources Advisory Committee was to have convened for two days starting at 9:00 a.m. on May 2, and 8:30 a.m. to adjournment on May 3, 1985. The meeting has been changed to convene for one day, May 3, 1985, 8:30 a.m. to adjournment at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205 in Building 31, Conference Room 7, C Wing.

The above one-day meeting will be open to the public.

Dated: April 1, 1985.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 85-8296 Filed 4-5-85; 8:45 am]
BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control, Prevention Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Prevention Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, April 19, 1985, to be held in the Manager's Conference Room, Room 282, at National Airport, Washington, D.C. The entire meeting will be open to the public from 10:00 a.m. to adjournment, and the current and future programs of the Prevention Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427-8630) will furnish substantive program information.

Dated: March 27, 1985.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 85-8297 Filed 4-5-85; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Public Lands in Lake County, OR

The parcels of public land described below have been previously offered for public auction sale by the Lakeview District, Bureau of Land Management pursuant to section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713) but remain unsold. The subject parcels have been reappraised to reflect current fair market value and sealed bids for these parcels will now be accepted at the Lakeview District Office. Bids may be submitted by qualified persons either by mail or delivered in person during regular business hours, (7:45 a.m. to 4:30 p.m.). Bids will not be accepted for less than the minimum bid listed below for each parcel and a separate sealed written bid should be submitted for each sale parcel desired.

All bids received will be opened June 19, 1985, and the first Wednesday of each subsequent month, thereafter. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check, made payable to the U.S. Department of the Interior-BLM for not less than the bid deposit indicated for each parcel. Bids must be enclosed in a sealed envelope marked in the lower left-hand corner as follows: "Public Sale Bid, Serial No. XXX."

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be supplemental bidding. Tied high bidders will be notified immediately and be allowed twenty days, from the date of notification receipt, to submit a new bid. In all cases the highest sealed bid will determine the successful purchaser. The successful purchaser will be notified in writing and will be required to submit the remainder of the amount bid within 180 days from the date of sale. Failure to submit the full sale price within 180 days from the date of sale shall result in sale cancellation and forfeiture of the bidder's deposit. All unsuccessful bids will be returned.

The parcels will remain available for purchase as described above until sold or withdrawn from sale by the authorized officer. The parcels available for sale are described as follows:

Serial and parcel No.	Legal description/acreage, Willamette Meridian, OR.	Acres	Minimum bid	Bid deposit
OR 34957C	T.27S., R.17E.	40	$5,400	$1,020
Parcel #1	Sec. 15: SW¼ SW¼.			
OR 34957D	T.27S., R.17E.	100	8,500	2,550
Parcel #2	Sec. 14: SE¼ SW¼ Sec. 23: NE¼ NW¼, S½NW¼NW¼.			
OR 364957E	T.27S., R.17E.	160	13,600	2,720
Parcel #3	Sec. 23: S½ NW¼, N½ SW¼.			
OR 366015	T.25S., R.16E.	40	3,200	960
Parcel #4	Sec. 5: SE¼ SE¼.			
OR 366016	T.25S., R.16E.	40	3,200	960
Parcel #5	Sec. 17: NE¼ NE¼.			
OR 366017	T.26S., R.16E.	34.52	3,000	900
Parcel #6	Sec. 6: Lot 6.			
OR 366018	T.26S., R.16E.	160	13,600	2,720
Parcel #7	Sec. 25: SW¼.			
OR 366019	T.27S., R.17E.	237.46	19,000	3,800
Parcel #8	Sec. 31 SE¼ NE¼ E½SE¼ Sec. 32: S½ NW¼ T.28S., R.17E. Sec. 6: Lot 9			
OR 366020	T.28S., R.16E.	80	6,400	1,920, NW¼ SW¼.
Parcel #9	Sec. 11: SW¼ SW¼.			
OR 366283	T.25S., R.16E.	40	3,200	960
Parcel #10	Sec. 29: SW¼ SW¼.			
OR 366284	T.25S., R.16E.	120	9,600	2,880
Parcel #11	Sec. 29: E½ SE¼ SW¼SE¼.			
OR 366285	T.25S., R.16E.	160	12,800	2,560
Parcel #12	Sec. 28: NE¼.			
OR 366286	T.26S., R.16E.	320	27,200	5,440
Parcel #13	Sec. 13: S½.			
OR 366287	T.28S., R.16E.	199.48	16,000	3,200

Serial and parcel No.	Legal description/acreage, Willamette Meridian, OR.	Acres	Minimum bid	Bid deposit
Parcel #14	Sec. 1: lots 1 thru 4, SW¼ NE¼ S½ NW¼.			
	Sec. 2: lot 1.			
OR 38685TB	T.27S., R.17E.	80	6,000	1,800
Parcel #15	Sec. 27:, SW¼ SW¼.			
	Sec. 28: SE¼ SE¼.			

Except for the provisions of section 203 of the Federal Land Policy and Management Act of 1976, (90 stat. 2750; 43 U.S.C. 1713), the above described lands are hereby segregated from appropriation under the public land laws, including the mining laws.

Bids or requests for information on the above parcels should be directed to the Lakeview District Office, 1000 South 9th Street, PO Box 151, Lakeview, Oregon 97630, telephone (505) 947–2177.

Dated: March 27, 1985.

Ralph Culbertson,

Acting District Manager.

[FR Doc. 85–8359 Filed 4–5–85; 8:45 am]

BILLING CODE 4310-33-M

[C–0124534]

Hearing on Withdrawal; Colorado; Fort Carson-Pinon Canyon Military Reservation

Correction

In FR Doc. 85–6482 beginning on page 11015 in the issue of Tuesday, March 19, 1985, make the following correction.

In the heading, the date "March 11, 1989" should have read "March 11, 1985".

BILLING CODE 1505-01-M

[N–39502]

Issuance of Conveyance Document; Issuance of Land Exchange Conveyance Document; Exchange of Public and Private Lands in Lyon and Douglas Counties, NV

Correction

In FR Doc. 84–29994 beginning on page 45268 in the issue of Thursday, November 15, 1984, make the following correction:

On page 45268, third column, in the second entry for "Mount Diablo Meridian", second line, "E½ SE¼;" should have read "E½SW¼;".

BILLING CODE 1505-01-M

Oregon; Realty Action Direct/Modified Competitive Sale in Lake County, OR

The following described parcels of land have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 2757, 43 USC 1713, 43 U.S.C. 1719) at no less than the appraised fair market value shown:

Serial and parcel No.	Legal description	Acreage	Fair market value	Bid deposit
OR 38040A	T. 33S., R. 18E., Willamette Meridian, OR	30	$5,150	$1,545
Parcel No. 1	Sec. 13: W½SW¼SW¼, SE¼SW¼SW¼.			
OR 38040B	T. 29S., R. 16E., Willamette Meridian, OR	40	1,800	540
Parcel No. 2	Sec. 17 NE¼NE¼.			
OR 38040C	T. 26S., R. 16E., Willamette Meridian, OR	40	5,800	1,740
Parcel No. 3	Sec. 3 SW¼SW¼.			

Except for the provisions of section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), the above described lands are hereby segregated from appropriation under the public land laws, including the mining laws.

The sale will be held on Wednesday, June 19, 1985, at 10:00 a.m., in the Bureau of Land Management, Lakeview District conference room, 1000 South Ninth Street, Lakeview, Oregon.

Sale bidding will be limited to sealed bids and must be for at least the appraised value. Individuals with a preference right to purchase a parcel must be present at the sale and must submit a sealed bid, appraised value or higher, in order to qualify to meet the high sealed bid. Direct sale candidate(s) need not be present at the sale, however, a sealed bid, for the appraised value or higher and the required bid deposit must be submitted by the designated purchased, to the Lakeview District Office, prior to the sale date and time specified.

Sale parcels OR 38040 A and C, will be offered through direct sale procedures with Mr. Ross Colahan and Mr. Charles Nofziger being the designated purchasers, respectively. Sale parcel OR 38040 B, will be offered for sale at public auction through modified competitive bidding with Mr. and Mrs. Mack McDowell, given preference to meet the high selling bid. Refusal or failure by the preference holders to meet the high selling bid immediately after the close of bidding shall constitute a waiver of such right.

Direct and modified competitive sale procedures are being used to recognize the needs of adjoining land owners and historical use by these land owners. Direct and modified competitive sale procedures are authorized under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713).

This sale has been determined to be in conformance with existing land use plan developed in accordance with the department's planning regulations, public participation and in coordination with local governmental entities.

The sale involves isolated land that is different and uneconomical to manage as part of the public lands, and is not suitable for management by another federal department or agency. The public interest will be served by offering this land for sale.

Federal law requires that all bidders be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property, or in the case of corporations, be authorized to own real estate in the state in which the sale land is offered.

Sealed written bids will be considered only if received by the Bureau of Land Management, Lakeview District Office, 1000 South Ninth Street, P.O. Box 151, Lakeview, Oregon 97630, prior to 10:00 a.m., Wednesday, June 19, 1985. A separate written bid should be submitted for each sale parcel desired. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashiers check, made payable to the U.S. Department of the Interior-BLM for at least the bid deposit indicated for each parcel and shall be enclosed in a sealed envelope clearly marked, "Bid for Public Land Sale OR 38040 A, B or C, Lake County, Oregon, June 19, 1985". The written sealed bids will be opened and publicly declared at the beginning of each sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid, shall be by supplemental bidding. Tied high bidders will be notified immediately and be allowed twenty days, from the date of notification receipt, to submit a new bid.

The terms and conditions applicable to the sale are:

1. The apparent high bidder or designated purchaser, shall submit the remainder of the full bid price within 180 days from the date of sale. Failure to submit the full bid price within 180 days from the date of sale shall result in sale cancellation of the specific parcel and the bid deposit shall be forfeited.

2. The authorized officer may reject the highest qualified bid and release the bidder from his/her obligation and withdraw any tract from the sale, if he determines that consumation of the sale would be inconsistent with the provisions of any existing law, or collusive or other activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

3. The patents will contain a reservation to the United States for ditches and canals.

4. The patents will contain a reservation to the United States for all leasable minerals, including oil and gas (43 U.S.C. 1719).

5. The sales will be subject to all valid existing rights.

6. Acceptable bids will also constitute an application for non-leasable minerals. The declared high bidder will be required to deposit a $50 non-returnable filing fee (43 CFR 2720.1–2(c)) and the required bid deposit, immediately at the sale. Failure to deposit these sums will result in disqualification as the higher bidder. The authorized officer shall then determine whether to accept the next highest bid, withdraw the parcel(s) from sale, or reoffer the parcel(s) for sale at a later date. The Bureau has determined that the mineral interests being offered have no known value.

Parcels not sold on the day of the sale will remain available for sale until sold or withdrawn. Sealed bids will be solicited on these parcels at the Lakeview District Office during regular business hours, (7:45 a.m. to 4:30 p.m.). The sealed bids will be opened July 3, 1985 and every first Wednesday of each subsequent month until the land is either sold, or withdrawn from sale.

Detailed information concerning the sale, including the planning documents, appraisals, environmental assessment and the record of public involvement, is available for review at the Lakeview District Office, Bureau of Land Mangement, 1000 South Ninth Street, Lakeview, Oregon.

For a period of 45 days from the date of issuance of this notice, interested parties may submit comments to the District Manager, Lakeview District Office, Bureau of Land Management, P.O Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630. Any adverse comments received as a result of the Notice of Realty Action or notification to the congressional committees and delegations pursuant to Pub. L. 98–146, will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of any changes.

Dated: March 27, 1985.

Ralph Culbertson,

Acting District Manager.

[FR Doc. 85–8360 Filed 4–5–85; 8:45 am]

BILLING CODE 4310-33-M

Battle Mountain District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Battle Mountain District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR, Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Thursday and Friday, May 16 and 17, 1985. The meeting will convene on May 16 at 12:30 p.m. at the BLM office in Eureka, Nevada.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Overview of oil and gas exploration in the District.

2. Discussion of environmental problems relating to oil field development.

3. Tour of Railroad Valley oil fields on Friday, May 17, 1985.

The meeting is open to the public. Interested persons may make oral statements between 4:00 and 4:30 p.m., Thursday, May 16, 1985, or file written statements for the council's consideration. If you wish to make an oral statement, please contact H. James Fox by 4:30 p.m., May 9, 1985.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820, or phone (702) 635–5181.

Dated: March 28, 1985.

H. James Fox,

District Manager

[FR Doc. 85–8323 Filed 4–5–85; 8:45 am]

BILLING CODE 4310-HC-M

North Fork Well, Park County, Availability of Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that a Bureau of Land Management, U.S. Department of the Interior, has prepared a final environmental impact statement (EIS) on the North Fork Well in Park County, Wyoming, and has made copies of the document available for public review.

The final EIS analyzes the environmental impacts that would result from drilling the proposed exploratary North Fork Well and alternatives.

ADDRESSES: A copy of the final EIS can be obtained from: Team Leader, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401.

The final environmental impact statement is available for inspection at the following locations: BLM District Office (Worland); Cody BLM Area Office (Cody), Shoshone National Forest Headquarters (Cody).

Chester E. Conard,

District Manager.

[FR Doc. 85–8308 Filed 4–5–85; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Reclamation

Garrison Diversion Unit Pick-Sloan Missouri Basin Program, ND; Intent To Prepare a Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Department of the Interior proposes to prepare a supplemental draft environmental statement (DES) for the Garrison Diversion Unit (GDU), Pick-Sloan Missouri Basin Program (P–SMBP) in North Dakota. The supplemental DES will be a programmatic statement that will provide a site specific analysis of all project features not addressed in previous project NEPA documents or features changed since discussion in those documents. The supplemental DES will not address municipal and industrial (M&I) water or irrigation supply to 17,580 acres on Indian lands for which no cumulative project effects can be identified; site specific analysis for those areas will be provided in later documents. All project features that are adequately covered by previous NEPA documents will be referenced, but not reanalyzed in this supplemental DES. All features will be discussed pursuant to the Garrison Diversion Unit Commission's recommendations.

The purpose of the GDU is to deliver Missouri River water to agricultural and M&I users in North Dakota. The project will consist of three reservoirs, five canals, 25 or more pumping plants, 12 irrigation areas, up to 130 M&I water systems, and wildlife mitigation lands. Irrigation water will be delivered to 113,360 acres of non-reservation land, in addition to the 17,580 acres on Indian lands.

The GDU Commission determined the following project features areas to have been adequately discussed in previous NEPA documents: the Snake Creek Pumping Plant; the McClusky Canal; the New Rockford Canal; the James River Feeder Canal; the Jamestown Dam and Reservoir; the New Rockford Irrigation Area; the Robinson Coulee/James River Diversion; the LaMoure Irrigation Area; the West Oakes Irrigation Area; the West Oakes Pumping Plant and Irrigation Area; and the Wildlife Mitigation Plan. These features will not be reanalyzed in the supplemental DES.

Several features of feature functions have been changed significantly since being described in previous NEPA documents; therefore, a site specific analysis will be provided for each in the supplemental DES. Those features/functions are the water control structures and associated fluctuations in the McClusky Canal; fluctuations in the level of Audubon Lake; the return flow system for the Linclon Valley Irrigation Area; the operation of the Jamestown Dam and Reservoir; James River flows; project effects upon the James River and National Wildlife Refuges; and the James River water quality. The effects of providing municipal water supplies via the James River, as described by the GDU Commission, will also be discussed.

Several new features have been added to the GDU, and site specific discussion of those features will be provided pursuant to the GDU Commission recommendations. They include: the Sykeston Canal; the Glover Reservoir; and the Harvey Pumping, McClusky Canalside, New Rockford Canalside, Turtle Lake, and New Rockford Extension Irrigation Areas. The Sykeston Canal is now in the preliminary design stage. It will transport water from the existing McClusky Canal to the New Rockford Canal. Three major alternative canal routes are being studied at present, with variations on those routes. The canal will be 25 to 30 miles long, and will have an average right-of-way width of about 300 feet. Glover Reservoir will be a storage and regulatory reservoir for the Lower James River in North Dakota. The reservoir will be located in two adjacent natural basins on the James River. The basins can be operated together or separately, depending on water demands. A dike will be built across the mouth of each basin (approximate lengths 7,600 feet and 6,100 feet, up to 40 feet height), and a channel will be cut to connect the two basins.

An inlet-outlet channel approximately 0.5 miles long will supply water from the James River. A pumping plant will lift water into the channel. If Glover is used to full capacity, enlargements will be necessary to the Oakes Pumping Plant and Oakes Canal to handle the highest flows.

Alternatives under consideration include a second pumping plant at Oakes, and alternative irrigation acreages at the LaMoure Extension Area and the West Oakes Extension Area. Alternative canal alinements, irrigation system design, and specific irrigation service areas are also under consideration.

There will be one meeting to solicit information from all interested agencies, public entities and persons to assist in determining the scope of the supplemental environmental statement and to identify the significant issues. The meeting will be held at the Townhouse Motel in Bismarck, North Dakota, at 9:00 a.m. on April 24, 1985. The draft statement is scheduled to be completed and available for comment during February 1986.

The contact person for this suplemental statement will be: Richard D. McCabe, Supervisory Environmental Specialist, Missouri-Souris Projects Office, Bureau of Reclamation, P.O. Box 1017, Bismarck, North Dakota 58502 Telephine: (701) 255–4011, Ext. 721 or FTS 783–4721.

Dated April 2, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85–8368 Filed 4–5–85; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Receipt of Application for Permit; Arizona-Sonora Desert Museum et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–691828

Applicant: Arizona-Sonora Desert Museum, Tucson, AZ.

The applicant requests a permit to import tissue samples taken from wild San Esteban Island chuckwalla (*Sauromalus varius*) for scientific research.

PRT–691834

Applicant: Chris Cagle, Olathe, KS.

The applicant requests a permit to import one sport-hunted trophy of a bontebok (*Damiliscus dorcas dorcas*) culled from the captive herd of Charles Tinley, Tsolwana Game Ranch, Tarkastad, South Africa, for enhancement of the survival of the herd.

PRT–690800

Applicant: Joseph T. Juckel, Anchorage, AK.

The applicant requests a permit to import one sport-hunted trophy of a bontebok (*Damiliscus dorcas dorcas*) to be culled from the herd of F.W.M. Bowker, Thorn Kloof, South Africa, for enhancement of the survival of the herd.

PRT–678870

Applicant: U.S. Fish & Wildlife Service, Patuxent Wildlife Research Center, Laurel, MD.

The applicant requests an amendment to permit PRT–678870 to allow for the radio tagging of Puerto Rican parrots (*Amazona vittata*) for scientific research and enhancement of survival.

PRT-691687

Applicant: International Crane Foundation, Baraboo, WI.

The applicant requests a permit to export six eggs from captive-bred Siberian cranes (*Grus leucogeranus*) to the Oka State Nature Reserve Ryazan District, USSR, for scientific research and enhancement of propagation.

PRT-691723

Applicant: Fish & Wildlife Service, Regional Director, Newton Corner, MA.

The applicant requests a permit to take bald eagles (*Haliaeetus leucocephalus*) chicks from nests in MD and VA to release in NC for enhancement of propagation.

PRT-691727

Applicant: W. Michael Howell, Samford University, Birmingham, AL.

The applicant requests a permit to take (harass) if needed for reintroduction purposes, specimens of the watercress darter (*Etheostoma nuchale*) for scientific research and enhancement of propagation as indicated in his application.

PRT-691235

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import a pair of captive-born bactrian deer (*Cervus elaphus bactrianus*) from the Tierpark Berlin, East Germany for the purpose of enhancement of propagation.

PRT-691755

Applicant: San Diego Zoo, San Diego, CA.

The applicant requests a permit to import 2 pairs of captive Douc langur (*Pygathrix nemaeus*) from Centro per lo Studio e la Conservazione degli Psittaciformi, Rome, Italy, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 1, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-8270 Filed 4-5-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting; Correction

This document changes the time of the meeting from 8:30 a.m. to 10:00 a.m. in the subject notice published on Thursday, March 28, 1985, Vol. 50, No. 60 on page 12419 in column 1 on line 8 (FR Doc. 85-7431).

Russell K. Olsen,

Federal Register Liaison Officer.

[FR Doc. 85-8291 Filed 4-5-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-43 (Sub-116)]

Rail Carriers; Illinois Central Gulf Railroad Co.—Abandonment—in Jackson County, IL; Findings

The Commission has found that the public convenience and necessity permit the Illinois Central Gulf Railroad Company to abandon its 31.15 mile rail line between (a) milepost 576.28 near Leahy (excluding Leahy) and milepost 554.00 at Carbon Lake (including Carbon Lake); (b) milepost 0.0 at Texas Junction (including Texas Junction), and milepost 1.31 at Carbon Lake (including Carbon Lake); and (c) milepost 82.44 at Murphysboro (including Murphysboro) and milepost 90.0 near Carbondale (excluding Carbondale), in Jackson County, IL.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-8393 Filed 4-5-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-105 (Sub-7X) and AB-72 (Sub-7X)]

Rail Carriers; the Western Pacific Railroad Co.—Discontinuance of Service—in Sutter, Placer, and Sacramento Counties, CA; and Sacramento Northern Railway—Abandonment—in Sutter, Placer, and Sacramento Counties, CA; Exemption

The Western Pacific Railroad Company (WP), operator of the line to be abandoned, and Sacramento Northern Railway (SN), owner of the line, have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuance of Service and Trackage Rights*. WP will discontinue service on and SN will abandon a line of railroad known as the Rio Linda Branch extending from milepost 102.935 near Rio Linda to milepost 109.161 near Sankey, a distance of approximately 6.226 miles in Sutter, Placer, and Sacramento Counties, CA.

Applicants have certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in California [1] has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on May 8, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by April 18, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 29, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: Joseph D.

[1] California Public Utilities Commission.

Anthofer, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 27, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-8320 Filed 4-5-85; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Western Pacific Railroad Co. and Union Pacific Railroad Co.; Intent To File an Application for the Construction and Operation of a Railroad Line in Alameda County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare an environmental assessment and invitation to comment.

SUMMARY: The Western Pacific Railroad Company (WP) and Union Pacific Railroad (UP) intend to file an application for authority to construct and operate approximately 980 feet of track in Freemont, California. The proposed rail line will run from WP's San Jose Branch to an automobile manufacturing facility at Warm Springs station. The proposed construction will enable WP & UP to provide competitive rail service to General Motors Corporation which is responsible for transporting the manufactured automobiles. The purpose of this notice is to announce our intention to prepare an environmental assessment and to invite comment.

DATE: Written comments are invited and should be submitted on or before May 8, 1985.

ADDRESS: Written comments should be addressed to: Interstate Commerce Commission, Section of Energy and Environment, Room 4143, 12th & Constitution Avenue, NW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Elaine Kaiser, (202) 275-0907.

SUPPLEMENTARY INFORMATION: Western Pacific Railroad Company (WP) and Union Pacific Railroad Company (UP) intend to seek Commission authority to construct 980±44 feet of single track rail line in Freemont, California. The proposed construction will provide General Motors Corporation (GM) with desired competitive rail service for transporting automobiles manufactured at a Warm Springs assembly plant by New United Motors Manufacturing, Inc., a joint venture between GM and Toyoto Motor Company.

The proposed construction will run from WP's San Jose Branch at Milepost 5.41 directly to the automobile manufacturing plant at Warm Springs station. The vacant land to be used for the line's construction is planned and zoned for industrial use. The trackage will cross three Southern Pacific Transportation Company (SP) tracks: (1) SP's Milpitas main line, (2) a passing track recently constructed by SP adjacent to its main line, and (3) a tail track from SP's Warm Springs yard. It will also cross a dead end public road that is located in this industrial area.

Under the Commission's environmental rules (49 CFR Part 1105), rail line construction projects normally require preparation of an environmental impact statement. In this case, however, based on our initial review of UP's and WP's submission and a preliminary investigation, we have identified no potentially significant or unmitigable environmental effects associated with the proposed line construction. Accordingly, we intend, at least initially, to evaluate the environmental ramifications of applicant's proposal in an assessment. Also, in conducting our assessment, we will coordinate and consult with other Federal and State agencies as needed.

Interested persons are invited to comment on our preliminary determination to prepare an environmental assessment as well as any specific environmental issues which may be relevant to the proposed construction and opreation.

Dated: April 1, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-8319 Filed 4-5-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-85-1-M]

AMAX Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Chemical Corporation, P.O. Box 279, Carlsbad, New Mexico 88220 has filed a petition to modify the application of 30 CFR 57.4-61A (ventilation doors) to its AMAX Mine and Mill (I.D. No. 29-00174) located in Eddy County, New Mexico. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that ventilation doors be installed at or near shaft stations of intake shafts and at any shaft designated as an escapeway to prevent the spread of smoke or gas in the event of a fire.

2. As an alternate method, petitioner proposes to use ventilation doors installed around the shaft areas and throughout the mine shop areas between the two shafts that will permit short-circuiting of all intake air from the shafts and mine shop directly into the main exhaust. These doors will also short circuit contaminated air from shaft bottom areas. Petitioner believes that these control capabilities will prevent the spread of smoke or gas in the event of a fire.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8268 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-10-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, P.O. Box 176, Marion Center, Pennsylvania 15759 has filed a petition to modify the application of 30 CFR 75.1100-3 (condition and examination of firefighting equipment) to its Tanoma Mine (I.D. No. 36-06967) located in Indiana County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all firefighting equipment be maintained in a usable and operative condition.

2. Petitioner states that due to extremely cold weather during the winter months, the waterline used for fire protection along the slope belt may freeze and become inoperative.

3. As an alternate method, petitioner proposes to maintain a dry waterline along the slope belt, equipped with an automatic actuating valve. This valve will be connected to the automatic fire sensors installed and maintained in accordance with 30 CFR 75.1103 through 75.1103–8. In addition, petitioner states that:

a. The automatic fire sensors, when actuated, will send a signal to the actuator valve, causing the valve to open, allowing the waterline to be pressurized with water for fire protection;

b. A manual bypass valve will be installed in the system to allow the waterline to be pressurized;

c. All persons in the area of the slope will be instructed as to the operation of the dry pipe system; and

d. Sufficient water will be available at all times for the dry pipe system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–8284 Filed 4–5–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–85–4–C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Moss No. 3A–2 Portal (I.D. No. 44–01642) located in Dickenson County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam ranges from 24 to 96 inches in height with undulations.

3. Petitioner states that the use of canopies in certain mining heights would result in a diminution of safety for the miners affected because the canopies could dislodge roof supports. In addition, the canopies decrease the operator's visibility and create discomfort to the operator, increasing the chances for an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address:

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–8255 Filed 4–5–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–85–2–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Arkwright No. 1 Mine (I.D. No. 46–01452) located in Monongalia County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that pumps are located along an older haulage, developed before 1970, that is congested with major falls and serve water problems. The haulage is ventilated with intake air and there are no effective return airways in the immediate vicinity. The intake air passing the pumps does not go directly to an active working section. The pumps are skid mounted, low horsepower (hp) ranging from one to ten hp and are moved at regular intervals.

3. As an alternate method, petitioner proposes that:

a. The pumps will be housed in a fireproof building;

b. An automatic fire suppression device will be installed in the pump station that will be activated by heat sensors over the pumps; and

c. No oil or combustible material will be stored in the pump station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85–8266 Filed 4–5–85; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–85–11–C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entities) to its Matthews Mine (I.D. No. 40–00520) located in Clairborne County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that the belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in belt entries to ventilate active working places. In support of this request, petitioner proposes to install an early warning fire detection system. Carbon monoxide monitors will be used to monitor the air with specific safeguards outlined in the petition. The Monitors will be installed at each belt drive and tail piece at intervals not to exceed 2,000 feet along each conveyor belt entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office or or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8265 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-12-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation, minimum requirements) to its Matthews Mine (I.D. No. 40-00520) located in Clairborne County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to use belt air to ventilate the working sections and to install an early warning fire detection system. Carbon monoxide monitors will be used to monitor the air with specific safeguards as outlined in the petition. The monitors will be installed at each belt drive and tail piece at intervals not to exceed 2,000 feet along each conveyor belt entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8254 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-14-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Jenkinjones No. 4 Mine (I.D. No. 46-04533) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in belt entries to ventilate active working places. In support of this request, petitioner proposes to install an early warning fire detection system. Carbon monoxide monitors will be used to monitor the air with specific safeguards as outlined in the petition. The monitors will be installed at each belt drive and tail piece at intervals not to exceed 2,000 feet along each conveyor belt entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8253 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-15-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems: installation; minimum requirements) to its Jenkinjones No. 4 Mine (I.D. No. 46-04533) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to use belt air to ventilate the working sections and to install an early warning fire detection system. Carbon monoxide monitors will be used to monitor the air with specific safeguards as outlined in the petition. The monitors will be installed at each belt drive and tailpiece at intervals not to exceed 2,000 feet along each conveyor belt entry.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and

Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address:

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8267 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-226-C]

Dixie Lee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Dixie Lee Coal Company, Route 2, Box 850, Teaberry, Kentucky 41660 has filed a petition to modify the application of 30 CFR 75.1100 (fire protection) to its No. 1 Mine (I.D. No. 15-14229) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that each coal mine be provided with suitable firefighting equipment adapted for the size and conditions of the mine.

2. As an alternate method to having water in the water-line along the No. 2 belt and on the head drive, petitioner proposes to use a 500 gallon water tank for firefighting purposes. In support of this request, petitioner states that the belt is fireproof and runs in water.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8252 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-9-C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter REsources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its No. 7 Mine (I.D. No. 01-01401) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings.

2. Petitioner is planning to install a longwall mining unit. A 500 horsepower (hp) shearing machine, an approximately 1,000 hp face conveyor and a stage loader with a crusher unit driven by a 150 hp motor will be used.

3. As an alternate method, petitioner proposes that 2300 A.C. high-voltage cables be located and used to supply power to permissible longwall face equipment in or inby the last open crosscut, with specific equipment and conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide no greater potential as an ignition source and will therefore provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8259 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-30-M]

Kaiser Aluminum & Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kaiser Aluminum & Chemical Corporation, P.O. Box 337, Gramercy, Louisiana 70052-0337 has filed a petition to modify the application of 30 CFR 55.4-27 (fire extinguishers on self-propelled mobile equipment) to its Gramercy Aluminum Mine (I.D. No. 16-00352) located in St. James Parish, Louisiana. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirements that whenever self-propelled mobile equipment is used, such equipment shall be provided with a suitable fire extinguisher readily accessible to the equipment operator.

2. Petitioner states that the fire extinguishers on the mobile equipment have been repeatedly stolen from the machines.

3. As an alternate method, petitioner proposes to locate 30 pound Ansul D/C and 150 pound D/C wheel unit fire extinguishers throughout the metals plant. Since there would be approximately 500 extinguishers located throughout the plant, petitioner states that the mobile equipment and vehicles in use would be no more than 50 feet from a working extinguisher. The extinguishers will be examined monthly and in the event of a fire, the trained fire brigade will be alerted to respond with the plant fire truck.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office or or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8251 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-3-C]

Kaiser Steel Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kaiser Steel Corporation, Sunnyside, Utah 84539 has filed a petition to modify the application of 30 CFR 75.1704 (escapeways) to its Sunnyside No. 3 Mine (I.D. No. 42-00092) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground mines have at least two separate and distinct travelable passageways from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate. These passageways must be designated as escapeways, and at least one of them must be ventilated with intake air.

2. Petitioner seeks a modification of the standard as it applies to a portion of a secondary escapeway located on the right side of the mine.

3. As an alternate method, petitioner proposes to bring the secondary escapeway back into the primary escapeway at the First Right entry, 900 feet from the surface escape drift opening. Petitioner states that 750 of the 900 feet is noncombustible—700 feet is rock and 50 feet has been shock creted with fibercrete, a noncombustible type of mortar. Petitioner further states that this escape route will provide a much faster and safer escape route from the mine, especially if disabled miners are involved.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the peititon are available for inspection at that address.

Dated: March 26, 1985.

Patricia E. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8257 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-5-C]

L & R Fuels, Inc.; Petition for Modification of Application of Mandatory Safety Standard

L & R Fuels, Inc., HC72, Box 725, Ashcamp, Kentucky 41512 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-13718) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 1 Elkhorn Seam ranging from 43 to 49 inches in height, with ascending and descending elevations.

3. Petitioner states that the use of a canopy on the mine's roof bolting machine would result in a diminution of safety for the miners affected because the canopy will restrict and cramp the operator's seating position and limit his or her field of vision, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8263 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-6-C]

Nowacki Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Nowacki Coal Company, Box 1308, R.D. 1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Slope (I.D. No. 36-07592) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are non-existent in the mine.

2. Ignition, explosion and mine fire history are non-existent for the mine.

3. There is no history of harmful quantities of carbon dioxide and other noxious or poisonous gases.

4. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

5. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners.

6. High velocities and large air quantities cause extremely uncomfortable damp and cold conditions in the already uncomfortable, wet mines.

7. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

8. Petitioner states that the alternate method proposed will at all times provide the same measure of protection for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8261 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-8-C]

Pickands Mather and Co.; Petition for Modification of Application of Mandatory Safety Standard

Pickands Mather and Company, 1100 Superior Avenue, Cleveland, Ohio 44114 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) as the authorized agent and operator for the Scott's Branch Mining Company's Scotts Branch Mine (I.D. No. 15-08079); Pikeville Coal Company's Chisholm No. 2 Mine (I.D. No. 15-12272); and Tuscaloosa Energy Corporation's Republic Mine (I.D. No. 15-02117) and Lick Creek Mine (I.D. No. 15-13480), all located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statments follows:

1. The petition concerns the use of padlocks to prevent mine scoop battery connector tightening rings from loosening and disconnecting the battery plugs.

2. Petitioner states that the use of padlocks results in a diminution of safety for the miners affected because the keys get lost and the key holes get plugged with mud. Should there be a fire on the scoop between the battery plug and main body of the scoop, and the breaker switch to the batteries were to malfunction, there would be no way to positively disconnect the power source (batteries) from the scoop to help diminish the fire. In addition, a proper tool may not be readily available to break off the lock.

3. As an alternate method, petitioner proposes that:

a. Metal locking devices, each consisting of a fabricated metal bracket and a metal locking screw, will be used in lieu of padlocks on permissible, mobile, battery powered machines used in the mines;

b. These locking devices will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening;

c. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking screws will be securely attached to the brackets to prevent accidental loss of the screws; and

d. Operators of affected permissible, mobile, battery powered machines and other miners who couple and uncouple battery plugs on these machines will receive:

(1) Training in proper use of the locking devices;

(2) Training in the hazards of breaking battery plug connections under load; and

(3) Training in the hazards of breaking battery plug connections in areas of the mine where electric equipment is required to be permissible.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8258, Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-271-C]

Red Hawk Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Red Hawk Coal Corporation, Box 2237, Williamson, West Virginia 25667 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-10508) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The coal seam height ranges from 38 to 54 inches, with ascending and descending grades creating dips and rolls in the mining face areas.

3. Petitioner states that the use of canopies would result in a diminution of safety for the miners affected because the canopies restrict the equipment operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8256 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-265-C]

The Youghiogheny and Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

The Youghiogheny and Ohio Coal Company, P.O. Box 1000, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CR 75.1100-2(e)(2) (quantity and location of firefighting equipment) to its Nelms No. 2 Mine (I.D. No. 33-00968) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that one portable fire extinguisher and 240 pounds of rock dust be provided at each temporary electrical installation.

2. As an alternate method, petitioner proposes to use one fire extinguisher with twice the capacity (ten pounds) as required at permanent electrical installations in lieu of providing both a five pound fire extinguisher and 240 pounds of rock dust at each temporary electrical installation.

3. In support of this proposed alternate method, petitioner states that the larger fire extinguisher could extinguish a larger fire in itself and more quickly than a five pound extinguisher and the rock dust. In addition, fire at a temporary electrical installation could be attacked at a greater distance by using a larger fire extinguisher rather than trying to apply rock dust in an effective manner.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8260 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-7-C]

Sand Fork Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sand Fork Mining Company, Inc., Route 4, Box 30, Beverely, Kentucky 40913 has filed a petition to modify the application of 30 CFR 75-1405 (automatic couplers) to its No. 8-B Mine (I.D. No. 15-11978) located in Bell County, Kentucky and its No. 11 Mine (I.D. No. 15-13455) and No. 12 Mine (I.D. No. 15-14160), both located in Leslie County, Kentucky. The petition is filed under seciton 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all haulage equipment be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment.

2. Coal is transported by a belt system and the track is used to transport supplies and personnel only. One car is used at a time on lightweight rails. The mines have narrow radius curves and much of the mine floor is uneven.

3. Petitioner states that the use of automatic couplers would result in a diminution of safety for the miners affected because:

a. The cars are too lightweight to guarantee coupling upon impact with automatic couplers. The stress and strain on these lightweight mine car chassis may cause structural failure and result in coupler misalignment, accidental uncoupling and supply car runaways; and

b. The automatic couplers lack the flexibility to negotiate the curves in the mines and the use of such couplers could result in derailments and runaways. Derailments could cause roof falls and runaway supply cars could cause injuries to mine personnel working along the track.

4. As an alternate method, petitioner proposes to use a pin, hook and looped-link coupling system. The supply cars will be brought to a complete stop before coupling or uncoupling. The person doing the actual coupling or uncoupling will be inside the railrunner at all times. At no time will any personnel be required to be between the car and the railrunner during the coupling or uncoupling procedure. In addition, the cars will be blocked to prevent movement and all employees will be trained in the procedures for coupling and uncoupling the cars.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginina 22203. All comments must be postmarked or received in that office on or before May 8, 1985. Copies of the petition are available for inspection at that address.

Dated: March 28, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-8262 Filed 4-5-85; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Revised Notice of Meeting

A notice regarding the 300th meeting of the NRC Advisory Committee on Reactor Safeguards to be held on April 11-13, 1985 in Washington, D.C. was noticed on March 19, 1985 in 50 FR 11024. A portion of this meeting on Friday, April 12, 1985 to discuss security measures regarding the GESSAR II nuclear power plant design was to be closed to public participation consistent with section 5 U.S.C. 552b(c)(3) of the Act. A portion of this session will also be closed under provision (1) of the Act to discuss National Security Information applicable to this type nuclear facility.

Dated: April 2, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-8341 Filed 4-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-317]

Baltimore Gas & Electric Co.; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR 50.55a to Baltimore Gas and Electric Company, the licensee for Calvert Cliffs Nuclear Power Plant Unit No. 1 located in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

10 CFR 50.55a(g)(4) requires that licensees update their inservice inspection (ISI) and testing (IST) programs to a newer edition of Section XI of the ASME Code each ten years. Since the regulations require these updates based on the 10-year anniversary of facility commercial operation, multi-unit sites often find that each unit has an ISI and IST program structured to a slightly different edition of the Code. The exemption would allow a common start date for ISI and IST for Calvert Cliffs Units 1 and 2. A common start date would be achieved by extending the present Unit 1 program expiration date from May 8, 1985 to April 1, 1987.

The proposed exemption is in response to the licensee's applications dated March 6, 1984 and January 28, 1985.

The Need for the Proposed Action

The proposed exemption is needed because ISI and IST at Calvert Cliffs would be accomplished for some period of time to two different ASME Codes if a common start date were not established. Although administratively possible, this situation could contribute to increased personnel errors in the performance of inspection and testing requirements to two different versions of the Code. This can create a substantial and additional administrative workload for what can be described as only nominal technical differences in the inspection and testing requirements.

Environmental Impact of the Proposed Action

The proposed exemption will provide a degree of ISI and IST that is

equivalent to that required by 10 CFR 50.55a(g)(4) such that there is no increase in the risk of failure for operational readiness of pumps and values whose function is required for safety at these facilites. Consequently, the probability of failure for operational readiness of components has not been increased, the radiological risk is not greater than determined previously, and the proposed exemption does not otherwise affect plant radiological effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant Units 1 and 2" dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for exemptions dated March 6, 1984 and January 28, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland.

Dated: at Bethesda, Maryland this 1st day of April, 1985.

For The Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors Division of Licensing.

[FR Doc. 85-8355 Filed 4-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-317]

Baltimore Gas and Electric Co.; Extension

I

In the matter of Baltimore Gas and Electric Company, (Calvert Cliffs Nuclear Power Plant Unit No. 1).

The Baltimore Gas and Electric Company (the licensee) is the holder of Facility Operating License No. DPR-53 which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1. This license provides among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility is located at the licensee's site in Calvert County, Maryland.

II

On February 22, 1983, the environmental qualification rule for electrical equipment important to safety for nuclear power plants, 10 CFR 50.49, became effective. Subsection (g) of 50.49 requires that each holder of an operating license issued prior to February 22, 1983, shall by May 20, 1983, identify the electrical equipment important to safety within the scope of the rule already qualified and submit a schedule for either the qualification or the replacement of remaining equipment subject to the rule. This schedule must establish a goal of final environmental qualification of the electrical equipment by the end of the second refueling outage after March 31, 1982, or by March 31, 1985, whichever is earlier. The rule also provides that the Director of the Office of Nuclear Regulation may grant extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment if requests are filed on a timely basis and demonstrate good cause for such an extension, such as procurement lead time, task complications, and installation problems.

III

By letter dated February 28, 1985, the licensee requested an extension of the date for final environmental qualification of electrical equipment specified in 10 CFR 50.49(g). Calvert Cliffs Unit No. 1 will begin its second refueling outage after March 31, 1985; therefore, the licensee would have to complete final environmental qualifications by March 31, 1985.

The equipment for which the licensee has requested extensions for the completion of environmental qualifications is described in the licensee's letter of February 28, 1985. The items identified fell into two categories:

1. Administrative Requirements

NRC Inspection Report No. 50-317/84-27, dated January 29, 1985, stated that the qualification files were not in an auditable form as required by Paragraph (j) of 10 CFR 50.49. To facilitate compliance with the auditability requirement, three activities are being implemented to upgrade the files: (1) a technical review of each file to verify completeness and to provide convenient summary information in the front of each file, (2) reorganization of each file into a standard format for ease of reference, and (3) implementation of the record control and storage requirements of ANSI N45.2.9.

2. Equipment Qualifications

a. Replace solenoid valve ISV 5178, currently an ASCO HT 8320, with an ASCO NP8320, which is fully qualified. This valve is located in Room A228 and is used on the ECCS pump room air cooler water outlet path.

b. Complete the qualification of ISV 516 and 517 by either rerouting conduit to the valves or installing Raychem or Conax termination seals to prevent water from entering the valves. Both valves are pilot solenoids on air-operated valves and both are located inside containment. ISV 516 is on the containment isolation valve in the letdown path. ISV 517 is on the containment isolation valve in the auxiliary spray path. Both valves are currently ASCO Model WPHTX8320A21V, but are being replaced with ASCO Model NP8320A185E due to a replacement parts problem with the WPHTX8320A21V valves.

c. Replace existing limit switches with qualified Namco EA 180-24302 limit switches in a number of safety-related valves.

d. Replace existing oscillator-amplifiers (P/N 805B217001) on various Fisher and Porter flow and pressure transmitters outside containment in harsh environments with qualified oscillator-amplifiers (P/N 805B241001). All of the subject transmitters provide indication only.

e. Replace existing pressure switch IPS 2085 used to close valve ICV 2085 on low header pressure switch with a fully

qualified switch valve. ICV 2085 is the control valve in the containment instrument air supply header. The current model is a Custom Component's 604GCR0 and the replacement will be a Static-O-Ring 6TA-B5-NX-CIA-TTJJX6, which is fully qualified. The switch is located inside containment.

f. Replace existing sample isolation valves outside containment with fully qualified valves. All of the subject valves are currently Dragon Model 10180-1. The replacement valves will be either Valcor Model V256-5295-77 or V256-5295-117, both of which are fully qualified.

g. Replace Barksdale pressure switches on the main steam isolation valves with qualified Static-O-Ring pressure switches.

h. Replace terminal blocks used for safety-related instrumentation both inside and outside containment with qualified terminations or splices.

i. Install qualified conduit-to-valve seals on safety-related Target Rock solenoid valves located inside containment.

j. Install qualified conduit-to-valve seals on safety-related Valcor solenoid valves located inside containment.

The licensee's February 28, 1985, letter contains justifications for continued operation of the equipment listed above. We have reviewed the licensee's submittal and find the licensee's reasons appropriate. Therefore, good cause exists for a schedular extension of the rule based upon the lead time necessary to complete certain environmental qualification records and replace certain equipment for Calvert Cliffs Unit No. 1.

IV

The environmental qualification rule provides that the Director of the Office of Nuclear Reactor Regulation may grant requests for extensions of this deadline to a date no later than November 30, 1985, for specific pieces of equipment, if these requests are filed on a timely basis and demonstrate good cause for such an extension. The staff has reviewed the justifications for continued operation and finds them acceptable. The staff concludes that the request for an extension beyond March 31, 1985, is timely and within the scope of 50.49(g) and finds that good cause exists for granting the request for the equipment listed herein. We find that extending the implementation date in accordance with the following schedule is acceptable and that operation until that time will not adversely affect the public health and safety:

1. Administrative Requirement—to be addressed in future correspondence

2. Equipment Qualification—Complete prior to entering Mode 4 following completion of the Cycle 8 refueling outage. The February 28, 1985, application indicates that this refueling outage will begin on or about April 5, 1985.

Your request for an extension in accordance with the above schedule for those items listed is hereby granted.

This Extension is effective upon issuance.

Dated at Bethesda, Maryland, this 31st day of March, 1985.

For the Nuclear Regulatory Commission.

Darrel G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8356 Filed 4-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Exemption

I

In the matter of Nebraska Public Power District Cooper Nuclear Station.

Nebraska Public Power District (the licensee) is authorized by Facility Operating License No. DPR-46 to operate the Cooper Nuclear Station (the facility) at steady-state reactor power levels not in excess of 2,381 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facility consists of a boiling water reactor located at the licensee's site in Nemaha County, Nebraska.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.2 of Appendix E requires that each licensee at each site shall annually exercise its emergency plan.

By letter dated December 28, 1984, as supplemented by letter dated February 1, 1985, the licensee requested an exemption from the schedular requirements of Section IV.F.2 of Appendix E. The last annual emergency preparedness exercise was a full scale exercise conducted at the Cooper Nuclear Station on May 15 and 16, 1984. The licensee requests that an exemption be granted to allow the next annual exercise to be conducted on October 16, 1985.

The licensee states that major scheduling constraints are anticipated from the annual refueling and extended outage required for the replacement of the reactor recirculation piping at Cooper Nuclear Station. The outage is expected to extend through May 1985, with an additional period of time required for post outage testing and recovery.

The licensee further states that the proposed exercise date has been coordinated with the agencies of the affected surrounding states and local governments, and the Federal Emergency Management Agency (FEMA) Region VI. In addition, the licensee states that the proposed exemption would establish a fall exercise cycle which would avoid conflict with annual spring outages at Cooper Nuclear Station and would provide potential benefit to the states and local governmental agencies by avoiding peak activity months during the spring (civil defense flood control and local spring work).

The licensee's February 1, 1985 letter supplementing the December 28, 1984 exemption request commits to compensating measures which will be taken in addition to the scheduled required classroom training to ensure maintenance of onsite emergency preparedness including communications, offsite monitoring, and appropriate tabletop drills to be conducted prior to Cooper Nuclear Station returning to commercial operation. Certain of the drills are to include activation of portions of the Control Room, Technical Support Center, and Emergency Operations Facility.

Full scale exercises at Cooper Nuclear Station with states and local government participating have been conducted annually during the previous 3 years, with the most recent full scale exercise conducted on May 15 and 16, 1984. This exercise involved appropriate full participation by all jurisdictions within the plume and ingestion exposure pathway emergency planning zones including the states of Missouri, Nebraska, and Iowa together with the counties of Atchison and Nodaway in Missouri, and Nemaha and Richardson in Nebraska. Both NRC and FEMA reported that the implementation of onsite and emergency plans was adequate to protect the health and safety of the public. These findings provide assurance that the licensee, states and local agencies have the capability to respond to an emergency at Cooper Nuclear Station.

Based on the above assurance related to maintenance of onsite preparedness

and the adequacy of offsite emergency preparedness, we conclude that the licensee's request for an exemption is reasonable and that granting the requested exemption will not adversely affect the overall state of emergency preparedness for Cooper Nuclear Station. Therefore, the licensee's request for exemption should be granted.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letter dated December 28, 1984, as supplemented by letter dated February 1, 1985, as discussed above, is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby approves the exemption, modified as follows:

In order to allow for minor schedule changes, the next emergency exercise at Cooper Nuclear Station conducted pursuant to the requirements of 10 CFR 50, Appendix E, Section IV.F, shall be conducted not later than October 31, 1985, and henceforth, annually from that date.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (50 FR 12867).

Dated at Bethesda, Maryland this 1st day of April, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8357 Filed 4-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-537]

U.S. Department of Energy, et al.; Withdrawal of Application for Construciton Permit and Revocation of Limited Work Authorization

By Motion, dated October 19, 1984, U.S. Department of Energy, Tennessee Valley Authority, and Project Management Corporation (Applicants) requested dismissal of the proceedings related to the application for construction permit for Clinch River Breeder Reactor Plant because U.S. Department of Energy, *et al.*, will not be completing the project. The proposed facility was to be located in Roane County, Tennessee, about 25 miles west of Knoxville, on the north side of the Clinch River. A "Notice of Hearing On Application for Construction Permit" was published in the Federal Register on June 18, 1975, (40 FR 25708).

On March 11, 1985 the Licensing Board issued a memorandum and order in which it granted Applicants' request (1) to withdraw their application for construction permit for Clinch River Breeder Reactor Plant; and (2) to dismiss the licensing proceeding subject to the following conditions imposed pursuant to the Hearing Board's authority under 10 CFR 2.107:

(1) The Applicants will redress the site in accord with their Final Site Redress Plan, and under the conditions set out in the Commission's June 6, 1984 letter of acceptance of the Final Site Redress Plan.

(2) The Applicants will modify the redress plan only in the event of a genuine expression of interest in an alternate use of the site from a serious project. In the event of such a prospect, the Applicants will carry out the redress plan to the greatest extent possible consistent with the alternate use. The Commission will review such prospects and any modifications.

(3) The Applicants will inform the Intervenors fully and immediately of the existence of an alternate use of the site, and of any modifications to redress.

The Licensing Board also authorized the Director, Office of Nuclear Reactor Regulation to revoke the LWA.

On November 23, 1983, the Intervenors filed a motion to terminate the proceedings on LWA issues pending before the Atomic Safety and Licensing Appeal Board. By Memorandum and Order (ALAB-755), December 15, 1983, the Chairman of the Atomic Safety and Licensing Appeal Board granted the Intervenors' motion and terminated its appellate proceedings on LWA issues, vacated the Licensing Board's partial initial decision, and vacated the Licensing Board's authorization of the issuance of the LWA.

By letter dated March 27, 1985 to the U.S. Department of Energy, *et al.*, the LWA issued to the Applicants was revoked.

In accordance with the Applicants' request and the Licensing Board's Memorandum and Order and pursuant to 10 CFR 2.107(c), notice is hereby given that the application for construction permit for Clinch River Breeder Reactor Plant has been withdrawn, that the proceeding in this matter has been dismissed and that the LWA issued to the U.S. Department of Energy, *et al.*, has been revoked.

Correspondence concerning this application will continue to be maintained at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and for six months at the Oak Ridge Public Library, Civic Center, Oak Ridge, Tennessee 37830 and the Lawson McGhee Public Library, 500 West Church Street, Knoxville, Tennessee 37902.

Dated at Bethesda, Maryland, this 27 day of March 1985.

For the Nuclear Regulatory Commission.

Thomas L. King,

Chief, Advanced Reactors Group, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85-8354 Filed 4-5-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Plant Unit Nos. 3 and 4 located in Dade County, Florida.

The amendments would revise the Technical Specifications to delete the maximum amount of enriched fissionable material which can be used in the core, or available on site, in the form of fabricated neutron flux detectors for the purpose of monitoring core netron flux. This is necessary to allow for new excore neutron flux monitoring systems to be installed pursuant to Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants To Assess Plant Conditions During and Following An Accident." In addition, the amendments will clarify the existing requirements relating to the surveillance for leak testing of fission detectors, sealed sources and startup-sources. These amendments were requested in the licensee's application dated March 7, 1985.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a

significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples not likely to involve a signficant hazards consideration is example (i), a purely administrative change to the Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

The deletion of the restriction on the amount of enriched fissionable material allowed on-site as fission detectors meets Example (i). Section 2.C of the Operating License specifies that the receipt, possession, and use of source byproduct and special nuclear material as authorized by the license shall be in amounts as required and in accordance with the Commissions regulations in 10 CFR Part 30, 40 and 70. This condition was incorporated in the license by amendment, including Technical Specifications 3.11 and 4.13, to ensure that the byproduct, source and special nuclear materials utilized at the Turkey Point Plant were maintained in accordance with the Commission rules and regulation and used in such amounts as required for reactor operation. The limit specified in the Design Features, section 5 of the Technical Specifications, apparently through oversight, was not deleted at that time. The deletion of the limit specified in section 5 will remove the restriction on the amount of fissionable material allowed on site as fission detectors consistent with the requirements specified in section 2.C of the license and will allow installation of the additional fission detectors in accordance with RG 1.97.

The proposed changes relating to the surveillance requirements also meet example (i). The changes are necessary to clarify the existing requirements in the Technical Specifications as they relate to the use of sealed sources, fission detectors and start-up sources. These changes will assure that any leakage resulting from handling will be detected. The proposed changes remove ambiguities in the existing requirements and, in addition, are in accordance with the surveillance requirements identified in NUREG–0452, "Standard Technical Specifications for Westinghouse Pressurized Water Reactor." Therefore, since the proposed amendments provided consistency and clarification of existing requirements, the proposed amendments fit the cited example for amendments which do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By May 8, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requests involve no signficant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the

amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where peititions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–3600 (in Missouri (800) 342–6700. The Western Union Operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harold F. Reis, Esquire, Newman and Holtzinger, P.C., 1615 L Street, NW, Washington, D.C. 20036, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Environmental and Urgban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Bethesda, Maryland, this 4th day of April 1985.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 85–8460 Filed 4–5–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–13680]

Application and Opportunity for Hearing; Intermark, Inc.

April 3, 1985.

Notice is hereby given that Intermark, Inc., a Delaware Corporation (the "Company"), has filed an application pursuant to Rule 310(b)(1)(ii) of the Trust Indenture Act of 1939 (the "Act") for a finding of the Commission that the trusteeship of United States Trust Company of New York (the "Trustee") under an indenture of the Company dated October 17, 1983 (the "Old Indenture"), and the trusteeship under an indenture of the Company dated April 1, 1985 (the "New Indenture") is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as trustee under either the Old Indenture or the New Indenture.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides in effect, with certain exceptions, that a trustee has such a conflict if it serves as trustee under two indentures of the same obligor. Under clause (ii) of subsection (1), however, the conflict may be excluded from the operation of this provision if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under a qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as trustee under either of such indentures.

In support of its application, the Company alleges that:

1. In October 1983, the Company made a public offering of two classes of its securities offered as units in the following combination: $1,000 principal amount 13.20% Senior Subordinated Debentures Due October 1, 1998 (the "Old Debentures"), with 34 warrants to purchase 17 shares of common stock of Square D Company for $43⅜ per share cash, exercisable on or before October 1, 1988 (the "Warrants"). Issued pursuant to that offer were $33,000,000 in principal aggregate amount of Old Debentures and 1,122,000 Warrants. The Old Debentures were issued under the Old Indenture between the Company and the Trustee.

2. On March 5, 1985, the Company commenced an exchange offer, exempt from registration under the Securities Act of 1933, as amended, pursuant to section 3(a)(9) thereof, whereby the Company offered to exchange 13.20% Senior Subordinated Debentures, Series B, due October 1, 1998 (the "New Debentures"), for the Warrants. The New Debentures will be issued pursuant to the New Indenture between the Company and the Trustee. The Company has filed with the Commission an application for qualification on Form T–3 dated March 5, 1985, to qualify the New Indenture. The purpose of the exchange offer is to permit the Company to reacquire the Warrants and sell the underlying shares of Square D Common Stock where advantageous.

3. The Old Indenture contained the following provisions:

(a) The Old Debentures were wholly unsecured and were made subordinated to Senior Debt and superior to Junior Debt, both as defined in the Old Indenture, and were also made expressly equal in right of payment to Intermark's previously issued 11⅞% Senior Subordinated Debentures Due September 15, 1999 (the "11⅞% Debentures").

(b) The Old Indenture also contained provisions for redemption of the Old Debentures either through direct purchase by Intermark or through a sinking fund commencing in 1989 designed to retire $27,000,000 of aggregate principal amount of Old Debentures (approximately 82%) prior to the maturity date.

(c) The Old Indenture contained a restriction on the payment of dividends such that the expenditure of $4,000,000 plus 50% of Intermark's Net Income, as defined in the Old Indenture, was prohibited at any particular date. This provision terminated at such time when the total principal amount of the outstanding Old Debentures was less than $5,000,000, i.e., 15.15% of the aggregate original prinicipal amount of the Old Debentures.

(c) The Old Indenture prohibited the Trustee from having a conflict of interest, defined in conformity with section 310(b)(1)(ii) of the Act as follows:

(1) The Trustee is trustee under another Indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other Indenture is a collateral trust indenture under which the only collateral consist of Debentures issued under this Indenture, provided that there shall be excluded from the operation of this paragraph any other indenture or indentures under which other securities, or certificates of interest or participation in other securities of the Company are outstanding if the Company shall have sustained the burden of proving on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the trustee from acting as such under this Indenture or such other indenture or indentures.

4. The New Indenture is virtually identical to the Old Indenture so that the Warrant holders to whom the exchange offer is being made, most of whom still hold the Old Debentures, will be familiar with the consideration being offered them and may feel more comfortable in accepting the exchange offer. The New Debentures, like the Old Debentures, are wholly unsecured. The New Indenture also contains the identical section 310(b)(1)(ii) language as does the Old Indenture.

5. The only changes in the New Indenture are as follows:

(a) The sinking fund provisions are changed to reflect the lower dollar amount necessary to redeem the New Debentures at the same rate and to the same level as the Old Debentures. The sinking fund under the New Indenture, as in the Old Indenture, commences in 1989 and will retire 82% of the original aggregate principal amount of the New Debentures prior to October 1, 1998.

(b) The provision for termination of restrictions on the payment of dividends is altered such that the termination will occur when the aggregate principal amount of the New Debentures decreases to 15.15% of the original aggregate principal amount, as in the Old Indenture.

(c) The New Indenture contains expanded definitions for Senior Debt and Junior Debt, and expanded language regarding the subordination of the New Debentures, such that the New Debentures are assured to be equal in right of payment with the Old Debentures and with the 11⅞% Debentures and vice versa.

6. The Company proposes, through the present exchange offer, that the Trustee serve as trustee under the New Indenture concurrently with its trustship under the Old Indenture. However, the trustee will face no conflict of interest in this service, as the two Indentures are virtually identical. Indeed, the limited differences between the Indentures are designed so that the rights of the two classes of Debentureholders remain equal and identical to each other. The different sinking fund provisions are designed such that the New Debentures and Old Debentures will both be retired at the identical rate to the identical proportion. The changes in certain definitions and in subordination provisions are such that the New Debentures will be entirely equal in right of payment to the Old Debentures and the 11⅞% Debentures, as provided in the Old Indenture. Because both the Old and New Debentures are wholly unsecured and are equal in right of payment, and because the Indentures under which each class of Debentures are issued are virtually identical, the Trustee will face no conflict of interest.

7. The Company has waived its right to a hearing on this application under the Commission's Rules of Practice.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the office of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after April 27, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Act. Any interested person may, not later than April 27, 1985 at 5:30 p.m., Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8379 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21911; File No. SR-CBOE-85-9]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change; Relating to Opening Rotations.

The Chicago Board Options Exchange, Inc. ("CBOE"), LaSalle at Van Buren, Chicago, IL 60601, submitted on March 22, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), which would amend CBOE Rule 6.2, Interpretation .01, by reversing the order of opening options series in opening rotations of equity options.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Rule 6.2 No change.

* * * Interpretations and Policies:

.01 Trading rotations shall be employed at the opening of the Exchange each business day. For each class of option contracts that has been approved for trading, the opening rotation shall be conducted by the Board Broker or Order Book Official acting in such class of options.

The opening rotation in each class of options shall be held promptly following the opening transaction in the underlying security on the principal exchange where it is traded. As a rule, a Board Broker or Order Book Official acting in more than one class of options should open them in the same order in which opening transactions are reported in the underlying securities. In conducting each such opening rotation, the Board Broker or Order Book Official should ordinarily first open the one or more series of options of a given class having the [nearest] *most distant* expiration, then proceed to the series of options having the next [most] *least* distant expiration, and so forth, until all series have been opened. If both puts and calls covering the same underlying security are traded, the Board Broker or Order Book Official shall determine which type of option would open first, and shall alternate the opening of put series and call series. A Board Broker or

Order Book Official may conduct the opening rotation in another manner only with the approval of two Floor Officials or at the direction of the Floor Procedure Committee.

In the event an opening transaction in the underlying security has not been reported within a reasonable time after 9:00 a.m. (Chicago time), the Board Broker or Order Book Official acting in option contracts on such security shall report the delay to a Floor Official and an inquiry shall be made to determine the cause of delay. The opening rotation for option contracts in such security shall be delayed until an opening transaction is reported in the underlying security unless two Floor Officials determine that the interests of a fair and orderly market are best served by opening trading in the option contracts.

.02–.03 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This rule change reverses the order of opening series of options in opening rotations of equity options. The Exchange's experience has been that the most active series of options are in the near-term. By opening these series last, rather than first, it is expected that there would be less time intervening between the opening rotation and open trading in the most actively traded servies. This would be beneficial to continuity in price. In the index options, pilot programs with this form of opening rotation have demonstrated the efficacy of this procedure. The statutory basis of this rule change is Section 6(b)(5) of the Exchange Act, in that, among other things, the rule change will add to a free, open and efficient market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange membership endorsed this rule change in a vote concluded on November 20, 1984.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longrer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 29, 1985.

[FR Doc. 85-8381 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21912; File No. SR-CBOE-85-08]

Self-Regulatory Organizations; Proposed Rule Change; Chicago Board Options Exchange, Inc.; Obligations for Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized: deletions are bracketed.

Obligations for Orders

Rule 7.4. (a) Acceptance. A Board Broker or Order Book Official shall ordinarily be expected to accept orders for all option contracts of the class or classes to which his appointment extends. [Such orders shall include market orders (as defined in Rule 6.53(a)), limit orders (as defined in Rule 6.53(b)) and such orders as may be designated by the Floor Procedure Committee.] A Board Broker or Order Book Official shall not accept orders [of any other type or] from any source other than a member. For the purposes of this rule, an order shall be deemed to be from a member if the order is placed with a Board Broker or Order Book Official by a person associated with a member or through the telecommunications system of a member firm. The Floor Procedure Committee may specify the manner in which orders are routed to the Board Broker or Order Book Official for entry into the book. No member shall place, or permit to be placed, an order with a Board Broker or Order Book Official for an account in which such member, any other member or any non-member broker/dealer has an interest.

(b) Types of Orders. Orders which may be placed with an Order Book Official shall include the following:

(i) market orders (as defined in Rule 6.53(a)), provided however that no member shall place or permit to be placed with an Order Book Official a market order in any options series after such series has been called for opening unless such market order cancels and replaces a limit order left with the

Order Book Official prior to the opening of such series;

(ii) limit orders (as defined in Rule 6.53(b)), provided however that an Order Book Official may refuse to accept limit orders other than orders to cancel and replace limit orders already left with the Order Book Official, or restrict the manner in which such orders may be placed with the Order Book Official if, based upon market conditions, the Order Book Official anticipates that the flow of limit orders to the book will excessively burden or impede trading or lead to a trading halt; and

(iii) such orders as may be designated by the Floor Procedure Committee.

[(b)] *(c)* Availability. Each Board Broker or a temporary Board Broker designated in accordance with Rule 7.9 must be at the post not later than one-half hour before the opening of the market each business day (or such earlier time as may be set by the Floor Procedure Committee because of unusual circumstances) and must remain on the floor throughout the business day and for at least 15 minutes following the close of the market (or such longer period as may be set by the Floor Procedure Committee because of unusual circumstances).

[(c)] *(d)* Execution. A Board Broker or Order Book Official shall use due diligence to execute the orders placed in his custody at the best prices available to him under the Rules of the Exchange.

[(d)] *(e)*(1) If a Board Broker or Order Book Official holds orders to buy and sell the same option series, and if the highest bid and lowest offer displayed by the Board Broker or Order Book Official in that series differ by more than the minimum fraction, he may cross such orders, provided he proceeds in the following manner:

(i) A Board Broker or Order Book Official shall request bids and offers for such option series and make all persons in the trading crowd aware of his request;

(ii) after providing an opportunity for such bids and offers to be made, he must bid above the highest bid or offer below the lowest offer at prices differing by the minimum fraction;

(iii) If neither hid bid nor his offer is taken, he may cross the order at such higher bid or lower offer if possible, or at a price determined by the limit order to be crossed, by announcing by public outcry that he is crossing and giving the quantity and price.

(2) If a Board Broker or Order Book Official holds orders to buy and sell the same option series, and if the highest bid and lower offer displayed by the Board Broker or Order Book Official in that series differ by the minimum fraction, he may cross such orders, by announcing by public outcry that he is crossing and giving the quantity and the price.

(3) The provisions of paragraph [(d)] *(e)* of this Rule shall not apply to matching 1¢ buy and sell orders under Rule 6.54.

[(e)] *(f)* Notwithstanding anything to the contrary in paragraph [(d)] *(e)* of this Rule, during the opening rotation for a class of option contracts, in the interests of achieving a single price opening, a Board Broker or Order Book Official may proceed as follows:

(i) The Board Broker or Order Book Official may match all market orders in his possession;

(ii) He shall then announce by public outcray the number of contracts he has matched and will cross at the opening price to be established;

(iii) He may then continue to bid or offer the remaining unmatched and unexecuted orders he has in his possession for execution during opening rotation.

. . . Interpretations and Policies:

.01 In addition to market and limit orders [which he is obligated to accept], a Board Broker or Order Book Official may only accept such other types of orders as have been designated by the Floor Procedure Committee.

.02–.05 No change.

.06 An Order Book Official who refuses to accept limit orders or restricts the manner in which such orders may be entered into the shoe based on a determination that the flow of orders will excessively burden or impede trading or lead to a trading halt shall, as soon as practicable, notify two floor officials, who shall then decide when the restrictions imposed by the Order Book Official should be discontinued.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule changes are designed to preclude the "dumping" of public customer orders into the order book. At present, a floor broker may place any market or limit order for a public customer into the book. (Exchange Rule 7.4(a)). Once in his custody, those order become the responsibility of the Order Book Official ("OBO"), who must exercise due diligence in attempting to execute them. (Exchange Rule 7.4(c)). Because bids and offers in the order book have priority over identical quotes in the trading crowd (Exchange Rule 6.45(a), (b)), whenever the market price of an option contract "touches" the best bid or offer in the book, trading among members of the crowd must cease until all executable orders in the book have been filled. Clearly, the practice of "dumping" orders into the book, which is apt to occur during periods of unusually active trading and rapidly changing prices, can cause severe backlogs in handling public customer orders. On some occasions trading halts have been called to enable OBO's to cope with a deluge of public customer orders dumped into the book in the midst of an active trading session.

The rule revisions seek to preclude dumping by floor brokers first by prohibiting the entry into the order book of a market order in any option series which already has been called during opening rotation. A market order is, by definition, immediately executable. Thus, there would not appear to be a need to book such orders during free trading. Under the amended rule, it should be noted, market orders already in the book could still be cancelled and replaced during the trading day.

The second substantive change to existing rules would authorize an Order Book Official to close the book to limit orders, or restrict the manner in which such orders could be booked, if the OBO determines from market conditions that the anticipated flow or orders to the book will excessively burden or impede trading or cause a trading halt. The OBO would have discretion either to refuse additional limit orders or place restrictions on the booking of such orders (for example, by requiring that they be time-stamped and/or initialled) as soon as the conditions which could give rise to dumping are detected. Once he takes such action, the OBO must summon two floor officials who will then determine whether and for how

long the OBO's restrictions should be allowed to continue. The rule revision does not authorize the OBO to restrict in any way cancellation and replacement of limit orders already booked.

The proposed amendments to Exchange Rule 7.4 are consistent with the requirements of the Securities Exchange Act of 1934 ("the Act") and further the objectives of the Act, particularly Section 6(b)(5) thereof, in that they are designed to promote just and equitable principles of trade and protect investors and the public interest through the elimination of unnecessary booking of orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The concept of this rule change was endorsed in a membership vote concluded on November 20, 1984.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8382 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21999; File No. SR-PHLX 85-7]

Self-Regulatory Organizations; Proposed Rule Change; Philadelphia Stock Exchange, Inc.; Establishment of an Alternate Specialist System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 27, 1985, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (the "PHLX" or the "Exchange") pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act") proposes to adopt Rule 203A to establish formal standards for the operation of a system of alternate specialists.

The text of the proposed rule change is set forth below.

Agreement of Alternate Specialists

Rule 203A (a) Upon being appointed as an alternate specialist, such alternate specialist shall agree to execute all orders in any security to which he is assigned in accordance with regulations herewith prescribed.

(b) Alternate specialists are members registered as specialists for purposes of the Securities Exchange Act of 1934 and as such may not effect on the Exchange as broker any transactions except upon a market or limited order.

(c) Such alternate specialists shall effect all of his transactions in securities traded on the Exchange so that they constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. No alternate specialist shall enter into transactions or make bids or offers that are inconsistent with such a course of dealings.

(d) An alternate specialist shall, at the request of a floor broker, make a bid or offer in any security to which he is assigned or in which he is then trading such that a transaction effected thereon will contribute to the maintenance of a fair and orderly market.

(e) An alternate specialist shall engage to a reasonable degree under existing circumstances in a course of dealing in the securities to which he is assigned that is reasonably calculated to contribute to the maintenance of a fair and orderly market. The Floor Procedure Committee (or other committee appointed for the purpose by the Board) shall specify the percentage of the shares purchased and sold by an alternate specialist that must be of securities to which he is assigned.

. . . Supplementary Material

.01 An alternate specialist shall at all times comply with applicable provisions of Rule 703 of the Exchange.

.02 An alternate specialist must also be registered as specialist in such number of securities as determined by the Floor Procedure Committee.

0.3 Fifty percent (50%) of an alternate specialists quarterly share volume must be in issues to which he is assigned. In situations where a Floor Official requests an alternate specialist to participate in trading an issue in which he is not assigned, the share volume so accumulated will be included as part of the volume required to satisfy the 50% requirement. Fifty percent (50%) of the quarterly share volume which creates or increases a position in an alternate specialist account must result from transactions consumated on the Exchange.

.04 Alternate specialists and specialists shall coordinate their activities in furtherance of the maintenance of a fair and orderly market.

.05 Except in unusual circumstances, no alternate specialist shall initiate a transaction on the exchange in his alternate specialist account from off the floor. Such transaction must be approved by two members of the Floor Procedure Committee. A written report thereof shall be submitted to the Market Surveillance Department stating the

nature of the unusual circumstances and containing the signatures of the approving members of the Floor Procedure Committee.

.06 Alternate specialsits as a group are entitled to participate in opening a security on the Exchange with equal standing with respect to any net imbalance (after specialist participation) of purchase and sale orders on the Exchange.

.07 Following the opening, when the bids or offers of one or more alternate specialists are equal in price to those of the specialist the alternate specialists as a group are entitled to participate in the transactions effected thereon to the extent of one-third of the total shares involved (excluding those needed to satisfy public orders).

.08 An alternate specialist may accept limit orders in any security to which he has been assigned that have been presented to the specialist and not accepted by him. Limit orders and market orders accepted by an alternate specialist shall be handled by him in accordance with Exchange rules governing the handling of such orders by specialists.

.09 When requested by a floor broker, an alternate specialist must accept and quarantee execution of all 100 share agency orders to which his assignment extends which are not accepted by the specialist. Subject to the requirements of the short sale rule, all agency market orders must be filled on the basis of the best consolidated quote system bid on a sell order or the best consolidated quote system offer on a buy order. All agency limit orders may be filled on the basis of Rule 228(a)(iii) or other criteria requiring a fill.

.10 Only those positions which have been established as a direct result of bonafide alternate specialist activity qualify for exempt credit treatment.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statuatory Basis for, the Proposed Rule Change

(a) *Purpose.* The purpose of proposed Rule 203A (the "rule") is to establish formal standards for the operation of a system of alternate specialists on the Exchange. The alternate specialist system is intended to add depth and liquidity to markets on the Exchange. The proposed rule imposes both "affirmative" and "negative" obligations on alternate specialists thus enabling members who register as such to qualify for market-maker status as contemplated by the Securities Exchange Act of 1934 (the "Act") and the rules thereunder. At the same time these obligations are aimed at protecting the public interest and strengthening the Exchange's ability to maintain fair, orderly and competitive markets on its floor.

The rule: (a) Requires alternate specialists to execute all orders in assigned securities in accordance with prescribed regulations; (b) provides that alternate specialists are specialists under the Act; (c) obligates him to execute transactions in securities traded on the Exchange so that they constitute a course of dealings reasonably calculated to contribute to a fair and orderly market; (d) requires that they make a bid and offer in assigned securities or securities in which trading at the request of a floor broker; (e) requires alternate specialists to engage to a reasonable degree under existing circumstances in a course of dealing in the securities to which assigned that is reasonably calculated to contribute to the maintenance of a fair and orderly market.

The supplementary material under the rule further outlines the "affirmative" and "negative" obligations imposed on alternate specialists.

(b) *Statuatory Basis for Proposed Rule Change.* Implementation of the proposed rule change will be consistent with those provisions of the Act by facilitating transactions in securities and, in general, to protect investors and the public interest. See Section 6(c)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed Rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions shoud file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

Dated: March 29, 1985.

[FR Doc. 85-8383 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21892; SR-BSE-85-1]

Self-Regulatory Organizations; Notice of Filing of and Order Approving Proposed Rule Change by the Boston Stock Exchange, Inc.; Relating to Amendments to Chapter XXXII of the Rules of the Board of Governors.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1985 the Boston Stock Exchange, Inc. ("BSE") filed with the Securities and Exchange Commission the proposed changes as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The BSE is proposing to amend its arbitration rules. The full text of the proposed amendments is included in the BSE's filing with the Commission and is summarized in Item II below.

II. Self-Regulatory Organization's Statement of the Purpose of, Statutory Basis for, and Burden on Competition of, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Changes in the Rules relating to arbitration are necessitated by changes to the Constitution of the Exchange which eliminated provisions relating to the arbitration of claims. While much of the material was duplicitous of material also found in Chapter XXVI of the Rules, certain amendments to the Rules were necessary. In addition, the development and promulgation of uniform industry standards by the Securities Industry Conference on Arbitration necessitates changes in the Rules of the Exchange in order to bring the Rules of the Exchange into conformity with industry standards.

Section 1 has been added to define who may invoke the procedures of this Exchange. This material was previously covered in the Constitution of the Exchange.

Section 2 is amended to increase the dollar limit for simplified arbitration from $2,500 to $5,000 and to establish a fee schedule for simplified arbitration claims.

Section 4 is amended to prevent the time limitation on submissions from barring the submission of a claim which is directed to arbitration by a court.

The amendments further provide that, where permitted by law, the statute of limitations will be tolled when a claimant, rather than all parties, files a submission agreement. The amendments also add a subsection to extend the six-year limitation on submissions for such period of time as a court may retain jurisdiction over the dispute.

Section 8(b) is added to provide for simplified arbitration procedures applicable to member controversies of less than $5,000 and for panels of 5 arbitrators for cases in excess of $100,000.

Section 10 is amended to provide for additional preemptory challenges in the discretion of the Arbitration Director where there are multiple claimants or respondents. The rule, as amended, states explicitly that there will be unlimited challenges for cause.

Section 13 is amended in two instances. The first (Section 13(b)(2)(i) specifically authorizes the arbitrators to bar a respondent from presenting a defense if the respondent has submitted only a general denial or if the response fails to specify all available defenses. The second change (Section 13(c)(2)), permits the Arbitration Director to sever arbitrations where there are multiple claimants.

Section 27 has been amended to specify how amendments to pleadings should be made.

Section 31 establishes a new fee schedule. In general, it slightly increases filing fees in certain cases in order to help defray expenses of administering the arbitration program.

The statutory basis for the rule change is Section 6(b)(5) of the Securities Exchange Act of 1934. The proposed rule change will clarify the administrative procedures used in the arbitration program, and enhance the effectiveness of that program. It will benefit both the public and members, and protect the interests of the investors and the public.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed amendment will have any impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The BSE requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. the BSE views the proposed rule change as being substantially the same as the amendments to rules of other self-regulatory organizations already approved by the Commission, and believes that the changes will clarify the administrative procedures used in the arbitration program, enhance the effectiveness of that program, and protect the interests of investors and the public.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed amendments are substantially the same as the amendments to rules of other self-regulatory organizations, recently published for public comment, considered and approved by the Commission.[1] The Commission believes

[1] The Commission has approved provisions similar to those contained in the proposed amendments to BSE's Arbitration Code for the National Association of Securities Dealers (SR-NASD-84-16; Securities Exchange Act Release No. 21295, September 7, 1984; 49 FR 36040, September 13, 1984); the Municipal Securities Rulemaking Board (SR-MSRB-84-5; Securities Exchange Act Release No. 21407, June 14, 1984; 49 FR 25332, June 20, 1984); the American Stock Exchange (SR-Amex-84-24; Securities Exchange Act Release No. 21442, October 31, 1984; 49 FR 44574, November 7, 1984); the Midwest Stock Exchange (SR-MSE-84-6; Securities Exchange Act Release No. 21506, November 20, 1984; 49 FR 46857, November 28, 1984); the Chicago Board Options Exchange (SR-CBOE-84-28; Securities Exchange Act Release No. 21476, November 9, 1984; 49 FR 45687, November 19, 1984); the New York Stock Exchange. (SR-NYSE-84-20;

Continued

accelerated approval is appropriate insofar as the proposed rule change will foster consistent arbitration procedures among the self-regulatory organizations.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1985.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

March 25, 1985.

[FR Doc. 85-837 2 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21904; SR-MSRB-85-9]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Proposed Rule Change

March 28, 1985.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 6, 1985, the Municipal Securities Rulemaking Board filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing proposed amendments to rule G–12 on uniform practice and rule G–15 on customer confirmations, clearance and settlement of transactions (hereafter referred to as the "proposed rule change"). The Board requests that the Commission delay the effectiveness of the proposed rule change for a period of 60 days following the date of Commission approval in order to provide time for information concerning the approval of the proposed rule change to be circulated to all persons affected. The text of the proposed rule change is as follows:*

Rule G–12 Uniform Practice

(a) Through (b) No change.

(c) Dealer Confirmations.

(i) Through (v) No change.

(vi) In addition to the information required by paragraph (v) above, each confirmation shall contain the following information, if applicable:

(A) Through (D) No change.

(E) *If the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are "original issue discount" securities;*

(E) Through (F) renumbered *(F)* through *(G)*

(d) Through (l) No change.

Rule G–15 Confirmation, Clearance and Settlement of Transactions with Customers

(a) Customer Confirmations.

(i) Through (ii) No change.

(iii) In addition to the information required by paragraphs (i) and (ii) above, each confirmation to a customer shall contain the following information, if applicable.

(A) Through (E) No change.

(F) *If the securities pay periodic interest and are sold by the underwriter as original issue discount securities, a designation that they are "original issue discount" securities;*

(F) Through (G) renumbered (*G*) through (*H*)

(iv) through (ix) No change.

(b) Through (d) No change.

* Italics indicate additions.

II. Self-Regulatory Organization's Statement on Purpose of, and Statutory Bais for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Board rules G–12(c) and G–15(a) require confirmation disclosure of certain descriptive information about the securities involved in inter-dealer and customer transactions, respectively. The proposed rule change would amend these rules to require that confirmations of transactions involving securities that are or were sold by underwriters as original issue discount securities and which also pay periodic interest shall include a designation that the securities involved are "original issue discount" securities.

The accretion of the discount of a tax-exempt original issue discount security generally is tax-exempt, at least in part, to the holder. Because of the tax implications that result from a municipal security being an original issue discount security, the Board has determined that there is a need for written identification or original issue discount securities on which periodic interest will also be paid. The Board is concerned that, when such securities are involved in a transaction, an investor might not perceive that the investment return will be received from two sources (*i.e.*, from both the periodic interest payments and the accretion of the discount) and may not realize the significance of (or may even pay capital gain taxes on) the apparent gain in principal when he subsequently disposes of the security. Similarly, a holder selling such an original issue discount security in the secondary market might not be paid the full value of the security if the parties do not realize that the security was issued at an original issue discount. The Board believes that written disclosure is especially important for these original issue discount securities because, unlike "zero coupon" securities, for which the Board has already adopted various confirmation disclosure requirements, they may be mistaken for traditional tax-exempt securities that pay return on investment only in the form of periodic interest payments.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to

Securities Exchange Act Release No. 21542, December 6, 1984; 49 FR 28403, December 12, 1984; and the Philadelphia Stock Exchange, (SR–Phlx–85–2; Securities Exchange Act Release No. 21762, February 14, 1985; 50 FR 7280, February 21, 1985).

foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In May 1984, the Board released for comment an exposure draft of amendments identical to the proposed rule change regarding confirmations of transactions involving original issue discount securities. One comment letter was received, which supported the draft amendments.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8371 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

(Release No. 34-21905; File No. SR-NSCC-85-2)

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corporation ("NSCC") Relating to an Amendment to NSCC Rules and Fee Structure Regarding the Release of Clearing Data

March 28, 1985.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1985, NSCC submitted to the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend National Securities Clearing Corporation's ("NSCC") SCC Division Rules and Procedures by adding a new Rule 49, Release of Clearing Data, as follows:

Release of Clearing Data

Rule 49. (a) Absent valid legal process or as provided in paragraph (b) hereof, the Corporation will only release Clearing Data relating to transactions of a particular participant to such participant upon his written request.

(b) The Corporation, in its sole discretion, may release Clearing Data relating to transactions of participants to regulatory organizations and self-regulatory organizations, as defined in the Securities Exchange Act of 1934, as amended, or other comparable Federal or State statutes. Provided, however, that nothing in this Rule shall prevent the Corporation from releasing Clearing Data to others, provided that such data small be in a form as to prevent the disclosure, whether patently or in easily discernible format, of proprietary and/or confidential financial, operational or trading data of a particular participant or inappropriately arranged groups of participants.

(c) With respect to the foregoing, the release of any Clearing Data shall be conditioned upon either (i) a writen request, or (ii) the execution of a written agreement with the Corporation, whichever appropriate in the Corporation's discretion and the Corporation, in its discretion, shall establish the conditions under which such data shall be released and the fees, if any, to be paid for such data.

(d) The term "Clearing Data" shall mean, for the purposes of this Rule, transaction data which is received by the Corporation for inclusion in the clearance and/or settlement process of the Corporation, or such data, reports or summaries thereof, which may be produced as a result of processing such transaction data.

(e) The foregoing notwithstanding, this Rule is not intended to, nor shall it be deemed to be in contravention, or a limitation, of NSCC's obligations, as a self-regulatory organization, to cooperate and share data with other regulatory and self-regulatory organizations for regulatory purposes.

Amend NSCC's SCC Division Rules and Procedures Manual by adding the following Addendum H:

****Interpretation of the Board of Directors****

Pursuant to SCC Division Rule 33, the Board of Directors is authorized to prescribe Procedures and other regulations in respect of the business of National Securities Clearing Corporation. The Board of Directors hereby adopts the following interpretation as a regulation of the SCC Division:

Release of Clearing Data to Regulatory and Self-Regulatory Organizations

The purpose of this interpretation is to limit the extent to which Clearing Data pertaining to municipal bond transactions may be obtained by regulatory or self-regulatory organizations and others pursuant to Rule 49.

Pursuant to paragraphs (b) and (c) of Rule 49, the Corporation may release Clearing Data to regulatory and self-regulatory organizations and others. The Corporation has determined at this time that, due to the current nature of

municipal data within the Corporation's possession and control, release without restriction could be susceptible to misunderstanding, and/or misuse. In order to avoid problems that such release, in general, could cause to the municipal securities industry, the Corporation has determined that at this time Municipal Clearing Data in general shall only be released to regulatory organizations and self-regulatory organizations who have demonstrated to the Corporation the necessity for obtaining such data in furtherance of the regulatory purpose of such organization. The Corporation will also permit the release of Municipal Clearing Data to other responsible entities for non-regulatory purposes but only in the limited format as described below.

Regulatory and self-regulatory organizations to whom the Corporation has consented to release data may, in writing, request that Municipal Clearing Data be provided to a third party in addition to or in lieu of themselves, upon a demonstration satisfactory to the Corporation, that such release to a third party would further the regulatory purpose of the regulatory organization or the self-regulatory organization.

With respect to the release of Municipal Clearing Data other than for regulatory purposes, the Corporation will release only a ranking of a pre-selected group of municipal bonds compared by the Corporation during a predetermined period of time to responsible entities. Such ranking shall be based upon the aggregate total of the par value of bonds compared by the Corporation during such period. The Corporation specifically reserves the right to deny any request where it has determined that with regard to providing data with respect to the pre-selected groups of bonds, the provision of such data could disclose whether patently or in easily discernible format, proprietary and/or confidential financial, operational or trading data of a particular participant.

The foregoing notwithstanding, this interpretation is not intended to, nor shall it be deemed to be in contravention, or a limitation, of the Corporation's obligation pursuant to its Shareholders Agreement.

Amend Paragraph V., "Pass Through and Other Fees" of NSCC's Fee Structure by adding:

D. Production of Clearing Data: (15)

To provide a bi-monthly ranking within a pre-selected group of municipal bonds (not to exceed fifty in number), based upon NSCC's comparison activity.	*$1,025 per month for the first twelve (12) months; $500 per month thereafter.*

(15) In establishing fees for the production of clearing data, NSCC will include its costs of developing requested programs, running such programs and any additional costs to distribute such data as produced, including an appropriate allocation of NSCC's general and administrative expenses and an appropriate allocation of NSCC's development costs of the system or service from which athe data is developed provided, however, that such latter allocation shall not exceed 25% of the above combined NSCC costs.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to specifically delineate within its rules the current practice that NSCC follows with respect to requests for the release of data within its possession and control. In conjunction therewith, NSCC has determined, with respect to requests for the release of municipal data, to limit at this time its current practice as codified in this rule. NSCC's purpose in so limiting the release of municipal data is as follows.

Effective August 1, 1984, the Municipal Securities Rulemaking Board ("MSRB") in Rule G–12, subject to certain exceptions, required all interdealer trades in municipal bonds, between (a) members of registered clearing agencies, (b) a member of a registered clearing agency and a non-member who utilizes as its clearing agent a member of a registered clearing agency, and (c) non-members who utilize clearing agents who are members of registered clearing agencies, be reported to a registered clearing agency for automated comparison.

Prior to the effective date of Rule G–12, NSCC on its own had developed a stand alone Municipal Bond Comparison System ("the System"). As a result of operating the System, NSCC has the ability to accumulate, in a central location, a significant amount of data concerning the municipal bond market place which was previously unavailable. However, NSCC recognizes that the data it can make available could be susceptible to misuse and/or misunderstanding by some parties. Such potential was also recently recognized by the MSRB on March 4, 1985 when it solicited comments concerning the development of automated systems for the dissemination of municipal securities pricing information. In that document, a copy of which is attached as Exhibit 2, specifically in the area of *Reporting of Transaction Data*, the MSRB raised a series of questions including, among others, "What safeguards should be followed to eliminate or reduce the risk of distortion or manipulation of the data?" The MSRB specifically stated that: "It may be necessary to establish limitations on the data to be released to prevent the dissemination of distorted or misleading information or to forestall undesirable or inappropriate effects from release of the data." It is equally clear, however, that the data could be of significant benefit to regulatory and self-regulatory organizations and to other responsible entities.

Accordingly, the proposed rule would limit NSCC at this time to providing municipal bond comparison data only to (i) regulatory organizations and self-regulatory organizations (and, upon their request, to third parties) for the sole purpose of assisting regulatory and self-regulatory organizations in the performance of their regulatory function under the Securities Exchange Act of 1934, as amended, or other comparable Federal or State statutes, and (ii) for other than regulatory or self-regulatory purposes to responsible entities, but only in the form of a ranking of a pre-selected group of municipal bonds compared by NSCC. NSCC would withhold dissemination of municipal clearing data, other than for regulatory purposes or as permitted above, pending resolve among industry participants and regulators as to the appropriateness of further dissemination.

The proposed rule also sets forth the basis under which fees would be charged for obtaining clearing data. The rule change does not affect NSCC's ability to safeguard securities and funds in its custody or control or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 29, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 28, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8373 Filed 4-5-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-020]

Coast Guard Academy Advisory Committee, Meeting

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Wednesday, April 22 and 24, 1985. The session on Monday will be held from 10:45 to 11:45 a.m. Another open session will be held on Wednesday from 10:15 to 11:15 a.m. The agenda for this meeting consists of the following items:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Capt David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444-8275, Issued in Washington, D.C. on April 1, 1985.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 85-8365 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-14-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes May 8, 1985.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
[illegible]-N	Ethyl Corp., Baton Rouge, LA	49 CFR 173.301(d)(2), 173.302(a)(1), (3)	To authorize shipment of silicon tetrafluoride, non-flammable gas, in tube trailers utilizing manifolded seamless steel cylinders conforming to DOT Specification 3AAX2200 and individually equipped with safety relief devices. (Mode 1.)
[illegible]-N	Westinghouse Electric Corp., Madison, PA	49 CFR 173.206(c)(4)	To authorize a one time shipment of sodium metallic, classed as a flammable solid in three non-DOT specification stainless steel storage tanks securely affixed to a flat bed tractor trailer. (Mode 1.)
[illegible]-N	Proco, Inc. Corpus Christi, TX	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks similar to DOT Specification MC-307/312 except for bottom outlet valve variations, for shipment of various flammable, corrosive, or poison waste liquids or semi-solids. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9413-N	EM Science, Cincinnati, OH	49 CFR 173.286	To authorize shipment of chemical kits containing limited quantities of flammable solid, n.o.s., zinc powder, and hydrochloric acid solution, classed as a corrosive material in specially designed packagings. (Mode 1.)
9414-N	Union Carbide Corp., Danbury, CT	49 CFR 173.302(a)(5)	To authorize shipment of tetrafluoromethane (halocarbon 14) non-liquefied, nonflammable gas, in DOT Specification 3AL aluminum cylinders. (Modes 1, 3.)
9415-N	Plasti-Drum Corp., Lockport, IL	49 CFR 173, Subpart D, E, F, H	To manufacture, mark and sell 30-gallon capacity polyethylene containers comparable to DOT Specification 34 except for a singe opening of 4 inches for shipment of those hazardous materials authorized in Specification 34 and 21C drums. (Modes 1, 2, and 3.)
9416-N	CIBA-GEIGY Corp., Ardsley, NY	49 CFR 173.359	To authorize shipment of organophosphorus pesticide, liquid, n.o.s., classed as a poison B, in DOT Specification 12P-60 fiberboard boxes each containing two 2½ gallon 2U containers. (Mode 1.)
9417-N	Russell-Stanley West, Inc., City of Industry, CA.	49 CFR 178.19-3	To authorize use of approximately 3,046 five gallon capacity DOT Specification 34 containers which have a thinner thickness than required in a isolated area in the bottom of the drums for shipment of those hazardous materials authorized in Specification 34. (Mode 1, 2.)
9418-N	West Texas Fabrication, Odessa, TX	49 CFR 173.119, 173.245	To manufacture, mark and sell non-DOT specification portable tanks having 6-60 gallon compartments firmly mounted on a truck chasis for shipment of various flammable and corrosive liquids (oil well treating compounds). (Mode 1.)
9419-N	FIBA Compressed Gas Equipment, Westboro, MA.	49 CFR 173.302, 173.34, Part 107, Appendix B	To authorize DOT Specification 3AAX and 3T cylinders to be periodically retested by acoustic emission equipment instead of hydrostatic retest. (Modes 1, 3.)
9421-N	Union Carbide Corp., Danbury, CT, Taylor-Wharton, Div. of Harsco Corp., Harrisburg, PA.	49 CFR 173.302, 173.304, 173.305	To manufacture, mark and sell non-DOT specification seamless, steel cylinders for the shipment of various compressed gases where the ratio of gas to cylinder weight is higher than the ratio with respect to DOT Specification 3AA cylinders. (Modes 1, 2, 3, 4.)
9422-N	Ford Motor Co., Mount Clemens, MI	49 CFR 172.202, 172.301	To authorize the depletion of a stock of approximately 40,000 shipping papers and labels preprinted with a proper shipping name now obsolete. (Modes 1, 2.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on April 1, 1985.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-8289 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes April 23, 1985.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, S.W., Washington, DC.

Application No.	Applicant	Renewal of exemption
3630-X	Mallinckrodt, Inc., Paris, KY	3630
3630-X	Ashland Services Company, Dublin, OH.	3630
5022-X	National Aeronautics and Space Administration, Washington, DC.	5022
5800-X	Ozark-Mahoning Company, Tulsa, OK.	5800
5746-X	U.S. Department of the Army, Falls Church, VA.	5746
5895-X	Explosive Technology, Inc., Fairfield, CA.	5895
6126-X	D & O Chemicals, Inc., Fort Lee, NJ.	6126
6126-X	Aceto Chemical Co., Inc., Flushing, NY.	6126
6658-X	U.S. Department of Energy, Washington, DC.	6658
6658-X	U.S. Department of the Army, Falls Church, VA.	6658
6759-X	Mesabi Powder Company, Hibbing, MN.	6759
6759-X	Atlas Powder Company, Dallas, TX.	6759
6762-X	Aquaphase Laboratories, Inc., Adrian MI.	6762
6762-X	National Chemical, Atlanta, GA	6762
6766-X	Dubois Chemicals, Cincinnati, OH.	6766
6774-X	HR Textron Inc., Pacoima, CA	6774
6874-X	Bio-Lab, Inc., Conyers, GA	6824
7063-X	Twin Lake Chemical, Co., Lockport, NY.	7063
7235-X	Luxfer U.S.A., Ltd., Riverside, CA.	7235
7269-X	U.S. Department of Energy, Washington, DC.	7269
7440-X	Revlon Professional Products, Inc., Jacksonville, FL.	7440
7482-X	Monsanto Company, Saint Louis, MO.	7482
7628-X	Chemtech Industries, Inc., St. Louis, MO.	7628
7700-X	Forest Service, U.S. Department of Agriculture, Washington, DC.	7700
7835-X	Union Carbide Corporation, Danbury, CT.	7835

Application No.	Applicant	Renewal of exemption
7985-X	Process Engineering, Incorporated, Plaistow, NH.	7985
8018-X	Forest Service, U.S. Department of Agriculture, Washington, DC.	8018
9065-X	U.S. Department of Energy, Washington, DC.	9065
8196-X	ANF-Industrie, Paris, France	8196
8196-X	Societe Auxiliaire de Transports et d'Industries, Paris, France.	8196
8232-X	ANF-Industrie, Paris, France	8232
8232-X	Societe Auxiliaire de Transports et d'Industries, Paris, France.	8232
8238-X	ASARCO Incorporated, New York, NY.	8238
8426-X	Martin Tank Manufacturing , Inc., Wilmington, CA.	8426
8518-X	Pacific Tank and Manufacturing, Long Beach, CA.	8518
8523-X	Dehon and Prochimac, Paris, France.	8523
8540-X	U.S. Department of the Army, Falls Church, VA.	8540
8554-X	Evenson Explosives, Inc., Morris, IL.	8554
8555-X	Morton Thiokol, Inc., Brigham City, UT.	8555
8581-X	Northrop Services, Inc., Research Triangle Park, NC.	8581
8748-X	Battelle, Pacific Northwest Laboratories, Richland, WA[2].	8748
8795-X	The Manson Company, South Elgin, IL [3].	8795
8901-X	Great Lakes Chemical Corporation, El Dorado, AR.	8901
8956-X	Cliff Mock Company, Conroe, TX	8956
8990-X	Pressure Pak, Inc., East Hampton, CT.	8990
8992-X	General Dynamics/Pomona Division Aviation Dept., Pomona, CA.	8992
9004-X	Metec Corporation, Tulsa, OK	9004
9014-X	Hunter Drums Limited, Burlington, Ont., Canada.	9014
9017-X	EVA Gasabfuhr-Verkehrsmittel-Gesellschaft mbH, Duesseldorf, West Germany.	9017
9017-X	Mobay Chemical Corporation, Pittsburgh, PA.	9017
9023-X	ANF-Industrie-Paris, France	9023
9041-X	Hercules, Incorporated-Wilmington, DE.	9041
9048-X	Brooks Instrument Div./Emerson Electric Co. Statesboro, GA.	9048
9051-X	Amerex Corporation Trussville, AL.	9051
9052-X	Chemical Handling Equipment Co., Inc. Southfield, MI.	9052
9063-X	Hoechst Aktiengesellschaft Frankfurt, West Germany.	9063
9078-X	Monsanto Company Saint Louis, MO.	9078
9129-X	Weldex Corporation Grafton, MA	9129
9141-X	Bristol Flare Corporation Bristol, PA.	9141
9256-X	U.S. Department of the Army Falls Church, VA[4].	9256

[1] To authorize cylinders for shipment of various flammable or nonflammable compressed gases to be manufactured with neck rings.
[2] To provide for an increased capacity of boron trifluoride tubes.
[3] To reorient the manufacture of cylinders patterned after DOT Specification 4BW instead of DOT Specification 4B240 ET.
[4] To authorize cargo aircraft only and cargo vessel as additional modes of transportation.

Application No.	Applicant	Parties to exemption
2709-P	Trojan Corporation, Salt Lake City, UT.	2709
2981-P	IRECO Incorporated, Salt Lake City, UT.	2981
4282-P	IRECO Incorporated, Salt Lake City, UT.	4282
5243-P	IRECO Incorporated, Salt Lake City, UT.	5243
5704-P[1]	IRECO Incorporated, Salt Lake City, UT.	5704
6126-P	Dicel Chemical Industries, Ltd., Ossaka, Japan.	6126
6293-P	IRECO Incorporated, Salt Lake City, UT.	6293
6418-P	Brown & Bryant, Inc., Shafter, CA.	6418
6759-P	IRECO Incorporated, Salt Lake City, UT.	6759
6984-P	IRECO Incorporated, Salt Lake City, UT.	6984
7052-P	Tracor Aerospace Austin, Inc., Austin, TX.	7052
7052-P	Micro Memory, Inc., Chatsworth, CA.	7052
7052-P	Flow Research Corporation, Houston, TX.	7052
7052-P	IRECO Incorporated, Salt Lake City, UT.	7052
7754-P	IRECO Incorporated, Salt Lake City, UT.	7754
8445-P	Southern Illinois University, Carbondale, IL.	8445
8685-P	IRECO Incorporated, Salt Lake City, UT.	8685
8901-P	Douglas Chemical Company, Liberty, MI.	8901
8988-P	Gearhart Industires, Inc., Fort Worth, TX.	8988
9108-P	Trojan Corporation, Salt Lake City, UT.	9108
9130-P	Bio-Lab, Inc., Conyers, GA	9130
9364-P	CIBA-GEIGY Corporation, Ardsley, NY[1].	9364
9402-P	NAACO S.A., Paris, France	9402
9402-P	Exploitation De Services Industriels ET DE Forets, Paris, France.	9402
9402-P	ALGECO, Paris, France	9402

[1] Request party status and to authorize shipment of an organoohosphorus pesticide liquid, n.o.s. as an additional commodity.

This notice of receipt of applications for renewal of exemptions and for party to an exmeption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on April 2, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-8290 Filed 4-5-85; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains revisions and extensions and lists the following information: (1) The Department of Staff Office issuing the form; (2) The title of the form; (3) the agency form number, if applicable; (4) how often the form must be filled out; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form; and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Office (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 3, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revisions

1. Department of Veterans Benefits
2. Request for Estate Information
3. VA Form Letter 27-439
4. On occasion
5. Individuals or households, State or local governments, Federal agencies or employees
6. 24,000 responses
7. 4,000 hours
8. Not applicable

1. Department of Veterans Benefits
2. Eligibility Verification Report
3. VA Form 21-4179, 21-8913 through 21-8920
4. Annually
5. Individuals or households
6. 1,500,000 responses
7. 300,000 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Application for Change of Permanent Plan (Nonmedical)
3. VA Form 29-1550
4. On occasion
5. Individuals or households
6. 500 responses
7. 166 hours
8. Not applicable

Extensions

1. Department of Veterans Benefits
2. Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders

3. VA Form 26–8736
4. On occasion
5. Businesses or other for-profit
6. 50 responses
7. 25 hours
8. Not applicable

1. Department of Veterans Benefits
2. Request for Information to Make Direct Payment to Child Reaching Majority
3. VA Form Letter 21–863
4. On occasion
5. Individuals or households
6. 22,600 responses
7. 3,767 hours
8. Not applicable

[FR Doc. 85–8300 Filed 4–5–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 67
Monday, April 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ENERGY REGULATORY COMMISSION

April 3, 1985.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., April 10, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

Consent Power Agenda, 811th Meeting—April 10, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 3856-002, Reed Hydro-Electric Corporation
CAP-2.
Project No. 8042-000, Rubi Hydro Partners
CAP-3.
Project No. 2890-005 and 006, Kings River Conservation District
CAP-4.
Project No. 2854-010, Town of Vidalia, Louisiana
CAP-5.
Project No. 6939-004, the city of Jackson, Ohio
CAP-6.
Project No. 8167-003, Synergics, Inc.
CAP-7.
Omitted
CAP-8.
Project No. 7339-001, Cross-O Ranch, Inc. and Hat Creek Corporation
CAP-9.
Project No. 2343-001, Potomac Edison Company
CAP-10.
Project No. 5275-000, Hydro Resource Company
Project No. 5325-000, Capital Development Company
Project No. 6014-002, Public Utility District No. 1 of Lewis County, Washington
Project No. 6600-000, Eagle Power Company
CAP-11.
Project No. 4441-003, Pacific Power and Light Company, et al.
Project No. 4702-002, city of Centralia, Washington
CAP-12.
Project No. 7187-002, Pankratz Lumber Company
CAP-13.
Docket No. ER84-576-007, Wisconsin Power & Light Company
CAP-14.
Docket No. ER85-301-000, Massachusetts Refusetech, Inc.
CAP-15.
Docket No. ER84-344-001, Maine Yankee Atomic Power Company
CAP-16.
Docket No. ER84-687-000, Pacific Power & Light Company
CAP-17.
Docket No. EL84-32-000, Plains Electric Generation and Transmission Cooperative, Inc. v. Public Service Company of New Mexico
Docket No. EL84-35-000, Public Service Company of New Mexico
Docket No. EL84-36-000, Texas-New Mexico Power Company v. Public Service Company of New Mexico
CAP-18.
Docket No. QF84-441-000, Turbine Tech., Inc.
CAP-19.
Docket No. QF85-187-001, County of Olmsted, Minnesota

Consent Miscellaneous Agenda

CAM-1.
(A) Docket No. RM85-2-000, Rules of Practice and Procedure: Commission review of remedial orders
(B) Docket No. RM85-3-000, delegation to the Chief Administrative Law Judge
CAM-2.
Docket No. RM79-76-238 (Texas—22 addition V), high-cost gas produced from tight formations
CAM-3.
Docket No. GP84-31-000, Natural Gas Pipe Line Company of America
CAM-4.
Docket No. GP81-14-000, Phillips Petroleum Company
CAM-5.
Docket No. RO84-2-000, Crown Central Petroleum Corporation

Consent Gas Agenda

CAG-1.
(A) Docket Nos. RP83-35-014 through 933, Texas Eastern Transmission Corporation
(B) Docket Nos. RP83-35-000, RP81-109-000, RP82-37-000 and RP74-41-016, Texas Eastern Transmission Corporation
CAG-2.
Docket No. RP83-137-016, Transcontinental Gas Pipe Line Corporation
CAG-3.
Docket No. RP84-79-005, Gas Gathering Corporation
CAG-4.
Docket Nos. TA83-2-47-000 and GP85-20-000, MIGC, Inc.
CAG-5.
Docket No. RP84-60-000, National Fuel Gas Supply Corporation
CAG-6.
Docket No. TA84-2-30-003 (PGA84-2a), Trunkline Gas Company
CAG-7.
Docket No. ST84-630-002, Delhi Gas Pipeline Corporation
CAG-8.
Docket Nos. ST81-194-002 and CP81-232-000, Northwest Alabama Gas District
CAG-9.
Docket Nos. RI74-188-044 and RI75-21-039, Independent Oil & Gas Association of West Virginia
CAG-10.
Docket No. C84-400-000, Ashland Exploration, Inc.
CAG-11.
Docket No. CI85-94-001, Tenngasco Corporation, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., Tenneco Exploration II, Ltd. and Tenneco West, Inc.
Docket Nos. CI85-95-001 and 002, Tenngasco Exchange Corporation
CAG-12.
Omitted
CAG-13.
Docket No. CP79-224-007, El Paso Natural Gas Company
CAG-14.
Docket Nos. CP84-132-001, 002, 003, CP84-133-001, 002, CP84-134-001, 002, CP84-196-001, 002 and 003, Columbia Gulf Transmission Company, Transcontinental Gas Pipe Line Corporation and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-15.
Docket Nos. CP84-348-001, 002, and 003, Mississippi River Transmission Corporation
CAG-16.
Docket Nos. CP82-487-002, 007 and 008, Williston Basin Interstate Pipeline Company and Montana-Dakota Utilities Company

Docket Nos. CP84–504–000, RP84–62–000, TA84–2–49–000, TA85–1–49–000, 001 and RP84–93–000, Montana-Dakota Utilities Company
Docket Nos. SA84–19–000, CP85–220–001 and 002, Williston Basin Interstate Pipeline Company
Docket Nos. CP85–221–001 and 002, Frontier Gas Storage Company

CAG–17.
Docket Nos. CP84–539–001 and 002, El Paso Natural Gas Company and Producer—Suppliers of El Paso Natural Gas Company

CAG–18.
Docket No. CP84–763–000, Columbia Gas Transmission Corporation v. Consolidated Gas Transmission Corporation

CAG–19.
Docket No. CP85–76–000, Columbia Gulf Transmission Company

CAG–20.
Docket No. CP84–684–000, Mountain Fuel Resources, Inc.

CAG–21.
Docket No. CP84–518–000, Louisiana Resources Company
Docket No. CP84–651–000, ANR Pipeline Company
Docket No. CP84–667–000, Northern Natural Gas Company, Division of Internorth, Inc.
Docket No. CI78–781–001, American Petrofina Company of Texas

CAG–22.
Docket No. CP84–479–000, Midwestern Gas Transmission Company

CAG–23.
Docket No. CP84–601–000, ANR Pipe Line Company

I. Licensed Project Matters

P–1.
(A) Project No. 4796–002, Niagara Mohawk Power Corporation and Glenn Park Associates
(B) Project No. 4796–008, Niagara Mohawk Power Corporation and Glenn Park Associates Project No. 4939–001, Brownville Power Company

P–2.
Project No. 199–039, South Carolina Public Service Authority

P–3.
Omitted

II. Electric Rate Matters

ER–1.
Docket No. ER84–355–000, Virginia Electric and Power Company

ER–2.
Docket No. ER82–703–000, New England Power Company

Miscellaneous Agenda

M–1.
Docket No. RM83–63–000, Automatic authorization for holding certain positions that require Commission approval under section 305(B) of the Federal Power Act

M–2.
Reserved

M–3.
Reserved

I. Pipeline Rate Matters

RP–1.
Docket Nos. TA85–3–17–000, 001 and TA85–2–17–000, Texas Eastern Transmission Corporation

RP–2.
Docket Nos. TA85–2–4–000 and RP85–118–000, Granite State Gas Transmission Company, Inc.

RP–3.
(A) Docket Nos. RP83–8–000 and 001, Columbia Gas Transmission Corporation v. Tennessee Gas Pipeline Company, a Divison of Tenneco Inc., et al.
(B) Docket No. TA85–1–8–002 (PGA85–1, GRI85–1 and IPR85–1), Tennessee Gas Pipeline Company, a Division of Tennecco Inc.

RP–4.
Docket Nos. ST80–296–000, et al., ST82–287–000, et al., ST82–397–000, et al. and ST84–703–000, Mississippi Fuel Company

II. Producer Matters

CI–1.
Docket No. CI80–70–000, Phillips Petroleum Company v. McCulloch Gas Processing Corporation and McCulloch Interstate Gas Corporation, Dinah Conrad, MHF Enterprises, Inc., DOL Resources, Inc., the Hawks Company and K.A. Thomas

III. Pipeline Certificate Matters

CP–1.
Docket No. CP85–183–000, Northern Natural Gas Company, Division of Internorth, Inc.

CP–2.
Docket No. CP85–181–000, Northern Natural Gas Company, Division of Internorth, Inc.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–8401 Filed 4–4–85; 10:31 am]
BILLING CODE 6717–01–M

2

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–85–6]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 10346, March 14, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Thursday, March 21, 1985.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the agenda and discussed in open session.

1. *Recommendation* concerning minimum crew on locomotives of through freight trains.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

Ray Smith,
Federal Register Liaison Officer.
April 3, 1985.

[FR Doc. 85–8394 Filed 4–4–85; 9:19 am]
BILLING CODE 7533–01–M

3

PAROLE COMMISSION

PLACE: Room 428–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

DATE AND TIME: Monday, April 22, 1985—1:00 p.m. through Wednesday, April 25, 1985—4:00 p.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open business meeting February 1 and 2, 1985.
2. Reports from the Chairman, Vice Chairman, Commissioners, Research, Case Operations, and the Administrative Sections.
3. Word processing equipment.
4. Forfeiture of street time (older convictions)
5. Emergency placement in a community treatment approved residential center.
6. Rewording of Parole Condition No. 11, possession of firearms or other weapons.
7. Professional Liability Insurance.
8. Study of Phencyclidine (PCP).
9. Use of informants.
10. Recommendations under 28 CFR 2.62 regarding motions under 18 U.S.C. 4205(g).
11. Suggested guideline revisions.

Consent Agenda

The following Consent Agenda Items shall be deemed adopted by consent and will not be discussed at the meeting unless a request to discuss a particular item has been received by April 18, 1985.

12. Minor revisions/clarifications of guidelines at 28 CFR 2.20.
13. R&P Memo No. 2 (dated March 25, 1985) previously distributed to the Commissioners.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission, (301) 492–5980.

Dated: April 4, 1985.

Joseph A. Barry,
General Counsel, United States Parole Commission.

[FR Doc. 85–8435 Filed 4–4–85; 2:40 pm]
BILLING CODE 4410–01–M

4

PAROLE COMMISSION

DATE AND TIME: Monday, April 22, 1985—9:00 a.m. to 11:30 a.m.

PLACE: Room 420–F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 20 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: April 4, 1984.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–3436 Filed 4–4–85; 2:40 pm]

BILLING CODE 4410-01-M

5

POSTAL SERVICE

Vote to Close Meeting

At its meeting on April 1, 1985, the Board of Governors of the United States Postal Service unanimously voted to close to public observation its meeting scheduled for May 6, 1985, in Washington, D.C. The meeting will involve a discussion of personnel matters.

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McKean, Peters, Ryan, Sullivan and Voss; Postmaster General Carlin; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; Senior Assistant Postmaster General Coughlin; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the discussion of personnel matters is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 85–8447 Filed 4–4–85; 2:54 pm]

BILLING CODE 7710-12-M

6

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 8, 1985.

A closed meeting will be held on Tuesday, April 9, 1985, at 3:00 p.m. An open meeting will be held on Thursday, April 11, 1985, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 9, 1985, at 3:00 p.m., will be:

Formal orders of investigation.

Regulatory matter bearing enforcement implications.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Report of Investigation.

Opinion.

The subject matter of the open meeting scheduled for Thursday, April 11, 1985, at 2:30 p.m., will be:

Consideration of whether to issue a release setting forth certain procedures and guidelines governing the filing and processing of exemptive applications and other filings submitted under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. For further information, please contact Mary A. Cole at (202) 272–3023.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272–2091.

John Wheeler,

Secretary.

March 29, 1985.

[FR Doc. 85–8380 Filed 4–3–85; 4:21 pm]

BILLING CODE 8010-01-M

7

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 11613 3/22/85)

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, March 19, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting held on Thursday, March 28, 1985, following the 10:00 a.m. open meeting.

Consideration of amicus participation.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Kohn at (202) 272–3195.

John Wheeler,

Secretary.

April 1, 1985.

[FR Doc. 85–8384 Filed 4–3–85; 4:33 pm]

BILLING CODE 8010-01-M

federal register

Monday
April 8, 1985

Part II

Department of Education

34 CFR Part 682
Guaranteed Student Loan Program; Schedule of Expected Family Contributions for 1985–86; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 682

Guaranteed Student Loan Program; Schedule of Expected Family Contributions for 1985–86

AGENCY: Department of Education.

ACTION: Final regulations, family contribution schedule for the Guaranteed Student Loan Program for 1985–86.

SUMMARY: The Secretary issues final regulations for use in determining student eligibility for interest benefits under the Guaranteed Student Loan Program (GSLP). These regulations, which establish the GSL Family Contribution Schedule for 1985–86, will apply to any loan for a period of instruction which begins on or after July 1, 1985, but not later than June 30, 1986, regardless of the time when the determination of the student's need for a loan is made.

EFFECTIVE DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. The regulations will apply to any loan for a period of instruction which begins on or after July 1, 1985, but not later than June 30, 1986, regardless of the time when the determination of the student's need for a loan is made.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann, Program Specialist, or Larry Oxendine, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, (ROB–3, Room 4310) 400 Maryland Avenue SW., Washington, DC 20202, Telephone (202) 245–2475.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b) of the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79) amended section 9 of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301) by requiring that the 1982–83 Family Contribution Schedule, modified to reflect the most recent and relevant data, be used as the Family Contribution Schedule for the years 1984–85 and 1985–86. These final regulations implement that statutory mandate for the 1985–86 academic year.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, because the content of the Family Contribution Schedule is determined by statute, public comment could have no effect on the content of these regulations. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these regulations is unnecessary and contrary to the public interest.

Modification of the 1982–83 Family Contribution Schedule for use for 1985–86

Section 9 of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301) required that the 1982–83 Family Contribution Schedule be modified and used as the schedule for the 1983–84 academic year. The 1983–84 GSL Family Contribution Schedule was the first schedule codified in regulations published in the **Federal Register**. Earlier schedules were published as notices in the **Federal Regester**. Section 4(b) of the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79) amended Pub. L. 97–301 to provide for schedules for academic years 1984–85 and 1985–86. This schedule, in turn, modifies the 1984–85 schedule. Because the 1984–85 schedule was substantially the same as the 1982–83 schedule, such modifications are, in effect, modifications of the 1982–83 schedule.

This schedule continues the use of systems of financial need analysis approved by the Secretary for use in the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs (the campus-based programs), and revises the set of tables in Appendix B of 34 CFR Part 682.

This schedule modifies the 1984–85 Family Contribution Schedule in the following respects:

(1) The 1984–85 schedule applies to loans for periods of instruction beginning on or after July 1, 1984, but not later than June 30, 1985. This schedule applies to loans for periods of instruction beginning on or after July 1, 1985, but not later than June 30, 1986, regardless of when an institution completes its portion of a student's GSLP application.

(2) This schedule requires, in § 682.301(c), that the institution, in determining the adjusted gross family income, consider the income reported by each family member on the 1984 Federal income tax return. "Adjusted gross income" means that term as defined in section 62 of the Internal Revenue Code. Further, references to the years 1983 and 1984 in §§ 682.301(c)(2)(iii) and 682.301(c)(4) are revised to refer to the years 1984 and 1985, respectively.

(3) Section 682.301(f) has been revised to specify that this schedule applies to loans for periods of instruction beginning on or after July 1, 1985, but not later than June 30, 1986.

(4) Sections 682.301(f) (1) and (2) have been revised to require the institution, in determining which of the approved need analysis systems may be used to calculate the student's expected family contribution, to consider whether the student has received financial assistance under the campus-based programs for the 1985-86 award year.

(5) The expected family contribution amounts in Tables A, B, C, and D of Appendix B have been revised to reflect 1984 Federal income taxes, F.I.C.A. (Social Security) withholding deductions, and average State and other taxes. The Standard Maintenance Allowance (SMA), applicable only to Tables A and B and derived from the most recent Bureau of Labor Statistics low budget standard, has been updated for inflation.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations continue the use of the current formula for determining student eligibility for interest benefits under the GSL program, modified to reflect the most recent and relevant data. The regulations, therefore, do not have an impact on small entities.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Student aid, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.032, guaranteed Student Loan Program)

Dated: March 29, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN PROGRAM

1. Section 682.301 is revised to read as follows:

§ 682.301 Eligibility for interest benefits on a GSLP loan.

(a)(1) *General.* (i) If a student's adjusted gross family income is $30,000 or less, the student qualifies for interest benefits for the amount of his or her GSLP loan.

(ii) If the student's adjusted gross family income is more than $30,000, the student qualifies for interest benefits if the institution he or she attends or is planning to attend determines that the student demonstrated financial need for the loan.

(2)(i) If the student demonstrates financial need for a loan of $1,000 or more, the student qualifies for interest benefits for the amount for which the student has demonstrated financial need.

(ii) If the student demonstrates financial need for a loan between $500 and $1,000, the student qualifies for interests benefits on a loan of up to $1,000.

(b) *Application for interest benefits.* To apply for interest benefits, the student shall submit to the lender his or her loan application. The application must include a certification from the student's institution of the following information—

(1) The estimated cost of attendance for the student for the academic period for which the loan is intended;

(2) The estimated financial assistance for the student for the academic period for which the loan is intended;

(3) The adjusted gross family income of the student's family;

(4) The student's expected family contribution if his or her adjusted gross family income exceeds $30,000; and

(5) The amount of the student's need for a loan as determined by the institution pursuant to paragraph (e) of this section.

(c) *Adjusted gross family income.* The institution determines the adjusted gross family income of the student's family based upon data provided, and certified to, by each person whose income is required to be considered.

(1) The adjusted gross family income of the student's family means the adjusted gross income, as defined in section 62 of the Internal Revenue Code, as reported on the 1984 Federal income tax return(s), of—

(i) The student;

(ii) The student's spouse, if any; and

(iii) The student's mother and father if the student, at the time he or she applies, is determined to be a "dependent student" rather than an "independent student."

(2) A student whose parents are divorced or separated follows these procedures for reporting a parent's adjusted gross income to determine the adjusted gross family income:

(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of application.

(ii) If the preceding criterion does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

(iii) If paragraph (i) or (ii) do not apply, include only the income of the parent who provided the greater support for the period commencing January 1, 1984 and ending 12 months prior to the date of application.

(3) If one of the parents has died, the student shall include only the income of the surviving parent. If both parents have died, the student shall not report any parental income for those parents even if the parent(s) had income.

(4) The following rule applies if either a parent whose income is taken into account under paragraph (c)(2) of this section, or a parent who is a widow or widower and whose income is taken into account under paragraph (c)(3) of this section, has remarried. The income of that parent's spouse shall be included in determining the adjusted gross family income if, in 1984 or 1985, the student—

(i) Has received or will receive financial assistance of more than $750 from that spouse; or

(ii) Has lived or will live for more than six weeks in the home of the parent and that spouse.

(5) The income of the student's spouse shall not be included in determining the adjusted gross family income for a student who is divorced or separated, or whose spouse has died.

(d) *Independent student.* An "independent student" is a student who meets the criteria set forth in 34 CFR 668.1a. All other students are considered to be dependent students.

(e) *Determination of need.* (1) If the student's adjusted gross family income exceeds $30,000, the institution shall determine the student's need for a loan by subtracting from the student's estimated cost of attendance, as defined in § 682.200, his or her—

(i) Estimated financial assistance, as defined in § 682.200; and

(ii) Expected family contribution, as determined in paragraph (f) of this section.

(2) The student shall certify the accuracy of any information he or she provides to the institution which is necessary to determine need.

(3) The Secretary may require that family members whose incomes are included in the student's adjusted gross family income under paragraph (c) of this section provide copies of the relevant Federal income tax return(s) and other pertinent documents to support the student's application for interest benefits.

(f) *Determination of expected family contribution.* For a student who seeks a loan for a period of instruction beginning on or after July 1, 1985, but not later than June 30, 1986, the institution shall calculate his or her expected family contribution as follows:

(1) If the student has been awarded financial assistance for award year 1985–86 (July 1, 1985–June 30, 1986) under the National Direct Student Loan (NDSL), College Work-Study (CWS), or Supplemental Educational Opportunity Grant (SEOG) program at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is his or her expected family contribution as calculated for the NDSL, CWS or SEOG program.

(2) If the student has not been awarded financial assistance under the NDSL, CWS, or SEOG program for award year 1985–86 at the time he or she applies for a Guaranteed Student Loan, the student's expected family contribution is determined under either—

(i) A need analysis system approved by the Secretary for the NDSL, CWS, and SEOG programs; or

(ii) The tables found in Appendix B if the adjusted gross income of the student and his or her family does not exceed $75,000.

(20 U.S.C. 1078, 1082)

2. Appendix B to Part 682 is revised to read as follows:

Appendix B to Part 682—Guaranteed Student Loan Program Tables for Determination of Expected Family Contribution for 1985–86

If authorized under the provisions of § 682.301(f)(2)(ii), an institution may use the following tables to determine the student's expected family contribution.

For purposes of the four tables—

"Dependent student" means a student who does not qualify as an "indenpendent student";

"Independent student" is defined in 34 CFR 668.1a; and

"Adjusted gross income" means the income, as defined in section 62 of the Internal Revenue Code, received in 1984.

Table A—Expected Family Contribution for a Dependent Student From a Two-Parent Family—1985–86

For a dependent student from a two-parent family, the educational institution determines the student's expected family contribution according to Table A. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table A, "family members" include the student, the student's spouse and their dependents, and the student's mother and father and their dependents. If the family includes a step-parent whose income is included in the adjusted gross family income, family members also include the step-parent and the dependents of the step-parent.

Table A is based on the following assumptions:

- One of the two parents is employed.
- No assets are considered.
- All of the family income was earned by the employed parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;
—F.I.C.A. (Social Security) for one wage earner;
—Average State and other taxes (8%); and
—A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The Standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because those living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

BILLING CODE 4000-01-M

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
Less than 30,001	### AUTOMATICALLY ELIGIBLE ###									
30,001 - 30,124	2,890	2,240	1,720	1,220	850	480	110	0	0	0
30,125 - 30,374	2,940	2,280	1,760	1,250	880	520	150	0	0	0
30,375 - 30,624	2,990	2,330	1,800	1,290	920	550	180	0	0	0
30,625 - 30,874	3,040	2,370	1,830	1,320	950	590	220	0	0	0
30,875 - 31,124	3,090	2,410	1,870	1,350	990	620	250	0	0	0
31,125 - 31,374	3,150	2,460	1,910	1,390	1,020	660	290	0	0	0
31,375 - 31,624	3,210	2,500	1,950	1,420	1,060	690	320	0	0	0
31,625 - 31,874	3,270	2,550	1,980	1,450	1,090	720	360	0	0	0
31,875 - 32,124	3,330	2,600	2,030	1,490	1,120	760	390	20	0	0
32,125 - 32,374	3,390	2,650	2,070	1,520	1,160	790	430	60	0	0
32,375 - 32,624	3,450	2,700	2,120	1,550	1,190	830	460	90	0	0
32,625 - 32,874	3,510	2,750	2,160	1,590	1,220	860	500	130	0	0
32,875 - 33,124	3,570	2,810	2,200	1,630	1,260	900	530	160	0	0
33,125 - 33,374	3,630	2,860	2,250	1,670	1,290	930	570	200	0	0
33,375 - 33,624	3,680	2,910	2,290	1,700	1,320	960	600	230	0	0
33,625 - 33,874	3,740	2,960	2,330	1,740	1,360	1,000	630	270	0	0
33,875 - 34,124	3,800	3,010	2,380	1,780	1,390	1,030	670	300	0	0
34,125 - 34,374	3,860	3,060	2,420	1,820	1,420	1,060	700	340	0	0
34,375 - 34,624	3,920	3,110	2,460	1,850	1,460	1,100	730	370	10	0
34,625 - 34,874	3,990	3,160	2,510	1,890	1,490	1,130	770	410	40	0
34,875 - 35,124	4,060	3,220	2,560	1,930	1,520	1,160	800	440	80	0
35,125 - 35,374	4,130	3,280	2,610	1,970	1,560	1,190	830	470	110	0
35,375 - 35,624	4,190	3,330	2,660	2,010	1,600	1,230	870	510	140	0
35,625 - 35,874	4,260	3,390	2,700	2,050	1,630	1,260	900	540	180	0
35,875 - 36,124	4,330	3,450	2,750	2,090	1,670	1,290	930	570	210	0
36,125 - 36,374	4,390	3,500	2,800	2,140	1,710	1,330	970	610	250	0
36,375 - 36,624	4,460	3,560	2,850	2,180	1,750	1,360	1,000	640	280	0
36,625 - 36,874	4,530	3,620	2,900	2,220	1,780	1,390	1,030	670	310	0
36,875 - 37,124	4,600	3,680	2,950	2,260	1,820	1,430	1,070	710	340	0
37,125 - 37,374	4,660	3,730	3,000	2,300	1,860	1,460	1,100	740	380	20
37,375 - 37,624	4,730	3,790	3,050	2,340	1,890	1,490	1,130	770	410	50
37,625 - 37,874	4,800	3,850	3,090	2,380	1,930	1,530	1,170	800	440	80
37,875 - 38,124	4,870	3,920	3,150	2,430	1,970	1,560	1,200	840	480	120
38,125 - 38,374	4,950	4,000	3,220	2,480	2,010	1,600	1,240	880	520	160
38,375 - 38,624	5,020	4,070	3,290	2,520	2,060	1,640	1,280	910	550	190
38,625 - 38,874	5,090	4,150	3,340	2,580	2,100	1,680	1,310	950	590	230

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
38,875 - 39,124	5,150	4,220	3,410	2,630	2,150	1,720	1,350	990	630	270
39,125 - 39,374	5,220	4,300	3,470	2,690	2,200	1,760	1,380	1,030	660	300
39,375 - 39,624	5,290	4,370	3,540	2,740	2,240	1,800	1,420	1,060	700	340
39,625 - 39,874	5,360	4,440	3,600	2,800	2,290	1,840	1,450	1,100	740	380
39,875 - 40,124	5,430	4,510	3,660	2,850	2,330	1,880	1,490	1,130	770	410
40,125 - 40,374	5,500	4,580	3,730	2,910	2,380	1,920	1,520	1,170	810	450
40,375 - 40,624	5,570	4,640	3,790	2,960	2,430	1,960	1,560	1,210	850	490
40,625 - 40,874	5,640	4,710	3,840	3,010	2,470	2,010	1,600	1,240	890	520
40,875 - 41,124	5,710	4,780	3,910	3,070	2,520	2,050	1,640	1,280	920	560
41,125 - 41,374	5,780	4,850	3,980	3,120	2,580	2,100	1,680	1,310	960	600
41,375 - 41,624	5,850	4,920	4,050	3,180	2,630	2,150	1,720	1,350	990	640
41,625 - 41,874	5,920	4,990	4,120	3,240	2,680	2,190	1,760	1,380	1,030	670
41,875 - 42,124	5,990	5,060	4,190	3,300	2,740	2,240	1,800	1,420	1,060	710
42,125 - 42,374	6,060	5,130	4,260	3,360	2,790	2,290	1,840	1,450	1,100	740
42,375 - 42,624	6,120	5,200	4,330	3,420	2,840	2,330	1,880	1,490	1,130	780
42,625 - 42,874	6,190	5,270	4,400	3,480	2,890	2,380	1,920	1,520	1,170	810
42,875 - 43,124	6,260	5,340	4,470	3,540	2,940	2,420	1,960	1,560	1,200	850
43,125 - 43,374	6,330	5,410	4,540	3,590	2,990	2,470	2,000	1,600	1,240	880
43,375 - 43,624	6,400	5,480	4,610	3,650	3,040	2,510	2,050	1,640	1,270	920
43,625 - 43,874	6,470	5,550	4,680	3,710	3,090	2,560	2,100	1,680	1,310	950
43,875 - 44,124	6,540	5,610	4,750	3,770	3,150	2,610	2,140	1,720	1,340	990
44,125 - 44,374	6,610	5,680	4,810	3,830	3,210	2,660	2,190	1,760	1,380	1,020
44,375 - 44,624	6,680	5,750	4,880	3,900	3,270	2,710	2,230	1,800	1,410	1,060
44,625 - 44,874	6,750	5,820	4,950	3,970	3,320	2,760	2,270	1,840	1,450	1,100
44,875 - 45,124	6,820	5,890	5,020	4,040	3,380	2,810	2,320	1,880	1,480	1,130
45,125 - 45,374	6,890	5,960	5,090	4,110	3,440	2,860	2,360	1,920	1,520	1,170
45,375 - 45,624	6,960	6,030	5,160	4,170	3,500	2,910	2,400	1,960	1,560	1,200
45,625 - 45,874	7,030	6,100	5,230	4,240	3,560	2,960	2,450	1,990	1,600	1,240
45,875 - 46,124	7,100	6,170	5,300	4,310	3,620	3,010	2,490	2,040	1,640	1,270
46,125 - 46,374	7,160	6,240	5,370	4,380	3,680	3,060	2,530	2,080	1,680	1,310
46,375 - 46,624	7,230	6,310	5,440	4,450	3,740	3,110	2,580	2,120	1,710	1,340
46,625 - 46,874	7,300	6,380	5,510	4,520	3,800	3,170	2,630	2,160	1,750	1,380
46,875 - 47,124	7,370	6,450	5,580	4,590	3,860	3,230	2,680	2,210	1,790	1,410
47,125 - 47,374	7,440	6,520	5,650	4,660	3,930	3,290	2,730	2,250	1,820	1,450
47,375 - 47,624	7,510	6,590	5,720	4,730	4,000	3,350	2,790	2,290	1,860	1,480
47,625 - 47,874	7,580	6,650	5,790	4,800	4,070	3,410	2,840	2,340	1,900	1,510

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family—1985-86

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
47,875 - 48,124	7,650	6,720	5,850	4,870	4,130	3,470	2,890	2,380	1,930	1,540
48,125 - 48,374	7,720	6,790	5,920	4,940	4,200	3,530	2,940	2,420	1,970	1,580
48,375 - 48,624	7,790	6,860	5,990	5,010	4,270	3,590	2,990	2,460	2,010	1,620
48,625 - 48,874	7,860	6,930	6,060	5,080	4,340	3,640	3,040	2,510	2,050	1,660
48,875 - 49,124	7,920	7,000	6,130	5,140	4,410	3,700	3,090	2,560	2,100	1,690
49,125 - 49,374	7,990	7,070	6,200	5,210	4,480	3,760	3,140	2,610	2,140	1,730
49,375 - 49,624	8,050	7,140	6,270	5,280	4,550	3,820	3,200	2,660	2,180	1,770
49,625 - 49,874	8,110	7,210	6,340	5,350	4,620	3,890	3,260	2,710	2,230	1,800
49,875 - 50,124	8,180	7,270	6,410	5,420	4,690	3,960	3,320	2,760	2,270	1,840
50,125 - 50,374	8,240	7,340	6,480	5,490	4,760	4,030	3,370	2,810	2,310	1,880
50,375 - 50,624	8,300	7,400	6,550	5,560	4,830	4,090	3,430	2,860	2,350	1,910
50,625 - 50,874	8,370	7,460	6,620	5,630	4,900	4,160	3,490	2,910	2,400	1,950
50,875 - 51,124	8,430	7,530	6,680	5,700	4,970	4,230	3,550	2,960	2,440	1,990
51,125 - 51,374	8,490	7,590	6,750	5,770	5,040	4,300	3,610	3,010	2,480	2,030
51,375 - 51,624	8,560	7,650	6,810	5,840	5,110	4,370	3,670	3,060	2,530	2,070
51,625 - 51,874	8,620	7,720	6,870	5,910	5,170	4,440	3,730	3,110	2,580	2,110
51,875 - 52,124	8,680	7,780	6,940	5,970	5,240	4,510	3,790	3,160	2,630	2,160
52,125 - 52,374	8,750	7,850	7,000	6,040	5,310	4,580	3,850	3,220	2,680	2,200
52,375 - 52,624	8,810	7,910	7,060	6,100	5,380	4,650	3,920	3,280	2,730	2,240
52,625 - 52,874	8,870	7,970	7,130	6,160	5,450	4,720	3,990	3,340	2,780	2,290
52,875 - 53,124	8,940	8,040	7,190	6,230	5,520	4,790	4,050	3,400	2,830	2,330
53,125 - 53,374	9,000	8,100	7,250	6,290	5,580	4,860	4,120	3,460	2,880	2,370
53,375 - 53,624	9,060	8,160	7,320	6,350	5,640	4,930	4,190	3,520	2,930	2,410
53,625 - 53,874	9,130	8,230	7,380	6,420	5,710	5,000	4,260	3,580	2,980	2,460
53,875 - 54,124	9,190	8,290	7,440	6,480	5,770	5,060	4,330	3,640	3,030	2,500
54,125 - 54,374	9,260	8,350	7,510	6,540	5,830	5,120	4,400	3,690	3,080	2,550
54,375 - 54,624	9,320	8,420	7,570	6,610	5,900	5,190	4,470	3,750	3,130	2,600
54,625 - 54,874	9,380	8,480	7,630	6,670	5,960	5,250	4,540	3,810	3,190	2,650
54,875 - 55,124	9,450	8,540	7,700	6,730	6,020	5,310	4,600	3,880	3,250	2,700
55,125 - 55,374	9,510	8,610	7,760	6,800	6,090	5,380	4,670	3,950	3,310	2,750
55,375 - 55,624	9,570	8,670	7,820	6,860	6,150	5,440	4,730	4,010	3,370	2,800
55,625 - 55,874	9,640	8,730	7,890	6,920	6,210	5,500	4,790	4,080	3,420	2,850
55,875 - 56,124	9,700	8,800	7,950	6,990	6,280	5,570	4,860	4,150	3,480	2,900
56,125 - 56,374	9,760	8,860	8,010	7,050	6,340	5,630	4,920	4,210	3,540	2,950
56,375 - 56,624	9,830	8,920	8,080	7,110	6,400	5,690	4,990	4,280	3,600	3,000
56,625 - 56,874	9,890	8,990	8,140	7,180	6,470	5,760	5,050	4,340	3,660	3,050

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
56,875 - 57,124	9,950	9,050	8,200	7,240	6,530	5,820	5,110	4,400	3,720	3,100
57,125 - 57,374	10,020	9,110	8,270	7,300	6,590	5,890	5,180	4,470	3,770	3,150
57,375 - 57,624	10,080	9,180	8,330	7,370	6,660	5,950	5,240	4,530	3,820	3,210
57,625 - 57,874	10,140	9,240	8,400	7,430	6,720	6,010	5,300	4,590	3,880	3,270
57,875 - 58,124	10,210	9,300	8,460	7,490	6,790	6,080	5,370	4,660	3,950	3,330
58,125 - 58,374	10,270	9,370	8,520	7,560	6,850	6,140	5,430	4,720	4,010	3,380
58,375 - 58,624	10,330	9,430	8,590	7,620	6,910	6,200	5,490	4,780	4,070	3,440
58,625 - 58,874	10,400	9,490	8,650	7,690	6,980	6,270	5,560	4,850	4,140	3,490
58,875 - 59,124	10,460	9,560	8,710	7,750	7,040	6,330	5,620	4,910	4,200	3,540
59,125 - 59,374	10,520	9,620	8,780	7,810	7,100	6,390	5,680	4,970	4,260	3,600
59,375 - 59,624	10,590	9,690	8,840	7,880	7,170	6,460	5,750	5,040	4,330	3,650
59,625 - 59,874	10,650	9,750	8,900	7,940	7,230	6,520	5,810	5,100	4,390	3,710
59,875 - 60,124	10,710	9,810	8,970	8,000	7,290	6,580	5,870	5,160	4,450	3,760
60,125 - 60,374	10,780	9,880	9,030	8,070	7,360	6,650	5,940	5,230	4,520	3,810
60,375 - 60,624	10,840	9,940	9,090	8,130	7,420	6,710	6,000	5,290	4,580	3,870
60,625 - 60,874	10,900	10,000	9,160	8,190	7,480	6,770	6,060	5,350	4,640	3,930
60,875 - 61,124	10,970	10,070	9,220	8,260	7,550	6,840	6,130	5,420	4,710	4,000
61,125 - 61,374	11,030	10,130	9,280	8,320	7,610	6,900	6,190	5,480	4,770	4,060
61,375 - 61,624	11,100	10,190	9,350	8,380	7,670	6,960	6,250	5,540	4,830	4,130
61,625 - 61,874	11,160	10,260	9,410	8,450	7,740	7,030	6,320	5,610	4,900	4,190
61,875 - 62,124	11,220	10,320	9,470	8,510	7,800	7,090	6,380	5,670	4,960	4,250
62,125 - 62,374	11,290	10,380	9,540	8,570	7,860	7,150	6,440	5,730	5,030	4,320
62,375 - 62,624	11,350	10,450	9,600	8,640	7,930	7,220	6,510	5,800	5,090	4,380
62,625 - 62,874	11,410	10,510	9,660	8,700	7,990	7,280	6,570	5,860	5,150	4,440
62,875 - 63,124	11,480	10,570	9,730	8,760	8,050	7,340	6,630	5,930	5,220	4,510
63,125 - 63,374	11,530	10,640	9,790	8,830	8,120	7,410	6,700	5,990	5,280	4,570
63,375 - 63,624	11,590	10,700	9,850	8,890	8,180	7,470	6,760	6,050	5,340	4,630
63,625 - 63,874	11,650	10,760	9,920	8,950	8,240	7,530	6,830	6,120	5,410	4,700
63,875 - 64,124	11,710	10,830	9,980	9,020	8,310	7,600	6,890	6,180	5,470	4,760
64,125 - 64,374	11,770	10,890	10,040	9,080	8,370	7,660	6,950	6,240	5,530	4,820
64,375 - 64,624	11,830	10,940	10,110	9,140	8,430	7,730	7,020	6,310	5,600	4,890
64,625 - 64,874	11,890	11,000	10,170	9,210	8,500	7,790	7,080	6,370	5,660	4,950
64,875 - 65,124	11,950	11,060	10,240	9,270	8,560	7,850	7,140	6,430	5,720	5,010
65,125 - 65,374	12,000	11,120	10,290	9,340	8,630	7,920	7,210	6,500	5,790	5,080
65,375 - 65,624	12,060	11,180	10,350	9,400	8,690	7,980	7,270	6,560	5,850	5,140
65,625 - 65,874	12,120	11,240	10,410	9,460	8,750	8,040	7,330	6,620	5,910	5,200

Table A: Expected Family Contribution for a Dependent Student From a Two-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members									
	3	4	5	6	7	8	9	10	11	12
65,875 - 66,124	12,180	11,300	10,470	9,530	8,820	8,110	7,400	6,690	5,980	5,270
66,125 - 66,374	12,240	11,360	10,530	9,580	8,880	8,170	7,460	6,750	6,040	5,330
66,375 - 66,624	12,300	11,410	10,590	9,640	8,940	8,230	7,520	6,810	6,100	5,390
66,625 - 66,874	12,360	11,470	10,650	9,700	9,010	8,300	7,590	6,880	6,170	5,460
66,875 - 67,124	12,420	11,530	10,710	9,760	9,070	8,360	7,650	6,940	6,230	5,520
67,125 - 67,374	12,470	11,590	10,760	9,820	9,130	8,420	7,710	7,000	6,290	5,580
67,375 - 67,624	12,530	11,650	10,820	9,880	9,190	8,490	7,780	7,070	6,360	5,650
67,625 - 67,874	12,590	11,710	10,880	9,940	9,250	8,550	7,840	7,130	6,420	5,710
67,875 - 68,124	12,650	11,770	10,940	10,000	9,300	8,610	7,900	7,190	6,480	5,770
68,125 - 68,374	12,710	11,830	11,000	10,050	9,360	8,670	7,970	7,260	6,550	5,840
68,375 - 68,624	12,770	11,880	11,060	10,110	9,420	8,730	8,030	7,320	6,610	5,900
68,625 - 68,874	12,830	11,940	11,120	10,170	9,480	8,790	8,090	7,380	6,670	5,970
68,875 - 69,124	12,890	12,000	11,180	10,230	9,540	8,850	8,160	7,450	6,740	6,030
69,125 - 69,374	12,940	12,060	11,230	10,290	9,600	8,910	8,220	7,510	6,800	6,090
69,375 - 69,624	13,000	12,120	11,290	10,350	9,660	8,970	8,280	7,570	6,870	6,160
69,625 - 69,874	13,060	12,180	11,350	10,410	9,720	9,020	8,330	7,640	6,930	6,220
69,875 - 70,124	13,120	12,240	11,410	10,470	9,770	9,080	8,390	7,700	6,990	6,280
70,125 - 70,374	13,180	12,300	11,470	10,520	9,830	9,140	8,450	7,760	7,060	6,330
70,375 - 70,624	13,240	12,350	11,530	10,580	9,890	9,200	8,510	7,820	7,120	6,410
70,625 - 70,874	13,300	12,410	11,590	10,640	9,950	9,260	8,570	7,880	7,180	6,470
70,875 - 71,124	13,360	12,470	11,650	10,700	10,010	9,320	8,630	7,940	7,250	6,540
71,125 - 71,374	13,410	12,530	11,700	10,760	10,070	9,380	8,690	8,000	7,300	6,600
71,375 - 71,624	13,470	12,590	11,760	10,820	10,130	9,440	8,750	8,050	7,360	6,660
71,625 - 71,874	13,530	12,650	11,820	10,880	10,190	9,490	8,800	8,110	7,420	6,730
71,875 - 72,124	13,590	12,710	11,880	10,940	10,240	9,550	8,860	8,170	7,480	6,790
72,125 - 72,374	13,650	12,770	11,940	10,990	10,300	9,610	8,920	8,230	7,540	6,850
72,375 - 72,624	13,710	12,820	12,000	11,050	10,360	9,670	8,980	8,290	7,600	6,910
72,625 - 72,874	13,770	12,880	12,060	11,110	10,420	9,730	9,040	8,350	7,660	6,970
72,875 - 73,124	13,830	12,940	12,120	11,170	10,480	9,790	9,100	8,410	7,720	7,020
73,125 - 73,374	13,880	13,000	12,170	11,230	10,540	9,850	9,160	8,470	7,770	7,080
73,375 - 73,624	13,940	13,060	12,230	11,290	10,600	9,910	9,220	8,520	7,830	7,140
73,625 - 73,874	14,000	13,120	12,290	11,350	10,660	9,960	9,270	8,580	7,890	7,200
73,875 - 74,124	14,060	13,180	12,350	11,410	10,710	10,020	9,330	8,640	7,950	7,260
74,125 - 74,374	14,120	13,240	12,410	11,460	10,770	10,080	9,390	8,700	8,010	7,320
74,375 - 74,624	14,180	13,290	12,470	11,520	10,830	10,140	9,450	8,760	8,070	7,380
74,625 - 74,874	14,240	13,350	12,530	11,580	10,890	10,200	9,510	8,820	8,130	7,440
74,875 - 75,000	14,300	13,410	12,590	11,640	10,950	10,260	9,570	8,880	8,190	7,490
Over 75,000	### MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ###									

BILLING CODE 4000-01-C

Table B—Expected Family Contribution for a Dependent Student From a One-Parent Family—1985–86

For a dependent student from a one-parent family, the educational institution determines the student's expected family contribution according to Table B. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution.

As used in Table B, "Family members" include the student, the student's spouse and their dependents, and the student's parent and the parent's dependents.

Table B is based on the following assumptions:

- The parent is employed.
- No assets are considered.
- All of the family income was earned by the parent.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households;
—F.I.C.A. (Social Security) for one wage earner;
—Average State and other taxes (8%);
—An employment allowance of 35% of income, to a maximum of $2,000; and
—A Standard Maintenance Allowance based on the average non-discretionary living expenses for families, derived from the Bureau of Labor Statistics low budget standard, and adjusted for inflation and family size. The standard Maintenance Allowance does not include an allowance for the living expenses of the dependent student for the 9 months the student is attending school because the living expenses are included in the student's cost of attendance.

To this balance, called "available income," which represents discretionary income, a conversion percentage is applied. The percentage increases as available income increases. The resulting value is the expected family contribution.

BILLING CODE 4000-01-M

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	$$$ AUTOMATICALLY ELIGIBLE $$$										
30,001 - 30,124	2,530	2,040	1,530	1,110	640	280	0	0	0	0	0
30,125 - 30,374	2,580	2,080	1,570	1,150	670	320	0	0	0	0	0
30,375 - 30,624	2,620	2,130	1,600	1,180	700	350	0	0	0	0	0
30,625 - 30,874	2,670	2,170	1,640	1,210	740	380	20	0	0	0	0
30,875 - 31,124	2,720	2,210	1,670	1,240	770	410	50	0	0	0	0
31,125 - 31,374	2,760	2,250	1,710	1,270	800	440	90	0	0	0	0
31,375 - 31,624	2,810	2,290	1,750	1,300	830	480	120	0	0	0	0
31,625 - 31,874	2,850	2,330	1,780	1,330	860	510	150	0	0	0	0
31,875 - 32,124	2,900	2,370	1,820	1,370	890	540	180	0	0	0	0
32,125 - 32,374	2,950	2,410	1,850	1,400	920	570	220	0	0	0	0
32,375 - 32,624	2,990	2,450	1,890	1,430	960	600	250	0	0	0	0
32,625 - 32,874	3,040	2,490	1,920	1,460	990	630	280	0	0	0	0
32,875 - 33,124	3,080	2,530	1,960	1,490	1,020	670	310	0	0	0	0
33,125 - 33,374	3,130	2,580	1,990	1,520	1,050	700	340	0	0	0	0
33,375 - 33,624	3,180	2,620	2,030	1,560	1,080	730	370	20	0	0	0
33,625 - 33,874	3,230	2,670	2,070	1,590	1,110	760	410	50	0	0	0
33,875 - 34,124	3,290	2,710	2,110	1,630	1,150	790	440	80	0	0	0
34,125 - 34,374	3,340	2,760	2,150	1,660	1,180	820	470	110	0	0	0
34,375 - 34,624	3,390	2,800	2,190	1,690	1,210	850	500	150	0	0	0
34,625 - 34,874	3,450	2,850	2,220	1,730	1,240	890	530	180	0	0	0
34,875 - 35,124	3,500	2,890	2,260	1,760	1,270	920	560	210	0	0	0
35,125 - 35,374	3,550	2,940	2,300	1,790	1,300	950	590	240	0	0	0
35,375 - 35,624	3,610	2,980	2,340	1,830	1,330	980	630	270	0	0	0
35,625 - 35,874	3,660	3,030	2,380	1,860	1,360	1,010	660	300	0	0	0
35,875 - 36,124	3,710	3,070	2,420	1,890	1,390	1,040	690	330	0	0	0
36,125 - 36,374	3,760	3,120	2,460	1,930	1,420	1,070	720	370	10	0	0
36,375 - 36,624	3,820	3,170	2,490	1,960	1,450	1,100	750	400	40	0	0
36,625 - 36,874	3,870	3,230	2,540	1,990	1,470	1,130	780	430	80	0	0
36,875 - 37,124	3,930	3,280	2,580	2,030	1,500	1,160	810	460	110	0	0
37,125 - 37,374	3,990	3,330	2,630	2,070	1,530	1,190	840	490	140	0	0
37,375 - 37,624	4,050	3,380	2,670	2,110	1,570	1,220	870	520	170	0	0
37,625 - 37,874	4,110	3,430	2,720	2,150	1,600	1,250	900	560	200	0	0
37,875 - 38,124	4,170	3,490	2,770	2,190	1,640	1,280	930	590	240	0	0
38,125 - 38,374	4,240	3,540	2,820	2,230	1,670	1,310	970	620	270	0	0
38,375 - 38,624	4,300	3,600	2,870	2,280	1,710	1,340	1,000	650	310	0	0
38,625 - 38,874	4,370	3,660	2,910	2,320	1,750	1,380	1,030	690	340	0	0

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
38,875 - 39,124	4,440	3,710	2,960	2,360	1,790	1,410	1,070	720	370	20	0
39,125 - 39,374	4,510	3,770	3,010	2,410	1,820	1,440	1,100	750	410	60	0
39,375 - 39,624	4,570	3,830	3,060	2,450	1,860	1,480	1,130	790	440	90	0
39,625 - 39,874	4,640	3,890	3,110	2,490	1,900	1,510	1,160	820	470	130	0
39,875 - 40,124	4,710	3,960	3,160	2,530	1,940	1,540	1,200	850	510	160	0
40,125 - 40,374	4,770	4,030	3,220	2,580	1,970	1,580	1,230	890	540	190	0
40,375 - 40,624	4,840	4,090	3,280	2,630	2,010	1,620	1,260	920	570	230	0
40,625 - 40,874	4,910	4,160	3,330	2,680	2,050	1,660	1,300	950	610	260	0
40,875 - 41,124	4,970	4,230	3,390	2,730	2,090	1,690	1,330	980	640	290	0
41,125 - 41,374	5,040	4,290	3,450	2,780	2,130	1,730	1,360	1,020	670	330	0
41,375 - 41,624	5,110	4,360	3,500	2,820	2,180	1,770	1,400	1,050	700	360	10
41,625 - 41,874	5,180	4,430	3,560	2,870	2,220	1,800	1,430	1,080	740	390	50
41,875 - 42,124	5,240	4,490	3,620	2,920	2,260	1,840	1,460	1,120	770	430	80
42,125 - 42,374	5,310	4,560	3,680	2,970	2,300	1,870	1,490	1,150	800	460	110
42,375 - 42,624	5,380	4,630	3,730	3,020	2,340	1,910	1,520	1,180	840	490	150
42,625 - 42,874	5,440	4,700	3,790	3,070	2,380	1,940	1,560	1,220	870	520	180
42,875 - 43,124	5,510	4,760	3,850	3,120	2,420	1,980	1,590	1,250	900	560	210
43,125 - 43,374	5,580	4,830	3,910	3,170	2,460	2,020	1,630	1,280	940	590	240
43,375 - 43,624	5,640	4,900	3,980	3,230	2,510	2,060	1,670	1,310	970	620	280
43,625 - 43,874	5,710	4,960	4,050	3,290	2,550	2,100	1,700	1,340	1,000	660	310
43,875 - 44,124	5,780	5,030	4,110	3,340	2,600	2,140	1,740	1,370	1,030	690	340
44,125 - 44,374	5,850	5,100	4,180	3,400	2,650	2,180	1,770	1,410	1,070	720	380
44,375 - 44,624	5,910	5,160	4,250	3,460	2,700	2,220	1,810	1,440	1,100	760	410
44,625 - 44,874	5,980	5,230	4,320	3,510	2,750	2,270	1,840	1,470	1,130	790	440
44,875 - 45,124	6,050	5,300	4,380	3,570	2,800	2,310	1,880	1,500	1,160	820	480
45,125 - 45,374	6,110	5,370	4,450	3,630	2,840	2,350	1,910	1,530	1,190	850	510
45,375 - 45,624	6,180	5,430	4,520	3,680	2,890	2,390	1,950	1,570	1,220	880	540
45,625 - 45,874	6,250	5,500	4,580	3,740	2,940	2,430	1,990	1,600	1,250	920	570
45,875 - 46,124	6,310	5,570	4,650	3,800	2,990	2,470	2,030	1,640	1,290	950	610
46,125 - 46,374	6,380	5,630	4,720	3,860	3,040	2,510	2,070	1,670	1,320	980	640
46,375 - 46,624	6,450	5,700	4,780	3,920	3,090	2,560	2,110	1,710	1,350	1,010	670
46,625 - 46,874	6,510	5,770	4,850	3,990	3,140	2,610	2,150	1,740	1,380	1,040	700
46,875 - 47,124	6,570	5,830	4,920	4,060	3,190	2,660	2,190	1,780	1,410	1,070	730
47,125 - 47,374	6,630	5,900	4,980	4,120	3,250	2,710	2,230	1,810	1,440	1,100	770
47,375 - 47,624	6,690	5,970	5,050	4,190	3,310	2,760	2,270	1,850	1,470	1,140	800
47,625 - 47,874	6,750	6,030	5,120	4,260	3,370	2,810	2,320	1,890	1,510	1,170	830

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
47,875 - 48,124	6,810	6,090	5,190	4,330	3,420	2,850	2,360	1,920	1,540	1,200	860
48,125 - 48,374	6,870	6,150	5,250	4,390	3,480	2,900	2,400	1,960	1,570	1,230	890
48,375 - 48,624	6,920	6,210	5,320	4,460	3,540	2,950	2,440	1,990	1,610	1,260	920
48,625 - 48,874	6,980	6,270	5,390	4,530	3,590	3,000	2,480	2,030	1,640	1,290	950
48,875 - 49,124	7,040	6,330	5,440	4,590	3,650	3,050	2,520	2,080	1,680	1,320	980
49,125 - 49,374	7,100	6,390	5,500	4,660	3,710	3,100	2,570	2,120	1,710	1,350	1,020
49,375 - 49,624	7,160	6,440	5,560	4,730	3,760	3,150	2,620	2,160	1,750	1,390	1,050
49,625 - 49,874	7,220	6,500	5,620	4,790	3,820	3,210	2,670	2,200	1,790	1,420	1,080
49,875 - 50,124	7,280	6,560	5,680	4,850	3,880	3,260	2,720	2,240	1,820	1,450	1,110
50,125 - 50,374	7,340	6,620	5,740	4,910	3,950	3,320	2,770	2,280	1,860	1,480	1,140
50,375 - 50,624	7,390	6,680	5,800	4,970	4,020	3,380	2,810	2,320	1,890	1,510	1,170
50,625 - 50,874	7,450	6,740	5,860	5,030	4,080	3,430	2,860	2,360	1,930	1,540	1,200
50,875 - 51,124	7,510	6,800	5,910	5,090	4,140	3,490	2,910	2,410	1,960	1,580	1,240
51,125 - 51,374	7,570	6,860	5,970	5,150	4,200	3,550	2,960	2,450	2,000	1,610	1,270
51,375 - 51,624	7,630	6,910	6,030	5,200	4,260	3,600	3,010	2,490	2,040	1,650	1,300
51,625 - 51,874	7,690	6,970	6,090	5,260	4,320	3,660	3,060	2,530	2,080	1,690	1,330
51,875 - 52,124	7,750	7,030	6,150	5,320	4,380	3,710	3,110	2,580	2,120	1,720	1,360
52,125 - 52,374	7,810	7,090	6,210	5,380	4,440	3,760	3,160	2,630	2,170	1,760	1,390
52,375 - 52,624	7,860	7,150	6,270	5,440	4,490	3,810	3,220	2,680	2,210	1,790	1,420
52,625 - 52,874	7,920	7,210	6,330	5,500	4,550	3,860	3,270	2,730	2,250	1,830	1,450
52,875 - 53,124	7,980	7,270	6,380	5,560	4,610	3,920	3,320	2,780	2,290	1,860	1,490
53,125 - 53,374	8,040	7,330	6,440	5,620	4,670	3,980	3,370	2,820	2,330	1,900	1,520
53,375 - 53,624	8,100	7,380	6,500	5,670	4,730	4,040	3,420	2,870	2,370	1,940	1,550
53,625 - 53,874	8,160	7,440	6,560	5,730	4,790	4,100	3,470	2,920	2,410	1,970	1,590
53,875 - 54,124	8,220	7,500	6,620	5,790	4,850	4,160	3,520	2,960	2,460	2,010	1,620
54,125 - 54,374	8,280	7,560	6,680	5,850	4,910	4,210	3,570	3,000	2,500	2,050	1,660
54,375 - 54,624	8,330	7,620	6,740	5,910	4,960	4,270	3,620	3,050	2,540	2,090	1,690
54,625 - 54,874	8,390	7,680	6,800	5,970	5,020	4,330	3,670	3,090	2,590	2,130	1,730
54,875 - 55,124	8,450	7,740	6,850	6,030	5,080	4,390	3,720	3,130	2,630	2,170	1,760
55,125 - 55,374	8,510	7,800	6,910	6,090	5,140	4,450	3,770	3,180	2,670	2,220	1,800
55,375 - 55,624	8,570	7,850	6,970	6,140	5,200	4,510	3,820	3,230	2,720	2,260	1,840
55,625 - 55,874	8,630	7,910	7,030	6,200	5,260	4,570	3,880	3,280	2,760	2,300	1,870
55,875 - 56,124	8,690	7,970	7,090	6,260	5,320	4,630	3,940	3,330	2,800	2,330	1,910
56,125 - 56,374	8,750	8,030	7,150	6,320	5,380	4,680	3,990	3,380	2,840	2,370	1,940
56,375 - 56,624	8,800	8,090	7,210	6,380	5,430	4,740	4,050	3,430	2,890	2,410	1,980
56,625 - 56,874	8,860	8,150	7,270	6,440	5,490	4,800	4,110	3,480	2,930	2,440	2,020

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
56,875 - 57,124	8,920	8,210	7,320	6,500	5,550	4,860	4,170	3,530	2,970	2,480	2,050
57,125 - 57,374	8,980	8,270	7,380	6,560	5,610	4,920	4,230	3,580	3,010	2,520	2,090
57,375 - 57,624	9,040	8,320	7,440	6,610	5,670	4,980	4,290	3,630	3,060	2,560	2,120
57,625 - 57,874	9,100	8,380	7,500	6,670	5,730	5,040	4,350	3,680	3,100	2,600	2,160
57,875 - 58,124	9,160	8,440	7,560	6,730	5,790	5,100	4,410	3,730	3,150	2,640	2,200
58,125 - 58,374	9,220	8,500	7,620	6,790	5,850	5,150	4,460	3,780	3,200	2,690	2,230
58,375 - 58,624	9,270	8,560	7,680	6,850	5,900	5,210	4,520	3,830	3,250	2,730	2,270
58,625 - 58,874	9,330	8,620	7,740	6,910	5,960	5,270	4,580	3,890	3,300	2,770	2,310
58,875 - 59,124	9,390	8,680	7,790	6,970	6,020	5,330	4,640	3,950	3,350	2,810	2,340
59,125 - 59,374	9,450	8,740	7,850	7,030	6,080	5,390	4,700	4,010	3,400	2,860	2,380
59,375 - 59,624	9,510	8,790	7,910	7,080	6,140	5,450	4,760	4,070	3,450	2,900	2,410
59,625 - 59,874	9,570	8,850	7,970	7,140	6,200	5,510	4,820	4,130	3,500	2,940	2,450
59,875 - 60,124	9,630	8,910	8,030	7,200	6,260	5,570	4,880	4,180	3,550	2,980	2,490
60,125 - 60,374	9,690	8,970	8,090	7,260	6,320	5,620	4,930	4,240	3,600	3,030	2,530
60,375 - 60,624	9,740	9,030	8,150	7,320	6,370	5,680	4,990	4,300	3,650	3,070	2,570
60,625 - 60,874	9,800	9,090	8,210	7,380	6,430	5,740	5,050	4,360	3,700	3,110	2,610
60,875 - 61,124	9,860	9,150	8,260	7,440	6,490	5,800	5,110	4,420	3,750	3,160	2,650
61,125 - 61,374	9,920	9,210	8,320	7,500	6,550	5,860	5,170	4,480	3,800	3,210	2,700
61,375 - 61,624	9,980	9,260	8,380	7,550	6,610	5,920	5,230	4,540	3,850	3,260	2,740
61,625 - 61,874	10,040	9,320	8,440	7,610	6,670	5,980	5,290	4,600	3,900	3,310	2,780
61,875 - 62,124	10,100	9,380	8,500	7,670	6,730	6,040	5,350	4,650	3,960	3,360	2,820
62,125 - 62,374	10,160	9,440	8,560	7,730	6,790	6,090	5,400	4,710	4,020	3,410	2,870
62,375 - 62,624	10,210	9,500	8,620	7,790	6,840	6,150	5,460	4,770	4,080	3,460	2,910
62,625 - 62,874	10,270	9,560	8,680	7,850	6,900	6,210	5,520	4,830	4,140	3,510	2,950
62,875 - 63,124	10,330	9,620	8,730	7,910	6,960	6,270	5,580	4,890	4,200	3,560	2,990
63,125 - 63,374	10,380	9,680	8,790	7,970	7,020	6,330	5,640	4,950	4,260	3,610	3,040
63,375 - 63,624	10,440	9,730	8,850	8,020	7,080	6,390	5,700	5,010	4,320	3,660	3,080
63,625 - 63,874	10,490	9,790	8,910	8,080	7,140	6,450	5,760	5,070	4,370	3,710	3,120
63,875 - 64,124	10,550	9,850	8,970	8,140	7,200	6,510	5,820	5,120	4,430	3,760	3,170
64,125 - 64,374	10,600	9,900	9,030	8,200	7,260	6,560	5,870	5,180	4,490	3,810	3,220
64,375 - 64,624	10,660	9,960	9,090	8,260	7,310	6,620	5,930	5,240	4,550	3,860	3,270
64,625 - 64,874	10,710	10,010	9,140	8,320	7,370	6,680	5,990	5,300	4,610	3,920	3,320
64,875 - 65,124	10,770	10,070	9,200	8,380	7,430	6,740	6,050	5,360	4,670	3,980	3,370
65,125 - 65,374	10,820	10,120	9,250	8,440	7,490	6,800	6,110	5,420	4,730	4,040	3,420
65,375 - 65,624	10,880	10,180	9,310	8,490	7,550	6,860	6,170	5,480	4,790	4,090	3,470
65,625 - 65,874	10,930	10,230	9,360	8,550	7,610	6,920	6,230	5,540	4,840	4,150	3,520

Table B: Expected Family Contribution for a Dependent Student From a One-Parent Family--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
65,875 - 66,124	10,990	10,290	9,420	8,610	7,670	6,980	6,290	5,590	4,900	4,210	3,570
66,125 - 66,374	11,040	10,340	9,470	8,660	7,730	7,030	6,340	5,650	4,960	4,270	3,620
66,375 - 66,624	11,100	10,400	9,530	8,720	7,780	7,090	6,400	5,710	5,020	4,330	3,670
66,625 - 66,874	11,150	10,450	9,580	8,770	7,840	7,150	6,460	5,770	5,080	4,390	3,720
66,875 - 67,124	11,210	10,510	9,640	8,830	7,900	7,210	6,520	5,830	5,140	4,450	3,770
67,125 - 67,374	11,270	10,560	9,700	8,880	7,950	7,270	6,580	5,890	5,200	4,510	3,820
67,375 - 67,624	11,320	10,620	9,750	8,940	8,010	7,330	6,640	5,950	5,260	4,560	3,870
67,625 - 67,874	11,380	10,680	9,810	8,990	8,060	7,390	6,700	6,010	5,310	4,620	3,930
67,875 - 68,124	11,430	10,730	9,860	9,050	8,120	7,440	6,760	6,060	5,370	4,680	3,990
68,125 - 68,374	11,490	10,790	9,920	9,100	8,170	7,500	6,810	6,120	5,430	4,740	4,050
68,375 - 68,624	11,540	10,840	9,970	9,160	8,230	7,550	6,870	6,180	5,490	4,800	4,110
68,625 - 68,874	11,600	10,900	10,030	9,210	8,280	7,610	6,930	6,240	5,550	4,860	4,170
68,875 - 69,124	11,650	10,950	10,080	9,270	8,340	7,660	6,980	6,300	5,610	4,920	4,230
69,125 - 69,374	11,710	11,010	10,140	9,320	8,390	7,720	7,040	6,360	5,670	4,980	4,290
69,375 - 69,624	11,760	11,060	10,190	9,380	8,450	7,770	7,090	6,420	5,730	5,030	4,340
69,625 - 69,874	11,820	11,120	10,250	9,430	8,500	7,830	7,150	6,470	5,780	5,090	4,400
69,875 - 70,124	11,870	11,170	10,300	9,490	8,560	7,880	7,210	6,530	5,840	5,150	4,460
70,125 - 70,374	11,930	11,230	10,360	9,540	8,610	7,940	7,260	6,580	5,900	5,210	4,520
70,375 - 70,624	11,980	11,280	10,410	9,600	8,670	7,990	7,320	6,640	5,960	5,270	4,580
70,625 - 70,874	12,040	11,340	10,470	9,660	8,720	8,050	7,370	6,690	6,020	5,330	4,640
70,875 - 71,124	12,090	11,390	10,520	9,710	8,780	8,100	7,430	6,750	6,070	5,390	4,700
71,125 - 71,374	12,150	11,450	10,580	9,770	8,840	8,160	7,480	6,800	6,130	5,450	4,760
71,375 - 71,624	12,200	11,500	10,630	9,820	8,890	8,210	7,540	6,860	6,180	5,500	4,810
71,625 - 71,874	12,260	11,560	10,690	9,880	8,950	8,270	7,590	6,920	6,240	5,560	4,870
71,875 - 72,124	12,310	11,610	10,740	9,930	9,000	8,320	7,650	6,970	6,290	5,620	4,930
72,125 - 72,374	12,370	11,670	10,800	9,990	9,060	8,380	7,700	7,030	6,350	5,670	4,990
72,375 - 72,624	12,420	11,720	10,850	10,040	9,110	8,430	7,760	7,080	6,400	5,730	5,050
72,625 - 72,874	12,480	11,780	10,910	10,100	9,170	8,490	7,810	7,140	6,460	5,780	5,110
72,875 - 73,124	12,540	11,830	10,970	10,150	9,220	8,540	7,870	7,190	6,510	5,840	5,160
73,125 - 73,374	12,590	11,890	11,020	10,210	9,280	8,600	7,920	7,250	6,570	5,890	5,220
73,375 - 73,624	12,650	11,950	11,080	10,260	9,330	8,660	7,980	7,300	6,620	5,950	5,270
73,625 - 73,874	12,700	12,000	11,130	10,320	9,390	8,710	8,030	7,360	6,680	6,000	5,330
73,875 - 74,124	12,760	12,060	11,190	10,370	9,440	8,770	8,090	7,410	6,740	6,060	5,380
74,125 - 74,374	12,810	12,110	11,240	10,430	9,500	8,820	8,140	7,470	6,790	6,110	5,440
74,375 - 74,624	12,870	12,170	11,300	10,480	9,550	8,880	8,200	7,520	6,850	6,170	5,490
74,625 - 74,874	12,920	12,220	11,350	10,540	9,610	8,930	8,250	7,580	6,900	6,220	5,550
74,875 - 75,000	12,980	12,280	11,410	10,590	9,660	8,990	8,310	7,630	6,960	6,280	5,600
Over 75,000	### MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ###										

BILLING CODE 4000-01-C

Table C—Expected Family Contribution for a Married Independent Student—1985–86

For a married independent student, the educational institution determines the student's expected family contribution according to Table C. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table C are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table C, "Family members" include the student, the student's spouse and their dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following:

—Federal income tax, based on standard deductions, computed at the rate applied to married taxpayers filing joint returns;
—F.I.C.A. (Social Security) for one wage earner; and
—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses of the student and his or her family because those expenses are included in the student's cost of attendance.

BILLING CODE 4000-01-M

Table C: Expected Family Contribution for a Married Independent Student--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	### AUTOMATICALLY ELIGIBLE ###										
30,001 - 30,124	22,480	22,730	22,980	23,230	23,460	23,680	23,900	24,120	24,330	24,510	24,690
30,125 - 30,374	22,640	22,890	23,140	23,390	23,630	23,850	24,070	24,290	24,510	24,690	24,870
30,375 - 30,624	22,800	23,050	23,300	23,550	23,790	24,010	24,230	24,450	24,670	24,870	25,050
30,625 - 30,874	22,960	23,210	23,460	23,710	23,960	24,180	24,400	24,620	24,840	25,040	25,220
30,875 - 31,124	23,120	23,370	23,620	23,870	24,120	24,350	24,570	24,790	25,010	25,220	25,400
31,125 - 31,374	23,280	23,530	23,780	24,030	24,280	24,520	24,740	24,960	25,180	25,400	25,580
31,375 - 31,624	23,440	23,690	23,940	24,190	24,440	24,690	24,910	25,130	25,350	25,570	25,760
31,625 - 31,874	23,600	23,850	24,100	24,350	24,600	24,850	25,070	25,290	25,510	25,730	25,940
31,875 - 32,124	23,760	24,010	24,260	24,510	24,760	25,010	25,240	25,460	25,680	25,900	26,120
32,125 - 32,374	23,910	24,170	24,420	24,670	24,920	25,170	25,410	25,630	25,850	26,070	26,290
32,375 - 32,624	24,060	24,330	24,580	24,830	25,080	25,330	25,580	25,800	26,020	26,240	26,460
32,625 - 32,874	24,220	24,490	24,740	24,990	25,240	25,490	25,740	25,970	26,190	26,410	26,630
32,875 - 33,124	24,370	24,650	24,900	25,150	25,400	25,650	25,900	26,140	26,360	26,580	26,800
33,125 - 33,374	24,520	24,800	25,060	25,310	25,560	25,810	26,060	26,300	26,520	26,740	26,960
33,375 - 33,624	24,680	24,960	25,230	25,480	25,730	25,980	26,230	26,470	26,690	26,910	27,130
33,625 - 33,874	24,830	25,110	25,390	25,640	25,890	26,140	26,390	26,640	26,860	27,080	27,300
33,875 - 34,124	24,980	25,260	25,540	25,800	26,050	26,300	26,550	26,800	27,030	27,250	27,470
34,125 - 34,374	25,140	25,420	25,700	25,960	26,210	26,460	26,710	26,960	27,200	27,420	27,640
34,375 - 34,624	25,290	25,570	25,850	26,120	26,370	26,620	26,870	27,120	27,370	27,590	27,810
34,625 - 34,874	25,440	25,720	26,000	26,280	26,530	26,780	27,030	27,280	27,530	27,750	27,970
34,875 - 35,124	25,600	25,880	26,160	26,440	26,690	26,940	27,190	27,440	27,690	27,920	28,140
35,125 - 35,374	25,750	26,030	26,310	26,590	26,850	27,100	27,350	27,600	27,850	28,090	28,310
35,375 - 35,624	25,900	26,180	26,460	26,740	27,010	27,260	27,510	27,760	28,010	28,260	28,480
35,625 - 35,874	26,060	26,340	26,620	26,900	27,170	27,420	27,670	27,920	28,170	28,420	28,650
35,875 - 36,124	26,210	26,490	26,770	27,050	27,330	27,580	27,830	28,080	28,330	28,580	28,820
36,125 - 36,374	26,360	26,640	26,920	27,200	27,480	27,740	27,990	28,240	28,490	28,740	28,980
36,375 - 36,624	26,520	26,800	27,080	27,360	27,640	27,900	28,150	28,400	28,650	28,900	29,150
36,625 - 36,874	26,670	26,950	27,230	27,510	27,790	28,070	28,320	28,570	28,820	29,070	29,320
36,875 - 37,124	26,820	27,100	27,380	27,660	27,940	28,220	28,480	28,730	28,980	29,230	29,480
37,125 - 37,374	26,970	27,260	27,540	27,820	28,100	28,380	28,640	28,890	29,140	29,390	29,640
37,375 - 37,624	27,110	27,410	27,690	27,970	28,250	28,530	28,800	29,050	29,300	29,550	29,800
37,625 - 37,874	27,260	27,560	27,840	28,120	28,400	28,680	28,960	29,210	29,460	29,710	29,960
37,875 - 38,124	27,410	27,730	28,010	28,290	28,570	28,850	29,130	29,380	29,630	29,880	30,130
38,125 - 38,374	27,570	27,900	28,180	28,460	28,740	29,020	29,300	29,560	29,810	30,060	30,310
38,375 - 38,624	27,720	28,050	28,350	28,630	28,910	29,190	29,470	29,740	29,990	30,240	30,490
38,625 - 38,874	27,880	28,210	28,520	28,800	29,080	29,360	29,640	29,910	30,160	30,410	30,660

Table C: Expected Family Contribution for a Married Independent Student--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
38,875 - 39,124	28,040	28,370	28,690	28,970	29,250	29,530	29,810	30,090	30,340	30,590	30,840
39,125 - 39,374	28,200	28,530	28,860	29,140	29,420	29,700	29,980	30,260	30,520	30,770	31,020
39,375 - 39,624	28,350	28,680	29,010	29,310	29,590	29,870	30,150	30,430	30,700	30,950	31,200
39,625 - 39,874	28,510	28,840	29,170	29,480	29,760	30,040	30,320	30,600	30,870	31,120	31,370
39,875 - 40,124	28,670	29,000	29,330	29,650	29,930	30,210	30,490	30,770	31,050	31,300	31,550
40,125 - 40,374	28,830	29,160	29,490	29,820	30,100	30,380	30,660	30,940	31,220	31,480	31,730
40,375 - 40,624	28,980	29,310	29,640	29,970	30,270	30,550	30,830	31,110	31,390	31,660	31,910
40,625 - 40,874	29,140	29,470	29,800	30,130	30,440	30,720	31,000	31,280	31,560	31,830	32,080
40,875 - 41,124	29,300	29,630	29,960	30,290	30,610	30,890	31,170	31,450	31,730	32,010	32,260
41,125 - 41,374	29,460	29,790	30,120	30,450	30,780	31,060	31,340	31,620	31,900	32,180	32,440
41,375 - 41,624	29,610	29,940	30,270	30,600	30,930	31,230	31,510	31,790	32,070	32,350	32,620
41,625 - 41,874	29,770	30,100	30,430	30,760	31,090	31,400	31,680	31,960	32,240	32,520	32,790
41,875 - 42,124	29,930	30,260	30,590	30,920	31,250	31,570	31,850	32,130	32,410	32,690	32,970
42,125 - 42,374	30,090	30,420	30,750	31,080	31,410	31,740	32,020	32,300	32,580	32,860	33,140
42,375 - 42,624	30,240	30,570	30,900	31,230	31,560	31,890	32,190	32,470	32,750	33,030	33,310
42,625 - 42,874	30,400	30,730	31,060	31,390	31,720	32,050	32,360	32,640	32,920	33,200	33,480
42,875 - 43,124	30,560	30,890	31,220	31,550	31,880	32,210	32,530	32,810	33,090	33,370	33,650
43,125 - 43,374	30,720	31,050	31,380	31,710	32,040	32,370	32,700	32,980	33,260	33,540	33,820
43,375 - 43,624	30,870	31,200	31,530	31,860	32,190	32,520	32,850	33,150	33,430	33,710	33,990
43,625 - 43,874	31,030	31,360	31,690	32,020	32,350	32,680	33,010	33,320	33,600	33,880	34,160
43,875 - 44,124	31,190	31,520	31,850	32,180	32,510	32,840	33,170	33,490	33,770	34,050	34,330
44,125 - 44,374	31,350	31,680	32,010	32,340	32,670	33,000	33,330	33,660	33,940	34,220	34,500
44,375 - 44,624	31,500	31,830	32,160	32,490	32,820	33,150	33,480	33,810	34,110	34,390	34,670
44,625 - 44,874	31,660	31,990	32,320	32,650	32,980	33,310	33,640	33,970	34,280	34,560	34,840
44,875 - 45,124	31,820	32,150	32,480	32,810	33,140	33,470	33,800	34,130	34,450	34,730	35,010
45,125 - 45,374	31,980	32,310	32,640	32,970	33,300	33,630	33,960	34,290	34,620	34,900	35,180
45,375 - 45,624	32,130	32,460	32,790	33,120	33,450	33,780	34,110	34,440	34,770	35,070	35,350
45,625 - 45,874	32,290	32,620	32,950	33,280	33,610	33,940	34,270	34,600	34,930	35,240	35,520
45,875 - 46,124	32,450	32,780	33,110	33,440	33,770	34,100	34,430	34,760	35,090	35,410	35,690
46,125 - 46,374	32,610	32,940	33,270	33,600	33,930	34,260	34,590	34,920	35,250	35,580	35,860
46,375 - 46,624	32,760	33,090	33,420	33,750	34,080	34,410	34,740	35,070	35,400	35,730	36,030
46,625 - 46,874	32,920	33,250	33,580	33,910	34,240	34,570	34,900	35,230	35,560	35,890	36,200
46,875 - 47,124	33,080	33,410	33,740	34,070	34,400	34,730	35,060	35,390	35,720	36,050	36,370
47,125 - 47,374	33,240	33,570	33,900	34,230	34,560	34,890	35,220	35,550	35,880	36,210	36,540
47,375 - 47,624	33,390	33,720	34,050	34,380	34,710	35,040	35,370	35,700	36,030	36,360	36,690
47,625 - 47,874	33,550	33,880	34,210	34,540	34,870	35,200	35,530	35,860	36,190	36,520	36,850

Table C: Expected Family Contribution for a Married Independent Student—1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
47,875 - 48,124	33,700	34,040	34,370	34,700	35,030	35,360	35,690	36,020	36,350	36,680	37,010
48,125 - 48,374	33,840	34,200	34,530	34,860	35,190	35,520	35,850	36,180	36,510	36,840	37,170
48,375 - 48,624	33,990	34,350	34,680	35,010	35,340	35,670	36,000	36,330	36,660	36,990	37,320
48,625 - 48,874	34,130	34,510	34,840	35,170	35,500	35,830	36,160	36,490	36,820	37,150	37,480
48,875 - 49,124	34,280	34,660	35,000	35,330	35,660	35,990	36,320	36,650	36,980	37,310	37,640
49,125 - 49,374	34,420	34,800	35,160	35,490	35,820	36,150	36,480	36,810	37,140	37,470	37,800
49,375 - 49,624	34,570	34,950	35,310	35,640	35,970	36,300	36,630	36,960	37,290	37,620	37,950
49,625 - 49,874	34,710	35,090	35,470	35,800	36,130	36,460	36,790	37,120	37,450	37,780	38,110
49,875 - 50,124	34,860	35,240	35,620	35,960	36,290	36,620	36,950	37,280	37,610	37,940	38,270
50,125 - 50,374	35,000	35,380	35,760	36,120	36,450	36,780	37,110	37,440	37,770	38,100	38,430
50,375 - 50,624	35,150	35,530	35,910	36,270	36,600	36,930	37,260	37,590	37,920	38,250	38,580
50,625 - 50,874	35,290	35,670	36,050	36,430	36,760	37,090	37,420	37,750	38,080	38,410	38,740
50,875 - 51,124	35,440	35,820	36,200	36,580	36,920	37,250	37,580	37,910	38,240	38,570	38,900
51,125 - 51,374	35,580	35,960	36,340	36,720	37,080	37,410	37,740	38,070	38,400	38,730	39,060
51,375 - 51,624	35,730	36,110	36,490	36,870	37,230	37,560	37,890	38,220	38,550	38,880	39,210
51,625 - 51,874	35,870	36,250	36,630	37,010	37,390	37,720	38,050	38,380	38,710	39,040	39,370
51,875 - 52,124	36,020	36,400	36,780	37,160	37,540	37,880	38,210	38,540	38,870	39,200	39,530
52,125 - 52,374	36,160	36,540	36,920	37,300	37,680	38,040	38,370	38,700	39,030	39,360	39,690
52,375 - 52,624	36,310	36,690	37,070	37,450	37,830	38,190	38,520	38,850	39,180	39,510	39,840
52,625 - 52,874	36,450	36,830	37,210	37,590	37,970	38,350	38,680	39,010	39,340	39,670	40,000
52,875 - 53,124	36,600	36,980	37,360	37,740	38,120	38,500	38,840	39,170	39,500	39,830	40,160
53,125 - 53,374	36,740	37,120	37,500	37,880	38,260	38,640	39,000	39,330	39,660	39,990	40,320
53,375 - 53,624	36,890	37,270	37,650	38,030	38,410	38,790	39,150	39,480	39,810	40,140	40,470
53,625 - 53,874	37,030	37,410	37,790	38,170	38,550	38,930	39,310	39,640	39,970	40,300	40,630
53,875 - 54,124	37,180	37,560	37,940	38,320	38,700	39,080	39,460	39,800	40,130	40,460	40,790
54,125 - 54,374	37,320	37,700	38,080	38,460	38,840	39,220	39,600	39,960	40,290	40,620	40,950
54,375 - 54,624	37,470	37,850	38,230	38,610	38,990	39,370	39,750	40,110	40,440	40,770	41,100
54,625 - 54,874	37,610	37,990	38,370	38,750	39,130	39,510	39,890	40,270	40,600	40,930	41,260
54,875 - 55,124	37,760	38,140	38,520	38,900	39,280	39,660	40,040	40,420	40,760	41,090	41,420
55,125 - 55,374	37,900	38,280	38,660	39,040	39,420	39,800	40,180	40,560	40,920	41,250	41,580
55,375 - 55,624	38,050	38,430	38,810	39,190	39,570	39,950	40,330	40,710	41,070	41,400	41,730
55,625 - 55,874	38,190	38,570	38,950	39,330	39,710	40,090	40,470	40,850	41,230	41,560	41,890
55,875 - 56,124	38,340	38,720	39,100	39,480	39,860	40,240	40,620	41,000	41,380	41,720	42,050
56,125 - 56,374	38,480	38,860	39,240	39,620	40,000	40,380	40,760	41,140	41,520	41,880	42,210
56,375 - 56,624	38,630	39,010	39,390	39,770	40,150	40,530	40,910	41,290	41,670	42,030	42,360
56,625 - 56,874	38,770	39,150	39,530	39,910	40,290	40,670	41,050	41,430	41,810	42,190	42,520

Table C: Expected Family Contribution for a Married Independent Student--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
56,875 - 57,124	38,920	39,300	39,680	40,060	40,440	40,820	41,200	41,580	41,960	42,340	42,680
57,125 - 57,374	39,060	39,440	39,820	40,200	40,580	40,960	41,340	41,720	42,100	42,480	42,840
57,375 - 57,624	39,210	39,590	39,970	40,350	40,730	41,110	41,490	41,870	42,250	42,630	42,990
57,625 - 57,874	39,350	39,730	40,110	40,490	40,870	41,250	41,630	42,010	42,390	42,770	43,150
57,875 - 58,124	39,500	39,880	40,260	40,640	41,020	41,400	41,780	42,160	42,540	42,920	43,300
58,125 - 58,374	39,640	40,020	40,400	40,780	41,160	41,540	41,920	42,300	42,680	43,060	43,440
58,375 - 58,624	39,790	40,170	40,550	40,930	41,310	41,690	42,070	42,450	42,830	43,210	43,590
58,625 - 58,874	39,930	40,310	40,690	41,070	41,450	41,830	42,210	42,590	42,970	43,350	43,730
58,875 - 59,124	40,080	40,460	40,840	41,220	41,600	41,980	42,360	42,740	43,120	43,500	43,880
59,125 - 59,374	40,220	40,600	40,980	41,360	41,740	42,120	42,500	42,880	43,260	43,640	44,020
59,375 - 59,624	40,370	40,750	41,130	41,510	41,890	42,270	42,650	43,030	43,410	43,790	44,170
59,625 - 59,874	40,510	40,890	41,270	41,650	42,030	42,410	42,790	43,170	43,550	43,930	44,310
59,875 - 60,124	40,660	41,040	41,420	41,800	42,180	42,560	42,940	43,320	43,700	44,080	44,460
60,125 - 60,374	40,800	41,180	41,560	41,940	42,320	42,700	43,080	43,460	43,840	44,220	44,600
60,375 - 60,624	40,950	41,330	41,710	42,090	42,470	42,850	43,230	43,610	43,990	44,370	44,750
60,625 - 60,874	41,090	41,470	41,850	42,230	42,610	42,990	43,370	43,750	44,130	44,510	44,890
60,875 - 61,124	41,240	41,620	42,000	42,380	42,760	43,140	43,520	43,900	44,280	44,660	45,040
61,125 - 61,374	41,380	41,760	42,140	42,520	42,900	43,280	43,660	44,040	44,420	44,800	45,180
61,375 - 61,624	41,530	41,910	42,290	42,670	43,050	43,430	43,810	44,190	44,570	44,950	45,330
61,625 - 61,874	41,670	42,050	42,430	42,810	43,190	43,570	43,950	44,330	44,710	45,090	45,470
61,875 - 62,124	41,820	42,200	42,580	42,960	43,340	43,720	44,100	44,480	44,860	45,240	45,620
62,125 - 62,374	41,950	42,340	42,720	43,100	43,480	43,860	44,240	44,620	45,000	45,380	45,760
62,375 - 62,624	42,090	42,490	42,870	43,250	43,630	44,010	44,390	44,770	45,150	45,530	45,910
62,625 - 62,874	42,220	42,630	43,010	43,390	43,770	44,150	44,530	44,910	45,290	45,670	46,050
62,875 - 63,124	42,360	42,780	43,160	43,540	43,920	44,300	44,680	45,060	45,440	45,820	46,200
63,125 - 63,374	42,490	42,910	43,300	43,680	44,060	44,440	44,820	45,200	45,580	45,960	46,340
63,375 - 63,624	42,630	43,050	43,450	43,830	44,210	44,590	44,970	45,350	45,730	46,110	46,490
63,625 - 63,874	42,760	43,180	43,590	43,970	44,350	44,730	45,110	45,490	45,870	46,250	46,630
63,875 - 64,124	42,900	43,320	43,740	44,120	44,500	44,880	45,260	45,640	46,020	46,400	46,780
64,125 - 64,374	43,030	43,450	43,870	44,260	44,640	45,020	45,400	45,780	46,160	46,540	46,920
64,375 - 64,624	43,170	43,590	44,010	44,410	44,790	45,170	45,550	45,930	46,310	46,690	47,070
64,625 - 64,874	43,300	43,720	44,140	44,550	44,930	45,310	45,690	46,070	46,450	46,830	47,210
64,875 - 65,124	43,440	43,860	44,280	44,700	45,080	45,460	45,840	46,220	46,600	46,980	47,360
65,125 - 65,374	43,570	43,990	44,410	44,830	45,220	45,600	45,980	46,360	46,740	47,120	47,500
65,375 - 65,624	43,710	44,130	44,550	44,970	45,370	45,750	46,130	46,510	46,890	47,270	47,650
65,625 - 65,874	43,840	44,260	44,680	45,100	45,510	45,890	46,270	46,650	47,030	47,410	47,790

Table C: Expected Family Contribution for a Married Independent Student--1985-86

Adjusted Gross Income	Number of Family Members										
	2	3	4	5	6	7	8	9	10	11	12
65,875 - 66,124	43,980	44,400	44,820	45,240	45,660	46,040	46,420	46,800	47,180	47,560	47,940
66,125 - 66,374	44,110	44,530	44,950	45,370	45,790	46,180	46,560	46,940	47,320	47,700	48,080
66,375 - 66,624	44,250	44,670	45,090	45,510	45,930	46,330	46,710	47,090	47,470	47,850	48,230
66,625 - 66,874	44,380	44,800	45,220	45,640	46,060	46,470	46,850	47,230	47,610	47,990	48,370
66,875 - 67,124	44,520	44,940	45,360	45,780	46,200	46,620	47,000	47,380	47,760	48,140	48,520
67,125 - 67,374	44,650	45,070	45,490	45,910	46,330	46,750	47,140	47,520	47,900	48,280	48,660
67,375 - 67,624	44,790	45,210	45,630	46,050	46,470	46,890	47,290	47,670	48,050	48,430	48,810
67,625 - 67,874	44,920	45,340	45,760	46,180	46,600	47,020	47,430	47,810	48,190	48,570	48,950
67,875 - 68,124	45,060	45,480	45,900	46,320	46,740	47,160	47,580	47,960	48,340	48,720	49,100
68,125 - 68,374	45,190	45,610	46,030	46,450	46,870	47,290	47,710	48,100	48,480	48,860	49,240
68,375 - 68,624	45,330	45,750	46,170	46,590	47,010	47,430	47,850	48,250	48,630	49,010	49,390
68,625 - 68,874	45,460	45,880	46,300	46,720	47,140	47,560	47,980	48,390	48,770	49,150	49,530
68,875 - 69,124	45,600	46,020	46,440	46,860	47,280	47,700	48,120	48,540	48,920	49,300	49,680
69,125 - 69,374	45,730	46,150	46,570	46,990	47,410	47,830	48,250	48,670	49,060	49,440	49,820
69,375 - 69,624	45,870	46,290	46,710	47,130	47,550	47,970	48,390	48,810	49,210	49,590	49,970
69,625 - 69,874	46,000	46,420	46,840	47,260	47,680	48,100	48,520	48,940	49,350	49,730	50,110
69,875 - 70,124	46,140	46,560	46,980	47,400	47,820	48,240	48,660	49,080	49,500	49,880	50,260
70,125 - 70,374	46,270	46,690	47,110	47,530	47,950	48,370	48,790	49,210	49,630	50,020	50,400
70,375 - 70,624	46,410	46,830	47,250	47,670	48,090	48,510	48,930	49,350	49,770	50,170	50,550
70,625 - 70,874	46,540	46,960	47,380	47,800	48,220	48,640	49,060	49,480	49,900	50,310	50,690
70,875 - 71,124	46,680	47,100	47,520	47,940	48,360	48,780	49,200	49,620	50,040	50,460	50,840
71,125 - 71,374	46,810	47,230	47,650	48,070	48,490	48,910	49,330	49,750	50,170	50,590	50,980
71,375 - 71,624	46,950	47,370	47,790	48,210	48,630	49,050	49,470	49,890	50,310	50,730	51,130
71,625 - 71,874	47,080	47,500	47,920	48,340	48,760	49,180	49,600	50,020	50,440	50,860	51,270
71,875 - 72,124	47,220	47,640	48,060	48,480	48,900	49,320	49,740	50,160	50,580	51,000	51,420
72,125 - 72,374	47,350	47,770	48,190	48,610	49,030	49,450	49,870	50,290	50,710	51,130	51,550
72,375 - 72,624	47,490	47,910	48,330	48,750	49,170	49,590	50,010	50,430	50,850	51,270	51,690
72,625 - 72,874	47,620	48,040	48,460	48,880	49,300	49,720	50,140	50,560	50,980	51,400	51,820
72,875 - 73,124	47,760	48,180	48,600	49,020	49,440	49,860	50,280	50,700	51,120	51,540	51,960
73,125 - 73,374	47,890	48,310	48,730	49,150	49,570	49,990	50,410	50,830	51,250	51,670	52,090
73,375 - 73,624	48,030	48,450	48,870	49,290	49,710	50,130	50,550	50,970	51,390	51,810	52,230
73,625 - 73,874	48,160	48,580	49,000	49,420	49,840	50,260	50,680	51,100	51,520	51,940	52,360
73,875 - 74,124	48,300	48,720	49,140	49,560	49,980	50,400	50,820	51,240	51,660	52,080	52,500
74,125 - 74,374	48,430	48,850	49,270	49,690	50,110	50,530	50,950	51,370	51,790	52,210	52,630
74,375 - 74,624	48,570	48,990	49,410	49,830	50,250	50,670	51,090	51,510	51,930	52,350	52,770
74,625 - 74,874	48,700	49,120	49,540	49,960	50,380	50,800	51,220	51,640	52,060	52,480	52,900
74,875 - 75,000	48,840	49,260	49,680	50,100	50,520	50,940	51,360	51,780	52,200	52,620	53,040
Over 75,000	### MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ###										

BILLING CODE 4000-01-C

Table D—Expected Family Contribution For a Single Independent Student—1985–86

For a single independent student, the educational institution determines the student's expected family contribution according to Table D. The amount obtained from the table is divided by the number of family members enrolled on at least a half-time basis in a postsecondary educational institution. The contributions set forth in Table D are based on a 12-month budget. If an educational institution calculates an independent student budget on a 9-month basis, it must multiply the contribution in the table by .75. No family assets are considered.

As used in Table D, "Family members" include the student and the student's dependents.

The conversion of the adjusted gross income to the expected family contribution is performed by subtracting from the adjusted gross income the following—

—Federal income tax, based on standard deductions, computed at the rate applied to taxpayers who qualify as heads of households;

—F.I.C.A. (Social Security) for one wage earner; and

—Average State and other taxes (4%).

The resulting value is the expected family contribution. No deduction is made for living expenses for the student and his or her family because those expenses are included in the student's cost of attendance.

BILLING CODE 4000-01-M

Table D: Expected Family Contribution for a Single Independent Student--1985-86

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
Less than 30,001	### AUTOMATICALLY ELIGIBLE ###											
30,001 - 30,124	21,440	21,720	22,000	22,280	22,560	22,840	23,180	23,340	23,580	23,820	24,060	24,300
30,125 - 30,374	21,580	21,880	22,160	22,440	22,720	23,000	23,270	23,510	23,750	23,990	24,230	24,470
30,375 - 30,624	21,720	22,030	22,310	22,590	22,870	23,150	23,430	23,670	23,910	24,150	24,390	24,630
30,625 - 30,874	21,870	22,180	22,460	22,740	23,020	23,300	23,580	23,830	24,070	24,310	24,550	24,790
30,875 - 31,124	22,010	22,330	22,620	22,900	23,180	23,460	23,740	24,000	24,240	24,480	24,720	24,960
31,125 - 31,374	22,150	22,470	22,770	23,050	23,330	23,610	23,890	24,160	24,400	24,640	24,880	25,120
31,375 - 31,624	22,300	22,620	22,920	23,200	23,480	23,760	24,040	24,320	24,560	24,800	25,040	25,280
31,625 - 31,874	22,440	22,760	23,080	23,360	23,640	23,920	24,200	24,480	24,730	24,970	25,210	25,450
31,875 - 32,124	22,580	22,900	23,220	23,510	23,790	24,070	24,350	24,630	24,890	25,130	25,370	25,610
32,125 - 32,374	22,730	23,050	23,370	23,660	23,940	24,220	24,500	24,780	25,050	25,290	25,530	25,770
32,375 - 32,624	22,870	23,190	23,510	23,820	24,100	24,380	24,660	24,940	25,220	25,460	25,700	25,940
32,625 - 32,874	23,010	23,330	23,650	23,970	24,250	24,530	24,810	25,090	25,370	25,620	25,860	26,100
32,875 - 33,124	23,160	23,480	23,800	24,120	24,400	24,680	24,960	25,240	25,520	25,780	26,020	26,260
33,125 - 33,374	23,300	23,620	23,940	24,260	24,540	24,840	25,120	25,400	25,680	25,950	26,190	26,430
33,375 - 33,624	23,440	23,760	24,080	24,400	24,710	24,990	25,270	25,550	25,830	26,110	26,350	26,590
33,625 - 33,874	23,580	23,900	24,220	24,540	24,860	25,140	25,420	25,700	25,980	26,260	26,510	26,750
33,875 - 34,124	23,730	24,050	24,370	24,690	25,010	25,300	25,580	25,860	26,140	26,420	26,680	26,920
34,125 - 34,374	23,870	24,190	24,510	24,830	25,150	25,450	25,730	26,010	26,290	26,570	26,840	27,080
34,375 - 34,624	24,010	24,330	24,650	24,970	25,290	25,600	25,880	26,160	26,440	26,720	27,000	27,240
34,625 - 34,874	24,160	24,480	24,800	25,120	25,440	25,760	26,040	26,320	26,600	26,880	27,160	27,410
34,875 - 35,124	24,300	24,620	24,940	25,260	25,580	25,900	26,190	26,470	26,750	27,030	27,310	27,570
35,125 - 35,374	24,440	24,760	25,080	25,400	25,720	26,040	26,340	26,620	26,900	27,180	27,460	27,730
35,375 - 35,624	24,580	24,910	25,230	25,550	25,870	26,190	26,500	26,780	27,060	27,340	27,620	27,900
35,625 - 35,874	24,710	25,050	25,370	25,690	26,010	26,330	26,650	26,930	27,210	27,490	27,770	28,050
35,875 - 36,124	24,850	25,190	25,510	25,830	26,150	26,470	26,790	27,080	27,360	27,640	27,920	28,200
36,125 - 36,374	24,980	25,330	25,660	25,980	26,300	26,620	26,940	27,240	27,520	27,800	28,080	28,360
36,375 - 36,624	25,120	25,470	25,800	26,120	26,440	26,760	27,080	27,390	27,670	27,950	28,230	28,510
36,625 - 36,874	25,250	25,600	25,940	26,260	26,580	26,900	27,220	27,540	27,820	28,100	28,380	28,660
36,875 - 37,124	25,390	25,740	26,090	26,410	26,730	27,050	27,370	27,690	27,980	28,260	28,540	28,820
37,125 - 37,374	25,530	25,880	26,230	26,550	26,870	27,190	27,510	27,830	28,130	28,410	28,690	28,970
37,375 - 37,624	25,660	26,010	26,360	26,690	27,010	27,330	27,650	27,970	28,280	28,560	28,840	29,120
37,625 - 37,874	25,800	26,150	26,500	26,840	27,160	27,480	27,800	28,120	28,430	28,710	28,990	29,270
37,875 - 38,124	25,950	26,300	26,650	26,990	27,310	27,630	27,950	28,270	28,590	28,880	29,160	29,440
38,125 - 38,374	26,100	26,450	26,800	27,150	27,470	27,790	28,110	28,430	28,750	29,050	29,330	29,610
38,375 - 38,624	26,250	26,600	26,950	27,300	27,630	27,950	28,270	28,590	28,910	29,220	29,500	29,780
38,625 - 38,874	26,400	26,750	27,100	27,450	27,790	28,110	28,430	28,750	29,070	29,390	29,670	29,950

Table B: Expected Family Contribution for a Single Independent Student--1985-86

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
38,875 - 39,124	26,560	26,910	27,260	27,610	27,950	28,270	28,590	28,910	29,230	29,550	29,840	30,120
39,125 - 39,374	26,710	27,060	27,410	27,760	28,100	28,430	28,750	29,070	29,390	29,710	30,010	30,290
39,375 - 39,624	26,860	27,210	27,560	27,910	28,260	28,590	28,910	29,230	29,550	29,870	30,180	30,460
39,625 - 39,874	27,010	27,360	27,710	28,060	28,410	28,750	29,070	29,390	29,710	30,030	30,350	30,630
39,875 - 40,124	27,170	27,520	27,870	28,220	28,570	28,910	29,230	29,550	29,870	30,190	30,510	30,800
40,125 - 40,374	27,320	27,670	28,020	28,370	28,720	29,070	29,390	29,710	30,030	30,350	30,670	30,970
40,375 - 40,624	27,470	27,820	28,170	28,520	28,870	29,220	29,550	29,870	30,190	30,510	30,830	31,140
40,625 - 40,874	27,620	27,970	28,320	28,670	29,020	29,370	29,710	30,030	30,350	30,670	30,990	31,310
40,875 - 41,124	27,780	28,130	28,480	28,830	29,180	29,530	29,870	30,190	30,510	30,830	31,150	31,470
41,125 - 41,374	27,930	28,280	28,630	28,980	29,330	29,680	30,030	30,350	30,670	30,990	31,310	31,630
41,375 - 41,624	28,080	28,430	28,780	29,130	29,480	29,830	30,180	30,510	30,830	31,150	31,470	31,790
41,625 - 41,874	28,230	28,580	28,930	29,280	29,630	29,980	30,330	30,670	30,990	31,310	31,630	31,950
41,875 - 42,124	28,390	28,740	29,090	29,440	29,790	30,140	30,490	30,830	31,150	31,470	31,790	32,110
42,125 - 42,374	28,540	28,890	29,240	29,590	29,940	30,290	30,640	30,990	31,310	31,630	31,950	32,270
42,375 - 42,624	28,690	29,040	29,390	29,740	30,090	30,440	30,790	31,140	31,470	31,790	32,110	32,430
42,625 - 42,874	28,840	29,190	29,540	29,890	30,240	30,590	30,940	31,290	31,630	31,950	32,270	32,590
42,875 - 43,124	29,000	29,350	29,700	30,050	30,400	30,750	31,100	31,450	31,790	32,110	32,430	32,750
43,125 - 43,374	29,150	29,500	29,850	30,200	30,550	30,900	31,250	31,600	31,950	32,270	32,590	32,910
43,375 - 43,624	29,300	29,650	30,000	30,350	30,700	31,050	31,400	31,750	32,100	32,430	32,750	33,070
43,625 - 43,874	29,450	29,800	30,150	30,500	30,850	31,200	31,550	31,900	32,250	32,590	32,910	33,230
43,875 - 44,124	29,610	29,960	30,310	30,660	31,010	31,360	31,710	32,060	32,410	32,750	33,070	33,390
44,125 - 44,374	29,760	30,110	30,460	30,810	31,160	31,510	31,860	32,210	32,560	32,910	33,230	33,550
44,375 - 44,624	29,910	30,260	30,610	30,960	31,310	31,660	32,010	32,360	32,710	33,060	33,390	33,710
44,625 - 44,874	30,060	30,410	30,760	31,110	31,460	31,810	32,160	32,510	32,860	33,210	33,550	33,870
44,875 - 45,124	30,220	30,570	30,920	31,270	31,620	31,970	32,320	32,670	33,020	33,370	33,710	34,030
45,125 - 45,374	30,370	30,720	31,070	31,420	31,770	32,120	32,470	32,820	33,170	33,520	33,870	34,190
45,375 - 45,624	30,520	30,870	31,220	31,570	31,920	32,270	32,620	32,970	33,320	33,670	34,020	34,350
45,625 - 45,874	30,670	31,020	31,370	31,720	32,070	32,420	32,770	33,120	33,470	33,820	34,170	34,510
45,875 - 46,124	30,810	31,180	31,530	31,880	32,230	32,580	32,930	33,280	33,630	33,980	34,330	34,670
46,125 - 46,374	30,940	31,330	31,680	32,030	32,380	32,730	33,080	33,430	33,780	34,130	34,480	34,830
46,375 - 46,624	31,080	31,480	31,830	32,180	32,530	32,880	33,230	33,580	33,930	34,280	34,630	34,980
46,625 - 46,874	31,210	31,630	31,980	32,330	32,680	33,030	33,380	33,730	34,080	34,430	34,780	35,130
46,875 - 47,124	31,350	31,770	32,140	32,490	32,840	33,190	33,540	33,890	34,240	34,590	34,940	35,290
47,125 - 47,374	31,480	31,900	32,290	32,640	32,990	33,340	33,690	34,040	34,390	34,740	35,090	35,440
47,375 - 47,624	31,620	32,040	32,440	32,790	33,140	33,490	33,840	34,190	34,540	34,890	35,240	35,590
47,625 - 47,874	31,750	32,170	32,590	32,940	33,290	33,640	33,990	34,340	34,690	35,040	35,390	35,740

Table D: Expected Family Contribution for a Single Independent Student--1985-86

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
47,875 - 48,124	31,890	32,310	32,730	33,100	33,450	33,800	34,150	34,500	34,850	35,200	35,550	35,900
48,125 - 48,374	32,020	32,440	32,860	33,250	33,600	33,950	34,300	34,650	35,000	35,350	35,700	36,050
48,375 - 48,624	32,160	32,580	33,000	33,400	33,750	34,100	34,450	34,800	35,150	35,500	35,850	36,200
48,625 - 48,874	32,290	32,710	33,130	33,550	33,900	34,250	34,600	34,950	35,300	35,650	36,000	36,350
48,875 - 49,124	32,430	32,850	33,270	33,690	34,060	34,410	34,760	35,110	35,460	35,810	36,160	36,510
49,125 - 49,374	32,560	32,980	33,400	33,820	34,210	34,560	34,910	35,260	35,610	35,960	36,310	36,660
49,375 - 49,624	32,700	33,120	33,540	33,960	34,360	34,710	35,060	35,410	35,760	36,110	36,460	36,810
49,625 - 49,874	32,830	33,250	33,670	34,090	34,510	34,860	35,210	35,560	35,910	36,260	36,610	36,960
49,875 - 50,124	32,970	33,390	33,810	34,230	34,650	35,020	35,370	35,720	36,070	36,420	36,770	37,120
50,125 - 50,374	33,100	33,520	33,940	34,360	34,780	35,170	35,520	35,870	36,220	36,570	36,920	37,270
50,375 - 50,624	33,240	33,660	34,080	34,500	34,920	35,320	35,670	36,020	36,370	36,720	37,070	37,420
50,625 - 50,874	33,370	33,790	34,210	34,630	35,050	35,470	35,820	36,170	36,520	36,870	37,220	37,570
50,875 - 51,124	33,510	33,930	34,350	34,770	35,190	35,610	35,980	36,330	36,680	37,030	37,380	37,730
51,125 - 51,374	33,640	34,060	34,480	34,900	35,320	35,740	36,130	36,480	36,830	37,180	37,530	37,880
51,375 - 51,624	33,780	34,200	34,620	35,040	35,460	35,880	36,280	36,630	36,980	37,330	37,680	38,030
51,625 - 51,874	33,910	34,330	34,750	35,170	35,590	36,010	36,430	36,780	37,130	37,480	37,830	38,180
51,875 - 52,124	34,050	34,470	34,890	35,310	35,730	36,150	36,570	36,940	37,290	37,640	37,990	38,340
52,125 - 52,374	34,180	34,600	35,020	35,440	35,860	36,280	36,700	37,090	37,440	37,790	38,140	38,490
52,375 - 52,624	34,320	34,740	35,160	35,580	36,000	36,420	36,840	37,240	37,590	37,940	38,290	38,640
52,625 - 52,874	34,450	34,870	35,290	35,710	36,130	36,550	36,970	37,390	37,740	38,090	38,440	38,790
52,875 - 53,124	34,590	35,010	35,430	35,850	36,270	36,690	37,110	37,530	37,900	38,250	38,600	38,950
53,125 - 53,374	34,720	35,140	35,560	35,980	36,400	36,820	37,240	37,660	38,050	38,400	38,750	39,100
53,375 - 53,624	34,860	35,280	35,700	36,120	36,540	36,960	37,380	37,800	38,200	38,550	38,900	39,250
53,625 - 53,874	34,990	35,410	35,830	36,250	36,670	37,090	37,510	37,930	38,350	38,700	39,050	39,400
53,875 - 54,124	35,130	35,550	35,970	36,390	36,810	37,230	37,650	38,070	38,490	38,860	39,210	39,560
54,125 - 54,374	35,260	35,680	36,100	36,520	36,940	37,360	37,780	38,200	38,620	39,010	39,360	39,710
54,375 - 54,624	35,400	35,820	36,240	36,660	37,080	37,500	37,920	38,340	38,760	39,160	39,510	39,860
54,625 - 54,874	35,530	35,950	36,370	36,790	37,210	37,630	38,050	38,470	38,890	39,310	39,660	40,010
54,875 - 55,124	35,670	36,090	36,510	36,930	37,350	37,770	38,190	38,610	39,030	39,450	39,820	40,170
55,125 - 55,374	35,800	36,220	36,640	37,060	37,480	37,900	38,320	38,740	39,160	39,580	39,970	40,320
55,375 - 55,624	35,940	36,360	36,780	37,200	37,620	38,040	38,460	38,880	39,300	39,720	40,120	40,470
55,625 - 55,874	36,070	36,490	36,910	37,330	37,750	38,170	38,590	39,010	39,430	39,850	40,270	40,620
55,875 - 56,124	36,210	36,630	37,050	37,470	37,890	38,310	38,730	39,150	39,570	39,990	40,410	40,780
56,125 - 56,374	36,340	36,760	37,180	37,600	38,020	38,440	38,860	39,280	39,700	40,120	40,540	40,930
56,375 - 56,624	36,480	36,900	37,320	37,740	38,160	38,580	39,000	39,420	39,840	40,260	40,680	41,080
56,625 - 56,874	36,610	37,030	37,450	37,870	38,290	38,710	39,130	39,550	39,970	40,390	40,810	41,230

Table B: Expected Family Contribution for a Single Independent Student--1985-86

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
56,875 - 57,124	36,750	37,170	37,590	38,010	38,430	38,850	39,270	39,690	40,110	40,530	40,950	41,370
57,125 - 57,374	36,890	37,300	37,720	38,140	38,560	38,980	39,400	39,820	40,240	40,660	41,080	41,500
57,375 - 57,624	37,020	37,440	37,860	38,280	38,700	39,120	39,540	39,960	40,380	40,800	41,220	41,640
57,625 - 57,874	37,150	37,570	37,990	38,410	38,830	39,250	39,670	40,090	40,510	40,930	41,350	41,770
57,875 - 58,124	37,290	37,710	38,130	38,550	38,970	39,390	39,810	40,230	40,650	41,070	41,490	41,910
58,125 - 58,374	37,420	37,840	38,260	38,680	39,100	39,520	39,940	40,360	40,780	41,200	41,620	42,040
58,375 - 58,624	37,560	37,980	38,400	38,820	39,240	39,660	40,080	40,500	40,920	41,340	41,760	42,180
58,625 - 58,874	37,690	38,110	38,530	38,950	39,370	39,790	40,210	40,630	41,050	41,470	41,890	42,310
58,875 - 59,124	37,830	38,250	38,670	39,090	39,510	39,930	40,350	40,770	41,190	41,610	42,030	42,450
59,125 - 59,374	37,960	38,380	38,800	39,220	39,640	40,060	40,480	40,900	41,320	41,740	42,160	42,580
59,375 - 59,624	38,100	38,520	38,940	39,360	39,780	40,200	40,620	41,040	41,460	41,880	42,300	42,720
59,625 - 59,874	38,230	38,650	39,070	39,490	39,910	40,330	40,750	41,170	41,590	42,010	42,430	42,850
59,875 - 60,124	38,370	38,790	39,210	39,630	40,050	40,470	40,890	41,310	41,730	42,150	42,570	42,990
60,125 - 60,374	38,500	38,920	39,340	39,760	40,180	40,600	41,020	41,440	41,860	42,280	42,700	43,120
60,375 - 60,624	38,640	39,060	39,480	39,900	40,320	40,740	41,160	41,580	42,000	42,420	42,840	43,260
60,625 - 60,874	38,770	39,190	39,610	40,030	40,450	40,870	41,290	41,710	42,130	42,550	42,970	43,390
60,875 - 61,124	38,910	39,330	39,750	40,170	40,590	41,010	41,430	41,850	42,270	42,690	43,110	43,530
61,125 - 61,374	39,040	39,460	39,880	40,300	40,720	41,140	41,560	41,980	42,400	42,820	43,240	43,660
61,375 - 61,624	39,180	39,600	40,020	40,440	40,860	41,280	41,700	42,120	42,540	42,960	43,380	43,800
61,625 - 61,874	39,310	39,730	40,150	40,570	40,990	41,410	41,830	42,250	42,670	43,090	43,510	43,930
61,875 - 62,124	39,430	39,870	40,290	40,710	41,130	41,550	41,970	42,390	42,810	43,230	43,650	44,070
62,125 - 62,374	39,560	40,000	40,420	40,840	41,260	41,680	42,100	42,520	42,940	43,360	43,780	44,200
62,375 - 62,624	39,690	40,140	40,560	40,980	41,400	41,820	42,240	42,660	43,080	43,500	43,920	44,340
62,625 - 62,874	39,820	40,270	40,690	41,110	41,530	41,950	42,370	42,790	43,210	43,630	44,050	44,470
62,875 - 63,124	39,940	40,390	40,830	41,250	41,670	42,090	42,510	42,930	43,350	43,770	44,190	44,610
63,125 - 63,374	40,070	40,520	40,960	41,380	41,800	42,220	42,640	43,060	43,480	43,900	44,320	44,740
63,375 - 63,624	40,200	40,650	41,100	41,520	41,940	42,360	42,780	43,200	43,620	44,040	44,460	44,880
63,625 - 63,874	40,330	40,780	41,230	41,650	42,070	42,490	42,910	43,330	43,750	44,170	44,590	45,010
63,875 - 64,124	40,450	40,900	41,350	41,790	42,210	42,630	43,050	43,470	43,890	44,310	44,730	45,150
64,125 - 64,374	40,580	41,030	41,480	41,920	42,340	42,760	43,180	43,600	44,020	44,440	44,860	45,280
64,375 - 64,624	40,710	41,160	41,610	42,060	42,480	42,900	43,320	43,740	44,160	44,580	45,000	45,420
64,625 - 64,874	40,840	41,290	41,740	42,190	42,610	43,030	43,450	43,870	44,290	44,710	45,130	45,550
64,875 - 65,124	40,960	41,410	41,860	42,310	42,750	43,170	43,590	44,010	44,430	44,850	45,270	45,690
65,125 - 65,374	41,090	41,540	41,990	42,440	42,880	43,300	43,720	44,140	44,560	44,980	45,400	45,820
65,375 - 65,624	41,220	41,670	42,120	42,570	43,020	43,440	43,860	44,280	44,700	45,120	45,540	45,960
65,625 - 65,874	41,350	41,800	42,250	42,700	43,150	43,570	43,990	44,410	44,830	45,250	45,670	46,090

Table D: Expected Family Contribution for a Single Independent Student--1985-86

Adjusted Gross Income	Number of Family Members											
	1	2	3	4	5	6	7	8	9	10	11	12
65,875 - 66,124	41,470	41,920	42,370	42,820	43,270	43,710	44,130	44,550	44,970	45,390	45,810	46,230
66,125 - 66,374	41,600	42,050	42,500	42,950	43,400	43,840	44,260	44,680	45,100	45,520	45,940	46,360
66,375 - 66,624	41,730	42,180	42,630	43,080	43,530	43,980	44,400	44,820	45,240	45,660	46,080	46,500
66,625 - 66,874	41,860	42,310	42,760	43,210	43,660	44,110	44,530	44,950	45,370	45,790	46,210	46,630
66,875 - 67,124	41,980	42,430	42,880	43,330	43,780	44,230	44,670	45,090	45,510	45,930	46,350	46,770
67,125 - 67,374	42,110	42,560	43,010	43,460	43,910	44,360	44,800	45,220	45,640	46,060	46,480	46,900
67,375 - 67,624	42,240	42,690	43,140	43,590	44,040	44,490	44,940	45,360	45,780	46,200	46,620	47,040
67,625 - 67,874	42,370	42,820	43,270	43,720	44,170	44,620	45,070	45,490	45,910	46,330	46,750	47,170
67,875 - 68,124	42,490	42,940	43,390	43,840	44,290	44,740	45,190	45,630	46,050	46,470	46,890	47,310
68,125 - 68,374	42,620	43,070	43,520	43,970	44,420	44,870	45,320	45,760	46,180	46,600	47,020	47,440
68,375 - 68,624	42,750	43,200	43,650	44,100	44,550	45,000	45,450	45,900	46,320	46,740	47,160	47,580
68,625 - 68,874	42,880	43,330	43,780	44,230	44,680	45,130	45,580	46,030	46,450	46,870	47,290	47,710
68,875 - 69,124	43,000	43,450	43,900	44,350	44,800	45,250	45,700	46,150	46,590	47,010	47,430	47,850
69,125 - 69,374	43,130	43,580	44,030	44,480	44,930	45,380	45,830	46,280	46,720	47,140	47,560	47,980
69,375 - 69,624	43,260	43,710	44,160	44,610	45,060	45,510	45,960	46,410	46,860	47,280	47,700	48,120
69,625 - 69,874	43,390	43,840	44,290	44,740	45,190	45,640	46,090	46,540	46,990	47,410	47,830	48,250
69,875 - 70,124	43,510	43,960	44,410	44,860	45,310	45,760	46,210	46,660	47,110	47,550	47,970	48,390
70,125 - 70,374	43,640	44,090	44,540	44,990	45,440	45,890	46,340	46,790	47,240	47,680	48,100	48,520
70,375 - 70,624	43,770	44,220	44,670	45,120	45,570	46,020	46,470	46,920	47,370	47,820	48,240	48,660
70,625 - 70,874	43,900	44,350	44,800	45,250	45,700	46,150	46,600	47,050	47,500	47,950	48,370	48,790
70,875 - 71,124	44,020	44,470	44,920	45,370	45,820	46,270	46,720	47,170	47,620	48,070	48,510	48,930
71,125 - 71,374	44,150	44,600	45,050	45,500	45,950	46,400	46,850	47,300	47,750	48,200	48,640	49,060
71,375 - 71,624	44,280	44,730	45,180	45,630	46,080	46,530	46,980	47,430	47,880	48,330	48,780	49,200
71,625 - 71,874	44,410	44,860	45,310	45,760	46,210	46,660	47,110	47,560	48,010	48,460	48,910	49,330
71,875 - 72,124	44,530	44,980	45,430	45,880	46,330	46,780	47,230	47,680	48,130	48,580	49,030	49,470
72,125 - 72,374	44,660	45,110	45,560	46,010	46,460	46,910	47,360	47,810	48,260	48,710	49,160	49,600
72,375 - 72,624	44,790	45,240	45,690	46,140	46,590	47,040	47,490	47,940	48,390	48,840	49,290	49,740
72,625 - 72,874	44,920	45,370	45,820	46,270	46,720	47,170	47,620	48,070	48,520	48,970	49,420	49,870
72,875 - 73,124	45,040	45,490	45,940	46,390	46,840	47,290	47,740	48,190	48,640	49,090	49,540	49,990
73,125 - 73,374	45,170	45,620	46,070	46,520	46,970	47,420	47,870	48,320	48,770	49,220	49,670	50,120
73,375 - 73,624	45,300	45,750	46,200	46,650	47,100	47,550	48,000	48,450	48,900	49,350	49,800	50,250
73,625 - 73,874	45,430	45,880	46,330	46,780	47,230	47,680	48,130	48,580	49,030	49,480	49,930	50,380
73,875 - 74,124	45,550	46,000	46,450	46,900	47,350	47,800	48,250	48,700	49,150	49,600	50,050	50,500
74,125 - 74,374	45,680	46,130	46,580	47,030	47,480	47,930	48,380	48,830	49,280	49,730	50,180	50,630
74,375 - 74,624	45,810	46,260	46,710	47,160	47,610	48,060	48,510	48,960	49,410	49,860	50,310	50,760
74,625 - 74,874	45,940	46,390	46,840	47,290	47,740	48,190	48,640	49,090	49,540	49,990	50,440	50,890
74,875 - 75,000	46,060	46,510	46,960	47,410	47,860	48,310	48,760	49,210	49,660	50,110	50,560	51,010
Over 75,000	### MUST USE CAMPUS-BASED APPROVED NEED ANALYSIS SYSTEM ###											

[FR Doc. 85-8059 Filed 4-5-85; 8:45 am]
BILLING CODE 4000-01-C

federal register

Monday
April 8, 1985

Part III

Environmental Protection Agency

40 CFR Part 166

Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 166

[OPP-250064; FRL-2814-3]

Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revise EPA's regulations on exempting Federal and State agencies from certain requirements for the use of pesticides under emergency conditions. Current regulations describe the types of exemptions allowed and the procedures to follow in applying for an exemption. The Agency believes that these proposed revisions will update, codify, and clarify procedures used to request emergency exemptions.

DATE: Written comments on this proposed rule should be submitted on or before June 7, 1985.

ADDRESS: Submit three copies of written comments, identified with the notation "OPP–250064," to: By mail:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, Va.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Franklin Gee, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1120B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–0592).

SUPPLEMENTARY INFORMATION: (OMB Control Number 2000–0458)

I. Introduction

A. Authority

This proposed regulation is published under the authority of section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), as amended by the Federal Environmental Pesticide Control Act of 1972, as amended (89 Stat. 751, 92 Stat. 836, 94 Stat. 3195 and 3196; 7 U.S.C. 136w)

B. Background

1. Historical

Section 18 of FIFRA gives the Administrator the authority, at his discretion, to exempt any Federal or State agency from any provision of the Act if he determines that emergency conditions exist which require such exemption. Regulations to implement the exemption provision were promulgated in 1973. Those regulations, under 40 CFR Part 166, address the various types of exemptions allowed and the procedures to be followed in order to make application for them. No amendments or revisions to these regulations have occurred since they were promulgated.

In the fall of 1982, the Office of Pesticide Programs (OPP) in accordance with Executive Order (E.O.) 12291, conducted a review of the regulations. In addition, the Agency conducted an audit of the programs under which EPA grants State and Federal agencies exemptions from FIFRA in order to cope with pest control emergencies. Some of the concerns raised by the audit and support for these revision are:

a. Over the 5-year period (fiscal year (FY) 1978 through FY 1982) of the audit, the number of emergency exemption actions submitted increased about 260 percent from FY 1978 (199) to FY 1982 (724). For crisis exemptions, the overall increase was 753 percent from FY 1978 (17) to FY 1982 (145).

b. The current regulations are not codified in a manner which make them easy to read and understand. This created an extra burden on the Agency because several memoranda clarifying the regulations have been sent to State lead personnel and Federal agencies. Such actions suggest that many sections of the regulations can be improved by redefining certain terms, rewording and rewriting certain sections.

c. The current regulations require agencies to submit sometimes duplicative and inadequate reports. This is time consuming and nonproductive to the agencies.

d. The current regulations say little about how the Agency considers risk associated with section 18 uses. The absence of this vital information creates grave concern among health officials and the general public that the Agency does not evaluate risk associated with section 18 uses. Thus, a revision of the regulations is needed to make clear the Agency's views on risk in regard to pesticide uses associated with emergency exemptions.

In addition to the OPP audit and the review of the regulations, the House Subcommittee on Department Operations, Reserach, and Foreign Agriculture released a report, dated December 17, 1982, entitled "Regulatory Procedures and Public Health Issues in the EPA's Office of Pesticide Programs." This report expressed concern that States or industry may be using section 18 authority to circumvent more stringent data and risk control requirements which apply to registration actions.

Considering the concerns raised by the E.O. review, OPP's audit, and the Congressional study, it is evident that the regulations can be improved with some revisions.

In light of the E.O. review, OPP's audit and the Congressional study, the Agency began to consider revisions to the regulations and held three public hearings in January 1984 to solicit the public's views in preparation for issuing proposed revised regulations. Subsequent to the hearings, the Agency chose to consider revising the regulations via the regulatory negotiation concept. This concept emerged in February 1983 when EPA announced in the **Federal Register** that it was beginning a "negotiated rulemaking" project to explore the extent to which face-to-face negotiations among interested parties could serve as a useful supplement to its current rulemaking process.

2. Negotiation Process

Negotiation is an accommodation process which gives the parties far greater control of the decisionmaking. Parties with different interests can resolve issues by meeting, discussing, and agreeing upon facts, questions, and solutions.

An advantage to negotiation in the regulatory area is that the parties determine not only the substance of a proposed rule but also, to the extent permitted by law, the procedures for deciding what the substance of the proposed rule will be. Encouraging the parties to share information and to work together allows for creative approaches

to resolving issues and reaching consensus. The goal of the negotiation is to reach consensus upon which to base a notice of proposed rulemaking.

3. Selection of Emergency Exemption Rulemaking for Negotiation

The Emergency exemption rulemaking was selected for the negotiation process because there was considerable public interest in the section 18 rule and it met EPA selection criteria. These criteria were: it was in the pre-proposal phase of development; affected interests were limited in number; groups representing these interests were readily identifiable; interest groups were contacted and indicated a willingness to negotiate this item in good faith; and the Agency identified a number of issues for resolution.

4. Establishment of Advisory Committee

The Agency was obliged to charter a Federal Advisory Committee to conduct full negotiation. EPA announced in the **Federal Register** of August 3, 1984 (49 FR 31145) its intent to establish an Advisory Committee under the Federal Advisory Committee Act. No comments or suggestions were received in response to that notice. Potential participants were identified by those expressing interest in section 18. All potential participants were contacted in order to determine whether they wished to be a party to the negotiation. The Committee held an organizational meeting on August 16, 1984, in order to develop operational ground rules and other basic protocols. The Advisory Committee held its first official meeting on September 28, 1984, at the National Institute for Dispute Resolution in Washington, D.C. The initial meeting and all four subsequent meetings of the full Advisory Committee were announced in the **Federal Register** and were open to the general public.

The following parties participated in the negotiations:

American Farm Bureau Federation
American Seed Trade Association
Association of American Pesticide Control Officials (AAPCO)
Association of State and Territorial Health Officials (ASTHO)
Defenders of Wildlife
Florida Citrus Mutual
Interregional Research Project No. 4 (IR–4)
National Agricultural Chemicals Associations (NACA)
National Association of State Departments of Agriculture (NASDA)
National Association of Wheat Growers
National Audubon Society
National Cattlemen's Association
National Coalition Against the Misuse of Pesticides (NCAMP)
National Corn Grower Association
National Cotton Council of America
National Food Processors Association (NFPA)
National Wildlife Federation (NWF)
Pesticide Users Advisory Committee (PUAC)
State FIFRA Issues Research and Evaluation Group (SFIREG)
U.S. Department of Agriculture (USDA)
U.S. Environmental Protection Agency (USEPA)

At the first full Committee meeting on September 28, the group adopted operating protocols. Important among the contents of the procedural protocol were the following statements:

The Committee will make every effort to reach a total consensus on all issues. To the extent a consensus is reached on any issue, EPA is committed to using the agreement as the basis for a proposed rulemaking. The agreement reached will take the form of proposed regulatory language that will be signed by all parties. Specific offers and statements made during the negotiations will not be used by other parties as the basis for future litigation. The representative attending any Committee meeting must be authorized to represent their organization.

The Committee divided into three working groups to consider 17 key issues that were previously identified. Group 1 was asked to consider the following key issues under the heading "Definition of Emergency and Crisis."

How should emergency be defined?
How does quarantine fit into the definition of an emergency?
How should EPA review crisis exemptions?
How should requests for repeat exemptions be handled?
How long should exemptions last?
How should EPA handle requests for exemptions resulting in the use of more than one chemical?
What information about alternatives should an applicant be required to provide?

Group 2 was asked to consider the following key issues under the heading "Implementation."

Should EPA issue for publication in the **Federal Register** notice of receipt of requests and/or approval of emergency exemptions?
What is the best way to ensure that use of a pesticide under an exemption meets the conditions imposed by EPA?
What information should EPA require an agency using an exempt pesticide to provide?
What is the best way to disseminate use information to users and producers?
What is the best way to deal with the timeframe for EPA's review?
Should EPA set enforceable levels for residues and how does EPA communicate this information to groups?
How long should exemptions last?
How should requests for repeat exemptions be handled?
How should EPA review crisis exemptions?
How should EPA handle requests for exemption resulting in the use of more than one chemical?

Group 3 was asked to consider the following key issues under the heading "Health and Safety Considerations."

How should EPA consider risk?
What criteria should be established for reviewing exemption requests for never-registered chemicals, those registered with data problems or chemicals undergoing special review?
Are the existing regulations adequate to deal with the use of cancelled or suspended pesticides?
How should chemical residue concerns be evaluated?

Several key issues overlapped within various working groups because of the interrelationship of the concerns. Working groups held separate meetings in addition to the full Committee. Results of the working groups were considered at full Committee meetings. It is from the results of the full Committee that consensus was reached on the preamble and proposed rule. Thus, the consensus of the full Committee forms the contents of this preamble and proposed rule which has been reviewed by the Agency and accepted for publication as the Agency's proposal.

C. Purposes of Proposed Revisions

This proposal would revise current regulations for the following purposes:

1. To clarify the meaning of the term "emergency" and other controversial terms, e.g., "significant economic loss," etc.

2. To codify the criteria for approval.

3. To update procedures used for processing section 18 applications.

4. To make the regulatory process more efficient by changing or eliminating requirements which are not necessary based on EPA's practical experience in administering the section 18 program over the last 10 years.

5. To rewrite the rule in clearer and more readable language.

II. Description of Proposed Part 166

The Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and the regulations promulgated under it, among other things, make it unlawful to sell or distribute an unregistered pesticide and to use a registered pesticide inconsistent with its labeling. Section 18 of the Act allows the Administrator of the United States Environmental Protection Agency to exempt State or Federal agencies from any provision of the Act if he determines that an emergency condition exists. Part 166 contains the procedures whereby the Administrator may exempt a Federal or State agency from the provisions of the Act which regulate the manner in which a pesticide is made available for use or is used.

A. General

1. Purpose

The purpose of these regulations is to establish the procedures under Part 166 by which the Agency may exempt State and Federal agencies from provisions of the Act in emergency situations.

The regulations as drafted specifically address exemption from sections 3 and 12 of the Act, which regulate making a pesticide available for use and using a pesticide in a manner that has not been approved through the Agency's registration process.

2. Types of exemptions

The proposed regulations specify in § 166.2 four types of exemptions. They are specific, quarantine, public health, and crisis exemptions. These are the same types of exemptions as provided for by the existing regulations.

A specific exemption under § 166.2(a) may be authorized to avert a significant economic loss or a significant risk to endangered species, threatened species, beneficial organisms, or the environment.

A quarantine exemption under § 166.2(b) may be authorized to control any pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States and its territories.

A public health exemption under § 166.2(c) may be authorized to control a pest that will cause a significant risk to human health.

The Committee agreed that emergency exemption applications could be submitted to the Agency for consideration prior to the actual existence of an emergency condition based on the expectation that an emergency condition would exist in the future. Such applications would identify what conditions would have to be experienced in order for the emergency condition to develop. Authorization of the exemption would include a "threshold" or other level which would have to be met before applications of the pesticide could occur. Examples of threshold levels include a specified number of plant pests per plant, some level of rainfall occurring within a specific timeframe, the presence of weeds at a given crop stage, or some percentage of crop defoliation due to a pest.

A crisis exemption under § 166.2(d) may be authorized to avert a significant economic loss or a significant risk to endangered species, threatened species, beneficial organisms, or the environment; to control any pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States and its territories; or to control a pest that would cause a significant risk to human health. However, a crisis exemption may be authorized only when an unpredictable emergency condition exists and the time element with respect to the application of the pesticide is critical, and there is not sufficient time either for a State or Federal agency to submit an application for a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the application.

3. Organization

The regulations have been organized into three Subparts. Subpart A deals with the general subject matter concerning exemptions, i.e., purpose, scope, structural organization, and definition of terms. Subpart B delineates the procedural requirements for obtaining a specific, quarantine, or public health exemption from the Agency. Subpart C delineates the procedural requirements for State or Federal agencies to authorize a crisis exemption.

4. Definitions

Section 166.3 defines terms that are used throughout Part 166. Terms not commonly recognized are discussed below.

The definition of the term "emergency condition" was discussed extensively by the Committee. It determined that in order for an emergency to exist there must be an urgent, non-routine situation which requires the use of a pesticide(s).

The phrase "urgent, non-routine situation" has been used to emphasize that the situation must be other than an ordinary one. An ordinary situation would include normal fluctuations in pest populations or environmental conditions. A chronic or continually occurring problem does not represent an "urgent, non-routine situation."

In establishing the existence of an emergency condition, it must be demonstrated that there currently is not a registered pesticide available for use under the Act which would alleviate the situation. The current regulations describe an emergency in terms of a "pest outbreak." However, past history indicates that a pest outbreak is not the only instance an emergency condition may exist. Unusual adverse climatic conditions obviously are not associated with a pest outbreak. Use of the term "pest outbreak" suggests an increase in a pest population's size. In many instances, risk to human health is based on a disease that a pest population carries. For example, the rabies virus can be carried by skunks. Even though a given skunk population may remain constant, the number of skunks within that population carrying the virus may increase. This could represent an emergency condition. On this basis, the term "pest outbreak" has been replaced by the term "urgent, non-routine situation." The use of the term "pest outbreak" has been retained for those instances where an increase in a pest population will result in a significant economic loss.

It must also be shown in demonstrating the existence of an emergency condition that an economically feasible alternative method, other than use of a pesticide, is not available to alleviate the situation. The phrase "economically feasible" has been added because there may be alternative methods available to control a pest situation which could cost more than the value of the crop being produced.

The definition of an emergency in the existing regulations accounts only for instances involving significant economic problems and public health problems. Past history has shown the need to expand this to include those instances where there is a significant risk to threatened or endangered species, beneficial organisms, or the environment and where there is the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States and its territories.

In instances involving the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States and its territories, it is not intended to apply to those areas where a pest has already become established. It is intended to cover quarantine situations and is primarily to address the needs of the Animal Plant and Health Inspection Service of USDA to carry out its responsibilities under various statutes. The language used in describing the situation parallels that in the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 160, 161). USDA conducts quarantine activities under these two acts and several other statutes (see 7 U.S.C. 150aa *et seq.* and 151 and 21 U.S.C. 111, 114, and 134a). In doing so, the USDA often has to rely on use of pesticides which are not registered for the pest they must control or are not registered at the rate of use necessary to eliminate the pest. State quarantine programs which are established to stop the dissemination of

an introduced pest would also be included.

In instances involving a significant risk to human health due either to the pest itself or a disease for which the pest is a vector, there does not necessarily have to be an outbreak of a pest population but rather an increase in the disease incidence within a pest population.

The Committee agreed that there may be instances when a pest must be controlled in order to protect threatened and endangered species. The Committee also agreed that there may be instances when a pest population should be controlled in order to protect beneficial organisms. In recent years many producers have turned to integrated pest management programs for control of pest problems. These control programs rely on the use of pest predators and pesticides. In instances where the use of a registered pesticide would reduce or eliminate a pest predator and thus require the use of additional pesticides to control the pest the predator would have controlled, the Committee believes that use of an alternative pesticide, which is less toxic to the predator, may be justified under the emergency exemption program.

The majority of requests received by the Agency under section 18 of the Act in the past have been for the purpose of averting a significant economic loss. The Committee agreed that in order for an emergency condition to exist in this instance, there must not only be a significant economic loss but it must also be as a result of a pest outbreak or unusual environmental conditions.

The term "significant economic loss" refers to a substantial reduction either in normally expected profitability for productive activities or in the value of public or private fixed assets for the area affected by the emergency. The contribution of obvious mismanagement to the loss will not be considered in determining loss.

The definition of "significant economic loss" is intentionally broad to allow for the full range of circumstances with which the emergency exemption process must cope. Most applications involve a request to use a pesticide on an agricultural commodity. Consequently, the guidance regarding exemptions are, or could be, requested for the protection of structures, museum pieces, park land, or for other purposes separate from agricultural productivity. The economic losses associated with these applications will be considered individually.

When determining the significance of the economic loss, the Committee agreed that it is sufficient to examine the impacts at the pesticide user level. Impacts do not have to be experienced at the regional, State, or national level before becoming "significant." This concept is captured by the words in the definition "for the area affected by the emergency."

The term "significant economic loss" replaces the term "significant economic problems" in the current regulations. This change is intended to emphasize the fact that the economic loss which is expected to be felt as a result of the pest outbreak should be outside the range of normal or historical losses. The Committee agreed that a major test of "significance" is whether the effects of the emergency pest situation will decrease the profitability of the affected commodity below the normal range for that commodity in the geographical area affected by the emergency. The effects of the emergency pest situation include, among other things, a loss in yield (quantity), a reduction in quality, higher harvesting costs, or a combination of these, which result in increased costs of production or reduced revenues.

In general, the Agency will examine the commodity yields and profits for the years preceding the emergency situation. If the emergency pest situation is expected to reduce yields and/or income below those experienced historically, then a significant economic loss has been demonstrated. Lack of potential gain may be considered only in connection with evaluating the long-term financial viability of an enterprise. In evaluating the significance of an economic loss for productive activities, the Committee agreed that EPA should consider whether the loss would affect the long-term viability expected from the productive activity. For example, an enterprise may face a situation where, due to circumstances beyond its control (e.g., bad weather), it must have a remarkably good upcoming crop year in order to remain financially viable. While, without an exemption to control an emergency pest situation, it can expect a crop yield and/or income within the historical range, this will not be sufficient to make up for the previous crop failures. Only with the use of an emergency exemption to solve the pest problem, can the enterprise maintain an expected; above-average yield and/or income to a point where the long-term financial viability of the enterprise is assured. In such a situation, an emergency exemption could be granted even though the "loss" expected by the enterprise is to an anticipated, above-normal yield and/or income.

The term "unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide. This term is defined in section 2(bb) of the Act and that definition is repeated here for easy reference and because of its importance concerning the necessary balance between expected benefits and risks of a pesticide use required prior to authorizing an emergency exemption.

The term "food" refers to any article used for food or drink for man or animals. This definition is meant to include, although is not limited to, all raw agricultural commodities, meat, fat, and meat byproducts, eggs, milk, water, and processed food or feed.

B. Specific, Quarantine, or Public Health Exemption

1. Application for an Emergency Exemption

Proposed § 166.20 identifies the specific information which must be provided when an application for a specific, quarantine, or public health exemption under section 18 is submitted to the Agency.

a. *General information.* Proposed § 166.20(a) requires that, in accordance with section 18 of FIFRA, an application for an exemption be submitted by the Governor of a State or the head of Federal or State agency. In addition, this section allows their official designee to submit an exemption when the designee has been delegated the authority in writing.

It was agreed that it would be helpful if applications contain the name and telephone number of a person who can be contacted for all matters relating to administration of the exemption request (§ 166.20(a)(1)).

Section 166.10(a)(2) would require applicants to submit information describing the pesticide proposed for use. The Committee agreed that applications should include, for a federally registered pesticide product(s), the registration number(s) and the product name(s). Instead of identifying specific products, applicants may request exemptions for particular types of formulations which may be produced by a number of companies. Any additional labeling to be used in connection with the exemption should accompany the application. For a non-federally registered pesticide product(s), a confidential statement of formula must be submitted or reference made to one already available at the Agency. The application must include complete labeling to be used in connection with the exemption.

Section 166.20(a)(3) would require applicants to submit information concerning the proposed use. Applications shall identify sites to be treated, the method of application, rate of application in terms of active ingredient and product, total acreage or other appropriate unit, total amount of pesticide to be used (active ingredient and product), all applicable user precautions and restrictions, and qualifications of applicators.

Section 166.20(a)(4) would require applicants to submit information discussing why available methods of control are no longer considered suitable to control the pest or situation. The Committee was concerned that requests under section 18 were not adequately explaining why available methods of control were no longer considered effective. While there was general agreement that there are many reasons why available methods of control may not control a particular pest or situation, there was also agreement that a detailed explanation is needed. Lack of alternative methods of control should also be noted. If a pesticide is available but not recommended by the appropriate State officials, an explanation of why it is not recommended must be provided. If a registered pesticide is not available, an explanation of what attempts were made to get adequate supplies and the results of those attempts must be provided. If a registered pesticide has been determined no longer to control the pest or situation, a detailed justification must be provided and supported by field data. If field data are not available, statements by qualified agricultural experts, extension personnel, university personnel, or other persons similarly qualified in the field of pest control will be acceptable.

A detailed explanation of why alternative practices, if any, will not control the pest or situation or are economically infeasible to use must also be provided. The term "alternative practices" is meant to encompass any nonpesticidal means of control including, but not limited to, rotating crops, tilling, using tolerant/resistant crop strains, burning, hoeing, hand weeding and employing good farm management practices. This discussion is particularly important with respect to repeat uses under the section 18 program. The Committee acknowledged that unforeseen circumstances may preclude the use of alternative practices in averting an emergency condition. However, it expects these practices, when feasible, to be employed in subsequent years, rather than continual use of a pesticide under an emergency exemption.

The Committee discussed the use of more than one pesticide to deal with the same emergency condition. Issues were raised relative to the use of several pesticides on the same field which leads to complex risk analyses for such combinations or to complex control mechanisms to preclude such treatment under each of several exemptions. The Committee agreed that there may be instances when the use of more than one pesticide is necessary and justifiable. Examples include the lack of adequate supplies of one chemical to control the pest or situation, pesticide resistance management, and the need to control different life stages of the pest. The regulations do not preclude the use of more than one pesticide chemical for the same emergency condition but it is the Committee's intent that such use under section 18 be authorized only when necessary to provide adequate control of a pest or situation. Authorization of more than one chemical will not be made for competitive or marketing purposes.

Section 166.20(a)(5) would require applicants to submit information concerning the efficacy of the proposed use. The Committee realizes there may be many instances where there is little actual field data to support the efficacy of proposed pesticide use. However, supporting documentation is required that the proposed pesticide use will likely control the pest or situation. Such supporting information may come from experimental testing of the use, small plot trials, laboratory trials, or corroborating evidence from similar uses or similar species. Without some type of information to show that the proposed use is efficacious, the Agency will be unable to ascertain the benefits expected thus precluding the Agency from conducting a benefit/risk analysis.

Section 166.20(a)(6) would require the applicant to submit information concerning residues of a pesticide resulting from food uses. The Committee was in agreement that if an exemption will be used on a food commodity and is expected to result in residues on the food commodity, the applicant should list those commodities likely to contain residues and estimate the maximum residues expected from the proposed use. If the residue levels are expected to be undetectable, the application should so state and specify the level of detection. Information on which the estimates are based should be submitted to the Agency for review or, if in the Agency's files, appropriately referenced.

For the purposes of section 18, food commodities will include raw agricultural commodities, processed food, and potable water. Residue levels must be estimated for all the food commodities whether or not residues which may result in a processed food are expected to be lower than those in the treated commodity.

Section 166.20(a)(7) would require an applicant to submit a discussion on potential risks which could be expected from use of the proposed pesticide. The Committee agreed that an application should address the potential risks to human health, endangered or threatened species, beneficial organisms, and the environment which might be expected to result from the proposed use, together with references to data and other supporting information. This section is intended to provide the Agency with the applicant's knowledge and viewpoint as well as available information concerning potential risks from a proposed use. It is not construed to be or intended to represent an environmental impact statement on the proposed use. Assessing the potential impact the proposed use will have on the environment is ultimately the responsibility of the Agency.

Section 166.20(a)(8) would require the applicant to submit information concerning coordination with other affected State or Federal agencies. The Committee agreed that if a proposed use of the pesticide is likely to be of concern to other Federal or State agencies, the application should indicate that such agencies have been contacted prior to submission of the application. However, because of the time element involved in many situations, the Committee agreed that the application could be submitted without having to wait for comments and that any comments received after submission of the application would be forwarded to the Agency as they are received.

Section 166.20(a)(9) would require the applicant to notify the registrants of all pesticide products proposed for use or, if appropriate, the basic manufacturer, that a request has been made to the Agency for use of the pesticide under a specific, quarantine, or public health exemption.

Proposed § 166.20(a)(10) states that an applicant must describe the legal authority and program resources for ensuring that a pesticide is used in accordance with the special terms and conditions imposed under an emergency exemption. There was some discussion over the need to submit a proposed enforcement program with all exemption requests. However, the Committee

agreed that it was burdensome and unnecessary to require this information for all exemptions and left it to the Agency's discretion as to when to require this information. Some instances when the Agency may require a description of the legal authority and program resources for ensuring that a pesticide is used in accordance with the terms and conditions imposed under an emergency exemption are when the use involves:

(1) A pesticide containing an active ingredient which has not been federally registered for use on a food commodity.

(2) A cancelled or suspended pesticide use.

(3) A potential hazard to human health or the environment if the provisions of the exemptions are not strictly enforced.

There was considerable discussion by the Committee on the need to submit a final report on use under an exemption prior to authorizing an identical exemption for the next growing season (§ 166.20(a)(11)). Since the required information needed for a final report may not be available before an applicant submits an application for a use in a subsequent season, the Committee agreed that applications for the use of a pesticide at a site for which the applicant has previously been exempted under section 18 should contain an interim report summarizing the results thus far of a specific or public health exemption if the application is submitted prior to the time the final report for the previous exemption is due. The interim report would contain that information specified in § 166.32 to the extent available at the time the application is made.

b. *Specific information, specific exemption.* Proposed § 166.20(b) contains provisions describing information required to support an application for a specific exemption. The Committee agreed that the following information, as appropriate, should be submitted in support of a specific exemption:

(1) The scientific and common name of the pest or pest complex.

(2) A detailed discussion of the events which brought about the emergency condition.

(3) In instances where the request is to protect endangered or threatened species (federally or State designated), beneficial organisms, or the environment, a discussion of the anticipated risks to same that would be remedied by the proposed use of the pesticide.

Proposed § 166.20(b)(3) requires the applicant to submit information supporting a significant economic loss. Based on the definition of "significant economic loss" in § 166.3(g), applicants must provide a determination that the expected economic loss without the exemption is significant. To make this determination, applicants should establish a base of the expected economic conditions without the emergency or the exemption (i.e., the normal conditions) and then estimate the magnitude of the change from this base caused by the emergency. Estimates should pertain only to the commodity and geographic area identified in the application. Whenever applicable and available, the following information must be utilized in the applicant's analysis and provided to EPA with the application.

i. Cash expenses for producing commodity over the last 5 years (attach commodity budgets supporting the cash expense figures).

ii. Yields (or other applicable measures of output) over the last 5 years. If a reduction in quality is the nature of the emergency, provide information on the proportion of yield falling into each grade over the past 5 years. (Attach supporting data.)

iii. An estimate of the effect of the emergency on quantity and/or quality of production. If this information is unavailable, provide information about the percent control of the pest with the registered pesticide over the last 5 years and the expected percent control with the pesticide requested under the emergency exemption. (Attach supporting data.)

iv. Prices received for commodity (in appropriate units) over the last 5 years. If a reduction in quality is the nature of the emergency, provide prices for each grade over the last 5 years. (Attach supporting data.)

v. Cost of pesticides (or other pest control techniques) used over the last 5 years and cost of pesticide requested under the emergency exemption. Whenever possible these costs should include both materials and application. (Attach supporting data.)

For most agricultural commodities, the information requested in the above items is both available and applicable. When it is not available, an applicant must explain the lack of availability and provide the best data which are available. When the information is not applicable (e.g., for structures, museum pieces, park land), an applicant should explain the inapplicability, discuss the expected economic losses in other reasonable terms, and provide the best available supporting data.

c. *Specific information, quarantine exemption.* Proposed § 166.20(c) requires specific information needed to support a request for a quarantine exemption. The Committee agreed that the following information should be submitted for a quarantine exemption: the scientific and common name of the pest, the origin of the pest and its means of introduction or spread, and the impact of not controlling the pest.

d. *Specific information, public health exemption.* Proposed § 166.20(d) discusses specific information required to support a request for a public health exemption. The Committee agreed that the following information shall be submitted for a public health exemption: the scientific and common name of the pest and, if the pest to be controlled is a vector, a description of the disease it is expected to transmit; a discussion of the magnitude of the health problems expected to occur; and a discussion of the availability of medical treatment for the health problem.

2. Consultation

Proposed § 166.24 contains the provision whereby the Agency may consult with the Secretary of Agriculture, the Governor of a State, or their representatives, regarding whether an emergency exists. The Agency included this section to reflect the provision in section 18 FIFRA. Committee members were in agreement that this would be useful in certain, but not all, instances. Such instances may include, but are not limited to:

(1) Uses proposed on large acreages of major crops.

(2) Similar exemptions requested by a large number of States.

(3) Uses proposed which could represent a significant impact on a State's agriculture.

3. Notice of Receipt

Proposed § 166.24 identifies those instances in which the Agency will issue a notice of receipt of an application for a specific, quarantine, or public health exemption for publication in the **Federal Register** for public comment. This section also specifies what information the **Federal Register** notice will contain and the length of time allowed for comment.

a. *When a notice of receipt will be issued.* The Committee's discussion of when publication of receipt of an application for an emergency exemption for public comment is needed was extensive. The possibility of providing for public comment in all instances was discussed as well as not providing for public comment at all. The Agency expressed a reluctance to issue a notice of receipt of all applications due to the increased workload, cost of publication,

and the delays which could be caused in responding to emergency situations. It also questioned the benefits to be derived based on the limited amount of interest expressed through public comments in the past.

After much discussion, it was agreed that notice of receipt would be most beneficial in those instances where the application requested pesticide uses with the greatest potential for adverse impacts on human health and the environment or where the use has been requested under section 18 for 3 previous years. The following are instances where public comment is proposed to be solicited for an application for an emergency exemption:

(1) An exemption request for the use of a new chemical. A new chemical is defined as any pesticide containing an active ingredient not contained in any currently registered pesticide. Such chemicals have not undergone the more rigorous review required under section 3 of FIFRA and it was the consensus of the Committee that solicitation of public comment may be useful.

(2) An exemption request for the first food use of a pesticide. Publication is proposed in those instances where, even though the pesticide is registered, it has not yet been registered for a food use. The rationale for this was basically the same as in Unit II.B.3.a.(1).

(3) An exemption proposing any use of a pesticide if such pesticide has been subject to a suspension notice under section 6(c) of the Act. The Agency does not issue section 6(c) suspension notices in the absence of a very good indication that there is a potential risk associated with use of the pesticide. The Committee therefore believes the public should have a chance to comment on any proposed use of a pesticide for which a section 6(c) suspension notice was issued.

(4) An exemption proposing use of a pesticide if such pesticide has been subject to a cancellation notice under section 6(b) of the Act and subsequently cancelled and the intended use is one that poses a risk similar to the risk posed by any use of the pesticide which was the subject of the notice under section 6(b). The rationale for this was basically the same as in Unit II.B.3.a.(3).

(5) An exemption proposing use of a pesticide if such pesticide contains an active ingredient which is or has been the subject of a Special Review (refer to § 166.3(h)) and the intended use is one that poses a risk similar to the risk posed by any use of the pesticide which was the subject of the Special Review. This provision is not intended to apply to a Special Review pesticide if all health and safety effects concerning the pesticide are successfully rebutted. The Agency does not subject a pesticide to Special Review unless there is evidence there is a potential risk associated with use of the pesticide. The Committee therefore agreed that the public should have a chance to comment on these types of uses.

(6) A specific or public health exemption request for use of a pesticide where an emergency exemption for that use has been requested for the previous 3 years and a complete application for registration under section 3 of FIFRA and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. The Committee felt that if, after 3 years of a particular pesticide use, a complete registration request and/or petition for tolerance had not been submitted, the public should have an opportunity to comment on any further use.

(7) An exemption request where the Administrator has determined that publication for public comment is appropriate. The Committee believes that since all requests will not be subject to public comment, the Administrator should have the discretion to issue notice of a request other than those listed above if he determines public comment is appropriate.

Some examples where the Administrator may desire to seek public comment include those applications the Agency believes may be controversial for one reason or another and applications which involve uses voluntarily cancelled or withdrawn where the Agency may have taken adverse action if such cancellation or withdrawal did not occur.

b. *Contents of public notice and length of comment period.* Proposed § 166.24 (b) and (c) outline the information that will be made available to the public in notices of receipt of requests for emergency exemptions and establish the length of time generally provided for comment. The Committee agreed that the Agency must be able both to respond to the emergency need as well as provide sufficient information and time to allow for meaningful public comment. The Committee agreed that a 15-day comment period would suffice based on the following:

(1) The notice would be for purposes of alerting people concerning proposed uses under section 18.

(2) If a concerned person wanted to comment and needed further information, the notice would give a contact person from whom to get this information.

(3) The Agency will make copies of the application available within 24 hours of receipt of a request via telephone or letter.

On the above bases, the Committee agreed that the following information was sufficient to be printed in the **Federal Register**: the name of the applicant; the name of the chemical requested for use, including, if available, the common name and the Chemical Abstracts Service (CAS) number; the total amount of product or active ingredient proposed for use; the geographical location where treatment is proposed; the proposed number of acres or other appropriate units proposed to be treated; a summary of the applicant's description of the emergency conditions including the pest and the site or crop to be treated; a description of the major conditions of use of the pesticide as proposed by the applicant; if the pesticide proposed for use meets the criteria of § 166.24(a) (3), (4), or (5), an identification of the types of risks that were the bases for EPA's regulatory action; and the name, telephone number, and address of a person in the Agency who can provide further information. The **Federal Register** notice title will contain the type of exemption and the chemical, site, and State concerned in the applicant's request.

The Committee also then agreed that normally, a notice of receipt shall give the public 15 days to file comments. The comment period may be shortened or eliminated if it is determined that the time available for a decision on the application requires it but reasons for such action will be given in a notice in the **Federal Register**. The comment period may be extended if additional time for comment is requested and would not interfere with a timely decision on the application.

4. Agency Review

Proposed § 166.25 provides general information on how the Agency will review applications for specific, quarantine, and public health exemptions as well as the criteria the Administrator uses in making a decision as to whether to approve such applications.

The Committee discussed the need to review exemption requests as expeditiously as possible in order to have a decision prior to the proposed use of a pesticide. The Committee agreed that exemption requests should have a high priority within the Office of Pesticide Programs and the Agency should commit adequate resources to the emergency exemption program in order to obtain timely responses to deal with emergency conditions.

a. *General review.* The Committee expressed a desire that the Agency provide a general overview as to how it reviews exemption applications. The logic behind this was that as applicants become more familiar with how the Agency evaluates applications, they can better prepare applications which contain the information necessary for EPA to make a decision.

The Agency first reviews applications to determine whether supporting information meets the criteria established in the definition of an emergency condition. Once a determination has been made that an emergency condition exists, the Agency will quantify potential risks from the proposed pesticide use to the environment.

In considering risks to man, the Agency will review available data with respect to acute, subchronic and chronic exposure. In connection with acute exposure the Agency will rely on acute oral and acute dermal LD_{50} studies as well as primary skin and eye irritation studies. Results of these studies will be used with information on the chemical's half-life and persistence, including actual field studies, if necessary, to quantify the extent of exposure to the pesticide to mixers/loaders, applicators, field workers, and the public. Based on the acute toxicity and extent of exposure, the Agency will estimate the potential risks to these groups.

The Agency will also review available subchronic and chronic toxicity data to determine potential dietary risks posed by food uses under section 18. The Agency will rely on subchronic data (i.e., feeding, teratogenic or reproduction studies) to establish a provisional no-observed-effect level (PNOEL) or on chronic feeding study(ies) to establish a no-observed-effect level (NOEL). In instances where a completed study is not available, the Agency may utilize interim reports. Information required to be contained in an interim report is discussed in Subdivision I of the Pesticide Assessment Guidelines.

In those instances where the total theoretical maximal residue contribution (TMRC)[1] exceeds 50 percent of the maximal permitted intake (MPI),[2] the Agency will ordinarily require, in addition to those studies listed above, a 1-year (or longer) interim report on a chronic feeding study and a first generation (or longer) interim report on a reproduction study.

When appropriate, an acute inhalation LC_{50} study and an acute delayed neurotoxicity study will be required. Toxicological studies utilized in evaluation of an exemption shall be conducted in accordance with Subdivision F of the Pesticide Assessment Guidelines. These guidelines are available through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

In reviewing chemicals with only a subchronic data base, a 2,000-fold safety factor will be used in determining the provisional allowable daily intake (PADI).[3] A 200-fold safety factor will be used for cholinesterase inhibition effects. For those chemicals with a chronic data base, a 100-fold safety factor will be used to determine the PADI and a 10-fold safety factor for cholinesterase inhibition.

The Agency will utilize the results of the above studies in connection with residue data and animal and plant metabolism studies to estimate potential risks posed to the public through dietary exposure. It will also consider the pesticide's potential to leach and contaminate ground water used for drinking or irrigation.

In considering risks to the environment, the Agency will consider available toxicity studies with respect to nontarget organisms and determine possible risks to a species' population.

When reviewing a repetitive exemption request the Agency will consider the higher level of exposure which would result from a subsequent use of the chemical over that which was estimated when the exemption was approved the first time.

In those instances where the Agency determines that a significant risk exists from a proposed use, it will expand its risks/benefits analysis to include community, regional or larger area impacts in addition to the impacts at the pesticide user level.

For the in-depth benefit analysis, economic impacts of the following types will be considered, whenever they are fully addressd in the application:

(1) Impacts at the pesticide user level.

(2) Measurable change in price and availability of the commodity to consumers resulting from a sufficiently large reduction in quantity to affect total supply.

(3) Measurable reduction in sales and/or employment of organizations supplying the affected producers.

(4) Measurable reduction in business volume and/or employment of organizations marketing the output of the affected producers.

(5) Measurable reduction in the economic base, including employment, of communities affected by the supplier and marketing organizations.

The Agency will also take into consideration any non-economic or qualitative information which describes benefits from using the pesticide.

Except for those data that are considered confidential, the Agency is willing to make available to health agencies or interested parties any information that was considered in making a decision on the emergency exemption application.

b. *Criteria for approval.* Proposed § 166.25(b) describes the criteria the Administrator will consider when making a decision whether or not to authorize an exemption. The Committee was in agreement that a determination that an emergency condition exists and use of the pesticide under the exemption would not cause unreasonable adverse effects to the environment were two criteria necessary to the decision-making process. Consideration shall be given to the potential future positive and/or negative impact(s) on the long-term pest situation when issuing an emergency exemption.

The Committee requested inclusion of a provision specifying that an exemption could not be granted for a use whose registration had been suspended under section 6(c) or cancelled under section 6(b), unless the use is authorized in accordance with the provisions of Subpart D of 40 CFR Part 164. This has been done.

At the suggestion of Committee members, the proposed regulations also provide for consideration in the Agency's decisionmaking process of two additional items. One is the progress, if any, which has been made in securing the registration of the use if it is a repeat exemption, and the other is the applicant's past record of compliance with the section 18 program. An exemption could be refused if the Agency determines that either of these items is unsatisfactory.

The Committee discussed the problem of repeat emergency exemptions and the potential for such uses circumventing the more rigorous section 3 registration process. In order to avert this the Committee agreed that there should be

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[1] "TMRC" is the amount of a chemical residue which is calculated to remain in an "average" adult human diet. The "average" diet weighs 1.5 kg and is composed of different food items in amounts equal to the calculated average intake for each food item. The TMRC calculation is based on the assumption that each food item contains the maximum level of residues authorized by existing or pending tolerances.

[2] "MPI" is the acceptable allowable daily intake times 60 kg (average body weight of humans).

[3] "PADI" is calculated by dividing a NOEL by the appropriate safety factor.

significant progress towards registration of section 18 uses. The Committee recognized that the Agency is in the best position to know the registration progress of section 18 uses. However, it was pointed out that if there was not significant progress towards registration of a section 18 use, requests for that use by a State or Federal agency would be denied and an additional year's use by State and Federal agencies while an alternative was sought would generally not be allowed. Thus it would be to a State or Federal agency's advantage to keep abreast of the progress made towards a section 3 registration.

5. Duration

Proposed § 166.28 establishes the length of time for which specific, quarantine and public health exemptions will be authorized.

The Committee discussed instances in the past where the Agency had authorized emergency exemptions for a 1-year period even though in many cases the use season was for a much shorter period of time. It was agreed that when an exemption application is approved, the time the exemption is allowed be limited to reflect the time that actual use will be needed, but in no case longer than 1 year. This is the same time period allowed by the existing regulations for specific and public health exemptions. However, at the suggestion of the Agency, the maximum time for a quarantine exemption was lengthened from 1 year to 3 years. The rationale for this extension is that:

(1) The goal of many of the quarantine exemptions is to eradicate a pest rather than just provide control of it for one season.

(2) The fact that many of the uses requested may or may not be used depends on whether the pest actually is present at ports of entry.

The Agency and the Animal Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, believe that the paperwork necessary to process the same exemptions every year is burdensome and unnecessary.

The benefits of requiring the submission of interim reports annually for quarantine exemptions authorized for longer than 1 year were discussed. The Committee agreed that such information would be useful.

6. Notice of Agency Decision

Proposed § 166.30 indicates that applicants will be notified of decisions regarding an application for a specific, quarantine or public health exemption in a timely manner. In addition to notifying the applicant, the Agency will, if the use is on food, inform the Food and Drug Administration, U.S. Department of Health and Human Services and/or the Food Safety and Inspection Service, U.S. Department of Agriculture, and will periodically issue notice in the **Federal Register**.

This section indicates that if an application is submitted which does not contain all of the information required in § 166.20, the Agency may halt and further evaluation of it until the time that the missing information is supplied.

This provision will provide an incentive for the applicant to ensure that all of the information specified in the regulations has been addressed or else risk experiencing delays in the processing by EPA of such requests. It should also quicken the response time that it takes an applicant to supply information missing from an application once so informed by the Agency.

The Agency will outline the specific reasons for a denial action and provide specific terms and conditions for use when an application is approved.

The Committee agreed that notification should be in a timely manner rather than try to define the exact mechanism whereby such notification would occur. Changes in technology could outdate a system specified in the regulations.

One type of condition which EPA may impose is a requirement that crops treated with a pesticide under an exemption must be destroyed or diverted to non-food uses. If the Agency determines that residues on food resulting from use of a pesticide under an exemption will pose an unacceptable risk to public health, EPA will require destruction or other appropriate disposition of such food as a condition of approval of the exemption. Imposition of this condition is seldom necessary.

The Committee members agreed that if a use under a specific, quarantine, or public health exemption is expected to result in residues in or on food, the Agency will notify FDA and/or USDA, whichever is appropriate, of the residue level(s) expected. This information is currently conveyed to these agencies to inform them that the Agency has evaluated this level(s), and based on available data, has determined it to be adequate to protect the public health. These agencies are concerned with interstate movement of treated food. Even though this is a current procedure of the Agency, it is not contained as a requirement in the existing regulations. The Committee further agreed that State food and health officials should be notified of this information since they are responsible for movement of treated food in intrastate commerce.

The Committee also agreed that State food and health officials and the Office of Drinking Water of EPA be notified when use of a pesticide under a specific, quarantine, or public health exemption is expected to result in residues in potable water.

This section also provides for publication in the **Federal Register** of approvals of all specific, quarantine, and public health exemptions. Generally, the information in that notice will be brief, indicating the pesticide, crop/site, the name of the applicant and the name, address and telephone number of a person in the Agency who could be contacted for more information. In those instances where a notice of receipt of application was published, the Agency will issue of notice of its final decision (approval or denial) and the basis for that decision. Again, although this is current Agency procedure, it is not a requirement of the existing regulations.

Committee members agreed that due to the cost in terms of both publication and manpower, and based on interest expressed in this type of information in the past, this notice could be brief as long as the notice identified a contact person within the Agency who could be contacted for more information.

7. Recordkeeping and Reporting Requirements for Specific, Quarantine, or Public Health Exemption

Proposed §.166.32 contains information the Agency requires to be submitted for specific, quarantine, or public health exemptions. It also indentifies what records should be available with respect to the first food use of a pesticide.

8. EPA Review of Information Obtained in Connection With an Emergency Exemption

The Committee agreed that information obtained in connection with emergency exemptions will be reviewed and utilized, as appropriate, with other regulatory decisions under FIFRA. The benefits of the Agency utilizing the information submitted by State and Federal agencies to assess whether alternative pesticide products are effective in controlling a pest or situation were discussed. The possibility of requiring registrants to amend registered labels to delete or modify their claims, as appropriate, based on this information was suggested. The Agency discussed the results of a project it had conducted in 1981 based on exemption request claims from 1980. EPA found that there are many reasons why available alternative controls were not effective; however, it was rarely

because the registered pesticide no longer controlled a pest within a State, much less its entire range. There are many factors which determine whether a registered pesticide will control the pest it is labeled for to the extent necessary to avoid such factors. These include weather, population pressure, pre-harvest intervals, time of application, pockets of resistance as well as the development of general resistance. The Agency currently keeps track of claims made by State or Federal agencies concerning why alternative pesticides will not control a pest or situation and takes appropriate action whenever such claims appear to be widespread. For example, if resistance to a certain fungicide is the cause for a number of States to request similar exemptions to deal with the same emergency condition, the Agency may want to pursue deleting the claim on the label or requiring use of the fungicide only as a tank mixture for that particular use.

9. Revocation or Modification of Exemptions

Proposed § 166.35 describes the conditions under which the Agency may revoke or modify a specific, quarantine, or public health exemption.

C.Crisis Exemptions

The Committee discussed the usefulness of the provisions in the current regulations concerning crisis exemptions. It was pointed out that the results of the 1982 OPP audit as well as the 1982 Congressional hearing on the section 18 program indicated misuse of the crisis provisions in some instances. In addition, the large increase in the number of crisis exemptions issued over the years provided some concern that misuse of this provision had occurred. The Committee questioned whether such provisions should be retained and, if so, whether they should be modified. It was agreed that the crisis provisions should be invoked only in dire situations where the emergency condition is unpredictable and there is no other way to mitigate the emergency.

1. Authorization

Proposed § 166.40 specifies who has the authority to issue crisis exemptions and when such exemptions may be granted. In accordance with the statute, heads of Federal or State agencies or the Governors of States are entitled to issue exemptions. In addition, it was agreed upon that their designees should be entitled to issue a crisis exemption. This is consistent with the authority to request exemptions under § 166.20.

A crisis exemption may be issued when an unpredictable emergency condition exists and the time element with respect to the application of the pesticide is critical, and there is not sufficient time either for a State or Federal agency to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request.

The Committee discussed whether the word "unpredictable" in defining the emergency situation whereby a crisis exemption could be utilized would preclude an agency from declaring a crisis exemption if it had requested a specific exemption which the Agency had not yet acted upon. It was the consensus of the Committee that this should not be the function of this word.

The Committee went one step further along these lines by describing a means to reduce the use of crisis exemptions. It agreed that emergency exemption applications be entertained based on an expectation that an emergency condition will exist in the future. This type of exemption application would be authorized based on the presence as a "threshold level." A threshold level would be a level for which the Agency had determined that an emergency condition would exist. Once a pest population or a situation progressed to this threshold level, use under the exemption would be allowed.

When an exemption application is submitted prior to the existence of an emergency condition, a detailed explanation of why such emergency condition is expected must be submitted (i.e., the pest problem is due to resistance to registered pesticides and unless a new pesticide is registered for this use, the emergency can be expected again). The Committee agreed that this could be useful in reducing the number of crisis exemptions and felt it to be a feasible method of dealing with emergency conditions.

2. Limitations

Proposed § 166.41 sets forth the limitations regarding which pesticide uses may not be authorized under a crisis exemption.

The current regulations prohibit utilization of the crisis provisions for any use which has been prohibited under a suspension or final cancellation order for a product. The Committee felt that there should be more limitations on utilizing the crisis provision. It was the consensus that crisis exemptions should not be utilized if the Agency, after being notified of a State or Federal agency's intent to issue a crisis exemption, informs the State/Federal agency not to do so. The Committee also agreed that use of these provisions would not be appropriate for a pesticide containing a new chemical or for the first food use of a pesticide.

3. Notice to EPA and Manufacturers

Proposed § 166.43 contains the requirement that a Federal or State agency provide a 36-hour advance notice, when feasible, to the Agency prior to utilizing the crisis provisions, and in no case later than 24 hours after the decision to avail itself of a crisis exemption.

The Agency is currently, in the majority of the cases, notified by a State/Federal agency prior to issuance of a crisis exemption. This is generally done to ensure that there will be no overt problems from this use, and is a safeguard most lead agencies choose to employ. The Committee members felt that this was a good practice which should be included in the proposed regulations. Because advance notification may not be possible in all instances, it was agreed that when feasible, prior notification could occur at least 36 hours in advance of utilization of the crisis provisions and in no case later than 24 hours after the agency decides to avail itself of a crisis exemption. It was agreed that prior notification should occur except in rare instances.

The Committee also believed that the registrants of all pesticide products to be used under the crisis exemption or, if appropriate, the basic manufacturer, be notified of the use of their chemical under a crisis exemption, in order to provide their thoughts and/or objections based on their extensive knowledge of the chemical. Such notification should occur at the same time as the Agency is notified or as soon thereafter as possible.

The Committee agreed that only essential information would be required in the advance notification of issuance of a crisis exemption due to the time element involved. This includes the name of the pesticide (common name and Chemical Abstracts Service number if available), the amount of product/active ingredient to be used, the site to be treated, the use pattern, date of treatment and an estimate of residue levels likely to result on food.

4. Duration

Proposed § 166.45 sets forth the length of time a pesticide may be utilized under a crisis exemption. The Committee agreed that the current regulations regarding duration of a crisis exemption were adequate and should be

incorporated without substantial change in the proposed regulations. A crisis exemption may be issued only for the time period necessary to control the pest or conditions causing the emergency but not longer than 15 days, unless an application requesting a specific, quarantine, or public health exemption for that use has been submitted to the Agency.

5. Notification of FDA and USDA

Proposed § 166.47 provides for notification of the Food and Drug Administration (FDA), U.S. Department of Health and Human Services and/or the Food Safety and Inspection Service, U.S. Department of Agriculture, if a food use is involved.

The Agency will immediately notify the USDA and/or FDA, as appropriate, of uses authorized under a crisis exemption. If the Agency has determined residue levels are likely to result in food commodities, USDA and/or FDA will be so notified along with a determination as to whether such residues pose an unacceptable risk to human health. If residue levels are unknown, the Agency will notify USDA and/or FDA of residue levels and their safety as soon as the determination is made. This notification is necessary because these agencies are responsible for enforcement of the statutes designed to protect the food supply. The Committee further agreed that State food and health officials should be notified of this information since they are responsible for movement of treated food in intrastate commerce.

The Committee also agreed that State food and health officials and the Office of Drinking Water of EPA be notified when use of a pesticide under a crisis exemption is expected to result in residues in potable water.

6. Public Notification

Proposed § 166.49 provides for public notice of crisis exemptions taken by Federal or State agencies through publication in the **Federal Register**. The Agency will issue at least quarterly a list of all crisis exemption(s). Information to be provided will include the name of the State or Federal agency issuing the crisis exemption, the name of the pesticide authorized for use (the common name and Chemical Abstracts Service (CAS) number if available), the site to be treated, whether a specific, quarantine, or public health exemption has been requested, and an Agency contact person who can provide further information.

The Committee also believed that the Agency should issue yearly, for publication in the **Federal Register**, a report listing the number of crisis exemptions declared and revoked. This would allow the public to scrutinize the use of the crisis provisions of section 18. This provision has been added to these regulations.

7. Reporting and Recordkeeping for Crisis Exemptions

Proposed § 166.50 outlines the information required in connection with the use of a pesticide under a crisis exemption and recordkeeping requirements.

It calls for immediate notification of the Agency of any adverse effects resulting from use of a pesticide under a crisis exemption. It also provides for final reports which summarize use of a pesticide under a crisis exemption. Information required is the same as that required under § 166.32(b) for a specific, quarantine, or public health exemption.

Authorizing agencies are required to record the locations where the pesticide was applied, the date of application (range), and the total quantity of pesticide used (product and/or active ingredient). Such information shall be made available to the Agency upon request. It was understood that the Agency intends to request such information only when there is a specific need for it.

8. Review and Revocation

Proposed § 166.53 describes the Agency's review procedure for a crisis use and the conditions under which EPA may revoke an agency's crisis exemption or its authority to issue crisis exemptions, in whole or in part.

Upon notification by a State or Federal agency, in accordance with § 166.43, that a crisis exemption has been authorized or is about to be authorized, EPA will undertake a rapid review of the pesticide and the proposed use to determine if the use of the pesticide will cause an unreasonable risk to human health. Based on this review the Agency will determine whether the crisis authority should be exercised or, if already exercised, whether the exemption should be revoked.

The Committee agreed that the Agency should retain the authority to revoke a crisis exemption if the Administrator determines that there is insufficient data to determine the risks posed from a use, or if such action is necessary to protect man or the environment, or if a State or Federal agency is not in compliance with the requirements of this Subpart.

The Committee also agreed that the Agency should retain the right to revoke a State or Federal agency's authority in part or in whole to utilize the crisis provisions of this Subpart. However, the Committee believes that a State or Federal agency should lose its right to the crisis provisions only when such action is necessary to protect man or the environment or when an agency is not complying with the requirements of this Subpart.

Statutory Requirements

As required by FIFRA sec. 25(a), a copy of this proposal was provided to the Secretary of Agriculture, the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition, and Forestry, and the FIFRA Scientific Advisory Panel. No comments on the proposed rule were received from the Congressional Committees. The FIFRA Scientific Advisory Panel waived its review of this proposal. The Secretary of Agriculture had no comment on the proposal; USDA was represented on the negotiating committee.

Executive Order 12291

Under Executive Order (E.O.) 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this proposed revision of Part 166 is not a major regulation as defined by E.O. 12291.

The revisions are primarily a recodification and clarification of established procedures. Although several additions have been made, they are not expected to have a major regulatory impact which would trigger the criteria of E.O. 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Regulatory Flexibility Act

This proposed rule has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that this proposal does not contain provisions which would have a significant adverse impact on a substantial number of small entities. The proposed revisions clarify the regulations and thus should make it easier for applicants to comply with them. Moreover, the applicants utilizing these regulations are exclusively Federal and State agencies. Although their constituents may consist of some small entities, they are not affected adversely by these revisions. For these reasons, I hereby certify that the proposed revisions to 40 CFR Part 166 do not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2000–0458. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 166

Pesticides and pests.

Dated: April 1, 1985.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR be amended by revising Part 166 to read as follows:

PART 166—EXEMPTION OF FEDERAL AND STATE AGENCIES FROM USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

Subpart A—General Provisions

Sec.
166.1 Purpose of organization.
166.2 Types of exemptions.
166.3 Definitions.
166.7 User notification and advertising.

Subpart B—Specific, Quarantine, and Public Health Exemptions

166.20 Application for a specific, quarantine, or public health exemption.
166.22 Consultation with the Secretary of Agriculture and Governors of the States.
166.24 Public notice of receipt of application and opportunity for public comment.
166.25 Agency review.
166.28 Duration of exemption.
166.30 Notice of Agency decision.
166.32 Reporting and recordkeeping requirements for specific, quarantine, and public health exemptions.
166.34 EPA review of information obtained in connection with emergency exemptions.
166.35 Revocation or modification of exemptions.

Subpart C—Crisis Exemptions

166.40 Authorization.
166.41 Limitations.
166.43 Notice of EPA and registrants or basic manufacturers.
166.45 Duration of crisis exemption.
166.47 Notification of FDA, USDA, and State health officials.
166.49 Public notice of crisis exemptions.
166.50 Reporting and recordkeeping requirements for crisis exemptions.
166.53 EPA review of crisis exemption and revocation of authority.

Authority: Secs. 18 and 25, 89 Stat. 754 and 751, 92 Stat. 833 and 836, 94 Stat. 3194, 3195, and 3196 (7 U.S.C. 136 p and w).

Subpart A—General Provisions

§ 166.1 Purpose and organization.

(a) *Purpose and scope.* Section 18 of the Act authorizes the Administrator to exempt State and Federal agencies from any provisions of the Act, if he determines that emergency conditions exist which require an exemption. The regulations in this Part establish procedures whereby the Administrator may exempt a Federal or State agency from the provisions of the Act which regulate the manner in which a pesticide is made available for use or is used.

(b) *Organization.* (1) The provisions in Subpart A describe the four types of emergency exemptions authorized by the Agency and define terms used in this Part.

(2) Subpart B establishes procedures and criteria for specific, quarantine, and public health exemptions.

(3) Subpart C establishes procedures and criteria for crisis exemptions.

§ 166.2 Types of exemptions.

There are four types of emergency exemptions which may be authorized: Specific, quarantine, public health, and crisis exemptions.

(a) *Specific exemption.* A specific exemption may be authorized in an emergency condition to avert:

(1) A significant economic loss, or

(2) A significant risk to:

(i) Endangered species,

(ii) Threatened species,

(iii) Beneficial organisms, or

(iv) The environment.

(b) *Quarantine exemption.* A quarantine exemption may be authorized in an emergency condition to control the introduction or spread of any pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States and its territories.

(c) *Public health exemption.* A public health exemption may be authorized in an emergency condition to control a pest that will cause a significant risk to human health.

(d) *Crisis exemption.* A crisis exemption may be utilized in an emergency condition when the time from discovery of the emergency to the time when the pesticide use is needed is insufficient to allow for the authorization of a specific, quarantine, or public health exemption.

§ 166.3 Definitions.

Terms used in this Part shall have the meanings established by the Federal Insecticide, Fungicide, and Rodenticide Act. In addition, as used in this Part, the following terms shall also apply:

(a) The term "the Act" means the Federal, Insecticide, Fungicide, and Rodenticide Act, as amended.

(b) The terms "the Agency" and "EPA" mean the U.S. Environmental Protection Agency.

(c) The term "beneficial organism" means any pollinating insect, or any pest predator, parasite, pathogen or other biological control agent which functions naturally or as part of an integrated pest management program to control another pest.

(d) The term "emergency condition" means an urgent non-routine situation that requires the use of a pesticide(s) and shall be deemed to exist when:

(1) No effective pesticides are available under the Act that have labeled uses registered for control of the pest under the conditions of the emergency; and

(2) No economically or environmentally feasible alternative practices which provide adequate control are available; and

(3) The situation:

(i) Involves the introduction or dissemination of a pest new to or not theretofore known to be widely prevalent or distributed within or throughout the United States and its territories; or

(ii) Will present significant risks to human health; or

(iii) Will present significant risks to threatened or endangered species or beneficial organisms; or

(iv) Will cause significant economic loss due to:

(A) An outbreak or an expected outbreak of a pest; or

(B) A change in plant growth or development caused by unusual environmental conditions where such changes can be rectified by the use of a pesticide(s).

(e) The term "food" means any article used for food or drink for man or animals.

(f) The term "new chemical" means an active ingredient not contained in any currently registered pesticide.

(g) The term "significant economic loss" means that, under the emergency conditions: for a productive activity, the profitability would be substantially below the expected profitability for that activity; or, for other types of activities, where profits cannot be calculated, the value of public or private fixed assets would be substantially below the expected value for those assets. Only losses caused by the emergency conditions, specific to the impacted site, and specific to the geographic area

affected by the emergency conditions are included. The contribution of obvious mismanagement to the loss will not be considered in determining loss. In evaluating the significance of an economic loss for productive activities, the Agency will consider whether the expected reduction in profitability exceeds what would be expected as a result of normal fluctuations over a number of years, and whether the loss would affect the long-term financial viability expected from the productive activity. In evaluating the significance of an economic loss for situations other than productive activities, the Agency will consider reasonable measures of expected loss.

(h) The term "Special Review" refers to any interim administrative review of the risks and benefits of the use of a pesticide conducted pursuant to the provisions of EPA's Rebuttable Presumption Against Registration rules, 40 CFR 162.11(a), or any subsequent version of those rules.

(i) The term "unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

§ 166.7 User notification and advertising.

The applicant, State or Federal agency, through user groups and other means, is responsible for notifying eligible users of the availability of the exempted pesticide(s). Notification may include distributing copies of the section 18 approval letter, labeling, or other information to eligible persons. Exemptions which are advertised are subject to withdrawal by EPA.

Subpart B—Specific, Quarantine, and Public Health Exemptions

§ 166.20 Application for a specific, quarantine, or public health exemption.

(a) *General information required in an application for a specific, quarantine or public health exemption.* An application must be submitted in writing by the head of the Federal or State agency, the Governor of the State involved, or their official designee. If a designee has been delegated authority to request exemptions, written authorization of such delegation must accompany the request or be on file with the Agency. In addition, the application must contain all applicable information specified in paragraphs (a) (1) through (11) of this section.

(1) *Identity of contact persons.* (i) Unless otherwise specified, the person who submits the application will be considered the contact person for all matters relating to administration of the emergency exemption.

(ii) Requests should identify by name and telephone number one or more qualified experts who may be contacted in case any questions arise concerning the application.

(2) *Description of the pesticide.* The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:

(i) For a federally registered pesticide product:

(A) The registration number and the name of the pesticide product if a specific product is requested; or the formulation(s) requested if a specific product is not desired; and

(B) A copy of any additional labeling proposed for the emergency exemption, or

(ii) For any other pesticide products:

(A) A confidential statement of formula or reference to one already submitted to the Agency, and

(B) Complete labeling to be used in connection with the proposed exemption use.

(3) *Description of the proposed use.* The application shall identify all of the following:

(i) Sites to be treated including their locations within the State.

(ii) The method of application.

(iii) The rate of application in terms of active ingredient and product.

(iv) The total acreage or other appropriate unit proposed to be treated.

(v) The total amount of pesticide proposed to be used in terms of both active ingredient and product.

(vi) All applicable restrictions and requirements concerning the proposed use and the qualifications of applicators using the pesticide.

(4) *Alternative methods of control.* The application shall contain:

(i) A detailed explanation of why the pesticide(s) currently registered for the particular use proposed in the application is not available in adequate supplies and/or effective to the degree needed to control the emergency. If the applicant states that an available registered pesticide is ineffective for the given situation, the statement must be supported by:

(A) Field date which demonstrate ineffectiveness of registered pesticides, or, if such data are unavailable,

(B) Statements by qualified agricultural experts, extension personnel, university personnel or other persons similarly qualified in the field of pest control.

(ii) A detailed explanation of why alternative practices, if available, either would not provide adequate control or would not be economically or environmentally feasible.

(5) *Effectiveness of proposed use.* The application shall contain data, a discussion of field trials, or other evidence which provide the basis for the conclusion that the proposed pesticide treatment will be effective in dealing with the emergency.

(6) *Discussion of residues for food uses.* If the proposed use is expected to result in residues of the pesticide in or on food, the application shall list the food likely to contain such residues and shall contain an estimate of the maximum amount of the residue likely to result from the proposed use, together with the information on which such estimates are based.

(7) *Discussion of risk information.* The application shall address the potential risks to human health, endangered or threatened species, beneficial organisms, and the environment expected to result from the proposed use, together with references to data and other supporting information.

(8) *Coordination with other affected State or Federal agencies.* If the proposed use of the pesticide is likely to be of concern to other Federal or State agencies, the application shall indicate that such agencies have been contacted prior to submission of the application, and any comments received from such agencies shall be submitted to EPA.

(9) *Notification of registrant or basis manufacturer.* The application shall contain a statement that the registrants of all pesticide products proposed for use or, if appropriate, the basic manufacturer have been notified that a request has been made to the Agency for use of the pesticide under a specific, quarantine, or public health exemption.

(10) *Description of proposed enforcement program.* Prior to approval, the applicant shall provide an explanation of the authority of the applicant or related State or Federal agencies for ensuring that use of the pesticide under the proposed exemption would comply with any special requirements imposed by the Agency and a description of the program and procedures for assuring such compliance.

(11) *Repeat uses.* Applications for the use of a pesticide at a site for which the application has previously been exempted under section 18 shall contain an interim report summarizing the results of the specific, quarantine, or public health exemption previously issued, if the application is submitted prior to the time the final report for the previous exemption is due. The interim

report shall contain that information specified in § 166.32 to the extent available at the time the application is made.

(b) *Information required for a specific exemption.* An application for a specific exemption shall provide all of the following information, as appropriate, concerning the nature of the emergency:

(1) The scientific and common name of the pest or pest complex.

(2) A discussion of the events which brought about the emergency condition.

(3) A discussion of the anticipated risks to endangered or threatened species, beneficial organisms, or the environment that would be remedied by the proposed use of the pesticide.

(4) A discussion of the anticipated significant economic loss, together with data and other information supporting the discussion, which addresses all of the following:

(i) Historical net and gross revenues for the site.

(ii) The estimated net and gross revenues for the site without the use of proposed pesticide.

(iii) The estimated net and gross revenues for the site with use of the proposed pesticide.

(c) *Information required for a quarantine exemption.* An application for a quarantine exemption shall provide all of the following information concerning the nature of the emergency:

(1) The scientific and common name of pest.

(2) The origin of pest and the means of its introduction or spread if known.

(3) The anticipated impact of not controlling the pest.

(d) *Information required for a public health exemption.* An application for a public health exemption shall provide all the following information concerning the nature of the emergency:

(1) The scientific and common name of pest to be controlled and if the pest is a vector, a description of the disease it is expected to transmit.

(2) A discussion of the magnitude of the health problems which are expected to occur without the pesticide use.

(3) Discussion of the availability of medical treatment for the health problem.

(Approved by Office of Management and Budget under control No. 2000–0458)

§ 166.22 Consultation with the Secretary of Agriculture and Governors of the States.

The Agency, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.

§ 166.24 Public notice of receipt of application and opportunity for public comment.

(a) *Publication requirement.* The Administrator shall issue a notice of receipt in the **Federal Register** for a specific, quarantine, or public health exemption and request public comment when any one of the following seven criteria is met:

(1) The application proposes use of a new chemical.

(2) The application proposes the first food use of an active ingredient.

(3) The application proposes any use of a pesticide if such pesticide has been subject to a suspension notice under section 6(c) of the Act.

(4) The application proposes use of a pesticide if such pesticide:

(i) Was the subject of a notice under section 6(b) of the Act and was subsequently cancelled, and

(ii) Is intended for a use that poses a risk similar to the risk posed by any use of the pesticide which was the subject of the notice under section 6(b).

(5) The application proposes use of a pesticide if such pesticide:

(i) Contains an active ingredient which is or has been the subject of a Special Review, and

(ii) Is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is the subject of the Special Review.

(6) The application proposes use of a pesticide for a specific or public health exemption where:

(i) An emergency exemption has been requested or granted for that use for each of the previous 3 years, and

(ii) A complete application for registration of that use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency.

(7) The Administrator determines that publication of notice is appropriate.

(b) *Contents.* The notice of receipt of an application for an emergency exemption shall contain all the following information:

(1) The name of the applicant.

(2) The name of the chemical requested for use, including, if available, the common name and the Chemical Abstracts Service (CAS) number.

(3) The total amount of product or active ingredient proposed for use.

(4) The geographical location where treatment is proposed.

(5) The proposed number of acres or other appropriate units proposed to be treated.

(6) A summary of the applicant's description of the emergency conditions including the pest and the site or crop to be treated.

(7) A description of the major conditions of use of the pesticide as proposed by the applicant.

(8) If the pesticide proposed for use meets the criteria of paragraphs (a) (3), (4), or (5) of this section, an identification of the types of risks that were the basis for EPA's regulatory action.

(9) The name, telephone number, and address of a person in the Agency who can provide further information.

(c) *Length of comment period.* Normally, a notice of receipt shall give the public 15 days in which to file comments on the application. The Administrator may shorten or eliminate the comment period if he determines that the time available for a decision on the application requires it and shall state reasons for such action in a notice in the **Federal Register**. The Administrator may extend the comment period if additional time for comment is requested and such an extension would not interfere with a timely decision on the application.

§ 166.25 Agency review.

(a) *General.* The Agency will review all requests as expeditiously as possible, making every attempt to respond to requests prior to the time when the proposed use is needed. The Agency will review the application and other available data necessary to make a determination with respect to all of the following:

(1) Whether an emergency condition exists or will exist.

(2) The level of residues in or on all food resulting from the proposed use.

(3) The anticipated benefits to be derived from the proposed use.

(4) The potential risks to the human health, endangered or threatened species, beneficial organisms, and the environment from the proposed use.

(b) *Criteria for approval.* The Administrator may authorize a specific, public health, or quarantine exemption, based on the information available to the Agency, after:

(1) He determines that:

(i) An emergency condition exists;

(ii) The use of the pesticide under the exemption will not cause unreasonable adverse effects on the enviornment;

(iii) Registration of the pesticide use for which the exemption is requested has not been suspended under section 6(c) of the Act or cancelled following a notice under section 6(b) of the Act, unless the use is authorized in accordance with the provisions of §§ 164.130 through 164.133 of this chapter;

(2) Giving due consideration to:

(i) Whether the pesticide is reasonably likely to be used in compliance with the requirements imposed by the Agency under the exemption, and

(ii) The progress which has been made toward registration of the proposed use, if a repeat specific or public health exemption is sought. It shall be presumed that if a complete application for registration of a use, which has been under a specific or public health exemption for the previous 3 years, has not been submitted, reasonable progress towards registration has not been made.

§ 166.28 Duration of exemption.

(a) *Specific or public health exemptions.* EPA shall allow use of a pesticide under a specific or public health exemption for as long a period as is reasonably expected to be necessary but in no case for longer than 1 year.

(b) *Quarantine exemption.* EPA shall allow use of a pesticide under a quarantine exemption for as long a period as is deemed necessary but in no case for longer than 3 years. Quarantine exemptions may be renewed. Interim reports containing the information specified in § 166.32(b) to the extent available shall be filed annually.

§ 166.30 Notice of Agency decision.

(a) *Notification of applicants.* The Agency shall notify an applicant of its decision to approve or deny an application request for an emergency exemption in a timely manner.

(1) *Incomplete applications.* The Agency may discontinue the processing of any application which does not contain all of the information required by § 166.20 until such time the additional information is submitted by the applicant.

(2) *Complete applications*—(i) *Denials.* The Agency will provide the specific reasons and rationale for denying the exemption request. If the denial is based on a specific information gap the decision shall be reconsidered in a timely manner when the information gap is filled.

(ii) *Approvals.* The Agency will provide the specific terms and conditions under which the exempted pesticide may be used.

(b) *Notification of FDA, USDA, and State health officials.* If a use authorized under a specific, quarantine, or public health exemption will result in residues of the pesticide chemical in or on food, the Agency will notify the Food and Drug Administration, U.S. Department of Health and Human Services and the Food Safety and Inspection Service, U.S. Department of Agriculture, as appropriate, of the level of residues expected to result. Additionally, the Agency will ensure that State health and food officials, as appropriate, are also provided with the information specified in this paragraph.

(c) **Federal Register** *publication.* (1) At least quarterly, the Administrator shall issue a notice in the **Federal Register** announcing approvals of all specific, quarantine, and public health exemptions. The notice shall contain all of the following:

(i) The name of the applicant.

(ii) The pesticide authorized for use.

(iii) The crop or site to be treated.

(iv) The name, address, and telephone number of a person in the Agency who can provide further information.

(2) In addition, if EPA has issued a Notice of Receipt of an application for an exemption, it will issue a notice of its final decision and the reasons for that decision.

§ 166.32 Reporting and recordkeeping requirements for specific, quarantine, and public health exemptions.

(a) *Unexpected adverse effects information.* Any unexpected adverse effects resulting from the use of a pesticide under a specific, quarantine, or public health exemption must be immediately reported to the Agency.

(b) *Final reports.* A report summarizing the results of pesticide use under specific, quarantine, and public health exemptions must be submitted to the Agency within 6 months from the expiration of the exemption unless otherwise specified by the Agency. The information in this report shall include all of the following:

(1) Total acreage, amount of commodity or other unit treated and the total quantity of the pesticide used.

(2) A discussion of the effectiveness of the pesticide in dealing with the emergency condition.

(3) A description of any unexpected adverse effects which resulted from use of the pesticide under the exemption.

(4) The results of any monitoring required and/or carried out under the exemption.

(5) A discussion of any enforcement actions taken in connection with the exemption.

(6) Method(s) of disposition of a food crop, if required to be destroyed under an exemption.

(7) Any other information requested by the Administrator.

(c) *Records.* Records for all treatments involving the first food use of a pesticide will be maintained a minimum of 2 years following the date of use of the exemption. On request by the Agency these records shall be made available to the Administrator. Records will include all of the following:

(1) Location where the pesticide was applied.

(2) Dates of application (range).

(3) Total quantity of the pesticide used.

(Approved by the Office of Management and Budget under control No. 2000-0458)

§ 166.34 EPA review of information obtained in connection with emergency exemptions.

EPA shall review information submitted in connection with emergency exemptions and, when applicable, use it in connection with other regulatory decisions under the Act.

§ 166.35 Revocation or modification of exemptions.

(a) *Grounds.* The Administrator may revoke or modify the terms or conditions of a specific, quarantine, or public health exemption if he determines one of the following:

(1) An emergency no longer exists.

(2) Use of the pesticide under the exemption may cause unreasonable adverse effects on the environment.

(3) The pesticide authorized under the exemption is not effective at controlling the pest or conditions causing the emergency.

(4) The terms and conditions established by the exemption and these regulations are not being complied with.

(b) *Implementation.* The revocation or modification becomes effective as soon as the Administrator notifies the State or Federal agency which submitted the application. Upon notification, the applicant is required immediately to take all necessary steps to assure that further use complies with the terms and conditions of any modification or, if the exemption has been revoked, to stop further use.

Subpart C—Crisis Exemptions

§ 166.40 Authorization.

The head of a Federal or State agency, the Governor of a State, or their official designee, is entitled to issue a crisis exemption in situations involving an unpredictable emergency situation when:

(a) An emergency condition exists; and

(b) The time element with respect to the application of the pesticide is critical, and there is not sufficient time either to request a specific, quarantine, or public health exemption or, if such a request has been submitted, for EPA to complete review of the request.

§ 166.41 Limitations.

The crisis provisions may not be utilized to authorize a pesticide use if any of the following has occurred:

(a) EPA has informed the head of the Federal or State agency, the Governor, or their official designee, not to issue such an exemption.

(b) The pesticide use has been suspended under section 6(c) of the Act.

(c) The pesticide use has been cancelled following a notice issued under section 6(b) of the Act.

(d) The pesticide contains a new chemical.

(e) The application proposes the first food use of a pesticide.

§ 166.43 Notice to EPA and registrants or basic manufacturers.

(a) *Timing of notice.* (1) When feasible, the State or Federal Agency issuing the crisis exemption must notify the Administrator at least 36 hours in advance of utilization of the crisis provisions. In no case shall notice be given to the Agency later than 24 hours after the decision to avail itself of a crisis exemption.

(2) The State or Federal agency issuing the crisis exemption shall notify the registrant(s) or, if appropriate, the basic manufacturer(s) of the pesticide(s) being used under the crisis exemption at the same time notice is given to EPA or as soon thereafter as possible.

(b) *Contents of notice.* Information required to be provided in notices shall include all of the following:

(1) The name of the chemical, including, if available, the common name and the Chemical Abstracts Service (CAS) number.

(2) The site on which the pesticide is to be used or is being used.

(3) The use pattern.

(4) The date on which the pesticide use is to begin or the date on which use of the pesticide began.

(5) An estimate of the level of residues of the pesticide expected to result from use under the crisis exemption.

(6) Any other pertinent information available at the time.

(Approved by the Office of Management and Budget under control No. 2000–0458)

§ 166.45 Duration of crisis exemption.

A crisis exemption may be authorized for:

(a) Only as long as is necessary to control the pest or conditions causing the emergency, and

(b) No longer than 15 days, unless an application requesting a specific, quarantine, or public health exemption for this use has been submitted to the Agency.

§ 166.47 Notification of FDA, USDA, and State health officials.

If a use authorized under a crisis exemption will result in residues of the pesticide chemical in or on food, the Agency will notify the Food and Drug Administration, U.S. Department of Health and Human Services and the Food Safety and Inspection Service, U.S. Department of Agriculture, as appropriate, of the level of residues expected to result and whether such residues pose an unacceptable risk to public health. This notice shall be provided as soon as the Agency makes its determination. Additionally, the Agency will ensure that State health and food officials, as appropriate, are also provided with this information.

§ 166.49 Public notice of crisis exemptions.

(a) *Periodic notices.* At least quarterly, the Administrator shall issue a notice in the **Federal Register** announcing issuance of crisis exemptions. The notice shall contain all of the following:

(1) The name of the State or Federal agency using a crisis exemption.

(2) The name of the chemical authorized for use, including, if available, the common name and the Chemical Abstracts Service (CAS) number.

(3) The site to be treated.

(4) The name, telephone number, and address of a person in the Agency who can provide further information.

(5) Whether a specific, quarantine, or public health exemption has been requested.

(b) *Annual reports.* Annually, the Agency shall issue a notice in the **Federal Register** that shall summarize:

(1) The number of crisis exemptions declared.

(2) The number of crisis exemptions revoked.

§ 166.50 Reporting and recordkeeping requirements for crisis exemption.

(a) *Adverse effects information.* Any adverse effects resulting from the use of a pesticide under a crisis exemption must be immediately reported to the Agency.

(b) *Final reports.* (1) A report summarizing the results of treatment under a crisis exemption will be required to be submitted to the Agency within 3 months following the last date of treatment. If a specific, quarantine, or public health exemption has been approved while the crisis exemption is in effect, however, the crisis exemption report may be incorporated into the specific, quarantine, or public health exemption final report required under § 166.32(b) and submitted at the time it is due.

(2) Information to be included in the crisis exemption report includes the same information as required in § 166.32(b) and an explanation as to why there was a need to utilize the crisis provisions.

(c) *Records.* Records will be maintained for a minimum of 2 years following the date of use of the exemption. On request by the Agency, these records shall be made available to the Administrator. Records will include all of the following:

(1) Location where the pesticide was applied.

(2) Dates of application (range).

(3) Total quantity of the pesticide used.

(Approved by the Office of Management and Budget under control No. 2000–0458)

§ 166.53 EPA review of crisis exemption and revocation of authority.

(a) *Review.* When a crisis exemption is about to be or has already been declared by a State or Federal agency, EPA will undertake an expedited review of the chemical to determine if use of the chemical may result in such unreasonable health or environmental risks that the crisis authority should not be exercised or the crisis exemption should be revoked.

(b) *Revocation*—(1) *Individual crisis exemptions.* A crisis exemption for the use of a specific pesticide may be revoked if the Administrator determines that:

(i) There are insufficient data to determine the risks posed from the use,

(ii) Such action is necessary to protect man or the environment, or

(iii) The State or Federal agency is not complying with the requirements of this Subpart C.

(2) *State or Federal agency authority.* The Administrator may revoke the authority of a State or Federal agency to issue crisis exemptions for any pesticide if he determines that:

(i) Such action is necessary to protect man or the environment, or

(ii) The State or Federal agency is not complying with the requirements of this Subpart C.

[FR Doc. 85–8327 Filed 4–5–85; 8:45 am]

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federal register

Monday
April 8, 1985

Part IV

Department of the Treasury

Internal Revenue Service

26 CFR Part 602

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act; Correction

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[T.D. 8011]

OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the Federal Register publication beginning at 50 FR 10221, March 14, 1985. Final regulations that were the subject of Treasury Decision 8011 adopted the display of control numbers that are required for Internal Revenue Service regulations that solicit or obtain information from the public.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective March 14, 1985. The corrections are also effective March 14, 1985.

FOR FURTHER INFORMATION CONTACT: George H. Bradley, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, Washington, D.C. 20224. Telephone 202–566–3486 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1985, the Federal Register published amendments to Title 26 of the Code of Federal Regulations. Those amendments set forth in display format a table of the control numbers that the Office of Management and Budget had assigned to regulations issued by the Internal Revenue Service that solicit or obtain information from the public.

Need for Correction

As published, Treasury Decision 8011 (FR Doc. 85–6015) contained an incorrect identification of a paragraph of a regulations section, and five incorrect identifications of CFR part numbers.

Correction of Publication

PART 602—[CORRECTED]

Accordingly, FR Doc. 85–6015 (50 FR 10221) is amended as follows:

Paragraph 1. On page 10226, in the third column, the reference § 31.6011 (d) 4 is corrected to read § 31.6011 (a)–4.

Par. 2. On page 10227, in the third column, the references § 57.6011 (a)–1(a), § 57.6011 (a)–1(b), § 57.6011 (a)–2 (a) and (b), and § 57.6302 (c)–1 (a) and (b) are corrected to read § 52.6011 (a)–1(a), § 52.6011 (a)–1(b), § 52.6011 (a)–2(a) and (b), and § 52.6302 (c)–1(a) and (b), respectively.

Par. 3. On page 10227, in the third column, the reference § 151.4997–2(a), (b), (c), (d), and (e) is corrected to read § 150.4997–2(a), (b), (c), (d), and (e).

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–8526 Filed 4–5–85; 10:46 am]

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H.J. Res. 134 / Pub. L. 99-9

Authorizing and requesting the President to designate the week of March 10 through 16 1985, as "National Employ-the-Older-Worker Week". (April 3, 1985; 99 Stat. 25) Price $1.00

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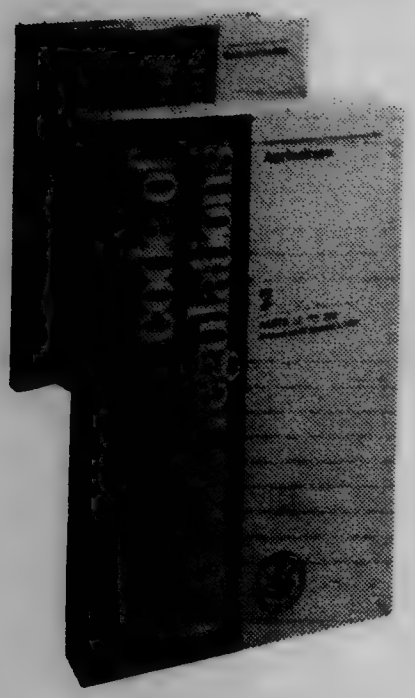
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Additional information, including a list of public laws, telephone numbers, and findings aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
Vol. 50, No. 68
Tuesday, April 9, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

Reemployment Rights

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing regulations to implement section 1203 of the Panama Canal Act of 1979, which provides reemployment rights for Federal employees who are detailed or transferred to the Panama Canal Commission in the Republic of Panama.

EFFECTIVE DATE: May 9, 1985.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey, (202) 632–6817.

SUPPLEMENTARY INFORMATION: On January 8, 1982, the Office of Personnel Management published (at 47 FR 956) proposed regulations to extend reemployment rights based on service with the Panama Canal Commission, and invited comments from the public. Comments were received from three agencies and two labor organizations. The following summarizes the major comments and actions taken:

One commenter suggested the regulation states more specifically that the written agreement for a detail or transfer must cover reemployment rights. This has been clarified and a requirement added for the employee to be given a copy of the agreement (§ 352.903). This is to assure the employee is given sufficient information to comply with the conditions for reemployment.

The regulation excludes from coverage all employees serving a trial or probationary period regardless of their type of appointment. The proposed regulations excluded such employees in the competitive service and the Senior Executive Service. As suggested by one commenter, the final regulation (§ 352.904) also excludes those in the excepted service.

One commenter suggested that since the law does not require a transferred employee to receive promotion consideration in the former agency while the employee is serving with the Commission, the regulation should not either. We agree and the provision in proposed § 351.906 has been dropped. Nevertheless, an agency may give promotion consideration to a transferred employee if consictent with the agency's merit promotion plan. Furthermore, a detailed employee remains an employee of the agency and would receive consideration for noncompetitive or competitive promotion in the same manner as would other employees.

One commenter felt the right to reemployment should not hinge on the Commission's consent to a resignation in every case and that provison should be made for instances when an employee feels compelled to resign because of exceptional circumstances. Since the law provides for reemployment upon *completion* of an employee's tour of duty with the Commission, we have not changed this provison (§ 352.907). In addition, we changed the time limit in § 352.907 for applying for reemployment to 30 days *after* rather than 30 days *before* expiration of employment with the Commission to be consistent with limits following resignation or involuntary separation.

One commenter believed the procedures for finding an appropriate position for reemployment were too complicated and proposed that the agency be required to look only in the employee's competitive area, not agencywide, to find a position at the employee's former grade. This proposal was not adopted inasmuch as the law guarantees reemployment under the same conditions as if the employee had remained with the agency. We believe it is appropriate for an agency to make an agency-wide search for a position at the former grade before subjecting the employee to possible demotion or separation by RIF. It was also suggested that a provision be added for meeting the reemployment obligation by placement in any position acceptable to the employee. We have done this and reorganized the section for greater clarity (§ 352.908).

These regulations will be supplemented by further guidance to be issued through the Federal Personnel Manual System. The Panama Canal Commission is responsible for issuing regulations that govern employment with the Commission.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal employees and agenices.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending 5 CFR Part 352 by adding Subpart I to read as follows:

PART 352—REEMPLOYMENT RIGHTS

* * * * *

Subpart I—Reemployment Rights After Service With the Panama Canal Commission

Sec.

352.901 Purpose.
352.902 Definitions.
352.903 Effecting a detail or transfer.
352.904 Eligibility.
352.905 Employees on detail.
352.906 Termination of transfer.
352.907 Exercise or termination of reemployment rights.
352.908 Agency obligation.
352.909 Appeals.

Authority: Pub. L. 96–70, 22 U.S.C. 3643.

Subpart I—Reemployment Rights After Service With the Panama Canal Commission

§ 352.901 Purpose.

This subpart implements section 1203 of the Panama Canal Act of 1979, which provides for the detail or transfer of Federal employees to the Panama Canal Commission with reemployment rights in the former agency.

§ 352.902 Definitions.

In this subpart—

"Act" means the Panama Canal Act of 1979 (22 U.S.C. 3601 *et seq.*).

"Agency" means an Executive agency, the United States Postal Service, and the Smithsonian Institution.

"Commission" means the Panama Canal Commission as established by section 1101 of the Act.

"Competitive area" is defined in § 351.402 of Part 351 of this chapter.

"Competitive level" is defined in § 351.403(a) of Part 351 of this chapter.

"Detail" is the assignment of loan of an employee to the Commission without the employee's transfer. The employee remains an employee of the agency in which employed and continues to be the incumbent of the position from which detailed.

"Term of employment" means the period of employment specified in the written agreement between the Commission and the agency for the transfer of an employee or extension of transfer.

"Transfer" means the change in appointment of an employee from an agency to a new appointment with the Commission.

§ 352.903 Effecting a detail or transfer.

(a) *Authority to approve.* The head of an agency may enter into written agreements with the Commission for the detail or voluntary transfer, for set periods of time, of agency employees to the Commission in accordance with section 3643 of title 22, United States Code, and this subpart. Refusal by the head of the agency to agree to a detail or transfer, or extension of detail or transfer, is not reviewable by the Office of Personnel Management or appealable.

(b) *Employee notice.* The agency will furnish the employee with a copy of the written agreement which must contain a statement of the time limits for exercising reemployment rights and the conditions of reemployment.

§ 352.904 Eligibility.

This subpart covers only eligible employees transferred or detailed to Commission positions with duty stations in the Republic of Panama.

(a) *Employees eligible.* Except as provided in paragraph (b) of this section, an employee serving in a position in an agency under any of the following appointments may be granted rights under this subpart:

(1) Career or career-conditional appointment in the competitive service;

(2) An appointment without a specific time limit in the excepted service; or

(3) A career appointment in the Senior Executive Service.

(b) *Employee not eligible.* The following employees are not eligible under this subpart:

(1) An employee who is serving a trial period or probationary period under an initial appointment;

(2) An employee who has received a proposed notice of involuntary separation (e.g., separation based on reduction in force, adverse action, or performance);

(3) An employee who is serving in a position excepted from the competitive service under Schedule C of Part 213 of this chapter, in a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter, or under Presidential appointment; or

(4) An employee whose resignation has been accepted for reasons other than to accept employment with the Commission.

§ 352.905 Employees on detail.

(a) An employee detailed to the Commission is subject to the same conditions of employment at his or her employing agency as if the employee has not been detailed.

(b) The Commission and the employing agency will arrange for the termination of a detail and the agency will return the employee to his or her former position or an equivalent one as provided in § 352.908 (b) and (c).

§ 352.906 Termination of transfer.

At the conclusion of a term of employment agreed upon as provided in § 352.903, employment with the Commission may be terminated without regard to Parts 351, 359, 432, 752, or 771 of this chapter.

§ 352.907 Exercise or termination of reemployment rights.

(a) *Exercise.* An individual who has been transferred under this subpart to the Commission and wishes to be reemployed must apply in writing to the former employing agency. The time limits for application for reemployment are—

(1) No later than 30 calendar days after the expiration of the term of employment with the Commission;

(2) No later than 30 calendar days after receipt of notice of involuntary separation during the term of employment with the Commission; or

(3) No later than 30 calendar days after resignation with the consent of the Commission.

(b) *Termination.* Reemployment rights terminate if the individual—

(1) Fails to apply within the time limits stated in paragraph (a) of this section;

(2) Resigns without the written consent of the Commission; or

(3) Within 10 calendar days, fails to accept an offer of reemployment made under § 352.908 that is determined to be a proper offer of reemployment by the reemploying agency or by the Merit Systems Protection Board on appeal.

§ 352.908 Agency obligation.

(a) *Time limits.* An employee is to be reemployed by the reemploying agency as promptly as possible, but not later than 30 calendar days after receipt of the reemployment application or on termination of the term of employment with the Commission, whichever is later.

(b) *Conditions.* An employee will be reemployed or returned from detail without loss of pay, seniority, or other rights or benefits to which the employee would have been entitled had he or she not been transferred or detailed. An employee in the Senior Executive Service will be reemployed or returned at not less than the rate at which paid immediately before the transfer or detail. An employee who is reemployed is not eligible for grade or pay retention under Part 536 of this chapter based on a grade or rate of pay attained while employed by the Commission.

(c) *Position to which entitled.*

(1) If the function with which the employee's former position was identified has been transferred, the employee's right is to a position in the gaining agency or activity.

(2) An employee whose right is to a position in the Senior Executive Service may be reemployed in or returned to any Senior Executive Service position in the former agency for which qualified.

(3) All other employees are entitled to be reemployed in or returned to a position at the same grade or level and in the same competitive area as the position last held in the former agency. If the reemployment would cause the separation or demotion of another employee, the applicant should be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position the employee is entitled. If the employee is not placed at the former grade or level, the agency must extend consideration beyond the competitive area. Responsibility for reemployment is agencywide.

(4) Reemployment may be at a higher grade than that to which the employee is entitled if all appropriate standards and requirements are satisfied and if this

will not cause the displacement of another employee.

(5) The reemployment obligation may be satisfied by placement in any position within the agency that is acceptable to the employee.

(d) *Agency refusal to reemploy.* An agency may refuse to reemploy under this section only when the employee was separated from the Commission for serious cause showing unsuitability for reemployment.

§ 352.909 Appeals.

(a) If an agency denies reemployment to an applicant who claims reemployment rights under this subpart, the agency must notify the applicant in writing of that denial and its reasons. In the same notice, the agency will inform the applicant of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

(b)(1) When an agency has reemployed or returned an employee, it will advise the employee of the right of appeal if he or she considers the reemployment or return not to be in accordance with the Act and this subpart.

(2) An employee in a bargaining unit covered by a negotiated grievance procedure that does not exclude this matter must use the negotiated grievance procedure.

(3) An employee to whom paragraph (b)(2) of this section does not apply is entitled to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The agency must comply with the provisions of § 1201.21 of this title.

[FR Doc. 85-8395 Filed 4-8-85; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-314]

Oriental Fruit Fly; Removal of Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document removes from the Domestic Quarantine Notices "Subpart—Oriental Fruit Fly" quarantine and regulations which quarantined California and imposed restrictions on the interstate movement of regulated articles from a regulated area in Los Angeles County, California. The quarantine and regulations were established for the purpose of preventing the artificial spread of the Oriental fruit fly into noninfested areas of the United States. It has been determined that the Oriental fruit fly no longer occurs anywhere in California and the quarantine and regulations are no longer necessary. The effect of this action is to delete restrictions on the interstate movement of previously regulated articles from the previously regulated area in Los Angeles County.

EFFECTIVE DATE: Effective date of this amendment is April 9, 1985. Written comments concerning this interim rule must be received on or before June 10, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 728 Federal Building, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period because otherwise there would be unnecessary restrictions imposed on the interstate movement of certain articles. This situation requires immediate action to delete such unnecessary restrictions.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

A document published in the **Federal Register** on September 7, 1984 (49 FR 35332-35339) set forth an interim rule amending Part 301 (Domestic Quarantine Notices) of Title 7 of the Code of Federal Regulations (7 CFR Part 301) by adding a new subpart 301.93, captioned "Subpart—Oriental Fruit Fly" [7 CFR 301.93 *et seq.*; hereinafter known as regulations]. The document quarantined the State of California and established regulations restricting the interstate movement of regulated articles out of a regulated area in Los Angeles County, California, in order to prevent the artificial spread interstate of Oriental fruit fly, *Dacus dorsalis* (Hendl). Subsequently, a document was published on December 27, 1984, in the **Federal Register** amending § 301.93-3 of the regulations by expanding the area designated as a regulated area. (See 49 FR 50155-50156.) This document deletes all of Subpart—Oriental Fruit Fly from Part 301.

The regulations designated a large number of fruits, nuts, vegetables, berries, and soil as regulated articles, and a portion of Los Angeles County in California, as a regulated area. No other area in California or elsewhere in the United States was designated as a regulated area.

Based on trapping and sampling surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California, it has now been determined that the Oriental fruit fly no longer occurs in Los Angeles County. Specifically, the last finding of fruit flies was made on November 14, 1984. Since then no other fruit flies or other evidence of an infestation have been found. Based on departmental expertise, it has been determined that sufficient time has passed without finding additional fruit flies or other evidence of an infestation to conclude that an infestation no longer exists in Los Angeles County.

Further, trapping and sampling surveys indicate that the Oriental fruit fly does not exist in any other place in California or in the United States.

Under these circumstances there is no longer a basis for imposing restrictions on the movement of articles from any area in California or elsewhere in the United States because of the Oriental fruit fly. Therefore, in order to relieve unnecessary restrictions on the interstate movement of certain articles,

it is necessary to amend 7 CFR Part 301 by removing Subpart—Oriental Fruit Fly from the Domestic Quarantine Notices.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment removes restrictions on the interstate movement of certain articles from a portion of Los Angeles County in California which is approximately 108 square miles in size. It appears that very little or no commercial activity occurs in this area because it is an urban area comprised primarily of private residences. The only commercial activity stems from local street vendors, ten local nurseries, and activity at the Los Angeles International Airport. The street vendors and nurseries sell regulated articles primarily for intrastate not interstate movement. Further, the only commercial activity at the Los Angeles International Airport affected by this regulation appears to be approximately 100 entities that ship regulated articles originating outside the regulated area to the Los Angeles International Airport for movement interstate or internationally. None of these entities are small entities within the meaning of the Regulatory Flexibility Act. Further, it appears that deleting the quarantine and regulations would have very little or no impact on the procedures normally followed by these entities (e.g., packing, marking and transporting) for transporting such articles, since these entities had implemented procedures independent of but consistent with the requirements imposed by the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plant (agriculture), Quarantine, Transportation, Oriental fruit fly.

PART 301—DOMESTIC QUARANTINE NOTICES

§§ 301.93—301.93–10 [Subpart Removed]

Accordingly, "Subpart—Oriental Fruit Fly" (7 CFR 301.93 through 301.93–10) is removed.

Authority: 7 U.S.C. 150dd, 150ee, 161, 162; 7 CFR 2.17, 2.51 and 371.2(c).

Done at Washington, D.C., this 3rd day of April 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–8362 Filed 4–8–85; 8:45 am]

BILLING CODE 3410–34–M

Commodity Credit Corporation

7 CFR Part 1488

[Amdt. 8]

CCC Export Credit Sales Program (GSM–5)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes supplements I, II and III to the Commodity Credit Corporation's (CCC) Export Credit Sales Program (GSM–5) regulations. Supplements I, II and III set forth additional detailed requirements for financing the export sales of beef breeding cattle, dairy breeding cattle, and breeding swine, respectively, under GSM–5.

EFFECTIVE DATE: April 9, 1985.

FOR FURTHER INFORMATION CONTACT: L. T. McElvain, Deputy Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, D.C. 20250. Telephone: (202) 447–6225.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since this rule does not have any of the effects specified in those documents.

I have determined that this rule will not have a significant economic impact on a substantial number of small entities. From past experience in operating the program, only a few small entities have participated in the program.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this rule. The environmental assessment is available for review in Room 4525, South Building, USDA during normal business hours.

On November 9, 1983, CCC published in the **Federal Register** (48 FR 51490) a proposal to delete supplements I, II and III to the CCC's Export Credit Sales Program (GSM–5) regulations (7 CFR Part 1488) which set forth additional detailed requirements for financing the export sales of beef breeding cattle, dairy breeding cattle, and breeding swine, respectively, under this program. A total of three comments was received from parties interested in the proposal. A discussion of these comments follows:

1. One commentator inquired as to why poultry was not included in the proposal.

Poultry did not apply to this proposal since specific financing requirements such as those covered by supplements I, II and III were never published in the **Federal Register** for poultry breeding stock. If CCC had wished to finance poultry sales, it could have done so under the GSM–5 general financing provisions for all agricultural commodities.

2. Another commentator, who represents 44,000 dairymen members, supported the proposal without qualification.

3. The third commentator objected to the proposal on the basis that the proposal would undermine the Berne Union Agreement and urged CCC not to provide more favorable credit terms than those outlined in the Berne Union Agreement.

The latter comment was not responsive since it was not proposed to amend the credit terms on which export sales of breeding animals would be financed but merely to delete detailed requirements for financing the export sales of breeding animals. Furthermore, CCC is not a party to the Berne Union Agreement. However, in response to this comment CCC can only extend credit terms for a maximum of three years which is consistent with provisions of the Berne Union Agreement.

After reviewing these comments, it was decided to make no change in the proposed rule. Accordingly, this final rule deletes supplements I, II and III to GSM–5. This rule also incorporates the

OMB Paperwork Reduction Act Control Number for the GSM–5 program.

In accordance with 5 U.S.C. 553(d)(1) the effective date of this rule may be less than 30 days from the date of publication since the removal of supplements I, II and III relieves special financing requirements for beef breeding cattle, dairy breeding cattle, and breeding swine, respectively.

List of Subjects in 7 CFR Part 1488

Agricultural commodities, Breeding animals, Exports, Financing, livestock.

PART 1488—[AMENDED]

Accordingly, Part 1488 of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1488 is amended to read as follows:

Authority: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and Sec. 4(a), 80 Stat. 1538, as amended by Sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

2. Part 1488 is amended by removing supplements I, II and III.

3. The table of contents for Part 1488 is amended by removing the references to supplements I, II and III at the end and by adding at the end the following:

* * * * *

Sec.

1488.23 OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act.

4. A new § 1488.23 is added to read as follows:

§ 1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0021.

Dated: April 1, 1985.

Melvin E. Sims,

General Sales Manager and Associate Administrator and Vice President, Commodity Credit Corporation.

[FR Doc. 85–8433 Filed 4–8–85; 8:45 am]

BILLING CODE 3410–10–M

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7 CFR Part 1491

[Amdt. 1]

Intermediate Credit Export Sales Program for Breeding Animals (GSM–201)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule deletes supplements I, II and III to the Commodity Credit Corporation's (CCC) Intermediate Credit Export Sales Program for Breeding Animals regulations (GSM–201). Supplements I, II and III set forth additional detailed requirements for financing the export sales of beef breeding cattle, dairy breeding cattle, and breeding swine, respectively, under GSM–201.

EFFECTIVE DATE: April 9, 1985.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Deputy Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, D.C. 20250. Telephone: (202) 447–6225.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since this rule does not have any of the effects specified in those documents.

I have determined that this rule will not have a significant economic impact on a substantial number of small entities. From past experience in operating the program only a few small entities have participated in the program.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this rule. The environmental assessment is available for review in Room 4525, South Building, USDA during normal business hours.

On December 13, 1983, CCC published in the **Federal Register** (48 FR 55478) a proposal to delete supplements I, II and III to the CCC's Intermediate Credit Export Sales Program for Breeding Animals regulations (GSM–201) (7 CFR Part 1491) which set forth additional detailed requirements for financing the export sales of beef breeding cattle, dairy breeding cattle, and breeding swine, respectively, under this program. Two comments were received regarding the proposal. A discussion of these comments follows:

1. One commenter, who represents 44,000 dairymen members, supported without qualification the proposal to remove supplements I, II and III from 7 CFR Part 1491.

2. The other commentator objected to the proposal on the basis that the proposal would undermine the Berne Union Agreement and urged CCC not to provide more favorable credit terms than those provided for in the Berne Union Agreement.

The latter comment was not responsive since it was not proposed to amend the credit terms on which export sales of breeding animals would be financed but merely to delete detailed requirements for financing the export sale of breeding animals. Furthermore, CCC is not a party to the Berne Union Agreement. However, in response to this comment CCC does recognize that the credit terms under the GMS–201 program could provide for longer terms than those called for in the Berne Union Agreement, but it is the opinion of CCC that the GSM–201 program can be used effectively without generating credit wars by developing and expanding foreign markets on a long-term basis for agricultural products.

After reviewing the comments, no changes were made from the proposed rule. Accordingly, this final rule deletes supplements I, II, and III to GSM–201. Also, this rule incorporates the OMB Paperwork Reduction Act Control Number for the GSM–201 program.

In accordance with 5 U.S.C. 553(d)(1) the effective date of this rule may be less than 30 days from the date of publication since the removal of supplements I, II and III relieves special financing requirements for beef breeding cattle, dairy breeding cattle, and breeding swine, respectively. Accordingly, the rule is being made effective upon the date of publication.

List of Subjects in 7 CFR Part 1491

Agricultural commodities, Breeding animals, Exports, Financing.

Part 1491—[AMENDED]

Accordingly, Part 1491 of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1491 reads as follows:

Authority: Sec. 4(b), 80 Stat. 1537, as added by Sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(b)); Sec. 5(f), 62 Stat. 1070, as amended (15 U.S.C. 714c).

2. Part 1491 is amended by removing supplements I, II and III.

3. The table of contents for Part 1491 is amended by removing the references to supplements I, II and III at the end and by adding at the end the following:

* * * * *

Sec.

1491.22 OMB Control Number Assigned Pursuant to the Paperwork Reduction Act

4. A new § 1491.22 is added to read as follows:

§ 1491.33 OMB Control Number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1491) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0012.

Dated: April 1, 1985.

Melvin E. Sims,

General Sales Manager and Associate Administrator and Vice President, Commodity Credit Corporation.

[FR Doc. 85–8437 Filed 4–8–85; 8:45 am]

BILLING CODE 3410-10-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 523

[No. 85-231]

Liquidity Definitions; Technical Amendments

Dated: March 29, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final Rule.

SUMMARY: In order to implement changes to section 5A(b)(1)(D) of the Federal Home Loan Bank Act included in the Housing and Community Development Technical Amendments Act of 1984 ("Act"), Pub. L. 98–479, 98 Stat. 2218, the Board has adopted amendments to its final regulations regarding the treatment as liquid assets of shares in certain investment companies. The amendments permit members of the Federal Home Loan Bank System to include shares of investment companies investing in highly rated corporate debt obligations and commercial paper with specified maturities for the purpose of satisfying their liquidity requirements.

EFFECTIVE DATE: April 9, 1985.

FOR FURTHER INFORMATION, PLEASE CONTACT: Wendy Samuel, Deputy Director, ((202) 377–6445) or Carol Rosa, Legal Assistant, ((202) 377–6464), Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On October 17, 1984, the Housing and Community Development Technical Amendments Act of 1984 ("Act"), Pub. L. 98–479, 98 Stat. 2218 was signed into law. The Act amended section 5A(b)(1)(D) of the Federal Home Loan Bank Act (12 U.S.C. 1425a(b)(1)(D) (1982)), permitting members of the Federal Home Loan Bank System ("member institutions") to include as liquid assets investments in shares of investment companies whose investments are limited to highly rated corporate debt obligations with three years of less remaining until maturity and highly rated commercial paper with 270 days or less remaining until maturity. Section 5A of the Federal Home Loan Bank Act imposes upon the Board the responsibility of maintaining the liquidity of member institutions to ensure "sound mortgage credit and a more stable supply of such credit", and to enable institutions "to meet withdrawals or to pay obligations" in an emergency.

Under the previous statutory authority, while direct investment by member institutions in certain corporate debt obligations and commercial paper could be counted as liquid assets, investment in investment companies that invested solely in such assets could not. 12 U.S.C. 1425a(b) (1)(D) (1982). Board regulations tracked this provision. 12 CFR 523.10(g)(8) (1984). This statutory approach was somewhat inconsistent with other provisions of section 5A(b)(1) which permitted liquid assets treatment of investments in shares of investment companies that invested in other specified types of liquid assets (12 U.S.C. 1425a(b)(1) (1982)).

By its action today, the Board amends § 523.10(g)(8) of the regulations in order to conform the regulatory language with the Federal Home Loan Bank Act, as amended by the Act, by expanding the definition of liquid assets to include shares of investment companies investing in certain corporate debt obligations and commercial paper with stated maturities. Consistent with this amendment, the Board is also amending §523.10(h)(6) to permit certain of these investment company shares to be considered short-term liquid assets.

Because these amendments implement statutory directives, the Board finds that observance of the notice and comment procedure pursuant to 5 U.S.C. 552(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 552(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest due to the minor, conforming nature of these amendments.

List of Subjects in 12 CFR Part 523

Banks, Banking, Liquidity, Liquid assets.

Accordingly, the Board hereby amends Part 523 of Subchapter B, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 523—MEMBERS OF BANKS

§ 523.10 [Amended]

1. Amend § 523.10(g)(8) by adding, after the phrase "paragraphs (g) (1) through (7)", the phrase ", and (9)".

2. Amend § 523.10(h)(6) by adding, after the phrase "paragraphs (h) (1) through (5)", the phrase ", and (7)".

(Federal Home Loan Bank Act, sec. 5A, 12 U.S.C. 1425a; Reorg. Plan No. 3 of 1947, 3 CFR 1943–48 Comp., P. 1071; sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85–8481 Filed 4–8–85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C–3151]

Commodore Business Machines, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this Consent Order requires a West Chester, PA. marketer of computer products, among other things, to cease, in connection with the advertising, sale or distribution of the Commodore 64 or any other hardware or software computer product, representing the availability or capability of a product, unless at the time of the claim the product is available for public sale in reasonable quantities, or has the claimed capability. The Order further bars the company from making any representations concerning the future availability or capability of a computer product unless the firm has a reasonable basis for the claim at the time the representation is made. The company is additionally required to maintain specified records for a period of three years.

DATE: Complaint and Order issued March 22, 1985.*

*Copies of the Complaint and the Decision and Order filed with the original document.

FOR FURTHER INFORMATION CONTACT: FTC/B 411–6, Joel Winston, Washington, D.C. 20580, (202) 376–8648.

SUPPLEMENTARY INFORMATION: On Tuesday, August 7, 1984, there was published in the **Federal Register**, 49 FR 31440, a proposed consent agreement with analysis In the Matter of Commodore Business Machines, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10–1 Availability of merchandise and/or service; § 13.180 Quantity; § 13.180–30 In stock; § 13.205 Scienfitic or other relevant facts. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1572 Availability of advertised merchandise and/or facilities; § 13.1710 Qualities or properties; § 13.1720 Quantity; § 13.1750 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Computer products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–8406 Filed 4–8–85; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3147]

Chevron Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: After a "Request For Termination Of Hold Separate Agreement" (Request) filed by a respondent in a divestiture order issued on October 24, 1984, had been placed on the public record for ten days and no comments had been received, the Commission reviewed the Request and concluded that the public interest warranted modifying Paragraph II(c) of the Order which provided that the Agreement To Hold Separate, attached to the Order as Appendix I, "shall continue in effect until such time as Schedule A Properties have been divested. . . ." Accordingly, the Matter was reopened and Paragraph II(c) revised to permit the Hold Separate Agreement to continue in effect until such time as Gulf's stock interest in Colonial Pipeline Company has been divested. The Commission held that the Hold Separate Agreement had accomplished its primary objectives with the divestitures of Gulf's refining and marketing assets in the Southeast and of its interest in Colonial Pipeline Company, and the potential harm resulting from the costs of continuing the Agreement outweighed any further need to maintain it in effect.

DATE: Consent Order issued on October 24, 1984; Modifying Order issued on March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Gerald T. Gregory L/301–22, Washington, D.C. 20580, (202) 634–4600.

SUPPLEMENTARY INFORMATION: In the Matter of Chevron Corporation, a corporation, and Gulf Corporation, a corporation. Codification appearing at 49 FR 45116 remains unchanged.

List of Subjects in 16 CFR Part 13

Gasoline, Mergers, Petroleum products, Trade practices

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

Before Federal Trade Commission

[Docket No. C–3147]

In the matter of Chevron Corporation, a corporation, and Gulf Corporation, a corporation. Order Modifying Decision and Order Issued October 24, 1984.

On February 21, 1985, respondent Chevron Corporation ("Chevron") filed a "Request For Termination Of Hold Separate Agreement" (Request"). Since Paragraph II(c) of the decision and order issued on October 24, 1984 ("the order") incorporates the Agreement To Hold Separate, which is attached to the order as Appendix I, the request, in effect, seeks modification of the order to terminate the Hold Separate Agreement. The Request was on the public record for ten days and no comments were received.

Paragraph II(c) of the order provides that the Agreement to Hold Separate "shall continue in effect until such time as the Schedule A Properties have been divested * * *." As the Request notes, the Hold Separate Agreement is not limited to the assets that Chevron is required to divest pursuant to the order but is applicable to all of Gulf's domestic oil and gas assets and operations. Chevron has now submitted divestiture applications covering all of the assets it is required to divest and the Commission has approved the divestitures with the exception of the divestiture of 51 percent of Gulf's interest in the West Texas Pipeline Company. The latter divestiture proposal is awaiting Commission action.

After reviewing respondent's Request, the Commission has concluded that the public interest warrants reopening the order and modifying Paragraph II(c) so that the Hold Separate Agreement will terminate on the consummation of the divestiture of Gulf's interest in Colonial Pipeline Company. The Commission has concluded that the potential harm resulting from the costs of continuing the Hold Separate Agreement outweighs any further need to maintain it in effect. The Commission is of the opinion that, with the divestitures of Gulf's refining and marketing assets in the Southeast and of its interest in Colonial Pipeline Company, the Hold Separate Agreement has accomplished its primary objectives. On the other hand, Chevron has demonstrated that the continuation of the Hold Separate Agreement, which is applicable to all of Gulf's domestic oil and gas assets and operations, is imposing considerable costs on Chevron and Gulf. These costs have been estimated to exceed $1 million a day and are being incurred because the Hold Separate Agreement prevents the realization of efficiencies that are expected to flow from integrating the operations of the two companies. Such efficiencies include those that can be achieved in combining the Chevron and Gulf work forces; increasing operating efficiencies and eliminating the duplication of functions resulting from overlapping operations in various areas; and combining desirable aspects of the technologies of the two companies. Chevron has also demonstrated that the Hold Separate Agreement is contributing to the loss of a considerable number of skilled employees who are difficult to replace and is adversely

affecting the morale and productivity of Gulf employees.

Accordingly, it is ordered that this matter be, and it hereby is, reopened, and that Paragraph II(c) of the Commission's order issued on October 24, 1984, be, and it hereby is, modified to read as follows:

* * * * *

(c) The Agreement to Hold Separate, Attached hereto and made a part hereof as Appendix I, shall continue in effect until such time as Gulf's stock interest in Colonial Pipeline Company has been divested, and Chevron and Gulf shall comply with all terms of said Agreement.

By the Commission. Commissioner Calvani voted in the negative.

Issued: March 13, 1985.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-8405 Filed 4-8-85; 8:45 am]

BILLING CODE 6750-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Increase in Maximum Permissable Interest Rates on Guaranteed Manufactured Home Loans, Homes and Condominium Loans, and Home Improvement Loans; Correction

AGENCY: Veterans Administration.

ACTION: Final regulations; Correction.

SUMMARY: In the Federal Register of Monday, April 1, 1985, (50 FR 12800), the VA (Veterans Administration) increased the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans were also increased. This action corrects an error in the publication.

EFFECTIVE DATE: March 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Nancy C. McCoy, Paperwork Management and Regulations Service (731), Office of Information Management and Statistics, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-2308).

SUPPLEMENTARY INFORMATION: In 50 FR 12801, dated Monday, April 1, 1985, in 36.4212(a)(3), the Veterans Administration inadvertently published 15½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home. This should be corrected to 15 percent simple interest per annum.

§ 36.4212 [Corrected]

Accordingly, § 36.4212(a)(3) is corrected by changing "15½ percent" to "15 percent".

Approved: April 4, 1985.

Nancy C. McCoy,

Chief, Directives Management Division.

[FR Doc. 85-8485 Filed 4-8-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-2814-8]

Approval of a Delayed Compliance Order Issued by the Pennsylvania Department of Environmental Resources to Brown Group Recreational Products, Inc., Hedstrom Division

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Brown Group Recreational Products, Inc., Hedstrom Division. The Order requires the company to bring air emissions from its metal surface coating facility in Bedford, Pennsylvania into compliance with certain regulations contained in the Federally approved Pennsylvania State Implementation Plan (SIP) by April 21, 1985. Because of the Administrator's approval, compliance with the Order by Hedstrom Division will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

EFFECTIVE DATE: This rule will take effect on April 9, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph Arena, Enforcement Policy & State Coordination Section (3AM21), Air Management Division, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, (215) 597-6553.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at: U.S. EPA, Region III, Air Management Division (3AM21), 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

SUPPLEMENTARY INFORMATION: On December 5, 1984, the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 49, No. 235, a notice proposing approval of a Delayed Compliance Order issued by the Pennsylvania Department of Environmental Resources to Brown Group Recreational Products, Inc., Hedstrom Division (hereinafter Hedstrom). The notice asked for public comments by January 4, 1985 on the EPA proposal.

No public comments were received by this office, therefore, the delayed compliance order issued to Hedstrom is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Hedstrom on a schedule to bring its metal surface coating facility in Bedford into compliance as expeditiously as practicable with Title 25, Pennsylvania Code, § 129.52, "Surface Coating Processes", a part of the federally approved Pennsylvania State Implementation Plan. The Order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Hedstrom to delay compliance with SIP regulations covered by the Order until April 21, 1985. The company is unable to immediately comply with these regulations. EPA has determined that its approval of the Order shall be effective April 9, 1985 because of the need to immediately place Hedstrom on a schedule which is effective under the Clean Air Act for compliance with the applicable requirements of the Implementation Plan.

List of Subjects in 40 CFR Part 65

Air pollution control.

(42 U.S.C. 7413(d), 7601)

Dated: April 2, 1985.

Lee Thomas,

Administrator.

PART 65—DELAYED COMPLIANCE ORDER

In consideration of the foregoing,

Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

By adding the following entry to the table in Part 65, in § 65.431:

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to Major Stationary Sources.

* * * * *

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Brown Group Recreational Products, Inc., Hedstrom Division.	Bedford, PA		Dec. 5, 1984	§ 129.52 of Title 25	Apr. 21, 1985.

[FR Doc. 85-8430 Filed 4-8-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 79-145; FCC 85-123]

Television Waveform Standards Concerning Horizontal and Vertical Blanking Intervals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends its rules to delete the limitation on the maximum durations of the vertical and horizontal blanking period during the transmission of video signals by television broadcast stations. This amendment is necessary to remove a rule which no longer serves a regulatory function and which restricts the broadcasting of certain historical tape recorded television programs and also the use of certain television program production equipment.

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Hank Van Deursen, Mass Media Bureau, Washington, D.C. 20554, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of television waveform standards concerning horizontal and vertical blanking intervals; BC Docket No. 79-145; FCC 85-123, FCC 85-123.

Adopted: March 14, 1985.
Released: March 22, 1985.

By the Commission.

Introduction

1. The Commission has under consideration a *Notice of Proposed Rule Making* (*Notice*) [1] in the above captioned matter and the comments filed in response thereto.[2] The *Notice* proposed to eliminate the maximun vertical and horizontal blanking interval standards from the Rules and make such standards available in an OST technical bulletin for good engineering practices. Vertical and horizontal blanking intervals are those periods during which synchronizing pulses are transmitted to control the vertical and horizontal scanning of the television picture. No picture information is transmitted during this time.

2. The Commission's Rules presently specify minimum and maximum timing values for both the horizontal and vertical blanking intervals. Maximum horizontal blanking is 11.44 microseconds and maximum vertical blanking is 21 lines (approximately 1335 microseconds). For several years, there has been a continuing problem with television broadcast signal waveforms exceeding the maximum values contained in the Rules. When this occurs, black borders may appear at the top and left hand side of the picture. Blanking interval width increases are inherent in much equipment used to process video signals and with some video source material.

Background/Comments

3. In 1979, the National Association of Broadcasters (NAB) recommended that the Commission not enforce the maximum vertical and horizontal blanking interval standards for a five year period. This would allow the broadcast industry and equipment manufacturers an opportunity to more fully investigate the problems associated with the blanking interval timing. The Commission adopted this temporary non-enforcement posture and is now in a position to render a final decision in this matter.

4. Most respondents to the *Notice* favored the proposal to remove the maximum vertical and horizontal blanking interval standards from the Rules. The comments indicated that there is a large amount of video material that would not meet either the present standard nor somewhat more liberal standards. This category of material includes instructional television material, some material from Electronic News Gathering efforts, and news footage of historic events. They asserted that this material is of interest to the viewing audience, but correcting such material would be very expensive. In some cases, even after extensive post-processing, some material may still not conform to the blanking intervals currently specified in the Rules.

5. The NAB stated that "the industry has been diligent in attempting to comply with the intent of the blanking rules. Since the proceeding began in 1979, substantial progress has been made by broadcasters and equipment manufacturers to correct the problem, except when there is involved certain archival program material. The heightened awareness of blanking standards, created by this proceeding, has served an important purpose."

6. Only one comment was received which opposed the removal of the standards on the premise that "resistance to the standards was based on the absence of available, reasonable priced equipment for monitoring the width and position of blanking signals." The commenter stated that he has developed an inexpensive monitoring device which will detect excessive blanking intervals. However, the cost of measurement equipment is not an issue in this proceeding because stations already do have monitoring equipment capable of making these measurements. Furthermore, measurement equipment does appear to be a factor affecting the underlying causes of the blanking interval problems.

Discussion

7. The five year hiatus in enforcement of the blanking interval standard has passed and it now appears that a

[1] Adopted on November 19, 1984, 49 FR 47638 (December 6, 1984).

[2] Comments were filed by: American Broadcasting Companies, Inc (ABC); CBS, Inc. (CBS); Richard LaSota (LaSota); Multimedia, Inc (Multimedia); National Association of Broadcasters (NAB); National Broadcasting Company, Inc (NBC); Public Broadcasting Service (PBS); Television Stations WNET, KOSA, WRAU, KCAU, WSAW, WTRF, WMTV, WAFB, WCTV, KGUN, KMTV, KICU, WAKR, WWTV, WWUP, WKRG (TV Licensees). No reply comments were filed.

marketplace approach is warranted. Incorrect blanking interval timing affects only the viewers of a particular station. Other co-channel and adjacent channel stations are not affected. So the standard is really one of on-channel quality, not interference. Furthermore, there is no indication in the record that non-enforcement of the blanking intervals standards has resulted in viewer dissatisfaction with TV pictures during this period.

8. Competition is keen among broadcasters and other video suppliers, and a strong incentive exists for each station to supply the best possible picture. However, market demands may dictate a tradeoff between blanking interval timing and choices of available programming. For example, much of the archival material may not meet the standards, but such programming may be of great interest to a station's viewing audience. Government regulations should not impede the airing of such material nor require that the material undergo expensive processing prior to airing. We are confident that the broadcasters will exercise good judgment and keep their audiences in mind when choosing and supplying programming. Therefore, it seems appropriate to remove the maximum blanking interval standards from the Rules.

9. Accordingly, the current maximum blanking interval standards will be designated as recommended limits. This will provide guidance to broadcasters, production houses, and manufacturers, and will permit judgments consistent with programming needs. We would hope that eventually the industry will set its own voluntary guidelines in such quality areas.

10. Regulatory Flexibility Final Analysis.

I. *Reason for action:* The current Rules prescribe transmission standards that cannot be met by broadcasters for several sources of program material. This action should eliminate that dilemma.

II. *The objective:* The Commission's action is designed to provide broadcast licensees with more freedom in choosing program material without the fear of violating FCC technical rules.

III. *Legal basis:* Action is proposed in accordance with sections 303 (g) and (r) of the Communications Act of 1934, as amended, which charges the Commission to encourage the most effective use of radio in the public interest.

IV. *Description, potential impact, and number of small entities affected:* The rule changes should favorably affect all television broadcast stations and viewers by eliminating technical rules that now restrict the transmission of certain video material, if the material exceeds the allowed horizontal or vertical blanking interval limits.

V. *Recording, recordkeeping, and other compliance requirements:* None.

VI. *Federal Rules which overlap, duplicate, or conflict with this Rule:* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:* None.

Paperwork Reduction Act

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Actions

12. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*)

13. Accordingly, it is ordered that Part 73 of the Commission's Rules is amended as set forth in the attached Appendix, to be effective upon adoption pursuant to section 5 U.S.C. s/s 553(d)(i). It is further ordered that this proceeding is terminated. Authority for the action taken herein is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

14. Further information on this proceeding may be obtained by contacting Hank Van Deursen, Mass Media Bureau, (202) 632–9660.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

Title 47 of the Code of Federal Regulations, Part 73 is amended as follows:

1. Section 73.699 Figure 6 would be amended by adding a new "Note" 19 to read as follows:

§ 73.699 TV engineering charts.

* * * * *

Notes

* * * * *

19 Maximum horizontal and vertical blanking intervals are recommended values only.

2. Section 73.699 Figure 7 would be amended by adding a new "Note" 12 to read as follows:

§ 73.699 TV engineering charts.

* * * * *

Notes

* * * * *

12 Maximum horizontal and vertical blanking intervals are recommended values only.

§ 73.4270 [Removed]

3. Section 73.4270 entitled *TV broadcast signals: Technical standards* is removed in its entirety.

[FR Doc. 85–7525 Filed 4–8–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Parts 73 and 76

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast station regulations in Parts 73 and 76 of the rules of the FCC. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: Effective April 9, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting.

47 CFR Part 76

Cable television.

Order

In the matter oversight of the radio and TV broadcast rules.

Adopted: March 28, 1985.
Released: April 4, 1985.

By the Chief, Mass Media Bureau:

1. In this *Order*, the Commission focuses its attention on the oversight of

its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) As part of the restructuring and reformatting of the broadcast rule book in 1979,[1] certain requirements pertaining to broadcast applications and reports to the FCC were removed from Subpart D of Part 1 of Title 47 to Subpart H of Part 73. In order to facilitate the change and to aid rule users in tracking the new rule section numbers and locations, cross references were left in Part 1 under each rule title to "See Section 73.3xxx" (the *new* rule number). A number of these transferred rules have been eliminated in Part 73, but the cross references have not been removed from Part 1. This is corrected with following deletion amendments:

(i) Section 1.547 Application for permission to use lesser grade operators, is deleted from Part 1 as a result of Section 73.3547 being removed in the Report and Order in Docket 20817, Radio Operator Licensing Program. 46 FR 35450, July 8, 1981;

(ii) Section 1.548 Application to operate by remote control, is deleted from Part 1 as a result of § 73.3548 being removed in the Report and Order in MM Docket 84–110, Operation of AM, FM and TV Broadcast Transmitters. 49 FR 47608, December 6, 1984;

(iii) Section 1.569 Applications for frequencies adjacent to Class I–A channels, is deleted from Part 1 as a result of Section 73.3569 being removed in the Report and Order in Docket 20642, Clear Channel Broadcasting in the AM Broadcast Band. 45 FR 43172, June 26, 1980.

(iv) Section 1.611 Financial report, is deleted from Part 1 as a result of § 73.3611 being removed in the Report and Order in BC Docket 80–190, Annual Financial Report of Broadcast Stations. 47 FR 13345, March 30, 1982. (See Appendix items 1, 2, 3 and 4.)

(b) Paragraph (a) of § 73.99, pertaining to presunrise and postsunset service for daytime stations, erroneously states ". . . Provisions are made for presunrise service and postsunrise service." The "postsunrise" service reference obviously should read postsunset.

Another inadvertency is remedied in paragraph (e)(4) of this rule section. In the Memorandum Opinion and Order in BC Docket 82–538,[2] this paragraph was revised to state that "Class III stations operating PSRA and PSSA are required to provide full protection to foreign Class II stations." It was meant, of course, to read ". . . foreign Class III stations." Corrections to these errors in the rule are made via this Order. (See appendix item 5.)

(c) In a Commission Order adopted August 24, 1982,[3] effective dates, long past, were removed from paragraphs (a) and (b) of § 73.561 Operating schedule; time sharing. When the rule appeared in the next edition of the Code of Federal Regulations, subparagraphs (b) (1) and (2) had been erroneously deleted. Apparently, this was due to miscrafting when the Order and rule change were given public notice in the Federal Register. A later correction was made but apparently missed, and the printing of the October 1984 edition Code of Federal Regulations was without the subparagraphs. Those subparagraphs, (b) (1) and (2), are reinstated herein. (See appendix item 6.)

(d) In the TV table of assignments, § 73.606, certain symbols may be used with the channel numbers to designate operational (ie.e., carrier frequency offsets) or service (i.e., commercial or noncommercial station) characteristics. The use of the asterisk (*) designates the channel is to be used for noncommercial educational broadcast stations only. Channel 10 in Silver City, New Mexico bears the asterisk symbol. But, it is erroneously designated. It is *not* a noncommercial educational channel, but is assigned for commercial stations. The asterisk is deleted via this Order. (See appenix item 7.)

(e) When the rule sections pertaining to multiple ownership were removed from the separate subparts for AM, FM and TV stations, they were combined into one rule applicable to all broadcast services and placed in Subpart H of Part 73, the rule subpart where all-service applicability pertains.[4] A cross reference to the former TV Multiple Ownership rule section in Subpart E, § 73.636, still exists in § 73.683 (c)(2). This cross reference in § 73.683 is revised to read, § 73.3555, Multiple Ownership's correct and current designation. (See appendix item 8.)

(f) In paragraph (b) of § 73.1675 Auxiliary antennas, a cross reference is made to the sections pertaining to modification of transmission systems and gives section number in the separate services' subparts. Modification of transmission systems was revised in 1982[5] by combining the rules for AM, FM and TV into one regulation for all services, designated § 73.1690, and placed in Subpart H of Part 73. The cross reference shown in § 73.1675 is corrected to refer the rule user to § 73.1690. (See appendix item 9.)

(g) In § 76.99, Grandfathering, the opening sentence cross references four other Part 76 rules sections, §§ 76.92, 76.94, 76.151 and 76.153. The Report and Order in Dockets 20988 and 21284 [6] eliminated §§ 76.151 and 76.153 from the rules. The cross references to them which remains in 76.99 are removed herein. (See appendix item 10.)

2. The Commission gives continuing review of its rules pursuant to section 610 of the Regulatory Flexibility Act of 1980. 5 U.S.C. 610. The purpose of the review is to determine if our rules impose a significant economic impact on a substantial number of small entities. Our rule evaluations in the period of January 1 to March 12 encluded 11 rule sections in Part 73, Subpart E of 47 CFR; and 31 rules sections in Part 73, Subpart H of 47 CFR.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

4. These amendments are implemented by authority designated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules, Parts 73 and 76 of the FCC Rules and Regulations are amended as set forth in the attached appendix, effective upon publication in the **Federal Register.**

7. For further information on this *Order,* contact Steve Crane, (202) 632–5414, Mass Media Bureau.

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[1] Order, In the Matter or Reregulation of Radio and TV Broadcasting. 72 FCC 2d. 534.

[2] 49 FR 17942, April 26, 1984.

[3] 47 FR 40170, September 13, 1982.

[4] Report and Order in Docket No. 20521, Multiple Ownership of AM, FM, TV, and CATV Stations. 49 FR 19482, May 8, 1984.

[5] 47 FR 8560, March 1, 1982.

[6] 45 FR 60136, September 11, 1980; 79 FCC 2d 663.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082, 47 U.S.C. 154, 303)

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

Appendix

PART 1—[AMENDED]

§ 1.547 [Removed]

1. 47 CFR 1.547 *Application for permission to use lesser grade operators* is removed in its entirety.

§ 1.548 [Removed]

2. 47 CFR 1.548 *Application to operate by remote control* is removed in its entirety.

§ 1.569 [Removed]

3. 47 CFR 1.569 *Applications for frequencies adjacent to Class I–A channels* is removed in its entirety.

§ 1.611 [Removed]

4. 47 CFR 1.611 *Financial Report* is removed in its entirety.

PART 73—[AMENDED]

5. 47 CFR 73.99 is amended by revising paragraphs (a) and (e)(4) to read as follows:

§ 73.99 Presunrise service authorization (PSRA) and Postsunset service authorization (PSSA).

(a) To provide the maximum uniformity in early morning operation compatible with interference considerations, and to provide for additional service during early evening hours for daytime-only stations, provisions are made for presunrise service and postsunset service. The permissible power to be assigned to presunrise or postsunset service authorization will not exceed 500 watts, or the authorized daytime or critical hours power (whichever is less).

* * * * *

(e) * * *

(4) Class III stations operating PSRA and PSSA are required to provide full protection to co-channel foreign Class III stations.

* * * * *

6. 47 CFR 73.561 is amended by adding paragraphs (b)(1) and (b)(2) to read as follows:

§ 73.561 Operating schedule; time sharing.

* * * * *

(b) * * *

(1) The licensee and the prospective licensee(s) shall endeavor to reach an agreement for a definite schedule of periods of time to be used by each. Such agreement shall be in writing and shall set forth which licensee is to operate on each of the hours of the day throughout the year. Such agreement shall not include simultaneous operation of the stations. Each licensee shall file the same in triplicate with each application to the Commission for initial construction permit or renewal of license. Such written agreements shall become part of the terms of each station's license.

(2) The Commission desires to facilitate the reaching of agreements on time sharing. However, if the licensees of stations authorized to share time are unable to agree on a division of time, the Commission shall be so notified by statement to that effect filed with the application proposing time sharing. Thereafter the Commission will designate the application for hearing on any qualification issues arising regarding the renewal or new applicants. If no such issues pertain, the Commission will set the matter for expedited hearing limited solely to the issue of the sharing of time. In the event the stations have been operating under a time sharing agreement but cannot agree on its continuation, a hearing will be held, and pending such hearing, the operating schedule previously adhered to shall remain in full force and effect.

* * * * *

§ 73.606 [Amended]

7. 47 CFR 73.606, *Table of Assignments,* is amended by removing the asterisk (*) designation from Channel 10+, under the community of Silver City in the New Mexico listing of TV channels.

8. 47 CFR 73.683 is amended by revising paragraph (c)(2) to read as follows:

§ 73.683 Field strength contours.

* * * * *

(c) * * *

(2) In connection with problems of coverage arising out of application of § 73.3555.

* * * * *

9. 47 CFR 73.1675 is amended by revising paragraph (b) to read as follows:

§ 73.1675 Auxiliary antennas.

* * * * *

(b) An application for a construction permit to install a new auxiliary antenna, or to make changes in an existing auxiliary antenna for which prior FCC authorization is required (see § 73.1690), must be filed on FCC Form 301 (FCC Form 340 for noncommercial educational stations).

* * * * *

10. 47 CFR 76.99 is revised to read as follows:

§ 76.99 Grandfathering.

The provisions of §§ 76.92 and 76.94 shall not be deemed to deprive a TV station whose signal was carried by a community unit prior to March 31, 1972, of the nonnetwork program exclusivity rights that such station had on March 30, 1972. However, such exclusivity rights shall extend only to simultaneous duplication of programming by lower priority television stations, unless the stations whose exclusivity rights are at issue is entitled to same-day network program nonduplication protection pursuant to § 76.94(b), in which case that station shall also be entitled to continued same-day nonnetwork program exclusivity.

[FR Doc. 85–8446 Filed 4–8–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 81

[PR Docket No. 84–760]

Restricted Radiotelephone Operator Permit (RP)

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Report and Order which was printed in the **Federal Register** on February 11, 1985 (50 FR 5590). The Appendix to the Report and Order inadvertently omitted reference to the requirements for coast stations in Alaska. This document is intended to correct the Report and Order to specifically reference these requirements.

FOR FURTHER INFORMATION CONTACT: Loretta J. Garcia, Private Radio Bureau, Aviation and Marine Branch, Washington, D.C. 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 81

Coast stations, Telephone.

Erratum

In the Matters of Amendment of Parts 81, 83 and 87 of the rules concerning requirements for Restricted Radiotelphone Operator Permits; PR Docket No. 84–760.

Released: April 3, 1985.

1. On January 30, 1985, the Commission released a Report and Order in the above-captioned proceeding, FCC 85–42, 50 FR 5590. In the Appendix, § 81.152(d) inadvertently omitted reference to the requirements for coast stations in Alaska. We are amending § 81.152(d) to specifically reference these requirements.

2. Accordingly, § 81.152(d) is corrected as set forth in the Appendix below.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

Section 81.152 is amended by revising paragraph (d) to read as follows:

§ 81.152 Operator required.

* * * * *

(d) Description of station:

	Minimum operator authorization
Public coast telegraph, all classes	T-2.
—Except A1 Morse under supervision of T1 or T2.	T-3.
—Except NB-DP under supervision of T1 or T2.	T-3, G or MP.
Coast telephone, all classes:	
—Exceeding 250 watts carrier power or 1,500 watts peak envelope power.	T-2 or G.
Except in Alaska regional and local area stations.	T-3, G or MP.
—250 watts or less carrier power or 1,500 watts or less peak envelope power operating on frequencies below 30 MHz.	T-3, G or MP.
Except in Alaska	None.
—250 watts or less carrier power or 1,500 watts or less peak envelope power operating on frequencies above 30 MHz.	None

* * * * *

[FR Doc. 85-8441 Filed 4-8-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 68
Tuesday, April 9, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Ch. X

[Docket Nos. AO–160–A62–RO2, et al.]

Milk in Middle Atlantic and Other Marketing Areas; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1004	Middle Atlantic	AO–160–A62–RO2
1001	New England	AO–14–A60
1002	New York-New Jersey	AO–71–A74–RO1
1005	Upper Florida	AO–356–A21
1007	Georgia	AO–366–A23
1011	Tennessee Valley	AO–251–A26
1012	Tampa Bay	AO–347–A24
1013	Southeastern Florida	AO–286–A31
1030	Chicago Regional	AO–361–A21
1032	Southern Illinois	AO–313–A32
1033	Ohio Valley	AO–166–A53
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A48
1040	Southern Michigan	AO–225–A36
1044	Michigan Upper Peninsula	AO–299–A23
1046	Louisville-Lexington-Evansville	AO–123–A52
1049	Indiana	AO–319–A33
1050	Central Illinois	AO–355–A22
1064	Greater Kansas City	AO–23–A55
1065	Nebraska-Western Iowa	AO–86–A42
1068	Upper Midwest	AO–178–A36
1075	Black Hills	AO–248–A18
1076	Eastern South Dakota	AO–260–A26
1079	Iowa	AO–295–A35
1093	Alabama-West Florida	AO–366–A2
1094	New Orleans-Mississippi	AO–103–A43
1096	Greater Louisiana	AO–257–A31
1097	Memphis	AO–219–A39
1098	Nashville	AO–184–A48
1099	Paducah	AO–183–A38
1102	Fort Smith	AO–237–A32
1106	Southwest Plains	AO–210–A44
1108	Central Arkansas	AO–243–A36
1120	Lubbock-Plainview	AO–328–A25
1124	Oregon-Washington	AO–368–A13
1125	Puget Sound-Inland	AO–226–A30
1129	Texas	AO–231–A52
1131	Central Arizona	AO–271–A25
1132	Texas Panhandle	AO–282–A35
1134	Western Colorado	AO–301–A18
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A4
1136	Great Basin	AO–309–A25
1137	Eastern Colorado	AO–326–A22
1138	Rio Grande Valley	AO–335–A30
1139	Lake Mead	AO–374–A9

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of Time for filing exceptions to proposed rule.

SUMMARY: This notice extends by 30 days the time for filing exceptions to a recommended decision issued March 15, 1985, concerning proposed amendments to the Middle Atlantic and other milk marketing orders. The recommended decision concerns proposals that were considered on the record of a public hearing held July 25–27, 1984, at Alexandria, Virginia. The request for additional time was made by a cooperative association.

DATE: Exceptions are now due on or before May 20, 1985.

ADDRESS: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued June 22, 1984; published June 27, 1984 (49 FR 26239).

Notice of Rescheduled Hearing: Issued July 3, 1984; published July 6, 1984 (49 FR 27769).

Recommended Decision: Issued March 15, 1985; published March 20, 1985 (50 FR 11171).

On April 1, 1985, the order regulating the handling of milk in the St. Louis-Ozarks marketing area was terminated. Therefore, any action taken after that date in regard to proposals pursuant to notices issued June 22, 1984 (49 FR 26239) and July 3, 1984 (49 FR 27769) will not apply to docket number AO–10–A56.

Notice is hereby given that the time for filing exceptions to the recommended decision issued March 15, 1985 (50 FR 11171), concerning proposals pursuant to notices issued June 22, 1984 (49 FR 26239) and July 3, 1984 (49 FR 27769) is hereby extended to May 20, 1985. The decision is based on the record of a public hearing held July 25–27, 1984, at Alexandria, Virginia, to consider proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and other marketing areas.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 602 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Ch. X

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, DC., on: April 4, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–8478 Filed 4–8–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain provisions relating to how much milk may be moved directly from farms to nonpool plants and still be priced under the order. The proposed suspension would remove the limits on such movements of milk during the month of April 1985. The action was requested by six cooperative associations that represent a substantial majority of the producers who supply the market. The cooperatives contend that the suspension is necessary to provide additional flexibility to allow efficient and orderly adjustments by market participants to charges in marketing conditions that will occur because of the termination of the adjacent St. Louis-Ozarks order effective April 1, 1985.

DATE: Comments are due not later than April 16, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building; U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant ot the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southern Illinois marketing area is being considered for the month of April 1985.

In § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Divisions, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not less than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures to make the suspension effective for April 1985.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove the limit on the amount of milk that may be diverted from pool plants to nonpool plants during the month of April 1985. The order now provides that during the month of April not more than 8 days of production of a producer may be diverted to nonpool plants. During the following months of May through July the order does not limit the amount of milk that may be diverted to nonpool plants.

The suspension was requested by six cooperative associations that requested a substantial majority of the producers who supply the market. The cooperatives indicate that the suspension is necessary to provide additional flexibility for market participants to adjust to changes in marketing conditions that will occur because of the termination of the adjacent St. Louis-Ozarks order effective April 1, 1985. When such order is terminated, a number of fluid milk plants in the St. Louis metropolitan area, and a substantial volume of producer milk associated with such plants, will become regulated under the Southern Illinois order. The cooperative associations who supply the fluid milk needs of the market expect that significant marketing adjustments will have to be made to accommodate to the structural changes in the market. They contend that a suspension of the diversion limits during April will provide market participants with a greater degree of flexibility in making adjustments to the marketing condition changes. They believe that the April through July period (there are no diversion limitations during May–July) will allow for adjustments to the termination of the St. Louis-Ozarks order to be made in an efficient manner.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Signed at Washington, D.C. on, April 4, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–8479 Filed 4–8–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain standards for regulating plants that are operated by cooperative associations under the Southwest Plains order. The proposed action for April through August 1985 would remove the requirements that certain plants operated by cooperative associations need to be located in the marketing area or in a county adjacent to the marketing area to become regulated under the order. The action was requested by Mid-America Dairymen, Inc., a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri that will become regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order is terminated effective April 1, 1985. The cooperative association contends that without the suspension costly and inefficient movements of milk would have to be made solely for the purpose of assuring that dairy farmers, who supply the fluid milk needs of southwest Missouri plants, will have their milk priced and pooled under the order.

DATE: Comments are due not later than April 16, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–2089.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultual Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of April through August 1985.

In § 1106.7(c), the words "located in the marketing area or in a county adjacent to the marketing area".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited because a longer period would not provide the

time needed to complete the required procedures to include the month of April in the suspension period.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The order currently provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the producer milk of members of a cooperative association is physically received at distributing plants. The proposed suspension would remove the requirement that cooperative association plants need to be located in the marketing area or in a county adjacent to the marketing area during the months of April through August 1985.

The action was required by Mid-America Dairymen, Inc., a cooperative association that operates plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri. The distributing plants in this area, and the supplies of producer milk associated with such plants, will become associated with the Southwest Plains order when the adjacent St. Louis-Ozarks order is terminated effective April 1, 1985. The cooperative association contends that during the spring and summer months there is a sufficient supply of direct-shipped milk available to furnish the fluid milk requirements of the distributing plants in southwest Missouri. Consequently, the cooperative association contends that without a suspension action, costly and inefficient movements of milk would have to be made solely for the purpose of assuring that dairy farmers, who constitute the source of supply for southwest Missouri distributing plants, will have their milk priced and pooled under the order.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

(Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674)

Signed at Washington, D.C. on: April 4, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–8480 Filed 4–8–85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

Criteria for an Extraordinary Nuclear Occurrence

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its regulations to revise the criteria for an "extraordinary nuclear occurrence" (ENO). If a nuclear incident were found by the Commission to be an "extraordinary nuclear occurrence," several legal defenses would be waived including the necessity of persons with damage claims to prove negligence. The proposed changes are designed to simplify the administrative criteria used by the Commission in making an ENO determination and to avoid the problems encountered by the Commission in applying the existing criteria to the accident at the Three Mile Island nuclear plant (TMI). These proposed changes will affect applicants for and holders of NRC licenses for production and utilization facilities and other persons indemnified as to such facilities.

DATE: The comment period expires on August 7, 1985. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given unless the comments are filed on or before that date.

ADDRESSES: All interested persons who desire to submit written comments or suggestions in connection with this proposed rule should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of all documents received may be examined and copied in the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: H.T. Peterson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427–4578.

SUPPLEMENTARY INFORMATION:

I. Background

In the event of a nuclear incident, claims for injuries or damages can be brought against the plant licensee and other parties considered responsible for the incident. The Price-Anderson provisions of the Atomic Energy Act (AEA) of 1954, as amended, (section 170) provide a system of private insurance and electric utility funds totaling over $560 million to pay pay public liability claims. One of the principal obstacles to a claimant's recovery for injuries or damages could be the necessity for the claimant to prove negligence on the part of the defendants or the absence of contributory negligence on the part of the claimant. Congress attempted to remove this obstacle in 1966 by amending the Price-Anderson Act to require the waiver of certain defenses by an indmnified person when the nuclear accident magnitude "triggered" the ENO criteria.

When the Commission determines that a nuclear incident is an "extraordinary nuclear occurrence" within the meaning of the Act and the Commission's regulations, the waiver of defenses provisions contained in the insurance policies and indemnity agreements implementing the Price-Anderson system are activated. As provided by section 170n(1) of the Atomic Energy Act of 1954, as amended, the waived defenses include:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified,

(ii) Any issue or defense, as to charitable or governmental immunity, and

(iii) Any issue or defense based on any statute of limitation if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than twenty years after the date of the nuclear incident.

The waivers of defenses, once triggered by an ENO determination by the Commission, relieve the claimant of having to prove negligence by a defendant and of having to disprove defenses such as contributory negligence. Whether or not an ENO is declared, however, a claimant would still have to prove: (a) Personal injury or damage, (b) amount of monetary loss, and (c) the causal link between the claimant's loss and the radioactive material released.

The term "extraordinary nuclear occurrence" is defined by section 11(j) of the Atomic Energy Act as follows:

The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted

or probably will result in substantial damages to persons offsite or property offsite.

This provision clearly calls for a two-pronged determination: (a) Substantial offsite release or substantial offsite radiation, and (b) actual or prospective substantial offsite damages. This section also requires the Commission to "establish criteria in writing" for application of these tests to specific events.

The Commission's present regulations were established in 1968 (33 FR 15998) and are found in 10 CFR 140.84 and 140.85. Consistent with the statutory definition, for the Commission to determine that there has been an ENO, the Commission must find that both substantial releases of radioactive materials or substantial offsite doses *and* substantial injury or substantial damages have occurred (both Criterion I and Criterion II must be met). The language of the regulation, especially that related to Criterion I, is rather technical and precise.

Criterion I

Criterion I relates to whether there has been a substantial discharge or dispersal of radioactive material offsite, or whether there has been a substantial level of radiation offsite. Criterion I calls for such a finding when radioactive material is released from its intended place of confinement or radiation levels occur offsite and *either* of the following findings are also made:

a. That one or more persons offsite were, could have been, or might be exposed to radiation or to radioactive material, resulting in a dose or in a projected dose in excess of one of the levels in the following table:

TABLE I.—TOTAL PROJECTED RADIATION DOSES

Critical organ	Dose (rems)
Thyroid	30
Whold body	20
Bone Marrow	20
Skin	60
Other organs or tissues	30

In measuring or projecting doses, exposures from the following types of radiation shall be included:

(1) Radiation from sources external to the body;

(2) Radioactive material that may be taken into the body from air or water; and

(3) Radioactive material that may be taken into the body from its occurrence in food or on terrestrial surfaces.

or

b. (1) Surface contamination of at least a total of any 100 square meters of offsite property has occurred as a result of a release of radioactive material from a production or utilization facility and such contamination is characterized by levels of radiation in excess of one of the values listed in column 1 or column 2 of the following table, *or*

(2) Surface contamination of any offsite property has occurred as the result of a release of radioactive material in the course of transportation and such contamination is characterized by levels of radiation in excess of one of the values in column 2 of the following table:

TABLE II.—TOTAL SURFACE CONTAMINATION LEVELS [1]

Type of emitter	Column 1 Offsite property contiguous to site; owned or leased by a person with whom an indemnity agreement is executed.	Column 2 Other offsite property
Alpha emission from transuranic isotopes.	3.5 microcuries per square meter.	0.35 microcuries per square meter.
Alpha emission from isotopes other than transuranic isotopes.	35 microcuries per square meter.	3.5 microcuries per square meter.
Beta or gamma emission.	40 millirads/hour at 1 cm. (measured through not more than 7 milligrams per square centimeter of total absorber).	4 millirads/hour at 1 cm. (measured through not more than 7 milligrams per square centimeter of total absorber).

[1] The maximum levels (above background), observed or projected, 8 or more hours after initial deposition.

If Criterion I is satisfied, Criterion II must then be applied.

Criterion II

Criterion II is satisfied if *any* of the following findings is made:

(1) The event has resulted in the death or hospitalization, within 30 days of the event, of five or more people located offsite showing objective clinical evidence of physical injury from exposure to the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material; *or*

(2) $2,500,000 or more of damage offsite has been or will probably be sustained by any one person, or $5 million or more of such damage in total has been or will probably be sustained, as the result of such event; *or*

(3) $5,000 or more of damage offsite has been or will probably be sustained by each of 50 or more persons, provided that $1 million or more of such damage in the aggregate has been or will probably be sustained, as the result of such events.

The term "damage" refers to damage arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material, and shall be based upon estimates of one or more of the following:

(1) Total cost necessary to put affected property back into use,

(2) Loss of use of affected property,

(3) Value of affected property where not practical to restore to use,

(4) Financial loss resulting from protective actions such as evacuation appropriate to reduce or avoid exposure to radiation or to radioactive materials.

II. Problems in Application

The accident at the Three Mile Island Nuclear Power Station, Unit 2, on March 29, 1979 uncovered several problems in applying the existing ENO criteria in 10 CFR 140.84 and 140.85. The Commission's determination that the accident at TMI was not an "extraordinary nuclear occurrence" was published in the **Federal Register** on April 23, 1980 (45 FR 27590). This determination was based in part on NRC staff report NUREG–0637, "Report to the Nuclear Regulatory Commission from the Staff Panel on the Commission's Determination of an Extraordinary Nuclear Occurrence (ENO)", dated January 1980. This report is available for inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, DC. A single copy of the report NUREG–0637 may be obtained free upon request from the Nuclear Regulatory Commission, Publication Services Section, Washington, DC 20555.

Basically, there are problems with the existing ENO criteria. These problems are:

1. Several of the dose criteria for "substantial releases" in the present regulation were formulated in part to be consistent with the then effective Protective Action Guides. Since 1968 proposed Protective Action Guides have been reformulated at lower dose levels.

2. The current Criterion II for "substantial injury" requires objective clinical evidence of radiation injury. However, tests for evidence of such injury are not necessarily conclusive proof of radiological injury. For example, psychological stress can manifest some physical symptoms similar to those associated with acute radiation injury.

3. Monetary damages in Criterion II were difficult, if no impossible, to

evaluate accurately in a timely manner. For example, in the ENO determination for the Three Mile Island Accident, compensation costs such as payments for evacuation were evaluated and tabulated. However, many damages, such as diminution of property values and business losses, required court adjudication before the proper compensation could be awarded.

III. Proposed Criteria

The Commission is proposing for comment three different options for determining whether an accident was an extraordinary nuclear occurrence. The first and second options retain the structure of the existing criteria and contain explicit criteria for both substantial releases and substantial damages. These options employ estimates of offsite doses and ground contamination as indicators of substantial releases but have separate criteria for substantial damages. These two options also seek to avoid the measurement problems encountered in applying the present criteria for "substantial damages" by focusing the criteria on costs which can be readily counted or estimated. The first two options differ in that the Commission is proposing alternative wording of these criteria for public comment.

The Commission is also interested in obtaining public comments on a third option for defining an ENO. This third option represents a new and arguably more simplified approach to arrive at ENO criteria which could be readily evaluated following a nuclear accident. This option focuses on establishing that a major release of radioactive materials has occurred with concomitant high offsite radiation levels or contamination. It does not require that doses to individuals be evaluated, nor does it require that property damage estimates or evacuation characteristics be evaluated. Further, this criterion for substantial releases does not require the NRC staff to evaluate exposure conditions such as occupancy time or building shielding factors for actual or hypothetical individuals and, consequently, would simplify the data collection and analysis following an accident. Thus, this option may be viewed as more straight forward than the other option. It allows for direct measurement of discharge of material or radiation levels, and by virtue of the strong causal relation between release of radionuclides and damages, it defines, by direct measurement, the conditions under which the Criterion II requirement of substantial damages is met. Therefore, its intent is that procedural barriers to a rapid determination should be minimized.

Option 1

Criterion I is a mechanism for determining that a substantial release of radioactive material or radiation offsite has occurred. Currently Criterion I specifies a 20-rem (0.2-sievert)* whole body dose to one person offsite with higher values for specific organs. The proposed regulation would lower these levels to a 5-rem whole body dose with correspondingly lower organs doses. This proposed modification has been selected to be numerically consistent with Protective Action Guides proposed by the Enivronmental Protection Agency[1] and those issued by the Food and Drug Administration.[2] This ensures that any nuclear accident which would have warranted protective actions will be found to involve a substantial release of radioactive materials which satisfy the first condition for an ENO determination.

The proposed dose levels for Criterion I, which would define levels of "substantial releases or substantial offsite doses" for screening purposes, are in the range of the occupational dose limits and hence could be regarded as too low to be viewed as being "substantial." However these doses criteria are substantially above the doses to the general public expected from normal operation of NRC-licensed facilities as limited by § 20.105 of 10 CFR Part 20 and, in that sense, constitute criteria for "substantial releases."

The words "* * * one or more persons offsite were, could have been or might be exposed * * *" in the current criterion would be replaced with the proposed words: "* * * one or more persons offsite were or will probably be exposed * * *" This proposal will remove the necessity to evaluate highly improbable "might have been" conditions in favor of conditions which would be more likely to occur.

The surface contamination levels in Criterion I will not be changed as those levels are consistent with proposed emergency response levels. The existing procedures in § 140.84(b) are inexpensive and can be performed rapidly. Although more sophisticated measurement techniques are available and specific radionuclide levels could be measured, the existing simpler tests provide adequate indication of contamination levels for an ENO determination.

Criterion II, which defines substantial damages, would be changed extensively. Instead of the present criterion based upon the total monetary worth of damages or clinical evidence of radiation injury, the proposed Criterion II for the amount of damages represents items for which information is readily available within the time frame for an ENO determination. For each of the monetary requirements, the total valuation is assumed to be equivalent to a loss of $2.5 million. This value is in the present ENO criterion as the amount of loss to a single individual which would constitute an ENO. The Commission no longer believes it necessary or useful to specify different amounts of monetary damages depending upon the number of people affected.

Criterion II (1) accounts for human injury. One alternative that the Commission is considering would replace the current criterion for clinical injury to 5 or more people with a requirement that 5 or more receive radiation doses which are in the range that would produce symptoms of "radiation sickness." For the purpose of this evaluation, clinical findings of radiation injury in the current criteria would not be required, only a showing that five or more people received doses in excess of 100 rads (1 Gy).* This is expressed in rads because the unit of dose equivalent (rem or sievert) requires a dose quality factor (QF) be used. In the range of doses which could cause acute injury such as the 100-rem (1-sievert) dose, the appropriate quality factor is dependent upon the specific biological end point.

In evaluating the doses for defining "substantial injury", the Commission intends that the methodology used for the evaluations be realistic rather than overly conservative. Parameters and models used in Regulatory Guide 1.109[3] are suitable for this purpose to the extent that they apply to accident conditions.

In this proposal, the present monetary values for property damage in the

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* A sievert (Sv) is the SI unit of dose equivalent: 1 Sv = 100 rem; 1 rem-centisievert (1 cSV) or 0.01 sievert.

[1] Environmental Protection Agency, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" EPA Report EPA-520/1-75-001 (Revised June 1980).

[2] Food and Drug Administration "Accidental Radioactive Contamination of Human Food and Animal Feeds: Recommendation for State and Local Agencies," published in the Federal Register on October 22, 1982 (47 FR 47073).

* Gray is the SI unit of absorbed dose. 1Gy = 100 rads; 1 rad = 0.01 gray.

[3] Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR Part 50, Appendix I". Available from Director, Division of Technical Information and Document Control, USNRC, Washington, DC 20555.

existing Criterion II would be replaced by things that could be readily counted or estimated within a relatively short time following an accident, such as tax assessments, numbers of people unemployed, and numbers of people evacuated. In Criterion II (2), the assessed value of property requiring decontamination is used as an index of damage. Criterion II (3) is based upon an assumed loss (to the person directly affected and others) of $100 per person-day of lost employment. In Criterion II (4) a cost of $25 per person-day for evacuees is used to arrive at the number of evacuees equivalent to the $2.5 million loss.

Option #2—Commissioner Asselstine's Proposals

Commissioner Asselstine has proposed alternatives to criteria for defining substantial releases and for specifying substantial injury. In Criterion I, in place of the change proposed in Option #1 for redefining substantial releases, Commissioner Asselstine would prefer that, instead of the present Part 140 wording: * * * one or more persons were, could have been or might be exposed * * *," the text would read:

"* * * a person or persons on or near any site boundary throughout the duration of the accident * * * *"

This permits the Commission to make the ENO evaluation based upon the estimated dose to an individual who possibly was at or near the site boundary throughout the course of the accident. As was the case with Option #1, this proposal also eliminates the uncertain "might have been" condition and employs the proposed revised dose criteria.

An alternative criterion for defining substantial injury has been proposed by Commissioner Asselstine. This alternative represents a change from using acute injury, such as in the present criterion for "objective clinical evidence of radiation injury" to five people or the death of the five people, or using a high dose to a few exposed individuals such as the 100-rem (1 sievert) dose to five people proposed in Option #1. Option #2 would use a requirement that a 100,000 person-rem (1,000 person-sieverts) collective dose delivered to the population within fifty miles as only indication of the potential impact of the accident on the surrounding population. This is consistent with findings that the latent effects of a serious nuclear accident could far outweigh the observable acute affects.

The proposed changes to the criteria for substantial damage are those proposed in Option #1.

Option #3—Commissioner Bernthal's Proposal

The rule presented as Options #1 and #2 resemble the existing ENO criteria in 10 CFR Part 140, Subpart E in several respects. The proposed organization is similar in that separate criteria are retained for substantial releases and doses and for substantial injury or damage. Both sets of criteria require the evaluation of doses to people. This might require that data on occupancy times, food comsumption, and movement be collected for those people living in the immediate vicinity of the facility or accident site. Both Option #1, Option #2, and the existing criteria require enumeration and valuation of damages. Although these options restrict the damages that the Commission must consider to those which can be more readily evaluated, the time and effort required for such an analysis could still be large. Moreover, damage costs or values could be required for property other than taxable property such as municipal utilities, churches, and schools. Although Option #1 and Option #2 would rectify a number of the problems with the existing ENO criteria, they do not represent a radical departure from them and fail to solve totally the problems associated with evaluation of damages.

The statutory definition of an ENO permits the Commission to make a definition that an ENO has occurred if there have been substantial releases of radioactive materials or substantial offsite doses which have resulted or will probably result in substantial injury or substantial damages. The current criteria and the revisions proposed above place more emphasis on releases of radioactive materials "which have resulted" in substantial injury or damage and thus require a detailed enumeration of such injuries or damages as have occurred. Option #3 proposed by Commissioner Bernthal suggests a different approach to decide whether a nuclear accident is an extraordinary nuclear occurrence in that it emphasizes the "will probably result" aspect in dealing with substantial injury or damages. Rather than requiring enumeration and evaluation of actual damages and identification of actual injuries, the Option #3 simplifies the Commission's task to identifying those conditions which could lead to injury or damages.

The ENO criteria in Option #3 depart from the two-tiered approach which first requires a finding that substantial releases (or doses) occurred and then determining that substantial injury or damages resulted. Instead, one set of criteria is given for the magnitude of releases and doses that the Commission believes will satisfy the conditions for both substantial releases and will probably result in injury or substantial damages.

A principal basis of an ENO determination is that an event occurred which released radioactive materials in such quantities that the event is clearly "extraordinary" compared to normal operation. This provides the threshold level to ensure that the waivers of defenses and other legal provisions of the Price-Anderson amendments of 1966 are not activated as a result of minor expected operational occurrences. Options #1 and #2 and the present criteria for substantial release set this threshold at a low level to provide a "trigger" for identifying events which might be classed extraordinary nuclear occurrences. Section 140.81(a) of 10 CFR Part 140 clearly states that the present criterion is below that where substantial injury or damage would result. This is also true for the proposed revisions especially as the numerical criterion for substantial releases is less than in the existing Part 140.

For Option #3, a release of radioactive materials which results in doses or dose rates offsite of a magnitude equal to or greater than the proposed criterion will suffice to demonstrate that substantial releases of offsite doses have occurred and that substantial damage will probably occur. Enumeration of actual damages is not required to satisfy the criterion. Based upon the experience with the ENO determination for the Three Mile Island accident, this simplification would be of great value to a prompt ENO determination. The Commission believes that such simplification warrants the issuance of this novel proposal for public comment.

Of the three conditions associated with Option #3, Conditions (a) and (b) apply primarily to accidents at commercial light-water reactors. Condition (a) applies to surface contamination which would result from deposited radioactive materials from serious accidents releasing particulates or semi-volatile materials. Condition (a) is considered a threshold for damage requiring extensive decontamination. Damage requiring interdiction or damage resulting in significant harm to people (early injuries, early deaths and latent effects) is considered well above this threshold and, therefore, is adequately covered by this condition. Condition (b) uses a 24-hour integrated dose of 10 rad (0.1 gray) as a measure of the dose which could be received by an

individual from releases including those from accidents from which only the noble gases are released. This dose criterion does not use the dose received by a specific individual or group of individuals. Rather, it is the dose which could have been received during the duration of the accident. The values of these conditions were selected to be far above doses or exposure rates which could occur from normal operation under existing radiation protection standards.

Commissioner Bernthal's proposal (Option #3) relies on the "will probably occur" aspect of the statutory ENO definition. It should be noted that this option would trigger the waivers of defenses and other resultant actions of an affirmative ENO determination without first having to establish that substantial injuries or damages have actually occurred. The criterion in Option #3 should ensure that an affirmative ENO determination will be reached in any situation which would give rise to substantial injury or damage, and, conversely, that it would be difficult to exceed the criterion in situations where accident consequences were minor. This should provide the threshold intended by the ENO concept.

IV. Petition for Rulemaking

In a petition (PRM–140–1) to the NRC, the Public Citizens Litigation Group and Critical Mass Energy Project requested that the accident at the Three Mile Island Nuclear Station Unit No. 2 be found to be an ENO. This portion of the petition was considered as part of the ENO determination already initiated by the Commission. The Commission later determined (as published in the **Federal Register** on April 23, 1980 [45 FR 27590]) that the Three Mile Island Accident was not an ENO as defined in the Atomic Energy Act and the Commission's regulations.

The petitioners also requested that the Commission make the criteria for determination of an ENO more in line with the intent of Congress. Notice of receipt of the petition and a request for public comment were published in the **Federal Register** on August 28, 1979 (44 FR 50419). One public comment was received regarding the ENO criteria. The commenter, an official of a nuclear utility, believed that the current criteria for determining an ENO are reasonable. The commenter stated that Congress intended that the waiver of defenses be limited to incidents resulting in significant injury or loss and that the current criteria are consistent with this. The commenter also believed that lowering the threshold for an ENO would lead to higher premiums for insurance coverage and could at some point endanger the availability of insurance coverage.

The Commission believes that the existing ENO criteria are consistent with the Atomic Energy Act definition of an ENO. However, based upon the experience during the Three Mile Island ENO determination, the Commission is proposing revised ENO criteria which are more practicable than the present regulation. Because the proposed regulations revise the standards against which an ENO determination will be made, the PCLG–CMEP petition for revised ENO criteria is granted in part.

The Commission believes that none of the proposed criteria will affect insurance premiums. During the 1966 Congressional hearings on the ENO, representatives of the insurance industry testified[4] that experience with claims would be the principal determinant of insurance premiums and that institution of the waivers of defenses would not be expected to have any effect on premiums.

The proposed modifications to the ENO criteria would not have changed the outcome of the ENO decision for the Three Mile Island accident. That accident would not have exceeded the proposed dose criteria or the surface contamination criteria and, consequently, would not have been found to be an ENO under existing or any of the proposed regulations.

Additional Comments of Commissioner Bernthal

Although the proposed criteria for an ENO in Option 1 are improvements to those currently in Part 140, substantial problems remain, problems that would be largely eliminated by the inherent simplicity of Option 3. The basis of Option 3 is the definition of two simple, objective dose measurements that directly satisfy the requirement of Criterion I; i.e., they are a measure of "Substantial Discharge of Radioactive Material or Substantial Radiation Levels Offsite." Moreover, these two measures are sufficiently correlated with "Substantial Damages to Persons Offsite or Property Offsite" (the definition of Criterion II) that there is no need for further considerations in order to satisfy Criterion II. For the special case of release of radionuclides that produce little or no gamma radiation, Option 3 here incorporates, with minor clarifying modifications, the relevant part of the existing rule.

In justifying this approach, it is useful first to consider some of the specific problems in Option 1. Second, the characteristics of damages to people and property must be considered, in order to establish what constitutes "substantial" damages. Finally, analyses which correlate "substantial damages" with the measures of radionuclide release recommended here will be discussed.

Option 1 of the proposed Part 140 rule is evidently complicated, and unnecessarily so. Demonstrating that the criteria for an ENO have been met may be difficult under Option 1, and the proposed rule itself suffers from inconsistences. For example, with reference to:

A. Criterion I (Defined as "Substantial Discharge of Radioactive Material or Substantial Radiation Levels") Part (a):

- In order to "measure" Part (a), one must be able to track two paths: the path of the persons at risk and the path of the plume of radionuclides. It is the intersection of these two paths that will determine the dose to persons, but the two pathways may never be known well enough to make a reliable determination of dose. (Doses cannot be measured after the fact.)
- It is doubtful one would know the compositions of the plume (radioactive cloud) in terms of radionuclides, particle sizes, and chemistry, sufficiently well to rely on them for calculating the critical parameters, i.e., damage to human beings and the dose to specific human organs.
- Since persons must actually be exposed to meet this criterion (e.g., 15 rems (0.15 sieverts) to the thyroid), it is a measure of exposure and possible damage (cf. Criterion II), not a measure of discharge or radiation level. Must people be present before a discharge or radiation level threshold can be established? [This problem is also addressed in the proposed revision to Criterion I(a) found in Option 2, but the problem of identifying the intersection of the two pathways remains.]

B. Criterion I Part (b)(1):

- For nuclear power plants, the breakdown into two alpha-emission groups is unnecessary.
- It is not clear whether *each* of the 100 square meters must be contaminated in excess of those levels in the table, or whether there need only be *some* contamination evident over 100 contiguous square meters. In the latter case, a single localized pocket or object of radioactivity could cause the criteria for an ENO to be met, even though the

[4] Testimony of D.C. Thomas with E.A. Lowie, R. Fisher, L. Senger, W.M. Smith and J.H. Merritt, "Proposed Amendments to Price-Anderson Act Relating to Waiver of Defenses," Hearings before the Joint Committee on Atomic Energy, 89th Congress, June, 1966. Superintendent of Documents, GPO 1966, page 120.

median and modal contamination per square meter might be very low.

C. Criterion II (Defined as "Substantial Damages to Persons Offsite or Property Offsite") Part (1):

• This is the only criterion for substantial radiation damage to persons, and the threshold is very high. Consider, for example, that the exposure of 5,000 people to 80 rads (0.8 grays) each would still fall below the threshold criterion for radiation damage to persons.

• If four persons were exposed to 600 rads each (6 grays) (lethal dose), the criterion would not be met.

D. Criterion II Part (2):

• The valuation itself of taxable property could be time-consuming and cumbersome, and leaves open the question of how one would quickly establish the value of items other than taxable property (e.g., cemeteries, municipal sewer systems, churches). The ENO finding must be made within a reasonable period of time.

E. Criterion II Part (3):

• An "Employment Loss" criterion could act as a disincentive for employees to return to work or for employers to require return to work. In any case, such numbers may in practice be difficult to measure.

F. Criterion II Part (4):

• This criterion depends more on the declaration of a general emergency than on damage to persons. There may well be declarations of general emergencies (with accompanying evacuation) without any release of radionuclides. The criterion could act as an incentive (or disincentive) to declaring a general emergency. There could also be an incentive to stay away from home in order to contribute to the threshold for waiving defenses.

In summary, it seems clear that Option 1 is so flawed as to call into question its practicality and applicability in any realistic circumstance. On the other hand, to demonstrate the suitability of an alternative, Option 3, it is important to establish a realistic definition of "substantial damages" to persons and property, and to relate that definition to a readily measurable radiological release.

Radiological releases from nuclear power plants under accident conditions are expected to fall into two categories: (1) Releases characterized by a mix of particulates, volatiles, and gases; and (2) releases consisting principally of noble gases (Xe, Kr). For the first category, significant contamination of property would very likely be evident and dominant long before direct health effects are determined to be present and would therefore represent a conservative and early indicator of harm.

Literature[1] on the subject suggests a hierarchy of "damage thresholds" that can be reasonably correlated with dose rates in the case of property, and with integrated doses in the case of persons. For example, the literature suggests readily measurable criteria as follows, in order of increasing severity: (1) Damage not requiring decontamination, such as that to milk and crops; (2) damage requiring decontamination; (3) damage requiring interdiction; i.e., physical isolation and exclusion of the public from contaminated areas for an indefinite period of time; (4) early injuries; and finally, (5) early fatalities.

Latent (cancer) fatalities or genetic effects are not included in such a tabulation because neither has a "threshold"; both are normally treated in a probabilistic fashion. Moreover, the incidence of these important latent health effects is characterized by doses well above the threshold for decontamination. The first item (milk and crops), on the other hand, involves relatively low cost damages (e.g., contaminated milk and crops are purchased and disposed of) and having costs that are unambiguous (e.g., the cost of buying milk and disposing of it can be clearly documented). Thus, there is little reason to set the threshold of "significant" damage this low.

On the other hand, costs become much more significant when decontamination becomes necessary. Decontamination may involve repaving roads, putting new roofs on homes, and deep plowing of farm lands and/or soil removal. Such costs very quickly would escalate to many millions of dollars—certainly "significant" as defined in this proposed rule. Costs involved in interdiction are still higher. Thus, a reasonable threshold to establish "significant damages" to property for ENO purposes is that level of damage which requires decontamination.

The remaining question is whether the "decontamination threshold" for significant damage correlates with an easily measurable dose-rate or integrated dose. As a guideline, studies[2] have proposed that decontamination should be required if the integrated dose over 30 years is expected to be greater than about 25 rem (0.25 sieverts). For a representative mix of radionuclides such as that expected to be released in an accident, such an integrated long-term dose would be indicated by 10 millirad/hr (0.10 milligray/hr) measured at 1 meter from the ground surface within a few hours after the release. Dose rates substantially higher than this would require interdiction, and could lead to significant latent and genetic effects and even risk of early injury or death.

Of course, the relation between the damage measures described above and the doses at various offsite locations are a function of variables such as meteorological conditions, plume characterizations, population distribution, and isotopic mixes of radionuclides. Specifically, studies show that:

1. Surface contamination dose rate is a good general dose measure—it correlates well with damage measures.

2. For a wide variation of accident conditions, the postulated decontamination threshold dose rate of 10 millirad/hr (0.10 milligray/hr) covers cases where costs of decontamination would be significant (i.e., at least a few million dollars).

3. For virtually all conceivable accident conditions, the threshold rate of 10 millirad/hr (0.10 milligray/hr) would envelop interdiction and all health effects (cancers, genetic effects and early casualties). The exception is the case of release of noble gases only. This case is addressed in category 2, described below.

4. TMI–2 accident releases resulted in surface contamination dose rates well below the 10 millirad (0.10 milligray/hr) threshold.

5. Accidents characterized by containment building failure (other than basemat melt-through) all are expected to result in peak surface dose rates well above 10 millirad/hr (0.10 milligray/hr).

6. Accidents characterized by no containment building failure all are expected to result in peak surface dose rates well below 10 millirad/hr (0.10 milligray/hr).

For the second category of release, that of only noble gas release, there is no lasting ground contamination and the

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[1] a. Food and Drug Administration, Emergency Protective Action Guides, Federal Register, Vol 47, #205, October 22, 1982, [47 FR 47073].

b. U.S. Nuclear Regulatory Commission, "Reactor Safety Study—An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants," WASH–1400 (NUREG–75/014), Appendix 6, October 1975.

c. Recommendations of the International Commission on Radiological Protection, Report #9, September 1965.

d. Federal Radiation Council Staff Report #5, 1964, "Background for Development of Radiation Protection Standards."

e. Medical Research Council of Great Britain, 1975, "Criteria for Controlling Radiation Doses to the Public after Accidental Escapes of Radioactive Material," Her Majesty's Stationary Office.

[2] a. Ibid. [2] b.

b. U.S. Nuclear Regulatory Commission, "Overview of the Reactor Safety Study Consequence Model" (NUREG–0340), October 1977.

damage to persons as a consequence of plume exposure dominates. An appropriate threshold dose for damage in this case can be as low as 10 rads (0.10 gray) integrated over 24 hours, since a noble gas plume passage is highly likely to be concluded within a few hours. This dose can be considered substantial since it is twice the value that triggers Protective Action as established by the FDA and the EPA.

Key to the entire approach suggested here is the fact that the proposed threshold surface contamination dose rate can be easily measured and confirmed by NRC shortly after an accident; the integrated dose would be monitored by the network of 40–50 TLD's located at each reactor site. (Needless to say, adequate dosimetry equipment in the vicinity of nuclear power plants is essential.)

For completeness, Criterion (c) has been included to cover the special cases where a radionuclide release might *not* involve significant gamma radiation, but might instead produce surface contamination by alpha and/or beta radiation emitters. Such hypothetical releases will be limited to events that might be associated with transportation of nuclear materials, operation of certain non-power plant reactor facilities, or operation of certain other special production and utilization facilities. Criterion (c) in Option 3 is taken directly from 10 CFR 140.84(b)(2) with minor clarifying modifications. The footnotes in that part of the existing rule have also been omitted because they are subject to misinterpretation and appear to be unnecessary.

In summary, radionuclide releases are sufficiently correlated with expected damage from such releases to establish a causal relationship between Criterion I and "Substantial Damages to Persons Offsite or Property Offsite." Therefore, no Criterion II as such is needed. The expected correlation between Criterion I and "substantial damages" suggests that the advantages to this approach far outweigh the disadvantages.

Paperwork Reduction Act Statement

The proposed rule contains no new information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule could affect NRC licensees of production and utilization facilities and the nuclear liability insurance underwriting pools. The companies that own the production and utilization facilities and the insurance pools do not fall within the definition of a small business found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the Small Business Size Standards set forth in 13 CFR Part 121.

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, notice is hereby given that adoption of the following amendments to 10 CFR Part 140 is contemplated.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 is revised to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13 and 140.13a are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Proposed Amendments—Option #1

1. In § 140.84, paragraph (a) is revised to read as follows:

§ 140.84 Criterion I—Substantial discharge of radioactive material or substantial radiation levels offsite.

* * * * *

(a) The Commission finds that one or more of the persons offsite has been or probably will be exposed to radiation or radioactive materials which would result in estimated doses in excess of any one of the levels in the following table:

TABLE 1.—TOTAL PROJECTED COMMITTED RADIATION DOSE

Organ	Dose (rems)	Dose (sieverts)
Total Body	5	0.05
Thyroid	15	0.15
Bone marrow	5	0.05
Bone (surface or mineral)	15	0.15
Skin	50	0.50

TABLE 1.—TOTAL PROJECTED COMMITTED RADIATION DOSE—Continued

Organ	Dose (rems)	Dose (sieverts)
Other organs or tissues	10	0.10

Exposures from the following types of sources of radiation shall be included:

(1) Radiation from sources external to the body;

(2) Radiation material that may be taken into the body from its occurrence in air or water;

(3) Radiation material that may be taken into the body from its occurrence in food or on terrestrial surfaces; and

(4) Radiation from sources internal to the body.

* * * * *

2. Section 140.85 is revised to read as follows:

§ 140.85 Criterion II—Substantial damages to persons offsite or property offsite.

After the Commission finds that an event has satisfied Criterion I, the Commission will determine that the event has resulted or will probably result in subtantial damages to persons offsite or property offsite when any of the following conditions are satisfied:

(a) Five or more people have received a radiation dose equivalent to the whole body or any organ in excess of 100 rads (1 gray) during the course of the accident.

(b) Offsite property having a value of $2,500,000 is contaminated with radioactive materials in excess of the levels in § 140.84(b). The valuation shall be based on market value taking into account the ratio of assessed value/market in each tax assessment jurisdiction.

(c) Employment loss of at least 25,000 person-day had occurred.

(d) Evacuation of at least 100,000 person-days has occurred as a result of an evacuation ordered by a State or local official with the authority to make such an order. For the purpose of this regulation, the evacuation period will end when the evacuation order is rescinded by this or another responsible official and when it is determined that the evacuated area may be reoccupied.

Option #2

1. In Subpart E of 10 CFR Part 140, § 140.84 paragraph (a) is revised to read as follows:

§ 140.84 Criterion I—Substantial discharge of radiocharge material or substantial radiation levels offsite.

* * * * *

(a) The Commission finds that any of the following doses were or could have been received by a person or persons located on or near any site boundary throughout the duration of the accident:

TABLE 1.—TOTAL PROJECTED COMMITTED RADIATION DOSE

Organ	Dose (rems)	Dose (sieverts)
Total Body	5	0.05
Thyroid	15	0.15
Bone marrow	5	0.05
Bone (surface or mineral)	15	0.15
Skin	50	0.50
Other organs or tissues	10	0.10

Exposures from the follwing types of sources of radiation shall be included:

(1) Radiation from sources external to the body;

(2) Radiation material that may be taken into the body from its occurrence in air or water;

(3) Radiation material that may be taken into the body from its occurrence in food or on terrestrial surfaces; and

(4) Radiation from sources internal to the body.

* * * * *

2. Section 140.85 is revised to read as follows:

§ 140.85 Criterion II—Substantial damages to persons offsite or property offsite.

After the Commission finds that an event has satisfied Criterion I, the Commission will determine that the event has resulted or will probably result in substantial damages to persons offsite or property offsite when any of the following conditions are satisfied:

(a) A calculated collective dose of 100,000 person-rem [1,000 person-sieverts] has been delivered within a 50-mile radius during the course of the accident.

(b) Offsite property having a value of $2,500,000 is contaminated with radioactive materials in excess of the levels in § 140.84(b). The valuation shall be based on market value taking into account the ratio of assessed value/market value in each tax assessment jurisdiction.

(c) Employment loss of at least 25,000 person-days has occurred.

(d) Evacuation of at least 100,000 person-days has occurred as a result of an evacuation ordered by a State or local official with the authority to make such an order. For the purpose of this regulation, the evacuation ordered by a State or local official with the authority to make such an order. For the purpose of this regulation, the evacuation period will end when the evacuation order is rescinded by this or another responsible official and when it is determined that the evacuated area may be reoccupied.

Option #3

1. In Subpart E of 10 CFR Part 140: § 140.84 is revised to read as follows:

§ 140.84 Criterion for an Extraordinary Nuclear Occurrence.

The Commission will determine that there has been a substantial release of radiocative material offsite, or that there have been substantial levels of radiation offsite such that substantial injuries or substantial damages have resulted or will probably result when radioactive material is released from its intended place of confinement and, as a result of the event, any of the following conditions is satisfied:

(a) Real and personal property is rendered unfit for its normal use as a result of contamination with radioactive materials at levels which produce gamma exposure rates at 1 meter above the surface equal to or greater than 10 millirads per hour, (0.1 milligray/hr).[1]

(b) The integrated air dose which could be received by an individual, over any 24-hour period exceeds 10 rads (0.1 gray), or

(c) Real and personal property is rendered unfit for its normal use as a result of contamination for each square meter of any 100 square meters (as a minimum) at levels in excess of:

Transuranic Alpha-particle-emitting radionuclides.	0.35 microcuries per square meter (0.013 MBq/m²).*
Non-transuranic alpha-particle emitting radionuclides.	3.5 microcuries per square meter (0.13 MBq/m²).*
Beta-gamma-emitting radionuclides.	4 millirads per hour (0.4 milligray/hr)@ 1 centimeter above the ground.[1]

*Megabecquerel where 1 MBq = 10 ⁶ Bq and 1 becquerel (Bq) is 1 disintegration per second. A curie is 3.7 x 10 ¹⁰ Bq or 34,000 MBq.

[1] Measured to exclude very short-lived radionuclides (those having half-lives less than 1 hour) either by measurement at least 8 hours after the cessation of abnormal releases of radioactive materials or by making multiple measurements and compensating or correcting for the contributions from these short-lived radionuclides.

§ 140.85 [Removed]

2. Section 140.85 is removed.

Dated at Washington, DC this 2nd day of April 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85-8339 Filed 4-8-85; 8:45 am]

BILLING CODE 7590-01-M

[1] Measured to exclude very short-lived radionuclides (those having half-lives less than 1 hour) either by measurement at least 8 hours after the cessation of abnormal releases of radioactive materials or by making multiple measurements and compensating or correcting for the contributions from these short-lived radionuclides.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 62b

[DoD Directive 1010.7]

Drunk and Drugged Driving by DoD Personnel

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulation on Drunk and Drugged Driving by DoD Personnel. The present regulation requires that the suspension of an individual's driving privilege be vacated if the individual is acquitted, the charges are dismissed, or there is an equivalent disposition. This means that driving privileges must be reinstated when charges are dismissed as a result of plea bargaining, even though there has been a valid blood alcohol content (BAC) test. The proposed change permits continuation of the suspension when the preliminary suspension was based on refusal to take a BAC test or when the preliminary suspension was based on a BAC test.

DATE: Comments: Written comments must be received by May 9, 1985.

ADDRESS: Submit comments to the Office of the Deputy Assistant Secretary of Defense (Professional Affairs and Quality Assurance), the Pentagon, Room 3D200, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: CDR Robert J. Battjes, PHS, telephone (202) 695-7116.

SUPPLEMENTARY INFORMATION: In FR Doc. 83-25194 appearing in the **Federal Register** on September 16, 1983 (48 FR 41581), the Office of the Secretary of Defense published the final rule to which this change pertains.

List of Subjects in 32 CFR Part 62b

Alcohol, Drugs, Highway safety intoxicated driving prevention program, Military and civilian personnel.

PART 625—[AMENDED]

Accordingly, this document proposes to amend 32 CFR Part 62b as follows:

1. The authority citation for Part 62b reads as follows:

Authority: 10 U.S.C. 131.

2. Section 62b.4(b)(2)(ii) is amended by inserting "military administrative

determination," after "nonjudicial punishment,"

3. Section 62b.4(2)(v) is revised to read as follows:

§ 62b.4 Procedures.

* * * * *

(b) * * *

(2) * * *

(v) When there is an official report that there has been a finding of not guilty, the charges have been dismissed or reduced to an offense not amounting to intoxicated driving, or there has been an equivalent determination in a non-judicial punishment proceeding or military or civilian administrative action, the suspension shall be vacated except as follows:

(A) If the preliminary suspension was based upon refusal to take a blood alcohol content (BAC) test, the matter shall be processed under paragraph § 62b.4(b)(3) below.

(B) If the preliminary suspension was based on a BAC test, the suspension shall be continued pending completion of a hearing unless disposition of the charges was based on invalidity of the BAC test. The individual shall be notified in writing of the continuation of the preliminary suspension and of the opportunity to request a hearing within 10 working days. If the individual requests a hearing to vacate the preliminary suspension, it shall be held within 10 working days of the request. The hearing shall be conducted in accordance with the provision of subparagraph § 62b.4(b)(1)(iv), above. The hearing shall consider the arrest report, the report of the official disposition, other official documentation, information presented by the individual, and such other information as the hearing officer may deem appropriate. If the hearing officer determines by a preponderance of the evidence that the individual was engaged in intoxicated driving, the suspension shall be for 1 year from the date of the original preliminary suspension. If not, the preliminary suspension shall be vacated. If the individual does not request a hearing within 10 working days, the suspension shall be for 1 year.

April 4, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-8427 Filed 4-8-85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 220, 227, 228 and 234

[OW-8-FRL 2815-1]

Ocean Incineration Regulations; Public Hearing Location Change

AGENCY: Environmental Protection Agency.

ACTION: Change in location of public hearing.

SUMMARY: In the **Federal Register** of March 14, 1985 (50 FR 10252), the EPA announced a series of public hearings to facilitate comments on proposed ocean incineration regulations published on February 28, 1985 (50 FR 8222). This action changes the location of the San Francisco, California hearing scheduled for April 30, 1985.

ADDRESS: The new location of the San Francisco public hearing scheduled for April 30, 1985, will be: Cathedral Hill Hotel, Japanese Pavilion (4th Floor), VanNess at Geary Street, San Francisco, California 94109.

FOR FURTHER INFORMATION CONTACT: Ed Johnson at 202-382-5460.

Dated: April 2, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 85-8429 Filed 4-8-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 85-87; FCC 85-144]

Preemption of Local Zoning Regulations of Receive-Only Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes a rule which would preempt state and local zoning regulations which discriminate against satellite receive-only antennas in favor of other communications facilities unless they have a direct and tangible relationship to valid, reasonable, demonstrable and clearly articulated health, safety or aesthetic objectives and constitute the least restrictive method available to accomplish such objectives. This action was taken in light of evidence presented in a proceeding initiated by a petition for declaratory ruling that indicated local regulations may be interfering with federal objectives in providing for the growth of nationwide satellite delivered communications services.

DATES: Comments may be filed on or before May 8, 1985 and reply comments on or before May 23, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman, Satellite Radio Branch, (202) 643-1781.

Notice of Proposed Rulemaking

In the matter of preemption of local zoning regulations of Receive-Only Satellite Earth Stations (CC Docket No. 85-87).

Adopted: March 28, 1985.

Released: April 1, 1985.

By the Commission: Commissioner Dawson issuing a separate statement.

I. Introduction

1. The Commission has before it a petition filed by United Satellite Communications, Inc. (USCI) requesting, pursuant to Section 1.2 of the Commission's rules, 47 CFR 1.2, a Declaratory Ruling preempting local zoning regulation of satellite receive-only earth stations. Oppositions and comments have been received from various parties.[1] Because the nature of the preemption requested in this proceeding deals with matters of significant local concern and because of the limited record compiled thus far, we have determined that the most appropriate way to respond to USCI's petition is to issue a Notice of Proposed Rulemaking pursuant to Section 1.411 of the Commission's rules, 47 CFR 1.411. The purpose of this notice is to propose the following rule:

State and local zoning or other regulations that discriminate against satellite receive-only antennas in favor of other communications facilities are preempted unless they have a direct and tangible relationship to reasonable, valid, demonstrable and clearly articulated health, safety or aesthetic objectives and constitute the least restrictive method available to accomplish such objectives.

We solicit public comment on this proposal as described in greater detail herein.

[1] American Radio Relay League (League) has filed a similar request for a ruling preempting zoning regulations of amateur radio towers. Although the League requested consolidation of its petition with the USCI matter (USCI opposes consolidation), we have elected to consider these petitions separately. Those concerns raised by Amateur Radio operators will be addressed in our future action on that request in the proceeding entitled PRB-1.

II. Background

A. USCI Petition

2. In its petition for a declaratory ruling, USCI has requested the Commission to issue what it terms a limited preemption of state and local regulations when such regulations—

(1) Lack a direct and tangible relationship to legitimate and neutral zoning or public health and safety considerations,

(2) Interpose requirements that frustrate the reception of satellite-transmitted signals, and

(3) Are contradictory to the preeminent federal interests in establishing and fostering interstate satellite program delivery services to the public.

3. The petition cites a Chicago ordinance as an example of an unacceptable zoning regulation. This law requires that an application for a construction permit for a satellite receiving station be processed as a "planned development," subjecting it to the review of three governmental agencies and a public hearing and requiring a $100.00 application fee. USCI also alleges that Chicago's ordinance was enacted for the purpose of protecting the cable industry in the city and refers to statements made to that effect by a city council member in the course of hearings on the ordinance.

B. Comments/Issues Raised

4. Initial comments and reply comments have been received in response to the USCI petition. In general, satellite industry representatives responded in favor of Commission preemption and stressed the necessity for access to antenna facilities. Local government representatives opposed preemption stating that it was unnecessary and an unwarranted federal interference in traditionally local concerns.

5. Satellite Television Industry Association, Inc. ("SPACE") supported Commission preemption of "unreasonable" zoning restrictions "which interfere with the expansion of home satellite antennas." [2] Attached to SPACE's comments are copies of other ordinances which it claims are examples of unreasonable satellite regulations and which apply zoning restrictions to the construction of antennas. Many of these relate to antenna size and bar the use of all but the smallest antenna (*e.g.*, one meter). Others require set backs or screening, installation only in certain areas or yard locations, high application fees or expensive engineering data, or consent by all affected neighbors in a residential area. SPACE argues that there should be no diameter restrictions permitted although local governments have the power to regulate for health and safety reasons, and little aesthetic regulation should be permitted. It also urges that any size considerations should be based on 4/6 GHz equipment instead of DBS antennas [3] because, according to SPACE, the future of the latter service is uncertain. [4]

6. Other supporting comments suggest similar or broader preemptive action. American Satellite suggests extending preemption to all local regulations which create obstacles for earth station installations. M/A-Com, Inc. asserts that a Commission order should state that local zoning must not discriminate between services, and that size of the antenna is an appropriate criteria for judging the reasonableness of regulations. RCA American Communications, Inc. states that preemption is consistent with prior Commission rulings and urges preemption of regulations which restrict the delivery of satellite services to the public. Equatorial Communication Services and Contemporary Communications Group urge preemption of all uses of earth stations whether industrial or residential, for video or data services, and Atlantic Satellite Communications, Inc. requests preemption of regulation of transmit facilities. Direct Broadcast Satellite Television Association, and Direct Broadcast Satellite Corp. voice concerns regarding the effect of restrictive and burdensome regulations on the development of direct broadcast services. Satellite Television Corp. (STC) argues that the Commission can rationally distinguish between smaller DBS facilities and larger satellite antennas "commonly know as 'back yard earth stations' " which it claims are not intended for direct reception of signals and are thus not an integral part of a telecommunications network. [5]

Channel One, Inc. urges preemption of all non-health and safety related local regulations.

7. State and local government representatives oppose preemption. New York City states that federal preemption will result in burdening the courts or the Commission with the consideration of all local ordinances, that preemption cannot be justified on this record because there is no evidence of restriction of satellite delivered services, and that there are adequate local remedies available as alternatives to preemption. The American Planning Association stresses the upholding by state courts of aesthetic zoning regulation and the availability of other remedies, and states that in preempting the Commission would be substituting its own judgment for that of local legislatures. The National League of Cities argues against preemption because (1) it would be an improper exercise of federal jurisdiction, (2) the Commission does not have the power to preempt, (3) national and local interests can be accommodated without preemption and (4) preemption would impose burdens on the Commission and on local governments. The National Association of Counties stresses the strong local interest in the exercise of police power. The North Area Cable Television Authority opposes preemption on the basis of its assertion that zoning matters are appropriately regulated by the state.

III. Discussion

8. This proceeding addresses two primary questions. Initially it must be determined if this Commission has the authority to preempt any zoning regulation. If so, it then must be determined what type of restrictions should be preempted. Finally, we must consider how to implement any preemption that might be adopted. Despite the strong and traditionally local nature of zoning power, it is our tentative conclusion that the Commission does have the authority to preempt zoning regulations when they act as obstacles to the federal objective to promote the growth of satellite delivered services. We do not propose to rule on individual ordinances. Instead, we believe announcing general policy for use by state and local officials will be sufficient to ensure that federal objectives are not frustrated

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[2] SPACE's pleading was titled "Petition for Declaratory Ruling and Comments." It is being considered as comments herein. USCI opposes consolidation with SPACE's petition, but the nature of the issues raised and relief sought by both parties support considering this pleading as comments herein.

[3] Because of technological differences, antennas used in Direct Broadcast Service (DBS) can be much smaller than the typical "home earth station" designed to receive programming transmitted in the 4/6 GHz frequency band.

[4] Both SPACE and M/A-Com, Inc. cited a large increase in the number of home earth stations in use as evidence of the economic strength of the home earth station market.

[5] USCI in reply comments agrees with this assertion and Atlantic Satellite Communications, Inc. objects because such a standard would be discriminatory and would create a "natural monopoly" for DBS services.

A. The Commission's Preemption Authority

9. Federal preemptive power may be exercised when:

(1) Congress has expressed a clear intent to preempt state law;

(2) Congress has legislated comprehensively to occupy an entire field of regulation; or

(3) Compliance with both state and federal law is impossible or the state regulation stands as an obstacle to the accomplishment of congressional purpose.[6]

10. This Commission has licensed carriers to provide domestic satellite service across the United States. Various types of businesses transmit their products and programming over these satellites and without satellite antennas to receive these transmissions, the services are useless.[7] In addition, recent amendments to the Commissions Act, 47 U.S.C. 705, provide that unless the sender has established a marketing system an individual using a satellite antenna at his dwelling may freely receive unscrambled satellite cable programming without incurring liability for unauthorized interception. This provision implicitly encourages entities transmitting unscrambled programming over satellites to set up public marketing systems which sell programming to the public. In enacting this legislation, Congress wished to ensure that Americans who did not have access to cable programming would be able to obtain such programming.[8] Individuals cannot take advantage of such marketing systems if they cannot set up receiving antennas with a minimal amount of interference from the state and local governments. Thus, excessive state and local regulation of satellite antennas interferes with a conditional right to receive programming via home earth stations. When state regulations are unreasonably interfering with or frustrating this right or the provisions of the Commissions Act or Commission rules, as described above, preemption is warranted.[9]

11. This Commission has preempted state regulation that interfered with or impeded the distribution of interstate communications. For example, we preempted state regulation that sought to classify as cable systems Master Antenna Television Systems carrying Multi-Point Distribution Service (MDS) transmitted programming. In that case, after noting that these services were interstate in nature,[10] we found that the state's attempt to regulate presented an obstacle to the accomplishment of Congressional objectives in promoting interstate commerce.[11]

12. In a recent order in *Earth Station Satellite Communications, Inc.*,[12] we preempted a state's attempt to apply cable regulations to Satellite Master Antenna Television Systems (SMATV). We emphasized the importance of a free market development of satellite delivered communications stating "it is clear that local prior approval requirements are inconsistent with national policies in these areas."[13] The opinion noted that the state certification requirement in question would result in delay or termination of service to the public.[14] The order left open the possibility of some local regulation of SMATV service such as zoning or safety requirements provided they did not interfere with or inhibit interstate transmissions.

13. On reconsideration, we affirmed the decision to preempt but declined to extend our order to grant a SPACE request to preempt local zoning ordinances that interfere with the erection of receive-only earth stations on residential property. We stated that the scope of the initial proceeding did not include review of zoning regulations and that petitioners should raise this issue in a separate proceeding "if they can show that local jurisdictions are deliberately 'zoning out' communications equipment for purposes of restricting national communications systems rather than for clearly acceptable purposes of local concern."[15]

14. On appeal, the Court of Appeals found that its review was limited to two issues, namely whether the Commission had authority to preempt and whether this authority was exercised reasonably. It affirmed the Commission concluding that preemption was consistent with prior Commission policy and was a " 'reasonable accommodation of conflicting policies that are within the agency's domain.' "[16] Distinguishing the SMATV services involved from traditional cable services because the latter involved the use of public rights of way and was thus subject to local control, the Court noted that this Commission has retained exclusive control over the licensing of satellites. The Court found that this Commission acted reasonably in the exercise of our authority to preempt.[17]

B. Nature of Local Regulation

15. Although the proper focus in a preemption action is not the relative importance to the states of their own laws,[18] it is incumbent on this Commission to take note of the traditionally local character of zoning regulation.[19] The parties filing comments opposing USCI's request have stressed this. They have also asserted that the Commission lacks authority to regulate local zoning matters and have raised the question of its ability to act as a "super zoning board" in reviewing the reasonableness of local regulations. Opponents have cited the fact that alternative remedies exist to individuals wishing to challenge actions taken pursuant to local zoning powers.

16. We recognize the strong local interest in zoning regulation. Such regulation has been upheld as a valid exercise of state police power where it is reasonable and bears a rational relationship to permissible state objectives such as preservation of the community's health and safety.[20] Even

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[6] Capital Cities Cable, Inc. v. Crisp, 104 S. Ct. 2694 (1984). *See also* Michigan Canners and Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board, 104 S. Ct. 2518 (1984); Florida Avocado Growers v. Paul, 373 U.S. 132 (1963); Hines v. Davidowitz, 312 U.S. 52 (1941).

[7] *See* Earth Satellite Communications, Inc., 95 FCC 2d 1223, 1232 (1983).

[8] *See* 130 Cong. Rec. H10439, H10443 (remarks of Representatives Wirth and Gore, respectively).

[9] Fidelity Federal Savings and Loan Assoc. v. De La Cuesta, 458 U.S. 141 (1982); Hines v. Davidowitz, 312 U.S. 52 (1941). *See* Virginia State Corporation Commission v. FCC, 737 F.2d 388 (4th Cir. 1984).

[10] The Commission pointed out that the station involved was part of a national network interconnected by a domestic communications satellite and that non-federal limitation of receive points could hamper interstate development of the service. In the Master of Orth-O-Vision, Inc., 69 FCC 2d 657, 660, 669 (1978), *aff'd sub nom.*, New York State Commission of Cable Television v. FCC, 669 F.2d 58 (2d Cir. 1982).

[11] 69 FCC 2d at 669. This preemption was upheld on review. New York State Commission on Cable TV v. FCC, *supra* note 10.

[12] 95 FCC 2d 1223, *recon. denied*, FCC 84-206, *aff'd sub. nom.* New York State Commission on Cable Television v. FCC, 749 F.2d 804 (D.C. Cir. 1984).

[13] *Id.* at 1232. The Commission cited In Re Regulation of Domestic Receive-Only Satellite Earth Stations, 74 FCC 2d 205 (1979), for the proposition that it favored the least regulation possible, consistent with satellite policies, in respect to earth station ownership.

[14] *Id.* at 1234.

[15] Earth Satellite Communications, Inc., FCC 84-206 at 3 (May 14, 1984).

[16] New York State Commission on Cable Television v. FCC, 749 F.2d 804, 808 (D.C. Cir. 1984) *citing* Crisp, 104 S.Ct. at 2101.

[17] *Id.* at 812-15. In this case the petitioners argued that preemption was contrary to the federal policy as opposed to preemption proponents in the USCI proceeding who assert that state policy conflicts with federal goals. Id. at 808.

[18] Free v. Bland, 396 U.S. 663 (1962). *See also*, Fidelity Federal Savings and Loan Assoc. v. De La Cuesta, 458 U.S. 141 (1982).

[19] *See* Columbia Plaza Ltd. Partnership v. Cowles, 402 F.Supp. 1337 (D.D.C. 1975).

[20] Village of Belle Terre v. Borass, 416 U.S. 1 (1974); Village of Euclid v. Ambler Realty, Co., 272 U.S. 365 (1926).

the promotion of purely aesthetic community values has been upheld under certain circumstances.[21] In addition, this Commission does not wish to assume the position of a national zoning board or substitute its judgment for that the local authorities by reviewing a myriad of individual zoning decisions. However, we do believe that the record established thus for indicates an existing problem and that it is within our authority to issue guidelines to insure that federal communications objectives are not frustrated.

C. Frustration of Federal Objectives by State Zoning Regulations

17. The purpose of this notice is to propose a preemption policy that recognizes local interests while insuring that federal policies are not frustrated. We seek to compile a record on the accuracy of our analysis of the problem, the interests involved, and the efficacy of our solution. The Chicago ordinance cited by USCI appears to be the type of local regulation which would be subject to preemption under our proposed ruling.[22]

18. The Chicago ordinance specifically exempts amateur radio towers and does not appear to apply to conventional home television antennas while it specifically subjects satellite receiving equipment to its rigorous provisions. The ordinance seems to single out satellite antennas because of their status, and not because of health and safety concerns regarding antennas in general such as windloading regulations. Nor does it apply clearly articulated aesthetic criteria such as screening or offset requirements. Thus, there appears to be no reasonable health and safety or aesthetic basis for the distinction in the city's ordinance.

19. The Chicago ordinance also imposes significant burdens on an individual attempting to obtain a construction permit for a single antenna. These include a $100 non-refundable application fee, a review by three separate city agencies and a public hearing, the same procedure that would be applied to an application to construct an airport, a hospital, or a large residential subdivision. These restrictions appear to go beyond those necessary to assure the legitimate health, safety or aesthetic values of the community.

20. USCI has submitted as part of this record transcripts of city council hearings regarding this ordinance. These transcripts indicate that at least one Council member who voted for the ordinance believed that its purpose was to protect the cable franchise in that city. We do not believe that regulations intended to afford a competitive advantage to one type of communications service to the disadvantage of another are in accord with our policies of providing for growth of all national communications facilities.

21. Despite these tentative conclusions regarding the Chicago ordinance, we recognize that this Commission should not unduly interfere with the legitimate affairs of local governments when they do not frustrate federal objectives. Communites have the right to maintain a certain quality of life for their citizens with respect both to their health and safety and to the aesthetic quality of the locality. Any final order preempting local zoning must be carefully and narrowly drawn and give effective guidance to the communities in carrying out their land use planning power. The following discussion addresses the various proposed preemption standards.

D. Proposed Rule

22. Neither USCI nor the other supporting parties advocate a total preemption of all local zoning regulations of satellite antennas. We agree that a complete preemption in this case would be an unwarranted federal intrusion into legitimate state and local matters. Thus, if we determine that a limited preemption is appropriate, a clear set of guidelines must be formulated in order to give state and local governments notice of the extent of their permissible power to regulate. We encourage parties to comment in this regard.

1. Size Consideration

23. These parties commenting in this proceeding have made several suggestions as to the nature of an appropriate limited preemption. One such suggestion is that the Commission establish a criteria based on the size of the proposed antennas. For example, M/A–Com, Inc. has proposed a limit of ten feet in residential areas and 12 feet in commercial areas below which local regulation would not be permitted absent a strong demonstration of the necessity for greater restriction by the local government. M/A–Com, Inc. indicates that this standard would draw the "clear bright line" needed to give guidance to local communities and to avoid the possibility of Commission review of numerous local ordinances. M/A–Com, Inc. also emphasizes that any local regulation must be non-discriminatory as to antenna type. STC argues that an order distinguishing between DBS antennas and home earth stations would be appropriate.[23] SPACE, on the other hand, urges the preemption of all local diameter restrictions.[24]

24. Antenna size may be a relevant factor in achieving safety and aesthetic objectives. Smaller antennas would seem to present less local concern from both aesthetic and safety points of view. It thus may be possible to establish certain presumptions related to size which would be based on the lack of strong local interest in regulating smaller facilities. However, because one of our main objectives in our proposed preemption order is to eliminate arbitrary governmental discrimination among communication facilities, we would be reluctant to promulgate a rule which might have the effect of promoting such discrimination. In addition, antenna size varies depending on usage and rapidly changing technology will affect any technical basis for a size distinction. We have thus not included size considerations as a regulatory criteria. However, we encourage parties advocating this approach to submit evidence supporting their position for consideration in our final decision.

2. Aesthetics

25. Another suggested approach to a preemption ruling is that the Commission ban all local zoning regulations enacted for aesthetic purposes. SPACE and Channel One, Inc. advocate this suggestion.

26. We have rejected this proposal because we believe that a local community has a strong legitimate interest in regulating for aesthetic purposes as long as that regulatory action is taken on a neutral basis without an unreasonably discriminatory effect. As previously discussed herein, local communities have the right to enact ordinances which will protect the aesthetic values of citizens and this Commission should not interfere with this right provided that federal objectives are not being frustrated. Thus, we feel that ordinances requiring

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[21] City Council of Los Angeles v. Taxpayers for Vincent, 104 S.Ct. 2118 (1984). The Court has required careful scrutiny of the breadth of such local restrictions on first amendment rights, however, and has refused to uphold ordinances based on aesthetic values which go beyond valid time, place and manner speech restrictions and which fail to leave open alternate channels for expression of the restricted communications. Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981). *See also* Schad v. Borough of Mt. Ephraim, 452 U.S. 61 (1981); Erzoznick v. City of Jacksonville, 422 U.S. 205 (1975).

[22] We have also considered the local ordinances submitted by SPACE and although we will not review them in detail, we conclude that some would be preempted by our proposed rule.

[23] *See* para. 8.

[24] *See* para. 5.

certain types of screening or placement should be permissable when applied in a proper context and on an equitable basis to all facilities. Again, however, we encourage commenters to offer evidence regarding this issue.

3. Extension to Other Antenna Uses

27. Other commenting parties have urged expansion of a preemption ruling to antennas other than receive-only antennas used in residential areas for video reception.[25] It is our intention to direct our proposed rule to receive-only satellite earth stations without regard to usage. We believe that there are additional considerations or determinations that must be made with respect to transmitting antennas that are being addressed in other proceedings and that would unduly broaden the scope of the proposals made herein.[26] Although we would accept comments on this issue, our present intention is to limit consideration to receive-only antennas.

4. USCI's Proposal

28. Another option before the Commission is the specific one proposed by USCI.[27] The proposed language does not directly deal with ordinances which unreasonably discriminate against satellite facilities in favor of other communications facilities.[28] An example of this is the Chicago ordinance which exempts amateur radio towers and does not appear to apply to UHF or VHF television antennas. In addition, USCI's language would need future Commission clarification and could engender further Commission involvement.[29] Therefore, we do not believe USCI's proposal is the appropriate standard.

5. Rule Proposed Herein

29. We feel that the rule proposed herein is sufficiently concrete and addresses some specific areas not included in the USCI request. In particular, it prohibits unreasonable governmental discrimination among antenna facilities. At the same time, the proposal clearly protects legitimate interests in regulating health, safety and aesthetic values of local communities.

30. The proposed rule accommodates both the federal interest in the Commission's open entry satellite policies and local interests in providing reasonable zoning protection for residents. This proposal is offered in response to evidence presented which indicates that local zoning regulation may be unreasonably interfering with the installation of satellite antennas, thus creating an obstacle to the federal goal of providing for the expansion of satellite delivered services. The Commission has made an initial determination that a limited preemption may well be warranted. Our proposed rule is designed to provide general guidance to individual antenna users and to local communities. It is not our intention to act as a national zoning board or to review individual ordinances. The rule would prevent communities from exercising their zoning power to discriminate against satellite receive-only antennas. It also leaves with local governments full authority to enact reasonable and neutral regulations which would protect the legitimate health, safety and aesthetic concerns of citizens. It thus accomodates both state and federal interests and fulfills the mandate of this Commission to ensure the growth of effective interstate communications.

IV. Conclusion

31. Authority for this proposed rulemaking is contained in Sections 151, 303, 403 and 705 of the Communications Act of 1934, as amended.

32. The major objective of this proceeding is to propose a policy implementing the Commission's preemption of local zoning regulation which discriminates against satellite antennas and which is not related to valid health, safety or aesthetic regulation and is not the least restrictive method of accomplishing such regulation.

33. Comments on all aspects of the proposed ruling are encouraged, but commenters should avoid merely repeating comments already submitted.

34. As required by Section 603 of the Regulatory Flexibility Act, we have prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. Any such comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

35. For the purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that subtantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comment/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation to the Commission Secretary for inclusion in the public files. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comment by the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number that proceeding to which it relates. *See generally* § 1.1231 of the rules, 47 CFR 1.1231.

36. Accordingly, it is ordered that interested parties may file comments according to an expedited schedule pursuant to § 1.425 of the Commission's rules on or before May 8, 1985 and reply comments on or before May 23, 1985. In addition to consideration of all relevant and timely comments, the Commission may take into consideration information not contained in the comments provided that evidence of the existence of such information including its nature and sources is placed in the public record and provided that the fact of the Commission reliance on such information is noted in any order taking final action in this matter.

37. It is further ordered that pursuant to § 1.419 of the Commission's rules, an original and five copies of all comments, replies, pleadings, briefs or other documents shall be filed with the Commission. Copies of all findings will be available for public inspection during

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[25] *See, e.g.*, Comments of Atlantic Satellite, Equatorial and American Satellite.

[26] *See e.g.*, Gen. Docket No. 79-144 in which the Commission is considering amending its rules to include the authorization and licensing of transmitting equipment emitting excessive microwave radiation as "major actions" subject to the Commission's environmental processing standards. In addition, PRB-1, *supra* note 1, will address the preemption request filed by the American Radio Relay League.

[27] *See* para. 2, *supra*.

[28] *See* Comments filed by Satellite Television Corp.

[29] *See* Comments filed by M/A-Com, Inc.

regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

38. It is further ordered that the Chief, Common Carrier Bureau, has delegated authority to require the submission of additional information, make further inquiries and modify the dates and procedures if necessary to provide for a fuller record and more efficient proceeding.

39. It is further ordered that the Secretary shall cause this Notice of Proposed Rulemaking and the attached Initial Regulatory Flexibility Analysis to be published in the **Federal Register.**

40. It is further ordered that the Secretary shall cause a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. et seq.)

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Initial Regulatory Flexibility Analysis

I. Reason for Action

In this proceeding the Commission seeks to develop a record and to elicit comments on a proposed rule preempting certain local zoning regulations of satellite receive-only earth stations. This action is taken in response to a petition for declaratory ruling and associated comments which indicate the possibility that local zoning restrictions may be frustrating the Commission's objective to promote the expansion of satellite services in the public interest.

II. Objective

The Commission's objective in proposing this rule is to ensure that local zoning regulations do not act as an obstacle to the accomplishment of federal communications objectives.

III. Legal Basis

The legal basis for this action is found in 47 U.S.C. 151, 303, 403 and 705.

IV. Small Entities Affected by the Proposed Rule

The proposed rule will have an effect on local government jurisdictions of all sizes as it may impose some limits on their power to enact zoning legislation related to satellite receive-only antennas. Small businesses selling receive-only antennas also may be affected in that their ability to do business in a competitive market may be enhanced by preemption. In addition, the ruling would afford guidance to local jurisdictions and to individual citizens regarding the acceptable limits of local governmental action.

V. Recording, Recordkeeping and Other Compliance Requirements

This action will not create any new reporting or record-keeping requirements.

VI. Federal Rules which Overlap, Duplicate or Conflict With the Proposed Rule

There is no overlap, duplication or conflict.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives

Because there appears to be a significant conflict between some local zoning regulations and the use of satellite receive-only facilities, the only effective alternative appears to be a limited preemption by the Commission. Failure to do so may lead to restrictive zoning regulations limiting the ability of small businesses to sell receive-only earth station equipment in competition with other transmission media. A federal statement of preemption criteria may reduce uncertainty in the areas for both local governments and small businesses and individuals reducing unnecessary litigation.

Separate Statement of Commissioner Mimi Weyforth Dawson

My preference with regard to the Commission's preemption authority would not be to initiate a potentially time-consuming rulemaking proceeding to inquire into the Commission's jurisdiction. I think that the record before us is more than adequate, and I am not sure what another round of comments will gain other than a delay in the ultimate resolution of the issues raised in the subject request for declaratory ruling. Moreover, I do not view the procedure chosen by the Commission in this particular instance as indicating that a notice-and-comment rulemaking is a legal predicate to a decision regarding the Commission's ability to preempt local regulation which has the effect of thwarting federal policy.

However, given the relatively brief comment period allowed in this proceeding as well as the Bureau's commitment for expeditious treatment of this docket, I am willing to support a notice of proposed rulemaking.

In addition, in the comments which are filed in this proceeding, I will be particularly interested as to whether the Commission's proposed preemption should include a similar provision to that contained in Section 3 of S.R. 35, recently introduced by Senator Goldwater. It seems to me that the Commission may well be interested in clearly preempting local restrictions which are intended to or do in fact "protect from competition or . . . provide a competitive advantage to any [non-satellite] means" of delivery or reception.

[FR Doc. 85–8440 Filed 4–8–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Ch. I

[CC Docket No. 79–105; FCC 85–148]

Detariffing the Installation and Maintenance of Inside Wiring.

AGENCY: Federal Communications Commission.

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Commission is proposing to detariff the installation and maintenance of inside wiring. In addition, the Commission is proposing that the ownership title to inside wiring should pass to the customer and/or owner of the premises once the telephone companies have fully amortized their inside wiring costs.

These proposals are being made to further the Commission's objective of insuring that the costs associated with inside wiring are borne by the cost causative customer. The detariffing of simple inside wiring will also enable others such as electricians to install and maintain inside wiring on a competitive basis with the telephone companies.

DATES: Comments shall be filed by May 13, 1985, Reply comments due on or before May 28, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Clifford M. Rand, Accounting and Audits Division, Common Carrier Bureau (202) 634–1861.

SUPPLEMENTARY INFORMATION:

Further Notice of Proposed Rulemaking

In the matter of detariffing the installation and maintenance of inside wiring; CC Docket No. 79–105, FCC 85–148.

Adopted: March 28, 1985.

Released: April 5, 1985.

By the Commission:

I. Introduction

1. In this *Further Notice of Proposed Rulemaking (Further Notice)*, we are proposing to detariff the installation of simple inside wiring and to detariff the maintenance of all inside wiring [1] (both simple and complex).[2] In addition, we are proposing that the telephone companies relinquish all claims to ownership of the inside wiring when their inside wiring costs have been fully amortized, that is, when the companies have a zero net investment in inside wiring.

2. We are proposing these changes to increase competition, to promote new entry into the market, to produce cost saving which would be passed on to the ratepayers, and to further the Commission's objective to create, to the maximum extent possible, an unregulated competitive marketplace environment for the development of telecommunications. We are also proposing these changes to ensure that the cost of inside wiring is borne by the cost causative customer.

II. Background

3. On March 31, 1981, the Commission released its *First Report and Order* in CC Docket 79-105, *Expensing of Inside Wiring*, 85 FCC 2d 818 (1981), in which it amended Part 31 of the Commission's Rules and Regulations (Uniform System of Accounts for Class A and Class B Telephone Compnies) by ordering all subject carriers to separate their investment in inside wiring into at least two subclasses, "station connections-inside wiring" and "station connections-others".[3] Station connections-inside wiring was defined as that segment of the wiring from the customer's side of the protector to the customer premises equipment. We also ordered that future inside wiring costs be charged directly to expense [4] and that embedded investment in inside wiring be amortized over a ten year period.[5]

4. These accounting changes were continuations of the Commission's efforts to ensure that the burden of costs associated with station connections are borne by the ratepayer who cause the costs to be incurred. Because these accounting changes merely reclassified the inside wiring from capital accounts to expense accounts, however, they did not assure that inside wiring costs would be borne by the cost causative customers. Because it did not appear possible to achieve fully the objective of charging the cost of inside wiring to the cost causative customer in a regulated environment solely by accounting means, the Commission instituted a *Further Notice of Inquiry (FNOI)* in CC Docket 79-105, 86 FCC 885 (1981), to search for other avenues to achieve this objective.

5. Respondents to the FNOI recommended that the Commission split inside wiring into simple and complex. Generally, it was argued that complex inside wiring could be detariffed but simple inside wiring could not because there were no alternative sources available for the provision of simple inside wiring, particularly in rural areas. Accordingly, the Commission addressed complex wiring in CC Docket 82-681, *supra* note 2, and left all questions relative to simple wiring to later orders. In CC Docket 82-681, the Commission established the intrasystem concept and detariffed all newly installed intrasystem wiring (also called complex wiring). Simple inside wiring was addressed to some degree in CC Docket 81-216, *Amendment of Part 68*, 97 FCC 2d 527, p. 543 (1984), wherein customers were given additional options, e.g., customers were permitted to augment existing non-system wiring (also called simple wiring) without going to the telephone company. However, simple inside wiring was not deregulated and remained subject to tariff if provided by the telephone company. The Commisssion did not order the sale of the embedded simple inside wiring but it did in Docket 79-105, *Expensing of Inside Wiring*, 85 FCC 2d 818 (1981), approve the sale of embedded inside wiring by the telephone companies to the extent authorized by state commission.

III. Discussion

6. In the actions this Commission has taken to date our primary concern has been to try to ensure that the general body of ratepayers is not paying for the costs of installing and maintaining inside wiring. The changes we have established so far for the treatment of inside wiring have not been completely successful in making the cost causative customer bear these costs. Also, we have not made any provisions for the ownership of inside wiring once it has been fully amortized. Our proposals now deal with the unresolved problems related to the installation, maintenance and ownership of inside wiring.

7. *Installation of Inside Wiring*—Currently, new simple inside wiring installed by telephone companies is provided under tariff and the costs of installation are recorded in expense account 605, "Installation and repairs of station equipment". This accounting treatment places part of the burden of installation costs on the general body of ratepayers in two ways. First, under current jurisdictional separations procedures, 47 CFR 67.315, approximately 28% (the industry wide average for the Subscriber Plant Factor (SPF)) of the expenses recorded in account 605 are assigned to the interstate jurisdiction for recovery from interstate ratepayers. Today, for example, AT&T, an interexchange carrier, pays approximately $470 million in installation and maintenance costs to the local telephone companies for its share of these costs. AT&T recoups these costs from its interstate ratepayers. The remainder of the expenses of inside wiring are assigned to the intrastate jurisdiction by the separations process and are collected by the exchange carriers from their customers through intrastate tariffs. Second, to the extent that the state tariff for the intrastate portion of the

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[1] The term "inside wiring" refers generally to that portion of telephone plant, including both labor and materials, accounted for in Account 232, "Station Connections," which is installed on the station apparatus side of the demarcation point set forth in our First Report and Order in CC Docket No. 81-216, *Amendment of Part 68*, 97 FCC 2d 527 (1984).

[2] The Commission defines complex wiring as intrasystem wiring which includes all cable and wire and its associated components (e.g., connecting blocks, terminal boxes, conduit between buildings on the same customer's premises, etc.) which connect station components to one another or to the common equipment of a PBX or a key system. *See* modification to the Uniform System of Accounts, CC Docket No. 82-681, FCC 83-457, 48 Fed. Reg. 50534(1983), Appendix p.8. *See also* Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, 95 FCC 2d 1276 (1983), at paras. 163-75. Simple inside wiring is any inside wiring other than complex wiring.

[3] "Station connections-other" was defined as the drop, block and protector. In the Report and Order in Docket 82-679, Amendment of Part 31, FCC 83-458, released October 26, 1983, the Commission revised Part 31 to transfer the existing drop and block investment from Account 232 Subclass "Station connections-other" to account 242:1, "Aerial Cable", and Account 242:3, "Buried Cable", as appropriate, along with the depreciation reserves. This approach left only the inside wiring portion in account 232 and the account was retitled "Station connections-inside wiring."

[4] The carriers were given the option of either flash-cut (expensing immediately) or phase-in expensing. Under the phase-in approach, 25% of these costs were to be expensed in year one, 50% expensed in year two, 75% in year three, and 100% in year four. Also, carriers were allowed, in certain instances, to "flashcut"—start immediate 100% expensing of these costs with state commission approval.

[5] In six instances the Commission has approved a shortened amortization period. Illinois Bell and General Telephone Company of Florida were both granted permission to utilize a six year period. Mountain Bell was granted permission to utilize a seven year period for their Arizona jurisdiction, and United Telephone Company of the Northwest was granted permission to utilize a seven year period for their Oregon and Washington jurisdictions. Ohio Bell was granted permission to use a seven and a half year amortization period. In each case permission was contigent upon obtaining approval of the state commission.

installation costs does not cover the total cost, the remainder is recovered from the general body of intrastate ratepayers.

8. While the costs of installing inside wiring are being collected from both interstate and intrastate ratepayers, not all these customers are causing inside wiring costs in any one year. That being the case, we do not believe that the costs of installing inside wiring should continue to be spread among the general body or ratepayers, even those who do not cause any of the costs. Consistent with the Commission's original goal in CC Docket 79–105, we belived that the burden of inside wiring costs should be borne by the cost causative customer.

9. In our tentative view the only reasonable means of achieving this goal and effecting payment by those customers who give rise to inside wiring expenditures is to detariff [6] the installation of simple inside wiring. Removing the installation of simple inside wiring from regulation should generate cost savings due to a reduced regulatory burden. The detariffing of simple inside wiring will also enable others such as electricians, home improvement contractors and new home builders to provide the installation of wiring on a competitive basis with the telephone companies.[7] A competitive environment for the provision for inside wiring should help reduce costs to the public. Our proposal to detariff the installation of simple inside wiring is consistent with our decision in CC Docket 82–681 wherein we detariffed the inside wiring (complex wiring) installed for detariffed complex systems. There, we detariffed complex wiring in the same way and on the same basis as we detariffed CPE in the *Second Computer Inquiry (Computer II).*[8] We now propose to detariff the installation of simple inside wiring in the same manner as we detariffed CPE in *Computer II.* This will further our overall regulatory objective to introduce competition whenever technological and economic circumstances are conducive.[9]

10. *Maintenance of Inside Wiring*—Our existing accounting rules require that the maintenance expense for all inside wiring also be recorded in expense account 605, "Installation and repairs of station equipment". As in the case of the installation of inside wiring, this accounting treatment places part of the burden of the maintenance costs on the general body of ratepayers. As we stated before, under current separations procedures approximately 28% of the expenses recorded in Account 605 are assigned to the interstate jurisdiction for recovery from interstate ratepayers. Further, to the extent the tariffed charges for maintenance of inside wiring do not cover costs, the remainder is recovered from the general ratepayer. Thus, we again face the problem of how to ensure that the cost causative customer bears directly the costs of maintenance.

11. We are encouraged by the fact that many telephone companies are no longer automatically providing the maintenance of simple inside wiring as part of their general tariff offerings. We have found that more and more telephone companies are moving, with state approval, to offering optional maintenance plans. Under these plans, the telephone companies will continue to provide the maintenance of the inside wiring for monthly fees ranging from $.30 to $.90 per month. Customers that do not avail themselves of the maintenance plan will have to pay the telephone companies for any maintenance or repairs or else seek other sources for maintenance and repair work.[10]

12. While we believe that these maintenance plans are an improvement, they do not accomplish our objective of having the cost causative customer bear directly the costs of maintenance for several reasons. First, a large number of the states require no tariffed charges for telephone company maintenance of inside wiring in which case all of the costs are borne by the general body of ratepayers. Second, the maintenance fees charged under maintenance plans may not be adequate to cover the costs of maintenance provided under the plan. Third, the rates charged for maintenance or repair work on a service call basis may not fully cover the costs of work for those customers not under the plan. And fourth, part of the maintenance costs being recorded in account 605 is being passed on to the interstate ratepayers through the separations process just as part of the installation cost is.

13. We tentatively find that the only reasonable means of effecting payment by those customers who give rise to maintenance and repair costs for inside wiring is to detariff the maintenance of all inside wiring in the same manner as we detariffed CPE in *Computer II.*

14. *Ownership of Inside Wiring*—In line with our proposals to detariff the installation of simple inside wiring and the maintenance of all inside wiring, it is necessary to address the question of ownership of the inside wiring once the companies have fully amortized their inside wiring costs. The ownership question pertains to both newly installed simple inside wiring (at least theoretically) and to all embedded inside wiring.

15. Inside wiring consists of the costs of the wire (materials) and the costs of the labor. Labor represents approximately 90–95% of inside wiring costs. After the costs associated with inside wiring have been fully recovered, the only practical value the inside wiring has is to the customer and/or owner of the premises.

16. The investment in embedded inside wiring (both simple and complex) originally was recorded in account 232 and is being amortized to expense account 608. New installations of simple inside wiring by telephone companies are now being expensed as incurred to account 605. Since the telephone companies are recovering through their revenue requirements their expenses for newly installed simple inside wiring, there are no additional costs left to recover. Similary, with embedded inside wiring currently being amortized, we believe that once this amortization is complete all cost to the telephone companies will have been recovered. To

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[6] The detariffing of inside wiring will in a number of cases require an unbundling of certain rate elements now in the tariffs since inside wiring has generally not been shown as a separate rate element. Recently, in our Special Access Tariff Order adopted March 1, 1985, we ordered the exchange carriers to develop, for the first time, a separate rate element for inside wiring previously bundled into a station connections rate element.

[7] The former BOCs would be required to comply with the separate subsidiary requirement of *Computer II.*

[8] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980), *reconsideration,* 84 FCC 2d 50 (1980), *further reconsideration,* 88 FCC 2d 512 (1981), *off'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert denied sub nom.* Louisiana Pub. Serv. Comm'n v. FCC, 103 S. Ct. 2109 (1983).

[9] The Commission in Docket 81–216 found that a competitive market situation exists for simple inside wiring when it allowed the customer to obtain new simple wiring from sources other than the telephone comapnies. Amendment of Part 68, Second Notice of Proposed Rulemaking and Order, 92 FCC 2d 1 (1982), First Report and Order, 97 FCC 2d 527 (1984). Further evidence that a market exists is, according to industry sources, supported by the fact that telephone companies often contract out wiring on new construction projects.

[10] The result of an informal study conducted by the staff of the Commission's Accounting and Audits Division indicated that as of November 15, 1984, the variance in the percentage of customers participating in optional monthly maintenance plans appears to be directly correlated to the manner in which the presentation of the offer was made to the customers, e.g., whether or not an actual response was necessary to decline or accept the maintenance plan. In Oregon, for instance, Pacific Northwest Bell customers must subscribe to the maintenance plan in order to be covered. Some Mountain Bell customers, however, must ask not to be covered by its maintenance plan. While only 16.5% of Oregon's customers chose the plan, in other states the participation ranged from 55% to 84.7%.

permit the companies to retain title and late be able to sell the inside wiring to the customer and/or owner of the premises would permit the companies to reap additional revenues from costs which have already been fully recovered. Therefore, we are proposing that the ownership/title to inside wiring should pass to the customer and/or ower [11] of the premises once the telephone companies have fully amortized their inside wiring costs.

17. We realize that detariffing the installation and maintenance of inside wiring will require revisions to the Uniform System of Accounts for Class A and Class B Telephone Companies (USOA). For example, if inside wiring is detariffed and removed from regulation, account 605 may not be needed. [12] In view of the fact that the majority of the costs that go into account 605 would no longer be place there, it may be more appropriate to renamed and redefine account 605 for any costs which remain. Any necessary modifications to the USOA will be made at the time we issue a decision in this Docket.

18. Interested parties should comment on the merits of our proposals as well as suggest others that may be available for the Commission to accomplish its stated objective of ensuring that the cost of inside wiring is borne by the cost causative customer. Such comments should include the revenue impact and tax consequences, if any, of such changes. We also request that commenting parties suggest any necessary modifications to the USOA that will be required as a result of our proposals. In the past, the Department of Defense (DoD) submitted comments in this Docket and we encourage DoD to express any concerns it may have on the issues raised in this NPRM.

I. Other Matters

19. In compliance with the provisions of section 605(b), of the Regulatory Flexibility Act, 5 U.S.C. § 605(b) we believe the above sets forth the purpose of the proposals. We certify that these accounting changes can be readily implemented by all carriers subject to Part 31 without significant economic impact on their operations. Moreover, as we discussed in paragraph 9 our proposals should help small businesses, such as electricians and home improvement contractors, to become competitive with the telephone companies in offering to install and maintain inside wiring.

20. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation on the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's official receiving the oral presentation. Each such *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state the docket number of the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

21. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

V. Ordering Clauses

22. Accordingly it is ordered, pursuant to the Provisions of Sections 4(i) and 220 (a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), that there is hereby instituted a notice of proposed rulemaking into the foregoing matters.

23. It is further ordered, That interested persons may file comments on the specific proposals discussed in this Notice on or before May 13, 1985. Reply comments shall be filed on or before May 28, 1985. In accordance with the provisions of § 1.419, of the Commission's Rules and Regulations 47 CFR § 1.419, and original and five (5) copies of all comments shall be furnished to the Commission, Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, N.W., Washington, DC.

24. It is further ordered, pursuant to section 220(i) that the Secretary shall serve a copy of this Notice on each state commission.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-8443 Filed 4-8-85; 8:45 am]

BILLING CODE 6712-01-M

[11] Our primary concern is that the telephone company has no claim to the ownership of the inside wiring. However, we request comments on whether the commission should determine this and whether the inside wiring should properly go to the customer or owner of the premises.

[12] Our proposals herein do not in any way effect the definition of the telephone network's customer premises interface or demarcation point set forth in our First Report and Order in CC Docket No. 81-216, 49 FR 21719 (May 23, 1984) and currently set out in 68.3(h) of our rules.

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47 CFR Part 73

[MM Docket No. 85-90; FCC 85-151]

AM Broadcast Directional Antenna Sampling Systems and Proof of Performance Field Strength Measurements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its rules for operation of AM broadcast stations which requre licensees of AM directional antennas to perform field strength measurements on a specified schedule. The value of these measurements and the circumstance for which they are needed will be examined. The required standards for design and construction of AM directional antenna sampling systems will also be considered. The purpose of this proceeding is to review the necessity for the above requirements.

DATES: Comments are due by June 10, 1985 and replies by July 10, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John W. Reiser, Mass Media Bureau, Technical and International Branch, Washington, D.C. 20554, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Federal Communications Commission.

Notice of Proposed Rule Making

In the Matter of AM Broadcast Directional Antenna Sampling Systems and Proof of Performance Field Strength Measurements; MM Docket No. 85-90, FCC 85-151.

Adopted: March 28, 1985.
Released: April 3, 1985.
By the Commission.

1. The Commission, on its own motion, is initiating this new proceeding in order to solicit public comment on a proposed revision of § 73.61 of the Rules. In particular § 73.61(b) requires certain AM broadcast stations using directional antenna (DA) systems to make periodic field signal strength proof of performance measurements and measurements at designated signal monitoring locations. These measurements are used to determine the radiation characteristics of DA systems. For many stations, these measurements must be made at regular intervals, whereas other similar stations are exempt from the measurement requirements based on certain conditions that existed prior to July 1, 1981. In this proceeding the Commission will explore fully the continued value of antenna proof of performance measurements, and the circumstances for which they are appropriate. Also considered is the need to specify construction practices for on-site antenna monitor sampling systems in the Rules.

Background

2. AM stations are licensed such that new stations provide an adequate signal over the community to which they are assigned, without causing interference to other previously existing stations. The Commission's authorization requirements provide for stations to use DA systems to prevent interference that could occur with non-directional operation. To this end, a DA focuses the radiated power in specific directions that do not cause interference, and at the same time minimizes radiated power in other protected directions. The non-directional antenna radiates power equally in all horizontal directions. To assure that a directional antenna continues to perform properly over time, 47 CFR 73.61(b) now requires a station that uses a DA system to perform radiation measurements on a regularly scheduled basis. These measurements, when combined and analyzed, are called a proof of performance (proof).

3. There are three types of DA proof of performance measurements. The first is the full proof (See 47 CFR 73.151 and 73.152) which is made to determine if the antenna is operating according to the terms of the station construction permit. The full proof is required for all DA stations when the antenna is first constructed or extensively modified. The second measurement, the partial proof, is required for most stations once each third year, and also if the DA undergoes minor system repairs. This measurement is used to determine if there have been changes in the system operation since its initial construction. The third, the skeleton proof, is required for some DA stations each year that a partial proof is not required. This measurement produces effectively a "spot" check of DA system operation.

4. Field strength measurements in support of proofs of performance involve using portable field strength meters to make observations of the station's signal level at various locations. Measurements are usually made in about eight horizontal directions, from the center of the DA site (radials). Full proofs require about fifty measurements on each radial, partial proofs about ten measurements per radial, and skeleton proofs require only three measurements per radial.

5. In order to conduct a proof of performance, the person making the measurements must travel by vehicle or walk along each radial to a distance of about twenty miles. At each of the measurement points along each radial, a reading using a field strength meter must be made to determine the signal level. Frequently, the person conducting these measurements must traverse swamps, water, thick woods, or rough terrain in order to reach the specified locations. The use of a helicopter, boat, or special conveyance is sometimes required. A full proof of performance can involve making measurements at hundreds of locations; whereas, skeleton proofs may require measurements at only ten or twenty locations. Once the field measurements have been taken, they must be analyzed to determine the actual signal levels being transmitted in each radial direction. This procedure is costly and time consuming, although it provides an excellent analysis of DA performance.

6. Approximately 25% of the stations using directional antennas are required to make field measurements at certain locations (monitoring points) specified in the station license. There are usually less than eight monitoring points per directional pattern located between two and three miles from the antenna and in critical directions (toward those stations being protected from interference). The station license states the maximum signal that is permitted at each point. Although measurements at these points provide a quick check for possible changes in the antenna pattern, variations in the signal level occur because of weather and seasonal changes, as well as changes in the conditions and use of the surrounding area.

7. In addition to the monitoring point and proof of performance measurements, the operation of a directional antenna is monitored on site by sampling and by measuring equipment that indicate the relative amplitudes and phases of the electric current in each of the elements (towers) of the directional array. The Rules currently contain detailed requirements for the design and installation of these sampling systems, including specifications for the type and method of installing the sampling devices and the cable connecting the sampling devices to the monitor.

Issues

8. This Rule Making action addresses two specific issues, as follows:

(1) Is there a continuing need for a required schedule of partial and skeleton proof of performance and antenna monitoring point measurements?

(2) Is there a need to retain specific design criteria in the Rules for on-site DA parameter monitoring systems?

Each issue will be developed separately.

Issue One: Continuing Need for Proofs

9. The Commission has no record of numerous complaints of interference caused by mis-adjusted AM directional antennas. To the contrary, we believe the AM band has served the public efficiently for several decades through the use of well-maintained directional antenna systems. We also believe licensees recognize the importance of each station maintaining its own antenna system properly to prevent over-all degradation of the band.

10. Of paramount importance in the operation of a directional array is the antenna's ability to maintain a specified

radiation pattern. The requirements now in the Rules provide for regularly scheduled checks of the radiation pattern. However, almost no flexibility is provided to licensees to employ alternative procedures. The Rules provide procedures to be followed by most licensees, regardless of the characteristics or stability of the particular DA.

11. For example, one antenna system might have a history of being stable over years of operation. Another antenna might require weekly adjustments to maintain the operating parameters. Licensees of systems are now required to conduct a triennial partial proof and intervening annual skeleton proofs. That schedule might be overly burdensome for the first system and insufficient for the second.

12. Based on the long record of successful operation of directional antennas, on our belief that licensees will recognize and execute their responsibilities, and on the relative differences in stability and complexity between arrays, it appears appropriate to re-examine the antenna proof of performance requirements. Even for those arrays designated as critical arrays by the Commission, flexibility in radiation pattern maintenance procedures should be given to individual licensees.[1]

13. We propose to eliminate the requirement that skeleton proofs be performed due to their limited value in showing actual antenna performance. Partial proofs are far more helpful in analyzing antenna performance, but the three year cycle may be more often than required for many antenna arrays. We therefore propose to give licensees the freedom and responsibility to schedule when routine partial proof measurements should be made. This will greatly reduce the burden on each licensee having a stable antenna array and still help assure that antenna systems do not deteriorate.

14. Therefore, we believe there is a continuing need for periodic partial proofs of performance and field monitoring point measurements, but on a schedule determined by the licensee. Even though the FCC requirements for specific schedules of monitoring point and partial proofs would be eliminated, licensees would continue to have the responsibility to maintain authorized radiation patterns. This function could be performed through partial proofs or other equivalent means, at the descretion of the licensees. This action would also eliminate the inconsistencies between stations as to the requirements for conducting field measurements, as indicated earlier. The Commission, however, retains the authority to require that proofs of performance be made by licensees whenever there is question of stability in directional antenna systems.

Issue Two: Sampling Systems

15. As indicated in the discussion for proofs of performance, a licensee has the basic responsibility to maintain the actual pattern shape of the directional antenna array. One method to monitor the array is through an on-site sampling system that registers the relative electrical current amplitudes and phases in each antenna element. The Rules now define the design and construction of sampling system that must be installed by licensees for new antennas or major rebuilds or existing antennas or of the sampling system (See 47 CFR 73.68).

16. Although the requirements in § 73.68 have provided guidance for the design of a sampling system, the guidance may be excessive for many antennas and insufficient for others. For example, critical arrays have very specific parameter tolerances which a sampling system that just meets the design requirements of § 73.68 could not measure. Similarly, a simple two-tower array may need only a minimal sampling system to maintain parameters. Also, § 73.68 does not allow for advances in technology such as fiber optics or digital sampling. However, because the quality of a sampling systems is so important to maintaining a day-to-day watch on DA performance, we solicit comments as to what extent § 73.68 should be deregulated. For example, currently the type of coaxial cable to be used for sampling lines is specified in the Rules. Although this level of specificity assures consistency between stations, is that degree of consistency necessary to prevent an increase in interference on the AM band? Further, to what extent can industry-mandated standards replace the current Rules?

17. *Regulatory Flexibility Initial Analysis.*

I. *Reason for Action:* The current Rules require some AM directional antenna licensees to perform proof of performance measurements while exempting others. This proposal would eliminate any such discrimination; and, minimize the need for the rigid schedule now imposed on licensees performing these measurements. Additionally, the proposal requests comments on relaxation of design and installation requirements of antenna sampling systems.

II. *The Objective:* To eliminate unnecessary regulations and policies.

III. *Legal Basis:* The action is proposed in accordance with sections 4 (i), 303 (e) and (r) of the Communications Act of 1934, as amended.

IV. *Description, Potential Impact, and Number of Small Entities Affected:* The proposed Rule changes should favorably affect most AM broadcast directional antenna licensees by relieving them of the schedule imposed on licensees performing proof-of-performance measurements.

V. *Recording, Recordkeeping, and Other Compliance Requirements:* None.

VI. *Federal Rules Which Overlap, Duplicate, or Conflict with this Rule:* None.

VII. *Any Significant Alternatives Minimizing Impact on Small Entities and Consistent with the Stated Objective:* None.

Paperwork Reduction Act

The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Actions

18. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603 (a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. 601 et seq.)

19. Accordingly, it is proposed to amend Part 73 of the Commission's Rules as set forth in the attached Appendix. Authority for the action taken herein is contained in sections 4(i), 303 (e) and (r) of the Communications Act of 1934, as amended.

20. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file Comments on or before June 10, 1985, and reply comments on or before July 10, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular

[1] The operating parameters of a critical array must be maintained to extremely close tolerance to prevent interference. See 47 CFR 73.68.

business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

21. For purposes of this nonrestrictive Notice and comment Rule Making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *et parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits an *et parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments on the proceeding must prepare a written summary of that presentation; and, on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

22. Further information on this proceeding may be obtained by contacting John W. Reiser, Technical and International Branch, Policy and Rules Division, Mass Media Bureau, (202) 632–9660.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

1. 47 CFR 73.14 would be amended by revising the definition of *Critical Directional Antenna* to read as follows:

§ 73.14 AM broadcast definitions.

* * * * *

Critical Directional Antenna. An AM Broadcast Directional Antenna that is required by terms of a station authorization to be maintained with the relative currents and phases at higher tolerances of deviation that those permitted under § 73.62; and, observed with a high precision monitor capable of measuring these parameters.

* * * * *

2. 47 CFR 73.53 would be amended to add paragraph (d) to read as follows:

§ 73.53 Requirements for authorization of antenna monitors.

* * * * *

(d) Stations determined as having a critical directional antenna must use an antenna monitor having high tolerance characteristics determined on an individual basis, and specified on the station authorization. Such monitors are not subject to the authorization requirements of paragraph (a) but they may be used only at the station for which they were specified.

3. 47 CFR 73.61 would be amended by revising paragraphs (a) and (b); and by removing Note 1, and Note 2 to read as follows:

§ 73.61 AM directional antenna field measurements.

(a) Each AM station using a directional antenna system must make field strength measurements at the monitoring point locations specified in the instrument of authorization as often as necessary to ensure proper directional system operation.

(b) Each AM station using a directional antenna system must perform a partial proof of performance as often as necessary to ensure proper directional system operation.

4. 47 CFR 73.154 would be amended by removing paragraph (b), revising paragraph (a) by removing its designation; and by revising the headnote to read as follows:

§ 73.154 Directional antenna partial proof of performance field strength measurements.

* * * * *

5. CFR 73.1225 would be amended by revising paragraph (c)(1)(iv), by deleting paragraph (c)(1)(iv)(A), and by redesignating paragraphs (c)(1) (iv)(B) and (c)(1)(iv)(C) as (c)(1)(iv)(A) and (c)(1)(iv)(B), to read as follows:

§ 73.1125 Station inspections by FCC.

* * * * *

(c) * * *

(1) * * *

(iv) Copy of the partial antenna proofs of performance directed by § 73.154 and made pursuant to the following requirements:

* * * * *

§ 73.1690 [Amended]

6. 47 CFR 73.1690, Modification of transmission systems, would be amended by removing paragraph (d)(3).

§ 73.1820 [Amended]

7. 47 CFR 73.1820, Station log, would be amended by removing paragraph (a)(2).

[FR Doc. 85–8445 Filed 4–8–85; 8:45 am]

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47 CFR Part 90

[PR Docket No. 85–102; FCC 85–157]

Amendment of the Commission's Rules To Make Additional Channels Available for Private Carrier Paging Operations in the 929–930 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to reapportion the channels allocated to private non-commercial paging and private carrier paging systems and whether to allow interpool sharing. Such modifications appear necessary in order to ensure that the quality of service in one pool is not compromised while frequencies in the other pool remain lightly used.

DATES: Comments are due by May 13, 1985 and replies by May 28, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rulemaking

In the matter of Amendment of Part 90 of the Commission's rules to make additional channels available for private carrier paging operations in the 929–930 MHz band; PR Docket No. 85–102; FCC 85–157.

Adopted: April 1, 1985.
Released: April 5, 1985.

By the Commission.

Introduction

1. The Commission is initiating this proceeding on its own motion to propose a modification in the distribution of channels available for private non-commerical paging and private carrier paging (PCP) operations in the 929–930 MHz band. The present distribution of channels appears to have resulted in uneven loading between private paging systems. Interpool sharing is also proposed to minimize future loading imbalances on these channels.

Background

2. On April 29, 1982, the Commission allocated the 929–930 MHz band to the Private Land Mobile Radio Services for paging operations.[1] Operational rules concerning the use of this band for private systems were deferred pending the analysis of comments filed in response to a *Further Notice* in this Docket.[2] In July of 1982, the Commission adopted a *Second Report and Order* in this proceeding establishing rules and policies to govern the operations of private paging stations in the band.[3] The Commission provided private land mobile users two alternatives to satisfy their paging requirements: (1) Non-commercial private systems (including sharing paging facilities with multiple licensing or cooperative sharing arrangements) and (2) private carrier (commercial) paging systems. In order to ensure that an adequate pool of frequencies would be available for non-commercial applicants, the Commission established separate frequency pools.[4] Based on projected user demand, the Commission allocated thirty channels for private non-commercial systems and ten channels for private carrier paging systems. The Commission stated however, that should a significant number of channels in either category remain unused it would review the use of channels in each pool and make changes if necessary.

Discussion

3. It has been almost three years since the Commission made the specific channel allocations. A review of our licensing records indicates that we have authorized over 600 private paging stations and less than 30 non-commercial stations. Based on these figures it appears that a modification of the present channel distribution in this band is in order. Accordingly, we are proposing to take ten channels from the non-commercial pool and to make them available for private carrier paging operations. Present non-commercial paging licensees on these channels would be grandfathered indefinitely.

4. We recognize that the proposed redistribution of channels may still result in significantly heavier loading on the commercial channels than on the non-commercial channels. In order to ensure that frequencies assigned in the non-commercial pool will not remain unused while the needs of commercial users go unmet we are proposing to allow interpool sharing of these channels. However, in order that private non-commercial eligibles are allowed ample opportunity to apply for channels and to implement systems in a manner best suited to their needs, we are proposing to delay the interpool sharing provisions until January 1, 1987. Consistent with other sharing arrangements used in the private radio services, an applicant requesting a frequency outside its pool must show that there are no satisfactory frequencies available within its own category and that the frequency requested is not being used within the proposed area of operation by an in-pool user.

Regulatory Flexibility Act Initial Analysis

5. The Commission certifies that sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rule making proceeding because the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The Commission affirms that current licensees will not be required to incur any obligations, financial or otherwise, and that existing non-commercial users on the frequencies being allocated for private carrier paging operations will be permitted to renew their authorizations indefinitely.

Paperwork Reduction Act Statement

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

7. Accordingly, notice is hereby given of rule making to amend Part 90 of the Commission's Rules and Regulations, in accordance with the proposal set forth in the attached Appendix.

8. The proposed amendment to the Rules is issued pursuant to authority contained in sections 4(i), 303(b), 303(f), 303(g), and 303(r) of the Commissions Act, as amended.

9. It is further ordered that the Secretary shall cause a copy of this *Notice of Proposed Rule Making* to be served upon the Chief Counsel for Advocacy of the Small Business Administration. The Secretary shall also cause a copy to be published in the **Federal Register.**

10. We encourage all interested parties to respond to this *Notice of Proposed Rule Making* since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex-parte* contracts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex-parte* presentation is any written or oral communication (other than formal written comments/pleadings of formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex-parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex-parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission official receiving the oral presentation. Each *ex-parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules 47 CFR 1.1231.

11. Pursuant to applicable procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before May 13, 1985, and reply comments on or before May 28, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public files and provided that the fact of the Commission's reliance on such

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[1] *First Report and Order*, Docket No. 80–183, 47 FR 26557 (June 7, 1982).

[2] Further Notice of Proposed Rule Making, Docket No. 80–183, 47 FR 16062 (April 14, 1982).

[3] *Second Report and Order*, Docket No. 80–183, 47 FR 39002 (September 8, 1982).

[4] Commercial applicants have an immediate need for channels as part of their business ventures, but individual private users generally do not apply for channels until they need them.

information is noted in the Report and Order.

12. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its Headquarters in Washington, D.C.

13. For further information on this proceeding, contact Herb Zeiler, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (202) 634–2443.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,
Secretary.

Appendix

PART 90—[AMENDED]

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. Section 90.494 is amended by revising the table in paragraph (a) and adding a new Paragraph (g).

§ 90.494 One-way paging operations in the 929–930 MHz band.

(a) * * *

TABLE

Pool 1—MHz	Pool 2—MHz
929.0125	929.3625
929.0375	929.3975
929.0625	929.4175
929.0875	929.4375
929.1125	929.4625
929.1375	929.6375
929.1625	929.6625
929.1875	929.6875
929.2125	929.7125
929.2375	929.7375
929.2625	929.7625
929.2875	929.7875
929.3125	929.8125
929.3375	929.8375
929.4875	929.8625
929.5125	929.8875
929.5375	929.9125
929.5625	929.9375
929.5875	929.9625
929.6125	929.9875

Frequencies listed in Pool 1 are available for shared use by all eligible Part 90 users except those eligible as private carrier paging (PCP) licensees.

Frequencies listed in Pool 2 are available only for shared use by private carrier paging (PCP) licensees.

Frequencies 929.7625 and 929.9875 are available for shared use in multi-area paging systems by private carrier paging (PCP) licenees.

Frequencies 929.2625 and 929.4875 are available only for shared use in mult-area paging systems for all Part 90 users except private carrier paging (PCP) licenees.

* * * * *

(g) Except for the channels available for multi-area operation, the channels listed in the Table in paragraph (a) of this section are available as of January 1, 1987, on a shared basis to all persons eligible in both pools under the following conditions:

(1) Channels will be available for interpool sharing only if there are no satisfactory frequencies available in the pool in which the applicant is actually eligible.

(2) There are no in-pool users authorized in the proposed area of operation.

[FR Doc. 85–8444 Filed 4–8–85; 8:45 am]
BILLING CODE 4712-01-M

Notices

Federal Register
Vol. 50, No. 68
Tuesday, April 9, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Bureau of Land Management Grants of Right-of-Way for the Celeron/All American Pipeline Project in the States of Arizona, California, New Mexico and Texas

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations (36 CFR Part 800) with the Bureau of Land Management and the State Historic Preservation Officers of Arizona, California, New Mexico and Texas providing for the management of historic properties that may be affected by the grants of right-of-way for the Celeron/All American Pipeline Project. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic properties will be identified, evaluated and treated in order to satisfy the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

DATE: *Comments Due:* May 9, 1985.

ADDRESS: Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, Telephone (303) 236–2682.

Dated: April 4, 1985.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 85–8406 Filed 4–8–85; 8:45 am]
BILLING CODE 4310-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Forest Service

[Docket No. 85–318]

Availability of Final Supplement to Gypsy Moth Environmental Impact Statement

Correction

In FR Doc. 85–7580 beginning on page 12593 in the issue of Friday, March 29, 1985, make the following correction:

On page 12594, first column, the following signature should appear above the file line:

"R. Max Peterson,
Chief, Forest Service".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 5–85]

Proposed Foreign-Trade Zone; Santa Ana, CA; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Santa Ana, California, requesting authority to establish a general-purpose foreign-trade zone in Santa Ana, Orange County, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 27, 1985. The applicant is authorized to make this proposal under Sections 6300–6305 of the Government Code of California.

The proposed foreign-trade zone would cover 43 acres within the City's 500-acre Inter City Commuter Station Redevelopment Project Area on Santa Ana Boulevard west of the Santa Ana Freeway, some 33 miles southeast of Los Angeles. The Santa Ana Community Redevelopment Agency plans to acquire the property pursuant to its authority under California law to acquire sites for development. The City's Economic Development Corporation, a non-profit organization with low-interest financing authority, would be the zone operator.

The application contains evidence of the need for zone services in the area. Several firms have indicated an interest in using zone procedures for the warehousing/distribution of products such as electronic components, computers and accessories, optical items, diving and safety equipment. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Alice Rigdon, District Director, U.S. Customs Service, Pacific Region, 300 S. Ferry St., Terminal Island, San Pedro, CA 90731; and Colonel Dennis F. Butler, District Engineer, U.S. Army Engineer District Los Angeles, P.O. Box 2711, Los Angeles, CA 90053.

As part of its investigation, the examiners committee will hold a public hearing on May 7, 1985, beginning at 10:00 a.m., in the City Council Chambers, City Hall, 20 Civic Center Plaza, Santa Ana.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by April 30. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through June 6, 1985.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce Branch Office, 116A W. 4th Street, Santa Ana, CA 92701

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: April 4, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-8504 Filed 4-8-85; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held April 25, 1985, 3:30 p.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, D.C. If necessary, the meeting will continue April 26 from 9:00-10:00 a.m. in Room 3407, Herbert C. Hoover Building. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentaion of papers or comments by the public.
3. Spare and replacement parts policy.
4. Procedure for review by DOD of license applications.
5. Raising the GLV limit.
6. Comparison of licensing procedures and time frames of other COCOM countries.
7. Levels of technology that require licenses by other COCOM countries.
8. Automation of DOC licensing procedures.
9. Treatment of emergency license applications by other agencies.
10. Action items underway.
11. Action items due at next meeting.

Executive Session

12. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the pulic may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated April 4, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85-8505 Filed 4-8-85; 8:45 am]

BILLING CODE 3510-01-M

Articles of Quota Cheese; Quarterly Determination and Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Publication of Quarterly Update of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared a quarterly update to its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese.

In the current quarter the Department has determined that the subsidy amounts have changed for each of the countries for which subsidies were identified in our annual subsidy list. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: April 12, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
Belgium	European Community (EC) Restitution Payments.	0.3	0.3
Canada	Export Assistance on Certain Types of Cheese.	26.1	26.4
Denmark	EC Restitution Payments.	0.1	0.1
Finland	Export Subsidy	32.3	32.3
	Indirect Subsidies	14.2	14.2
		46.5	46.5
France	EC Restitution Payments.	1.2	1.2
Ireland	EC Restitution Payments.	0	0
Italy	EC Restitution Payments.	15.1	15.1
Luxembourg	EC Restitution Payments.	0.3	0.3
Netherlands	EC Restitution Payments.	0	0
Norway	Indirect (Milk) Subsidy	13.3	13.3
	Consumer Subsidy	29.5	29.5
		42.8	42.8
Switzerland	Deficiency Payments	55.8	55.8

APPENDIX.—QUOTA CHEESE SUBSIDY PROGRAMS—Continued

Country	Program(s)	Gross [1] subsidy (cents per pound)	Net [2] subsidy (cents per pound)
U.K.	EC Restitution Payments.	0	0
W. Germany	EC Restitution Payments.	0	0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 85-8420 Filed 4-8-85; 8:45 am]
BILLING CODE 3510-DS-M

[Case No. 626]

Piher Semiconductores, S.A.; Order Amending Temporary Denial of Export Privileges

In the matter of Piher Semiconductores, S.A., Avda San Julian, s/n Apartado Correos 177, Granallers (Barcelona), Spain.

By Order of April 9, 1982, 47 FR 16819 (April 20, 1982), June 2, 1982, 47 FR 24765 (June 8, 1982), August 3, 1982, 47 FR 35808 (August 17, 1982), October 12, 1982, 47 FR 46558 (October 19, 1982), December 7, 1982, 47 FR 55989 (December 14, 1982), March 22, 1983, 48 FR 12762 (March 28, 1983), May 19, 1983, 48 FR 23471 (May 25, 1983), August 26, 1983, 48 FR 40418 (September 7, 1983), November 30, 1983, 48 FR 54676 (December 6, 1983), February 28, 1984, June 1, 1984, 49 FR 23906 (June 8, 1984), August 31, 1984, 49 FR 35823 (September 12, 1984), and December 14, 1984, 49 FR 49489 (December 20, 1984), the Order of February 25, 1982, 47 FR 9044 (March 3, 1982) Temporarily Denying Export Privileges was amended so as to authorize certain exports by Piher International Corp. The Order of December 14, 1984 further provided that Piher International Corp. could apply for an extension of such authorization to export if serious economic hardship would be caused by failure of such extension coupled with a continuing consideration of a motion filed by Piher international Corp. that requested exception from the provisions of Paragraph III of the Order of February 25, 1982.

Consideration of this motion to except Piher International Corp. is still continuing, and it has now applied for an extension of its authorization to make certain exports, asserting that failure to obtain the extension will entail serious economic hardship.

Based on the representations made by Piher International Corp., I find that its application for an extension of its authorization to make certain exports is justified, and that granting this extension will not jeopardize the purpose of the Order of February 25, 1982.

Accordingly, it is hereby ordered that the Order of February 25, 1982 is further amended by excepting, from its denial of export privileges, Piher International Corp., with addresses at 903 Feehanville Drive, Mt. Prospect, Illinois 60056, and at Post Office Box 91969, Chicago, Illinois 60680, insofar as Piher International Corp. exports variable resistors and potentiometers to its customers in Canada and Singapore in fulfillment of shipments scheduled through June 1985 in the shipment release documents filed by Piher International Corp. in support of its Application for this extension, provided all such exports are G-DEST under the Export Administration Regulations (15 CFR Parts 368-399 (1984)). Piher International Corp. may apply for an extension of this Amendment to shipments scheduled after June 1985 should a continuing consideration of its aforesaid motion entail serious economic hardship if such an extension is not issued.

This Amendment of the Order is effective April 1, 1985.

Dated: April 3, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-8422 Filed 4-8-85; 8:45 am]
BILLING CODE 3510-DT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With Israel on Category 361

April 4, 1985.

On March 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Israel to enter into consultations concerning exports to the United States of cotton sheets in Category 361, produced or manufactured in Israel.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Israel, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton sheets in Category 361, produced or manufactured in Israel and exported to the United States during the twelve-month period which began on March 29, 1985 and extends through March 28, 1986 at a level of 626,455 numbers.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 361 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Israel—Market Statement

Category 361—Cotton Sheets

March 1985.

Summary and Conclusions

United States imports of Category 361 from Israel are non-institutional type sheets. Imports from Israel during 1984 were 626,455 sheets (52,205 dozen), up 404.3 percent from the 1983 imports of 124,226 sheets (10,352 dozen). Israel was the fourth largest supplier, accounting for 7.43 percent of the total 1984 imports. This was substantial growth and from a country which shipped no sheets in 1982. The market for Category 361 non-institutional sheets has been disrupted by imports and imports from Israel, in 1984, reached a level which disrupted the U.S. market.

U.S. Production

Production of non-institutional cotton sheets in the United States increased from 990,000 dozen in 1979 to 1,279,000 dozen in 1980. Production trended downward after 1980, declining to 1,014,000 dozen sheets in 1983. Production for the first three quarters of 1984 were 567,000 dozen sheets, down 26.3

percent from the same period in 1983. Production by quarters in 1984 trended downward pointing toward a more substantial decline in 1984 than is indicated by the decrease registered during the first three quarters.

U.S. Imports

U.S. imports of non-institutional cotton sheets increased from 22,000 dozen in 1979 to 248,000 dozen in 1983. Imports in 1984 were up 150 percent to 622,000 dozen. Imports during the last quarter of 1985 were 247,000 dozen sheets, almost equal to the total 1983 imports. Israel, in 1983, first appeared as an exporter of sheets to the U.S.

Import Penetration

The ratio of imports to domestic production increased sharply, up ten-fold, from 2.2 percent in 1979 to 24.5 percent in 1983. The ratio for the first three quarters of 1984 was 66.1 percent, 263 percent above the same period in 1983. The very sharp spurt in imports during the last quarter of 1984 probably resulted in an import ratio between 80 and 85 percent for the full year of 1984.

Domestic Producers Market Share

The U.S. market for domestically produced and imported non-institutional cotton sheets, after increasing in 1980, was remarkably stable through 1984. The U.S. producers share of the market was also stable through 1981, but began to decline an increasing rate thereafter. The domestic producers share for 1981 was 95 percent; it dropped to 89 percent in 1982; to 80 percent in 1983; and to 60 percent during the first three quarters of 1984. The full year share in 1984 will be even smaller due to the surge in imports during the last quarter.

Import Values vs U.S. Producers Price

Nearly all the sheets imported from Israel are carded sheets entering under TSUSA No. 363.3010. Imports are good quality flannel sheets which are landed at a duty-paid value below the U.S. producers price for comparable sheets.

[FR Doc. 85-8421 Filed 4-8-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Organization of the Joint Chiefs of Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group; Closed Meeting

AGENCY: Joint Strategic Target Planning Staff, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The Director, Joint Strategic Target Planning Staff has scheduled a closed meeting of the Scientific Advisory Group.

DATE: The meeting will be held on 8 and 9 May 1985.

ADDRESS: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, 2 April 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specified need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 4, 1985.

[FR Doc. 85-8426 Filed 4-8-85; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chaper 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Record of Military Processing—Armed Forces of the United States; DD Form 1966.

DD Form 1966 is the basic form used by all military Services for obtaining data used in determining eligibility of applicants for enlistment in the Armed Forces of the United States and for establishing records for those enlisted. Individuals (male and female) 17 to 26 years of age.

Responses 1,000,000.

Burden hours 334,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L(PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643.

Patrica H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 4, 1985.

[FR Doc. 85-8425 Filed 4-8-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Community College of the Air Force (CCAF Advisory Committee); Meeting

The Community College of the Air Force Advisory Committee will hold a meeting on May 6, 1985 at 8:00 a.m. in the Conference Room, Room 6, Building 905, and May 7, 1985 at 8:00 a.m. in the Conference Room, Room 203, Building 900, located at Randolph Air Force Base, San Antonio, Texas.

The meeting is open to the public.

Agenda items include: Briefings by Air Training Command Staff Agencies, Governance, Faculty Credentials, State of the College, Status of CCAF Self-Study for Reaffirmation of Accreditation, CCAF Program Review Status, Technical Training Center Reaffirmation Status, and Health Care Sciences Department Briefing.

For further information, contact Lieutenant Colonel John R. Fergus, (205) 293-7937, Community College of the Air Force, Maxwell Air Force Base, Alabama 36112-6655.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-8411 Filed 4-8-85; 8:45 am]

BILLING CODE 3910-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be fowarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

Air Force ROTC Four-year Scholarship Application

The application is used by the AFROTC Four-year Central Scholarship Selection Board to evaluate applicants for four-year scholarships. The information is needed to ensure that all applicants are considered on an equitable basis, and that only the best-qualified applicants with a proven potential for success are awarded scholarships.

High School Students or Graduates between the Ages of 16 and 21

Responses 15,000

Burden hours 7,500

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Viriginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Major J.D. Hogan, HQ USAF/MPPE, The Pentagon, Washington, DC 20330–5060, telephone (202) 695–0318.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 4, 1985.

[FR Doc. 85–8424 Filed 4–8–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Supplemental Notice of Intent To Prepare Environmental Impact Statement

AGENCY: Department of the Army, DOD.

ACTION: Supplemental Notice of Intent to Prepare an Environmental Impact Statement on the potential impacts resulting from the demilitarization of all M55 rockets currently in storage within the continental United States (CONUS). These obsolete munitions contain the lethal chemical warfare nerve agents GB or VX. Stockpiles of these rockets are located at the following CONUS installations: Anniston Army Depot (ANAD), Anniston, Alabama; Lexington-Blue Grass Depot Activity (LBDA), Lexington, Kentucky; Pine Bluff Arsenal (PBA), Pine Bluff, Arkansas; Tooele Army Depot (TEAD), Tooele, Utah; and US Army Depot Activity Umatilla (UMDA), Hermiston, Oregon.

1. On January 30, 1984, the Army published a Notice of Intent to prepare Environmental Impact Statements on the proposed construction, operation and decontamination of chemical agent demilitarization facilities at ANAD, LBDA and UMDA (49 FR 3679). In accordance with regulations for implementing the procedural provisions of the National Environmental Policy Act, promulgated by the Council on Environmental Quality (CEQ) (40 CFR Parts 1500–1508) and applicable implementing regulations, the Army initiated a public scoping process designed to aid in identifying the significant issues related to the proposed action. Public scoping meetings were held at Anniston, Alabama (February 15, 1984), Richmond, Kentucky (February 16, 1984), and Hermiston, Oregon (February 21, 1984). As a result of comments received during the scoping process for those EISs, the Army has determined that it is appropriate to develop a broader plan for the demilitarization of all M55 rockets currently in CONUS storage and to prepare a single EIS which examines all the alternatives.

2. Alternatives which have been identified for consideration in the EIS include:

a. The "no action" alternative which is considered to be deferral of demilitarization with continued storage of the munitions at their current locations, including actions necessary to meet the conforming storage requirements of the Resource Conservation and Recovery Act (RCRA).

b. Construction (or modification), operation, and ultimate decommissioning of separate demilitarization facilities at each of the current storage locations. Use of these facilities for other purposes including the demilitarization of other agents/munitions would be subject to separate review under the National Environmental Policy Act (NEPA).

c. Transportation to demilitarization facilities to be constructed or modified at one or more locations. The following transportation alternatives have been selected at this time for specific, detailed analysis:

(1) Transportation of rockets from ANAD, LBDA, and UMDA to Johnston Atoll, Central Pacific Ocean.

(2) Transportation of rockets from ANAD, LBDA and UMDA to TEAD, Tooele, Utha.

(3) Transportation of rockets from ANAD and LBDA to PBA, Pine Bluff, Arkansas, and from UMDA to TEAD, Tooele, Utah.

Use of these facilities for other purposes including the demilitarization of other chemical agents/munitions would also require separate NEPA review.

3. The Department of the Army is responsible for the demilitarization of obsolete/unserviceable chemical warfare agents and munitions in a manner which provides protection of public health and safety and which is environmentally acceptable. Incineration, in industrial-sized, environmentally safe, disposal facilities, would be the method used for destroying the rockets. Under the National Environmental Policy Act (NEPA), the Army is required to analyze and document the impacts of alternative courses of action and to consider the results of this analysis in its decision as to which of the alternatives to implement.

4. In accordance with the decision to prepare an EIS on the demilitarization of all M55 rockets in CONUS, the Army is extending the public scoping process initiated in January 1984, and is seeking continued participation and additional input from the public as well as Federal, state and local agencies. To provide an opportunity for public input to the extended scoping process, interested

individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration by the Army and possible incorporation into the Environmental Impact Statement. Particularly solicited is information that would assist the Army in analyzing the potential environmental consequences of the proposed action. This includes information on other environmental studies planned or completed in the area of all storage installations and sites potentially impacted by the transportation alternatives; issues and alternatives which the Environmental Impact Statement should consider; recommended mitigating measures; and major impacts associated with the proposed action. Concerned agencies and individuals' views will be obtained through persons, telephone, and mail contacts in addition to anticipated public scoping meetings to be held at convenient locations near all storage installations and possibly at some key sites most closely related to the transportation alternative. Schedules of public scoping meetings will be announced locally at a later date. Pertinent issues identified at the three public scoping meetings held in February 1984 will be considered in the draft EIS as will the findings of the National Research Council report on Disposal of Chemical Munitions and Agents, comments made from the series of meetings held in Kentucky (LBDA area), and the results of the tests being conducted to assess the M55 rocket. Questions and comments regarding the scope of the analysis and/or specific issues which should be addressed in the analysis should be submitted to LTC John A. Soyak, US Army Toxic and Hazardous Materials Agency, ATTN: AMXTH-ES, Aberdeen Proving Ground, Maryland 21010-5401. Telephone (301) 671-2556. Comments and suggestions should be received by December 4, 1895, to be considered in the draft EIS.

5. It is estimated that the draft Environmental Impact Statement will be available to the public in March 1986. When the draft Environmental Impact Statement is completed, a public notice of its availability for review will be announced in order that interested person may comment on the document. That notice will also provide a schedule of public hearings to solicit public response. Comments received will be considered in preparation of the final Environmental Impact Statement. Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the draft and final EISs may contact LTC Soyak at the address indicated above.

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OASA(I&L).

[FR Doc. 85-8431 Filed 4-8-85; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Directorate of Personal Property; International Through Government Bill of Lading Household Goods Program

AGENCY: Military Traffic Management Command, DoD.

ACTION: The Military Traffic Management Command (MTMC), on behalf of the Department of Defense (DOD), is modifying procedures associated with the acquisition of rates for international through Government bill of lading (ITGBL) shipments of household goods and unaccompanied baggage. This has been previously announced in 50 FR 9881, March 12, 1985.

SUMMARY: The purpose of this announcement is to extend the time for receipt of written comments from April 12, 1985, to May 1, 1985, and to provide other information.

Comments: Written comments concerning the intended modification will be considered if received not later than May 1, 1985.

Address Comments To: Commander, Military Traffic Management Command, Attn: Rate Acquisition Division (MT-PPC-Int'l), Room 408, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

FOR FURTHER INFORMATION CONTACT: LTC Robert P. Coleman or Mrs. Naomi King, HQ Military Traffic Management Command, Attn: MT-PPC (Room 408), 5611 Columbia Pike, Falls Church, Virginia 22041-5050, (202) 756-2385.

SUPPLEMENTARY INFORMATION: In view of the additional time for comments and to allow sufficient time for evaluating responses, Volume 51 will continue to be based on industry related documents.

This request for comments and the resulting determinations are being made under the authority of 10 U.S.C. 2301-2314 and DOD Directives 4500.9 and 4500.34R.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 4, 1985.

[FR Doc. 85-8477 Filed 4-8-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Randolph-Sheppard Act; Initiation of Secretarial Determination

AGENCY: Department of Education.

ACTION: Notice of Initiation of Secretarial Determination.

SUMMARY: Notice is given that the Department of Education is initiating a Secretarial determination under the Randolph-Sheppard Act in accordance with 20 U.S.C. 107(b). As required by section 107(b) of the Randolph-Sheppard Act, the Secretary will determine whether proposed limitations on the placement or operation of blind vending facilities in Federal prisons, based on a finding that such placement or operation would adversely affect the interests of the United States, are justified. Interested persons or organizations are invited to submit written documentation on the issues for consideration in the determination. Please provide four copies.

DATES: Written documentation must be received on or before May 24, 1985.

ADDRESS: Documentation should be addressed to the Department of Education, Rehabilitation Services Administration, Division for the Blind and Visually Impaired, Vending Facility Branch, Room 3222, MES Building, 330 C Street, SW., Washington, D.C. 20202. Attention: Arbitration Clerk.

FOR FURTHER INFORMATION CONTACT: Mr. Chester Avery, Director, Division for the Blind and Visually Impaired, Rehabilitation Services Administration, 330 C Street, SW., Washington, D.C. 20202. Telephone: (202) 732-1316.

SUPPLEMENTARY INFORMATION: On October 26, 1984, the Department of Justice, Federal Bureau of Prisons, requested two limitations on the placement or operation of vending facilities in Federal prisons. One limitation would apply to vend facilities placed in inmate housing units and recreational areas and would consist of a requirement that a commission be paid from the profits of the vending facility to the prison commissary system. The second limitation would apply to vending facilities in visitors' and employees' lounges and would require that a commission be paid to employees' clubs. Both limitations are requested to apply nationally; however, if the second limitation is not found to be justifiable as applied to all facilities, it is requested that consideration be given to applying the limitation to particular facilities

where, due to special circumstances, it is found the interests of the United States would be adversely affected. In addition to addressing the issues of limitations, the Bureau of Prisons has agreed to utilize this process to address any collateral issues, such as income sharing, so national guidelines can be developed for the uniform application of the Randolph-Sheppard Act to all Federal prison facilities. While this Secretarial determination will address the application of the Randolph-Sheppard Act to all Federal property administered by the Bureau of Prisons, it will particularly focus on the Federal Correctional Facility, Talledega, Alabama, where a Randolph-Sheppard licensed blind vendor is presently operating a vending facility.

Donald M. Thayer, J.D., Special Assistant to the Commissioner, Rahabilitation Services Administration, is designated the Review Officer for this Secretarial determination and will proceed with the Secretarial determination in accordance with the Procedures for the Conduct of a Secretarial Determination developed for the purpose. A copy of the procedures is available on request.

Availability to public: All documentation submitted in response to this Secretarial determination will be available for public inspection, during and after the comment period, in room 3224 Switzer Building, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Madeline Will,

Assistant Secretary, Office of Special Education and Rehabilitation Service.

April 1, 1985.

[FR Doc. 85-8476 Filed 4-8-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Education

Regional Educational Laboratories and Research and Development Centers Program

AGENCY: Department of Education.

ACTION: Extension of Closing Date for Transmittal of Applications for Grants for Institutional Operations for NIE Research and Development Centers.

SUMMARY: The Secretary of Education (the Secretary) extends the closing date for transmittal of applications for grants to operate an NIE research and development center (a center), under the Regional Educational Laboratories and Research and Development Centers Programs, to August 15, 1985.

Applications for new grants for institutional operations must be mailed or hand delivered on or before August 15, 1985.

Authority for these grants is contained in section 405(f) of the General Education Provisions Act (GEPA), as amended (20 U.S.C. 1221e(f)).

On October 12, 1984, the Secretary published in the **Federal Register** at 49 FR 40079 an application notice for the transmittal of applications for planning grants and grants for institutional operations for NIE research and development centers. In the case of 5-year grants for institutional operations, the Secretary requested applications by June 6, 1985. The Secretary is now considering the option of providing additional information to applicants with respect to the research areas of centers. If the Secretary decides to provide additional information, that information will be published in the **Federal Register** by May 15, 1985. Anticipating this possibility, the Secretary considers that a longer application preparation period will provide sufficient time for prospective applicants.

Applications previously submitted in response to the June 6 deadline date may be revised by the new closing date.

Program information regarding eligibility requirements, selection criteria, post-award requirements, length of awards, and available funds, as well as requirements for the transmittal of applications, were given in the October 12, 1984 notice and remain unchanged. In addition, no changes will be made in the eleven missions identified in the October 12, 1984 notice.

Grant information packages, including application forms and a copy of the application notice mentioned above, may be obtained by contacting Susan Klein (telephone: (202) 254-6271) or Gail MacColl (telephone: (202) 254-7930), National Institute of Education, 1200 19th Street, N.W., Washington, D.C. 20208. Originally released in October 1984, these packages provide current information to applicants, with the sole exception of the change in closing date included in this notice.

Prospective applicants and other interested individuals and organizations not already on NIE's mailing list of laboratory and center competitions may request to be kept informed of new information on the center competitions by contacting Mrs. Ella Jones, National Institute of Education, 1200 19th Street, N.W., Washington, D.C. 20208. Telephone: (202) 254-7180.

(Sec. 405(f) of the General Education Provisions Act, 20 U.S.C. 1221e(f))

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

Dated: April 4, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-8564 Filed 4-5-85; 1:16 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant)

AGENCY: San Francisco Operations Office, DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The proposed work will be conducted at the University of Nevada-Las Vegas, Earth Sciences Division, 255 Bell Street, Reno, Nevada 89505. The proposed period of performance is twelve months, beginning April 1, 1985 through April 1, 1986. The proposed cost of the work is $119,000.

GRANT NO. DE-FG03-85SF15555

Scope of Project

The major thrust of the research is to investigate the benefit of elevated temperatures provided by geothermal fluids in recovering valuable elements from ores and concentrates. Reaction acceleration is one possible benefit of applying geothermal fluids, another is to raise temperature of leaching solutions in the winter when frequent low temperatures shut down operations.

The research to be conducted will investigate the co-location of mining/processing and geothermal occurrences in Nevada, the character of the geothermal resource, and the effects of these fluids on leaching, flotation and other processes for the recovery of valuable elements from the ores. Studies will entail collection of representative materials in the field, laboratory tests and evaluations, computer modeling, and plans with industry for possible full-scale field tests of specific applications.

FOR FURTHER INFORMATION CONTACT: Jane Hadly, Contract Specialist, Contracts Management Division, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in San Francisco, California, March 28, 1985.

Donald W. Pearman, Jr.,

Acting Manager.

[FR Doc. 85-8414 Filed 4-8-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-9-20-000 and TA85-9-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 3, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on March 29, 1985 tendered for filing Second Substitute Sixth Revised Sheet No. 201 and Second Substitute First Revised Sheet No. 241 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Second Substitute Sixth Revised Sheet No. 201 is being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment as set forth in section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Such tariff sheet reflects reduced rates filed by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"). Second Substitute First Revised Sheet No. 241 identifies the purchased gas cost included in the sales rates shown on Second Substitute Sixth Revised Sheet No. 201.

Algonquin Gas proposes the effective date of Second Substitute Sixth Revised Sheet No. 201 and Second Substitute First Revised Sheet No. 241 to be March 1, 1985.

Algonquin Gas requests permission to credit the subsequent month's billing following Commission acceptance to effectuate such rate change as of March 1, 1985, in the event Algonquin Gas does not receive approval in time for the April 7, 1985 billing of March, 1985 sales.

Algonquin Gas notes that a copy of this filling is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before April 11, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8461 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-48-000 and TA85-2-48-001]

ANR Pipeline Co.; PGA Rate Change

April 3, 1985.

Take notice that on March 29, 1985, ANR Pipeline Company (ANR) pursuant to Section 15 to the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") First Revised Sheet No. 18 and First Revised Sheet No. 19 to Original Volume No. 1 of its Tariff to be effective May 1, 1985.

First Revised Sheet No. 18 reflects an 8.57¢ per dekatherm ("dth") decrease in the gas cost component of the commodity rate of ANR's CD-1 and MC-1 Rate Schedules, and increase of $1.684 in the monthly demand rate applicable to the CD-1 and MC-1 Rate Schedules and an increase in ANR's one part rates applicable to Rate Schedules SGS-1 and LVS-1 of 8.45¢ and 0.43¢, respectively, per dth.

ANR states that the change in rates set forth above is a result of factors which are outlined below:

A. Factors resulting in cost reductions.

1. Reductions in the cost of gas imported from Canada as a result of renegotiated agreements with suppliers.

2. Reductions in the cost of gas from a number of domestic producers as a result of renegotiated gas purchase contracts in terms of prices and take requirements.

3. A reduction of 0.55¢/dth resulting from the completion of installment payments associated with the Commission's Order Nos. 94, *et al.*

B. Factors resulting in partially offsetting cost increases.

1. Producer price increases for regulated supply sources as authorized by the Natural Gas Policy Act of 1978.

2. The replacement of older, lower cost supply sources with new, higher cost sources.

3. An increase in the surcharge for deferred gas costs to a positive 3.93¢ per dth from the November 1, 1984 PGA surcharge of a negative 9.27¢ per dth.

4. A net increase of 2.89¢ per dth which results from a reduction in the carrying charges associated with a decrease in ANR's take-or-pay balances offset by an increase of the-charges associated with the recovery of one-time payments and other reimbursement arrangements negotiated with suppliers in lieu of full take-or-pay payments. See Article IX, B of the Stipulation and Agreement at *ANR Pipeline Company*, Docket Nos. RP82-80, *et al.*

5. An increase of 0.61¢ per dth resulting from the expiration of the requirement in Article X(a) of the Stipulation and Agreement in Docket Nos. RP82-80, *et al.*, that ANR reduce its rates in connection with volumes of gas purchased from its affiliate, ANR Production Company, for PGA filings effective May 1, 1984 and November 1, 1984.

First Revised Sheet No. 19 reflects the fact the since there were zero MSAC's reported by ANR's customers, there is no PGA reduction.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice an Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8462 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8212-001]

City of Santa Rosa; Surrender of Preliminary permit

April 4, 1985.

Take notice that City of Santa Rosa, Permitee for the Rock Creek Project No. 8212, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8212 was issued on September 28, 1984, and would have

expired on February 28, 1986. The project would have been located on Rock Creek in Shasta County, California.

The Permittee filed the request on March 11, 1985, and the preliminary permit for Project No. 8212 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8463 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-301-000]

Clay Petroleum, Inc.; Application for Partial Abandonment of Service

April 4, 1985.

Take notice that Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective application which is on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before April 12, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI85-301-000, B, Mar. 27, 1985	Clay Petroleum, Inc., 101 Southwestern Blvd.—Suite 110, Sugar Land, TX 77478.	Trunkline Gas Co., Ralph Thomas No. 1, 280 Acre Unit, Ramsey Field, Colorado County, TX.		(1)

[1] Applicant requests authorization to abandon service from certain acreage committed and dedicated under a gas purchase contract dated July 24, 1967, between Trunkline Gas Company and Prairie Producing Company, *et al.* The only well producing on the subject acreage was plugged and abandoned in March 1982, and the subject lease reverted to the landowners.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-8464 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-122-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

April 3, 1985.

Take notice that Colorado Interstate Gas Company (CIG), on March 28, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1, 1–A, and 2. The proposed base rates would increase revenues from CIG's jurisdictional customers by approximately $47.5 million above CIG's currently effective rates (excluding the GRI adjustment and all surcharges). The proposed increase is based on the 12-month period ended December 31, 1984, adjusted for known and measureable changes which will become effective within the nine months subsequent to that date, as provided for in the Commission's Regulations.

CIG states that the jurisdictional rates filed herewith are designed to enable CIG to recover increases in its jurisdictional cost of service.

In addition, included in this filing are Revised Tariff Sheets adjusting the Transportation rates CIG charges its existing transportation customers under various X-Rate Schedules contained in Original Volume No. 2 of CIG's FERC Gas Tariff.

Finally, CIG has included with its filing proposed changes in its resale Rate Schedules G–1, I–1, H–1, and F–1. A new Rate Schedule PR–1 applicable to existing CIG resale services for Mountain Fuel Resources, Inc., K N Energy, Inc., and Northern Gas Division of K N Energy, Inc., is also proposed. Likewise, CIG filed a new FERC Gas Tariff, Original Volume No. 1–A which contains transportation rate schedules to cover new transportation services by CIG. In addition to transportation rate schedules, Volume No. 1–A contains general terms and conditions which, *inter alia*, establishes curtailment procedures that would be implemented in the event CIG has insufficient capacity to meet all of its sales and transportation obligations. These general terms and conditions also include exculpatory language that defines the extent of CIG's liability in the event of curtailment. CIG states that the new transportation services are the subject of a contemporaneous application by CIG pursuant to section 7 of the Natural Gas Act.

CIG contends that the subject changes in its resale rate schedule and the new transportation rate schedules are intended to make the jurisdictional services offered by CIG more responsive to the current marketing demands in its service area. CIG requests all necessary waivers of the Commission's Regulations in order for its filing to be accepted. CIG also states that copies of this filing have been served on its jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8465 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-123-000]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

April 3, 1985.

Take notice that Colorado Interstate Gas Company (CIG) on March 28, 1985,

tendered for filing First Revised Sheet No. 61G to its FERC Gas Tariff, Original Volume No. 1. CIG states that this filing reflects the terms of Stipulation 16, adopted and approved by Ordering Paragraph E of the Commission's Opinion No. 226, issued September 28, 1984. This filing reflects a change in the period during which CIG is required to remit GRI funding unit collections to GRI from 30 days after receipt to 15 days after receipt. CIG requests an effective date retroactive to January 1, 1985.

CIG requests whatever waiver of Commission Regulations as may be deemed necessary to accept this tariff sheet for filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington D.C. 20426, in accordance with §§ 385.211 or 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8466 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-51-000 and TA85-3-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 3, 1985.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on March 27, 1985, tendered for filing the following revised tariff sheets to its FERC Gas Tariff proposed to be effective April 1, 1985.

First Revised Volume No. 1

Fifth Revised Sheet No. 52
Fiftieth Revised Sheet No. 57
Alternate Fiftieth Revised Sheet No. 57.

Great Lakes states that the filing provides for a substantial reduction, estimated at $5.7 million on an annual basis, in the cost of gas resold by Great Lakes to ANR Pipeline Company ("ANR") resulting from recent negotiations among Great Lakes, ANR and TransCanada PipeLines Limited ("TransCanada"), sole supplier of natural gas to Great Lakes. As a result of further negotiations between Great Lakes and TransCanada the filing also provides for a substantial reduction in the cost of gas for total system company use estimated to be $16.2 million on an annual basis, and in the cost of gas for certain small customers namely Inter-City Gas Corporation, Peoples Natural Gas Company and Michigan Power Company, estimated to be $1.1 million annually. These reductions in border price for Canadian gas have been negotiated to meet the competative requirements of the respective markets being served.

Great Lakes has requested various waivers of the Commission's Regulations so as to permit the out-of-period PGA filing to become effective April 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8467 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-4-51-000 and TA85-4-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 3, 1985.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on March 29, 1985, tendered for filing Fifty-First Revised Sheet No. 57, Alternate Fifty-First Revised Sheet No. 57 and Tenth Revised Sheet No. 57-A to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective May 1, 1985.

Fifty-First Revised Sheet No. 57 and Alternate Fifty-First Revised Sheet No. 57 reflect a Purchased Gas Cost Surcharge resulting from maintaining an Unrecovered Purchased Gas Cost Account for the period commencing September 1, 1984 and ending February 28, 1985. These tariff sheets are directly related to two filings made by TransCanada Pipelines' Limited (TransCanada) to the National Energy Board of Canada (NEB) on March 8, 1985 and March 11, 1985 respectively, requesting authorization for reductions in the export price of natural gas purchased by Great Lakes from TransCanada. In the event that the NEB approves the application of March 8, 1985 prior to the application of March 11, 1985 Great Lakes requested the approval of Fifty-First Revised Sheet No. 57. If both applications are approved by the NEB it was requested that the Commission approve Alternate Fifty-First Revised Sheet No. 57. Great Lakes further states that it has undertaken to advise the Commission promptly of the approvals granted by the NEB.

Tenth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing May 1, 1985 and ending October 31, 1985. No incremental costs are estimated for this period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8468 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-45-003]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

April 3, 1985.

Take notice that on March 25, 1985, Inter-City Minnesota Pipelines Ltd., Inc. ("Inter-City") tendered for filing substitute 23rd Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff to be effective March 1, 1985. Inter-City also submitted supporting schedules and exhibits as required by Commission regulations.

In order to permit the requested effective date, Inter-City requested waiver of applicable notice provisions and any other Commission regulations that might restrict such an effective date.

Inter-City states that substitute 23rd Revision Sheet No. 4 reflects a reduced rate for gas imported by Inter-City at International Falls, Minnesota pursuant to NEB license GL–29. (These imports constitute Inter-City's eastern zone for rate purposes.) The reduced rate and the terms and conditions of the attached amending agreement dated February 15, 1985 are further stated to have been approved by the NEB.

In its application, Inter-City also states that its western zone (GL 28) rates and proposed PGA adjustment remain unchanged from those set out on 21st Revised Sheet No. 4 filed on October 1, 1984 in Inter-City's Docket No. TA 85–1–45 (PGA 85–1), accepted for filing effective November 1, 1984. Although Inter-City had negotiated reduced rates for its GL 28 purchases and had filed to implement the lower rates pending NEB approval, the NEB denied the negotiated GL 28 rate.

Inter-City's application also requests that Fourth Revised Sheet No. 61, filed on January 24, 1985, be approved by the Commission effective February 14, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8469 Filed 4–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–46–000 and TA85–2–46–001]

Kentucky West Virginia Gas Co.; Proposed Change in Rates

April 3, 1985.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 29, 1985, tendered for filing with the Commission its Thirty-Third Revised Sheet No. 27 and Thirteenth Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective May 1, 1985.

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in section 18, General Terms and Conditions of FERC Gas Tariff, First Revised Volume No. 1.

The current purchase gas adjustment is a reduction of 6.15¢ per dekatherm (dth). The deferred gas cost adjustment is 2.31¢ per dth or an increase of 11.31¢ per dth. These changes result in a net increase to the jurisidictional sales rate in this filing of 5.17¢ per dth, for a total effective rate of 360.52¢ per dth, to become effective May 1, 1985.

Kentucky West further states that, in making the instant filing, it does not waive or prejudice its right to continue to prosecute its petition for review with the United States Court of Appeals for the Fifth Circuit of the Commission's Order dated December 2, 1982, denying Kentucky West's application for rehearing of the Order issued April 30, 1982 in Docket Nos. TA82–2–46–001 (PGA–2) (IPR82–2). *(Kentucky West Virginia Gas Company vs. FERC,* Case No. 62–4595—filed December 3, 1982).

Kentucky West further states that, in making the instant filing, it does not waive any rights it may have to a filing to charge and collect NGPA prices for all Company-owned production retroactive to December 1, 1978, nor does it waive any rights to collect any carrying charges or interest charges applicable thereto.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commission and upon each party on the service list of Docket No. RP83–46.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8470 Filed 4–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP84–63–003, et al.]

Mississippi River Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

April 3, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before April 12, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing Date	Company	Docket No.	Type filing
2/15/85	Mississippi River Transmission Corp.	RP84–63–003	Report.
2/19/85	Alabama-Tennessee Natural Gas Co.	RP73–77–027	Do.
2/19/85	Panhandle Eastern Pipe Line Corp.	RP85–96–001	Btu.*
2/22/85	Northwest Central Pipeline Corp.	RP74–52–005	Report.
2/26/85	North Penn Gas Co.	TA84–1–27–004	Do.
3/4/85	Columbia Gas Transmission Corp.	RP85–81–001	Btu.*
3/18/85	Alabama-Tennessee Natural Gas Co.	RP73–77–028	Report.
3/18/85	Arkla Energy Resources.	RP85–115–000	Btu.*
3/20/85	Kentucky-West Virginia Gas Co.	RP85–120–000	Btu.*
3/25/85	North Penn Gas Co.	RP85–121–000	Btu.*

*Refunds resulting from Btu Measurement Adjustments. Each Company will retain its basic Docket No. and Sub-Dockets will be assigned to future related filings.

[FR Doc. 85–8471 Filed 4–8–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85-1-25-002]

Mississippi River Transmission Corp.; Rate Change Filing

April 3, 1985.

Take notice that on March 29, 1985, Mississippi River Transmission Corporation ("Mississippi") tendered for filing Substitute Ninth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. Said tariff sheet is proposed to be effective as of March 1, 1985.

Mississippi states that the filing is being submitted pursuant to a Commission letter order dated February 25, 1985 at Docket No. TA85-1-25-000 and TA85-1-25-001 which accepted for filing Mississippi's Ninth Revised Sheet No. 4 to be effective March 1, 1985, subject to Mississippi filing revised rates to reflect any reductions in pipeline supplier rates being tracked therein. Mississippi states that the instant filing reflects rate changes from Natural Gas Pipeline Company of America. The annual cost reduction of this PGA revision to Mississippi's jurisdictional customers is approximately $5.0 million from rates contained in Mississippi's original PGA filing.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 8472 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP83-68-008]

Natural Gas Pipeline Co., of America; Change in FERC Gas Tariff

April 3, 1985.

Take notice that on March 29, 1985, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to be effective April 1, 1985.

Fifty-eight Revised Sheet No. 5
Twenty-fifth Revised Sheet No. 5A

Natural states that the revised tariff sheets were filed pursuant to the Docket Nos. RP83-68, *et al.* settement agreement to revise its entitlement charge downward to reflect the revised Annual Entitlements effective April 1, 1985.

A copy of this filing has been mailed to Natural's jurisdictional customers, interested state regulatory agencies, and all parties set out on the official service list at Docket Nos. RP83-68, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before April 11, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8473 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-17-M

[Docket No. G-13963-000, et al.]

Phillips Oil Co. (Successor in Interest to Phillips Petroleum Co.), et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

April 4, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 23, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
G-13963-000, E, Mar. 18, 1985	Phillips Oil Company (successor in interest to Phillips Petroleum Company), 336 HS&L Building, Bartlesville, OK 74004.	El Paso Natural Gas Company, Aneth Field, San Juan County, UT.	(1)	14.73
CI79-645-000, E, Mar. 8, 1985	Shell Offshore Inc. (successor to Florida Exploration Company), P.O. Box 4480, Houston, TX 77210.	Florida Gas Transmission Company, Mississippi Canyon 194 Field, Offshore LA.	(2)	15.025
CI83-163-003, Mar. 8, 1985	Texaco Inc., P.O. Box 52332, Houston, TX 77052	Bridgeline Gas Distribution Company, South Marsh Island Block 236 Field, Offshore LA.	(2)	15.025
CI78-1247-001, E, Apr. 1, 1985	Shell Offshore Inc. (successor to Florida Exploration Company), P.O. Box 4480, Houston, TX 77210.	Florida Gas Transmission Company, South Marsh Island Blocks 149 and 150, Offshore LA.	(2)	15.025
CI85-259-000, A, Mar. 4, 1985	Pioneer Production Corporation, P.O. Box 2542, Amarillo, TX 79189.	Texas Eastern Transmission Corporation, Block A-567 High Island Area, South Addition, Offshore TX	(2)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
CI85-278-000, E, Mar. 6, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company (successor to Park Oil and Gas Inc.) P.O. Box 2819 (22100 DAB), Dallas, TX 75221.	ANR Pipeline Company, West Cameron Block 560, Offshore LA.	(⁶)	15.025
CI85-279-000, A, Mar. 5, 1985	Exxon Corporation, P.O. Box 2180, Houston, TX 77252-2180.	Transwestern Pipeline Company, North Horseshoe Bend, Eddy County, NM.	(⁷)	14.73
CI85-280-000, A, Mar. 11, 1985	Phillips Oil Company, 336 HS&L Building, Bartlesville, Oklahoma 74004.	Amoco Gas Company, OCS-G-3306, Block 624, Matagorda Islands Area, Offshore TX.	(⁸)	14.73
CI85-281-000, A, Mar. 11, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	Natural Gas Pipeline Company of America, West Cameron 81, OCS-G-3258, Offshore LA.	(⁹)	15.025
CI85-283-000, A, Mar. 4, 1985	Pioneer Production corporation, P.O. Box 2542, Amarillo, TX 79189.	Michigan Wisconsin Pipe Line Company, Block A-567, High Island Area, South Addition, Offshore TX.	(¹⁰)	14.73
CI85-284-000, A, Mar. 4, 1985	do	Transcontinental Gas Pipe Line Corporation, Block A-567, High Island Area, South Addition, Offshore TX.	(¹¹)	14.73
CI83-444-001, E, 3/15/85 Mar. 18, 1985	Phillips Petroleum Company (successor to Phillips Oil Company) 336 HS&L Building, Bartlesville, OK 74004.	Arkansas Louisiana Gas Company, North Ruston Field, Lincoln Parish, LA.	(¹²)	14.73
CI85-295-000, A, Mar. 22, 1985	Pennzoil Producing Company, P.O. Box 2967, Houston, TX 77001.	Texas Gas Transmission Corporation, Eugene Island Area, Blocks 330 (portion), and 337, Offshore LA.	(¹³)	15.025
CI85-296-000, A, Mar. 25, 1985	Amoco Production Company, P.O. Box 3092, Houston, TX 77077.	Natural Gas Pipeline Company of America, Boyd Field, Eddy and Lea Counties, NM.	(¹⁴)	14.73
CI85-297-000, A, Mar. 25, 1985	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Texas Gas Transmission Corporation, Eugene Island Block 337, Offshore Louisiana (Federal Domain).	(¹⁵)	14.73
CI85-298-000, E, Mar. 25, 1985	Cities Service Oil and Gas Corporation (successor to Sun Exploration and Productioin Company), P.O. Box 300, Tulsa, OK 74102.	Panhandle Eastern Pipe Line Company, Hugoton Field, Stevens County, KS.	(¹⁶)	14.73

[1] Effective December 1, 1983, Phillips Petroleum Company assigned to Applicant, its working interest in the Aneth Field, San Juan County, Utah.
[2] Effective as of September 21, 1984, Florida Exploration Company assigned to FEC Offshore Productive Inc. its interest in, *inter alia*, the leases covered by the certificate held by FEC and issued in Docket No. CI79-645.
[3] Applicant is filing for change in delivery point.
[4] Effective as of September 21, 1984, Florida Exploration Company assigned to FEC Offshore Productive Inc. its interest in the leases covered by the certificate held by FEC.
[5] Applicant is filing under Gas Purchase Contract dated February 13, 1984.
[6] By Assignment dated effective March 1, 1984, Park Oil and Gas, Inc. conveyed to Applicant all of its interest in and under the lands.
[7] Applicant is filing under Gas Purchase Contract dated December 10, 1979.
[8] Applicant is filing under Gas Purchase Contract dated February 18, 1985.
[9] Applicant is filing under Gas Purchase Contract dated January 7, 1985.
[10] Applicant is filing under Gas Purchase Contract dated May 13, 1983.
[11] Applicant is filing under Gas Purchase Contract dated November 14, 1984.
[12] Effective August 1, 1983, Phillips Oil Company assigned to Phillips Petroleum Company its interst in the Mathewes D Sand Unit located in Lincoln Parish, Louisiana.
[13] Applicant is filing under Gas Purchase Contract dated February 7, 1985.
[14] Applicant is filing under Gas Purchase Agreements dated May 21, 1978 and October 15, 1984.
[15] Applicant is filing under Gas Purchase Contract dated March 5, 1985.
[16] Effective December 1, 1984, Cities Service Oil and Gas Corporation acquired the interest of Sun Exploration and Production Company in certain leases in Steven County, Kansas.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage, D—Amendment to delete acreage; E—Total Succession; F—Partial Succession

[FR Doc. 85-8474 Filed 4-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2030-009]

Portland General Electric Co.; Offer of Settlement

Issued April 1, 1985.

Take notice that on February 11, 1985, an offer of settlement was jointly filed by the Portland General Electric Company (PGE), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes), and the United States Department of the Interior (Interior) with respect to the Pelton Project No. 2030. Project No. 2030 is located on the Deschutes River in Jefferson County, Oregon.

Section 10(e) of the Federal Power Act, 16 U.S.C. 803(e), requires the Commission to assess annual charges against licensees for the use of tribal lands embraced within Indian reservations. Portions of Project No. 2030 are located within the boundary of the Warm Springs Indian Reservation. PGE, the Tribes, and Interior in its capacity as trustee for the Tribes have entered into settlement agreement which would establish the compensation to be paid to the Tribes by PGE through the remainder of the Project No. 2030 license which expires on December 31, 2001. The agreement also settles a number of existing and prospective disputes among the parties to the agreement.

If the offer of settlement is approved by the Commission, the license for Project No. 2030 would be amended to provide that the compensation to be paid to the Tribes will be in accordance with the offer of settlement.

The offer of settlement is on file with the Commission and is available for public inspection. Anyone choosing to comment on the offer of settlement should file their comments with the Commission on or before May 9, 1985, at the following address: Mr. Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8475 Filed 4-8-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 943]

P.U.D. No. 1 of Chelan County, WA; Issuance of Annual License(s)

April 4, 1985.

Public Utility District No. 1 of Chelan County, Washington, is the Licensee for the Rock Island Project No. 943, located on the Columbia River in Washington. The license for Project No. 943 was issued effective January 21, 1930, for a period ending January 20, 1980. The project was maintained and operated under annual licenses until a new license was issued. 15 FERC ¶ 62,187 (1981). The Court of Appeals for the Ninth Circuit subsequently set aside the license. *Confederated Tribes and Bands of the Yakima Indian Nation* v. *FERC*, 734 F.2d 1347 (1984), *Petition for cert. filed* 53 U.S.L.W. 3652 (U.S. February 27, 1985) (No. 84-1365). In order to authorize the continued operation and maintenance of the project pending further Commission action, it is appropriate and in the public interest to issue an annual license to P.U.D. No. 1 of Chelan, Washington.

Take notice that an annual license was issued to P.U.D. No. 1 of Chelan

County, Washington for the period February 28, 1985,[1] to February 27, 1986, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Rock Island Project No. 943, subject to the terms and conditions of the original license. Take further notice that, if issuance of a new license does not take place on or before February 27, 1986, a new annual license will be in effect each year thereafter, effective February 28 of each year, until such time as a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8453 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-58-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 3, 1985.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on *March 26,* 1985 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Substitute Fourth Revised Sheet No. 100
Substitute Sixth Revised Sheet No. 101.

On December 10, 1984 and February 20, 1985, Texas Eastern was issued a temporary and a permanent certificate respectively, in Docket No. CP85-58-000, authorizing the sale and delivery of an additional 8000 dekatherms of gas per day to its sixty-eight (68) current Rate Schedule SGS customers. On March 7, 1985, Texas Eastern filed the necessary tariff sheets to reflect such changes pursuant to Ordering Paragraph (B) of the Commissions February 20, 1985 order.

The tariff sheets submitted herewith for filing are for the sole purpose of setting forth the correct total entitlement quantities for Gloster, Mississippi and Huntingburg, Indiana which were misrepresented in the March 7, 1985 tariff filing wherein such entitlements were not consistent with the quantities previously filed for in the aforementioned Docket No. CP85-58-000 as Certificated by the Commission.

The proposed effective date of the above tariff sheets is December 10, 1984.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

[1] This is the date on which the Court of Appeals issued its mandate vacating the new license.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 4/11/85. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8454 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-50-000 and TA85-2-50-001]

Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

April 3, 1985.

Take notice that on March 29, 1985, Valley Gas Transmission, Inc. (Valley) tendered for filing Thirtieth Revised Sheet No. 2A to Original Volume No. 1, and Third Revised Sheet No. 10 to Original Volume No. 2, of its FERC Gas Tariff. Valley states that these tariff changes, which are proposed to become effective on May 1, 1985, are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley states that the proposed changes reflect adjustments to Valley's current surcharge adjustment and current gas cost adjustment.

A copy of this filing has been served on all jurisdictional customers and interested state regulatory commission.

Any person desiring to be heard or to protect said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8455 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2165-000]

William R. Miller; Applications, etc.

April 4, 1985.

Take notice that on March 25, 1985, William R. Miller filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Ohio Edison Company
Vice President, Governmental Personnel Relations—The Goodyear Tire and Rubber Company.

Any person desiring to be heard or to protect said filing should file a motion to invervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-8456 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-49-003]

Williston Basin Interstate Pipeline Co.; Compliance Filing

April 3, 1985.

Take notice that on March 28, 1985, Williston Basin Interstate Pipeline Company (Williston) tendered for filing Second Substitute Original Sheet No. 10 to its FERC Gas Tariff, Original Volume No. 1 and Second Substitute Original Sheet No. 10 to its FERC Gas Tariff Original Volume No. 2, proposed to be effective January 1, 1985. These revised tariff sheets with supporting detail are filed pursuant to the Commission's order issued March 20, 1985, with respect to Williston's PGA filing of February 22, 1985, directing removal of third party costs, revision of NGPA code listings,

and statement of Order No. 94 production-related costs. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 1, 1985.

The revised tariff sheets effect a net rate decrease of 3.249 cents per Mcf relative to Williston's PGA filing of February 22, 1985, and a net rate decrease of 23.525 cents per Mcf relative to previously effective rates. Williston requests expedited review to permit rapid reflection of this rate reduction in customer billing.

Copies of this compliance filing were service upon Williston's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8457 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-305-000, et al.]

Carson Energy, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Carson Energy, Inc., Ice Haus, II

[Docket No. QF85-305-000]

March 29, 1985.

On March 18, 1985, J.R. Bishop, President, Carson Energy, Inc., (Applicant) c/o Western Energy Engineers, Inc., Box 474, Balboa Isle, California 92662 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Ice Haus II cogeneration facility is located at 17171 S. Central Avenue, Carson, California 90746. The facility will contain a combustion turbine-generator, a two pressure level heat recovery boiler (HRB) and an extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRB will be supplied to the absorption refrigeration equipment which provide refrigeration at the host ice making facility Ice Haus II. The net electric power production of the facility will be 41,997 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in winter of 1986.

2. Energy Technology Engineering Center, Rockwell International Corporation

[Docket No. QF84-191-002]

April 2, 1985

On March 25, 1985, Energy Technology Engineering Center (ETEC), Rockwell International Corporation, (Applicant) Box 1449, Canoga Park, California 91304, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Applicant asserts that the small power production facility will be located at the ETEC Test Facilities, Woolsey Canyon Road, Santa Susana, California. Waste in the form of superheated steam generated in the process of testing prototypes of commerical sodium-heated steam generators, will be utilized to generate electricity at a maximum net capacity of 30 megawatts.

3. Republic Gypsum Company

[Docket No. QF85-313-000]

April 2, 1985.

On March 22, 1985, Republic Gypsum Company, (Applicant) of P.O. Box 750, Dallas, Texas 75221, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Duke, Jackson County, Oklahoma 73532. The facility will contain one or more combustion turbine generator(s). The engine exhaust will be used in the direct fired drying process. The electrical power production capacity of the facility will be approximately 3000 kW. The primary energy source will be natural gas. The facility is expected to be installed on July 1, 1985. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8450 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8801-000, et al.]

Hydroelectric Applications (Burlington Energy Development Associates, et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No: 8801-000.

c. Date Filed: December 14, 1984.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Upper Yarmouth.

f. Location: Royal River in Cumberland County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John R. Anderson and Mr. Joseph D. Brostmeyer, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, Massachusetts 01803.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 11-foot-high, 200-foot-long fitted stone

and earth dam; (2) an existing 7-acre reservoir at a normal surface elevation of 70 feet M.S.L.; (3) a proposed intake gate; (4) a proposed 1,200-foot-long, 8-foot-diameter steel penstock; (5) a proposed powerhouse containing three turbine/generator units, each rated at 250 kW, with a total installed capacity of 750 kW; (6) a proposed 20 foot-long, 10-foot-wide rock-lined open tailrace; (7) a proposed 1,000 foot-long, 35.4-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 3,750 MWh. The existing dam is owned by the Town of Yarmouth, Yarmouth, Maine.

k. Purpose of Project: Project power would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigated project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $19,900.

2 a. Type of Application: Major License (over 5 MW).

b. Project No.: 7693–001.

c. Date Filed: February 29, 1984.

d. Applicant: Saylorville Hydro Partners.

e. Name of Project: Saylorville Water Power Project.

f. Location: On the Des Moines River in Polk County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David B. Ward, Flood, Bechtel, Ward, & Cole, 1000 Potomac Street, N.W., Suite 402, Washington, D.C. 20007, & Mr. Douglas A. Spaulding, Indeco of Minnesota, 1500 S. Lilac Drive, 351 Tyrol W. Bldg., Minneapolis, Minnesota 55416.

i. Comment Date May 13, 1985.

j. Competing Application: Project No. 7691, Date Filed: October 5, 1983.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) a proposed approach channel, which would be approximately 3,250 feet long and 36 feet wide; (2) a proposed 22-foot-diameter, 500-foot-long reinforced concrete tunnel. The tunnel would be connected to the approach channel and would pass through the existing dam to the proposed intake structure; (3) a proposed intake structure, which would contain three, eight-foot-wide and nineteen-foot-high gates; (4) a proposed powerhouse containing two generating units rated at 2,100 kW and 6,200 kW, respectively, for a total installed capacity of 8,300 kW. The powerhouse would be located in the east abutment of the existing dam; (5) a proposed 134-foot-long stilling basin; (6) a proposed 3,400-foot/long by 97-foot-wide discharge channel; (7) a proposed 69-kV, 2,500-foot-long transmission line; and (8) appurtenant facilities. The estimated average annual energy output for the project is 30,552,000 kWh.

l. Purpose of Project: The energy generated at the project would be used for the normal operations of the project, and the excess energy would be sold to Iowa Power and Light Company or other local utility companies.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 8724–000.

c. Date Filed: November 19, 1984.

d. Applicant: Cook Electric, Incorporated.

e. Name of Project: Manton-Battle Creek Project.

f. Location: On North Fork of Battle Creek, near Manton, in Shasta and Tehama Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dale Hatch, Cook Electric, Incorporated, P.O. Box No. 1071, Twin Falls, Idaho 83303–1071.

i. Comment Date: May 13, 1985.

j. Competing Application: Project No. 8725, Date Filed: 11/19/84.

k. Description of Project: The proposed project would consist of: (1) an 8-foot-high, 25-foot-long inlet structure at elevation 2,020 feet; (2) a 5-foot-diameter, 14,520-foot-long steel penstock; (3) a powerhouse with a total installed capacity of 4,700 kW operating under a head of 540 feet; and (4) a 6,600-foot-long, 69-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 24 million KWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $32,400.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, & D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 8725–000.

c. Date Filed: November 19, 1984.

d. Applicant: Elektra Power Corporation.

e. Name of Project: North Fork Battle Creek Hydroelectric Project.

f. Location: On North Fork of Battle Creek, near Manton, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U..C. 791(a)–825(r).

h. Contact Person: Mr. D. Dixon Collins, Elektra Power Corporation, 744 San Antonio Road, Palo Alto, California 94303.

i. Comment Date: May 13, 1985.

j. Competing Application: Project No. 8724, Date Filed: 11/19/84.

k. Description of Project: The proposed project would consist of: (1) an 8-foot-high, 110-foot-long diversion dam at elevation 2,000 feet; (2) a 5.6-foot-long diversion dam at elevation 2,000 feet; (2) a 5.6-foot-diameter, 13,00-foot-long diversion conduit; (3) a 6.5-foot-diameter, 900-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 4,980 kW operating under a head of 410 feet; and (5) a 1.3-mile-long, 12.3-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 16 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of an 18-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $80,000.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

5 a. Type of Application: Exemption.

b. Project No.: 8402–000.

c. Date Filed: June 29, 1984.

d. Applicant: Melvin R. Hall.

e. Name of Project: Rapidan Mill Hydropower Project.

f. Location: Rapidan River, Orange and Culpepper Counties, Virginia.

g. Filed Pursuant to: Section 408 of the energy Security Act of 1980, 16 U.S.C. 2705 and 2706.

h. Contact Person: Mr. Melvin R. Hall, 7418 Silver Pine Drive, Springfield, Virginia 22153.

i. Comment Date: May 13, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing concrete gravity dam, 200 feet long and 12 feet high; (2) an existing reservoir with a surface area of 3.5 acres and a storage capacity of approximately 20 acre-feet; (3) an existing concrete powerhouse located at the right dam abutment and containing two generating units with a total capacity of 105 kW, which would be refurbished; (4) an existing tailrace canal, 12 feet wide and 350 feet long; (5) an existing 12.5-kV transmission line leading from the powerhouse to a point of interconnection about 20 feet away; and (6) appurtenant facilities. The estimated average annual generation of 843,000 kWh would be sold to Virginia Electric Power Company.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take over or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 8676–000.

c. Date Filed: January 11, 1985.

d. Applicant: Wyoming Municipal Power Agency.

e. Name of Project: Grayrocks Dam.

f. Location: On the Laramie River, tributary to the North Platte River, near the town of Wheatland, in Platte County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Larry LaMaack, Post Office Box 900, Lusk, Wyoming 82225.

i. Comment Date: May 31, 1985.

j. Description of Project: The proposed project would consist of: (1) the existing 94-foot-high 2,700-foot-long Grayrocks Dam; (2) the existing Grayrocks Reservoir having a surface area of 3,547 acres and a storage capacity of 104,100 acre-feet at normal maximum water surface elevation 4,404 feet msl; (3) an existing 'morning glory' type intake structure and valve chamber; (4) an existing 8-foot-diameter 500-foot-long pipeline and a proposed 6-foot-diameter 540-foot-long pipeline; (5) a new powerhouse containing a generating unit rated at 1,000-kW; (6) a tailrace; (7) a switchyard; and (8) a 1,850-foot-long 13-kV transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which time it would conduct engineering and environmental feasibility studies and would prepare an FERC license application at a cost of $50,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project energy would be used by Applicant to serve its system needs. Applicant estimates that the average annual energy production would be 4,500 MWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

7 a. Type of Application: Minor License.

b. Project No.: 6582–001.

Date Filed: July 2, 1984.

D. Applicant: Frederick D. Ehlers.

e. Name of Project: North Fork Sprague River.

f. Location: On the North Fork Sprague River in Klamath County, near the town of Bly, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Steven A. Zamsky, P.O. Box 7148, Klamath Falls, Oregon 97602.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of: (1) a 2-foot-high, 30-foot-long gabion weir; (2) a concrete intake structure located within the bank of the stream; (3) a 4,800-foot-long concrete flume; (4) a forebay; (5) a 42-inch-diameter, 325-foot-long penstock; (6) a powerhouse containing three generating units with a combined total capacity of 1,119 kW; (7) a tailrace; and (8) a 6-mile-long, 12-kV transmission line tying into an existing Pacific Power and Light line. The estimated annual energy output would be 5,750 MWh.

The estimated cost of the project is $2,755,000.

k. Purpose of the Project: Project power would be sold to Pacific Power and Light.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

8 a. Type of Application: Major Licensee.

b. Project No.: 7722–000.

c. Date Filed: October 13, 1983.

d. Applicant: Enviro Hydro, Incorporated.

e. Name of Project: Long Canyon Creek Water Project.

f. Location: On Long Canyon Creek, within Eldorado National Forest, in Placer County, California.

Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. H. L. "Pete" Childers, President, Enviro Hydro, Incorporated, 9200 Shanley Lane, Auburn, California 95603.

i. Comment Date: May 29, 1985.

j. Description of Project: The proposed project would consist of: (1) a 4-foot-high concrete diversion dam at elevation 3,840 feet; (2) a 48-inch-diameter, 14,000-foot-long low pressure pipe; (3) a 48-inch-diameter, 1,700-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 2,370 kW operating under a head of 560 feet; and (5) a 12.5-kV, 2-mile-long transmission line connecting the project with an existing Pacific Gas and Electric Company (PG&E) line north of the powerhouse. Applicant estimates the cost of the project at $3.5 million.

k. Purpose of Project: The project's estimated annual generation of 6.1 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 8751–000.

c. Date Filed: November 29, 1984.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: Big Cottonwood Lower Project.

f. Location: On Big Cottonwood Creek in Salt Lake County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, President, G.W.P., 484 East 300 North, Manti, Utah 84642.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would be located on lands of the State of Utah and the Wasatch National Forest and would consist of: (1) a new diversion structure at El. 5,100 feet m.s.l. on Big Cottonwood Creek; (2) a new pipeline penstock, 36 inches in diameter and about 5,620 feet long; (3) a new powerhouse, at El. 4,850 feet m.s.l., to contain turbine-generator units rated at 400 kW and 800 kW for a total rated capacity of 1,200 kW; (4) a tailrace returning flow to the creek; (5) a new transmission line, about 1,000 feet long, connecting to an existing Utah Power and Light Company (UP&L) line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7,920,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $55,000.

10 a. Type of Application: Minor License.

b. Project No: 5619–001.

c. Date Filed: December 24, 1984.

d. Applicant: R.D.D. Incorporated.

e. Name of Project: Knott Creek Hydroelectric Project.

f. Location: On Knott Creek, near Denio, Humboldt County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard Drake, R.D.D. Incorporated, 440 Rhinehart Court, Winnemucca, Nevada 89445.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) the Applicant's existing 24-foot-high by 140-foot-long Knott Creek earthern dam to be raised by 14 feet and to have a storage capacity of 2,900-acre-feet at elevation 6,466 feet; (2) reconstruction of existing emergency spillway; (3) a 4-foot-wide, 3-foot-high diversion structure; (4) an 18-inch-diameter, 13,800-foot-long steel penstock; (5) a powerhouse containing one generating unit with a rated capacity of 554 kW operating under a head of 1,167 feet; (6) a 7,500-foot-long, 25-kV transmission line from the powerhouse to connect to an existing 25-kV Harney Electric Cooperative, Incorporated (HECI) transmission line. The applicant estimates the average annual energy generation at 1.6 million kWh to be sold to HECI. The project cost has been estimated to be about $1,315,000. No recreational facilities are proposed as part of this project.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

11 a. Type of Application: Major License.

b. Project No.: 6435–001.

c. Date Filed: August 1, 1984.

d. Applicant: Joseph B. Nelson.

e. Name of Project: Trapper Creek Hydro.

f. Location: On Trapper Creek in Valley County, Idaho, within Boise National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Warren B. Nelson, 3410 Montvue Drive, Meridian, Idaho 83642.

i. Comment Date: May 10, 1985.

j. Competing Application: Project No. 6206–002, Date Filed: 06/21/82.

k. Description of Project: The proposed project would consist of: (1) a 10-foot-high, 40-foot-wide diversion dam with crest elevation 6,455 feet, with a fish passage system; (2) a filter intake system of 24-inch-diameter perforated corrigated aluminum pipe; (3) a 26-inch-diameter, 12,100-foot-long steel penstock; (4) a log powerhouse at elevation 5,170 feet containing two generating units rated at 900 kW each producing a total average annual output of 8.5 GWh; (5) a buried corrigated aluminum pipe tailrace with a stilling basin; and (6) a 100-foot-long, 69-kV transmission line. The estimated project cost, as of July 1984, is $1,100,000.

This application has been accepted for filing as of June 15, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et al., 28 FERC ¶ 61,062, issued July 18, 1984.

l. Purpose of Project: Project output would be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A9, B, C and D1.

n. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

12 a. Type of Application: Preliminary Permit.

b. Project No: 8332–000.

c. Date Filed: June 1, 1984.

d. Applicant: City of Ellensburg, Washington.

e. Name of Project: 1146 Wasteway Hydroelectric Project.

f. Location: On lands managed by the Bureau of Reclamation, on Kittitas Reclamation District Main canal and Yakima River, near Cle Elum, in Kittitas County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Douglas E. Williams, City Manager, City of Ellensburg, Ellensburg, Washington 98926.

i. Comment Date: May 13, 1985.

j. Description of Project: The proposed project would consist of: (1) a diversion structure consisting of an existing 10-foot-long by 10-foot-wide canal control gate and intake structure, located on the Kittitas Reclamation District Main Canal at Canal Station 1165 + 30; (2) a 1,200-foot-long, 4-foot-diameter welded steel penstock; (3) a powerhouse at Yakima River mile 173.7 containing two generators having a combined capacity of 3.6 MW and an annual energy production of 6.94 GWh; (4) a 100-foot-long tailrace to the Yakima River; and (5) a 0.5-mile-long, 115-kV transmission line to an existing Puget Sound Power and Light Company line.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $90,000.

k. Purpose of Project: Power will be utilized locally or marketed to utilities and industries in the northwest.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 8974–000.

c. Date Filed: February 25, 1985.

d. Applicant: Southern New Hampshire Hydroelectric Development Corporation.

e. Name of Project: Upper Factory Dam.

f. Location: On the Cocheco River in Strafford County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John N. Webster, P.O. Box 1073, Dover, New Hampshire 03820.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) a 13.6-foot-high and 110-foot-long wooden A-frame dam, now breached, property of the New Hampshire Water Resources Board; (2) A reservoir with a surface area of 30 acres at a normal elevation of 105 feet mean sea level; (3) a new intake structure and powerhouse at the right abutment of the dam with three 250-kW turbine-generator units; (4) a new 480-volt and 1,000-foot-long transmission line; and other appurtenances. Applicant estimates an average annual generation of 3,500,000 kWh.

k. Purpose of Project: Project energy would be sold to the Pubic Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seek issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $1,500.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 8873–000.

c. Date Filed: January 7, 1985.

d. Applicant: W.A. Vachon and Associates, Inc.

e. Name of Project: West Branch of the Swift River.

f. Location: West Branch of the Swift River in Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. W.A. Vachon, W.A. Vachon Associates, Inc., P.O. Box 149, Manchester, Massachusetts 01944.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) a proposed 3-foot-high, 40-foot-long concrete dam; (2) a proposed reservoir at elevation 1,380 feet ASL, with an area of 900 square feet and impounding 11,000 gallons of water; (3) a proposed 14-inch-diameter, 7,000-foot-long conduit; (4) a proposed powerhouse containing one 99-kW turbine/generator; (5) a proposed 1,000-foot-long, 480-volt transmission line; and (6) appurtenant facilities. The estimated average annual generation is 446 MWh.

k. Purpose of Project: Project energy would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $9,000.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 8719–000.

c. Date Filed: November 15, 1984.

d. Applicant: Schroon River Hydro Associates.

e. Name of Project: Warrensburg.

f. Location: On the Schroon River in Warren County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ruben S. Brown, Schroon River Hydro Associates, 1250 Broadway, New York, New York 10001.

i. Comment Date: May 31, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 24-foot-high, 188-foot-long concrete gravity dam; (2) installation of 3-foot-high flashboards; (3) a reservoir having a surface area of 35 acres, a storage capacity of 500 acre-feet, and a normal water surface elevation of 645 feet msl; (4) a proposed forebay structure; (5) two proposed 8-foot-diameter, 60-foot-long steel penstocks; (6) a proposed powerhouse containing generating units with a total installed capacity of 2600 kW; (7) an 80-foot-long tailrace; (8) a proposed 34.5-kV, 400-foot-long transmission line; and (9) appurtenant facilities. The Applicant estimates the annual average generation would be 10,300,000 kWh. The existing dam and project facilities are owned by the Warrensburg Board and Paper Company.

k. Purpose of Project: All project energy generated would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $75,000.

16 a. Type of Application: Preliminary Permit.

b. Project No.: P–8983–000.

c. Date Filed: March 1, 1985.

d. Applicant: Cherokee Nation of Oklahoma.

e. Name of Project: W.D. Mayo Lock and Dam No. 14.

f. Location: On the Arkansas River in Sequoyah County, Oklahoma.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence C. Wise, Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' W.D. Mayo Lock and Dam No. 14 and Reservoir and would consist of: (1) a proposed powerhouse 200 feet long and 200 feet wide to contain three bulb turbines with a combined installed capacity of 37.5 megawatts; (2) a proposed tailrace channel, trapezoidal in shape, with bottom width varying from 200 feet at the powerhouse to 600 feet at the confluence with the Arkansas River; (3) a new 161–kV transmission line 17 miles long; and (4) appurtenant facilities. Project power would be sold to the Applicant's customers.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $72,645.

17 a. Type of Application: Preliminary Permit.

b. Project No.: P–8749–000.

c. Date Filed: November 29, 1984.
d. Applicant: Clearwater Hydro Company.
e. Name of Project: Boulder Creek Hydroelectric.
f. Location: On Boulder Creek, within Kootenai National Forest Lands, near Bonners Ferry, in Boundary County, Idaho and Lincoln County, Montana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Charles Gresham, Clearwater Hydro Company, Route 1, Box 555, Hiawatha Road, Morristown, Tennessee 37814.
i. Comment Date: June 3, 1985.
j. Description of Project: The proposed project would consist of: (1) a 9-foot-high, 30-foot-long diversion dam at elevation 2,340 feet; (2) a 4,200-foot-long, 42-square-foot cross-section penstock tunnel; (3) a powerhouse containing two generating units with a total installed capacity of 4,850 kW; and (4) a 4,800-foot-long transmission line connecting to an existing 67-kV transmission line. The Applicant estimates an average annual energy production of 21.2 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $18,400. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold to Washington Water Power via Northern Lights Utility.
l. This notice also consists of the following standard paragraphs: A6, A7, B, C, D2.

18 a. Type of Application: Preliminary Permit.
b. Project No: 8833–000.
c. Date Filed: December 26, 1984.
d. Applicant: Enco Development Corporation.
e. Name of Project: Yaak Falls Power.
f. Location: On Yaak River, within the Kootenai National Forest lands, near Troy, in Lincoln County, Montana.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Kenneth R. Koch, Enco Development Corporation, P.O. Box 5663, Bellingham, Washington 98227.
i. Comment Date: June 3, 1985.
j. Description of Project: The proposed project would consist of: (1) a 10-foot-high, 200-foot-long concrete diversion structure at an elevation of 2,435 feet; (2) a 700-foot-long, 90-inch-diameter low pressure pipeline; (3) a 150-foot-long, 90-inch-diameter steel penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 1,500 kW; and (5) a 5.5-mile-long, 115-kV transmission line connecting to an existing Bonneville Power Administration transmission line. The Applicant estimates an average annual energy production of 5.8 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $250,000. No new roads would be constructed or drilling conducing during the feasibility study.

k. Purpose of Project: The project power would be sold to the Pacific Power and Light Company.
l. The notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

19 a. Type of Application: License for Transmission Line.
b. Project No: 8810–000.
c. Date Filed: December 20, 1984.
d. Applicant: Pacific Power and Light Company.
e. Name of Project: South Bend 69/115-kV Transmission Line.
f. Location: On the southern end of the City of Bend, in Deschutes County, Oregon.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. John Melnichuk, Vice President, Engineering and Technical Services, Pacific Power and Light Company, 920 S.W. Sixth Avenue, Portland, Oregon 97204.
i. Comment Date: May 8, 1985.
j. Description of Project: The proposed South Bend 69/115-kV Transmission Line will connect to the Central Oregon Irrigation District's proposed Central Oregon Siphon Power Project No. 3571 for which an application for license is pending. The proposed 1.11-mile-long transmission line will run approximately parallel to the Central Oregon Canal for 3,700 feet until intersection Blakely Road and the final 2,200 feet will run parallel to Blakely Road. The proposed line will be interconnected with the existing 69-kV Bend—Pilot Butte Transmission Line which is owned by the Applicant. No substation will be needed at the point of interconnection with the Bend—Pilot Butte Transmission Line. Three switches will be installed for connection to Project No. 3571. No Federally-owned lands are located with the project boundary.
k. Purpose of Project: The proposed transmission line will convey power generated at the Central Oregon Siphon Power Project No. 3571 to Applicant transmission line.
l. The notice also consists of the following standard paragraphs: B, C and D1.

20 a. Type of Application: Exemption (5 MW or less).
b. Project No.: 8640–000.
c. Date Filed: October 4, 1984.
d. Applicant: Havilah S. Hawkins and Joseph A. Sawyer.
e. Name of Project: Seabright Dam.
f. Location: Megunticook River in Knox County, Maine.
g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).
h. Contact Person: Mr. Havilah S. Hawkins, Box 798, Camden, Maine 04843.
i. Comment Date: May 13 1985.
j. Description of Project: The proposed project would consist of: (1) an existing 16-foot-high, 90-foot-long concrete dam owned by the Applicants; (2) an existing resevoir with a surface area of 85-acres, and a gross storage capacity of 970-acre-feet at elevation 127 feet m.s.l.; (3) a proposed powerhouse at the base of the dam containing a generating unit with a total rated capacity of 94-kW; (4) a proposed 300-foot-long transmission line tying into the existing Central Main Power Company system; and (50) appurtenant facilities. The Applicant estimates a 288,000 kWh average annual energy production.
k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

21 a. Type of Application: Major License (over 5 MW).
b. Project No.: 8511–000.
c. Date Filed: August 3, 1984.
d. Applicant: Seward Development-Red Rock Associates.
e. Name of Project: Red Rock Hydroelectric Water Power Project.
f. Location: On the Des Moines River in Marion County, Iowa.
g. Filed Pursuant to: Federal Power Act, 16, U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Gary D. Bachman, VanNess, Feldman, Sutcliffe, Curtis, & Lavenberg, 1050 Thomas Jefferson Street, N.W., Washington, D.C. 20007, & Mr. James C. Katsekas, Rivers Engineering Corp., Route 2, Londonderry Professional Center, Londonderry, New Hampshire 03053.

i. Comment Date: May 10 1985.

j. Competing Application: Project No. 8261, Date Filed: April 24, 1984 Due Date: April 12, 1985.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) a proposed 300-foot-long, 200-foot-wide, and 38-foot-deep intake channel; (2) five proposed 12.5-foot-diameter steel penstocks, which would be approximately 523 feet long. The penstocks would extend from the intake structure through the west side of the existing dam to the proposed powerhouse; (3) a proposed powerhouse containing five generating units having a total installed capacity of 30 MW: (4) a proposed 100-foot-long tailrace; (5) a proposed 69-kV, one-half mile long transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 110,000,000 kWh.

l. Purpose of Project: Energy produced at the project would be sold to either the Pella Cooperative Electric Association, the Central Iowa Power Cooperative, or the Iowa Power Corporation.

m. This notice also consists of the following standard paragraphs: A4, B, C, & D1.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issue relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency (ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no

comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 14, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8452 Filed 4-8-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-347-000, et al.]

Natural Gas Pipeline Co. of America, et al.; Natural Gas Certificate Filings

April 2, 1985.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP85-347-000]

Take notice that on March 8, 1985, Natural Gas Pipeline Company of America (NGPA), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85-85-347-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Chevron Chemical Company (Chevron), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NGPL states that pursuant to a transportation agreement dated September 26, 1977, as amended January 11, 1985, among Trunkline Gas Company (Trunkline), NGPL and Chevron, NGPL proposes the following: (1) firm transportation of a daily quantity of natural gas equal to 75 percent of up to 10,000 Mcf of natural gas per day, the demand quantity, from West Cameron Blocks 533 and 534, offshore Louisiana, at a monthly demand charge equal to $34,300, (2) best-efforts transportation for each Mcf of overrun gas accepted by NGPL for transportation on behalf of Chevron from West Cameron Blocks 533 and 534, offshore Louisiana, to Cameron Parish, Louisiana, at a charge of 11.28 cents and (3) onshore transportation of the demand quantity and overrun gas from Cameron Parish, Louisiana, to Vermilion Parish, Louisiana, at rates based on NGPL's FERC Rate Schedule X-50.

It is stated that Chevron would deliver the gas to NGPL and Trunkline at the point of connection between their facilities and the producer facilities in West Cameron Blocks 533 and 534, offshore Louisiana. It is stated that NGPL and Trunkline would use their capacity in Stingray Pipeline Company's (Stingray) offshore pipeline system to transport the gas to an existing interconnection between NGPL and Stingray in Cameron Parish, Louisiana. NGPL indicates that it would then transport the volumes to United Gas Pipe Line Company for the account of Chevron at the outlet of NGPL's meter station near the Texaco Henry plant in Vermilion Parish, Louisiana.

It is stated that the proposed service would continue for a term of 15 years commencing on the date of first receipt of gas or until production terminates from West Cameron Blocks 532, 533 and 534, whichever is longer.

NGPL indicates that for the transportation and handling of Chevron's liquids and liquefiables, both NGPL and Trunkline would charge Chevron a monthly fee equal to 55.0 cents per barrel for liquids and 4.5 cents per Mcf for liquefiables transported 100 miles offshore, prorated to the actual mileage of offshore transportation.

Comment date: April 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-343-000]

Take notice that on March 6, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-85-343-000 an application pursuant to Section 7(b) of the Natural Gas Act for (1) permission and approval to abandon delivery of natural gas to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), by reducing Peoples' entitlements; (2) and pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessary authorizing Applicant to sell and deliver said gas to a new customer and authorizing Applicant to realign certain volumes of winter peaking service (WPS) entitlements between existing delivery points for Peoples, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that one of the communities presently served by Peoples, the City of Lake Park, Iowa, has elected to discontinue the distribution service of Peoples and chose to make such distribution of natural gas a municipal function. Applicant further states that by agreement dated February 20, 1984, Peoples agreed to sell the Lake Park distribution system to the City of Lake Park. In order to meet Lake Park's natural gas needs, which is estimated to be 700 Mcf per day, Peoples is said to have agreed to reduce its receipt of natural gas from Applicant by 700 Mcf per day and assign such volumes to Lake Park. Applicant states it will sell and deliver the 700 Mcf per day of natural gas to Lake Park under its Rate Schedule CD-1. Peoples is said to have requested further that Northern realign 50 Mcf per day of WPS presently designated for delivery to Lake Park and make such volumes of WPS available at Estherville, Iowa.

The following sets forth, in Mcf, the changes in contract demand (CD) and WPS delivered to Peoples:

Peoples	Existing authority		Proposed changes		Proposed authority	
	CD	WPS	CD	WPS	CD	WPS
Estherville	4,447	1,013	(185)	50	4,262	1,063
Lake Park	505	50	(505)	(50)	0	0

The following sets forth, in Mcf, the proposed service to Lake Park:

City of Lake Park	Existing authority		Proposed changes		Proposed authority	
	CD	WPS	CD	WPS	CD	WPS
Lake Park	0	0	700	0	700	0

Comment date: April 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP85-370-000]

Take notice that on March 18, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-370-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Indiana Gas Company, Inc. (Indiana Gas), as agent for Knauf Fiber Glass (Knauf), under the certificate issued in Docket No. CP82-407-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 2.3 billion Btu of natural gas per day on an interruptible basis for Indiana Gas, as agent for Knauf, until June 30, 1985, with an extension for a term to end no later than October 31, 1985, should the Commission extend the end-user transportation program beyond June 30, 1985. Texas Gas indicates that the gas to be transported would be purchased by Knauf from EnTrade Corporation (EnTrade) and would be used for low-

priority boiler fuel at Knauf's Shelbyville, Indiana, plant.

Texas Gas states that it would receive the gas for Knauf's account from EnTrade in Bossier Parish, Louisiana, and deliver it to Indiana Gas in Lawrence County, Indiana. It is indicated that Indiana Gas is the distribution company serving Knauf in Shelbyville, Indiana.

It is indicated Texas Gas would charge Indiana Gas its Rate Schedule TSC–3 rate for Rate Schedule G customers, currently 21.80 cents, plus a 1.25-cent GRI surcharge for each million Btu of natural gas transported. In addition Texas Gas states it would retain 2.57 percent of the gas delivered to it for fuel, company-use, and unaccounted-for gas.

Texas Gas also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Knauf. The flexibile authority requested would apply only to points related to sources of gas supply not to delivery points in the market area. Texas Gas would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 17, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP82–385–004]

Take notice that on March 13, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP82–385–004 a third amendment to its pending application filed on June 21, 1982, in Docket No. CP82–385–000 pursuant to Section 7(c) of the Natural Gas Act so as to reflect modifications to the proposed facilities as a result of an increase in the Canadian purchase and storage gas to be transported through such facilities, all as more fully set forth in the third amendment which is on file with the Commission and open to public inspection.

Applicant states that as a result of additional customer commitments for the Transco-Niagara Storage Service, as reflected in Docket No. CP82–503–003, demand for such service exceeded the levels of service for which Applicant was previously requesting authorization. Applicant states further that rather than allocate service among its customers, by amendment to storage agreements dated December 28, 1984, Applicant has entered into arrangements to provide the additional storage capacity of 5,700,000 Mcf and 100,000 Mcf per day withdrawal capability to meet fully its customers' stated demands for additional peak period gas supplies. Applicant states that the proposed Transco-Niagara Storage Service, as so expanded, would provide Applicant's customers with 25,700,000 Mcf of top storage capacity and 400,000 Mcf per day of withdrawal capability.

Applicant also states that it has entered into an amendment dated June 28, 1984, to its existing gas purchase contract with its Canadian supplier, Sulpetro Limited, which (1) modified the pricing terms in order to reflect flexible market responsive price provisions; (2) modified the quantity provisions to provide for an increase in the purchase quantities of 50,000 Mcf per day, to 125,000 Mcf per day, commencing November 1, 1987, with no stepdown in volumes during the later years of the import; and (3) extended the term of the import arrangement for an additional three years through 1994. Applicant further states that by Order No. 46–A issued October 3, 1984, in Docket No. 84–06–NG, the Economic Regulatory Administration approved the revised import arrangement finding such arrangement to be consistent with the Secretary of Energy's policy guidelines for the importation of natural gas and not inconsistent with the public interest.

Applicant states that as a result of the aforementioned amended gas purchase arrangement with Sulpetro Limited and the increase in levels of the proposed Transco-Niagara Storage Service, it is necessary and appropriate to increase the proposed expansion of Applicant's Leidy line and market area facilities. Applicant states further that as so modified, such new facilities would enable Applicant to deliver an additional 765,000 Mcf of natural gas per day to its sales and storage customers. In that regard, Applicant states that the necessary expansion of its Leidy line is now proposed to be accomplished as follows:

(1) construct 8.52 miles of 30-inch pipeline loop from Leidy storage field (Leidy M.P. 194.06) to Leidy M.P. 185.54;

(2) construct 26.10 miles of 36-inch pipeline loop from M.P. 0.00 to M.P. 26.10, parallel to the so-called Southern loop of the Leidy line;

(3) construct 56.45 miles of 36-inch pipeline loop frm Leidy M.P. 12.51 to Leidy M.P. 68.96;

(4) install an additional 15,000 horsepower of compression at Station 520; and

(5) install an additional 6,700 horsepower of compression at Station 515.

Applicant states that modifications to the proposed pipeline looping on Applicant's market area facilities are also required. Specifically, the following expansion of Applicant's market area facilities in Pennsylvania and New Jersey is now proposed:

(1) construct 32.04 miles of 24-inch pipeline looping of the 16-inch and 12-inch Trenton-Woodbury lateral from M.P. 4.79 to M.P. 36.83;

(2) construct 7.28 miles of 16-inch pipeline loop of the 16-inch and 8-inch Oreland and Ashmead Road laterals between the Oreland meter station and the Ashmead Road meter station;

(3) construct 1.74 miles of 10-inch pipeline loop of the 6-inch Trenton lateral from M.P. 4.79 to the Trenton meter station;

(4) construct 26.96 miles of 36-inch pipeline loop from M.P. 1789.53 to M.P. 1816.49 on the Caldwell loop;

(5) construct 4.91 miles of 36-inch pipeline loop from M.P. 1820.66 to M.P. 1825.57 on the Caldwell loop; and

(6) install a new compressor station consisting of 12,500 horsepower of compression on Applicant's mainline facilities near Princeton, New Jersey.

Applicant states that the estimated cost of the proposed Leidy line and market area facilities is $286,696,000.

Comment date: April 23, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP82–503–003]

Take notice that on March 13, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP82–503–003 a third amendment to its pending application filed in Docket NO. CP–82–503–000 pursuant to Section 7(c) of the Natural Gas Act, so as to reflect an increase in the level of service in order to meet its customers' stated needs for additional peak period gas supplies, and a reduction in the indicated initial rates for such service under Rate Schedule T–NSS as a result of reductions in the estimated unit costs and charges pertaining to such service, all as more fully described in the third amendment which is on file with the Commission and open to public inspection. Applicant states that the combination of the reduction in the current estimated unit cost of the proposed expansion of Applicant's Leidy line and market area

facilities for which an application for authorization is pending in Docket No. CP82–385–004 and the reduction in unit cost of upstream storage and transportation services, results in a reduction the indicated initial rates for service under Rate Schedule TNSS. In this regard, Applicant states that the indicated rates for Rate Schedule T–NSS service now are a monthly demand charge of $9.73 per dt of contract demand, a monthly capacity charge of 2.5 cents per dt equivalent of annual capacity and injection and withdrawal charges of 7.0 cents per dt equivalent, the derivation of which charges are set forth in third amended Exhibit P to the application.

Further, Applicant states that it has entered into arrangements for additional storage capacity and withdrawal capability in order to meet fully its customers' stated needs for additional peak period gas supplies. In this connection, Applicant states that under the current proposal Transco-Niagara Storage Service would provide its customers with 25,700,000 Mcf of storage capacity and up to 400,000 Mcf withdrawal capability. Therefore, Applicant states that it is necessary to modify the instant proposal to reflect the following storage customers and the indicated levels of service under Rate Schedule T–NSS (in dekatherms):

Customer	Capacity (Mcf)	Daily demand (Mcf)
Algonquin Gas Transmission Co	4,200,000	40,241
Atlanta Gas Light Company	5,000,000	100,000
The Brooklyn Union Gas Company	1,005,000	14,722
City of Bowman, Georgia	6,000	100
City of Buford, Georgia	24,000	409
Elizabethtown Gas Company	1,000,000	24,537
City of Lawrenceville, Georgia	20,000	1,000
Long Island Lighting Company	1,500,000	14,722
Penn Gas & Water Company	1,580,000	22,182
Philadelphia Gas Works	500,000	6,179
Public Service Electric & Gas Co	8,971,000	140,813
Public Service Company of North Carolina	1,750,000	24,537
City of Social Circle, Georgia	8,000	200
South Jersey Gas Company	1,000,000	10,000
Tri-County Natural Gas Co	24,000	400

Applicant also notes that since Piedmont Natural Gas Company, Inc. (Piedmont), is unable at this time to provide a firm commitment for service, Applicant has deleted Piedmont from its request for authorization to render service under Rate Schedule T–NSS.

Comment date: April 23, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Western Gas Interstate Company

[Docket No. CP85–396–000]

Take notice that on March 27, 1985, Western Gas Interstate Company (Western), 900 United Bank Tower, 400 W. 15th Street, Austin, Texas 78801, filed in Docket No. CP85–396–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authoring the construction and operation of certain minor facility changes to an existing compressor located on Western's West Line near Etter, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western requests authority to make minor changes to its existing Etter compressor in order to allow Western to make deliveries of cheaper gas available from sources on the southern portion of its West Line to customers on the northern portion of its West Line during periods of peak demand. Western estimates the cost of these facilities to be $3,000. Western indicates further that the propoed changes to its Etter compressor would allow it to offer cheaper gas to all its customers during this peak period.

Comment date: April 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.2050 a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8451 Filed 9–8–85; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84V–0369 et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for certain specified sunlamps and sunlamp products manufactured or imported by six organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below under "SUPPLEMENTARY INFORMATION."

ADDRESS: The application and all correspondence on the applications have been placed on display in the

Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tracy Summers, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CRF 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted each of the six organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted to allow the listed products to vary from that portion of § 1040.20(c)(2)(ii) requiring the maximim timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally ultraviolet-A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. CDRH's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturer does not result in severe, acute skin burns, or corneal injury. Therefore, the time interval requirement of § 1040.20(c)(2)(ii) is not appropriate for these UVA products. Even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk to chemically sensitized lenses or of cornea damage or of long-term development of lense opacities. This requirement remains.

CDRH has determined that suitable and/or alternate means of radiation protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products in lieu of the time interval requirement that was determined to be inappropriate. Therefore, on the affective dates specified in the table below, CDRH approved the requested variances by letter from the Deputy Director of CDRH to each manufacturer or importer.

So that the product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance, both of which are specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/ termination date
84V-0369	Rothschild Sunsystems, Inc., 125 Wolf Road, Suite 308, Albany, New York 12203.	UVA sunlamp products manufactured by Rothschild Sunsystems, Inc.	Dec. 28, 1984/ Dec. 28, 1989.
84V-0400	Klaus Industries Co., Inc., 6217 West Lake Street, Minneapolis, Minnesota 55416.	UVA sunlamp products manufactured by Klaus Industries Co., Inc.	Dec. 28, 1984/ Dec. 28, 1989.
84V-0420	Sunthetic Engineering, Inc., 1962 Fifth Avenue, Marion, Iowa 52302	UVA sunlamp products manufactured by Sunthetic Engineering, Inc.	Jan. 18, 1985/ Jan. 18, 1990.
84V-0423	Bainbridge Trading Co., Ltd., 210 Sound Beach Avenue, Old Greenwich, Connecticut 06870.	UVA sunlamp products manufactured by Helitron, Ltd., and imported by Bainbridge Trading Co., Ltd..	Jan. 18, 1985/ Jan. 18, 1990.
85V-0014	Solar Tan, Inc., 1101 Enterprise Avenue, Bay 9, Oklahoma City, Oklahoma 73128.	UVA sunlamp products manufactured by Solar Tan, Inc.	Feb. 11, 1985/ Feb. 11, 1990.
85V-0031	Ameritan, 5232 W. Center Street, Milwaukee, Wisconsin 53210	UVA sunlamp products manufactured by Ameritan.	Feb. 11, 1985/ Feb. 11, 1990.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiogical Health (21 CFR 5.86).

Dated: March 15, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–8396 Filed 4–8–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84D–0428]

Availability of Compliance Policy Guide for Cytotoxic Testing for Allergic Diseases

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a compliance policy guide entitled "Cytotoxic Testing for Allergic Dieseases." This guide addresses the agency's regulatory position regarding the use of the cytotoxic test in the diagnosis of allergic diseases.

ADDRESS: A copy of the guide is available for public examination at, and comments and requests for single copies may be sent to, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Alzena G. Darr, Center for Devices and Radiological Health (HFZ–323), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7208.

SUPPLEMENTARY INFORMATION: A number of Federal and State agencies which share responsibility for the regulation or licensure of medical testing laboratories are concerned about allergy clinics, health centers, and testing laboratories performing the cytotoxic test and promoting the test as effective in the detection of allergic diseases, particularly for food and food additives. The Health Care Financing Administration (HCFA) and the Federal Trade Commission (FTC) have asked FDA to assess the validity, accuracy, and effectiveness of "in vitro" cytotoxic testing as a diagnostic tool. FDA is concerned that businesses may begin distributing kits for cytotoxic testing for which efficacy has not been established.

This policy guide states that it is FDA's opinion that the cytotoxic test is

unreliable as a diagnostic tool and is not generally recognized by qualified experts as effective. The guide also addresses the agency's regulatory position that cytotoxic test kits marketed for use in the diagnosis of allergic diseases are adulterated and misbranded devices under the Federal Food, Drug and Cosmetic Act. The agency will consider appropriate regulatory action to enforce the statute should misbranded or adulterated kits be discovered.

The policy guide is available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (address above). In accordance with 21 CFR 10.85(d)(3) and (i), any person may submit written comments on the guide. Written comments may be sent to the Dockets Management Branch. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Although such comments will be considered if the guide is revised, the agency will not defer regulatory action pending any such revision.

Dated: April 2, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8275 Filed 4-8-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92-463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Migrant Health

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245-6791. Copies may be obtained from Mr. Billy Sandlin, Executive Secretary, National Advisory Council on Migrant Health, Room 7A-55, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1153.

Dated: April 3, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-8397 Filed 4-8-85; 8:45 am]

BILLING CODE 4160-15-M

Revision of Income Criteria for Eligibility for Uncompensated Services

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the applicability of the recent revision of the Poverty Income Guidelines to uncompensated services programs administered by health care facilities pursuant to Titles VI and XVI of the Public Health Service Act.

DATE: The revision of the guidelines must be implemented by affected facilities on May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Martin J. Frankel, Director, Division of Facilities Compliance, Office of Health Facilities, Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration, 5600 Fishers Lane, Room 11-19, Rockville, Maryland 20857, Telephone 301-443-6512.

SUPPLEMENTARY INFORMATION: On March 8, 1985, [50 FR 9517] with a correction published on March 14, 1985 [50 FR 10319], the annual revision of the Poverty Income Guidelines was issued, effective upon publication in the **Federal Register**. That revision affects, among others, health care facilities that have received construction assistance under Title VI or Title XVI of the Public Health Service Act, 42 U.S.C. 291, et seq., and 42 U.S.C. 300q, et seq., respectively. The regulations applicable to those facilities provide that the eligibility of persons for uncompensated services is to be determined in accordance with the currently Poverty Income Guidelines of the Department of Health and Human Services, formerly published by the Community Services Administration (CSA). See 42 CFR. 124.506(a). The statute which gave this Department authority to revise the guidelines also provides that any reference to the Poverty Income Guidelines constitutes a reference to, in this case, the present revision [Pub. L. 97-35, 683(c)(1)]. A discussion of the basis for delaying the effective date can be found in the **Federal Register**, Volume 47, No. 78, page 17489, published on April 23, 1982.

Dated: April 3, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-8398 Filed 4-8-85; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee and Cancer Biology-Immunology Contracts Review Committee; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the National Institutes of Health announces the establishment by the Secretary of Health and Human Services of the Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee, and the establishment of the Cancer Biology-Immunology Contracts Review Committee by the Director, National Cancer Institute, under the authority of section 405(a)(2) of the Public Health Service Act (42 U.S.C. 285(a)(2).

The Arthritis, Diabetes, and Digestive and Kidney Diseases Special Grants Review Committee shall provide advice to the Seretary; the Assistant Secretary for Health; the Director, National Institutes of Health; and the Director, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, concerning the review of research grant and National Research Service Award applications.

The Cancer Biology-Immunology Contracts Review Committee shall advise the Director, National Cancer Institute, and the Directors of the Divisions of Cancer Treatment, Cancer Etiology, Cancer Biology and Diagnosis, and Cancer Prevention and Control, concerning the technical scientific merit of proposals relating to biology, microbiology (including virology), and immunology of cancer.

Authority for these committees shall terminate two years from the date of establishment, unless renewed by appropriate action as authorized by law.

Dated: March 29, 1985.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 85-8419 Filed 4-8-85; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Health Systems Agencies and State Health Planning Development Agencies; Certificate of Need Reviews

AGENCY: Health Resources and Services Administration, PHS, HHS.

ACTION: Notice regarding adjustment of the expenditure minimum for capital expenditures and the expenditure minimum for annual operating costs.

SUMMARY: This notice provides necessary information for each State which chooses to adjust the capital expenditure and annual operating cost expenditure minimums that are used to determine whether proposals are subject to review under a State's certificate of need program. The notice also provides guidance to assist a State Health Planning and Development Agency (State Agency) in determining the exact minimum dollar figure it will use and in seeking further information.

FOR FURTHER INFORMATION CONTACT: John F. Belin, Director, Division of Agency Operations and Management, Office of Health Planning, Bureau of Health Maintenance Organizations and Resources Development, Health Resources and Services Administration, 5600 Fishers Lane—Room 9A–21, Rockville, Maryland 20857, Telephone 301 443–6680.

SUPPLEMENTARY INFORMATION: The Health Planning and Resources Development Amendments of 1979 (Pub. L. 96–79) as amended by the Health Programs Extension Act of 1980 (Pub. L. 96–538) and the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) require the Secretary to designate by regulation: (1) An index maintained or developed by the Department of Commerce which could be used by States to adjust the minimum threshold for capital expenditures and (2) an index which could be used by States to adjust the minimum threshold for annual operating costs in the State certificate of need programs. Pub. L. 97–35 also raised the minimum threshold for capital expenditures to $600,000 and for annual operating costs to $250,000 effective October 1, 1981. The Secretary designated the Department of Commerce Composite Construction Cost Index for both threshold adjustments in the certificate of need final regulations published October 31, 1980 (42 CFR 123.401). Threshold adjustments are based on the change in the index from October 1 of one year to October 1 of the next year. Application of the yearly change in the index is compounded from 1979, the base year for threshold adjustments, to 1984. This notice provides the change in the Department of Commerce Composite Construction Cost Index from October 1, 1979 to October 1, 1984. On October 1, 1979, the index was fixed at 133.4. On October 1, 1984, the index was fixed at 163.7. This 30.3 point change represents a 22.7 percent increase. States which are authorized to adjust the capital expenditure and operating cost expenditure minimums may increase them up to 22.7 percent, resulting in a capital expenditure minimum threshold of $736,200 and an annual operating cost minimum threshold of $306,750.

Dated: April 3, 1985

John H. Kelso,

Acting Administrator.

[FR Doc. 85–8399 Filed 4–8–85; 8:45 am]

BILLING CODE 4160–15–M

National Committee on Vital and Health Statistics and National Center for Health Statistics Conference

Pursuant to the Federal Advisory Act (Pub. L. 92–463), notice is hereby given that the National Committee on Vital and Health Statistics established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will sponsor in cooperation with the National Center for Health Statistics a 2-day conference on the tenth revision of the International Classification of Diseases (ICD–10) to convene on Wednesday, May 1 and Thursday May 2, 1985 from 9:30 a.m. to 5:00 p.m. at the Lister Hill Auditorium, National Institutes of Health campus, Bethesda, Maryland.

The purpose of the conference will be to strengthen communication lines within the United States among all those organizations and individuals who have an interest in the ICD and particularly with the National Center for Health Statistics and its WHO Collaborating Center for Classification of Diseases for North America. There will be discussions of the process and timetable for developing draft proposals to be submitted to the World Health Organization. We expect to identify the appropriate organizations to serve as focal points for particular ICD–10 chapters and to provide an opportunity for those present to express their views on general issues.

Further information regarding this meeting may be obtained by contracting Dr. Gail F. Fisher, National Center for Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: April 2, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85–8502 Filed 4–8–85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise a notice describing a system of records maintained by the Office of Administrative Services in the Office of the Secretary. The notice titled "Secretarial Subject Files—Interior, Office of the Secretary–46" is being revised to reflect functional realignments which have occurred since its previous publication in the Federal Register on May 3, 1983 (48 FR 19946). The descriptions of the system location and system manager have been appropriately updated. The revised notice is published in its entirety below, and is effective April 9, 1985.

Dated: March 28, 1985.

Oscar W. Mueller, Jr.,

Director, Office of Information, Resources Management.

INTERIOR/OS–46

SYSTEM NAME:

Secretarial Subject Files—Interior, Office of the Secretary—46.

SYSTEM LOCATION:

Office of the Secretary, Office of Administrative Services (PMO), Division of General Services, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who have had correspondence with the Office of the Secretary.

CATEGORIES OF RECORDS IN THE SYSTEM:

Index cards containing the name, dates, and subject codes for retreival of subject files, subject files of correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 43 U.S.C. 1457, 44 U.S.C. 3101, Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records are to support the operational, program and policy decisions of the Secretary of the Interior, Under Secretary, Solicitor, Assistance Secretaries. Disclosures outside the department are (1) to the U.S. Department of Justice when related to litigation or anticipated litigation, and (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, and (3) to a Member of Congress from the record of an individual in response to an inquiry made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3" x 5" index cards correspondence filed in folders.

RETRIEVABILITY:

Indexed by subject.

SAFEGUARDS:

Stored in locked office.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of General Services (PMO), Office of Administrative Services, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURE:

A written and signed request stating that the requester seeks information concerning records pertaining to him/her.

RECORD ACCESS PROCEDURE:

Submit requests to the System Manager. The request must be in writing, signed by the requester, and meet the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addresed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Correspondence or documents signed at the Secretarial level.

[FR Doc. 85-8432 Filed 4-8-85; 8:45 am]
BILLING CODE 4310-10-M

Bureau of Indian Affairs

Plan for the Use and Distribution of the Fort McDermitt Paiute and Shoshone Tribe of Indians Judgment Funds in Docket 87-D Before the United States Claims Court

March 28, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on July 18, 1983 in satisfaction of the award granted to the Fort McDermitt Paiute and Shoshone Tribe of Indians before the United States Claims Court in Docket 87-D. The plan for the use and distribution of the funds wa submitted to the Congress with a letter dated July 16, 1984, and was received (as recorded in the Congressional Record) by the Senate on July 25, 1984, and by the House of Representatives on July 23, 1984. The plan became effective on January 21, 1985, as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

The funds of the Fort McDermitt Paiute and Shoshone Tribe, appropriated July 18, 1983, in Docket 87-D before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

Per Capita Payment Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan.

Programing Aspect

Twenty (20) percent of the funds, and any amounts remaining from the per capita payment provided above, shall be invested by the Secretary and utilized by the tribal governing body on an annual budgetary basis, subject to the approval of the Secretary, for tribal social and economic development programs.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-8410 Filed 4-8-85; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

Coeur d'Alene District Office; Sales of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive, and Direct Sale Offerings of Public Lands in Bonner, Kootenai, Shoshone, Idaho and Latah Counties, Idaho; correction.

SUMMARY: In FR Doc. 85-3554 beginning on page 6061 in the issue of Wednesday, February 13, 1985, make the following corrections: On page 6061, third column in the table, under Legal description for Tract No. I-6-39, (R.1W.) should read (R.2W.). Under Legal description for Tract No. I-6-223, (Lot 4) should read (Lot 1). Under Legal description for Tract No. I-6-224, (Lot 14) should read (lot 13).

Dated: April 1, 1985.

Wayne Zinne,

District Manager.

[FR Doc. 85-8423 Filed 4-8-85; 8:45 am]
BILLING CODE 4310-GG-M

Filing of Plat of Survey, New Mexico

March, 12, 1985.

The plats of the survey described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on March 12, 1985.

The dependent resurvey and subdivision of section T. 9 S., R. 26 E. under Group No. 835, approved February 15, 1985, and the dependent resurvey of lots in T. 20 N., R. 9 E., under Group No. 781, approved February 13, 1985, NMPM, NM.

This survey was requested by Roswell and Albuquerque Districts, Bureau of Land Management, respectively.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-8417 Filed 4-8-85; 8:45 am]

BILLING CODE 4310-FB-M

Sale of Public Lands; Siskiyou County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Sale of Public Lands in Siskiyou County, California.

SUMMARY: The following described public lands have been examined, and through the development of land use planning decisions based upon public input, resource considerations, regulations, and Bureau policies, it has been determined that the proposed sale of these parcels is consistent with the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, and approved Redding Resource Area Land Use Plans.

Sale will be by sealed bid only. In no case shall lands be sold for less than the appraised fair market value. The following public lands will be offered for sale on June 25, 1985, at 1:00 p.m., unsold parcels will remain available pending disposition as cited in this notice.

MOUNT DIABLO BASE AND MERIDIAN, SISKIYOU COUNTY, CALIFORNIA

Case No.	Parcel No.	Sale method [1]	Legal description	Acres	Fair market value
CA 16478	1	M	T. 41 N., R. 8 W., Sec. 8, NW¼NW¼	40	$40,000
CA 16479	2	D	T. 41 N., R. 8 W., Sec. 14, NW¼NW¼	40	7,800
CA 16480	3	M	T. 42 N., R. 5 W., Sec. 18, SW¼NE¼	40	10,000
CA 16481	4	M	T. 42 N., R. 5 W., Sec. 18, W½SW¼NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼.	26.25	5,250
CA 16482	5	M	T. 43 N., R. 6 W., Sec. 12, NE¼NW¼	40	7,800
CA 16483	6	D	T. 43 N., R. 6 W., Sec. 12, SE¼SW¼, SW¼SE¼	80	15,200
CA 16484	7	M	T. 44 N., R. 8 W., Sec. 32, Lot 1	5.18	3,000
CA 16485	8	M	T. 45 N., R. 4 W., Sec. 8, N½NW¼	80	15,200
CA 16486	9	M	T. 46 N., R. 2 W., Sec. 34, SW¼SE¼	40	13,500
CA 16487	10	C	T. 43 N., R. 6 W., Sec. 18, Lots 1, 2, 3, and 4	56.57	17,000
CA 16488	11	C	T. 43 N., R. 6 W., Sec. 30, Lots 1, 2, 3, and 4	49.89	75,000
CA 16489	12	M	T. 42 N., R. 5 W., Sec. 4, NE¼SW¼, NW¼SE¼	40	4,200
CA 16490	13	M	T. 42 N., R. 5W., Sec. 4, NE¼SW¼, NW¼SE¼	80	8,000
CA 16491	14	C	T. 42 N., R. 5 W., Sec. 24, N½NE¼	80	48,000
CA 16492	15	M	T. 43 N., R. 5 W., Sec. 34, SE¼SW¼, SW¼SE¼	80	8,000
Total				777.89	

[1] D—Direct, M—Modified Competitive, C—Competitive.

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands described are hereby segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of publication, whichever occurs first.

Sale methodology will be pursuant to FLPMA and existing policy, laws, and regulations pertaining to disposal of public lands. Current policy madates all public sales be conducted by *sealed bid only*. Disposal may be by competitive, modified competitive (designated bidder(s) shall be offered the right to meet the highest bid), or by direct sale (non-competitive), if justified by criteria cited in 43 CFR 2711.3–3. BLM may accept or reject any and all bids, or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, cosummation of the sale would not be in the best interest of the United States.

Those parcels identified for sale by modified competitive bidding will include designation of a bidder(s). The designated bidder(s) will have the right to meet the highest apparent bid for the affected parcel. Refusal or failure to meet the highest bid, at the time of the sale, shall constitute a waiver of this provision. Direct sales will be offered to the designated bidder without competition.

Each parcel will be offered individually for sale by sealed bid only. Sealed bids will be opened and recorded at a public sale to be held on June 25, 1985, at 1:00 p.m., in the first floor Conference Room, Klamath National Forest Headquarters Office, U.S. Forest Service, 1312 Fairlane Road, Yreka, California. Sealed bids shall be considered only if received by 10:00 a.m. on June 25, 1985, at the Redding Resource Area Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002, or hand carried to a Bureau of Land Management representative in the Conference Room, Klamath National Forest Headquarters, U.S. Forest Service, 1312 Fairlane Road, Yreka, California from 10:00 a.m. until commencement of the sale at 1:00 p.m. Interested parties and the public in general may attend all sales, where sealed bids will be opened and the parcels sold.

Unsold parcels will be available competitively by sealed bids only until sold, withdrawn, or segregation terminates. Subsequent public sales will be held on the first Wednesday of each month at 10:00 a.m. at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002. Sealed bids shall be considered only if received at the above address prior to 10:00 a.m. on the date of sale.

Each sealed bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Department of Interior—BLM for not less than 20 percent (20%) of the bid. The sealed bid envelopes must be marked on the front left corner "Redding Resource Area, Siskiyou Land Sale, Parcel Number_____

If 2 or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental biddings. The desingnated high bidders shall be allowed to submit oral or sealed bids as designated by the Authorized Officer.

The successful bidder shall submit the remainder of the full bid price prior to the expiration of 180 days from the date of sale. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited. The next high bid will then be honored.

A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered for conveyance have no known mineral value, except on Parcel Number

9, where the United States will reserve the oil and gas estate (due to oil and gas lease CA 11898). The declared high bidder will be required to deposit immediately a $50.00 non-refundable filing fee (43 CFR 2720.1–2(c) (in addition to the required twenty percent (20%) bid deposit), and the mineral estate will be sold simultaneously with the surface estate. Failure to deposit this filing fee will result in disqualification as the high bidder.

Sale terms and conditions are as follows:

A. Reservations to the United States—there are hereby excepted from These Land Patents and reserved to the United States the following:

A right-of-way on the property for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat, 391, 43 U.S.C. 945.

Parcel #1—A right-of-way and all appurtenances thereto, by Permit #S 045263, issued in perpetuity to the United States (Federal Aviation Administration), under the authority of 44 LD 513.

Parcel #4—A Right-of-Way S 080196, to the State of California, Department of Highways, for Interstate 5, under the Federal Aid Highway Act of August 27, 1958, as amended; 23 U.S.C. 317 (1964).

Parcel #7—A right-of-way to the State of California (State Highway 3) by Permit #S 051053, under the Act of November 9, 1921, (42 Stat. 212 23 U.S.C. 18). Including such additional uses as authorized by the State of California within the highway right-of-way pursuant to Utilities Encroachment Permit #270–U–780804 issued to Pacific Power and Light Company; and to Siskiyou Telephone Company pursuant to Utility Encroachment Permits #277–U–780805 and 277–U–781805.

Parcel #9All the oil and gas shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

Parcel #14—The right to itself, its permittees or licensees, to enter upon, occupy or use, any part or all of said land within Power Project No. 960 in the NE¼NE¼ of said Section 24 for the purposes set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, 41 Stat. 1075, as amended 16 U.S.C. 818.

B. Rights of the Third Parties—The conveyance made by these Land Patents are subect to all valid existing rights, including the following:

Parcel #1—

1. Those rights for electric transmission line purposes as have been granted to Pacific Power and Light Company, by Permit #S 046581, under the Act of March 4, 1911, (43 U.S.C. 961).

2. The successful bidder agrees that he takes the real estate subject to the existing grazing use of Quentin J. Tobias, holder of grazing authorization No. 3130. The rights of Quentin J. Tobias to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 3130 shall cease on February 28, 1989. The successful bidder is entitled to receive annual grazing fees from Quentin J. Tobias in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the Federal Register.

3. Those rights for road purposes as have been granted to Siskiyou Cablevision, Inc., by Permit #CA 16499, under the Act of October 21, 1976, (43 U.S.C. 1761).

Parcel #7—

1. Those rights for access road purposes as have been granted to Junior L. and Margaret Coppock, by Permit #CA 8561, under the Act of October 21, 1976, (43 U.S.C. 1761).

Parcel #9—

1. Those rights granted by oil and gas lease CA 11898, under the terms and provisions of the Act of February 25, 1920, (41 Stat. 437, 30 U.S.C. 181, as amended).

Parcel #11—

1. Those rights for distribution line purposes as have been granted to Pacific Power and Light Company, by Permit #CA 9035, under the Act of October 21, 1976, (43 U.S.C. 1761).

2. Those rights for access road purposes as have been granted in perpetuity to John H. and Mary Linville by Permit #CA 14737, under the Act of October 21, 1976 (43 U.S.C. 1761).

3. Those rights for access road purposes as have been granted in perpetuity to Kenneth D. and Rose M. Cochran, by Permit #CA 16493, under the Act of October 21, 1976, (43 U.S.C. 1761).

Parcel 14—

1. Those rights for electric transmission line purposes as have been granted to Pacific Power and Light Company, by Permit #CA 9034, under the Act of October 21, 1976, (43 U.S.C. 1761).

2. Those rights for telephone and telegraph line purposes as have been granted to Pacific Bell, by Permit #S 036666, under the Act of March 4, 1911, (43 U.S.C. 961).

C. All bidders must be United States citizens; corporations must be authorized to own real property in the State of California; political subdivisions of the State and State instrumentalities must be authorized to hold property. Proof of meeting these requirements shall accompany bids.

D. Upon disqualification of an apparent high bidder, the next high bid will be honored. Bids will only be considered if they are made for not less than fair market value of the land, and bids must include all of the land in the parcel.

Detailed information concerning the sale, including the environmental assessment and land report are available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

DATE: Comments should be sent to the following address no later than May 15, 1985.

ADDRESS: Comments and suggestions should be sent to: State Director, California State Office, Bureau of Land Management Federal Office Building 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become a final determination for the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Robert J. Bainbridge, (916) 246–5325.

Robert J. Bainbridge,

Redding Area Manager.

[FR Doc. 85–8506 Filed 4–8–85; 8:45 am]

BILLING CODE 4310–40–M

Final Resource Management Plan/ Environmental Impact Statement for the Northeast Resource Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) for the Northeast Resource Area, Canon City District, Colorado.

SUMMARY: The Final RMP/EIS for the Northeast Resource Area, Colorado is available for the public. The RMP/EIS analyzes the potential impacts of a proposed management plan for approximately 40,000 acres of public land and approximately 615,000 acres of federal minerals underlying state or

private surface. A 30-day protest period is provided as required by BLM planning regulations (43 CFR 1610.52).

DATE: The protest period ends May 24, 1985.

ADDRESS: Protests should be sent to: BLM Director, Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Frank Young, Area Manager, Bureau of Land Management, Northeast Resource Area, Denver Federal Center, Bldg. 41, Denver, CO 80225, telephone (303) 236–4399.

SUPPLEMENTARY INFORMATION: Approval of the RMP will permit implementation of the proposed plan. The proposed plan establishes interim multiple use management for approximately 40,000 acres of public land and final minerals management for approximately 615,000 acres of federal mineral estate. The 40,000 acres of public land are scheduled for disposal out of BLM administration to improve management efficiency.

The document is available from the Northeast Resource Area Office at the above address. Copies are also at local libraries in northeast Colorado. Persons who have participated in this planning process and have interests which may be adversely affected may protest approval of the plan.

Protests should be made to the BLM Director with the following information:

1. Name, mailing address, telephone number, and interest of the person filing the protest.
2. A statement of the issue or issues being protested.
3. A statement of the part or parts being protested.
4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record.
5. A concise statement explaining why the protesting party disagrees with the BLM Colorado State Director's decision.

Dated: April 3, 1985.

Kannon Richards,

Bureau of Land Management, State Director.

[FR Doc. 85–8503 Filed 4–8–85; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 692014

Applicant: Fred Davenport, Omaha, NE

The applicant requests a permit to import one sport-hunted trophy of bontebok (*Damilisus dorcas dorcas*) culled from the herd of Phil van der Merwe, Republic of South Africa, for enhancement of the survival of the herd.

PRT 692275

Applicant: Tennessee Valley Authority, Knoxville, TN

The applicant requests a permit to take 15 clutches of embryos or glochidia each year of Cumberland monkey face pearly mussels (*Quadrula intermedia*) and dromedary pearly mussels (*Dromus dromas*) from the Powell River, TN and VA, for scientific research (determining fish host).

PRT 691879

Applicant: Duke University Primate Center, Durham, NC

The applicant requests a permit to import two captive born male lesser mouse lemurs (*Microcebus murinus*) from the Skansen Aquarium, Stockholm, Sweden, for enhancement of propagation.

PRT 691894

Applicant: International Society for Krishna, Consciousness, New Vrindavan Community, Moundsville, WV

The applicant requests a permit to import 2 female Asiam elephants from the ISKC, Sri Mayapur, Nadia, India for enhancement of propagation through public exhibition.

PRT 691901

Applicant: Don Holt, Ingram, TX

The applicant requests a permit to import one sport-hunted trophy of a bontebok (*Damaliscus d. dorcas*) culled from the herd of Phil van der Merwe, Republic of South Africa, for enhancement of survival of the herd.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 100 North Glebe Road, Arlington, Virginia 22201), or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 4, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–8438 Filed 4–8–85; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the regulations governing marine mammals (50 CFR Part 18).

Applicant Name: Seattle Aquarium, Pier 59, Seattle, WA 98101; File No. 691770
Type of Permit: Public Display
Name and Number of Animals: Alaskan sea otter (*Enhydra lutris*), 1
Summary of Activity to be Authorized: The applicant proposes to import this animal for the purpose of public display.
Source of Marine Mammals for Public Display: This animal was born at the Vancouver Public Aquarium, Canada on APR 19, 1983.
Period of Activity: 1 year

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application(s) are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: April 3, 1985.

R.K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 85–8439 Filed 4–8–85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil & Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of the availability of environmental documents prepared OCS mineral exploration proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EAs) and Findings of No Significant Impact (FONSIs), prepared by the MMS for the following oil and gas exploration activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which FONSIs were prepared by the Gulf of Mexico OCS in the three month period preceding this Notice.

Activity/operator	Location	Date
Sun Oil Company, five exploratory wells, OCS-G 6260; SEA No. N-1917.	High Island Area, East Addition, South Extension, Block A-368; 120 miles southeast of the Texas coast.	Feb. 1, 1985.
Chevron U.S.A. Inc., three exploratory wells, OCS-G 6436; SEA No. N-1975.	Destin Dome Block 422; 64 miles southwest of Panama City, FL.	Feb. 22, 1985.
Chevron U.S.A. Inc., five exploratory wells, OCS-G 6414, 6415, and 6418; SEA No. N-2015.	Destin Dome Blocks 116, 158, and 159; 47 miles southwest of Panama City, Florida.	Mar. 22, 1985.
Amoco Production Company, eight exploratory wells, OCS-G 6422; SEA No. N-2029.	Destin Dome Block 204; 58 miles southwest of Panama City, FL.	Mar. 28, 1985.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Regional Supervisor (LE), Leasing and Environment, Gulf of Mexico OCS Region, Minerals Management Service, Post Office Box 7944, Metairie, Louisiana 70010, Telephone (504) 838-2755.

SUPPLEMENTARY INFORMATION: The MMS prepares EAs and FONSIs for proposals which relates to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: April 1, 1985.

John L. Rankin,

Regional Director Gulf of Mexico OCS Region.

[FR Doc. 85-8507 Filed 4-8-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places, Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 30, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April, 24, 1985.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Stratford, *Boothe Homestead,* Main St. Putney

NEW JERSEY

Atlantic County

Hamilton Township, *Weymouth (schooner)*

Hudson County

Jersey City, *Jersey City Medical Center,* Roughly bounded by Baldwin, Cornelison and Fairmont Aves., Clifton Pl. and Montgomery St.

Jersey City, *Paulus Hook Historic District (Boundary Increase),* Roughly bounded by York, Green, Essex and Henderson

NORTH CAROLINA

Forsyth County

Winston-Salem, *Blair, William Allen, House,* 210 S. Cherry St.

Catawba County

Hickory, *Claremont High School Historic District (Hickory MRA),* Roughly bounded by 5th and 3rd Aves., 3rd St., 2nd Ave. and N. Center St.

Hickory, *Kenworth Historic District (Hickory MRA),* Roughly bounded by 2nd Ave., 5th St. and 3rd Ave. Dr. SE

Hickory, *Oakwood Historic District (Hickory MRA),* Roughly bounded by Oakwood Cemetery, 4th St., 2nd, 3rd and 4th Aves. and 6th St. NW

Hickory, *Second Street Place Southwest Historic District (Hickory MRA),* Roughly bounded by Main Ave. Pl., 2nd Ave. Pl. and 1st Ave. SW

Chowan County

Edenton Vicinity, *Sandy Point,* Off NC 32 East of NC 1114

Durham County

Durham, *Bright Leaf Historic District (Durham MRA),* Roughly bounded by Minerva Ave., N & W RR, Washington, Morris and Great Jones Sts., Southern Railway and S. Duke St.

Durham, *Duke Memorial United Methodist Church (Durham MRA),* 504 W. Chapel Hill St.

Durham, *Durham Cotton Mills Village Historic District,* Roughly bounded by Byrd and Middle Sts., E. Frontage Rd. and Reservoir St.

Durham, *Durham Hosiery Mills #2-Service Printing Company Building (Durham MRA),* 504 E. Pettigrew St.

Durham, *Emmanuel AME Church (Durham MRA),* 710 Kent St.

Durham, Ephphatha Church (Durham MAR), 220 W. Geer St.

Durham, *Golden Belt Historic District (Durham MRA),* Roughly bounded by Norfork & Western RR, Taylor and Holman Sts., Morning Glory Ave. and Main St.

Durham, *Morehead Hill Historic District (Durham MRA),* Roughly bounded by Jackson St., East-West Expressway, S. Duke St., Lakewood Ave., Shephard St. and Arnette Ave.

Durham, *North Carolina Central University (Durham MRA),* Bounded by Lawson St., Alston Ave., Nelson St. and Fayetteville St.

Durham, *O'Brien, William Thomas, House (Durham MRA),* 820 Wilkerson Ave.

Durham, *Pearl Mill Village Historic District (Durham MRA),* 900 Blk. of Washington and Orient Sts. between Trinity and Dacien Aves.

Durham, *Powe House (Durham MRA),* 1503 W. Pettigrew St.

Durham, *Scarborough House (Durham MRA),* 1406 Fayetteville St.

Durham, *Smith Warehouse,* 100 N. Buchanan Blvd.

Durham, *Trinity Historic District (Durham MRA)*, Roughly bounded by Green, Duke and Morgan Sts., Buchanan Blvd. and Markham St.
Durham, *Venable Tobacco Company Warehouse*, 302–304 E. Pettigrew St.
Durham, *Warren, Stanford L., Library (Durham MRA)*, 1201 Fayetteville St.
Durham, *West Durham Historic District (Durham MRA)*, Roughly bounded by Knox, Ninth, W. Main, Rutherford and Hale Sts.
Durham, *West Point on the Eno (Durham MRA)*, Roxboro Rd.

Guilford County

Greensboro, *Greensboro Historical Museum*, 130 Summit Ave.

Harnett County

Lillington vicinity, *Summer Villa and the McKay-Salmon House*, SR 1291.
Lillington vicinity, *Summerville Presbyterian Church and Cemetery*, Off SR 1291.

Hertford County

Ahoskie, *Ahoskie Downtown Historic District*, Roughly bounded by W. North St., Seaboard Coastline RR, W. Main St., S. and N. Mitchell Sts.

Johnston County

Benson, *Benson Historic District*, Roughly bounded by E. Hill, N. Lee, E. Parish and Farmers Dr. on Main and Church Sts.

Jones County

Pollocksville, *Lavender, Bryan, House*, Off US 17 South of Trent River Bridge.

Wake County

Raleigh, *Boyland Heights (Early Twentieth Century Raleigh Neighborhoods TR)*, Roughly bounded by Norfolk & Southern RR, Mountford, Martin and Florence Sts. and Dorothea Dr.
Raleigh, *Cameron Park (Early Twentieth Century Raleigh Neighborhoods TR)*, Roughly bounded by Clark Ave., W. Peace and Saint Mary's Sts., College Pl., Hillsborough St. and Oberlin Rd.
Raleigh, *Glenwood (Early Twentieth Century Raleigh Neighborhoods TR)*, Roughly bounded by Wade Ave., Norfolk and Southern Railway, Belmont St., and Glenwood Ave.

Washington County

Plymouth, *Perry-Spruill House*, 328 Washington St.

WYOMING

Fremont County

Atlantic City, *Atlantic City Mercantile*, Rt. 62, Box 260.

Sublette County

Boulder vicinity, *Steele Homestead*, WY 191.

Sweetwater County

McKinnon vicinity, *Stewart, Elinore Pruitt, Homestead*, Off UT 414.

Uinta County

Evanston vicinity, *Young, Brigham, Oil Well.*

[FR Doc. 85–8514 Filed 4–8–85; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the thirteenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on May 9 and 10, 1985.

The purpose of the meeting is to assist A.I.D. in implementing the components of the Title XII program by providing a two-way communications link for concerns of A.I.D. and concerns of the universities. During this meeting JCARD will review the International Research Center programs; take action on a proposed extension of the Tropical Soils Collaborative Research Support Program (CRSP); and receive a report on plans in the Human Capital Development area. Also, the Executive Committee will lead a discussion on the organization and structure of JCARD.

JCARD will meet from 1:00 p.m. to 5:00 p.m. on May 9 and from 9:00 a.m. to 1:00 p.m. on May 10. The meeting will be held in the Cardinal Room, Holiday Inn, 1850 N. Fort Myer Drive, Rosslyn, Virginia. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, BIFAD Support Staff, Washington, D.C. 20523 or telephone him at (202) 632–7332.

Dated: April 3, 1985.

John Stovall

A.I.D. Advisory Committee Representative Joint Committee on Agricultural Research and Development Board for International Food and Agricultural Development.

[FR Doc. 85–8515 Filed 4–8–85; 8:45 am]
BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30615]

Railcarriers; Columbus & Greenville Railway Co., Greenville Holding Company, and Cagy Transportation—Exemption From 49 U.S.C. 10901, 11301, 11343, 11344, and 11345

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts (1) from 49 U.S.C. 11343 *et seq.* the purchase and operation by Columbus & Greenville Railway Company (C&G) of three rail lines totalling 63.9 miles in western Mississippi; (2) from 49 U.S.C. 10901 the subsequent acquisition of these rail lines by Greenville Holding Company through assignment, and (3) from 49 U.S.C. 11301 the guaranty by C&G of the promissory note obligation to finance in part the transaction .

DATES: This exemption is effective on April 5, 1985. Petitions to reopen must be filed by April 29, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30615 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Robert J. Corber, Steptoe & Johnson, 1330 Connecticut Ave., NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: April 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–8516 Filed 4–8–85; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment Standards Administration
Report of Construction Contractor's Wage Rates
1215–0046; WD–10
On occasion
Businesses or other for-profit; Small businesses or organization
75,000 responses; 18,750 hours; 1 form

Form WD–10 is used by the U.S. Department of Labor to elicit construction project data from contractor associations, contractors and unions. The wage data is used to determine locally prevailing wages under the Davis-Bacon and Related Acts.

Extension

Mine Safety and Health Administration
Escapeways and Escape Facilities
1219–0052
Weekly
Businesses and other for profit; small businesses or organizations
2,075 respondents; 155,210 hours

Standard requires that escapeways from underground coal mines be examined for hazardous conditions each week. Records are required to be kept of the results of the examinations.

Signed at Washington, D.C. this 4th day of April 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–8512 Filed 4–8–85; 8:45 am]

BILLING CODE 4510-27-M; 4510-43-M

Employment and Training Administration

[TA–W–15,611]

Miller Shoe Co., Cincinnati, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on February 27, 1985, applicable to all workers of the Miller Shoe Company, Cincinnati, Ohio. The Notice of Certification was published in the **Federal Register** on March 15, 1985 (50 FR 10549).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certification. The additional information revealed that substantial layoffs occurred several weeks after the termination date set in the Department's certification.

The intent of the certification is to cover all workers to the Cincinnati, Ohio plant of the Miller Shoe Company who were affected by the decline in the sales or production of women's shoes related to increased import competition. The notice, therefore, is amended by providing a new termination date of April 1, 1985.

The amended notice applicable to TA–W–15,611 is hereby issued as follows:

All workers of the Miller Shoe Company, Cincinnati, Ohio who became totally or partially separated from employment on or after November 19, 1983 and before April 1, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of March 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–8511 Filed 4–8–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–15,534]

ASARCO, Inc., Tacoma Smelter, Tacoma, WA; Affirmative Determination Regarding Application for Reconsideration

By an applicable dated March 14, 1985, after being granted a filing extension, the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Workers Adjustment Assistance on behalf of workers and former workers of ASARCO's smelter in Tacoma, Washington. The determination was published in the **Federal Register** on January 30, 1985 (50 FR 4283).

The application claims, among other things, that ASARCO's refinery in Amarillo, Texas, which is the end user of Tacoma's production, imported blister copper. It is also claimed that the refining of copper through toll customer arrangements had an adverse impact on smelter operations.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., this 28th day of March 1985.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 85-8508 Filed 4-8-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 25, 1985—March 29, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firms or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,663; Bates Fabrics, Inc., Lewiston, ME

TA-W-15,684; Westover Knitting Mills, Inc., Indian Orchard, MA

TA-W-15,685; Westover Knitting Mills, Inc., New York, NY

TA-W-15,680; S & M Fringing, Inc., New York, NY

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15,679; Randee-Wyn, Inc., New York, NY

Aggregate U.S. imports of trimmings are negligible.

TA-W-15,675; Hoskins Manufacturing Co., Mio, MI

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-15,681; Sawyer Research Products, Inc., Eastlake, OH

The decrease in sales is attributable to a loss of export sales.

TA-W-15,677; Olin Corp., Chemical Group, Moundsville, WV

The decrease in sales is attributable to a loss of export sales.

TA-W-15,676; Medusa Cement Co., Wampum, PA

Separations from the subject firm were seasonal in nature.

TA-W-15,678; RCA Corp., RCA Records Division, Indianapolis, IN

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-15,673; Oak Communications Systems, Elkhorn, WI

Separations from the subject firm resulted from a transfer of production to another domestic facility.

TA-W-15,665; Globe Refractories, Newell, WV

Aggregate U.S. imports of clay bricks and shapes are negligible.

TA-W-15,694; Hunt-Wesson Foods, Bayonne, NJ

Aggregate U.S. imports of vegetable (cooking/salad) oil were negligible.

TA-W-15,682; Union Carbide Corp., Union Carbide Caribe, Inc., Ponce, PR

Separations from the subject firm resulted from a transfer of production to other domestic facilities.

Affirmative Determinations

TA-W-15,637; Tennessee Handbags, Inc., Danridge, TN

A certification was issued covering all workers separated on or after November 26, 1983.

TA-W-15,693; Hamilton Sportswear, Elizabeth, NJ

A certification was issued covering all workers separated on or after December 17, 1983 and before May 1, 1984.

TA-W-15,618; Halltex Clothing Co., Hall, TN

A certification was issued covering all workers separated on or after November 13, 1984 and before January 31, 1985.

TA-W-15,674; Wasser & Fluhrer, Inc., Kalama, WA

A certification was issued covering all workers separated on or after December 19, 1983.

TA-W-15,670; U.S. Steel Corp., Gary Works, Tie Plate Div., Gary, IN

A certification was issued covering all workers engaged in employment related to the production of railroad tie plates in the Tie Plate Division of the Gary Works of U.S. Steel Corporation separated on or after December 18, 1983 and before June 1, 1984.

TA-W-15,651; G.H. Bass & Co., Wilton, ME

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,683; United Pants Co., Inc., Plymouth, PA

A certification was issued covering all workers separated on or after December 20, 1983 and before December 31, 1984.

TA-W-15,686; A & C Wood Turnings, Inc., Cedar Brook, NJ

A certification was issued covering all workers separated on or after January 2, 1984 and before December 31, 1984.

I hereby certify that the aforementioned determinations were issued during the period March 25, 1985—March 29, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 2, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-8510 Filed 4-8-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations, pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the

subject matter or the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 19, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 19, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 1st day of April 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or firms workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Amerada Hess Corp. (workers)	Purvis, MS	3/21/85	3/9/85	TA-W-15,812	Petroleum refining.
Chemstar Products (workers)	Carlton, MN	3/19/85	3/15/85	TA-W-15,813	Drill starch.
East Point Seafood Co. (company)	South Bend, WA	3/25/85	3/18/85	TA-W-15,814	Pack canned shrimp and oysters.
Falcon Shoe Manufacturing Co (workers)	Lewiston, ME	3/20/85	3/15/85	TA-W-15,815	Shoes—boys' and children's.
Jomac Products, Inc. (workers)	Knox, IN	3/21/85	2/28/85	TA-W-15,816	Work gloves.
Margaret Fashions (ILGWU)	Panama City, FL	3/20/85	3/15/85	TA-W-15,817	Sportswear, ladies'.
Man-Anne Bag Corp. (workers)	New Windsor, NY	3/19/85	3/11/85	TA-W-15,818	Handbags, ladies'.
Martin Jay Casuals (ILGWU)	New York, NY	3/25/85	3/13/85	TA-W-15,819	Sportswear, children's and ladies'.
Texaco, Inc. (OCAW)	Lawrenceville, IL	3/15/85	3/11/85	TA-W-15,820	All refined petroleum products.
Tultex Corp., Marion Plant (workers)	Marion, NC	3/25/85	3/11/85	TA-W-15,821	Fleecewear garments.
U.S. Steel Corp. (workers)	Milwaukee, WI	3/1/85	3/22/85	TA-W-15,822	Sales office.
USM Corp. (workers)	Kenton, TN	3/18/85	3/13/85	TA-W-15,823	Shoe components.
Crompton Co., Howard Richmond Plant (workers)	Leesburg, AL	3/15/85	3/8/85	TA-W-15,824	Corduroy and velveteen for clothing.
Crompton Co., Frank E. Richmond Plant (workers)	Osceola, AR	3/15/85	3/8/85	TA-W-15,825	Do.
Double Z Knitwear Corp. (ILGWU)	Ridgewood, NY	3/22/85	3/12/85	TA-W-15,826	Sweaters—ladies', knitted garments.
Helomet, Inc. (UMWA)	Masontown, PA	3/21/85	3/15/85	TA-W-15,827	Magnetite.
Indiana Glass Co. (workers)	Dunkirk, IN	3/2/85	2/28/85	TA-W-15,828	Glass tableware, decorated glassware, and other glass items.
Kayser Roth Mens Apparel, Inc. (workers)	Timonium, MD	3/5/85	2/28/85	TA-W-15,829	Men's sportcoats, men's suits.
Litton Microwave Cooking Products (workers)	Sioux Falls, SD	3/12/85	3/1/85	TA-W-15,830	Microwave ovens.
LTV Corp. (USWA)	Cleveland, OH	3/15/85	3/12/85	TA-W-15,831	Hot mill, finished sheet, cold mill blooming mill, crafts, etc.
Modern Manufacturing Co. (workers)	Timonium, MD	3/5/85	2/28/85	TA-W-15,832	Men's sportcoats and men's suits.
Rexnord Heavy Maschinery (USWA)	Milwaukee, WI	2/11/85	2/5/85	TA-W-15,833	Finished machined and assembled crushers, parts.
Tuscarora Yarns, Inc.—J.M. Odell Plant (company)	Bynum, NC	3/21/85	3/15/85	TA-W-15,834	Spun cotton yarn.
American Accessories, Inc., Frantel Div. (workers)	Rutledge, TN	3/12/85	3/6/85	TA-W-15,835	Leather wallets for men and ladies.
Dorchester Refining Co. (OCAW)	Mt. Pleasant, TN	3/11/85	3/7/85	TA-W-15,836	Gasoline, asphalt.
Eaton Corp., Axle Brake Div. (workers)	Humbolt, TN	3/14/85	3/12/85	TA-W-15,837	Axle housing.
FMC Corp., Construction Equipment Group (company)	Cedar Rapids, IA	3/18/85	3/13/85	TA-W-15,838	Hydraulic excavators.
Freeman Shoe Company (workers)	Emmitsburg, MD	3/15/85	3/13/85	TA-W-15,839	Men's shoes.
Kerr-McGee Nuclear Corp. (OCAW)	Ambrosia Lake, NM	3/1/85	2/23/85	TA-W-15,840	Uranium concentrate.
Maple Creek Mine Complex (UMWA)	New Eagle, PA	2/21/85	2/11/85	TA-W-15,841	Metallurgical coal.
Mission Furniture Manufacturing Co. (workers)	Los Angeles, CA	3/12/85	3/6/85	TA-W-15,842	Home furniture.
Nutone Division of Scovill (workers)	Cincinnati, OH	3/13/85	3/6/85	TA-W-15,843	Ceiling heat/vents and paddle fans.
Philips ECG, Inc. (USWA)	Seneca Falls, NY	3/14/85	3/12/85	TA-W-15,844	Television tubes.
Sprague Electric Co. (workers)	Hillsville, VA	3/14/85	3/11/85	TA-W-15,845	Miniature aluminum electrolytic capacitors.
Vest, Inc. (company)	Fallston NC	3/20/85	3/18/85	TA-W-15,846	Men's vests, suits, sport and tuxedo.
Weyerhaeuser Co. (IWA)	Springfield OR	3/12/85	3/3/85	TA-W-15,847	Process timber into plywood.
Bethlehem Steel Corp. (USWA)	Chesterton, IN	3/18/85	3/15/85	TA-W-15,848	Steel.
Champion International (IWA)	Seattle, WA	2/12/85	2/2/85	TA-W-15,849	Plywood.
Falk Corporation (workers)	Milwaukee, WI	3/8/85	3/1/85	TA-W-15,850	Industrial gears and power transmission.
Mad John Sportswear, Inc.	Hollidaysburg, PA	2/27/85	2/13/85	TA-W-15,851	Blouses, ladies.
Minscribe Corp. (company)	Longmont, CO	3/8/85	2/22/85	TA-W-15,852	Disk drives for table top computers.
Roadmaster Corp. (United Employees Union #1)	Olney, IL	3/8/85	2/28/85	TA-W-15,853	Bycycles, exercise equipment, and Jr. riding toys.
Rob Roy, Inc. (company)	Cambridge, MD	3/4/85	2/15/85	TA-W-15,854	Boys' wear and infants' creepers, etc.
Tally Togs, Inc. (company)	Hoboken, NJ	3/20/85	3/15/85	TA-W-15,855	Newborns' and infants' snowsuits (outerwear).
Tennessee Fan Co. (workers)	Fayetteville, TN	3/12/85	3/7/85	TA-W-15,856	Oscillating table fan, ceiling fans.
Tri-Caro, Inc., Amtex Division (workers)	Cleveland, TN	3/12/85	3/6/85	TA-W-15,857	Knit fabrics (underwear materials and swimsuit).
Zeus Manufacturing Co. (workers)	Washington, GA	2/25/85	2/21/85	TA-W-15,858	All weather coats.
Zeus Manufacturing Co., Twilight Sewing Plant (workers)	Lincolnton, GA	2/25/85	2/21/85	TA-W-15,859	Do.
Algro Knitting Mills, Inc. (ACTWU)	Milltown, NJ	2/25/85	2/14/85	TA-W-15,860	Cotton and synthetic knitted fabrics.
Avondale Mills (company)	Sycamore, AL	3/4/85	2/25/85	TA-W-15,861	Polyester and combed cotton yarn.
Burlington Industries, Inc. Burlington Blended Fabrics Div. (workers).	Lindolnton, NC	2/15/85	2/12/85	TA-W-15,862	100 percent cotton and polyester/cotton yarn.
Code-A-Phone Corp. (workers)	Louisville, KY	3/5/85	2/26/85	TA-W-15,863	Telephone system equipment, call diverting equipment, telephone answering equipment.
Houdaille Industries, Powermatic/Burke (workers)	Cincinnati, OH	3/19/85	3/14/85	TA-W-15,864	Metal cutting machine tools.
Miami-Footwear (USWA)	Miami, FL	2/4/85	2/1/85	TA-W-15,865	Women's dress and casual shoes.
Pleasantburg Manufacturing (company)	Greenville, SC	3/6/85	3/1/85	TA-W-15,866	Ladies' knit tops.
S & S Manufacturing (company)	Spartanburg, SC	3/6/85	3/1/85	TA-W-15,867	Do.
Simpson Timbers Co. McCleary Door & Plywood Plants (Brotherhood of Carpenters).	McCleary, WA	3/5/85	2/27/85	TA-W-15,868	Lumber products.
The Brandt Cabinet Works, Inc. (Upholsterers Int'l Union)	Hagerstown, PA	3/14/85	3/11/85	TA-W-15,869	Occasional wood furniture.
Thomaston Mills, Inc., Griffin Div. (co.)	Griffin, GA	3/18/85	3/13/85	TA-W-15,870	Apparel fabrics—denim.
Thomaston Mills, Inc., Gen. Office, Thomaston Div., Peerless Div. & Finishing Div. (CO.).	Thomaston, GA	3/18/85	3/13/85	TA-W-15,871	Fabrics, industrial household, finishing.
Abex Corp., Engineered Products Div. (USWA)	Medina, NY	3/1/85	2/25/85	TA-W-15,872	Iron and steel castings, iron tire mold castings.
Albion Cooperative, Inc. (company)	Albion, NY	3/25/85	3/22/85	TA-W-15,873	Cold storage—junice apples.
Century Brass Products, Inc., Metals Div. (UAW)	Waterbury, CT	3/12/85	3/7/85	TA-W-15,874	Brass wire and strip sheet.
Cotter Corp., Uranium Mill (OCAW)	Canon City, CO	3/6/85	2/21/85	TA-W-15,875	Milling uranium.
Kennecott Copper Corp., Utah Copper Div. (USWA)	Magna, UT	2/4/85	2/1/85	TA-W-15,876	Copper refine.
Do	Bingham Canyon, UT	2/4/85	2/1/85	TA-W-15,877	Mining copper.
Do	Garfield, UT	2/4/85	2/1/85	TA-W-15,878	Copper milling.
Schwartz Walder Mine (OCAW)	Golden, CO	3/6/85	2/21/85	TA-W-15,879	Mine ore.

[FR Doc. 85-8509 Filed 4-8-85; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act; Native American Programs; Proposed Allocations and Allocation Formula for Program Year 1985, Regular Program and Calendar Year 1985, Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is publishing the proposed Native American allocations, distribution formula and rationale and individual grantee planning estimates for Program Year 1985 for regular programs funded under the Job Training Partnership Act, and for Calendar Year 1985 for Summer Youth Employment and Training Programs funded under the Job Training Partnership Act.

DATE: Written comments on this proposal are invited, and must be received on or before April 30, 1985.

ADDRESS: Send written comments to: Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, Room 6122, 601 D Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Mayrand. Telephone: 202–376–6225.

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes below for review and comment the proposed allocations and distribution formula for Native American grantees to be funded under JTPA Title IV, section 401, and Title II, Part B. The amounts to be distributed are $62,243,000, for Title IV, section 401; and $13,176,511, for Title II, Part B, for the Summer Youth Employment and Training Programs (SYEP) for the summer of Calendar Year 1985.

The formula for Title IV, section 401, provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 precent will be based on the number of poverty-level Native Americans in the grantee's area.

Furthermore, for Program Year 1985 no grantee will receive less than 80 percent of the funding level it received for Program Year 1984, unless its territory to be served was increased or decreased. The rationale for the formula is that unemployment and poverty in an area are good indications of the need for employment and training programs.

The formula for allocating Title II, Part B, SYEP funds divides the funds among eligible recipients based on the proportion that the number of youths in their area bears to the total number of youths in all eligible areas. Further, in Calendar Year 1985 each grantee is guaranteed that it will receive at least 80 percent of the SYEP funds it received in Calendar Year 1984. The rationale for using the number of youths in the formula is that they are the program beneficiaries.

Statistics on youth, unemployed, and poverty-level Native Americans are derived from the Decennial Census of the Population, 1980. Subjects to Congressional appropriation actions, DOL proposes to use a similar methodology for one more year for the SYEP, and thereafter to allocate to each grantee the amount it would receive by direct application of the 1980 Census data without a hold harmless provision. Program Year 1985 is the last year a hold harmless provision will apply to JTPA Title IV, section 401 funds.

Signed at Washington, D.C., this 26th day of March, 1985.

Paul A. Mayrand.

Director, Office of Special Targeted Programs.

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		TOTAL	COST POOL	PROGRAM
ALABAMA	CREEK NATION EAST OF MISS. INC.	396,115	75,223	320,892
ALASKA	ALEUTIAN/PRIBILOF ISLANDS ASSOC.	71,298	14,260	57,038
ALASKA	ASSOC. OF VILLAGE COUNCIL PRESIDENTS	575,057	115,011	460,046
ALASKA	BRISTOL BAY NATIVE ASSOCIATION	142,551	28,510	114,041
ALASKA	COOK INLET NATIVE ASSOCIATION	367,818	73,564	294,254
ALASKA	KAWERAK INCORPORATED	224,610	44,922	179,688
ALASKA	KENAITZE INDIAN TRIBE	66,786	13,357	53,429
ALASKA	KODIAK AREA NATIVE ASSOCIATION	64,947	12,989	51,958
ALASKA	MALNELLIK MANPOWER	176,253	35,251	141,002
ALASKA	METLAKATLA INDIAN COMMUNITY	79,414	15,883	63,531
ALASKA	NORTH PACIFIC RIM	70,117	14,023	56,094
ALASKA	SITKA COMMUNITY ASSOCIATION	44,155	8,831	35,324
ALASKA	TANANA CHIEFS CONFERENCE,INC.	391,826	78,375	313,501
ALASKA	TLINGIT AND HAIDA COUNCIL	229,796	45,959	183,837
ARIZONA	AFFILIATION OF ARIZONA IND. CNTRS. INC.	348,483	69,697	278,786
ARIZONA	AMERICAN INDIAN ASSOC. OF TUCSON	338,241	67,648	270,593
ARIZONA	COLORADO RIVER INDIAN TRIBES	82,840	16,568	66,272
ARIZONA	GILA RIVER INDIAN COMMUNITY	495,324	99,065	396,259
ARIZONA	HOPI TRIBAL COUNCIL	388,143	77,629	310,514
ARIZONA	INDIAN DEV. DIST. OF ARIZONA,INC.	113,196	22,639	90,557
ARIZONA	NATIVE AMERICANS FOR COMMUNITY ACTION	202,555	40,511	162,044
ARIZONA	NAVAJO TRIBE OF INDIANS	6,879,094	1,375,819	5,503,275
ARIZONA	THE PAPAGO TRIBE OF ARIZONA	431,747	86,349	345,398
ARIZONA	PASQUA YAQUI TRIBE	38,892	7,778	31,114
ARIZONA	PHOENIX INDIAN CENTER,INC.	711,669	142,336	569,335
ARIZONA	SALT RIVER PIMA-MARICOPA IND. COMMUN.	96,837	19,367	77,470
ARIZONA	SAN CARLOS APACHE TRIBE	315,922	63,184	252,738
ARIZONA	WHITE MOUNTAIN APACHE TRIBE	335,539	67,108	268,431
ARKANSAS	AM. INDIAN CENTER OF ARKANSAS,INC.	295,989	59,198	236,791
CALIFORNIA	CALIFORNIA INDIAN MANPOWER CONT.	2,785,396	557,079	2,228,317
CALIFORNIA	CHOCALANIA AMERICAN INDIAN COUNCIL	465,144	93,029	372,115
CALIFORNIA	CONT. OF UNITED INDIAN NATIONS	648,432	129,682	518,750
CALIFORNIA	FRESNO AMERICAN INDIAN COUNCIL	283,586	56,717	226,869
CALIFORNIA	HOOPA VALLEY BUSINESS COUNCIL	52,251	10,450	41,801
CALIFORNIA	INDIAN CENTER, IN C.'	1,687,560	337,512	1,350,048

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		TOTAL	COST POOL	PROGRAM
CALIFORNIA	INDIAN CENTER OF SAN JOSE,INC.	238,758	47,752	191,006
CALIFORNIA	INDIAN HUMAN RESOURCES CENTER	455,365	91,073	364,292
CALIFORNIA	NORTHERN CALIF. IND. DEV. COUNCIL,I NC.	327,998	65,600	262,398
CALIFORNIA	ORANGE COUNTY INDIAN CENTER,INC.	323,307	64,661	258,646
CALIFORNIA	TULE RIVER TRIBE	134,911	26,982	107,929
CALIFORNIA	YA-KA-AMA INDIAN EDUC. AND DEV.,INC .	133,556	26,711	106,845
COLORADO	DENVER INDIAN CENTER, INC.	622,866	124,573	498,293
COLORADO	SOUTHERN UTE INDIAN TRIBE	57,623	11,525	46,098
COLORADO	UTE MOUNTAIN INDIAN TRIBE	69,477	13,895	55,582
CONNECTICUT	AMERICAN INDIANS FOR DEVELOPMENT,IN C.	193,986	38,797	155,189
DELAWARE	DEPARTMENT OF LABOR,STATE OF DELAWA RE	40,065	8,013	32,052
FLORIDA	FLA. GOVERNORS COUNCIL ON IND. AFFAIRS	720,388	144,078	576,310
FLORIDA	MICCOSUKEE CORPORATION	123,403	24,681	98,722
FLORIDA	SEMINOLE TRIBE OF FLORIDA	69,500	13,900	55,600
GEORGIA	DEPARTMENT OF ARCHIVES AND HISTORY	275,443	55,089	220,354
HAWAII	ALU LIKE,INC.	2,559,696	511,939	2,047,757
HAWAII	HAWAII COUNCIL OF AM. INDIAN NATIONS	90,251	18,050	72,201
IDAHO	KOOTENAI TRIBE OF IDIANS	36,735	7,347	29,388
IDAHO	NEZ PERCE TRIBE	79,989	15,998	63,991
IDAHO	SHOSHONE-BANNOCK TRIBES	247,608	49,522	198,086
ILLINOIS	AM. IND. BUS. ASSN. TRNG. AND EMPL. PROG.	1,122,196	224,439	897,757
KANSAS	MID AMERICA ALL INDIAN CENTER,INC.	167,326	33,465	133,861
KANSAS	UNITED TRIBES OF KANSAS AND S.E. NEB.	513,713	102,743	410,970
LOUISIANA	INTER-TRIBAL COUNCIL OF LOUISIANA,I NC.	463,688	92,738	370,950
MAINE	CENTRAL MAINE INDIAN ASSOCIATION,IN C.	94,427	18,885	75,542
MAINE	TRIBAL GOVERNORS, INC.	108,626	21,725	86,901
MARYLAND	BALTIMORE AMERICANINDIAN CTR.,INC.	326,488	65,298	261,190
MASSACHUSETTS	BOSTON INDIAN COUNCIL,INC.	245,800	49,160	196,640
MASSACHUSETTS	MASHPEE-WAMPANOG INDIAN TRIBAL COUNCIL	85,727	17,145	68,582
MICHIGAN	GRAND RAPIDS INTER-TRIBAL COUNCIL	122,684	24,537	98,147
MICHIGAN	GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS	56,839	11,368	45,471
MICHIGAN	INTER-TRIBAL COUNCIL OF MICHIGAN,IN C.	73,999	14,800	59,199
MICHIGAN	MICHIGAN INDIAN EMPLOYMENT AND TRAI NING, INC.	820,459	164,092	656,367
MICHIGAN	NORTH AMERICAN INDIAN ASSOC. OF DETROIT	413,372	82,674	330,698
MICHIGAN	POTAWATOMIE INDIAN NATION	157,024	31,405	125,619

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MICHIGAN	SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS	208,826	41,765	167,061
MICHIGAN	SOUTHEASTERN MICHIGAN INDIANS, INC.	53,808	10,762	43,046
MINNESOTA	AMERICAN INDIAN FELLOWSHIP ASSN.	140,267	28,053	112,214
MINNESOTA	AMERICAN INDIAN OPPORTUNITIES CTR.	538,222	107,844	431,378
MINNESOTA *	BOIS FORTE R. B. C.	40,099	8,011	32,044
MINNESOTA	FOND DU LAC R.B.C.	52,252	10,456	41,826
MINNESOTA	LEECH LAKE R.B.C.	185,063	37,013	148,050
MINNESOTA	NETT LAKE R.B.C.	33,784	6,757	27,027
MINNESOTA	MINNEAPOLIS AMERICAN INDIAN CENTER	315,726	63,145	252,581
MINNESOTA	RED LAKE TRIBAL COUNCIL	148,184	29,637	118,547
MINNESOTA	WHITE EARTH R.B.C.	165,877	33,175	132,702
MISSISSIPPI	MISSISSIPPI BAND OF CHOCTAW INDIANS	321,264	64,253	257,011
MISSOURI	REGION VII AMERICAN INDIAN COUNCIL, INC.	595,239	119,048	476,191
MONTANA	FORT PECK INDIAN RESERVATION	221,655	44,331	177,324
MONTANA	BLACKFEET TRIBAL BUSINESS COUNCIL	294,400	58,880	235,520
MONTANA	CHIPPEWA CREE TRIBE, ROCKY BOYS RESE RV.	103,465	20,693	82,772
MONTANA	CONFEDERATED SALISH & KOOTENAI TRIBES	260,160	52,032	208,112
MONTANA	CROW INDIAN TRIBE	218,487	43,697	174,790
MONTANA	FT. BELKNAP AGENCY	83,412	16,682	66,730
MONTANA	MONTANA UNITED INDIAN ASSOCIATION	448,599	89,719	358,874
MONTANA	NORTHERN CHEYENNE TRIBE	173,133	34,627	138,506
NEBRASKA	INDIAN CENTER, INC.	136,588	27,318	109,270
NEBRASKA	NEBRASKA INDIAN COMMISSION	41,959	8,392	33,567
NEBRASKA	NEBRASKA INDIAN INTER-TRIBAL DEV. CORP.	321,800	64,360	257,440
NEVADA	INTER-TRIBAL COUNCIL OF NEVADA	347,569	69,514	278,055
NEVADA	LAS VEGAS INDIAN CENTER, INC.	97,348	19,456	77,814
NEVADA	SHOSHONE PAIUTE TRIBES	171,272	34,256	137,018
NEW JERSEY	POWHATAN RENAPE NATION	307,735	61,547	246,188
NEW MEXICO	ALAMO NAVAJO SCHOOL BOARD	80,438	16,088	64,350
NEW MEXICO	ALL INDIAN PUEBLO COUNCIL	155,054	31,011	124,043
NEW MEXICO	JICARILLA APACHE TRIBE	56,103	11,221	44,882
NEW MEXICO	MESCALERO APACHE TRIBE	78,527	15,705	62,822
NEW MEXICO	NATIONAL INDIAN YOUTH COUNCIL	744,492	148,898	595,594

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		TOTAL	COST POOL	PROGRAM
NEW MEXICO	PUEBLO OF ACOMA	105,167	21,033	84,134
NEW MEXICO	PUEBLO OF LAGUNA	109,656	21,931	87,725
NEW MEXICO	PUEBLO OF TAOS	35,701	7,140	28,561
NEW MEXICO	PUEBLO OF ZUNI	301,871	60,374	241,497
NEW MEXICO	NAVAJO NAVAJO SCHOOL BOARD, INC.	96,389	19,278	77,111
NEW MEXICO	SANTA CLARA INDIAN PUEBLO	22,030	4,406	17,624
NEW MEXICO	SANTO DOMINGO TRIBE	131,407	26,281	105,126
NEW YORK	AMERICAN INDIAN COMMUNITY HOUSE, INC .	805,899	161,180	644,719
NEW YORK	NATIVE AMERICAN HARVARD PROGRAMS, I NC.	217,526	43,505	174,021
NEW YORK	THE NORTH AM. IND. CLUB OF SYRACUSE AND VICINITY, IN	295,948	59,190	236,758
NEW YORK	ST. REGIS MOHAWK TRIBE	89,864	17,973	71,891
NEW YORK	SENECA NATION OF INDIANS	420,538	84,108	336,430
NORTH CAROLINA	CUMBERLAND COUNTY ASSOC. FOR IND. PEOPLE	130,299	26,060	104,239
NORTH CAROLINA	EASTERN BAND OF CHEROKEE INDIANS	245,583	49,117	196,466
NORTH CAROLINA	GUILFORD NATIVE AMERICAN ASSOC.	99,041	19,808	79,233
NORTH CAROLINA	LUMBEE REG. DEV. ASSOC.	1,338,570	267,714	1,070,856
NORTH CAROLINA	METROLINA NATIVE AMERICAN ASSN.	101,225	20,245	80,980
NORTH CAROLINA	NORTH CAROLINA COMM. OF IND. AFFAIRS	399,039	79,832	319,207
NORTH DAKOTA	DEVILS LAKE SIOUX TRIBE	123,322	24,664	98,658
NORTH DAKOTA	STANDING ROCK SIOUX TRIBE	258,182	51,636	206,466
NORTH DAKOTA	THREE AFFILIATED TRIBES	141,079	28,216	112,863
NORTH DAKOTA	TURTLE MOUNTAIN BAND OF CHIPPEWA IND.	350,711	70,142	280,569
NORTH DAKOTA	UNITED TRIBES – ED. TRN. CNTR.	210,265	42,053	168,212
OHIO	OHIO INDIAN JOB TRAINING PARTNERSHIP AGENCY	748,351	149,670	598,681
OKLAHOMA *	CADDO TRIBE	61,877	12,375	49,502
OKLAHOMA	CENTRAL TRIBES OF THE SHAWNEE AREA, INC.	83,499	16,698	66,791
OKLAHOMA	CHEROKEE NATION OF OKLAHOMA	1,458,593	291,719	1,166,874
OKLAHOMA	CHEYENNE-ARAPAHO TRIBES	195,879	39,176	156,703
OKLAHOMA	CHICKASAW NATION OF OKLAHOMA	391,057	78,211	312,846
OKLAHOMA	CHOCTAW NATION OF OKLAHOMA	796,411	159,282	637,129
OKLAHOMA	CITIZENS BAND POTAWATOMI IND. OF OKLA.	197,366	39,473	157,893
OKLAHOMA	KIOWA TRIBE OF OKLAHOMA	170,369	34,074	136,295
OKLAHOMA	CREEK NATION OF OKLAHOMA	593,471	118,694	474,777
OKLAHOMA	FOUR TRIBES CONSORTIUM OF OKLAHOMA	74,488	14,898	59,590
OKLAHOMA	INTER-TRIBAL COUNCIL OF N.E. OKLAHOMA	68,394	13,679	54,715

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		TOTAL	COST POOL	PROGRAM
OKLAHOMA	KAW TRIBE OF OKLAHOMA	23,864	4,773	19,091
OKLAHOMA	KIOWA TRIBE OF OKLAHOMA	210,893	42,179	168,714
OKLAHOMA	OKLAHOMA TRIBAL ASSISTANCE PROGRAM, INC.	344,300	68,860	275,440
OKLAHOMA	OSAGE TRIBAL COUNCIL	114,731	22,946	91,785
OKLAHOMA	OTOE-MISSOURIA INDIAN TRIBE OF OKLA.	37,308	7,462	29,846
OKLAHOMA	PAWNEE TRIBE OF OKLAHOMA	23,731	4,746	18,985
OKLAHOMA	PONCA TRIBE OF INDIANS	55,953	11,191	44,762
OKLAHOMA	SEMINOLE NATION OF OKLAHOMA	149,795	29,959	119,836
OKLAHOMA	TONKAWA TRIBE OF OKLAHOMA	41,365	8,269	33,076
OKLAHOMA	UNITED URBAN INDIAN COUNCIL	352,362	70,472	281,890
OREGON	CONFED. TRIBES OF SILETZ INDIANS	327,396	65,479	261,917
OREGON	CONFED. TRIBES OF THE UMATILLA IND. RES.	45,860	9,172	36,688
OREGON	CONFEDERATE TRIBES OF WARM SPRINGS	96,780	19,356	77,424
OREGON	ORGANIZATION OF FORGOTTEN AMERICANS	450,119	90,024	360,095
OREGON	URBAN INDIAN COUNCIL	290,775	58,155	232,620
PENNSYLVANIA	COUNCIL OF THREE RIVERS	457,008	91,402	365,606
PENNSYLVANIA	UNITED AM. INDIANS OF THE DEL. VALLEY	204,310	40,862	163,448
RHODE ISLAND	RHODE ISLAND INDIAN COUNCIL	149,194	29,839	119,355
SOUTH CAROLINA	OFFICE OF THE GOVERNOR OF SOUTH CAROLINA	272,906	54,581	218,325
SOUTH DAKOTA	CHEYENNE RIVER SIOUX TRIBE	233,494	46,699	186,795
SOUTH DAKOTA	CROW CREEK SIOUX TRIBE	106,072	21,214	84,858
SOUTH DAKOTA	LOWER BRULE SIOUX TRIBE	59,173	11,835	47,338
SOUTH DAKOTA	OGLALA SIOUX TRIBE	736,886	147,377	589,509
SOUTH DAKOTA	ROSEBUD SIOUX TRIBE	436,481	87,296	349,185
SOUTH DAKOTA	SISSETON-WAHPETON SIOUX TRIBE	170,001	34,000	136,001
SOUTH DAKOTA	UNITED SIOUX TRIBES DEV. CORP.	615,551	123,110	492,441
TENNESSEE	USET INCORPORATED	543,844	108,769	435,075
TEXAS	ALABAMA-COUSHATTA INDIAN RESERVATION	676,530	135,306	541,224
TEXAS	DALLAS INTER-TRIBAL CENTER	277,642	55,528	222,114
TEXAS	TIGUA INDIAN TRIBE	462,111	92,422	369,689
UTAH	INDIAN CENTER OF SALT LAKE	424,202	84,840	339,362
UTAH	UTE INDIAN TRIBE	76,238	15,248	60,990
VERMONT	ABENAKI SELF-HELP ASSN./N.E.IND. CONC.	75,282	15,056	60,226
VIRGINIA	PAMUNKEY PAMUNKEY MONACAN CONSORTIUM	245,164	49,033	196,131
WISCONSIN	AMERICAN INDIAN COMMUNITY CENTER	218,788	43,758	175,030

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		TOTAL	COST POOL	PROGRAM
WASHINGTON	COLVILLE CONFEDERATED TRIBES	206,781	41,356	165,425
WASHINGTON *	EASTERN WASHINGTON INDIAN CONSORTIUM	510,133	102,027	408,106
WASHINGTON	LUMMI INDIAN BUSINESS COUNCIL	45,369	9,074	36,295
WASHINGTON	N.W. INTER-TRIBAL COUNCIL	55,377	11,075	44,302
WASHINGTON	PUYALLUP TRIBE	166,945	33,389	133,556
WASHINGTON	SEATTLE INDIAN CENTER	437,342	87,468	349,874
WASHINGTON	WESTERN WASH. IND. EMPL. AND TRNG. PROG.	879,776	175,955	703,821
WISCONSIN	LAC COURTE OREILLES TRIBAL GOVERNING BOARD	65,439	13,088	52,351
WISCONSIN	LAC DU FLAMBEAU CONSORTIUM	47,718	9,544	38,174
WISCONSIN	MENOMINEE INDIAN TRIBE OF WISCONSIN	100,305	20,061	80,244
WISCONSIN	MILWAUKEE AREA AM. IND. MANPOWER COUNC.	234,658	46,932	187,726
WISCONSIN	ONEIDA TRIBE OF INDIANS OF WIS., INC .	208,025	41,605	166,420
WISCONSIN *	ST. CROIX TRIBAL COUNCIL	39,412	7,882	31,530
WISCONSIN	STOCKBRIDGE-MUNSEE COMMUNITY	63,226	12,645	50,581
WISCONSIN	WISCONSIN INDIAN CONSORTIUM	92,946	18,589	74,357
WISCONSIN	WISCONSIN-WINNEBAGO BUSINESS COMMITTEE	201,802	40,360	161,442
WYOMING	SHOSHONE/ARAPAHOE TRIBES	229,378	45,876	183,502
	NATIONAL TOTAL	62,243,000	12,448,600	49,794,400

*Organizations identified with an asterisk were not designated to be PY 1985/86 grantees. The planning estimate assigned to them will be assigned to an alternate designee.

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		TOTAL	PROGRAM	COST POOL
ALASKA	ALEUTIAN/PRIBILOF ISLANDS ASSOC.	35,503	28,402	7,101
ALASKA	ASSOC. OF VILLAGE COUNCIL PRESIDENTS	266,800	213,440	53,360
ALASKA	BRISTOL BAY NATIVE ASSOCIATION	84,662	67,730	16,932
ALASKA	COOK INLET NATIVE ASSOCIATION	205,223	164,178	41,045
ALASKA	KAWERAK INCORPORATED	104,883	83,906	20,977
ALASKA	KENAITZE INDIAN TRIBE	17,896	14,317	3,579
ALASKA	KODIAK AREA NATIVE ASSOCIATION	77,350	61,880	15,470
ALASKA	MALEMIUT PANPOWER	90,825	72,660	18,165
ALASKA	METLAKATLA INDIAN COMMUNITY	18,665	14,932	3,733
ALASKA	NORTH PACIFIC RIM	27,666	22,133	5,533
ALASKA	SITKA COMMUNITY ASSOCIATION	38,774	31,019	7,755
ALASKA	TANANA CHIEFS CONFERENCE, INC.	220,713	176,570	44,143
ALASKA	TLINGIT AND HAIDA COUNCIL	192,360	153,888	38,472
ARIZONA	PASCUA YAQUI TRIBE	9,525	7,620	1,905
ARIZONA	COLORADO RIVER INDIAN TRIBES	31,943	25,554	6,389
ARIZONA	GILA RIVER INDIAN COMMUNITY	137,585	110,068	27,517
ARIZONA	HOPI TRIBAL COUNCIL	109,491	87,593	21,898
ARIZONA	INDIAN DEV. DIST. OF ARIZONA, INC.	42,815	34,252	8,563
ARIZONA	NAVAJO TRIBE OF INDIANS	2,414,377	1,931,502	482,875
ARIZONA	THE PAPAGO TRIBE OF ARIZONA	157,230	125,784	31,446
ARIZONA	SALT RIVER PIMA-MARICOPA IND. COMMUN.	47,818	38,254	9,564
ARIZONA	SAN CARLOS APACHE TRIBE	120,363	96,290	24,073
ARIZONA	WHITE MOUNTAIN APACHE TRIBE	134,987	107,990	26,997
CALIFORNIA	CALIFORNIA INDIAN MANPOWER CONS.	208,366	166,693	41,673
CALIFORNIA	KERN VALLEY BUSINESS COUNCIL	35,622	28,498	7,124
CALIFORNIA	NORTHERN CALIF. IND. DEV. COUNCIL, INC.	7,184	5,747	1,437
CALIFORNIA	TULE RIVER TRIBE	5,782	4,626	1,156
COLORADO	NATIONAL URBAN INDIAN COUNCIL, INC.	521	417	104
COLORADO	SOUTHERN UTE INDIAN TRIBE	16,267	13,014	3,253
COLORADO	UTE MOUNTAIN INDIAN TRIBE	19,414	15,531	3,883
FLORIDA	MISCOSUKEE CORPORATION	40,794	32,635	8,159
FLORIDA	SEMINOLE TRIBE OF FLORIDA	38,186	30,549	7,637
HAWAII	ALU LIKE, INC.	1,045,015	836,012	209,003
IDAHO	IDAHO INTER-TRIBAL POLICY BOARD	6,466	5,173	1,293
IDAHO	NEZ PERCE TRIBE	20,898	16,718	4,180

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		TOTAL	PROGRAM	COST POOL
IDAHO	SHOSHONE-BANNOCK TRIBES	40,891	32,713	8,178
KANSAS	UNITED TRIBES OF KANSAS AND S.E. NEB.	36,176	28,941	7,235
LOUISIANA	INTER-TRIBAL COUNCIL OF LOUISIANA, INC.	7,746	6,197	1,549
MAINE	TRIBAL GOVERNORS, INC.	22,620	18,096	4,524
MICHIGAN	GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS	18,761	15,009	3,752
MICHIGAN	INTER-TRIBAL COUNCIL OF MICHIGAN, INC.	29,330	23,464	5,866
MICHIGAN	SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS	43,585	34,868	8,717
MINNESOTA	AMERICAN INDIAN FELLOWSHIP ASSN.	5,343	4,274	1,069
MINNESOTA	BOIS FORTE R. B. C.	14,011	11,209	2,802
MINNESOTA	FOND DU LAC R.B.C.	11,696	9,357	2,339
MINNESOTA	LEECH LAKE R.B.C.	49,935	39,948	9,987
MINNESOTA	MILLE LACS R.B.C.	11,043	8,834	2,209
MINNESOTA	MINNEAPOLIS AMERICAN INDIAN CENTER	12,942	10,354	2,588
MINNESOTA	RED LAKE TRIBAL COUNCIL	64,367	51,494	12,873
MINNESOTA	WHITE EARTH R.B.C.	87,928	70,342	17,586
MISSISSIPPI	MISSISSIPPI BAND OF CHOCTAW INDIANS	53,014	42,411	10,603
MONTANA	FORT PECK INDIAN RESERVATION	78,318	62,654	15,664
MONTANA	BLACKFEET TRIBAL BUSINESS COUNCIL	132,612	106,090	26,522
MONTANA	CHIPPEWA CREE TRIBE, ROCKY BOYS RESERV.	43,526	34,819	8,705
MONTANA	CONFEDERATED SALISH & KOOTENAI TRIBES	73,892	59,114	14,778
MONTANA	CROW INDIAN TRIBE	82,647	66,118	16,529
MONTANA	FT. BELKNAP AGENCY	57,282	45,826	11,456
MONTANA	NORTHERN CHEYENNE TRIBE	59,268	47,398	11,850
NEBRASKA	NEBRASKA INDIAN INTER-TRIBAL DEV. CORP.	32,145	25,716	6,429
NEVADA	INTER-TRIBAL COUNCIL OF NEVADA	70,428	56,342	14,086
NEVADA	SHOSHONE PAIUTE TRIBES	19,890	15,912	3,978
NEW MEXICO	ALAMO NAVAJO SCHOOL BOARD	28,735	22,988	5,747
NEW MEXICO	ALL INDIAN PUEBLO COUNCIL	150,670	120,536	30,134
NEW MEXICO	EIGHT INDIAN PUEBLO COUNCIL	38,252	22,602	5,650
NEW MEXICO	JICARILLA APACHE TRIBE	31,867	25,478	6,369
NEW MEXICO	MESCALERO APACHE TRIBE	40,939	32,751	8,188
NEW MEXICO	PUEBLO OF ACOMA	42,238	33,790	8,448
NEW MEXICO	PUEBLO OF LAGUNA	76,469	61,175	15,294
NEW MEXICO	PUEBLO OF TAOS	27,429	21,943	5,486
NEW MEXICO	PUEBLO OF ZUNI	130,794	104,603	26,151

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		TOTAL	PROGRAM	COST POOL
NEW MEXICO	NAVAJO NATION	115,261	22,609	5,652
NEW MEXICO	SANTA CLARA INDIAN PUEBLO	5,773	4,618	1,155
NEW MEXICO	SANTO DOMINGO TRIBE	42,238	33,790	8,448
NEW YORK	AMERICAN INDIAN COMMUNITY HOUSE, INC.	5,820	4,656	1,164
NEW YORK	THE NORTH AM. IND. CLUB OF SYRACUSE AND VICINITY, INC.	7,408	5,926	1,482
NEW YORK	ST. REGIS MOHAWK TRIBE	28,498	22,798	5,700
NEW YORK	SENECA NATION OF INDIANS	115,891	92,713	23,178
NORTH CAROLINA	EASTERN BAND OF CHEROKEE INDIANS	88,516	70,813	17,703
NORTH DAKOTA	DEVILS LAKE SIOUX TRIBE	40,194	32,155	8,039
NORTH DAKOTA	STANDING ROCK SIOUX TRIBE	126,815	101,452	25,363
NORTH DAKOTA	THREE AFFILIATED TRIBES	56,862	45,490	11,372
NORTH DAKOTA	TURTLE MOUNTAIN BAND OF CHIPPEWA IND.	111,126	88,901	22,225
OKLAHOMA	CADDO TRIBE	12,604	10,083	2,521
OKLAHOMA	CENTRAL TRIBES OF THE SHAWNEE AREA, INC.	35,118	28,094	7,024
OKLAHOMA	CHEROKEE NATION OF OKLAHOMA	841,001	672,801	168,200
OKLAHOMA	CHEYENNE-ARAPAHO TRIBES	114,970	91,976	22,994
OKLAHOMA	CHICKASAW NATION OF OKLAHOMA	192,908	154,326	38,582
OKLAHOMA	CHOCTAW NATION OF OKLAHOMA	335,207	268,166	67,041
OKLAHOMA	CITIZENS BAND POTAWATOMI IND. OF OKLA.	158,360	126,648	31,712
OKLAHOMA	COMANCHE TRIBE OF OKLAHOMA	122,098	97,598	24,400
OKLAHOMA	CREEK NATION OF OKLAHOMA	281,520	225,216	56,304
OKLAHOMA	FOUR TRIBES CONSORTIUM OF OKLAHOMA	37,812	30,250	7,562
OKLAHOMA	INTER-TRIBAL COUNCIL OF N.E. OKLAHOMA	36,753	29,402	7,351
OKLAHOMA	KAW TRIBE OF OKLAHOMA	6,412	5,130	1,282
OKLAHOMA	KICKAPOO TRIBES OF OKLAHOMA	15,105	12,084	3,021
OKLAHOMA	KIOWA TRIBE OF OKLAHOMA	87,265	69,812	17,453
OKLAHOMA	OKLAHOMA TRIBAL ASSISTANCE PROGRAM, INC.	203,780	163,024	40,756
OKLAHOMA	OSAGE TRIBAL COUNCIL	74,662	59,730	14,932
OKLAHOMA	OTOE-MISSOURIA INDIAN TRIBE OF OKLA.	21,359	17,087	4,272
OKLAHOMA	PAWNEE TRIBE OF OKLAHOMA	22,858	18,286	4,572
OKLAHOMA	PONCA TRIBE OF INDIANS	49,165	39,332	9,833
OKLAHOMA	SEMINOLE NATION OF OKLAHOMA	68,504	54,803	13,701
OKLAHOMA	TONKAWA TRIBE OF OKLAHOMA	46,760	37,408	9,352
OKLAHOMA	UNITED URBAN INDIAN COUNCIL	224,850	179,880	44,970
OREGON	CONFED. TRIBES OF SILETZ INDIANS	9,429	7,543	1,886

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		TOTAL	PROGRAM	COST POOL
OREGON	CONFED. TRIBES OF THE UMATILLA IND. RES.	18,583	14,866	3,717
OREGON	CONFEDERATE TRIBES OF WARM SPRINGS	43,488	34,790	8,698
OREGON	ORGANIZATION OF FORGOTTEN AMERICANS	6,709	5,367	1,342
SOUTH CAROLINA	OFFICE OF THE GOVERNOR OF SOUTH CAROLINA	11,738	9,390	2,348
SOUTH DAKOTA	CHEYENNE RIVER SIOUX TRIBE	84,894	67,915	16,979
SOUTH DAKOTA	CROW CREEK SIOUX TRIBE	32,011	25,609	6,402
SOUTH DAKOTA	LOWER BRULE SIOUX TRIBE	16,482	13,186	3,296
SOUTH DAKOTA	OGLALA SIOUX TRIBE	329,862	263,890	65,972
SOUTH DAKOTA	ROSEBUD SIOUX TRIBE	143,142	114,514	28,628
SOUTH DAKOTA	SISSETON-WAHPETON SIOUX TRIBE	50,031	40,025	10,006
SOUTH DAKOTA	UNITED SIOUX TRIBES DEV. CORP.	66,716	53,373	13,343
TEXAS	ALABAMA-COUSHATTA INDIAN RESERVATION	5,484	4,387	1,097
TEXAS	TIGUA INDIAN TRIBE	12,027	9,622	2,405
UTAH	UTE INDIAN TRIBE	53,173	42,538	10,635
VIRGINIA	MATTAPONI PAMUNKEY MONACAN CONSORTIUM	3,206	2,565	641
WASHINGTON	COLVILLE CONFEDERATED TRIBES	94,934	75,947	18,987
WASHINGTON	EASTERN WASHINGTON INDIAN CONSORTIUM	186,186	148,949	37,237
WASHINGTON	LUMMI INDIAN BUSINESS COUNCIL	42,628	34,102	8,526
WASHINGTON	N.W. INTER-TRIBAL COUNCIL	33,675	26,940	6,735
WASHINGTON	PUYALLUP TRIBE	64,595	51,676	12,919
WASHINGTON	WESTERN WASH. IND. EMPL. AND TRNG. PROG.	143,524	114,819	28,705
WISCONSIN	LAC COURTE OREILLES TRIBAL GOVERNING BOARD	27,666	22,133	5,533
WISCONSIN	LAC DU FLAMBEAU CONSORTIUM	21,293	17,034	4,259
WISCONSIN	MENOMINEE INDIAN TRIBE OF WISCONSIN	49,261	39,409	9,852
WISCONSIN	ONEIDA TRIBE OF INDIANS OF WIS., INC.	32,616	26,093	6,523
WISCONSIN	ST. CROIX TRIBAL COUNCIL	22,323	17,858	4,465
WISCONSIN	STOCKBRIDGE-MUNSEE COMMUNITY	14,367	11,494	2,873
WISCONSIN	WISCONSIN INDIAN CONSORTIUM	40,788	32,630	8,158
WISCONSIN	WISCONSIN-WINNEBAGO BUSINESS COMMITTEE	35,385	28,308	7,077
WYOMING	SHOSHONE/ARAPAHOE TRIBES	85,046	68,037	17,009
	NATIONAL TOTAL	13,176,511	10,541,207	2,635,304

[FR Doc. 85–8513 Filed 4–8–85; 8:45 am]

BILLING CODE 4510-30-C

Office of Pension and Welfare Benefit Programs

[Application No. D-3871]

Amendments to Prohibited Transaction Exemption (PTE) 81-8 Involving Certain Short-Term Investments

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Adoption of amendments to PTE 81-8.

SUMMARY: This document amends PTE 81-8. PTE 81-8 is a class exemption that permits various transactions relating to investments by employee benefit plans in certain short-term money market instruments. The amendments affect participants, beneficiaries and fiduciaries of plans making the stated investments, dealers and banks covered by the amendments, and other persons engaging in the described transactions.

EFFECTIVE DATE: January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Pension and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-7902. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 3, 1984, notice was published in the **Federal Register** (49 FR 27379) of the pendency before the Department of proposed amendments to PTE 81-8. PTE 81-8 provides an exemption from the prohibited transaction restrictions of section 406(a)(1), (A), (B), and (D) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code (the Code) by reason of section 4975(c)(1) (A), (B), and (D) of the Code.

Cantor, Fitzgerald Securities Corp. requested the first proposed amendment by application dated November 24, 1982 (Application No. D-3871). At the urging of the American Bankers Association, the Department proposed the second amendment on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), specifically § 3.01 of that Procedure.

Information collection requirements contained in PTE 81-8 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB #1210-0061 approved for use through 5/31/87.

References in this preamble to sections 406 and 408 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

The notice gave interested persons an opportunity to comment on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

1. Description of the Exemption

PTE 81-8 provides an exemption for certain investments which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on behalf of an employee benefit plan of bankers acceptances, commercial paper, repurchase agreements, and certificates of deposit. Presently, the class exemption has four sections. Each section deals with one of the kinds of investment described above (e.g., Section I deals with bankers acceptances), and each section contains its own conditions. Such an investment would be prohibited in the absence of an exemption in instances where, for example, the seller of the instrument involved in the investment is a party in interest in relation to a plan by reason of providing services to the plan.

One of the amendments to PTE 81-8 granted pursuant to this notice expands the categories of sellers with whom plans may enter into repurchase agreements (under Section III of the exemption) to include dealers in bankers acceptances who report their security positions and other data on a daily basis to the Federal Reserve Bank of New York. For the sake of convenience, the entire text of Section III is reprinted with this notice.

The other amendment adds a new Section V to the exemption that permits a plan to invest in securities issued by a bank or its affiliate in cases where the bank is a party in interest with respect to the plan only by reason of the furnishing of checking account or related services (such as clearing and record keeping services) to the plan.

2. Discussion of Comments Received

The Department received three letters commenting on various aspects of the proposed amendment concerning bank securities in addition to a letter from the American Bankers Association urging prompt adoption of both amendments. All of the comment letters were generally supportive of the proposal.

One comment letter requested the Department to expand the scope of the proposed new Section V to include plan investments in any "security or other property" customarily marketed by banks as well as securities issued by banks. According to the letter, such security or other property would include mortgage loan participations. The commenter asserts that, given the safeguards afforded by the conditions stated in Section V, the addition would broaden the investment opportunities to plans in relation to banks which provide checking account services to them while still protecting the interests of plan participants.

The only kinds of "security or other property" specifically mentioned in the letter are mortgage loan participations. The Department points out that a separate class exemption (Prohibited Transaction Exemption 82-87, 47 FR 21331, May 18, 1982) already permits investments of this nature provided the relevant conditions specified in that exemption are met. PTE 82-87 provides, in pertinent part, an exemption from the prohibitions of section 406(a) of ERISA for the purchase by a plan of a mortgage loan or participation interest therein from a party in interest. Certain amendments to PTE 82-87 were proposed in the **Federal Register** on December 11, 1984 (49 FR 48236).

The new Section V of PTE 81-8 permits plans to invest in any type of securities, including equities as well as debt instruments, so long as the conditions set forth in the proposal are satisfied. The letter of comment gives no detail (other than mortgage loan participations) as to kinds of securities or other property customarily marketed by banks which would provide a basis on which the Department could make a determination. Accordingly, the Department has decided not to expand the type of relief intended under proposed Section V in the way suggested in the comment letter.

A letter submitted on behalf of the California Bankers Association (CBA) and a letter from the Union Bank in California recommended that subparagraph B of proposed Section V should be broadened to include services other than checking account or related services. The CBA names thirteen such services: lockbox services, note collection, remittances, credit analyses and reviews, Federal funds wire transfers, securities execution through investment securities departments, foreign currency transactions, loan

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

References in this preamble to sections 406 and 408 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

servicing, savings deposit accounts, payroll services, data processing, account reconcilement, and cash management.

The CBA argues that, if the bank offering these services is a fiduciary in relation to a plan, then the safeguards proposed in Section V.C. and V.D. provide any purchasing plans with sound protection from abuse. If the bank is not a fiduciary, then the probability of abuse is even less. The CBA maintains that the interests of plan participants are served by allowing banks to offer the various services mentioned above (to the investing plans) because costs to the plans for these services may be lower when they are obtained from the same institution and duplication of services would be minimized.

The Department notes that PTE 81–8 extends only to transactions defined in section 406(a) of ERISA and does not cover acts involving plan fiduciaries described in section 406(b). Accordingly, the class exemption would not provide relief in a situation where a bank has some discretion over the plan assets involved in an investment in securities of that bank or of an affiliated entity. Seciton 406(b) of ERISA provides, in part, that a plan fiduciary, as defined in ERISA section 3(21)(A), shall not deal with plan assets in his or her own interest or act in a transaction involving the plan on behalf of a party whose interests are adverse to those of the plan or its participants.

As for nondiscretionary bank services, the comment letters have not provided sufficient information to enable the Department to make a decision that the proposed amendment should be broadened in the suggested manner. Accordingly, the amendment is not being modified to include a party in interest relationship stemming from any services other than checking account services between a bank and a plan which invests in securities of the bank.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA, the Department makes the following determinations:

(i) The amendments set forth herein are administratively feasible;

(ii) They are in the interests of plans and of their participants and beneficiaries, and

(iii) They are protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amendments are supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Amendments

Accordingly, the following amendments to PTE 81–8 are hereby granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

1. Section III is amended to read as follows: "III. *Repurchase Agreements.* A repurchase agreement (or securities or other instruments under cover of a repurchase agreement) in which the seller of the underlying securities or other instruments is a bank which is supervised by the United States or a State; a broker-dealer registered under the Securities Exchange Act of 1934; or a dealer who makes primary markets in securities of the United States government or any agency thereof or in bankers acceptances and reports daily to the Federal Reserve Bank of New York its position with respect to these obligations, if each of the following conditions are satisfied.

A. The repurchase agreement is embodied in, or is entered into pursuant to a written agreement the terms of which are at least as favorable to the plan as an arm's length transaction with an unrelated party would be. For transactions occurring before April 23, 1981 a written confirmation of a repurchase agreeement whose terms were at least as favorable to the plan as an arm's length transaction with an unrelated party would have been will be deemed to satisfy this condition.

B. The plan receives interest at a rate no less than that which it would receive in a comparable transaction with an unrelated party.

C. The repurchase agreement has a duration of one year or less.

D. The plan receives securities, banker's acceptances, commercial paper, or certificates of deposit having a market value equal to not less than 100 percent of the purchase price paid by the plan.

E. Upon expiration of the repurchase agreement and return of the securities or other instruments to the bank, broker-dealer or dealer (seller), the seller transfers to the plan an amount equal to the purchase price plus the appropriate interest.

F. Neither the seller nor an affiliate of the seller has discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

G. The securities, banker's acceptances, commercial paper or certificates of deposit received by the plan—

(1) Could be acquired directly by the plan in a transaction not covered by this section III without violating sections 406(a)(1)(E), 406(a)(2) or 407(a) of the Act; and,

(2) If the securities are subject to the provisions of the Securities Act of 1933, they are obligations that are not "restricted securities" within the meaning of Rule 144 under that act.

H. With respect to transactions occurring on or after April 23, 1981,

(1) If the market value of the underlying securities or other instruments falls below the purchase price at any time during the term of the agreement, the plan may, under the written agreement required by paragraph A of this section, require the seller to deliver, by the close of business on the following business day, additional securities or other instruments the market value of which, together with the market value of securities previously delivered or sold to the plan under the repurchase agreement, equals at least 100 percent of the purchase price paid by the plan;

(2) If the seller does not deliver additional securities or other instruments as required above, the plan may terminate the agreement, and, if upon termination or expiration of the agreement, the amount owing is not paid to the plan, the plan may sell the

securities or other instruments and apply the proceeds against the obligations of the seller under the agreement, and against any expenses associated with the sale; and,

(3) The seller agrees to furnish the plan with the most recent available audited statement of its financial condition as well as its most recent available unaudited statement, agrees to furnish additional audited and unaudited statementsof its financial condition as they are issued and either: (A) Agrees that each repurchase agreement transaction pursuant to the agreement shall constitute a representation by the seller that there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the plan fiduciary with whom such written agreement is made; or (B) prior to each repurchase agreement transaction, the seller represents that, as of the time the transaction is negotiated, there has been no material adverse change in its financial condition since the date of the last statement furnished that has not been disclosed to the plan fiduciary with whom such written agreement is made.

(4) In the event of termination and sale as described in (2) above, the seller pays to the plan the amount of any remaining obligations and expenses not covered by the sale of the securities or other instruments, plus interest at a reasonable rate.

If a seller involved in a repurchase agreement covered by this exemption fails to comply with any condition of this exemption in the course of engaging in the repurchase agreement, the plan fiduciary who caused the plan to engage in such repurchase agreement shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1) (A) through (D) of the Act solely by reason of the seller's failure to complye with the conditions of the exemption."

2. A new Section V is added to read as follows: "V. *Securities of Banks.* A security issued by a bank or an affiliate of the bank if:

A. The bank is supervised by the United States or a State;

B. The bank is a party in interest or disqualified person with respect to the plan solely by reason of the furnishing of checking account or related services to the plan;

C. The terms of the transaction are at least as favorable to the plan as those of an arm's-length transaction with an unrelated party would be; and

D. The investment is not part of an arrangement under which the bank causes a transaction to be made with or for the benefit of a party in interest or disqualified person."

Signed at Washington, D.C., this 2nd day of April, 1985.

Alan D. Lebowitz,

Acting Administrator, Office of Pension and Welfare Benefit Programs.

[FR Doc. 85-8483 Filed 4-8-85; 8:45 am]

BILLING CODE 4717-01-M

[Application No. D-5548 et al.]

Proposed Exemptions; Paint America Company, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Paint America Company Employees Profit Sharing Plan (the Plan) Located in Dayton, Ohio

[Application No. D-5548]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective January 1, 1975, to the lease of an improved parcel of real property (the Property) entered into on October 1, 1974, by the Plan to Paint America Company (Paint America), the sponsor of the Plan, provided that the terms and conditions of the lease were not less favorable to the Plan than those terms available in a transaction with an unrelated party. The lease was entered into before the effective date of the Act but after July 1, 1974, the date specified in the transitional rules under sections 414 and 2003 of the Act.

Effective Date: If granted, this exemption will be effective January 1, 1975 through June 25, 1982, the date of the sale of the Property by the Plan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 120 participants. As of December 31, 1983, the Plan had total assets of $502,753. The First National Bank of Dayton (the Bank), a wholly owned subsidiary of National City Corporation (National City), a bank holding company, has served as the trustee of the Plan since before 1974. The Bank has complete discretionary authority with regard to Plan investments. The Bank maintains certain commerical relationships with Paint America, including a $1,050,000 loan which was extended to Paint America in 1981. These commercial relationships constitute a very small percentage of the Bank's total assets and loans outstanding. In this regard the Bank has total assets of approximately $650 million and National City has total assets of $13 billion. Neither the Bank, National City, or Paint America have any common employees, officers or directors nor does any entity own stock in each other. The only common stock interrelationship is that Mr. Robert Rightmeyer, the sole shareholder of Paint America, owns approximately 200 shares of National City stock. The applicant represents that these holdings represent a very small percentage of National City's publicly held shares.

2. In 1974, the Plan acquired the Property from an unrelated party for a total price of $80,000. The Property consists of approximately 14,323 square feet of land and is located at 27 East Linden Avenue, Miamisburg, Ohio. Immediately after purchase, Paint America (then known as the Jef-Kar Corporation), a commercial retailer of paint products, expended $93,738 to renovate the property for commercial use. The Plan leased the Property, as improved by the renovations, for a term of five years to Paint America effective October 1, 1974. The lease was a "triple-net" lease providing that the lessee was reponsible for all costs and expenses associated with maintaining the Property. The lease provided for three consecutive five year renewal options. The lease provided for rental for the first five months of the lease term of $500 per month, and rental for the remaining 55 months of the initial lease term of $750 per month. The lease was renewed on October 1, 1979 at a rental of $750 per month. This rental provided the Plan with an annual rate of return of approximately 15% based upon the total acquisition price of the Property of $80,000.

3. The Bank represents that it acted as the fiduciary for the Plan with respect to the acquisition of the Property and lease thereof to Paint America. The Bank states that it believed that the purchase of the Property and lease thereof was appropriate and suitable for the Plan. The Bank states that the rent charged under the lease was fair market rental value at the time the lease was entered into. The applicant represents that all rental payments were timely paid under the lease.

4. The applicant states that the lease was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. In this regard the applicant states that it first learned that the lease was a prohibited transaction sometime in the year 1979. The applicant therefore requested an exemption in January, 1980 for the past lease and a sale of the Property to Paint America to terminate the lease arrangement. The exemption application was withdrawn in February, 1981, and the Plan immediately thereafter began efforts to sell the Property to an unrelated party.

5. The Property was ultimately sold to Leeward Properties (Leeward) an unrelated party to the Plan, on June 25, 1982 for $110,000. The Plan received cash and a note from the buyer in the amount of $88,000. Concurrent with the sale the Plan assigned its interest in the lease to Leeward and a new lease of the Property was entered into between Leeward and Paint America.

6. Mr. Charles Azzling of Fitzpatrick Realty Company, located in Dayton, Ohio, had appraised the Property and had determined, based on an income approach that the Property, as of October 29, 1980, had a fair market value of $140,000. The Bank states that because of the depressed market for commercial properties in 1981 and 1982, an appraisal based upon the income approach was only a guide in determining the price for which the Property could actually be sold. The Bank therefore represents that the sales price of $110,000 was the fair market value of the Property. The Bank represents that the sale yielded the Plan a capital gain of $50,000 in addition to the 15% annual rate of return on the Property from the lease.[1]

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the Bank, the fiduciary for the Plan, determined that the purchase and lease of the Property was appropriate and in the best interests of the Plan; (b) the Bank determined that the rental under the lease was fair market rental when entered into; (c) all payments under the lease were timely paid; (d) the applicant represents that the lease was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975; and (e) the applicant attempted to divert the Property as soon as it realized the lease was prohibited.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Contractor's Equipment Company Employees Profit Sharing Plan (the Plan) Located in El Paso, Texas

[Application No. D-5686]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan to Contractor's Equipment Company (the Employer) of certain real property (the Real Property) for the cash consideration of $19,000, provided the price paid for the Real Property is not less than its fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with approximately 67 participants and total assets of $1,147,603 as of December 31, 1983. The trustees of the Plan (the Trustees) are Messrs. Frank Weidner, George Weidner, Jr. and Cecil B. Oliver. Investment decisions for the Plan pertaining to stock transactions are handled by Merrill, Lynch, Pierce, Fenner and Smith while investment decisions regarding other assets, including real estate and cash are made by Mr. Frank Weidner.

2. The Employer, which maintains its principal place of business in El Paso, Texas, is engaged in the selling, leasing and repairing of heavy construction equipment in the southwestern United States and in Mexico.

3. In January 1972, the Plan purchased approximately 1.739 acres of unimproved land, legally described as "Block 1, Tract 1F2A, Ascarte Grant" and located in the City of El Paso, El

[1] The Department expresses no opinion herein whether the sale of the Property violated any provision of Part 4 of Title I of the Act.

Paso County, Texas. The Plan bought the Real Property from Leavell Development Company and El Paso Construction Company, the original developers of the area and unrelated parties. The Plan paid $37,875 for the Real Property. The Real Property partially adjoins the land on which the Employer operates its business.

In August 1975, the Plan sold .585 acres of the Real Property to Messrs. Richard and Edward Saab (the Saabs), both unrelated parties, for $30,000. The Plan granted the Saabs an option to purchase an additional 19,500 square feet but the option expired without ever being exercised. In conveying a portion of the Real Property to the Saabs, an access easement was retained in favor of the Plan for the benefit of the 1.154 acre of the Real Property then remaining. Presently, the Real Property consists of the 1.154 acre, of which only 32,300 square feet are now in use. The Real Property is also unencumbered.

4. At some point, the exact date of which is questionable, the Employer's employees and participants in the Plan began using a portion of the Real Property for parking purposes. According to the exemption application, the Employer did not order or direct this use of the Real Property nor did it pay the Plan any rent. In June 1981, the Employer erected, at its own expense, a chain link fence around part of the Real Property in order to curtail a rash of vandalism to the automobiles of its employees. Following the construction of the fence, the Employer commenced storing equipment on the Real Property for its own benefit.

5. In January 1984, the Area Administrator (the Area Administrator) of the Dallas Area Office of the Department concluded his investigation of the Plan and the activities of the Trustees after January 1, 1975. Based on the facts gathered during the investigation, the Area Administrator stated in a letter dated January 18, 1984 that the Employer's use of the Real Property and non-compensation of the Plan violated certain provisions of sections 404, 406 and 407 of the Act. In view of these violations, the Area Administrator suggested that the Employer cease using the Real Property and pay the Plan $13,561, representing back rent and interest. He also recommended that the Employer request an exemption from the Department in order to purchase or lease the Real Property from the Plan.

The Employer disputed the Area Administrator's calculation of the rental arrearage. In a letter dated June 8, 1984, the Employer wrote that it considered the Area Administrator's valuation of the Real Property to be excessive inasmuch as part of the Real Property had been sold to the Saabs and it (the Employer) had used only a portion of the remaining land. The Employer also explained that it was not until June 1981 when the reamining portion of the land was fenced in and it commenced its use.

In a letter dated June 29, 1984, the Area Administrator stated that although he did not believe the valuation of the Real Property was excessive since it had been based on two current appraisals, he was willing to consider the fact that other than for employee parking, the Employer did not commence actively using the Real Property until June 1981 and that Plan participants were the major beneficiaries of the Real Property prior to that time. The Area Administrator requested that the Employer pay the Plan back rent for its use of the Real Property between June 1981 through April 1984. Additionally, the Area Administrator stated that any taxes paid by the Plan on the Real Property from 1981 through the present should be paid by the Employer.

Thus, for the period June 1981 through June 1984, the Area Administrator assessed total rents and interest of $2,981 and total taxes and interest of $491. According to the exemption application, the Employer has paid all amounts that were determined to be in arrears. The Employer also continues to use the Real Property and it pays the Plan fair market value rent. The Employer will pay fair market value rent until the proposed transaction is consummated.

6. Since its ownership of the entire tract of land comprising the Real Property, the Plan has incurred holding costs consisting of ad valorem taxes paid to the City and County of El Paso. Although the Employer did not maintain complete records of tax payments for the years 1972 through 1983, it is estimated that the Plan's total holding costs were approximately $5,400.

7. During October 1984, the Real Property was valued by two independent appraisers who maintain their businesses in El Paso, Texas. The first appraisal was performed by Mr. Robert M. Keller (Mr. Keller), an active member of the Society of Industrial Realtors and an associate of James A. Keller, Realtors. In an appraisal report dated October 11, 1984, Mr. Keller placed the fair market value of the Real Property at $16,000.

Mr. Gus Momsen (Mr. Momsen), a senior member of the American Society of Appraisers and an associate of the Holder Company, conducted the second and subsequent appraisals of the Real Property. Initially, Mr. Momsen valued the Real Property at $19,000 in an appraisal report dated May 2, 1984. Because this appraisal did not address certain access problems or deficiencies in the Real Property, Mr. Momsen revalued the Real Property at $17,000 on October 23, 1984 and he took these factors into consideration.

In addenda to the appraisals dated January 22 and March 6, 1985, Mr. Momsen clarified his opinion on the value of the Real Property. In his January 1985 letter, he placed the fair market value of the Real Property again at $17,000. He also reiterated the access problems and explained that the easement retained by the Plan should pass with the conveyance of the land. Because of the prior use of the easement, Mr. Momsen did not believe it altered the October 1984 valuation.

In the March 1985 addendum, Mr. Momsen stated that the Real Property had no special or unique value to the Employer by reason of its proximity to the Employer's place of business. He also concluded that a premium price for the Real Property would not be warranted.

8. An administrative exemption is requested to permit the Plan to sell the Real Property and the access easement to the Employer for cash. The sales price for the Real Property will be the $19,000 value as established by Mr. Momsen. The Plan will not be required to pay any real estate commissions or fees in connection with the sale.

As a precondition to the sale, the Employer represents that it will pay all excise taxes due the Internal Revenue Service (the Service) by reason of the use of the Real Property within 60 days of the granting of the proposed exemption.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price for the Real Property will be based on the highest of the independently appraised values; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; and (d) within 60 days of the granting of the proposed exemption, the Employer will pay all excise taxes that are assessed by the Service for the use of the Real Property.

For Further Information Contact: Ms. Jan Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Robert S. Koons, Jr., Inc. Money Purchase Pension Trust (the Plan) Located in Dallas, Texas

[Application No. D-5806]

Proposed Exemption

The Department is considering granting an exemption under the authority of and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Plan's purchase of certain stock from Mr. Robert S. Koons, Jr. (Mr. Koons), a disqualified person with respect to the Plan, provided the purchase price does not exceed the fair market value of the stock at the time of the consummation of the transaction. Because Mr. Koons is the sole participant in the Plan and is also the sole owner of Robert S. Koons, Jr., Inc., (the Plan Sponsor) the Plan is not subject to Title I of the Act, including section 406, pursuant to 29 CFR 2510.3-3 (b) and (c)(1). However, the Plan is subject to Title II of the Act, which includes section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with one participant, Mr. Koons. The Plan had total assets of $175,000 as of September 30., 1984. Mr. Koons is the Plan trustee. The Plan Sponsor is a manufacturing representative of several furniture and fabric companies.

2. Mr. Koons became a stockholder in Independence Bank (the Bank) when the bank became chartered in early 1983. On October 3, 1983, Mr. Koons purchased 4,950 shares of the stock (the Stock) from the Bank at $12.85 per share. Mr. Koons indicated to the Bank at that time he wished to own part of the Stock individually and have part of the Stock owned by the Plan. At the time the Bank charter was granted, Mr. Koons discussed with an attorney the desirability of placing approximately one-half to two-thirds of the Stock in the Plan. The attorney advised Mr. Koons that his could constitute a prohibited transaction. He, therefore, did not purchase any of the Stock on behalf of the Plan.

3. An exemption is requested to allow the Plan to purchase shares of the Stock from Mr. Koons and to allow the Plan to purchase its pro rata share of any shares of the Stock that might be offered for sale under pre-emptive rights stemming from its ownership of the Stock it will purchase for fair market value. The proposed transactions will not exceed 25 percent of the total assets of the Plan.

4. The purchase price for the Stock will be $12.81 per share. The Plan will pay cash for the Stock. The Plan will pay no brokerage fees or sales commissions. An independent appraisal of the Stock was performed by MBank Dallas. MBank Dallas is unrelated to the Plan or the Plan Sponsor. The appraisal established the fair market value of the Stock at $12.81 per share as of January 4, 1985. The Stock is not traded on an open market exchange.

5. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408 of the Act because:

(a) The Plan will be able to purchase bank stock in a strong and growing economic area;

(b) The Plan will pay the fair market value of the Stock as determined by an independent appraisal; and

(c) The Plan's trustee has determined that the transaction will be in the interests of an protective of the Plan.

Since Mr. Koons is the only participant in the Plan, and the sole owner of the Plan Sponsor, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments are due 30 days after the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York

[Application No. D-5862]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to (1) the acquisition of shares of common stock (the Common Stock) of Donaldson, Lufkin, and Jenrette, Inc. (DLJ) from employee benefit plans (the Plans) by ELAS Acquisition Corp. (Acquisition Corp.), an indirect wholly-owned subsidiary of Equitable, which is a party in interest with respect to the Plans, by means of an offer to purchase for cash the Common Stock (the Purchase Offer) between DLJ and Acquisition Corp; and (2) any cancellation, extinction, and conversion of such Common Stock held by the Plans into the right to receive cash, pursuant to the Agreement of Merger (the Merger Agreement) between DLJ and Acquisition Corp., provided that the price received by the Plans is at least equal to the price received by other shareholders (the Shareholders) of the Common Stock.

Effective Date: If the proposed exemption is granted, it will be effective December 13, 1984.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States, having total assets as of December 31, 1983, of approximately $43 billion. Equitable provides funding, asset management, and other services for a large number of Plans subject to the provisions of Title I of the Act. Equitable maintains several pooled separate accounts in which pension, profit-sharing, and thrift plans participate, and has several single customer separate accounts and direct investment management arrangements, pursuant to which it manages all or a portion of the assets of a number of large plans.

2. Acquisition Corp. was incorporated in Deleware in November 1984, and has had no prior operating history.

3. DLJ, a Delaware corporation, and its subsidiaries provide investment banking, investment management, securities and commodities brokerage, and related financial transactional services. It provides these services primarily through three major operating subsidiaries: Alliance Capital Management Corporation (Alliance), Donaldson, Lufkin & Jenrette Securities Corporation (Securities Corp.), and ACLI International Incorporated. DLJ's activities are directed primarily towards professional markets—major institutions, corporations, public entities, and substantial individual investors—while also providing services to a broader base of retail clients through the Pershing Division of Securities Corp. DLJ's principal executive office is located at 140 Broadway, New York, New York. Common shares of DLJ are publicly traded on the New York Stock Exchange. As of November 20, 1984, DLJ had 12,777,587 outstanding common

shares which were held by more than 5,500 persons or entities, and 213,956 preferred shares outstanding which were held by 35 persons or entities.[2]

4. The applicant is requesting an exemption which will permit Acquisition Corp. to acquire from the Plans the outstanding Common Stock under the Purchase Offer and as provided for under the Merger Agreement. Equitable may be a party in interest with respect to many Plans. However, Equitable has not been able to identify these Plans, if any, primarily because ownership of common shares changes daily as a result of New York Stock Exchange trading and because common shares which may be or may have been held on behalf of these Plans at any particular point in time are typically registered in the name of a financial institution or other nominee with no public identification of the beneficial owner.[3] However, Plans maintained by Equitable for its own employees are not among the Shareholders. Nor do any separate accounts or investment advisory accounts maintained by Equitable in which Plans participate hold any Common Stock. DLJ and Alliance each maintain a profit sharing plan (the DLJ and Alliance Plans) on behalf of their own employees which did hold Common Stock until such Common Stock was accepted for payment by Acquisition Corp.[4]

5. The terms of the subject acquisition are as follows: The Merger Agreement was entered into on November 20, 1984. The Merger Agreement provides that Equitable, through Acquisition Corp., will offer to acquire all of the common and preferred shares of DLJ and that, upon completion of the Purchase Offer, Acquisition Corp. will be merged into DLJ (the Merger). Upon consummation of the Merger, DLJ will operate as an indirect wholly-owned subsidiary of Equitable. The DLJ Board of Directors approved the Merger Agreement, determined that the Purchase Offer was fair to the Shareholders, and recommended acceptance of the Purchase Offer by the Shareholds.[5] On November 21, 1984, Acquisition Corp., pursuant to the Merger Agreement, commenced the Purchase Offer to purchase for cash all outstanding DLJ common shares at a price of $30.00 per share and all $9.50 Series A convertible preferred shares at a price of $230.779 per share. The Dealer Manager of the Purchase Offer is Morgan Stanley & Co., Incorporated. The cost of purchasing all outstanding preferred and common shares pursuant to the Purchase Offer and the Merger Agreement, plus related fees and expenses, would be approximately $420 million. The Purchase Offer is not conditioned upon any minimum number of shares being tendered. No commissions will be paid by tendering Shareholders. The Purchase Offer was extended and expired at midnight January 16, 1985. The Offer to Purchase, which was sent to all shareholders, contains a detailed description of the entire Purchase Offer and Merger Agreement.[6]

6. As of December 13, 1984, Acquisition Corp. began accepting for payment tendered Common Stock. Since it is represented that Acquisition Corp. has acquired sufficient shares to constitute a majority of voting power of the total common and preferred shares, Acquisition Corp. will be able to approve the Merger without regard to the vote of other Shareholders. Additionally, it is represented that because Acquisition Corp. will acquire at least 90 percent of each of the outstanding common shares and preferred shares, Acquisition Corp. may, under Delaware law, effect the Merger without a vote of DLJ's Shareholders. It is represented that the Merger of Acquisition Corp. into DLJ was to be completed on January 17, 1985.

7. After the completion of the Purchase Offer, the parties are obligated under the Merger Agreement to cause the Merger of Acquisition Corp. into DLJ. DLJ will continue as the surviving corporation and will be an indirect wholly-owned subsidiary of Equitable.

8. Under the Merger Agreement, each outstanding common and preferred share of DLJ not owned by Equitable, DLJ, or any of their subsidiaries, will be cancelled and extinguished and converted into a right to receive in cash $30.00 and $230.769, respectively. Thus, Shareholders who did not tender their shares under the Purchase Offer will receive in the Merger the same price for shares, $30.00 per common share and $230.769 per preferred share, that tendering Shareholders received.

9. The negotiations between DLJ and Equitable regarding the Purchase Offer and the Merger Agreement were conducted on a totally arm's-length basis. No officers or directors of Equitable or any of its affiliates were, as of the date of the Merger Agreement (November 20, 1984), officers or members of the Board of Directors of DLJ. It is represented that the offering price for the Common Stock under the Purchase Offer is more than 15 percent higher than the reported closing price $26.00 per share for such common share on November 2, 1984, the last full trading day prior to public announcement of the agreement in principle with respect to the acquisition. As of the date of the commencement of the Purchase Offer, the book value of the Common Stock was approximately $13.75 per share.

10. Equitable will not exercise any discretionary authority it might have with respect to a plan to cause any one of the Plans to engage in any of the transactions covered by the requested exemption. Neither Equitable nor any of its affiliates will act as a fiduciary with respect to any of the Common Stock covered by the requested exemption which may constitute assets of an employee benefit plan. The decision for any one of the Plans on whose behalf such Common Stock may be held to tender such Common Stock pursuant to the Purchase Offer will be made in every case by a fiduciary of such plan who is unaffiliated with, and acting completely independently of, Equitable

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[2] It has been represented that prior to purchase by Acquisition Corp., DLJ's preferred shares were held by approximately 35 holders who received promissory notes from Equitable in connection with the tendering of their preferred shares. None of the preferred shareholders include any employee benefit plans. Accordingly, the acquisition of preferred shares pursuant to the Purchase Offer and the Merger Agreement is not covered under this proposed exemption.

[3] Because the identify of such plans is not known to Equitable, it is proposed that notice to interested persons be accomplished through the publication of the Notice of Proposed Exemption in the **Federal Register**.

[4] It is represented that the transfer of the DLJ and Alliance Plans' Common Stock pursuant to the Purchase Offer, is covered by the statutory exemption contained in section 408(e) of the Act, and is accordingly not covered by this proposed exemption. All subsequent references in this exemption to Common Stock do not include any Common Stock formerly held by the DLJ and Alliance Plans.

[5] It is represented that prior to entering into the Merger Agreement, Equitable entered into stock purchase agreements with two officers and directors of DLJ, a trust for the benefit of the children of one such officer and director, and two corportions to acquire an aggregate of 3,435,824 common shares at $30.00 per share and 160,093 preferred shares at $230.769 per share representing approximately 32.4 percent of the outstanding common shares (assuming conversion of the outstanding preferred shares). At the request of the individuals involved, the Stock purchase agreements were never closed. Instead the individuals tendered their shares for cash pursuant to the terms of the Purchase Offer. In addition, DLJ and Equitable entered into a stock option agreement pursuant to which DLJ granted Equitable an option to purchase 2,361,000 authorized but unissued common shares at $30.00 per share.

[6] The Purchase Offer, which was provided to all holders of record of DLJ's common and preferred shares, advised that a tender of shares pursuant to the Purchase Offer, or the conversion of shares into the right to receive cash pursuant to the Merger Agreement, by an employee benefit plan as to which Equitable is a party in interest may result in a prohibited transaction under section 406 of the Act. It is represented that the Shareholders were further advised that Equitable intended to apply to the Department for a retroactive prohibited transaction exemption with respect to the subject transactions.

and its affiliates. Such fiduciaries are bound by the fiduciary responsibility provisions of the Act to act purdently and solely in the interests of the plan. Equitable has no discretionary authority, responsibility, control or influence with respect to such decisions by these fiduciaries.[7]

In summary, the applicant represents that the transactions satisfy the requirements of section 408(a) of the Act as follows:

(1) The negotiations regarding the terms of the Purchase Offer and the Merger Agreement, particularly the cash price offered for the Common Stock, were undertaken on a totally arm's-length basis by officers of DLJ and Equitable;

(2) The offering price for the Common Stock is considerably higher than the public market value of the Common Stock prior to the announcement of the Purchase Offer;

(3) In the case of any acquisition of the Common Stock by Acquisition Corp. covered by the proposed exemption, the decision by any of the Plans to tender Common Stock pursuant to the Purchase Offer will have been made by a fiduciary of the Plans totally unrelated to Equitable and any of its affiliates; and

(4) The Plans have or will receive the same price for the Common Stock as was received by all other Shareholders.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 49765(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisioins of the Act and/or the Code, including any prohibited transaction provisons to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisioins of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of April 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–8482 Filed 4–8–85; 8:45 am]

BILLING CODE 4510-29-M

[7] The Department by this exemption is not proposing relief for any transactions which might involve violations by Equitable or its affiliates of the fiduciary self-dealing or conflict-of-interest prohibitions of section 406(b) of the Act.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film Preservation Section) to the National Council on the Arts will be held on April 17, 1985 from 9:30 am to 5:00 pm in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

March 27, 1985.

John H. Clark,

Director Office of Council & Panel Operations, National Endowment for the Arts

[FR Doc. 85–8400 Filed 4–8–85; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel (Advancement Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Advancement Section) to the National Council on the Arts will be held on April 26, 1985 from 9:00 am to 5:30 pm in Room 730 of the Nacy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506

This meeting is for the purpose of recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 1, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–8416 Filed 4–8–85; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel (Challenge Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 25, 1985 from 9:00 am to 5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 1, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–8414 Filed 4–8–85; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel (Advancement Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Museum Advisory Panel (Advancement Section) to the National Council on the Arts will be held on April 30, 1985 from 9:00 am to 5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 1, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–8415 Filed 4–8–85; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel (Challenge Section); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Museum Advisory Panel (Challenge Section) to the National Council on the Arts will be held on April 29, 1985 from 9:00 am to 5:30 pm in the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: April 1, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–8413 Filed 4–8–85; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. –463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.

Date and Time: April 25–26, 1985; 9:00 am to 5:00 pm each day.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact Person: Dr. C. William Kern, Acting Division Director, Division of Chemistry, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357–7947.

Summary Minutes: May be obtained from Dr. C. William Kern.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open-Discussion of the current status and future plans of the Chemistry Division's activities.

M. Rebecca Winkler,

Committee Management Officer.

April 4, 1985.

[FR Doc. 85–8449 Filed 4–8–85; 8:45 am]

BILLING CODE 7535–01–M

Committee Management Advisory Committee on Merit Review; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I have determined that the establishment of the Advisory Committee on Merit Review is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee on Merit Review.

Purpose: To evaluate merit review as practiced by NSF and other agencies and provide advice and recommendations concerning alternative systems of merit review and selection of projects for grants.

Effective Date of Establishment and Duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will operate for one year.

Membership: The membership of this Committee shall be fairly balanced in terms of the points of view represented and the Committee's function. Members will be individuals eminent in science, engineering, education, and industry. Due consideration will be given to achieving membership that reasonably represents public, private, and academic communities; women, minorities, and the handicapped, and different geographical regions of the country.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act, GSA Interim Regulations on Federal Advisory Committee Management, Foundation policy and procedures, and other directives and instructions issued in implementation of the Act.

Edith Block,

Director.

April 4, 1985.

[FR Doc. 85-8448 Filed 4-8-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-458A]

Gulf States Utilities Company and Cajun Electric Power Cooperative, Inc.; Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of Nuclear Rector Regulation has made an initial finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review of Unit 1 of the River Bend Power Station by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the 'significant change' determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the River Bend 1 construction permit to Gulf States Utilities Company and Cajun Electric Power Cooperative, Inc., the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as 'staff', have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

"In reaching this conclusion, the staff considered the structure of the electric utility industry in Louisiana, the events relevant to the River Bend construction permit review and the events that have occurred subsequent to the construction permit review.

"The conclusion of the staff's analysis is as follows:

"Staff has identified changes in the conduct of Gulf States Utilities Company (Gulf States) since the completion of the construction permit (CP) antitrust review that may have competitive significance in the Louisiana bulk power industry. Gulf States: (1) Has offered ownership shares in River Bend to power entities in Louisiana and Texas; (2) negotiated new interconnections and service agreements with other generating systems throughout Louisiana and adjacent States; (3) has joined with other power entities in the development and construction of additional non-nuclear base load generating facilities; (4) is serving new wholesale customers; (5) has provided transmission services to generating power entities in its service area; (6) has prepared a draft 'Power Delivery Agreement' to provide transmission services to non-generating entities; and (7) has curtailed or cancelled the construction of new generating plant and equipment, due in large measure to the slow down in projected load growth of Gulf States' system.

"Many of these activities, e.g., the offer of nuclear plant access, transmission service to generating power entities and various wholesale for resale agreements, represent changes in Gulf States' conduct as a result of commitments (and subsequent River Bend license conditions) made to the Department of Justice during the CP antitrust review. The River Bend license conditions and the changes which evolved as a result of the license conditions have provided smaller power systems the means to seek out alternative sources of power and energy and gain a foothold in the market occupied by a broad spectrum of power suppliers in Louisiana and surrounding States. The license conditions have provided a competitive stimulus among bulk power suppliers in Louisiana and surrounding States. At the same time, the license conditions have provided the customers of these power suppliers, i.e., smaller, less integrated power systems, the ability to purchase more cost effective sources of power and energy. Staff encourages more of these types of changes for they tend to promote the most cost efficient allocation of power and energy throughout the Louisiana bulk power market.

"One area of concern identified by staff in its review of Gulf States' activities since the completion of the CP review concerned allegations that Gulf States was unwilling to provide wheeling rights over its transmission system to non-generating power systems in it service area. The River Bend license conditions required Gulf States to provide transmission services to *generating* power entities. A refusal by Gulf States to provide transmission services to *non*-generating power entities was looked upon by staff as a change in Gulf States' conduct that could represent a significant change since the CP review and if any relief were required, it would evolve from an operating license antitrust review, not from a compliance proceeding. After review of the available data and contacts with Gulf States and other affected power entities in Louisiana, staff believes that the allegations pursuant to Gulf States' refusal to provide wheeling services to non-generating power entities is being resolved. Gulf States has (indirectly) offered wheeling services to a large number of non-generating power systems in Louisiana through its interconnection agreements with Cajun Electric Power Cooperative, Inc. (Cajun) and the Louisiana Energy and Power Authority (LEPA). Moreover, it appears that non-LEPA power entities without generating capability can now gain access to Gulf States' transmission system through the "Power Delivery Agreement" (PDA) proposed by Gulf States. (Although the PDA is presently in draft form, Gulf States has indicated to staff that the PDA will be made available to eligible entities requesting it. Staff will continue to monitor Gulf States' activities to determine if any eligible non-generating power system is refused wheeling services under the proposed PDA.)

"Staff believes that the changes which have occurred in Gulf States' relationships with smaller power systems in and adjacent to its service area since the completion of the construction permit antitrust review have been generally pro-competitive. Access to the benefits associated with large base load power plants has been made available to many smaller less integrated power entities incapable of financing such plants on their own. Through the implementation of the River Bend license conditions requiring wheeling, generating power entities in Louisiana (particularly the smaller systems) are now better able to supplement and coordinate their generation with other generating

systems. Moreover, through new agreements negotiated or presently being offered by Gulf States, non-generating power entities in and adjacent to Gulf States' service area now have access to alternative sources of power and energy via Gulf States' transmission system. As a result of these developments, staff is recommending that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the River Bend Nuclear Station.

"Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the River Bend Station, Unit 1 is not required."

Signed on April 2, 1985 by Darrell G. Eisenhut, Acting Director of Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 for 30 days from the date of the publication of the **Federal Register** notice. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

April 3, 1985.

[FR Doc. 85-8458 Filed 4-8-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8380]

Rocky Mountain Energy Co.; Draft Finding of No Significant Impact Regarding the Termination of Source and Byproduct Material License SUA-1228 for the Operation of the Nine Mile Lake In Situ Leach Research and Development Site, Natrona County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY:

(1) *Proposed Action.* The proposed administrative action is to terminate Rocky Mountain Energy Company's Source Material License SUA-1228 for the Nine Mile Lake In Situ Leach Research and Development site, at which complete ground-water restoration could not be achieved.

(2) *Reasons for Finding of No Significant Impact.* An Environmental Assessment was prepared by the staff of the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the conclusions resulting from the environmental assessment:

(a) The licensee, using the best practicable technology, conducted several episodes of restoration which temporarily improved ground-water quality, but were followed by periods of ground-water quality deterioration. Pattern 1 continues to act as a source of contamination at the Nine Mile Lake site. The mechanisms responsible for the release of contaminants are dissolution of precipitates, diffusion of dissolved species for low permeability zones into high permeability zones and solution channels, desorption of ions from clay and other minerals and possibly the presence of unrecoverable lixiviant.

Alternatives considered for removing or containing the remaining contamination included additional restoration involving ground-water sweep and recirculation, grouting of the contaminated area, use of reductants, and natural restoration. Additional restoration involving ground-water sweep and recirculation methods would be costly and would not be effective at eliminating the source of contamination, resulting in only temporary improvement in ground-water quality. Grouting techniques would not be effective methods of isolation since there is no feasible means of confirming that the contamination has been permanently contained. Additional injection and recovery operations probably would re-establish oxidizing conditions and actually increase concentrations of some of these elements. The use of reductants is not considered to be proven technology at this time, and may result in unpredictable complications at great cost. Natural restoration appears to be the best method for reducing the concentration of heavy metals.

(b) Prior to operation at the Nine Mile Lake site baseline water quality sampling showed water quality to be poor. Natural concentration of TDS, sulfate, radium, cadmium, iron, lead, manganese, mercury and selenium render this water unsuitable for domestic use, and natural concentrations of radium, mercury, selenium, and vanadium render it unsuitable for livestock use. Although some species such as radium and uranium tend to be associated with the uranium roll front deposit most species increase in concentration with distance from the recharge area. Local recharge from dry alkaline lake beds also contributes significantly to the mineralization of the ground water. Therefore, the incremental contamination caused by the ISL R&D operations is not significant when considering the natural quality of the ground water.

(c) Notification of hazards associated with the ground-water contamination at this site would be provided to the public via the Wyoming Department of Environmental Quality well permitting procedures. Therefore, the potential for future users of this ground water is greatly minimized.

In accordance with 10 CFR 51.32, the Director, Uranium Recovery Field Office made the determination to issue a draft finding of no significant impact to further the purposes of NEPA regarding an unprecedented action and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register.** The unprecedented action is the termination of a source material license for an ISL R&D site where ground water has not been completely restored. This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Suite 100, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW, Washington, D.C.

Dated at Denver, Colorado, this 29th day of March, 1985.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch I, Uranium Recovery Field Office, Region IV.

[FR Doc. 85-8459 Filed 4-8-85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14447 (812-6016)]

Baker, Fentress & Co.; Application for Order Permitting Certain Limited Partners To Engage in Affiliated Transactions

April 2, 1985.

Notice is hereby given that Baker, Fentress & Company ("Applicant"), Suite 3510, 200 West Madison Street, Chicago, IL 60660, a non-diversified, closed-end, management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on January 8, 1985, and an amendment thereto on March 14, 1985, for an order of the Commission pursuant to section 6(c) of the Act granting an exemption from the provisions of section 2(a)(3)(D) of the Act in connection with Applicant's proposed purchases of limited partnership interests in various limited partnerships. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

Applicant proposes to invest as a limited partner in various limited partnerships. Applicant represents that any such investments in limited partnerships would be limited to less than five percent of the equity of the partnership and would be made solely for investment purposes. Applicant further represents that it will limit its investment to those limited partnerships in which (a) the management is vested exclusively in the general partners(s) and (b) Applicant will have no power to control the affairs of the limited partnership or of the general partner(s).

Applicant states that as of December 31, 1984, it had total investments of $316 million, with $224 million invested in unaffiliated issuers, $46 million invested in a controlled affiliate ("Controlled Affiliate"), $1 million invested in non-controlled affiliates and $45 million invested in short-term obligations and bankers' acceptances. Applicant states that the Controlled Affiliate is engaged in the planned development of Florida real estate and the production and sale of citrus fruit.

Applicant believes that section 2(a)(3)(D) of the Act could be construed to mean that each limited partner of a limited partnership in which Applicant would invest (including Applicant) would be an affiliated person of each other partner. Consequently, Applicant asserts that, in the absence of exemptive relief, such limited partners and their affiliates would need to scrutinize each co-participant in every future transaction as as to assure that there would be no violation of section 17(d) of the Act or the rules and regulations thereunder. Applicant also asserts that a comparable problem exists for affiliated transactions under section 17(a) of the Act.

Applicant states that the problems described above are particularly acute given its ownership in the Controlled Affiliate, an active operating company with various business interests. Applicant contends that if it were to invest in a limited partnership, the Controlled Affiliate could from time to time have transactions with that partnership's other partners or their affiliates. Applicant submits that although certain of those transactions could be exempt from the prohibitions of section 17(a) of the Act and Rule 17d–1 thereunder pursuant to Rules 17a–6 and 17d–1(d)(5) under the Act, the statutory and regulatory burden for assuring that the persons referred to in such exemptive rules are not participating in the transactions is upon the partners of the limited partnership and their respective affiliates. Applicant asserts that it is neither possible nor fair to impose this burden on the limited partners of a limited partnership as an incidence of Applicant's investment therein.

Applicant states that the relief sought relates solely to the terms "partner" and "copartner" appearing in section 2(a)(3)(D) of the Act. Furthermore, Applicant states that any transactions involving affiliated persons of Applicant (other than "partners" or "copartners" solely by reason of their status as limited partners in a limited partnership) or affiliated persons of such persons on the one hand, and Applicant or the Controlled Affiliate on the other hand, will continue to be subject to the limitations contained in sections 17 (a) and (d) of the Act and the rules and regulations thereunder notwithstanding issuance of the requested order.

Applicant alleges that because the monitoring and operational problems associated with treating limited partners of a limited partnership as affiliated persons of Applicant are so severe, a limited partnership might not accept an investment from Applicant unless relief from the results described above is granted. Applicant submits that if investment companies such as Applicant were to be effectively precluded from investing in limited partnerships, the effect would be to deprive such companies of participation in attractive investment opportunities available to others and to deprive those partnerships of a significant source of capital.

Applicant submits that the requested exemption is consistent with the purposes fairly intended by the policy and provisions of the Act. In support of its exemptive request, Applicant notes that a comparable investment by a registered investment company in an enterprise organized in a corporate form as opposed to a limited partnership form would not lead to the restrictions on subsequent transactions by the co-investors of the registered investment company. Applicant further submits that none of the abuses intended to be remedied by the passage of the Act are inherent in the facts of the present situation.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8486 Filed 4–8–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14453; 812–6030]

CenTrust Mortgage Acceptance Corp.; Application for an Order Exempting Applicant

April 3, 1985.

Notice is hereby given that CenTrust Mortgage Acceptance Corporation ("Applicant"), 3217 N.W. 15th Terrace, Suite 307, Ft. Lauderdale, Florida 33309, a Delaware corporation, filed an application on January 23, 1985, and an amendment thereto on March 20, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940

("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant states that it is a limited pruposes financing corporation organized to facilitate the financing of long-term residential mortgages on one- to four-family residences, and that it will engage in no other business or investment activity. Currently, it is wholly-owned by CenTrust Mortgage Corporation, a Florida corporation which originates and sells mortgage loans on residential properties. Before commencing operations, Applicant plans to issue shares representing 50 percent of its outstanding voting securities to one or more unaffiliated entities for additional capital contributions.

Applicant intends to issue certain mortgage-collateralized obligations ("Bonds") secured by a trust indenture ("Indenture") with an independent trust ("Trustee"), supplemented by one or more supplemental indentures, which will each apply to a separate series of bonds (a "Series"). Bonds are to be sold to institutional and retail investors through investment banking firms, and each Series registered under the Securities Act of 1933, absent an appropriate exemption. Indentures for public offerings will be subject to the Trust Indenture Act of 1939.

The Bonds are to be collateralized by certain assets ("Mortage Collateral"), including (i) pledged mortgage loans ("Pledged Loans"), which will be secured by first mortgages or deeds of trust on one- to four-family residences, and originated by or on behalf of, or purchased by, home building companies, savings and loan associations, mortgage banking concerns, or other financial institutions, including CenTrust Mortgage Corporation ("Participants"); (ii) "fully-modified pass-through" mortgage-backed certificates, principal and interest on which is guaranteed by the Government National Mortgage Association ("GNMA Certificates"); (iii) Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"); (iv) Guaranteed Mortgage Pass-Through Certificates issued by the Federal National Mortgage Association ("FNMA Certificates") (GNMA Certificates, FHLMC Certificates and FNMA Certificates collectively, "Mortgage Certificates," each representing a fractional undivided interest in an underlying pool of mortgage loans); and (v) reinvestment earnings and distributions on (i)–(iv) above. Mortgage Collateral may also include certain proceeds accounts, debt service funds, reserve funds and insurance policies.

Participants, or their limited purpose finance subsidiaries ("Finance Companies"), may either sell or pledge Mortgage Collateral to Applicant in connection with the issuance of Bonds. In the case of a sale, the Participant will transfer title to Mortgage Collateral directly to Applicant in exchange for Bond issuance proceeds. In the case of a pledge, a participant will organize a Finance Company, to which it will transfer title to Mortgage Collateral. The Finance Company will enter into a funding agreement ("Funding Agreement") with Applicant, CenTrust Mortgage Corporation, or an affiliate of CenTrust Mortgage Company, which will make a collateralized mortgage loan ("CML") to the Finance Company in accordance with the Funding Agreement.

Pursuant to Funding Agreement entered into with CenTrust Mortgage Corporation, or an affiliate thereof (other than Applicant), a Finance Company will pledge Mortgage Collateral to CenTrust Mortgage Corporation or its affiliate as security for a CML; CenTrust Mortgage Corporation or its affiliate will sell the Funding Agreement to Applicant and the Mortgage Collateral will continue to secure such Funding Agreement; Applicant will issue a Series of Bonds; the proceeds of that Series will be transmitted to CenTrust Mortgage Corporation or its affiliate; Centrust Mortgage Corporation or its affiliate will use such proceeds to make the CML to the Finance Company, which in turn will apply the proceeds to the repayment of indebtedness incurred in funding or acquiring mortgage loans, or originating additional loans securied by one-to four-family residences; and the Finance Company will repay the CML by causing payments on the Mortgage Collateral to be made directly to the Trustee as needed to amortize principal and interest on the corresponding Series.

Where Funding Agreements are entered into directly between a Finance Company and Applicant, the Finance Company will pledge Mortgage Collateral to Applicant as Security for a CML; Applicant will issue a Series of Bonds; Applicant will use the Series proceeds to make the CML to the Finance Company, which will in turn use the proceeds to repay indebtedness incurred in funding or acquiring mortgage loans, or in originating additional loans on one- to four-family residences; and the Finance Company will repay the CML by causing payments on the Mortgage Collateral to be made directly to the Trustee on behalf of Applicant as needed to pay principal and interest on the corresponding Series.

Under any of the foregoing arrangements, Applicant will assign to the Trustee its entire right, title and interest in the Funding Agreements and the Mortgage Collateral as security for the Series.

Although the Bonds will not be redeemable by the Bondholders, Applicant states, they may be subject to special redemption if the Trustee determines that there is sufficient cash flow from Mortgage Collateral to service outstanding Bonds between scheduled payment dates. Additionally, all or a portion of a Series may be subject to redemption at the option of Applicant at any time on or after a "bond redemption date," when the aggregate principal balance of the Series has declined below the "bond redemption amount" as set forth in the Indenture and the prospectus, or in the private placement memorandum relating to that Series.

In support of its request for exemption, Applicant notes that a number of large homebuilders and lending institutions have issued mortgage backed bonds through wholly-owned finance companies, and that such finance companies have not been required to register under the Act, apparently on the strength of the exception to the Act's definition of investment company provided in section 3(c)(5)(c) of the Act, which removes any company not issuing redeemable securities, face-amount certificates of the installment type, or periodic payment plan certificates, and which is engaged in the business of acquiring mortgages and other liens on and interests in real estate, from the purview of the Act. Applicant submits that there is no reason deriving from public policy to require it to register under the Act merely because its objective is to facilitate the efforts of smaller institutions in employing the same financing mechanism, and thereby achieving the same economies of scale as the larger builders and lenders.

The Mortgage Certificates which are sold directly to Applicant as Mortgage Collateral may include both "whole pool," or "partial pool," Mortgage Certificates. Applicant asserts that both whole pool and partial pool Mortgage Certificates constitute "mortgages and other liens on an interest in real estate"

within the meaning of section 3(c)(5)(C), and that it should be exempted from the Act regardless of whether its assets consist primarily of, or its income is primarily attributable to whole or partial pool Mortgage Certificates.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securites and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

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[Release No. IC-14552; (File No. 812-5760)]

Energy Fund Inc., et al.; Application for an Amended Order in Connection With Loans of Portfolio Securities to an Affiliate

April 4, 1985.

Notice is hereby given that Energy Fund Incorporated, Guardian Mutual Fund, Inc., and the Partners Fund, Inc. (the "Funds"), all at 342 Madison Avenue, New York NY 10173, and registered under the Investment Company Act of 1940 ("Act") as open-end management investment companies, and Neuberger and Berman ("N&B", collectively with the Funds "Applicants"), at 522 Fifth Avenue, New York, NY 10036, filed an application on January 30, 1984, and amendments thereto on December 20, 1984 and January 28,1985, requesting an order pursuant to sections 6(c), 17(b), and 17(d) of the Investment Company Act of 1940 (the "Act") and Rule 17d–1 thereunder amending a previous order, Investment Company Act Release No. 11249, dated July 13, 1980 (the "Existing Order"), pursuant to sections 6(c), 17(b), and 17(d) of the Act and Rule 17d–1 thereunder that granted certain exemptions from the provisions of sections 17(a), 17(d), and 18(f) of the Act to the extent necessary to permit the Funds to make portfolio loans to N&B, subject to certain conditions. Applicants seek an amended order revising certain conditions of the Existing Order, including the method of calculating the collateral fees to be paid to N&B in connection with N&B's borrowing of portfolio securities from the Funds. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, to the Act and the rules thereunder for the text of their relevant provisions, and to the notice of the filing of the application for the Existing Order (Investment Company Act Release No. 11175, May 19, 1980) for a statement of its relevant provisions.

Applicants state that N&B is a New York Stock Exchange member firm that indirectly owns all of the outstanding stock of the corporation serving as investment adviser to each of the Funds, and that N&B itself serves as the Fund's subadviser. Absent the Existing Order, N&B would be prohibited by section 17(a)(3) of the Act from borrowing portfolio securities from the Funds because of its relationship with them.

Applicants assert that, because of major changes in the securities lending business since the filing of the prior application, it is not economically feasible for N&B to borrow any meaningful amount of portfolio securities from the Funds under the conditions set forth in the Existing Order. The Applicants further assert that because the Funds lack the necessary personnel and expertise in the securities lending business, the Funds are not able to lend any meaningful amount of their portfolio securities to borrowers other than N&B. Accordingly, the Applicants seek a number of modifications of the Existing Order. The proposed modifications have been considered and approved by the committees of disinterested directors of the Funds which have responsibility under the Existing Order for monitoring securities loan transactions between the Funds and N&B (the "disinterested director committees").

According to the application, in 1977, each of the Funds obtained shareholder approval to lend portfolio securities with a view to realizing additional income and an increased overall return. In such transactions, the borrowing broker secures its obligation to return the borrowed securities by depositing cash collateral equal to at least 100% of their market value with the lending Fund, and the lending Fund invests the cash collateral in a short-term, interest-bearing money market instrument such as an overnight repurchase agreement issued by the Fund's custodian bank. At the time of the loan, the borrowing broker and the lending Fund establish the portion of the earnings on the cash collateral invested by the Fund which is to be paid by the borrowing broker as a collateral fee. The lending Fund realizes additional income and hence an increased return by retaining the balance of such earnings on the collateral.

According to the application, under the Existing Order, the collateral fee rate at which the Funds are permitted to lend securities to N&B may not exceed a "Posted Rate" determined daily by averaging the rates paid to N&B by the three registered investment companies (other than the Funds) which on the preceding day had the largest market value of securities on loan to N&B. The Applicants assert that, as a result of the changes in the securities lending business, this formula regularly produces a Posted Rate which is substantially lower than, and hence uncompetitive with, the collateral fee rates at which N&B concurrently borrows securities from unaffiliated, non-investment company lenders. In support of this assertion, N&B has supplied data indicating that, over the four months ended December 31, 1983, the Posted Rate ranged from ⅝ of 1% to 1⅝% lower than the collateral fee rates actually paid to N&B in the preponderance of its securities borrowings form unaffiliated third-party lenders. The Existing Order relieves N&B of the obligation to borrow from the Funds securities which it can obtain from an unaffiliated third-party at a collateral fee rate which is at least ⅛ of 1% higher than the Funds' Posted Rate. Accordingly, since the Existing Order was granted, N&B has not borrowed a meaningful amount of securities from the Funds.

Applicants contend that the collateral fee rates paid by investment companies which lend their securities are not a suitable measure of the market because investment companies are not regular participants in the securities lending business. The Applicants believe that most investment companies (including the Funds) lack the internal capability in securities lending and do not have portfolios of the size and diversity needed to attract the attention of the large New York Stock Exchange member firms which are the principal borrowers of securities. N&B has advised the Funds that, like most such brokerage firms, N&B generally deals with investment companies as lenders of last resort when N&B requires securities in great demand but short supply; and,

in such cases, N&B usually borrows the securities at collateral fee rates well below those at which it borrows readily available securities. Thus, Applicants believe that the Posted Rate is not a fair and accurate reflection of collateral fee rates prevailing in the securities lending market.

According to the application, the disinterested director committees of the Boards of Directors of the Funds, after considering this situation, have approved certain proposed modifications of the Existing Order. The most significant of these modifications is a change in the method of calculating the Posted Rate that would permit the Funds to pay N&B collateral fees which more closely approximate the market rate evidenced by N&B's concurrent dealings with unaffiliated third-party lenders.

According to the applications, under the proposed modification, the Posted Rate would be computed on each business day on the basis of a weighted average of the collateral fee rates actually paid to N&B under securities borrowing contracts constituting, both in number and dollar amount, at least 66⅔% of all such contracts outstanding at the close of business on the last preceding business day. The Posted Rate so fixed for any business day would be applicable to each securities loan made by any of the Funds to N&B on such day, and would remain in effect for the duration of the loan, subject to renegotiation and adjustment by agreement of such Fund and N&B, in which case the Posted Rate fixed for the business day on which the adjustment is agreed upon would thereafter apply to the loan unless and until further adjusted in the same manner. The Funds would be required to renegotiate an outstanding securities loan to the current Posted Rate or to terminate the loan if, (i) the current Posted Rate declines to more than ½ of 1% below the Posted Rate applicable to the loan or (ii) the overnight repurchase rate at which the Fund invests collateral posted by N&B declines to no more than ½ of 1% above the Posted Rate applicable to the loan. If securities loaned to N&B are or become the subject of certain transactions which are likely to produce increased borrowing demand for such securities (e.g., a tender offer, exchange offer, business combination, acquisition or disposition, corporate reorganization or liquidation, bankruptcy proceeding or proxy contest), and N&B borrows securities of the same issue from an unaffiliated third-party lender at a collateral fee rate more than ⅛ of 1% lower than the Posted Rate then in effect with respect to the loan made by a Fund, such Posted Rate would be reduced to such lower collateral fee rate. If N&B borrows from an unaffiliated registered investment company at a collateral fee rate lower than the Posted Rate then applicable to an outstanding borrowing of securities of the same issue from any of the Funds, such Posted Rate would similarly be reduced to such lower collateral fee rate.

Applicants contend that the proposed modification establishes a formula for determining the Posted Rate that will be fair and reasonable in operation both to the Funds and N&B. N&B believes that, among New York Stock Exchange member firms, which constitute the principal borrowers of securities, it is one of the five largest securities borrowers. As a major participant in the securities lending business, N&B continually borrows securities from a large and diverse group of unaffiliated lenders, including other brokerage firms and institutional investors such as banks, insurance companies, pension and profit-sharing funds, charitable foundations and educational institutions, all or most of which have committed substantial resources and personnel to the development of expertise and capability in the securities lending business. In such transactions, N&B negotiates collateral fee rates at arms length, taking into account not only its own desire to realize profits from such transactions, but also the borrowing competition it faces from other brokerage firms, many of which are substantially larger than N&B. For these reasons, Applicants believe that N&B's securities borrowing activities are a fair representation of the marketplace, and that the collateral fee rates at which N&B makes the preponderance of its securities borrowings from unaffiliated third-party lenders are a fair reflection of prevailing market rates.

Applicants assert that in considering these matters, the Funds have also given weight to the fact that, with the modifications described above, the Existing Order would place the Funds in a more favorable position with respect to their securities loans to N&B than they would be in with respect to securities loans to unaffiliated third-party borrowers. Thus, as indicated above, the modified formula for computing the Posted Rate would include "most favored nation" arrangements with respect to securities loaned to N&B which are or become the subject of a publicly announced transaction that is likely to create increased borrowing demand for such securities and with respect to securities loaned to N&B by other registered investment companies. In addition, the amended order would continue in effect conditions of the Existing Order obligating N&B (i) to reimburse each Fund for any economic loss it may incur by reason of an excess of the costs it incurs in lending securities to N&B over its earnings from such loan, and (ii) to borrow from the Funds securities required by N&B which the Funds are willing to lend at the current Posted Rate unless N&B can borrow the same securities from a third-party lender at a collateral fee rate at least ⅛ of 1% higher than such Posted Rate. Finally, under a new condition proposed for inclusion in the amended order, N&B would be required to pay over to each Fund, on a quarterly basis, certain "excess earnings" that N&B would otherwise have derived from the relending of securities borrowed from the Fund.

Apart from the changes described above, the Applicants propose a number of other modifications of the conditions of the Existing Order. These may be summarized as follows:

(1) It is proposed that seven conditions of general applicability to securities loans made by the Funds be deleted from the amended order. The Applicants state that in their place the Board of Directors of each Fund will adopt a set of operating procedures governing securities loans to unaffiliated third-party borrowers. The proposed operating procedures would be substantively identical to the general conditions in the Existing Order in all but the following respects:

(a) Each Fund would be permitted to accept as collateral for a securities loan to an unaffiliated borrower, in addition to cash and United States government securities, any other form of collateral permitted by Regulation T and Rule 15c3–3 under the Securities Exchange Act of 1934. However, the amended order would retain a condition of the Existing Order requiring N&B to collateralize all of its borrowings from the Funds with cash;

(b) An existing requirement that a lending Fund realize a "reasonable" return from each securities loan would be modified to provide that such return be "determined by an investment officer of the fund to be reasonable within general guidelines established by the Fund's Board of Directors." Applicants state that this modification is intended to establish a more objective standard which can be audited by their independent public accountants;

(c) An existing requirement that any custodial fees paid by a lending Fund in

connection with a securities loan be "reasonable" would be replaced by a requirement that any such fees be "paid to the Funds' regular Custodian pursuant to a fee schedule approved by the Fund's Board of Directors." The Funds state that this modification accords with their actual operating practice;

(d) A condition which now limits the market value of securities loaned by any of the Funds to 10% of its total net assets would be modified to permit each Fund to lend securities having a market value of up to 30% of its total net assets, but the modified condition would impose a 10% sublimit on loans to do any single borrower.

(2) It is proposed that a condition relating to transactions in which N&B acts as a finder for third-party borrowers be deleted from the Existing Order. Applicants state that in conducting its securities borrowing and lending activities, N&B acts as principal for its own account and at its own risk, and does not act as finder, broker or agent for any lender or borrower of securities. Applicants further state that, in a substantial majority of cases, N&B borrows securities from brokers and institutional lenders with a view to relending such securities to other brokerage firms, most of which are major participants in the securities lending business who would be acceptable as borrowers of securities from the Funds under criteria established by their Boards of Directors. On this basis, the Applicants propose that the deleted condition be replaced by a new condition which states that N&B will act as principal for its own account and at its own risk in borrowing securities from the Funds and in relending such securities to third-party borrowers but which goes on to provide that, if during any calendar quarter, N&B's earnings from the relending of securities borrowed from any Fund exceed the Fund's earnings from such loans to N&B by more than ⅛ of 1% per annum of the average market value of the securities loaned, N&B will pay over such excess earnings to the Fund. The Applicants assert that this condition will insure that N&B does not derive excessive profits from the relending of securities borrowed from the Funds.

(3) As previously noted, it is proposed that an existing condition of general applicability limiting the securities loans of each Fund to 10% of its total net assets be deleted from the amended order, and that, in lieu thereof, each Fund adopt an operating procedure limiting its securities lending to 30% of its total net assets and imposing a sublimit of 10% of total net assets on loans to any single borrower. In order to take account of these modifications, it is proposed that the amended order contain a new condition making the 10% sublimit specifically applicable to securities loan transactions between each Fund and N&B.

(4) It is proposed that the amended order contain a new condition obligating each fund to maintain and preserve permanently in an easily accessible place a written copy of the operating procedures (and any modifications thereof) which are followed in lending securities and to maintain and preserve for a period of not less than six years from the end of the fiscal year in which any securities loan occurs, the first two years in an easily accessible place, (i) a written record of each securities loan setting forth the number of shares or face amount of securities loaned, the loan fee received or Collateral Fee paid, the identity of the borrower and the terms of the loan and, (ii) a written record of the information and documentation considered and the deliberations and actions taken by the committee of disinterested directors of the Fund in connection with the discharge of its responsibility to review securities loans made by the Fund to N&B. Applicants state that the purpose of this condition is to make the Funds recordkeeping obligations associated with their securities lending activities similar to those imposed by Rule 17e-l(c) of the Act on registered investment companies which rely on that Rule in buying and selling securities through affiliated brokerage firms.

The Applicants submit that the amended order sought by the Application will ensure that all transactions involving securities loans by the Funds to N&B will be reasonable and fair to both the lending Funds and to N&B, consistent with the Fund's investment policies, and will not involve overreaching by any party, and that such amended order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further submit that such amended order will enable the Funds to lend their portfolio securities to N&B on a regular basis, thereby enabling the Fund to realize substantially greater income at lower cost and reduced risk than would result from the lending of portfolio securities of the Funds to unaffiliated third-party borrowers, and, in this manner, will produce the additional return to the shareholders of the Funds that the Existing Order was intended but has failed to produce.

Applicants finally request that any amended order issued on the application be made applicable to any other registered investment company which invests primarily in equity securities and for which N&B or any subsidiary of N&B is now acting or hereafter acts as investment adviser or sub-adviser, provided that such company files with the Commission a written undertaking, accompanied by the resolutions of its Board of Directors or Trustees which authorize and implement the undertaking, (i) to adopt and maintain operating procedures of general applicability to such company's securities loans which are similar in substance to the operating procedures followed by the Funds, and (ii) to adopt and be bound by all of the conditions of the amended order in connection with any securities loans made by such company to N&B.

Notice is further given that any interest person wishing to request a hearing on the application may, not later than April 29, 1985, ate 5:30 p.m. do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8497 Filed 4-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21916; File No. SR-Amex-85-1]

Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc.; Regarding Restrictions of Persons Affiliated With Specialists or Specialist Units.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 19, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission

Amendment No. 1 to the above filing to reflect changes to the Statement of Purpose in Item II. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.[1]

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

(a) The American Stock Exchange, Inc. (the "Exchange"), is proposing to amend Rules 190 and 193 to permit an approved person or member organization which is associated with a specialist or specialist unit (collectively referred to herein as an "affiliated upstairs firm") to:

- Trade specialty securities
- Trade options on specialty stock
- Engage in business transactions with the issuer (or insider) of specialty stock or stock underlying specialty options
- Accept orders in specialty securities from the issurer, its insiders and institutions, and
- Perform research and advisory services with respect to specialty securities.

provided certain conditions are met which result in the establishment of an Exchange approved "Chinese Wall" between the upstairs firm and the specialist unit on the floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

For many years Amex rules have imposed restrictions on stock specialists and on various persons affiliated with specialists or specialist units.[2] These rules have stood as serious obstacles to attracting diversified, well-capitalized retail firms to act as specialists at the Exchange. In general, these rules prohibit specialists, their member organizations, and their corporate parents, from engaging in business transactions with issuers of specialty stocks (or insiders of such issuers); from "popularizing" specialty stock, *i.e.*, making recommendations and providing research coverage; from accepting orders in specialty stocks from the issuer, insiders, and institutions; from trading in options on their speciality stocks; and from trading in specialty securities, except pursuant to market making functions. As a result, with some exceptions, diversified retail firms with corporate finance, retail sales and research departments have avoided the specialist business since they would be required to curtail or eliminate many of their present business activities as they relate to specialty stocks.

These restrictions derive principally from a concern that any business relationship between a listed company and its specialist could either give rise to the improper transmission or use of material non-public corporate or market information or to conflicts of interest. It was felt that specialists, due to their unique position in the market, should carry out their market making responsibilities free of any outside influences or undertakings. The restrictions on specialists were extended to cover "approved persons" or affiliated upstairs firms of a specialist unit whose business relationships with issuers raised similar conflicts of interest problems, so they would not be placed in a more advantageous position vis-a-vis other market participants because of their association with the specialist unit.

The regulatory and competitive environment has changed materially since these rules were first adopted in the early 1960's. At that time specialists had a measure of control over markets in their specialty stock which has been greatly eroded due to a number of circumstances, including the adoption of SEC Rules 19c–1 and 19c–3,[3] and the increasing competitive vigor of both the over-the-counter market and the regional exchanges. Further, the steady increase in member firm block trading activity reduced the control specialists were perceived to have over the market in their specialty stocks. Today, there is no longer a continuing need for these prohibitions, as they relate to affiliated upstairs firms, in light of the highly sophisticated surveillance techniques in effect at the Exchange and increased competition from other markets. These diversified firms now specializing on the Exchange have for some time asked the Exchange to ease these restrictions. Similar restrictions are not imposed on over-the-counter market makers, and the NYSE, which does have similar rules, is currently actively studying their revision.[4] Moreover, both the Pacific Stock Exchange and the Boston Stock Exchange, which were not required to adopt such restrictions (apparently because they were not the primary market in most of the stocks traded there) have recently taken steps to attract major retail firms to their floors. Relaxation of the rules restricting the activities of affiliated upstairs firms will assist the Exchange in remaining competitive with these other markets.

Specifically, the Exchange proposes to amend Rule 193, concerning affilitated persons of specialists, to provide an exemption (for the affiliated upstairs firm only) from: the trading restrictions pertaining to purchases or sales of specialty stock for the account of an approved person, as specified in Rule 170; the prohibitions placed on an approved person's trading in options on speciality stocks, as specified in Rule 175; the prohibition against "popularizing" specialty stocks, as specified in Commentary to Rule 190; the prohibition against entering into business transactions with the issuers (or insiders) of specialty stocks, as specified in Rule 190(a); and the prohibition against accepting orders in specialty stocks from the issuer, insiders

[1] While this notice of filing of the Amex proposal requests public comment on the proposed rule change, the Commission expects to issue a separate release relating to the affiliation of an exchange approved person or member organization with a specialist or specialist unit. In its release the Commission will pose specific questions relating to the affiliation of an upstairs firm with a specialist unit. Prospective commentators, therefore, may wish to consider whether to comment on the instant filing or the Commission's separate release.

[2] The rule apply to "approved persons" which refers to an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is either controlled by or under common control with a member or member organization, or which is the owner of a leased membership.

[3] Rule 19c–1 eliminated off-board trading restrictions on most agency transactions. Rule 19c–3 precludes exchange off-board trading restrictions from applying to securities that were listed on an exchange after April 26, 1979.

[4] The NYSE issued a Special Membership Bulletin on July 26, 1984 which described a "functional regulation" concept, similar to the Amex proposal, that would exempt firms associated with a specialist unit from a number of similar NYSE specialist restrictions if its terms were met.

and institutions, as specified in Rule 190(b). In addition, since certain of Rule 190's prohibitions are extended to options specialist by Rule 950(k) upstairs firms will be exempt from those prohibitions, as well. This exemption will only be available to an approved person or other affiliated upstairs member organization which obtains prior Exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated specialist, *i.e.*, *a* "Chinese Wall". Formal Exchange Guidelines which firms, as stated above, will be required to meet in establishing these procedures are discussed below.

The Chinese Wall. Today, many diversified retail firms have established internal policies and procedures, known as Chinese Walls, restricting inter-departmental flow of material non-public information about the firm's corporate clients.[5] The goal of these procedures is to prevent the communication of unpublished price-sensitive information about issuers of publicly held securities to those departments of the firm which might misuse the information for market trading purposes. The Chinese Wall concept operates on the principle that adequate control over access to inside information will preclude its misuse and reduce conflicts of interest problems. In diversified securities firms, personnel in the retail sales, research and investment advisory divisions are generally denied access to information held by the firm's investment banking division. Usually this is accomplished by an express policy statement which prohibits personnel who have knowledge of material non-public information about a publicly held corporation from communicating that information to personnel in other departments of the firm. In addition, some firms bolster their walls by restricting access to files containing non-public information, controlling personnel transfers between departments, physically separating the "knowledgeable" department from the remainder of the firm, or by creating a separate subsidiary or affiliate.

Any firm wishing to obtain an exemption for its non-specialist activities from the restrictions specified in amended Rule 193 must establish a Chinese Wall in conformity with Exchange Guidelines between the specialist unit and its affiliated upstairs member firm. The exemption is voluntary. Any affiliated upstairs firm not wishing to satisfy the Exchange criteria will remain subject to the restrictions discussed above.

The Chinese Wall envisioned in these rule changes will be designed to preclude the flow of corporate or market information, including the positions of the specialist and the condition of his book, between the specialist member organization and any operational unit or department of the affiliated upstairs firm. Once in place, these procedures will substantially lessen the need for the prohibitions contained in the rules discussed above to the extent they apply to upstairs firms affiliated with specialists. The restrictions themselves would remain in effect as to the specialist organization itself.

The Guidelines. In substance, the proposed Guidelines set forth minimum requirements to be met by a firm seeking the exemption of Rule 193. Specifically, under the Guidelines: A firm seeking the exemption must organize the operations of the upstairs affiliated firm and its associated specialist unit in such a way that the activities of each entity are clearly separate and distinct. The affiliated upstairs firm and its associated specialist organization will be required to be organized as separate organizations. At a minimum, the two organizations will be required to maintain spearate and distinct books, records and accounts and each satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated upstairs firm and its specialist organization to be under common management, in no instance will either organization be permitted to exercise influence over or control the other's conduct with respect to particular securities.

The affiliated upstairs firm and its specialist organization will be required to establish written procedures, to be submitted for Exchange approval, to preclude the flow of material, non-public or market information derived from either the activities or positions of the specialist or the activities and positions of the upstairs firm. These procedures must designate and specifically identify the individual(s) within the upstairs firm with responsibility for maintenance and surveillance of such procedures. The Guidelines leave the responsibility of establishing a system of policies and procedures necessary to avoid a violation of Exchange rules to the member firm seeking the exemption. The Exchange, however, must approve the procedure established before any exemptions will be granted. Moreover, the Exchange will continue to monitor the effectiveness of the Wall through audit procedures, as described below.

If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the upstairs firm are acceptable under the Guidelines, the Exchange will inform the firm, in writing, at which point the affiliated upstairs firm may act in reliance on the exemption in Rule 193. Absent such prior written approval, the firm will not be entitled to act in reliance on the exemption.

The Guidelines also require that all orders in a specialty security for a proprietary account of an affiliated upstairs firm, other than orders left with the specialist for execution or orders to be executed in a cross-transaction to facilitate executions of customer orders in the normal course of its block positioning activity, must be executed by a broker not affiliated with the upstairs firm.

The specialist organization may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its specializing activity to any other broker and in the same manner that it would make information available to any other broker. The specialist organization may only make such information available to a broker affiliated with the upstairs firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information.

Where an affiliated upstairs firm "popularizes" a specialty security it must disclose that an associated specialist makes a market in the security, may have a position in the stock, and may be on the opposite side of public orders executed on the Floor of the Exchange in the stock, and the firm will have to notify the Exchange immediately after the issuance of a research report or written recommendation. Firms must take appropriate remedial action against any person violating the Guidelines and/or the firm's internal compliance and audit procedures. The Exchnage may, if necessary, take appropriate action, including (without limitation) reallocation of specialty securities and/or revocation of the exemption provided in Rule 193, in the event of such a violation. If the affiliated upstairs firm intends to clear proprietary trades of the specialist organization procedures must be established to ensure that information with respect to such

[5] Chinese Walls have gained wide acceptance in multiservice securities firms, as well as in commercial banks, investment companies, insurance companies and similar entities, as a means of minimizing legal hazards flowing from the possession of sensitive, non-public information and perceptions of conflicts of interest.

clearing activities will not be used to compromise the firm's Chinese Wall. The procedures followed must, at a minimum, be the same as those presently used by the firm to clear trades of third parties. Only firms that currently clear third party trades will be permitted to self-clear for the specialist organization. Finally, no individual associated with an affiliated upstairs firm may trade as a Registered Trader, a Registered Equity Market Maker, or a Registered Options Trader in any stock or option in which an associated specialist organization specializes.

Surveillance and Oversight.—First, as mentioned above, firms seeking the exemption will be required to apply, setting forth in writing the compliance and audit procedures they propose to implement, together with the persons within the firm responsible for such compliance. In assessing these applications, the Exchange will be concerned not only with whether the procedures meet the Exchange's Guidelines, but also with the level of capability of the firm's compliance personnel and the firm's past record for meeting the Exchange's overall compliance requirements.

Second, the existing market surveillance conducted by the Exchange is already far more detailed and sophisticated than its capabilities of the early 1960's and is aimed at uncovering the types of trading activities which gave rise to the restrictions which have historically governed specialists. Thus, unusual trading activity, whether by the specialist or by others, indicating a possible breach of the Wall is likely to be exposed by existing daily transaction journal and computer exception reports. This capability will be made even stronger upon the forthcoming completion of the Equities Audit Trail which will enable the Exchange to reconstruct the market more rapidly to determine, among other things, if a specialist's trading activities are consistent with its marketmaking responsibilities.

Third, the Exchange will in addition develop new surveillance and inspection programs specifically aimed at firms enjoying exemptions under Rule 193, as a means of bolstering the continuing regulatory oversight of the Chinese Wall's effectiveness. In this respect, as is set forth in more detail below, additional reports of upstairs research and trading activities will be required, and exchange inspections personnel will conduct both regular and special inspections to assure that these firms are in fact maintaining and internally policing their Chinese Wall procedures.[6]

A. *Proprietary Trading—Rule 170.* Rule 170(e) presently prohibits a member, officer, employee or approved person who is affiliated with the specialist or specialist organization from trading in specialty stocks. Amended Rule 193's exemption will allow an affiliated upstairs firm to effect proprietary trades in specialty securities free of these specialist restrictions provided it has adopted written procedures to prevent individuals at the affiliated upstairs firm who direct day-to-day trading decisions for proprietary accounts from receiving knowledge of the specialist's book or trading activities. Thus, the affiliated upstairs firm will not be placed in a more advantageous position vis-a-vis other market participants, and proprietary trading by the upstairs firm will not be any different than similar trading effected by other firms not affiliated with the specialist. Similarly, the specialist unit will be insulated from any information concerning the upstairs firm's business relations with an issuer which could affect his market making responsibilities. The Exchange will augment its surveilance for possible breaches of the Wall by requiring daily reports of all proprietary trades in specialty stocks directly from the affiliated upstairs firm which will then be compared to specialist positions and market making performance.

In addition, as mentioned above, Exchange Guidelines provide that all orders in a specialty security for a proprietary account of an affiliated upstairs firm of the specialist, other than orders left with the specialist for execution, or orders to be executed in a cross-transaction to facilitate executions of customer orders in the normal course of its block positioning activity must be executed by an unaffiliated broker. In addition, the specialist organization may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its specializing activity to any other broker and in the same manner that it would make information available to any other broker. The specialist organization may only make such information available to a broker affiliated with the upstairs firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information. This will assure that no preferential treatment occurs in the handling of orders.

B. *Overlying Options—Rule 175(a).* Rule 175(a) prohibits specialists and their member organizations from trading options on any security in which they are registered as a specialist. Amended Rule 193 will allow an affiliated upstairs firm to trade options on specialty stocks for its own account, whether for trading or hedging purposes, thus enabling it to take full advantage of the stock trading exemption discussed above. The Exchange will institute a special surveillance routine for abusive trading by receiving and analyzing daily options trading reports and comparing them to underlying stock trading by the parent firm and the specialist.

C. *Business Transactions with the Issuer—Rule 190(a).* Presently, Rule 190(a) prohibits any business transactions between a stock specialist, his member organization or parent firm and the issuers and insiders of their specialty stocks. Amended Rule 193 will provide an exemption to permit affiliated upstairs firms to engage in the full gamut of legitimate business transactions. Thus, affiliated upstairs firms will be permitted to engage in underwriting,[7] merger and acquisiton or

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[6] The usefulness of the Chinese Wall concept has been recognized by the Commission in other contexts. For example, in the tender offer area, Rule 14e-3(b) provides that a multiservice firm will not be held in violation of the "disclose or abstain" aspects of the rule if the individuals making the decision to trade in the affected securities did so unaware of inside information possessed by other individuals in the firm, provided the institution itself has established reasonable policies to ensure that such individuals do not receive inside information, *i.e.*, a Chinese Wall. Similarly, the Commission's statements regarding the then proposed Insider Trading Sanctions Act, enacted in 1984, indicate that a multiservice firm with an effective Chinese Wall would not be liable for trades effected on one side of the Wall, notwithstanding inside information possessed by firm employees on the other side.

[7] In order to facilitate use of the exemption provided in proposed Rule 193, the Exchange will request that the Commission provide either exemptive relief or a "no-action" position with regard to Rules 10b-6 (underwriting) and 10a-1 (short sales) under the Securities Exchange Act of 1934.

SEC Rule 10b-6 prohibits persons who are engaged in a distribution of securities from bidding for a security which is the subject of the distribution until they have completed their participation in the distribution. An exception to Rule 10b-6 for affiliated upstairs firms complying with Rule 193 is necessary if the specialist is to be permitted to perform his affirmative market obligations during a distribution in which the affiliated upstairs firm is a participant.

SEC Rule 10a-1 governs short sales and requires "netting" stock positions to determine whether an entry is net short or net long. A firm seeking to abide by the exemption offered in proposed Rule 193 could not comply with the provisions of Rule 10a-1 and still preserve the integrity of a Chinese Wall since the Wall requires that there will no be sharing of information with respect to the specialty stock positions of the specialist and its affiliated upstairs firm. Thus, Rule 10a-1 should not be interpreted by the Commission to require the

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other corporate finance activities on behalf of a specialty issuer. These examples, however, are provided for illustrative purposes only, and by no means are intended to be all-inclusive. With a properly functioning Chinese Wall it should not matter whether the business in question is conducted by the affiliated upstairs firm or some other firm. For the Exchange to conduct surveillance in this area the Securities Division, which monitors the business activities of Amex-listed companies, will direct relevant information to the Trading Analysis Division which can then review specialist activity in light of the possibility that the specialist obtained and traded upon material non-public information, or that the specialist was influenced by knowledge of business dealings by the parent firm, in carrying out his market making responsibilities.

D. *Institutional Orders—Rule 190(b).* Rule 190(b) prevents a specialist or his member organization from accepting orders in its specialty securities directly from designated institutions. It does not permit the acceptance by specialists of institutional orders when acting as agent for another member or member organization of the Exchange. Historically, the Exchange has interpreted Rule 190(b) to apply to all approved persons, including the affiliated upstairs firms, even though its language refers only to a specialist, his member organization and any corporate subsidiary. The rule is concerned with preventing large institutions from using their influence unduly, for example, to obtain access to information regarding the specialist's book, or affect the actions of the specialist unit, or receive favorable treatment in the execution of their orders. This prohibition is unnecessary if a firm complies with the Exchange's Guidelines since the Chinese Wall structure will prevent the specialist and the affiliated upstairs firm's institutional trading department from prearranging any favorable executions. Further, once an order is presented on the floor, Exchange surveillance and the discipline of the Amex floor trading rules will prevent any preferential treatment by the specialist. Therefore, amended Rule 193 will provide an exemption from Rule 190(b) to allow the acceptance of orders in specialty securities directly from issuers, insiders, and institutions. For purposes of clarification, Rule 190(b) has been amended to add the term "approved persons" so that upstairs firms not obtaining Rule 193's exemption remain subject to Rule 190(b)'s restrictions.

E. *Popularizing—Commentary to Rule 190.* An approved person or affiliated upstairs firm of a specialist unit is prohibited from "popularizing" a specialty stock by Commentary to Rule 190. This restriction is concerned with conflicts of interest and potential for market manipulation where the upstairs firm makes recommendations, solicits orders or issues research reports concerning a stock in which its associated specialist is registered and may have a significant position as principal. However, a Chinese Wall which operates in the manner required by the Exchange Guidelines is designed to draw a curtain between the upstairs firm and its specialist affiliate. Thus, the specialist will be unable to obtain advance knowledge of the firm's recommendations. Further, by permitting affiliated upstairs firms to issue research reports the Exchange will enhance the flow of public information about its listed companies thereby providing a tangible benefit to the investing public. Therefore, an approved person or member organization which is affiliated with a specialist member organization and entitled to the exemption provided in amended Rule 193, will be permitted to popularize a specialty security, provided that it makes disclosures that an associataed specialist makes a market in the security, may have a position in the stock, and may be on the opposite side of public orders executed on the Floor of the Exchange in the stock. The Exchange also will require affiliated upstairs firms to notify it immediately after they issue research reports or written recommendations. This will facilitate the institution of timely trading studies.

(2) Basis

The proposed amendments are consistent with Section 6(b) of the Exchange Act in general and further the objectives of Sections 6(b)(5) and 6(b)(8) in particular in that they are designed to remove impediments to and perfect the mechanism of a free and open market, to protect investors and the public interest by removing barriers to entry into specializing and encouraging competition in specializing, and to remove burdens on competiton not necessary or appropriate. The proposed amendments are also consistent with Section 11A(a)(1)(C) in that it will promote competition among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes are intended to reduce burdens on competition which were excessive since they created disincentives to specializing without any offsetting regulatory benefits.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accrodance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by April 30, 1985.

Dated: April 2, 1985.

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specialist unit and its segregated upstairs firm to "net" their respective stock positions to determine whether the two entities are in aggregate, net long or net short for purposes of the Rule.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8493 Filed 4-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21910; File No. SR-AMEX-85-4]

Self-Regulatory Organizations; Proposed Rule Changes, American Stock Exchange, Inc., Relating to Changes to Rule 602 (Designation of Arbitrators), Rule 605 (Initiation of Proceedings), Rule 606 (Rules of General Application), Rule 601 (Panel of Arbitrators) and Disciplinary Rule 12 (Disclosure of the Result of Disciplinary Proceeding)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 21, 1985 the American Stock Exchange, Inc. ("Amex" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Amex is proposing to amend its arbitration rules to conform them to recent changes in the securities industry's Uniform Arbitration Code concerning public customers versus member arbitrations and to change the process by which arbitrators are appointed, and its disciplinary rules to provide for the publicity of summary disciplinary proceeding decisions. The Amex included the text of the proposed amendments in its filing with the Commission.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Changes

The self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes in its filing with the Commission. The test of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

SICA Rule Changes

A uniform arbitration code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), which is composed of representatives of the Amex, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of public customer versus member arbitration procedures. The proposed rule changes are intended to conform the Amex's arbitration rules to the most recent amendments to the Uniform Code.

1. *Designation of Number of Arbitrators.* Presently, Rule 602(a) provides that: one public arbitrator is appointed for customer controversies involving an amount not exceeding $5,000; a three member panel comprised of two public arbitrators and one industry arbitrator is appointed where the amount in controversy is greater than $5,000 and does not exceed $100,000; and a five member panel comprised of three public arbitrators and two industry abritrators is selected where the amount in controversy exceeds $100,000. Rule 602(a) is proposed to be amended to require a five member panel only in cases where the amount in controversy is $500,000 or more. Even in that instance, parties will be permitted to agree in writing to having their dispute determined by a three member panel. The majority of the panel would in either case consist of public arbitrators.

In cases where the amount in controversy exceeds $100,000, it is usually necessary to schedule multiple hearing sessions. Reducing the panel size from five to three will reduce scheduling difficulties which delay the ultimate resolution of a case. Further, the proposed amendment will reduce the Exchange's costs and enable it to use arbitrators on more cases.

2. *Answer-Defenses.* As the volume of arbitrations has expanded throughout the industry, some respondent brokerage firms are failing to file answers on a timely basis, thereby delaying the expeditious resolution of those cases. While civil court practice and the Exchange's own disciplinary rules provide recourse for the failure to submit an answer, there is no comparable rule for arbitration proceedings.

A proposed amendment to Rule 605(b) would permit the arbitrators, within their discretion, to bar a respondent, responding claimant, cross-claimant or third party respondent from presenting any matter, argument or defense at the hearing where such party has failed to file an answer within twenty business days from receipt of service or within a time extention granted by the Director of Arbitration.

3. *Adjournment.* The most frequent cause of delay in arbitration proceedings is a last minute adjournment request from one of the parties. This is inconvenient for the panel members and the opposing party, who have each set time aside for the hearing, and adds to the Exchange's administrative costs. At the American Arbitration Association, which administers' approximately 40,000 arbitrations a year, an adjournment fee is routinely imposed on the party making such a request.

The proposed amendment to Rule 606(e) would require a party requesting an adjournment to pay a fee equal to his filing fee but no more than $100, once a panel of arbitrators has been appointed. It is expected that this adjournment fee will discourage adjournment requests and help cover the attendant costs of processing them. The proposed amendment also provides that the fee may be waived by the arbitrators or returned in the arbitration award.

Selection of Arbitrators

Rule 601 provides that Exchange arbitrators shall be selected by the Chairman of the Exchange, subject to the approval of the Board. It is proposed that Rule 601 be amended to empower the Chairman to approve all arbitrators without Board approval.

This amendment would conform Amex rules to the arbitration rules of the NYSE, NASD and CBOE. Amending the rule as proposed recognizes that arbitrator selection is a managerial function, and it would allow the Exchange to quickly add new arbitrators to its roster, thereby avoiding scheduling delays. The Board will be kept apprised on a periodic basis of the Exchange's roster of arbitrators.

Disclosure of the Result of Summary Disciplinary Proceedings

In the case of formal disciplinary proceedings, Exchange Disciplinary Rule 12 requires public announcement of results unless the offense relates solely

to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors. Formal proceedings normally involve serious violations of Exchange rules or federal securities laws and are heard by Disciplinary Panels. Summary proceedings, which are heard by Disciplinary Committees, are typically concerned with more technical or procedural rule violations. Since the matters which come before a Disciplinary Committee generally involve offenses which fall within the two-part exception to Rule 12, such matters are not usually publicized.

However, Rule 12, is not now expressly applicable to summary proceedings. Article V, Section 1(e) of the Constitution, requires the Exchange to ". . . adopt rules governing the announcement of the result of *any* disciplinary proceeding conducted pursuant to the provisions of this Article . . ." (emphasis added) it is proposed to amend Rule 12 to make clear that the existing standard for Disciplinary Panels applies to Disciplinary Committees as well.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule changes will impose any burden on competition. The arbitration rule changes will further uniformity of regulation within the securities industry. The disciplinary rule change merely codifies existing policy.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any Person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitteted by April 30, 1985.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: March 29, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8490 Filed 4-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21817; File No. SR-MSRB-85-2]

Self-Regulatory Organizations; Order Approving Rule Change by Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB") on February 5, 1985 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") to amend MSRB Rule A-12, which provides that municipal securities brokers and municipal securities dealers must pay the MSRB an initial fee, to make it clear that such a broker or dealer must comply with MSRB Rule A-12 before initiating any municipal securities activities.

MSRB Rule A-12 applies to all municipal securities brokers and municipal securities dealers, including those engaged in lines of business in addition to municipal securities activities and those effecting only occasional municipal securities transactions. At present, the rule does not specifically address the situation that arises when a securities firm that is not engaged in municipal securities activities registers with the Commission and later decides to engage in municipal securities activities.

The rule change will clarify MSRB Rule A-12. It will make explicit that payment of the initial fee is a prerequisite to engaging in a municipal securities business. It also will simplify the language of the rule by deleting the new irrelevant references to the 1975 deadline for compliance by firms already registered with the Commission by virtue of doing business in non-exempted securities. In addition, it will delete the reference to the ten day period after Commission registration for compliance by municipal securities-only firms and dealer banks which the 1975 amendments to the Act had required to register with the Commission for the first time.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 21772 (50 FR 7680, February 25, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to the MSRB and, in particular, the requirements of section 15B and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 2, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8495 Filed 4-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23647; 70-7094]

Applications; Cleveland-Cliffs Inc., et al., Notice of Proposed Acquisition of Utility Securities

April 2, 1985.

Cleveland-Cliffs Inc. ("CCI"), 14th Floor Huntington Building, Cleveland, Ohio 44115-1448, an Ohio Corporation and The Cleveland-Cliffs Iron Company ("Cliff"), 14th Floor Huntington Building, Cleveland, Ohio, 44115-1448, also an Ohio Corporation and an exempt holding company under section 3(a)(3)(a) of the Public Utility Holding Company Act of 1935 ("Act") have filed an application with this Commission pursuant to section 3(a)(3), 9(a)(2) and 10 of the Act.

Cliffs is engaged in various development and production activities related to natural resources. Cliffs extracts, produces and processes iron ore and manages iron ore mining ventures in the United States, Canada and Australia. Cliffs also performs oil and gas contract drilling services in onshore and offshore areas of the United States and holds oil and gas exploration and production interests. Further, Cliffs is in the hardwood lumber and veneer business, participates in oil shale development ventures and provides technical and management services for resource development.

As an adjunct to its domestic activities, Cliffs owns certain electric generating facilities which provide power for its mining operations. Specifically, Cliffs has a wholly-owned subsidiary, Cliffs Electric Service Company ("Service"), a Michigan corporation, and an exempt holding company under section 3(a)(1) of the Act. Service's operations are conducted exclusively in four Michigan counties. At present, approximately 96% of the power available to Service is supplied to iron ore mines and related facilities managed by Cliffs. The remaining amount of power is sold by Service to the City of Marquette, Michigan Board of Light and Power and to Wisconsin Electric Power Company. Service is an "electric utility company" as defined in section 2(a)(3) of the Act.

Service owns 93% of Upper Peninsula Generating Company ("Generating"), a Michigan corporation and an "electric utility company" as defined in section 2(a)(3) of the Act. The remaining 7% of Generating is owned by Upper Peninsula Power Company ("Power") which is not an affiliate company of either Cliffs or Service Generating, which is managed by Power, operates a steam electric generating plant near Marquette, Michigan. The power contract among Generating, Service and Power provides that Generating will sell its electric power generating only to Service and Power. At present, Service is entitled to the power generation of units 1 and 4–9 and Power is entitled to the power generation of units 2 and 3. Each owner has agreed to pay its pro rata share of the costs and expenses of their respective units as well as provide Generating with minimum working capital.

CCI was formed in connection with a proposed corporate restructuring ("Restructuring") of Cliffs. The Restructuring involves the establishment of a holding company form of corporate organization, to be accomplished through a merger pursuant to which Cliffs will ultimately become a wholly-owned subsidiary of CCI, which will become the publicly-held parent company. Under the Agreement of Merger, each of the issued and outstanding common stock of Cliffs, par value $1.00 per share ("Cliffs Shares"), including Cliffs Shares held in the treasury of Cliffs, but excluding Cliffs Shares with respect to which dissenters' rights are exercised, will be converted into and become an equal number of common stock shares of CCI, par value $1.00 per share ("CCI Shares"), without requiring any exchange of Certificates. The consolidated financial condition of CCI immediately after the Restructuring will be substantially identical to that of Cliffs immediately prior to the Restructuring.

CCI states that pursuant to the Ohio General Corporation Law, approval and adoption of the Agreement of Merger requires the affirmative vote of the holders of two-thirds of the issued and outstanding Cliffs Shares. Adoption of the Agreement to Merger by the holders of Cliffs Shares will also constitute approval by such holders of:

(i) The Articles of Incoporation of CCI (including the authorized capital of CCI, which at the time of the Merger will consist of 28,000,000 shares of common stock, par value $1.00 per share, 3,000,000 shares of voting preferred stock, without par value, and 4,000,000 shares of non-voting preferred stock, without par value and the elimination of any preemptive rights as to both the common stock and the voting and nonvoting preferred stock) that will be in effect after the Restructuring;

(ii) the Regulations of CCI, which are substantially identical to the presently effective Regulations of Cliffs; and

(iii) the assumption by CCI of certain of Cliff's obligations under Cliffs' Investment Credit Employee Stock Ownership Plan and Restricted Stock Plan, the assumption by CCI of certain of Cliff's obligations under several agreements between Cliffs and its Directors and certain of its executive officers, and of all amendments thereto or clarifications thereof appropriate to implement such assumptions or to reflect the transformation to a holding company form of corporate organizations.

All indebtedness of Cliffs outstanding immediately prior to the time the Merger is effected will remain the indebtedness of Cliffs, and is not being assumed or guaranteed by CCI in connection with the Restructuring, except as explicity set forth herein.

Cliffs is at present a party to several lines of credit facilities and loan agreements which currently form the principal sources of borrowings of funds which may be necessary or descriable in connection with the business activities conducted at present by Cliffs through its divisions, subsidiaries and affiliated entities. It is contemplated that, either prior to or after the Merger, CCI would undertake discussions with the lenders involved in such arrangments, which discussions may lead to the replacement of some or all of these arrangements with similar lines of credit facilities, loan agreements or both, with CCI being substituted for Cliffs as the borrowers thereunder.

In the application CCI also requests that it be granted an exemption under section 3(a)(3) of the Act and Cliffs requests that it be permitted to retain its section 3(a)(3) exemption. These two requests will be noticed at a later time.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on CCI at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, with respect to the section 9(a)(2) request, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8489 Filed 4–8–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14451; 812–5993]

DBL Tax-Free Cash Fund Inc.; Notice of Application for Exemptive Order Relating to Acquisition of Puts

April 3, 1985.

Notice is hereby given that DBL Tax-Free Cash Fund Inc. (the "Fund"), 60 Broad Street, New York, New York 10004, an open-end, diversified management investment company registered under the Investment

Company Act of 1940 (the "Act"), filed an application on November 27, 1984, and amendments thereto on February 15, and March 25, 1985, for a Commission order, exempting the Fund's Limited Term Portfolio from the provisions of Section 12(d)(3) of the Act to permit acquisition of standby commitments from brokers or dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the provisions cited in the application.

The Fund states that its Limited Term Portfolio (the "Portfolio") seeks the highest level of income exempt from federal income taxes to the extent consistent with the preservation of capital by investing principally in high quality tax-exempt limited-term securities issued by state and municipal governments and by public authorities ("Municipal Obligations"). The Portfolio expects to maintain a dollar-weighted average portfolio maturity of three to six years and will only purchase instruments with remaining maturities of ten years or less.

The Fund represents that, to improve its liquidity and ability to pay redemption proceeds, the Portfolio may enter into "standby commitments" with brokers, dealers or banks under which the issuer would agree to purchase a specified Municipal Obligation at a specified price ("Puts"). The Fund represents further that each Put will be: (1) In writing and physically held by the Fund's custodian; (2) exercisable by the Portfolio at any time prior to the maturity of the underlying securities; (3) entered into only with brokers, dealers and banks which, in the opinion of the Fund's investment manager, present minimal risks of default; (4) unconditionally and unqualifiedly exercisable at the Portfolio's option; (5) non-transferable, although Municipal Obligations purchased subject to Puts may be sold to a third party at any time, even though the Puts remain outstanding; and (6) exercisable at a price equal to (i) with respect to Municipal Obligations having remaining maturities of 60 days of less, (a) the Portfolio's acquisition cost of the Municipal Obligations subject to Puts (excluding any accrued interest which the Portfolio paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period the Portfolio owned the securities, plus (b) all interest accured on the securities since the last interest payment date during the period the securities were owned by the Portfolio, and (ii) with respect to all other Municipal Obligations, (a) the market value of the Municipal Obligations subject to Puts (excluding any accrued interest which the Portfolio paid on their acquisition), plus (b) all interest accured on the securities since the last interest payment date during the period the securities were owned by the Portfolio.

The Fund expects that Puts will generally be available without the payment of any direct or indirect consideration. However, the Fund states that, if necessary and advisable, the Portfolio will pay for Puts, either separately in cash or by paying a higher price for portfolio securities which are acquired subjects to Puts. The Fund represents that the total amount paid for outstanding Puts will not exceed ½ of 1% of the value of the Portfolio's total assets calculated immediately after any Put is acquired. During the term of a Put, it will be difficult to evaluate the likelihood of its exercise or the potential benefit to the Portfolio should the Put be exercised. In light of such uncertainties, all Puts held by the Portfolio will be valued at zero. The cost of a Put will be reflected as unrealized depreciation for the period during which the Put is held by the Protfolio.

Applicant submits that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant states that the proposed acquisition of Puts will not affect the Portfolio's net asset value per share for purposes of sales and redemptions and will not pose new investment risks, but rather will improve its liquidity and ability to promptly meet redemptions. Applicant's investment manager intends to evaluate periodically the credit of institutions issuing Puts to the Portfolio.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8492 Filed 4-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14449; File No. 812-6016]

Libra Bank PLC; Application and Opportunity for Hearing

April 3, 1985.

Notice is hereby given that Libra Bank PLC ("Applicant" formerly named Libra Bank Limited), c/o Lawrence Hohlt or Abraham Zylberberg, Sage Gray Todd & Sims, Two World Trade Center, 100th Floor, New York, New York 10048, has filed an application on Januray 7, 1985, and an amendment thereto on March 26, 1985, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), for an order of the Commission, exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for a statement of the relevant provisions thereof.

Applicant states that it is a commercial bank organized under the United Kingdom's Company Act of 1948 and is subject to the United Kingdom's Banking Act of 1979 (the "1979 Act"). Applicant represents that it is headquartered in London, England and maintains offices in Latin America as well as a state-licensed agency in New York. Applicant was formed in 1972 by a multinational consortium of banks, with the specific objective of mobilizing and channeling capital resources to Latin America and the Caribbean region.

As of December 31, 1983, Applicant states that it has total assets of approximately $2.6 billion of which approximately 73% consisted of loans. Also, income from loans accounted for approximately 81% of Applicant's total revenues of $295 million.

According to the application, Applicant is subject to the general supervisory oversight of the Bank of England. Under the Bank of England Act of 1946 (the "1946 Act"), the Bank of England is broadly empowered to request information from and make recommendations to banks and issue directives requiring compliance with such requests or recommendations. The Bank of England's general powers under

the 1946 Act are supplemented by the 1979 Act.

Applicant asserts that under the 1979 Act, deposit-taking institutions must be authorized by the Bank of England, and must meet general statutory criteria pertaining to management and solvency. Applicant believes that regulation of the United Kingdom banking system is largely based upon informal cooperation between the Bank of England and United Kingdom banks and operates through a number of accepted practices and standards that have been developed over time. Banks file regular, detailed reports and periodic statistical returns prescribed by the Bank of England. These reports include, among other things, information concerning directors, controllers, foreign exchange activities, advances, and an analysis of sterling and foreign currency assets and liabilities. In accordance with the 1979 Act, the Bank of England has introduced formalized codes relating to the adequacy of capital, liquidity and foreign currency exposure.

By virtue of Applicant's maintenance of an agency in New York State, Applicant contends that it is subject to regulation by the Board of Governors of the Federal Reserve System (the "Board") because of the International Banking Act of 1978 (the "IBA"). The IBA permits the Board to regulate the type of activities in the United States in which Applicant may engage. Under the IBA, Applicant is required to file annual reports with the Board on its operations and financial condition, including full information on earnings, reserves and capital, accompanied by an explanation of material differences between United States and foreign accounting practices. Applicant is also required to furnish such additional information as the Board may request.

Applicant's New York agency is licensed by the Superintendent of Banks of the State of New York (the "Superintendent") under sections 200 and 201 of the New York Banking Law. In order to be licensed, a foreign bank must submit documents as to the nature of its business, key personnel and its financial condition. Upon receipt of a properly completed license application, the Superintendent conducts a detailed investigation of the foreign bank, its reputation and assets. The examination is similar to the kind conducted by the Superintendent when a New York State chartered bank is established.

Applicant states that the commercial paper proposed to be issued and sold in the United States will be evidenced by short-term notes ("Notes") and will provide Applicant with an alternative source of United States dollars funds to supplement its other sources. The Notes will have those characteristics, including a maturity of not more than 270 calendar days and a minimum denomination of not less than $100,000, which will enable them to qualify for the exemption from registration under section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). Furthermore, the Notes will be prime quality negotiable commercial paper and contain no provision for payment on demand, extension, renewal or automatic "roll-over". Applicant presently anticipates that during the first year in which the Notes are sold, the aggregate amount of Notes outstanding at any one time is unlikely to exceed $200,000,000.

Applicant does not propose to register the Notes under the 1933 Act. However, Applicant will not offer or sell any Notes in the United States until it has received a written opinion from its United States counsel stating that the Notes are entitled to the section 3(a)(3) exemption. Applicant does not request the Commission's review or approval of such opinion. The Notes and any future issue of Applicant's securities will receive prior to issuance one of the three highest short-term investment grade ratings from at least one of the nationally recognized statistical rating organizations and Applicant's United States counsel will certify in writing of such rating. No such rating will be obtained, however, if in the opinion of Applicant's United States counsel, an exemption from registration is available under section 4(2) of the 1933 Act.

The Applicant represents that its notes will be direct liabilities of Applicant and will rank *pari passu* among themselves and equally with all other unsecured, unsubordinated indebtedness of Applicant, including deposit liabilities (other than indebtedness to the United Kingdom to the extent such indebtedness is preferred by operation of law). The notes will rank prior to any subordinated indebtedness of Applicant and to the rights of shareholders. The notes will be sold through one or more of the registered securities dealers to the types of institutional and other sophisticated investors that ordinarily participate in the United States commercial paper market.

Applicant undertakes to ensure that each offeree who has indicated an interest in Applicant's Notes, and prior to any sale of the Notes to such offeree, will be provided with a memorandum that describes Applicant's business and contains a recent balance sheet and income statement of Applicant. The memorandum and financial statements will be as comprehensive as those customarily used in commercial paper offerings in the United States describing any material differences between accounting principles applicable to United Kingdom banks and generally accepted accounting principles applicable to United States commercial banks and updated periodically to reflect material changes in Applicant's financial status.

While it has no present intention of doing so, Applicant may in the future offer other debt securities for sale in the United States. Any such future offering by Applicant in the United States will be made pursuant to a registration under the 1933 Act or pursuant to an applicable exemption from registration under the 1933 Act. The future offering will be made on the basis of a disclosure document appropriate and customary for such registration or exemption and in any event as comprehensive as those used in offerings of similar debt securities by issuers in the United States. Applicant undertakes to ensure that such a disclosure document will be provided to each offeree who has indicated an interest in such securities prior to any sale except in the case of an offering made pursuant to a registration statement under the 1933 Act.

Applicant represents that it will appoint a bank or trust company having an office in New York City as agent to issue the Notes on behalf of Applicant. Applicant will expressly submit to the jurisdiction of those New York State and United States federal courts which sit in the City and County of New York for the purpose of any action brought on the Notes. Applicant also submits that it will be subject to suit in any other court in the United States which shall have jurisdiction over Applicant by virtue of the manner of the offering of the Notes or otherwise. Such submission to jurisdiction will also pertain to any future debt offerings in the United States. Applicant will appoint an agent to accept service of process in any proceeding.

Applicant asserts that the application is consistent with the protection of investors, and necessary and appropriate in the public interest because the particular abuses against which the Act was directed, such as excessive management and brokerage fees, investments in companies in which the investment company management has a personal interest and other forms of self-dealing, were thought not to be prevalent in the commercial banking industry. Applicant further asserts that its activities are regulated and overseen by banking authorities in the United Kingdom and to some extent by the

United States Government and New York State banking authorities.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8491 Filed 4-8-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21918; File No. 4-280]

Self-Regulatory Organizations; Order Approving Plan by the American Stock Exchange, Inc.

The American Stock Exchange, Inc. ("Amex") submitted on September 11, 1984, copies of a proposed plan pursuant to Rule 19d-1(c)(2) under the Securities Exchange Act of 1934 ("Act").[1] The proposed plan specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person. In accordance with paragraph (c)(2) of Rule 19d-1, Amex proposed to designate as minor rule violations certain specified rule violations under Amex's two automatic fine systems, and requested that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. According to Amex, the quarterly notice for each violation would list the name of the member or member organization, the nature and date of the violation, the sanction imposed, and the date of disposition.

Amex's minor rule infraction fine system and its reporting violation fee system are the two systems of fines encompassed by the proposed plan. Under the minor rule infraction fine system, the uncontested minor rule violations included in the proposed plan are as follows:[2]

(1) Floor decorum violations;[3]

(2) The following on floor/off floor operational violations:[4]

(a) A specialist's failure to be properly represented at the trading post at scheduled times to answer inquiries regarding the status of orders and resolve equity DK notices;[5]

(b) A specialist's failure to respond to inquiries regarding unreported PER/AMOS automated order routing market orders;[6]

(c) Failure to submit option trade comparison data to the Exchange by specified deadlines;

(d) Failure to be represented at the Exchange's options reconciliation room at scheduled times to resolve rejected options trades; and

(e) Failure to provide the required options audit trail information on trade comparison input.

Floor governors and exchange officials are authorized under minor rule infraction fine system to charge members and member organizations whith floor decorum and operational violations and to assess fines ranging from $50 for a first offense to $500 for a sixth offense.

Officials under Amex's reporting violation fee system [7] can impose a fee of $50 per day for the late filing of reports periodically specified by the Exchange. According to Amex, currently twelve reports,[8] primarily in the financial and market surveillance areas, are subject to the system. Under both the reporting violation fee system and the minor rule infraction fine system, members or member organizations may plead guilty and pay the fine or contest the charge and request a hearing before the Exchange's Disciplinary Committee.[9]

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[1] In Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984), the Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the SRO with respect to the matter.

[2] *See* Securities exchange Act Release No. 17071 (August 18, 1980), 45 FR 56218 (August 22, 1980) (SR-Amex-80-22), in which the Commission approved Amex's proposed rule change to revise its procedures for the disposition of minor rule violations and to include non-compliance with off-floor operational matters as a minor rule violation.

[3] Amex defines floor decorum violations as any act or omission which tends to disrupt the orderly conduct of business on its trading floor or which causes serious interference with the personal comfort or safety of other persons on the floor. Examples of floor decorum violations include running on the trading floor, smoking in unauthorized areas, and the throwing of objects and obstructions on the floor. The floor decorum violations included in the Exchange's minor rule infraction fine system already are exempt from reporting under Rule 19d-1(c)(1). *See* Securities Exchange Act Release No. 17085 (August 22, 1980), 45 FR 57707 (August 29, 1980).

[4] On September 1, 1982, the SEC granted an Amex request that it be permitted to file quarterly reports with respect to its minor operational and reporting violations. *See* letter from Michael J. Kulczak, Branch Chief, Division of Market Regulation, to J. Bruce Ferguson, Assistant Vice President, Amex, dated September 1, 1982. *See also* letter from Richard O. Scribner, Executive Vice President, Amex, to Michael A. Cline, Branch Chief, Division of Market Regulation, dated August 7, 1981, in which Amex requested that an exemption from the notice provision of Rule 19d-1 be granted for uncontested minor rule violations covered by its existing minor disciplinary infraction fine system and its fee system for certain reporting violations. By including this arrangement in this minor rule violation plan filed under Rule 19d-1, Amex formalizes the existing agreement with the Commission.

[5] When comparison information is received on certain transactions and the recipient has no knowledge of the transaction the comparision is stamped "Don't Know," ("DK"), dated and initialed, and the comparision form so stamped is returned immediately to the seller. The Amex has facilities, and its rules specify procedures, for the resolution of such uncompared trades as promptly as possible.

[6] The Post Execution Reporting System ("PER") automatically routes market orders and reports and day market and limited price odd lot orders and reports between member firm offices and trading posts. The Amex Options Switch System ("AMOS") automatically routes limited price option day orders and reports between member firm offices and trading posts on the Amex floor. Both systems are designed to improve order flow and execution reporting, and to reduce operating costs of subscribing member organizations.

[7] The Amex fee system for certain reporting violations under Amex Rule 30 was approved by the Commission in Securities Exchange Act Release No. 18827 (June 21, 1982), 47 FR 18190 (June 29, 1982) (SR-Amex-81-15).

[8] The following 12 reports are subject to the reporting violation fee system: (1) Exam 12 (Report of financial condition); (2) Equity Computation; (3) Net Capital Computation; (4) X-17A-5, Part II (FOCUS Report); (5) X-17A-5, Part I (FOCUS Report); (6) X-17A-5, Part IIA (FOCUS Report); (7) X-17A-5, Part IIA (Short form FOCUS Report); (8) MO 14 and MO 15 (Specialist financial reports); (9) Form 958-C (Registered Options Trader and Specialist Report of orders entered in underlying securities related to Amex options); (10) Form 50 (Short Postion); (11) 1-RA (Exchange transactions initiated from off-floor); and (12) 1-S (Round lot short sales transactions).

[9] As noted above, only uncontested violations are eligible for abbreviated periodic reporting under Amex's proposed plan.

Notice of the proposed plan, together with the terms of substance of the proposed plan was given by the issuance of a Commission release (Securities Exchange Act Release No. 21757, February 13, 1985) and by Publication in the **Federal Register** (50 FR 7245, February 21, 1985). No comments were received with respect to the proposed plan.

The Commission finds that the proposed plan is consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, with the requirements of section 6(b)(5) dealing with the promotion of just and equitable principles of trade, the facilitation to transactions in securities, and the protection of investors and the public interest, and with the requirements of section 19(d) which warrant the periodic reporting of uncontested minor disciplinary violations which are deemed not final under the Act.

It is therefore ordered, pursuant to Rule 19d-1(c)(2) under the Act, that the above-mentioned proposed plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation Pursuant to delegated authority.

John Wheeler,

Secretary.

April 3, 1985.

[FR Doc. 85-8494 Filed 4-8-85; 8:45 am]

BILLING CODE 8717-01-M

[Release No. 34-21915; File Nos. SR-NASD-85-7, SR-AMEX-85-2]

Self-Regulatory Organizations; Proposed Rule Changes by National Association of Securities Dealers, Inc., and American Stock Exchange, Inc., Relating to Proxy Solicitation Surcharges

I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 25, 1985, the American Stock Exchange, Inc. ("Amex") and on March 27, 1985, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule changes as described herein. The Commission is publishing this notice to solicit comments on the NASD's proposed rule change from interested persons.[1] As discussed below, the Commission has approved both proposed rule changes on an accelerated basis.

II. Description of Proposals

The proposed rule changes would establish a surcharge that Amex and NASD members may impose on issuers for forwarding materials to beneficial owners of their issues. The proposed surcharge would be twenty cents for each set of proxy materials mailed as a unit during the next year. Under the NASD proposal, the surcharge could be imposed between April 1, 1985 and March 31, 1986. The Amex and the NASD state that they have submitted the proposals to comply with rules, discussed *infra*, recently adopted by the Commission that are intended to improve the ability of issuers to identify and communicate with their securityholders whose securities are held in "street name". According to the Amex, the proposed amendments to Amex Rule 576 (Transmission of Proxy Materials to Customers) are consistent with section 6(b) of the Act in general, and further the objectives of section 6(b)(4) in particular in that the surcharge is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The NASD believes that its proposed rule change is consistent with section 15A(b)(5) of the Act because it provides for the equitable allocation of reasonable dues, fees, and other changes among members and issuers.

III. Prior Commission Action

As noted, the Commission amended two of its rules to improve communications between issuers and seccurityholders whose securities are held in street name.[2] The Commission adopted Rule 14b-1(c) (17 CFR 240.14b-1(c)) requiring brokers to provide issuers, upon request and assurance of reimbursement of reasonable expenses (direct and indirect), with the names and addresses and securities positions of customers who are beneficial owners of the issuers' securities and who have not objected to such disclosure. The Commission also adopted a corresponding amendment to Rule 17a-3(a)(9) (17 CFR 240.17a-3(a)(9)) requiring that the customer records maintained by the broker for street name holders include whether the beneficial owner has objected to the disclosure to issuers of his or her identity, address, and securities position.[3] The Commission left the determination of the reasonable costs of compliance to the self-regulatory organizations ("SROs").[4] The Amex and NASD proposals are essentially similar to the surcharge proposed by the New York Stock Exchange, Inc. ("NYSE") based on the recommendation of one of its committees.[5]

IV. Request for Public Comment on the NASD Proposal

Interested persons are invited to submit written data, views and arguments concerning the NASD proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

Copies of the NASD's submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the NASD's proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 30, 1985.

V. Discussion

As noted above, the NYSE submitted a proposed rule change that is essentially the same as the Amex and NASD proposals. The Commission has considered that proposal and approved it as consistent with the Act and the rules and regulations thereunder.[6] The

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[1] Notice of the Amex proposal was given by issuance of a Commission release (Securities Exchange Act Release No. 21820, March 6, 1985) and by publication in the **Federal Register** (50 FR 9930, March 12, 1985). No comments have been received with respect to the Amex proposed rule change.

[2] Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082 (August 3, 1983).

[3] The Commission deferred the effective date of these rules until January 1, 1986. Securities Exchange Act Release No. 21339 (September 21, 1984), 49 FR 38096 (September 27, 1984).

[4] Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082 (August 3, 1983).

[5] File No. SR-NYSE-85-2, published for comment in Securities Exchange Act Release No. 21702 (February 1, 1985), 50 FR 5461 (February 8, 1985).

[6] Securities Exchange Act Release No. 21900, (March 28, 1985). The NYSE's and Amex's original proposal provided that the start-up costs associated with the implementation of the direct shareholder communication rules be funded by a surcharge of $.20 per proxy for each of an issuer's two annual meeting proxy solicitations subsequent to the approval of the surcharge. At the request of the Commission staff, the NYSE and Amex have modified their original proposals to apply the

Continued

Commission also has reviewed that Amex and NASD proposals and finds that they are consistent with the requirements of the Act and the rules and regulations thereunder. The Commission finds the Amex proposed rule change to be consistent with Section 6(b) of the Act and in particular with section 6(b)(4) which requires exchange rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. In addition, the Commission finds that the NASD's proposed rule change is consistent with section 15A(b) (5) of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers.

VI. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds good cause for approving the proposed rule changes prior to the 30th day after publication in the **Federal Register**. The NASD has requested accelerated approval because it believes that the proposal should be effective immediately to permit members to recoup costs associated with complying with Rules 14(b)–1(c) and 17a–3(a)(9)(ii) during the 1985 proxy "season." In addition, the NASD believes its members would be benefitted if the implementation of its proposal coincides with the Commission's approval of similar proposals submitted by other SROs. The Commission concurs with the NASD, and also believes that issuers and the public would benefit if each of the SRO proposals can be implemented simultaneously. The Amex and the NASD proposals raise no new issues not also raised by the NYSE proposal. Thus, the public has had many prior opportunities to comment on the issues raised by the proposals and further comment prior to approval is unnecessary.[7] The Commission also believes that approving these proposals to coincide with the approval of the NYSE's similar proposed rule change would protect investors and would be in the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

John Wheeler,

Secretary.

April 1, 1985.

[FR Doc. 85–8487 Filed 4–8–85; 8:45 am]

BILLING CODE 6717–01–M

surcharge for only one year. The Commission will require more cost data in connection with future proposals for additional surcharges for next year's proxy dissemination. *See* letters from James E. Buck, Secretary, NYSE, and Michael S. Emen, Vice President, Amex, dated March 14, 1985 and March 25, 1985, respectively, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC. *See also* Securities Exchange Act Release No. 21900, Notes 6–8 and accompanying text.

[7] The Commission notes that the Amex proposal was published in the **Federal Register** on March 12, 1985, and no comments have been received. *See* note 1, *supra*.

DEPARTMENT OF STATE

Export-Import Bank; Denial of Applications; Libya

Pursuant to Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended, and in accordance with the authority delegated to the Secretary of State by Executive Order 12166, I hereby determine that denial by the Export-Import Bank of applications for credit with respect to Libya for non-financial or non-commercial considerations would clearly and importantly advance United States policy in combatting international terrorism and would be in the national interest.

This determination shall be published in the **Federal Register**.

George P. Shultz,

Secretary of State.

March 23, 1985.

[FR Doc. 85–8412 Filed 4–8–85; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 85–4–9; Docket Nos. 42540, 42541]

Application of Air Mid-America, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85–4–9) Dockets 42540 and 42541.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Air Mid-America fit, awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation, and dismissing its application for authority to engage in scheduled foreign air transportation.

DATES: Persons wishing to file objections shall do so no later than April 30, 1985; answers to objections shall be filed no later than May 10, 1985.

ADDRESSES: Objections and answers to objections should be filed in Dockets 42540 and 42541 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Juliana M. Winters, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete test of Order 85–4–9 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85–4–9 to that address.

Dated: April 3, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–8500 Filed 4–8–85; 8:45 am]

BILLING CODE 4910–62–M

[Order 85–4–11; Docket No. 42858]

Application of Skybus, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 85–4–11) Docket 42858.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Skybus fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation; denying a request by New York Airways that the Department should not authorize any authority that infringes on its "Sky Bus" service mark; and denying ALPA's request that the application should not be granted because it is inconsistent with the carrier's current operation plan.

DATES: Persons wishing to file objections shall do so no later than April 23, 1985 answers to objections shall be filed no later than May 3, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42858 and addressed to the

Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington D.C. 20590, and should be served upon the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116L, Washington, D.C. 20590, (202) 426–7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–4–11 is available from our Documentary Services Division at the above address. Persons outside the metropolitan area may send a postcard request for Order 85–4–11 to that address.

Dated: April 3, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–8501 Filed 4–8–85; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 4, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of those submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545–0185
Form Number: IRS Form 4798
Type of Review: Extension
Title: Carryover of Pre-1970 Capital Losses
Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of the Public Debt

OMB Number: 1535–0014
Form Number: PD 1025
Type of Review: Extension
Title: Application for Relief on Account of Loss, Theft or Destruction of U.S. Registered Securities
OMB Number: 1535–0015
Form Number: PD 1022
Type of Review: Extension
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of U.S. Bearer Securities (Organizations)
OMB Number: 1535–0016
Form Number: PD 1022–1
Type of Review: Extension
Title: Report/Application for Relief on Account of Loss, Theft or Destruction of U.S. Bearer Securities (Individuals)
Clearance Officer: Peter Laugesen, (202) 376–4102, Bureau of the Public Debt, Room 445, 999 E. Street, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports Managements Office.

[FR Doc. 85–8434 Filed 4–8–85; 8:45 am]

BILLING CODE 4810–25–M

[Supp. to Dept. Circ. Public Debt Series—No. 8–85]

Treasury Notes of March 31, 1989; Series L–1989

March 27, 1985.

The Secretary announced on March 27, 1985 (50 FR 12103), that the interest rate on the notes designated Series L–1989, described in Department Circular—Public Debt Series—No. 8–85 dated March 20, 1985, will be 11¼ percent. Interest on the notes will be payable at the rate of 11¼ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85–8402 Filed 4–8–85; 8:45 am]

BILLING CODE 4810–40

[Supp. to Dept. Circ. Public Debt Series—No. 9–85]

Treasury Notes of April 15, 1992; Series E–1992

March 28, 1985.

The Secretary announced on March 27, 1985 (50 FR 12105), that the interest rate on the notes designated Series E–1992, described in Department Circular—Public Debt Series—No. 9–85 dated March 20, 1985, will be 11¾ percent. Interest on the notes will be payable at the rate of 11¾ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85–8403 Filed 4–8–85; 8:45 am]

BILLING CODE 4810–40–M

[Supp. to Dept. Public Debt Series—No. 10–85]

Treasury Bonds of 2005

March 29, 1985.

The Secretary announced on March 27, 1985 (50 FR 12101), that the interest rate on the bonds designated Bonds of 2005, described in Department Circular—Public Debt Series—No. 10–85, dated March 20, 1985, will be 12 percent. Interest on the bonds will be payable at the rate of 12 percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85–8404 Filed 4–8–85; 8:45 am]

BILLING CODE 4810–40–M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April 25, 1985, at 2:30 p.m.
Thursday, May 9, 1985, at 2:30 p.m.
Thursday, May 23, 1985, at 2:30 p.m.
Thursday, June 6, 1985, at 2:30 p.m.
Thursday, June 20, 1985, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a

guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 2, 1985.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-8484 Filed 4-8-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 68
Tuesday, April 9, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Items
Civil Rights Commission	1
Consumer Product Safety Commission	2
Nuclear Regulatory Commission	3

1

COMMISSION ON CIVIL RIGHTS

PLACE: Room 512, 1121 Vermont Avenue, NW., Washington, D.C.

DATE AND TIME: Thursday, April 11, 1985, 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Report
IV. Consideration of Draft Report on Comparable Worth
V. SAC Recharters
VI. Presentation on "The Anti-Democratic Right" by Irwin Suall, Director of Fact Finding, Anti-Defamation League
VII. Civil Rights Development in the Eastern Region

PERSONS TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communication Division, (202) 376–8312.

Lawrence B. Glick,
Solicitor, (202) 376–8339.
April 5, 1985.

[FR Doc. 85–8584 Filed 4–5–85; 2:56 pm]
BILLING CODE 6335-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, April 10, 1985.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Nitrosamines in Pacifiers: Status

The staff will brief the Commission on the reduction of nitrosamine levels in rubber pacifiers and industry's plans for a voluntary standard.

2. Mid Year Review

The Commission and staff will review and consider the status of CPSC's Fiscal Year 1985 Operating Plan.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20270 301–492–6800.

Dated: April 4, 1985.
Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 85–8498 Filed 4–4–85; 4:13 p.m.]
BILLING CODE 6355-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 8, 15, 22, and 29, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 8

Thursday, April 11

2:00 p.m.
  Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING)
3:30 p.m.
  Affirmation Meeting (Public Meeting) (if needed)

Week of April 15—Tentative

Tuesday, April 16

10:00 a.m.
  Discussion of Low Level Waste Issues (Public Meeting)

Thursday, April 18

9:30 a.m.
  Briefing on TMI–1 Steam Generator and Other Plant Matters (Public Meeting)
11:15 a.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Indian Point Order (tentative)

Week of April 22—Tentative

Tuesday, April 23

10:00 a.m.
  Discussion of Pending Investigations (Closed—Ex. 5 & 7)
11:00 a.m.
  Discussion of Diablo Canyon-2 Contested Issues (Closed—Ex. 10) (Tentative)
2:00 p.m.
  Discussion/Possible Vote on Diablo Canyon-2 Low Power License (Public Meeting)

Thursday, April 25

2:00 p.m.
  Affirmation Meeting (Public Meeting) (if needed)

Week of April 29—Tentative

Wednesday, May 1

2:00 p.m.
  Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, May 2

10:00 a.m.
  Discussion of Modified Rule on Material False Statements (Public Meeting)
3:30 p.m.
  Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "TMI–1—Aamodt Motion for Reconsideration and Reopening of the Record" scheduled for April 4, *postponed.*

Discussion of Indian Point Order (Public Meeting) scheduled for April 2 *moved* to April 4.

Discussion of Environmental Qualification of Electrical Equipment—Status of Compliance with Rule (Public Meeting) scheduled for April 4 *moved* to April 2.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Carrado,
Office of the Secretary.
April 4, 1985.

[FR Doc. 85–8597 Filed 4–5–85; 3:44 pm]
BILLING CODE 7590-01-M

federal register

Tuesday
April 9, 1985

Part II

Environmental Protection Agency

40 CFR Part 250

Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 250

[SWH-FRL 2766-7]

Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today issuing a proposed guideline for Federal procurement of paper and paper products containing recovered materials. The guideline would implement section 6002(e) of the Resource Conservation and Recovery Act (RCRA), which requires EPA to prepare guidelines to assist procuring agencies in complying with requirements of that section and designates paper as a product category for which EPA must prepare such a guideline. The purpose of this proposed guideline is to stimulate the procurement of paper and paper products containing recovered materials, thereby increasing the diversion and recovery of materials from the solid waste stream. The guideline recommends procedures for Federal agencies to follow in drafting or reviewing product specifications. The proposal also recommends practices for procuring agencies to use in establishing an affirmative procurement program for paper and paper products containing recovered materials that maximizes the use of postconsumer recovered materials.

DATES: Comments must be submitted on or before June 10, 1985.

ADDRESSES: Comments should be addressed to RCRA Docket Clerk, Office of Solid Waste (WH-565A), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the docket number, which is "Section 6002."

The public docket is located in Room S212-A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, 800-424-9346; or William Sanjour, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-4502.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency (EPA) is today proposing the second of a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or "Act"), as amended, 42 U.S.C. 6962, required Federal, State, and local procuring agencies using appropriated Federal funds to purchase items composed of the highest percentage of recovered materials practicable. Under Section 6002(e), EPA must prepare guidelines to assist these agencies in complying with the requirements of this section. Section 6002(e) specifically requires that EPA prepare a guideline for the procurement of paper containing recovered materials.

The estimated 45.5 million tons of postconsumer wastepaper generated annually in the United States constitute approximately 30 percent of the current tonnage of municipal solid waste. Any increase in the utilization rate of wastepaper in the production of paper and paper products that can be stimulated by Federal procurement policy will further the objective of Section 6002.

The first of this series of guidelines, Guideline for Federal Procurement of Cement and Concrete Containing Fly Ash (40 CFR Part 249), was published in the **Federal Register** on January 28, 1983 (48 FR 4230). The preamble to that guideline explained EPA's regulatory strategy for fulfilling its responsibilities under Section 6002 of RCRA.

The preamble to the fly ash guideline explained the objectives of RCRA and the requirements of Section 6002 (48 FR 4230). Since the Agency received and addressed public comments on the goals and requirements of Section 6002 in conjunction with the final promulgation of the fly ash guideline, no further comment on these issues is solicited in this proposal.

As indicated in the preamble to the fly ash guideline, EPA prepares guidelines for items containing recovered materials that have been designated by the Administrator under Section 6002(e) after consideration of certain factors. Because, however, Section 6002(e) specifically directs the Administrator to prepare a guideline for paper, it is not necessary for EPA to take administrative action designating paper as an appropriate subject for a guideline; Congress has already made that determination.

The Federal Government's commitment to increased purchases of paper and paper products containing recovered materials may encourage manufacturers to increase the amount of recovered materials in their products. This proposed guideline could have a positive effect on public attitudes and consumers' acceptance of paper and paper products containing recovered materials.

The major Federal purchasers of paper, and, therefore, the agencies most likely to be affected by the proposed guideline, are: the Government Printing Office (GPO), which operates under the direction of the congressional Joint Committee on Printing (JCP); the General Services Adminstration (GSA); and the Department of Defense (DOD). On advice of its Committee on Paper Specifications, which includes representatives from GPO, JCP adopts specifications and standards for printing and writing grades of paper. GSA adopts specifications for all other paper products. DOD further reviews these standards and drafts additional specifications, as necessary, to establish military standards for some of the items it procures.

While this guideline was being developed, Congress amended Section 6002 of RCRA as part of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616 [Nov. 8, 1984]). These amendments have been incorporated into the guideline.

The Agency invites comments on all issues covered in the preamble, the proposed guideline, and the supporting documents, which can be found in the rulemaking docket.

II. The Guideline

Statutory Requirements

The proposed guideline explains requirements and makes recommendations to procuring agencies (which include Federal, State, and local agencies, grantee, and contractors) for carrying out the provisions of Section 6002 regarding the procurement of paper and paper products containing recovered materials. The Act applies to procurements involving $10,000 or more of appropriated Federal funds, and the guideline defines direct and indirect purchases to which the provision of the Act apply.

Section 6002(c) of the Act requires procuring agencies to procure "items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition," considering the guidelines issued by EPA, if reasonable levels of performance, cost, and availability can

be achieved. Section 6002(c) also requires procuring agencies to obtain from suppliers an estimate and certification of the percentage of such materials contained in their products.

Section 6002(d)(1) of RCRA requires agencies that draft or review specifications for procurement items to eliminate any exclusion of recovered materials and any requirement that items be manufactured from virgin materials, while section 6002(d)(2) requires procuring agencies, after EPA publishes each guideline, to assure that their specifications for procurement items covered by that guideline "require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item."

Section 501(a) of the Hazardous and Solid Waste Amendments of 1984 (to be codified as section 6002(i) of RCRA) requires each procuring agency, after EPA publishes a guideline, to "develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law." The affirmative procurement program must consist of four elements: (1) A preference program for paper and paper products containing postconsumer recovered materials; (2) an agency program to promote the preference program; (3) a program for estimating, certifying, and verifying the recovered materials content; and (4) annual review and monitoring of the effectiveness of the affirmative procurement program. Section 501(a) of the Amendments states that, in the case of paper, the recovered materials preference program must provide for the maximum use of postconsumer recovered materials.

Under the proposed guideline, agencies would be required to: (1) Revise their specifications to eliminate any that discriminate against the use of recovered materials and to adopt those requiring the use of recovered materials to the maximum extent practicable; and (2) develop an affirmative procurement program for recovered materials, as described above (including certification and estimation procedures). EPA believes that compliance with these two requirements would constitute compliance with the general procurement, certification, and estimation requirements of section 6002(c), the specification revision requirements of section 6002(d), and the requirement to develop an affirmative procurement program to be codified in section 6002(i).

Scope

The Agency believes that the inclusion of as many items as possible within the scope of the guideline will encourage the paper industry to increase and improve the production of paper and paper products containing recovered materials. Thus, all major paper and paperboard purchase categories are included within the scope of this guideline.

The Agency considered comments by GPO and representatives of the printing industry indicating that performance standards for certain grades of fine printing and writing paper cannot currently be met by paper containing recovered materials. It was suggested that EPA exclude these papers on an item-by-item basis. It was also suggested that certain items, such as surgical masks, that must meet stringent standards of noncontamination be individually excluded. EPA concludes that the language of section 6002(d)(2) of RCRA, which requires the "use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item," allows the exclusion of an item when performance standards cannot be met if recovered materials are used in the product. Thus, while the guideline does not specifically exclude any items based on this criterion, it allows a procuring agency to omit the requirement to include recovered materials from the specification for an item on the basis of standards related to performance. EPA suggests a procedure for documenting such an exclusion in § 250.12(d) of this guideline.

Applicability

The requirements of section 6002 generally apply to "procuring agencies," which are defined in section 1004 as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the affirmative purchasing requirements apply to any purchase by a procuring agency exceeding $10,000 or to purchases where the quantity of "functionally equivalent" items purchased in the preceding fiscal year exceeded $10,000. The Agency's interpretation of this requirement is described in more detail below. EPA believes that the proposed interpretation will provide an effective program without imposing an unreasonable bookkeeping burden on the purchasers and users of paper and paper products.

Direct Purchases

For the purpose of this guideline, purchases made as a result of a solicitation by a procuring agency either for its own general use or that of other agencies (for example, GSA purchases) are considered "direct." EPA believes that a contract for printing is, in part, a paper procurement action because the type of paper to be used is explicity stated in the contract. (Labor and overhead expenses involved in printing would be considered a service.) Therefore, a Federal agency that provides printing services to other governmental agencies would be subject to this guideline. The guideline leaves the method of calculating the value of paper used in performing a printing contract to the discretion of the agency awarding that contract. This provides wide latitude. GPO has stated that the value of the paper may be as low as 20 percent or as high as 80 percent of the contract. The value allocated to the paper used in the performance of the printing contract would determine the applicability of the guideline: if that value is $10,000 or more, the guideline would apply.

Indirect Purchases

As stated previously, section 6002 of RCRA and the proposed guideline apply to procurement actions by agencies other than Federal agencies if they expend appropriated Federal funds. Thus, if Federal funds are used to establish or maintain a program or activity by a state, local government, contractor, or grantee that is separate from a continuing program, and if accounts are kept separately from other accounts, the requirements of section 6002 and the provisions of the guideline would apply to any paper procurement for that program or activity if it meets the $10,000-threshold. If, however, Federal funds are used to support continuing programs and activities, and it is not possible to separate such funds from other receipts, these requirements would not apply. For example, if a city Housing Authority receives a Federal grant to build and maintain a housing project and uses $10,000 of the funds for stationery, leases, or brochures, the provisions of the guideline would apply. On the other hand, if the Housing Authority receives a disbursement of Federal funds from a block grant for general support of its continuing programs, and no separate accounting for specific items is maintained, the

provisons of the guideline would not apply.

The $10,000 Threshold

The procurement requirements of section 6002(a) apply to any purchase of a "procurement item" or "functionally equivalent" procurement items costing $10,000 or more. In common usage, terms such as "paper" and "boxes" include many items manufactured to meet different performance standards. They may not, therefore, technically be "functionally equivalent" (for instance copy paper cannot be used for offset printing). The variations in grades and types of paper products are numerous. The JCP has specifications for over 50 grades of all types of paper, 23 for printing paper alone, while GSA estimates that it provides specifications for about 300 paper products. Few procuring agencies, as defined in the Act, purchase $10,000 of any one grade of paper or any one paper product, and so restricting the applicability of section 6002 to purchases based on a very technical definition of functional equivalency would limit the effectiveness of the proposed guideline in meeting the objectives of the Act.

EPA considered grouping grades of paper and types of products according to the Census Bureau (Department of Commerce) Standard Industrial Classification system, but this seemed system inappropriate for general use. Another alternative was the Federal Procurement Data Center (GSA) Product and Service Code Systems, but they appeared overly inclusive (for example, boxes, cartons, and crates constitute one reporting category). The Agency has concluded that, in the case of paper and paper products, "functionally equivalent" items should be defined as a category of items having the same or substantially similar end use. EPA has developed a proposed categorization based on the concept of similar end use. For procuring agencies making many purchases, the proposed categorization would expend the applicability of the guideline beyond a technically defined "functional equivalency" so that a greater number of procurement actions would be affected. The proposed categorization would, on the other hand, reduce the number of small entities affected because the categories represent a more limited concept of functional equivalency than the inclusive term "paper."

Under § 250.3 of the proposed guideline, each of the following groups of items would be "functionally equivalent":

—All grades and types of xerographic/copy paper;
—Newsprint;
—All grades and types of printing paper;
—Corrugated boxes, fiberboard boxes, and folding boxboard;
—Stationery, office papers (memo pads, scratch pads, and so forth), and envelopes;
—Toilet tissue, paper towels, facial tissue, paper napkins, and doilies;
—Brown papers, coarse papers, and industrial wipers.

The Agency is soliciting comments regarding this proposed categorization.

III. Specifications

General

Section 6002(d)(1) requires that, by May 9, 1986, agencies that draft and review specifications for procurement items procured by Federal agencies eliminate specifications that exclude the use of recovered materials or that require that items be manufactured from virgin materials only. Within one year after publication of this guideline, procuring agencies must assure that "such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item."

Since passage of the 1980 Amendments to section 6002(d) of RCRA, some agencies have moved to require the use of recovered materials; others have felt it sufficient to "permit" and/or "encourage" the use of "reclaimed fibers" or "recovered materials." By adding the requirement that procuring agencies establish affirmative procurement programs for items containing recovered materials, the 1984 Amendments make it clear that "permitting" or "encouraging" the use of such materials is not sufficient to assure that specifications require the maximum use of recovered materials "without jeopardizing the intended end use of the item." Federal agencies must take affirmative steps to encourage their use.

Under § 250.12 of the proposed guideline, requirements for specifications are presented. An example of the statement that should appear on all specifications is given. Under the guideline, overly stringent specifications would be revised to allow for a higher recovered materials content. Specifications need not be revised, however, "if it can be technically determined that for a particular end use a product containing recovered materials will not meet reasonable performance standards." (See § 250.13.)

Specifications Related to Performance

Some paper items, such as archival papers, certain map papers, deed papers, and face masks used in "clean rooms," cannot meet standards of performance necessary for their intended end use if they contain any percentage of recovered materials. EPA considered removing these items from coverage under the guideline, but decided that these papers would have to be excluded on an item-by-item basis since the Agency does not have the expertise to make such a technical determination. Therefore, it is recommended that individual agencies document any finding that, for a particular end use, an item containing recovered materials will not meet reasonable performance standards and reference the documentation in subsequent solicitations for bids.

Specifications Related to Contamination of Wastepaper

EPA has found that some wastepapers used in the production of fine tissue papers at mills where deinking takes place are contaminated with a specific PCB (PCB–1242). PCB–1242 was once used in the manufacture of carbonless copy paper; PCB-contaminated papers were recycled and now contaminate a portion of the wastepaper used in the manufacture of fine and tissue papers from deinked wastepaper. This contamination causes the discharge of PCB-containing wastewaters from many deink mills. In addition, papers produced at these mills may be contaminated with low levels of PCB–1242.

The Agency determined that PCB discharges are reduced by biological treatment. EPA proposed regulations for the control of PCB–1242 at deink mills producing fine and tissue papers in November 1982. (See 41 FR 52066.) The technology basis of the regulations is additional suspended solids removal. Studies conducted by EPA demonstrated that improved removal of suspended solids will result in additional reductions in the discharge of PCB's. EPA's studies have concentrated only on PCB–1242 discharges in wastewaters from deink fine and tissue mills. The Agency has no data on the PCB concentration in wastepapers or in paper produced from wastepaper. It is clear, however, that when PCB-contaminated papers are recycled for reuse in the production of papers that are again recycled, an increasingly larger quantity of papers becomes contaminated with PCB's. Agencies should recognize these risks and

consider them when implementing this guideline.

Specifications Related to Aesthetics

Representatives of recycling interests and vendors of paper and paper products containing recovered materials often state that specifications related to aesthetics, such as whiteness, brightness, and dirt count, serve as unnecessary impediments to the use of such paper. EPA suggests that agencies that draft specifications carefully review their specifications related to aesthetics to determine whether they are overly stringent for the product's intended end use and eliminate unnecessary restrictions.

New Specifications

Technological advances, which occur continuously in the paper and paperboard manufacturing industry, are causing the increased utilization of recovered materials in many products. For example, the process of manufacturing newsprint with 100 percent recovered materials has recently been perfected. In § 250.14 of the guideline, EPA recommends that agencies reviewing and revising specifications monitor such changes and issue new specifications that reflect these advances, particularly in those cases where a particular end use is currently being met only by paper that does not contain recovered materials.

Performance testing of paper containing recovered materials is a continuing activity of the American Society of Testing and Materials, the Technical Association of Pulp and Paper Industry, the Institute of Paper Chemistry, and the Forest Products Association. The proposed guideline recommends that Federal agencies make use of the results of such research in developing standards and revising specifications.

IV: Affirmative Procurement Program

Section 6002(i) of RCRA requires procuring agencies to adopt an affirmative procurement program to ensure that paper and paper products containing postconsumer recovered materials are purchased to the maximum extent practicable. Therefore, the guideline differentiates between "postconsumer recovered materials" and "other recovered materials." The definition of "postconsumer recovered materials" includes paper, paperboard, and fibrous wastes that have passed through their end usage as a consumer item or that enter and are collected from municipal solid waste. "Other recovered materials" include manufacturing wastes, forest residues, and other wastes such as dry paper and paperboard waste generated after completion of the papermaking process, obsolete inventories, and other fibrous wastes.

Recovered Materials Preference Program

The first of four requirements of the affirmative procurement program is a recovered materials preference program to maximize the use of postconsumer recovered materials. The procuring agency may implement the preference program by employing a case-by-case approach, by adopting minimum content standards, or by choosing a substantially equivalent alternative.

Section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals. Among these are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some State programs for the procurement of paper and paper products containing recovered materials. Insufficient factual data were available from those States to assess accurately the effectiveness and cost of their programs.

In the case of Federal preferential procurement programs that allow a price preference or a set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of Section 6002 seems, however, to contemplate the adoption of either price preferences or set-asides. In fact, the legislative history of the 1984 Amendments appears to indicate that price preferences and set-asides would be unacceptable. (See remarks of Representative Hawkins, Chairman of the JCP, during the House debate on H.R. 2867, indicating that the JCP cannot accept other than the lowest priced bid, but that the JCP would give full consideration to recovered materials content in the case of tie bids. *Cong. Rec.*, H. 9161 [Nov. 3, 1983].) Therefore, rather than recommending price preferences or set-asides, the preference program recommended is a "case-by-case" policy in which the bid offering the highest postconsumer recovered materials content would be accepted in the case of otherwise identical bids, as described by Representative Wyden during the House debate on H.R. 2867. (See *Cong. Rec.*, H. 9160–61 [Nov. 3, 1983].)

The case-by-case bidding procedure proposed in the guideline can be characterized as an "open-bid" policy. Thus, bids would be solicited from all vendors, including those selling paper and paper products that do not contain postconsumer recovered materials. Vendors would be required to estimate the percentage of postconsumer recovered materials in their products. Preference would be granted first to the lowest bid. In the case of identical low bids, preference would be granted to the item containing the highest percentage of postconsumer recovered materials. If a paper or paper product containing postconsumer recovered materials is consistently offered at a competitive price, EPA recommends that the procuring agency consider adopting a minimum recovered materials content standard for that item. Through this solicitation process, the procuring agency would be assured of the lowest possible price, the maximum level of competition, and availability of the product.

Agencies may also adopt initially a program of minimum content standards for each of the items it procures, as described in section 6002(i)(3)(B), or choose a substantially equivalent alternative to the case-by-case or minimum content standards approaches. Background information that may be useful in setting minimum recovered materials content standards is available in the docket for this guideline.

Agency Promotion Program

The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline makes several suggestions for procuring agencies to consider for disseminating information about their preference program, such as placing notations in solicitations for bids and conducting discussions about the program at bidders' conferences and meetings. The guideline also suggests that agencies such as GSA that procure paper and paper products for use by other agencies consider noting in their catalogs those papers or paper products that contain postconsumer recovered materials.

Estimation, Certification, and Verification

The third requirement of the affirmative procurement program relates to estimates, certification, and verification: the agency must require estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications. Section 6002(c)(3) of the Act states that contracting officers must require vendors to certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount in applicable specifications or other contractual arrangements. Vendors must also estimate the percentage of recovered materials utilized in the performance of the contract. As explained earlier, EPA believes the procurement requirements of section 6002(c)(1) may be met by implementing the affirmative procurement program in section 6002(i), and, likewise, the estimation and certification requirements in sections 6002(c)(3) and (i)(2)(C) are equivalent. Therefore, procuring agencies need only develop one set of procedures for estimates and certification of postconsumer recovered materials content. This proposed guideline recommends that the forms and procedures for fulfilling these requirements be adopted concurrently with the rest of the procuring agency's affirmative procurement program.

Under these requirements, agencies that adopt the case-by-case approach recommended by this guideline would require each bid to include an estimate of the total percentage of postconsumer recovered materials that would be used in the performance of the contract. The solicitation for a contract should note that the estimated percentage of postconsumer recovered materials is a contract requirement. If the agency later adopts minimum postconsumer recovered materials content standards for certain items based on its experience procuring these items using the case-by-case approach, the minimum would be specified in the solicitation. Certification that the item meets that specification would be required from each bidder.

States with paper procurement preference programs have forms that may be used. Or, agencies may want to consider using the certification clause contained in the Federal Acquisition Regulation, § 52.223 (48 FR 42539, Sept. 19, 1983, to be codified at 48 CFR 52.223), which states: "The offeror certifies, by signing this offer, that recovered materials, as defined in section 23.402 of the Federal Acquisition Regulation, will be used as required by the applicable specifications." Attachment 403 (9/78) to GSA Standard Form 33 (Revised 3–77), as prescribed by Federal Procurement Regulations 1–16.101, also provides an example of a possible certification. EPA believes that a single certification clause would satisfy the requirements of section 6002(c).

Section 6002 also requires procedures to verify the percentages of recovered materials (or, in the case of paper, postconsumer recovered materials) in procured items. Scientific verification of fiber content is not possible, however, because recovered fibers bear the same chemical composition and form as virgin fibers. Recovered fibers tend to be shorter, but this is only a tendency and is also a characteristic of some virgin fibers. EPA considered suggesting that agencies conduct onsite inspections at the mill during the manufacturing process, but this possibility was rejected as onerous, expensive, and generally unnecessary. Industry representatives have indicated that records of materials used during a given "run" are not always accurate. These representatives have stated, however, that records are available, or could be maintained, in a form that would substantiate sufficient annual usage of recovered materials at the mill to verify the amount certified in the contract. A suggestion of certification by the mill itself was rejected as unnecessary and burdensome.

Because there is no scientific method of measuring the percentage of postconsumer recovered materials or of identifying specific fibers in paper after the manufacturing process, EPA is recommending that procuring agencies be prepared to conduct audits of mill records whenever they have reason to believe that a procured item does not contain as high a percentage of postconsumer recovered materials as the vendor certified. For instance, it may be appropriate for a procuring agency to conduct such an audit where a bidder protests a preference granted in the award of a contract based on postconsumer recovered materials content. The guideline also recommends that the procuring agency make clear in the award that the vendor or mill must consent to reasonable verification procedures.

Review and Monitoring

The fourth requirement of the affirmative procurement program is a process for annual review and monitoring of its effectiveness. This review should include an estimate of the quantity of paper or paper products purchased containing postconsumer recovered materials. Such records can provide a basis for future evaluation and modification of an agency's affirmative procurement program.

V. Price, Competition, Availability, and Performance

Section 6002(c)(1) of the Act allows a procuring agency not to procure products containing postconsumer recovered materials if it determines that such items are not reasonably available within a reasonable period of time; fail to meet the performance standards of the applicable specifications or the reasonable performance standards of the procuring agency; or are available only at an unreasonable price. EPA has considered the effect of these limitations on an affirmative procurement program and makes the following recommendations.

Price

Several factors affect the market price, or bid price, of paper and paper products containing postconsumer recovered materials in relation to the prices of products manufactured from other fibers, including the percentage of postconsumer recovered materials used, the degree of decontamination and deinking required to meet the performance standards for a specific product, and the proximity of the mill to the supply of postconsumer recovered materials or the prospective consumer. Because there is no uniform method of determining the relative price of these items other than through the competitive bidding process, this proposed guideline recommends that procuring agencies use an "open-bid" process, allowing paper and paper products containing postconsumer recovered materials to compete equally for government contracts and awards.

Section 6002 raises the issue of "reasonable" price. EPA stated in the fly ash guideline that it believed the wording of the Act implied that Congress intended that the recovered materials product may, in fact, cost more, but not much more, than the virgin materials product as long as the price is reasonable. During congressional debate on amendments to section 6002 of RCRA, the Chairman of the JCP stated, however, that he had been assured "that the lowest cost to the Government will remain the primary and controlling factor in buying paper, with considerations of recovered postconsumer waste fiber content in paper a secondary matter." (See *Cong.*

Rec., H. 9160 [Nov. 3, 1983].) EPA considers this colloquy concerning the effect of the proposed amendments on the price paid for paper as an indication of congressional intent that, in the case of paper, bids for the postconsumer recovered materials product will be given preference only if they are equal to, or less than, bids for the comparable virgin materials product. This conclusion is reflected in EPA's interpretation of the case-by-case preference program recommended in section 6002(i)(3)(A), as requiring the procuring agency to choose an item containing postconsumer recovered materials only when the bids are otherwise equal.

Competition

The existing level of competition for paper and paper products containing postconsumer recovered materials varies depending on the product. The case-by-case, open-bid approach recommended, in which bids are solicited for paper and paper products composed of other fibers as well as those containing postconsumer recovered materials, would assure competition for all potential vendors while encouraging the maximum utilization of postconsumer recovered materials by offering a preference in the bidding process for products with such materials.

Availability

The Agency does not feel that procuring agencies should have to tolerate any unusual or unreasonable delays in obtaining paper or paper products containing postconsumer recovered materials. As affirmative procurement programs prove effective, paper and paper products containing postconsumer recovered materials should become more widely and consistently available.

Performance

All products are required to meet the same predetermined performance standards and/or applicable product specifications. Under the proposed guideline, agencies should review their specifications to ensure that performance standards do not unnecessarily discriminate (directly or indirectly) against the utilization of postconsumer recovered materials. The specification review procedure recommended would also assist the agencies in eliminating any specifications that are not related to reasonable performance. (See the more detailed discussion of performance standards under "Specifications," above.)

VI. Implementation and Compliance

Under section 6002(g), the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, is responsible for overseeing implementation of section 6002 of the Act and for coordinating it with other Federal procurement policies. When the final guideline is promulgated, the appropriate parts will be implemented by the Federal Acquisition Regulations.

Because of the high level of public and congressional interest in resource recovery, substantial pressure may be brought to bear on agencies that fail to comply with the intent of the guideline. Section 7002(a) of RCRA allows for citizen suits against agencies to enforce compliance. In addition, Federal procurement policy provides grievance procedures for bidders.

Effective Dates for Implementation

A section 6002(d)(1) requires that no later than May 9, 1986, procuring agencies eliminate from specifications any exclusion of recovered materials and any requirement for the use of virgin materials, except for items for which such a change would jeopardize the end use of the item. Section 6002(d)(2) requires agencies to assure that their specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item within one year of publication of the guideline. Section 6002(i) of RCRA requires procuring agencies to develop an affirmative procurement program for the procurement of paper and paper products containing postconsumer recovered materials within one year of publication of the final guideline. Section 6002(c)(3) requires that EPA designate a date by which procuring agencies shall require vendors to certify and estimate the percentage of recovered materials used in the performance of a contract. Since the affirmative procurement program must include certification and estimation provisions, this guideline proposes to require each procuring agency to implement this requirement at the same time the agency implements its affirmative procurement program.

VIII. Summary of Supporting Analyses

General

There are three major studies on the effect of a Federal policy for the procurement of paper containing recovered materials: *Can Federal Procurement Practices be Used to Reduce Solid Waste?* (Arthur D. Little, Inc., 1973); *Collection of Data Pertinent to the EPA's Development of Guidelines for Government Procurement of Paper Products Containing Recycled Materials* (Franklin Associates, Ltd., 1979); and *Evaluation of Federal Paper Procurement Practices* (Gershman, Brickner and Bratton, Inc., 1981). In addition, an economic analysis was prepared for the guideline, as was a background document.

Executive Order 12291

Under Executive Order (E.O.) 12291, proposed regulations must be classified as major or nonmajor. E.O. 12291 establishes the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because Federal purchases of paper and paper products do not constitute a large share of those markets, industry generally does not make manufacturing decisions that are not otherwise economically feasible in order to meet Federal procurement requirements. The granting of a price preference is not recommended in the proposed guideline; therefore, product costs should not increase. Furthermore, the flexibility allowed to the procuring agencies in implementing an affirmative procurement program should make it possible to make adjustments if any adverse market dislocation or decrease in competition should occur.

Because of the number of items included in the paper and paper product categories and the number of procurement actions taken by procuring agencies each year, such agencies may find it necessary to allocate additional resources to the implementation of this guideline. The flexibility allowed and the practices recommended in this proposed guideline are, however, intended to avoid increased expenditures by procuring agencies. For example, EPA has recommended that the form for estimating and certifying recovered materials content be simple and that it be consistent with the procuring agency's usual contracting procedure.

On the basis of the above information and on more extensive data in the rulemaking docket, the Agency has

concluded that the proposed guideline is a nonmajor rule.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

Primarily because of the $10,000-threshold, EPA does not expect a substantial number of small entities to be affected. The Agency also believes that the flexible approach to procurement of paper and paper products containing recovered materials provided for in the proposed guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, vendors, or contract printers. Detailed information on this assessment can be found in the RCRA docket for this guideline.

For the above reasons, I hereby certify that this proposed guideline would not have a significant economic impact on a substantial number of small entities. This guideline does not, therefore, require a regulatory flexibility analysis.

Paperwork Reduction Act

The information collection requirement in this proposed guideline has been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on this requirement should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place, NW., Washington, D.C., 20503, marked "Attention: Desk Officer for EPA." The final guideline package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 250

Forest and forest products, Government contracts, Government procurement, Packaging and containers, Paper, Recycling, Resource recovery.

Dated: April 2, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend 40 CFR by adding a new Part 250 to read as follows.

PART 250—GUIDELINE FOR FEDERAL PROCUREMENT OF PAPER AND PAPER PRODUCTS CONTAINING RECOVERED MATERIALS

Subpart A—General

Sec.

250.1 Purpose.
250.2 Designation.
250.3 Applicability.
250.4 Definitions.

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

250.10 Introduction.
250.11 Elimination of recovered materials exclusion.
250.12 Requirement of recovered materials content.
250.13 Exclusion for products containing recovered materials that do not meet reasonable performance standards.
250.14 New specifications.

Subpart C—Affirmative Procurement Program for Paper Containing Postconsumer Recovered Materials

250.20 Elements of affirmative procurement program.
250.21 Limitations to affirmative procurement program.

Authority: 42 U.S.C. 6902.

Subpart A—General

§ 250.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Solid Waste Disposal Act Amendments of 1980 (42 U.S.C. 6962), as amended by the Hazardous and Solid Waste Amendments of 1984 (Pub.L. 98-616), as that section applies to paper and paper products.

(b) This guideline contains recommendations for implementing the requirements of section 6002 of RCRA, including the revision of specifications and the establishment of an affirmative program for the procurement of paper and paper products containing postconsumer recovered materials. The guideline also makes recommendations concerning the solicitation for bids and certification and verification procedurees. In addition, the guideline sets dates for compliance.

(c) The Agency believes that adherence to the practices recommended in the guideline constitutes compliance with Section 6002 of RCRA, as it relates to the purchase of paper and paper products containing recovered materials.

§ 250.2 Designation.

Under Section 6002(e)(2) of RCRA, paper and paper products that contain recovered materials are designated as a product for which affirmative procurement actions are required on the part of procuring agencies.

§ 250.3 Applicability.

(a) This guideline applies to all paper and paper products purchased with appropriated Federal funds.

(b) This guideline applies to all procuring agencies and to all procurement actions in which the agency purchases a procurement item, as defined in § 250.4, with appropriated Federal funds, when the purchase price of the item exceeds $10,000, or where the quantity of such items or of functionally equivalent items purchased with appropriated Federal funds during the preceding fiscal year was $10,000 or more. For purposes of this guideline, each item listed in each category below is considered functionally equivalent to every other item in the category: all grades and types of xerographic/copy paper; newsprint; all grades and types of printing paper; corrugated boxes, fiberboard boxes, and folding boxboard; stationery, office papers (e.g., memo pads, scratch pads, and envelopes); toilet tissue, paper towels, facial tissue, paper napkins, and doilies; and brown papers, coarse papers, and industrial wipers.

(c) Procurement actions covered by this guideline include:

(1) All purchases of paper or paper products made directly by a procuring agency or by any person directly in support of work being performed for a procuring agency, for example, contract printing; and

(2) Indirect purchases of paper and paper products made by a procuring agency, such as purchasing resulting from Federal grants, loans, and similar forms of disbursements of monies that the procuring agency intended to be used for the procurement of paper or paper products.

(d) Purchases of paper and paper products that are unrelated or incidental to Federal funding, i.e., not the direct result of a Federal contract, grant, loan, funds disbursement, or agreement with a procuring agency, are not covered by this guideline.

§ 250.4 Definitions.

As used in this guideline, the following terms shall have the meaning indicated below:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Solid Waste Disposal Act Amendments of 1980, as amended (42 U.S.C. 6901 *et seq.*), and

the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616);

"Bleached papers" means paper made of pulp that has been treated with bleaching agents;

"Brown papers" means papers usually made from unbleached kraft pulp and used for bags, wrapping, and so forth;

"Coarse papers" means papers used for industrial purposes, as distinguished from those used for cultural or sanitary purposes;

"Corrugated boxes" means boxes made of corrugated paperboard, which, in turn, is made from a fluted corrugating medium pasted to a flat sheet of paperboard (linerboard); multiple layers may be used;

"Doilies" means paper place mats used on food service trays in hospitals and other institutions;

"Envelopes" means brown, manila, padded, or other mailing envelopes not included with "stationery";

"Facial tissue" means a class of soft absorbent papers in the sanitary tissue group;

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including a government corporation, and the Government Printing Office;

"Fiberboard boxes" means boxes made from containerboard, either solid fiber or corrugated paperboard (general term); or boxes made from solid paperboard of the same material throughout (specific term);

"Folding boxboard" means a paperboard suitable for the manufacture of folding cartons;

"Industrial wipers" means paper towels especially made for industrial cleaning and wiping;

"Newsprint" means paper of the type generally used in printing newpapers. It is lightweight, nondurable, low-cost paper made primarily from mechanical pulps;

"Office papers" means note pads, loose-leaf fillers, tablets, and other papers commonly used in offices, but not defined elsewhere;

"Offset printing paper" means an uncoated or coated paper designed for offset lithography;

"Paper" means one of the two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping, and sanitary purposes;

"Paper napkins" means special tissues, white or colored, plain or printed, usually folded, and made in a variety of sizes for use during meals or with beverages;

"Paper product" means any item manufactured from paper or paperboard. The term "paper product" is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers;

"Paper towels" means paper toweling in folded sheets, or in raw form, for use in drying or cleaning, or where quick absorption is required;

"Paperboard" means one of the two broad subdivisions of paper, the other being paper itself. Paperboard is usually heavier in basis weight and thicker than paper. Sheets 0.012 inch or more in thickness are generally classified as paperboard. The broad classes of paperboard are containerboard, which is used for corrugated boxes; boxboard, which is principally used to make cartons; and all other paperboard;

"Printing paper" means any paper suitable for printing, such as book paper, bristols, and writing paper;

"Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, that is the subject of any purchase, barter, or other exchange made to procure such item;

"Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State that is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;

"Recovered materials" means waste material and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term "recovered materials" includes:

(a) Postconsumer materials such as:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(b) Manufacturing, forest residues, and other wastes such as:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(3) Fibrous by-products of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(4) Wastes generated by the conversion of goods made from fibrous material (e.g., waste rope from cordage manufacture, textile mill waste, and cuttings); and

(5) Fibers recovered from waste water that otherwise would enter the waste stream;

"Specification" means a detailed description of the technical requirements for materials, products, or services that specifies the minimum requirement for quality and construction of materials and equipment necessary for an acceptable product. Specifications are generally in the form of a written description, drawings, prints, commercial designations, industry standards, and other descriptive references;

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

"Stationery" means writing paper suitable for pen and ink, pencil, or typing. Matching envelopes are included in this definition;

"Tabulating cards" means cards used in automatic tabulating machines;

"Tabulating paper" means tabulating forms for use on automatic data processing equipment with a sprocket-feed mechanism;

"Toilet tissue" means a sanitary tissue paper. The principal characteristics are softness, absorbency, cleanliness, and adequate strength (considering easy disposability). It is marketed in rods of varying sizes or in interleaved packages;

"Unbleached papers" means papers made of pulp that has not been treated with bleaching agents;

"Xerographic/copy paper" means any grade of paper suitable for copying by

the xerographic process (a dry method of reproduction).

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

§ 250.10 Introduction.

This subpart offers guidance to Federal agencies that draft or review specifications for paper and paper products.

§ 250.11 Elimination of recovered materials exclusion.

By May 9, 1986, each Federal agency must assure that its specifications do not unfairly discriminate against the use of recovered materials. At a minimum, except as noted in § 250.13, each Federal agency must:

(a) Revise those specifications, standards, and procedures that currently require that paper and paper products contain only virgin materials to eliminate this restriction; and

(b) Revise those specifications, standards, and procedures that prohibit using recovered materials in paper and paper products to eliminate this restriction.

§ 250.12 Requirement of recovered materials content.

(a) Within one year of publication of this guideline, paper and paper product specifications must ensure that recovered materials will be required to the maximum extent possible without jeopardizing the intended end use of the paper or paper product.

(b) Except as noted in § 250.13, each specification should include a statement substantially similar to the following:

> Recovered materials content to the maximum extent feasible is required, provided that the other requirements of this standard are met. Paper and paper products with recovered materials content are preferred over those without such content.

(c) Specifications that are overly stringent for a particular end use and that bear no relation to functionality, such as brightness and whiteness for copy paper, should be revised in order to allow for a higher recovered materials content. Specifications that bear no relation to functionality should be revised according to an agency's established review procedure. In determining the relationship to functionality of existing specifications, Federal agencies should make maximum use of existing voluntary standards and research by organizations such as the American Society for Testing and Materials' committees D6, D10, and F5; the Technical Association of Pulp and Paper Industry; and the American Institute of Paper Chemistry.

§ 250.13 Exclusion for products containing recovered materials that do not meet reasonable performance standards.

(a) Notwithstanding the requirements of § 250.11 and § 250.12 of this section, Federal agencies need not revise specifications to require the use of recovered materials if it can be technically determined that for a particular end use a product containing recovered materials will not meet reasonable performance standards.

(b) Any determination under this paragraph should be documented by the drafting and reviewing agency and be based on technical performance information related to a specific item, not a grade of paper or type of product. Agencies should reference such documentation in subsequent solicitations for the specific item in order to avoid repetition of previously documented points.

§ 250.14 New specifications.

When paper or a paper products containing recovered materials is produced in types and grades not previously available, new specifications should be developed for such type or grade.

Subpart C—Affirmative Procurement Program for Paper Containing Postconsumer Recovered Materials

§ 250.20 Elements of affirmative procurement program.

Within one year after the publication of the final guideline, procuring agencies must establish an affirmative procurement program consisting of the following elements:

(a) A preference program for procurement of paper and paper products containing postconsumer recovered materials consisting of one of the following:

(1) A policy of awarding contracts, on a case-by-case basis, to the vendor offering an item composed of the highest percentage of postconsumer recovered materials practicable, subject to the limitations based on competition, availability, performance, and price described in Section 6002(c)(1)(A)–(C) of the Act and § 250.21, or

(2) Minimum recovered materials content standards that assure that the postconsumer recovered materials content required is the maximum available without jeopardizing the intended end use of the item or violating the limitations of Section 6002(c)(1)(A)–(C) of the Act and § 250.21, or

(3) A substantially equivalent alternative to paragraph (a) (1) or (2).

(b) A promotion program to promote the preference program adopted under paragraph (a) of this section. Under the program, procuring agencies should consider all possible promotional methods including the following:

(1) A special notation prominently displayed in any paper or paper product procurement solicitation or invitation to bid.

(2) A statement in each paper specification defining "postconsumer recovered materials" as they are defined in § 250.4.

(3) A brief statement in advertisements of bids describing the preference program. Such advertisements should be placed in the *Commerce Business Daily* and periodicals commonly read by vendors of paper and paper products containing postconsumer recovered materials.

(4) Any catalog listing of available products (such as GSA's *Office Supplies*) indicating which paper or paper product contains postconsumer recovered materials.

(5) Discussion of the preference program at prebidders' conferences or similar meetings of potential bidders.

(c) A program for estimates, certification, and verification.

(1) Agencies must require estimates of the total percentage of postconsumer recovered materials utilized in the performance of a contract.

(2) Vendors must certify the minimum postconsumer recovered materials actually utilized.

(3) There must be reasonable verification procedures for estimates and certifications, e.g., the procuring agency may state in solicitations for bids that, in the case of a bidder's protest, all estimates and certifications will be subject to audits of mill records.

(d) A program for review and monitoring.

(1) Each agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(2) The annual review should include an estimate of the quantity of paper and paper products purchased containing postconsumer recovered materials.

§ 250.21 Limitations to affirmative procurement program.

A decision not to procure paper or paper products containing postconsumer recovered materials may be based only on one or more of the following factors: Lack of competition among vendors; lack of reasonable availability within a reasonable time period; failure to meet the performance standards in the solicitation for bids or in the reasonable performance standards of the agency; or unreasonable price. For purposes of this guideline, "unreasonable price" is any price other than the price offered in the lowest responsive bid.

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Making urgent supplemental appropriations for the fiscal year ending September 30, 1985, for emergency famine relief and recovery in Africa, and for other purposes. (Apr. 4, 1985; 99 Stat. 27) Price: $1.00

S.J. Res. 79/Pub. L. 99-11

To designate April 1985, as "Fair Housing Month". (Apr. 4, 1985; 99 Stat. 30) Price: $1.00

S.J. Res. 62/Pub. L. 99-12

Commemorating the twenty-fifth anniversary of United States weather satellites. (Apr. 4, 1985; 99 Stat. 31) Price: $1.00

H.J. Res. 121/Pub. L. 99-13

To designate the month of April 1985 as "National Child Abuse Prevention Month". (Apr. 4, 1985; 99 Stat. 33) Price: $1.00

H.J. Res. 160/Pub. L. 99-14

Designating March 22, 1985, as "National Energy Education Day". (Apr. 4, 1985; 99 Stat. 35) Price: $1.00

H.R. 1886/Pub. L. 99-15

To phase out the Federal supplemental compensation program. (Apr. 4, 1985; 99 Stat. 37) Price: $1.00

S.J. Res. 50/Pub. L. 99-16

To designate the week of April 1, 1985, through April 7, 1985, as "World Health Week", and to designate April 7, 1985, as "World Health Day". (Apr. 4, 1985; 99 Stat. 39) Price: $1.00

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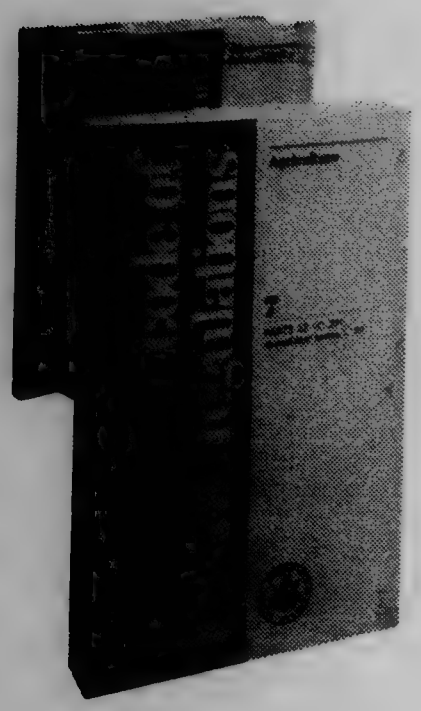
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H.J. Res. 181/Pub. L. 99-18

To approve the obligation and availability of prior year unobligated balances made available for fiscal year 1985 for the procurement of additional operational MX missiles. (Apr. 4, 1985; 99 Stat. 42) Price: $1.00

H.J. Res. 186/Pub. L. 99-19

Designating April 2, 1985, as "Education Day, U.S.A.". (Apr. 4, 1985; 99 Stat. 43) Price: $1.00



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Rules and Regulations

Federal Register
Vol. 50, No. 69
Wednesday, April 10, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-321]

Mexican Fruit Fly; Deletion of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on August 28, 1984, which amended the "Mexican Fruit Fly" quarantine and regulations by removing the previously regulated area in Los Angeles County, California from the list of regulated areas and by removing California from the list of States quarantined because of Mexican fruit fly, *Anastrepha ludens* (Loew). This action was taken because it had been determined that Mexican fruit fly no longer occurs in California. This affect of this action was to remove unnecessary restrictions on regulated articles moving interstate from the previously regulated area in California.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Federal Building, 6505 Belcrest Road, Room 663, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

A document published in the **Federal Register** on August 28, 1984, (49 FR 33991-33992) set forth an interim rule amending the Mexican fruit fly quarantine and regulations (7 CFR 301.64 *et seq.*) by removing the previously regulated area in Los Angeles County, California from the list of regulated areas and by removing California from the list of States quarantined because of Mexican fruit fly, *Anastrepha ludens* (Loew). The quarantine and regulations restrict the interstate movement of regulated articles from regulated areas in quarantined States in order to prevent the artificial spread of the Mexican fruit fly.

The document published on August 28, 1984, stated that Los Angeles County, California, was being removed from the list of regulated areas, and California was being removed from the list of quarantined States in 7 CFR 301.64-3(c) because it has been determined, based on surveys conducted by the U.S. Department of Agriculture and State agencies of California, that the Mexican fruit fly no longer occurs in the previously regulated area in Los Angeles County, or anywhere else in California. The document concluded that there was no longer a basis for imposing restrictions on the interstate movement of regulated articles from anywhere in California.

The amendment became effective on the date of publication in order to relieve unnecessary restrictions on the interstate movement of regulated articles from California.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of August 28, 1984, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on August 28, 1984.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been determined that this amendment will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service, has determinated that this action will not have a significant impact on a substantial number of small entities. This amendment removed restrictions on the interstate movement of certain articles from a portion of Los Angeles County, California, approximately 33 square miles in size. There are approximately 30 out of 200 dealers at a local produce market which sell regulated articles interstate from this previously designated area. This compares with hundreds of small entities that move such articles interstate from nonaffected areas in United States. Further, because of certain routine procedures followed at the local produce market in the previously regulated area in Los Angeles County, California in handling regulated articles, little or no treatment of regulated articles was required prior to their movement interstate. For these reasons, this action is not expected to have significant effect on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mexican fruit fly, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 33991-33992 on August 28, 1984, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 161, 162; 7 CFR 2.17, 251 and 371.2(c).

Done at Washington, D.C. this 5th day of April 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-8601 Filed 4-9-85; 8:45 am]
BILLING CODE 3410-34-M

Office of the Secretary

7 CFR Part 3015

Department of Agriculture Programs and Activities Covered Under Executive Order 12372

AGENCY: Office of the Secretary, USDA.

ACTION: Rule related notice.

SUMMARY: The purpose of this Notice is to inform State and local governments and other interested USDA persons of programs and activities included within the scope of Executive Order 12372, "Intergovernmental Review of Federal Programs." A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 2117–B, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250. (Telephone (202) 382–1553).

SUPPLEMENTARY INFORMATION: The program listed below by Catalog of Federal Domestic Assistance Number was inadvertently omitted in the June 24, 1983, **Federal Register** listing of USDA programs included under Executive Order 12372 (48 FR 29114). This program is now being included under the scope of the Order and affects only the Boundary Waters Canoe Area in the State of Minnesota.

10.669 Accelerated Cooperative Assistance for Forest Programs on Certain Lands Adjacent to the Boundary Waters Canoe Area

If the State of Minnesota is interested in adding this program for review under the Order, the State Single Point of Contact should notify Ms. Lyn Zimmerman, Office of Finance and Management, Financial Management Division, USDA, Room 2117–B, Auditors Building, 201 14th Street SW., Washington, D.C. 20250. (Telephone (202) 382–1553).

Dated: April 4, 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration

[FR Doc. 85–8550 Filed 4–9–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–81–AD; Amdt. 39–5039]

Airworthiness Directives; Gates Learjet Models 23, 24, 25, 28, 29, 35, 36, 35A, 36A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive (AD) applicable to certain Gates Learjet Models 23, 24, and 25 series airplanes. This amendment requires that each airplane's stall prevention system be adjusted to preclude the potential for a hazardous aerodynamic stall. This AD also provides for the installation of a handling qualities improvement kit as an alternate means of compliance.

DATES: Effective May 20, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information and modification kits may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277. Service information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Sorensen, Aerospace Engineer, Wichita Aircraft Certification Office, ACE–160W, FAA, Central Region, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (319) 948–4432.

SUPPLEMENTARY INFORMATION: A proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations by amending Amendment 39–3932 (45 FR 65999; October 9, 1980), AD 80–19–11, was published in the **Federal Register** on January 4, 1985 (50 FR 478). The comment period closed February 15, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment.

One comment was received. The commenter (the manufacturer) stated that since the proposal was published, the cost of the airplane modification kits has been revised as follows:

1. Parts:
—1 kit price=$5,000
—2 kit price=$5,000
—3 kit price=$50;

2. Labor: 30 hours at $38 per manhour;

3. Flight Check: $500 (or $200 per day plus expenses if the airplane is flown in the field).

Depending on the configuration of a particular airplane the correct modification kit would be either 84–5–1, 84–5–2 or 84–5–3. This analysis assumes that all affected airplanes will require the more expensive kit. Assuming the most expensive kit is installed at the factory, the total cost per airplane would be $6,640.

The commenter also recommended that the time of compliance be revised to reflect an eighteen (18) month period after issuance of the AD. The FAA has determined that an 18-month compliance time will not compromise safety with respect to this rule, and the amendment has been changed accordingly.

It is estimated that 100 planes of U.S. registry will be affected by this AD. It will require approximately 30 manhours per airplane to accomplish the required installation; the average labor charge will be $38 per hour. The modification kit will cost approximately $5,000 per airplane. The loss associated with two days of down time is estimated to be $1,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $764,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Gates Learjet Model 23, 24, or 25 series airplanes are operated by small entities. A final evaluation has been prepared for this action and has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

§ 39.13 [Amended]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13), Amendment 39–3932 (45 FR 65999; October 9, 1980),

AD 80-19-11 is amended by adding a new paragraph (H), to read as follows:

(H) On or before October 1, 1986, accomplish the requirements of paragraphs 1. or 2., below, on Learjet Models 23, 24, 24A, 24B, 24B-A, 24D, 24D-A, 25, 25A, 25B, 25C, with unmodified wings, at an FAA certificated maintenance repair station, and insert in the appropriate sections of the Airplane Flight Manual (AFM) the permanent AFM revision pertaining to procedures and performance associated with Airplane Modification Kit (AMK) 83-4 or 84-5. The limitations and performance information required by paragraphs A)3., A)7., A)8., A)9., A)10., A)11., and A)12 of this AD are superseded by the AFM revision included with these kits.

1. Incorporate AMK 83-4 to improve airplane handling qualities and aerodynamic stall characteristics, or

2. Incorporate AMK 84-5 to make the stall prevention system (pusher) operation consistent with the airplane performance and limitations.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas, 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, Central Region, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective May 20, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Issued in Seattle, Washington, on April 4, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-8598 Filed 4-9-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AWA-13]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment redesignates segments of Federal Airways V-9, V-16, V-17, V-20, V-66 and V-71; revokes segments of V-13, V-16, V-20, V-66, V-68 and V-71; and establishes new segments of V-13, V-202 and V-507 to enhance the traffic flow within the Albuquerque, Fort Worth, Houston and Memphis Air Route Traffic Control Centers' (ARTCC) areas.

EFFECTIVE DATE: 0901 GMT, June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

History

On February 14, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V-9E, V-9W, V-16S, V-17E, V-17W, V-20N, V-20S, a segment of V-68S and V-71W; revoke V-13W, V-16N, V-66N, a segment of V-68S, V-71E, and establish new segments of V-13, V-202 and V-507, to enhance the traffic flow within their respective ARTCC areas (50 FR 6193). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations renumbers V-9E between New Orleans, LA, and Greenwood, MS; renumbers V-9W between McComb, MS, and Greenwood, MS; renumbers V-16S between Tucson, AZ, and Cochise, AZ, and Wink, TX, and Big Spring, TX; renumbers V-17E between Cotulla, TX, and San Antonio, TX; renumbers V-17W between McAllen, TX, and Laredo, TX, and San Antonio, TX, and Austin, TX, and Oklahoma City, OK, and Gage, OK; renumbers V-20N between Beaumont, TX, and Lafayette, LA, and New Orleans, LA and Semmes, AL; renumbers V-20S between Lafayette, LA, and New Orleans, LA, and Semmes, AL, and Monroeville, AL; renumbers V-68S between San Angelo, TX, and Junction, TX; renumbers V-71W between Monroe, LA, and Natchez, MS; revokes V-13W between Shreveport, LA, and Texarkana, AR; revokes V-16N between Columbus, NM, and El Paso, TX; revokes V-66N between Columbus, NM, and El Paso, TX; revokes V-68S between Hobbs, NM, and San Antonio, TX; revokes V-17E between Baton Rouge, LA, and Monroe, LA; establishes new segments of V-13 from Laredo, TX, to McAllen, TX; V-202 from Tucson, AZ, Cochise, AZ, and V-507 from Oklahoma City, OK, to Gage, OK, thereby enhancing the traffic flow within their respective ARTCC areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

PART 71—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V-9 [Amended]

By removing the words "McComb, MS, including an E alternate from New Orleans to McComb via Picayune, MS; Jackson, MS, including an E alternate and also a W alternate via INT McComb 348° and Jackson 199° radials; Greenwood, MS, including an E alternate and also a W alternate;" and by substituting the words, "McComb, MS; Jackson, MS; Greenwood, MS;".

V-555 [New]

From New Orleans, LA, via Picayune, MS; McComb, MS; INT McComb 019° and Jackson, MS, 169° radials; Jackson; INT Jackson 010° and Greenwood, MS, 159° radials; to Greenwood.

V-557 [New]

From McComb, MS, via INT McComb 348° and Jackson, MS, 199° radials; Jackson; INT Jackson 340° and Greenwood, MS, 189° radials; to Greenwood.

V-13 [Revised]

From Laredo, TX, via INT Laredo 156° and McAllen, TX, 306° radials; McAllen; Harlingen, TX; INT Harlingen 033° and Corpus Christi, TX, 176° radials; Corpus Christi; INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios, Humble, TX; Lufkin, TX; Shreveport, LA; Texarkana, AR;

Rich Mountain, OK; Fort Smith, AR; INT Fort Smith 006° and Razorback, AR, 190° radials; Razorback; Neosho, MO; Butler, MO; Napoleon, MO; INT Napoleon 336° and St. Joseph, MO, 132° radials; Lamoni, IA; Des Moines, IA, Mason City, IA; Farmington, MN; Grantsburg, WI; Duluth, MN; to Thunder Bay, ON, Canada. The airspace outside the United States is excluded.

V–16 [Amended]

By removing the words "Cochise, AZ, including a S alternate via INT Tucson 122° and Cochise 257° radials; Columbus, NM; El Paso, TX, including a N alternate via INT Columbus 075° and El Paso 286° radials;" and substituting the words "Cochise, AZ; Columbus, NM; El Paso, TX;" and by removing the words "Big Spring, including a S alternate from Wink to Big Spring via Midland, TX;" and substituting the words "Big Spring;"

V–17 [Revised]

From Brownsville, TX, via Harlingen, TX; McAllen, TX; 29 miles 12 AGL, 34 miles 25 MSL, 37 miles 12 AGL; Laredo, TX; Cotulla, TX; INT Cotulla 046° and San Antonio, TX, 196° radials; San Antonio; INT San Antonio 042° and Austin, TX, 229° radials; Austin; Waco, TX; Acton, TX; Bridgeport, TX; Duncan, OK; INT Duncan 011° and Oklahoma City, OK, 180° radials; Oklahoma City; Gage, OK; Garden City, KS; to Goodland, KS.

V–546 [New]

From Wink, TX, via Midland, TX; to Big Spring, TX.

V–552 [Revised]

From Tucson, AZ, via INT Tucson 122° and Cochise, AZ, 257° radials; Cochise; San Simon, AZ; Silver City, NM; to Truth or Consequences, NM.

V–590 [New]

From Cotulla, TX, via INT Cotulla 046° and San Antonio, TX, 183° radials; San Antonio; INT San Antonio 027° and Austin, TX, 244° radials; Austin; INT Austin 041° and Waco, TX, 173° radials; Waco.

V–592 [New]

From Beaumont, TX, via INT Beaumont 056° and Lake Charles, LA, 272° radials; Lake Charles; INT Lake Charles 084° and Lafayette, LA, 285° radials; Lafayette; Tibby, LA; New Orleans, LA; Picayune, MS; Semmes, AL; INT Semmes 063° and Monroeville, AL, 216° radials; to Monroeville.

V–30 [Amended]

By removing the words "including a north alternate via INT Beaumont 056° and Lake Charles 272° radials; Lafayette, LA, including a N alternate via INT Lake Charles 084° and Lafayette 285° radials; New Orleans, LA, including a S alternate from Lafayette to New Orleans via Tibby, LA;" and by substituting the words "Lafayette, LA; New Orleans, LA;" and by removing the words "Semmes, AL, including a N alternate from New Orleans to Semmes via Picayune, MS, excluding the airspace between the main and this N alternate;" and by substituting the words "Semmes, AL;" and by removing the words "Monroeville, including a S alternate via INT Semmes 063° and Monroeville 216° radials;" and by substituting the word "Monroeville;"

V–66 [Amended]

By removing the words "El Paso, TX, including a N alternate via INT Columbus 075° and El Paso 286° radials;" and by substituting the words "El Paso, TX;"

V–68 [Amended]

By removing the words "Midland, including a S alternate via INT Hobbs 136° and Midland 283° radials; San Angelo, TX, including a S alternate via INT Midland 128° and San Angelo 278° radials; Junction, TX, including a S alternate via INT San Angelo 181° and Junction 310° radials; San Antonio, TX, including a south alternate via Center Point, TX;" and by substituting the words "Midland; San Angelo, TX; Junction, TX; San Antonio, TX;"

V–71 [Amended]

By removing the words "via Natchez, MS, including an E alternate via INT Baton Rouge 028° and Natchez 157° radials; Monroe, LA, including a W alternate;" and by substituting the words "via Natchez, MS; Monroe, LA;"

V–554 [New]

From Natchez, LA, via INT Natchez 310° and Monroe, LA, 160° radials; to Monroe.

V–587 [Revised]

From Oklahoma City, OK; via INT Oklahoma City 282° and Gage, OK, 152° radials; Gage; Liberal, KS; to Garden City, KS.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on April 4, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–8593 Filed 4–9–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–AWA–34]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment redesignates segments of Federal Airways V–15, V–70, V–289, V–291, V–306 and V–477. Additionally, segments of V–15, V–70 and V–198 are also amended due to the relocation of the Scholes, TX, VORTAC to an on-airport site at the Galveston, TX, Airport.

EFFECTIVE DATE: 0901 G.M.T., June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On February 14, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V–15W, V–70N, V–198N, V–198S, V–289E, V–291N, V–306S and V–477W; and amend segments of V–15, V–70 and V–198N due to the relocation of the Scholes, TX, VORTAC to an on-airport site at the Galveston, TX, Airport (lat. 29°16'08.75" N., long. 94°52'03.09" W.) (50 FR 6192). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The establishment of a new segment of V–359 as announced in the NPRM will not be implemented, as it has been determined that this extension of the airway is not required. Except for the V–359 extension deletion and editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations renumbers V–15W between Hobby, TX, and Waco, TX; renumbers V–70N between Lafayette, LA, and Baton Rouge, LA; renumbers V–198N between Junction, TX, and Stonewall, TX; renumbers V–198S between Eagle Lake, TX, and Sabine Pass, TX; renumbers V–289E between Beaumont, TX, and Lufkin, TX; renumbers V–291N between Winslow, AZ, and Flagstaff, AZ; renumbers V–306S between Navasota, TX, and Lake Charles, TX; renumbers V–477W between Navasota, TX, and Scurry, TX, and amends segments of V–15, V–70 and V–198 due to the relocation of the Scholes, TX, VORTAC to an on-airport site at the Galveston, TX, Airport (lat. 29°16'08.75" N., long. 94°52'03.09" W.).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V–289 [Amended]

By removing the words "Lufkin, including an E alternate;" and by substituting the word "Lufkin;"

V–569 [New]

From Beaumont, TX, via INT Beaumont 338° and Lufkin, TX, 146° radials; to Lufkin.

V–291 [Amended]

By removing the words "Flagstaff, AZ, including a N alternate from Winslow to Flagstaff via INT Winslow 292° and Flagstaff 063° radials" and by substituting the words "to Flagstaff, AZ;"

V–572 [New]

From Winslow, AZ, via INT Winslow 292° and Flagstaff, AZ, 063° radials; to Flagstaff.

V–306 [Revised]

From Junction, TX, via Austin, TX; Navasota, TX; INT Navasota 064° and Diasetta, TX, 283° radials; Daisetta; to Lake Charles, LA.

V–574 [New]

From Navasota, TX, via Humble, TX; Daisetta, TX; Beaumont, TX; to Lake Charles, LA.

V–477 [Revised]

From Humble, TX, via Leona, TX; to Scurry, TX.

V–571 [New]

From Humble, TX, via Navasota, TX; Leona, TX; INT Leona 330° and Scurry, TX, 182° radials; to Scurry.

V–573 [New]

From Texarkana, AR, via INT Texarkana 037° and Hot Springs, AR, 225° radials; Hot Springs; to Little Rock, AR.

V–15 [Revised]

From Hobby, TX, via Navasota, TX; College Station, TX; Waco, TX; Scurry, TX; Blue Ridge, TX; Ardmore, OK; Okmulgee, OK; INT Okmulgee 048° and Neosho, MO, 223° radials; to Neosho. From St. Joseph, MO, via INT St. Joseph 343° and Neola, IA, 157° radials; Neola; INT Neola 322° and Sioux City, IA, 159° radials; Sioux City; INT Sioux City 340° and Sioux Falls, SD, 169° radials; Sioux Falls; Huron, SD, including a west alternate from Sioux Falls to Huron via Mitchell, SD, Aberdeen, SD, including a W alternate; 18 miles, 69 miles, 42 MSL, Bismarck, ND; to Minot, ND.

V–70 [Amended]

By removing the words "Baton Rouge, LA, including a N alternate via INT Lafayette 012° and Baton Rouge 264° radials;" and by substituting the words "Baton Rouge, LA;"

V–198 [Revised]

From San Simon, AZ, via Columbus, NM; El Paso, TX; 6 miles wide; INT El Paso 109° and Hudspeth, TX; 287° radials; 6 miles wide; Hudspeth; 29 miles, 38 miles, 82 MSL, INT Hudspeth 109° and Fort Stockton, TX; 284° radials; 18 miles, 82 MSL; Fort Stockton; 20 miles, 116 miles, 55 MSL; Junction, TX; San Antonio, TX; Eagle Lake, TX; Hobby, TX; INT Hobby 091° and Sabine Pass, TX; 265° radials; Sabine Pass; White Lake, LA; Tibby, LA; Harvey, LA; 69 miles, 33 miles, 25 MSL; Brookley, AL; INT Brookley 056° and Crestview, FL, 266° radials; Crestview; Marianna, FL; Tallahassee, FL; Greenville, FL; Taylor FL; INT Taylor 093° and Jacksonville, FL, 287° radials; to Jacksonville.

V–556 [New]

From San Angelo, TX; via INT San Angelo 181° and Junction, TX; 310° radials; Junction; Stonewall, TX; INT Stonewall 113° and Eagle Lake, TX, 270° radials; Eagle Lake; INT Eagle Lake 116° and Scholes, TX, 278° radials; to Scholes.

V–548 [New]

From Hobby, TX; via INT Hobby 290° and College Station, TX; 151° radials; College Station; INT College Station 307° and Waco, TX, 173° radials; to Waco.

V–559 [New]

From Lafayette, LA, via INT Lafayette 012° and Baton Rouge, LA, 264° radials; to Baton Rouge.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and (14 CFR 11.69)

Issued in Washington, D.C., April 4, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–8594 Filed 4–9–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 84–AWA–14]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment redesignates segments of Federal Airways V–76, V–94, V–95, V–102, V–105, V–114, V–163 and V–212; revokes a segment of V–94; and establishes a new segment of V–358 to enhance the traffic flow within the Albuquerque, Fort Worth, Los Angeles, Houston and Memphis Air Route Traffic Control Centers' (ARTCC) areas.

EFFECTIVE DATE: 0901 GMT, June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On February 14, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to renumber V–76N, V–76S, V–94N, V–95W, V–102S, V–105E, V–114N, V–163W, V–212N and V–94S, and establishes a new segment of V–358, to enhance the traffic flow within their respective ARTCC areas (50 FR 6195). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations renumbers V–76N between Lubbock, TX, and Industry, TX; renumbers V–76S between Llano, TX, and Hobby, TX; renumbers V–94N between Newman, TX, and Salt Flat, TX; renumbers V–95W between Phoenix, AZ, and Winslow, AZ; renumbers V–102S between Salt Flat, TX, and Carlsbad, NM; renumbers V–105E between Prescott, AZ, and Peach Springs, AZ, and between Coaldale, NV, and Reno, NV; renumbers V–114N between Shreveport, LA, and New Orleans, LA; renumbers V–163W between Corpus Christi, TX, and Acton, TX, and beween Ardmore, OK, and Oklahoma City, OK; renumbers V–212N between Alexandria, LA, and McComb, MS; revokes V–94S between Deming, NM, and Newman, TX; establishes a new segment of V–358 from Ardmore, OK, to Oklahoma City, OK, thereby enhancing the traffic flow within their respective ARTCC areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V–76 [Revised]

From Lubbock, TX, via INT Lubbock 188° and Big Spring, TX, 286° radials; Big Spring; Hyman, TX; San Angelo, TX; Llano, TX; Austin, TX; Industry, TX; INT Industry 101° and Hobby, TX, 290° radials; to Hobby.

V–363 [New]

From Lubbock, TX; to Big Spring, TX.

V–365 [New]

From Llano, TX, via INT Llano 135° and Austin, TX, 280° radials; to Austin.

V–538 [New]

From Llano, TX; via INT Llano 096° and Austin, TX, 314° radials; Austin; INT Austin 090° and Industry, TX, 310° radials; Industry; Eagle Lake, TX; to Hobby, TX.

V–84 [Amended]

By removing the words "Newman, TX, including a S alternate via INT Deming 119° and Newman 271° radials; Salt Flat, TX, including a north alternate via INT Newman 091° and Slat Flat 312° radials;" and by substituting the words "Newman, TX; Salt Flat, TX;"

V–369 [New]

From Newman, TX, via INT Newman 091° and Salt Flat, TX, 312° radials; Salt Flat; INT Salt Flat 085° and Carlsbad, NM, 220° radials; to Carlsbad.

V–86 [Revised]

From Gila Bend, AZ, via INT Gila Bend 096° and Phoenix, AZ, 204° radials; Phoenix; 49 miles, 40 miles, 95 MSL; Winslow, AZ; 66 miles, 39 miles, 125 MSL; Farmington, NM; Durango, CO; Gunnison, CO; 15 miles 125 MSL, 12 miles 145 MSL, 22 miles 157 MSL, 23 miles 135 MSL, 9 miles 128 MSL; to Kiowa, CO. The airspace 14,000 feet MSL and above is excluded from 23 NM northeast of Phoenix to 22 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen.

V–567 [New]

From Phoenix, AZ; via INT Phoenix 006° and Winslow, AZ, 224° radials; 52 miles, 95 MSL; to Winslow. The airspace 14,000 feet MSL and above is excluded from 23 NM north of Phoenix to 26 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen.

V–102 [Revised]

From Salt Flat, TX, via Carlsbad, NM; Hobbs, NM; Lubbock, TX; Guthrie, TX; to Wichita Falls, TX.

V–105 [Revised]

From Tucson, AZ, via INT Tucson 298° and Casa Grande, AZ, 145° radials; Casa Grande; Phoenix, AZ; Prescott, AZ; 25 miles, 22 miles 85 MSL; Boulder City, NV; Las Vegas, NV; INT Las Vegas 286° and Beatty, NV, 142° radials; 17 miles, 105 MSL Beatty; 105 MSL Coaldale, NV; 62 miles 110 MSL; to Reno, NV.

V–582 [New]

From Prescott, AZ; 25 miles 85 MSL, via INT Prescott 319° and Peach Springs, AZ, 134° radials; 8 miles 85 MSL; Peach Springs; INT Peach Springs 308° and Las Vegas, NV, 061° radials; to Las Vegas.

V–584 [New]

From Coaldale, NV, 110 MSL via Mina, NV; 110 MSL; INT Mina 300° and Reno, NV, 135° radials; to Reno.

V–114 [Revised]

From Amarillo, TX, via Childress, TX; Wichita Falls, TX; INT Wichita Falls 117° and Blue Ridge, TX, 285° radials; Blue Ridge; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; to New Orleans, LA; excluding the portion within R–3801B and R–3801C.

V–566 [New]

From Gregg County, TX, via Shreveport, LA; INT Shreveport 176° and Alexandria, LA, 302° radials; Alexandria; INT Alexandria 109° and New Orleans, LA, 312° radials; to New Orleans; excluding the portion within R–3801B and R–3801C.

V–163 [Revised]

From Matamoros, Mexico; via Brownsville, TX; 27 miles standard width, 37 miles 7 miles wide (3 miles E and 4 miles W of centerline); Corpus Christi, TX; Three Rivers, TX; INT Three Rivers 345° and San Antonio, TX, 168° radials; San Antonio; Lampasas, TX; Acton, TX; Bridgeport, TX; Ardmore, OK; INT Ardmore 342° and Oklahoma City, OK, 154° radials; to Oklahoma City. The airspace within Mexico is excluded.

V–568 [New]

From Corpus Christi, TX, via INT Corpus Christi 296° and Three Rivers, TX, 165° radials; Three Rivers; INT Three Rivers 327° and San Antonio, TX, 183° radials; San Antonio; Stonewall, TX; Llano, TX; INT Llano 026° and Acton, TX, 215° radials; to Acton.

V–358 [Amended]

By removing the words "to Ardmore, OK." and by substituting the words "Ardmore, OK; INT Ardmore 327° and Oklahoma City, OK, 180° radials; to Oklahoma City.

V–212 [Amended]

By removing the words "to McComb, MS, including a north alternate via Natchez, MS." and by substituting the words "to McComb, MS."

V–570 [New]

From Alexandria, LA, via Natchez, LA; to McComb, LA.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on April 4, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–8592 Filed 4–9–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85–AWP–11]

Alteration of VOR Federal Airways and Jet Routes; Prescott, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments to Federal Airways and Jet Routes change the name of the Prescott Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aid (VORTAC) facility at Prescott, AZ, to the Drake VORTAC. The name change was initiated in connection with the general policy to change the name of navigation aids bearing the same name as the airports which they serve if the aid is not located on the airport. This action does not change the routing of any airway.

EFFECTIVE DATE: 0901 G.m.t., June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Smith, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, D.C. 20591; telephone: (202) 426–8783.

The Rule

The purpose of these amendments to § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to change the description of V–257, V–12, V–264, V–105, V–105E, J–11, J–78, J–92, J–96, J–134, J–6 and J–10 to reflect the new name, Drake VORTAC, which heretofore was referred to as the Prescott VORTAC. This action is part of a system-wide effort to rename each navigational aid that bears the same name as the airport it serves, if the navigational aid is not located on the airport. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to rename the Prescott VORTAC to the Drake VORTAC. Renaming this FAA facility has no impact on users of the navigational aid or upon the use of the associated airspace. Because this action involves only agency management and property, I find under 5 U.S.C. 553(a)(2) that notice or public procedure is not required.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

List of Subjects in 14 CFR Parts 71 and 75

VOR Federal Airways and jet routes, Aviation Safety.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

§ 71.123 [Amended]

V–562 will be added effective June 6, 1985. The following is an alteration to the original description of V–562, effective upon the establishment.

V–562 [Amended]

By removing the word "Prescott" wherever it appears in the description and substituting the word "Drake"

V–257 [Amended]

By removing the word "Prescott" wherever it appears in the description and substituting the word "Drake"

V–12 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

V–264 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

V–105 [Amended]

By removing the word "Prescott" wherever it appears in the description and substituting the word "Drake"

§ 75.100 [Amended]

J–11 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

J–78 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

J–92 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

J–96 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

J–134 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

J–6 [Amended]

By removing the word "Prescott" and substituting the word "Drake"

J–10 [Amended]

By removing the word "Prescott" wherever it appears in the description and substituting the word "Drake"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on April 4, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–8595 Filed 4–9–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 85–66]

Customs Regulations Amendments Relating to Cancellation of Temporary Importation Bonds; Delay of Effective Date

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of delay of effective date.

SUMMARY: By a final rule document published at T.D. 85–40 in the Federal Register on March 12, 1985 (50 FR 9797), §§ 10.38 and 10.39, Customs Regulations (19 CFR 10.38, 10.39), were amended. The amendments, which were to become effective on April 11, 1985, would have eliminated the requirement that Customs officers examine merchandise imported temporarily under bond or under an A.T.A. carnet, before exportation, and to supervise the exportation process in order to have the temporary importation bond or carnet cancelled. Proof of exportation would have been verified by documentary evidence ordinarily submitted to Customs.

It has now been determined that while these amendments would ease Customs workload and be of some benefit to importers, the changes could have compromised enforcement efforts. As this would not be advisable, the effective date of T.D. 85–40 is delayed indefinitely and no amendments will be made to §§ 10.38 and 10.39 at this time.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Arnold Sarasky, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8848).

Dated: April 5, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85–8608 Filed 4–9–85; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Veterinary Medicine Officials

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to Center for Veterinary Medicine officials to correct an organization title which was changed by a recent reorganization.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and

Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: Effective February 28, 1985, the Acting Assistant Secretary for Health approved a reorganization of the Center for Veterinary Medicine that changed the title of the Office of Scientific Evaluation to the Office of New Animal Drug Evaluation.

This document revises § 5.71, *Termination of exemptions for new drugs for investigational use in human beings and in animals* (21 CFR 5.71) and § 5.83, *Approval of new animal drug applications and their supplements* (21 CFR 5.83) to reflect the change in organization title.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies); Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. By revising §5.71(b)(2), to read as follows:

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.

* * * * *

(b) * * *

(2) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM.

2. By revising § 5.83(b)(1), to read as follows:

§ 5.83 Approval of new animal drug applications and their supplements.

* * * * *

(b) * * *

(1) The Director and Deputy Director, Office of New Animal Drug Evaluation, CVM.

* * * * *

Effective date. This regulation shall become effective April 10, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: April 3, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8538 Filed 4-9-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 5

Delegations of Authority and Organization; Revised Organization

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the regulations to set forth the organization structure of the agency and to provide new addresses for one regional office and one district office.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. By revising § 5.100 to read as follows:

§ 5.100 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner [1]

Commissioner of Food and Drugs.
Deputy Commissioner.

Office of Regulatory Affairs

Office of Regulatory Resource Management.
Division of Planning, Evaluation, and Management.
Division of Regulatory Information Systems.
Office of Enforcement.
Division of Regulations Policy.
Division of Compliance Management and Operations.
Division of Compliance Policy
Office of Regional Operations.
Division of Federal-State Relations.
Division of Field Science.
Division of Field Investigations.
Division of Emergency and Epidemiological Operations.

Office of Management and Operations

Office of Health Affairs

Office of Science

Office of Planning and Evaluation

Office of Legislation and Information

Office of Consumer Affairs

Center for Drugs and Biologics [1]

Office of the Center Director.
Office of Management.
Division of Planning and Evaluation.
Division of Administrative Management.
Division of Drug Information Resources.
Division of Information Systems Design.
Medical Library.
Office of Scientific Advisors and Consultants.
Office of Consumer and Professional Affairs.

Office of Compliance

Office of the Director.
Division of Drug Quality Evaluation.
Division of Drug Labeling Compliance.
Division of Drug Quality Compliance.
Division of Scientific Investigations.
Division of Biological Product Compliance.
Division of Regulatory Affairs.

Office of Drug Standards

Office of the Director.
Division of OTC Drug Evaluation.
Division of Biopharmaceutics.
Division of Generic Drugs.
Division of Drug Advertising and Labeling.
Division of Bioequivalence.

Office of Drug Research and Review

Office of the Director.
Division of Cardio-Renal Drug Products.
Division of Surgical-Dental Drug Products.
Division of Neuropharmacological Drug Products.
Division of Oncology and Radiopharmaceutical Drug Products.
Division of Drug Biology.
Division of Drug Chemistry.
Division of Drug Analysis.

Office of Biologics Research and Review

Office of the Director.
Division of Blood and Blood Products.
Division of Virology.
Division of Bacterial Products.
Division of Biochemistry and Biophysics.
Division of Biological Product Quality Control.
Division of Anti-Infective Drug Products.
Division of Metabolism and Endocrine Drug Products.
Division of Biological Product Certification.
Division of Biological Investigational New Drugs.

Office of Epidemiology and Biostatistics

Office of the Director.
Division of Drug and Biological Product Experience.
Division of Biometrics.

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[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

Center for Food Safety and Applied Nutrition [1]

Office of the Center Director.
Office of Management.
Office of the Director.
Division of Program Operations.
Division of Administrative Operations.
Division of Information Resources Management.

Office of Compliance

Office of the Director.
Division of Regulatory Guidance.
Division of Food and Color Additives.
Division of Cooperative Programs.

Office of Toxicological Sciences

Office of the Director.
Division of Toxicology.
Division of Pathology.
Division of Mathematics.

Office of Physical Sciences

Office of the Director.
Division of Chemical Technology.
Division of Color Technology.
Division of Cosmetics Technology.
Division of Chemistry and Physics.

Office of Nutrition and Food Sciences

Office of the Director.
Division of Consumer Studies.
Division of Nutrition.
Division of Food Technology.
Division of Microbiology.

Center for Devices and Radiological Health [1]

Office of the Center Director.
Office of Management and Systems.
Office of the Director.
Division of Resource Management.
Division of Information Services.
Division of Computer Services.
Division of Planning and Evaluation.
Office of Health Physics.
Office of Health Affairs.
Office of Standards and Regulations.

Office of Compliance

Office of the Director.
Division of Radiological Products.
Division of Compliance Programs.
Division of Compliance Operations.
Division of Product Surveillance.

Office of Device Evaluation

Office of the Director.
Division of Cardiovascular Devices.
Division of Gastroenterology/Urology and General Use Devices.
Division of Anesthesiology, Neurology, and Radiology Devices.
Division of Obstetrics/Gynecology, Ear, Nose, Throat, and Dental Devices.
Division of Surgical and Rehabilitation Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.

Office of Science and Technology

Office of the Director.
Division of Medical Engineering.
Division of Life Sciences.
Division of Physical Sciences.

Office of Training and Assistance

Office of the Director.
Division of Consumer Affairs.
Division of Small Manufacturers Assistance.
Division of Intergovernmental Programs.
Division of Technical Development.
Division of Professional Practices.
Division of Training Support.

Center For Veterinary Medicine [1]

Office of the Center Director.
Office of Management.

Office of New Animal Drug Evaluation

Division of Biometrics and Production Drugs.
Division of Drug Manufacturing and Residue Chemistry.
Division of Therapeutic Drugs for Food Animals.
Division of Drugs for Non-Food Animals.
Division of Drug and Environmental Toxicology.

Office of Surveillance and Compliance

Division of Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Voluntary Compliance and Hearings Development.

Office of Science

Division of Veterinary Medical Research.

National Center for Toxicological Research [2]

Office of the Director.
Office of Scientific Intelligence.
Associate Director for Research Operations and Planning.
Office of Management.
Division of Management Services.
Division of Toxicological Data Management Systems.
Division of Facilities Engineering and Maintenance.
Associate Director for Research.
Division of Teratogenesis Research.
Division of Mutagenesis Research.
Division of Carcinogenesis Research.
Division of Molecular Biology.
Division of Biometry.
Division of Chemistry.
Associate Director for Chemical Evaluation.
Division of Chemical Toxicology.
Division of Pathology.
Division of Microbiological Services.

2. In § 5.115 by revising the entry for "Region IV" to read as follows:

§ 5.115 Field structure.

* * * * *

Region IV

Regional Field Office: 1010 West Peachtree St. NW., 4th Floor, Atlanta, GA 30309.
District Office: 1010 West Peachtree NW., Atlanta, GA 30309.
District Office: 297 Plus Park Blvd., Nashville, TN 37217.
District Office: P.O. Box 118, Orlando, FL 32802.

* * * * *

[1] Mailing address: 200 C St. SW., Washington, DC 20204.

[2] Mailing address: Jefferson, AR 72079.

Effective date. This regulation shall be effective April 10, 1985.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)))

Dated: April 3, 1985.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8533 Filed 4-9-85; 8:45 am]
BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 84F-0097]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phenol in polycarbonate resin intended for use in contact with food. This action responds to a petition filed by Dow Chemical Co.

DATES: Effective April 10, 1985; objections by May 10, 1985.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 26, 1984 (49 FR 18043), FDA announced that a petition (FAP 4B3787) has been filed by Dow Chemical Co., 1803 Building, Door 7, Midland, MI 48640, proposing that § 177.1580 (21 CFR 177.1580) be amended to provide for the safe use of phenol as an optional adjuvant in polycarbonate resin intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As

provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

Lists of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 177 is amended in § 177.1580(b) by alphabetically inserting a new item in the list of substances, to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1580 Polycarbonate resins.

* * * * *

(b) * * *

List of substances	Limitations
* * * * *	
Phenol (CAS Reg. No. 108-95-2)	
* * * * *	

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before May 10, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective April 10, 1985.

(Sec. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: April 2, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8534 Filed 4-9-85; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 2H5357/R750]

Tolerances for Pesticides in Food and Animal Feeds Administered by the Environmental Protection Agency; Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish a food and a feed additive regulation to permit the plant growth regulator ethephon in or on milling fractions of wheat and barley. These regulations to establish maximum permissible levels for residues of the pesticide in or on the commodities were requested pursuant to a petition by Union Carbide Agricultural Products Co.

EFFECTIVE DATE: Effective on April 10, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 240, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 28, 1982 (47 FR 32602), and amended in the **Federal Register** of August 18, 1982 (47 FR 36015), which announced that Union Carbide Agricultural Products Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had filed food/feed additive petition 2H5357 with the EPA. This petition proposed amending 21 CFR 193.186 and 21 CFR Part 561 by establishing regulations permitting residues of the plant growth regulator ethephon ((2-chloroethyl)phosphonic acid) in or on the commodities and feed items milling fractions of wheat and barley at 5.0 parts per million (ppm).

No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP–2F2711/R749) published elsewhere in the rules section of this issue of the **Federal Register.**

Temporary tolerances for ethephon used on the commodities and feed items milling fractions of wheat and barley in accordance with an experimental use program were added in the **Federal Register** of May 2, 1984 (49 FR 18737), with an expiration date of April 20, 1985.

The pesticide is considered useful for the purpose for which the tolerances are sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*). Therefore, 21 CFR Parts 193 and 561 are amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that

regulations establishing new food or feed additive levels or conditions for safe use of additives, or raising such food or feed additive levels, do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

(Sec. 408(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1)))

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

Dated: March 28, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore 21 CFR, Chapter I, is amended as follows:

PART 193—[AMENDED]

1. In Part 193, in § 193.186 by adding new paragraph (a), which is currently designated "Reserved," and by amending paragraph (b) by removing the entiries "Barley, milling fractions, except flour" and "Wheat, milling fractions, except flour" as follows:

§ 193.186 Ethephon.

(a) A food additive regulation is established permitting residues of the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the following food commodities:

Foods	Parts per million
Barley, milling fractions, except flour	5.0
Wheat, milling fractions, except flour	5.0

(b) * * *

Foods	Parts per million
Barley, milling fractions, except flour [Removed]	5.0 [Removed]
* * * * *	
Wheat, milling fractions, except flour [Removed]	5.0 [Removed]
* * * * *	

PART 561—[AMENDED]

2. In Part 561, in § 561.225 by amending paragraph (a) by adding, and alphabetically inserting, the following commodities, and by removing paragraphs (b) and (c) and designating paragraph (b) "Reserved" as follows:

§ 561.225 Ethephon.

(a) * * *

Foods	Parts per million
Barley, milling fractions, except flour	5.0
* * * * *	
Wheat, milling fractions, except flour	5.0

(b) [Reserved]

[FR Doc. 85-8025 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

21 CFR Parts 193 and 561

[FAP 3H5409/R637; FRL-2811-4]

Tolerances for Pesticides in Food and Animal Feeds Administered by the Environmental Protection Agency; Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: These rules establish a food and a feed additive regulation to permit residues of the fungicide thiabendazole in or on wheat milled fractions (except flour). These regulations to establish maximum permissible levels for the residues of the fungicide in or on the commodity were requested pursuant to a petition by Merck and Co., Inc.

EFFECTIVE DATE: Effective on April 10, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 28, 1983 (48 FR 44267), that Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065, had submitted a food additive petition (FAP) proposing to amend 21 CFR Part 193 by establishing a regulation permitting residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on the commodity wheat milled fractions (except flour). No comments were received in response to the notice of filing.

Wheat milled fractions (except flour) are used for human food and animal feed; for this reason both food and feed tolerance regulations are being established for this commodity.

The toxicology data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP2F2603 and 3F2882/R638) increasing tolerance levels in or on wheat grain and potatoes that appears elsewhere in this issue of the **Federal Register.**

These food and feed additive regulations for wheat milled fractions (except flour) and established tolerances, including those referred to elsewhere in this issue of the **Federal Register,** will result in a theoretical maximum residue contribution (TMRC) of 2.4712 milligrams per day (mg/day) for a 60-kg person and will utilize 41.18 percent of the acceptable daily intake (ADI).

The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes.

The pesticide is considered useful for the purpose for which these food and feed additive regulations are sought, and it is concluded that the pesticide may be safely used in the prescribed manner when such uses are in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended September 30, 1973 (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) et seq.). Therefore, the food and feed additive regulations are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels or conditions for safe use of additives, or raising such food or feed additive levels, do not have a significant economic impact on a

substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

Dated: March 12, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

Therefore, Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 193—[Amended]

1. In Part 193 by adding new § 193.470, to read as follows:

§ 193.470 Thiabendazole.

A tolerance of 3 parts per million is established for residues of the fungicide thiabendazole [2-4-thiazolyl) benzimidazole] in or on wheat milled fractions (except flour) resulting from applications of the fungicide to growing wheat.

PART 561—[AMENDED]

2. In Part 561 by amending § 561.380 in paragraph (a) by alphabetically inserting the commodity wheat milled fractions (except flour), to read as follows:

§ 561.380 Thiabendazole.

(a) * * *

Feed	Parts per million
* * * * *	
Wheat milled fractions (except flour)	3.0
* * * * *	

[FR Doc. 85-8031 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

POSTAL SERVICE

39 CFR Part 255

Access of Handicapped Persons to Postal Services, Programs, Facilities, and Employment

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of the rule is to bring together in one place a single statement of the Postal Service's policies and procedures concerning handicapped persons. The new part: (a) Informs the public of the Postal Service's policies and administrative practices towards handicapped individuals and of the administrative procedures which handicapped persons may follow when they have a complaint or inquiry about or seek changes in postal practices, policies, or procedures, affecting themselves, based upon their handicap; and (b) guides employees in responding to complaints or inquiries by handicapped persons in which the emphasis is on the person's handicap rather than on the specific postal subject matter. The scope of the rule includes, but is not limited to, the Postal Service's adoption of regulations under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1982).

EFFECTIVE DATE: May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Charles R. Braun, (202) 245-4620.

SUPPLEMENTARY INFORMATION: On October 20, 1982, the Postal Service published for comment in the Federal Register (47 FR 46706) proposed regulations designed to implement and unify various provisions of law including the amendments made to 29 U.S.C. 794 by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Interested persons were invited to submit written comments concerning the proposed regulations on or before December 20, 1982.

The Postal Service received 24 comments. Most specifically endorsed the proposal's basic goal of bringing together into one place a single statement of the Postal Service's policies and procedures concerning handicapped persons. No comment objected to this goal. Questions were raised, however, concerning certain details. Following is a discussion of the principal issues raised by the comments and the substantive changes that were adopted.

Employment

A number of comments expressed concern about whether the proposal was sufficiently detailed to demonstrate the Postal Service's awareness of, and compliance with, both section 501 of the Rehabilitation Act of 1973, and requirements concerning employment of the handicapped in the postal system which are derived from section 501, such as the duty to make "reasonable accommodations" for handicapped employees and job applicants. While the proposal had stated in a separate provision (§ 255.1(d), "Postal Employment") that "Discrimination against otherwise qualified handicapped persons in postal employment is prohibited * * *", the proposal did not specifically mention either section 501, the Postal Service's derivative "reasonable accommodation" duty, or many other details concerning the Postal Service's employment obligations, although the proposal had referred specifically to postal regulations embodied in the Postal Service's Employee & Labor Relations Manual.

The Postal Service, having more than 710,000 employees, and being subject in its personnel decisions to various administrative and judicial review procedures, is aware of the entire governmental regulatory structure applicable to postal employment of the handicapped. That structure includes not only the postal regulations in the Postal Service's Employee & Labor Relations Manual, but also section 501, the affirmative action plan which the Postal Service annually adopts under section 501 with the approval of the Equal Employment Opportunity Commission (EEOC), all of the applicable regulations adopted by the EEOC under section 501, and implementing postal directives other than those contained in the Employee & Labor Relations Manual.

The proposal's brevity concerning employment was intended for readability. In order to accommodate the concerns expressed by the public comments, while retaining as much brevity as possible, the rule is revised in §§ 255.1(a), 255.1(d) and 255.3(a)(1), to include, as appropriate, specific references to section 501, applicable EEOC regulations, and the Postal Service's derivative duties under section 501 not to discriminate against handicapped applicants and employees, and to make reasonable accommodations for them.

Time Limits for Complaint Responses

A number of comments expressed concern about the proposal's general requirement that postal complaint resolution procedures be followed in a timely manner, because the proposal did not specify the number of days for particular actions. At present, the number of days for resolution of customer complaints—by the handicapped and non-handicapped alike—is fixed by internal memoranda rather than by regulations. The administrative advantage of memoranda is that they permit reasonable and flexible time limits according to changing work loads, budgets, and other unavoidable variables. However, one comment correctly observed that it would be helpful for the public to know generally when to expect to receive complaint responses.

According, the final rule incorporates a new provision (§ 255.1(c)(4)) which

establishes regulatory time limits. This provision permits postal managers responsible for complaint handling to prescribe shorter time limits by memorandum where circumstance permit. Conforming changes will be made to postal regulations of a general character concerning all customer complaints, since the intent is to continue to prescribe time limits for complaint resolution on a nondiscriminatory basis for all customers without regard to handicap.

Automatic Review of Service Decisions

A number of comments expressed concern as to whether all local managers receiving service complaints would be able to make legally correct decisions where the legal rights of the handicapped were concerned. While in this area good judgment and the proper attitude will normally be sufficient to ensure correct decisions even without technical legal expertise, the proposal like the final rule authorizes local postal officials to seek legal advice from the Postal Service's Regional Counsel (§ 255.1(c)(3)). In addition, the rule incorporates a provision not contained in the proposal (§ 255.1(c)(5)) requiring an additional and higher level of review where a negative response is proposed. An additional and independent level of review will help insure that legal advice is requested if needed and that good judgement is exercised. The new provision makes clear that such intermediate review will not foreclose an administrative appeal to higher authority by a customer who remains dissatisfied.

Handicapped Parking

A number of commenters expressed concern about the existence or enforcement of parking restrictions for the handicapped on postal property. Provision for federal, state, and local enforcement of such restrictions is already covered, however, by preexisting postal regulations concerning the policing and enforcement of all conduct regulations for postal facilities, 39 CFR 232.1(q) (1984). These general regulations were not specifically mentioned by the proposal. Since the comments showed both that parking was a matter of concern and that the commenters were unfamiliar with these existing postal regulations of a general character on this topic, the final rule incorporates a new provision (255.3(a)(3), "Handicapped Parking") reflecting these enforcement procedures. In addition, § 255.3(a)(1) is amended by the insertion of a new last sentence requiring the "accessible" facilities to be preferred when facilities are selected for lease or purchase to include facilities at which "any needed off-street parking is provided."

Special Arrangements

A few comments expressed concern about the latitude allowed in proposed § 255.2(a) to make special arrangements for handicapped persons other than those specifically prescribed by postal regulations and enumerated in proposed § 255.2(b)(1) through (4). One concern was that it would be helpful to list all available arrangements so that handicapped customers would know in advance what accommodations were available. Another concern was that without completely detailed regulations, local officials would have too much discretion.

While these concerns are understandable, there are a number of countervailing considerations. Handicapped individuals are not all alike. The capabilities and needs of each handicapped customer may change as each individual changes and as the technology available to help each individual to achieve greater self-sufficiency improves. The Postal Service for its part conducts a wide variety of operations throughout the United States, its territories, and possessions, in rural, suburban, and urban America. Post offices vary in their nature from a one-person operation serving an isolated town of a few persons to thousands of employees in more than a hundred branches and stations serving a metropolis of millions. Accordingly, what would properly be considered under existing law to be a legally-required "reasonable accommodation" by one post office for one handicapped customer in one situation may not necessarily be such a "reasonable accommodation" in the circumstances of a different office or another customer at a different time.

Moreover, the practice of working out, at the local level, special arrangements for handicapped postal customers is a long-standing one antedating section 504. Individualized arrangements that have been adopted and have proved satisfactory in one town or for one customer are not necessarily the same as those adopted and accepted for another customer in another town thousands of miles away. Yet both arrangements could meet applicable legal requirements, either because of relevant difference in circumstances, or because either arrangement satisfies customer needs and legal requirements.

Given these complex, varied, and changing circumstances, overly detailed or uniform regulation could be disruptive or harmful. Such regulations could prevent useful service innovations from evolving at the local level in response to new situations. Moreover, very few complaints are received questioning the adequacy of particular local accommodations. None of the comments offered any evidence of any present system-wide problems in the working of the accommodation process, which operates informally on the basis of good judgment, with a regulation such as proposed § 255.2(a). Consequently, § 255.2(a) is adopted as proposed.

Particular Special Programs

Certain comments about proposed § 255.2(a)(1) through (4) questioned why the stamps-by-mail program is limited to "city delivery customers," why many but not all self-service postal centers (SSPCs) are accessible to the handicapped, and why postage-free mailing privileges for the blind are not extended to other handicapped persons.

The stamps-by-mail program is designed as a convenience for city delivery customers, since their carriers do not sell stamps on their routes. Rural delivery carriers do provide this convenience to their customers. Accordingly, a rural delivery customer who finds it inconvenient to buy stamps at a post office can buy stamps whenever the carrier makes his or her daily delivery, an option not available to city delivery customers.

Not all SSPCs are accessible to the handicapped, since some of them are situated in places, such as shopping centers, which are outside the Postal Service's jurisdiction or control, and which may be inaccessible in ways that the Postal Service cannot change. The Postal Service of course prescribes and effectuates access standards for the design, construction, and installation of equipment in the SSPCs, such as parcel post depositories and vending machines, which it owns or controls.

Regulations on postage-free mailings are limited to certain articles for the use of the blind as authorized by Congress, 39 U.S.C. 3403–3405 (1982). The Postal Service is bound by these legal limits on the extent of these postage-free mailing privileges. 39 U.S.C. 208, 403(c), 3621 (1982).

Relationship of Rule to Government-Wide Coordination Guidelines

A number of commenters questioned whether the proposal should follow or duplicate guidelines issued by the former Department of Health, Education, and Welfare (HEW) and the Department of Justice for the coordination of regulations under section 504 for federal grant-in-aid recipients, 28 CFR Part 41,

former 45 CFR Part 84. As an independent agency, the Postal Service is outside the general government-wide section 504 coordination activity formerly administered by HEW and now administered by the Department of Justice. Exec. Order No. 12250, 45 FR 72995. While these coordination guidelines or regulations do not legally apply to the Postal Service, it is legally obligated to follow section 504 to the same extent as are other covered federal agencies. The Postal Service is authorized and obligated to adopt the best implementing postal regulations it can independently formulate for the management of the postal system's effectuation of section 504, and for the information of its customers and employees, even if such regulations vary in wording and detail from nonpostal implementing regulations used by nonpostal federal agencies.

Some of the regulations which the comments specifically asked the Postal Service to adopt were ones which lacked postal relevance, such as those defining the term "federal financial assistance". The Postal Service does not make federal grants to private recipients.

Nonpostal "coordination" regulations are generally inappropriate for the postal system because of their length, their legalistic complexity, and their self-contained structure. Both the proposal and the final rule are comparatively short and simple compared to nonpostal regulations, since postal regulations are primarily intended for postal employees and customers. In general, postal regulations speak as briefly and as clearly as possible to the non-lawyers to whom they are principally addressed. By contrast, nonpostal regulations which govern federal grant-in-aid recipients, such as state and local government agencies and private universities represented by full-time legal counsel, may need to be written quite differently.

Postal regulations concerning the handicapped and laws concerning their implementation must also be written so as to be integrated with postal regulations concerning non-handicapped persons and the implementation of other laws governing the postal system. Virtually all postal personnel must exercise responsibilities which serve the general public, including handicapped persons. The regulations which they use are therefore subdivided into manuals on different postal subjects corresponding to postal operating needs of the individuals who must follow the regulations or inform the public about them. Postal regulations usually must prescribe uniform instructions regardless of whether a handicapped person may be affected: for example, the regulations on wrapping mail properly so as to prevent damage to the contents. It would therefore be impractical to offer a completely separate set of postal regulations for handicapped persons.

Leased Facilities

A number of comments questioned the proposal insofar as it did not require leased postal facilities either to be selected so as to be accessible, to be remodeled to make them accessible to handicapped persons, or to be remodeled to improve access in accordance with a timetable. In light of these comments, the final rule is revised to include an express statement of the Postal Service's mandatory policy to give preference in the selection of leased space to accessible facilities. (§ 255.3(a)(1)). [1] Selection of accessible buildings and remodeling or existing buildings to attain accessibility, however, are not always feasible. Since section 504 does not require buildings to be remodeled when programmatic nondiscrimination can be accomplished through other means, the rule like the proposal continues to authorize the offering of reasonable service accommodations to handicapped customers. [2] Such accommodations can provide equivalent or better service to the customer concerned, such as when a postmaster or clerk in a small office, to which a ramp cannot be added, can conveniently and promptly be summoned by a handicapped customer to provide service while the customer remains seated in his or her car.

Discretionary Modification of Facilities

Other comments questioned the propriety of the factors enumerated in proposed § 255.3(a)(2) for discretionary remodeling of facilities not legally required to be remodeled. The Postal Service shares the dissatisfaction with inaccessible facilities but must operate within existing constraints. Foremost among these are (a) the requirement that the Postal Service fund its operations out of postal revenues, 39 U.S.C. 3621 (1982), (b) the fact that most privately-constructed buildings, whether already leased or purchased or available for lease or purchase, do not conform to current federal access standards, (c) the general requirement that federal remodeling projects conform to federal access standards for new construction, and (d) the fact that remodeling of an existing structure to comply with access standards for new construction may be impractical or impossible. The Postal Service must therefore exercise discretion in remodeling preexisting facilities. Section 255.3(a)(2) is therefore adopted as proposed.

Historic Preservation

Several comments questioned the portions of the proposal (§ 255.3 (a)(2)(vi) and (a)(4)) reflecting the Postal Service's policy of complying with the National Historic Preservation Act of 1966. These comments seemed to be based on the misapprehension that historic preservation could be used by the Postal Service as a "loophole" to keep the handicapped out of postal buildings.

The National Historic Preservation Act, however, is independently administered by the Secretary of the Interior in cooperation with State and local historic preservation officers. National policies on nondiscrimination toward the handicapped and on historic preservation have generally not conflicted in practice. The Postal Service's Board of Governors has determined that, ". . . it is the policy of the Postal Service to abide by the general policies and requirements for historic preservation applicable in the government." [3] Postal management adheres to this guideline on historic preservation considerations. 39 U.S.C. 202(a), 205(a) (1982). Accordingly, the proposed historic preservation provisioins are adopted without change.

Access Standard Uniformity

One commenter expressed concern about the lack of uniformity that would result from the Postal Service's use of its own handicapped access standards for building design and construction rather than the standards recommended for private use by the American National Standards Institute (ANSI) or the minimum guidelines and requirements for federal standards which are issued by the Architectural and Transportation Barriers Compliance Board. However, the Postal Service is required by law (the Architectural Barriers Act of 1968) to issue and follow its own access standards. 42 U.S.C. 4154a, 4155.

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[1] "At every discretionary opportunity, including the selection of new leased space, accessibility should be provided where the cost of providing accessibility is at an acceptable level." U.S. Postal Service, Real Estate and Buildings Bulletin No. GN-81-8, July 15, 1981, ¶IV.A.

[2] The question of whether the Postal Service's views about when remodeling is legally required are correct is the subject of litigation which is now pending before the courts.

[3] Resolution No. 82-7, of the Board of Governors of the United States Postal Service, "Policy on Historic Preservation", November 9, 1982.

Existing law in this respect reflects the fact that the access requirements for buildings dedicated to postal uses may need to differ in some respects from those for buildings dedicated to nonpostal federal uses, such as military installations or federally funded residential housing.

In order to promote greater uniformity in federal and non-federal access standards, the Postal Service has been working for several years with the three other federal agencies authorized by the Barriers Act to issue federal access standards to develop uniform federal standards that would comply with the Board's minimum guidelines and requirements in a uniform way and also be as closely aligned as possible with ANSI's recommendations. A joint proposal for such uniform standards has already been published by the four agencies in the **Federal Register** for public comment, 48 FR 19610. Staff work on a final uniform standards document is complete, and the Postal Service has approved the final staff draft. When that uniform document is approved by the other three agencies, the Postal Service will revise its own standards accordingly. While the Postal Service will continue to have and apply its own standards as the law contemplates, postal standards will be as closely aligned with nonpostal standards as possible.

Proposed Public Hearings

One suggestion was that the Postal Service should hold "public hearings" on the proposal, but no justification was offered except a generalized assertion concerning the proposal's "importance." The limitation of a rule-making procedure to written comments is not illegal or unreasonable, however, regardless of the importance of the proposed rule. Public hearings can be costly and burdensome both to the sponsoring agency and to the commenters, who may feel compelled to participate to assure an effective presentation of views. In the absence of any promise of benefits to be gained from public hearings, the Postal Service chose to rely on written comments.

Proposed Self-Evaluation

One suggestion was that the proposal should be amended to establish a program for continuing reevaluation by the Postal Service of its own policies toward the handicapped. Postal management feels that reevaluation programs are already in place. The agency is subject to congressional oversight and independent review by other government agencies such as the General Accounting Office, the Equal Employment Opportunity Commission, and the Architectural and Transportation Barriers Compliance Board. The Postal Service regularly receives and responds to complaints from its customers. The Postal Service is subject to scrutiny by political leaders, journalists, and competitors. The legality of postal decisions and policies is subject to challenge in federal litigation. 39 U.S.C. 409(a), 1208, 3628 (1982).

Criticism of existing postal practices and policies is thus already provided by interested parties directly and indirectly. Since self-evaluation within the Postal Service necessarily results on a regular basis, an amendment of the proposal to establish a self-evaluation program seemed redundant. This conclusion is not intended to suggest any view as to whether such a provision would be desirable or should be required in the regulations adopted by any other federal agency, since few federal agencies operate with as much direct public contact and under as much public scrutiny as the postal Service. The need for special self-evaluation programs has to be determined by each agency in the light of its own circumstances.

Publication of Proposal in Federal Register

The proposal was criticized for being published only in the **Federal Register**, and for only listing a telephone number to call for further information, on the theory that the proposal was "inaccessible" without being available in braille or on cassette tape and without listing a telephone number equipped with a teletypewriter to enable deaf persons having such equipment or access to it to telecommunicate with the Postal Service for further information. However, these comments were criticisms of the proposal by persons or groups who manifested no need for such assistance. No requests were received from anyone either for copies of the proposal in braille or on cassette, or for special telecommunications arrangements. The 60-day comment period allowed ample time for special arrangements to be made upon request.

Cross-References to Other Postal Manuals

One commenter claimed that the proposal was illegally "ambiguous and unintelligible" because of its references to various manuals of postal regulations, and that therefore another proposal should be published. Provisions to which the proposal specifically referred, however, were published as an appendix to the proposal. Moreover, prospective commenters calling the telephone number or writing to the address published with the proposal to ask for further information about either the proposal or the regulations to which cross-references were made were promptly given during the 60-day comment period any information about the cross-referenced regulations which they requested.

In the notice-and-comment rulemaking procedure which the Postal Service is following, the published notice of proposed rulemaking is only required to give "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3) (1982). The notice published in this rulemaking exceeded this requirement: it included all of the terms of the proposed rule and all of the terms of the preexisting published regulations to which cross-references were proposed to be made. The comments received reflected general understanding of the proposal. Accordingly, a second proposal does not appear to be needed or required.

Comments Not Directed to the Proposal

A few responses commented not only on the proposed rule on which comments were invited, but also on the supplementary information section and the appendix of existing postal regulations accompanying the proposal. The Postal Service provided the supplementary information section and the appendix as a convenience for the public to help interested persons understand and comment on the proposal. This supplementary information section of the final rule accordingly discusses only those comments which were relevant to the proposed rule.

Notice

It was suggested that the proposed regulation was deficient in not requiring signs to be posted in post office lobbies to give notice to customers of their rights under section 504 of the Rehabilitation Act, and the procedures to follow to complain about discrimination. Since there are many laws and regulations which may affect a postal customer's rights, it is impractical to post signs in lobbies giving notice of all applicable legal sources or requirements, and it would be unjust to require a dissatisfied customer to support a complaint with citations of specific laws or regulations. The Postal Service instead makes every effort to solicit both written and oral comments and complaints from customers. Consumer Service Cards are required to be available in post office

lobbies to enable any customer to complain in writing "about any aspect of products, services or personnel . . . ."[4] When a customer complains orally to an employee, the employee receiving the complaint is required to record it on a Consumer Service Card so that follow-up attention and action can occur.[5]

In view of the foregoing considerations, the Postal Service adopts the following revisions of title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 255

Handicapped persons.

In title 39, CFR, add a new Part 255 to read as follows:

PART 255—ACCESS OF HANDICAPPED PERSONS TO POSTAL SERVICES, PROGRAMS, FACILITIES, AND EMPLOYMENT

Sec.

255.1 Discrimination against handicapped persons prohibited.
255.2 Special arrangements for postal services.
255.3 Access to postal facilities.
255.4 Other postal regulations; authority of postal officials and employees.

Authority: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794.

§ 255.1 Discrimination against handicapped persons prohibited.

(a) *Policy.* Postal Service policy is to comply fully with sections 501 and 504 of the Rehabilitation Act of 1973, and other applicable laws. Accordingly, no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity operated by the Postal Service, or in employment.

(b) *Definition.* For purposes of paragraph (a) of this section, the term "handicapped" applies to a person who has, has a record of, or is regarded as having, a physical or mental impairment which substantially limits one or more of such person's major life activities.

(c) *Customer Service Complaints.*—(1) *How made.* Complaints by or on behalf of otherwise qualified handicapped customers who believe that they have been discriminated against in the provision of postal services solely by reason of their handicap may be made in accordance with Domestic Mail Manual 114.1. The customer should provide, or be willing to provide upon request, sufficient information regarding the matter to permit a complete examination of all of the relevant circumstances concerning the complaint.

(2) *Exhaustion of Administrative Remedies.* See Domestic Mail Manual 114.14.

(3) *Resolution.* A local official receiving a complaint of unlawful discrimination against a handicapped person, such as a refusal to serve an otherwise qualified customer solely because of the customer's handicap, must handle it in accordance with existing regulations and procedures for resolution of customer complaints, including the time limits prescribed in or under § 255.1(c)(4). The steps taken by the official should include an initial review of the complaint to determine whether further investigation is necessary to resolve the complaint, or whether immediate action can be taken to remedy any illegal discrimination that may be occurring. Such corrective action as is determined to be necessary to resolve the complaint should be taken as soon as possible. The complainant should be notified promptly of the action taken; if the matter cannot be resolved quickly, appropriate interim reports, including an acknowledgment of receipt of the complaint, should be furnished to the complainant. Replies to written complaints must be in writing; replies to nonwritten complaints may be in writing or any other appropriate medium. If a complaint claims that discrimination has resulted from the lack of special arrangements for handicapped persons, the complaint should be handled in accordance with § 255.2(b) or § 255.3(b), as appropriate. Legal advice on whether a particular complaint seeks to end unlawful discrimination or to request special arrangements may be sought from the Regional Counsel.

(4) *Time Limits.* If a complaint cannot be resolved within fifteen (15) days the customer must be sent a written acknowledgment of the receipt of the complaint. If the complaint cannot be resolved within thirty (30) days of its receipt, the customer must be sent an interim report in writing, including a statement of when the matter is expected to be resolved. Whenever it appears that a complaint cannot be resolved within sixty (60) days of its receipt, a written report and explanation must be submitted to the appropriate Regional Office, and to the Consumer Advocate, U.S. Postal Service, Washington, D.C. 20260–6320. Local managers may prescribe shorter time limits for complaint responses within their area of responsibility by memorandum or other appropriate written directive.

(5) *Automatic Review.* If an associate office postmaster or management sectional center manager proposes to deny a request by a handicapped customer for a special arrangement or the alteration of a facility, the proposed decision shall be submitted to the next higher level of management (if the request is for a special arrangement) or to the appropriate Field Real Estate and Buildings Office (if the request is for the alteration of a facility). The customer shall be notified of the approved decision. No review under this provision limits the customer's right of appeal to the Consumer Advocate under Domestic Mail Manual 114.14.

(6) *Appeal.* See Domestic Mail Manual 114.14.

(d) *Postal Employment.* Discrimination against otherwise qualified handicapped postal employees or job applicants is prohibited, under section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, and by implementing regulations promulgated by the Equal Employment Opportunity Commission and the Postal Service. Complaints of discrimination against handicapped applicants or employees may be made in accordance with the procedures prescribed in the Employee and Labor Relations Manual (ELM) concerning Equal Employment Opportunity, which apply to discrimination against handicapped persons.

§ 255.2 Special arrangements for postal services.

(a) *Policy.* The Postal Service offers all of its services to all of its customers without discrimination. Customers who would have difficulty using or be unable to use certain services may be eligible under postal regulations for special arrangements. Some of the special arrangements that the Postal Service has authorized are listed below. No customer is required to use any special arrangement offered by the Postal Service, but a customer's refusal to make use of such special arrangement does not require the Postal Service to offer other special arrangements to that customer.

(1) *Carrier Delivery Services and Programs.* See Domestic Mail Manual 155.262.

(2) *Postal Retail Services and Programs.*—(i) *Stamps by Mail.* See Postal Operations Manual 145.

(ii) *Retail Service from Rural Carriers.* See Domestic Mail Manual 156.41.

(iii) *Self-Service Postal Centers.* Self-Service Postal Centers (SSPCs) contain vending equipment for the sale of stamps and stamp items, and parcel and letter deposit boxes. See Postal Operations Manual 154. Many SSPCs are accessible to individuals in

[4] Domestic Mail Manual 114.11, published in the Appendix of the proposal, 47 FR 46760, column 2.
[5] *Id.*

wheelchairs. Customers may obtain information concerning the nearest such SSPC from their local post office.

(iv) *Postage-Free Mailing for Certain Mailings.* See Domestic Mail Manual parts 135 and 115.24, and International Mail Manual 225.

(b) *Inquiries and Requests.*—(1) *How made:* Customers wishing further information about special arrangements for particular postal services may contact the postmaster or other local postal official responsible for such service.

(2) *Response.* A local official receiving a request for special arrangements must provide the customer with any such arrangements as are required by postal regulations and must notify the customer of the special arrangements. If no such special arrangements are required, the responsible official may take such actions to accommodate the customer as are within his or her authority to provide under postal regulations, if he or she determines that doing so would be reasonable, practical, and consistent with the economical and proper operation of the program or activity for which he or she has budgetary responsibility. Every customer who requests special arrangements shall be notified promptly of the determination made and the reasons therefor. If a determination cannot be made quickly, appropriate interim reports, including an acknowledgment of receipt of the request, must be furnished to the customer. Replies to written requests must be in writing; replies to nonwritten requests may be in writing or any other appropriate medium.

(c) *Exhaustion of Administrative Remedies and Appeal.* See Domestic Mail Manual 114.14.

§ 255.3 Access to postal facilities.

(a) *Policy.*—(1) *Legal and Policy Requirements.* It is Postal Service policy to comply fully with the physical access requirements of the Architectural Barriers Act of 1968, as amended. Pursuant to that Act, the Postal Service designs, constructs, and alters its facilities in accordance with its published standards for access to postal facilities. Such standards are contained in Handbook RE–4, Standards for Facility Accessibility by the Physically Handicapped, single copies of which may be obtained free of charge by writing to the Real Estate and Buildings Department, U.S Postal Service Headquarters, Washington, D.C. 20260–6400. In general, the Postal Service's access standards apply prospectively to all newly constructed facilities, and to all new alterations of certain features of existing facilities, regardless of whether the facilities are owned or leased, and regardless of whether the alteration is required or discretionary. In addition, the Postal Service remodels facilities for handicapped access whenever such remodeling is legally required under section 501 of the Rehabilitation Act of 1973 as a "reasonable accommodation" to handicapped employees or applicants. Moreover, where handicapped persons are employed or are to be employed, their work areas are required by postal policy to be altered in accordance with Postal Service access standards to make them accessible to the handicapped employees. At every available opportunity, accessible facilities must be selected for lease or purchase, where cost is at an acceptable level, and such facilities provide desirable working conditions, a maximum degree of convenient and efficient postal services, proper access to existing and future air and surface transportation facilities, and control of postal costs (*see* 39 U.S.C. 101(g) and 403(b)(3)). For purposes of the preceding sentence, a facility and its elements are considered "accessible" if they comply with any handicapped access code which has been adopted by any government agency or recommended by the American National Standards Institute, and if any needed off-street parking is provided.

(2) *Discretionary Modifications.* The Postal Service may also modify facilities not legally required to conform to the Barriers Act's standards when it determines that doing so would be consistent with efficient postal operations. Not all facilities are required to conform to the standards adopted under the Act. In determining whether modifications not legally required should be made, due regard is given to:

(i) The cost of the discretionary modification;

(ii) The number of customers to be benefited by the modification;

(iii) The inconvenience, if any, to the general public;

(iv) The anticipated useful life of the modification to the Postal Service;

(v) If the facility is leased, whether the lease would require the Postal Service to restore the premises to their original condition at the expiration of the lease, and, if so, the possible cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with paragraph (a)(4) of this section;

(vii) The availability of other options to foster service accessibility; and

(viii) Any other factor that may be relevant and appropriate to the decision.

(3) *Handicapped Parking.* Handicapped parking restrictions must be rigorously enforced by the installation's Security Control Officer. Where members of the U.S. Postal Security Force are not available to exercise the powers of special policemen under 40 U.S.C. 318, local postmasters and installation heads must, pursuant to 40 U.S.C. 318b and with the approval of the chief postal inspector or his designee, seek the assistance of state and local enforcement agencies to insure that these restrictions are enforced. See 39 CFR 232.1(q).

(4) *Historic Preservation.* Postal Service policy is to comply with the requirements of the National Historic Preservation Act of 1966, Executive Order 11593, and the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800 (1984) as they pertain to the modification of historic and architecturally significant properties.

(5) *Blind Vendor Facilities.* See Employee & Labor Relations Manual 614 (Issue 6, 5–20–81).

(b) *Inquiries and Requests.*—(1) *How made.* Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the access standards, may be made to the local postmaster or to the manager of the facility involved.

(2) *Response.* The official contacted, if authorized to do so, must determine, in consultation with appropriate supervisors, whether the facility is required to be modified to conform to access standards, and if it is not, whether discretionary alterations should be made. If the facility is required to be modified, arrangements for the required alterations must be made as soon as practicable. If modifications are not required, discretionary alterations may be made, on a case-by-case basis, in accordance with the criteria listed in paragraph (a)(2) of this section. Every customer who requests modifications must be notified promptly of the determination made and the reasons therefor. If a determination cannot be made quickly, appropriate interim reports, including an acknowledgement of the request, must be furnished to the customer. Replies to written requests must be in writing; replies to nonwritten requests must be in writing or any other appropriate medium.

(c) *Exhaustion of Administrative Remedies and Appeal.* See Domestic Mail Manual 114.14.

§ 255.4 Other postal regulations; authority of postal officials and employees.

This Part 255 supplements all other postal regulations. Nothing in this part is intended either to repeal, modify, or amend any other postal regulation, to authorize any postal official or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures. Officials or employees receiving complaints which they lack authority to resolve must promptly refer any such complaint to a higher-level or more appropriate official or employee, and at the same time must notify the customer of the name of the person who is handling the complaint.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85-8543 Filed 4-9-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5F2883/R619; FRL-2811-3]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide thiabendazole in or on mushrooms. This regulation to establish a maximum permissible level for residues of the fungicide in or on mushrooms was requested by Merck & Co., Inc.

EFFECTIVE DATE: Effective on April 10, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register of June 1, 1983 (48 FR 24452), which announced that Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, has submitted a pesticide petition (3F2883) to EPA proposing that 40 CFR Part 180 be amended by establishing a tolerance for residues of the fungicide thiabendazole (2-(4-thiazolyl)-benzimidazole) resulting from its preharvest application in or on mushrooms at 40.0 parts per million (ppm).

There were no comments received in response to the notice of filing. The data submitted in the petition and other relevant material have been evaluated. The data considered include a 2-year dog-feeding study with no-observed-effect level (NOEL) of 50 milligrams per kilogram of body weight per day (mg/kg/bw/day); a rat reproduction study with NOEL of 20 mg/kg/bw/day; a rabbit teratology study with NOEL up to 800 mg/kg/bw/day (highest dose tested); a mouse reproduction study with NOEL of 150 mg/kg/bw/day; a rat teratology study with NOEL up to 80 mg/kg/bw/day (highest dose tested); a 2-year rat-feeding study with NOEL of 10 mg/kg/bw/day with no significant oncogenic effects at 0, 10, 40, and 160 mg/kg/day under the conditions of the study; and a mouse oncogenicity feeding study with no significant oncogenic effects under the conditions of the study at doses of 0.066, 0.533, and 0.2 percent for females and 0.022, 0.066, and 0.2 percent for males. Based on the rat-feeding study with a NOEL of 200 ppm (10 mg/kg/bw/day) and using a 100-fold safety factor, the allowable daily intake (ADI) is 0.1000 mg/kg/bw/day, and the maximum permissible intake (MPI) is 6.000 mg/day for a 60-kg person. Established tolerances and this proposed tolerance result in a theoretical maximum residue contribution of 1.9339 mg/day for a 60-kg person and utilization of 32.23 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in or on a variety of raw agricultural commodities ranging from 0.1 to 10.0 ppm.

The pesticide is considered useful for the purpose for which the tolerance is sought. There are no regulatory actions pending against the continued registration of the pesticide. The metabolism of the pesticide is adequately understood, and an adequate analytical method, spectrophotofluorometry, is available for enforcement purposes.

Based on the information cited above, the Agency has determined that the establishment of the tolerance for residues of the pesticide in or on the mushrooms will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2))

Dated: March 12, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.242(a) is amended by adding, and alphabetically inserting, the raw agricultural commodity mushrooms, to read as follows:

§ 180.242 Thiabendazole; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Mushrooms	40.0
* * * * *	

* * * * *

[FR Doc. 85-8032 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2711/R749; PH-FRL 2812-6]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Ethephon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the plant growth regulator ethephon in or on various agricultural commodities. This regulation to establish maximum permissible residues of ethephon on the commodities was requested pursuant to a petition by Union Carbide Agricultural Products Co.

EFFECTIVE DATE: Effective on April 10, 1985.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Jaylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 240, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 28, 1982 (47 FR 32602), which announced that Union Carbide Agricultural Products Co., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, had filed a pesticide petition (PP 2F2711) with the Agency proposing to amend 40 CFR 180.300 by establishing tolerances for residues of the plant growth regulator ethephon ((2-chloroethyl)phosphonic acid) in or on the raw agricultural commodities grain of wheat and barley at 0.1 part per million (ppm) and straw of wheat and barley at 10.0 ppm.

In the **Federal Register** of January 23, 1985 (50 FR 3024), the petitioner amended the petition by increasing the tolerance level on grain of barley and wheat from 1.0 to 2.0 ppm and proposing tolerances for milk at 0.1 ppm and liver and kidney of cattle, goats, hogs, and horses at 2.0 ppm.

The petitioner subsequently amended the petition by submitting a revised Section F proposing tolerances for residues of ethephon on wheat grain at 2.0 ppm; wheat straw at 10 ppm; barley grain at 2.0 ppm; barley straw at 10 ppm; milk at 0.1 ppm; and meat, fat, and meat by-products of cattle, hogs, horses, goats, and sheep at 0.1 ppm. Since there is no potential increase in exposure from these tolerances, a period of public comment is not necessary.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered include several acute toxicology studies, a 90-day feeding study with dogs (0; 5; 25; 187.5 mg/kg/day) with a no-observed effect level (NOEL) of 5 mg/kg/day (CHE) and no systemic effects; a 3-generation reproduction study (rats) with a NOEL greater than 75 mg/kg/day (reproductive effects); a teratology study (fats) with a NOEL greater than 600 mg/kg/day; a teratology study (rabbits) with a NOEL greater than or equal to 50 mg/kg/day; a neurotoxicity study (hens) negative at 1,000 mg/kg/day; a 2-year chronic feeding/oncogenicity study with rats (0; 1.5; mg/kg) with a NOEL of 1.5 mg/kg (ChE) and no oncogenic effects noted under the conditions of the study; a 2-year chronic feeding study (dogs) with NOEL less than or equal to 1.25 mg/kg/day (ChE) and 7.5 mg/kg/day (systemic effects); and a 3-week dermal application study (no systemic toxicity, dermal effects only).

The acceptable daily intake (ADI) based on the 2-year dog feeding study (NOEL of 7.5 mg/kg) and using a 100-fold safety factor is calculated to be 0.0750 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 4.5 mg/day. The theoretical maximum residue contribution (TMRC) for existing tolerances for a 1.5-kg diet is calculated to be 0.4304 mg. Food additive and feed additive tolerances are being established for milling fractions of barley and wheat (except flours) concurrently (see FAP No. 2H5357/R750 appearing elsewhere in the rules section of this issue of the **Federal Register**). The current action will use 3.47 percent of the ADI. Published tolerances use 9.57 percent of the ADI. Additional information is needed to clarify results of a mouse oncogenicity study. The company has been notified of the required information and has agreed to submit the information required.

The nature of the residue is adequately understood, and an adequate analytical method (gas liquid chromatography using a capillary column and a flame photometric detector) is available for enforcement purposes. There are currently no actions pending against the continued registration of this chemical. No residues of this chemical are expected to occur in poultry and eggs from this use pattern. Residues of the chemical are expected to occur in meat and milk from this use pattern, but the residues will be covered by the proposed tolerance on meat, fat, meat by-products, and milk.

Based on the above information considered by the Agency, it is concluded that the tolerances established by amending 40 CFR Part 180 will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 28, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.300 is amended by adding, and alphabetically inserting, the following raw agricultural commodities to read as follows:

§ 180.300 Ethephon; tolerances for residues.

* * * * *

Commodities	Parts per million
• • • • •	
Barley, grain	2.0
Barley, straw	10.0
• • • • •	
Cattle, fat	0.1
Cattle, mbyp	0.1
Cattle, meat	0.1
• • • • •	
Goats, fat	0.1
Goats, mbyp	0.1
Goats, meat	0.1
• • • • •	
Hogs, fat	0.1
Hogs, mbyp	0.1
Hogs, meat	0.1
Horses, fat	0.1
Horses, mbyp	0.1
Horses, meat	0.1
• • • • •	
Milk	0.1
• • • • •	
Sheep, fat	0.1
Sheep, mbyp	0.1
Sheep, meat	0.1
• • • • •	
Wheat, grain	2.0
Wheat, straw	10.0
• • • • •	

[FR Doc. 85-8027 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2983 and 3F2882/R636; FRL-2811-2]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Thiabendazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases the tolerances for residues of the fungicide thiabendazole in or on potatoes and wheat grain. This regulation to increase maximum permissible levels for residues of thiabendazole in or on these raw agricultural commodities was requested by Merck and Co., Inc.

EFFECTIVE DATE: Effective on April 10, 1985.

ADDRESS: Written objections may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 17, 1982 (47 FR 6991), which announced that Merck and Co., Inc., P.O. Box 2000, Rahway, NJ 07065, had filed a pesticide petition (PP 2F2603) with EPA. The petition proposed that 40 CFR 180.242 be amended by increasing the tolerance for residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole] in or on the raw agricultural commodity wheat grain from 0.2 part per million (ppm) to 1.0 ppm. EPA also issued a notice, published in the **Federal Register** of June 1, 1983 (48 FR 24451), which announced that Merck and Co., Inc., had filed a pesticide petition (PP 3F2882) with EPA. This petition proposed that 40 CFR 180.242 be amended by increasing the tolerance for residues of the fungicide thiabendazole [2-(4-thiazolyl)benzimidazole) in or on the raw agricultural commodity potatoes from 3.0 ppm to 8.0 ppm. EPA issued a second notice, published in the **Federal Register** of September 30, 1983 (48 FR 44904), which announced that Merck and Co., Inc., had amended the petition by increasing the tolerance from 8.0 to 10.0 ppm. No comments were received in response to these notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which these tolerances are sought. The toxicological data considered in support of the tolerances include the following: an acute oral lethal dose rat study (median lethal dose (LD_{50}) = 3.3 grams per kilogram (g/kg)); an acute oral lethal dose mouse study (LD_{50} = 3.8 g/kg); a 2-year rat-feeding study with a no-observed-effect level (NOEL) of 10 mg/kg/day that was negative for oncogenic potential up to and including 160 mg/kg/day; a 2-year dog-feeding study with a NOEL of 50 mg/kg/day; a mouse oncogenicity feeding study with a negative oncogenic potential up to and including 799.5 mg/kg/day; a rat teratology study that was negative at 80 mg/kg; a rabbit teratology study that was negative at 300 mg/kg; a mouse reproduction study with a NOEL of 150 mg/kg/day; and a rat reproduction study with a NOEL of 20 mg/kg/day. Based on the 2-year rat-feeding study (NOEL = 10 mg/kg/day) and using a 100-fold safety factor, the allowable daily intake (ADI) is 0.10 mg/kg/day; the maximum permissible intake (MPI) is 6.0 mg/day for a 60-kg person. Currently established tolerances; the feed and food additive tolerance for wheat milled fractions (except flour) at 3.0 ppm, which appears elsewhere in this issue of the **Federal Register**; and these tolerances result in a maximum theoretical exposure of 2.4712 mg/day for a 60-kg person and utilize 41.18 percent of the ADI. Tolerances have previously been established for residues of thiabendazole in or on a variety of raw agricultural commodities (40 CFR 180.242). There are no regulatory actions pending against continued registration of the pesticide, and there are no other considerations involved in establishing these tolerances. Secondary residues of thiabendazole and its metabolite, 5-hydroxy thiabendazole, in meat, milk, poultry, and eggs will not exceed the currently established tolerances. The metabolism of thiabendazole is adequately understood, and an adequate analytical method, spectrophotometric analysis, is available for enforcement purposes.

A related document (FAP 3H5409/637) establishing a food and feed additive tolerance for the fungicide in or on wheat milled fractions (except flour) appears elsewhere in this issue of the **Federal Register**.

Based on the information cited above, the Agency had determined that the establishment of these tolerances for the fungicide thiabendazole in or on the raw agricultural commodities potatoes and wheat grain will protect the public health. Therefore, the regulation is established by amending 40 CFR 180.242, as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(d)(2), 68 Stat. 512, 21 U.S.C. 346a(d)(2))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 12, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.242(a) is amended by revising the tolerances for potatoes and wheat grain, to read as follows:

§ 180.242 Thiabendazole; tolerance for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Potatoes (pre & post-h)	10.0
* * * * *	
Wheat grain	10.0

* * * * *

[FR Doc. 85-8034 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 50344-5044]

Foreign Fishing; Bering Sea and Aleutian Islands Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening a foreign fishery and request for comment.

SUMMARY: The Secretary of Commerce has determined that fishing vessels of the Union of Soviet Socialist Republics (U.S.S.R) may continue trawling for the 1985 Soviet allocation of groundfish in the Bering Sea and Aleutian Islands (BSA) management area. The Director, Alaska Region, NMFS (Regional Director), closed the BSA management area to trawling by vessels of the U.S.S.R. on February 20, 1985, after the Soviet portion of the prohibited species catch (PSC) limit for king crab was exceeded while fishing for yellowfin sole. The Regional Director is allowing the U.S.S.R. to continue a directed fishery for pollock under foreign fishing regulations governing the BSA groundfish fishery. This action is necessary to achieve the total allowable catch (TAC) of pollock in the BSA management area. It is intended as a conservation and management measure to promote full use of BSA groundfish resources.

DATES: This notice is effective April 5, 1985. Comments must be submitted on or before May 6, 1985.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. During the 30-day comment period, the data on which this notice is based will be available for public inspection during business hours (8 a.m. to 4:30 p.m.) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing foreign fishing for groundfish in the BSA establish PSC limits for four species caught incidentally to the permitted foreign trawl fisheries. Overall PSC limits are calculated annually based on the total allowable level of foreign fishing (TALFF) for BSA groundfish. The initial PSC limit for king crab is increased, using a specified formula, in proportion to increases in TALFF during the fishing year. Each foreign nation receiving an allocation of BSA groundfish is given a portion of the overall PSC limit, based on the amount of its groundfish allocation. Foreign governments are informed of their initial PSC limits at the beginning of the fishing year. The initial 1985 PSC limit of king crab for fishing vessels of the U.S.S.R. was 6,619 crabs.

The foreign fishing regulations further provide that the Regional Director will notify a nation when any of its PSC limits is approached so that voluntary efforts by vessels of that nation may reduce the incidental catch of the species in question. When a PSC limit is reached, the entire management area is to be closed to trawling by vessels of that nation for the remainder of the fishing year. After making certain findings, however, the Regional Director may allow a selected portion of that nation's fleet to continue fishing under specified conditions until that nation's groundfish allocation is reached. In making such findings under § 611.93(e)(2)(iii), the Regional Director must take into account the following considerations:

(A) The risk of biological harm to prohibited species stocks and of socioeconomic harm to authorized prohibited species users posed by continued trawling by the selected elements;

(B) The extent to which the selected elements have avoided incidental prohibited species catches up to that point in the fishing year;

(C) The confidence of the Regional Director in the accuracy of the estimates of prohibited species catch by the selected elements up to that point in the fishing year;

(D) Whether observer coverage of the selected elements is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in the elements' prohibited species catch; and

(E) The enforcement record of owners and operators of vessels included in the selected elements, and the confidence of the Regional Director that adherence to prescribed conditions can be assured in light of available enforcement resources.

Fishing vessels of the U.S.S.R. began harvesting the initial Soviet allocation of groundfish in the BSA during the first week of January 1985. During its first two weeks, this fishery targeted on pollock, and only 569 king crabs were incidentally caught. During its third week the fishery began targeting on yellowfin sole, and its estimated incidental harvest of king crab was 3,434 crabs. During the week ending January 26, an estimated 36,284 king crabs were incidentally harvested. An additional incidental catch of 9,981 king crabs was estimated for the week ending February 2. The current total incidental harvest by Soviet trawlers is 51,995 king crabs. Clearly, the Soviet fleet exceeded the initial Soviet king crab PSC limit by January 26.

Estimates of PSC's are based on reports from NMFS observers on board foreign fishing vessels. These reports are not available to the Regional Director until two weeks after the week being reported. Thus it was not apparent until February 11 that the U.S.S.R. had exceeded its PSC limit for king crab. The Soviet fleet had departed the BSA by that time, and it was too late to issue a warning. Nevertheless, the Regional Director closed the BSA management area to further fishing by vessels of the U.S.S.R. effective February 20, 1985.

During March 1985, a revised initial allocation of TALFF was made for the 1985 BSA foreign groundfish fishery. The U.S.S.R. received an allocation of 10,205 metric tons (mt), most of which is pollock. Accordingly, the Soviet PSC limit for king crab increased to 12,371 crabs. Under the closure of February 20, however, the Soviet fleet is not permitted to harvest this allocation of TALFF or any future allocations this

year. This notice is issued under § 611.93(e)(2)(iii) to allow a portion of the Soviet fleet to continue fishing.

Findings

The Regional Director has considered the five criteria listed above in developing the following findings:

(A) The risk of biological and socioeconomic harm to king crab stocks and fishermen would be low if Soviet trawlers conduct a directed fishery for pollock only. The PSC rates prescribed by the foreign fishing regulations are such that all foreign fisheries in the BSA will maintain their PSCs at acceptably low levels of biological risk. Currently the king crab PSC limit for the entire foreign groundfish fishery in the BSA is 242,210 crabs; the total estimated incidental catch to date for the five nations fishing in the BSA is 52,055 crabs. Thus the total incidental catch of king crab is substantially below the amount that would cause concern that king crab stocks would be harmed by continued Soviet fishing for pollock.

The total incidental king crab catch to date indicates also that socioeconomic harm to authorized prohibited species users would be minimal if Soviet vessels were allowed to continue fishing for pollock. The remaining balance of the PSC limit for king crab is ample to accommodate the four other nations permitted to fish in the BSA. These other nations have demonstrated extremely low incidental catches of king crab. The socioeconomic impact on U.S. fishermen also is likely to be insignificant despite the fact that domestic king crab landings have been reduced in recent years. Assuming that Soviet vessels fishing for their current revised allocation of pollock made incidental catches of king crab at the same rate as occurred during their pollock fishery in early January 1985, their projected total Soviet king crab catch would be about 1.7 percent of the estimated 3.4 million king crabs harvested in the BSA by domestic fishermen in 1984. The entire current PSC limit is about 7.1 percent of the 1984 domestic harvest of king crab in the BSA. In past years, however, total king crab incidental harvest has not exceeded one-third of the annual PSC limit. Assuming that the domestic king crab fishery will harvest about the same amount in 1985 as in 1984, these percentages are within the normal range of year-to-year variability expected from environmental and other biological influences.

(B) The Soviet trawl fleet has avoided excessive incidental PSCs up to this point in the fishing year while fishing for pollock. During the first two weeks of 1985 when the Soviet fleet was targeting on pollock, its incidental catch rate was 0.52 king crab per metric ton of pollock. This rate is within the incidental catch rate of 0.56365 king crab per metric ton of groundfish prescribed by the foreign fishing regulations. In addition, the performance of the Soviet fleet in October, November, and December of 1984 was good. It harvested 12,014 mt of pollock and 8,158 mt of yellowfin sole during those months; its incidental catch rate was 0.03 king crab per mt of pollock and yellowfin sole combined. This rate was substantially below the rate of 0.6 king crab per metric ton of groundfish allocation specified for foreign fisheries in 1984.

The Soviet trawl fleet in 1985 also has stayed within its prescribed PSC limits for other prohibited species. To date, the fleet has caught relatively low percentages of its PSC limits for Tanner crab (6 percent), halibut (6.5 percent), and salmon (3.5 percent).

(C) The Regional Director is confident that the PSC estimates are accurate, due to 100 percent observer coverage of the fishing vessels of the U.S.S.R.

(D) The 100 percent observer coverage of the Soviet trawl fleet is sufficient to assure adherence to the condition that it fish for pollock only and to alert the Regional Director to increases in its PSC.

(E) The enforcement record of fishing vessels of the U.S.S.R. is generally good; they have had no significant violations under current regulations since entering the fishery in October 1984. Observer data indicate that the excessive incidental catches of king crab occurred when the fleet was targeting on yellowfin sole. The Regional Director is confident that these incidental catches were not intentional and may have resulted from increased vulnerability of king crab to bottom trawl gear fishing yellowfin sole early in the fishing year. Historically, trawling for pollock has not involved high incidental catches of king crab.

Pollock will be the target species because the remaining yellowfin sole allocation is sufficient only for incidental catches which, when taken, will cause closure of the Soviet BSA groundfish fishery. Current allocations of other species are too small to encourage directed fishing for them. Opening the BSA management area to the Soviet trawl fleet, therefore, should not result in excessive incidental catches of king crab. Fnally, the Regional Director has been assured of Soviet intentions to observe their PSC limits strictly.

For these reasons, the Regional Director finds that fishing vessels of the U.S.S.R. may be allowed to resume fishing for their remaining groundfish allocations in the BSA management area during the remainder of the 1985 fishing year. The Regional Director finds also that this action is necessary immediately to achieve the TAC for pollock in the BSA management area in an orderly manner.

This notice will become effective upon filing for public inspection with the Office of the Federal Register. Public comments on this notice may be submitted to the Regional Director at the address above. After considering any comments received, the Regional Director will determine whether the field order should be changed.

Other Matters

Allowing the Soviet fleet to harvest its current allocation of TALFF increases the efficiency of Soviet factory trawlers participating in joint ventures with domestic fishermen because the factory trawlers are able to fish when weather conditions prevent fishing by the smaller domestic joint venture vessels. This is especially important during the winter and spring when adverse weather conditions prevail in the BSA management area. The flexibility afforded by a TALFF allocation has prompted the Soviets to increase substantially their purchase of groundfish from domestic joint venture fishermen. This benefit to domestic fishermen could be reduced if further delay of the Soviet pollock fishery resulted in the withdrawal of Soviet processors from the BSA management area. For these reasons, delay of the Soviet pollock fishery is undesirable.

In addition pollock are currently in spawning concentrations, allowing their harvest with increased efficiency and reduced incidental catches of prohibited species. The pollock are dispersed later in the year and incidental catches of other species increase. When spawning is completed during May, the oil content and meat quality of the pollock is low, making them less desirable for food. Finally, further delay of the Soviet pollock fishery could jeopardize achievement of the TAC for pollock in the BSA.

For these reasons, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), finds, under § 611.93(e)(1)(ii)(C), that provision of an opportunity for public comment prior to the effective date of this notice would adversely affect the conservation and management of groundfish. The Assistant Administrator finds for the same reasons that advance opportunity for public comment on this notice would be impracticable and contrary to the

public interest and that no delay should occur in its effective date, under the provision of sections 553 (b) and (d) of the Administrative Procedure Act.

This action is taken under the authority of regulations specified at § 611.93 and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requests, as defined in the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 611

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 5, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-8576 Filed 4-5-85; 2:21 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 69
Wednesday, April 10, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1002 and 1004

[Docket Nos. AO-162-A62 and AO-71-A74]

Milk in the Middle Atlantic and New York-New Jersey Marketing Areas; Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This notice establishes May 10 as the new deadline for filing exceptions to the March 5 recommended decision concerning proposed amendments to the Middle Atlantic and New York-New Jersey milk orders. Counsel for a federation of cooperatives and a handler who would become regulated because of the marketing area expansion requested the additional time to prepare his exceptions. Also, counsel for two proprietary handlers and a cooperative association asked for more time to file exceptions. Petitioners stated that more time is needed to evaluate the impact of the Department's recommendations on the operations of their clients.

DATE: Exceptions now are due on or before May 10, 1985.

ADDRESS: Comments (six copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued June 17, 1983; published June 23, 1983 (48 FR 28655).

Recommended decision: Issued March 5, 1985; published March 11, 1985 (50 FR 9637).

Correction to recommended decision: Published March 21, 1985 (50 FR 11374).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Middle Atlantic and New York-New Jersey marketing areas, which was issued in March 5, 1985, is hereby extended to May 10, 1985.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Parts 1002 and 1004

Milk marketing orders, Milk, Dairy products.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C., on April 5, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-8603 Filed 4-9-85; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Funding and Fiscal Affairs; Farm Credit System; Liquidation; Extension of Comment Period

AGENCY: Farm Credit Administration.

ACTION: Notice; Proposed rule comment period extension.

SUMMARY: The Farm Credit Administration ("FCA"), by its Federal Farm Credit Board ("Federal Board"), published for comment proposed amendments to its regulations relating to the voluntary or involuntary liquidations of Farm Credit System ("System") banks and associations in the Federal Register on February 13, 1985 (50 FR 6000-6005). The FCA hereby gives notice that the original comment period is extended to May 1, 1985.

DATE: The period for receipt of written comments is hereby extended to May 1, 1985.

ADDRESS: All comments should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all written communications received will be available for inspection by interested parties in the Office of the Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On February 13, 1985, the FCA published in the Federal Register proposed revisions to its regulations relating to the voluntary or involuntary liquidations of System institutions. The proposed revision would expand the FCA receivership regulations to include the basic provisions that have heretofore been contained in the orders appointing receivers and will apply to banks as well as associations. These provisions in the regulations will assist in clarifying the status of receivers of System institutions as agents of the FCA and will enhance the ability of receivers to carry out their responsibilities. The proposed regulations set forth procedures for placing a bank or association into receivership, the powers and duties of receivers, the rights of creditors and stockholders of an institution in liquidation, and the inventory and examination requirements associated with receiverships. Since the publication of the proposed regulations, the FCA has received several comments requesting additional time to respond to the proposed regulations. The Federal Board has determined that an extended comment period would be beneficial in order to ensure that all interested parties have an opportunity to comment on the proposed revision to the regulations.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-8521 Filed 4-9-85; 8:45 am]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21914; File No. S7-14-85]

Initiation or Resumption of Quotations Without Specified Information

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of comments.

SUMMARY: Recently, in adopting amendments to Rule 15c2-11 under the Securities Exchange Act of 1934, the Commission instructed the staff to compile and evaluate information on the costs and benefits associated with the rule. Rule 15c2-11 regulates the submission and publication of quotations by broker-dealers for certain over-the-counter securities. Under the rule, a broker-dealer must obtain specified information about the security and its issuer prior to initiating or resuming a quotation in a quotation medium. This release identifies particular costs and benefits believed to be associated with the the rule as recently amended, and solicits comments and data on them. Comments are also requested on any other costs and benefits that can be identified, and on whether there are alternative regulatory approaches that, in light of cost/benefit data, would better achieve the rule's objectives. Commentators are urged to quantify their observations and views to the extent possible..

DATE: Comments must be received on or before June 10, 1985.

ADDRESSES: Interested persons should submit three copies of their written data, views, and opinions to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549 and should refer to File No. S7-14-85. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 1024, 450 Fifth Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry E. Bergmann (202-272-2874) or Nancy J. Burke (202-272-2848), Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Recently, the Securities and Exchange Commission adopted amendments to Rule 15c2-11 ("Rule 15c2-11" or the "Rule") [1] under the Securities Exchange Act of 1934 (the "Act").[2] At that time, the Commission announced that it intended to continue its review of the benefits and costs associated with the Rule and would seek further public comment on these matters, including the application of the Rule to quotations entered without a specified price.[3]

Unless an exception is available, Rule 15c2-11 requires that, prior to entering a quotation for an over-the-counter security in a quotation medium, a broker or dealer have in its files specified information about the security and its issuer.[4] Adopted in 1971,[5] the Rule was designed to deter manipualtive and fraudulent behavior that had been prevalent in connection with the distribution and trading of unregistered securities of corporations having little or no earnings, assets or operations ("shell corporations").[6] A broader purpose of the Rule, however, is to inhibit broker-dealers from establishing arbitrary quotations for infrequently traded over-the-counter securities.[7] Because changes in the over-the-counter market since the Rule's adoption had restricted the Rule's effectiveness, the Commission adopted the 1984 Amendments.[8]

During consideration of the 1984 Amendments, the Commission expressed its interest in obtaining additional information about the impact of the Rule on the over-the counter market and on market makers that participate in that market. This information will assist the Commission in assessing whether the principal objectives of the Rule are being or can be fulfilled and thus whether the Rule should be retained in its current form, be revised, or be rescinded. Accordingly, this release describes certain benefits the Commission believes are derived through the Rule, and solicits comments with respect to these and other possible benefits. The Commission is also soliciting comment about various costs that may be associated with the Rule. Finally, public comment is requested on the appropriateness, in light of relevant costs and benefits, of adopting an alternative regulatory approach to Rule 15c2-11.

II. Benefits Associated With Rule 15c-11

The Commission has identified four benefits which appear to be associated with the Rule. Commentators are requested to discuss these apparent benefits, and to quantify them, if possible. Because this is not an exclusive list of benefits that the Rule may provide, commentators are encouraged to identify and, to the extent feasible, quantify any other benefits.

A. Information.

Rule 15c2-11 generally requires a broker-dealer to have information concerning an issuer before the broker-dealer initiates or resumes the publication of a quotation in the issuer's securities that are covered by the Rule.[9]

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[1] 17 CFR 240.15c2-11. *See* Securities Exchange Act Release No. 21470 (November 8, 1984), 31 SEC Docket 1041 (November 20, 1984), 49 FR 45117 (November 15, 1984) (the "1984 Amendments").

[2] 15 U.S.C. 78a-jj.

[3] Securities Exchange Act Release No. 21470 (November 8, 1984), 31 SEC Docket at 1041 (November 20, 1984), 49 FR at 45117 (November 15, 1984).

[4] Because of the operation of paragraph (f)(3) of the Rule, commonly referred to as the "piggyback" exception, Rule 15c2-11 as a general matter is applicable only with respect to the initiation or resumption of a quotation.

[5] Securities Exchange Act Release No. 9310 (September 13, 1971), 36 FR 18641 (September 18, 1971). Rule 15c2-11 was adopted under section 15(c)(2) of the Act, among other sections. Section 15(c)(2) gives the Commission broad authority to promulgate rules that define, and that prescribe means reasonably designed to prevent, fraudulent, deceptive or manipulative acts or practices in the over-the-counter securities market.

[6] Rule 15c2-11 was intended to address a variety of questionable practices involving a "spin-off" or other distribution to the public of the securities of a shell corporation and the subsequent active trading of those shares at increasingly higher prices that bore no relation to the securities' value. *See* Securities Act Release No. 4982 (July 2, 1969), 34 FR 11581 (July 15, 1969).

[7] As discussed *infra*, the Rule prompts broker-dealers to focus their attention on the issuer of a covered security when they participate in the initiation or resumption of a public market for that security. In addition, the Rule serves as a surveillance mechanism with respect to covered securities, since the Commission generally receives copies of the information broker-dealers have gathered to satisfy the Rule's requirements when they initiate quotations in an interdealer system.

[8] The 1984 Amendments made the Rule applicable to publication of quotations without a specified price and to publication of quotations for certain foreign securities and depositary shares evidenced by American Depositary Receipts ("ADRs"). However, exceptions to the Rule were established for the publication of quotations for NASDAQ securities and for quotations that represent a customer's unsolicited indication of interest. The amendments also revised the scope of the Rule's piggyback exception and permitted broker-dealers to maintain alternative items of information about reporting companies when the specified reports are not reasonably available. The 1984 Amendments became effective on January 14, 1985.

The Commission notes that commentators' views are sought herein with respect to the Rule as amended, including the application of the Rule to unpriced entries.

[9] The information requirements are set forth in paragraph (a) of the Rule. Generally, they require a

Continued

The Rule is intended to prompt a broker-dealer to give some measure of attention to certain fundamental financial and other information about issuers of certain over-the-counter securities before it commences trading in their securities. By requiring a broker-dealer to have that information on hand, the Rule assists the firm in determining that it is not participating in a manipulative or fraudulent scheme.[10] At the same time, the requirement also provides a means for making available to the marketplace generally a basic level of information concerning the securities at the time a trading market starts.[11] The Rule, however, does not itself require issuers to make disclosure. Rather, it provides a precondition before a broker-dealer can publish quotations for securities comprising a segment of the over-the-counter market, *e.g.*, inactively traded or newly-distributed securities that are not quoted through the NASDAQ system.

B. Surveillance

Under current practice, when a broker or dealer wishes to initiate or resume the publication of a quotation in the "pink sheets," it files "NQB" Form 211"with the National Quotation Bureau, Inc. ("NQB"), the publisher of the pink sheets. This form notifies the NQB of the basis upon which the quotation is made (*e.g.*, whether or not the quoted security is a reporting company), and in the case of a non-reporting company requires that the 16 fundamental items of information prescribed in paragraph (a)(5) of the Rule be provided to the NQB.[12] For each quotation that is to be initiated or resumed, the NQB, as a matter of practice, sends copies of the form and its accompanying information to the Commission's staff in New York and Washington. The information so provided constitutes an important surveillance mechanism for infrequently traded, non-NASDAQ over-the-counter securities, and has been helpful to the Commission's enforcement staff in connection with its investigative activities. In the past, review of the NQB forms has provided the Commission with information that has resulted in several trading suspensions, injunctive actions, administrative proceedings, and/or requests from criminal authorities for access to the Commission's files.

C. Evidence.

Rule 15c2–11 was adopted as a response to the market making activities of certain brokers and dealers who submitted quotations, in many cases, at a time when no financial or other material information concerning the security or the issuer was available to either the brokers and dealers submitting the quotations or to public investors induced to purchase the security.[13] These activities were considered to be essential to the successful manipulative trading of the stock of shell corporations, usually at increasingly higher prices.[14] Until the Rule was adopted, the Commission encountered difficulty in establishing that those broker-dealers were culpable participants in such manipulations because the broker-dealers asserted that they were unaware that the issuers involved were shell corporations. By requiring broker-dealers to obtain information about the securities in which they initiate quotations, the Rule provides a source which the Commission could use to rebut such assertions.

While violations of Rule 15c2–11 are rarely alleged by the Commission in lawsuits claiming manipulation or violations of a broker-dealer's "shingle theory" obligations,[15] the information requirements of the Rule have served to help the Commission's enforcement staff build an argument that the defendant acted with the requisite intent. For example, in one case where an employee of a broker-dealer recommended the purchase of a particular stock to retail customers and at the same time acted as market maker in that stock without ascertaining the accuracy of financial information about the issuer and without having all of the information required by Rule 15c2–11, the court found that the employee's actions were reckless and established that he acted with the requisite scienter, in violation of the antifraud provisions of the federal securities laws.[16]

D. Deterrence

In response to the Commission's 1983 release proposing amendments to the Rule,[17] one of the commentators recounted that the Rule had prevented at least one potentially fraudulent scheme where trading in the stock of a dormant company was about to be resumed. The commentator stated that when he demonstrated to the issuer, a broker-dealer, and a transfer agent that trading in the company's securities could not be commenced by the broker-dealer until the company furnished the broker-dealer with the information specified in Rule 15c2–11, the plan was abandoned.

The Commission recognizes that such anecdotal evidence is not easily quantified in evaluating the benefits associated with the Rule. Nevertheless, it believes that such evidence exists and should be considered when conducting an analysis of the operation of the Rule. Therefore, commentators are urged to provide the Commission with information or evidence which may be helpful in evaluating the Rule's deterrent effect. To the extent that commentators can quantify this information, they are requested to do so.[18]

III. Costs Associated with Rule 15c2–11

The Commission has identified three types of costs which may be associated with the Rule. Commentators are encouraged to discuss these costs and to

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broker-dealer that wishes to enter a quotation for the securities of an issuer to maintain (i) a prospectus, if the issuer has conducted a recent public offering registered under the Securities Act of 1933 (the "Securities Act"); (ii) an offering circular, if the issuer has effected a recent offering pursuant to Regulation A under the Securities Act; (iii) the most recent annual report or annual statement and any subsequent periodic reports for an issuer that is required to file certain reports pursuant to section 13 or 15(d) of the Act or that is an insurance company whose securities are exempt from registration under section 12(g) of the Act; (iv) current information furnished to the Commission pursuant to Rule 12g3–2(b) under the Act, in the case of a foreign private issuer; or (v) certain specified financial and other information about the security and its issuer, in the case of non-reporting companies.

[10] Paragraph (c) of the Rule provides that the broker-dealer must keep the information relating to the publication or submission of a quotation for the period specified in Rule 17a–4 under the Act (*i.e.*, for a minimum of three years, the first two years in an accessible place).

[11] *See* paragraphs (a)(4) and (a)(5) of the Rule, which require the broker-dealer submitting quotations for covered securities to make the information required to be maintained under those paragraphs reasonably available upon request.

[12] *See* Rule 15c2–11(d).

[13] *See* Securities Act Release No. 4982 (July 2, 1969), 34 FR 11581 (July, 1979).

[14] *See* Securities Exchange Act Release No. 9310 (September 13, 1971), 36 FR 18641 (September 18, 1971).

[15] The "shingle theory", as articulated in *Charles Hughes & Co.* v. *S.E.C.*, 139 F.2d 434 (2d Cir. 1943), *cert. denied*, 321 U.S. 786 (1944), states that a broker-dealer impliedly represents that it will deal fairly with its customers, and that it has an adequate basis for all representations it makes concerning securities. *See, e.g., Hanly* v. *S.E.C.*, 415 F.2d 589, 596–97 (2d Cir. 1969); *Duker & Duker*, 6 S.E.C. 386, 388 (1939).

[16] *Securities and Exchange Commission* v. *World Gambling Corporation*, 555 F. Supp. 930 (S.D.N.Y. 1983), *aff'd*. No. 83–6102 (2d Cir. October 27, 1983) (unreported opinion); *see also Securities and Exchange Commission* v. *Management Dynamics, Inc.*, 515 F.2d 801, 810–11 n.6 (2d Cir. 1975).

[17] Securities Exchange Act Release No. 19673 (April 14, 1983), 27 SEC Docket 1099 (April 26, 1983), 48 FR 17111 (April 21, 1983) (the "1983 Proposing Release").

[18] For example, where the dollar amount of a thwarted scheme is ascertainable, commentators should include such information.

quantify them where possible. In addition, they are requested to identify and, to the extent feasible, quantify any other costs.

A. The Costs to Market Makers

The Rule requires market makers to obtain and then to preserve for a specified period information about issuers of certain securities in which they wish to initiate or resume making markets. The costs involved in obtaining this information are uncertain.[19] One market maker has stated orally to the staff that actual costs of acquiring this information are equal to the cost of the telephone call to the issuer in whose securities the broker-dealer desires to make a market. However, two commentators to the 1983 Proposing Release stated that the Rule imposes significant costs on market makers, but they did not quantify those costs.

The costs of the Rule also may depend on any other uses to which this information may be put by market makers. For example, market makers who also conduct a retail brokerage business may find this information useful to satisfy suitability, due diligence, or similar obligations if they recommend the security to customers. The Commission is interested in whether market makers would obtain some or all of this information even if not required to do so by the Rule.

B. The Cost to Issuers

The requirements of Rule 15c2–11 are restricted to brokers and dealers and do not extend to issuers. The Rule may, however, indirectly affect those issuers that desire broker-dealers to make a market for their securities, but that are not subject to a system of continuous disclosure, *i.e.*, non-reporting companies. This indirect affect may occur since a broker-dealer initiating a quotation for the securities of such issuers must have the information specified by paragraph (a)(5) [20] of the Rule. To obtain this information the broker-dealer may contact the issuer. In that case, the issuer, if it does not already have such information for other purposes, may have to compile the information and then forward it to requesting market makers. Thus, some issuers may have to incur certain costs or see their securityholders forego the services of market makers. The Commission is interested in obtaining information and data about these costs and, if they are significant, any ways in which they can be reduced.

C. Liquidity Considerations

Issuers may choose not to respond to market makers' requests for the information required by the Rule, for example, if they are not interested in whether a public market for their securities exists. Moreover, if the Rule imposes significant costs on market makers, some may withdraw from market making in certain issues, including some that may be thinly traded. While individuals can still lawfully effect transactions, liquidity in such securities may be reduced, conceivably reducing the value of the shares. The Commission is interested in any evidence that issuers or market makers have reacted in this manner and, if so, the effect of their actions on the liquidity of the securities involved.

IV. Recent Amendments and the "Piggyback" Exception

Historically, to establish eligibility for the "piggyback" exception there had to be two-way priced quotations for at least twelve days during the thirty prior calendar days, with no more than four consecutive business days without such quotations.[21] However, to accommodate the amendment extending the application of the Rule to unpriced quotations, the 1984 Amendments added another piggyback provision that can be relied on when the interdealer quotation system specifically identifies unsolicited customer indications of interest. In that case, to qualify for piggybacking, there must be quotations (excluding any quotation identifed as a customer interest, but including unpriced as well as priced quotations) in the interdealer quotation system for at least twelve days during the prior thirty days, with no more than four consecutive business days without a quotation.[22] Because the piggyback revisions have prompted some inquiries, the Commission is seeking comment on the piggyback exception. Specifically, as in the 1983 Proposing Release, commentators are asked to provide information with respect to the benefits and costs of the current formulation of, and compliance practices under, the piggyback exception and whether there are other formulations that would achieve the same result in light of cost/benefit considerations.

Although the 1984 Amendments applied the Rule to the quotation of securities of foreign private issuers and of ADRs that represent deposited shares of foreign private issuers, the Rule makes no allowance for a market maker's piggybacking on quotations in foreign markets for the securities of foreign private issuers. The Commission was concerned about the commencement of quotations for these securities in the U.S. over-the-counter market without sufficient information about the foreign private issuers being available to the marketplace. In addition, the Commission has insufficient knowledge of the reliability of the price-setting mechanisms of foreign markets and does not believe that it can readily identify foreign securities that are actively traded in their native market. Commentators are invited to comment as to whether and under what circumstances market makers should be allowed to piggyback on quotations in non-U.S. markets when they initiate quotations in U.S. markets.

V. Areas of Inquiry

The Commission solicits comment on the costs and benefits associated with the Rule. Since the costs and benefits discussed in this release may not be exclusive, commentators are encouraged to identify, and to the extent feasible, quantify any other costs or benefits.

The Commission also seeks comments on deregulatory alternatives, *i.e.*, whether there is a continuing need for some or all of the Rule's provisions, whether there are alternative ways of regulating this sector of the over-the-counter market which would result in greater benefits and/or lower costs, or whether the Rule should be rescinded. The Commission solicited comment from the public on these topics in the 1983 Proposing Release. While none of the commentators on the proposed amendments explicitly supported rescinding the Rule, a few raised questions about the Rule's usefulness. Since that time, the Commission has also learned of new technological developments which may impact upon

[19] The Rule may impose other costs, such as those relating to ascertaining whether a particular quotation is exempt, and the costs to broker-dealers of completing NQB Form 211.

[20] Paragraph (a)(5) of the Rule specifies 16 fundamental items of information pertaining to the issuer and the quoted security, including recent balance sheet and profit and loss and retained earnings statements, that a broker-dealer must have in its records before initiating or resuming a quotation.

[21] Rule 15c2–11(f)(3)(ii). The piggyback exception presumes that regular and frequent quotations are an appropriate substitute for the information the Rule otherwise requires to be obtained. *See* Securities Act Release No. 21470 (November 8, 1984), 31 SEC Docket at 1045 (November 20, 1984), 49 FR at 45121 (November 15, 1984).

[22] Rule 15c2–11(f)(3)(i). The 1984 Amendments also revised the piggyback exception to accommodate market makers piggybacking on the quotations of a firm that thereafter ceases entering quotations in the quotation system. *See* Rule 15c2–11(f)(3)(iii).

the Rule. For instance, one new development involves creation of an integrated database concerning over-the-counter issuers and their securities which, if successful and made available to securities firms through inhouse computer terminals, could replace the firms' internal files.[23]

Commentators are also invited to respond to the following questions, presenting relevant quantification whenever possible.

1. The Information Function of the Rule

(a) Does the Rule encourage a market maker to review available information about an issuer before it initiates or resumes a quotation of a covered security?

(b) What information does a dealer need in order to make a market in a security? Does the information that the Rule requires to be in the possession of a market maker have any effect on its quotation? Please explain.

(c) Is the Rule effective, directly or indirectly, in assuring that information about a non-reporting issuer is available to the marketplace before trading in its securities can be commenced? Is this an appropriate function of the Rule? What information is otherwise publicly available regarding these issuers?

(d) How often do investors or securities analysts request information that the Rule requires market makers to obtain?

2. The Surveillance Function of the Rule

(a) Are the current procedures for supplying the Commission with copies of NQB Form 211 an efficient mechanism for overseeing the non-NASDAQ over-the-counter market?

(b) Are there more effective procedures, such as requiring a broker-dealer to furnish NQB Form 211 (or a similar form) directly to the Commission? Rather than requiring a broker-dealer to furnish the form directly to the Commission, would it be sufficient for a broker-dealer to notify the Commission whenever it initiates a quotation for a security of a reporting company, since the requisite information will already be on file with the Commission?

3. The Deterrence Function of the Rule

(a) Has the Rule had a deterrent effect on fraudulent or manipulative trading schemes such as those involving trading in the securities of shell companies or the setting of arbitrary quotations for thinly traded securities?

(b) Absent the Rule, are existing antifraud and antimanipulation restrictions sufficient to insure that market makers do not enter quotations that further fraudulent or manipulative trading schemes?

4. The Effect of the Rule on Market Makers

(a) Is the information required by the Rule of the type that broker-dealers would obtain anyway to satisfy the requirement that they have a reasonable basis for any recommendation of securities to retail customers or to maintain due diligence files? What if the firm does a wholesale business only?

(b) What are the costs to market makers of obtaining and maintaining the information required by the Rule?

(c) What are other costs of the Rule to market makers, such as completing and forwarding NQB Form 211 or determining if a quotation is exempt?

(d) Does the Rule have other effects on market makers?

(e) Are these costs or other effects significant in light of the benefits of the Rule?

5. The Effect of the Rule on Issuers

(a) What are the costs to issuers of preparing the information required by the Rule and providing it to requesting broker-dealers? Are these costs different for non-reporting and reporting companies? How should these costs be weighed against the Rule's purposes?

(b) Can some portion of the information requirement of the Rule be rescinded with little additional risk to investors but substantial savings to issuers? If so, please explain.

(c) Can some portion of the information requirement of the Rule be expanded with little additional cost to issuers while providing market makers with beneficial information that they do not receive under the current formulation of the Rule? If so, please explain.

6. The Effect of the Rule on Liquidity

(a) Does the Rule reduce liquidity in non-NASDAQ over-the-counter securities?

(b) Do some non-reporting companies choose not to furnish the specified information to market makers? If so, how often does this occur and what is the impact on the liquidity of these securities? What is the effect on shareholders?

(c) Have some broker-dealers ceased market making in securities subject to the Rule rather than comply with its provisions as amended, and, if so, has this significantly reduced liquidity in these securities?

(d) Are any reductions in liquidity alleviated by the recent amendment exempting unsolicited customer indications of interest from the Rule?

7. Other Benefits and Costs

(a) Does the Rule provide any other benefits or impose any other costs?

(b) How substantial are these benefits or costs?

8. Piggyback Exception

(a) Is the piggyback exception of the Rule effective as currently formulated in light of the purposes of the Rule? Is there an alternative regulatory approach that would be more efficient?

(b) Do you believe that there are any circumstances under which market makers in foreign issues should be allowed to piggyback on quotes in the foreign market? If so, please explain.

9. Alternative Regulatory Approaches

(a) Is there an alternative regulatory approach that would provide benefits that the Rule does not currently provide? Would such an approach involve additional costs? Would the additional benefits outweigh the additional costs? Is there an alternative approach that would provide the same benefits at lower costs?

(b) Are there any technological developments which limit or eliminate the Rule's usefulness?

(c) Does the Rule as currently formulated significantly inhibit technological innovation? Please explain. If the Rule inhibits technological innovation can it be modified to allow beneficial innovation to proceed?

List of subjects in 17 CFR Part 240

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

By the Commission.

John Wheeler,

Secretary.

April 1, 1985.

[FR Doc. 85-8488 Filed 4-9-85; 8:45 am]

BILLING CODE 8010-01-M

[23] Among the information to be contained in the database would be a four-year income statement; two-year balance sheet; and information on the issuer's earnings during the past year, market price as of a specified date, and price/earnings ratio.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 158

[OPP-250062; FRL-2813-4]

Submission of Pesticide Data; Notification to the Secretary of Agriculture of a Proposed Regulation on the Flagging of Studies for Potential Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Transmittal of a proposed rule.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of the U.S. Department of Agriculture a proposed regulation that would establish criteria to identify data demonstrating potential adverse effects when they are first submitted to the Agency. Registrants and applicants for registration who submit certain types of toxicological, environmental fate, or ecological effects data would be required to include a statement identifying ("or flagging") a study if it demonstrated effects or characteristics defined in the proposal. Flagging by the data submitter would enable the Agency to give priority review to pesticides that may potentially pose unreasonable risks to man or the environment, thereby focusing EPA's regulatory actions on pesticides of greatest concern. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

Jean Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0592).

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the regulation for publication in the **Federal Register** anytime after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(Sec. 25, Pub. L. 92-516, 86 Stat. 973 as amended; (7 U.S.C. 136 et seq.))

Dated: March 11, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-8334 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[SW-FRL-2814-2]

Amendment to National Oil and Hazardous Substances Contingency Plan; the National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the third update to the National Priorities List ("NPL"). This update contains 26 new sites. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA requires that the NPL be revised at least annually, and today's notice proposes the third such revision.

DATES: Comments may be submitted on or before June 10, 1985, May 10, 1985 for the Lansdowne, Pennsylvania site.

ADDRESSES: Comments may be mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: NPL Staff), Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The Headquarters public docket for the third update to the NPL will contain: Hazard Ranking System (HRS) score sheets for each proposed site and each Federal facility site listed in Section IV of this notice; a Documentation Record for each site describing the information used to compute the scores; and a list of document references. The Headquarters public docket is located in EPA Headquarters, Room S325 of Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the documents from the Headquarters public docket should be directed to the EPA Headquarters docket office. The HRS score sheets and the Documentation Record for each site in a particular EPA Region will be available for viewing in the appropriate Regional Offices upon publication of this notice. These Regional dockets will also contain documents containing the background data relied upon by the Agency in calculating or evaluating the HRS scores. Copies of these background documents may be viewed in the appropriate Regional Offices and copies may be obtained upon request. A third category of documents with some relevance to the scoring of each site also may be viewed and copied by arrangement with the appropriate EPA Regional Office. An informal written request, rather than a formal request, should be the ordinary procedure for requesting copies of any of these documents. Requests for HRS score sheets and Documentation Record should be directed to the appropriate Regional Office docket (see addresses below). Requests for background documents should be directed to the appropriate Regional Superfund Branch office.

Copies of comments mailed to Headquarters during the 60-day public comment period (30-day public comment period for Lansdowne, Pennsylvania) may be viewed only in the Headquarters docket during the comment period. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional Office docket approximately one week following the close of the comment period. Comments received after the close of comment period will be available at Headquarters and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request should be the ordinary procedure for requesting copies of these comments. Addresses for the Headquarters and Regional Office dockets are:

Denise Sines, Headquarters, U.S. EPA CERCLA Docket Office, Room S325, 401 M Street, SW., Washington, D.C. 20460, 202/382-3046

Peg Nelson, Region I, U.S. EPA Library, Room E121, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/223-5791

Audrey Thomas, Region II, U.S. EPA Library, 26 Federal Plaza, 7th Floor,

Room 734, New York, NY 10278, 212/264–2881
Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19106, 215/597–0580
Gayle Alston, Region IV, U.S. EPA Library, Room G–6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/681–4216
Lou Tilley, Region V, U.S. EPA Library, Room 1420, 230 South Dearborn Street, Chicago, IL 60604, 312/353–2022
Nita House, Region VI, U.S. EPA Library, Room 2878, InterFirst II Building, 1201 Elm Street, Dallas, TX 75270, 214/767–7341
Connie McKenzie, Region VII, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236–2828
Dolores Eddy, Region VIII, U.S. EPA Library, 1860 Lincoln Street, Denver, CO 80295, 303/844–2560
Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974–8076
Joan McNamee, Region X, U.S. EPA, 11th Floor, 1200 6th Avenue, Seattle, WA 98101, 206/442–4903.

FOR FURTHER INFORMATION CONTACT:
C. Scott Parrish, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH–548E), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Phone (800) 424–9346 (or 382–3000 in the Washington, D.C., metropolitan area).

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I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9657 ("CERCLA" or "the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implement the responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually. CERCLA requires that this National Priorities List ("NPL") be included as part of the NCP. Today, the Agency is proposing the addition of 28 sites to the NPL. This brings the number of proposed sites to 272 in addition to the 540 currently promulgated.

EPA is proposing to include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, or of any "pollutant or contaminant." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

II. Purpose of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environmental and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification for a site on the NPL is intended primarily to guide EPA is determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake remedial actions. Moreover, listing does not require any action of an private party, nor does it determine the liability of any party for the cost of cleanup at the site. In addition, a site need not be on the NPL to be the subject of CERCLA-financed removal actions or of actions brought pursuant to sections 106 and 107 of CERCLA.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. The information collected to develop HRS scores is not sufficient in itself to determine the appropriate remedy for a particular site. EPA relies on further, more detailed studies to determine what response, if any, is appropriate. These studies will take into account the extent and magnitude of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potential responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Trust Fund established under CERCLA, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. Also, it is possible that EPA will conclude after further analysis that no action is needed at a site because the site does not present a significant threat to public health, welfare, or the environment.

III. NPL Update Process and Schedule

Pursuant to section 105(8)(B) of CERCLA, 42 U.S.C. 9605(8)(B), EPA is required to establish, as part of the NCP for responding to releases of hazardous substances, a NPL of sites of such

releases. The principal purpose of this notice is to propose the addition to the NPL of 26 new sites. All of these sites except one have HRS scores of 28.50 or above. The Lansdowne Radiation site, Lansdowne, Pennsylvania, as described in section V, is being proposed on the basis of § 300.66(b)(4) of the recently proposed amendments to the NCP (50 FR 5882, February 12, 1985).

CERCLA requires that the NPL be revised at least once per year. Accordingly, EPA published the first NPL (48 FR 40658) in September 1983, containing 406 sites. In May 1984, EPA recognized that a serious problem required immediate remedial action and therefore added 4 sites to the NPL (49 FR 19480). In September 1984, EPA added 128 sites to the NPL (49 FR 37030). An additional 244 new sites were proposed for inclusion as the second update to the NPL on October 15, 1984 (49 FR 40320). On February 14, 1985, EPA added two sites in New Jersey to the NPL (50 FR 6320). For each proposed NPL update, EPA informs the States of the closing dates for submission of candidate sites to EPA. This proposed update is the second within one year and initiates EPA's plan to increase the frequency of updating of the NPL. In addition to these periodic updates, EPA believes it may be desirable in rare instances to propose or promulgate separately individual sites on the NPL because of the apparent need for expedited remedial action. This occurred in the case of the proposed listing of Times Beach, Missouri (48 FR (9311, March 4, 1983), the promulgation of four San Gabriel Valley, California, sites (49 FR 19480, May 8, 1984) and the promulgation of two New Jersey radium sites (February 14, 1985, 50 FR 6320).

As with the establishment of the initial NPL and subsequent revisions, States have the primary responsibility for selecting and scoring sites that are candidates and submitting the candidate sites to the EPA Regional Offices. States may also designate a site as the State priority site. The EPA Regional Offices then conduct a quality control review of the States' candidate sites. After conducting this review, the EPA Regional Offices submit candidate sites to EPA Headquarters. The Regions may include candidate sites in addition to those submitted by States. In reviewing these submissions, EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring.

In this **Federal Register** notice, the sites listed consist of sites not currently on the NPL that the Agency is proposing to add to the NPL. These additions are contained in the list immediately following this preamble.

Public Comment Period

EPA requests public comment on these 26 proposed sites. Comments on the Lansdowne, Pennsylvania, Health Advisory site only will be accepted for 30 days following the date of publication of this notice in the **Federal Register**. Comments on the remaining proposed sites will be accepted for 60 days following publication of this notice in the **Federal Register**. EPA is also soliciting comments on 6 Federal facilities that have HRS scores of 28.50 or higher and that may be added to the NPL in the future. The following section of this preamble identifies these sites and discusses EPA's Federal facility approach. See the "ADDRESSES" portion of this notice for information on where to obtain documents relating to the scoring of the 26 non-Federal and 6 Federal sites. After considering the relevant comments received during the comment period and determining the final score for each site, the Agency will add to the current NPL all proposed sites that meet EPA's criteria for listing. EPA may add the 6 Federal facility sites contingent upon the outcome of proposed changes to the NCP (50 FR 5862, February 12, 1985). This is discussed in greater detail in the following section.

IV. Eligibility

CERCLA restricts EPA's authority to respond to certain categories of releases and expressly excludes some substances from the definition of release. In addition, as a matter of policy, EPA may choose not to use CERCLA to respond to certain types of releases because other authorities can be used to achieve cleanup of these releases. Preambles to previous NPL rulemakings have discussed examples of these policies. See, e.g., 48 FR 40658 (September 8, 1983); 49 FR 37074 (September 21, 1984); and 49 FR 40320 (October 15, 1984). Generally, this proposed update continues these past eligibility policies; however, changes in the RCRA sites policy are proposed, and the Agency's policy of listing Federal Facilities is discussed. In addition, the Agency has evaluated one mining site for this update that is not being proposed for listing at this time. The Agency intends to initiate discussions with the Department of Interior (DOI) to determine whether DOI will take appropriate action under the Surface Mining Control and Reclamation Act to protect public health and the environment at this site if it appears to the Agency that remedial action will be necessary.

RCRA Sites

In 1976, Subtitle C of the Resource Conservation and Recovery Act (RCRA) mandated a Federal program to provide a "cradle-to-grave" management system for hazardous wastes that exhibit certain characteristics or are listed under section 3001 of the Act. Persons who generate, transport or treat, store or dispose of listed wastes or wastes of certain characteristics must comply with management standards promulgated by EPA. CERCLA also has authorities that can be used to address problems associated with wastes covered by the RCRA regulatory program, as well as other hazardous wastes and materials.

The Agency has considered eligible for listing on the NPL those RCRA facilities where a significant portion of the release appeared to come from a "non-regulated land disposal unit" of the facility. Non-regulated land disposal units are defined as portions of the facility that ceased receiving hazardous waste prior to January 26, 1983, the effective date of EPA's permitting standards for Land Disposal facilities (47 FR 32349, July 26, 1982). Regulated land disposal units of RCRA facilities generally have not been included on the NPL, except where the facility is abandoned or lacks sufficient resources and RCRA corrective action could not be enforced (49 FR 37074, September 21, 1984).

The Hazardous and Solid Waste Amendments of 1984 have expanded the Agency's authority to require corrective measures under RCRA. Owners or operators of RCRA treatment and storage facilities are now required to clean up releases of hazardous wastes and hazardous constituents (constituents listed in Appendix VIII of 40 CFR Part 261) from all solid waste management units at the facility. New corrective action authorities include the following:

- EPA can issue an administrative order to or initiate a civil referral against the site owner or operator to compel corrective action or any other response necessary to protect human health or the environment at interim status facilities where there is or has been a release of hazardous waste [section 3008(h)].
- A facility to which a RCRA permit is issued after November 8, 1984, must address all releases of hazardous waste or hazardous constituents from any hazardous or solid waste management unit, regardless of the time at which

waste was placed in the unit [section 3004(u)].

• EPA can require the owners or operators of some facilities subject to RCRA requirements to take corrective action beyond the facility boundary unless the adjoining property owner refuses permission [section 3004(v)].

The Agency intends to use the expanded provisions of RCRA to the extent practicable to effect cleanup of releases from units that can be reached under those authorities.

In light of the new RCRA authorities, and the Agency's intention to use them, where practical, to effect cleanup, the Agency is reconsidering the current policy (49 FR 40324, October 15, 1984) of listing RCRA-related sites that have HRS scores of 28.50 or above on the NPL. Specifically, the Agency is considering deferring listing RCRA-related sites that score 28.50 or higher on the NPL until the Agency determines that RCRA corrective measures are not likely to succeed due to factors such as: (1) The inability or unwillingness of the owner/operator to pay for such actions; (2) the inadequacies of the financial responsibility guarantees to pay for such costs; or (3) the Agency or State priorities for addressing the sites under RCRA. This proposed deferred listing policy would be applicable only to sites with releases subject to RCRA Subtitle C regulatory or enforcement authorities.

The following are examples of RCA-related sites for which the Agency is reconsidering its present listing policy:

• Sites at which a RCRA permit addresses releases of hazardous waste or hazardous constituents from hazardous waste or solid waste management units. Permit conditions will specify corrective measures and those conditions can be enforced through a compliance order or court action. Action may also be taken under RCRA section 7003 or CERCLA section 106 if there is an imminent and substantial endangerment.

• Operating hazardous waste units that have RCRA interim status. There are no regulatory requirements for corrective action applicable to interim status units. EPA can compel corrective action at its discretion under the enforcement authority of section 3008(h) if the Agency has inforation that there is or has been a release of hazardous waste, under RCRA section 7003 or CERCLA section 106 if there is an imminent and substantial endangerment.

• Solid waste management units (activie or inactive) or closed RCRA hazardous waste management units at an operating interim status facility. EPA can use the interim status corrective action authority of section 3008(b) to address releases from those units or a RCRA permit compelling corrective measures can be issued. Action may also be taken under RCRA section 7003 or CERCLA section 106 if there is an imminent and substantial endangerment. Hazardous waste units that ceased receiving hazardous waste before January 26, 1983, and solid waste management units are eligible for the NPL under the current policy.

• Closed hazardous waste management units or active or inactive solid waste management units at a facility that has ceased treating, storing, or disposing of RCRA hazardous waste. The interim status corrective action authority may be applicable to these units. Hazardous waste land disposal units that closed after January 26, 1983, are required to have a post-closure permit. In addition, RCRA section 7003 or CERCLA section 106 may be used if there is an imminent and substantial endangerment. Hazardous waste land disposal units that are closed before January 26, 1983 and solid waste management units are eligible for the NPL under the current policy.

The Agency solicits comments on the appropriateness of revising its present RCRA listing policy by deferring listing of RCRA-related sites until the Agency determines that RCRA corrective measures are not likely to succeed due to factors such as: (1) The inability or unwillingness of the owner/operator to pay for such activities; (2) the inadequacies of the financial responsibility guarantees to pay for such costs; and (3) EPA or State priorities for addressing the sites under RCRA. Commenters should address this suggested revision to the listing policy with respect to the examples of RCRA-related sites mentioned above and are asked to suggest other examples of RCRA-related sites that may be appropriate for deferred listing. The Agency also solicits comments on appropriate criteria to determine when RCRA corrective measures are not likely to succeed and listing is appropriate (e.g., inability or unwillingness of owner/operator to pay for such actions and EPA and State priorities). Listing would only be considered for those sites which score 28.50 or above.

In addition, the Agency intends to apply any revised RCRA-related site listing policy to RCRA-related sites that are currently proposed or promulgated on the NPL, and, in appropriate cases, delete sites from the NPL. For example, such sites could be removed from the proposed or final NPL if the Agency determines that: (1) All necessary corrective measures are likely to be completed under RCRA authorities; and (2) CERCLA Fund-financed activities, such as remedial investigation/feasibility studies, remedial design, or remedial action, or CERCLA enforcement action have not been initiated. If such a policy were applied to currently proposed and promulgated sites on the NPL and it is determined that such sites should be removed from the proposed or final NPL, these sites could be relisted if Agency later determines that RCRA corrective measures at these sites are not likely to succeed.

Four RCRA-related sites with HRS scores of 28.50 or above were submitted for consideration for Update #3. The Agency applied the current RCRA listing policy to these sites and has include them in today's proposed listing. The sites are: Love's Container Services Landfill, Buckingham County, Virginia; Conservation Chemical Compay, Kansas City, Missouri; Frit Industries, Humboldt, Iowa; and Union Chemical Company, Inc., South Hope, Maine. The Agency may elect to defer a final rulemaking decision on these four sites until the Agency determines the appropriateness of a revised RCRA listing policy.

Release From Federal Facilities Sites

CERCLA section 111(e)(3) prohibits use of the Fund for remedial actions at Federally owned facilities, and § 300.66(e)(2) of the NCP prevents including Federal facilities on the NPL. Prior to proposal of NPL Update #2 (49 FR 40320, October 15, 1984), EPA did not list any sites on the NPL where the release resulted solely from a Federal facility regardless of whether contamination remained on site or had migrated off-site. However, based on public comments received from previous NPL announcements, EPA proposed 36 Federal facilities for NPL Update #2. As discussed in the preamble to Update #2, EPA did not intend to promulgate any of these sites until after amendments to § 300.66(e)(2) of the NCP and been promulgated.

On February 12, 1985, EPA proposed amendments to § 300.66(e)(2) of the NCP (50 FR 5862), and requested public comment on whether to list Federal facilities on the NPL. For this update, EPA has decided to not propose the listing of any additional Federal facilities until public comments have been received and considered by the Agency. The Agency has, however, applied the HRS to Federal facility sites and has determined that the following Federal facilities would have qualified for listing:

NPL group	State	Site name	City or county	Response category[1]	Cleanup status[2]
3	MD	Aberdeen Proving Ground-Edgewood	Edgewood	R	
6	OK	Tinker AFB (Soldier Creek/Bldg 3001)	Oklahoma City	R	
8	PA	Letterkenny Army Depot (PDO Area)	Franklin County		
9	IL	Joliet Army Ammunition Plant (LAP Area)	Joliet	R	
10	CA	Moffett Naval Air Station	Sunnyvale	R	
	MD	Aberdeen Proving Ground-Michaelsville Landfill	Aberdeen	R	

[1] V = Voluntary or negotiated response; F = Federal enforcement; D = Actions to be determined; R = Federal and State Response; S = State enforcement.
[2] I = Implementation activity underway, one or more operable units; O = One or more operable units completed, others may be underway; C = Implementation activity completed for all operable units.

The Agency is soliciting comments on the scoring of these sites and may promulgate the sites without soliciting further comments if the Agency decides to amend the NCP and include Federal facilities in future NPL listings.

V. Contents of the Proposed Third NPL Update

All of the sites, except one, included in today's proposed revision to the NPL meet the Agency's criteria for listing of an HRS score of 28.50 or above. The Lansdowne Radiation site, Lansdowne, Pennsylvania is being proposed on the basis of § 300.66(b)(4) of the recently proposed amendments to the NCP (50 FR 5882, February 12, 1985).

Section 300.66(b)(4) provides that "in addition to those releases identified by their HRS scores as candidates for the NPL, EPA may identify for inclusion on the NPL any other release that the Agency determines is a significant threat to public health, welfare or the environment. EPA may make such a determination when the Department of Health and Human Services has issued a health advisory as a consequence of the release."

The Lansdowne Radiation site consists of a residential duplex in Lansdowne, Pennsylvania. For approximately 20 years, beginning in the 1930's, the basement of the duplex was used by a radio-chemist to manufacture radium sources for radiotherapy. In 1964, the property was decontaminated by the Pennsylvania Department of Health and the U.S. Public Health Service and the property was certified safe for residential use.

In 1984, measurements of radon and radon daughters in the indoor atmosphere of the property indicated elevated levels of radiation. The study, conducted by the Argonne National Laboratory concluded that many measurements of radon daughters exceed EPA recommended action levels and many measurements of external gamma radiation exceed the EPA remedial action guideline of 20 microroentgens per hour.

In light of this information, the Department of Health and Human Services (HHS) issued a health advisory on March 5, 1985, citing that the entire duplex structure should be considered to pose a significant health risk to long-term occupants. With the issuance of the health advisory and the apparent need for remedial action, the Agency is proposing the addition of the Lansdowne Radiation site to the NPL. Upon promulgation of § 300.66(b)(4) of the NCP, the Agency may add the Lansdowne site to the final NPL.

Each entry on the proposed third NPL update contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. A site EPA is proposing to add is placed by score in a group corresponding to the groups of 50 sites presented within the final NPL. For example, sites in group 3 of the proposed update have scores that fall within the range of scores covered by the third group of 50 sites on the final NPL. Each entry on this proposed update and at sites already on the NPL is accompanied by one or more notations referencing the status of response and cleanup activities at the site at the time this list was prepared. This site status and cleanup information is described briefly below.

EPA categorizes the NPL sites based on the type of response at each site (Fund-financed, State enforcement, Federal enforcement, and/or voluntary action). In addition, codes indicating the general status of site cleanup activities are provided. EPA is including the cleanup status codes to identify sites where significant response activities are underway or completed. The cleanup status codes on this NPL update are included in response to public requests for information regarding actual site cleanup activities and to acknowledge situations where EPA, States, or responsible parties have undertaken response actions. The status codes for these proposed sites and all final NPL sites will be updated each time EPA promulgates additional sites to the NPL.

Response Categories

The following response categories are used to designate the type of response underway. One or more categories may apply to each site.

Voluntary or Negotiated Response (V). Sites are included in this category if private parties have started or completed response actions pursuant to settlement agreements or consent decrees to which EPA or the State is a party. This category includes privately-financed remedial planning, removal actions, initial remedial measures and/or remedial actions.

Federal and/or State Response (R). The Federal and/or State Response category includes sites at which EPA or State agencies have started or completed response actions. These include removal actions, nonenforcement remedial planning, initial remedial measures, and/or remedial actions under CERCLA [NCP, § 300.66(f)–(i) 47 FR 31217, July 16, 1982]. For purposes of assigning a category, the response action commences when EPA obligates funds.

Federal Enforcement (F). This category includes sites where the United States has filed a civil complaint (including cost recovery actions) or issued an administrative order. It also includes sites at which a Federal court has mandated some form of response action following a judicial proceeding. All sites at which enforcement-lead remedial investigations and feasibility studies are underway are also included in this category.

A number of sites on the NPL are the subject of investigations or have been referred to the Department of Justice for possible enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, these sites are not included in this category, but are included under "Category To Be Determined."

State Enforcement (S). This category includes sites where a State has filed a civil complaint or issued an administrative order. It also includes sites at which a State court has mandated some form of response action following a judicial proceeding. Sites where State enforcement-lead remedial investigations and feasibility studies are underway are also included in this category.

It is assumed that State policy precludes the release of information concerning possible enforcement action until such action has been formally taken. Accordingly, sites subject to possible State legal action are not included in this category, but are included under "Category To Be Determined."

Category To Be Determined (D). This category includes all sites not listed in any other category. A wide range of activities may be in progress at sites in this category. EPA or a State may be evaluating the type of response action to undertake, or an enforcement case may be under consideration. Responsible parties may be undertaking cleanup actions that are not covered by a consent decree or an administrative order.

Cleanup Status Codes

EPA has decided to indicate the status of Fund-financed or private party cleanup activities underway or completed at proposed and final NPL sites. Fund-financed response activities which are coded include: significant removal actions, initial remedial measures, source control remedial actions, and off-site remedial actions. The status of cleanup activities conducted by responsible parties under a consent decree, court order, or an administrative order also is coded. Remedial planning activities or engineering studies do not receive a cleanup status code.

Many sites listed on the NPL are cleaned up in stages or "operable units." For purposes of cleanup status coding, an operable unit is a discrete action taken as part of the entire site cleanup that significantly decreases or eliminates a release, threat of release, or pathway of exposure. One or more operable units may be necessary to complete the cleanup of a hazardous waste site. Operable units may include removal actions taken to stabilize deteriorating site conditions, initial remedial measures, and remedial actions. A simple removal action (constructing fences or berms or lowering free-board) that does not eliminate a significant release, threat of release, or pathway of exposure is not considered an operable unit for purposes of cleanup status coding.

The following cleanup status codes (and definitions) are used to designate the status of cleanup activities at proposed and final sites on the NPL. Only one code is used to denote the status of actual cleanup activity at each site since the code are mutually exclusive.

Implementation Activities Are Underway for One or More Operable Units (I). Field work is in progress at the site for implementation of one or more removal or remedial operable units, but no operable units are completed.

Implementation Activities Are Completed for One or More (But Not All) Operable Units. Implementation Activities May be Underway For Additional Operable Units (O). Field work has been completed for one or more operable units, but additional site cleanup actions are necessary.

Implementation Activities Are Completed for All Operable Units (C). All actions agreed upon for remedial action at the site have been completed, and performance monitoring has commenced. The site will be considered for deletion from the NPL subsequent to completion of the performance monitoring and preparation of a deletion recommendation. Further site activities could occur if EPA considers such activities necessary.

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. The EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. The EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revision to the NCP pursuant to section 105 of CERCLA (40 FR 31180) and the economic analysis prepared for the recently proposed amendments to the NCP (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing the addition of 26 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Costs

The EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in a proposed rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review.

The major events that follow the proposed listing of a site on the NPL are a responsible party search and a remedial investigation/feasibility study (RI/FS) which determines whether remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

Costs associated with responsible party searches are initially borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States on a 90%:10% basis (50%:50% in the case of State-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving Fund-financed remedial actions.

Rough estimates of the average per-site and total costs associated with each of the above activities are presented below. At this time EPA is unable to predict what portions of the total costs will be borne by responsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of cost recovery actions where such actions are brought.

Cost category	Average total cost per site[1]
RI/FS	$800,000
Remedial design	440,000
Remedial action	7,200,000
Inital remedial measures (IRM) at 10% of sites	80,000
Net present value of O&M[2]	3,770,000

[1] 1984 U.S. dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
SOURCE: "Extent of the Hazardous Release Problem and Future Funding Needs-CERCLA section 301(a)(1)(c) Study", December 1984, Office of Solid Waste and Emergency Response, U.S. EPA.

Costs to States associated with today's proposed amendments arise from the required State cost-share of: (1) 10 percent of remedial implementation (remedial action and IRM) and first year O&M costs at privately-owned sites; and (2) 50 percent of the remedial planning (RI/FS and remedial design), remedial implementation and first year O&M costs at State or locally-owned sites. States will assume all the cost for O&M after the first year. Using the assumptions developed in the 1982 RIA for the NCP, we can assume that 90 percent of the 26 non-Federal sites proposed to be added to the NPL in this amendment will be privately-owned and 10 percent will be State or locally-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 26 sites would be $118 million, of which $89 million is attributable to the State O&M cost.

The act of listing a hazardous waste site on the final NPL does not necessarily cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of response costs, but the Agency considers such factors as: the volume and nature of the wastes at the site to the parties; ability to pay; and other factors when deciding whether and how to proceed against potentially responsible parties.

Economy-wide effects of this proposed amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposed amendment to list additional sites are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, this proposed expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, private lawsuits, and/or Federal or State enforcement actions.

As a result of the additional NPL remedies, there will be lower human exposure to high risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these particular sites.

Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generates employment, directly or indirectly (through purchased materials).

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The proposed listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate a number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the proposed listing of these 26 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost recovery actions which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

PART 300—[AMENDED]

It is proposed to amend Appendix B of 40 CFR Part 300 by proposing to add the following sites to the National Priorities List.

Authority: 42 U.S.C. 9601–9657

Dated: March 28, 1985.

Lee M. Thomas,

Administrator.

NATIONAL PRIORITIES LIST, PROPOSED UPDATE 3 SITES

EPA RG	State	site and name	City or county	Response category[1]	Cleanup status[2]
		Group 3			
05	MI	Rockwell International (Allegan)	Allegan	D	
03	DE	Cokers Sanitation Service Lis	Kent County	D	
07	IA	Fmt Industries (Humboldt Plant)	Humboldt	S	
		Group 4			
05	IN	Waste, Inc., Landfill	Michigan City	S	
03	PA	Rohm and Haas Co Landfill	Bristol Township	D	
02	NJ	Dayco Corp./L.E. Carpenter Co.	Wharton Borough	V	O
		Group 6			
02	NJ	Monitor Devices/Intercircuits Inc	Wall Township	S	
01	NH	Tibbets Road	Barrington	R	O
		Group 7			
03	PA	York County Solid Waste/Refuse Lf	Hopewell Township	V	I
03	VA	Love's Container Services Lf	Buckingham County	D	
01	NH	Mottolo Pig Farm	Raymond	R, F, S	O
06	TX	Texarkana Wood Preserving Co	Texarkana	D	
04	FL	Petroleum Products Corp	Pembroke Park	S	
05	MI	H. Brown Co., Inc	Grand Rapids	D	
01	RI	Davis (GSR) Landfill	Glocester	S	
03	DE	NCR Corp. (Millsboro)	Millsboro	D	
		Group 8			
03	VA	First Piedmont Corp. Rock Quarry	Pittsylvania County	D	
04	FL	Harris Corp./General Develop Utl	Palm Bay	S	I
07	MO	Valley Park TCE	Valley park	D	
		Group 10			
03	PA	Keystone Sanitation landfill	Union Township	D	I

NATIONAL PRIORITIES LIST, PROPOSED UPDATE 3 SITES—Continued

EPA RG, State, site, and name	City or county	Response category [1]	Cleanup status [2]
04 NC National Starch & Chemical Corp	Salisbury	D	
01 ME Union Chemical Co., Inc	South Hope	R, S	O
Group 11			
03 PA Reeser's Landfill	Upper Macungie Twp	D	
07 MO Conservation Chemical Co	Kansas City	R, F	
05 WI Wausau Ground Water Contamination	Wausau	R	O
03 PA Lansdowne Radiation Site	Lansdowne	R	

[1] V=Voluntary or negotiated response; F=Federal enforcement; D=Actions to be determined; R=Federal and State Response; S=State enforcement.
[2] I=Implementation activity underway, one or more operable units; O=One or more operable units completed, others may be underway; C=Implementation activity completed for all operable units.

[FR Doc. 85-8587 Filed 4-9-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

[Docket No. 85-6]

Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984; Excepted Commodities; Extension of Time To File Comments

AGENCY: Federal Maritime Commission.

ACTION: Enlargement of time to comment.

SUMMARY: Three separate groups of conferences and one interested group of shippers have requested an extension of time to comment in this proceeding, which was initiated by Federal Register notice of March 18, 1985 (50 FR 10807–10810). The Commission originally allowed comments to be filed on or before April 17, 1985, and the requests seek enlargements of time ranging from May 17, 1985, to June 3, 1985. The parties variously point to the fact that four Commission proceedings of general industry interest currently require comments to be filed within a short space of time, cite the importance of this proceeding and the need for detailed industry input, and describe the time necessary to coordinate the views of the various member lines of a conference. Grounds for an extension having been established, an enlargement of time until May 17, 1985, is granted.

DATE: Comments due on or before May 17, 1985.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5740.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8588 Filed 4-9-85; 8:45 am]
BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5-86]

Subcontracting with Small Business and Small Disadvantaged Business Concerns; Proposed Change to Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) Chapter 5, concerning subcontracting with small business and small disadvantaged business concerns. The change will add section 519.705–4 to provide a checklist for use in reviewing subcontracting plans, section 519.705–5 to require the contracting officer to send copies of the appropriate reporting forms to the contractor at the time of award, section 519.770–1 to provide information on the report forms and procedures to be used under the subcontractor report forms and procedures to be used under the subcontractor assistance program, and section 519.770–2 to outline the responsibilities and procedures related to subcontracting under the subcontracting assistance program. In addition, section 519.705–6 will be revised to require that small business technical advisors be notified of contract awards that contain subcontracting plans and to identify the officials that the contracting officer is to send copies of subcontracting plans and checklists. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

DATES: Comments are due in writing not later than May 10, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Mr. Bill Davison, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy, 18th and F Sts., NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Frank Padula, Office of GSA Acquisition Policy and Regulations on (202) 523–3823.

SUPPLEMENTARY INFORMATION:

Impact:

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempt certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subject in 48 CFR Part 519.

Government procurement.

Dated: April 3, 1985.

Ida M. Ustad,

Acting Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 85-8558 Filed 4-9-85; 8:45 am]
BILLING CODE 6820-61-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 387 (Sub-No. 958)]

Exemption From Regulation; Shipments Subsequently Made Subject to a Contract Rate

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Exemption.

SUMMARY: The Commission proposes to grant an exemption from the statutory provisions requiring railroads to charge only their published tariff rates. The exemption would allow a railroad to

charge a purchaser of rail service a contract rate rather than the otherwise applicable published tariff rate, and, when appropriate, pay reparations or waive undercharges when certain conditions are met.

DATE: Comments are due on May 10, 1985.

ADDRESS: An original and 15 copies of any comments, referring to Ex Parte No. 387 (Sub-No. 958), should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: The text of the proposed exemption follows as an appendix to this notice.

Additional information is contained in the Commission's full decision. To obtain a copy of the full decision, write to office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428.

This action will not significantly affect the quality of the human environment, energy conservation, or a substantial number of small entities.

List of Subjects in 49 CFR Part 1039

Railroads.

Authority: 5 U.S.C. 553; 49 U.S.C. 10321 and 10505.

Decided: March 25, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons, joined by Chairman Taylor and Commissioner Lamboley, concurred with a separate expression.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

Title 49 is proposed to be amended by adding new § 1039.19 to read as follows:

§ 1039.19 Transportation of shipments subsequently made subject to a contract rate.

Railroad transportation is exempt from the provisions of 49 U.S.C. 10761, 11902, 11903, and 11904 to the extent a railroad may apply a contract rate rather than an otherwise applicable tariff rate, and accordingly, pay reparations or waive undercharges, under the following conditions:

(a) A transportation contract under 49 U.S.C. 10713 has been filed with the Commission and has become effective;

(b) The shipment at issue falls within the terms of the contract; and

(c) The shipment was transported before the contract could be implemented at the Commission, but after the parties agreed upon the rate to be charged, and they either (1) agreed to be bound by the contract or intended the movement(s) to be covered by it, or (2) signed the contract.

(1) The names and addresses of the carriers involved in the exemption;

(2) A statement certifying that all carriers to the contract and the shipper concur in the action;

(3) The number of the contract involved; and

(4) A statement certifying that this action complies with paragraph (a)–(c) of this section.

[FR Doc. 85–8706 Filed 4–9–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of the Status of the Ivory-Billed Woodpecker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The Service is reviewing the status of the ivory-billed woodpecker (*Campephilus principalis*) to determine if this species is extinct and should therefore be proposed for removal from the Federal list of endangered and threatened wildlife. The Service invites additional data on the status of this bird.

DATE: Information regarding the status of the ivory-billed woodpecker should be submitted on or before August 8, 1985.

ADDRESSES: Comments and data should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials related to this notice are available for inspection, by appointment, during normal business hours at 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Ms. Alisa M. Shull, Biologist, Endangered Species Staff (505/766–3971 or FTS 474–3972), at the above address.

SUPPLEMENTARY INFORMATION:

Background

The ivory-billed woodpecker (*Campephilus principalis*) was listed as endangered on March 11, 1967 (32 FR 4001), and June 2, 1970 (35 FR 8495). No critical habitat has been designated. The lack of confirmed sightings in recent years may indicate that the ivory-bill is extinct and, if so, it should be removed from the list of endangered and threatened wildlife (50 CFR 17.11). The Service is publishing this notice of review to solicit biological information on the status of the ivory-billed woodpecker. We encourage submission of information that will clarify the status of this species. This notice does not commit the Service to subsequently proposing this species for delisting.

The ivory-billed woodpecker is the largest North American woodpecker, averaging 20 inches in length. The plumage is shiny black with a white stripe down the neck from the cheek to the back. The outer halves of the secondaries are white and form a large, triangular patch across the lower back when the bird is perched. Females have a black crest; males have a red crest. The bill is the distinctive color of ivory. The ivory-billed woodpecker's call sounds somewhat like a tin trumpet.

The ivory-bill is often confused with the smaller pileated woodpecker (*Dryocopus pileatus*), which is about 17 inches long. Pileated woodpeckers, however, show no white on their back when resting. In flight, pileated woodpeckers show white on the forward rather than the rear portion of the wing, as in the ivory-bill. Both male and female pileated woodpeckers have a red crest (male's is more extensive) and a black bill.

Two subspecies are recognized (American Ornithologists' Union, 1983): the American ivory-billed woodpecker (*Campephilus principalis principalis*) and the Cuban ivory-billed woodpecker (*Campephilus principalis bairdii*). Both subspecies may be extinct and are considered under this notice of status review. The identification of the two subspecies cannot be made in the field as the differences are minute and can only be seen in the hand. The Cuban subspecies was last reported from the pine forests of the eastern mountains of Cuba but was known to occur historically over most of Cuba, including the Isle of Pines.

The American ivory-billed woodpecker formerly occupied bottomland and swamp forests from northeastern Texas, southeastern Oklahoma, northeastern Arkansas, southeastern Illinois, southern Indiana, and southeastern North Carolina, southward to southern Florida, and west through the Gulf States to the Brazos River, Texas (Tanner, 1942). Early accounts gave no accurate or definite

statements of abundance, but indicated that the ivory-bill was never common (Aldrich, 1980). Their numbers and distribution began to decrease in the latter half of the nineteenth century. The period of greatest range reduction outside of Florida appears to be between 1885 to 1900, and between 1900 and 1915 in Florida (Tanner, 1942). Arthur T. Wayne (1910—cited in Aldrich, 1980) stated that he saw 200 ivory-bills in Florida during the years 1892 to 1894. Tanner (1942) estimated that there were approximately 24 American ivory-billed woodpeckers left in 1939. Louisiana, Florida, Texas, and possibly South Carolina supported birds. Since Tanner's study, there have not been comparable status surveys. The Service has not received any reports of the Cuban birds for many years.

The primary reason for the decrease in ivory-bill numbers appears to be a reduction in suitable habitat due to logging. Limited study of the ivory-bill's habitat has been conducted. Tanner (1942) studied this woodpecker for 3 years and suggested the bird's primary habitat included cypress swamps and bottomland forests where gum and oak trees predominate in largely virgin stands of many miles in extent. This habitat was found in the large, hardwood bottomlands and swamps of the coastal plain and Mississippi Delta, and the cypress swamps of Florida. According to Tanner (1942), "In many cases their [ivory-billed woodpeckers] disappearance almost coincided with logging operations. In others there was no close correlation, but there are no records of ivory-bills inhabiting areas for any length of time after those have been cut over." In one small area, however, (the Suwanee River region of Florida) ivory-bills are believed to have been reduced by excessive collecting rather than as a result of logging. Tanner (1956) believed, though, that the main cause of decline in ivory-billed woodpecker numbers was probably the indirect destruction of their food supply because "the young trees left in a cut-over forest provide much less food for woodpeckers than do the mature trees of a virgin or old forest." The home range of a pair of this species was estimated to be from 6 to 17 square miles (Tanner, 1942).

The most important food of the ivory-bill is wood-boring larvae (Tanner, 1942). Ivory-billed woodpeckers do most of their feeding by scaling off the bark of trees dead 2 to 4 years to get at the borers that live between the bark and sapwood (Tanner, 1942). Only stands of very old forest appear to be capable of providing the large numbers of dead trees needed by a pair of this species.

There has been little, solid evidence over the last 30 years to support the existence of the ivory-billed woodpecker. One problem, as mentioned earlier, is the misidentification of the pileated woodpecker as an ivory-bill. From time to time, the Service has received reports of sightings of the latter species. Some photographs and a tape recording have also come to the attention of the Service. Virtually every report has left some chance that it was not of a live ivory-billed woodpecker. However, some of these reports could not be conclusively shown not to be of an ivory-bill. Most reports were clearly of the common pileated woodpecker. Others seemed to indicate the possibility that one or more ivory-bills were extant in the southeastern United States during the 1950's and, perhaps, later decades.

The last, most conclusive observation of the American subspecies has never been determined. Of the hundreds of reports in the Service's files covering the past 3 decades, none can be unequivocally stated to be of an American ivory-billed woodpecker. Several appear to be probable.. Verification of visual observations is difficult, at best. Observers rarely are carrying photographic equipment to adequately capture the event. Cuban ivory-billed woodpeckers appear to have been nesting as recently as about 1960, so there is a greater probability that this subspecies may still survive.

Public Comments Solicited

The regulation at 50 CFR 424.11(d) (revision published October 1, 1984; 49 FR 38900–38912) states that a species may be delisted if it: (1) Becomes extinct, (2) recovers, or (3) if the original classification was in error. A "sufficient period of time" must be allowed to clearly ensure that a species has become extinct.

In the past, data on possible ivory-billed woodpecker sightings have been withheld by some individuals on the assumption that the birds would be better protected if no one learned of their presence. While there is some validity in this approach, it also results in a lack of knowledge for those agencies that would manage the habitat to benefit the species. To the knowledge of the Service, there has been no totally accepted confirmation of live ivory-billed woodpeckers since the early 1950's. While confirmation is best provided by specimens in hand, this method could destroy the last individuals; confirmation may also be supported by adequate photographs or tape recordings. Multiple sightings by different observers or one observation made simultaneously by a number of observers may lead to the conclusion of probable existence.

With this notice of status review, the Service is requesting anyone who may have information on these two subspecies to contact the Regional Director (see **ADDRESSES**). The Service has particular interest in receiving information on any recent sightings or evidence that the ivory-billed woodpecker may still exist. Photographs and other confirming materials are especially solicited; however, all reports are welcome. Visual observations without supporting descriptions of the bird(s), its behavior, the habitat, and general locale would be of little value to the Service.

The Service will consider all data that it now has, as well as any new information obtained as a result of this review. Depending upon what is indicated by the data, further surveys could be initiated, a workshop held to discuss the findings, or a rulemaking prepared to delist one or both subspecies because of extinction.

Literature Cited

Aldrich, J.W. 1980. Selected vertebrate endangered species of the seacoast of the United States—ivory-billed woodpecker. U.S. Fish and Wildlife Service. 12 pp.

American Ornithologists' Union. 1983. Check-list of North American birds. Sixth edition. Lawrence, Kansas, 877 pp.

Tanner, J.T. 1942. The ivory-billed woodpecker. National Audubon Society Research Report, No. 1, New York. 111 pp.

Tanner, J.T. 1956. The ivory-billed woodpecker. Texas Game and Fish. July. p. 15.

Author

The primary author of this notice is Alisa M. Shull (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: March 7, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–8519 Filed 4–9–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 69
Wednesday, April 10, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 5, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250 (202) 447–2118

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, ATTN: Desk Officer for USDA

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

- Office of Finance and Management
Debt Collection
On occasion
Farms; Businesses or other for-profit; Non-profit institutions; 5,992 responses; 5,992 hours; not applicable under 3504(h)
Peter Ben Ezra (202) 447–7557

Extension

- Agricultural Stabilization and Conservation Service
Rural Clean Water Program (RCWP) Regulation—Request for Cost Sharing RCWP–1
On occasion
Individuals or Households; Farms; 500 responses; 250 hours; not applicable under 3504(h)
Charles W. Sims (202) 447–7334

Revision

- Agricultural Stabilization and Conservation Service Fees for Services—Cotton Warehouses
WA–137
Annually
Small businesses or organizations; 400 responses; 100 hours; not applicable under 3504(h)
Harry J. Wishmire (202) 475–4028

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85–8551 Filed 4–9–85; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Montana; Beaverhead National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Beaverhead National Forest Plan Draft Environmental Impact Statement.

SUMMARY: The period of public review for the Beaverhead National Forest Draft Environmental Impact Statement has been extended until June 1, 1985.

ADDRESS: Requests for further information should be addressed to: Joseph J. Wagenfehr, Supervisor, Beaverhead National Forest, P.O. Box 1258 Dillon, MT 59725.

Tom Coston,
Regional Forester.

[FR Doc. 85–8561 Filed 4–9–85; 8:45 am]
BILLING CODE 3410–01–M

Decision to Grant Easement for Power Line Construction Through the San Jacinto Wilderness

The Regional Forester for the Pacific Southwest Region of the United States Forest Service, Department of Agriculture, has issued a decision to grant an easement to the Southern California Edison Company (SEC) across National Forest lands on the Southern Corridor (Morongo Bypass option) for the purpose of constructing, operating, and maintaining a 500 KV power transmission line from Devers substation near North Palm Springs California to Valley Substation near Perris, California.

As authorized in the California Wilderness Act of 1984 (Pub. L. 98–425, Section 101(24)), this easement will occupy a designated corridor through the San Jacinto Wilderness. This easement shall be confined to that area depicted as "potential power line corridor" on the map entitled San Jacinto Wilderness Additions—Proposed.

As specified in the Act, if the power line is constructed the corridor shall cease to be part of the San Jacinto Wilderness. Notice of this change in designation shall be published in the **Federal Register** at the time of the power line construction.

Zane G. Smith, Jr.,
Regional Forester, Pacific Southwest Region.

[FR Doc. 85–8562 Filed 4–9–85; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

DEM South Coast Dune Stabilization Critical Area Treatment RC&D Measure, Rhode Island

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Richard N. Duncan, State

Conservationist, Soil Conservation Service, 46 Quaker Lane, West Warwick, Rhode Island 02893, telephone (401) 828–1300.

Notice: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the DEM South Coast Dune Stabilization Critical Area Treatment RC&D Measure, Washington County, Rhode Island.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined the preparation and review of an Environmental Impact Statement are not needed for this project.

The measure concerns a plan to stabilize fragile dune areas along Rhode Island's south coast. The planned action includes limited dune redistribution, beachgrass planting, sand fence installation and fertilizing. Work is proposed at five sites along state owned and operated beach areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard N. Duncan. The Environmental Assessment has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the Environmental Assessment are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: March 27, 1985.

Richard N. Duncan,

State Conservationist.

[FR Doc. 85–8520 Filed 4–9–85; 8:45 am]

BILLING CODE 3410-16-M

Animal and Plant Health Inspection Service

Forest Service

[Docket No. 85-322]

Availability of Final Supplement to Gypsy Moth Environmental Impact Statement; Correction

AGENCY: Animal and Plant Health Inspection Service and Forest Service, USDA.

ACTION: Correction.

SUMMARY: A document published in the **Federal Register** on March 29, 1985 (captioned "Availability of Final Supplement to Gypsy Moth Environmental Impact Statement" and set forth at 50 CFR 12593–12594) provided notice of the availability of the final supplement to the Environmental Impact Statement on Gypsy Moth Suppression and Eradication Projects. The document also stated that:

In accordance with the Council of Environmental Quality's regulations in 40 CFR 1506.10 implementing NEPA, no decision with regards to the EIS, shall be made until after April 15, 1985, concerning what, if any, actions to be taken under the gypsy moth suppression and eradication projects.

It was intended that the date quoted above be April 14, 1985. Therefore, this document corrects the last sentence, in the third column on page 12593 of the notice published in the **Federal Register** on March 29, 1985 (50 FR 12593–12594) by changing the date "April 15, 1985" to "April 14, 1985".

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436–8295; or Thomas N. Schenarts, Area Director, Insect and Disease Managgement Staff, Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008, (215) 461–3150.

Accordingly, the last sentence in the third column, on page 12593, of the **Federal Register** document published on March 29, 1985 (50 FR 12593–12594) is being corrected to read as follows:

"In accordance with the Council of Environmental Quality's regualtions in 40 CFR 1506.10 implementing NEPA, no decision with regards to the EIS shall be made until after April 14, 1985, concerning what, if any, actions to be taken under the gypsy moth suppression and eradication projects."

Done at Washington, D.C., this 9th day of April, 1985

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

Done at Washington, D.C., this 9th day of April, 1985.

R. Max Peterson,

Chief, Forest Service.

[FR Doc. 85–8794 Filed 4–9–85; 12:05 pm]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA

Title: Application for a Federal Fisheries Permit—Amendment E

Form No.: Agency—N/A; OMB—0648–0097

Type of Request: Revision of a currently approved collection

Burden: 114 new respondents; 23 new reporting hours

Needs and uses: The information requested is to implement a provision of the Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region requiring that fish traps and trap buoys to be identified with the boat or vessel fishing the traps. It will prevent trap poaching and theft and will enhance enforcement of fish trap restrictions. Reducton in trap loss and poaching of fish will result in substantial savings to trap fishermen

Affected public: Individuals or households, businesses or other for profit, small businesses or organizations

Frequency: Annually

Respondent's obligation: Mandatory

OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 5, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-8636 Filed 4-9-85; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on April 23, 1985 at 10:00 a.m., in the Commodore Room, New York Yacht Club, 37 West 44th Street, New York, New York. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen LaGrande (202/377-3737).

Dated: April 4, 1985.

Ronald I. Levin,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-8637 Filed 4-9-85; 8:45 am]

BILLING CODE 3510-DR-M

Computer Systems Technical Advisory Committee; Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Electronic Instrumentation Technical Advisory Committee; Automated Manufacturing Equipment Technical Advisory Committee; and Telecommunications Equipment Technical Advisory Committee; Rescheduling of Meeting

AGENCY: International Trade Administration, Commerce.

Federal Register citation of previous announcement: 50 FR 13643 April 5, 1985.

Previously announced time and date of the meeting: 3:00 p.m., April 25, 1985.

Changes in the meeting: 1:00 p.m., April 26, 1985.

Dated: April 5, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-8642 Filed 4-9-85; 8:45 am]

BILLING CODE 3510-DT-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than (insert date 20 days after publication in the **Federal Register**) to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85-00007."

Applicant: Henny Penny Corporation, 1219 U.S. Rt. 35 West, P.O. Box 60, Eaton, Ohio 45320, Telephone: 513-456-4171, Contact: Alan Fredette, International Sales Manager

Application No.: 85-0007

Date Received: March 20, 1985

Date Deemed Submitted: March 26, 1985.

Members in Addition to Applicant: Lincoln Manufacturing Co., Inc. of Fort Wayne, Indiana

Controlling Entity: None

Summary of the Application

A. Export Trade

In conjunction with its own export activities, the Henny Penny Corporation ("HPC"), a manufacturer of commercial food service equipment and accessories, intends to act as an export trade facilitator for its clients, including its Member, to assist them in the exportation of commercial food service equipment, accessories, and spare parts. HPC intends to provide its clients with Export Trade Services that include: (1) Identifying and establishing export sales distribution contacts; (2) establishing export distribution and sales networks; (3) providing guidance on export sales distribution coordination, the establishment of exclusive distributorships, export marketing strategies, technical service coordination, qualification of equipment for use in export markets, advertising, and export credit parameters; and (4) providing a full range of training procedures for the day to day execution of export department duties. HPC intends to assist its clients in exporting worldwide.

B. Export Trade Activities and Methods of Operation

The Applicant seeks certification to enter into individual agreements with clients, including its member, whereby HPC agrees to provide Export Trade Services only for its clients, and the clients agree (a) not to appoint any person or company other than HPC to obtain Export Trade Services and (b) to export commercial food service equipment, accessories, and parts only through distributors approved by HPC. Such agreements may include terms that require the clients to (a) compensate HPC for its marketing efforts and for all export sales of the clients' commercial food service equipment, accessories, and parts, whether or not sales are made through distributors or by the clients directly; and (b) provide HPC with monthly export sales reports. The agreements may be specific as to Export Markets. Distributorship agreements developed by HPC for its clients will not include HPC as a party.

Dated: April 5, 1985.

Richard H. Shay,

Acting General Counsel.

[FR Doc. 85-8647 Filed 4-9-85; 8:45 am]

BILLING CODE 3510-DR-M

National Bureau of Standards

[Docket No. 41044–4144]

Proposed Federal Information Processing Standard; Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Proposed Federal Information Processing Standard.

SUMMARY: The purpose of this notice is to annouce a proposed Federal Information Processing Standard (FIPS) entitled "Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS)." This proposed standard adopts in whole American National Standard X3.110–1983, which is identical to Canadian Standard T500–1983.

Prior to the submission of this proposal to the Secretary for reviw and approval, it is essential to assure that consideration is given to the views of manufacturers, the public, and State and local governments. The pupose of this notice is to solicit such views.

The proposed Federal Information Processing Standard contains two basic sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the proposal is provided in this notice. Interested parties may obtain a copy of the technical specifications from the American National Standards Institude, 1430 Broadway, New York, New York 10018, (212) 354–3473.

The proposed announcement section includes a provision that redesignates the head of agency as the authority to review and approve requests for waivers to the standard. This change in waiver authority from the Secretary of Commerce to the head of agency is in accordance with recent changes in Federal program administration that strengthen the agency's role in managing information resources. The proposed provision for a *Commerce Business Daily* notice will help to assure that the waiver process is open to public review. Comments are invited on this proposed waiver procedure, as well as on the technical and other implementation requirements of the standard.

DATE: Comments and proposals must be submitted on or before July 9, 1985.

ADDRESS: Written comments on this proposed standard or any alternative proposals should be submitted to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, Attention: Proposed standard on Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

Written comments and proposals received in response to this notice will be made part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Little, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–3723.

Dated: April 4, 1985.

Ernest Ambler,

Director.

Proposed Federal Information Processing Standards Publication———

(date)

Announcing the Standard for Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS)

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15, Code of Federal Regulations (CFR).

Name of Standard. Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS) (FIPS———).

Category of Standard. Hardware and Software Standard, Interchange Codes.

Explanation. This standard describes the formats, rules, and procedures for the encoding of alphanumeric text and pictorial information for videotex and teletext applications. This standard is based upon the architecture defined in the multilayered reference model of open systems interconnection (OSI), under development by the International Organization for Standardization (IOS), but this standard does not define the OSI Standard presentation layer protocol itself. This standard defines a specific data syntax for use by OSI presentation layer protocols and some specific semantics for use at the application layer in videotex and teletext applications. This standard is based upon the Federal Standard Code for Information Interchange (ASCII) and its extentions (FIPS 1–2). It is intended to be used in Federal information processing systems, communications systems, and associated videotex and teletext equipment.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standard X3.110–1983, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

Related Documents.

a. FIPS PUB 1–2, Code for Information Interchange, Its Representations, Subsets and Extensions (adopts three ANSI standards: X3.4–1977, X3.32–1973, X3.41–1974 and also has further specifications).

b. FPBS PUB 16–1, Bit Sequencing of the Code for Information Interchange in Serial-by-Bit Data Transmission (adopts ANSI X3.15–1976).

c. FIPS PUB 17–1, Character Structure and Character Parity Sense for Serial-by-Serial-Bit Data Communication in the Code for Information Interchange (adopts ANSI X3.16–1976).

d. FIPS PUB 18–1, Character Structure and Character Parity Sense for Parallel-by-Bit Data Communication in the Code for Information Interchange (adopts ANSI X3.25–1976).

e. FIPS PUB 86, Additional Controls for Use with American National Standard Code for Information Interchange (adopts ANSI X3.64–1979).

f. American National Standard X3.4–1977, Code for Information Interchange (ASCII).

g. American National Standard X3.41–1974, Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code for Information Interchange.

h. American National Standard X3.64–1979, Additional Controls for Use with American National Standard Code for Information Interchange.

i. International Standard ISO 646–1983, Information Processing—ISO 7-Bit Coded Character Set for Information Interchange.

j. International Standard ISO 2022–1982, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Code Extension Techniques.

k. International Standard ISO 2375–1974, Data Processing—Procedure for Registration of Escape Sequences.

l. International Standard ISO 4873–1979, Information Processing—8-Bit

Coded Character Set for Information Interchange.

m. International Standard ISO 6429–1983, Information Processing—ISO 7-Bit and 8-Bit Coded Character Sets—Additional Control Functions for Character Imaging Devices.

n. International Standard ISO 6937/1–1982, Information Processing—Coded Character Sets for Text Communication, Part 1: General Introduction.

o. International Standard ISO 6937/2–1982, Information Processing—Coded Character Sets for Text Communication, Part 2: Latin Alphabetic and Non-Alphabetic Graphic Characters.

p. International Standard ISO 7498–1983, Data Processing—Open Systems Interconnection Basic Reference Model.

q. CCITT Recommendation V.3, 1972, International Alphabet No. 5.

r. CCITT Recommendation F.300–1980, Videotex Service.

s. CCITT Recommendation S.100–1980, International Information Exchange for Interactive Videotex.

Applicability. This standard is applicable to Federal acquisition and use of data processing and communication systems, data systems, system components, and related equipment that may be required to accept, process, store, transmit or interchange character coded information representing alphanumeric text or pictorial information to be displayed or printed on videotex or teletext terminals. This standard is applicable to the representation of alphanumeric text and pictoral information at the interface between host computers and videotex terminals or between teletext data and teletext decoders.

Implementation. All equipment and data systems to which this standard is applicable that are brought into the Federal Government inventory on or after the date of this FIPS PUB must be in conformace with this standard unless a waiver has been obtained in accordance with the waiver provisions given below.

Specifications. This standard adopts in whole American National Standard X3.100–1983, Videotex/Teletext Presentation Level Protocol Syntax (North American PLPS).

Waivers. Under certain exceptional circumstances, the head of the agency is authorized to waive the application of the provisions of this FIPS PUB. Exceptional circumstances which could warrant a waiver are:

a. Significant, continuing cost or efficiency disadvantages will be encountered by the use of this standard and,

b. The interchange of information between the system for which the waiver is sought and other systems is not anticipated.

Agency heads may act only upon written waiver requests containing the information detailed above. Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers on an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver request, any supporting documents, the document approving the waiver request and any supporting and accompanying document(s), with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 85–8541 Filed 4–9–85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committee will convene public meetings at the Hilton, 3580 West Beach Boulevard, Biloxi, MS, to review swordfish stock assessment; revisions to the spiny lobster regulations; consideration of continued development of the Billfish Fishery Management Plan (FMP); consideration of approval of the work plan for the Data Collection FMP, as well as discuss personnel matters.

The Council meeting will convene at 8 a.m., May 15, 1985; recess at approximately 5 p.m.; reconvene on May 16 at 8 a.m., and adjourn at approximately noon. Committee meetings of the Council will be held May 13–14, 1985. Discussion of personnel matters will be closed to the public during both Council and Committee sessions. For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: April 4, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–8552 Filed 4–9–85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs of a Briefing entitled "Federal Agencies and Women's Education Resources" conducted by the Executive Committee. An Executive Committee Meeting will also be held. The agenda of the Briefing will include discussion for Education Associations on Resource of Women's Programs in the Executive Branch of Government, and the Executive Committee will include discussions on the Council's FY 1985 Budget, and the Council Annual Report. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: April 17, 1985: 9:00 a.m. to 12:00 p.m. (Briefing); 12:00 p.m. to 1:30 p.m. (Executive Committee); and 1:30 p.m. to 3:30 p.m. (continuation of Briefing).

ADDRESS: Both meetings will be held at the Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202; Room 3000 for the Briefing, and Room 4079 for the Executive Committee Meeting.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 500, Washington, D.C., 20036, (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary

on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Briefing, *Federal Agencies and Women's Educational Resources*, will take place on April 17, 1985, from 9:00 a.m. to 12:00 p.m.; and 1:30 p.m. to 3:30 p.m.

The meeting of the Executive Committee will take place on April 17, 1985, from 12:00 p.m. to 1:30 p.m. The agenda will include discussion of the Council's FY 1985 budget and 1984 Annual Report.

The public is being given less than fifteen-days' notice of this meeting because of the relocation of the Council office.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 500, Washington, D.C. 20036.

Signed at Washington, D.C. on April 5, 1985.

Sally A. Todd,

Executive Director.

FR Doc. 85-8508 Filed 3-9-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Application Notice Establishing the Closing Date for Transmittal of Fiscal Year 1985 Applications for New Cooperative Agreements; Services for Deaf-Blind Children and Youth

Applications are invited for new projects under the Services for Deaf-Blind Children and Youth program.

Authority for this program is contained in Section 622 of Part C of the Education of the Handicapped Act.

(20 U.S.C. 1422)

Applications may be submitted by public or nonprofit private agencies, institutions, or organizations to enter into cooperative agreements with the Secretary to conduct projects in the States of Mississippi and Louisiana that enhance services to deaf-blind children and youth.

Closing Date for Transmittal of Applications: An application for a new project must be mailed or hand delivered on or before May 28, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.025A, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information: This program supports projects, as described under 34 CFR 307.11, that provide:

(a)(1) Special education and related services, as well as vocational and transitional services, to deaf-blind children and youth to whom States are not obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act and to whom the State is not providing those services under some other authority.

These services may include the following:

(i) Diagnosis and educational evaluation of children and youth at risk of being identified as deaf-blind.

(ii) Programs of adjustment, education, and orientation for deaf-blind children and youth.

(iii) Consultative, counseling, and training services for families of those deaf-blind children and youth being served under this part.

(2) Technical assistance to State educational agencies so that they may more effectively—

(i) Provide special education and related services, as well as vocational and transitional services, to those deaf-blind children and youth to whom they are obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act or some other authority;

(ii) Provide preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind children or youth;

(iii) Replicate successful, innovative approaches to providing educational or related services to deaf-blind children and youth;

(iv) Facilitate parental involvement in the education of their deaf-blind children and youth; and

(v) Provide consultative and counseling services for professionals, paraprofessionals, parents, and others who play a direct role in the lives of deaf-blind children and youth, to enable them to understand the special problems of those children and youth, and to assist in the provision of appropriate services to those children and youth.

(3) The services described in paragraph (a)(1) to deaf-blind children and youth to whom a State is obligated to make available a free appropriate public education under Part B of the Education of the Handicapped Act and to whom the State is providing those services under some other authority.

Projects assisted under this program must be designed to:

(i) Give first priority in the use of project funds to the provision of services described in paragraph (a)(1); and

(ii) Give second priority in the use of project funds to the provision of technical assistance to State educational agencies, as described in paragraph (a)(2).

Any remaining funds may be used by the grantee, upon request of the State educational agency, for the services described in paragraph (a)(3).

Each grantee under this secton shall:

(1) Develop and implement procedures to evaluate the effectiveness of services to deaf-blind children and youth which it provides under paragraph (a)(1) of this section; and

(2) Provide technical assistance to the State educational agencies served under paragraph (a)(2) of this section in the development and implementation of procedures for evaluating the effectiveness of services provide by those agencies to deaf-blind children and youth.

Certain projects under this program received awards in fiscal year 1984 for a three year period. Among these awards was one issued for three years to a multi-State project to provide services to the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, and Oklahoma. The program regulations provide that any State may elect to participate independently from any present multi-State group *(see* 34 CFR 307.11(e) and 307.20(a)(1)). The Secretary has determined that the most appropriate time for a State to exercise an option to withdraw from a multi-State project would be at the time an application for continuation is required of a multi-State project. The Department of Education has received official notification that the States of Louisiana and Mississippi wish to exercise this option beginning in fiscal year 1985. Therefore, this announcement pertains only to applications proposing to provide services under single State projects in the States of Mississippi and Louisiana, through cooperative agreements.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled "Intergovernmental Review of Federal Programs". The regulations took effect on September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an inter-governmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and selected this program for review:

Alabama	New Mexico
Arizona	New York
Arkansas	North Dakota
California	Ohio
Connecticut	Oklahoma
Delaware	Oregon
Florida	Pennsylvania
Hawaii	South Carolina
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	Utah
Louisiana	Vermont
Maine	Virginia
Massachusetts	Washington
Michigan	West Virginia
Missouri	Wisconsin
Montana	Gaum
Nebraska	Trust Territory
Nevada	The Northern Mariana Islands
New Hampshire	Virgin Islands
New Jersey	

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by July 27, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA Number 84.025A), 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications.)

Please note that the above address is not the same address as the one to which the applicant submits its application. Do not send applications to the above address.

Available Funds: It is estimated that approximately $235,000 will be available for two new projects under 84.025A, Services for Deaf-Blind Children and Youth for fiscal year 1985. These estimates of funding level do not bind the U.S. Department of Education to a specific number of awards or to the amount of any award, unless that amount is otherwise specified by statute or regulations. Awards will be for up to a two year period (*see* 34 CFR 75.253). Funding for awards will be based on the extent to which applicants address the two priorities described under "Program Information." However, funds not used for these two priorities may be used by the grantee, upon request of the State educational agency, for the services described in paragraph (a)(3).

Application Forms: Application forms and program information packages are expected to be ready for mailing on April 12, 1985. These materials may be obtained by writing to the Special Needs Section, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested. (Approved by the Office of Management and Budget under control number 1820–0028).

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Services for Deaf-Blind Children and Youth program (34 CFR Part 307). Final regulations for this program were published on July 11, 1984 (49 FR 28360).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

For Further Information Contact: Charles W. Freeman, Special Needs Section, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202. Telephone: (202) 732–1165.

(20 U.S.C. 1422)

(Catalog of Federal Domestic Assistance Number 84.025; Services for Deaf-Blind Children and Youth)

Dated: April 3, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8640 Filed 4–9–85; 8:45 am]

BILLING CODE 4000-01-M

Rehabilitation Long-Term Training; Project Applications

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Certain New Rehabilitation Long-Term Training Project Applications for Fiscal Year 1985.

Applications are invited for new Rehabilitation Long-Term Training projects for Fiscal Year 1985 in the long-term training fields of Rehabilitation Administration, Rehabilitation Facility Administration and Workshop Personnel, and Rehabilitation Psychology.

Authority for this program is contained in section 304 of the Rehabilitation Act of 1973, as amended.

(29 U.S.C. 774)

Closing Date for Transmittal of Applications: Applications for grant awards must be mailed or hand delivered on or before June 17, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.129, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An application must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal Holidays.

Program Information: Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

The purpose of the Rehabilitation Long-Term Training Program is to support projects designed for training personnel available for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped.

Historically Black colleges and universities are encouraged to participate in this program.

All applications submitted for new projects under this notice must propose training in one of the Rehabilitation Long-Term Training fields covered under this notice. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), the Secretary especially urges the submission of Fiscal Year 1985 applications for new projects that respond to invitational priorities designated below for the long-term training fields of Rehabilitation Administration, Rehabilitation Facility Administration and Workshop Personnel, and Rehabilitation Psychology. However, an application submitted in one of the rehabilitation long-term training fields covered under this notice that meets an invitational priority will not be given preference over other applications that do not meet the priority in that field.

All applications will be evaluated according to selection criteria which appear in program regulations in 34 CFR 386.30.

Invitational Priorities

1. Rehabilitation Administration

Applications submitted under Rehabilitation Administration should address managerial training needs of employed upper and mid-level managers and first-line supervisors of State vocational rehabilitation units. The training for upper and mid-level managers should focus on developing and upgrading their management skills to develop and expand cooperative programming between State vocational rehabilitation units and other service delivery systems, such as school systems. Training for first-line supervisors should focus on developing and upgrading their skills to monitor the client casework activities of subordinate rehabilitation service delivery personnel and to effect subordinate personnel familiarization with and use of new and innovative techniques to provide improved vocational training and job coaching for and placement of severely physically and mentally disabled individuals into competitive employment.

2. Rehabilitation Facility Administration and Workshop Personnel

Applications submitted under Rehabilitation Facility Administration and Workshop Personnel should address: (a) The training needs of upper and mid-level managers employed in vocationally oriented rehabilitation facilities which cooperate closely with State vocational rehabilitation units; or (b) the training needs of direct rehabilitation service delivery providers employed in vocationally oriented facilities.

The training for upper and mid-level rehabilitation facility personnel should focus on the development and upgrading of skills to improve their ability to manage a vocationally oriented rehabilitation facility engaged in production and work adjustment activities for severely physically and mentally disabled individuals.

The training for direct rehabilitation service delivery personnel employed in vocationally oriented facilities should focus on the development and upgrading of skills of such categorical types of facilities personnel as vocational

instructors, production supervisors, and resident supervisors. The training should focus on skills development and upgrading that will increase their knowledge about and capacity to use new and innovative methods and techniques in the vocational training and placement of physically and mentally disabled individuals into competitive employment. The training should include content to increase the skills of such direct service delivery personnel to provide transitional employment and supported work services to disabled individuals.

3. Rehabilitation Psychology

Applications submitted in Rehabilitation Psychology should propose training for psychologists currently employed or used by State vocational rehabilitation units or rehabilitation facilities to provide diagnostic services or psychological consultation. The purpose of the training should be to improve services to learning disabled individuals by upgrading the skills of these personnel to diagnose, treat, and plan rehabilitation services programs for learning disabled individuals and to facilitate the transition of learning disabled individuals from school to employment.

Available Funds: The total amount of funds available under the Rehabilitation Training Program in Fiscal Year 1985 is $22,000,000, including an estimated $7,820,000 for new rehabilitation long-term training projects. Of this amount, it is estimated that $1,915,000 will be available for new projects in the rehabilitation long-term training fields covered by this notice as follows: $550,000 for Rehabilitation Administration; $450,000 for Rehabilitation Facility Administration and $730,000 for Workshop Personnel; and $185,000 for Rehabilitation Psychology. The range of funded projects is expected to be from $48,000 to $300,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

An announcement for new projects in the Rehabilitation Long-Term Training Program fields of Rehabilitation Medicine, Prosthetics Orthotics, Vocational Evaluation and Work Adjustment, Rehabilitation Nursing, Physical Therapy, Occupational Therapy, Rehabilitation of the Deaf, Rehabilitation of the Blind, Job Placement and Job Development, Rehabilitation of the Mentally Ill, Undergraduate Education in the Rehabilitation Services and Other was published in the **Federal Register** on February 27, 1985 at 50 FR 7949.

Application Forms: Application forms and program information packages for new awards are available and may be obtained by writing to the Office of Developmental Programs, Rehabilitation Services Administration U.S. Department of Education, 400 Maryland Avenue, SW. (Mary E. Switzer Building, Room 3030–M/S 2312), Washington, D.C. 20202.

Application forms and program information packages will be mailed to grantees who are completing long-term training projects during the 1984–1985 academic year in fields covered under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 25 pages in length. The Secretary further urges that only the information required be submitted.

(Approved by the Office of Management and Budget under control number 1820–0018)

Applicable regulations: Regulations applicable to this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); and

(b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386).

Further information: Martin W. Spickler, Ph.D., Director, Division of Resource Development, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (Mary E. Switzer Building, Room 3319–M/S 2312), Washington, D.C. Telephone: (202) 732–1352.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training)

Dated: April 3, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8639 Filed 4–9–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of the Secretary

International Energy Agency Report

AGENCY: Department of Energy.

ACTION: Extension of date for request for comments.

SUMMARY: The Department requested comments on the International Energy Agency's (IEA) Coal Industry Advisory Board recently completed technical study on the effect of coal quality and ash characteristics on boiler operations. The request for comments was contained in the **Federal Register** on March 8, 1985, (50 FR 9492). The Department now wishes to extend the date for comments on this report.

DATES: Comments should be received on or before May 10, 1985.

ADDRESS: Copies of the IEA report are available from the Office of the Assistant Secretary for Fossil Energy (FE–1), Department of Energy, Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Biggerstaff, Office of the Assistant Secretary for Fossil Energy, Department of Energy, Washington, D.C. 20585.

Issued in Washington, D.C., April 3, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85–8570 Filed 4–9–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 82–11–NG]

Northern Natural Gas Co., Division of Internorth, Inc. Order Amending Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order amending authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on March 29, 1985, the ERA Administrator issued an opinion and order extending the term of Northern Natural Gas Company's Division of InterNorth, Inc. (Northern), existing import authorization for two years from November 1, 1987, through October 31, 1989. During that period Northern is authorized to import from Consolidated Natural Gas Limited (Consolidated) up to 135,000 Mcf per day and 49,275 MMcf per year of Canadian

natural gas at Emerson, Manitoba, minus the volumes Northern elects to import, up to a daily maximum of 67,500 Mcf, at Monchy, Saskatchewan, through the prebuilt facilities of the Alaska Natural Gas Transportation System. The order also amends Northern's existing import authorization to incorporate recent pricing and minimum purchase revisions to its gas purchase contract with Consolidated.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:
Olga T. Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9482
Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC. 20585

Issued in Washington, DC. on April 3, 1985.

James W. Workman,

Director, Office of Fuels Programs Economic Regulatory Administration.

[ERA Docket No. 82-11-NG; DOE/ERA Opinion and Order No. 76]

Northern Natural Gas Company, Division of InterNorth, Inc.

Order Amending Authorization To Import Natural Gas From Canada

March 29, 1985.

I. Background

A. Original Application

On August 9, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, to extend the term of its existing import authorization issued August 29, 1980,[1] for an additional two years from November 1, 1987, through October 31, 1989. Concurrently, Northern filed an application with the Federal Energy Regulatory Commission (FERC) in Docket No. CP80-22-003 to similarly extend a related authorization issued June 27, 1980.[2] [3]

Under the ERA August 29, 1980, authorization, Northern may import from Consolidated Natural Gas Limited (Consolidated) up to approximately 200,000 Mcf per day and up to 73,000 MMcf per year through October 31, 1987, at a point on the U.S.-Canadian border near Emerson, Manitoba, minus whatever volumes it elects to import through the Eastern Leg of the Alaska Natural Gas Transportation System (ANGTS) at Monchy, Saskatchewan.[4] The Eastern Leg facilities of the ANGTS "prebuild" are owned and operated by the Northern Border Pipeline Company (Northern Border). Pursuant to the import authority granted by the FERC on June 27, 1980, Northern is authorized to import over the same term up to 100,000 Mcf per day of this gas through Northern Border's facilities.

On May 13, 1982, Northern and Consolidated executed an amending agreement that established the basis for the original applications in this and the related FERC docket. Among other changes, this contract amendment extended the term of the original contract for two years, through October 31, 1989. In light of the May 13, 1982, contract amendment, Northern requested authority to extend the term of the import through October 31, 1989. Specifically, the application filed with the ERA requested authority to import near Emerson up to 135,000 Mcf per day and up to 49,275 MMcf per year during the additional two-year term minus the volumes Northern elects to import at Monchy. Northern requested that FERC authorize Northern to import at Monchy up to 67,500 Mcf per day over the same two-year term.

Northern proposed that the price for the gas would be the international border price set from time to time by the National Energy Board of Canada (NEB), which was $4.94 (U.S.) per MMBtu at the time of application.

Previously, under DOE Delegation Order No. 0204-8, the FERC had jurisdiction under Section 3 of the Natural Gas Act to approve imports of gas from Canada for transportation through the Eastern Leg and Western Leg prebuilt segments of the ANGTS. That jurisdiction has since been vested in the ERA by DOE Delegation Order No. 0204-11, issued in conjunction with the Secretary of Energy's new policy guidelines governing the import of natural gas.[5] On April 3, 1984, the ERA consolidated Northern's application that had been pending at the FERC with the ERA proceeding in Docket No. 82-11-NG.[6]

B. Amended Application

On February 16, 1984, the ERA requested that all applicants with natural gas import applications pending before the ERA file supplements to their existing applications and explain whether their applications met or would require modification to meet the new policy guidelines.[7] On April 16, 1984, Northern filed a supplement to its application in this consolidated docket requesting ERA to defer action on its proposal while it renegotiated its natural gas purchase contract with Consolidated. Those negotiations resulted in amendments to the gas purchase agreement which were executed November 1, 1984. Subsequently, on December 10, 1984, Northern filed a second supplemental application[8] requesting that the ERA (1) find the Northren and Consolidated gas purchase agreement, as amended, consistent with the policy guidelines; (2) grant the requested extension; and (3) take expedited action on this application because Northern would otherwise be restricted to 150,000 Mcf per day (the limit previously established by the NEB) and the increased supply was needed in Northern's temperature sensitive markets.[9]

On December 24, 1984, Northern filed a third supplement requesting an interim emergency order to amend its current import authorization to permit it immediately to increase its imports from 150,000 Mcf per day to 200,000 Mcf per day until the ERA issued a final decision on the December 10, 1984, supplement to its application.

By letter dated December 29, 1984, the ERA notified Northern that an emergency interim amendment was unnecessary because the FERC and ERA orders issued June 27, 1980, and August

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[1] *Northern Natural Gas Company*, DOE/ERA Opinion and Order 19 (1 ERA ¶ 70,518).

[2] Docket No. CP80-22, 11 FERC ¶ 61,340.

[3] Notices of Northern's ERA and FERC applications were published in the Federal Register on September 22, 1982 (47 FR 41846), and October 4, 1982 (47 FR 43775), respectively.

[4] Consolidated's export license granted by the Canadian National Energy Board in December 1979 permits the sale to Northern of a maximum of 200,000 Mcf per day at Monchy through October 31, 1984, after which daily quantities are phased down in the final three years of the license to provide for exports of 150,000 Mcf, 100,000 Mcf, and 50,000 Mcf, respectively.

[5] 49 FR 6648, February 22, 1984.

[6] 1 ERA ¶ 70,562, *Federal Energy Guidelines*.

[7] 49 FR 6692, February 22, 1984.

[8] Notice of Northern's filing was published in the Federal Register on December 21, 1984 (49 FR 49709). It limited the period for new interventions and comments on the supplement to 20 days to accommodate Northern's request for expedited action.

[9] The NEB issued an order to Consolidated in January 1983 which increased the maximum daily export quantities for sale to Northern in the three contract years November 1, 1984 through October 31, 1987, to 200,000 Mcf, 160,000 Mcf and 135,000 Mcf, respectively, and extended the duration of the exports for two years. It was conditioned upon the ERA's approval of Northern's application in this docket by January 31, 1985.

29, 1980, respectively, granted Northern authority to import a maximum daily volume of 200,000 Mcf over the entire term of the authorization. On January 4, 1985, the ERA issued a **Federal Register** notice which amended its previous notice of Northern's December 10, supplement to extend the public comment period 10 days to January 21, 1985, to allow a full 30 days for comments on the requested extension.

Under the November 1, 1984, amended contract, commencing with U.S. and Canadian regulatory approvals, the purchase price in effect during the 1984–85 contract year will be $3.50 (U.S.) per MMBtu for all imported volumes up to 27.375 Bcf. For all volumes taken above that level the price will be $2.70 (U.S.) per MMBtu provided Northern has satisfied its minimum annual take-and-pay obligation of 40.15 Bcf.[10] In future years, the price of the gas is to be renegotiated annually. Future take-and-pay volumes will also be subjected to annual renegotiation. The revised agreement provides that negotiations among the parties concerning price and volume obligations will be based on the objective of achieving levels which would enable Northern to resell the gas in its markets and provide Consolidated with a fair price and reasonable level of sales. If the parties are unable to reach an agreement by September 15 of a particular year, the matter will be submitted to arbitration. The amendment further requires that not less than 50 percent of the volumes imported during the 1984–85 contract year shall be delivered at Emerson.

In support of its application, Northern states the renegotiated provisions ensure an arrangement that is sufficiently flexible to permit pricing and volume adjustments as required by market conditions and available competing fuels, and is therefore consistent with the Secretary of Energy's gas import policy.

II. Intervenors

The ERA and the FERC received 34 motions to intervene and notices of intervention in response to their September 22, and October 4, 1982, **Federal Register** notices of Northern's initial application. These are identified in Appendix A. Two of those who filed for intervention, Valero Transmission Company (Valero) and Delhi Gas Pipeline Coporation (Delhi), opposed the application. In addition, Valero requested a trial-type hearing.

Valero is an intrastate pipeline engaged in the transmission and sale of natural gas for resale within the State of Texas. Delhi is an intrastate pipeline which operates primarily in Texas and Oklahoma. In their peitions, Varlero and Delhi raised a number of issues related to need for the gas, to the applicant's petition for blanket authorization from the FERC to make off-system sales in 1982 and 1983, and to the impact of off-system sales on intrastate pipelines.

Algonquin Gas Transmission Company (Algonquin), an interestate pipeline serving the northeast United States, did not oppose the application but indicted concern that the arrangement might have an impact on Algonquin's import project pending before the ERA in Docket No. 81–02–NG. At the time Algonquin expressed this concern, the NEB was conducting proceedings to determine the amount of surplus Canadian gas avaiable for export to the year 2000 in order to make decisions concerning applications for export licenses before it, including one filed by Algonquin's supplier, Pan-Alberta Gas Ltd. (Pan-Alberta). Algonquin observed that its import project might be adversely affected if the levels of exportable surplus gas were not adequate to satisfy all export license requests. This issue is now moot since the NEB in its January 1983 omnibus export decision approved Pan-Alberta's proposed export to Algonquin.

In its December 21, 1984, notice of Northern's second supplement to its application, the ERA invited comments, protests and additional motions to intervene to be filed by January 12, 1985. The ERA's January 11, 1985, notice extended the filing period to January 21, 1985. The December 21 notice requested that previous intervenors review their positions and update their earlier filings to indicate whether the issues raised at that time were still germane to Northern's renegotiated contract. Parties that wanted additional proceedings, even if a previous request had been made, were instructed to include the request for the particular proceeding in their response to the notices.

Five previous intervenors and one new intervenor submitted comments to the December 21, 1984, and January 11, 1985, notices.[11] All support Northern's revised import proposal. No further motions to intervene, notices of intervention or protests to the granting of the application were filed. The ERA did not receive any requests for additional procedures.

In the absence of any additional comments or requests for additional procedures from Valero or Delhi, the ERA concludes that the issues they raised are no longer relevant in this proceeding. The ERA assumes, therefore, that the only comments presently relevant to this proceeding are those received in response to the December 21, 1984, notice. Those comments support the application.

III. Decision

Northern's application has been reviewed to determine if it conforms with Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that the import "will not be consistent with the public interest."[12] In making this finding, the Administrator is guided by the Secretary of Energy's natural gas import policy.[13] Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test. The need for the import and the security of the import supply are other considerations.

All intervenours responding to the notice of Northern's November 1, 1984, contract amendment support it. The amended purchase agreement provides that the price of the gas and the take-and-pay volumes will be subject to annual renegotiation after the 1984–85 contract year. One of the expressed objectives of the annual renegotiations is to achieve prices and volume obligations that enable Northern to resell the gas in its markets. Provision for these adjustments demonstrates that this import arrangement is reasonable, flexible, and will be market-competitive over the proposed term of the autorization.

The question of the need for an import is answered by its competitiveness. The amended arrangement has been found to be competitive, and no intervenor has callenged the need for the gas. The security of this import is not a major issue because natural gas from Canada has been imported into a wide range of domestic markets for many years and no

[10] The NEB, in its December 1984 decision on Consolidated's request to amend its export licenses GL–61 and GL–75 for sale to Northern, consistent with the terms of the November 1, 1984 Amending Agreement between the parties, approved the new two-tiered export price for the contract year November 1, 1984 through October 31, 1985, on condition that the average annual price not be less than the current Toronto city-gate wholesale price of $3.15 (U.S.) per MMBtu. All non-pricing provisions in the agreement were approved by the NEB.

[11] The previous intervenors who responded are: (1) Inter-City Gas Corporation; (2) Iowa Public Service Co; (3) Minnesota Gas Company; (4) Northern States Power Co. (Minnesota); and (5) Northern States Power Co. (Wisocnsin). Lake Superior District Power Co. filed a petition to intervene for the first time.

[12] 15 U.S.C. 717b.

[13] 49 FR 6684, February 22, 1984.

issue concerning Canada's reliability as a supplier has been raised.

Northern's proposed arrangement for the continued and extended importation of natural gas conforms with the Secretary's policy guidelines. After taking into consideration all information in the record of this proceeding, I find that the amended authorization requested by Northern is not inconsistent with the public interest and should be granted.[14]

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. The import authorizations previously granted to Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) by the ERA in DOE/ERA Opinion and Order No. 19 issued August 24, 1980, in Docket No. 79–24–NG, and by the FERC in its order issued July 27, 1980, in Docket No. CP80–22, which permit the importation of a combined total of up to 200,000 Mcf per day of natural gas at Emerson, Manitoba, and Monchy, Saskatchewan, through October 31, 1987, are hereby amended to extend the term of the import authorizations, now consolidated, from November 1, 1987, through October 31, 1989, in accordance with the amended application submitted December 10, 1984, in this docket.

B. During the period November 1, 1987, through October 31, 1989, Northern is authorized to import up to 135,000 Mcf per day and 49,275 MMcf per year at Emerson, minus the volumes it elects to import, up to a daily maximum of 67,500 Mcf, at Monchy through the prebuilt facilities of the Alaska Natural Gas Transportation System, in accordance with the volumes Northern has contracted to purchase.

C. The above-referenced orders are further amended to incorporate Northern's November 1, 1984, revisions, to its gas purchase contract with Consolidated for previously authorized volumes.

D. With respect to the natural gas authorized by this Order, Northern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of gas imported at points on the International boundary near Emerson, Manitoba, and Monchy, Saskatchewan, respectively, and the average price, on an MMBtu basis, paid for such gas.

E. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., March 29, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

Appendix A

Algonquin Gas Transmission Co.
Boundary Gas Co.
Delhi Gas Pipeline Corp.
Great Lakes Gas Transmission Co.
Inter-City Gas Corporation
Interstate Power Co.
Iowa Electric Light & Power Co.
Iowa Illinois Gas and Electric
Iowa Public Service Company
Iowa Southern Utilities Co.
Iowa State Commerce Commission
Metropolitan Utilities District of Omaha
Michigan Power Company
Michigan-Wisconsin Pipeline Co.
Minnesota Gas Company
Minnesota Public Service Commission
Minnesota Municipal Utilities Association
Natural Gas Pipeline Co. of America
Northern Border Pipeline Company
Northern Illinois Gas Co.
Northern States Power Company (Minnesota)
Northern States Power Company (Wisconsin)
Northwest Alaskan Pipeline Co.
Northwestern Public Service Co.
Process Gas Consumers Group
Panhandle Eastern Pipeline Co.
Public Service Commission of Wisconsin
South Dakota Public Utilities Commission
Terra Chemicals International, Inc.
Transcontinental Gas Pipeline Corp.
Trans-Canada Pipeline Ltd.
Valero Transmission Company
Wisconsin Gas Company
Wisconsin Power & Light Company

[FR Doc. 85–8631 Filed 4–9–85; 8:45 am]

BILLING CODE 6450–01–M

[14] Because existing pipeline facilities will be used the DOE has determined that granting this application is not a federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et. seq.) and therefore an environmental impact statement of environmental assessment is not required.

Federal Energy Regulatory Commission

[Docket No. RP85–8–001]

Canyon Creek Compression Co.; Motion To Make Suspended Tariff Sheet Effective

April 5, 1985.

Take notice that on April 1, 1985, Canyon Creek Compression Company (Canyon) filed with the Federal Energy Regulatory Commission (Commission) a Motion To Make Suspended Tariff Sheet Effective. Canyon moved to make effective on April 1, 1985, a tariff sheet filed on October 19, 1984, in this proceeding. The rates and changes on the tariff sheet to be effective April 19, 1985, reflect the revision required to comply with conditions set out in Commission's order issued November 15, 1984.

Canyon states that copies of the Motion, together with the tariff sheet, have been served on all of Canyon's customers and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8609 Filed 4–9–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF85–311–000, et al]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Cogeneration National Corp. et al.

April 4, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Cogeneration National Corp.

[Docket No. QF85–311–000]

On March 21, 1985, Congeneration National Corporation (Applicant), of 1355 Willow Way, Suite 222, Concord, California 94520 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping cycle cogeneration facility will be located at the intersection of Road 23 and West Washington Street in Stockton, California. The facility will consist, in part, of two extraction condensing steam turbine/generators and two coal fueled circulating fluidized bed combustor steam generators. The electric power production capacity of the facility will be 40 MW excluding station use. The primary source of energy will be coal. Construction will begin in November 1985.

2. Inter-Power of New York, Inc.

[Docket No. QF85-312-000]

On March 22, 1985, Inter-Power of New York, Inc., (Applicant) c/o Inter-Power Technologie GmbH, Neumarkt 15, D-6600 Saarbrucken, Federal Republic of Germany, with alternate address of Energy Resources Development Corp., 163 Delaware Avenue, Delmar, New York 12054, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Saratoga County, New York. The facility will utilize condensing-extraction steam turbines to produce steam for industrial use in Waterford. The electric power production capacity of the facility will be 200 MW. The primary energy source will be coal with pelletized municipal solid waste as a supplemental fuel. Construction of the facility is scheduled to begin on May 1, 1987.

3. Modular Generating System, Inc.

[Docket No. QF85-319-000]

On March 25, 1985, Modular Generating System, Inc., (Applicant) of 5200 South Quebec Street, Suite 506, Englewood, Colorado 80111, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Buffalo, New York. It will consist of a combination of gas fired reciprocating engines, from which, waste heat will be collected and sold to Rick's Nursery for commercial greenhouse operation. The electric power production capacity of the facility will be 19.9 MW. The primary energy source will be natural gas. The installation of the facility will begin in 1985.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8629 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-375-000 et al.]

Natural gas certificate filings; Columbia Gas Transmission Corporation et al.

April 4, 1985.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corp.

[Docket No. CP85-375-000]

Take notice that on March 6, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP85-342-000 a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Kal Kan Foods, Inc. (Kal Kan), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 660 million Btu of natural gas per day, less retainage, for Kal Kan through June 30, 1985. Columbia states that the gas to be transported hereunder would be used as boiler fuel in Kal Kan's Columbus, Ohio plant.

Columbia indicates that the gas to be purchased involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of sections 103 and 107 of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas from Ohio Gas Marketing and redeliver such gas to Columbia Gas of Ohio, Inc. (distribution Company), which in turn redelivers the gas to Kal Kan.

Columbia states that it would charge its current rate of 29.93 cents per dt equivalent of volumes that are within the distribution company's total daily entitlement, or its current rate of 41.27 cents per dt equivalent of volumes that are in excess of distribution company's total daily entitlement, exclusive of company-use and unaccounted-for gas. It is further stated that Columbia would retain for company-use and unaccounted-for gas a percentage of the gas delivered hereunder as reflected in Columbia's rate filings; this percentage is currently 2.43 percent.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Columbia will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Commment date: May 20, 1985, in accordance with Standard Paragarph G at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP85-378-000]

Take notice that on March 20, 1985, K N Energy, Inc. (K N), P.O. Box 15625, Lakewood, Colorado 80215, filed in Docket No. CP85-378-000 a request to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Northern Utilities, Inc. (Northern), under the certificate issued in Docket Nos. CP83-140-000 and CP83-140-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes to add a new delivery point to the already existing four delivery points under Northern's present contract demand of 9,300 Mcf of natural gas per day and winter period demand of 1,000 Mcf per day. K N states that the proposed delivery point would be

located where K N and Northern's pipeline facilities interconnect in Fremont County, Wyoming.

K N states that the total contract demand to be delivered to Northern would not change under the subject proposal and that K N's existing tariff does not prohibit the addition of delivery points. It is further stated that the proposal would be accomplished without detriment or disadvantage to K N's other customers and that it would have no impact on K N's peak day or annual deliveries.

K N indicates that the proposed existing point of interconnection was authorized in Docket No. ST85-003-000 and that no new facilities would be required for this proposal.

Comment date: May 20, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Niagara Interstate Pipeline System

[Docket No. CP83-170-002]

Take notice that on March 12, 1985, Niagara Interstate Pipeline System (NIPS), Tenneco Building, 1010 Milam, Houston, Texas 77001, filed in Docket No. CP83-170-002 a second amendment to its pending application filed in Docket No. CP83-170-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect, *inter alia*, an increase in the volumes of natural gas to be transported and resulting modifications of the facilities to be constructed and operated, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

NIPS states that its application, filed on January 25, 1983, requested authority to construct and operate a large diameter natural gas pipeline and related facilities extending from the United States-Canadian border near Niagara Falls, New York, to a point in the vicinity of the Leidy storage field near Tamarack, Pennsylvania, and to transport natural gas through such facilities for four shippers, Algonquin Gas Transmission Company (Algonquin), Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), Texas Eastern Transmission Corporation (Texas Eastern), and Transcontinental Gas Pipe Line Corporation (Transco). It is stated that these proposed services and facilities were designed to accommodate the transportation of volumes of natural gas which the shippers and others sought to import from Canada.

NIPS states that its application was amended on March 25, 1983, to reflect modifications of its proposed services and facilities consistent with the decision of the National Energy Board of Canada (NEB) authorizing the export of lesser volumes of natural gas at Niagara Falls than had been requested and was supplemented on July 25, 1983, with the submission of executed agreements with each of the shippers regarding the transportation services to be provided.

NIPS states that the second amendment to its application is being filed to accommodate Transco's request that NIPS transport an additional 150,000 Mcf of imported gas per day. NIPS now seeks authority to transport maximum daily volumes of up to 50,979 Mcf for Algonquin, up to 500,000 Mcf for Tennessee, up to 151,105 Mcf for Texas Eastern, and up to 764,822 Mcf for Transco.

To accommodate the increased volumes to be transported, NIPS states that it now proposes to construct a compressor station of approximately 17,000 horsepower at the southern terminus of its system near Tamarack, Pennsylvania, in lieu of the 11,600 horsepower station that was previously proposed. It is stated that the estimated total capital cost of NIPS' proposed facilities is now $327,102,000. NIPS states that it continues to believe that its project is vastly superior to proposed alternatives and will best serve the public interest.

By virtue of the Commission orders of July 5, 1983, 24 FERC ¶ 61,003, and October 2, 1984, 29 FERC ¶ 61,006, this amended application is consolidated in the ongoing hearing proceedings in Docket No. CP81-107, *et al.*

Comment date: April 25, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP85-74-001]

Take notice that on March 13, 1985, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP85-74-001 an amendment to its pending application in Docket No. CP85-74-000 pursuant to Section 7 of the Natural Gas Act so as to reflect a new transportation agreement between Texas Gas and ANR Pipeline Company (ANR) dated February 7, 1985, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

As stated in the application, pursuant to a gas purchase contract dated June 29, 1984, between Texas Gas and Amoco Production Company (Amoco), Amoco has the right to retain each day, for a term extending until July 1, 1987, up to 25 percent of the daily contract quantity for sale to Florida Gas Transmission Company (Florida Gas) to fulfill Amoco's obligations to Florida Gas under a warranty contract dated November 20, 1964.

It is stated that in order for it to fulfill its obligations to Amoco, Texas Gas entered into a gas transportation agreement with Amoco dated June 29, 1984, whereby Texas Gas would transport such retained gas for Amoco in its system and in its capacity in a portion of ANR's system under an existing agreement with ANR. This proposed amendment is to reflect a new agreement between Texas Gas and ANR under which gas for both Texas Gas and Amoco would be transported by ANR and to delete any reference to the existing agreement between Texas Gas and ANR.

Comment date: April 26, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8630 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-125-000]

Distrigas of Massachusetts Corp.; Proposed Changes in FERC Gas Tariff

April 5, 1985.

Take notice that on March 29, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 1, 1985. The proposed changes are based on the twelve-month period ending December 31, 1985 as adjusted, and would increase jurisdictional terminalling service revenues by $11,391,170 per year. DOMAC also proposes a change in rate form from its straight commodity tiered rates to three-part rates reflecting the modified fixed/variable method.

DOMAC states that the proposed increased rate is necessary to permit it to recover its costs of service for the test period of twelve months ended December 31, 1984, as adjusted.

DOMAC indicates that copies of the filing have been served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8610 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1267-000]

Greenwood County, South Carolina; Issuance of Annual License

April 5, 1985.

On February 7, 1985, the Commission issued a notice of issuance of annual license for Project No. 1267. The February 7, 1985 notice incorrectly stated that the licensee of Project No. 1267 was the Duke Power company. The actual licensee of Project No. 1267 is Greenwood County, South Carolina. The Project No. 1267 project works are leased by the County to the Duke Power Company. This renotice corrects the February 7, 1985 notice.

Therefore, take notice that on February 3, 1982, Greenwood County, South Carolina (County), Licensee for the Buzzard's Roost Project No. 1267 filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder. Project No. 1267 is located on the Saluda River in Greenwood, Laurens, and Newberry Counties, South Carolina.

The license for Project No. 1267 was issued for a period ending February 10, 1985. In order to authorize the continued operation and maintenance of the project, pending Commission action on the Licensee's application, it is appropriate and in the public interest to issue an annual license to the County.

Take notice that an annual license was issued to Greenwood County, South Carolina for a period effective February 11, 1985, to February 10, 1986, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1267 subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before February 10, 1986, an annual license will be issued each year thereafter, effective February 11 of each year, until such time as a new license is issued, without further notice being given, by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8611 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-126-000]

Northern Border Pipeline Co.; Filing of Proposed Changes of FERC Gas Tariff

April 5, 1985.

Take notice that Northern Border Pipeline Company (Northern Border) on March 29, 1985 tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1.

Northern Border states that the purpose of this filing is to establish the interruptible transportation rate to be in effect for the period from May 1, 1985, through October 31, 1985, under Rate Schedule IT-1 set forth in Original Volume No. 1 of its FERC Gas Tariff. Northern Border proposes to charge IT-1 Shippers, who enter into Service Agreements during the above period, 8.054 cents per 100 Dekatherm-Miles for the term of such Service Agreements.

Northern Border has based its proposed charge on the billing determinants in its cost of service during the six month period from July 1984 through December 1984. The proposed rate for each Dekatherm-Mile of gas transported stated as a rate per 100 Dekatherm-Miles is based on Northern Border's operating expenses, ad valorem taxes and debt service. Northern Border states that the method used to arrive at the proposed rate is consistent with the method used to establish the initial interruptible transportation rate filed in the instant docket.

Any person desiring to be heard or to protest said filing should file on or before April 12, 1985, a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8512 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-387-000, et al.]

Public Service Company of Oklahoma et al.; Electric Rate and Corporate Regulation Filings

April 4, 1985.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Oklahoma

[Docket No. ER85-387-000]

Take notice that on March 25, 1985, Public Service Company of Oklahoma (PSO) tendered for filing an Interconnection and Power Supply Agreement, dated March 15, 1985 (the "Agreement"), between PSO and the Oklahoma Municipal Power Authority ("OMPA"). The Agreement provides that PSO will supply OMPA with transmission services and with capacity and energy to supplement OMPA's own power resources. PSO requests that the Agreement and rates determined thereunder be made effective as of May 1, 1985, and accordingly requests waiver of notice requirements under the Federal Power Act.

Copies of the filing have been served on OMPA and the Oklahoma Corporation Commission.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER85-382-000]

Take notice that on March 27, 1985, Pacific Gas and Electric (PGandE) tendered for filing a proposed change under electric service Rate Schedule FERC Nos. R-2, 53, 72, 84, 85 and 88. This change is a downward adjustment to base rates resulting from the net effect of four adjustments to the Company's Base Revenue Amount authorized by the California Public Utilities Commission. These adjustments are proposed pursuant to rate settlement agreements with the affected customers. The estimated total adjustment for the year 1984 is a reduction of $305,400 for FERC jurisdictional customers.

This rate schedule change is proposed to become effective as of January 1, 1984, in accord with the terms of the rate settlement agreements. The following customers have approved the proposed change: the City and County of San Francisco, the City of Santa Clara, CP National Corporation, Northern California Power Agency, Shasta Dam Area PUD and Sierra Pacific Power Company.

Copies of this filing were served upon the affected customers and the California Public Utilities Commission.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company, Inc.

[Docket No. ER85-379-000]

Take notice that on March 18, 1985, Vermont Electric Power Company, Inc. (VELCO) tendered for filing a change in rate under FERC Rate Schedule No. 236.

VELCO states that these rate changes are provided for in Paragraph 5 of FERC Rate Schedule No. 10 and Article IV of FERC Rate Schedule No. 236.

VELCO further states that the percentage rate used in computing monthly charges changed from 17.98% to 10.70%.

VELCO requests that the effective date for the proposed change in rate be January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: April 16, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Carolina Power and Light Company

[Docket No. ER85-184-001]

Take notice that on February 27, 1985, Carolina Power and Light Company (CP&L) submitted for filing a compliance report pursuant to the Commission's order dated January 30, 1985.

CP&L states that the submitted copies of the revised Phase I and Phase II fuel clauses, reflect the changes ordered by the Commission and fully comply with the Commission's Regulations.

Comment date: April 16, 1985, in accordance with Standard Paragraph H at the end of this notice.

5. Delmarva Power & Light Company

[Docket No. ER81-504-007]

Take notice that on March 25, 1985, Delmarva Power and Light Company (Delmarva) submitted for filing a refund compliance report pursuant to the Commission's Order dated February 21, 1985.

Pursuant to such Order, Delmarva has previously filed with this Commission the respective revised tariff sheets and rate schedules as concerns the Delaware Municipalities of Clayton, Middletown, Milford, Newark, New Castle and Smyrna in compliance with the Commission Letter Order dated February 2, 1983.

Delmarva states it has refunded the excess revenues collected with interest through March 8, 1985. Interest was refunded in accordance with Section 35.19a of the Commission's Regulations.

Delmarva further states that the exhibits submitted details the affected resale Customers the monthly billing determinants and revenues under prior, interim settlement and compliance rates, the monthly revenue refund and the monthly interest computed, with a summary of such information for the total refund period. Such refund was made on March 8, 1985 with interest calculated through that date.

Comment date: April 18, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Company

[Docket No. EC85-11-000]

Take notice that on March 25, 1985, Kansas Gas and Electric Company submitted for filing an application, pursuant to Section 203 of the Federal Power Act, for approval of its participation in a Lease Agreement respecting certain transmission facilities ("Lease Agreement") which provides for the lease of certain 345 kV transmission facilities located in eastern Kansas to Kansas City Power and Light Company ("KCP&L").

Under the Lease Agreement, KCP&L obtains a transmission path to move its share of power and energy from the Wolf Creek Generating Station to its service territory.

Comment date: April 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8616 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-29-000 and TA85-3-29-001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 5, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 29, 1985, the following tariff sheets to Second Revised Volume No. 1 of its FERC gas tariff:

Proposed Tariff Sheets

Thirty-Fifth Revised Sheet No. 12
Thirty-Fifth Revised Sheet No. 15
First Revised Sheet No. 15-A
Thirteenth Revised Sheet No. 16

Alternate Tariff Sheets

Alternate Thirty-Fifth Revised Sheet No. 12
Alternate Thirty-Fifth Revised Sheet No. 15
Alternate First Revised Sheet No. 15-A
Alternate Thirteenth Revised Sheet No. 16

The above-listed "Proposed Tariff Sheets" reflect an overall rate reduction of 32.8¢ per dt in the commodity or delivery charge of Transco's CD, G, OG, E, S-2, ACQ, and PS rate schedules. This reduction is composed of a 17.0¢ per dt decrease in the current gas cost portion of commodity rates, an 11.3¢ per dt net decrease in the Deferred Adjustment, and a 4.5¢ per dt decrease to reflect elimination of the special surcharge which was contained in Transco's latest PGA filing (TA85-1-29, effective November 1, 1984) related to recovery of certain retroactive Order No. 94 payments.

Transco states that although its regularly scheduled effective date for this PGA would be May 1, 1985, Transco prefers to place the instant rate reduction in effect one month early, *i.e.*, on April 1, 1985, and Transco therefore requests a waiver of the Commission's regulations in order to place into effect the "Proposed Tariff Sheets" on April 1, 1985. In support of the requested April 1, 1985 effective date, Transco states that the latest available data show that Transco's average gas cost excluding demand charges for gas purchases during the last PGA period have been below the cost projected in that PGA. Transco further indicates that during this period Transco's gas costs have approached, if not actually reached, the projected level of $3.01 for the prospective PGA period. Transco states that to delay the benefits of such efforts on the part of Transco and its producer-suppliers until May 1, 1985 would hamper Transco's ability to compete as well as its customers' ability to acquire least cost supplies at the earliest possible time.

Transco has filed the "Alternate Tariff Sheets" with a proposed effective date of May 1, 1985, in the event that such requested waiver is not granted. In that event, the Deferred Adjustment would be collected over a six month period under the "Alternate Tariff Sheets" rather than the seven-month period under the "Proposed Tariff Sheets." As a result of spreading the balance over six months rather than seven months, the decrease in the Deferred Adjustment under the "Alternate Tariff Sheets" is 10.8¢ per dt rather than 11.3¢ per dt, and the overall rate reduction under the "Alternate Tariff Sheets" is 32.3¢ per dt rather than the 32.8¢ per dt under the "Proposed Tariff Sheets."

Transco's filing reflects the following particulars:

A. Order No. 94 Payments

Transco has eliminated the special surcharge of 4.5¢ per dt related to certain retroactive Order No. 94 payments. In addition, Transco has not reflected in the instant filing certain amounts relating to Order No. 94 payments not reflected in the special surcharge and not previously contained in the appropriate subaccount of Account No. 191. Transco intends in the near future to propose in a separate filing a direct billing procedure for collection of past Order No. 94 payments, such procedure to include provision for credit to customers for amounts already paid, including amounts paid through the special 4.5¢ surcharge.

B. Sales Estimate

Pursuant to the Stipulation and Agreement dated November 30, 1983 in Transco Docket No. TA83-1-29, *et al.*, Transco has included in Appendix C, Schedule D to the instant filing an explanation of the increased sales estimate utilized to project Transco's cost of gas for this filing as compared to actual sales made to the corresponding PGA period last year. The last corresponding PGA period was an unusually low sales period for Transco, and Transco states that the Commission's approval of Transco's settlement in Docket No. RP83-137, *et al.* (Order issued March 27, 1985) should revert Transco's sales to more normal levels, as more fully explained in the filing.

C. Transco's MMP and MRP Programs

In the Commission's Order of February 1, 1985, in Transco's PGA proceeding in Docket Nos. TA85-1-29 *et al.*, Transco was directed to provide a detailed breakdown, by producer and NGPA category, of actual purchases under its Market Maintenance Program (MMP) and Market Retention Program (MRP). Included in the instant filing in Appendix C, Schedule C, are such data as are available for the period November 1, 1984 through February 18, 1985, the latest available date for the data.

D. Sulpetro Issue

In its order of October 31, 1984 in Docket No. TA85-1-29, *et al.*, the Commission set for hearing the issue of the manner in which Transco reflects its purchased gas costs from Sulpetro Limited. In the instant filing, Transco has reflected gas costs attributable to purchases from Sulpetro in the same manner as in the TA85-1-29 proceeding. Transco undertakes to be bound in the instant proceeding by the final resolution of this issue which is presently pending in the Docket No. TA85-1-29 proceeding.

Transco states that copies of the filing are being mailed to each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8613 Filed 4-9-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-49-000 and TA85-3-49-001

Williston Basin Interstate Pipeline Co.; Purchased Gas Cost Adjustment Filing

April 5, 1985.

Take notice that on March 29, 1985, Williston Basin Interstate Pipeline Company (Williston) tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

Original Volume No. 1

First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Alternate First Revised Sheet No. 10
Alternate First Revised Sheet No. 11

Original Volume No. 2

First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Alternate First Revised Sheet No. 10
Alternate First Revised Sheet No. 11

The proposed effective date of the tariff sheets is May 1, 1985.

Williston states that the filing consists of two separate computations. First Revised Sheet Nos. 10, 11 and 12 (Original Volume No. 1) and First Revised Sheet Nos. 10, 11 and 12 (Original Volume No. 2) and the schedules in support thereof were computed in strict adherence to Williston's PGA clause, Commission Rules and Regulations and NGPA guidelines. The changes herein reflect a cumulative gas cost adjustment for Rate Schedules G–1, PR–1, I–1, and X–1 of a negative 16.789 cents per Mcf. The surcharge adjustment for Rate Schedules G–1, PR–1 and I–1 is a negative 36.962 cents per Mcf. These changes represent a net decrease in rates for Rate Schedules G–1, PR–1 and I–1 of 87.468 cents per Mcf and a net decrease of 87.468 cents per Mcf for Rate Schedule X–1, from currently effective rates. Rate Schedule X–5 reflects a cumulative gas cost adjustment of 16.859 cents per Mcf, a decrease of 5.746 cents per Mcf. Rate Option A for Rate Schedule T–4 will be reduced by 1.108 cents per Mcf for Service Class I and by 2.215 cents per Mcf for Service Class II.

Alternate First Revised Sheet No. 10 and 11 (Original Volume No. 1) and Alternate First Revised Sheet Nos. 10 and 11 (Original Volume No. 2) and supporting alternate schedules represent the results of calculations, pursuant to special and significant facts and circumstances, and therefore warrant special commission consideration. As such, Williston has requested waiver to vary from normal PGA procedures. It is these alternate tariff sheets, along with First Revised Sheet No. 12 (Original Volume No. 1) and First Revised Sheet No. 12 (Original volume No. 2) which Williston respectfully requests the Commission to accept as part of its FERC Gas Tariff. The changes contained herein reflect a cumulative gas cost adjustment for Rate Schedules G–1, PR–1, I–1 and X–1 of a negative 60.900 cents per Mcf. The surcharge is a negative 27.436 cents per Mcf to Rate Schedules G–1, PR–1 and I–1. These changes represent a net decrease in rates to Rate Schedules G–1, PR–1 and I–1 of 122.053 cents per Mcf, and a net decrease for Rate Schedule X–1 of 46.970 cents per Mcf, from currently effective rates. Rate Schedule X–5 reflects a cumulative gas cost adjustment of a negative 96.957 cents per Mcf, a decrease of 119.562 cents per Mcf. For Rate Schedule T–4, Rate Option A, the rate will be reduced by 1.652 cents per Mcf for Service Class I and by 3.303 cents per Mcf for Service Class II.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8614 Filed 4–9–85; 8:45 am]

BILLING CODE 6717-01-M

Revised Emergency Action Plan Guidelines

April 5, 1985

Pursuant to the authority in § 12.22(a)(1) of the Commission's Regulations, the Director, Office of Hydropower Licensing, has revised the guidelines for the preparation of emergency action plans (EAP). The guidelines have been revised to facilitate the preparation, annual review and updating of EAP's to ensure their effectiveness and workability. The guidelines should be used in conjunction with the instructions contained in Part 12, Subpart C of the Commission's Regulations.

Owners/developers (herein referred to as owners) of all dams under Commission jurisdication must develop and file an EAP with the Regional Engineer unless an exemption is obtained pursuant to § 12.21 of the Regulations. All required EAP's developed subsequent to the date of this notice must follow the format established in the revised guidelines. Owners are not required to rewrite and refile existing EAP's in accordance with the established format. However, as part of the annual review and updating process, owners should determine whether their EAP's can be enhanced based on the information in the revised guidelines and are, therefore, urged to consider reorganizing their EAP's in the format described therein.

Copies of the revised guidelines are available from the Director, Division of Inspections or the Regional Engineer.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8615 Filed 4–9–85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of March 18 Through March 22, 1985

During the week of March 18 through March 22, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

L.B. Carter Heating, March 19, 1985 HEE–0107

On November 14, 1984, L.B. Carter Heating (Carter) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Carter had failed to show that the burden imposed on the firm by the reporting requirement outweighs the public benefits of access to the requested information. Accordingly, exception relief was denied.

Zoubek Oil Co., March 19, 1985, HEE–0106

On November 6, 1984, Zoubek Oil Company (Zoubek) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sale Report." In considering the request, the DOE found that Zoubek had failed to show that the burden imposed on the firm by the reporting requirement outweighs the public benefits of access to the requested information. Accordingly, exception relief was denied.

Appeal

John T. O'Rourke & Associates, March 22, 1985, HFA-0272

John T. O'Rourke & Associates filed an Appeal from a partial denial by the DOE Western Area Power Administration of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that certain portions of the document which was initially withheld under FOIA exemption four (4) should be released to the public, another portion should be remanded, and certain portions were properly withheld. Important issues that were considered in the Decision and Order were (i) the confidentiality of cost data, (ii) the status of personnel resumes, and (iii) the potential competitive harm which might be caused by the release of various types of information.

Requests for Exception

Abajo Petroleum, Inc., March 20, 1985, HEE-0109

On November 29, 1984, Abajo Petroleum, Inc. (Abajo) filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Abajo had failed to show that the burden imposed on the firm by the reporting requirement outweighs the public benefits of access to the requested information. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

The Charter Company, March 20, 1985, HQF-0180

The Office of Hearings and Appeals (OHA) established procedures for distributing $4,986,730 in consent order funds and accrued interest which remained after the conclusion of the first stage of the Charter Company refund proceeding. The consent order fund was remitted to DOE by The Charter Company in settlement of alleged regulatory violations regarding Charter's sales of No. 2-D diesel fuel. The OHA concluded that state governments are the appropriate bodies to formulate refund plans in this proceeding because they are in a position to provide effective and efficient restitution to diesel resellers and consumers in the 11 states where Charter marketed No. 2-D diesel fuel. The OHA apportioned the Charter consent order fund among those 11 states according to the amount of Charter No. 2-D diesel fuel sold in each jurisdiction during the period covered by the Charter consent order. In this manner, refund shares would be proportional to the probable level of injury sustained by resellers and consumers within each state. Upon approval by OHA of a state's plan that will provide restitutionary benefits to Charter No. 2-D diesel fuel resellers and consumers within that jurisdiction, the refund amount apportioned to the state———

Perry Gas Processors, March 20, 1985, HQF-0021

The Office of Hearings and Appeals (OHA) established procedures for distributing $57,376 in consent order funds and accrued interest which remained after the conclusion of the first stage of the Perry Gas Processors refund proceeding. The consent order fund was remitted to DOE by Perry Gas Processors in settlement of alleged regulatory violations regarding Perry's sales of natural gasoline. The OHA found that Perry sold the natural gasoline covered by the consent order to Shell Oil Company, which used it as a blend stock to produce motor gasoline. The OHA concluded that state governments are the appropriate bodies to formulate refund plans in this proceeding because they are in a position to provide effective and efficient restitution to resellers and consumers in the 27 states where Shell motor gasoline was primarily marketed. OHA apportioned the Perry consent order fund among those 27 states according to the amount of Shell motor gasoline sold in each jurisdiction during the period covered by the Perry consent order. In this manner, refund shares would be proportional to the probable level of injury sustained by resellers and consumers within each state. Upon approval by OHA of a state's plan that will provide restitutionary benefits to Shell motor gasoline resellers and consumers within that jurisdiction, the refund amount apportioned to the state will be disbursed.

Riverside Oil, Inc., March 21, 1985, HEF-0494

The DOE issued a Decision and Order implementing a plan for the distribution of $19,000 received as a result of a consent order entered into by Riverside Oil, Inc. and the DOE on August 30, 1980. The DOE determined that the consent order funds should be distributed in two stages. In the first stage, the DOE stated that the funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Riverside's alleged pricing violations. In the event that money remains after all first stage claims have been disposed of, the DOE determined that it would formulate a plan for distributing these funds.

Webco Southern Oil, Inc., March 20, 1985, HEF-0194

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the fund obtained as the result of a consent order with Webco Southern Oil Company, Inc. on April 7, 1981. Under the terms of the consent order, Webco agreed to remit $14,561.57 to the DOE. The funds will be available to injured purchasers of motor gasoline from Webco during the period March 1, 1979 through July 31, 1979. The information which must be included in refund applications is specified in the Decision.

Refund Applications

Pennzoil Company/Paul L. Strycula, March 22, 1985, RF10-62

A Decision and Order was issued to Paul L. Strycula (Strycula) concerning an Application for Refund filed by Strycula, a reseller-retailer of Pennzoil products. The firm elected to apply for a refund based upon the presumption of injury and the volumetric allocation formula outlined in *Office of Special Counsel*, 9 DOE ¶82,545 (1982). In considering this application, the DOE concluded that Strycula should receive a refund of $944 plus interest, based on volumes of Pennzoil products contracted for during 1976 and 1977.

Standard Oil Co. (Indiana)/Kentucky; Belridge Oil Co./Kentucky, March 20, 1985, RQ21-147, RQ6-146

The Commonwealth of Kentucky filed a proposed second-stage refund plan for using $72,589 in unclaimed funds from the Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company (Belridge) special refund proceedings. Kentucky proposed to spend $12,477 ($9,838 of the Amoco fund and $2,639 of the Balridge fund) to promote greater participation in the Solar Energy Conservation Bank program. The OHA found that the promotional program would benefit injured consumers of middle distillates and approved funding for the program. Kentucky also proposed to spend the remaining funds on an electric vehicle research and testing program. The OHA found that any possible benefits from the electric vehicle program to injured motor gasoline consumers were too remote and denied approval of the program. The OHA allowed Kentucky to resubmit another plan for use of the balance of the funds.

Standard Oil Co. (Indiana)/Klaers Oil Co., March 18, 1985, RF21-12377

Klaers Oil Company, a wholesaler of Amoco motor gasoline, filed duplicate Applications for Refund and received duplicate refunds in the Amoco special refund proceeding. The DOE determined that the second refund plus accrued interest should immediately be remitted to the DOE. The DOE also directed Klaers to explain the reason for the duplicate submissions and to submit purchase verification for the volumes of motor gasoline claimed in its application within 30 days. The DOE stated that failure to provide this additional information would result in the total rescission of Klaer's refund.

Standard Oil Co. (Indiana)/Schneider Oil Co., March 18, 1985, RF21-12368

Schneider Oil Company, a wholesaler of Amoco motor gasoline, filed duplicate Applications for Refund and received duplicate refunds in the Amoco special refund proceeding. The DOE determined that the second refund plus accrued interest should immediately be remitted to the DOE. The DOE also directed Schneider to explain the reason for the duplicate submissions and to submit purchase verification for the volumes of motor gasoline claimed in its application within 30 days. The DOE stated that failure to provide this additional information would result in the total rescission of Schneider's fund.

Standard Oil Co. (Indiana)/Tredelhorn & Assoc., March 18, 1985, RF21-12373, RF21-12374

Tredelhorn and Associates, wholesaler of Amoco motor gasoline and middle distillates, filed duplicate Applications for Refund and received duplicate refunds in the Amoco special refund proceeding. The DOE determined that the second refund plus accrued interest should immediately be remitted to the DOE. The DOE also directed Tredelhorn to explain the reason for the

duplicate submissions and to submit purchase verification for the volumes of motor gasoline and middle distillates claimed in its application within 30 days. The DOE stated that failure to provide this additional information would result in the total rescission of Tredelhorn's refund.

Dismissals

The following submissions were dismissed:

Name	Case No.
Commonwealth Petroleum Co	RF21-11234 RF21-12370
Yukon Energy Corp	HEE-0091

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

April 2, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.

[FR Doc. 85-8571 Filed 4-9-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $7,500 and $7,853.08 obtained as result of Consent Orders that the DOE entered into with Kiesel Company and L.P. Rech Distributing Company, both reseller-retailers of motor gasoline. Kiesel is located in St. Louis, Missouri; Rech is in Roundup, Montana.

DATE AND ADDRESS: Applications for refund of a portion of the Kiesel or Rech consent order funds must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF-0107 or HEF-0161 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Amy Reaner, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to two consent orders entered into by Kiesel Company (Kiesel) and L.P. Rech Distributing Company (Rech). The Kiesel consent order settled possible pricing violations in the firm's sales of motor gasoline to customers during the period March 1, 1979 through July 31, 1979; the Rech consent order settled alleged pricing violations in the firm's sale of motor gasoline to its customers during the period of September 1, 1979 through November 30, 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Kiesel and Rech consent order funds was issued on January 10, 1985. 50 FR 4779 (February 1, 1985).

Today's Decision sets forth final procedures and standards that the DOE formulated to distribute the contents of two escrow accounts funded by Kiesel and Rech pursuant to the respective consent orders. In the case of Kiesel, the DOE has decided that the consent order funds should be distributed to fifty-two first purchasers after each has filed an application for refund. In the case of Rech, the DOE has decided that the consent order funds should be distributed to one customer, if the customer's application for refund clearly demonstrates that it is entitled to these funds. The purchasers in both of these cases were identified by DOE audits and were allotted funds based on presumptions of injury which the DOE has utilized in past proceedings. In both cases, however, applications for refund will be accepted from purchasers not identified by the DOE audits.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from Kiesel or Rech during the audit periods. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: April 2, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.

April 2, 1985.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: Kiesel Company; L.P. Rech Distributing Company
Date of Filing: October 13, 1983
Case Numbers: HEF-0107, HEF-0161

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA). The petition requests that the OHA formulate and implement procedures for the distribution of funds received in connection with consent orders that ERA entered into with Kiesel Company (Kiesel) and L.P. Rech Distributing Company (Rech).

I. Background

Each of these firms is a "reseller" of "covered products" as those terms were defined in 10 CFR 212.31. Kiesel's main office is in St. Louis, Missouri; Rech is located in Roundup, Montana. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a consent order with DOE. Each consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Each consent order also states that the subject firm does not admit that it committed any such violations. A brief discussion of other pertinent matters covered by each consent order follows:

The Kiesel consent order covers the period March 1, 1979, through July 31, 1979. The DOE audit alleged that during that period, the firm committed possible pricing violations amounting to $42,100.08 with respect to its sales of motor gasoline. In order to settle all claims and disputes between Kiesel and DOE regarding the firm's sales of motor gasoline during the audit period, Kiesel and the DOE entered into the consent order on January 13, 1981. According to the Kiesel consent order, the firm agreed to deposit $7,500 (plus interest for late payment) into an interest bearing escrow account for ultimate distribution by DOE. The consent order funds were paid in full on February 2, 1981, without any interest being due.

The Rech consent order covers the period September 1, 1979, through November 30, 1979. The DOE audit revealed possible pricing violations amounting to $14,111.65 with respect to sales of motor gasoline during the audit

period. In order to settle all claims and disputes between Rech and DOE regarding the firm's sales of motor gasoline during the audit period, Rech and the DOE entered into the consent order on September 15, 1980, in which the firm agreed to make refunds amounting to $15,621.72 (including interest). According to the Rech consent order, the alleged overcharges affected two classes of customers. Separate processes were established by which Rech would make refunds to its customers. Initially, Rech agreed to refund $7,768.64, including interest, directly to its retail customers, on or before September 30, 1980. In addition, on September 16, 1980, the firm placed $7,853.08, including interest, in an escrow account for DOE to distribute to wholesale purchasers.

On January 10, 1985, a Proposed Decision and Order (PD&O) was issued which set forth a tentative plan for the distribution of the Kiesel and Rech consent order funds. 50 FR 4779 (February 1, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on the information contained in the ERA audit files. The PD&O states that this approach is warranted based upon our experience in prior Subpart V cases where all or most of the purchasers of the firm's products are identified in the audit file, *see, e.g., Marion Corp.*, 12 DOE ¶85,014 (1984) (*Marion*). Under such circumstances, a more precise determination with respect to the identity of the parties allegedly overcharged in the first instance was possible. A copy of the PD&O was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to each purchaser identified in the ERA audit file.[1]

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981), *and Office of Enforcement*, 8 DOE ¶82,597 (1981).

In the PD&O we stated that during the Kiesel audit, seventy-five first purchasers wre identified as having allegedly been overcharged. The Rech audit shows that all of the alleged overcharges settled by its consent order were attributable to purchases made by a single firm. We know that the DOE audit files do not necessarily provide conclusive evidence as to the identity of possible refund recipients or the refund that may be appropriate. However, the information contained in the audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶85,050 at 88,259 (1983). In *Marion* we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced thatn would a distribution plan based solely on a volumetric approach. *Marion* at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned either among the customers identified by the audit or to their downstream purchasers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶85,024 (1984); *Brown Oil Co.*, 12 DOE ¶85,028 (1984). The first purchasers identified by the audit, along with the share of settlement funds allotted to each by ERA, are listed in the Appendices A, B, and C.

Identification of first purchasers is only the initial step in the distribution process. We must also determine whether these first purchasers were actually injured, or whether any or part of the alleged overcharges were passed on. As we stated in the PD&O, we will adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow accounts in these cases. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). We will adopt presumptions in this case in order to permit claimants to participate in the refund process without disproportionate expense, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund procedures, in these cases we propose to adopt a presumption that claimants seeking small refunds were injured by Kiesel and Rech's pricing practices.

There are a variety of reasons for adopting this presumption. *See e.g., Uban Oil Co.*, 9 DOE ¶82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure certainly can be time-consuming and expensive. In the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to OHA) of analyzing it, may exceed the expected refund amount. Failure to adopt simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Kiesel and Rech and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small claim presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim involves a level of purchases below a threshold level. Other refund decisions have expressed the threshold either in terms of purchase volumes or dollar amounts. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984), we noted that describing the threshold in terms of a

[1] Some of the copies of the PD&O which were mailed to the identified purchasers were returned unclaimed. We attempted to contact these purchasers, but we were unable to do so. As a result, copies of this Final Decision and Order cannot be sent to these purchasers. However, each may still submit an application for refund.

dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In these cases, where the consent order fund is small, the refund amount is fairly low, and the time period of the consent order is many years past, establishing a threshold of $5,000 would be reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶85,226 (1984), and cases cited therein. In the PD&O we stated that after analysis of the information in the record, it appears that all seventy-five of Kiesel's customers listed on the Appendix made small purchases of Kiesel's products. However, as we stated in the PD&O, the refund authorized for Rech's single customer, Main Street Conoco (Main Street), is larger than the amount which a firm may be entitled to receive under the small claims presumption we have adopted.

On the basis of the considerations discussed above, we propose to distribute a portion of the escrow funds to the first purchasers listed in Appendices A and B, in the amounts specified, plus accrued interest to date. The share of the escrow fund which the listed purchasers in Appendix A may receive represents 17.8% of the amount each was allegedly overcharged, and is consistent with the terms of the Kiesel consent order which settled for 17.8% of the total amount of alleged overcharges identified by the audit. L.P. Rech, however, agreed in the Rech Consent order to refund the entire amount it had allegedly overcharged its one identified customer. Therefore, the portion of the escrow account which the purchaser listed in Appendix B is to receive, represents 100 percent of the amount it was allegedly overcharged. In order to actually receive a refund each customer will still be required to file an application for refund. (*See* discussion *infra*).

However, as we stated in the PD&O, since the refund allotted to Main Street is larger than $5,000—and therefore larger than a "small claim"—the firm will be required to make a specific demonstration of injury prior to its receiving the full refund allotted to it in Appendix V. As in previous special refund cases, Main Street will be required to show that it did not pass the effects of Rech's alleged regulatory violations through to its own customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which the firm could make this showing, Main Street should generally demonstrate that at the time it purchased Rech's products, market conditions would not permit it to pass the alleged overcharges on to its own customers in the form of higher prices. In addition, the firm must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of bank will not, however, automatically establish injury. *See Tenneco Oil Co./ Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).[2]

There may also have been first purchasers other than those identified by the ERA audit, as well as subsequent repurchasers, who may have been injured by the alleged overcharges and who therefore could be entitled to a portion of the consent order funds. If these or other additional meritorious claims are filed, the figures set forth in the Appendices will be adjusted accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[3]

Finally, we are not prepared, based on the information now available to us, to distribute any of the Kiesel consent order funds to the purchasers identified in Appendix C. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweights the modest benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 88,225 (1982). *See also* 10 CFR 205.286(b). Each of the firms listed in Appendix C purchased less than 2,700 gallons of motor gasoline in total. Some involve purchase as small as 66 gallons. While refunds based on purchases levels of this order of magnitude may be appropriate in other Subpart V proceedings, especially where they can be aggregated in some manner with other claims made by the firm in order to reduce administrative costs, in this case they are simply too small to merit individual consideration.

III. Applications for Refund

We have concluded that the procedures described in the PD&O represent the best means available for distributing the Kiesel and Rech consent order funds. No comments were received objecting to the refund procedures proposed in the PD&O.[4] Accordingly, for the reasons stated in the PD&O we will implement these proposals. We shall now accept applications for refunds from customers who purchased petroleum product from Kiesel and Rech during the audit period. As proposed, the consent order funds will be distributed to the firms that the ERA alleged in its audit were overcharged by Kiesel or Rech, provided each files an application, as well as to other eligible customers of Kiesel or Rech who apply for a refund.

In order to receive a refund each claimant will be required to submit with its application, either a schedule of its monthly purchases of petroleum products from Kiesel or Rech or a statement verifying that it purchased petroleum products from Kiesel or Rech

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[2] We have determined in previous special refund cases that a purchaser who was in a position to be injured by a supplier's alleged overcharges may be eligible to receive the full refund allotted to it in the DOE audit, even if this amount slightly exceeds $5,000. *See* Reinhard Distributors Inc., 12 DOE ¶ 85,137 (1984). In that case we found that one of Reinhard's purchasers was a partial end-user, had a small sales volume, and was situated in a small community and lacked alternative suppliers. We therefore determind that this customer was likely injured by the alleged overcharges and, accordingly, was entitled to a refund of over $5,000, as set forth in the DOE audit. The refund authorized for Main Street also only exceeds $5,000 by a small amount. Therefore, if Main Street can submit information which would demonstrate that it was in a similar position to Reinhard's customer, we may consider granting it the full refund as set forth in Appendix B. If Main Street does not choose to make a demonstration of injury, it may be able to rely on our records and receive a refund of up to $5,000 under the small claims threshold we have proposed in this case (*see* Footnote 5, infra).

[3] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated in the appendices.

[4] On February 11, 1985 we received a letter from Rech stating that the firm intends to file a refund application for the Rech consent order funds, because it contends that in owned and operated Main Street during the entire audit period. However, since this decision's purpose is limited to establishing procedures to be used for filing and processing claims in the first stage of the Rech refund proceeding, it would be premature for us to determine at this time the refund due to an individual applicant. While we do intend to consider the fact that Rech owned Main Street during the audit period when we determine whether or not Rech is entitled to receive any refund, we will reserve judgment on Rech's claim until it has filed its refund application.

and is willing to rely on the data in the audit file. Claimants must indicate, as well, whether they have previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding.

Purchasers not identified by the ERA audit will be required to provide specific information as to the date, place, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. A purchaser must indicate, as well, how it used the Kiesel or Rech product, *i.e.*, whether it was a reseller or ultimate consumer. Each applicant must also state whether there has been a change in ownership of the firm since the audit period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." See 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF–0107 (Kiesel) and HEF–0161 (Rech) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by Kiesel Company pursuant to the consent order executed on January 13, 1981, may now be filed.

(2) Applications for refunds from the funds remitted to the Department of Energy by L.P. Rech Distributing Company pursuant to the consent order executed on September 15, 1980, may now be filed.

(3) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

(4) This is a final order of the Department of Energy.

Dated: April 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

KIESEL COMPANY

First purchasers	Portion of settlement amount [1]
Taylor Excavating, 3917 Reavis Barracks Rd., St. Louis, Mo. 63132	$40.23
Security Armored Car, 1022 S. 9th St., St. Louis, Mo. 63104	273.61
Grey Eagle Distributing, 2340 Mill Park Dr., St. Louis, Mo.	204.80
Kirchner Ind., Inc., 2346 Palm, St. Louis, Mo. 63107	28.39
Gould, Inc., 940 West Port Plaza, St. Louis, Mo. 63141	36.65
Tully Equipment, 3900 Green Park Road, St. Louis, Mo. 63125	16.22
Mt. Lebanon Guardian Cemetery, 11101 St. Charles Rock Rd., St. Louis, Mo. 63114	20.41
C. Rollo Construction, 5000 Kemper Ave., St. Louis, Mo. 63139	94.08
Cent. & Mech. Ind., Inc., 146 President St., St. Louis, Mo. 63118	27.58
Chemlawn 11422 Schenk, St. Louis, Mo.	26.42
Biggs Properties, Timbertake Apts., 1177 Timberbrook Dr., St. Louis, Mo. 63122	16.14
Bussen Quaries, 5000 Bussen Rd., St. Louis, Mo. 63129	18.18
St. Louis Ship. Div., Pott Inc., 501 N. 7th Street, St. Louis, Mo. 63101	16.96
Catholic Cemeteries of St. Louis, 7301 Watson Road, St. Louis, Mo. 63119	44.80
Voallmer Bros. Contr., 911 N. Grand Blvd., St. Louis, Mo. 63106	18.15
I-55 Service Center, 4553 S. Broadway St., St. Louis, Mo. 63111	149.34
Tonsing Sales & Svc., 4011 Bayless Ave., St. Louis, Mo. 63125	524.57
Baker Mobil Svc., 2812 Moravec Dr., High Ridge, Mo. 63049	94.52
B & W Auto Svc., 8025 Alabama Ave., St. Louis, Mo. 63111	503.78
Erma Jackson, S.J. Petroleum, 9149 Coral, St. Louis, Mo. 63125	251.00
Southwest Service, 5301 Arsenal St., St. Louis, Mo. 63139	184.86
Allen Cab, 1414 N. Sarah St., St. Louis, Mo. 63113	80.90
Missouri Petroleum, 1620 Woodson Rd., St. Louis, Mo. 63114	62.46
Missouri State Hyw. Comm., 329 S. Kirkwood Rd., St. Louis, Mo. 63122	497.86
City of Ferguson, 110 Church St., Ferguson, Mo. 63135	289.01
Bi-State Development Agency, 701 N. 1st St., St. Louis, Mo. 63101	350.49
St. Louis Board of Education, 3416 Cook Ave., St. Louis, Mo. 63106	879.04
Jefferson Barracks, Nat'l Cemetery, 101 Memorial Dr., St. Louis, Mo. 63125	40.89
V.A. Hospital, 1520 Market St., St. Louis, Mo. 63103	21.19
Rockwood School Dist., 111 East North St., Eureka, Mo. 63025	157.59
Budrouch Excavation, 2520 Lemay Ferry Road St. Louis, Mo. 63125	76.14
Branch Metals, 620 Saint Cyr Road St. Louis, Mo. 63137	59.25
Fenster & Sons Iron, 9620 N. Broadway, St. Louis, Mo. 63137	22.83
ACF Industries, 9666 Olive St. Rd., St. Louis, Mo. 63132	53.74
Union Electric 316 N. 12th St., St. Louis, Mo. 63101	954.75
Biebel Bros. Roofing, 1600 N. Lindbergh Blvd., St. Louis, Mo. 63132	146.90
Service Rental Co., 8601 New Hampshire Ave., St. Louis, Mo. 63123	30.58
Jay's Texaco, 2115 Redman Rd., St. Louis, Mo. 63136	392.38
Monsanto, 800 N. Lindbergh, St. Louis, Mo. 63141	30.39
City of Valley Park, Valley Park, Mo. 63088	67.71
Lindy's Auto Service, 4390 Telegraph Road, St. Louis, Mo. 63129	12.00
Grebe Oldsmobile, 3400 S. Kingshighway, St. Louis, Mo. 63139	29.41
Jenkin, Guerin, Inc., 4480 Hunt Avenue, St. Louis, Mo. 63110	46.74
U.S.P.F.O. For Missouri, 1715 Industrial Drive, Jefferson City, Mo. 65101	19.09
Turley Martin, #1 Mercantile Center, St. Louis, Mo. 63101	23.97
Ace Scrap Metal, 5900 Manchester, St. Louis, Mo. 63110	173.74
St. Louis Air National Guard, 10800 Natural Bridge, Bridgeton, Mo. 63044, Bldg 235 (LG) C	98.64
St. Louis Bulk Mail Ctr., 5600 Phantom Drive Hazelwood, Mo. 63042	452.70
St. Lucas Park Hill Cemetery, 11825 Denny Road, St. Louis, Mo. 63126	15.43
King Motor Service, 3801 S. Broadway, St. Louis, Mo. 63118	35.56
St. Louis Interagency Car Pool, GSA Motor Pool, 4300 Goodfellow, Bldg 115, St. Louis, Mo. 63120	83.03
Bommarito Oldsmobile	[2] 113.85

[1] Does not include interest. Actual refunds will include the interest which has accrued on these amounts since DOE received the Kiesel consent order funds on February 2, 1981.

[2] Purchaser with no available address.

Appendix B

RECH DISTRIBUTING COMPANY

First purchaser	Portion of settlement amount [1]
John L. Pratt, Esq. (Main Street Conoco), Post Office Box 685 Roundup, Montana 59072	$7,853.06

[1] Includes principal and interest through June 20, 1980. The actual refund will also include the additional interest which has accrued on this amount since DOE received the Rech consent order funds on September 16, 1980.

Appendix C

KIESEL COMPANY

[Claims under $15]

First purchaser	Portion of settlement amount
A. Spiritas Wrecking	$.46
Morris Linen & Towel	9.61
Ralston Purina	3.03
Newger Materials	.30
General American Ins.	2.77
St. Louis Wood Products	5.78
New Picker Cemetery	.69
Arrowhead Golf Club	7.99
Benco Bommarito Construction	8.80
Host International	9.51
Lakeside Center for Boys	5.64
U.S. Coast Guard, 2nd Dist	6.36
St. Louis Community College	1.86
Federal Barge Lines	1.02
Mercy Center	3.47
LaSalle Iron Works	2.27
Alton Fire Protection Dist	9.08
Norfolk & Western R.R	7.83
Kirchner Enterprises	4.00

[FR Doc. 85–8572 Filed 4–9–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $36,116 ultimately to be obtained as the result of a consent order which the DOE entered into with Red Triangle Oil Company, a reseller of petroleum products located in Fresno, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. All comments should conspicuously display a reference to case number HEF–0162.

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $36,116 plus accrued interest ultimately to be obtained by the DOE under the terms of a consent order entered into with Red Triangle Oil Company. The funds are being provided to the DOE by Red Triangle to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period November 1, 1973, through December 31, 1978.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 46 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be requird either to submit a schedule of its monthly purchases from Red Triangle or to submit a statement verifying that it purchased petroleum products from Red Triangle and is willing to rely on the data in the audit files. Certain firms will also be required to made specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHS invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to sumbit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: April 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 2, 1985.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Red Triangle Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF–0162.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 C.F.R Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Red Triangle Oil Company (Red Triangle).

I. Background

Red Triangle is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Fresno, California. A DOE audit of Red Triangle's records revealed possible violations of the Mandatory Petroleum Price Regulation. 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and December 31, 1978, Red Triangle committed possible pricing violations amounting to $91,345.68 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Red Triangle and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Red Triangle and the DOE entered into a consent order on March 24, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Red Triangle does not admit that it violated the regulations.

Under the terms of the consent order, Red Triangle agreed to make refunds amounting to $59,993. Separate processes were established by which Red Triangle would refund money to injured parties. First, $2,043, representing alleged overcharges on sales to Red Triangle's Bulk Retailer class of purchasers, was to be refunded directly to those purchasers. Second, Red Triangle was to refund $21,834, representing alleged overcharges on sales of motor gasoline at company-owned service stations, by reducing the price of gasoline at those stations by two cents per gallon until the full amount had been refunded. Finally, Red Triangle was to deposit $36,116, representing alleged overcharges to service stations, into an interest-bearing escrow account for ultimate distribution by the DOE. After paying $9,238.76 on January 23, 1982, Red Triangle became delinquent in its payments. However, on December 5, 1984, the firm remitted $10,000 to the DOE and agreed to pay $2,000 per month until it has discharged its liability. *See* Momorandum of Telephone Conversation of December 26, 1984, between Eugene Guziewicz of ERA's Settlements Division and Douglas Friedman, OHA Staff Analyst. Thus far, the firm has remained current in its

payments. This decision concerns the $36,116 plus interest that should ultimately be available for distribution.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Based on our experience with Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Red Triangle's pricing practices during the period November 1, 1973 through December 31, 1978. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Red Triangle, 46 service-station first purchasers were identified as having allegedly been overcharged. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit and/or their downstream customers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices 1 and 2.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we also propose the adoption of a presumption in order to determine the level of a purchaser's injury and thereby distribute funds in the escrow account in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we plan to adopt in this case is used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by Red Triangle's pricing practices.

There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursement to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchases. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*) and cases cited therein. The record indicates that 45 of the 46 identified customers made small purchases. The one firm whose potential refund falls above the threshold bought

[1] Once we have analyzed all applications for refund, we will authorize disbursement of whatever funds are in escrow. In the event that valid claims exceed the amount in escrow at the time, each successful claimant will receive a pro rata share and will receive the remainder of its refund if and when additional funds are received by the DOE.

almost four times as much fuel as the second-largest purchaser.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[2]

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we proposed to distribute a portion of the escrow funds to those firms listed in Appendices 1 and 2. Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any necessary showing of injury.[3] However, no addresses are available for the firms listed in Appendix 2 and we are therefore unable to contact those firms directly. In order to locate these firms, we will provide Red Triangle and various petroleum dealers' associations in California with copies of this Proposed Decision and will publish a notice in the Federal Register. Information regarding the identity and location of each of these firms will be accepted for a period of 90 days from the date of publication of notice of a final Decision and Order in this proceeding in the Federal Register.[4]

There may also have been other first purchasers not identified by the ERA audit, as well as subsequent repurchasers, who may have been injured as a result of Red Triangle's pricing practices during the audit period and who would therefore be entitled to a portion of the consent order funds.[5] If additional meritorious claims are filed, the figures set forth in the Appendices will be adjusted accordingly. Actual refunds will be determined only after analyzing all appropriate claims.[6]

In order to receive a refund, each claimant will be required to submit either a schedule of its monthly purchases of motor gasoline from Red Triangle or a statement verifying that it purchased motor gasoline from Red Triangle and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Purchasers not identified by the ERA audit will be required to provide specific information as to the date, place, price, and volume of motor gasoline purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

B. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Red Triangle Oil Company pursuant to the consent order executed on March 24, 1980, will be distributed in accordance with the foregoing decision.

APENDIX 1—FIRST PURCHASERS

First purchaser	Share of settlement[1]
James W. Askew, Huck and Jim's, 4665 North Kavanaugh, Fresno, California 93705	$1,335.46
William Aubuchon, Bill's Service, 2510 Whitson, P.O. Box 232, Selma, California 93662	1,496.31
Black's Gulf, 3551 East Lowe, Fresno, California 93702	72.23
H. Bohannon, 959 Clovis Avenue, Clovis, California 93612	984.64
Clore Gulf, 4520 East Redlands, Fresno, California 93726	525.42
J.F. Crowell, c/o Rose & Connolly, Certified Public Accountants, Fresno, California 93704	96.68
D. Deves, 4010 North West Avenue, Fresno, California 93705	137.24
Ben Farmer, 2102 Vine Street, Sanger, California 93657	516.46
Fresno, A.N.G., 5425 East McKinley Fresno, California 93705	50.56
Louis J. Gennuso, Sr., Gennuso's Service, Fresno and E. Streets, Fresno, California 93706	1,173.77
Elbert A. Hendrix, 317 South Peach, Fresno, California 93727	1,367.96
Bill Hensley, P.O. 607, Madera, California 93637	1,932.26
Louie Hernandez, 2559 South Chestnut Avenue, Fresno, California 93725	325.05
Herring, 373 West North Avenue, Fresno, California 93706	425.17
Jesse's Gulf, P.O. Box 488, Firebaugh, California 93622	1,155.71
Liberty Auto, 1099 C Street, Fresno, California 93702	707.67
Paul Lindsay, 420 West Shaw Avenue, Clovis, California 93612	310.60
Alfred G. Marmolejo, 3827 East Liberty, Fresno, California 93706	964.30
J. McBee, 2937 D Street, Selma, California 93662	817.59
Herbert R. McCarty, 788 West Bullard, Fresno, California 93705	130.02
L. McDonnell, 3893 Arden Drive South, Fresno, California 93703	809.03
Horst Pakorra, General Delivery, Oakhurst, California 93644	195.03
John Patterson, 2240 Tuolumne, Fresno, California 93721	7,544.41
William W. Perry, 3770 West McKinley, Fresno, California 93711	111.96
Ruth Reese, Lane's Gulf, 1107 Lincoln, Madera, California 93637	505.62
Vincent Rio Frio, 36440 Sough Highway 99, Kingsburg, California 93631	671.76
Udom Ruengpom, C & N Service, 6753 Blackstone, Fresno, California 93710	877.62
J. Salazar, 7011 North Van Buren Avenue, Herndon, California 93721	81.40

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to prove their injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (*Ada*).

[3] The share of the escrow fund allocated to each firm listed in Appendices 1 and 2 represents 60 percent of the amount each was allegedly overcharged. This is consistent with the terms of the consent order, which settled for 60 percent of the total amount of alleged overcharges to service stations.

[4] If we are unable to locate any firm listed in Appendix 2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[5] We are aware of one claimant who was not identified by ERA. Mr. Raul Marmolejo of Fresno, California notified ERA that he was a first purchaser. If he, or any other similarly situated person or firm, submits the information required from purchasers not identified by the audit, we will modify this decision and authorize a refund for him.

[6] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

APPENDIX 1—FIRST PURCHASERS—Continued

First purchaser	Share of settlement[1]
Stone's Golf, 215 East Estate, Tulare, California 93274	1,014.86
Sunset Gulf, 1703 West Olive, Fresno, California 93705	1,238.78
Ted and Lil, 16814 West Gettysberg, Kerman, California 93630	552.57
Judith Ann Tweedy, c/o Robert J. Cook, Esq., 9805 Main Street, Lamont, California 93241	155.30
Ben Vales, 1210 Academy, Sanger, California 93657	393.66
Dan Vargas, P.O. Box 932, San Joaquin, California 93660	848.73
Ralph Waldrum, Senior Citizens, 1917 South Chestnut, Building 15E, Fresno, California 93702	379.22
Glean N. Ward, 215 West Shaw, Clovis, California 93612	906.51
Williams Gulf, 12550 Second Drive, Cutler, California 93615	906.51
Zip and Go, 485 Barstow Avenue, Fresno, California 93706	715.10

[1] Does not include accrued interest.

APPENDIX 2—FIRST PURCHASERS, NO ADDRESS AVAILABLE

First purchaser	Share of settlement
Twain Bankston	144.66
R. Brown	985.97
Don's Gulf	61.40
B. Meithrop	137.24
D. McComes	50.56
Schultz Gulf	812.61
W.W. Gulf	169.75
P. Walker	424.79

[FR Doc. 85-8573 Filed 4-9-85; 8:45 am]

BILLING CODE 6456-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/46; FRL-2813-5]

Special Review of Certain Pesticide Products; Cyanazine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces that EPA is initiating a Special Review of all pesticide products containing the active ingredient cyanazine. EPA has determined that cyanazine, a registered herbicide, produces teratogenic effects in laboratory rats and that sufficient exposure to mixer/loaders and applicators exists so that cyanazine meets or exceeds a risk criterion described in 40 CFR 162.11. Accordingly, a Special Review of products containing cyanazine has been initiated to determine whether registration of these products should be permitted to continue and, if so, under what terms and conditions. During the Special Review process, EPA will carefully examine the risks and benefits of using cyanazine and will determine whether additional regulatory actions are required.

DATE: Comments, evidence to rebut the presumptions in this Notice, and other relevant information must be received no later than 45 days from the date this notice is received or until **Federal Register** May 28, 1985, (whichever is later).

ADDRESS: Three copies of written comments identified as (OPP-30000/46) should be sent by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comments that do not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All non-CBI written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Spencer L. Duffy, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7421).

SUPPLEMENTARY INFORMATION: The term "Special Review" is the name now being used by EPA for the process previously called the Rebuttable Presumption Against Registration (RPAR) process. Modifications to the process have recently been proposed in the **Federal Register**. The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any final notice of intent to cancel pesticide registrations which may be issued under FIFRA section 6(b). The Special Review process is described at 40 CFR 162.11 and is usually initiated because one or more of the risk criteria identified in that section have been exceeded, as revealed by testing of the pesticide's active ingredient.

EPA has determined that a Special Review will be conducted for all pesticide products containing cyanazine as an active ingredient. EPA has also determined that data necessary to conduct the Agency's risk assessment must be developed on an accelerated basis, and that precautionary labeling is required to reduce risk during the Special Review process.

Issuance of this Notice means that potential hazards associated with the use of cyanazine have been identified. These hazards will be examined further to determine the nature and extent of the risk, and considering the benefits of cyanazine, whether such risks cause unreasonable adverse effects on the environment.

A document entitled "Guidance for the Interim Registration of Pesticide Products Containing Cyanazine" (Guidance Document) has been issued. (The Guidance Document is also referred to as a Registration Standard). The Guidance Document is available to the public from the contact person named above. This Guidance Document explains the basis for EPA's decision to start a Special Review and also contains references, background information, data requirements, and other information pertinent to the continued registration of pesticides containing cyanazine.

I. Initiation of a Special Review

A. General

A pesticide product may be sold or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Before a product can be registered, it must be shown that it can be used without "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)), that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide" (FIFRA section 2(bb)). The burden of proving that a pesticide meets this standard for registration is on the proponent of initial or continued registration. If at any time the Agency determines that a pesticide no longer meets this standard for registration, the Administration may cancel the registrator under section 6 of FIFRA.

The Agency has created an administrative process for fully

evaluating whether a pesticide satisfies or continues to satisfy the statutory standard for registration. This Special Review process provides an informal procedure through which EPA may gather and evaluate information about the risks and benefits of a pesticide's uses. It also provides a means by which interested members of the public may comment on and participate in EPA's decision making process. The regulations governing this process are set forth in 40 CFR 162.11.

A Special Review is begun when EPA determines that a pesticide meets or exceeds one or more of the risk criteria set out in the regulations (40 CFR 162.11(a)(3)). The Agency generally announces the beginning of the Special Review by issuing a Position Document 1 (PD 1) which is published in the **Federal Register**. In addition, registrants of affected products will receive the PD 1 by certified mail. Registrants and other interested persons are invited to scrutinize the basis for the Agency's decision to initiate the Special Review and to submit data and information which rebut or support the Agency's initial determination regarding risk. Commenters may also suggest methods to reduce risks of use of the pesticide. In addition to addressing risk issues, commenters are encouraged to submit evidence and discussions of the biological, economic, social, and environmental costs and benefits of use of the pesticide. The public participation stage is described in more detail in Unit IV. This Notice constitutes Position Document 1 for pesticide products containing cyanazine.

If risk issues are not satisfactorily resolved, EPA will proceed to evaluate the risks and benefits of cyanazine in order to determine whether to propose regulatory actions to reduce the risks. After providing an opportunity for comment by the Scientific Advisory Panel, the Secretary of Agriculture, registrants, and the public on those actions and the reasons for them, EPA will issue an appropriate final notice. If EPA determines that the risks of use exceed the benefits, EPA will issue a notice of intent to cancel the registration of products intended for such use. The notice may state the intention to cancel registrations outright or may require certain changes in the composition, packaging, application methods and/or labeling of the product. These changes would be intended to reduce the risks to levels that when considered against the benefits will not cause unreasonable adverse effects to man or the environment.

A notice initiating a Special Review is not a notice of intent to cancel the registration of a pesticide, and a Special Review may or may not lead to cancellation. This Notice initiating the Special Review for cyanazine products is an announcement of EPA's concern about the safety of the pesticide's use, and only after carefully considering the risks and benefits of cyanazine and determining that it appears to cause unreasonable adverse effects on the environment, would EPA issue a notice of intent to cancel.

B. Presumption

EPA has determined that the use of pesticide products containing cyanazine pose risks which meet or exceed one of the risk criteria in 40 CFR 162.11(a)(3)(ii)(B). This regulation provides that a Special Review shall be conducted if the use of a pesticide "produces any other chronic or delayed toxic effect in test animals at any dosage up to a level, as determined by the Administrator, which is substantially higher than that to which humans can reasonably be anticipated to be exposed, taking into account ample margins of safety." Studies submitted to the Agency have shown that cyanazine produces teratogenic and fetotoxic effects in laboratory animals. Based on these data and on an evaluation of potential exposure of mixer/loaders and applicators to cyanazine, the Agency concluded that cyanazine has exceeded the risk criteria for initiating a Special Review.

1. *Toxicological concerns.* The data base for the continued registration of cyanazine includes two studies submitted by Shell Oil Company. The first study (MRID 00009102) designed to test for teratogenicity was conducted using Fischer 344 rats. In this study, rats were dosed daily by gastric intubation on gestational days 6–15. On the 20th day of gestation rats were sacrificed and necropsies were performed. Results from this test showed increased incidence of anophthalmia (no eyes) and microphthalmia (small eyes), in fetuses at a dose level of 25 mg/kg/day. A no observed effect level (NOEL) was established at 10 mg/kg/day. In addition, cyanazine caused increased incidence of diaphragmatic hernia in fetuses borne by treated rats. It was not clear, however, at the conclusion of the test whether the diaphragmatic hernia effect was a true teratogenic response. The registrant has been asked to submit by 12/31/85 additional data to clarify the diaphragmatic hernia issue.

In another study conducted by Shell Oil Company Laboratory, New Zealand rabbits 3–4 months old were mated at 7–11 months and dosed with cyanazine (orally via gelatin capsules) 6–18 days post coitum (p.c.). The rabbits were sacrificed on the 29th day (p.c.). The results showed cyanazine produced fetotoxic effects at 2 mg/kg/day. A NOEL was established at 1 mg/kg/day. The primary fetotoxic response was low litter weights. No teratogenic effects were observed in this study.

2. *Applicator (non-dietary) risk.* The Agency has determined that the principal group of people exposed to cyanazine is mixer/loader and applicator personnel and that dermal absorption is the primary route of entry for cyanazine. Data from a surrogate study with a pesticide which had similar use patterns were used because adequate exposure data on cyanazine were not available to the Agency. These estimates are based on a completely unprotected agricultural worker and assume 140 acres are treated per day (10 hours) by a 60 kg woman. The estimates of the amount of cyanazine absorbed by mixer/loaders and applicators are presented in the table below.

TABLE 1.—ESTIMATES OF CYANAZINE ABSORBED BY WORKERS

Operation	Exposure/ absorption
Mixing/loading (open system)	1.95 mg/kg/day.
Application	5.4 mg/kg/day.

These exposure estimates suggest levels of exposure to cyanazine at or near the point where teratogenic and fetotoxic effects were observed in experimental laboratory animals.

A dermal absorption study requested during the development of the Registration Standard has been completed and was submitted to the Agency January 16, 1985. The Agency has determined that this study is unacceptable because of the excessive amounts of cyanazine which were not accounted for at the low (0.5 mg) and intermediate (5.0 mg) dose levels. Cyanazine losses ranged from 13.6–55.0 percent for the low dose level and from 15.3–23.4 percent for the intermediate dose level. These losses made it impossible to quantitate accurately absorption of cyanazine by the skin of the test animals. It also prevented evaluation of the significance of the unusual absorption patterns which occurred during this test.

3. *Dietary Risk.* Dietary exposures to cyanazine result from use on corn and other crops which are used for human food and livestock feed. Ninety six percent of the cyanazine produced in the United States is applied to corn. A

margin of safety (MOS) for dietary exposure to a teratogen is usually determined based on a single serving of a given food commodity. For cyanazine, the single serving for all raw agricultural commodities is very close to the food factor. (The food factor is the portion of the diet, usually expressed as a percentage, which is contributed by a given food based on the annual average consumption of that food.) Therefore the theoretical maximum residue contribution (TMRC) as a result of existing tolerances for each of these commodities can be used as an exposure estimate. Further, residues of cyanazine have not been found on crops and the tolerances were set at the limit of detection of the analytical method. On this basis, the margins of safety for the teratogenic and/or maternal and fetotoxic effects can be calculated according to the following formula:

$$MOS = \frac{\text{No observed effect level (NOEL) (mg/kg)}}{\text{Exposure (mg/kg)}}$$

Based on the above formula, the margins of safety (MOS) were acceptable for all crops. The Agency therefore determined that the dietary risk criterion set forth in 40 CFR 162.11 had not been exceeded.

C. Additional Data

Data considered pivotal to refine the Agency risk assessment have been required on an expedited basis via the Registration Standard. These data are needed to clarify the diaphragmatic hernia issue which may be an additional teratogenic response and to determine the amount of cyanazine absorbed upon contact with exposed skin. These data will be discussed at the time the Agency issues its proposed regulatory decision in the Position Document 2/3 (PD–2/3).

The following table shows the pivotal data requirements and the due dates for data on cyanazine.

TABLE 2.—PIVOTAL DATA

Pivotal data required	Submission date
Teratogenicity study	Dec. 31, 1985.
Dermal absorption study	July 31, 1985 (study submitted 1/16/85 was found to be unacceptable)

D. Additional Concerns

The Agency is concerned about ground and surface water contamination from agricultural uses of cyanazine. Cyanazine has the potential to move (leach) through the soil and contaminate ground water which may be used as drinking water. Cyanzaine has been found in surface and ground water as a result of agricultural use. The Agency does not have the data necessary to assess the health risks associated with consuming drinking water which has been contaminated with cyanazine. However, ground water data have been requested via the Registration Standard and are due in June 1986. In the interim, to address cyanazine's potential to contaminate drinking water, label changes have been imposed which advise users not to apply cyanazine to highly permeable soils or where the water table is close to the surface.

E. Current Regulatory Actions

Because the Agency has determined that cyanazine produces teratogenic effects in laboratory animals at concentrations to which mixer/loaders and applicators may be exposed, the Guidance Document requires that an appropriate warning be added to the pesticide label regarding cyanazine's potential to cause birth defects in laboratory animals. The Guidance Document also requires the registrant to change the label to include the "Restricted Use" classification which limits the use of the pesticide to certified applicators or to persons directly under their supervision. The registrant, however, has not yet committed to implement these requirements. The Agency will take appropriate actions to ensure compliance with these requirements.

All currenly registered cyanazine products will remain registered while the Special Review is in progress. In addition, the Agency is deferring final decisions on the reregistration of any products containing cyanazine as a sole active ingredient until the Special Review is concluded. The Agency is requiring data sufficient to recalculate existing tolerances which will include the combined residues of the parent compound and all metabolites that contain the triazine moiety.

F. Comments on the Initiation of the Special Review

Prior to the initiation of a Special Review, the sole registrant of the active ingredient was given notification of the Agency's determination that one of the criteria to initiate a Special Review may have been met. This notification included information on the toxicity findings, route of exposure and related general information. The registrant was allowed 30 days following receipt of the notification to rebut the Agency's conclusions. The registrant responded to the notification requesting the Special Review be delayed until all teratogenicity data were submitted but failed to rebut the Agency's presumption of teratogenicity for cyanazine.

G. Rebuttal Criteria

All registrants, applicants for registration, and other interested members of the public are invited to submit evidence either to support or to rebut the presumption that cyanazine causes teratogenic effects in rats and may cause such effects in humans. Under 40 CFR 162.11(a)(4)(iii) the presumption initiating a Special Review may be rebutted by proving, in the case of acute and chronic toxicity criteria, "that the determination by the Agency that the pesticide meets or exceeds any of the criteria for risk was in error."

H. Benefits Information

The Agency will conduct a comprehensive benefits review and analysis for cyanazine during the Special Review process and will consider that information in setting forth the Agency's proposed regulatory decision in the Position Document 2/3. A preliminary analysis of the benefits of cyanazine has been performed and is presented here.

Ninety-six percent of the cyanazine produced in the U.S. is used as a herbicide on corn. About 3 percent is used on cotton and less than 1 percent is used on sorghum and wheat. About 14–16 percent of the total U.S. corn acreage was treated with cyanazine in 1982. Most of the cyanazine produced is applied in the corn belt states (IL, IN, IA, MO, OH) and a lesser amount applied in the Northern Plain States (KS, NE, and SD). About 3 percent is used on cotton mainly as a postemergent, directed spray herbicide.

Growers selected cyanazine over other currently available corn herbicides for the following reasons:

(1) Cyanazine has a wide annual broadleaf and grassy type weed control spectrum.

(2) It can be tank-mixed with a number of herbicides (atrazine, butylate, alachlor and metolachlor) to broaden its weed control spectrum.

(3) Because of its relatively short persistance in the soil, cyanazine reduces the carryover effect of other more persistent triazine herbicides on subsequent crops.

(4) Cyanazine, unlike some of its alternatives, has no rotational crop restrictions.

There are several alternatives to cyanazine and data show no significant increase in production cost if they are used. However, the alternative herbicides have a narrower weed

control spectrum than cyanazine and may produce carryover effects when mixed with other more persistent herbicides such as atrazine.

In addition to submitting evidence to rebut the presumptions or risk in the Special Review, 40 CFR 162.11(a)(5)(iii) provides that a registrant or applicant "may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide subject to the presumption outweigh the risk of use." If the presumption of risk is not rebutted, the benefits evidence submitted by registrants, applicants, and other interested persons will be considered by the Agency when determining the appropriate regulatory action.

Registrants, applicants or other interested persons who desire to submit benefits information should consider submitting information on the following subjects along with any other relevant information they desire:

1. Identification of the biological and economic importance of cyanazine uses including market studies and estimated quantities applied for those uses.

2. Identification of alternative chemical and nonchemical methods of control for all registered uses and application techniques including any health effects and potential for water contamination associated with use of the alternatives.

3. Determination of any change in costs to cyanazine users for obtaining equivalent disease control with available substitute products or management techniques.

4. Assessment of the expected changes in the level of efficacy, crop yield, crop quality, crop injury, herbicide-resistant weed species, and environmental impacts associated with the use of alternative control measures.

5. Indentification of increased or reduced risks associated with the mixing, loading, applying and disposing of alternative chemicals, and of other hazards associated with their potential increase in use if cyanazine were not available as well as descriptions of the application equipment types, protective clothing and mixing/loading and disposing procedures for the alternative chemicals.

6. Indentification of cultural and spray application practices, and other factors that affect farmworker exposure to cyanazine.

7. Indenfication of any alternative cultural or integrated pest management practices which are enhanced or limited by use of cyanazine.

II. Rebuttal Submission Procedures

All registranst and applicants for registration are being notified by certified mail of the Special Review being initiated on their products containing cyanazine.

The registrants and applicants for registration will have 45 days from the date this notice is received or until May 28, 1985, (whichever is later) to submit evidence in rebuttal to the Agency's presumption. Other interested parties may submit comments during the same period.

III. Duty To Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional infomation regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. Registrants or cyanazine products must immediately submit any published or unpublished information, studies, reports, analyses, or reanalyses regarding any cyanazine effects in animal species or humans, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data should be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. Registrants should notify EPA of any studies on cyanazine currently in progress, their purpose, the protocol, the approximate completion date, a summary of all results observed to date, the name and address of the laboratory performing the studies, and a statement as to whether these studies are being conducted in accordance with the Good Laboratory Practices specified in 40 CFR Part 160, published in the **Federal Register** of November 29, 1983 (48 FR 53946).

IV. Public Comment Opportunity

During the time allowed for submission of rebuttal evidence, specific comments are solicited on the presumptions set forth in this Notice and in the Registration Standard. In particular, any documented episodes of adverse effects on humans or domestic animals should be submitted to the Agency as soon as possible. Any information as to any laboratory studies in progress or completed should be submitted to the Agency as soon as possible with a statement as to whether those studies are in compliance with the Good Laboratory Practices specified in 40 CFR Part 160. Specifically, information on any adverse toxicological effects of cyanazine, its impurities, metabolites, and degradation products is solicited. Similarly, submission of any studies or comments on the benefits from the use of cyanazine is requested. All comments and information and analyses, which come to the attention of EPA, may serve as a basis for final determination of regulatory action following the Special Review.

All comments and information should be sent to the address given above, preferably in triplicate, to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation [OPP–30000/46].

During the comment period, interested members of the public or registrants may request a meeting to discuss the risk issues and methods of reducing risks. Any records pertaining to such meetings, including minutes, agendas, and comments received will be filed under docket number [OPP–30000/46].

Dated: March 29, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–8335 Filed 4–9–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–100020; FRL–2814–4]

Research Triangle Institute and Engineering and Economics Research, Inc.; Transfer of Data to Contractor and Subcontractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA plans to transfer information submitted under sections 3, 6, and 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to Research Triangle Institute of Research Triangle Park, NC, and its subcontractor, Engineering and Economics Research, Inc., of Vienna, VA, under Contract No. 68–01–6826. This contractor and subcontractor shall perform services for the Office of Pesticide Programs (OPP) of EPA. Some of the information that will be made available to the contractor and subcontractor has been claimed to be confidential business information (CBI). Information will be made available to the contractor and subcontractor consistent with the requirements of 40 CFR 2.301(h). This action will enable the contractor and subcontractor to fulfill the obligations of the contract, and this notice serves to notify affected persons.

DATE: Research Triangle Institute and Engineering and Economics Research,

Inc., will be given access to these documents no sooner than April 15, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: William C. Grosse, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703–557–2613).

SUPPLEMENTARY INFORMATION: Under this contract, Research Triangle Institute and Engineering and Economics Research, Inc., shall perform an evaluation of registration applications and OPP's pesticide registration process.

Section 10(e) of FIFRA provides that information that is considered by the submitter to be trade secret or commercial or financial as described by FIFRA section 10(d) may be disclosed to an authorized contractor when such disclosure is necessary for the performance of the contract. EPA routinely receives such information as part of the data that are submitted by pesticide registrants and others as provided for in FIFRA sections 3, 6, and 7.

Contractors are authorized to receive such data if the EPA program office managing the contract makes the determinations specified in 40 CFR 2.301(h)(2) as referenced in § 2.307. Such determinations have been made concerning the contract with Research Triangle Institute and Engineering and Economics Research, Inc.

FIFRA section 10(f) provides a criminal penalty for wrongful disclosure of confidential business information, whether such disclosure is made by an EPA employee or an EPA contractor.

The contract with Research Triangle Institute and Engineering and Economic Research, Inc., specifically prohibits disclosure of confidential business information to any third party in any form without written authorization from EPA, and personnel of this contractor and subcontractor will be required to sign a nondisclosure agreement before they are permitted access to such information.

Dated: March 29, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–8330 Filed 4–9–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50635; FRL–2814–5]

Issuance of Experimental Use Permits; American Hoechst Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

8340–EUP–6. Extension. American Hoechst Corporation, Rte. 202–206 North, Somerville, NJ 08876. This experimental use permit allows the use of 1,277 pounds of the insecticide [1R,]1(S*)3(RS*)]]-2,2-dimethyle-3-(1,2,2,2-tetrabromoethyl) cyclopropanecarboxylic acid alpha-cyano-(3-phenoxyphenyl) methyl ester on cotton to evaluate the control of various insects. A total of 5,600 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Arizona, California, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The experimental use permit is effective from April 27, 1985 to April 27, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

10182–EUP–30. Renewal. ICI Americas Inc., Wilmington, DE 19897. This experimental use permit allows the use of 321 pounds of the herbicide 5-[2-chloro-4-(trifluoromethyl) phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide on soybeans to evaluate the control of various broadleaf weeds. A total of 1,000 acres are involved; the program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit was previously effective from November 12, 1982 to November 12, 1984. The permit is now effective from March 8, 1985 to March 31, 1986. This permit is issued with the limitation that all food or feed derived from the experimental use program will be destroyed with the exception of samples collected for research purposes. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

43813–EUP–1. Janssen Pharmaceutica, P.O. Box 344, Bear Tavern Rd., Washington Crossing, NJ 08560. This experimental use permit allows the use of 100 pounds of the fungicide 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole on cucumbers, melons, peppers, and tomatoes to evaluate the control of various fungal diseases. A total of 56,060,000 pounds of fruit are involved; the program is authorized only in the States of California, Florida, New Jersey, New York, Pennsylvania, and Texas. The experimental use permit is effective from January 29, 1985 to December 31, 1986. A temporary tolerance for residues of the active ingredient in or on cucurbit vegetables and fruiting vegetables has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

43813–EUP–2. Janssen Pharmaceutica, P.O. Box 344, Bear Tavern Road, Washington Crossing, NJ 08560. This experimental use permit allows the use of 8,700 pounds of the fungicide 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole oh cucurbit vegetables and fruiting vegetables to evaluate the control of various fungal diseases. A total of 8,675 acres are involved; the program is authorized only in the States of California, Maryland, New Jersey, New York, and Texas. The experimental use permit is effective from January 29, 1985 to December 31, 1986. A temporary tolerance for residues of the active ingredient in or on cucurbit vegetables and fruiting vegetables has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

35977–EUP–2. Extension. Maag Agrochemicals Research and Development, 5699 North Kings Highways, P.O. Box X, Vero Beach, FL 32960. This experimental use permit allows the use of 25.5 pounds of the insect growth regulator ethyl [2-(4-phenoxyphenoxy)ethyl[carbamate on non-crop areas to evaluate the control of

fire ants. A total of 1,700 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from July 13, 1985 to July 13, 1986. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

2792–EUP–1. Issuance. Pennwalt Corporation, 1713 S. California Ave., Monrovia, CA 91016. This experimental use permit allows the use of 200 pounds of the fungicide 1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1*H*-imidazole on melons to evaluate the control of various fungal diseases. A total of 25,000,000 pounds of fruit are involved; the program is authorized only in the States of Arizona California, and Texas. The experimental use permit is effective from January 29, 1985 to March 31, 1986. A temporary tolerance for residues of the active ingredient in or on cucurbit vegetables and fruiting vegetables has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900))

7182–EUP–22. Renewal. 3M Company, Bldg. 223–IN–05, St. Paul, MN 55144. This experimental use permit allows the use of 14,345 pounds of the plant growth regulator mefluidide on pasturegrasses to evaluate forage quality enhancement and animal productivity enhancement. A total of 57,380 acres are involved; the program is authorized only in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, Nebraska, Ohio, Pennsylvania, Tennessee, Virgina, and Wisconsin. The experimental use permit was previously effective from March 14, 1984 to August 31, 1984. The permit is now effective from February 21, 1985 to August 31, 1986. Temporary tolerances for residues of the active ingredient in or on pasturegrasses; pasturegrass hay; milk; and the meat, fat, and meat byproducts of cattle, goats, horses, and sheep have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purpose from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: March 29, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–8329 Filed 4–9–85; 8:45 am]

BILLING CODE 6560–50–M

[PF–408; PH–FRL 2812–4]

Certain Companies Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and food/feed additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–408] and the petition number, attention Product Manager (PM–21), at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS–757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this notice may be claimed confidential by marking any party or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, (PM–21), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and food/feed additive petitions (FAB) relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filings

1. *PP 5F3224.* Mobay Chemical Corporation, P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120. Proposes to amend 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolites as follows:

a. The fungicide and its metabolite 4-(4-chlorophenoxy)-2,2-dimethyl-4-(*H*-1,2,4-triazol-1-y1)-1,3-butanediol in or on the commodities grapes at 0.5 part per million (ppm), wheat, grain at 0.75 ppm; wheat, green forage at 85.0 ppm; and wheat, straw at 17.0 ppm.

b. The fungicide and its metabolite containing chlorophenoxy and triazole moieties in or on the commodities meat, fat, and meat byproducts (mbyp) of cattle, goats, hogs, horses and sheep at 2.5 ppm; meat, fat, and mbyp of poultry and eggs at 0.01 ppm; and milk at 0.1 ppm.

The proposed analytical method of determining residues is gas liquid chromatography.

2. *FAP 5H5458.* Mobay Chemical Corp. Proposes to amend 21 CFR Parts 193 (food) and 561 (feed) by establishing a regulation permitting residues of the above fungicide and its metabolite 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-1-y1)-1,3-butanediol in or on the following commodities:

CFR affected	Commodities	Parts per million (ppm)
21 CFR Part 193.	Grape juice	0.6
	Wheat, milled fractions (except flour)	3.5
21 CFR Part 561.	Grape pomace (wet and dry)	2.5
	Raisin waste	1.8

II. Amended Petition

PP 7E1941. ICI Americas Inc., Concord Pike and New Murphy Road, Wilmington, DE 19897. EPA issued a notice, published in "the Federal Register of September 29, 1982 (47 FR 42805), which announced that ICI Americas Inc. had submitted PP 7E1941 to the Agency proposing to amend 40 CFR Part 180 by establishing tolerances

for the residues of the fungicide 5-butyl-2-(ethylamino)-4-hydroxy-6-methylpyrimidine in or on cantaloupe melons at 0.1 ppm.

ICI Americas Inc. has amended the petition by increasing the tolerance level on cantaloupe melons from 0.1 ppm to 0.2 ppm. The proposed analytical method for determining residues is gas chromatography using a nitrogen detector.

(Secs. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)); 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))).

Dated: March 28, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-8029 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G3017/T483; PH-FRL 2812-5]

Imazalil; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the fungicide imazalil in or on the raw agricultural commodities group cucurbit vegetables and fruiting vegetables group (except cucurbits). These temporary tolerances were requested by Janssen Pharmacentica and Pennwalt Corp.

DATE: These temporary tolerances expire December 30, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: Janssen Pharmacentica, P.O. Box 344, Bear Tavern Rd., Washington Crossing, NJ 08560, and Pennwalt Corp., 1713 S. California Ave., Monrovia, CA 91016, requested in pesticide petition PP 4G3017 the establishment of temporary tolerances for residues of the fungicide imazalil (1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy) ethy1]-1*H*-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1*H*-imidazole-1-y1)-1-ethanol in or on the raw agricultural commodities group cucurbit vegetables at 10 parts per million (ppm) and fruiting vegetables group (except cucurbits) at 10.0 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permits 43813-EUP-1, 43213-EUP-2 and 2792-EUP-1, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Janssen Pharmacentica and Pennwalt Corp must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 30, 1986. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: March 28, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-8023 Filed 4-9-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-735-DR]

Amendment to Notice of a Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-735-DR), dated March 29, 1985, and related determinations.

DATED: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Illinois, dated March 29, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 29, 1985:

Brown, Crawford, Green, Jersey, LaSalle, Marshall, Schuyler, Scott, and Whiteside Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83-516, Disaster Assistance. Billing Code 6718-02.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-8542 Filed 4-9-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Form Revision

AGENCY: Federal Financial Institutions Examination Council (Examination Council).

ACTION: Adoption of revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC Form 002).

SUMMARY: The Examination Council has adopted revisions to FFIEC Form 002. The Council's Notice or Request for

Comments on proposed revisions appeared in the Federal Register on July 26, 1984. The comment period originally expired on September 10, 1984 but was extended to October 31, 1984. After consideration of all comments and after making appropriate changes, the Council adopted the revised FFIEC Form 002 on March 12, 1985 for implementation with the September 30, 1985 report.

FOR FURTHER INFORMATION CONTACT: William A. Ryback, Office of the Comptroller of the Currency, Washington, DC 20219, (202/447–0413); Stanley J. Sigel, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202/452–2696); Hugh W. Conway, Federal Deposit Insurance Corporation, Washington, 20429, (202/389–4345).

SUPPLEMENTARY INFORMATION: The Examination Council, pursuant to section 1008(c) of Title 10 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3305) has adopted for federal supervisory agency implementation a revision of FFIEC Form 002, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The revision will go into effect with the September 30, 1985 report.

The comment period for the proposed revision ran from July 26, 1984 through October 31, 1984. The Council had particularly requested comments on the following features of the proposal issued for public comment:

- Separate identification of specific data on International Bank Facilities (IBFs) to allow the elimination of the quarterly IBF report (FR 2074);
- Addition of selected income and expense information;
- Addition of an allowance and provision for loan losses;
- Addition of a schedule for past due loans;
- Addition of a schedule on commitments and contingencies; and,
- Public disclosure provisions.

In response to its request for comments, the Council received fifteen letters of which eight were from foreign banks, three were from associations representing foreign banks, two were from Federal District Banks, one was from a commercial bank, and one was from a U.S. Government Agency.

In general, the respondents supported the reporting of IBF data in the FFIEC 002, but objected to the public disclosure of the selected income and expense information, schedule for past due loans, and the allowance and provision for loan losses. In addition, reaction to the reporting of selected income and expense information, past due loans, and the allowance and provision for loan losses, regardless of confidentiality, was generally negative while the addition of a schedule on commitments and contingencies drew little response.

More specifically, no negative comments were received regarding the proposal to incorporate the reporting of IBF data into the FFIEC 002. The Federal Reserve Board's quarterly IBF report (FR 2074) will be eliminated upon implementation of the revised FFIEC 002. Some comments were received, however, suggesting that the form in which the Council proposed to collect IBF data should be modified to simplify the reporting for branches and agencies. Accordingly, the Council replaced the column from which IBF data would have been derived by subtraction with a column in which IBF data will be reported directly.

The majority of respondents, which included the foreign banks and the associations representing foreign banks, objected to the public disclosure of the proposed selected income and expense information, past due loans, and the allowance and provision for loan losses. The foreign banks objected to the public availability of this information primarily on the grounds that such information, disclosed on an individual office basis, is not meaningful in the assessment of the performance of the entire bank. The disclosed information, therefore, could create the potential to mislead the public in assessing such performance, especially when made available through an official reporting requirement. In addition, the foreign banks believe that such disclosure, on an individual office basis, would be discriminatory toward non-U.S. banks since U.S. chartered banks are not required to disclose such information on an individual office basis. In recognition of these views, the Council decided that this information, to the extent required to be reported in the revised 002, should be held confidential. Schedule M, "Due from/Due to Related Institutions in the U.S. and in Foreign Countries," is currently confidential and will continue to be confidential. An additional line item will be added to Schedule M to secure information on the balance of any allowance for loan losses to the extent that such a balance exists on the branch's or agency's books.

Many of the foreign bank respondents questioned the supervisory value of income and expense data for branches, even were it to be kept confidential. The Council gave serious consideration to this concern and has asked for further staff study on the matter. If the staff study results in a defensible proposal to collect income and expense data, the Council will look again at the question. In any case, the collection of income and expense data will not begin any earlier than March 31, 1986.

The Federal Reserve, which collects and processes the 002 report on behalf of all three federal bank supervisory agencies, will now submit the revised report to the Officer of Management and Budget (OMB) for its approval, in accordance with Section 3507 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.12. Once OMB approval has been received, instructions and sample copies of the revised report will be available from the Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 701, Washington, DC 20006, and will be distributed directly to all U.S. branches and agencies of foreign banks.

Dated: April 5, 1985.

Robert J. Lawrence,

Executive Secretary, FFIEC.

[FR Doc. 85–8569 Filed 4–9–85; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL MARITIME COMMISSION

Concorde/Nopal Line Petition

On January 23, 1985, Concorde/Nopal Line (Concorde/Nopal) petitioned the Federal Maritime Commission pursuant to section 19 of the Merchant Marine Act of 1920 (46 U.S.C. 876) to issue rules to meet or adjust conditions which Concorde/Nopal alleges are unfavorable to shipping in the U.S./Venezuela trade. Although the Commission notified the Department of State and the public of its intention to issue a proposed rule to meet or adjust the apparently unfavorable conditions, that action was deferred at the request of Concorde/Nopal which informed the Commission on February 13, 1985 that it expected to reach an amicable resolution of the matter in consultations with the Venezuelan Ministry of Transportation and Communication.

Concorde/Nopal has again requested that the Commission defer action on its petition in the expectation that the matter will be resolved by April 12, 1985. The Commission will, accordingly, defer further action on the proposed rule and the petition until after April 15, 1985. The Commission does so with the understanding that Concorde/Nopal will inform the Commission in writing by April 15, 1985 of the status of its application to the Venezuelan Ministry of Transportation and Communications to carry commercial cargoes in the trade and the results of its consultations with officials of the Ministry.

By the Commission.
Bruce A. Dombrowski,
Acting Secretary,
[FR Doc. 85-8539 Filed 4-9-85; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 84-34]

Shipping Conditions in the U.S./Argentina Trade; Rulemaking Petition

On September 21, 1984 Ivaran Lines petitioned the Commission for issuance of rules to meet or adjust conditions alleged to be unfavorable to shipping in the U.S. trades with Argentina resulting from laws, decrees and actions of the government of Argentina and certain Argentine-flag carriers. Ivaran's petition focused in particular on the effects of Argentine government Resolution 619 which restricts the carriage of Argentine export cargoes to the U.S. to members of a northbound pooling agreement. Ivaran is not currently a member of this agreement. The Commission published notice of the petition in the **Federal Register** inviting the public to comment on the petition. (49 FR 40097, October 12, 1984). The Commission also asked the Departments of State and Transportation to attempt to reach an informal resolution of the problem through government-to-government initiatives.

The Departments of State and Transportation have informed the Commission that they have received informal assurances from Argentine authorities that "they are not enforcing and do not intend to enforce" Argentine government Resolution 619, and that Ivaran continues to have access to the northbound U.S./Argentine trade. In addition, Ivaran Lines requested on April 3, 1985 that the Commission defer consideration of its petition for three weeks so that it may further pursue possible resolution of the issues raised in its petition through its own contacts with U.S. government officials and others.

The Commission will, accordingly, defer further consideration of Ivaran's petition until the week of April 29, 1985. The Commission does so with the understanding that Ivaran Lines will inform the Commission in writing by April 26, 1985 of its current status in the trade, the results of its consultations with U.S. and Argentine officials, and its intentions with respect to disposition of the petition pending before the Commission. By the Commission.

Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-8590 Filed 4-9-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 4, 1985.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve Systems, Washington, D.C. 20551 (202-452-3829)

OMB Desk Officer— Robert Neal — Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for OMB Approval To Extend With Revision

1. Report title: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Agency form number: FFIEC 002
OMB Docket number: 7100-0032
Frequency: Quarterly
Reporters: U.S. banches and agencies of foreign banks.
Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), 3102(b)]; and is given confidential treatment [5 U.S.C. 552(b)(8)].

This report provides balance sheet information from all U.S. branches and agencies of foreign banks required for the supervisory and regulatory requirements of the International Banking Act of 1978. Additional uses of the data are to augment the bank credit, loan, and deposit information needed for monetary policy consideration.

Board of Governors of the Federal Reserve System, April 4, 1985.
James McAfee
Associate Secretary of the Board.
[FR Doc. 85-8525 Filed 4-9-85; 8:45 am]
BILLING CODE 6210-01-M

First National State Bancorporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 2, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President). 33 Liberty Street, New York, New York 10045:

1. *First National State Bancorporation*, Newark, New Jersey; to acquire 100 percent of the voting shares of First Fidelity Bank, Princeton, West Windsor, New Jersey.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Blue Water Bancshares, Inc.*, Port Huron, Michigan; to become a bank holding company by acquiring 80.4 percent of the voting shares of Peoples Bank of Port Huron, Port Huron, Michigan.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Commerce Bancorp, Inc.*, Phoenx, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of First National Commerce Bank, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, April 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8522 Filed 4-9-85; 8:45 am]

BILLING CODE 6210-01-M

FSB Bancorporation et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 2, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *FSB Bancorporation*, Decatur, Alabama; to acquire People Insurance Company, Birmingham, Alabama, thereby engaging in the activities of underwriting credit life, accident and health insurance. These activities would be conducted in the State of Alabama.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Byron Bancshares, Inc.*, Byron, Illinois; to acquire Ives Insurance Agency, Byron, Illinois, thereby engaging in general insurance activities including the sale of accident and health insurance, fire and casualty insurance and life insurance. These activities would be performed within a 20 mile radius of Byron, Illinois.

Board of Governors of the Federal Reserve System, April 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8523 Filed 4-9-85; am]

BILLING CODE 6210-01-M

Indian Head Banks, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, indentifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Indian Head Banks, Inc.*, Nashua, New Hampshire; to engage *de novo* through its subsidiary, Indian Head Mortgage Servicing Corp., Nashua, New Hampshire, in the activities of making, acquiring and servicing loans or other extensions of credit for its own account or for the account of others as would be made by a mortgage company.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, First Bank System Community Development Corporation, Minneapolis, Minnesota, in the activities of making debt and equity investments in projects designed primarily to promote community welfare.

Board of Governors of the Federal Reserve System, April 4, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8524 Filed 4-9-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on February 12-13, 1985, paragraph 1(a) of the Committee's authorization for domestic open market operations was amended to raise from $4 billion to $6 billion the limit on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities, effective immediately, for the period ending with the close of business on March 26, 1985.

Note.—For paragraph 1(a) of the authorization, see 36 FR 22697.

By order of the Federal Open Market Committee, April 3, 1985.

Stephen H. Axilrod,

Secretary

[FR Doc. 85-8648 Filed 4-9-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorization for Domestic Open Market Operations

In accordance with the Committee's rules regarding availability of information, notice is given that on March 26, 1985, the Committee amended its Authorization for Domestic Open Market Operations effective immediately, to raise from $4 billion to $6 billion the limit in paragraph 1(a) on changes between Committee meetings in System Account holdings of U.S. government and federal agency securities. As amended, paragraph 1(a) of the Authorization for Domestic Open Market Operations reads as follows:

Authorization for Domestic Open Market Operations

1. The Federal Open Market Committee authorizes and directs the Federal Reserve Bank of New York, to the extent necessary to carry out the most recent domestic policy directive adopted at a meeting of the Committee:

(a) To buy or sell U.S. Government securities, including securities of the Federal Financing Bank, and securities that are direct obligations of, or fully guaranteed as to principal and interest by, any agency of the United States in the open market, from or to securities dealers and foreign and international accounts maintained at the Federal Reserve Bank of New York, on a cash, regular, or deferred delivery basis, for the System Open Market Account at market prices, and, for such Account, to exchange maturing U.S. Government and Federal agency securities with the Treasury or the individual agencies or to allow them to mature without replacement; provided that the aggregate amount of U.S. Government and Federal agency securities held in such Account (including forward commitments) at the close of business on the day of a meeting of the Committee at which action is taken with respect to a domestic policy directive shall not be increased or decreased by more than $6.0 billion during the period commencing with the opening of business on the day following such meeting and ending with the close of business on the day of the next such meetings.

By order of the Federal Open Market Committee, April 3, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85-8649 Filed 4-9-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of February 12-13, 1985

In accordance with §217.5. of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on February 12-13, 1985.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that real GNP expanded at a moderate pace in the fourth quarter, reflecting some strengthening in late 1984 after several months of considerably reduced growth, and there was evidence of continued moderate expansion in early 1985. Total retail sales rose in January at about the same pace as the average for November and December, while the decline in housing starts appears to have ended. Industrial production and nonfarm payroll employement increased appreciably in the November-December period and nonfarm payroll employment rose substantially further in January. The civilan unemployment rate rose slightly in January to 7.4 percent. Information on business spending suggests less rapid exansion in outlays for fixed investment, following exceptional growth earlier; businesses also appear to have made substantial progress in adjusting their inventories. During 1984 broad measures of prices generally increased at rates close to those recorded in 1983, and the index of average hourly earnings rose somewhat more slowly.

The Foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has continued to appreciate strongly since mid-December. After the announcement on January 17 by the G-5 Ministers of Finance and Central Bank Governors regarding coordinated intervention in exchange markets, and subsequent operations, the dollar's rise moderated somewhat. The merchandise trade deficit declined sharply in December and for the fourth quarter as a whole, primarily because of a large drop in imports from the high rate in the third quarter. Nevertheless, the deficit for the full year 1984 was substantially higher than in 1983.

After growing little on balance since early summer, M1 expanded at a rapid pace in late 1984 and early 1985. The broader aggregates also expanded rapidly in recent months. For the period from the fourth quarter of 1983 to the fourth quarter of 1984, M1 grew at a rate of about 5¼ percent, somewhat below the midpoint of the Committee's range for the year, and M2 increased at a rate of about 7¾ percent, a bit above the midpoint of its longer-run range. Both M3 and total domestic nonfinancial debt expanded at rates above the Committee's ranges for the year, reflecting vary large government borrowing and strong private credit growth, boosted in part by the unusual size of merger-related credit activity. Short-term interest rates have risen somewhat on balance since the December meeting of the Committee, but long-term rates are about unchanged to a little lower. On December 21, the Federal Reserve approved a reduction in the discount rate from 8½ to 8 percent.

The Federal Open Market Committee seeks to foster monetary and financial conditions that well help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at this meeting to establish ranges for monetary growth of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9½ percent for M3 for the period from the fourth quarter of 1984 to the fourth quarter of 1985. The associated range for total domestic nonfinancial debt was set at 9 to 12 percent for the year 1985. The Committee agreed that growth in the monetary aggregates in the upper part of their ranges for 1985 may be appropriate, depending on developments with respect to velocity and provided that inflationary pressures remain subdued.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the implementation of policy for the immediate future, taking account of the progress against inflation, remaining uncertainties in the business outlook, and the strength of the dollar in the exchange markets, the Committee seeks to maintain reserve conditions characteristic of recent weeks. Should growth in M1 appear to be exceeding an annual rate of around 8 percent and M2 and M3 a rate of around 10 to 11 percent during the period from December to March, modest increases in reserve pressures would be sought, particularly if business activity is rising at a satisfactory rate and exchange market pressures diminish. Lesser restraint on reserve position would be acceptable in the event of substantially slower growth in the monetary aggregates, particularly in the context of sluggish growth in economic activity and continued strength of the dollar in foreign exchange markets. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

[1] The Record of policy actions of the Committee for the meeting of February 12-13, 1985, if filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

By order of the Federal Open Market Committee, April 3, 1985.

Stephen H. Axilrod,

Secretary

[FR Doc. 85-8046 Filed 4-9-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0123]

Eastman Chemicals Division, Eastman Kodak Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Eastman Chemicals Division, Eastman Kodak Co., has filed a position proposing that the food additive regulations be amended to provide for the safe use of non-oriented ethylene-1, 4-cyclohexylene dimethylene terephthalate copolymer in contact with foods containing up to 25 percent (by volume) of aqueous alcohol.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3856) has been filed by Eastman Chemicals Division, Eastman Kodak Co., Kingsport, TN 37662, proposing that § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer* (21 CFR 177.1315) be amended to provide for the safe use of non-oriented ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer in contact with foods containing up to 25 percent (by volume) of aqueous alcohol.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: April 2, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8537 Filed 4-9-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPO-53-PN]

Medicare Program; Assignment and Reassignment of Home Health Agencies to Designated Regional Intermediaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: Section 1816(e)(4) of the Social Security Act (as amended by Section 2326(b) of the Deficit Reduction Act of 1984, Pub. L. 98-369) requires that the number of regional intermediaries designated to service freestanding home health agencies (HHAs) be limited to not more than ten. In accordance with Section 1816(e)(4) of the Act and existing regulations, this notice announces our proposal to designate ten regional intermediaries to process the workload of these HHAs, the States each intermediary would service, the general criteria used to select these intermediaries, and the procedures we plan to use during the change-over period. This notice also announces our tentative selections of designated regional intermediaries.

The goal of this notice and the legislation on which it is based is to achieve more consistent and effective administration of the home health benefit under the Medicare program.

DATE: To assure consideration, comments must be received by June 10, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-53-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 2090 Independence Ave., SW., Washington, D.C., or to Room 793, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., S.W., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Toba M. Winston, (301) 597-0471.

Regarding intermediary selection Norman Fairhurst, (301) 594-9498.

Regarding transition

SUPPLEMENTARY INFORMATION:

Background

In the Medicare program, in general, fiscal intermediaries under contract with HCFA are responsible for making payment to providers of services for the covered services they furnish to Medicare beneficiaries.

Section 1816 of the Social Security Act (the Act) gives any group or association of providers the option of nominating an intermediary to determine the proper amount of reimbursement and to make those payments. As amended in 1977 (Pub. L. 95-142), this section authorizes the Secretary, notwithstanding the nomination process, to assign and reassign providers that had nominated intermediaries to other intermediaries and to designate regional or national intermediaries for a class or classes of providers.

In 1980, section 930(o) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) further amended section 1816(e) of the Social Security Act by adding a new paragraph (4). Section 1816(e)(4) of the Act requires the Secretary to designate regional agencies or organizations that have entered into an agreement under Section 1816 of the Act to perform functions under that agreement for freestanding home health agencies (HHAs) in the region. (For purposes of this notice, we consider a freestanding HHA as one that is not a subdivision of another Medicare provider of services, which are hospitals, skilled nursing facilities, comprehensive outpatient rehabilitation facilities and hospices.)

Section 1816(e)(4) of the Act also requires that if an HHA is hospital-affiliated (i.e., the hospital and HHA are under common control) the Secretary shall assign that HHA to a regional intermediary only if the Secretary, after applying published criteria relating to administrative efficiency and effectiveness, determines that the assignment would result in the more effective and efficient administration of the Medicare program. We are also applying this approach to HHAs that are affiliated with Medicare providers of service other than hospitals. An HHA is determined to be provider-affiliated when it is an integral and subordinate part of a Medicare provider and is operated with other departments of the

provider under common licensure, governance, and professional supervision; that is, all services of both the provider and the HHA are fully integrated. The existence of either (1) an agreement between an HHA and a Medicare provider with respect to the referral of patients or (2) a share-service arrangement (a common arrangement recognized by both Medicare and Medicaid) does not necessarily mean an HHA is provider-affiliated and is not considered in determining the status of the facility.

To implement these provisions of Section 1816(e)(4) of the Act, we amended our regulations (42 CFR 421.117) to require that all freestanding HHAs serviced by a nominated intermediary be serviced instead by a regional intermediary designated by HCFA (47 FR 38535, September 1, 1982). At that time we defined, in the preamble to those amendments, "regional" as meaning "State" and, therefore, we designated one intermediary to service freestaning HHAs in each State.

More recently, we amended our regulations (42 CFR 421.103) concerning providers' options to elect to receive payments directly from HCFA rather than through a fiscal intermediary (49 FR 3648, January 30, 1984). These regulations also clarified our authority to contract out the workload of these freestanding HHAs that dealt directly with us instead of these freestanding HHAs that dealt directly with us instead of through fiscal intermediary. Effective February 29, 1984, we required the direct dealing freestanding HHAs to receive payments from the designated regional intermediaries. In addition, we made available to all HHAs the option of requesting an alternative designated regional intermediary if the HHA could demonstrate that such an arrangement would be consistent with the effective and efficient administration of the Medicare program.

All freestanding HHAs have now been transferred to the 47 regional intermediaries (an intermediary may have the responsibility to service HHAs in more than one State). However, Section 2326 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) again amended Section 1816(e)(4) of the Social Security Act. By not later than July 1, 1987, HCFA is required to reduce the number of regional intermediaries designated to service freestanding HHAs to not more than ten.

Proposed Actions

We considered designating as few as one national intermediary to as many as ten intermediaries. We are proposing to reduce to ten the number of regional intermediaries that would service HHAs. With ten, as compared to fewer intermediaries, there would be smaller distribution of workload and providers, resulting in greater potential for first-hand knowledge of the HHA provider communities and less administrative complexity, which should lead to better service to HHAs. Selecting ten intermediaries would also offer the least risk of transition problems since it would require reassigning fewer providers. Additionally, we feel that selecting fewer than ten intermediaries at this time would limit flexibility to HCFA with respect to both short-term (e.g., dealing with specific intermediary problems) and long-term (e.g., future consolidation and/or specialization) contingency planning. In the future, one or more of the ten selected intermediaries may cease to serve as an HHA intermediary. In that event, we reserve the right to either fill the vacancy(ies) or to operate with fewer than ten intermediaries.

It should be noted that the areas proposed to be serviced by each intermediary follow HCFA regional configurations, with the following exceptions. We propose that both the Atlanta and Chicago Regions be divided into two areas, with each area serviced by a separate intermediary. We also propose combining the Kansas City and Denver Regions under one intermediary and the Seattle and San Francisco Regions under another intermediary. We are proposing these exceptions to the standard HCFA regional configuration in order to provide a better distribution of providers and bill volume per intermediary.

In making our tentative selections, we did not use a precise mathematical formula for ranking the intermediaries; rather we considered each intermediary's performance against an entire array of criteria and compared it against other existing intermediaries available within the proposed regional configurations. In tentatively selecting the proposed ten intermediaries, the major criteria we used included each intermediary's electronic data processing capability and its past performance as measured by HCFA's fiscal year 1983 Contractor Performance Evaluation Program (CPEP). (FY 84 CPEP results are only now becoming available. We plan to review our tentative selections in light of FY 84 scores once they are available.) In addition, we evaluated each intermediary's performance specific to servicing HHAs, including evaluation of performance in the following areas:

- Ensuring that coverage and payment requirements are met;
- Ensuring that correct utilization determinations are made;
- Establishing interim payments for participating HHAs to approximate Medicare reimbursable costs as closely as possible;
- Accurately applying principles of reimbursement to ensure that only reasonable and allowable costs of furnishing covered services to Medicare beneficiaries are reimbursed to HHAs;
- Completing accurate coverage compliance reviews;
- Completing timely HCFA cost report settlements; and
- Processing reconsideration requests timely and accurately.

In addition, we attempted to evaluate an intermediary's performance in the area of provider relations; e.g., whether the intermediary provides adequate training to providers, whether it responds to telephone and written inquiries from HHAs promptly, and whether it demonstrates a willingness to communicate coverage and reimbursement policies fully to HCFA providers. In this regard, we have taken into account unsolicited comments from some home health agency associations, as well as individual HHA providers.

Furthermore, we considered an intermediary's past performance and cooperation in implementing HCFA initiatives in a timely and cost effective manner. Also with an eye to minimizing disruption, we looked at the number of providers that would need to be reassigned based on various intermediary selections and the percentage of workload increase for a selected intermediary.

We wish to stress that we have not come to any final conclusions concerning these selections and therefore reserve the right to make changes by adding an organization not previously listed and deleting one that is listed once we evaluate comments and evaluate more recent performance data. Our tentative selections to service the freestanding HHAs in the indicated States and the District of Columbia and Puerto Rico are as follows:

1. Associated Hospital Service of Maine—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
2. The Prudential Insurance Company of America*—New Jersey, New York, the Virgin Islands, and Puerto Rico.
3. Blue Cross of Greater Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia.
4. Blue Cross and Blue Shield of South Carolina—Kentucky, North Carolina, South Carolina, and Tennessee.

5. Aetna Life and Casualty—Alabama, Florida, Georgia and Mississippi.
6. Blue Cross and Blue Shield of Michigan—Indiana, Michigan and Ohio.
7. Health Care Service Corporation (Chicago, Illinois)—Illinois, Minnesota and Wisconsin.
8. New Mexico Blue Cross and Blue Shield, Inc.—Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
9. Blue Cross of Iowa, Inc.*—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
10. Blue Cross of California*—Alaska, Arizona, California, Hawaii, Idaho, Oregon, Nevada and Washington.

(Intermediaries annotated with an asterisk (*) would also continue to serve as alternative designated regional intermediaries.)

The current provision of 42 CFR 421.117(e), which allows HHAs to request to receive payment from one of three alternative designated regional intermediaries, depending upon the State in which the HHA is situated, is not affected by this proposal. Those HHAs that do not wish to be serviced by the designated regional intermediary may request to be serviced by the alternative designated regional intermediary. We will, in accordance with the provisions of § 421.106, evaluate the request to determine whether the change is consistent with the effective and efficient administration of the program. An HHA that has already been approved to use an alternative designated regional intermediary, as provided in § 421.117, is not affected by this notice (since we are not selecting new alternative designated intermediaries), unless such an HHA wishes to be serviced by the new designated regional intermediary.

Under 42 CFR 421.117, an HHA chain not desiring to receive payment from more than one designated regional intermediary has the opportunity to request to be serviced by a single designated regional intermediary. Alternatively, the chain may request to be serviced by one lead intermediary with the assistance of the local designated regional intermediary. These options will also continue to be made available. The lead, local, or a single intermediary must, as required by the regulations, be a currently designated regional intermediary.

Implementation

We expect that approximately 60 percent of freestanding HHAs participating in the Medicare program would be reassigned to another intermediary under the proposed configuration and intermediary designations. We also expect a final notice concerning this subject to be issued sufficiently in advance of FY 1986 that the transfers can begin before then.

A. Transfer Schedule

Providers would receive at least 60 days' notice prior to the date of their transfer. We intend that the provider transfer date be based on the provider cost report year ending date. We would consider other transfer dates if the receiving intermediary is not ready to handle unique automated billing situations.

B. Assurance of Cash Flow

We plan to make every effort to assure that there will be no interruption of cash flow to HHAs. We would work closely with the designated intermediary and HHAs to identify and resolve problems that could potentially interrupt HHAs' cash flow.

C. Transition Costs

Provider cost incurred due to the transfer would be allowable and reimbursable under established Medicare reimbursement principles. If the HHA's costs exceed the limits as the result of the required transfer to a designated regional intermediary, an exception to the limits may be granted, to the extent that the costs are reasonable, attributable to the circumstances specified, separately indentified by the provider, and verified by the intermediary. Requests for transition cost exceptions would be processed by HCFA consistent with the provisions for handing other exceptions requested under 42 CFR 405.460(f).

D. Procedures During the Change-Over Period

Each HHA would be notified by mail of procedures to follow during the change-over process. We plan to arrange for an orderly transition of service.

1. HHAs would submit bills for services provided before the transfer date to the outgoing intermediary. This same intermediary would be responsible for the settlement of the currently due cost report, prior unsettled cost reports, and any appeals arising from those cost reports.

2. All bills for services provided on and after the transfer date would be submitted to the receiving intermediary.

3. We would continue the ombudsmen-type positions that have been established in each HCFA region to assist providers in resolving any problems encountered during the transition or thereafter.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rules that are considered major rules because they would be likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or have an adverse impact on competition, employment, productivity, or innovation. This document contains our general statement of policy about how we propose to interpret Section 1816 (e)(4) of the Social Security Act and implementing regulations. We believe it is not the type of "rule" subject to the Executive Order. Nevertheless, in the spirit of the Executive Order, we are voluntarily providing the following information.

We project that approximately 2,400 freestanding HHAs would be assigned from their present intermediary to a different regional intermediary, and that we would incur one-time administrative costs of $3 million for extensive travel and training related to the reassignment of these HHAs. We expect to achieve some savings in program expenditures as a result of the consolidation of HHAs and the reduction in the number of intermediaries servicing HHAs. Savings would be associated with economies of scale that would lower unit processing costs, with improved reimbursement determinations, and with better control of utilization and payments. The potential savings, coupled with the one-time costs, would not exceed the $100 million threshold and would not produce a major increase in cost or prices.

Generally, we consider an adverse effect on employment, productivity, innovation, or competition to be significant only if that effect would be equivalent to an economic loss of $10 million or more, and the adverse effect would result in a 10 percent or greater change in a year for a common measurement of an economic variable of the affected entities. For the reasons discussed above, we expect these proposed reassignments to have beneficial, rather than adverse, effects on productivity, and possibly on innovation. Further, although the reassignment of HHAs to fewer intermediaries may result in a reduced level of employment by those intermediaries that would no longer service freestanding HHAs, we do not believe this would be of a significant magnitude. Finally, we have determined that this proposal would not have an adverse effect on competition. Under the statute, there is not a competitive

"market" for intermediary services but rather procedures for administrative designations.

For these reasons, we have determined that our proposal would not meet any of the criteria for identifying major rules. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires us to perform and publish an initial regulatory flexibility analysis for any proposed rule (that is, a rule for which notice and comment procedures are required under 5 U.S.C. 553) unless the Secretary certifies that the rule would not result in a significant impact on a substantial number of small entities. This document contains our general statement of policy about how we propose to interpret Section 1816(e)(4) of the Social Security Act and implementing regulations. We believe it is not the type of "rule" subject to the Regulatory Flexibility Act. Nevertheless, in the spirit of the Act, we are voluntarily providing the following information.

This proposal would require reassignment of a substantial number of freestanding HHAs to designated regional intermediaries, and, for purposes of regulatory flexibility analysis, we consider all providers and other entities participating in Medicare to be small entities. However, we have determined that the impact on the affected entities would not be significant.

We plan to minimize the impact on the affected HHAs. We intend to assure a continued cash flow for each of the affected HHAs, to base reassignment dates upon the provider cost report year ending dates and to provide an exception for those HHAs whose costs exceed their limits as a result of transition costs incurred through the redesignation. For these reasons, we believe, and the Secretary certifies, under 5 U.S.C. 605(b), that this proposal would not result in a significant impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

(Section 1816(e)(4) of the Social Security Act; 42 U.S.C. 1395h) (Catalog of Federal Domestic Assistance Program No. 13. 773, Medicare—Hospital Insurance)

Dated: March 7, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85–8540 Filed 4–9–85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kenai National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska; correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; correction.

SUMMARY: This document corrects a notice of availability that appeared on page 8796 in the **Federal Register** of Tuesday, March 5, 1985. This action is necessary to correct the date by which comments should be submitted.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, Telephone (907) 786–3399.

The following correction is made in FR DOC. 85–5245 appearing on 8796 in the issue of March 5, 1985: On page 8796, column one, second paragraph, first sentence, "**DATES**" is corrected to read "Comments on the final CCP/EIS must be submitted on or before June 7, 1985, to receive consideration by the Regional Director.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85–8532 Filed 4–9–85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NM 52395]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 162.57-acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by July 9, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505–988–6326.

The Department of the Interior proposes that the existing land withdrawal made by Secretarial Order of December 22, 1928, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 21 S., R. 26 E.,
Sec. 23, Lots 2, 3, 6, 7.
The area described contains 102.57 acres.

The purpose of the withdrawal is for use in connection with the Brantley and Carlsbad projects. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 29, 1985.

Leroy C. Montoya,

Acting State Director.

[FR Doc. 85–8580 Filed 4–9–85; 8:45 am]

BILLING CODE 4310-FB-M

[AR-034183]

Public Lands Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following public lands are being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 23 N., R. 19 W.,
Section 6, lots 1 thru 4, inclusive S½N½, and S½;
Section 7, SW¼;
Section 18, all (excluding mineral patent 1220920);
T. 23 N., R. 20 W.,
Section 12, all (excluding mineral patent 1220920);
Section 13 NE¼, E½NW¼, and S½ (excluding mineral patent 1220920);
Section 14, all.

Comprising 3209.57 acres, more or less, subject to prior valid existing rights.

In exchange for these lands, the federal government would acquire approximately 4,320 acres from Walter MacEwen of Westlake Village, California. The offered lands are within Desert bighorn sheep range in the Black Mountains northwest of Kingman, Arizona.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1(b), shall segregate the public lands described herein to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the Federal Register of a termination of the segregation, or 2 years from date of this publication, whichever occurs first.

This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the public lands while the preparation of an environmental assessment is ongoing. Upon completion of the environmental assessment and land use decision, a Notice of Realty Action shall be published specifying the lands to be exchanged and any reservations of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange including a list of the offered lands is available for review at the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 2, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-8563 Filed 4-9-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 2323, 2324, and 3783, Blocks 360, 361, and 353, respectively, Eugene Island Area, offshore Louisiana. Proposed Plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 25, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-8554 Filed 4-9-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 072, Block 12, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on March 29, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-8553 Filed 4-9-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1610, 1901, 1966, and 1967, Blocks 65 and 64, South Pass Area, and Blocks 152 and 153, Main Pass Area, respectively, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on March 29, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/ Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Mineral Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: March 29, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–8555 Filed 4–9–85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Current Schedule of Reviews of Government Versus Contract Operation of Commercial or Industrial Activities and Service Contracts

AGENCY: Agency for International Development, IDCA.

ACTION: Notification of current schedule of reviews.

SUMMARY: Pursuant to Office of Management and Budget (OMB) Circular A–76, notice is hereby given that the Agency for International Development (AID) intends to conduct reviews of the commercial and industrial activities listed below to identify opportunities for improving their efficiency and cost effectiveness. Based on the results of the reviews cost comparison studies may be performed to determine if one or more of the activities should be performed under contract. Specific invitations for bids or requests for proposals will be announced in the Commerce Business Daily. A contract or contracts may or may not result from each review or cost comparison study. Results of each study can be made available to responding bidders or offerors and other interested parties.

FOR FURTHER INFORMATION CONTACT: Fred Allen, 632–3378, John H. Elgin, 632–3378.

SUPPLEMENTARY INFORMATION: Studies to be made are identified in the following tabulation:

Name of activity	Location of activity	Review start date
Offst. dup. prs. opr.	Washington, D.C.	In process.
Educ/training	Rosslyn, VA	1 Apr. 85.
Computer specialist	Washington, D.C.	3 June 85.
Mail and file	do	1 Oct. 85.
Motor pool/ warehsg Voucher examiner.	do	6 Jan. 86.
Audiovosual prod	do	1 Mar. 86.

Dated: April 2, 1985.

R.T. Rollis, Jr.,

Assistant to the Administrator for Management.

[FR Doc. 85–8557 Filed 4–9–85; 8:45 am]

BILLING CODE 8118-01-M

[Redelegation of Authority No. 40.11.2]

Redelegation of Authority to Director, Office of Administration of Justice and Democratic Development, Bureau for Latin America and the Caribbean

I. Pursuant to the authorities delegated to me as Deputy Assistant Administrator for Latin America and the Caribbean, I hereby redelegate to the Director, Office of Administration of Justice and Democratic Development, Bureau for Latin America and the Caribbean, with respect to Regional projects in the Latin American and Caribbean region related to administration of justice and democratic development, the following authorities.

A. Implementing Authorities

Authority to implement, in accordance with the terms of the authorization thereof and in accordance with the applicable statutes and regulations, all grant agreements, and amendments thereto, whether heretofore or hereafter authorized, including authority:

1. To sign Project Implementation Orders (PIO's);

2. To approve contractors, review and approve all grantee contracts financed in whole or in part by an AID grant and review and approve requests for proposals and invitations for bids with respect to such contracts;

3. To prepare, sign and deliver Project Implementation Letters; and

4. To review and approve documents and other evidence submitted by grantees in satisfaction of conditions precedent under such grant agreements.

B. Extension of Terminal Dates.

Authority to extend:

1. The terminal date for meeting conditions precedent for a cumulative period of not to exceed six months;

2. The terminal date for requesting disbursement authorizations for a comulative period of not to exceed one year; and

3. The terminal date for completion of performing services and furnishing goods (PACD) for a cumulative period of not to exceed one year.

II. The authorities hereby redelegated may not be further redelegated, but may be exercised by persons who are performing the functions of the Director, Office of Admnistration of Justice and Democratic Development, Bureau for Latin America and the Caribbean, in an "acting" capacity.

III. Actions within the scope of this redelegation heretofore taken by the Director, Office of Administration of Justice and Democratic Development, Bureau for Latin America and the Caribbean, are hereby ratified and confirmed.

IV. This redelegation of authority is effective immediately.

Dated: March 29, 1985.

Marshall Brown,

Deputy Assistant Administrator, Bureau for Latin America and the Caribbean.

[FR Doc. 85-8556 Filed 4-9-85; 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-209]

Aluminum Frame Fabric-covered Luggage and Components; Decision Not To Review Initial Determination Terminating Investigation on the Basis of Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of the investigation on the basis of a consent order.

SUMMARY: The U.S. International Trade Commission hereby gives notice of its decision not to review an initial determinination (ID) terminating the above-captioned investigation. The ID terminated the investigation on the basis of a consent order signed by complainant Skyway Luggage Company and respondents Baltimore Luggage Company and Nan Zong Leather Products Company, Ltd.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311.

SUPPLEMENTARY INFORMATION: The Commission has determined that the consent order will have no negative effects on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers.

Termination of this investigation on the basis of the consent order furthers the public interest by conserving Commission resources and those of the parties involved.

This action is taken pursuant to the authority of 19 U.S.C. 1337 and 19 CFR 210.53.

Notice of the ID was published in the **Federal Register** of March 20, 1985, 50 FR 11252. No petition for review was filed, nor were any comments received from Government agencies or from the public.

Copies of the consent order, the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: April 4, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8618 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-205]

Certain Dialyzers Using Telescoping Connectors for Fluid Lines; Decision Not to Review Initial Determination Terminating Investigation on the Basis of Consent Order Agreement; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Termination of the investigation on the basis of a consent order agreement.

SUMMARY: On February 15, 1985, the administrative law judge (ALJ) in this investigation, Judge Saxon, issued an initial determination (ID) (Order No. 4) which terminates this investigation on the basis of a consent order agreement incorporating a proposed consent order between complainant Baxter Travenol Laboratories, Inc. and respondent Terumo Corporation.

Termination of this investigation furthers the public interest by conserving Commission resources and those of the parties involved.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0311.

SUPPLEMENTARY INFORMATION: This action is taken pursuant to the authority of 19 U.S.C. 1337 and 19 CFR 210.53.

The Commission has determined that the consent order will have no negative effects on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers.

Notice of the ID was published in the **Federal Register** of February 27, 1985, 50 FR 7969. No petition for review was filed, nor were any comments received from Government agencies or from the public.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: April 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8619 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-243 (Preliminary)]

Certain Expansion Tanks From the Netherlands

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Netherlands of prepressurized, diaphragm-type expansion tanks for use in closed water systems, which are alleged to be sold in the United States at less than fair value (LTFV).[2]

Background

On February 14, 1985, a petition was filed with the Commission and the Department of Commerce by Amtrol, Inc., West Warwick, RI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain prepressurized diaphragm expansion tanks and parts thereof [3] for closed water systems from the Netherlands. Accordingly, effective February 14, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-243 (Preliminary).

Notice of the institution of the Commission's investigation and of a

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes determines that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of the imports.

[3] The petitioner included "parts" of expansion tanks in the petition only in order to deter any evasion of possible antidumping duties on expansion tanks by importing the tanks in semi-finished form or sections, which the petitioner considered to be "parts." Such imports would not be considered to be parts for tariff purposes. Accordingly, the Commission did not include "parts" of expansion tanks in its notice of institution.

public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 6, 1985 (50 FR 9140). The conference was held in Washington, DC, on March 8, ,1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 1, 1985. The views of the Commission are contained in USITC Publication 1669 (April 1985), entitled "Certain Expansion Tanks from the Netherlands: Determination of the Commission in Investigation No. 731-TA-243 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: April 1, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8622 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02

[Investigation No. 337-TA-210]

Certain Motor Graders With Adjustable Control Consoles and Components Thereof; Initial Determination Terminating Investigation on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of investigation on the basis of settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement among complainant Caterpillar Tractor Co. (Caterpillar) and respondents Komatsu Ltd. and Komatsu America Corp. (Komatsu). On March 1, 1985, complainant, respondents, and the Commission investigation attorney filed a joint motion requesting termination of the investigation on the basis of a settlement agreement (Motion No. 210-3). On March 5, 1985, administrative law judge issued an ID accepting the settlement agreement and granting the motion for termination.

FOR FURTHER INFORMATION CONTACT: Brenda A. Jacobs, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1627.

SUPPLEMENTARY INFORMATION: No petitions for review were received and there were no comments from Government agencies or the public.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.51 (19 CFR 210.51).

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: April 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8617 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-202 (Final)]

Tubiar Steel Framed Stacking Chairs From Italy

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-202 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of tubular steel framed stacking chairs, provided for in item 727.70 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination by July 11, 1985, and the Commission will make its final injury determination by July 11, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR part 201).

EFFECTIVE DATE: March 14, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202-523-0399), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of tubular steel framed stacking chairs from Italy are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on August 10, 1984, by counsel for Frazier Engineering, Inc., Greenfield, IN. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United Sates was materially injured by reason of imports of the subject merchandise (49 FR 39116, Otober 3, 1984).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on May 14, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on June 3, 1985, at the U.S. International Trade Commission Building, 701 E Street, NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on May 23, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on May 29, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 29, 1985.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on June 10, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 10, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: April 2, 1985.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8621 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Extension of Deadline for Decision Concerning Review of Initial Determination

AGENCY: International Trade Commission.

ACTION: Three-day extension of deadline for determining whether to review initial determination (ID) concerning the violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation.

SUMMARY: The 45-day deadline for the Commission to determine whether to review the ID was Wednesday, March 27, 1985. (See 19 CFR 210.54(b) and 210.55, as amended at 49 FR 46123 (Nov. 23, 1984).) That deadline has been extended to the close of business on Monday, April 1, 1985.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0350.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 1985, the presiding administrative law judge issued an ID holding that certain respondents have violated section 337 in the importation or sale of the subject woodworking machines. On February 20, 1985, the Commission investigative attorney filed a petition for review of portions of the ID. The complainant filed a response opposing the petition.

Under § 210.53(h) of the Commission's rules, the ID would have become the Commission's determination effective March 27, 1985, unless the Commission ordered a review or extended the deadline for its decision concerning a review. (See 19 CFR 210.53(h), as amended at 49 FR 46123 (Nov. 23, 1984).) In light of the number of issues presented in this "more complicated" investigation (see 49 FR 22724 (May 31, 1984)), the Commission decided to extend the deadline for determining whether to review the ID.

Public Inspection

Copies of the ID, the petition for review, the complainant's response, and all other nonconfidential documents on the record of this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

Issued: April 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8620 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02-M

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of information collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-204, Competitive Assessment of the U.S. Commuter and Business Aircraft Industries, instituted under the authority of section 332(b) of the Tariff act of 1930 (19 U.S.C. 1332(b)).

Summary of proposal:

(1) Number of forms submitted: two.

(2) Title of form: Competitive Assessment of the U.S. Commuter and Business Aircraft Industries—Questionnaire for Importers of Commuter and/or Business Aircraft and

Questionnaire for Purchasers of Commuter and/or Business Aircraft.

(3) Type of request: new.

(4) Frequency of use: nonrecurring.

(5) Description of respondents: Firms importing or purchasing commuter and-or business aircraft in the United States.

(6) Estimated number of respondents: 220.

(7) Estimated total number of hours to complete the forms: 3360.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional information or comment: Copies of the proposed form and supporting documents may be obtained from Deborah C. Ladomirak (202)–523–0131). Comments about the proposal should be directed to Ms. Francine Picoult, Desk Officer for the U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. If you anticipate commenting on a form but find that time to prepare comments will prevent your from submitting them promptly you should advise OMB of your intent as soon as possible. Ms. Picoult's telephone number is (202) 395–7231. Copies of any comments should be provided to Mr. William E. Fry (U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436.

Issued: April 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–8627 File 4–9–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–255 (Preliminary)]

Animal Feed Grade DL-Methionine From France

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–255 (Preliminary) under section 733(a) of the Tarriff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason by imports from France of animal feed grade DL-methionine, provided for in item 425.04 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 20, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: April 3, 1985.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth (202–523–0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on April 3, 1985 by Degussa Corp., a U.S. producer of animal feed grade DL-methionine.

Participation in the Investigation

Persons wishing to particulate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15, 1984), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 26, 1985 at the U.S. International Trade Commission Building, 701 E Street NW, Washington, DC. Parties wishing to participate in the conference should contact Abigail Eltzroth (202–523–0289) not later than April 24 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before April 30 a written statement of the information pertinent of the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be cleared labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: April 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–8628 Filed 4–9–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-204]

Certain Pull-Type Golf Carts and Wheels Therefor; Commission Decision Not To Review Initial Determination Terminating Respondents on The Basis of a Settlement Agreement

AGENCY: International Trade Commission.

SUMMARY: Decision not to review initial determination terminating two respondents on the basis of a settlement agreement.

ACTION: The Commission has determined not to review the administrative law judge's initial determination (ID) (Order No. 7) terminating the above-captioned investigation with respect to respondents Diversified Products Corporation and Glotex International, Incorporated, on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0079.

SUPPLEMENTARY INFORMATION: On February 5, 1985, complainants Ajay Enterprises Corporation and Spherex, Inc., and respondents Diversified Products Corp. (DP) and Glotex International, Inc. (Glotex), filed a joint motion to terminate the investigation as to respondents DP and Glotex on the basis of a settlement agreement. The administrative law judge (ALJ) issued an ID granting the joint motion for termination on March 5, 1985. No petitions for review or comments from Government agencies or the public were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: April 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–8625 Filed 4–9–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-192]

Certain Spring Balance Arm Lamp Heads; Commission Decision Not to Review Initial Determination; Termination of Investigation

AGENCY: International Trade Commission.

ACTION: Termination of certain respondents on the basis of settlement agreements; termination of the investigation.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 9) terminating seventeen respondents on the basis of settlement agreements. The ID granted the following joint motions filed by complainant Luxo Lamp Corp. and named respondents: Motion to terminate BC Imports, Inc. (Motion No. 192–4), and motion to terminate Prestigeline, Inc. (Motion No. 192–5), filed October 19, 1984; motion to to Terminate Fleco Industries, Inc., Lite-Tron, Light World Inc., and Light Fantastic of Texas (Motion No. 192–7); motion to terminate Sansui Industries Co., Ltd. (Motion No. 192–8), and motion to terminate J.K. Gill (Motion No. 192–9), filed October 26, 1984; motion to terminate Associated Graphics, Inc. (Motion No. 192–10), filed October 31, 1984; motion to terminate City Electric, Inc. (Motion No. 192–11), filed November 9, 1984; motion to terminate Pay 'n Pak Stores, Inc. (Motion No. 192–12), filed November 23, 1984; motion to terminate Advanced Tool Technology, Inc. (Motion No. 192–14), filed December 3, 1984; motion to terminate Lightways, Inc. (Motion No. 192–15), filed January 14, 1985; motion to terminate Sternlite Corp. (Motion No. 192–18), motion to terminate Lighting Bug, Ltd., Inc., and Lighting Resource (Motion No. 192–19), and motion to terminate J&D International (Motion No. 192–20), filed January 20, 1985. Complainant Luxo also filed Motion No. 192–13, November 26, 1984, withdrawing the complaints as to respondents Lighting Sources, Charming Products Corp., and Golden H&Y Co. The administrative law judge issued the ID granting the aforementioned motions for termination on February 22, 1985. There being no remaining respondents, the ID also terminated the investigation

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, telepone 202–523–0311.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule § 210.51 (19 CFR 210.51). Notice of the ID was published in the **Federal Register** of March 6, 1985 (50 FR 9141). No petitions for review of the ID were filed nor were any comments received from Government agencies or the public.

Copies of the nonconfidential version of the ID and all other nonconfidential dcuments filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: April 1, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–8623 Filed 4–9–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Certain Woodworking Machines; Commission Decision to Review Initial Determination; Schedule for Filing of Written Submissions on Review Issues and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review portions of the administrative law judge's initial determination that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1984) to be codified at 19 CFR 210.53–.56)

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Esq. Office of he General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION: On February 7, 1985, the presiding adminstrative law judge issued an initial determination (ID) holding that there is a violation of section 337 in the importation and sale of certain woodworking machines. The Commission investigative attorney petitioned for review of certain parts of the initial determination pursuant to § 210.54(a) of the Commission's rules.

After examining the petition for review and the response thereto, the Commission has concluded that the following issues warrant review:

1. Whether the overall design appearances of the complainant's 10-inch table saw and 14-inch band saw are nonfuctional and have acquired secondary meaning;

2. The definition of the domestic industry;

3. Whether there is an effect or tendency to substantially injure the domestic industry;

4. Whether the Commission should entertain the complainant's arguments concerning misappropriation, in light of the fact that misappropriation is not one of the alleged unfair acts and practices listed in the notice of investigation;

5. Patent infringement, including the question of whether the Commission should entertain the complainant's arguments concerning the alleged infringement of claim 4 of U.S. letters Patent 3,745,493, in view of the fact that claim 4 is not listed in the notice of investigation; and

6. Whether respondent Leroy International Corp. should be found to be in violation of section 337.

The Commission's review will be limited to the above issues. No other issues will be considered.

In connection with the portions of the ID that the Commission determined not to review, the Commission has adopted the following findings of fact proposed by the parties:

1. Common-law trademark infringement (i.e., the overall design of the 10-inch table saw and the 14-inch band saw), likelihood of confusion—the complainant's proposed findings 77–122;

2. Common-law trademark infringement (i.e., the term "Contractor's Saw")—the Commission investigative attorney's proposed findings 22–48;

3. Registered trademark infringement—the complainant's proposed findings 123–130.2, 146, and 147.2

4. False and deceptive advertising—the complainant's proposed findings 146–147.4 and the Commission investigative attorney's proposed findings 227–239;

5. Passing off—the Commission investigative attorney's proposed findings 240–242;

6. Efficient and economic operation—the complainant's proposed findings 157–173; and

7. The parties—the Commission investigative attorney's proposed findings 1-17.

The Commission also hereby amends conclusions of law 10–11 in the ID to include the activities of the respondents as indicated in the discussion on pages 24–26 of the ID and in the findings of fact adopted listed hereinabove in connection with registered trademark infringement.

If, at the conclusion of the review, the Commission finds that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders that could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of remedy, it must consider the effect of that remedy upon the public interest. The factors that the Commission will consider include the effect that an exclusion order and/or cease and desist orders should have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting a remedy would have on the public interest.

If the Commission finds that a violation of section 337 has occurred and orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are encouraged to file written submissions on the legal issues under review and on the issues of remedy, the public interest, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. The filing deadlines are as follows:

Tuesday, April 16, 1985—written submissions on the review issues;

Tuesday, April 23, 1985—written submissions concerning remedy, the public interest,and bonding; and

Tuesday, April 30, 1985—reply submissions on the review issues and reply submissions on remedy, the public interest, and bonding.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary not later than the close of business on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary to the Commission.

Notice of this investigation was published in the **Federal Register** of December 15, 1983 (48 FR 55786). See also 49 FR 20767 (May 16, 1984).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: April 3, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–8626 Filed 4–9–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-237 (Preliminary) and 731-TA-245-247 (Preliminary)]

Low-fuming Brazing Copper Wire and Rod From France, New Zealand, and South Africa; Determinations

On the basis of the record [1] developed in investigation No. 701-TA-237 (Preliminary), the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from France of low-fuming brazing copper wire and rod [3] which are alleged to be subsidized by the Government of France.

In addition, on the basis of the record developed in investigation No. 731-TA-245 (Preliminary), the Commission determines,[4] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from France of low-fuming brazing copper wire and rod which are alleged to be sold in the United States at less than fair value (LTFV).

The Commission further determines, on the basis of the record developed in investigations Nos. 731-TA-246 and 247 (Preliminary), pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from New Zealand and South Africa of low-fuming brazing copper wire and rod which are alleged to be sold in the United States at LTFV.

Background

On February 19, 1985, petitions were filed with the Commission and the Department of Commerce by counsel on behalf of American Brass Co., Rolling Meadows, IL; Century Brass Products, Inc., Waterbury, CT; and Cerro Metal Products, Inc., Bellefonte, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of low-fuming brazing copper wire and rod from France and New Zealand,[5] and by reason of LTFV imports of low-fuming brazing copper wire and rod from France, New Zealand, and South Africa. Accordingly, effective February 19, 1985, the Commission instituted preliminary countervailing duty investigations Nos. 701-TA-237 and 238 (Preliminary) and preliminary antidumping investigations Nos. 731-TA-245-247 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 27, 1985 (50 FR 7971). The conference was held in Washington, DC, on March 13, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 5, 1985. The views of the Commission are contained in USITC Publication 1673 (April 1985), entitled "Low-Fuming Brazing Copper Wire and Rod from France, New Zealand, and South Africa: Determinations of the Commission in Investigations Nos. 701-TA-237 (Preliminary) and 731-TA-245-247 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.
Issued: April 5, 1985.

Kenneth R. Mason,
Secretary.

[FR Doc. 85-8624 Filed 4-9-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Lodwick dissenting.

[3] The term "Low-fuming brazing copper wire and rod" covers brazing wire and rod, of copper, whether or not flux-coated, provided for in items 612.62, 612.72, and 653.15 of the Tariff Schedules of the United States (TSUS).

[4] Commissioner Lodwick dissenting.

[5] Effective April 1, 1985, New Zealand lost its entitlement to an injury determination, and the Commission terminated investigation No. 701-TA-238 (Preliminary). Also, at the same time the cited petitions were filed, counsel for the petitioners filed a countervailing duty petition with Commerce concerning imports of low-fuming brazing copper wire and rod from South Africa. Inasmuch as South Africa is not a signatory to the GATT Subsidies Code, the Commission is not required to make an injury determination.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Safe Drinking Water Act; Township of West Carroll

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 8, 1985, a proposed partial consent decree in *United States* v. *Water and Sewer Authority of the Township of West Carroll*, Civil No. 83-811 (W.D. Pa.), was lodged with the United States District Court for the Western District of Pennsylvania. The proposed partial consent decree requires the Water and Sewer Authority of the Township of West Carroll to comply with the sampling, analysis, reporting, public notification, and record keeping requirements of the Safe Drinking Water Act, and to achieve and maintain compliance with the maximum contaminant levels for turbidity contained in 40 CFR 141.13 by October 1, 1988.

The Department of Justice will receive comments for a period of thirty (30) days from the date of this publication relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Water and Sewer Authority of the Township of West Carroll*, D.J. Ref. 90-5-1-1-1496.

The proposed partial consent decree may be examined at the office of the United States Attorney, 633 United States Post Office and Courthouse, Pittsburgh, Pennsylvania 15219, at the Region III Office of the Environmantal Protection Agency, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106 and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed partial consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed partial consent decree, refer to the case, proposed partial consent decree, and D.J. reference number, and include a check payable to the United States Treasury in

the amount of $0.80 ($0.10 per page reproduction charge).

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-8559 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act; International Partners in Glass Research; Emhart Glass Research, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Emhart Glass Research, Inc., has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the formation of International Partners in Glass Research and (2) the nature and objectives of the partnership. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the partnership and its general area of planned activities are given below.

International Partners in Glass Research, a New York partnership, was formed on December 14, 1984, to undertake a research program by funding research efforts at various research institutions. The following firms are partners:

ACI Ventures, Inc., 1811 Quail Street, Newport Beach, CA 92660

Bayerische Flaschen-glashuettenwereke, Weigand & Soehne GmbH & Co., KG, D-8641 Steinback AM Wald, Federal Republic of Germany

Brockway Research Incorporated, c/o Brockway, Inc., McCullough Avenue, Brockway, PA 15824

Emhart Glass Research, Inc., 123 Day Hill Road, Windsor, CT 06095

Portion Research, Inc., c/o Consumers Glass Co. Limited, 4022 The West Mall, Suite 900, Etobicoke, Ontario M9C 5J7 Canada

Rockware Glass Limited, Headlands Lane, Knottingley, W. Yorks WF11 OHP, England

Yamamura Glass Co., Ltd., 2-113, Higashihama-Cho, Nishinomiya, Japan.

The purpose of the partnership is to conduct a basic research and development program directed to the development of glass containers that will be stronger and lighter than those currently used by members of the glass container industry and to derive income therefrom through the granting of licenses to third parties. Research and development will be undertaken on a distinct project basis—universities, institutes, or industrial research laboratories will be chosen to engage in each specific area of basic research. The areas of research and product development will encompass, but not be limited to, such areas as research of glass composition and properties, strengthening techniques, forming processes, and coatings.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 85-8634 Filed 4-9-85; 8:45 am

BILLING CODE 4410-01-M

National Cooperative Research Act; Portland Cement Assoc., Change in Membership

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Portland Cement Association ("PCA") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. Specifically, effective Janaury 31, 1985, Centex/Nevada/Texas and, effective March 1, 1985, Lousiville Cement Company resigned from membership in the PCA. Accordingly, at present the members of the PCA are:

Aetna Cement Corporation
Alaska Basic Industries
Arkansas Cement Corporation
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Atlantic Cement Company, Inc.
Blue Circle Inc.
CalMat Co.
Capitol Aggregates, Inc.
Cianbro Corporation
Davenport Cement Company
General Portland Inc.
Genstar Cement Company
Gifford-Hill & Company, Inc.
Ideal Basic Industries, Cement Division
Independent Cement Corporation
Lehigh Portland Cement Company
Lone Star Industries, Inc.
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Portland Cement Corp.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Cement, Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Genstar Cement Limited
Lake Ontario Cement Limited
Miron Inc.
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Limited

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Holderbank Consulting, Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
Bendy Engineering, M.K./H.K. Ferguson
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 FR 5015 (1985).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-8633 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-01-M

United States v. Newell Companies, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), that a proposed Final Judgment, Stipulatin and Competitive Impact Statement have been filed with the United States District Court for the District of Connecticut in Hartford, Connecticut, in *United States* v. *Newell Companies, Inc.*, Civil No. N 82-305 (PCD). The Complaint in this case alleges that the acquisition of the Stanley Drapery Hardware Division of The Stanley Works by Newell Companies, Inc. ("Newell") violates Section 7 of the Clayton Act, 15 U.S.C. 18, in that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of drapery hardware in the United States. Since the acquisition, Newell has operated the acquired business under the trade name Judd Drapery Hardware ("Judd").

The proposed Final Judgment would require Newell to divest Judd within 180 days following entry of the Final

Judgment. The divestiture shall be accomplished through an independent broker, previously selected by the parties. The independent broker will commence efforts to effect divestiture immediately upon the filing of the proposed Final Judgment with the Court. In addition, until the divestiture is completed, the Stipulation and Hold Separate Order entered by the Court, which requires Newell to maintain and operate Judd as a separate and ongoing business enterprise, shall remain in effect and Newell shall comply therewith. Under other provisions of the proposed Final Judgment, at the option of the purchaser, Newell is required to transport, at its expense, some or all of the assets which Newell previously transferred from Judd's operation in Wallingford, Connecticut. Newell is also required, at the option of the purchaser, for a period not to exceed three months, to provide assistance to aid the purchaser in re-establishing a staff of field service representatives. Finally, Newell would be enjoined for a period of ten years from acquiring, without the consent of the Department of Justice, the assets or stock of any person engaged in the manufacture or sale of drapery hardware in the United States. The Competitive Impact Statement describes fully the terms of the proposed Final Judgement and the background of the action.

Comments regarding the proposed Final Judgement are invited from the public. The statutory comment period is sixty days from the date of this publication in the **Federal Register**. Such comments and responses thereto will be filed with the Court and published in the **Federal Register**. Comments should be directed to Ralph T. Giordano, Chief, New York Field Office, Antitrust Division, Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court District of Connecticut

United States of America, plaintiff, v. Newell Companies, Inc., defendant.

[Civ. No. N 82-305 (PCD)]

Filed: April 4, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

(2) The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment.

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: April, 1985

For the Plaintiff: J. Paul McGrath, *Assistant Attorney General;* Roger B. Andewelt, Ralph T. Giordano, *Attorneys, Department of Justice.*

For the Defendant: William S. D'Amico, D'Amico, Luedtke, Demarest & Golden, 1920 N Street, NW.; Suite 400, Washington, D.C. 20036, Telephone: (202) 785-9200; Lowell L. Jacobs, Martha E. Gifford, Geoffrey Swaebe, Jr., Belinda Johnson, *Attorneys, Department of Justice, Antitrust Division.* 26 Federal Plaza, Room 3630, New York, New York 10278, Telephone: (212) 264-0659.

United States District Court, District of Connecticut

United States of America, plaintiff, Newell Companies, Inc., defendant.

[Civ. No. N 82-305 (PCD)]

Filed: April 4, 1985.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on June 14, 1982, and the defendant, Newell Companies, Inc., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II

As used in this Final Judgment:

(A) "The defendant" means Newell Companies, Inc., including each division, subsidiary and affiliate thereof, except Judd.

(B) "Judd" means the business of Judd Drapery Hardware, a Newell Company, having its headquarters in Wallingford, Connecticut, including the assets and capital stock acquired by the defendant on April 24, 1981 from The Stanley Works, wherever such assets are currently located, and such other assets as are used by or in connection with the operation of Judd Drapery Hardware, but not including those assets which were acquired from The Stanley Works and were located at Roxton Pond, Canada.

(C) "Drapery hardware" means products used to hang draperies or curtains, including adjustable traverse, curtain, cafe and sash rods and various functional and decorative accessories such as hooks, rings, supports, brackets and tiebacks.

(D) "Person" means any individual, partnership, firm, corporation, association or any other business or legal entity.

(E) "Eligible purchaser" means any person not owned or controlled by the defendant, directly or indirectly, and approved by the plaintiff or the Court, which certifies in writing its intention to purchase and operate Judd as a viable and ongoing business engaged in the manufacture and sale of drapery hardware, reasonably demonstrates to the plaintiff or the Court that it will have the capability of doing so, and agrees to supply any information in its possession, custody, or control requested by the plaintiff in accordance with Section V (D) of this Final Judgment.

III

The provisions of this Final Judgment shall apply to the defendant, its officers, directors, agents and employees, and to its subsidiaries, affiliates, successors and assigns, and to each of their respective officers, directors, agents and employees, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

(A) The defendant is hereby ordered and directed to divest, as a viable and ongoing business engaged in the manufacture and sale of drapery

hardware in the United States, all of its ownership in and control over Judd to an eligible purchaser. Provided that nothing in the Final Judgment obligates the defendant to finance the sale of Judd or any of Judd's assets to any purchaser.

(B) At the request of a prospective eligible purchaser, the defendant shall sell to such purchaser less than all of Judd's assets but only with the written approval of the plaintiff and only if such assets are capable of being operated as a viable and ongoing business engaged in the manufacture and sale of drapery hardware in the United States. In the event that the plaintiff approves a sale to an eligible purchaser pursuant to this paragraph (B), such sale shall fully discharge the defendant's obligations under Section IV (A) of this Final Judgment.

V

(A) Subject to Section V (D) of this Final Judgment, Louis Klein, Jr., previously selected by the plaintiff and the defendant in accordance with the attached agreement, and herein approved by the Court, shall act as an independent broker with full power and authority to carry out the divestiture ordered in Section IV of this Final Judgment.

(B) The independent broker shall commence efforts to find an eligible purchaser and to effect divestiture immediately upon the filing of this Final Judgment with the Court. The independent broker shall at all times thereafter use its best efforts to effect divestiture. The defendant shall in good faith devote its best efforts to assist the independent broker in promoting the sale of Judd, including providing to a potential eligible purchaser access to Judd's plant, machinery, books and records and the opportunity to interview Judd personnel. The defendant shall promptly notify the independent broker of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire Judd, together with full details of the same.

(C) Thirty (30) days from the date of entry of this Final Judgment and every thirty (30) days thereafter until the divestiture has been completed, the independent broker shall submit an affidavit to the plaintiff describing in detail the fact and manner of compliance with this Final Judgment. Each affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) days, has contacted or been contacted by the independent broker or the defendant in relation to the proposed sale of Judd, or has made an offer, expressed an interest or desire, or entered into negotiations, to acquire Judd, together with full details of same. The independent broker shall maintain full records of all efforts made to divest Judd, including summaries of all meetings and conversations; such records shall be made available to the plaintiff at its request.

(D) At least forty-one (41) days prior to the proposed closing of any sale pursuant to this Final Judgment, the independent broker shall furnish in writing to the plaintiff and the defendant the terms and conditions of the proposed sale together with the name and address of the proposed eligible purchaser and a description of its business. The defendant shall advise the plaintiff and the independent broker in writing no later than thrity-one (31) days prior to the scheduled closing date whether it has any objection to the proposed sale. If the defendant does so object, such objection shall be sufficient to bar the sale unless the Court approves the sale. The plaintiff may apply to the Court for approval of such sale within ten (10) days of notice of the defendant's objection, unless the plaintiff requested additional information. The plaintiff shall advise the defendant and the independent broker in writing no later than thirty-one (31) days prior to the scheduled closing date whether it has any objection to the proposed sale or that it requests additional information. If the plaintiff does so object, the defendant may apply to the Court for approval of such sale within ten (10) days of notice of the plaintiff's objection. If the plaintiff requests additional information from the defendant, the independent broker, or the proposed eligible purchaser: such information must be furnished ten (10) days of the receipt of the request, unless the plaintiff shall agree otherwise in writing; and the plaintiff shall have ten (10) days from the date all such information is received by it in which to object to the proposed sale or to apply to the Court for appoval of such sale. If the plaintiff does not so object, such objection shall be sufficient to bar the sale unless the Court approves the sale. The defendant may apply to the Court for approval of such sale within ten (10) days of notice of the plaintiff's objection. The time period set forth in Section VI of this Final Judgment shall be tolled from the time either the plaintiff or the defendant files its application with the Court, pursuant to this section, until the conclusion of any proceeding in any Court under this section relating to the approval of a proposed sale.

VI

Subject to the provisions of Section V (D) of this Final Judgment, if the independent broker has not effected divestiture within one hundred eighty (180) days following the entry of this Final Judgment, the obligation of the defendant to divest shall then be terminated and the requirement of divestiture considered satisfied: Provided, however, that upon application and a proper showing to the Court that there is a potential eligible purchaser that has made an offer, expressed a serious interest or desire, or entered into negotiations, to acquire Judd, the obligation of divestiture may be extended by the Court for such additional period of time as may be reasonably necessary to complete negotiations and effect the sale.

VII

Until the divestiture required by this Final Judgment has been accomplished, all of the provisions of the Stipulation and Hold Separate Order entered by this Court on August 17, 1982 shall remain in effect and the defendant shall comply therewith.

VIII

At the option of the eligible purchaser, and on its request within thirty (30) days following the closing date of the sale of Judd, the defendant shall:

(A) at its expense, undertake to transport promptly to a location selected by the eligible purchaser some or all of the assets of Judd listed in the attached Schedule A, which the defendant previously transferred from Judd's operation in Wallingford, Connecticut. However, the method of transportation shall be at the purchaser's discretion, reasonably exercised, and the expense of the transportation shall not be more than the expense which the defendant would incur in transporting the assets to Wallingford, Connecticut; and (B) use its best efforts for a period to be selected by the eligible purchaser but not to exceed three (3) months to provide assistance to aid the eligible purchaser in assembling, hiring and providing the necessary training for re-establishing a staff of field service representatives that is capable of satisfactorily servicing Judd's customers.

IX

The defendant is enjoined and restrained for a period of ten (10) years from the date of entry of this Final Judgment from acquiring any of the assets or stock of, or from merging with, any person engaged in whole or in part in the manufacture or sale of drapery

hardware in the United States without the prior written consent of the plaintiff, or if such consent is refused, then upon approval by this Court after an affirmative showing by the defendant that the effect of any such acquisition will not be substantially to lessen competition or tend to create a monopoly in any line of commerce in any section of this country. Nothing herein contained shall preclude the defendant from acquiring drapery hardware manufacturing property or equipment from any source in the ordinary course of its business.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by means provided in Sections V (C) or (D) or Section X of this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to the plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by the plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction of this section is retained by this Court for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of violations hereof.

XII

This Final Judgment will expire on the tenth anniversary of the date of entry, or with respect to any particular provision, on any earlier date specified.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

Peter C. Dorsey,

United States District Judge.

SCHEDULE A.—JUDD MACHINERY AND EQUIPMENT SENT FROM WALLINGFORD, CONNECTICUT

Machine No.	Description
1. Machinery And Equipment sent to Freeport, Illinois	
10974A	Maple wood Formers.
10974B	Maple wood Formers.
10984A	Cooper-Wymouth Reel.
10984B	Cooper-Wymouth Reel.
11011A	Maplewood Rolling Mill.
11011B	Maplewood Rolling Mill.
11008A	Cut To Length Feed Table.
11008B	Cut To Length Feed Table.
11012A	Cooper-Weymouth Reel.
11012B	Cooper-Weymouth Reel.
3378	Rod Strip Feed.
3378	Rod Rolling Machine.
3378	Rebuild Curt-N-Mate Machine.
2591	O Gang Slitting Machine.
11041	Tie Together Roll Form & Bend
5776	Clark Mod. IF40 Platform Truck.
2724	5 HP Motor Driven Buffer.
2417	13" South Bend Coom Lathe.
5678	Harris Surface Grinder.
5969	Rotary Table for Brpt. Miller.
5328	Brpt. Milling Machine.

SCHEDULE A.—JUDD MACHINERY AND EQUIPMENT SENT FROM WALLINGFORD, CONNECTICUT—Continued

Machine No.	Description
4704	Double Head Riveter.
5599	Clausing Drill Press.
5994	Doboy Unipocket Machine.
5994	Vibratory Feeder.
3379	Rod Rolling Machine.
4024	Rod Bender & Telescope Machine.
11026A	Two Draperie Pack Tables.
4746	Furniture for Stapling 4112 Rod.
5572	Closure Card Machine 3½.
5572	Rebuild Closure Card Machine.
5575	Closure Card Machine 4½.
5575	Rebuild Closure Card Machine.
5576	Closure Card Machine 3¼.
5576	Rebuild Closure Card Machine.
5574	Closure Card Machine 4½.
5574	Rebuild Closure Card Machine.
	6 Assembly Tables.
	32 #75 Cases.
11091	Replace Die for Rod #42243.
11013	IN-Outer Rolls #42240-42243.
10921	Rebuild Prenotch Die #42240.
11229	Clipping Tools #40411 & 40412.
10972	CTL Feed Table Mdl Form Mills.
10973	In-Outer Roll #42198 & 42199.
10703	Clipping Die for #40412.
11123	Build Tool for #42198.
10836	Slit Roll Curt-N-Mate.
10911	Rod Formers Curt-N-Mate.
10995	Curtain Rod Bending Station.
10956	Repair Die #42249.
10956	Rod 42249-50 Drp. Supp.
10573	Die For #42756-07.
10955	Repair Die #40306 & 40307.
10993	Prog. Die for #42756-00.
	Prog. Die for #42306-00.
40408	Clipping Tool.
11124	Outer Clipping Die.
42306	Progressive Die.
5364	Model XL Doboy Packaging Machine.
2. Machinery And Equipment Sent to Binghamton, New York	
5474	Molding Machine.
5679	Bearing Assembly Machine.
5786	Mold Sweep.
5784	Mold Sweep.
5877	Mold Sweep.
5878	Mold Sweep.
5879	Mold Sweep.
5940	Sonic Welder.
42908	Mold.
41214	Mold.
41975	Mold.
42332	Mold.
42803	Mold.
43033	Mold.
43182	Mold.
43183	Mold.
43188	Mold.
42731	Mold.
42910	Mold.
80006	Mold.
42800	Mold.
42948	Mold.
43060	Mold.
42847	Mold.
42904	Mold.
42785	Mold.
43196	Mold.
42648	Mold.
43118	Mold.
43187	Mold.
42173	Mold.
32060	Mold.
42646	Mold.
42580	Mold.
42590	Mold.
42592	Mold.
42239	Mold.
42634	Mold.
42478	Mold.
42237	Mold.
42238	Mold.
42246	Mold.
42247	Mold.
43116	Mold.
43081	Mold.
42652	Mold.
43119	Mold.

SCHEDULE A.—JUDD MACHINERY AND EQUIPMENT SENT FROM WALLINGFORD, CONNECTICUT—Continued

Machine No.	Description
42633	Mold.
80024	Mold.
42730	Mold.
43167	Mold.
80021	Mold.
42651	Mold.
42784	Mold.
42714	Mold.
80078	Mold.
43235	Mold.
42942	Mold.
43197	Mold.
43198	Mold.
80079	Mold.
42716	Mold.
42713	Mold.
43164	Mold.
43178	Mold.
43179	Mold.

Agreement

This agreement is entered into as of the 8th day of March, 1985, by and between Louis Klein, Jr. ("Klein") and Newell Companies, Inc., a corporation organized under the laws of the State of Delaware ("Newell").

Whereas, it is contemplated that Newell will consent to the entry of a proposed Final Judgment (the "Final Judgment") in the case entitled *United States* v. *Newell Companies, Inc.*, Civil No. N 82-305 (PCD), pending before the United States District Court for the District of Connecticut; and

Whereas, Newell has been advised that the U.S. Department of Justice ("DOJ"), on behalf of the plaintiff United States of America, intends to file the Final Judgment with the Court when it is consented to by Newell pursuant to the procedures set forth in the Antitrust Procedures and Penalties Act; and

Whereas, the Final Judgment, upon becoming effective, would direct Newell to divest itself of all of its ownership in and control over Judd Drapery Hardware, a Newell Company ("Judd"), pursuant to certain terms and conditions as set forth therein; and

Whereas, Klein has been recommended by the DOJ as an independent broker in connection with the divestiture of Judd; and

Whereas, the Final Judgment, upon becoming effective, would authorize Klein to serve as an independent broker who is to use his best efforts to effect the divestiture through the sale of Judd to a third party purchaser; and

Whereas, the parties hereto desire to enter into this Agreement to set forth the terms and conditions under which Klein will serve as an independent broker;

Now Therefore, in consideration of the mutual promises and covenants as hereinafter set forth, the parties hereto do agree as follows:

1. *Scope of Engagement.* Newell hereby hires Klein to serve as an independent broker with respect to the divestiture of Judd by Newell pursuant to the terms of the proposed Final Judgment. Newell shall notify Klein when the proposed Final Judgment has been filed with the court and Klein shall thereupon commence preparation of an offering circular and take any other actions deemed necessary by Klein preparatory to the offering of Judd for sale to third parties. Upon notification from Newell that the Final Judgment has become effective, Klein shall use his best efforts to identify an eligible purchaser for Judd under the terms and conditions as set forth herein. For purposes of this Agreement, an "eligible purchaser" shall be defined in the same manner as in Section II(E) of the Final Judgment and the business of "Judd" to be available for sale shall be defined in the same manner as Section II(B) of the Final Judgment. Klein acknowledges that he has been provided with a copy of the proposed Final Judgment.

2. *Terms of Offer of Sale.*

(a) Klein will attempt to sell Judd to an eligible purchaser at the highest price attainable. Klein will use his best efforts to sell Judd at a price of not less than $5,671,000. Klein has been advised by Newell that Newell regards a price of $5,671,000, the appraised value of Judd as of December 31, 1984, to be a fair and reasonable price for Judd. Pursuant to Section V(D) of the Final Judgment, Newell shall retain the right to object to any proposal for the sale of Judd. The DOJ does not express a view as to what constitutes a reasonable price for Judd and has the right to ask the Court to approve a sale even if Newell objects on the basis of price.

(b) The sale shall be on an all cash basis, with Newell having no obligation to provide financing to the purchaser. Newell and the purchaser each shall be responsible for payment of their respective closing expenses, including their attorneys, accountants and other third party expenses incurred by them. The purchaser shall be responsible for paying any recording or transfer taxes in connection with the transaction and shall assume all liabilities of Judd as of the date of closing, including accounts payable. Acounts receivable as of the closing shall be allocated to the purchaser.

(c) The proposed sale contract may contain a provision that, if requested by the purchaser within thirty (30) days following the closing date, Newell will at its expense transfer to a location selected by the purchaser those assets listed on Schedule A to the Final Judgment, provided that the method of transportation shall be reasonably selected by the purchaser and the expense involved shall not be more than that which would be incurred in the transportation of such assets to the Wallingford, Connecticut facilities of Judd. Additionally, the proposed contract may contain a provision that, if requested by the purchaser within the above time period, Newell will use its best efforts for period to be selected by the purchaser not to exceed three (3) months to provide assistance to the purchaser in assembling, hiring and providing the necessary training for the re-establishing of a staff of field service representatives capable of satisfactorily servicing Judd's customers. If the proposed contract either or both of the foregoing provisions, it shall also contain the purchaser's estimate of the cost associated with such activity, and Newell shall be obligated to pay only the lesser of actual or estimated costs. In the case of the field service organization, if the provision is used the contract shall also contain a description of the level of staffing and training and the duration of such persons' utilization that is proposed. If there is no provision in the contract regarding these matters, then Newell shall have no obligation to undertake any of such activities following the closing.

(d) Closing shall take place no later than one hundred eighty (180) days following the date on which the Final Judgment becomes effective.

3. *Compensation.*

(a) As full and complete compensation for Klein's services, Newell agrees to pay to Klein the sum of One Hundred Thousand Dollars ($100,000.00), together with Two Percent (2%) of any amount received by Newell from the sale of Judd at a price in excess of $5,671,000. The sum of One Hundred Thousand Dollars ($100,000.00) shall be payable as follows:

(i) Sixty Thousand Dollars ($60,000.00) shall be paid in three installments of Twenty Thousand Dollars ($20,000.00) each, the first of which shall be due three days after the date on which the Final Judgment becomes effective, and the second and third of which shall be due on the thirtieth and sixtieth day, respectively, following the date on which the Final Judgment becomes effective;

(ii) Thirty Thousand Dollars ($30,000.00) shall be paid in two installments of Fifteen Thousand Dollars ($15,000.00) each, which installments shall be due on the ninetieth and one hundred twentieth day, respectively.

following the date on which the Final Judgment becomes effective; and

(iii) Ten Thousand Dollars ($10,000.00) shall be paid in one installment due on the one hundred fiftieth day following the date on which the Final Judgment becomes effective.

(b) If any of the due dates for a payment under (a) falls on a weekend or legal holiday, the actual due date shall be the next business day following the date on which the payment otherwise is due. In the event that the closing of the sale of Judd takes place prior to the date on which a payment to Klein otherwise is due, payment of the entire One Hundred Thousand Dollars ($100,000.00) (or such portion thereof as has not been previously paid) shall be made at the closing. Any payment due as a result of a sale in excess of $5,671,000 also shall be due at the closing.

(c) In addition to the foregoing compensation, Newell will reimburse Klein for incurred out-of-pocket expenses not to exceed Five Thousand Dollars ($5,000.000) in the aggregate.

(d) In the event that the proposed Final Judgment does not become effective, Newell shall have no obligation to pay any sums to Klein pursuant to this Agreement.

4. *Reports.*

(a) Commencing thirty (30) days from the date of entry of the Final Order and continuing every thirty (30) days thereafter until the sale of Judd has been consummated on Klein's duties hereunder have been terminated, Klein shall submit an affidavit to the DOJ describing in detail his efforts to sell Judd during the preceding thirty (30) day period. Each affidavit shall include the name, address and telephone number of each person who, during the preceding thirty (30) day period, contacted or was contacted by Klein in regard to the proposed sale of Judd, or who has made an offer, expressed an interest or desire, or entered into negotiations to acquire Judd, together with full details of the same. Klein agrees to maintain full records of all efforts undertaken by him to effect a sale of Judd, including summaries of meetings and conversations, and to make such records available to the DOJ upon its request.

(b) No later than forty-one (41) days prior to the proposed closing of any sale of Judd arranged by Klein, Klein shall furnish to Newell and the Department of Justice information concerning the terms and conditions of the proposed sale together with the name and address of the proposed eligible purchaser and a description of its business. Klein understands that either Newell or the DOJ may, no later than thirty-one (31) days prior to the proposed closing date, object to a proposed sale. In the DOJ requests additional information, Klein agrees to furnish such information within ten (10) days of the receipt of the request, unless the DOJ otherwise agrees in writing. Klein agrees to promptly supply Newell with any information Newell may request regarding the terms and conditions of the proposed transaction so that Newell can make a determination whether to accept or object to the transaction within the time period set forth above. Klein agrees to treat all information received from Newell, the DOJ, or any potential purchaser of Judd confidentially, and agrees not to disclose such information except in compliance with the terms of this Agreement or as ordered by the court under the terms of the Final Judgment.

5. *Access to Information.* Newell agrees to provide potential eligible purchasers identified by Klein with access, during normal business hours and upon reasonable notice, to Judd's plant, machinery, books and records and the opportunity to interview Judd's personnel, upon receipt of a request therefor from Klein or directly from the potential eligible purchaser. If the request has been made directly by the potential eligible purchaser, Newell shall promptly notify Klein of full details of any contact it has with the potential eligible purchaser.

6. *Miscellaneous.*

(a) Any notice required or permitted to be given pursuant to this Agreement will be deemed sufficiently given when delivered, or, if sent by mail, postage prepaid, on the third day after such mailing, to the following address or to any other address that has been designated in writing to the sending party:

(i) To Newell: Newell Companies, Inc., P.O. Box 117, 1 Millington Road, Beloit, Wisconsin 53511, Attention: Mr. Daniel C. Ferguson, President
With a copy to: William S. D'Amico, Esq., D'Amico, Luedtke, Demarest & Golden, 1920 N Street NW., Suite 400, Washington, D.C. 20036
(ii) To the DOJ: Antitrust Division, U.S. Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278
(iii) To Klein: Louis Klein, Jr., Fifth Floor, 522 Fifth Avenue, New York, NY 10036.

(b) This agreement embodies the entire agreement of the parties hereto and supersedes any and all prior agreements and understandings, written or oral, with respect to the subject matter hereof, including the letter of intent dated March 4, 1985. This Agreement may not be amended or modified except in writing signed by both parties and subject to the approval of the DOJ.

(c) This Agreement shall be construed and given effect in accordance with the laws of the State of Connecticut.

In Witness Whereof, the parties have set their respective hands and seals hereto as of the date and year first written above.

Louis Klein, Jr.,

Attest:

Mary Lou Wemstrom,

Newell Companies, Inc.

By:

Donald Krause,

Title:

Vice President-Controller.

United States District Court, District of Connecticut

United States of America, plaintiff, v. Newell Companies, Inc., defendant.

[Civ. No. N 82-305 (PCD)]

Filed April 4, 1985.

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On June 14, 1982, the United States filed a civil antitrust Complaint alleging that the April 1981 acquisition of the Stanley Drapery Hardware Division ("SDH") of The Stanley Works by Newell Companies, Inc. ("Newell") violated Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in the manufacture and sale of drapery hardware in the United States. The Complaint seeks the divestiture of the acquired business.

The United States and the defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify and enforce the proposed Final Judgment, and to punish violation thereof.

II

Events Giving Rise to the Alleged Violation

On or about April 24, 1981, Newell acquired SDH for approximately $11,535,000. Since the acquisition, Newell has operated SDH under the trade name Judd Drapery Hardware ("Judd").

Both Newell and Judd manufacture and sell drapery hardware. Drapery hardware is the term used by the industry to describe the unique cluster of products that are used to hang draperies or curtains. Drapery hardware products include traverse rods (both white and decorative), cafe rods, curtain rods, and sash rods, each of which is manufactured in a variety of sizes and styles, and various functional and decorative accessories such as hooks, rings, supports, brackets and tiebacks. Drapery hardware manufacturers sell their products to retailers, jobbers and drapery workrooms in the United States. Both the manufacturers and the purchasers of drapery hardware treat this cluster of interrelated items as a distinct product line.

Since no other products can reasonably and practically be used to hang draperies or curtains, which is the only function of drapery hardware, there are no substitutes in the marketplace for these products. Thus, if the price of drapery hardware increases, buyers who need drapery hardware cannot turn to any other product. For these and other reasons, the United States contends that the manufacture and sale of drapery hardware in the United States is the appropriate market within which to assess the competitive effect of the acquisition.

Newell is the second largest manufacturer of drapery hardware in the United States. In 1980, Newell had domestic drapery hardware sales of approximately $32 million and a 14.15% market share. SDH was the sixth largest drapery hardware manufacturer in the United States. In 1980, SDH had domestic drapery hardware sales of approximately $17 million, and a 7.46% market share. The combination of Newell and SDH increased Newell's market share to 21.61%.

The market for the manufacture and sale of drapery hardware in the United States is highly concentrated. The four largest firms accounted for 78.48%, and the six largest firms had 95.03% of 1980 domestic sales. The merger raised the Herfindahl-Hirschman Index (HHI) from 2238 to 2448 in 1980. The HHI, a measure of market concentration, is the sum of the squares of the market shares of each competitor. Thus, the effect of this acquisition may be substantially to lessen competition in the manufacture and sale of drapery hardware in the United States.

The United States and the defendant have engaged in extensive pretrial discovery. Upon the proposal of the defendant, settlement negotiations have been conducted. These negotiations have resulted in the proposed Final Judgment which is the subject of this Statement.

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the APPA. The proposed Final Judgment constitutes no admission by any party as to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Final Judgment is in the public interest.

A. Divestiture

The proposed Final Judgment requires Newell to divest all of its ownership in and control over Judd, within 180 days of the entry of the Final Judgment, to a purchaser who intends to operate it as a viable and ongoing business engaged in the manufacture and sale of drapery hardware. At the request of a prospective purchaser, Newell must sell less than all of Judd's assets but only with the written approval of the United States and only if such assets are capable of being operated as a viable and ongoing business engaged in the manufacture and sale of drapery hardware. Newell is not required to finance the sale of Judd or any of Judd's assets.

Divestitute shall be accomplished through an independent broker, previously selected by the parties in accordance with the agreement attached to the proposed Final Judgment, with full power and authority to carry out the divestiture. This procedure will ensure that divestiture will be effected in an expeditious manner. The independent broker will commence efforts to effect divestiture immediately upon the filing of the proposed Final Judgment with the Court. Newell must use its best efforts to assist the independent broker in promoting the sale of Judd. The independent broker will attempt to sell Judd at the highest price attainable.

After receiving notice by the independent broker of the terms and conditions of a proposed sale, either party may object to the proposed sale. Either party's objection shall be sufficient to bar the sale unless the Court approves the sale.

If the independent broker has not effected divestiture within 180 days following entry of the proposed Final Judgment, Newell's obligation to divest Judd shall be terminated. However, if there is a potential purchaser seriously interested in buying Judd, the Court may extend Newell's obligation of divestiture for such additional period of time as may be reasonably necessary to complete negotiations and effect the sale.

Until the divestitute of Judd is accomplished, the Stipulation and Hold Separate Order entered by the Court, which requires Newell to maintain and operate Judd as a separate and ongoing business enterprise, shall remain in effect and Newell shall comply therewith.

In addition, at the option of the purchaser, Newell is required to transport, at its expense, to a location selected by the purchaser, some or all of the assets which Newell previously transferred from Judd's operation in Wallingford, Connecticut. The assets are specified in Schedule A to the proposed Final Judgment. The method of transportation shall be at the purchaser's discretion, reasonably exercised, although Newell shall not incur an expense greater than the expense to transport the assets back to Wallingford.

Finally, at the option of the purchaser, for a period not to exceed three months, Newell is required to provide assistance to aid the purchaser in re-establishing a staff of field service representatives that is capable of servicing Judd's customers.

B. Other Provisions

The proposed Final Judgment enjoins Newell for ten years from acquiring any of the assets or stock of any person engaged in the manufacture or sale of drapery hardware in the United States without first obtaining the approval of the United States. If the United States objects, Newell can seek the Court's approval, but must bear the burden of proof that the acquisition will not lessen competition or tend to create a monopoly. Newell may acquire drapery hardware manufacturing equipment in the ordinary course of its business.

The proposed Final Judgment also contains reporting provisions and visitation rights that will permit the United States to determine and secure compliance with the Final Judgment.

IV

Remedies Available to Potential Private Litigants

Entry of the proposed Final Judgment will have no effect on the rights of persons who may have been injured by the alleged violation. Private plaintiffs may sue for any remedy they deem appropriate. However, pursuant to Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), this Final Judgement may not be used as *prima facie* evidence in private litigation.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment must do so within sixty (60) days of the date of publications of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Ralph T. Giordano, Chief, New York Field Office, Antitrust Division, United States Department of Justice, 26 Federal Plaza, Room 3630, New York, New York 10278.

VI

Alternatives to the Proposed Final Judgment

The relief sought in the Complaint is the divestiture of Judd. the proposed Final Judgment requires that Newell, through an independent broker, divest Judd within six months after entry of the Final Judgment.

The United States considered the alternative to the proposed Final Judgment of proceeding to trial on the merits. While the United States was confident of its ability to succeed ultimately after a trial, it is likely that after as successfully trial a court would order divestiture substantially the same as that to which the parties have now agreed. Thus, the proposed Final Judgment fully achieves the objectives sought by the United States and is preferable to proceeding to a trial on the merits.

VII

Determinative Documents

There are no materials or documents which the United States considered determinative in formulating this proposed Final Judgment. Accordingly, no documents are being filed along with this Competitive Impact Statement.

Dated: April 1, 1985, New York, New York.

Respectfully submitted,

Lowell L. Jacobs,

Martha E. Gifford,

Geoffrey Swaebe,

Belinda Johnson,

Attorneys, Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10278, (212) 264-0659.

Certificate of Service

I, Lowell L. Jacobs, hereby certify that on this day of April 3, 1985, I served a copy of the foregoing Competitive Impact Statement upon William S. D'Amico, Esq., D'Amico, Luedtke, Demarest & Golden, 1920 N Street NW., Washington, D.C. 20036, counsel for defendant Newell Companies, Inc., by Express Mail.

Lowell L. Jacobs,

Attorney, Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10278, (212) 264-0659.

[FR Doc. 85-8635 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration Application; Knoll Pharmaceutical Co.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 16, 1984, Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (30 days from publication).

Dated: April 4, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-8577 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration Application; M.D. Pharmaceutical, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 14, 1984, M.D. Pharmaceutical Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 10, 1985.

Dated: April 4, 1985.

Gene R. Haislip

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-8580 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration Application; Western Fher Laboratories, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 9, 1984, Western Fher Laboratories, Inc., Carretera 132 KM. 25.3 P.O. Box 7468, Ponce, Puerto Rico 00732, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance. Phenmetrazine (1631).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 10, 1985.

Dated: April 4, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-8579 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-09-M

Controlled Substances; Dudley B. Turner Jr., D.O.; Revocation and Denial of Application

On February 1, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an order to show cause to Dudley B. Turner Jr., D.O. (Respondent), 460 Market Street, Williamsport, Pennsylvania 17701 seeking to revoke DEA Certificate of Registration AT2447642, and to deny any pending applications for renewal of that registration. The statutory predicate under 21 U.S.C. 824(a)(2) was the conviction of Respondent on September 6, 1984, in the Court of Common Pleas of Lycoming County, Pennsylvania, of eight counts of "prescription of controlled substance in a manner not in accordance with treatment principles accepted by a responsible segment of the medical profession." These are felony offenses relating to controlled substances.

Respondent, through counsel, explicitly waived his opportunity for a hearing and submitted a statement regarding his position on the proposed revocation of the DEA Certificate of Registration previously issued to him. The Acting Administrator finds that Respondent has waived his opportunity for a hearing under 21 CFR 1301.54(c), and enters this final order on the record as it appears. 21 CFR 1301.54 (d) and (e).

The Acting Administrator finds that a grand jury sitting in Lycoming County, Pennsylvania, returned a 36-count indictment against Respondent, charging him with violations of Pennsylvania Act 64, Section 13(a)(14). Respondent pled guilty to seven counts of distribution of various controlled substances including Preludin, Seconal, Tuinal, Parest and Qualude.

The Acting Administrator finds that the Pennsylvania Bureau of Narcotic Investigations and Drug Control (Bureau) began an investigation of Respondent in December, 1981. The investigation was instituted as a result of reports from the Williamsport Police Department that numerous Schedule II prescriptions written by Respondent were appearing at area pharmacies. Monthly Schedule II reports, which the pharmacies are required to maintain, confirmed that Respondent was writing excessive numbers of Schedule II prescriptions. These prescriptions were written primarily in the names of two young men. A review of these records revealed that Respondent prescribed 120 Seconal; 270 Tuinal; 60 Parest; 120 Ionamin 340 Valium; and 54 ozs. of Tussionex in September, 1981 for one of these men. He prescribed 810 Preludin and 270 Dilaudid for the same young man in October and November, 1981. Respondent's prescribing with respect to the other young man were similar. In September, 1981, he prescribed 105 Tuinal for this individual. Between September and December, 1981, he prescribed 450 Darvocet-N and between September 1981 and November, 1981, he prescribed 62 ozs. of Tussionex.

During the course of the investigation, the Pennsylvania agent conducting the investigation spoke with a professor at the Philadelphia School of Osteopathy. This physician examined patient profiles of the two young men and concluded that Respondent's prescriptions for these patients were excessive and not in accordance with treatment principles accepted by a responsible segment of the medical profession. The professor also told the Pennsylvania agent that Respondent's medical records, which the agent seized on September 28, 1982, pursuant to a search warrant, were so abbreviated as to be improper.

The Pennsylvania agent interviewed one of the individuals receiving the prescriptions on March 3, 1983. This individual told the agent that he had paid Respondent for the prescriptions. The individual admitted that he sold many of the pills that he received by these prescriptions on the street. He said that he paid Respondent on one occasion up to $600 for a number of prescriptions. This individual told the agent that Respondent was aware that he was selling drugs on the street, but that Respondent counseled him to "be careful". The agent interviewed the second individual on April 8, 1983, and his statement corroborated that of the first man. He told the agent that he could get anything he wanted from Respondent and that following an initial contact in 1977 or 1978, Respondent did not medically examine him. Respondent prescribed for this individual upon request. Respondent told this individual that he was aware that the Pennsylvania authorities were investigating him and therefore to be "careful" in filling the prescriptions.

The Acting Administrator further finds that the Pennsylvania agent and others interviewed Respondent on July 20, 1983. At this interview, Respondent admitted to the agent that he had prescribed "too many" Dilaudids to the first individual in October, 1981. He also admitted that his prescriptions to this person were not good medical practice. As to the second individual, Respondent stated that he did not realize that he was prescribing so many controlled substances. He admitted to the agent that what he was doing was "not what you might call good medical practice." Respondent said that he was not aware that the second individual was in to see him since he did not take the time to "pull the card" and "go and bring it up to date."

The Acting Administrator has carefully considered Respondent's position statement. The submission from Respondent consists largely of copies of letters that were submitted at Respondent's sentencing hearing and a photostat of portions of the sentencing hearing before a Pennsylvania state court judge. Respondent operated his own medical practice from the early 1940's until 1976. At that time he assumed full time employment at the

United States Penitentiary in Lewisburg, Pennsylvania as chief medical officer, working several evenings a week at his former practice. It was during this period that Respondent wrote the prescriptions which were the basis of the charges against him and his ultimate plea of guilty. In his submission, Respondent presented evidence that he was a good employee at Lewisburg Penitentiary. He also submitted evidence from a broad spectrum of community residents in the Williamsport area that he had provided competent and caring medical attention over the years and that he was the only osteopath practicing in Williamsport. Among those individuals submitting letters or testimony at the sentencing hearing were various area physicians.

While the Acting Administrator is impressed by the sincerity of the testimony concerning Dr. Turner, this testimony in no way explains or mitigates Respondent's actions leading to his plea. Indeed, none of the submissions touch on Respondent's ability to responsibly handle controlled substances, which is the central issue in this proceeding or any other proceeding brought to revoke a registration or deny an application. Respondent's submission in no way describes Respondent's current need for controlled substances prescribing and dispensing privileges or his current professional situation. The Acting Administrator is not convinced that Respondent can once again assume the heavy responsibilities imposed by DEA registration, and can professionally and competently handle controlled substances. The public should not be put at risk that Respondent may choose again to exercise bad judgment or engage in something less than the competent practice of osteopathy in his prescribing of controlled substances.

Having examined the record in this Matter, the Acting Administrator finds that he has the statutory authority under 21 U.S.C. 824(a)(2) to revoke Respondent's certificate of registration and to deny any pending applications for renewal. The Acting Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100, hereby revokes Certificate of Registration AT2447642 previously issued to Dudley B. Turner Jr., D.O., and denies any pending applications for renewal, effective May 10, 1985.

Dated: April 3, 1985.

John C. Lawn,

Acting Administrator.

[FR Doc. 85-8578 Filed 4-9-85; 8:45 am]

BILLING CODE 4410-09-M

LEGAL SERVICES CORPORATION

One-Time Grant Award; Announcement

AGENCY: Legal Services Corporation.

ACTION: Announcement of One-Time Grant Award.

SUMMARY: The Legal Services Corporation (LSC) announces its intent to award a one-time, non-recurring grant of $70,000 to the American Corporate Counsel Institute (ACCI). This grant will be for a one-year term. It will be awarded pursuant to authority conferred by Sections 1006(a)(1)(B) and 1006(A)(3) of the Legal Services Corporation Act of 1974, as amended, in response to an unsolicited proposal submitted by ACCI for assistance in continuing ACCI's Corporate Pro Bono Activation Program. The grant will not be subject to automatic refunding rights or entitled to any rights, including hearing rights, under Section 1011 of the LSC Act, as amended, or LSC regulations promulgated thereunder.

This public notice is issued pursuant to Section 1007 (F) of the LSC Act, with a request for comments and recommendations within a period of thirty (30) calendar days from date of publication of this Notice. The grant award will not become effective and no grant funds will distributed prior to expiration of this thirty-day period.

DATE: All comments and recommendations must be received by the Program Development and Substantive Support Unit within the Office of Field Services of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses III, Esq., Legal Services Corporation, Office of Field Services, Program Development and Substantive Support Unit, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272-4356.

SUPPLEMENTARY INFORMATION: This grant will be the second award to the American Corporate Counsel Institute. This 501(c)(3) corporation was established by the American Corporate Counsel Association (ACCA) to support the Association's endeavors in the fields of education, research and community service. The ACCA/ACCI Pro Bono Program was originally funded by LSC in October 1983. This Pro Bono Program performs a variety of activities to stimulate the development and expansion of corporation law department pro bono projects. The Program fosters pro bono commitments by attorneys employed by corporation law departments as well as from outside counsel retained by corporations. These corporation sponsored projects provide civil legal assistance to poor individuals and generally work cooperatively with local LSC-funded field programs.

Thomas Opsut,

Interim President, Legal Services Corporation.

[FR Doc. 85-8645 Filed 4-9-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological Systematic Collections; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Anthropological Systematic Collections.

Date and time: April 26, 1985, 9:00 a.m.—5:00 p.m.

Place: National Science Foundation, 1800 G. St., NW, Washington, DC 20550, Room 1141.

Type of meeting: Closed.

Contact person: Mary W. Greene, Assoc. Program Director for Anthropology, Room 320, National Science Foundation, Washington, DC 20550, (202) 357-7804.

Purpose of advisory panel: To provide advice and recommendations concerning support for systematic anthropological collections.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reveiwed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 5, 1985.

[FR Doc. 85-8641 Filed 4-5-85; 4:45 pm]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Medical Uses of Isotopes; Reestablishment

AGENCY: Nuclear Regulatory Commission.

ACTION: The purpose of this notice is to announce the reestablishment of the Advisory Committee on Medical Use of Isotopes for an additional two-year period.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with GSA, the Nuclear Regulatory Commission has determined that reestablishment of this advisory committee is in the public interest. This committee provides advice with respect to the development of standards and criteria for regulating and licensing uses of radionuclides in human subjects. It also provides advice and consultation with respect to individual applications on user qualifications and the human use of radiation sources.

FOR FURTHER INFORMATION CONTACT: Patricia Vacca, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 427–4112.

Dated at Washington, D.C., this 5th day of April 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–8600 Filed 4–9–85; 8:45 am]

BILLING CODE 7590–01–M

Publication Sales Program with the Government Printing Office

Notice is hereby given that effective May 7, 1985, the Nuclear Regulatory Commission (NRC) will no longer be a consigned sales agent for the U.S. Government Printing Office (GPO) for the printing, inventory control, and public sale of NRC publications. Consistent with the provisions of Title 44 section 1708 of the U.S. Code that govern recovery costs related to government publications, the Superintendent of Documents will perform the sale and distribution of NRC publications.

To provide service to customers for NRC publications, the GPO has established a special mailing address and telephone number. NRC publications may be ordered by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013–7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or VISA or Mastercard number and expiration date.

Subscription account service will also continue to be available for selected periodic NRC publications. Anyone wishing to inquire about a subscription account or subscribe to a periodic NRC publication may do so by calling GPO at (202) 783–3238. Further information concerning the availability of subscription services will be announced by GPO.

The NRC will continue to participate in the National Technical Information Service Program. Individuals or organizations may continue to purchase NRC documents at NTIS subject to NTIS procedures and prices.

Dated at Bethesda, MD, this 3rd day of April 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–8604 Filed 4–9–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–13]

Babcock & Wilcox Co.; Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated August 7, 1984, as supplemented, Babcock & Wilcox Company (the licensee) requested authorization to dismantle the critical facility, License No. CX–10, located near Lynchburg, Virginia, and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Component Parts, and Termination of Facility License" was published in the **Federal Register** on September 18, 1984 at 49 FR 36579. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common defense and security or to the health and safety of the public. The basis of the findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an Environmental Impact Statement need not be prepared.

Accordingly, Babcock & Wilcox Company is hereby authorized to dismantle the critical facility covered by License No. CX–10, as amended, and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, B&W will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. CX–10.

For further details with respect to this action, see (1) the B&W application for authorization to dismantle the facility and dispose of component parts, dated August 7, 1984, as supplemented, (2) the Commission's related Safety Evaluation, and (3) the Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 4th day of April 1985.

Hugh L. Thompson, Jr.,

Director, Division of Licensing.

[FR Doc. 85–8605 Filed 4–9–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of proposed amendments which would change the expiration date for the Calvert Cliffs Nuclear Power Plant Unit 1 Operating

License, DPR–53 from July 7, 2009, to July 31, 2014, and change the expiration date for the Calvert Cliffs Nuclear Power Plant Unit 2 Operating License, DPR–65, from July 7, 2009, to August 13, 2016.

Identification of Proposed Action

The currently licensed term for Calvert Cliffs Units 1 and 2 is 40 years commencing with issuance of the construction permit (July 7, 1969). Accounting for the time that was required for plant construction, this represents an effective operating license term of 35 years of Unit 1 and 33 years for Unit 2. The licensee's application dated June 15, 1984 requests a 40-year operating license term for Calvert Cliffs Units 1 and 2.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration dates of the Operating Licenses for Calvert Cliffs Units 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant Units 1 and 2" April 1973, and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of Calvert Cliffs Units 1 and 2 has increased, the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding Calvert Cliffs with regard to indigenous plant and animal species, including those that are commercially valuable, for the additional years of facility operation. In addition the National Pollutant Discharge Elimination System permit provides additional environmental protection.

Finding of No Significant Impact.

The staff has reviewed the proposed change to the expiration dates of the Calvert Cliffs Units 1 and 2 Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments dated June 15, 1984, (2) the Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant Units 1 and 2, April 1973, and (3) the Environmental Assessment dated April 3, 1985. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C. 20555 and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland, this 3rd day of April 3, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactor, Division of Licensing.

[FR Doc. 85–8606 Filed 4–9–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–3014]

Finding of No Significant Impact; Issuance of Special Nuclear Material License No. SNM–1950; Northeast Nuclear Energy Co., Waterford, CT

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License No. SNM–1950 to permit the receipt, possession, inspection, and storage of unirradiated nuclear fuel assemblies at the Millstone Nuclear Power Plant, Unit 3, in Waterford, Connecticut. The unirradiated fuel assemblies will be for eventual use in the Millstone Nuclear Power Plant, Unit 3, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM–1950. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland, this 4th day of April 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85–8607 Filed 4–9–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–275]

Pacific Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Correction

In FR Doc. 85–5525 appearing on page 9338, in the issue of Thursday, March 7, 1985, make the following change in the notice captioned as above:

Line 4—change "DPR–76" to "DPR–80"

Dated at Bethesda, Maryland, this 3rd day of April, 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85–8608 Filed 4–9–85; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD

Meeting

April 22, 1985.

The President's Economic Policy Advisory Board will meet on April 22, 1985, at the White House, Washington, D.C. from 9:00 a.m. to 1:00 p.m. The purpose of this meeting is to review and discuss:

The Strong Dollar and Its Economic Implications

The Federal Budget
Trade Policy and Services
The Bonn Summit

"All agenda items concern matters listed in Section 552(b) of Title 5, United States Code, specifically sub-paragraphs (1), (4), (8) and (9) thereof, and will be closed to the public."

John A. Svahn,

Assistdht to the President for Policy Development.

[FR Doc. 85-8680 Filed 4-9-85; 8:45 am]

BILLING CODE 3195-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0418]

RISA Capital Associates; License Surrender

Notice is hereby given that, RISA Capital Associates, 280 Oser Avenue, Hauppauge, New York 11788, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958 (the Act). RISA Capital Associates was licensed on March 26, 1982.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on February 4, 1985, and accordingly all rights and privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: March 27, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-8568 Filed 4-9-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0322]

Wesco Capital, Ltd.; Surrender of License

Notice is hereby given that Wesco Capital, Ltd., 3471 Via Lido, Suite 204, Newport Beach, California 92663 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Wesco Capital, Ltd. was licensed by the Small Business Administration on August 30, 1983.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on April 1, 1985, and accordingly, all rights, privileges, and franchises derived thereform have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: April 3, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-8567 Filed 4-9-85; 8:45 am]

BILLING CODE 8025-01-M

Washington; Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Spokane, Washington, will hold a public meeting at 9:30 a.m. on Thursday, April 25, 1985, in Room 695, U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651, U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington 99210, telephone (509) 456-3781.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 2, 1985

[FR Doc. 85-8565 Filed 4-9-85; 8:45 am]

BILLING CODE 8025-01-M

Louisiana; Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of New Orleans, Louisiana, will hold a public meeting at 10:00 a.m. on Friday, April 26, 1985, at 333 St. Charles Avenue, Room 900. The meeting will be held to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call T.A. Aboussie, District Director, U.S. Small Business Administration, 1661 Canal Street, New Orleans, Louisiana 70112-2890, (504) 589-2744.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 2, 1985.

[FR Doc. 85-8566 Filed 4-9-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/639]

Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet May 15-16, 1985 in Conference Room 8A&B, Federal Aviation Administration Building, 800 Independence Avenue, SW., Washington, D.C. The meeting will begin at 9:30 a.m. on both days.

Study Group 8 studies matters relating to systems of radiocommunications and radiodetermination for the mobile services. The purpose of the meeting is to review preparations for the internatonal meeting of Study Group 8 in Geneva in November, 1985.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, D.C. 20520; telephone (202) 632-2592.

Dated: April 1, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-8531 Filed 4-9-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/638]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting at 0930 on April 24, 1985, in Room 1303 of the Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting will be to discuss results of the 30th session of the International Maritime Organization (IMO) Subcommittee on Fire Protection, February 4-8, 1985, including: use of cargo as fuel, location of fire control plans, flame spread test for interior finish and deck coverings, portable and fixed halon units, inert gas systems for chemical carriers, guidelines for oil tankers not fitted with inert gas systems, materials equivalent to steel, bow and stern loading, fire integrity of deck penetrations, alarm systems, helicopter

facilities and other miscellaneous subjects.

Plans for the 31th session of the IMO Subcommittee on Fire Protection will also be discussed including: smoke control research, cargo tank venting arrangements, fire fighting systems and materials equivalent to steel.

Member of the public may attend up to the seating capacity of the room.

For further information contact Mr. Donald J. Kerlin, U.S. Coast Guard (G-MTH-4/13), Washington, D.C. 20593. Telephone: (202) 462-2197.

Dated: March 20, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-8530 Filed 4-9-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review.

Dated: April 5, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB No. 1545-0020
Form No. IRS Form 709
Type of Review: Extension
Title: United States Gift Tax Return
OMB No. 1545-0143
Form No. IRS Form 2290
Type of Review: Revision
Title: Heavy Vehicle Use Tax return
OMB No. 1545-0256
Form No. IRS Forms 941C and 941C PR
Type of Review: Revision
Title: Statement of Correct Information
OMB No. 1545-0575
Form No. IRS Forms 5330
Type of Review: Revision
Title: Return of Excise Taxes Related to Employee Benefit Plans
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, N.W., Washington, D.C. 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Bureau of Alcohol, Tobacco and Firearms

OMB No. 1512-0149
Form No. ATF F 2900 (5100.21)
Type of Review: Revision
Title: Application, Permit and Report—Beer and Wine (Puerto Rico)
OMB No. 1512-0151
Form No. ATF 2928 (5120.34)
Type of Review: Revision
Title: Prepayment Tax Return—Wine (Puerto Rico)
OMB No. 1512-0153
Form No. ATF F 2900 (5130.21)
Type of Review: Reinstatement
Title: Prepayment Tax Return—Beer (Puerto Rico)
OMB No. 1512-0210
Form No. ATF 5110.51
Type of Review: Revision
Title: Application, Permit and Report—Distilled Spirits Products (Puerto Rico)
OMB No. 1512-0211
Form No. ATF F 5110.52
Type of Review: Reinstatement
Title: Deferred Tax Return—Distilled Spirits (Puerto Rico)
OMB No. 1512-0212
Form No. ATF F 5110.53
Type of Review: Revision
Title: Prepayment Tax Return—Distilled Spirits (Puerto Rico)
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

James V. Nasche, Jr.,

Departmental Reports Management Office.

[FR Doc. 85-8646 Filed 4-9-85; 8:45 am]

BILLING CODE 4810-25-M

Debt Management Advisory Committee; Closed Meeting

Notice is hereby given, pursuant to Section 10 of Pub. L. 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, D.C. on April 29 and 30 and May 1, 1985 of the following debt management advisory committee:

Public Securities Association, U.S. Government and Federal Agencies Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provided for working sessions on April 29 and 30, and the preparation of a written report to the Secretary of the Treasury on May 1, 1985.

Pursuant to the authority placed in Heads of Departments by Section 10(d) of Pub. L. 92-463, and vested in me by Treasury Department Order 101-5, I hereby determine that this meeting is concerned with information exempt from disclosure under Sections 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such a meeting be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making it final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by Section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature, disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by Section 552b(c)(9)(a) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of Section 552b of Title 5 of the United States Code.

Dated: April 5, 1985.

John J. Niehenke,

Acting Assistant Secretary (Domestic Finance).

[FR Doc. 85-8644 Filed 4-9-85; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

Meetings of the U.S. Advisory Commission on Public Diplomacy will be held in Tokyo, April 23–24; Beijing, April 25–26; Shanghai, April 28; and Hong Kong, April 29–30, 1985. The Commission will meet with senior Embassy officers and host country government officials, business and cultural leaders; observe program activities of USIA's posts; and consult with senior public affairs officers from U.S. embassies in Bangkok and Manila.

The Commission will also visit the East-West Center in Honolulu, Hawaii and meet with its Director and senior staff members on May 1–3, 1985.

For further information, please call Gloria Kalamets, (202) 485–2468.

Dated: April 5, 1985.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 85-8527 Filed 4-9-85; 8:45 am]

BILLING CODE 8230-01-M

Advisory Board for Radio Broadcasting to Cuba; Establishment

The Advisory Board for Radio Broadcasting to Cuba, was created by Public Law 98–111, the Radio Broadcasting to Cuba Act.

The Advisory Board for Radio Broadcasting to Cuba shall review the effectiveness of the activities carried out under Public Law 98–111, and shall make recommendations to the President, the Director and the Associate Director for Broadcasting of the United States Information Agency as it may deem necessary.

The charter of the Advisory Board for Radio Broadcasting to Cuba has been filed with the GSA Committee Management Secretariat and the Library of Congress.

Dated: April 2, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-8528 Filed 4-9-85; 8:45 am]

BILLING CODE 8230-01-M

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Washington, DC, on Thursday, May 9, 1985, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Patrick Henry Building of the USIA, 601 D Street NW, Room 10017. The meeting will begin at 9:00 AM. Point of contact for the meeting is Terry Balazs, tel: 202–485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the development of appropriate radio broadcasting signal standards in a jammed environment, review of direct broadcast satellite concepts, and other technical and regulatory issues relating to VOA modernizaton.

This meeting will be closed to the public because issues relating to future site negotiations for Voice of America relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) in fact is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Dated: April 2, 1985.

Charles Z. Wick,

Director.

[FR Doc. 85-8529 Filed 4-9-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Sheraton Hotel, 500 Canal Street, New Orleans, Louisiana 70130, on July 10 and 11, 1985.

The opening day session will begin at 8 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone in the Office of the Chief Memorial Affairs Director (phone 202–389–2398) not later than 12 noon, EDT June 14, 1985.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (40) at 810 Vermont Avenue, NW, Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Chief Memorial Affairs Director. Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon, EDT June 14, 1985. Oral statements will be heard only between 9 and 10 a.m. on July 11, 1985.

Dated: April 3, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-8574 Filed 4-9-85; 8:45 am]

BILLING CODE 8320-01-M

Special Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on May 9 and 10, 1985. The session on May 9 will be held on the First Floor of the Disabled American Veterans National Service and Legislative Headquarters, 807 Maine Avenue, SW., Washington, DC, and the session on May 10 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Administrator and the Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on May 9 will convene at 5:00 p.m., and the session on May 10 will convene at 8:00 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary

for those wishing to attend to contact Mrs. Von Hudson, Program Assistant, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–2298) prior to May 1, 1985.

Dated: April 3, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–8575 Filed 4–9–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 69
Wednesday, April 10, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:22 p.m. on Thursday, April 4, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Hunter, Hunter, Oklahoma, which was closed by the Bank Commissioner for the State of Oklahoma, on Thursday, April 4, 1985; (2) accept the bid for the transaction submitted by The First National Bank in Tonkawa, Tonkawa, Oklahoma; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 5, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8662 Filed 4-8-85; 11:02 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, April 15, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance and for consent to merge and establish one branch:

Bank of Santa Ana, Santa Ana, California, a proposed new bank, for Federal deposit insurance and for consent to merge, under its charter and with the title "First American Trust Company," with First American Trust Company, Santa Ana, California, a noninsured trust company, and to establish the sole branch of First American Trust Company as a branch of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,202-NR—First National Bank of Browning, Browning, Montana

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: United States National Bank, San Diego, California, NR-305 (Memo dated March 28, 1985)

Summary Audit Report re: Heritage Bank of Bureau County, Depue, Illinois, AP-373 (Memo dated March 7, 1985)

Summary Audit Report re: Planters Trust & Savings Bank of Opelousas, Opelousas, Louisiana, AP-388 (Memo dated March 13, 1985)

Summary Audit Report re: Republic Bank of Kansas City, Kansas City, Missouri, SR-402 (Memo dated March 12, 1985).

Summary Audit Report re: First Continental Bank & Trust Company of Del City, Del City, Oklahoma, SR-479 (Memo dated March 15, 1985)

Summary Audit Report re: Emerald Empire Banking Company, Springfield, Oregon, AP-371 (Memo dated March 28, 1985)

Summary Audit Report re: The Lawrence County Bank, Lawrenceburg, Tennessee, AP-395 (Memo dated March 22, 1985)

Summary Audit Report re: United American Bank in Knoxville, Knoxville, Tennessee, Review of the Modification of Agreement, Dated August 8, 1984, Between First Tennessee Bank, Knoxville, Tennessee, and the FDIC

Discussion Agenda:

Memorandum and resolution re: Supervisory Policy of the Federal Financial Institutions Examination Council concerning the sale and purchase of United States Government guaranteed loans by insured financial institutions and related income, servicing fees, and premiums.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8739 Filed 4-8-85; 3:45 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, April 15, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in he conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of Subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of Subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552 (b) (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8740 Filed 4-8-85; 8:45 am]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 15, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchases of computers within the Federal Reserve System.
2. Building proposals regarding the Federal Reserve Bank of Atlanta.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8650 Filed 4-5-85; 5:08 pm]

BILLING CODE 6210-01-M

5

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 16, 1985.

PLACE: Hearing Room A, Interstate Commerce Commission Building, 12th & Constitution Ave., NW., Washington, D.C. 20423.

STATUS: Open Special Conference.

MATTER TO BE DISCUSSED: Finance Docket No. 30500, Norfolk Southern Corporation-Control-North American Van Lines, Inc.

CONTACT PERSON FOR MORE INFORMATION: Robert R. Dahlgren, Office of Public Affairs, Telephone: (202) 275-7252.

James H. Bayne,

Secretary.

[FR Doc. 8738 Filed 4-8-85; 4:01 p.m.]

BILLING CODE 7035-01-M

6

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (50 FR 12438 3/28/85).

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: March 25, 1985.

CHANGE IN THE MEETING: Additional Items.

The following additional items were considered at a closed meeting held on Tuesday, April 2, 1985, at 3:15 p.m.

Litigation matter.

Settlement of injunctive action.

Consideration of amicus participation.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please, contact: Barry Mehlman at (202) 272-2648.

John Wheeler,

Secretary.

April 5, 1985.

[FR Doc. 85-8681 Filed 4-8-85; 12:08 pm]

BILLING CODE 8010-01-M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of April 15, 1985.

An open meeting will be hled on Tuesday, April 16, 1985, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Tuesday, April 16, 1985, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Treadway, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, April 16, 1985, at 10:00 a.m., will be.

1. Consideration of whether to grant the proposals by the National Association of Securities Dealers, Inc. and six national securities exchanges to trade options on over-the-counter ("OTC") stocks and stock indexes. The Commission also will consider whether to adopt amendments to Rule 12a–6 under the Securities Exchange Act of 1934 that would remove the current prohibition against the exchange trading of options on OTC stocks and stock indexes. For further information, please contact Alden Adkins at (202) 272–2825.

2. Consideration of whether to issue a release soliciting comment on issues concerning the increasing internationalization of the world securities markets. For further informaion, please contact Andrew E. Feldman at (202) 272–2388.

3. Consideration of whether to issue a release proposing for public comment revisions to Form TA–1, utilized for registration as a transfer agent, including a new SEC Supplement to Form TA–1 to require information about persons associated with an independent, non-issuer transfer agent; proposed Rule 17Ac2–2, which requires transfer agents to complete proposed Form TA–2, an annual report regarding the nature and scope of a transfer agents' business activities. Also to be considered for public comment is an amendment to securities Exchange Act Rule 17Ac2–1(c) to increase the time period from 21 to sixty days for a registered transfer agent to amend their registration application once information reported therein becomes inaccurate misleading or incomplete. For further information, please contact Pierron R. Leef, Jr. at (202) 272–2897 or Randy G. Goldberg at (202) 272–2365.

4. Consideration of whether to issue a release proposing technical amendments to Rule 3A–02 of Regulation S–X, "Consolidated financial statements of the registrant and its subsidiaries." For further information, please contact Dorothy Walker at (202) 272–7343.

The subject matter of the closed meeting scheduled for Tuesday, April 16, 1985, at 2:30 p.m., will be:

Formal orders of investigation.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceeding of an enforcement nature

Regulatory matter regarding financial institution.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alan Dye at (202) 272–2014.

John Wheeler,

Secretary.

April 5, 1985.

[FR Doc. 85–8602 Filed 4–8–85; 3:50 am]

BILLING CODE 8010–01–M

federal register

Wednesday
April 10, 1985

Part II

Department of Agriculture

48 CFR Ch. 4
Acquisition Regulation

DEPARTMENT OF AGRICULTURE

48 CFR Ch. 4

Acquisition Regulation

AGENCY: Office of Operations, Department of Agriculture.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms and amends the interim rule by which Agriculture published the Agriculture Acquisition Regulation (AGAR) to implement and supplement the new Federal Acquisition Regulation (FAR), both of which regulations were effective on April 1, 1984.

The purpose of the FAR, codified as 48 CFR Chapter 1, is to simplify the Federal acquisition process by adopting a uniform regulation for all executive agencies. The FAR is intended to eliminate the confusion caused contractors by differing policies prescribed among the various regulatory agencies. The purpose of the AGAR, codified as 48 CFR Chapter 4, is to implement the FAR where required and to supplment the FAR in areas where there is no FAR coverage of policies unique to this Department.

Although the AGAR replaces the Agriculture Procurement Regulations (AGPR) codified at 41 CFR Chapter 4, the AGPR remains in full force and effect for contracts awarded prior to the effective date of the FAR and AGAR. The AGPR will be applicable to Departmental contracts entered into, or contracts resulting from solicitation issued prior to, April 1, 1984, and will be applicable to those contracts until such times as they are completed, terminated, or modified to comply with the provisions of the FAR and AGAR.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Procurement Division (Room 1575–So.), Office of Operations, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447–8924.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
III. Public Comments

I. Background

The interim rule published in the Federal Register on March 28, 1984, (49 FR 12110–12133) established this Department's acquisition regulation to implement and supplement the FAR and invited comments through May 15, 1984. Comments were received from two public sources, and from numerous contracting activities within the agency. The pertinent public comments and the dispositive actions taken on them are summarized in subsection III of this preamble section. Many of the internal agency comments are being adopted to improve the clarity of this final rule.

II. Procedural Requirements

A. Executive Order 12291

Pursuant to the memorandum from David Stockman, Director, Office of Management and Budget, to Donald Sowle, Administrator, Office of Federal Procurement Policy, and Douglas Ginsburg, Administrator, Office of Information and Regulatory Affairs, dated December 19, 1984, this rule is exempt from Sections 3 and 4 of Executive Order 12291.

B. Regulatory Flexibility Act

This Department certified in the original document (49 FR 12110, March 28, 1984) that this document would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection or record keeping requirements that are imposed on the public by this rule have been approved by the Office of Management and Budget under OMB control number 0505–0005 in accordance with section 3504(h) of the Paper Work Reduction Act of 1980, 44 U.S.C. 3501, et seq.

III. Public Comments

One commenter took exception to section 401.301(b) which authorizes Departmental contracting activities to issue internal guidance on matters not directly affecting contractors or prospective contractors. The commenter is concerned that contracting activities may avoid publishing directives about policies and procedures indirectly affecting contractors, but which may be of substantive consequence to contractors. We agree that the effect of a directive is an important determinant whether the directive should be published. Consequently, section 401.301(b) has been amended to define internal guidance as being without significant effect upon contractors, as well as defining the term "significant."

The same commenter recommended adding a section 436.102 to define "Architect Engineer Services" in accordance with 41 CFR 1–4.1002. We believe the matter is being addressed by the two councils maintaining the FAR, and should be established only by FAR amendment for the sake of uniformity among agencies.

The commenter also expressed reservations about the appropriateness of FAR 19.502–2 total small business set-aside policy on acquisitions including those for A&E services. Out of concern for a uniform regulation, we believe neither a request to deviate from the FAR or a request for the councils maintaining the FAR to amend the "rule of two" standard should be pursued.

It should be understood that the "rule of two" applies only after a decision to set aside has been made in accordance with 19.502–1. In other words, it does not determine if there will be a set aside, but does determine the extent of a set aside. The current FAR language in 19.502–2 represents new policy only for former Federal Procurement Regulations (FPR) users. It is a policy that has been in effect for almost 5 years in DOD and approximately 1½ years at NASA.

Until the procurement regulations were amended to include this "rule of two" as a firm standard, the sole measure for deciding to make a small business set-aside total was whether there was "a reasonable expectation" that a "sufficient number" of responsible small business firms would present offers "at reasonable prices." The "sufficient number" standard was open to wide interpretation and proved inadequate for deciding when an entire procurement could be blocked out for exclusive small business bidding.

We believe that the confusion over the "rule of two" developed as a result of reading FAR 19.502–2 out of context. FAR 19.502 must be read in total in order to apply the policies for total or partial set-asides. At this time we do not consider it necessary to modify the FAR since the basic policy for setting aside acquisitions had not been changed.

Another commenter suggested adding a discrete transaction code for research and development (R&D) contracts in section 404.870–2. The transaction codes to identify contract types were established out of convenience and preference to contracting activities and the agency. The absence of a unique two-position code number for R&D contracts should not imply directly that R&D is a subset of service type contracts subject to the Service Contract Act. However, to avoid an inadvertent incorporation into some inappropriate category, the section is revised to add a separate transaction code for R&D contracts.

The commenter also criticized the omissions in FAR Subpart 42.1 or the AGAR Supplement 442.1 of any reference to OMB Circular A–88 policies

about the cognizant agency concept for auditing educational institutions and negotiating their indirect cost rates. Since AGAR section 442.102 simply specifies the coordinating office through which contracting officers may obtain audit services and does not override any established Government-wide policy, we believe no change to this section is required.

The commenter believes the clauses at AGAR 452.228–70, 452.228–71, and 452.228–72 are prescribed in such a manner as to imply that they must be inserted into all solicitations. We believe the prescription to insert provisions for bid or contract security "as prescribed in 428.102," which in turn applies only when performance and payment bonds may be required, is sufficiently clear to mean that the insertion is not universally required.

Lastly, the commenter suggested that we express the rationale for the clauses at 452.232–70 and 452.232–71 regarding interest on overdue payments and payment due dates. We agree. Suitable coverage is added to Part 432 to explain the basis for the two clauses as well as the clause at 452.232–72 since the supplementation results from the Prompt Payment Act (Pub. L. 97–177). Alternates to the clauses at 452.232–70 and 452.232–71 are also added.

There were numerous recommended revisions received from cognizant offices within Agriculture, and, to the extent accepted, they have been incorporated into this final rule.

List of Subjects in 48 CFR Chapter 4

Government procurement.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

For the reasons set out in this preamble, the interim rule adding Chapter 4 to Title 48 of the Code of Federal Regulations is adopted as a final rule, with the changes as set forth below.

Issued in Washington, D.C., April 2, 1985.

Frank Gearde, Jr.,

Director, Office of Operations.

PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

401.104–2 [Amended]

1. Section 401.104–2 is amended by correcting the section citation "415.80–3" at the end of the fourth sentence of paragraph (b) to read "415.804–3."

2. Section 401.104–2 is further amended by revising the last sentence of paragraph (b) to read, "However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs."

3. Section 401.105–70 is added to read as follows:

401.105–70 OMB approval under the Paperwork Reduction Act.

The OMB control number 0505–0005 applies to USDA solicitations and specified information collections within the AGAR.

4. Section 401.301(b) introductory text is revised and two entries are added to the list of subagency symbols in paragraphs (b)(4) to read as follows:

401.301 Policy.

* * * * *

(b) Each designated Head of a Contracting Activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect on contractors or prospective contractors. "Significant effect" is defined generally as something which has an effect beyond the internal operating procedures of the activity, or has a cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the **Federal Register**. HCAs shall ensure that the guidance, procedures, or instructions e, issued:

* * * * *

(4) * * *

4E Food Safety and Inspection Service.

* * * * *

4S Extension Service.

5. Section 401.670 is added to read as follows:

401.670 Legal review and assistance.

Proposed acquisitions may be subject to legal review by the Office of the General Counsel in accordance with the procedures contained in Departmental Directives (5000 series).

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

6. Section 403.303 is revised to read as follows:

403.303 Reporting suspected antitrust violations.

Contracting officers shall report the circumstances of suspected violations of antitrust laws to the Office of Inspector General in accordance with procedures in Departmental Regulation 1710–2.

7. Section 403.502 is revised to read as follows:

403.502 Subcontractor kickbacks.

Contracting officers shall report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51–54) to the Office of Inspector General in accordance with procedures in Departmental Regulation 1710–2.

PART 404—ADMINISTRATIVE MATTERS

8. Section 404.870–2 is amended by revising paragraph (a)(8) to read as follows:

404.870–2 Contract numbering system.

* * * * *

(a) * * *

(8) Code 57—leasehold interest in real property contract

* * * * *

PART 405—PUBLICIZING CONTRACT ACTIONS

9. Section 405.404–1(a) is revised to read as follows:

405.404–1 Release procedures.

(a) HCA's shall establish procedures to control the release of long-range acquisition estimates as authorized under FAR 5.404–1.

* * * * *

PART 407—ACQUISITION PLANNING

407.170 [Amended]

10. Section 407.170 is amended by changing the word "Regulation" to read "Directives."

11. Section 407.302 is revised to read as follows:

407.302 General.

The requirements of FAR Subpart 7.3 and OMB Circular A–76 are implemented in Departmental Directives (2100 series).

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

12. Section 408.802(c) is revised to read as follows:

408.802 Policy

* * * * *

(c) Prior to contracting for any of the items defined in FAR 8.801, the contracting officer shall verify that the requisite approval has been received by the publication liaison officer or requisitioner.

PART 410—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

13. Section 410.004 is amended by revising paragraph (a) and the introduction text of paragraph (b); by adding a sentence to paragraph (b)(5); and by adding paragraph (c) to read as follows:

416.504 Selecting specifications or descriptions for use.

(a) In accordance with FAR 10.004(b)(2), purchase descriptions shall not specify a product, or specific feature of a product, peculiar to a manufacturer unless the office initiating the purchase request furnishes written documentation and the contracting officer concurs that the product, or specific product feature, is essential to the Government's requirements and other similar products will not meet their requirements.

(b) A "brand name or equal" purchase description shall be used only under the conditions listed in FAR 10.004(b)(3) and in accordance with the following policies and procedures.

* * * * *

(5) * * * This provision may be modified for use in negotiated contracts.

(c) The policies and procedures in this section and the provision at 452.210–70 are not applicable to contracts for construction services, since the use of trade name descriptions are covered by the clause at FAR 52.236–5, Material and Workmanship.

PART 414—FORMAL ADVERTISING

14. Section 414.407–8(c)(1) is amended by revising the second sentence as follows:

414.407–8 Protests against award.

* * * * *

(c) * * *

(1) * * * Within 25 working days after notification by the Office of Operations that a protest has been filed with the GAO, the contracting officer shall prepare a report responsive to the protest and forward to the GAO in accordance with agency procedures.

* * *

* * * * *

Subpart 414.2—[Removed]

15. Subpart 414.2 consisting of sections 414.205 and 414.205–1, is removed in its entirety.

PART 415—CONTRACTING BY NEGOTIATION

16. Section 415.307(c) is revised to read as follows:

415.307 Signatory authority.

* * * * *

(c) For the purpose of signing determinations and findings for contracts or modifications negotiated for not more than $25,000 under authority of 41 U.S.C. 252(c)(11), the "appropriate official" shall be the head of a contracting office or at least one level above the contracting officer.

415.406 [Removed]

17. Section 415.406 is removed.

PART 416—TYPES OF CONTRACTS

416.603–2 [Amended]

18. Section 416.603–2 is amended by adding the words "or a designee" between the acronym "HCA" and the word "is."

19. Section 416.702 is revised to read as follows:

416.702 Basic agreements.

Promptly after execution by the Government, the HCA shall furnish to the Director, Office of Operations, a copy of each basic agreement negotiated with a contractor in accordance with FAR 16.702.

PART 417—SPECIAL CONTRACTING METHODS

Subpart 417.2—[Removed]

20. Subpart 417.2 consisting of sections 417.703 and 417.206, is removed in its entirety.

21. Section 417.502 is revised to read as follows:

417.502 General.

The HCA shall establish procedures for making interagency acquisitions under the Economy Act. The determination required by FAR 17.502 shall be made at a level above the contracting officer.

PART 419—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

419.201–71 [Amended]

22. Section 419.201–71(a) and (d) are amended by changing "$25,000" to read "$10,000."

23. Section 419.201–72 is amended as follows:

a. Paragraphs (a)(2), (3), (5) and (d) are amended by changing "$25,000" to read "$10,000."

b. Paragraph (e) is added to read as follows:

419.201–72 Goals.

* * * * *

(e) Fiscal year goals are expected to reflect measurable improvement over an agency's performance in the previous fiscal year. Justification for establishing a goal lower than the achievement attained should be documented in accordance with paragraph (b) of this section.

24. Subpart 419.4 is added to read as follows:

Subpart 419.4—Cooperation With the Small Business Administration

419.402 Small Business Administration procurement center representatives.

(a) SBA has assigned a full-time Procurement Center Representative (PCR) to USDA procuring agencies located in the metropolitan Washington, D.C. area. A part-time PCR also has been assigned to the ASCS Kansas City Field Office (KFO), Kansas City, MO. PCR responsibilities are described in FAR 19.402.

(b) Acquisition offices in the metropolitan Washington, D.C. area and the KFO shall notify and make available for review by the PCR all proposed acquisitions in excess of $10,000 that have not been unilaterally set aside for small business (see FAR 19.501(c)). This action shall be taken prior to announcement of the acquisition in the Commerce Business Daily or before public solicitation of offers.

PART 432—CONTRACT FINANCING

25. Subpart 432.1 is added to read as follows:

Subpart 432.1—General

432.102 Description of contract financing methods.
432.111 Contract clauses.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c)

Subpart 432.1—General

432.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under USDA contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. Such payments are authorized also for service contracts, if the contracting officer determines that progress payments based on costs are not practicable and adequate safeguards can be provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR 32.5, as supplemented by Subpart 432.5, except that progress payments based on a percentage or stage of completion may be authorized on a case-by-case basis by the HCA or designee when a determination is made that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

432.111 Contract clauses.

Payments due dates shall be established in accordance with the provisions set forth in Subpart 432.70, *Contract Payments.*

26. Subpart 432.70 consisting of sections 432.7000 through 432.7004, is added to read as follows:

Subpart 432.70—Contract Payments

Sec.
432.7000 Scope of subpart.
432.7001 Definitions.
432.7002 General.
432.7003 Exemptions.
432.7004 Contract clauses.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c)

Subpart 432.70—Contract Payments

432.7000 Scope of subpart.

This subpart prescribes policies and procedures for the inclusion of payment terms in USDA contracts and purchase orders; the requirements of the Prompt Payment Act (Pub. L. 97–177; 31 U.S.C. 3901 et seq.), Office of Management and Budget (OMB) Circular No. A–125, Prompt Payment; and invoice requirements and matters concerning payments to contractors.

432.7001 Definitions.

"Business concern" means any person or organization engaged in a profession, trade, or business; and nonprofit entities (including State and local governments, but excluding Federal entities) operating as contractors.

"Contract" means any enforceable agreement, including rental and lease agreements and purchase orders, between an agency and a business concern for the acquisition of property or services.

"Designated payment office" means the place named in the contract for the forwarding of invoices for payment, or in certain instances for approval.

"Due date" means the date by which, if payment is made, a specified discount can be taken.

"Discount date" means the date by which, if payment is made, a specified discount can be taken.

"Payment date" means the date on which a check for payment is dated or an electronic funds transfer is made.

"Proper invoice" means a bill or written request for payment prepared and submitted by a contractor in accordance with contract terms and conditions.

"Receipt of invoice" means the date a proper invoice is actually received in the designated payment office, or the date on which USDA accepts the property or service, whichever is later.

432.7002 General.

(a) It is the policy of USDA to include payment terms in its contracts and to make payment due thereunder on the due dates determined in accordance with such terms.

(b) In accordance with guidelines set forth in the Treasury Fiscal Requirements Manual (1 TFRM 6–8040.20), it is also the policy of the Government to defer payment until as close as administratively possible to the due date for payment or, if appropriate, the discount date. However, discounts for early payments shall not be taken, unless such discounts are determined to be economical under the provisions of 1 TFRM 6–8040.30.

(c) When not otherwise established contractually, it is the USDA policy that the payment due date for invoices, bills, statements, or any other documents including progress and final payments (hereinafter referred to as "invoices") shall be the thirtieth (30th) calendar day after date of invoice receipt as defined in this subpart, unless a different date is required by law or regulations. If the 30th day falls on a holiday or weekend, the next business day will be used.

(d) Notice of an apparent error, defect, or impropriety in an invoice shall be given to a business concern within 15 days of invoice receipt (3 days for meat or meat food products and 5 days for perishable agricultural commodities). When provided orally, the notice shall be suitably documented.

(e) The contracting officer and other responsible officials shall ensure that receipt and acceptance are executed as promptly as possible.

(f) Checks shall be mailed or transmitted on or about the same day for which the check is dated.

(g) When USDA accepts property or services from a business concern, but does not make payment for each such complete delivered item of property or service by the required payment date, an interest penalty shall be paid to such business concern unless such payment is made within 15 days after the due date (3 days for meat or meat products and 5 days for perishable agricultural commodities) or is exempted pursuant to 432.7003 below.

(h) If a business concern offers USDA a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, payment will be made in an amount equal to the discounted price only if payment is made within such specified period of time. Violation of this provision shall result in payment of an interest penalty on any amount which remains unpaid and on which the Department fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(i) To ensure prompt payment of amounts due, all USDA contracts shall incorporate appropriate payment provisions enabling the Government, at its option, to determine at the time of payment the method of payment to be used (e.g., check, electronic funds transfer).

432.7003 Exemptions.

The interest penalty provisions of this subpart are not applicable to the following types of contract payments:

(a) Advance payments, progress payments or other payments made for financing purposes before receipt of complete delivered items of property or service;

(b) Payments under cost-reimbursement contracts or similar payments under other types of contracts providing for cost-reimbursements; e.g., a Time-and-Materials or Labor-Hour Contract, a Personal Service Contract;

(c) Payments for utilities (gas, water, electricity, etc.) where the contract includes provisions for late payment charges established by tariffs or State regulatory commissions; or

(d) Payments under informal contracts for the purchase of utilities under a tariff when such tariff provides for late payment charges.

432.7004 Contract clauses.

(a) The contracting officer shall insert one of the clauses at 452.232–70 Interest on Overdue Payments, in solicitations and contracts. The contracting officer shall select the Alternate that is applicable to the type of supplies or services being procured.

(b) The contracting officer shall insert one of the clauses at 452.232–71, Payment Due Date, in solicitations and contracts. The contracting officer shall select the Alternate that is applicable to the type of supplies or services being procured.

(c) The contracting officer shall insert the clause at 452.232–72, Invoice Requirements, in solicitations and contracts for supplies or services which require the submission of invoices.

(d) The contracting officer shall insert the clause at 452.232–73, Method of Payment, in all solicitations and contracts for supplies and services, including construction, and in leases of real property.

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

436.602-3 [Amended]

27. Section 436.602-3(a) is amended by correcting the section citation "436.601-1" to read "436.602-1."

436.603 [Amended]

28. Section 436.603(b) is amended by changing the word "approval" in the first sentence to read "comment."

29. Part 437 is revised to read as follows:

PART 437—SERVICE CONTRACTING

Subpart 437.1—Service Contracts—General

437.104 Personal services contracts.

Subpart 437.2—Consulting Services

437.205 Management controls.

Authority: 5 U.S.C. 301 and 5 U.S.C. 498(c).

Subpart 437.1—Services Contracts—General

437.104 Personal services contracts.

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis (without regard to civil service compensation and classification standards in 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, *Provided:*

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

(2) The expenditure does not exceed any limitations prescribed in the appropriation.

(b) 7 U.S.C. 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, *Provided,* it is for a temporary basis and for a term not to exceed six months in any fiscal year.

Subpart 437.2—Consulting Services

437.205 Management controls.

Contracts for consulting services are subject to the management controls and procedures in Departmental Regulations (5000 series).

PART 446—QUALITY ASSURANCE

30. Section 446.704 is revised to read as follows:

446.704 Authority for use of warranties.

(a) The requisitioning unit is responsible for preparing a written recommendation to identify those acquisitions deemed appropriate for application of warranty provisions. The recommendation shall address the criteria set forth at FAR 46.703 to document the basis on which a warranty is considered appropriate. The recommendation shall also identify the specific parts, subassemblies, assemblies, systems, or contract line items to which a warranty should apply.

(b) Before soliciting the requirement, the contracting officer shall make a written determination, subject to approval at a level above the contracting officer, whether to include a warranty contract clause.

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

31. Section 452.228-70 is revised to read as follows:

452.228-70 Notice of Required Bid Security.

As prescribed in 428.102-3(a), insert the following provision in solicitations:

Notice of Required Bid Security (Apr. 1984)

Each bidder must submit a bid guarantee in the amount of ——* percent of the total bid price, but in no event shall the penal sum exceed $3 million. If a bid bond is submitted, it should be on Standard Form 24. Money orders, cashiers checks, or certified checks, if used, shall be drawn payable to: *(Insert name of USDA contracting activity).*

(End of Clause)

*The Contracting Officer shall insert an appropriate number but not less than 20 percent.

32. Section 452.232-70 is revised to read as follows:

452.232-70 Interest on overdue payments.

As prescribed in 432.7004(a), insert the following clause in all nonexempt contracts and purchase orders, including those for construction and leases of real property.

Interest on Overdue Payments (Apr. 1984)

(a) The Prompt Payment Act, Public Law 97-177 (96 Stat. 85, 31 U.S.C. 1801) is applicable to payments under this contract and requires the payment to contractors of interest on overdue payments and improperly taken discounts.

(b) Determinations of interest due will be made in accordance with the provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

Alternate I (Mar. 1985)

If an architect-engineer or other professional or technical service contract is involved add the following paragraphs (c) and (d) to the basic clause:

(c) The A-E (Contractor) shall not be entitled to interest penalties on progress payments (such as payments for concept and tentative drawings) and other payments made for financing purposes before receipt of complete delivered items of property or service. The Government shall be liable for interest penalties only on the amount of payment which is past due that represents payment for complete delivered items of property or service which have been accepted by the Government.

(d) The term "progress payments," as used herein, signifies payments made as work progresses under the contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion, as provided under the payment provisions of this contract. As used herein this term does not include payments for partial deliveries accepted by the Government under this contract, or partial payments on contract termination claims.

(Alternate II (Mar. 1985)

If a construction contract which provides for progress payments is involved, add the following paragraph (c) to the basic clause:

(c) The Contractor shall not be entitled to interest penalties on progress payments and other payments made for financing purposes before receipt of complete delivered items of property or service, or on amounts withheld temporarily in accordance with the contract.

(End of clause)

33. Section 452.232-71 is amended by revising (a) introductory text and paragraph (d) of the clause to paragraph (g); by revising paragraphs (b) and (c); and by adding paragraphs (d) through (g), to read as follows:

452.232-71 Payment due date.

(a) As prescribed in 432.7004(b), insert a clause substantially the same as the following provision in solicitations and supply contracts when invoices required to be furnished by Contractors may be received before the Government has had an opportunity to inspect and accept the supplies. It shall be stipulated in the payment terms that payment will be due on the later of: (1) receipt of invoice, or (2) the acceptance of the supplies. The following clause, for example, is suitable for use in supply contracts when delivery is on an f.o.b. destination basis:

Payment Due Date (Apr. 1984)

* * * * *

(d) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

(b) As prescribed in 432.7004(b), insert the following clause in solicitations and supply contracts when invoices are required to reflect that delivery (or performance) and acceptance has already occurred. This would be the

situation in the case of supplies purchased on f.o.b. origin basis, with inspection and acceptance at source, and proof of shipment (e.g., a Government bill of lading) required to be furnished with the invoice. This may also be the case with respect to various contracts for services.

Payment Due Date—Alternate I (Mar. 1985)

(a) Payments under this contract will be due on the ——* calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

**"30th"* calendar day, unless the contracting officer inserts a different number.

(c) As prescribed in 432.7004(b), insert the following clause in solicitations and supply contracts for meats and meat food products, or perishable agricultural commodities.

Payment Due Date—Alternate I (Mar. 1985)

(a) Payment under this contract will be due on the ——* calendar day after the date of delivery.

(b) A proper invoice covering the supplies delivered is required to be submitted with the shipment. Delivery will be deemed to be made on the later of the actual date of delivery, or the date a proper invoice is received in the office designated to receive the invoice.

(c) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting officer shall insert "7th" for the acquisition of meats and meat food products, and "10th" for the acquisition of perishable agricultural commodities.

(d) As prescribed in 432.7004(b), insert the following clause in solicitations and nonpersonal service contracts when invoices required to be furnished by contractors may be received before the date of completion of performance of the services it shall be stipulated in the payment terms that payment will be due on the later of receipt of the invoice, or the date of completion of performance of the services.

Payment Due Date—Alternative III (MAR 1985)

(a) Payment under this contract will be due on the——* calendar day after the later of:

(1) The date of actual receipt of a proper invoice in the office designated to receive the invoice, or

(2) The date of completion of performance of the services.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communication System shall be considered to be the date payment is made.

(End of Clause)

**"30th"* calendar day, unless the contracting officer inserts a different number.

(e) As prescribed in 432.7004(b), insert the following clause in architect-engineer (including supplemental architect-engineer contracts) and other professional or technical service contracts.

Payment Due Date—Alternative IV (MAR 1985)

(a) The required payment date will be——* calendar days after (1) the date of actual receipt of a proper invoice by the office designated to receive the invoice, or (2) the date the contract deliverable is approved, whichever is later.

(b) The date of the check issued in payment or the date of the payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

**"30th"* calendar day, unless the contracting officer inserts a different number.

(f) As prescribed in 432.7004(b), insert the following clause in solicitations and construction contracts when the contract amount is expected to exceed the small purchase limitation. Construction contracts which do not involve progress or other financing payments shall utilize the clause in paragraph (d) above.

Payment Due Date—Alternative V (MAR 1985)

(a) Payment due dates under this contract will be as follows:

(1) For progress payments, ——* calendar days after the date of actual receipt of a proper written progress payment request/invoice in the office designated to receive invoices. If the Government agrees with the amount of the Contractor's payment request, payment will be based on that amount. If the Government does not agree with the amount of the Contractor's request, the Contracting Officer will attempt to reach agreement with the Contractor on an alternative amount. If timely agreement is not possible, the Contracting Officer will make payment based upon the Government estimate. The term "progress payment," as used herein, means payments made as work progresses under the contract based upon costs incurred, percentage of completion accomplished, or a particular stage of completion achieved. As used herein this term does not include payments for partial deliveries accepted by the Government under this contract, or partial payments on contract termination claims.

(2) For partial payments for complete delivered items of property or service, ——** calendar days after the later of: (i) the date of actual receipt of a proper payment request/invoice in the office designated to receive invoices, or (ii) the date the property or services are accepted by the Government. The term "partial payments," as used herein, means payments made under the contract for such completed property or services delivered to and accepted by the Government, where such property or services are only a part of the total contract requirements.

(3) For final payment, ——** calendar days after the later of: (i) the date of actual receipt of a proper payment request/invoice in the office designated to receive invoices, (ii) the date of actual receipt by the contracting officer of a release of all claims against the Government, relating to this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the release, or (iii) the date all property or work is accepted by the Government.

(b) For the purpose of determining the due dates for partial payments and final payment and for no other purpose, acceptance will be deemed to occur on the ——*** calendar day after the date of actual receipt of property or completion of work.

(c) If the property or services are rejected for failure to conform to the technical requirements of the contract, the provisions of paragraph (b) of this clause will be based upon the date of the Contractor's correction of the defect(s).

(d) To be considered "proper," a payment request/invoice must satisfy the requirements of the "Invoice Requirements" clause and the "Payments under Fixed Price Construction Contracts" clause of this contract.

(e) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

*The contracting office should insert in appropriate number of days. The number should represent the average time required to inspect the work, verify the payment request, and process the payment. In establishing the number of days the contracting officer should consider whether there will be Government inspectors assigned to the project site. The number of days shall not exceed 30 unless a longer period is justified. Such justification shall be included in the contract file.

**The contracting officer should insert in appropriate number (normally 30 days, unless some other number of days is necessary and is justified in the contract file).

***The contracting officer should insert the number of days which constitutes the number of days necessary for inspection, acceptance, and other necessary actions. The number should range from 15 to 30 days depending upon the size, complexity, and location of the project.

(g) As prescribed in 432.7004(b) insert the following clause in all solicitations and contracts for leases of real property.

Payment Due Date—Alternative VI (Mar. 1985)

(a) Payment under this contract will be due on the 5th workday of the month following that in which payment accrued.

(b) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(End of Clause)

34. Section 452.232–73 is added to read as follows:

452.232–73 Method of payment.

As prescribed in 432.7004(d), insert the following clause in all solicitations and contracts for supplies and services, including construction, and in leases of real property:

Method of Payment (Mar. 1985)

(a) Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) The Contractor shall forward the following information in writing to (*Insert addressee identification*) not later than 7 days after receipt of notice of award.

(1) Full name (where practicable), title, phone number, and complete mailing address of responsible official(s) (i) to whom check payments are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(2) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(C) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to the Contracting Officer in writing at least 30 days before the effective date of the change. It is the Contractor's responsibility to furnish these changes 30 days before submitting invoices to avoid invoices being returned as improper.

(D) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number.

(End of Clause)

[FR Doc. 85–8536 Filed 4–9–85; 8:45 am]

BILLING CODE 3410–98–M

federal register

Wednesday
April 10, 1985

Part III

Department of Education

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of final annual funding priorities.

SUMMARY: The Secretary announces annual funding priorities for the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program. To ensure widespread and effective use of program funds, the Secretary announces seven priorities to direct funds to the areas of greatest need for fiscal year 1985. A separate competition will be established for each priority.

EFFECTIVE DATE: This notice of priorities will take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these final annual funding priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson, Special Needs Section, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Room 3511—M/S 2313). Washington, D.C. 20202. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Auxiliary Activities program, authorized by section 624 of the Education of the Handicapped Act, supports research, development or demonstration, training, and dissemination activities which meet the unique educational needs of handicapped children and youth, and are consistent with the purposes of Part C of the Act (20 U.S.C. 1424). The Education of the Handicapped Act Amendments of 1983, Pub. L. 98–199, included amendments to the provisions of section 624. In accordance with this authority, the Secretary will invite projects under the following priorities for fiscal year 1985. Projects will be funded for up to 36 months, except where otherwise indicated, subject to an annual review of progress, the availability of Federal funds, and other factors (*see* 34 CFR 75.251–75.253).

Summary of Comments and Responses

A "Notice of Proposed Annual Funding Priorities" was published in the Federal Register on January 4, 1985 (50 FR 700) for the Auxiliary Activities—Innovative Programs for Severely Handicapped Children program. Three comments were received. Two commenters were supportive of the proposed priorities and did not suggest any changes.

Comment. The only commenter recommending a change proposed the addition of a priority to serve children and youth at risk of being categorized as deaf-blind.

Response. No change has been made. This priority was included in both the fiscal year 1983 and 1984 competitions, to which very limited response was received. Consequently, the Secretary determined to increased the amount of monies available under other priorities, including Priority 84.086H—"Non-directed Demonstration Projects for Deaf-Blind Children and Youth," which allows for a greater diversity of project efforts. Should an applicant desire to propose a project dealing with the at-risk issue for deaf-blind children, however, such an application could be submitted under the "Non-directed Demonstration Projects for Deaf-Blind Children and Youth" priority

Priorities

(1) *Non-directed Demonstration Projects for Severely Handicapped Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant educational needs, including vocational needs, of severely handicapped (other than deaf-blind) children and youth. The content of the demonstration projects is limited only by the overall mission of the program—to demonstrate innovative and effective approaches to the education of severely handicapped children. Applicants proposing to conduct the projects must fully describe and justify the selection of the focus and particular approach to be demonstrated. Approximately $7,000 is expected to be available for issuing up to six awards under this competition.

(2) *Approaches to Total Life Planning for Deaf-Blind Children and Youth.* This priority supports projects which implement innovative procedures for the development of total life planning for deaf-blind children and youth. The planning must include: (1) Assessment of a broad range of skills and capabilities including, but not limited to, cognitive, linguistic, affective, and psychomotor functioning of the project participants; (2) identification of services which are essential to meet the needs of the participants and which will maximize their potential as they approach adulthood; (3) development of strategies for individualized life planning for each project participant, with provision for modifying the planning on at least an annual basis; and (4) development of strategies for applying individualized planning to deaf-blind children and youth not served by the project. These projects: (1) May begin activities from the time children are identified as handicapped and include planning for preschool education through vocational education and rehabilitation services as appropriate, emphasizing the transition of such children from educational to home and community environments; and (2) encourage the active involvement of parents in promoting the implementation of total life planning for these children. Approximately $600,000 is expected to be available for issuing up to five awards under this competition.

(3) *Skills Training, Placement, and Supported Employment for Deaf-Blind Youth.* This priority supports projects which design, implement, and disseminate information about innovative practices in the prevocational and vocational skills training, work site placement, and supported employment of deaf-blind youth. The practices must extend beyond, expand upon, complement, or supplement existing successful practices. These projects may also include feasible applications of techniques still in the development stage in research and other experimental programs. Four characteristics distinguish these programs from traditional vocational education programming for deaf-blind children and youth. These programs are designed to—(1) Provide employment opportunities for youth lacking the potential for unassisted competitive employment or those not eligible for vocational rehabilitation benefits; (2) provide, in combination with other Federal, State and local funding services, ongoing training supervision and support services without the expectation of unassisted competitive work; (3) provide an employment focus directed toward the achievement by deaf-blind youth of the same goals (security, mobility, quality of life, and income level) sought by nonhandicapped workers; and (4) incorporate a variety of support strategies and techniques to assist a service agency in providing training to deaf-blind individuals at work sites. Approximately $600,000 is expected to be available for issuing up to five awards under this competition.

(4) *Non-directed Demonstration Projects for Deaf-Blind Children and Youth.* This priority supports projects designed to demonstrate specific, viable procedures for meeting significant

educational needs of deaf-blind children and youth. The content of the demonstration projects is to focus upon the overall mission of the program—to demonstrate innovative and effective approaches to the education of deaf-blind children and youth in the least restrictive environment with the goal of providing educational programs for these children and youth in regular school settings. Projects, in particular, must be designed to demonstrate functional and viable procedures in such areas as the design, implementation, and evaluation of age appropriate curricula and the provision of related services for the education of deaf-blind children and youth.

For the purposes of this priority, the term "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. *See* 34 CFR 300.13.

Each applicant proposing to conduct a project must fully describe and justify the selection of the focus and particular approach to be demonstrated. Approximately $800,000 is expected to be available for issuing up to five awards under this competition.

(5) *State-wide Systems Change.* This priority supports projects which design, implement, evaluate, and disseminate information about a model for the State-wide delivery of compehensive special education and related services to severely handicapped children and youth (including deaf-blind children and youth), ages birth through 21, within a particular State. Such a design must utilize and enhance existing service delivery systems for these children. Particular attention should be placed on ensuring that deaf-blind children are properly integrated into these systems since services to this group are often provided through a combination of regional, Federal, State and local service providers. Federal programs with which the projects should be coordinated include Early Childhood State Plan projects (34 CFR Part 309), the Services for Deaf-Blind Children program (34 CFR Part 307), and vocational education activities. Each project must develop a system which will—(1) Develop a comprehensive description of services for severely handicapped children within a State; (2) complete an extensive analysis of the current service delivery system; (3) design an improved comprehensive State-wide model for the delivery of educational services to maximize the potential of severely handicapped children and youth; (4) implement the model of Statewide services on a pilot basis under systematic and carefully documented conditions; (5) design and implement an evaluation plan for each of the project components; (6) disseminate information about the model's findings and recommendations; (7) establish and utilize an advisory committee; and (8) maintain a performance measurement system to monitor all project activities. In the past few years, contracts have been awarded to establish similar Statewide service delivery systems. States receiving these contracts are not eligible for funding under this priority. These states are Georgia, Hawaii, Illinois, Kansas, Minnesota, Montana, New York, Oregon, Washington, Utah, and Wyoming.

Projects under this priority will be funded through cooperative agreements with the Secretary. Approximately $1,672,500 is expected to be available for issuing up to 13 grants or cooperative agreements under this competition.

(6) *Communication Skills Development for School-age Deaf-Blind Children and Youth.* This priority supports projects which identify critical educational problems in developing communication skills in school-age deaf-blind children, ages 6 through 21, design and demonstrate innovative programs to effectively resolve such problems, and disseminate information about project findings and recommendations. Projects should address one of the following issues—(1) Appropriate communication modes; (2) standardized procedures of communication (language) sampling within a range of social contexts; (3) the sequence of communicative behaviors that follow the presymbolic stage and are predictive of later linguistic or communicative functioning; (4) procedures for assessment of communicative exchanges between deaf-blind persons and others (parents, siblings, peers, teachers, etc.); (5) effective intervention strategies that facilitate effective communicative exchanges between deaf-blind persons and others; or (6) procedures for selecting and evaluating technological aids with attention to the vocabulary and linguistic features appropriate to each device and its individual user. Approximately $1,050,000 is expected to be available for issuing up to 14 grants with each grant averaging $75,000 annually. These grants will be awarded for 24 months or less.

(7) *Social and Community Skills Development for Severely Handicapped Children and Youth.* This priority supports projects which design, implement, and evaluate innovative procedures which increase the skills and opportunities of severely handicapped (including deaf-blind) children and youth to socially interact with peers and others in neighborhood and other community situations. These projects should seek to promote the development of new social skills, and improve the existing interactive skills, and additionally seek to ensure that the right of such children and youth to participate in community activities outside of structured educational or intervention settings is not dependent upon a particular level of performance. Projects should focus on one or more of the following issues—(1) Enhancing social skills; (2) reducing or eliminating social barriers; and (3) increasing opportunities for social participation. Projects which emphasize skill enhancement should provide opportunities for generalization to other settings. Activities preparing the community and/or neighborhood to support and adjust to the inclusion of severely handicapped children and youth should include parents, professionals, and non-handicapped peers as well as the general public. Projects which focus on increasing environmental opportunities should emphasize integrated settings and provide opportunities for expanding available effective experiences. Project activities should focus on two or more small groups of two or more severely handicapped children and be co-directed by a parent and local educational agency professional. Approximately $1,340,000 is available for issuing up to 16 grants with each grant averaging $83,750 annually. These grants will be for 24 months or less.

Information collection requirements have been approved by the Office of Management and Budget under control number 1820–0028.

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.086; Innovative Programs for Severely Handicapped Children)

Dated: April 4, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–8638 Filed 4–9–85; 8:45 am]

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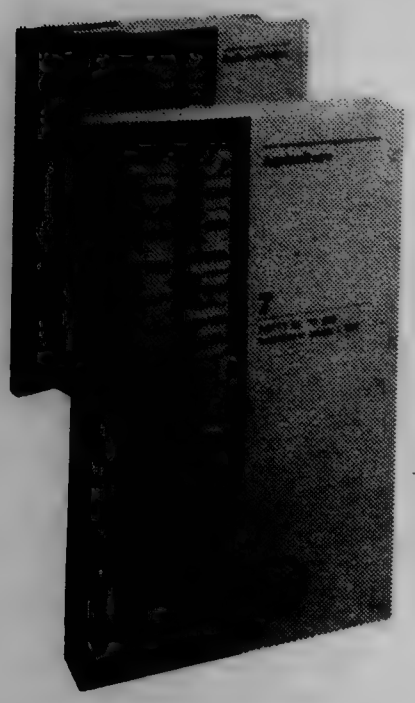
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Animal and Plant Health Inspection Service

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Coast Guard

Marketing Agreements
Agricultural Marketing Service

Natural Gas
Federal Energy Regulatory Commission

Navigation (Water)
Coast Guard

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 85–10 of April 2, 1985

Military Assistance for Haiti

Memorandum for the Secretary of State

By virtue of the authority vested in me by Section 614(a)(1) of the Foreign Assistance Act of 1961, as amended (the Act), I hereby:

(1) determine that the furnishing of up to $300,000 for Haiti in assistance under Chapter 2 of Part II of the Act, without regard to the provisions of Section 540(e) of the Foreign Assistance and Related Programs Appropriations Action, 1985,[1] is important to the security interests of the United States; and

(2) authorize the furnishing of such assistance for necessary transportation, maintenance, communications, and related articles and services to enable the continuation of migrant and narcotics interdiction operations.

You are requested to report this determination to the Congress immediately, and none of the assistance provided for herein shall be furnished until after such report has been made.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, April 2, 1985.

cc: The Secretary of Defense

[FR Doc. 85–8847
Filed 4–9–85; 3:17 pm]
Billing code 3195–01–M

[1] **Editorial note:** The act is entitled the "Foreign Assistance and Related Programs Appropriations Act, 1985."

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1984–85 Crop Year for Certain Varietal Types of Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule designates final free and reserve percentages for Natural (sun-dried) Seedless, Oleate and Related Seedless, and Zante Currant raisins from California's 1984 production. They are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome supply situation facing the raisin industry. Free raisins can be shipped immediately to any market, while reserve raisins must be held by handlers in a pool for the account of the Raisin Administrative Committee. The Committee works with the USDA in administering the marketing order program. Reserve raisins may be sold later by the Committee to handlers for free use, exported to authorized countries, carried over as a hedge against a short crop the following year, sold to government agencies, or disposed of in other outlets noncompetitive with those for free raisins.

EFFECTIVE DATES: August 1, 1984 through July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The relevant provisions of this part require that the percentages designated herein for the 1984–85 crop year apply to all Natural (sun-dried) Seedless, Oleate and Related Seedless, and Zante Currant raisins acquired by handlers from the beginning of that crop year; (2) handlers are marketing 1984–85 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantity computed by the Committee for these varietal types available to handlers; (3) this action relieves restrictions on handlers; and (4) handlers are aware of this action unanimously recommended by the Committee at an open meeting and need no additional time to comply with these percentages. In fact, many have been conducting their operations on the basis that no more than the full trade demand would be released for immediate sale to domestic and export markets.

This final rule designates final free and reserve percentages for the 1984–85 crop year for Natural (sun-dried) Seedless raisins of 61 percent and 39 percent, for Oleate and Related Seedless raisins of 78 percent and 22 percent, and for Zante Currant raisins of 64 percent and 36 percent, respectively. These percentages would apply to all standard raisins of these varietal types acquired by handlers during the 1984-85 crop year.

These final marketing percentage designations would be pursuant to §§ 989.54 and 989.55 of the marketing agreement and Order No. 989, both as amemded (7 CFR Part 989; 50 FR 1830), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Pursuant to § 989.54(a), on or before August 15 of each crop year, the Committee is required to hold a meeting to review shipment data, inventory data, and other matters relating to the supply of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee is required to compute a trade demand under a formula prescribed in that paragraph. In accordance with these provisions, the Committee computed and announced a trade demand of 182,425 tons for Natural (sun-dried) Seedless raisins, 6,068 tons for Oleate and Related Seedless raisins, and 1,889 tons for Zante Currant raisins.

As required under § 989.54(b), the Committee met on October 4, 1984, and computed and announced preliminary free and reserve percentages for each of these varietal types. The Committee determined that the field price for Natural (sun-dried) Seedless raisins was firmly established, but that the field prices for Oleate and Related Seedless, and Zante Currant raisins were not firmly established. Hence, in accordance with § 989.54(b), preliminary free and reserve percentages to release 85 percent of the computed trade demand for Natural (sun-dried) Seedless raisins, and 65 percent of the computed trade demand for Oleate and Related Seedless and Zante Currant raisins were computed and announced by the Committee. With respect to Natural (sun-dried) Seedless raisins, 85 percent of the computed trade demand equalled 155,061, which when divided by the initial estimate of production (291,857 tons) resulted in a preliminary free percentage of 53 percent. The difference between the preliminary free percentage and 100 percent is the preliminary reserve percentage or 47 percent. Sixty-five percent of the computed trade demand for Oleate and Related Seedless raisins was 3,957 tons which when divided by the initial crop estimate of 7,420 tons resulted in a preliminary free percentage of 53 percent. The reserve percentage was 47 percent. For Zante Currants, the portion of the trade demand required to be released totalled 1,228 tons, which when divided by the initial crop estimate of 2,722 tons resulted in a preliminary free percentage

of 45 percent. The reserve percentage was 55 percent.

Subsequent to the October 4 meeting, the Committee determined that the field prices for Oleate and Related Seedless and Zante Currant raisins had been firmly established and the Committee computed and announced an interim change in the preliminary free percentages for each varietal type to release 85 percent of the computed trade demand to handlers. The preliminary free percentage for Oleate and Related Seedless raisins was increased to 70 percent and for Zante Current raisins it was moved up to 59 percent. Corresponding decreases were made in the reserve percentages for each varietal type. Departmental approval was not necessary for any of these Committee actions.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. Section 989.54(d) also provides that the difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage.

On January 8, 1985, the Committee met and recommended final free and reserve percentage for the 1984–85 crop year and made its final production estimates for Natural (sun-dried) Seedless, Oleate and Related Seedless, and Zante Currant raisins.

The Committee estimated the 1984–85 season production of Natural (sun-dried) Seedless raisins at 297,873 tons (6,016 tons more than its preliminary estimate of 291,857 tons). Dividing the computed trade demand of 182,425 tons by the final estimate of production results in a final free percentage of 61.24 percent. The Committee rounded that percentage to 61 percent which results in a final reserve percentage of 39 percent.

For Oleate and Related Seedless raisins, the Committee estimated the 1984–85 production at 7,765 tons (345 tons more than its preliminary estimate of 7,420 tons). Dividing the computed trade demand of 6,088 tons by the final estimate of production for this varietal type results in a free percentage of 78.40 percent. The Committee rounded that percentage to 78 percent which results in a final reserve percentage of 22 percent.

For Zante Currant raisins, the Committee's final estimate of production totalled 2,960 tons (238 tons more than its preliminary estimate of 2,722 tons). Dividing the computed trade demand of 1,889 tons by the final production estimate results in a free percentage of 63.82 percent. The Committee rounded that percentage to 64 percent which results in a final reserve percentage of 36 percent.

The Committee met again on January 16, and pursuant to § 989.54(c), computed and announced interim free percentages of 60 percent for Natural (sun-dried) Seedless, 76 percent for Oleate and Related Seedless, and 63 percent for Zante Currants. These percentages released almost all of the computed trade demand for each of these varietal types. This decision reflects the strong marketing conditions which currently exist in domestic and export markets, and the Committee's belief that it's final production estimates are accurate.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the designation, under §§ 989.54 and 989.55, of final free and reserve percentages for the 1984–85 crop year for Natural (sun-dried) Seedless, Oleate and Related Seedless, and Zante Currant raisins, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 989

Marketing agreement and orders, Grapes, Raisins and California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Therefore, § 989.237 is added to 7 CFR Part 989 reading as follows: (The following section will not be published in the Code of Federal Regulations).

§ 989.237 Final free and reserve percentages for the 1984–85 crop year.

The percentages of standard Natural (sun-dried) Seedless, Oleate and Related Seedless, and Zante Currant raisins acquired by handlers during the crop year beginning August 1, 1984, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percentage	Reserve percentage
Natural (sun-dried) seedless	61	39
Oleate and related seedless	78	22
Zante currant	64	36

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 8, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–8709 Filed 4–10–85; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 116

Coastal Barrier Resources System; Financial Assistance; Policies of General Application

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Based on the Coastal Barrier Resources Act of 1982, which prohibits direct or indirect Federal financial assistance under authority of any Federal law within the Coastal Barrier Resources System, including, but not limited to the construction or purchase of any structure, appurtenance, facility or related infrastructure as well as the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, or erosion prevention of, any system unit, SBA proposed a subpart to advise the public of the Agency's responsibilities under section 5 of the above cited Act.

EFFECTIVE DATE: April 11, 1985.

ADDRESS: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Edward J. Myerson, Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653–6470.

SUPPLEMENTARY INFORMATION: On August 24, 1984, 49 FR 33692, a notice of proposed rulemaking was published in the **Federal Register** to advise the public of SBA's responsibilities under section 5 of the Coastal Barrier Resources Act of 1982. No comments were received.

Since this subpart merely advises the public of the applicability of Pub. L. 97–348, 16 U.S.C. 3501 *et seq.* to SBA's programs, it is subject neither to the requirements of the Regulatory Flexibility Act nor of Executive Order 12291.

There are no reporting or recordkeeping requirements subject to OMB approval in this Rule.

List of Subjects in 13 CFR Part 116

Flood insurance, Flood plains, Lead poisoning, Small businesses, Veterans, Coastal barrier system.

PART 116—[AMENDED]

Accordingly, pursuant to 16 U.S.C. 3501 *et seq.* and 15 U.S.C. 634(b)(6), a new Subpart E is added to Part 116, as follows:

Subpart E—Coastal Barrier Resources Act

Sec.
116.40 Purpose and scope
116.41 Definition of Coastal Barrier Resources System.

Authority: 16 U.S.C. 3501 *et seq.* and 15 U.S.C. 634(b)(6).

Subpart E—Coastal Barrier Resources Act

§ 116.40 Purpose and scope.

This subpart describes the application of the Coastal Barrier Resources Act of 1982 (Act), the SBA financial assistance programs. The Act prohibits direct or indirect Federal financial assistance under authority of any Federal law within the Coastal Barrier Resources System, including, but not limited to the construction or purchase of any structure, appurtenance, facility or related infrastructure as well as the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, or erosion prevention of, any system unit. The following programs are subject to the legislation: all financial assistance under Subsections 7 (a) and (b) of the Small Business Act, and Titles III, IV, and V of the Small Business Investment Act, as amended, including lease, surety bond and pollution control guarantees, small business investment companies, and development companies.

§ 116.41 Definition of Coastal Barrier Resources System.

Coastal Barrier Resources System. "Coastal Barrier Resources System" means those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on maps entitled "Coastal Barrier Resources System," enacted by Congress, and on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, Department of the Interior.

(Catalog of Federal Domestic Assistance Programs, Nos. 59.001 thru 3, 58.008, 59.010 thru 14, 59.016 thru 18, 59.020 thru 25, 59.027 thru 31)

Dated: March 27, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-8656 Filed 4-10-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility

AGENCY: Social Security Administration, HHS.

ACTION: Correction of final rule.

SUMMARY: In the final rule which appeared in the **Federal Register** on February 11, 1985 (50 FR 5571), § 416.210(b) of Regulations No. 16 was revised. In that section reference is made to section 43 of the Internal Revenue Code. Section 471 of Pub. L. 98-369 (The Deficit Reduction Act of 1984) redesignated section 43 as section 32. Section 416.210(b) is being corrected to conform to that legislation.

FOR FURTHER INFORMATION CONTACT: Dave Smith, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7460.

PART 416—[AMENDED]

SUPPLEMENTARY INFORMATION:

A revision of § 416.210(b) of Regulations No. 16 was published as a final rule on February 11, 1985 (50 FR 5571). Section 43 of the Internal Revenue Code, which was referred to in the revision, was redesignated as section 32 by section 471 of Pub. L. 98-369 (The Deficit Reduction Act of 1984). In order to conform the regulations to the legislation, § 416.210(b) should be corrected to read as follows:

§ 416.210 You do not apply for other benefits.

* * * * *

(b) *What "other benefits" includes.* "Other benefits" includes any payments for which you can apply that are available to you on an ongoing or one-time basis of a type that includes annuities, pensions, retirement benefits, or disability benefits. For example, "other benefits" includes veterans' compensation and pensions, worker's compensation payments, Social Security insurance benefits, unemployment insurance benefits and earned income tax credits (EITC's) payable under sections 32 and 3507 of the Internal Revenue Code. You will be required to apply to your employer for advance payment of EITC's. If a past period of employment is involved, or if your earned income is derived from self-employment, you will be required to apply with your personal income tax return.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: April 3, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-8743 Filed 4-10-85; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Commissioner of Food and Drugs; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting its final rule that added the delegation of authority from the Assistant Secretary for Health to the Commissioner of Food and Drugs under section 156 of Title 35 of the United States Code (35 U.S.C. 156) (49 FR 50642; December 31, 1984).

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION:

PART 510—[CORRECTED]

In FR Doc. 84-33794, appearing on page 50642 in the issue for Monday, December 31, 1984, in the third column of that page the following correction is made:

§ 5.10 [Corrected]

In § 5.10 *Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials*, paragraph (a)(27), the phrase "Title II of the Drug Price Competition and Patent Term Restoration Act of 1984 (35 U.S.C. 156)" is changed to read "section 156 of Title 35 of the United States Code (35 U.S.C. 156), as amended,".

Dated: April 3, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8653 Filed 4-10-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 71, 170, 171, 180, 201, 310, 312, 314, 330, 430, 431, 433, 510, 511, 514, 570, 571, 601, 812, 1003, and 1010

[Docket No. 82N-0293]

New Drug and Antibiotic Regulations

Correction

In FR Doc. 85-4071 beginning on page 7452 in the issue of Friday, February 22, 1985, make the following corrections:

1. On page 7459, in the third column, in the first line, "for" should read "from"; also, in the eighth line, "significant" should read "significantly".

2. On page 7464, in the third column, in the second complete paragraph, in the first line, "had" should read "has"; also, in the sixteenth line, "inveitably" should read "inevitably"; and in the third complete paragraph, in the eighth line, "complied" should read "compiled".

3. On page 7478, in the first column, in the first complete paragraph, in the eleventh line, "report an" should read "report about an"; also, in the second column, in paragraph 97, in the second line, "to" should read "on".

4. On page 7480, in the first column, in paragraph 102, in the seventeenth line, after "ways" insert a period, and before "reviewing", begin a new paragraph and insert the following: "a. The final rule codifies the general principle that during the course of".

5. On page 7486, in the first column, in paragraph 120, in the thirty-first line, "reviews" should read "reviewers".

6. On page 7490, in the second column, in the second complete paragraph, in the eighth line, "had" should read "has".

PART 314—[CORRECTED]

§ 314.50 [Corrected]

7. On page 7495, in the second column, in § 314.50(d)(2)(i), in the fourth line, insert "that" between "studies" and "otherwise".

8. On page 7496, in the second column, in § 314.50(d)(6)(i), in the fourth line, "analyses" should read "analysis"; also, in the sixth line "analysis" should read "analyses".

9. On page 7496, in the third column, in § 314.50(f)(1), in the tenth line, "FDA-1517" should read "FDA-1571".

§ 314.70 [Corrected]

10. On page 7499, in the first column, in § 314.70(b)(1)(v)(*a*), in the third line, "established" should read "establishment";

§ 314.72 [Corrected]

Also, in the third column, in § 314.72(a)(2)(ii), in the first line, "is" should read "in".

§ 314.80 [Corrected]

11. On page 7500, in the second column, in § 314.80(c), in the eighth line, "(HFN-70)," should read "(HFN-730),".

12. On page 7501, in the third column, in § 314.80(h), in the fourteenth line, "resaleable" should read "releaseable".

§ 314.81 [Corrected]

13. On page 7502, in the first column, in § 314.81(b)(2)(i), in the eighth line, "the" should read "this".

§ 314.103 [Corrected]

14. On page 7504, in the third column, in § 314.103(c)(3), in the thirteenth line, "is" should read "its".

§ 314.150 [Corrected]

15. On page 7507, in the third column, in § 314.150(a), in the fourteenth line, insert "and" after "act".

§ 314.200 [Corrected]

16. On page 7510, in the second column, in § 314.200(e)(2)(I)(B), in the fourth line, "rational" should read "rationale".

§ 314.300 [Corrected]

17. On page 7512, in the second column, in § 314.300(b)(6)(i), in the first line, "DFA" should read "FDA".

18. On page 7513, in the third column, in § 314.300(d)(1), in the first line, "no" should read "not".

PART 514—[CORRECTED]

§ 514.1 [Corrected]

19. On page 7517, in the second column, in § 514.1(b)(12)(iii), in the first line, "Will" should read "With".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Approval of Permanent Program Amendments From the State of Kansas Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of an amendment to the Kansas permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letter dated December 21, 1984, Kansas submitted a program amendment consisting of a revision to K.A.R. 47-15-13 which governs notices of violations (NOV) and contains procedures for extending abatement periods beyond 90 days under certain circumstances. OSM published a notice in the **Federal Register** on February 15, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 6364). The public comment period ended March 18, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director of OSM has determined that the amendment meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendment. The Federal regulations at 30 CFR Part 916 which codify decisions on the Kansas program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to bring their programs into conformity with the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: April 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas program was conditionally approved by the Secretary of the Interior on January 21, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Kansas program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 **Federal Register** (46 FR 5892).

II. Discussion of the Amendment

By letter dated December 21, 1984, Kansas submitted a program amendment consisting of revision to K.A.R. 47-15-13 which governs notices of violation (NOV) and contains procedures for extending abatement periods beyond 90 days under certain

circumstances. Proposed K.A.R. 47–15–13 is patterned after OSM's regulations on NOVs at 30 CFR 843.12. Specifically, Kansas has included regulatory language in K.A.R. 47–15–13 that allows the permittee to request an extension of the 90-day abatement time limit from the State under certain conditions.

OSM published a notice in the **Federal Register** on February 15, 1985 (50 FR 6364), announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendments. The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The public comment period closed March 18, 1985.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment submitted by Kansas on December 21, 1984, meets the requirements of SMCRA and 30 CFR Ch. VII, as discussed below.

The Kansas rule at K.A.R. 47–15–13 establishes procedures for granting an extension of the 90-day abatement period under certain circumstances.

K.A.R. 47–15–13 reflects the revised language of 30 CFR 843.12. Paragraph (c) was amended to allow extensions of the 90-day abatement period under specific conditions which are set forth in paragraph (f). These conditions include: The permittee applying for and diligently pursuing a permit renewal or other necessary approval that will not be issued within the 90 days; a valid judicial order precluding abatement within 90 days to which the permittee is pursuing all rights of appeal and to which there is no other effective legal remedy; a labor strike; taking actions that violate safety standards established by the Mine Safety and Health Act, and climatic conditions precluding abatement within 90 days. Extensions may be granted for climatic conditions only if abatement would cause more environmental harm than it would prevent. No extension granted under this provision may exceed 90 days.

The Federal rule at 30 CFR 843.12 requires all permittees to meet certain conditions before they are granted an extension of the 90-day abatement period. All the Federal conditions for granting an extension are contained in the Kansas rule. Therefore, the Director finds that the Kansas rule change is no less effective than the Federal regulation.

IV. Public Comment

The responses to public comments are set forth below.

1. The Fish and Wildlife Service (FWS) commented that the proposed amendment would be a disincentive to mining companies to correct violations in a timely manner. The FWS would prefer to see the Kansas rule unchanged. The Director finds that the rule change sets forth specific criteria for extending the abatement period beyond 90 days. The burden of proof for granting an extension rests with the permittee. The Director considered the FWS's comments but has found the Kansas rule to be no less effective than the Federal regulations which provide for an abatement period of more than 90 days under certain circumstances. Therefore, the Director is not requiring changes to the Kansas rule.

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the December 21, 1984, amendment to the Kansas program. The Director is amending Part 916 of 30 CFR Ch. VII to reflect approval of the above State program modification.

VI. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: April 8, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 916—KANSAS

30 CFR 916.15 is amended by adding a new paragraph (d) as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(d) The following amendment submittted to OSM on December 21, 1984, is approved April 11, 1985. Kansas regulation K.A.R. 47–15–13.

[FR Doc. 85–8730 Filed 4–10–85; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 62

[CGD 85–005]

Deletion of Loran Description; Change in Blink Procedure

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule deletes Subpart 62.40-Loran from Title 33, Code of Federal Regulations (CFR). The informational provisions of this subpart are obsolete and contain no regulatory directives. Of particular note is a recent modification in Signal Warning procedures which diverges from the procedures outlined in § 62.40–15. This change and all future modifications will be more effectively publicized via updates to Coast Guard publications which provide current Loran information to system users.

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: CWO G.D. Ziemer, Radionavigation Information Branch (G–NRN–3), Room 1413, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Telephone (202) 472–5857.

SUPPLEMENTARY INFORMATION: This rule merely deletes nonregulatory material from the CFR; therefore, notice and comment are unnecessary in accord

with 5 U.S.C. 553(b)(B). Since the information is available to the public through more appropriate and easily accessible publications, no adverse impact will result from this rule.

Discussion

Subpart 62.40 of Title 33 CFR discusses various aspects of the Loran radionavigation system. Much of this material relates specifically to Loran-A which is no longer in use. In addition, the Loran "Signal Warning" section in the existing regulations is now obsolete because the signal warning provisions (commonly known as "blink procedures") have recently been changed.

Loran transmitting stations use blink to alert users of signal irregularities which affect the accuracy of the Loran system. For those interested in the technical change, secondary stations no longer exhibit blink during master off-air periods whether scheduled or not. In addition, master stations no longer display ninth pulse blink to notify users of system abnormalities. Users will continue to be notified by way of secondary blink of other system abnormalities. Loran users should make note of this change in personal copies of the Loran-C User Handbook. This change is in response to inquiries from affected parties and responses to a Request for Comments published in the Federal Register on Monday, December 21, 1981. (46 FR 61980)

Subpart 62.40—Loran is being deleted because current and complete Loran information is more effectively disseminated through the Loran-C User Handbook, COMDTINST M16562.3 and the Radionavigation Bulletin. Copies of the handbook can be purchased for $4.75 each from the Superintendent of Documents, Order Section, U.S. Government Printing Office, Washington, DC 20402. The Radionavigation Bulletin is available free of charge from Commandant (G-NRN-3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Both of these publications are frequently updated and represent a more appropriate method of disseminating non-regulatory information to interested parties.

Drafting Information

The principal persons involved in drafting this document are CWO G.D. Ziemer, Project Manager, Office of Navigation and LT Dave Shippert, Project Counsel, Office of Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely removes non-regulatory material from the CFR. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 62

Navigation (water), United States aids to navigation system.

PART 62—[AMENDED]

§§ 62.40–1 through 62.40–20

For the reasons set out in the preamble, 33 CFR Part 62 is amended by deleting Subpart 62.40-Loran in its entirety (§§ 62.40–1 through 62.40–20 inclusive).

Authority: 33 U.S.C. 81; 49 CFR 1.45(2); 49 CFR 1.46(b).

Dated: March 6, 1985.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 85-8719 Filed 4-10-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD2 85-02]

Special Local Regulations; Memphis in May Canoe and Kayak Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 738.5 to 736.0, Lower Mississippi River. The "Memphis in May Canoe and Kayak Race", a flotilla of canoes and kayaks, will be held on May 11, 1985 at Memphis, Tennessee. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations will be effective from 9:00 a.m. on May 11, and terminate at 12:00 noon on May 11, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. D.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Lower Mississippi River between miles 738.5 and 736.0 during the "MEMPHIS IN MAY CANOE AND KAYAK RACE", May 11, 1985. This event will consist of a flotilla of canoes and kayaks which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. There was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, Project Officer, Boating Technical Branch, and Lt. R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0201 to read as follows:

§ 100.35–0201 Lower Mississippi River, miles 738.5 through 736.0.

(a) *Regulated Area:* The area between Mile 738.5 and 736.0 Lower Mississippi River is designated the regatta area, and may be closed to commercial navigation or mooring between the hours of 9:00 a.m. and 12:00 noon (local time), on May 11, 1985.

(b) *Special Local Regulations:* Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol, while they are operating in the performance of their assigned duties.

(1) The Patrol Commander may be reached on Channel 16 (156.8 MHz) when necessary, by the call sign "Coast Guard Patrol Commander".

(c) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0201 will be effective on May 11, 1985, between the hours of 9:00 a.m. and 12:00 noon local time.

Authority: 33 U.S.C. 1233; 49 U.S.C. 108; 33 CFR 100.35; 49 CFR 1.46(b).

Dated: April 4, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 85–8722 Filed 4–10–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD11 85–02]

Marine Event; San Diego Crew Classic

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: Special local regulations for the San Diego Crew Classic were issued by Commander, Eleventh Coast Guard District on 22 March 1985 and published in the **Federal Register** on April 1, 1985 (50 FR 12799). Due to a sewage spillage in the original regulated area, this event will take place in a new location in Mission Bay, California. All other information in the promulgated regulations shall remain the same.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: In consideration of the foregoing Part 100 of Title 33, Code of Federal Regulations, is corrected by revising § 100.35 11–85.02(a) to read as follows:

§ 100.35 11–85–02 San Diego Crew Classic, Mission Bay, CA

(a) *Regulated Area:* The following area may be closed intermittently to all vessel traffic. The portion of Mission Bay, California bounded by Enchanted Cove, Fiesta Island, Pacific Passage and DeAnza Point.

* * * * *

(33 U.S.C. 1233; 33 U.S.C. 1236; 49 CFR 1.46(b); 33 CFR 100.35)

Dated: April 5, 1985.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85–8716 Filed 4–10–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR PARTS 146 and 150

[CGD 82–069a]

Casualty Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule eliminates the costs of salvage, cleaning, gas freeing and drydocking from the marine casualty reporting requirements contained in Title 33, Code of Federal Regulations (CFR). Since the costs of salvage, cleaning, gas freeing and drydocking can vary widely depending on the nature of the casualty, they tend to distort the basis for using a monetary criteria to establish a reporting threshold. This Final Rule will have a negligible effect on the number of reports submitted by the marine industry by reducing the cost of marine casualties for reporting purposes.

EFFECTIVE DATE: This regulation becomes effective on May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Lt. W.F. Diaduk, Office of Merchant Marine Safety (G–MMI–1/14), Room 1405, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593; 426–1455, 7:00 to 3:30, Monday through Friday.

SUPPLEMENTARY INFORMATION: On October 19, 1983 (48 FR 48475), the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (CGD–82–069a) concerning eliminating the costs of salvage, cleaning, gas freeing and drydocking from the casualty reporting requirements contained in Title 33, Code of Federal Regulations. No comments were received.

Since the costs of salvage, cleaning, gas freeing and drydocking can vary widely depending on the nature of the casualty, they tend to distort the basis for using a monetary criteria to establish a reporting threshold. Based on this fact, the casualty reporting requirements for vessels contained in Title 46, Code of Federal Regulations, were amended by eliminating these costs. This rulemaking will amend the Outer Continental Shelf Activities and Deepwater Port regulations (33 CFR 146.30 and 150.711 respectively) in the same manner and provide for uniform reporting requirements throughout the marine industry. Statistics for 1981 indicate that only one per one thousand casualties (approximately 0.10% of the casualty population) involved instances where this amendment could have eliminated the need for reporting. Consequently, this proposal will have a negligible effect on the number of reports submitted.

Drafting Information

The principal persons involved in drafting this proposal are: Lt. W.F. Diaduk, Project Manager, Office of Merchant Marine Safety and Lt. S.R. Sylvester, Project Attorney, Office of the Chief Counsel.

Regulatory Evaluation

This revision is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This proposal will have a negligible effect on the number of reports submitted, as discussed in the Supplementary Information section.

Regulatory Flexibility Act Certification

Since the impact of the final rule is to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in these regulations (33 CFR

146.30(d) and 33 CFR 150.711(a)(1)) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2115.0003.

List of Subjects

33 CFR Part 146

Coast Guard, Continental shelf, Marine safety, and Reporting and recordkeeping requirements.

33 CFR Part 150

Coast Guard, Deepwater ports, Oil imports, Environmental protection, Water pollution control and Reporting and recordkeeping requirements.

In consideration of the foregoing, Parts 146 and 150 of Title 33, Code of Federal Regulations, are amended as follows:

PART 146—OUTER CONTINENTAL SHELF ACTIVITIES

1. The authority citation for Part 146 reads as follows:

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; sec. 22 of sec. 208, Pub. L. 95–372, 92 Stat. 656 (43 U.S.C. 1348); 49 CFR 1.46(z).

2. In § 146.30 paragraph (d) is revised to read as follows:

§ 146.30 Notice of casualties.

* * * * *

(d) Damage costs referred to in paragraphs (b)(3) and (b)(4) of this section include the cost of labor and material to restore the facility to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage of the facility.

PART 150—DEEPWATER PORTS

3. The authority citation for Part 150 reads as follows:

Authority: Secs. 10(a), 10(b), Pub. L. 93–627, 88 Stat. 2137–18 (33 U.S.C. 1509 (a) and (b)); 49 CFR 1.46(s).

4. In § 150.711 paragraph (a)(1) is revised to read as follows:

§ 150.711 Casualty or accident.

(a) * * *

(1) Any component of a deepwater port which is hit by a vessel and total damage to all property is in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

Dated: April 8, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85–8718 Filed 4–10–85; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Merchandise Return Service; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 85–4270, in the issue of Monday, March 11, 1985, the Postal Service published a final rule on Merchandise Return Service. The rule contained, at two places, erroneous instructions on the proper location for class of mail endorsements to be printed or rubber stamped on the merchandise return label by permit holders. This final rule corrects those instructions.

EFFECTIVE DATE: June 30, 1985.

FOR FURTHER INFORMATION CONTACT: F.E. Gardner, (202) 245–5756.

SUPPLEMENTARY INFORMATION: In the final rule published on March 11, 1985, newly revised DMM 919.442 and 919.443 provided, among other things, that the class of mail endorsements must be printed or rubber stamped "to the left of the merchandise return legend and above the address. . . ." This is incorrect. The endorsements must be printed or rubber stamped in the open space to the *right* and above the *Merchandise Return Label* legend. This is consistent with Exhibit 919.4, published on page 9627 as a part of the rule. For additional clarity, we are adding a "see" reference to this Exhibit.

For the above reasons, the Postal Service hereby makes the following corrections to FR Doc. 85–4270 beginning on page 9622 in the issue of Monday, March 11, 1985:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

On page 9624, first column, paragraphs .442 and .443 are corrected to read as follows:

.442 Parcels will be returned as First-Class Mail if the permit holder endorses the label "First-Class." The endorsements must be in letters at least ¼ of an inch high and must be printed or rubber stamped in the open space to the right and above the *Merchandise Return Label* legend. See Exhibit 919.4.

Note.—First-Class Mail cannot be insured unless the contents contain third- and fourth-class matter and are so labeled.

.443 Parcels qualifying for special rate fourth-class or library rate will be returned at those rates provided the appropriate identifying endorsement prescribed in 725.1, 764.11 or 767.1 is preprinted or rubber stamped in letters at least ¼ of an inch high in the open space to the right and above the *Merchandise Return Label* legend. See Exhibit 919.4.

(39 U.S.C. 401, 404(a)(1))

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 85–8701 Filed 4–10–85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, and 266

[SWH–FRL–2815–6]

Hazardous Waste Management System; Definition of Solid Waste; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical Corrections to the Definition of Solid Waste Final Rulemaking.

SUMMARY: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provided general and specific standards for various types of hazardous waste recycling activities. In reviewing this rulemaking and as a result of questions and comments received, the Agency has identified a number of typographical and technical errors requiring correction. This notice makes these changes and modifies the previous publication accordingly.

EFFECTIVE DATE: These corrections become effective on April 11, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424–9346 or at (202) 382–3000. For technical information contact Matthew A. Straus, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION: On January 4, 1985, EPA amended its existing definition of solid waste. See 50 FR 614. This rulemaking defined which materials are solid wastes when

disposed of, burned, incinerated, or recycled. The major part of the regulation addressed the question of which secondary materials being recycled (or held for recycling) are solid wastes and, if hazardous, hazardous wastes. The Agency also published regulatory standards for various types of hazardous waste recycling activities.

The Agency has received a number of questions and comments on various aspects of this final rule. In considering these questions and in reviewing the final rule, the Agency has identified a number of typographical errors and technical errors requiring correction. These corrections and changes are described below:

A. Compliance Dates for Precious Metal Reclamation

The preamble specifically spells out the compliance dates for all persons who generate, transport, treat, store, or dispose of wastes which are covered by the final rule (see 50 *FR* 614). In that discussion, EPA indicated that for persons reclaiming precious metals from recycled materials (*i.e.*, hazardous waste), the rule would become effective immediately since these are ". . . rules for which the regulated community does not need time to come into compliance."[1] This is true, for the most part, because precious metal reclamation is exempt from most of the regulatory requirements. The new rules do impose certain regulatory requirements on certain persons (*i.e.*, those who were not previously subject to regulation) for the first time, however—namely, manifest requirements (§ 266.70(b)(2)), notification requirements for those persons who have not previously notified (§ 266.70(b)(1)), and certain recordkeeping requirements (§ 266.70(c)). The Agency intended that the rules become effective immediately only for those persons who are subject to less regulation, however, since these are the only persons who need no time to come into compliance. EPA, therefore, is clarifying this part of the preamble to indicate that §§ 266.70 (b) and (c) will not become effective for those persons who are subject to increased regulation with respect to precious metal reclamation until July 5, 1985 (assuming Federal operation of the hazardous waste program), or in authorized States, when the States amend their rules to incorporate and make effective this part of the Federal program.

B. Notification and Part A Requirements

1. Submission of Section 3010 Notification

The January 4th regulation stated that any person who generates, transports, treats, stores, or disposes of hazardous wastes that are covered by the new regulation must notify EPA or a State authorized by EPA to operate the hazardous waste program by April 4, 1985, unless these persons have previously notified EPA or an authorized State. See 50 *FR* 614. A number of questions have been raised regarding who must notify and by when. We repeat the instructions here to clarify any misunderstanding. In particular:

- Any person who has previously notified EPA or an authorized State either as a generator or a treater, storer, or disposer *does not* need to do so again except as described below. In addition, certain recycled materials are exempt from any regulation under these rules, and persons are not required to notify with respect to these exempt recycled materials.
- Any person who has previously notified EPA or an authorized State of their activities but has withdrawn their application must re-notify the Agency or an authorized State of their activities.
- Persons who have not notified (and were never required to notify) must submit a notification to EPA or a State with an authorized permit program. This is true even for those generators, transporters, treaters, storers, or disposers who are located in a State that has an authorized permit program since Section 3010 of RCRA is independent of the Section 3006 State authorization section. Thus, even though a person may not have to comply with any of the substantive requirements of this rule on July 5 (*i.e.*, the January 4th rules do not become effective in authorized States until that State amends its rules to adopt the new requirements) they still must notify EPA or a State with an authorized permit program that they either generate, transport, treat, store, or dispose of a recyclable material. (The rules on obtaining authorization for newly promulgated regulations are set out in 40 CFR 271.21. See 49 *FR* 21678, May 22, 1984.)

2. Submission of Part A Permit Applications

The January 4th regulation also indicated that all persons had to: (1) Notify EPA or an authorized State by April 4, 1985 and (2) submit a new or an amended Part A permit application to EPA or an authorized State by July 5, 1985, in order to be eligible, or to remain eligible for interim status. These instructions misstate the requirements in two respects. First, as described in Section B.1., any person who has previously notified EPA or an authorized State does not need to do so again, except where the previous notification has been withdrawn. We, therefore, are clarifying the notification procedures to indicate that facilities that wish to be eligible or to remain eligible for interim status need only file a notification if they have not previously notified EPA or an authorized State that they generate, transport, treat, store, or dispose of hazardous wastes and have not received an identification number.

The second correction deals with the submission of the Part A permit application. In particular, persons should *not* submit their Part A permit application to a State that has an authorized permit program (either final or interim authorization) until that State amends its regulations to adopt the January 4th rules and EPA authorizes the amended State program. Once this process is completed, the new or amended permit applications are to be submitted to the State pursuant to the State requirements. Those facilities which are located in States which do not have permit programs authorized by EPA must submit their new or amended Part A permit application to EPA by July 5, 1985.

C. Correction to Table 11

Table 11 to the preamble of the final rules displays a decision tree which identifies the various regulatory requirements for the different recycling activities and materials. See 50 *FR* 645. The second box in the left hand column of this table refers to § 261.6(a)(4). This is a misprint, and should refer to § 261.6(a)(3).

D. Correction to § 260.30(a)

In paragraph (a) to § 260.30, the Agency incorrectly referenced the section which defines "accumulated speculatively" as § 261.1(c)(8)(B). See 50 *FR* 661. The section reference should read § 261.1(c)(8); this typographical error is corrected by this notice.

E. Definition of Hazardous Waste

The final rule amended § 261.3(c)(2) to indicate generally that commercial products reclaimed from a hazardous waste are products, not wastes, and so are not subject to the RCRA Subtitle C provisions. When republishing amended § 261.3, however, EPA inadvertently

[1] The Hazardous and Solid Waste Amendments of 1984 (HSWA) amended Section 3010 of the Resource Conservation and Recovery Act (RCRA) to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance.

omitted from the rule a recent amendment to § 261.3(c)(2) indicating that lime neutralized waste pickle liquor sludge from iron and steel operations is not automatically a hazardous waste, even though it is derived from treating a hazardous waste. See 49 *FR* 23284, June 5, 1984. We, therefore, are correcting this technical error in this notice by reprinting § 261.3(c)(2) to reflect the June 5, 1984 amendment.

F. Regulation of Hazardous Waste-Derived Fuels Produced by Petroleum Refineries and Iron and Steel Industry Mills

Many refineries take oil-bearing, listed hazardous wastes from the petroleum refining process and re-introduce them into the refining process. Resulting fuels are defined as hazardous waste fuels both by the January 4 regulations and by RCRA amended section 3004(r). As we discussed in the preamble to the burning and blending rules proposed on January 11, 1985 (50 *FR* at 1684), EPA is currently evaluating whether such recycling of metal-bearing petroleum refining wastes significantly affects the concentration of metals in refinery fuel products. Until these evaluations are completed, we have indicated that it is inappropriate to subject these fuels to regulation. *Id.* at 1689–690.

However, as we discussed in the preamble to the January 4 rules, the transport and storage requirements apply to all hazardous waste fuels containing listed wastes and sludges, except for those produced by a person other than the generator of the waste (see 50 *FR* 632). Consequently, if a generator (*e.g.*, a refiner) of a listed hazardous waste or sludge blends or processes these wastes and sends them to a burner or fuel processor or distributor, the processed fuel is subject to regulation. Our concern was that without such a provision, all a person would have to do with their listed waste or sludge is process it minimally to evade regulation.

As indicated explicity in the January 11 proposed rules, however, we did not intend for the January 4th rule to regulate those fuel oils that are derived from a hazardous waste and are produced at a refinery. We reserved judgment on the need for regulation and raised it as an issue for comment in the January 11 proposal. See 50 *FR* at 1689–690. We believe that these fuels are produced from substantial processing (*i.e.*, petroleum refining) of reintroduced hazardous waste, and thus are *bona fide* waste-derived fuels more like the fuels that are produced by a waste fuel processor (which are currently exempt from regulation) than the wastes that may be processed minimally by other generators. In light of this, and to bring the January 4 rule into conformance with explicit preamble language of the January 11th proposal, we are clarifying this provision by adding a new paragraph (3) to § 266.30(b) to exempt (at this time) those fuel oils produced at a petroleum refinery that are derived from an indigenous petroleum refinery hazardous waste. The language of the exemption parallels RCRA section 3004(r) of the Hazardous and Solid Waste Amendments of 1984 and so applies to fuels produced when a petroleum refinery reintroduces indigenous petroleum refinery hazardous wastes (within the meaning of RCRA section 3004(r) (2) and (3)) to the refining process under the terms set out in those provisions.

EPA also is adding a new paragraph (4) to § 266.30(b) to clarify that hazardous waste-derived coke from the iron and steel industry is not subject to regulation when the only hazardous wastes used in the coke-making process are from iron and steel production. As stated in the preamble to the January 11 proposed regulations, the Agency does not intend to regulate this type of waste-derived coke, at this time. See 50 *FR* at 1690. As with waste-derived petroleum fuels, waste-derived coke is a *bona fide* fuel that has undergone processing, and so is unlike wastes that are processed minimally by a generator. (We note, however, that the coke is exempt only if wastes that are indigenous to the iron and steel making process are used in the coking process. The exemption would not apply, for example, if a steel mill were to take a spent solvent, or other non-indigenous waste, and use it in the coking process.)

G. Exclusion of Black Liquor

In the January 4 publication, EPA amended § 261.4(a) of the regulations to provide that black liquor, a type of spent chemical which is caustic and sometimes corrosive, which is typically reclaimed and reused in the pulpmaking process, is not a solid waste when so reclaimed and reused. The regulatory language limited the applicability of this exclusion to black liquor that is reclaimed and reused in one particular type of pulpmaking process, the Kraft process. Spent pulping liquors (of which black liquor is one type) in fact are generated, reclaimed, and reused in other types of pulpmaking processes as well,[2] and the Agency did not intend to restrict the exclusion solely to the Kraft process. See §260.10, definition of "industrial furnace," where EPA stated that "pulping liquor recovery furnaces" are industrial furnaces, and did not limit the definition to the Kraft pulpmaking process. See 50 FR at 661. Accordingly, we are making a technical correction by modifying this exclusion to make it clear that all spent pulping liquors that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process are to be included in the exclusion.

H. Omission From Small Quantity Generator Provision

The final rule excludes those hazardous wastes that are exempt from regulation when they are to be recycled from the small quantity generator calculation. See 50 FR 652. The rule also excludes spent lead-acid batteries that are to be reclaimed from the small quantity generator calculation (even though they are subject to some regulation) because they are not subject to regulation in the hands of the generator. Precious metal wastes, however, are to be included when making the small quantity generator calculation. See preamble footnote 43 at 50 FR 652.[3] Although this point is clear in the preamble, we inadvertently omitted the reference to precious metal wastes that are reclaimed in the rule. See amended §261.5. This technical error is being corrected in this notice by revising the second sentence in §261.5(c) to read as follows: "Hazardous waste that . . . and Subparts C, D, *and F* of Part 266 is included . . . . of this section." This revision is necessary in order to make it clear that precious metal wastes that are reclaimed are to be included when making the small quantity generator calculation.

I. Hazardous Waste Burned for Energy Recovery

The final rule exempts from regulation (for the time being) those transporters who transport hazardous waste fuel from a marketer to a burner. See § 266.33(b). However, as stated in both the preamble and the rule, generators may be marketers. In addition, as clarified in the preamble, the transport

[2] The various chemical-based pulping processes can be placed into four categories: sulfate (which is the Kraft process), sulfite (ammonia-, calcium-, sodium-, or magnesium-based), semi-chemical (including the neutral sulfite, ammonia carbonate and green liquor processes), and soda (which is similar to the Kraft process, but without sulfur).

[3] Footnote 43 states that although the precious metal wastes that are reclaimed are subject to a reduced set of standards, we believe they should be subject to the small quantity generator calculation since these wastes are subject to regulation in the hands of the generator.

and storage requirements apply to those hazardous waste fuels containing listed wastes and sludges that are shipped from the generator to a burner or blender. See 50 FR 632. If a generator of a listed hazardous waste or sludge blends or processes these wastes and sends them to a burner or a waste fuel processor, the blended waste fuels are subject to regulation until burned or reprocessed by the fuel processor (except as described earlier). Thus, there is a conflict in the regulation, because transporters taking hazardous waste fuels from generators to burners or waste fuel processors are regulated. See § 266.33(a). To correct this conflict, we are revising paragraph (b) of § 266.33 to read as follows: "Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous waste fuel from marketers, who are not also the generators, to burners or other marketers."

J. Regulatory Status of Non-Listed Commercial Chemical Products

Under the final rules, commercial chemical products and intermediates, off-specification variants, spill residues, and container residues listed in 40 CFR 261.33 are not considered solid wastes when recycled except when they are recycled in ways that differ from their normal use—namely, when they are burned for energy recovery or used to produce a fuel. A number of questions have been raised as to the regulatory status of commercial chemical products that are not listed in § 261.33 but exhibit one or more of the hazardous waste characteristics (*i.e.*,ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity).

Although we do not directly address non-listed commercial chemical products in the rules, their status would be the same as those that are listed in § 261.33—That is, they are not considered solid wastes when recycled except when they are recycled in ways that differ from their normal manner of use. This is the same relationship that exists between discarded commercial chemical products that are listed in § 261.33, and those that exhibit a characteristic of hazardous waste. We believe this point is implicit in the rules, as it is implicit in existing §§ 261.3 and 261.33.

K. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice simply makes typographical and technical corrections and does not change the previously approved final rule, this rule is not a major rule and, therefore, no Regulatory Impact Analysis was conducted.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Hazardous materials, Waste treatment and disposal.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 266

Hazardous materials.

Dated: April 2, 1985.

Jack W. McGraw,

Assistant Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 reads as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, and 3010 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921 through 6927, and 6930].

2. In § 260.30, paragraph (a) is revised to read as follows:

§ 260.30 Variances from classification as a solid waste.

* * * * *

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in § 261.1(c)(8) of this chapter);

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

4. Section 261.3 is amended by revising paragraph (c)(2) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste: (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332).

* * * * *

5. Section 261.4 is amended by revising paragraph (a)(6) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(6) Pulping liquors (*i.e.*, black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

* * * * *

6. Section 261.5 is amended by revising the second sentence in paragraph (c) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(c) * * * Hazardous waste that is subject to the requirements of § 261.6 (b) and (c) and Subparts C, D, and F of Part 266 is included in the quantity determination of this section and is subject to the requirements of this section.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

7. The authority citation for Part 266 reads as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), and 6924].

8. In § 266.30, paragraphs (b) (3) and (4) are added to read as follows:

§ 266.30 Applicability.

* * * * *

(b) * * *

(3) Hazardous waste fuels that are exempt from the labeling requirements of RCRA Section 3004(r).

(4) Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

* * * * *

9. Section 266.33 is amended by revising paragraph (b) to read as follows:

§ 266.33 Standards applicable to transporters of hazardous waste fuel.

* * * * *

(b) Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous wastes fuel from marketers, who are not also the generators of the waste, to burners or other marketers.

* * * * *

[FR Doc. 85-8585 Filed 4-10-85; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 201

[FIRMR Temp. Reg. 12]

Establishing Integrated Records Management Provisions for the Federal Information Resources Management Regulation (FIRMR)

AGENCY: Office of Information Resources Management, GSA

ACTION: Temporary regulation.

SUMMARY: This regulation establishes FIRMR Parts 201–22, Records Management Programs, and 201–45, Management of Records. This regulation consists of those provisions of Federal Property Management Regulations (FPMR) Part 101–11, Records Management, for which GSA will continue to be responsible after April 1, 1985, when the National Archives and Records Service (NARS) becomes an independent agency to be known as the National Archives and Records Administration (NARA). The subject matter includes the management of mail, files, records, directives, forms, reports, micrographics, copy, correspondence, and records equipment and supplies. Regulations governing records disposition and adequacy of documentation are not included in this temporary regulation since NARA will be responsible for those areas, effective April 1, 1985. Except as noted no substantive changes have been made in authorities, policies, or procedures from those contained in FPMR Part 101–11, from which these provisions are derived.

DATES: *Effective date:* April 1, 1985. *Expiration date:* December 31, 1986. *Comments are due:* April 30, 1985.

ADDRESS: Comments should be submitted to the General Services Administration, Office of Information Resources Management, Policy Branch (KMPP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: David R. Mullins, Policy Branch (KMPP), telephone (202) 566–0194 or FTS, 566–0194.

SUPPLEMENTARY INFORMATION: (1) Public Law 98–497, the National Archives and Records Administration Act of 1984, was signed on October 19, 1984. Under the act, NARS will become an independent agency known as The National Archives and Records Administration (NARA), effective April 1, 1985. As a result, responsibility for the administration of the provisions now contained in FPMR Part 101–11 will be divided between GSA and NARA. This regulation incorporates into the FIRMR those provisions of FPMR Part 101–11 which promote economy and efficiency in records management. NARA intends to establish a regulation in 36 CFR XII that will include the FPMR provisions that address records disposition and adequacy of documentation. A subsequent FPMR amendment will rescind the provisions now in FPMR Part 101–11.

(2) The FIRMR was initially established effective April 1, 1984 (49 FR 20994 May 17, 1984). The integrated text, consisting of the provisions governing ADP and telecommunications procurement and management previously contained in FPMR Subpart 101–35, 36, and 37, and Federal Procurements Regulations (FPR) Subparts 1–4.11, 1–4.12, and 1–4.13, was published in the Federal Register on January 30, 1985. This issuance integrates the third IRM component (records management) for which GSA is responsible into the FIRMR text.

(3) The intent of this regulation is to reformat the FPMR provision into the FIRMR format and numbering system and to make editorial changes to accurately reflect the current organizational structure within GSA's Office of Information Resources Management and the division of responsibilities between NARA and GSA. Otherwise, substantive changes from the text now appearing in the FPMR are contained only in § 201–45.104, Forms management; Subpart 201–45.5, Standard and Optional Forms Management Programs; and Subpart 201–45.6, Interagency Reports Management Program. These provisions represent the reconciled versions of proposed FPMR amendments that were previously circulated for public comments. Due to the enactment of Public Law 98–497 and its April 1, 1985, effective date, the proposed changes were not issued as FPMR amendments and are included in this temporary regulation.

(4) Pursuant to section 22(d) of the Office of Federal Procurement Policy Act (section 302(a) of Pub. L. 98–577), the publication of proposed rules has been waived because of the necessity to implement Pub. L. 98–497 effective April 1, 1985.

(5) However, notice of proposed rulemaking regarding this action (as a FIRMR amendment) was published in the Federal Register (50 FR 6970, February 19, 1985) with comments due by March 21, 1985. Comments received on the amendment are being reconciled, and a FIRMR amendment is being prepared to replace this temporary regulation. Although the deadline for comments on the amendment has passed any comments on this temporary issuance received before April 30, 1985, will be considered to the maximum practicable extent in preparation of the final amendment.

(6) This regulation was developed in coordination with the Archivist of the United States in accordance with § 201–1.201(a).

(7) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

(8) *Derivation Tables for Individual Parts.*

FIRMR sections	FPMR sources
Derivation Table for Part 201–22	
201–22.000	101–11.000
201–22.001	101–11.101
201–22.001–1	101–11.101–1
201–22.001–2	101–11.101–2
201–22.001–3	None
201–22.001–4	101–11.103–1
	101–11.104
201–22.002	101–11.102
201–22.002–1	101–11.102–1
201–22.002–2	101–11.102–2
201–22.002–3	101–11.102–3

FIRMR sections	FPMR sources
201-22.002-4	101-11.102-4
201-22.002-5	101-11.102-6
201-22.003	101-11.103
201-22.003-1	101-11.103-2
201-22.003-2	101-11.103-3
201-22.003-3	101-11.103-4

Derivation Table for Part 201-45

201-45.100	101-11.200
201-45.101	101-11.201
201-45.101-1	101-11.201-1
201-45.102	101-11.206
201-45.102-1	101-11.206-1
201-45.102-2	101-11.206-3
201-45.102-3	101-11.206-4
201-45.103	101-11.207
201-45.103-1	101-11.207-1
201-45.103-2	101-11.207-3
201-45.103-3	101-11.207-4
201-45.104	101-11.208
201-45.104-1	None
201-45.104-2	None
201-45.104-3	101-11.208-1
201-45.104-4	None
201-45.104-5	101-11.208-3
	101-11.208-4
201-45.105	101-11.209
201-45.105-1	101-11.209-1
201-45.105-2	101-11.209-2
201-45.105-3	101-11.209-4
201-45.105-4	101-11.209-5
201-45.105-5	101-11.209-6
201-45.106	101-11.210
201-45.106-1	101-11.210-1
201-45.106-2	101-11.210-3
201-45.106-3	101-11.210-4
201-45.201	101-11.301
201-45.201-1	101-11.301-1
201-45.201-2	101-11.301-2
201-45.202	101-11.302
201-45.202-1	101-11.302-1
201-45.202-2	101-11.302-2
201-45.202-3	101-11.302-4
201-45.202-4	101-11.302-5
201-45.203	101-11.304
201-45.203-1	101-11.304-1
201-45.203-2	101-11.304-3
201-45.203-3	101-11.304-4
201-45.204	101-11.305
201-45.204-1	101-11.305-1
201-45.204-2	None
201-45.204-3	101-11.305-3
	101-11.305-4
201-45.205	101-11.306
201-45.205-1	101-11.306-1
201-45.205-2	101-11.306-3
	101-11.306-4
201-45.300	101-11.500
201-45.301	101-11.501
201-45.302	101-11.503
201-45.303	101-11.504
201-45.304	101-11.505
201-45.401	101-11.603
201-45.401-1	101-11.603-1
201-45.401-2	101-11.603-3
201-45.401-3	101-11.603-4
201-45.401-4	101-11.603-5
201-45.401-5	101-11.603-6
201-45.401-6	101-11.603-7
201-45.401-7	101-11.603-8
201-45.401-8	101-11.603-9
201-45.401-9	101-11.603-10
201-45.401-10	101-11.603-11
201-45.401-11	101-11.603-12
201-45.401-12	101-11.603-13
201-45.401-13	101-11.603-14
201-45.401-14	101-11.603-15
201-45.500	101-11.800
201-45.500-1	101-11.800-1
201-45.501	101-11.801
201-45.502	101-11.803
201-45.503	101-11.804
201-45.504	101-11.805
201-45.504-1	101-11.805-1
	101-11.805-2
201-45.504-2	101-11.805-1
	101-11.805-2
201-45.505	101-11.806-6
201-45.505-1	None
201-45.506	101-11.806-7
201-45.507	101-11.806-8
201-45.508	101-11.806-9
201-45.509	101-11.806-1
201-45.510	101-11.806-1
201-45.510-1	101-11.806-1
201-45.510-2	101-11.806-1
201-45.510-3	None
201-45.511	101-11.806
201-45.512	101-11.806-3
201-45.513	None
201-45.514	101-11.807
201-45.600	101-11.1100
201-45.601	101-11.1101
201-45.602	101-11.1100-1
201-45.603	101-11.1103
201-45.604	101-11.1105-1
201-45.605	101-11.1105-3
201-45.606	101-11.1105-2
201-45.607	101-11.1106-3
201-45.608	101-11.1106-2
201-45.609	101-11.1107
201-45.609-1	101-11.1107-1
201-45.609-2	101-11.1107-2
201-45.609-3	101-11.1107-5
201-45.610	None
201-45.610-1	101-11.1107-6
	101-45.1107-7
201-45.610-2	101-11.1107-8
201-45.611	101-11.1108
201-45.700	101-11.4900
201-45.701	101-11.4912
201-45.702	101-11.4913
201-45.703	101-11.4914
201-45.704	101-11.4915
201-45.705	101-11.4916
201-45.706	None
201-45.707	101-11.4920
201-45.708	101-11.4922
201-45.800	101-11.1000
201-45.801	101-11.1001
201-45.802	101-11.1002
201-45.803	101-11.1003
201-45.804	101-11.1004
201-45.805	101-11.1005

(9) *Distribution Table.*

In the following tables the designation, "NARA," means that the cited FPMR material is the responsibility of the National Archives and Records Administration under Pub. L. 98-497.

FPMR sources	FIRMR sections

Distribution Table for Part 201-22

101-11.000	201-22.000
101-11.001	201-22.001
101-11.101-1	201-22.001-1
101-11.101-2	201-22.001-2
101-11.101-3	201-2.001
101-11.101-4	201-22.001-4
101-11.101-5	Deleted
101-11.102	201-22.002
101-11.102-1	201-22.002-1
101-11.102-2	201-22.002-2
101-11.102-3	201-22.002-3
101-11.102-4	201-22.002-4
101-11.102-5	NARA
101-11.102-6	201-22.002-5
101-11.103	201-22.003
101-11.103-1	201-22.001-4
101-11.103-2	201-22.003-1
101-11.103.3	201-22.003-2
101-11.103-4	201-22.003-3
101-11.104	201-22.001-4

Distribution Table for Part 201-45

101-11.200	201-45.100
101-11.201	201-45.101
101-11.201-1	201-45.101-1
101-11.202	NARA
101-11.202-1	NARA
101-11.202-2	NARA
101-11.203	NARA
101-11.203-1	NARA
101-11.203-2	NARA
101-11.204	Deleted
101-11.205	Deleted
101-11.206	201-45.102
101-11.206-1	201-45.102-1
101-11.206-2	201-45.001
101-11.206-3	201-45.102-2
101-11.206-4	201-45.102-3
101-11.207	201-45.103
101-11.207-1	201-45.103-1
101-11.207-2	201-45.001
101-11.207-3	201-45.103-2
101-11.207-4	201-45.103-3
101-11.208	201-45.104
101-11.208-1	201-45.104-1
101-11.208-2	201-45.104-2
101-11.208-3	201-2.001
101-11.208-4	201-45.104-3
101-11.208-5	201-45.104-4
101-11.208-6	201-45.104-5
101-11.209	201-45.105
101-11.209-1	201-45.105-1
101-11.209-2	201-45.105-2
101-11.209-3	201-2.001
101-11.209-4	201-45.105-3
101-11.209-5	201-45.105-4
101-11.209-6	201-45.105-5
101-11.210	201-45.106
101-11.210-1	201-45.106-1
101-11.210-2	201-2.001
101-11.210-3	201-45.106-2
101-11.210-4	201-45.106-3
101-11.301	201-45.201
101-11.301-1	201-45.201-1
101-11.301-2	201-45.201-2
101-11.302	201-45.202
101-11.302-1	201-45.202-1
101-11.302-2	201-45.202-2
101-11.302-3	201-2.001
101-11.302-4	201-45.202-3
101-11.302-5	201-45.202-4
101-11.303	None
101-11.304	201-45.203
101-11.304-1	201-45.203-1
101-11.304-2	201-45.001
101-11.304-3	201-45.203-2
101-11.304-4	201-45.203-3
101-11.305	201-45.204
101-11.305-1	201-45.204-1
101-11.305-2	201-45.001
101-11.305-3	201-45.204-3
101-11.305-4	201-45.204-3
101-11.306	201-45.206
101-11.306-1	201-45.206-1
101-11.306-2	201-2.001
101-11.306-3	201-45.206-2
101-11.320-4	201-45.206-2
101-11.320	NARA
101-11.321	NARA
101-11.322	NARA
101-11.323	NARA
101-11.324	NARA
101-11.325	NARA
101-11.326	NARA
101-11.327	NARA
101-11.328	NARA
101-11.329	NARA
101-11.401	NARA
101-11.402	NARA
101-11.403	NARA
101-11.404	NARA
101-11.405	NARA
101-11.406	NARA
101-11.407	NARA
101-11.408	NARA
101-11.409	NARA
101-11.410	NARA
101-11.411	NARA
101-11.412	NARA
101-11.500	201-45.300
101-11.501	201-45.301
101-11.502	201-2.001
101-11.503	201-45.302
101-11.504	201-45.303
101-11.505	201-45.304
101-11.506	NARA
101-11.507	NARA
101-11.508	NARA
101-11.509	NARA
101-11.510	NARA
101-11.601	Deleted
101-11.602	Deleted
101-11.603	201-45.401
101-11.603-1	201-45.401-1
101-11.603-2	201-45.401-2
101-11.603-3	201-2.001
101-11.603-4	201-45.401-3
101-11.603-5	201-45.401-4
101-11.603-6	201-45.401-5
101-11.603-8	201-45.401-7
101-11.603-9	201-45.401-8

FPMR sources	FIRMR sections
101-11.800-10	201-45.401-8
101-11.800-11	201-45.401-10
101-11.800-12	201-45.401-11
101-11.800-13	201-45.401-12
101-11.800-14	201-45.401-13
101-11.800-15	201-45.401-14
101-11.701	NARA
101-11.701-1	NARA
101-11.701-2	NARA
101-11.701-3	NARA
101-11.701-4	NARA
101-11.701-5	NARA
101-11.701-6	NARA
101-11.800	201-45.500
101-11.800-1	201-45.506-1
101-11.801	201-45.501
101-11.802	201-2.001
101-11.803	201-45.502
101-11.804	201-45.503
101-11.805	201-45.504
101-11.805-1	201-45.504-1
	201-45.504-2
101-11.805-2	201-45.504-1
	201-45.504-2
101-11.806	Deleted
101-11.806-1	201-45.509
	201-45.510-1
	201-45.510-2
101-11.806-2	Deleted
101-11.806-3	201-45.512
101-11.806-4	Deleted
101-11.806-5	Deleted
101-11.806-6	201-45.507
101-11.806-7	201-45.508
101-11.806-8	201-45.505
	201-45.505-1
101-11.807	201-45.514
101-11.808	201-45.511
101-11.8	Deleted
101-11.1000	201-45.600
101-11.1001	201-45.601
101-11.1002	201-45.602
101-11.1003	201-45.603
101-11.1004	201-45.604
101-11.1005	201-45.605
101-11.1100	201-45.606
101-11.1100-1	201-45.602
101-11.1101	201-45.601
101-11.1102	201-45.001
101-11.1102-1	201-2.001
101-11.1102-2	201-2.001
101-11.1102-3	201-2.001
101-11.1102-4	201-2.001
101-11.1102-5	201-2.001
101-11.1102-6	201-2.001
101-11.1102-7	201-2.001
101-11.1103	201-45.603
101-11.1104	201-45.604
101-11.1105	Deleted
101-11.1105-1	201-45.604
101-11.1105-2	201-45.606
101-11.1105-3	201-45.605
101-11.1106	Deleted
101-11.1106-1	Deleted
101-11.1106-2	201-45.606
101-11.1106-3	201-45.607
101-11.1107	201-45.609
101-11.1107-1	201-45.609-1
101-11.1107-2	201-45.609-2
101-11.1107-3	Deleted
101-11.1107-4	Deleted
101-11.1107-5	201-45.609-3
101-11.1107-6	201-45.610-1
101-11.1107-7	201-45.610-1
101-11.1107-8	201-45.610-2
101-11.1107-9	Deleted
101-11.1108	201-45.611
101-11.1109	Deleted
101-11.12	(1)
101-11.13	NARA
101-11.4900	201-45.700
101-11.4901	NARA
101-11.4902	NARA
101-11.4903	NARA
101-11.4904	NARA
101-11.4905	NARA
101-11.4906	NARA
101-11.4907	NARA
101-11.4908	NARA
101-11.4909	NARA
101-11.4910	NARA
101-11.4911	None
101-11.4912	201-45.701
101-11.4913	201-45.702
101-11.4914	201-45.703
101-11.4915	201-45.704
101-11.4916	201-45.705
101-11.4917	Deleted
101-11.4918	Deleted
101-11.4919	Deleted
101-11.4920	201-45.707
101-11.4921	NARA
101-11.4922	201-45.708
101-11.4930-248	NARA
101-11.4930-248-A	Deleted
101-11.4930-249	Deleted
101-11.4930-249-A	Deleted
101-11.4930-250	Deleted
101-11.4930-282	NARA
101-11.4931	NARA
101-11.4932	NARA

[1] To be rescinded (see 41 CFR 101-6.10).

List of Subjects

41 CFR Part 201–2

Government procurement, Government property management, Government records management.

41 CFR Part 201–22

Government records management.

41 CFR Part 201–45

Government records management.

In 41 CFR Chapter 201, the following temporary regulation is added to Appendix A at the end of the chapter.

FIRMR Temporary Regulation 12

April 1, 1985.

To: Heads of Federal agencies.

Subject: Establishing integrated records management provisions for the FIRMR

1. *Purpose:* This regulation establishes FIRMR Parts 201–22, Records Management Programs, and 201–45, Management of Records. This regulation consists of those provisions of Federal Property Management Regulations (FPMR) Part 101–11, Records Management, for which GSA will continue to be responsible after April 1, 1985, when the National Archives and Records Service (NARS) becomes an independent agency to be known as the National Archives and Records Administration (NARA). The subject matter includes the management of mail, files, records, directives, forms, reports, micrographics, copy, correspondence, and records equipment and supplies. Regulations governing records disposition and adequacy of documentation are not included in this temporary regulation since NARA will be responsible for those areas, effective April 1, 1985. Except as noted no changes have been made in authorities, policies, or procedures from those contained in FPMR Part 101–11, from which these provisions are derived.

2. *Effective date:* This regulation is effective April 1, 1985.

3. *Expiration date:* This regulation expires December 31, 1986.

4. *Background:*

a. Public Law 98–497, the National Archives and Records Administration Act of 1984, was signed on October 19, 1984. Under the act, NARS will become an independent agency known as The National Archives and Records Administration (NARA), effective April 1, 1985. As a result, responsibility for the administration of the provisions now contained in FPMR Subpart 101–11 will be divided between GSA and NARA. This regulation incorporates into the FIRMR those provisions of FPMR Subpart 101–11 which promote economy and efficiency in records management. NARA intends to establish a regulation that will include the FPMR provisions that address records disposition and adequacy of documentation. A subsequent FPMR amendment will rescind the provisions now in FPMR Subpart 101–11.

b. The FIRMR was initially established effective April 1, 1984 (49 FR 20994 May 17, 1984). The integrated text, consisting of the provisions governing ADP and telecommunications procurement and management previously contained in FPMR Subparts 101–35, 36, and 37, and Federal Procurements Regulations (FPR) Subparts 1–4.11, 1–4.12, and 1–4.13, was published in the Federal Register on January 30, 1985. This issuance integrates the third IRM component (records management) for which GSA is responsible into the FIRMR text.

c. The intent of this regulation is to reformat the FPMR provisions into the FIRMR format and numbering system and to make editorial changes to accurately reflect the current organizational structure within GSA's Office of Information Resources Management and the division of responsibilities between NARA and GSA. Otherwise, substantive changes from the text now appearing in the FPMR are contained only in § 201–45.104, Forms management; Subpart 201–45–5, Standard and Optional Forms Management Program; and Subpart 201–45–6, Interagency Reports Management Program. These sections represent the reconciled versions of proposed FPMR amendments that were previously circulated for public comments. Due to the enactment of Pub. L. 98–497 and its April 1, 1985, effective date, the proposed changes were not issued as FPMR amendments and are included in this temporary regulation.

5. *Explanation of changes.*

PART 201-2—[AMENDED]

a. Section 201-2.001 is amended by adding (alphabetically) definitions as follows:

§ 201-2.001 Definitions.

* * * * *

"ADP records management" means maintaining a current file-by-file inventory of machine-readable records and the accompanying documentation for each file and maintaining these files in a facility in conformance with § 201-34.006-3 while carrying out periodic checks to verify readability. Documentation of ADP records consists of functional and operational flow charts, physical file characteristics, recording mode information including basic coding structure (code books), recording system information, record layouts, printout plans (formats), and basic run instructions (run books).

* * * * *

"Computer output microfilm (COM)"—see "Microfilm terms."

* * * * *

"Continuation sheet"—see "Stationery terms."

* * * * *

"Copier" means a machine that creates paper copies directly without requiring the creation of an intermediate master for each original.

"Copy" means a duplicate of a document previously created.

"Copying" means the making of copies whether by copier or duplicator.

"Correspondence" means letters, form letters, telegrams, memoranda, endorsements, summary sheets, postal cards, memo routing slips, and other written communications.

* * * * *

"Directive" means a written communication that initiates or governs action, conduct, or procedure. Directives are often issued as circulars, notices, regulations, orders, and handbooks, and include materials usually issued to multiple addressees in multiple copies for insertion in policy, administrative, or operations manuals. News releases, program announcements, catalogs, price lists, training materials, and correspondence are not included.

"Directives management" means the effective and efficient development of controlled directives and their distribution, use, maintenance, and disposition.

"Duplicator" means a machine that produces paper copies through the use of an intermediate master.

* * * * *

"Exception" means GSA approval for an agency to change the content, format or printing specifications of a Standard or Optional form. (Exceptions are not waivers.) Content exceptions apply to Standard forms only, while format and printing exceptions apply to both Standard and Optional forms.

(a) Content exceptions are changes to the data elements of a form (i.e., additions, deletions, or revisions).

(b) Format exceptions are changes made by rearranging the data elements or spacing of entries on a form without change to the data elements.

(c) Printing exceptions are changes in the printing specifications of a form (e.g., changes to paper, including size, and the establishment of sets and marginally punched constructions) that result in no changes in content or format.

* * * * *

"External directive" means officially prescribed guidance issued to a primary audience outside the originating agency.

* * * * *

"Facility"—see "Microfilm terms."

"File" means an arrangement of records. The term is used to denote papers, photographs, photographic copies, maps, machine-readable information, or other recorded information regardless of physical form or characteristics, accumulated or maintained in filing equipment, boxes, or machine-readable media, or on shelves, and occupying office or storage space.

* * * * *

"Flat"—see "Stationery terms."

"Form" means a fixed arrangement of captioned spaces designed for entering and extracting prescribed information, including ADP systems forms. (See definition of non-form item.) Examples of ADP systems forms are:

(a) Paper forms designed to collect data for computer input; and

(b) Form layouts that are:

(1) Preprinted on continuous feed computer paper;

(2) Contained on overlays used to generate formatted computer outputs; or

(3) Programed by a Federal agency and printed by a computer.

"Format" means a guide, table, sample, or exhibit that illustrates a predetermined arrangement or layout for presenting data.

"Foundry type fonts"—see "Stationery terms."

* * * * *

"Interagency Report" means a reporting requirement imposed by an agency on one or more other agencies. Operating documents are excluded.

"Interagency reports coordinator" means the official appointed by the agency senior official designated under the Paperwork Reduction Act of 1980 to—

(a) Serve as the liaison between agency offices, components, other agencies, and GSA on interagency reporting matters;

(b) Clear and evaluate each request for a new, revised, or extended interagency report before signing and submitting Standard Form 360, Request for Clearance of an Interagency Reporting Requirement (§ 201-45.4922);

(c) Coordinate the agency response to requests from other agencies for cost estimates of new or revised interagency reports; and

(d) Maintain the official agency records on interagency reports.

* * * * *

"Internal directive" means an officially prescribed intra-agency policy or procedure, delegation of authority, or assignment of responsibility.

* * * * *

"Internal reporting requirement" means any requirement that involves reports prepared and used solely within a department or agency covered by Title 44, United States Code.

* * * * *

"Letterhead"—see "Stationery terms."

"Lettersize envelopes"—see "Stationery terms."

"Mail" means letters, telecommunications, memoranda, post cards, documents, packages, publications, and other communications received for distribution or dispatch.

* * * * *

"Manifold carbon tissue set"—see "Stationery terms."

* * * * *

"Microfilm"—see "Microfilm terms."

"Microfilm terms" include—

(a) "Computer Output Microfilm (COM)" means microfilm containing data produced by a recorder from computer generated signals.

(b) "Facility" means an area set aside for equipment and operations required in the production or reproduction of microforms either for internal use or for the use of other organizational elements of the Federal Government.

(c) "Microfilm" means (1) Raw (unexposed and unprocessed) film with characteristics that make it suitable for use in micrographics;

(2) The process of recording microimages on film; and

(3) A fine grain, high resolution photographic film containing an image greatly reduced in size from the original.

(d) "Microform" means a term used for any form containing microimages.

(e) "Micrographics" means the science and technology of document and

information microfilming and associated microform systems.

(f) "Microimage" means a unit of information, such as a page of text or a drawing, that has been made too small to be read without magnification.

(g) "Micrographic system" means a configuration of equipment and procedures for the production, reproduction, maintenance, storage, retrieval, display, or use of microforms. A micrographic system may involve one or more, but not necessarily all, of the functions listed above.

"Microfilm"—see "Microfilm terms."

"Micrographic system"—see "Microfilm terms."

"Micrographics"—see "Microfilm terms."

"Microimage"—see "Microfilm terms."

* * * * *

"Non-form item" means a printed product without spaces for entering information. Such items (instruction sheets and bulletins, pamphlets, notices, contract clause sheets, placards, certain tags and labels, pattern letters, guide letters, and form letters, etc.) may be assigned form numbers and controlled through the forms management program for referencing, printing, stocking, and distributing, but are excluded from statistical reporting of forms, and are identified as non-form or other items.

"Operating document" means a completed form or other document used to facilitate, accomplish, or provide a description or record of a transaction, function, or event. The information in an operating document may provide data (or input) for a report, but that is not its primary purpose. Examples are application forms, purchase orders, bills of lading, personnel actions, inspection or audit reports, and reports that involve direct command and control of military forces or cryptological activities related to national security.

"Optional form" means a form developed by a Federal agency for use in two or more agencies and approved by GSA for nonmandatory Government-wide use.

* * * * *

"Overprinting" means the printing of pertinent identical entries (e.g., agency name and address, accounting codes and organization codes) in a captioned area on a Standard or Optional form. Overprints are not exceptions.

* * * * *

"Promulgating agency" means any Federal agency that develops a Standard form as defined in this § 201–2.001 and prescribes the mandatory Government-wide use of that form in a regulation.

* * * * *

"Records, as used in Parts 201–22 and 201–45", means all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical forms or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included (44 U.S.C. 3301).

"Records equipment and supplies, as used in Part 201–45" means file cabinets, shelf files, mail handling equipment, visible files, mechanized files, file guides, folders, jackets, wallets, microfilm, microfiche, magnetic tape, magnetic disks, and similar items used in the creation and maintenance of records and in mail handling. A program for managing equipment and supplies should also include desk-top office computers and dictating equipment.

"Records management" means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with respect to records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations (44 U.S.C. 2901(2)).

* * * * *

"Report" means data or information which is transmitted for use in determining policy, planning, controlling, and evaluating operations and performance; making administrative decisions or preparing other reports. The data or information may be in narrative, statistical, graphic, or other form and may be on paper, magnetic tapes, or other media.

"Report form" means a special category of form that is designed for collecting identical information from persons or organizations either inside or outside the collecting agency.

"Reporting" means the process by which data or information for a report is collected, organized, transmitted, and retained.

* * * * *

"Sponsoring agency" means any Federal agency that develops an Optional form as defined in this § 201–2.001.

"Standard form" means a form prescribed by a Federal agency, pursuant to its authority, and approved by GSA for mandatory Government-wide use.

* * * * *

"Stationery"—see "Stationery terms."

"Stationery terms" include—

(a) "Continuation sheet" means the second or succeeding page of a letter.

(b) "Flat" envelope, also called "oversize" envelope, means a rectangular envelope that exceeds one or more of the maximum dimensions for lettersize envelopes, but does not exceed 15 inches in length, or 12 inches in height, or .75 inches in thickness.

(c) "Foundry type fonts" means those fonts readily available at no additional cost for printing stationery.

(d) "Letterhead" means paper, showing agency identification, used for official correspondence. Identification includes name, acronym, logo, seal, code, and/or address affixed by printing, engraving, embossing, typing, stamping, or other labeling.

(e) "Lettersize envelopes" means rectangular envelopes with minimum dimensions of 5 inches in length, 3.5 inches in height, and .007 inches in thickness and maximum dimensions of 11.5 inches in length, 6.125 inches in height, and .25 inches in thickness.

(f) "Manifold carbon tissue set" means a tissue sheet attached to a one-time carbon sheet and is commonly called "tissue."

(g) "Stationery" means paper products used in correspondence, such as letterhead, continuation sheets, manifold carbon tissue sets, carbon paper, carbonless paper, memorandums, post cards, and envelopes.

* * * * *

b. Part 201–22 is added to read as follows:

PART 201–22—RECORDS MANAGEMENT PROGRAMS

Sec.

201–22.000 Scope and objectives of part.
201–22.001 General provisions.
201–22.001–1 Authority.
201–22.001–2 Applicability.
201–22.001–3 Responsibility for records management programs.
201–22.001–4 GSA responsibilities.

Sec.
201–22.002 Agency responsibilities.
201–22.002–1 Authority.
201–22.002–2 Program content.
201–22.002–3 Creation of records.
201–22.002–4 Organization, maintenance, and use of records.
201–22.002–5 Liaison offices.
201–22.003 Agency program evaluation.
201–22.003–1 Evaluation by GSA.
201–22.003–2 Agency internal evaluation.
201–22.003–3 Agency evaluation review and followup procedures.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201–22.000 Scope and objectives of part.

(a) This part prescribes policies and promulgates standards, procedures, and techniques for the economical and efficient management of Federal agencies' records.

(b) This part is intended to promote economy and efficiency in records creation, maintenance, and use, and to help achieve the information resources management goals of the Paperwork Reduction Act of 1980 to:

(1) Reduce the paperwork burden the Federal Government imposes on the public;

(2) Reduce the cost to executive agencies of collecting, managing, and disseminating information;

(3) Maximize the usefulness of information collected by executive agencies;

(4) Make Federal information policies and practices uniform; and

(5) Ensure that the collection, maintenance, use, and dissemination of information by the Federal Government is consistent with applicable laws relating to confidentiality, including the Privacy Act.

§ 201–22.001 General provisions.

§ 201–22.001–1 Authority.

The regulations in this part are pursuant to the authority contained in the records provisions of 44 U.S.C. 2904.

§ 201–22.001–2 Applicability.

The regulations in this part apply to all Federal agencies as defined in § 201–2.001.

§ 201–22.001–3 Responsibility for records management programs.

Public Law 98–497 (effective April 1, 1985) amends the records management statutes to divide records management responsibilities between the Administrator of General Services and the Archivist of the United States as head of the National Archives and Records Administration (NARA). Under the Act, the Administrator of General Services remains responsible for promoting economy and efficiency in records management. The Archivist is responsible for records disposition and adequacy of documentation. GSA regulations are in this Part 201–22 and in Part 201–45. NARA regulations are in 36 CFR XII. Agency heads are responsible for records programs which must be in compliance with regulations promulgated by both NARA and GSA.

§ 201–22.001–4 GSA responsibilities.

(a) Section 2904 of Title 44, United States Code requires the Administrator of General Services to provide guidance and assistance to Federal agencies to ensure economical and effective records management by agencies. In providing such guidance and assistance, the Administrator shall have the responsibility to:

(1) Promote economy and efficiency in the selection and use of space, staff, equipment, and supplies for records management;

(2) Promulgate standards, procedures, and guidelines with respect to records management and records management studies;

(3) Conduct research with respect to the improvement or records management practices and programs;

(4) Collect and disseminate information on training programs, technological developments, and other activities relating to records management;

(5) Establish such interagency committees and boards as necessary to provide an exchange of information among Federal agencies with respect to records management;

(6) Direct the continuing attention of Federal agencies and the Congress on the need for adequate policies governing records management;

(7) Conduct records management studies and designate the heads of executive agencies to conduct records management studies with respect to establishing systems and techniques designed to save time and effort in records management;

(8) Conduct inspections or surveys of the records and the records management programs and practices within and between Federal agencies; and

(9) Report to the Congress and to the Director of the Office of Management and Budget each year, and at such time or times as the Administrator may deem desirable, on the results of the foregoing activities, including evaluations of responses by Federal agencies to any recommendations resulting from studies or inspections conducted by the Administrator, and to the extent practicable, estimates of costs to the Government resulting from the failure of agencies to implement such recommendations.

(b) Section 3513 of Title 44 of the United States Code (The Paperwork Reduction Act of 1980, Pub. L. 96–511) requires the Administrator of General Services to assist the Director of the Office of Management and Budget in selectively reviewing at least once every 3 years, the information management activities of each executive agency.

§ 201–22.002 Agency responsibilities.

§ 201–22.002–1 Authority.

Section 3102 of Title 44 of the United States Code requires the head of each Federal agency to establish and maintain an active, continuing program for the economical and efficient management of agency records.

§ 201–22.002–2 Program content.

Agency programs shall, among other things, provide for:

(a) Effective controls over the creation, the organization, maintenance and use of all agency records.

(b) Cooperation with GSA in developing and applying standards, procedures, and techniques designed to improve the management of records and ensure the maintenance and security of records.

(c) Compliance with the provisions of Title 44 of the United States Code and with the regulations issued thereunder.

§ 201–22.002–3 Creation of records.

Adequate records management controls over the creation of agency records shall be instituted to ensure that agency functions are adequately and properly documented; that routine operational paperwork is kept to a minimum; and that the accumulation of unnecessary files is prevented. Effective techniques to be applied in this area include the application of systems for the control of correspondence, forms, directives and issuances, and reports; the minimizing of duplicate files, and the disposal without filing of transitory material that has no value for record purposes.

§ 201–22.002–4 Organization, maintenance, and use of records.

Provision shall be made for the continued analysis and improvement of such matters as mail handling and routing, record classification and indexing systems, the use of filing equipment and supplies, the reproduction and transportation of records, and work production standards relating thereto, to insure that records are maintained economically and

efficiently and in such a manner that their maximum usefulness is attained.

§ 201-22.002-5 Liaison offices.

An office or offices within each Federal agency shall be assigned specific responsibility for the development of the records management program. The office to which the major responsibility is assigned shall be reported to the General Services Administration (KL), Washington, DC 20405.

§ 201-22.003 Agency program evaluation.

§ 201-22.003-1 Evaluation by GSA.

Agency programs for controlling the creation, maintenance, and use of current records will be inspected periodically by GSA (see also § 201-22.001-4(b)). The objectives of these inspections are to:

(a) Determine agency compliance with the regulations set forth in this Part 201-22 and Part 201-45.

(b) Evaluate the effectiveness of agency records management programs and practices.

§ 201-22.003-2 Agency internal evaluation.

Each agency should periodically inspect the records management programs within the agency, with the frequency and depth permitted by the agency's resources. These inspections should have objectives similar to those listed in § 201-22.003-1, and should be designed to complement the inspections performed by GSA. Criteria for agency self-inspection are available from GSA (KL), Washington, DC 20405.

§ 201-22.003-3 Agency evaluation review and followup procedures.

(a) A Federal agency has a maximum of 60 calendar days to comment on the factural content of a draft evaluation report.

(b) A Federal agency shall submit an action plan to the Assistant Administrator for Information Resources Management implementing the recommendations in an evaluation report not later than 90 calendar days after the date of transmittal of the final report to the agency. The agency action plan shall include:

(1) Specific action(s) the agency plans to take on each evaluation report recommendation. If an agency does not plan to implement a recommendation, the rationale for not acting shall be documented in the action plan; and

(2) Proposed month and year for completing each planned action.

(c) A Federal agency shall submit an action plan implementation progress report every 6 months to the Assistant Administrator for Information Resources Management, GSA, until the agency action plan is implemented. Interagency report control number 0153 GSA AR has been assigned to this report in accordance with Subpart 201-45.6.

(d) GSA will: (1) Analyze the adequacy of the agency action plan to implement recommendations contained in the evaluation report;

(2) Provide comments to the agency on the plan within 60 calendar days; and

(3) Notify an agency when progress reports are no longer required.

c. Part 201-45 is added to read as follows:

PART 201-45—MANAGEMENT OF RECORDS

Sec.
201-45.000 Scope of part. [Reserved]

Subpart 201-45.1—Creation of Records

201-45.100 Scope of subpart.
201-45.101 General provisions.
201-45.101-1 Agency action.
201-45.102 Correspondence—agency program responsibilities.
201-45.102-1 Correspondence management functions.
201-45.102-2 Program requirements.
201-45.102-3 Program implementation.
201-45.103 Reports-agency program responsibilities.
201-45.103-1 Reports management function.
201-45.103-2 Program requirements.
201-45.103-3 Program implementation.
201-45.104 Forms management.
201-45.104-1 Scope of section.
201-45.104-2 Relationship to other directives.
201-45.104-3 Objectives of forms management.
201-45.104-4 GSA assistance.
201-45.104-5 Agency responsibilities.
201-45.105 Directives management.
201-45.105-1 Scope of section.
201-45.105-2 Authority.
201-45.105-3 Objectives.
201-45.105-4 Agency responsibilities.
201-45.105-5 Additional information.
201-45.106 Automatic data processing records; agency program responsibilities.
201-45.106-1 ADP records management function.
201-45.106-2 Program requirements.
201-45.106-3 Program implementation.

Subpart 201-45.2—Organization, Maintenance, and Use of Current Records

201-45.201 General provisions.
201-45.201-1 Authority.
201-45.201-2 Agency action.
201-45.202 Copy management.
201-45.202-1 Scope of section.
201-45.202-2 Authority.
201-45.202-3 Agencies' responsibilities.
201-45.202-4 GSA responsibilities.
201-45.203 Mail-agency program responsibilities.
201-45.203-1 The mail management function.
201-45.203-2 Program requirements.
201-45.203-3 Program implementation.
201-45.204 Files management.
201-45.204-1 The files management function.
201-45.204-2 GSA responsibilities.
201-45.204-3 Agency program implementation.
201-45.205 Records equipment and supplies—agency program responsibilities.
201-45.205-1 Management records equipment and supplies.
201-45.205-2 Agency program requirements.

Subpart 201-45.3—Micrographics

201-45.300 Scope of subpart.
201-45.301 Authority.
201-45.302 Agency program responsibilities.
201-45.303 GSA responsibilities.
201-45.304 Micrographic systems analysis.

Subpart 201-45.4—Records Equipment and Supplies

201-45.401 Stationery standards.
201-45.401-1 General provisions.
201-45.401-2 Standard stationery specifications.
201-45.401-3 Procurement and stocking.
201-45.401-4 Printing of letterhead stationery.
201-45.401-5 Preparing and using letterhead stationery.
201-45.401-6 Manifold (tissue) sheets.
201-45.401-7 Envelopes.
201-45.401-8 Envelopes and post cards.
201-45.401-9 Optional Form 10, U.S. Government Memorandum.
201-45.401-10 Optional Form 41, Routing and Transmittal Slip.
201-45.401-11 Standard Form 63, Memorandum of Call.
201-45.401-12 Standard Form 65, U.S. Government Messenger Envelope.
201-45.401-13 Optional Form 27, United States Government 2-Way Memo.
201-45.401-14 Waivers.

Subpart 201-45.5—Standard and Optional Forms Management Program

201-45.500 Scope of subpart.
201-45.500-1 Objectives.
201-45.501 Authority.
201-45.502 Agency responsibilities.
201-45.503 GSA responsibilities.
201-45.504 Approval, disapproval, and cancellation procedures.
201-45.504-1 Approval and disapproval of Standard and Optional forms.
201-45.504-2 Cancellation of Standard and Optional forms.
201-45.505 Interagency Committee on Medical Records (ICMR) responsibilities.
201-45.505-1 Clearance of medical Standard forms.
201-45.506 Standard and Optional forms coordination with interagency reporting approved by GSA.
201-45.507 Standard and Optional forms used for collections of information from the public.
201-45.508 Reporting requirements.
201-45.509 Overprinting of Standard and Optional forms.
201-45.510 Exceptions to Standard and Optional forms.
201-45.510-1 Policy.

Sec.
201–45.510–2 Clearance procedures for exceptions.
201–45.510–3 Review of exceptions.
201–45.511 Program review.
201–45.512 Employee sugestions.
201–45.513 Acquisition of forms.
201–45.514 Procurement of stocks of Standard and Optional forms.

Subpart 201–45.6—Interagency Reports Management Program

201–45.600 Scope of subpart.
201–45.601 Authority.
201–45.602 Objectives.
201–45.603 Agency responsibilities.
201–45.604 Establishing or revising interagency reporting requirements.
201–45.605 Extending interagency reporting requirements.
201–45.606 Discontinuing interagency reporting requirements.
201–45.607 Justifying interagency reporting requirements.
201–45.608 Cost estimates.
201–45.609 Special provisions.
201–45.609–1 Exemptions.
201–45.609–2 Waivers.
201–45.609–3 Classified reporting requirements.
201–45.610 Coordination with other clearance authorities.
201–45.610–1 Interagency/public reporting requirements.
201–45.610–2 Interagency reporting coordination with Standard and Optional forms approved by GSA.
201–45.611 Obtaining forms.

Subpart 201–45.7—Forms

201–45.700 Scope of subpart.
201–45.701 Optional Form 10: United States Government Memorandum.
201–45.702 Standard Form 63: Memorandum of Call.
201–45.703 Standard Form 65: U.S. Government Messenger Envelope.
201–45.704 Optional Form 27: United States Government 2-Way Memo.
201–45.705 "Guides to Simplified Informal Correspondence."
201–45.706 Optional Form 41: Routing and Transmittal Slip.
201–45.707 Standard Form 152: Request for Clearance, Procurement, or Cancellation of Standard and Optional Forms.
201–45.708 Standard Form 360: Request for Clearance of an Interagency Reporting Requirement.

Subpart 201–45.8—Technical Assistance

201–45.800 Scope of subpart.
201–45.801 Services available.
201–45.802 Technical advice and assistance on records management programs.
201–45.803 Technical assistance involving studies and surveys.
201–45.804 General paperwork systems studies.
201–45.805 Request for service.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 201–45.000 Scope of part. [Reserved]

Subpart 201–45.1—Creation of Records

§ 201–45.100 Scope of subpart.

(a) Chapters 29 and 31 of the Title 44, United States Code, gives the Administrator of General Services and the heads of Federal agencies responsibility for the development and implementation of standards and programs for the economical and efficient management of Federal records. Specifically, each Federal agency is required to provide for effective controls over the creation of records.

(b) Effective controls over records creation must encompass all types of records at all levels of organization, central office and field. Specifically, there are four types of records which require continuing attention. These types—correspondence, reports, forms, and directives—are common to all agencies. Generally these records are created on paper, but they may also appear on punch cards, film, tape, and other media.

§ 201–45.101 General provisions.

§ 201–45.101–1 Agency action.

(a) The head of each Federal agency, in meeting the requirements of section 3102 of Title 44, United States Code for controlling the creation of records, is expected to observe the program responsibilities and standards set forth in this Subpart 201–45.1 and regulations issued by NARA in 36 CFR XII. These responsibilities and standards are basic to the Government-wide control of records creation; however, the application of the program responsibilities by individual agencies may be influenced by factors such as agency size, organization, mission and paperwork activity.

(b) Each Federal agency is expected to: (1) Assign to an office(s) of the agency the responsibility for the development and implementation of agencywide programs for the management of correspondence, reports, forms, ADP records, micrographics, mail, files, and directives. When organization arrangement, size, or complexity requires, actual control may be established at bureau, service, or office level. Programs at these control points will operate within the framework of the overall agency plan.

(2) Issue a directive(s) establishing program objectives, responsibilities, and authorities. A copy of each directive issued (and subsequent amendments or supplements) should be readily available for inspection by the Office of Information Resources Management, GSA.

§ 201–45.102 Correspondence-agency program responsibilities.

§ 201–45.102–1 Correspondence management function.

The objectives of correspondence management are to limit correspondence to essential requirements, to improve the quality of necessary correspondence, and to provide for its creation in an economical and efficient manner.

§ 201–45.102–2 Program requirements.

(a) Each Federal agency, in providing for effective controls over the creation of records, is expected to establish an appropriate program for the management of agency correspondence (§ 201–45.101–1). The program will:

(1) Prescribe the types of correspondence to be used in official agency communications.

(2) Establish and implement agency standards concerning the number and kind of copies required and their distribution and purpose.

(3) Implement the correspondence standards set forth in the U.S. Government Correspondence Manual and in pertinent GSA Records Management Handbooks, with such modifications as may be necessary for specialized agency practices.

(4) Implement the Government-wide standards issued by GSA for the procurement and use of letterheads, manifold paper, memorandum forms, and envelopes.

(5) Review, on a continuing basis, agency correspondence practices and procedures to find opportunities for improvement and simplification.

(b) Standards, guides, and instructions developed for the agency correspondence management program are to be in published form, designed for easy reference and revision. They should be readily available to those who write, review, sign, type, and file correspondence.

§ 201–45.102–3 Program implementation.

The following actions are basic to a correspondence management program.

(a) Prepare only necessary correspondence and essential copies.

(b) Use form letters to the maximum extent possible and use guide letters and paragraphs when practical following the standards, guides, and principles set forth in the GSA handbook, Form and Guide Letters.

(c) Originate letters that are carefully planned, easily read and understood, and responsive to the needs of the recipient by applying the standards,

guides, and principles set forth in the GSA Records Management Handbook, Plain Letters.

(d) Prepare correspondence that is consistent in style and format, neat and attractive in appearance, and editorially correct by applying the standards, guides, and principles set forth in the U.S. Government Correspondence Manual.

(e) Develop and implement procedures that expedite the clearance and handling of correspondence.

(f) Provide for periodic spotchecks of agency correspondence to determine compliance with standards.

§ 201–45.103 Reports-agency program responsibilities.

§ 201–45.103–1 Reports management function.

The effective management of reports requires an organized and continuous effort to improve the quality and economy of reporting to ensure that agency management officials are provided with the exact information needed in the right place, at the right time, and in the format most useful to them for informed decision making. The reports management function includes the output (report) of agency systems or procedures as well as the reporting systems themselves. The report management function is also concerned with interagency reports management (Subpart 201–45.6) and with the clearance of public reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980 and OMB regulations in 5 CFR Part 1320.

§ 201–45.103–2 Program requirements.

(a) Each Federal agency, in providing for effective controls over the creation of records, is expected to establish an appropriate program for the management of its internal reporting requirements (§ 201–45.101–1). The program shall:

(1) Establish and implement standards and procedures for identifying management information needed for planning, controlling, and evaluating.

(2) Establish and implement standards and procedures for designing management information systems, including the design of reports used in those systems.

(3) Establish and implement standards and procedures for initiating, identifying, reviewing, approving, preparing, and distributing internal reporting requirements.

(4) Provide essential management information concerning the number and types of reports in use and, for reports which require a significant amount of manpower and other resources, the estimated costs of development, operation, and use (§ 201–45.103–1(c)).

(5) Provide for the periodic review of approved reports for need, adequacy, design, and economy of preparation and use.

(6) Ensure that all applicable laws and statutes (e.g., Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), Federal Information Processing Standards (FIPS) (40 U.S.C. 759(f); 15 CFR Part 8)) and regulations issued by NARA (36 CFR XII) are considered in the development of internal reporting requirements.

(b) Standards, guides, and instructions developed for the reports management program are to be published and designed for easy reference and revision. They shall be readily available to reports originators and users and to GSA for periodic review as part of the GSA records management evaluation program as prescribed in § 201–22.103, Agency program evaluation.

(c) Approval, modification, or disapproval of internal agency reporting requirements (§ 201–45.103–2(a)(3)) shall be based on an objective cost effectivness evaluation in accordance with costing guidelines issued by the Office of Office Information Systems (KL), GSA, unless reporting is exempted in accordance with § 201–45.103–2(d). Cost estimates of internal reporting requirements shall cover the same reporting costs defined for interagency reports (§ 201–45.606–1) and be based on the same costing alternatives specified for interagency reports (§ 201–45.606–2).

(d) The following external reporting requirements are exempted from the provisions of this subpart (however, internal agency reporting requirements that may be developed by an agency in order to respond to an exempted external reporting requirement are subject to the provisions of this subpart):

(1) Legislative branch requirements in statutes or congressional committee requests;

(2) Judicial branch requirements in court orders or other judicial determinations;

(3) Presidential requirements in Presidential directives; and

(4) OMB budgetary, program review and coordination, and legislative clearance requirements.

(e) If an agency determines that it cannot comply with all provisions of this subpart for a specific internal reporting requirement, selected program requirements may be waived by an appropriate agency program authority. As a minimum, all internal reporting requirements granted such waivers shall be assigned a summary cost estimate (§ 201–45.606–2) by the agency program authority.

§ 201–45.103–3 Program implementation.

The following actions are basic to a reports management program:

(a) Establish and maintain an inventory of internal and external recurring reports.

(b) Develop the kinds of reporting systems that best serve management.

(c) Analyze all reports inventoried and all reports submitted for approval to determine that:

(1) The information is adequate, necessary, meaningful, and useful;

(2) The information is obtained from the best available source and in the simplest manner;

(3) The reporting frequency is consistent with the time the information is actually needed; and

(4) The estimated cost of gathering the information does not exceed its management value.

(d) Require that each request for a new or revised report explain how the report will be used.

(e) Require that each report be supported by a directive setting forth instructions for preparation and submission.

§ 201–45.104 Forms management.

§ 201–45.104–1 Scope of section.

Section 201–45.104 provides policies and guidelines for managing, administering, and implementing Federal agency forms management programs.

§ 201–45.104–2 Relationship to other directives.

(a) Subpart 201–45.5 set forth the scope, objectives, goals, and procedures required to manage and operate the Standard and Optional Forms Program.

(b) Part 201–8 contains guidance regarding Federal Information Processing Standards applicable to forms management, particularly regarding the use of data standards applicable to the interchange of machine processable data between and among agencies. (See § 201–8.1307–1.)

§ 201–45.104–3 Objectives of forms management.

Each Federal agency's forms management program shall:

(a) Eliminate unnecessary forms by justifying the need for existing and proposed forms;

(b) Reduce systems' operating costs and increase systems' efficiency by developing forms that are easy to fill-in, read, transmit, process, and retrieve;

(c) Reduce reproduction costs and improve productivity by appropriately designing and printing forms; and

(d) Periodically evaluate agency forms for continuing effectiveness and improvement.

§ 201-45.104-4 GSA assistance.

GSA will guide and assist Federal agencies in creating, maintaining, and using records, including forms. The Office of Information Resources Management, GSA provides standards, guidelines, and training materials regarding forms management for all Federal agencies. Specific advice and assistance may be obtained by contacting the General Services Administration, Office of Office Information Systems (KL), Washington, DC 20405.

§ 201-45.104-5 Agency responsibilities.

Each Federal agency shall establish and maintain a forms management program for those forms with an annual use of 100 copies or more as part of a continuing records management effort and shall assign responsibility to a specific official or office that will:

(a) Develop program objectives; define responsibilities and authorities; issue directives; and establish procedures for submitting, reviewing, approving, and identifying agency forms, including ADP systems forms;

(b) Use forms analysis and design standards described in pertinent GSA records and information management handbooks;

(c) Train persons who analyze, design, coordinate, and manage forms;

(d) Review the forms management program regularly to determine the adequacy of the system and its effectiveness in meeting agency needs;

(e) Ensure compliance with agency forms management policies and procedures;

(f) Review all requests for new forms and all reprints or revisions of existing paper forms to ensure that:

(1) All forms efficiently collect data necessary to the agency's mission;

(2) Forms meet all requirements of applicable statutes, standards, and regulations;

(3) Each form is supported by a directive setting forth instructions for preparing, submitting, and using the form (not applicable to self-explanatory forms used by a single organizational element such as an office, division, or region);

(4) Paper forms are designed for economical printing, stocking, and distributing; and

(5) An adequate supply of paper forms is procured.

(g) Review at least annually the most frequently used forms and those forms that create a significant burden for preparation for continued need and possible improvement;

(h) Assign a title, a form number, an edition date, and a department/agency/bureau identification to each form;

(i) Classify and group all forms by function and subject to aid in systems analysis, cross-referencing, and combining or eliminating forms;

(j) Maintain a historical case file for each controlled form, including information on each form's purpose, use, disposition, development, clearance, and (if appropriate) publication;

(k) Compile and maintain developmental and operational costs for public-use and interagency report forms using the format and instructions contained in Standard Form 335, Summary Worksheet for Estimating Forms Costs (as described in FIRMR Bulletin 18);

(l) Use the costing format and instructions contained in Standard Form 335 when the agency chooses to compile cost data on its internal forms;

(m) Maintain a list of current forms the agency uses;

(n) Encourage testing of forms and procedures to collect information economically and efficiently; and

(o) Promote forms management concepts, benefits, and training within the agency.

§ 201-45.105 Directives management.

§ 201-45.105-1 Scope of section.

Section 201-45.105 provides Federal agencies with standards and guidelines for establishing and managing effective directives systems. Small or temporary agencies may modify these regulations to meet their specific requirements.

§ 201-45.105-2 Authority.

As required by Chapter 29 of Title 44, United States Code, the Administrator of General Services will provide guidance and assistance to Federal agencies on the creation, maintenance, and use of records consistent with NARA regulations in 36 CFR XII.

§ 201-45.105-3 Objectives.

Directives management objectives are to provide agency managers with the means to effectively and efficiently convey written instructions to users and to document agency policies and procedures.

§ 201-45.105-4 Agency responsibilities.

Each Federal agency, to provide for effective, continuing directives management, shall:

(a) Assign to all agency managers the responsibility for preparing and maintaining directives needed to carry out their assigned responsibilities.

(b) Assign overall responsibility for planning, organizing, and controlling the directives management program to an office at the department or agency level, and delegate directives management functions, as needed, to lower organizational levels.

(c) Issue a directive(s) that states the purpose, responsibilities, authorities, policies, standards, and procedures of the agency's directives program.

(d) Organize agency directives systematically so that they are readily available to users by:

(1) Developing an integrated directives system that includes all agency policies and procedures;

(2) Classifying directives by subject so that all directives on any subject can be readily identified;

(3) Maintaining current indexes of existing directives and other finding aids, as necessary, so users may easily locate the directives they need;

(4) Establishing distinctive formats for directives so recipients can recognize them as authoritative agency instructions;

(5) Differentiating between permanent and temporary directives and ensuring that temporary directives carry expiration dates; and

(6) Maintaining directives in a form, such as looseleaf binders, where obsolete or revised materials may be easily removed or inserted.

(e) Ensure that directives are clearly written by:

(1) Establishing and implementing writing standards for directives; and

(2) Identifying the audience for each directive, and writing so that the intended readers can easily understand it.

(f) Ensure that directives are useful by:

(1) Providing users with only necessary information;

(2) Keeping directives current by issuing changes as needed; and

(3) Providing for the issuance of supplemental directives. This permits overall agency direction to be adapted to local conditions by field and other organizational components, provided that supplemental directives are consistent with the intent of the originals.

(g) Review each proposed directive to ensure that it is necessary, accurate, complete, and understandable.

(h) Coordinate and clear each proposed directive to avoid issuing conflicting policies or procedures.

(i) Establish and publish effective and efficient procedures for the timely reproduction and distribution of directives.

(j) Furnish copies of directives only to those who need them by:

(1) Requiring originators to identify those with a "need to know" or a "need to act" for each new directive for the purpose of developing accurate distribution lists;

(2) Annually reviewing and updating distribution lists for directives; and

(3) Periodically distributing checklists of current directives so users can determine whether they have received relevant directives.

(k) Require originators to biennially review each directive for need and currentness, and require originators to certify whether to continue, revise, or cancel each directive.

(l) Conduct training, or provide written guidance, as follows:

(1) For managers, on the importance of using the directives system to provide written instructions for accomplishing the agency's objectives;

(2) For directives originators, on the writing style and proper format for directives; and

(3) For users, on how to use the directives system.

(m) Evaluate the effectiveness and cost of the directives system, as follows:

(1) Maintain essential management information on the operation of directives systems. Examples of this information are data on the cost and time required to prepare, clear, and distribute directives; and annual workload data on the number of pages of directives issued, revised, and canceled. This information may be collected on a sampling basis;

(2) Annually review high-cost or high-volume directives activities to find opportunities for improvement;

(3) Evaluate annually the operating performance of the directives system. For example, select a sample of agency directives to find out if the intended recipients (i) received the directive, (ii) received it before its effective date, (iii) needed it, and (iv) understood it and acted correctly; and

(4) Evaluate the appliction of technologies, such as automatic data processing (including word processing), micrographics, photocomposition, and facsimile transmission, as means of improving the efficiency and effectiveness of the directives system.

§ 201–45.105–5 Additional information.

For more details on managing a directives system, refer to GSA's handbook, Communicating Policy and Procedures. For instructions on preparing external issuances for publication in the Federal Register, consult the "Document Drafting Handbook," 1980 edition, available from the U.S. Government Printing Office.

§ 201–45.106 Automatic data processing records; agency program responsibilities.

§ 201–45.106–1 ADP records management function.

The objectives of ADP records management are to ensure efficient and economic automatic data processing by: using proper recording and preservation techniques of machine instructions and operating procedures; establishing standards for proper maintenance, storage, and disposition of machine-readable records; developing optimum procedures for computer rooms and related support areas; and reviewing these recordkeeping practices on a continuing basis to find opportunities for improvement. Preservation and disposition of machine-readable records shall in accordance with regulations issued by NARA in 36 CFR XII.

§ 201–45.106–2 Program requirements.

(a) Each Federal agency, in providing for effective controls over the creation of records, is expected to establish an appropriate program for the management of ADP records. The program will:

(1) Prescribe the types of records to be used and maintained for the proper documentation and preservation for ADP operation.

(2) Prescribe the types of machine readable records, together with the necessary classification, labeling, recording, and filing standards.

(3) Review, on a continuing basis, agency ADP recordkeeping practices and procedures to find opportunities for improvement and simplification.

(b) Standards, guides, and instructions developed for the agency ADP records management program are to be in published form, designed for easy reference and revision.

§ 201–45.106–3 Program implementation.

Each agency shall establish standards for ADP records management and issue instructions and guidelines in the form of handbooks or manuals in acccordance with the appropriate standards. Specifically, these standards shall include:

(a) Identifying ADP records through classification and labeling;

(b) Filing and controlling methods for finding ADP records;

(c) Preserving machine-readable records through the use of disposition schedules, proper media storage facilities, and maintenance techniques (see 36 CFR XII);

(d) Issuing forms and formats for recording machine programs (instructions), functional and operational flow charts, record layouts, record coding structure (code books), printout plans, and basic machine run instructions (run books).

Subpart 201–45.2—Organization, Maintenance, and Use of Current Records

§ 201–45.201 General provisions.

§ 201–45.201–1 Authority.

Section 3102 of the Title 44, United States Code, requires that the head of each Federal agency "shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. Such program shall, among other things, provide for effective controls over the * * * maintenance and use of records in the conduct of current business * * *".

§ 201–45.201–2 Agency action.

Each Federal agency is expected to:

(a) Assign to an office(s) of the agency the responsibility for the development and implementation of agencywide management programs for mail, files, and records equipment and supplies. When organization arrangement, size, or complexity requires, actual control may be established at bureau, service, or office level. Programs at these control points will operate within the framework of the overall agency plan.

(b) Issue a directive(s) establishing program objectives, responsibilities, and authorities. A copy of each directive (and subsequent amendments or supplements) should be readily available for inspection by the General Services Administration.

§ 201–45.202 Copy management.

§ 201–45.202–1 Scope of section.

Section 201–45.202 sets forth the copy management responsibilities of the General Services Administration and other Federal agencies. It provides guidance to Federal agencies on managing copying practices and copying equipment. It does not apply to the reproduction of micrographic, photographic, or machine readable records or to associated equipment.

§ 201–45.202–2 Authority.

As required by Chapter 29 of Title 44, United States Code, the Administrator of General Services shall provide guidance and assistance to Federal agencies regarding the reproduction of

records and the selection and use of equipment and supplies associated with the copying of records. As provided by section 5 of Pub. L. 94–575, this regulation does not limit or supersede the authority or responsibility of the Joint Committee on Printing (JCP) or the Government Printing Office under chapters 1 through 19 of title 44 U.S.C.; nor does this regulation relieve Federal agencies of their responsibilities under Chapters 1 through 19 of title 44 U.S.C., or the Government Printing and Binding Regulations as published by the JCP.

§ 201–45.202–3 Agencies' responsibilities.

To ensure good copying practices and proper equipment management, each agency shall:

(a) *Determine availability of common centralized services.* Before agencies consider purchase or rental of copying equipment, they shall first determine the availability of common centralized services, such as GSA print plant and copy centers, to ensure that the required copying capability cannot be met economically and efficiently through the use of centralized services (see also FPMR Subpart 101–5.2, Centralized Field Duplicating Services).

(b) *Match equipment to copying needs.* (1) Whenever purchase or rental of copying equipment is planned, agencies shall determine the users' copying requirements. The following kinds of information are needed:

(i) Average number of copies needed per month;

(ii) Physical characteristics of materials routinely copied (e.g., copy size, individual sheet or bound volumes, etc.);

(iii) Average number of pages per document;

(iv) Average number of copies per page;

(v) How the copies are used; and

(vi) How quickly they are needed.

Each piece of copying equipment shall be used according to its operating characteristics and limitations. Equipment that is used in excess of its rated capacity is likely to suffer from frequent breakdowns, and equipment that is used at levels significantly below its rated capacity is not economical.

(2) When deciding on the types of equipment to be procured, agencies shall consider both direct and indirect costs of copying. Direct costs include such items as the lease or purchase price of equipment, the cost of maintenance and supplies, and the salaries of full-time equipment operators. Indirect costs include such items as overhead and the amount of time consumed by personnel in seeking and obtaining copying services. Copying service contracts, ranging from the provision and maintenance of equipment and supplies to complete copying services, are offered by private companies. An agency shall decide to contract for copying services if contracting is more economical than using its own resources. (See Office of Management and Budget Circular A–76 for guidance on acquiring commercial products and services.)

(c) *Maintain records.* To determine the proper use and most cost effective and economical placement of equipment, agencies shall establish inventory records for each machine. Records shall include the following information:

(1) Equipment brand, model number or name, and serial number;

(2) Type of procurement (lease, purchase, or lease-with-option-to-purchase) and installation date;

(3) Essential provisions of the lease plan or, if owned, the purchase price and essential elements of the maintenance plan, if any;

(4) Number of copies produced by month;

(5) Equipment characteristics, such as production speed, significant accessories or special features, and special electrical requirements;

(6) A record of repairs and maintenance; and

(7) Information on the operating environment, such as machine location, organizations served, and whether access to the machine is unrestricted, restricted to a full-time operator, or otherwise limited.

(d) *Review equipment requests.* Requests for equipment shall be reviewed by offices with authority to ensure economical procurement and placement of equipment. Reviews shall include:

(1) Study of the current copying needs of the requesting office;

(2) Consideration of projected copying needs of the requesting office;

(3) Analysis of the present use of equipment by the requesting office;

(4) Consideration as to whether the requesting office should share existing equipment, acquire its own, upgrade existing equipment, or use some combination of these alternatives;

(5) A determination of whether alternate reproduction methods are practical;

(6) A cost/benefit analysis of any feasible equipment alternatives, including a determination of whether purchase of lease would be more economical (see FPMR Subpart 101–25.5, Guidelines for Making Purchase or Lease Determinations); and

(7) Study to determine the best location for the equipment.

(e) *Review supply procurement policy.* Agencies shall review at least annually, procurement methods and sources for supplies, such as paper, toner, ink, and duplicating masters. Options, such as blanket purchase agreements, bulk purchasing, and procurement under General Services Administration contracts, may offer lower costs.

(f) *Review copy management efforts.* Agencies shall conduct periodic reviews to determine whether improvements are necessary. Practices shall be audited to determine whether they can be improved. Records shall be reviewed to identify areas of potential improvements in equipment management.

§ 201–45.202–4 GSA responsibilities.

To assist Federal agencies in planning, developing, and evaluating copy management programs, the General Services Administration will:

(a) Provide guidelines on developing and maintaining a copy management program. These will consist of handbooks, guides for evaluating agency programs, and other publications.

(b) Provide advice and assistance in carrying out copy management studies and in program management.

(c) Periodically review agency programs to determine what improvements can be made.

§ 201–45.203 Mail-agency program responsibilities.

§ 201–45.203–1 The mail management function.

The objective of mail management is to provide rapid handling and accurate delivery of mail throughout the agency at minimum cost. To do this processing steps are kept to a necessary minimum; sound principles of work flow are applied, modern equipment, supplies, and devices are used; and, in general, operations are kept as simple as possible, so as to increase efficiency.

§ 201–45.203–2 Program requirements.

(a) Each Federal agency, in providing for effective controls over the creation of records, is expected to establish an appropriate program for the management of agency mail (§ 201–45.201–2). The program will:

(1) Establish and implement standards and procedures for the receipt, delivery, collection, and dispatch of mail.

(2) Implement the mail management standards set forth in the GSA handbook, Managing the Mail.

(3) Provide essential management information concerning the volume and types of mail processed and time

requirements for internal delivery and mailing.

(4) Review, on a continuing basis, agency mail practices and procedures to find opportunities for improvement and simplification.

(b) Standards, guides, and instructions developed for the agency mail management program are to be in published form, designed for easy reference and revision. They should be readily available to those concerned with mail and messenger operations. In addition, pertinent information for users of mail and messenger services should be given the widest possible dissemination.

§ 201-45.203-3 Program implementation.

The following actions are basic to a mail management program:

(a) Deliver mail to the action office within shortest possible time after receipt. (Objective should be 4- to 6-hour delivery.)

(b) Establish realistic time limits for replying to White House and Congressional mail, and to public correspondence. Limit preparing letters of a purely acknowledgment nature to cases in which a considerable time may be needed for a substantive reply.

(c) Limit mail followup control to security mail or mail important because of its source or content.

(d) Make maximum and proper use of the services and facilities of the U.S. Postal Service.

(e) Develop and install procedures that expedite and limit mail clearance, reviews, and signing.

(f) Provide central control with established schedules for messenger services.

§ 201-45.204 Files management.

§ 201-45.204-1 The files management function.

The objectives of files management are to cost effectively organize agency files so that needed records can be found rapidly, to ensure that records are complete, to facilitate the selection and retention of records of archival value, and to accomplish the prompt disposition of noncurrent records.

§ 201-45.204-2 GSA responsibilities.

GSA is responsible for furnishing guidance on filing systems to agencies. Filing systems include classification and filing schemes, file locations, filing procedures, file retrieval procedures, chargeout procedures, and refiling procedures for records on paper, microfilm, and electronic media. Such filing system guidance will be compatible with regulations issued by the National Archives and Records Administration (36 CFR XII).

§ 201-45.204-3 Agency program implementation.

Each Federal agency, in providing for effective controls over the creation of records and the management of agency files (See § 201-45.201-2) shall:

(a) Establish and implement standards and procedures for classifying, indexing, and filing records set forth in GSA handbooks;

(b) Formally specify official file locations;

(c) Standardize reference service procedures for finding, chargeout, and refiling of agency records;

(d) Standardize, to the extent possible, the equipment and supplies used in filing and reference service operations by using standard items stocked by GSA's Office of Federal Supply and Services;

(e) Make available to all employees published standards, guides, and instructions designed for easy reference and revision; and

(f) Review the program periodically to determine the adequacy of the filing system and its effectiveness in providing records requested.

§ 201-45.205 Records equipment and supplies—agency program responsibilities.

§ 201-45.205-1 Managing records equipment and supplies.

The objectives of a records equipment and supplies management program are to ensure that Federal agencies obtain equipment and supplies that are necessary and suitable to agency records operations, and that such equipment and supplies are available and are used properly.

§ 201-45.205-2 Agency program requirements.

Each Federal agency in providing for effective control over the creation of records, shall establish a program to manage agency records equipment and supplies (see § 201-45.201-2) by:

(a) Standardizing records equipment and supplies as much as possible;

(b) Reviewing requests for the purchase of records equipment and supplies for essentiality and standardization;

(c) Purchasing standard equipment and supplies listed in Federal Supply Schedules;

(d) Reviewing new developments in the field of records equipment and supplies; and

(e) Reviewing currently owned and rented equipment to determine that it is needed, properly used and maintained, and updated as required.

Subpart 201-45.3—Micrographics

§ 201-45.300 Scope of subpart.

This subpart provides (a) standards and guidelines for using micrographics technology in the creation, use, storage, and retrieval of Federal Government records. Additional guidance on the use of micrographics is available in GSA records and information management handbooks, Micrographics Systems Analysis, Microfilming Records, and Computer Output Microfilm. Guidance on the use of microforms is contained in 36 CFR XII.

§ 201-45.301 Authority.

As provided in 44 U.S.C. Chapter 29 of Title 44, United States Code, the Administrator of General Services is authorized to develop and promote standards to improve the management of records.

§ 201-45.302 Agency program responsibilities.

Each agency shall:

(a) Issue internal regulations and procedures for the submission, review, and approval or disapproval of proposed micrographic systems and applications;

(b) Issue procedures for evaluating the continued efficiency and effectiveness of micrographic systems and applications;

(c) Review ongoing micrographic systems periodically for conformance to established policies, procedures, and standards;

(d) Develop and maintain a complete and accurate inventory of micrographic production and reproduction equipment within the agency; e.g., cameras, processors, duplicators, and COM recorders, for the purpose of resource management. The inventory shall, as a minimum, include: type of equipment, name of manufacturer, model and serial number, date of acquisition, location, and purchase or rental status;

(e) Disseminate all publications containing micrographics standards and guidelines and other current information concerning the advantages and limitations of micrographic systems to managers and operating officials involved in the development or operation of micrographic systems;

(f) Assign responsibility for the review and approval of all micrographic systems to a specific office or official. The responsible office or official shall establish procedures for the review and approval of ongoing and proposed systems and application requests to ensure that they are complete and

contain the information shown in § 201–45.304; and

(g) Ensure that agency directives issued in accordance with § 201–45.302 (a), (b), and (f) are readily available for inspection by the General Services Administration.

§ 201–45.303 GSA responsibilities.

GSA shall:

(a) Disseminate to agencies the standards and criteria necessary for developing, evaluating, and operating micrographic systems. This includes:

(1) Information to acquaint potential users with micrographics technology and its various applications;

(2) Methods and procedures for conducting feasibility studies;

(3) Criteria for estimating cost and guidelines for comparing existing and proposed systems with alternative approaches;

(4) Standards for microforms and formats, and guidelines for selecting appropriate micrographic systems for specific types of applications; and

(5) Standards and guidelines for evaluating the continuing efficiency and effectiveness of micrographic systems;

(b) Analyze Government-wide practices through research projects and inspections to determine areas in which the application of micrographics will improve efficiency and effectiveness in the creation and use of documents and information;

(c) Conduct periodic inspections of agencies' micrographics programs as part of the GSA records and information management program evaluation prescribed in § 201–22.103, Agency program evaluation; and

(d) Coordinate with the Government Printing Office (GPO) on matters involving micropublishing; with the National Bureau of Standards (NBS) on Federal Information Processing Standards concerning micrographics; and with the National Archives and Records Administration (NARA) on micrographics systems relating to information of continuing value.

§ 201–45.304 Micrographic systems analysis.

(a) A systems analysis including a cost/benefit analysis shall be conducted by the agency prior to the decision to establish a micrographic system. The cost/benefit analysis shall include a comparative cost analysis in accordance with Office of Management and Budget (OMB) Circular A–76, if it meets the guidelines described therein.

(b) The systems analysis shall contain the following items:

(1) An examination of the current operating system to evaluate the need for the documents or information and the use to which they are put.

(2) A consideration of the alternatives to micrographics including such measures as:

(i) Revising records control schedules to provide for the disposition of paper records by disposal, by transfer of inactive paper records to the Federal records centers, or by offer of permanently valuable paper records to the National Archives and Records Administration (NARA) (36 CFR Chapter XII); and

(ii) Improving current retrieval and distribution procedures using paper records.

(3) A consideration of all feasible alternative methods of creating the microform records, such as:

(i) Purchase, lease, or lease-purchase of equipment already in the agency.

(ii) Sharing micrographic production equipment already in the agency.

(iii) Using the micrographic facility of another agency.

(iv) Contracting for NARA reimbursable micrographic services.

(v) Contracting with a non-Government commercial services firm.

(vi) Other alternatives identified in the analysis.

(4) An analysis of the workload and staffing requirements to ensure sufficient trained personnel to operate and maintain the micrographic system.

(5) An examination of the information needs of the user when determining reduction ratio, format, quality control procedures, viewing equipment, and user training.

(6) A review to ensure compatibility of microforms used within the agency and those used to transmit information to other agencies and the public.

(7) A determination of the availability and cost of specialized space requirements; i.e., temperature, humidity control, or plumbing.

(8) A review to ensure adherence to NARA standards for the photographic and micrographic production and reproduction of records.

(c) The chosen alternative shall be the most cost effective and efficient system unless overriding intangible benefits necessitate an alternate decision.

(d) Procurement of COM equipment is subject to those FIRMR provisions governing ADP (see particularly Subparts 201–24, 201–30, and 201–32).

(e) Procurement of equipment for micropublishing is subject to the provisions of the Government Printing and Binding Regulations published by the Joint Committee on Printing, United States Congress.

Subpart 201–45.4—Records Equipment and Supplies

§ 201–45.401 Stationery standards.

§ 201–45.401–1 General provisions.

(a) Section 201–45.401 prescribes mandatory standards for selection and use of blank and printed stationery paper, including the format designs of formal letters and informal letters (memoranda). Also prescribed are formal standards for the Optional Form 10, U.S. Government Memorandum; Optional Form 41, Routing and Transmittal Slip; Standard Form 63, Memorandum of Call; Standard Form 65, U.S. Government Messenger Envelope; and Optional Form 27, United States Government 2-Way Memo.

(b) Nothing in this subpart shall supersede, in any manner, the provisions of the "Government Paper Specification Standards" and the "Government Printing and Binding Regulations" issued by the Congressional Joint Committee on Printing (JCP) or any applicable U.S. Postal Service (USPS) regulation.

§ 201–45.401–2 Standard stationery specifications.

Government stationery standard specifications are set forth in the "Table of Standard Specifications" as follows:

BILLING CODE 6820-25-M

TABLE OF STANDARD SPECIFICATIONS

Item	Color		Size		Paper quality shall not exceed		
					Substance[1]		
	Paper	Printing	Inches (width x length)	Millimeters[2] (width x length)	Grade[3]	Pounds[4]	Grams[5] (g/m^2)
Stationery							
Letterhead stationery designed for window envelopes	White	One Color	8.5 x 11 8.5 x 7.3 8.5 x 5.5	216 x 279 216 x 185 216 x 140	50 percent rag or 25 percent rag	16 20	60 75
Continuation sheets	Match agency letterhead.	None	8.5 x 11	216 x 279	50 percent rag or 25 percent rag	16 20	60 75
Manifold (tissue) letterhead	White	Match agency letterhead.	8.5 x 11	216 x 279	25 percent rag	9	34
Manifold (tissue)	Yellow and White[6]	None					
Memorandum stationery designed for window envelopes	White	Match agency letterhead.	8.5 x 11 8.5 x 7.3 8.5 x 5.5	216 x 279 216 x 185 216 x 140	CW (writing) or 25 percent rag	20 16	75 60
Continuation sheets	Match memo stationery.	None	8.5 x 11	216 x 279	CW (writing) or 25 percent rag	20 16	75 60
Manifold (tissue)	Yellow and White[6]	None	8.5 x 11	216 x 279	25 percent rag	9	34

TABLE OF STANDARD SPECIFICATIONS -CONTINUED

Item	Color		Size		Paper quality shall not exceed		
					Substance[1]		
	Paper	Printing	Inches (width x length)	Millimeters[2] (width x length)	Grade[3]	Pounds[4]	Grams[5] (g/m^2)
Envelopes	White	Match agency letterhead color and style.	Use smallest possible		Determined by Federal Supply Service	24	90
	Brown	Black ink in agency letterhead style or Green ink in agency style when diamond borders are used.	Use smallest possible		Kraft	28	105
United States Government Memorandum (OF 10)	White	Black	8.5 x 11	216 x 279 ...	CW (writing)	20	75
			8.5 x 5.5 ...	216 x 140 ...			
Memorandum of Call [SF 63 (pads)]	At discretion of GPO		4 x 5.2 ...	102 x 132 ...	At discretion of GPO		
U.S. Government Messenger Envelope:							
(SF 65A)	Brown	Dark Brown ...	4.25 x 9.5 ...	108 x 241 ...	Kraft	24	90
(SF 65B)			9.5 x 12	241 x 305 ...			
(SF 65C)			12 x 16	305 x 406 ...			
Routing and Transmittal Slip (OF 41)	At discretion of GPO		8 x 5.25 ..	203 x 133 ...	At discretion of GPO		
United States Government 2-Way Memo (OF 27)	White/ Yellow/Pink	Black	8.5 x 11	216 x 279 ...	Chemical transfer	9	32

[1] Joint Committee on Printing, Government Paper Specification Standards.
[2] Joint Committee on Printing sizes rounded to whole millimeter.
[3] CW = Chemical Wood.
[4] Weight per 500, 17" x 22" sheets.
[5] Weight, per sheet, per square meter.
[6] Other colors may be used but paper quality shall not exceed 25 percent rag, 9 lbs (34 grams per square meter).

BILLING CODE 6820-25-C

§ 201–45.401–3 Procurement and stocking.

Agencies shall:

(a) Procure stationery through normal supply channels;

(b) Procure Standard and Optional forms, prescribed in §§ 201–45.401–9 through 201–45.401–13, from the Office of Federal Supply and Services, General Services Administration.

(c) Establish procedures to ensure that stationery inventories are economically maintained at levels consistent with need;

(d) Maintain economical levels and distribute stationery to avoid unneeded storage costs; stock loss due to deterioration; and obsolescence due to geographical, organizational, name, and design changes. Generally, agencies should limit stationery stock levels to a 1 year's supply;

(e) Limit stationery styles and sizes to the minimum needed to ensure efficient and effective program operations;

(f) Not change stationery designs without written justification, approved by the head of the agency, or if so delegated, the senior official for information resources management, documenting improved program operations; and

(g) Ensure that all reasonable, orderly, and economical means are used to deplete obsolete stationery.

§ 201–45.401–4 Printing of letterhead stationery.

Agencies may design letterhead stationery subject to the following conditions:

(a) The design provides for economical printing and efficient letter preparation;

(b) JCP regulations are followed;

(c) Requirements of § 201–45.401–2, are followed;

(d) The letterhead design is across the 8.5-inch top edge, supports the economical use of labor and materials, and does not prevent the proper use of window envelopes;

(e) Standard foundry type fonts are used;

(f) The letterhead of agencies with a unique 5-digit ZIP Code is limited to the agency's full name and return address (city, State, and ZIP Code). For example:

Public Service Agency
Washington, DC 00000

The head of the agency or, if so delegated, the senior official for information resources management may grant written exceptions only to major bureaus, offices, and services, provided the cost to print, distribute, stock, and use additional letterhead is less expensive than the clerical cost to type titles, etc.;

(g) The letterhead of agencies having more than one location where mail is received directly from USPS, or having offices that require other address block data to aid in return mail delivery, may also contain the street address or other identifying address, in addition to the items listed in paragraph (f) of this section; for example:

Public Service Agency
Region 00
Anytown, OK 00000

Public Service Agency
Service Building, Room 000
Anytown, MO 00000

(h) No other printing occurs below the letterhead, except as required in this section and except for non-letterhead printing of form letters;

(i) The head of the agency or, if so delegated, the senior official for information resources management determines that Optional Form 10 will not adequately serve an agency's needs for informal letterhead;

(j) End-of-text marks, fold marks, and marks to align the address block in a window envelope are to be preprinted on all letterhead stationery, but the head of the agency, or, if so delegated, the senior official for information resources management may grant a written exception to preprinted marks on formal letterhead;

(k) In the left margin, below agency designed informal letterhead (memorandum), are printed, in this order and flush with the left typing margin: Date, Reply to Attention of (or From), Subject, and To. For additional information, see the U.S. Government Correspondence Manual, Part 1, Chapter 1.

§ 201–45.401–5 Preparing and using letterhead stationery.

Agencies shall ensure that formal letterhead and informal letterhead (memorandum) stationery is prepared by the most economical use of labor and materials, including the style, format and other efficient steps prescribed in the United States Government Correspondence Manual (See § 201–45.102–2(a)(3)). Informal letterhead (memorandum) shall be the principal letterhead used in written, intra- and interagency correspondence.

§ 201–45.401–6 Manifold (tissue) sheets.

Agencies shall create copies only when need has been determined and shall use tissues to make them. A substitute for tissue sheets is permitted, provided (a) equal or better copy quality is maintained and (b) labor and material costs to produce the substitution are no greater than those for tissue preparation. (See § 201–45.401–2.) Agencies shall use yellow tissues for official file copies if the record copy is to be filed in paper form. White tissues shall be used for all other purposes, unless color will aid in processing, identification, or disposition. Letterhead tissues may only be used for formal letters to addressees outside the originating agency who specifically request letterhead copies.

§ 201–45.401–7 Envelopes.

Agencies shall ensure that:

(a) Except for self-mailers, no printing is done on the inside of envelopes;

(b) Envelopes are sent using the most economical service consistent with delivery needs;

(c) The material-plus-postage cost of "flat" envelopes, made from material other than that specified in § 201–45.401–2, is more economical for mailing than the material-plus-postage cost of kraft envelopes;

(d) Envelopes and post cards that will be processed by USPS meet mailing requirements and are eligible for the most economical mail service; and

(e) Use of lettersize window envelopes is specifically prescribed in written agency policy requiring maximum possible use, except for mailing material that:

(1) Involves national security,

(2) Is highly confidential to the agency or the addressee,

(3) Is uneconomical to mail in window envelopes, or

(4) Is sent to high level officials in Government or the private sector.

§ 201–45.401–8 Envelopes and post cards.

(a) Agencies shall ensure that printed items on envelopes and post cards are arranged and located according to USPS specifications. Printed envelopes and post cards shall contain the agency's full name and return address, the USPS-required penalty statement, and the "official business" designation. When an agency pays the return postage, agency-supplied return envelopes and post cards must bear either prepaid postage or "Business Reply."

(b) Except for USPS-required items, no other printed, stamped, or affixed marking or design shall be placed on envelopes or on the front of post cards unless it has been determined in each instance that use of a given marking or design will either:

(1) Reduce the agency's costs,

(2) Expedite mail delivery or handling,

(3) Aid in the delivery of services to the public, or

(4) Promote a program or activity having major national impact. The use of each marking or design must be approved in writing by heads of

agencies. The approval authority may only be delegated to the senior official for information resources management.

§ 201–45.401–9 Optional Form 10, U.S. Government Memorandum.

This form is designed to aid informal, intra-agency or interagency correspondence preparation and is designed for use with window envelopes. (See the U.S. Government Correspondence Manual.) Standard spaces are provided for the date, addressee, subject matter, and sender. It may be overprinted with the agency's name and address at the top. It is intended for use by agencies whose needs are met by a single format and whose identification and data requirements, if any, do not justify agency-designed letterhead.

§ 201–45.401–10 Optional Form 41, Routing and Transmittal Slip.

This form is design to transmit brief informal messages and/or documents and not for use as a record of approvals, concurrences, disposals, clearances, or similar actions. Spaces are provided for routing, addressee initials, and the date.

§ 201–45.401–11 Standard Form 63, Memorandum of Call.

This form is designed to record telephone numbers, messages, or visits for personnel who are not available at the time of the call or visit.

§ 201–45.401–12 Standard Form 65, U.S. Government Messenger Envelope.

This form is designed as a reusable envelope and is available in three sizes as SF 65A (preferred), SF 65B, and SF 65C. (See § 201–45.401–2.) It is designed to transmit correspondence and other matter between agencies if not used as the outer cover for mail tendered to USPS. Any agency component may use SF 65 internally if it is processed only by agency messengers. Consecutively arranged spaces are provided on the front and back of the envelope for the name or title of the addressee, organization, and mail stop number. SF 65 is the ony authorized messenger envelope, and agencies may not procure another type. SF 65 may not be used to transmit unenveloped materials covered by the Privacy Act.

§ 201–45.401–13 Optional Form 27, United States Government 2-Way Memo.

This form is a 3-part carbonless set for informal communications. The message and reply are placed on the same page in brief informal language. It can be sent and returned in a window envelope, if an envelope is necessary.

§ 201–45.401–14 Waivers.

Agencies seeking a waiver of any provision of this Subpart 201–45.4 shall submit a written request to the Director of Office Information Systems, Office of Information Resources Management (Mailing address: General Services Administration (KL), Washington, DC 20405). Requests should include a statement of justification, pertinent specifications, and, if appropriate, scaled sample designs.

Subpart 201–45.5—Standard and Optional Forms Management Program

§ 201–45.500 Scope of subpart.

This subpart sets forth procedures for Federal agencies to follow in obtaining both the approval and cancellation of Government-wide Standard and Optional forms. It also provides agencies' responsibilities for developing, promulgating, sponsoring, and managing Government-wide forms through the Standard and Optional Forms Management Program. This subpart supplements § 201–45.104, Forms management.

§ 201–45.500–1 Objectives.

The objectives of the Standard and Optional Forms Management Program are to provide for:

(a) Simplified Government-wide procedures;

(b) Cost-effective practices and procedures for creating, stocking, distributing, and using Standard and Optional forms;

(c) The creation of Standard and Optional forms based on a valid need and in compliance with applicable laws and regulations, including the Freedom of Information Act (FOIA) (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Federal Information Processing Standards (40 U.S.C. 759) implemented by GSA (41 CFR 201–8.1).

(d) The reduction of unnecessary forms;

(e) Close coordination of the program with the other information resources management activities within an agency; and

(f) Improved office productivity through the application of appropriate design, construction, and reproduction standards and guidelines.

§ 201–45.501 Authority.

The Standard and Optional Forms Management Program was developed and operated by the Office of Management and Budget (OMB) consistent with the authorities prescribed by the Budget and Accounting Act of 1921. GSA assumed responsibility for the program on May 29, 1967, through agreement with OMB.

§ 201–45.502 Agency responsibilities.

Each agency shall:

(a) Establish and issue internal procedures for the clearance and use of Standard and Optional forms.

(b) Designate an agency-level Standard and Optional forms liaison representative and alternate, and notify GSA in writing of such designees names, titles, mailing addresses, and telephone numbers. (Changes in designations shall be submitted to GSA within 30 calendar days after a new designation is made. All communications concerning designees shall be addressed to the General Services Administration (KLSO), Washington, DC 20405.)

(c) Ensure that new and revised Standard and Optional forms developed increase systems' efficiency and do not duplicate forms already available under the Standard and Optional Forms Management Program.

(d) Develop new and revised Standard and Optional forms in accordance with the provisions of this subpart; the agency's mission, responsibilities, and regulatory authority; applicable laws and regulations (201–45.500–1(c)); and GSA forms analysis and design guidelines.

(e) Coordinate the development, revision, or cancellation of Standard and Optional forms with users agencies.

(f) Prepare a supporting statement for each Standard and Optional form developed, revised, or canceled and for each request for exception to an existing Standard or Optional form. The supporting statement shall include an assessment of the effect on the process which the form supports and the anticipated increase or decrease in the cost of that process.

(g) Obtain GSA approval for each new, revised, and canceled Standard and Optional form as prescribed in § 201–45.504.

(h) Reply to GSA written information requests in a timely manner and review printing proofs within 15 workdays.

(i) Review existing Standard and Optional forms which the agency has promulgated, sponsored, or received an exception to determine and implement possible forms improvement, consolidation, and cancellation, at least annually.

(j) Maintain records documenting all agency Standard and Optional forms actions.

(k) Submit such information as may be requested by GSA in order to manage the program.

(l) Compile and maintain developmental and operational costs using Standard Form 335, Summary Worksheet for Estimating Forms Costs, for all Standard and Optional forms developed or revised by the agency and that are also used for collections of information from the public or are interagency report forms (see § 201–45.104–5(k)).

(m) Assist GSA in developing (i.e., collecting information and designing and testing) new Standard and Optional forms.

(n) Make available for local reproduction those promulgated or sponsored Standard and Optional forms with an anticipating or actual annual use of 5,000 or less. (Full size illustrations of these forms must be included in the prescribing regulation or form announcement, or must otherwise be made available to users, and must be clearly annotated, "AUTHORIZED FOR LOCAL REPRODUCTION".)

(o) Standardize exception requests at the highest organizational level possible.

(p) Print and stock those exceptions approved for individual agency use. (See FPMR § 101–26.302.)

§ 201–45.503 GSA responsibilities.

GSA shall:

(a) Promote the simplification of Government-wide procedures and improve office productivity through the development of new and revised Standard and Optional forms.

(b) Analyze and approve or disapprove all requests for new or revised Standard and Optional forms and exceptions to the use of Standard and Optional forms.

(c) Maintain and distribute to all agencies a current list of approved Standard and Optional forms and agency liaison representatives.

(d) Coordinate with the Office of Management and Budget (OMB) on the approval of new and/or revised Standard and Optional forms that are within OMB's clearance jurisdiction.

(e) Promulgate or sponsor new Standard or Optional forms when a need is demonstrated and when it is in the best interest of the Government.

(f) Ensure that all proposed Standard and Optional forms are in conformance with applicable laws and regulations (see § 201–45.500–1(c)).

(g) Issue information on current Standard and Optional forms clearance actions.

(h) Coordinate the printing of Standard and Optional forms with the U.S. Government Printing Office.

(i) Develop and issue updates to the Standard and Optional Forms Facsimile Handbook.

(j) Maintain records documenting activities of the Standard and Optional Forms Management Program.

(k) Conduct use audits of Standard and Optional forms.

(l) Collect information and issue reports on the Standard and Optional Forms Management Program.

§ 201–45.504 Approval, disapproval, and cancellation procedures.

§ 201–45.504–1 Approval and disapproval of Standard and Optional forms.

The promulgating or sponsoring agencies and GSA have specific responsibilities in the process for forms approval.

(a) Each promulgating or sponsoring agency shall:

(1) Request approval for new and revised Standard and Optional forms by submitting to GSA (KLSO, Washington, D.C. 20405) three copies of each of the following: (i) A Standard Form 152, Request for Clearance, Procurement, or Cancellation of Standard and Optional Forms; (ii) a supporting statement (see § 201–45.502(f)); (iii) the draft form; (iv) a list of the names, titles, and organizations of persons with whom the form was coordinated and a summary of any major problems on which agreement could not be reached; (v) a list of potential user agencies and their projected annual usage; and (vi) a draft announcement of the issuance of the form for inclusion in the appropriate directive or regulatory system and/or the **Federal Register**.

(2) Ensure that draft announcements include implementing instructions that address the following information: (i) Purpose; (ii) form title; (iii) form number; (iv) a sample or reduced facsimile of the form, if possible; (v) preparation instructions; (vi) obligation for use (i.e., mandatory or optional); (vii) frequency of use; (viii) number of copies required; (ix) guidance on use and disposition of present stocks; and (x) supply source.

(3) Ensure that the following appear on all approved new and revised Standard and Optional forms: (i) The Standard or Optional form number assigned by GSA; (ii) the edition date; (iii) the name of the promulgating or sponsoring agency; (iv) a citation of the agency regulation that requires mandatory use of the form (for Standard forms only); (v) the OMB approval number as applicable (see § 201–45.507); and (vi) the interagency report control number, as appropriate. Normally the form number and edition date will be located on the first page of the form in the lower right corner. The OMB number must appear in the upper right corner of the form.

(4) Announce the issuance of approved new or revised Standard or Optional forms by publishing a change in the appropriate directive or regulatory system and/or a notice in the **Federal Register**. In addition to implementing instructions, announcements shall include: (i) Approximate availability date, if known; (ii) the interagency report control number, if the form is used as an interagency report; and (iii) the OMB approval number, if the form is used to collect information from the public. A copy of the change and/or notice must be submitted to GSA, KLSO, Washington, DC 20405.)

(5) Announce that new or revised forms with an anticipated or actual annual use of 5,000 or less are available for local reproduction by user agencies. (See § 201–45.502(n).)

(b) GSA shall: (1) Analyze agency requests to approve new and revised forms to: (i) Verify that the form fulfills a need; (ii) ensure that approval will not result in duplicate forms; (iii) assess the impact on users; and (iv) ensure that the form conforms to GSA forms design and cost-effectiveness standards and guidelines.

(2) For approved requests: (i) Assign an edition date and, if required, a form number; (ii) notify the requesting agency of the decision on the returned Standard Form 152; and (iii) enter the approved form in the Standard and Optional Forms Inventory. Edition dates, once assigned by GSA, may not be changed by an agency.

(3) For requests that are disapproved, notify the requesting agency of the decision on the returned Standard Form 152.

§ 201–45.504–2 Cancellation of Standard and Optional forms.

The promulgating or sponsoring agencies and GSA have specific responsibilities in the process for forms cancellation.

(a) When a promulgating or sponsoring agency believes a Standard or Optional form is no longer needed, the agency shall:

(1) Request cancellation of the form to GSA by submitting a Standard Form 152, a supporting statement (see § 201–45.502(f)), and a draft of the proposed cancellation notice.

(2) Notify the using agencies of the cancellation, when approved by GSA, by publishing a cancellation notice in the appropriate directive or regulatory system and/or in the **Federal Register**. A copy of each notice must be submitted to GSA, KLSO, Washington, DC 20405.

(b) When a promulgating or sponsoring agency submits a request for cancellation to GSA, GSA shall:

(1) Analyze the request to: (i) Verify that the form is no longer necessary; (ii) ensure that cancellation will not result in the proliferation of replacement forms; (iii) assess the impact on users; and (iv) ensure that disposition of existing stock is cost-effective.

(2) Approve or disapprove the request and notify the promulgating or sponsoring agency of the decision on the returned Standard Form 152.

§ 201–45.505 Interagency Committee on Medical Records (ICMR) responsibilities.

The Interagency Committee on Medical Records (ICMR) is responsible for reviewing all health care related Standard forms to ensure quality, uniformity, and adequacy of health care records of the Federal government. The ICMR is responsible for developing new and revised medical Standard forms and requesting cancellation of and exceptions to existing medical Standard forms. GSA is responsible for promulgating and approving medical Standard forms.

§ 201–45.505–1 Clearance of medical Standard forms.

The ICMR chairperson shall initiate, sign, and submit requests for the approval of medical Standard forms to: GSA, Forms and Records Management Branch (ATRAR), Washington, DC 20405. ATRAR shall forward the request to GSA/OIRM for processing in accordance with § 201–45.504–1.

§ 201–45.506 Standard and Optional forms coordination with interagency reporting approved by GSA.

As provided in Subpart 201–45.6, GSA is responsible for approving interagency reporting requirements. When an agency develops or revises a Standard or Optional form in conjunction with an interagency reporting requirement, the agency shall submit to GSA a Standard Form 360, Request for Clearance of an Interagency Reporting Requirement, in addition to other clearance requirements prescribed by this subpart.

§ 201–45.507 Standard and Optional forms used for collections of information from the public.

(a) Under 5 CFR Part 1320, Standard and Optional forms that also require approval by OMB (44 U.S.C. 3501–3513) because they are to be used to collect information from the public or State and local governments, or are the basis of general purpose statistics, shall be submitted by the promulgating or sponsoring agency to OMB through GSA. Agencies shall submit a Standard Form 83, Request for OMB Review and necessary attachments, in addition to other clearance requirements prescribed by this Subpart when developing, revising, canceling or requesting exception to a Standard or Optional form requiring OMB clearance.

(b) Requests for extension of OMB clearance of Standard and Optional forms will be initiated by the promulgating or sponsoring agency and will be sent to OMB through GSA using Standard Form 83, in addition to the Standard Form 152 and accompanying documentation. If the request results in no changes to the affected form, Standard Form 152 and the accompanying documentation may be omitted.

§ 201–45.508 Reporting requirements.

Agencies shall submit to GSA, Office of Information Resources Management (KLSO), Washington, DC 20405, 60 workdays before the close of each fiscal year a summary of the Standard and Optional forms used for collections of information covered by 5 CFR Part 1320. Instructions for preparing the report are on GSA Form 3515, Annual Report of Standard and Optional Forms Used for collections of Information Covered by 5 CFR Part 1320. Include in the report the actual number of forms used plus the estimated number for the remainder of the current fiscal year. This report is assigned Interagency Report Control Number 0309–GSA–AN. Separate reports shall be submitted for each department or comparable independent organizational unit.

§ 201–45.509 Overprinting of Standard and Optional forms.

Overprinting of Standard and Optional forms is at each agency's discretion but should be limited to quantities that are cost-effective. Overprinting of forms is ordered through GSA/WFSI, Washington, DC 20407.

§ 201–45.510 Exceptions to Standard and Optional forms.

§ 201–45.510–1 Policy.

(a) Exceptions to Standard and Optional forms shall be requested only when an agency can demonstrate that the deviation in the content, format, and/or printing specifications of the form is cost-effective.

(b) Reproduction and stocking of approved exceptions is the responsibility of the requesting agency. (See FPMR § 101–26.302.)

(c) Content and format exceptions become void when the affected Standard or Optional form is revised or canceled by the promulgating agency, or when the exception is altered.

(d) Printing exceptions become void when the affected Standard or Optional form is canceled, when a usable construction that meets user needs is stocked by GSA's Office of Federal Supply and Services, or when the form is revised unless the agency certifies in writing that there is a continued need for the printing exception. This certification of continued need must be received by GSA, KLSO within 60 workdays of the revision of the Standard or Optional form. GSA will notify agencies with printing exceptions of the need for certification.

§ 201–45.510–2 Clearance procedures for exceptions.

(a) Agencies shall submit exception requests to GSA, including three copies of the proposed form, Standard Form 152, the supporting statement, and if appropriate, the printing requisition. The supporting statement shall explain the reasons for the request including conclusive evidence that the Standard or Optional form can not be used as prescribed in the existing format or construction or is not economical; the proposed alteration(s) or deviation(s); the resultant cost benefits; and shall include an estimate of the number of forms expected to be used in one year.

(b) Exceptions shall be reviewed by GSA to limit unnecessary variations of the form, assess the need for additional standardized constructions, and economy of application; and shall be sent to the promulgating agency for a signed recommendation of approval or disapproval. When the clearance action is returned, GSA will analyze both the exception request and the promulgator's recommendation. GSA will notify the requesting agency of its decision to approve, modify, or disapprove the request.

(c) Approved exceptions must bear the following on the first page, below or near the form number element: (1) "Department (abbreviation)—Major component (abbreviation) Exception to (form number) approved by GSA/OIRM (Month and Year)", and (2) when appropriate, citation of the internal directive.

(d) When an exception is approved, GSA/OIRM will forward a copy of the approval and the printing requisition, if included in the request package, to GSA/WFSI, Standard Forms Management Section for processing. The approved exception notifies WFSI to deduct the order quantity from their standard form stock level because the agency will no longer use the form as stocked.

§ 201-45.510-3 Review of exceptions.

(a) GSA shall periodically review and analyze exceptions to specific forms and recommend form content, format, and printing changes to the promulgating agency.

(b) The promulgating agency shall implement the recommended changes through revisions of the Standard or Optional form or provide GSA with acceptable reason(s) for non-implementation, within 60 workdays.

§ 201-45.511 Program review.

Periodically GSA shall review agency implementation of the Standard and Optional Forms Management Program in order to assess the effectiveness of the program and the agency's conformity to this regulation.

§ 201-45.512 Employee suggestions.

In accordance with Federal Personnel Manual Chapter 451, employee suggestions that propose changes in the format, content, construction, or use of a Standard or Optional form shall be sent from the suggester (through the suggestion program) to the promulgating or sponsoring agency for evaluation. New and revised Standard and Optional forms created as a result of employee suggestions shall be processed in accordance with procedures provided in § 201-45.504-1 of this subpart.

§ 201-45.513 Acquisition of forms.

Supplies of Standard Form 152 may be obtained by submitting a requisition in FEDSTRIP/MILSTRIP format to the GSA regional office that provides support for the requesting activity. The national stock number is 7540-00-935-4084. Standard Form 335 may be obtained by the same method using national stock number 7540-01-178-8722.

§ 201-45.514 Procurement of stocks of Standard and Optional forms.

General procedures for procuring stocks of Standard and Optional forms are in FPMR § 101-26.302, Standard and Optional forms.

Subpart 201-45.6—Interagency Reports Management Program

§ 201-45.600 Scope of subpart.

This subpart states procedures for agencies to follow in seeking approval of interagency reports.

§ 201-45.601 Authority.

The provisions of this subpart implement 44 U.S.C. Chapters 29 and 31, recognizing OMB functions under 44 U.S.C. 3504(e) and OMB implementation under 5 CFR 1320.16 (48 FR 13696, March 31, 1983.)

§ 201-45.602 Objectives.

The purpose of this program is to ensure that interagency reports are based on need, are cost-effective, and comply with laws and regulations; e.g., Freedom of Information Act (5 U.S.C. 552); the Privacy Act of 1974 (5 U.S.C. 552a); and Federal Information Processing Standards (40 U.S.C. 759(f)) implemented by GSA (Part 201-8).

§ 201-45.603 Agency responsibilities.

Each agency shall:

(a) Issue internal procedures for submitting, reviewing, and approving or disapproving interagency reports;

(b) Appoint officials to serve as interagency report coordinator and alternate;

(c) Submit the names, titles, locations, and telephone numbers of the interagency reports coordinator and alternate to the General Services Administration, Interagency Operating Programs Branch (KLSO), Washington, DC 20405. (Any change in the person appointed must be sent to GSA within 30 calendar days);

(d) Develop new and revised interagency reporting requirements under this subpart;

(e) Obtain GSA approval for each new, revised, or extended interagency reporting as soon as possible;

(f) Review the GSA Inventory of Approved Interagency Reports to decide if a proposed report can be met by an existing report;

(g) Review existing interagency reports for possible improvements when submitting requests to extend clearances;

(h) Provide responding agencies the opportunity to comment on each proposed new or revised interagency reporting requirement;

(i) Obtain GSA approval to collect test information from other Federal agencies to do a pilot test of the system if the estimated cost for a new or substantially revised report exceeds $500,000;

(j) Reply within 30 calendar days to other agencies' written requests cost estimates of the cost of responding to existing or proposed interagency reports;

(k) Respond to approved interagency reports as specified in instructions; and

(l) Refrain from responding to interagency reporting requirements not approved by GSA and inform GSA of the requirements.

§ 201-45.604 Establishing or revising interagency reporting requirements.

(a) The requiring agency shall consult with GSA (KLSO) on proposed new or revised interagency reporting requirements before submitting Standard Form 360, Request for Clearance of an Interagency Reporting Requirement. Following the discussion with GSA, the agency shall justify the need for the report and estimate the reporting costs, under §§ 201-45.607 and 201-45.608. The agency shall then send to GSA (KLSO) an original and one copy of Standard Form 360 with supporting documents through the agency's interagency reports coordinator. Upon receipt of the Standard Form 360, GSA will review the proposal for demonstrated need, cost effectiveness, systems design, and coordination with other clearance authorities, and will ensure that the report does not duplicate existing interagency reports.

(b) If GSA approves the report, it will assign an interagency report control number and an expiration date, return the Standard Form 360 to the agency's interagency reports coordinator, and enter the report in the GSA Inventory of Approved Interagency Reports.

(c) The requiring agency shall notify responding agencies of approved reports by directive or by correspondence. The directive publishing the requirement shall include the following information: (1) Purpose; (2) report title; (3) whether it is mandatory or voluntary; (4) interagency report control number; (5) report format; (6) preparation instructions; (7) responding agencies; (8) frequency of use; (9) number of copies; (10) mailing address; (11) due date; (12) name and telephone number of contact person; and (13) for mandatory reports, whether it requires a negative response.

(d) If a form is needed to collect data, the agency shall place the interagency report control number in the upper right corner of the form.

(e) When GSA rejects an agency's request for a report, GSA will advise the agency, in writing of the reasons for the rejection.

§ 201-45.605 Extending interagency reporting requirements.

GSA will notify agencies 90 calendar days in advance of the expiration date of a requirement. Agencies shall submit requests for extensions for new and revised reports at least 60 calendar days before the expiration date. (See § 201-45.604.)

§ 201-45.606 Discontinuing interagency reporting requirements.

If an interagency report is no longer needed, the agency shall notify GSA and responding agencies by directive or correspondence. GSA will discontinue the requirement on the expiration date unless it receives a request for an extension under § 201-45.605.

§ 201–45.607 Justifying interagency reporting requirements.

A justification statement, signed by the official who requested the reporting requirement, shall be attached to Standard Form 360. The justification shall:

(a) State why the report is needed and how it will be used;

(b) Describe the benefits (in dollar value if possible) expected from the information and assess the probability that the benefits will be achieved;

(c) Describe how the program will be affected if the information is not obtained;

(d) Identify any responding agencies that took part in designing, testing, and estimating the cost of the proposed report;

(e) Identify the agencies that agree or do not agree with the proposed report and summarize the reasons why;

(f) Explain how the reporting costs shown on the Standard Form 360 were derived (see § 201–45.608);

(g) Describe other reporting plans considered, including: (1) Frequency of reporting (2) use of exception reporting. (3) use of sampling techniques, (4) selection of respondents, (5) obligation of respondents to comply, (6) amount of detail, (7) format of report, and (8) method of transmission.

§ 201–45.608 Cost estimates.

GSA needs cost estimates to decide if the expected value of the information is worth the cost of obtaining it. Agencies shall identify using the following costs alternative(s), the method(s) used to prepare the reporting cost estimate. Costing criteria for these costing alternatives are contained in the "Reports Management Handbook" issued by GSA. Supporting documentation and worksheets for all cost estimates must be available for GSA review. GSA review may include the appropriateness of the agency costing alternative selection.

Alternatives	Characteristics
(a) Pilot testing (estimate based on actual costs collected).	High cost reporting; full scale mechanized systems; data banks; large number of data elements; new data collection system; respondent cost may be needed for budget purposes.
(b) Factoring (estimate based on actual costs previously collected for a comparable report).	Medium to low cost reporting; revision of a previously costed report; high degree of experience with comparable reports made by the same (one or a limited number) responding agencies; cost easy to compare with actual cost for a similar report.
(c) Sampling (estimate based on a representative selection of responding agencies).	Low to high cost reporting; large number of respondents; new reports.
(d) Technical estimates (estimate based on experience).	Low cost reporting; more detailed costing waived by GSA; one-time reports; limited number of respondents.

§ 201–45.609 Special provisions.

§ 201–45.609–1 Exemptions.

(a) The following interagency reports requirements are exempted from Subpart 201–45.6: (1) Legislative branch reports, (2) Office of Management and Budget (OMB) and other Executive Office of the President reports, and (3) judicial branch reports required by court order or decree. However, interagency reports required by Federal agencies to respond to exempted requirements are subject to clearance under this subpart.

(b) Questions concerning the applicability of these exemptions shall be directed to GSA (KLSO).

§ 201–45.609–2 Waivers.

Agencies seeking a waiver from justifying and cost-estimating a report under §§ 201–45.607 and 201–46.608 shall send a written explanation of the need for the report and the waiver to GSA (KLSO). Waiver requests must include a summary cost estimate in item 9 of Standard Form 360.

§ 201–45.609–3 Classified reporting requirements.

Interagency reporting requirements for security classified information are exempt from this subpart. However, interagency reporting requirements for non-security classified information are not exempt from this subpart, even if such information is later given a security classification by the requesting agency.

§ 201–45.610 Coordination with other clearance authorities.

§ 201.45.610–1 Interagency/public reporting requirements.

Interagency reporting requirements that collect information from the public as well as from Federal agencies require approval by OMB under 5 CFR Part 1320. Agencies shall submit these interagency reporting requirements to OMB and GSA at the same time for clearance.

§ 201–45.610–2 Interagency reporting coordination with Standard and Optional forms approved by GSA.

As stated in Subpart 201–45.5, GSA is responsible for approving Standard and Optional forms. Therefore, when an agency plans to use a new or revised Standard or Optional form for a proposed interagency report, the agency shall also submit Standard Form 152, Request for Clearance, Procurement, or Cancellation of Standard and Optional Forms.

§ 201–45.611 Obtaining forms.

The forms required by this subpart may be obtained by submiting a FEDSTRIP/MILSTRIP requisition to the GSA regional office that provides support for the requesting office.

Subpart 201–45.7—Forms

§ 201–45.700 Scope of subpart.

This Subpart 201–45.7 establishes forms used in connection with the regulations prescribed elsewhere in this Part 201–45. The following forms are established. Illustrations of the forms appear in Appendix E (FIRMR looseleaf Edition).

§ 201–45.701 Optional Form 10: United States Government Memorandum.

§ 201–45.702 Standard Form 63: Memorandum of Call.

§ 201–45.703 Standard Form 65: U.S. Government Messenger Envelope.

There are three versions of this form as follows:

(a) Standard Form 65–A (9½ by 4 inches);

(b) Standard Form 65–B (9½ by 12 inches); and

(c) Standard Form 65–C (12 by 16 inches).

§ 201–45.704 Optional Form 27: United States Government 2-Way Memo.

§ 201–45.705 "Guides to Simplified Informal Correspondence".

§ 201–45.706 Optional Form 41: Routing and Transmittal Slip.

§ 201–45.707 Standard Form 152: Request for Clearance, Procurement, or Cancellation of Standard and Optional Forms.

§ 201–45.708 Standard Form 360: Request for Clearance of an Interagency Reporting Requirement.

Subpart 201–45.8—Technical Assistance

§ 201–45.800 Scope of subpart.

This subpart contains information and procedures pertaining to the furnishing of technical assistance services to Federal agencies by the General Services Administration (GSA).

§ 201–45.801 Services available.

The following services are available to Federal agencies from GSA:

(a) Technical advice and assistance on agency records management programs and activities as described in this Part 201–45;

(b) Various types of studies and surveys in records management areas; and

(c) General paperwork systems studies.

§ 201–45.802 Technical advice and assistance on records management programs.

GSA provides technical advice and guidance to Federal agencies in the conduct of their records management activities. This includes assistance in the development of records management programs concerned with the creation, organization, maintenance, and use of agency records. Advice and guidance will be consistent with NARA regulations concerning records disposition and adequacy of documentation (36 CFR XII).

§ 201–45.803 Technical assistance involving studies and surveys.

At the request of Federal agencies, GSA will conduct studies and surveys for agencies involving any one or a combination of the records management areas described in this Part 201–45. These studies and surveys are normally on a reimbursable basis.

§ 201–45.804 General paperwork systems studies.

At the request of Federal agencies, and normally on a reimbursable basis, GSA also conducts general paperwork systems studies.

(a) A general paperwork systems study is defined as a systematic and detailed cost/benefit analysis which identifies and defines systems requirements for effective, efficient, and economical management and operation, and the alternative methods to satisfy these requirements; and recommends the optimum paper work systems arrangement for management approval. The general paperwork systems study covers all management and operating processes, whether or not electronic data processing equipment is involved. Where electronic data processing services are involved, the general paperwork systems study will include all (1) manual and machine steps from initiation of the process to prescription of output and the delivery of valid input to the computer center and (2) processes covering the adequacy of the output and its use.

(b) A general paperwork systems study is not concerned with the actions taken to convert input into automatic data processing equipment to prescribed computer outputs.

§ 201–45.805 Request for service.

Agencies desiring any of the services from GSA provided for in this Subpart 201–45.8 should communicate with the General Services Administration (KFM), Washington, DC 20405.

6. *Agency actions:* Pending the issuance of a permanent amendment of the FIRMR, agencies shall follow the policies and procedures in this temporary regulation.

7. *Information and assistance:* Inquiries concerning this regulation should be directed to David R. Mullins, Policy Branch (KMPP), Office of Information Resources Management, telephone (202) 566–0194 or FTS, 566–0194.

8. *Submission of comments.* The views of agencies and other interested parties regarding the effect or impact of the provisions in this regulation were requested via, **Federal Register** notices of proposed rulemaking of August 6, 1984, October 22, 1984, and February 19, 1985. Comments are currently being reconciled, and a FIRMR amendment is being prepared to replace this temporary regulation. Although the deadline for comments on the amendment has passed, any comments on this temporary issuance received before April 30, 1985, will be considered to the maximum practicable extent in preparation of the final amendment. Comments should be addressed to the General Services Administration, Office of Information Resources Management, Policy Branch (KMPP), Washington, DC 20405.

(Sec. 205(c), 64 Stat. 390; 40 U.S.C. 486(c))

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–8517 Filed 4–10–85; 8:45 am]

BILLING CODE 6820–25–M

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41 CFR Part 101–21

[FPMR Amdt. D–83]

Federal Buildings Fund, Reimbursable Services

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: General Services Administration (GSA) amends its regulations for incurring and collecting obligations for reimbursable services in excess of reimbursable work authorization estimates. Total obligations may be incurred against reimbursable work authorizations (RWAs) with a total authorization amount of $1,000 or less in an amount exceeding the authorized amount by up to $100. Total obligations may be incurred against RWA's with an authorized amount in excess of $1,000 by up to 10 percent of the amount or $1,000, whichever is less, unless such action would result in the estimated maximum costs exceeding $500,000 for which no specific congressional prospectus project approval or certification exempting funds from section 7 of the Public Buildings Act of 1959, as amended, exists. The changes are intended to clarify the policy and to satisfy circumstances where it would be impractical, infeasible or uneconomical to obtain another authorization from the agency to increase the authorized amount to cover all costs incurred. Failure of GSA to notify the agency that the obligations will exceed the authorized amount regardless of amount, does not relieve the agency of paying actual costs.

EFFECTIVE DATE: April 11, 1985.

FOR FURTHER INFORMATION CONTACT: James Marsden, Office of Buildings Management, (PB), 202–566–1563.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumer or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of this rule; had determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

The billing procedure for reimbursable services was revised from fixed-price billing in advance to quarterly billing in an amount equal to obligations accumulated for the billing period, for all except above-standard-level recurring reimbursable work. This procedure was published in the **Federal Register** on September 20, 1982 (47 FR 41361).

In reference to incurring obligations in excess of the estimate, the FPMR states in part:

GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of the estimate; however, failure of GSA to notify the agency that obligations will exceed the estimate

does not relieve the agency of paying actual costs.

The clause in the FPMR binding the agencies to pay actual cost was included in recognition of the fact that in a limited number of circumstances it would be impractical, infeasible or uneconomical to obtain another authorization from the agency to increase the estimate to cover all costs incurred. The following are examples of such circumstances.

(1) Costs associated with a particular RWA may be incurred and exceed the authorized amount before initial accounting information is received by the performing organization.

(2) The cost to obtain an amended RWA may exceed the total cost of a relatively low cost RWA or the cost of processing an RWA.

(3) Stopping work on an RWA before obtaining formal authorization for additional work required would be a serious inconvenience to the client agency or would substantially increase the cost of completing the RWA.

(4) The time frame of the reimbursable job is of extremely short duration.

The preceding are not intended to be all inclusive, but rather represent the types of circumstances which might exist which would make it impractical or infeasible to obtain another authorization from the client agency when obligations are incurred which would exceed the authorized amount.

GSA, in its efforts to improve the management of the reimbursable program, is proposing the following changes. GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of the estimate except when:

(1) Total obligations are incurred against RWAs with an authorized amount of $1,000 or less in an amount not exceeding the authorized amount by $100; and

(2) Total obligations are incurred against RWAs with an authorized amount in excess of $1,000 in an amount not exceeding the authorized amount by 10 percent or $1,000, whichever is the less amount. When the estimated maximum cost exceeds $500,000 GSA is required to get prior prospectus authorization from Congress. In lieu of this prospectus authorization, the agency can provide a certification that the funds are exempt from section 7 of the Public Buildings Act of 1959, as amended.

There may be circumstances, as discussed above, when GSA will not be able to notify an agency before incurring obligations in excess of the preceding parameters. This failure of GSA to notify the agency does not relieve the agency of paying actual costs, regardless of the dollar amount, and does not constitute a valid reason for chargeback or short paying the bill.

List of Subjects in 41 CFR Part 101–21

Federal buildings and facilities, Government property management.

PART 101–21—FEDERAL BUILDINGS FUND

1. The authority citation for Part 101–21 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101–21.6—Billings, Payments, and Related Budgeting Information for Space and Services Furnished by the General Services Administration

2. Section 101–21.604 is amended by revising paragraph (e) to read as follows:

§ 101–21.604 Billing procedures for reimbursable charges.

* * * * *

(e) GSA Form 2957, Reimbursable Work Authorization, must be completed before reimbursable work is begun. This authorization must describe the work or services ordered and include an estimate of the cost of the work described. Work authorizations must be signed by a responsible official capable of authorizing the obligation and committing the agency to payment of the charges, must contain a citation to the appropriation or funds to be charged, and must have statement that funds in the amount of the stated estimate are available for immediate obligation for the requested work. GSA will make every effort to obtain approval and certification of additional funds before incurring any obligations in excess of the estimate except when:

(1) Total obligations are incurred against reimbursable work authorizations with a total authorized amount of $1,000 or less in an amount exceeding the authorized amount by up to $100 and;

(2) Total obligations are incurred against reimbursable work authorizations with an authorized amount in excess of $1,000 by up to 10 percent of the amount or $1,000, whichever is less, such action would result in the estimated maximum costs exceeding $500,000 for which no specific congressional prospectus project approval or certification exempting the funds from section 7 of the Public Buildings Act of 1959, as amended, exists. However, failure of GSA to notify the agency that obligations will exceed the authorized amount, regardless of the dollar amount, does not relieve the agency of paying full actual costs.

Dated: March 8, 1985.

Dwight A. Ink,
Acting Administrator of General Services.

[FR Doc. 85–8752 Filed 4–10–85; 8:45 am]
BILLING CODE 6820–23–M

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48 CFR Ch. 5

[APD 2800.12 CHGE 8]

General Services Administration Acquisition Regulation; Competition in Contracting

Correction

In FR Doc. 85–5461 beginning on page 10036 in the issue of Wednesday, March 13, 1985, make the following corrections:

1. On page 10036, in the third column, the text beginning with **SUPPLEMENTARY INFORMATION** up to the paragraph designated "5." should have appeared in the second column, immediately following the **FOR FURTHER INFORMATION CONTACT** paragraph.

514.407–74 [Corrected]

2. On page 10053, in the middle column, in 514.407–74(a)(1)(ii), the fifth line, "those" should read "this".

3. On page 10054, in the first column, the paragraph numbered "111" and the heading preceding it should have read:

515.406–5 [Removed]

111. Section 515.406–5 is removed.

BILLING CODE 1505–01–M

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48 CFR Parts 501 and 507

[APD 2800.12 CHGE 9]

General Services Administration Acquisition Regulation; Acquisition Planning

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add Subpart 507.1 to implement and supplement FAR 7.1 and to prescribe policies and procedures for acquisition planning. In addition, Section 501.103, Applicability, is revised to indicate that the new Subpart 507.1 applies to leases of real property. Section 507.307 is also added to implement FAR 7.307. The intended effect is to improve the regulatory coverage and to provide

uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Harry Rosinski, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4768.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1984, the General Services Administration published in the Federal Register (49 FR 35161) GSAR Notice No. 5-7 inviting comments from interested parties on these proposed change to the regulation and provided a 30-day comment period. No public comments were received. Comments received from various elements within GSA have been analyzed, reconciled, and incorporated, when applicable, into this GSAR final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempt certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration certified in the original document (49 FR 35161, September 6, 1984) that this document would not have a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Ch. 5

Government procurement.

1. The authority citation for 48 CFR Chapter 5 reads as follows:

Authority: 40 U.S.C. 486(c).

2. Subchapter B heading is relocated between Parts 504 and 505 and revised to read as follows:

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATIONS SYSTEM

3. Section 501.103 is amended by revising paragraphs (a) and (b) to read as follows:

501.103 Applicability.

(a) The GSAR applies to all GSA contracts for property or services (including construction) for the use of the Federal Government through purchase or lease.

(b) Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interests in real property. Parts 501, 502, 503, 505, 506, 517, 533, 552, 553, and Subparts 504.70, 507.1, 509.4, 515.1, 532.8 and 543.1 include policies and procedures which generally apply to all contracts including leases of real property. Other GSAR provisions do not apply to leases of real property unless a specific cross reference is made to the provision in Part 570.

* * * * *

PART 507—ACQUISITION PLANNING

4. Part 507, Table of Contents, is amended to add new subpart and sections to read as follows:

Subpart 507.1 Acquisition Plans

507.100 Scope of subpart.
507.101 Definitions.
507.102 Policy.
507.104 General procedures.
507.105 Contents of written acquisition plans.
507.105-70 Contents of a limited acquisition plan.
* * * * *
507.307 Appeals.

Authority: 40 U.S.C. 486(c).

5. Subpart 507.1 Acquisition Plans, Consisting of §§ 507.100 through 507.105-70, is added to read as follows:

Subpart 507.1—Acquisition Plans

507.100 Scope of subpart.

This subpart implements and supplements FAR Subpart 7.1 and prescribes policies and procedures for acquisition planning. The subpart is applicable to all elements of GSA with respect to the acquisition of personal property, nonpersonal services (including construction) and leasehold interests in real property.

507.101 Definitions.

(a) "Comprehensive acquisition plan" means a plan which encompasses the entire acquisition process beginning at the point when agency needs are established and including the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contract(s), contract financing, contract performance, contract administration and those technical and management functions directly related to the process of fulfilling agency needs by contract. It applies to the acquisition of personal property, nonpersonal services (including construction) and leases of real property in those cases where it has been determined that the criteria for such a plan have been met. It requires the coordination of all persons involved in the acquisition including representatives of legal, fiscal, technical, engineering, and contracting offices. Policies and procedures for this type of plan are set forth in GSA Order, Comprehensive Acquisition Planning (APD 2800.13).

(b) "Limited acquisition plan" means a detailed acquisition plan beginning with receipt of a purchase request or other comparable document by the contracting office. If contracting begins without such a document, planning should begin as soon as the contracting office is aware of a contract need. It includes the solicitation and award phases of contracting.

507.102 Policy.

All proposed acquisitions which, in accordance with the requirements of GSA Order, Comprehensive Acquisition Planning (APD 2800.13), are determined by the senior program official involved to meet the criteria for comprehensive acquisition planning shall have such a plan prepared for them. By definition, a comprehensive acquisition plan includes the elements contained within the limited acquisition plan. Consequently, all proposed acquisitions in excess of $25,000, except those for which a comprehensive acquisition plan has been prepared, shall have a limited acquisition plan completed for them. The value of proposed options which will be priced and/or evaluated shall be added to the basic contract value for determining whether the dollar threshold has been met. Before an unpriced and/or unevaluated option exceeding $25,000 is exercised a plan shall be prepared in accordance with the requirements of this subpart. No solicitation shall be issued until either a comprehensive acquisition plan or a limited acquisition plan has been prepared for acquisitions described in GSAR 507.100 unless waived as authorized by this subpart or GSA Order, Comprehensive Acquisition Planning, (APD 2800.13). A contract shall not be entered without providing for full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available for acquisition.

507.104 General procedures.

(a) The contracting officer shall be responsible for preparing a limited acquisition plan. All such plans shall be reviewed and approved at least one level above the individual writing the plan. The head of the contracting activity (HCA) may require review and approval at a higher level.

(b) When requirements are received in the last month of the fiscal year and award is anticipated during the same month, the plan shall be reviewed and approved at a level no lower than the contracting director.

(c) All plans over $100,000 must be in writing, except as otherwise provided below. HCA's may authorize oral plans for acquisitions between $25,000 and $100,000. For oral plans, the file must be documented with the name of the individual who approved the plan.

(d) The contracting director may waive the requirement for a written limited acquisition plan when the Government's requirement must be met in cases of unusual or compelling urgency. The individual responsible for preparing the plan will present (at the minimum) an oral plan to at least the next higher level. The file must be documented to show: the nature of the urgency, the content of the oral plan, and the name of the individual who approved it. This document may be prepared after award when preparation prior to award would unreasonably delay the acquisition. The documentation segment may be included in the justification required by FAR 6.302–2(c).

(e) Acquisition plans for contracts expected to exceed $100,000 which propose using other than full and open competition must be coordinated with and concurred in by the cognizant competition advocate unless the proposed contract will be awarded under the authority at FAR 6.302–5 or will be awarded under a class justification approved by the Assistant Administrator for Acquisition Policy. HCA's may require coordination and concurrence for contracts equal to or less than $100,000. The cognizant competition advocate is—

(1) The contracting activity competition advocate, as defined in Subpart 502.1, for plans for contracts exceeding $100,000, but equal to or less than $10,000,000.

(2) The agency competition advocate, as defined in Subpart 502.1, for plans for contracts exceeding $10,000,000. The contracting activity competition advocate shall concur in all plans before submission to the agency competition advocate.

(f) The specific content of a plan will vary depending on the nature of the acquisition and the dollar value involved. A suggested, general limited plan outline is at GSAR 507.105–70. For specific programs HCA's may authorize: (1) Continued use of existing detailed plan outlines that generally meet the requirements of GSAR 507.105–70; (2) development of standard plan outlines meeting the needs of individual programs; (3) substitution of automated systems which adequately address individual plan elements for the written requirement; (4) modification of the suggested outline by deleting inapplicable elements or adding new ones as needed.

507.105 Contents of written acquisition plans.

507.105–70 Contents of a limited acquisition plan.

A suggested general limited acquisition plan outline follows. The items should be discussed as appropriate.

Limited Acquisition Plan

(a) *Analysis of the Requirement.* (1) Description of the Requirement—

(i) Commodity or Services: Briefly describe NSN or other identifying characteristics.

(ii) Number of line items: (If applicable).

(iii) Estimated dollar value: Total ——— Unit Price ———.

(iv) Contract period: ———.

(v) Buyers name: ———.

(2) History of previous acquisitions—

(i) Method of acquisition: Sealed bidding? Competitive proposals?

(ii) Competition:

(A) Full and open competition.

(B) Full and open competition after exclusion of sources.

(C) Other than full and open competition.

(iii) Type of contract:

(iv) Conditions peculiar to previous acquisitions:

(A) Minimum order limitation.

(B) Maximum order limitation.

(C) Delivery time.

(D) Prices Paid.

(E) Competition received.

(F) Set asides.

(G) Problems in evaluating offers.

(b) *Current considerations affecting the acquisition.* (1) Socio-Economic considerations.

(i) Small business set aside.

(ii) Labor surplus set aside.

(iii) Subcontracting provisions.

(2) Use of options.

(i) Evaluated.

(ii) Not evaluated.

(3) Market Survey/Pricing.

(i) Competition expected?

(ii) How can competition be enhanced?

(iii) Market Survey. If no survey, explain why.

(iv) Pricing data.

(v) System life costing feasibility?

(A) Cost data needed?

(B) Commercial sales/marketing price data needed?

(C) Audit report needed?

(4) Economic price adjustments?

(5) Support status.

(i) Backorders.

(ii) Delinquencies.

(iii) No coverage.

(6) Acquisition approach.

(i) New/changed acquisition methods?

(ii) Method of acquisition: Sealed bidding? Competitive proposals?

(iii) Contract type.

(iv) Evaluation method.

(c) *Milestone events.* *Date*

(1) Purchase request.

(2) Acquisition plan approval.

(3) Justification and approval for other than full and open competition and/or any required D&F approval.

(4) Issuance of synopsis.

(5) Issuance of solicitation.

(6) Evaluation of proposals, audit, other field pricing reports, and technical reports.

(7) Beginning and completion of negotiations.

(8) Contract preparation, review, clearance.

(9) Contract award.

6. Section 507.307 is added to read as follows:

507.307 Appeals.

Appeal procedures for informal administrative review of the initial cost comparison result are contained in GSA Order, GSA Appeal Procedure under OMB Circular A–76, Revised (ADM 5400.37).

Dated: March 20, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–8757 Filed 4–10–85; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 50, No. 70
Thursday, April 11, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 84-079]

Animals Destroyed Because of Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the payment of indemnity for animals destroyed because of brucellosis to provide that claims to compensation for animals destroyed because of brucellosis shall not be allowed if the animals are from a "herd know to be affected" with brucellosis, if the animals were identified as brucellosis reactor animals subsequent to the classification of the herd as a "herd known to be affected," and if an "approved action plan or approved individual herd plan" is not in effect for the herd. It appears that this action is needed to help ensure that herd owners do not abuse the indemnity system by continuously making claims for compensation for animals destroyed because of brucellosis in those cases when the herd owners do not have a plan for taking adequate measures to eradicate brucellosis in the herd.

DATE: Written comments must be received on or before June 10, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the "Animals Destroyed Because of Brucellosis" regulations in 9 CFR Part 51 (referred to below as the indemnity regulations) which contain provisions governing the payment of indemnity for cattle, bison, and breeding swine destroyed because of brucellosis. The proposed amendment to the indemnity regulations incorporates certain provisions of the "Brucellosis" regulations contained in 9 CFR Part 78 (referred to below as the brucellosis regulations). The brucellosis regulations govern the interstate movement of cattle, bison, and swine because of brucellosis, and are designed to help prevent the interstate spread of brucellosis.

Under the indemnity regulations indemnity is paid to an owner of such animals slaughtered because of brucellosis to encourage the owner to cooperate in the timely removal of infected animals from the herd or, in the case of herd depopulation, to remove a foci of infection and thereby prevent transmission of brucellosis to nearby susceptible herds. The indemnity regulations in §51.9 contain a list of circumstances under which claims for compensation for animals destroyed because of brucellosis shall not be allowed. It is proposed to expand this list of circumstances to provide that claims for compensation for animals destroyed because of brucellosis shall not be allowed if the animals are from a "herd known to be affected" as defined in §78.1(aaa) of the brucellosis regulations, if the animals were identified as reactors subsequent to the classifications of the herd as a "herd known to be affected," and if an "approved action plan or approved individual herd plan" as defined in § 78.1(xx) of the brucellosis regulations is not in effect for the herd.

Section 78.1(aaa) of the brucellosis regulations defines "herd known to be affected" as:

> Any herds in which any animal has been classified as a brucellosis reactor, and which has not been released from quarantine.

Section 78.1(xx) of the brucellosis regulations defines an "approved action plan or approved individual herd plan" (referred to below as an approved herd plan) as:

> (1) A herd management and testing plan which is designed by the herd owner, his veterinarian if so requested, and a veterinarian of the Cooperative Brucellosis Eradication Program to control and eventually eradicate brucellosis from an affected herd. Plans must be approved jointly by the State animal health official and the Veterinarian in Charge. A similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd is also within the meaning of the term "Individual Herd Plan" or "Approved Action Plan."
>
> (2) The plan must call for the most appropriate veterinary procedures and proven herd management procedures to control the spread of brucellosis within the herd and thereby eradicate the disease from the herd.

A herd in which any animal has been classified as a brucellosis reactor would be placed under a State or Federal quarantine because of a risk of the herd causing the spread of brucellosis. Even if all of the known reactors had been removed, the presence of a quarantine would indicate that there is a significant risk of animals in the herd harboring brucellosis in the incubation stage even though they had tested negative for brucellosis. When reactors are found in a herd, it would be helpful to the eradication effort to take immediate action to rid the herd of the reactors. It could take several weeks or more to develop an approved herd plan. Under these circumstances, it appears that the reactors found upon initial testing should be eligible for compensation regardless of whether a herd plan was in effect. However, it appears that claims for compensation for animals destroyed because of brucellosis should not be allowed if the animals are from a "herd known to be affected," if the animals were identified as reactors subsequent to the classification of the herd as a "herd known to be affected," and if an approved herd plan is not in effect for the herd. This would help ensure that herd owners do not abuse the indemnity system by continuously making claims for compensation for animals destroyed because of brucellosis in those cases where the herd owners do not have a plan for taking adequate measures to eradicate brucellosis in the herd.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0064.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of cattle, bison, and swine owners who receive indemnity in any given year is less than 1 percent of all cattle, bison, and swine owners in the United States, and the amount of indemnity paid out of all kinds is less than $10 million per year.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 51

Animal diseases, Bison, Cattle, Hogs, Indemnity payments, Brucellosis.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, it is proposed to amend the "Animals Destroyed Because of Brucellosis" regulations contained in 9 CFR Part 51 by adding a new paragraph (i) in § 51.9 to read as follows:

§ 51.9 Claims not allowed.

* * * * *

(i) If the animals are from a "herd known to be affected" as defined in § 78.1 of this chapter, if the animals were identified as brucellosis reactor animals subsequent to the classification of the herd as a "herd known to be affected," and if an "approved action plan or approved individual herd plan" as defined in § 78.1 of this chapter is not in effect for the herd.

Authority: Secs. 3, 4, 5, 11, and 13, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC., this 8th day of March, 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–6177 Filed 4–8–85; 4:46 pm]

BILLING CODE 3410-34-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Review of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of regulations selected for review.

SUMMARY: This notice is made pursuant to a requirement of the Regulatory Flexibility Act to publish a list of regulations selected for review during the succeeding 12 months. The Federal Deposit Insurance Corporation (the "FDIC") has selected seven regulations for review by the staff during 1985 and invites comments concerning these regulations.

ADDRESS: Comments may be mailed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: John Keiper, Paperwork and Regulation Control Coordinator, Office of the Executive Secretary, (202) 389–4351.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) requires each agency to periodically review its rules which have a significant economic impact upon a substantial number of small entities. All such rules existing on January 1, 1981, must be reviewed within ten years of that date and all such rules adopted after January 1, 1981, must be reviewed within ten years of publication of such rules as the final rule. The FDIC will satisfy this requirement by following the more stringent requirements of its statement of policy entitled "Development and Review of FDIC Rules and Regulations" (44 FR 31007, May 30, 1979; 44 FR 32353, June 6, 1979; 44 FR 76858, December 28, 1979; 49 FR 7288, February 28, 1984), which prescribes the review of each rule (whether or not it has a significant economic impact on a substantial number of small entities) at least every five years.

Reviews will address all relevant issues, including whether the regulations should be continued, revised, or rescinded. Any change to a regulation as a result of a review will be published in the **Federal Register** in accordance with the requirements of the Administrative Procedure Act, as either a proposed rulemaking action subject to public comment or as a final rulemaking action. Each review will evaluate:

(a) The continued need for the regulation;

(b) Alternative methods of accomplishing the purpose of the regulation;

(c) The type and number of complaints or suggestions received;

(d) The need to minimize the burden imposed on those affected by the regulation, especially small banks;

(e) Possible simplification or clarification of the regulation;

(f) The need to eliminate overlapping, duplicative and conflicting regulations; and

(g) The length of time since the regulation was last evaluated and the extent to which technology, economic conditions, and other factors have changed in the area affected by the regulation.

The regulations of the FDIC are set forth in the several parts which constitute chapter III of title 12 of the *Code of Federal Regulations*. During 1985 was FDIC will made reviews of the following:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES OF ACQUISITION OF CONTROL

Legal basis: 12 U.S.C. 1815, 1816, 1817(j), 1818, 1819; 12 U.S.C. 1607.

Description and need: Part 303 sets forth the requirement and procedures to be followed by State nonmember banks in making application to the FDIC on such matters as obtaining deposit insurance, establishing a branch or moving a main office or branch, establishing remote service facilities, merging or consolidating, extending corporate or charter powers, reducing or retiring capital, providing notice of change in bank control, and various other matters. The regulation also describes the authority delegated by the FDIC Board of Directors to certain officials and committees of the Corporation to act on such matters as applications, notices of acquisition of control, requests for relief from

reimbursement, and other related matters.

PART 304—FORMS, INSTRUCTIONS, AND REPORTS

Legal basis: 12 U.S.C. 1819.
Description and need: Part 304 identifies the forms and reports used for submitting information to the FDIC, describes the circumstances under which a particular form or report should be used, identifies sources for obtaining preprinted forms, and prescribes the required contents of a report for which there is no preprinted form. The forms and reports serve various supervisory functions.

PART 308, SUBPART B—RULES OF PRACTICE GENERALLY

Legal basis: 12 U.S.C. 1819; 15 U.S.C. 78w; 12 U.S.C. 1972; 5 U.S.C. 504
Description and need: Subpart B to Part 308 prescribes rules of practice and procedures followed by the FDIC in hearings pursuant to the provisions of the Federal Deposit Insurance Act or other applicable law pertaining to involuntary termination of the insured status of any bank; issuance of cease-and-desist orders against any insured nonmember bank or its official; assessment of civil penalties against a bank or its official; issuance of orders that remove or suspend from office a director or officer of an insured nonmember bank; disapproval of a proposed acquisition of control of an insured nonmember bank; and imposition of sanctions upon a municipal securities dealer or a person associated with such a dealer.

PART 309—DISCLOSURE OF INFORMATION

Legal basis: Sec. 2(9) "Seventh" and "Tenth," Pub. L. 797, 64 Stat. 881, as amended by Title III; sec. 309, Pub. L. 95–630, 92 Stat. 3677 (12 U.S.C. 1819 "Seventh" and "Tenth"); § 309.5, also issued under 5 U.S.C. 552.
Description and need: This Part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information.

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

Legal basis: 5 U.S.C. 552b and 12 U.S.C. 1819.
Description and need: This part implements the policy of the "Government in the Sunshine Act," Section 552b of Title 5, United States Code, which is to provide the public with as much information as possible regarding the decision-making processes of certain Federal agencies, including the Federal Deposit Insurance Corporation, while preserving the rights of individuals and the ability of the agency to carry out its responsibilities.

PART 329—INTEREST ON DEPOSITS

Legal basis: 12 U.S.C. 1819, 1828, 1832.
Description and need: The provisions of Part 329 apply to the advertisement and payment of interest or dividends on deposits in insured nonmember banks and insured State branches of foreign banks.

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

Legal basis: 12 U.S.C. 1813, 1817, 1821, 1822.
Description and need: Part 330 provides for determination by the FDIC of the insured depositors of an insured bank and the amount of their insured deposit accounts. It sets forth the rules for determining the insurance coverage of deposit accounts maintained by depositors.

Dated: March 28, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–8756 Filed 5–10–85; 8:45 am]
BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy

AGENCY: Small Business Administration.
ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) proposes to repeal § 120.101–2(b)(1)(v), the broadcasting and cable TV exception to the general rule that SBA will grant no financial assistance to media applicants, *i.e.*, ". . . if the applicant is engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property . . . ." This rule will hereafter be referred to as SBA's media policy. The rule now permits SBA financial assistance to commercial broadcasters (radio and television) and cable TV systems under the regulatory jurisdiction of the Federal Communications Commission (FCC) or to a cable TV franchise granted in conformity with FCC standards.

DATES: Comments must be submitted on or before June 10, 1985.

ADDRESS: Written comments, in duplicate, are to be addressed to the Associate Administrator for Finance and Investment, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Charles Hertzberg, telephone 202–653–6574.

SUPPLEMENTARY INFORMATION: The present rule excepting broadcasters and cable TV operators from the general prohibition against granting financial assistance to media applicants was published and effective on January 27, 1978 (43 FR 3701).

In publishing the final rule, SBA explained its exception from the general rule in relevant part as follows:

> The premise underlying SBA's general policy of denying financial assistance to 'opinion molders' is set forth in 13 CFR 120.2(d)(4), which is quoted hereafter. The rationale for the exception created today in favor of broadcasters and cable TV operators is that these industries are already subject to Government regulations. In the case of broadcasters, the regulation is by the FCC; in the case of cable TV operators, regulations is by local franchising authorities operating under FCC guidelines. Participants in these industries are subject to 'equal time' and 'fairness' rules and each participant holds its license or franchise only so long as it operates in the public interest. No such restrictions apply to other opinion molders such as publishers and producers of 'audio visual materials' (*id.*).

In 1981 the Supreme Court upheld an FCC Policy Statement that the public interest is best served by market forces, *FCC v. WNCN Listeners Guild*, 450 U.S. 582. The Court concluded that governmental efforts to improve the broadcast market have led to distortions of programming, and that the costs of government instrusion into the market place outweigh the benefits. Accordingly, it does not appear that SBA's 1978 reasoning is now valid.

For these reasons, it is hereby proposed to repeal § 120.101–2(b)(1)(v) in its entirety.

Regulatory Impact

For purposes of E.O 12291, SBA certifies that this amendment, if adopted, would not be a major rule since it would not have an annual economic effect of $100 million or more. In this connection, we note that during FY 1984 SBA approved 70 loan applications averaging $248,861 from radio and TV broadcasters, cable systems and related industries

(Standard Industrial Classification Manual 1972, Nos. 4832/3). The amendment will not result in a cost increase for anyone or have an adverse effect on competition or employment anywhere.

For purposes of Regulatory Flexibility Act, 5 U.S.C. *et seq.*, it may have a significant economic impact on a substantial number of small entities. Consequently, the following information is offered:

1. This amendment is proposed to adapt SBA's media policy to changed conditions in the broadcasting industry. The legal basis is found in Sections 4(d) [as amended by Reorganization Plan No. 4 of 1965 (30 FR 9353)], and 5(b)(6) of the Small Business Act [15 U.S.C. 633(d) and 634(b)(6)] which authorize the Administrator of SBA to establish loan policies and promulgate implementing regulations.

2. Description of small entities to which the amended rule would apply. The amendment would apply to operators of commercial broadcasting stations and cable TV systems under FCC jurisdiction falling within the size standard of 13 CFR Part 121. It is not possible to estimate the number of small entities that will be affected by this amendment. However, during FY 1984 SBA approved 70 loan applications for the two classes of industries (SIC Nos. 4832 and 4833) which, besides radio and TV stations and cable systems, include related industries such as those furnishing program material and services.

3. There is no reporting or recordkeeping requirement contained in this amendment.

4. This amendment does not overlap, duplicate or conflict with any Federal rule.

5. The only significant alternatives to this rule would be to leave the rule unamended, or to remove all the restrictions of SBA's media policy. The reason against the first alternative has been stated above. The second alternative is one of the options SBA will consider when the media policy is reviewed in its entirety.

6. There are no monetary costs or other adverse effects inherent in this amendment.

Since this amendment carries no recordkeeping or reporting requirement, it is not subject to the Paperwork Reduction Act of 1980, Pub. L. 96-551.

List of Subjects in 13 CFR Part 120

Loan Programs—Business, Small Businesses.

PART 120—[AMENDED]

§ 120.101-2 [Amended]

Accordingly, pursuant to sections 4(d) and 5(b)(6) of the Small Business Act, 15 U.S.C. 633(d) and 634(b)(6), SBA hereby proposes to repeal § 120.101-2(b)(1)(v) of Part 120, Chapter I of Title 13, Code of Federal Regulations.

(Catalog of Federal Domestic Assistance No. 59.012 Small Business Loans)

Dated: January 24, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-8659 Filed 4-10-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-245 (Colorado-40 Addition)]

High-Cost Gas Produced From Tight Formations; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on May 23, 1985.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on April 23, 1985.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Edward Gingold, (202) 357-5491, or Victor Zabel, (202) 357-8616.

Notice of Proposed Rulemaking by Director, OPPR

In the matter of High-Cost Gas Produced from Tight Formations; Docket No. RM79-76-245, (Colorado-40 Addition).

Issued: April 8, 1985.

I. Background

On February 25, 1985, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Niobrara Formation located in Adams and Weld Counties, Colorado, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Colorado's recommendation that the Niobrara Formation be designated a tight formation should be adopted.[1] Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Niobrara Formation is located in Adams County, Colorado, in Township 1 South, Range 67 West, Sections 1 through 36; Township 1 South, Range 68 West, Sections 25 through 36; and in Weld County, Colorado, in Township 1 North, Range 67 West, Section 32 S/2, 6th P.M. No federal acreage is included in the recommended area and the area contains 48½ square miles.

The Niobrara Formation underlies the Pierre Shale and overlies the Codell Sandstone. Shales, mudstones, limestones, and dolomites comprise the Niobrara Formation. The top of the Niobrara Formation averages 7,500 feet in depth. The Niobrara Formation varies in thickness from 250 to 450 feet and the formation is of Cretaceous age.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-45 convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas premeability throughout the pay section

[1] Certain new tight formation gas wells will be deregulated as of January 1, 1985, in accordance with Commission Order Nos. 406 and 406-A.

of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97 [Reg. Preambles 1977–1981], FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the Niobrara Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before May 23, 1985. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–245 (Colorado-40 Addition), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than April 23, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formation.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(210) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

* * * * *

(210) *Niobrara Formation in Colorado.* RM79–76–245 (Colorado-40 Addition).

(i) *Delineation of formation.* The Niobrara Formation is located in Adams County, Colorado, in Township 1 South, Range 67 West, Sections 1 through 36; Township 1 South, Range 68 West, Sections 25 through 36; and in Weld County, Colorado, in Township 1 North, Range 67 West, Section 32 S/2, 6th P.M.

(ii) *Depth.* The average depth to the top of the Niobrara Formation is 7,500 feet. The Niobrara Formation varies in thickness from 250 to 450 feet.

[FR Doc. 85–8666 Filed 4–10–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Certain Fuel Grade Ethanol

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of several domestic interested parties with respect to Customs determination that certain fuel grade ethanol imported from several Caribbean Basin countries may qualify for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA). The petitioners contend that the ethanol is currently incorrectly classified under the CBERA as being eligible for duty-free entry into the U.S. They believe that the beverage grade ethanol transformed to fuel grade ethanol in the Caribbean Basin countries is not subjected to a "substantial manufacturing process" and does not produce a "new or different article of commerce". Therefore, they believe the duty prescribed for ethanol in the tariff schedules should be collected. This document invites comments addressing the correctness of the current classification.

DATE: Comments must be received on or before June 10, 1985.

ADDRESS: Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Harold Singer, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to Customs determination that certain fuel grade ethanol imported from several Caribbean Basin countries may qualify for duty-free entry under the Caribbean Basin Economic Recovery Act (CBERA; 19 U.S.C. 2701). The product at issue, ethyl alcohol (ethanol) imported for use as a fuel, is classified under item 901.50, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), at a rate of duty of 60¢ per gallon. (This 60¢ per gallon duty is in addition to a 3% ad valorem duty on ethanol for nonbeverage purposes from item 427.88, TSUS). However, some ethanol may enter the U.S. free of duty since Customs has ruled that the transformation of beverage grade ethanol from a non-beneficiary country to motor fuel ethanol in a beneficiary country through azeotropic distillation is sufficient to make the motor fuel ethanol a product of the beneficiary country for purposes of the CBERA.

The petitioners contend that fuel grade ethanol is not a new or different

article of commerce from beverage grade ethanol as the only significant difference in the composition of the two is their water content. It is argued that azeotropic distillation is not a substantial manufacturing process. The azeotropic method of distillation involves adding benzene or some other chemical to 190 proof ethanol and then heating the mixture so that the benzene will vaporize and carry away most or all of the water in the mixture. This results in ethanol of a higher proof.

The possibility that importers will import ethanol free of duty is the result of two previous Customs ruling letters. In Customs letter CLA–2 CO:R:CV:V, 553209 HS, September 12, 1984, it was stated that an article is substantially transformed for tariff and related purposes when, as a result of a substantial manufacturing or processing operation, a new or different article of commerce emerges having a name, character, or use which is distinct from the article or material from which it is transformed. Applying this definition, it was determined that azeotropic distillation is a substantial processing operation and fuel grade ethanol was a different product from beverage grade ethanol.

In Customs letter CLA–2 CO:R:CV:VS, 071693 TL, January 3, 1984, it was determined that General Headnote 3(a), TSUS, would afford duty-free entry to 199+ proof alcohol that had been produced from 180–190 proof alcohol after azeotropic distillation performed in the U.S. Virgin Islands.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification issue.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved April 2, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85–8709 Filed 4–10–85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 85–17]

Contract Procedures; Advertising for Bids; Noncollusion Affidavit

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on contract procedures regarding advertising for bids that appear at page 12037 in the **Federal Register** on Wednesday, March 27, 1985 (50 FR 12037). The action is necessary to correct a typographical error in the docket number given under the **"ADDRESS"** heading to read as "Docket No. 85–17."

DATE: Comments on the proposed rule must be submitted on or before May 28, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85–17, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 and 4:15 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. P. E. Cunningham, Chief, Construction and Maintenance Division, (202) 426–0392, or Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426–0780. Office hours are from 7:45 to 4:15 p.m., ET, Monday through Friday.

In FR Doc. 85–7212 appearing on page 12037 in the issue of March 27, 1985, under the heading of **"ADDRESS"** the docket number "84–14" is corrected to read as "85–17."

Issued on: April 3, 1985.

Dowell H. Anders,

Acting Chief Counsel, Federal Highway Administration.

[FR Doc. 85–8699 Filed 4–10–85; 8:45 am]

BILLING CODE 4910-22-M

23 CFR Part 650

[FHWA Docket No. 85–21]

Navigational Clearances for Bridges

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA requests comments on a proposal to issue regulations for the coordination and development of Federal-aid highway projects which effect navigation. The regulations will summarize existing policies and procedures regarding the construction of bridges over navigable waterways. The purposes of this document is to strengthen and improve the coordination between highway interests and waterway interests, and to achieve cost-effective designs. The regulation will be issued as a part of a comprehensive effort by FHWA to streamline and accelerate the planning and developmental processes on Federal-aid highway projects under the "one stop" processing concept.

DATE: Comments must be received on or before July 10, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85–21, Federal Highway Administration, Room 4205, HCC–10, 400 7th Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip L. Thompson, Office of Engineering (HNG–31), (202) 472–7690, or Mr. Michael Laska, Office of the Chief Counsel (HCC–10), (202) 426–0762, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA's directive on bridge clearances for navigation (Federal-Aid Highway Program Manual 6–7–1–1–) has not been revised since 1971 although there have been changes in legislative requirements and project development procedures

since that time. The operating procedures for determining bridge clearances and obtaining bridge permits have been issued by FHWA in a variety of forms including memorandums to regional administrators, Technical Advisories, Notices, and a FHWA/U.S. Coast Guard (USCG) Memorandum of Understanding (MOU). This distribution of recommended operating procedures through different channels of communication has been a source of confusion for State highway agencies as well as for FHWA personnel.

The proposed regulation corrects this deficiency by summarizing the existing legislative requirements and established operating procedures, and by referencing appropriate guidance material.

The proposed regulations will clearly define FHWA and USCG responsibilities relative to navigation clearances which are provided for the construction of Federal-aid highway bridges. The FHWA policy is to be involved in navigation clearance determinations, to meet the reasonable needs of navigation with fixed birdges, wherever practicable, and to provide for reasonable protection from ship collisions.

The proposed regulations will provide the coordination procedures for Federal-aid highway bridges which require navigational clearances. Bridges over waterways which do not require a USCG permit represent 99 percent of the bridges over waterways processed by FHWA. For example, in calendar year 1983, FHWA authorized the construction or rehabilitation with Federal funds of approximately 5,900 bridges over waterways which did not require a USCG permit. During the same period, the USCG issued permits for about 60 bridges to be constructed with Federal funds.

For bridges not requiring a USCG permit, the FHWA through its division offices has the responsibility to determine that a USCG permit is not required, through consultation if necessary; to assure that the reasonable needs of local navigation are met; and to notify the USCG if navigation lights and signals are required.

For bridges requiring a USCG permit, the FHWA has agreed to process projects according to step-by-step procedures detailed in Appendix A of the proposed regulation and to coordinate environmental review of projects in accordance with the MOU in Appendix B of the proposed regulation. In addition to these procedures, a requirement has been included that sufficient preliminary design shall be accomplished during the environmental phase of project development to determine horizontal and vertical navigational clearances that are acceptable to the FHWA and the USCG for further project development.

The FHWA encourages fixed bridges wherever practicable so that highway and waterway traffic can be best served. While this decision usually has to be made on the basis of a benefit cost analysis, a higher initial cost can often be justified to save future operating costs.

In addition to the proposed regulations, the FHWA has already published the following non-binding guidance for navigation clearances which will continue as guidance under the proposed regulations:

(1) The HA should consider the river geometry, currents and velocities; present and future barge and tow traffic, distribution and sizes; clearances at bridges upstream and downstream and navigational problems at those locations; and the history of problems with ice, lock sizes and other problems unique to the bridge site. An analysis using methods in FHWA Technical Advisory T 5140.2,[1] Navigation Channel Widths in Bends, dated February 17, 1978, can be used in making an engineering study of navigational clearances needs. In addition, Bridge sites can be modeled to assure that no undue navigational hazards will be created at the bridge. Also, controlled time lapse photography of barge traffic moving through the river reach can be used to determine the width of stream actually occupied by a tow in passing through the bridge site.

(2) The HA should use information on the increment of highway bridge costs and on the increased motor vehicle operating costs due to navigational needs in the early coordination with the USCG and the subsequent development of bridge plans to provide adequate navigational clearances at a reasonable cost to the Federal aid highway project. The USCG has the primary responsibility for decisions governing navigational clearances for bridges; however, the FHWA has a coordinate responsibility to assist in obtaining information regarding the costs to highway users associated with the navigational clearances.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. The anticipated economic impact of this proposed regulation is minimal since its main purpose is to summarize and emphasize current policies and procedures. Therefore, a full regulatory evaluation is not required. For these reasons and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Fedeal Domestic Assistance Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 650

Bridges, Grant programs—transportation, Highways and roads

Issued on: April 3, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, and under the authority of section 124(a) of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599, 92 Stat. 2702), 23 U.S.C. 144(h), 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*, 49 CFR 1.48(b), the FHWA proposes to amend Part 650 of Title 23, Code of Federal Regulations, by adding a new Subpart H as set forth below.

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

Subpart H—Navigational Clearances for Bridges

Sec.

650.801 Purpose.
650.803 Policy.
650.805 Bridges not requiring a USCG permit.
650.807 Bridges requiring a USCG permit.
650.809 Movable span bridges.
Appendix A—USCG/FHWA Procedures for handling projects which require a USCG bridge permit.
Appendix B-USCG/FHWA Memorandum of Understanding on coordinating the preparation and processing of Environmental Documents

Authority: Sec. 124(a), Pub. L. 95–599, 92 Stat. 2702; 23 U.S.C. 144(h), 315; 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*; 49 CFR 1.48(b)

Subpart H—Navigational Clearances for Bridges

§ 650.801 Purpose.

The purpose of this regulation is to establish policy and to set forth coordination procedures for Federal-aid highway bridges which require navigational clearances.

[1] Federal Highway Administration internal directives are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

§ 650.803 Policy.

It is the policy of FHWA:

(a) To assist in determining the navigational clearance for bridges,

(b) To provide clearances which meet the reasonable needs of navigation and provide for cost-effective highway operations,

(c) To provide fixed bridges wherever practicable, and

(d) To provide appropriate protective and warning systems on bridges subject to ship collisions.

§ 650.805 Bridges not requiring a USCG permit.

(a) The FHWA through its division offices has the responsibility to determine that a USCG permit is not required for bridge construction. This determination shall be made at an early stage of project development so that any necessary coordination can be accomplished during environmental processing.

(b) A USCG permit shall not be required if the FHWA Division Administrator or Division Engineer for Direct Federal projects determines that the proposed contstruction, reconstruction, or replacement of the federally aided or assisted bridge is over waters which are neither tidal nor used or susceptible to use for interstate or foreign commerce.

(c) The highway agency (HA) shall assess the need for a USCG permit or navigation lights or signals for proposed bridges. The HA shall consult the appropriate District Offices of the U.S. Army Corps of Engineers if the susceptibility to improvement for navigation of the water of concern is unknown and of the USCG if the navigability of the waters is in question.

(d) Where the HA believes that a USCG permit is not required, it shall include a statement to that effect in the appropriate environmental review document or with the categorical exclusion determination. The statement shall be supported by adequate documentation so that the Division Administrator or Engineer can make a determination that a USCG permit is not required.

(e) Since construction is waters exempt from a USCG permit continues to be subject to other USCG authorizations, such as approval of navigation lights and signals and timely notice to local mariners of waterway changes, the Division Administrator or Engineer shall notify the USCG ehenever it is determined that the proposed action may substantially affect local navigation.

§ 650.807 Bridges requiring a USCG permit.

(a) The USCG has the responsibility to determine whether a USCG permit is required for the improvement or construction of a bridge over navigable waters except for the exemption exercised by FHWA in §650.805.

(b) A USCG permit shall be required when a bridge crosses waters which are: (1) Tidal or (2) used as a means of transport for substantial interstate or foreign commerce or are susceptible to improvement for this use. If it is determined that a USCG permit is required, the project shall be processed in accordance with the following procedures.

(c) The HA shall initiate coordination with the USCG at an early stage of project development and provide opportunity for the USCG to be involved throughout the environmental review process in accordance with 23 CFR Part 771. Additional guidance is provided in the following procedures: The USCG/FHWA Procedures for Handling Projects which Require a USCG Bridge Permit (Appendix A) and the U.S. Coast Guard/Federal Highway Administration Memorandum of Understanding on Coordinatng the Preparation and Processing of Environmental Documents (Appendix B).

(d) The HA shall accomplish sufficient preliminary design during the environmental phase of project development to determine horizontal and vertical navigational clearances acceptable to the FHWA and the USCG for further project development and to determine the feasibility of any proposed movable bridge.

(e) The HA shall consider hydraulic, safety and navigational needs along with highway costs when designing a proposed waterway crossing.

(f) For bridges where the risk of ship collision is significant, HA's shall consider the need for pier protection and warning systems as outlined in FHWA Technical Advisory 5140.19, Pier Protection and Warning Systems for Bridges Subject to Ship Collisions, dated February 11, 1983.

(g) Special navigational clearances shall normally not be provided for accommodation of floating construction equipment of any type that is not required for navigation channel maintenance. If the navigational clearances are influenced by the needs of such equipment, the HA shall prepare a finding of fact to accompany the USCG permit application which identifies the equipment by type and ownership, and by expected frequency of movement of equipment in the area of the bridge.

(h) The permit application shall be submitted to the USCG only after the bridge concept and clearances are agreed upon by the HA or land management agency, whichever is applicable, and by FHWA. For projects which require FHWA approval of plans, specifications and estimates; preliminary bridge plans shall be approved at the appropriate level by FHWA for structural concepts, hydraulics, and navigation clearances.

(i) If the HA presents alternative designs for bids, then the permit application shall be prepared in sufficient detail so that all alternatives can be evaluated by the USCG. If appropriate, the USCG will issue a permit for all alternatives. Within 30 days after award of the construction contract, the USCG shall be notified by the HA of the alternate which was selected. The USCG procedure for evaluating permit applications which contain alternates is presented in its Bridge Administration Manual (COMDT INST M16590.5).[2] The FHWA policy on alternates, Alternate Design for Bridges; Policy Statement, was published at 48 FR 21409 on May 12, 1983.

§ 650.809 Movable span bridges.

A fixed bridge shall be selected whenever practicable. If there are social, environmental or engineering reasons which favor the selection of a movable bridge, a benefit-cost analysis to support the need for the movable bridge shall be prepared as a part of the preliminary plans.

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[2] United States Coast Guard internal directives are available for inspection and copying as prescribed in 49 CFR Part 7, Appendix B.

APPENDIX A.—USCG/FHWA PROCEDURES FOR HANDLING PROJECTS WHICH REQUIRE A USCG BRIDGE PERMIT

Federal Highway Administration	U.S. Coast Guard (USCG) activities
1. System Planning Activities.	
2. Project Initiation Activities.	
3. Preliminary Environmental/Location Studies.	
(a) Data gathering.	
(b) Determine if a USCG permit is required.	
(c) If a permit is required, initiate coordination with USCG, and request USCG (District) to be cooperating agency as per CEQ Regulations.	
(d) Assess navigation needs in cooperation with USCG; provide information to USCG if preliminary notice is to be issued; i.e., plans, clearances, description of project, etc. Clarify environmental review scoping responsibilities as necessary.	3(d) Assess navigational needs and assist FHWA/State with draft EIS or EA; consider, as appropriate, preliminary public notice of project location(s) and evaluation of possible effects on waterway. Advise FHWA/State whether the proposed project meets the reasonable needs of navigation or is controversial.
(e) Advise the USCG district ASAP of proposed Programmatic section 4(f).	
4(a) Issue draft EIS or EA and include discussion of navigation needs and potential highway impacts; continue coordination with Coast Guard.	4(a) Comment on navigational and environmental aspects of draft EIS or EA, concentrating on the bridge(s) and approaches, with particular emphasis on adequacy of proposed clearances.
4(b) Consider joint FHWA/State and Coast Guard public notice and hearing(s), especially in controversial cases.	4(b) Participate in joint public notice and hearing(s): (1) Where requested by FHWA/State. (2) When sufficient information is available on a given bridge to avoid separate USCG hearing.
5. Select highway location and prepare final EIS or FONSI; respond to comments received on navigation and environmental aspects of highway bridges. If the USCG has not provided comments on the navigation aspects, contact the USCG and obtain their views on the adequacy of the proposed clearances.	5. Upon request, assist in preparing responses to any navigational issues received on environmental document.
6. Furnish preliminary final EIS or FONSI to USCG for review, as appropriate.	6. Review preliminary final EIS or FONSI and comment, as appropriate.
7. Whenever practicable submit application for USCG permit. (Permit application(s) may include alternate bridge designs.) Resolve any outstanding issues.	7. When permit application is included, review for completeness and issue formal public notice.
8. FHWA approval of final EIS or FONSI. Complete submission for permit application as required. If Programmatic section 4(f) is used, provide USCG with the supporting information for determining its applicability including alternatives, mitigation measures, and FHWA/SHPO agreement.	
9. If permit has not been previously submitted, apply for permit as soon as practicable after design work commences.	9(a) For applications submitted after approval of final EIS or FONSI, District reviews application and issues formal public notice. 9(b) District concurs in resolution of any outstanding issues; forwards permit application with recommendation to Washington Headquarters or acts on permit application where appropriate.
10. Complete bridge design. If alternate designs submitted, notify USCG of alternate selected within 30 days of bid award.	

Appendix B.—USCG/FHWA Memorandum of Understanding on Coordinating the Preparation and Processing of Environmental Documents

I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to avoid unnecessary duplication of effort by the Coast Guard and the Federal Highway Administration (FHWA), both agencies of the Department of Transportation (DOT), in the preparation and processing of environmental documents pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)(c)) and other Federal environmental statutes and orders for bridge projects requiring approvals of both the FHWA and Coast Guard. The NEPA requires the Secretary of Transportation to make explicit analyses of environmental consequences of proposed major Federal actions under DOT jurisdiction and prepare detailed statements which analyze and consider the impact of these proposed actions upon the environment. The procedures set forth in this MOU will be utilized to strengthen the early coordination between the Coast Guard and the FHWA prior to and during the developing of the highway section and environmental processing.

II. Definitions

The definitions contained in the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508) are applicable to this MOU as well as the following:

1. *Bridge:* The term "bridge and its approaches," as used in 33 CFR 114.05, should be defined in each case by applying proper engineering sense to the facts of the case. The term may be defined generally as including all work integral to the structure itself. For example, if a bridge deck's grade is the same as the grade of the highway approach to it, the point where the abutment terminates would be considered the limit of the bridge. In a case where the bridge deck is at a higher elevation than the approach highway leading up to it, with a change in grade required to reach that elevation, the point where a change in grade in the approach highway occurs would be considered the limit of the bridge. Other bridges, whether highway, railroad, industrial conveyors, pipelines, etc., excepting aerial transmission lines, which are reconstructed, removed, relocated, or otherwise involved in the Federal assistance project requiring approval of the location and plans by the Commandant, U.S. Coast Guard, are included in this definition.

2. *Bridge Permit:* The approval of location and plans of a bridge, pursuant to the provisions of 33 U.S.C. 491, 491 *et seq.*, 511 *et seq.*, 525 *et seq.*, and 535, and Acts of Congress authorizing the construction of bridges, including international bridges.

3. *Coast Guard:* This shall mean the Commandant of the Coast Guard; Chief, Office of Navigation; Chief, Bridge Administration Division; or Commander of a Coast Guard District to the extent of the authority delegated. However, throughout section IV and V of this MOU, unless otherwise stated, Coast Guard shall mean the Commander of a Coast Guard District.

4. *FHWA:* This shall mean the Administrator, Federal Highway Administration; the Regional Federal Highway Administrator; or Division Administrator (Division Engineer for Direct Federal highway projects) to the extent of the authority delegated. However, throughout sections IV and V of this MOU, unless othewise stated, FHWA shall mean the Division Administrator.

5. *Highway Agency (HA):* The agency with the primary responsibility for initiating and carrying forward the planning, design, and construction of bridges and highways. For bridges and highways financed with Federal-aid highway funds, the HA will normally be the appropriate State highway department. For bridges and highways financed with other funds, such as National Forest, and National Park roads and highways, etc., the HA will be the appropriate Federal or State agency.

6. *Federally Aided Highway Project:* Highway and bridge projects constructed with the assistance of the FHWA-administered funds, including projects financed from funds transferred to the FHWA for other agencies.

7. *Navigable Waters of the United States:* (1) For purposes of bridge administration, "navigable waters of the United States" means the following (unless specifically declared otherwise by Congress):

a. The territorial sea:

b. Internal waters subject to tidal influence; and

c. Internal waters not subject to tidal influence, which

(1) Are or have been used, or are or have been susceptible for use, by themselves or in connection with others, as highways for *substantial interstate or foreign commerce,*

notwithstanding obstructions that require portages; or

(2) A governmental or non-governmental body having expertise in waterway improvement determines or has determined to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with others, highways for *substantial interstate or foreign commerce.*

III. Lead Agency for Environmental Processes

Except as provided for in section 144(h) of Title 23 U.S.C., the Coast Guard must approve (issue a permit for) the location and plans for highway bridges crossing navigable waters of the United States. A significant number of these bridges are constructed with the assistance of Federal funds administered by the FHWA.

The actions by the FHWA and Coast Guard require an evaluation under the terms of NEPA, as implemented by the CEQ Regulations (40 CFR Parts 1500–1508), DOT Order 5610.1C, applicable parts of the operating agencies' directives (FHPM 7–7–2 and Commandant Instruction M 16475.1A), and other Federal environmental statutes and orders. The CEQ regulations strongly encourage that a single agency (lead agency) be designated to handle the NEPA responsibilities where related actions by several Federal agencies are to be taken. The lead agency, in such instances, assumes the responsibility for consultation with other agencies, coordinating necessary environmental studies and evaluations, and preparation of any NEPA-related determination or document for review by the cooperating Federal agencies prior to making it available for public review.

The Coast Guard and the FHWA agree that, when a highway section requires an action by both FHWA and Coast Guard, the FHWA will normally serve as the lead agency for the preparation and processing of environmental documents.

IV. Responsibility of the FHWA

A. FHPM 7–7–2 defines three classes of actions which prescribe the level of documentation required in the NEPA process. These are:

1. Class I (EIS's)—Action that requires an EIS.

2. Class II (Categorical Exclusions)—Actions that do not individually or cumulatively have a significant effect on the environment.

3. Class III (Environmental Assessments)—Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or Class II are Class III. For these actions, an environmental assessment (EA) must be prepared culminating in a decision to prepare an EIS or a finding of no significant impact (FONSI).

The above documents shall demonstrate, where applicable, consideration of and compliance with the requirements of other Federal environmental statutes and orders, including but not limited to:

23 U.S.C. 138 and 49 U.S.C. 1653(f) (section 4(f) of the Department of Transportation Act of 1966);

16 U.S.C., *et seq.*, Archeological and Historic Preservation Act and 23 U.S.C. 305;

16 U.S.C. 662, section 2 of the Fish and Wildlife Coordination Act;

16 U.S.C. 1452, 1456, sections 303 and 307 of the Coastal Zone Management Act of 1972;

16 U.S.C., 1536, section 7 of the Endangered Species Act of 1973;

33 U.S.C. 1251, *et seq.*, Clean Water Act of 1977;

42 U.S.C. 300(f), *et seq.*, Safe Drinking Water Act of 1974;

42 U.S.C. 4371, *et seq.*, Environmental Quality Improvement Act of 1970;

42 U.S.C. 4601 *et seq.*, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

42 U.S.C. 4901, *et seq.*, Noise Control Act of 1972;

42 U.S.C. 7401, *et seq.*, Clean Air Act;

42 U.S.C. 2000(d)-(d)4, Title VI of the Civil Rights Act of 1964;

Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977;

Executive Order 11593, Protection and Enhancement of the Cultural Environment, dated May 13, 1971, implemented by DOT Order 5650.1 dated November 20, 1972;

Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650.2, dated April 23, 1979;

Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.1A, dated August 24, 1978.

B. It is the intent of this MOU that the data developed and the evaluation of impacts upon the human environment set forth in the appropriate environmental document will satisfy the requirements of both FHWA and the Coast Guard. In order to achieve this result, it is incumbent upon FHWA to initiate early and to maintain continuing coordination with the Coast Guard throughout the NEPA phase of project development. Accordingly, it is the responsibility of FHWA to take the following actions:

1. As the lead agency, FHWA shall be responsible for the preparation of the appropriate documentation for Class I, II, or III projects in accordance with the requirements of FHPM 7–7–2.

2. The FHWA shall consult with the Coast Guard prior to determining that any project project which may require a Coast Guard bridge permit is a Class I, II, or III action.

3. For each project that may require a Coast Guard bridge permit and is to be processed as a Class I or Class III action, FHWA will request that the Coast Guard become a cooperating agency.

4. For Class I projects, FHWA will continue to consult with the Coast Guard during the preparation of both the draft and final EIS.

5. For Class II projects, FHWA will provide the Coast Guard with information which documents that a project is a categorical exclusion.

6. For Class III projects, FHWA will consult with the Coast Guard during the preparation of both the environmental assessment, and if so determined, the FONSI.

7. The FHWA will consult with the Coast Guard relative to the need for highway and Coast Guard public hearing opportunities and consider a joint public hearing where appropriate.

8. If FHWA determines, pursuant to section 144(h) of Title 23 U.S.C., that project is exempt from a Coast Guard permit, it shall so notify the Coast Guard of same if FHWA believes that sufficient navigation exists to require the establishment, maintenance, and operation of lights and signals as required under 14 U.S.C. 685.

9. When a difference of opinion arises between the FHWA Division Administrator and the Coast Guard District Commander relative to the proper class of action or adequacy of environmental documentation, the FHWA Division Administrator shall meet with the Coast Guard District Commander and attempt to resolve the issue. If the issue is not resolved, the FHWA Division Administrator shall so notify the FHWA Regional Administrator who, in turn, shall consult with the District Commander. If the issue is not resolved at the FHWA Regional Office level, the Regional Administrator shall refer it to the FHWA Associate Administrator for Right-of-Way and Environment for appropriate handling.

10. The FHWA will ensure that the environmental documentation submitted to the Coast Guard with the permit application is complete with respect to satisfying NEPA and other Federal environmental statutes and orders.

V. Responsibility of the Coast Guard

It is the responsibility of the Coast Guard to take the following actions:

1. The Coast Guard shall cooperate with and provide guidance to FHWA and the HA during the determinations of class of actions and in the preparation of appropriate environmental documentation relative to its areas of jurisdiction.

2. The Coast Guard will furnish names of waterway organizations to FHWA and HA with whom consultation should be made during the development of environmental studies and to whom copies of the draft environmental documents should be sent for review.

3. Provided coordination has been accomplished in accordance with this MOU, the Coast Guard will ordinarily accept FHWA's environmental documentation as satisfactory compliance with NEPA for the purpose of processing the bridge permit application.

4. Where it is necessary for the Coast Guard to hold a hearing or public review of the navigational aspects of the proposal, the Coast Guard notice will make reference to the approved FHWA environmental documentation. It is not the intent of the Coast Guard notice to invite review and comment on approved FHWA environmental documentation.

Dated: April 27, 1981.

Concur.

R.A. Barnhart,

Federal Highway Administrator.

Dated: May 6, 1981.

Concur.

J.B. Hayes,

Commandant, U.S. Coast Guard.

[FR Doc. 85-8698 Filed 4-10-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-297-84; LR-299-84]

Application of Loss Deferral and Wash Sale Rules and Treatment of Holding Periods and Losses With Respect to Straddle Positions and Mixed Straddles; Straddle-By-Straddle Identification and Mixed Straddle Account Elections; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the application of the loss deferral and wash sale rules and treatment of holding periods and losses with respect to straddle positions; and relating to mixed straddles.

DATES: The public hearing will be held on Thursday, May 2, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, April 24, 1985.

ADDRESS: The public hearing will be held in the I.R.S. auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C.

The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, Attn: CC:LR:T (LR-297-84 and LR-299-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, Washington, D.C. 20224. Telephone 202-566-3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: One of the two subjects of the public hearing is proposed regulations §§ 1.1092(b)-1, 1.1092(b)-2, and 1.1092(b)-5. The proposed regulations appeared in the **Federal Register** for Thursday, January 24, 1985 (50 FR 3352).

The second subject of the hearing is proposed regulations §§ 1.1092-3 and 1.1092-4. These proposed rules appeared in the **Federal Register** for Thursday, January 24, 1985 (50 FR 3351).

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notices of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, April 24, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-8774 Filed 4-10-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Permanent State Regulatory Program of Texas

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period on a request submitted by the State of Texas to further extend the deadline for Texas to resubmit rules governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850.

On March 1, 1984, the State of Texas submitted to OSM an amendment to its approved regulatory program. OSM announced procedures for a public comment period and a public hearing on the amendent in the **Frderal Register** on March 23, 1984 (49 FR 10943). The proposed amendment concerned blaster training, examination and certification.

On June 25, 1984, Texas requested that OSM grant an extension of time for the development of a blaster training, examination and certification program and suspend the current rulemaking on this subject.

On September 21, 1984, OSM announced its decision to suspend rulemaking on the proposed rules and extend Texas' deadline to March 21, 1985 (49 FR 37062). On March 7, 1985, Texas requested an additional four months extension through July 15, 1985, to submit the State's blaster certification rules.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. OSM is proposing to again modify the deadline for Texas to develop and adopt its blaster program. This notice sets forth the dates and locations for submission of written comments.

DATES: Comments not received by 4:00 p.m. May 13, 1985, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Ch. M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12

months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication date of OSM's rule, or March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSM published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State.

On June 25, 1984, Texas advised OSM that it would require a six-month extension of the deadline for resubmission of a blaster program in order that Texas might adequately address and respond to the issues raised by OSM. Texas requested the six-month extension in order to prepare documentation on the issues raised by OSM and to prepare any necessary revisions and additions to the program. Texas also requested suspension of the current rulemaking on this subject.

In the September 21, 1984 **Federal Register** OSM announced its decision to suspend current rulemaking and extend Texas' deadline to March 21, 1985 (49 FR 37062). On March 7, 1985, Texas requested an additional four months extension through July 15, 1985, to submit the State's blaster certification rules, training and certification program.

Texas stated that, due to restrictions in its Administrative Procedure and Texas Register Act, only one rule action amending § 11.221 may be pending at a time. There is another rulemaking currently ongoing in Texas and therefore blaster certification revisions cannot be submitted at this time. The State anticipates that a rulemaking to revise blaster certification regulations can be submitted to the Railroad Commission of Texas by July 15, 1985, if the current rulemaking schedule proceeds as planned.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: April 8, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85–8729 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 85–03]

Marine Event; California Cup Race

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This proposed rule will establish special local regulations during the Annual California Cup Race. This four day event usually takes place in the summer of each year in the waters of Santa Monica Bay, California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during the race.

This years event will be held on the 24th thru the 27th of May 1985. Future information on dates, times, number of participants and location will be published in the weekly issue of the Eleventh Coast Guard District Local Notice to Mariners, at least 30 days prior to the event each year.

DATES: Comments must be received on or before May 10, 1985.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, CA. Normal office hours are between 7:30 AM and 3:30 PM, Monday through Friday except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice (CGD1185–03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT Joseph R. McFaul, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Proposed Regulation

The California Yacht Club sponsors the California Cup Race each year in the navigable waters approximately one mile southwest of Santa Monica, CA beginning at 11:00 AM till 7:00 PM. This event usually has 4 to 12 ocean racing and cruising sailboats, 70 feet in length, that could pose a hazard to navigation. Vessels desiring to transit the regulated area may do so only with clearance from a patrolling law enforcement vessel or an event committee boat.

The California Cup Race is conducted annually in the summer months, usually from 11:00 AM to 7:00 PM on the navigable waters off Santa Monica, California. Further information on exact time, date and location are published by the eleventh Coast Guard District in the Local Notice to Mariners and/or Special Local Regulation promulgated at least 30 days prior to the event. The special local regulations are effective usually for a four day period overlapping on a weekend.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated area will be opened periodically for the passage of vessel traffic and is in force for only a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, by adding the following section:

§ 100.35 11–85–03 California Cup, Santa Monica, CA.

(a) *Regulated Area.* The following area will be closed intermittently to all vessel traffic. (1) That portion of the Santa Monica Bay, California, enclosed by the following coordinates:

(i) 34 degrees 01.4′ N, 118 degrees 31.8′ W.

(ii) 33 degrees 59.7′ N, 118 degrees 37.9′ W.

(iii) 33 degrees 59.2′ N, 118 degrees 37.7′ W.

(iv) 33 degrees 59.5′ N, 118 degrees 33.4′ W.

(v) 33 degrees 57.0′ N, 118 degrees 30.9′ W.

(vi) 33 degrees 57.2′ N, 118 degrees 30.1′ W.

(2) The actual race course area (including the regulated area) is enclosed by the following coordinates:

(i) 34 degrees 01.4′ N, 118 degrees 31.8′ W.

(ii) 33 degrees 59.7′ N, 118 degrees 37.9′ W.

(iii) 33 degrees 55.5′ N, 118 degrees 36.1′ W.

(iv) 33 degrees 57.2′ N, 118 degrees 30.1′ W.

(b) *Effective dates.* These regulations will be effective from 11:00 AM to 7:00 PM on 24 thru 27 May 1985.

(c) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants or official regatta patrol vessels are considered spectators. The "official regatta patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol this event.

(1) No spectators shall, block, anchor, loiter in, or impede the through transit of participants or official regatta patrol vessels in the regulated area during the effective dates, unless cleared for such entry by or through an official regatta patrol vessel.

(2) When hailed and/or signaled by horn or whistle by an official regatta patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions of the designated Patrol Commander. Failure to do so may result in citation for failure to comply.

(3) All vessels in close proximity shall operate at a safe and prudent speed which will create a minimum wake that will not affect participants.

(4) The Patrol Commander is empowered to forbid and control the movement of vessels in the regulated area. He may terminate the marine event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(33 U.S.C. 1233; 33 U.S.C. 1236); 49 CFR 1.46(b); 33 CFR 100.35)

Dated: March 28, 1985.

F.P. Schubert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 85–8721 Filed 4–10–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD8–85–05]

Drawbridge Operation Regulations; Back Bay of Biloxi, MS

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Mississippi State Highway Department (MSHD), the Coast Guard is considering a change to the regulation governing the operation of the bascule span bridge over the Back Bay of Biloxi, mile 0.4, on US 90 between Biloxi and Ocean Springs, Harrison and Jackson Counties, Mississippi, to provide that the draw need not open for passage of vessels from 6:30 to 7:05 a.m.; 7:20 to 8:05 a.m.; 4:00 to 4:45 p.m.; and 4:55 to 5:30 p.m., Monday through Friday except holidays. The draw would continue to open on signal outside these rush hour periods. Presently, the draw is required to open on signal at all times. This proposal is being made because frequent openings of the drawspan during these rush hours result in backup of overland traffic along US 90, a major roadway in the area. This action should accommodate the needs of vehicular traffic during peak morning and afternoon traffic periods, while still providing for the reasonable needs of navigation. Additionally, this document proposes to correct the regulation governing the drawbridge of S15 Back Bay of Biloxi, mile 3.0, to show that the bridge actually is located on Interstate Highway 110.

DATE: Comments must be received on or before May 28, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The Comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Steve Crawford, project attorney.

Discussion of Proposed Regulation

Navigation through the bridge consists of barge tows and single tug boats, commercial fishers, and pleasure craft. Vertical clearance of the span in the closed position is 40.0 feet above high water and 41.8 feet above low water, with unlimited clearance in the open position. Data submitted by the MSHD show that:

(1) The peak vehicular traffic period in the morning is from 6:30 to 8:00. For the period 11 December 1984 through 18 December 1984, the daily average number of vehicles crossing the bridge during the weekday peak morning traffic period was 1652—on an average of 330 vehicles every 15 minutes.

(2) The peak vehicular traffic period in the afternoon is from 4:00 to 5:30. For the period 11 December 1984 through 18 December 1984, the daily average number of vehicles crossing the bridge during the weekday peak afternoon traffic period was 2379—or an average of 476 vehicles every 15 minutes.

(3) For the period 1 May 1984 through 10 December 1984, Monday through Friday, there were 252 bridge openings during the weekday morning peak vehicular traffic period—an average of 1.6 openings per day; and 256 bridge openings during the weekday peak afternoon traffic period—an average of 1:6 openings per day.

Based on these data, the Coast Guard feels that this proposal will provide relief to overload traffic during weekday peak rush hours, while still meeting the reasonable needs of navigation.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels will be affected by the proposed bridge closure periods, as evidenced by the bridge opening statistics which show that the bridge averages only 1.6 openings during each rush period. Moreover, a 10 to 15-minute break during each rush hour period would allow for an opening of the draw to pass all waiting vessels, and would ensure that the average delay to vessels would not exceed 23 minutes. The vessels that transit the bridge are mainly repeat users and scheduling their passage outside of the rush hours, when the draw would continue to operate on signal, should involve little or no additional expense to them. Since the economic impact of this proposal expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations by revising § 117.675 to read as follows:

PART 17—DRAWBRIDGE OPERATION REGULATIONS

§ 117.675 Back Bay of Biloxi.

(a) The draw of the U.S. 90 bridge, mile 0.4, between Biloxi and Ocean Springs shall open on signal; except that, from 6:30 a.m. to 7:05 a.m., 7:20 a.m. to 8:05 a.m., 4:00 p.m. to 4:45 p.m., and 4:55 p.m. to 5:30 p.m., Monday through Friday except holidays, the draw need not open for the passage of vessels.

(b) The draw of the I–110 bridge, mile 3.0 at Biloxi, shall open on signal if at least six hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: March 26, 1985.

W.H. Stewart,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–8720 Filed 4–10–85 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A–5–FRL–2815–7]

Proposed Delayed Compliance Order for Atec Industries, Inc., Canfield, OH

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Atec Industries, Inc. The Order requires the company to bring volatile organic hydrocarbon emissions from its miscellaneous metal parts coating line in Canfield, Ohio, into compliance with the Ohio Administrative Code (OAC) 3745–21–09(U), part of the federally-approved Ohio State Implementation Plan (SIP). The company is unable to comply with these regulations at this time, and the proposed Order would establish an expeditious schedule requiring final compliance by December 31, 1985. Source compliance with the Order would preclude suits under the federal enforcement and citizen suit provision of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before May 13, 1985 and requests for a public hearing must be received on or before April 26, 1985. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held twenty-one days after notice of the date, time, and place of the hearing, which will be provided in a separate notice in the **Federal Register**.

ADDRESS: Comments and requests for a public hearing should be submitted to the Office of Regional Counsel, EPA, Region V, 230 South Dearborn, Chicago, Illinois, 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Attermeyer, Associate Regional Counsel, Office of Regional Counsel, EPA, Region V, 230 South

Dearborn, Chicago, Illinois, 60604 at (312) 886–5312.

SUPPLEMENTARY INFORMATION: Atec Industries, Inc., operates a miscellaneous metal parts coating line at its Canfield, Ohio, plant. The proposed Order addresses volatile organic hydrocarbon emissions from the miscellaneous metal parts coating at this facility, which are subject to OAC 3745–21–09(U), part of the federally-approved Ohio State Implementation Plan. OAC 3745–21–09(U) limits the emissions of volatile organic hydrocarbons from these sources and OAC 3745–21–04(C)(28) specifies the date by which Atec Industries, Inc., must be in compliance with said rule. This Order requires final compliance with OAC 3745–21–09(U) by December 31, 1985, by reformulation to compliant high solids coatings. The source has consented to the terms of the Order, and has agreed to meet the increments established in the Order during the period of this informal rulemaking.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: March 29th, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–8582 Filed 4–10–85; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–38 and 101–39

Motor Equipment Management and Interagency Fleet Management System

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Proposed rule.

SUMMARY:

a. Part 101–38. Motor Equipment Management

The General Services Administration (GSA) proposes to update the policies and procedures concerning the management of Government-owned and leased motor vehicles. Certain sections from Parts 101–25, 101–26, and 101–39, that apply to the operations of the Federal motor vehicle fleet have been incorporated into proposed Part 101–38. This proposed Part has been restructured to provide a more logical sequence of events, i.e., the regulation begins with planning for motor vehicle acquisition and concludes with motor vehicle disposal actions, accident reports, and the kind of agency data necessary for GSA's annual Federal Motor Vehicle Fleet Report.

b. Part 101–39. Interagency Fleet Management Systems

GSA proposes to update policies and procedures concerning the management and operation of the Interagency Fleet Management System (formerly the Interagency Motor Pools System). This proposed rule clarifies the obligations and responsibilities of Federal agencies when requesting and operating interagency fleet management system vehicles.

c. The revisions to Parts 101–38 and 101–39 were proposed by the appropriate GSA program offices that are responsible for the efficient operation and management of motor vehicles used by the Government. These revisions were reviewed and comments were made by the Interagency Motor Equipment Management Committee, the Interagency Advisory Committee on Regulatory Review, and other Federal agencies. These comments were adopted or reconciled.

DATE: Additional comments on the proposed rules must be received on or before June 10, 1985.

ADDRESS: Comments should be submitted to the General Services Administration (FTA) Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. John B. Millington, Office of Transportation, Travel and Transportation Regulations Division, (703) 557–1256 or FTS 557–1256. A copy of the full text of the proposed rules is available upon request. A copy of these proposed rules will be furnished separately to each member of the Interagency Advisory Committee on Regulatory Review.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291, dated February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from the rules outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Part 101–38

Energy conservation, Gasohol, Government propoerty management, Motor vehicles.

41 CFR Part 101–39

Government property management, Motor vehicles, Safety, and claims.

The authority citation for Parts 101–38 and 101–39 reads as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Dated: March 14, 1985.

By delegation of the Assistant Administrator.

James J. Grady, Jr.,

Director of Policy and Agency Assistance.

[FR Doc. 85–8753 Filed 4–10–85; 8:45 am]

BILLING CODE 6820–24–M

41 CFR Part 101–40

Transportation and Traffic Management

March 19, 1985.

AGENCY: Office of Federal Supply and Services, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on proposed changes to 41 CFR 101–40 that will revise, clarify, and update traffic and transportation management policies and procedures which were previously published in FPMR Amendment G–49 on December 30, 1980 (45 FR 85741). On March 24, 1983, a draft of proposed changes was sent for review and comment to appropriate GSA offices and to members of the Interagency Committee on Transportation and Traffic Management representing 32 civilian executive agencies. In addition, copies of the draft were sent to the Interagency Advisory Committee on Regulatory Review. The comments received have been reconciled and incorporated where practicable. This proposed rule will make the following amendments and revisions:

a. Part 101–40 is revised to reflect GSA organizational changes and to correct certain editorial errors.

b. Part 101–40 also is revised to remove application to passenger transportation since travel regulations and employee entitlements are covered under other directives; e.g., GSA Bulletin FPMR A–40 (41 CFR 101–7), FPMR Temp. Reg. A–22, and FPMR Temp. Reg. A–24.

c. Section 101–40.103–2 is revised to incorporate the General Accounting

Office's revised guidelines for implementing the Fly America Act.

d. Section 101–40.103–3 is revised to emphasize agency responsibilities under the coastwise laws of the United States.

e. Section 101–40.109–2 is revised to increase the threshold at which an agency may enter into term contracts for office relocations from $5,000 to $10,000.

f. Section 101–40.110–3 is added to reflect the Government's policy toward women-owned business enterprises.

g. Section 101–40.203–1 is revised to establish time periods in which household goods carriers must submit interstate and intrastate individual rate tenders in order to participate in the Centralized Household Goods Traffic Management Program, which has been transferred to the GSA regional Customer Service Bureau, Transportation Services Branch (6FBT), Kansas City, Missouri.

h. Section 101–40.203–2 is recaptioned and the term "actual expense method" is changed to "GBL method" to remove confusion that may arise in describing "out-of-pocket" moving expenses.

i. Section 101–40.207 is revised to clarify the application of the Military Personnel and Civilian Employees' Claims Act of 1964 and to show that Pub. L. 97–226 increased the maximum compensation on employees' claims from $15,000 to $25,000.

j. Section 101–40.303–4 is revised to include reference to socially or economically disadvantaged carriers and women-owned carriers.

k. Subpart 101–40.4 is recaptioned and revised to provide guidelines for which each executive agency shall establish appropriate procedures for placing commercial carriers in a temporary nonuse, debarred, or suspended status. GSA has determined that it is more appropriate for individual agencies, rather than the GSA Central Office, to administer temporary nonuse, debarment, and suspension actions against carriers for the causes enumerated in this subpart. However, this subpart provides that debarred or suspended carriers will be included in the Consolidated List of Debarred, Suspended, and Ineligible Contractors which is compiled, maintained, and distributed by GSA in accordance with 48 CFR 9.404.

l. Section 101–40.702–3 is revised to increase the minimum amount at which agencies may process loss and damage claims from $25 to $50. This change is deemed appropriate in view of increased administrative costs. This section also reflects the cancellation of Standard Form 363. The provisions of this form have been incorporated in the revised Standard Form 361, Transportation Discrepancy Report. This revised section also removes the requirement for notifying the Department of Transportation of any pilferage, theft, or loss occurring in shipments of ammunition, explosives, or other hazardous articles (as identified in 49 CFR Part 172).

m. Subpart 101–40.49 is recaptioned and revised to remove references to formats and agreements. This subpart addresses forms only.

n. Section 101–40.4906–3 is recaptioned and revised to illustrate revised Standard Form 361, Transportation Discrepancy Report.

o. Section 101–40.4906–4 is recaptioned and revised to illustrate the revised guidelines for preparing Standard Form 361, Transportation Discrepancy Report.

p. Section 101–40.4906–4 is recaptioned and revised to illustrate the revised GSA Form 2485, Cost Comparison for Shipping Household Goods (Commuted Rate System vs. GBL Method).

DATE: Comments must be received on or before June 10, 1985.

ADDRESS: Requests for a copy of the full text of the proposed rule and comments relative thereto should be addressed to the General Services Administration (FTA), Washington, DC 20406. A copy of the full text will be furnished to each member of the Interagency Advisory Committee on Regulatory Review.

FOR FURTHER INFORMATION CONTACT: Mr. John B. Millington or Mr. Joseph M. Napoli, Office of Transportation, Travel and Transportation Regulations Division (FTA), at (703) 557–1256 or FTS 557–1256.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involved in the least net cost to society. Index terms for 41 CFR 101–40 are: Freight, Government property management, Moving of household goods, Office relocations, and Transportation.

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Dated: March 19, 1985.

By delegation of the Assistant Administrator.

James J. Grady, Jr.,

Director of Policy and Agency Assistance.

[FR Doc. 85–8754 Filed 4–10–85; 8:45 am]

BILLING CODE 6820–24–M

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41 CFR Part 101–41

Administrative Offset and Interest Assessment on Transportation Related Claims

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) to permit Government agencies to collect by administrative offset when carriers fail to make refunds for totally unused passenger tickets under 41 CFR 101–41.210, and other transportation related ordinary debts. They also allow agencies to assess interest and penalties on delinquent refunds due the Government for totally unused passenger tickets, and other transportation related ordinary debts. This order also establishes the procedures for collecting transportation related claims arising out of GSA's transportation audit (31 U.S.C. 3726). These revised procedures will improve the efficiency of Government-wide efforts to collect debts owed the United States, as prescribed by the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711–3719), and the Federal Claims Collection Standards jointly published by the U.S. Department of Justice and the General Accounting Office (49 FR 8889, March 9, 1984).

COMMENT DATE: Written comments must be received by 4:00 p.m. June 10, 1985.

ADDRESS: Comments should be sent to General Services Administration (BWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits, 202–786–3014.

SUPPLEMENTARY INFORMATION: The General Service Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. The GSA has based all

administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation. It is proposed to amend 41 CFR 101–41 as follows.

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 is:

Authority: 31 U.S.C. 3711–3719 and 3726, 40 U.S.C. 486(c)

2. The table of contents for Part 101–41 is amended by revising or adding the following:

101–41.210 Ticket Refund Procedures.
101–41.210–1 Exchanged or Returned Tickets.
101–41.210–1a Agency monitoring and processing of exchanged ticket refunds.
101–41.210–2 Unused or Unreturned Tickets.
101–41.210–3 Agency processing of SF 1170.
101–41.210–3a Carrier processing of SF 1170 claims.
101–41.210–4 Agency processing of SF 1170 refunds.
101–41.210–5 Agency Processing of SF 1170 Claims for which the carrier failed to refund or otherwise satisfy the claim.
101–41.500 Scope and applicability of subpart.
101–41.501 Definitions.
101–41.502 Examination of Payments and Initiation of Collection Action and Assertion of Claims.
101–41.503 Refunds and/or Protests to Claims.
101–41.504 Collection action by other means.
101–41.505 Disposition of Collections.
101–41.506 Transportation debts administratively determined to be due the United States.
101–41.507 Disclosure to Consumer Reporting Agencies and Referrals to Collection Agencies.

Subpart 101–41.2—Passenger Transportation Services Furnished for the Account of the United States

3. Sections 101–41.210 and 101–41.210–1 are recaptioned and revised as follows:

§ 101–41.210 Ticket refund procedures.

Agencies shall not revise carrier bills or require carriers to rebill items except as provided in § 101–41.210–5 and 6, to recover from carriers the value of exchanged, returned, or unused tickets.

§ 101–41.210–1 Exchanged or returned tickets.

Exchanged or returned tickets are tickets in a carrier's possession for which the carrier has issued a lesser valued ticket, receipt, or refund application showing a refund due the U.S. Government. Agencies shall not submit an SF 1170 to the carrier to claim a refund for the unused value of an exchanged or returned ticket. Carriers are required to make refunds to the "bill charges to" office indicated on the GTR within 60 calendar days from date of ticket exchange. Agencies must provide travelers with a "bill charges to" address by attaching a copy of the GTR or some other document containing the information to the ticket or to the travel authorization. If carriers cannot identify the issuing agency, refunds will be sent to GSA (BWCA), Washington, D.C. 20405. These refunds are subject to the following procedures:

(a) Carriers must include the traveler's name, GTR number, ticket number, amount being refunded, and any other information pertinent to the refund.

(b) Agencies may make written inquiry to the carrier to obtain the above information for the purpose of recovering the refund from GSA.

(c) When using the Diners Club Charge Cards, unused tickets (wholly or partially) are returned by the traveler to the TMC, Scheduled Airlines Traffic Office (SATO), or air carrier's office that issued the original ticket.

When using the GTS account, employees submit unused tickets to the appropriate Federal agency office, TMC, or SATO office that furnished the airline ticket for agency credit.

4. Section 101–41.210–1a is revised as follows:

§ 101–41.210–1a Agency monitoring and processing of exchanged ticket refunds.

Agencies awaiting exchanged or returned ticket carrier refunds shall:

(a) Obtain carrier refund applications or receipts from travelers for accounting purposes.

(b) Record and deposit refunds in conformity with agency fiscal procedures.

(c) Forward carrier refund applications and any other pertinent information to GSA (BWCA) Washington, D.C. 20405, if refund has not been received within 90 calendar days of date of ticket exchange or return.

5. Section 101–41.210–2 is recaptioned and revised as follows:

§ 101–41.210–2 Unused or unreturned tickets.

Unused or unreturned tickets are those which have not been used for passenger service, exchanged, or returned to a carrier. Agencies shall demand the refund value of these tickets from carriers through the use of an SF 1170, Redemption of Unused Tickets. A separate SF 1170 must be prepared for each GTR, though more than one ticket or adjustment transaction may be related to that GTR. Each ticket must be listed on the SF 1170. For procedures covering unused transportation services billed by Foreign Flag Carriers, see § 101–41.210–6.

6. Section 101–41.210–3 is recaptioned and revised as follows:

§ 101–41.210–3 Agency preparation of SF 1170 claims.

Timely processing of SF 1170 is essential to facilitate prompt refunds from carriers. Agencies preparing SF 1170 shall ensure that:

(a) All copies clearly show the required details;

(b) The original and the duplicate copy, together with pertinent unused tickets, are promptly forwarded to the carrier; and

(c) All other copies are retained by the agency for accounting control.

7. Section 101–41.210–3a is amended by revising paragraph (a) and (b) as follows:

§ 101–41.210–3a Carrier processing of SF 1170 claims.

* * * * *

(a) Carriers must include the traveler's name, GTA number, the ticket number, the amount being refunded, and any other information pertinent to the refund.

(b) Agencies may make written inquiry directly to the carrier to obtain the above information for the purpose of recovering refunds from GSA.

8. Section 101–41.210–4 is revised as follows:

§ 101–41.210–4 Agency processing of SF 1170 refunds.

Upon return of the original SF 1170 with the refund, the agency shall record and deposit the refund in conformity with its fiscal procedures; and, if the refund has previously been reported to GSA as uncollected under § 101–41.210–5, shall, within 30 calendar days of receipt thereof, forward the original SF 1170, together with any advice from the carrier regarding the basis of the refund,

to the General Services Administration (BWCA).

9. Section 101–41.210–5 is recaptioned and revised as follows:

§ 101–41.210–5 Agency processing of SF 1170 claims for which the carrier failed to refund or otherwise satisfy the claim.

(a) Partial tickets—A partial ticket is one in which one or more (but not all) coupons have been used. If, within 90 calendar days from the date of issuance of SF 1170, the carrier has failed to make refund for the unused portion of a partial ticket or to furnish a satisfactory explanation as to why no refund is due, the agency shall transmit the triplicate copy of the SF 1170 and all related correspondence to the General Services Administration (BWCA) for appropriate action. An agency may remove from its active accounts those debts referred to GSA under this section. This shall be recorded in a manner sufficient to support its removal from agency accounting records. Should a refund or response be received from the carrier after referring the claim to GSA, the agency shall, within 30 calendar days of receipt thereof, forward the original SF 1170, together with any advice from the carrier regarding the basis of the refund, to the General Services Administration (BWCA) is accordance with 101–41.210–4.

(b) Complete tickets—A complete ticket is one is which no coupons have been used. If, within 30 calendar days from the date of issuance of SF 1170, the carrier has failed to make refund for a complete ticket or to furnish a satisfactory explanation as to why no refund is due, the agency shall take action to collect the debt under the Federal Claims Collection Standards, including administrative offset.

Subpart 101–41.5—Claims by the United States Relating to Transportation Services

10. Section 101–41.500 is revised as follows:

§ 101–41.500 Scope and applicability of subpart.

This subpart sets forth procedures applicable to the assertion of claims by the United States that arise out of freight and passenger transportation services furnished for the account of the United States, the consideration and disposition of protests thereto, the collection of claims by administrative offset and by other means, the imposition of interest, penalties, and the disposition of amounts collected.

11. Sections 101–41.501, 101–41.502, and 101–41.503 are recaptioned and revised as follows:

§ 101–41.501 Definitions.

(a) The term "overcharges" as used herein means charges for transportation services in excess of those applicable thereto under tariffs lawfully on file with Federal or State transportation regulatory agencies, and charges in excess of those applicable thereto under rates, fares, and charges established pursuant to section 10721 of the Revised Interstate Commerce Act, as amended (49 U.S.C. 10721), or other equivalent contract, arrangement, or exemption from regulation.

(b) The term "ordinary debt" as used herein means any administratively determined transportation-related debt other than an overcharge. Ordinary debts include, but are not limited to, payments for transportation services ordered and not furnished, duplicate payments, and those involving loss and/or damage to property transported by carriers.

(c) The term "claim" as used herein means any demand by the United States for the payment of overcharges, ordinary debts, fines, civil penalties, special charges, or interest.

§ 101–41.502 Examination of payments and initiation of collection action and assertion of claims.

(a) *Examination of payments.* (1) Carrier bills and supporting documents that represent payments made by agency disbursing officers for freight and passenger transportation services shall be forwarded to the General Services Administration (BWAAC), Washington, D.C. 20405, for audit. For the purpose of determining whether a claim exists, GSA will consider:

(i) The document ordering the services furnished to determine the contractual basis upon which the rights of the Government and the carrier are based;

(ii) The pertinent tariffs, special or reduced rate quotations, contracts, or agreements, to determine the proper charge for the services rendered;

(iii) Decisions of the courts, regulatory bodies, and the Comptroller General affecting the rates, fares, and charges; and

(iv) Information furnished by transportation officers, travelers, or agencies.

(2) The General Services Administration is obligated to honor a carrier bill for charges properly due. However, GSA has a concurrent responsibility to question or disapprove that part of a payment to a carrier which is found to be illegal or mathematically incorrect or which is not accompanied by documented support establishing an obligation of the United States.

(b) *Notice of Overcharge.* (1) A GSA notice of overcharge is issued when it is determined that a carrier has been paid a sum in excess of that proper for the services rendered. This notice, which states a debt owed to the United States, sets forth: the amount paid; the basis for the proper charge for each Government bill of lading or Government transportation request; and cites applicable tariff references and other data relied upon to support the statement of difference. A separate notice of overcharge is stated for each Government bill of lading or Government transportation request and mailed to the billing carrier.

(2) If the GBL or the GTR contains a contract provision relating to the assessment of interest, then interest shall be charged under the contract terms thereof. If neither contains such a provision, then interest shall be assessed under the Debt Collection Act (31 U.S.C. 3717) and the Federal Claims Collection Standards, 4 CFR Parts 101–105, and Regulations published in 41 CFR Part 105–55.

(c) *Notice of Indebtedness.* A GSA notice of indebtedness is issued when it is determined that an ordinary debt is due the United States. This notice sets forth the basis for the debt, the debtor's rights, interest, penalty and other consequences of nonpayment. The debt is due immediately. Interest accrues 30 calendar days after the mailing of the notice of indebtedness and is subject to interest charges, penalties and administrative costs as prescribed by 31 U.S.C. 3717.

§ 101–41.503 Refunds and/or protests to claims.

(a) Carriers are requested to promptly refund amounts due the United States. Checks shall be made payable to the "General Services Administration" and mailed to the General Services Administration (BWCA), Washington, D.C. 20405.

(b) A carrier that disagrees with a claim may protest by letter to the General Services Administration (BWCA), Washington, D.C. 20405. Since each claim is processed as a separate account receivable, the carrier shall use a separate letter for each claim being protested. The carrier shall present the basis for its protest and submit either the original or a legible copy of all documents substantiating its position. If the carrier believes that an amount less than that claimed is due, it should submit a check for the amount due.

together with a full explanation of the reasons for believing the balance is not due. With reference to an ordinary debt, which is the subject of a notice of indebtedness, the carrier may: Inspect and copy the Government's records related to the claim; seek review by GSA of the claim decision; and/or enter into a written agreement for the payment of the claim. GSA will acknowledge receipt of each letter containing a substantive protest and upon completion of consideration will notify the carrier whether the claim has been sustained, amended, or canceled. Repetitious letters of protest will not serve to preclude the collection of claims found due.

12. Section 101–41.504 is revised as follows:

§ 101–41.504 Collection action by other means.

When a carrier fails to pay or protest a claim and GSA determines that the amount is still due the United States, GSA will effect collection by other means, as set forth in paragraphs (a) through (d) of this section.

(a) When GSA has an indebted carrier's claim against the Government on hand for direct settlement, GSA will apply all or any portion of the amount determined to be due the carrier to the Government's outstanding claim, in accordance with the Federal Claims Collection Act.

(b) When the action outlined in paragraph (a) of this section cannot be taken, GSA will instruct one or more Government disbursing offices to deduct the amount due the United States from an unpaid carrier's bill. A 3-year limitation applies on the deduction of overcharges from amounts due a carrier or forwarder (31 U.S.C. 3726); and, a 10-year limitation applies on the deduction of ordinary debts (31 U.S.C. 3716).

(c) When collection cannot be effected through either of the above procedures, GSA normally sends two additional demand letters to the indebted carrier requesting payment of the amount due within a specified time. Lacking satisfactory response, GSA may place a complete stop order against amounts otherwise payable to the indebted carrier by placing the name of that carrier on the Department of the Army "List of Contractors Indebted to the United States."

(d) When actions to effect collection, as stated in the preceding paragraphs (a) through (c), are unsuccessful, GSA may report the debt to the Department of Justice for collection, litigation, and related proceedings, as prescribed in 4 CFR Part 105.

13. Section 101–41.505 is recaptioned as follows:

§ 101–41.505 Disposition of collections.

* * * * *

14. Section 101–41.506 is amended by revising paragraph (a) and removing paragraph (c) and adding new paragraphs (c), (d), (e), (f) and (g).

§ 101–41.506 Transportation debts administratively determined to be due the United States.

(a) Under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.),* the Comptroller General and the Attorney General have joint responsibility for promulgating standards for the collection, compromise, termination or suspension of collection action on any debts determined to be due the United States. Regulations defining agency responsibilities for collecting amounts determined to be due the United States, establishing principles governing agency collection procedures for reporting uncollectible debts to the General Accounting Office (GAO) or the Department of Justice, are found in 4 CFR Parts 101 through 105 and in the GAO Policy and Procedures Manual for Guidance of Federal Agencies.

* * * * *

(c) The Director, Office of Transportation Audits, has the authority and responsibility to audit and settle all accounts arising from the payment for domestic and foreign freight and passenger transportation services furnished for the account of the United States under the provisions of 31 U.S.C. 3726 without regard to monetary limitations. He initiates actions on claims arising from his audit and settlement activities.

(d) Whenever feasible, debts owed to the United States, together with interest, administrative charges and penalty charges, should be collected in full. If the debtor requests installment payments, the Director, Office of Transportation Audits, shall determine the financial hardship of the debtor and may arrange installment payments.

(e) All liquidated or certain claims (those upon which all audit procedures under 31 U.S.C 3726 have been completed) over $20,000, exclusive of interest, penalties and administrative charges which cannot be collected, shall be referred to the Department of Justice.

(f) The Director, Office of Transportation Audits, may terminate collection action on, or settle by compromise at less than the principal amount liquidated or certain claims not exceeding $20,000 exclusive of interest, penalties and administrative charges if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) Complete collection is not enforceable within a reasonable time;

(3) The amount of the claim does not justify the foreseeable collection cost; or

(4) There are uncertain litigative probabilities.

(g) The Director, Office of Transportation Audits, shall prescribe internal regulations for the guidance of GSA personnel collecting claims arising from the audit of transportation accounts.

15. Section 101–41.507 is added as follows:

§ 101–41.507 Disclosure to consumer reporting agencies and referrals to collection agencies.

GSA may disclose delinquent debts to consumer reporting agencies and may refer delinquent debts to debt collection agencies under provisions of the Federal Claims Collection Act, and § 105–55.010 of these Regulations.

Dated: March 25, 1985.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 85–8755 Filed 4–10–85; 8:45 am]

BILLING CODE 6820–AM–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 85–7]

Independent Action—Notice and Meeting Provisions in Conference Agreements

AGENCY: Federal Maritime Commission.

ACTION: Enlargement of time to comment.

SUMMARY: Three separate groups of conferences and one interested group of shippers have requested an extension of time to comment in this proceeding, relating to the filing of agreements submitted to the Commission pursuant to section 5 of the Shipping Act of 1984, which was initiated by **Federal Register** notice of March 18, 1985 (50 FR 10810–10813). The Commission originally allowed comments to be filed on or before April 17, 1985, and the requests seek enlargements of time ranging from May 1, 1985, to May 17, 1985. The parties variously point to the fact that four Commission proceedings of general industry interest currently require comments to be filed within a short space of time, cite the importance of this proceeding and the need for detailed

industry input, and describe the time necessary to coordinate the views of the various member lines of a conference. Grounds for an extension having been established, an enlargement of time until May 17, 1985, is granted.

DATE: Comments due on or before May 17, 1985.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5740.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8589 Filed 4–10–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–82; RM–4901]

TV Broadcast Station in Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Television Channel 47 for Channel 42 at Little Rock, Arkansas, in response to a petition filed by Valley Associates. The assignment of Channel 47 at Little Rock could provide a better site selection for interested applicants.

DATES: Comments must be filed on or before May 28, 1985, and reply comments on or before June 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Little Rock, Arkansas); MM Docket No. 85–82, RM–4901.

Notice of Proposed Rule Making

Adopted: March 13, 1985.
Released: April 5, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Valley Associates ("petitioner"), proposing the substitution of UHF Television *54 for unused UHF Channel *28 in Russellville, Arkansas, in order to accommodate its application for a particular site location on UHF Television Channel 42 in Little Rock, Arkansas.

2. Little Rock (population 158,461[1] is the seat of Pulaski County (population 340,613) and the state capital. Little Rock is currently assigned commercial channels 4, 7—, 11, 16— and 42 and noncommercial educational channels *2— and *36.

3. Petitioner's proposal is intended to alleviate a potential separation requirement between Channel *28 at Russellville and its proposed site on Channel 42 at Little Rock. Possible sites for Channel 42 are currently restricted to an area east and northeast of Little Rock. Both the Little Rock Municipal Airport and Air Force Base are located in this area. Petitioner alleges that the presence of these facilities would preclude the construction of a new television tower at a competitive height with other Little Rock broadcast facilities.

4. The Commission does not generally favor substituting a higher reserved television channel for another, when an alternative channel is available. A staff study indicates that Channel 47 could be substituted for Channel 42 in Little Rock, and would require no change for Channel *28 in Russellville. The substitution would provide for a site location in the petitioner's desired direction. Therefore, we will solicit comments on the substitution of Channel 47 for Channel 42 in that community.

§ 73.606 [Amended]

5. In view of the fact that Little Rock, Arkansas could utilize its seventh local television service, the Commission finds that it would be in the public interest to seek comments to amend the Television Table of Assignments, § 73.606(b), of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Little Rock, Ark	*2—, 4, 7—, 11, 16—, *36, and 42.	*2—, 4, 7—, 11, 16—, *36, and 47—

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before May 28, 1985, and reply comments on or before June 12, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner, as follows: Eugene T. Smith, 715 "G" Street, SE., Washington, D.C. 20003, (counsel for the petitioner).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.*

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the TV Table of

[1] Population figures are taken from the 1980 U.S. Census.

Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-8725 Filed 4-10-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-77; RM-4860]

TV Broadcast Station in Hammond, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action herein proposes the assignment of UHF Television Channel 62 to Hammond, Louisiana, as that community's first television assignment, in response to a petition filed by Stuart B. Mitchell and Associates.

DATES: Comments must be filed on or before May 28, 1985, and reply comments must be filed on or before June 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposed Rule Making

Adopted: March 13, 1985.
Released: April 5, 1985.

By the Chief, Policy and Rules Division.

In the matter of Amendment of § 73.606(b), table of assignments, TV broadcast stations (Hammond, Louisiana); MM Docket No. 85-77, RM-4860.

1. A petition for rule making has been filed by Stuart B. Mitchell and Associates ("petitioner") requesting the assignment of UHF Television Channel 62 to Hammond, Louisiana, as that community's first television channel. Petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Hammond (population 15,043) [1] in Tangipahoa Parish (population 80, 698) is located in southeastern Louisiana, approximately 70 kilometers (44 miles) northwest of New Orleans, Louisiana.

3. UHF Television Channel 62 can be assigned to Hammond, Louisiana in compliance with the minimum distance separation requirements of § 73.610 and 73.698 of the Commission's Rules.

§73.606 [Amended]

4. Based on the above facts, we believe that the public interest would be served by seeking comments on petitioner's request. Accordingly, it is proposed to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the community listed below:

City	Channel No.	
	Present	Proposed
Hammond, LA		62+

5. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 28, 1985, and reply comments on or before June 12, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Stuart B. Mitchell and Associates, 180 South Washington Street, Suite 200, Falls Church, VA 22046.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,*

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to

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[1] Population figures were extracted from the 1980 U.S. Census.

Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponents(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspections of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-8726 Filed 4-10-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-80; RM-4658]

TV Broadcast Station in Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 32 to Kansas City, Missouri, as its seventh commercial television channel, in response to a petition filed by Michael R. Neal.

DATES: Comments must be filed on or before May 28, 1985, and reply comments must be filed on or before June 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Notice of Proposing Rule Making

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Kansas City, Missouri); MM Docket No. 85-80, RM-4858.

Adopted: March 13, 1985.
Released: April 5, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Michael R. Neal ("petitioner") requesting the assignment of UHF Television Channel 32 to Kansas City, Missouri. Petitioner has filed information in support of the proposal and indicated an interest in apply for the channel, if assigned.

2. Kansas City (population 448,159),[1] in Jackson County (population 632,266), is located in western Missouri, approximately 380 kilometers (235 miles) west of St. Louis, Missouri. The proposal could provide a seventh commercial TV station to Kansas City.

3. UHF Television Channel 32 can be assigned to Kansas City, Missouri in compliance with the minimum distance separation requirements with a site restriction 12.2 miles southeast to avoid short spacing to Station KBIN, Channel 32, Council Bluffs, Iowa.

§ 73.606 [Amended]

4. Based on the above facts, we believe that the public interest would be served by seeking comments on petitioner's request. Accordingly, it is proposed to amend the Television Table of Assignments (§ 73.606(b) of the Rules), for the community listed below:

City	Channel No.	
	Present	Proposed
Kansas City, MO	4, 5+, 9+, *19+ 41-, 50-, 62+, and *68-.	4, 5+, 9+, *19+ 32-, 41-, 50-, 62+, and *68-.

[1] Population figures were extracted from the 1980 U.S. Census.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 28, 1985 and reply comments on or before June 12, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Mr. David R. Jones, 217 West Ford Valley Road, Knoxville, TN 37940
and
Broadcast Technical Services, P.O. Box 9338, Knoxville, TN 37940
(Consultants to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M. Street NW., Washington, D.C.

[FR Doc. 85–8728 Filed 4–10–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–78; RM–4892]

TV Broadcast Station in Jacksonville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 35 to Jacksonville, North Carolina, as that community's first commercial allocation, at the request of Jacksonville Broadcasting Company.

DATES: Comments must be filed on or before May 28, 1985, and reply comments on or before June 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Jacksonville, North Carolina); MM Docket No. 85–78, RM–4892.

Adopted: March 13, 1985.
Released: April 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Jacksonville Broadcasting Company ("petitioner") requesting the assignment of UHF TV

Channel 35 to Jacksonville, North Carolina, as that community's first commercial allocation. Petitioner states that it will apply for the channel, if assigned.

2. Jacksonville (population 17,056), [1] the seat of Onslow County (population 112,784), is located in eastern North Carolina, approximately 165 kilometers (100 miles) southeast of Raleigh. It currently has assigned noncommercial educational Station WUMM, UHF TV Channel *19, licensed to the University of North Carolina. Channel 35 can be assigned to Jacksonville in compliance with the Commission's minimum distance separation and other technical requirements.

§ 73.606 [Amended]

3. We believe the public interest would be served by proposing to assign Channel 35 to Jacksonville as it could provide the community with its first commercial service. Accordingly, we propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Jacksonville, NC	*19	*19, and 35

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 28, 1985, and reply comments on or before June 12, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Robert W. Healy, Esq., Gordon and Healy, Chartered, 1821 Jefferson Place, NW., Washington, D.C. 20036 (Counsel to petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the data for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acint on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-8724 Filed 4-10-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S.C Census.

47 CFR Part 73

[MM Docket No. 85-74; RM-4767]

FM Broadcast Station in Big Lake, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of FM Channel 280A to Big Lake, Texas, as that community's second channel, at the request of Marvin G. Schwartz.

DATES: Comments must be filed on or before May 28, 1985, and reply comments on or before June 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b) table of allotments, FM broadcast stations (Big Lake, Texas); MM Docket No. 85-74 RM-4767.

Adopted: March 11, 1985.
Released: April 5, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Marvin G. Schwartz ("petitioner") requesting the allotment of Channel 280A to Big Lake, Texas, as that community's second FM channel. Petitioner has indicated an intention to apply for the channel, if assigned.

2. Big Lake is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Therefore, Mexican concurrence must be obtained before the channel can be allotted.

3. We believe the public interest would be served by proposing to allot Channel 280A to Big Lake, as requested. Accordingly, we seek comments on the amendment of the FM Table of Allotments, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Big Lake, TX	252A	252A, and 280A.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 28, 1985, and reply comments on or before June 12, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Marvin G. Schwartz, 21777 Ventura Blvd., Woodland Hills, California 91364.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleading. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate or service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the

Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-8723 Filed 4-10-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-76; RM-4900]

TV Broadcast Station in Wolfforth, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Randy Chandler Ministries, Inc., proposes the assignment of UHF Television Channel 22- to Wolfforth, Texas, as that community's first commercial television service.

DATES: Comments must be filed on or before May 28, 1985, and reply comments on or before June 12, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

In the matter of amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Wolfforth, Texas); MM Docket No. 85-76, RM-4900.

Notice of Proposed Rule Making

Adopted: March 13, 1985.
Released: April 5, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed February 7, 1985, by Randy Chandler Ministries, Inc. ("petitioner"), seeking the assignment of UHF TV Channel 22 to Wolfforth, Texas, as the community's first commercial television facility. Petitioner has stated an intention to apply for the channel, if assigned.

2. Wolfforth (population 1,701) [1] in Lubbock County (population 211,651) is located in northern Texas approximately 16 kilometers (10 miles) southwest of Lubbock, Texas.

3. UHF TV Channel 22- can be assigned to Wolfforth, Texas, in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules.

§ 73.606 [Amended]

4. In view of the fact that Wolfforth could receive a first commercial television broadcast service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules for the following community:

City	Channel No.	
	Present	Proposed
Wolfforth, TX		22-

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 28, 1985, and reply comments on or before June 12, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: George R. Grange II, Esquire, Gammon & Grange, 1925 K Street, NW., Suite 300, Washington, D.C. 20006; Counsel for Randy Chandler Ministries, Inc.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this

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[1] Population figures are taken from the 1980 U.S. Census.

effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-8727 Filed 4-10-85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 70
Thursday, April 11, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III; Regulatory Analysis of Agency Rules; Request for Comments

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Rulemaking has under consideration a draft recommendation on regulatory analysis of administrative agency rules. Interested persons are invited to comment on the draft recommendation.

DATE: Comments due by Monday, April 29, 1985.

ADDRESS: Send comments to: Michael W. Bowers, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, 202/254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Rulemaking is considering a draft recommendation on agency implementation of regulatory analysis requirements. The draft recommendation is based on a study done for the Administrative Conference by Professor Thomas O. McGarity of the University of Texas School of law. Copies of Professor McGarity's report may be obtained from the Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, D.C. 20037; telephone: 202/254–7065.

Professor McGarity's report and the draft recommendation address the role of regulatory analysis in the internal agency decisionmaking process, focusing on the way agencies perform, or should perform, regulatory analysis. The report and draft recommendation do *not* deal with several important subjects, including: (1) The merits of a general regulatory analysis requirement, (2) the appropriate "trigger" for requiring regulatory analysis; (3) Office of Management and Budget review of agency rules; and (4) judicial review of regulatory analysis.

The Committee on Rulemaking is especially interested in receiving additional information relating to Part 4 of the draft recommedation on the use of consultants in regulatory analysis of rules. More specifically: (1) To what extent does this recommendation duplicate or conflict with existing laws governing federal contracting?, and (2) Do existing laws adequately prevent or resolve conflicts of interest relating to use of consultants for regulatory analysis?

Draft Recommendation

1. The Roll of Regulatory Analysis in the Rulemaking Process

(a) *Identifying Options.* The regulatory analysis process can be very useful to agency decisionmakers in identifying innovative regulatory options. However, regulatory analysis can yield regulatory options only if the regulatory analysis function becomes an integral part of the internal agency decisionmaking process.

(i) Agencies should not begin intensive information-gathering and other analytical efforts on rules until agency technical staff and agency regulatory analysts have attempted to identify a broad range of regulatory options.

(ii) Agencies should experiment with a phased system of reducing options. Under a phased system, the agency initially should identify as large a number of options as it can for brief study. As options are considered and rejected, the remaining options should be analyzed with increasing thoroughness. As resource constraints preclude further consideration of an option, the agency should list the option in its regulatory analysis documents [1] and explain briefly why the option did not warrant further study.

(iii) Although the extent to which options are identified and analyzed in regulatory analysis documents is largely a matter for individual agency management, regulatory analysis documents normally should attempt to identify and analyze several realistic regulatory options.

(b) Integrating Regulatory Analysis into the Decisionmaking Process—(i) *Timing of Analytical Input.* If regulatory analysis is to be used in a rulemaking, the internal agency decisionmaking process should be structured to involve agency regulatory analysts early in the evolution of the rule, before innovative alternatives have been eliminated.

(ii) *Communicating Policy to Regulatory Analysts.* Regulatory analysis can be a valuable tool for communicating policy within regulatory agencies if the analysis explicitly identifies the policy goals that motivate a recommendation. Therefore, it is important that upper level policymakers in agencies provide clear guidance to subordinate decisionmaking units (such as steering committees and working groups) as to the policies that should guide the agency in choosing among options in individual rulemaking proceedings.

(iii) *Policy Input at Important Decisionmaking Junctures.* The different perspectives of an agency's regulatory analysis staff and its technical staff ensures that when both staffs are relied upon in the decisionmaking process, disagreements over appropriate agency policy will result. To obtain the most benefit from this clash of views, agencies should structure the internal decisionmaking process to ensure high level policy input, at important decisionmaking junctures, on the issues upon which the agency's regulatory analysts and technical staff disagree.

(iv) *Regulatory Analysts' Role in Responding to Comments.* When an agency solicits public comment on a regulatory analysis document or on portions of the proposed rule's statement of basis and purpose that draw upon the regulatory analysis document, the agency decisionmaking process should be structured to ensure that agency regulatory analysts have a role in developing the agency's response to the public comments.

(v) *Inter-Agency Review Comments.* Agencies should place in the public rulemaking record any written comments that are directed to the contents of regulatory analysis documents during the inter-agency review process. See ACUS Recommendation 80–6 (1 CFR 305.80–6).

[1] As used in this recommendation, "regulatory analysis document" means any preliminary or final regulatory analysis document accompanying a proposed or final rule.

(vi) *Communicating Regulatory Analysis Results to Congress and the Public.* Agencies should prepare brief summaries of preliminary and final regulatory analysis documents and make them available to appropriate congressional committees and to the public. The summaries should contain tables, charts and other devices to make the information contained in regulatory analysis documents understandable.

(c) *Use of Regulatory Analysis Where Not Required or Where Options Are Foreclosed.* (i) Regulatory analysis documents should consider the costs and benefits of feasible options, even if the agency is statutorily precluded from implementing some of those options. Regulatory analysis documents that consider options outside the agency's authority should be transmitted to the institutions with power to implement them, such as Congress and other agencies, and also be made available to the public.

(ii) Agencies should consider using regulatory analysis as a tool for managing policy for rulemaking initiatives with impacts on the economy that fall below the thresholds set by law for requiring formal regulatory analyses.

2. Disclosure in Regulatory Analysis Documents

In ACUS Recommendation 79–4 (1 CFR 305.79–4), the Conference advises agencies using cost-benefit and similar analyses to include in public notices of particular proceedings information about the analytical methods and assumptions used in conducting the analyses. The following recommendations pertain to disclosure in regulatory analysis documents whether for use by the public or agency decisionmakers.

(a) When agencies use quantitative models to quantify important variables in regulatory analysis documents, the known limitations of those models should be clearly stated.

(b) To avoid allowing quantitative models to oversimplify complex decisionmaking considerations, agencies should require regulatory analysis documents to (1) state clearly the major assumptions that undergird the models relied upon in the regulatory analysis, and (2) discuss important decisionmaking variables that are not subject to quantitative analysis.

(c) Agencies should require that regulatory analysis documents attempt to characterize the uncertainties that are included in quantitative predictions by using tools such as confidence intervals; multiple assessment models; sensitivity analysis, and worst case analysis.

(d) Agencies should require regulatory analysis documents to explicitly address the distributional impacts of rulemaking initiatives and the methods used for discounting future costs and benefits. Agencies should consider using more than one discount rate to clarify the sensitivity of the analytical projections to the discount rate.

(e) Agency regulatory analysis documents should make explicit reference to any agency policies that motivate the agency to choose one set of assumptions over another, to draw one inference rather than another, and to choose one quantitative model over another.

3. Informational Needs for Regulatory Analysis

(a) *Agency Access to Information.* Accurate information on the costs and economic impacts of proposed rules is essential to the regulatory process, and often the most important source of this information is a regulated party. Therefore, the Office of Management and Budget should allow agencies to address requests for cost and economic impact information to regulated parties when such requests are needed for accurate economic impact assessments. The Office of Management and Budget should coordinate its regulatory analysis review function with its paperwork reduction function to ensure that it approves information gathering activities that are designed to yield information that it is likely to require later in the rulemaking review process.

(b) *Coordination of Information Gathering Activities.* Agencies should attempt to coordinate their sponsored research activities with their regulatory analysis initiatives. More specifically, agencies should include regulatory analysts in the process of setting long-term research priorities. In addition, agencies should encourage the participation of representatives from the office responsible for agency-sponsored research in the rulemaking process at the very early stages when informational needs are defined.

(c) *Cooperative Regulatory Analysis.* Agencies should attempt on a trial basis to engage in cooperative regulatory analysis by bringing representatives from all affected parties together to assess the validity of particular studies prior to relying upon those studies in regulatory analysis documents.

(d) *Reducing Potential Bias.* Agencies should attempt to reduce the impact of bias in the sources of the information that they use in preparing regulatory analysis documents. This does not mean that agencies should automatically ignore or discount the value of information simply because it comes from a source with an interest in the outcome of the rulemaking initiative. Steps that agencies can take to reduce bias include:

(i) Consulting, whenever possible, multiple sources of information in preparing regulatory analysis documents;

(ii) Carefully citing in regulatory analysis documents all information upon which the analysis draws, and making the information available for public scrutiny at convenient times and places;

(iii) Actively soliciting comment and criticism from acknowledged experts in the fields that the documents address.

(e) *Retrospective Assessments of Previous Analyses.* Agencies should regularly perform retrosppective assessments of the predictions made in previous regulatory analysis documents. Retrospective analyses can provide feedback on the accuracy of agency predictions and thereby enable agencies to enhance the accuracy of future predictions or make judgments about the value of regulatory analysis to an agency's regulatory effort.

4. Use of Consultants in Preparing Regulatory Analysis Documents

Agencies can benefit from entering into consulting contracts with highly qualified experts to aid in gathering and analyzing information for regulatory analysis documents. However, agency personnel should retain the ultimate responsibility for the contents of regulatory analysis documents to prevent delegation of agency responsibility to consultants and to guard against consultant conflict of interest.

a. Agency employees, not consultants, should draft regulatory analysis documents.

b. When a regulatory analysis document relies upon consultant reports, the agency should place the reports in the public rulemaking record, subject to appropriate deletion of trade secret and other commercial or financial information that companies may have shared with consultants under confidentiality agreements.

c. Prior to entering into a consulting contract, agencies should require that each potential consultant prepare a statement describing in general terms any work that the consultant or any employee of the consultant who is likely to work on the project is currently preforming for a potentially regulated party or any work that the consultant or employee has performed in the past for a potentially regulated party. Such statements should be placed in the

rulemaking record, and they should accompany any documents that the consultant prepares for the agency in connection with the regulatory analysis.

(d) Agencies should not employ a consultant who is currently retained by a potentially regulated party to perform services similar to those that the agency is requesting, and agencies should include provisions in consultant contracts that prohibit consultants from accepting employment from a potentially regulated party to perform similar services during the time that the consultant is performing services for the agency.

(e) Agencies should include provisions in consultant contracts that prohibit consultants from seeking employment for similar services from potentially regulated parties for one year following the completion of the contract with the government.

5. The Scope and Limits of Regulatory Analysis

(a) Cost-benefit analysis can be a effective tool for marshalling and analyzing information and for establishing regulatory priorities, but it alone should not be used to dictate particular regulatory results in many regulatory contexts. Cost-effectiveness analysis is more appropriate for rulemaking that involves health, environmental, historical, artistic, and aesthetic considerations for which markets do not exist.

(d) Agencies should not request, and the Office of Management and Budget should not grant, exemptions from regulatory analysis requirements solely on the ground that a rule is perceived to be deregulatory in nature.

(c) Agencies and the Office of Management and Budget should take care that the regulatory analysis preparation and review procedures does not cause undue delay in the rulemaking process or produce post hoc rationalizations for decisions already made.

List of Subjects in 1 CFR Ch. III

Administrative practice and procedure, Regulatory analysis.

Dated: April 9, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85-8783 Filed 4-10-85; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: May 9-10, 1985.

Time: 8:30 a.m.-4:30 p.m., May 9; 8:30 a.m.-4:30 p.m., May 10.

Place: Room 104-A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, D.C.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C. F. Murphy, Executive Secretary, National Plant Genetics Resources Board, U.S. Department of Agriculture, Room 239, Building 005, BARC-West, Beltsville, Maryland 20705. Telephone: (301) 344-1560.

Done at Beltsville, Maryland, this 1st day of April 1985.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 85-8745 Filed 4-10-85; 8:45 am]

BILLING CODE 3410-03-M

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date: May 22-23, 1985.

Time: 8:00 a.m.-4:00 p.m.

Place: Room 3109 South Building, Department of Agriculture, Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact Person for Agenda and More Information: Dr. Edward M. Wilson, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 209, Justin Smith Morrill Building, Washington, DC 20251; telephone: 202/447-4587.

Done at Washington, DC, this 5th day of March 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85-8746 Filed 4-10-85; 8:45 am]

BILLING CODE 3410-22-M

Office of Grants and Program Systems

Policy Advisory Committee for the Science and Education Research Grants Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Grants and Program Systems announces the following meeting:

Name: Policy Advisory Committee for the Science and Education Research Grants Program.

Date: May 8, 1985.

Time: 9:00 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 1222 South Agriculture Building, 14th and Independence Avenue SW., Washington, D.C. 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To advise the Secretary of Agriculture with respect to the research to be supported, priorities to be adopted and emphasized, and the procedures to be followed in implementing those programs of research grants to be awarded competitively.

Contact Person for Agenda and More Information: Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 112, J.S. Morrill Building, Washington, DC. 20251, telephone: 202/475-5022.

Done at Washington, D.C. this 3rd day of April 1985.

Anne Holiday Schauer,

Executive Secretary, Policy Advisory Committee.

[FR Doc. 85-8747 Filed 4-10-85; 8:45 am]

BILLING CODE 3410-MT-M

Soil Conservation Service

Nibbs Creek Watershed; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of federal funding for the Nibbs Creek Watershed Project, Amelia County, Virginia, effective on July 22, 1969. The sponsoring local organizations have concurred in this determination and agree that federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Manly Wilder, State Conservationist, at Soil Conservation Service, 400 North 8th Street, Federal Building, Richmond, Virginia 23240, telephone (804) 771-2457.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and Federally-assisted programs and projects is applicable)

Manly S. Wilder,

State Conservationist.

April 1, 1985.

[FR Doc. 85-8684 Filed 4-10-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Harvard University et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 83-122. Applicant: Harvard University, Cambridge, MA 02138. Instrument: Apparatus for the Study of Clusters in Expanding Supersonic Beams by Means of Raman Scattering. Date of Denial Without Prejudice to Resubmission: January 15, 1985.

Docket No. 83-209. Applicant: Harvard University, Cambridge, MA 02138. Instrument: Fourier Transform for Infrared Michelson Interferometer and Accessories. Date of Denial Without Prejudice to Resubmission: January 8, 1985.

Docket No. 83-271. Applicant: National Aeronautics and Space Administration, Pasadena, CA 91109. Instrument: CCD 2000 Imaging System. Date of Denial Without Prejudice to Resubmission: January 15, 1985.

Docket No. 83-020. Applicant: Emory University, Atlanta, GA 30322. Instrument: Scanning Electron Microscope, Model DS-130 with Accessories. Date of Denial Without Prejudice to Resubmission: January 8, 1985.

Docket No. 84-135. Applicant: University of California, Livermore, CA 94550. Instrument: (2) Excimer Lasers KRF, Model EMG 150ES with Accessories. Date of Denial Without Prejudice to Resubmission: January 9, 1985.

Docket No. 84-148. Applicant: National Institutes of Environmental Health Sciences, Research Triangle Park, NC 27709. Instrument: Quadrupole Mass Spectrometer System, Model 12-250. Date of Denial Without Prejudice to Resubmission: January 15, 1985.

Docket No. 84-260. Applicant: University of California, Los Alamos, NM 87545. Instrument: (2) Streak Tubes. Date of Denial Without Prejudice to Resubmission: October 10, 1984.

Docket No. 84-319. Applicant: Indiana University, Bloomington, IN 47405. Instrument: Electrophoresis System, Model Mark II with Accessories. Date of Denial Without Prejudice to Resubmission: January 10, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-8768 Filed 4-10-85; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Commerce

SN 6-400,571 (4,499,700)
Systems for Monitoring Changes in Elastic Stiffness in Composite Materials

Department of Health and Human Services

SN 6-399,257 (4,500,637)
Prevention of Graft Versus Host Disease Following Bone Marrow Transplantation

SN 6-475,215
Multi-Layer Coil Assembly Coaxially Mounted Around the Rotary Axis for Preparatory Countercurrent Chromatography

Department of the Air Force

SN 6-520,356
Method and Apparatus for Generating a Structured Light Beam Array

SN 6-624,567
Secure Digital Speech Communication

SN 6-643,138
Method and Apparatus for High Speed, Sustained Recording and Infrared Laser Beam Patterns

SN 6-649,454
Apparatus for Retrieving, Placing, and Stocking Trays from an Automatic Storage and Retrieval Carousel
SN 6-659,484
Cargo Handling System
SN 6-675,171
Frequency Selective Signals-To-Noise Enhancer/Limiter Apparatus
SN 6-680,432
Active Dispersion Control for a Doppler Broadened Laser
SN 6-684,240
Autonomous Uninterruptable Power Supply Apparatus
SN 6-686,954
Interactive Communication Channel
SN 6-689,681
Electron-Bombarded Silicon Spatial Light Modulator
SN 6-689,699
Charge Isolation in a Spatial Light Modulator
SN 6-689,736
Sabot/Gun Gas Diverter
SN 6-690,438
Vibration Isolator Actuator
SN 6-698,728
Optimizing Hot Workability and Controlling Microstructures in Difficult to Process High Strength and High Temperature Materials
SN 6-698,979
Wavelength Dependent, Tunable, Optical Time Delay System for Electrical Signals

Department of the Army

SN 6-686,048
Device for Controlling Optical Fiber Twist on a Bobbin
SN 6-699,990
Dielectric Resonator
SN 6-704,816
Injection Controlled Laser Transmitter with Twin Local Oscillators
SN 6-705,267
Monolithic Planar Doped Barrier Limiter
SN 6-707,107
Adjustment of the Frequency-Temperature Characteristics of Crystal Oscillators
SN 6-707,346
Compensation of Acoustic Wave Devices

Department of the Interior

SN 6-488,482 (4,500,329)
Self-Actuating Vacuum Gas/Liquid Separator
SN 6-622,515 (4,500,398)
Production of Lead from Sulfides

[FR Doc. 85-8688 Filed 4-10-85; 8:45 am]
BILLING CODE 3510-04-M

Patent and Trademark Office

Interim Protection for Mask Works of Japanese Nationals Domiciliaries and Sovereign Authorities

Correction

In FR Doc. 85-7363 beginning on page 12355 in the issue of Thursday, March 28, 1985, make the following correction:

On page 12357, second column, under the heading **"Before the Secretary of Commerce"**, fourth paragraph, second line, "not" should read "now".

BILLING CODE 1505-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With Portugal on Categories 360 and 361

On March 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Portugal to enter into consultations concerning exports to the United States of cotton pillowcases in Category 360 and cotton sheets in Category 361 produced or manufactured in Portugal.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Portugal, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of such products produced or manufactured in Portugal and exported to the United States during the twelve-month period which began on March 29, 1985 and extends through March 28, 1986 at levels of 1,626,083 numbers and 2,980,444 numbers, respectively.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 360 and 361 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Portugal—Market Statement

Category 360—Pillowcases

March 1985.

Summary and Conclusions

United States imports of Category 360 from Portugal are non-institutional type pillowcases. Imports from Portugal during 1984 were 1,626,000 pillowcases (135,500 dozen), up 185.3 percent from the 1983 imports of 570,000 million pillowcases (47,500 dozen). This was substantial growth and can be expected to accelerate if not subject to restraints.

The market for Category 360 non-iinstitutional pillowcases has been disrupted by imports and imports from Portugal, the second largest supplier, have disrupted the market.

U.S. Production

Production of non-institutional cotton pillowcases in the United States decreased from 326,000 dozen in 1979 to 250,000 dozen in 1983. Production for the first three quarters of 1984 were 183,000 dozen pillowcases, down fractionally from the same period in 1983. Production by quarters in 1984 trended downward pointing toward a more substantial decline in 1984 than is indicated by the decrease registered during the first three quarters.

U.S. Imports

U.S. imports of non-institutional cotton pillowcases increased from 40,000 dozen in 1979 to 174,000 dozen in 1983. Imports in 1984 were up 139 percent to 416,000 dozen. Imports during the last quarter of 1985 were 166,000 dozen pillowcases, almost equal to the total 1983 imports.

Import Penetration

The ratio of imports to domestic production increased sharply from 12.2 percent in 1979 to 69.6 percent in 1983. The ratio for the first three quarters of 1984 was 135.5 percent, 143 percent above the same period in 1983. The very sharp spurt in imports during the last quarter of 1984 probably resulted in an import

ratio between 165 and 170 percent for the full year of 1984.

Domestic Producers Market Share

The U.S. market for domestically produced and imported non-institutional cotton pillowcases declined from 366,000 dozen in 1979 to 300,000 dozen in 1982. The market sharply increased in 1983 and 1984 with a level of 424,000 dozen in 1983 and 431,000 dozen for the first three quarters of 1984. However, U.S. producers share of the market declined over the entire period as production share fell from 69 percent in 1979 to 42 percent for the first three quarters of 1984. The share for the last quarter of 1984 will be even smaller since imports surged during that period.

Import Values vs U.S. Producers Price

Approximately 52 percent of the cotton pillowcases imported from Portugal are combed pillowcases entered under TSUSA No. 363.3040. The remainder are carded pillowcases entering under TSUSA No. 363.3020. Imports are landed at duty-paid values below the U.S. producers price for comparable pillowcases.

Portugal—Market Statement

Category 361—Cotton Sheets

March 1985.

Summary and Conclusions

United States imports of Category 361 from Portugal are non-institutional type sheets. Imports from Portugal during 1984 were 2.96 million sheets (248,000 dozen), up 27.5 percent from the 1983 imports of 1.31 million sheets (109,000 dozen). This was substantial growth and can be expected to accelerate if not subject to restraints.

The market for Category 361 non-institutional sheets has been disrupted by imports; imports from Portugal the largest supplier have contributed to the disruption; and, removal of restraints on imports from Portugal would intensify the market disruption.

U.S. Production

Production of non-institutional cotton sheets in the United States increased from 980,000 dozen in 1979 to 1,279,000 dozen in 1980. Production trended downward after 1980, declining to 1,014,000 dozen sheets in 1983. Production for the first three quarters of 1984 were 567,000 dozen sheets, down 26.3 percent from the same period in 1983. Production by quarters in 1984 trended downward pointing toward a more substantial decline in 1984 than is indicated by the decrease registered during the first three quarters.

U.S. Imports

U.S. imports of non-institutional cotton sheets increased from 22,000 dozen in 1979 to 248,000 dozen in 1983. Imports in 1984 were up 150 percent to 622,000 dozen. Imports during the last quarter of 1985 were 247,000 dozen sheets, almost equal to the total 1983 imports.

Import Penetration

The ratio of imports to domestic production increased sharply, up ten-fold, from 2.2 percent in 1979 to 24.5 percent in 1983. The ratio for the first three quarters of 1984 was 66.1 percent, 263 percent above the same period in 1983. The very sharp spurt in imports during the last quarter of 1984 probably resulted in an import ratio between 80 and 85 percent for the full year of 1984.

Domestic Producers Market Share

The U.S. market for domestically produced and imported non-institutional cotton sheets, after increasing in 1980, was remarkably stable through 1984. The U.S. producers share of the market was also stable through 1981, but began to decline at an increasing rate thereafter. The domestic producers share for 1981 was 95 percent; it dropped to 89 percent in 1982; to 80 percent in 1983; and to 60 percent during the first three quarters of 1984. The full year share in 1984 will be even smaller due to the surge in imports during the last quarter.

Import Values vs Producers Price

Approximately 51 percent of the cotton sheets imported from Portugal are combed sheets entered under TSUSA No. 363.3030. The remainder are carded sheets entering under TSUSA No. 363.3010. Imports are mostly flannel sheets which are landed at a duty-paid value below the U.S. producers price for comparable sheets.

[FR Doc. 85-8708 Filed 4-10-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 1, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhanced Non-Nuclear Munition Storage will meet at The Pentagon, Washington, DC, Room 5D982, May 6 (9:00 a.m.–5:00 p.m.) and May 7 (9:00 a.m.–5:00 p.m.) 1985 to review operational requirements and to discuss programs and initiatives to enhance munition storage and handling techniques. This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-8695 Filed 4-11-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Improvement of the Port Sutton Terminal Channel, Hillsborough Bay, Hillsborough County, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare Draft Environmental Impact Statement.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, is studying the feasibility of improving the Port Sutton terminal channel located in the northeast corner of Tampa Bay, Hillsborough County, Florida. All of the practicable alternatives, whether implementable by the Federal Government or not, are listed below:

Non-structural

No action.

Relocation of port operations.

Load and off-load deep draft vessels at western end of existing channel with shallow draft shuttle vessels.

Structural

Deepen channel to a selected depth between 35 and 43 feet and widen the channel to a maximum width of 300 feet to facilitate use by the more economical deep draft cargo vessels.

Disposal of dredged material in Tampa Bay, or on upland sites, or create marshlands in Tampa Bay with suitable dredged material, or a combination of the three.

The scoping process included the issuance of a public notice on 9 October 1984 that advertised the study and requested comments from the public. A report describing the study and requesting information and comments was sent to known affected or interested parties, including Federal, State, and local agencies and interested private organizations and parties on 9 November 1984. A scoping meeting is not contemplated. Issues to be addressed in the DEIS will be determined during scoping.

The U.S. Fish and Wildlife Service (FWS) is being consulted as part of the planning process in accordance with the Fish and Wildlife Coordination Act. The U.S. National Marine Fisheries Service (NMFS) and the State of Florida are also being consulted, and their contributions will be considered and apropriately applied in the planning process. Consultation for section 7 of the Endangered Species Act and the Archeological and Historic Preservation Act is in progress. Disposal of dredged

material in ocean waters will be evaluated by section 103 of the Marine Protection, Research, and Sanctuaries Act. Disposal of dredged material into waters of the United States will be evaluated by section 404(b) of the Federal Water Pollution Control Act. The DEIS will be made available to the public in June 1985 unless more time is needed for preparation.

Questions about the proposal or the DEIS may be directed to: Ronnie L. Tapp, Environmental Studies Section, U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida 32232, Telephone: 904–791–1690.

Dated: April 1, 1985.

Charles T. Myers III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85–8632 Filed 4–10–85; 8:45 am]

BILLING CODE 3710-AJ-M

Intent to Prepare an Environmental Impact Statement (EIS) for Port Everglades, FL, Development, 1984–2000

Subject: Department of the Army Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Port Everglades, Florida, Development, 1984–2000.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Port Everglades Authority proposes to expand Port Everglades as detailed in the *Port Everglades Master Development Plan 1984–2000.* An Environmental Impact Statement will address those actions of the Port Authority that will require a Department of the Army permit under section 10 of the River and Harbor Act of 1899 and section 404 of the Clean Water Act of 1977. Cumulative impacts of the proposed action and development adjacent to the project area that can be reasonably projected to occur as a result of port development will also be addressed.

The following alternatives are being considered:

a. Denial of all permits (no action).

b. Issuing of all permits as applied for.

c. Issuing of all permits with conditions.

d. Denying a permit for various discrete components of the expansion while issuing permits for the remainder of the components.

A scoping meeting is not contemplated. Scoping will be accomplished by correspondence with affected Federal, State, and local agencies, and with interested parties.

A draft of the EIS will be made available to the public in September 1985. Address questions concerning the EIS to: U.S. Army Engineer District, Post Office Box 4970, Jacksonville, Florida 33232–0019, Attn: Mr. Dan Malanchuk, (SAJPD–ES), Telephone (904) 791–1689, FTS 946–1689.

Dated: March 28, 1985.

Robert B. Ottesen,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 85–8711 Filed 4–10–85; 8:45 am]

BILLING CODE 3710-AJ-M

Department of the Navy

Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy, Headquarters Marine Corps, intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing May 13, 1985. Cost study process is rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. Since studies not yet begun, specifications not yet prepared. When bids/proposals desired, appropriate advertisements will be placed. No consolidated bidders' list being maintained since solicitations will be processed by various contracting offices throughout United States.

Marine Corps Air Station, Yuma, AZ

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance

Marine Corps Logistics Base, Barstow, CA

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance

Marine Corps Base, Camp Pendleton, CA

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance
Acceptance Testing

Marine Corps Air Station, El Toro, CA

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance
Operation of Bulk Liquid Storage

Marine Corps Recruit Depot, San Diego, CA

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance

Marine Corps Air Ground Combat Center, Twentynine Palms, CA

Motor Vehicle Operation
Motor Vehicle Maintenance

Marine Corps Logistics Base, Albany, GA

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance
Printing and Reproduction

Camp H.M. Smith, HI

Motor Vehicle Operation
Motor Vehicle Maintenance
Storage and Warehousing

Marine Corps Air Station, Kaneohe Bay, HI

Storage and Warehousing

Marine Corps Finance Center, Kansas City, MO

Motor Vehicle Operation
Storage and Warehousing

Marine Corps Base, Camp Lejeune, NC

Maintenance/Repair of Dining Facility Equipment
Repair of Metal Containers
Motor Vehicle Operation
Architect-Engineering Services

Marine Corps Air Station, Cherry Point, NC

Motor Vehicle Operation
Motor Vehicle Maintenance
Storage and Warehousing, Receipt
Storage and Warehousing, Shipping
Storage and Warehousing, Care, Rewarehousing and Support of Material
Training Devices and Simulators
Maintenance of Buildings and Structures, Family Housing
Maintenance of Buildings and Structures, Other than Family Housing
Railroad Facilities Maintenance

Marine Corps Air Station, Beaufort, SC

Installation Bus Services
Motor Vehicle Operation
Motor Vehicle Maintenance
Fueling Service (Aircraft)

Marine Corps Recruit Depot, Parris Island, SC

Motor Vehicle Operation
Motor Vehicle Maintenance

Marine Corps Development and Education Command, Quantico, VA

Maintenance/Repair of Special Equipment
Maintenance/Repair of Dining Facility Equipment
Other Maintenance/Repair of Equipment
Installation Bus Services
Food Services
Motor Vehicle Operation
Motor Vehicle Maintenance
Heating Plants and Systems
Sewage and Waste Plants and Systems
Other Services or Utilities
Fueling Services (Aircraft)
Maintenance of Buildings and Structures, Family Housing
Maintenance of Buildings and Structures, other than Family Housing
Grounds and Surfaced Areas

William F. Roos, Jr.,

Lieutenant, JAGC, USNR Federal Register Liaison Officer.

April 3, 1985.

[FR Doc. 85-8442 Filed 4-10-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Coastal Systems Center Review Team; Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Coastal Systems Center Review Team of the Naval Research Advisory Committee Panel on Laboratory Oversight will meet on May 7–8, 1985, at the Naval Coastal Systems Center, Panama City, Florida. The first session will commence at 8:00 a.m. and terminate at 5:15 p.m. on May 7. The second and final session will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 8. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NCSC. The agenda for the meeting will consist of technical briefings by the NCSC departments which will assist the team in their efforts to make a thorough evaluation of the scientific, technical, and engineering health of the activity. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 4, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-8760 Filed 4-10-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Ocean Systems Center; Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Ocean Systems Center Review Team of the Naval Research Advisory Committee Panel on Laboratory Overisght will meet on May 6–7, 1985, at the Naval Ocean Systems Center, San Diego, California. The first session will commence at 8:00 a.m. and terminate at 5:15 p.m. on May 6. The second and final session will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 7. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the scientific, technical, and engineering health of NOSC. The agenda for the meeting will consist of technical briefings by the NOSC departments which will assist the team in their efforts to make a thorough evaluation of the scientific, technical, and engineering health of the activity. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander M.B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 4, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-8761 Filed 4-10-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. INCENT-2]

Implementation of the Industrial Incentive Rate for the Direct-Service Industrial Customers of the Bonneville Power Administration

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of final action.

SUMMARY: On January 23, 1985, BPA proposed implementing the Industrial Incentive Rate for BPA's direct-service industrial customers (DSIs) over the period March 1 through June 30, 1985. The market price for alumium had deteriorated to the point where, beginning in March 1985, several DSIs were expected to curtail production from earlier levels. In an effort to maintain as much of the existing load as possible, BPA investigated whether BPA's revenues would increase as a result of implementation of the Industrial Incentive Rate. Based on the results of its initial studies, public comments, and revised studies, BPA adopted an Incentive Rate approximately equal to a 6-mill per kilowatthour discount from the Standard Industrial Rate.

The Industrial Incentive Rate will be effective for a 4-month period beginning March 1, 1985, and shall be applied on a take-or-pay basis to the loads of those DSIs who elected to purchase under this arrangement.

Responsible Official: Janet W. McLennan, Assistant Power Manager for Natural Resources and Public Services, is the official responsible for implementation of the Industrial Incentive Rate.

DATES: The Industrial Incentive Rate is effective March 1 through June 30, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Baker, Bonneville Power Administration, Public Involvement office, P.O. Box 12999, Portland, Oregon 97212. Telephone numbers, voice/TTY for the Public Involvement office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland;

800–547–6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. George T. Reich, Acting Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4131

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–434–6226, extension 701

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137

SUPPLEMENTARY INFORMATION:

I. Background

The Industrial Incentive Rate is a reduced rate designed to increase BPA's revenues during periods of adverse market conditions for the aluminum industry over those revenues which would otherwise be expected to result from application of BPA's Standard Industrial Rate. The rate also is intended to stimulate industrial production and maintain employment in the Pacific Northwest. Under the terms of the 1983 General Rate Schedule Provisions, the Industrial Incentive Rate can be offered to the DSIs only if BPA can demonstrate that the net result of implementing the rate would be to increase total BPA revenues.

For a 6-month period beginning on September 1, 1984, BPA implemented the Industrial Incentive Rate for the first time. The rate, averaging 22.7 mills per kilowatthour, represented a discount of approximately 5 mills per kilowatthour from the Standard Industrial Rate. Given the economic conditions which the DSIs currently face, BPA decided that it would be advisable to consider implementing another incentive rate upon expiration of the first—this time for the period March 1 through June 30, 1985.

II. BPA's Action

BPA analyzed the appropriateness of instituting another incentive rate in a feasibility study, published on January 23, 1985. Following a 3-week public comment period, BPA revised its feasibility study and offered the DSIs a discount from the Standard Industrial Rate of approximately 6 mills, contingent on a take-or-pay commitment that would ensure that BPA's revenues would increase as a result of the offer. Although BPA originally sought a commitment level of 2360 megawatts (MW), the DSIs only committed to purchasing 2262.4 MW. However, given the effects of BPA's customer charge which increases the average rate paid by some DSIs, the commitment of 2262.4 MW was enough to increase BPA's total revenue by $113,000 over the 4-month incentive rate period and by $9.4 million over 7 months. The average rate for the 4 months during which the incentive rate applies will be approximately 19.8 mills per kilowatthour for those DSIs for whom the customer charge in the Industrial Power Rate Schedule has no effective impact; the average rate for those DSIs which are affected by the customer charge will be higher. Overall, the average rate for all DSIs over the incentive rate period should be approximately 22.1 mills per kilowatthour.

One major issue in the implementation of the incentive rate had to do with the calculation of the "floor rate" pursuant to section 7(c)(1) of the Pacific Northwest Electric Power Planning and Conservation Act. With respect to the industrial floor rate, the power sales contract for this Incentive Rate power includes the following language:

Industrial Floor Rate

In accordance with the Administrator's Record of Decision on the 1983 Final Rate Proposal (WP–83–A–02, p. 268, September 1983), the "floor rate" explained in section 7(c)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(c)(2), shall not be based on the Industrial Incentive Rate under this Agreement. In consideration of this Incentive Rate offer by Bonneville, the undersigned Industry agrees not to contest the inclusion of loads in the calculation of the floor rate for the period March through June 1985, to the extent that the floor rate is based on Operating Year 1985 loads. This Section 8 is not severable from the remainder of this Agreement, unless the section is held to be unlawful by the United States Court of Appeals for the Ninth Circuit.

Further information relating to the Industrial Incentive Rate is contained in the Final Feasibility Study, the Evaluation of the Record, and the Record of Decision. Copies of these materials are available from the BPA Public Involvement Office at the address listed under "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Portland, Oregon on March 28, 1985.

Peter T. Johnson,

Administrator.

[FR Doc. 85–8669 Filed 4–10–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[OFC Case No. 65036–8262–21, 22–22; Docket No. ERA–FC–84–029]

Ukiah Peaking Facility; Order Granting Northern California Power Agency Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act, of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting Northern California Power Agency, Ukiah Peaking Facility, exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On December 24, 1984, the Northern California Power Agency, Ukiah Peaking Facility (NCPA Ukiah), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

NCPA Ukiah requested a permanent peakload exemption under 10 CFR 503.41 for a simple-cycle combustion turbine installation consisting of two 25.8 MW combustion turbine-generator systems and appurtenant equipment with a maximum heat input rate of 323 million Btu per hour per turbine. The proposed units are to be installed at the NCPA Ukiah facility in Ukiah,

California. The powerplant will be capable of burning natural gas or petroleum.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to NCPA Ukiah a permantent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the facility in Ukiah, California.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordancce with section 702(a) of FUA, this order and its provisions shall take effect on June 10, 1985.

FOR FURTHER INFORMATION CONTACT:

George Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, D.C. 20585, Phone (202) 252–1251

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceding is available for inspection upon request at the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m.–4:00 p.m.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. NCPA Ukiah has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Ukiah, California facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d) ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this unit, in the **Federal Register** on February 7, 1985 (50 FR 5298), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of NCPA Ukiah's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed March 25, 1984. No comments were received and no hearing was requested.

NCPA Ukiah certified in it Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

NCPA Ukiah certified that the maximum design capacity of the powerplant is 49.5 megawatts and that the maximum generation that will be allowed during any 12-month period for the combustion turbine is the design capacity times 1,500 hours or 74,250 megawatt-hours, constituting a "peakload powerplant" operation within the definition.

NCPA Ukiah has also certified that it will secure all applicable permits and approvals prior to commencement of operation of this new unit under exemption.

As ERA determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that NCPA Ukiah has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants NCPA Ukiah a permanent exemption for a peakload powerplant to be installed at its facility in Ukiah, California, permitting the use of natural gas or petroleum as a primary energy source in the unit.

After review by ERA's Office of Fuels Programs, Coal and Electricity Division, of NCPA Ukiah's completed environmental checklist submitted pursuant to 10 CFR 503.13, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C. on April 5, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–8771 Filed 4–10–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EF84–2011–000]

Bonneville Power Administration; Filing

April 8, 1985.

Take notice that on April 2, 1985, the U.S. Department of Energy on behalf of the Bonneville Power Administration submitted for filing the Bonneville Power Administration (BPA) Erratum to 1983 General Rate Schedule Provisions.

The BPA 1983 Wholesale Power Rate Schedules and General Rate Schedule Provisions presently reads:

"sum of all the customer's bills (in dollars and net of the LDD) associated with a given ECP for the class of power in question during the exchange adjustment period; the computation of SCB for the Industrial Firm Power Rate (IP–83) shall *exclude* purchases under the Industrial Incentive Rate:"

The language should be corrected to read:

"sum of all the customer's bills (in dollars and net of the LDD) associated with a given ECP for the class of power in question during the exchange adjustment period; the computation of SCB for the Industrial Firm Power Rate (IP–83) shall *include* purchases under the Industrial Incentive Rate:"

The use of the word "exclude," rather than "include," in the term "SCB" renders the denominator of the equation for SCB incorrect by not basing the calculation on total purchases under the IP–83 rate schedule. The numerator of the equation (ICB) correctly excludes incentive rate purchases in order to determine the proportion of purchases made at the Standard Industrial Rate and Premium Industrial Rate. As presently worded, BPA would pay excessive exchange rebates to DSIs by

crediting the DSIs for costs of the exchange which the DSIs never paid. Such was never the intent of the Exchange Adjustment mechanism. BPA's revenue forecasts and revenue analyses made at the time of incentive rate implementation are consistent with the correction made in this filing. This correction does not change BPA's projected revenues on file with the Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8732 Filed 4-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-1-22-002]

Consolidated Gas Transmission Corp.; Compliance Filing

April 8, 1985.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on April 1, 1985, filed Substitute Second Revised Sheet No. 31 to comply with the Commission's February 28, 1985, suspension order.

The filing reduces Consolidated's commodity rates by 0.18 cent/Dt and demand rates by 2 cents/Dt to reflect reductions in the rates of pipeline suppliers.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8733 Filed 4-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-2-25-000 and TA85-2-25-001]

Mississippi River Transmission Corp.; Rate Change Filing

April 5, 1985.

Take notice that on April 2, 1985, Mississippi River Transmission Corporation ("Mississippi") tendered for filing Tenth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. An effective date of May 1, 1985 is proposed.

Mississippi states that the instant filing reflects significant rate reductions to its jurisdictional customers resulting from expiration of Mississippi's gas purchase agreement with Trunkline Gas Company ("Trunkline") and Mississippi's obligation to purchase thereunder, effective May 1, 1985. The impact of the instant filing on Mississippi's Rate Schedule CD-1 is a decrease of $.796 per Mcf in Demand Charge D-1 and a decrease in the commodity rate of $.0102 per Mcf. The single part rate under Rate Schedule SGS-1 reflects a decrease of $.0757 per Mcf. The combined impact of the rate changes is an approximate $8.7 million annual reduction in gas costs to Mississippi's jurisdictional customers below the current cost of gas reflected in Mississippi's March 1, 1985 rates.

Mississippi requests waiver of the Notice requirements of § 154.22 of the Commission's Regulations and such other Rules or Regulations of the Commission and of any provisions of Mississippi's tariff in order that Tenth Revised Sheet No. 4 may become effective May 1, 1985 as proposed.

Mississippi states that the rate reductions are a direct result of and, in Mississippi's opinion, contemplated by the Commission's February 19, 1985 Order in Docket No. CP84-348-000 which ruled that termination of Mississippi's obligation to purchase from Trunkline did not require prior Commission authorization.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8734 Filed 4-10-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-137-017]

Transcontinental Gas Pipe Line Corp.; Compliance Tariff Filing

April 8, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on April 1, 1985 certain original and revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1. The Proposed tariff sheets are filed pursuant to Ordering Paragraph (E) of the March 27, 1985 "Order Approving Settlement With Modifications" issued by the Federal Energy Regulatory Commission (Commission) in Docket Nos. RP83-137-000, *et al.* As provided in Ordering Paragraph (E) of such order, the proposed effective date of the subject tariff filing is April 1, 1985.

Transco states that the purpose of the instant compliance tariff filing is to implement the terms and provisions of the DS, T-I and T-II rate schedules approved by the aforesaid Commission order. Additional, Transco states that because the Commission has determined in its March 27, 1985 order that the rates being filed under Rate Schedules T-I (for service in excess of a customer's firm sales level other than transportation of certain working interest gas) and T-II are "fully allocated" rates, subject to a final decision in the ongoing proceedings in Docket No. RP83-137-000, Transco's Rate Schedule T-III is no longer necessary as a separate rate schedule. Transco states that it therefore proposes to cancel Rate Schedule T-III effective April 1, 1985.

In addition, with respect to Rate Schedules DS, T-I and T-II, Transco states that the rates and provisions on the sheets submitted for filing are

identical to those filed in Transco's "Amended Offer of Settlement" on December 26, 1984 in Docket Nos. RP83–137–000, *et al*, with the two exceptions noted below:

1. Transco has reflected the currently effective rate under Rate Schedule T–1 for service within buyer's firm sales level on Ninth Revised Sheet No. 13. Such rate, which reflects the non-gas cost component in the Rate Schedule CD commodity rate, was approved effective March 1, 1985 by Commission order issued February 7, 1985 in Docket No. RP83–137–014.

2. *Pro Forma* Original Sheet No. 194 submitted with the Amended Offer of Settlement erroneously reflected DS service eligibility data for purchasers under the G and OG Rate Schedules on the basis of 1983–84 winter period sales at the higher of actual sales or 65% load factor. The 65% load factor floor on such eligibility data was intended to apply only to the CD and Firm Industrial customers, as reflected in Article III, Paragraph 8(c) and *Pro Forma* Original Sheet No. 193 of the Amended Offer of Settlement, and the inclusion of such load factor floor for the G and OG customers was an inadvertent error. In Original Sheet No. 194 submitted with the instant compliance tariff filing, the eligibility data has been corrected to set forth actual winter period sales data, without adjustment, for the G and OG customers.

Paragraph (E) of the Commission's March 27, 1985 Order waived the requirements of §§ 154.22 through 154.28 of the Regulations in order that those sheets implementing the settlement agreement shall become effective on April 1, 1985. Transco also requests waiver of said Sections of the Commission's Regulations in order that those sheets cancelling Rate Schedule T–III may also be made effective on April 1, 1985 as proposed.

Transco further states that in accordance with § 154.16 of the Commission's Regulations, copies of this filing were mailed to all parties to this proceeding and to all persons upon whom the original filing herein was made.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.211 and 385.214). All such motions or protests should be filed on or before April 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix A

Ninth Revised Sheet No. 13
Original Sheet No. 13–1A
Original Sheet No. 13–2A
Third Revised Sheet No. 13–B
First Revised Sheet No. 13–C
Original Sheet No. 13–D
Second Revised Sheet No. 153
Second Revised Sheet No. 154
Second Revised Sheet No. 166
Second Revised Sheet No. 167
First Revised Sheet No. 182
Original Sheet No. 187
Original Sheet No. 188
Original Sheet No. 189
Original Sheet No. 190
Original Sheet No. 191
Original Sheet No. 192
Original Sheet No. 193
Original Sheet No. 194
Original Sheet No. 195
Original Sheet No. 196
Second Revised Sheet No. 345
First Revised Sheet No. 368
Original Sheet No. 371
Original Sheet No. 372
Original Sheet No. 373.

[FR Doc. 85–8735 Filed 4–10–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–124–000]

United Gas Pipe Line Co.; Compliance Filing

April 5, 1985.

Take notice that on March 26, 1985, United Gas Pipe Line Company (United) tendered for filing Third Revised Sheet No. 4–F to its FERC Gas Tariff, First Revised Volume No. 1 in compliance with the Commission's December 21, 1984, order in Docket No. CP84–379, which required United to file an abbreviated section 4 application to implement any change in the monthly rate.

United states that the proposed rate for April 1985 is $3.04 per Mcf, which reflects a change from the previous rate. United submits that its projected cost of gas including company-used and unaccounted for gas for the month of April is $2.99 per Mcf. The additional gas which will be purchased to satisfy Discount Rate Schedule (DRS) demand is expected to be obtained from existing sources and United does not anticipate that it will incur additional variable costs (other than costs of company-used and unaccounted for gas which are included in the gas cost portion of the rate) to deliver the DRS gas. United notes, however, that the system average variable cost underlying United's currently effective rates as settled in Docket No. RP82–57 (and as justified in the cost and revenue study accepted by Commission order dated January 15, 1985) is approximately 5 cents per Mcf. The proposed rate for April exceeds the sum of the projected cost of gas and any variable costs incurred in providing the service and, therefore, exceeds the floor prescribed under the Discount Rate Schedule.

United requests any further waiver, as may be required, to permit this sheet to become effective April 1, 1985. United indicates that copies of this filing were mailed to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8736 Filed 4–10–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP83–52–000]

United Gas Pipe Line Co.; Errata to Notice of Customer Meeting

April 5, 1985.

The customer meeting erroneously noticed in this docket for April 11, 1985, will be held on April 16, 1985. 50 FR 13416 (April 4, 1985).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8737 Filed 4–10–85; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Record of Decision To Construct the Liberty-Coolidge 230-kV Transmission Line Project, AR

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Record of decision to construct the Liberty-Coolidge 230-kV Transmission Line Project, Arizona.

SUMMARY: The Western Area Power Administration (Western) has made the decision to construct the Liberty to Coolidge 230-kilovolt (kV) transmission line following the environmentally preferred alternative identified in the draft and final environmental impact statements (EIS). Approximately 58 miles of the transmission line will be constructed with single-pole structures made of concrete, steel, or a combination of these materials. Segments of four transmission lines will be removed and then consolidated on these structures. Approximately 27 miles will be constructed using wood-pole H-frame structures. Bays will be added at Liberty and Coolidge Substations. Western will proceed with land acquisition, construction, and subsequent operation and maintenance of the transmission line. The availability of the draft and final EIS (DOE/EIS–0100) for the project was announced in the **Federal Register** by the Environmental Protection Agency on July 15, 1983, and November 9, 1984, respectively. Western also published in the **Federal Register** other notices regarding the EIS as appropriate.

Western will implement the mitigation measures listed in the EIS. A specific mitigation plan for cultural resource impacts will be developed in consultation with the Arizona State Historic Preservation Officer (SHPO), and this plan will be implemented before construction activities begin in the vicinity of eligible cultural resource sites. In addition, any site specific mitigation requirements identified during construction will be addressed by Western and coordinated with appropriate Federal, State, and local agencies.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Saylor, Environmental Specialist, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, Telephone: (702) 293–8844.

SUPPLEMENTARY INFORMATION: Western will upgrade electrical transmission capability between the Liberty and Coolidge Substations. For 58 miles, the project plan will involve constructing a new double circuit 230-kV transmission line (consolidating the existing Parker-Phoenix 161-kV line with the new line) from the Liberty Substation to near the Phoenix Substation, and upgrading the existing Phoenix-Coolidge 115-kV transmission line to 230-kV from near Phoenix to Coolidge (consolidating the existing Phoenix-Maricopa 115-kV line with the new line part of the way). A short segment of the existing Coolidge-Saguaro 115-kV line will be consolidated with the new line as it nears Coolidge Substation. Approximately 27 miles of line will be constructed with single-circuit wood-pole H-frame structures.

The existing Phoenix-Coolidge 115-kV transmission line is an integral part of the Western system serving southern Arizona and is near full capacity. The southern portion of the Central Arizona Project (CAP) will require an additional 108 megawatts (MW) of transmission capacity once completed. In addition, the 1980 Arizona Loads and Resource Report showed that Western has the need to increase transmission capacity into southern Arizona by 100 MW to meet the demands of customer load growth. Present capacity is limited to 325 MW, while identified capacity requirements are proposed at 423 to 433 MW.

The action will serve the following purposes: (1) Capacity would be available to supply CAP requirements; (2) capacity would be available to meet anticipated customer growth needs; (3) system and service reliability would be increased; (4) safety conditions would be improved and maintenance costs would be reduced; and (5) a contribution to energy conservation would be made by reducing line losses.

Regional and corridor-specific studies were conducted for the study area. Project scoping and public involvement were undertaken. A preliminary environmental assessment, agency contacts, the formation of a Project Task Force and a Cultural Resources Investigations Peer Review Panel, and a series of public meetings were undertaken prior to preparation of the EIS. Additionally, a concerted effort was made to contact and inform the general public. Public planning workshops were held, and nearly 7,500 letters were sent to potentially affected landowners.

Studies were divided into three broad categories: Natural resources, which investigated such areas as water resources, wildlife, vegetation, and earth resources; human resources, which investigated such areas as land use, aesthetic resources, and socioeconomic impacts; and cultural resources, which investigated prehistoric, historic, native American, and architecutral resources. Western evaluated these resources within the study area to identify potential transmission line corridors. Some major factors considered were: (1) Archaeological and historic sites; (2) areas of religious significance to native Americans; (3) wildlife and vegetative resources; (4) existing and proposed land use, especially agricultural and residential; (5) human health; (6) climate and air quality; (7) geology and soils; and (8) visual resources. Areas of opportunity, least impact, avoidance, and exclusion were then identified, and alternative corridors were delineated.

The alternative corridors were persented to the public in a series of public planning workshops. Input from landowners and other interested groups and individuals was used to help select the environmentally preferred corridor.

The draft EIS was issued in July 1983, which presented Western's proposed action, reasonable alternatives to the proposed action, and the environmental impacts associated with the proposal and alternatives. Public Hearings on the draft EIS were conducted in August 1983, and written and oral comments were received. Pending negotiations for right-of-way across the Gila River Indian Community, the final EIS was not released until November 1984.

Alternatives considered were:

(1) No Action.

(2) Energy Conservation.

(3) Alternative Transmission Systems and Tehnologies.

(4) Design Alternatives.

(5) Routing Alternatives.

Basis of Decision

The no-action alternative would result in a rebuild of the Phoenix-Coolidge 115-kV transmission line. Forty-two percent of the wood poles would have to be replaced along with necessary crossarms and X-braces. However, this still would not meet the increased demand generated by the CAP (an authorized Federal water development project) and by customer load growth in southern Arizona since the 115-kV line is near full capacity. Western would then need to construct new transmission facilities on new right-of-way to satisfy these demands. In addition, the 115-kV rebuild would still pass through the Snaketown National Historic Landmark causing significant impacts to cultural resources. The selected action will consolidate segments of four separate transmission lines on one set of structures on mostly existing rights-of-way, reducing environmental impacts.

Energy conservation measures could not significantly reduce existing area loads to offset the over 100 MW of projected load growth in southern Arizona.

Other transmission systems or technologies were not technologically or economically feasible. Underground construction could cost about 8 to 10 times greater than overhead construction, and the environmental

impacts on physical resources would be significantly greater. There are no existing or planned transmission facilities owned by other utilities that Western could use to meet the stated need.

Western selected the single-pole and wood-pole H-frame structure types because of costs and available supplies. Visual impacts and land use conflicts would be less than other structure types.

To reduce visual impacts of the line, Western will use nonspecular conductors. Conductor selection was made to best serve needs and reduce line losses. If steel structures are used, then Western will use nonspecular structures.

No major objections were received to the environmentally preferred corridor during either the draft or final EIS review periods. All practicable means to avoid or minimize environmental harm from the project were identified in the draft EIS, and these mitigative measures will be implemented.

Coordination with the appropriate Federal, State, and local agencies and individuals has been completed. There are no federally listed threatened or endangered species that would be affected by the proposed action. Some special status State-listed species are in the study area. Western will coordinate with the State before construction regarding site specific protection for these species.

An intensive cultural resource survey of the project's right-of-way and existing pole locations has been conducted. A cultural resource mitigation plan will be developed in consultation with the SHPO and the Advisory Council on Historic Preservation to minimize the project's effect on eligible cultural resource sites. Pole removal and rehabilitation activities within the Snaketown National Historic Landmark and other sensitive areas will be monitored by qualified professionals. The project construction specifications will provide that in the event previously undiscovered cultural resources are encountered during construction of the line, activities that could jeopardize those resources will be suspended until a qualified archaeologist or historian can evaluate their significance and recommend appropriate action.

In response to Executive Orders 11988 and 11990 and the Department of Energy's *Compliance with Floodplain/Wetlands Environmental Review Requirements* (10 CFR Part 1022), Western evaluated the potential effects of the project on floodplain/wetlands. The preferred corridor was located to avoid floodplains and wetlands wherever possible. Only two very small wetlands exist on the right-of-way, and both are sustained by irrigation ditch runoff. Care will be taken during construction to preserve wetland vegetation. Floodplains are extensive but are typically dry during most of the year as is the case in a very arid climate. Upstream impoundments and diversions for flood control and irrigation reduce the amount of flooding. The removal of the old lines from flood plains will reduce the amount of transmission line located in the floodplains. There are no practicable alternatives to locating structures within the 100-year floodplains of the Agua Fria, Salt, and Gila Rivers since the Liberty and Coolidge Substations are on opposite sides of these rivers. Proper design and siting of the new structures will not restrict or have any significant effects on these floodplains. Care will be taken during construction to minimize disturbance of any floodplain vegetation and control erosion.

Copies of this record of decision will be sent to the appropriate agencies and individuals.

Issued at Golden, Colorado, February 15, 1985.

William H. Clagett,

Acting Administrator.

[FR Doc. 85-8772 Filed 4-10-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-250066; FRL-2816-2]

Nominations to the Scientific Advisory Panel; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 *et seq.*). Public comment on the nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

ADDRESS: By mail, submit comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA

DATE: Comments should be postmarked not later than May 13, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS-766C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 1115, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7096)

SUPPLEMENTARY INFORMATION:

I. Background

FIFRA amendments enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Pub. L. 92-643, 86 Stat. 770 (5 U.S.C. App. I). The qualifications as provided by the Charter follow.

A. Qualifications of Members

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of membership on any other advisory committee to a Federal department or agency or employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of 40 CFR Part 3, Subpart F—Standards of Conduct for Special Government Employees, which include rules regarding conflicts of interest. An officer and/or employee of an

organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before being formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the **Federal Register** the name, address, and professional affiliations of each nominee.

B. Applicability of Existing Regulations

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special governmental employees (which include advisory committee members) will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

C. Process of Obtaining Nominees

In accordance with the provisions of section 25(d), EPA, in January 1985, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill three vacancies occurring on the SAP. NIH responded by letter dated February 27, 1985, enclosing a list of 6 nominees; NSF responded by letter dated February 19, 1985, with a list of 12 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill three vacancies occurring during calendar year 1985.

Harold R. Behrman, professor, obstetrics, gynecology, and pharmacology, School of Medicine, Yale University. *Expertise:* Physiology, biochemistry. *Born:* November 26, 1939. *Education:* University of Manitoba, BS 1962, MS 1965; North Carolina State University, PhD (physiology), 1967. *Professional experience:* Research assistant, sensory and digestive physiology, North Carolina State University, 1964–1967; Cancer Medical Research Council research fellow, reproductive endocrinology, Harvard Medical School, 1967–1970; associate professor 1970–1971, assistant professor, physiology, 1971–1972; director, Department of Reproductive Biology, Merck Institute of Therapeutic Research, 1972–1975; associate professor, 1976–1981, professor, obstetrics, gynecology, and pharmacology, School of Medicine, Yale University, 1981–present. *Concurrent position:* Lalor fellow, Harvard Medical School, 1971–73. *Societies:* Cancer Federation of Biological Science: Society Experimental Biology and Medicine; Endocrine Society; Society of Endocrinology; Cancer Physiology Society. *Research:* Polypeptide and peptide hormone interrelationships in endocrine systems with prostaglandins and purines.

Edward Bresnick, Director and Eppley Professor of Oncology, Eppley Institute for Research in Cancer and Allied Diseases, University of Nebraska Medical Center. *Expertise:* Biochemistry. *Born:* September 7, 1930. *Education:* St. Peters College, BS 1952; Fordham University, MS, 1954; PhD 1957. *Professional experience:* Research associate, Medical Branch, University of Texas, 1957–1958; resident biochemist, Burroughs, Wellcome and Company, 1958–1961; from assistant professor, biochemistry to professor, pharmacology, Baylor College of Medicine, 1970–1972; professor of cellular and molecular biology and chairman of department, Medical College of Georgia, 1972–1978; professor of biochemistry, College of Medicine, University of Vermont, 1978–1982, department chairman, 1980–1982. *Concurrent position:* Consultant, National Institute General Medical Science. *Societies:* AAAS; American Chemical Society, American Association of Cancer Research, American Society of Cell Biologists, American Society of Biological Chemists. *Research:* Cancer research, enzymology; regulatory mechanisms; pyrimidine and nucleic acid metabolism.

Thomas W. Clarkson, professor, radiation biology, biophysics, pharmacology and toxicology, University of Rochester. *Expertise:* Toxicology. *Born:* August 1, 1932. *Education:* University of Manchester, BS, 1953; PhD (biochemistry) 1956. *Professional experience:* Medical Research Council fellow, University of Manchester, 1956–1957; instructor, radiation biology, University of Rochester, 1957–1961; science officer, Medical Research Council, United Kingdom, 1962–1964; senior fellow, Weizmann Institute, 1964–1965; associate professor, biophysics, pharmacology and radiation biology, 1965–1971; professor, radiation, biology, biophysics, pharmacology and toxicology, University of Rochester, 1971-present; director, Environmental Health Science Center, 1975-present; *Concurrent position:* Member, Committee for Food Protection, National Academy of Science-National Academy of England, 1973–1976; Subcommittee on Toxicology, 1972–1976; member, Toxicology Advisory Board, Food and Drug Administration, 1975–1977; member, Toxicology Study Section, NIH, 1976–1977. *Societies:* AAAS; Health Physics Society; British Pharmacology Society; Society of Toxicology; Chemical Society. *Research:* Cellular physiology; reabsorption mechanisms in intestime and kidney; heavy metal toxicology; action of metals on cellular level in intestime, kidney and red blood cells.

Deiter Hans Max Groschel, professor of pathology and internal medicine and Director, clinical microbiology, Department of Pathology, University of Virginia Medical School. *Expertise:* Medical microbiology; infectious diseases. *Born:* May 13, 1931. *Education:* University of Cologne, MD 1957; American Board Microbiology, Diploma, 1965. *Professional experience:* Medical intern, University of Cologne, 1958–1960; research associate, hygiene and microbiology, 1960–1963; associate microbiologist, Wistar Institute, Pa., 1963–1965; from assistant professor to associate professor, School of Medicine, Temple University, 1965–1968; director, microbiology and infectious diseases, Springfield Hospital Medical Center, 1968–1971; associate professor, 1971–1978; professor, pathology, University of Texas M.D. Anderson Hospital and Tumor Institute, 1978; professor, pathology and internal medicine, Department of Pathology, director, clinical microbiology, University of Virginia Medical School, 1979-present. *Concurrent position:* Clinical associate in lab medicine, School of Medicine, University of Connecticut, 1970–1971; associate professor of pathology, University of Texas Graduate School of Biomedical Science, 1972; associate professor of medicine and pathology, University of Texas School of Medicine, Houston, 1973. *Societies:* AMA; fellow,

American Academy Microbiology; American Society of Microbiology; German Society of Hygiene and Microbiology; Reticuloendothelial Society. *Research:* Clinical microbiology; public health: epidemiology; natural resistance to infection; infectious diseases; infection control.

Charles Edward Hamner, Jr., professor, obstetrics and gynecology, School of Medicine, University of Virginia and associated vice president, health services. *Expertise:* Biochemistry; veterinary medicine. *Born:* March 26, 1935. *Education:* Virginia Polytech Institute, BS, 1956; University of Georgia, DVM, 1960; MS 1962; PhD (biochemistry) 1964. *Professional experience:* Assistant professor, exploratory surgery 1964–1967; associate professor of obstetrics and gynecology, 1967–1977; assistant vice president, health services, 1977–80; professor, obstetrics and gynecology, School of Medicine, University of Virginia 1977-present; associate vice president, health services, 1980-present. *Concurrent position:* Morris Animal Foundation fellow, University of Georgia, 1960–61; National Institute General Medicine Science fellow, 1961–1964; consultant, Pharmaceutical Research and Development Management, WHO, NIH, 1971; director, program coordination, A.H. Robins Company, 1974–1977. *Honors and Awards:* Research Career Development Award, NIH, 1971. *Societies:* Society of Study Reproduction: American Society of Animal Science; British Society Study of Fertility. *Research:* Sperm metabolism; composition of female reproductive tract secretions; drug development: Industrial management.

John James Lech, professor of pharmacology, Medical College of Wisconsin, Milwaukee, Wisconsin 53213. *Expertise:* pharmacology. *Born:* June 21, 1940. *Education:* Rutgers University, Newark, BS 1962; Marquette University, PhD (pharmacology), 1967. *Professional experience:* From instructor to assistant professor, 1967–1974; associate professor, pharmacology, 1974–1980; professor, pharmacology and toxicology, Medical College of Wisconsin, 1980-present. *Concurrent position:* American Heart Association grant, Medical College of Wisconsin, 1972–1975. *Societies:* AAAS; Society of Toxicology; American Fisheries Society; American Society of Pharmacology and Experimental Therapeutics. *Research:* Cardiac triglyceride metabolism; metabolism of foreign compounds by fish.

Daniel Sidney Longnecker, professor of pathology, Dartmouth Medical School. *Expertise:* Pathology. *Born:* June 8, 1931. *Education:* State University of Iowa, AB, 1954; MD, 1956; MS, 1962. *Professional experience:* From assistant professor to associate professor, pathology, University of Iowa, 1961–1969; associate professor, School of Medicine St. Louis University, 1969–1972; professor, pathology, Dartmouth Medical School, 1972-percent. *Concurrent position:* NIH fellow, Department of Pathology, University of Pittsburgh, 1965–1967; USPHS research grants, University of Iowa, 1967–1969; St. Louis University, 1969–1971 and Dartmouth College, 1975-present; visiting assistant professor, Department of Pathology, University of Pittsburgh, 1965–1967. *Societies:* American Society of Clinical Pathologists and Academic Pathologists; Society of Experimental Biology and Medicine; American Association of Pathologists and Bacteriologists; American Society of Experimental Pathologists. *Research:* Biochemical mechanisms of cell injury; experimental pancreatitis; carcinogenesis.

David Pimentel, professor, insect ecology and agricultural science, Cornell University. *Expertise:* Ecology, entomology. *Born:* May 24, 1925. *Education:* University of Massachusetts, BS, 1948; Cornell University PhD (entomology), 1951. *Professional experience:* Assistant, entomology, Cornell University, 1948–1951; chief, tropical research lab, USPHS, San Juan, Puerto Rico, 1951–1953; project leader, technical development lab, Savannah, Georgia, 1954–1955; from assistant professor to professor, insect ecology and head, Department of Entomology and Limnology, State University, New York College of Agriculture, Cornell University, 1955–1969; professor, insect ecology, 1969–1976; professor, insect ecology and agricultural science, Cornell University, 1976-present. *Societies:* AAAS; Ecology Society of America: Social Study Evolution; Entomology Society; American Society of Zoology. *Research:* Ecology and genetics of insect-plant, parasitic-host and predator-prey population systems; environmental resource management and pollution, energy and land resources in the food system; systems management in pest control.

Gary Strobel, professor, plant pathology, Montana State University. *Expertise:* Plant pathology. *Born:* September 23, 1938. *Education:* Colorado State University, BS, 1960; University of California, Davis, PhD (plant pathology), 1963. *Professional experience:* From assistant professor to professor, botany, 1963–1977; professor, plant pathology, Montana State State University, 1977-present. *Concurrent position:* Principal investigator, NSF and USDA research grants; NIH career development award, 1969–1974. *Societies:* AAAS, American Phytopathology Society; American Society of Plant Physiologists; American Society of Biological Chemists. *Research:* Plant disease physiology; biochemistry of fungi and bacteria that cause plant diseases; phytotoxic glycopeptides: metabolic regulation in diseased plants; nature and mechanism of action of host-specific toxins.

Raymond Robert Suskind, professor, environmental health and medicine, chairman, Department of Environmental Health, and Director, Kettering Lab, College of Medicine, University of Cincinnati. *Expertise:* Medical science; health sciences. *Born:* November 29, 1913. *Education:* Columbia University, AB, 1934; State University New York, MD 1943; American Board of Dermatology and Syphilology, diploma 1949. *Professional experience:* Resident, dermatology, and syphilology, Cincinnati General Hospital, 1944–1946; resident fellow, dermatology, College of Medicine, University of Cincinnati, 1948–1949; from assistant professor to associate professor, preventive medicine and industrial health, 1949–1962; assistant professor, dermatology, 1950–1962; director, dermatology research, Kettering Lab, 1948–1962; professor of dermatology and head, division of environmental medicine, Medical School, University of Oregon, 1962–1969; professor, environmental health and medicine, chairman, Department of Environmental Health and director, Kettering Lab, College of Medicine, University of Cincinnati. *Honor and Awards:* Mitchell Award, State University New York Medical Center, 1943. *Societies:* American College of Physicians; New York Academy of Science; fellow, American Academy of Dermatologists; American Occupational Medical Association; American Dermatology Association. *Research:* Environmental medicine and dermatology: percutaneous absorption; cutaneous hypersensitivity; effects of physical environment on skin reactions to irritants and allergens; environmental cancer; environmental problems of chemical origin; mechanisms and patterns of cutaneous responses to irritants and intergenic stimuli: Percutaneous absorptions; chemical carinogenesis; biological effects of heavy metals.

Glenn Walter Suter, research associate, ecology, Environmental

Science Division, Oak Ridge National Laboratory. *Expertise:* ecology. *Born:* May 1, 1948. *Education:* Virginia Polytech Institute, BS 1969; University of California, Davis, PhD (ecology) 1976. *Professional experience:* Research associate, Ecology, Environmental Sciences Division, Oak Ridge National Laboratory, 1975–present. *Societies:* AAAS; Ecology Society of America. *Research:* effects of unconventional energy sources on terrestrial biotic communities.

James Arthur Swenberg, head, biochemical, toxicology and pathology department, Chemical Industry Institute of Toxicology. *Expertise:* veterinary pathology. *Born:* January 15, 1942. *Education:* University of Minnesota, DVM, 1966; Ohio State University, MS, 1968; PhD (veterinary pathology), 1970. *Professional experience:* NIH trainee in pathology, Ohio State University, 1966–1970; research associate, 1970; assistant professor, 1970–1972; associate professor, 1972; research scientist in pathology, UpJohn Company, 1972–1977; head, biochemical, toxicology, and pathology, Chemical Industrial Institute of Toxicology, 1978–present. *Concurrent position:* Consultant, Battelle Memorial Institute, 1971–1972. *Societies:* American Association of Cancer Research; AAAS; American Association of Neuropathologist; American College of Veterinary Pathologists. *Research:* Cancer research, including chemical carcinogenesis, neurooncogenesis and chemotherapy, and short term test for carcinogens; DNA damage/mutagenesis; improved toxicology and data handling methods.

Gary August Wilson, director, microbiology research, Miles Laboratory, Elkhart, Indiana. *Expertise:* Molecular genetics, microbiology. *Born:* December 13, 1942. *Education:* Illinois State University, Normal, BS 1965; University of Chicago, MS 1968, PhD (microbiology), 1970. *Professional experience:* Fellow, School of Medicine, University of Rochester, 1970–1972; from instructor to assistant professor, microbiology, 1972–1978; associate professor, 1978–1980. *Concurrent position:* American Cancer Society research grant, 1972; faculty research award, 1979; visiting professor, Institute Gulbenkian de Ciencia, Portugal, 1974; visiting professor, 1976. *Societies:* American Society of Microbiologists; AAAS; Sigma Xi. *Research:* DNA-mediated transformation in *Bacillus subtilis;* restriction endonucleases; gene cloning:

Dated: April 3, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-8702 Filed 4-10-85; 8:45 am]

BILLING CODE 6519-50-M

[Docket No. ECAO-CD-81-2; A-4-FLR-2816-3]

Draft Air Quality Criteria Document for Lead

AGENCY: Environmental Protection Agency.

ACTION: Notice of a corrigenda to the second external review draft.

SUMMARY: The existing criteria document, *Air Quality Criteria for Lead* (EPA-600/8-77-017), is being updated and revised pursuant to sections 108 and 109 of the Clean Air Act, as amended, 42 U.S.C. 7408 and 7409, and will be used as a basis for review and, as appropriate, revision of the National Ambient Air Quality Standard (NAAQS) for lead. As prt of this process, EPA released the second external review draft of the revised criteria document, *Air Quality Criteria for Lead* (EPA-600/8-83-028B), which was made available for public comment between October 15 and December 14, 1984. However, in light of the recent publication of several important papers in the scientific literature concerning the relationship between blood lead levels and blood pressure, EPA is making available for public comment a corrigenda to the second external review draft of the revised criteria document, *Air Quality Criteria for Lead.* The corrigenda, the full text of which is included in this notice, discusses the newly published information on blood lead-blood pressure relationships. Also included are several corrections to the external review draft which need to be noted prior to the review of the second external review draft of the subject lead document by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board. Details about the time and place of this meeting will be provided in a subsequent **Federal Register** announcement.

DATES: Comments on the corrigenda must be received by May 10, 1985.

ADDRESSES: EPA requests that all comments be submitted in writing to the Project Manager, Air Quality Criteria for Lead, Environmental Criteria and Assessment Office, MD-52, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. The corrigenda will also be available for public inspection and copying at the EPA Library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. David Weil, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711 [(919) 541-4163].

All public comments received, as well as the Agency's responses to these comments, will be included in the docket established for the review of the lead document (Docket No. ECAO-CD-81-2). The docket is available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m. at EPA headquarters in the Central Docket Section, A-130, Gallery 1, West Tower, Waterside Mall, 401 M Street SW., Washington, DC 20460.

Dated: April 4, 1985.

Bernard D. Goldstein,

Assistant Administrator for Research and Development.

12.9.1 Lead Effects on the Cardiovascular System

Lead has long been reported to be associated with cardiovascular effects, in both human adults and children. This section assesses pertinent literature on the subject, including: (1) Studies of cardiotoxic effects in overtly lead-intoxicated individuals; (2) epidemiologic studies of associations between lead exposure and increased blood pressure, including observations for nonovertly intoxicated subjects; and (3) toxicologic data providing well-controlled experimental evidence for lead-induced cardiovascular effects in animals and valuable information on possible mechanisms of action underlying cardiovascular effects of lead exposure. Interrelationships between certain cardiovascular effects, e.g. hypertension, and lead-induced renal effects are discussed in more detail elsewhere in this chapter (see Section 12.5).

12.9.1.1 Cardiovascular Effects in Human Adults and Children

Structural and functional changes suggestive of lead-induced cardiac abnormalities have been described for both adults and children, always in individuals with clinical signs of overt intoxication. For instance, in reviewing five fatal cases of lead poisoning in young children, Kline (1980) noted that degenerative changes in heart muscle were reported to be the proximate cause of death; it was not possible, however, to establish that the observed changes were directly due to lead intoxication

per se. In another study, Kósmider and Petelenz (1962) found that 66 percent of a group of adults over 46 years old with chronic lead poisoning had electrocardiographic abnormalities, a rate four times the adjusted normal rate for that age group. Additional evidence for a possible etiological role of higher level lead exposure in the induction of disturbances in cardiac function derives from observations of the disappearance of electrocardiographic abnormalities following chelation therapy in the treatment of many cases of lead encephalopathy (Myerson and Eisenhauer, 1963; Freeman, 1965; Silver and Rodriguez-Torres, 1968). The latter investigators, for example, noted abnormal electrocardiograms in 21 of 30 (20 percent) overtly lead-intoxicated children prior to chelation therapy, but abnormal electrocardiograms remained for only four (13 percent) after such therapy (Silver and Rodriguez-Torres, 1968). None of the above studies provide definitive evidence that lead induced the observed cardiotoxic effects, although they are highly suggestive of an etiological role of lead in producing such effects. However, further substantial evidence supporting the plausibility of lead being a causative factor in producing cardiotoxic effects in humans has been derived from animal toxicology studies, as discussed later.

Hypertension or, more broadly, increased blood pressure represents another type of cardiovascular effect long studied as possibly being associated with excessive lead exposure. As long ago as 1886, Lorimer reported that high blood lead levels increased the risk of hypertension. However, from then until only recently, relatively mixed and often apparently contradictory results have been reported concerning associations between high-level lead exposures and hypertension effects. That is, numerous investigators reported significant associations between hypertension and lead poisoning (Oliver, 1891; Legge, 1901; Vigdortchik, 1935; Emmerson, 1963; Dingwall-Fordyce and Lane, 1963; Richet et al., 1966; Morgan, 1976; Beevers, et al., 1976), whereas other studies failed to find a statistically significant association at $p < 0.05$ (Belknap, 1936; Fouts and Page, 1942; Mayers, 1947; Brieger and Riedera, 1959; Cramer and Dahlberg, 1966; Malcolm, 1971; Ramirez-Cervantes et al., 1978). The potential contribution of lead to hypertension was difficult, if not impossible, to determine based on the results of the above studies, due to many methodological differences and problems (e.g., lack of comparable definitions of lead exposure and prospective control populations, variations in how hypertension was defined or measured as the key health endpoint, etc.).

In contrast to the confusing array of results derived from the above studies, a much more consistent pattern of results has begun to emerge from more recent investigations of relationships between lower-level lead exposures and increases in blood pressure or hypertension. Kromhout and Couland (1984), for example, reported associations between hypertension and blood lead among general population groups, and Batuman et al. (1983) reported an association between hypertension and chelatable lead burdens in veterans. Also, Moreau et al. (1982) reported significant associations ($p < 0.001$) between blood-lead levels and a continuous measure of blood pressure among 431 French policemen (age 24 to 55 years), after controlling for important potential confounding variables such as age, body mass index, smoking, and drinking.

In a larger recent study, Pocock et al. (1984) evaluated relationships between blood lead concentrations, hypertension, and renal function indicators in a clinical survey of 7735 middle-aged men from 24 British towns. Results for the overall group studied indicated correlation coefficients of $r = +0.03$ and $r = +0.01$ for associations between systolic and diastolic blood pressure, respectively, and blood lead levels. The systolic blood pressure correlation, though small in magnitude, was nevertheless statistically significant at $p < 0.01$. However, analyses of data for men categorized according to blood lead concentrations only suggested increases in blood pressure at lower blood lead levels; no further, significant increments in blood pressure were observed at higher blood lead levels (either before or after adjustment for factors such as age, town, body mass index, alcohol consumption, social class, and observer). Evaluation of prevalence of hypertension defined as systolic blood pressure over 160 mm Hg revealed no significant overall trend; but of those men with blood lead levels over 37 μg/dl, a larger proportion (30 percent) had hypertension when compared with the proportion (21 percent) for all other men combined ($p < 0.08$). Similar results were obtained for diastolic hypertension defined as >100 mm Hg, i.e., a greater proportion (15 percent) of men with blood lead levels over 37 μg/dl, had diastolic hypertension in comparison with the proportion (9 percent) for all other men ($p < 0.07$). Pocock et al. (1984) interpreted their findings as being suggestive of increased hypertension at blood lead levels over 37 μg/dl, but not at lower concentrations typically found in British men. However, an unpublished EPA reanalysis of the grouped data reported by Pocock et al. (1984) indicates that blood lead is a significant predictor of blood pressure in their data, both before and after adjusting for covariates, when a regression of blood pressure is performed versus the log of blood lead for their reported group averages (U.S. EPA, 1985). Furthermore, the regression coefficient indicated that the size of the effect was significant, suggesting a blood pressure increase of 3 mm Hg as blood lead increases from 5 to 15 μg/dl.

Relationships between blood lead and blood pressure among American adults have also been recently evaluated, as reported by Harlan et al. (1985) and Pirkle et al. (1985). These analyses were based on evaluation of NHANES II data, which provide careful blood lead and blood pressure measurements on a large-scale sample representative of the U.S. population and considerable information on a wide variety of potentially confounding variables as well. As such, these analyses avoided the problem of selection bias, the healthy-worker effect, workplace exposures to other toxic agents, and problems with appropriate choice of control groups that often confounded or complicated earlier, occupational studies of blood-lead, blood-pressure relationships. The analyses reported by Harlan et al. (1985) demonstrated statistically significant linear associations ($p < 0.001$) between blood lead concentrations and blood pressure (both systolic and diastolic) among males and females, aged 12 to 74 years. However, using a model controlling for a number of other potentially confounding factors, blood lead was not independently related to blood pressure in women after adjusting for the effects of other variables in the model.

Further analyses reported by Pirkle et al. (1985) focused on white males (aged 40 to 59 years) in order to avoid the effects of collinearity between blood pressure and blood lead concentrations evident at earlier ages and because of less extensive NHANES II data being available for non-whites. In the subgroup studied, Pirkle et al. (1985) found significant associations between blood lead and blood pressure even after including in multiple regression analyses all known factors previously established as being correlated with blood pressure. The relationship also held when tested against every dietary and serologic variable measured in the

NHANES II study. Inclusion of both curvilinear transformations and interaction terms altered little the coefficients for blood pressure associations with lead (the strongest relationship was observed between the natural log of blood lead and the blood pressure measures). No evident threshold was found below which blood lead level was not significantly related to blood pressure across a range of 7 to 34 μg/dl. In fact, the dose-response relationships characterized by Pirkle et al. (1985) are indicative of large initial increments in blood pressure at relatively low blood lead levels, followed by leveling off of blood pressure increments at higher blood lead levels. This pattern is consistent with biphasic blood pressure increases observed in response to blood lead increases in the rat (Victery et al., 1982a,b) and may also account for the failure of other studies to find consistent relationships between blood pressure and blood lead in study groups with mild to moderate elevations of blood lead concentrations. Pirkle et al. (1985) also found lead to be a significant predictor of diastolic blood pressure greater than or equal to 90 mm Hg, the criterion blood pressure level now standardly employed in the United States to define hypertension.

Additional analyses were performed by Pirkle et al. (1985) to estimate the likely public health implications of their findings concerning blood-lead, blood-pressure relationships. Changes in blood pressure that might result from a specified change in blood lead levels were first estimated. Then coefficients from the Pooling Project and Framingham studies (Pooling Project Research Group, 1978 and McGee and Gordon, 1976, respectively) of cardiovascular disease were used as bases: (1) To estimate the risk for incidence of serious cardiovascular events (myocardial infarction, stroke, or death) as a consequence of lead-induced blood pressure increases and (2) to predict the change in the number of serious outcomes as the result of a 37 percent decrease in blood lead levels for adult white males (aged 40–59 years) observed during the course of the NHANES II survey (1976–1980). The following declines in serious outcomes were thusly estimated: (1) A 4.7 percent decrease (77,300 fewer events) for fatal and non-fatal myocardial infarctions; (2) a 6.7 percent decrease (27,500 fewer events) for fatal and non-fatal strokes; and (3) a 5.5 percent decrease (73,900 fewer events) for death from all causes.

Overall, the recent analyses reported by Harlan et al. (1985) and Pirkle et al. (1985) provide convincing evidence for strong associations between blood pressure increases and blood lead levels, even at blood lead concentrations below 30 μg/dl and, possibly, down to as low as 7 μg/dl. Whether the associations observed are causal or not remain to be more definitively established, as is the case for consequent risks for serious cardiovascular outcomes estimated by Pirkle et al. (1985). However, much support for the plausibility of causal relationships between lead exposures and hypertension, as well as other cardiovascular effects, is provided by experimental toxicology findings discussed next.

12.9.1.2 Toxicological Studies in Animals.

Electron microscopy of the myocardium of lead-intoxicated rats (Asokan, 1974) and mice (Khan et al., 1977) have shown diffuse degenerative changes analogous to those alluded to earlier for lead-poisoned children. Kopp and coworkers have also found depression of contractility, isoproterenol responsiveness, and cardiac protein phosphorylation (Kopp et al., 1980a), as well as high energy phosphate levels (Kopp et al., 1980b) in hearts of lead-fed rats. Similarly, persistent increased susceptibility to norepinephrine-induced arrhythmias has been observed in rats fed lead during the first three weeks of life (Hejtmancik and Williams, 1977, 1978, 1979a,b; Williams et al., 1977a,b).

The cardiovascular effects of lead alone or in conjunction with cadmium have been studied in rats following chronic low level exposure by Perry and coworkers (Perry and Erlanger, 1978; Kopp et al., 1980a,b). Perry and Erlanger (1978) exposed female weanling Long-Evans rats to cadmium, lead, or cadmium plus lead (as acetate salts) at concentrations of 0.1, 1.0, or 5.0 ppm in deionized drinking water for up to 18 months. These authors reported statistically significant increases in systolic blood pressure for both cadmium and lead in the range of 15–20 mm Hg. Concomitant exposure to both cadmium and lead usually doubled the pressor effects of either metal alone. A subsequent study (Kopp et al., 1980a) using weanling female Long-Evans rats exposed to 5.0 ppm cadmium, lead, or lead plus cadmium in deionized drinking water for 15 or 20 months showed similar pressor effects of these two metals, alone or in combination, on systolic blood pressure. Electrocardiograms performed on these rats demonstrated statistically significant prolongation of the mean PR interval. Bundle electrograms also showed statistically significant prolongations. Other parameters of cardiac function were not markedly affected. Phosphorus-31 nuclear magnetic resonance (NMR) studies conducted on perchloric acid extracts of liquid nitrogen-frozen cardiac tissue from these animals disclosed statistically significant reductions in adenosine triphosphate (ATP) levels and concomitant increases in adenosine diphosphate (ADP) levels. Cardiac glycerol 3-phosphoryl-choline (GPC) were also found to be significantly reduced using this technique, indicating a general reduction of tissue high-energy phosphates by lead or cadmium. Pulse-labeling studies using ^{32}p demonstrated decreased incorporation of this isotope into myosin light-chain (LC-2) in all lead or cadmium treatment groups relative to controls.

The results of this group of studies indicate that prolonged low-dose exposure to lead (and/or cadmium) reduces tissue concentrations of high-energy phosphates in rat hearts and suggest that this effect may be responsible for decreased myosin LC–2 phosphorylation and subsequent reduced cardiac contractility. Other experiments by these authors (Kopp et al., 1980b) were also conducted on isolated perfused hearts of weanling female Long-Evans rats exposed to cadmium, lead, or lead plus cadmium in deionized drinking water at concentrations of 50 ppm for 3–15 months. Incorporation of ^{32}P into cardiac proteins was studied following perfusion on inotropic perfusate containing isoproterenol at a concentration of 7×10^{-7}M. Data from these studies showed a statistically significant reduction in cardiac active tension in hearts from cadmium- or lead-treated rats. Incorporation of ^{32}P was also found to be significantly reduced in myosin LC–2 proteins. The authors suggested that the observed decrease in LC–2 phosphorylation could be involved in the observed decrease in cardiac active tension in lead- or cadmium-treated rats.

Further evidence for lead inducing elevated blood pressure is provided by the study of Iannaccone et al. (1981), who reported increased blood pressure ($p < 0.001$) in rats at blood lead levels of 38 μg/dl. Significant enhancement of blood pressure responses to norepinephrine was also observed in the lead-treated rats. The Iannaccone et al. (1981) study confirms the findings of lead-induced blood pressure increases reported by Perry and coworkers, as does the Victery et al. (1982a,b) study which found a biphasic response of

blood pressure to lead exposure in the rat.

Makasev and Krivdina (1972) observed a two-phase change in the permeability of blood vessels (first increased, then decreased permeability) in rats, rabbits, and dogs that received a solution of lead acetate. A phase change in the content of catecholamines in the myocardium and in the blood vessels was observed in subacute lead poisoning in dogs (Mambeeva and Kobkova, 1969). This effect appears to be a link in the complex mechanism of the cardiovascular pathology of lead poisoning.

The susceptibility of the myocardium to toxic effects of lead was supported by *in vitro* studies in rat mitochondria by Parr and Harris (1976). These investigators found that the rate of Ca^{2+} removal by rat heart mitochondria is decreased by 1 nmol Pb/mg protein.

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Additional Items for Corrigenda

1. Table 13–5 (vol. IV, pg. 13–25) is incomplete. It should be an exact reproduction of Table 11–14 (vol. III, pg. 11–48).

2. Table 13–6 (vol. IV, pg. 13–27). Delete the word "percent" from title.

3. In some volume IV's, pg. 12–60 may have been omitted.

[FR Doc. 85–8703 Filed 4–10–85; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–42069; TSH–FRL 2817–5]

Test Rule Development Process Under the Toxic Substances Control Act; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA will hold a public meeting to discuss the process for developing test data pursuant to section 4 of the Toxic Substances Control Act (TSCA). This meeting was requested by the Natural Resources Defense Council (NRDC) and the Chemical Manufacturers Association (CMA).

DATE: The meeting will be held on Wednesday, April 17, 1985, at 10 a.m.

Meeting location: Capitol Park International Hotel, South Lobby Conference Room, 800 4th St., SW., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, 401 M St. SW., Washington, D.C. 20460, Toll Free: 800–424–9065, In Washington, D.C.: 554–1404, Outside the USA: Operator–202–554–1404.

SUPPLEMENTARY INFORMATION: EPA will hold a public meeting to discuss the process for developing test data pursuant to section 4 of TSCA.

I. Background

NRDC and CMA have requested to meet with personnel from EPA to discuss the process for developing test data pursuant to section 4 of TSCA. EPA has agreed to meet with representatives from both NRDC and CMA and has scheduled a public meeting for this purpose. The purpose of the meeting is to identify and discuss any changes that could be made to the current test rule development process under TSCA section 4 that would speed the development of needed test data. Persons interested in attending this meeting or in receiving more information about the meeting should call the TSCA Assistance Office.

II. Public Record

EPA has established a public record for this meeting (OPTS–42069). This record will include a summary of the meeting. The record will be available for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Rm. E–107, 401 M St., SW., Washington, D.C. 20460. The Agency will supplement the record with additional relevant information as it is received.

(Sec. 4, Pub. L. 94–469, 90 Stat. 2003 (15 U.S.C. 2601))

Dated: April 8, 1985.

Don Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–8822 Filed 4–10–85; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 13]

Military Household Goods Rates of Vessel Operating Common Carriers; Order Extending Investigation

The Investigative Officer has recommended that this investigation be extended for 60 days in order that the final report and recommendations reflect the contracts for the carriage of military household goods which became effective April 1, 1985. The Order instituting Fact Finding Investigation No. 13 appeared at 49 FR 13918, April 9, 1984.

Now therefore, it is ordered, that this investigation be extended for 60 days, and that the final report and recommendations of the Investigative Officer shall be filed no later than June 7, 1985.

It is further ordered, That Notice of this Order be published in the **Federal Register.**

By the Commission April 5, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8731 Filed 4–10–85; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 202–010025–004.
Title: Red Sea Rate Agreement.
Parties:
Barber Blue Sea Line
Maersk Line
Nedlloyd Lijnen B.V.
Sea-Land Service, Inc.
Synopsis: The proposed amendment would eliminate the $10,000 membership fee and reduce the notice period for independent action from ten days to two. The parties have requested a shortened review period.

Agreement No. 224–010740.
Title: Norfolk Terminal Agreement.
Parties:
Virginia International Terminals, Inc. (VIT)
Seapac Services/Neptune Orient Lines (SEAPAC/NOL)
Synopsis: Agreement No. 224–010740 provides that SEAPAC/NOL shall have the nonexclusive use of marine terminals at the Norfolk International Terminals, Norfolk, Virginia. VIT shall furnish SEAPAC/NOL terminal services at the facility. SEAPAC/NOL will call at the facility in consideration for the assessment of terminal charges by VIT that are different than those contained in Terminal Operators Conference of Hampton Roads Terminal Tariff No. 1 (FMC Agreement No. 8435). SEAPAC/NOL guarantees to move through the Norfolk International Terminals 22,000 containers in the initial year of this agreement, and 30,000 each subsequent year. The term of the agreement is for

three years. The parties have requested a shortened review period for the agreement.

By Order of the Federal Maritime Commission.

Dated: April 8, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8765 Filed 4-10-85; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on April 2, 1985, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent that it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No. 201-000089-002.

Title: Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Port Monatee, Brunswick, St. Mary's, Ferandina, Jacksonville, Tampa; Tonnage Assessment Agreement.

Parties:

South Atlantic Employers Negotiating Committee

International Longshoremen's Association, AFL-CIO

Synopsis: This amendment lowers the overall assessment per ton and the unit assessment as set forth in FMC Agreement No. 201-000089-001. The agreement is a tonnage assessment agreement covering the aforementioned ports. The agreement is designed to obtain funds necessary to meet the fringe benefit obligations under the Employers-ILA collective bargaining agreement. It contains a tonnage formula for funding the fringe benefits obligations for guaranteed annual income, vacation and holiday, and administrative support for those benefits.

By Order of the Federal Maritime Commission.

Dated: April 8, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8767 Filed 4-10-85; 8:45 am]

BILLING CODE 6730-01-M

Intent To Terminate Approval of Agreement

Agreement No. 1 10284.

Title: United States Lines, Inc. and Lykes Bros. Steamship Co., Inc.; Husbanding Agreement.

Parties:

United States Lines, Inc.

Lykes Bros. Steamship Co., Inc.

Synopsis: The Commission has been notified by United States Lines, Inc. that Agreement No. 10284 has been canceled, effective July 8, 1984.

Filing Party: United States Lines, Inc., 27 Commerce Drive, Cranford, New Jersey 07016.

By Order of the Federal Maritime Commission.

Dated: April 8, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8766 Filed 4-10-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 5, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of informaiton. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recomendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before April 22, 1985.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829).

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

1. Report title: Bank Holding Company Financial Supplement.
Agency form number: FR Y-9
OMB Docket number: 7100-0128
Frequency: semiannually, annually
Reporters: Bank Holding Companies
Small businesses are not affected

General description of report: This information collection is mandatory [12 U.S.C. 1844] and is not given confidential treatment.

The FR Y-9 data historically has been primary source of information for the Federal Reserve System's bank holding company (BHC) surveillance function in its on-going monitoring of the financial condition of these institutions. BHC's with consolidated assets of $150 million or more are required to file this report.

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

2. Report title: Banking Holding Company Financial Statement.
Agency form number: FR 2352
OMB Docket number: will be assigned
Frequency: semiannually
Reporters: Bank Holding Companies
Small businesses are affected

General description of report: This information collection is mandatory [12 U.S.C. 1844] and is not given confidential treatment.

The FR 2352 data is one of the primary sources of information for the Federal Reserve System's bank holding company

(BHC) surveillance function in its on-going monitoring of the financial condition of these institutions. BHC's with consolidated assets of less than $150 million are required to file this report.

Board of Governors of the Federal Reserve System, April 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8665 Filed 4-10-85; 8:45 am]

BILLING CODE 6210-01-M

ABC Holding Co. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 USC 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 3, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *ABC Holding Company*, Moultrie, Georgia; to merge with Quitman Bancshares, Inc., Quitman, Georgia, thereby indirectly acquiring The Bank of Quitman, Quitman, Georgia.

2. *Charter Holding Company, Inc.*, Tuscaloosa, Alabama; to become a bank holding company by acquiring 88.44 percent of the voting shares of First State Bank of Tuscaloosa, Tuscalóosa, Alabama.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *North Adams Bancshares, Inc.*, Ursa, Illinois; to become a bank holding company by acquiring 80.0 percent of the voting shares of North Adams State Bank of Ursa, Ursa, Illinois.

Board of Governors of the Federal Reserve System, April 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8663 Filed 4-10-85; 8:45 am]

BILLING CODE 6210-01-M

Buffalo Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Buffalo Bancshares, Inc.*, Buffalo, Kentucky; to engage *de novo* in the activity of selling credit life insurance in the Commonwealth of Kentucky.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Wilcox Bancshares, Inc.*, Grand Rapids, Minnesota; to engage *de novo* directly in the activities of making loans or other extensions of credit for the company's account or for the account of others. These activities would be conducted in Grand Rapids, Minnesota.

Board of Governors of the Federal Reserve System, April 5, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8664 Filed 4-10-85; 8:45]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents (formerly the Ad Hoc Advisory Committee on Hypersensitivity to Sulfiting Agents in Food) by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on March 13, 1987, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: April 4, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8655 Filed 4-10-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0367]

Drugs Composed Wholly or Partly of Insulin

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) advises that it will begin certifying human insulins as soon as the official human insulin reference standard becomes available from the United States Pharmacopeial Convention, Inc. (U.S.P.C.), which should be sometime during the second quarter of 1985. In addition, FDA announces its intention to begin selectively testing samples of batches of insulin submitted to FDA for certification instead of replicating all required tests. The agency will continue routinely to perform the potency test and to require insulin manufacturers to submit the results to all required tests for review by FDA.

FOR FURTHER INFORMATION CONTACT: Robert D. Bradley, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION:

I. Insulin and the Federal Food, Drug, and Cosmetic Act

Under section 506 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 356), FDA certifies batches of drugs composed wholly or partly of insulin. The act requires that each batch of insulin be certified if it meets the characteristics of identity, strength, quality, and purity, prescribed by regulations issued to ensure safety and efficacy of use. The act further provides that, before the effective date of such regulations FDA shall, in lieu of certification, issue a release for any batch which, in FDA's judgment, may be released without risk as to the safety and efficacy of its use (see 21 U.S.C. 356(a)). Under section 506(c) of the act and 21 CFR 429.30, tests and methods of assay for insulin products for purposes of certification are those set forth in the U.S.P.

II. Human Insulin

Until recently, all insulin was derived from the pancreas glands of animals. The source of these insulins was declared as either porcine, bovine, or a mixture of each, depending on the animal from which the insulin was derived. FDA recently approved a new insulin, called human insulin, from a different source. Unlike beef and pork insulins, which are named on the basis of source, the new insulin is identified as human, not because it is derived from human beings, but, rather, because it has the same molecular structure as insulin found in the human body. Human insulin may be manufactured by two different methods:

(1) Enzymatic modification of pork insulin and (2) recombinant deoxyribonucleic acid (DNA) technology.

Currently, human insulin is "released" under section 506(a) of the act, rather than certified under section 506(b) of the act, because no public standards have been established for human insulin. However, a monograph for human insulin is included in the latest revision of the official compendium, the United States. Pharmacopeia XXI—National Formulary XVI (U.S.P./N.F.), which became official on January 1, 1985. Because tests and methods of assay for certification of insulin products are those set forth in the U.S.P., the U.S.P. monograph establishes a public standard for human insulin that will be applicable to all human insulin products. Therefore, FDA expected to begin certifying batches of human insulin in accordance with the U.S.P. monograph when it became official on January 1, 1985. However, the U.S.P. human insulin reference standard required to perform several of the tests set forth in this monograph is not yet available from the U.S.P.C. Because the results of these tests are not valid without the use of this reference standard, FDA will continue to release batches of human insulin under the provisions of section 506(a) of the act until the reference standard is available and in use by the insulin manufacturers. U.S.P.C. expects to have this reference standards available sometime during the second quarter of 1985.

III. Certification Based on Selective Testing and Manufacturers' Test Results

A. General

Since the inception of the insulin certification program, the agency, as a condition of certification or release, has subjected all batches of insulin to tests and assays in FDA's own laboratories. The agency then compared the results of those tests conducted by FDA with the results of the same tests conducted by the manufacturer. In considering comments submitted to the agency that full replicative testing is unnecessary for currently manufactured insulin products, the agency reexamined this certification testing policy. FDA has concluded, as a result of this reexamination, that there appears to be no public health reason to continue, as a condition for certification, replicating routine tests, such as sterility, pH, loss on drying, nitrogen content, zinc content, isophane ratio, and the test for insulin not extracted by buffered acetone. Improved analytical procedures and techniques now give results with lower variability than those used a few years ago. Further, many of these same or similar tests are performed routinely by manufacturers on other injectable drug products without FDA review of the manufacturers' results or testing of samples of the drug products before they are introduced into interstate commerce. Although FDA has determined to discontinue replication of all routine tests on all batches of insulin for purposes of certification, the agency will continue to require the submission of required samples of each batch of insulin products submitted for certification to enable the agency to perform any or all of the required tests. Although FDA will onbly selectively test the samples, the manufacturers will still be required to submit the results of all required tests for FDA's review. The agency expects that this change in its certification testing procedure will take effect sometime during the second quarter of 1985.

The policy change of basing certification on review of the manufacturers' tests and on FDA's selective testing results does not apply, at this time, to the insulin potency assay. For both human insulins and animal insulins, FDA will continue to replicate the potency test as discussed below.

B. Development and Validation of a New Potency Assay for Insulin Products

Along with the development of human insulins, sophisticated laboratory testing techniques have been under development. It became clear in the early 1980's that one of these techniques, the high performance liquid chromatography (HPLC) test, should be seriously considered for use in assaying the amount of insulin present in insulin products.

Up to now, a rabbit bioassay test has been used to determine the biological activity and potency of insulin master lots. The rabbit test is designed to be a model of the effect of insulins on the blood sugar level in humans. Although satisfactory in terms of its reliability, the rabbit test is time-consuming and somewhat cumbersome to perform because of the large number of rabbits required to ensure the accuracy of the assigned potency. The HPLC test, on the other hand, is a sophisticated, rapid, in vitro analytical procedure that can be used to assay specifically the amount of insulin present.

At a May 1982 workshop sponsored by FDA and the U.S.P.C., the use of the HPLC assay as the potency assay for insulin products was discussed. The consensus of the workshop was that the HPLC test should be developed and validated as the potency test for insulin products in place of the rabbit bioassay. Because the HPLC assay does not measure biological activity, it was also recommended that a rabbit bioidentity test (using fewer rabbits than the rabbit biossay) be done to ensure that each master lot of insulin has appropriate biological activity.

C. Potency Testing of Human Insulins

Through the efforts of the U.S.P.C., industry, and FDA, an HPLC test has undergone validation testing for use on human insulins. The U.S.P. monograph for human insulin set forth in the official U.S.P. includes the HPLC test as the test for assigning potency of human insulin drug products. The monograph, in addition, continues to require the rabbit bioassay. However, in the absence of the U.S.P. human insulin reference standard, the HLPC test can not be used for assigning potency. Therefore, the potency of human insulin must continue to be assigned based on the results of the rabbit bioassay until the U.S.P. human insulin reference standard becomes available.

For the foreseeable future, FDA will perform both the HPLC test and the rabbit bioassay. The agency anticipates that, as more experience is gained using the HPLC test, the rabbit bioassay will be replaced by a rabbit bioidentity test. When the human insulin monograph is revised to eliminate the rabbit bioassay, FDA will discontinue conducting the rabbit bioassay for certification purposes. If experience with these test procedures is satisfactory, in the future the agency will consider extending its policy of selective testing to the potency test for human insulins.

Potency Testing of Animal Insulins

The validation of the HPLC assay for insulin products from animal sources is in progress, but because of several technical problems, e.g., establishing reference standards, correlating data with the bioassay, and developing HPLC methods for a variety of dosage forms, it has not progressed as far as has validation of the HPLC test for human insulin products. Therefore, the sole potency assay specified in the U.S.P. for animal insulins, and which will be performed by FDA, continues to be the rabbit bioassay. In addition, FDA will perform the HPLC test on animal insulins for research and correlation purposes.

Correlation of results obtained from the rabbit bioassay and the HPLC test is necessary before it would be prudent to accept the HPLC assay as the potency assay for animal insulins and, in all probability, before the U.S.P.C. will modify its U.S.P. monographs for animal insulins to specify that the HPLC test can be used for animal insulins.

Dated: April 3, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-8654 Filed 4-10-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85G-0122]

Novo Laboratories, Inc.; Filing of Petition for Affirmation for GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novo Laboratories, Inc., has filed a petition (GRASP 4G0295), proposing that pullulanase derived from *Bacillus acidopullulyticus* is generally recognized as safe (GRAS) as a direct human food ingredient.

DATE: Comments by June 10, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fisher Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9950.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 4G0295) has been filed by Novo Laboratories, Inc., 59 Danbury Rd., Wiltron, CT 06897, proposing that pullulanase derived from *Bacillus acidopullulyticus* is GRAS as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

Interested persons may, on or before June 10, 1985, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether this use is or is not GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8591 Filed 4-10-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (FR, Vol 46, No. 223, pp. 58933-58934, dated Thursday, November 19, 1981, **Federal Register**, Vol. 48, No. 3, pp. 512-513, dated Wednesday, January 5, 1983, and **Federal Register**, Vol. 48, No. 198, pp. 46447-46448, dated Wednesday, October 12, 1983) is amended to reflect the reorganization of the Office of Legislation and Policy (OLP), Office of the Associate Administrator for Policy.

—The OLP is being reorganized to streamline operations by consolidating similar functions.

The Specific Amendments to Part F. Are As Follows

—Section FQ.20.C. Office of Legislation and Policy (FQC) is amended by deleting the functional statements and organizational titles for Section FQ.20.C.1. Congressional Affairs Staff (FQC-1), Section FQ.20.C.2. Office of Legislation (FQCC), and Section FQ.20.C.3. Office of Policy Analysis (FQCB). The deletion of the two offices includes deleting the offices' subordinate divisions in their entirety. The new division functional statements and organizational titles for the OLP (Section FQ.20.C.) are as follows:

1. Division of Policy Analysis (FQCB)

Plans and conducts long-range and short-range policy analyses of health care financing issues and legislative proposals. Initiates or performs major policy studies for the Associate Administrator for Policy (AAP) in such areas as reimbursement reform, alternative cost control systems, and the reimbursement of new delivery systems. Coordinates technical and operating policy issues with respect to the introduction of appropriate statutory modifications through the Office of Legislation and Policy. Reviews policy documents including regulations, issue papers and memoranda before they are signed by the Administrator and/or the AAP. Reviews, analyzes, and develops new legislative proposals for submission to the Department and the Congress. Serves as a focal point for interface with the Office of the Assistant Secretary for Planning and Evaluation, other departmental components, and other Federal agencies on health care financing policy issues and legislative initiatives. Provides technical services and support to the Office of Research and Demonstrations, the Bureau of Eligibility, Reimbursement and Coverage, other HCFA components, and the Congress on the policy implications and technical aspects of new legislative or policy initiatives.

2. Division of Legislation (FQCC)

Plans and directs the legislative planning and development activities of HCFA. Develops and analyzes recommendations concerning legislative proposals for changes to the health care financing programs. Develops long-range legislative plans in substantive areas related to the reimbursement, coverage, and eligibility of services under the Medicare and Medicaid programs. Analyzes the impact of HCFA and congressional legislative proposals affecting HCFA programs, and makes recommendations to the Administrator, the Associate Administrator for Policy, and the Department. Prepares testimony and technical briefing materials for congressional hearings on HCFA programs, and serves as principal advisor to the HCFA senior staff on congressional legislative initiatives of interest or concern to the Agency. Develops the technical specifications for HCFA legislation. Provides information on HCFA programs and legislative plans to members of the Congress and the congressional committees as requested. Coordinates legislative activities, and prepares for congressional hearings with the Office of the Assistant Secretary for Legislation.

3. Division of Legislative Services and Congressional Affairs (FQCD)

Provides legislative research and analysis services to HCFA staff, and produces regular and special reports on legislative issues and activities. Prepares background materials on the Congress for congressional hearings and briefing sessions, and coordinates with HCFA components on the preparation of bill reports and bill report clearances. Maintains and services HCFA with a legislative research and reference library. Responds directly or coordinates responses to written and verbal congressional and legislative requests for information related to HCFA programs. Organizes and prepares materials for briefings of individual Congressmen and their constituents. Monitors the interests or concerns of individual Congressmen, and prepares recurring reports on significant congressional contacts. Analyzes alternative responses to congressional issues, and makes recommendations to higher officials on specific issues.

Dated: March 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-8682 Filed 4-10-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

[Docket No. N-85-1516; FR-2095]

Announcement of Oasis Technique Research and Demonstration Project

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of Oasis Technique Research and Demonstration Project.

SUMMARY: HUD is announcing a one-year cooperative agreement that will support a demonstration of a management improvement technique for public housing projects. The Awardee is the Oasis Institute of the Housing Authority of the City of Fort Lauderdale, Florida. A demonstration site and facilitating organization with characteristics similar to those in Fort Lauderdale are to be selected by the Awardee, subject to approval by the Department. The Oasis Institute will prepare a report on the application of the Oasis Technique to the demonstration site so that other public housing agencies (PHAs) across the country can build on the experiences and adapt the approaches to their environment.

DATE: Comments are due on or before May 28, 1985.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and title.

FOR FURTHER INFORMATION CONTACT: William A. Wisner, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW, Room 8126, Washington, DC 20410, Phone (202) 426-1520 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The "Oasis Technique," developed by the Oasis Institute of the Fort Lauderdale Housing Authority (FLHA), is a quality-of-life improvement technique that seeks to identify the strengths and weaknesses of a neighborhood that contains a public housing project so that the appropriate financial and human resources can be properly focused and utilized to reverse the trend of neighborhood deterioration. Improvements occur because a strategically located public housing site, or "Oasis," in a neighborhood that has many social problems, is targeted for rehabilitation and is made decent and safe. The improved site results in a ripple effect that leads to improvement in adjacent areas.

The Technique's principal areas of focus are: (1) Physical rehabilitation and modernization of public housing projects; (2) improved grounds aesthetics through the use of tree and shrub plantings and tenant ground maintenance; (3) management and peer pressure to promote timely payment of rent, nondisturbance of neighbors and adequate maintenance of grounds and building exteriors; (4) intensive police involvement in public housing agency crime reduction efforts; (5) community-wide, private and public sector involvement in the overall revitalization process; and (6) on-going counseling of residents.

In Fort Lauderdale, the "Oasis Technique" has been successful in improving the physical environment of the selected public housing projects, increasing stability in resident tenure, and decreasing neighborhood crime. In addition, neighborhood blight appears to have been arrested and there is evidence of increased private

investment in the areas surrounding the "Oasis."

For the technique to be successful, there must be participation by residents, the active use of public safety and other city services, tutorial programs, and employment generating activities that together address neighborhood needs in their totality.

HUD is announcing a one year cooperative agreement with the Oasis Institute, a not-for-profit organization established by the Board of Commissioners of the Fort Lauderdale Housing Authority for the purpose of assisting PHAs and communities in the use of the Oasis Technique. Under the agreement, the Institute will undertake the following preliminary tasks: (1) Develop a management and work plan to include a detailed allocation of resources and a time schedule for accomplishment of tasks under the cooperative agreement; (2) describe the Fort Lauderdale environment in which the technique was applied, the involved PHA properties and neighborhood and the principal areas of focus for the technique, and describe the strategies and resources used to deal with the problems and issues identified, the results and accomplishments of implementing the technique in Fort Lauderdale, and the recommendations and experiences that will be helpful to other communities; and (3) develop a demonstration site selection process. The Oasis Institute will undertake the following tasks as the demonstration project: (i) Indentify a suitable demonstration site and entity (facilitating organization) for the demonstration of the "Oasis Technique"; (ii) implement the technique and provide management support at the demonstration site; and (iii) produce reports on the implementation of the "Oasis Technique" at the demonstration site. The reports will cover such subject areas as the setting and environment; the specific revitalization problems and challenges faced at this site; the major actors in the public and private sector, including the PHA, residents, local government, business and community leaders, and their roles in dealing with the problems and marshaling existing public and private resources. The steps involved in applying the technique, any problems or obstacles encountered, problem-solving strategies, costs, and results will be described. The reports are to aid other communities in adapting the technique to their individual needs.

Funds for this project are authorized under Title V of the Housing and Urban Development Act of 1970. The funding that is to be provided to the Oasis Institute is for its use in accomplishing and documenting the demonstration. No funds will be provided to the facilitating organization or PHA. As a condition of participation in the demonstration, the facilitating organization will be expected to contribute its own resources as required to carry out the demonstration.

In accordance with the requirements of section 470 of the Housing and Urban-Rural Recovery Act of 1983, the demonstration will begin with the selection of the demonstration site under the proposed cooperative agreement. PHAs that would like to be considered as applicants for the demonstration site should contact the Oasis Institute by May 28, 1985 at 437 Southwest 4th Ave., Fort Lauderdale, FL 33315.

The selection will not be made until at least fifteen (15) days after the period provided for public comment has expired and all comments received have been fully considered. In the event that the Department's consideration of the comments gives rise to a significant change in any aspect of the planned demonstration, notice of the change will be published in the **Federal Register**. If appropriate, the commencement of activities may be delayed as a resut of comments, the activities may be modified, or additional public comment may be sought.

The site selection process must take into consideration the fact that the site should exhibit as many of the characteristics of the physical and governmental environment surrounding the pre-Oasis FLHA properties as possible. Applicants for the demonstration site are to be PHAs, in consort with units of local government, and must contact the Oasis Institute to be considered. The participating unit of general local government will be expected to commit the resources of its local agencies to provide such support as may be appropriate for the demonstration. The facilitating organization for the demonstration is expected to be a PHA, a unit of local government, a task force with special powers, or an existing organization recognized as having the potential for solving the complex problems of slum and blight. It must be capable of mobilizing existing public and private sector resources and effecting cooperation among public and private community groups necessary to address the defined problems.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410.

The Catalog of Federal Domestic Assistance program number is: 14.506, Office of Policy Development and Research, General Research and Technology Activity.

Authority: Title V of the Housing and Urban Development Act of 1970.

Dated: April 5, 1985.

June Q. Koch,

Assistant Secretary for Policy Development and Research.

[FR Doc. 85-8715 Filed 4-10-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Impact Statement on North Key Largo (Florida) Habitat Conservation Plan and Endangered Species Act Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) intends to gather the information necessary for the preparation of an Environmental Impact Statement (EIS) for the North Key Largo (Florida) Habitat Conservation Plan (HCP) and proposed Endangered Species Act section 10(a) permit. The HCP is being prepared by the North Key Largo Habitat Conservation Plan Study Committee in conjunction with the preparation by Monroe County, Florida of a Comprehensive Plan for development of the County. The FWS is working closely with the County and the Florida Department of Community Affairs (DCA) in preparation of the EIS. Study Committee meetings since the summer of 1984 have provided suggestions and information on the scope of issues and significant issues to be addressed in the HCP and EIS. In addition, the FWS will hold two (2) public scoping meetings and solicits further written comments on the scope of issues and significant issues that should be addressed in the EIS.

DATES: *Public Scoping meetings*—Two public scoping meetings will be held in conjuntion with meetings of the Habitat Conservation Plan Study Committee. The first will be held at 1 p.m on May 16, 1985. The precise time and date of the second meeting will be published in the Federal Register.

Written comments—Written comments will be accepted until following the second scoping meeting. The exact date for the closing of the comment period will be pubished in a subsequent Federal Register notice.

ADDRESS: *Public scoping meetings*—The May 16, 1985, meeting will be held at the Monroe County Public Library, Key Largo Branch, 2nd Floor, First Federal Savings and Loan Building, Walforf Plaza, Mile Marker 100. The location of the second meeting will be announced in the Federal Register.

Written comments—Should be addressed to: David Wesley, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: David Wesley, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207, (904) 791–2580.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action

The FWS may issue a permit pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a), that would authorize the take of endangered species incidental to development and other activities in North Key Largo, Florida. Section 10(a) of the Endangered Species Act was amended in 1982 to authorize the issuance of permits to take endangered species as an incident to otherwise lawful activities provided that the permit application is supported by a habitat conservation plan that will further the long term conservation of the species. Section 10(a) specifically requires a habitat conservation plan to specify: (1) The likely impact of the incidental taking of the species; (2) the steps the applicant will take to minimize and mitigate such impacts and the long term funding that will be available to implement those steps; (3) the alternatives to the taking that have been considered and the reasons they are not being utilized; and (4) other measures that the FWS may require as being necessary or appropriate for the purposes of the plan. The FWS may issue an incidental take permit only upon finding that: (1) The taking will be incidental; (2) the applicant will minimize and mitigate the impacts of the taking to the maximum extent practicable; (3) the applicant will ensure that adequate long term funding for the plan will be available; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the additional measures specified by the FWS will be met.

FWS issuance of a permit authorizing take of endangered species incidental to development of North Key Largo will be subject to at least three environmental reviews. First, the FWS will engage in intra-FWS consultation under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), to ensure that issuance of the permit will not be likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species. Second, the FWS previously has issued two previous biological opinions under section 7(a)(2) with respect to Federal activities in North Key Largo that may affect listed species. An opinion dated May 29, 1980, furnished to the Farmers Home Administration, resulted in prohibitions on water hook ups in certain parts of North Key Largo. A second opinion, dated October 27, 1983, and furnished to the Rural Electrification Administration, resulted in prohibitions on electrical hook ups in certain parts of North Key Largo. These opinions may be revised, possibly in conjunction with section 7 consultation with respect to the proposed incidental take permit. Third, in addition to triggering consultation under section 7, the proposed issuance of the incidental take permit may have significant effects on the quality of the human environment and thus will be the subject of an EIS prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

Monroe County, Florida, within which North Key Largo is located, is in the process of preparing a Comprehensive Plan for development of the County under the Florida Area of Critical State Concern process, Florida Statutes, Chapter 380. Any successful HDP for North Key Largo must be consistent with the requirements of the Monroe County Comprehensive Plan. In addition, Congress has allocated $98,000, to be matched with non-Federal funds, for the development of an HCP for North Key Largo. The FWS has subsequently entered into a grant agreement with the DCA under which the County, in cooperation with the DCA, will prepare an HCP for North Key Largo. In preparing the HCP, the County and its staff will work with the North Key Largo Habitat Conservation Plan Study Committee to explore the possibilities for allowing reasonable levels of development on North Key Largo, while meeting the goals of section 10(a), which include ensuring the long term conservation of any affected listed species. Pursuant to the FWS–DCA grant agreement, the County will prepare the EIS for the FWS for the possible incidental take permit in conjunction with its preparation of the HCP.

Proposed Scoping Process

Parties interested in the potential for development of an HCP for North Key Largo convened the first in a series of meetings on the HCP in July 1984. These meetings have been attended by representatives of landowners, citizens and environmental groups, and local, State and Federal agencies, including the County, the DCA, the Governor's Office and the FWS. In order to gather further information, the FWS will also hold two public scoping meetings in conjunction with meetings of the North Key Largo Habitat Conservation Plan Study Committee. The first will be held on May 16, 1985, in Key Largo at the place noted above under "**ADDRESSES.**" Following this meeting a draft document setting forth the scope of issues and significant issues that will be addressed in the EIS will be prepared and distributed. A second scoping meeting will then be held to discuss the draft scoping document and other issues relating to the scope of the EIS. Finally, the comment period will remain open until a few weeks after the second scoping meeting. The location of the second scoping meeting and the dates of that meeting and the close of the comment period will be announced in a future **Federal Register** notice.

Significant Issues

The Key Largo woodrat, Key Largo cotton mouse, and Schaus swallowtail butterfly, all listed as endangered under the Endangered Species Act, inhabit the upland hardwood hammock forest areas of North Key Largo. The prickly apple cactus is a candidate species which may soon be proposed for listing and also inhabits the hammocks. The hardwood hammocks, which originally were found throughout the Florida Keys and in the southern peninsula of Florida, have been reduced by human activities and are one of the most limited and threatened ecosystems in Florida. The American crocodile, also listed as endangered, occupies low-lying wetlands in North Key Largo. These wetlands are protected by State laws and regulations. The FWS is also currently in the process

of acquiring lands for the Crocodile Lake National Wildlife Refuge, whose projected size is 7,000 acres. As a result, development pressure on the upland hardwood hammock areas have increased, creating direct conflicts between development and conservation of the endangered species and their habitats.

The purpose of the North Key Largo HCP would be to conserve and enhance the habitats of the endangered species and ensure the long term conservation of the species while accommodating some development. Alternative plans for accomplishing this purpose will be examined during the process of preparing the HCP and the EIS. Implementaion of the HCP could have some or all of the following impacts:

1. Loss of individuals of the endangered species inhabiting North Key Largo. Restoration of individuals could occur as a result of captive propagation or translocation to other suitable habitats.

2. Loss of some portion of the current habitats of the endangered species. Some habitats disturbed during construction activities might be reclaimed as productive habitat following construction. Enhancement of habitat through plantings and vegetation management could also occur.

3. Impacts on the species and remaining habitat resulting from increased numbers of people living in and visiting North Key Largo.

4. Socioeconomic impacts on surrounding communities resulting from increased numbers of people living in and visiting North Key Largo.

5. Increased protection for some or all of the species' habitats through public acquisition of fee title, easements or other interests in land currently occupied by the species.

6. Increased protection for the species through conservation-oriented restrictions on development or specific management programs designed to enhance the species.

Alternatives to the Proposed Action

1. No action. No HCP would be developed and no incidental take permit would be issued by the FWS. Development activities could lead to significant losses of the endangered species and their habitats, but would conflict with the prohibition in section 9 of the Endangered Species Act, 16 U.S.C. 1538, on taking endangered species.

2. Development of an HCP that would allow some development while ensuring the long term conservation of the species. Such an HCP would be consistent with the Monroe County Comprehensive Plan. The HCP could be structured in a number of different ways and still meet the statutory requirements for an HCP. The HCP will consider several alternative scenarios for siting potential development and maximizing habitat values, including concentrating development in clusters without regard to property boundaries, allowing landowners to develop individual parcels, and establishing programs where some development rights could be transferred to less environmentally sensitive areas. Each alternative would incorporate a range of development levels and intensities.

3. Public acquisition of privately held habitat of the endangered species. This would be in addition to the purchase by the FWS of lands for the Crocodile Lake National Wildlife Refuge.

The environmental review of this proposed action will be conducted in accordance with the requirements of NEPA, the regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508, other applicable Federal regulations, and FWS procedures for compliance with those regulations.

Dated: March 28, 1985.

James W. Pulliam, Jr.,

Regional Director, U.S. Fish and Wildlife Service, Atlanta, Georgia.

[FR Doc. 85–8361 Filed 4–10–85; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: National Demographic Profile of Outdoor Recreational Topographic Map Users

Abstract: Respondents supply information on use of topographic maps in outdoor recreational activities, type of recreation, frequency of map use, and on demographic characteristics. The recreational and demographic profile developed from the survey will be used to design an effective marketing program to increase map sales revenues.

Bureau Form Number: None

Frequency: One time

Description of Respondents: 500 male and 500 female general-public individuals.

Annual Response: 1,000

Annual Burden Hours: 60

Bureau clearance officer: Geraldine A. Wilson, 703–860–7211

Dated: February 16, 1985.

R.B. Southard,

Chief, National Mapping Division.

[FR Doc. 85–8697 Filed 4–10–85; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paper Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and explanatory material may be obtained by contacting the Bureau's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7340.

Title: Subchapter E—Education—Waiver for Academic Standards—25 CFR Part 36

Abstract: Information is needed to control wholesale request for waivers and to ensure that minimum academic standards and the dormitory criteria are adhered to. Information will be used to determine the validity of waiving academic standards. The information collection will involve tribal governments and local school boards.

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Tribes and school boards

Annual Responses: 29.33

Annual Burden Hours: 293.3

Bureau Clearance Officer; Ramona Moore (202) 343–3574
John W. Fritz,
Assistant Secretary, Indian Affairs.
April 2, 1985.
[FR Doc. 85–8683 Filed 4–10–85; 8:45 am]
BILLING CODE 4310–02–M

Plan for the Use and Distribution of the Devils Lake Sioux Tribe of Indians Judgment Funds in Docket 363 Before the United States Claims Court

April 4, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on August 1, 1983, in satisfaction of the award granted to the Devils Lake Sioux Tribe of Indians before the United States Claims Court in Docket 363. The plan for the use and distribution of the funds were submitted to the Congress with a letter dated July 6, 1984, and was received (as recorded in the Congressional Record) by the Senate on July 23, 1984, and by the House of Representatives on July 23, 1984. The plan became effective on January 6, 1985, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted.

The plan reads as follows:

For the Use and Distribution of the Devils Lake Sioux Tribe's Judgment Funds in Docket 363 (Forfeiture Act Claims, Treaties of July 23, 1851, and June 19, 1858, and Non-Forfeiture Act Claims) before the United States Claims Court

The share of the Devils Lake Sioux Tribe, 26.21 percent, of the award funds in Docket 363 appropriated on August 1, 1983, totaling $3,770,593.68, and the funds appropriated the same date in satisfaction of a Docket 363 award granted specifically to the Devils Lake Sioux Tribe, totaling $50,731.52, both before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows.

Per Capita Payment Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments by the Secretary of the Interior (hereinafter the "Secretary") in sums as equal as possible to all tribal members born on or prior to and living on the effective date of this plan.

Programing Aspect

Twenty (20) percent of the funds, and any amounts remaining from the per capita payment provided above, shall be invested by the Secretary and utilized by the tribal governing body on an annual budgetary basis for tribal social and economic development programs as follows:

1. Elderly Assistance Program—four (4) percent
2. Recreation Projects—two (2) percent
3. Education Assistance Program—one (1) percent
4. Assistance in Funeral and Burial Expenses—two (2) percent
5. Tribal Land Acquisition—three (3) percent
6. Tribal Administration—eight (8) percent

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds distributed per capita or made available under this plan for programing shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted programs.

John W. Fritz,
Deputy Assistant Secretary, Indian Affairs.
[FR Doc. 85–8714 Filed 4–10–85; 8:45 am]
BILLING CODE 4310–02–M

Final Determination That the Kaweah Indian Nation, Inc., Does Not Exist as an Indian Tribe

April 1, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary has determined that the Kaweah Indian Nation, Inc. does not exist as an Indian tribe within the meaning of Federal law. This notice is based on a confirmed determination, following a public comment period on the proposed finding, that the group does not satisfy three of the seven mandatory criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed finding to decline to acknowledge the group was first published on page 28770 of the **Federal Register** on Monday, July 16, 1984. Interested parties were given 120 days in which to submit factual or legal arguments to rebut evidence used to support the proposed finding. No rebuttals or other comments were received during the comment period and no evidence was submitted which would warrant changing the conclusion that the Kaweah Indian Nation does not exist as an Indian tribe within the meaning of Federal law.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the Kaweah Indian Nation could make application for services and other benefits. No viable alternatives were found.

This determination is final and will become effective 60 days after publication unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 83.10.

John W. Fritz,
Deputy Assistant Secretary, Indian Affairs.
[FR Doc. 85–8689 Filed 4–10–85; 8:45 am]
BILLING CODE 4310–02–M

Final Determination That the Principal Creek Indian Nation East of the Mississippi Does Not Exist as an Indian Tribe

This notice is published in the exercise of authority delegated by the Secretary of Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f), notice is hereby given that the Assistant Secretary had determined that the Principal Creek Indian Nation East of the Mississippi does not exist as an Indian tribe within the meaning of Federal law. This notice is based on a confirmed determination, following a public comment period on the proposed findings that the group does not satisfy all of the seven mandatory criteria set forth in 25 CFR 83.7 and, therefore, does

not meet the requirements necessary for a government-to-government relationship with the United States.

Notice of the proposed finding to decline to acknowledge the group was published on page 25311 on the **Federal Register** on June 20, 1984. Interested parties were given 120 days in which to submit factual or legal arguments to rebut evidence used to support the finding that the Principal Creek Nation East of the Mississippi does not exist as an Indian tribe. The initial 120 day comment period was subsequently extended for an additonal 120 days and the notice of the extension appeared in the **Federal Register** on November 1, 1984 on page 44024. The extension was provided because of deficiencies in the initial distribution of the proposed finding.

No rebuttals or other comments were received during the comment period and its extension and no evidence was submitted which would warrant changing the conclusion that the Principal Creek Indian Nation East of the Mississippi does not exist as an Indian tribe within the meaning of Federal law.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment are available under which the Principal Creek Indian Nation East of the Mississippi could make application for services and other benefits. No viable alternative was found.

With regard to future claims awards to individual Eastern Creek Indian descendants, we are unable to predict, at this time, what the eligibility requirements might be or who will be the eligible beneficiaries.

This determination is final and will become effective 60 days after publication unless the Secretary of the Interior requests the determination be reconsidered pursuant to 25 CFR 83.10(a–c).

John W. Fritz,

Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85–8694 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[Groups 748, 809 and 894; 4–19952–ILS–940]

California; Filing of Plat of Survey

April 1, 1985.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Humboldt and Siskiyou Counties

T. 2 N., R. 5 E.
T. 13 N., R. 6 E.

Mount Diablo Meridian, Modoc County

T. 46 N., R. 5 E.

2. (2) The plat, in two (2) sheets representing the dependent resurvey of portions of the east, west and north boundaries, and a portion of the subdivisional lines of Township 2 North, Range 5 East, Humboldt Meridian, under Group No. 748, California, was accepted February 22, 1985.

(b) The plat in eight (8) sheets, represents a dependent resurvey of Homestead Entry Survey No. 220 and Mineral Survey No. 1321 and the metes-and-bounds survey of Tracts 38 through 49, Township 13 North, Range 6 East, Humboldt Meridian, for Group 809, California, was accepted February 22, 1985.

(c) The plat representing the dependent resurvey of a portion of the north boundary, subdivisional lines, subdivision-of-section lines of section 3, the survey of a portion of the subdivision of section lines of section 3, and the metes-and-bounds survey of a portion of lot 35, in section 3, T. 46 N., R. 5 E., Mount Diablo Meridian, under Group No. 894, California, was accepted February 26, 1985.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–8693 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–05–M

[C–40710]

Colorado; Invitation for Coal Exploration License Application, Sunland Mining Corp.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Sunland Mining Corporation, in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

Routt County, CO

T. 4 N., R. 86 W., 6th P.M.
Sec. 20, all;
Sec. 21, N½, SW¼, NW¼SE¼, S½SE¼;
Sec. 28, all;
Sec. 29, all.

The application for coal exploration license is available for public inspection during normal business hours under serial number C–40710 at the BLM Colorado State Office, Public Room, 1037 20th Street, Denver, Colorado and at the BLM Craig District Office, 455 Emerson Street, Craig, Colorado.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate. Written Notice of Intent to Participate should be addressed to the following and must be received by them within thirty (30) days after the publication of this Notice of Invitation in the **Federal Register**:

Chief, Mineral Leasing Section, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and

David R. Canning, General Manager, Sunland Mining Corporation, P.O. Box 55, Oak Creek, Colorado 80467.

Evelyn W. Axelson,

Chief, Mineral Leasing Section.

[FR Doc. 85–8696 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–JB–M

[N–41323; 5–00253]

Realty Action; Competitive Sale; Public Lands in Washoe County, NV

Correction

In FR Doc. 85–7221, beginning on page 12065 in the issue of Wednesday, March 27, 1985, make the following correction:

On page 12065, the docket number in the heading should have appeared as set forth above.

BILLING CODE 1505–01–M

Draft Logical Mining Unit Application and Processing Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of draft guidelines and request for public comment.

SUMMARY: This Notice sets forth draft guidelines reflecting the Department of

the Interior's proposed administration of section 2(d) of the Act of February 25, 1920 (otherwise known as the Mineral Leasing Act (MLA)), as amended (30 U.S.C. 202a). The Department of the Interior's regulations that implement section 2(d) of MLA are codified at 43 CFR Part 3487 (1984). When final, these guidelines will be used by Bureau of Land Management personnel in order to process logical mining unit (LMU) applications, develop approval stipulations, ensure public participation, and monitor operator-compliance with the LMU approval. This notice invites public comments on the draft guidelines.

DATE: Comments must be submitted on or before June 10, 1985.

ADDRESS: Department of the Interior, Bureau of Land Management (660), 18th and C Sts., NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Politzer or Mr. Allen B. Agnew, Bureau of Land Management (660), 18th and C Sts., NW., Washington, D.C. 20240 (202/343-7722).

SUPPLEMENTARY INFORMATION: Section 5 of the Federal Coal Leasing Amendments Act of 1976, as amended, added paragraph 2(d) to MLA. This amendment states that the Secretary, upon determining that maximum economic recovery of Federal coal will be achieved, may approve the consolidation of Federal coal leases into an LMU. Federal coal leases issued prior to enactment of FCLAA may only be included in an LMU with the consent of *all* leases whose Federal coal leases will be included in the approved LMU. If requested by a person having a direct interest that is or may be adversely affected, a public hearing must be held prior to LMU approval. An LMU is an area of land in which the coal can be developed in an efficient, economic, and orderly manner as a unit, with due regard to conservation of the coal and other resources. An LMU may contain one or more Federal coal leases, and may include non-Federal coal; however, all lands in an LMU must be under the effective control of a single operator, be able to be developed and operated as a single operation, and be contiguous. No LMU may be approved if the total acreage would exceed 25,000 acres.

An approved LMU is subject to the diligence requirements of section 7 of MLA—diligent development, continued operation, and 3-year resource recovery and protection plan submittal. Formation of an LMU allows production of coal from anywhere within the LMU to be construed as occurring on all Federal coal leases contained in the approved LMU. However, the entire LMU recoverable coal reserves must be mined out within 40 years.

The draft guidelines provide a background and general discussion of these provisions of MLA and set forth the approval criteria, application requirements, consultation and public participation requirements, and approval stipulations. The guidelines also discuss in great detail how the section 7 of MLA diligence requirements of individual Federal coal leases do and do not govern the diligence requirements imposed on the LMU. The guidelines further discuss modifications to approved LMU's, how an LMU may fail and the results of the failure on individual Federal coal leases that were contained in the LMU, and how the Department of the Interior intends to monitor the diligence requirements of both the LMU and the individual Federal coal leases contained in the LMU. Finally, example notification letters relating to consultation, public participation, and LMU approval are contained in the appendices.

The draft guidelines were formulated in light of informal advice rendered by Solicitor's Office staff. The Department of the Interior invites public comment on these draft guidelines. All actions on pending applications for LMU approval are suspended as of April 11, 1985, until publication of final LMU guidelines in the **Federal Register**.

The primary author of these draft guidelines is Mr. Allen B. Agnew, Branch of Technical Support, Solid Mineral Operations Division, Bureau of Land Management (BLM), assisted by other BLM field and headquarters personnel and the Office of the Solicitor, Department of the Interior.

The draft guidelines are set forth below.

Dated: April 4, 1985.

Robert F. Burford,

Director, Bureau of Land Management.

LMU APPLICATION AND PROCESSING GUIDELINES

I. Background

Section 5 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), added Section 2(d) to the Mineral Leasing Act of 1920 (MLA), which provides the legislative framework for logical mining units (LMU's). The implementing regulations at 43 CFR Part 3480, which were published in the **Federal Register** on July 30, 1982 (effective August 30, 1982), provide LMU description and establishment criteria. The Authorized Officer (AO), defined at 43 CFR 3400.0-5(b),[1] may approve an LMU application submitted by an operator/lessee or may direct that an LMU be established. LMU approval/denial is a Bureau of Land Management (BLM) State Director Decision. Therefore, for the purpose of LMU approval/denial, the State Director is the AO. For day-to-day management/oversight, the BLM District Manager is the AO, as stated in the LMU Approval Stipulations (see Appendix B-2).

Although the Secretary, through the AO, has discretion to order LMU formation, it is not normally the policy of BLM to order LMU formation. Such an order would only be given when maximum economic recovery (MER) of the coal deposits would be increased in accordance with section 2(d)(1) of MLA. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal, may be diminished by creation of other separate Federal coal leases or LMU's, or may be disminished by the relinquishment of recoverable coal reserves and/or acreage.

II. General Discussion

The purpose of these guidelines is to set forth the requirements and conditions that must be satisfied to enable an LMU to be approvable. The guidelines do not alter any aspect of the AO's discretionary authority in acting on LMU applications, which is set forth in the 43 CFR Part 3480 rules.

Federal coal leases have diligence provisions that are lease-specific. The diligence provisions for LMU's are LMU-specific. When a Federal coal lease is included in an LMU, both types of diligence run *simultaneously*. However, in essence, LMU-specific diligence takes precedence over lease-specific diligence, *as long as* that Federal coal lease is contained in an approved LMU. In other words, LMU diligence *supersedes*, but *does not suspend*, lease-specific diligence requirements. As long as all LMU approval conditions/stipulations, including diligence, are complied with, *an individual Federal coal lease contained in an approved LMU is not in noncompliance with lease-specific diligence requirements.*

Diligence is based on recoverable coal reserves, as determined by the responsible mining engineer and the AO. The standards for coal reserve base, minable reserve base, recoverable coal reserves, and MER are defined in the regulations at § 3480.0-5. The

[1] Hereafter, all "3400. . . ." citations refer to "43 CFR," unless otherwise stated or unless referring to a complete Group or Part at 43 CFR.

responsible mining engineer and the AO must use their best professional judgment in applying these definitions to determine recoverability and that MER will be achieved. The regulatory criteria may be adapted locally to determine the recoverable coal reserves.

Any coal beds, proposed to be excluded, include all coal that the LMU operator proposes not to mine. Therefore, a narrative of the coal reserve base, minable reserve base, and recoverable coal reserves, by bed, will be required in the LMU application, in addition to a narrative regarding *any* Federal coal that the operator proposes to not mine or to render unminable. Such coal may either be required to be mined as a condition of LMU approval, may be assigned to another lessee upon approval by the AO, may be relinquished if authorized by the AO, may be segregated into another Federal coal lease or into another LMU, or may be retained in the LMU if such coal could not be mined (e.g., that portion of the coal reserve base that could not be economically mined by any entity or operation).

A Federal coal lease, or LMU, *must* produce commercial quantities of coal prior to the end of 10 years, or the Federal coal lease or LMU is *automatically terminated by law.* There is no statutory or regulatory relief from this provision. Nothing prohibits LMU formation just prior to the end of the first 10-year period that a Federal coal lease is individually subject to diligence. Since production from anywhere within an LMU is deemed to have occurred on all *Federal* coal leases within the LMU, as long as criteria for LMU approval are adhered to, that Federal coal lease is not in jeopardy. But, if LMU diligent development is not satisfied, the LMU is terminated by law; then, the Federal coal leases must be assessed individually for compliance with MLA. Upon LMU failure, if a specific Federal coal lease would have not achieved lease-specific diligent development within its initial 10-year period, that Federal coal lease would *also* be automatically terminated by law.

Note.—See Appendix C regarding potential ramifications of LMU failure.

The commercial quantities (by regulation, 1 percent of the LMU recoverable coal reserves) for diligent development and continued operation is the *minimum* required to satisfy the LMU diligence provisions. However, in order to achieve the LMU 40-year recoverable coal reserves exhaustion requirement, the operator will have to supply a production schedule showing that the 40-year mine out will be achieved.

Necessarily, for a majority of the life-of-the-mine for the LMU, annual production will have to meet or exceed an average of 2½ percent. However, once the LMU is subject to continued operation, annual production *cannot be less than* 1 percent annually or based on a 3-year rolling average; otherwise, advance royalty will be due.

Note.—There is a limitation on the number of years that advance royalty can be paid for an LMU. See section VII.G. regarding Advance Royalty and Appendix C regarding potential ramifications of LMU failure.

If an LMU application shows that there are more than 40 years of reserves, then some land/coal must either be relinquished, assigned-out from the LMU, made part of another LMU, or segregated from the LMU into another separate Federal coal lease.

Note.—Once a Federal coal lease is segregated and assigned a new lease number, it remains a separate and distinct entity. If an LMU were to fail and if the lessee(s) wished to have the segregated Federal coal leases recombined, there is no appropriate authority at 43 CFR Group 3400 to consolidate the segregated Federal coal leases back into the original Federal coal lease by administrative Decision.

If the LMU application shows that the coal will be mined within 40 years, *and* if the operator fails to achieve that 40-year mine out, the LMU is subject to cancellation by State Director Decision. There is no relief from the 40-year mine-out provision.

Note.—In fact, 40 years is actually a maximum. The Secretary has discretion to impose shorter mine-out time frames. However, Department policy (as codified at 3487) is to allow the full 40-year mine-out period for any approved LMU.

If a Federal coal lease has no production during the life-of-the-mine for the LMU, and if the 40-year LMU mine-out provision is violated, the LMU must be cancelled by State Director Decision and the Federal coal lease reverts to its individual, lease-specific diligence requirements. Since there had been no production, the Federal coal lease would be automatically terminated by law. This is because that Federal coal lease, individually, would never have achieved its own diligent development by production of commercial quantities of the lease-specific recoverable coal reserves prior to the end of the lease-specific diligent development period. Other ramifications on specific Federal coal leases when an LMU fails are discussed in Appendix C.

All *lands* within the LMU must be under the effective control of a single operator. This requirement is *not* related to the "surface owner consent" requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) or the surface-owner consultation process at 43 CFR Part 3420. Where there is non-Federal land and/or non-Federal coal to be included in the LMU, the public participation procedures require that all surface owners and all coal owners, if other than the Federal Government, be notified. In addition, to demonstrate effective control, the LMU application must contain a narrative of agreements with the surface *and* coal owners, if other than the Federal Government. If necessary, hard copies of those executed agreements may have to be provided; for example, the agreements may be required to be produced as the result of a public hearing, if one is held. LMU's are formed to provide lessees a tool to develop all of their coal as a single operation and to allow coal production from anywhere within the LMU to constitute production from all *Federal* coal leases in the LMU.

Note.—An LMU approval is an agreement between the Federal Government and a non-Federal entity. Failure by the non-Federal entity to comply with that agreement constitutes a breach. Therefore, LMU cancellation is an administrative action, not a judicial action. LMU's may be cancelled by State Director Decision, for just cause, stating the cause of the cancellation.

III. LMU Approval Criteria

The application for an LMU or modification to an approved LMU must satisfy certain statutory and regulatory criteria. The AO, except for good cause stated in a Decision disapproving the LMU application, shall approve an LMU *if* the LMU application satisfies *all* of the following:

1. Within the proposed LMU boundary, the LMU recoverable coal reserves must be *capable of being developed in an efficient, economical and orderly manner as a unit,* with due regard to conservation of the recoverable coal reserves and other resources.

2. The LMU *may consist of one more Federal coal leases and* may include *intervening or adjacent lands* in which the United States does not own the coal.

3. All lands and coal in the LMU shall be under the *effective control of a single operator.*

4. All lands must be *able to be developed and operated as a single operation.* A single operation may include a series of excavations.

5. All lands within the LMU *must be contiguous* (i.e., have at least one point

in common, including cornering tracts). Intervening physical separations such as burn or outcrop lines and intervening legal separations such as rights-of-way do not destroy contiguity, as long as the legal subdivisions have at least one point in common.

6. Mining *operations must achieve MER of the Federal recoverable coal reserves* within the LMU.

7. If portions of a single Federal coal lease are to be included in more than one LMU, that Federal coal lease shall be segregated into two or more Federal coal leases,

8. If only a portion of a Federal coal lease is to be included in an LMU, the remaining land shall be segregated into another Federal coal lease.

9. The operator may apply to relinquish any portion of a Federal coal lease, segregated under item 7 or 8 above, in accordance with 3452.1, or may assign any portion of such a Federal coal lease in accordance with 3453.

10. The LMU cannot exceed 25,000 acres, including both Federal and non-Federal lands.

11. The operator must agree to the LMU approval stipulations.

IV. LMU Application Requirements

Five copies of the LMU application must be submitted to the AO. The resource recovery and protection plan (R2P2),[3] or R2P2 modification if there is a currently approved R2P2 for at least one of the Federal coal leases, will have to contain all of the requirements of §3482.1(c) for the life-of-the-mine for the LMU. (See section VII.A. regarding Resource Recovery and Protection Plan submittals for LMU's on which there is an already approved R2P2 or, for non-Federal coal, an already approved SMCRA permit.) Therefore, only information sufficient to determine satisfaction of the LMU APPROVAL CRITERIA needs to be submitted in the LMU application. The LMU application must contain a *narrative* that covers the following:

1. Name and address of the *designated operator* of the LMU § 3487.1(c)(1)]:

[3]Hereafter, R2P2 means the plan of operations submited pursuant to MLA, in accordance with § 3482.1(b) of the 1982 regulatory diligence systems, or the "mine plan" approved for Federal coal leases prior to the 1982 rulemaking.

• This is very important, as more than one operator/lessee may want its Federal Coal lease(s) included in the LMU.

2. A listing of the Federal coal lease serial numbers, a description of the land and all coal beds (including thickness and quality) within the boundary of the LMU, and an indentification of those coal beds proposed to be mined and those coal beds proposed to be excluded from any Federal coal lease which would be a part of the LMU [§ 3487.1(c)(2)]:

• The listing of all Federal coal lease serial numbers must include the name and address of all lessees with Federal coal leases proposed to be included in the LMU.

• As stated in the July 30, 1982, preamble to the 43 CFR Part 3480 rules, the rules are intended to require the operator to demonstrate his *right to enter and mine all recoverable coal reserves* contained in the proposed LMU. The legal description of all lands (Federal and non-Federal) within the proposed LMU boundary is required on a lease-by-lease basis. For the Federal portion, it most probably will be the legal land description contained in each Federal coal lease form. For non-Federal portions, the legal land description should be on a surface-owner-specific and, if applicable, coal-owner-specific basis. The requirement of a description on a surface-owner-specific basis is necessary for two reasons. First, all lands within the LMU must be under the *effective control of a single operator.* (See item 3 below.) Second, all surface and coal owners must be notified of the proposed LMU action pursuant to public participation procedures. Where the non-Federal coal owners are different from the surface owners, the legal land description is also required for that coal on a coal-owner-specific basis. The name and address of the surface and coal owners, if other than the Federal Government, must be included with the legal land description.

• A narrative describing the *surface and underground coal reserve base, minable reserve base,* and *recoverable coal reserves, by bed,* of *all* coal (Federal and non-Federal) within the proposed LMU boundary. Representative cross-sections are recommended; but, they are not required at the time of LMU application because they must be submitted with the R2P2, or R2P2 modification, that contains the entire life-of-the-mine for the LMU.

• A narrative describing that part of the *Federal coal reserve base* that the applicant intends to exclude (segregate) from the LMU, to relinquish, to assign, to not mine, or to render unminable. Represenative cross-sections are recommended; but, they are not requird unless the AO deems their submittal to be necessary in order to determine whether relinquishment would be in the public interest or that MER would not be achieved by exclusion or relinquishment, or to determine which coal will have to be segregated into another Federal coal lease(s) or LMU(s) by the exclusion [see § 3487.1(f)(3), concerning segregations and relinquishment].

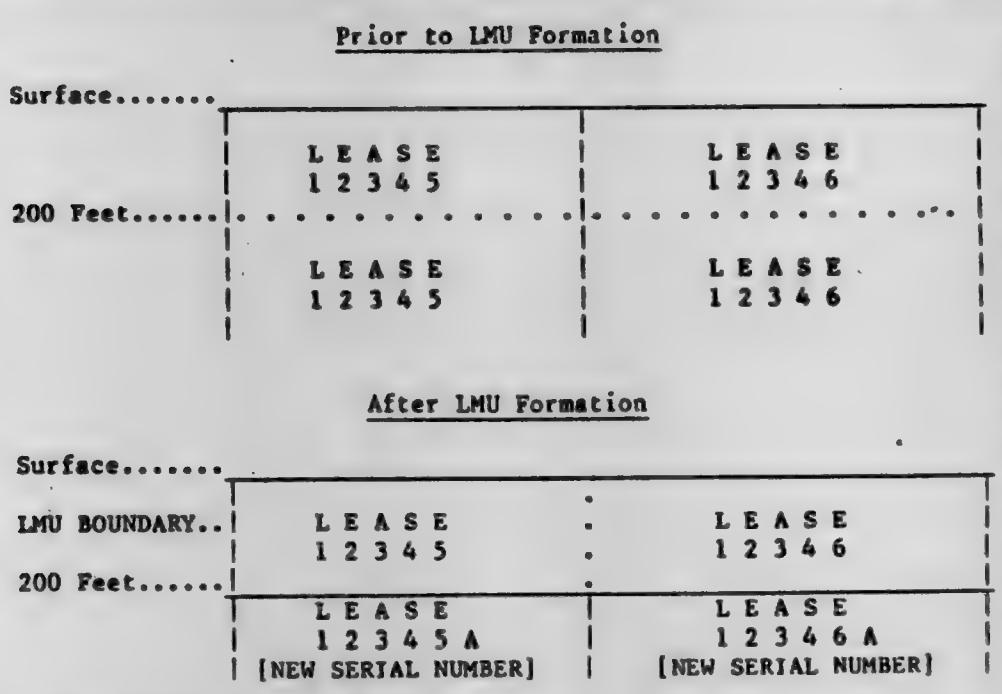
Note.—If a portion of the Federal Coal reserve base contains coal that is not recoverable (e.g., could not be recovered economically by any entity or any operation), that coal does *not* fall in the category of "not to mine, or to render unminable" for the purposes of segreation into another Federal coal lease(s) or LMU(s). Otherwise, the situation could result where the lessee would hold a Federal coal lease, by segregation, from which no Federal coal could be mined.

It would serve no purpose to either segregate such coal from the LMU or to turn coal back to the Federal Government by relinquishment.

Example—Hypothetical Vertical Segregation of Federal Coal Leases Due to LMU Formation

Assume that a lessee holds two contiguous Federal coal leases. The lessee than applies for an LMU to include both Federal coal leases, but for *only* the coal at a depth less than or equal to 200 feet. If the LMU is approved, the Federal coal lease serial numbers for the coal *in* the LMU would remain the same. However, the coal not contained in the LMU would be assigned new serial numbers on a lease-specific basis, *prior to* approval of the LMU. See diagrams that follow.

Note.—These requirements are not to be confused with the "*surface owner consent*" provisions of SMCRA or the surface owner consultation process at 43 CFR Part 3420. Since all lands must be under the effective control of a single operator, all surface and all coal to be included in the LMU must be contained.



Note.—In this example, the *lower* coal is segregated into two separate Federal coal leases, each with its own unique serial number (see **Special Note** below). Those Federal coal leases could have been assigned to a second lessee or the original lessee could still hold them as separate Federal coal leases. If the Federal coal leases that were segregated from the LMU would have to begin production to satisfy their lease-speicific diligence requirements, then mining operations could be approved, with consideration of 3484.1(c)(4) regarding multiple coal bed mining. Although it might be preferable from a management standpoint to have the lessee relinquish the lower beds, that is only one of the options available to the lessee where the LMU applicant would propose to not mine certain coal.

Special Note.—Federal coal lease segregation and assignment of new lease serial numbers are *not* Federal coal lease readjustments. The terms and conditions of Federal coal leases 12345 and 12346 would apply to Federal coal leases 12345A and 12346A, respectively, as if no segregation had occurred. [Also, see § 3484.1(c)(4), concerning the restrictions on multiple coal bed mining in determining whether MER will be achieved.]

3. Documents and related information showing all lands are under the *effective control of a single operator* and capable of being *mined as a single operation.* [§ 3487.1(c)(3)]—:

• A narrative of agreements and their effective dates for *all* lands (surface owners and coal owners, if other than the Federal Government) within the proposed LMU boundary is sufficient. For example, where the surface of a Federal coal lease is under Federal ownership, the operator/lessee automatically obtained effective control of the land as of the date of Federal coal lease issuance, any other BLM-authorized surface uses *not* withstanding. If the surface of a Federal coal lease (issued after enactment of SMCRA) is private or if there is non-Federal coal, the narrative can state, for example: "On August 1, 1980, [LMU applicant] executed a surface-owner agreement [or lease, right-of-way, or other similar agreement] with [non-Federal entity], the surface owner [coal owner (if appropriate)] of the following described lands [coal (if appropriate)];" followed by a legal description of the surface or coal, as appropriate; if the legal description is the same as decribed in item 2, a cross-reference to the appropriate legal description is sufficient.

Note.—If the lessee holds a Federal coal lease that underlies private surface, and if that Federal coal lease was issued prior to enactment of SMCRA, no surface-owner consent is necessary because the Federal coal lease issuance conferred the right-to-mine *all* coal contained in the Federal coal lease, pursuant to the surface-owner compensation limitations of the Stock Raising Homestead Act, and other applicable Acts.

• Since all surface owners and all coal owners, other than the Federal Government, must be notified individually during the public participation procedures, a narrative of effective control of the surface and of the right to enter and mine *all* recoverable coal reserves is all that is needed here. If a surface or coal owner protests the LMU formation or if a public hearing is required, documentation of the effective control by the operator/lessee will have to be produced at that time. (See also the **Note** regarding surface-owner consent in item 2 above.)

• If more than one Federal coal lessee wants Federal coal leases combined to form an LMU, then the lessees must execute an agreement that *one* designated operator has effective control of *all* the land and coal within the proposed LMU boundaries. The LMU must be under the effective control of a single operator; however, two or more Federal coal lessees may execute an agreement resulting in a joint partnership or consortium. In such an event, that partnership or consortium could be the designated operator if the executed agreement(s) so states.

• If any conditions exist that cause the land in the proposed LMU to *not* constitute a *single operation*, the proposed LMU must be reconfigured so that the LMU would constitute a single operation. Otherwise, the LMU cannot be approved. The ultimate determination as to whether the LMU will be mined as a **single operation** must be made by the responsible mining engineer and the AO, using their best professional judgment. The following examples are provided for discussion purposes only, and are not intended to set forth the sole criteria for what constitutes a single operation:

a. If coal from a single mine on the LMU is marketed through more than one separate and distinct loadout facility, each of which has its own support facilities, that most probably would constitute a single operation and would not prohibit LMU approval.

b. If the coal to be mined from two different parts of the LMU were to go to market through separate and distinct loadout facilities, each having its own support facilities, that could constitute two different operations and not allow the LMU to be approved.

c. If two mines are "related" but have separate and distinct loadout facilities and markets, they might constitute a single operation (e.g., where the existence and sequencing of two mines are dependent on each other, such as two underground mines separated vertically, but not horizontally; see § 3484.1(c)(4) concerning multiple coal-bed mining).

4. Sufficient data to allow MER determination for the Federal recoverable coal reserves [§ 3487.1(c)(4)]:

• See item 2 above regarding narrative requirements and apply them in the same manner to any coal bed, or portion thereof, proposed to not be mined or to be rendered unminable. Sufficient information concerning the non-Federal coal must be provided to allow the AO to determine that MER of the Federal recoverable coal reserves

will be achieved. For this part of the application the narrative must be in sufficient detail to justify the unmined or rendered-unminable portions.

Note.—"Unmined or rendered-unminable" includes coal proposed to be: (a) Not mined; (b) rendered unminable; (c) assigned to another entity and not included in the LMU; (d) relinquished; or, (e) segregated into another Federal coal lease of LMU.

5. Any other information required [§ 3487.1(c)(5)]:

• In order to be able to develop the LMU approval stipulations, the AO may need to ask for a narrative of a preliminary schedule that would show the intent of the LMU applicant to satisfy the diligent development and continued operation requirements to be imposed on the LMU [§ 3487.1(e)(2)]; as well as the 40-year mine out requirement [§ 3487.1(e)(6)].

• These should be simple narratives, because the R2P2, or R2P2 modification, for the LMU will have to contain all of the requirements of § 3482.1(c) for the life-of-the-mine for the LMU, and will have to show a life-of-the-mine schedule for a 40-year mine out. In addition, the estimates of the *recoverable coal reserves* will normally be preliminary and subject to revision based on new information. That information may come from exploration drilling prior to submittal of the R2P2, or R2P2 modification, for the LMU or prior to submittal of the permit application package, or from new information obtained during the mining operation such as a previously undiscovered fault that causes some of the LMU recoverable coal reserves to be rendered unminable. Once mining commences, the AO, through inspection and enforcement/production verification of the LMU, may determine that the recoverable factor is greater or lesser than originally planned. In such an event, the LMU recoverable coal reserves estimate and, LMU commercial quantities requirement would be revised accordingly.

6. Confidential information [§ 3487.1(c)(6)]:

• Treat such information in accordance with the provisions at § 3481.3

V. Consultation/Public Participation

1. Prior to approval of an LMU, the AO must consult with the LMU applicant concerning any *Federal* recoverable coal reserves that the LMU applicant either wishes to not mine, to render unminable, to assign, to relinquish or to segregate into another Federal coal lease or LMU. The AO must also consult with the LMU applicant about LMU approval stipulations that will supersede the lease-specific provisions for the duration of the LMU, in order to allow consistent application of the LMU diligence provisions (i.e., R2P2 submittal for the LMU, 40-year LMU recoverable coal reserves exhaustion requirement, diligent development, continued operation, advance royalty, and Federal rental and royalty collection requirements) [§ 3487.1(d)(1)].

• The reason for such consultations is to aid in developing the LMU stipulations under § 3487.1(e), to which the operator/lessee must agree.

2. The public participation procedures at § 3481.2, must be completed *prior to* LMU approval [§ 3487.1(d)(2)]. The consultation with the LMU applicant, as discussed above, may be done prior to *or* concurrently with the public participation procedures. Assuming the LMU application is in an approvable form, the following must be done to satisfy the public participation procedures.

• The LMU application (or application to modify an approved LMU) must be made available for public inspection in the office of the AO, with the exceptions of the confidential information, which is handled in accordance with the provisions at § 3481.3.

• The AO must post a notice of availability at his office and mail a notice of availability (*certified, return receipt requested*) to:

a. All surface and all coal owners, if other than the Federal Government, within the boundary of the proposed LMU.

b. All appropriate State and Federal Agencies (e.g., if only Federal coal and Federal surface is involved, it is only necessary to notify the Office of Surface Mining (OSM) or, if applicable, State Regulatory Authority and the Surface Management Agency, if other than BLM; however, if non-Federal coal or non-Federal surface is involved, it is necessary to notify the surface or coal owners and appropriate State Agencies, in addition to OSM).

c. The clerk or other appropriate officer in the County or Counties in which the proposed LMU would be located.

d. A local newspaper(s) of general circulation in the locality of the proposed LMU for publication at least once a week for two consecutive weeks.

• If the AO receives a written request for a public hearing from any person having a direct interest which is or may be affected adversely by the approval of the LMU, a public hearing must be held. However, the written request for such a hearing must be received within 30 days from the date of the *first newspaper publication of the notice of availability.* A complete transcript must be made available to the public at the BLM office that held the hearing. Copies of the transcript must be furnished *at cost* to anyone interested.

• The AO must consider all testimony presented at the public hearing in making a decision on whether to approve the LMU.

• Prior to final approval of an LMU, the proposed decision must also be published in a local newspaper(s) of general circulation in the locality of the proposed LMU at least once a week for two consecutive weeks. This notice may be published concurrently with the notice of availability.

Note 1.—The example notice in Appendix A–2 incorporates both the notice of availability and the notice of proposed decision.) In either event, the LMU *cannot* be approved *before* 30 days, from the date of the *first* newspaper publication of the notice of availability, has expired.

Note 2.—Appendix A contains example form letters to be used for notification of pending LMU approvals, or for pending modifications to approved LMU's, as well as the notice of availability and proposed decision mentioned above. The words contained in the brackets in Appendices A and B are the alternative phrasing that should be used, depending on the specifics of the application, for either an LMU or LMU modification.

Special Note.—Although an LMU may not be approved prior to 30 days after the first newspaper publication of the notice of availability, the *effective date* of LMU approval can be made to be the date that the LMU application was submitted by the applicant.

VI. LMU Approval Stipulations

Prior to LMU approval, the AO must transmit the LMU approval stipulations to the LMU applicant. Appendix B–1 is an example of such notification. The letter transmitting the LMU approval stipulations to the LMU applicant must contain a narrative of the criteria the AO used to determine compliance with the LMU approval criteria. The approval date for an LMU must be at least 30 days *after* the first newspaper publication of the notice of availability. If a public hearing is requested, the date of the LMU approval will be dependent on the results of that hearing. For example, if the result of the hearing is to proceed with the LMU approval, the approval date could be 30 days after the first newspaper publication of the notice of availability (i.e., backdated from the date of the hearing). If the results show that the LMU should only be approved with special stipulations, the approval date could be the date that the LMU

applicant concurs with the special stipulations following the hearing. [See the **Special Note** at the end of section V. above regarding *effective date* of LMU approval.] The LMU approval stipulations must contain the following:

1. R2P2, or R2P2 modification, for the LMU must be submitted not later than 3 years from the effective date of the most recent Federal coal lease that is subject to the 1982 regulatory diligence system prior to LMU approval. The R2P2, or R2P2 modification, for the LMU must contain all the information required by § 3482.1(c) for the life-of-the-mine for all Federal and non-Federal lands/coal within the LMU.

Note.—The LMU operator has 3 years from the effective date the most recent Federal coal lease, which is subject to the 1982 regulatory diligence system prior to LMU approval, to submit either an R2P2 for the entire LMU or a modification to the existing R2P2 that will cover the entire LMU. This applies only if there is an approved R2P2 for at least one of the Federal coal leases to be included in the LMU and, *on the date of LMU approval*, there is *no production* occurring from anywhere within the LMU. See the **Note** and **Special Note** under section VII.A. regarding Resource Recovery and Protection Plan submittal where there are ongoing mining operations at the time of LMU approval.

2. A schedule for achieving diligent development and maintaining continued operation for the LMU.

• Production of coal from anywhere within the LMU is credited toward the LMU commercial quantities requirement for LMU diligent development and/or LMU contined operation.

3. Reporting periods for Federal rental and Federal royalty payments for Federal coal leases within the LMU must be exactly the same. This provision applies to the LMU, the Federal coal lease terms shall not be so amended.

4. The superseding, *for the duration of the LMU*, of Federal coal lease terms and conditions for the individual Federal coal leases within the LMU, in order to be consistent with the LMU stipulations. This provision applies to the LMU, the Federal coal lease terms shall not be so amended. Federal *royalty rates* will not be changed by LMU formation.

Note.—As Federal coal lease readjustments occur while the Federal coal leases are in the LMU, the royalty rates and other lease-specific terms and conditions will be changed in accordance with applicable regulations. A readjustment of a Federal coal lease contained in an approved LMU does not change the approval stipulations or conditions of the LMU.

5. Estimates of the Federal and non-Federal recoverable coal reserves using data acquired by generally acceptable exploration methods.

• These estimates, determined by the responsible mining engineer and the AO using their best professional judgment, are subject to revision at the time of R2P2 submittal for the LMU, or based on new information [see § 3482.2(c)].

6. Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the date that coal is first produced from the approved LMU. This is determined during the first royalty reporting period following that date, regardless whether the production occurs from Federal or non-Federal recoverable coal reserves.

Note.—If coal is being produced from anywhere within the LMU boundary on the date of LMU approval, the 40-year clock begins on the effective date of LMU approval [§ 3487.1(e)(6)].

Special Note.—Section 2(d)(4) of MLA states: "The Secretary *may amend* the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit." (Emphasis added.) The rules at § 3475.6(b) state: "When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with *or are superseded* by the requirements imposed on the LMU of which it has become a part." (Emphasis added.) The rules at § 3487.1(e)(4) provide for "[t]he revision * * * of terms and conditions of the individual Federal leases included in the LMU * * * [by amendment of the Federal coal lease terms] so that they are consistent with the stipulations of the LMU." The LMU approval stipulations apply to all Federal and non-Federal coal and land contained in the approved LMU. The LMU approval stipulations "amend" the lease-specific diligence provisions by *superseding*, but *not suspending*, the lease-specific diligence provisions for the life-of-the-LMU. If the LMU were to fail for whatever reason, the individual, lease-specific diligence provisions would apply to the Federal coal leases as if they had never been included in an LMU. Therefore, the individual Federal coal lease terms are not to be altered by adjudicative action at the time of LMU approval.

VII. Diligence for LMU Operations

Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU *in lieu* of those diligent development and continued operation requirements that would apply to the Federal coal lease individually [§ 3483.1(c)]. See also the Appendix D entitled "Notification to Lessees Regarding, and the Monitoring of, Diligent Development and Continued Operation."

There are several methods by which a Federal coal lease becomes subject to diligence, as currently implemented by the 1982 regulatory diligence system, without LMU formation

Note.—Hereafter, for the purposes of these guidelines only, these Federal coal leases will be referred to as "subject to diligence."[3]

1. Issuance after August 4, 1976;
2. Readjustment after August 4, 1976;
3. Modification (to *add* acreage and/or recoverable coal reserves) after August 4, 1976;
4. Revision to the Federal coal lease form, to include diligence provisions, at the request of the Department of the Interior in 1980; or,
5. Election in August 1982, to have a Federal coal lease(s) be subject to the 1982 regulatory diligence system (43 CFR Part 3480) *in lieu* of the Federal coal lease terms regarding minimum production and minimum royalty.

If production has occurred from any of these Federal coal leases, after the date they became "subject to diligence" and prior to their inclusion in the LMU, then the LMU diligent development must be cedited with the production. Such production can be credited *only* toward the LMU diligent development requirement [§ 3482.2(a)(3)]. If the total credit exceeds 1 percent of the LMU recoverable coal reserves, the LMU diligent development is deemed to have been achieved on the effective date of the LMU approval. Thereafter, the LMU is subject to continued operation, beginning the first LMU royalty reporting period following the effective date of the LMU approval.

A. Resource Recovery and Protection Plan

The R2P2 for the LMU is due within 3 years from the effective date of the most recent (recent is relative to date of LMU approval) Federal coal lease that is "subject to diligence" prior to LMU approval. If the LMU contains at least one Federal coal lease that is *not* "subject to diligence," and if there is no production occurring within the LMU boundary on the date of LMU approval, the R2P2 for the LMU is due within 3 years from the effective date of LMU approval.

Note.—If there is an approved R2P2 for at least one of the Federal coal leases to be included in the LMU, and if there is no

[3] Technically, all Federal coal leases are subject to some form of diligence. For example, for Federal coal leases issued prior to August 4, 1976, the Federal coal lease terms regarding minimum production/minimum royalty are a form of diligence. Therefore, "subject to diligence" means only those Federal coal leases that are subject to the 1982 regulatory diligence system which implements the diligence provisions of MLA, as amended by FCLAA in 1976.

production occurring within in the LMU, boundary on the date of LMU approval, the LMU operator has 3 years from the effective date of the most recent Federal coal lease or, if applicable, 3 years from the effective date of LMU approval (see the preceding discussion), to submit either an R2P2 for the life-of-the-mine for the LMU, or a modification to the existing R2P2 that will cover the life-of-the-mine for the LMU.

Special Note.—The 3-year R2P2 submittal time frame for the LMU stops at the end of the 3-year anniversary of the most recent (recent is relative to LMU approval) Federal coal lease that became "subject to diligence" prior to LMU formation. However, if the LMU contains at least one Federal coal lease that is not "subject to diligence" prior to LMU formation, the 3-year R2P2 submittal time frame stops 3 years from the effective date of the LMU approval, *with two exceptions. First,* where the Federal coal lease that would control the 3-year time frame is older than 3 years at the time of LMU application, the R2P2 for the entire LMU must be submitted with the LMU application. This is because if the Federal coal lease's 3-year time frame were to govern, there would be a situation where the R2P2 for the LMU would have had to have been approved prior to the LMU application being submitted for approval. *Second,* and more importantly, if there are *ongoing mining operations on Federal or non-Federal coal* at the time of LMU approval, the R2P2 for the entire LMU must be submitted with the LMU application. This is because any production from anywhere within the LMU is applied toward the diligence obligations for the entire LMU. Therefore, in such an instance, the R2P2 for the LMU must be approved at the same time that the LMU is approved.

1. For *nonproducing* LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

Example "a":

Lease "A" issued: March 1, 1971
Lease "B" issued: February 1, 1981
Lease "C" issued: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
R2P2 for LMU due not later than: March 30, 1986

Example "b":

Lease "D" issued: April 9, 1957
Lease "E" issued: June 12, 1964
Lease "D" readjusted: April 9, 1977
Lease "F" issued: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983 [Lease "E" readjusted: June 12, 1984]
R2P2 for LMU due not later than: May 10, 1988.

2. For *nonproducing* LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example "a":

Lease "A" issued: July 7, 1977
Lease "B" issued: August 8, 1978
Lease "C" issued: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1983
R2P2 for LMU due not later than: September 9, 1985

Example "b":

Lease "D" issued: June 6, 1980
Lease "E" issued: May 5, 1979
Lease "D" readjusted: June 6, 1980
Lease "F" issued: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
R2P2 for LMU due not later than: October 10, 1985.

3. For *nonproducing* LMU's containing *only* Federal coal leases that have been "subject to diligence" for *more than 3 years* prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example:

Lease "A" issued: July 7, 1977
Lease "B" issued: August 8, 1978
Lease "C" issued: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1986
R2P2 for LMU due at the time of submittal of the LMU application
R2P2 for LMU approved: April 1, 1986.

4. For LMU's containing either a *producing* Federal coal lease or *producing* non-Federal coal, the R2P2, *must be submitted at the time of LMU application.* The LMU may not be approved without a simultaneous approval of the R2P2.

B. Diligent Development

"One percent of the total LMU recoverable coal reserves (i.e., Federal and non-Federal) contained in the approved LMU must be produced prior to the end of the LMU diligent development period." [3480.0–5(a)(13)].

The total LMU recoverable coal reserves figure (from which the 1 percent LMU commercial quantities requirement is derived) is that number estimated by the responsible mining engineer and the AO as of the date of approval of the R2P2 submitted for all Federal and non-Federal coal included in the LMU [3487.1(e)(1)]. However, if there are ongoing mining operations under a previously approved R2P2 and SMCRA permit on Federal coal or under an approved SMCRA permit on non-Federal coal, the estimate of the LMU recoverable coal reserves must be made at the time of LMU approval, based on information submitted in the LMU application and R2P2 for the life-of-the-mine for the LMU so that LMU commercial quantities production requirements can be determined.

Any adjustment to the LMU recoverable coal reserves may be accomplished by the responsible mining engineer and the AO after consultation with the operator/lessee.

Special Note.—If the LMU recoverable coal reserves are adjusted during the 10-year, LMU diligent development period, based on new information or LMU modification, the 1 percent LMU recoverable coal reserves production requirement to achieve diligent development must also be adjusted and will be effective *immediately.* (See also the *SPECIAL NOTE* under section VII.F. regarding Continued Operation.)

C. Production Crediting

The total LMU recoverable reserves figure at the time of LMU approval includes the recoverable coal reserves from Federal lands and non-Federal lands, and any production credited toward Federal coal lease diligent development *prior to* inclusion in the LMU. The time frames, from which the LMU recoverable coal reserves are estimated, follow:

1. All non-Federal recoverable coal reserves at the time of LMU formation;

2. All Federal recoverable coal reserves remaining at the time of LMU formation for Federal coal leases not yet "subject to diligence;"

3. All Federal recoverable coal reserves determined by the responsible mining engineer and the AO (for Federal coal leases "subject to diligence") to have been in existence *on the effective date that each of those Federal coal leases became "subject to diligence," not* only those recoverable reserves remaining at the time of LMU formation; and,

4. All Federal coal, produced after August 4, 1976, that the operator/lessee has requested to be credited toward Federal coal *lease* diligent development *prior to* LMU formation (i.e., *prior-production* credits).

Any *prior production* credited, at the lessee's request, toward diligent development for a Federal coal lease *prior to* inclusion of that Federal coal lease in an LMU, must also be credited toward diligent development for the LMU [§ 3482.2(a)(3)].

Note.—A request to credit prior production for a Federal coal lease contained in an approved LMU, *cannot* be accepted while that Federal coal lease is contained in the LMU. *Prior-production* crediting is only allowed toward lease-specific diligent development [§ 3483.5 (d) and (e)]. Once a Federal coal lease is included in an LMU, the

LMU-specific diligence requirements supersede the lease-specific diligence requirements. Therefore, there is no provision for allowing *prior LMU-production* credits toward LMU-specific diligent development while the Federal coal leases are contained in the approved LMU. If prior production has been credited toward lease-specific diligent development *prior to* LMU formation, that production must be credited toward LMU-specific diligent development at the time of LMU approval [§ 3483.5(g)]

D. Federal Coal Lease vs. LMU Production Credits

Under § 3483.5 (a), (b), and (c), any *production occurring after* a Federal coal lease is "subject to diligence" is credited toward diligent development for the Federal coal lease. If that Federal coal lease is included in an LMU, any production credited toward lease-specific diligent development and/or continued operation prior to LMU formation is credited toward LMU-specific diligent development. Any production from a Federal coal lease after it is included in an approved LMU is credited toward *both* lease-specific and LMU-specific diligent development and/or continued operation, if the Federal coal leases individually are "subject to diligence."

If a Federal coal lease is not "subject to diligence," production is only credited toward the LMU-specific diligent development and/or continued operation. After that Federal coal lease becomes "subject to diligence," production is also credited toward the lease-specific diligent development and/or continued operation. Once the lease-specific or, if in an LMU, the LMU-specific diligent development is achieved, the Federal coal lease or LMU is subject to its specific continued operation requirement.

Both § 3483.5(d) and (e) allow for *prior-production* credits for Federal coal leases. Those prior-production credits, by regulation, can only be applied toward *lease-specific* diligent development. Once a Federal coal lease is included in an LMU, the LMU-specific diligence requirements supersedes the lease-specific diligence requirements. Therefore, in accordance with § 3483.5(g), *no prior-production* credits can be applied to a Federal coal lease or LMU *while that Federal coal lease is contained in an approved LMU.* [See also Appendix C regarding potential ramifications of LMU failure.]

If production to achieve diligent development is occurring from non-Federal recoverable coal reserves contained in the LMU, then the AO must require the submittal of certified production reports and maps for non-Federal as well as Federal portions of the LMU. Since production from non-Federal coal would be used to satisfy a Federal requirement imposed on the LMU, section 2(d) of MLA allows the AO to require submittal of such information. Also, since non-Federal production is being used to satisfy a Federal requirement imposed on the LMU, the responsible mining engineer must verify the non-Federal production as part of his inspection and enforcement responsibilities. This requirement is addressed in Appendix B–2, LMU Approval Stipulations, under item 1. "Supervision."

Special Note:—*"Federal* coal leases" means Federal coal leases on public or acquired lands *only*. *"Non-Federal* leases" includes Indian tribal, Indian allotted, fee/private, and State coal. This is an extremely important distinction for the following reason. Production from anywhere (Federal or non-Federal coal) within the LMU is construed as occurring on all *Federal* coal leases within the LMU. However, the reverse is not true. Federal production within an LMU is *not* construed as occurring on any *non-Federal* coal leases within the LMU. For example, if an Indian coal lease, the lease form of which states that the lease lasts as long as production continues, is contained in an LMU, production from *other* non-Federal coal or from Federal coal does *not* satisfy the Indian, lease-specific production requirement, unless the Indian lease document so specifies.

E. Diligent Development Period Start Dates

1. For LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

• The LMU diligent development period begins on the effective date that the most recent (recent is relative to date of LMU approval) Federal coal lease became "subject to diligence" prior to LMU approval [§ 3480.0–5(a)(14)(ii)(B)].

Example "a":

Lease "A" issued: July 7, 1977
Lease "B" issued: August 8, 1978
Lease "C" issued: September 9, 1979
LMU approved containing leases "A", "B", and "C": April 1, 1983
LMU diligent development period begins: September 9, 1979
Latest date to achieve LMU diligent development: September 9, 1989.

Example "b":

Lease "D" issued: June 6, 1980
Lease "E" issued: May 5, 1979
Lease "D" readadjusted: June 6, 1980.
Lease "F" issued: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
LMU diligent development period begins: October 10, 1982 [Lease "D" readjusted: June 6, 1990]
Latest date to achieve LMU diligent development: October 10, 1992.

2. For LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

• The LMU diligent development period begins on the effective date of LMU approval (regardless whether the LMU also contains at least one Federal coal lease that is "subject to diligence" *prior to* LMU approval) [§ 3480.0–5(a)(14)(ii)(A)].

Example "a":

Lease "A" issued: March 1, 1971
Lease "B" issued: February 1, 1981
Lease "C" issued: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
LMU diligent development period begins: March 30, 1983 [Lease "A" readjusted: March 1, 1991]
Latest date to achieve LMU diligent development: March 30, 1993

Example "b":

Lease "D" issued: April 9, 1957
Lease "E" issued: June 12, 1964
Lease "D" readjusted: April 9, 1977
Lease "F" issued: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
LMU diligent development period begins: May 10, 1983 [Lease "E" readjusted: June 12, 1984] [Lease "D" readjusted: April 9, 1987]
Latest date to achieve LMU diligent development: May 10, 1993.

The LMU diligent development period stops at the end of the royalty reporting period in which production of 1 percent of the LMU recoverable coal reserves is achieved, or at the end of the 10-year diligent development period for the LMU, whichever comes first. Stated another way, the LMU diligent development period stops no later than the tenth anniversary of the Federal coal lease that governs the beginning of the LMU diligent development period [§ 3480.0–5(a)(14)]. In the preceding example, the governing Federal coal lease is Lease "B". Therefore, the LMU diligent development period begins on the date of LMU approval.

Note.—A pre-August 4, 1976, Federal coal lease that is not "subject to diligence" *prior to* LMU approval does *not* affect the lease-specific diligence provisions of any other Federal coal lease contained in the approved LMU. LMU diligence *supersedes* lease-specific diligence, it does *not suspend* lease-specific diligence. See the discussion below regarding LMU failure and Appendix C.

Note.—Sections VII.H. and VII.I. clarify the interrelationship of lease-specific advance royalty vs. LMU-specific advance royalty and the number of years for which advance royalty may be paid.

Failure to achieve LMU diligent development *automatically* results in the LMU being terminated. At that time, the Federal coal lease(s) reverts to its individual Federal coal lease terms that would otherwise have governed the Federal coal lease had it not been included in an LMU.

- **If, for whatever reason, the LMU fails, the Federal coal lease(s) contained in that LMU reverts to the diligence provisions that would have applied to that Federal coal lease(s), if that Federal coal lease(s) had not been included in the LMU.**
- **As long as the Federal coal leases are contained in an approved LMU and that LMU is in compliance with the LMU-specific diligence provisions, failure of a Federal coal lease to satisfy its lease-specific diligence provisions is of no consequence because the LMU-specific diligence provisions *supersede* the lease-specific diligence provisions. However, the LMU-specific diligence provisions do *not suspend* the lease-specific diligence provisions.**

Example:

Federal coal lease "A" issued: April 1, 1984
Federal coal lease "B" issued: June 18, 1986
LMU approved containing leases "A" and "B": July 15, 1988
LMU fails, for whatever reason: July 15, 1993
Latest date for Federal coal lease "A" to achieve diligent development: April 1, 1994
Latest date for Federal coal lease "B" to achieve diligent development: June 18, 1996.

- **Even though Federal coal leases "A" and "B" were contained in the LMU for 5 years, the 10-year, lease-specific diligent development periods for Federal coal leases "A" and "B" were not suspended, they were just superseded. Federal coal leases "A" and "B" must achieve diligent development by April 1, 1994, and June 18, 1996, respectively, or they will be automatically terminated by law.**

F. Continued Operation

"Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in § 3483.3." [§ 3483.1(a)(2)].

1. The first LMU continued operation year begins on the first day of the royalty reporting period immediately following the royalty reporting period in which LMU diligent development was achieved. A continued operation year ends on the last day of the royalty reporting period that completes the 12-month period.

2. At least 1 percent of the *total* LMU recoverable coal reserves (Federal *and* non-Federal) must be produced *each* continued operation year for the first 2 continued operation years following the achievement of diligent development. Thereafter, 1 percent of the LMU recoverable coal reserves must be produced for each following continued operation year, averaged on 3-year intervals (i.e., the continued operation year in question, averaged with the two preceding continued operation years).

Note.—Any adjustment to the LMU recoverable coal reserves may be accomplished by the AO after consultation with the operator/lessee.

Special Note.—If the LMU recoverable coal reserves are adjusted during the course of any continued operation year, based on new information or LMU modification, the 1 percent LMU recoverable coal reserves production requirement to maintain continued operation must also be adjusted and will be effective *beginning the next continued operation year.* (See also the *SPECIAL NOTE* under VII.B. regarding Diligent Development.)

G. Advance Royalty

Advance royalty, accepted *in lieu* of continued operation for an LMU, is paid in an amount equivalent to the production royalty that would be owed on 1 percent of the *Federal* LMU recoverable coal reserves. For LMU's, the advance royalty rate is 8 percent if the Federal LMU recoverable coal reserves will be mined only by underground mining methods. The advance royalty rate is 12½ percent if the Federal LMU recoverable coal reserves will be mined only by other methods or a combination of methods [§ 3483.4(c)].

If some production has occurred, but that production is insufficient to maintain continued operation, then advance royalty must be paid. The amount of the advance royalty is assessed on the *difference* between the coal actually produced and the production that would have been required to maintain continued operation.

If an operator knows that, in the forthcoming continued operation year, he will not produce the required 1 percent, the operator must apply to the AO for approval to pay advance royalty for that year [§ 3483.4(a)]. Such request must be made no later than 30 days after the beginning of that continued operation year [§ 3483.4(b)].

If an operator requests authorization *later than* 30 days after the beginning of that continued operation year, the AO *may* condition his approval of the advance royalty payment on the payment of a late-payment charge on the amount of the advance royalty due [§ 3483.4(b)]. This provision allows for those instances where the operator is producing but, for whatever reason, fails to produce the required 1 percent of the LMU recoverable coal reserves during a continued operation year. The late payment charge, if required, shall be calculated by the Minerals Management Service in accordance with 30 CFR 218.200.

Production from anywhere within an LMU is construed as occurring on all Federal coal leases within the LMU; *this does not apply vice versa* (see the *SPECIAL NOTE* in VII.D. regarding "Federal" vs. "non-Federal" coal leases). Therefore, if *LMU* continued operation is not met, some advance royalty is due, prorated against the amount of Federal vs. non-Federal recoverable coal reserves in the LMU, regardless whether production was greater than 1 percent of the Federal portion of that LMU. The LMU ADVANCE ROYALTY FORMULA, based on such prorating, was developed to determine the amount of advance royalty due (see VII.H. below).

For example, if an LMU contains Federal recoverable coal reserves of 25 million tons and non-Federal recoverable coal reserves of 75 million tons, the 1 percent commercial quantities requirement is 1 million tons; however, the advance royalty is based on only 250,000 tons. If during a continued operation year only 500,000 tons were produced, the LMU continued operation requirement would not have been met. Therefore, advance royalty is due. Again LMU advance royalty is based only on the *Federal* portion of the total LMU recoverable coal reserves.

H. Amount of Advance Royalty Due

As with nonproducing Federal coal leases, nonproducing LMU's can satisfy the condition of continued operation by payment of advance royalty *either:* (1) During the continued operation year in question or, (2) averaged over a 3-year period (the continued operation year in question plus the 2 preceding continued operation years). As long as the condition of continued operation is being satisfied by payment of advance royalty in *either* instance, the LMU is in

compliance with the condition of continued operation.

In order to determine the amount of LMU advance royalty due, use the following:

1. Was 1 percent produced during the continued operation year?
   a. Yes, no advance royalty due.
   b. No, go to 2.
2. Was 3 percent or more produced during the continued operation year plus the 2 preceding continued operation years, thereby satisfying the regulatory 3-year rolling average provision?
   a. Yes, no advance royalty due.
   b. No, advance royalty *is* due.

Note.—For the first 2 LMU continued operation years, *advance royalty is paid on* 1 percent of the *Federal LMU* recoverable coal *reserves prorated against* the *total LMU* recoverable coal *reserves*. Thereafter, advance royalty is paid on 1 percent of the prorated Federal LMU recoverable coal reserves for the continued operation year in question *or* 3 percent of the prorated Federal LMU recoverable coal reserves for the continued operation year plus the 2 preceding continued operation years, *whichever is less*.

LMU Advance Royalty Formula

$$ARD=[COPR-COYP]\times\frac{ARB}{COYR}\times ARR\times UV$$

Where ARD = Advance Royalty Due
COYR = Continued Operation Year *Production Requirement* (i.e., 1 percent of total recoverable coal reserves, Federal plus non-Federal, in LMU)
COYP = *Total LMU Production Achieved*, Federal plus non-Federal, During Continued Operation Year
ARB-Advance Royalty Base (i.e., 1 percent of *Federal recoverable coal reserves* in LMU)
ARR = LMU Advance Royalty Rate (e.g., 12½ percent, or 8 percent, as applicable)
UV = Unit Value (determined under § 3485.2(g))

Note.—The COYR equals 1 percent of the *total* LMU recoverable coal reserves. The ARB equals 1 percent of the *Federal* recoverable coal reserves in the LMU. Therefore, COYR and ARB are equal *only if* the LMU contains no non-Federal coal.

The ARB and COYP are LMU-specific, regardless from which coal the conditions were being satisfied. If the LMU is in the 3-year rolling average for continued operation, a determination must be made as to whether the LMU produced 1 percent in the continued operation year in question *or* an average of 1 percent during the continued operation year in question plus the 2 preceding continued operation years.

To determine the amount of advance royalty due for an LMU, compare the *total tons* that should have been produced to maintain continued operation for the year in question with the *total tons* that should have been produced to maintain continued operation for the 3-year period consisting of the continued operation year in question plus the 2 preceding continued operation years. The LMU advance royalty due will be assessed on the lesser of the two amounts. After determining which of the two is the lesser *total tons* that would satisfy either condition of continued operation, use the LMU ADVANCE ROYALTY FORMULA to determine the amount due.

If the 3-year rolling average results in the lesser *total tons* the LMU ADVANCE ROYALTY FORMULA term "[COYR−COYP]" is calculated as follows:

COYR = 3 Continued Operation Years' *Production Requirement* (i.e., 3 percent of *total recoverable coal reserves*, Federal plus non-Federal, in LMU)
COYP = *Total LMU Production Achieved*, Federal plus non-Federal, During the Continued Operation Year *plus* the 2 Preceding Continued Operation Years

The rest of the LMU ADVANCE ROYALTY FORMULA remains unchanged.

The following shows one example of how the LMU ADVANCE ROYALTY FORMULA can be used to determine the amount of advance royalty due.

Example: Assume the total LMU recoverable coal reserves are 100,000,000 tons and the total Federal recoverable coal reserves are 75,000,000 tons. The 1 percent commercial quantities requirement is 1,000,000 tons. The LMU has achieved diligent development.

Continued Operation Year (COY)	1	2	3	4	5	6	7	8	9
Recoverable Coal Reserves Produced (Million Tons)	1.0	1.0	5.0	0.0	0.5	1.8	0.8	0.2	0.3
Production on which Advance Royalty Due (Million Tons)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.7

Is advance royalty due and, if so, on what percent of the Federal recoverable coal reserves is the advance royalty to be paid?

COY–1: 1,000,000 tons produced, no advance royalty due.
COY–2: 1,000,000 tons produced, no advance royalty due.
COY–3: 5,000,000 tons produced, no advance royalty due.
COY–4: 0 tons produced, no advance royalty due.
COY–2+COY–3+COY–4=6,000,000 tons.
Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.
COY–5: 500,000 tons produced, is advance royalty due?
COY–3+COY–4+COY–5=5,500,000 tons.
Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.
COY–6: 1,800,000 tons produced, no advance royalty due.
COY–7: 800,000 tons produced, is advance royalty due?
COY–5+COY–6+COY–7=3,100,000 tons.
Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.
COY–8: 200,000 tons produced, is advance royalty due?
COY–8 production is less than 1,000,000 tons.
COY–6+COY–7+COY–8=2,800,000 tons.
Therefore, the LMU has also not produced more than 3,000,000 tons over the 3 years in question; on what amount of production is advance royalty due?
COY–8: 1.0−0.2=800,000 tons.
COY–6/COY–7/COY–8:
3,000,000−2,800,000=200,000 tons.
Advance royalty must be paid on *200,000* tons, times the Advance Royalty Base, divided by *1,000,000* tons. This is the *lesser amount* required to satisfy either condition of continued operation.

$$ARD=[COYR-COYP]\times\frac{ARB}{COYR}\times APP\times UV$$

Because the *3-year rolling average concept applies* for COY–8;

[COYR−COYP]=[3,000,000 tons−2,800,000 tons]=*200,000 tons*
COYR=1,000,000 tons

ARB=0.01×75,000,000 tons=750,000 tons

Therefore:

$$ARD=[200{,}000\text{ tons}]\times\frac{750{,}000\text{ tons}}{1{,}000{,}000\text{ tons}}\times ARR\times UV$$

COY–9: 300,000 tons produced, is advance royalty due?
COY–9 production is less than 1,000,000 tons.
COY–7+COY–8+COY–9+1,300,000 tons.
Therefore, the LMU has also not produced more than 3,000,000 tons over the 3 years in question; on what amount of production is advance royalty due?

COY–9: 1,000,000−300,000=700,000 tons.
COY–7/COY–8/COY–9:
3,000,000−1,300,000=1,700,000 tons.
Advance royalty must be paid on *700,000* tons, times the Advance Royalty Base divided by *1,000,000* tons. This is the *lesser amount* required to satisfy either condition of continued operation.

$$ARD=[COYR-COYP]\times\frac{ARB}{COYR}\times ARR\times UV$$

Because the *continued operation year in question applies* for COY–9,
[COYR−COYP]=[1,000,000 tons−300,000 tons]=*700,000 tons*

COYR=1,000,000 tons
ARB=0.01×75,000,000 tons=750,000 tons
Therefore:

$$ARD=[700{,}000\text{ tons}]\times\frac{750{,}000\text{ tons}}{1{,}000{,}000\text{ tons}}\times ARR\times UV$$

Note.—See Appendix C for a discussion of potential ramifications of LMU failure.

I. Number of Times Advance Royalty May Be Paid for LMU's

Advance royalty can only be paid a total of 10 times. This is true regardless whether it is being paid *in lieu* of lease-specific or LMU-specific continued operation. However, the number of years for which LMU advance royalty may be paid is governed by the Federal coal lease that is *least harmful* to the LMU.

Note.—This specific condition is the only LMU, diligence-governing situation that *may* not be tied to the most recent (recent is relative to LMU approval) Federal coal lease that is "subject to diligence" prior to LMU formation. That is, the Federal coal lease with the fewest number of years for which advance royalty has been paid dictates the number of times that advance royalty can be paid for the LMU.

Example "a": LMU formed containing two Federal coal leases that are "subject to diligence." One of the Federal coal leases has paid advance royalty twice, the other has not paid advance royalty. How many times may advance royalty be paid for the LMU? *Ten.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. Since one Federal coal lease has not paid advance royalty prior to LMU formation, it can have advance royalty paid for it ten times. Therefore, so can the LMU.

Example "b": LMU formed containing two Federal coal leases that are "subject to diligence." One of the Federal coal leases has paid advance royalty three times, the other has paid four times. How many times may advance royalty be paid for the LMU? *Seven.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. The Federal coal lease with the fewest number of advance royalty payments dictates the number of times that advance royalty may be paid for the LMU.

Example "c": LMU formed containing two Federal coal leases; one is "subject to diligence," the other is not "subject to diligence." The one that is "subject to diligence" has paid advance royalty ten times. How many times may advance royalty be paid for the LMU? *Ten.* This is because KMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. The Federal coal lease that is not "subject to diligence" has never had the option to pay advance royalty *in lieu* of continued operation; therefore, the LMU has the full ten times that advance royalty may be paid *in lieu* of LMU continued operation.

Note.—The *date* that the Federal coal leases, individually, became "subject to diligence" prior to LMU formation *does not affect* the number of times that advance royalty may be paid for an LMU.

Special Note.—See Appendix C concerning potential ramifications of LMU failure.

J. Initial 20-Year Period Available for Payment of Advance Royalty for LMU's

Advance royalty can *only* be paid during the initial 20-year period that a Federal coal lease is "subject to diligence." This limitation carries over to LMU's, where the LMU 20-year period is dictated by the most recent (recent is relative to LMU approval) Federal coal lease that is "subject to diligence" prior to LMU formation. The end of this initial 20-year period available for the payment of advance royalty is dictated by the fact that a Federal coal lease is effective "* * * for twenty years and for so long thereafter as coal is produced annually in commercial quantities * * *." 30 U.S.C. 207(a). Therefore, no advance royalty can be paid after the initial 20-year period has expired. Similarly, advance royalty paid during that initial 20-year period cannot be credited against production royalty after that initial 20-year period has expired.

The initial 20-year period for each individual Federal coal lease starts on the effective date that the Federal coal lease becomes "subject to diligence." The most recent (recent is relative to LMU approval) date of all Federal coal leases contained in the LMU dictates how many years of an initial 20-year period are left for the LMU.

1. For LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example "a":

Lease "A" issued and begins its initial 20-year period: July 7, 1977.

Lease "B" issued and begins its initial 20-year period: August 8, 1978.

Lease "C" issued and begins its initial 20-year period: September 9, 1982.

LMU approved containing leases "A", "B", and "C": April 1, 1983.

LMU initial 20-year period begins: September 9, 1982.

[Lease "A" readjusted: July 7, 1997.]

[Lease "B" readjusted: August 8, 1998.]

[Lease "C" readjusted: September 9, 2002.]

LMU initial 20-year period ends: September 9, 2002.

Example "b":

Lease "D" issued: June 6, 1960.

Lease "E" issued and begins its initial 20-year period: May 5, 1979.

Lease "D" readjusted and begins its initial 20-year period: June 6, 1980.

Lease "F" issued and begins its initial 20-year period: October 10, 1982.

LMU approved containing leases "D", "E", and "F": April 2, 1983.

LMU initial 20-year period begins: October 10, 1982.

[Lease "D" readjusted again: June 6, 1990.]

[Lease "E" readjusted: May 5, 1999.]

[Lease "D" readjusted again: June 6, 2000.]

[Lease "F" readjusted: October 10, 2002.]

LMU initial 20-year period ends: October 10, 2002.

2. For LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

Example "a":

Lease "A" issued: March 1, 1971.

Lease "B" issued and begins its initial 20-year period: February 1, 1981.

Lease "C" issued and begins its initial 20-year period: January 2, 1982.

LMU approved containing leases "A", "B", and "C": March 30, 1983.

LMU initial 20-year period begins: March 30, 1983.

[Lease "A" readjusted and begins its initial 20-year period: March 1, 1991.]

[Lease "B" readjusted: February 1, 2001.]

[Lease "A" readjusted again: March 1, 2001.]

[Lease "C" readjusted: February 2, 2002.]

LMU initial 20-year period ends: March 30, 2003.

Example "b":

Lease "D" issued: April 9, 1957.

Lease "E" issued: June 12, 1964.

Lease "D" readjusted and begins its initial 20-year period: April 9, 1977.

Lease "F" issued and begins its initial 20-year period: January 15, 1981.

LMU approved containing leases "D", "E", and "F": May 10, 1983.

LMU initial 20-year period begins: May 10, 1983.

[Lease "E" readjusted and begins its initial 20-year period: June 12, 1984.]

[Lease "D" readjusted again: April 9, 1987.]

[Lease "E" readjusted again: June 12, 1994.]

[Lease "D" readjusted again: April 9, 1997.]

[Lease "F" readjusted: January 15, 2001.]

LMU initial 20-year ends: May 10, 2003.

VIII. LMU Modifications

The boundaries of an LMU may be modified upon application by the operator/lessee and approval by the AO, or the AO may direct that the LMU be modified; the AO may adjust the estimate of LMU recoverable coal reserves either upward or downward, based on new information such as a previously undetected fault that renders some of the LMU recoverable coal reserves unminable; the LMU may be enlarged by the addition of other Federal coal leases, with interests in non-Federal coal, or both; and, the LMU boundaries may also be enlarged as a result of the enlargement of a Federal coal lease. The LMU may be diminished by the deletion (e.g., assignment or relinquishment) of other Federal coal leases, deletion of non-Federal coal, or both; and, the LMU may be diminished as a result of the diminishment of a Federal coal lease (e.g., partial assignment).

1. Based on new information, any adjustment to the LMU recoverable coal reserves may be accomplished by the AO after consultation with the operator/lessee. For example, if development drilling shows that the initial LMU recoverable coal reserves estimate was too small, as verified by the responsible mining engineer, the AO shall notify the LMU operator of the revised LMU recoverable coal reserves estimate and the revised LMU commercial quantities requirements. These data must also be updated in the Solid Leasable Minerals System LMU data base. The LMU recoverable coal reserves, upon which the 1 percent commercial quantities requirement is based, *cannot decrease due to production* from the LMU.

2. If the LMU recoverable coal reserves are adjusted, based on new information or LMU modification, prior to the LMU achieving diligent development, the 1 percent LMU commercial quantities requirement must also be adjusted, effective on the date of the adjustment or LMU modification. However, the LMU 10-year diligent development period is *not* extended by an LMU modification.

• If unmined LMU recoverable coal reserves are *decreased* by the adjustment or modification, the LMU may already have produced 1 percent of the new LMU recoverable coal reserves figure; thus, the LMU would be deemed to have achieved diligent development on the effective date of the adjustment or modification. In this case, the first continued operation year would begin on the first LMU royalty reporting period following the effective date of the adjustment or modification. In this case, the first continued operation year would begin on the first LMU royalty reporting period following the effective date of the adjustment or modification. See also the discussion on DILIGENCE FOR LMU OPERATIONS.

3. The 40-year LMU recoverable coal reserves exhaustion date, that has already been determined due to the commencement of production from the approved LMU, cannot be extended due to the subsequent enlargement or diminishment of the LMU recoverable coal reserves [§ 3487.1(g)(4)], or based on new information that results in the revision of the LMU recoverable coal reserves. For example, were an LMU to be approved that contained the original LMU and other lands, the new LMU would still have the same 40-year mine-out requirement date as the original LMU. If land and/or recoverable coal reserves are added or deleted from the LMU, the 40-year requirement is unaffected. The effect of adding or deleting recoverable coal reserves and the LMU commercial quantities requirement for LMU-specific diligent development and continued operation.

IX. LMU Failure/Cancellation

An LMU may fail for various reasons. Appendix C addresses LMU failure based on several of these reasons. An LMU may be cancelled by State Director Decision, for just cause, stating the cause of the cancellation.

An LMU may be cancelled upon application of the operator/lessee and approval by the AO. For example, if an LMU contains one Federal coal lease and non-Federal coal, and if all of the Federal recoverable coal reserves have been mined out, there normally is no reason for continuation of the LMU. As long as the operator/lessee has complied with all applicable statutes, such as the reclamation obligations pursuant to SMCRA, and as long as the Federal coal lease royalty management account is in good standing, the operator/lessee may then apply for Federal coal lease relinquishment.

Upon cancellation of an LMU, the Federal coal leases are again "subject to diligence" on an individual, lease-specific basis. The lease-specific diligence provisions are those that would have applied to the Federal coal leases as if they had never been included in an approved LMU. See also Appendix C regarding potential ramifications of LMU failure.

X. General Statement on Processing LMU Applications

As stated in the Department's Draft Guidelines on section 2(a)(2)(A) of MLA (50 FR 6398, 6406), BLM will develop rules to provide for the timely processing of "* * * LMU's within a

specific period of time that will be established in the rules."

Appendix A–1—Example Notification Letter to Non-Federal Surface, or Non-Federal Coal, Owner

Must Be Mailed Certified, Return Receipt Requested

[Surface Owner]

[Address]

Dear Mr./Ms. ———:

Enclosed is a copy of a public notice of availability and proposed effective date for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and private and/or State lands and/or Indian lands (if there are any non-Federal lands to be included in the LMU)], part of which you are the surface [and/or coal (if appropriate)] owner. The LMU applicant has informed us that he has an agreement in the form of [insert the type of agreement: e.g., legal document, copy of a letter of agreement between the LMU applicant and the surface and/or coal owner] providing him effective control of the lands [and coal (if appropriate)] within the proposed LMU [modification (if appropriate)] boundaries. The lands stated to be covered by the agreement are contained in the public notice of availability. If you have any comments concerning the approval of this LMU application [modification to the approved LMU (if appropriate)], please inform this office within 30 days from receipt of this letter.

Sincerely yours,

[Authorized Officer]

Enclosure.
[Notice of Availability.]

Appendix A–2—Example Notice Incorporating Both the Notice of Availability and Notice of Proposed Decision

Notice

APPLICATION FOR LOGICAL MINING UNIT [MODIFICATION (if appropriate)] APPROVAL AND PROPOSED EFFECTIVE DATE OF APPROVAL [if both notices are combined, as in this example]

The [insert the appropriate name of the] Office of the Bureau of Land Management has received an application from [insert the name and address of the LMU applicant] for a logical mining unit (LMU) [modification of an approved LMU (if appropriate)] in accordance with 43 CFR Part 3487. The application for the proposed LMU [modification (if appropriate)] is available for review at [insert the address of the responsible BLM Office].

The proposed LMU [modification (if appropriate)] contains lands from [insert the number of] Federal coal leases [and non-Federal lands (if appropriate)]. The descriptions of the lands contained within each Federal coal lease [and other lands (if appropriate)] and which are to form the LMU [modification (if appropriate)] are as follows:

Federal coal		Land
		Description
Lease No.	Acreage	[(in Principle Meridian/) (Township/Range/Section/) (Lot or, if appropriate,) (Latitude/Longitude/) (Metes/Bounds)]
Non-Federal		
Lands	Acreage	[description, as above]
Total acreage: [Sum of the above].		

The approval of this application is proposed to be effective [insert the date of the LMU application or other date, as appropriate (see Special Note in Section V.)].

Any comments concerning the approval of this LMU application [modification (if appropriate)] should be sent, within 14 days of this notice, to:

[Originating BLM Office]

[Address]

Appendix A–3—Example Notification Letter to Federal or State Agency

Must Be Mailed Certified, Return Receipt Requested

[Federal (or State) Agency]

[Address]

Dear Mr./Ms. ———: Enclosed is a copy of a public notice of availability and proposed effective date for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and non-Federal lands (if appropriate), located in [State name(s)].

According to 43 CFR Part 3487, a notice of availability for any proposed LMU or proposed modification to an approved LMU shall be sent to appropriate Federal and State Agencies. If you have any questions regarding this LMU application [proposed modification to the approved LMU (if appropriate)], please telephone [name of the Authorized Officer] directly at [commercial telephone number], FTS ——. If you have any comments on this LMU application [proposed modification to the approved LMU (if appropriate)], Please send them to [originating BLM Office address] within 14 days.

Sincerely yours,

[Authorized Officer]

Enclosure

[Notice of Availability]

Appendix A–4—Example Notification Letter to County Clerk

Must be Mailed Certified, Return Receipt Requested

[Name]

County Clerk, [Name of] County

[Address]

Dear Mr./Ms. ———: Enclosed is a copy of a public notice of availability and proposed effective date for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and non-Federal lands (if appropriate)], part [All (if appropriate)] of which is located in [name of] County.

According to 43 CFR 3481.2, a notice of availability for any proposed LMU or proposed modification to an approved LMU shall be posted for public viewing in appropriate County Offices in the County or Counties in which the proposed LMU [modification (if appropriate)] is located.

Please post a copy of this letter and notice in your office for 30 days, beginning upon receipt of this letter. If your have any questions regarding this LMU application [proposed modification to the approved LMU (if appropriate)], please contact [name of the Authorized Officer] on [commercial telephone number]. If you have any comments on this LMU application [proposed modification to the approved LMU (if appropriate)], please send them to [originating BLM Office address] within 14 days.

Thanks you for your time and consideration.

Sincerely yours,

[Authorized Officer]

Enclosure

[Notice of Availability]

Appendix A–5—Example Notification Letter to Newspaper

Must be Mailed Certified, Return Receipt Requested

Publisher: [Name of] Newspaper

[Address]

Dear Sir or Madam: Enclosed are three copies of the *Advertising Order*, Form SF–1143. Public Voucher for Advertising appears on the reverse of the *Advertising Order* and should be used by you for the purpose of settling accounts for amounts due.

To facilitate the settling of accounts, please furnish a copy of each publication to the above address, attention: [Name of Authorized Officer]. Include with this published copy all charges for publication. These charges should be placed on the Public Voucher form, as stated on the form.

Failure to comply with the above requirements may prevent or delay the settlement of your account.

Thank you for your time and consideration.

Sincerely yours,

[Authorized Officer]

Enclosures

[Advertising Order]

[Notice of Availability]

Appendix B–1—Notification, to LMU Applicants, of LMU Approval Stipulations, and Request for LMU Applicant Acceptance

Must be Mailed Certified, Return Receipt Requested

In Reply Refer To:

[Appropriate Code]

[List of Federal]

[Coal Lease Serial]

[Number(s)]

[LMU Applicant Name and Address]

Dear Mr./Ms.———: We have completed our review of your logical mining unit (LMU) application [application to modify your logical mining unit (LMU) (if appropriate)], and have determined that it is in conformance with the basic approval criteria

for LMU's. This determination is based on the following:

1. The LMU recoverable coal reserves are capable of being developed in an efficient, economical and orderly manner as a unit, with due regard to conservation of the recoverable coal reserves and other resources. [Insert a statement listing or discussing the criteria the AO used to arrive at this conclusion; e.g., "This statement is based on review by the responsible mining engineer of the LMU application and proposed sequencing and scheduling of development."]

2. All lands in the LMU are under the effective control of a single operator. [Insert justification statement; for example, cite the agreement of, or designation statement for, the designated operator and include the designated operator's name.]

3. All lands within the LMU will be developed and operated as a single operation. [Insert justification statement.]

4. All lands within the LMU boundaries are contiguous. [Insert justification statement; e.g., "A review of the legal land-descriptions for all land and coal shows that the lands and coal have at least one point in common."]

5. Mining operations will achieve maximum economic recovery of the Federal recoverable coal reserves within the LMU. [Insert brief justification statement.]

6. No Federal coal leases to be included in this LMU are included in another LMU. [Otherwise, the AO must segregate such Federal coal leases into two or more Federal coal leases.]

7. The *total* acreage of the proposed LMU does not exceed 25,000 acres. [Insert justification statement in the same format as in number 4. above.]

8. [If only a portion of a Federal coal lease is to be included in the LMU, a statement must be made that the remaining land must be segregated into another Federal coal lease or that the operator may apply to relinquish the remaining land in accordance with 43 CFR 3452.1, or may apply to assign the remaining land in accordance with 43 CFR Part 3453.]

Enclosed are two copies of the stipulations of approval for your LMU application [application to modify your approved LMU (if appropriate)]. If we do not receive a response from you within 30 days of your receipt of this letter, we will assume that you no longer want to have the LMU formed [modified (if appropriate)], and the Federal coal leases [existing LMU (if appropriate) will remain subject to their (its (if appropriate)] individual Federal coal lease [LMU (if appropriate)] terms. If you concur with the stipulations, please sign and date both copies and return one original to this office. The LMU [modification (if appropriate)] will be effective on [insert the date that is 30 days after the first newspaper publication of the notice of availability and proposed decision], unless a public hearing is requested. If a public hearing is requested, the effective date of LMU approval [approval of the LMU modification (if appropriate)] will be dependent on the results of that hearing. If you have any questions, please contact [Name of Authorized Officer] of this Office at [insert commercial telephone number].

Sincerely,

[State Director]

Enclosure: 2 copies of [Name] Logical Mining Unit Stipulations.

Note.— The *name* of the LMU should be the mine name to be] [associated with the LMU. If there is no mine name, use] [another identifier that would enable the name of the LMU] [to be distinctive. This is necessary because an operator] [may have two LMU's near each other. This is *not* the LMU] [*number*, which is assigned by WO–660 in the Solid Leasable] [Minerals System data base.

Appendix B–2—[Name (see Note at End of This Appendix)] Logical Mining Unit Stipulations

1. Supervision

The District Manager located at Bureau of Land Management, [insert appropriate office address], is responsible for the review and approval of exploration plans and operations, and modifications thereto, prior to the commencement of mining operations within a permit area approved pursuant to the Surface Mining Control and Reclamation Act of 1977. That District Manager is also responsible for review and approval of resource recovery and protection plans and modifications thereto. That District Manager is also responsible for inspection and enforcement, including production verification, of such operations and all lands and all coal within the logical mining unit (LMU) and for implementing all other applicable provisions of the 43 CFR Group 3400 rules.

2. Resource Recovery and Protection Plan

In accordance with the requirements of 43 CFR 3482.1(b), [insert name of LMU applicant] shall submit a resource recovery and protection plan (R2P2) to the District Manager no later than [insert the date that is 3 years from the effective date that the most recent Federal coal lease became "subject to diligence" prior to the proposed effective date of the LMU approval (or, if the LMU will contain at least one Federal coal lease that is not "subject to diligence" prior to LMU approval, insert the date that is 3 years from the proposed effective date of the LMU approval). See the guidelines—VII.A.3. for an exception that requires the R2P2 to be submitted prior to LMU approval; that R2P2 must be approved at the time of LMU approval.]. The R2P2 must contain all the requirements of 43 CFR 3482.1(c) for the life-of-the-mine for the LMU. If there is a previously approved R2P2 for at least one Federal coal lease contained in the LMU, [insert name of LMU applicant] may opt to submit an R2P2 for the entire LMU or submit a modification to the existing R2P2 to enable it to cover the life-of-the-mine for the LMU. If [insert name of LMU applicant] decides to modify the existing R2P2, such modification shall be submitted to the District Manager within 3 years from the date listed above. If production is occurring from anywhere within the LMU, the R2P2 must be submitted for approval prior to approval of the LMU; that R2P2 must be approvable and be approved at the time the LMU is approved.

3. Diligent Development and Continued Operation

Pursuant to 43 CFR 3480.0–5(a)(14)(ii)[(A)], the diligent development period for the LMU begins on the effective date of LMU approval [[OR] (B), the diligent development period for the LMU began on [insert the effective date that the most recent Federal coal lease became "subject to diligence" prior to the effective date of LMU approval

Note.—Paragraph (A) applies if at least one of the Federal coal leases to be included in the LMU was issued prior to August 4, 1970, and is not yet "subject to diligence." Paragraph (B) applies in all other cases.]]. Therefore, the LMU must have production of commercial quantities before [insert the date that is 10 years from the effective date of the 10-year diligent development period as stated in the previous sentence.] [Name of LMU applicant] must mine [insert 1 percent of the estimated *total* Federal and non-Federal recoverable coal reserves] from anywhere within the LMU to achieve diligent development and, thereafter, to maintain continued operation or request to be allowed to pay advance royalty in lieu of continued operation.

4. Advance Royalty

The number of years for which advance royalty may be paid *in lieu* of continued operation is [insert the maximum number of years that is left for the Federal coal leases considered individually (see section VII. I. of these guidelines)]. Advance royalty may be paid *in lieu* of continued operation only until [insert the date that is 20 years from the date that the most recent Federal coal lease became "subject to diligence" (see section VII.]. of these guidelines)]. No advance royalty paid prior to that date may be credited against production royalty after that date.

5. Reporting Period

The rental amount for each Federal coal lease is to be prorated to the effective date of the LMU. Thereafter, the LMU rentals for all Federal coal leases within the LMU will be due in lump sum on each annual anniversary of the effective date of LMU approval. Upon approval and for the duration of this LMU, no Federal rentals may be credited against production royalties for any Federal coal lease contained in the LMU, the Federal coal lease terms of which allowed for such credits prior to the effective date of the LMU.

Royalties for Federal recoverable coal reserves produced within the LMU will be paid in lump sum, identified by individual Federal coal lease on the Coal Production and Royalty Reporting Form 9–373A

Note.—When Royalty Management of the Minerals Management Service obtains approval for a new form and number, this title and number must be changed to reflect that new form.

every royalty reporting period. The LMU royalty reporting period will be on a monthly basis beginning the royalty reporting period after the date that coal is first produced from the LMU, following the effective date of LMU approval. If coal is being produced on the

effective date of LMU approval, the first royalty reporting period will begin the first day of the month following the effective date of the LMU approval. Since all production within an LMU is credited to the entire LMU, a certified record of all non-Federal LMU coal production must be provided to the District Manager every royalty reporting period. Progress maps and reports required by 43 CFR 3482.3 shall show *all* Federal *and* non-Federal production from anywhere within the LMU.

8. Recoverable Coal Reserves Exhaustion

The 40-year LMU recoverable coal reserves exhaustion period commences the date that coal is first produced from the LMU, following the effective date of LMU approval. If there is production occurring within the LMU on the effective date of LMU approval, the 40-year clock begins on the effective date of LMU approval.

9. Other

If the LMU, of which this [these (if appropriate)] Federal coal lease is [leases are (if appropriate)] a part, fails for whatever reason, the Federal coal lease[s] will automatically be subject to the diligence provisions that otherwise would have applied had the Federal coal lease[s] not been included in an LMU.

I hereby agree to the above-listed LMU approval stipulations.

[Signature of LMU Applicant] _____,
[Name of LMU Applicant Company]
Date _____

[Note.—The *name of* the LMU should be the mine name to be] [associated with the LMU. If there is no mine name, use] [another identifier that would enable the name of the LMU] [to be distinctive. This is necessary because an operator] [may have two LMU's near each other. This is *not* the LMU] [*number*, which is assigned by WO–660 in the Solid Leasable] [Minerals System data base.]

[Special Note.— If these are LMU *Modification* Stipulations,] [stipulation 1 should be repeated from the] [original LMU approval stipulations; stipulation 2] [must be revised to state that the approved R2P2] [must be modified within 3 years of the effective] [date of the modification to address the modified] [area, or modified prior to commencement of mining] [operations in the modified area, whichever occurs] [first; and stipulation 3 should state that the] [original LMU approval stipulations are not] [altered by the approval of the modification.]

Appendix C–1—Potential Ramifications of LMU Failure

Special Note.—Any potential LMU failure must be coordinated with WO–660 in order to determine the Federal coal lease(s) compliance with the diligence provisions that will now govern the Federal coal leases on a lease-specific basis.

An LMU may fail for several reasons, including, but not limited to:

1. Failure to comply with LMU approval stipulations;

2. Failure to submit the R2P2 or modification to an approved R2P2, for the LMU within the applicable 3-year time period;

3. Failure to achieve diligent development within the 10-year LMU diligent development period;

4. Failure to maintain LMU continued operation or, *in lieu* thereof, to pay advance royalty;

5. Failure to achieve the LMU, 40-year recoverable coal reserves mine out; and,

6. For other reasons (e.g., failure to pay rental or royalty, or failure to comply with a notice of noncompliance).

There are several factors that must be considered on a lease-specific basis when an LMU fails, including, but not limited to:

1. The diligence provisions for each Federal coal lease apply as if the LMU never existed. This is because the LMU diligence *superseded, but did not suspend,* the lease-specific diligence. Thus, in effect, it is necessary to now "look back" to see whether the Federal coal leases individually have been satisfying their lease-specific diligence obligations:

a. The Federal coal lease must achieve diligent development within 10 years from the date it is "subject to diligence" or it is terminated by law.

b. After diligent development is achieved, the Federal coal lease must maintain continued operation.

2. Advance royalty must be paid *in lieu* of continued operation when there is less than 1 percent of the Federal coal lease's recoverable coal reserves produced in the first 2 continued operation years and, thereafter, on a 3-year rolling average.

a. Advance royalty can only be paid *in lieu* of continued operation for a total of 10 continued operation years.

b. Advance royalty can only be paid *in lieu* of continued operation during the initial 20-year period that the Federal coal lease is "subject to diligence" after August 4, 1976.

For the duration of an LMU, lease-specific diligence provisions still apply to the Federal coal leases contained in the LMU. These provisions must be monitored in the Solid Leasable Minerals System *in addition to* the LMU-specific diligence provisions. LMU-specific diligence *supersedes,* but does *not suspend,* the lease-specific diligence. That is, the diligence clocks and requirements run simultaneously while the Federal coal leases are included in the LMU; but, the LMU clocks and requirements take precedence over the Federal coal lease clocks and requirements. Upon LMU failure, the compliance with lease-specific diligence will determine what, if any, administrative actions must be taken against the individual Federal coal leases.

Note.—Noncompliance/nonconformance with lease-specific diligence is *not* a factor that requires correction as long as that Federal coal lease is included in an LMU and the LMU operations are in compliance with *all* LMU-specific conditions (e.g., approval stipulations, LMU-specific diligence).

The following discussion addresses several examples of what can happen if an LMU fails; the discussion is not meant to be exhaustive or complete. The examples are solely to demonstrate some scenarios that could happen.

Example 1: Diligent Development Period

Sequence of Events

Lease "a" issued January 1, 1980.
Lease "b" issued January 1, 1978.
Lease "a" readjusted January 1, 1980.
LMU formed January 1, 1988. Neither Lease "a" nor Lease "b" has ever produced. Lease "a" controls the LMU 10-year diligent development period. Therefore, the LMU must achieve diligent development by January 1, 1990. LMU fails on January 1, 1989, for refusal to submit maps or to report non-Federal LMU production.
State Director issues Decision cancelling the LMU.

Question: What Is the Effect on Each Federal Coal Lease?

Federal coal lease "a" is unaffected at this time. It has until January 1, 1990, to achieve its diligent development.

Federal coal lease "b" is automatically terminated by law for failure to achieve its diligent development by January 1, 1988.

Example 2: Federal Coal Leases Individually Not Subject to Diligence Prior to LMU Formation

Sequence of Events

Lease issued January 1, 1975.
LMU formed January 1, 1988.
LMU achieves diligent development January 1, 1990.
LMU advance royalty paid for 3 years, then LMU fails on January 1, 1993, because the LMU operator refuses to produce or pay additional advance royalty.
State Director issues Decision cancelling the LMU.

Question: What Is the Effect on the Federal Coal Lease?

Individually, the Federal coal lease is not "subject to diligence" until readjustment on January 1, 1995. Therefore, *no* advance royalty can be applied toward that Federal coal lease *individually.* As of January 1, 1995, the

Federal coal lease would have 10 years to achieve diligent development. The Federal coal lease also has an initial 20-year period beginning on January 1, 1995, during which, once subject to continued operation, advance royalty could be paid up to a maximum of 10 years. This is because the Federal coal lease, individually, is not "subject to diligence" until January 1, 1995; therefore, advance royalty paid for the LMU does not count as advance royalty paid for the Federal coal lease.

Example 3: Initial 20-Year Period

Sequence of Events

Lease "a" issued January 1, 1978.
Lease "b" issued January 1, 1984.
Lease "a" achieves diligent development on January 1, 1988.
Lease "b" achieves diligent development on January 1, 1994.
Leases "a" and "b" maintain continued operation through production.
LMU formed on January 1, 1996.
LMU achieves diligent development on January 1, 1999.
LMU pays advance royalty for 3 years and on January 1, 2002,
LMU fails for refusal to pay further advance royalty.
State Director issues Decision cancelling the LMU.

Question: What is the Effect on Each Federal Coal Lease?

Federal coal lease "a" *must* be cancelled. Its initial 20-year period that it is subject to diligence ended January 1, 1998. Advance royalty paid for an LMU is counted as one year for which advance royalty is paid for *all* Federal coal leases in the LMU that are "subject to diligence" or after a Federal coal lease becomes "subject to diligence" after LMU approval. Since advance royalty was paid after the Federal coal lease "a" initial 20-year period, when the LMU fails the Federal coal lease is in noncompliance with the law and must be cancelled.

Federal coal lease "b" is currently unaffected. Its initial 20-year period ends on January 1, 2004. Therefore, Federal coal lease "b" is still in its initial 20-year period, has had advance royalty paid for 3 years, and has 2 continued operation years more during which advance royalty may be paid.

Example 4: Number of Advance Royalty Payments.

Sequence of Events

Lease "a" issued January 1, 1975.
Lease "b" issued January 1, 1978.
Lease "c" issued January 1, 1981.
LMU formed January 1, 1994. As of this date, Federal coal lease "a" is still under its 1975 terms and has never produced. Federal coal lease "b" has achieved diligent development and paid advance royalty for 8 years. Federal coal lease "c" has achieved diligent development and paid advance royalty for 3 years. After the LMU achieves diligent development, Federal coal lease "c" controls the LMU for purposes of advance royalty; therefore, the LMU has only 7 years during which advance royalty may be paid *in lieu* of LMU continued operation. LMU 10-year diligent development period begins on effective date of LMU approval as Federal coal lease "a" controls because Federal coal lease "a" is not yet "subject to diligence." Assume that production credited toward LMU diligent development, due to production from Federal coal leases "b" and "c," equals 1 percent of the total LMU recoverable coal reserves.

LMU status on January 1, 1994: LMU diligent development achieved January 1, 1994. LMU is subject to continued operation. Lease "a" readjusted on January 1, 1995. LMU pays advance royalty for 3 years, then fails on January 1, 1997, for refusal to produce or to pay further advance royalty.

Note.—There was *no* production during the life of LMU.

State Director issues Decision cancelling the LMU.

Question: What is the Effect on Each Federal Coal Lease?

Federal coal lease "a" is unaffected. It is beginning the third year of its lease-specified diligent development period, and has until January 1, 2005, to achieve diligent development.

Federal coal lease "b" *must* be cancelled by State Director Decision. Advance royalty can only be accepted for 10 years for any Federal coal lease. As long as the Federal coal lease was in the LMU, the LMU-diligence superseded the Federal coal lease diligence. Upon LMU failure, Federal coal lease "b" has now paid advance royalty for 11 total years which is a violation of the law. There is no other recourse but to cancel Federal coal lease "b".

Federal coal lease "c" is unaffected. Federal coal lease "c" has now paid advance royalty for a total of 6 years. Federal coal lease "c" is in its appropriate continued operation year and must comply with the lease-specific diligence requirements.

Example 5: Production Credits

Sequence of Events

Lease issued on January 1, 1980.
Produces 0.6% of recoverable coal reserves, *in existence on August 4, 1976,* between August 4, 1976, and January 1, 1980. Lease readjusted on January 1, 1980. "Subject to diligence." Produces 0.8% of recoverable coal reserves, *in existence on January 1, 1980,* between January 1, 1980, and January 1, 1983. Lease included in LMU on January 1, 1983.

LMU fails on January 1, 1993, for failure to achieve diligent development. During the LMU, only non-Federal coal was produced.

State Director isues Decision cancelling the LMU.

Question: What is the Effect on Each Federal Coal Lease?

Lessee immediately requests to credit production between 1976 and 1980 toward Federal coal lease diligent development, thus achieving a total greater than 1 percent of the recoverable coal reserves in existence in 1980 *plus* 1 percent of the production credited between 1976 and 1980.

The Federal coal lease is deemed to have achieved Federal coal lease diligent development on January 1, 1990 (the end of the lease-specific, 10-year diligent development period). However, it is now January 1, 1993.

If the lessee so requests, and if the AO so authorizes, the lessee may then pay 3 years of advance royality bringing the Federal coal lease into compliance with the lease-specific diligence provisions.

Note.—The initial 20-year period for the Federal coal lease began on January 1, 1980. Therefore, the lessee has until December 31, 1999, to exercise the option to pay advance royality *in lieu* of the lease-specific continued operation, as long as the number of payments does not exceed ten (see item number 3. above).

January 1, 1993, status: Federal coal lease beginning its fourth continued operation year. Federal coal lease has paid 3 of the 10 years of advance royalty to which it is entitled.

Appendix D-1—Notification to Lessees Regarding, and the Monitoring of, Diligent Development and Continued Operation

Due to the consequences of failing to achieve diligent development and to maintain continued operation, the importance of complete and accurate records should enforcement action be required, and to ensure nationwide consistency, the procedures set forth below are to be implemented immediately for Federal coal leases "subject to diligence" and for LMU's.

Notification Procedures (On a Lease-by-Lease Basis, for Federal Coal Leases "Subject to Diligence", and on an LMU-by-LMU Basis

1. Initially notify each Federal coal lessee and each LMU designated operator (as well as the entity that applied, and subsequently received approval, for the LMU) of:

a. Date the diligent development period begins or began.

b. Date by which diligent development must be achieved.

c. Recoverable coal reserves estimate.

d. Commercial quantities requirement.

2. At the completion of *each* year during which the Federal coal lease or LMU is in the diligent development mode, notify each lessee and each designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) of the remaining tonnage that must be produced to achieve diligent development.

3. Upon the achievement of diligent development, confirm in writing that diligent development has been achieved for the Federal coal lease or LMU. The confirmation must include:

a. The date the royalty reporting period *during* which diligent development was achieved.

b. The date that the Federal coal lease or LMU is subject to continued operation (i.e., the beginning date of the royalty reporting period following the royalty reporting period during which diligent development was achieved).

c. The 12-month period which defines the continued operation year.

d. The tonnage that must be produced to maintain continued operation. Also, specify that this tonnage is required each of the first 2 continued operation years and on a 3-year average thereafter.

e. The fact that advance royalty may only be accepted *in lieu* of continued operation upon application to and approval by the AO. When applications to pay advance royalty are made after the thirtieth calendar day of the continued operation year, acceptance may be conditioned on the assessment of a late payment charge.

4. At the end of any continued operaton year during which continued operation was *not* maintained:

a. Issue a notice of noncompliance for failure to meet the continued operation requirement, and that failure to apply to pay advance royalty may result in Federal coal lease cancellation. For details on notices of noncompliance, see § 3486.3.

5. Where advance royalty is paid for a continued operation year where continued operation was *not* met, notify the Federal coal lessee or designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) that the advance royalty payment counts against the total of 10 years for which it can be paid. Specify the total number of years advance royalty has been paid to date *in lieu* of continued operation and the total number of remaining continued operation years for which the lessee or LMU operator has the option to apply to pay advance royalty.

6. Where advance royalty is paid for a continued operation year and continued operation subsequently *is met*, notify the Federal coal lessee or designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) that the advance royalty payment, *is not* counted against the total of 10 years for which it can be paid.

7. Upon approval of a revision of recoverable coal reserves based on new information, reissue the initial notification to reflect the AO's approval of the revision, with the revised commercial quantities requirement.

Note.—If the revision occurs while the Federal coal lease or LMU is subject to diligent development, the revised commercial quantities requirement is effective immediately. If the revision occurs while the Federal coal lease or LMU is subject to continued operation, the revised commercial quantities requirement is effective on the beginning of the *following* continued operation year.

Special Note.—Notifications for LMU's shall break down the production and recoverable coal reserves by "Federal" and non-Federal. **Note.**—The term "Federal" includes only Federal recoverable coal reserves that are either "public" or "acquired." The term "non-Federal" includes recoverable coal reserves that are "fee" (sometimes referred to as "private"), "State," "Indian tribal," and "Indian allotted."

These categories must also be separately broken down.

Monitoring Diligent Development and Continued Operation

On a lease-by-lease basis, for Federal coal leases that are "subject to diligence," and on an LMU-by-LMU basis, the diligent development, continued operation, commercial quantities, advance royalty, and LMU data elements *must be maintained* continuously up-to-date in the Automated Federal and Indian Leasable Minerals System data base, as well as its successor, the Solid Leasable Minerals System data base.

[FR Doc. 85-8535 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-84-M

[AA-6676-A2; 4310-JA 0082 5-000262-QP5-0082]

Alaska Native Claims Selection; Koliganek Natives Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611(b), will be issued to Koliganek Natives Limited for approximately 1,919 acres. The lands involved are:

Seward Meridian, Alaska (Surveyed)

T. 5 S., R. 46 W.,
Sec. 26.
T. 5 S., R. 48 W.,
Secs. 23 and 26.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 13, 1985 to file an appeal. However parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-8713 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-JA-M

[F-14912-B; 5-00262-GPS-057]

Alaska Native Claims Selection; Northway Natives Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Northway Natives Incorporated for the Native village of Northway for approximately 3,939 acres. The lands involved are within:

U.S. Survey No. 2784

Copper River Meridian, Alaska

Tps. 14 and 16 N., R. 17 E.,
Tps. 15 and 16 N., R. 18 E.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until May 13, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–8712 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–JA–M

[5–00253]

Wild Horse and Burro Gathering; Public Hearing

Notice is hereby given in accordance with Pub. L. 92–195, as amended by Pub. L. 94–579, and Pub. L. 95–514, a public hearing will be held on May 7, 1985 at 7:00 p.m., at the City Hall, Caliente, Nevada.

The agenda for the meeting will include:

(1) The use of helicopters and motorized vehicles when conducting wild horse and burro gatherings.

(2) Implementation of the Herd Management Plan and Gathering Plan for all wild horse and burros within the Las Vegas District including those located on the Nevada Wild Horse Range portion of the Nellis Range Complex, located approximately 40 miles southeast of Tonopah, Nevada.

The authority for use of helicopters in gathering wild horses and burros is, 43 CFR 4730.7 and 4740.9–2.

The initial gatherings will take place from June 1, 1985 through August 14, 1985, and from August 15, 1985 through September 30, 1985. Subsequent gatherings will be conducted as necessary for management purposes.

The hearing is open to the public. Interested persons may make oral statements to the hearing moderator or file written statements for management consideration. Anyone wishing to make oral statements should notify the Area Manager, Caliente Resource Area, P.O. Box 237, Caliente, Nevada 89008, by April 26, 1985. Depending on the number of persons wishing to make oral statements a per-person time limit may be established by the moderator.

Summary minutes of the hearing will be maintained in the BLM Caliente Resource Area Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: March 25, 1985.

Kemp Conn,

District Manager.

[FR Doc. 85–8759 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–HC–M

[5–17440]

California Desert District Advisory Council; meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 and 94–579 that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet May 16–17–18, 1985, at the Heritage Inn, 1050 N. Norma in Ridgecrest, CA. In conjunction with the meeting, the Council will make field trips to public land sites in the Ridgecrest area and in areas north of the City of Independence.

Agenda items for the meetings will include a review and recommendations on the 1985 proposals for amending the California Desert Plan, including the proposed revision of the Plan's Goals and Objectives; presentation of the Record of Decision on the 1984 amendments; a report on the results of the Grazing Fee Study; results of the study undertaken by the Council's Microwave Communications Task Force; updates and reviews on current issues, including pipeline projects and other rights-of-way; and a field review of local issues including the Bureau of Land Management/Forest Service interchange proposal.

All formal Council meetings are open to the public, with a specific time allocated for public comment and additional time made available by the Council Chairman if comment is necessary during the presentation of specific agenda items. Members of the public are welcome to participate in the scheduled field trip, but must provided their own transportation and/or meals.

Written comments on specific agenda items may be filed in advance of the meeting with Council Chairman Dr. Loren Lutz, c/o Bureau of Land Management Public Affairs, Office, 1695 Spruce Street, Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507, (715) 351–6383.

Dated: April 3, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85–8758 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–40–M

Known Geothermal Resources Area; Idaho

Pursuant to the authority vested in the Secretary of the Interior by Section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1.C, and Secretarial Orders 3071, and 2087, and Bureau of Land Management Instruction Memorandum 83–384, the following-described lands are hereby revoked as the Crane Creek Known Geothermal Resources Area, effective February 1, 1985:

(12) Idaho

Crane Creek Known Geothermal Resources Area

Boise Meridian Idaho

T. 11 N., R. 3 W.
Secs. 5 through 8;
sec. 18.
T. 11 N., R. 4 W.
Secs. 1 and 12.

The revoked area aggregates 4,342 acres, more or less.

The subject lands will be made available to the first qualified applicant under regulations appearing at 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Dated: April 3, 1985.

Bill R. Lavelle,

Deputy State Director for Mineral Resources.

[FR Doc. 85-8751 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-GG-M

Land Resource Management; Filing of Plats Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted January 4, 1985, were officially filed in the Montana State Office effective 10 a.m. on January 28, 1985.

Principal Meridian, Montana

T. 15 N., R. 25 E.

The plat, in four sheets, represents the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 22, 25, 31, 32, 33, and 34, Township 15 North, Range 25 East, Principal Meridian, Montana. The area described is in Petroleum County.

Principal Meridian, Montana

T. 16 N., R. 25 E.

The plat, in four sheets, represents the dependent resurvey of a portion of the Fourth Standard Parallel North, through Ranges 24 and 25 East; a portion of the Coulson Guide Meridian, through Township 16 North; the south and west boundaries; the subdivisional lines; and a portion of the adjusted original meanders, and the survey of the subdivision of sections 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, and 35, Township 16 North, Range 25 East, Principal Meridian, Montana. The area described is in Petroleum County.

These surveys were executed at the request of the Lewistown District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: January 28, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: April 1, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-8749 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Filing of Plats Survey; Montana

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted January 23, 1985, were officially filed in the Montana State Office effective 10 a.m. on February 4, 1985.

Principal Meridian, Montana

T. 3 S., R. 1 W.

The supplemental plat showing amended lottings created by the segregation of Mineral Surveys Nos. 480, 748, and 6405 in section 19, Township 3 South, Range 1 West, Principal Meridian, Montana, is based upon the plat approved October 30, 1889; the plats for Mineral Surveys Nos. 480, 748, and 6405, approved June 14, 1877, July 29, 1881, and June 21, 1902, respectively, and Amended plat showing mineral segregation in section 19, approved April 15, 1926; and was accepted January 23, 1985. The area described is in Madison County.

This plat was prepared at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: February 4, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: April 1, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-8750 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-DN-M

Colorado; Craig District Advisory Council Meeting

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on April 24, 1985.

The meeting will begin at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. FS/BLM Grazing Fee Evaluation Report.
2. Discussion about proposed changes in the Federal Oil and Gas Royalty Management Act.
3. Report on Wildlife/Livestock workgroup.

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street Craig, Colorado 81625, by April 19, 1985.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: April 2, 1985.

William J. Pulford,

District Manager.

[FR Doc. 85-8872 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-JB-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Nonferrous Metals surveys

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications, including the Mineral Industry Survey (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6-1151-MA ET AL (41 Forms)

Frequency: Monthly, Quarterly and Annual

Description of Respondents: Producers and Consumers of Nonferrous Metals

Annual Responses: 16,672

Annual Burden Hours: 20,275

Bureau Clearance Officer: James T. Hereford (202) 634-1125

April 3, 1985.

Robert C. Horton,

Director.

[FR Doc. 85-8690 Filed 4-10-85; 8:45 am]

BILLING CODE 4310-53-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Industrial Minerals Surveys

Abstract: Respondents supply the Bureau of Mines and domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Survey (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6–1221–A ET AL. (44 Forms)
Frequency: Monthly, Quarterly, Semiannual, Biennial and Annual
Description of Respondents: Producers and Consumers of Industrial Minerals
Annual Responses: 16,952
Annual Burden Hours: 11,648
Bureau Clearance Officer: James T. Hereford (202) 634–1125

Robert C. Horton,

Director.

April 3, 1985.

[FR Doc. 85–8691 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–53–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Ferrous Metals Surveys

Abstract: Respondents supply the Bureau of Mines and domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Survey (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials/A Bimonthly Survey for use by private organizations and other government agencies.

Bureau Form Number: 6–1066–MA ET AL. (18 Forms)
Frequency: Monthly and Annual
Description of Respondents: Producers and Consumers of Ferrous Metals
Annual Responses: 11,343
Annual Burden Hours: 6,137
Bureau Clearance Officer: James T. Hereford (202) 634–1125

Robert C. Horton,

Director.

April 3, 1985.

[FR Doc. 85–8692 Filed 4–10–85; 8:45 am]

BILLING CODE 4310–53–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-130X)]

Illinois Central Gulf Railroad Co.; Abandonment in Lauderdale County, MS; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its .93-mile line of railroad between milepost 4.67 and milepost 5.60 in Brockton, MS.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*,360 I.C.C. 91 (1979).

The exemption will be effective May 11, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by April 22, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 1, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Richard M. Karnowski, 233 North Michigan Ave., Chicago, IL 60601.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 4, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–8707 Filed 4–10–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–1 (Sub-183)5]

Chicago and North Western Transportation Co.; Abandonment Between Kelley and Slater, IA; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company to abandon its 5-mile rail line between Kelley (milepost 28.4) and Slater (milepost 23.4) in Story County, IA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the

envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

[illegible] H. Beyne,

Secretary.

[FR Doc. 85–8773 Filed 4–10–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Janssen Inc.

Pursuant to §1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 15, 1985, Janssen Inc., P.O. Box JPH, State Road 933 KM 0.1, Mamey Ward, Gurabo, Puerto Rico 00658, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances, may also file comments or objections to the issuance of the above application and may file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 13, 1985.

Dated: April 2, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–8697 Filed 4–10–85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Materials Research; Postponement of Meeting

The meeting of the Advisory Committee for Materials Research scheduled for April 18–20, 1985, is being postponed until mid-May. A new meeting notice will be published in the Federal Register.

The notice of the April meeting appeared in the Federal Register on April 2, 1985.

M. Rebecca Winkler,

Committee Management Officer.

April 8, 1985.

[FR Doc. 85–8704 Filed 4–10–85; 8:45 am]

BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14454; File No. 811–3149]

Application and Opportunity for Hearing; Carnegie/KILICO Variable Annuity Account

April 4, 1985.

Notice is hereby given that Carnegie/KILICO Variable Annuity Account ("Applicant"), 120 S. LaSalle Street, Chicago, Illinois 60603, registered as a unit investment trust under the Investment Company Act of 1940 (the "Act"), filed an application on Form N–8F on February 27, 1984, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on March 13, 1981, and that its depositor, Kemper Investors Life Insurance Company, filed a registration statement for variable annuity contracts on Form S–6 on March 13, 1981, but that the registration statement never became effective and no public offering of securities was ever made. Applicant submits that it is an insurance company separate account created on March 6, 1981, under the laws of California, and that the Board of Directors of Kemper Investors Life Insurance Company will rescind the resolution creating Applicant at the next practicable opportunity. Applicant submits that it has no securityholders, no assets, and no outstanding debts or other liabilities. Applicant states that it is not a party to any litigation or administrative proceeding, has made no sales of securities of which it is the issuer, and is not now engaged or proposed to be engaged in any business activities other than those necessary for winding up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, and order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8677 Filed 4–10–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14455; File No. 811–3180]

Application and Opportunity for Hearing; CEF/KILICO Variable Annuity Account

April 4, 1985.

Notice is hereby given that CEF/KILICO Variable Annuity Account ("Applicant"), 120 S. LaSalle Street, Chicago, Illinois 60603, registered as a unit investment trust under the Investment Company Act of 1940 (the "Act"), filed an application on Form N–8F on February 27, 1984, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on May 7, 1981, and that its depositor, Kemper Investors Life Insurance Company, filed a registration

statement for variable annuity contracts on Form S–6 on May 7, 1981, but that the registration statement never became effective and no public offering of securities was ever made. Applicant submits that it is an insurance company separate account created on May 1, 1981, under the laws of California, and that the Board of Directors of Kemper Investors Life Insurance Company will rescind the resolution creating Applicant at the next practicable opportunity. Applicants submits that it has no security holders, no assets, and no outstanding debts or other liabilities. Applicant states that it is not a party to any litigation or administrative proceeding, had made no sales of securities of which it is the issuer, and is not now engaged or proposed to be engaged in any business activities other than those necessary for winding up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8676 Filed 4–10–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23654; 70–7081]

Central Ohio Coal Company, et al.; Supplemental Notice of Guaranty by Lease Payments

April 5, 1985.

Ohio Power Company ("Ohio Power), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's coal mining subsidiaries Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company ("SOCCo") and Windsor Power House Coal Company ("Windsor") (collectively the "Applicants"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to the application-declaration in this proceeding subject to sections 9, 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

On March 29, 1985 (HCAR No. 23646) this Commission authorized each Applicant to enter into a Master Leasing Agreement with non-affiliates ("Lessors") pursuant to which Lessors will commit to lease through June 30, 1986 to such companies, mining equipment with a total aggregate acquisition cost not exceeding $50 million. COCCo's participation in the Leasing Agreement is contingent upon approval of Ohio Power's guaranty of certain obligations of COCCo's under the Leasing Agreement.

Applicants now propose that Ohio Power execute a Guaranty Agreement in favor of the parties to the Participation Agreement, other than Applicants (the "Participants"), providing that Ohio Power shall unconditionally and irrevocably guarantee payment of all amounts payable by COCCo to any participant under the Leasing Agreement. This guaranty is necessary because COCCo previously made a partial assignment of revenues under its Coal Supply Agreement with Ohio Power.

The amended application-declaration and any additional amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by April 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notifed of any hearing, if ordered, and will receive a copy of any notice or order issued in this mater. After said date, the amended application-declaration, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–8679 Filed 4–10–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14456; File No. 811–3056]

Application and Opportunity for Hearing; Hutton UIT Variable Account

April 4, 1984.

Notice is hereby given that Hutton UIT Variable Account ("Applicant"), 120 S. LaSalle Street, Chicago, Illinois 60603, registered as a unit investment trust under the Investment Company Act of 1940 (the "Act"), filed an application on Form N–8F on February 27, 1984, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it registered under the Act on May 6, 1980, and that its depositor, Kemper Investors Life Insurance Company, filed a registration statement on Form S–6 on May 6, 1980, but that the registration statement never became effective and no public offering of securities was ever made. Applicant submits that it is an insurance company separate account created on March 12, 1980, under the laws of California, and that the Board of Directors of Kemper Investors Life Insurance Company will rescind the resolution creating Applicant at the next practicable opportunity. Applicant submits that it has no security holders, no assets, and no outstanding debts or other liabilities. Applicant states that it is not a party to any litigation or administrative proceeding, has never made any sales of securities of which it is the issuer, and is not now engaged or proposed to be engaged in any business activities other than those necessary for winding up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8675 Filed 4-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14457 (File No. 812-6022)]

Salomon Brothers Unit Investment Trust, Insured Tax-Exempt Series One, et al.; Application and Opportunity for Hearing

April 4, 1985.

Notice is hereby given that Salomon Brothers Unit Investment Trust, Insured Tax-Exempt Series One ("Series One") and all subsequent and similar series of Trust ("Trusts"), and their sponsor, Salomon Brothers Inc ("Sponsor") (the Trusts and Sponsor collectively, "Applicants"), c/o Salomon Brothers Inc, One New York Plaza, New York, New York 10004, filed an application on January 10, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from section 22(c) of the Act and Rule 22c-1 thereunder to the extent necessary to permit them to sell units of beneficial ownership of the Trusts ("Units") on the date of deposit of the Trust at a price based upon the net asset value determined with reference to the value of the securities deposited therein on the business day preceding the date of deposit. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

Applicants state that the Trusts are unit investment trusts organized under the laws of the State of New York whose investment objectives are the receipt of federally tax-exempt interest income consistent with the preservation of capital through an investment in a diversified portfolio of municipal bonds (the "Securities"). Applicant further states that each insured series of the Trust will invest only in insured Securities.

Applicants state that Series One is, and each future Trust will be governed by a trust indenture (the "Indenture") under New York law and a Standard Terms and Conditions of Trust (the "Agreement") for that Trust, under which the Sponsor will act as depositor, a banking corporation or trust company meeting the requirements of the Act will act as trustee ("Trustee") and Standard & Poor's Corporation and Kenny Information Systems will act as evaluator. Applicants state that the Sponsor will initially deposit in Series One insured tax-exempt municipal bonds or contracts for the purchase of such bonds with the Trustee in exchange for certificates representing ownership of all of the Units of the Trust. Later that day (the "Date of Deposit"), an amendment to a registration statement with respect to the Trust on Form S-6 under the Securities Act of 1933, which describes the deposit and execution of the Indenture, will be filed with the Commission. Applicants further state that upon the grant of effectiveness of such registration statement, the Units will be sold by the Sponsor to the public pursuant to the Prospectus contained therein and at the price described in said Prospectus which shall include a sales charge.

Applicants state that holders of Units ("Unitholders") can dispose of their Units through their brokers or dealers or through redemption by the Trustee. Applicant states that while the Sponsor is not obligated to do so, it is the Sponsor's present intention to purchase Units tendered to brokers or dealers or to the Trustee for redemption. Applicants further state that the Sponsor may terminate such purchases at any time.

Applicants propose to sell Units of each Trust pursuant to purchase orders received on the Date of Deposit for that series at a public offering price which is based on the net asset value per Unit determined with reference to the value of the Securities at 4:00 p.m. on the business day preceding the Date of Deposit. The Sponsor agrees, however, as a condition to the requested exemptive order, that if the public offering price determined on the basis of the net asset value per Unit as of the close of business on the Date of Deposit is more than 2.5% below the public offering price determined at the close of the preceding business day (a $25 decline on a $1,000 unit), it will effect all purchase orders received on the Date of Deposit at the lower (forward) price.

Applicants represent that beginning on the business day following the Date of Deposit, the public offering price will be based on the current net asset value per unit next determined after receipt of the purchase order, plus the sales charge. Applicants further represent that the net asset value next determined also will be used in calculating the unit price for all redemptions, and for all purchases and sales by the Sponsor in connection with its secondary market activities.

Applicants believe that Rule 22c-1 has two purposes: (1) To eliminate any dilution in the value of investment company shares which might occur through the practice of selling securities at a price based on a previously established value which permits a potential investor to take advantage of an increase in the value of investment company shares which is not yet reflected in the price for such shares; and (2) to eliminate certain speculative trading practices.

Applicants assert that where, as here, a sponsor forms a trust by depositing portfotlio securities in return for all units of the trust, trust assets are in no way affected by the method of pricing the units in the initial public offering. Applicants further assert that the method proposed for pricing units on the Date of Deposit is analogous to "backward pricing" used with respect to secondary market transactions on the offering side in connection with "eligible trust secrities", such as municipal, bonds, permitted by Rule 22c-1. Like those secondary market activities, Applicants state, this proposal cannot result in dilution of the interests of Unit-holders.

Applicants state that the forward pricing rquirements of Rule 22c-1 can be confusing to investors in unit trusts that forward price on the date of deposit. Applicants state that brokers seeking indications of interest from potential investors generally give an estimated price per unit (e.g. $1,000 per unit) based on the sponsor's intention to establish units of approximately that value in forming the trust. Applicants assert that though the effective prospectus for a trust that sells units at a forward price on the date of deposit sets forth the calculation of the public offering price, the price given is that which would have been effective had the trust been formed on the business day preceding the date of deposit. Accordingly, Applicants state that the price set forth in the prospectus is not the price at which any purchases of units will be effected. Rather, purchases are effected and confirmations are sent out at a different (forward) price established pursuant to Rule 22c-1. Applicants assert that upon receipt of the confirmation and prospectus, the purchaser may be confused and concerned by the difference between the price in the prospectus and the price on the confirmation (neither of which is the round number of the estimated price), particularly wher the transaction is confirmed at a price higher than that set forth in the prospectus. Applicants submit that if the order requested herein

is granted, purchasers of Trust units on the Date of Deposit will have their purchase orders effected and confirmed at the price set forth in the final prospectus.

Applicants submit that the possibility of speculation from backward pricing on the Date of Deposit will be minimal. Applicants state that in order for a speculator to benefit from a purchase and immediate redemption, the net asset value increase would have to be in excess of the sale charge which will probably be approximately 4.00% of the public offering price (approximately $40). Applicants further state that because the redemption price is determined as of the close of business on the day the redemption requet is received, the speculator would be required to tender the Units for redemption prior to the time the price was fixed, thereby taking at least a temporary market risk. In light of the applicable sales charges and the difference between offering prices of the Securities (which are the prices used to compute the initial public offering price) and the bid prices thereof (which are used to compute redemption prices) (generally a difference of between $10 and $20 per Unit), Applicants assert that such one day price changes will not approach the transactioanl costs related to any attempted speculation by investors. Applicants maintain that even though Series One will be comprised of long term securities, the volatility of market prices in any one day is not likely to be of such a magnitude to overcome the related costs of speculation.

Applicants state that in order to eliminate any possiblity of speculation on the part of the Sponsor, the Sponsor agrees, as a condition to the granting of the exemptive order, that during the initial public offering period for any Trust, it will not tender back to the Trustee for redemption any of its unsold Units. Applicants further state that the Sponsor will not allow its registered representatives (or any broker or dealer through which it might in the future distribute Units) to convert an increase in the market into a speculative gain by tendering any Units they might purchase to the Trustee for redemption during the initial public offering period.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 30, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8674 Filed 4-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21924; File No. SR-NYSE-85-9]

Self-Regulatory Organizations; Proposed Rule Change and Notice of Immediate Effectiveness; New York Stock Exchange, Inc.; Relating to the Confirmation of Good 'Til Cancelled (G.T.C.) Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 13, 1985, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The NYSE is proposing to require members and member organizations on April 20, 1985, to use confirmation slips prepared by the Exchange when they confirm so-called Good 'Til Cancelled ("G.T.C.") orders [1] rather than preparing the confirmation slips themselves. The proposed rule change will affect the application of Exchange Rule 123A.55.[2]

Under the proposed procedures, member organizations that use the NYSE's As-Of-Status Request System [3] will prepare magnetic tapes containing their G.T.C. files in the manner and form prescribed by the Exchange and deliver them to SIAC on Saturday, April 20, 1985, by 2:00 a.m. Those members and member organizations that cannot prepare a magnetic tape will list their G.T.C. files on the form prescribed by the Exchange and deliver them to SIAC by 11:00 p.m. on the Friday preceding the Saturday confirmation day. From this input, SIAC will prepare single confirmation slips for each member and member organization, and several copies of a log listing each order. The slips will be delivered to the Exchange, which will have personnel available to deliver them to the specialists.[4]

According to the NYSE the purpose of the proposed rule change is to bring the preparation of the confirmation of "open order" or G.T.C. slips into one central location. The NYSE believes that this will permit the Exchange to monitor and control the preparation of the confirmation slips. When members and member organizations prepare their slips independently, the NYSE has found that from time to time a small number of these members are not able to produce their slips at the designated time due to some operational problem.

The NYSE believes that the proposed rule change will enable it to better carry out the purposes of the Act as enunciated in section 6(b)(5) and section 11A(a)(1), by facilitating transactions in securities, creating the opportunity for more efficient market operations, and enhancing the economically efficient execution of securities transactions. The proposed rule change will enable the NYSE to streamline, monitor, and control the process of confirming G.T.C. orders, and take rapid remedial action where necessary. Under the proposal the NYSE would know early in the day if a member or member organization had a problem. In addition, the NYSE believes that under the proposal members and member organizations should find it less costly to confirm their

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[1] A G.T.C. order is an order to buy or sell which remains in effect until it is either executed or cancelled.

[2] Exchange Rule 123A.55 now requires members and member organizations to prepare their own confirmation slips with duplicate receipt stubs, and requires specialists to sign or stamp the duplicate receipt stubs before they are returned to the members or member organizations that issued them. Under the proposal the confirmation slips issued to specialists by the Exchange on behalf of members and member organizations will not contain a duplicate receipt stub. Specialists will retain the single slip confirmations for their own records, while members and member organizations will be provided with a log listing the G.T.C. orders that were sent to the specialists.

[3] The NYSE's As-Of-Status Request System is a system whereby automated firms, rather than preparing their limited price order slips themselves, can have them printed by the Securities Industry Automation Corporation ("SIAC"). The firms send the limited price order information to SIAC. SIAC prints this information and sends a print-out to the Exchange early each morning. Specialists then respond to the printed requests.

[4] This system of automatically preparing confirmation tickets was tested last year. According to the NYSE, the test proved extremely successful; therefore, this year all firms that confirm G.T.C. orders will be required to use the new procedure.

G.T.C. orders because they would not have to prepare individual confirmation slips and sort them according to Trading Post and specialist unit order.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C. 20549. Reference should be made to File No. SR–NYSE–85–9.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available at the principal office of the NYSE.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

April 4, 1985.

[FR Doc. 85–8678 Filed 4–10–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund one of its 39 Small Business Development Centers (SBDC's), the New York-upatate SBDC, during fiscal year 1985. It also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the SBDC to be refunded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through July 1, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson, 202–653–6768.

SUPPLEMENTARY INFORMATION: SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the date of refunding of this existent SBDC. Relevant information identifying this SBDC and providing its mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 60 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 60 day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization received SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business venders such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All conseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: April 4, 1985.

James C. Sanders,

Administrator.

Address of Relevant SBDC Director: Mr. James L. King, SBDC Director, SBDC, State University of New York, State University Plaza, Albany, New York 12246 (518) 473–5398.

[FR Doc. 85–8657 Filed 4–10–85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04–0235]

Hickory Venture Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company.

On February 12, 1985, a notice was published in the **Federal Register** (50 FR 5840), stating that Hickory Venture Capital Corporation located at 200 West Court Square, Suite 624, Huntsville, Alabama 35801 had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1985), for a license to operate as a small business investment company under the provisions of Section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on March 25, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 04/04–0235 to Hickory Venture Capital Corporation to operate as small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 3, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–8660 Filed 4–10–85; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund two of its 39 Small Business Development Centers (SBDC's), the Oklahoma SBDC and the Houston, Texas SBDC, during fiscal year 1985. It also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through August 9, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published five months in advance of the date of refunding of these existent SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416. Comments will be accepted by the relevant SBDC and SBA for a period of four months (120 days) from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 120 day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information,

and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: April 4, 1985.

James C. Sanders,

Administrator.

Addresses of Relevant SBDC Director

Lloyed Miller, State Director, SBDC, Southeastern Oklahoma State University, Kerr Industrial Application Center, Durant, Oklahoma 74701, (405) 924–0277

Dr. Jon P. Goodman, State Director, SBDC, University of Houston, University Park, College of Business Administration, 4800 Calhoun, Houston, Texas 77004, (713) 749–4176.

[FR Doc. 85–8658 Filed 4–10–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85–018]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting; Cancellation

AGENCY: Coast Guard, DOT.

ACTION: Cancellation of meeting.

SUMMARY: The meeting of the Lower Mississippi River Waterway Safety Advisory Committee scheduled for Tuesday, April 16, 1985, as published in Vol. 50 No. 60, page 12433 of the **Federal Register** on March 28, 1985, is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Commander R.A. Brunnell, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Telephone number (504) 589–6901.

Dated: April 3, 1985.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 85–8717 Filed 4–10–85; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petitions; Bennett, Walters, Perish, Howell, Box, Zweigle

This notice sets forth the reasons for denial of six petitions submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*).

On September 19, 1984, Pauline and Howard Bennett of Wheaton, MD, asked the agency to commence an investigation into the shoulder harness anchorage location in 1983 Toyota Camry passenger cars. The Bennetts complained that when the shoulder harnesses are used they touch the neck rather than crossing the shoulder.

The agency contacted the importer and reviewed NHTSA's information concerning shoulder harnesses on 1983–85 Toyota Camry vehicles. Toyota reported two telephone complaints, while NHTSA found none in its own records. Further, NHTSA examined harness fit in a 1984 Camry, and did not observe the condition complained of. The manufacturer provides an auxiliary anchor point in the Camry which can be used if the first location causes discomfort to the harness wearer.

Since the problem appeared to be infrequent, there was no reasonable possibility that the manufacturer would be ordered to recall the vehicles at the conclusion of the investigation, and the petition was denied on January 2, 1985.

Rick Walters of Norcross, GA, asked the agency on August 14, 1984, to examine the performance of Dunlop SP Sport D3 radial tires in wet conditions, alleging "*Severe* tendency to hydroplane." Both 1982 and 1984 Toyota Celica Supras owned by Mr. Walters were equipped with the tires. The agency examined its files and found no similar complaints from Supra owners regarding Dunlop tires. Because hydroplaning can occur from vehicle factors or a combination of vehicle and tire factors as well as from tire factors

alone, there was no reasonable possibility that the manufacturer would be ordered to recall the tires at the conclusion of the investigation, and on January 4, 1985, the petition was denied.

Philip M. Perlah of Westport, CT, petitioned on December 6, 1984, for an investigation based upon the failure of a protective rubber boot and/or a constant velocity joint in his 1980 front-wheel drive Volkswagen Dasher.

The agency has received no other reports relating to boot or joint failure in the 1980 Dasher. The Volkswagen Dasher Warranty and Maintenance Manual recommends that the boots be inspected at 15,000 miles and at 15,000 miles intervals thereafter as an owner maintenance item. Failure of the joint would be preceded by persistent sounds which increase in intensity as the mileage increases. Because warning occurs long before complete failure the agency believes that such a problem does not represent a widespread defect with safety related implications. Since there was no reasonable possibility that the manufacturer would be ordered to recall the vehicles at the conclusion of the investigation, Mr. Perlah's petition was denied in February 1985.

Dan Howell of the Center for Auto Safety, Washington, D.C. petitioned on September 20, 1983, alleging steering lockup or sudden loss of control on 1981–82 Ford Escort/EXP and Mercury Lynx/LN7 passenger cars.

Agency analysis of the petition revealed that the only dominant failure mode was loss of steering due to tie rod failure. NHTSA had already conducted two investigative actions into tie rod failure on these vehicles, the most recent of the two indicating that the failure phenomenon had all but vanished. As a consequence there appeared to be no reasonable possibility that the manufacturer would be required to recall the vehicles at the end of an investigation, and the petition was denied on August 14, 1984.

On February 28, 1984, Robert P. Box of Yuma, Arizona, alleged that 1981 Mercury Lynx vehicles contain a safety related defect due to timing chain failure.

In reviewing its records NHTSA discovered 20 additional reports of timing belt failure on 1981–82 Ford Escort and Mercury Lynx vehicles. Ford Motor Company, the manufacturer of the Lynx, advised NHTSA that the company had taken several actions in connection with the timing belts: Improvement of belt material, and extension of warranty to cover belt breakage for 5 years or 60,000 miles and to cover engine damage associated with timing belt failure. It had also made engine changes in 1983 and subsequent models to eliminate the possibility of internal damage to the engine if failure occurred.

Neither NHTSA had nor Ford received reports of front wheel lockup or accidents associated with timing belt failure. Accordingly there appeared to be no reasonable possibility that at the end of an investigation the manufacturer would be required to recall the vehicles, and Mr. Box's petition was denied on August 14, 1984.

Fuel vapors and foam consequent upon vehicle stalling occasioned a petition from Mr. and Mrs. Charles A. Zweigle of Stanhope, NJ, who on October 29, 1984, asked for an unvestigation of 1983 Plymouth Fury cars equipped with Slant Six engines.

Chrysler Corporation, the manufacturer of the vehicle, reported no accidents or injuries to the condition complained of, and NHTSA found no similar reports in its files. The manufacturer had developed a field service fix for the problem, and had issued a technical service bulletin covering it. Accordingly there appeared to be no reasonable possibility that at the end of an investigation Chrysler Corporation would be required to recall the vehicles, and the petition was denied on February 8, 1985.

Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on April 2, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85–8686 Filed 4–10–85; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the painting entitled "Rhinoceros" to be included in the exhibit, "Stubbs: An Exhibition in Honor of Paul Mellon" imported from abroad for the temporary exhibition without profit within the United States is of cultural significance. This object is imported pursuant to a loan agreement between the Royal College of Surgeons, London, England and the National Gallery of Art. I also determine that the temporary exhibition or display of the painting at the National Gallery of Art, Washington, D.C., beginning on or about May 3, 1985, to on or about June 2, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Thomas E. Harvey

General Counsel and Congressional Liaison.

Dated: April 5, 1985.

[FR Doc. 85–8681 Filed 4–10–85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a new collection and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 8, 1985.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

New

1. Department of Medicine and Surgery
2. National Vietnam Veterans Readjustment Survey
3. VA Form 10–20769(NR)
4. One-time
5. Individuals or households
6. 3,910 responses (For 3 years)
7. 11,980 hours (For 3 years)
8. Not applicable

[FR Doc. 85–8700 Filed 4–10–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 70
Thursday, April 11, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2.00 p.m. on Monday, April 8, 1985, the Corporation's Board of Directors determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the application of Tustin Thrift and Loan Association, an operating noninsured industrial bank located at 530 East First Street, Tustin, California, for Federal deposit insurance.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: April 8, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8787 Filed 4-9-85; 11:07 am]

BILLING CODE 6714-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 16, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, April 18, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC. (Fifth floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Management report on enforcement and proposed revisions to the enforcement process
Classification—Assistant Staff Director for Public Disclosure
Classification—Administrative Clerk for Public Disclosure
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-8844 Filed 4-9-85; 3:13 pm]

BILLING CODE 6715-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 13912, April 9, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 10, 1985, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers and Companies have been added:

Item No., Docket No. and Company

CAP-20
EL80-38-002 and Project No. 405, Philadelphia Electric Power Company and Susquehanna Power Company
Project No. 1025-003, Safe Harbor Water Power Corporation
Project No. 1881-002, Pennsylvania Power & Light Company
Project No. 1888-002, York Haven Power Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8801 Filed 4-9-85; 12:55 pm]

BILLING CODE 6717-02-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-17]

TIME AND DATE: Monday, April 15, 1985, at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints:
(a) Certain apparatus for the disintegration of urinary calculi (Docket No. 1178).
(b) Powdered impression material (Docket No. 1181).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-8775 Filed 4-9-85; 9:28 am]

BILLING CODE 7020-02-M

5

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., May 6, 1985.

PLACE: On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, Telephone 601-634-5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85-8861 Filed 4-9-85; 4:03 pm]

BILLING CODE 3710-GX-M

6

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., May 7, 1985.

PLACE: On Board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85–8862 Filed 4–9–85; 4:03 pm]

BILLING CODE 3710-GX-M

7

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 3:30 p.m., May 8, 1985.

PLACE: On board MV MISSISSIPPI at City Front, foot of Crawford Street, Vicksburg, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85–8863 Filed 4–9–85; 4:03 pm]

BILLING CODE 3710-GX-M

8

MISSISSIPPI RIVER COMMISSION

TIME AND DATE: 9:00 a.m., May 10, 1985.

PLACE: On board MV MISSISSIPPI at foot of Prytania Street, New Orleans, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rodger D. Harris, telephone 601–634–5766.

Rodger D. Harris,

Executive Assistant, Mississippi River Commission.

[FR Doc. 85–8864 Filed 4–9–85; 4:03 pm]

BILLING CODE 3710-GX-M

9

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:00 p.m., Wednesday, April 17, 1985.

PLACE: Williamsburg Hilton, 501 Kingmill Road, Williamsburg, Virginia, (804) 220–2500.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Final Rule: Reimbursement under Part 721, NCUA Rules and Regulations.
4. Appeal of Regional Director's Denial of Charter Application for Funeral Service FCU (Region IV).
5. Report on Supervisory Committee Manual.
6. Legislative update.

TIME AND DATE: 11:00 a.m., Wednesday, April 17, 1985.

PLACE: Williamsburg Hilton, 501 Kingmill Road, Williamsburg, Virginia, (804) 220–2500.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Special Assistance to Prevent Liquidation under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–8793 Filed 4–9–85; 11:50 am]

BILLING CODE 7535-01-M

federal register

Thursday
April 11, 1985

Part II

Environmental Protection Agency

40 CFR Part 228

Ocean Dumping; Notice of Final Determination To Deny Petitions To Redesignate the 12-Mile Site

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-2-FRL-2816-1]

Ocean Dumping; Notice of Final Determination To Deny Petitions To Redesignate the 12-Mile Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination to deny petitions to redesignate New York Bight Sewage Sludge Dump Site.

SUMMARY: EPA today announces its final determination to deny petitions by several current municipal sewage treatment sludge ("municipal sludge") dumpers to amend 40 CFR 228.12(b)(4) to redesignate the 12-Mile Sewage Sludge Dump Site in the New York Bight Apex. The designation of the 12-Mile Site as an EPA-approved ocean dumping site expired on December 31, 1981. Since that time, the ocean dumping of municipal sludges has continued under court order. Today's determination will result in the need to transfer municipal sludge dumping operations from the 12-Mile Site to the Deepwater Municipal Sludge Dump Site designated on May 4, 1984 (the former EPA-approved interin 106-Mile Ocean Waste Dump Site). Under the court order, dumping at the Deepwater Municipal Sludge Dump Site may continue until a final determination is made by EPA on the municipalities' permit applications.

ADDRESSES: The record supporting this action may be examined at:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA Region II Library, Room 1002, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Csulak, Environmental Analysis Branch (WH-556), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Statute and Regulations

Section 102 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended (33 U.S.C. 1401 et seq.,), authorizes EPA to grant permits for the ocean dumping of various materials. Under EPA's Ocean Dumping regulations (40 CFR Parts 220–229), approval of ocean dumping activities is dependent upon designation of an ocean disposal site and the issuance of a permit in accordance with criteria found at 40 CFR Part 227. These permit criteria include: (1) Specific limitations on the types and quantities of materials which may be dumped into ocean waters; (2) an assessment of the need for ocean dumping; (3) an assessment of the availability and impact of alternatives to ocean dumping; and (4) an assessment of the impact of the proposed dumping on aesthetic, recreational, and economic values and on other uses of the ocean. In applying for such a permit, an applicant must also indicate the site at which the dumping activity is proposed to take place. The applicant may propose to conduct dumping at a site already designated by EPA or at another site. In either case, EPA regulations require that the site be designated as an approved site according to procedures and criteria found at 40 CFR Part 228 before or at the same time that a permit is issued.

Section 102(c) of the MPRSA provides that the EPA Administrator may, considering the criteria established pursuant to Section 102(a), designate sites or times for dumping. On September 19, 1980, the Administrator delegated authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

EPA has promulgated implementing regulations which provide criteria for the designation and management of approved sites for ocean dumping (40 CFR Part 228). Criteria for the selection of dumping sites are found at 40 CFR (§ 228.4 to 228.6. Generally, these regulations provide procedures for designation (§ 228.4), general criteria for site selection § 228.5), and specific criteria for site selection (§ 228.6). Application of these criteria to the 12-Mile Site is discussed below.

The 12-Mile Site has been used since 1924 for the ocean dumping of municipal sludges. In 1973 (subsequent to enactment of the MPRSA), EPA designated this area as an "interim" site to be used primarily for the dumping of municipal sludges (38 FR 12875). However, small amounts of industrial materials also have been dumped at the site.

While more than 200 sewage treatment plants have previously dumped municipal sludges at the site, only 26 plants (operated by nine municipal sewerage authorities) are now authorized (all under Federal court order) to use this site for municipal sludge disposal. Although the number of municipal sludge dumpers has decreased since passage of the MPRSA, the volume of sludge dumped at the 12-Mile Site has increased from 4.6 million wet tons in 1973 to more than 8.3 million wet tons in 1983. This increase has resulted primarily from the upgrading of sewage treatment facilities and the resultant increase in municipal sludge production in the New York/New Jersey metropolitan area.

On May 18, 1979, the 12-Mile Site was designated as an approved municipal sludge disposal site (45 FR 29052). This site designation, which expired on December 31, 1981, was based on the information and analysis presented in the "Final Environmental Impact Statement (EIS) on the Ocean Dumping of Sewage Sludge in the New York Bight." A notice of availability of the EIS was published in the Federal Register on October 16, 1978. The underlying assumption of the EIS was that, by December 31, 1981, the ocean dumping of municipal sludge in the New York/New Jersey metropolitan area would cease and environmentally acceptable alternatives would have been implemented. Requirements to implement an alternative to ocean dumping on or before the end of 1981 were included in all permits for ocean dumping of municipal sludge issued by EPA. Therefore, pending development of land-based disposal alternatives, the EIS recommended continued use of the existing dumping site.

EPA believed that so long as the required safeguards (i.e., permit restrictions for disposal, efficient monitoring programs, etc.) were in effect, disposal for a limited period of time at the 12-Mile Site was preferable to use of a new, undisturbed area which would be impacted if dumping were to occur there. However, EPA recognized that with the required upgrading of sewage treatment facilities and the construction of various new plants, the quantity of municipal sludge needing disposal would increase and could cause additional impact at the existing disposal site.

Since the end of 1981, the ocean dumping of municipal sludge at the 12-Mile Site has been authorized by court orders. Those court actions are discussed below.

II. Court Actions

In 1981, New York City and several other municipalities brought suits against EPA, challenging EPA's refusal to renew their permits to ocean dump municipal sludge at the 12-Mile Site after December 31, 1981. In the New York City case, Judge Sofaer held that EPA could not deny ocean dumping permit applications without considering the availability and impact of land-based alternatives. "City of New York v. EPA" 543 F. Supp. 1084 (S.D.N.Y. 1981).

The Judge's order barred EPA from taking any action to prohibit New York City from dumping municipal sludge at the 12-Mile Site (as long as certain conditions of previously issued EPA permits were met) until the Agency ruled on the City's petition to redesignate that site. EPA has now denied the City's petition to redesignate the 12-Mile Site. Therefore, under the terms of the court order, New York City will now be required to take all steps necessary for a rapid and orderly shift of its municipal sludge dumping operations to such sites as are designated by EPA. On May 4, 1984, EPA designated a Deepwater Municipal Sludge Dump Site (49 FR 19005).

Orders similar to that issued in the "City of New York" litigation were entered on the consent of the parties in cases involving EPA and eight other municipal sewerage authorities in the New York/New Jersey metropolitan area which are currently dumping municipal sludge at the 12-Mile Site.

Thus, in light of these court orders and EPA's designation of a Deepwater Municipal Sludge Dump Site, today's denial of petitions to redesignate the 12-Mile Site will result in the need to transfer municipal sludge dumping operations from the 12-Mile Site to the Deepwater Municipal Sludge Dump Site. Under the court orders, dumping at the Deepwater Municipal Sludge Dump Site may continue until EPA makes final determinations on each municipalities' permit applications.

III. Petitions

On December 20, 1982 (47 FR 56665), EPA requested comments on the possible redesignation of the 12-Mile Site. The Agency's consideration of the redesignation of the 12-Mile Site was based on petitions submitted by the New York City Department of Environmental Protection, the Bergen County Utilities Authority, the Joint Meeting of Essex and Union Counties, the Linden Roselle Sewerage Authority, the Passaic Valley Sewerage Commissioners, the Rahway Valley Sewerage Authority, and the Middlesex County Utilities Authority.

The original petitions filed by New York City and the six New Jersey authorities cited the lack of degradation outside the dump site, the unlikelihood of improvement if dumping were stopped there, and the additional cost of moving to a new dump site as reasons for redesignation. Since no additional factual information on the site was presented, EPA granted the petitioners additional time to provide further technical information to support their petitions. All submitted additional documentation.

IV. Tentative Denial of Petitions

On May 4, 1984 (49 FR 19042), EPA announced its tentative determination to deny petitions by several current municipal sludge dumpers to initiate rulemaking to redesignate the 12-Mile Sewage Sludge Dump Site in the New York Bight Apex. EPA's tentative determination was based upon a finding that designation of the site would be inconsistent with the criteria set forth in section 102(a) of the MPRSA and in regulations issued pursuant thereto (40 CFR Part 228).

Recognizing the considerable interest by the affected parties, EPA scheduled a series of public hearings in June 1984, at three locations in the New York/New Jersey area to receive comments concerning the tentative decision (49 FR 21700). On June 18, 1984, a public hearing was held at Monmouth College in West Long Branch, New Jersey. On June 20, 1984, a second public hearing was held at the City of New York Graduate School in New York. The third public hearing was held June 22, 1984, at Hofstra University in Hempstead, Long Island. The public comment period ended July 3, 1984. Transcripts of the public hearings and comments are available for public inspection at the locations listed above under **ADDRESSES.**

V. Findings Upon Which the Final Determination Is Based

A. Site Selection Criteria

EPA's final determination to deny petitions to redesignate the 12-Mile Site continues to be based upon the findings that designation of the site would be inconsistent with the criteria set forth in section 102(a) of the MPRSA and in regulations issued pursuant thereto (40 CFR Part 228).

1. General Criteria

Five general criteria (40 CFR 228.5) are used in the selection and approval for continuing use of ocean disposal sites. Sites are to be selected so as to: (1) Minimize the interference of disposal activities with other activities in the marine environment; (2) to limit impacts to temporary perturbations in water quality or other environmental conditions caused by disposal operations anywhere within the disposal site; (3) permit the implementation of effective monitoring to prevent adverse impacts; (4) whenever feasible, designate ocean dumping sites beyond the edge of the Continental Shelf; and (5) terminate interim sites that do not satisfy the criteria for site selection upon designation of a suitable alternative disposal site. The characteristics of the 12-Mile Site are summarized below in terms of the five general criteria.

Three navigational lanes established by the U.S. Coast Guard converge and intersect in the New York Bight Apex. As a result, the 12-Mile Site is located in an area of heavy commercial and recreational ship traffic. Because of this, strict limits have had to be placed on the time municipal sludge barges may occupy the site for dumping. Also, the individual barges utilizing the site are numerous enough at this time to cause concern about the potential hazards to navigation that may result from increased utilization of the site in the future. EPA has concluded that far more than a doubling of the current dumpsite usage will be needed for all the dumpers to meet the limiting permissible concentration (LPC) requirement imposed by 40 CFR 227.27. The U.S. Coast Guard has concluded that, in order to dispose of current municipal sludge volumes, comply with the LPC requirement, and prevent navigational hazards, a series of single barges would have to occupy the site for a total of 44 hours per day. It is obvious that a 44 hour per day demand is impossible to accommodate, and the proposed scheme unworkable. Therefore, it would be impossible to dump the current volumes of municipal sludge in a manner that meets the LPC without creating serious navigational concerns.

The 12-Mile Site is also located in an area that is extensively used for breeding, spawning, nursery, feeding and passage by living resources in both adult and juvenile phases. Valuable commercial and recreational fisheries exist in the vicinity of the 12-Mile Site. In addition to fish and shellfish, wildlife species including dolphins, whales, turtles, and sea birds occasionally may be found in the vicinity of the site.

The New York Bight is bordered by the Long Island coast on the north and the New Jersey coast on the west. The 12-Mile Site is located slightly to the east of the center of the Apex. The Christiaensen Basin which is a topographical low lies just to the northwest of the site. The lower Hudson Shelf Valley starts at the southern end of the Basin and extends in a southeasterly direction toward the open sea.

The water column in the vicinity of the 12-Mile Site undergoes regular seasonal changes in stratification because of heating and cooling, wind mixing and influx of low salinity water

from the Hudson-Raritan estuary. Average currents are toward the southwest, but vary widely under the influence of local winds and stratification.

Summaries of currents and hydrography in the waters of the inner portion of the New York Bight show long-term mean flows to the southwest, ranging from 5–6 cm/sec in the surface layer to less than 2 cm/sec in the bottom water. On shorter time scales, the currents are stronger and highly variable in direction and speed. Wind driven surface currents can occur in any direction and compensating flows in bottom waters can result from some wind conditions, producing either shoreward advance and upwelling of bottom water off New Jersey and in the Hudson Shelf Valley, or with different wind conditions the offshore retreat of bottom water.

These currents disperse the municipal sludge throughout the Bight, but especially toward the Christiaensen Basin and the Hudson Shelf Valley where they eventually settle out. Local currents transport some municipal sludge constituents toward the Long Island shoreline.

At least three other sources contribute contaminants to the New York Bight Apex. The Hudson-Raritan estuary, which contains contaminants from all the industries and municipalities that discharge into these rivers, contribute the largest contaminant loads. The fresh water river plume, however, generally flows southward, directly along the New Jersey coastline. The strong ocean current returning south along the coastline creates a hydraulic "wall" which prevents the river plume water—and its associated contaminants—from flowing to the eastern half of the Apex, where the Christiaensen Basin, the Hudson Shelf Valley, and the 12-Mile Site are located. Coastal runoff from point and non-point sources in both New York and New Jersey contributes relatively small amounts of contaminants. Studies show that contaminants from Long Island "disappear" within 5 nautical miles south of the coast, masked by the greater contributions from the municipal sludge dump site.

The ocean dumping of dredged materials also contributes a significant amount of contaminants. The dredged material site (Mud Dump Site) is west of the 12-Mile Site, the Christiaensen Basin, and the Hudson Shelf Valley. Prevailing currents generally carry materials away from the dredged material site and toward the shoreline. Moreover, since dredged material contains a much higher proportion of solids than sludge, much more dredged material settles and remains on site.

This combination of locations, prevailing currents, and waste characteristics lead EPA to conclude that municipal sludge dumped at the 12-Mile Site is the primary source of the sewage-related contaminants found in the Christiaensen Basin, the Hudson Shelf Valley, and the ocean floor north of the site up to approximately 5 nautical miles south of Long Island. Municipal sludge may also be partly responsible for contamination in other areas of the Apex.

The site is within 12 nautical miles of coastal beaches in New Jersey and Long Island and adjacent to geographically important fishing areas. Oceanographic conditions at the 12-Mile Site are such that dumping operations cause perturbations in water quality in and near the site. Elevated levels of bacteria due to municipal sludge dumping have resulted in an area 6 nautical miles in radius (150 mi^2) surrounding the site being closed by the Food and Drug Administration (FDA) to commercial shellfishing. Levels of toxic metals and organohalogens in bottom sediments are increased over normal ambient levels in areas near the site, including known fishing areas. Changes in relative abundance and diversity of species in areas affected by municipal sludge dumping have been observed, as have indications of sublethal effects including bioaccumulation. Other alterations that have been identified include: decreased species diversity compared to communities in sedimentologically similar habitats; species shifts to pollution-tolerant species; and the disappearance of pollution-sensitive crustaceans. Municipal sludge also results in an increased biochemical oxygen demand and contains nutrients that contribute to anaerobiosis when ocean dumped. As explained above, the ocean dumping of municipal sludge at the 12-Mile Site is probably the primary cause of these impacts in the eastern portion of the Bight Apex. Municipal sludge dumping is also a contributing factor to the overall degradation of the New York Bight.

The site's location near other significant sources of contaminant inputs affecting the overall Bight area (e.g., the Hudson-Raritan estuary plume and dredged material dump site) severely restricts EPA's ability to isolate, identify, and control the immediate impacts of municipal sludge dumping and to implement an effective monitoring and surveillance program to detect long-term impacts. With increased utilization of this site in the future, the inability to identify impacts on a continuing basis could result in more serious damage to the Bight Apex and surrounding environment before sufficient conclusive information becomes available to take mitigative measures.

The 12-Mile Site location, while historically used for municipal sludge dumping, does not satisfy the statutory preference for sites to be located off the Continental Shelf whenever feasible. While this statutory preference embodies a degree of judgment as to what is feasible, EPA has determined that it is indeed feasible to use the Deepwater Municipal Sludge Dump Site, which is located off-the-Shelf. Moreover, the Deepwater Municipal Sludge Dump Site is environmentally preferable. Municipal sludge dumped at the Deepwater Municipal Sludge Dump Site would be largely dispersed in the upper part of the water column, thus allowing for sufficient dilution to background levels. The much greater ocean depths would allow solids to disperse over a much larger area before they settled on the ocean bottom, reducing the potential for sediment contamination. It is technically feasible to monitor and isolate the impacts of such dumping, especially without compounding impacts of pollution from other sources which occurs at the 12-Mile Site. The greater distance from shore of such a site would reduce the possibility of any impacts on shorelines and beaches or interference with nearshore fisheries and shellfisheries. The cost to the municipalities using an off-the-Shelf site would be greater. However, EPA believes that municipal sludge disposal at the Deepwater Municipal Sludge Dump Site is economically feasible.

Municipal sludge dumped at the 12-Mile Site does not remain at the site but disperses throughout the Bight Apex. The site was originally designated for a finite period on the presumption that municipal sludge dumping in the New York/New Jersey metropolitan area would be terminated at the end of 1981. However, this has not been the case. The present municipal sludge dump site does not meet the criteria for an acceptable site. Moreover, an environmentally preferable off-the-Shelf site has been designated by EPA. Therefore, for all the reasons described throughout this notice, EPA has determined to deny the petitions to redesignate the 12-Mile Site.

2. Specific Factors

Eleven specific factors (40 CFR 228.6) are used in evaluating a proposed disposal site to ensure that the general criteria are met.

EPA established these specific factors (§ 228.6), to identify the key elements in the environmental assessment of the impact of the site for disposal. These factors are used to make critical environmental determinations of ocean disposal and are the basis for final site selection.

The eleven specific factors considered in site designation are discussed below as they relate to the 12-Mile Site.

Factor 1—Geographical position, depth of water, bottom topography and distance from coast.

- The site is centrally located in the New York Bight Apex on the Continental Shelf.
- It is bordered north and northwest by the Christiaensen Basin and west and southwest by the Hudson Shelf Valley.
- Water depth is approximately 27 meters (88 feet).
- Bottom topography is flat, and elevated relative to the adjacent Hudson Shelf Valley and Christiaensen Basin.
- The nearest point of land in New Jersey is approximately 10.3 nautical miles away and on Long Island, 9.9 nautical miles from the site.
- The site occupies an area of about 6.6 square nautical miles with coordinates of 40°22'30" to 40°25'00" N Latitude and 73°41'30" to 73°45'00" W Longitude.

Factor 2—Location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases.

- Substantial valuable living marine resources are associated with the 12-Mile Site and adjacent areas. These resources are heavily utilized by both commercial and recreational fishing interests.
- The site is located within an area in which commercial shellfishing is prohibited by the FDA due to bacteriological contamination.
- The area including the 12-Mile Site is utilized by fish and shellfish for breeding, spawning, nursery, feeding, and passage in both juvenile and adult phases.

Factor 3—Location in relation to beaches and other amenity areas.

- The site is near coastal beaches, resorts, state and Federal parks, and other amenity areas in New Jersey and Long Island. The nearest Long Island coastline is 9.9 nautical miles away. The nearest New Jersey coastline is 10.3 nautical miles away.
- Municipal sludge-derived waste constituents have been detected above normal ambient values in bottom sediments as close as 5 nautical miles from the coast of Long Island.

Factor 4—Types and quantities of wastes proposed to be disposed of, and proposed methods of release.

- Individual dumpers currently using the 12-Mile Site would be required to comply with the permissible discharge rate established by EPA's Ocean Dumping regulations (40 CFR 227.8, 227.27). Because of the significant volume of municipal sludge to be dumped, the limited size of the dump site, concern for navigational hazards, the relative toxicity of the sludge dumped, and other technical factors, it will not be possible for the present dumpers, in combination, to comply with the required discharge rate. This is further discussed in detail in Section VI, response to Comment No. 3.
- All authorized municipal sludges would be transported by vessels with subsurface release mechanisms.
- From 1973 to 1983, more than 63 million wet tons of municipal sludges were dumped at the 12-Mile Site. In 1973, 4.5 million wet tons were dumped. This increased in 1983 to more than 8.3 million wet tons.

Factor 5—Feasibility of surveillance and monitoring.

- Environmental monitoring at the 12-Mile Site is greatly facilitated by its proximity to shore and shallow depths. However, because of the long history of waste disposal at the site, true baseline conditions are difficult to define. Also, the presence of several major pollution sources to the Bight Apex (e.g., Hudson-Raritan plume, wastewater discharges, and other ocean dump sites) makes it difficult to precisely identify distinct cause-and-effect relationships.
- Surveillance of disposal activities at the 12-Mile Site is being accomplished by using patrol boats, aircraft, or shiprider provided by the U.S. Coast Guard, or remote observation such as by radar or satellite.
- The site can also be monitored by ocean-going vessels. EPA, NOAA, the permittees, and others have conducted extensive monitoring/research activities in and near the site during the past.

Factor 6—Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevalent current direction and velocity.

- Circulation in the Bight Apex is highly variable and is affected by winds, tides, and discharge from the Hudson-Raritan estuary. The mean flow direction is to the southwest at average velocities of 5–6 cm/sec at the surface and less than 2 cm/sec at the bottom.
- Vertical density stratification typically occurs from April to October, with a surface mixed layer as shallow as 5 meters. A horizontal density front exists west of the Hudson Shelf Valley axis and the dump site between the relatively freshwater discharge of the Hudson-Raritan estuary which flows southward along the coast of New Jersey and the relatively saline water of the Bight Apex.
- The hydraulic residence time of the Bight Apex has been estimated to be from 5 to 10 days.
- Field measurements of municipal sludge dispersion demonstrate the dispersive nature of the water column at the 12-Mile Site. Dispersion is most rapid when the meteorological and hydrographic conditions include high winds and an unstratified water column. However, high background levels of contaminants from the Hudson-Raritan estuary contribute to the apparent "rapid dispersion" by masking the detection of dumped municipal sludge after longer periods of time.
- The 12-Mile Site is located within an area where substantial shoreward currents have been observed and assist in transporting the dumped municipal sludge towards Long Island's beaches.
- Much of the municipal sludge dumped at the 12-Mile Site is transported to the Christiaensen Basin where the most severe benthic impacts are observed.

Factor 7—Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

- The 12-Mile Site has been used for the disposal of municipal sludge from the New York/New Jersey metropolitan area since 1924, and limited quantities of industrial wastes were disposed of at the site prior to 1976.
- Three other major ocean disposal sites for the dumping of dredged material, cellar dirt, and acid wastes are located in the New York Bight Apex.
- Quantities of municipal sludges dumped in the Bight have increased from about 4.6 million wet tons in 1973 to approximately 6.3 million wet tons in 1983. Quantities of dredged material dumped at the Mud Dump Site in the Bight Apex decreased from over 13 million tons in 1973 to 4.1 million tons in 1983. Acid wastes dumped at the Acid Waste Disposal Site decreased from about 2.7 million wet tons in 1973 to 38 thousand wet tons in 1983. Cellar dirt dumping decreased from 900 thousand tons in 1973 to 89 thousand tons in 1980; no cellar dirt was dumped between 1981 and 1983.
- Currently, approximately 200 million gallons of raw, 133 million gallons of primary treated, and 1,883 million gallons of secondary treated wastes are discharged daily to the Hudson-Raritan estuary from municipal

treatment plants and ultimately enter the Bight Apex. Approximately 275 million gallons per day of industrial wastes (excluding cooling waters) also are discharged to the estuary.

• Monitoring by EPA, NOAA, and others has indicated that the New York Bight Apex is significantly degraded and has adversely affected shellfish, fin fish, and other living marine resources in and beyond the Bight Apex.

• The relative mass loading of the different contaminant inputs to the Bight Apex varies considerably. The largest contributions by weight are those associated with discharges in the Hudson-Raritan estuary (including municipal and industrial discharges). The next largest contributions are those associated with the ocean dumping of dredged materials, municipal sludges, and industrial wastes. However, the quantities of contaiminant inputs do not necessarily represent the proportional environmental impact on the New York Bight environment. The availability of toxic substances to the biota is a function of processes occurring within the environment and has been shown in many cases not to be correlated with total contaminant loads. Repeated measurements of levels of heavy metals, organic materials, petroleum hydrocarbons, and bacteria in the Apex all indicate a region of higher concentrations encompassing the depositional center of the 12-Mile Site and the dredged material dump site. Municipal sludge, which consists of approximately 5 percent solids and 95 percent water with other dissolved contaminants, disperses rapidly when ocean dumped and, its widespread dispersion enhances its bioavailability. In contrast, dredged material has a much greater solids content. With the exceptions of ammonia and manganese, most nutrients, metals, and toxic organics associated with dredged material remain within the site.

• Municipal sludge contributes up to 30 percent or approximately 1,300 to 4,400 pounds per year of the total polychlorinated biphenyls (PCB's) loading to the Bight. Municipal sludge is also responsible for much of the Bight's inputs of chlorinated hydrocarbon pesticides, such as DDT and dieldrin. DDT from municipal sludge ranges from approximately 234 to 510 pounds per year. Because of the large quantity of water associated with municipal sludge, these contaminants are biologically available to marine organisms. This creates a risk of human exposure through consumption of contaminated seafood.

• Sewage associated contaminants have been found to the north of the site within 5 nautical miles of Long Island beaches. They have also been found as far as 22 miles south of the 12-Mile Site, including portions of the Christiaensen Basin, the Hudson Shelf Valley, and other important fishing areas.

• Sediments from the center of the Christiaensen Basin are unconsolidated, soupy in texture, and high in material which researchers have indicated are likely derived from ocean dumped municipal sludge.

• Negative impacts on the benthic species have been observed in a 7 to 11 square nautical mile area within the Christiaensen Basin which is adjacent to the 12-Mile Site.

• Fecal coliform levels associated with municipal sewage and detected in bottom sediments show a high degree of sewage related contamination as far south as 22 miles down the Hudson Shelf Valley.

• Concentrations of chromium, copper, lead, mercury, cadmium, nickel, and zinc in bottom sediments are approximately 10 times greater near the municipal sludge dumpsite than in other areas of the New York Bight.

• Ecological effects which can be attributed wholly or in part to the ocean dumping of municipal sludge includes: closure of shellfish beds; introduction of viral, bacterial, fungal and protozoan pathogens into the Apex which remain viable for long periods of time; elevated levels of heavy metals and toxic orgainic compounds (e.g., PCB's and Polyclic Aromatic Hydrocarbons (PAH's)) in bottom sediments and marine organisms; reduced bottom dissolved oxygen levels; reduced catches of bony fishes; alterations in the benthic biological community, particularly in the proliferation of stress-tolerant polychaete worms; observed sublethal effects in organisms, including reduction of reproductive functions, increased incidences of fin rot and black gill disease, mutation of fish larvae, decreased survival of offspring; and introduction of carbon and nutrients, which contributes to planktonic blooms and anaerobiosis.

Factor 8 —Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.

• The site is located in the heavily trafficked entrance to New York Harbor. It is within the Precautionary Zone established by the U.S. Coast Guard for commercial and recreational traffic. The imposition of more stringent discharge rate requirements meeting EPA requirements on municipal sludge dumpers would require vessels to remain at the 12-Mile Site for many additional hours. This provision would also require more than one barge to occupy the site at the same time. This would pose a navigational hazard which is unacceptable to the U.S. Coast Guard.

• Dumping activities at the 12-Mile Site are interfering with fishing and recreational use of the Bight Apex. Valuable living marine resources associated with the site and adjacent areas are substantial and heavily utilized by commercial and recreational fishing industries. The ability of the Bight Apex to sustain living resources harvested by man has been seriously impaired. An area of 6 nautical mile radius from the center of the dumpsite (150 mi^2) plus adjacent areas reaching to the Long Island and New Jersey beaches have been closed for the taking of bivalves for human consumption based on elevated coliform bacteria levels.

Factor 9—The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

• Elevated levels of heavy metals, including cadmium, nickel, zinc, mercury, lead, copper, and chromium have been found in and adjacent to the 12-Mile Site, the Christiaensen Basin and Hudson Shelf Valley. In addition, elevated levels of chlorinated hydrocarbons such as PCB's, petroleum hydrocarbons, and other contaminants have been measured in the sediments.

• A fecal steroid, *Coprostanol*, *Escherichia coli*, and a pathogenic protozoan, *Acanthamoeba*, which are associated with municipal sludge and are utilized as sludge tracers, are found at elevated levels outside the dumpsite.

• Densities of spores of the fecal indicator, *Clostridium perfringens*, are high in the Christiaensen Basin and gradients have been observed in the direction of the Long Island coast and up to 50 nautical miles down the Hudson Shelf Valley.

• Changes in relative abundance and diversity of species in areas affected by municipal sludge disposal have been observed, as have indicators or sublethal effects, including bioaccumulation, mutations, and increased bacterial resistance to antibiotics and toxic metals.

• The incidence of disease in fish and shellfish is elevated in the New York Bight relative to other areas in the mid-Atlantic ocean. Diseases include fin erosion, ulcers, and exoskeletal anomalies in shellfish, including crabs, lobsters, and shrimp.

• High prevalence of chromosomal aberrations have been found in fish eggs and larvae taken from the New York Bight. Greater mortality of eggs and

larvae have also been associated with the Apex and Hudson Shelf Valley than in other areas of the Bight.

- The areas outside the 12-Mile Site receiving municipal sludge (e.g., Christiaensen Basin) have been characterized by benthic populations which are greatly reduced in diversity and species richness.
- Many of the benthic species, particularly tube-dwelling amphipods, which are extremely important in the food web and normally found in these water depths and sediment types, are rare or absent in the areas adjacent to the 12-Mile Site.

Factor 10—Potentiality for the development or recruitment of nuisance species in the disposal site.

- Species shifts to pollution-tolerant species such as the archetypal opportunist, *Capitella capitata*, have been observed in the Christiaensen Basin. This species can be classified as an undesirable species.
- Impacts to the benthic fauna at and adjacent to the site have altered the biological community, resulting in the loss of the preferred food sources for important fin fish.

Factor 11—Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

- The site is located in close proximity to Gateway National Recreational Area, one of the most heavily utilized national parks in the United States.
- The site also is located near a number of important Federal, state and local parks, including Fire Island National Seashore and Jones Beach State Park on Long Island, and Island Beach State Park in New Jersey.
- Due to its proximity to the metropolitan area, the site is close to various features of historical importance, including the Marconi Twin Lights, various forts, and Liberty Island.
- There have not been any reported adverse impacts.

B. Impact Category I

EPA has established an "Impact Category I" in the Ocean Dumping regulations (40 CFR 228.10) which specifies that the effects of activities at the disposal site must be categorized in "Impact Category I," when one or more of five specified conditions exist and can reasonably be attributed to ocean dumping activities.

EPA is required to place limitations on the use of any Impact Category I site "as are necessary to reduce the impacts to acceptable levels." As explained in EPA's response to New York City's comment, Section VI, Response to Comment No. 1, EPA's decision not to redesignate the 12-Mile Site for municipal sludge disposal is a necessary part of reducing the impacts summarized below.

As explained below, EPA has determined that conditions (i), (iii), and (v) are present in the New York Bight Apex. It is likely that condition (ii) also exists. The City of New York has conceded in its own comments that (iii) can reasonably be attributed to municipal sludge dumping. Accordingly, EPA today is classifying the 12-Mile Site as an "Impact Category I" site. The basis for EPA's findings are described in detail in the response to Comment No. 2 in Section VI of this notice.

(i) There is identifiable progressive movement or accumulation, in detectable concentrations above normal ambient values, of any waste or waste constituent from the disposal site within 12 nautical miles of any shoreline, marine sanctuary designated under Title III of the Act, or critical area designated under Section 102(c) of the Act.

From 1973 to 1983, more than 83 million wet tons of municipal sludges were dumped at the 12-Mile Site. In 1973, sludges were dumped at a rate of 4.5 million wet tons per year. This increased in 1983 to approximately 8.3 million wet tons.

Analysis of sediments in the Bight Apex indicates a high level of contamination by organic carbon, heavy metals, and hydrocarbons in areas outside the 12-Mile Site. The highest levels of organic carbon were found adjacent to the municipal sludge and dredged material dumpsite. High levels of spores of the virus, *Clostridium perfringens*, have been found within 5 nautical miles of Long Island beaches. This virus is a "tracer" for human pathogens found in municipal sludge. Since the quantities of municipal sludge disposal at the site have risen steadily and progressively since 1973, EPA believes it is reasonable to conclude that contaminants have been accumulating and have also been progressively moving off the site.

(ii) The biota, sediments, or water column of the disposal site, or any area outside the disposal site where any waste or waste constituent from the disposal site is present in detectable concentrations above normal ambient values, are adversely affected by the toxicity of such waste or waste constituent to the extent that there are statistically significant decreases in the populations of valuable commercial or recreational species, or of specific species of biota essential to the propagation of such species within the disposal site and such other area as compared to populations of the same organisms in comparable locations outside such site and area.

Studies have shown that the benthic community in the vicinity of the 12-Mile Site shows low species diversity compared to near-by ecologically similar areas. The benthic community is an important source of food for many commercial and recreational species. Studies also show that valuable commercial and recreational species caught in the New York Bight suffer a high incidence of disease and physical abnormality. EPA has found sufficient evidence relating alterations in species to contaminants present in municipal sludge that it can conclude that municipal sludge dumping at the 12-Mile Site is contributing to these conditions. This is particularly likely in the case of the benthic organisms in the areas, where most of the municipal sludge dumped at the 12-Mile Site ultimately accumulates. Since benthic organisms are not very mobile, the adverse impacts exhibited are likely due in large part to contaminants contained in municipal sludge dumped at the 12-Mile Site.

New York City states in their comments that this criterion cannot be shown to be violated because EPA has not demonstrated that these are "statistically significant" decreases in populations of valuable commercial or recreational species or a specific species of biota essential to the propagation of such species within the 12-Mile Site.

Site designation regulations define "statistically significant" as a 95 percent confidence level (40 CFR 228.2(f)). The purpose of this "statistical significance" requirement is to discount the occurrence of an observation that might be attributable exclusively to chance, natural variation, or other pollution sources. As stated throughout the technical evaluations prepared by both New York City and EPA, substantial marine research has been done by many scientists over a considerable period of time in the New York Bight Apex. It is evident that from the results of their studies that there is substantial impact on the benthic community, commercial species, and recreational species. Moreover, it is highly likely that at least part of this impact can be attributed to disposal of municipal sludge at the 12-Mile Site. New York City did collect their own data and stated that no "statistically significant" differences exist. However, New York City has not provided original data to substantiate this claim nor have they indicated that they had evaluated the studies published in the literature and refuted the "statistical significance" of those

studies. Accordingly, EPA concludes that given the evidence, municipal sludge dumping has resulted in decreases in the populations of valuable commercial and recreational species and specific species of biota essential to the preparation of such species.

(iii) Solid waste material disposed of at the site has accumulated at the site or in areas adjacent to it, to such an extent that major uses of the site or of the adjacent areas are significantly impaired and the Federal or State agency responsible for regulating such uses certified that such significant impairment has occurred and states in its certificate the basis for its determination of such impairment.

New York City has acknowledged that the FDA has closed shellfishing in an area with a radius of six nautical miles (approximately 150 mi^2) surrounding the site. EPA believes it is likely that if all other sources were eliminated, the shellfish restriction would continue to be necessary due to the disposal of municipal sludge at the 12-Mile Site. Studies show that a gradient of progressively higher concentrations of bacteria and *Clostridium perfringens* spores can be drawn from a point approximately 5 nautical miles from Long Island's beaches to the 12-Mile Site. This gradient includes the shellfish closure area. The presence of this gradient strongly suggests that the 12-Mile Site is the source of these contaminants.

(iv) There are adverse effects on the taste or odor of valuable commercial or recreational species as a result of disposal activities.

EPA acknowledges that adverse effects on the taste or odor of commercial or recreational species has not been identified.

(v) When any toxic waste, toxic waste constituent, or toxic byproduct of waste interaction, is consistently identified in toxic concentrations above normal ambient values outside the disposal site more than four hours after disposal.

Repeated measurements of levels of heavy metals, organic materials, petroleum hydrocarbons, and bacteria show that high levels persist in the sediments of the New York Bight above ambient values for more than four hours after disposal. The measurements reveal regions of higher concentrations encompassing the depositional centers of the municipal sludge and dredged material sites. However, dredged material studies indicate that, except for ammonia and manganese, most nutrients, metals and toxic organics associated with dredged material are not readily available. Therefore, municipal sludge from the 12-Mile Site is the most likely source of these contaminants. The areas of municipal sludge deposition have also been shown to be high in fish disease and abnormalities associated with toxic contaminants. For a more complete discussion of these toxic effects, refer to EPA's response to Comment No. 7 in Section VI of this document.

C. Conclusion

Based on its analysis of the petitions and supporting documents, the EIS and comments thereon, public hearing records, public comments, and EPA/NOAA documents containing the results of scientific studies of ocean dumping activities at and near the 12-Mile Site, EPA concludes that redesignation of this site would not be in compliance with statutory and regulatory criteria for ocean dump site designation.

The cessation of municipal sludge disposal in the New York Bight, along with the implementation of a series of other Agency programs, will help to improve the overall quality of these waters which serve as a source of food and provide recreation for millions of people annually and are vital to the economic well-being of the entire New York and New Jersey metropolitan area. The other Agency actions include financing for the construction of improved sewage treatment facilities and critical evaluation of marine discharge waivers under section 301(h) of the Clean Water Act.

EPA has consistently worked towards meeting the goal of restoring the quality of the Nation's marine environment. Based on this goal, the current state of the environment in the New York Bight Apex, and the existence of an environmentally preferable and feasible off-the-Shelf ocean disposal site, EPA has determined that further contamination of the nearshore area by municipal sludge dumping is no longer justifiable, nor is it permitted by EPA's regulatory criteria. Thus, discontinued use of the 12-Mile Site is consistent with the statute, the implementing regulations, and the goals of environmental restoration.

VI. Response to Comments

EPA received a substantial number of responses to its request for comments on the tentative denial of petitions to redesignate the 12-Mile Site (49 FR 19042). The petitioners and only a few other commenters favor the redesignation of the 12-Mile Site. However, EPA has received hundreds of comments, signed petitions by thousands of citizens, resolutions from approximately 100 municipalities, and letters of concern from numerous elected officials and the general public objecting to the redesignation of the 12-Mile Site. Responses to New York City's comments on the tentative denial of petitions to redesignate the 12-Mile Site follow. New York City's comments cover all of the major issues raised by the other commenters who favor redesignation. The number in parentheses at the beginning of each comment identifies the comment according to the numbering system that New York City used.

1. *Comment (1.1)*: New York City believes that there is no justification for EPA's statement that volumes of sewage sludge or quantities of solids and contaminants to be disposed at the 12-Mile Site will increase significantly within the next 5 years. Nevertheless, if the Agency is concerned about the potential effect of increased sewage sludge disposal at the 12-Mile Site, the appropriate response should not be to deny redesignation of the site. Instead, EPA should place reasonable limits on the increased quantities of sewage sludge that could be disposed at the site. New York City believes that such reasonable limits would easily accommodate all sewage sludge generated by the nine permittees during the next 5 years. Alternatively, EPA could place limitations on the total quantity of specific contaminants of concern disposed at the 12-Mile Site, such that the total quantity of these contaminants disposed would not be significantly increased. Such a management approach would be consistent with EPA's efforts to ensure that the quality of sewage sludges is maintained or improved through industrial pretreatment programs.

In developing its estimates of sewage sludge volumes to be disposed, EPA ignored the changes in the characteristics of sewage sludge that are caused by the increased treatment which also leads to the increased volume of sewage sludge to be disposed. Sewage sludge is composed primarily of water, and only less than 2–11 percent solid material which contains all of the contaminants. When wastewater is subjected to additional treatment (e.g., secondary versus primary), the total volume of sewage sludge is increased, while the total quantity of solids, and therefore, of contaminants, in the sewage sludge is not significantly changed. The increased volume is due to the increased water content, since water is more difficult to remove from suspended solid material which is of a finer-grained nature following secondary treatment. Because the total quantity of contaminants contained in

sewage sludge is more properly represented by the total solids in sewage sludge, the total weight in solids (as opposed to the total volume of sewage sludge) gives a more accurate picture of the yearly changes that occur in contaminant loading due to sewage sludge disposal.

EPA's Response: Whether or not predictions on future volumes are precise, municipal sludge volumes have increased from 5.9 million wet tons in 1979 to over 8.3 million wet tons in 1983. Moreover, municipal sludge dumping at 1979 levels had already created unacceptable environmental impacts. When EPA designated the site for use in 1979, it explained that the New York Bight was already severely degraded, and continued municipal sludge disposal would be acceptable only as a temporary measure until New York City could identify a feasible alternative. EPA specified that the designation would expire on December 31, 1981. Since that time, the volume of municipal sludge has increased, and this has resulted in further adverse impacts to the New York Bight. EPA has decided to base its decision on existing degradation caused by current dumping levels. Therefore, the amount of the anticipated increase is not relevant.

Nevertheless, EPA continues to believe that New York will be producing greater amounts of sewage sludge in the future. Major new treatment plants will be constructed in New York (Red Hook and North River), and upgraded to secondary treatment capacity in New York (Newtown Creek) and New Jersey (Passaic Valley). Both the new and improved treatment facilities will remove contaminants from wastewaters that are currently discharged directly to rivers which flow into the New York Bight Apex. The process of removing these contaminants will generate new quantities of sludge.

Contrary to New York's assertions, upgrading from primary to secondary treatment does significantly increase the amount of solids in municipal sludge by at least fifty percent. Moreover, in terms of the wet tons vs. dry tons issue, it is misleading to suggest that the liquid component of municipal sludge has no adverse environmental impacts. Although many contaminants adhere to the surface of the solid particles in sludge, the water contains dissolved materials that can also be detrimental to the marine environment.

As an alternative to closing the 12-Mile Site, New York City has requested EPA to place limits on either the total quantity of sludge or on specific contaminants of concern. EPA has considered New York City's suggestion, but found it unworkable. As New York City maintains throughout it comments, it is difficult to identify precisely all the impacts caused by municipal sludge dumped at the 12-Mile Site, because at least three other major sources of contaminants impact the New York Bight Apex: the dredged material site, the Hudson-Raritan estuary, and coastal point and non-point sources. All of these sources contain some sewage-related contaminants, and all contribute to some of the degradation observed in the Bight. However, two factors have prevented experts from precisely identifying the relative contributions from these additional contaminants sources. First, the physical characteristics of the Bight, which include a complex pattern of currents and widely varied topography, make it difficult to track or predict the dispersion of contaminants. Second, waste characteristics affect the impact of contaminants on the Bight environment. For example, contaminants from muncipal sludge, which is largely liquid, are transported offsite rapidly and easily. Contaminants associated with dredged materials, which are largely solid, tend not to move offsite in significant amounts because the heavier solids settle and mound within the site.

While it might be possible to learn more about the relative contributions of the various sources, such studies would be expensive and time-consuming. Furthermore, EPA is not convinced that they would produce definitive answers, and in the interim, the environment of the Bight Apex would not improve. Moreover, EPA believes that the Deepwater Municipal Sludge Disposal Site (DMSDS) would be environmentally preferable even to limited use of the 12-Mile Site. The DMSDS site is farther from shellfish beds and beaches than the 12-Mile Site. The great depths (ranging from 4,700 feet to 9,000 feet) and active hydrodynamics at the DMSDS provide for much more extensive dispersion and dilution of wastes than the shallower depths (approximately 88 feet) at the 12-Mile Site. Therefore, it is unlikely that significant amounts of municipal sludge would reach the bottom and result in benthic impacts at the DMSDS. Living marine resources associated with the DMSDS appear to be less valuable relative to those adjacent to the 12-Mile Site, which are substantial and heavily used by the public. The DMSDS also satisfies Congress' preference for utilizing wherever feasible locations beyond the edge of the Continental Shelf. In addition, New York City has not suggested that using the DMSDS site is infeasible.

Accordingly, EPA has concluded that all disposal of municipal sludge at the 12-Mile Site should be prohibited. This conclusion was also expressed by the National Oceanic and Atmospheric Administration (NOAA) in testimony on July 21, 1983, before the Subcommittee on Water Resources of the Committee on Public Works and Transportation.

Finally, New York City suggested that setting contaminant limits for municipal sludge at the 12-Mile Site will provide incentives for new industrial pretreatment programs. However, discontinuance of the 12-Mile Site will not remove all incentives for new local pretreatment programs. Effective pretreatment could increase the potential for the disposal of municipal sludge by other environmentally preferable alternatives. Pretreatment might also make municipal sludge a useful and economically valuable resource.

2. *Comment (1.2)*: New York City believes that EPA has not demonstrated that the 12-Mile Site should be classified as "Impact Category I." In addition, the regulations specify that, even if a site were to be classified as "Impact Category I," this is not cause to deny redesignation of a site. Instead, the regulations specify that withdrawal of a designation is only one of several management options which can be applied to a site which is designated in "Impact Category I." These options also include changes in the total specified quantities or in the types of wastes to be discharged at a specific disposal site.

EPA Response: EPA has responded to New York City's specific criticisms in the discussion of "Impact Category I" in Section V.B of this notice. As explained in the response to New York City's comments on municipal sludge quantities, EPA has found limiting municipal sludge quantities at the 12-Mile Site to be unworkable.

3. *Comment (228.5(a))*: While it is true that the 12-Mile Site is partially located in a heavily-trafficked, navigational Precautionary Zone, the use of the 12-Mile Site has been proved not to be hazardous to navigation. In response to concerns voiced by various groups, the U.S. Coast Guard requested an opinion from the Captain of the Port of New York regarding the navigational safety aspects of sludge disposal at the 12-Mile Site. In a letter dated 8 April, 1982, to the Commander of the Third Coast Guard District, B.E. Joyce, Captain of the Port of New York stated: ". . . sludge dumping has occurred in that area since 1924, with no reported accidents" (Joyce

1982). He additionally stated: ". . . the twelve-mile dumpsite could still accommodate its present (traffic) load and absorb a 100 percent increase . . ." Ongoing sewage sludge disposal operations are, in fact, safe. Further, projected sludge production could be accommodated. There have been no accidents in the precautionary zone in the Bight Apex involving sewage sludge vessels or barges despite the large number of trips to the site that have occurred over many years of disposal.

EPA's Response: The Agency acknowledges that there have not been any reported hazards to navigation as the result of past and current sludge dumping at the 12-Mile Site. However, because conditions will change as discussed below, the Agency has concluded that future use of the site will very likely pose hazards to navigation.

In 1979, the 12-Mile Site was designated to be used only on an interim basis. Therefore, EPA did not enforce its requirements limiting the rate of sludge discharge from vessels using the site in order to avoid navigational hazards. EPA allowed a faster rate of sludge discharge in order to decrease the duration of dumps and reduce barge traffic at the site. This action was taken because it was the opinion of the U.S. Coast Guard's Captain of the Port that municipal sludge dumping at the site must be confined to one ship at a time in order to avoid hazards to navigation.

The high rate of discharge, however, violates the limiting permissible concentration (LPC) specified in 40 CFR 227.28. This limitation restricts the concentration of the liquid phase of municipal sludge, after initial mixing. While the Agency has, for reasons noted above, allowed discharge rates above those that exceed the LPC in the past, it is inconceivable that the continued use of the site would be permitted without enforcing the requirement for a reduced rate of discharge.

The letter New York City cited did not discuss the issue of meeting the LPC. In a second letter, dated November 23, 1983, the Captain of the Port concluded that it would be impossible to meet the LPC while disposing current municipal sludge volumes without requiring more than one barge to occupy the site at the same time. The Captain of the Port rejected this solution because he believed that multiple simultaneous dumps would pose unacceptable threats to navigation.

For this reason, the Agency considers hazard to navigation a serious threat and determines that the criteria of the Ocean Dumping Regulations are not met.

4. *Comment (228.5(b)):* While it is true that sludge particles are widely dispersed throughout the Bight Apex, it has not been demonstrated that any impacts directly caused by sewage sludge disposal have occurred beyond the site. Sporadic incidences of elevated bacterial levels in the water column have been reported in the vicinity of the site and, therefore, the FDA has imposed a precautionary shellfish closure. However, water quality measurements in the vicinity of the 12-Mile Site typically reveal very low or no detectable counts of fecal coliforms.

Levels of toxic metals and organohalogens are elevated in bottom sediments of the Christiaensen Basin and the Hudson Shelf Valley, both of which are near the 12-Mile Site. However, it is generally recognized that these contaminants are associated with fine-grained sediment particles, which naturally characterize these topographically low areas of the Bight Apex. Numerous sources of these fine-grained particulates, with associated contaminants, contribute to the contaminant levels found in these areas, including the Hudson River plume, dredged material disposal, cellar dirt disposal, etc. The disposal of sewage sludge at the 12-Mile Site contributes only 4 percent of the total solid material entering the Bight Apex and less than 2–11 percent of the contaminants of concern. Indeed, NOAA testimony (Ehler 1983) states that "[the Christiaensen Basin and the Hudson Shelf Valley] . . . would be expected to accumulate contaminants of coastal or estuarine origin even if dumping at the 12-mile site were discontinued." For these same reasons, contaminants detected in sediments within 5 nautical miles of coastal beaches cannot be ascribed to sewage sludge disposal and are likely to be from nearshore sources.

EPA, in identifying sewage sludge disposal as a contributor to the overall degradation of the Bight Apex, fails to properly characterize the true contaminant loading to the Bight. NOAA testimony (Ehler 1983) states:

> It is probable that the contaminant contribution of sewage sludge to environmental loadings, body burdens and ecological effects for a given toxicant is approximately proportional to the sludge input to the Bight as a whole. For most contaminants, the proportion added to the New York Bight regions via sewage sludge dumping is generally small. . .

EPA should explicitly state that sewage sludge disposal can, at most, bear only a small culpability for the contaminant concentrations that exist in the New York Bight Apex, and that the environmental condition of the Apex will not be appreciably improved should the 12-Mile Site be closed to sewage sludge disposal.

It should also be noted that this criterion states that elevated contaminant levels should be reduced to normal ambient levels before reaching any beach, shoreline, etc. Certainly, there have never been data demonstrating that contaminants or effects from sewage sludge disposal have approached any shoreline or geographically limited fishery. Despite the vague allegations in the EPA notice, this criterion is certainly met by the 12-Mile Site. Further, only a slight increase in sewage sludge quantities to be disposed at the 12-Mile Site might occur in the near future; and there is no scientific or technical evidence that would suggest that such a slight increase would potentially affect shorelines.

EPA's Response: EPA agrees that no data conclusively indicate that contaminants from the municipal sludge dump site exceed ambient levels at any beach or geographically limited fishery. Consequently, EPA cannot conclude that the site specifically violates the general criterion described in 40 CFR 228.5(b). However, EPA does not agree with the remaining claims in this comment.

Numerous studies cited throughout this document indicate that sewage-related contamination is primarily responsible for a variety of impacts outside the 12-Mile Site. Elevated levels of bacteria due to municipal sludge dumping have resulted in the area surrounding the site being closed to commercial shellfishing by the FDA. Levels of toxic metals and organohalogens in bottom sediments are increased over normal ambient levels in areas near the site, including known fishing areas. Changes in relative abundance and diversity of species in areas affected by municipal sludge dumping have been observed, as have indications of sublethal effects, including bioaccumulation. In addition, other alterations that have been reported include: decreased species diversity compared to communities in sedimentologically similar habitats; species shifts to pollution-tolerant species; and the disappearance of pollution-sensitive crustaceans.

Contrary to New York City's assertions and to Ehler's 1983 study, proportional contaminant contribution is not the best measurement of the impact of municipal sludge dumping. It is important to recognize when performing mass balance analyses that the contaminant inputs are not instantaneously and completely mixed with all waters of the Bight. In the

eastern portion of the Bight Apex, including the Christiaensen Basin, the Hudson Shelf Valley, and the area between the dump site and Long Island, municipal sludge is probably a much more important contributor of contaminants than any other source. Although the greatest bulk load of contaminants is introduced by discharges into the Hudson and Raritan Rivers, the surface plume, which contains most of these contaminants, principally flows south very close to the New Jersey coastline. Prevailing currents moving towards the southwest contain the plume and prevent significant amounts of its contaminants from spreading east toward the Christiaensen Basin, the Hudson Shelf Valley and the municipal sludge site. Coastal runoff from the New Jersey and Long Island shore is not a significant input because of its relatively low volume. Studies have been unable to trace the contaminants from the Long Island shore farther than 5 nautical miles south of the coast. At that point, contributions spreading north from other pollution sources (i.e., 12-Mile Site) are strong enough to mask the coastal input.

Repeated measurements of heavy metals, organic materials, petroleum hydrocarbons and bacteria all indicate regions of high concentrations centered on the municipal sludge and dredged material dump sites. The municipal sludge dump site is probably a much more important source of these contaminants than the dredged material site. General studies of dredged material dump sites indicated that, with the exception of ammonia and manganese, most nutrients, metals, and toxic organics associated with dredged materials are not readily bioavailable (Lee and Jones, 1979). Because dredged materials contain much greater amounts of solids, a much higher portion of these solids and their associated contaminants are sequestered on the bottom of the site and remain there.

New York City implied that the transfer of pathogens from surf clams and ocean quahogs is of little importance because they do not occur in great abundance in the vicinity of the 12-Mile Site, and also suggested that "shellfishing closure is a mere formality" "given the lack of harvestable populations of shellfish in the area of the 12-Mile Site." Contaminated shellfish do not have to be harvested commercially to pose a threat to the public health. Such contaminated shellfish may be gathered by non-commercial fishermen as well. Certainly the closure of shellfish beds is not considered by the authorities to be a "mere formality."

5. *Comment (228.5(d)):* Since no adverse long-range impacts have been detected, the monitoring and surveillance programs in effect at the 12-Mile Site have performed their intended purpose. New York City has concluded that the impacts from the disposal are controlled and that the monitoring and surveillance that are currently conducted will continue to be effective in prohibiting any adverse long-term effects.

EPA's Response: As stated above, isolating the impacts of municipal sludge dumping from other sources of pollution is extremely difficult, but EPA disagrees that monitoring has shown no long term impacts. For further discussion, see EPA's responses to Comments Nos. 13, 14, 17, and 19.

6. *Comment (228.5(e)):* New York City estimates that annual costs of dumping at the Deepwater Municipal Sludge Dump Site will be approximately $28.71 million, compared to an estimated annual cost of only $4.09 million at the 12-Mile Site. Disposal at the 106-Mile Site will be economically feasible, but burdensome. Any limited environmental benefits that might result from moving disposal to the 106-Mile Site are outweighed by adverse environmental impacts and economic costs. EPA's contention that disposal at the 106-Mile Site is environmentally preferable to disposal at the 12-Mile Site is technically unsupported.

EPA's Response: EPA has considered New York City's argument, but did not find it persuasive. EPA acknowledges that disposal costs will certainly be higher for the Deepwater Municipal Sludge Dump Site than for the 12-Mile Site. EPA believes, for all the reasons discussed elsewhere in this notice, that the Deepwater Municipal Sludge Dump Site is environmentally preferable. EPA had concluded that the environmental benefits of using the Deepwater Municipal Sludge Dump Site outweigh the additional costs. NOAA has also testified before Congress that the Deepwater Municipal Sludge Dump Site is environmentally preferable to the 12-Mile Site. Moreover, EPA carefully considered the feasibility of using the 106-Mile Site when it designated that site, and concluded that sludge dumping would be feasible. New York City was the only commenter that submitted information on the relative costs of ocean disposal at these sites.

Also, EPA's ocean dumping regulations provide for the consideration of economic issues in the permit process. Each of the municipal sludge dumpers currently using the 12-Mile Site will have an opportunity to raise issues concerning the costs of alternatives including land-based alternatives, in the permit application process that will follow this decision to deny the petitions for redesignation of the 12-Mile Site.

7. *Comment:* (2.4.1) EPA Region II has issued interim permits to nine sewage authorities in the New York Bight Apex. These permits set limits for maximum discharge rates and minimum vessel speeds. Present permit conditions for the nine sewage authorities are a maximum discharge rate of 15,500 gallons per minute (gpm) and a minimum speed of 3 nautical miles per hour (knots). In 1983, EPA considered revising the interim permit conditions. EPA Region II sent notices of draft proposed revisions to the interim permits of all the permittees except New York City. These draft proposed revisions would lower the maximum discharge rates by 26–87 percent for individual dumpers, from 15,500 gpm to as low as 2,000 gpm. The effect of this revision would be to increase the time that a transport vessel must remain at the 12-Mile Site while discharging. Depending on the sludge and the transport vessel used, EPA calculated up to 15.75 hours per trip would be required.

New York City claims that EPA's calculation of the proposed permit condition discharge rates is premised on several errors. In the following discussion, EPA describes each alleged error and presents its response.

a. EPA selected the second worst LC50 value for *Mysidopsis bahia* reported by the permittee during the previous two years of compliance monitoring data.

EPA's Response: New York City objects to EPA's use of second worst LC50 value reported during previous two years of compliance monitoring data.

The City discusses the variability of the LC50 test due to biological variability of species; procedural details during test operation and non-homogeneity of test samples. New York City further suggests that where multiple acute toxicity test results for a waste exist, they should be used to calculate a species mean acute value and indicates use of the mean value for LC50 tests has become standard practice in establishing national water quality criteria for the protection of aquatic life (presumably under the Clean Water Act).

The purpose of the Marine Protection, Research, and Sanctuaries Act is to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health,

welfare, amenities or the marine environment, ecological systems or economic potentialities. Given this intent, the use of the second worst case observation is not precluded. Moreover, New York City's suggested use of the mean could be too liberal. If the applicant wanted to present alternative statistical analysis, EPA believes a more appropriate alternative approach would be to provide the LC50 value at the 95 percent significance level and compare that value to the second worst observed value. The City references a large data base, but has not provided information for either a 95 percent significance level or a mean level for this organism.

b. This LC50 was multiplied by an application factor of 0.01 to obtain the maximum sewage sludge concentration to be allowed 4 hours after dumping. A more appropriate application factor would be 0.05.

EPA's Response: New York City suggests increasing the application factor out from 0.01 to 0.05 based upon toxicity tests where ammonia concentration was held constant and metals and organics were varied. New York City concludes from these LC50 values that metals and organics showed no effect and, therefore, the higher application factor is more appropriate:

The purpose of the application factor of the Ocean Dumping regulations is to provide a safety factor to the acute LC50 values in order to account for the chronic toxic effects these toxicants could exert over a longer exposure time. Chronic toxic effects (e.g., fish disease) are observed in the New York Bight Apex in the vicinity of the municipal sludge dump site. Accordingly, the City's proposal is not persuasive.

c. EPA used LC50 values for *Mysidopsis bahia* when calculating the draft revised dumping rates for New York Metropolitan Area permittees. The confounding effect of particulate matter in interpreting *Mysidopsis bahia* toxicity tests results brings into question the utility of this species as the most sensitive estimator of potential sewage sludge toxicity. These effects exhibited at the high concentrations of particulates used in laboratory test conditions may dramatically alter direct chemical toxicity effects, as well as produce mortality through mechanical disruption in a manner that may be dissimilar to actual field effects where suspended particulate concentrations are quickly reduced far below laboratory test concentrations. Short-term lethality tests do not provide sufficient resolution to distinguish between the two component effects. Several authors (e.g., Stern and Stickle 1977; Peddicord and McFarland 1978) have concluded that ecological effects of suspended solids in water were generally minimal and transitory. As such, it is unrealistic to assess long-term ecological effects by employing data points from tests where short-term mortality may be controlled more by a mechanical disruption.

EPA's Response: New York City argues that *Mysidopsis bahia* is an inappropriate organism for use in the LC50 tests because such organisms may be affected by the particulate rather than chemicals in the City's municipal sludges. EPA's Ocean Dumping regulations (§ 227.27(c)) require that tests species be chosen from among the most sensitive species documented in the scientific literature or accepted by EPA as being reliable test organisms to determine the anticipated impact of the wastes on the ecosystem at the disposal site. New York City further indicates that of the three test species tested by New York City, *Mysidopsis bahia* has the lowest LPC when exposed to total municipal sludge which indicates to EPA that this is the most sensitive species. EPA finds the City's speculation that the toxicity may be due to particulates, not chemicals, is not sufficient evidence that the organism is inappropriate.

d. Historically, regulatory compliance assessments under the Ocean Dumping regulations have employed the EPA/COE Release Zone Method to predict dispersion and dilution of ocean-dumped wastes. The Regulations, however, state that field data should be used in conjunction with an appropriate mathematical model to predict initial mixing and dispersion. New York City undertook a modeling effort incorporating the unique characteristics of sewage sludge, as well as the available hydrodynamic data at the 12-Mile Site, to refine the prediction of plume dispersion, and to provide a basis for calculating minimum dilution ratios that exist following a sewage sludge dump at the 12-Mile Site. The Release Zone Method was found to predict less plume dispersion than the mathematical mixing model which was verified by actual field data. Observations from field studies on dispersion and dilution of ocean-dumped sewage sludge have also shown that the Release Zone Method does not predict as much dilution as typically occurs under actual field conditions.

EPA's Response: New York City argues that use of the EPA/COE Release Zone Method to predict dispersion and dilution of ocean dumped wastes is found to predict less plume dispersion than as shown by a New York City model and available hydrodynamics data at the 12-Mile Site.

EPA cannot evaluate whether this approach would be more appropriate since insufficient detail is provided in these comments. However, the EPA/COE Release Zone Method is used extensively and generally presents acceptable predictions of dispersion and dilution. Even if the model is somewhat conservative, its use is not inconsistent with the stated purpose of the MPRSA to strictly limit adverse impacts.

8. *Comments (2.2.1, 2.2.2, 2.2.3):* Commercial fish catches from the Bight have decreased in size since the 1950s. The average size of many species has also decreased. There is, however, no evidence linking these decreases to the disposal of municipal sludge. Overfishing is the most probable cause.

Considering that most of the current recreational fishing occurs inshore of the dump site and on shoal areas adjacent to the 12-Mile Site, it does not appear that dumping activity interferes with this fishery. Furthermore, since much of the fishing effort is guided by bottom topography, cessation of dumping is not likely to result in a significant increase in recreational fishing activities within the dumpsite since the dumpsite does not provide structures preferred by fishermen or fish.

The available data indicate that current dumping practices and, specifically, dumping at the 12-Mile Site are compatible with spawning or nursery requirements of fishery stocks of the area (NOAA 1977). Because of the limited areal extent of the dump site, any adverse conditions that might occur at the site are extremely unlikely to affect the reproductive success of any species. The fish community is dominated by migratory coastal species, some of which do use the area as a small part of their spawning and nursery ground. However, none of these species are limited geographically to the Bight and none require a specific habitat unique to the Bight or the 12-Mile Site at any stage of their life history.

There is no evidence to suggest that any species of wildlife or seabird cited in EPA's proposal uses the 12-Mile Site or the adjacent areas of the New York Bight Apex as a unique habitat. Consequently, it is unlikely that the disposal of sewage sludge at the 12-Mile Site, or any other site in the Middle Atlantic Bight, would adversely impact these populations.

EPA's Response: As New York City observes, fin fish populations and size have decreased. The causes of the decrease have not been determined. Overfishing would certainly contribute to these decreases. EPA believes that contamination from municipal sludge

dumping is very likely to be responsible for part of the decreases in commercial fishing. EPA bases its conclusion on two observed phenomena: the high incidence of disease in species that spend most of their time in areas where sediments have been contaminated by municipal sludge, and the reductions in the same areas of the benthic species that serve as food for commercial and recreational species.

Diseases observed in species inhabiting the ocean bottom of the Bight Apex include fin erosion in flatfishes (Murchelano and Ziskowski, 1982), and blackgill disease in lobster and other shell fish (Sawyer, 1982; Sawyer et al, 1983; Sawyer et al, 1984). Studies have also shown that fin fish found in the vicinity of the 12-Mile Site show a higher incidence of lesions than in the Bight as a whole (Murchelano and Ziskowski, 1979). Evidence of changes in the benthic macro-invertebrate community is ever more striking. The areas adjacent to these municipal sludge and dredged material disposal sites exhibit even lower species diversity than the surrounding ecologically similar areas of the Christiaensen Basin and Hudson Shelf Valley. The most affected zone covers an area of approximately 7-11 square nautical miles west of the 12-Mile Site. This area supports a depauperate community dominated by dense populations of the otherwise rare polychaete *Capitella capitata* (Boesch, 1982). This species is generally considered an opportunist and is typically associated with highly polluted environments (Steimle et al, 1982). Moreover, most of the Christiaensen Basin beyond this zone is described as an enriched transition zone, covering an area greater than 176 square nautical miles (Boesch, 1982). The transition zone is populated by a dense community of species characteristic of muddy fine sands except that crustaceans, particularly amphipods which are pollution-sensitive, are virtually absent. Amphipods are dominant members of the macrobenthos of similar but less polluted, topographically low, silty areas of the Middle Atlantic Bight (Boesch, 1979; Steimle et al, 1982).

Boesch (1982) recognized that comparisons of benthic communities must be made between habitats similar in sediment properties but with varying contaminant levels, and, therefore, made comparisons "along a gradient from the Christiaensen Basin down the Hudson Shelf Valley, along which sediment properties remain relatively constant, but contaminant levels (such as trace metals and organic carbon) decline rapidly away from their source [the sewage sludge and dredged material dumpsites]."

Boesch stated that "[i]n the New York Bight Apex, most of those species of macrobenthos apparently advantaged by waste discharges [dumping] are not known to be important prey for fishes in the western North Atlantic. On the other hand, those species largely excluded from the upper Valley and the Christiaensen Basin, but abundant in similar sediments of the Hudson Shelf Valley, are among the most important prey species known for demersal fishes in the New York Bight region." These findings led Boesch to state that "it is reasonable to conclude on the basis of literature that the trophic resource 'potential' of a substantial portion of the Bight Apex has been reduced" and that "it appears that the ability of the . . . Bight Apex to sustain living resources harvested by man has been impaired."

It is true as New York City stated that the Christiaensen Basin would be characterized by a different benthic community than adjacent coarser sediments in the absence of man's activites—this topographically low area would be expected to support a naturally more diverse macrobenthic community than adjacent coarser sediment areas. Therefore, the fact that the fine-grained areas of the Apex support less diverse macrobenthic communities than surrounding coarser-grained areas further demonstrates that the former have been degraded ecologically.

In addition to this indirect evidence of adverse impacts on commercial finfish, there is at least one study linking contaminants from municipal sludge directly to decreases in catch sizes. NOAA, in 1976, found that catch weight per ton was lower in "high carbon" areas of the Bight. NOAA also observed "consistently lower fish population densities" in these areas. NOAA defined high carbon areas as those with greater than one percent carbon in sediments, and included the Christiaensen Basin and the Hudson Shelf Valley. Since ocean-disposed municipal sludge is a principal contributor of carbon to these two areas, EPA believes it is reasonable to conclude that municipal sludge dumping has affected the size of the catch and the population in these areas.

Finally, New York City's comment ignores the impact of the 12-Mile site on commercial shellfishing. As previously stated, the FDA closed a large area centered on the site to commercial shellfishing because of elevated coliform levels in the water column. Moreover, a study shows that commercial fisherman do not harvest the dense beds of clams off Long Island that are located outside of the FDA closure area (Sinderman, 1981). Thus, municipal sludge dumping has had a significant adverse effect on commercial shellfishing.

With regard to recreational fishing, EPA agrees that physical dumping activities probably cause little or no interference because recreational fishermen probably do not use the dump site in large numbers. However, EPA expects that the higher incidence of disease and the decreases in the benthic food supply described above would have an adverse effect on the quantity and quality of fish available.

With regard to spawning and nursery activities, EPA agrees that there are no species which use the Bight as their sole spawning ground. However, EPA expects that the high concentrations of heavy metals and organic chemicals found in sediments where sludge has settled do affect species which spawn or nurse in the Bight. One study shows a high incidence of chromosomal aberrations in Atlantic mackerel embryos (Longwell et al., 1984).

Wildlife including birds, cetaceans, and turtles occur in the vicinity of the 12-mile site. The presence of these wildlife species in the New York Bight Apex ranges from common to rare and from permanent to seasonal. EPA agrees with the comment that the disposal of municipal sludge at the 12-Mile Site has apparently not adversely impacted the New York Bight wildlife population.

Because EPA has decided not to redesignate the 12-mile site, EPA has not coordinated with the U.S. Fish and Wildlife Service (USFWS) nor National Marine Fisheries Service (NMFS) regarding the potential for impacts on endangered on threatened species. Resolution of any potential effects on endangered or threatened species under the jurisdiction of the USFWS and NMFS would be necessary before the 12-Mile Site could be redesignated.

9. *Comment (2.3.1, 2.3.2, 2.3.3):* The **Federal Register** announcement states that the 12-Mile Site is near coastal beaches and parks. In contrast to the Agency's conclusion, New York City demonstrated that because of the distance of the site from the shoreline and the general hydrographic conditions within the Bight, adverse impacts from the continued disposal at this site are not anticipated; and the Agency itself previously concluded that continued use of the existing site is not a present threat either to public health or to water quality along the Long Island or New Jersey beaches (EPA 1978).

New York City also questions why EPA considers the 12-Mile Site to be too near the shoreline when the dredged material site is even closer. New York City also claims that EPA relied on inaccurate sources when it concluded that sludge-related constituents have been found within 5 nautical miles of Long Island.

EPA's Response: The 12-Mile Site is near coastal beaches, resorts, state and Federal parks, and other amenity areas in New Jersey and Long Island. Presently, there is no evidence of increased incidence of human disease or unacceptable water quality due to municipal sludge disposal, but there is evidence that pathogens move away from the site and toward beaches, thus posing a potential threat. Sludge-derived waste constituents have been detected above normal ambient values in bottom sediments as close as 5 nautical miles from the coast of Long Island.

The source for this statement is not, as New York City suggests, the 1974 "Here Come de Sludge" article by Soucie. EPA is not claiming that a "front" of municipal sludge is advancing on Long Island. Nor has EPA attempted to base its findings on the presence of fine-grained particles or black particles. Rather, EPA relied on a study by Cabelli and Pederson (1982) and their finding that quantities of *Clostridium perfringens* spores in sediments exceeded ambient levels within 5 nautical miles of the shoreline. This viral organism has been closely associated with sewage-related bacteria, and is often used as a "tracer" for sewage contamination. As explained elsewhere in this notice, contaminants from dredged material are less bioavailable than contaminants from municipal sludge. Thus, the dredged material site, although closer to shore, is a less important source of contamination.

10. *Comment (2.6.1):* EPA appears to have based its assessment of the dispersive capacity of the Apex region on the erroneous information concerning the physical oceanography of the New York Bight Apex which was included in the Federal Register announcement. This information concerns the average speeds of currents in the New York Bight. EPA has, therefore, apparently underestimated the capacity of the Bight Apex waters to disperse and assimilate sewage sludge.

EPA Response: Assimilative capacity has been defined as the quantity of contaminants that can be added to a system without causing unacceptable alteration or impairing beneficial uses (Csanady et al., 1979; Krenkel and Novotvy, 1980). The FDA shellfish closure area shows interference with shellfishing in the vicinity of the Bight.

If the endpoint of assimilative capacity is the protection of marine life and its uses and the protection of human health, the effects previously stated indicate that the assimilative capacity for some contaminants may be exceeded in some areas of the New York Bight (e.g., Christiaensen Basin). EPA's conclusion that the Bight is not successfully dispersing and assimilating municipal sludge contaminants is based on these observed impacts rather than on average current speeds. Accordingly, the current speed issue is not relevant, however, EPA does not concede that its information is erroneous.

11. *Comment (2.6.2):* EPA listed four components of sewage sludge: surface film, aqueous phase, suspended particulate phase, and solid phase (49 FR 19045). In contrast, in the same issue of the Federal Register, EPA stated that "EPA does not believe that the municipal sludge contains a solid phase" (48 FR 19012). Research by NYC (1983a), Westchester County (1984), and Nassau County (in press) indicates that sewage sludges do not have a solid phase as defined by EPA in the Ocean Dumping regulations.

EPA's Response: Although the two Federal Register notices which New York City referenced to contain different descriptions of the components of municipal sludge, the statement made in 49 FR 19012 which states that municipal sludge does not have a solid phase is an error. Municipal sludge has a solid phase within the meaning of 40 CFR 227.32(a).

12. *Comment (2.7.5):* Sewage sludge is a minor contributor [of pollution] relative to dredged material. For example, quantitatively, dredged material is estimated to contribute 23 times more suspended solids; 20 times more arsenic; 15 times more PCBs; 9 times more mercury; 8 times more nickel; 4 times more cadium, chromium, copper, lead, and zinc; and twice as much oil and grease as sewage sludge.

Furthermore, the statement that most of the dredged material contaminants are sequestered in the depositional mound has been clearly contradicted by a recent NOAA study by Dayal et al. (1981). These researchers used mass balance calculations for the depositional period 1973–1978 to conclude that "although most of the dumped material is present in the disposal site, most metals are lost from the system in varying degrees either during the dumping process or following deposition of the dumped material." This conclusion is likely to be valid also for toxic organic compounds although they were not studied by Dayal et al. Further, the contaminants in sewage sludge are certainly not more bioavailable than contaminants from the Hudson-Raritan estuary, which EPA acknowledges accounts for the majority of the contaminants loading to the New York Bight.

Finally, the extensive chemical fractionation, bioassay, and bioaccumulation testing conducted by New York City as part of its Special Permit Application submitted to EPA in January of 1984 clearly indicates that contaminants present in sewage sludges are not readily bioavailable and not toxic to test organisms after the allowable initial dilution period. Thus, the question of relative bioavailability is far from answered and an assessment of potential effects based on relative mass loading represents the best estimate which can be developed from currently available technical information.

EPA's Response: EPA does not believe that the extent to which municipal sludge contributes to observed environmental loadings, body burdens, and ecological effects for a given contaminant, is proportionate to the percentage of the contaminants introduced with municipal sludge. The quantities of contaminants derived from the individual sources considered do not necessarily represent the proportional impact on the New York Bight environment. The availability of toxic substances to the biota is a function of processes occurring within the environment and has been shown in many cases not to be correlated with total contaminant loads (Schubel et al., 1978; Chen et al., 1976; Lee and Jones, 1977). EPA has previously explained why it believes that the most significant source of contaminants found in the Christiaensen Basin, the Hudson Shelf Valley, and the area between the 12-Mile Site and Long Island's beaches is from the ocean dumping of municipal sludge and not the Hudson-Raritan estuary or the dredged material site.

Lee (1977) stated that: "It is improper to draw inferences about potential water quality effects based on total mass load. In order to properly interpret the water quality aspects of the mass load, one must determine what fraction of the contaminants from each of the sources will become available within the receiving water system to affect water quality."

EPA continues to maintain that municipal sludge dumping is a more significant source of contaminants than dredged material. Although the dredged material may have associated with it larger amounts of some contaminants,

these contaminants are not so readily bioavailable.

The Corps of Engineers has extensively studied the release of contaminants from dredged material and has found that, with the exceptions of ammonia and manganese, most nutrients, metals, and toxic organics associated with dredged material are not readily bioavailable (Lee, 1976; Lee and Jones, 1977; Lee and Jones, 1979).

Because of these findings, Lee (1977) concluded that "it is certainly inappropriate to compare the contaminants added to a water body from domestic and industrial wastewaters and their sludges to those added from dredged waterway sediments." Since dredged material disposal contributes a high percentage of some important contaminants to the New York Bight (e.g., PCBs), the implication is that the contribution due to municipal sludge and estuarine discharge of bioavailable contaminants may be significantly higher than the total mass loading contributions described in the literature (Mueller et al., 1976; NYC, 1983; Swanson et al., 1983).

Therefore, since contaminants in dredged material are significantly less bioavailable than those in municipal sludge, the effective contribution of sludge dumping would be proportionately much higher than its percent contribution of contaminant mass loadings.

NOAA's National Marine Fisheries Service also supports this conclusion. They have stated in a letter to EPA (August 24, 1983), that of the directly ocean dumped materials, municipal sludge contributes only 1–10 percent of the total mass loading of most contaminants into the Bight, with dredged material usually accounting for higher percentages. However, contaminants in municipal sludge are more bioavailable. NOAA also states that municipal sludge may be responsible for a greater proportion of some selected contaminants. For instance, it has been reported that municipal sludge contributes a larger share of the total PCB loading to the Bight. Bopp et al (1981) estimated this value to be 30 percent, while West and Hatcher (1980), reported that municipal sludge was the primary source of PCBs in the Bight Apex. Municipal sludge also contains much of the Bight's inputs of DDT and associated metabolites. Preliminary estimates are that 106 to 231 kg (233 to 508 lbs.) of DDT per year are dumped due to municipal sludge; this is 1.6 to 3.5 times the input in dredged material (O'Connor et al., 1982). Furthermore, New York City has not addressed other important contaminants that result in biochemical oxygen demand. In this regard, municipal sludge exerts significantly more biochemical oxygen demand than dredged material.

For all of these reasons, EPA cannot agree with New York City's comments and Ehler's (1983) conclusion that relative mass loadings of a few individual pollutants are reasonable indicators of source inputs. It further demonstrates that the wet basis should be used to evaluate the impact of the material being disposed.

13. *Comment:* EPA's reference to sludge-contaminated sediments may refer to reports which unsuccessfully attempted to identify the relative sources of sewage-related components in sediments of the New York Bight apex. Many of these reports incorrectly refer to the high-organic, fine-grained sediments and muds in the New York Bight Apex as "sludge-related." Although such high-organic, fine-grained sediments may in some areas contain sewage-related contaminants, the principal sources of these sewage-related contaminants are probably treated effluents and dredged material, not sewage sludge. EPA may also have relied on Cabelli and Pederson's 1982 study of *Clostridium perfringens* spores. This report found high levels of spores 5 nautical miles from Long Island's beaches. However, these levels can be explained by the fine grains in the sediment at this location. Coaser-grained sediments nearer and farther offshore have lower spore levels.

Mueller et al.'s data indicated that less than one-hundredth of one percent of the Bight's fecal coliform load results from ocean dumping. Instead coliforms result predominantly from municipal waste waters, urban runoff, and industrial waste waters.

EPA's Response: EPA does not agree with New York City's assessment of the Cabelli and Pederson study. That study shows a progressive gradient of spore levels starting with high levels at 5 nautical miles from Long Island, and increasing steadily up to 12 nautical miles from shore—the location of the sludge dump site. Thus, the study shows that New York City's assertions about grain size is irrelevant.

EPA also disagrees that sources such as effluent discharges to rivers, urban runoff, and dredged materials are more important sources of the pathogenic bacteria and viruses found within 5 to 12 nautical miles of Long Island.

The rate of municipal sludge input is higher than the estimated rate of the fine sediment input from runoff (Freeland et al, 1979). Suspended fine sediment may enter the Bight Apex from the Hudson-Raritan estuary at higher rates than by either land runoff or municipal sludge disposal. However, due to the prevailing current direction, it is likely that municipal sludge is the primary source of contaminated particles in the sediments in the eastern portion of the Bight Apex.

New York City has not commented on data related to sediment contribution in the Christiaensen Basin and the Hudson Shelf Valley, and other portions of the eastern Bight Apex impacted by the municipal sludge dump site.

For example, Cabelli and Pederson found that most of the sludge is transported southeast down the Hudson Shelf Valley. Spore densities decreased exponentially along the course of the Hudson Shelf Valley; elevated concentrations were detected to a distance of at least 105 nautical miles.

Hatcher and McGuillivary (1979) investigated the distribution of sewage contamination in Apex sediments using the fecal steroid coprostanol as an indicator of sewage-derived organic matter. They found that the highest values (10–15%) were found in the Christiaensen Basin where black organic silts accumulate, and nearly half, or possibly more, of the organic matter was sewage-derived. This material is probably from ocean-dumped municipal sludge because municipal sludge has a higher organic content and because currents flow from the dump site toward the Basin. Sewage contamination of sediments with organic carbon down the Hudson Shelf Valley was also indicated. Sewage contamination of sediments has been prevalent in this area over at least the past 28 years. Thus, there is evidence form tracers that particulate matter of unquestionable fecal origin and probably from the municipal sludge disposed at the 12-Mile Site is deposited and accumulates in the depressions of the Christiaensen Basin and in the Hudson Shelf Valley.

With regard to the study by Mueller et al (1976) and New York City's 1983 update, it may be true that municipal sludge contributes a small part of the overall coliform contaminant load, but this is not relevant. The contaminants from the municipal sludge site do not mix uniformly throughout the Bight. Instead, as indicated above, they accumulate in specific areas of the eastern half of the Bight Apex.

14. *Comment (2.7.7.4):* While it is true that municipal sewage sludge disposal contributes to reductions in bottom dissolved oxygen, this contribution is negligibly small. Sewage sluge inputs represent only an estimated 6 percent of

the total average annual oxygen demand of the New York Bight Apex and only about 50 percent of the estimated oxygen consumption due to ocean disposed dredged material. During the summer when oxygen concentrations reach their lowest point, sewage sludge probably accounts for only 4 percent or less of the oxygen demand since algal production, and its subsequent decomposition, is greatly increased at that time (Segar and Berberian, 1976).

EPA's Response: It is true that the literature has identified municipal sludge dumping as a minor contributor to oxygen depletion in the Bight Apex compared to primary production and riverine input. However, organic loading and nutrient stimulation of in situ primary production due to municipal sludge disposal contribute to oxygen depletion, and these contributions may not be trivial. Segar and Berberian (1976) reported that municipal sludge dumping contributes approximately 3 percent of the total average organic carbon loading to the New York Bight Apex and that the sludge contribution exerts 8 percent of the total potential oxygen demand on the average. Other researchers have attributed higher pecent contributions. Both Thomas et al. (1976) and Garside and Malone (1977) estimated that municipal sludge disposal is responsible for 7 percent of the organic carbon loading to the Apex, and Swanson et al. (1983) suggested that sewage sludge may contribute greater than 10 percent of the carbon to the New York Bight.

As stated previously, relative contributions are not the best indicator of ecological effects. Although municipal sludge contributes a small percentage of annual oxygen demand to the total load of the New York Bight, the area where most municipal sludge ultimately settles show the most servere impacts. In the Christiaensen Basin, an organism capable of tolerating low oxygen levels, *Capitella capitata*, has become the dominant benthic species. This shift suggests that the biological oxygen demand associated with municipal sludge causes localized adverse impacts in the eastern half of the Bight Apex.

15. *Comment (2.7.7.1)*: The sewage sludge disposed at the 12-Mile Site by New York City has undergone anaerobic digestion, which reduces microbial pathogen levels by 90 to 99 percent. Therefore, the number of viruses, bacteria, fungi, and protozoa have already been drastically reduced before the sludges are disposed at the site. The small quantities of these organisms that are contained in sewage sludge disposed at the 12-Mile Site do not cause any ecological changes, since these organisms do not effectively compete, or even survive, in the marine environment and are dwarfed in numbers by the abundant, indigenous marine microflora. Further, the microbial pathogens associated with human sewage are not pathogenic to marine life. Ocean-disposed sewage sludge microoganisms also pose no health risk to humans due to their rapid dilution and die-off in the marine environment and their isolation from recreational and shell fish-harvesting waters.

EPA's Response: EPA disputes the contention that human pathogens do not survive. Until recently it has been thought that most pathogens do not persist in the marine environment following ocean disposal of sewage sludge. Fecal coliform bacteria are commonly used as indicators of pathogens. The time required for a ninety percent reduction in coliforms discharged to the ocean ranged from 0.5 to 8.0 hours, and typicaly around 2 hours (Mitchell and Chamberlin, 1975; Atwood et al., 1979). However, recent work has shown that some pathogenic bacteria undergo a "viable-but-non-culturable" stage. In this stage they are not detectable by conventional culturing techniques but remain viable in marine environmnets for at least two to three weeks. These pathogenic bacteria also may remain virulent after entering the non-culturable stage (Roszak et al, 1984b). In light of this evidence of survival of pathrogens must be reassessed.

EPA agrees that human pathogens from municipal sludge are not reaching beaches in significant numbers and are not presently causing health impacts. However, EPA disagrees that dilution and die-off prevent human pathogens from impacting shellfish areas. The fact remains that, due to sludge dumping, the area within a 6 nautical miles radius (150 mi^2) centered about the 12-Mile Site has been closed to shellfish harvesting for human consumption in order to protect human health.

Fish and shellfish can concentrate pathogens within their tissues. Although the organisms are not pathogenic to marine life, public health hazards can result when contaminated seafood organisms are consumed by humans. While cooking kills or deactivates many pathogens, it does not remove all risk because some pathogens can survive high temperatures. Also, neither EPA nor the FDA can guarantee that all contaminated shellfish will be properly cooked.

16. *Comment (2.7.7.2)*: Mass balance analyses of contaminant loading to the New York Bight Apex indicates that the predominant sources of coliform inputs are sources other than the ocean dumping of sewage sludge. No change in the surface water quality of the coastal waters could be expected should ocean dumping of sewage sludge be moved to another site. Since other sources of ocean dumped material, such as dredged material, undoubtedly contribute substantial numbers of coliforms, the probability exists that the present shellfishing closure centered on the 12-Mile Site would need to be retained due to nearby disposal of dredged material and discharge of river water. EPA stated that only a "tiny fraction" of the area currently closed might be reopened (47 FR 56665).

New York City also disputes EPA's attribution of observed reductions in catches of bony fishes to sludge disposal. New York believes factors such as natural variation and overfishing are responsible for fluctuations in catch size. New York acknowledges that NOAA reported lower catches of ground fish in "high carbon" inshore areas of the Bight, but suggests that the variations are due to natural habitat preference. Moreover, New York argues that carbon from all sources settles in the low bottom of the Christiaensen Basin, and cites NOAA for the conclusion that these low areas would continue to accumulate contaminants even if sludge dumping stopped (Ehler 1983).

EPA's Response: As EPA has stated in response to several other comments, mass balance analyses are not the best predictors of contaminant impacts. Because of current directions and dredged material behavior, municipal sludge is probably the primary contributor of the coliforms that led FDA to ban shellfishing in the area around the sludge dump site. New York City's claim that surface water quality would not improve if the municipal sludge site were moved is totally unsupported. Moreover, shellfish are exposed to contaminants in sediments as well as contaminants in surface waters. New York City has mischaracterized EPA's prediction about the fraction of the shellfish closure area that could be expected to recover. At 47 FR 56665, EPA predicted that the eastern third of this 150 square mile area would reopen if municipal dumping were moved out of the Bight Apex. EPA believes that if other referenced sources of coliforms were reduced or eliminated and the current dumping of municipal sludge were allowed to continue at the 12-Mile Site, it is likely that a shellfish restriction would continue to be

imposed because of the bacterial and viral content of the municipal sludge alone.

With regard to bony fish, New York City offers no support for its hypothesis that ground fish catches are lower in "high carbon" areas because fish naturally dislike the habitats in those areas. While New York City is correct in suggesting that solids like carbon tend to settle in low areas like the Christiaensen Basin, the prevailing current directions make it unlikely that large quantities of carbon travel to the Basin from either the dredged material site or the Hudson-Raritan estuary. Both of these sites are west of the Basin, and the currents in this part of the Apex flow toward shore where they then mix with the Hudson-Raritan estuary plume and travel south along the New Jersey coastline. The citation from the NOAA report does not identify which contaminants would accumulate in the Basin and, thus, may not be relevant to the "high carbon" issue. EPA believes, however, that even if the estuary and the dredged material site contribute carbon to the Basin, contributions from the municipal sludge site are much larger.

17. *Comment (2.7.7.6):* EPA cannot link fish diseases to municipal sludge dumping. The causes of fin rot are not clear, and it is probably naturally occurring. The causes of black gill disease are also unknown, and the disease has been reported in prawns and lobsters grown in closed water systems at shellfish farms. Thus black gill is probably not a reliable indicator of environmental degradation. Similarly, studies do not show a clear relationship between sewage contaminants and abnormalities of Atlantic mackerel embryos. Although samples collected in the Bight Apex contained more dead or dying embryos than samples collected off Long Island, samples collected off New Jersey showed similar numbers. Biological factors such as the numbers of adult mackerel may affect eff survival.

EPA's Response: Elevated incidences of fish and shellfish diseases in the New York Bight Apex have been associated with environmental stress due to the cumulative effect of all contaminant sources.

Murchelano and Ziskowski (1982) averaged over 1973–1977 the frequency of fin erosion in flatfishes from both the Apex and control areas. Their data showed significantly higher incidence of fin rot in winter flounder from the Apex (14.1 percent) than from Sandy Hook/Raritan Bays (7.6 percent) or the Great Bay control area (1.9 percent). The most recent (1977) data reported by Muchelano and Ziskowski show the incidence of fin rot in winter flounder to be approximately 3.5 percent, 1 percent, and 0 percent, respectively, in those three study areas.

Sawyer and his colleagues have extensively studied black gill disease in rock crabs and have published several papers that strongly indicate an association of this disease with municipal sludge disposal sites (e.g., Sawyer, 1982; Sawyer et al., 1983; Sawyer et al., 1984).

Sawyer's studies have shown that gill blackening, shell erosion, and melanization of tissues or appendages has been observed frequently in crabs, lobsters, and shrimp collected from the polluted waters of the New York Bight Apex (Gopalan & Young, 1975; Young & Pearce, 1975; Bodammer & Sawyer, 1981; Sawyer, 1982). Extensive surveys in New Jersey and New York coastal waters have shown that although shell erosion and melanization of diseased tissues occur commonly in many crustacean species, the incidence of both conditions is remarkably high in specimens collected near ocean disposal sites (Gopalan & Young, 1975; Sawyer et al., 1979). Shell erosion or "burn spot" has been reported throughout the world (Rosen, 1970), and when present on commercially valuable species such as the stone crab, *Menippe mercenaria*, may be of concern to fishery management (Iversen & Beardsley, 1976). Black foci or "spots" in otherwise clean gills, in contrast to blackened gills, similarly are not necessarily associated with degraded habitats. Localized blackening is known to be caused by fungal infections (Uzmann & Haynes, 1986; Lightner & Fontaine, 1975), ascorbic acid deficiency causing 'black death' (Magarelli et al., 1979, heavy metal exposure (Couch, 1978) and exposure to a dithiocarbamate biocide (Doughtie & Rao, 1983).

In contrast to "black spot" disease, extensive blackening of gills in *Cancer irroratus* involving 50–100% of the lamellae and filaments has been observed only in moribund specimens, or live specimens caught at or near ocean disposal sites (Sawyer, 1982).

The organisms inspected in the studies cited by New York City apparently exhibited "black spot" disease which is a natural response to a variety of abnormalities (Sawyer et al., 1984) rather than gill blackening involving the accumulation of black sludge sediments between the gill lamellae and filaments. Consequently, New York City's contention that the occurrence of black gill is not a reliable indicator of environmental degradation and cannot be attributed to sewage sludge is erroneous.

The short paper by Sawyer et al., (1982b) cited by New York City (1984) summarized the findings of a study described in more detail by Sawyer et al. (1983). The entire purpose of the latter paper was to illustrate the dependence of the incidence of black gill on molting activity. In that study the low incidence of black gill (0–2 percent) was expected since 93 percent of the crabs were collected during or immediately after molting.

In contrast, rock crabs during the intermolt period exhibit elevated frequencies of black gill in association with sludge-contaminated sediments. Analyses of data on over 4,000 specimens collected over a 5-year period showed that up to 10 percent of the crabs collected from municipal sludge-impacted areas of the New York Bight Apex had black gills during the intermolt period. In a recent study of rock crabs from the "Mud Hole" of the upper Hudson Shelf Valley, Sawyer et al. (1984) found severe gill blackening in up to 30 percent of the specimens collected. For comparison, 0–2 percent is reflective of background incidence of black gill in the Bight (Sawyer et al., 1982b).

EPA does not disagree that lesions and ulcers are abnormalities that occur in fish from many coastal environments. The point remains that research has shown higher incidence of lesions in the vicinity of the 12-Mile Site than from the Bight as a whole (Murchelano and Ziskowski 1979).

Longwell et al. (1984) summarized the field observations of mackerel egg morbundity-mortality as follows:

In May of 1974, viability of Atlantic mackerel embryos in the New York Bight—as based on cytological analysis of over 4,000 eggs from plankton at over 50 sites—varied significantly over the area. Highest mortalities were about the Apex dump sites and New Jersey coast.

Spatial differences in morbundity become more evident as the embryos become less sensitive. By the tail-bud/tail-free stage, the pattern of higher incidence of morbundity in the Apex—apparently associated with the dump sites and estuarine discharge—is evident.

18. *Comment:* New York City agrees that the region in which the 12-Mile Site is located in a highly productive fishery area. It is even quite possible that some fishery production may be related to the beneficial input of carbon and nutrients from sewage sludge disposal. Nonetheless, as previously stated, the Bight Apex is sustaining a large,

productive fishery and there is no evidence that the Bight Apex's ability to sustain these resources has been impaired. Although shellfishing has been banned within a 6 nautical mile radius of the 12-Mile Site (the only interference with any ocean use that can be ascribed to sewage sludge disposal at the site), shellfishing in a large area has been banned due to bacterial contamination from sources other than sewage sludge disposal. It is likely that shellfish in a large portion of that 6 nautical mile radius area would be prohibited from commercial exploitation due to the other bacterial sources even if sludge disposal at the 12-Mile Site was banned. In any event, the rather meager shellfish resources of this area need not be lost, since World Health Organization and FDA guidelines permit safe use of these shellfish for human consumption after suitable depuration or adequate cooking.

EPA's Response: EPA believes that it is highly doubtful that municipal sludge disposed of at the 12-Mile Site has had any beneficial effects on the marine environment (e.g., fishery production). The addition of nutrients and organic carbon to the Apex contributes to oxygen depletion and hypoxic stress on marine organisms. New York City has offered no evidence to support this claim.

One of the most obvious impacts of municipal sludge disposal at the 12-Mile Site is the ban imposed by the FDA on harvesting bivalve mollusks for human consumption. A circular area encompassed by a 6 nautical mile radius centered at the site was closed to shellfishing in 1970, and the restricted area was extended to the Long Island and New Jersey shorelines in 1974. The FDA closures were based on elevated coliform bacteria concentrations in the water column which are indicative of pathogen levels.

Municipal sludge disposal has contributed to the significant biological changes that have occurred in the New York Bight Apex. The ecosystem recovery rate is dependent on the contaminant elimination rate and the biota repopulation rate. Contaminants of municipal sludge origin may be substantially removed from the water column within a few months after cessation of dumping, but metals and refractory organics will persist in the sediments. The sediments will serve as a long-term source of contaminants to the water column and biota. Repopulation of the water column following cessation may occur relatively quickly because of the high mobility or transportability of indigenous pelagic organisms. Repopulation of sediments by indigenous species may require many years because of the persistence of toxic chemicals in the benthic environment. The overall recovery of the Bight Apex following cessation of municipal sludge disposal will be affected by the existence of other contaminant sources. Cessation of municipal sludge dumping in the Bight Apex is an important step towards improving the water quality of the New York Bight. To further improve water quality, EPA has denied waivers for ocean discharges under Section 301(h) of the Clean Water Act, and funded construction of major new sewage treatment facilities.

It is gratifying that New York City consulted the definitive work on shellfish preparation (Rombauer and Becker, 1973), but cooking techniques are not considered by the FDA when considering whether or not to allow shellfishing in a particular area. The fact remains that, due to municipal sludge dumping, the area within a 6 nautical mile radius centered at the 12-Mile Site has been closed to shellfish harvesting for human consumption since 1970 in order to protect the public health.

19. *Comment (2.9.1):* Effluent and other discharges into the Hudson and Raritan Rivers which flow into the Bight, surface run-off, and dredged material disposal contribute more than 500 times the sewage micro-organisms that are contributed by disposal of sewage sludge at the 12-Mile Site. Therefore, inputs of ocean-disposed micro-organisms at the 12-Mile Site can only elevate concentrations of these organisms above the background levels of contamination caused by other sources within a brief period (less than 4 hours) following disposal. This conclusion is supported by field data from EPA and New York City monitoring programs which show that elevated concentrations in the water column occur only within the 12-Mile Site under most circumstances. Rapid dilution, coupled with microbial die-off in the marine environment, is responsible for the extremely low levels (frequently undetectable) of microbial organisms at, and near, the 12-Mile Site. In an EPA monitoring program, only 8 samples out of 1,224 showed high coliform levels. Another EPA monitoring program showed no violations of New York or New Jersey water quality standards for coliforms.

Concentrations of persistent microorganisms in the sediments of the New York Bight Apex reflect all microbial inputs to the area. The primary input is in the discharge from the Hudson-Raritan estuary. The degree of contamination attributable to sewage sludge would be expected to reflect the relative inputs. For example, sewage sludge contributes only 8.4 percent of the cadmium, 3.1 percent of the mercury, 9.2 percent of the lead, 11.1 percent of the copper, and 9.5 percent of the chromium to the region. The relative loading of *Clostridium perfringens* and coprostanol has not been estimated, but it is likely that is similar to the relative loading of coliforms, of which sewage sludge contributes 0.2 percent. Therefore, it is not likely that the disposal of sewage sludge elevates sediment concentrations of contaminants significantly beyond existing concentrations which are controlled by other source.

EPA's Response: EPA agrees that coliform levels in the water column near the 12-Mile Site have not violated state water quality standards. Coliform levels are high enough, however, for the FDA to close the area to shellfishing. Moreover, EPA is also concerned about high contaminant levels found in sediments in areas where municipal sludge is probably the largest contributor of contaminants.

The Hudson-Raritan estuary indeed contributes large pollutant loads to the New York Bight as a whole. However, it is not likely to contribute significant amounts to the sediments north of the municipal sludge site, in the Basin or in the Hudson Shelf Valley. Remotely-sensed images show a defined river plume along the New Jersey coastline. Therefore, the plume and its contents as previously indicated are not instantaneously and fully mixed throughout the Bight Apex.

Under present disposal conditions there is evidence that particulate matter from municipal sludge dumped at the 12-Mile Site reaches the bottom and accumulates in the sediment north of the dump site. Transport of sludge-associated pathogens from the 12-Mile Site has been observed within 5 nautical miles of Long Island's beaches. Cabelli and Pederson (1982) studied the movement of municipal sludge from the 12-Mile Site by measuring spore densities of *Clostridium perfringens*, a bacterium consistently found in human feces and, therefore, in municipal sludge. This study showed spore densities in sediments extending toward the Long Island coast decreased exponentially with increasing distance from the Basin, and with increasing water depth to about 18 meters (approximately 5 nautical miles from shore) after which they become relatively constant. Northward movement of municipal sludge to waters

shallower than 18 meters was apparently small enough to be masked by fecal contamination from inshore sources. The highest spore densities were found in sediments or the Christiaensen Basin, adjacent to the 12-Mile Site. They also found that most of the municipal sludge is transported southeast down the Hudson Shelf Valley. Spore densities decrease exponentially along the course of the Hudson Shelf Valley. Elevated concentrations were detected to a distance of at least 44 nautical miles.

20. *Comment (2.7.7.5, 2.9.2):* Although the extent of the benthic community alterations possibly caused by contaminant inputs has been fairly well quantified, the complex nature of the multiple contaminant contributions to the Apex and the lack of an adequate historical baseline preclude assignment of the blame for these "effects" to the disposal of sewage sludge, particularly since sewage sludge provides only a very small fraction of all contaminant inputs. Recovery of the Bight is also unlikely.

EPA's Response: Benthic studies indicate that contamination of the Bight Apex has led to measurable changes in population density, species composition, species diversity and physiology and behavior of benthic organisms. The greatest faunal alterations are found just west of the municipal sludge disposal site.

Alterations that have been reported include: decreased species diversity compared to communities in sedimentologically similar habitats; species shifts to pollution-tolerant species such as the archetypal opportunist, *Capitella capitata;* and the disappearance of pollution-sensitive crustaceans, most notably the amphipods. New York City provides no support for the suggestion that differences in the benthic community of the Christiaensen Basin compared to that of the lower Hudson Shelf Valley "may be related to differences in depth and salinity regime," and EPA has found no supporting existing studies.

New York City's (1984) notation that "the benthic community of the 12-Mile Site itself is characterized by moderate values or diversity" is irrelevant and misleading because dumping has greater impacts outside of the site. The dispersal of municipal sludge dumped at the 12-Mile Site is such that particulates do not settle out and remain on the sea floor within site boundaries. The relatively coarse sediments at the site are continually reworked by hydrodynamic action so that fine materials (and associated contaminants) are flushed from the area; therefore, benthic impacts are not expected in the site. EPA (1982) stated that:

> Most sludge particles will initially settle in the central and northeastern portions of the Christiaensen Basin, which lies slightly north of, and between, the Mud Dump and Sewage sludge site.

The areal extent of negative benthic effects has been estimated to be 7–11 nautical miles for the most degraded area in the Christiaensen Basin adjacent to the 12-Mile Site, and greater than 176 nautical miles for the enriched zone where pollution-intolerant amphipods are virtually excluded. The fact that the most severely degraded area is located adjacent to the municipal sludge disposal site indicates that sludge disposal is highly responsible for the observed degradation.

A frequently-used argument that the Christiaensen Basin "would be characterized by a benthic community different from adjacent coarser sediments" is obvious and is irrelevent considering that differences in benthic communities have been observed between the Basin and sedimentologically similar areas.

EPA acknowledges that it has no baseline studies of the Basin. No studies were performed before dumping began in the 1920s. EPA would face the same problem any time it considered terminating the designation of an existing dump site. In the absence of a baseline, EPA believes it is reasonable to compare the Christiaensen Basin's benthic community to similar areas that have not been affected by dumping.

EPA has addressed thoroughly the issue of other sources elsewhere in these comments. EPA disagrees with New York City's prediction that the benthic community will not recover unless the Federal government and the states reduce all sources of contamination. Municipal sludge is the most significant sources of contamination to the areas with the most altered benthic communities. Moreover, EPA has taken actions to reduce pollution from other sources, and will continue to do so. Although recovery may be slow, EPA expects that it will occur. See response to Comment No. 18.

21. *Comment (2.11):* The statements regarding Factor 11, "existence at or in close proximity to the site of any significant natural or cultural features or historical importance," are correct. However, both EPA and NOAA have repeatedly stated that sewage sludge disposal at the 12-Mile Site causes no environmental impacts on the shoreline. Swanson et al. (in press) states "[s]ludge dumping at the 12-Mile Site . . . seems to have no measurable effect on water quality at the beaches." Therefore, EPA is remiss in not stating in its announcement that disposal at the 12-Mile Site has not and would not be expected to impinge on any of these recreational or historical sites or their use.

EPA's Response: EPA agrees that, at the present time, pathogens associated with ocean disposed municipal sludge have not reached coastal water or beaches, nor contributed to swimming-associated illness. However, sludge-derived pathogens have been detected in sediments as close as approximately five nautical miles from the coast of Long Island. Therefore, EPA does not agree that there is no potential for impacts at any of these sites.

22. *Comment (2.10):* The term "nuisance species" is undefined by the regulations or the Final Environmental Impact Statement supporting the regulations and also has no common scientific meaning. However, it is doubtful that polychaete worms in the Christiaensen Basin could legitimately be so labeled, since they perform a vital role in reworking and degrading the organics present in the sediments. Similarly, no other species found in the Christiaensen Basin whose increased abundance has been attributed to the effects of pollutant inputs from a variety of sources should be considered a nuisance since they do not affect the activities of humans or of any valuable marine resources.

EPA's Response: EPA agrees that the term "nusiance species" is undefined and accordingly *Capitella capitata* may not be a nuisance species. However, this species is generally considered an opportunist that is typically associated with highly polluted environments (Steimle et al., 1982). Thereby, it can be classified as an undersirable species because it is less important to the food web in the New York Bight than the pollution-sensitive species which have disappeared.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: April 1, 1985.

Jack E. Ravan,

Assistant Administrator for Water.

[FR Doc. 85–8586 Filed 4–10–85; 8:45 am]

BILLING CODE [illegible]

federal register

Thursday
April 11, 1985

Part III

Environmental Protection Agency

48 CFR Parts 1501, 1503, 1505, 1506, 1513, 1514, 1515, 1517, 1527, 1533, 1536, and 1552

Acquisition Regulations; Competition in Contracting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1501, 1503, 1505, 1506, 1513, 1514, 1515, 1517, 1527, 1533, 1536, and 1552

[FRL-2810-3]

Acquisition Regulation; Competition in Contracting

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule amends the Environmental Protection Agency Acquisition Regulation (EPAAR) to implement revisions to the Federal Acquisition Regulation (FAR) resulting from the Competition in Contracting Act (CICA), Title VII of Pub. L. 98–369. This rule is necessary to conform the EPAAR to the FAR revisions. The effect of this rule is to revise EPA procurement policies and procedures impacted by the CICA.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Edward Murphy, Environmental Protection Agency, Procurement and Contracts Management Division (PM–214), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Tel: (202) 382–5034.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
III. Public Comments

I. Background

The Competition in Contracting Act (CICA) substantially changes the basic statutes underlying the Federal procurement system. Agencies must achieve full and open competition by soliciting sealed bids or requesting competitive proposals or by use of other competitive procedures, unless a statutory exception permits other than full and open competition. Among its major provisions, the Act imposes new justification, approval, and synopsis requirements for contracts employing other than full and open competition; requires appointment of a competition advocate; codifies the General Accounting Office bid protest process; and provides statutory authority for the General Services Board of Contract Appeals to resolve protests regarding automatic data processing aquisitions. Solicitations issued after March 31, 1985 must comply with the requirements of the Act.

The Department of Defense (DOD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) issued the proposed changes to the FAR resulting from the CICA for comment on October 1, 1984. The interim rule issuing FAR revisions was published in the Federal Register on January 11, 1985 (50 FR 1726). This rule implements those changes in the EPAAR.

II. Procedural Requirements

A. Executive Order 12291

The EPA certifies that this rule is not a major rule for the purposes of Executive Order 12291.

B. Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

III. Public Comments

The notice of proposed rulemaking inviting public comments on this rule was published in the Federal Register on December 5, 1984.

The EPA received two public comments. The first commentor suggested several editorial revisions, which EPA considered. The commentor also questioned the designation of the Deputy Director, Procurement and Contracts Management Division (P&CMD) as the Agency Competition Advocate. The commentor stated that a separate position is required. The EPA considers that the Deputy Director, P&CMD, could serve as the Agency Competition Advocate provided the he/she were not assigned duties or responsibilities inconsistent with FAR 6.502. However, as a result of a management decision on the staffing needs of P&CMD, a separate position for the Agency Competition Advocate has been created.

The second commentor raised issues on the publicizing and response time (1505.203), the use of synopses to perform market surveys (1505.270), and the example for only one responsible source (1506.302–1).

The commentor stated there was no indication of a class deviation to the FAR to support section 1505.203. This section gives EPA Contracting Officers discretion to synopsize actions which may fall within one of the synopsis exceptions in FAR 5.202(a), and to use lesser time periods than those prescribed in the FAR. EPA does not consider a class deviation to be necessary. The time periods for publication in the FAR are for contract actions that require a synopsis. The lesser time periods authorized in section 1505.203 are for contract actions that are exempted from the synopsis requirements in the FAR.

The commentor stated that synopsizing an unsolicited research proposal of the type described in FAR 5.202(a)(7) might subject Contracting Officers to criminal penalties mentioned in FAR 15.508(b). EPA has revised 1505.203 to state that Contracting Officers may not synopsize a contract action under the exception in FAR 5.202(a)(7) if to do so would disclose the originality or innovativeness of the proposed research.

Section 1505.270 requires market surveys to be used in justifying sole source acquisitions. The commentor stated that FAR 6.302–1 contains, as an example of only one responsible source, unsolicited research proposals of the type described in 6.302–1(b)(3). This type of research proposal is exempted from the synopsis requirements in FAR Subpart 5.2 by 5.202(a)(7). The commentor stated that contract actions resulting from unsolicited research proposals of the type described in FAR 5.202(a)(7) should be exempt from the requirements of 1505.270.

EPA considers that a market survey would be appropriate provided the survey did not disclose the originality of thought or innovativeness of the proposed research. EPA has therefore amended 1505.270 to instruct Contracting Officers not to conduct a market survey to justify a sole source acquisition resulting from an unsolicited research proposal if to do so would disclose the originality or innovativeness of the proposal.

Section 1506.302–1 illustrates a situation, i.e. follow-on contracts for services, which may be used as authority for only one responsible source. The commentor stated this section appeared restrictive, and should not foreclose the possibility of awarding contracts from the acceptance of unique and innovative research proposals. EPA has amended the section to indicate the example is not all inclusive.

List of Subjects in 48 CFR Ch. 15

Government procurement.

Dated: March 15, 1985.

Kenneth Dawsey,

Acting Director, Office of Administration.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

For the reasons set out in the preamble, Chapter 15 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 1501—[AMENDED]

1. Section 1501.670–5, paragraph (b), is revised to read as follows:

1501.670–5 Procedures.

* * * * *

(b) The division director (or equivalent) of the responsible office shall approve the memorandum. If expenditure of funds is involved, as part of this submission the program office shall include a Procurement Request/Order, EPA Form 1900–8, with funding sufficient to cover the supplies or services. For any new work, or work beyond the scope of an existing contract, the program office shall submit a justification for other than full and open competition (JOFOC) as required by FAR 6.302, FAR 6.303, and 1506.303 or for small purchases, a sole source justification as required by 1513.170 of this chapter.

* * * * *

PART 1503—[AMENDED]

2. Section 1503.670 is revised to read as follows:

1503.670 Solicitation of disclosure provision.

The Contracting Officer shall insert the provision at 1552.203–70, Current/Former Agency Employee Involvement Certification, in all solicitations for sole source acquisitions.

PART 1505—[AMENDED]

3. Section 1505.000 is revised to read as follows:

1505.000 Scope of part.

This part provides instructions on publicizing contract opportunities and response time, instructions on information to include in the synopses of proposed contracts, instructions on publicizing orders under GSA schedule contracts, policy references relative to release of information, and procedures for obtaining information on previous Government contracts.

4. The title for Subpart 1505.2 is revised to read as follows:

Subpart 1505.2—Synopses of Proposed Contract Actions

5. Subpart 1505.2 is amended by adding sections 1505.202 and 1505.203 to read as follows before section 1505.270:

1505.202 Exceptions.

The Head of the Contracting Activity (HCA) is delegated the authority to make the written determination in FAR 5.202(b).

1505.203 Publicizing and response time.

(a) The Contracting Officer may, at his/her discretion under certain circumstances, elect to transmit a synopsis to the Commerce Business Daily (CBD) of a proposed contract action that falls within an exception to the synopsis requirement in FAR 5.202(a). For those contract actions, the Contracting Officer may provide for a lesser time period than the 15 days required by FAR 5.203(a) and the 30 days required by FAR 5.203 (b) or (c), and the 45 days required by FAR 5.203(d). The Contracting Officer must identify the basis for the lesser time periods for response in the synopsis.

(b) The authority for paragraph (a) does not extend to the synopsis of contract actions falling within the exception in FAR 5.202(a)(7), if to do so would disclose the originality of thought or innovativeness of the proposed research.

6. Section 1505.270 is revised to read as follows:

1505.270 Use of synopses to perform market surveys.

(a) Market surveys shall be used in justifying sole source acquisitions and acquisitions using other than full and open competitive procedures with a potential value in excess of $25,000. The synopsis of such acquisitions for supplies or services and subsequent evaluation of the responses by the Government constitutes an acceptable market survey.

(b) The synopsis of a proposed sole source acquisition and acquisitions using other than full and open competition of $10,000 or more must contain sufficient detail to permit the Contracting Officer to perform an evaluation of the responses to the synopsis. As a minimum the synopsis shall include:

(1) The information required by FAR 5.207;

(2) A clear statement of the supplies or services being acquired;

(3) Required contractor capabilities, experience, and any other factors salient to the requirement; and

(4) Criteria listed in relative order of importance to be used in the evaluation of responses. (Contracting Officers may include specific weights assigned to each criteria).

(c) Contracting Officers are not required to perform market surveys to justify an other than full and open acquisition resulting from an unsolicited research proposal if to do so would disclose the originality of thought or innovativeness of the proposal.

7. Subpart 1505.2 is amended by adding section 1505.271 to read as follows:

1505.271 Publicizing orders under GSA Schedule Contracts.

(a) Contracting Officers are not required to synopsize orders placed under Federal Supply Schedules when following the procedures in FAR 8.404–2 and 8.405–1. Contracting Officers need synopsize orders under Automatic Data Processing and Teleprocessing Services Program schedules only if required by the Federal Information Resources Management Regulation.

(b) Sole source orders of $10,000 or more under the Federal Supply Schedule must be synopsized in accordance with FAR Part 5.8. Part 1506 is added to 48 CFR Chapter 15 to read as follows:

PART 1506—COMPETITION REQUIREMENTS

Sec.

1506.000 Scope of part.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources

1506.202 Establishing or maintaining alternative sources.

Subpart 1506.3—Other Than Full and Open Competition

1506.301 Policy.
1506.302 Circumstances permitting other than full and open competition.
1506.302–1 Only one responsible source.
1506.303 Justifications.
1506.303–2 Content.
1506.370 Limited competition.
1506.371 Conduct of market surveys.
1506.372 Class justification.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1506.000 Scope of part.

This part implements FAR Part 6. It prescribes the Environmental Protection Agency policies and procedures in obtaining full and open competition in the acquisition process.

Subpart 1506.2—Full and Open Competition After Exclusion of Sources

1506.202 Establishing or maintaining alternative sources.

The Head of the Contracting Activity (HCA) is delegated the authority to make the determination and finding as stated in FAR 6.202(b)(1).

Subpart 1506.3—Other Than Full and Open Competition

1506.301 Policy.

In the fulfillment of national policy, acquisitions by EPA shall be conducted utilizing full and open competition with all responsible sources. However, it is recognized that one or more of the circumstances in FAR 6.302 may apply where it is in the interest of the Government and EPA to solicit limited sources or only one source. In such instances, the initiating program office may recommend that the supplies or services be obtained from a limited number of sources or only from one source. This recommendation is subject to review and approval as provided in FAR 6.304.

1506.302 Circumstances permitting other than full and open competition.

The exceptions in FAR 6.302 apply to all EPA acquisitions of supplies or services in excess of $1,000 unless exempted by FAR 6.001. For acquisitions awarded using small purchase procedures, Contracting Officers shall refer to 1513.170 for applicable policies and procedures.

1506.302-1 Only one responsible source.

The authority in FAR 6.302-1 may be used in the following situation, provided the synopsis requirements in FAR 5.201 and the justification requirements in FAR 6.303 are met. (This situation is an example and is not intended to be all-inclusive.) Follow-on contracts for services that represent a continuation of a previous effort performed by the proposed source as a result of a competitive acquisition may be deemed to be available only from that source when it is likely that award to any other source would result in (a) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (b) unacceptable delays in fulfilling the Agency's requirements.

1506.303 Justifications.

1506.303-2 Content.

The documentation requirements in this section apply only to acquisitions processed using other than small purchase procedures. (Refer to 1513.170 for documentation for small purchase acquisitions).

(a) The initiating office shall prepare a written justification for other than full and open competition (JOFOC) that documents the facts and circumstances substantiating the infeasibility of full and open competition for each recommended limited sources or sole source acquisition when required by FAR 6.302.

(b) The recommendation shall be entitled "Justification for Other Than Full and Open Competition" and shall be signed at the programmatic Division Director or comparable office level prior to submission with the procurements request. The JOFOC shall contain the information prescribed in FAR 6.303-2 (a) and (b).

(c) If unusual and compelling urgency (see FAR 6.303-2) is a basis for the JOFOC, then the following applies. Explain the circumstances that led to the need for an urgent contractual action. Explain why the requirement could not have been processed in sufficient time to permit full and open competition. It should be noted that the existence of legislation, court order, or Presidential mandate is not, of itself, a sufficient basis for a JOFOC. However, the circumstances necessitating legislation, court order, or Presidential mandate may justify contractual action on an other than full and open competition basis.

(d) If the proposed acquisition has been synopsized in accordance with the applicable requirements in FAR Subpart 5.2, the Contracting Officer must incorporate the evaluation of responses to the synopsis in the JOFOC. (See 1506.371(d) for contents of the evaluation document).

1506.370 Limited competition.

Limited competition, i.e. the use of competitive procedures that are not full and open competition and that restrict the number of sources solicited, must be justified under one of the authorities in FAR 6.302. The use of limited competition requires the justification set forth in FAR 6.303. Limited competition requires the solicitation of offers from as many potential sources as is practicable under the circumstances.

1506.371 Conduct of market surveys.

(a) The Contracting Officer shall determine the extent of any market survey. In making this decision, the Contracting Officer may consider such factors as the type and size of the acquisition, the results of recent competitive acquisitions for similar supplies or services, or other recent market surveys.

(b) The Contracting Officer, with input from the Project Officer, shall determine the market survey strategy and who is responsible for accomplishing the different aspects of the survey. For example, the Contracting Officer may choose to have discussions with offerors who had proposed on previous similar requirements. For market surveys involving discussions with or inquiries from commercial firms, the Contracting Officer shall conduct or participate in such discussions or inquiries.

(c) Commerce Business Daily (CBD) synopses of proposed sole source acquisitions or acquisitions using other than full and open competition and subsequent evaluation of the responses by EPA constitute an acceptable market survey. If the FAR requires a synopsis, other methods of conducting market surveys may not be used as a substitute for the synopsis.

(d) Under those circumstances when synopses are issued to assist in determining the existence of competition, the Contracting Officer, with the assistance of the Project Officer, shall evaluate responses to such synopses in accordance with the general criteria included in the synopsis. If the evaluation indicates that full and open competition can be provided for, the Contracting Officer shall issue a new synopsis and a competitive solicitation that adhere to the time periods in FAR 5.203. If the Contracting Officer determines, after evaluation of responses, that a sole source acquisition or limited competition should be conducted, the evaluation document shall be incorporated in the JOFOC for review in accordance with 1506.303-2(d) (for small purchases see 1513.170-1). The documentation shall include:

(1) A copy of the CBO synopsis;

(2) A listing of respondees to the synopsis;

(3) A written evaluation of the responses; and

(4) The basis for the Contracting Officer's conclusion that full and open competition is impractical.

1506.372 Class justification.

Appendix I to 48 CFR Chapter 15 contains a class justification authorizing Agency Contracting Officers to make acquisitions from the Federal Prison Industries and the Government Printing Office. Individual justifications for acquisitions from these two sources are not required.

PART 1513—[AMENDED]

9. Subpart 1513.1 is amended by adding sections 1513.170, 1513.170–1, 1513.170–2, and 1513.170–3 to read as follows:

1513.170 Competition exceptions and justification for sole source small purchase acquisitions.

1513.170–1 Contents of sole source justifications.

The program office submitting the procurement request must submit, as a separate attachment, a brief written statement in support of any sole source acquisition. The statement must cite one or more of the circumstances in FAR 6.302, and the necessary facts to support each circumstance. Although program offices may not cite the authority in FAR 6.302–7, the public interest may be used as a basis to support a sole source acquisition. If the acquisition has been synopsized as a notice of proposed sole source acquisition, the statement must include the results of the evaluation of responses to the synopsis. (See 1505.270 for contents of a synopsis of a proposed sole source acquisition).

1513.170–2 Approval.

The Contracting Officer is the approving official for all sole source acquisitions processed using small purchase procedures.

1513.170–3 Exceptions.

A written justification is not required for the following types of acquisitions: (a) Acquisitions under mandatory Federal Supply Schedule or mandatory ADP and TSP schedules; and (b) acquisitions required by statute to be obtained from a specific source, such as the National Industries for the Blind or Other Severely Handicapped or Federal Prison Industries.

PART 1514—[AMENDED]

10. Part 1514 is revised by amending the Title and section 1514.201–6 to read as follows:

PART 1514—SEALED BIDDING

1514.201–6 Solicitation provisions.

(a) The Contracting Officer shall insert the solicitation provision at 1552.214–70, Past Performance, in all invitations for bids.

(b) The Contracting Officer shall insert the solicitation provision at 1552.214–71, Contract Award-Other Factors-Sealed Bidding, in invitations for bids when it is appropriate to describe other factors that will be used in evaluating bids for award.

11. Subpart 1514.4 is amended by adding sections 1514.404 and 1514.404–1 to read as follows before section 1514.406:

1514.404 Rejection of bids.

1514.404–1 Cancellation of invitations after opening.

The Head of the Contracting Activity is authorized to make the determination in FAR 14.404–1(c).

PART 1515—[AMENDED]

Subpart 1515.1—[Removed]

12. Subpart 1515.1 is removed.

Subpart 1515.3—[Removed]

13. Subpart 1515.3 is removed.

14. Section 1515.602 is revised to read as follows:

1515.602 Applicability.

FAR Subpart 15.6 and this subpart apply to all competitive negotiated acquisitions in excess of $25,000, except architect engineering services which are covered in 1536.6.

15. Section 1515.608 is amended by adding paragraph (e) to read as follows:

1515.608 Proposal evaluation.

* * * * *

(e) *Rejection of proposals.* The Head of the Contracting Activity is authorized to make the determination in FAR 15.608(b).

16. The title for Subpart 1515.10 is revised to read as follows:

Subpart 1515.10—Preaward, Award, and Postaward Notifications, Protest, and Mistakes

1515.1002 [Redesignated as 1515.1003]

17. Subpart 1515.10 is amended by redesignating section 1515.1002 as section 1515.1003.

PART 1517—[AMENDED]

18. Section 1517.207 is amended by revising the last sentence in paragraph (b) to read as follows:

1517.207 Exercise of options.

* * * * *

(b) * * * In the event that sufficient funding is not available within the 60 day period, the Government waives the right to exercise the option, thereby rendering any additional requirements subject to full and open competition requirements.

* * * * *

PART 1527—[AMENDED]

1527.7003 [Amended]

19. Section 1527.7003, paragraphs (a) and (d)(3), are amended by removing the term "formal advertising" and inserting in its place "sealed bidding".

PART 1533—[AMENDED]

20. Part 1533 is revised to read as follows:

PART 1533—PROTESTS, DISPUTES AND APPEALS

Sec.

1533.000 Scope of part.

Subpart 1533.1—Protests

1533.103 Protests to the Agency.
1533.103–70 Time for filing.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.
1533.209 Suspected fraudulent claims.
1533.211 Contracting Officer's decision.
1533.212 Contracting Officer's duties upon appeal.

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

1533.000 Scope of part.

This part implements and supplements FAR Part 33 and prescribes policies and procedures for processing protests and contract disputes and appeals.

Subpart 1533.1—Protests

1533.103 Protests to the Agency.

1533.103–70 Time for filing.

(a) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In acquisitions where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(b) In cases other than those covered in paragraph (a) of this section, protests shall be filed not later than ten working days after the basis of protest is known or should have been known, whichever is earlier.

Subpart 1533.2—Disputes and Appeals

1533.203 Applicability.

Pursuant to an interagency agreement

between the EPA and the Department of the Interior Board of Contract Appeals (IBCA), the IBCA will hear appeals from final decisions of EPA Contracting Officers issued pursuant to the Contract Disputes Act. The rules and regulations of the IBCA appear in 43 CFR Part 4.

1533.209 Suspected fraudulent claims.

The Contracting Officer shall refer matters relating to suspected fraudulent claims under the Contract Disputes Act to the Inspector General through the Head of the Contracting Activity (HCA).

1533.211 Contracting Officer's decision.

Final decisions of Contracting Officers under the Contract Disputes Act shall be reviewed by legal counsel and the Chief of the Contracting Office prior to issuance.

1533.212 Contracting Officer's duties upon appeal.

Upon receipt of notice of appeal, the Contracting Officer shall take the following actions:

(a) *Submission of the notice of appeal to IBCA.* (1) When a notice of appeal in any form has been received, the Contracting Officer shall endorse on it the date of the notice's mailing (or the date of receipt if the notice was otherwise conveyed) and within 5 days shall forward the notice of appeal to the IBCA by certified mail. The Contracting Officer shall verbally notify the legal counsel that the appeal has been received.

(2) A notice of appeal, whether filed within the time prescribed by the "Disputes" clause or not, shall be submitted to the IBCA. The Contracting Officer shall forward promptly every notice of appeal to IBCA even if the intention to appeal is only vaguely or indirectly expressed, and regardless of the form of the notice, or of the method by which the notice was furnished to the Contracting Officer.

(3) Copies of the notice of appeal shall be sent simultaneously to the Policy and Quality Assurance Branch, Procurement and Contracts Management Division and to legal counsel.

(b) *Establishment and submission of appeal files to IBCA.* (1) Following receipt of a notice of appeal, or advice that an appeal has been filed, the Contracting Officer shall promptly compile the appeal file (copies of all documents pertinent to the appeal), and four duplicate appeal files. The file shall include the following:

(i) The findings of fact and the Contracting Officer's final decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(ii) The contract, and pertinent plans, specifications, amendments, and change orders;

(iii) Correspondence between the parties and other data pertinent to the appeal;

(iv) Transcripts of any testimony taken during the course of proceedings and affidavits, or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board;

(v) Such additional information as may be considered material.

(2) In addition to the above, the Contracting Officer shall prepare an index listing each document included in the file submitted to the IBCA, and place copies of such index in the submission and duplicate files.

(3) Contracting Officers, in making the submission, may not submit original documents which are a part of the official contract file. Copies of the pertinent documents shall be submitted.

(4) Within 15 days of receipt or advice of a notice of appeal, the official and two duplicate files shall be forwarded through legal counsel to the Procurement and Contracts Management Division for review. The Procurement and Contracts Management Division shall forward the official appeal file to the IBCA within the 30 day time limitation set forth in 43 CFR 4.104(a). One duplicate file shall be retained by the Contracting Officer, one by the Procurement and Contracts Management Division, and one by legal counsel.

(5) If for any reason the Contracting Officer anticipates that a timely submission cannot be made, he/she shall immediately advise legal counsel by telephone of the extent of the anticipated delay and the reasons therefore. However, every effort will be exerted to make timely submissions.

(6) At the time of transmittal of the appeal file to the Board, the Contracting Officer shall notify the appellant of the transmittal and provide a copy of the appeal file to the appellant. Within the transmittal to the IBCA, the Contracting Officer shall indicate that the appellant has been provided with a copy of the appeal file.

PART 1536—[AMENDED]

21. The title for Subpart 1536.3 is revised to read as follows:

Subpart 1536.3—Special Aspects of Sealed Bidding in Construction Contracting

PART 1552—[AMENDED]

22. Section 1552.203–70 is amended by revising the introductory paragraph to read as follows:

1552.203–70 Current/former agency involvement certification.

As prescribed in 1503.603, insert the following solicitation provision in all EPA solicitation documents for sole source acquisitions.

* * * * *

23. Section 1552.210–77 is revised to read as follows:

1552.210–77 Management Consulting Services.

As prescribed in 1510.011–77, insert the following contract clause in all contracts for management consulting services.

Management Consulting Services (Apr 1985)

All reports containing recommendations to the Environmental Protection Agency shall include the following information on the cover of each report: (a) Name and business address the the contractor; (b) contract number; (c) contract dollar amount; (d) whether the contract was subject to full and open competition or a sole source acquisition; (e) name of the EPA Project Officer and the EPA Project Officer's office identification and location; and (f) date of report.

(End of Clause)

24. Section 1552.214–70 is amended by revising the introductory paragraph to read as follows:

1552.214–70 Past Performance.

As prescribed in 1514.210–6(a), insert this solicitation provision in all inivitations for bids:

* * * * *

25. Section 1552.236–71 is amended by revising the title of the solicitation provision and the last sentence of the second paragraph and paragraphs (a) and (b) in the solicitation provision; and by removing paragraph (c) in the solicitation provision to read as follows:

1552.236–71 Additive or deductive items.

* * * * *

Additive or Deductive Items (Apr 1985)

* * * * *

After the contract has been awarded, any

work which should have been part of the contract offered by the solicitation originally (i.e. any additive or deductive item) may be procured by either of the following methods of acquisition listed in descending order of priority:

(a) Full and open competition resulting in a new contract.

(b) Negotiation of a supplemental agreement to the existing contract justified under FAR 6.302.

28. Appendix I is added to 48 CFR Chapter 15 to read as follows:

Appendix I.—Environmental Protection Agency; Class Justification For Other Than Full and Open Competition in Acquisitions From the Federal Prison Industries and the Government Printing Office

1. The Environmental Protection Agency (EPA) anticipates the acquisition of supplies from the Federal Prison Industries (UNICOR) and the acquisition of Government printing and related supplies from the Government Printing Office (GPO) to meet the needs of the Agency.

2. The Agency is authorized to make these acquisitions from the UNICOR and GPO without full and open competition under the authority in 41 U.S.C. 253(c)(5) as sources required by statute, i.e. 18 U.S.C. 4124 and 44 U.S.C. 501–504, 1121.

3. The anticipated cost of these acquisitions to the Agency will be fair and reasonable.

4. This class justification applies to any proposed acquisition made by the EPA from the UNICOR or GPO.

5. This class justification will remain in effect until April 1, 1988.

6. The undersigned certifies that this class justification is accurate and complete to the best of his knowledge and belief.

Dated: March 13, 1985.

Brain K. Polly,

Director, Procurement and Contracts Management Division.

[FR Doc. 85–8583 Filed 4–10–85; 8:45 am]

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Title 3—

The President

Presidential Determination No. 85–9 of March 29, 1985

Military Assistance for El Salvador

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended (the Act), I hereby:

(1) determine that the furnishing of up to an additional $10 million for El Salvador under Chapter 2 of Part II of the Act, without regard to the limitations and restrictions on such assistance contained in P.L. 98–396, is important to the security interests of the United States; and

(2) authorize the furnishing of such assistance.

Such assistance shall be in addition to amounts otherwise available for El Salvador.

You are requested to report this determination to the Congress immediately, and none of the assistance provided for herein shall be furnished until after such report has been made.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, March 29, 1985.

cc: The Secretary of Defense

[FR Doc. 85–9010
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Rules and Regulations

Federal Register
Vol. 50, No. 71
Friday, April 12, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Regulations for Federal Meat Grading and Certification Services; Product Control Authority

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the grading and certification of meat and meat products (7 CFR Part 54) by granting official graders and their supervisors the authority to control the movement and use of meat and meat products which do not comply with the regulations or that need to be held pending the results of an examination.

EFFECTIVE DATE: May 13, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin, Chief, Meat Grading and Certification Branch, Livestock Division, Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, D.C. 20250. (Telephone 202/382–1113.)

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to sections 1(b) (1), (2), and (3) of that Order because (1) it would not have an annual effect on the economy of $100 million or more; (2) it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

The requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) which deals with the impact of regulations on small entities were also satisfied in that William T. Manley, Deputy Administrator, Agricultural Marketing Service, certified that this rule will not have a significant impact on a substantial number of small entities. The final rule grants authority to official graders and their supervisors to control the movement and use of meat and meat products which do not comply with the regulations (7 CFR Part 54) or that need to be held pending the results of an examination. On a nationwide basis, the final rule will not measurably affect the average cost-per-unit graded and/or certified currently borne by all entities using the services. Consequently, the final rule will not significantly affect meatpackers, meat processors, consumers or any other small entity, and will not affect normal competition in the marketplace.

Background

The Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat which they desire. In this regard, official graders and their supervisors, as authorized in 7 CFR Part 54, grade and certify approximately 14 billion pounds of meat and meat products each year.

During the grading and certification processes, official graders and their supervisors control meat and meat products which comply with applicable regulations to maintain the integrity of officially graded and certified products. Certified meat and meat products and graded meats are controlled by applying official identification marks, sealing meat product containers, continuous supervision, or a combination of these methods. However, meat and meat products which do not comply with applicable regulations or those meat and meat products held pending the results of an examination cannot be controlled adequately by official graders or their supervisors under current regulations. In certain cases, such meat and meat products may be incorrectly labeled or processed into certified product. The amendment of the regulation to grant official graders and their supervisors the authority to control adequately such meat and meat products consists primarily of describing and designating an official identification device and explaining its use in 7 CFR Part 54. In actual use, official graders and their supervisors would attach the identification device to meat and meat products or product containers not complying with the regulations or that need to be held pending further examination. Attaching the official identification device identifies the meat and meat products or product containers as being controlled under the authority of the AMA. Consequently, any meat or meat product so identified could not be used, moved, or altered in any manner without the express permission of an authorized USDA representative. The unauthorized removal or alteration of the official identification device or the identified meat or meat product would be a violation of the AMA and regulations issued thereunder. The amendment would facilitate the effective control of noncomplying meat or meat products or those held pending the results of an examination.

The proposal to revise the meat grading and certification regulations (7 CFR Part 54) to grant authority to official graders and their supervisors for control of meat and meat products which do not comply with applicable regulations or those meat and meat products held pending the results of an examination was published in the **Federal Register** on November 9, 1984 (Volume 49, No. 219, pages 44758–44760). Comments on the proposal were invited for 60 days ending on January 8, 1985. The need for the revision of the meat grading and certification regulations (7 CFR Part 54) and the justification of the proposed changes were detailed in the proposal.

Summary of Comments

During the comment period, a total of three comments were received. The distribution of these comments was as follows: national trade organizations—2 and meatpacking companies—1. Two of the three comments supported the

proposal with recommendations for minor modifications. One comment expressed opposition to the proposal on the grounds that the authority to control meat and meat products not in compliance with applicable regulations or held pending the results of an examination was unnecessary and would place undue burden on the meat industry. Each area raised by these comments is dealt with below.

The two supporting comments recommended a total of three modifications to the proposal. The first recommended modification was to limit the use of Agricultural Marketing Service (AMS) product control authority to meat and meat products in compliance with Food Safety and Inspection Service (FSIS) wholesomeness requirements. The commenter supported the recommendation by stating that Government effort would be duplicated and an unneccesary regulatory burden placed on the industry if both FSIS retention authority and AMS product control authority were used simultaneously by the two Agencies to restrict the movement and use of one product. The Agency recongizes that it is entirely possible for meat and meat products to fail to comply with both AMS and FSIS regulations. However, in any case involving noncompliance of meat and meat products with FSIS regulatory requirements, FSIS will have the primary responsibility of ensuring proper retention and disposition. AMS will only control meat and meat products for appropriate cause that are in compliance with FSIS regulatory requirements.

Another recommended modification was to permit an "authorized USDA representative" to release meat and meat products controlled under AMS product control authority in lieu of limiting the authority to release meat and meat products to "official graders or supervisors of grading" as stated in the proposal. Incorporating this recommendation would permit authorized FSIS personnel, under certain conditions, to release meat and meat products controlled by AMS. The commenter pointed out that in the Alternatives section and Figure 1 of the proposal the Agency states that an "authorized USDA representative" may release control of meat and meat products. However, in the regulatory language of the proposal, we limit the authority to release the control of meat and meat products to "official graders and supervisors of grading." This discrepancy has been corrected by modifying the language of Sections 54.11 and 54.17, as proposed, to permit the release of AMS controlled meat and meat products by an authorized USDA representative.

The final modification recommended by the supporting comments was for the Agency to address the conditions which must be met by an establishment for the timely release of controlled meat and meat products. AMS product control authority is designed to control only those meat and meat products that have been determined not to be in compliance with meat grading regulations (7 CFR Part 54) or are being held pending the results of an examination and are involved in, or in the vicinity of, an ongoing grading or certification program. The Agency will not control meat and meat products by use of the product control authority that are outside of the grading and certification programs conducted by AMS. For example, in a certification program, once a controlled product is removed from the processing area and designated by an establishment for commercial channels, the product will be released from AMS control. Therefore, exercising product control authority in this manner should not restrict normal commercial marketing or result in extended control periods that may lead to product deterioration and loss.

The one opposing comment stated that product control authority was unnecessary because the Agency could control noncomplying meat and meat products within its existing authority by withholding or removing official grading or certification marks. This is correct for meat and meat products that are officially graded or certified or products certified contingent upon the results of subsequent examinations. However, in most cases, ungraded or uncertified meat and meat products that fail to comply with the regulations do not receive official grading and certification marks. Consequently, noncomplying meat and meat products cannot be controlled by removing or withholding official grading and certification marks as the commenter suggests.

Therefore, based on the analysis discussed in the proposed rule (49 FR, No. 219, pages 44758–44760) and the analysis of the comments outlined above, the regulations governing the grading and certification of meats, prepared meats, and meat products (7 CFR Part 54) are, except for the case noted above, finalized as proposed.

In summary, the change involved in this amendment to the meat grading and certification regulations (7 CFR Part 54) grants official graders and their supervisors the authority to control the movement and use of meat and meat products which do not comply with the regulations or that need to be held pending the results of an examination.

List of Subjects in 7 CFR Part 54

Beef carcasses, Meat and meat products, Grading and certification, Standards, Food grades and standards, Food labeling.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

Subpart A—Regulations

Service

2. Section 54.11 is amended by revising paragraph (a)(1)(ix) and adding paragraph (a)(1)(x) to read as follows:

§ 54.11 Denial or withdrawal of service.

(a) * * *

(1) * * *

(ix) has knowingly used, moved, or otherwise altered, in any manner, meat or meat products identified by an official product control device, mark, or other identification as specified in Section 54.17, or has removed such official device, mark, or identification from the meat or meat products so identified without the express permission of an authorized representative of the USDA; or (x) has in any manner not specified in this paragraph violated subsection 203(h) of the AMA: *Provided,* That paragraph (a)(1)(vi) of this section shall not be deemed to be violated if the person in possession of any item mentioned therein notifies the Director or Chief without such delay that he has possession of such item and, in the case of an official device, surrenders it to the Chief, and, in the case of any other item, surrenders it to the Director or Chief or destroys it or brings it into compliance with the regulations by obliterating or removing the violative features under supervision of the Director or Chief: *And provided further, That* paragraphs (a)(1)(ii) through (ix) of this section shall not be deemed to be violated by any act committed by any person prior to the making of an application of service under the regulations by the principal person. An application or a request for service may be rejected or the benefits of the service may be otherwise denied to, or withdrawn from, any person who operates an establishment for which he has made application for service if, with the knowledge of such operator, any

other person conducting any operations in such establishment has committed any of the offenses specified in paragraphs (a)(1) (i) through (x) of this section after such application was made. Moreover, an application or a request for service made in the name of a person otherwise eligible for service under the regulations may be rejected, or the benefits of the service may be otherwise denied to, or withdrawn from, such a person (A) in case the service is or would be performed at an establishment operated (*1*) by a corporation, partnership, or other person from whom the benefits of the service are currently being withheld under this paragraph, or (*2*) by a corporation, partnership, or other person having an officer, director, partner, or substantial investor from whom the benefits of the service are currently being withheld and who has any authority with respect to the establishment where service is or would be performed; or (B) in case the service is or would be performed with respect to any product in which any corporation, partnership, or other person within paragraph (a)(1)(x)(A)(*1*) of this section has a contract or other financial interest.

* * * * *

3. Section 54.17 is amended by adding paragraph (g) to read as follows:

§ 54.17 Official identifications.

* * * * *

(g) A rectangular, serially numbered tag, on which a shield encloses the letters "USDA" and the words "Product Control," as shown in Figure 1, constitutes a form of official identification under the regulations for meat and meat products. Official graders and supervisors of grading may use "Product Control" tags or other methods and devices as approved by the Administrator for the identification and control of meat and meat products which are not in compliance with the regulations or are held pending the results of an examination. Any such meat or meat product so identified shall not be used, moved, or altered in any manner; nor shall official control identification be removed, without the express permission of an authorized representative of the USDA.

BILLING CODE 3410-03-M

FORM LS-10
(2-84)

NO. XXXXX

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
LIVESTOCK DIVISION

USDA
Product Control

DO NOT REMOVE TAG
OR
USE PRODUCT
WITHOUT AUTHORIZATION

(SEE REVERSE)

NO.
PRODUCT TAGGED

NO OF CONTAINERS

Obverse

The product(s) or container(s) to which this tag is attached is (are) controlled under authority of the Agricultural Marketing Act and is (are) not to be used, moved or altered in any manner without the expressed permission of an authorized representative of the United States Department of Agriculture. The unauthorized removal or alteration of this tag or utilization of the tagged product(s) is a violation of the Agricultural Marketing Act of 1946, as amended and regulations issued thereunder.

REMARKS:

AUTHORIZED EMPLOYEE DATE

PRODUCT CONTROL
LOCATION AND REMARKS:

AUTHORIZED EMPLOYEE DATE

FORM LS-10 (2-84) (Reverse)

Reverse

Figure 1

BILLING CODE 3410-02-C

Done at Washington, D.C. April 8, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-8741 Filed 4-11-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 511]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 295,000 cartons during the period April 14–20, 1985. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period April 14–20, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on April 9, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the lemon demand pattern continues to be good on larger sizes, steady on middle sizes, and easy on smaller sizes of fruit.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.611 is added as follows:

§ 910.611 Lemon Regulation 511.

The quantity of lemons grown in California and Arizona which may be handled during the period April 14, 1985, through April 20, 1985, is established at 295,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 10, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-8992 Filed 4-11-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of LADECO Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Linea Aerea del Cobre, S.A. "LADECO" to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with LADECO on March 29, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilities the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

§ 238.3 [Amended]

In § 238.3, *Aliens in immediate and continuous transit,* the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, Linea Aerea del Cobre, S.A. "LADECO".

(Sections 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: April 5, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-8834 Filed 4-11-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 83-042AI]

Imported Product; Amendment to Withdrawal of Certain Countries From the List of Those Eligible for Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Amendment to interim rules.

SUMMARY: On February 15, 1984, the Food Safety and Inspection Service (FSIS) published an interim rule with request for comments (49 FR 5727). This interim rule withdrew the Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama from the list of countries eligible under the Federal Meat Inspection Act (FMIA) to import cattle, sheep, swine, goat, and equine products into the United States. This action was necessary because those countries had failed to implement satisfactory residue testing and/or species verification programs, resulting in their no longer meeting provisions of the FMIA. On April 12, 1984, FSIS published an amendment to this interim rule which relisted the country of Panama as again being eligible under the FMIA to import the products of cattle, sheep, swine, and goats into the United States (49 FR 14497). On May 31, 1984, the countries of El Salvador and Nicaragua were also relisted as eligible to import the products of cattle, sheep, swine, and goats into this country (49 FR 22626). Since publication of those amendments, the Dominican Republic has also corrected the deficiencies in its inspection system and, therefore, is now being relisted as eligible to import the products of cattle, sheep, swine, and goats into the United States. All other aspects of the February 15, 1984, interim rule remain in effect.

DATE: Amendment to interim rule effective April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Havlik, Assistant Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1984, FSIS published in the **Federal Register** an interim rule with request for comments (49 FR 5727). This interim rule withdrew the Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama from the list of countries eligible under the Federal Meat Inspection Act (FMIA) to import the products of cattle, sheep, swine, goats, and equines (Mexico only) into the United States. The FMIA requires that in order for a country to be eligible to import meat products into the United States, that country must establish inspection standards that are "at least equal to" the requirements of the FMIA and the United States regulations which are applicable to official establishments in this country.

In order for a foreign country's inspection system to be considered "at least equal to" that of the United States, the country must provide for testing of fat, kidney, muscle and/or liver tissues for chlorinated hydrocarbons, organophosphates, trace metals, antibiotics, and (if applicable) hormones, using a method approved by the Secretary. In addition, the country must conduct an approved species verification program. Failure at that time of the Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama to implement satisfactory residue testing and/or species verification programs resulted in their being withdrawn from the list of countries eligible to import meat products into the United States.

In the February 15, 1984 interim rule withdrawing these countries, FSIS stated that once they had corrected the deficiencies in their residue testing and/or species verification programs, and the Administrator was satisfied that their systems meet all provisions of the FMIA, those countries would again be added to the list of countries eligible to import cattle, sheep, swine, and goat products into the United States.

The Dominican Republic has provided the Administrator with evidence showing that its system is now "at least equal to" that of the United States. Accordingly, this amendment to the February 15, 1984, interim rule (as previously amended on April 15, 1984 and May 31, 1984) makes the Dominican Republic again eligible to import cattle, sheep, swine, and goat products into the United States.

All other aspects of the February 15, 1984 interim rule remain in effect.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

For reasons explained in the preamble, Part 327, Subchapter A, Chapter III of Title 9, Code of Federal Regulations, is amended as set forth below.

9 CFR Part 327 is amended as follows:

1. The authority citation for Part 327 is revised to read as follows:

Authority: 76 Stat. 663 [7 U.S.C. 450 *et seq.*]; 34 Stat. 1260, 81 Stat. 584, as amended [21 U.S.C. 601 *et seq.*]; 46 Stat. 689 [19 U.S.C. 1306].

§ 327.2 [Amended]

2. In Part 327, § 327.2(b) is amended by adding the following country to the list of countries eligible to import cattle, sheep, swine, and goat products into the United States:

Dominican Republic

Done at Washington, D.C. on: April 4, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-8865 Filed 4-11-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-2-AD; Amdt. 39-5037]

Airworthiness Directive; Partenavia Costruzioni Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68C-TC and P 68 Observer Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Partenavia Costruzioni Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68C-TC and P 68 Observer airplanes which requires periodic visual inspections of the front and rear wing spars for cracks until reinforcement plates are installed. This action is based upon Partenavia receiving reports of cracks being found in the wing spars. The inspections required by this AD will identify these cracks so that they may be repaired before they adversely affect the airworthiness of the wing.

EFFECTIVE DATE: May 17, 1985. Compliance: As prescribed in the body of this AD.

ADDRESSES: Partenavia Service Bulletin (S/B) No. 65, Revision 1, dated September 27, 1984, applicable to this AD may be obtained from Partenavia Costruzioni Aeronautiche S.p.A. via Cava, Casoria-Napoli (Italy). A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. H. Chimerine, Brussels Aircraft Certification Office, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 513.38.30, or, Mr. J. Dow, FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive visual inspections for cracks and repair of cracks found in the front and rear wing spars of all Partenavia Costruzioni Aeronautiche S.p.A. Models P 68, P 68B, P 68C, P 68C-TC and P 68 Observer airplanes was published in the Federal Register on February 4, 1985 (50 FR 4870). The proposal resulted from reports of cracks found in the spar caps prompting the manufacturer to initiate a service bulletin describing corrective action to prevent crack growth and assure wing structural integrity.

The Registro Aeronautico Italiano (R.A.I.), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Italy, has classified this Service Bulletin No. 65, Revision 1, dated September 27, 1984, and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under Italian registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of R.A.I. combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Partenavia S/B No. 65, Revision 1, dated September 1984, and the mandatory classification of this Service Bulletin by the R.A.I. and determined that a Notice of Proposed Rulemaking was appropriate.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposal is adopted without change.

There are approximately 56 airplanes of U.S. registry affected by this AD. The cost of complying with the AD is estimated to be $15,680 to the private sector. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulation (14 CFR 39.13) is amended by adding the following new AD.

Partenavia Costruzioni Aeronautiche S.p.A.: Applies to all Model P 68, P 68B, P 68C, P 68C-TC and P 68 Observer (Serial Numbers 001 thru 328) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude the failure of the wing spar, within 100 hours time-in-service after the effective date of this AD or upon accumulating 2,100 hours time-in-service, whichever occurs later, and thereafter at intervals not exceeding 500 hours time-in service since the last inspection, accomplish the following:

(a) Visually inspect the front and rear wing spars for cracks as described in Part A of Partenavia S/B No. 65, Revision 1, dated September 27, 1984.

(b) If cracks are found as a result of any inspection required by Paragraph (a) of this AD, prior to further flight, accomplish the modification described in Part B of Partenavia S/B No. 65, Revision 1, dated September 27, 1984.

(c) The repetitive inspections required by Paragraph (a) of this AD may be discontinued when the modification in Paragraph (b) of this AD is accomplished.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Aircraft Certification Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

This amendment becomes effective on May 17, 1985.

Issued in Kansas City, Missouri, on April 2, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-8779 Filed 4-11-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24581; Amdt. No. 1282]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800

Independence Avenue SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Index

14 CFR Part 97: Approaches, Standard Instrument, Aviation Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

. . . *Effective June 6, 1985*

Parsons, KS—Tri-City, VOR RWY 13, Amdt. 3
Austin, MN—Austin Muni, VOR RWY 36, Amdt. 12
Austin, MN—Austin Muni, VOR RWY 18, Amdt. 12
Miles City, MT—Frank Wiley Field, VOR RWY 4, Amdt. 11
Miles City, MT—Frank Wiley Field, VOR/DME RWY 22, Amdt. 8
Holdrege, NE—Brewster Field, VOR/DME–A, Orig.
Batavia, OH—Clermont County, VOR–B, Amdt. 2
Rapid City, SD—Rapid City Regional, VOR or TACAN RWY 32, Amdt. 22
Rapid City, SD—Rapid City Regional, VOR/DME or TACAN RWY 14, Amdt. 14
Galveston, TX—Scholes Field, VOR RWY 13, Amdt. 15, Cancelled
Galveston, TX—Scholes Field, VOR RWY 13, Orig.
Houston, TX—Clover Field, VOR/DME–A, Amdt. 2
Houston, TX—Houston Gulf, VOR/DME RWY 31, Orig., Cancelled
Houston, TX—Houston Gulf, VOR RWY 31, Orig.
Houston, TX—William P. Hobby, VOR/DME RWY 31L, Amdt. 12
Houston, TX—William P. Hobby, VOR/DME 2 RWY 31L, Amdt. 2, Cancelled
Houston, TX—William P. Hobby, VOR RWY 13R, Amdt. 15
La Porte, TX—La Porte Muni, VOR–A, Amdt. 10
Plainview, TX—Hale County, VOR RWY 4, Amdt. 8
LaCrosse, WI—LaCrosse Muni, VOR RWY 36, Amdt. 25
Lacrosse, WI—LaCrosse Muni, VOR RWY 13, Amdt. 24

. . . *Effective May 23, 1985*

Orland, FL—Orlando Executive, VOR RWY 13, Amdt. 12
Orland, FL—Orlando Executive, VOR RWY 31, Amdt. 13
Panama City, FL—Panama City-Bay County, VOR or TACAN RWY 14, Amdt. 14
Panama City, FL—Panama City-Bay County, VOR or TACAN RWY 32, Amdt. 9
Panama City, FL—Panama City-Bay County, VOR or TACAN–A, Amdt. 12
Wabash, IN—Wabash Muni, VOR–A, Amdt. 7
Tewksbury, MA—Tew-Mac, VOR RWY 21, Amdt. 7
Coldwater, MI—Branch County Memorial, VOR RWY 24, Amdt. 1
Coldwater, MI—Branch County Memorial, VOR RWY 6, Amdt. 1
Niles, MI—Jerry Tyler Meml, VOR RWY 3, Amdt. 6
Niles, MI—Jerry Tyler Meml, VOR RWY 21, Amdt. 2
Tekamah, NE—Tekamah Muni, VOR RWY 32, Amdt. 2
Erwin, NC—Harnett County, VOR/DME RWY 4, Amdt. 1
Hickory, NC—Hickory Muni, VOR RWY 24, Amdt. 22

. . . *Effective May 9, 1985*

Bermuda Dunes, CA—Bermuda Dunes, VOR RWY 29, Amdt. 1, Cancelled

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

. . . *Effective June 6, 1985*

Concord, CA—Buchanan Field, LDA RWY 19R, Amdt. 5
Kalamazoo, MI—Kalamazoo County, LOC BC RWY 17, Amdt. 17

. . . *Effective May 23, 1985*

Orlando, FL—Orlando Executive, LOC BC RWY 25, Amdt. 15
Americus, GA—Souther Field, LOC RWY 22, Amdt. 1
Waterloo, IA—Waterloo Muni, LOC BC RWY 30, Amdt. 8

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

. . . *Effective June 6, 1985*

Chicago, IL—Chicago-O Hare Intl, NDB RWY 9R, Amdt. 15
Parsons, KS—Tri-City, NDB RWY 35, Amdt. 4
Parsons, KS—Tri-City, NDB RWY 17, Amdt. 7

Louisville, KY—Standiford Field, NDB RWY 1, Amdt. 5
Miles City, MT—Frank Wiley Field, NDB RWY 4, Amdt. 5
Holdrege, NE—Brewster Field, NDB RWY 18, Amdt. 4
Batavia, OH—Clermont County, NDB-A, Amdt. 4
Rapid City, SD—Rapid City Regional, NDB RWY 32, Amdt. 1
Angleton/Lake Jackson, TX—Brazoria County, NDB RWY 17, Amdt. 1
Houston, TX—Houston-Southwest, NDB RWY 28, Amdt. 3
Houston, TX—Houston-Southwest, NDB RWY 10, Amdt. 4
La Porte, TX—La Porte Muni, NDB RWY 30, Amdt. 2
LaCrosse, WI—LaCrosse Muni, NDB RWY 18, Amdt. 10

. . . *Effective May 23, 1985*

Orlando, FL—Orlando Executive, NDB RWY 7, Amdt. 13
Panama City, FL—Panama City-Bay County, NDB RWY 14, Amdt. 3
Americus, GA—Souther Field, NDB RWY 22, Amdt. 1
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 8R, Amdt. 44
Atlanta, GA—The William B. Hartsfield Atlanta Intl, NDB RWY 26L, Amdt. 15
Vinton, IA—Vinton Veterans Mem Arpk, NDB RWY 16, Amdt. 3
Vinton, IA—Vinton Veterans Mem Arpk, NDB RWY 27, Amdt. 2
Waterloo, IA—Waterloo Muni, NDB RWY 12, Amdt. 8
Wabash, IN—Wabash Muni, NDB RWY 27, Amdt. 9
Staunton/Waynesboro/Harrisonburg, VA—Shenandoah Valley, NDB RWY 4, Amdt. 7
Huntington, WV—Tri-State/Walker Long Field, NDB RWY 12, Amdt. 15

. . . *Effective May 9, 1985*

Grand Junction, CO—Walker Field, NDB RWY 11, Amdt. 17, Cancelled

4. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

. . . *Effective June 6, 1985*

Chicago, IL—Chicago-O Hare Intl, ILS RWY 9L, Amdt. 6
Rapid City, SD—Rapid City Regional, ILS RWY 32, Amdt. 15
Angleton/Lake Jackson, TX—Brazoria County, ILS Rwy 17, Amdt. 1
Galveston, TX—Scholes Field, ILS RWY 13, Amdt. 6
Houston, TX—William P. Hobby, ILS RWY 13R, Amdt. 8
LaCrosse, WI—LaCrosse Muni, ILS RWY 18, Amdt. 12

. . . *Effective May 23, 1985*

Orlando, FL—Orlando Executive, ILS RWY 7, Amdt. 18
Panama City, FL—Panama City-Bay County, ILS RWY 14, Amdt. 13
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 8R, Amdt. 57
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 26L, Amdt. 17
Waterloo, IA—Waterloo Muni, ILS RWY 12, Amdt. 6
Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, ILS RWY 35, Amdt. 14
Greenville, SC—Greenville Downtown, ILS RWY 36, Amdt. 26
Staunton/Waynesboro/Harrisonburg, VA—Shenandoah Valley, ILS RWY 4, Amdt. 5
Huntington, WV—Tri-State/Walker-Long Field, ILS RWY 30, Amdt. 2
Huntington, WV—Tri-State/Walker-Long Field, ILS RWY 12, Amdt. 6

. . . *Effective April 2, 1985*

Hilo, HI—General Lyman Field, ILS RWY 26, Amdt. 9

5. By amending § 97.31 RADAR SIAPS identified as follows:

. . . *Effective May 23, 1985*

Orlando, FL—Orlando Executive, RADAR-1, Amdt. 21
Huntington, WV—Tri-State/Walker-Long Field, RADAR-1, Amdt. 4

6. By amending § 97.33 RNAV SIAPs identified as follows:

. . . *Effective June 6, 1985*

Parsons, KS—Tri-City, RNAV RWY 17, Amdt. 4
Parsons, KS—Tri-City, RNAV RWY 35, Amdt. 4
Houston, TX—Houston-Southwest, RNAV RWY 28, Amdt. 2

. . . *Effective May 23, 1985*

Manchester, NH—Manchester Arpt/Grenier Industrial Airpark, RNAV RWY 6, Amdt. 2
Danville, VA—Danville Muni, RNAV RWY 20, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. §§ 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3)).

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on April 5, 1985.

John S. Kern,

Acting Director of Flight Operations.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

[FR Doc. 85-8782 Filed 4-11-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 121

[Docket No. 24073; Amdt. 121-185]

Airplane Cabin Fire Protection

Correction

In FR Doc. 85-7538, beginning on page 12726 in the issue of Friday, March 29, 1985, make the following corrections:

On page 12733, second column, first line of § 121.309(c)(2), "April" should have read "October"; and in the third column, ninth line of § 121.309(c)(4), "April" should read "October".

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 373

[Docket No. 50336-5036]

Change in Reporting Frequency From Monthly to Quarterly Under the Distribution License Procedure

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Distribution License is a special licensing procedure designed to facilitate the export of commodities under large scale international marketing programs. This rule amends § 373.3 of the Export Administration Regulations by changing the requirement for reporting of exports destined for Switzerland and Yugoslavia from monthly to quarterly. The frequency of reporting under this procedure is being reduced under the Office of Export Administration's recent institution of a comprehensive auditing program which has materially strengthened its export control program and also enabled it to reduce the frequency of required reports. This reduction is consistent with the Administration's policy of reducing unnecessary regulatory burdens.

DATES: This rule is effective April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Roy Flinn, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone (202) 377-3856).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) are inapplicable because this regulation involves a foreign affairs function of the United States.

2. This rule makes a regulatory burden consistent with requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* by replacing the requirement for monthly reports under the Distribution License Procedure to quarterly reports.

3. Because a notice of proposed rulemaking is not being published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of subjects in 15 CFR Part 373

Exports.

PART 373—[AMENDED]

Accordingly, § 373.3 (g) and (i) of the Export Administration Regulations (15 CFR Parts 368–399) are revised and the OMB control numbers are added to the end of the section to read as follows:

§ 373.3 Distribution license.

* * * * *

(G) Special documentation for Specific Destinations. If a Form ITA–6052P authorizes distribution or use within Switzerland or Yugoslavia, a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as appropriate, must be obtained prior to any export or reexport to these destinations. As shipments are made to these destinations under the Swiss Blue Import Certificates and Yugoslav End-Use Certificates, they must be reported to the Office of Export Administration by submitting all completed certificates or copies of partially used certificates with a cover sheet identifying the quarter in which the complete or partial shipment was made. These should cover all such shipments during the particular quarter and should be forwarded to the Office of Export Administration at the address in § 373.1. Shipments made after the certificates are transmitted to the Office of Export Administration shall continue to be reported quarterly by letter, giving the certificate number, the quantities and dates of any such shipments made during the quarter, and the balance remaining unused at the end of the quarter. This special documentation requirement is also subject to certain recordkeeping provisions of § 373.3.

* * * * *

(i) *Reexports.*— (1) *Distributor.* A distributor who is an approved consignee under a Distribution License may reexport commodities received under the Distribution License in accordance with the following rules:

(i) An approved consignee may reexport to any of the U.S. exporter's other consignees who have been approved under the Distribution License procedure.

(ii) An approved consignee who is a subsidiary, affiliate or branch of the U.S. exporter may reexport to any approved destination included in the sales territory assigned by the U.S. exporter, provided the country is an eligible country as defined in § 373.3(a).

(iii) Other approved distributors may reexport to any approved destination that is included in a formal written agreement with the U.S. exporter, or its wholly owned subsidiary, provided the country is an eligible country as defined in § 373.3(a).

(iv) An approved consignee, regardless of whether it is a subsidiary, affiliate or branch of the U.S. exporter, may reexport for use or distribution within Switzerland or Yugoslavia only if the reexport is covered by a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate, as applicable. The Swiss Blue Import Certificate need not be submitted to the Office of Export Administration, but shall be retained in accordance with the recordkeeping provisions described in § 373.3(1)(3). The original of each Yugoslav End-Use Certificate issued, or a reproduced copy, if the original is required by the government of the country in which the distributor is located, shall be immediately forwarded by the distributor to the U.S. exporter. The original or reproduced copies received from the distributor shall be submitted by the U.S. exporter, on a quarterly basis, to the Office of Export Administration at the address in § 373.1, with a letter identifying the distributors from which received. While an approved consignee in Switzerland, without obtaining a Swiss Blue Import Certificate, may stock commodities in Switzerland for reexport to other approved consignees in other countries, such commodities may be released for distribution or use within Switzerland only after a Swiss Blue Import Certificate covering the transaction has been obtained. These documents shall be retained in accordance with the recordkeeping provisions of § 373.3(1)(3).

(v) An approved consignee may reexport only to eligible countries. See Supplement No. 1 to Part 373 for country limitations on certain commodities.

* * * * *

(Recordkeeping requirements in paragraph (g) are approved by the Office of Management and Budget under OMB No. 0625–0052. Recordkeeping requirements in paragraph (i) are approved by the Office of Management and Budget under OMB Nos. 0625–0052 and 0625–0104.)

Authority: (Secs. 203, 206, Pub. L. 96–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704) Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Date: April 5, 1985.

James K. Pont,

Acting Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85–8599 Filed 4–11–85; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 201, 270, and 271

[Docket Nos. RM83–72–001, et al. and RM82–16–001, et al.; Order No. 391–A]

Production Under the Natural Gas Policy Act of 1978; Order Denying Rehearing and Clarifying Final Rule

Issued: April 10, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing and clarifying final rule.

SUMMARY: The Federal Energy Regulatory Commission is issuing this Order No. 391–A to deny rehearing of and clarify Order No. 391. 49 FR 33849 (August 27, 1984); III FERC Stats. & Regs. ¶ 30,588 (1984). Order No. 391 amended various sections of the Commission's regulations in order to implement the Supreme Court's decision in *Public Service Commission of New York* v. *Mid-Louisiana Gas Co.*, —— U.S. ——,

103 S. Ct. 3024 (1983). The Mid-Louisiana decision held that the pricing provisions of the Natural Gas Policy Act of 1978 are applicable to pipeline production, that is, gas produced by natural gas pipelines and taken into their transmission systems for resale.

EFFECTIVE DATE: This order is effective April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Mattingly, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8317.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

In the matter of First Sales of Pipeline Production Under Section 2(21) of the Natural Gas Policy Act of 1978, Docket Nos. RM83–72–001, 002, 003, 004, 005, 006, 007, 008, and 009; First Sales by Affiliates, Docket Nos. RM82–16–001, 002, 003, 004, 005, 006, 007, 008 and 009.

I. Introduction

The Federal Energy Regulatory Commission, on August 22, 1984, issued Order No. 391, [1] a Final Rule implementing the Supreme Court's decision in *Public Service Comm'n of the State of New York* v. *Mid-Louisiana Gas Co., et al.*[2] The *Mid-Louisiana* decision held that the pricing provisions of the Natural Gas Policy Act of 1978 (NGPA) [3] are applicable to pipeline production, that is, gas produced by natural gas pipeline companies and taken into their transmission systems for subsequent resale. This Order No. 391–A denies rehearing of and clarifies Order No. 391.

II. Background

Congress established categories of ceiling prices applicable to certain first sales of natural gas under Title I of the NGPA. In Order No. 391, the Commission authorized pipelines to receive NGPA maximum lawful prices for their own production. The Commission amended its regulations to include within the definition of "first sale", found in section 2(21) of the NGPA, the intracompany transfer of gas from a pipeline's production division to its transmission division. The transfer was defined as taking place at the wellhead. In addition, the Commission established several rules applicable to pipeline production. These include: (1) Pipelines may continue to price certain gas on a cost-of-service basis, subject to Commission review; (2) guidelines were established for pricing certain gas that previously was priced on a cost-of-service basis; and (3) an intracompany operating statement must be filed by each interstate pipeline producer.

The Commission received nine timely requests for rehearing.[4] As discussed below, the Commission finds that the requests for rehearing do not present any new facts or arguments which would warrant modification of the Order No. 391. Accordingly, the requests for rehearing are denied.

III. Discussion

A. Cost-of-Service Pricing

One applicant requests rehearing of the Commission's decision in the final rule to continue permitting a pipeline to price gas it produces on a cost-of-service basis. This petitioner contends that the Commission's authority to establish a cost-of-service rate that is higher than the otherwise applicable NGPA rate is limited by the affiliated entities test under NGPA section 601(b)(1)(E). The applicant urges the Commission to modify § 154.42(c) to apply the affiliated entities test as a ceiling on the cost-of-service rate.

The Commission believes its legal authority under the NGA and NGPA to establish a cost-of-service price greater than the otherwise applicable NGPA price is only limited by the just and reasonable standard in the NGA. In response to the applicant the Commission provides the following clarification.

NGPA section 109(b)(2) gives the Commission the authority to establish a rate higher than the applicable maximum lawful price, if the Commission makes a just and reasonable finding. This price can apply to any gas that qualifies for the section 109 price, *i.e.* natural gas produced from any new well not otherwise qualified for a higher price; natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate was not in effect; and natural gas not committed or dedicated to interstate commerce which was not subject to an existing contract on November 8, 1978. The Commission also has the authority to establish a just and reasonable rate higher than the applicable maximum lawful price for section 104 gas under NGPA section 104(b)(2). This authority applies to natural gas that was committed or dedicated to interstate commerce on November 8, 1978 if a just and reasonable rate was in effect for that gas on that date. In order for the Commission to set a cost-of-service rate for pipeline production it must find that that rate is just and reasonable under section 4 of the Natural Gas Act. The NGPA does not require the Commission to add the affiliated entities test to this cost-of-service review.

When the Commission authorized a pipeline to use cost-of-service pricing for its production, it meant only to permit the pipeline that had been pricing its production on that basis to continue to price it on that basis. This authorization was intended to allow pipelines that could not switch to NGPA pricing because of settlements accepted and approved by the Commission to remain on cost-of-service.

The Commission emphasizes that it did not intend to allow a pipeline not currently using a cost-of-service methodology to switch to this methodology in the future for any of its production in an attempt to avoid the market price at the wellhead. Furthermore, much if not all of the gas is now price-deregulated and the Commission believes that the best pricing mechanism for this gas is the market.

B. Effect of Settlements on Pricing of Pipeline Production

AEPCO requests the Commission to modify the rule to require that new natural gas which by settlement has been priced on a cost-of-service basis shall continue to be priced on that basis notwithstanding enactment of the NGPA. AEPCO alleges that the rule, as issued, could be interpreted to prohibit cost-of-service pricing of pipeline production from wells drilled after the effective date of the NGPA (December 1, 1978).

In promulgating this rule, the Commission did not interfere with approved settlements. Under the rule, pipeline production priced on a cost-of-service basis under prior settlements will continue to be so priced during the life of the settlements. To the extent prior settlements provide for the pricing of pipeline production on a cost-of-service basis subsequent to December 1, 1978, those settlements will be given full

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[1] Production under Section 2(21) of the Natural Gas Policy Act of 1978, 49 FR 33,849 (Aug. 27, 1984) (Docket Nos. RM83–72–000 and RM82–16–000).

[2] —— U.S. ——, 103 S. Ct. 3024 (1983).

[3] 15 U.S.C. 3301–3432 (1982).

[4] Rehearing requests were filed by Arizona Electric Power Cooperative, Inc. and the City of Willcox, Arizona (AEPCO); National Fuel Gas Supply Corporation; El Paso Natural Gas Company; Public Service Commission of New York; Mid Louisiana Gas Company; Kentucky West Virginia Gas Company; Consolidated Gas Transmission Corporation; Phelps Dodge Corporation, Magma Copper Company, ASARCO Inc., Inspiration Consolidated Copper Company and Kennecott Corporation (jointly); and Phillips Petroleum Company and Phillips Oil Company.

force and effect. There is no need to modify the rule.

C. Designation of Transfer Point

Order No. 391 establishes the wellhead as the point of transfer of gas from the pipeline's production division to its transmission division and thus the point at which the NGPA ceiling price is applied. The order further provides that by designating the wellhead as the transfer point, any production-related costs incurred by the pipeline will be incurred by the pipeline's transmission division, and will be reviewed in the pipelines's rate proceedings under the Natural Gas Act.[5]

AEPCO argues that a pipeline should not be able to collect more production-related costs with respect to its own production than could an independent producer, and that the Commission's designation of the wellhead as the point of delivery frustrates this requirement and distorts application of the affiliated entities test under section 601(b)(1)(E). AEPCO provides an example of this preceived problem, which is as follows. The delivery of gas under a first sale by a producer may occur at a point distant from the wellhead. The producer may agree to gather the gas to the point of delivery to the pipeline and may agree to absorb the cost of this gathering or, alternatively, to charge the pipeline for this service up to the allowed limit under the Commission's regulations.[6] However, if another well in the same field is owned by a pipeline and the pipeline performs the production-related service, it may recover the actual cost of the service even if that cost exceeds the maximum amount a producer would be authorized to collect.[7]

In order to remedy this alleged infirmity in the rule, AEPCO recommends that pipelines should be authorized to collect only those production-related cost allowances available to producers. As a corollary, AEPCO argues that all investment in gathering, processing and similar facilities which provide production-related services to its own production must be removed from each pipeline's rate base and all production-related expenses applicable to pipeline production must be removed from each pipeline's cost-of-service.

AEPCO's real argument is not about the proper transfer point but about how to treat the recovery of production-related costs by producer-pipelines in light of the affiliated entities rule. While a pipeline may receive either more or less production-related costs than a producer in a given situation, that fact provides no basis for modifying this rule. The Commission has previously established policies governing production-related costs for first sales. Under § 271.1104 producers are entitled to recover production-related costs, if authorized by contract, up to the amounts specified in that regulation. The regulation provides generic allowances for gathering and compression; allowances for other services are based on actual cost. Pipelines may recover, for comparable services, their actual costs, subject to Commission review and approval in the pipelines' section 4 rate proceedings. These costs are permitted, if prudent, irrespective of whether the services are performed on their own production or on gas purchased from producers.

D. Retroactive Effect of Rule

In Order No. 391, the Commission reaffirmed on a generic basis its prior policy developed in individual pipeline rate proceedings that retroactive repricing of pipeline production pursuant to *Mid-Louisiana* will not be permitted unless the pipeline specifically reserved the issue of NGPA rate treatment for its own production in applicable rate settlements.[8] National Fuel Gas Supply Corporation, Mid Louisiana Gas Company, and Kentucky West Virginia Gas Company, each of which is a pipeline producer, argue that a pipeline is entitled to reprice its own production in accordance with *Mid-Louisiana* notwithstanding any failure to reserve the repricing issue in prior rate settlements. Their arguments are restatements of arguments previously made in comments in response to the rulemaking notice in this proceeding and rejected in Order No. 391. The Commission has reviewed the requests for rehearing and finds that no facts or arguments have been presented which would warrant any changes in the policy governing retroactive application of *Mid-Louisiana*.[9]

National Fuel also seeks rehearing of the provisions of the rule requiring the application of NGPA regulations to pipeline production.[10] National Fuel argues that under Commission Order No. 58,[11] which continued NGA regulation of pipeline production, pipelines had no notice that they were expected to comply with NGPA regulations. Therefore, according to National Fuel, pipelines should be permitted to retroactively collect applicable NGPA prices without regard to the NGPA requirements or the Commission should, at a minimum, grant a blanket waiver of these NGPA requirements. The Commission in Order No. 391 considered and rejected the suggestion of a blanket waiver and adopted instead a case-by-case determination.[12] The Commission is of the opinion that the terms of the rule on this point are adequate to assure that pipeline producers will be treated equitably. National Fuel has not presented any new facts that would warrant a change in this policy.

E. Inclusion of Cost-of-Service Production in PGA Filings

Order No. 391 provides that costs associated with pipeline production priced on a cost-of-service basis cannot be included in the pipeline's PGA filing and must instead be included along with other costs in the pipeline's general rate filings under section 4 of the NGA. El Paso Natural Gas Company argues that cost-of-service pipeline production should be permitted to be included in PGA filings and that to relegate such production to section 4 proceedings virtually insures that a pipeline will fail to recover fully the costs of production.

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[5] Order No. 391, 49 FR 33849, 33855 (Aug. 27, 1984).

[6] 18 CFR 271.1104 (1984).

[7] *See* 18 CFR 2.102 (1984).

[8] Order No. 391, 49 FR 33849, 33855–56 (Aug. 27, 1984).

[9] The Commission notes that since the issuance of Order No. 391, the U.S. Court of Appeals for the Fourth Circuit, on September 24, 1984, issued its decision in Consolidated Gas Supply Corp. v. FERC, 745 F.2d 281 (4th Cir. 1984). In that case the court unanimously affirmed the Commission's policy on the issue of retroactive application of *Mid-Louisiana*. Several other cases involving this issue have been appealed and await decision. Arizona Electric Power Cooperative, Inc. V. FERC, D.C. Cir., No. 82–2172; Mid Louisiana Gas Company v. FERC, Fifth Cir., No. 82–4470; Kentucky West Virginia Gas Co. v. FERC, Fifth Cir., No. 82–4594; Kansas-Nebraska Natural Gas Co. v. FERC, Fifth Cir., No. 81–4116.

[10] Sellers are required to file an application with the appropriate jurisdictional agency for a well category determination in order to price gas under sections 102, 103, 107 or 108 of the NGPA. 18 CFR Part 274 (1984). In addition, sellers are permitted to collect the applicable NGPA prices, subject to refund, commencing on the date the application is filed. 18 CFR Part 273 (1984). The final rule required pipelines to file well category determinations with the jurisdictional agencies and maintained the date applicable to interim collections. This permitted a pipeline to receive the NGPA ceiling prices from the date an application for determination was filed with the jurisdictional agency. The Commission provided that in cases where a pipeline had not made the necessary filing for a well determination prior to *Mid-Louisiana*, it would consider waiving the requirements of these rules so as to permit a pipeline to collect the NGPA incentive prices retroactively, assuming the pipeline is otherwise entitled to such prices.

[11] Final Rule Governing the Maximum Lawful Price for Pipeline, Distributor or Affiliate Production, 44 FR 66577 (November 20, 1979). This order was vacated by the *Mid-Louisiana* decision.

[12] Order No. 391, 49 FR 33849, 33852 (Aug. 27, 1984).

The Commission finds El Paso's argument unpersuasive. As pointed out in Order No. 391, the PGA process is not designed to recover the actual costs associated with company-owned production but to track gas costs authorized by contract and subject to NGPA ceiling prices regardless of actual costs related thereto. Therefore, the PGA proceeding does not provide the information necessary to determine the reasonableness of a pipeline's cost-based production. In addition, El Paso has not provided any persuasive reason why costs associated with pipeline production cannot adequately be recovered by means of the section 4 rate procedure. The policy set forth in this rule represents no departure from the Commission's past practice. The pipeline is free to file a section 4 rate application if it believes its effective rates do not adequately cover its costs. El Paso has shown no facts which demonstrate that a generic exception should be made for the particular costs involved in a pipeline's gas production operations.[13]

F. Incentive Prices

Order No. 391 provides that in determining whether a pipeline is entitled to the incentive price for its tight formation or production enhancement gas, the Commission will apply the NGPA's affiliated entities test. The New York Public Service Commission (New York) argues this provision of the rule is unreasonable and places pipeline producers in a position superior to that of independent producers. Instead, New York favors allowing retroactive incentive prices only in cases where a pipeline can demonstrate that the gas would not have been produced except in anticipation of receiving the incentive price. As to future production, New York would require the pipeline in its PGA proceeding to demonstrate on a well-by-well basis that any claimed incentive prices are necessary to render the production economic.

Specifically, New York argues that since the basis for the incentive prices is that they are necessary to insure production of high-cost gas, the pipeline should be required to make the showing of need. New York alleges that application of the affiliated entities test is inapposite. The fact that incentive prices were necessary for independent producers who have negotiated contracts authorizing such prices, does not, in its view, show that these incentive prices were also necessary for pipeline producers. New York further argues that it is unnecessary to permit pipeline production to be priced at the section 107(c)(5) rate retroactively since a pipeline's actual production of potentially eligible gas at non-incentive prices proves that the incentive price was unnecessary.

Pipelines do not contract with themselves for their own production and therefore the negotiated price requirement cannot be met by pipelines. As a substitute standard, the Commission adopted the affiliated entities test. Under this test, if independent producers have been permitted to collect incentive prices for certain types of production, the pipeline *may* be eligible to collect incentive prices for similar types of production. Whether a pipeline will be entitled to an incentive price will depend on the circumstances of each particular situation. The Commission cannot at this time specify how the affiliated entities test should be applied in each specific case, but a pipeline should receive the incentive price only if the evidence in a particular case supports the conclusion that in the event the pipeline's gas had been produced by an independent producer, that producer *would* in all likelihood have received the incentive price. The Commission believes this approach is reasonable and is preferable to New York's suggestion that a pipeline's eligibility be based on well-specific cost and related data to be submitted by the pipeline producer. In addition, the information required under New York's proposal is in excess of what is required of producers and has not been shown to be reasonable or necessary. Accordingly, New York's request for rehearing on this issue is denied.

G. Application of Rule to Blanket Certificate Regulations

Consolidated Gas Transmission Corporation requests the Commission, as a part of its implementation of *Mid-Louisiana*, to amend § 157.209 of the regulations pertaining to natural gas eligible to be transported in interstate commerce under blanket certificates. Consolidated requests the Commission to remove from the existing regulation the limitation which precludes transportation of a pipeline's own production under blanket certificates.

The existing blanket certificate program authorizing transportation for any end-user is experimental and will expire on June 30, 1985.[14] The Commission has stated its intention to review the program at that time and make any modification found to be necessary.[15] Consolidated's request for modification of the blanket certificate regulations should be considered in connection with the Commission's review of the blanket certificate program rather than as a part of this rulemaking.

H. Method of Determining Applicable NGPA Prices

Phelps Dodge Corporation, Magma Copper Company, ASARCO, Inc., Inspiration Consolidated Copper Company, and Kennecott Corporation (jointly Phelps Dodge) request the Commission to clarify Order No. 391 with regard to the method to be used in determining NGPA prices applicable to pipeline production. Phelps Dodge argues that such prices must be determined on a well-by-well basis.[16]

The Commission intends that pricing of pipeline production under the NGPA should conform as nearly as possible to producer pricing under the NGPA. NGPA pricing is normally based on wells or well completions, and the Commission anticipates NGPA pricing of pipeline production will also be based on wells.

Phelps Dodge also argues that the intracompany operating statement required by Order No. 391 is inadequate. Phelps Dodge expresses the belief that a statement setting forth nonprice terms should be required for each well and that without such information it will be difficult and infeasible to apply the affiliated entities test. The Commission disagrees. In Order No. 391, the Commission declined to require statements for each well, but held that

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[13] This does not preclude a pipeline from attempting to demonstrate on an individual basis in a section 4 rate proceeding the appropriateness of establishing a tracking mechanism to reflect changes in costs associated with pipeline production based on specific circumstances unique to their operations.

[14] Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate, 48 FR 34,872 (Aug. 1, 1983) (Order No. 234-B).

[15] *See* Notice of Inquiry, Docket No. RM85-1-000, 50 FR 114 (Jan. 2, 1985). The Commission has proposed to extend the program through December 31, 1985, pending further review. 30 FERC ¶ 61,320 (1985).

[16] Phelps Dodge also requests the Commission to confirm the fact that possible retroactive application of NGPA prices to pipeline production and related issues arising under the rule should be determined in individual proceedings, and that those issues specifically related to possible retroactive repricing by El Paso should be determined in El Paso's pending proceeding in Docket No. TA82-2-33, *et al.* The Commission agrees with Phelps Dodge that the determination of retroactive NGPA pricing for specific pipelines must be made in individual proceedings, and that the proceeding in Docket No. TA82-2-33, *et al.* is the proper forum for determination of issues involving possible retroactive pricing by El Paso. *See* El Paso Natural Gas Co., 29 FERC ¶ 61,133 (1984).

the operating statement must nevertheless contain sufficient information, including a description of non-price terms, as is necessary to apply the affiliated entities test. [17] Phelps Dodge has not presented any new facts or arguments which would warrant modifying the requirements established in Order No. 391. If experience under the rule demonstrates the need for more specific information concerning a pipeline's production operations, the matter will be reconsidered and if necessary the requirements of the operating statements will be revised.

I. Determination of Section 104 Price for Pipeline Production Previously Priced on Cost-of-Service Basis

Phillips Petroleum Company and Phillips Oil Company (jointly Phillips) request rehearing of the provisions of Order No. 391 establishing prices under section 104 of the NGPA for pipeline production previously priced on a cost-of-service basis. Under the rule, pipelines are entitled to the same, ceiling prices under section 104 as independent producers. Phillips argues that pipeline production previously priced on a cost-of-service basis has a different maximum lawful price under section 104. Section 104 provides that the maximum lawful price is the higher of the just and reasonable rate in effect on April 20, 1977, as adjusted for inflation pursuant to section 101(a) of the NGPA (section 104(b)(1)(A)), or "any just and reasonable rate which was established by the Commission after April 10, 1977 and before the date of enactment of this Act . . ." (section 104(b)(1)(B)). For producers, and for pipeline production based on producer ceiling prices, the rate in effect on April 20, 1977, was an applicable area or national rate previously established by the FPC. However, Phillips notes that as to pipeline production priced on a cost-of-service basis as of April 20, 1977, a just and reasonable rate was also established, namely the cost-of-service rate converted to a Btu basis. According to Phillips, the applicable rate for such production under section 104 is the April 20, 1977 cost-of-service rate per MMBtu plus the section 101(a) inflation adjustments. [18] Since the cost-of-service rates for pipeline production were in most cases lower than the rates allowed producers for equivalent production, the resulting ceilings advocated by Phillips would normally be below the applicable section 104 ceiling prices approved by the Commission in this rule. Phillips appears to argue that this aspect of the rule is unduly favorable to pipeline producers.

Phillips' position would not permit a pipeline to receive the same section 104 rate that a producer would receive. Gas produced by an independent producer that was committed or dedicated to the interstate market before the date of enactment of the NGPA for which a just and reasonable rate was in effect qualifies for the section 104 rate. The Commission blieves the *Mid-Louisiana* decision requires parity treatment for producer and pipeline production. To achieve this result the Commission believes that pipeline production previously priced on a cost-of-service basis must be permitted to receive the section 104 NGPA ceiling prices. Therefore Phillips' request for rehearing is denied.

In consideration of the foregoing, the Commission orders:

The requests for rehearing of Order No. 391 are denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8802 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[17] Order No. 391, 49 FR 33849, 33853 (Aug. 27, 1984).

[18] A similar argument is made by AEPCO. See AEPCO's request for rehearing, p. 3.

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18 CFR Part 271

[Docket No. RM79-76-236; Texas-9 Addition VI; Order No. 314]

High-Cost Gas Produced From Tight Formations; Texas

Issued: April 10, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1984)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This order adopts the recommendation of the Railroad Commission of the State of Texas that an additional specified area of the Travis Peak Formation, located in Nacogdoches and Rusk Counties, Texas, Railroad Commission District 6, be designated as a tight formation under § 271.703 of the Commission's Regulations.

EFFECTIVE DATE: This rule is effective May 10, 1985.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-5491 or Walter W. Lawson (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

The Commission amends § 271.703(d) of its regulations (18 CFR § 271.703(d) (1984)) to include an additional area of the Travis Peak Formation, located in Nacogdoches and Rusk Counties, Texas, Railroad Commission District 6, as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by the Director, Office of Pipeline and Producer Regulation, issued November 8, 1984 (49 FR 45174, November 15, 1984) [1] based on a recommendation by the Railroad Commission of Texas (Texas) in accordance with § 271.703, that a specified area of the Travis Peak Formation located in Nacogdoches and Rusk Counties, Texas, Railroad Commission District 6, be designated as a tight formation.

Evidence submitted by Texas supports the assertion that the specified area of the Travis Peak Formation located in Nacogdoches and Rusk Counties, Texas, meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Texas recommendation.

This amendment shall become effective May 10, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Section 271.703 is amended as follows:

1. The authority citation for Part 271 reads as follows:

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held.

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(36)(vi) to read as follows:

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.* * * *

(36) *Travis Peak Formation in Texas. FM79–76 (Texas–9).* * * *

(vi) *Toolan (Travis Peak) Field.*

(A) *Delineation of formation.* The designated portion of the Travis Peak Formation consists of all or part of the surveys located in the Toolan Field, in portions of Nacogdoches and Rusk Counties, Texas, specifically the area encompassed by a 2.5 mile radius around Hill International Production Company's B. J. Edwards, *et al.*, No. 1 well, located approximately one mile southwest of the town of Garrison, Texas, Francis Kellett Survey, Abstract 329.

(B) *Depth.* These Travis Peak sands are found in the interval ±7,100 feet subsea to ±9,200 feet subsea, or from the base of the Pettit to the top of the Cotton Valley intervals.

* * * * *

[FR Doc. 85–8803 Filed 4–11–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF STATE

22 CFR Part 2

[Departmental Regulation 108.841]

Duration of Protection for United States Representative to the United Nations

AGENCY: Office of the Under Secretary for Management, Department of State.

ACTION: Final rule.

SUMMARY: The Department of State, by this regulation, authorizes security officers designated under 22 CFR 2.1 to provide protection to the departing United States Representative to the United Nations. The purpose of the regulation is to clarify the continuity of protection for that officer.

The regulation limits authorization to a maximum of 30 days.

A successor to the United States Representative has been designated and the incumbent's resignation is effective at the end of April 1, 1985. This presents an immediate emergency situation to which this regulation responds, making it impracticable to follow the procedures of Executive Order 12291 (46 FR 34263) (exemption 8(a)(1)). Similarly, on the basis of the present emergency, the Department finds that notice and public procedure on this regulation are impracticable and contrary to the public interest. Because of the importance of the protection of the departing Representative of the United States to the United Nations to the conduct of foreign relations, the Department also finds that this regulation involves a foreign affairs function of the United States.

DATE: This regulation is effective April 1, 1985.

ADDRESS: Send written comments to: The Assistant Legal Adviser for Management, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: K.E. Malmborg, Assistant Legal Adviser for Management, (202) 632–2350.

SUPPLEMENTARY INFORMATION: As required by 22 U.S.C. 2656, this regulation has been transmitted, prior to its effective date, to the Speaker of the House of Representatives and the Chairman of the Senate Foreign Relations Committee.

List of Subjects in 22 CFR Part 2

Foreign officials, Security measures.

Accordingly, 22 CFR 2.1 is amended by adding at the end thereof the new paragraph (c) set forth below:

PART 2—[AMENDED]

§ 2.1 [Amended]

* * * * *

(c) When the Under Secretary of State for Management determines that it is necessary, persons designated under paragraph (a) of this section shall be authorized to provide protection to a departing United States Representative to the United Nations. In providing such protection, they are authorized to exercise the authorities described in paragraphs (1) and (2) of paragraph (a) of this section. Such protection shall be for the period or periods determined necessary by the Under Secretary of State for Management, except that the period of protection under this paragraph shall in no event exceed 30 calendar days from the date of termination of that individual's incumbency as United States Representative to the United Nations.

Dated: April 1, 1985.

Ronald I. Spiers,

Under Secretary for Management.

[FR Doc. 85–8685 Filed 4–11–85; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 204

[Docket No. R–85–965; FR–1415]

Withdrawal of Final Rule for the TMAP Program

Correction

In FR Doc. 85–7358 appearing on page 12527 in the issue of Friday, March 29, 1985, make the following correction: In the second column, in the SUPPLEMENTARY INFORMATION in the fourteenth line, "1984" should read "1985".

BILLING CODE 1505-01-M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

25 CFR Part 700

Commission Operations and Relocation Procedures; Notice of Final Date for Voluntary Relocation Application

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Final rule.

SUMMARY: This notice establishes final rules regarding Notice of Final Date for Voluntary Relocation Application. This action is necessary to respond to the Fiscal Year 1985 Interior Appropriations Bill, Pub. L. 98–473, which contains language establishing July 7, 1985, as a deadline for receipt of applications for voluntary relocation.

EFFECTIVE DATE: May 13, 1985.

ADDRESS: Comments may be sent to the Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002, Telephone (602) 779–2721.

SUPPLEMENTARY INFORMATION: The Fiscal Year 1985 Interior Appropriations Bill, Pub. L. 98–473, contains language establishing July 7, 1985 as a deadline for receipt of applications for voluntary relocation. The Conference Report also contained the following explanatory language:

Language is included in the bill to establish July 7, 1985 as deadline for receipt of

applications for voluntary relocation instead of June 30, 1985 as proposed by the Senate.

The managers agree that benefits for voluntary relocation shall be available only to those households or individuals who have filed an application with the Commission on or prior to July 7, 1985.

With respect to "involuntary relocatees", the managers believe that it is the responsibility of the Commission to notify those individuals eligible for relocation of the change in the date for applications. After July 7, 1985, those people who have not applied cannot be considered uninformed and therefore are "involuntary relocatees" if they have not made the effort to apply for relocation with the Commission.

In order to implement these provisions, the Commission has adopted regulations which provide for notice to applicants, filing of applications, and defining involuntary relocation.

Comment was received from the Navajo Tribe regarding the use of the term "involuntary relocatee." The Tribe stated that the term was offensive and labeled people as lawbreakers. The Navajo-Hopi Legal Services Program also commented on this term stating that the use of the term may constitute a violation of the U.S. Constitution. The Commission has removed the term "involuntary relocatee" from the Final Rule.

The proposed rule suggested the removal of § 700.139, Referral for Action. Comment was received that the section remain in the Final Rule. This comment has been incorporated into the Final Rule thus, § 700.139 will remain in the regulations. Regarding § 700.139, the option to exercise the referral for action may be taken at a date which shall be five years after the date of approval of the Report and Plan by the Congress. This is consistent with Pub. L. 93–531 and the Report and Plan.

Finally, the date July 8, 1985 (Monday) is established as the final date that applications can be received rather than July 7, 1985 which is a Sunday.

The principal author of this proposed rulemaking is E. Susan Crystal, Attorney-at-Law, of the Navajo and Hopi Indian Relocation Commission.

List of Subjects in 25 CFR Part 700

Administrative practice and procedure, Conflicts of interests, Freedom of Information, Grant program-Indians, Indian-claims, Privacy, Real property acquisition, Relocation Assistance.

Authority: 25 U.S.C. 640d, Pub. L. 93–531, 25 U.S.C. 640d–14, Pub. L. 98–305.

PART 700—[AMENDED]

Accordingly, the Commission amends Subpart C, by revising § 700.137, and adding § 700.138, *Persons who have not applied for voluntary relocation by July 8, 1985 as follows.* (Section 700.139 remains unchanged.):

§ 700.137 Notice of final date for voluntary relocation application.

(a) *General.* Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable following the final publication of this rule and informed of the deadline for application for voluntary relocation benefits.

(b) In order to be considered for voluntary relocation assistance benefits, an applicant must have filed a completed application form with the Commission by close of business on July 8, 1985.

§ 700.138 Persons who have not applied for voluntary relocation by July 8, 1985.

(a) Pursuant to 25 U.S.C. 640d–14(d)(3), heads of households who do not make timely arrangements for relocation by filing an application by July 8, 1985, shall be provided a replacement home by the Commission. To be eligible for benefits (Housing and Moving Expenses), such persons must be domiciled on July 8, 1985, on land partitioned to a tribe of which they are not members; and they must also otherwise meet all other current eligibility criteria.

(b) The Commission shall utilize amounts payable with respect to such households pursuant to 25 U.S.C. 640d–14(b)(2) and 25 U.S.C. 640d–14(a) for the construction or acquisition of a home and related facilities for such households.

(c) Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance by July 8, 1985, shall be contacted by the Commission as soon as practicable. At such time, the Commission shall—(1) request that the head of household choose an available area for relocation, and contract with the Commission for relocation; and (2) offer the relocatee suitable housing; and (3) offer to purchase from the head of household the habitations and improvements; and (4) offer provisions for the head of household and his family to be moved (e.g., moving expense, etc.).

Ralph A. Watkins, Jr.,

Chairman, Navajo-Hopi Relocation Commission.

[FR Doc. 85–8785 Filed 4–11–85; 8:45 am]

BILLING CODE 7160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 47 and 178

[T.D. ATF–202]

Importation of Firearms and Other Miscellaneous Amendments Relating to Firearms and Ammunition

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule implements a provision of the Trade and Tariff Act of 1984 pertaining to the importation of certain firearms classified as curios or relics. It also removes from the regulations, or redesignates, the penalty, seizure, and forfeiture provisions in Subpart J of 27 CFR Part 178 relative to firearms and ammunition.

DATE: This final rule is effective on April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Daniel E. Crowley, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7591).

SUPPLEMENTARY INFORMATION: This final rule implements § 233 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, 98 Stat. 2991). This section of the Act amended § 925 of Chapter 44 of Title 18, United States Code (18 U.S.C. Chapter 44), by adding a new paragraph (e). Under this paragraph, the importation by a licensed importer of all rifles and shotguns listed by the Director as curios or relics, and all handguns listed by the Director as curios or relics that are generally recognized as particularly suitable for or readily adaptable to sporting purposes, is allowed notwithstanding any other provision of Title 18.

Under the amendment, a licensed importer may import rifles, shotguns, or handguns listed as curios or relics notwithstanding the 18 U.S.C. 925(d)(3) prohibition on importation of surplus military firearms. However, the importation of curio or relic handguns is subject to the same sporting purposes criterion specified in 18 U.S.C. 925(d)(3). Therefore, non-sporting handguns, including surplus military non-sporting handguns, remain nonimportable.

The amendment, however, does not in any way affect other U.S.C. titles containing provisions concerning the importation of firearms. For example,

the provisions in Title 22 relative to the importation of arms, ammunition, and implements of war under section 38 of the Arms Export Control Act (Pub. L. 92–239, as amended, 90 Stat. 744, 22 U.S.C. 2778) continue to be operative with respect to the importation of firearms listed as curios or relics. This is also true for the provisions in Title 26 relating to the importation of firearms within the purview of Chapter 53 of the Internal Revenue Code of 1954 (26 U.S.C. Chapter 53), i.e., National Firearms Act weapons.

The final rule also revises the regulations in Subpart J of Part 178 of Title 27, Code of Federal Regulations (27 CFR Part 178, Subpart J). The regulations in 27 CFR Part 178 implement the provisions of Chapter 44 of Title 18, U.S.C. Subpart J of that part contains the penalty, seizure, and forfeiture provisions pertaining to firearms and ammunition. The penalty provisions in this subpart are simply restatements of statutes concerning certain crimes and punishments. Moreover, because of their nature, no regulatory action is required for the implementation of these statutes. Since these provisions are adequately covered in the law, there is no need to restate them in Subpart J. Furthermore, the major purpose of the regulations in 27 CFR Part 178 is to provide procedural and substantive requirements relative to the operations of persons licensed to engage in the firearms and ammunition business. The restating of criminal statutes, however, does not further this purpose.

The following summarizes the more substantive changes made to the regulations by this final rule.

A. Importation of Firearms

To effectuate the amendment to the law enacted by § 233 of the Trade and Tariff Act, the regulations in 27 CFR Part 178 are amended by adding § 178.118. This section allows a licensed importer to bring in all rifles and shotguns classified by the Director as curios or relics, and all handguns classified by the Director as curios or relics that are determined to be generally recognized as particularly suitable for or readily adaptable to sporting purposes, including surplus military firearms. Moreover, it is provided that the firearms must be imported in accordance with the applicable importation provisions of 27 CFR Part 178 and the importation provisions of 27 CFR Part 47. Furthermore, curios or relics which fall within the definition of "firearm" under 26 U.S.C. 5845(a) are required to also meet the importation provisions of 27 CFR Part 179 before they may be imported.

As discussed, the regulations in 27 CFR Part 47 concern the importation of arms, ammunition, and implements of war, and implement § 38 of the Arms Export Control Act. Except for shotguns with barrels 18 inches or more in length, all importations of firearms are subject to the import controls of 27 CFR Part 47. ATF reviewed these regulations for their impact on the importation of curio or relic firearms and concluded that certain provisions in 27 CFR Part 47 that hindered the importation of such firearms (e.g. § 47.52) could be amended consistent with Section 38 of the Arms Export Control Act.

In carrying out the import functions of § 38 of the Arms Export Control Act, ATF is directed by section 1(*1*)(2) of Executive Order 11958 (42 FR 4311) to consult with the Department of State. After consultation with the Department of State, and with their concurrence, the provisions of 27 CFR Part 47 have been revised. This revision in no way diminishes the foreign policy and national security requirements implemented by these regulations. The following summarizes why and how these regulations are amended.

1. Under § 47.52, the importation of an article on the Import List proscribed in § 47.21 is prohibited if the article originates in certain countries or areas. In administering this section, an article that was manufactured in, or has recently been in, a proscribed country or area, was considered to have originated in that country or area.

ATF recognized that this position could preclude the importation of many firearms listed as curios or relics. After evaluating the issue, it was concluded that curio or relic firearms manufactured in a proscribed country or area prior to the country or area becoming proscribed need not be considered as having originated in a proscribed country or area. This conclusion was also made for curio or relic firearms manufactured in a non-proscribed country or area which have been in a proscribed country or area. To avoid giving a proscribed country or area an advantage, it was further determined that the curio or relic firearms must have been stored in a non-proscribed country or area for the five year period immediately prior to importation. Section 47.52 is revised by adding paragraphs (d) and (e) to reflect this position.

Under paragraph (d), an application for a permit to import articles (firearms) that were manufactured in, or have been in, a country or area proscribed under § 47.52 may be approved where the articles are covered by Category I(a) of the Import List (other than those subject to 27 CFR Part 179), are importable as curios or relics under 27 CFR 178.118, and meet certain specified criteria. The articles must have been manufactured in a proscribed country or area prior to the date the country or area became proscribed or must have been manufactured in a non-proscribed country or area. The articles must also have been stored in a non-proscribed country or area for the five year period immediately prior to importation. However, regardless of where they have been stored, curio or relic firearms manufactured in a country or area after the country or area became proscribed may not be imported. Moreover, this paragraph does not apply to curio or relic firearms subject to the provisions of 27 CFR Part 179.

To import the firearms, the person applying for the permit is required by paragraph (e) to certify as to how the firearms meet the criteria specified in paragraph (d). The certification statement is required to be prepared in letter form, executed under the penalties of perjury, and submitted to the Director at the time application is made for the import permit. The certification statement must be accompanied by documentary information on the country or area of manufacture and on the country or area of storage for the five year period immediately prior to importation. Such information may consist of any document that the applicant believes substantiates the date and place of manufacture and the place of storage. The Director, however, reserves the right to determine whether the documentation is acceptable and to require additional documentation.

2. In connection with the above amendment, the term "executed under the penalties of perjury" is defined.

B. Miscellaneous Amendments Relating to Firearms

The penalty provisions in Subpart J of 27 CFR Part 178 pertaining to the criminal misuse of firearms and to the receipt, possession, or transportation of firearms by a felon or other proscribed person, or by an employee of any such person, are removed from the regulations. The remaining penalty provision and the seizure and forfeiture provision are transferred to other locations within 27 CFR Part 178, i.e., redesignated, and Subpart J is reserved. The penalty provision for a false statement or representation and the seizure and forfeiture provision are redesignated as § 178.128 and as § 178.149, respectively.

Administrative Procedure Act

This amendment made by this final rule concerning the importation of curio or relic firearms merely conforms the regulations in 27 CFR Part 178 to an amendment of law. Moreover, since they constitute rules of agency procedure and practice, the revisions made to Subpart J of 27 CFR Part 178 fall within a recognized exception to the rulemaking provisions of 5 U.S.C. 553. In addition, the amendments made to 27 CFR Part 47 are excepted from the rulemaking provisions of 5 U.S.C. 553 because these regulations involve a foreign affairs function of the United States. For these reasons, and in view of the fact that the amendment to the law was effective November 14, 1984, ATF has determined that it is impractical, unnecessary and contrary to the public interest to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to the preparation of a regulatory flexibility analysis are not applicable to this final rule.

Executive Order 12291

This final rule in not a "major rule" within the meaning of section 1(b) of Executive Order 12291 on Federal Regulations issued February 17, 1981 (46 FR 13193). This rule is not major because it will not result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innnovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this rule is not subject to the requirement for a regulatory impact analysis.

In addition, the Office of Management and Budget (OMB) has granted ATF a waiver from the review procedures of the Executive Order. This final rule was reviewed by OMB in accordance with the terms and conditions of that waiver. Any comments from OMB to ATF and any ATF response to those comments are available for public inspection during normal business hours at the: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Office Building, 1200 Pennsylvania Avenue NW, Washington, DC.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget pursuant to 3507 of the Paperwork Reduction Act of 1980 (OMB Control No. 1512-0017).

Right To Petition for Amendment of the Rule

Under 5 U.S.C. 553(e), any interested person may petition for the amendment of a rule. A petition must set forth the section or sections of the regulations involved and provide reasons for the requested action. Since it is particularly helpful in evaluating whether additional rulemaking is needed, the factual basis supporting the requested action should be provided in the petition. Any petition received will be carefully evaluated and, if further action is found to be appropriate, rulemaking proceedings will be initiated. After evaluation, ATF will notify the petitioner of the action taken or to be taken on the petition. The address for submitting a petition is: Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044, (ATTN: C:F:F, T.D. AFT-202).

The following list of **Federal Register** Thesaurus of Indexing Terms apply to this final rule:

List of Subjects

27 CFR Part 47

Administrative practice and procedure, Arms control, Arms and munitions, Authority delegations, Chemicals, Customs duties and inspection, Imports, Penalties, Reporting requirements, Scientific equipment, and seizures and forfeitures.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Drafting Information

The principal author of this rule is J. R. Whitley, ATF Tax Specialist, Compliance Operations, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7531).

Authority

Accordingly, under the authority contained in 22 U.S.C. 2778 (90 Stat. 744) and 18 U.S.C. 926 (82 Stat. 234), the Director amends Title 27, Code of Federal Regulations.

PART 47—IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Section A. Part 27 is amended as follows:

§ 47.11 [Amended]

Paragraph 1. Section 47.11 is amended by adding the definition "Executed under the penalties of perjury", reading as follows:

* * * * *

Executed under the penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the application, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this —— (insert type of document such as statement, certificate, application, or other document), including the documents submitted in support thereof, has been examined by me and, to best of my knowledge and belief, is true, correct, and complete."

* * * * *

Par. 2. Section 47.52 is amended by adding paragraphs (d) and (e) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

* * * * *

(d) Applications for permits to import articles that were manufactured in, or have been in, a country or area proscribed under this section may be approved where the articles are covered by Category I(a) of the Import List (other than those subject to the provisions of 27 CFR Part 179), are importable as curios or relics under the provisions of 27 CFR 178.118, and meet the following criteria:

(1) The articles were manufactured in a proscribed country or area prior to the date, as established by the Department of State, the country or area became proscribed, or, were manufactured in a non-proscribed country or area; and

(2) The articles have been stored for the five year period immediately prior to importation in a non-proscribed country or area.

(e) Applicants desiring to import

articles claimed to meet the criteria specified in paragraph (d) of this section shall explain, and certify to, how the firearms meet the criteria. The certification statement will be prepared in letter form, executed under the penalties of perjury, and submitted to the Director at the time application is made for an import permit. The certification statement must be accompanied by documentary information on the country or area of original manufacture and on the country or area of storage for the five year period immediately prior to importation. Such information may, for example, include a verifiable statement in the English language of a government official or any other person having knowledge of the date and place of manufacture and/or the place of storage; a warehouse receipt or other document which provides the required history of storage; and any other document that the applicant believes substantiates the place and date of manufacture and the place of storage. The Director, however, reserves the right to determine whether documentation is acceptable. Applicants shall, when required by the Director, furnish additional documentation as may be necessary to determine whether an import permit application should be approved.

Section B. Part 178 is amended as follows:

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

Paragraph 1. The table of sections is amended as follows:

* * * * *

178.118 Importation of certain firearms classified as curios or relics.

* * * * *

178.128 False statement or representation.

* * * * *

Subpart I—Exemptions, Seizures, and Forfeitures

* * * * *

178.149 Seizures and forfeitures.

* * * * *

Subpart J—[Reserved]

* * * * *

Par. 2. Section 178.118 is added reading as follows:

§ 178.118 Importation of certain firearms classified as curios or relics.

Notwithstanding any other provision of this part, a licensed importer may import all rifles and shotguns classified by the Director as curios or relics, and all handguns classified by the Director as curios or relics that are determined to be generally recognized as particularly suitable for or readily adaptable to sporting purposes. The importation of such curio or relic firearms must be in accordance with the applicable importation provisions of this part and the importation provisions of 27 CFR Part 47. Curios or relics which fall within the definition of "firearm" under 26 U.S.C. 5845(a) must also meet the importation provisions of 27 CFR Part 179 before they may be imported.

Par. 3. Section 178.128 is added reading as follows:

§ 178.128 False statement or representation.

Any person who knowingly makes any false statement or representation with respect to any information required by the provisions of the Act or this part to be kept in the records of a person engaged in the firearms or ammunition business, or in applying for any license, exemption, or relief from disability, under the provisions of the Act, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Par. 4. Subpart I is amended by revising the heading for the subpart and by adding § 178.149 to read as follows:

* * * * *

Subpart I—Exemptions, Seizures, and Forfeitures

* * * * *

§ 178.149 Seizure and forfeiture.

Any firearm or ammunition involved in, or used or intended to be used in, any violation of the provisions of the Act or of this part, or in violation of any other criminal law of the United States, shall be subject to seizure and forfeiture. The provisions of Title 26, U.S.C., relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that title, shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act.

§§ 178.161—178.166 (Subpart J) [Removed and reserved]

Par. 5. Subpart J is removed and reserved.

Signed: February 8, 1985.

Stephen E. Higgins,

Director.

Approved March 27, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-8947 Filed 4-11-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 78

[DoD Directive 1332.xx]

Voluntary State Tax Withholding From Retired Pay; Correction

AGENCY: Defense.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule that appeared on page 12249 in the **Federal Register** on Thursday, March 28, 1985 (50 FR 12249). This action is necessary to include a new "§ 78.5" and renumber the presently printed "§ 78.5."

FOR FURTHER INFORMATION CONTACT: Mr. James Jaskinski, telephone 202-697-0536.

List of Subjects in 32 CFR Part 78

Military personnel, Intergovernmental relations.

Accordingly, the following corrections are made to the proposed new Part 78 as follows:

PART 78—[AMENDED]

1. The authority citation for 32 Part 78 remains unchanged to read:

Authority: 10 U.S.C. 1045.

2. Change the heading "§ 78.5" in column three on page 12250 to read "§ 78.6"

3. Add a new "§ 78.5" to read as follows"

§ 78.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Comptroller)* shall establish policy and procedures, provide guidance, coordinate changes with the Uniformed Services, sign and administer the agreements with States, and monitor the implementation of this part.

(b) The *Secretaries of the Military Departments* and the *Heads of the Other Uniformed Services* shall implement this part.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 9, 1985.

[FR Doc. 85-8791 Filed 4-11-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Germantown (LSD 42) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval dock landing ship. The intended effect of this rule is to warn marines in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Germantown (LSD 42) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light not required; height above hull. Annex 1. sec. 2 (a)(i). (ii). (c). (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1. sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1. sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1. sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1. sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1. sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex 1. sec. 3(a)	Percentage horizontal separation attained
USS GERMANTOWN	LSD 42							x	55

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: March 29, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

Approved:

[FR Doc. 85–8763 Filed 4–11–85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS South Carolina (CGN 37) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS South Carolina (CGN 37) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

§ 706.2 [Amended]

Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light not required; height above hull. Annex 1, sec. 2(a)(i), (ii), (c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex 1, sec. [3](a)	Percentage horizontal separation attained
USS SOUTH CAROLINA	CGN 37						X	X	26.2

Authority: Executive Order 11964; 33 U.S.C. 1605.

Date: March 29, 1985.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-8762 Filed 4-11-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS Texas (CGN 39) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: March 29, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS Texas (CGN 39) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light not the required height above hull. Annex 1, sec. 2(a) (i), (ii), (c), (d)	Aft masthead light less than 4.5 meters above forward masthead light. Annex 1, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex 1, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex 1, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex 1, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex 1, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex 1, sec. (3)(a)	Percentage horizontal separation attained
USS TEXAS	CGN 39						x	x	13.3

Authority: Executive Order 11964; 33 U.S.C. 1605.

Dated: March 29, 1985.

Approved:

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-8764 Filed 4-11-85; 8:45 am]

BILLING CODE 3810-AE-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

[FIRMR Temp. Reg. 11]

Implementation of Public Laws 98-369 and 98-577 Regarding Competition in the Acquisition of Information Resources

Correction

In FR Doc. 85-7980 beginning on page 13319 in the issue of Thursday, April 4, 1985, make the following corrections:

Appendix A—[Corrected]

1. On page 13320, in the first column, the first line should read "FIRMR TEMPORARY REGULATION 11". The date immediately below should read "March [illegible], 1985".

2. On the same page, in the same column, in paragraph 5, in the second line, "froth" should read "forth".

3. On the same page, in the third column, in paragraph 17, in the fourth line, "establishment" should read "establishing".

4. On page 13325, in the third column, in § 201-24.210(a), in the first line, "and" should read "any".

5. On page 13327, in the middle column, in § 201-30.013-1, in the last line, "element" should read "elements".

6. On page 13329, in the third column, in § 201-39.006-4, add a comma after "Data" in the heading.

7. On page 13330, in the second column, in § 201-40.008(a)(3), in the eighteenth line, "consumer" should read "consumes".

8. On page 13331, in the second column, in § 201-40.008(d)(4), in the second line, insert "overall" between "lower" and "maintenance".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Reorganization of the Office of General Counsel

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's rules to reflect a reorganization in the Office of General Counsel. The Legal Counsel Division is renamed the Administrative Law Division. The three functional branches within the Legal Counsel Division (Mass Media, Common Carrier/Private Radio and Administrative Law) are abolished. This action is taken to simplify and improve management of the Office of General Counsel.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Karl Brimmer, Management Planning and Program Evaluation Office (202) 632-3906.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Order

In the matter of Amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Office of General Counsel.

Adopted: April 2, 1985.
Released: April 5, 1985.

By the Managing Director:

1. The Commission, by the Managing Director, acting pursuant to delegated authority, has under consideration proposed changes in the organization of the Office of General Counsel, which would require amendment to section 0.42 of the Commission's Rules and Regulations.

2. In November 1984 the Commission approved the consolidation of essentially all its legislative functions into the Office of Congressional and Public Affairs. See FCC 84-642. This reorganization eliminated various legislative oversight functions from the Office of General Counsel. I am therefore approving an internal restructuring of the Office of General Counsel to reflect these changes in workload. Specifically, the Office's three functional branches (Mass Media, Common Carrier-Private Radio and Administrative Law), which had legislative responsibilities in their respective areas, are being abolished and the division's name is being changed back to "Administrative Law Division". The Administrative Law Division will, of course, retain all present functions of the Legal Counsel Division. Part 0 of the Commission's Rules and Regulations, which describes the agency's organization, is being amended to reflect these changes.

3. The amendments adopted herein pertain to agency organization. The prior public notice and comment procedures and effective date provisions of Section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing, it is ordered, effective April 5, 1985 that Part O of the Rules and Regulations is amended as set forth in the Appendix hereto.

Federal Communications Commission,

Edward J. Minkel,

Managing Director.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154,303)

Appendix

PART 0—[AMENDED]

Part O of Chapter 1 of Title 47 of the Code of Federal Regulations is hereby amended as indicated below.

Section 0.42 is revised to read:

§ 0.42 Units in the Office.

The Office of General Counsel is structured into the following units:

(a) Immediate Office of the General Counsel
(b) Litigation Division
(c) Administrative Law Division
(d) Adjudication Division

[FR Doc. 85-8892 Filed 4-11-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 22

[Gen. Docket Nos. 80-183; RM-3365; RM-2750; RM-2047; RM-3088; FCC 85-139]

Allocation of Spectrum in the 928-941 MHz Band and To Establish Other Rules, Policies and Procedures for One-way Paging Stations the Domestic Land Mobile Service; Denial of Petition for Reconsideration

AGENCY: Federal Communication Commissions.

ACTION: Final rule; Denial of Petition for reconsideration.

SUMMARY: This action denies the Petition for Reconsideration filed by National Message Network on June 29, 1984. The Commission upholds its decision to use lottery procedures to choose among nationwide paging applications. The Commission declines to set aside an additional thirteen

frequencies from the reserve band for network organizers.

This action is taken by the Commission in the interest of efficient, expeditious service to the public and in order to utilize the spectrum in the most efficient manner possible.

This action will allow three network organizers to begin constructing nationwide systems promptly.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Order on Reconsideration

[FCC 85-139]

Before the Federal Communications Commission in the matter of amendments of parts 2 and 22 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to establish other Rules, Policies and Procedures for One-way Paging Stations in the Domestic Land Mobile Service, Gen. Docket No. 80-183; RM-2365, RM-2750, RM-2047, RM-3068.

Adopted March 22, 1985.
Released March 27, 1985.

By the Commission:

1. Before us is a Petition for Reconsideration filed by National Message Network (NMN) on June 29, 1984. NMN requests that we reconsider certain aspects of the Third Report and Order, FCC 84-148, released May 24, 1984 (49 FR 22318, May 29, 1984), which finalized our regulatory policies for common carrier network paging.[1] American Paging Network, Inc. filed a comment in support of NMN's petition. In addition, in response to a request from the Commission's staff, additional comments and reply comments were filed.

I. Background

2. A nationwide paging system would enable subscribers to receive paging signals outside the range of the originating local service area. In our *First Report and Order*, 89 FCC 2d 1337, 1346-49 (1982), we allocated three frequencies for network paging; one frequency was intended for a nationwide network, and two would be used either for regional or for nationwide paging. On reconsideration, we decided to allocate all three frequencies for nationwide use exclusively. We adopted a two-step regulatory process in which one carrier (a "network organizer") will be licensed on each network frequency with the responsibility for organizing the network. Local radio common carriers (the "network operators") will affiliate with one or more network organizers to provide paging initiation and/or local distribution of network pages. *Memorandum Opinion and Order on Reconsideration* (Part 2), ("Reconsideration Order"), 93 FCC 2d 908 (1983). In our *Third Report and Order, supra,* we adopted an open access requirement for local-area carriers desiring to originate network system pages, but declined to adopt an open access requirement for carriers providing local distribution of network pages. (*Id.*, paras. 7-8). In addition, we preempted state authority over rate regulation of the network operators, and decided to forbear from regulating rates of both network organizers and operators (*Id.*, paras. 13-16). Finally, we decided to utilize a lottery to choose among network organizer applicants, and we developed streamlined application processes for network operators. (*Id.* paras. 19-20). On August 11, 1983, the Commission received applications from sixteen carriers desiring to be one of the three network organizers. On July 31, 1984, the Commission conducted the lottery, and chose three tentative selectees.[2]

3. NMN's petition concerns the portion of the *Third Report and Order* that adopts a lottery procedure for nationwide paging. NMN requests that the Commission consider alternative approaches other than a lottery to license nationwide paging systems. Specifically, NMN proposes that additional frequencies be authorized for network paging so that all pending applications could be licensed. It also argues that the Commission's decision to use a lottery is not in the public interest and requests, in the alternative to its proposal, that the Commission conduct a comparative evaluation in order to license network organizers. For the reasons explained below, we decline to adopt NMN's alternative proposal and affirm our decision to use a lottery approach.

II. Summary of the Arguments

4. NMN proposes that thirteen of the forty channels in the 900 MHz reserve band (930-931 MHz) be re-assigned for network paging systems to accommodate all applicants for network organizer. Because these frequencies are currently allocated for paging service, argues NMN, a new allocation proceeding is not required to implement this plan: The Commission could amend its Table of Frequency Allocations (47 CFR 2.106), or simply waive its rules upon a finding of good cause. To avoid inefficient spectrum utilization, NMN proposes that the authorization to operate an intercity paging network on one of these frequencies should be granted subject to the express condition that each network organizer must establish intercity network and transmission facilities in a certain number of markets within a specified period of time. If the network organizer failed to implement its system in the required amount of time, the right to operate on the frequency would terminate and the license would be automatically forfeited. Any channels thus "recaptured" would return to the reserve pool. This system would allow consumers to vote with their dollars for the services and service providers they prefer, rather than have their decisions shaped by the arbitrary selection/elimination process that occurs in a lottery. The most capable entrepreneurs would be rewarded for their efforts in developing the service.

5. NMN strongly criticizes the Commission's use of a lottery to decide among nationwide paging applicants. First it attacked what it termed the Commission's "sketchy" rationale for deciding to utilize a lottery. NMN contrasts our finding that each network organizer applicant "is proposing to provide the same basic service to the customer . . . and each is proposing to serve at least the minimum number of cities initially and expand nationwide within two years" (*Third Report* at para. 19), with our finding that the applications reflect a diversity of networking arrangements and technologies, as well as different "paging formats, service practices and maintenance plans." *Id.* at n. 35. NMN argues that the Commission failed to recognize, when concluding that network organizer proposals are no different than conventional PLMS paging applications, that, in the latter case, applicants merely propose the construction of one or more local paging transmitters, whereas in the former case, network organizers are seeking to establish an intercity network for the distribution of paging traffic and may or may not propose to operate local paging transmission facilities. Furthermore, the *Third Report*, characterizes network organizers as "providers or resellers of intercity exchange services" (para. 14) a business clearly distinguishable from traditional radio common carrier paging operations. NMN therefore urges us to evaluate other alternatives.

[1] National Satellite Paging, Inc. also filed a Petition for Reconsideration; however, this petition was withdrawn contingent upon Commission approval of the settlement agreement between NSP and Radiofone.

[2] Radiofone, Inc., United Paging Corporation, and Page Memo, Inc., are the tentative selectees.

6. NMN argues that comparative evaluation is justified in the case of nationwide paging. It states that our conclusion that there are no meaningful distinctions among the various proposals for nationwide paging contradicts prior Commission positions on this subject and ignores essential facts. First NMN cites our previous conclusions concerning the difference among proposals to providing nationwide paging service,[3] and states our "belated assertion" that no significant differences exist among the sixteen applicants is simply not true. Second, NMN argues that nationwide paging is not analogous to low power television and cellular radio, which were specifically authorized for lottery use by legislative history. There are hundreds of cellular and low power television licenses available, but only three nationwide paging frequencies. No excessive administrative burden or backlog would exist for such applicants, NMN argues. NMN also charges that the Commission has not conducted the type of evaluation of nationwide paging proposals that would form the basis of a reasoned conclusion that there is no difference from the public's standpoint which applicants are licensed. Some of the issues which NMN believes should form the basis of a comparative evaluation include networking technologies, paging formats, service proposals, maintenance plans, applicants' perception of the market, their understanding and application of network engineering principles and their utilization and adaptation of available technologies. In addition, NMN believes we should consider applicants' proposals for redundancy in equipment, customer service, network access, multiplicity of backup transmission paths, and viability of service design. According to NMN, the Commission should also examine the experience, resources, financial ability and technical, operation and market capabilities.

7. On October 11, 1984, the Commission's staff met with the network paging applicants to discuss NMN's proposal. Applicants who were not chosen as tentative selectees favored NMN's approach, while tentative selectees, usually along with their partners in partial settlement arrangements, vigorously opposed any increase in the number of network organizers. At the conclusion of the meeting, the staff requested that the parties submit their comments in writing.

8. Filing comments in favor of NMN's proposal are American Switch Co. (ASC), American Paging Network, Inc. (APN), Ranier Corporation, Ameripage, Inc., CBA Page, Inc. (CBA), and RadioPage America (RPA). APN, ASC, and NMN also filed reply comments. NMN and its supporters argue that a rulemaking is not necessary, and that the pool of prospective applicants need not be enlarged from the original sixteen. They point out that market forces should decide the best and strongest network organizers, that reserve frequencies can be used efficiently if the suggested licensing requirements are implemented, and fairness requires that all applicants be given an opportunity to compete if the Commission decides not to utilize comparative hearings.

9. Opposed to NMN's suggestion are American Satellite Paging, Inc. (ASP), Cybertel-Cox Beep USA Nationwide Paging (Beep USA), Contemporary Communications Corporation (CCC), and Page Memo, Inc. These applicants argue that creating new licenses would greatly prejudice tentative selectees, would be unfair because parties have already spent considerable sums to prepare their direct cases for comparative hearing, that the market could not support sixteen network organizers, that further delay is harmful, and that the Commission's decision to implement a lottery was reasonable. In addition, the winning applicants argue that a rulemaking is necessary to allocate additional frequencies.

III. Discussion

A. Additional Frequencies for Nationwide Paging Network

10. We decline to adopt NMN's alternative approach to licensing network paging. The comments filed in response to the staff's request fail to demonstrate that the public interest would be served by implementation of NMN's suggestion. As a threshhold matter, NMN's request for additional frequencies could be viewed as an untimely petition for reconsideration of the *First Report and Order, supra*, wherein we decided to allocate three frequencies for network paging. NMN's argument that it seeks "reconsideration of substantive licensing policies and procedures adopted for the first time in the *Third Report*" (Reply, p. 9) is partially incorrect: Only the lottery decision was made in the Third Report. The time to raise arguments concerning our decision in the *First Report and Order* to offer three frequencies for nationwide paging has long passed. The proper vehicle for requesting a change in such a policy would be a petition for rulemaking. *See Geller v. FCC*, 610 F. 2d 973 (D.C. Cir. 1979). We decline to issue a notice of proposed rulemaking, however, for the following reasons.

11. *Early availability of Nationwide Paging.* The speed with which nationwide paging service will be brought to the public is one of our primary concerns. After considering our obligations under the different scenarios suggested by the parties, it is clear that upholding our decision to license only three network organizers at this time will result in the earliest service to the public. The reasons for this decision are, first, that all the applications are on file and the lottery has been conducted.

The delay in issuing the three licenses results solely from the confusing settlements arranged by some applicants [4] and the pleadings we address here. Second, it is our considered opinion that a rulemaking is necessary to allocate additional frequencies from the reserve band. The addition of thirteen frequencies to this service is a significant departure from the scope of the original service as developed in the previous rulemaking case. Even if we were able to find that the type of open entry advocated by NMN is in the public interest, we cannot withdraw from the reserve band, and assign, 13 channels without considering alternative uses. We already have pending one petition to allocate a channel.[5] We also know that the Canadians are interested in some channels in the reserve, and there is likely to be demand for channels for local paging in the major markets. A rulemaking would take about a year to complete.[6]

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[3] In 1980, we stated that the various rulemaking proposals and developmental applications to operate nationwide paging "differ substantially in their approaches." *Notice of Proposed Rulemaking*, Gen. Docket No. 80-183, FCC 80-231, 45 FR 32013 released May 8, 1980. In our 1983 *Reconsideration Order*, We refetred to current proposals for nationwide paging that were "significantly different" from our original conceptualization of nationwide paging systems and that we expected to receive "disparate proposals" from network organizer applicants. *Reconsideration Order, supra*, paras. 15, 25, n. 11.

[4] Settlement Agreement, filed July 31, 1984, by NSP, PageMemo, CCC, Radiofone, and NPN. Two of the parties to this agreement were lottery winners, giving rise to two further agreements among divided co-signors.

[5] Amendment of § 2.106 of Part 2 of the Commission's Rules to allocate the reserve frequency 930.0125 MHz, RM 4887, filed Jan. 8, 1985 (Public Notice Janaury 28, 1985).

[6] The losing nationwide applicants may request that we initiate procedures to allocate additional channels from the reserve; however, we will not delay granting the three initial construction permits while we consider such a request.

12. The third reason for our decision to remain with the allocation of three network organizer frequencies is that additional frequency allocation would not remove the delays associated with appeals of Commission decisions. The result of a rulemaking for additional frequency allocation would be to inject another set of litigants: Some demanding a comparative hearing, some supporting the lottery decision, third parties opposing such use of the reserve spectrum, and still others against (or in favor) or re-opening the application process and of headstart by existing applicants. Clearly, speedy service to the public would not result.

13. *Quality of Network Organizers.* One of the arguments raised by NMN concerned the idea that market forces should choose among all sixteen network organizer applicants, rather than random selection. Under this system, customers would "vote" with their dollars for the best systems, thus assuring that the strongest competitors among network organizers would survive. Network organizers which do not offer popular systems would either fail or be unable to meet the expansion requirements, and their frequencies would be returned to the reserve pool.

14. Such a market-based system has much appeal. Nevertheless, there are limitations on the amount of spectrum that can be allocated for the free competitive development of any service. We have still been offered no reason to believe that more than three channels should be set aside for nationwide paging organizers.[7] In addition, wide-area and regional paging systems are developing rapidly, and these would be likely to compete for some of the customers that might use nationwide paging, thereby slowing the rate of increase in demand for nationwide paging. Further delay in licensing network organizers, and the potential for many more organizers in the market, would serve to undercut demand still further.

B. Lottery Procedures.

15. We also reject NMN's claim that a lottery procedure for network paging is not in the public interest. NMN misperceives our reasons for choosing to utilize lottery procedures for nationwide paging. We adopted lottery for this new service because there are no decisionally significant differences among applicants, and because each applicant proposes to meet our minimum service requirements. We found that network organizer applications are no more different from one another than are other DPLMRS applications. We concluded that "for the same reasons we decided to use lotteries for mutually exclusive DPLMRS applications, we also find that a lottery will serve the public interest in this instance." We further stated that only minimal benefits to the public could result from a comparative hearing. *Third Report and Order, supra,* at para. 19. While it is true, as NMN points out, that network service is technologically somewhat different from traditional radio common carrier paging operations, the fact remains that, from an administrative point of view, these applications are very similar: They propose one-way paging service in essentially the same markets with substantially similar consumer offerings. A comparative hearing would not measurably assist us in choosing the best three network organizers. Technological differnces among types of public land mobile services do not, in and of themselves, justify different processing. Furthermore there are sixteen mutually exclusive applications; the resulting comparative hearing would have been extremely complicated and burdensome, and almost impossible to conduct on an expedited basis. *See generally Cellular Lottery Order,* 56 RR2d 8 (1984), at para. 21. In contrast, as a result of our decison to adopt lottery, we are prepared to issue authorizations for network paging contemporaneously with this decision.[8]

IV. Conclusion

16. The public has waited long enough for nationwide paging service. There are three frequencies available now and technically qualified applicants are available to begin service quickly. As our discussion herein has shown, further delay is clearly not in the public interest. We remain free to revisit the issue of need for additional nationwide paging frequencies through a future rulemaking.

17. We have considered the alternatives proposed by the parties and remain convinced that a lottery in conjunction with marketplace forces will bring the best service to the public in the least amount of time.

V. Ordering Clause

18. Accordingly, it is ordered, that the Petition for Reconsideration filed by National Message Network is denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-8898 Filed 4-11-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

Frequency Allocation to the Offshore Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: The Federal Communications Commission corrects a typographical error in its *Report and Order,* FCC 84-509, released March 20, 1985 relating to frequency allocation to the Offshore Radio Service (March 27, 1985, 50 FR 12021). The error is editorial in nature and needs to be corrected to make the *Report and Order* accurate.

ADDRESS: Federal Communications Commission, 1919 "M" Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology 2025 "M" Street, NW. 20554, (202) 653-8162.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of Amendment of Parts 2, 22, 74 and 90 of the Commission's rules to provide additional Channels for the Offshore Radio Service. Gen. Docket No. 83-45; RM-3910, RM-3924.

Released: April 4, 1985.

The Commission's *Report and Order,* FCC 84-509, released March 20, 1985, is corrected by modifying the text of § 90.315(k) in the middle column of page 12028 by replacing the referenced rule section "§91.173" by "§90.173."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-8893 Filed 4-11-85; 8:45 am]

BILLING CODE 6712-01-M

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[7] In response to our original notice, *supra* note 3, not one party suggested that more than three channels for nationwide paging were desirable.

[8] We project that it would have been mid-1986 at the earliest before we would have issued authorizations for this service using comparative processes.

Proposed Rules

Federal Register
Vol. 50, No. 71
Friday, April 12, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

Dairy Promotion Program; Referendum Order; Determination of Representative Period; and Designation of Referendum Agent

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document orders that a referendum be conducted to determine whether producers favor the continuation of the Dairy Promotion and Research Order. Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, which authorized the implementation of the promotion order, requires that the referendum be conducted within the 60-day period preceding September 30, 1985. In order to be continued, the Dairy Promotion and Research Order must be approved by a majority of the producers voting in the referendum.

DATE: The referendum is to be completed within the 60-day period preceding September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Chief, Promotion and Research Staff, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6909.

SUPPLEMENTARY INFORMATION: It is hereby directed that a referendum be conducted among producers for the purpose of ascertaining whether the Dairy Promotion and Research Order, as amended, shall be continued. Pursuant to section 115(a) of the Dairy and Tobacco Adjustment Act of 1983, such order shall be continued only if the Secretary determines that it is approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) have been engaged in the production of milk for commercial use.

The month of April 1985 is hereby determined to be the representative period for the conduct of such referendum.

John R. Williams is hereby designated as the agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda in connection with the Dairy Promotion and Research Order. (7 CFR 1150.200, *et seq.*).

Such referendum shall be completed within the 60-day period preceding September 30, 1985.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

(Pub. L. 98–180, 97 Stat. 1128)

Signed at Washington, D.C., on April 8, 1985.

James C. Handley,
Administrator.

[FR Doc. 85–8742 Filed 4–11–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–ASW–10]

Airworthiness Directives; Aerospatiale (Societe Nationale Industrielle Aerospatiale) Model SA–365 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive inspections of the main rotor mast on Aerospatiale Model SA–365 series helicopters. The proposed AD is needed to detect corrosion or cracks which could result in failure of the main rotor mast and consequent loss of control of the helicopter.

DATES: Comments must be received on or before May 17, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. Comments delivered must be marked: Docket No. 85–ASW–10. Comments may be inspected in Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

The applicable service bulletins may be obtained from: Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of each of the service bulletins is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or R. T. Weaver, Regulations Program Management, ASW–111, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877–2548.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas 76106, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 85–ASW–10." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that corrosion of the main rotor masts may occur as a result of fretting or finish deterioration which could result in fatigue cracking and crack growth which could cause loss of the helicopter.

Since this condition is likely to exist or develop on other helicopters of the same type design, the proposed AD would require visual repetitive inspections and repair or replacement, as necessary, of the main rotor mast on Aerospatiale Model SA–365 series helicopters.

The FAA has determined that this proposed regulation only involves 13 helicopters in operation in the United States with an annual cost of $2,800 for each helicopter. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

AEROSPATIALE (Societe Nationale Industrielle Aerospatiale): Applies to Aerospatiale Model SA–365 series helicopters, certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent possible failure of the main rotor mast, accomplish the following:

(a) For helicopters which have 250 hours' or more total time in service on the main rotor mast on the effective date of this AD, inspect in accordance with paragraph (d) within 50 hours' time in service, unless already accomplished.

(b) For those helicopters which have less than 250 hours' total time in service on the main rotor mast on the effective date of this AD, inspect in accordance with paragraph (d) before reaching 300 hours' time in service on the main rotor mast, unless already accomplished.

(c) For those helicopters exhibiting a severe tracking defect, inspect in accordance with paragraph (d) before further flight, unless already accomplished.

(d) Remove the main rotor hub from the main rotor mast and inspect the mast in accordance with Service Bulletin No. 05.08 (for Model SA–365C series helicopters) and Service Bulletin No. 05.04 (for Model SA–365N helicopters) or FAA-approved equivalent, as appropriate.

(e) Replace any cracked masts with a serviceable part.

(f) Reinstall the main rotor hub in accordance with the appropriate Service Bulletin No. 05.08 or 05.04, or FAA-approved equivalent, after completion of the inspection and rework of paragraphs (d) and (e).

(g) Repeat the inspections required in paragraph (d) at intervals not to exceed 300 hours' time in service from the last inspection.

(h) After the installation or corrosion resistant mast (P/N 365A31–1179–02), the inspections of paragraphs (a), (b), (d), and (g) no longer apply.

(i) Any equivalent method of compliance with this AD must be approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106 or by the Manager, Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium 09667.

(j) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the inspections required by this AD may be accomplished.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.85)

Issued in Fort Worth, Texas, on March 28, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–8780 Filed 4–11–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–CE–13–AD]

Airworthiness Directives: Fairchild Burns Company Models FBC–2000A–2–42, FBC–2000A–2–45, FBC–2000A–3–57, FBC–2000A–3–59 and FBC–2000A–3–62 Aft Facing Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Fairchild Burns Company Models FBC–2000A–2–42, FBC–2000A–2–45, FBC–2000A–3–57, FBC–2000A–3–59 and FBC–2000A–3–62 seats. This AD would require inspection and modification of the center spreaders on certain models of aft facing seats manufactured by the Fairchild Burns Company in accordance with FAA Technical Standard Order (TSO) C–39a, Aircraft Seats and Berths. The results of structural tests indicate that the center spreaders do not comply with the emergency landing condition requirements of the Federal Aviation Regulations. This condition could result in the failure of the seats in a minor crash landing and injury to the occupants of these seats. The proposed inspection and modification will preclude this occurrence.

DATES: Comments must be received on or before May 17, 1985.

ADDRESSES: Fairchild Burns Service Bulletins (S/B) A25–20–526, Revision "B", S/B A25–20–527, Revision A, and S/B A25–20–528, Revision "C", applicable to this AD may be obtained from the Fairchild Burns Company, 1455 Fairchild Road, Winston-Salem, North Carolina 27105 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–13–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Jack Bentley, Aeorspace Engineer, Atlanta Aircraft Certification Office, ACE–120A, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the

light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–CE–13–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that the center spreaders on certain models of aft facing seats manufactured by the Fairchild Burns Company do not comply with the emergency landing condition requirements of the Federal Aviation Regulations. This noncompliance could result in the failure of the seats in a minor crash landing. This condition was discovered by the manufacturer during a structural test program where it was determined that center spreaders, manufactured with lightening holes in the web portion of the spreaders, do not permit these seat assemblies to comply with the applicable regulatory emergency landing conditions. Since the condition described is likely to exist or develop in other seats of the same design, the proposed AD would require inspection and modification, as necessary, of the center spreaders of Fairchild Burns Company Models FBC–2000A–2–42, FBC–2000A–2–45, FBC–2000A–3–57, FBC–2000A–3–59 and FBC–2000A–3–62 aft facing seats in accordance with applicable service bulletins. The FAA has determined there are approximately 460 seats affected by the proposed AD. The cost to the private sector of complying with the proposed AD is estimated to be $15 per seat. The total cost is estimated to be $6900 to the private sector. This cost precludes the proposed AD from having a significant economic impact on any small entity under the criteria of the Regulatory Flexibility Act.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Fairchild Burns Company: Applies to Models FBC–2000A–2–42, FBC–2000A–2–45, FBC–2000A–3–57, FBC–2000A–3–59 and FBC–2000A–3–62 aft facing seats (all serial numbers listed in the service bulletins in paragraph (a) of this AD) manufactured in accordance with FAA Technical Standard Order (TSO) C–39a, Aircraft Seats and Berths, installed in aircraft certified in any category.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent failure of the aft facing seats in the event of a minor crash landing, accomplish the following:

(a) Visually inspect and modify, as required, the center spreader, aft facing seats in accordance with the following Fairchild Burns Service Bulletins:

(1) A25–20–526, Revision "B": Models FBC–2000A–2–42 and FBC–2000A–3–62 seats.

(2) A25–20–527, Revision "A": Models FBC–2000A–2–45 and FBC–2000A–3–59 seats.

(3) A25–20–528, Revision "C": Models FBC–2000A–2–42, FBC–2000A–3–57 and FBC–2000A–3–62 seats.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, Central Region.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and Section 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on April 2, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–8781 Filed 4–11–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, and 54

[LR–216–84; LR–145–84]

Taxation of Fringe Benefits and the Limitation on the Amount of Cost Recovery Deductions and Investment Tax Credit for Luxury Automobiles, and the Limitation When Certain Property Is Used for Personal Purposes; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Announcement.

SUMMARY: This document announces a change in the agenda for the public hearing that is to be held on April 16, 17, and 18 at the Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Cynthia Grigsby, Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, Washington, D.C. 20224. Telephone 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1985, the Internal Revenue Service published in the **Federal Register** (50 FR 7072) a notice of public hearing on proposed regulations. The regulations that are to be the subject of the hearing were also published in the **Federal Register** on February 20, 1985 (50 FR 7071 for LR–145–84 and 50 FR 7073 for LR–216–84). These proposed rules pertain to the limitation on the amount of cost recovery deductions and investment tax credit for luxury automobiles, and the limitation when certain property is used for personal purposes, and the taxation of fringe benefits. The hearing is scheduled to be held April 16, 17, and 18, 1985, in the IRS Auditorium beginning at 10:00 a.m. on each of the three days.

Announcement

There is a change in the agenda for the hearing. Because of recent Congressional developments, the proposed regulations relating to the recordkeeping rules of section 274(d) of the Internal Revenue Code will no longer be a subject for oral presentations.

All other matters pertaining to this hearing remain as previously announced.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-8835 Filed 4-11-85; 8:45 am]

BILLING CODE 4820-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Inventions by VA Employees as Coinventors in Research Supported by Nonprofit Organizations and Small Businesses

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The purpose of this proposed rulemaking is to provide policy, procedure, and guidelines with respect to ownership of patent rights to inventions made by VA (Veterans Administration) employees as coinventors under funding agreements with nonprofit organizations, including universities, and small business firm, (contractors) where the purpose is to perform experimental, developmental or research work. As a result of the affiliation of VA medical centers and local universities or other institutions of higher learning, VA employees are oftentimes involved in the development of inventions in conjunction with employees of those institutions without a specific contract for that research having been made. Universities have been requesting that the VA assign or transfer its interest to an invention to the university in those instances where a university coinventor is involved. Due to the instances where this situation has arisen and may be expected to arise in the future, it is necessary for the VA to set forth procedures and criteria for determination of patent rights ownership in those situations. Accordingly, this proposed rule specifies the bases the VA will use to make such determinations and the conditions applicable to any assignment made. These procedures and criteria would apply to inventions involving VA employee coninventors under funding agreements between the VA and nonprofit organizations or small business firms covering research which is not the subject of any other contract, grant, or agreement. The regulations shall apply only to inventions made after the effective date.

DATES: Comments must be received on or before May 13, 1985.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Diana M. Bloss, Deputy Assistant General Counsel, Veterans Administration, (202) 389-5061.

SUPPLEMENTARY INFORMATION:

I. Background

The Patent and Trademarks Amendments of 1980, Pub. L. 96-517, provides, in part, that in any case where a Federal employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm, the Federal agency employing the coinventer is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor, subject to the conditions set forth in chapter 18 of title 35, United States Code. (35 U.S.C. 202(e))

It is clear that Congress conferred discretionary authority to the agency employing the Federal coinventor to transfer or assign any rights it has acquired from its employee in any invention made under a funding agreement with a nonprofit organization or small business firm to the contractor. Other situations, not involving a Federal employee coinventor or a funding agreement, would be covered under specific contracts. In those instances, the contract provisions regarding disposition of patent rights would govern. If such contracts contained no provisions with regard to disposition of patent rights, the general provisions of Pub. L. 96-517 would govern.

II. Description of the Proposed Rules.

The proposed rules set out the obligation of the contractor to inform the agency of any invention in which a VA employee is a coinventor. This provision, it is hoped, will ensure that the agency is aware of contractor involvement and interest prior to making a determination of rights in and to an invention in accordance with Executive Order 10096, as amended, which sets forth the criteria for determination of patent rights ownership between a Government employee inventor and the Government. The proposed rule also sets out the information the contractor must provide along with the request for assignment or transfer, the bases the agency will use to make the determination, and the conditions applicable to any assignment made. The proposed rule additionally provides for the contractor to make monetary awards or payments to the VA coinventor in those instances where it is assigned the agency's interest to the invention, and the marketing of the invention may result in royalties to the contractor.

The Administrator has determined that this proposed rule is not a major rule as that term is defined by Executive Order 12291 on Federal Regulations. The annual effect on the economy would be less than $100 million. The rule would not cause a major increase in costs or prices; nor would it have significant adverse effects on the economy.

The Administrator has certified that these proposed regulations will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Compliance and reporting burdens other than those already imposed by Pub. L. 96-517 and OMB Circular A-124 would be minimal.

The information collection requirements contained in § 1.639 of these regulations have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the information collection requirement(s) should be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Veterans Administration, 726 Jackson Place, NW, Washington, DC 20503 (202) 395-6880.

There is no catalog of Federal Domestic Assistance Number involved.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, government contracts, government property, inventions and patents.

Approved: February 15, 1985.

Harry N. Walters,

Administrator.

PART 1—[AMENDED]

38 CFR Part 1, *General*, is amended by proposing to add the following new center heading and §§ 1.635 through 1.644 to read as follows:

Inventions by Employees of the Veterans Administration as Coinventors in Research Supported by Nonprofit Organizations and Small Businesses

§ 1.635 Purpose.

The purpose of these regulations concerning inventions by employees of the VA as coinventors under funding agreements with nonprofit organizations, including universities, and small business firms is to set forth policy, procedure and guidelines to be followed in determining patent rights to inventions developed under research which is not the subject of any other contract, grant or agreement. (35 U.S.C. 202(e))

§ 1.636 Definitions.

(a) The term "funding agreement" means any contract, grant, or cooperative agreement entered into by the VA and any contractor for the performance of experimental, developmental, or research work. (35 U.S.C. 201(b))

(b) The term "contractor" means any person, small business firm, or nonprofit organization, including a university, that is a party to a funding agreement. (35 U.S.C. 201(c))

(c) The term "small business firm" means a small business concern as defined in 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (35 U.S.C. 201(h))

(d) The term "nonprofit organization" means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute. (35 US.C.(i))

(e) The term "invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35, United States Code. (35 U.S.C. 201(d))

(f) The term "subject invention" means any invention conceived or first actually reduced to practice by a VA employee coinventor in the performance of work under a funding agreement. (35 U.S.C. 201(e))

(g) The term "employee' or "Government employee" means any officer or employee, civilian or military, of the VA. Part-time employees, part-time consultants, without compensation employees, interns and residents are included. (38 U.S.C. 210(c))

§ 1.637 Governing provisions.

(a) *Authorization to transfer rights.* When a Federal employee is a coinventor of any invention made under a funding agreement with a nonprofit organization or small business firm, the Federal agency employing such coinventor is authorized to transfer or assign whatever rights it may acquire in the subject invention from its employee to the contractor. Such assignment or transfer is, however, subject to the specific conditions set forth in chapter 18 of title 35, United States Code. (35 U.S.C. 202(e))

(b) *Conditions of transfer.* In any case when a Federal agency transfers or assigns the right it has acquired in a subject invention from its employee to the contractor under 35 U.S.C. 202(e), the assignment will be made subject to the same conditions as would otherwise apply to the contractor were no Federal employee coinventor involved. Those conditions are set forth in the clause of Attachment A to OMB Circular A–124. (35 U.S.C. 202(e); OMB Circular A–124)

§ 1.638 Delegation of authority.

The General Counsel is authorized to act for the Administrator of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The determination of rights to an invention made by a VA employee coinventor under a funding agreement shall be made by the General Counsel, subject to the approval of the Commissioner of Patents and Trademarks, where required. Any decision as to march-in rights under § 1.643 will be made by the Office of the General Counsel, Veterans Administration, (hereinafter referred to as the Office of the General Counsel). (38 U.S.C. 210)

§ 1.639 Disclosure and request for assignment of patent rights.

When the contractor becomes aware of the existence of a possible invention made by a VA employee as a coinventor arising out of research which is the subject of a funding agreement, the contractor, if it wishes to obtain an assignment, shall make a request in writing to the Office of the General Counsel (024), VA Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The request shall be postmarked within 120 calendar days of the date the contractor becomes aware of the existence of the invention or within 15 days after the contractor becomes aware of the filing of a patent application, whichever occurs first. The request shall:

(a) Describe the invention with specificity, including the date the invention was conceived or first actually reduced to practice, and shall state the names and business addresses of all known inventors; (35 U.S.C. 202(e))

(b) Include a copy of any publication describing the invention, including the date of any publication, and any manuscript submitted for publication, and identify any public use of the invention, and; (35 U.S.C. 202(e))

(c) Include a statement of the contractor's contribution to the development of the invention, including the financial value of that contribution, as of the time of making its request. A copy of any patent application filed with regard to the invention shall be provided to the Office of the General Counsel within 15 days of filing. The contractor shall provide the VA medical center that is a party to the funding agreement, copies of all documents provided to the Office of the General Counsel. If the VA medical center becomes aware of the existence of a possible invention under its funding agreement prior to notification from the contractor, it shall forward all available information to the Office of the General Counsel. The Office of the General Counsel will promptly notify the contractor of the existence of a possible invention and make available the information received. (35 U.S.C. 202(e))

(d) The time limit for disclosure and request for assignment of patent rights may be extended by the Office of the General Counsel upon the contractor's request. (35 U.S.C. 202(e))

§ 1.640 Allocation of rights.

The Office of the General Counsel shall determine whether to grant the contractor's request for assignment or transfer of patent rights on the following bases:

(a) In all cases where considerations of national security so require, all interest in and to the invention shall remain in the United States Government, as represented by the Administrator of Veterans Affairs or assignee. (35 U.S.C. 202(e))

(b) In all cases where the individual contribution of the VA employee coinventor is such as equitably to warrant granting such title in the invention as the United States might otherwise obtain to said employee under 37 CFR 100.6(b)(2), such title shall be granted to the employee coinventor in accordance with the procedures in 37 CFR 100.1 through 100.11 and §§ 1.650 through 1.666 of this chapter. Any decision adverse to the VA employee coinventor under this paragraph may be appealed to the Commissioner of Patents and Trademarks in accordance

with the procedures set forth in 37 CFR 100.7. (35 U.S.C. 202(e))

(c) In cases not covered by paragraphs (a) and (b) of this section where the contractor's contribution to the research giving rise to the invention has been preponderant (over 50 percent) in comparison to that of the VA, where the VA official or officials responsible for approving the VA's contribution to the research have been kept informed of the contractor's involvement, and the contractor has made a request for assignment of rights which meets the time limits and other requirements of § 1.639, the VA shall assign to the contractor whatever rights it may acquire in the invention from its employee(s), and may, in its discretion, assign such rights to the contractor under circumstances where the above criteria are not met. Any assignment shall be subject to the applicable conditions set forth in OMB Circular A–124, except as modified herein. (35 U.S.C. 202(e))

§ 1.641 Expenditures by contractor in pursuing a patent prior to agency assignment or transfer.

Any expenditures by the contractor pursuing a patent application prior to any assignment of rights to the contractor by the VA are at the contractor's risk. The contractor is not entitled to any reimbursement from the VA for such expenditures should the VA retain rights. The VA shall not consider such expenditures as part of the contractor's contribution in determining rights, except when immediate action is necessary to avoid bars to filing. (35 U.S.C. 202(e))

§ 1.642 Conditions of assignment or transfer.

(a) The United States Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the invention throughout the world and shall have the additional rights to sub-license any foreign government or international organization pursuant to any existing or future treaty or agreement. (35 U.S.C. 202(c)(4))

(b) In the event the contractor shall execute a royalty-bearing license agreement in the invention, the contractor shall pay the VA employee coinventor $300 per year for each year any such royalty-bearing license agreement is in effect or shall make such annual payments to the VA employee coinventor as it would make were that VA employee an employee of the contractor, whichever annual amount is greater. (35 U.S.C. 202 (c)(7)(C), (e))

(c) All other conditions of assignment or transfer as set forth in Attachment A of OMB Circular A–124, are applicable, except as modified herein in accordance with part 17 of OMB Circular A–124. (35 U.S.C. 202(e))

§ 1.643 March-in procedures.

Whenever the VA receives information that it believes might warrant the exercise of march-in rights to request or grant a license under paragraph j. of the clause of Attachment A of OMB Circular A–124, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. If no comments are received from the contractor within 30 days, the VA may proceed in accordance with paragraphs (a) through (f) of this section. If a comment is received, then the VA shall, within 60 days thereafter, initiate the procedures stated in paragraphs (a) through (f) of this section or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified. (35 U.S.C. 203; OMB Circular A–124, part 13)

(a) If a march-in proceeding is to be initiated, it shall be initiated by issuance of a written notice by the VA to the contractor and its assignee or licensee, if any. The notice should include the reasons for the proposed march-in terms sufficient to place the contractor on notice of the facts upon which the action is based, and the specified field or fields of use in which the VA is considering licensing. The notice shall advise the contractor of its rights, as set forth in paragraph (c) of this section. (OMB Circular A–124, part 13(c))

(b) Within 30 days of receipt of the written notice, the contractor may submit, in person, in writing, or through a representative, information or argument in opposition to the proposed march-in. If the information presented raises a genuine dispute over material facts, the Office of the General Counsel shall either undertake the matter or refer it to another official for fact-finding. (OMB Circular A–124, part 13(d))

(c) During the fact-finding process, the contractor shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront such persons as may be presented. A transcribed record of any hearing shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the VA and the contractor. Any portion of such hearing involving testimony or evidence concerning utilization or obtaining utilization by the contractor, its assignee, or licensee, shall be closed to the public, including potential licensees. (OMB Circular A–124, part 13(e)).

(d) The official conducting the fact-finding shall prepare written findings of fact for the Office of the General Counsel promptly after conclusion of the fact-finding proceeding. A copy shall be sent to the contractor (assignee or licensee) by registered or certified mail. (OMB Circular A–124, part 13(f)).

(e) The Office of the General Counsel shall base the determination on the facts found, any other information submitted by the contractor, and the administrative record. The Office of the General Counsel may reject only those facts found that are clearly erroneous. Written notice of the determination shall be sent to the contractor, its assignee, or licensee, by certified or registered mail within 90 days after completion of the fact-finding process or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercised. (OMB Circular A–124, part 13(g))

(f) The VA may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights. (OMB Circular A–124, part 13(f))

§ 1.644 Appeals

(a) The following actions may be appealed by the contractor to the Administrator of Veterans Affairs or designee:

(1) Any decision by the Office of the General Counsel that the United States Government shall retain title in and to the invention under the provisions of § 1.640(c). (35 U.S.C. 202(e))

(2) A refusal to grant an extension of time under § 1.639(c) or a refusal to extend any of the filing periods set forth in paragraph c.(3) of the clause of Attachment A to OMB Circular A–124.

(3) A request for conveyance of title under those conditions set forth in paragraph d. of the clause of Attachment A to OMB Circular A–124.

(4) A refusal to grant a waiver under paragraph i. of the clause of Attachment A to OMB Circular A–124.

(5) A refusal to approve an assignment under paragraph k.(1) of the clause of Attachment A to OMB Circular A–124.

(6) A refusal to approve an extension

of the exclusive license period under paragraph k.(2) of the clause of Attachment A to OMB Circular A–124. (OMB Circular A–124, part 14)

(b) The appeal shall be in writting, shall set forth with specificity the basis for the appeal and shall be postmarked within 60 calendar days of receipt of the action being appealed. If a dispute as to the factual basis for a conveyance of title under paragraph (a)(2) of this section arises, including any dispute as to whether an invention is a subject invention, will be subject to the fact-finding procedures of § 1.643. (OMB Circular A–124, part 14(b))

(c) Any decision to revoke or modify the contractor's license to the extent necessary to achieve practical application of the subject invention under paragraph e.(2) of the clause of Attachment A to OMB Circular A–124, in accordance with the procedures set forth in paragraph e.(3) of the same clause, may be appealed to the Administrator of Veterans Affairs under the provisions of § 1.666. (35 U.S.C. 202(e); OMB Circular A–124, part 14(b))

[FR Doc. 85–8705 Filed 4–11–85; 8:45 am]

BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2817–3]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; Extension of the public comment period.

SUMMARY: On January 31, 1985 (50 FR 4537), USEPA proposed rulemaking on the Indiana Lake County total suspended particulate (TSP) plan. The State and the Lake County Attainment Task Force (LCATF) requested an extension to the public comment period. USEPA is extending the public comment period to May 15, 1985.

DATE: Comments must be postmarked on or before May 15, 1985.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Darborn Street, Chicago, Illinois 60604.

Copies of the SIP revision material and the comment period extension requests are available at the following addresses for review: (It is recommended that you telephone Robert B. Miller, at (312) 886–6031, before vising the Region V office.)

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On January 31, 1985, USEPA proposed for public comment to disapprove a TSP plan for Lake County, Indiana which was developed by the LCATF and submitted by the State. A 60-day comment period was provided, and comments were due by April 1, 1985. On February 27, 1985, the State requested a 90-day extension to the public comment period because of a large amount of material that the State had collected which it wished to review prior to commenting on USEPA's proposal. On March 5, 1985, the LCATF requested a 6-month extension of the comment period until September 30, 1985, so that it could adequately comment on the technical issues. A detailed discussion of the steps that the LCATF plans to follow were included, which basically contemplated the development of a revised technical support package for the plan currently before USEPA. On March 20, 1985, the State too requested an extension to the public comment period until September 30, 1985, in order to allow for the remodeling of the Lake County area.

USEPA has reviewed the State's and the LCATF's extension requests and has determined that a 45-day extension of the public comment period until May 15, 1985 is warranted. USEPA believes that this extension should give parties ample time to comment on key issues concerning USEPA's proposed disapproval. The denial of the 6-month extension, of course, does not preclude Indiana from the development of a revised play if it so wishes, but does allow USEPA to act on the plan currently in front of it in a timely manner.

(42 U.S.C. 7410, 7502, and 7601)

Dated: April 1, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–8825 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 65

[A–5–FRL–2815–8]

Federal and State Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for C.W. Zumbiel Company

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an Administrative Order to C.W. Zumbiel Company ("Zumbiel"). The Order requires the company to bring volatile organic hydrocarbon emissions from its rotogravure printing lines in Norwood, Ohio, into compliance with Ohio Rule 3745–21–09(Y), part of the federally-approved Ohio State Implementation Plan (SIP). The company is unable to comply with this regulation at this time, and the proposed Order would establish an expeditious schedule requiring final compliance by November 1, 1985. Source compliance with the Order would preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before May 13, 1985. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held twenty-one days after notice of the date, time, and place of the hearing which will be provided in a separate notice in the **Federal Register**.

ADDRESS: Comments and requests for a public hearing should be submitted to the Office of Regional Counsel, EPA, Region V, 230 S. Dearborn, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Carey S. Rosemarin, Assistant Regional Counsel, Office of Regional Counsel (5C–16), EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 at (312) 353–2094.

SUPPLEMENTARY INFORMATION: Zumbiel operates package rotogravure printing lines at its facility in Norwood, Ohio. The proposed Order addresses volatile organic compound (VOC) emissions from Presses #50 (P001) and #51 (P002), both of which are subject to Ohio Rule 3745–21–09(Y), which is part of the federally-approved Ohio State Implementation Plan. That section limits the emissions of VOCs from package rotogravure printing lines.

The proposed Order requires final compliance with the emission limitations of Rule 3745–21–09(Y)(1)(b) by November 1, 1985, by the installation of add-on control equipment which complies with Rule 3745–21–09(Y)(1)(b). The Order provides that this equipment must be installed by September 15, 1985. Zumbiel has consented to the terms of the Order, and has agreed to meet the Order's increments during the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). If the Order is issued, compliance by the source with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded. Zumbiel has been notified that it is subject to, and may be required to pay a noncompliance penalty under, section 120 of the Act.

Comments received by the date specified above will be considered in determining whether EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: March 29, 1985.

Valdas V. Adamkus,

Regional Administrator, Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter 1, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

By adding an entry to the Table in § 65.400, *Federal Delayed Compliance Orders*, issued under Section 113(d) (1), (3), and (4) of the Act, as follows:

Source	Location	Order No.	SIP Regulation(s) involved	Date of FEDERAL REGISTER proposal	Final compliance date
C.W. Zumbiel Co.	Norwood, OH	To be assigned	Rule 3745–21–09(Y)	Date of publication of this notice	11/1/85

(42 U.S.C. 7413(d) and 7601)

[FR Doc. 85–8581 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

[BERC–297–P]

Medicaid Program; Treatment of Social Security Cost of Living Increases for Individuals Who Lose SSI Eligibility

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would revise current Medicaid rules for determining financial eligibility for an individual who is no longer eligible for benefits under title XVI of the Social Security Act, the Supplemental Security Income (SSI) Program, due to receipt of cost of living increases (COLAs) under section 215(i) of the Social Security Act. This change would affect categorically needy eligibility in all States by requiring that any individual who would still be entitled to benefits under the SSI program but for receipt of a section 215(i) COLA after April 1977 must be treated as if he or she were still receiving those SSI benefits. This proposal would not apply in Puerto Rico, Guam, the Virgin Islands, and American Samoa, where the SSI program is not in effect.

This proposed revision is made pursuant to a decision of the United States District Court for the Northern District of California. That decision invalidated the existing provision of the Medicaid regulations under which individuals who were no longer eligible for SSI benefits qualified for Medicaid only when a section 215(i) COLA was the specific cause of the loss of SSI benefits.

DATES: To assure consideration, comments must be received by June 11, 1985.

ADDRESS: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–297–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland. In commenting, please refer to BERC–297–P.

Comments will be available for public inspection as they are received, beginning approximately three weeks from today, in Room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC., 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Roy Trudel, (301) 594–9128.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1902(a)(10)(A) of the Social Security Act (the Act), 42 U.S.C. 1396a(a)(10)(A), in most States an individual who receives supplemental security income (SSI) under title XVI of the Act is eligible for Medicaid as a categorically needy individual. Under section 212(a) of Pub. L. 93–66, 42 U.S.C. 1382 (note), a State must provide an eligible aged, blind, or disabled individual with a State supplementary payment (SSP) if that individual received State assistance for the aged, blind, or disabled in December 1973 and his or her income for that month exceeded the amount later received under SSI, plus other income. Under Medicaid regulations at 42 CFR 435.130, a State must provide categorically needy coverage to an individual receiving such a mandatory SSP. This means that under Medicaid an individual who receives a mandatory SSP is treated as if he or she receives SSI.

In addition, under section 1616(a) of the Act, 42 U.S.C. 1382e(a), a state may choose to provide an optional SSP based on need to an individual who is eligible for SSI or would be eligible for SSI except for his or her income. Under section 1902(a)(10)(A)(ii)(IV) of the Act,

42 U.S.C. 1396a(a)(10)(A)(ii)(IV), and Medicaid regulations at 42 CFR 435.230, an individual who receives an optional SSP and who would be eligible for SSI except for his or her income, may be covered by a State as an optional categorically needy individual. (In the following discussion, the term "SSI" includes mandatory and optional SSP as well; and "loss of SSI" means loss of all such benefits the individual was receiving.)

Some SSI recipients also receive cash payments under title II of the Act, Federal Old-Age, Survivors, and Disabled Insurance Benefits (OASDI" or "social security"), in amounts low enough that they continue to meet the income eligibility criteria for the SSI program. As OASDI recipients, these individuals receive annual OASDI cost of living increases (COLAs) including those provided for in section 215(i) of the Act, 42 U.S.C. 415(i). Under general Medicaid rules, if this annual increase raises a recipient's income above the SSI limit, disqualifying that individual from further benefits under the SSI program, the result could be the loss of categorically needy eligibility for Medicaid benefits. To address this issue, in 1977 Congress enacted section 503 of Pub. L. 94–566, 42 U.S.C. 1396a (note), (commonly known as the "Pickle amendment), so that an OASDI COLA made under section 215(i) of the Act does not result in loss of Medicaid, even though receipt of the COLA did result in the loss of SSI.

Because we believed that Congress intended this amendment to mean that section 215(i) COLAs would be excluded in calculating Medicaid eligibility only when such an increase was the specific cause of the loss of SSI, we went through notice and comment rulemaking and issued regulations to that effect.

II. Court Orders

In 1981 in *Ciampa* v. *Schweiker*, 511 F. Supp. 670 (D. Mass. 1981), the United States District Court for the District of Massachusetts ordered us to provide categorically needy Medicaid coverage to individuals who reside in Massachusetts who once received Medicaid because of their entitlement to SSI, whenever they would requalify for these benefits "but for" section 215(i) COLAs paid after April 1977. This means that if a former Medicaid recipient who is currently ineligible for SSI for any reason, would still be eligible for SSI "but for" the amount of income from section 215(i) COLAs received since April 1977 by the individual after the last month he or she was both eligible for and received SSI benefits and was entitled to OASDI, then that individual is still eligible for categorically needy Medicaid benefits. That decision was affirmed by the Court of Appeals for the First Circuit in *Ciampa* v. *Secretary of Health and Human Services*, 687 F.2d 518 (1st Cir. 1982). We therefore substituted this "but for" test for the previously used "solely" test in Massachusetts.

In 1984, the United States District Court for the Northern District of California considered the same issue, certified a nationwide class (except for individuals who were already under the "but for" test), and ordered the Secretary to rescind the regulations at 42 CFR 435.135 that govern the effect of section 215(i) COLAs on the determination of categorically needy eligibility under Medicaid. (*Lynch* v. *Rank*, Civil Action No. 83–2340 (N.D. Cal. March 9, 1984)). That court also ordered us to prepare new regulations consistent with the findings of the Court of Appeals in the *Ciampa* case. Thus, as required by the United States District Court for the Northern District of California, we would amend our regulations to provide that an individual, who is not now eligible for SSI but would be eligible for SSI if section 215(i) COLAs received after April 1977 after the individual's last month of eligibility for and receipt of SSI as well as entitlement to OASDI were ignored in counting the individual's income, must be treated as an SSI recipient for purposes of determining categorically needy eligibility under Medicaid.

In addition, as required by the *Lynch* Court, we have notified the States that they are to stop applying the "solely" test and instead to substitute the "but for" test. This proposal is consistent with that notice. The *Lynch* decision was recently affirmed by the Court of Appeals for the Ninth Circuit in *Lynch* v. *Rank*, 747 F.2d 528 (9th Cir. 1984).

III. States That Do Not Follow SSI Rules in Establishing Medicaid Eligibility

Under section 1902(f) of the Act, 42 U.S.C. 1396a(f), as enacted by section 209(b) of Pub. L. 92–603, a State may use more restrictive Medicaid eligibility criteria for the aged, blind, and disabled than those applied nationally for determining eligibility under SSI. A State may choose to cover only those individuals who would have been eligible under the criteria of its Medicaid plan in effect on January 1, 1972, or a State may employ criteria different than its January 1, 1972 plan, but not more liberal than current SSI criteria. Thus, in the 14 States currently applying the 1902(f) option ("1902(f) States"), eligibility for SSI benefits does not automatically guarantee Medicaid eligibility because these States may apply a more restrictive test for categorically needy eligibility. Because the *Lynch* Court specifically stated that its decision applied to all States except Massachusetts, States that do not base Medicaid eligibility on SSI eligibility must nonetheless treat individuals covered by the Pickle amendment (as defined by these regulations) in the same manner as they would treat SSI recipients for Medicaid eligibility purposes. (This does not necessarily guarantee eligibility for Medicaid, because, in 1902(f) States, SSI recipients only receive Medicaid under certain conditions.)

IV. Proposed Changes to the Regulations

We would revise 42 CFR 435.135 to specify that in determining categorically needy eligibility for Medicaid, States must treat an individual as if he or she were receiving SSI if he or she—

(1) Is receiving OASDI benefits;

(2) Was receiving SSI but became ineligible for those payments after April 1977; and

(3) Would still be eligible for SSI if the section 215(i) COLAs received since April 1977 after the last month of both eligibility for and receipt of SSI and entitlement to OASDI were not counted as income.

Even though the express terms of the current 42 CFR 435.135 refer to individuals who were receiving SSI or optional SSP only, it has always been our intent that this section apply to individuals who were receiving mandatory SSP as well. This is because under 42 CFR 435.130, States must provide Medicaid to individuals receiving mandatory SSP, and thus for this purpose must treat individuals who receive mandatory SSP as if they were receiving SSI. We are changing the regulation at 42 CFR 435.135 by eliminating the word "optional" to clarify that it applies to individuals who received SSI, mandatory SSP, or optional SSP.

We have clarified the wording of 42 CFR 435.135(a) to indicate that only COLAs received *after* the last month of both eligibility for and receipt of SSI and entitlement to OASDI would not be counted as income. Although this is the same policy as in the current regulation, it may not have been stated clearly.

In addition, we would make editorial changes to remove gender-specific language in 42 CFR 435.135.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in the Executive Order.

As noted previously, we are required to publish proposed rules for determining categorically needy eligibility under Medicaid for individuals not currently eligible for SSI who would be eligible for SSI but for the receipt of OASDI COLAs under section 215(i) of the Act after April 1977. These individuals were dually entitled to OASDI and SSI, but lost their SSI benefits sometime after April 1977. If section 215(i) COLAs received after the last month of receipt of SSI after April 1977 were not counted as income, these individuals would be eligible for SSI and thus possibly eligible for categorically needy Medicaid benefits. (Other individuals who lost categorically needy eligibility solely because of receipt of section 215(i) COLAs would not be affected by this proposal because their eligibility has been protected under existing regulations.)

This change would restore categorically needy Medicaid eligibility to a number of individuals. Current estimates suggest that 500,000 or more individuals nationwide may have to be contacted to identify those who would still be eligible but for receipt of section 215(i) COLAs. We expect that many of those identified during the screening will be found to be unaffected by this proposal, even if its requirements had been applied at the time they lost their eligibility. In addition, some of those who would have retained categorically needy eligibility will not be affected at this time due to institutionalization, death, or other changes of circumstances.

Based on the data currently available to us, we estimate that implementation of this proposal would restore categorically needy eligibility to about 20,000 aged or disabled individuals who have lost categorically needy eligibility since 1977, and who have not become otherwise eligible for Medicaid benefits. In addition, this proposed change would result in about 3,000 to 4,000 individuals per year retaining categorically needy eligibility that they would lose under the current regulations. Medicaid enrollment for FY 1985 is projected to be 22.9 million, 6.3 million of whom are aged or disabled. Thus, we estimate that, during the first year, implementation of this proposal would increase total Medicaid enrollment by less than 0.1 percent and would increase aged and disabled Medicaid enrollment by about 0.3 percent.

Each additional individual who becomes categorically eligible for Medicaid under these rules would increase Federal Medicaid expenditures by an amount less than the estimated average annual Medicaid cost for all recipients, since the characteristics of the affected individuals are such that we know that they are most likely not institutionalized, and that nearly all have Medicare, which acts as primary payor for dually eligible individuals. In addition, many of the individuals who may have been denied categorically needy eligibility receive Medicaid benefits under the medically needy eligibility option that is available in 34 States, and the change of their status under this proposed rule would have a negligible effect on program costs. We estimate that implementation of this proposal would increase Federal Medicaid expenditures by about $5 million the first year. Even using pessimistic assumptions about the size of the group affected, we project that it would be highly unlikely that our estimate of Medicaid costs, as shown below, would triple. We project that Federal Medicaid expenditures would increase as follows over the next several years. State expenditures would increase correspondingly.

Fiscal year	Federal expenditure increase [1]
1985	$5
1986	10
1987	15

[1] These estimates are rounded to the nearest $5 million.

These increased expenditures would have some economic impact in that they would, to some extent, result in increased Medicaid revenues received by providers and reduce out-of-pocket medical costs for the affected individuals. However, we have determined that these effects would not meet any of the Executive Order criteria for identifying major rules. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Pub. L. 96–354, requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction", which means "governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand." States are not included in this definition. In addition, since they are individuals, Medicaid recipients are not considered small entities under the Regulatory Flexibility Act. However, all nonprofit and most for-profit providers of Medicaid services are considered small entities under the Regulatory Flexibility Act. In determining whether a regulatory flexibility analysis is required, we must, therefore, consider whether this change would have a significant impact on a substantial number of providers.

Generally, we consider a proposal to have a significant impact on a group of entities if it would affect their total revenues by 3 percent or more. Currently, about 20,000 individuals and entities provide medical services under Medicaid. In FY 1982, these providers were paid a total of nearly $30 billion. We assume that, absent any information to the contrary, any additional income resulting from this proposed change would be distributed among all providers in the same proportion as their current Medicaid income. Lacking data on total revenue for all 20,000 potentially affected providers, we considered whether this proposal would affect their aggregate annual Medicaid income by 3 percent.

We believe it would be highly unlikely that this proposal would increase Medicaid enrollment or expenditures by 3 percent, even in view of the difficulty in determining with certainty the number of individuals whose eligibility status would be affected. As discussed above, we estimate that the first year effects of implementing this proposal would be to increase Medicaid enrollment by less that 0.1 percent, and to increase Federal Medicaid expenditures by about $5 million. Neither of these would constitute or produce a significant economic impact on the aggregate Medicaid revenues of providers. For these reasons, we have determined and the Secretary certifies, under 5 U.S.C. 605(b), that this proposed rule would not result in a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

VI. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or

respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to them in the preamble of the rule.

List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

42 CFR Part 435 would be amended as set forth below:

1. The authority citation reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.135 is revised to read as follows:

§ 435.135 Individuals who become ineligible for cash assistance as a result of OASDI cost-of-living increases received after April 1977.

(a) If an agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, it must provide Medicaid to individuals who—

(1) Are receiving OASDI;

(2) Were receiving SSI or State supplements but become ineligible for those payments after April 1977; and

(3) Would still be eligible for SSI or State supplements if the mount of OASDI cost-of-living increases paid under section 215(i) of the Act, after the last month after April 1977 for which those individuals were both eligible for and received SSI or a State supplement and were entitled to OASDI, were deducted from income.

(b) Cost-of-living increases include the increases received by the individual or his or her financially responsible spouse.

(c) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis a Medicaid is provided to individuals continuing to receive SSI or State supplements. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy, the agency must cover that individual as categorically needy. In determining the amount of his or her income, the agency may deduct the cost-of-living increases paid under section 215(i) after the last month after April 1977 for which that individual was both eligible for and received SSI or a State supplement and was entitled to OASDI.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: January 15, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: March 22, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-8792 Filed 4-11-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 25; Notice 59]

Uniform Tire Quality Grading Standards; Denial of Petition for Reconsideration

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: On December 19, 1984, this agency published a final rule reinstituting treadwear grading requirements under the Uniform Tire Quality Grading Standards (UTQGS). The schedule set forth in that rule for reinstituting those requirements was identical to the schedule which the United States Court of Appeals for the District of Columbia Circuit ordered the agency to adopt.

Petitions for reconstruction of that rule were filed on January 17 and 18, 1985. The petitions stated that the postponement of parts of the schedule was necessary because the grades which would be achieved by these two types of tires, when measured against the new course monitoring tires (CMT's) in conjunction with the new base course wear rates (BCWR's), would be substantially lower than the grades which would have been achieved had the same tires been measured against the old CMT's and the old BCWR's. The petitions claimed that this would result in much lower grades for tires which had undergone no appreciable design changes, and lead to the anomaly where bias ply tires, which traditionally had been assigned the lowest treadwear grades, would now be graded higher than many, if not most, bias belted and radial tires.

NHTSA promptly initiated its own testing to learn if these concerns were well-founded. This testing showed that the agency's departure from its previous practice of calculating the BCWR by relating the wear rate of the new CMT's to the wear rate of the old CMT's had indeed created the problems reported by petitioners. Based on the results of that testing, NHTSA made adjustment to the BCWR's assigned to the new bias belted and radial CMT's. These adjustments solved the problem noted by the petitioners without necessitating a postponement of the effective dates set forth in the December 19 final rule.

For this reason and because NHTSA is unaware of any other reasons for postponing those dates, the petitions are denied.

FOR FURTHER INFORMATION CONTACT: William Boehly, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: NHTSA suspended treadwear grading requirements under the UTQGS at 48 FR 5690, February 7, 1983. This action was taken after the agency found high levels of variability in treadwear test results and in the grade assignment practices of the various tire manufacturers. This variability resulted in a substantial likelihood that treadwear information being provided to the public under this program would be misleading, i.e., that the assigned grades could, in many instances, incorrectly rank the actual treadwear performance of different tires.

On April 24, 1984, the United States Court of Appeals for the District of Columbia Circuit vacated the agency's suspenion of the treadwear grading requirements in *Public Citizen* v. *Steed*, 733 F.2d 93. That same court issued an order of October 31, 1984, directing NHTSA to reinstitute treadwear grading according to the following schedule.

SCHEDULE

	Bias ply tires	Bias belted tires	Radial tires
Tire manufacturers complete testing	Nov. 7, 1984	Feb. 1, 1985	Mar. 1, 1985.
Affix paper labels and submit brochures to NHTSA for review	Dec. 15, 1984	Mar. 1, 1985	Apr. 1, 1985.
Distribute brochures to the public	Jan. 15, 1985	Apr. 1, 1985	May 1, 1985.
Modify all molds to include treadwear	May 15, 1985	Aug. 1, 1985	Sept. 1, 1985.
Include treadwear grading in vehicle manufacturer's consumer information booklet.	Sept. 1, 1985	Sept. 1, 1985	Do.

NHTSA published a final rule reinstituting the treadwear grading requirements under UTQGS at 49 FR 49293, December 19, 1984. The schedule set forth in that rule for reinstituting those requirements was identical to the schedule set forth in the court's October 31 order.

Petitions for reconsideration of the effective dates set forth for bias belted and radial tires in the December 19 final rule were filed by the Goodyear Tire & Rubber Company on January 17, 1985, and by the Rubber Manufacturers Association (RMA) on January 18, 1985. These petitions sought a delay in the effective dates of the treadwear grading requirements for the bias belted and radial tires. They argued that the new CMT's for these tire types, when used in conjunction with the new BCWR's, would result in treadwear grades which were substantially lower than the grades which would have been achieved by the same tires if the old CMT's and the old BCWR's were used. According to RMA's petition, this would result in the establishment of a new treadwear grading system, rather than a simple reimplementation of the previous grading system.

The test results and other data presented in support of the RMA's petition for reconsideration indicated that the treadwear grades to be assigned these tire types using the new course monitoring tires and the new base course wear rates were significantly lower than NHTSA had anticipated. Petitioners claim that this would result in much lower grades for tires which had undergone no appreciable design changes, and lead to the anomaly where bias ply tires, which traditionally had been assigned the lowest treadwear grades, would now be graded higher than many, if not most, bias belted and radial tires. Given these contentions, NHTSA promptly instituted its own testing to see if the concerns were well-founded. This testing showed that the agency's departure from its previous practice of calculating the BCWR for a new CMT by relating the wear rate of the new CMI's to the wear rate of the old CMT's created the problems reported by the petitioners.

NHTSA's testing of the bias belted course monitoring tires began on January 22, 1985, and ended on January 30. As a result of its testing, NHTSA announced on January 31, 1985, that the base course wear rate for the new bias belted course monitoring tires was changed from the previously assigned level of 10.62 mils per 1000 miles to 6.94 mils per 1000 miles. NHTSA's testing of the radial course monitoring tires began on January 31, 1985, and ended on February 25. The testing let NHTSA to announce on February 28, 1985, that the base course wear rate for the new radial course monitoring tires was changed from the previously assigned level of 4.45 mils per 1000 miles to 2.89 mils per 1000 miles.

The agency believes that these adjustments to the base course wear rates for bias belted and radial tires will result in those tires achieving treadwear grades comparable to those which they would have achieved if measured against the old course monitoring tires and the old base course wear rates. Moreover, these adjustments were made promptly enough so that there was no need for the agency to consider seeking a postponement of the dates for reinstituting the treadwear grading requirements.

In view of the foregoing, the agency is denying the petitions for reconsideration. Without justificaton for a postponement, the agency can neither seek a change in the court's October 31 order, a prerequisite to rulemaking, nor conduct rulemaking to postpone any dates adopted in the December 19 final rule. The adjustments to base course wear rates removed any basis in the petitions for postponing the dates for reinstituting treadwear grading for bias belted and radial tires. Since the agency is unaware of any other reason that would justify postponing those dates, NHTSA is not taking any action to change the schedule in the court's October 31 order or the agency's December 19 final rule.

(Secs. 103 and 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegation of authority at 49 CFR 1.50)

Issued on April 9, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85–8899 Filed 4–9–85; 5:03 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-14)]

Rail Abandonments; Offers of Financial Assistance

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to modify its regulations at 49 CFR 1152.27 governing offers of financial assistance under 49 U.S.C. 10905. The proposed regulations require offerors to submit the evidence in support of their requests to set terms with that request. Reply evidence is to be submitted 15 days later and rebuttal evidence would be permitted 10 days after the replies are filed. This will enable the Commission to meet statutory deadlines and analyze the evidence of record.

DATES: Comments are due on June 11, 1985.

ADDRESSES: An original and 15 copies of comments referring to Ex Parte No. 274 (Sub-No. 14) should be sent to:.

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275–7245;

or

Wayne A. Michel, (202) 275–7657.

SUPPLEMENTARY INFORMATION: The text of the proposed rules follows as an appendix to this notice. Additional information is contained in the Commission's full decision. To obtain a copy of the full decision contact Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275–7428..

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities because the general purpose is to protect the rights of parties to have balanced and quick resolution to their request to have the Commission set the terms for sale or subsidy.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedures, Railroads.

This rulemaking notice is issued under the authority of 5 U.S.C. 553 and 49 U.S.C. 10321 and 10905.

Dated: April 1, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49 of the CFR is proposed to be amended as follows:

PART 1152—[AMENDED]

Section 1152.27 is proposed to be amended by revising paragraph (h)(4) to read as follows:

§ 1152.27 Financial assistance procedures.

* * * * *

(h) * * *

(4) All evidence and information supporting the request to set terms must be submitted with the request. Replies to this evidence are due within 15 days of the request. Rebuttal evidence may be submitted up to 25 days after the request was filed. Evidence and information submitted after these dates may be rejected.

* * * * *

[FR Doc. 85-8905 Filed 4-11-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international shipment of certain wildlife and plant species, which are listed in appendices to this 88-nation treaty. Any nation that is a Party to CITES May propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces decisions by the Fish and Wildlife Service on negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States. The proposals will be considered in April and May 1985 at the fifth regular meeting of the Parties in Buenos Aires, Argentina.

DATE: Proposals discussed in this notice will be subject to voting by Party nations on May 2 and 3, 1985. Any of these proposals that are adopted will enter into effect 90 days later (i.e., on August 1, 1985).

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 537, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653-5948, fts 653-5948.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation and for which it needs cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Seretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and interested intergovernmental bodies and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting

Decisions

This notice announces negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties. The Service announced the proposals and invited comments on tentative negotiating positions in the February 7, 1985, **Federal Register** (50 FR 5279). Proposals submitted by the United States were described in the December 14, 1984, **Federal Register** (49 FR 48775).

It is neither practical nor in the best interests of the United States to establish inflexible negotiating positions on proposals in advance of the meeting. However, decisions announced in this notice represent formal guidance to the delegation, which will seek to obtain agreement of the Conference of the Parties with these positions. Such positions will only be modified if the U.S. delegation finds it necessary to do so in response to new information during the meeting in Argentina.

Comments Received

The Service received verbal comments at a public meeting on February 13, 1985, and written comments in response to the February 7, 1985, Federal Register notice. These comments and the Service's response to them are discussed below.

1. *Mammals*—Dr. S. McGreal of the International Primate Protection League transmitted comments from Dr. B. Hrdy in opposition to the proposed transfer of the gray or Hanuman langur (*Presbytis entellus*) from Appendix I to Appendix II. Dr. Hrdy stated that increasing human pressure means that every population of langurs near a settled area is potentially endangered. The Service anticipates that the langurs are likely to be affected by such human pressure, but notes that *P. entellus* is not currently threatened with extinction and, therefore, would be more appropriately listed in Appendix II. There is no evidence that such a transfer would result in greater international trade in this species.

The Marine Mammal Commission, Dr. J. Grandy of the Humane Society of the United States, and Mr. C. Van Note of Monitor commented in support of the proposed transfer of the narwhal (*Monodon monoceros*) from Appendix II to Appendix I. The Marine Mammal Commission and Mrs. C. Stevens of the Society for Animal Protective Legislation commented in support of adding the hooded seal (*Cystophora cristata*) to Appendix II. The Service

agrees with these comments, based on currently available information. New information that Canada recently supplied on the population status of these species and the trade in them is under review and will be considered by the U.S. delegation.

The Wildlife Conservation and Management Committee of the American Association of Zoological Parks and Aquariums (AAZPA) commented in opposition to the proposed transfer of the Chinese population of the leopard cat (*Felis bengalensis bengalensis*) and the entire species of Asiatic black bear (*Selenarctos thibetanus*) from Appendix I to Appendix II, on the grounds that this move could further threaten populations of these animals in other parts of their range. The same views were expressed by the New York Zoological Society, TRAFFIC (U.S.A.) (with respect to the bear only), and by Mr. E.D. Asper of Sea World of Florida.

In response, the Service has decided to oppose the proposal on the bear unless evidence of satisfactory population status is presented in support of the transfer from other countries in which it occurs. Regulation of trade in leopard cats at the subspecies level is made difficult by identification problems; pelts of the different subspecies are almost indistinguishable. *F. b. bengalensis* is now listed in Appendix I, but all 4 or 5 other subspecies are in Appendix II. Thus, transfer of the Chinese population of *F. b. bengalensis* to Appendix II should not have much effect on populations of these animals in other parts of their range. The Service intends to support this proposal.

Mr. D.E. Moore of the Burnet Park Zoo in Liverpool, New York, supplied information on trade in the fennec fox (*Vulpes (Fennecus) zerda*) as pets, and urged that the United States support a proposal to add the species to Appendix II. Mr. Moore indicated that he had been unable to find any data on the status of wild fennec populations, which is one reason the Service tentatively opposed the proposal. If information about population status becomes available, the U.S. delegation might support the proposal, but not otherwise. The current inclusion of this species in Appendix III by Tunisia appears to be more appropriate.

2. *Birds*—The Wildlife Conservation and Management Committee of AAZPA, the New York Zoological Society, and Mr. E.D. Asper of Sea World commented in support of the proposed transfer of the scarlet macaw (*Ara macao*) from Appendix II to Appendix I. AAZPA noted that while the species is not endangered throughout its range, some populations are certainly in trouble and need protection. The Service notes that listing the species in Appendix I could reduce the threat of trade for those populations at risk, but also that the species as a whole does not appear to be currently threatened. Under these circumstances, the Service finds it difficult to support the proposal in the absence of information from countries in which the species occurs, other than from the proponent, Costa Rica.

TRAFFIC (U.S.A.) commented, with respect to the proposed transfer of the great green macaw (*Ara ambigua*), from Appendix II to Appendix I, that the species has a fairly restricted range and that populations are reported as suffering from habitat loss, but that there does not appear to be significant trade demand for the species on the basis of U.S. import data. The Service finds that the proposal does not present a strong case for Appendix I listing, but that on balance, such listing appears to be appropriate.

Support for the proposed transfer of the North American gyrfalcon *(Falco rusticolus)* population from Appendix II to Appendix I were voiced by Ms. F. Lipscombe of the National Audubon Society and by TRAFFIC (U.S.A.). Comments in opposition to the proposal were submitted by Dr. T.J. Cade of Cornell University, Mr. R.B. Berry of the North American Raptor Breeders' Association, Mr. R. Thacker of the North American Falconers Association, and Mr. J.H. Glass of the Wildlife Legislative Fund of America.

Comments in favor of the proposal were (1) there appears to be a fairly widespread practice of declaring wild-caught gyrfalcons to be captive-bred in order to obtain CITES certificates; (2) there is a relatively high volume of trade in these birds in various world markets; (3) there are apparently illegal trade problems; and (4) there is similarity in appearance to the Appendix I Eurasian gyrfalcon.

Comments against the proposal were (1) the best available information about the population status of gyrfalcons indicates that the entire species is not threatened with extinction and should not be listed in Appendix I; (2) the species should be managed as a renewable resource by issuing a reasonable number of licenses each year for legal taking by falconers for personal use and not for commercial purposes; (3) there is no evidence that taking, either legal or illegal, has been a cause for decline in gyrfalcon populations; (4) listing in Appendix I will encourage illegal trade; and (5) the population should be kept in Appendix II to facilitate legal trade in captive-produced birds.

The Service's previous tentative position was to support the proposal on the basis of law enforcement concerns. However, there is no indication that the present Appendix II listing of North American gyrfalcons has, in itself, caused enforcement problems. The Service finds that the best available biological information supports the continued listing of this gyrfalcon population in Appendix II, not Appendix I. Regulatory mechanisms exist in CITES to prevent such listing from jeopardizing other gyrfalcon populations listed in Appendix I.

Opposition to the proposed transfer of the laggar falcon *(Falco jugger)* from Appendix II to Appendix I was stated by Dr. T. Cade and Mr. R. Berry, on the grounds that it is a common and widespread species, and by TRAFFIC (U.S.A.), who noted that population information is lacking and there does not appear to be a significant trade demand for the species. The proposal by India supplies almost no information; limited information now available to the Service indicates that this species is more appropriately listed in Appendix II.

Comments on the proposed addition of the jabiru stork (*Jabiru mycteria*) to Appendix I were submitted by TRAFFIC (U.S.A.), to the effect that there appears to be very little trade demand and the species is seemingly stable in much of South America. The Service has found that the available information does not support the proposed listing.

3. *Reptiles and Amphibians*—The Service received 21 written and 2 verbal comments in opposition to various proposals to transfer various populations of green sea turtles *(Chelonia mydas)* and hawksbill sea turtles (*Eretmochelys imbricata)* from Appendix I to Appendix II. Main points raised in these comments were (1) proposals by Indonesia and the Seychelles are not supported by biological information; (2) the Suriname ranching of green sea turtles affects a regional resource, rather than a national one, it might involve excessive harvest of eggs, and it does not provide an adequate marking scheme for products; (3) the French proposal on ranching of green sea turtles in Europa and Tromelin does not consider differences in reproductive success between the two islands, it identifies only speculative conservation benefits, and the marking scheme is inadequate; (4) the United Kingdom's proposal on ranching of green sea turtles depends on rejuvenation of a U.S. market that the

ranch will not be able to satisfy fully, conservation benefits of the ranch do not depend on international trade, and the marking scheme is inadequate; and (5) national and international efforts to curb deleterious taking and trade in sea turtles would be undercut if trade in products from certain populations were allowed.

The Service also received two written comments and one verbal comment in favor of the United Kingdom's ranching proposal for green sea turtles. Main points of these comments were (1) the ranch (Cayman Turtle farm) has exceeded the requirements of the CITES resolution on ranching; (2) commercial utilization can be a positive force in conservation of such wildlife; and (3) research and a turtle release program at the ranch potentially benefit the species.

The Service's decision, considering these comments and other information, is to support the ranching proposals by France and the United Kingdom, and to oppose proposals by Suriname on ranching of green sea turtles and by Indonesia and the Seychelles to transfer wild populations of green and hawksbill sea turtles to Appendix II. The French and United Kingdom proposals appear to meet the criteria of the resolution on ranching. The remaining questions about biological concerns and marking schemes are relatively minor and might be possible to resolve at the meeting in Argentina. The United States has introduced a draft resolution on a uniform marking scheme that is designed to minimize enforcement problems in distinguishing ranched products from wild-collected ones. As for the remaining proposals, the Service has received information that the Suriname ranch has ceased operations, and the available biological information does not support the Indonesian and Seychelles proposals.

In addition to comments on sea turtles, the Service also received several comments on proposals concerning other reptiles and amphibians. The Wildlife Conservation and Management Committee of AAZPA, the New York Zoological Society, Sea World, and the Animal Protection Institute of America commented in opposition to a proposal to transfer Australian salt-water crocodiles subject to ranching from Appendix I to Appendix II. The only reason given was that the legal trade could stimulate illegal trade. However, Papua New Guinea's population of this species already is on Appendix II, so it is not likely that moving the Australian population to that appendix would do much to stimulate further illegal trade. TRAFFIC (U.S.A.) commented that the proposal is sound, but that the U.S. delegation should consider additional safeguards on take and export by Australia. The Service has decided to support Australia's proposal, and will provide guidance to the U.S. delegation to discuss such safeguards.

Comments in opposition to proposals to transfer Nile crocodiles from Appendix I to Appendix II were made by the Florida Game and Fresh Water Fish Commission, the American Society of Ichthyologists and Herpetologists, TRAFFIC (U.S.A.), and the Animal Protection Institute of America. The thrust of the comments was that a status change to permit crocodile harvest cannot be supported without first obtaining suitable scientific information and establishing reliable and enforceable trade controls. The Service agrees with these views.

Opposition to the transfer of four species or subspecies of Asian freshwater turtles from Appendix I to Appendix II was stated by the Wildlife Conservation and Management Committee of AAZPA, the New York Zoological Society, and Mr. E.D. Asper of Sea World. Reasons given by AAZPA were that these downlistings would stimulate and open up trade in these species, which was a major cause in the original decline, and that population data do not indicate that such action would be in the best long-term interest of the species.

On the other hand, the American Association of Ichthyologists and Herpetologists recommended support for these proposals on the basis of studies indicating that the species are not in danger of extinction. TRAFFIC (U.S.A.) wrote that the turtles are exploited in Bangladesh for domestic consumption and export, and recommended that the trade monitoring issue be discussed with Bangladesh before trade restrictions are weakened. The U.S. delegation will undertake such discussions, and if results are satisfactory, support these proposals. They appear to be biologically justified.

Comments in support of the proposed addition of the Asian bullfrog, *Rana tigrina*, to Appendix II were made by TRAFFIC (U.S.A.), who felt that the listing seemed justified in light of tremendous trade levels and the potential threat to the species, especially in Bangladesh. The American Association of Ichthyologists and Herpetologists, on the other hand, indicated that the frog is quite widespread and while the situation needs to be monitored, the proposal is not justified at this time. The Service has determined that the species does not appear to be potentially threatened with extinction as a result of trade, but agrees that this situation should be monitored. The U.S. delegation will discuss such measures with representatives of the countries to export and assess whether measures taken by those countries to regulate harvest and trade are adequate to conserve the species.

4. *Corals*—The Wildlife Conservation and Mangement Committee of the AAZPA and the New York Zoological Society commented that the listing of at least some species of stony corals (Order Scleractinia) seems warranted because some corals are being exploited worldwide and some protection and monitoring may be useful. TRAFFIC (U.S.A.) added that trade demands potentially threaten many reef areas in the Pacific and Caribbean, and urged the United States to explore methods for better controlling coral trade and to encourage countries of origin to monitor exports, perhaps by including heavily-traded coral taxa on CITES Appendix III. The Service agrees with the latter recommendation; biological data do not support Appendix II listing of stony corals, but destruction of coral reefs through trade and other activities is a problem in many areas.

5. *Plants*—Australia has proposed to remove various endemic plants from Appendix II. Dr. F.T. Campbell of the Natural Resources Defense Council commented that questions about the long-term impact of extensive flower cutting and the status of particular species in some of the genera should be discussed with Australian authorities at the meeting. TRAFFIC (U.S.A.) commented in opposition to the Australian proposals for similar reasons. Dr. B.D. Morley of the Botanic Gardens of Adelaide and State Herbarium (Adelaide, Australia) expressed support for the proposed delistings, which he indicated is considered possible because of recent changes made in the legislation protecting plants in Western Australia. Dr. S.D. Hopper of the Western Australian Wildlife Research Centre sent reports providing details on the wildflower industry, and noted that he would have further reports available at the Argentina meeting on (1) the occurrence of Appendix II taxa on national parks and nature reserves, and (2) an examination of harvesting techniques used by commercial pickers. The service has concluded that the U.S. delegation should support the delisting of *Pimelea physodes*, but support other Australian plant proposals only if the concerns noted above and concerns on

adequate enforcement of Australian law can be resolved at the meeting.

Brazil has proposed the transfer of eight species of endemic orchids from Appendix II to Appendix I on the grounds that they are depleted or extirpated by horticultural collecting, illegal trade, and deforestation. Dr. F.T. Campbell of the Natural Resources Defense Council commented in support of this proposal. TRAFFIC (U.S.A.) also expressed support for the the proposal and supplied data on U.S. imports of the orchids in 1983. The Service has determined that the proposal is appropriate and that it should be supported by the U.S. delegation.

Chile has proposed the transfer of its Andean population of *Fitzroya cupressoides* (Alerce of false larch) from Appendix I to Appendix II. The coastal population of this tree in Chile was transferred to Appendix II in 1983. Comments in opposition to the current proposal were submitted by Dr. T.T. Veblen of the University of Colorado, Mr. G. Stutzin of the Comite Nacional pro Defensa de la Fauna y Flora in Chile, Dr. F.T. Campbell of the Natural Resources Defense Council, and TRAFFIC (U.S.A.). The basic concerns about this proposal are that it will aid in the reduction of existing stands of *Fitzroya*, and that there is little or no chance that the populations will be managed as a renewable resource. The Service shares these concerns, which led to the listing of *Fitzroya cupressoides* in Appendix I of CITES in 1973 and as a threatened species under the U.S. Endangered Species Act in 1979.

The Peoples Republic of China has proposed the addition of three species of rare endemic plants to Appendix I. Dr. S.L. Krugman of the U.S. Forest Service commented that most if not all of the known stands of *Cathaya argyrophylla* are under protection in China, that there is considerable scientific interest in the species, but that it is not of commercial importance. Dr. W.L. Ackerman, formerly of the U.S. National Arboretum, commented that *Camellia chrysantha* may well be an endangered species in the wild, perhaps because of the great demand for it abroad. Since 1980, it has been under rapid propagation and distribution in several countries. Although the species is maintained in cultivation, Dr. Ackerman noted that its extirpation in the wild would be a great loss for the genetic variation that may exist there. Dr. F.T. Campbell of the Natural Resources Defense Council commented in support of the proposal to add *Cycas panzhihuaensis* to Appendix I. The Service has determined that the U.S. delegation should support all three proposals, pending clarification from the Chinese delegation about the need for international protection in addition to the current national protection.

Summary of Positions

Negotiating positions of the U.S. delegation on proposals by Parties other than the United States are summarized in the following table.

Species	Proposed amendment	Proponent	U.S. position
Mammals:			
Order Primates:			
Alouatta pallista (mantled) howler monkey	Remove from I	Costa Rica	Oppose.
Pygathrix (Rhinopithecus) spp. (snubnosed monkeys)	Transfer from II to I	China	Support.
Loris tradigradus (slender loris)	....do	India	Do.
Presbytis entellus (gray or Hanuman langur)	Transfer from I to II	....do	Do.
Presbytis phayrei (dusky langur)	Transfer from II to I	....do	Do.
Order Cetacea: *Monodon monoceros* (narwhal)	....do	Federal Republic of Germany	Do.
Order Carnivora:			
Felis bengalensis bengalensis (leopard cat)	Transfer Chinese population from I to II	China	Do.
Selenarctos thibetanus (Asiatic black bear)	Transfer from I to II	....do	Oppose.
Cystophora cristata (hooded seal)	Add to II	Sweden	Support.
Vulpes (*Fennecus*) *zerda* (fennec fox)	Added to II	Tunisia	Oppose.
Order Perissodactyla: *Equus kiang* (Kiang, wild ass)	Transfer from II to I	India	Support.
Order Artiodactyla:			
Camelus bactrianus (Bactrian camel)	Add to I	China	Do.
Cervus albirostris (white lipped deer)	....do	....do	Do.
Muntiacus crinifrons (black muntjac)	....do	....do	Do.
Budorcas taxicolor (takin)	....do	....do	Do.
Birds:			
Order Ciconiiformes: *Jabiru mycteria* (Jabiru)	....do	Costa Rica	Oppose.
Order Falconiformes:			
Falco jugger (lagger falcon)	Transfer from II to I	India	Do.
Falco rusticolus (gyrfalcon)	Transfer North American population from II to I	Denmark and Norway	Do.
Order Gruiformes: *Gruidae* spp. (cranes)	Add all species not yet listed to II	United Kingdom	Support.
Order Psittaciformes:			
Ara ambigua (great green macaw)	Transfer from II to I	Costa Rica	Do.
Ara macao (scarlet macaw)	Transfer from II to I	....do	Oppose.
Reptiles:			
Order Crocodylia:			
Crocodylus niloticus (Nile crocodile)	Transfer from I to II	Malawi	Do.
Crocodylus niloticus (Nile crocodile)	Transfer Mozambique population from I to II	Mozambique	Do.
Crocodylus porosus (salt-water crocodile)	Transfer Australian population subject to ranching from I to II.	Australia	Support.
Crocodylus porosus (salt-water crocodile)	Transfer Indonesian population subject to ranching from I to II.	Indonesia	Oppose.
Order Testudinata:			
Chelonia mydas (green sea turtle)	Transfer Indonesian population from I to II	....do	Do.
Chelonia mydas (green sea turtle)	Transfer Suriname population subject to ranching from I to II.	Suriname	Do.
Chelonia mydas (green sea turtle)	Transfer Europa and Tromelin Islands populations subject to ranching from I to II.	France	Support.
Chelonia mydas (green sea turtle)	Transfer captive population subject to ranching in Cayman Island from I to II.	United Kingdom	Do.
Eretmochelys imbricata (hawksbill sea turtle)	Transfer Indonesia population from I to II	Indonesia	Oppose.
Eretmochelys imbricata (hawksbill sea turtle)	Transfer Seychelles population from I to II	Seychelles	Do.
Kachuga tecta tecta (Indian sawback turtle)	Transfer from I to II	Bangladesh and India	Support.
Lissemys punctata punctata (Indian flap-shell tortoise)	....do	Bangladesh	Do.
Trionyx gangeticus (Indian softshell turtle)	....do	India	Do.
Trionyx hurum (peacock softshell turtle)	....do	....do	Do.
Order Squamata:			
Hoplocephalus bunderoides (*Broad-headed snake*)	Add to II	Australia	Do.
Varanus bengalensis (Bengal monitor)	Transfer from I to II	Bangladesh	Oppose.
Varanus flavescens (yellow monitor)	....do	....do	Do.

Species	Proposed amendment	Proponent	U.S. position
Amphibians:			
Order Anura:			
Bufo periglenes (Monteverde toad)	Transfer from I to III	Costa Rica	Support.
Rana hexadactyla (Asian bullfrog)	Add to II	Federal Republic of Germany	Oppose.
Rana tigrina (Indian bullfrog)	do	do	Do.
Rheobatrachus spp. (platypus frog)	do	Australia	Support.
Molluscs:			
Order Veneroida:			
Hippopus hippopus (horse's hoof clam)	do	do	Do.
Hippopus porcellanus (china clam)	do	do	Do.
Tridacna crocea (crocus clam)	do	do	Do.
Tridacna maxima (small giant clam)	do	do	Do.
Tridacna squamosa (scaly clam)	do	do	Do.
Corals:			
Acropora spp. (staghorn corals)	do	do	Oppose.
Euphyllia spp. (trumpet corals)	do	do	Do.
Favia spp. (brain corals)	do	do	Do.
Fungia spp. (mushroom corals)	do	do	Do.
Halomitra spp. (bowl corals)	do	do	Do.
Heliopora spp. (blue corals)	do	do	Do.
Lobophyllia spp. (brain corals)	do	do	Do.
Merulina spp. (merulines)	do	do	Do.
Millepora spp. (fire corals)	do	do	Do.
Pavona spp. (cactus corals)	do	do	Do.
Pectinia spp. (lettuce corals)	do	do	Do.
Platygyra spp. (brain corals)	do	do	Do.
Pocillopora spp. (brush corals)	do	do	Do.
Seriatopora spp. (bird nest corals)	do	do	Do.
Stylophora spp. (cauliflower corals)	do	do	Do.
Tubipora spp. (organ-pipe coral)	do	do	Do.
Platygyra spp. (brain corals)	do	do	Do.
Pocillopora spp. (brush corals)	do	do	Do.
Seriatopora spp. (bird nest corals)	do	do	Do.
Stylophora spp. (cauliflower corals)	do	do	Do.
Tubipora spp. (organ-pipe coral)	do	do	Do.
Plants:			
Family Caryophyllaceae:			
Gymnocarpos przewalskii	Delete from I	Switzerland	Do.
Melandrium mongolicum	do	do	Do.
Silene mongolica	do	do	Do.
Stellaria pulvinata	do	do	Do.
Family Compositae: *Saussurea lappa* (costus, kuth roots)	Transfer from II to I	India	Support.
Family Cupressaceae: *Fitzroya cupressoides* (fitzroya, alerce)	Transfer population of Andes in Chile from I to II	Chile	Oppose.
Family Cycadaceae: *Cycas panzhihuaensis*	Transfer from II to I	China	Support.
Family Haemodoraceae:			
Anigozanthos spp. (kangaroo paws)	Delete from II	Australia	Oppose.
Macropidia fuliginosa (black kangaroo paw)	do	do	Do.
Family Leguminosae:			
Ammopiptanthus mongolicum	Delete from I	Switzerland	Do.
Thermopsis mongolica	Delete from II	do	Do.
Family Orchidaceae:			
Cattleya aclandiae	Transfer from II to I	Brazil	Support.
Cattleya amethystoglossa	do	do	Do.
Cattleya domeniana	do	do	Do.
Cattleya granulosa	do	do	Do.
Cattleya schilleriana	do	do	Do
Cattleya schofieldiana	do	do	Do.
Cattleya velutina	do	do	Do.
Laelia tenebrosa	do	do	Do.
Family Pinaceae:			
Cathaya argyrophylla	Add to I	China	Do.
Family Proteaceae:			
Banksia spp. (banksias)	Delete from II	Australia	Oppose.
Conospermum spp. (smoke brushes)	do	do	Do.
Dryandra formosa (showy dryandra)	do	do	Do.
Dryandra polycephala	do	do	Do.
Xylomelum spp. (woody pears)	do	do	Do.
Family Rutaceae:			
Crowea spp. (croweas)	do	do	Do.
Geleznowia verrucosa	do	do	Do.
Family Theaceae:			
Camellia chrysantha	Add to I	China	Support.
Family Thymelaeaceae:			
Pimelea physodes (qualup bell)	Delete from II	Australia	Do.
Family Verbenaceae:			
Caryopteris mongolica	Delete from II	Switzerland	Oppose.

Negotiating positions given in this table are based upon the best available biological and trade information, taking into account comments received from the public and the criteria for listing species in the appendices (Resolutions Conf. 1.1 and 1.2 of the Conference of the Parties to CITES). If further information is presented at the meeting in Argentina, the U.S. delegation will take it into account in determining whether these positions remain appropriate. As indicated above in the discussion of comments, support or opposition to particular proposals may depend on whether questions about them are satisfactorily answered at the meeting.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This notice issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended). It was prepared by Dr. Richard L. Jachowski, Office of Scientific Authority.

Dated: April 9, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-8866 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 71
Friday, April 12, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of the Census

Estimates of the Voting Age Population for 1984

In accordance with the requirements of the 1976 amendment to the Federal Election Campaign Act, 2 U.S.C. 441a(e), notice is hereby given that the estimates of the voting age population for July 1, 1984, for each state, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of American Samoa, Guam and the Virgin Islands are as shown in the following table.

I have certified these estimates to the Federal Election Commission.

Malcolm Baldrige,
Secretary of Commerce.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR STATES AND SELECTED OUTLYING AREAS: JULY 1, 1984

[In thousands]

Area	Population 18 and over
United States	172,466
Alabama	2,880
Alaska	338
Arizona	2,196
Arkansas	1,697
California	18,961
Colorado	2,322
Connecticut	2,407
Delaware	458
District of Columbia	488
Florida	8,465
Georgia	4,205
Hawaii	752
Idaho	679
Illinois	8,421
Indiana	3,987
Iowa	2,126
Kansas	1,786
Kentucky	2,692
Louisiana	3,107
Maine	850
Maryland	3,264
Massachusetts	4,433
Michigan	6,589
Minnesota	3,038
Mississippi	1,801
Missouri	3,694
Montana	588
Nebraska	1,163
Nevada	677
New Hampshire	725
New Jersey	5,681
New Mexico	988
New York	13,346
North Carolina	4,564
North Dakota	468
Ohio	7,873
Oklahoma	2,377
Oregon	1,965
Pennsylvania	8,991
Rhode Island	736
South Carolina	2,373
South Dakota	500
Tennessee	3,471
Texas	11,272
Utah	1,027
Vermont	390
Virginia	4,208
Washington	3,190
West Virginia	1,421
Wisconsin	3,488
Wyoming	351
Outlying Areas	
Puerto Rico	2,038
Guam	70
Virgin Islands	60
American Samoa	18

ESTIMATES OF THE POPULATION OF VOTING AGE FOR STATES AND SELECTED OUTLYING AREAS: JULY 1, 1984—Continued

[In thousands]

Area	Population 18 and over

[FR Doc. 85-8880 Filed 4-11-85; 8:45 am]
BILLING CODE 3510-07-M

International Trade Administration

Montana State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 82-00323R. Applicant: Montana State University, Bozeman, MT 59717. Instrument: Mass Spectrometer System, Model MM7070E-HF with Integrated DS2035 and Accessories. Original notice of this resubmitted application was published in the **Federal Register** of September 20, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 82-323 which was denied without prejudice to resubmission for informational deficiencies. The foreign instrument provides (1) a maximum scan speed of 0.5 seconds per decade with 1000 resolution and a total cycle time of 1 second, and (2) 300 millisecond switching between positive and negative ion operation. The National Institutes of Health advises in its memorandum dated January 23, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,
Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-8839 Filed 4-11-85; 8:45 am]
BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; R.M. Marquis Footwear, Inc., et al.

Peitions have been accepted for filing from the following firms: (1) R.M. Marquis Footwear, Inc., 25 Winter Street, Gardiner, Maine 04345, producer of riding boots (accepted March 11, 1985); (2) Samson Altman, Inc., 144 Moody Street, Waltham, Massachusetts 02154, producer of women's blazers (accepted March 11, 1985); (3) Barron Knitting Mills, Inc., North Main Street, Northfield, Vermont 05663, producer of socks for me, women and children (acceptaed March 11, 1985); (4) Empreass Coqui, Inc., P.O. Box 89, Sabana Seca, Toa Baja, Puerto Rico 00749, producer of seasonings, condiments and processed food mixes (accepted March 13, 1985); (5) Fisher Berkeley Corporation, P.O. Box 8487, Emeryville, California 94662, producer of loudspeaker intercommunication systems (accepted March 14, 1985); (6) Gardner/Fulmer Lithograph, 8332 Commonwealth Avenue, Buena Park, California 90621, producer of books,

posters, programs, labels and brochures (accepted March 19, 1985); (7) Aloha Shake Company, Inc., P.O. Box 376, Pacific Beach, Washington 98571, producer of wood shakes and shingles (accepted March 19, 1985); (8) Warren Industries, Inc., 2045 Bennett Road, Philadephia, Pennsylvania 19116, producer of surveying, engineering and other instruments (accepted March 25, 1985); (9) Del Astra Industries, Inc., 1011 North Broadway, Stockton, California 95205, producer of waterbed mattresses and liners (accepted March 25, 1985); (10) Luke Farms, R. D. 2, Route 14A, Dundee, New York 14937, producer of grapes, berries and corn (accepted March 25, 1985); (11) Spokane Industries, Inc., P.O. Box 3350, Spokane, Washington 99220, producer of rock crushers, steel and iron castings, and steel processing tanks (accepted March 25, 1985); (12) Lasy, Inc., 935 Dillingham Boulevard, Room 208, Honolulu, Hawaii 96817, producer of women's and girls' dresses, pants, shorts, shirts and blouses (accepted March 26, 1985); (13) Black River Hardwood Company, Inc., Route 2, Box 101, Kingstree, South Carolina 29556, producer of hardwood furniture dimension (accepted March 27, 1985); (14) Bean Hill Industries, Inc., 69 Chestnut Street, Norwich, Connecticut 06360, producer of men's and women's slacks and women's skirts (accepted March 27, 1985); (15) Burrell Cutlery Company, Inc., Rockwell Avenue, Ellicottville, New York 14731–0308, producer of cutlery and knife sets (accepted March 27, 1985); (16) The Terrell Machine Company, 3000 South Boulevard, Charlotte, North Carolina 28209, producer of gear drives and textile machinery (accepted March 28, 1985); (17) Marquise Collection, Inc., 100–02 Rockaway Boulevard, Ozone Park, New York 11417, producer of women's shirts (accepted March 29, 1985); (18) Boston Bay Seafoods Company, Inc., 9–11 Boston Fish Pier, Boston, Massachusetts 02210, producer of seafood (accepted April 2, 1985); (19) S. Goldfeder, Inc., 125 Grove Street, Yalesville, Connecticut 06492–1557, producer of silver-plated hollow ware (accepted April 2, 1985); (20) Imua Builder Services, Ltd., 91–188 Kalaeloa Boulevard, Ewa Beach, Hawaii 96707, producer of cabinets and millwork (accepted April 2, 1985); (21) Suz-Ette Fashions, Inc., 500 Seventh Avenue, New York, New York 10018, producer of women's coats and jackets (accepted April 2, 1985); (22) Cuddle Coat, Inc., 500 7th Avenue, New York, New York 10018, producer of women's coasts and suits (accepted April 2, 1985); (23) Pyramid Magnetics, Inc., 21100 Street, Chatsworth, California 91311, producer of computer components (accepted April 3, 1985); (24) Lou Taylor, Inc., 711 West 16th Street, Hialeah, Florida 33010, producer of handbags (accepted April 4, 1985); (25) Roadmaster Corporation, P.O. Box 344, Olney, Illinois 62450, producer of bicycles, tricycles, other toy vehicles and exercise equipment (accepted April 4, 1985).

The petitions were submitted purusant to section 251 of the Trade Act of 1974 (Public Law 93–618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each pettioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Director, Certification Division, Office of Trade Adjustment Assistance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Jack W. Osbrun,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–8840 Filed 4–11–85; 8:45 am]

BILLING CODE 3510–DR–M

[A–429–403]

Postponement of Final Antidumping Duty Determination and Postponement of Hearing; Carbon Steel Wire Rod From the German Democratic Republic

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that (1) we have a received a request from the respondent in this investigation to postpone the final determination until not later than July 1, 1985, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)), and (2) that we have determined to postpone our hearing until May 20, 1985, and our final determination as to whether sales of carbon steel wire rod (wire rod) from the German Democratic Republic (GDR) have occured at less than fair value until not later than July 1, 1985.

EFFECTIVE DATE: April 12, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–2830.

SUPPLEMENTARY INFORMATION: On October 24, 1984, we published a notice in the Federal Register (49 FR 42773) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether wire rod from the GDR was being, or was likely to be, sold at less than fair value. On November 13, 1984, the International Trade Commission determined that there is a reasonable indication that imports of wire rod are materially injuring a U.S. industry. On March 12, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 9815). The notice stated that if the investigation proceeded normally, we would make our final determination by May 20, 1985. Pursuant to section 735(a)(2) of the Act, the respondent requested an extension of the final determination date. The respondent is qualified to make such a request because it accounts for a significant proportion of the exports of the merchandise. If an exporter who accounts for a significant proportion of exports of the merchandise under investigation properly requests an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. We will issue a final determination in this case not later than July 1, 1985.

The hearing, originally scheduled for April 10, 1985, has been postponed. the new hearing date will be May 20, 1985, as 10 a.m. in room 1851, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Interested parties who wish to participate must submit a request to the Deputy Assitant Secretary for Import Administration, Room 3099B, at the

above address within 10 days of publication of this notice. Oral presentations will be limited to issues raised in the briefs..

Requests should contain: (1) The party's name, address, and telephone number, (2) the number of participants, (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 13, 1985. All written views should be filed in accordance with 19 CFR 353.46, at the above address and in at least 10 copies, not later than the date established at the hearing for the submission of post-hearing briefs. All written views should be submitted not later than May 24, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 4, 1985.

[FR Doc. 85-8841- Filed 4-11-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Advisory Committee on Oceans and Atmosphere; Meeting Addendum

An addition has been made to the agenda for the April 17-18, 1985 National Advisory Committee on Oceans and Atmosphere (NACOA) meeting published Monday, April 1, 1985 (50FR 12844-12845). The revised tentative agenda is as follows and includes an additional panel meeting Wednesday morning.

Wednesday, April 17, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B-100, Washington, DC

9:00 a.m.-10:30 a.m.: Plenary—Room 416
- Introductory Remarks
- Guest Speaker, Congressman Mike Lowry

10:30 a.m.-12:30 p.m.: Panel Meetings
- Federal/State Relationships, Chairman: John Norton Moore, Room 416

Topic: Work Session on CZMA, Reauthorization/Consistency
Speakers: None

10:30 a.m.-12:30 p.m.
- Shipbuilding, Chairman: Don Walsh, Room B-100

Topic: Work Session
Speakers: None

12:30 p.m.-1:30 p.m.: Lunch

1:30 p.m.-4:00 p.m.: Panel Meetings
- Exclusive Economic Zone, Chairman: Lee Gerhard, Room 416

Topic: Elements of a National Plan
Speakers: Harris B. Stewart, Jr., Professor of Marine Studies, Director, Center of Marine Studies, Old Dominion University
George Zahn, President, Deep Sea Ventures, Inc.
Juan Carlos Torres, President, Sea Pharm
- Atmospheric Affairs, Chairman: S. Fred Singer, Room B-100

Topic: Acid Rain
Speakers: George Freeman, Counsel, Utility Air Regulatory Group
TBA: Representative from an Environmental Interest Group

4:00 p.m.-5:00 p.m.: Plenary—Room 416
- Federal/State Relationships

Topic: CZMA Reauthorization/ Consistency

5:00 p.m.: Recess

Thursday, April 18, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

8:30 a.m.-10:00 a.m.: Plenary—Room 416
- Shipbuilding, presentation by Panel Chairman

10:30 a.m.-12:30 p.m.: Plenary
- Closed Session, Presentation by the Department of Defense on data protection

Intelligence Community Headquarters, 1724 F Street, NW., Room 6W02, Washington, DC

12:30 p.m-1:30 p.m.: Lunch

2001 Wisconsin Avenue, NW., Page Building #1, Room 416, Washington, DC

2:00 p.m.-4:00 p.m.: Plenary—Room 416
- Panel Reports
- Other Business

4:00 p.m.: Adjourn

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Steven N. Anastasion, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 330 Whitehaven Street, NW., Washington, DC. 20235. The telephone number is 202/653-7818.

Dated: April 9, 1985.

Steven N. Anastasion,

Executive Director.

[FR Doc. 85-8838 Filed 4-11-85; 8:45 am]

BILLING CODE 3510-12-M

Marine Mammals; Application for Permit; Montreal Zoological Park

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Montreal Zoological Park (P140C).

b. Address: Montreal, Quebec, Canada 83C T80.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: California sea lion (*Zalophus californianus*)—2.

4. Type of Take: Captive maintenance of beached/stranded animals.

5. Location of Activity: California.

6. Period of Activity: 1 year.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Ministere du Loisir, de la Chasse et de la Peche have been found appropriate and sufficient to allow consideration of this permit application.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine

Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices;

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C., and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

April 4, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-8859 Filed 4-11-85; 8:45 am]

BILLING CODE 3510-09-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of the Republic of Indonesia To Review Trade Category 614pt

April 9, 1985.

On March 29, 1985, the Government of the United States requested consultations with the Government of the Republic of Indonesia with respect to spun filament polyester printcloth in Category 614pt. (only TSUSA No. 338.5051). This request was made on the basis of the agreement, as amended, between the Governments of the United States and the Republic of Indonesia relating to trade in Cotton, Wool and Man-Made Fiber Textiles and Textile Products of October 13 and November 9, 1982.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, as amended, may establish a prorated twelve-month specific limit of 2,953,278 square yards for the entry and withdrawal from warehouse for consumption of textile products in Category 614pt, produced or manufactured in Indonesia and exported to the United States during the period which began on March 29, 1985 and extends through the end of the agreement year, June 30, 1985.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution, to control imports in this category during the 90-day consultation period (March 29–June 27, 1985) at a level of 3,418,146 square yards. In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter, may be charged to levels established for the period which began on March 29, 1985 and extends through June 30, 1985 and any restraint period established subsequent to that.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tarif Schedules of the United States Annotated (1985).

Anyone wishing to comment or provide data or information regarding the treatment of Category 614pt under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of the Republic of Indonesia, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Indonesia—Market Statement

Category 614 Part—Spun/Filament, Polyester/Cotton Printcloth, TSUSA No. 338.5024

March 1985.

Summary and Conclusions

United States imports of Category 614 Part—spun/filament polyester/cotton printcloth—from Indonesia quadrupled in 1984 to 9.8 million square yards. This is a sharp and substantial increase in imports into a sector already adversely affected by imports.

Indonesia is the largest supplier of this type printcloth, accounting for 36 percent of the total imports in 1984. These imports from Indonesia are entered at duty-paid landed values which are below the U.S. producers' price for comparable fabrics. These and other factors lead the United States Government to conclude that imports from Indonesia are creating a real risk of market disruption in the United States for such fabrics.

U.S. Producers' Market Share

The U.S. producers' share of Category 614Pt. fabric market declined from 87 percent in 1982 to 72 percent in 1984. During this period, the U.S. share has dropped on an average of 8 percent per year.

U.S. Production

Although U.S. production of Category 614Pt. fabric increased in 1984, this does not reflect current market conditions for the U.S. producer. The increase in production is not flowing through to final sales but to inventory accumulation. Mill owned inventories rose 109 percent from January 1984 to January 1985. Billed and held inventories are up 19 percent. Unfilled orders dropped dramatically with forward bookings for the second quarter of 1985 being off by 46 percent. In addition, current production operations are severely threatened to the point where one major mill recently completely withdrew from the market shutting down 200 looms affecting 150 employees. Another company is seriously considering a reduction in operating schedules and a lay-off of over 100 employees in two mills which directly compete with these imports.

U.S. Imports

U.S. imports of Category 614Pt. increased to a record level of 27.5 million square yards in 1984. Imports for 1984 were 16.9 million square yards higher, or 160 percent of the 1983 levels. The 1984 imports were five and three-quarters times the 1982 imports.

Import Penetration

The ratio of imports to domestic production has increased almost three-fold, rising from 14.8 percent in 1981 to 39.3 percent in 1984.

Import Values

All of the 1984 imports of Category 614 from Indonesia are entered under TSUSA No. 338.5024, combination of spun and filament yarn polyester/cotton printcloth. The duty-paid values of these imports from Indonesia are below the U.S. producer price for comparable fabrics.
April 9, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 13 and November 9, 1982, as amended and extended, between the Governments of the United States and Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 15, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 614pt.[1] produced or manufactured in Indonesia and exported during the ninety-day period which began on March 29, 1985 and extends through June 27, 1985 in excess of 3,418,146 square yards.[2]

Textile products in Category 614pt.[1] which have been exported to the United States prior to March 29, 1985 shall not be subject to this directive.

Textile products in Category 614pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

[1] In Category 614, only TSUSA No. 338.5051.

[2] The level has not been adjusted to reflect any imports exported after March 28, 1985.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implemetation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-8879 Filed 4-11-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 commodities and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: April 12, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On September 28, November 9, and December 7, 1984 and February 1, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (49 FR 38325, 49 FR 44788, 49 FR 47890, and 50 FR 4726) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Class 1015

Staff Section: 1015-00-699-0633

Class 1025

Staff Section: 1025-01-044-2587, 1025-00-563-7232

Class 6530

Paper Sheeting, Examination Table: 6530-01-092-3914

Class 7105

Frame, Picture (Wood): 7105-00-052-8898, 7105-00-051-1212, 7105-00-052-8886

SIC 7389

Commissary Shelf Stocking and Custodial Service, Columbus Air Force Base, Mississippi

C.W. Fletcher,

Executive Director.

[FR Doc. 85-8842 Filed 4-11-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: May 15, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services

listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Class 3750

Cutter, Weed: 3750-00-239-8877, 3750-00-239-8878

Class 3990

Pallet, Material Handling: 3990-00-892-4394

Class 6530

Pad, Pre-Operative Preparation: 6530-00-457-8102

Class 7105

Table, Coffee: 7105-00-139-7573, 7105-00-139-7601
Table, End: 7105-00-139-7598
Table, Lamp: 7105-00-139-7600

Class 8405

Liner, Poncho, Camouflage: 8405-00-889-3683

SIC 0782

Grounds Maintenance, Bonneville Lock and Dam, Bonneville, Oregon

SIC 7349

Commissary Shelf Stocking and Custodial Service, Fort Stewart, Georgia
Commissary Shelf Stocking and Custodial Service, Hunter Army Airfield, Georgia
Commissary Shelf Stocking and Custodial Service, Shaw Air Force Base, South Carolina

C.W. Fletcher,

Executive Director.

[FR Doc. 85-8843 Filed 4-11-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 24, 1985, 9:00 A.M. until conclusion of business.

ADDRESS: Hilton Inn—Denver Airport, 4411 Peoria Street, Denver, CO 80239 (303/373-5730).

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, N.W., Suite 500, Washington, D.C. 20036 (202/634-6160.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under Section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Executive Committee will meet in closed session to discuss personnel matters involving the selection of the Director, Indian Education Programs. This discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) of section 552b(c) of Title 5 U.S.C. of the Government in the Sunshine Act.

The public is being given less than fifteen days notice of this closed session due to the exceptional emergency nature of the situation and scheduling dates to correspond with the Executive Committee.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: April 2, 1985. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 85-8837 Filed 4-11-85; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: May 3, 1985.

ADDRESS: Holiday Inn—Capitol, 550 C Street SW, Washington, D.C. 20024. (Room will be posted.)

FOR FURTHER INFORMATION CONTACT: Laverne Johnson, Intergovernmental Advisory Council on Education, Department of Education, 300-7th Street SW., Washington, D.C. 20202 (202) 472-0464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the Council is open to the public. The meeting is scheduled for 1:30 p.m. to 4:30 p.m. on May 3.

The proposed agenda includes:

—Evaluation of National Networking Conference
—Discussion of Council's Report on Conference
—Review of Possible Topics for the next Conference(s)
—Discussion on Council Internal Business

On May 2 and 3, the Council will host its first National Networking Conference. The topic for this conference is teacher preparation. Seating is limited. For further information on the conference, please contact Laverne Johnson at 202/472-0464.

Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education, 300-7th Street SW., Room 513, Washington, D.C.

Signed at Washington, D.C. on Monday, April 8, 1985.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 85-8871 Filed 4-11-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Restricted Eligibility for Grant Award; Geothermal Resources Council

March 15, 1985.

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice.

SUMMARY: DOE/SAN Announces that it intends to award a grant to the Geothermal Resources Council, Davis, CA, in the amount of $54,333, for "Technology Transfer at the GRC International Symposium". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE/SAN has determined that eligibility for this grant award shall be limited to the Geothermal Resources Council.

PROCUREMENT REQUEST NUMBER: 03-85SF15007.000.

PROJECT SCOPE: The GRC proposes to develop and publish geothermal technology data which will feature the international aspects of geothermal development. They will also provide a display booth at their 1985 International Symposium, scheduled for August, 1985, designed to inform attendees of the numerous techniques, procedures, processes, materials and equipment that have been developed in the geothermal resources field but which remain relatively unknown to geothermal developers.

FOR FURTHER INFORMATION CONTACT:
Ms. Lucy Garcia, FGS Div., U.S. Department of Energy, san Francisco Operations Office, 1333 Broadway; Oakland, CA 94612.

Issued in San Francisco, CA, March 8, 1985.

Vito A. Magliano,
Acting Manager.

[FR Doc. 85-8885 Filed 4-11-85; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-84-015; OFP Case No. 51050-9254-21-22]

Order Granting Alaska Electric Generation and Transmission, Inc., Exemption From Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent reliability of service exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to Alaska Electric Generation and Transmission, Inc. (AEG&T or "the petitioner"), of Palmer, Alaska. The permanent reliability of service exemption for a proposed new electric powerplant permits the use of a natural gas-fired combustion turbine with a nameplate rating of 39 MW, that will operate as a simple-cycle combustion turbine unit to produce electrical power at AEG&T's plant at Soldotna, Alaska. The new unit, identified as Soldotna Power Plant Unit No. 1, is expected to commence operation to meet load forecast electrical demands commencing in 1985. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on June 11, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 5:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, S.W., Room GA-073-D, Washington, D.C. 20585 Phone (202) 252-1649
Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone (202) 252-6749

SUPPLEMENTARY INFORMATION: On July 30, 1985, AEG&T petitioned ERA under section 212(f) of FUA and 10 CFR 503.40 for a permanent reliability of service exemption for its proposed new powerplant. AEG&T proposes to install a new combustion turbine powerplant unit at Soldotna, Alaska. The new unit will operate as a base load integrated system, producing electricity to meet forecast demands, commencing with the winter of 1985-86.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including AEG&T's certification to EPA, in accordance with 10 CFR 503.40(a)(c), that:

1. AEG&T is not able to construct an alternate fuel fired in time to prevent an impairment of reliability of service;
2. Despite diligent good faith efforts, AEG&T is not able to make the demonstration necessary to obtain a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, inadequate capital, or State and local requirements, in the time required to prevent an impairment of reliability of service;
3. No alternate power supply exists; and
4. Use of mixtures is not feasible.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 30, 1984 (49 FR 47097), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on January 14, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Reliability of Service Exemption

Based upon the entire record of this proceeding, ERA has determined that AEG&T has satisfied the eligibility requirements for the requested permanent reliability of service exemption, as set forth in 10 CFR 503.40. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent reliability of service exemption to AEG&T to permit the use of natural gas as the primary energy source for its proposed facility in Soldotna, Alaska.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on April 4, 1985.

Robert L. Davies,
Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-8884 Filed 4-11-85; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA 82-16-NG]

Pacific Gas Transmission Company; Natural Gas Imports, Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Issuance of Final Order Granting Amendments to Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 2, 1985, the ERA Administrator issued a final opinion and order authorizing Pacific Gas Transmission Company (PGT) to import an additional 1.9 Tcf of natural gas from Canada during the period November 1, 1985, through October 31, 1993. The incremental increase in authorized volumes will permit PGT to continue to import natural gas at its currently authorized level of 1023 MMcf per day through October 31, 1993. The final order superseded DOE/ERA Opinion and Order No. 63 issued November 1, 1985, which authorized the importation of the additional gas subject to a showing by PGT that the import arrangement would provide competitively priced gas to the markets served.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA-017B, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-9482

Michael T. Skinker, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-6667

Issued in Washington, DC., on April 4, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

Final Order Granting Amendments to Authorization to Import Natural Gas From Canada

[DOE/ERA Opinion and Order No. 63A]

April 2, 1985.

I. Background

On November 1, 1984, in DOE/ERA Opinion and Order No. 63 (Order No. 63),[1] the Economic Regulatory Administration (ERA) conditionally authorized the Pacific Gas Transmission Company (PGT) to import from Alberta and Southern Gas Company, Ltd. (Alberta and Southern) 1023 MMcf of natural gas per day through October 31, 1993,[2] subject to a showing prior to the flow of the gas that the import arrangement, as then structured, is competitive in Pacific Gas and Electric Company (PG&E) markets. The ERA noted that no party had questioned the need for the gas or raised the issue of security of supply. "What the parties have questioned is whether Canadian gas is the appropriate choice for meeting those needs [of the California market] if it is not competitive in the markets served." [3] Accordingly, the ERA stated that competitiveness of PGT's import arrangement would be fully evaluated before final action was taken and that the parties would be given an opportunity to comment on all aspects of the import arrangement and to request additional procedures when PGT applied to make the conditional authorization final.

On December 24, 1984, PGT filed a supplement to the original application requesting final approval of the additional volumes that were conditionally authorized in Order No. 63. In the supplement, PGT stated that it proposed to apply the terms of its renegotiated contract with Alberta and volumes to the additional volumes conditionally authorized. Those terms, submitted as part of an October 1, 1984, report by PGT to this agency, were effective November 1, 1984, for currently authorized volumes. The renegotiated contract provided for a commodity rate at the international border of $2.99 (U.S.) per MMBtu which is subject to semi-annual review and adjustment, plus a demand charge based on actually incurred costs of transportation and shipping from within Canada to the export point. PGT projects that this price structure will result in an average delivered price at the California border of $3.63 (U.S.) per MMBtu. The renegotiated contract also reduced PGT's take-or-pay obligation from 60 percent to 50 percent of daily contract quantity and eliminated the yearly, monthly, and daily minimum purchase obligations with respect to volumes PGT is currently authorized to import.

PGT asserted that the renegotiated contract's reduced minimum purchase obligations and revised price structure would enable it to market the requested additional volumes of Canadian gas competitively. PGT cited two factors in its renegotiated contract that assure competitiveness for all future purchases over the life of the import arrangement: (1) the provision for semi-annual price review and redetermination, and (2) the "equitable purchase clause" under which imported gas will be purchased on an equivalent basis with domestic gas as long as the price is competitive, combined with complete elimination of minimum physical take provisions.

In a procedural order issued January 29, 1985, the ERA provided the opportunity for parties to comment on the competitiveness of PGT's revised contract and on all aspects of PGT's import arrangement. Parties who had opposed PGT's application were notified that they must restate their opposition to the import arrangement if they were still opposed to PGT's request. The parties were also given the opportunity to request additional procedures. Responses were due February 28, 1985, and answers were due March 15, 1985.

On March 3, 1985, PGT filed a report with the ERA of a reduction in the commodity rate for Canadian gas from $2.99 to $2.92 per MMBtu, effective April 1, 1985. The price reduction resulted from the semi-annual price review and redetermination called for in the gas sale contract. PGT projected that the pricing revision would result in a delivered price for Canadian gas at the California border of $3.55 per MMBtu.

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[1] *Pacific Gas Transmission Company*, DOE/ERA Opinion and Order No. 63, issued November 1, 1984 (1 ERA ¶ 70,574).

[2] Under FERC Docket Nos. CP 69-346 and CP 69-347, March 13, 1970 (43 FPC 418). PGT is authorized to import the following volumes:

Period	Annual volumes* (MMcf)	Average daily volumes (MMcf./d)
Present to 10/31/85	373,500	1,023
11/1/85 to 10/31/86	305,670	838
11/1/86 to 10/31/89	153,300	420
11/1/89 to 10/31/93	77,745	213

PGT applied for the following incremental volumes:

Period	Annual volumes* (MMcf)	Average daily volumes (MMcf./d)
Present to 10/31/85		
11/1/85 to 10/31/86	67,525	185
11/1/86 to 10/31/89	220,085	603
11/1/89 to 10/31/93	295,650	810

*Annual volumes were determined by multiplying average daily volumes by 365, using the more exact average daily volume of 1023.3 MMcf.

[3] *See supra* note 1.

II. Response to Procedural Order

Two responses were received to the January 29, 1985, procedural order. One was by the El Paso Natural Gas Company (El Paso) and the other by the Railroad Commission of Texas (RCT). Neither El Paso nor RCT contend that PGT's import arrangement as now structured is not competitive. However, both El Paso and RCT note that PGT's revised contract with Alberta and Southern was approved by the Canadian National Energy Board for a one-year period only, subject to yearly extensions. They also noted it was subject to review and concurrence by the affected Canadian gas producers, and could be changed as a result of the semi-annual price review and redetermination provision in the revised contract. Because of the potential for further changes, El Paso and RCT requested that the ERA condition its final approval of PGT's import arrangement so that any significant changes in the contractural terms underlying PGT's importation of Canadian gas would not become effective until after a public notice and comment period and a finding that such changes were not inconsistent with the public interest.

PGT, its affiliate PG&E, and the Public Utilities Commission of the State of California (CPUC) filed answers supporting issuance of an unconditional final order and opposing El Paso's and RCT's request for conditions requiring further review of PGT's authorization in the future. The CPUC cities the elimination of minimum physical take provisions, the reduction in take-or-pay obligations to the 50 percent level, and contract provisions providing for a competitive price through adjustments based on domestic pipeline prices, as evidence that PGT's import arrangement as now structured will remain fair and competitive. PGT and PG&E assert that there is a conflict between El Paso's approach, wherein each price redetermination would be subjected to detailed regulatory review, and the DOE's policy guidelines which encourage provisions that allow price adjustments during the life of an import agreement as evidence of the competitiveness of the arrangement. PGT also states that its obligation under Section 590.407 of the ERA's administrative procedures to report any changes in its import arrangement ensures that the public interest is adequately protected.

III. Decision

PGT's application has been evaluated to determine if the arrangement meets the public interest requirements of Section 3 of the Natural Gas Act. Under Section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [4] The Administrator is guided by the Secretary of Energy's policy relating to the regulation of natural gas imports.[5] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In Order No. 63, the ERA authorized PGT to import the additional volumes of Canadian natural gas, subject to a showing prior to the flow of the gas on November 1, 1985, that PGT's import arrangement, as then structured, is competitive in the California market. Accordingly, the only issue remaining to be resolved is the competitiveness of PGT's import arrangement over the term of the contractural arrangement.

The substantial reduction in PGT's take-or-pay obligations, the elimination of its minimum physical take obligations, the reduction in the price of the Canadian gas imported by PGT, and the flexibility provided by the semi-annual review and redetermination provisions amply demonstrate that PGT's import arrangement is competitive and market-responsive, and can be expected to remain so over the term of the underlying contract.

Although El Paso and RCT have requested that the ERA condition this authorization to require opportunity to comment before any significant changes in PGT's contractual arrangements become effective, such conditions are viewed as unnecessary and as an obstacle to maintaining a market-responsive import arrangement. The revised gas sales contract allows PGT to negotiate price changes, as was recently done to reduce the commodity rate, in order for the Canadian gas to remain competitive. It is not our intention to intervene in the negotiation of such contract adjustments so long as PGT is operating within the terms of its existing import arrangement.

Should any substantive contract amendments be made at a future date affecting the facts or circumstances upon which PGT's authorization is based, PGT has a continuing obligation, under the ERA's administrative procedures, to report such amendments to the ERA for review. Section 590.407 emphasizes that whenever such changes are contrary to or otherwise not permitted by the existing authorization, an application to amend the existing authorization must be filed. Accordingly, the conditions requested by El Paso and RCT are unnecessary and their requests for them are denied.

Finally, all opposition to PGT's proposed extension appears to have ended. The arrangement apparently now satisfies all of the parties.

After talking into consideration all information in the record of this proceeding, I find that the condition in Order No. 63 has been met—that PGT has demonstrated that its import arrangement, as now structured, is competitive in the market served. Therefore, granting the amendment as requested is not inconsistent with the public interest.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. The import authorization previously issued by the Federal Power Commission to Pacific Gas Transmission Company (PGT) under Docket Nos. G–17350, G–17351 and G–17352 on August 5, 1960 (24 FPC 134), as amended in Docket Nos. CP 65–213, CP 65–214 and CP 65–215 on June 14, 1966 (35 FPC 1003), as amended in Docket Nos. CP 67–187 and CP 67–188 on October 30, 1968 (40 FPC 1147), and as amended in Docket Nos. CP 69–346 and CP 69–347 on March 13, 1970 (43 FPC 418), is hereby further amended to increase the authorized volumes to permit PGT to import up to 1023 MMcf of Canadian natural gas per day for the period November 1, 1985 through October 31, 1993.

B. The above-referenced orders are further amended to incorporate PGT's November 1, 1984, revisions to its gas sale contract with Alberta and Southern Gas Company, Ltd. for previously authorized volumes and for volumes authorized by this order.

C. With respect to the natural gas authorized to be imported by this order, PGT shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of gas imported, the average price paid per MMBtu for both the demand and commodity components, and the average delivered price at the California border per MMBtu.

Issued in Washington, DC., April 2, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85–8900 Filed 4–11–85; 8:45 am]

BILLING CODE 6455–01–M

[4] 15 U.S.C. 717b.

[5] 49 FR 6684, February 2, 1984.

Federal Energy Regulatory Commission

[Docket Nos. ER85-393-000, et al.]

Electric Rate and Corporate Regulation Filings; Georgia Power Company, et al.

April 5, 1985.

Take notice that the following filings have been made with the Commission:

1. Georgia Power Company

[Docket No. ER85-393-000]

Take notice that on March 28, 1985, Georgia Power Company (Georgia Power) tendered for filing a contract executed between it and the Administrator of the Southeastern Power Administraton (SEPA) acting on behalf of the United States Government, Department of Energy. The contract is filed with the Federal Energy Regulatory Commission because certain of its provisions provide for the payment of a transmission charge by the Government for transmission of capacity and energy to certain preference customers designated by the Government.

Georgia Power requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: April 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Montaup Electric Company

[Docket No. ER85-397-000]

Take notice that on March 28, 1985, Montaup Electric Company (Montaup) tendered for filing a short-term system sale agreement between Montaup and Massachusetts Municipal Wholesale Electric Company (MMWEC), dated August 15, 1982. This Agreement provides for a sale of capacity and associated energy from Montaup to MMWEC. Montaup will provide this capacity and energy from six fossil fuel generating units (Somerset Units 5 & 6; Canal Units 1 & 2; Cleary Units 9 & 9A).

Through an oversight, filing of this contract was not made in the required 60-day notice period. In order to permit Montaup and MMWEC to achieve mutual benefits from this system agreement, Montaup requests waiver of the 60-day notice requirement in order to permit this rate schedule to become effective on August 15, 1982. The waiver, if granted, will have no effect upon purchasers under any other rate schedule.

Montaup indicates that it has served copies of the filing on Massachusetts Municipal Wholesale Electric Company and the Massachusetts Commission.

Comment date: April 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Montana Power Company

[Docket No. ER85-394-000]

Take notice that on March 28, 1985, Montana Power Company (Montana) tendered for filing a revised Appendix I as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement ("Agreement") between Montana and the Bonneville Power Administration ("BPA").

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit to Montana's residential and farm customers.

Montana requests an effective date of August 3, 1984, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: April 17, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Montana Power Company

[Docket No. ER85-395-000]

Take notice that on March 28, 1985, Montana Power Company (Montana) tendered for filing a revised Appendix I, as required by Exhibit C for retail sales in accordance with the provisions of the Residential Purchase and Sale Agreement (Agreement) between Montana and the Bonneville Power Administration (BPA).

The Agreement was entered into pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501. The Agreement provides for the exchange of electric power between Montana and BPA for the benefit of Montana's residential and farm customers.

Montana requests an effective date of April 17, 1984, and therefore requests waiver of the Commission's notice requirements.

A copy of the filing was served upon BPA.

Comment date: April 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER85-396-000]

Take notice that on March 28, 1985, Montaup Electric Company (Montaup) tendered for filing Exhibit A's designated Series No. II, Taunton No. 13, specifying electric power to be transmitted under Service Agreement with Taunton dated September 14, 1978; North Attleborough No. 2, specifying electric power to be transmitted under the Service Agreement with North Attleborough dated February 28, 1977; and MMWEC No. 2, specifying electric power to be transmitted under the Service Agreement with MMWEC dated November 1, 1981.

Taunton has contracted to purchase varying amounts (0-25,000 kw) from Northeast utilities from November 8, 1982 through four weeks notice by either party.

This contract was not utilized until October, 1984 and EUA had not previously submitted an exhibit A. Montaup requests that the Exhibit A be allowed to become effective as of October 1, 1984.

North Attleborough has contracted to purchase varying amounts (0-10-000 kw) from Taunton's Cleary No. 9 from November 1, 1984 through Life of Unit. The current purchase is 2,000 kW through April 30, 1985.

Montaup requests that this Exhibit A be allowed to become effective November 1, 1984.

MMWEC has contracted to purchase 5,000 kw from Taunton's Cleary No. 9 from November 1, 1984 through April 30, 1985.

Montaup requests that this Exhibit A be allowed to become effective November 1, 1984.

Montaup requests waiver of the 60-day notice requirement to permit the effective dates requested above. Montaup was notified of the transactions too late to comply with that requirement.

Montaup indicates that it has served copies of the filings on the parties to the transactions and the pertinent state commissions.

Comment date: April 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8800 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-72-001]

Algonquin Gas Transmission Co.; Filing of Substitute Revised Tariff Sheets

April 8, 1985.

Take notice that on March 29, 1985, Algonquin Gas Transmission Company (Algonquin Gas) transmitted for filing the following substitute revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute First Revised Sheet No. 611
Substitute First Revised Sheet No. 612

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 2, 1985.

Algonquin Gas states that such Substitute First Revised Sheets modify Section 11 of the General Terms and Conditions, relating to Assignment, and replace First Revised Sheet Nos. 611 and 612, which had been filed February 12, 1985, in Docket No. RP85-72-000. Algonquin Gas states that First Revised Sheet Nos. 611 and 612 thus are being withdrawn.

More specifically, Algonquin Gas states that it is clarifying such assignment provision to indicate the procedure for obtaining any necessary certificate authority related to an assignment, and to provide for superseding Service Agreements so that the results of an authorized assignment are reflected in an updated agreement. Algonquin Gas proposes that its tariff sheets should become effective 30 days after filing, or on April 29, 1985.

Algonquin Gas states that it has served a copy of its filing on each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8804 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-25-000]

Applied Energy Services, Inc. v. Oklahoma Corporation Commission; Complaint

April 9, 1985.

Take notice that on April 4, 1985, Applied Energy Services, Inc. (AES) submitted for filing a complaint against Oklahoma Corporation Commission (OCC).

The issue in this complaint order concerns Rule 58(H) of the OCC General Rules. Rule 58(H) reads:

> The utility shall include in each contract with a cogenerator or small power producer the provision, and put the cogenerator and small power producer on actual notice, that the Commission may, after proper notice and hearing, change the terms and otherwise finalize experimental purchase tariffs and special contracts.

AES states:

(1) That Rule 58(H) of the OCC General Rules is in direct violation of FERC's rules implementing PURPA, and;

(2) That Rule 58(H) represents bad public policy, and;

(3) That FERC enforcement action against OCC Rule 58(H) would be consistent with its policy statement regarding PURPA Section 210.

AES requests the Commission to undertake an enforcement action seeking enforcement of the FERC's rule against OCC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 29, 1985. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8805 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8254-001]

Burnt Ranch Stables; Surrender of Preliminary Permit

April 10, 1985.

Take notice that Burnt Ranch Stables, Permittee for the Burnt Ranch Stables Project, FERC No. 8254, has requested that its preliminary be terminated. The preliminary permit for Project No. 8254 was issued on November 26, 1984, and would have expired on April 30, 1986. The project would have been located on Hennesey Creek, in Trinity County, California.

The Permittee filed the request on March 7, 1985, and the preliminary permit for Project No. 8254 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8806 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7814-001]

Cedar Falls Utilities; Surrender of Preliminary Permit

April 10, 1985.

Take notice that Cedar Falls Utilities, Permittee for the proposed Ceder Falls Dam Hydro Project No. 7814, has requested that its preliminary permit be terminated. The premit was issued on June 6, 1984, and would have expired November 31, 1985. The project would have been located on the Cedar River in Black Hawk County, Iowa. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on March 21, 1985, and the preliminary permit for Project No. 7814 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or Holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect

through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8807 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10133-001, et al.]

CNG Producing Co.; Application of Succession in Interest From MAPCO Oil & Gas Co. to CNG Producing Co.

April 9, 1985.

Take notice that on February 1, 1985, CNG Producing Company, (CNG) of 705 South Elgin Avenue, Post Office Box 2115, Tulsa, Oklahoma 74101-2115, as successor in interest to MAPCO Oil & Gas Company, (MAPCO) filed an application to amend certain certificates currently held by MAPCO to show CNG as certificate holder and to redesignate the related rate schedules listed in the attached Appendix.

Effective as of January 1, 1985, MAPCO Oil & Gas Company sold to CNG Producing Company substantially all of its onshore domestic oil and gas properties.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 395.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Appendix

MAPCO rate schedule No.	Docket No.
GRS 1	G-10133
GRS 2	G-15050
GRS 4	G-15052
GRS 5	G-15052
GRS 8	G-16146
GRS 16	G-19480
GRS 17	G-20148
GRS 19	C174-302
GRS 20	C174-646
GRS 21	C175-030
GRS 22	C175-151
GRS 24	C176-397
GRS 26	C177-747
GRS 28	C184-415
MAPCO Oil & Gas Company	CNG Producing Company.

[FR. Doc. 85-8808 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST79-16-003, et al.]

Delhi Gas Pipeline Corp. et al.; Extension Reports

April 9, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before April 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST79-16-003	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Transwestern Pipeline Co	03-05-85	D	06-04-85
ST79-34-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	03-11-85	C	06-09-85
ST79-38-002	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001	do	03-11-85	C	06-09-85
ST81-356-002 [1]	Northern Natural Gas Co., 2223 Dodge St., Omaha, NE 68102	Delhi Gas Pipeline Corp	03-11-85	B	06-08-85
ST83-34-002	Columbia Gulf Transmission Co., P.O. Box 683, Houston, TX 77001	Louisiana Intrastate Gas Corp	03-13-85	B	06-30-85
ST83-485-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Intratex Gas Co	03-04-85	B	06-02-85
ST83-502-001	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Southern Natural Gas Co	03-14-85	C	06-15-85
ST83-515-001	ANR Pipeline Co., 500 Renaissance Center, Detroit, MI 48243	Spindletop Gas Distribution Corp	03-01-85	B	06-01-85
ST83-518-001 [1]	do	do	03-06-85	B	06-01-85
ST83-520-001 [1]	do	do	03-06-85	B	06-01-85
ST83-525-001	Texas Eastern Transmission Corp. P.O. Box 2521, Houston, TX 77001	Southern Natural Gas Co	03-04-85	G	06-15-85
ST83-529-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	do	03-08-85	G	06-08-85
ST83-530-001	do	LGS Intrastate, Inc	03-08-85	B	06-06-85
ST83-533-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	United Gas Pipe Line Co	03-11-85	G	06-06-85
ST83-534-001	United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001	Southern Natural Gas Co	03-08-85	G	06-09-85

Docket No.	Transporter/seller	Recipient	Date filed	Part 284 subpart	Effective date
ST85-537-001	Southern Natural Gas Co., P.O. Box 2563, Birmingham, AL 35202	United Gas Pipe Line Co	03-11-85	G	06-09-85
ST85-571-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Bridgeline Gas Distribution Co	03-06-85	D	06-02-85
ST83-573-001	do	LGS Intrastate, Inc	03-05-85	D	06-02-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
NOTE—The noticing of these filings does not constitute a determination of whether filings comply with the Commission's Regulations.

[FR Doc. 85-8809 Filed 4-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-128-000]

Equitable Gas Co., a Division of Equitable Resources, Inc.; Petition for Waiver of Refund Requirements

April 8, 1985.

Take notice that on March 29, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable) tendered for filing a petition for a waiver of certain portions of Section 154.38 of the Commission's Regulations, and of Equitable's FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet Nos. 6b through 6d, Item 6, "Purchased Gas Cost Rate Adjustments". The above-mentioned Commission regulation and tariff provision require the passthrough to jurisdictional customers of refunds received by Equitable from its pipeline suppliers. Equitable is requesting a waiver of these requirements as they pertain to Revere Natural Gas Company (Revere), a jurisdictional customer purchasing gas service from Equitable under Rate Schedule GS-1. As of March 6, 1985, Revere was in arrears to Equitable for a total of $200,213.96 for said gas service. Equitable contends that, under the circumstances, cash refunds or purchased gas adjustment credits to Revere are inappropriate, and Equitable requests that the Commission authorize it to use the refund amounts otherwise due Revere as an offset against the arrearages owed, until such time as the arrearages are paid in full.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 15, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-8810 Filed 4-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI76-192-000, et al.]

FEC Offshore Productive, Inc., Successor to Florida Exploration Co.; Application To Amend Certificates of Public Convenience and Necessity and To Redesignate Rate Schedules

April 9, 1985.

Take Notice that on December 31, 1984, FEC Offshore Productive, Inc. (FEC) of 3040 Post Oak Boulevard, Suite 200, Houston, Texas 70056, filed an application for redesignation of certificates of public convenience and necessity and related rate schedules, as listed in the attached appendix as a successor-in-interest to Florida Exploration Company (Florida).

By Assignment, Bill of Sale and Conveyance effective September 21, 1984, Florida Assigned its interest in certain offshore blocks as listed in the attached appendix to FEC.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

APPENDIX.—FLORIDA EXPLORATION COMPANY, OFFSHORE RATE SCHEDULES 12/8/84

Rate schedule No.	Docket No.	Offshore area/block	Purchaser (contract date)
9	CI76-192	S. Timbalier, Block 186.	Transco (1-15-73).
10	CI76-325	Grand Isle, Block 76.	Florida Gas Transmission (12-5-75).
12	CI76-516	Ship Shoal, Block 348.	Transco (3-25-74).
13	CI77-50	Vermilion, Blocks 21 and 33.	Florida Gas Transmission (5-12-76).
27	CI77-835	S. Timbalier, Block 66.	Trunkline (6-29-77).
30	CI76-518	Grand Isle, Blocks 75 and 76.	Florida Gas Transmission (2-14-75).
33	CI76-510	E. Cameron, Block 116.	Texas Eastern (6-15-74).
36	CI76-1247	S. Marsh Islands, Blocks 149 and 150.	Florida Gas Transmission (6-3-76).
38	CI79-645	Mississippi Canyons, 194 Field (Unit).	Florida Gas Transmission (6-1-66).
39	C181-21	W. Cameron, Block 65.	Florida Gas Transmission (6-25-80).
40	C181-96	Sabine Pass, Blocks 10 and 17.	Florida Gas Transmission (6-1-80).
41	C182-1	Galveston, Block 353.	Transco (8-25-81).
42	C182-210	Main Pass, Block 37.	Tennessee (5-25-82).
C&K (Enstar) Small Producer Certificate	CS71-1102.	Vermilion, Block 171.	Sea Robin PL (3-1-76) JOA Sale.

[FR Doc. 85-8811 Filed 4-11-85; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 8451-001]

Mega Renewables; Surrender of Preliminary Permit

April 10, 1985.

Take notice that Mega Renewables, Permittee for the Upper Power Project, FERC No. 8451, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8451 was issued on December 13, 1984, and would have expired on May 31, 1986. The project would have been located on

Slate Creek, in Shasta County, California.

The Permittee filed the request on March 1, 1985, and the preliminary permit for Project No. 8451 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8812 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-73-000, et al.]

Mitchell Energy Corp.; Notice of Application of Succession in Interest From Mitchell Energy Offshore Corp. to Mitchell Energy Corp.

April 9, 1985.

Take notice that on March 19, 1985, Mitchell Energy Corporation (Mitchell), of P.O. Box 4000 The Woodlands, Texas 77387-4000 filed an application for a certificate of public convenience and necessity to cover certain interests it has recently acquired through merger with Mitchell Energy Offshore Corporation (Mitchell Energy).

Mitchell, By Certificate of Ownership and Merger dated January 31, 1985, merged and assumed all the interests of Mitchell Energy. Sales of production from properties previously owned by Mitchell Energy were authorized under Certificates of Public Convenience and Necessity issued to Mitchell Energy in Docket Nos. CI75-73, CI75-848, CI76-244 and CI81-222. Mitchell seeks authorization to continue the sales as previously authorized. Further, Mitchell requests that Mitchell Energy Gas Rate Schedule Nos. 3, 4, 5 and 6 be redesignated as Mitchell Energy Corporation Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applications to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8813 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8087-001]

The Nuclear Energy Group, Inc.; Surrender of Preliminary Permit

April 10, 1985.

Take notice that the Nuclear Energy Group, Inc., Permittee for the proposed Morgantown Lock and Dam Project No. 8087, requested that its preliminary permit be terminated. The preliminary permit was issued on September 24, 1984, and would have expired on February 28, 1986. The project would have been located on the Monongahela River in Monongalia County, West Virginia.

The Permittee filed the request on March 22, 1985, and the preliminary permit for Project No. 8087 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8814 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8169-001]

The Nuclear Energy Group, Inc.; Hydro Systems Division; Surrender of Preliminary Permit

April 10, 1985.

Take notice that the Nuclear Energy Group, Inc.; Hydro Systems Division, Permittee for the proposed Carlyle Reservoir Dam Project No. 8169, requested by letter dated March 18, 1985, that their preliminary permit be terminated. The preliminary permit was issued on October 31, 1984, and would have expired on September 30, 1986. The project would have been located on the Kaskaskia River in Clinton County, Illinois.

The Permittee filed the request on March 22, 1985, and the preliminary permit for Project No. 8169 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8815 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2570-002, et al.]

Phillips Oil Company (Successor In Interest To Aminoil, Inc.); Application for Certificates of Public Convenience and Necessity and Request for Redesignation of Rate Schedules

April 9, 1985.

Take notice that on March 19, 1985, Phillips Oil Company (Phillips) of 336 HS&L Building, Bartlesville, Oklahoma 74004, filed an application for certificate public convenience and necessity to render service previously authorized by the Commission under certificate previously issued to Aminoil Inc., and requests that the related rate schedules listed in the attached Appendix be redesignated.

The certificate application results from the merger between Phillips Oil Company and Aminoil, Inc., pursuant to Delaware law effective January 1, 1985.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426 petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX

RS No.	Purchaser	Certificate docket
1	Northwest Central Pipeline Corp	G-2570
4 [1]	El Paso Natural Gas Co	G-11627
8	Williston Basin Interstate Pipeline Co	CI61-1271
10	Northwest Central Pipeline Corp	CI64-612
14	Lone Star Gas Co	G-3978
15	...do	CI62-98
16	...do	CI63-394
17 [1]	Transcontinental Gas Pipe Line Corp	CI66-639
20 [1]	Sea Robin Pipeline Co	CI69-949
21 [1]	Southern Natural Gas Co	CI69-1097
24	Lone Star Gas Co	CI66-20
26	Panhandle Eastern Pipe Line Co	CI70-374
27	...do	CI70-375
29	Lone Star Gas Co	G-6658
30	...do	CI62-739
31	...do	CI63-577
33	...do	G-6658
34	...do	CI66-20 CI71-226
35	...do	CI71-910
39	Texas Eastern Transmission Corp	CI74-735
40	Tennessee Gas Pipeline Co	CI75-225
41	El Paso Natural Gas Co	CI75-484
42	Northwest Pipeline Corp	CI76-166
43	Texas Eastern Transmission Corp	CI77-855
45	Florida Gas Transmission Co	CI76-1061
46	Texas Eastern Transmission Corp	CI76-1279
47	...do	CI79-137
48	Natural Gas Pipeline Co of America	CI79-170
50	Transcontinental Gas Pipe Line Corp	CI79-577
51	United Gas Pipe Line Co	CI78-910
52	Tennessee Gas Pipeline Co	CI80-457
53	...do	CI80-458
54	ANR Pipeline Co	CI80-452
55	...do	CI80-453
56	Columbia Gas Transmission Corp	CI80-486
58	Texas Eastern Transmission Corp	CI81-387
59	...do	CI81-407
60	Columbia Gas Transmission Corp	CI77-244
61	...do	CI77-853
62	Natural Gas Pipeline Co of America	CI78-209
63	Trunkline Gas Co	CI76-379
64	Transcontinental Gas Pipe Line Corp	CI78-327
65	Natural Gas Pipeline Company of America	CI77-658
67	...do	CI78-751
68	...do	CI78-752
69	...do	CI78-135
70	...do	CI78-80
71	Transcontinental Gas Pipe Line Corp	CI79-171
72	Natural Gas Pipeline Co of America	CI79-454
73	...do	CI79-455
74	...do	CI79-459
75	...do	CI79-576
76	...do	CI79-578
77	Sea Robin Pipeline Co	CI80-451
78	Natural Gas Pipeline Co of America	CI81-118
79	ANR Pipeline Co	CI81-356
80	Tennessee Gas Transmission Co	CI80-396
81	Southern Natural Gas Co	CI61-173
83	...do	CI68-536
84	...do	CI68-1218
85	...do	CI80-607
86	Tennessee Gas Pipeline Co	CI80-204
87	Natural Gas Pipeline Co of America	CI82-215
88	Tennessee Gas Pipeline Co	CI82-209
89	Trunkline Gas Co	CI82-302
90	Texas Eastern Transmission Corp	CI82-310
91	Transcontinental Gas Pipe Line Corp	CI82-313
92	...do	CI82-315
93	...do	CI82-357
94	...do	CI82-358
95	Natural Gas Pipeline Co of America	CI79-219
96	Texas Eastern Transmission Corp	CI84-333
97	Neches Gas Distribution Co	CI-64-612
98	The city of Long Beach, California	CI85-93

[1] Denotes Operator, et al.

[FR Doc. 85-8816 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7926-001]

Richard and Charles Gresham; Surrender of Preliminary Permit

April 10, 1985.

Take notice that Richard and Charles Gresham, Permittees for the Spread Creek Project No. 7926 have requested that their preliminary permit be terminated. The preliminary permit was issued on May 31, 1984, and would have expired on October 31, 1985. The project would have been located on Spread Creek in Lincoln County, Montana.

The Permittees filed the request on March 4, 1985, and the preliminary permit for Project No. 7926 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8817 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8502-001]

Trinity Bar Hydro Limited; Surrender of Preliminary Permit

April 10, 1985.

Take notice that Trinity Bar Hydro Limited, Permittee for the Trinity Bar Hydroelectric Project, FERC No. 8502, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8502 was issued on December 24, 1984, and would have expired on May 31, 1986. The project would have been located on Big Bar Creek, in Trinity County, California.

The Permittee filed the request on February 25, 1985, and the preliminary permit for Project No. 8502 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8818 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-405-000, et al.]

Baltimore Gas & Electric Co. et al.; Electric Rate and Corporate Regulation Filings

April 9, 1985.

Take notice that the following filings have been made with the Commission:

1. Baltimore Gas & Electric Company

[Docket No. ER85-405-000]

Take notice that on March 29, 1985, Baltimore Gas & Electric Company (BG&E) tendered for filing as an initial rate schedule an agreement (the Agreement) between Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO together with CL&P are the NU Companies) and BG&E. The Agreement, dated as of March 26, 1985 provides for sale by BG&E of energy from its system ("system energy") to the NU Companies on a daily or weekly basis (a "transaction"). BG&E states that the timing of transactions cannot be accurately estimated but that BG&E would offer to sell such system energy to the NU Companies only when it was economical to do so. The NU Companies would only accept such offer if it was economical to do so.

BG&E requests that the Commission waive its customary notice period and allow the Agreement to become effective on March 29, 1985.

According to BG&E copies of this filing have been mailed to CL&P and WMECO.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power & Light Company

[Docket No. ER85-402-000]

Take notice that on March 29, 1985, Central Power and Light Company (Company) tendered for filing a change in rate for 1985 under the Transmission Services Agreement (Agreement) between Company and Houston Lighting and Power (HL&P). Accompanying the filing is the Rate Schedule change (designated TS No. 69 revised, supplement No. 2) and a cost of service study.

The company has requested that the rate schedule change be made effective as of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: April 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Edison Company

[Docket No. ER85-403-000]

Take notice that on March 29, 1985, Commonwealth Edison Company (Commonwealth) tendered for filing proposed changes in its currently effective Rider 7, Meter Lease, the Rider 20, Fuel Adjustment, applicable to the Company FERC Electric Service Tariff, Rate 79. The changes incorporated in proposed Rider 7–PR and 20–PR conforms the definition of cost of fuel to the calculation used for service on and after January 1, 1985.

Commonwealth requests an effective date of May 29, 1985, without suspension, for Rider 7–PR and an effective date of January 1, 1985, without suspension for Rider 20–PR. Commonwealth requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the customers affected by the filing and the Illinois Commerce Commission.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Edison Company

[Docket No. ER85-404-000]

Take notice that on March 29, 1985, Commonwealth Edison Company (Company) tendered for filing proposed changes in its FERC Electric Service Tariff Rate 79 and Riders 7 and 20. The Company has proposed a two step increase. Step 1, proposed to become effective May 29, 1985, would increase revenues from jurisdictional sales and service by $7,879,000 and Step 2, proposed to become effective May 30, 1985, would increase revenues by $18,400,000, based on the 12 month period ending December 31, 1985.

The Company states that the proposed increase in charges is made necessary by increases in the costs of providing electric service.

Copies of the filing were served upon the customers affected by the filing and the Illinois Commerce Commission.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company

[Docket No. ER85-401-000]

Take notice that on March 29, 1985, Jersey Central Power & Light (Jersey Central) tendered for filing proposed changes in its currently effective rate schedule for full requirements service to its wholesale customers and in its supplemental and wheeling service to Allegheny Electric Cooperative Inc.

The proposed rates are in two phases: Phase A designed to reflect an anticipated major power purchase from Pennsylvania Power & Light Company (PP&L) and Phase B which does not reflect this purchase. The rate increase under Phase A reflects significant demand costs associated with the PP&L purchase which are more than offset by energy savings. Giving recognition to the energy savings under the PP&L purchase as a rate reducing item, Jersey Central asserts that both phases may be characterized as increases of approximately 9%.

Jersey Central requests an effective date of May 30, 1985 for Phase A and May 31, 1985 for Phase B.

Copies of this filing were served upon each customer and upon the New Jersey Board of Public Utilities.

Comment date: April 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Wisconsin)

[Docket No. ER85-398-000]

Take notice that on March 28, 1985, Northern States Power Company of Eau Claire, Wisconsin (NSP(W)) tendered for filing a proposed change in its currently effective rate schedule for full requirements service to its thirteen wholesale customers.

The proposed rate schedule will increase revenues from the sales to these customers by $1,399,979 based on sales for the January 1, 1985 to December 31, 1985 test year. The rate schedule change includes a revised W–1 rate for NSP(W)'s thirteen all-requirements municipal customers.

NSP(W) requests an effective date of May 30, 1985 for the filing.

Comment date: April 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER85-399-000]

Take notice that on March 29, 1985, Pacific Gas and Electric Company (PGandE) tendered for filing changes to the rate schedules under the Interconnection Agreement between PGandE and Northern California Power Agency ("the NCPA Agreement") and to the Interconnection Agreement between Pacific Gas and Electric Company and the City of Santa Clara ("the Santa Clara Agreement").

The agreements provide for firm transmission service between points of receipt and delivery. NCPA and Santa Clara wish to include a new point of receipt at PGandE's Telsa Substation. This change also will not affect the revenue collected from NCPA or Santa Clara, assuming that the power purchased from DWR at Telsa serves as replacement power, additional charges will apply in accordance with previously filed rates under Schedule G of the Agreement.

PGandE states that since the contractual arrangements have just concluded, PGandE must request a waiver of the Commission's notice requirements. Therefore, PGandE respectively requests an effective date of January 1, 1985. No customers under any other rate schedules will be affected if such waiver is granted. DWR has requested that such service is not to be provided after May 31, 1985. Accordingly, PGandE requests that this transmission service must be terminated as of June 1, 1985.

Comment date: April 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Sierra Pacific Power Company

[Docket No. ER85-406-000]

Take notice that on April 1, 1985, Sierra Pacific Power Company (Sierra) tendered for filing a notice of a two-phased change in rates and charges in rate schedule R–1 of its FERC Electric Tariff, Volume 1. Sierra also proposes to cancel Rate Schedule R–2 and to continue service heretofore provided under that Schedule under the revised R–2 Schedule. These rates apply to Sierra's wholesale firm power service. Based upon the 12-month estimated test period ending June 30, 1986, Sierra estimates that the proposed Phase 1 rates would increase annual revenues from FERC jurisdictional sales and services by approximately $1,788,000 or 24.5%. The proposed Phase 2 rates would increase such revenues by an additional $188,000 or 2.1%. Additionally, the proposed rates reflect continuation of several rate designs, including: (1) a purchase power adjustment; (2) voltage discount; (3) a power factor adjustment; and (4) a demand ratchet for partial requirements service. The proposed effective date for both phases is June 1, 1985.

Sierra states that the reason for the proposed increase in rates and charges is to allow Sierra to earn a return on its investment in a major addition to rate base arising from the commercial operation of Valmy 2. The rate increase is also required to allow Sierra to begin to recover increases in other costs that have occurred since its last rate increase filing submitted in November, 1981.

Copies of this filing were served upon Sierra's jurisdictional customers, the

California Public Utilities Commission and the Nevada Public Service Commission.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER85-400-000]

Take notice that on March 29, 1985, Virginia Electric and Power Company (VEPCO) tendered for filing proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to Rural Electric Cooperatives and Wholesale Municipalities. Based on the test period 12 months ending December 31, 1985 conditions, the Company estimates that the proposed changes in resale rates will increase annual revenues from Cooperative Customers other than Old Dominion Electric Cooperative, by $.60 million, increase annual revenues from Old Dominion Electric Cooperative by $6.39 million, and from Municipal Customers by $.157 million.

The Company states that the increase in wholesale rates is needed to compensate for the costs associated with the Bath County Pumped Storage Project, to cover the increased costs of doing business, and to achieve a reasonable overall rate of return of 11.28 percent.

VEPCO requests an effective date of May 29, 1985.

Copies of the proposed rates were served upon all of the Company's jurisdictional Wholesale Customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8914 Filed 4-11-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding seven consent order funds totalling $832,707.76 to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving the following parties: Arkla Chemical Corporation of Shreveport, Louisiana (Case No. HEF-0030), Eugene Endicott of Redmond, Oregon (Case No. HEF-0069), Field Oil Company of Ogden, Utah (Case No. HEF-0071), F.O. Fletcher, Inc. of Tacoma, Washington (Case No. HEF-0074, Glaser Gas, Inc. of Calhan, Colorado (Case No. HEF-0080), Ideal Gas Company, Inc. of Nyssa, Oregon (Case No. HEF-0093), and Inland U.S.A., Inc. of St. Louis, Missouri (Case No. HEF-0096).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to consent orders entered into by Arkla Chemical Corporation of Shreveport, Louisiana, Eugene Endicott of Redmond, Oregon, Field Oil Company of Ogden, Utah, F.O. Fletcher, Inc. of Tacoma, Washington, Glaser Gas, Inc. of Calhan, Colorado, Ideal Gas Company, Inc. of Nyssa, Oregon, and Inland U.S.A., Inc. of St. Louis, Missouri (hereinafter collectively referred to as the consent order firms). Each consent order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The consent orders settled possible pricing violations in the consent order firms' sales of refined petroleum products to customers during the relevant audit periods.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow accounts funded by the consent order firms pursuant to the consent orders. The DOE has tentatively decided that the consent order funds should be distributed to those customers of the consent order firms who establish that they were injured by one of the consent order firms' alleged overcharges. Such customers will receive refunds based on the amount they were allegedly overcharged, according to DOE audit files. However, applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. 20585.

Dated: April 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

April 3, 1985.

Names of Firms: Arkla Chemical Corporation, Eugene Endicott, Field Oil Company, F.O. Fletcher, Inc., Glaser Gas, Inc., Ideal Gas Company, Inc., Inland U.S.A., Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0030; HEF-0069; HEF-0071; HEF-0074; HEF-0080; HEF-0093; and HEF-0096.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement special refund proceedings to distribute funds received pursuant to Consent Orders entered into by the DOE and the following parties: Arkla Chemical Company (Arkla) of Shreveport, Louisiana; Eugene Endicott (Endicott) of Redmond, Oregon; Field Oil Company (Field) of Ogden, Utah; F.O. Fletcher, Inc. (Fletcher) of Tacoma, Washington; Glaser Gas, Inc. (Glaser) of Calhan, Colorado; Ideal Gas, Inc. (Ideal) of Nyssa, Oregon; and Inland U.S.A., Inc. (Inland) of St. Louis, Missouri (hereinafter collectively referred to as the consent order firms). The aggregate amount of funds involved in this proceeding is $832,707.76.

I. Background

Each of the consent order firms is a "reseller" or "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes concerning certain sales of refined petroleum products.[1] Each Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, each Consent Order states that the consent order firm does not admit that it committed any such violations.

Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability regarding sales to their respective customers during the consent order periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the consent order amounts, the products covered by the Consent Orders, and the dates of the consent order periods are set forth in Appendices A–G to this Proposed Decision and Order.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶82,552 (1982); *Office of Enforcement*, 9 DOE ¶82,508 (1981); *Office of Enforcement*, 8 DOE ¶82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the seven consent order funds. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of these funds.

III. Proposed Refund Procedures

Insofar as possible, these consent order funds should be distributed to those customers of the consent order firms who were injured by the alleged price violations. In each case, the ERA audit file pertaining to the Consent Order lists the names of customers who purchased refined petroleum products from the consent order firm, along with the pro rata amounts the ERA calculated the customers should be eligible to receive in a refund proceeding. This information is listed in the Appendices to this Proposed Decision and Order.[2] In our view, these identified firms and their downstream customers are most likely the only parties who were adversely affected by any overcharges by the consent order firms. However, we recognize that there may be other purchasers of refined petroleum products from these firms who were not listed in the ERA audit files and who may have been injured by the pricing practices of the consent order firms during the relevant consent order period. We therefore propose to accept applications from any party that can show injury resulting from the consent order firms' alleged overcharges.

Many of the identified customers of the consent order firms are resellers, i.e., retailers and wholesalers. We propose that these firms, and any other claimants who resold petroleum products purchased from one of the consent order firms, be required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers.* In order to qualify for a refund, firms that resold petroleum products purchased from one of the consent order firms must show that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges to its customers. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[3] The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); Vickers Energy Corp./Standard Oil Co., 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

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[1] Endicott did not enter into a Consent Order with the DOE. However, in order to settle all claims and disputes between Endicott and the DOE, the firm agreed to pay $10,000 to the DOE under the terms of a Stipulation for Consent to Judgement approved by the United States District Court for the District of Oregon on June 10, 1980. *Endicott V. Schelesinger*, Civil No. 790–129 (D.C. Ore. 1980). In view of the similarity between the terms of the Stipulation and the terms usually agreed upon in a Consent Order, we will hereinafter refer to the Stipulation as a Consent Order.

[2] The names listed in the Appendices do not include customers who were entitled to receive direct refunds (*see* fn. 6) or customers who purchased at service stations operated by two of the consent order firms (*see* fn. 8). In addition, we currently do not have addresses for several of the customers who were allegedly overcharged by Arkla and Field (*see* Appendices A and C). We request that anyone knowing the locations at these firms or individuals inform this Office of their addresses.

[3] Some of the motor gasoline sales covered by the Consent Orders entered into by Field and Inland occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers who purchased motor gasoline from Field or Inland will not be required to submit bank information for purchases made after July 15, 1979.

In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). In the present case, we are adopting a presumption that reseller claimants seeking small refunds were injured by the pricing practices settled in each Consent Order. This presumption is based on a number of considerations. *See, e.g.*, Uban Oil Co., 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of this presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase covered products from one of the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially, The small claim presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[4] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the time period of each Consent Order is quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.[5] *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumption we are adopting regarding small reseller or retailer claimants, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of petroleum products purchased from one of the consent order firms need only document their purchase volumes from the consent order firm to make a sufficient showing that they were injured by the alleged overcharges.[6] On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased petroleum products consumed as fuel or as raw materials will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ ——, HEF–0221 (February 22, 1985)

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order funds among successful applicants. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe that this information can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See, e.g., Marion.* Specifically, we note that the ERA audits were very well-defined, and the Consent Orders were limited to the same products and time periods as the audits. We therefore propose that the maximum refunds for the firms listed in the Appendices who make the requisite showing set forth in Part III of this Proposed Decision be equivalent to the potential refund amounts calculated by the ERA.[7] These refund amounts,

[4] We propose that resellers who made only spot purchases from one of the consent order firms be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97; *see also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claim is based.

[5] Any claimant whose potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold amount.

[6] The Consent Orders entered into by Field, Fletcher, Glaser, and Ideal required each consent order firm to refund a certain amount directly to its end-user customers. The funds in the escrow accounts are thus primarily intended for distribution to the firms' reseller and retailer customers. Accordingly, an end-user of refined petroleum products purchased from Field, Fletcher, Glaser, or Ideal will not be eligible for a refund in this proceeding unless it certifies that it did not receive a direct refund from the consent order firm.

[7] The transactions covered by the Arkla Consent Order (all sales of motor gasoline, diesel fuel, naphtha, and kerosene by Arkla during the period November 1, 1973 through January 31, 1974) are also covered by a separate Consent Order entered into by the DOE and Arkansas Louisiana Gas Company (ALGC), of which Arkla is a wholly-owned subsidiary. Specifically, the ALGC Consent Order covers sales of motor gasoline, diesel fuel, and other refined products by ALGC and Arkla during the period September 1, 1973 through December 31, 1973. The ALGC Consent Order is the subject of a separate Subpart V proceeding (Case No. HEF–0201). We propose that the potential claimants in this proceeding (*see* Appendix A to this Proposed

Continued

which are listed in the Appendices, represent a prorated portion of the alleged overcharges by the consent order firms.[8] Successful refund applicants will also receive a pro rata share of the interest which has accured since the deposit of the funds into the escrow accounts.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in these proceedings should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the Federal Register, copies will be provided to the consent order firms' customers whose names and addresses we have obtained from the ERA audit files. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where the consent order firms conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by the consent order firms listed in Appendices A–G to this Proposed Decision and Order will be distributed in accordance with the foregoing Decision.

Appendix A—Arkla Chemical Corporation, P.O. Box 21734, Shreveport, LA 71151

Consent Order Period: Nov. 1, 1973 to Jan. 31, 1974.

Products Covered: Motor gasoline, diesel fuel, naphtha, kerosene.

Consent Order Amount: $67,500.

Identified customers	Potential refund [1]
Aerobic System of Arkansas, P.O. Box 6, Gravel Ridge, AR 72706	$122
ARCO Building Materials, P.O. Box 232, Little Rock, AR 72203	41
ARCO Metals, P.O. Box 6716, Shreveport, LA 71106	59[illegible]
Albers Feed & Farm Supply (Carnation Country Store), 1100 Wheeler Ave., Fort Smith, AR 72901	8[illegible]
Albert Harper, 8701 Mize Road, Little Rock AR 72206	117
A.L.K. Moore Trucking, P.O. Box 5006, Bossier City, LA 71111	39[illegible]
Anchor Paint Mfg. Co., 2317 Cantrell Road, Little Rock, AR 72206	4[illegible]
Arkansas Cement Corp., P.O. Box 21734, Shreveport, LA 71151	3,222
Arkansas Foundry, P.O. Box 231, Little Rock, AR 72203	834
Arkansas Oklahoma, 115 North 12th Street, Fort Smith, AR 72901	1,202
Arkansas Petroleum Sales, P.O. Box 5237, Little Rock, AR 72205	1,316
Armstrong Tool & Supply, P.O. Box 1468, McAlester, OK 74501	318
A. Tenenbaum Co., P.O. Box 15138 GMF, Little Rock, AR 72231	26
Fall City Co., P.O. Box 39, Nashville, AR 71852	3,266
Earling Construction Co., Route 1, Box 348-A, Laveca, AR 72941	26
Barnwell Shingle Tab, P.O. Box 7681, Shreveport, LA 71107	19
Bigelow Robinson Co., 1115 Pine St., North Little Rock, AR 72114	47
Big K Development, 13700 Beckenham, Little Rock, AR 72207	48
Bob Guthrie Contractor, 3615 Dixon Road, Little Rock, AR 72206	30
Bob's Trailer Ville, 3816 N. 43 Street, Fort Smith, AR 72901	72
Bowles & Eden Equipment, Route 2, Box 33 B, North Little Rock, AR 72116	31
Brandon Van & Storage, P.O. Box 9628, Little Rock, AR 72219	43
Braswell Motor Freight, P.O. Box 7007, Shreveport, LA 71107	485
Brown Janitor Service, P.O. Box 4581, Little Rock, AR 72204	30
Eugene Oil Co., P.O. Box 147, Monroe, LA 71201	816
Byers Oil Co., P.O. Box 725, Hope, AR 71801	1,818
C & C Electric, P.O. Box [illegible]6, Little Rock, AR 72203	40
Caddo Parish School Board, P.O. Box 37000, Shreveport, LA 71130	1,060
Calumet Refining Co., Star Route, Box 126, Princeton, LA 71067	140
Capital Welding Supply, P.O. Box 3015, Little Rock, AR 72203	56
Capital Chemical, 2326 Cantrell Road, Little Rock, AR 72202	81
Car Care, 6015 Mitchell Dr., Little Rock, AR 72209	284
Carl Staggs Plumbing, 15300 Bauch Lane, Little Rock, AR 72206	72
Casey Grocery & Station, Cecil, AR 72930	265
Chandeler Trailer Convey, P.O. Box 9410, Little Rock, AR 72219	231
City of Shreveport, P.O. Box 31109, Shreveport, LA 71130	20
C.J. Micheu, 1821 Parker, North Little Rock, AR 72114	24
Clark Equipment Co., P.O. Box 2619, Cantrell Booker Road, Little Rock, AR 72203	83
Coca-Cola Bottling Co., P.O. Box 1114, Shreveport, LA 71163	316
Curtis Barker Oil Co., P.O. Box 6081, Shreveport, LA 71106	580
Cunningham-Nelson Chevrolet, P.O. Box 167, Ozark, AR 72949	117
D & S Self Service, 3838 North Market St., Shreveport, LA 71107	311
Dan Glover Trucking Co., 3820 Mabelvale Pike, Little Rock, AR 72204	1,147
Daniels Moving & Storage, P.O. Box 427, North Little Rock, AR 72115	40
D. D. McCowen, 8301 West 36th St., Little Rock, AR 72204	15
Deaton Oil Co., P.O. Box D, Murfreesboro, AR 71958	816
Descoteau Heating & Air, 3603 Jacksonville Hwy., North Little Rock, AR 72117	39
Dillaha Fruit Co., P.O. Box 546, Little Rock, AR 72203	54
Ditch Witch Trencher of LA., 3815 East Texas, Bossier City, LA 71111	84
D. J. Pipe & Steel Co., 1220 South Zero, Fort Smith, AR 72901	107
DLM Inc., P.O. Box 37, Malvern, AR 72104	75
D. N. Marshall & Son, Rt. 4, Booneville, AR 72927	290
Donald Kirk Plastering, 319 Gill, Little Rock, AR 72205	49
Duggan Machine Co., Inc., P.O. Box 7333, Shreveport, LA 71107	18
East Texas Motor Freight, P.O. Box 7176, Shreveport, LA 71107	77
Economy Oil Co., P.O. Box 8117, Shreveport, LA 71108	2,134
E. E. Stillman, 48 Stillman Loop-Route, Benton, AR 72015	40
Enterprise Products Co., 3418 Barksdale Blvd., Bossier City, LA 71112	3,012
Enterprise Tool, Inc., Mail Route Road, Little Rock, AR 72205	64
Erection Service, P.O. Box 231, Little Rock, AR 72203	99
Esquire Marble Co., 15104 Sardis Road, Mabtevale, AR 72103	25
Fagan Electric Co., Inc., 3401 West 65th St., Little Rock, AR 72206	300
Fort Smith Plating Co., 4302 Wheeler Ave., Fort Smith, AR 72901	80
Fred Stewart Co., 429 South Zero, Fort Smith, AR 72901	204
Frost-Whited Co., Inc., P.O. Box 37150, Shreveport, LA 71103	18
Goodwin Plumbing Co., 8009 Texas Road, Fort Smith, AR 72903	31
Greene Valley Farms, P.O. Box 4517, Asher Station, Little Rock, AR 72214	48
Griffin-Legett Funeral, 5800 West 12th St., Little Rock, AR 72204	35
H & R Oil Co., 204 N. Walcott St., Jefferson, TX 75657	345
Halliburton Co., P.O. Box 5335, Bossier City, LA 71111	485
Highway Dumphaulers, P.O. Box 3164, Little Rock, AR 72203	830
Holco Oil Co., 1010 Horton Street, Minder, LA 71055	98
Hume Superior, 1011 East 30th St., Little Rock, AR 72206	30
Hyde Naphtha Co., P.O. Box 837, Marshall, TX 75670	85
Industrial Supply Inc., 1509 Rebsamen Park Rd., Little Rock, AR 72203	34

Decision) be allowed to apply for a refund in either proceeding concerning their purchases from Arkla during the period covered by both Consent Orders (November 1, 1973 through January 31, 1974). In the present proceeding, each claimant's refund amount will be determined according to the potential refund amount calculated by the ERA and listed in Appendix A. In the ALGC proceeding, we have proposed that each claimant's refund amount be determined according to a volumetric refund factor. *See Arkansas Louisiana Gas Co.*, 6 Fed. Energy Guidelines ¶90,052 (Proposed Decision and Order, January 9, 1985). No claimant will be allowed to receive a refund in both proceedings for purchases made during the Arkla consent order period.

[8] According to our records, Arkla and Inland also sold motor gasoline to end-users at company-owned service stations. The ERA audit files pertaining to Arkla and Inland do not list alleged overcharges for customers who purchased motor gasoline from these service stations (*see* Appendices A and G). We therefore propose to establish a claims procedure whereby these unidentified customers can apply for a refund based on the volume of motor gasoline which they purchased from service stations owned by Arkla or Inland. *See Vickers*. The volumetric factor will be determined by dividing the portion of the consent order amount designated for distribution to customers at Arkla and Inland's service stations by the estimated total volume of motor gasoline sold at the service stations during the consent order period. This results in a per gallon volumetric refund amount for each gallon of motor gasoline which an applicant purchased from Arkla or Inland during the consent order period. In the case of Arkla, the per gallon volumetric refund amount is $0.003716 ($371.00 divided by 99,828 gallons). In the case of Inland, the per gallon volumetric refund amount is $0.005283 ($145.275 divided by 27,499,100 gallons).

Identified customers	Potential refund [1]
Industrial Tarsel, P.O. Box 1660, Little Rock, AR 72203	94
Inglis Construction Co., Rt. 3 Box 327-A, Little Rock, AR 72205	172
Irish Pipe Coatings Co., P.O. Box 19060, Shreveport, LA 71136	44
James A. Culberson, Rt. 2 Box 195-FF, Alexander, AR 72202	58
James C. Thompson, Rt. 2 Box 266 E, Alexander, AR 72202	24
J. O. Gott Plumbing, 4228 East 43rd St., North Little Rock, AR 72117	152
J. C. Penney Co., P.O. Box 2405, 9th Floor, Dallas, TX 75221	660
J. K. Hill, P.O. Box 398, Ringgold, LA 71068	29
James Rigging, P.O. Box 3289, North Little Rock, AR 72103	270
J. S. Robinson, P.O. Box 59, Bethany, LA 71007	509
Kennedy Sheet Metal, P.O. Box 6870 Sherwood Sta., North Little Rock, AR 72116	40
King & Pilgram, P.O. Box 679, Pittsburg, TX	317
La. Dept. of Highways, P.O. Box 38, Shreveport, LA 71161	27
L. O. Culverhouse, Route 1 Box 5, Sibley, LA 71073	436
Lester Burst Nursey, 7820 Cantrell Road, Little Rock, AR 72207	18
Libbey Glass Co., P.O. Box 30012, Shreveport, LA 71130	112
Lipton Oil Co., 200 South Martin, Warren, AR 71671	126
Little Rock Asphalt, 3621 Mablevale Pike, Little Rock, AR 72202	425
Little Rock Crate & Basket, 1623 East 14th St., Little Rock, AR 72202	15
L-L-L-L Construction Co., 1057 Kent Rd., Shreveport, LA 71107	46
Loy S. Hathaway, Boles Route, Waldron, AR 72958	96
Luekers Wholesale Oil, P.O. Box 384, Waskom, TX 75692	738
Lund Oxygen Co., P.O. Box 3725, Shreveport, LA 71103	17
M & M Motor Co. Auto Service, 4731 N. Lakeshore Drive, Shreveport, LA 71103	24
M & S Lumber Co., 208 S. Bell, Ozark, AR 72949	270
Machen Construction, P.O. Box 6118, South Station, Little Rock, AR 72206	670
Marion Young Rental, 6 Holly Hill, Little Rock, AR 72204	57
Martin & Son, P.O. Box 42, Winnsboro, TX 75494	738
Matson Construction Co., P.O. Box 2557, Little Rock, AR 72203	152
Matthews Oil Co., Inc., P.O. Box 4045, Shreveport, LA 71104	117
May Oil Co., Route 1 Box 84, North Little Rock, AR 72217	231
Mechanical Services, Route 3 Box 1510, Plain Dealing, LA 71064	393
Medlock Produce Co., Route 1, Von Buren, AR 72956	706
M. E. Easley, Route 2, Plain Dealing, LA 71064	24
Methodist Children's Home, P.O. Box 4125, Little Rock, AR 72214	22
Metro Waste Co., P.O. Box 9156, Little Rock, AR 72219	151
Midwest Casting Corp., P.O. Box 206, Mabelvale, AR 72103	30
Miller Drilling Co., Route 5 Box 450, Fort Smith, AR 72901	102
Mitchell Machinery, P.O. Box 15248, Little Rock, AR 72231	38
Mobil Oil Corp., P.O. Box W, Ada, OK 74820	40
Moody Equipment Co., P.O. Box 334, Little Rock, AR 72203	192
Murphy Oil USA, Inc., 200 Peach Street, Eldorado, AR 71730	309
NLR Soft Water Inc., 131 Military Road, North Little Rock, AR 72115	84
North Little Rock Water Dept., P.O. Box 796, North Little Rock, AR 72115	85
Norwell Equipment, P.O. Box 37210, Shreveport, LA 71103	33
Parker Solvents Co., P.O. Box 271, Fort Smith, AR 72902	75
P. E. Burton, Route 3 Box 994, Minden, LA 71055	23
Pentzien, Inc., Frazier Pke., Little Rock, AR	430
Percy Mingo, 4109 Hollywood Ave., Shreveport, LA 71109	388
Perkins Automatic Sprinkler Co., 1021 Jessie Rd., Little Rock, AR	135
Petroleum Distributing Co., P.O. Box 269, Houston, TX 77001	493
Petroleum Sales Co., Inc., 817 West First St., Bossier City, LA 71010	783
Pickens-Bond Construction, Gazette Building, Little Rock, AR 72201	144
P. M. Oil Co., P.O. Box 639, Prescott, AR 71857	629
Porky Davis General Tire, P.O. Box 1147, Little Rock, AR 72203	84
Pulaski Academy, 12701 Hinson Road, Little Rock, AR 72207	80
Pulaski Country Arkansas, Thirty Second & Brown St., Little Rock, AR 72205	30
Ralph A. Hill, 200 Hill Road, Bryant, AR 72022	33
Razorback Ready Mix, 6421 New Benton Hwy., Little Rock, AR 72204	391
Richards Cycle Shop, 6800 South University, Little Rock, AR 72204	37
Richards Machinery & Supply Co., 5400 Interstate, Shreveport, LA 71103	23
Rushing & Mason Equipment Co., Inc., 7675 West 70th St., Shreveport, LA 71129	33
SAIA Motor Freight Line, Inc., P.O. Box 7643, Shreveport, LA 71137-7643	534
Saunders Leasing Systems, Inc., 1660 King's Hwy., Shreveport, LA 71109	5,750
Savacool & Roberts, Rt. 4 Box 134, Minden, LA 71055	286
Scott Plumbing Co., 1804 Splawn, North Little Rock, AR 72118	98
Sebastian County Road Dept., P.O. Box 388, Greenwood, AR 72936	463
Service Truck Lines, Inc., P.O. Box 3804, Shreveport, LA 71103	36
Shreveport Oil Co., P.O. Box 8432, Shreveport, LA 71108	2,871
Shreveport Packing Co., 1801 Kings Hwy., Shreveport, LA 71103	18
Smith Chevrolet-Cadillac, P.O. Box 3069, Fort Smith, AR 72913	215
Smith Oil & Tire Co., P.O. Box 7965, Shreveport, LA 71107	895
Southland Corp., P.O. Box 4008, Shreveport, LA 71104	288
Springer Painting Co., P.O. Box 4128, Little Rock, AR 72214	35
Stephens, Inc., P.O. Box 5911, Shreveport, LA 71105	18
Stephen's Production Co., Box 2407, Forth Smith, AR 72903	1,891
T.A.W., Inc., P.O. Box 761, Lindsay, OK 73052	71
T. B. Mercer Trucking Co., P.O. Box 1809, Fort Worth, TX 76101	27
The Texas & Pacific Ry. Co., 712 Missouri Pacific Bldg., St. Louis, Missouri 63103	21
Thompson-Hayward Chemical Co., 3100 West 65th, Little Rock, AR 72206	93
Tiger Mart, Inc., P.O. Box 76, Keithville, LA 71047	548
T. J. Myers Excavating, 16301 Raines Road, Little Rock, AR 72210	81
T. J. Smith Box Co., P.O. Box 1643, Fort Smith, AR 72902	25
Toll Manufacturing, 7400 West 12th St. Lower Level, Little Rock, AR 72204	146
Tom Jones Construction, No. 1 Circle Drive, Benton, AR 72015	59
TPI City Construction, 3001 East 63rd St., Kansas City, MO 64132	692
Twin City Ready Mix, P.O. Box 9829, Little Rock, AR 72219	233
United Fence Co., P.O. Box 4161, Fort Smith, AR 72901	106
Waskom Oil Co., P.O. Box 146, Waskom, TX 75692	1,463
Welders Supply Co., 800 E. Roosevelt Rd., Little Rock, AR	221
Wheeling Pipeline, Inc., Industrial Loop, Shreveport, LA 71107	128
Wilbanks Co., Inc., P.O. Box 5417, Bossier City, LA 71111	41
Wilkerson Diesel Service, P.O. Box 219, North Little Rock, AR 72115	115
Woodline, Inc., P.O. Box 1047, Russellville, AR 72801	46
W. R. Stephens Farm, 114 East Capitol, Little Rock, AR 72201	89
W. R. Wrape Stone Co., P.O. Box 182, Little Rock, AR 72203	29
Bill Adamson	22
Brooks Oil Co	141
Calley's Fine Service	51
C.L. Brixie	25
Crop Service Co	30
Felton Oil Co	1,272
Flexline, Inc	89
Foster Oil Co	319
Gass Service Co	221
Glen Vahl	56
Hazen Oil Co., Inc	19
Herman Douglas	176
J.I. Spainhour	224
Lee Phillips	34
Leo Mathis Co	24
Little Rock Airmotive, Inc	37
McFarlands Welding Service	146
Mid South Utility Contractor	72
M. L. Persons	231
Monard Harrison	2,826
Ozark Material Co	194
Page Oil Co	96
Pic-Walsh Freight Co	186
Pilgrim Inc	62
Rison Butane Co	207
R.L. Johnson	250
Roberds & Merrill	80
Robert M. Goff Co	28
Surface Combustion	66
TGW Developers	176
Tom Burgess	29
Trey Burns	47
U.S. Plywood Co	56
W. D. Savacool	64
Customers with potential refund claims of less than $15 (148)	[2] 982
Unidentified customers of company-owned service stations (see fn. 6)	371

[1] Rounded to the nearest dollar.

[2] In the absence of other evidence, these customers would not be eligible for refunds under the procedures proposed in the attached Proposed Decision because their potential refund claims are below the minimum refund amount of $15.

Appendix B—Eugene Endicott, P.O. Box 388, Redmond, OR

Consent Order Period: Nov. 1, 1973 to Nov. 30, 1975.

Products Covered: Motor gasoline, aviation gasoline.

Consent Order Amount: $10,000.

Identified customers	Potential refund [1]
John Hall, 8572 W. Antler, Redmond, OR 97756	$2,090
Ronald Halsey, 688 E. 1st Street, Prineville, OR 97754	1,980
Lawrence Loar, P.O. Box 1, Camp Sherman, OR 9732-0001	190
Butler Aircraft, Roberts Field, Redmond, OR 97756	810
Tasco, Inc., 606 110 Ave. N.E., Suite 315, Bellevue, WA 98004	4,930

[1] Rounded to the nearest dollar

Appendix C—Field Oil Company, 136 W. Rushton Street, Ogden, UT 84401

Consent Order Period: Mar. 1, 1979 to July 31, 1979.

Products Covered: Motor gasoline.

Consent Order Amount: $17,955.15 to reseller customers, $4,772.41 to end-user customers (*see* footnote 6).[1]

Identified reseller customers	Potential refund [2]
Amoco Freeway, 3185 Harrisons Blvd., Ogden, UT 84403	$2,516.80
Big Verns, 345 N. Main, Clearfield, UT 84015	110.14
Bill's American Service, 5608 S. 1900 W., Roy, UT 84067	1,459.06
Ed Blair Service, 2991 Monroe Blvd., Ogden, UT 84401	443.19

Identified reseller customers	Potential refund [1]
Crabtree Auto Company, 765 W. Riverdale, Ogden, UT 84403	29.44
Walt Devore's Service, 133 N. Main, Clearfield, UT 84015	2,225.81
Harry Duckworth, 155 S. 300 E., Kaysville, UT 84015	219.28
Fair Better Service, P.O. Box 1167, Ogden, UT 84402	872.53
Delbert Jensen, 4525 S. 300 W., Ogden, UT 84403	709.80
Kar Kwik #1, 2784 Jefferson Ave., Ogden, UT 84403	27.19
Ain' Rent-a-Car, 123 22nd Street, Ogden, UT 84401	20.85
Mini Mart, 1452 Washington Blvd., Ogden, UT 84401	1,954.82
Nebeker Oil, 1062 Washington Blvd., Ogden, UT 84401	36.03
Bill Olson, 2301 S. Main, Bountiful, UT 84010	1,341.41
Woody Pendleton, 3185 Harrison Blvd., Ogden, UT 84403	1,018.50
Short Stop, 5086 Harrison Blvd., Ogden, UT 84403	2,278.18
Simson's Market, 2784 Jefferson Ave., Ogden, UT 84403	435.52
Vern Stockseth, 5865 S. Woodland Drive, S. Ogden, UT 84403	577.57
M. J. Kunz	818.80
Gordon Truck Service	746.24

[1] Under the terms of the Field Consent Order, the firm agreed to pay $4,781.58 directly to end-users and $18,052.00 to the DOE. In response to a subsequent discovery of several mathematical errors in the audit, an addendum to the Consent Order was executed on July 6, 1981, thereby reducing the consent order amounts to $4,772.41 for direct payment to end-users and $17,995.15 for payment to the DOE.

[2] Since the consent order amount constituted a 100% settlement of the alleged overcharges, each potential refund amount represents the total alleged overcharges incurred by the identified customer.

Appendix D—F.O. Fletcher, Inc., 606 Alexander, Tacoma, WA 98421

Consent Order Period: Nov. 1, 1973 to May 31, 1974.

Products Covered: Motor gasoline, middle distillates.

Consent Order Amount: $131,470.00 to resellers, $3,350.00 to end-users (*See* footnote 6).

Identified reseller customers	Potential refund [1]
Garbie Oil Co., 7005 N. Vincent Ave., Portland, OR 97217	$285
Lee Huber, 12959 S.E. Powell Blvd., Portland, OR 97236	292
Arden & Ed C. Kneppers, 1000 S.E. 82nd Ave., Portland, OR 97256	1,844
R & M Transport, 7321 N.E. 140th Place, Kirkland, WA 98033	37
Penrco Oil Co., 1919 W. 39th St., Vancouver, WA 98660	716
H. C. Sanderson, Route Bigg Jct., Portland, OR 97229	171
John M. Wilson, 1908 N.E. 57th Street, Portland, OR 97213	1,404
Franke Oil Co., P.O. Box 2440, Eugene, OR 97402	819
Ballard Oil Co., 5300 28th Ave. N.W., Seattle, WA 98106	[2] 9
Blue Line Exchange, P.O. Box 37, Portland, OR 97043	117
Brokers Petroleum, 5100 N.W. 137th Ave., Portland, OR 97229	805
Chappell Oil Co., Rte. 3, Box 4766, St. Helens, OR 97051	1,906
Bob Epley, A-1 Oil Co. 1013 N.E. 82nd Ave., Portland, OR 97213	12,837
McCall Oil Co., 2313 Lloyd Center, Portland, OR 97232	8,975
Morrison Oil Co., P.O. Box 17339, Portland, OR 97217	1,120
Pacific Petroleum, Inc., 1328 S.W. Baseline Rd., Hillsboro, OR 97123	2,939
Powell Distributing Co., P.O. Box 17194 Kenton Station, Portland, OR 97208	533
Redmond Oil Co., 14344 Woodinville-Redmond Road, Redmond, WA 98052	4,073
Joe B. Young, P.O. Box 267, Hood River, OR 97031	83
Robert Wanamaker, P.O. Box 77, Haines, WA 97833	1,174
Vernon Pratt, 1304 East 10th Street, Dallas, OR 97058	197
Triwax Service, 205 Columbia N.E., Salem, OR 97303	2,202
James F. Lemon, P.O. Box 55, Monroe, OR 97546	69
Doubrowsky Logging Co., P.O. Box 191, Coldenvale, WA 98620	160
D. Anderson, 824 State Street, Olympia, WA 98506	815
Petro Stops Northwest, 302 S. Plummer, Tucson, AZ 85719	165
Savway, 95 S.W. First Ave., Ontario, OR 97914	1,299
Schroeder Fuel Co., 1583 Wenatchee Ave., Wenatchee, WA 98801	1,763
Duncan Service Station, 10656 Pacific Avenue, Tacoma, WA 98444	249
Lukanbill Service Station, 5535 McKinley, Tacoma, WA 98404	240
Ripley Service Station, 941 Meridan, Puyallup, WA 98371	475
Brannon Service Station, 901 Valley, Puyallup, WA 98371	190
Lilyblad Petroleum, 2244 Port of Tacoma Road, P.O. Box 1381 Tacoma, WA 98401	8,750
Marlen L. Knutson, P.O. Box 318, Stanwood, WA 98292	742
Chet & Jack Potter, 1601 E. 27th, Tacoma, WA 98421	806
Able Oil Co., P.O. Box 103, Aberdeen, WA 98520	2,662
Pedersen Oil Co., 1702 Penn Ave., Bremerton, WA 98310	1,318
Norm Drew, P.O. Box 2014, Olympia, WA 09501	124
Gene Morris Fuel Co., Box 71, Route 1, Glenoma, WA 98336	1,416
Port Orchard Oil Co., P.O. Box 140, Port Orchard, WA 98366	1,353
City Fuel, 1912, Wilkerson, Tacoma, WA 98405	304
Northwest Petroleum, 250 E. D Street, Tacoma, WA 98405	52
Gene Peters, Caribou Four, Glenoma, WA 98336	1,225
Harvey, DeWitt, 9805 14th South, Seattle, WA 98108	531
Elton Newman, 1105 Lynnhurstway, San Jose, CA 95116	1,013
Ray Ridgeway, 3457 15th West, Seattle, WA 98119	2,896
Lee Clayton, 9805 14th South, Seattle, WA 98108	36
Leonard L. Anderson, Anderson Heating, 1098 N.W. Innis Arden Dr., Seattle, WA 98177	38
Cecil Armstrong, Cunningham Fuel, 4459 S. Hudson, Seattle, WA 98118	40
Best Fire Oil Co., 7624 S.E. 24th, Mercer Island, WA 98040	41
Charles Forsberg, 2024 N.W. 190th, Seattle, WA 98177	221
J. Kletsch, Burien Fuel, 19260 Des Moines Hwy., Seattle, WA 98168	1,345
Bob Landon, Landon Fuel, 16068 Ambaum Blvd. So., Seattle, WA 98148	18
Art Stokka, Williams Heating Oil, 2008 N.W. 56th, Seattle, WA 98107	112
Suburban Fuel, 15055 Des Moines Way, Seattle, WA 98148	82
J. Wasilousky, Fireside Fuel, 3515 N.E. 96th, Seattle, WA 98115	28
Ken Wise, West Fuel Co., 4455 35th St. S.W., Seattle, WA 98126	534
Tom Danforth, Thrifty Oil West, Box 2646, Everett, WA 98200	439
J. Pardonavion, Paddy's Fuel, 6311 Rockefeller, Everett, WA 98200	490
Emmet Kramer, Freeland Oil Sales, Langley, WA 98260	[2] 11
L. DeYoung Oil Co., P.O. Box 227, Woodinville, WA 98072	215
A. Jaskari, Sea Rac Oil, 1102 S. 188th Place, Seattle, WA 98148	148
Salmon Bay Oil, 206 Administration Bldg., Fisherman's Terminal, Seattle, WA 98104	307
Sound Oil, 6346 Rainier Ave., Seattle, WA 98118	318
Tom's Fuel, 3801 Second Ave., N.E., Seattle, WA 98105	87
J. Clemonts, 402 Third Ave., South, Twin Falls, ID 83301	1,077
C. W. Douds, Boise, ID 83702	[2] 8
Lynch Oil Co., 535 West Main, Box 780, Burley, ID 83318	4,648
Johnson Oil, State Street, Boise, ID 83702	170
Meyers Oil Co., 1310 State Street, Boise, ID 83702	103
Blue & White, 914 Royal Blvd., Boise, ID 83706	11,915
Franklin Oil Co., P.O. Box 176, Caldwel, ID 83605	7,523
Fred West, P.O. Box 7467, Boise, ID 83707	375
J. A. Trimble Oil, 1424 Second Ave., South, Nampa, ID 83651	2,169
C. B. Oil, 1010 First Street, Nampa, ID 83651	5,969
A. J. Miller, 352 Oak Circle Drive, Boise, ID 83702	840
Jackson Oil, P.O. Box 35, Homedale, ID 83628	1,129
Farmer Oil Co., 301 S. 24th, Boise, ID 83706	35
Veryl Smith, P.O. Box 818, Lagrande, WA 98348	1,381
Milton Schofield, 419 S. Main, Freewater, OR 97862	220
James Simmons, P.O. Box 488, Long Creek, OR 97856	1,045
Joe Young, P.O. Box 267, Hood River, OR 97031	22
C. Buck, Consumer Corner, Umatilla, OR 97882	66
Savway, 471 North Curtis Road, Boise, ID 83706	457
F. L. Bunds, 3641 S.E. 154th, Portland, OR 97213	31
Marvin McKelvie, 1103 N.W. 49th St., Vancouver, WA 98663	96
D. B. Pruett, 2357 S.E. 50th Ave., Portland, OR 97215	138
E. G. Smith, 3107 S.E. 90th Place, Portland, OR 97213	21
Darr Oil Co., Inc., P.O. Box 603, Albany, OR 97321	4,970
D. Fraser, 6825 Highway 99, Vancouver, WA 98665	222
J. D. Johnson & Co., P.O. Box 276, Hood River, OR 97301	1,617
Skillern Oil Co., 50 Highway 99 North, Eugene, OR 97402	663
Redmond Oil Co., P.O. Box 670, Bend, OR 97701	1,258
Roger Malfait, Rte. 2, Box 282-M, Wasiousia, WA 98671	1,138
Peter Willden, 10587 S.E. 82nd Ave., Portland, OR 97266	1,544
Longview Staples, 965 15th Ave., Longview, WA 98632	2,039
Eugene Nichols, 205 Columbia N.E., Salem, OR 97303	1,822
Killingsworth Boomtown, 5020 N. Interstate Ave., Portland, OR 97266	28
Mustang, 19105 S.E. Yamhill, P.O. Box 16211, Portland, OR 97233	412
Valley Willamette, 1995 Commercial St., Salem, OR 97303	[2] 4
Unlocated End-Users	[3] 640

[1] Rounded to the nearest dollar.

[2] In the absence of other evidence, these customers would not be eligible for refunds under the procedures proposed in the attached Decision because their potential refund claims are below the minimum refund amount of $15.

[3] This amount was deposited in the DOE escrow account after Fletcher was unable to locate several end-users who were eligible for direct refunds under the terms of the Fletcher Consent Order. We porpose that any end-users listed in Schedule A of the Consent Order who certify that they did not receive a direct refund from Fletcher be eligible for a refund in the persent proceeding. We will base their refunds on the amount they would have received under the terms of the Consent Order if Fletcher had initially been able to locate them.

Appendix E—Glaser Gas, Inc., P.O. Box 38, Calhan, CO 80808

Consent Order Period: Nov. 1, 1973 to Feb. 29, 1976.

Products Covered: Propane.

Consent Order Amount: $23,155.37 to resellers, $31,655.36 to end-users (*see* footnote 6).

Identified reseller customers	Potential refund [1]
Red Tag Gas, 215 Auburn Drive, Colorado Springs, CO 80906	$15,352
Kiowa Store, c/o Steve Herrick, Kiowa, CO 80117	6,414
Arkansas Valley Coop Assoc., 302 N. Main St., La Junta, CO 81050	90

Identified reseller customers	Potential refund [1]
Henderson Propane Co., Box 52, Simla, CO 80835	1,297

[1] Rounded to the nearest dollar.

Appendix F—Ideal Gas, Inc., 901 King Avenue, Nyssa, OR 97913

Consent Order Period: Nov. 1, 1973 to Apr. 30, 1974

Products Covered: Propane.

Consent Order Amount: $53,714.00 to resellers, $18,326.00 to end-users (*see* footnote 6).

Identified reseller customers	Potential refund [1]
American Propane, 122 W. Avenue, Caldwell, ID 83605	$283
Economy Gas, P.O. Box 561, Litchfield, MN 55355	5,366
Burns Propane Gas, 1310 Hines Blvd., Burns, OR 97720	1,209
Domestic Industrial Gas, 6806 Northeast Highway 99, Vancouver, WA 98665	32,878
T & T Gas, P.O. Box 45, Conway, KS 67434	3,976
Petrolane Northwest, 455 E. 4 S. Suite 404, Salt Lake City, UT 84111	10,092

[1] Rounded to the nearest dollar.

Appendix G—Inland U.S.A., Inc., 305 Kimberly Building, 2510 South Brentwood, St. Louis, MO 63144

Consent Order Period: Mar. 1, 1979 to Aug. 30, 1979.

Products Covered: Motor Gasoline.

Consent Order Amount: $485,000.[1]

Identified customers	Potential refund [2]
Midwest Petroleum Co., 6760 Southwest Ave., St. Louis, MO 63143	$52,040
Gold Oil Co., 701 Sherman Rd., Belleville, IL 62221	4,271
Laws Enterprises (Bi-Rite) 2110 Chouteau, St. Louis, Mo 63103	9,780
Sievekung Co., Inc., 12960 Gravois Rd., St. Louis, MO 63217	12,916
Knapp Oil Co., P.O. Drawer 2, Xenia, IL 62899	7,274
Hutchinson Farms, Rt. 2, Charleston, MO 63834	21
Reelfoot Packing Co., P.O. Box 589, Union City, TN 38261	157
Gas Mart Oil Co., 2745 E. Skelly Drive, Suite 101, Tulsa, OK 74105	998
Pemiscott Oil Co., 103 East 10th St., Caruthersville, MO 73830	586
Energy Petroleum Co., 2130 Kienlen, St. Louis, MO 63121	2,171
Lieber Service Station, 8227 Gravois St., St. Louis, MO 63123	3,450
City of Fulton, City Hall Bldg., Fulton, KY 42041	137
Vickers Oil Co., P.O. Box 2240, Wichita, KS 67201	1,516
UCO Oil Co., 12920 East Whittier Blvd., Whittier, CA 90607	71,444
Aero Gas Co., 3755 Hwy 94 South, St. Charles, MO 63301	983
ALP Oil Company, 13010 Manchester, Des Peres, MO 63131	111
Circo III, P.O. Box 12731, Creve Coeur, MO 63141	2,348
Ray Oil Co., 12981 Gravois Rd., St. Louis, MO 63127	1,190
Dalton Petroleum, P.O. Drawer Y, Hayti, MO 63851	792
Kenneth Yount, Box 6705, Brentwood, MO 63144	132
Kellett Oil Co., P.O. Box 869, Hwy 615, Sikeston, MO 63801	436
Wolf Oil Company, Highway 24 W, Box 574, Moberly, MO 65270	845
Don Williams, Rt. 3, Charleston, MO 63834	21
Robert Brace Service, Wellsville, MO 63384	227
C. J. Coddington, 1727 West 59th, O'Fallen, IL 62269	291
Onyx Corp., 11345 Olive St. Road, Creve Coeur, MO 63141	21,923
Ronnie Nixon, R.R. #1, Mineral Point, MO 63141	867
Key & Sons Oil Company, Highway AT, Villa Ridge, MO 63089	650
Billy J. Lawson, Frankclay, MO 63844	180
Clyde Nixon, Highway 21 East, Potosi, MO 63364	180
Len Thoele Service, 1703 N. Fourth St., St. Charles, MO 63301	1,278
C. C. Dillon Oil Co., 1342 Lonedell Road, Arnold, MO 63010	8,220
McCollum Service Station, Vandalia, MO 63382	375
Texas Discount Gas Co., P.O. Box 248, Arnold, MO 63010	7,818
Wides Oil Co., Murphysoboro, IL 62966	851
Fred Chevrolet, 7700 Manchester Road, St. Louis, MO 63143	26
Manchester Leasing, 1075 S. Brentwood Blvd., St. Louis, MO 63117	21
Raymond Cornwell, 401 E. Main St., E. Prairie, MO 63845	1,405
Star Service, 156 Progress Parkway, Maryland Heights, MO 63043	7,100
Charles Browder Marine, P.O. Box 623, Fulton, KY 42041	1,331
John Watson, North Blanche, Mounds, IL 62964	481
Saveway Oil Co., P.O. Box 336, Cape Girardeau, MO 63701	718
Site Oil Company, 7755 Carondelet, St. Louis, MO 63105	41,438
Flash Oil Corporation, 7755 Carondelet, St. Louis, MO 63105	114,139
Unidentified customers of company-owned service stations (*see* fn. 6)	145,275

[1] Inland actually paid $528,273.24 into the DOE escrow account, as a result of interest which had accrued up to the date of payment. Accordingly, each of the potential refund amounts listed in this Appendix includes a prorated share of this interest.

[2] Rounded to the nearest dollar.

[FR Doc. 85-8801 Filed 4-11-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $1.9 million in consent order and remedial order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Brownlie, Wallace, Armstrong & Bander, Inc.; Cordele Operating Company; and H. H. Gungoll & Associates.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. All comments should conspicuously display a reference to case numbers HEF-0564, HEF-0565 and HEF-0572.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to consent orders entered into by Brownlie, Wallace, Armstrong & Bander, Inc. (BWAB) on August 28, 1984 and Cordele Operating Company on May 31, 1984. Those consent orders settled all disputes between the firms and DOE concerning possible violations of DOE price regulations with respect to BWAB's sales of crude oil during the period January 1, 1979 through January 27, 1981 and Cordele's sales of crude oil during the entire period of federal price controls. In additon, the Proposed Decision concerns funds obtained in connection with the issuance of a Remedial Order to H. H. Gungoll & Associates on April 5, 1984 which determined that the firm overcharged purchasers of crude oil produced from its Van Deventer Quarter property during the period January 1, 1975 through December 31, 1976.

The Proposed Decison sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by the firms pursuant to the consent orders and the remedial order. The DOE has tentatively established procedures under which purchasers of BWAB, Cordele, or Gungoll crude oil during the audit period may file claims for refunds from the escrow fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of

1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Dated: April 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 4, 1985.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Brownlie, Wallace, Armstrong & Bander, Inc.; Cordele Operating Company; and H. H. Gungoll & Associates.

Dates of Filing: February 28, 1985; February 28, 1985; and March 18, 1985.

Case Numbers: HEF–0564; HEF–0565; and HEF–0572.

Under the procedural regulations of the Department of Energy, the Economic Regulatory Administration (ERA) may request that the Office of Harings and Appeals (OHA) formulate and implement a specially-designed process to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with remedial orders or consent orders involving Brownlie, Wallace, Armstrong & Bander, Inc. (BWAB) and the other firms listed above. Pursuant to these orders, the firms were either equired or agreed to make refunds totaling approximately $1,912,000 for actual violations or to settle alleged violations of the DOE pricing regulations. Those funds, at least some portion of which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution. These cases have been consolidated for purposes of this decision because each involves actual or alleged crude oil pricing or certification violations. In addition, the issues concerning the identification of injured parties are similar in each case.

I. Regulatory Background

The parties in each of these cases were subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. DOE and its predecessor agencies conducted audits of these firms and the investigations revealed actual or alleged violations of the Mandatory Petroleum Price Regulations with respect to the sale of crude oil.

Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72–74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property, additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131 (a)(4), (b)(1). Refiners were required to report these certifications to the DOE and its predecessors when they processed the crude oil to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. As discussed above, the federal regulations governing the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners and their downstream customers because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil were forced to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many small, independent firms, with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

II. Factual Background

The actual or alleged violations generally involved in cases concerning producers of crude oil fall into two general categories. The first type of alleged violation involves incorrect certifications and the second involves sales of crude oil at prices in excess of the applicable ceiling price for "old" or "new" oil. In the present proceeding, H.H. Gungoll & Associates was found to have incorrectly classified crude oil produced from its Van Deventer Quarter property during the period Janaury 1, 1975 through December 31, 1976 and to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well" prices and the maximum price permitted for "old" oil. Cordele Operating Company allegedly sold crude oil at prices in excess of the applicable ceiling price in violation of 10 CFR Part 212, Subpart D and predecessor regulations during the entire period of federal crude oil price controls. Similarly, BWAB was alleged to have improperly priced crude oil produced from its Burlington Northern 11–21 property during the period January 1, 1979 through January 27, 1981.

III. Jurisdiction

The procedural regulations of the Department of Energy set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V.[1] Those regulations

[1] At one time crude oil and refined petroleum products were subject to a comprehensive price regulation scheme which could be utilized to facilitate the channeling of refunds to overcharged parties including ultimate consumers. However, since the President has exempted crude oil and all

Continued

provide that the Subpart V process may be used in situations where the Department of Energy is unable to identify readily persons who were or may have been injured by alleged or adjudicated violations or where it is unable to readily ascertain the amount of their alleged injuries. 10 CFR 205.280. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the record developed in this proceeding, we have concluded that, although the identity of the first purchasers of the firms' crude oil may be known, it may be difficult to identify other potentially injured parties and to determine to what extent a refund applicant may have been injured by the firm's pricing or certification practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. The Office of Hearings and Appeals therefore will accept jurisdiction over the funds which the three firms paid to the DOE in connection with enforcement proceedings or consent orders underlying the Petitions for Implementation of Special Refund Proceedings.

IV. Proposed Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceedings. In *Office of Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶82,521 (1982), 47 FR 2196 (January 14, 1982) (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982), 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations.[2] *See also A. Johnson & Co., Inc.*, 12 DOE ¶85,102 (1984), 49 FR 44541 (November 7, 1984) (establishing refund procedures like those in *Alkek* and *Adams* for funds obtained from 194 firms) (hereinafter cited as *A. Johnson*). Because the types of alleged violations that underlie the present proceeding are substantially the same as those that were the subject of the *Alkek*, *Adams*, and *A. Johnson* proceedings, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after those proceedings. We therefore propose to establish first-stage refund procedures in which we will accept first-stage refund applications to be adjudicated in the same manner and using the same principles as those refund applications that were filed pursuant to the *Alkek*, *Adams*, and *A. Johnson* determinations. Parties who have filed claims in the *Alkek* and *Adams* proceedings, but have not received a decision on those claims, will be deemed to have filed similar applications in this proceeding.

Because of the difficulty inherent in establishing the level of injury to parties in the persent case, there may be a portion of the refund moneys remaining after all successful first-stage claimants have been paid even though three of the consent order firms have paid less into the escrow account than they are obligated to pay. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1982).

It Is Therefore Ordered That:

(1) The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and Brownlie, Wallace, Armstrong & Bander, Inc. on August 28, 1984 shall be distributed in the manner set forth in the foregoing Decision.

(2) The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and Cordele Operating Company on May 31, 1984 shall be distributed in the manner set forth in the foregoing Decision.

(3) The refund amount provided in conjunction with the Remedial Order issued to H.H. Gungoll & Associates on April 5, 1984 shall be distributed in the manner set forth in the foregoing Decision.

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refined petroleum products from the DOE regulatory program, *see* Exec. Order No. 12287, 46 FR 9909 (1981), price rollbacks are no longer an effective means of refunding money to purchasers who were overcharged in the past.

[2] We subsequently added to the Alkek/Adams "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In re Stripper Well Exemption Litigation, Case No. HEF-0025, 48 FR 57606 (1983).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $94,797.28 (plus accrued interest) obtained as the result of Consent Orders which the DOE entered into with Collins Oil Company of Aurora, Illinois (Case No. HEF-0051), C.C. Dillon Company of Arnold, Missouri (Case No. HEF-0063), Enterprise Oil and Gas Company of Detroit, Michigan (Case No. HEF-0070, and Foster Oil Company of Richmond, Michigan (Case No. HEF-0075).

DATE AND ADDRESS: Applications for refund of a portion of one of the consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Collins Consent Order Refund Proceeding, Dillon Consent Order Refund Proceeding, Enterprise Consent Order Refund Proceeding, or Foster Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC. 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to Consent Orders entered into by the following parties: Collins Oil Company of Aurora, Illinois; C.C. Dillon Company of Arnold, Missouri; Enterprise Oil and Gas Company of Detroit, Michigan; and Foster Oil Company of Richmond, Michigan (hereinafter collectively referred to as the consent order firms). These Consent Orders settled possible pricing and allocation violations with respect to the consent order firms' sales of refined petroleum products during the relevant consent order periods. Under the terms of these Consent Orders, the following amounts have been remitted to the DOE: $12,000 by Collins; $48,788.23 by Dillon;

$24,512.05 by Enterprise; and $9,497 by Foster. These amounts are being held in separate interest-bearing escrow accounts pending determination of their proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments form interested parties concerning the proper disposition of the four consent order funds. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on January 11, 1985. 50 FR 4582 (January 31, 1985).

As the Decision and Order indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased refined petroleum products from one of the consent order firms during the relevant consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: April 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 3, 1985.

Decision and Order of the Department of Energy

Special Refund Procedures

Names of Firms: Collins Oil Company; C.C. Dillon Company; Enterprise Oil and Gas Company; and Foster Oil Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF–0051; HEF–0063; HEF–0070; and HEF–0075.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to Consent Orders entered into by the DOE and the following parties: Collins Oil Company (Collins) of Aurora, Illinois, C.C. Dillon Company (Dillon) of Arnold, Missouri, Enterprise Oil and Gas Company (Enterprise) of Detroit, Michigan, and Foster Oil Company (Foster) of Richmond, Michigan (hereinafter collectively referred to as the consent order firms).

I. Background

Each of the consent order firms is a "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR § 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Pricing Regulations. Subsequently, each of these firms entered into a separate Consent Order with the DOE in order to settle its disputes concerning certain sales of refined petroleum products. Each Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, each Consent Order states that the consent order firm does not admit that it committed any such violations.

Pursuant to these Consent Orders, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability regarding sales to their respective customers during the relevant consent order period. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the settlement amounts, the products covered by the Consent Orders, and the dates of the consent order periods are set forth in Appendices A–D to this Decision and Order.

On January 11, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order funds. 50 FR 4582 (January 31, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined to rely, in part, on information contained in the ERA audit files. We observed that this approach was warranted based on our experience in prior Subpart V cases where the consent order period is coterminous with the audit period, all or most of the firm's products were identified by the ERA, and alleged overcharge amounts were specified for those customers in the audit records. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). At the same time, we recognized that there may have been other purchasers who were not identified in the audit files and who may have been injured as a result of the pricing practices of one of the consent order firms during the relevant consent order period. We therefore proposed to establish a claims procedure whereby the consent order firms' customers could apply for a refund.

A copy of the PD&O was published in the **Federal Register** on January 31, 1985, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to those purchasers whose names and addresses were listed in the ERA audit files, and are set forth in Appendices A–D. Comments were filed on behalf of Osceola Refining Company (Osceola) and the States of Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. All of the comments filed by the states discuss the distribution of any residual funds that might remain after refunds have been made to first-stage claimants. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of refined petroleum products from one of the consent order firms should submit in an Application for Refund in order to establish eligibility for a portion of the relevant consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the states' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[1]

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*,

[1] It is not clear, however, that Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia have a legitimate interest in this proceeding, since none of the sales involved were made in these states.

9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). We have received no comments challenging our authority to fashion special refund procedures in this case. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the four consent order funds.

III. Determination of Injury and Refund Amounts

In the PD&O, we proposed that retailer and reseller claimants (including refiners acting as resellers) be required to demonstrate that they did not pass on to their customers the price increases implemented by one of the consent order firms. *See, e.g., Vickers.* We also proposed to adopt a presumption of injury with respect to small claims. Specifically, we proposed that a reseller whose refund claim is below a threshold amount of $5,000 not be required to submit any additional evidence of injury beyond purchase volumes.

Osceola, a purchaser of Enterprise petroleum products, filed comments objecting to the requirement that resellers of petroleum products submit proof of injury. Osceola argues that the length of time since the execution of the Enterprise Consent Order and the decontrol of the petroleum industry makes a precise showing of injury nearly impossible. Osceola requests that a presumption of injury be adopted for all claimants, regardless of the nature of their operations or the amount of their refund claims.

We are not persuaded by Osceola's arguments. The purpose of a Subpart V proceeding is to effect restitution for those parties who were injured by the pricing practices of a consent order firm. *See* 10 CFR 205.280. As in prior refund decisions, we find that a proof of injury for firms whose refund claims exceed the $5,000 threshold is neither unfair nor unduly burdensome, given those firms' larger size, their presumably greater sophistication and accounting capabilities, and the DOE's preexisting recordkeeping requirements under 10 CFR 210.92. *See Vickers* at 85,396. It would be contrary to the objectives of the Subpart V regulations to distribute large refunds without requiring a detailed showing of injury by the claimants. Were we to do so, customers who were not affected adversely by the consent order firms' alleged pricing violations could receive substantial refunds, while customers who actually experienced injury might not be compensated at all. We believe that a proof of injury requirement for resellers above the threshold level best accomplishes restitution.[2]

Accordingly, in order to qualify for a refund, resellers of refined petroleum products purchased from one of the consent order firms must show that during the relevant consent order period market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers must show that they maintained a "bank" of unrecovered costs in order to demonstrate that they did not subsequently recover these costs by increasing their prices.[3] As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./ Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As mentioned above, we proposed to adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e).

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Orders is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly and to allocate its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from one of the consent order firms and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[4] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to

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[2] It should be noted that under the procedures we are adopting, Osceola will not be required to make a detailed showing of injury provided that (i) the firm was not a spot purchaser and (ii) the firm reduces its refund claim from $5,022 (*see* Appendix C) to $5.0000. *See* footnotes 4 and 5, *infra*.

[3] Some of the motor gasoline sales covered by the Dillon Consent Order occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers who purchased motor gasoline from Dillon will not be required to submit bank information for those purchases made after July 15, 1979.

[4] Resellers who made only spot purchases from the consent order firms will be presumed to have suffered no injury. They will therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97; *see also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimants who were spot purchasers must submit additonal evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claim is based.

applicants seeking relatively small refunds. *Id.* at 88,210. In the PD&O, we proposed that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to both the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the proposed maximum refund amounts are fairly low and the time periods of the Consent Orders are quite distant, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable.[5] *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumption for small claims, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Orders. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also, Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of petroleum products purchased from one of the consent order firms need only document their purchase volumes from the consent order firm to make a sufficient showing that they were injured by the alleged overcharges.[6]

[5] As in prior refund cases, resellers whose maximum potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold amount.

[6] The Consent Orders for Dillon, Enterprise, and Foster required each consent order firm to refund a certain amount directly to its end-user customers. The funds in the escrow accounts are thus primarily intended for distribution to the firm's reseller and retailer customers. Accordingly, an end-user of refined petroleum products purchased from Dillon, Enterprise, or Foster will not be eligible for a refund in this proceeding unless it certifies that it did not receive a direct refund from the consent order firm.

IV. Calculation of Refund Amounts

In the PD&O, we proposed that the maximum refund for the firms listed in the Appendices be based on the amount they were allegedly overcharged, as calculated by the ERA. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. As we noted in the PD&O, the ERA audits were very narrow in scope, the Consent Orders were limited to the same products and time periods as the audits, and the consent order firms had a relatively small number of customers. Because of these factors, the information contained in the audit files can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See, e.g., Marion.* To calculate the maximum refund for each identified customer listed in the Appendices, we will multiply the alleged overcharge amounts for each eligible claimant by a pro rata factor, determined by dividing the relevant consent order amount by the relevant alleged overcharges.[7] The pro rata factor for each Consent Order and the alleged overcharges and potential refund amount for each identified customer are listed in the Appendices. In addition, successful refund applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow accounts.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 at 85.225 (1982). *See also* 10 CFR 205.286(b).

V. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the four consent order funds. Accordingly, we shall now accept applications for refunds from the customers listed in the Appendices. We will also accept claims from any customers not listed in the Appendices who can show that they were injured by the pricing practices of one of the consent order firms during the relevant consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of petroleum products for which it is claiming a refund. The applicant must also state how it used the petroleum products, i.e., whether it was a reseller or an ultimate consumer. Retailers and resellers (including refiners acting as resellers) who request refunds in excess of the $5,000 threshold amount must submit evidence to establish that they did not pass on the alleged overcharges to their customers. In addition, each applicant must state whether there has been a change in ownership of the firm since the relevant audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Applicants should also report any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant

[7] In the case of Collins, the ERA audit files do not list alleged overcharges for individual, residential end-users of No. 2 heating oil. *See* Appendix A. Similarly, in the case of Dillon, the ERA audit files do not identify those non-retail customers who purchased unleaded gasoline transported via common carrier (Class II purchasers). *See* Appendix B. As proposed in the PD&O, we will establish a claims procedure whereby these unidentified customers of Collins and Dillon can apply for a refund based on the volume of petroleum products which they purchased from the consent order firm. *See Vickers.* A volumetric factor has been determined in each case by dividing a prorated portion of the amount that the entire class of unidentified customers was allegedly overcharged (as shown in Appendices A and B) by the estimated total volume of petroleum products sold to the class of customers during the relevant consent order period. In each case, this results in a refund amount for each gallon which an applicant purchased from the consent order firm. In the PD&O, we calculated the volumetric factor for Collins residential end-users to be $1.0807 per gallon based upon a total sales volume figure of 5,299.63 gallons. Upon closer examination of the Collins audit file, however, we discovered that the correct sales volume figure for residential end-users of Collins No. 2 heating oil is 582,963 gallons. Accordingly, we have adjusted the volumetric factor for Collins residential end-users to $0.0108 per gallon (($8,786.30 × .6504) divided by 528,963). In the case of Dillon, the volumetric factor for Class II customers is $0.0153 per gallon (($271.42 × .8534) divided by 15,090 gallons). As we stated in the PD&O, the ERA audit files do not specifically list the volumes of unleaded gasoline sold to Class II customers during the consent order period. Accordingly, we have estimated sales volume figures for this class of customers by multiplying the total volume of unleaded gasoline sold by Dillon during the consent order period by the percentage of the total alleged overcharges attributable to this class.

should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d)

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** Each application must be in writing, signed by the applicant, and specify that it pertains to either the Collins Consent Order Fund, Case No. HEF–0051, the Dillon Consent Order Fund, Case No. HEF–0063, the Enterprise Consent Order Fund, Case No. HEF–0070, or the Foster Consent Order Fund, Case No. HEF–0075. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application form which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 100 Independence Ave., S.W., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the consent order funds remitted to the Department of Energy by the consent order firms listed in Appendices A–D to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: April 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Collins Oil Company, 45 Pierce St., Aurora, IL 60505

Consent Order Period: Nov. 1, 1973 to Jan. 31, 1975.

Products Covered: No. 2 Heating Oil.

Consent Order Amount: $12,000.00.

Pro Rata Factor ($12,000.00 divided by $18,450.84): .6504.

Identified customers	Alleged overcharges	Potential refunds [1]
Chi Pre Cast, N. Auror Road, Naperville, IL 60540	$18.17	[1] $12.00
Bristol Grade School, Bristol, IL 60512	315.76	205.00
Georgia Pacific, Franklin Park, IL 60131	2,345.63	1,526.00
Mercy Manor, North Lake, Aurora, IL 60505	35	[1] 0
Aurora Laundry, 562 S. River, Aurora, IL 60506	1,009.15	656.00
K & K Well Drilling [2] 11630 Chayote Street, Los Angeles, CA 90049	164.94	107.00
Dart Container, 310 Evergreen Drive, N. Aurora, IL 60442	970.05	631.00
Geneva Construction, RR 25 W. Indian Trail Road, Aurora, IL 60506	19.66	[1] 13.00
Bowman, Waterman, IL 60556	516.70	337.00
Condux International, Box 69, Naperville, IL 60566	320.63	209.00
Corner's Welding, West Lake & Grey Avenue, Aurora, IL 60506	30.60	20.00
Ackley Brothers, RR #2 Box 139, Aurora, IL 60504	979.30	637.00
Curran, 237 Aurora Avenue, Naperville, IL 60540	160.80	105.00
Bale Service, Big Rock, IL 60511	4.32	[1] 3.00
Mosher Exteriors, address not available	344.22	289.00
RCA Association, address not available	118.34	77.00
North Oil, address not available	1,818.60	1,183.00
Wago, address not available	8.35	[1] 5.00
Model Ind., address not available	9.96	[1] 6.00
Glenwood Petro, address not available	323.40	210.00
Ward Library, address not available	80.59	52.00
Residential End Users, (unidentified)	8,789.30	5,717.00

[1] Rounded to the nearest dollar.

[2] In the absence of other evidence, these customers will not be eligible for refunds under the procedures set forth in the attached Decison, because their potential refund claims are below the minimum refund amount of $15.

[3] A copy of the PD&O was sent to K & K Well Drilling at the above address, but was returned to this Office unclaimed. Accordingly, we will not send a copy of the final Decision and Order to this firm, but it may still submit an application for refund in the present proceeding.

Appendix B—C.C. Dillon Company, 1342 Lonedell Rd., Arnold, MO 63010

Consent Order Period: Mar. 1, 1979 to Aug. 30, 1979.

Products Covered: motor gasoline (including gasohol).

Consent Order Amount: $48,788.23.[1]

Pro Rata Factor ($48,788.23 divided by $57,172.27): 8534:

Identified customers	Alleged overcharges	Potential refunds [2]
Bennet Hills Automotive Co., 10115 Manchester St., Kirkwood, MO	$948.75	$811.00
Big M Gas, 9626 Lackland Rd., Overland, MO	1,537.43	1,312.00
Bonafide Oil Company, 5735 Fee Fee Rd., Bridgeton, MO	748.27	639.00
Butler Hill Texaco, 4205 Butler Hill Rd., Mehlville, MO	304.47	260.00
Crystal Clean Carwash, 3955 Bayless St., St. Louis, MO	3,265.08	2,788.00
Green Park Texaco, 2730 Union Rd., St. Louis, MO 63125	332.36	284.00
Kay & Sons Oil Company, Highway AT, Villa Ridge, MO 63089	350.81	299.00
Lieber Service Stations, 4036 Bayless Rd., St. Louis, MO	4,177.51	3,568.00
M & S Truck Stop,[3] 485 N. Highway Dr., Fenton, MO	1,778.06	1,517.00
Mr. Gas, P.O. Box 217, Birch Tree, MO 65438	10,780.60	9,200.00
Premium Oil Company, 5200 Pernod St., St. Louis, MO	1,214.50	1,036.00
Ray Oil Company, 12961 Gravois Rd., Sappington, MO	32.00	27.00
7-Eleven Division, Southland Corp., St. Louis Zone Office, 14288 Ladue Rd., Creve Coeur, MO	1,056.59	902.00
Site Oil Company, 7755 Carondelet Ave., St. Louis, MO	515.14	440.00
Swanter Motors "66", 501 W. Essex St., Kirkwood, MO	2,499.22	2,133.00
U-Gas, 105 Delores Dr., Fenton, MO	10,184.67	8,675.00
Watkin's Service Station, 2285 S. Highway 141, Fenton, MO	2,002.08	1,709.00
Brook's Service Station	541.04	462.00
Cooper Oil Company	1,759.48	1,502.00
Corral Truck Stop	3,522.36	3,006.00
Dickman's Mobil	13.62	[1] 12.00
F.A. Stein Oil	2,861.01	2,442.00
Hatcher Oil Company	92.08	79.00
Highway Oil Company	1,816.64	1,550.00
Husky Oil Company	231.26	197.00
Ideal Service Station	222.59	190.00
Jed Oil Company	489.02	417.00
Lamplighter Texaco	150.14	128.00
M.F.A. Station	128.31	109.00
Mack's "66"	307.01	262.00
National Stockyards	87.85	75.00
Oscar's "66"	217.95	186.00
Raybum Sonic	944.11	806.00
Spencer's "66"	289.97	247.00
Target	631.26	539.00
Value Oil Company	144.16	123.00
Ward's Sonic	742.62	634.00
Class II "non-retail" unleaded gasoline customers (unidentified)	271.42	232.00

[1] Subsequent to the issuance of the PD&O, Dillon completed its payments to the DOE. The firm paid a total of $448,788.23, including interest that had accrued on the consent order amount prior to payment. to reflect the interest paid by the firm, the pro rata factor and the potential refund amounts have been adjusted from the figures utilized in the PD&O.

[2] Rounded to the nearest dollar.

[3] A copy of the PD&O was sent to M & S Truck Stop at the above address, but was returned to this Office unclaimed. Accordingly, we will not send a copy of the final Decision and Order to this firm, but it may still submit an application for refund in the present proceeding.

[4] In the absence of other evidence, Dickmen's Mobil will not be eligible for a refund under the procedures set forth in the attached Decision, because the firm's potential refund claim is below the minimum refund amount of $15.

Appendix C—Enterprise Oil & Gas Company, 1445 Linwood Ave., Detroit, MI 48238

Consent Order Period: Nov. 1, 1973–June 30, 1976.

Products Covered:[1] middle distillates, residual fuels.

Consent Order Amount: $19,098.01 to reseller customers, $5,414.04 to end-user customers.[2]

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[1] The Enterprise Consent Order, at ¶ 2, indicates that Enterprise also sold motor gasoline to resellers, but we have determined that the reference to motor gasoline was an error.

[2] There are several end-users of Enterprise petroleum products who were eligible for direct refunds under the terms of the Enterprise Consent Order but who could not be located by Enterprise. The $5,414.04 designated for these customers is currently being held in the DOE escrow account established for the Enterprise consent order funds. As proposed in the PD&O, any end-users listed in the Enterprise Consent Order who certify that they

Continued

Pro Rata Factor for reseller customers ($19,098.91 divided by $38,609.91): .4947.

Identified reseller customers	Alleged overcharges	Potential refunds[1]
Detroit Oil Barge, Address not available	$11,263.14	5,572.00
General Oil, Address not available	2,249.49	1,106.00
Kenneth H. White Company, 565 South Woodward, Birmingham, MI 48202	2,459.20	1,217.00
Osceola Refining, 2780 Refinery Road, West Branch, MI 48661	10,151.21	5,022.00
Triple CLean Oil, 601 Garfield Avenue, Bay City, MI 48706	12,496.87	6,182.00

[1] Rounded to the nearest dollar.

Appendix D—Foster Oil Company, 36065 Water St., Richmond, MI 48062

Consent Order Period: Nov. 1, 1973–Apr. 30, 1974.

Product Covered: motor gasoline.

Consent Order Amount: $9,497.00.

Pro Rata Factor ($9,497.00 divided by $20,456.14): .4643.

Identified customers	Alleged overcharges	Potential refunds[1]
Yezbick Corporation, Richard Yezbick, 290 Elizabeth Street, Mt. Clemens, MI 48043	$15,808.03	$7,247.00
Jim Pistro Arrow Service, 1215 E. Caro Road, Caro, MI 48723	1,802.19	837.00
Norm Adamic Arrow Service, 4055 Huron Avenue, North Branch, MI 48461	1,356.24	630.00
Carlos Service Center, 1505 Main Street, Snover, MI 48472	662.78	308.00
McLeod Truck Stop, 5800 W. Michigan Avenue, Ypsilanti, MI 48197	617.70	287.00
Wheel Truck Stop, 31414 Ecorse Road, Romulus, MI 48174	409.12	190.00

[1] Rounded to the nearest dollar.

[FR Doc. 85-8903 Filed 4-11-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained as the result of DOE enforcement proceedings or civil litigation involving actual or alleged crude oil pricing violations by Beverly Hills Oil Company (HEF-0328), Jim Cox Oil Company (HEF-0345), E. Dunlap, Jr. (HEF-0351), James W. Harris Production Company (HEF-0369), and Prosper Energy Corporation (HEF-0485)

DATE AND ADDRESS: Applications for refund must be postmarked by July 11, 1985, should conspicuously display a reference to the specific case name and number and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of DOE enforcement proceedings or civil litigation involving alleged or actual crude oil pricing violations by Beverly Hills Oil Company, Jim Cox Oil Company, E. Dunlap, Jr., James W. Harris Production Company and Prosper Energy Corporation. All or a portion of those funds have been paid to DOE and are being held in escrow under the jurisdiction of DOE pending receipt of instructions from OHA regarding their final distribution.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by July 11, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. 20585.

Dated: April 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 4, 1985.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Beverly Hills Oil Co.; Jim Cox d/b/a Jim Cox Oil Co.; E. Dunlap, Jr./E. Dunlap Corp.; James W. Harris Production Co.; and Prosper Energy Corporation.

Dates of Filing: October 13, 1983; October 13, 1983; October 13, 1983; October 13, 1983; and January 20, 1984.

Case Numbers: HEF-0328; HEF-0345; HEF-0351; HEF-0369; and HEF-0485.

The proceeding involves Petitions for the Implementation of Special Refund Procedures filed by the Economic Regulatory Administration (ERA) with the Office of Hearings and Appeals (OHA) pursuant to the provisions of 10 CFR Part 205, Subpart V. Under those procedural regulations, ERA may request that OHA formulate and implement a specially-designed process to distribute funds received as a result of enforcement proceedings or court actions in order to remedy the effects of alleged or actual violations of the Department of Energy (DOE) regulations. On the dates listed above, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with remedial orders, consent orders or court orders involving Beverly Hills Oil Company and the other firms listed above. Pursuant to these orders, the firms were either required or agreed to make refunds totaling approximately $4,500,000 for actual violations or to settle alleged violations of the DOE pricing regulations. Some portion of those funds have been paid to the DOE and are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution. These cases have been consolidated for purposes of this decision because each involves actual or alleged crude oil pricing or certification violations. In addition, the issues concerning the identification of injured parties are similar in each case.

Background

The parties in each of these cases were subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. DOE and its predecessor agencies conducted audits of these firms and the

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did not receive a direct refund from Enterprise will be eligible for a refund in the present proceeding. We will base their refunds on the amount they would have received under the terms of the Consent Order if Enterprise had initially been able to locate them.

investigations revealed actual or alleged violations of the Mandatory Petroleum Price Regulations with respect to the sale of crude oil.[1] The actual or alleged violations involved in these cases fall into two general categories. The first type of alleged violation involves incorrect certifications. E. Dunlap, Jr. [2] and Prosper Energy Corporation were alleged to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well" prices and the maximum price permitted for "old" oil. The second type of violation involved concerns alleged sales of controlled crude oil at prices in excess of the applicable ceiling price for "old" or "new" oil. Beverly Hills Oil Company and James W. Harris Production Company allegedly sold crude oil at prices that were based on the incorrect posted price. Jim Cox Oil Company committed unspecified "overcharge" violations relating to certain crude oil which it produced and sold.

On December 21, 1984, we issued a Proposed Decision and Order which tentatively set forth procedures to distribute refunds to parties who were injured by the five firms' alleged violations. 50 FR 3832 (January 28, 1985). In the proposed decision we described a two-stage process for the distribution of the funds made available by the consent order. We proposed to refund money in the first stage to identifiable purchasers of crude oil who were injured by the alleged overcharges. We stated that a second stage of the refund procedure may be necessary if funds remain after meritorious claims are paid in the first stage. In response to our proposed decision, several interested parties filed comments.

This decision establishes procedures for filing claims in the first stage of the refund proceeding and describes the information that a claimant should submit in order to demonstrate that it is eligible to receive a portion of the funds. In establishing these requirements, we have considered comments filed by Sun Company Inc. in response to the first-stage proposals in the December 21 decision. We will not, however, determine procedures for a second stage of the refund process in this decision. Although we received comments from several states regarding disposition of funds remaining at the conclusion of the first stage of the refund proceedings, it is premature for us to address the issues raised by the States until all the first-stage claims have been paid.

Jurisdiction

In previous Subpart V decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). The DOE regulations provide that the Subpart V process may be used in situations where the Department of Energy is unable to readily identify persons who were or may have been injured by alleged violations or where it is unable to readily ascertain the amount of their alleged injuries. After reviewing the record developed in this proceeding, we have concluded that, although the identity of the first puchasers of individual firms' crude oil may be known, it may be difficult to identify other potentially injured parties and to determine to what extent a refund applicant may have been injured by the firm's pricing or certification practices. Under these circumstances, Subpart V provides a useful mechanism for devising a procedure to effect restitution. We will therefore grant ERA's Petitions for the Implementation of Special Refund Procedures and assume jurisdiction over the distribution of these funds.

Refund Procedures

We have previously established refund procedures for consent orders involving the same type of crude oil-related violations as those which are the subject of the present proceeding. In *Office on Enforcement: In the Matter of Alfred B. Alkek*, 9 DOE ¶ 82,521 (1982), 47 FR 2196 (January 14, 1982), (hereinafter cited as *Alkek*) and *Office of Enforcement: In the Matter of Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982) 47 FR 16381 (April 16, 1982) (hereinafter cited as *Adams*), which involved consent orders and remedial orders with 58 firms, we established a two-stage refund procedure for consent order and remedial order funds received as a result of alleged crude oil regulatory violations.[3] *See also A. Johnson & Co., Inc.*, 12 DOE ¶ 85,102 (1984), 49 FR 44541 (November 7, 1984) (establishing refund procedures like those in *Alkek and Adams* for funds obtained from 194 firms) (hereinafter cited as *A. Johnson*). The types of alleged violations that underlie the present proceedings are the same as those that were the subject of the *Alkek*, *Adams*, and *A. Johnson* proceedings. After having considered the comments we received concerning the first-stage proceedings tentatively adopted in our proposed decision, we have determined that it is appropriate to formulate a two-stage refund proceeding modeled after the *Alkek*, *Adams*, and *A. Johnson* proceedings. We therefore will

[1] Those regulations generally required crude oil producers to determine the first sale price of crude oil on the basis of the level of production from a property during a specified base period, *i.e.*, the base production control level (BPCL). *See* 6 CFR 150.354; 10 CFR 212.72–.74. The term "property" was defined as the right to produce crude oil which arises from a lease or fee interest. 6 CFR 150.354(b)(2); 10 CFR 212.72. Crude oil production that did not exceed the BPCL for a particular property was generally subject to the lower tier ("old" oil) ceiling price rule. 6 CFR 150.354; 10 CFR 212.73. Crude oil production that exceeded the BPCL ("new" oil) could generally be sold without regard to the ceiling price rule prior to February 1, 1976, and at the upper tier ceiling price level after that date. 6 CFR 150.354(c)(2); 10 CFR 212.74(a). Prior to February 1, 1976, in months in which new oil could be sold from a property additional volumes of crude oil could be sold as "released" oil at prices in excess of the applicable lower tier ceiling price level. 6 CFR 150.354(c)(3); 10 CFR 212.74(b). Additionally, crude oil produced from a "stripper well property" could generally be sold at market price levels. Producers and resellers of crude oil were generally required to certify in writing to each purchaser in the distribution chain the respective volumes of the various categories of price-controlled domestic crude oil included in each purchase. 10 CFR 212.131(a)(4), (b)(1). Refiners were required to report these certifications to the DOE and its predecessors when they processed the crude oil to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

The Entitlements Program, 10 CFR 211.67, was part of the comprehensive program administered by the DOE for the mandatory pricing and allocation of crude oil, residual fuel oil and refined petroleum products. As discussed above, the federal regulations governing the price of crude oil created a price disparity between, on the one hand, foreign crude and uncontrolled domestic crude oil, and old and upper-tier (price-controlled) oil on the other hand. These price controls had an unequal effect on refiners and their downstream customers because some refiners had greater access to the cheap old oil than others. Firms which had little or no access to price-controlled oil had to purchase uncontrolled domestic or similarly expensive foreign crude oil. As a result, many firms with little or no access to price-controlled domestic reserves, experienced crude oil acquisition costs so high relative to the industry as a whole that those costs threatened their viability. To remedy these imbalances, the DOE established the Entitlements Program. 39 FR 31650 (1974); 39 FR 39740 (1974). Under the Entitlements Program, refiners with proportionally greater access to cheap price-controlled oil made cash payments, in the form of the purchase of entitlements, to refiners with less access to price-controlled oil. The program was designed to restore the competitive viability of the refining industry by generally equalizing among all domestic refiners the benefits associated with access to the lower-priced domestic crude oil.

[2] A Remedial Order was issued to E. Dunlap, Jr. on June 24, 1981. *See Dunlap, E., Jr.*, 8 DOE ¶ 83,016 (1981). By the terms of the remedial order, the firm was directed to pay $57,017.36 plus interest to the Department of Energy.

[3] We subsequently added to the Alkek/Adams "pool" the portion of the Amoco consent order funds that was allocated for crude oil claims. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,203. We have also discussed the potential distribution of crude oil overcharge funds in In re Stripper Well Exemption Litigation, Case No. HEF-0025, 48 FR 57906 (1983).

establish first-stage refund procedures in which we will accept refund applications to be adjudicated in the same manner and using the same principles as those first-stage refund applications that were filed pursuant to the *Alkek Adams*, and *A. Johnson* determinations.

In its comments on the proposed decision, the Sun Oil Company suggested that the so-called "regulatory methodology" which it advocated for distributing the Stripper Well overcharges would also be appropriate in this case. For an explanation of Sun's position see *Stripper Well Exemption Litigation*, 12 DOE ¶85,017 (1984), and Documents No. 00200 and 00235 filed therein. Sun alternatively suggested that, regardless of whether we adopt its "methodology," the Entitlements-related portions of the settlement funds in the present proceeding should be distributed in the same way as the Stripper Well overcharges. Sun's position is premised on the reasonable assumption that the cost of the alleged and actual violations underlying the present cases was spread through the Entitlements Program in a manner similar to that of the Stripper Well overcharges. *See Union Oil v. DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1982). We anticipate that we will adopt a method of granting refunds in the consolidated *Alkek, Adams*, and *A. Johnson* proceeding which is consistent with that which OHA ultimately recommends to the District Court in the Stripper Well Exemption Litigation. However, because those matters are all currently under active consideration, this is neither an appropriate time nor place for discussing the merits of Sun's proposal.

We will now accept applications for refund for portions of the escrow accounts established with funds received from the above-listed firms. *See* 10 CFR 205.283. Parties who have filed claims in the *Alkek, Adams*, or *A. Johnson* refund proceedings, but who have not yet had a decision on those claims, will be deemed to have filed similar applications in this proceeding and therefore need not file a separate application. Other potential refiner and reseller claimants should file an application for refund following the guidelines outlined below. As we noted in *Alkek*, it would be premature for consumers and consumer groups to file applications for refund until the refiners' and resellers' claims have been resolved. *Alkek* at 85,136.

An application must be in writing, signed by the applicant, and must specify the name of the specific settlement fund to which it pertains, identified by firm name and case number. An applicant should indicate from whom the crude oil was purchased, and, if the applicant was not a direct purchaser from one of these five firms, it should also indicate the basis for its belief that it was injured by the firm's alleged regulatory violations forming the basis of this proceeding. In addition, a claimant who was subject to the DOE regulations must show that it was unable to pass through to its customers the price increases caused by the actual or alleged violations. Each applicant should report any past or present involvement as a party in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d). Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Applications for refund of a portion of the settlement and remedial order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284.

It should be noted that four of the five firms involved in these proceedings have not deposited into the escrow account all of the moneys which they are legally obligated to pay.[4] As a result it is possible, but not likely, that applicants for refund from each of the funds might establish eligibility for refunds which exceeds the amount of funds currently available for distribution. In order to ensure that each applicant is treated fairly in the allocation of available funds, we will delay processing any of the applications received in each individual case until after the deadline for the filing of all applications in that case. We will then determine whether the applicants' combined eligibility for refund amounts exceed the available moneys. To the extent that the dollar value of potential refunds to applicants exceeds the amount of money available for distribution from each firm, we will decrease the amount of all refunds established in order to ensure that each applicant receives a proportional share of the applicable escrow fund. We emphasize, however, that should the funds available for distribution exceed the total amount of refunds for which applicants are eligible, no corresponding increasse in share size will be awarded.

Conclusion

The refund mechanisms and procedures outlined above for first-stage claims filed with DOE will be adopted. Because of the difficulty inherent in establishing the level of injury to parties in the present case, there may be a portion of the refund moneys remaining after all successful first-stage claimants have been paid even though three of the consent order firms and the remedial order firm have paid less into the escrow account than they are obligated to pay. As in previous cases, we shall hold in abeyance our determination as to appropriate second-stage procedures

[4] Proper Energy Corporation originally placed $3,293,911.11 into an escrow account in connection with civil litigation. The District Court subsequently ordered Prosper to place an additional $651,153.08 plus interest into the escrow account. That total amount, plus accrued interest, is available for distribution by OHA. With regard to the remaining firms, DOE records of escrow accounts through January 31, 1985 show that Beverly Hills Oil Company has paid $41,951 out of $161,951 and has filed for protection under federal bankruptcy laws. Jim Cox has paid $30,379.14 out of $32,879.41 and has defaulted on payments. The matter has been referred to the U.S. Department of Justice. The James W. Harris Production Company paid $103,509.74 out of $150,000 but no payments had been tendered since Septmber 1983. A demand letter was sent. E. Dunlap has paid a total of $100,536.73 into escrow and appears to be making timely payments toward amounts still owing under the Remedial Order.

for these cases until we know how much money will remain after first-stage claims are paid. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1982).

It is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Beverly Hills Oil Company pursuant to the Consent Order executed on June 7, 1982 may not be filed.

(2) Applications for Refunds from the funds remitted to the Department of Energy by James W. Harris Production Corporation pursuant to the Consent Order executed on September 5, 1979 may now be filed.

(3) Applications for Refunds from the funds remitted to the Department of Energy by Prosper Energy Corporation in conjunction with the court's order in *Prosper Energy Corporation v. DOE*, Civil Action No. 3–78–0651W (N.D. Tex.) may now be filed.

(4) Applications for Refunds from the funds remitted to the Department of Energy by Jim Cox in conjunction with the court-approved settlement in *Jim Cox d/b/a/ Jim Cox Oil Co v. DOE*, Civil Action No. 80–6–C (E.D. Okla.) may now be filed.

(5) Applications for Refunds from the funds remitted to the Department of Energy by E. Dunlap, Jr. pursuant to the Remedial Order issued to E. Dunlap, Jr. on June 24, 1981 may now be filed.

(6) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: April 4, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–8804 Filed 4–11–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51566; FRL–2816–7]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-eight PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–724—June 26, 1985.

P 85–725, 85–726 and 85–727—June 29, 1985.

P 85–728, 85–729, 85–730, 85–731, 85–732, 85–733, 85–734, 85–735, 85–736, 85–737, 85–738, 85–739, 85–740, and 85–741—June 30, 1985.

P 85–742, 85–743, 85–744, 85–745, 85–746, 85–747, 85–748, 85–749, 85–750, 85–751, 85–752, 85–753, 85–754, 85–755, 85–756, 85–757 and 85–758—July 1, 1985.

P 85–759, 85–760 and 85–761—July 2, 1985.

Written comments by:

P 85–724—May 27, 1985.

P 85–725, 85–726 and 85–727—May 30, 1985.

P 85–728, 85–729, 85–730, 85–731, 85–732, 85–733, 85–734, 85–735, 85–736, 85–737, 85–738, 85–739, 85–740 and 85,741—May 31, 1985.

P 85–742, 85–743, 85–744, 85–745, 85–746, 85–747, 85–748, 85–749, 85–750, 85–751, 85–752, 85–753, 85–754, 85–755, 85–756, 85–757 and 85–758—June 1, 1985.

P 85–759, 85–760 and 85–761—June 2, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51566]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "P" ((PMN), "T" (TMEA) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–724

Manufacturer. Confidential.

Chemical. (G) Ethoxylated thiol ether.

Use/Production. (G) An additive used in metal treating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacturer: Dermal, a total of 1 worker, up to 2–3 hrs/da.

Environmental Release/Disposal. 25 kg/da released.

P 85–725

Manufacturer. Confidential.

Chemical. (G) Polymer of alkyl methacrylates, substituted alkyl methacrylate and styrene.

Use/Production. (G) Component of a coating. Prod. range: 212,000–241,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 40 workers, up to 8 hrs/da, up to 69 da/yr.

Environmental Release/Disposal. 12 to 104 kg/batch released to land. Disposal by landfill.

P 85–726

Importer. Confidential.

Chemical. (G) Alicyclic carboxylic acid.

Use/Import. (G) Ingredient for use in consumer products; highly dispersive use. Import range: 100–1,000 kg/yr.

Toxicity Data. Acute oral: 3.64 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Primary irritant; Repeated insult patch test: Negative; Ames Test: Not mutagenic; Photosensitization: Negative.

Exposure. Import: Dermal, a total of 3 workers, up to 1 hr/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential. Disposal by private water treatment plant.

P 85–727

Importer. International Paint Company, Inc.

Chemical. Further clarification needed before information can be released to the public files.

Use/Import. (S) Industrial and commercial pigment for paint. Import range: Confidential.

Toxicity Data. Acute oral (4 wks): 1,000 mg/kg/da & >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—No irritation, Eye—Mild to moderate; Chromosome aberrations test: Negative; Ames Test: Not mutagenic; Skin sensitization: Not sensitive; LC_{50} 48 hr (Daphnia magna): 88.8±7.9 parts per million (ppm); LC_{50} 96 hr (Rainbow

Trout): 200 ppm; BOD_5: <0.1 gO_2/g; COD: 0.354 gO_2/g; TOC: 0.092 gC/g; LC_{50}: >100 mg/l.

Exposure. Processing: Dermal and inhalation.

Environmental Release/Disposal. Confidential.

P 85-728

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified trisphenol novolac.

Use/Production. (S) Site-limited intermediate for epoxy resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: Dermal, a total of 5 workers.

Environmental Release/Disposal. Release to air, water and land. Disposal by navigable waterway after treatment, incineration and landfull.

P 85-729

Manufacturer. Confidential.

Chemical. (G) Acrylate/methacrylate polymer with styrene.

Use/Production. (G) Industrial coating component. Prod. range: 100,000-395,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 31 workers, up to 8 hrs/da, up to 160 da/yr.

Environmental Release/Disposal. 8 to 135 kg/batch released to land. Disposal by incineration and landfull.

P 85-730

Manufacturer. Confidential.

Chemical. (G) Substituted phosphate ester.

Use/Production. (G) An additive for certain plastics. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—2,187 mg/kg, female—1,819 mg/kg, combined—1,995 mg/kg; Acute dermal: >20,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Inhalation: 20.6 mg/l; Ames Test: Non-mutagenic; BA1B/3T3 Test: No significant transformation.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-731

Manufacturer. P-S Chemicals, Inc.

Chemical. (G) Neutralized acrylic polymer.

Use/Production. (G) The product is used to control viscosities of water based slurries of calcium carbonate, clays, and mineral pigments. Prod. range: Confidential.

Toxicity Data. Acute oral (male and female): >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight.

Exposure. Manufacturer: Dermal, a total of 4 workers, up to 8 hrs/da, up to 220 da/yr.

Environmental Release/Disposal. 0.5 kg/batch released to water, Disposal by publicly owned treatment works (POTW).

P 85-732

Manufacturer. Ethyl Corporation.

Chemical. (G) Halogenated aromatic substituted alkane.

Use/Production. (G) Intermediate in process. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-733

Manufacturer. Ethyl Corporation.

Chemical. (G) Halogenated aromatic polymer.

Use/Production. (G) Flame retardant additive. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—4,716 mg/kg, female—3,293 mg/kg; Acute dermal: >5,000 mk/kg; Irritation: Skin—Mild, Eye—Mild; Ames test: No reproducible genetic activity; HPC/DNA Repair Test: To reproducible genetic activity; HPC/DNA Repair Test: No reproducible genetic activity.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-734

Manufacturer. Ethyl Corporation.

Chemical. (G) Halogenated aromatic alkene.

Use/Production. (G) Intermediate in process. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—4.7 g/kg, female—3.3 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Mild, Eye—Mild; Ames Test: No geotoxic activity; HPC/DNA Repair Assay: No genotoxic activity.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-735

Manufacturer. CIBA-GEIGY Corporation.

Chemical. (G) Substituted pyridine disazo dye.

Use/Production. (S) Industrial high temperature exhaust dyes polyester/polyester blends (wearing apparel) and continuous pad thermasol polyester/polyester blends household furnishings, sheeting, upholstery. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Sub-acute 28-day feeding study: No observable effect level=100 ppm; Ames Test: Negative; Skin sensitization: Non-sensitizer; LC_0 96 hr (Zebra fish): >1,000 mg/l and >100 ppm; EC_{50} 24 hr (Daphnia magna): >100 mg/l; IC_{50} 3 hr: >100 mg/l; Micronucleus test: negative; COD: 1,569 and 1909.1 mg/gO_2; BOD_5: 20 and 0 mg/gO_2.

Exposure. Processing: inhalation, a total of 1 worker, up to 5 hr/da, up to 5 da/yr.

Environmental Release/Disposal. Less than 0.5 released to water. Disposal by POTW and navigable waterway.

P 85-736

Manufacturer. Hercules Incorporated.

Chemical. (G) Modified rosin, calcium-zinc salt.

Use/Production. (S) Industrial resin for publication gravure inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacturer: Dermal, a total of 50 workers, up to 3 hrs/da, up to 340 da/yr.

Environmental Release/Disposal. 10 kg/batch released.

P 85-737

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Copolymer of polyfluoroalkyl substituted methacrylate and polysubstituted methacrylates.

Use/Production. (G) Fabric finish, industrial use, nondispersive for consumer product. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal, a total of 2 workers.

Environmental Release/Disposal. 10kg/batch contained for disposal to on-site waste water treatment.

P 85-738

Manufacturer. Confidential.

Chemical. (G) Alkyd resin.

Use/Production. (S) Alkyd resin is converted into paint. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-739

Manufacturer. SpecialyChem Products Corporation.

Chemical. (G) Alkylphenol.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Irritant.

Exposure. Confidential.

Environmental Release/Disposal. 1kg/batch released to waste water. Disposal by waste disposal company.

P 85-740

Manufacturer. National Starch and Chemical Corporation.

Chemical. (G) Coplymer of acrylates and dimethyl diallyl ammonium chloride.

Use/Production. (S) Electroconductive polymer for copy paper. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-741

Importer. Confidential.

Chemical. (G) Acrylic acid-acrylamidosulfonic acid co-polymer including phosphino groups.

Use/Import. (G) Water treatment additive for industrial systems. Import range: Confidential.

Toxicity Data. Acute oral: >10ml/kg; Irritation: Skin—Minimal.

Exposure. Use: dermal and ocular, a total of 45 workers, up to 1–4 hrs/da, up to 20–200 da/yr.

Environmental Release/Disposal. Release to water. Disposal by sewage treatment facility or directly into streams or rivers.

P 85-742

Manufacturer. Confidential.

Chemical. (G) Alkyl polyoxyalkylene phosphate esters.

Use/Production. (S) Surfactant for use as a component in dispersing agents. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: A total of 1 worker.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85-743

Importer. Confidential.

Chemical. Further Clarification needed before information can be released to the public files.

Use/Import. (G) Adhesives for open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85-744

Importer. EM Industries.

Chemical. (S) 4-n-tetradecyl 4'-(2-μετηυλβθτυλ) πηενυλβενζοατε.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-745

Importer. EM Industries.

Chemical. (S) (+)-4-n-hexyloxyphenyl 4-(2-methylbutyl) biphenyl 4'-carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-746

Importer. EM Industries.

Chemical. (S) (+)-4-(2-methylbutyl) phenyl 4-(2-methylbutyl) biphenyl 4'-carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-747

Importer. EM Industries.

Chemical. (S) (+)-4-cyanophenyl-4-(2-"-methylbutyl) biphenyl 4'-carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20-500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-748

Importer. EM Industries.

Chemical. (S) 4-n-octyloxyl >-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-749

Importer. EM Industries.

Chemical. (S) 4-n-hexyloxy 4'-(2-methylbutyl) phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-750

Importer. EM Industries.

Chemical. (S) 4-n-decyloxy 4'-(2 methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Negative.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-751

Importer. EM Industries.

Chemical. (S) 4-n-dodecyloxy 4'-(2 methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Negative.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85-752

Importer. EM Industries.

Chemical. (S) 4(2-methylbutyl)phenyl 4'-n-octylbiphenyl carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive

devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–753

Importer. EM Industries.

Chemical. (S) 4-n-propyl 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–754

Importer. EM Industries.

Chemical. (S) 4-n-pentyl 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Positive.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–755

Importer. EM Industries.

Chemical. (S) 4(2-methylbutyl) phenyl 4'-n-heptylbiphenyl carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic; Irritation: Skin—Slight, Eye—Temporary; Delayed contact hypersensitivity: Negative.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–756

Importer. EM Industries.

Chemical. (S) 4-n-heptyl 4'-(2-methylbutyl)-phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–757

Importer. EM Industries.

Chemical. (S) 4-n-nonyl 4'-(2-methylbutyl) phenylbenzoate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/wk.

Environmental Release/Disposal. No release.

P 85–758

Importer. EM Industries.

Chemical. (S) 4-(2-methylbutyl) 4'-pentylbiphenyl carboxylate.

Use/Import. (S) Used in an encapsulated form to make sensitive devices (thermometers, thermographs). Import range: 20–500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Ames Test: Not mutagenic.

Exposure. Use: Dermal, a total of 1–2 workers, up to 8 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. No release.

P 85–759

Manufacturer. The Dow Chemical Company.

Chemical. (G) Advancement product of modified triglycidyl ether of tri(hydroxyphenyl) methane.

Use/Production. (S) Industrial transfer molding of electronic parts and manufacture of printed circuit board, electrical laminates and structural composites. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 20 workers.

Environmental Release/Disposal. Up to 0.5 kg/sample released to air or land with an estimated less than 0.02 kg/batch to water. Disposal by navigable waterway after treatment, incineration and landfill.

P 85–760

Manufacturer. Confidential.

Chemical. (G) Functional acrylic copolymer.

Use/Production. (G) Industrial coatings component. Prod. range: 100,000–402,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 29 workers, up to 8 hrs/da, up to 186 da/yr.

Environmental Release/Disposal. 7 to 125 kg/batch released to land. Disposal by incineration and landfill.

P 85–761

Manufacturer. UNIROYAL, Inc.

Chemical. (G) Diphenylmethane diisocyanate terminated polyol polyurethane prepolymer.

Use/Production. (S) Industrial durable polymer for molded products—e.g., sheeting used for chute fabrication. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 3 workers, up to 2 hrs/da, up to 14 da/yr.

Environmental Release/Disposal. No release.

Dated: April 8, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85–8827 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59190; FRL–2816–8]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: April 29, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–59190]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–4201, 401 M Street, SW, Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act (TSCA). The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the mofified format will use the letters "T" (TMEA), "P" (PMN) and "Y" (POLYMER EXEMPTION). The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

T 85–37

Close of Review Period. May 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Polyol adducted with an aromatic isocyanate.

Use/Production. (S) For use as a two component polyurethane compound for potting and encapsulating electrical components. Prod. range: Confidential.

Toxicity Data. Acute oral: >20 g/kg; Acute dermal: 15.8 g/kg; Irritation: Skin—Slight, Eye—Non-irritant, Inhalation: 370 mg/m^3.

Exposure. Manufacture: Dermal and inhalation, a total of 9 workers, up to 1 hr/da.

Environmental Release/Disposal. No data submitted.

T 85–38

Close of Review Period. May 16, 1985.

Importer. Confidential.

Chemical. (G) Acrylic acid-acrylamidosulfonic acid co-polymer including phosphino groups.

Use/Import. (G) Water treatment additive for industrial systems. Prod. range: Confidential.

Toxicity Data. Acute oral: >10 mg/kg; Irritation: Minimal.

Exposure. Import: Dermal, a total of 45 workers, 1–4 hrs/da, 20–200 da/yr.

Environmental Release/Disposal. Release to water. Disposal by discharging into a sewage treatment facility or directly into streams and rivers.

Dated: April 8, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85–8824 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180671; FRL–2816–6]

North Dakota Department of Agriculture; Receipt of Application for Emergency Exemption To Use 2-Methoxy-N-(2-Oxo-1,3-Oxazolin-3-yl)-Acet-2',6'-Xylidine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the North Dakota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient 2-methoxy-N-(2-oxo-1,3-oxazolin-3-yl)-acet-2',6'-xylidine, (Oxadixyl, ISO Approved; formulated by Gustafson Corp. as Anchor 25% Dust Fungicide) to control downy mildew on 1,450,000 acres of sunflowers in North Dakota. It is the Agency's policy to solicit public comment on applications involving active ingredients which have no registered end uses. Accordingly, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP/180671," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM±2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Libby Welch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 716A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (17 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which requires such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of 2-methoxy-N-(2-oxo-1,3-oxazolin-3-yl)-acet-2',6'-xylidine), available as Anchor 25% Dust Fungicide from Gustafson Corp., to control downy mildew caused by the *Plasmopara halstedii* on 1,450,000 acres of sunflowers grown in North Dakota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicates that downy mildew is not adequately controlled by existing cultural methods or registered pesticides, and all sunflower hybirds are susceptible to the new races of downy mildew.

The Applicant indicates that the only two fungicides which are currently registered for use on sunflowers are Maneb and Captan. The Applicant indicates that neither of those fungicides have controlled sunflower downy mildew in their trials. Specific exemptions were issued in 1982, 1983, and 1984 for use of metalaxyl to control downy mildew in sunflowers. At this time the Agency will not entertain a request for this use of metalaxyl due to a lack of an adequate mammatian toxicity data base for metalaxyl. The Applicant estimates the crop value of 1,450,000 acres of sunflowers to be $174,000,000. The Applicant states that yield reductions caused by downy mildew will reach 1.2%. Thus, the Applicant estimates, the economic benefit from the use of Anchor would be a total of $2,090,000.

Anchor will be applied at a maximum rate of 1.0 ounce of active ingredient per hundred weight of seed. A maximum of one application will be made. A total of 362,500 pounds of active ingredient will

be required to treat the seed necessary to plant 1,450,000 acres of sunflowers. Anchor will be applied by individual growers at time of planting. Applications would be made from May 1 through July 1, 1985.

This notice does not constitute a decision by EPA on the application itself. Interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 29, 1985 and should bear the indentifying notation "OPP 180671." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by North Dakota.

Dated: April 4, 1985.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 85-8828 Filed 4-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59185C TSH-FRL 2817-7]

Certain Chemicals; Approval of Petition for Modification of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a petition for modification of four test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-67, TME-84-68, TME-84-69, and TME-84-70. The modification conditions are described below.

EFFECTIVE DATE: April 2, 1985.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613C, 401 M St. SW., Washington, DC. 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury

On September 7, 1984, TMEs 84-67, 84-68, 84-69, and 84-70 became effective. The notice of approval of these TMEs was published on September 18, 1984 (49 FR 36564). On February 25, 1985, the Company petitioned for modification of the TMEs. EPA hereby approves the petition for modification of TME-84-67, TME-84-68, TME-84-69, and TME-84-70. EPA has determined that test marketing of the new chemical substances subject to these TMEs, under the conditions described in the original notice of approval as modified by this notice of approval of petition for modification of test marketing exemptions, will not present any unreasonable risk of injury to health or the environment. All conditions and restrictions described in the original notice of approval and in this notice of approval must be met.

TME-84-67

Notice of Approval of Test Market Exemption: September 18, 1984 (49 FR 36564).

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Modification: This modification allows the Company to ship some of the TME substance, without neutralizing it, at a pH of 2.5-3.

Public Comments: None.

TME-84-68

Notice of Approval of Test Market Exemption: September 18, 1984 (49 FR 36564)

Risk Assessment: No significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Modification: This modification allows the Company to ship some of the TME substance, without neutralizing it, at a pH of 2.5-3.

Public Comments: None.

TME-84-69

Notice of Approval of Test Market Exemption: September 18, 1984 (49 FR 36564)

Risk Assessment: No Significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Modification: This modification allows the Company to ship some of the TME substance, without neutralizing it, at a pH of 2.5-3.

Public Comments: None.

TME-84-70

Notice of Approval of Test Market Exemption: September 18, 1984 (49 FR 36564)

Risk Assessment: No Significant health or environmental concerns were identified. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Modification: This modification allows the Company to ship some of the TME substance, without neutralizing it, at a pH of 2.5-3.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts signficant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 2, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-8820 Filed 4-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59185A TSH-FRL 2817-6]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of four applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-24, TME-85-25, TME-85-26, and TME-85-27. The test marketing conditions are described below.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611E, 401 M St. SW., Washington, DC. 20460, (202) 382–3391.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–24, TME–85–25, TME–85–26, and TME–85–27. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The production volume, use and the number of customers must not exceed that specified in the application.

The following additional restrictions apply to TME–85–24, TME–85–25, TME–85–26, and TME–85–27. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T85–24

Date of Receipt: February 21, 1985.
Notice of Receipt: March 1, 1985 (50 FR 8393).
Applicant: Products Research and Chemical Corporation.
Chemical: (G) Polymer of ethanol 2-mercapto, oxirane extended, hydroxy terminated, reaction product with silane, substituted propyl triethoxy.
Use: (S) Adhesion promoting ingredient.
Production Volume: 1,000 pounds.
Number of Customers: Fifty.
Worker Exposure: During manufacture, 4 workers may be exposed dermally up to 8 hours per day for up to 50 days. During use, 120 workers may be exposed dermally up to 8 hours per day for up to 200 days.
Test Marketing Period: Twelve months.
Commencing on: April 5, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

T85–25

Date of Receipt: February 21, 1985.
Notice of Receipt: March 1, 1985.
Applicant: Products Research and Chemical Corporation.
Chemical: (G) Polymer of ethanol 2,2'-thiobis, ethanol, 2-mercapto, and oxirane, methyl, reaction product with aliphatic isocyanate and substituted aliphatic amine.
Use: (S) Adhesion promoting ingredient.
Production Volume: 1,000 pounds.
Number of Customers: Fifty.
Worker Exposure: During manufacture, 4 workers may be exposed dermally up to 8 hours per day for up to 50 days. During use, 120 workers may be exposed dermally up to 8 hours per day for up to 100 days.
Test Marketing Period: Twelve months.
Commencing on: April 5, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

T85–26

Date of Receipt: February 21, 1985.
Notice of Receipt: March 1, 1985 (50 FR 8393).
Applicant: Products Research and Chemical Corporation.
Chemical: (G) Polymer of ethanol 2,2'-thiobis, ethanol, 2-mercapto, and oxirane, methyl, reaction product with silane, substituted propyl triethoxy.
Use: (S) Adhesion promoting ingredient.
Production Volume: 1,000 pounds.
Number of Customers: Fifty.
Worker Exposure: During manufacture, 4 workers may be exposed dermally up to 8 hours per day for up to 50 days. During use, 120 workers may be exposed dermally up to 8 hours per day for up to 100 days.
Test Marketing Period: Twelve months.
Commencing on: April 5, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

T85–27

Date of Receipt: February 21, 1985.
Notice of Receipt: March 1, 1985 (50 FR 8393).
Applicant: Products Research and Chemical Corporation.
Chemical: (G) Polymer of ethanol 2-mercapto, oxirane, extended, Hydroxy terminated, reaction product with aliphatic isocyanate and substituted aliphatic amine.
Use: (S) Adhesion promoting ingredient.
Production Volume: 1,000 pounds.
Number of Customers: Fifty.
Worker Exposure: During manufacture, 4 workers may be exposed dermally up to 8 hours per day for up to 50 days. During use, 120 workers may be exposed dermally up to 8 hours per day for up to 200 days.
Test Marketing Period: Twelve months.
Commencing on: April 5, 1985.
Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 5, 1985.

Don R. Clay,
Director, Office of Toxic Substances.

[FR Doc. 85–8821 Filed 4–11–85; 8:45 am]
BILLING CODE 6560–50–M

[OPTS-59710; FRL-2816-8]

Certain Chemicals; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period for Y 85–36, 85–37, 85–38 and 85–39: April 21, 1985. Y 85–40, 85–41 and 85–42: April 22, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: A nonsubstantive change in the prefixes is being initiated for information published under sections 5(d)(2) and 5(h)(6) of TSCA. The notices will contain essentially the same information but the prefixes to the specific number assignment will appear in an abbreviated form. Prefixes under the modified format will use the letters "Y" (POLYMER EXEMPTION), "P" (PMN) and "T" (TMEA). The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–36

Manufacturer. Confidential.
Chemical. (G) Acrylamide-acrylic acid terpolymer, mixed sodium ammonium salt.
Use/Production. (G) Thickener. Prod. range: Confidential.
Toxicity Data. No data sumbitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–37

Manufacturer. Confidential.
Chemical. (G) Acrylamide-acrylic acid terpolymer, sodium salt.
Use/Production. (G) Thickener. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–38

Manufacturer. Confidential.
Chemical. (G) Polyester polyurethane.
Use/Production. (G) Industrial coating component. Prod. range: 50,000–150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–39

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Polyester polymer.
Use/Production. (S) Industrial coating vehicle. Prod. range: 500,000–2,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–40

Manufacturer. Confidential.
Chemical. (G) Polyester polyol.
Use/Production. (S) Industrial coating resin component. Prod. range: 22,000–27,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–41

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Industrial thermoset plastic molding resin. Prod. range: 71,000–295,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–42

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Industrial high solids coating resin component. Prod. range: 16,500–82,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: April 8, 1985.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 85–8823 Filed 4–11–85; 8:45 am]

BILLING CODE 6560-50-M

[OPP–180672; FRL–2816–5]

Minnesota Department of Agriculture; Receipt of Application for Emergency Exemption to Use 2-Methoxy-N-(2-oxo-1,3-Oxazolin-3-yl)-Acet-2', 6'-Xylidine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient 2-methoxy-N-(2-oxo-1,3-oxazolin-3-yl)-acet-2',6'-xylidine, (Oxadixyl, ISO Approved; formulated by Gustafson Corp. as Anchor 25% Dust Fungicide) to control downy mildew on 156,000 acres of sunflowers in Minnesota. It is the Agency's policy to solicit public comment on applications involving active ingredients which have no registered end uses. Accordingly, EPA is soliciting comment before making the decision whether or not to grant the exemption. Date: Comments must be received on or before April 29, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP–180672," should be submitted by mail to: .

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential

may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Libby Welch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 716A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (17 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of 2-methoxy-N-(2-oxo-1,3-oxazolin-3-yl)-acet-2',6'-xylidine), available as Anchor 25% Dust Fungicide from Gustafson Corp., to control downy mildew caused by the *Plasmopara halstedii* on 156,500 acres of sunflowers grown in Minnesota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicates that downy mildew is not adequately controlled by existing cultural methods or registered pesticides, and all commercial sunflower hybirds are susceptible to the new race of downy mildew found in 1981.

The Applicant indicates that the only two fungicides which are currently registered for use on sunflowers are Maneb and Captan. The Applicant indicates that research shows they are not effective as downy mildew control agents. Specific exemptions were issued in 1982, 1983, and 1984 for use of metalaxyl to control downy mildew in sunflowers. At this time the Agency will not entertain a request for this use of metalaxyl. The Applicant estimates the crop value of 156,500 acres of sunflowers to be $20,658,000. The Applicant states that yield reductions caused by downy mildew will reach 1.5%. Thus the economic benefit, based on information provided by the Applicant, from the use of Anchor would be a total of $309,870.

Anchor will be applied at a maximum rate of 1.0 ounce of active ingredient per hundred weight of seed. A maximum of one application will be made. A total of 39,125 pounds of active ingredient will be required to treat the seed necessary to plant 156,500 acres of sunflowers. Anchor will be applied by individual growers at time of planting. Applications would be made from April 20 through July 1, 1985.

This notice does not constitute a decision by EPA on the application itself. Interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 29, 1985, and should bear the identifying notation "OPP 180672." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Minnesota.

Dated: April 3, 1985.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 85–8829 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–180673; FRL–2816–4]

Minnesota Department of Agriculture; Receipt of Application for Specific Exemption To Use 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-YL[Methyl]-1H-1,2,4-Triazole; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") for a specific exemption to use the active ingredient 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole (Tilt, EPA Reg. No. 100–817) to control brown spot caused by *Bipolaris oryzae* on 22,000 acres of wild rice in Minnesota. It is the Agency's policy to solicit public comment on applications involving active ingredients which have not been previously registered for a food or feed use. Accordingly, EPA is soliciting comment before making the decision whether or not to grant the specific exemption.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP–180673," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington DC 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION:

By mail: Libby Welch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (17 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of 1-[[2-(2,4-dichlorophenyl)-4-prophyl-1,3-dioxolan-2-yl]methyl)-1*H*-1,2,4-triazole, available as Tilt (EPA Reg. No. 100–617) from Ciba-Geigy, to control brown spot cause by *Bipolaris oryzae* on 22,000 acres of wild rice grown throughout Minnesota. Tilt is currently only registered on grasses grown for seed. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

According to the Applicant, the recorded incidence of brown spot has occurred annually since 1971 and has

severely reduced yields throughout the State, up to 100% in some instances. The organism can be disseminated by the physical movement of infested soil and/or infected plant debris, wind and infected wild rice seed.

The Applicant predicts that this disease situation will continue and even worsen because of the following factors: (1) Resistant wild rice varieties are currently unavailable and none are anticipated within the near future; (2) the pathogen abounds on the various wild grasses and cultivated cereals found throughout the wild rice growing areas; (3) crop residue destruction by burning or deep plowing has not been effective in controlling this disease; (4) Dithane M–45 is currently labeled for control of brown spot. The Applicant states that published reports of the ability of *Bipolaris oryzae* to become adapted to higher than recommended field rates of Dithane M–45 have been scientifically reported; (5) environmental conditions favoring epidemic development also prevent timely application of Dithane M–45. It is estimated that treatment of affected acreage with Tilt in 1985 could save the Minnesota wild rice industry between 4 and 12 million dollars.

Tilt will be applied at a rate of 75 grams active ingredient at the boot stage of plant development if lesions are present. If disease progress is still evident an additional application at flowering will be required. If the disease does not occur until late boot heading only one application at 100 grams active ingredient per acre will be made. A total of 7,300 pounds of active ingredient will be needed to treat 22,000 acres of wild rice. Applications will be by air. Applications would be made from July 1 through August 31, 1985.

This notice does not constitute a decision by EPA on the application itself. Interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 29, 1985, and should bear the identifying notation "OPP/80673." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exeption requested by Minnesota.

Dated: April 3, 1985

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 85–8830 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2817–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 25, 1985 through March 29, 1985 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–AFS–D65011–WV, Rating EC2, Monongahela Nat'l Forest, Land and Resource Mgmt. Plan, WV. SUMMARY: EPA believes that the program as planned, places insufficient emphasis on maintenance of water quality in the watershed. EPA believes that the combined effects of timbering and mining could seriously and cumulatively impact the watershed's water quality without appropriate mitigation.

ERP No. D–FHW–E40683–NC, Rating EC2, NC–280 Construction, NC–280 and NC–191 Intersection, Mills R. to I–26 near Asheville Airport, NC. SUMMARY: EPA believes that the DEIS alternative analysis should be more inclusive. EPA also requested that the implementation of noise abatement measures be reconsidered and that additional habitat impact information is needed.

Final EISs

ERP No. F–OSM–L67014–WA, John Henry No. 1 Mine Operation, Permit, WA. SUMMARY: EPA believes that the program as planned, places insufficient emphasis on maintenance of water quality in the watershed. EPA believes that the combined effects of timbering and mining could seriously and cumulatively impact the watershed's water quality without appropriate mitigation.

Dated: April 9, 1985

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–8912 Filed 4–11–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2817–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmenal Impact Statements filed April 1, 1985 through April 5, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850129, FSuppl, COE, LA, New Orleans to Venice Hurricane Protection Project, Plaquemines Parish, Due: May 13, 1985, Contact: Scott Clark (504) 838–2521.

EIS No. 850130, Final, NOA, PAC, North Pacific Fur Seals Conservation, Interim Convention, Extension, Due: May 13, 1985, Contact: Richard Roe (202) 634–7461.

EIS No. 850131, Final, FHW, CA, CA–52 Construction, I–805 to Santo Road, San Diego County, Due: May 13, 1985, Contact: Mike Pool (916) 440–2521.

EIS No. 850132, Final FHW, AL, Tallahaga Scenic Drive Completion, Bulls Gap to Piedmont, Tallahaga NF, Due: May 13, 1985, Contact: Martin Convisser (202) 426–4357.

EIS No. 850133, DSuppl, COE, TX, Lake Wichita-Holiday Creek Flood Control Plan, Wichita Falls, Wichita County, Due: May 28, 1985, Contact: Buell Atkins (918) 581–7857.

EIS No. 850134, Draft, AFS, AL, Alabama National Forests, Land and Resource Management Plan, Due: July 11, 1985, Contact: Joe J. Brown (205) 832–7630.

EIS No. 850135, Draft, SCS, LA, Bayou Mallet Watershed Flood Prevention Project, Mermentau River Basin, Acadia, St. Landry, and Evangeline Parishes, Due: May 31, 1985, Contact: Harry Rucker (318) 473–7751.

EIS No. 850136, Draft, COE, PA, Francis E. Walter Dam Modifications, Lehigh River, Delaware River Basin, Carbon, Luzenne and Monroe Counties, Due: May 28, 1985, Contact: Jeffrey Radley (215) 597–4833.

EIS No. 850137, Draft, BLM, OR, Two Rivers Planning Area, Resource Management Plan, Prinville District, Due: June 30, 1985, Contact: Brian Cunninghame (503) 447–4115.

EIS No. 850138, Final, FHW, OR, South Slough (Charleston) Bridge Replacement, Cape Arago Highway, Coos County, Due: May 13, 1985, Contact: Dale Wilken (503) 399–5749.

EIS No. 850139, Final, SFW, AK, Kenai National Wildlife Refuge, Conservation Management Plan, Kenai Peninsula Borough, Due: May 13, 1985, Contact: William Knauer (907) 786–3399.

EIS No. 850140, Draft, BLM, WY, Kemmerer Resource Area, Resource Management Plan, Due: July 12, 1985, Contact: Alan Stein (307) 382–5350.

Amended Notice: EIS No. 850010, DRevised, AFS, MT, Beaverhead National Forest Land and Resource Management Plan, Due: June 1, 1985, Published FR 2–15–85 Review extended.

Dated: April 9, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–8913 Filed 4–11–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirements Approved by OMB

April 4, 1985.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, FCC, (202) 632–7513.

OMB No.: 3060–0003
Title: Application for Amateur Radio Station and/or Operator License
Form No.: FCC 610

A revised application form FCC 610 has been approved for use through 3/31/88. The June 1984 edition with the previous expiration date of 5/31/87 will remain in use until revised forms are available. In the meantime, Volunteer Examiners may follow modified instructions as published in the **Federal Register** of February 1, 1985 (50 FR 4686).

OMB No.: 3060–0016
Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or FM Translator Station
Form No.: FCC 346

A revised application form FCC 346 has been approved for use through 1/31/88. The July 1983 edition with the previous expiration date of 7/31/84 (which was extended to 7/31/87) will remain in use until revised forms are available. At that time all previous editions will be declared obsolete.

OMB No.: 3060–0035
Title: Application for Renewal of Auxiliary Broadcast License (Short Form)
Form No.: FCC 313–R

The approval on FCC 313–R has been extended through 3/31/88. The September 1982 edition with the previous expiration date of 4/31/85 will remain in use until updated forms are available.

OMB No.: 3060–0069
Title: Application for Commercial Radio Operator License
Form No.: FCC 756

A rivised application form FCC 756 has been approved for use through 3/31/88. The November 1984 edition with a previous expiration date of 12/31/85 will remain in use until revised forms are available. At that time all previous editions will be declared obsolete.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–8891 Filed 4–11–85; 8:45 am]

BILLING CODE 6712–01–M

Roanoke TV 60 Broadcasting et al.; Hearing Designation Order

In re applications of Wilbur O. Colom, et al., d/b/a Roanoke TV 60 Broadcasting, MM Docket No. 85–86; Southwest Virginia Television, File No. BPCT–840803KG; for Construction Permit for New Television Station Roanoke, Virginia, File No. BPCT–841005KY.

Adopted: March 21, 1985.
Released: April 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Wilbur O. Colom, Congress Street Properties, Inc., Willis M. Anderson, and Dr. Wendell H. Butler, d/b/a Roanoke TV 60 Broadcasting (TV 60) [1] and Southwest Virginia Television (Southwest) for authority to construct a new commercial television station on Channel 60, Roanoke, Virginia.

2. No determination has been made that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

3. On November 21, 1984, the Association of Maximum Service Telecasters, Inc. filed an informal objection to the application of Southwest [2] on the ground that the proposed transmitter site was short-spaced by 4.29 miles to Station WNRW(TV), Channel 45, Winston-Salem, North Carolina. On December 19, 1984, Southwest filed a "petition for leave to amend" accompanied by an amendment changing its antenna site to a location which meets the Commission's minimum mileage separation requirements. For good cause shown, the petition is granted and the amendment is accepted. The informal objection will be dismissed as moot.

4. Section V–C, Item 10, FCC Form 301, requires that an applicant submit the area and population within its predicted Grade B contour. Southwest has not submitted this information. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Southwest will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following isues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each applicant would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered That, the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

8. It is further ordered, That the informal objection filed by the Association of Maximum Service Telecasters, Inc. is dismissed as moot.

9. It is further ordered, That to avail themselves of the opportunity to be

[1] On March 5, 1985, TV 60 petitioned for leave to amend and to clarify a previous amendment relating to equity ownership. Since the amendment was filed in response to the Commission's request, it will be accepted. See § 73.3514(b) of the Commission's Rules. No comparative advantage will be permitted, however.

[2] This objection also included the application of Brahman Communications. The Brahman Communications application was returned as unacceptable for filing on February 26, 1985.

heard, the appliants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, That the applications herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commisison's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission,

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-8804 Filed 4-11-84; 8:45 am]

BILLING CODE 6712-01-M

Arkelian Broadcasting Co. and Benitez Communications, Inc.; Hearing Designation and Order

In re applications of Arkelian Broadcasting Company WWWO, Marco Island, FL.; Has: 1510 kHz, 1 kW, DA-D, D, Req: 1480 kHz, 1 kW, DA-2, U MM DOCKET NO. 85-85, File No. BP-840217AA. Benitez Communications, Inc. East Naples, Florida; Req: 1460 kHz, 0.5 kW, D; File No. BP-840702AI.

Adopted: March 22, 1985.

Released: April 5, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Arkelian Broadcasting Company (Arkelian) and Benitez Communications, Inc. (Benitez). Also before the Commission is a motion to dismiss Benitez's application filed by Arkelian, related pleadings, and a petition for leave to amend filed by Benitez.

2. The date until which Benitez could file amendments to its application as a matter of right (B cut-off date) was November 27, 1984. On December 11, 1984, Benitez submitted an amended engineering statement, requesting a waiver of § 73.37 of the Commission's Rules, accompanied by a petition for leave to amend. This amendment is unopposed and will not prejudice the other applicant nor confer any comparative advantage to Benitez. We therefore will accept the amendment.

3. Arkelian filed a motion to dismiss Benitez's application, alleging that the proposal submitted by Benitez would result in prohibited overlap of its proposed 0.5 mV/m contour with the 0.5 mV/m contour of first adjacent Station WSPB, Sarasota, Florida, in violation of Section 73.37(a) of the Commission's Rules. While Arkelian's contention is correct, we have determined that a waiver of § 73.37(a) is warranted. A waiver of § 73.37(a) is granted to Benitez, *infra*, in paragraph 4 of this Order, thus rendering Arkelian's argument moot. Accordingly, we will deny Arkelian's motion to dismiss.

4. Benitez has requested a waiver of § 73.37(a) to permit overlap with the existing 0.5 mV/m contour of Station WSPB, Sarasota, Florida. The proposed overlap is caused by the high conductivity of salt water paths, and occurs exclusive offshore, beyond the normal mainland service contours of both stations. In view of the unique circumstances involved, we find that the overlap which would occur would not prejudice the basic policy considerations underlying the provisions of § 73.37(a) of the Rules. Accordingly, a waiver is granted to Benitez to permit acceptance of its proposal.

5. Arkelian has requested a waiver of § 73.37(b)(2) of the Rules, to permit Station WWWO to receive overlap to its proposed 1 mV/m contour. This overlap is *de minimus* and is the result of the high conductivity of salt water paths. *See, Larson-Irwin Enterprises (KOAG)*, 6 F.C.C. 2d 613 (1967); *see also, Collier Broadcasting Co.*, 25 F.C.C. 2d 867 (1970). Accordingly, a waiver is granted to Arkelian.

6. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed.[1] However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify issues to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

7. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearig in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine: (a) the areas and populations which would receive primary aural service from the proposal of Benitez Communications, Inc., and the availability of other primary service to such areas and populations, (b) the areas and populations which would gain or lose primary aural service from the proposal of Arkelian Broadcasting Company and the availability of other primary service to such areas and populations, and (c) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine in the event that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the petition for leave to amend filed by Benitez Communications, Inc. is granted and the accompanying amendment is accepted for filing.

9. It is further ordered, That the motion to dismiss filed by Arkelian Broadcasting Company is denied.

10. It is further ordered, That § 73.37(a) of the Commission's Rules is waived on behalf of Benitez Communications, Inc.

11. It is further ordered, That § 73.37(b) of the Commission's Rules is waived on behalf of Arkelian Broadcasting Company.

12. It is further ordered, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

13. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to Section 1.221(c) of the Commission's Rules, the parties shall within 20 days of the mailing of this Order, in person or by attorney, file with the Commission in triplicate a written appearance stating an intention

[1] The facilities specified by Arkelian Broadcasting Company herein are subject to modification, suspension or termination without right of hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janerio 1981, and to bilateral and other multilateral agreements between the United States and other countries.

to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, That pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-8886 Filed 4-11-85; 8:45 am]

BILLING CODE 6712-01-M

[Gen. Docket No. 84-607]

Advisory Committee for the World Administrative Radio Conference for the Mobile Services; Establishment

Adopted: February: 22, 1985.
Released: March 29, 1985.

By the Commission:

Purpose

1. The purpose of this *Memorandum Opinion and Order* is to establish a federal advisory committee to prepare for the International Telecommunication Union (ITU) World Administrative Radio Conference (WARC) for the Mobile Services. This conference is anticipated to be held in 1987. A Commission proceeding has been established to assist our preparations for the Mobile Services WARC.[1] the maintenance of an advisory committee would be an adjunct to that proceeding.

Background

2. Although the detailed agenda for the Mobile Services WARC has not been established by the ITU, the Conference is expected to have jurisdiction to consider and revise many of the provisions of the international Radio Regulations pertaining to the use of radio by the mobile services. Thus, a thorough preparatory review and assessment of United States options of the conference is necessary. It is particularly critical that the process begin expeditiously. There are large sections of the Radio Regulations devoted exclusively to Mobile Services, and significant portions devoted both to Mobile and non-Mobile Services. To accomplish a review of this magnitude will require extensive effort to ensure that all U.S. interests have been adequately examined prior to our submission of U.S. proposals to the Conference. We anticipate that proposals will be due in Geneva about January 1, 1987, based on an August, 1987, start of the conference.

Establishment of a Federal Advisory Committee

3. There are several means whereby the Commission and Executive Branch can develop policies for international organizations considering communication issues. One means is through the creation of an advisory committee consisting of members of the public having a knowledge of and interest in the subject matter.[2] Such committees generally meet at regular intervals with advance notice of meetings given in the **Federal Register**, affording an opportuntiy for members to research and discuss relevant issues, and to develop findings or recommendations. All of these activities are governed by the Federal Advisory Committee Act of 1972.[3]

4. In view of the utility that such an advisory committee could provide, the Commission solicited comments regarding the desirabiity of creating an advisory committee for the Mobile Services WARC in the First Notice of Inquiry in this proceeding.[4] Five of the commenters supported the need for, or indicated a desire to participate in, any mechanism that might be established to promote more detailed interface with the public on matters that may be considered at the WARC. One of the reply comments also encouraged the establishment of such a committee. The remaining 5 commenters and 2 reply comments voiced no opinion one way or the other.

5. American Telephone and Telegraph Company (AT&T) supported the need for an advisory committee, particulary to collect usage data concerning the HF maritime mobile service. The Association of American Railroads (AAR) indicated that an advisory committee could provide the necessary public interface with the Commission. Mobile Marine Radio, Incorporated, indicated that it will assist, as appropriate, in the preparatory efforts. The Radio Technical Commission for Maritime Services (RTCM) indicated that there is merit in utilizing the expertise of advisory committees because this normally provides for an improved dialogue between the Commission and all interested parties. Like AT&T, RTCM also believes that the collection of HF maritime mobile data through an advisory committee is particularly desirable. RCA Global Communications (RCA) indicated that the FCC should consult with the RTCM in preparing for the 1987 WARC. Aeronautical Radio, Incorporated (ARINC), in its reply comments, supported the formation of an industry advisory committee, believing that such a committee could have merit in developing the United States proposals for the WARC.

6. From the comments filed there is an indication that the creation of an advisory committee would provide the opportunity for a thorough examination of the issues and result in a more focused preparatory process. There are, of course, other domestic forums focusing upon Mobile WARC matters. The Interdepartment Radio Advisory Committee has established Ad Hoc 104 to develop recommendations for the National Telecommunications and Information Administration (NTIA). Recommendations developed by this group will be primarily centered on Federal agency spectrum management interests. The public has no direct access or involvement in its activities. The National Committee of the CCIR, primarily through its United States Study Group-8 effort, will continue its on-going examination and development of technical and operational bases for the mobile services. United States Coast Guard, through its Safety-of-Life-at-Sea (SOLAS) Working Group on Radiocommunications of the International Maritime Organization (IMO) will address matters as they relate to safety and distress in that forum. We also expect the Federal Aviation Administration to develop some mechanism to prepare for meetings within the International Civil Aviation Organization (ICAO) forum. We would further expect that associations and other domestic groups representing operators, manufacturers, and users will also develop some form of preparatory mechanisms.[5]

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[1] See *First Notice of Inquiry*, (General Docket No. 84-607), FCC 84-262, 49 FR 26301, adopted June 15, 1984, published June 27, 1984.

[2] The Commission has used this method in the past in preparing for international radio conferences. Most recently, a federal advisory committee was created to prepare for the ITU WARC on the Use of the Geostationary-Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC). See *Memorandum Opinion and Order*, General Docket No. 80-741, FCC 81-317, 46 FR 42758, adopted July 16, 1981.

[3] Federal Advisory Committee Act, Pub. L. 92-463, October 6, 1972, 86 Stat. 770, as amended Pub. L. 94-409, sec. 5(c), September 13, 1976, 90 Stat. 1247 at sec. 3(c). The Act appears at 5 U.S.C. App. I (1976).

[4] *First Notice of Inquiry*, *supra* at [1].

[5] We note that the Radio Technical Commission for Maritime Services has created Special

Continued

7. In addition to these activities, there are a number of on-going separate Commission domestic proceedings that are relevant to the Mobile WARC preparatory process. For example, the recent adoption of the *Notice of Proposed Rule Making* concerning allocation of spectrum and establishment of rules pertaining to the radiodetermination-satellite service will have a bearing on this process.[6] Another example is the *NPRM* in the mobile satellite area.[7] Still yet another example is the on-going Space WARC preparatory activities, as correctly pointed out by the American Telephone and Telegraph Company in its comments to the *Notice*.[8] Those activities, and the results of the first session of the Space WARC In 1985 concerning the mobile-satellite services, will have to be considered.

8. As suggested by the commenters, a central or principal forum is needed to provide for an interaction among the various groups identified above so that a set of comprehensive and cohesive ideas might be developed to assist the Commission in preparing for the 1987 Mobil WARC. By this *Order* the Commission now establishes such a committee. This committee is intended to bring together a broad range of individuals who are knowledgeable in the issues that the Mobile WARC will consider. Although the committee cannot formally exercise any authority over the advisory committees of other agencies, we expect that a useful interaction will take place. We particularly envision that any output from such groups as RTCM will be presented and coordinated through the advisory group.

9. The broad activities of the committee are set forth in the Charter attached as Appendix 1. It indicates that the work product should be produced in three steps. The first step would be a recommendation to the Commission on the issues that should be addressed by the Mobile Service WARC. Emphasis would be on the mobile service uses and requirements through the 1987–2000 time-frame and the impact of consideration or non-consideration of these issues at the Mobile WARC. Since this Mobile WARC could have far reaching impact on communications in the mobile and mobile satellite areas for the next twenty years, such an initial effort will assist in developing considerations that will have to be taken into account when the agenda for the Mobile WARC is decided. That decision will probably be made at the ITU Administrative Council in July, 1985.[9] Thus, the first step input from the advisory committee will have to be completed no later than April 1, 1985 in order to provide advice to the FCC in preparing for the Council meeting. It should be in the form of identifying specific Articles, Appendices, and Resolutions/Recommendations of the Radio Regulations and the impact on the United States if those issues are either considered or not considered.

10. The second step of the advisory committee would be to consider recommendations concerning actual changes to the international Radio Regulations that will be part of the 1987 Mobile WARC mandate. Here the emphasis should be on the development of technical, regulatory, operational and frequency ideas and plans, again in a cohesive package intended to satisfy the United States requirements identified in step 1. The studies could also include, as a third step, such matters as economic impact, international ramifications, and so forth. The report on the second and third steps, would be due no later than June 1, 1986. We recognize, however, that the second step is more critical than the third.

11. We expect that the entire Committee will meet no less than three times a year and perhaps more often as the deadline for submission draws closer. Membership on the Committee will not be constrained, although regular dissemination of materials may be limited to regular participants in the Committee's activities, bearing in mind the need for proper balance of interests. It is expected that this Committee will attempt to reach a consensus on as many matters as possible. Where that does not occur, dissenting members will be encouraged to prepare separate comments presenting their view. The Committee will be created, conducted, and terminated pursuant to the Federal Advisory Committee Act of 1972.[10] Advance notice of all Committee meetings will be given to the public through publication in the **Federal Register**. Because funds for the conduct of this Committee are extremely limited, private-sector, i.e., non-government, members of the Committee must cover all their participating expenses.

12. Accordingly, it is ordered that an advisory committee be established to assist the Commission in preparation for the 1987 ITU World Administrative Radio Conference on the Mobile Services. The staff is instructed to take the necessary steps to obtain the prompt approval of the Charter of the Advisory Committee, attached as Appendix 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1—Charter of the Advisory Committee for the World Administrative Radio Conference for the Mobile Services

A. *The Committee's Official Designation.*

Advisory Committee for the World Administrative Radio Conference for the Mobile Services.

B. *Names of the Subcommittees.*

None.

C. *Committee's Objectives and Scope of its Activity.*

(1) Objective: to advise the staff of the Federal Communications Commission concerning preparations for the International Telecommunication Union World Administrative Radio Conference for the Mobile Services currently scheduled for 1987.

(2) a. Scope of activity on the agenda for the mobile conference: all steps necessary to assemble information and provide advice concerning the following matters:

- Development of a list of ITU Radio Regulation issues that should be addressed by the Mobile WARC, and the potential impact on interests of the United States if those issues either are considered or are not considered.

b. Scope of activity for the United States proposals: all steps necessary to assemble information and provide advice concerning the following matters:

- Development of technical, operational, regulatory and related radio frequency ideas and criteria to meet needs of the United States in a consolidated and cohesive manner, presenting such data in ITU Radio Regulation format.
- The gathering of data and the establishment of agreed parameters to define radio frequency spectrum use and

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Committee No. 108; we would anticipate that other such similar entities would do likewise, and that any output from such groups would be channelled through the Mobile WARC Advisory Committee.

[6] *Notice of Proposed Rule Making*, General Docket No. 84-689, and Docket No. 84-690, RM 4426, FCC 84-319, 49 Fed. Reg. 36512, adopted July 12, 1984, published July 12, 1984.

[7] *Notice of Proposed Rule Making*, General Docket No. 84-1234, RM-4247, FCC 84-558.

[8] *Fourth Notice of Inquiry*, General Docket No. 80-741, FCC 84-194, 49 Fed. Reg. 21419, adopted May 10, 1984, published May 21, 1984.

[9] *Notice supra* at [1], paragraph 2.

[10] *Supra* at [2].

requirements, compiling such material into a cohesive recommendation, presenting rationale, alternatives, and ideas for its successful use at the conference.

c. Scope of activity concerning advice for possible use by the United States Delegation: all steps necessary to assemble information and provide advice concerning the following matters:

- An evaluation of the interests of other nations and international organizations that may be involved in preparing for the Mobile WARC.
- An assessment of the impact on mobile terrestrial and satellite radiocommunication services by the various envisioned conference outcomes, including, to the extent determinable, economic and regulatory effects.

D. *Period of Time Necessary for the Committee to Carry Out Its Purposes.*

Final written reports for the activities associated with the development of the Agenda for the Mobile WARC must be completed by April 1, 1985. Final written reports for consideration in developing the United States proposals or use by the United States Delegation must be completed by June 1, 1986.

E. *Official to Whom the Committee Reports.*

Chief, Private Radio Bureau and Chief Scientist Federal Communications Commission.

F. *Agency Responsible for Providing Necessary Support.*

The FCC will furnish necessary administrative support, including the facilities needed for conducting meetings of the Committee.

G. *Description of the Duties for Which the Committee is Responsible.*

The duties of the Committee will be to assemble data and prepare analyses and recommendations concerning the points enumerated in Part C above and to furnish them to the FCC staff.

H. *Estimated Operating Costs in Dollars and Man-years.*

The estimated annual operating costs are $20,000 for the FCC. Estimated man-years are 0.5 for the FCC and 10.0 for private and other government participants.

I. *Estimated Number and Frequency of Committee Meetings.*

The Committee will meet at least 3 times per year.

J. *Committee's Termination Date.*

K. *Date the Charter is Filed.*

[FR Doc. 85-8895 Filed 4-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket: FEMA-REP-3-PA-3]

Receipt of Radiological Emergency Response Plans

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plans.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensees and State and local government's radiological emergency response plans. Since FEMA has the responsibility for reviewing the State and local government's plans, the Commonwealth of Pennsylvania has submitted radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Pennsylvania and include the plans of counties which are near the Duquesne Light Company's Beaver Valley Power Station located in Shippingport, Pennsylvania.

DATE PLANS RECEIVED: March 28, 1985.

FOR FURTHER INFORMATION CONTACT: Paul P. Giordano, Regional Director, Federal Emergency Management Agency Region III, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106.

Notice

In support of the Federal requirement for emergency response plans, FEMA has established a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR Part 350.8) "Review and Approval of State Radiological Emergency Plans and Preparedness," 48 FR 44338, the Commonwealth of Pennsylvania Disaster Operations Plan, Annex E was received by the Federal Emergency Management Agency Region III Office.

Included are the plans for Beaver County, 27 municipalities, 13 school districts and 4 support counties, which are fully or partially within the plume exposure pathway emergency planning zone of the nuclear plant.

Copies of the Plan are available for review at the FEMA Region III office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart C of 44 CFR Part 5. There are 2348 pages in the document, reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Paul P. Giordano, Regional Director, at the above address within thirty days of this Federal Register Notice.

Paul P. Giordano,

Regional Director.

[FR Doc. 85-8786 Filed 4-11-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Tariff Rules on Free Time and Detention Applicable to Carrier Equipment Provided to Shippers, Consignees, or Their Draymen; Enlargement of Time To File Replies

By Notice published in the Federal Register on March 12, 1985 (50 FR 9904), the Commission advised of the filing of the subject petition for rulemaking by American President Lines, Ltd. and gave interested parties until April 10, 1985, to reply to the petition. The petition asks the Commission to institute a rulemaking for the purpose of prescribing tariff rules dealing with the use of carrier-provided containers and related equipment by shippers, consignees or others on their behalf.

The Atlantic Regional Committee of the Steamship Operators Intermodal Committee (SOIC) has requested a 60-day enlargement of time to file replies to the petition, describing the common interest of its numerous ocean carrier members in the involved issues, and explaining that more time is necessary for the entire SOIC to examine the significant issues presented so as to arrive at a unified position. Sea-Land Service, Inc. endorses SOIC's motion, citing its considerable interest in this matter and the need for additional time to finalize its position. Sea-Land, however, states that 30 days would be a sufficient extension for its purposes.

An enlargement of time will be granted. Interested persons may submit replies to the petition (original and fifteen copies) on or before May 13, 1985. Replies shall also be served on filing counsel: David B. Cook, Esquire, Shea & Gardner, 1800 Massachusetts Avenue NW., Washington, D.C. 20036.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8799 Filed 4-11-85; 8:45 am]

BILLING CODE 6730-01-M

Automated Tariff Filing and Information System (ATFI); Intent To Form an Advisory Committee

AGENCY: Federal Maritime Commission.

ACTION: Notice of intent to form an Advisory Committee.

SUMMARY: The Commission is considering the establishment of an advisory committee to make continuing recommendations on the implementation of an automated tariff filing and information system. The committee would be comprised of representatives of interests affected by an automated tariff filing and information system, including representatives of conferences, ocean common carriers, non-vessel operating common carriers, ocean freight forwarders, shippers, shippers' associations, ports and transportation support firms.

DATE: Comments and suggestions (original and 15 copies) due within 30 days after publication in the Federal Register.

ADDRESS: Comments and suggestions must be mailed to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Commissioner Edward J. Philbin, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5715

John Robert Ewers, Director, Office of Regulatory Overview, 1100 L Street NW., Washington, D.C. 20573, (202) 523–5866.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission (FMC) is in the conceptual phase of a project to automate its tariff filing functions under the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) and the Intercoastal Shipping Act of 1933 (46 U.S.C. app. 843–848). This project has been designated the Automated Tariff Filing and Information System (ATFI). Key agency officials involved with tariff filing functions and uses have been named to a Policy Steering Committee. Chairman Alan Green, Jr. has appointed Vice Chairman James J. Carey as Chairman of the ATFI Policy Steering Committee and Commissioner Edward J. Philbin as Vice-Chairman of that Committee.

The Committee has drafted a plan of action to accomplish the goal of tariff automation. (Hereinafter referred to as the ATFI Plan.) The ATFI Plan calls for, *inter alia*, the formation of an Advisory Committee comprised of persons representing interests affected by tariff automation to ensure proper evaluation of such a system during its design and implementation phases.

The fundamental goal of the ATFI Plan is the development of a system with the ability to capture, review, process, retrieve and manipulate tariff type information in an automated environment and which is responsive to the needs of the Commission, private sector users and other governmental agencies. Under the Plan the Commission must not only address system requirements and design with respect to ADP hardware and software needs necessary to transfer to electronic media data presently filed in the form of hard-copy tariffs, but also the procurement process, pilot system design, implementation and operation, an estimate of the cost of developing and implementing the system, system phase-in, user education, maintenance and upgrading capability of such a system.

In addition to the mechanics of system design the ATFI Plan also establishes the following policy goals:

1. The automated system is to operate in the private sector.

2. The system is to be financially self-sufficient through the assessment of user charges for access to this information.

3. Access by the Commission is to be without cost.

4. The integrity of this system is to be ensured by the Commission through the development and ownership of software which will control entry into the system.

5. A means is to be constructed to minimize the monopolistic control of any single company operating the system, and efforts shall be made to preserve the existence of satellite companies now commercially engaged in the dissemination of tariff data.

6. Contractual arrangements for electronic filing are not to curtail the public access to tariff documents now routinely made available in public document rooms or otherwise.

7. Contractual arrangements for electronic filing systems are not to interfere with public access under the Freedom of Information Act.

8. The burden imposed upon tariff filers to comply with the technical requirements of filing tariffs in an automated system are to be minimized.

9. The Federal Maritime Commission is to retain final authority to reject filings that do not comply with agency requirements, and to determine the public availability of information pursuant to the Freedom of Information Act and other statutes.

10. The electronic filing system is to be able to maintain historical records that can be retained, retrieved and reproduced for legal evidentiary purposes and to comply with governmental records retention requirements. The study is to recommend appropriate historical records retention periods and methodologies.

11. The electronic filing system is to be designed to prevent unathorized modification or tampering with data yet allow the identification and authorized correction of errors.

12. All fees for the use of the electronic filing system either for filing of documents or retrieval and reproduction of documents are to be reasonable and not deter or impair full public use thereof.

The Commission has concluded that public discussion and recommendations of the foregoing needs and goals by those interests affected by automation of tariff filing during the process of designing and implementing the ATFI Plan is essentail to the success of this effort. Accordingly, the Commission hereby proposes to form an Advisory Committee composed of such interests for that purpose.

It is proposed that in addition to required agency representatives, the Advisory Committee will consist of 15–20 persons representing:

Conferences
Ocean Common Carriers (VOCC's and NVOCC's)
Other Common Carriers
Freight Forwarders
Shippers' Associations
Other Shippers
Ports
Transportation Support Firms

The Commission seeks public comment on the formation of the Advisory Committee including the interests represented, the scope of its functions and the needs of the public that should be addressed. Representatives will serve on the Advisory Committee without compensation but with reimbursement of out-of-pocket expenses directly associated with their participation. Facilities and support staff for the Committee will be provided by the Commission at its offices in Washington, D.C. Meetings of the Committee will be open to the public and a record of the proceedings will be maintained.

Persons wishing to participate in the Advisory Committee should so indicate in their comments and advise as to the interest they wish to represent and why they can adequately represent that interest.

Upon receipt of all comments and requests to participate the Commission will issue a Final Notice of Formation of the Advisory Committee stating the membership and the date and agenda of its first meeting.

By the Commission.
Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-8776 Filed 4-11-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citizens Bankshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 3, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Citizens Bankshares, Inc.*, Ogden, Utah; to continue to engage in all aspects of the industrial loan business as provided under Utah law, including the making of loans and issuance of thrift certificates and thrift passbook accounts, through the acquisition of certain assets and assumption of certain liabilities of Continental Thrift and Loan, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, April 8, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-8788 Filed 4-11-85; 8:45 am]
BILLING CODE 6210-01-M

First New England Bankshares Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 3, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First New England Bankshares Corp.*, Taunton, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of First Bristol County National Bank, Taunton, Massachusetts.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Community State Banking Corporation*, Starke, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Community State Bank of Starke, Starke, Florida.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Cascade Bancorporation, Inc.*, Cascade, Wisconsin; to become a bank holding company by acquiring 97.5 percent of the voting shares of State Bank of Cascade, Cascade, Wisconsin.

2. *Mt. Zion Bancorp, Inc.*, Mt. Zion, Illinois; to acquire 70.40 percent of the voting shares of First National Bank of Mt. Zion, Mt. Zion, Illinois.

Board of Governors of the Federal Reserve System, April 8, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-8789 Filed 4-11-85; 8:45 am]
BILLING CODE 6210-01-M

North American Bank Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in section 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *North American Bank Corporation*, Farmington, New Hampshire; to engage *de novo* on an on-going basis in commercial finance through commercial loan participations with North American Bank Corporation's wholly owned subsidiary, Farmington National and Savings Bank, Farmington, New Hampshire.

Board of Governors of the Federal Reserve System, April 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8790 Filed 4-11-85; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust New York Corporation; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 1985.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation*, New York, New York; to engage *de novo* directly in underwriting and dealing in government obligations and money market instruments; acting as investment or financial advisor; providing management consulting advice to nonaffiliated bank and nonbank depository institutions; and leasing personal or real property or acting as agent, broker, or advisor in leasing such property.

Board of Governors of the Federal Reserve System, April 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8909 Filed 4-11-85; 8:45 am]

BILLING CODE 6210-01-M

Third National Corporation et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 8, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Third National Corporation*, Nashville, Tennessee; to merge with Mid-South Bancorp, Inc., Murfreesboro, Tennessee thereby indirectly acquiring Mid-South Bank and Trust Company, Murfreesboro, Tennessee.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *GNP Bancorp, Inc.*, Mundelein, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of New Century Bank, Mundelein, Illinois.

2. *Montgomery Financial Corporation*, Darlington, Indiana; to become a bank holding company by acquiring at least 80 percent of the voting shares of Farmers and Merchants State Bank, Darlington, Indiana.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Sebree Bankcorp*, Sebree, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Sebree Deposit Bank, Sebree, Kentucky.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Shawnee Bancshares, Inc.*, Shawnee, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Shawnee, Shawnee, Kansas.

Board of Governors of the Federal Reserve System, April 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8910 Filed 4-11-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of

Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 5, 1985.

Social Security Administration

Subject: Annual Earnings Test Direct-Mail Followup Program Notices—Reinstatement—SSA–L 9778 through 9782—(0960–0369)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Human Development Services

Subject: Study of Adoption Exchanges—New
Respondents: Adoption Exchanges, adoption agencies
Subject: Statewide Information System—Section 427 (a)(2)(A) of Pub. L. 96–272, The Adoption Assistance and Child Welfare Act of 1980—Reinstatement (0980–0138)
Respondents: States
OMB Desk Officer: Judy A. McIntosh

Public Health Service

Centers for Disease Control

Subject: Use of Hepatitis B Vaccine in High Risk Groups—New
Respondents: Individuals and Physicians
Subject: NIOSH Cross-Sectional and Prospective Medical Industrywide Studies—Extension—(0920–0037)
Respondents: Individuals or households

Alcohol, Drug Abuse and Mental Health Administration

Subject: Evaluation of Child Abuse Reporting and Confidentiality of Alcohol and Drug Abuse Patient Records—New
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Office of the Assistant Secretary for Health

Subject: Validation of Measures Developed for an Evaluation Handbook for Health Education Programs in Smoking Prevention/Cessation—New
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: BERC 024. FN Coverage of Oxygen for Use in a Patient's Home—HCFA–R–60—New
Respondents: Small businesses or organizations
Subject: Plan of Treatment (POT) and Home Health Certification Form, HCFA–485 Medical Information Form (MIF), HCFA–486 Addendum to the POT and MIF, HCFA–487, and Intermediary Medical Information Request, HCFA–488—Revision (0938–0357)
Respondents: State/local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Atten: (name of OMB Desk Officer).

Dated: April 8, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–8744 Filed 4–11–85; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC)
Date: April 29–30, 1985
Place: Knollwood Room, Omni Hotel, One Omni International, Atlanta, Georgia 30335
Time and Type of Meeting: Open 9:00 a.m. to 4:30 p.m.—April 29; Closed 4:30 p.m. to 5:00 p.m.—April 29; Open 9:00 a.m. to 12:00 noon—April 30
Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Telephone: (404) 329–3343

Purpose: The committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of previous meeting and future meeting dates; recommendations from the diesel subgroup; discussion of issues related to the x-ray surveillance program for underground coal miners; and an overview of the NIOSH mining program.

Beginning at 4:30 p.m. through 5:00 p.m., April 29, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: April 8, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–8929 Filed 4–11–85; 8:45 am]

BILLING CODE 4150–19–M

Health Care Financing Administration

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 we are proposing to establish a new system of records, Credit Reports for Medicaid Recipients, (Credit Bureau(s)), HHS/HCFA/BQC No. 09–70–2004. We have provided background information about the proposed system in the "Supplementary Information" section below. HCFA invites public comments by May 9, 1985, with respect to routine uses of the system.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), on April 9, 1985. The new system of records including routine uses will become effective June 10, 1985, unless HCFA receives comments which

would convince us to make a contrary determination.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G–A–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Stephen A. Snyder, Bureau of Quality Control, Health Care Financing Administration, Room 230, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone 301–594–6157.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of and to implement section 1903(u) of the Social Security Act enacted by section 133 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248. Section 1903(u)(1)(A) of the Social Security Act requires the Secretary to measure the amount of erroneous expenditures in determining Medicaid eligibility and to disallow Federal financial participation for erroneous expenditures greater than 3 percent beginning with the April-September 1983 review period and each fiscal year thereafter. Title 42 CFR 431.800 established a Medicaid Quality Control system to identify eligibility errors which is used to measure the amount of erroneous expenditures by States. This is in compliance with section 1903(u). Information received from the credit bureau(s) will enable HCFA to more accurately establish the amount of erroneous excess payments and thus reduce erroneous expenditures or increase savings for disallowances.

The purpose of this system of records is to use credit bureaus to identify and/or verify sources of income and resources of Medicaid recipients.

Although contracts will be executed, at this time no credit bureau(s) has been selected.

In order to complete the objectives, HCFA regional offices will directly request credit files from the credit bureau(s) on Medicaid recipients included in sample groups. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatability criteria since the information is collected for administering the Medicaid program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: April 5, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

SYSTEM NAME

Credit Reports for Medicaid Recipients (Credit Bureaus) HHS/HCFA/BQC.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION

HCFA central office and regional offices (see Appendix A)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Seven thousand five hundred to ten thousand Medicaid recipients in sample groups per year for three years. Contracts may be reawarded after three years.

CATEGORIES OF RECORDS IN THE SYSTEM

Credit Bureau Credit Files

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

Section 1903(u) of the Social Security Act (42 USC 1396(u)) was enacted by section 133 of TEFRA, Pub. L. 97–248.

Regulations 42 CFR 431.800, 43 FR 45188, September 29, 1978, as amended at 44 FR 17935, March 23, 1979; 48 FR 29453, June 24, 1983 and implementing regulation 431.803, 48 FR 29450, June 24, 1983, as amended 49 FR 4740, February 8, 1984, and 431.804, 48 FR 54224, December 1, 1983.

PURPOSE(S)

To use credit bureaus to identify and verify sources of income and resources of Medicaid recipients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES

Disclosures may be made:

1. To the contractor which will use the information to supply HCFA with a credit file and which shall be required to maintain Privacy Act safeguards with respect to such records.

2. To a State Medicaid agency which will use the information in its eligibility decisions.

3. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. In the event of litigation where the defendant is (a) the Department, any component of the department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

Storage:

Storage will be on paper and magnetic tape.

Retrievability:

Information will be retrieved by recipient's name, social security number or other unique identifier by HCFA or the contractor.

SAFEGUARDS

HCFA will maintain all records in appropriate files accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, if required, HCFA and/or the contractor will initiate automated data processing (ADP) system security procedures required by DHHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g. use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL

Hard copy records and magnetic tape will be maintained. Disposal occurs three years from the last action on the case.

SYSTEM MANAGER(S) AND ADDRESS

Director, Bureau of Quality Control, Health Care Financing Administration, Room 200, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE

To determine if a record exists write to the System Manager at the address indicated above. Specify name, address, and State.

RECORD ACCESS PROCEDURES

Same as notification procedure. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelevant, incomplete or not current).

RECORD SOURCE CATEGORIES

Credit files collected from credit bureaus.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

None.

Appendix A.—Health Care Financing Administration Central and Regional Office Addresses

1. Central Office Address: Bureau of Quality Control, HCFA, Room 239, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

2. HCFA Regional Office Addresses:

Boston Region—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; John F. Kennedy Federal Building, Room 1309, Boston, Massachusetts 02203

New York Region—New Jersey, New York, Puerto Rico, Virgin Islands; 26 Federal Plaza, Room 38–130, New York, New York 10007.

Philadelphia Region—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia; P.O. Box 7760, Philadelphia, Pennsylvania 19101.

Atlanta Region—Alabama, North Carolina, South Carolina, Florida, Georgia, Kentucky, Mississippi, Tennessee; 101 Marietta Street, Suite 602, Atlanta, Georgia 30323.

Chicago Region—Illinios, Indiana, Michigan, Minnesota, Ohio, Wisconsin; 175 West Jackson, Suite A–835, Chicago, Illinios 60604.

Dallas Region—Arkansas, Louisiana, New Mexico, Oklahoma, Texas; Medicare/Medicaid Quality Control, P.O. Box 50768, Dallas, Texas 75250–0768

Kansas City Region—Iowa, Kansas, Missouri, Nebraska; New Federal Office Building, Room 235, 601 East 12th Street, Kansas City, Missouri 64106.

Denver Region—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming; Federal Office Building, 5th Floor, 1961 Stout Street, Denver, Colorado 80294.

San Francisco Region—American Samoa, Arizona, California, Guam, Hawaii, Nevada; Federal Office Building, 100 Van Ness Avenue, 20th Floor, San Francisco, California 94102.

Seattle Region—Alaska, Idaho, Oregon, Washington; 2901 Third Avenue, Mail Stop 406, Seattle, Washington 98121.

[FR Doc. 85–8778 Filed 4–11–85; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Availability of Request for Applications for Grants To Study Visual Function in Low Vision Patients National Eye Institute [1]; Announcement

Application Receipt Date: June 14, 1985.

The National Eye Institute (NEI), in cooperation with the National Institute on Aging (NIA), announces the availability of a Request for Applications for research project grants for support of studies on functional vision in low vision patients. The major objective of this RFA is to encourage scientists and clinicians to relate information derived from laboratory tests of visual function to patients' ability to perform common visually based tasks in their everyday lives. The goal is to develop a battery of tests that could be used by practicing eye care specialists to generate a profile of visual function for each of their patients and then predict how their functioning will improve with the use of specific visual aids.

Surveys of visually impaired persons reveal two main clusters to tasks that present special difficulties for patients' adaptation to limited vision: orientation and mobility tasks and tasks involving visual information extraction. It is expected that multidisciplinary teams of eye care specialists, vision scientists, orientation and mobility specialists, and rehabilitation professionals will be required to address these problems.

The mechanism of support for this program will be the traditional individual research project grant (RO1). Review of applications for scientific and technical merit will be by an initial review group convened solely for this purpose by the Review and Special Project Office, NEI. Following the initial review for scientific merit, applications will be reviewed by the National Advisory Eye Council.

Requests for copies of the complete RFA should be addressed to: Constance W. Atwell, Ph.D., Chief, Strabismus, Amblyopia, and Visual Processing Branch, National Eye Institute, Building 31, Room 6A49, Bethesda, Maryland 20205, Telephone: (301) 496–5301.

[1] In cooperation with the National Institute on Aging.

This program is described in the Catalog of Federal Domestic Assistance No. 13.871, Strabismus, Amblyopia and Visual Processing. Awards will be made under the authority of the Public Health Service Act, Title III, Part A, Section 301, Pub. L. 78–410, as amended (42 USC 241); and administered under PHS Grants Policies and Federal Regulation 42 CFR Part 52 and 45 CFR Part 74. This program is not subject to the requirement of Executive Order 12372 or Health Systems Agency review.

Dated: April 2, 1985.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 85–8797 Filed 4–11–85; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Iran; Finding Regarding Foreign Social Insurance or Pension System

Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to aliens, subject to the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)), for any month after they have been outside the United States for 6 consecutive calendar months.

Section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)) provides that section 202(t)(1) shall not apply to any individual who is a citizen of a foreign country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and under which (A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and (B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

Subparagraphs (A) and (B) of section 202(t)(4) of the Social Security Act (42 U.S.C. 402(t)(4) (A) and (B)) provide that section 202(t)(1) shall not be applicable to benefits payable on the earnings record of an individual who has 40 quarters of coverage under Social Security or who has resided in the United States for a period or periods aggregating 10 years or more. However, the provisions of subparagraphs (A) and (B) of section 202(t)(4) shall not apply to an individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such

country and which satisfies the provisions of subparagraph (A) of section 202(t)(2) but not the provisions of subparagraph (B) of section 202(t)(2).

Pursuant to authority duly vested in the Commissioner of Social Security by the Secretary of Health and Human Services, and redelegated to the Director of the International Policy Staff, the Director has approved a finding that Iran has had a social insurance or pension system which pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death since August 1975 when the most recent social insurance law was enacted.

Further, a finding has been approved that Iran paid benefits to United States citizens outside of Iran in compliance with part (B) of section 202(t)(2) of the Social Security Act from 1975 through November of 1978. From December 1978 on, Iran did not pay benefits to eligible United States citizens outside of Iran.

Accordingly, it is hereby determined and found that Iran has had in effect since August 1975 a social insurance or pension system which meets the requirements of section 202(t)(2)(A) of the Social Security Act (42 U.S.C. 402(t)(2)(A)); and, from August 1975 through November 1978, Iran would pay benefits to eligible United States citizens who reside outside of Iran. This revises our finding of December 3, 1968 (published at 33 FR 17928), that Iran does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2).

It is also determined that, effective with December 1978, the system would not pay benefits to eligible United States citizens residing outside of Iran and, therefore, did not meet and does not meet, the provisions of section 202(t)(2)(B) of the Social Security Act (42 U.S.C. 402(t)(2)(B)) from that date forward.

Dated: April 4, 1985.

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 85-8848 Filed 4-11-85; 8:45 am]

BILLING CODE 4195-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pine River Indian Irrigation Project, Colorado

ACTION: Notice.

SUMMARY: The purpose of this public notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Pine River Indian Irrigation Project to properly reflect the cost of labor, materials, equipment, and services. The change is from $3.66 to $5.25 per acre per year.

EFFECTIVE DATE: The effective date of this notice is March 21, 1985, for the 1985 and subsequent irrigation seasons and remains in effect until changed.

FOR FURTHER INFORMATION CONTACT: George E. Gover, Superintendent, Bureau of Indian Affairs, Southern Ute Agency, P.O. Box 315, Ignacio, Colorado 81137; telephone number (303) 563-4511.

SUPPLEMENTARY INFORMATION: This notice is issued by authority delegated the Assistant Secretary of the Interior in 209 DM 8 and redelegated by the Deputy Assistant Secretary for Indian Affairs (Operations) to the Area Director in 10 BIAM 3.

An analysis of costs of operation and maintenance of the Pine River Indian Irrigation Project was mailed to individual waterusers and further explained to the project waterusers at a general meeting conducted on January 31, 1985. The analysis was presented to the Southern Ute Tribal Council on February 5, 7, and March 13, 1985, and additionally presented to Southern Ute tribal waterusers on March 20, 1985. The cost analysis was posted in three conspicuous locations on the reservation.

This notice shall read as follows:

Pine River Indian Irrigation Project

Annual Operation and Maintenance Charges

Annual Per Acre Assessment—The basic annual assessment for operation and maintenance against the irrigable lands to which water can be delivered under the Pine River Indian Irrigation Project in Colorado is hereby fixed for the year 1985 and thereafter until further notice as follows:

Annual Per Acre Assessment:

1. Project Operations and Maintenance	$4.00
2. Vallecito Reservoir Operation and Maintenance	$1.25
3. Minimum Charges for Any Tract	$6.00

Payment—With the exception of 1985, the annual operation and maintenance assessment shall be due and payable on April 1 of each year and continued in effect thereafter until further notice. The 1985 annual operation and maintenance assessment is due and payable on May 1, 1985. Water will not be delivered to land until the assessment has been paid or arrangements have been made under CFR Part 171.17 Operation and Maintenance Charges.

Vincent Little,

Area Director, Albuquerque Area Office.

[FR Doc. 85-8870 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Extension of Public Comment Period Draft Guidelines on Section 201(a)(2)(A) of the Act of February 25, 1920, as amended (30 U.S.C. 2(a)(2)(A))

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the comment period to allow the public to develop an appropriate response on the draft guidelines on Section 2(a)(2)(A) of the Act of February 25, 1920, as amended (otherwise known as the Mineral Leasing Act (MLA)) (30 U.S.C. 201(a)(2)A)). The Bureau of Land Management published draft logical mining unit (LMU) application and processing guidelines in the Federal Register on April 11, 1985. The LMU guidelines are intended to supplement the Department of the Interior's implementation rules at 43 CFR 3487 (1984). LMU production may be used to satisfy the production obligations of Section 2(a)(2)(A) of MLA. Due to the interrelationship between the two draft guidelines, the comment period for the draft guidelines on Section 2(a)(2)(A) of MLA is hereby extended for a period of 30 days from the date of publication of the draft LMU guidelines.

DATES AND ADDRESSES: Comments must be submitted by May 13, 1985. Comments received or postmarked after that date may not be considered as part of the decisionmaking process on the final guidelines on Section 2(a)(2)(A) of MLA. Please note that comments on the draft LMU guidelines must still be submitted by June 10, 1985. Comments received or postmarked after that date may not be considered as part of the decisionmaking process on the final guidelines on LMU application and processing. Comments on both guidelines should be sent to: Director (660), Bureau of Land Management, 18th and C Streets NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Section 2(a)(2)(A) of MLA provides that any entity that holds and has held a Federal coal lease for 10 years when such entity is not, except as provided for in Section 7(b) of MLA, producing coal from the

lease deposits in commercial quantities, cannot be issued a Federal lease on or after August 4, 1986. The Bureau of Land Management proposed guidelines on February 15, 1985 (50 FR 6398), that detail the interrelationships of the Section 2(a)(2)(A) prohibition to other aspects of MLA, such as LMU's and lease diligence obligations, treated in the coal rules at 43 CFR Group 3400 (1984).

The rules regarding LMU application and processing are codified at 43 CFR 3487 (1984). Section 2(d) of MLA (30 U.S.C. 202a) provides for formation of LMU's. Section 2(d) also states that "the Secretary may provide . . . that . . . production . . . [anywhere] . . . in the [LMU] shall be construed as occurring on all Federal leases in that [LMU]." The draft LMU guidelines, which supplement the rules at 43 CFR 3487 (1984), exercise this Secretarial discretion and state that production from anywhere within an LMU constitutes production from all Federal leases contained in the approved LMU. Therefore, LMU production may be used to satisfy the production obligations of Section 2(a)(2)(A) of MLA. The Bureau of Land Management proposed draft LMU application and processing guidelines in the Federal Register on April 11, 1985.

Due to the interrelationships of LMU production and the Section 2(a)(2)(A) of MLA prohibition, the Bureau of Land Management has extended the comment period for the draft guidelines on Section 2(a)(2)(A) of MLA to allow for concurrent review and comment by the public.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Politzer or Mr. Allen B. Agnew, (202) 343–7722.

Dated: April 8, 1985.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 85–8777 Filed 4–11–85; 8:45 am]

BILLING CODE 4310–84–M

[AA–6673–K; AA–6683–A2]

Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, will be issued to Stuyahok Limited for approximately 1,920 acres. The lands involved are in the vicinity of New Stuyahok.

Seward Meridian, Alaska (Surveyed)

T. 6 S., R. 45 W.

T. 7 S., R. 46 W.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE ANCHORAGE DAILY NEWS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 13, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (906), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E (1983) (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Barbara A. Lange,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–8845 Filed 4–11–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–14958]

Proposed Withdrawal and Opportunity for Public Meeting, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Air Force proposes to withdraw approximately 4,108 acres of public land as a buffer zone for the Indian Mountain Research Site. The lands will remain closed to surface entry, mining and mineral leasing under Public Land Order (PLO) No. 5184. This notice closes the land for up to 2 years from selection by the State of Alaska, the only form of appropriation authorized by PLO 5184.

EFFECTIVE DATE: April 12, 1985; comments must be received on or before July 11, 1985.

ADDRESS: Comments and meeting requests should be sent to: Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, BLM Alaska State Office, 701 C. Street, Box 13, (907) 271–5060.

On January 27, 1984, the U.S. Army Corps of Engineers, filed an application for the Department of the Air Force to amend Public Land Offer (PLO) 5164 of February 28, 1972, and withdrew the following described lands from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws.

Kateel River Meridian (Unsurveyed)

T. 7 N., R. 24 E.,
- Sec. 13, S2N2S2 and S2S2, those lands lying outside of PLO 3942;
- Sec. 14, S2NW4SW4, S2S2, those lands lying outside of PLO 3942;
- Sec. 15, S2, S2S2N2;
- Sec. 16, E2SE2;
- Sec. 21, E2NE4, E2E2SE4;
- Sec. 22, those lands lying outside of PLO 5164;
- Sec. 23, those lands lying outside of PLOs 3942 and 5164;
- Sec. 24, those lands lying outside of PLOs 1910, 3942 and 5164;
- Sec. 25, W2E2E2, W2E2, W2, those lands lying outside of PLO 5164;
- Sec. 26, those lands lying outside of PLO 5164;
- Sec. 27, those lands lying outside of PLO 5164;
- Sec. 28, E2NE4NE4;
- Sec. 34, N2N2, those lands lying outside of PLO 5164, N2S2N2;
- Sec. 35, S2NW4NW4, N2N2N2, those lands lying outside of PLO 5164, S2NE4NE4;
- Sec. 36, NW4NE4, N2NW4.

The area described contains approximately 4,108 acres.

The purpose of the withdrawal is to add 4,108 acres of buffer zone to the 447 acres previously withdrawn as Indian Mountain Air Force Research Site under Public Land Order 5164, for an aggregate of 4,555 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 85-8873 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-JA-M

[U-52894]

Realty Action; Sale of Public Lands in Beaver County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as Lot 2, Sec. 18, T. 29 S., R. 7 W., SLB&M, Utah, containing 40.30 acres, is proposed for sale by competitive bidding at no less than the appraised fair market value of $12,000.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted by May 28, 1985. The sale will be held on June 18, 1985 at 10:00 am.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Beaver River Resource Area Office, 444 South Main, Cedar City, Utah, 84720, (801) 586-2458. Comments should also be sent to same address. The sale will be held in the Commission Chambers, Beaver County Courthouse, 105 East Center Street, Beaver, Utah.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1980, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights including right-of-way U-44897 held by Utah Power and Light Company and Oil and Gas Lease U-52970.

4. If the public lands are not sold pursuant to this notice they will remain available for sale on a continuing basis until sold.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of any action by the District Manager, this realty action notice will be the final determination of the Department of the Interior.

Dated: April 3, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85-8882 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-DQ-M

California Desert District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Meeting of the California Desert District Grazing Advisory Board.

SUMMARY: Notice is hereby given in acordance with Pub. L. 94-579, Title IV, Section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Wednesday, May 15, 1985 from 10 a.m. to 4:30 p.m. in the Ready Room, Herite Inn, 1050 North Norma, Ridgecrest, California 93555.

The agenda for the meeting will include:

—Range Improvement Projects Proposed for FY85

—Grazing Fee Study

—FY85 Desert Plan Amendment Review

—Cooperative Management Agreement and Allotment Management Plan Review

—Wild Horse and Burro Program Update

—Tour of Burro Facilities

The meeting is open to the public wuth time alloted for public comment after each subject has been presented.

Summary Minutes of the meeting will be maintained in the California Desert District and will be available for public inspection during regular business hours within 30 days following the meeting.

For further informaztion and meeting confirmation: Contact the Bureau of Land Management, California Desert District Office, 1695 Spruce street, riverside, California 92507; (714) 351-6398.

Dated: April 5, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85-8860 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-40-M

[ES-034717, Group 130]

Wisconsin; Notice of Filing of Plat of Survey of Hiatus

April 8, 1985.

1. The plat of the dependent resurvey of the east boundary, Township 29 North, Range 21 East, the west boundary, Township 29 North, Range 22 East, and survey of the subdivisional lines, Township 29 North, Range 21½ East, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 23, 1985.

2. The dependent resurvey was made at the request of interested landowners.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 23, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-8890 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-01-M

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Fifth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service publishes summaries of the United States negotiating positions for the fifth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

FOR FURTHER INFORMATION CONTACT: Thomas J. Parisot, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201. Telephone: (703) 235-1937.

SUPPLEMENTARY INFORMATION:

Background

In accordance with § 23.25 of 50 CFR Part 23, Subpart D, the Service's rules providing for public participation in the development of negotiating positions for meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora [hereinafter referred to as CITES or the Convention], the Service publishes summaries of the United States negotiating positions for the fifth regular meeting of the Conference of the Parties to the Convention ("the meeting") to be held in Buenos Aires, Argentina, April 22 through May 3, 1985.

The Service published summaries of proposed negotiating positions for most of the matters to be addressed at the meeting in the **Federal Register** of February 8, 1985 (50 CFR 5432). The notice also set forth summaries of eleven additional issues. Only one summary proposed negotiating position was published with regard to the eleven additional issues. Information and comments were received with regard to six of these issues at a public meeting conducted by the Service (February 13, 1985) and in writing. Pursuant to § 23.38(a) of the rules, and due to the lack of time necessary to develop proposed negotiating positions on these issues in accordance with the rules, the Director by this notice suspends the applicability of § § 23.32, 23.33, 23.34 and 23.36 as they relate to these additional issues and the circumstances associated therewith.

What follows is a summary of the negotiating positions on the items of the provisional agenda and the additional issues, a summary of written information and comments received in response to the notice of February 8, 1985, and at the above-mentioned public meeting, and a summary of the bases for the negotiating positions which include, if necessary, response to information and comments received. In the interest of time and economy, where the negotiating position is the same as the proposed negotiating position the words "no change" appear together with a brief restatement of the summary proposed negotiating position as it appeared in the February 8, 1985, notice. if information and comments for a particular agenda item were received by the Service in accordance with the February 8, 1985, notice, they are summarized in the "Information and Comments" element associated with the agenda item. If the basis for a proposed negotiating position is changed, but the proposed negotiating position has been adopted without change, the new basis for the negotiating position is stated. Where no elements of a particular agenda item have changed, the words "no change" appear after the number and title of the agenda item follow by a brief restatement of the summary proposed negotiating position as it appeared in the February 8, 1985, notice. Numbers and titles used in this notice correspond to those used in the February 8, 1985, notice. One should consult the notice of August 13, 1984 (49 FR 32263) to better understand the issues and the notice of February 8, 1985, to understand the proposed negotiating positions and their bases.

Negotiating Positions (Summaries)

I. Opening Ceremony by the Authorities of Argentina

(No change.) No position necessary.

II. Welcoming Addresses

(No change.) No position necessary.

III. Establishment of Credentials and Other Committees

(No change.) Seek membership on Credentials and other committees.

IV. Adoption of Agenda and Working Programme

(No change.) Support adoption of the Provisional Agenda and Working Programme.

V. Report of the Credentials Committee

(No change.) Suppport adoption of committee report if it does not recommend exclusion of legitimate representatives.

VI. Adoption of Rules of Procedure

(No change.) Support adoption of the rules.

VII. Admission of Observers

(No change.) Support admission of representatives of all technically qualified observers.

VIII. Matters related to the Standing Committee

Negotiating Position: No change, except that with regard to the division of the Central and South American Region into two regions [South America; and Central America and the Caribbean], support the division, provided such division does not give rise to proposals that would result in a proliferation of regions.

Information and Comments: None received.

Basis of Negotiating Position: Division, which has the support of most of the Latin American countries, might induce more Central American and Caribbean countries to join CITIES. However, a proliferation of regions would increase the costs and workload of the Secretariat and the Parties.

IX. Report of the Secretariat

(No change.) Support the recent changes in the relationship between the Secretariat, the International Union for the Conservation of Nature nd Natural Resources (IUCN) and the United Nations Environment Programme.

X. Financing and Budgeting of the Secretariat and of Meetings of the Conference of the Parties

1. Financial Report for 1983–84 (No change). Commend the Secretariat for economies. Support ratification of the Bonn Financial Amendment. Persuade Parties that have never made financial contributions to do so.

2. Budget for 1986–87 and Medium Term Plan for 1988–89. Negotiating Position: (Change.) The United States believes that the 1986–87 budget should be revised to reflect the current U.S. dollar-Swiss franc exchange rate and will request clarification of the increases proposed for 1986–87 over anticipated Secretariat expenditures.

Information and Comments: None received.

Basis of Negotiating Position: No change, except that recently received information on anticipated 1985 expenditures and the Secretariat's use of the exchange rate in calculating the 1986–87 budget require clarification of that budget.

3. External Funding (No change.) Suppport use of external funding to supplement CITES budget and for specific projects approved by Standing Committee or COP.

4. Headquarters Matters (No change.) Support recently altered headquarters arrangements for the Secretariat. Agree to fair rental payment to IUCN for 1984 if a consensus of Parties supports it.

XI. Relationship With Other International Organizations

(No change.) Support Secretariat efforts to obtain FAO consent to use of Model Phytosanitary Certificate as an optional alternative to CITES certificates of artificial progagation for some controlled specimens.

XII. Committee Reports and Recommendations

1. Technical Committee Report (No change.) Elements of report addressed under other agenda items.

2. Identification Manual Committee Report (No change.) Support continued development of the manual.

3. Nomenclature Committee Report

Negotiating Position: (No change.) Support continuation of work of the committee and clarify committee's role as a consultant on nomenclature issues.

XIII. Interpretation and Implementation of the Convention

1. Report on National Reports Under Article VIII, paragraph 7 of the Convention.

Negotiating Position: (Change) With regard to the European Community (EC) plan to submit a combined annual report for its member countries, the United States believes the EC countries that are also CITES Parties have a legal obligation to report trade between such countries.

(No change.) Support efforts to obtain annual reports from delinquent Parties; support a review of deficiencies of annual reports and possible increase in financial support for the Wildlife Trade Monitoring Unit.

Information and Comments: None received.

Basis of Negotiating Position: No change, except that concerning the EC plan not to report intracommunity trade, the Service has received legal advice from its Solicitor and from the U.S. Department of State indicating that the reporting of intracommunity trade would in no way affect the provisions of the Treaty of Rome or the obligations deriving therefrom.

2. Trade in Ivory From African Elephant

Negotiating Position: (No change.) Support the adoption of an export quota and marking and tracking system for African elephant tusks. (Change.) Support a ban on trade in tusks currently in stock as of a specified date in the future.

Information and Comments: Two commenters supported the quota system, but only if the quotas did not include personally sport-hunted trophies, because a reduction in the number of takings of such trophies would reduce the revenues obtained by some of the African countries from hunting licenses, etc., which are used for game managment and would encourage poaching.

Basis of Proposed Negotiating Position: No change, except that with regard to current stocks of tusks in nonproducer countries, the United States believes that an all encompassing inventory and marking system would be difficult to execute properly. A ban on trade by nonproducing nations is simpler to administer, and more difficult to circumvent.

With regard to excluding sport-hunted trophies from the quotas, the United States believes that the quotas were set on a sustainable yield basis. Thus elephants taken in excess of the quotas, whether for sport hunting or for other uses, could be biologically harmful to the species.

3. Trade in Plant Specimens

Negotiating Position: No change, except that the United States could support use of Model Phytosanitary Certificates and licenses for trade in Appendix I artificially propagated plants provided they are issued or certified by the appropriate Management Authority.

Information and Comments: One commenter opposed the use of phytosanitary certificates in lieu of CITES documents, because it would make it more difficult for importing countries to determine whether CITES certificates were issued by the proper authority in the exporting country.

Basis of Negotiating Position: No change, except that the United States believes that by requiring phytosanitary certificates and licenses to be issued or certified by a Management Authority, it would not be more difficult to determine if the CITES documents were issued by the proper authority in the exporting country and would help assure that the findings upon which the documents were issued were appropriate.

4. Significant Trade in Appendix II Species (No change.) Support adoption of a procedure for identifying species in Appendix II traded in volumes that might be detrimental to their survival.

5. Control of Readily Recognizable Parts and Derivatives.

Negotiating Position: No change, except that the proposed resolution no longer contains a list of readily recognizable parts and derivatives. The resolution now proposes to cover all parts and derivatives readily recognizable from any circumstances, except those specifically agreed to by the Parties. The United States would support this proposal if amended to allow only listings of parts and derivatives of Appendix II and Appendix III plants and Appendix III animals.

Information and Comments: One commenter supported the proposed negotiating position's opposition to a list of readily recognizable parts and derivatives.

Basis of Negotiating Position: No change, except that the United States believes that the proponents of a list of readily recognizable parts and derivatives of Appendix II animals deleted a list from their proposal, because they met with opposition to the list at several Technical Committee meetings. The proposal as currently drafted appears to seek approval of a list in principle, leaving the specifics of a list to a later time. The Article I, paragraph (b) definition of "specimen" only provides for specifying (listing) parts and derivatives of Appendix II and Appendix III plants, and Appendix III animals. It does not provide for specifying parts and derivatives of Appendix I and Appendix II animals.

6. Control of Specimens That Are "Personal or Household Effects" (No change.) Item withdrawn from provisional agenda.

7. Captive Breeding and Long-Maturing Species (No change.) No position necessary. Item withdrawn from the provisional agenda.

8. Definition of "Primarily Commercial Purposes" (No change.) Support a recommendation that would define "primarily commercial purposes" so that unless noncommercial uses clearly predominated, the specimen would be said to be used for primarily commercial purposes. Exclude from consideration the economic nature of the transaction between the country of export and the country of origin.

9. Time Validity of Import Permits.

Negotiating Position: (No change.) Time validity should not be limited to 6 months. If necessary, limit should be 1 year.

Information and Comments: One commenter pointed out that a limit on the time validity of import permits would in effect reduce the 6-month time validity of export permits.

Basis of Negotiating Position: No change, except that the United States opposes any recommendation that would enable the Management Authority of the country of export to deem an import permit time invalid although it was time valid on its face.

10. Definition of Pre-Convention Speciments (No change.) Oppose revocation of Conf. 4.11 which provides, in part, that a change in species status from Appendix II to Appendix I is neither the occasion for establishing a new applicable date nor for allowing trade as Appendix II specimens. Oppose any recommendation that would allow the country of import to refuse a Pre-Convention certificate of exemption because the specimen was acquired after the importing country's applicable date. Each Party should select its Conf. 4.11 applicable date and inform the Secretariat of the date selected.

Information and Comments: One commenter supported the proposed

negotiating position concerning refusal of a Pre-Convention certificate by the country of import based on the application of its applicable date, and concerning selection of an applicable date by each Party.

Basis of Proposed Negotiating Position: (No change.)

11. A CITES Register of Traders in Live Specimens of Wild Fauna (No change.) Oppose adoption of an international register of wildlife traders.

12. Interpretation of Article VII, Paragraphs 4 and 5 (Exemptioin for Captive-Bred and Artificially Propagated Specimens) (No change.) This item was eliminated from the provisional agenda.

13. Relationship between CITES Transport Guidelines for Live Animals and IATA Live Animals Regulations (No change.) Support establishment of effective liaison between the Technical Committee and the IATA Live Animals Board in order to assure that the IATA Live Animals Regulations are consistent with the humane transport concerns of CITES.

XIV. General Matters of Principle Relating to the Appendices

1. Ten Year Review of the Appendices (No change). Support completion of the Ten Year Review.

2. Criteria for the Inclusion of Species in Appendix III (No change). Oppose any attempt to limit right of any Party listing Appendix III species to restrict export to a greater degree than provided by CITES. Support the proposition that a Party can only list in Appendix III its resident species. Support development of a list of Appendix III species covered in "higher taxa" listings.

XV. Consideration of Proposals for Amendment of Appendices I and II

This item is being addressed in a separate **Federal Register** notice.

XVI. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conference of the Parties (No change). Favor holding COP 6 in the Pacific area.

2. Closing Remarks (No change). No position necessary.

Additional Issues

1. Extraordinary Meeting

The calls for an extraordinary meeting by Canada (legal personality) and Peru (commercial trade in Vicuna products) did not receive support from at least ⅓ of the Parties. Therefore, the Secretariat could not convene an extraordinary meeting in connection with COP 5. The United States had supported the Canadian request.

2. Consideration of the criteria for amendment of Appendices I and II

Negotiating Position: (No change). Favor relaxation of the Berne Criteria for downlisting species from Appendix I to Appendix II but only for species listed at the Washington Conference and only allow relaxation no later than COP 7. Oppose the imposition of quotas to qualify for downlisting under relaxed criteria. Instead, favor use of the Berne Appendix II listing criteria and a showing that there is an effective management program for the species and that its trade will not reduce CITES controls on other species.

Information and Comments: One commenter opposed relaxation of the Berne downlisting criteria, because the resolution does not state specifically which decision-making procedures would be applicable to the downlisting and the setting of quotas. The criteria for downlisting stated in the resolution were vague ("one can take for granted that the populations of such taxon can withstand a certain level of exploitation for commercial trade").

Basis of Negotiating Position: The Berne Criteria were not in existence for use in the listings at the Washington Conference. Some species may have been inappropriately listed at that time. The Berne Criteria should be relaxed to increase the chances for downlisting of those species to Appendix II, but not relaxed to the point where there are no substantive information requirements. The United States favors use of the Berne listing requirements and trade and management safeguards to assure that downlisting and commercial trade are appropriate. Since the Berne listing criteria were available for use in the listing decisions made at Berne (COP 1) and all subsequent meetings, relaxation should not be available for species listed at those meetings. The United States favors terminating relaxation immediately after COP 7 in order to restore the integrity of the Berne Criteria as soon as possible while affording sufficient opportunity for use of the special relaxation criteria. There is no indication that the resolution for relaxation would apply anything other than the normal listing procedures of Article XV to proposals eligible for relaxation.

3. Trade in Ranched Specimens

Negotiating Position: Support adoption of the U.S. proposal for a uniform marking system for ranched specimens to facilitate enforcement and administration. Product units whose marks were eliminated for ligitimate reasons in a country of reexport would have to be marked again. Nonparties would have to use the same marking system as Parties. Standardized reporting and monitoring procedures should be developed by the Secretariat to assure that an approved ranching operation continues to meet the requirements of Conf. 3.15.

Information and Comments: One commenter supported the U.S. proposal as feasible and reasonable. Another felt that it was a commendable concept, but questioned its feasibility for all types of ranching operations and saw a danger that disputes over marking could be used to restrict or eliminate trade. This commenter favored marking guidelines rather than mandatory requirements at this time. Another commenter suggested that the Parties and experts study the issue and report back to COP 6. The U.S. proposal could be a basis for such study.

Basis of Negotiating Position: Conf. 3.15 requires marking of ranched products. It would be difficult for administrative and enforcement officials to be current on many nonstandardized marking systems. A marking system in the form of guidelines would allow variations in systems that would diminish the advantages of uniformity. The United States believes that marking systems have been studied and applied sufficiently to allow a uniform marking system for ranched specimens to become operable after COP 5. Any problems with the system can be brought to the attention of the Technical Committee for resolution. A standardized reporting and monitoring system would facilitate such reporting and monitoring.

4. Regular review of alleged infractions

Negotiating Position: The United States supports a resolution that would direct the Technical Committee in cooperation with the secretariat to investigate infractions and report in writing to the next COP if the Party concerned has not satisfactorily corrected the infraction. However, the United States would amend the resolution to include mention of Article XIII procedures which allow the alleged violator an opportunity to rebut the charges and allow other procedures and to expand the Technical Committee's report to include infractions that have been satisfactorily corrected.

Information and Comments: None received.

Basis of Negotiating Position: The proposed resolution could stimulate the Technical Committee and Secretariat to more actively pursue their mandate to

monitor operation of the Convention and provide more complete reports on Article XIII measures taken. An alleged violator should be given an opportunity to rebut the charges. Reporting infractions that have been satisfactorily corrected would give credit to those who have successfully corrected the infractions.

5. Interpretation of "the text of the proposed amendment"

Negotiating Position: The United States supports the Secretariat's view that an acceptable proposal to amend the species appendices is one that includes a substantially complete supporting statement. By analogy this view should also be applied to draft resolutions and other documents for meetings of the COP.

Information and Comments: None received.

Basis of Negotiating Position: The purpose of requiring a proposal to be submitted 150 days (330 for ranching) before the meeting of the Conference of the Parties is to allow the Parties and the Secretariat sufficient time to review the proposal and to circulate their comments so that the decision at the COP will be an informed one. Failure to submit a substantially complete supporting statement could defeat this purpose.

6. Endorsement in principle of a convention for the protection of animals

Negotiating Position: The United States shares the concerns of those interested in the humane treatment of animals, but the Parties should be able to review the finalized text of the convention before considering endorsement.

Information and Comments: One commenter opposed any endorsement as being too potentially divisive and harmful to CITES operations. Another commenter supported endorsement.

Basis of Negotiating Position: Endorsement without knowing the details of such a convention would be unwise. It could in its final form contain provisions which are not proper management procedures for U.S. wildlife.

7. Nomenclature and taxonomy used in the appendices

Negotiating Position: Support the use of *Mammal Species of the World: A Taxonomic and Geographic Reference* as guidance to the CITES Secretariat on the nomenclature and taxonomy to be used for the appendices with regard to mammals. Discourage the use of alternative sources of guidance in the interest of effectively and uniformly implementing the Convention.

Information and Comments: None received.

Basis of Negotiating Position: At COP 4, the Parties agreed to use *Mammal Species of the World* as the standardized nomenclatural reference for mammals. Certain German-speaking states have objected to using this reference because it does not match other references they are accustomed to using and would require changes in some of their electronic data processing and identification manuals. Such internal problems should not cause the COP to abandon its previous decision. Instead, objections from German-speaking states should be handled within the CITES Nomenclature Committee through the periodic updating that is planned for *Mammal Species of the World*.

8. Trade in leopard skins

Negotiating Position: No change, except that the United States supports the proposals of Zimbabwe, Zambia, and Tanzania to increase their export quotas to 350, 300 and 250 respectively. Oppose alternative proposals to allow them to set their own quotas without review by the COP.

Because of the provision of the Endangered Species Act, the United States is not in a position to support the importation of tourist souvenirs in the absence of clear evidence that such trade benefits the conservation of the species. The United States will seek information to assess the effectiveness of the system and to consider changes in Service regulations to allow limited import of tourist souvenirs.

Information and Comments: One commenter would oppose quotas if they included sport-hunted trophies, because a limitation on hunting would reduce revenues used for game management. Another commenter suggested that subquotas should be established within each quota for sale as curios and for hunting trophies to prevent trade in curios from using up the quota resulting in a loss of game management revenues.

Basis of Negotiating Position: No change, except that the United States could support a subquota for trophies and curios within a soundly based quota system. However, the United States believes that the quotas proposed for Zimbabwe, Zambia and Tanzania were set to include sport-hunted trophies. It is likely that those countries have considered the effect of placing a limitation on sport-hunted trophies on revenues and on the species.

9. Interpretation of Article XIV, paragraph 1

Negotiating Position: The United States could support a call for a review by each Party of stricter domestic measures on commercial trade in Appendices II and III species, but it is opposed to justifying continued application of domestic measures to the COP.

Information and Comments: One commenter supported the U.S. position.

Basis of Negotiating Position: Parties should review their stricter domestic measures in order to keep them current, but Article XIV, paragraph 1, places no restrictions on a Party's right to take stricter domestic measures. The proposed resolution, which would subject those Parties that take stricter domestic measures to a charge of violating the spirit of the Convention, would be a restriction on that right and could be divisive in terms of the future of CITES.

10. Guidelines for the Secretariat When Making Recommendations in Accordance with Article XV

Negotiating Position: The United States could support in principle a proposal to require the Secretariat to cite references for data used in making its recommendations on species listing proposals but believes that the matter can be handled without a formal resolution. Support the Secretariat's freedom to make recommendations that it deems appropriate whether or not published data are available.

Information and Comments: None received.

Basis of Negotiating Position: Citations would help the Parties evaluate the Secretariat's recommendations. Perhaps the Parties should have a similar obligation when making their comments on species proposals. The United States supports a strong and independent Secretariat in keeping with its responsibilities under CITES.

11. Cayman Turtle Farm (CTF)

Negotiating Position: The United States would consider supporting a resolution characterizing products of CTF as from specimens bred in captivity, but believes that treatment of CTF as a ranch under Conf. 3.15 is more appropriate.

Information and Comments: Two commenters agreed with the U.S. position, one of these noted that CTF no longer takes specimens from the wild. Seven commenters opposed any commercial trade in CTF products, primarily because it would weaken

conservation efforts for sea turtles. One of the seven commenters stated that approval should be delayed until scientific research shows that ranching will benefit the species.

Basis of Negotiating Position: While recognizing that CTF products might stimulate demand to a point at which it encourages illegal trade, the United States proposal for uniform marking, reporting and monitoring procedures should reduce the likelihood of such trade. CTF is conducting research intended to benefit the species.

Additional Items

1. Effects of Reservations

Although the effects of reservations to species listings is not a specific agenda item for COP 5, the United States believes that those Parties that have taken reservations should review them to determine if they should be withdrawn. The United States intends to discuss this issue with those reserving Parties attending COP 5, particularly those that have been trading substantial quantities of Appendix I specimens.

2. Certificates of Origin for Appendix III Specimens

This issue was inadvertently omitted from the notice of February 8, 1985. It was raised at the February 13, 1985, meeting. The issue is whether officials other than CITES Management Authorities (or nature conservation authorities in the case of nonparties) can issue certificates of origin for Appendix III specimens under the terms of CITES.

Negotiating Position: Under the terms of the Convention, customs or other officials that are not Management Authorities may not issue CITES Appendix III certificates of origin.

Informaiton and Comments: None received.

Basis of Negotiating Position: Article IX, paragraph 2, and Article VI, paragraphs 1 and 3, taken together stand for the proposition that only designated Management Authorities competent to grant CITES permits and certificates (including Appendix III certificates of origin) may do so.

This notice was prepared by Arthur W. Lazarowitz, Federal Wildlife Permit Office.

Dated: April 8, 1985.

Robert A. Jantzen,

Director, Fish and Wildlife Service.

[FR Doc. 85-8867 Filed 4-11-85 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Receipt of Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0593C, Block 198, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on April 3, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-8883 Filed 4-11-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30636]

CSX Corporation—Exemption—Issuance of Notes

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts CSX Corporation from the requirements of 49 U.S.C. 11301 for the issuance of up to $150,000,000 of medium term notes.

DATES: This exemption is effective on April 11, 1985. Petitions to reopen must be filed by May 2, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30636 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: David W. Yearwood, 500 Water Street, Jacksonville, FL 32202

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 3, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-8906 Filed 4-11-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 14, 1985, 9:30 a.m., Rm. S4215 A & B Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, April 8, 1985.

Signed at Washington, D.C. this 8th day of April 1985.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85-8897, Filed 4-11-85; 8:45 am]

BILLING CODE: 4510-28-M

Occupational Safety and Health Administration

Agency Guidelines on Biotechnology

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of guidelines on occupational safety and health in the field of biotechnology and request for public comment.

SUMMARY: OSHA has reviewed its responsibilities under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) as they relate to the protection of the safety and health of workers in the rapidly developing field of biotechnology. Section 8 of the Act authorizes OSHA to inspect workplaces including laboratories and places of employment relating to biotechnology. Section 5(a)(1) of the Act requires that each employer furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

OSHA has determined that this general duty clause, together with several specific standards, currently provides an adequate and enforceable basis for protection the safety and health of employees in the field of biotechnology. No additional regulation of workplaces using biotechnology appears to be needed at this time, since no hazard of hazards from biotechnology per se have been identified. However, if any of the new biotechnology processes cause hazardous working conditions that result in a significant risk of death or serious harm to workers, OSHA will consider regulating unless the worker exposure is effectively controlled under current OSHA standards or another agency has exercised its authority over health and safety mattters for those working conditions. Guidelines contained in this notice are provided to: (1) Clarify the relationship of the existing statute to the field of biotechnology, and (2) reiterate commonly employed laboratory safety practices.

DATE: The docket for this guideline, H-042, will remain open for comment until August 12, 1985.

ADDRESS: All comments should be sent to Docket Office, Docket No. H-042, OSHA, Room N-3670, United States Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

A. Background

The Cabinet Council on Natural Resources and the Environment formed a Working Group on Biotechnology which first met in April 1984. The Office of Science and Technology Policy of the Executive Office of the President was selected to coordinate the Working Group which is composed of several Federal agencies.

A "Proposal for a Coordinated Framework for Regulation of Biotechnology" was published in the **Federal Register**, Volume 49, Number 252, Monday, December 31, 1984, pages 50856-50907. The Proposal included a matrix of applicable laws and regulations and statements by the Food and Drug Administration, Environmental Protection Agency and the United States Department of Agriculture. Although OSHA's authorities in biotechnology were contained in the "Regulatory Matrix" (pages 50864-50865), the statement of policy and request for public comment presented here were developed to clarify the policies of this agency.

Biotechnology is the application of biological systems and organisms to technical and industrial processes. The technologies employed in this area include, but are not limited to:

(1) Classical genetic selection and/or breeding for purposes such as developing bakers yeast, conventional fermentation and vaccine development;

(2) The direct in vitro modification of genetic material, e.g., recombinant DNA or gene splicing; and,

(3) Other novel techniques for modifying genetic material of living organisms, e.g., cell fusion and hybridoma technology.

Modern biotechnology is analogous to other conventional industrial processes and has great potential benefit to society and wide application to numerous industries. It is considered by some to have economic potential comparable to the microprocessor industry. Genetic engineering has a wide spectrum of applications of commercial importance, but many such applications are in the early stages of development or have been expressed only as concepts.

The Occupational Safety and Health Administration

The Occupational Safety and Health Act of 1970 (OSH Act) grants the Secretary of Labor broad power to require employers to provide a safe and healthful workplace for their employees. Where other Federal agencies exercise their statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health, OSHA is preempted by section 4(b)(1) of the Act.

Section 5(a)(1) of the Act requires employers to furnish their employees with a workplace "free from recognized hazards that are causing or are likely to cause death or serious physical harm." Section 5(a)(2) requires employers to comply with safety and health standards set by the Secretary. The Secretary in establishing standards to deal with toxic materials and harmful physical agents is required by the OSH Act to "set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life" (section 6(b)(5)). Under a recent Supreme Court decision permanent standards can be promulgated only upon a finding by the Secretary that the standard is reasonably necessary to remedy a significant risk of material health impairment. Finally, emergency temporary standards may be promulgated only upon a finding that employees are "exposed to grave danger." (Section 6(c)(1))

In view of the statutory criteria briefly outlined above and the current known hazards from biotechnology processes there does not appear to be a need for new OSHA regulations. Furthermore, the biotechnology processes, whether present in laboratories, pilot projects or

industrial plants, usually involve conventional chemicals and processes that are already covered by OSHA regulations. These conventional processes use solvents or products, some of which may be toxic or dangerous to employee health in certain dosages over certain periods of time. The potentially hazardous character of some aspects of biotechnology is primarily from the chemicals used and not the biotechnology products. Therefore, the regulations that effectively regulate chemical exposures will usually ensure that biohazards, too, will be controlled. However, when a process employing biotechnology alone or in combination with conventional chemicals and technology presents a significant hazard to employees which cannot be dealt with by existing standards or the general duty clause, OSHA will consider regulating in order to protect employee health. At this time, no new regulations that would specifically cover biohazards are warranted.

B. Guidelines

As stated above, section 5(a) of the OSH Act requires that each employer—

(1) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) Shall comply with occupational safety and health standards under this Act.

Specific standards which may be applicable include:

- Specific air contaminants (29 CFR Part 1910, Subpart Z).
- Access to employee exposure and medical records (29 CFR 1910.20).
- Hazard communication (29 CFR 1910.1200).
- Exposure to toxic chemicals in laboratories (currently in draft and under development).
- Respiratory protection (29 CFR 1910.134) (currently being updated).
- Safety standards of a general nature, for example, general environmental, walking and working surfaces, fire protection, compressed gases, electrical safety, and material handling and storage contained in 29 CFR Part 1910 Subparts J, D, E and L, H, S and N).

Effective biological safety and health programs have been operative in a variety of laboratories for many years. Motivation and critical judgment are necessary in addition to specific safety and health knowledge to ensure protection of personnel, the public and the environment. All personnel directly involved in biotechnological projects should receive adequate instruction so that the potential biohazards can be understood and appreciated. Emergency plans should be formulated for each project where the chemicals used or biotechnical product produced pose a potential safety or health hazard. The plans should describe the procedures to be followed if an accident contaminates personnel or workplaces. If a research group is working with a known pathogen for which an effective vaccine is available, employees should be immunized, as appropriate.

Before biotechnological work is undertaken, it is important that management determine the potential hazards involved and the precautions to be taken. Program and support staff should then be advised of the real and potential hazards. Staff should be instructed and trained in the protection and techniques required to ensure safety and in the procedures for dealing with accidentally created hazards.

C. Public Participation

Public comment on these guidelines is encouraged. Interested persons are invited to submit written data, views and arguments related to the Guidelines on Biotechnology. These comments must be postmarked on or before 120 days and submitted to the Docket Office, Docket No. H–042, OSHA, Room N–3670, United States Department of Labor, 200 Constitution Ave., NW., Washington, D.C. 20210. The data, views and arguments that are submitted will be made available for public inspection and copying at the above address.

Signed at Washington, D.C. this 3rd day of April, 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–8197 Filed 4–11–85; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

Date: April 26, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for College Teachers applications in Foreign and Comparative Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1986.

Date: April 29, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Stipends for College Teachers applications in History, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1986.

Date: April 30, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review Summer Seminars for College Teachers applications in Art, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–8796 Filed 4–11–85; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Presidential Young Investigator Awards; Announcement of Competition

The National Science Foundation announces the competition for Presidential Young Investigator Awards to be announced in February 1986.

These awards provide cooperative research support for the Nation's most outstanding and promising young [1] science and engineering faculty. With participation of the industrial sector, the awards are intended to improve the capability of universities to respond to the demand for highly qualified scientific and engineering personnel for academic and industrial research.

A maximum of 100 new Presidential Young Investigator Awards will be made in this competition. At least half of these awards will be made in engineering fields. Awards will be made for up to five years based on the annual determination of satisfactory performance and subject to the availability of funds.

In this competition there will be two types of nominations. The distinction between the two lies in the nomination procedure only and not in the nature of the award. Scientists and engineers who have received or are about to receive their doctoral degrees may be nominated for *faculty awards* by eligible institutions who have appointed or plan to appoint them to tenure track faculty positions. In addition, graduate students currently nearing their doctoral degrees, postdoctoral students, and other recent doctoral recipients without faculty affiliation may be nominated for *prefaculty awards* tenable at an appropriate eligible institution. Institutions offering tenure track positions to recipients of *prefaculty awards* are expected to assume the same commitments as those associated with *faculty awards*.

Because this program is aimed particularly at influencing young scientists and engineers in their decisions regarding academic careers, the Foundation strongly encourages the nomination for *prefaculty awards* of outstanding graduate students nearing completion of their gradute work.

Eligibility

U.S. institutions granting doctorates in at least one of the fields supported by the Foundation[2] are eligible to participate in this program. Nominations may be submitted from any science or engineering department in an eligible institution.

Eligible institutions may nominate, for *faculty awards*, both current and prospective members of their faculty who are early in their careers, and who are holding or have been offered tenure track positions as of the time of nomination.

Eligible institutions may also nominate their promising graduate students and recent doctoral recipients for *prefaculty awards*. Such awards are tenable only in tenure track positions at eligible institutions.

In either case, nominees must have received their doctorates after January 1, 1982. However, scientists and engineers who received their doctoral degrees in 1981 and have had at least one year of full-time industrial employment beyond the doctorate, or who received their doctoral degrees in 1980 and have had at least two years of full-time industrial employment beyond the doctorate are also eligible for nomination.

U.S. citizens or individuals who are permanent residents as of the time of nomination are eligible to receive these awards.

Those nominated may conduct research in any branch of science and engineering normally supported by NSF. Particular emphasis in the selection of awards will be given to the mathematical, physical and biological sciences and engineering where there are substantial needs for faculty development.

Support and Commitments

Minimum Presidential Young Investigator Awards will consist of $25,000 of Federal funds per year. However, in accordance with the objective of developing improved links between the academic and industrial sectors, the Foundation will provide up to $37,500 of additional funds per year on a dollar-for-dollar matching basis to contributions from industrial sources (normally private, for-profit corporations), resulting in total possible annual support of up to $100,000.

Because industry matching in fields of interest to it is central to the program goals of leveraging Federal funds and fostering industry-university cooperation, NSF expects that matching funds will be obtained in most cases from private, for-profit corporations. However, because industrial funds may be difficult to obtain for some areas of research not in the mainstream of industrial interests, matching funds may be accepted from private non-profit foundations (other than foundations associated with particular universities or university systems). A grantee institution must certify in its budget submission that the matching funds have been specifically designated by the donor for the PYI award.

Matching funds may be either in cash or permanent research equipment. The equipment must be of a type and quality necessary to carry out the awardee's research program. The worth of equipment donations should be based on its fair market value.

Funds meeting the foregoing criteria which have been expended in support of a nominee's research effort after the closing date of this competition may be designated as matching funds.

Institutions are also expected to make a significant commitment to the support of their awardees. Institutions are responsible for arranging for the industrial support and guaranteeing full academic year salary for the awardee. None of the Presidential Young Investigator funds, whether provided by the Foundation or by industry, may be used to underwrite academic year salaries of awardees. However, up to 10 percent of the Foundation funds may be used to defray administrative expenses in lieu of indirect costs.

Application Procedures

Nominations for *faculty awards* originate from the departmental chairperson or analogous administrative officer of the sponsoring institution. Nominations for prefaculty awards originate from the departmental chairperson or analogous institutional officer of the academic department where the nominee's doctoral studies are being or were carried out.

Each nomination submission must include:

- The Nomination Form provided. For a *faculty award* nomination, the Form includes a statement signed by an official authorized to make an institutional commitment to guarantee the nominee's academic year salary and to seek matching industrial support. *Prefaculty* nominations need only be signed by the nominating official.
- A complete, up-to-date *Curriculum vitae*, including a one-page description of the nominee's research interests; a list of prior and current research grants, including sources and amounts; and a bibliography of the nominee's publications in refereed journals indicating by means of an asterisk those of which the nominee is senior author (a complete or partial list of other publications may be attached where it

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[1] "Young" in this context refers to academic age, as determined by time elapsed since receipt of the doctorate.

[2] See NSF 83-87, *Grants for Scientific and Engineering Research*

may materially strengthen the nomination);

• A statement, signed by the nominee, regarding plans for his or her academic career and signifying the intent to implement them if given a Presidential Young Investigator award; and

• Recommendations from three referees who are familiar with the research interests and capability of the nominee. *Referees for faculty award* nominations may not be from the nominating institution.

After an awardee has been selected, the employing institution will be asked to prepare a first-year budget in support of the awardee's research activities. The budget should show both the amount requested from the Foundation and the sources and amounts of industrial support. This information will be used in determining the amount of the award and other terms and conditions. Except as otherwise provided in this announcement, the terms and conditions, as well as the expected institutional commitment, will be analogous to those stated in the publication, NSF 83–57, *Grants for Scientific and Engineering Research*. Similar submissions will be required annually for each successive year of support under this program.

Presidential Young Investigator Awardees will be expected to begin their tenure by October 1 of the year of their awards.

Evaluation and Selection

Selection will be based on an evaluation of the nominee's ability and potential for contributing to the future vitality of the Nation's scientific and engineering effort as evidenced by accomplishments, including contributions of original research and in the training of future scientists and engineers. Recommendations; suitability of the sponsoring institution for the implementation of the nominee's plans for his or her research and academic career (where applicable); probable impact of the award on the future career development of the nominee; scientific quality of the research likely to emerge; and the potential impact of the award on the researh field in question will be considered. In the case of *prefaculty nomination*, particular attention will be paid to evidence of the nominee's ability to conduct independent quality research. The selection of individuals to receive Presidential Young Investigator Awards will be made by the National Science Foundation with the advice of panels of outstanding scientists and engineers.

Inquiries

Inquiries regarding the awards may be addressed to the Presidential Young Investigator Awards, National Science Foundation, Washington, D.C. 20550, or telephoned inquiries to (202) 357–7536.

Michael M. Frodyma,

Program Director, Postdoctoral Fellowships.

April 9, 1985.

[FR Doc. 85–8878 Filed 4–11–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Archaeology/Physical Anthropology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/Physical Anthropology.

Date and Time: April 29–May 1, 1985; 9:00 a.m.–5:00 p.m.

Place: Holiday Inn (Downtown), Denver, CO.

Type of Meeting: Closed.

Contact Person: Dr. John E. Yellen, Program Director for Anthropology, Room 320, National Science Foundation, Washington, DC 20550, (202) 357–7804.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

April 9, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–8877 Filed 4–11–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Eukaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92– 463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Eukaryotic Genetics.

Date and time: Monday and Tuesday, April 29th and 30th, 1985 from 8:30 a.m. to 5:00 p.m.

Place: Room 1242, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Delill Nasser, Program Director, Eukaryotic Genetics, Room 329G Telephone: 202/357–0112.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The panel Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

April 9, 1985.

[FR Doc. 85–8875 Filed 4–11–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Prokaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Prokaryotic Genetics.

Date and Time: Tuesday, April 30—Wednesday, May 1, 1985; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550, Room 1242B.

Type of Meeting: Closed.

Contact Person: Dr. Philip D. Harriman, Program Director, Prokaryotic Genetics; (202) 357–9687.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

April 8, 1985.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-8676 Filed 4-11-85; 8:45 am]

BILLING CODE 7555-01-M

Interagency Arctic Research Policy Committee; Meeting

March 27, 1985.

In accordance with the Arctic Research and Policy Act, Pub. L. 98-373, the National Science Foundation announces the following meeting:

Name: Interagency Arctic Research Policy Committee.

Date and Time: April 29, 1985, 9:30 a.m.

Place: National Science Foundation, Room 543, 1800 G Street, NW., Washington, D.C.

Type of Meeting: Open—entire meeting.

Contact Person: Dr. Peter E. Wilkniss, Division Director, Division of Polar Programs, Room 620, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357-7766.

Purpose of Committee: The Interagency Arctic Research Policy Committee was established by Pub. L. 98-373, the Arctic Research and Policy Act, to survey arctic research, help determine priorities for future arctic research, assist in the development of a national arctic research policy, prepare a single, integrated multi-agency budget request for arctic research, develop a 5-year plan to implement national arctic research policy, and facilitate cooperation in and coordination of arctic research.

Agenda:

9:30 Welcome and Introduction
9:40 Introduction to the Arctic
10:00 Congressional Perspective on Arctic Research and Policy Act
10:10 Requirements and Work Plan
10:20 Presentation of Proposed Research Policy
10:30 Presentation of Agency Budget Plans
10:50 Message from Chairman, Arctic Research Commission
11:00 Public Participation Period

Public Participation: Members of the public are invited to submit written comments to the contact person listed above prior to the meeting. Written comments received in advance of the meeting will be distributed to Committee representatives for consideration and acknowledgement. Committee meetings are not designed as public hearings and will not normally receive verbal comments from observers unless specifically invited by the Committee. Observers invited to address the Committee will be limited to 5 minutes each. An invitation to address the Committee is contingent upon advance submission of the proposed statement and a determination by the Committee that such statement is relevant and appropriate to the agenda at that particular meeting. The texts of such statements shall not exceed 5 double-spaced typed pages each.

Peter E. Wilkniss,

Director, Division of Polar Programs.

[FR Doc. 85-9027 Filed 4-11-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 35—Medical Use of Byproduct Material

3. The form number if applicable: Not applicable.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years.

5. Who will be required or asked to report: Physicians and medical institutions who are applicants for or holders of an NRC license authorizing the administration of byproduct material or its radiation to humans for medical care.

6. An estimate of the number of responses: 99,355

7. An estimate of the total number of hours needed to complete the requirement or request: 426,429

8. An indication of whether Section 3504 (h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: NRC is proposing a complete revision of 10 CFR Part 35, the regulations governing the use of byproduct material in the diagnosis and treatment of human disease. The revision consolidates requirements that are scattered in the current regulations, license conditions, and policy statements. It also clarifies recordkeeping and reporting requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 9th day of April 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-8850 Filed 4-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315/50-316, Licenses No. DPR-58/DPR-74, EA 84-105]

American Electric Power Service Corp. (D.C. Cook Plant, Units 1 and 2); Order Imposing Civil Monetary Penalty

I

American Electric Power Service Corporation (the "licensee") is the holder of Operating Licenses No. DPR-58 and No. DPR-74 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission"). The licenses authorize the licensee to operate the D.C. Cook Plant, Units 1 and 2 in accordance with the conditions specified therein. The licenses were issued on October 25, 1974 and December 23, 1977.

II

A special inspection of the licensee's activities was conducted during the period June 21 through August 30, 1984. The results of this inspection indicated that the licensee has not conducted its activities in full compliance with the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated November 21, 1984. The Notice states the nature of the violations, the applicable provisions of the Atomic Energy Act, the requirements of the Nuclear Regulatory Commission regulations or license conditions that were violated, and the amount of civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with a letter dated December 21, 1984.

III

Upon consideration of American Electric Power Service Corporation's response (December 21, 1984) and the statements of fact, explanation, and argument regarding mitigation contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1984, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether on the basis of such violations this Order should be sustained.

Dated at Bethesda, Maryland this 8th day of April 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The licensee's December 21, 1984 response to the November 21, 1984 Notice of Violation and proposed Imposition of Civil Penalty for the American Electric Power Service Corporation, D.C. Cook Plant, Units 1 and 2 admits that the violations occurred as stated in the Notice. The violations involved instances in which the licensee failed to meet operability requirements of the technical specifications owing to an insufficient understanding by plant staff of such requirements or inadequate surveillance procedures. The licensee requests 50% mitigation of the amount of the proposed civil penalty for unusually extensive corrective actions.

Summary of Licensee's Response

The licensee contends that the safety significance of the violations was limited; notwithstanding, the licensee took specific corrective actions for each of the three violations identified. In addition to these specific corrective actions, the licensee implemented a generic corrective action program to prevent recurrence of similar events and to gain assurance that similar situations involving noncompliance do not now exist. These generic corrective actions encompass the following areas: (1) The licensee is conducting a review of procedures dealing with either containment integrity or delivery of emergency water to either the primary or secondary system. The review process is expected to be completed by May 1, 1985; (2) A program for independent reviews of adherence to procedures has been developed to assure that procedures adequately demonstrate and allow literal compliance with technical specifications. This program started on September 17, 1984; (3) A training program is being developed for presentation to both licensed operators and certain nonoperating personnel which consists of eleven key areas that relate the accident analyses to the technical specifications. The first training session was presented on November 16, 1984; and (4) An effort is under way to identify technical specifications which require clarification. The licensee urges the NRC to consider these extensive corrective actions cited in their response letter as well as corrective actions taken to ensure proper operation of other systems not referenced in the November 21, 1984 Notice. In view of these actions, the licensee requests mitigation of the proposed civil penalty by 50 percent as provided under Section V.B.2 of Appendix C to 10 CFR Part 2.

Evaluation of Licensee's Response and Conclusion

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee did not provide any information that was not already considered in determining the significance of the violation. A review of the licensee's generic corrective actions indicated that the corrective actions taken and proposed are extensive in scope and are the type of actions that, if properly implemented, should have a lasting effect on overall regulatory performance. However, the licensee has had problems with ensuring that surveillance procedures adequately implement technical specification requirements and that operating procedures are correctly applied. These matters have been discussed in enforcement conferences as early as August 4, 1981. Continuing problems in this area indicate that actions to correct the previous violations and to prevent recurrence of similar problems in this case have not been adequate. Thus, more extensive corrective actions were required to ensure NRC requirements were satisfied now. Therefore, the NRC staff has concluded that mitigation of the civil penalty based on extensive corrective actions is not warranted in this case.

[FR Doc. 85–8857 Filed 4–11–85; 8:45 am]
BILLING CODE 7590-01-M

[License No. 21–19339–01; Docket No. 30–17456; EA 85–02]

Gorsira X-Ray, Inc.; Order Revoking License

I

Gorsira X-Ray, Inc., P.O. Box 3031, Farmington Hills, MI (the "licensee") is the holder of Byproduct Material License No. 21–19339–01 (the "license") issued by the Nuclear Regulatory Commission (NRC). License No. 21–19339–01 authorizes the possession and use of byproduct materials for industrial radiography and is due to expire April 30, 1985.

II

By Order dated January 15, 1985, the license was suspended, effective immediately, and the licensee was given an opportunity to show cause why the license should not be revoked. 50

Federal Register 3850 (January 28, 1985). As described in that Order, the NRC took these actions on the basis of the licensee's failure to respond to a July 2, 1984 Notice of Violation that set forth the violations identified during the April 27, 1984 inspection. The NRC Region III staff attempted to contact the licensee by telephone on six occasions during the period August 14 through September 24, 1984. These attempts were not successful. The NRC sent the licensee another letter on October 22, 1984 requesting a response to the July 2, 1984 Notice. The licensee did not respond. On November 26, 1984, the Region III staff contacted the licensee's attorney. The attorney stated the licensee had received the July 2, 1984 Notice and the October 22, 1984 letter from the NRC. The attorney made arrangements for a meeting on December 12, 1984 between the licensee and the NRC staff to discuss the July 2, 1984 Notice and the licensee's failure to respond to that Notice. The licensee failed to attend that meeting.

Because these developments raised substantial questions as to whether the licensee had sufficient financial resources as well as the ability and willingness to comply with NRC requirements to ensure that licensed byproduct material would be used in a manner that would provide adequate protection of public health and safety, the Order to Show Cause and Order Suspending License was issued on January 15, 1985 to the licensee. In accordance with the Order the licensee was required to cease and desist from any use of byproduct material in its possession and immediately place all such material in locked storage. The licensee was required within seven days of the issuance of the Order to transfer all licensed material within its possession to a person authorized by the NRC to possess and use such material and to notify the NRC Region III office in writing to whom the material was transferred and when the transfer was completed.

The Order also provided the licensee opportunity to file a written answer thereto within 25 days of the date of the Order and stated that, upon the licensee's failure to file an answer within the specified time, the Director, Office of Inspection and Enforcement, would issue a subsequent Order, without further notice, revoking the license. The licensee has not filed an answer to the Order. The NRC understands, however, that the radioactive material that was in the licensee's possession has been transferred to an authorized recipient. Because the circumstances described in the January 15, 1985 Order would warrant revocation of a license and the licensee has not demonstrated, though given an opportunity to do so, why its license should not be revoked, I have determined to revoke Byproduct Material License No. 21–19339–01.

III

Accordingly, pursuant to Sections 81, 161(b), and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30, and 34, it is hereby ordered that Byproduct Material License No. 21–19339–01 is revoked.

This Order is effective upon issuance.

Dated at Bethesda, Maryland this 2nd day of April 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85–8858 Filed 4–11–85; 8:45 am]

BILLING CODE 7590–01–M

[License No. 34–13774–01, EA 85–40]

John C. Haynes d.b.a. John C. Haynes Company; Order

I

John C. Haynes Company ("the licensee"), 800 Hebron Road, Newark, Ohio 43055, is the holder of Byproduct Material License No. 34–13774–01 which currently authorizes the licensee to possess americium-241 for storage only. During the 1970's the licensee's facility was used to irradiate diamonds and other gemstones using unsealed americium-241 for the purpose of inducing color changes. At one time the licensee possessed up to 25 curies of americium-241 and 2 curies of cerium-144. Subsequently, the licensee advised NRC that all radioactive material was properly disposed of at an authorized disposal facility with the exception of a small residual amount in the form of contamination of the licensee's facility. In 1981 the license was modified to limit activities to *storage* only of about 150 millicuries of americium-241 in the form of residual contamination.

II

On March 28, 1985, John C. Haynes was arrested by agents of the Federal Bureau of Investigation for unauthorized possession and use of radioactive byproduct material and for making false statement to the Nuclear Regulatory Commission (NRC). A substantial amount of americium-241, approximately 1-2 curies was recovered from the licensee's facility. A larger quantity, estimated by Mr. Haynes to be about 20 curies, was removed from the residence of an associate of the licensee. The amount recovered far exceeds the 150 millicurie limit authorized by the license in the form of contamination in the licensee's facility. Survey measurements taken by NRC and the Department of Energy personnel at the time of the arrest indicates that the licensee's facility is contaminated with significant quantities of americium-241. Approximately 1 curie of americium-241 remains in four gloveboxes. Mr. Haynes stated that he had used flammable chemical agents to decontaminate gemstones and these chemicals are located in the gloveboxes. Further, highly radioactive waste material was found in the gloveboxes which the licensee stated is soaked with flammable cleaning fluid.

The recent discovery of Mr. Haynes' continued unauthorized use of licensed material, and the extensive contamination of the building in which material has been used, caps the already checkered history of Mr. Haynes as an NRC licensee. A number of events in recent years have raised questions regarding the licensee's capability to safely control licensed radioactive material. The licensee has been cited for a number of violations of NRC requirements. During a December 16, 1975 inspection of the licensee's facility, several items of noncompliance were identified relating to personnel overexposure, inadequate radiological surveys, inadequate personnel monitoring, inadequate storage of radioactive materials, and inadequate record keeping. Further, as a result of inspections on February 6–7, 1980, March 14, 1980, and November 17–19, 1981, items of noncompliance were identified relating to contamination in excess of a license condition, inadequate radiological surveys, and unauthorized storage and incineration of licensed material.

In 1980, the NRC was informed that the licensee was in default on the mortgage on its licensed facility and that the mortgagee was threatening foreclosure. The NRC's concern that the licensee might lose control over its licensed facility led to the issuance in 1981 of an Order to Modify License, which limited licensed activity only to storage of material and which required the licensee to submit a decontamination plan. 46 FR 44540 (Sept. 4, 1981). In 1982, upon presentation to the NRC of documentation that the licensee had paid off its mortgage and gained clear title to the property, and upon payment

of inspection fees owed the NRC, the Order to Modify License was rescinded. 47 FR 26952 (June 22, 1982). This was only done, however, after the license had been amended to limit licensed activity to storage only.

As a result of inspections conducted on July 21–22, August 4, 16, and 19, 1983 at the licensee's facility located at Rural Route 6, Newark, Ohio, Region III inspectors and an NRC consultant, Oak Ridge Associated Universities (ORAU), determined that extensive contamination existed, both in restricted and unrestricted areas of the facility. The majority of the contamination was located within the restricted laboratory area within the structure. Contamination was also extensive on the restricted area walls and floors. Other restricted area surfaces which are contaminated are sinks, shower drains, and exterior surfaces of the gloveboxes. Surface paint scraping also yielded extensive contamination.

On August 19, 1983, the licensee submitted to the Nuclear Regulatory Commission (NRC) a request for termination of the license in which the licensee indicated that he was financially unable to pay for decommissioning of its facility.

Under 10 CFR 30.36(d)(1)(v), a licensee must decontaminate its facility and provide a report to NRC confirming the absence of radioactive contamination. Accordingly, the NRC issued an Order to the licensee to show cause why the licensee should not be required to adopt the ORAU Decontamination Plan contained in the ORAU Final Report (May 1984), or an equivalent plan, and to decontaminate the facility in accordance with such plan. 49 FR 26325 (June 27, 1984). On about July 10, 1984, the licensee responded to the Order by asserting that he did not have the financial ability to pay for decontamination.

III

As noted in section II of this Order, the licensee's facility is now substantially more contaminated then it was at the time of the August 1983 ORAU survey as the result of the licensee's unauthorized use of americium-241 at the facility. Approximately 1-curie of americium-241 is now present in the four gloveboxes at the facility as contrasted to an estimated 150 millicuries in the entire facility in August 1983. The ventilation system, which maintains a negative presure on the gloveboxes (thereby helping avoid the dispersal of the contamination offsite) may be shut off due to the licensee's past failures to make timely electric utility payments. Although no contamination has to date been detected off the licensee's property, a substantial amount of americium-241 is present in the facility in powder form which could be dispersed as a result of vandalism, fire or other phenomena.

As a condition of his release on his own recognizance, the U.S. magistrate prohibited Mr. Haynes from going to the facility. Even if he were permitted access to the facility, Mr. Haynes' unauthorized use of material indicates that he neither appreciates the hazard posed by the material nor can be trusted to safely maintain the facility. There is no other responsible licensed individual in a position to ensure the security and the safety of the facility. However, 24-hour security is being maintained by the Licking County Sheriff's Office through an agreement with NRC as a short-term measure.

In view of the extensive contamination of the licensee's facility and in the absence of a responsible individual who can act for the licensee to ensure that the facility is safely maintained, the Commission lacks adequate assurance that the licensee's facility can remain in its present state without undue risk to public health and safety. The radioactive contamination of the facility and the physical condition of the facility and its contents pose an imminent hazard that requires immediate action to abate the hazard. Accordingly, I have determined pursuant to 10 CFR 2.202(f) that the public health, safety, and interest require that the licensee be ordered, effective immediately, to permit entry into his facility and removal of radioactive material and contamination by a person or agency authorized by the Commission.

I have also determined that License No. 34–13774–01 should be revoked. Mr. Haynes' unauthorized use of radioactive material, in such a manner as to greatly increase the contamination of his facility and the hazard it poses to the public, evinces a wanton disregard for the Commission's requirements and public health and safety. The licensee's precarious financial position also draws into question the wisdom of permitting him to remain a licensee, even in a possession-only status, and the licensee has previously requested termination of the license. All these circumstances constitute sufficient cause for revocation of the license under section 186 of the Atomic Energy Act. In view of the licensee's willful disregard of the Commission's requirements, and the lack of adequate control over licensed activities, I have determined that no prior notice is required under 10 CFR 2.201 and that, pursuant to 10 CFR 2.202(f), removal of all radioactive material from the facility and completion of decontamination is immediately required and, thereafter, License No. 34–13774–01 should be revoked.

IV

Accordingly, pursuant to Section 81, 161b, 161i, 161o, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and Part 30, it is hereby ordered that:

A. Effective immediately, the licensee shall permit a person or agency authorized by the Commission to enter, survey, and remove from the facility radioactive material and contamination and contaminated objects which pose an imminent hazard to the public health and safety. J.C. Haynes is responsible for the costs associated with the removal of material and any decontamination necessitated by the imminent hazard.

B. Effective immediately, upon completion of the action specified in section A above, the licensee shall: (1) Remove or cause to be removed any remaining radioactive material from the facility and (2) decontaminate or cause to be decontaminated the facility and its environs to the levels specified in "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source of Special Nuclear Material." Following the removal of all radioactive material from the facility and completion of decontamination activities as specified herein, Byproduct Material License No. 34–13774–01 will be revoked.

V

The licensee may show cause why this Order should not have been issued and should be vacated by filing a written answer under oath or affirmation within 20 days of the date of this Order which sets forth the matters of fact and law on which the licensee relies. The licensee may answer as provided in 10 CFR 2.202(b) by consenting to this Order. Upon the failure of the licensee to answer within the specified time, this Order shall be final without further proceedings.

The licensee or any other person who has an interest affected by this Order may request a hearing within 20 days after issuance of this Order. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Inspection and Enforcement, U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555. Copies shall also be sent to the Executive Legal Director at the same address. If a person other than the licensee requests a hearing, that person shall describe specifically, in accordance with 10 CFR 2.714(a)(2), the nature of the person's interest and the manner in which that interest is affected by this Order. An answer to this order or a request for hearing shall not stay the immediate effectiveness of section IV of this order.

If a hearing is requested, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether, on the basis of the matters set forth in sections II & III of this Order, this Order should be sustained.

Dated at Bethesda, Maryland, this 5th day of April 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-8851 Filed 4-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-123]

Finding of No Significant Environmental Impact; Facility Operating License No. R-79, University of Missouri, Rolla

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. R-79 for the University of Missouri research reactor located on the campus in Rolla, Missouri.

The amendment will renew the Operating License until November 20, 1999, in accordance with the licensee's application dated December 14, 1984. Opportunity for hearing was afforded by the Notice of Consideration of Extension of License Expiration Date published in the **Federal Register** on February 13, 1985 at 50 FR 6085.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment dated November 16, 1984, the Commission concludes that renewal of the license will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts as Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since 1961. The environmental impacts associated with the continued operation of the University of Missouri, Rolla, facility are discussed in an Environmental Assessment dated November 16, 1984. The Assessment, which was issued in connection with Amendment No. 7, concluded that continued operation of the University of Missouri, Rolla, reactor will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding.

(b) Even after prolonged operation at a power level of 200 kilowatts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(c) The hypothetical loss of integrity of a fueled experiment will not lead to radiation exposures in the unrestricted environment that exceed the guideline values of 10 CFR Part 20.

The Assessment, dated November 16, 1984, and these conclusions are fully applicable to this extension of expiration date.

For further details with respect to this proposed action, see the application for extension dated December 14, 1984, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG-1086).

These documents and this Notice of Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies of NUREG-1086 may be purchased by calling (301) 492-9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 5th day of April 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-8854 Filed 4-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-08168; License No. 37-14855-01, EA 84-110]

Trans-Eastern Inspection Services, Inc.; Order Imposing Civil Monetary Penalties

I

Trans-Eastern Inspection Services, Inc., 1726 Northwest Avenida del sol, Boca Raton, Florida (the "licensee") is the holder of License No. 37-14855-01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorizes the licensee to use byproduct material to conduct industrial radiography and related activities.

II

An NRC safety inspection of the licensee's activities under the license was conducted in August 1984. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated December 3, 1984. The Notice states the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of the proposed civil penalties for the violations. A response dated January 16, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

Upon consideration of the answers received, and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil

penalties contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalties proposed in the Notice of Violation and Proposed Imposition of Civil Penalties for the violations as amended by the enclosed Appendix should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, PL 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Five Thousand Dollars ($5,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, as amended by the enclosed Appendix, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 2nd day of April 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluations and Conclusions

In the licensee's January 16, 1985 response to the Notice of Violation and Proposed Imposition of Civil Penalties dated December 3, 1984, the licensee admits the seven violations except for a portion of one violation, and protests proposed imposition of the civil penalties. The response provides the reasons why the licensee believes the penalties are not appropriate. Provided below are (1) a restatement of each violation, (2) a summary of the licensee's response, and (3) the NRC evaluation of the licensee's response.

Restatement of Violations

A. 10 CFR 20.101(a) limits the whole body exposure of an individual in a restricted area to one and one quarter rems per calendar quarter, except as provided by 10 CFR 20.101(b). Paragraph (b) allows a whole body exposure of three rems per calendar quarter provided conditions specified are met.

Contrary to the above, during the second quarter of 1984, one individual working in the restricted area at a field site in Mazie, Oklahoma received a whole body radiation dose of 4.37 rems, an exposure of 1.37 rems in excess of that permitted under 10 CFR 20.101(b). [Further, during the second quarter of 1984, a second individual working in a restricted area at the same field site received a whole body radiation dose of 1.28 rems, an exposure of 30 millirems in excess of that permitted under 10 CFR 20.101(a), and the conditions of 10 CFR 20.101(b) were not met for this individual.] [1]

B. 10 CFR 20.201(b) requires that each licensee make such surveys as (1) are necessary to comply with regulations in 10 CFR Part 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, on June 28, 1984, a 68 curie iridium–192 radiography source located in a radiography device was retrieved from a guide tube at a radiography site in Mazie, Oklahoma, without first performing a survey to determine the position of the source in the guide tube, and to evaluate the exposure that could be received during the retrieval of the source.

C. 10 CFR 34.43(b) requires that a radiation survey with a radiation survey instrument be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed and, if the device has a source guide tube, the survey must include the entire length of the guide tube.

Contrary to the above, on June 28, 1984, radiation surveys were not performed following each radiographic exposure to determine that the sealed source has returned to its shielded position. As a result, two radiographers approached the device unaware that the source was in an exposed condition and received unnecessary and unplanned exposures.

D. 10 CFR 34.33(d) requires that if an individual's pocket dosimeter is discharged beyond its range, the individual's film badge or TLD shall be immediately sent for processing.

Contrary to the above, on June 28, 1984, two radiographer's pocket dosimeters were discharged beyond their range and the film badges were not immediately sent for processing.

E. Condition 16 of License No. 37–14855–01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated February 23, 1982, as amended April 13, 1982, and letters dated February 1, 1983 and October 5, 1983.

The February 1, 1983 letter includes amendments to the operating and emergency procedures. Section 8.0, items F, G and H, requires that the radiographer notify the RSO of an emergency and maintain surveillance until the RSO, or persons authorized by the RSO, can take corrective action. This section further requires that at no time shall the radiographer try to retrieve the source.

Contrary to the above, on June 28, 1984, the RSO was not notified when it was determined that a source could not be returned to the shielded position. Further, the radiographers retrieved the source to the fully shielded position prior to notifying the RSO.

F. 10 CFR 20.105(b) requires that radiation levels in unrestricted areas, as defined in 10 CFR 20.3(a)(17), be limited so that an individual who is continuously present in the area cannot receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on August 15, 1984, radiation levels of 1.0 millirem per hour (sufficient to provide a dose of greater than 100 millirems in seven consecutive days) existed 18 inches from the outside wall of a trailer, an unrestricted area, at the field site in Mazie, Oklahoma. The dose rate was

[1] As explained on page 3 under "NRC Evaluation of licensee Response," the bracketed material has been deleted form the Notice of Violation.

caused by a radiography device located in the trailer.

G. 10 CFR 20.203(e)(1) requires that rooms in which licensed materials are used or stored, in an amount exceeding ten times the quantity of material specified in 10 CFR Part 20, Appendix C, be conspicuously posted "Caution Radioactive Material" (CRM).

Contrary to the above, on August 15, 1984, the trailer at a field site in Mazie, Oklahoma, in which a 68 curie iridium-192 source was stored, was not conspicuously posted to indicate the presence of radioactive material. A small "Caution Radioactive Material" (CRM) tag was located in a south window, but was barely visible due to fading, and there was not CRM sign on the access door to the trailer.

These violations have been categorized in the aggregate at Severity Level III (Supplement IV).

Cumulative Civil Penalties—$5,000 assessed equally among the violations.

Summary of Licensee Response

The licensee admits the occurrence of all the violations cited in the Notice of Violation and Proposed Imposition of Civil Penalties, but provides evidence which indicates that one of two individuals referenced in Item A did not receive a dose in excess of 10 CFR 20.101(a) limits. Specifically, the licensee indicates that the individual who received 1.28 rems during the second quarter of 1984 had completed a Form NRC–4, which would have permitted the individual to receive a dose of 3 rems in a calendar quarter. The licensee states that this form had inadvertently been misfiled at the time of the inspection, and was not available for NRC review.

Although the licensee admits the violations, the licensee protests the civil penalties for the following stated reasons:

(a) Although a management breakdown contributed to the incident, this particular problem was isolated in nature, and the largest contributing factor to the violations was the willful and independent actions carried out by an experienced radiographer;

(b) A complete and truthful investigation of the incident was performed, the serious nature of the violations was not omitted, and all findings were completely reported to the NRC;

(c) The company has safely produced over a million radiographs over the past five years; and

(d) The company has taken corrective action.

NRC Evaluation of Licensee Response

Based on the additional information provided by the licensee, the NRC retracts that portion of the violation involving the individual who received a dose of 1.28 rem during the second calender year of 1984. Because another individual received an exposure in excess of that permitted by the regulation, a violation of 10 CFR 20.101(a) did occur.

The licensee has not provided a sufficient basis for withdrawal or mitigation of the civil penalties. While the licensee indicates that the actions of a single individual were the greatest contributor to the violations, the licensee acknowledges, in its specific response to each violation, that management deficiencies existed which also contributed to the problem. Such deficiencies included insufficient audits, a lack of physical presence at the Mazie site, and a failure to ensure that standard employment practices were carried out. Furthermore, it is management's responsibility to control and direct the activities of each employee and agent, and as stated in the NRC enforcement policy, the lack of management involvement may not be used as a basis for mitigating civil penalties.

The NRC staff acknowledges that the licensee provided the required report to the NRC on July 27, 1984. However, this does not provide a basis for mitigation of the civil penalties. Failure to make the report would have constituted an additional violation of NRC requirements. Furthermore, the licensee did not promptly identify the violation. If the licensee's site supervisor had promptly returned the April and May film badges, if licensee personnel had accurately recorded their dosimeter readings, and if the site supervisor had investigated complaints of a "radiation problem," the exposure in excess of regulatory limits could have been identified and possibly avoided.

The licensee has taken corrective action for the violations. However, corrective action is always required to correct violations. In this instance, the licensee's corrective actions were not considered unusually prompt or extensive. The actions taken were only those that the NRC would expect the licensee to take. Therefore, mitigation on this basis is not appropriate.

The licensee's enforcement history does not provide an adequate basis for mitigation of the civil penalties. An NRC inspection in October 1982 resulted in the identification of four violations. One of these violations, involving failure to perform an adequate survey, was also identified during the August 1984 inspection.

NRC Conclusion:

Although the licensee provided additional information not previously provided, which resulted in retraction of a portion of one of the violations, no information was provided to retract any violation in its entirety. Accordingly, the violations of each of the requirements set forth in the Notice of Violation did occur and they collectively represented a breakdown in management control of the radiation safety program. A sufficient basis was not provided for either mitigation or withdrawal of the civil penalties. Therefore, the NRC staff concludes that civil penalties of $5,000 should be imposed.

[FR Doc. 85–8858 Filed 4–11–85; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–124]

Environmental Assessment and Finding of No Significant Environmental Impact; Proposed Amendment to Facility Operating License No. R–62, Virginia Polytechnic Institute and State University

The Nuclear Regulatory Commission (the Commission) is considering issuance of a renewal amendment to Facility Operating License No. R–62 for the Virginia Polytechnic Institute and State University (VPI) research reactor located on the campus in Blacksburg, Virginia.

The amendment will renew the Operating License until November 16, 1989, and place the license in a "possession only" status in accordance with the licensee's applications dated October 2, 1979 and October 22, 1984, as supplemented.

Environmental Assessment

Identification of Proposed Action

By letter dated October 2, 1979, the licensee requested a license renewal with a power increase from 100 kilowatts (thermal) to 500 kilowatts (thermal). Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on May 2, 1980, at 45 FR 29453. No request for hearing or petition for leave to intervene was filed following notice of the proposed action. The licensee requested, by letter dated August 19, 1981, that the original application be amended to restore the power to 100 kilowatts (thermal). Then on October 22, 1984, the licensee applied for a possession only license which

renews the license until November 16, 1989. Currently, there are no plans to change any of the structures or other facilities associated with the reactor during the possession only license period requested by the licensee.

Need for the Proposed Action

The operating license for the facility was to have expired November 16, 1979. The licensee made a timely request for renewal. The proposed action is required to authorize VPI to continue to possess the nuclear research reactor even though a decision has been made not to operate it in the near future.

Alternatives to the Proposed Action

As required by Section 102(2)(E) of NEPA (42 U.S.C.A. 4332(2)(E)), the staff has considered possible alternatives to the proposed action. The only reasonable alternative to the proposed action that was considered was not renewing the license. This alternative would have led to change in status and a likely small impact on the environment. From the standpoint of environmental impact, there are no appropriate alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The staff did not consult other agencies or persons.

No Significant Impact Finding

Based on the foregoing Environmental Assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for this proposed action.

For further details with respect to this action, see the licensee's request for renewal dated October 2, 1979, and supplemental letters. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland this 4th day of April 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-8853 Filed 4-11-85; 8:45 am]

BILLING CODE 7590-01-M

Docket Nos. 50-266 and 50-301

Wisconsin Electric Power Co.; Denial of Request for Amendment to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensee for amendments to Facility Operating License Nos. DPR-24 and DPR-27, issued to the Wisconsin Electric Power Company (the licensee), for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities), located in the Town of Two Creeks, Manitowoc County, Wisconsin.

The amendments as proposed by the licensee modified the Point Beach Technical Specifications (TS), to provide additional restrictions on the movement of heavy loads over the spent fuel pool, changed position titles within the administrative section of the TS, and made miscellaneous corrections and editorial changes. The licensee's application for the amendments was dated March 16, 1984 as modified September 25, 1984. Notice of consideration of issuance of the amendments was published in the **Federal Register** on June 20, 1984 (49 FR 25350 at 25381) and on January 23, 1985 (50 FR 3047 at 3057). The requested changes were granted except for a proposed change regarding selected facility staff qualifications, which was denied.

Notice of issuance of Amendment Nos. 91 and 95 will be published in the Commission's next regular monthly **Federal Register** notice.

The portion of the application which proposed a change regarding selected facility staff qualifications was denied. The request to allow the use of either a "designated alternate" or the Health Physicist to meet the requirements formerly required of either the Superintendent-Chemistry and Health Physics or the Health Physicist was found unacceptable for the following reasons: (1) The designated alternate" is not limited to the Radiation Protection Staff (i.e., the individual could be part of the operations staff); (2) There is no assurance that the individual would have access to the plant manager; and (3) There is no assurance that the appointed individual would have line authority over Health Physics foreman and techniciana. The existing TS were found to give licensee sufficient flexibility to operate the Point Beach facilities.

The licensee was notified of the Commission's denial of this request by letter dated April 8, 1985.

By May 13, 1985 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition of leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date.

A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts, & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated March 16, as modified September 25, 1984 and (2) the Commission's letter to Wisconsin Electric Power Company, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Joseph P. Mann Public Library, Two Rivers, Wisconsin. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Division of Licensing.

Dated at Bethesda, Maryland this 8th day of April, 1985.

For the Nuclear Regulatory Commission.

James R. Miller,

Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85-8855 Filed 4-11-85 8:45 am]

BILLING CODE 7590-01-M

Design Information Needs in the Site Characterization Plan; Availability of Draft Technical Position

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed the Draft Generic Technical Position, "Design Information Needs in the Site Characterization Plan."

DATE: The comment period expires June 11, 1985.

ADDRESSES: Send comments to Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management,

U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington D.C. 20555. Copies of this document may be obtained free of charge upon written request to Nancy Still, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, D.C. 20555, Telephone 1/800/368–5642, Ext. 74426, or 427–4426 for Washington area callers.

FOR FURTHER INFORMATION CONTACT: John T. Greeves, Acting Chief, Engineering Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone No. (301) 427–4734.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) and Commission Regulation 10 CFR Part 60 promote interaction between Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application so as to allow a licensing decision to be made by the NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Characterization Plans (SCP's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site specific technical issue. A number of GTP's will be developed by the staff to establish lists of generic issues or information requirements for sites being investigated by DOE.

At an appropriate stage in the development of each GTP, notice of availability will be published in the **Federal Register** and copies will be placed in the Public Document Rooms (PDR's) and distributed to DOE, host states and potentially affected tribes for comment. Interested members of the general public will be able to obtain copies upon request and will be encouraged to comment. At the close of the comment period (normally 60 days), the staff will consider the comments received and issue a final position.

This announcement solicits comment on a draft GTP, "Design Information Needs in the Site Characterization Plan". In this GTP, the NRC staff addresses the type and level of detail of design information that needs to be included in the Site Characterization Plan (SCP). This is intended to ensure that the SCP will include sufficient information for the NRC to assess the completeness and adequacy of the site characterization program for the proposed geologic repository. While the NRC recognizes the design information needs will vary from site to site, certain design information is generic and the GTP contains guidance which NRC has developed for all candidate sites in various media.

Dated at Silver Spring, Maryland, this 2nd day of April, 1985.

For the Nuclear Regulatory Commission.

Hubert J. Miller,

Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 85–8852 Filed 4–11–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Coal Options Task Force; Regular Meeting

AGENCY: Coal Options Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Approval of minutes from the meeting of March 8, 1985
- Review and comment concerning generic coal plant preliminary cost, schedule and performance assumptions
- Review and comment concerning issue paper—Cost and Availability of Resources
- Review and comment concerning issue paper—Research, Development and Demonstration For Promising Resources
- Other business
- Next meeting
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Coal Options Task Force.

DATE: Thursday, April 18, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council Central Office at 850 S.W. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION, CONTACT: Jeff King at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–8874 Filed 4–11–85; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–21925; SR–BSE–84–6]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Boston Stock Exchange, Inc. ("BSE") submitted on November 27, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend Chapter II, Section 33 of the BSE rules to permit the execution of agency orders received from members of a foreign exchange approved by the BSE Board of Governors. The proposed rule change is designed to ensure that agency orders transmitted directly to the floor of the BSE by members of the Montreal Exchange ("Montreal") are subject to the existing provisions of the BSE's execution guarantee rule which requires specialists to accept and guarantee all agency orders from 100 to 1299 shares.

The Commission approved the initial phase ("Phase I") of an electronic linkage with Montreal on November 1, 1984.[1]

The BSE is now planning to implement a second phase ("Phase II") of the BSE-Montreal linkage to expand the list of securities to trade through the linkage to include United States-listed securities available for trading through ITS. the BSE, in consultation with Montreal, plans to designate certain stocks as eligible for transmission via the Montreal Exchange's Registered

[1] The initial phase of the linkage permitted Montreal members to direct "marketable limit" orders in approximately 40 United States-listed Canadian national stocks (or stocks trading in the United States pursuant to unlisted trading privileges), currently available for trading through the Intermarket Trading System ("ITS"), to the BSE floor through electronic terminals located on the Montreal floor. Securities Exchange Act Release No. 21449, November 1, 1984; 49 FR 44575, November 7, 1984 (File No. SR–BSE–84–6). Orders received from Montreal are priced by the Montreal member and executed by a BSE specialist at that price or a more favorable price. When an execution is not possible under those terms, (*e.g.*, the order is mispriced or the market has moved between the time it is priced in Montreal and received in Boston) the order is automatically cancelled and a message is sent back to Montreal that the order has not been filled. Limit orders not eligible for immediate execution are not accepted in the initial phase of the linkage.

Representative Order Routing and Execution System ("MORRE").[2] When Phase II is fully operational, orders in these BSE eligible stocks will be transmitted from the Montreal Exchange to the BSE through MORRE. It is expected there will be approximately 200 BSE eligible securities that will be selected for inclusion in the MORRE library of eligible securities. Orders received on the terminal printer shall designate the Montreal member, the stock, quantity and execution price in United States dollars.[3] Upon receipt at the BSE, the order will be called out to the floor and executed by the registered specialist at the MORRE price or better. Executed trades will be cleared in the same manner as under Phase I.[4]

The BSE has stated that full implementation of Phase II, as described above, will be delayed until the summer of 1985 to provide additional time for systems enhancements by Montreal to accommodate the expansion of eligible securities and the addition of the BSE to the MORRE system.[5] The BSE has informed the Commission that, during the interim months, it plans to proceed with an expansion of the list of eligible securities, utilizing the current Phase I system. Under this stage of implementation of Phase II, order flow generated from Montreal members will be routed via BSE's Automated Data Processing system and would be called out on the floor, like any other order, to the appropriate BSE specialist. The BSE has noted that, with respect to the operational mechanics of the system, there will be no difference between orders received under Phase II and orders received under Phase I. Unlike orders in Phase I, however, all its agency orders (including the dual United States-Canadian listings included under Phase I and the United States listings traded through ITS), will be subject to the BSE's execution guarantee rule.[6]

The Montreal Exchange is a self-regulatory organization under the Quebec securities laws and is regulated by the Quebec Securities Commission,[7] which oversees the self-regulatory operations of the Exchange. Both the BSE and Montreal maintain surveillance and record retention policies to monitor the trading process. Montreal maintains a complete audit trail of all securities transactions that occur on its floor, permitting it to reconstruct the market for a particular stock and identify the time, price, size and participants of each trade in that stock. Montreal's trading regulations include provisions comparable to rules imposed by United States exchanges, including rules relating to manipulative trading practices (*e.g.*, rules regarding suitability, churning, short sales, net capital, and best execution).[8]

Under the initial phase of the linkage, the procedures for transmitting the Canadian generated trades, together with the Montreal Exchange's rules relating to record retention, have provided the record basis for conducting further inquiry if a given trade is questioned.[9] In addition, the exchanges have established a Joint Floor Committee for the purpose of overseeing implementation of the linkage and resolving any questions with respect to questioned trades.

With respect to the issue of BSE and Commission access to information from Montreal, under the terms of the written agreement establishing the linkage, both exchanges have agreed to "cooperate fully" in the investigation of any questioned trade.[10] The BSE had informed the Commission that, when necessary, it will submit information requests to Montreal regarding questioned trades, either on its own or the Commission's initiative. In addition, Rule III, Article 7003 of the Montreal Exchange allows for the furnishing of investigatory information to "any other stock exchange, securities commission or similar authority . . . relating to the business affairs, acts, conduct, practices or proceedings of any member of the Exchange."[11]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 21603, December 26, 1984) and by publication in the **Federal Register** (50 FR 908, January 7, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

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[2] MORRE is an automated small order routing and execution system possessing many of the characteristics of the PACE, MAX and SCOREX systems utilized by the Philadelphia, Midwest and Pacific Stock Exchanges, respectively. The MORRE system will accept orders entered by members of the Montreal Exchange and route these orders in BSE-eligible securities to the BSE for execution. Orders routed through the MORRE system will be automatically priced at the best United States market derived from the consolidated quotation system.

[3] Like Phase. I, Phase II will be limited to the transmission of "Marketable limit" orders from Montreal to the BSE.

[4] *See Securities Exchange Act Release No. 21449, November 1, 1984; 49 FR 44575, November 7, 1984.*

[5] *See* letter from Michael R. Lindberg, Vice President and General Counsel, BSE, to Michael Cavalier, Branch Chief, Branch of Exchange Regulation dated February 14, 1985.

[6] The BSE's execution guarantee rule requires BSE specialists to accept and guarantee execution of all agency orders in eligible securities from 100 up to 1299 shares at the best bid or offer.

[7] *See* Quebec Securities Act, R.S.Q. 1964, C. 274, as amended Title VI, Chapter 1, Section 169–185.

[8] Montreal surveillance is coordinated by two separate offices. Montreals' Department of Listing and Surveillance monitors trade activity and trade reports. Montreal also has an Exchange Examiner who is responsible for monitoring member compliance and acts as an independent overseer of floor trading activity.

[9] Montreal recordkeeping rules include the requirement that a market maker retain floor tickets and other records of executed trades for a period of five years and that records of orders received but unfilled be maintained for two years. In addition, Montreal itself maintains records of all trades generated on and through its floor for comparable periods. Montreal, like United States exchanges, imposes specific "know your customer" requirements on its members and requires a member to maintain records regarding the identity of customers.

[10] In this regard, Montreal has confirmed in writing its understanding that to "cooperate fully" requires Montreal to utilize all the resources available to it "including the full discretionary authority of the Governing Committee to require members to disclose information, in order to cooperate with the BSE in resolving questioned trades." *See* letter from Pierre Lortie, President, Montreal Exchange, to Michael Lindburg, Vice President and General Counsel, BSE, dated October 31, 1984 ("October 31 letter").

[11] Montreal has indicated that the transfer of information from Monteral to the BSE falls within the scope of Article 7003. Montreal has also indicated to the BSE that when a question regarding the integrity of a trade arises which cannot be resolved by the Montreal Floor Committee, a member's records may be taken and, if necessary, depositions formally recorded. *See* October 31 letter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 8, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-8889 Filed 4-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21926; File No. SR-CBOE-85-18]

Self-Regulatory Organizations; Chicago Board Options Exchange Incorporated; Notice of Filing of Proposed Rule Change; Relating to Unusual Market Conditions

The Chicago Board Options Exchange, Incorporated ("CBOE"), LaSalle At Van Buren, Chicago, IL 60603, submitted on March 22, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), to provide that stop and stop-limit orders in the S&P 100 Index become effective when either a transaction has occurred at the stop price or the market quotation on the same side of the market equals the price on the order.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

Unusual Market Conditions

Rule 6.6. No Change.

. . . Interpretations and Policies:

.01 A stop order to buy an S&P 100 Index ("OEX") option contract becomes a market order when the option contract trades or is bid at or above the stop price. A stop order to sell an OEX option contract becomes a market order when the option contract trades or is offered at or below the stop price. A stop-limit order to buy an OEX option contract becomes a limit order when the option contract trades or is bid at or above the stop price. A stop-limit order to sell an OEX option contract becomes a limit order when the option contract trades or is offered at or below the stop price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Ordinarily, under Rule 6.53, stop orders and stop-limit orders become, respectively, market orders and limit orders when a transaction occurs at the specified stop price, or a transaction at a higher price in the case of a stop or stop-limit order to buy, or a transaction at a lower price in the case of a stop or stop-limit order to sell.

The trading pit in S&P 100 ("OEX") Index Options has become so massive that the foregoing standards for handling stop and stop-limit orders are unworkable. It is quite possible, due to the noise level and size of the OEX trading pit, for a floor broker not to be able to hear a trade causing a stop or stop-limit order to become effective.

Because current market quotations are displayed on screens, however, a floor broker is capable of seeing the relationship of the current market quotation with stop and stop-limit orders in his deck. Therefore, in order to permit the use of stop and stop-limit orders in OEX on a workable basis, the proposed rule change would cause stop and stop-limit orders to become effective based upon relationships with transactions or quotations. As proposed, a stop order or stop-limit order would become effective when either a transaction has occurred at the stop price or the market quotation on the same side of the market equals the price on the order.

Thus, for example, in the case of a stop order to buy, a market bid at the stop price would trigger the order, since the quotation would equal the stop price. A stop order to sell would become a market order once the market offer reaches the stop price.

The Exchange separates broker, dealer, and order book functions. Thus, stop orders are protected from being taken advantage of by market quotation movements effected by market-makers, who are not privy to the depth or size of stop or stop-limit orders held by floor brokers.

The proposed rule change is consistent with the Act, and in particular, Section 6(b)(5) of the Act in that the rule change is designed to protect public investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 3, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

April 8, 1985

John Wheeler,

Secretary.

[FR Doc. 85-8887 Filed 4-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23658; 70-7097]

Monongahela Power Company et al. Notice of Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealer and Exception from Competitive Bidding

April 8, 1985

Monogahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac"), Downsville Pike, Hagerstown, Maryland 21740, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601, (collectively, the "Companies"), wholly-owned electric utility subsidiaries of Allegheny Power System, Inc., a registered holding company, have filed an application with this Commission pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

The companies propose to issue and sell short-term notes from time to time to banks and to a dealer in commercial paper through December 31, 1986, in aggregate principal amounts not to exceed $60 million, $70 million, and $80 million outstanding at any one time for Monongahela, Potomac, and West Penn, respectively. These amounts include any short-term debt still outstanding under this Commission's prior authorization (HCAR No. 23161 (December 27, 1983)).

Each note payable to a bank will be dated as of the date of the borrowing which it evidences, will mature not more than 270 days after the date of issuance or renewal thereof, and will bear interest at no greater than the then current prime or equivalent interest rate of the bank at which the borrowing is made. The notes may or may not have prepayment provisions.

The Companies have agreed to pay for lines of credit with a group of banks of maintaining compensating balances (no greater than 3% of all or a portion of the line of credit) and/or by paying an annual cash fee (no greater than ¼ of 1% of all or the balance of the line of credit). Such cash balances are maintained in many cases for the purpose of meeting regular operating requirements. If the balances were maintained solely to fulfill compensating balance requirements, the effective cost of bank borrowing under the lines of credit would be no more than 10.825% based on a prime commerical credit rate of 10.5%.

The commercial paper will not be prepayable and will have varying maturities, none more than 270 days. The notes will be sold directly to a dealer at a discount not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and of the particular maturity. The dealer may reoffer the commercial paper to not more than 200 of its customers at a discount rate of 1/8 of 1% per annum less than the discount rate to the Companies. An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance and sale of commercial paper notes.

The proceeds from the borrowings will be used for general corporate purposes, including the financing of construction and property acquisitions.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 6, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-8868 Filed 4-11-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #6253; Amdt. #1]

Texas; Declaration of Disaster Loan Area

The above numbered Designation (50 FR 2640) is amended to include the County of Wibarger. All other information remains the same, i.e. the termination date for filing applications is the close of business on October 10, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 5, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-8795 Filed 4-11-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

All-Cargo Authority In Domestic Charter Section 401 Certificates

AGENCY: Department of Transportation.

ACTION: Notice of order to Show Cause (Order 85-4-14), Docket 43026.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order amending all outstanding charter certificates by removing a condition prohibiting all-cargo air transportation.

DATES: Persons wishing to file objections shall do so no later than May 1, 1985; answers to objections shall be filed no later than May 13, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43026 and addressed to the Documentary Services Division (C-55), U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590, and should be served upon all certificated air carriers.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Aviation Enforcement and Proceedings (C-70), U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590, (202) 426-7631.

Dated: April 4, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-8833 Filed 4-11-85; 8:45 am]

BILLING CODE 4910-62-M

Caribbean Air Cargo Co., Ltd; Order To Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause: Order 85-4-32.

SUMMARY: The Department proposes to approve the following application:

Applicant: Caribbean Air Cargo Company, Ltd. (Caricargo).

Application Dates: June 25, 1980, and September 15, 1983, Docket: 41703.

Authority Proposed: Initial foreign air carrier permit to engage in nonscheduled foreign air transportation of property and mail between the coterminal points Barbados and Trinidad and Tobago and the coterminal points San Juan, Puerto Rico; Miami,

Florida; Houston, Texas; and New York, New York via named Caribbean intermediate points.

Authority Tentatively Denied: Miami-Belize, Miami-Dominican Republic turnaround services.

Objections: All interested persons having objections to the Department's tentative findings and conclusions that this authority should be granted in part and denied in part, as described in order cited above, shall, NO LATER THAN May 10, 1985, file a statement of such objections with the Department of Transportation (20 copies) and mail copies to the applicant, the Department of State, and the Ambassadors of Barbados and Trinidad and Tobago in Washington, D.C. A statement of objections must cite the docket numbers and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Department will enter an order which will, subject to disapproval by the President, make final the Department's tentative findings and conclusions and issue the proposed permit.

ADDRESSES:

Docket 41702, Documentary Services Division, C–55, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590

Applicant: Caribbean Air Cargo Company, Ltd., c/o Harry A. Bowen, Esq., Suite 350, 2020 K Street, NW., Washington, D.C. 20006

To obtain a copy of the order, write to the Documentary Services Division (C–55), at the above address.

FOR FURTHER INFORMATION CONTACT: Chuck Hedges, Licensing Division, Office of Aviation Operations, Department of Transportation, (202) 755–3805.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

Summary of Application

[Dockets 41703]

Homeland Countries: Barbados and Trinidad and Tobago

Current Exemption Issued By: Order 83–4–11, dated April 15, 1983

Evidence Incorporated by Reference from: Docket 38379

Authority Covered By Bilateral Agreement: Exchange of Notes with Barbados

Reciprocity and Comity As Basis for Authority Sought: Yes—Adequate Comity and Reciprocity exist.

Holds Government License For Authority Sought: Exhibit #5

Operating History: Currently operates nonscheduled and charter cargo service to Miami, Houston, San Juan and New York from Trinidad and Tobago and Barbados

Aircraft Owned (0) And Leased (L): 2 Boeing 707–351C (L), 2 C–46 (0)

Aircraft Maintenance performed By: Caribbean Air Cargo Co., Ltd.

Financial indicators (as at)—	Dec. 31, 1982 (000)	Dec. 31, 1981 (000)
Total assets	$16.5	NA
Total liabilities	12.6	NA
Owners' equity	4.0	NA
Operating profit (Loss)–12 months ended	1.3	($.009)

Majority Ownership By Nationals Of: Barbados, Trinidad and Tobago—Government-owned

Effective Control By Nationals Of: Barbados, Trinidad and Tobago—Government-controlled

Insurance Coverage: Meets requirements of 14 CFR 205

Insurance Refused Or Involuntarily Cancelled During Last 3 years: No

Refused Debt Financing Last 3 years: No

Defaulted On Transportation Commitments Last 3 Years: No

Failed To meet Current Financial Obligations Last 3 Years: No

Safety Or Tariff Violations During Last 5 Years: No

Subscribers To Standard Permit Conditions Regarding Insurance And Annex 6 Of Chicago Convention And C.A.B. Agreement 18900: Yes

Near-term Annual Fuel Consumption Exceeds 10 million gallons: No

[FR Doc. 85–8832 Filed 4–11–85; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits filed under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended April 5, 1985.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Apr. 1, 1985	43007	Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10158. Application of Trans World Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity authorizing it to serve between St. Louis, Missouri and Toronto, Canada. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 29, 1985.
Do	43008	Trans-Artic Ltd. d/b/a Polar Alaska Enterprises, Inc. in Alaska, c/o Jane K. Matz, 2440 SW. 151st Street, Seattle, Washington 98166. Application of Trans-Artic Ltd. d/b/a/ Polar Alaska Enterprises, Inc. in Alaska pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in interstate air transportation of persons, property and mail between the terminal point Fairbanks, Alaska, Nuiqsut, Alaska and the terminal point Prudhoe Bay, Alaska, Conforming Applications, Motions to Modify Scope and Answers may be filed by April 29, 1985.
Apr. 2, 1985	43009	Sierra Trans Air, Inc., c/o Stephen A. Alterman, Meyers & Alterman, 1710 Rhode Island Avenue NW., Second Floor, Washington, D.C. 20036. Application of Sierra Trans Air, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in interstate and oversees charter air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by April 30, 1985.
Do	43011	China Airlines, Limited, c/o George C. Pendleton, Anderson & Pendleton, 1000 Connecticut Avenue NW., Suite 707, Washington, D.C. 20036. Application of China Airlines, Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment to its foreign air carrier permit to authorize it to engage in the foreign air transportation of persons, property and mail in scheduled and non-scheduled service to and from the coterminal Dallas, Texas. With this amendment, Applicant's permit would authorize it to engage in foreign air transportation of persons, property and mail, as follows: Between the coterminal points Taipei and Kaohsiung, Taiwan; intermediate points in the Pacific, and the coterminal points Guam; Honolulu, Hawaii; Seattle, Washington; Los Angeles and San Francisco, California; Dallas, Texas; New York, New York; and beyond to Amsterdam, The Netherlands. Answer may be filed by April 30, 1985.

Date filed	Docket No.	Description
Do	43013	People Express Airlines, Inc., c/o Robert E. Cohn, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036. Conforming Application of People Express Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations for an amendment of its certificate of public convenience and necessary authorizing it to operate nonstop service between Newark, New Jersey and Manchester, England Answers may be filed by April 16, 1985.
Apr. 3, 1985	43016	Trinidad and Tobago (BWIA International) Airways Corporation, c/o John L. Richardson, Verner, Liipfert, Bernhard, McPherson and Hand, Suite 1000, 1660 L Street NW., Washington, D.C. 20036. Application of Trinidad and Tobago Airways Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment to its permit, so as to authorize BWIA to engage in the foreign air transportation of persons, property and mail in scheduled service as follows: Between the terminal point New York, New York, the intermediate point Grenada, and the terminal point Port of Spain, Trinidad. Answers may be filed by May 1, 1985.
Apr. 4, 1985	43022	Air Transport International, Inc., c/o James M. Burger, Burger & Kendall, 1726 M Street NW., Washington, D.C. 20036. Application of Air Transport International, Inc. Pursuant to section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing it to engage in scheduled air transportation of persons, property and mail between and among all points, territories and possessions of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by May 2, 1985.
Do	43023	Air Ontario Limited, c/o Elisabeth M. Pendleton, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, D.C. 20036. Application of Air Ontario Limited pursuant to section 402 of the Act and Subpart Q of the Regulations to authorize it to engage in foreign scheduled air transportation of persons, property and mail between cleveland, Ohio and Toronto, Ontario. Answers may be filed by May 2, 1985.
Apr. 2, 1985	42570	Bahamasair Holdings Ltd., c/o George U. Carneal, Hogan & Hartson, 815 Connecticut Avenue NW., Washington, D.C. 20006. Second Amendment to the Application of Bahamasair Holdings Ltd. for renewal and amendment of its foreign air carrier. Bahamasair requests that its pending application should be amended by adding Orlando, Florida to the new coterminal points being sought. Answer may be filed by April 30, 1985.
Apr. 2, 1985	42052	Delta Air Lines, Inc., Hatsfield Atlanta Int'l. Airport, Atlanta, Georgia 30320. Amendment No. 1 to the Application of Delta Air Lines, Inc. to add Dallas/Ft. Worth, Texas-Tokyo, Japan to the route segments set forth in the orignal application. Answers may be filed by May 2, 1985.

Phyllis T. Kayor,
Chief, Documentary Services Division.
[FR Doc. 85-8831 Filed 4-11-85; 8:45 am]
BILLING CODE 4910-13-M

Federal Aviation Administration

General Aviation Flight Data Recorder; Availability of Technical Standard Order and Request for Comment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comment.

SUMMARY: The proposed TSO-C111 prescribes the minimum performance standard that General Aviation Flight Data Recorder must meet in order to be identified with the marking "TSO-C111."

DATE: Comments must identify the TSO file number and be received on or before July 26, 1985.

ADDRESSES: Send all comments on the proposed Technical Standard Order to:

Federal Aviation Administration, Policy and Procedures Branch, AWS-110, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C111, 800 Independence Avenue SW., Washington, D.C. 20591

Or Deliver Comments To: Room 335, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Policy and Procedures Branch, AWS-110, Aircraft Engineering Division, Office of Airworthiness Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, Telephone (202) 426-8395.

Comments received on the proposed Technical Standard Order may be inspected, before and after the comment closing date in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, D.C. 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they submitted to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How To Obtain Copies

A copy of the proposed TSO-C111 may be obtained by contacting the person under "For Further Information Contact." TSO-C111 references Society of Automotive Engineers, Inc. (SAE), Aerospace Standard (AS) Document No. 8039 dated January 1985 for the minimum performance standard and Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO-160B dated January 1980 and DO-178 dated November 18, 1981, for the environmental standard and software requirement. SAE AS Document No. 8039 may be purchased from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096, and RTCA Document Nos. DO-160B and DO-178 may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005.

Issued in Washington, D.C., on April 5, 1985.

Thomas E. McSweeny,
Manager, Aircraft Engineering.
[FR Doc. 85-8331 Filed 4-11-85; 8:45 am]
BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 71
Friday, April 12, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1
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National Labor Relations Board	8
Postal Rate Commission	9

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, April 18, 1985, see times below.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public—8:30 a.m.

1. Commission Staff Briefing

The staff will brief the Commission on various matters.

MATTERS TO BE CONSIDERED: Closed to the Public—9:30 a.m.

2. Compliance Status Report

The staff will brief the Commission on various Compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: April 10, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85-8930 Filed 85; 11:09 am]

BILLING CODE 6355-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, April 22, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization; GC Recommendations
2. Proposed Commission Decision
3. Options Paper on Enforcement of an ORA Decision

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: April 10, 1985.

Johnnie Johnson,

Attorney-Advisor.

[FR Doc. 85-8966 Filed 4-10-85; 3:34 pm]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:43 p.m. on Friday, April 5, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Capistrano National Bank, San Juan Capistrano, California, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, April 5, 1985; (2) accept the bid for the transaction submitted by Farmers and Merchants Bank of Long Beach, Long Beach, California, an insured State member bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 10, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-8959 Filed 4-10-85; 1:48 pm]

BILLING CODE 6714-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 13912, April 9, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: April 10, 1985. 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number and Company have been added:

Item No., Docket No. and Company

M-2

PL85-1-000, Statement of Policy on the Regulatory Treatment of Payments made In Lieu of Take-or-Pay

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8942 Filed 4-10-85; 1:48 pm]

BILLING CODE 6717-02-M

5

FEDERAL HOME LOAN BANK BOARD

DATES AND TIMES: Wednesday, April 17, 1985, at 9:00 a.m. Thursday, April 18, 1985, at 1:00 p.m.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meetings.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6677).

MATTERS TO BE CONSIDERED:

Meeting of Wednesday, April 17, 1985

Settlements of insurance
Mortgage disclosures
Combinations involving Federal stock associations
Acquisition of control of insured institutions; delegations

Meeting of Thursday, April 18, 1985

Loan-loss deferrals
Acquisition, development and construction loans
Subordinated debt
Over-the-counter options

No. 3, April 10, 1985.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85-8986 Filed 4-10-85; 2:02 pm]

BILLING CODE 6720-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, April 17, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposal to extend, with revision, the Commercial Bank Report of Consumer Installment Credit (FR 2571).

Discussion Agenda:

2. Proposed revisions to the Board's Equal Employment Opportunity Regulation. (Proposed earlier for public comment; Docket No. R-0527)

3. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: April 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-8907 Filed 4-9-85; 4:53 pm]

BILLING CODE 6210-01-M

7

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, April 17, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21th Street, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 9, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-8908 Filed 4-9-85; 4:53 pm]

BILLING CODE 6210-01-M

8

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Wednesday, April 17, 1985.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b (c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Selection of Regional Director for Region 30, Milwaukee, Wisconsin.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated: Washington, D.C., April 9, 1985.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 85-8985 Filed 4-10-85; 2:02 pm]

BILLING CODE 7545-01-M

9

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, April 18, 1985.

PLACE: Conference Room, Room 300, 1333 H Street, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. C85-1, Compliant of Advo-Systems, Inc.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, D.C. 20268, Telephone (202) 789-5840.

Chales L. Clapp,

Secretary.

[FR Doc. 85-8958 Filed 4-10-85; 1:46 pm]

BILLING CODE 7715-01-M

federal register

Friday
April 12, 1985

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570 and 3580

Revision of Regulations Covering Leasing of Solid Minerals Other Than Coal and Oil Shale; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, 3570, and 3590

Leasing of Solid Minerals Other Than Coal and Oil Shale; Revision of Regulations Covering Leasing of Solid Minerals Other Than Coal and Oil Shale

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would totally revise the provisions of 43 CFR Group 3500 concerning leasing of solid minerals other than coal and oil shale, to reduce the regulatory burden imposed on the public, to streamline and clarify the existing provisions, to change the format to address specific minerals individually and to achieve a number of miscellaneous purposes under the authority granted the Secretary of the Interior by various statutes.

DATE: Comments should be submitted by June 11, 1985.

Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Marcia Rohn, (202) 343–2893

or

Zareh Mozian, (202) 343–2456.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would totally revise the regulations in 43 CFR Group 3500—Leasing of Solid Minerals Other than Coal and Oil Shale. This proposed rulemaking is a result of the review of the Group 3500 regulations discussed in the final rulemaking that appeared in the Federal Register of April 25, 1984 (49 FR 17892). This proposed rulemaking will complete the streamlining and clarifying of Group 3500 that began with the amendments made by the final rulemaking of April 25, 1984. The format has been changed to address specific minerals individually. The proposed rulemaking would retain in Part 3500 those provisions that are applicable to all minerals covered by Group 3500 and would break the mineral-specific sections into separate parts as follows: Part 3510—Phosphate; Part 3520—Sodium; Part 3530—Potassium; Part 3540—Sulphur; Part 3550—Asphalt in Oklahoma and Gilsonite; Part 3560—Hardrock Minerals; and Part 3570—Special Leasing Areas. This breakdown by mineral should prove helpful to the users of these regulations. The Bureau of Land Management has prepared a redesignation table comparing the sections of the proposed rulemaking with the corresponding sections of the existing regulations. The public may obtain a copy of this table by requesting it from the above address. The proposed rulemaking is a part of a continuing effort by the Bureau to update, streamline and clarify its regulations to better serve the public, while at the same time lessening the regulatory burden imposed on the public. The public is requested to include in their comments suggestions that they believe would improve the proposed rulemaking.

One of the changes made by the proposed rulemaking is the inclusion of a section within each part covering a specific mineral which sets forth pertinent regulations that affect that mineral. Those sections are designed to serve as an aid to the user only and would not exclude the applicability of any regulations not cited. The public is asked to comment on whether these references are helpful and should they or others be in the final rulemaking.

As part of the mineral-specific provisions of the proposed rulemaking, the non-competitive leasing provisions for gilsonite would be replaced with an all competitive system. As of the date of publication of this proposed rulemaking, the Bureau of Land Management will no longer issue prospecting permits for gilsonite. If this proposed rulemaking is adopted as a final rulemaking, all pending permit applications will be rejected. All existing prospecting permits will be handled under existing regulations, with the right to obtain a preference right lease if all requirements have been met.

The Department of the Interior has been petitioned to change the allowable acreage holdings for potassium. The question of whether to change the allowable acreage for potassium and hardrock leases, where the limits is not set by statute, is being studied by the Department. The public is asked to submit comments on this question to assist the Department in its deliberations. The final rulemaking will reflect the decision made on this subject.

The proposed rulemaking follows the language of the existing regulations on the royalty rate for asphalt in Oklahoma, which is not less than $.25 per two thousand pounds of marketable production. This royalty rate has been the same for many years and the Department of the Interior is considering the need to increase the royalty rate. The public is requested to comment on this issue, with specific reasons why the rate should or should not be changed.

The proposed rulemaking would add a new Subpart 3575 which implements sections 403, 404 and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2–460mm–4). The Act authorizes the leasing of leasable and hardrock minerals within the White Mountains National Recreation Area and grants holders of certain unperfected mining claims a preference right to lease those minerals.

The proposed rulemaking would eliminate the provisions of § 3563.1 pertaining to leasing of silica sands and other nonmetallic minerals in certain lands in Nevada. This deletion is required because Executive Order No. 5015, which withdrew these lands and provided for such leasing, has been rescinded. The proposed rulemaking also would eliminate the provisions of § 3563.2 that authorize the leasing of sand and gravel in certain lands patented to the State of Nevada. The authorizing statute does not specify the method of disposal of these deposits and the Department of the Interior has determined that, for uniformity, they should be disposed of under the Materials Act of 1947 (30 U.S.C. 601 et seq.). As a result of the change that would be made by this proposed rulemaking, future disposals of such sand and gravel would be made only under the regulations in Group 3600 which implement the Materials Act and no further leases would be issued under § 3563.2 after the date of publication of this proposed rulemaking. Any outstanding leases would be managed in accordance with the existing provisions of § 3563.2. However, such leases would be renewed only for the lessee of record on the effective date of the final rulemaking resulting from this proposed rulemaking.

The proposed rulemaking would cross-reference the provisions of 43 CFR 2920 to allow individuals to obtain mineral exploration licenses for gathering in an environmentally sound way needed resource and geological data. In addition, the proposed rulemaking would add specific requirements unique only to mineral exploration licenses. Another change that would be made by the proposed rulemaking, to facilitate prompt environmental review, is a requirement

that an applicant file an exploration plan with an application for a prospecting permit. The existing regulations require the filing of an exploration plan prior to entry on the lands for prospecting purposes.

The public is also requested to review this revision carefully to be certain that no procedures that are necessary to the efficient operation of the programs covered by the regulations have been omitted.

The principal author of this proposed rulemaking is Marcia Rohn, Division of Solid Mineral Leasing, assisted by the staff of the Office of Legislation and Regulatory Management, all of the Bureau of Land Management, and the staff of the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rulemaking is a revision of existing regulations and would not change in any substantive manner the procedures imposed by the existing regulations. The principal purpose of the proposed rulemaking is to streamline and simplify the procedures contained in the existing regulations. This will benefit all users equally.

The information collection requirements in this proposed rulemaking have already been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0030, 1004–0121 and 1004–0142.

List of Subjects

43 CFR Part 3500

Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3510

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3520

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3530

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3540

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3550

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3560

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3570

Administrative practice and procedure, Mines, Public lands—mineral resources, Surety bonds.

43 CFR Part 3580

Mineral royalties, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), Reorganization Plan No. 3 of 1946 (16 U.S.C. 520), and the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm—2—460mm—4) it is proposed to revise Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, and 3570, Group 3500, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

Group 3500—[Revised]

1. Group 3500 is revised:

A. By redesignating part 3570 as part 3580:

B. By Revising Parts 3500, 3510, 3520, 3530, 3540, 3550, and 3560, and adding a new part 3570 to read as follows:

Group 3500—Leasing of Solid Minerals Other than Coal and Oil Shale

Note.—The information collection requirements contained in Parts 3500, 3510, 3520, 3530, 3540, 3550, 3560, and 3570 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1004–0030, 1004–0121 and 1004–0142. The information is being collected to permit the authorized officer to determine whether an applicant is qualified to hold a lease for exploration, development and utilization of leasable minerals other than coal and oil shale on the public lands. The information will be used to make this determination. A response is required to obtain a benefit.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

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Subpart 3500—Leasing of Solid Minerals Other Than Coal and Oil Shale—General

§ 3500.0–3 Authorities.

The statutory authorities for the regulations in this group are as follows:

(a) *Leasable minerals.*—(1) *Public domain.* The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181–287), including the Act of February 7, 1927 (30 U.S.C. 281–287), the Act of April 17, 1926 (30 U.S.C. 271–276), and the Act of June 28, 1944 (58 Stat. 483–485), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(2) *Acquired lands.* The Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(b) *Hardrock minerals.* (1) Section 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. Appendix) transferred the functions of the Secretary of Agriculture relative to the leasing or other disposal of minerals to the Secretary of the Interior for lands acquired under the following statutes: (i) the Act of March 4, 1917 (16 U.S.C. 520); (ii) Title II of the National Industrial Recovery Act of June 16, 1933 (40 U.S.C. 401, 403(a) and 408); (iii) the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118); (iv) section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); (v) the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (7 U.S.C. 1011(c) and 1018); and (vi) section 3 of the Act of June 28, 1952 (66 Stat. 285).

(2) Section 3 of the Act of September 1, 1949 (30 U.S.C. 192c) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(3) The Act of June 30, 1950 (16 U.S.C. 508(b)) authorizes leasing of the hardrock minerals on National Forest lands in Minnesota.

(c) *Special acts.* (1) Gold and silver in confirmed private land grants are covered by the Act of June 8, 1926 (30 U.S.C. 291–293).

(2) Reserved minerals in lands patented to the State of California for parks or other purposes are covered by the Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026).

(3) *National Park Service Areas.* Congress authorized mineral leasing, including the leasing of nonleaseable minerals in the manner prescribed by section 10 of the Act of August 4, 1939 (43 U.S.C. 387), in the following national recreation areas: (i) Lake Mead National Recreation Area—The Act of October 8, 1964 (16 U.S.C. 460n–3(b)); (ii) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—The Act of November 8, 1965 (16 U.S.C. 460q–5); (iii) Ross Lake and Lake Chelan National Recreation Areas—The Act of October 2, 1968 (16 U.S.C. 90c–1(b)); (iv) Glen Canyon National Recreation Area—The Act of October 27, 1972 (16 U.S.C. 460dd et seq.).

(4) *Shasta-Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the Act of November 8, 1965, (16 U.S.C. 460q–5) authorizes mineral leasing, including the leasing of nonleasable minerals in the manner prescribed by section 3 of the Act of September 1, 1949, (30 U.S.C. 192c), on lands within the Shasta-Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

(5) *White Mountains National Recreation Area.* Sections 403, 404, and 1312 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 460mm–2 through 460mm–4) authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner described by section 10 of the Act of August 4, 1939, as amended (43 U.S.C. 387), and the removal of leasable minerals from lands or interest in lands within the recreation area in accordance with the mineral leasing laws.

(6) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) authorizes the management and use of the public lands.

(7) The Independent Offices Appropriation Act (31 U.S.C. 9701) authorizes agencies to charge fees to recover the costs of providing services or things of value.

§ 3500.0–5 Definitions.

As used in Group 3500, the term:

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "State Director" means an employee of the Bureau of Land Management who has been designated as the chief administrative officer of one of the Bureau's 12 administrative areas designated as "States".

(d) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in group 3500 of this title.

(e) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in group 3500 of this title (see 43 CFR subpart 1821).

(f) "Public domain lands" means lands, including mineral estates, which never left the ownership of the United States, lands which were obtained by the United States in exchange for public domain lands, lands which have reverted to the ownership of United States through the operation of the public land laws, and others specifically identified by Congress as part of the public domain.

(g) "Acquired lands" means lands, including mineral estates, which are not public domain lands and which the United States obtained through purchase, gift, or condemnation, and includes lands previously disposed of

under the public land laws including the mining laws.

(h) "Leasable minerals" means the chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium or sodium and related products; sulphur in the States of Louisiana and New Mexico and on all acquired lands; phosphate, including associated and related minerals; asphalt in certain lands in Oklahoma; and gilsonite (including all vein-type solid hydrocarbons).

(i) "Valuable deposit" means a mineral occurrence where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his/her labor and means, with a reasonable prospect of success, in developing a valuable mine.

(j) "Chiefly valuable" means a valuable deposit where there is no significant conflict between the extraction of sodium, sulphur or potassium and any non-mineral disposition of lands. Where such extraction conflicts with other disposition, the lands shall be deemed chiefly valuable for sodium, sulphur or potassium extraction if the economic value of the lands for extraction of such minerals exceeds its economic value for any non-mineral disposition.

(k) "Act" means the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

(l) "Service" means the Minerals Management Service.

(m) "Bureau" means the Bureau of Land Management.

(n) "Hardrock minerals" means those locatable minerals for which a mineral patent may be obtained under the Mining Law of 1872 and which are not leasable minerals or mineral materials salable under Group 3600 of this title. Hardrock minerals include, but are not limited to, copper, lead, zinc, magnesium, nickel, tungsten, gold, silver, bentonite, uranium, barite, feldspar and flourspar.

§ 3500.1 Nondiscrimination.

Any person acquiring a lease under Group 3500 shall comply fully with the equal opportunity provisions of Executive Order 11246 of September 24, 1965, as amended, and the regulations and relevant orders of the Secretary of Labor (41 CFR Chapter 60) and 43 CFR Part 17.

§ 3500.2 False statements.

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

§ 3500.3 Unlawful interests.

No member of, or delegate to, Congress, or Resident Commissioner, and no employee of the Department of the Interior, except as provided in part 20 of this title, shall be entitled to acquire or hold any Federal lease, or interest therein. (Officer, agent or employee of the Department—See 43 CFR Part 20; Member of Congress—See R.S. 3741; 41 U.S.C. 22; 18 U.S.C. 431–433)

§ 3500.4 Appeals.

Any party adversely affected by a decision of the authorized officer made pursuant to the provisions of Group 3500 of this title shall have a right of appeal pursuant to part 4 of this title.

§ 3500.5 Filing of documents.

(a) All necessary documents shall be filed in the proper BLM office. A document shall be considered filed when it is received in the proper BLM office.

(b) Documents and supporting information filed under this group shall be closed to inspection in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552).

§ 3500.6 Multiple development.

The granting of a permit or lease for the prospecting, development or production of deposits of any particular mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation, or the allowance of applicable entries, locations or selections of leased lands with a reservation of the mineral deposits to the United States. Each permit or lease shall reserve the right to allow any other uses, or to allow disposal, of the leased lands that will not unreasonably interfere with the exploration and mining operations of the permittee or lessee and the permittee/lessee shall make all reasonable efforts to avoid interference with such authorized uses.

§ 3500.7 Environmental considerations.

Before a lease or permit is issued, the authorized officer or the appropriate surface management agency shall prepare the appropriate documentation required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

§ 3500.8 Lands not subject to leasing.

The following lands are not subject to leasing under the provisions of group 3500:

(a) Lands within national parks and monuments;

(b) Lands within Indian Reservations, except the Uintah and Ouray Indian Reservation, Mill Creek Extension, State of Utah;

(c) Lands within incorporated cities, towns and villages;

(d) Lands within naval petroleum and oil shale reserves and within the national petroleum reserves;

(e) Lands acquired by the United States for development of helium, fissionable material deposits or other minerals essential to the defense of the country, except that the lands may be leased for leasable minerals subject to leasing under the Act;

(f) Lands acquired by foreclosure or otherwise for resale;

(g) Acquired lands reported as surplus under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); and

(h) Any tidelands or submerged coastal lands within the continental shelf or littoral to any part of lands within the jurisdiction of the United States.

§ 3500.9 Consent and consultation.

§ 3500.9–1 Federal lands administered by agencies outside of the Department of the Interior.

(a) Unless consent is required by law, public domain lands administered by an agency outside of the Department of the Interior shall only be leased after the Bureau of Land Management has consulted with the surface managing agency.

(b) Acquired lands shall only be leased with the written consent of the head or other appropriate official of the surface managing agency.

(c) An applicant may pursue the administrative remedies provided by a particular surface managing agency where such agency has required special stipulations in the lease or permit, or has refused consent to issuance of the lease or permit. It the applicant notifies the authorized officer within 30 days of receipt of the Bureau's decision that he/she has requested the surface managing agency to reconsider its decision, the time for filing an appeal under part 4 of this title is suspended until a decision is reached by such agency.

§ 3500.9–2 Ownership of surface overlying federally owned minerals by a State or charitable organization.

Where the United States has conveyed title to, or otherwise transferred the control of the surface of lands to any State or political subdivision, agency or instrumentality

thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for permit or lease and shall be given a reasonable time, not to exceed 90 days, within which to suggest any lease stipulations deemed necessary for the protection of existing surface improvements or uses, to set forth the facts supporting the necessity of the stipulations or file any objections it may have to the issuance of the lease or permit. Where a party controlling the surface opposes the issuance of a lease or permit or wishes to place such restrictive stipulations, but the facts submitted in opposition to issuance or concerning the necessity for restrictive stipulations expressed by the party controlling the surface do not provide adequate basis for such action, the final decision as to whether to issue the lease or permit shall be based on a determination by the authorized officer as to whether or not the interests of the United States would best be served.

Subpart 3501—Descriptions and Acreage

§ 3501.1 Land descriptions.

§ 3501.1–1 Public domain.

Each application shall contain a complete and accurate description of the lands for which the lease or permit is desired. The lands applied for shall be in reasonably compact form.

(a) If the lands have been surveyed under the public land rectangular system, each application shall describe the lands by legal subdivision, section, township and range. Generally, a quarter-quarter section or a lot is the smallest legal subdivision for which an application may be made.

(b) When protracted surveys have been approved and the effective date thereof published in the **Federal Register**, all applications for lands shown on such approved protracted surveys shall describe the lands in the same manner as provided in paragraph (a) of this section for officially surveyed lands.

(c) If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(d) (1) On a noncompetitive lease, the survey for unsurveyed lands shall be at the expense of the applicant.

(2) On a competitive lease, the survey of unsurveyed lands shall be at the expense of the United States.

§ 3501.1–2 Acquired lands.

(a) (1) If the lands have been surveyed under the rectangular system of public land surveys, the description shall conform to that system and the lands shall be described by legal subdivision, section, township, and range. Generally, a quarter-quarter section or a lot is the smallest legal subdivision for which an application may be made.

(2) Where the description cannot conform to the public land surveys, any boundaries which do not so conform shall be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not surveyed but within the area of the public land surveys, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected to a reasonably nearby official survey corner by courses and distances. Each application shall be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part.

(b) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it shall be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired lands constitute less than the entire tract acquired by the United States, they shall be described by courses and distances between successive angle points on the boundary of the tract, tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances. Each application shall be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part.

(c) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number shall be accepted in lieu of the description required in paragraphs (a)(2) and (b) of this section. However, such application shall be accompanied by the map required by paragraphs (a)(2) and (b) of this section.

§ 3501.1–3 Accreted lands.

Where an application includes any accreted lands that are not described in the deed to the United States, such accreted lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3501.2 Computing acreage holdings.

(a) In computing acreage holdings or control, the accountable acreage of a party owning any interest, either directly or indirectly, shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage, except that no party shall be charged with its pro rata share of any acreage holdings of any association or corporation, unless it is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) The amount of acquired lands acreage for leasable minerals that may be held under lease or permit may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the Act. Public domain lease holdings shall not be charged against acquired lands lease holdings and vice versa; such respective holdings shall not be interchangeable.

(c) Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

Subpart 3502—Qualification Requirements

§ 3502.1 Who may hold leases.

(a) Leases may be held only by citizens of the United States, associations (including partnerships and trusts) of such citizens, corporations organized under the laws of the United States or of any State or territory thereof and by municipalities. Citizens of a foreign country may only hold interest in leases or permits through stock ownership, stock holding or stock control.

(b) Citizens of a foreign country may only hold interests in leases and permits for leasable minerals if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States. A list of those countries denying similar or like privileges is available from any Bureau office.

(c) A mineral lease or permit shall not be issued to a minor. Leases or permits may be issued to a legal guardian or trustee of a minor.

§ 3502.2 Qualifications and holdings statements.

§ 3502.2–1 Filing of evidence.

Evidence of qualifications rquired by this section may be filed separately in the proper BLM Office. Thereafter, a reference by serial number to the record in which such evidence is filed, together with a statement as to any amendments, shall be acceptable in lieu of resubmitting the evidence with each application. It is the responsibility of applicants and lessees to assure that such evidence is current and accurate. An application referring to the serial number may be submitted only to the Bureau office where the evidence of qualifications is on file.

§ 3502.2–2 Individuals.

To qualify to hold a Federal prospecting permit, lease or license, an individual shall submit a signed statement showing:

(a) He/she is a U.S. citizen; and

(b) That his/her acreage holdings for the particular mineral concerned do not exceed the acreage holdings allowed for that mineral.

§ 3502.2–3 Associations, including partnerships and trusts.

(a) For an association, such as a partnership, to qualify to hold a prospecting permit, lease or exploration license, or any interest therein, a member or authorized attorney-in-fact shall submit the following:

(1) A signed statement setting forth: (i) The names, addresses, and citizenship of all members owning or controlling 10 percent or more of the association or partnership; (ii) the names of the members authorized to act on behalf of the association or partnership; (iii) that the association or partnership's acreage holdings for the particular mineral concerned do not exceed the acreage holdings for that mineral; and (iv) that the acreage holdings of any member owning more than 10 percent of the association or partnership do not exceed that allowed.

(2) A copy of the articles of the association or partnership.

(b) In order for a trust to hold prospecting permits or leases or any interest therein on behalf of a beneficiary, the guardian or trustee shall submit the following:

(1) A signed statement setting forth: (i) the citizenship of the beneficiary; (ii) the guardian or trustee's own citizenship; (iii) the grantor's citizenship, if the trust is revocable; and (iv) that the acreage holdings of the beneficiary, the guardian or trustee, or the grantor, if the trust is revocable, do not exceed that allowed.

(2) A copy of the court order or other document authorizing or creating the trust or guardianship.

§ 3502.2–4 Corporations.

For a corporation to qualify to hold a prospecting permit, lease, or exploration license, or any interest therein, an officer or authorized attorney-in-fact shall submit a signed statement setting forth:

(a) The State in which the corporation is incorporated;

(b) The names and citizenship of any stockholder owning or controlling more than 10 percent of the stock of the corporation;

(c) The names of the officers authorized to act on behalf of the corporation;

(d) That the corporation's acreage holdings, and those of any stockholding identified under paragraph (b) of this section, do not exceed that allowed; and

(e) The percentage of stock owned, held or controlled by citizens of a foreign country or persons with addresses outside the United States.

§ 3502.2–5 Heirs and devisees.

(a) If an applicant for a permit, an applicant for a preference right lease or a successful bidder to a competitive lease dies before the permit or lease is issued, the permit or lease shall be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his/her name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms;

(ii) Evidence that the heirs or devisees are the heirs or devisees of the decreased and are his/her only heirs or devisees; and

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by § 3502.2–1 of this title.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by § 3502.2–1 of this title, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

(b) If a permittee or lessee dies, the executor or administrator of the estate shall be recognized as the record title holder of the permit or lease if probate has not been completed; and if probate has been completed, or is not required, the heirs or devisees shall be so recognized, provided that in all cases, the evidence required in paragraph (a) of this section has been filed.

§ 3502.2–6 Attorneys-in-fact.

An attorney-in-fact shall submit evidence of his/her authority to act on behalf of the applicant. The applicant shall submit a separate statement as to qualifications and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make or to execute such statements.

§ 3502.3 Other parties in interest.

If the applicant is not the sole party in interest to a permit or lease, he/she shall submit with his/her application the names of all other parties who hold or will hold any interest in the application or in the permit or lease, when issued. All interested parties shall furnish appropriate evidence of their qualifications to hold such permit or lease interest.

Subpart 3503—Fees, Rentals and Royalties

§ 3503.1 Payments.

§ 3503.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

§ 3503.1-2 Where remitted.

(a)(1) All filing fees and all first-year rentals and bonuses for leases issued under Group 3500 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and all payments for leases shall be paid to the Service.

(b) All royalties on producing leases and all payments under leases in their minimum production period shall be paid to the Service.

§ 3503.2 Production royalties, minimum royalties and overriding royalties.

§ 3503.2-1 Production royalty rates.

Production royalty rates shall be set out in a separate schedule attached to and made a part of all leases and shall be determined on an individual case basis by the authorized officer prior to lease offering. For leases offered competitively, the rates shall be set out in the notice of lease sale. For leases issued noncompetitively, the schedule shall be sent to the prospective lessee for concurrence and signature prior to lease issuance.

§ 3503.2-2 Minimum production and royalty.

(a) Each lease shall be conditioned upon a minimum annual production beginning with the sixth lease year, except the authorized officer may allow in writing the payment of minimum royalty described in paragraph (b) of this section in lieu of production for any particular lease year. Minimum royalty payments shall be credited to production royalties for that year.

(b) Leases issued, renewed or readjusted on or after the effective date of these regulations shall establish a minimum royalty of $3 per acre or fraction thereof per year payable in advance.

(c) Leases renewed or readjusted after the effective date of these regulations shall require a minimum annual production as described in paragraph (a) of this section beginning with the first full year after the date of the renewal or readjustment. Hardrock mineral leases or development or operating agreements which are subject to escalating rentals are exempt from these minimum production and royalty requirements.

§ 3503.2-3 Limitation of overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise; provided, however, that if the total of the overriding royalty interest at any time exceeds 1 percent of the gross value of the output at the point at which royalty is assessed, it shall be subject to reduction or suspension by the authorized officer to a total of not less than 1 percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order to: (1) prevent premature abandonment; or (2) make possible the economic mining of marginal or low grade deposits. Where there is more than 1 overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or, in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest shall not be approved unless the owner of that interest files his/her agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the authorized officer.

(c) Where an interest in a phosphate lease, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he/she shows to the satisfaction of the authorized officer that he/she has made substantial investments for improvements on the lands covered by the assignment.

§ 3503.2-4 Waiver, suspension, or reduction of rental, minimum royalty or royalties.

(a) In order to encourage the greatest ultimate recovery of the leased minerals, and in the interest of conservation, whenever the authorized officer determines it is necessary to promote development or finds that leases cannot be successfully operated under the terms provided therein, the rental or minimum royalty payments may be waived, suspended or reduced, or the rate of royalty reduced.

(b) An application for any of the above benefits shall be filed in duplicate in the proper BLM office. The application shall contain the serial number of the lease, the name of the record title holder, the operator or sublessee and a description of the lands by legal subdivision in addition to the following information:

(1) Each application shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months immediately preceding the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(2) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products and all facts showing whether the mines can be successfully operated under the royalty or rental fixed in the lease. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to anyone other than the United States, the amounts so paid and efforts made to reduce them.

(3) The applicant shall also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to aggregate not in excess of one-half the royalties paid to the United States.

§ 3503.3 Suspensions.

§ 3503.3-1 Suspension of operations and production.

(a) The authorized officer may, in the interest of conservation, order or agree to a suspension of operations and production.

(b) Applications by lessees for suspensions of operations and production shall be filed in duplicate in the proper BLM office and shall set forth why it is in the interest of conservation to suspend operations and production.

(c) The term of any lease shall be extended by adding thereto any period of suspension of operations and production during such term.

(d) A suspension shall take effect as of the date specified by the authorized officer. Rental and minimum annual production shall be suspended during any period of suspension of operations and production beginning with the first day of the lease month on which the

suspension of operations and production becomes effective, or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental and minimum annual production shall end on the first day of the lease month in which operations or production is resumed, or upon expiration of the suspension, whichever occurs first. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the lease.

(e) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which a suspension of operations and production is directed or granted by the authorized officer.

§ 3503.3-2 Suspension of operations.

(a) The authorized officer may suspend operations on a lease issued under the regulations in group 3500 of this title when marketing conditions are such that leases cannot be operated except at a loss.

(b) Application for suspension shall be submitted in duplicate to the proper BLM office and shall contain sufficient information to establish that the lease cannot be operated except at a loss.

(c) A suspension of operations does not affect the term of the lease or the annual rental payment.

(d) A suspension shall take effect as of the date specified by the authorized officer. Minimum annual production shall be suspended during any period of suspension of operations beginning with the first day of the lease month on which the suspension becomes effective, or, if the suspension becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of minimum annual production shall end on the first day of the lease month in which operations are resumed, or upon expiration of the suspension, whichever occurs first.

(e) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which a suspension of operations is granted by the authorized officer.

Subpart 3504—Bonds

§ 3504.1 Bonding requirements.

§ 3504.1-1 When filed.

Prior to the issuance of a permit or lease, the applicant shall be required to submit a surety or personal bond as described in this subpart.

§ 3504.1-2 Where filed.

All bonds shall be filed in the proper BLM office on an approved form. A single copy executed by the principal or, in the case of surety bonds, by both the principal and an acceptable surety is sufficient. Nationwide bonds may be filed in any Bureau office.

§ 3504.1-3 Surety bonds and personal bonds.

(a) Only those surety bonds issued by qualified surety companies approved by the Department of the Treasury shall be accepted. (See Department of the Treasury Circular No. 570, any supplemental circulars or any replacements).

(b) Personal bonds shall be accompanied by: (1) cash; (2) cashier's check; (3) certified check; or (4) negotiable U.S. Treasury bonds of a value equal to the amount specified in the bond. Negotiable Treasury bonds shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the lease or permit.

§ 3504.1-4 Amount of bond.

(a) The bond amounts shall be established on a case by case basis by the authorized officer. Minimum bonding requirements are set forth in the pertinent regulations for specific minerals.

(b) The authorized officer may elect to increase the amount of any bond to be issued or any outstanding bond when additional coverage is determined appropriate.

§ 3504.1-5 Statewide and nationwide bonds.

(a) In lieu of separate bonds for each lease or permit, a lessee or permittee may furnish a bond in an amount of not less than $25,000, as determined by the authorized officer, to cover all leases and permits for a specific mineral in any 1 State.

(b) In lieu of separate bonds for each lease or permit, a lessee or permittee may furnish a bond in the amount of not less than $150,000, as determined by the authorized officer, to cover all leases and permits for a specific mineral nationwide.

§ 3504.2 Default.

(a) Where, upon a default, the surety makes a payment to the United States of an obligation incurred under a lease, the face amount of the surety bond or personal bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) After default, upon penalty of cancellation of all of the leases or permits covered by such bond, the principal shall within 6 months after notice, or within such shorter period as may be fixed by the authorized officer, either post a new bond or increase the existing bond to the amount previously held. In lieu thereof, the principal may within that time file separate or substitute bonds for each lease or permit.

§ 3504.3 Termination of period of liability.

The authorized officer shall not give consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease or permit have been met.

Subpart 3506—Assignments and Subleases

§ 3506.1 Permits and leases subject to assignment or sublease.

Any prospecting permit or lease may be assigned in whole or in part to any person, association, or corporation qualified to hold such lease or permit.

§ 3506.2 Filing fees.

To be accepted for filing, each instrument of assignment of record title, operating rights and overriding royalty assignments shall be accompanied by a nonrefundable filing fee of $25. Any instrument not accompanied by the filing fee shall not be accepted.

§ 3506.3 Filing requirements.

§ 3506.3-1 Record title assignments.

(a) A separate instrument of assignment shall be filed in triplicate for each permit or lease. The instrument shall be filed within 90 days of final execution and shall contain:

(1) Name and current address of assignee;

(2) Interest held assignor and interest to be assigned;

(3) Description of the lands to be assigned as described in the permit or lease;

(4) Percentage of overriding royalties retained; and

(5) Date and signature of assignor.

(b) The assignee shall provide a single copy of the request for approval of assignment which shall contain:

(1) Statement of qualifications and holdings as required by subpart 3502 of this title;

(2) Date and signature of assignee; and

(3) Filing fee as required by § 3506.2 of this title;

(c) The approval of an assignment of all interests in a specific portion of the lands in a lease shall create a separate lease which shall be given a current serial number.

§ 3506.3–2 Operating rights.

One copy of an operating rights assignment shall be filed within 90 days from the date of final execution and shall contain the operating agreement between the lessee and operator. The assignee shall file a request for approval as described in § 3506.3–1(b) of this title. The agreement shall be approved by formal decision.

§ 3506.3–3 Overriding royalty interests.

In order to verify the holdings of the assignee, all overriding royalty interest assignments shall be filed for record purposes within 90 days from the date of execution, but no formal approval shall be given. Any such assignment shall be deemed to be valid provided it is accompanied by the assignee's statement of qualifications as provided for in subpart 3502 of this title.

§ 3506.4 Permit or lease account status.

The authorized officer shall not approve an assignment of a permit or lease unless the account under the permit or lease is in good standing.

§ 3506.5 Bonds.

§ 3506.5–1 Coverage.

If the permittee or lessee has been required to maintain a bond, then prior to approval of the assignment, the assignee shall be required to furnish a new bond in the same amount, or, in lieu thereof, consent of the surety on the present bond to the substitution of the assignee as principal. (See Subpart 3504)

§ 3506.5–2 Continuing responsibility.

The assignor and his/her surety shall continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the assignment. If the assignment is not approved, the assignor's obligation to the United States shall continue as though no such assignment had been filed for approval. After the effective date of approval the assignee, including sublessee, and his/her surety shall be responsible for the performance of all permit or lease obligations notwithstanding any terms in the assignment to the contrary.

§ 3506.6 Effective date.

An assignment shall take effect the first day of the month following its final approval by the Bureau, or if the assignee requests, the first day of the month of the approval.

§ 3506.7 Extensions.

The approval of an assignment shall not extend the life of the permit or the readjustment or renewal periods of the lease.

Subpart 3507—Fractional and Future Interest Permits and Leases

§ 3507.1 Issuance of prospecting permits and leases.

§ 3507.1–1 Prospecting permits.

A prospecting permit for a present fractional interest in mineral deposits acquired by the United States may be issued by the authorized officer.

§ 3507.1–2 Leases.

Subject to the provisions of section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 353), noncompetitive leases for future or fractional interests in lands believed, but not known, to contain mineral deposits, may be issued by the authorized officer whenever he/she finds it to be in the public interest.

§ 3507.2 Forms and applications.

No specific application form is required, but the application shall contain the same information required of an applicant for the specific mineral concerned.

§ 3507.3 Terms and conditions.

Permit and lease terms and conditions shall be established on an individual case basis.

§ 3507.4 Consent of agency or bureau.

A prospecting permit for a present fractional interest in mineral deposits, or a lease for a fractional or future interest in mineral deposits acquired by the United States, may be issued by the authorized officer only with the consent of the surface management agency.

§ 3507.5 Where filed and filing fee.

The application shall be filed in triplicate in the proper BLM office and shall be accompanied by a nonrefundable filing fee of $25.

§ 3507.6 Qualifications.

Compliance with Subpart 3502 of this title is required.

§ 3507.7 Evidence of ownership.

§ 3507.7–1 Present fractional interest.

An applicant for a present fractional interest permit or lease shall have a present interest in the minerals. If the applicant does not own all of the mineral interests not owned by the United States or all of the operating rights therein, the application shall show the extent of the applicant's rights and the names of the other owners of such rights.

§ 3507.7–2 Future interest.

An application for a whole or fractional future interest prospecting permit or lease shall include evidence of title to the present interest in the mineral deposit, which may be in the form of a certified abstract of title or certificate of title. If the applicant is the owner of the operating rights to the non-federal minerals and acquired such rights under a lease or contract with the owner of such minerals, the application shall be accompanied by 3 copies of such lease or contract. A whole or fractional future interest lease shall be issued only to an applicant who owns all or substantially all of the present operating rights to the non-federal minerals as fee owner, lessee or operator holding such rights.

§ 3507.8 Effective date of future interest leases.

Furture interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3507.9 Rejection of application.

(a) An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals shall be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time shall automatically lapse and thereafter only applications for a present interest lease shall be considered.

(b) Unless the authorized officer determines it to be in the public interest to do otherwise, a lease or prospecting permit shall not issue to one who, with the Federal interest applied for, would control less than 50 percent of the operating rights, and the application for such a lease or permit shall be rejected.

Subpart 3508—Mineral Lease Exchange

§ 3508.0–1 Purpose.

This subpart permits a mineral prospecting permittee, or mineral lessee, to relinquish the lease to be acquired under preference right, or an existing mineral lease, in exchange for a mineral lease of other lands of comparable value for any leasable or hardrock mineral when the Secretary concludes that operations on the preference right or outstanding lease would not be in the public interest, and that operations on

the lands leased in exchange would be in the public interest.

§ 3508.0-7 Scope.

(a) The regulations in this subpart and Subpart 3435 of this title, which cover provisions related to exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications, may be used in exchanges of one mineral for another.

(b) In the case of a conflict between this subpart and the provisions of Subpart 3435 of this title, the provisions governing the lease or lease interest to be issued shall control.

§ 3508.1 When exchange provisions apply.

(a) The provisions of this subpart shall be invoked by the authorized officer notifying the preference right lease applicant or lessee that he/she is prepared to consider exchange of a mineral lease for relinquishment of leasing rights on the lands described in the notice.

(b) The authorized officer may seek the exchange of any part or all of the lands under preference right lease application or lease. More than 1 preference right lease application or lease may be considered. The effect of a partial or multiple exchange shall be taken into account by the authorized officer in determining whether such an exchange is in the public interest.

(c) An exchange mineral lease shall not be issued unless the authorized officer finds, after completing the procedures in this subpart, that the exchange is in the public interest.

(d) For the purposes of this subpart, an exchange shall be considered in the public interest if the authorized officer finds that the benefits of production from the lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to agricultural production potential, or scenic, biological, geologic, historic or other public interest values from lease operations. In exercising his/her discretion to exchange mineral leasing values in the public interest, the authorized officer shall consider, but is not limited to consideration of, these elements of the public interest: recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports and rights-of-way.

§ 3508.2 Exchange procedures.

(a) The authorized officer shall notify the preference right lease applicant or lessee when he/she is prepared to consider an exchange or other mineral leasing values for a tract under lease application or lease. The exchange notice shall:

(1) State why the authorized officer believes an exchange would be in the public interest;

(2) Provide that the lease applicant or lessee shall respond by indicating whether he/she is willing to negotiate for an exchange under this subpart; and

(3) Contain a description of the lands for which the authorized officer would offer exchange terms. The preference right lease applicant's or lessee's reply may describe the lands on which the lease applicant or lessee would accept an exchange lease.

(b) A preference right lease applicant shall show the timely submittal of a mineral preference right lease application.

(c) If the preference right lease applicant demonstrates to the Secretary that the applicant has a preference right to a lease, the authorized officer may, in lieu of issuing a lease on the preference right, negotiate for the selection of appropriate exchange lands and establish lease terms on the lands to be leased in exchange.

(d)(1) The lands leased in exchange shall, to the satisfaction of the preference right lease applicant or lessee and the authorized officer, be a lease tract containing a deposit of leasable or hardrock minerals of comparable value. A lease tract shall be determined "of comparable value" for exchange purposes when the authorized officer concludes that the value of the more valuable tract is less than 10 percent greater than the value of the less valuable tract.

(2) The lands covered by an exchange lease shall be subject to leasing under the authorities contained in § 3500.0-3 of this title.

(e) The exchange right shall be equal to the fair market value of the preference right or lease to be relinquished. A reply to the authorized officer's notice by the preference right lease applicant or lessee which indicates a willingness to consider an exchange also shall indicate a willingness to provide geologic and economic data to enable the authorized officer to determine the fair market value of the relinquished preference right or lease.

(f) After the prospective exchange lessee and the authorized officer agree on the lands to be leased in exchange, a notice of the proposed exchange shall be published in the **Federal Register** and in a newspaper(s) in the county(s) where both the preference right or lease lands and the proposed exchange lease lands are located. The notice shall include:

(1) The time and place of a public hearing(s);

(2) The authorized officer's preliminary findings that the exchange is in the public interest; and

(3) A request for public comments on the merits of the proposed exchange.

§ 3508.3 Issuance of lease.

(a) If, after public hearing, the authorized officer determines by written decision that issuance of the exchange lease is in the public interest, he/she shall establish stipulations for operations on the exchange lease.

(b) The exchange lease shall be subject to the relevant provisions of group 3500 and standard lease terms thereunder and shall contain:

(1) A recital that the lessee quitclaims and relinquishes any right or interest in the preference right lease application or lease exchanged; and

(2) A recital of the authorized officer's finding that the lease issuance is in the public interest.

Subpart 3509—Relinquishment, Termination, Expiration, and Cancellation

§ 3509.1 Relinquishment.

§ 3509.1-1 Prospecting permits.

The permittee may relinquish the entire prospecting permit or any legal subdivision thereof. A partial relinquishment shall clearly describe the lands surrendered and give the exact acreage relinquished. A relinquishment shall be filed in the proper BLM office. Upon its acceptance by the authorized officer, the relinquishment shall be effective as of the date it is filed. Such lands, if otherwise available, shall become available for the filing of new applications immediately upon notation on the official status records.

§ 3509.1-2 Leases.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may relinquish the entire lease or any legal subdivision thereof. A partial relinquishment shall clearly describe the lands surrendered and the exact area thereof. A relinquishment shall be filed in the proper BLM office. Upon its acceptance by the authorized officer, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his/her surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in

accordance with the regulations and terms of the lease.

§ 3509.2 Termination of prospecting permits.

A prospecting permit shall automatically terminate for failure to pay rental on or before the anniversary date of the permit. The termination of the permit for failure to pay rental shall be noted on the official records of the proper BLM office. Until such notation is made, the lands covered by the permit shall not be available for filing of any other permit applications. Applications for such permits filed prior to such notation shall be rejected.

§ 3509.3 Expiration.

§ 3509.3-1 Prospecting permits.

The permit shall expire at the end of its initial or extended term, as applicable, without notice to the permittee. Upon expiration, the lands, if otherwise available and if no preference right lease application has been filed by the prior permit holder, shall be subject to filing of new applications for prospecting permits 60 days thereafter.

§ 3509.3-2 Leases.

(a) Hardrock, sodium, sulphur and asphalt leases shall expire either at the end of the lease term, if a timely application for lease renewal is not timely filed in accordance with applicable regulations, or at the time a timely application for renewal is rejected.

(b) Potassium, phosphate and gilsonite leases continue for so long as the lessee complies with the lease terms and conditions which are subject to periodic readjustment in accordance with applicable regulations.

§ 3509.4 Cancellation.

§ 3509.4-1 Prospecting permits.

Except as provided for in § 3509.2 of this title, if a permittee fails to comply with the provisions of the law or the regulations issued thereunder, or defaults with respect to any of the terms or stipulations of the permit and such failure or default continues for 30 days after service of written notice thereof by the authorized officer, the permit may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time.

§ 3509.4-2 Leases.

(a) If the lessee fails to comply with the provisions of the Act, or of the general regulations promulgated and in force on the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof, or defaults in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the Act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) If any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the Act, the authorized officer shall give the lessee 30 days to remedy the violation or to show cause why the Attorney General should not be requested to institute proceedings in a court of competent jurisdiction to:

(1) Cancel the lease;

(2) Forfeit the interest so owned; or

(3) Compel disposal of the interest so owned or controlled.

§ 3509.4-3 Bona fide purchasers.

(a) A lease or interest therein shall not be cancelled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation. All purchasers shall be charged with constructive notice as to all pertinent regulations and all Bureau records pertaining to the lease and the lands covered by the lease. No party shall be eligible for status as a bona fide purchaser if the Bureau has not approved the assignment under which the party acquired an interest in the lease.

(b) Prompt action shall be taken to dismiss, as a party to any proceedings with respect to a violation by a predecessor of any provisions of the Act, any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented that the purchaser is not a bona fide purchaser. If, during any such proceeding, a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her lease interests, or if such rights are suspended by order of the Secretary pending a decision, payments or rentals and the running of time against the term of the lease involved shall be suspended as of the first day of the month following the filing of the waiver or of the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

PART 3510—PHOSPHATE

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Subpart 3510—Phosphate Leasing—General

§ 3510.0–3 Authorities.

Authorities for leasing phosphate are shown under § 3500.0–3 of this title.

§ 3510.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of phosphate, including associated and related minerals, found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of phosphate.

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of phosphate under the permit.

(c) "Exploration licenses" allow the licensee to explore known deposits of phosphate to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of phosphate and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of phosphate adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of phosphate to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3510.2 Other applicable regulations.

§ 3510.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3510.2–2 Special areas.

Part 3570 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3570 are applicable, the regulations in this part and Part 3500 shall govern the leasing of phosphate in those national recreation areas and those patented lands.

§ 3510.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 20,480 acres under prospecting permit and lease in the United States.

Subpart 3511—Lease Terms and Conditions

§ 3511.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under Part 3510 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of phosphate, phosphate rock and associated or related minerals.

§ 3511.2 Rental and royalty.

§ 3511.2–1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of not less than 25 cents for the first lease year, 50 cents for the second and third lease years, and $1 for each and every year thereafter. The annual rental payment shall not be less than $20. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3511.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2–1 of this title but not less than 5 per centum of the gross value of the output of phosphates or phosphate rock and associated or related minerals.

§ 3511.3 Duration of lease.

The lease shall be issued for an indeterminate period subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3511.4 Readjustment.

The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such periods. Prior to the expiration of each 20-year period, the lessee shall be notified by the authorized officer at least 2 years prior to the expiration date of the lease as to whether the lease terms and conditions are to be readjusted. If the authorized officer fails to so notify the lessee, or if the proposed readjusted terms and conditions are not transmitted to the lessee before the end of the 2-year period prior to the 20-year anniversary date, the right to readjust the lease shall have been waived until the expiration of the next 20-year term. The lessee is

deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection thereto, or relinquishes the lease. If objections are filed timely, but a mutual agreement between the lessee and the authorized officer cannot be reached, the authorized officer shall issue a formal decision of readjustment which the lessee may appeal in accordance with part 4 of this title.

§ 3511.5 Use of other minerals.

Any phosphate lease issued pursuant to this subpart shall provide that the lessee may use deposits of silica, limestone or other rock on the leased lands in the processing or refining of the phosphates, phosphate rock and associated or related minerals mined from the leased lands upon payment of royalty as set forth in the royalty schedule attached to the lease.

§ 3511.6 Bonds.

Prior to issuance of a lease, the applicant shall furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000. (See Subpart 3504)

§ 3511.7 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3570)

§ 3511.8 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3580 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3512—Phosphate Prospecting Permits

§ 3512.1 Areas subject to prospecting.

A prospecting permit may be issued for any unclaimed, undeveloped area of open and available Federal lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of phosphate. Discovery of a valuable deposit of phosphate within the terms of the permit entitles the permittee to a preference right lease.

§ 3512.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of phosphate in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3512.3 Application for prospecting permit.

§ 3512.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3512.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3512.3–3 Exploration plans.

An exploration plan in triplicate, reasonably designed to determine the existence and workability of the deposit, shall accompany the application and shall include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3512.3–4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30–day period, the advance rental shall be refunded. Priority for the permit shall be

established as of the date the corrected application is filed.

§ 3512.4 Determination of priorities.

§ 3512.4–1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3512.4–2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3512.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3512.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3512.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3512.8 Terms and conditions of permit.

§ 3512.8–1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for a period not to exceed 4 years as provided in § 3512.9 of this title. No exploration activities shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3512.8–2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3512.8–3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3512.8–4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3570)

§ 3512.9 Prospecting permit extensions.

§ 3512.9–1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 4 years at the discretion of the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3512.9–2 Application for extension.

(a) Filing requirements.

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Applications for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre, or fraction there of made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set out in § 3512.9–1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3512.9–3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3513—Preference Right Lease

§ 3513.1 Application for preference right lease.

§ 3513.1–1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20. (See subpart 3503)

§ 3513.1–2 Contents of application.

(a) The application shall contain a statement of qualification and holdings in compliance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems, the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings, and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3513.2 Review of application.

§ 3513.2–1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of phosphate. The determination shall be based on the data furnished to the authorized officer by the permittee as required by Part 3580 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary

surface disturbance and measures to be taken to reclaim that disturbance.

§ 3513.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3570 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3513.1-2 of this title.

§ 3513.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of phosphate was discovered.

§ 3513.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of phosphate;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts sufficient to show entitlement to a lease, a permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of phosphate was discovered.

Subpart 3514—Exploration License

§ 3514.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3514.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased phosphate deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3514.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3514.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3512.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3514.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3514.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3514.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3514.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3514.4-4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3514.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until either the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever is first.

§ 3514.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3515—Competitive Leasing

§ 3515.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable phosphate deposit may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3508 and 3516 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3515.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3509.9 and Part 3570 of this title, as applicable.

3515.3 Sale procedures.

§ 3515.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3515.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the phosphate deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3515.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount, and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's

qualifications (See Part 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and,

(g) Any other information deemed appropriate.

§ 3515.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3515.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3515.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3516—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3516.1 Lands subject to lease.

Lands available for leasing which are known to contain a phosphate deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by a issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3516.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the existing lease and the additional lands is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) Leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3516.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a phosphate deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3516.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3516.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event, shall such payment be less than $1 per acre or fraction thereof.

§ 3516.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3511 of this title. The terms and conditions of modified leases shall be the same as the existing leases.

Subpart 3517—Use Permits

§ 3517.1 Use permits.

A lessee or permittee may be granted a right to use the surface of unappropriated and unentered public lands, not exceeding 80 acres, not included within the boundaries of a national forest if necessary for the proper extraction, treatment or removal of the leased deposits.

§ 3517.1-1 Applications.

Applications for permits to use additional lands shall be filed in triplicate in the proper BLM office. Each application shall be accompanied by a nonrefundable $25 filing fee and the first year's rental. The rental payment shall not be less than $20.

§ 3517.1-2 Rental.

(a) The annual rental charge for use of such lands shall not be less than $1 an acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and also shall be required on all use permits issued prior to the effective date of this section.

(b) Any use permit shall terminate automatically if the permittee or lessee fails to pay the rental.

§ 3517.1-3 Additional requirements.

Applications shall set forth the specific reasons why the permittee or lessee needs any additional lands for the use named, describe the lands desired in accordance with Subpart 3501 of this title and also set forth the reasons why the lands are desirable and adapted to the use named, either in point of location, topography or otherwise, and shall assure that they are unoccupied and unappropriated. The application shall also contain an agreement to pay the annual charge prescribed in the permit.

§ 3517.2 Approval.

A use permit shall be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests

that it be dated the first day of the month of issuance.

PART 3520—SODIUM

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Subpart 3520—Sodium Leasing—General

§ 3520.0–3 Authorities.

Authorities for leasing deposits of chlorides, sulphates, carbonates, borates, silicates or nitrates of sodium, hereinafter referred to as deposits of sodium or any sodium compound, are shown under § 3500.0–3 of this title.

§ 3520.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits or any sodium of sodium compound found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of sodium or any sodium compound.

(b) "Preference right leases" are issued to the holders of prospecting permits who demonstrate the discovery of a valuable deposit of sodium or any sodium compound under the permit and that the lands covered by the permit are chiefly valuable therefore.

(c) "Exploration licenses" allow the licensee to explore known deposits of sodium or any sodium compound to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of sodium or any sodium compound and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of sodium or any sodium compound adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of sodium or any sodium compound to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3520.2 Other applicable regulations.

§ 3520.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3520.2–2 Special areas.

Part 3570 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3570 are applicable, the regulations in this part and Part 3500 shall govern the leasing of deposits of sodium or any sodium compound in those national recreation areas and those patented lands.

§ 3520.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 5,120 acres under prospecting permit and lease in any 1 State, except that, where the Secretary determines pursuant to 30 U.S.C. 184(b)(2) that it is necessary to secure the economic mining of sodium compounds, holdings may equal 15,360 acres. (See subpart 3526)

Subpart 3521—Lease Terms and Conditions

§ 3521.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under Part 3520 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of

the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of sodium, sodium compounds and other related products, including, but not limited to, potassium and potassium compounds.

§ 3521.2 Rental and royalty.

§ 3521.2–1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years and $1 for each and every year thereafter. The rental paid for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3521.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2–1 of this title, but at not less than 2 per centum of the quantity or gross value of the output of sodium compounds and related products at the point of shipment to market.

§ 3521.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew at the end of the initial term and at the end of each 10-year period thereafter. (See Subpart 3528)

§ 3521.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3521.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3570)

§ 3521.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by part 3506 of this title.

(d) Cancellation and relinquishment are covered by part 3509 of this title.

(e) Exploration and mining are covered by Part 3580 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3522—Sodium Prospecting Permits

§ 3522.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of open and available Federal lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of sodium or any sodium compound. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of 1 of these sodium compounds, and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3522.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of sodium or any sodium compound in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3522.3 Application for prospecting permit.

§ 3522.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of that form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof, made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3522.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3522.3–3 Exploration plans.

An exploration plan in triplicate, reasonably designed to determine the existence and workability of the deposit, shall accompany the application and shall include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance, and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and,

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and,

(v) The method of planting, including approximate quantity and spacing.

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features and the proposed location of drill holes, trenches and roads; and,

(f) Such other data as may be required by the authorized officer.

§ 3522.3-4 Rejection of application.

Any application for a prospecting permit which does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3522.4 Determination of priorities.

§ 3522.4-1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3522.4-2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3522.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3522.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3522.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3522.8 Terms and conditions of permit.

§ 3522.8-1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may not be extended.

§ 3522.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3522.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3522.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3570)

Subpart 3523—Preference Right Lease

§ 3523.1 Application for preference right lease.

§ 3523.1-1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See Subpart 3503)

§ 3523.1-2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with Subpart 3502 of this title;

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres;

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto; and

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3523.2 Review of application.

§ 3523.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of sodium or any sodium compound and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by Part 3580 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3523.2-2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3570 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3523.1-2 of this title.

§ 3523.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of sodium or any sodium compound was

discovered and that the lands are chiefly valuable therefor.

§ 3523.4 Rejection of application.

(a) The authorized officer shall reject the application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of sodium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit requested information in a timely manner; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of sodium or any sodium compound was discovered and that the lands are chiefly valuable therefor.

Subpart 3524—Exploration License

§3524.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3524.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased deposits of sodium or any sodium compound to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3524.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§3524.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3522.3–3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3524.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3524.4–1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3524.4–2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3524.4–3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3524.4–4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3524.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public either until the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever is first.

§ 3524.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3525—Competitive Leasing

§ 3525.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of valuable deposits of sodium or any sodium compound may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3508 and 3526 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3525.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3525.3 Sale procedures.

§ 3525.3–1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale also shall be posted for 30 days in the public room of the proper BLM office.

§ 3525.3–2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the sodium deposit or any sodium compound deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3525.3–3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the

successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3525.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3525.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3525.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3526—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3526.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of sodium or any sodium compound that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3526.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the existing lease and additional lands is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3526.3 Filing requirements.

(a) An application shall be filed in triplicate with proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a sodium deposit or any sodium compound deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3526.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title.

§ 3526.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3526.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3521 of this title. The terms and conditions of a modified lease shall be the same as the existing lease.

Subpart 3527—Use Permits

§ 3527.1 Use permits.

A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of unoccupied non-mineral public lands, not to exceed 40 acres, that are not included within the boundaries of a national forest, for camp sites, refining works and other purposes connected with, if necessary to, the proper development and use of the deposits covered by the permit or lease.

§ 3527.1 Applications.

Applications for permits to use additional lands shall be filed in triplicate in the proper BLM office. No specific form is required. Each application shall be accompanied by a nonrefundable $25 filing fee and the first year's rental. The rental payment shall not be less than $20.

§ 3527.1–2 Rental.

The annual rental charge for use of such lands shall not be less than $1 an acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and also shall be required on all use permits issued prior to the effective date of this section. Any use permit shall terminate automatically if the permittee or lessee fails to pay the required rental.

§ 3527.1–3 Additional requirements.

Applications shall set forth the specific reasons why the permittee or lessee needs the additional lands for the use named, describe the lands desired in accordance with Subpart 3501 of this title and also set forth the reasons why the lands are desirable and adapted to the use named, either in point of location, topography or otherwise, and shall assure that they are unoccupied and unappropriated. The application shall also contain an agreement to pay the annual charge prescribed in the permit.

§ 3527.2 Approval.

A use permit shall be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests in writing that it be dated the first day of the month of issuance.

Subpart 3528—Lease Renewals

§ 3528.1 Applications.

An application for lease renewal shall be filed at least 1 year prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM

office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof.

§ 3528.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3528.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3528.1 of this title, the lease shall expire on the last day of the current lease term.

§ 3528.4 Lease terms and conditions.

Each lease, if renewed, shall be issued on a form approved by the Director and shall be effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3521 of this title.

PART 3530—POTASSIUM

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Subpart 3530—Potassium Leasing—General

§ 3530.0–3 Authorities.

Authorities for leasing deposits of chlorides, sulphates, carbonates, borates, silicates or nitrates of potassium, hereinafter referred to as deposits of potassium or any potassium compound, are shown under § 3500.0–3 of this title.

§ 3530.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of potassium or any potassium compoundfound on lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of potassium or any potassium compound.

(b) "Preference right leases" are issued to the holders of prospecting permits who demonstrate the discovery of a valuable deposit of potassium or any potassium compound under the permit and the lands covered by the permit are chiefly valuable for potassium or any potassium compound.

(c) "Exploration licenses" allow the licensee to explore known deposits of potassium or any potassium compound to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of potassium or any potassium compound and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of potassium or any potassium compound adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of potassium or any potassium compound to an adjacent Federal lease with contains an existing mine, provided the deposits can only be mined as part of the existing mining operation.

§ 3530.2 Other applicable regulations.

§ 3530.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3530.2–2 Special areas.

Part 3570 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3570 are applicable, the regulations in this part and Part 3500 shall govern the leasing of deposits of potassium or any potassium compound in those national recreation areas and those patented lands.

§ 3530.3 Allowable acreage holdings.

No person, association or corporation shall hold at any particular time, either

directly or indirectly, more than 51,200 acres in permits or 25,600 acres in leases in any 1 State.

Subpart 3531—Lease Terms and Conditions

§ 3531.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or readjusted under Part 3530 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of potassium, potassium compounds and other related products, including, but not limited to, sodium and sodium compounds.

§ 3531.2 Rental and royalty.

§ 3531.2–1 Rental.

(a) Each lease shall provide for the payment of rental at the rate of 25 cents per acre or fraction thereof for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth years and $1 for the sixth and each succeeding year during the continuance of the lease. Rental is payable annually on or before January 1. The rental paid for any year shall be credited against the first royalties that accrue under the lease during the year for which the rental was paid.

(b) If the annual rental is not timely remitted, the lease shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3531.2–2 Production royalty.

All leases shall be conditioned upon the payment of such royalties as may be specified in the lease as fixed by the authorized officer in advance as provided under § 3503.2–1 of this title, but shall not be less than 2 per centum of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market.

§ 3531.3 Duration of lease.

The lease shall be issued for an indeterminate period subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

§ 3531.4 Readjustment.

The terms and conditions of a lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such periods. Prior to the expiration of each 20-year period, the lessee shall be notified by the authorized officer as to whether the lease terms and conditions are to be readjusted. If the authorized officer fails to so notify the lessee, or if the proposed readjusted terms and conditions are not transmitted to the lessee during the 2 years prior to the anniversary date, the right to readjust the lease shall have been waived until the expiration of the next 20-year term.

The lessee is deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection thereto, or relinquishes the lease. If objections are filed timely, but a mutual agreement between the lessee and the authorized officer cannot be reached, the authorized officer shall issue a formal decision of readjustment which the lessee may appeal in accordance with part 4 of this title.

§ 3531.5 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3531.6 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction.

§ 3531.7 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3580 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3532—Potassium Prospecting Permits

§ 3532.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of open and available Federal lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of deposits of potassium or any potassium compound, except prospecting permits may not be issued for lands in or adjacent to Searles Lake, California. If, within the term of the permit, the permittee makes a discovery of a valuable deposit of potassium or any potassium compound, and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3532.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of potassium or any potassium compound. The permittee may remove only such material as may be necessary to demonstrate the existence of a valuable mineral deposit.

§ 3532.3 Application for prospecting permit.

§ 3532.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision, but shall not be less than $20.

§ 3532.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with Subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form.

§ 3532.3–3 Exploration plans.

An exploration plan in triplicate, reasonably designed to determine the existence and workability of the deposit, shall accompany the application and shall include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and,

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and,

(f) Such other data as may be required by the authorized officer.

§ 3532.3–4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days from receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3532.4 Determination of priorities.

§ 3532.4–1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3532.4–2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3532.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3532.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3532.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3532.8 Terms and conditions of permit.

§ 3532.8–1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may be extended for an additional 2 year period. No exploration activities shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3532.8–2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3532.8–3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3532.8–4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in §3500.9 of this title. (See also Part 3570)

§ 3532.9 Prospecting permit extensions.

§ 3532.9–1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 2 years by the authorized officer provided that:

(a) The permittee has been unable, with reasonable diligence, to determine the existence or workability of valuable deposits covered by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that, in the opinion of the authorized officer, the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3532.9–2 Application for extension.

(a) Filing requirements.

(1) No specific application form is required.

(2) Application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit.

(3) Applications for extension shall be accompanied by a nonrefundable filing fee of $25, and advance rental of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall, if applicable:

(1) Demonstrate that the permittee has met the conditions for extension set forth in § 3532.9–1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3532.3–3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3533—Preference Right Lease

§ 3533.1 Application for preference right lease.

§ 3533.1–1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See Subpart 3503)

§ 3533.1–2 Contents of application.

(a) The application shall include a statement of qualification and holdings in accordance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3533.2 Review of application.

§ 3533.2–1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of potassium or any potassium compound and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by Part 3580 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3533.2–2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3570 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3533.1–2 of this title.

§ 3533.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of potassium or any potassium compound was discovered and that the lands are chiefly valuable therefor.

§ 3533.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of potassium and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of potassium or any potassium compound was discovered and that the lands are chiefly valuable therefor.

Subpart 3534—Exploration License

§ 3534.0–3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3534.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known, unleased deposits of potassium or any potassium compound to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3534.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3534.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3532.3–3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3534.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3534.4–1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3534.4–2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3534.4–3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting of the Notice of Exploration.

§ 3534.4–4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3534.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public either until the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever is first.

§ 3534.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3535—Competitive Leasing

§ 3535.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable deposit of potassium or any potassium compound may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Parts 3508 and 3536 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3535.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3535.3 Sale procedures.

§ 3535.3–1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale also shall be posted for 30 days in the public room of the proper BLM office.

§ 3535.3–2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the deposit of potassium or any potassium compound being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3535.3–3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3535.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3535.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3535.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3536—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3536.1 Lands subject to lease.

Lands available for leasing which are known to contain a deposit of potassium or any potassium compound that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3536.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the existing lease and additional lands is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3536.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a deposit of potassium or any potassium compound extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3536.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3536.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3536.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3531 of this title. The terms and conditions of a modified lease shall be the same as the existing lease.

PART 3540—SULPHUR

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Subpart 3540—Sulphur Leasing—General

§ 3540.0–3 Authorities.

Authorities for leasing deposits of sulphur are shown under § 3500.0–3 of this title.

§ 3540.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of sulphur found on Federal lands in New Mexico and Louisiana and on acquired Federal lands which are available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of sulphur.

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of sulphur under the permit and demonstrate that the lands covered by the permit are chiefly valuable for sulphur.

(c) "Exploration licenses" allow the licensee to explore known deposits of sulphur to obtain data but do not grant the licensee any preference or other right to a lease.

(d) "Competitive leases" are issued for known deposits of sulphur and allow the lessee to mine the deposit.

(e) "Fringe acreage leases" are issued noncompetitively for known deposits of sulphur adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(f) "Lease modifications" are used to add known deposits of sulphur to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3540.2 Other applicable regulations.

§ 3540.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3540.2–2 Special areas.

Part 3570 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3570 of this title are applicable, the regulations in this part and Part 3500 of this title shall govern the leasing of sulphur in those national recreation areas and those patented lands.

§ 3540.3 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular

time, more than 1,920 acres in the aggregate in 3 prospecting permits and leases in any 1 State.

Subpart 3541—Lease Terms and Conditions

§ 3541.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under Part 3540 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize, in accordance with its terms and conditions, the mining of sulphur.

§ 3541.2 Rental and royalty.

§ 3541.2–1 Rental.

(a) Each lease shall provide for the payment of rental annually and in advance during the continuance of the lease at the rate of 50 cents per acre or fraction thereof. The rental for any year shall be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Rental remittances shall be made in accordance with § 3503.1 of this title.

§ 3541.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

§ 3541.3 Duration of lease.

The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew at the end of the initial term and at the end of each 10-year period thereafter. (See Subpart 3547)

§ 3541.4 Bonds.

Prior to issuance of a lease, the applicant shall be required to furnish a bond in an amount to be determined by the authorized officer but not less than $5,000. (See Subpart 3504)

§ 3541.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3570)

§ 3541.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by § 3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3580 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3542—Sulphur Prospecting Permits

§ 3542.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of open and available Federal lands subject to leasing where prospecting or exploratory work is necessary to determine the existence or workability of sulphur deposits. If, within the terms of the permit, the permittee makes a discovery of a valuable deposit of sulphur and the lands are determined to be chiefly valuable therefor, the permittee is entitled to a preference right lease.

§ 3542.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of sulphur in accordance with the terms and conditions of the permit. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3542.3 Application for prospecting permit.

§ 3542.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of such form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre, or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3542.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's qualifications and holdings. (See Subpart 3502); and

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 640 acres in a reasonably compact form.

§ 3542.3–3 Exploration plans.

An exploration plan in triplicate, reasonably designed to determine the existence and workability of the deposit, shall accompany the application and shall include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and,

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs or other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed location of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3542.3–4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3542.4 Determination of priorities.

§ 3542.4–1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3542.4–2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands priority shall be determined in accordance with Subpart 1821 of this title.

§ 3542.5 Amendment to application.

An amendment to an application for a prospecting permit to include additional lands, not to exceed 640 acres in total, will receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3542.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal, the advance rental submitted with the application shall be refunded.

§ 3542.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3542.8 Terms and conditions of permit.

§ 3542.8–1 Duration of permit.

Prospecting permits are issued for a term of 2 years, and may not be extended.

§ 3542.8–2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3542.8–3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. The rental payment shall not be less than $20.

§ 3542.8–4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer of the responsible official of the surface management agency if the surface is not under Bureau jurisidiction as described in § 3500.9 of this title. (See Part 3570)

Subpart 3543—Preference Right Lease

§ 3543.1 Application for preference right lease.

§ 3543.1–1 Filing requirements.

(a) No specific application form is required.

(b) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires.

(c) The application shall be accompanied by the first years' rental at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. (See Subpart 3503)

§ 3543.1–2 Contents of application.

(a) The application shall include a statement of qualifications and holdings in accordance with Subpart 3502 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 640 acres.

(c) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and the extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(d) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3543.2 Review of application.

§ 3543.2–1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of sulphur and whether the lands are chiefly valuable therefor. The determination shall be based on data furnished to the authorized officer by the permittee as required by Part 3580 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3543.2–2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3570 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3543.1–2 of this title.

§ 3543.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the term of the permit, a valuable deposit of

sulphur was discovered and that the lands are chiefly valuable therefor.

§ 3543.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of sulphur and/or the lands are not chiefly valuable therefor;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have the right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of sulphur was discovered and that the lands are chiefly valuable therefor.

Subpart 3544—Exploration License

§ 3544.0-3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b))

§ 3544.1 Exploration license.

Private parties, jointly and severally, may apply for exploration licenses to explore known, unleased sulphur deposits to obtain geologic, environmental, and other pertinent data concerning such deposits.

§ 3544.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3544.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3542.3-3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3544.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3544.4-1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3544.4-2 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3544.4-3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3544.4-4 Decision on plan and participation.

The authorized officer may issue the license naming the participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between exploration plans.

§ 3544.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public either until the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever is first.

§ 3544.6 Modification of exploration plan.

Upon application therefor, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3545—Competitive Leasing

§ 3545.1 Lands subject only to competitive leasing.

Lands available for leasing where prospecting or exploratory work is unnecessary to determine the existence or workability of a valuable sulphur deposit may be leased only through competitive sale to the qualified bidder who offers the highest acceptable bonus bid, except as provided in Subparts 3506 and 3546 of this title. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3545.2 Surface management agency.

Prior to competitive lease offering, the surface management agency shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3545.3 Sale procedures.

§ 3545.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3545.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the sulphur deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3545.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice.

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3545.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3545.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3545.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3546—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3546.1 Lands subject to lease.

Lands available for leasing which are known to contain a sulphur deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3546.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 640 acres; or

(2) The acreage of the existing lease and additional lands is not in excess of 640 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resources to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3546.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 50 cents per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a sulphur deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3546.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3546.5 Payment of bonus.

(a) Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3546.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3541 of this title. The terms and conditions of a modified lease shall be the same as in the existing lease.

Subpart 3547—Lease Renewals

§ 3547.1 Applications.

An application for lease renewal shall be filed at least 1 year prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of 50 cents per acre or fraction thereof.

§ 3547.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3547.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3547.1 of this title, the lease shall expire on the last day of the current lease term.

§ 3547.4 Lease terms and conditions.

Each renewal lease shall be issued on a form approved by the Director and shall be dated effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3541 of this title.

PART 3550—ASPHALT IN OKLAHOMA AND GILSONITE (INCLUDING ALL VEIN-TYPE SOLID HYDROCARBONS)

Subpart 3550—Asphalt in Oklahoma and Gilsonite (Including All Vein-type Solid Hydrocarbons)—General

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Subpart 3550—Asphalt in Oklahoma and Gilsonite (Including All Vein-type Solid Hydrocarbons)—General

§ 3550.0–3 Authorities.

Authorities for leasing asphalt in Oklahoma and gilsonite (including all vein-type solid hydrocarbons) are cited under § 3500.0–3 of this title.

§ 3550.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of asphalt on certain lands in Oklahoma and gilsonite (including all vein-type solid hydrocarbons) found on lands available for leasing. The regulations provide for this in the following manner:

(a) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of gilsonite under the permit.

(b) "Exploration license" allow the licensee to explore known deposits of gilsonite to obtain data but do not grant licensee any preference or other right to a lease.

(c) "Competitive leases" are issued for known deposits of asphalt in Oklahoma and gilsonite (including all vein-type solid hydrocarbons) and allow the lessee to mine the deposit.

(d) "Fringe acreage leases" are issued noncompetitively for known deposits of asphalt in Oklahoma and gilsonite (including all vein-type solid hydrocarbons) adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(e) "Lease modifications" are used to add known deposits of asphalt in Oklahoma or gilsonite (including all vein-type solid hydrocarbons) to an adjacent Federal lease which contains an existing mine, provided the deposits can only be mined as part of the existing mining operation.

§ 3550.2 Minerals subject to leasing.

(a) By the Act of June 28, 1944 (58 Stat. 463, 483–485), Congress authorized the Secretary to acquire certain lands and mineral deposits in Oklahoma and amended the Act to authorize leasing of the asphalt deposits on those lands. The lands and mineral deposits covered by the 1944 law are those reserved from allotment in accordance with the provisions of section 58 of the Supplemental Agreement of 1902 (32 Stat. 654) with the Choctaw-Chickasaw Nations of Indians. Congress ratified the purchase contract in the Act of June 24, 1948 (62 Stat. 596), and appropriated funds for the purchase in the Act of May 24, 1949 (63 Stat. 76).

(b) In 1981, Congress amended the Act by including tar sand within the meaning of oil and retaining separate leasing authority for vein-type solid hydrocarbons such as gilsonite. Fluid and gaseous hydrocarbons are leased as oil and gas, while bedded deposits are leased either as coal, oil shale or as oil (tar sand). The leasing authority for vein-type solid hydrocarbons is implemented by the regulations in this part.

§ 3550.3 Other applicable regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The regulations in Part 3500 of this title include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation, and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3550.4 Allowable acreage holdings.

§ 3550.4–1 Asphalt in Oklahoma.

No person, company, association or corporation may hold, at any time, either directly or indirectly, leases exceeding in the aggregate 2,560 acres.

§ 3550.4–2 Gilsonite (including all vein-type solid hydrocarbons).

No person, company, association or corporation may hold at any one time, directly or indirectly, more than 7,680 acres under lease in any one State.

Subpart 3551—Lease Terms and Conditions

§ 3551.1 Applicability of lease terms and conditions.

Except as otherwise specifically stated, all lease terms and conditions set out under this section apply to all leases issued, readjusted or renewed under Part 3550 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of asphalt or gilsonite, including all vein-type solid hydrocarbons, as appropriate.

§ 3551.2 Rental and royalty.

§ 3551.2–1 Rental.

(a)(1) Each asphalt lease shall provide for the payment of rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years, and $1 for each calendar year thereafter. The rental paid for any year shall be credited against royalties which may accrue under the lease during the year for which rental was paid.

(2) Each gilsonite (including all vein-type solid hydrocarbons) lease shall provide for the payment of rental annually and in advance at the rate of 50 cents per acre or fraction thereof. The rental for any year shall be credited against royalties which may accrue under the lease during the year for which rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Remittances of rentals shall be in accordance with § 3503.1 of this title.

§ 3551.2–2 Production royalty.

All leases shall be conditioned upon the payment to the United States of such royalties as may be specified in the lease, which shall be fixed by the authorized officer in advance as provided under § 3503.2–1 of this title. The royalty rate for asphalt shall not be less than 25 cents per ton of 2,000 pounds of marketable production.

§ 3551.3 Duration of lease.

§ 3551.3–1 Asphalt in Oklahoma.

(a) The lease shall be issued for an initial term of 20 years subject to a preferential right in the lessee to renew at the end of the initial term and at the end of each 10-year period thereafter.

(b)(1) An application for lease renewal shall be filed at least 1 year prior to the expiration of the lease term. There is no specific form required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof. If the holder of a lease fails to apply for renewal timely, the lease shall expire on the last day of the lease term.

(2) Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

(3) Each renewal lease shall be issued on a form approved by the Director and shall be effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3551 of this title.

§ 3551.3–2 Gilsonite (including all vein-type solid hydrocarbons).

(a) The lease shall be issued for 20 years and for so long thereafter as gilsonite (including all vein-type solid hydrocarbons) is produced in paying quantities subject to the Secretary's right of reasonable readjustment of lease terms and conditions at the end of each 20-year period.

(b) The terms and conditions of a gilsonite lease are subject to reasonable readjustment at the end of each 20-year period following the effective date of the lease unless otherwise provided by law at the time of expiration of such periods. Prior to the expiration of each 20-year period, the lessee shall be notified by the authorized officer at least 2 years prior to the expiration date of the lease as to whether the lease terms and conditions are to be readjusted. If the authorized officer fails to so notify the lessee, or if the proposed readjusted terms and conditions are not transmitted to the lessee before the end of the 2-year period prior to the 20-year anniversary date, the right to readjust the lease shall have been waived until the expiration of the next 20-year term. The lessee shall be deemed to have agreed to the readjusted terms and conditions unless, within 60 days after receiving them, the lessee files an objection thereto, or relinquishes the lease. If objections are filed timely, but a mutual agreement between the lessee and the authorized officer cannot be reached, the authorized officer shall issue a formal decision of readjustment which the lessee may appeal in accordance with part 4 of this title.

§ 3551.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall be required to furnish a bond in an amount to be determined by the authorized officer, but not less than $5,000. (See Subpart 3504)

§ 3551.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer or the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9 of this title. (See also Part 3570)

§ 3551.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered in § 3503.2–2 of this title.

(b) Suspension of operations and production or suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Subpart 3509 of this title.

(e) Exploration and mining are covered by Part 3580 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3553—Exploration License

§ 3553.0–3 Authority.

Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)).

§ 3553.1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore for unleased asphalt on available lands in Oklahoma and to explore known unleased gilsonite (including all vein-type solid hydrocarbons) deposits to obtain geologic, environmental and other pertinent data concerning such deposits.

§ 3553.2 Regulations applicable.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations undef Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3553.3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3512.3–3 of this title. The exploration plan, as approved, shall be attached to, and made a part of, the license.

§ 3553.4 Notice of exploration.

Applicants for exploration licenses shall be required to publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3553.4–1 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3553.4–2 Publication and posting of notice.

(a) The applicant shall publish the notice once a week for 3 consecutive weeks in at least 1 newspaper of general circulation in the area where the lands are located.

(b) The authorized officer shall post the notice in the proper BLM office for 30 days.

§ 3553.4–3 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3553.4–4 Decision on plan and participation.

The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between proposed exploration plans.

§ 3553.5 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public until either the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the

competitive position of the licensee, whichever is first.

§ 3553.8 Modification of exploration plan.

Upon application, a modification of the exploration plan may be approved by the authorized officer.

Subpart 3554—Competitive Leasing

§ 3554.1 Lease by competitive bidding.

Leases may be offered competitively under this part without regard to the quantity or quality of the mineral deposit that may be present therein. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3554.2 Surface management agency.

Prior to competitive lease offering, the surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3554.3 Sale procedures.

§ 3554.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3554.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the deposit being offered, to the extent available;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3554.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's qualifications (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay their proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3554.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3554.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3554.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit subitted with the bid shall be returned.

Subpart 3555—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3555.1 Lands subject to lease.

Lands available for leasing which are known to contain an asphalt or gilsonite deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for the lands or by adding such lands to an existing Federal lease.

§ 3555.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) That the lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for the fringe acreage is not in excess of 5,120 acres for gilsonite or 2,560 acres for asphalt; or

(2) The acreage of the existing lease and the additional lands is not in excess of 5,210 acres for gilsonite or 2,560 acres for asphalt.

(c) That the mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) That the lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and,

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3555.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific form is required.

(b)(1) An asphalt lease application shall be accompanied by a nonrefundable filing fee of $25, and an advance rental payment of 25 cents per acre or fraction thereof for a new lease or at the rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(2) A gilsonite lease application shall be accompanied by a nonrefundable filing fee of $25 and an advance rental payment of 50 cent per acre of fraction thereof for a new lease or at the rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management.

(c) The application shall:

(1) Make reference to the serial number of the lease if the lands adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the lands desired;

(3) Include a showing that a gilsonite or asphalt deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

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§ 3555.6 Terms and conditions of lease.
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§ 3555.4 Surface management agency.

The surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable.

§ 3555.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal, but in no event shall such payment be less than $1 per acre or fraction thereof.

§ 3555.6 Terms and conditions of lease.

The terms and conditions of a modified lease shall be the same as the existing lease. A new lease shall be issued subject to the terms and conditions set forth under Subpart 3551 of this title.

PART 3560—HARDROCK MINERALS

Subpart 3560—Hardrock Minerals Leasing—General

§ 3560.0–3 Authorities.

Authorities for leasing hardrock minerals are shown under § 3500.0–3 of this title.

§ 3560.1 Leasing procedures.

The regulations in this part provide the procedures for qualified entities to obtain rights to develop deposits of hardrock minerals found on certain lands available for leasing. The regulations provide for this in the following manner:

(a) "Prospecting permits" allow the permittee to explore for deposits of hardrock minerals.

(b) "Preference right leases" are issued to holders of prospecting permits who demonstrate the discovery of a valuable deposit of a hardrock mineral(s) under the permit.

(c) "Competitive leases" are issued for known deposits of hardrock minerals and allow the lessee to mine the deposit.

(d) "Fringe acreage leases" are issued noncompetitively for known deposits of hardrock minerals adjacent to existing mines on non-Federal lands which can only be mined as part of the existing mining operation.

(e) "Lease modifications" are used to add known deposits of hardrock minerals to an adjacent Federal lease which contains an existing mine provided the deposits can only be mined as part of the existing mining operation.

§ 3560.2 Other applicable regulations.

§ 3560.2–1 General leasing regulations.

Part 3500 of this title contains the general regulations governing the leasing of solid minerals other than coal and oil shale and supplements, as applicable, the regulations in this part. The Part 3500 regulations include, but are not limited to, such matters as multiple mineral development, environmental review, other agency consent and consultation and lands not available for leasing. Cross-reference to specific regulations in Part 3500 is provided in this part as an aid to the reader and is not intended to limit the applicability of Part 3500 only to the cross-referenced regulations.

§ 3560.2–2 Special areas.

Part 3570 of this title contains regulations specific to certain national recreation areas and to certain lands patented to the State of California, and as applicable, supplements this part. Except where specific regulations in Part 3570 of this title are applicable, the regulations in this part and Part 3500 shall govern the leasing of hardrock minerals in those national recreation areas and those patented lands.

§ 3560.3 Lands subject to lease.

§ 3560.3–1 Department of Agriculture lands.

With the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe, the hardrock minerals in the following lands administered by the Secretary of Agriculture are subject to lease:

(a) Lands acquired pursuant to: (1) The Act of March 4, 1917, granting authority to mine lands acquired under the Weeks Act (16 U.S.C. 520); (2) Title II of the National Industrial Recovery Act

of June 16, 1933 (40 U.S.C. 401, 403(a) and 408); (3) The 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118); (4) Section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781); and, (5) The Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended by the Act of July 28, 1942 (7 U.S.C. 1011(c) and 1018).

(b) Lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(c) Portions of Juan Jose Lobato Grant (North Lobato) and of the Anton Chica Grant (El Pueblo) in New Mexico (66 Stat. 285) described in section 1 of the Act of June 28, 1952.

(d) Public domain lands within National Forest lands in Minnesota.

(e) Lands in Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area, subject to the regulations in Subpart 3573 of this title.

§ 3560.3–2 National Park Service Recreation areas.

With the consent of the Regional Director, National Park Service, and subject to such conditions as may be prescribed by the Regional Director, the following national recreation areas administered by the National Park Service are available for leasing subject to the regulations in Subpart 3572 of this title:

(a) Lake Mead National Recreation Area;

(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area;

(c) Ross Lake and Lake Chelan National Recreation Areas; and

(d) Glen Canyon National Recreation Area.

§ 3560.3–3 White Mountains National Recreation Area.

The lands within White Mountains National Recreation Area are available for lease subject to the regulations in Subpart 3575 of this title.

§ 3560.3–4 Lands patented to the State of California for park purposes.

The reserved hardrock minerals in certain lands patented to the State of California are available for lease subject to the regulations in subpart 3574 of this title.

§ 3560.4 Allowable acreage holdings.

No person, company, association or corporation may hold at any particular time, directly or indirectly, more than 20,480 acres under prospecting permit and lease for a particular handrock mineral or an associated group of hardrock minerals, of which not more than 10,240 acres may be held under lease. However, the authorized officer may authorize a lessee to hold an additional 10,240 acres under lease if he/she finds, upon a satisfactory showing submitted by the lessee, that such additional acreage is necessary to promote the orderly development of the mineral resource, and does not result in undue control of the mineral to be mined, removed and marketed. In any case, the aggregate chargeable acreage held under permit and lease shall not exceed 20,480 acres.

§ 3560.5 Identity of mineral or minerals required.

All applications under this section shall specify the mineral or minerals for which the lease or permit is sought. A permit, if granted, shall be for the mineral or minerals requested and any associated minerals. A preference right lease shall be issued for the mineral(s) specified in the permit for which a valuable deposit has been discovered and for any associated minerals. (See also Subpart 3563 and 3565)

§ 3560.6 Multiple development.

The granting of a hardrock permit or lease for the prospecting, development, or production of deposits for a specific mineral shall not preclude the issuance of other permits or leases for the same lands for deposits of other minerals with suitable stipulations for simultaneous operation. It is recognized, however, that multiple permits or leases for solid hardrock minerals on the same lands would not be compatible in most cases. For this reason, multiple permits or leases for such minerals generally shall not be issued for the same lands.

§ 3560.7 Hardrock mineral specimen collection.

Hardrock mineral specimens may be collected for non-commercial purposes (e.g., recreation, hobby collecting, scientific or research specimens, etc.), on Federal lands, the surface of which is not administered by the Bureau of Land Management. The appropriate surface management agency shall determine which areas and under what conditions such specimen collection may be conducted and whether an approved permit shall be necessary prior to the collector's entry on the lands. If such a permit is necessary, it shall be obtained from the responsible official of the surface management agency who shall have the discretionary authority to issue the permit, determine the permit fee, if any, and specify the terms and conditions of the permit.

Subpart 3561—Lease Terms and Conditions

§ 3561.1 Applicability of lease terms and conditions.

The lease terms and conditions set out under this section apply to all leases issued or renewed under Part 3560 of this title. Each lease shall be issued on a form approved by the Director and shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved. Each lease shall authorize in accordance with its terms and conditions the mining of the hardrock mineral(s) for which the lease issued, including any associated minerals.

§ 3561.2 Rental and royalty.

§ 3561.2–1 Rental.

(a) Each lease shall provide for the payment of rental at the rate of $1 per acre or fraction thereof each year on or before the anniversary date of the lease. The rental payment shall not be less than $20. The rental paid for any year shall be credited against any royalties which may accrue under the lease during the year for which the rental was paid.

(b) If the annual rental is not timely remitted, the lessee shall be notified by the authorized officer that, unless payment is made within 30 days from receipt of such notification, action shall be taken to cancel the lease. (See § 3509.4–2)

(c) Remittances of rental shall be made in accordance with § 3503.1 of this title.

§ 3561.2–2 Production royalty.

The production royalty shall be determined by the authorized officer on a case-by-case basis as provided in § 3503.2–1 of this title. If hardrock minerals other than those specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate shall be established by the authorized officer for such mineral(s).

§ 3561.3 Duration of lease.

The lease shall be issued for a period not exceeding 20 years as determined by the authorized officer with a preference right in the lessee to renew at the end of the initial term and at the end of each 10-year period thereafter.

§ 3561.4 Bonds.

Prior to issuance of a lease under this part, the applicant shall furnish a bond in an amount to be determined by the

authorized officer but not less than $5,000. (See Subpart 3504)

§ 3561.5 Special stipulations.

To insure adequate utilization and protection of the lands and their resources, leases shall contain such stipulations as may be prescribed by the authorized officer of the responsible official of the surface management agency if the surface is not under Bureau jurisdiction as described in §3500.9 of this title. (See also Part 3570)

§ 3561.6 Other applicable regulations.

Leases issued under this part shall also be subject to the conditions set forth in other regulations, including, but not limited to, the following:

(a) Minimum annual production and minimum royalty are covered by §3503.2–2 of this title.

(b) Suspension of operations and production and suspension of operations are covered by § 3503.3 of this title.

(c) Assignments and subleases are covered by Subpart 3506 of this title.

(d) Cancellation and relinquishment are covered by Part 3509 of this title.

(e) Exploration and mining are covered by Part 3580 of this title.

(f) Royalty management is covered by 30 CFR Chapter II, Subchapter A.

Subpart 3562—Hardrock Minerals Prospecting Permits

§ 3562.1 Areas subject to prospecting.

A prospecting permit may be issued for any area of open and available Federal lands subject to hardrock mineral leasing where prospecting or exploratory work is necessary to determine the existence or workability of a particular hardrock mineral(s). Discovery of a valuable deposit of any such mineral(s) within the terms of the permit entitles the permittee to a preference right lease.

§ 3562.2 Rights conferred by issuance of prospecting permits.

A permit shall grant the permittee the exclusive right to prospect on and explore the lands to determine the existence of a valuable deposit of the mineral(s) for which the permit was issued. The permittee may remove only such material as is necessary to demonstrate the existence of a valuable mineral deposit.

§ 3562.3 Application for prospecting permit.

§ 3562.3–1 Filing requirements.

(a) An application shall be filed on a form approved by the Director or an exact reproduction of that form.

(b) An application shall be filed in triplicate with the proper BLM office.

(c) The application shall be accompanied by a nonrefundable filing fee of $25, and rental for the first year at the rate of 50 cents per acre or fraction thereof made payable to the Department of the Interior-Bureau of Land Management. The rental payment shall be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. The rental payment shall not be less than $20.

§ 3562.3–2 Contents of applications.

Each application shall be typewritten, or printed plainly in ink; manually signed in ink and dated by the applicant or applicant's duly authorized attorney-in-fact, and shall contain the following:

(a) The name and address of the applicant;

(b) A statement of the applicant's holdings in accordance with Subpart 3502 of this title;

(c) A complete and accurate land description in compliance with subpart 3501 of this title. The application shall not include more than 2,560 acres in a reasonably compact form; and

(d) The name of mineral(s) for which the permit is sought. (See § 3560.5)

§ 3562.3–3 Exploration plans.

An exploration plan in triplicate, reasonably designed to determine the existence and workability of the deposit, shall accompany the application and shall include the following:

(a) The names, addresses and telephone numbers of persons responsible for operations under the plan and to whom notices and orders are to be delivered;

(b) A brief description, including maps, of geologic, water, vegetation, and other physical factors, and the distribution, abundance and habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed operation within the area where exploration is to be conducted, and the present land use within and adjacent to the area;

(c) A narrative description showing:

(1) The method of exploration and types of equipment to be used;

(2) The measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or their habitat and other natural resources, and hazards to public health and safety, including specific actions necessary to meet all applicable laws and regulations;

(3) The method for plugging drill holes; and

(4) The measures to be taken for surface reclamation, which shall include as appropriate:

(i) A reclamation schedule;

(ii) The method of grading, backfilling, soil stabilization, compacting and contouring;

(iii) The method of soil preparation and fertilizer application;

(iv) The type and mixture of shrubs, trees, grasses, forbs and other vegetation to be planted; and

(v) The method of planting, including approximate quantity and spacing;

(d) The estimated timetable for each phase of the work and for final completion of the program;

(e) Suitable topographic maps or aerial photographs showing existing bodies of surface water, topographic, cultural and drainage features, and the proposed locations of drill holes, trenches and roads; and

(f) Such other data as may be required by the authorized officer.

§ 3562.3–4 Rejection of application.

Any application for a prospecting permit that does not comply with the requirements of this subpart shall be rejected. If the applicant files a new application for the same lands within 30 days of receipt of the rejection, the nonrefundable filing fee and rental payment submitted with the original application shall be applied to the new application, provided the serial number of the original application is shown on the new application. If a new application is not filed within the 30-day period, the advance rental shall be refunded. Priority for the permit shall be established as of the date the corrected application is filed.

§ 3562.4 Determination of priorities.

§ 3562.4–1 Regular filings.

Priority of application shall be determined in accordance with the time of filing.

§ 3562.4–2 Simultaneous filings.

Where more than 1 application is filed at the same time for the same lands and for the same mineral, priority shall be determined in accordance with Subpart 1821 of this title.

§ 3562.5 Amendment of application.

An amendment to an application for a prospecting permit to include additional lands shall receive priority for such additional lands from the date of the filing of the amended application. The amended application shall be accompanied by the required advance rental. No additional filing fees are required.

§ 3562.6 Withdrawal of application.

An application for permit may be withdrawn in whole or in part before the permit is signed on behalf of the United States. Upon acceptance of the withdrawal by the authorized officer, the advance rental submitted with the application shall be refunded.

§ 3562.7 Permit bonds.

Prior to issuance of the permit, the applicant shall furnish a bond in an amount determined by the authorized officer, but not less than $1,000. (See Subpart 3504)

§ 3562.8 Terms and conditions of permit.

§ 3562.8-1 Duration of permit.

Prospecting permits are issued for an initial term of 2 years, and may be extended for a period not to exceed 4 years as provided in § 3562.9 of this title. No exploration activities shall be conducted following expiration of the initial term unless and until the permit has been extended by the authorized officer.

§ 3562.8-2 Dating of permits.

The permit shall be dated as of the first day of the month after its approval by the authorized officer unless the applicant requests in writing that it be dated the first day of the month in which it is approved.

§ 3562.8-3 Annual rental.

Rental at the rate of 50 cents per acre or fraction thereof shall be paid annually on or before the anniversary date of the permit. the rental payment shall not be less than $20.

§ 3562.8-4 Special stipulations.

To insure adequate protection of the lands and their resources, permits shall contain such stipulations as may be prescribed by the authorized officer or the surface management agency if the surface is not under Bureau jurisdiction as described in § 3500.9. (See also Part 3570)

§ 3562.9 Prospecting permit extensions.

§ 3562.9-1 Conditions for, and duration of, extensions.

A permit may be extended for a maximum of 4 years by the authorized officer provided that:

(a) The permittee has been unable with reasonable diligence to determine the existence or workability of valuable deposits of any mineral(s) coverd by the permit and desires to continue the prospecting or exploration program. Reasonable diligence means that in the opinion of the authorized officer the permittee has drilled a sufficient number of core holes on the permit area or performed other comparable prospecting to explore the permit area within the time allowed; or

(b) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his/her control.

§ 3562.9-2 Application for extension.

(a)(1) An application for extension shall be filed in the proper BLM office at least 90 days prior to expiration of the permit. No specific application form is required.

(2) Applications for extension shall be accompanied by a nonrefundable filing fee of $25 and the first year's rental of 50 cents pre acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(b) The application for extension shall:

(1) Demonstrate that the permittee has met the conditions for extension set forth in § 3562.9-1 of this title;

(2) Demonstrate the permittee's diligent prospecting activities; and

(3) Show how much additional time is necessary to complete prospecting work.

§ 3562.9-3 Effective date.

The permit extension shall become effective as of the date of approval.

Subpart 3563—Preference Right Lease

§ 3563.1 Application for preference right lease.

§ 3563.1-1 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office no later than 60 days after the prospecting permit expires. No specific form is required.

(b) The application shall be accompanied by the first year's rental at the rate of $1 per acre or fraction thereof made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20. (See Subpart 3503)

§ 3563.1-2 Contents of application.

(a) The application shall include a statement of the applicant's holdings in accordance with Subpart 3505 of this title.

(b) The application shall contain a complete and accurate description of the lands in accordance with § 3501.1 of this title. The lands shall have been included in the prospecting permit and shall not exceed 2,560 acres.

(c) The application shall identify the mineral(s) of which a valuable deposit(s) was discovered.

(d) The application shall be accompanied by a map(s) which shows utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the approximate locations and extent of the areas to be used for pits, overburden and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(e) The application shall include a narrative statement setting forth:

(1) The anticipated scope, method and schedule of development operations, including the types of equipment to be used;

(2) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed; and

(3) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands.

§ 3563.2 Review of application.

§ 3563.2-1 Preference right determination.

The authorized officer shall determine whether the permittee has discovered a valuable deposit of any mineral covered by the prospecting permit. The determination shall be based on data furnished the authorized officer by the permittee as required by Part 3580 of this title during the life of the permit and supplemental data submitted at the request of the authorized officer to determine the extent and character of the deposit, the anticipated mining and processing methods, the anticipated location, kind and extent of necessary surface disturbance and measures to be taken to reclaim that disturbance.

§ 3563.2 Surface management agency.

The surface management agency, if other than the Bureau, shall review the application for preference right lease in accordance with § 3500.9 and Part 3570 of this title, as applicable. The appropriate surface management agency may request supplemental data regarding surface disturbance and reclamation if not otherwise submitted under § 3563.1-1 of this title.

§ 3563.3 Issuance of lease.

The authorized officer shall issue a lease to the holder of a prospecting permit who shows that, within the terms of the permit, a valuable deposit of any mineral(s) covered by the prospecting permit was discovered.

§ 3563.4 Rejection of application.

(a) The authorized officer shall reject an application for a preference right lease if the authorized officer determines:

(1) That the applicant did not discover a valuable deposit of any mineral covered by the prospecting permit;

(2) The applicant did not submit in a timely manner requested information; or

(3) The applicant did not otherwise comply with the requirements of this subpart.

(b) On alleging in an application facts the applicant believes to be sufficient to show entitlement to a lease, a permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals.

(c) At the hearing, the permittee shall have both the burden of going forward and the burden of proof by a preponderance of the evidence that a valuable deposit of the mineral(s) was discovered.

Subpart 3564—Competitive Leasing

§ 3564.1 Lands subject only to competitive leasing.

Lands where prospecting or exploratory work is unnecessary to determine the existence or workability of a particular hardrock mineral deposit may only be leased through competitive sale to the qualified bidder who offers the highest acceptable bonus bid. A competitive lease sale may be initiated either through an expression of interest or on Bureau motion.

§ 3564.2 Surface management agency.

Prior to competitive lease offering, the surface management agency, if other than the Bureau, shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable. (See also § 3560.3)

§ 3564.3 Sale procedures.

§ 3564.3-1 Publication and posting of notice.

Prior to a lease offering, the authorized officer shall publish a notice of lease sale for at least 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated. The notice of lease sale shall be posted for 30 days in the public room of the proper BLM office.

§ 3564.3-2 Contents of notice.

The lease sale notice shall include:

(a) The time and place of sale;

(b) The bidding method;

(c) A description of the tract being offered;

(d) A description of the mineral deposit being offered;

(e) The minimum bid to be considered; and

(f) Information on where a detailed statement of the terms and conditions of the lease sale and of the proposed lease may be obtained.

§ 3564.3-3 Detailed statement.

The authorized officer shall also prepare and make available a detailed statement of sale containing:

(a) The lease form approved by the Director with terms and conditions, including the rental, royalty rates, bond amount and special stipulations;

(b) An explanation of the manner in which bids may be submitted;

(c) A notice that each bid shall be accompanied by the bidder's statement of holdings (See Subpart 3502) and one-fifth of the amount bid;

(d) A notice that the successful bidder(s) shall be required, prior to lease issuance, to pay its proportionate share of the total cost of the publication of the sale notice;

(e) A warning to all bidders concerning 18 U.S.C. 1860 which prohibits unlawful combination or intimidation of bidders;

(f) A statement that the Secretary reserves the right to reject any and all bids, and the right to offer the lease to the next qualified bidder if the successful bidder fails to obtain the lease for any reason; and

(g) Any other information deemed appropriate.

§ 3564.4 Bid opening.

All bids shall be opened and announced at the time and date specified in the notice of lease sale, but no bids shall be accepted or rejected at that time. Bids received after the time specified in the notice of sale shall not be considered. A bid may be withdrawn or modified prior to the time specified in the notice of sale.

§ 3564.5 Award of lease.

After the authorized officer has determined that the highest qualified bid meets or exceeds fair market value, copies of the lease on the form attached to the detailed statement shall be sent to the successful bidder who shall, within a specified time, sign and return the lease form, pay the balance of the bonus bid, pay the first year's rental, pay the publication costs and furnish the required lease bond.

§ 3564.6 Rejection of bid.

(a) If the high bid is rejected for failure of the successful bidder to sign the lease form and pay the balance of the bonus bid, or otherwise comply with the regulations of this subpart, the one-fifth bonus accompanying the bid shall be forfeited to the United States.

(b) If the lease cannot be awarded for reasons determined by the authorized officer to be beyond the control of the successful bidder, the authorized officer shall reject the bid and the deposit submitted with the bid shall be returned.

Subpart 3565—Noncompetitive Leasing—Fringe Acreage Leases and Lease Modifications

§ 3565.1 Lands subject to lease.

Lands available for leasing which are known to contain a hardrock mineral deposit that extends from an adjoining Federal lease or from privately held lands may be leased noncompetitively either by issuance of a new lease for these lands or by adding such lands to an existing Federal lease.

§ 3565.2 Special requirements.

Before a fringe acreage lease may be issued or a lease modified under this subpart, the authorized officer shall determine the following:

(a) The lands are contiguous to an existing Federal lease or to non-Federal lands owned or controlled by the applicant;

(b)(1) The new lease for fringe acreage is not in excess of 2,560 acres; or

(2) The acreage of the existing lease and the additional lands is not in excess of 2,560 acres;

(c) The mineral deposit is not in an area of competitive interest to holders of other active mining units in the area;

(d) The lands applied for lack sufficient reserves of the mineral resource to warrant independent development; and

(e) That leasing the lands will result in conservation of natural resources and will provide for economical and efficient recovery as part of a mining unit.

§ 3565.3 Filing requirements.

(a) An application shall be filed in triplicate with the proper BLM office. No specific application form is required.

(b) The application shall be accompanied by a nonrefundable filing fee of $25 and an advance rental payment of $1 per acre or fraction thereof for a new lease or at the rental rate set forth in the base lease for a modification made payable to the Department of the Interior—Bureau of Land Management. The rental payment shall not be less than $20.

(c) The application shall:

(1) Make reference to the serial number of the lease if the land adjoin an existing Federal lease;

(2) Contain a complete and accurate description of the land desired;

(3) Include a showing that a hardrock mineral deposit extends from the applicant's adjoining lease or from private lands owned or controlled by the applicant; and

(4) Include proof of ownership or control of the mineral deposit in the adjoining lands if not under a Federal lease.

§ 3565.4 Surface management agency.

The surface management agency shall be consulted in accordance with § 3500.9 and Part 3570 of this title, as applicable. (See also § 3560.3)

§ 3565.5 Payment of bonus.

Prior to the issuance of a new lease or a modification of an existing lease, the applicant shall be required to pay a bonus in an amount determined by the authorized officer based on an appraisal. In no event shall such payment be less than $1 per acre or fraction thereof.

§ 3565.6 Terms and conditions of lease.

New leases shall be issued subject to the terms and conditions set out under Subpart 3561 of this title. The terms and conditions of a modified lease shall be the same as the existing lease.

Subpart 3566—Lease Renewals

§ 3566.1 Applications.

An application for lease renewal shall be filed at least 1 year prior to the expiration of the lease term. No specific form is required. All applications shall be filed in triplicate in the proper BLM office together with a nonrefundable $25 filing fee and an advance rental payment of $1 per acre or fraction thereof. The rental payment shall not be less than $20.

§ 3566.2 Bonds.

Prior to the issuance of a renewal lease, the lessee may be required to furnish a new bond as prescribed by Subpart 3504 of this title.

§ 3566.3 Failure to apply for renewal.

If the holder of a lease fails to apply for renewal as provided in § 3566.1 of this title, the lease shall expire on the last day of the lease term.

§ 3566.4 Lease terms and conditions.

Each lease, if renewed, shall be issued on a form approved by the Director and shall be dated effective the first day of the month following its approval by the authorized officer or the first day of the month following the expiration of the current lease, whichever is later, and shall otherwise be subject to the terms and conditions set forth under Subpart 3561 of this title.

Subpart 3567—Development Contracts

§ 3567.1 Development contracts and processing and milling arrangements.

Development contracts and processing and milling arrangements by 1 or more lessees with 1 or more persons, associations or corporations to justify operations on a large scale for the discovery, development, production or transportation of ores may be approved by the authorized officer without regard to the acreage limitation set forth in §3560.4 of this title.

§ 3567.2 Acreage chargeability.

Leases and permits committed to an approved development contract or to a processing or milling arrangment shall not be included in computing accountable acreage.

§ 3567.3 Applications.

All applications shall be filed in triplicate in the proper BLM office. No specific form is required. An application shall include the following:

(a) Copies of the contract affecting the Federal leases and/or permits;

(b) A statement showing the nature and reasons for the requested contract;

(c) A statement showing all of the interests held in the contract area by the designated contractor; and

(d) The proposed or agreed upon plan of operation or development of the leased lands.

§ 3567.4 Approval.

Development contracts may be approved by the authorized officer when, in his/her judgment, conservation of natural resources or the public interest shall be best served thereby. The contract shall be signed and agreed upon by the parties prior to final approval by the Bureau.

PART 3570—SPECIAL LEASING AREAS

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Subpart 3571—Gold and Silver in Confirmed Private Land Grants

§ 3571.0–3 Authority.

Authority for leasing gold and silver in confirmed private land grants is shown in § 3500.0–3(c)(1) of this title.

§ 3571.1 Lands to which applicable.

The regulations in this subpart apply to lands in private land claims patented pursuant to decrees of the Court of Private Land Claims where the grant did not convey the rights to deposits of gold, silver and quicksilver and where the grantee has not otherwise become entitled in law or in equity to the deposits.

§ 3571.2 Who may obtain a lease.

Applications shall only be filed by, and leases issued to, the owner of the lands under the confirmed land grant; that is, the original grantee or his/her record transferee or successor in title.

§ 3571.3 Application for lease.

(a) Applications for leases shall be filed in triplicate in the proper BLM office and may include all or any part of the grant for which the applicant holds title on the date of the application. No specific form is required.

(b) Applications shall set forth the name and address of the applicant, describe the lands in which the deposits occur by legal subdivisions of the public surveys, if so surveyed; otherwise by metes and bounds; or if for the entire area in the grant, the name of the grant, area and date of patent shall suffice. The mineral deposits shall also be fully described, giving character, mode of occurrence, nature of the formation, kind and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary to successful operation of the mine(s) contemplated, estimated amount of production of gold, silver and quicksilver, or any of them, and such other pertinent information as the applicant may desire to set forth, including what he/she considers a reasonable royalty rate under the lease.

(c) The applicant shall also file with his/her application a duly authenticated abstract of title showing present ownership of the lands or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 3571.4 Leases.

§ 3571.4-1 Lease terms.

The lease shall be issued for a period of 20 years with a perference right in the lessee to renew at the end of the initial terms and at the end of each 10 year period thereafter.

§ 3571.4-2 Rate of royalty; investment determined.

If the authorized officer finds the application sufficient to authorize issuance of a lease, then he/she shall establish a rate of royalty of not less than 5 percent of more than 12½ percent of the value of the output of gold, silver or quicksilver at the mine and also shall establish the amount of investment required under the lease.

§ 3571.4-3 Lease form and execution.

A lease on a form approved by the Director shall be furnished to the applicant, who shall be allowed 30 days from notice within which to execute and return the lease to the proper BLM office and to furnish the required bond.

§ 3571.5 Bond.

Prior to lease issuance, the lessee shall furnish a bond of not less than $2,000 conditioned upon compliance with all terms and conditions of the lease including the investment requirement prescribed. The authorized officer reserves the right to increase the bond amount.

Subpart 3572—National Park Service Areas

§ 3572.0-3 Authority.

Authority for leasing mineral deposits within certain national recreation areas administered by the National Park Service are found in § 3500.0-3(c)(3) of this title.

§ 3572.1 Other applicable regulations.

§ 3572.1-1 Leasable minerals.

Except as otherwise specifically provided in this subpart, leasing of deposits of leasable minerals shall be governed by regulations in Parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3572.1-2 Hardrock minerals.

Except as otherwise specifically provided in this subpart, the regulations in Parts 3500 and 3560 of this title shall govern the leasing of hardrock minerals.

§ 3572.2 Lands to which applicable.

§ 3572.2-1 Boundary maps.

The area subject to the regulations in this subpart are those areas of land and water which are shown on the following maps on file and available for public inspection in the Office of the Director of the National Park Service and in the Superintendent's Office of each area. The boundaries of these areas may be revised by the Secretary as authorized in the Acts cited under § 3500.0-3(c)(3) of this title.

(a) Lake Mead National Recreation Area—The map identified as "boundary map, 8360-80013A, revised December 1979."

(b) Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area—The map identified as "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," numbered BOR-WEST 1004, dated July 1963.

(c) Ross Lake and Lake Chelan National Recreation Areas—The map identified as "Proposed Management Units, North Cascades, Washington," numbered NP-CAS-7002, dated October 1967.

(d) Glen Canyon National Recreation Area—The map identified as "Boundary Map, Glen Canyon National Recreation Area," numbered GLC-91,006, dated August 1972.

§ 3572.2-2 Excepted areas.

The following areas shall not be open to mineral leasing:

(a) *Lake Mead National Recreation Area.* (1) All waters of Lake Mead and Mohave and all lands within 300 feet of those lakes measured horizontally from the shoreline at maximum water surface elevations.

(2) All lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams and all lands within any developed and/or concentrated public use area or other area of outstanding recreational significance as designated by the Superintendent on the map (NRA-L.M. 2291A, dated July 1966) of Lake Mead National Recreation Area which is available for inspection in the Office of the Superintendent.

(b) *Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area.* (1) All waters of Whiskeytown Lake and all lands within 1 mile of that lake measured from the shoreline at maximum surface elevation.

(2) All lands classified as high density recreation, general outdoor recreation, outstanding natural and historic, as shown on the map numbered 611-20, 004B, dated April 1976, entitled "Land Classification, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area." This map is available for public inspection in the Office of the Superintendent.

(3) All lands within Section 34 of Township 33 north, Range 7 west, Mt. Diablo Meridian.

(c) *Ross Lake and Lake Chelan National Recreation Area.* (1) All of Lake Chelan National Recreation Area.

(2) All lands within ½ mile of Gorge, Diablo and Ross Lakes measured from the shoreline at maximum surface elevation.

(3) All lands proposed for or designated as wilderness.

(4) All lands within ½ mile of State Highway 20.

(5) Pyramid Lake Research Natural Area and all lands within ½ mile of its boundaries.

(d) *Glen Canyon National Recreation Area.* Those areas closed to mineral disposition within the natural zone, development zone, cultural zone and portions of the recreation and resource utilization zone as shown on the map numbered 80,022A, dated March 1980, entitled "Mineral Management Plan—Glen Canyon National Recreation Area." This map is available for public inspection in the Office of the Superintendent and the Offices of the State Directors, Bureau of Land Management, Arizona and Utah.

§ 3572.3 Consent and consultation.

Any lease or permit respecting minerals shall be issued or renewed only with the consent of the Regional Director, National Park Service. Such consent shall only be granted upon a determination by the Regional Director that the activity permitted under the lease or permit shall not have significant adverse effect upon the resources or administration of the area pursuant to the authorizing legislation for the area. Any lease or permit issued shall be subject to such conditions as may be prescribed by the Regional Director to protect the surface and significant resources of the area, to preserve their use for public recreation and subject to the condition that site specific approval of any activity on the lease shall only be given upon a concurrence by the Regional Director. All lease applications received for reclamation withdrawn lands shall also be submitted to the Bureau of Reclamation for review.

Subpart 3573—Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area

§ 3573.0–3 Authority.

Authority for leasing mineral deposits within the Shasta and Trinity Units of Whiskeytown-Shasta-Trinity National Recreation Area is cited under § 3500.0–3)c)(4) of this title.

§ 3573.1 Other applicable regulations.

The regulations in this subpart authorize issuance of mineral leases on lands administered by the Forest Service within the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area.

§ 3573.1–1 Leasable minerals.

Except as otherwise specifically provided in § 3573.2 of this title, leasing of leasable mineral deposits shall be governed by the regulations in Parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3573.1–2 Hardrock minerals.

This subpart governs the leasing of hardrock minerals in the Shasta and Trinity Units of the Whiskeytown-Shasta-Trinity National Recreation Area. The terms and conditions of hardrock leases issued under this subpart shall be the same as those set out for hardrock leases in Subpart 3561 of this title except as specifically modified in this subpart.

§ 3573.2 Consent of Secretary of Agriculture.

Any lease or permit respecting minerals in lands subject to this subpart shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he/she may prescribe after he/she finds that such disposition would not have significant adverse effects on the purpose of the Central Valley Project or the administration of the recreation area.

§ 3573.3 Applications for hardrock mineral leases.

No specific form is required. An application shall include the applicant's name and address, a statement of holdings in accordance with Subpart 3502 of this title, a description of the lands in accordance with Subpart 3501 of this title, and the name of the mineral for which the lease is desired. The applicant shall state whether the mineral applied for can be developed in paying quantities, stating the reasons therefor, and shall furnish such facts as are available to him/her respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application shall be filed in triplicate in the proper BLM office and shall be accompanied by a nonrefundable filing fee of $25.

§ 3573.4 Hardrock mineral leases.

§ 3573.4–1 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions, described by metes and bounds and connected to a corner of the public survey by courses and distances. The authorized officer may prescribe a lesser area for any mineral deposit if such lesser area is adequate for an economic mining operation.

§ 3573.4–2 Royalties, rentals and minimum royalties.

Rentals and royalties shall be determined by the authorized officer on the basis of the fair market value, but in no event shall be less than:

(a) A rental of 50 cents per acre or fraction thereof payable annually in advance until production is obtained.

(b) A minimum royalty of 1 dollar per acre or fraction thereof payable annually in advance after production is obtained.

(c) A production royalty of 2 percent of the amount or value of the minerals mined, the exact amount of royalty to be fixed prior to the issuance of the lease.

§ 3573.4–3 Special terms and conditions.

Each lease shall contain provisions for the following:

(a) Diligent development of the leased property except when operations are interrupted by strikes, the elements or casualties not attributable to the lessee, unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions;

(b) Occupation and use of the surface shall be restricted to that which is reasonably necessary for the exploration, development and extraction of the leased minerals, subject to any special rules to protect the values of the recreation area;

(c) No vegetation shall be destroyed or disturbed except where necessary to mine and remove the minerals;

(d) Operations shall not be conducted in such a manner as to adversely affect the purpose of the Central Valley Project through dumping, drainage or otherwise;

(e) Structures shall not be erected or roads or vehicle trails opened or constructed without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his/her successor;

(f) Reservation of the right to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3573.4–4 Duration of lease.

Leases shall be issued for a period of 5 years. Any lease in good standing, upon which production in paying quantities has been obtained, shall be subject to renewal for successive 5 years terms on such reasonable terms as may be prescribed by the Secretary. An

application for renewal shall be filed in triplicate in the proper BLM office within 90 days prior to the expiration of the current lease term unless the lands included in the lease have been withdrawn at the expiration of such term.

§ 3573.4–6 Lease by competitive bidding.

Leases may be offered competitively for any lands applied for under this subpart without regard to the quantity or quality of the mineral deposit that may be present therein.

§ 3573.5 Disposal of materials.

Materials within the public lands covered by the regulations in this subpart which are not subject to the provisions of §§ 3573.1–1 and 3573.1–2 of this title, shall be subject to disposal under the Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.) subject to the conditions and limitations on occupancy and operations prescribed for leases in this subpart.

Subpart 3574—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purposes

§ 3574.0–3 Authorities.

Authority for leasing reserved minerals in certain lands patented to the State of California for park or other public purposes is cited under § 3500.0–3(c)(2) of this title.

§ 3574.1 Lands to which applicable.

The regulations in this subpart apply to certain lands patented to the State of California for park and other public purposes.

§ 3574.2 Minerals to be leased.

Leasable and hardrock minerals are subject to lease under this subpart.

§ 3574.3 Other applicable regulations.

Subject to the regulations in this subpart, the regulations in Parts 3500, 3510, 3520, 3530, 3540, 3550 and 3560 of this title shall govern the leasing of all leasable and hardrock minerals within the area.

§ 3574.4 Notice of application.

The authorized officer shall notify the surface owner of each application received. Notice of any proposed competitive lease offer shall also be given to the surface owner prior to publication. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory, the application shall be rejected and the lands shall not be offered for lease sale.

§ 3574.5 Protection of surface.

All leases issued pursuant to this subpart shall be conditioned upon compliance by the lessee with all of the laws, rules and regulations of the State of California for the safeguarding and protection of plant life, scenic features and park or recreational improvements on the lands, where not inconsistent with the terms of the lease or this section. The lease shall also provide that any mining work performed upon the lease shall be located in accordance with any requirements of the State necessary for the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property shall be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine shall be on a route approved in writing by the State's authorized representative.

§ 3574.6 Terms of lease.

Leases for hardrock minerals shall issue for a period of 5 years with a perference right of renewal at the end of the initial term and at the end of each 5 year period thereafter. [See Subpart 3566]

Subpart 3575—White Mountains National Recreation Area—Alaska

§ 3575.0–3 Authority.

Authority for leasing minerals in White Mountains National Recreation Area—Alaska is found in § 3500.0–3(c)(5) of this title.

§ 3575.1 Lands to which applicable.

The lands subject to the regulations in this subpart are within the White Mountains National Recreation Area—Alaska, which have been opened to mineral leasing and development pursuant to the findings in the land use plan for the area that such use and development would be compatible with, or would not significantly impair, public recreation and conservation of the scenic, scientific, historic, fish and wildlife or other values contributing to public enjoyment. The land use plan is on file and available for inspection in the Bureau's Fairbanks District Office.

§ 3575.2 Other applicable regulations.

§ 3575.2–1 Leasable minerals.

Leasing of deposits of leasable minerals shall be governed by the applicable regulations in Parts 3500, 3510, 3520, 3530, 3540 and 3550 of this title.

§ 3575.2–2 Hardrock minerals.

Except as otherwise specifically provided in this subpart for mining claimant preference right leases, the regulations in Parts 3500 and 3560 of this title shall govern the leasing of hardrock minerals.

§ 3575.3 Mining claimant preference right leases.

§ 3575.3–1 Who may obtain a preference right lease.

Where, consistent with the land use plan, the Secretary has opened the area to mineral leasing and development, the holder of an unperfected mining claim within the White Mountains National Recreation Area which was, prior to November 16, 1978, located, recorded and maintained in accordance with applicable Federal and State laws on lands located within the recreation area, is entitled to a lease for the removal of the hardrock minerals from the mining claim(s), provided such mining claimant submits a timely application.

§ 3575.3–2 Application.

(a) An application for preference right lease shall be filed in triplicate in the Fairbanks District Office, P.O. Box 1150, Fairbanks, Alaska 99707, by the holder of an unperfected mining claim(s) within 2 years from the date the land use plan is approved.

(b) No specific form is required.

(c) Each application shall be signed in ink by the applicant and shall include the following:

(1) The applicant's name and address;

(2) The serial number of each claim for which the application is made;

(3) The name of the mineral(s) for which a lease is sought; and

(4) A separate map upon which the claim(s) is clearly marked.

(d) A single application may embrace any number of unperfected mining claims provided that, in the aggregate, the claims do not exceed 640 acres. The claims shall be contiguous and shall be located entirely within an area of 6 miles square. Multiple applications may be submitted.

§ 3575.4 Leases.

§ 3575.4–1 Survey for leasing.

Prior to the issuance of a lease under this subpart, the applicant, at his/her own expense, shall be required to have a correct survey made under authority of a proper cadastral engineer, such survey to show the exterior surface boundaries of the entire lease tract, not each individual mining claim where

more than 1 claim is involved, which boundaries are to be distinctly marked by monuments on the ground. Application for authorization of survey shall be made in accordance with Subpart 1821 of this title.

§ 3575.4–2 Terms and conditions.

Leases shall be issued on a form approved by the Director and under such terms and conditions as prescribed in the lease form and Subpart 3561 of this title. Where deemed necessary, special lease stipulations shall also be included for the protection of the surface, its resources and use for recreation.

§ 3575.4–3 Relinquishment of claims.

Prior to issuance of a lease, the applicant shall relinquish in writing any right or interest in his/her mining claim(s) as of the date the lease covering such claim(s) becomes effective.

§ 3575.5 Exploration license.

§ 3575.5–1 Exploration license.

Private parties, jointly or severally, may apply for exploration licenses to explore known unleased hardrock mineral deposits to obtain geologic, environmental and other pertinent data concerning such deposits. Exploration licenses do not grant the licensee any preference or right to a lease.

§ 3575.5–2 Other applicable regulations.

Except as otherwise specifically provided in this subpart, the regulations pertaining to land use authorizations under Part 2920 of this title shall govern the issuance of exploration licenses.

§ 3575.5–3 Exploration plan.

All applications for exploration licenses shall include an exploration plan which is in full compliance with § 3562.3–3 of this title. The approved exploration plan shall be attached to, and made a part of, the license.

§ 3575.5–4 Notice of exploration.

Applicants for exploration licenses shall publish a Notice of Exploration inviting other parties to participate in exploration under the license on a pro rata cost sharing basis.

§ 3575.5–5 Contents of notice.

The Notice of Exploration prepared by the authorized officer and furnished to the applicant shall contain:

(a) The name and address of the applicant;

(b) A description of the lands;

(c) The address of the Bureau office where the exploration plan shall be available for inspection; and

(d) An invitation to the public to participate in the exploration under the license.

§ 3575.5–6 Publication and posting of notice.

(a) The applicant shall publish the Notice of Exploration once a week for 3 consecutive weeks in at least 1 newspaper of general circulation nearest the area where the lands are located.

(b) The authorized officer shall post the notice in the Bureau's Alaska State Office and in the Fairbanks District Office for 30 days.

§ 3575.5–7 Notice of participation.

Any person who seeks to participate in the exploration program shall notify the authorized officer and the applicant in writing within 30 days after posting.

§ 3575.5–8 Decision on plan and participation.

(a) The authorized officer may issue the license naming participants and acreage covered, establishing core hole spacing and resolving any other issue necessary to minimize surface disturbance and inconsistencies between exploration plans.

(b) Upon application by the participant, a modification of the exploration plan may be approved by the authorized officer.

§ 3575.5–9 Submission of data.

The licensee shall furnish the authorized officer copies of all data obtained during exploration. All data shall be considered confidential and not made public either until the areas involved have been leased or until the authorized officer determines that public access to the data would not damage the competitive position of the licensee, whichever is first.

Subpart 3576—Nevada

§ 3576.1 Sand and gravel.

§ 3576.1–1 Applicable laws and regulations.

The Act of June 8, 1926 (44 Stat. 708), authorizes the Secretary of the Interior to dispose of the reserved minerals in certain lands patented to the State of Nevada under such conditions and under such rules and regulations as he/she may prescribe. Valuable deposits of sand and gravel in such lands shall be subject to disposal only under the regulations in Group 3600 of this title which implement the Materials Act of 1947, as amended (30 U.S.C. 601 et seq.).

§ 3576.1–2 Existing leases.

Existing sand and gravel leases may be renewed at the expiration of their term for an additional period of 5 years and each successive 5 year period thereafter on such terms and conditions as the authorized officer determines to be reasonable. An application for renewal shall be filed in triplicate in the proper BLM office within 90 days prior to the expiration of the lease term and be accompanied by a nonrefundable filing fee of $25. Prior to renewal of a lease, the lessee shall be required to file a new bond and remit rental for the first year of the renewal lease in the respective amounts prescribed by the authorized officer. The rental payment shall not be less than $20. Leases shall only be renewed upon application of the lessee of record on the effective date of this regulation. Leases may be transferred for the remaining term, but shall not be renewed.

J. Steven Griles,

Acting Assistant Secretary of the Interior.

February 1, 1985.

[FR Doc. 85–8710 Filed 4–11–85; 8:45 am]

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federal register

Friday
April 12, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

California: CA84-5022	Oct. 5, 1984.
Idaho: ID85-5010	Feb. 15, 1985.
Illinois:	
IL83-2037	Apr. 29, 1983.
IL85-5004	Jan. 18, 1985.
Massachusetts:	
MA85-3013	Mar. 15, 1985.
MA85-3014	Mar. 15, 1985.
MA85-3015	Mar. 15, 1985.
Ohio:	
OH83-5122	Nov. 25, 1983.
OH83-5127	Dec. 23, 1983.
Oregon: OR84-5020	June 22, 1984.
Pennsylvania:	
PA82-3011	Mar. 12, 1982.
PA84-3015	June 1, 1984.
PA84-3035	Sept. 21, 1984.
PA84-3037	Oct.5, 1984.
Texas:	
TX84-4036	May 25, 1984.
TX84-4037	May 25, 1984.
TX85-4001	Jan. 25, 1985.
TX84-4015	Mar. 16, 1984.
TX83-4075	Oct. 21, 1983.
Washington: WA84-5040	Nov. 16, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Colorado: CO83-5109(CO85-5021)	Apr. 8, 1983.
Missouri: MO84-4044(MO85-4005)	Aug. 3, 1984.
Nebraska: NE80-4100(NE85-4004	Dec. 12, 1980.

Signed at Washington, D.C.; this 5th Day of April 1985.

James L. Valin,

Assistant Administration.

BILLING CODE 4510-27-M

DECISION NO. CA84-5022 - MOD. #7
(49 FR 39416 - October 5, 1984)
Alameda, Alpine, Amador Counties, etc., California

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Brick Tenders:		
Area 1		
Area 1: Amador, El Dorado, Nevada, Placer; Sacramento, and Yolo Counties	$13.80	$3.46
ADD:		
Brick Tenders:		
Area 1		
Area 1: Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba Counties	13.80	3.46

DECISION NO. IL85-5004 - Mod# 1
(50 FR 2762 - January 18, 1985)
Kankakee County, Illinois

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Residential	$11.40	$1.85+ 3.6%
TILE FINISHERS	14.20	2.53
TRUCK DRIVERS:		
2-3Axles	15.50	c
4 Axles	15.70	c
5 Axles	15.90	c
6 Axles	16.05	c
FOOTNOTES:		
c. $119.70 per week		
OMIT:		
PAINTERS		
ADD:		
PAINTERS:		
Brush; Roller; Taper (hand); and Paperhanger	15.24	
Swing Stage; Scaffolding over 30 ft; Epoxy; Toxic material; Sandblast; Spray Machine taping	16.24	

DECISION #IL83-2037-MOD #6
(48 FR19583-April 29, 1983)
Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
TUG WORKERS:		
Fireman, Lineman, Oiler Deckhand, Scowman (on/or with tugboards, lauches, or other self-propelled boats)	$18.18	$1.10+ b+d
DREDGE WORKERS:		
Fireman, oiler, deckhand & scowman (with dipper dredges, hydraulic dredges or other floating equipment engaged in dredging operations); pipeline men (both afloat & shore, including loading, unloading, installing, maintaining & handling pipelines for hydraulic dredges & sandboats)	18.18	1.10+ b+d
Range & Sweep men, Service truck driver	14.30	1.10+ b+d
FOOTNOTES:		
b: $16.44 per day per employee		
d: Eight paid holidays (Paul Hall's Day combined with Washington's Birthday)		

DECISION NO. OR84-5020 - Mod# 10
(49 FR 25821 - June 22, 1984)
Statewide Oregon

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; STONEMASONS:		
Area 2:		
Projects Under $1 million	$14.23	$3.27
SHEET METAL WORKERS:		
Area 1	20.04	4.54
STEAMFITTERS:		
Area 1	20.48	3.65
LINE CONSTRUCTION:		
Area 1, Zone 1:		
Fringe benefits:		
Groups 1,2 &3		3.25+3½%
Groups 4,5,6 & 7		2.55+3½%

DECISION NO. ID85-5010 - Mod# 1
(50 FR 6503 - February 15, 1985)
Statewide Idaho

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Area 2:		
Fringes (all classifications)		$4.86
LINE CONSTRUCTION:		
Area 1, Zone 1:		
Cable Splicer, Leadman pole Sprayer	20.03	3.25+3½%
Lineman, pole sprayer, heavy line equip man, certified lineman welder	18.11	3.25+3½%
Tree trimmer	16.35	3.25+3½%
Line equipment Man	15.61	2.55+3½%
Head groundman, powderman, Jackhammerman	13.66	2.55+3½%
Head groundman (chipper)	13.66	2.55+3½%
Groundman	12.84	2.55+3½%

DECISION NO. MA85-3013 - MOD. #1
(50 FR 10587 - March 15, 1985)
Essex, Suffolk, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Dukes, Nantucket Counties Massachusetts

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS		
Zone 5A	15.43	3.77
PLUMBERS, PIPEFITTERS & STEAMFITTERS:		
Aera 2	18.15	4.82
SPRINKLER FITTERS		
Area 1	21.75	3.41

DECISION NO. MA85-3014 - MOD. #1
(50 FR 10594 - March 15, 1985)
Worcester County, Massachusetts

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS		
Area 1	16.80	3.78+ 3%

DECISION NO. MA85-3015 - MOD. #1
(50 FR 10600 - March 15, 1985)
Berkshire, Franklin, Hampden and Hampshire Counties, Massachusetts

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	18.73	4.53
ELECTRICIANS		
Area 3	16.80	3.78+ 3%

DECISION NUMBER OH83-5122 - MOD. #12 (48 FR 53234 - November 25, 1983) Statewide, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers & Stonemasons:		
Area 6	$15.52	$3.21
Area 7	16.945	2.25
Area 10	15.00	1.75
Area 20	17.385	3.53
Area 30	17.14	3.10
Carpenters & Piledrivermen:		
Area 9:		
Piledrivermen	15.53	4.665
Area 14:		
Carpenters	16.20	3.80
Piledrivermen	17.11	3.80
Electricians:		
Area 4	18.20	3.80+ 3 1/2%
Area 12	14.14	2.48+ 3%
Ironworkers:		
Area 10	14.79+ 8%	5.63
Painters:		
Area 2	15.00	1.89
Power Equipment Operators:		
Zone 1: Columbiana, Mahoning & Trumbull Cos.:		
Class 1	17.38	4.11
Class 2	16.39	4.11
Class 3	15.83	4.11
Class 4	15.36	4.11
Class 5	15.26	4.11
Class 6	17.63	4.11
Omit:		
Footnote:		
c. 8% of gross earnings:		

DECISION NUMBER OH83-5127 - MOD. #12 (48 FR 56903 - December 23, 1983) Adams, Allen,... Wood & Wyandot Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 5	$16.10	$3.57
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 4	15.52	3.21
Area 5	16.945	2.25
Electricians:		
Area 9	14.14	3% + 2.48
Glaziers:		
Area 9	16.34	1.26
Ironworkers:		
Area 6	14.79+ 8%	5.63
Lathers:		
Area 1	15.50	3.70
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 4:		
Marble Setters	16.355	2.25
Terrazzo Workers; & Tile Setters	16.305	2.25
Area 14:		
Marble Setters	17.385	3.53
Millwrights:		
Area 5	16.44	3.31
Area 7	16.65	3.70
Painters:		
Area 2:		
Brush; Drywall Taping; & Rollers	13.55	1.89
Wall Covering; Paperhanging	13.80	1.89
Sandblasting; Spray; & Steamcleaning	14.05	1.89
Sheet Metal Workers:		
Area 8	17.18	3.32
Laborers:		
Area 2:		
Group 1	11.90	3.00
Group 2	12.05	3.00
Group 3	12.20	3.00
Omit:		
Footnote:		
y. 8% of gross earnings		

DECISION NO. PA84-3037 - MOD. #1 (49 FR 39436 October 5, 1984) Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS		
Zone 2	16.33	2.66
CARPENTERS		
Zone 2	13.22	2.55
ELECTRICIANS:		
Zone 1	13.06	3.97
Zone 3	16.40	1.70 +3%
Zone 5	17.38	1.89+ 3%
IRONWORKERS:		
Zone 3		
Structural	17.75	4.30
Reinforcing	17.50	4.30
PAINTERS		
Zone 3		
Brush	12.22	1.30
Structural Steel	12.67	1.30
Spray	12.97	1.30
PILEDRIVERMEN	15.97	6.91+d
PLASTERERS		
Zone 4	13.81	1.66
OMIT:		
PLUMBERS		
Zone 1	16.72	2.44
Zone 2	15.24	3.95
Zone 3	17.05	2.39
Zone 4	13.38	3.59
STEAMFITTERS		
Zone 1	16.72	2.44
Zone 2	14.79	4.35
Zone 3	17.05	2.39
Zone 4	18.38	3.59

ADD:	Basic Hourly Rates	Fringe Benefits
PLUMBERS		
Zone 1	15.76	3.64
Zone 2	15.24	4.30
Zone 3	17.85	2.42
Zone 4	18.68	3.94
Zone 5	16.06	3.64
STEAMFITTERS		
Zone 1	15.76	3.64
Zone 2	14.79	4.85
Zone 3	17.85	2.42
Zone 4	18.68	3.94
Zone 5	16.06	3.64

DECISION NO. PA84-3037 Modification No. 1

OMIT:

AREA COVERED BY PLUMBERS ZONES

Zone 1 - Lycoming & Sullivan Counties
Zone 2 - Schuylkill County
Zone 3 - Northumberland County; Lebanon County, (West of Route 501)
Zone 4 - Lebanon County (East of Route 501)

AREA COVERED BY STEAMFITTERS ZONES

Zone 1 - Lycoming & Sullivan Counties
Zone 2 - Schuylkill County
Zone 3 - Northumberland County; Lebanon County, (West of Route 501)
Zone 4 - Lebanon County; (East of Route 501)

ADD:

AREA COVERED BY PLUMBERS ZONES

Zone 1 - Lycoming
Zone 2 - Schuylkill County
Zone 3 - Northumberland County; Lebanon County, (West of Route 501)
Zone 4 - Lebanon County (East of Route 501)
Zone 5 - Sullivan County

AREA COVERED BY STEAMFITTERS ZONES

Zone 1 - Lycoming
Zone 2 - Schuylkill County
Zone 3 - Northumberland County; Lebanon County, (West of Route 501)
Zone 4 - Lebanon County; (East of Route 501)
Zone 5 - Sullivan County

DECISION NO. PA82-3011 - MOD. #12 (47 FR 10963 - March 12, 1982) Bradford, Tioga & Union Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS: Tioga County in its entirety Remainder of Union and Bradford Counties	13.06	3.97
PLASTERERS: Tioga, Union and Remainder of Bradford County	14.20	

DECISION NO. PA84-3015 - MOD. #7 (49 FR 22976 - June 1, 1984) Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	17.91	2.04
BRICKLAYERS & STONE MASONS	13.92	2.03
ELEVATOR CONSTRUCTORS	15.90	3.29+a+b
ELEVATOR CONSTRUCTORS HELPERS	11.13	3.29+a+b
ELEVATOR CONSTRUCTORS PROBATIONARY	7.95	
PAINTERS:		
Brush	14.22	1.30
Structural Steel	12.67	1.30
Spray	12.97	1.30
Tank, Bridge, Stack	13.47	1.30
TERRAZZO & TILE SETTERS	14.65	2.02

DECISION NO. PA84-3035 - MOD. #4 (49 FR 27243 - Sept. 21, 1984) Lackawanna, Susquehanna, Wayne & Wyoming Counties Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CEMENT MASONS: Wyoming, Wayne, Susquehanna Counties, Scranton in Lackawanna County	16.85	
PLASTERERS	16.93	
PLUMBERS	15.24	4.45

DECISION #TX84-4036-MOD#6 (49 FR 22189-May 25,1984) Jefferson & Orange Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Elevator Constructors: Mechanics	$15.195	3.29+a
Helpers	10.64	3.29+a
Helpers (Prob.)	7.60	
Bricklayers & Stonemasons	17.28	2.40

DECISION #TX84-4037-MOD#5 (49 FR 22191-May 25,1984) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchison, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher and Wheeler Cos., Texas	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians: Zone 2 Electricians	14.30	1.00+3.25%
Cable Splicers	14.55	1.00+3.25%

MODIFICATIONS P. 7

	Basic Hourly Rates	Fringe Benefits
DECISION #TX85-4001-MOD#2 (50 FR 3623-January 25, 1985)		
Galveston & Harris Cos., Texas		
CHANGE:		
Elevator Constructors:		
Mechanics	15.195	3.29+a
Helpers	10.64	3.29+a
Helpers (Prob.)	7.60	
DECISION #TX84-4015-MOD#6 (49 FR 10008-March 16,1984)		
Wichita County, Texas		
CHANGE:		
Electricians:		
Electricians	14.30	1.00+ 3.25%
Cable Splicers	14.55	1.00+ 3.25%

	Basic Hourly Rates	Fringe Benefits
DECISION #TX83-4075—MOD. #2 (48 FR 48908—Oct. 21, 1983)		
Ector and Midland Cos., Texas		
CHANGE:		
Bricklayers and Stonemasons	$13.50	$ .50
Electricians	14.90	1.60+ 3.10%
Plumbers and Pipefitters	14.75	1.49
Sheet Metal Workers	14.30	2.17 + 3%

	Basic Hourly Rates	Fringe Benefits
DECISION NO. WA84-5040 - Mod# 6 (49 FR 45532 - Nov. 16, 1984) Statewide Washington		
CHANGE:		
CARPENTERS:		
Area 4:		
Carpenters	16.57	3.42
Piledriver, sawfiler, stationary power woodworking tool	16.72	3.42
Boommen, Carpenters(burned, charred, treated material)	16.82	3.42
Piledriver, creosote	16.93	3.42
Millwright, Machine Erectors	17.07	3.42
ELEVATOR MECHANICS:		
Area 1	19.855	a+3.29
GLAZIERS:		
Area 5	16.84	b+2.66
PAINTERS:		
Area 1:		
Drywall Taper	14.67	2.59
Area 4:		
Striper	16.65	1.83
SHEET METAL WORKERS:		
Area 3	20.04	4.54
TERRAZZO WORKERS; TILE SETTERS:		
Area 1	16.48	2.00
Area 7	17.44	3.43
LINE CONSTRUCTION:		
Group 6:		
Head groundman (chipper)	13.66	
FRINGE BENEFITS:		
Groups 1 to 3		3.25+3½
Groups 4 to 7		3.25+3½
ELECTRONIC TECHNICIANS:		
Area 1	12.81	1.12+3%
ADD:		
ELECTRONIC TECHNICIANS:		
Area 3:		
Grays Harbor, Lewis, Mason, Pierce, Pacific, and Thurston Counties	14.00	7.4%

SUPERSEDEAS DECISION

STATE: Colorado — COUNTIES: Statewide
DECISION NUMBER: CO85-5021 — DATE: Date of Publication
Supersedes Decision No. CO83-5109 dated April 8, 1983, in 48 FR 15404.
DESCRIPTION OF WORK: Heavy and Highway Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$12.50	$3.22
CEMENT MASONS	12.04	2.79
ELECTRICIANS:		
Area 1:		
Electricians	16.85	2.10+ 3-3/10%
Cable Splicers	17.10	2.10+ 3-3/10%
Area 2:		
Electricians	16.00	1.50+ 4%
Cable Splicers	16.25	1.50+ 4%
Area 3:		
Contracts over $100,000.00:		
Electricians	15.49	2.00+ 4½%
Cable Splicers	17.04	2.00+ 4½%
Electricians on electrical contracts less than $100,000.00	11.50	1.80+ 4½%
Area 4:		
Electricians	16.12	2.06+ 3%
IRONWORKERS:		
Structural, Ornamental, and Reinforcing	13.50	3.53
LINE CONSTRUCTION:		
Cable Splicers	16.55	2.00+ 3%
Journeyman Lineman Gas Fitter Welder Line Equipment Operator Line Truck Crew Class 1:	13.33	2.00+ 3%
Groundman	10.28	
PAINTERS:		
Area 1:		
Brush	13.85	2.33
Spray, Swing Stage	16.45	2.33

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Area 2:		
Brush	$11.20	$1.88
Spray, Swing Stage	11.80	1.88
Area 3:		
Brush	12.19	1.88
Spray, Swing Stage	12.79	1.88
PLUMBERS:		
Montezuma County	17.45	2.65

	Basic Hourly Rates ZONE 1	Basic Hourly Rates ZONE 2
LABORERS:		
Group 1	$ 9.95	$10.45
Group 2	10.05	10.55
Group 3	10.35	10.85
Group 4	10.50	11.00
Group 5	10.70	11.20
Group 6	10.75	11.25
TUNNEL LABORERS:		
Group 1	9.95	10.45
Group 2	10.85	11.35
Group 3	10.95	11.45
Group 4	11.03	11.53
Group 5	11.10	11.60
Group 6	12.00	12.50
(Shafts, Raises, Missile Silos and all underground work other than Tunnels):		
Group 1	10.95	11.45
Group 2	11.10	11.60
Group 3	11.20	11.70
Group 4	11.48	11.98
Group 5	11.53	12.03
Group 6	12.13	12.63

FRINGE BENEFITS: $2.59

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:	ZONE 1	ZONE 2
(Other than for work in Tunnels, Shafts, and Raises:		
Group 1	$11.26	$11.93
Group 2	11.61	12.28
Group 3	11.96	12.63
Group 4	12.11	12.78
Group 5	12.26	12.93
Group 6	12.41	13.08
(For work in Tunnels, Shafts, and Raises):		
Group 1	13.41	14.08
Group 2	13.76	14.43
Group 3	13.86	14.53
Group 4	14.11	14.78
Group 5	14.26	14.93
Group 6	14.66	15.33
Group 7	14.41	15.08
FRINGE BENEFITS		
$3.70		
TRUCK DRIVERS:	ZONE 1	ZONE 2
Group 1	12.91	12.16
Group 2	13.01	12.31
Group 3	13.11	12.44
Group 4	13.21	12.51
Group 5	14.81	12.56
Group 6	14.86	12.63
Group 7	14.91	12.68
Group 8	14.96	12.75
Group 9	15.01	12.88
Group 10	15.06	12.94
Group 11	15.16	13.06
Group 12	15.21	13.31
Group 13	15.31	13.36
Group 14	15.46	13.43
Group 15	15.51	13.57
Group 16	15.61	13.81
Group 17	15.71	14.07
Group 18	15.81	14.81
Group 19	15.91	-
Group 20	16.11	-
FRINGE BENEFITS		
$2.94		

Basic Hourly Rates	Fringe Benefits

ZONE DESCRIPTIONS

CARPENTERS

Counties entirely within Zone 1:

Adams	Crowley	Gilpin	Morgan
Alamosa	Custer	Huerfano	Otero
Arapahoe	Delta	Jefferson	Phillips
Archuleta	Denver	La Plata	Prowers
Bent	Douglas	Lake	Pueblo
Boulder	Eagle	Larimer	Rio Grande
Chaffee	El Paso	Las Animas	Sedgwick
Clear Creek	Elbert	Logan	Teller
Conejos	Fremont	Mesa	Weld
Costilla	Garfield	Montezuma	

Counties entirely within Zone 2:

Baca	Jackson	Moffat	Routt
Cheyenne	Kiowa	Ouray	San Juan
Dolores	Kit Carson	Park	San Miguel
Grand	Lincoln	Pitkin	Summit
Gunnison	Mineral	Rio Blanco	Yuma
Hinsdale			

Legal description of the portions of Montrose, Saguache, and Washington Counties which are included within Zone 1, as follows:

All of Montrose County lying Northerly of the North Line of Ouray County and said North Line extended to the Township Line between R11W and R12W, said part being East of said Township Line of the New Mexico Principal Meridian and the Eastern portion of Saguache County; from Highway #285 to the Town of Saguache, and Highway #114 to the County Line, and all of Washington County lying North of the 40°00'00" Latitude Base Line

Legal description of the portions of Montrose, Saguache and Washington Counties which are included within Zone 2, as follows:

All of Montrose County except that part lying Northerly of the North Line of Ouray County and said North Line extended West to the Township Line between R11W and R12W, said point being East of said Township Line of the New Mexico Principal Meridian and the Western portion of Saguache County; from Highway #285 to town of Saguache and Highway #114 to County Line, and all of Washington County lying South of the 40°00'00" Latitude Base Line.

ZONE DESCRIPTIONS (Cont'd)

ELECTRICIANS:
Area 1: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Gilpin, Grand, Jackson, Jefferson, Lake, Larimer, Logan, Morgan, Phillips, Sedgwick, Summit, Washington, Weld, and Yuma Counties
Area 2: Delta, Dolores, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, and San Miguel Counties
Area 3: Alamosa, Archuleta, Baca, Bent, Chaffee, Crowley, Custer, Fremont, Huerfano, Kiowa, Las Animas, Mineral, Otero, Prowers, Pueblo, Rio Grande, and Saguache Counties
Area 4: Cheyenne, Elbert, El Paso, Kit Carson, Lincoln, Park, and Teller Counties

PAINTERS:
Area 1: Adams, Arapahoe, Boulder, Clear Creek, Delta, Denver, Douglas, Eagle, Elbert, Garfield, Gilpin, Grand, Gunnison, Jackson, Jefferson, Lake, Larimer, Logan, Mesa, Moffat, Montrose, Morgan; Park County (northern half); Phillips, Pitkin, Rio Blanco, Routt, Sedgwick, Summit, Washington, and Weld Counties
Area 2: Baca, Bent, Crowley, Custer, Huerfano, Kiowa, Las Animas, Otero, Prowers, and Pueblo Counties
Area 3: Alamosa, Archuleta, Chaffee, Cheyenne, Dolores, El Paso, Fremont, Hinsdale, Kit Carson, La Plata, Lincoln, Mineral, Montezuma, Ouray; Park County (southern half); Rio Grand, Saguache, San Juan, San Miguel, and Teller Counties

LABORERS

Zone 1: The area encompassed by 15 driving miles from the Main Post Office at Craig, Steamboat Springs, and Meeker. Also, included are all other Counties not outlined in Zone 2.
Zone 2: The Counties of Jackson, Moffat, Rio Blanco and Routt

Group 1: Minimum Labor, including Caissons to 8'; Carrying Reinforcing Rods; Work on Cross Culverts, connections and side drains in connection with highway work, whether corrugated metal or concrete pipe; Fence Erectors; Metal Mesh; Dowel Bars; Tie Bars and Chairs in concrete paving; Nursery Man including seeding, mulching and planting of trees, shrubs and flowers; Stake Chaser; Gabion Baskets and Reno Mattresses; Pipe plants and yards, stringing of pipe or skids, handling and signaling on pipe line work

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Tender to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Grade Checker; Compressors, 360 C.F.M. or less

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete Finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, Rotary, Churn, or Cable Tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck

Group 4: Cable operated Crane, truck mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer Mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

ZONE DEFINITIONS
POWER EQUIPMENT OPERATORS

Legal Description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington counties which are included within Zone 1, as follows:

All of Adams, Arapahoe, Elbert and Las Animas counties lying west of the Township line between R59W and R60W of the 7th Guide Meridian West; and all of Eagle County lying west of the Township line between R80W and R81W of the North line of Ouray County and said North line extended west to the Township line between R11W and R12W said part lying east of said Township line of the New Mexico Principal Meridian, and all of Washington County lying North of the 40°00'00" Base Line.

Legal Description of the portions of Adams, Arapahoe, Eagle, Elbert, Las Animas, Montrose and Washington counties which are included within Zone 2, as follows:

All of Adams, Arapahoe, Elbert and Las Animas lying east of the Township line between R59W and R60W of the 7th Guide Meridian West, and all of Eagle County lying east of the Township line between R80W and R81W of the 9th Guide Meridian West and all of Montrose County except that part lying northerly of the north line of Ouray County and said north line extended west to the Township line between R11W and R12W, said point being east of said Township line of the New Mexico Principal Meridian, and all of Washington County lying south of the 40°00'00" latitude Base Line.

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

LABORERS (TUNNEL)

Group 1: Outside Labor

Group 2: Minimum Tunnel Labor, Dry Houseman

Group 3: Cable or Hose Tenders, Chuck Tenders, Concrete Laborers, Dumpmen, Whirley Pump Operators

Group 4: Tenders on Shotcrete, Gunniting and Sand Blasting; Tenders, Core and Diamond Drills; Pot Tenders

Group 5: Cement Finisher Tender, applying of concrete processing materials

Group 6: Collapsible Form Movers and Setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Tunnel Liner Plate Setters; Vibrator Men, internal and external; Unloading, stopping and starting of Moran Agitator Cars; Diamond and Core Drill Operators; Cement Finisher (underground); Shotcrete Operator; Gunnite Nozzlemen, Sand Blasters, Pump Concrete Placement Men

(Shafts, Raises, Missile Silos and All Underground Work other than Tunnels)

Group 1: Laborers, Topmen, Bottommen and Cagers

Group 2: Chucktenders, Concrete Laborers, Whirley Pump Operators

Group 3: Tenders in Shotcrete Gunniting and Sand Blasting; Tenders on Core and Diamond Drills; Pot Tenders; Cement Finisher Tenders, applying concrete processing materials

Group 4: Diamond and Core Drill Operators; Cement Finisher (underground); Gunnite Nozzlemen; Shotcrete Operators; Sand Blasters and Pump Concrete Placement Men

Group 5: Any employee performing work underground from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. All lines and safety belts used shall be of a type approved by State and Federal Laws

Group 6: Collapsible Form Movers and Setters, Miners, Machine Men and Bit Grinders, Nippers, Powdermen and Blasters, Reinforcing Steel Setters, Timbermen (steel or wood tunnel) support, including the placement of sheeting when required) and all cutting and welding that is incidental to the Miner's work; Liner Plate Setters; Vibrator Men, internal and external

LABORERS (Cont'd)

Group 2: Chuck Tenders, Nippers, Core, and Diamond Drill Tenders, Powdermen Tenders; Hot Asphalt Labor, Rakers, Boxtenders, Asphalt Curb Machines, Potmen (not mechanical); Multi-plate Culvert Pipe; Air, gas and electrical tool Operators; Barco Hammers; Spaders, electric hammers; Air Tampers; Cutting Torch on demolition work; Caissons 8' to 12'; Cofferdams; Power operated Concrete Buggies; Operators of concrete saws on pavement (other than Gang Saws); Timber and Chain Saws; Stresser or Stretcherman on Post Tension Prestressed Concrete on or off jobsite; Cement Finisher Tender; Sand Blaster; Concrete processing material; Monitor; Spotters; Dumpmen; Transverse Concrete Conveyor Operator; Mechanical Grouters; Boring Machine (air hydraulic); Automatic Concrete Power Curbing Machine; Jack Hammer; Vibrators; Paving Breakers; Frost proofing; Any Laborer performing bridge work over 40' above the ground or above a floor and working from a Bos'n Chair; Swing Stage, Life Belt or Block and Tackle as safety requirement. (All lines and safety belts used shall be of a type approved by State and Federal Laws); Gunniting and Shotcrete Tenders; Caissons over 12'; Scalers; Timbermen, underpinning and shoring; Form Setters and/or Stringmen on roads, highways, streets and airport runways; Distribution, placing and hooking of landing mats; Bull Float (hand operated) and Center Expansion Machines; Grade Checkers if required by employer; Pipe Wrappers; Dopers; Jeep Holiday Detector Men, Bandage Makers; Laborers working in Trenches on all pipe lines, sewer, water, gas, oil, telephone conduit, Pen Stock, Siphones, drainage lines, Caulkers, Yarners, Pipe Graders, air, gas, electric and hydraulic tools, Boring Machines, Hydraulic Jacks, Drills, Tampers, and similar operated tools; Wiping of Joint Concrete Pipe, inside and out; Labor applicable,to pipe coating or wrapping, plants and yards; Enamelers of pipe, inside and out

Group 3: Powdermen and Blasters; Gunnite Nozzlemen; Shotcrete Operator; Pipe Layer on trunk pipe lines in connection with highway work; Relining Pipe; Mixer Man; Pipelayer; Hydro-broom

Group 4: Wagon Drills and Air Tracks; Jackhammer Operators in Caissons over 12'; Bellers and Stemmen; Licensed Powdermen; Diamond and Core Drills powered by air

Group 5: Any work, other than on bridges, performed by Laborers working from a Bos'n Chair, Swinging Stage, Life Belt or Block and Tackle as a safety requirement. All lines and safety belts used shall be of a type approved by State and Federal Laws; Pugs and Galleys in Dams

Group 6: Mason Tenders, Brick and Plaster

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mucking Machines and Front End Loaders, underground, Slusher; Mine Hoist Operator

Group 6: Mole

Group 7: Mechanic - Welder, heavy duty

TRUCK DRIVERS ZONE DEFINITIONS

COUNTIES WITHIN ZONE 1:

Alamosa, Archuleta, Baca, Bent, Cheyenne, Conejos, Costilla, Crowley, Delores, Eagle, Grand, Gunnison, Hinddale, Jackson, Kiowa, Kit Carson, Lake, LaPlata, Lincoln, Logan, Mineral, Moffat, Montezuma, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Rio Blanco, Rio Grand, Routt, Saquache, San Juan, San Miguel, Sedgewick, Summit, Yuma, Washington

COUNTIES WITHIN ZONE 2:

Adams, Arapahoe, Boulder, Chaffee, Clear Creek, Custer, Delta, Denver, Douglas, Elbert, El Paso, Fremont, Garfield, Gilpin, Huerfano, Jefferson, Larimer, Las Animas, Mesa, Pueblo, Teller, Weld and Montrose

TRUCK DRIVERS ZONE 1

Group 1: Pick Up, Truck Driver Tenders, Dumpmen, Greasemen

Group 2: Dump truck driver to including 6 cubic yard, sweeper truck, flat rank single axle, and manhaul, shuttle truck or bus, liquid and bulk tankers - single axle

Group 3: Flat rank tandem axle battery men, mechanics tenders

Group 4: Fork lift driver

Group 5: Dump truck driver over 6 cubic yards, to and including 14 cubic yards

Group 6: Straddle truck driver, lumber carrier, liquid and bulk tankers-tandem axle

Group 7: Truck drivers-fuel truck, grease truck, combination fuel and grease

Group 8: Cement mixer - agitator truck to and including 10 cubic yards, Distributor truck driver, Liquid and bulk tankers - semi or combination

Group 9: Multi purpose truck-specialty and hoisting

Group 10: Dump truck driver over 14 cubic yards, to and including 29 cubic yards, Highboy, lowboy, floats, semi Cab operated distributor truck driver - semi Liquid and bulk tankers - Euclid - Electric or similar Truck Driver dumptor type, Youngbuggy, Jumbo and similar type equipment

Group 11: Truck driver, snow plow

Group 12: Cement mixer - agitator truck over 10 cubic yards, to and including 15 cubic yards

Group 13: Dump truck driver over 29 cubic yards, to and including 39 cubic yards

Group 14: Cement mixer - agitator truck over 15 cubic yards

Group 15: Tire man Dump truck driver over 39 cubic yards, to and including 54 cubic yards

Group 16: Mechanic

Group 17: Dump truck driver over 54 cubic yards, to and including 79 cubic yards

Group 18: Heavy duty diesel mechanic, body men, welders or combination men

Group 19: Dump truck driver over 79 cubic yards, to and including 104 cubic yards

Group 20: Dump truck driver over 104 cubic yards

TRUCK DRIVERS ZONE 2

Group 1: Pick up, truck driver tenders, Dumpmen, Greasemen

Group 2: Dump truck driver to including 6 cubic yard, sweeper truck, Flat rack single axle, and manhaul, shuttle truck or bus Liquid and bulk tankers - single axle

Group 3: Flat rank tandem axle Battery men, mechanics tenders Liquid and bulk tankers - tandem axle Dump truck driver over 6 cubic yards, to and including 14 cubic yards

Group 4: Straddle truck driver, lumber carrier

Group 5: Fork lift driver Truck drivers-fuel truck, grease truck, combination fuel

Group 6: Cement mixer - agitator truck to and including 10 cubic yards, Distributor truck driver

Group 7: Multi purpose truck - specialty and hoisting

Group 8: Dump truck driver over 14 cubic yards, to and including 29 cubic yards, cab operated distributor truck driver - semi Liquid and bulk tankers - Euclid - Electric or similar Truck Driver dumptor type, Youngbuggy, Jumbo and similar type equipment Liquid and bulk tankers - semi or combination (Water truck drivers required to middle-rate plus 10 cents.)

Group 9: Truck driver, snow plow

Group 10: Cement mixer - agitator truck over 10 cubic yards, to and including 15 cubic yards

Group 11: Dump truck driver over 29 cubic yards, to and including 39 cubic yards

Group 12: Tire man Dump truck driver over 39 cubic yards, to and including 54 cubic yards

Group 13: Cement mixer - agitator truck over 15 cubic yards

Group 14: Mechanic

Group 15: Dump truck driver over 54 cubic yards, to and including 79 cubic yards

Group 16: Dump truck driver over 79 cubic yards, to and including 104 cubic yards

Group 17: Dump truck driver over 104 cubic yards

Group 18: Heavy duty diesel mechanic, body men, welders or combination men

SUPERSEDEAS DECISION

STATE: Missouri COUNTIES: Statewide
DECISION NO.: MO85-4005 DATE: Date of Publication
Supersedes Decision No. MO84-4044 dated August 3, 1984 in 49 FR 31198.
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 1	$16.96	$3.43
Zone 1A	16.56	3.43
Zone 2	16.01	3.43
Zone 3	15.90	2.23
Zone 4	15.30	2.23
Zone 5	15.30	3.43
Zone 6	17.17	.86
Zone 6A	16.22	1.31
Zone 7	17.17	.86
Zone 7A	16.72	1.31
Zone 7B	17.17	.86
Zone 7C	16.67	1.36
Zone 7D	17.17	.86
Zone 8	15.55	2.05
Zone 9	16.05	2.67
Zone 10	16.96	2.70
CEMENT MASONS:		
Zone 1	16.325	1.95
Zone 2	15.03	1.70
Zone 3	15.17	2.33
Zone 4	12.75	
Zone 5	14.23	
Zone 6	15.85	
Zone 7	14.85	
Zone 8	14.50	9.38
Zone 9	15.35	2.60
Zone 10	14.65	2.60
Zone 11	12.45	2.95
ELECTRICIANS:		
Zone 1:		
Electrical contracts over $30,000.00	16.42	1.15% + 14.75%
Electrical contracts $30,000.00 & under	13.62	1.15% + 14.75%
Zone 2	16.18	3.01+ 10%
Zone 3:		
Electrical contracts not to exceed 2000 man hours	15.18	3.01+ 10%
Electrical contracts 2000 man hours & over	$16.18	$3.01+ 10%
Zone 4:		
Electrical contracts not to exceed 2000 man hours	15.18	3.01+ 10%
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 5:		
Electrical contracts not to exceed 2000 man hours	14.58	3.01+ 10%
Electrical contracts 2000 man hours & over	16.18	2.19+ 10%
Zone 6	17.20	2.19+ 28-1/2%
Zone 7:		
Electrical contracts over $15,000.00	17.20	2.19+ 28-1/2%
Zone 8:		
Electrical contracts $15,000.00 & under	14.78	2.19+ 28-1/2%
Zone 9:		
Electrical contracts $15,000.00 & under	11.43	2.19+ 28-1/2%
Zone 10:		
Electrical contracts $15,000.00 & under	8.07	2.19+ 28-1/2%
Zone 11	14.55	1.89+ 9%
Zone 12	15.04	1.89+ 9%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
Zone 13	$13.97	$2.27 + 10%
Zone 14:		
Electricians	13.09	1.67+ 8%
Cable Splicers	13.44	1.67+ 8%
Zone 15:		
Electricians	15.71	3.47+ 10%
Cable Splicers	15.96	3.47+ 10%
IRONWORKERS:		
Zone 1	16.075	3.40
Zone 2	17.51	3.37
Zone 3	14.53	3.37
Zone 4	14.60	2.67
Zone 5	16.00	2.40
Zone 6	13.85	2.46
Zone 7	15.55	2.45
Zone 8	15.325	3.40
Zone 9	17.225	2.99
LABORERS:		
Group 1:		
Zone 1	12.43	3.45
Zone 2	11.28	3.20
Zone 3:		
(a)	14.90	2.05
(b)	14.40	2.55
Zone 4:		
(a)	14.15	2.05
(b)	13.65	2.55
Group 2:		
Zone 1	12.78	3.45
Zone 2	11.83	3.20
Zone 3:		
(a)	15.50	2.05
(b)	15.00	2.55
Zone 4:		
(a)	14.75	2.05
(b)	14.25	2.55
Zone 5: (Clay, Jackson, Platte & Ray Counties):		
Group 1	13.02	3.60
Group 2	13.82	3.60
Zone 6: (St. Louis City and County):		
General Laborer	15.275	2.58
Dynamiter or Powderman	15.775	2.58
LINE CONSTRUCTION:		
Zone 1:		
Lineman	$18.33	$1.25 + 8-1/2%
Lineman Operator	17.10	1.25 + 8-1/2%
Groundman Powderman	12.84	1.25 + 8-1/2%
Groundman	12.23	1.25 + 8-1/2%
Zone 2:		
Lineman	17.54	1.25 + 8-1/2%
Lineman Operator	16.73	1.25 + 8-1/2%
Groundman Powderman	12.27	1.25 + 8-1/2%
Groundman	11.38	1.25 + 8-1/2%
Zone 3:		
Linemen & Cable Splicer	16.53	1.00+ 23.75%
Groundman-Winch Driver	12.15	1.00+ 23.75%
Groundman-Driver	11.72	1.00+ 23.75%
Equipment Operator	14.79	1.00+ 23.75%
Groundman	11.72	1.00+ 23.75%
Zone 4:		
Lineman	17.75	.65+ 13-1/2%
Groundman Equipment Operator	15.14	.65+ 13-1/2%
Groundman - Class A	11.26	.65+ 13-1/2%
Zone 5: Railroad & Cross County Transmission Lines:		
Lineman	15.50	1.00+ 8-1/2%
Lineman Operator	14.36	1.00+ 8-1/2%
Groundman Powderman	10.79	1.00+ 8-1/2%
Groundman	10.09	1.00+ 8-1/2%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Zone 5 (Cont'd):		
Pole Treating Specialist	$16.28	$1.00+ 8-1/2%
Pole Treating Truck Driver	10.79	1.00+ 8-1/2%
Pole Treating Groundman	10.09	1.00+ 8-1/2%
Zone 6: Telephone and Telegraph Railroad Communications and C.A.T.V. Work:		
Cable Splicer, Air Pressure Technician, Central Office Equipment Man and Key System Installer	10.16	.50+ 8-1/2%
Telephone Lineman, Installer, CATV Terminator and Equipment Operator (D-4 or larger Crawler, Wheel Trencher Quarter Yard Backhoe or larger)	9.73	.50+ 8-1/2%
Equipment Operator (all other small equipment)	8.50	.50+ 8-1/2%
Groundman-Winch Driver	7.61	.50+ 8-1/2%
Groundman	6.67	.50+ 8-1/2%
Zone 7: Telephone & Telegraph & CATV Work:		
Cable Splicers; Air Pressure Technician, Central Office Equipment Man	10.96	.45+3%
Telephone Lineman & Installer, Repairman, CATV Terminator, Equipment Operator (1/4 yd. Backhoe & larger & D-4 Crawler & larger)	10.39	.45+3%
Groundman-Winch Driver	7.87	.45+3%
Groundman	6.36	.45+3%
PAINTERS:		
Zone 1:		
Brush & Roller	$16.04	$2.00
Spray	17.04	2.00
Bridge	16.79	2.00
Zone 2:		
Brush	11.30	1.07
Spray	12.30	1.07
Sandblasting & Waterblasting	13.10	1.07
Tower, Stacks, Walkway, Cables, Tanks, and Bridges	12.80	1.07
Bridges over 500 ft. in length	16.52	1.07
Zone 3:		
Brush	12.50	2.60
Spray, Structural Steel & Sandblasting	13.75	2.60
Zone 4:		
Brush	14.25	
Bridge	15.00	
Spray, Sandblasting Operator; Work performed on bridges 75 ft. in height	15.25	
All Structural Steel over 50 ft. in height	15.00	
Zone 5:		
Brush	14.60	1.45
Spray	15.60	1.45
Steel, storage bin & tank	15.00	1.45
Bridges, stage; Belt; Manpoke	15.10	1.45
Zone 6:		
Brush, Roller	13.02	.60
Spray	13.52	.60
Zone 7:		
Brush	13.70	.45
Spray	14.20	.45
Zone 8:		
Brush	16.00	2.53
Spray	18.00	2.53
Zone 9:		
Brush	13.73	1.28
Spray, Bridgeman, Steelman	14.23	1.28
Zone 10:		
Brush	14.00	
Spray	16.00	

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Zone 1:		
Group I	$15.30	$4.07
Group II	15.05	4.07
Group III	14.35	4.07
Group IV:		
(a)	10.33	4.07
(b)	13.35	4.07
Zone 2:		
Group I	16.32	4.04
Group II	16.32	4.04
Group III	15.02	4.04
Group III (a)	13.95	4.04
Group IV	14.57	4.04
Group IV (a)	13.49	4.04
Group V:		
(a)	17.02	4.04
(b)	17.87	4.04
(c)	18.32	4.04
(d)	19.07	4.04
Zone 3:		
Group I	16.45	3.97
Group II	16.25	3.97
Group III	16.05	3.97
Group IV	15.45	3.97
Zone 4:		
Group I	14.85	3.97
Group II	14.50	3.97
Group III	14.30	3.97
Group IV	13.45	3.97
Zone 5:		
Group I	14.65	4.05
Group II	14.40	4.05
Group III	13.70	4.05
Group IV	12.20	4.05
Zone 6:		
Group I	14.60	4.05
Group II	14.25	4.05
Group III	14.05	4.05
Group IV	12.25	4.05
Zone 7:		
Group I	15.47	2.75
Group II	15.12	2.75
Group III	14.92	2.75
Group IV	12.87	2.75
Zone 8:		
Group I	15.90	3.97
Group II	15.70	3.97
Group III	15.50	3.97
Group IV	14.90	3.97

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Zone 1:		
Group 1	$14.17	$ 4.25
Group 2	14.02	4.25
Group 3	13.71	4.25
Group 4	13.51	4.25
Group 5	13.29	4.25
Zone 2:		
Group 1	19.25	
Group 2	19.40	
Group 3	19.47	
Group 4	19.36	
Group 5	19.15	
Zone 3:		
Group 1	18.05	
Group 2	18.20	
Group 3	18.27	
Group 4	18.16	
Group 5	17.95	
Zone 4:		
Group 1	15.09	3.00
Group 2	15.24	3.00
Group 3	15.31	3.00
Group 4	15.20	3.00
Group 5	14.99	3.00
Zone 5:		
Group 1	13.88	3.00
Group 2	14.03	3.00
Group 3	14.15	3.00
Group 4	14.04	3.00
Group 5	13.78	3.00
Zone 6:		
Group 1	13.15	3.00
Group 2	13.30	3.00
Group 3	13.42	3.00
Group 4	13.31	3.00
Group 5	13.05	3.00
Zone 7:		
Group 1: Trucks or Trailers of a water level capacity of 11.99 cu. yds. or less.	15.17	55.00 **
Group 2: Forklift Trucks; Job Site Ambulance & Pickup Trucks & Flat Bed Trucks	14.00	55.00 +a

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	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D):		
Zone 7 (Cont'd):		
Group 3: Truck or Trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including Euclids, Speedace and similar equipment of same capacity and Compressors	$15.37	$55.00 +a
Group 4: Trucks or Trailers of a water level capacity of 22.0 cu. yds. and over including Euclids, speedace and all Floats, Flat Bed Trailers, Boom Trucks, Winch Trucks including small trailers, Farm Wagons, Tilt-top Trailers, Field Offices Tool Trailers, Concrete Pumps, Concrete Conveyors and Gasoline Tank Trailers	15.47	55.00 +a

FOOTNOTE:

a - 7 Paid Holidays also, paid vacation of 3 days of 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any contract year; 5 days paid vacation for 1,000 hours of service in any one contract year; also .80 per hour health and welfare.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREAS COVERED BY CARPENTERS AND PILEDRIVERMEN ZONES

Zone 1 - Franklin, Jefferson, St. Charles Counties
Zone 1A - Lincoln, Warren Counties
Zone 2 - Pike, St. Francois, Washington Counties
Zone 3 - Cass, Lafayette, Buchanan, Clinton and Johnson Counties
Zone 4 - Atchison, Andrew, Barry, Barton, Bates, Caldwell, Camden, Carroll, Cedar, Christian, Dade, Dallas,Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Worth & Wright Counties
Zone 5 - Crawford, Dent, Gasconade, Iron, Madison, Maries, Montgomery, Phelps, Pulaski, Reynolds, Shannon & Texas Counties
Zone 6 - Boone, Cooper and Howard Counties
Zone 6A - Pettis, Benton and Morgan Counties
Zone 7 - Lewis, Marion and Ralls Counties
Zone 7A - Callaway, Cole, Miller, Moniteau and Osage Counties
Zone 7B - Adair, Putnam, Sahuyler, Knox and Sullivan Counties
Zone 7C - Audrain and Monroe Counties
Zone 7D - Randalph, Chariton, Linn, Macon and Shelby Counties
Zone 8 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Ste. Genevieve, Scott, Stoddard and Wayne Counties
Zone 9 - Clay, Jackson, Platte and Ray Counties
Zone 10 - St. Louis County and City

AREAS COVERED BY CEMENT MASONS ZONES

Zone 1 - Bates, Carroll, Cass & Lafayette Counties
Zone 2 - Dent, Phelps, Pike, Pulaski, Texas, Marion, Ralls and Shannon Counties
Zone 3 - Clay, Jackson, Platte & Ray Counties
Zone 4 - Cedar, Christian,Dade, Dallas, Douglas, Greene, Howell, Laclede, Ozark, Polk, Stone, Taney, Webster & Wright Counties
Zone 5 - Benton, Henry, Hickory, Johnson, Morgan, Pettis, Saline & St. Clair Counties
Zone 6 - Adair, Audrain, Boone, Chariton, Cooper, Howard, Linn, Macon, Moniteau, Monroe, Randolph, Shelby, Schuyler, Sullivan & Putnam Counties
Zone 7 - Callaway, Camden, Cole, Gasconade, Maries, Miller, Montgomery, & Osage Counties
Zone 8 - Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway & Worth Counties
Zone 9 - St. Louis City & County, Jefferson & St. Charles Counties
Zone 10 - Franklin, Lincoln, Warren, Iron, St. Francois, Ste. Genevieve, Washington, Reynolds & Madison Counties
Zone 11 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Scott, Stoddard and Wayne Counties

AREAS COVERED BY ELECTRICIAN ZONES

Zone 1 - Adair, Audrain (that part of east of Highway 19), Clark, Knox, Lewis Linn, Macon, Marion, Monroe, Montgomery, Pike, Putnam, Ralls, Schuyler, Scotland, Shelby and Sullivan Counties
Zone 2 - Area bounded on the North by State Highway 92 in Platte & Clay Counties; east bya straight line from Intersection of State Highway 92 & 33 in Clay County Intersection of U.S. Highway 24 & State Highway 7 in Jackson County, south on Highway 7 to Pleasant Hill; South from Pleasant Hill due West to the Missouri - Kansas State Line; West by the Missouri - Kansas State Line. Towns of Pleasant Hill & Blue Springs are excluded
Zone 3 - Portion of Cass, Clay, Jackson and Platte Counties not included In Zone 2
Zone 4 - Bates, Benton, Henry, Johnson, Lafayette & Pettis Counties
Zone 5 - Carroll, Cooper, Morgan, Ray and Saline Counties
Zone 6 - St. Charles County, St. Louis County and City
Zone 7 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Franklin, Iron, Jefferson, Lincoln, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, St. Francois, Ste. Genevieve, Stoddard, Warren, Washington and Wayne Counties
Zone 8 - Franklin, Jefferson, Lincoln & Warren Counties
Zone 9 - Bollinger, CapeGirardeau, Perry, Scott, St. Francois and Ste. Genevieve Counties
Zone 10 - Butler, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Ripley, Reynolds, Stoddard, Washington and Wayne Counties
Zone 11 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Laclede, Oregon, Ozark, Polk, Shannon, Stone, Taney, Texas, Webster and Wright Counties
Zone 12 - Pulaski County
Zone 13 - Andrew, Buchanan, Clinton, DeKalb, Atchison, Holt, Mercer, Gentry, Harrison, Daviess, Grundy, Worth, Livingston, Nodaway, Caldwell Counties
Zone 14 - Barry, Barton, Cedar, Dade, Jasper, McDonald, Newton, St. Clair, Vernon and Lawrence Counties
Zone 15 - Audrain (except Cuivre Township), Boone, Callaway, Camden, Chariton, Cole, Crawford, Dent, Gasconade, Howard, Maries, Miller, Moniteau, Osage Phelps and Randolph Counties

AREAS COVERED BY IRONWORKERS ZONES

Zone 1 - Audrain, Boone, Callaway, Cole, Crawford, Dent, Gasconade, Maries, Montgomery, Osage, Phelps, Pike, Pulaski and Shannon Counties
Zone 2 - Buchanan, Cass, Clay, Jackson, Lafayette, Platte and Ray Counties
Zone 3 - Andrew, Atchison, Barton, Bates, Benton, Caldwell, Carroll, Cedar, Chariton, Christian, Clinton, Cooper, Dade, Dallas, Daviess, DeKalb, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Johnson, Laclede, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Pettis, Polk, Putnam, Randolph, St. Clair, Saline, Sullivan, Vernon, Webster, and Worth Counties
Zone 4 - Barry, Jasper, Lawrence, McDonlad, Newton and Stone Counties
Zone 5 - Adair, Clark, Knox, Lewis, Macon, Marion, Schuyler, Scotland, Ralls, Monroe and Shelby Counties
Zone 6 - Ozark and Taney Counties

AREAS COVERED BY IRONWORKERS ZONES - (CONT'D)

Zone 7 - Butler, Cape, Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Ripley, Scott, Stoddard and Wayne Counties
Zone 8 - Camden, Douglas, Howell, Laclede, Miller, Monroe, Oregon, Ralls, Texas and Wright Counties
Zone 9 - City & County of St. Louis, St. Charles, Jefferson, Franklin, Lincoln, Warren, Washington, St. Francois, Iron, Ste. Genevieve, Reynolds, Madison, Ballinger, Carter and Wayne Counties

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 1 AND 2

GROUP 1 - GeneralLaborers - Carpenter tenders; salamander tenders; loading trucks under bins; hopper & conveyers; track men; all other general laborers; air tool operator;cement handler, bulk or sack; dump man on earth fill; georgie buggie man; material batch hopper man; material mixer man (except on manholes); coffer dams; riprap pavers - rock, block or brick; scaffolds over ten feet notself-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator, all work in connection with hydraulic or general dredging operations; puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 feet where compressed air is not used; abutment and pier hole men working six (6) feet or more below ground; men working in coffer dams for bridge piers and footings in the river; ditchliners; pressure groutmen; caulker and chain or concrete saw; cliffscalers working from scaffolds, bosuns' chairs or platforms on dams or power plants over (10) feet above ground; mortarmen on brick or block manholes.
GROUP 2 - Skilled Laborers - Head pipe layer on sever work; laser beam man; Jackson on any other similar tamp; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters; hot mastic kettleman; hot tar applicator; sandblasting and gunite nozzlemen; air tool operator in tunnels; screed man on asphalt machine; asphalt raker; barco tamper; churn drills; air track drills and all similar drills; vibrator man; stringline man for electronic grade control; manhole builders--brick or block; dynamite and powder men; welder; grade checker on cuts and fills

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 3 AND 4

GROUP 1 - General Labor-Carpenter tenders; salamander tenders; dump man; ticket takers; loading trucks under bins, hoppers, and conveyors; track man; cement handler; dump man on earth fill; georgie buggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers-rock, block or brick; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil,drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setters, puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handlingepoxy material; topper of standing trees; feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 ft. where compressed air is not used; abutment and pier hole men working six (6) ft. or more below ground; men working in coffer dams for bridge piers and footings in the river; barco tamper; jackson or any other similar tamp; cutting torch man; liners, curb, gutters, ditch liners; hot mastic kettleman; hot tar applicator; hand blade operator; mortar men on brick or block manholes; rubbing concrete, air tool operator under 65 lbs.; caulker and lead man; chain or concrete saw under 15 h.p.
GROUP 2 - Skilled Laborers - Vibrator man; asphalt raker; head pipe layer on sewer work; batterboard man on pipe and ditch work; cliff scalers working from bosun's chairs; scaffolds or platforms on dams or power plants over 10 ft. high; air tool operator over 65 lbs.; stringline man on concrete paving; sandblast man; laser beam man; wagon drill; churn drill; air track drill and all other similar type drills,gunite nozzle man; pressure grout man; screed man on asphalt; concrete saw 15 h.p. and over; grade checker; stringline man on electronic grade control; manhole builder; dynamite man; powder man; welder; tunnel man

AREAS COVERED BY LABORERS

Zone 1 - Buchanan, Cass and Lafayette Counties
Zone 2 - Andrew, Atchison, Barry, Barton, Bates, Benton, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Greene,Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Laclede, Lawrence, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Wright and Worth Counties.
Zone 3:
a - Franklin and Jefferson Counties
b - St. Charles County
Zone 4:
a - Adair, Audrain, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Dunklin, Gasconade, Howard, Howell, Iron, Knox, Lewis, Linn, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam,Ralls, Randolph, Reynolds, Ripley, St.Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Sullivan, Texas, Washington and Wayne Counties

AREAS COVERED BY LABORERS - (CONT'D)

Zone 4 (Cont'd):
b - Lincoln, Montgomery and Warren Counties

LABORER CLASSIFICATION DEFINITIONS - ZONE 5 - CLAY, JACKSON PLATTE AND RAY COUNTIES

Group 1 - General laborer - Carpenter tenders, salamander tenders; loading trucks under bins, hoppers and conveyors; track men and all other general laborers; air tool operator; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgia buggies man; material batch hopper man; scale man; material mixer man (except on manholes); soffer dans; abutments and pier hole men working below ground); riprap pavers rock, block or brick; signal man; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile & duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only); crusher feeder; men handling creosote ties on creosote materials; men working with and handling epoxy material or materials (where specialprotection is required); topper of standing trees; batter board man on pipe & ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on under ground tunnels where compressed air is not used
Group 2 - Skilled Laborers - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp; wagon driller, churn drills, air trackdrills and all other similar drills; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters and (etc.); hot mastic kettleman; hot tar applicator; hand blade operators; mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; head pipe layer on sewer work; manhole builder (brick or block); dynamite and powder men; welder

AREA COVERED BY LINE CONSTRUCTION

Zone 1 - Bates, Benton, Carroll, Cass, Clay, Henry, Johnson, Jackson, Lafayette, Pettis, Platte, Ray and Saline Counties
Zone 2 - Andrew, Atchinson, Barry, Barton, Buchanan, Caldwell, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Stone, Taney, Vernon, Webster, Worth and Wright Counties
Zone 3 - Crawford, Franklin, Iron, Jefferson,Reynolds, St. Charles, St. Francois, St. Louis and City, Washington, Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Dent, Gasconade, Howard, Howell, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Ripley, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas and Warren Counties

AREA COVERED BY LINE CONSTRUCTION (CONT'D)

Zone 4 - Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Scott, Stoddard and Wayne Counties
Zone 5 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew DeKalb, Davies, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Vernon, Benton, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark and Gentry Counties
ZONE 6 - Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Franklin, Gasconade, Howard, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, St. Louis and City, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, Warren and Washington Counties
ZONE 7 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew, DeKalb, Daviess, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Benton, Vernon, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark, Gentry Counties

AREA COVERED BY PAINTERS

Zone 1 - Bates, Caldwell, Carroll, Clinton, Cass, Clay, Daviess, Grundy, Henry, Harrison, Jackson, Johnson (excluding Whiteman Air Force Base, Lafayette, Livingston, Mercer, Platte and Ray Counties
Zone 2 - Bollinger, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Reynolds, Iron,Butler, Carter, Shannon, Wayne, Oregon, Ripley, Ste. Genevieve, St.Francois, Perry, Washington, & Madison Counties
Zone 3 - Camden, Crawford, Dent Laclede, Maries, Miller, Phelps, Pulaski and Texas Counties
Zone 4 - Benton, Cooper, Moniteau, Morgan, Pettis and Saline Counties
Zone 5 - Andrew, Atchinson, Buchanan, DeKalb, Gentry, Holt, Nodaway & Worth Counties
Zone 6 - Barry, Barton, Cedar, Dade, Jasper, Lawrence, McDonald, Newton, St. Clair and Vernon Counties
Zone 7 - Adair, Audrain, Boone, Callaway, Chariton, Cole, Gasconade, Howard, Monroe, Montgomery, Linn, Osage Scotland and Randolph Counties
Zone 8 - Jefferson, St. Charles, St. Louis & City, Warren, Lincoln, Pike and Franklin Counties
Zone 9 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Ozark, Polk, Stone, Taney, Webster andWright Counties
Zone 10 - Clark, Lewis, Marion, and Ralls Counties.

CLASSIFICATION DEFINITIONS

Power Equipment Operators Zone 1

Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, alltypes; boilers-2; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator, derrick or derrick-trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drill-cat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader-fork lift; hoisting engineer-2 active drums; locomotive operator, standard guage; mechanics and welders, field; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump-2; pushcat operators; quad-trac; scoop operator- all types; scoops in tandem; self-propelled rotary drill (leroy or equal-not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slipform paver (CMI, REX or Equal); throttle man; truck crane; welding machine maintenance operator-2

Group II - "A" frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader operator; greaser; hoisting engine-1 drum; LaTourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra-hammer or similar type; power shield; pub mill operator; stump cutting machine; towboat operator; tractor operator-over 50 HP

Group III - Boilers-1; chip spreader (front man); churn drill operator; compressor maintenance operator-1; concrete saws, self-propelled; conveyoroperator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; subgrading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 HP or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator-1

Group IV:
(a) Oilers
(b) Oiler driver, (all types)

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE $.25) ABOVE GROUP I RATE
Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. boom or over (including jib) - draglines, 3 yd. capacity or over - piledrivers, 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over

Power Equipment Operators Zone 2

Group I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley

Group II - air tuggerw/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (jobsite); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination, compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines,self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers,jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

Group III - Conveyor, large (not self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacityor less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck; concrete saw, self-propelled;curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are

Group III - (Cont'd):
used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader,regardless of size, not paver; oiler on dredge; oiler on truck crane pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment
Group III(a) - Truck crane and dredge
Group IV - Boat operator-outboard motor (job site); conveyor (such as cos-way-it) regardlessof how used; oiler; sweeper, floor
Group IV(a) - Crawler type
Group V - (a) Air pressure, oiler engineer, operating under ten pounds (b) air pressure, oiler engineer operating over ten pounds (c) air pressure engineer operating under ten pounds (d) air pressure engineer operating over ten pounds (e) crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoists, three or more drums; scoop,tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

Power Equipment Operators Zones 3, 4 and 8

Group I - Asphalt finishing machine & trench widening spreader, asphalt plant console operator; autograder; automatic slipform paver; back hoe; blade operator - all types; boat operator - tow; boiler - 2; central mix concrete plant operator; clam shell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline opr.; dredge booster pump ;dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch-hammer wheel; locomotive operator- standard guage; mechanics and welders; mucking machine; piledriver operator; pitman crane operator; push cat operator; quad-trac; scoop operator; sideboom cats; skimmer scoop operator; trenching machine operator; truck crane, shovel operator
Group II - A-Frame; asphalt hot-mix silo; asphalt roller operator; asphalt plant fireman (drum or boiler)); asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridge & dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; dredge oiler; elevating grader operator; fork lift; grease fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor; pavement breaker; powerbroom-self-propelled; power shield; rooter; slip-form finishing machine; stumpcutter machine; side discharge concrete spreader; throttleman; tractor operator (over 50 hp); winch truck; asphalt roller operator; crusher operator

Group III - Spreader box operator, self-propelled (not asphalt; tractor operator (50 h.p. or less); boilers - 1; chip spreader (front man); churn drill operator; compressor over 105 CFM 2 - 3 pumps 4" & over; 2-3 light plant 7.5 KWA or any combination thereof; clef plane opr.; compressor maintenance operator 2 or 3; concrete saw operator (self-propelled); curb finishingmachine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; tank car heater (combination boiler & booster); ulmac, ulric or similar spreader; vibrating machine operator; hydrobroom
Group IV - Oiler; grout machine; oiler-driver; compressor over 105 CFM-1; conveyor operator - 1; maintenance operator; pump - 4" & over - 1

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE
Crane with 3 yds. & over buckets; dragline operator - 3 yds. & over; shovel - 3 yds. & over; piledrivers - all types; clamshell - 3 yds. & over; hoists - each additional active drum over 2 drums

FOLLOWING CLASSIFICATION SHALL RECEIVE ($.50) ABOVE GROUP I RATE
Tandem scoop operator

Crane, rigs over 100 feet (incl. jib) - 1¢ per foot

Power Equipment Operators Zones 5, 6 & 7

Group I - Asphalt finishing machine & trench widening spreader; asphalt plant console operator; automatic slipform paver; autograder; backhoe; blade operator, - all types; boat operator - tow; boilers - 2; central mix concrete plant operator; clamshell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline operator; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch hammer wheel; locomotive operator; - standard guage; mechanics and welder; mucking machine; piledriver operator; sideboom cats; skimmer scoop operators; trenching machine operator; truck crane; scoop operators - all types

Group II - A-frame; asphalt hot mix silo; asphalt plant fireman (drum or boiler); asphalt roller operator; asphalt plant man; asphalt plant mixer operator, backfiller operator; barber-greene loader; boat operator (bridges and dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; crusher operator; dredge oiler; elevating grader operator; fork lift; greaser-fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor, pavement breaker; power - broom - self-propelled; power shield; rooter; slip form finishing machine; stumpcutter machine; side discharge concrete spreader; throttle man; tractor operator (over 50 hp); winch truck

POWER EQUIPMENT OPERATORS - ZONES 5,6, & 7 (CONT'D)

GROUP III - Boilers - 1; chip spreader (front man); churn drill operator; clef plane operator; concrete saw operator (self-propelled); curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; spreader box operator, self-propelled (not asphalt); tank car heater operator; (combination boiler & booster); ulmac, ulric, or similar spreader; vibrating machine operator, not hands; tractor operator (50 hp or less)
GROUP IV - Oiler; oiler driver

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE
DRAGLINE operator - 3 yds. & over; shovel - 3 yds. & over; clam-shell - 3 yds. & over; crane, rigs or piledrivers, 100' of boom or over (incl. jib.), hoists - each additional active drum over 2 drums

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.50) ABOVE GROUP I RATE
Tandem scoop operator; crane, rigs or piledrivers 150' to 200' of boom (incl. jib.)

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.75) ABOVE GROUP I RATE
Crane rigs, or piledrivers 200 ft. of boom or over (incl. jib.)

AREAS COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE 1 - Clay, Jackson, Platte and Ray Counties
ZONE 2 - St. Louis City and County
ZONE 3 - Franklin, Jefferson, St. Charles Counties
ZONE 4 - Adair, Audrain, Boillinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Gasconade, Howell, Iron, Knox, Lewis, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Washington, and Wayne Counties
ZONE 5 - Buchanan, Cass, Clinton and Lafayette Counties
ZONE 6 - Andrew, Atchinson, Bates, Benton, Caldwell, Carroll, Charlton, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Holt, Howard, Johnson, Linn, Livingston, Mercer, Nodaway, Pettis, Saline, Sullivan and Worth Counties
ZONE 7 - Christian, Greene, Jasper, Lawrence, Taney, Barry, Barton, Camden, Cedar, Dade, Dallas, Douglas, Hickory, Laclede, McDonald, Newton, Ozark, Polk, St. Clair, Stone, Vernon, Webster and Wright Counties
ZONE 8 - Lincoln and Warren Counties

TRUCK DRIVER CLASSIFICATION DEFINITIONS

ZONE 1

Group 1 - Mechanics & Welders-field
Group 2 - A-frame low boy-boom truck driver

Group 3 - Insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks: speedace: euclids and similar excavating equipment material trucks, tandem two teams; semi-trailers; winch-truck-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi
Group 4 - One team; station wagons; pickup truck; material trucks, single axle, tank wagon drivers, single axle
Group 5 - Oilers and greasers-field

ZONES 2, 3, 4, 5 & 6

Group 1 - Flat bed trucks - single axle; station wagon; pickup trucks; material trucks - single axle; tank wagon - single axle
Group 2 - Flat bed trucks - tandem axle; material trucks, tandem axle; tank wagon - tandem axle
Group 3 - Semi and/or pole trailers; winch fork and steel trucks; Insley wagons, dumpsters, half tracks, speedace, euclids, and other similar equipment, a-frame and derrick trucks, float or low boy distributor drivers and operators, tank wagon, semi-trailer
Group 4 - Agitator and transit mix truck
Group 5 - Warehousemen

AREA COVERED BY TRUCK DRIVER ZONES

ZONE 1 - Clay, Jackson, Platte & Ray Counties
ZONE 2 - Franklin, Jefferson and St. Charles Counties
ZONE 3 - Lincoln and Warren Counties
ZONE 4 - Buchanan, Cass, Johnson and Lafayette Counties
ZONE 5 - Andrew, Audrain, Barton, Bates, Benton, Bollinger, Boone, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Charlton, Christian, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Gasconade, Greene, Henry, Hickory, Howard, Iron, Jasper, Laclede, Lawrence, Linn, Livingston, Macon, Maidson, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgran, New Madrid, Newton, Osage, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Ralls, Randolph, Reynolds, St. Clair, St. Francois, Ste. Genevieve, Saline, Scott, Shannon, Shelby, Stoddard, Texas, Vernon, Washington, Wayne, Webster and Wright Counties
ZONE 6 - Adair, Atchinson, Perry, Butler, Clark, Dunklin, Gentry, Grundy, Harrison, Holt, Howell, Knox, Lewis, McDonald, Mercer, Nodaway, Oregon, Ozark, Putnam, Ripley, Schuyler, Scotland, Stone, Sullivan, Taney and Worth Counties
ZONE 7 - St. Louis City and County

SUPERSEDEAS DECISION

STATE: Nebraska COUNTY: Lancaster
DECISION NO.: NE85-4004 DATE: Date of Publication
Supersedes Decision No. NE80-4100 dated December 12, 1980, in 45 FR 81980
DESCRIPTION OF WORK: Residential projects, consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING MECHANICS	$ 8.00	
CARPENTERS	8.30	
CEMENT MASONS/FINISHERS	8.56	
DRYWALL WORK:		
Finishers & Tapers	7.57	
Stockers, Haulers, Scrapers	6.40	
Sheet Rock Hangers	9.00	
ELECTRICIANS	7.93	
INSULATORS	6.75	
LABORERS	6.12	
PAINTERS	7.57	
PLUMBERS/PIPEFITTERS	9.00	
ROOFERS	7.73	
SHEET METAL WORKERS	$ 8.59	
TRUCK DRIVERS	6.92	
POWER EQUIPMENT OPERATORS:		
Tractor Operator	6.75	
Backhoe Operator	8.17	
Bulldozer Operator	8.98	
Roller	9.18	
Grader	9.93	
Front-End-Loader	9.12	
Scraper	10.00	
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

[FR Doc. 85-8651 Filed 4-11-85; 8:45 am]

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Friday
April 12, 1985

Part IV

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 571, 572, and 585

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Notices of Proposed Rulemaking and Denials of Petitions for Rulemaking

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 37]

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Improvement of Seat Belt Assemblies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; response to petitions for reconsideration.

SUMMARY: On January 8, 1981, NHTSA amended Standard No. 208, *Occupant Crash Protection*, to specify additional performance requirements for both manual and automatic safety belt assemblies installed in motor vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less, to promote the installation of convenient and comfortable belt assemblies. Petitions for reconsideration of these new performance requirements were received from seven vehicle manufacturers. The purpose of this notice is to propose modifications to certain aspects of the comfort and convenience performance requirements in orders to clarify the agency's intent and to address the concerns raised in the petitions. The notice also proposes to change the effective date of the comfort and convenience requirements to September 1, 1986, to coincide with the effective date of the Department's July 11, 1984, rule requiring the installation of automatic restraints.

ADDRESS: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. The Docket is open 8 a.m. to 4 p.m., Monday through Friday.

DATES: Proposed effective date is September 1, 1986; comments must be received by May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Nelson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: On January 8, 1981, NHTSA amended Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), to specify additional performance requirements to promote the comfort and convenience of both manual and automatic safety belt systems installed in motor vehicles with a GVWR of 10,000 pounds or less (46 FR 2064). The final rule included specifications relating to the following aspects of seat belt performance and design: Latchplate accessibility; seat belt guides; adjustable buckles for certain belts; shoulder belt pressure; convenience hooks; belt retraction; and comfort devices. Type 2 manual belts (lap and shoulder combination belts) installed in front seating positions in passenger cars were excepted from these additional performance requirements, since it was assumed such belts would be phased out in passenger cars as the automatic restraint requirements of Standard No. 208 became effective.

Seven petitions for reconsideration of the January 8, 1981, amendment were received from the following vehicle manufacturers: American Motors Corporation, General Motors Corporation, Volkswagen of America, Inc., Ford Motor Company, Chrysler Corporation, Renault U.S.A., and Daimler-Benz AG. On February 18, 1982, the agency issued a partial response to the petitions for reconsideration by extending the effective date of the comfort and convenience requirements for one year, from September 1, 1982, to September 1, 1983 (47 FR 7254). Subsequently, the agency proposed (47 FR 51432) and then adopted (48 FR 24717), a further extension of the effective date for the requirements until September 1, 1985.

Correlation to Belt Use

A majority of the manufacturers which submitted petitions for reconsideration questioned the basic correlation between seat belt comfort and convenience and seat belt use. The agency has considered these objections, but continues to believe that seat belt assemblies that are comfortable to wear and convenient to use will tend to enhance seat belt use. Various studies have concluded that safety belt comfort and convenience play an important role in whether people use the belts installed in their vehicles (DOT HS-801-594; DOT-HS-803-570; DOT-HS-805-702; DOT-HS-805-165; "An Analysis of the Factors Affecting Seat Belt," 1977). Some of the problems identified in these studies include: many belts are difficult to reach; many belts do not fit properly (e.g., they cross the occupant's neck); the pressure of many shoulder belts is felt to be excessive, many belts are difficult to buckle; and some belts become too tight after they have been worn for several minutes and their users have moved around.

The agency continues to believe that certain of the performance requirements included in the final rule will help to eliminate the most significant of the above-mentioned problems. While it may be true that comfortable and convenient safety belts may not, in and of themselves, induce higher use rates, uncomfortable or inconvenient safety belts are very likely to discourage continued use by people who are induced to try wearing belts. Thus, the agency believes that comfortable and convenient safety belts are important to support its program to increase safety belt use in the U.S. Therefore, petitioners' requests that the seat belt comfort and convenience requirements be eliminated entirely are denied.

Although the agency has determined that the comfort and convenience requirements should not be eliminated, it has decided upon reconsideration that certain changes should be considered in response to petitioners' concerns. A discussion of the requested changes for each of the individual specifications is set forth below, together with the modifications that are being proposed by this notice. (For a complete understanding of the performance requirements discussed in this notice, including the relationship of the requirements to seat belt comfort and convenience, interested persons should refer to both the notice of proposed rulemaking (44 FR 77210, December 31, 1979) and the final rule (46 FR 2064, January 8, 1981) preceding this notice.)

Automatic Locking Retractors

Paragraph S7.1.1.3 of Standard No. 208 was amended in the January 8, 1981, final rule to specify that certain lap belts installed in front outboard seating positions are required to have an emergency-locking retractor rather than an automatic locking retractor (which was previously allowed as an option). Automatic locking retractors are inconvenient to use since they must be extended in a single continuous movement to a length sufficient to allow buckling or they will lock. They also tend to tighten excessively under normal driving conditions, sometimes making it necessary to unbuckle and refasten the lap belt to relieve pressure on the pelvis and abdomen. Neither of these problems exists with the emergency locking retractor, which allows occupant movement without tightening and which locks only upon vehicle impact.

The agency is, however, concerned that the use of child restraints in the front outboard passenger position could result in the child restraint sliding out of position during pre-crash vehicle maneuvering or braking if the retractor cannot be locked manually. Some data

from the agency's latest testing (Contract No. DTNH 22-83-C-08010) indicate that excessive spool-out of the lap belt occurs before the retractor locks. This, together with the child restraint being moved out of position due to vehicle maneuvering or the child's movement in the restraint, could greatly reduce the effectiveness of the child restraint. While it is the agency's position that children should be placed in child restraints in the rear seats since crash statistics indicate that the rear seat is a safer environment during a crash, it is recognized that many people will continue to use child restraints in the front passenger's position in spite of that fact. Therefore, the agency is proposing that Type 1 seat belts or the lap belt portion of Type 2 belts that are adjusted for length by an emergency locking retractor in any designed seating position other than the driver's position, shall be equipped with a locking means to permit secure restraint of child restraint devices.

The agency is aware of devices that are currently installed on or will be available in the market place that permit compliance with the proposal. One such device is the adjustable (locking) "D"-ring that is on many domestic models. Another is an emergency locking retractor that will convert to an automatic locking retractor by overt action and then revert back to an emergency locking retractor when the buckle is released. The agency currently permits the use of a manual adjustment device capable of causing the emergency locking retractors that adjust the lap belt to lock when the belt is buckled, for seating positions other than the front designated seating position. In sum, there are several means currently available to meet the intent of the proposed requirements and the agency believes that users of child restraint devices should be able to securely restrain the devices in the vehicle.

One manufacturer's petition for reconsideration questioned whether paragraph S7.1.1.3 referred only to Type 1 belts (lap belts) or also to the lap belt portion of a Type 2 belt (combination lap and shoulder belt). The requirement was intended to apply to Type 1 belts (in front outboard seating positions), including those installed in passenger cars, and to the lap belt portion of Type 2 belts (in front seating positions) in vehicles other than passenger cars. The reason for the latter application is that the problems associated with automatic locking retractors are equally bothersome in Type 2 belts. An amendment to paragraph S7.1.1.3 is proposed in this notice to clarify these points.

The agency is also proposing a change to paragraph S7.1.1.3 to clarify that the requirement only applies to lap belts that are installed in vehicles for compliance with the standard. Thus, a Type 1 lap belt that is installed in a passenger car in conjunction with an air bag, in order to meet the lateral and rollover requirements of the standard, would be required to have an emergency locking retractor. However, a Type 1 lap belt installed by a manufacturer in conjunction with a single diagonal automatic belt would not have to have an emergency locking retractor since the single diagonal automatic belt would fully meet the belt requirements of the standard by itself.

American Motors Corporation asked in a letter (although not in its petition for reconsideration) whether the requirements of S7.1.1.3 apply to open-body vehicles. The agency did not intend to exclude open-body vehicles from this requirement; however, the agency requests comments on whether such vehicles should be excluded.

One manufacturer also asked whether paragraph S7.1.1.4 was intended to preclude the use of automatic locking retractors in rear seating positions in vehicles. The answer to that question is no. Manufacturers may install either type of retractor, however, if an emergency locking retractor is provided, a locking means to permit child restraint devices to be securely restrained would be required as specified in S7.1.1.5.

Convenience Hooks for Automatic Belts

Some automatic belt design plans include a manual "convenience hook" which would enable occupants manually to stow the belt webbing totally out of the way as they are about to exit the vehicle. Paragraph S7.4.1 of the final rule was included to ensure that such convenience hooks would not affect compliance with the automatic restraint requirements. Automatic belts installed for compliance with the injury criteria of FMVSS 208 were intended to operate without requiring any manual procedures by the vehicle occupant. Thus, manual hooks could not be a necessary component to move the belt webbing out of the occupant's way since this would defeat the automatic aspect of performance. Paragraph S7.4.1 currently provides that any such hook must automatically release the belt webbing prior to the car being driven.

Ford requested that clarifying language be included in S7.4.1 to make it clear that convenience hooks are intended to stow seat belt webbing of operational automatic belts to increase the ease of entering or exiting the vehicle. Ford stated that they are evaluating automatic belt designs that employ a retainer that stows the inboard latchplate when the latchplate is disengaged by actuation of the emergency release. This protrusion prevents the latchplate and associated webbing from falling on the ground and becoming soiled when the door is opened. Ford requests that S7.4.1 be revised to make it clear that the convenience hook need release the webbing only when the automatic belt is otherwise operational.

Ford pointed out that this section requires that convenience hooks on vehicles must release when the ignition switch is in the "on" or "start" position and the vehicle's drive train is engaged. Alternatively, at the manufacturer's option, for vehicles with manual transmissions only, this release may occur when the ignition switch is in the "on" or "start" position and the vehicle's parking brake is in the released mode. Ford believes that the alternative release option should apply to all vehicles with convenience hooks, no matter what type of transmission is installed in the vehicle. The intent of S7.4.1 is to cause convenience hooks to release the automatic belt webbing at the beginning of vehicle movement. Permitting automatic transmission-equipped vehicles to employ the optional method for convenience hook release (when the parking brake is in the released mode) will provide additional design flexibility for vehicle manufacturers while achieving the timely release of the convenience hooks.

The agency agrees with the points raised by Ford and, accordingly has proposed revised language in S7.4.1 to reflect the requested changes.

Webbing Tension-Relieving Devices

Some seat belt designs include devices intended to relieve shoulder belt pressure. These "window-shade" mechanisms or other tension-relieving devices can reduce the effectiveness of belts in crash situations where excessive slack has been introduced in the belt webbing. Paragraph S7.4.2 was added to Standard No. 208 in the final rule to specify that any such tension-relieving devices may be used on automatic belt systems only if the system would comply with the injury criteria of the standard with the device adjusted to any possible position. The notice of proposed rulemaking preceding the final rule would have banned tension-relieving devices outright. The final form of S7.4.2 was in recognition of the fact that such devices can greatly

accommodate belt fit and can increase belt comfort in certain circumstances, and was intended to allow manufacturers wider latitude in designing automatic belts.

Several manufacturers objected to the wording of S7.4.2 on the basis that the belt system would have to meet the injury criteria even when the device had been used to produce excessive slack in order, essentially, to defeat the system. As the requirement was written, the result suggested by these comments is correct. The agency did intend to require that the belt system meet the injury criteria in any position to which it could be adjusted, even if such a usage was not intended by the manufacturer.

Upon reconsideration of this position, however, the agency has tentatively determined that this requirement is unduly stringent and would effectively preclude the use of tension-relieving devices altogether. The agency believes that the added potential to improve belt fit and the added comfort of these devices is desirable in certain circumstances since it could operate to enhance proper belt use.

The use of tension relievers could enable a manufacturer to provide for user comfort while permitting the decision about the location of automatic seat belt anchorages to be based soley on safety performance considerations. For example, one manufacturer noted that automatic seat belt anchorages located on the front doors will be used to comply with the standard. Since this manufacturer states that belt effectiveness in crashes is the most important of the many criteria which must be considered in the design of seat belt systems, the specific location of anchorages will be determined on the basis of test dummy kinematics and injury criteria performance. These criteria could cause the upper shoulder belt anchorage to be placed in the upper rear corner of the door. On some models, this could cause the shoulder belt to be in close proximity to the neck of some occupants and could result in chafing under certain conditions. Trying to correct this condition by relocating the anchorage could compromise the level of protection provided by the seat belt. Other than undertaking extensive and extremely costly redesign of certain vehicles, the only means of fitting all possible users, in addition to movable anchorages which are already permitted by FMVSS 210, is to incorporate a tension-relieving device so that a small amount of slack can be introduced in order to move the belt webbing off the occupant's neck.

The agency understands the problem of trying to provide for the comfort of a wide range of sizes of vehicle occupants, but at the same time recognizes that excessive slack could compromise belt effectiveness. On balance, the agency believes that it is not necessary to prohibit tension-relievers at this time and therefore is proposing to reword paragraph S7.4.2 so that such devices are not prohibited simply because of the possibility that they might be misused by vehicle occupants.

As paragraph S7.4.2 would be reworded in this proposal, manufacturers would be required to include instructions in their vehicle owner's manual concerning the proper use of any tension-relieving devices incorporated in their automatic belt systems. These instructions would have to state the maximum amount of slack that can safely be introduced and include a warning to vehicle occupants that if excessive slack is introduced into the system, the protection offered by the belt system would be substantially reduced or even eliminated. The agency solicits specific comments on the potential effect that tension-relievers may have on belt effectiveness and belt usage. The agency is particularly interested in obtaining data on the effects of belt slack vs. effectiveness.

Torso Belt Body Contact Force

NHTSA research indicates that a substantial number of occupants are likely to complain about pressure if the torso belt net contact force is greater than .7 pound (DOT HS–805 597). Therefore, the January 8, 1981, final rule specified that the torso portion of any belt system shall not create a contact pressure exceeding that of a belt with a total net contact force of .7 pound. Most of the petitions for reconsideration objected to this requirement. However, the objections were essentially identical to the arguments raised by the manufacturers when the requirement was first included in the notice of proposed rulemaking. No new reasons were given which would cause the agency to reverse its prior decision on this issue. As stated in the final rule, a detailed study by Man Factors, Inc. showed that belt contact force greater than 0.7 pound was unacceptable to more than 60 percent of the test subjects. Therefore, because excessive pressure is such a major complaint by motor vehicle occupants, the agency believes it is extremely important to limit belt contact force. The agency reiterates its statement of reasons made in the Januray 8, 1981, final rule.

The agency also does not accept one manufacturer's argument that the procedure specified for measuring belt contact force is not practicable or repeatable. The specified procedure is relatively simple and was based primarily on comments by manufacturers in response to the notice of proposed rulemaking (i.e., commenters recommended that a procedure be specified for measuring belt pressure, and included recommended specifications). The manufacturer did not provide concrete data demonstrating that the procedure or the requirement is not reasonable and practicable. The procedure remains as issued.

One manufacturer requested that the contact force requirement, S7.4.3, be amended to except any belt system incorporating a tension-relieving device. In support of this request, the petitioner noted that even .7 pounds of pressure is objectionable to some vehicle occupants and that a tension-relieving device can be used to eliminate pressure entirely, i.e., so that the webbing does not even touch the occupant where the force is measured.

While the agency believes these arguments may have merit, it is concerned that excepting belt systems incorporating tension-relieving devices may result in designs that have excessive contact force. This could cause an occupant to introduce slack in the belt who otherwise might not do if the system complied with the 0.7-pound contact force requirement, thus reducing potential effectiveness of the belt.

However, as noted earlier, the agency believes that it is not necessary to preclude tension-relieving devices altogether and has revised S7.4.2, *Test Procedures*, so that such devices shall not be precluded. However, the agency has also tentatively concluded that belt systems that incorporate webbing tension-relieving devices should not be excluded from the 0.7 pound contact force requirement. The tentatively proposed amendment also clarifies that tension-relieving devices include "comfort clips," "window-shade" devices or other mechanisms that can reduce belt control pressure entirely. Comments are solicited on the cost to comply with the 0.7-pound contact force requirement and the costs of various types of tension-relieving devices.

Subsequent to the final rule, American Motors stated that occupants of open-body vehicles (for examples, Jeeps) may prefer to have the secure feeling of the seat belt upper torso webbing tight against their chest, i.e., with a force greater than the 0.7 pound specified in the standard. The company asked that open-body vehicles be excluded from the belt contact force requirement. The agency believes that the 0.7-pound force

will keep the upper torso belt sufficiently tight against the chest to satisfy virtually all occupants who may perfer to "feel" the belt on the chest. Therefore, open-body vehicles have not been excluded from the 0.7 pound contact force requirement.

Latchplate Accessibility

As noted in the final rule, one of the most inconvenient aspects of using many current seat belt designs is the difficulty that the seated occupant has in reaching back to grasp the belt latchplate when the belt is unbuckled and in its retracted position. The greater the difficulty in reaching the latchplate to buckle the belt, the more likely the occupant will be discouraged from using the belt. Poor accessibility of latchplates results from two main factors: location of the lactchplate beyond the convenient reach of some seated vehicle, occupants, and inadequate clearance between the seats and side of the vehicle to allow, easy grasping of the latchplate.

Paragraph S7.4.4 of the January 8, 1981, final rule specified requirements to define limits on reach distance for latchplates and to prescribe minimum clearances for arm and hand access. The latter requirement was specified in terms of a test block which must be able to move to the latchplate unhindered.

Several petitioners stated that paragraph S7.4.2 should be clarified to indicate it is only applicable to seat belts at front outboard seating positions. This is what the agency intended and the agency is proposing clarifying language for S7.4.2.

Other manufacturers stated that the requirement for "unhindered transit" of the test block to determine latchplate access is design restrictive and unduly stringent, since it does not allow any depression of the seat cushion by the test block. These manufacturers argued that a vehicle occupant would not be bothered if the seat cushion had to be depressed to a limited degree to reach the latchplate. The manufacturers also argued that the requirement should be eliminated altogether since the standard already requires vehicles to have a latch mechanism "whose components are accessible to seated occupants in both the stowed and operational position."

For the same reasons as were stated in the January 8, 1981, final rule, the agency believes that it is necessary to specify performance requirements for the easy accessibility of latchplates. However, upon reconsideration of the manufacturers' comments, the agency has determined that allowing some limited amount of seat cushion depression to gain access to the latchplate would not destroy the effectiveness of this requirement. A manufacturer pointed out that one of its vehicles cannot pass the latchplate accessibility requirement specified in the standard because the test block depresses the seat cushion, yet the vehicle was shown to be acceptable in NHTSA's contract with Verve Corporation which evaluated the accessibility requirement with human test subjects (DOT HS–803–887).

After reconsidering all factors, the agency has determined that the simplest way to accommodate the manufacturers' legitimate concerns that the existing requirement is unduly stringent is to propose reducing the size of the test block. Reducing the size of the test block is simpler than developing an objective method for measuring and limiting seat cushion depression. The new dimensions for the test block proposed in this notice are representative of the human hand, while the originally adopted dimension was representative of both the hand and a small portion of the forearm. The new dimensions have been determined to be adequate based on the length and thickness dimension listed in SAE Recommended Practice J833A and J925. Therefore, the proposed dimension change should meet the manufacturers' concerns and still ensure easy accessibility.

Belt Retraction

Many persons find seat belts inconvenient because the belt webbing will not retract completely to its stowed postion when the system is unbuckled, thus creating an obstacle when the occupant is trying to exit the vehicle or soiling the belt if it is caught in the door. To alleviate such problems, paragraph S7.4.5 was included in the January 8, 1981, final rule to provide that the belt webbing of any seat belt assembly shall automatically retract completely to its stowed position when the latchplate is released from the buckle and the adjacent vehicle door is opened.

In its petition for reconsideration, one manufacturer stated that it markets certain light truck models which have "captain's chairs" that are equipped with movable armrests. The armrests on the outboard side of these seats must be raised and placed in a stowed position before the occupant can exit the vehicle. For this type vehicle seat, the manufacturer requested that the requirement for belt retraction be revised to indicate that the movable armrest may be adjusted to its stowed position prior to conducting the retraction test.

The agency believes that the petitioner's request is justified for vehicle seats in which the outboard armrest must *in fact* be moved before the occupant can exit the vehicle. However, if a movable armrest is installed only for added convenience, many persons may leave it down, i.e., not place it in its stowed position. In such cases, the belt must be able to retract completely to its stowed position. In such cases, the belt must be able to retract completely to its stowed position when it is unbuckled and the adjacent door is opened.

Although not included in its petition for reconsideration, American Motors has asked the agency by letter to exclude open-body vehicles without doors from the retraction requirements of paragraph S7.5. The company stated that the requirement for complete retraction of a safety belt when the buckle is released and the door is opened is inappropriate for vehicles without doors. The specification for complete retraction when the door is opened was included in the requirement because some belt window-shade devices can be released either manually by the occupant or automatically when the vehicle door is opened. The agency agrees that the requirement that a belt retract when a vehicle's door is opened is inapplicable to vehicles with no doors. The agency continues to believe that an open-body vehicle with a belt system with a tension-relief device should completely retract when an occupant manually deactivates the tension-relief device. Therefore, the agency proposes to modify paragraph S7.4.6 to provide that open-body vehicles with no doors that have a belt system with a tension-relief device shall fully retract when an occupant manually deactivates the tension-relief device.

Seat Belt Guides

Seat belt webbing and buckles in motor vehicles often fall or are pushed down behind the seat. Consequently, occupants are discouraged or actually precluded from using the belts. Paragraph S7.4.6.1 of the final rule specified that belt webbing that is designed to pass through the seat cushion or between the seat cushion and seat back shall pass through guide openings in the seat or through flexible conduits between the seat cushion and seat back to maintain the location of the seat belt latchplate and buckle on the seat cushion. In addition, S7.4.6.2 specified that the buckle and latchplate of a manual seat belt assembly shall not slip out of the guides or conduits and fall behind the seat cushion. There was an exception from these requirements for "rear seats that tumble."

Nearly all of the manufacturers which submitted petitions for reconsideration had objections concerning the specifications for seat belt guides. Several manufacturers argued that the specification for "guide openings" or "flexible conduits" might preclude other designs which would achieve the same purpose, such as the use of rigid cables. One manufacturer had several objections to the requirement as stated in S7.4.6.1 and S7.4.6.2. That company argued that the requirement in the former paragraph, by the phrase, "to maintain the location of the seat belt latchplate and buckle on the seat cushion," establishes a higher level of performance than is required in the latter paragraph. The company pointed out that the performance requirement in S7.4.6.2 only specifies that the seat belt latchplate shall not pass through the seat belt guides and fall behind the seats under stated conditions. The company stated that the level of performance inherent in the S7.4.6.1 phrase, when applied to nonretractable belts, is not attainable by seat belt guides.

The agency did intend for paragraph S7.4.6.1 to establish a separate requirement from the one in S7.4.6.2. The point is that in some cases buckles might not be able to pass back through guide openings to fall behind the seat, yet could nevertheless fall behind the seats due to the amount of belt webbing between the buckles and the guide openings. Paragraph S7.4.6.2 was intended to assure that belt hardware is not pulled back through guide openings or conduits when the seat is moved forward or folded. Paragraph S7.4.6.1 was intended to make certain that belt buckles and latchplates are always accessible to the vehicle occupant. As stated in the January 8, 1981, final rule: "The intent of the provision was only to require that the belt hardware pass through guides or conduits to maintain the location of the buckle and latchplate *on top of the seat cushion*" [emphasis added]. The agency believes it is extremely important that belt buckles and latchplates or some portion of the attached webbing should remain on the seat cushion at all times to assure that the user has ready access to the belts. However, the agency agrees with the manufacturers' concerns about design flexibility and does not mean to limit the design used to achieve this goal. The agency believes that manufacturers should be permitted to use stiffeners, guide openings, cables or conduits of any type to ensure that the belt hardware will remain on top of the seat cushion during normal use. However, the agency urges manufacturers not to employ designs that are so stiff that the belt system retractor will not pull the belt tight enough to properly fit small occupants or that are unduly difficult to cinch down in the case of manually adjustable belts. This notice proposes clarifying language to reflect the issues.

In response to a question by one manufacturer, the agency does not mean to imply by this requirement that it must be impossible for someone to be able intentionally to push the belt hardware behind the seat cushion to get rid of it. The requirement is only intended to address conditions of normal use, such as someone sitting on the seat cushion.

Two manufacturers requested that the agency clarify what is meant in S7.4.6.1 by the phrase "seats that tumble," and one of these requested that the exception be expanded to include other seats that articulate to serve a dual function. Specifically, one manufacturer has a van model which has a seat that converts into a bed by moving the seat cushion horizontally forward about nineteen inches. Thus, although the seat does not "tumble," The company argues that the requirement would necessitate placing the belt hardware on the seat frame, and that such seats should also be excluded from the requirement. The agency believes that in light of the various configurations and design limitations that might arise, seats that are movable to serve a secondary function should be excluded from the requirements of S7.4.6. The agency has also determined that the term "tumble" is causing unnecessary confusion. Therefore, this notice proposes to modify the provision to state that seats whose seat cushions are "movable" to serve a dual function are excepted from the requirements. The agency does urge manufacturers to make every attempt to meet the requirements for all seats, or provide instructions to explain how the seat belts are re-inserted between the seat cushion and seat back after the seat is returned to its riding position.

Finally, several manufacturers objected to the requirement in S7.4.6.2 that the inboard receptacle end of a seat belt assembly installed at a front outboard seating position shall be accessible with the center arm rest in any position to which it can be adjusted (without having to move the armrest). One petitioner argued that the armrest is also an occupant convenience item, and that it is reasonable to assume that a front seat occupant would not be inconvenienced by moving the armrest in order to buckle the seat belt. Another manufacturer argued that the requirement is not objective because no test procedure is specified to determine "accessibility."

The agency disagrees with these arguments. Having to move the armrest each time the belt is used in order to gain access to the belt hardware to buckle the belt is an inconvenience and a discouragement to seat belt use, and in some cases may be a hindrance to disconnection in emergency situations. Also, requiring that a belt buckle be readily accessible should ensure that the buckle is visible as well. A restraint with a visible buckle is more likely to be used than one which is hidden from the occupant's view. Finally, the agency does not agree with the petitioner's comment that a detailed test procedure is needed for this requirement. Simple inspection should be sufficient to determine whether it would be possible for a person to buckle his or her belt without first moving the arm rest. Accordingly, the agency does not believe manufacturers will have any real problems complying with this requirement.

Warning System Requirements

The January 8, 1981, final rule included a new specification for warning systems for automatic belts (S4.5.3.3(b)(C)) to ensure that motorized automatic belts are locked into place before the vehicle begins moving. If for some reason the motorized belt has not returned and locked into its protective mode, the occupant would be alerted by a continuous light and by a 4- to 8-second audible warning, under the requirements included in the final rule.

In its petition, a manufacturer stated that it has investigated several motorized automatic belt systems since the January 8, 1981, final rule was issued and has determined that the audible warning requirement could be a problem in certain cases. As written in the final rule, S4.5.3.3(b) required a 4- to 8-second audible warning beginning whenever the vehicle's ignition switch is moved to the "on" or "start" position and the webbing of a motorized system is not in its locked, protective mode at the anchorage point. Further, the requirement specified that there shall be a warning light *for as long as* the ignition switch is in the "on" or "start" position and the webbing of a motorized system is not in its locked, protective mode at the anchorage point.

The manufacturer pointed out that in some motorized belt designs it is considering there are several instances in which the audible signal might not activate when it is needed, and several instances in which it might activate before it is really needed.

If the ignition is turned to the "on" or "start" position while the belt webbing is still moving, the audible signal will activate even though the belt will eventually (in a matter of seconds) be locked into its protective mode. The petitioner is concerned that this will be annoying to motorists since the buzzer will sound every time the ignition is turned on. As the manufacturer pointed out, the vehicle occupants never hear the buzzer in other automatic belt systems provided the belt remains fastened.

The agency agrees with the manufacturer that this is a legitimate concern. The agency has stated in the past that occupants should not be subjected to audible warnings unless a belt system is in fact not in its protective mode. Also, if the audible warning activates every time the ignition is turned to the "on" position, it will become so routine that it will have no effect when it is in fact needed to warn that a belt is not operable.

Further, the agency is re-considering the requirement that would require a continuous or flashing warning light for as long as condition A (The vehicle's ignition switch is moved to the "on" position or to the "start" position) exists with condition B (The driver's automatic belt is not in use, as determined by the belt latch mechanism not being fastened or, if the automatic belt is non-separable, by the emergency release mechanism being in the released position). The agency believes that a 60 second light would be sufficient to remind the driver that the belts were unfastened and that continuous light could become an unnecessary irritant and would become so routine that it would have no effect in reminding the driver to buckle-up. The agency is proposing to change that requirement to provide for a warning light that activates for *at least* 60 seconds if condition (A) exists simultaneously with condition (B). Such a requirement would allow the manufacturer the option of providing for additional warning time. The agency would like comments if the requirement should be specific as to the length of time the warning light should exist in regards to conditions (A) and (B).

In regard to condition C (The belt webbing of a motorized automatic belt system is not in the locked protected mode at its anchorage point), the agency believes that the warning light should remain on as long as condition (A) exists simultaneously with condition (C). Since there would be no visible means other than the warning light available to the driver to determine whether or not the motorized belt was or was not in a protective mode, the driver could be misinformed as to the readiness of the automatic belt system if the warning light automatically turned off at a pre-set time without regard to the readiness of the system.

After considering these problems, the agency believes that the best solution to competing concerns is to require only a visible warning signal (i.e., tell-tale light) for motorized automatic belt systems that have not locked properly at the anchorage point. The warning light would not be obnoxious to vehicle occupants and, since it is not limited to a duration of 4- to 8-seconds, it would continue to operate as long as the automatic belt has not been locked into its protective mode. The agency believes that this will be a sufficient warning to vehicle occupants that their motorized system has not been properly locked at the anchorage point. Under the proposed requirements an audible signal will be required, however, if the motorized system has a separate emergency release mechanism, e.g., a buckle release, and the belt is not fastened (condition "B" in the standard).

Test Procedures

One manufacturer stated that the test procedure specified in S10.5 for establishing the reach envelopes described in S7.4.4 (not S7.4.7 as is incorrectly stated in the January 8, 1981, final rule) relating to latchplate access, is not repeatable and not stated in objective terms. The company contends that positioning the test dummy in a vehicle is impossible to accomplish without variations and that this positioning will cause a variation in test results when determining the reach envelopes.

The agency does not accept those arguments. While there may be some minor variations in dummy positions from one test to another, the agency believes that the latitude available to the manufacturer for locating latchplates and retractors is more than sufficient to allow the manufacturer to overcome the small standard deviations in locating the test dummy device. The agency believes the reach envelopes that are specified and the test procedure are amply supported and validated by data obtained from contracts with Verve Corporation (DTNH-22-C-07011 and DTNH-22-80-C-07611), Man Factors Incorporated (DOT-HS-7-01617) and Dynamic Science Corporation (DTNH 11-22-80-C-02083). Therefore, the test procedure of S10.5 remains unchanged.

The notice of proposed rulemaking preceding the January 8, 1981, final rule did not specify a test procedure for measuring the belt contact force limitations specified in S7.4.3. In response to comments to the proposal, a procedure was specified in the final rule, S10.6. Several petitioners requested that minor changes and clarifications be made in these procedures. One petitioner stated that the clothing on the dummy test device used in the procedure can produce drag resulting in unwanted deviations in the force measurements. In order to avoid this minor problem, the agency is proposing to modify the procedure to specify that the test dummy is to be unclothed.

Another manufacturer requested that the procedure be revised to conform with the procedure noted in the Man Factors Report (DOT-HS-7-01617). The procedure specified in S10.6 is very similar to the Man Factors study, with modification based on industry suggestions (in comments to the proposal). The S10.6 procedure includes minor modifications to ensure that the belt drag on the belt guide components is eliminated prior to the force measurement. The agency believes that these modifications should remain in the standard to provide more accurate measurements.

Walk-in Van Vehicles

One manufacturer stated that twenty-five percent of the walk-in van vehicles it will produce in the 1983-model year and thereafter will have a GVWR less than 10,000 pounds. These vehicles would, therefore, be subject to the comfort and convenience requirements of Standard No. 208. The company stated that certification of walk-in vans to these requirements would necessitate significant restraint design changes which would not be justified in terms of their unique design and distinct usage characteristics. Therefore, the company's petition requested that walk-in vans be excepted from the comfort and convenience requirements.

The manufacturer claims that changes to walk-in vans necessary to meet the requirements of S7.4.4 (latchplate access) and S7.4.5 (belt retraction) could be restrictive to intended vehicle use. The company stated, "the addition of retractors and belt stiffeners to the seat, if necessary to meet the S7.4.4 reach requirements, could interfere with driver access to cargo in delivery applications." The manufacturer stated that the changes required to meet S7.4.4 and S7.4.5 would include: the addition of emergency locking retractors; relocation of anchorages to the seat pedestal; and seat structural modification. The company claims that the consumer cost for these changes would be

approximately $115 for a vehicle equipped only with a driver seat.

After carefully evaluating those comments, the agency has tentatively determined that walk-in step vans should be excluded from seat belt comfort and convenience requirements. By the term "walk-in vans" the agency is referring to city delivery type vehicles used, for example, to deliver parcels or dry cleaning. The agency has evaluated the cost of requiring these vehicles to comply with the requirements and believes that with many walk-in van designs the addition of emergency locking retractors and relocation of belt anchorages to the seat would be extremely expensive. This is true because most walk-in vans have pedestal seats and the anchorages and restractors would have to be designed to accommodate the great distance from the vehicle floor to the seat cushion. This means it would be much more expensive for these vehicles to comply with the requirements than other vehicles. Moreover, the agency believes that in some designs, the belt hardware and webbing that would be required to comply with the requirements could thwart access to the rear cargo area of the vehicle. Because of the fact that the driver in these vehicles is constantly in and out of the seat, belt use is at a minimum. The agency does not believe that added comfort and convenience will significantly increase belt use in these vehicles because of their particular commerical use. This, coupled with the greater cost of these vehicles to comply, leads the agency to propose excluding walk-in vans from the seat belt comfort and convenience requirements. However, these vehicles are still required to have safety belts at each designated seating position as specified by section S4.2.1.2(a) of FMVSS 208 and which conform to the requirements of Standards 209 and 210.

One petitioner noted that the preamble to the final rule indicated that the weights and dimensions of the vehicle occupants referred to in Standard No. 208 and specified in S7.1.3 were to be revised and included in the amendment. The chart, however, was not included in the final rule. Therefore, the chart is being included in this notice. The agency emphasizes again that this chart is not intended to make any changes in the 49 CFR Part 572 test dummy.

The agency indicated in the January 8, 1981, final rule that it intended to issue performance guidelines concerning other area of seat belt comfort and covenience not included in the amendment to Standard No. 208. After reconsideration, however, the agency has decided that it will not issue such performance guidelines at this time.

In the notice of proposed rulemaking published December 31, 1979, (44 FR 77210), the agency proposed a minimum 2-inch clearance between the webbing of an automatic belt and the outboard seat cushion when the vehicle door is completely opened to facilitate a perception of the proper method for entering the vehicle, i.e., sliding behind and underneath the belts. In their response to this proposal, most manufacturers opposed the minimum specification for webbing/seat clearance. The comments stated that there is no safety rationale for the requirement because any misconception concerning the proper way to enter the vehicle would be removed after the occupant became familiar with the vehicle. Peugeot stated that experience has shown that the occupant can easily push the strap aside for a moment in order to enter the vehicle. The company argued that the proposed requirement is tantamount to requiring the installation of an automatic mechanism to move the belt system's top anchor position. (Note: In response to this specific comment, the agency, in 1974, issued an interpretation that it would not consider a belt system that had to be manually moved out of the way by the occupant to be an "automatic" system that would satisfy the requirements of the standard; see 39 FR 14594, April 25, 1974. The agency now believes that such an interpretation may be overly stringent and seeks public comment on this issue.) Several manufacturers stated the minimum specification could degrade belt effectiveness in a crash. These manufacturers argued that the specification would preclude a belt, particularly a lap belt, from fitting securely around the occupant. This could result in the occupant "submarining" under the belt during a crash. In its January 1981 final rule, the agency declined to promulgate any seat to webbing clearance requirement. Nevertheless, the agency encourages manufacturers to provide as much vertical clearance between the seat cushion and webbing as is practical.

Currently, manual Type 2 seat belts installed in the front seats of passenger cars are exempted from the comfort and convenience requirements. This was done to allow manufacturers to devote their resources to automatic restraints in these vehicles since Type 2 manual belts in the front seats would be phased out when the automatic restraint requirements became effective. However, the final rule mandating automatic restraints (49 FR 28962) specifies that if States representing two-thirds or more of the nation's population enact mandatory seat belt usage laws before April 1, 1989, the requirement for automatic protection will no longer apply. In the event that this occurs, the agency is hereby proposing to extend the applicability of the comfort and convenience requirements to Type 2 manual belts installed in the front seats of passenger cars effective September 1, 1989.

In the interim, the agency urges manufacturers to voluntarily incorporate as many of the requirements as possible in their passenger cars equipped with Type 2 manual belts in the front seats. Millions of these vehicles will be equipped with manual belts between now and September 1, 1989. It is extremely important that the belt systems on these vehicles be comfortable and convenient to use so that the current low rate of belt use can be increased. The requirements can be included easily and inexpensively during the normal model-year design changes and the agency urges all manufacturers to do so.

Regulatory Impact

NHTSA has considered the economic and other impacts of this proposal and determined that the rule is not a major rule within the meaning of Executive Order No. 12291. The agency has further determined that the proposal is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. In issuing the final rule on January 8, 1981, NHTSA released a final regulatory evaluation which contains the agency's assessment of the societal benefits and economic consequences of that rule. Copies of the evaluation can be obtained by writing to NHTSA's Docket Section at the address given at the beginning of this notice.

A supplement to that evaluation has been prepared and placed in the public docket. The change proposed in this notice are not anticipated to significantly increase costs for manufacturers or to consumers. Rather, most of the changes proposed in this notice will reduce costs somewhat for manufacturers. This is particularly true since the effective date of the comfort and convenience requirements has been delayed for one year to September 1, 1986. With this additional lead time, most manufacturers will be able to make necessary changes in their seat belt installation during normal model-year design changes. This should reduce any costs associated with the requirements.

The agency has also analyzed this proposal for purposes of the National Environmental Policy Act and has determined that it will not have a significant effect on the human environment.

Furthermore, the agency has reviewed the effects of this proposed rule on small entities under the Regulatory Flexibility Act. Based on this evaluation, I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Due to the minimal effect on testing costs, the final rule will not significantly affect the manufacturing costs of any seat belt manufacturers who are small entities or the retail price of vehicles purchased by any small organizations or governmental units. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

PART 571—[AMENDED]

§ 571.208 [Amended]

In consideration of the foregoing, 49 CFR 571.208, would be amended as follows:

1. S7.1.1.3 would be revised to read:

S7.1.1.3(a) Except as provided in S7.1.1.3(b), a Type 1 lap belt or the lap belt portion of any Type 2 belt installed at any front outboard designated seating position for compliance with this standard in a vehicle, other then walk-in van-type vehicles, manufactured on or after September 1, 1986, shall meet the requirements of S7.1 by means of an emergency-locking retractor that conforms to Standard No. 209 (§ 571.209).

(b) The requirements of S7.1.1.3(a) do not apply to the lap belt portion of any Type 2 belt installed in a passenger car or to walk-in van-type vehicles.

2. A new paragraph S7.1.1.5 would be added to read:

S7.1.1.5 A manual Type 1 or the lap belt portion of a manual Type 2 seat belt that is adjusted for length by an emergency locking retractor, installed for compliance with this standard in any designated seating position other than the driver position, in any vehicle with a GVWR of 10,000 lbs. or less, manufactured after September 1, 1986, shall be provided with a locking means to permit the secure restraint of child restraint devices. Belts installed in walk-in van-type vehicles need not comply with this requirement.

3. S7.4 would be revised to read:

S7.4 *Seat belt comfort and convenience.* (a) Automatic seat belts installed in any vehicle, other than walk-in van-type vehicles, with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1986, shall meet the requirements of S7.4.1, S7.4.2, and S7.4.3.

(b) Except as provided in S7.4(c), manual seat belts, except for passenger cars, installed for compliance with this standard in any vehicle with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1986, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6. Manual seat belts in passenger cars manufactured on or after September 1, 1989, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6.

(c) The requirements of S7.4(b) do not apply to manual belts installed in walk-in van-type vehicles.

4. S7.4.1 would be revised to read:

S7.4.1 *Convenience hooks.* Any manual convenience hook or other device that is provided to stow seat belt webbing to facilitate entering and exiting the vehicle shall automatically release the webbing when the automatic belt system is otherwise operational and shall remain in the released mode for as long as (a) exists simultaneously with (b), or at the manufacturer's option for as long as (a) exists simultaneously with (c)—

(a) The vehicle ignition switch is moved to the "on" or "start" position;

(b) The vehicle's drive train is engaged;

(c) The vehicle's parking brake is in the released mode (nonengaged).

5. S7.4.2 would be revised to read:

S7.4.2 *Webbing tension-relieving device.* Any automatic seat belt assembly that includes either manual or automatic devices that permit the introduction of slack in the webbing of the upper torso restraint (e.g., "comfort clips" or "window-shade" devices) shall comply with the injury criteria of S5 of this standard with the belt webbing adjusted to introduce the maximum amount of slack that is recommended by the vehicle manufacturer in the owner's manual to be introduced into the shoulder belt under normal use conditions. The vehicle owner's manual shall explain how the device works and shall specify the maximum amount of slack (in inches) which is recommended to be introduced under normal use into the belt by means of the tension-relieving device. The instructions shall also warn that introducing slack beyond the specified amount could significantly reduce the effectiveness of the belt in a crash. Any belt slack that can be introduced into the belt system by means of any tension-relieving device or design shall be cancelled each time the belt is unbuckled and the adjacent vehicle door is opened except for open-body vehicles with no doors.

6. S7.4.3 would be revised to read as follows:

S7.4.3 *Belt contact force.* When tested in accordance with S10.8, the upper torso webbing of any seat belt assembly shall not exert more than 0.7 pounds of contact force when measured normal to and one inch from the chest of an anthropomorphic test dummy, positioned in accordance with S10 in the seating position for which that assembly is provided, at the point where the centerline of the torso belt crosses the midsagittal line on the dummy's chest. Automatic seat belt assemblies with tension-relieving devices shall be tested with the tension-relieving device deactivated.

7. The first sentence of S7.4.4 would be revised to read as follows:

S7.4.4 *Latchplate Access.* The latchplate of any seat belt assembly installed in front outboard seating positions in accordance with S4.1.2 shall be located within the outboard reach envelope of either the outboard arm or the inboard arm described in S10.7 and Figure 3 of this standard.* * *

8. S7.4.5 would be revised to read as follows:

S7.4.5 *Retraction.* When tested under the conditions of S8.1.2 and S8.1.3, with anthropomorphic test dummies whose arms have been removed positioned in the front outboard designated seating position in accordance with S10 and restrained by the belt systems for those positions, the torso and lap belt webbing of any of those seat belt systems shall automatically retract to their completely stowed position when the latchplate is released from the buckle and the adjacent vehicle door is in the open position. Open bodied vehicles with no doors that have a belt system with a tension-relieving device shall fully retract when the tension-relieving device is manually deactivated. For the purpose of the retraction requirement, outboard armrests may be placed in their stowed positions if they are on vehicle seats that must have the armrests in the stowed position to allow an occupant to exit the vehicle.

9. S7.4.6.1 would be revised to read as follows:

S7.4.6.1(a) Any manual seat belt assembly whose webbing is designed to pass through the seat cushion or between the seat cushion and seat back shall be designed to maintain the location of the seat belt latchplate and

buckle, or a portion of the seat belt webbing, on top of the seat cushion under normal conditions (i.e., conditions other than when belt hardware is intentionally pushed behind the seat by a vehicle occupant).

(b) The requirements of S7.4.6.1(a) do not apply to seats whose seat cushions are movable so that they serve a function other than seating.

10. S4.5.3.3(b) would be revised to read as follows:

S4.5.3.3(b) In place of a warning system that conforms to S7.3 of this standard, be equipped with the following warning system: At the left front designated seating position (driver's position), be equipped with a warning system that activates a continuous or intermittent audible signal for a period of not less than 4 seconds and not more than 8 seconds and that activates a continuous or flashing warning light for not less than 60 seconds, visible to the driver (beginning when the vehicle ignition switch is moved to the "on" or the "start" position) when condition (A) exists simultaneously with condition (B), and that activates a continuous or flashing warning light, visible to the driver, displaying the identifying symbol for the seat belt telltale shown in Table 2 of Standard No. 101 (49 CFR 571.101) for as long as condition (A) exists simultaneously with condition (C).

(A) The vehicle's ignition switch is moved to the "on" position or to the "start" position.

(B) The driver's automatic belt is not in use, as determined by the belt latch mechanism not being fastened or, if the automatic belt is nonseparable, by the emergency release mechanism being in the released position.

(C) The belt webbing of a motorized automatic belt system is not in its locked, protective mode at the anchorage point.

11. S10.5 would be amended to reference S7.4.4 rather than S7.4.7.

12. S10.6 would be revised to read as follows:

S10.6 To determine compliance with S7.4.3 of this standard, position the anthropomorphic test dummy, which is unclothed, in the vehicle in accordance with S6.1.11 and under the conditions of S6.1.2 and S6.1.3. Close the vehicle's adjacent door, pull 12 inches of belt webbing from the retractor and then release it, allowing the belt webbing to return to the dummy's chest. Pull the belt webbing three inches from the dummy's chest and release until the webbing is within one inch of the dummy's chest and measure belt pressure.

13. Figure 4 of this standard would be revised as follows:

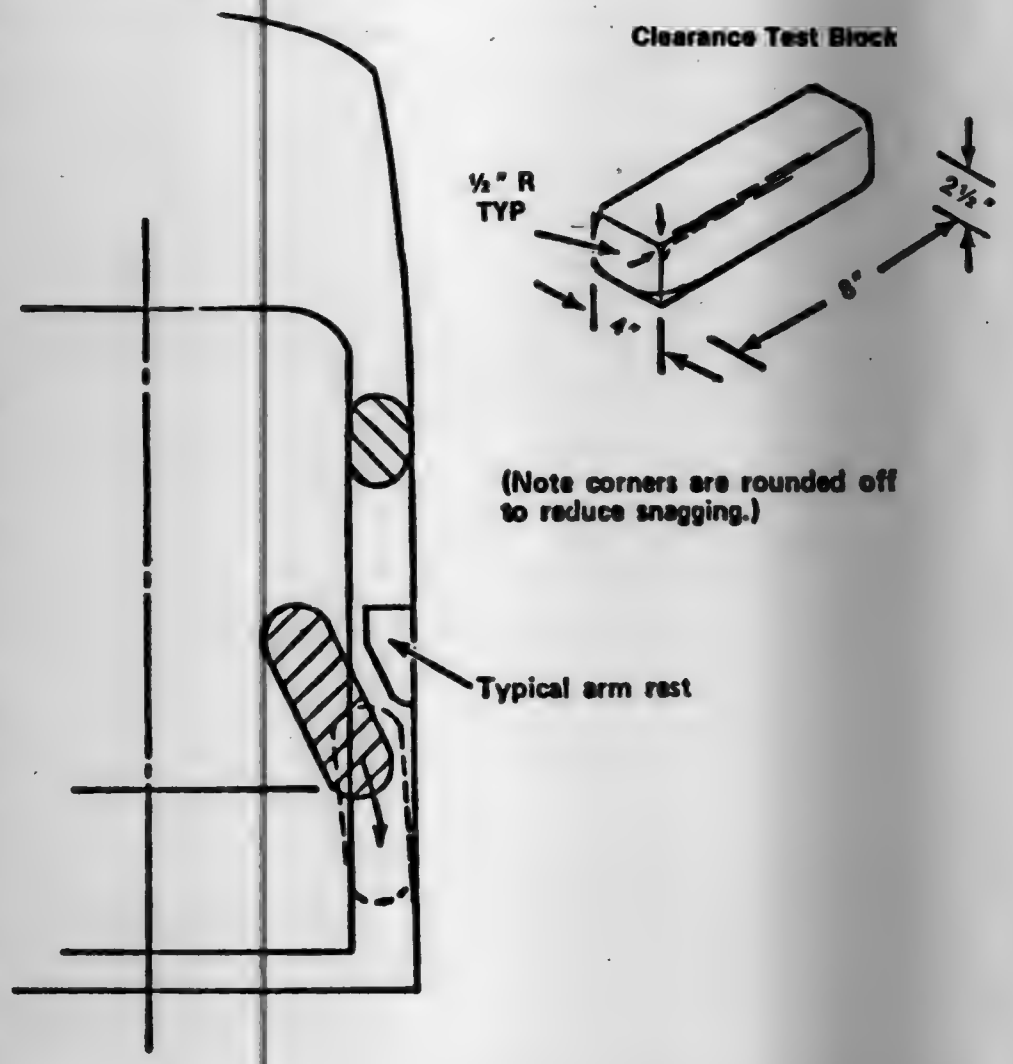


Figure 4—USE OF CLEARANCE TEST BLOCK TO DETERMINE HAND/ARM ACCESS

14. The weights and dimensions of the vehicle occupants referred to in this standard and specified in S7.1.3 would be revised to read as follows:

	50th percentile 6-year-old child	5th percentile adult female	50th percentile adult male	95th percentile adult male
Weight (pounds)	47.3	102	164±3	215.
Erect sitting height (inches)	25.4	30.9	35.7±.10	38.
Hip breadth (sitting) (inches)	8.4	12.8	14.7±.7	16.5.

	50th percentile 6-year-old child	5th percentile adult female	50th percentile adult male	95th percentile adult male
Hip circumference (sitting) (inches)	23.9	36.4	42.0	47.2.
Waist circumference (sitting) (inches)	20.8	23.6	32.0+.60	42.5.
Chest depth (inches)		7.5	9.3±.20	10.5.
Chest circumference:				
Nipple (inches)		30.5		
Upper (inches)		29.8	37.4±.6	44.5.
Lower (inches)		26.6		

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: April 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8672 Filed 4-8-85; 3:14pm]

BILLING CODE 4910-59-M

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49 CFR Parts 571 and 585

[Docket No. 74-14; Notice 38]

Federal Motor Vehicle Safety Standards for Occupant Crash Protection and Automatic Restraint Phase-In Reporting Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 17, 1984, the Secretary of Transportation issued a final rule requiring automatic occupant protection in all passenger cars based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989, unless, before April 1, 1989, two-thirds of the population of the United States are covered by state mandatory safety belt use laws (MULs) meeting specified criteria. In that notice, the Secretary identified several issues that would likely need additional rulemaking. This notice sets forth proposals on the following issues identified in the Secretary's final rule: elimination of the oblique crash tests, application of the automatic restraint requirements to convertibles, application of the Head Injury Criteria to non-contact HIC measurements, adoption of some of the New Car Assessment Program test procedures, and express mention in Standard No. 208 of the due care defense.

In addition, this notice also addresses dynamic testing of manual belts and reporting requirements regarding compliance with the phase-in requirements.

DATE: Comments must be received by May 28, 1985. If adopted, the proposed amendments would become effective 45 days after publication of the final rule in the **Federal Register.**

ADDRESS: Comment should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, NW., Washington, D.C. 20590. (Docket Room hours 8 a.m.-4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Barry Felrice, Office of Vehicle Safety Standards, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426-1810.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1984 (49 FR 28962), the Secretary of Transportation issued a final rule requiring automatic occupant protection in all passenger cars based on a phased-in schedule beginning on September 1, 1986, with full implementation being required by September 1, 1989, unless, before April 1, 1989, two-thirds of the population of the United States are covered by state mandatory safety belt use laws (MULs) meeting specified criteria.

More specifically, the rule requires:

- Front outboard seating positions in passenger cars manufactured on or after September 1, 1986, for sale in the United States, will have to be equipped with automatic restraints based on the following schedule:
- Ten percent of all cars manufactured on or after September 1, 1986.
- Twenty-five percent of all cars manufactured on or after September 1, 1987.
- Forty percent of all cars manufactured on or after September 1, 1988.
- One hundred percent of all cars manufactured on or after September 1, 1989.
- During the phase-in period, each car that is manufactured with a system that provides automatic protection to the driver without automatic belts will be given an extra credit equal to one-half car toward meeting the percentage requirement.
- The requirement for automatic restraints will be rescinded if MULs meeting specified conditions are passed by a sufficient number of states before April 1, 1989, to cover two-thirds of the population of the United States effective not later than September 1, 1989.

In that notice, the Secretary identified various issues on which additional rulemaking was likely. Those issues were the elimination of the oblique crash tests, application of the automatic restraint requirements to convertibles, application of the Head Injury Criteria (HIC) to non-contact HIC measurements, adoption of some of the New Car Assessment Program (NCAP) test procedures, adoption of the Hybrid III test dummy, and express mention in FMVSS 208 of the due care defense.

This notice sets forth specific proposals on all of these issues, except on the Hybrid III test dummy, which is the subject of a separate notice in today's **Federal Register.** In addition, this notice also addresses dynamic testing of manual belts and reporting requirements regarding compliance with the phase-in requirements.

A number of other related Standard No. 208 issues are addressed in separate notices issued in today's **Federal Register.** Those issues are raising the HIC from 1,000 to 1,500 and the comfort and convenience of safety belts.

Convertibles

This notice proposes alternative occupant crash protection requirements for convertibles beginning with the model year 1990. The agency proposes that manufacturers have the option of installing manual lap belts subject only to the belt strength requirements of Standard No. 209 and the anchorage strength requirements of Standard No. 210 instead of automatic restraints subject to the injury criteria of Standard No. 208.

Background

Ford Motor Company requested that convertibles be exempted from the automatic restraint requirements in their comments on the notice of proposed rulemaking (48 FR 48622). Ford argued that the installation and operation of automatic lap and shoulder belts are not feasible in convertibles and, therefore, that the only means of compliance would be with air bags. As a result, the requirement, in effect, would be a design standard for convertibles, according to Ford. Ford argued further that an exemption was appropriate since the Vehicle Safety Act requires that safety standards be "appropriate for the class of vehicle to which they apply," and since convertibles are already exempt from the requirement in Standard 208 that all front outboard seating positions have lap and shoulder belts.

The July 1984 final rule responded to this request by stating disagreement with Ford on the issue of the feasibility of providing automatic belts in convertibles, but recognizing the possibility that providing those belts might not be appropriate or acceptable.

Accident Statistics for Convertibles

From 1975 through 1982, fatalities involving convertible occupants showed a consistent decline due to the "phasing out" of the passenger convertible. The number of convertible occupant fatalities dropped from 840 in 1975 to 240 in 1982 while the number of convertibles involved in fatal accidents also decreased from 1,025 in 1975 to 302 in

1982. During this period, convertibles constituted less than one percent of the total vehicle population. However, beginning in 1982, domestic automobile manufacturers increased production of convertibles. In 1982, four convertible models were available and in 1983, eight convertible models were available. By mid-1983, the automobile industry estimated that convertibles comprised two percent of new car sales in the United States. Thus, convertible sales are increasing.

Automatic Restraint Systems for Convertibles

The agency has considered the available options for providing automatic occupant crash protection to improve the safety of convertibles. The agency believes that although it is technologically feasible to install air bags in convertibles because there are no significant differences between their installation in convertibles and other passengers cars, installation of air bags in convertibles might not be reasonable due to the high estimated cost of installing air bags in those vehicles, which are produced in relatively small volumes. In their comments on the notice of proposed rulemaking, most manufacturers indicated that they were likely to comply with an automatic protection requirement for passenger cars by installing automatic safety belts, not air bags. While some companies are expected to provide driver-side air bags, the production volume of air bags is not likely to be high enough, i.e., over 300,000 units, to bring the production costs down to the level of $320 for a full front seat system as estimated by NHTSA. Consequently, air bag installation cost for convertibles could range from $600 to $1,500 per vehicle for a volume of 100,000 units or less, drastically affecting the cost, and possibly sales, of that type of vehicle.

As to automatic belts, NHTSA believes that an automatic belt which includes a torso restraint might be precluded by present convertible body designs. On other passerger cars, the B-pillar or door frame can provide the anchorage point for torso restraint, whether manual or automatic. On convertibles, the addition of a structural redesign providing a third anchorage point would be necessary. This anchorage could be a "pylon" type structural extension of the B-pillar or door fame. That extension might change the design image and aesthetics of the convertible. More important, because of the substantial strength it would have to have in order to withstand belt loads, this structural extension could present an additional impact hazard in some crash modes to front or rear seat occupants. The use of "Targa" roof designs and rollbars in some models might serve to facilitate the attachment of belt systems. The agency requests commenters to address the possible use of these designs with automatic belt systems.

Convertible design does not preclude passive interiors as a method of providing automatic occupant protection. However, only one manufacturer, General Motors, is known to be pursuing this approach for passenger cars and it has not yet shown the ability to meet consistently the injury criteria at 30 mph. Therefore, the early availability of this approach across the fleet of convertibles appears unlikely at this time.

Based on the considerations discussed in this notice, the agency is proposing that manufacturers have the option of installing manual lap belts instead of automatic restraints as required under the July 1984 final rule. The manual belts would be subject to the belt strength requirements of Standard No. 209 and the anchorage requirements of Standard 210, but not to the injury criteria and dynamic crash test procedures of Standard 208, including those proposed for manual belts elsewhere in this notice.

Convertibles equipped with manual lap belts would be included in the base production total of vehicles manufactured during the phase-in period of automatic restraints for other passenger cars under Standard No. 208.

The agency requests comments on the manual belt alternative as well as on the alternative of adopting no amendment regarding convertibles. In addition, NHTSA has several specific questions regarding convertibles to assist it in its decisionmaking:

1. How many convertibles are currently being produced? How many will be produced annually over the next 5 years?

2. What is the average sales price for a convertible?

3. How much would air bag systems raise the price of a convertible?

4. Is it feasible to install automatic lap belts in convertibles and, if so, how much would automatic lap belt systems, including necessary vehicle modifications, raise the price of a convertible? If automatic lap belts are feasible, should the agency allow their use in convertibles as an alternative type of automatic restraints?

5. What percent of new convertibles sales are equipped with lap and shoulder belts as opposed to only lap belts? What is the equivalent percent for the entire "on the road" convertible fleet?

6. What effect would higher prices caused by air bags have on convertible sales?

7. If no special provision is made for covertibles, how would manufacturers comply with the standard? Specifically: What percentage of convertible production would use air bags? What percentage would use passive interiors? What percentage would be modified to accept automatic belts? How much would these systems cost manufacturers and consumers?

Alternative Calculations of HIC

In April 1983, the Committee on Common Market Automobile Constructors (CCMC) petitioned the agency to change the calculation of the Head Injury Criterion (HIC). CCMC asked that the HIC only be calculated when there is a contact between the test dummy's head and a portion of the vehicle during a Standard No. 208 crash test. (CCMC also petitioned the agency to raise the HIC limit from 1,000 to 1,500. As explained in a separate notice appearing elsewhere in today's Federal Register, the agency has denied that portion of the CCMC petition.) Similarly, in response to the October 1983 NPRM on Standard No. 208, GM, Ford, MVMA, and AMC requested the agency to eliminate the HIC for noncontact events. Further comments urging the agency to eliminate the HIC measurement in the absence of head contacts were received from those same companies and from Renault and Peugeot in response to the Secretary's May 1984 SNPRM.

History of HIC

NHTSA first adopted the use of a HIC in Standard No. 208 in March 1972 (37 FR 5507). The HIC was to be calculated over the entire crash duration and cover both contact and noncontact events. Several manufacturers petitioned for the elimination of the HIC arguing that, in many vehicles, the available belt systems either could not meet or were only marginally meeting the criteria. They also argued that much of the head acceleration is attributable to the motion of the head as it moves forward without striking anything in the vehicle. Actual field collision data, they argued, did not indicate that this type of head movement by shoulder belted vehicle occupants in a crash is a serious injury producing factor.

The agency recognized the uncertainty of the significance of HIC in the absence of a head strike and concluded that the "present evidence [is] too scanty to be conclusive in either

direction." (37 FR 12393, June 23, 1972) As a result, and because of leadtime needed to achieve compliance, the agency temporarily amended the standard, until August 15, 1975, to modify the HIC calculation method. The amendment provided that measurement of head acceleration begins for belted dummies only at the moment at which the head strikes some portion of the vehicle other than the belt. Beginning on August 15, 1975, however, the HIC calculation was made during both contact and non-contact situations.

As discussed in the Secretary's Supplemental Notice of Proposed Rulemaking on Standard No. 208 in May 1984 (49 FR 20460), recent data continue to cloud the issue of the significance of non-contact HIC's. Commenters are referred to that notice for a more detailed description of the recent data.

Basis for HIC

The HIC was an outgrowth of the Gadd Severity Index, which in turn was developed on the basis of the Wayne State Tolerance Curve (WSTC). The WSTC was derived from a variety of experiments in which head-related injuries were produced by contact and noncontact sources. For example, data on contact injury results from heads directly impacting rigid surfaces were used to derive that part of the curve dealing with the relationship between short duration, high magnitude accelerations and potential injuries. Tolerance to non-contact injuries were the result of high speed sled tests of volunteers and also of animals who were restrained with lap and shoulder belts; the data from these tests defined that part of the curve dealing with long duration, low magnitude accelerations. Contact based injuries, however, were predominant in the composition of the curve. That is, most of the data points defining the curve were based on short duration head contacts. Although, this does not mean that the curve cannot be used over its entire range for forecasting the threshold of injury, the level of confidence is much higher for those regions in which data points provide a very clear definition of the curve, as is the case for direct contacts in which the impact time durations range up to 15ms. The level of confidence is lower for those portions of the curve which are made up of only a few points, portions which are analogous to non-contact events.

The agency considers the HIC to be the best currently available head injury indicator. There are substantial research data demonstrating that, for head contact cases, a HIC limit of 1000 is an effective method to minimize injury. There are a number of other candidate indicators, but none are developed far enough to be used with any degree of confidence. The HIC as an injury indicator for noncontact cases is weaker, although as discussed below, there are experimental data supporting the view that injuries may result in some non-contact situations.

A study of head injuries of lap-shoulder belt restrained cadavers, conducted by German researchers, showed that in tests up to 30 mph, there is approximately a 3 percent probability of brain injury due to ruptured blood vessels in non-contact situations. (See Docket 74–14, General Reference, Entry 532.) Since it is not currently possible to identify neurological damage in cadavers, it is not known whether any of the cadavers received brain injuries other than the ruptured blood vessels. Existing accident data on belt restrained occupants shows practically no brain injuries in non-contact situations, supporting the conclusion reached by the German researchers that the probability of vascular injuries to the brain occuring in non-contact crashes is low.

Other studies suggest that when the rapid whipping-like movement (angular acceleration) of the head in a crash exceeds certain limits, regardless of whether the head is directly impacted, the brain may be injured. This type of injury can occur because one hemisphere of the brain moves relative to the other causing blood vessels to burst. However, agency analysis of crash tests has shown that the whipping of the head of a lap-shoulder belt restrained occupant in 30 mph crash tests is usually substantially below the level at which angular acceleration could cause injury to the brain. Although the probability of non-contact injury to the brain appears low, the agency is still concerned about reducing the possibility of such injuries.

In addition, the agency is concerned about the possibility of non-contact neck injuries. The cadaver test discussed earlier in this notice found that 46 of the 100 cadavers experienced damage to the upper thorax-cervical spine region during the testing. Those same data show that neck injuries for belted cadavers are approximately 15 times more frequent than head injuries in frontal collisions.

The German study reported that neck injuries are caused primarily by rapid motion of the head and neck with respect to the torso, resulting in tears, separations, dislocations and fractures of neck tissues. The researchers examined the head motion of the cadavers and found two separate kinematic motions: translation, which is movement in a straight line, and translation-rotation. These types of motions can cause two separate injury mechanisms: first, shear forces in the neck caused by translation of the head relative to the torso and second, centrifugal or tension forces on the neck caused by the translation-rotation motion of the head.

To reduce the probability of non-contact injuries, the agency is proposing alternative requirements. Based on the comments, the agency will decide whether to retain the current requirement or to adopt one of the proposed alternatives.

The first alternative is to retain the current HIC calculation for contact situations. However, in non-contact situations, a HIC would not be calculated, but instead new neck injury criteria would be calculated. These new criteria may also reduce the possibility of brain injury. The neck criteria would be calculated differently depending upon whether the test uses the existing Part 572 test dummy or the Hybrid III test dummy, which the agency is proposing to adopt in a notice published elsewhere in today's **Federal Register**. The reason for the difference is that the Hybrid III test dummy has instrumentation in its neck to measure directly shear and tension forces in the neck and the existing Part 572 test dummy has no neck instrumentation. Therefore, the agency is proposing to use the Hybrid III's neck instrumentation and set limits on the shear and tension forces in the neck. The precise limits proposed for the Hybrid III are discussed in the separate notice proposing to adopt that test dummy.

Since neck forces can not be measured directly by the exising Part 572 test dummy, the agency is proposing to indirectly calculate such forces through the use of a head acceleration-based criteria. The neck injury limits set for the existing Part 572 test dummy would be similar to those set for the Hybrid III test dummy. The proposed limits for the existing Part 572 test dummy are based on a review of the Hybrid III test dummy head-neck impact response data collected by the agency's Safety Research Laboratory in its sled test series of lap-shoulder belt restrained occupants. Based on that data, the agency has determined that in non-contact situations there is an excellent correlation between the forces directly measured on the neck and the inertial accelerations of the test dummy's head. This is because

noncontact forces in the head (i.e., acceleration) can only be transmitted through the neck. Based on this direct corelation between head accelerations and neck forces, the agency has tentatively determined that an assessment of the potential for neck injury can be made with the existing Part 572 test dummy by using the acceleration data measured in the test dummy's head.

The proposed limits on tension and shear loads, expressed in g's, would set maximum levels that could not be exceeded for specified time durations. For example, the load producing tension forces in the neck could not exceed 66 g's during any time period and could not exceed 22 g's for any time duration greater than 43 milliseconds; the load producing shear forces in the neck could not exceed 61 g's during any time period and could not exceed 22 g's for any time duration greater than 43 milliseconds.

The second alternative proposed by the agency would calculate a HIC in both contact and non-contact situations, but limit the calculation to a specified time interval. GM, recognizing the difficulty of determining head contact during a crash test, suggested such an alternative in its December 19, 1983 comments on Standard No. 208 (See Docket 74–14, Notice 32, Entry 1666.) At present, the HIC is calculated for the entire crash duration. GM has suggested that calculating the HIC over the entire duration of the crash is not appropriate for long duration crashes. The proposed revision would respond to GM's suggestion by changing the HIC calculation so that it would be calculated for any time interval of up to 36 milliseconds during the crash duration. This would limit head acceleration to 60 g's or less, a level which is below the threshold at which head injury occurs.

The agency is proposing this new method for calculating the HIC because the current HIC calculation can produce an artificially high HIC for a crash which has a relatively low g's level, below the 60 g's injury threshold, but a long time duration. The agency has determined that the 36 millisecond time interval will assure that a HIC of 1000 is not exceeded for time duration up to 36 milliseconds and that the average g level on the head will not exceed 60 g's for any time period greater than 36 milliseconds. The 60 g acceleration limit was set as a reasonable head injury threshold by the originators of the Wayne State Tolerance Curve and should also serve as a surrogate limit for neck injury.

The agency requests comments and data on whether either of these two alternatives should be adopted in place of the existing HIC requirement.

Determination of Head Contact

In order to limit the HIC calculation only to events where there is head contact, the agency must determine what techniques should be used in its crash testing to establish the occurrence and duration of head contact. At present, there are several methods available for the establishment of head contact durations, but there are still questions about their levels of consistency and accuracy. Measurement technologies consist of the following major groups: photographic, electrical contact switches, electrical strain or pressure transducers, and other (such as laser, chemical, etc.). Each of these test methods have certain advantages and disadvantages for specific applications, e.g., photographic evidence is indisputable but visibility can not be always assured and time measurements are of low accuracy; electrical contacts in most environments provide relatively good accuracy, but the reliability of registering contact in the impact environment is relatively low; strain and pressure transducers are area contact sensitive and in some instances may fail to register; other contact type measurements may produce indications which are not part of the crash event and therefore are not always reliable. The agency solicits comments and test data on specifying one of the above techniques for the establishment of contact. The agency is also interested to determine whether redundant contact sensing methods should be used and requests comments on that issue.

NCAP Test Procedures

The July 17, 1984 final rule addressed the issues raised by the commenters concerning the test procedures used in Standard No. 208 by explaining that adoption of the procedures used in the New Car Assessment Program (NCAP) will help reduce variability, albeit by some unknown amount. This notice proposes to adopt several of the specific NCAP test procedures. The proposed test procedures cover two areas, test dummy positioning and vehicle loading.

The most significant proposed changes concern the positioning of the test dummies. During the Repeatability Test Program, the agency determined that the current positioning requirements for the passenger test dummy's feet are subject to misinterpretation. The problem arose in the positioning of the feet in vehicles which do not have a flat floor pan, but instead have a portion of the wheel well that is a part of the floor. Placing the feet on part of the wheel well could result in the test dummy's knees being pushed rearward and upward by the deformation of the wheel well to a position where it could be more easily contacted by the test dummy's head. Contact between the knee and the head can result in a high Head Injury Criterion reading. The proposed foot positioning procedures make clear that the test dummy's feet are not to be placed on the wheel well.

The proposed vehicle loading procedures would also modify the current fuel system requirements to reduce slightly the amount of variability in filling the fuel system. In addition, new procedures would be added to ensure that, once the vehicle is loaded with all the necessary test dummies and other test equipment, the vehicle's attitude is within specified limits.

Due Care

During the recent rulemaking on Standard No. 208, Ford Motor Co. urged the adoption of a "design to conform" requirement for the standard. The July 11, 1984 final rule did not adopt Ford's suggestion since the design to conform approach can introduce unacceptable subjectivity into the determination of whether a manufacturer complies with a standard.

The agency recognizes that because of the complexity of the requirements of Standard No. 208, manufacturers are concerned that the rule state that the due care provision of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1397(b)(2)) applies to compliance with standard. This notice proposes to amend the standard to state explicitly that a vehicle shall not be deemed in noncompliance if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the standard. This showing shall be consistent with those made under the "due care" provision of the Act.

Oblique Crash Tests

The frontal barrier crash requirement specifies the level of injury criteria that shall not be exceeded when the vehicle, traveling longitudinally forward at any speed up to and including 30 mph, impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle or at an angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle.

The SNPRM contained a proposal to eliminate the requirement to test compliance at angles up to 30 degrees from the longitudinal direction. This proposal was based on agency research,

as well as data from Ford, which demonstrated a lower crash pulse in oblique tests than in frontal tests, resulting in less serious injury measurements on test dummies. The agency tentatively concluded that occupants would be protected in oblique crashes if the injury criteria could be met in a direct frontal crash. Thus, a separate compliance test was unnecessary and redundant. A number of comments were submitted in response to this proposal as discussed below. The July 1984 final rule reiterated the agency's belief that the oblique test requirement may not be necessary and thus may not meet the need for motor vehicle safety and unnecessarily add to compliance costs. However, in that final rule, it was stated that prior to taking final action, additional test data and comments on the oblique test requirement would be sought. We are hereby requesting additional data regarding the effects upon safety and on automatic restraint development and administrative and compliance costs if the requirement is deleted. We are also requesting comments on the issue of international harmonization of test requirements.

Comments to the SNPRM

In response to the SNPRM, Ford restated its belief that the oblique test is redundant and merely adds to the cost of testing, adversely affects leadtime and adds more unpredictability to the testing. Ford referenced material it had submitted previously to NHTSA which contained data on 30 degree angular vs. frontal tests. These data related to Ford's 33-car barrier crash tests of 1972 Mercury airbag vehicles. Ford's February 1976 report on the subject, "Airbag Crash Test Repeatability" (ESRO Report No. S–76–3), stated that the results of the angular crashes were lower in magnitude and had less variability than the frontal crashes. In twelve frontal tests, average driver and passenger HIC values were 479 and 462, respectively. In angular tests, the respective means for HIC were 185 and 330, well below the values in the frontal crashes.

Chrysler, BMW, Volvo, Nissan, Mercedes, Honda, and Mazda agreed with the proposal in the SNPRM to eliminate the requirement, claiming that no insight in restraint performance was provided by the test, it was not essential for verifying compliance since test results were lower than in the direct frontal test, and thus it only contributed to leadtime and testing costs. Mazda was the only company to provide data to support its conclusion. Mazda provided the results of a single test which showed a driver HIC of 779 and a passenger value of 758 in a frontal crash test using an experimental two-point passive belt while the corresponding values in the angular test were 488 and 302. Mercedes also stated that the oblique test is an obstacle to producing airbags.

Several other commenters also favored the deletion of the oblique test. IIHS said its support was based on the assumption that deletion of the test would promote the use of airbags. The Breed Corporation cited confidential data it had seen from manufacturers as the basis for its support.

Several commenters did not endorse the proposed deletion of the oblique test. The July 1984 final rule referred to discussions between GM and NHTSA, in which GM based its lack of support for the deletion of the oblique test on the belief that the test is more representative of real world crashes than the frontal test. GM also said that, regardless of the agency's decision, it would continue to conduct oblique tests. GM stated, however, that it has no objection to the test being deleted from the standard. Saab opposed the deletion of the requirement, terming the proposal "a way to cover up for a weakness in the airbag system." VW stated that an oblique test should be retained for vehicles which do not include upper torso belts. This would include airbag equipped cars or cars with "friendly interiors," and, under today's proposal, convertibles. As previously stated in the final rule, in discussions with NHTSA, Saab did not eleborate on their assertion that deletion of the test would be a "cover up" for airbag deficiencies, nor did VW explain why they believed the test necessary for airbags but not automatic belts.

Peugeot and Renault also opposed deletion of the oblique test, arguing that it is more respresentative of the majority of actual crashes, and instead urged deletion of the perpendicular test. They stated that retaining the oblique test and deleting the perpendicular test would result in harmonization with a European regulation (WP 29/R237/REV 1). VW recommended deleting the perpendicular test since the forthcoming Economic Commission for Europe (ECE) regulation on crash protection will have only an oblique test.

The Center For Auto Safety opposed deletion of the oblique test, arguing that this could compromise occupant protection.

Recent Test Results

Recent test data on six vehicles obtained by the agency for belted occupants in perpendicular frontal and oblique crash tests for the New Car Assessment Program, and data obtained from compliance tests of air bag restraint systems in perpendicular and oblique frontal crash tests, support the proposal to eliminate the olbique tests requirement. Information based on test data confirm that the crash pulse is less severe in oblique test, resulting in less serious injury measurements on test dummies. The tests showed lower dummy injury readings in angular crashes, especially for HIC and chest g's, with a few exceptions for femur injury readings. Further, based on a general analysis of motion picture film recorded in the New Car Assessment Program during the 30 degree oblique frontal crash test, it appears that the principal direction of travel of test dummies in the test does not exceed 10 degrees from the longitudinal center line of the vehicle. Therefore, the principal direction of forces on the test device in a 30 degree oblique test is similar to direction of forces in a perpendicular impact test.

Although the test dummy measurements appear to be less severe in oblique tests of restrained occupants, the agency notes that those vehicles may have been produced to comply with the 30 degree oblique test. The agency seeks comment on whether the above vehicles were specifically designed to meet a 30 mph, or any other, oblique crash test at the injury levels specified in Standard No. 208.

Questions

To assess whether the retention of the oblique test requirement is not necessary to meet the need for safety, and to assess related matters, the agency is particularly interested in obtaining data and comments on the following issues.

1. Would air bag system designs which currently comply with both the perpendicular and angular test requirements be affected by the deletion of the oblique test? Would there be any effect on air bag design which might affect occupant crash protection? (e.g., would an air bag large enough to provide occupant crash protection in a perpendicular crash be also large enough to provide occupant crash protection in an angular crash?)

2. Occupant rotation with a 2-point automatic belt is more pronounced as these belts allow free rotation of the occupant's hips. Would occupant protection using a 2-point or 3-point automatic belt system be affected by the deletion of the oblique test requirement?

3. In the case of "passive interiors" or other non-belt technology, the agency

seeks additional data and comments on whether the perpendicular frontal impact crash tests adequately measure the effectiveness of these technologies in reducing injuries and fatalities resulting from such things as A-pillar impacts and vehicle intrusion in oblique crashes.

4. Test data obtained by the agency in the New Car Assessment Program indicated that, while dummy injury readings were lower for HIC and chest g's in oblique tests than for perpendicular tests, femur injury readings were higher in several cases. In light of these data, does the oblique test requirement contribute significantly to the evaluation and prevention of femur injuries?

5. What are the administrative costs relating to compliance with the 30 degree oblique test requirement?

6. What would be the effect on research and development and vehicle design and construction costs and leadtime to manufacturers if the 30 degree oblique test is eliminated? Are those effects different for the different types of automatic crash protection systems?

7. Peugeot and Renault supported the retention of the oblique test and deletion of the perpendicular test. They stated that this would be harmonized with a European regulation (WP/29/R237/REV 1). Volkswagen also recommended deleting the perpendicular test since the forthcoming regulation on crash protection from the Economic Commission for Europe will only have an oblique test. The agency requests comments on this issue of the international harmonization of testing. Should changes be made in the frontal barrier crash requirements as suggested by Peugeot, Renault, or VW, in order to further international harmonization? What effect would this have on system design?

Dynamic Testing of Manual Belts

This notice also proposes that manual lap-shoulder belts installed at the outboard seating positions of the front seat of four different vehicle types comply with the dynamic testing requirements of section S5.1 of Standard No. 208. Those requirements provide for using anthropomorphic dummies in vehicle crash tests for measuring the level of protection offered. The four vehicle types which would be subject to this requirement are passenger cars and light trucks, small van-like buses, and light multipurpose passenger vehicles. (The agency considers light trucks, small van-like buses, and light multipurpose passenger vehicles to be vehicles with a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. The 5,500 pound unloaded vehicle weight limit is also used in Standard No. 212, *Windshield Retention,* and Standard No. 219, *Windshield Zone Intrusion.* The limit was adopted in those standards on November 29, 1979 (44 FR 68470) to reduce compliance problems for final-stage manufacturers. Commenters are referred to the November 1979 notice for a complete discussion of the 5,500 pound limit.)

(As discussed earlier, the dynamic test would not apply to manual belts used in convertibles. In addition, a new dynamic test would not be required for a lap belt, installed in accordance with S4.1.2.1 (c)(2) of Standard No. 208, used with an air bag system meeting the occupant crash protection requirements of the standard. The standard currently provides that such a lap belt must be dynamically tested in combination with the air bag in a frontal crash test.)

Standard No. 208 currently specifies that passenger cars, light trucks, and light multipurpose passenger vehicles may be equipped with Type 2 (i.e., lap and shoulder belts) safety belts, which conform with the requirements of Standard No. 209, *Seat Belt Assemblies* (49 CFR 571.209), at the front outboard seating positions. In small van-like buses, Standard No. 208 specifies that the driver's seating position may be equipped with either a Type 1 or Type 2 safety belt. Standard No. 209 does not require that safety belts be installed in vehicles and then subjected to crash forces. Instead, the standard tests safety belts as separate pieces of equipment. The safety belts are tested for strength and other qualities in laboratory bench tests. Once a safety belt is certified as complying with the requirements of Standard No. 209, it may be installed in a vehicle without any further testing or certification as to its performance in that vehicle.

There are some significant trends which have developed recently which lead NHTSA to propose that vehicle manufacturers be required to certify the compliance of manual belts with the dynamic testing requirements of Standard No. 208. In essence, this proposal would require that the combination of the manual belts as well as the vehicle's structure and interior be tested to ensure that the combination provides adequate protection to vehicle occupants. One trend which forms the basis for this proposal is the downsizing in recent years of all four vehicle types covered by this proposal. Smaller vehicles means smaller interior spaces and therefore front seat occupants are closer to potentially hostile vehicle interior surfaces, such as windshield headers, A-pillars, instrument panels, and the like. Closer physical proximity to these surfaces increases the possibility of occupants contacting them in a crash and being injured.

The other significant trend has been the introduction of shoulder-belt tension relieving devices, particularly on domestically-produced passenger cars. The use of shoulder belt tension-relieving devices can add additional slack to the belt, which allows more forward movement by the occupant. This gives rise to the possibility that, in the case of excessive slack, unsafe levels of this forward movement could occur for restrained vehicle occupants. In a crash, it is important that forward movement of an occupant be minimized. Forward movement increases the chances of occupant contact with potentially hostile interior surfaces. Further, unrestrained forward movement allows higher acceleration of the head and chest before the occupant is either restrained by the shoulder belt or contacts the vehicle interior surfaces. The greater acceleration of the head and chest increases the chances of serious injury to the occupant. Therefore, the agency has tentatively concluded that dynamic testing of manual belts may be necessary to ensure that the belt, vehicle structure, and vehicle interior combination provide a minimum level of safety for vehicle occupants.

Accordingly, this notice proposes to require that manual belts in passenger cars be certified using the same test procedures and achieving the same level of occupant protection as automatic occupant protection systems. If shoulder belt tension-relieving devices are present on the manual belts, those devices would be adjusted in testing to introduce the amount of slack that is recommended by the manufacturer for the shoulder belt under normal use conditions in accordance with the instructions in the owner's manual. Further, the owner's manual would be required to warn the reader that the tension-relieving device should not be used to introduce slack beyond the maximum amount specified therein, and that to do so could significantly reduce the effectiveness of the belt in the event of a crash. For a further disussion of this issue, see the notice on comfort and convience of safety belts published elsewhere in today's **Federal Register.**

This notice also proposes that manual belts in light trucks, buses, and MPV's be certified according to the same dynamic test procedures used to certify automatic restraints, even though such vehicle will not be required to be

equipped with automatic restraints. The downsizing discussed at the outset of this section can be dramatically seen in these vehicles also, as exemplified by the new smaller pickup trucks and the "mini-vans" introduced in recent years. This trend brings vehicle occupants closer to potentially hostile interior surfaces. Additionally, many person have shifted from purchasing passenger cars to purchasing light trucks and MVPs. For instance, many persons who would have purchased station wagons twenty years ago now purchase passenger vans or light pickup trucks. NHTSA believes it is reasonable that occupants of these vehicles be assured that their belts, in combination with the vehicle's structure and interior geometry, provide a minimum level of safety.

The agency is requesting comments on whether there will be any additional costs which would be imposed on manufacturers of light trucks, buses, and MPV's by this proposed requirement; and if there were, whether they would be more than a few dollars per vehicle. These vehicles are generally crash-tested now, so that the manufacturer can certify compliance with Standard No 212, *Windshield Mounting*, Standard No. 219, *Windshield Zone Intrusion*, and Standard No. 301, *Fuel System Integrity*. Test dummies are inside the vehicles during these crash tests, primarily for the purpose of adding some ballast to the vehicles. The additional steps, for vehicle testing, which would be needed to certify compliance with this proposed requirement would be adding the necessary instrumentation to the test dummies and recording the measurements.

These proposed requirements would take effect on September 1, 1989, and only if the Secretary determines that two-thirds of the population is covered by mandatory belt usage laws, thereby rescinding the requirement that automatic protection be provided for occupants of the outboard seating positions in the front seat. Should such a determination be made, it is important that users of those belts be assured that they are as equally protected as if automatic restraints were in those particular vehicles. Absent such a determination, application of the dynamic testing requirements to manual safety belts would be unnecessary since those belts would not be permitted in the outboard seating positions of the front seat.

The proposed requirements would, if adopted, probably require modifications to some vehicles as currently manufactured. The results of this agency's New Car Assessment Program (NCAP), in which the vehicles are subjected to a 35 mph frontal barrier crash, show that 58 percent of the tested vehicles fail to meet one or more of the injury criteria specified in Standard No. 208. While it is true that vehicles are objected to significantly higher force levels in the NCAP testing than in Standard No. 208 testing (vehicles must absorb 36 percent more energy in a 35 mph crash than in a 30 mph crash), there is a countervailing aspect in the NCAP tests. The NCAP test procedures provide for removing all slack from the shoulder belts prior to conducting the tests. Under the procedure proposed in this notice, vehicles with shoulder belt tension-relieving devices would be tested with some slack introduced into the belt system. The agency requests specific comments on the level, if any, of vehicle modifications necessary to ensure compliance with this requirement by September 1, 1989.

As an adjunct to this rulemaking, this notice also proposes to amend Standard No. 209 to exempt belt assemblies certified as complying with these dynamic testing requirements from the webbing attachment hardware and assembly performance requirements of S4.4 of Standard No. 209. In addition, the notice proposes to amend Standard No. 210 to exempt dynamically tested belts from the anchorage location requirements of that standard. Standard No. 210 currently has the same anchorage location exemption for automatic belts. Continued application of those requirements to those manual belts would be unnecessary since the same aspects of performance would be indirectly tested in the dynamic testing. Further, this amendment would permit vehicle manufacturers maximum freedom to design and install manual belts in any way that ensures adequate protection for the user in the event of a crash.

This notice proposes that these amendments take effect on September 1, 1989. An earlier effective date could require the diversion of industry resources away from designing automatic restraint systems for passenger cars toward requiring improvements to manual belt systems on vehicles where manual belt systems might not be permitted at these seating positions. Additionally, this leadtime will allow the manufacturers to minimize the costs associated with any vehicle modifications necessary to certify compliance with these proposed occupant protection requirements.

Phase-In

The phase-in requirements of the July 1984 final rule may be summarized as follows. Subject to the enactment of state mandatory belt usage laws covering at least two-thirds of the U.S. population, manufacturers must install automatic restraints in an increasing percentage of production over a three-year period. In the 12-month period beginning September 1, 1986, each manufacturer must install automatic restraints in a number of passenger cars equivalent to at least 10 percent of the average annual production of that manufacturer during the preceding three-year period; in the 12-month period beginning September 1, 1987, each manufacturer must install automatic restraints in a number of passenger cars equivalent to at least 25 percent of the average annual production of that manufacturer during the preceding three-year period; and in the 12-month period beginning September 1, 1988, each manufacturer must install automatic restraints in a number of passenger cars equivalent to at least 40 percent of the average annual production of that manufacturer during the preceding three-year period. Effective September 1, 1989, manufacturers must equip all passenger cars with automatic restraints.

In its petition for reconsideration of the July 1984 final rule, the Automobile Importers of America (AIA) requested clarification of the term "manufacturer". That organization noted that passenger cars may have more than one manufacturer and requested clarification of which company is to be treated as a vehicle's manufacturer for purposes of calculating average annual production. AIA stated that, without such clarification, double counting or undercounting would likely occur. That organization suggested that it would be appropriate to permit the manufacturers involved to agree on a designation of the company to be treated as the manufacturer of such cars. AIA suggested that if no agreement amount the manufacturers were reported to NHTSA, the manufacturer marketing the cars in the United States should be required to include those vehicles in computing its base production. AIA stated that this arrangement woud be consistent with the objectives of the rule because the overall number of cars equipped with automatic restraints would be unaffected. Subsequent to issuance of the final rule, General Motors, Toyota and New United Motors Manufacturing, have made similar comments. New United Motors is a joint

venture between GM and Toyota for the purpose of assemblying in the U.S. a motor vehicle designed by Toyota and sold by GM.

The agency generally agrees with AIA, GM, Toyota, and New United Motors concerning this issue. Section 102(5) of the National Traffic and Motor Vehicle Safety Act defines "manufacturer" as "any person engaged in the manufacturing or assembling of motor vehicles . . ., including any person importing motor vehicles . . . for resale." A passenger car may thus have more than one manufacturer in two types of instances: (1) The vehicle may be manufactured or assembled by two or more companies, and (2) The vehicle may be manufactured or assembled outside the United States by one or more companies and then imported by another company. In order to avoid possible double counting or undercounting in such instances, the agency believes it is appropriate to clarify who shall be treated as the manufacturer for purposes of calculating average annual production of passenger cars for each manufacturer and amount of passenger cars manufactured by each manufacturer.

In order to provide maximum flexibility to manufacturers while assuring that percentage goals are met, this notice proposes to permit manufacturers to determine, by contract, which of them will count such passenger cars as its own. The notice proposes two rules of attribution in the absence of such a contract. First, a passenger car which is imported for purposes of resale would be attributed to the importer. The agency intends that this proposed attribution rule would apply to both "grey market" importers as well as importers authorized by the vehicle's original manufacturer. (In this context, the so-called "grey-market" refers to the importation of cars which are originally manufactured for sale outside the U.S. and which are them imported without the manufacturer's authorization into the U.S. by either an importer for purposes of resale. The Vehicle Safety Act requires that such vehicles be brought into conformity with Federal motor vehicle safety standards.)

Under the second proposed attribution rule, a passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, would be attributed to the manufacturer which markets the vehicle. These two proposed rules would generally attribute a vehicle to the manufacturer which is most responsible for the existence of the vehicle in the United States, i.e., by importing the vehicle or by manufacturing the vehicle for its own account as part of a joint venture, and which is responsible for marketing the vehicle. (Importers generally market the vehicles they import). The agency requests comment on whether these proposed requirements adequately cover all possible situations and on the appropriateness of the specific proposed rules of attribution. Depending on the comments, the agency may adopt additional rules of attribution and/or different rules.

Ford stated that the phase-in provisions should take account of new developments in arrangements for the manufacture and marketing of motor vehicles, noting the situation where a manufacturer sponsors the design and manufacture of a vehicle for its own account, as a joint venture or as an outside purchaser. Ford provided an example of such an arrangement where it is importing passenger cars from Europe, but stated that should such an arrangement be carried out wholly within the United States, the manufacturer sponsoring the design and assembly of the vehicle would have no incentive under the present phase-in provisions to direct that cars manufactured for its account be equipped with automatic restraints. While Ford did not explain the reason for this conclusion, that company apparently concluded that such a sponsor would not be considered a manufacturer of such cars for purposes of the phase-in provisions.

As noted above, the amendment proposed by this notice would permit a passenger car produced by more than one manufacturer to be attributed, by contract, to any one of the manufacturers. Since the National Traffic and Motor Vehicle Safety Act places the responsibility of compliance with safety standards on manufacturers, the agency does not have authority to attribute a vehicle to a party other than one of the vehicle's manufacturers. However, the agency considers the language in section 102(5) of the Vehicle Safety Act that a manufacturer is "any person engaged in the manufacturing or assembling of motor vehicles . . ." to be sufficiently broad to include sponsors, depending on the circumstances. For example, if a sponsor contracts for another manufacturer to produce a design exclusively for the sponsor, the sponsor may be considered the manufacturer. This follows from application of basic principles of agency law. In this case, the sponsor is the principal. On the other hand, the mere purchase of vehicles for resale by a company which also is a manufacturer of motor vehicles does not make the purchaser the manufacturer of those vehicles.

AIA also requested clarification of the term "average annual production." That organization stated that it assumes that average annual production refers only to cars manufactured for sale in the United States, and not a company's worldwide production. Nevertheless, AIA requested that its interpretation be confirmed in an amendment to the rule. AIA is correct that the average annual production refers only to cars manufactured for sale in the United States. Since all of NHTSA's safety standards apply only to vehicles manufactured for sale in the United State, the agency does not believe an amendment is necessary.

Consistent with this view, the agency notes that so-called "grey-market" cars are not included in the average annual production of the original manufacturer or its authorized importer. As discussed above, persons who import vehicles for purposes of resale are "manufacturers" under the Safety Act. Under the proposed attribution rules, such cars would be attributed to the importer, who would be responsible for meeting the percentage phase-in requirements, as well as for making the necessary reports proposed in this notice. The agency requests comments on whether treating grey-market car importers in the same fashion as other importers would adequately assure the compliance of the grey market cars with the phase-in requirements.

Several manufacturers and manufacturer organizations requested greater flexibility in meeting the minimum percentage requirements for the three years of the phase-in. Several manufacturers suggested that manufacturers be given credits for early introduction of larger numbers of automatic restraints than would be required by the phase-in percentages. These credits could be counted toward the minimum percentage requirements of later years. Nissan and the Automobile Importers of America suggested that manufacturers also be permitted to count automatic restraint equipped vehicles produced in later years of the phase-in toward meeting the minimum percentage requirements of earlier years. AIA suggested that such a scheme could include a penalty attached to any carry-back.

The agency tentatively agrees that it would be appropriate to permit manufacturers who exceed the minimum percentage phase-in requirements in earlier years to count those extra vehicles toward meeting the minimum percentage requirements of later years.

This would encourage early introduction of larger numbers of automatic restraints and provide increased flexibility for manufacturers, while continuing to assure an orderly build-up of production capability for automatic restraint equipped cars as contemplated by the final rule. The total number of automatic restraint cars required by the end of each time period would not change.

The agency cannot, however, agree to any type of carry-back scheme, even if a penalty is attached. Under such a scheme, manufacturers could wait until the second or third year before producing any automatic restraint equipped vehicles, thereby delaying the safety benefits from those vehicles and undermining the purposes of the phase-in.

The agency is accordingly proposing to permit manufacturers who exceed the minimum percentage phase-in requirements in the first or second years to count those extra vehicles toward meeting the requirements in the second or third years. In addition, manufacturers could also count any automatic restraint vehicles produced during the one year preceding the first year of the phase-in.

Phase-In Reporting Requirements

The July 1984 notice stated that, to ensure compliance with the phase-in requirements, each manufacturer would be required to submit a report to the agency within 60 days of the end of each model year certifying that it has met the applicable percentage requirement. The notice stated that the report would have to separately identify, by Vehicle Identification Number (VIN), those cars that the manufacturer has equipped with automatic seatbelts and those cars that it has equipped with automatic airbags or some other form of occupant protection technology. The notice indicated that a notice of proposed rulemaking on this matter would be issued.

This notice proposes to establish a new Part 585, *Automatic Restraint Phase-in Reporting Requirements.* As discussed below, the proposal differs slightly from that discussed by the July 1984 notice, as part of an agency effort to minimize administrative burdens for manufacturers while assuring that the agency has sufficient information for purposes of enforcements.

As contemplated by the July 1984 notice, Part 585 would require manufacturers to submit three reports to NHTSA, one for each of the three phase-in periods. Each report, covering production during a 12-month period beginning September 1 and ending August 31, would be required to be submitted within 60 days of the end of such period.

Information required by each report would include a statement regarding the extent to which the manufacturer had complied with the applicable percentage phase-in requirement of Standard No. 208 for the period covered by the report; the number of passenger cars manufactured for sale in the United States for each of the three previous 12-month production periods; the actual number of passenger cars manufactured during the reporting production (or during a previous production period and counted toward compliance in the reporting production period) period with automatic seat belts, air bags and other specified forms of automatic restraint technology, respectively; and brief information about any express written contracts concerning passenger cars produced by more than one manufacturer, which affect the report. (A discussion of how passenger cars produced by more than one manufacturer are to be treated for purposes of the phase-in requirements is provided elsewhere in this notice. Manufacturers would be permitted to determine, by contract, which of them will count such passenger cars as its own. Rules of attribution would be established for situations where there is no such contract. The agency requires information about such contracts for purposes of enforcement since the contracts affect which vehicles are attributed to a particular manufacturer and hence how the phase-in provisions apply to the manufacturer.)

Chrysler, Ford, and other manufacturers have petitioned the agency to reconsider the requirement that the number of cars that must be equipped with automatic restraints must be based on a percentage of the average annual production for the past three model years. They argued that if car sales were to drop drastically during the phase-in period, then the number of vehicles that they would have to equip with automatic restraints based on their prior three year sales volume would be a significantly greater percentage of their actual production than intended by the final rule. For example, Ford said that if its "sales of 1989 models were to drop as drastically as its sales of 1980 models dropped versus the three previous model years' sales, Ford would be required to required to equip 70 percent of its 1989 model production with passive restraints, rather than 40 percent" as specified in the final rule. Ford and other manufacturers asked the agency to adopt an alternative that would permit manufacturers to equip the required percentage of its actual production of passenger cars with automatic restraints during each affected year. The agency believes that such an alternative has merit and is proposing to adopt it as an alternative means of compliance, at the manufacturer's option. Should the agency decide to adopt this alternative means of compliance, after consideration of the public comments on this proposal, the agency would make conforming changes in the final rule on reporting requirements. For example, it would not be necessary to report the production data for the preceding 36 months if the final rule permits, and the company elects, to comply on the basis of actual production during the affected year. Therefore, commenters are requested to consider the related effects of the proposals for reporting requirements and for the alternative method for determining the compliance base.

In order to keep administrative burdens to a minimum, the agency has decided that the required report need not use the VIN to identify the particular type of automatic restraint installed in each passenger car produced during the phase-in period which is reported as having automatic restraints. Since such information could be necessary for purposes of enforcement, however, the agency is proposing to require that manufacturers maintain records until December 31, 1991 of the VIN and type of automatic restraint for each passenger car produced during the phase-in priod which is reported as having automatic restraints. Although grey-market cars are not required to have a US-format VIN number, those cars would still have a European-format VIN number and thus grey-market importers would be required to retain that VIN information. (The agency is currently considering a petition from Volkswagen requesting that grey-market cars be required to have US-format VINs.) The reason for retaining the information until 1991 is to ensure that such information would then be available until the completion of any agency enforcement action begun after the final phase-in report is filed in 1990. The agency believes this requirement would meet the needs of the agency, with minimal impacts on manufacturers.

Impact Analyses

The agency has considered the economic and other effects of the proposals in this notice and determined that they are not major within the meaning of Executive Order 12291 nor significant within the meaning of DOT's

regulatory policies and procedures. A Preliminary Regulatory Evaluation (PRE) has been prepared and placed in the public docket.

Three of the proposals contained in this notice potentially have measurable economic consequences, which are fully detailed in the PRE and briefly discussed below. Those three proposals concern the occupant crash protection requirements for convertibles, the use of dynamic testing for manual belt systems and the deletion of the oblique test. The remaining proposals in this notice concern technical changes that are not anticipated to have more than minimal economic effects on either consumers or manufacturers and thus require no regulatory evaluation.

The potential effects of the convertible proposals will depend on whether the proposed alternative is ultimately adopted. If there is no change in the provision requiring convertibles to meet the same requirements as other passenger cars, the agency expects that the most likely means of compliance will be air bag systems. If produced in low volumes, the potential cost could range from $600–$1500. The sales effect of such a price increase are unknown. The agency estimates that air bag equipped convertibles would prevent from 37–76 more fatalities and from 1,162–2,056 more serious injuries than the current lap belt equipped fleet.

The use of automatic lap/shoulder or automatic shoulder belts to meet the standard would not be possible without modifying current convertible designs. The agency does not have a cost estimate for the possible structural changes needed to incorporate automatic belts and request manufacturers to provide cost data on this issue.

The proposed dynamic testing of lap-shoulder belt systems could result in increased testing costs to vehicle manufacturers. At present, manufacturers already conduct crash testing for Standards No. 212, *Windshield Mounting*, Standard 219, *Windshield Zone Intrusion*, and Standard No. 301, *Fuel System Integrity*. Manufacturers can combine the dynamic testing of safety belts with the testing done to meet these other standards and thus avoid the cost of testing an additional vehicle for the proposed safety belt requirements. The agency estimates that the incremental costs associated with the instrumentation and measurements needed for the dynamic testing of safety belts in passenger cars, light trucks and MPV's and small van-like buses would be approximately $8,500 per test, excluding the cost of the vehicle.

As discussed in the preamble section on oblique testing, the safety effects of deleting the oblique tests are not fully known. For example, some data indicate that HIC and chest injury measurements are lower in oblique tests, while femur injury measurements are higher. The agency is seeking additional data on the possible safety consequences of deleting the oblique test so that it can determine the possible effects on safety. The potential economic effects of deleting the requirement would be reductions in manufacturer testing costs and in costs associated with vehicle modifications necessary to pass the oblique test. The agency does not have information on which specific vehicle modifications are necessary to meet the oblique tests and requests comments from manufacturers on the potential cost savings associated with deleting the test.

NHTSA has also considered the impacts of these proposals under the Regulatory Flexibility Act. I hereby certify that this proposed action will not have a significant economic effect on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

Few, if any, passenger car manufacturers would qualify as small entities. The suppliers of webbing and other manual or automatic restraint components would not likely be significantly affected. Small organizations or governmental units should not be significantly affected since the price increases associated with this proposed action should not affect the purchasing of new cars by these entities.

The reporting and recordkeeping requirements proposed in this notice are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. Accordingly, those proposed requirements are being submitted to OMB for its review pursuant to the Paperwork Reduction Act. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Finally, the agency has analyzed this proposal for purposes of the National Environmental Policy Act. The agency has determined that this action would not have any significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentially should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 585

Reporting and recordkeeping requirements.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.208 is proposed to be amended as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

1. Section S4.1.3.1.2 would be revised to read as follows:

S4.1.3.1.2 Subject to S4.1.3.4(b) and S4.1.5 an amount of the cars specified in S4.1.3.1.1 equal to not less than 10 percent of the average annual production of passenger cars manufactured on or after September 1, 1983, and before September 1, 1986, by each manufacturer, shall comply with the requirements of S4.1.2.1.

2. Section 4.1.3.2. would be revised to read as follows:

S4.1.3.2.2 Subject to S4.1.3.4(c) and S4.1.5 an amount of the cars specified in S4.1.3.2.1 equal to not less than 25 percent of the average annual production of passenger cars manufactured on or after September 1, 1984, and before September 1, 1987, by each manufacturer, shall comply with the requirements of S4.1.2.1.

3. Section 4.1.3.3.2 would be revised to read as follows:

S4.1.3.3.2 Subject to S4.1.3.4(d) and S4.1.5 an amount of the cars specified in S4.1.3.3.1 equal to not less than 40 percent of the average annual production of passenger cars manufactured on or after September 1, 1985, and before September 1, 1988, by each manufacturer, shall comply with the requirements of S4.1.2.1.

4. Section S4.1.3.4. would be revised to read as follows:

S4.1.3.4 Calculation of complying passenger cars

(a) For the purposes of calculating the numbers of cars manufactured under S4.1.3.1.2, S4.1.3.2.2, or S4.1.3.3.2 to comply with S4.1.2.1, each car whose driver's seating position will comply with these requirements by means other than any type of seat belt is counted as 1.5 vehicles.

(b) For the purposes of complying with S4.1.3.1.2, a passenger car which:

(1) is manufactured on or after September 1, 1985, but before September 1, 1986,

(2) complies with S4.1.2.1, and

(3) is not counted toward compliance with S4.1.3.2 or S4.1.3.3, may be treated by the manufacturer as having been manufactured on or after September 1, 1986, but before September 1, 1987.

(c) For the purposes of complying with S4.1.3.2.2, a passenger car which:

(1) is manufactured on or after September 1 1985, but before September 1, 1987

(2) complies with S4.1.2.1, and

(3) is not counted toward compliance with S4.1.3.1 or S4.1.3.3, may be treated by the manufacturer as having been manufactured on or after September 1, 1987, but before September 1, 1988.

(d) For the purposes of complying with S4.1.3.3.2, a passenger car which:

(1) is manufactured on or after September 1, 1985, but before September 1, 1988,

(2) complies with S4.1.2.1, and

(3) is not counted toward compliance with S4.1.3.1 or S4.1.3.2, may be treated by the manufacturer as having been manufactured on or after September 1, 1988, but before September 1, 1989.

5. A new section S4.1.3.5 would be added to read as follow:

S4.1.3.5 *Passenger cars produced by more than one manufacturer.*

S4.1.3.5.1 For the purposes of calculating average annual production of passenger cars for each manufacturer and the amount of passenger cars manufactured by each manufacturer, under S4.1.3.1.2, S4.1.3.2.2 or S4.1.3.3.2, a passenger car produced by more than one manufacturer shall be attributed to a single manufacturer as folllows, subject to S4.1.3.5.2:

(a) A passenger car which is imported shall be attributed to the importer.

(b) A passenger car manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer which markets the vehicle.

S4.1.3.5.2 A passenger car produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S4.1.3.5.1.

6. Section S4.1.4.1 would be added to read as follows:

S4.1.4.1 *Convertibles manufactured on or after September 1, 1989.* Each convertible shall meet the requirements of S4.1.2.1, S4.1.2.2, or S4.1.2.3. An occupant protection system that meets the requirements of S4.1.2.1 or S4.1.2.2 may be installed at one or more designated seating positions of a convertible that otherwise meets the requirements of S4.1.2.3.

7. A new section S4.6 would be added to read as follows:

S4.6 *Dynamic testing of manual belt systems.*

S4.6.1 Each passenger car, truck, bus and multipurpose passenger vehicle with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less, which is equipped with a Type 2 seat belt assembly at each front outboard seating positions pursuant to S4.1.2.3, shall meet the frontal crash protection requirements of S5.1, when an anthropomorphic test device is restrained by the Type 2 seat belt assembly. Convertibles, open body type vehicles, walk-in van-type trucks, motor homes, vehicles designed exclusively to be sold to the U.S. Postal Service and vehicles carrying chassis-mount campers need not comply with the provisions of this paragraph.

S4.6.2 A Type 2 seat belt assembly subject to the requirements of S4.6.1 of this standard is not required to comply with paragraph S4.4 of Standard No. 209 (49 CFR 571.209) of this Part.

8. Section S6.2 would be revised to adopt one of the following alternatives:

Alternative One: Section S6.2 would be revised and a new section S6.5 would be added as follows:

S6.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity), and t1 and t2 are any two points in time during the crash of the vehicle when there is evidence of head contact with any part of the vehicle other than the belt system.

S6.5 If there is no evidence of head contact, then the acceleration measured at the center of gravity of the head shall not exceed either of the following:

(a) The upper limits of the curve shown in Figure 1 when measured by the accelerometer whose sensitive axis is oriented to record longitudinal fore and aft accelerations, and

(b) The upper limits of the curve shown in Figure 2 when measured by the accelerometer whose sensitive axis is oriented to record inferior-superior accelerations.

Alternative Two: Section S6.2 would be revised to read as follows:

S6.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000 where as is the resultant acceleration expressed as a multiple of g (the acceleration of gravity) and t1 and t2 are any two point in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

9. Section S7.4.2 would be revised to read as follows:

S7.4.2 *Webbing tension relieving device.* For any automatic seat belt assembly and any Type 2 seat belt assembly installed in the front outboard designated seating positions pursuant to S4.1.2.3 of this standard which includes either manual or automatic devices that permit the introduction of slack in the webbing of the upper torso restraint (e.g., "comfort clips" or "window-shade" devices), automatic seat belts shall comply with the occupant crash protection requirements of S5 and manual seat belts shall comply with S5.1 of this standard with the belt webbing adjusted to introduce the maximum amount of slack (in inches) that is recommended by the vehicle manufacturer in the owner's manual to be introduced into the shoulder belt under normal use conditions. The vehicle owner's manual shall explain how the tension relieving device works and shall specify the maximum amount of slack (in inches) which is recommended to be introduced under normal use into the belt by means of the tension-relieving device. The instruction shall also warn that introducing slack beyond the specified amount could significantly reduce the effectiveness of the belt in a crash. Any belt slack that can be introduced into the belt system by means of a tension relieving device shall be cancelled each time the belt is unbuckled and the adjacent vehicle door is opened.

10. Section 8.1.1(c) would be revised to read as follows:

S8.1.1(c) *Fuel system capacity.* With the test vehicle on a level surface, the fuel is pumped from the tank and the engine operated until it stops. Stoddard solvent then will be added to the test vehicle's fuel tank in an amount which is equal to 92 to 94 percent of the vehicle manufacturer's stated usable capacity, plus an additional amount to fill the entire fuel system from the fuel tank through the engine's induction system.

11. A new section 8.1.1(d) would be added to read as follows:

S8.1.1(d) *Vehicle test attitude.* The distance between a level surface and a standard point on the test vehicle's body directly above each wheel opening shall be determined in the "as delivered" condition. Delivery condition is the vehicle as received at the test site, with 100 percent of all fluid capacities, and all tires inflated to the manufacturer's specifications as listed on the tire placard or label. The distance between a level surface and the same standard points used above on the vehicle's body shall be determined in the fully "loaded" condition. The fully loaded condition is the test vehicle with a 50th percentile anthropomorphic test dummy in each front outboard designated seating position, plus the cargo load, as specified by the manufacturer on the vehicle's tire capacity placard, placed in the cargo area. The pretest vehicle attitude shall be equal to either the "as delivered" or "loaded" attitude or between the "as delivered" attitude and the "loaded" attitude.

12. Section 8.1.3 would be revised to read as follows:

S8.1.3 *Adjustable seat back placement.* Adjustable seat backs are in the manufacturer's nominal design riding position. This position can be measured in terms of specific latch or detent positions from the forward most seat back angle, or a dummy torso angle. If the vehicle is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

13. Sections 8.1.11 through 8.1.11.2.3 would be removed.

14. Sections 8.1.12 and 8.1.13 would be redesignated 8.1.11 and 8.1.12, respectively.

15. Section 10 would be revised to read as follows:

S10 *Dummy positioning procedures.* Anthropomorphic test dummies are positioned in the vehicle as specified in S10.1 through S10.8, and except as otherwise specified the dummies are not restrained during an impact by any means that require occupant action.

S10.1 *Vehicle equipped with front bucket seats.* In the case of a vehicle equipped with front bucket seats, dummies are placed at the front outboard designated seating positions with the test device torso against the seat back, and the thighs against the seat cushion to the extent permitted by placement of the dummy's feet in accordance with the appropriate paragraph of S10. The dummy is centered on the seat cushion of the bucket seat and its midsagittal plane is vertical and longitudinal.

S10.1.1 *Driver position placement.* At the driver's position, the knees of the dummy are initially set 14.5 inches apart, measured between the outer surfaces of the knee pivot bolt heads, with the left outer surface 5.9 inches from the midsagittal plane of the dummy. The right foot of the dummy rests on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, it is set perpendicular to the tibia and placed as far forward as possible in the direction of the geometric center of the pedal with the rearmost point of the heel resting on the floor pan. The plane defined by the femur and tibia centerlines of the right leg is as close as possible to vertical without inducing torso movement and except as prevented by contact with a vehicle surface. The left foot is placed on the toeboard with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the planes described by the toeboard and the floor pan. If the foot cannot be positioned on the toeboard, it is set perpendicular to the tibia and placed as far forward as possible with the heel resting on the floor pan. The femur and tibia centerlines of the left leg fall in a vertical plane except as prevented by contact with a vehicle surface.

S10.1.2 *Passenger position placement.*

S10.1.2.1 *Vehicles with a flat floor pan/toeboard.*

(a) The knees are initially set 14½ inches apart measured between the outer surfaces of the knee pivot bolt heads.

(b) The right and left feet are placed on the vehicle's toeboard with heel resting on the floor pan as close as possible to the intersection point with the toeboard. If the feet cannot be placed flat on the toeboard, they shall be set perpendicular to the lower leg centerlines and placed as far forward as possible with the heels resting on the floor pan.

(c) The right and left leg assemblies are placed so that the upper and lower leg centerlines fall in vertical longitudinal planes.

S10.1.2.2 *Vehicles with wheel house projections in passenger compartment.*

(a) The knees are initially set 14½ inches apart measured between outer surfaces of the knee pivot bolt heads.

(b) The right and left feet are placed in the well of the floor pan/toeboard and not on the wheelhouse projection. If the feet cannot be placed flat on the toeboard, they shall be set perpendicular to the lower leg centerlines and placed as far forward as possible with the heels resting on the floor pan.

(c) If it is not possible to maintain vertical longitudinal planes through the upper and lower leg centerlines and foot centerlines for each leg assembly then place the leg as close to parallel as possible.

S10.2 *Vehicle equipped with bench seating.* In the case of a vehicle which is equipped with a front bench seat, a dummy is placed at the left and right front outboard designated seating position, with the dummy torso against the seat back and the thighs against the seat cushion to the extent permitted by placement of the dummy's feet in accordance with the appropriate paragraph of S10.1.

S10.2.1 *Driver position placement.* The dummy is placed at the left front outboard designated seating position so that its midsagittal plane is vertical and longitudinal, and passes through the center point of the plane described by the steering wheel rim. The legs, knees, and feet of the dummy are placed as specified in S10.1.1.

S10.2.2 *Passenger position placement.* The dummy is placed at the right front outboard designated seating position as specified in S10.1.2, except that the midsagittal plane of the dummy is vertical, longitudinal, and the same distance from the longitudinal centerline as the midsagittal plane of the dummy at the driver's position.

S10.3 *Initial dummy placement.* With the dummy at its designated seating position as specified by the appropriate requirements of S10.1 or S10.2, place the upper arms against the seat back and tangent to the side of the upper torso and the lower arms and palms against the outside of the thighs.

S10.4 *Dummy settling.*

S10.4.1 *Dummy vertical upward displacement.* Slowly lift the dummy parallel to the seat back plane until the dummy's buttocks no longer contact the seat cushion or until there is dummy head contact with the vehicle's headlining.

S10.4.2 *Lower torso force application.* Using a dummy positioning fixture, apply a rearward force of 50 pounds through the center of the rigid surface against the dummy's lower torso in a horizontal direction. The line of force application shall be 6½ inches above the bottom surface of the dummy's buttocks. The 50 pound force shall be maintained with the rigid fixture applying reaction forces to either the floor pan/toeboard, the 'A' post, or the vehicle's seat frame.

S10.4.3 *Dummy vertical downward displacement.* While maintaining the contact of the horizontal rearward force application plate with the dummy's lower torso, remove as much of the 50 pound force as necessary to allow the dummy to return downward to the seat cushion by its own weight.

S10.4.4 *Dummy upper torso rocking.* Without totally removing the horizontal rearward force being applied to the dummy's lower torso, apply a horizontal forward force to the dummy's shoulders sufficient to flex the upper torso forward until its back no longer contacts the seat back. Rock the dummy from side to side 3 or 4 times so that the dummy's spine is at any angle from the vertical in the 14 to 16 degree range at the extremes of each rocking movement.

S10.4.5 *Upper torso force application.* With the dummy's midsagittal plane vertical, push the upper torso back against the seat back with a force of 50 pounds applied in a horizontal rearward direction along a line that is coincident with the dummy's midsagittal plane and 18 inches above the bottom surface of the dummy's buttocks.

S10.5 *Placement of dummy arms and hands.* With the dummy positioned as specified by S10.3 and without inducing torso movement, place the arms, elbows, and hands of the dummy, as appropriate for each designated seating position in accordance with S10.3.1 or S10.3.2. Following placement of the limbs, remove the force applied against the lower half of the torso.

S10.5.1 *Driver's position.* Move the upper and the lower arms of the dummy at the driver's position to fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the palm of each hand contacts the outer part of the rim of the steering wheel at its horizontal centerline. Place the dummy's thumbs over the steering wheel rim, positioning the upper and lower arm centerlines as close as possible in a vertical plane without inducing torso movement.

S10.5.2 *Passenger position.* Move the upper and the lower arms of the dummy at the passenger position to fully outstretched position in the lowest possible orientation. Push each arm rearward, permitting bending at the elbow, until the upper arm contacts the seat back and is tangent to the upper part of the side of the torso, the palm contacts the outside of the thigh, and the little finger is barely in contact with the seat cushion.

S10.6 *Head adjustment.* Without inducing torso movement, position the head so that the surface of the transverse instrumentation mounting platform in the head is horizontal and the head midsagittal plane fails in a longitudinal plane.

S10.7 *Dummy positioning for latchplate access.* The reach envelopes specified in S7.4.4 are obtained by positioning an anthropomorphic test dummy in the driver's seat or passenger's seat in its forwardmost adjustment position. Attach the lines for the inboard and outboard arms to the test dummy as described in Figure 3 of this standard. Extend each line backward and outboard to generate the compliance arcs of the outboard reach envelope of the test dummy's arms.

S10.8 *Dummy positioning for belt contact force.* To determine compliance with S7.4.3 of this standard, position the anthropomorphic test dummy in the vehicle in accordance with the appropriate requirements specified in S10.1 or S10.2 and under the conditions of S8.1.2 and S8.1.3. Pull the belt webbing three inches from the dummy's chest and release until the webbing is within 1 inch of the dummy's chest and measure the belt contact force.

16. S11 would be removed.

17. S4.1.3.1.1, S4.1.3.2.1, S4.1.3.3.1, and S4.1.4 would be amended by adding a new second sentence to read as follows:

A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

571.209 *Standard No. 209; Seat belt assemblies.*

1. A new paragraph S4.6 would be added, to read as follows:

S4.6 *Manual belts subject to crash protection requirements of § 571.208.*

(a) A Type 2 seat belt assembly subject to the requirements of S4.6.1 of Standard No. 208 (49 CFR 571.208) of this Part is not required to comply with S4.4 of this standard.

(b) In addition to the marking requirements of S4.1(j) of this standard, a Type 2 seat belt assembly that does not comply with the requirements of S4.4 of this standard shall be permanently and legibly marked or labeled with the following language:

This seat belt assembly may only be installed at a front outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less.

1. Chapter V, Title 49, Transportation, the Code of Federal Regulations, would be amended to add the following new Part:

PART 585—AUTOMATIC RESTRAINT PHASE-IN REPORTING REQUIREMENTS

Secs.

585.1 Scope.
585.2 Purpose.
585.3 Applicability.
585.4 Definitions.
585.5 Reporting requirements.
585.6 Records.

Authority: Secs. 103, 119 Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

§ 585.1 Scope.

This section establishes requirements for passenger car manufacturers to submit a report, and maintain records related to such report, concerning the number of passenger cars equipped with automatic restraints in compliance with the requirements of Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), that each manufacturer install automatic restraints in a percentage of its annual passenger car production.

§ 585.2 Purpose.

The purpose of the reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a passenger car manufacturer has complied with the requirements of Standard No. 208 of this Chapter (49 CFR 571.208) for the installation of automatic restraints in a percentage of each manufacturer's annual passenger car production.

§ 585.3 Applicability.

This part applies to manufacturers of passenger cars.

§ 585.4 Definitions.

All terms defined in section 102 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391) are used in their statutory meaning.

"Passenger car" is used as defined in 49 CFR Part 571.3.

"Production year" means the 12-month period between September 1 and August 31 inclusive.

§ 585.5 Reporting requirements.

(a) *General reporting requirements.* Within 60 days after the end of each of the production years ending August 31, 1987, August 31, 1989, and August 31, 1988, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with the requirements of Standard No. 208 for installation of automatic restraints in its passenger cars produced in that year. Each report shall:

(1) Identify the manufacturer;

(2) State the full name, title and address of the official responsible for preparing the report;

(3) Identify the production year being reported on;

(4) Contain a statement regarding the extent to which the manufacturer has complied with the requirements of § 4.1.3 of Standard No. 208;

(5) Provide the information specified in 585.6;

(6) Be written in the English language;

(7) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) *Report content.* (1) *Basis for phase-in production goals.* Each manufacturer shall provide the number of passenger cars manufactured for sale in the United States for each of the three previous production years.

(2) *Production.* Each manufacturer shall report the actual number of passenger cars equipped with automatic seat belts, the actual number of passenger cars equipped with air bags, and the actual number of passenger cars equipped with other forms of automatic restraint technology, which shall be described, for the production year being reported on, and each preceding production year, to the extent that cars produced during that year are treated under §4.1.3.4 of Standard No. 208 as having been produced during the production year being reported on.

(3) *Passenger cars produced by more than one manufacturer.* Each manufacturer whose reporting of information under (1) and/or (2) is affected by one or more of the express written contracts permitted by section § 4.1.3.5.2 of Standard No. 208 shall:

(i) Report the existence of each such contract, including the names of all parties to such contract.

(ii) Report the actual number of passenger cars covered by each such contract.

§ 585.6 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number and type of automatic restraint for each passenger car for which information is reported under 585.5(b)(2), until December 31, 1991.

Issued: April 8, 1985.

Barry Felrice,

Association Administrator for Rulemaking.

[FR Doc. 85–8673 Filed 4–8–85; 3:14 pm]

BILLING CODE 4910–59–M

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49 CFR Parts 571 and 572

[Docket No. 74–14; Notice 39]

Anthropomorphic Test Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from General Motors, this notice proposes to adopt the Hybrid III test dummy as an alternative to the Part 572 test dummy in testing done in accordance with Standard No. 208, *Occupant Crash Protection.* The notice proposes to amend Part 572, *Anthropomorphic Test Dummies,* to adopt the specifications, instrumentation, test procedures and calibration requirements for the Hybrid III test dummy. The notice also proposes to amend Standard No. 208 to provide that, 45 days after publication of a final rule, manufacturers would have the option of using either the existing Part 572 test dummy or the Hybrid III test dummy. However, as of September 1, 1991, the Hybrid III would replace the Part 572 test dummy and be used as the exclusive means of determining a vehicle's conformance with the injury reduction performance requirements of Standard No. 208.

The notice further proposes to establish new injury reduction performance requirements for facial lacerations, which would go into effect on September 1, 1989, and, in response to a petition from the Center for Auto Safety, to set new injury reduction performance requirements for the neck and chest, which would go into effect 45 days after publication of a final rule. It also proposes new requirements covering the knee and tibia, which would go into effect on September 1, 1991. The proposed amendment would increase vehicle safety by permitting the use of a more advanced test dummy which is capable of more sophisticated measurements of the potential for human injury in a frontal crash.

DATES: Comments must be received by June 11, 1985. If adopted, the proposed amendments would become effective 45 days after publication of the final rule in the Federal Register.

ADDRESS: Comment should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590. (Docket Room hours are 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590. Telephone (202) 426–2264.

SUPPLEMENTARY INFORMATION: In December 1983, General Motors (GM) petitioned the agency to amend Part 572, *Anthropmorphic Test Dummies,* to adopt specifications for the Hybrid III test dummy. GM also petitioned for an amendment of Standard No. 208, *Occupant Crash Protection,* to allow the use of the Hybrid III as an alternative test device for compliance testing. The agency granted GM's petition on July 20,

1984. The agency subsequently received a petition from the Center for Auto Safety to propose more stringent injury criteria levels for the Hyrbrid III dummy and to establish new injury criteria so as to take advantage of the Hybrid III's superior measurement capability. The Center's petition was granted on September 17, 1984. This notice proposes amendments to Part 572 and Standard NO. 208 that are responsive to the petitioners and which, in the agency's judgment, will enhance motor vehicle safety.

GM Petition

In its petition, GM argued that the Hybrid III test dummy provides more meaningful information about the occupant protection potential of a vehicle than does the test dummy currently specified in Part 572 of the agency's regulations. GM also argued that the Hybrid III test dummy's impact responses are more respresentative of human responses. Furthermore, GM said that the Hybrid III allows the assessment of additional injury potential—31 total measurements vs. 8 for the current Part 572 test dummy. GM also claims that the repeatability and reproducibility of the Hybrid III are as good as those of the existing Part 572 test dummy and that it has acceptable durability in test applications. In support of these claims, GM has submitted numerous documents, all of which are available in Docket No. 74–14 (see 74–14 N32, Nos. 1666, 6480, 6972, 7644–54, 8423 and 8828 and 74–14 N36, No. 18).

Historical Background

In a search for better means of obtaining mechanical simulations of human responses to injury, NHTSA awarded GM a contract in 1972 for a dummy development program which was to synthesize and incorporate all of the known anthropomorphic and biomechanical data into a new dummy configuration suitable for automobile crash test applications. By the end of 1973, GM had developed the AID 502 50th percentile dummy which was subsequently thoroughly evaluated and compared against the existing Part 572 test dummy. Although incorporating numerous new design features and reflecting the up-to-date biomechanical response and anthropometry characteristics, the dummy produced neither significantly different impact responses nor more meaningful injury assessments than was possible with the existing Part 572 test dummy. Since there were no advantages in using this new dummy, the agency chose not to pursue its development any further.

GM, on the other hand, continued the development of the AID 502 dummy in the knee, chest and neck areas. It improved the biomechanical response and incorporated a number of new transducers to indicate the potential of additional injuries. The revised AID 502 dummy became known as the Hybrid III. In publicly available documents, GM has detailed the design features of the Hybrid III test dummy and its biofidelity, mostly with cadavers at the component level.

In its initial submission to the agency on March 22, 1977, GM indicated that fully belt-restrained Hybrid III test dummies in sled tests experienced higher HIC levels and somewhat higher chest and pelvis injury severity levels than were measured with the Part 572 test dummy. However, further data submitted on May 13, 1977, show virtually no differences in head and chest acceleration responses observed in sled tests with lap and shoulder belt restrained dummies seated on a hard seat fixture. Other data received in a September 19, 1977, submission show test results obtained in sled tests of restrained and unrestricted Hybrid III and Part 572 test dummies seated in one GM model car. In these instances, the Part 572 test dummy generally had higher head HIC and chest acceleration levels in the unrestrained test configuration than did the Hybrid III test dummy. In full scale barrier crash tests of two 1977 GM models, the overall Hybrid III test dummy response levels were considerably lower than in comparable sled tests. Since that time some changes have been made in the Hybrid III test dummy and considerable changes have been made in vehicles, which could make the 1977 test results of dubious value for the current test environment. NHTSA requests data and comments on current comparisons of the two test dummies in various crash configurations.

GM conducted additional tests in 1979 using lap-shoulder belted Hybrid III test dummies seated in a Volvo mounted on a test sled. (SAE report, "Correlation of Field Injuries and GM Hybrid III Dummy Response for Lap-Shoulder Belt Restraint.") This testing did not provide more definitive conclusions about the usefulness of the Hybrid III test dummy because the statistical averaging of the accident data used as inputs for that testing and the use of sleds for crash pulse simulation produced test conditions which did not replicate real world crash environments.

Since the publication of these papers, GM has increased the measurement capacity of the Hybrid III test dummy to at least 31 sensors as compared to eight for the Part 572 test dummy. Furthermore, the design of the Hybrid III test dummy has been fully documented and the drawing and specifications packages were delivered to NHTSA on January 31, 1984, and placed in the public docket. GM also assisted Humanoid Systems with financing and engineering to tool up and prepared the dummy for manufacturing. As of July 1984, approximately 40 Hybrid III test dummy dummies have been manufactured and sold by Humanoid Systems. NHTSA evaluated the production version of the Hybrid III test dummy during 1983–84 in three different sled test environments and compared the results to the performance of the Part 572 test dummy. The results of those tests are discussed in more detail later in this notice.

Need for Proposed Rulemaking

Based on its review of the available test data, the agency recognizes that the Hybrid III test dummy represents an appreciable advancement in the state-of-the-art of human simulation and that its use would be beneficial for continued improvement in vehicle safety. The Hybrid III test dummy appears to have superior biofidelity over the current Part 572 test dummy with a capability, ultimately, of monitoring almost four times as many injury producing measurements. Several measurements cover areas of the body that are not instrumented in the current Part 572 test dummy, but which are important for the development and the measurement of effectiveness of occupant protection systems. The agency therefore proposes to include the specification for the Hybrid III test dummy as Subpart E to Part 572. It would consist of the description of the dummy, its method of instrumentation, test procedure and impact responses of the various body segments.

The agency proposes that the Hybrid III test dummy be permitted for use as an alternate test device 45 days after issuance of the final rule, as long as the additional injury criteria proposed by this notice are met, and completely replace the current Part 572 test dummy by September 1, 1991. This schedule would permit vehicle manufacturers adequate time to phase in the use of the Hybrid III test dummy into the design and development of new models. Until September 1, 1991, each manufacturer would have the option of complying with the Standard No. 208 requirements using either the Part 572 test dummy or the more extensively instrumented Hybrid III test dummy.

Because the Hybrid III test dummy is capable of measuring more sources of injury than the existing Part 572 test dummy, the agency is also proposing to take advantage of that capability, as requested by the Center for Auto Safety, by setting additional injury reduction criteria for the Hybrid III test dummy to cover those body areas which show a high incidence of serious and/or disabling injuries. With the exception of the proposed facial laceration, thorax compression, and neck criteria, the newly proposed injury reduction criteria setting limits on knee shear, moments on the knee and ankle, and tibia compression loading would not go into effect until September 1, 1991, when the Hybrid III would completely replace the Part 572 test dummy. The agency is proposing an earlier effective date, 45 days after publication of the final rule for the thorax deflection and neck criteria for the Hybrid III test dummy and for the proposed neck criteria to be used in the absence of head contact with the Part 572 test dummy. (Parts of the proposed neck criteria are also a part of the agency's proposal, published elsewhere in today's **Federal Register**, proposing alternative measures to limit occupant injuries in crashes where there is no head impact.)

Similarly, the agency proposes an effective date of September 1, 1989 for the facial laceration injury criteria for both test dummies. The proposed facial laceration criteria should not generally require changes in vehicles with air bag systems or automatic belts, since the test dummy should not hit the windshield in those vehicles. However, vehicles with passive interiors would probably have to use antilacerative windshields to comply with the proposed facial laceration requirement. The antilacerative windshield technology needed to meet the facial laceration injury criteria has been developed and is currently being introduced in a limited number of passenger cars. The agency believes that the proposed September 1, 1989 effective data provides adequate leadtime for suppliers to produce sufficient quantities of the neede anti-lacerative windshields and for manufacturers to incorporate those windshields into their vehicle designs.

Changes to Standard No. 208 Specifications

Based on its review of the available test data, the agency has tentatively determined that the Hybrid III and Part 572 test dummies do not generate necessarily identical impact responses. However, when tested in lap-shoulder belts or with air cushions or under circumstances that do not allow the dummies to impact any other vehicle surfaces, the differences are minimal. Based on available data, the agency agrees with GM that there are no common transfer functions to relate the response of Hybrid III test dummy to the responses of the Part 572 test dummy. This is the case because, among other reasons, the dummies have different seating heights and seating postures and thus they will undergo different trajectories in a crash, likely contacting different components of the vehicle's interior. Due to the lack of consistent test data supporting the need to establish different injury criteria for the two dummies in areas of common measurements, and the absence of empirical data on which to base different criteria, the agency is not proposing separate injury criteria for the Hybrid III test dummy in those areas. However, as discussed elsewhere in this notice, the Hybrid III has the capability to measure additional significant injury modes as compared to the existing Part 572 test dummy, with the resulting potential to mitigate injuries to these body parts, and the agency is proposing to set new injury criteria to take advantage of the Hybrid III's additional capabilities.

Other Related Issues

The GM petition to allow alternate use of the Hybrid III dummy for compliance with Standard No. 208 requirements raises a number of questions that need to be answered. The agency is aware that the Hybrid III and the Part 572 test dummies have certain limitations. For example, neither dummy may perform well in a side impact crash. Nevertheless, we believe the Hybrid III test dummy is substantially superior as an injury assessment device over the existing Part 572 test dummy because of its capability to measure additional sources of potential injury and is the best current representation of the state-of-the-art in dummy technology. Its design is backed by extensive biomechanical data and documentation and the injury thresholds are the results of well founded synthesis of current experimental research and accident data.

The questions raised by the GM petition fall into three general categories. The agency requests comments on each of the following areas, which are discussed in detail below:

1. Technical adequacy of the Hybrid III test dummy design and its performance.
2. The proposed injury criteria.
3. Test dummy positioning procedures.

Hybrid III Design and Comparison to the Part 572 Test Dummy

Dummy Construction and Biofidelity

The materials used in the construction of the Hybrid III test dummy are nearly the same as those used for the Part 572 test dummy, except for the neck and the knees. The mass distributions between the two dummies are nearly identical. Individual segments, however, differ in design except for the abdominal insert and the pelvic bone. The Hybrid III test dummy segments in general match the anthropometric profiles of the average of the driving population somewhat closer than do those of the Part 572 test dummy. However, no one is certain to what extent relatively small differences in the contours of the dummy are important, considering that under severe impact conditions, significant local geometric distortions of the body segments of real life accident victims occur. However, better control of body symmetry and greater precision of flesh thicknesses throughout the dummy should add to the impact repeatability of the dummy. Review of available data indicates that the Hybrid III test dummy has somewhat better repeatability of impact responses at the component calibration levels, but the agency does not know whether this would also be true at higher impact speeds at which crash tests are performed.

Some segments of the Hybrid III test dummy are of unique design, e.g., the neck is composed of multilink members and incorporates capabilities to measure moments, axial tensile and compression loads, and shear forces at the head/neck interface. The thorax has a deflection sensor and the knees have ligament strain measurement capabilities which are not available on the Part 572 test dummy. Special purpose installations may be procured for the Hybrid III test dummy to measure femur and tibia bending moments and tibia compression forces.

The performance characteristics for most body segments are mostly derived from low level energy impact tests. Since the testing has been limited to low speed conditions at the component level, the agency seeks data as to whether the Hybrid III test dummy can also maintain its more human-like responses at higher speed impacts. Questions were raised in a recent University of California, San Diego study by Dennis Schneider and others ("ATD and Cadaver Head Response to Impact Loading") and referenced in the petition from the Center for Auto Safety. In that study, the Hybrid III test dummy's head showed less correlation with cadavers than did

the Part 572 test dummy in frontal impacts. Similarly, the GM study on energy absorption steering columns (Factors Influencing Laboratory Evaluation of Energy-Absorbing Steering Systems, Docket 74–14, Notice 32, Entry 1666 B) indicates that the Hybrid III test dummy's thorax may be somewhat insensitive to impact velocities, which could impair the assessment of occupant injuries. These possible differences, however, were not substantiated in full scale vehicle crash tests, the test mode in which the dummy is intended for use. The agency solicits comments and information on this issue to determine the relative importance, if any, of these concerns, especially in light of the overall improved biomechanical simulation and more extensive injury measures that the Hybrid III provides.

Temperature Sensitivity

Tests conducted by the agency ("State-of-the-Act Dummy Selection") have indicated that the Hybrid III test dummy chest impact response parameters (deflection and peak acceleration) exhibit considerable temperature sensitivity within the current temperature range (66° F to 78° F) allowed in Part 572 test dummy testing. The agency does not have any data to indicate that these sensitivities would be less in compliance testing with belts, air cushions, or passive vehicle interiors. The agency solicits information on the range of temperature controls (69° to 72° F) apparently required to attain the current repeatability levels of the Part 572 test dummy and whether that control is feasible and practicable in industrial test environments.

Seated Height

The Hybrid III test dummy has nearly a 2 inch lower seated height than the Part 572 test dummy. This difference is due to the Hybrid III test dummy's slumped posture design to simulate the "slouch" of the average seated occupant as compared to the nearly erect "military" posture of the Part 572 test dummy. The agency does not know to what extent use of the Hybrid III test dummy would affect decisions by vehicle manufacturers for the design and location of belts, windshield headers, instrument panels, steering wheel protection systems, seats, etc., and solicits comments on this issue.

Curved Lumbar Spine

The Hybrid III test dummy employs a curved lumbar spine designed to provide more realistic posture and attitude of vehicle occupants. This design appears to accommodate the use of lumbar supports in the seats of some GM cars. However, similar supports in some other makes of vehicles appear to create positioning problems for the Hybrid III test dummy in order to attain a correct posture. The agency does not know the extent of this problem and solicits information on this issue and on what steps, if any, may be needed to correct it.

Durability

Agency sled testing has indicated that the Hybrid III test dummy chest has less durability than the Part 572 test dummy, e.g., it goes out of calibration more frequently and experiences some permanent deflection set of the ribcage in 30 mph test exposures. The agency solicits information on whether this problem has been encountered in other vehicle test applications of the Hybrid III test dummy and, if it occurs, of what concern it is to dummy users.

Hybrid III Test Dummy Impact Responses

The Hybrid III test dummy impact responses are reasonably well documented and backed up by mostly cadaver based laboratory response data as well as by its extensive use by GM for the design and development of vehicles. There is however, no extensive history of accident data analysis showing how well vehicles designed using the Hybrid III test dummy are performing for real world accident victims. Recent data from the Highway Loss Data Institute, however, seem to indicate that GM cars, which according to GM have benefited from the use of the Hybrid III test dummy for development of safety improvements, have generally better injury loss experience than comparable cars of other manufacturers. Comments are sought on this issue.

Injury Criteria for Part 572 and Hybrid III

Equivalence of HIC Measurements

Some limited tests, conducted by Schneider, involving pendulum impacts of the foreheads of the two test dummies and cadavers indicate that the Hybrid III test dummy generates lower acceleration responses than either the Part 572 test dummy or cadaver heads. The reasons for the apparent differences, found in Schneider's tests, between the Hybrid III test dummy and cadaver responses in this regard have not yet been fully resolved or explained. Agency sponsored tests have measured the head impact response of the two test dummies in drop tests onto rigid plates and found that the Hybrid III's responses under these limited test conditions were lower than those of the Part 572 test dummies.

The agency believes, however, that in impacts into more pliable surfaces, such as found in vehicle interiors, the difference is minimized. This belief is based on the sled tests, cited earlier, and on a limited number of vehicle crash tests in which the Hybrid III and the Part 572 test dummies were used. Unfortunately, the existing data do not allow a precise, quantitative estimate of the difference in vehicle crash tests. In view of these uncertainties, the agency is conducting additional research on this question and requests other users of Hybrid III and Part 572 test dummies to provide information they have on differences in head impact responses between the two types of test dummies. The agency also solicits comments on the request of the Center for Auto Safety to set different head impact performance limits for the Hybrid III test dummy.

Elsewhere in today's **Federal Register**, the agency is proposing alternative methods for calculating or using the HIC. These alternatives, which would apply to the existing Part 572 test dummy and the Hybrid III test dummy, are:

1. Calculate the HIC only if head contact occurs during the crash, but substitute new injury criteria as surrogate measurements of neck injury in noncontact situations.

2. Calculate the HIC over the entire crash duration but limit the HIC time interval to a maximum of 36 milliseconds.

As discussed in that notice, the agency will adopt only one of the proposed alternatives in a final rule, if it decides to change the existing requirement. Whichever alternative is chosen would be applied to both the existing Part 572 test dummy and to the Hybrid III test dummy.

Neck

The proposed neck injury criteria for use with the Hybrid III test dummy calls for the measurement of neck bending moments and forces in the fore and aft direction and axial compression and tension loads. The availability of measurement of moments and forces in the neck will also adequately account for the inertial loads generated by the head during its free flight. Because the inertial forces of the head are transmitted and eventually dissipated through the neck., the limits on the neck forces will also effectively control the loads that the head is exposed to in noncontact events, which may permit

the deletion of the HIC requirement for those crash conditions. The selected injury tolerances are based on the best known thresholds of injury and are in line with published technical and medical literature. The agency's 1982 SAE paper on crash priorities estimates that noncontact neck injuries in car accidents are experienced by approximately 160,000 car occupants, 56,000 in frontal collisions. The proposed injury criteria are designed to reduce the severity of, or eliminate, at least 35,000 noncontact neck injuries to occupants of passenger cars through the control of inertial forces on the head to subinjury levels at speeds below 30 mph. The agency requests comments and data on the proposed neck injury criteria.

Facial Lacerations

The present head injury reduction criterion used in Standard No. 208 does not address facial injuries, such as cuts and lacerations, due to impacts into windshields and other vehicle surfaces. The agency estimates that approximately 155,000 facial laceration injuries occur each year due to windshield impacts. While facial lacerations may not always be life threatening, they can result in serious physical and psychological injuries. Standard No. 208 has not included a facial laceration reduction criterion because it was assumed that use of air cushions or automatic belts would prevent occupants from impacting the windshied. However, as new technology, such as passive vehicle interiors, which rely on padding rather than belts or air bags, are adopted and to the extent automatic belts will be disconnected, the potential for facial laceration can be high. It is estimated that approximately 77,000 windshield related facial lacerations can be eliminated if vehicle designs will protect occupants from these types of injuries in impacts up to 30 mph. The agency is therefore proposing to add a new facial laceration reduction criterion to Standard No. 208; the criterion would not go into effect until September 1, 1992.

The facial injury reduction criterion would be based on the use of a technique used by GM with the Hybrid III test dummy. The chamois technique has also been used by Patrick and Chou in an extensive series of tests to study the lacerative effects of windshields. A two-layer chamois would be placed over the head of the dummy prior to the test. The injury reduction criterion would require the inner layer of the chamois to be completely free of any cuts or lacerations after the impact tests required by Standard No. 208.

The agency requests comments on the need for a facial injury reduction criterion and on the repeatability of the proposed test method for assessing facial injuries.

Injury Criteria for Hybrid III

Thorax

The agency believes that the current acceleration based tolerance specified with the use of the existing Part 572 test dummy is adequate to measure the injury potential of belt and air cushion protected occupants. The use of the more compliant Hybrid III test dummy necessitates additional measures such as deformation-deflection of the thorax sternum.

The agency proposes to add to the existing 60g acceleration tolerance level, a limit for compression deflection of the sternum relative to the spine when the Hybrid III test dummy is used for compliance testing; the agency proposes a three inch deflection limit for inflatable systems and a two inch limit for all others.

The agency believes that the two inch deflection limit recommended by GM is appropriate for lap-shoulder belted occupants because the geometry of the shoulder belt produces more chest compression in the area where the belt pressure is applied rather than in the area where the deflection sensor measures the displacement of the sternum. The agency, however, does not agree with GM that the 2 inch criterion should be limited only to lap-shoulder belt restrained occupants, since other systems, such as steering wheels, instrument panels and other interior protrusions, produce similar concentrated, but not necessarily centered loads which would in many instances also produce larger localized deflection than is recorded by the chest deflection sensor.

The agency agrees with GM that a three inch deflection limit is appropriate for distributed loading restraint systems, such as air bags, which usually contact the occupant's torso with symmetric loading and spread the impact forces fairly evenly over the torso area. For these reasons, the agency is proposing a three inch deflection limit only for systems symmetrically load the torso and a two inch limit for all other protection systems.

Comments and data are requested on the value and utility of the proposed supplemental deflection measure of the sternum. Since the thorax is one of the major load paths for the dissipation of the occupant impact energy, it is important that the proposed deflection measurement can adequately and properly address and interpret the dynamic interactions with a variety of vehicle surfaces. Since the sternum deflection sensor can best record the displacements when its sensitive axis is in line with the impacting surface, commenters are being asked to address the need for and utility of using additional deflection gauges to assure that potentially injurious displacement of other thorax areas are not overlooked. Data are also sought on the practicability and the consistency of the proposed measurement in the vehicle impact environment and its usefulness for the development of automatic and active restraint systems as well as steering column systems.

The agency is also aware of the apparent low sensitivity of the Hybrid III test dummy thorax response to changes in impact speeds and changes in impacted mass as reported by J.D. Horsch (Docket No. 74–14, No. 32, Entry 1666B). Horsch tested the Hybrid III test dummy and Part 572 test dummy in steering systems impacts at 14 and 22 feet per second with standard and increased steering column masses. In addition, some columns had provision for distributed loading on the thorax, while others did not. Test results indicate low and in some instances inconsequential changes in both the acceleration and deflection parameters in spite of changes in impact speeds and steering system masses. GM argues that these insensitivities are more a reflection of excellent steering column properties rather than insensitivities of the Hybrid III test dummy. However, the agency notes that such insensitivities are less apparent in Part 572 test dummies tested under the same conditions. The agency solicits comments and data on this issue.

Femurs

The agency proposes to set an injury prevention criterion for the Hybrid III test dummy which would limit femur loads to 2250 pounds, which is the same limit used for the existing Part 572 test dummy. NHTSA requests comment on the appropriateness of this value.

Knee and Tibia

The agency proposes adding the GM developed knee shear and tibia bending and compression fracture criteria when the Hybrid III dummy is used as the exclusive Standard No. 208 compliance test device beginning on September 1, 1991. The knee shear criterion limits translation of the tibia relative to the femur to not more than 0.6 in. The proposed tibia criteria limit the compression forces to 1800 lbs and

establish limits on injuries due to combined bending moments and compression forces. They are described in more detail below.

Knee/tibia tolerances are important because of the anticipated increased use of knee restraints. The knee restraint is used to dissipate the impact energy of the lower portion of an occupant body and limbs when the occupant's knees and/or tibias impact the knee restraint. Testing by GM has shown that the orientation, size and impact characteristics of a knee bolster are crucial for minimizing knee joint and tibia-fibula injury in an impact. A wide variability in car occupants' statures and seating postures means that the knee bolster could load the flexed leg either through the knee (acting directly through the femur) or through the tibia (acting through the knee joint). Potential injuries associated with these types of impacts could vary considerably and those associated with tibia impacts can result in either tibia/fibula fractures and/or knee joint ligament tears.

The lower extremity injuries of passenger car occupants in frontal collisions, reported by the agency in the report "A Search for Priorities in Crash Protection", amount to approximately 3.1% of all crash-related harm, which translates into approximately 79,000 injured persons annually. Approximately 16,000 of those persons incur serious injuries (AIS 3 and above). It is not known at the present time how many of these are made up of femur fractures, tibia fractures and/or knee shear injuries. Most of the injuries (except for amputation) are of low risk to life, but in many instances are associated with relatively longer term impairment and pain than other body areas injured at comparable severity levels. The introduction of knee restraints into vehicle design and the intention to contain the lower part of the occupant's body through knee and tibia impacts has the potential of increasing the number and the severity of lower leg injuries by a considerable amount unless the knee bolster is specifically designed to prevent these injuries.

The agency believes that the knee joint shear criterion (displacement of the tibia relative to the femur can not exceed 0.6 inch) developed and used by GM is in line with published research. The proposed displacement limit is intended to prevent tears of critical ligaments and also avoid injuries leading to future debilitation of the knee joint. The GM developed injury threshold, limiting the compression forces to 900 pounds on each side of the tibia clevis at the knee also in line with the published research.

The agency also proposes to adopt the GM-developed injury threshold index for tibia compression-bending which is computed from the following expression:

$$\frac{M}{M_c} + \frac{P}{P_c} < 1$$

where M_c=168 lbs-ft and P_c=7,950 lbs and M and P are actually measured moments and compression forces respectively. If the sum of the ratio of the bending moments either at the knee or at the ankle end of the tibia and the compression force does exceed the value of 1, fractures of the tibia and fibula shafts of the lower legs are unlikely to occur.

The higher average crash accelerations of small cars, the use of knee cushions to control the deceleration of the lower torso part of the occupant, and the potential entrapment of the lower legs by the intrusion of the floor board pose a significant potential for lower leg injuries in frontal crashes. For this reason, the agency believes that the inclusion of the compression/bending moment criterion into FMVSS 208 injury requirements is needed if tibia and ankle fractures are to be prevented.

The proposed tibia-knee injury assessment methodology is relatively new and to the best of our knowledge has not been employed by anyone else outside of GM. Comments and data are solicited on the need and value of the measurements for the control of knee pad designs and on the practicability of the proposed measurement package. In view of the substantial set of tibia measurements proposed (14 total), commenters are asked to review their usefulness for predicting the injury potential and to provide views and data on the possible consolidation, or simplification of the criteria. Data are also solicited on the repeatability of the Hybrid III leg injury measurements.

Hybrid III Positioning Procedure

Based on the differences in the anthropomorphic characteristics of the Hybrid III and Part 572 test dummies, the agency is proposing to set different test dummy positioning procedures for the Hybrid III test dummy. The proposed changes affect the positioning of the pelvic bone, upper torso and head to ensure a consistent and realistic posture for the Hybrid III.

The proposed test procedure is based upon the positioning procedure developed by GM. The major change from the GM procedure is that the GM procedure provides that the test dummy's H-Point is positioned in reference to the seating reference point specified in the manufacturer's design drawing for that vehicle. The agency has found in its own testing that the Hybrid III test dummy can be more easily installed and adjusted by using a modified procedure. Under the proposed procedure the dummy would initially be placed in the vehicle seat set at its mid-track position, as required by Standard No. 208, and the location of the H-point of the seated dummy determined. After all of the remaining positioning requirements have been met, the H-point location of the test dummy would be remeasured and adjusted so that it is within ±0.2 inch of its original position. Based on the limited testing the agency has done with the Hybrid III test dummy, we believe that the proposed positioning procedure will be easy to use and produce repeatable results. The agency is particularly interested in learning of positioning procedures followed by other Hybrid III users which would promote the repeatability of the test results.

Impact Analyses

NHTSA has examined the effect of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other effects of this rulemaking action are minimal. A regulatory evaluation describing those effects has been placed in the docket.

The availability and use of advanced technology and tools such as the Hybrid III test dummy for the evaluation of effectiveness and integrity of occupant protection systems by vehicle manufacturers will assist in screening out vehicle environments that might be either marginal or not appropriate for occupant protection, but not assessable with the current technology Furthermore, the ability of the Hybrid III test dummy to monitor the potential of many more modes of injuries to the occupant may accelerate the introduction of further innovations for occupant protection by other vehicle manufacturers.

The basic Hybrid III test dummy is estimated to cost approximately $19,000, or $7,000 more than the equivalent Part 572 test dummy. The addition of neck transducers, the thorax deflection gauge, knee shear and tibia force and bending moment sensors will increase the cost

per dummy by an additional $24,000. For an assumed average of at least 10 dummies per vehicle manufacturer, the total cost increment per manufacturer may amount to approximately $310,000. Assuming the average dummy is capable of approximately 30 test applications, the total estimated cost increment per dummy test would be approximately $1000 for each manufacturer. The incremental cost of dummy verification and calibration would be approximately $1000 per test. In addition, the need to monitor twenty additional data channels (three neck, one thorax, two knees and 14 tibia and the use of the facial laceration measurement) would add approximately $1050/per dummy, thus raising the total increment per dummy per test application to approximately $3050. Assuming a total of 300 dummy applications per year per larger manufacturer, it is estimated that on the average the incremental cost to each larger manufacturer may be around $915,000. When amortized over production, incremental cost may be around $0.40 per vehicle or less, depending on the number of vehicle models a vehicle manufacturer may have under development.

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act and I hereby certify that it will not have a significant economic effect on a substantial number of small entities. The proposed changes affect motor vehicle manufacturers, none of which is a small business entity. The effect on small organization and governmental units would not be significant. The minimal, if any, price increase associated with this rulemaking should not affect the purchasing of new cars by these entities.

Potential Environmental Impact

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

The Hybrid III test dummy is made of nearly identical materials as the Part 572 test dummy. The change to the Hybrid III test dummy will have no effects on the environment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to those submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting for the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rule docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, Part 572, *Anthropomorphic Test Dummies*, and Part 571.208, *Occupant Crash Protection*, of Title 49 of the Code of Federal Regulations would be amended as follows:

PART 572—[AMENDED]

1. A new Subpart E would be added to Part 572 to read as follows:

Subpart E—Hybrid III Test Dummy

§ 572.30 General description.

(a) The dummy consists of components and assemblies specified in the Anthropomorphic Test Dummy Part List identified by GM drawing No. 78051–218, revision I, and of subordinate drawings listed in the parts list consisting of 13 pages with the issuance date of 9/15/83 under the title "Model H–III." The dummy is made up of the following component assemblies:

Revision	
78051–61	Head Assembly—Complete—(H)
78051–90	Neck Assembly—Complete—(A)
78051–89	Upper Thorax Assembly—Complete—(G)
78051–70	Lower Torso Assembly—Complete—(G)
78051–56	Leg Assembly—Complete (LH)—(D)
78051–57	Leg Assembly—Complete (RH)—(D)
78051–123	Arm Assembly—Complete (LH)—(D)
78051–124	Arm Assembly—Complete (RH)—(D)

The drawings and specifications contained in this parts list are included herein by reference and are available for examination in docket 74–14, Room 5108, 400 Seventh Street, S.W. Washington D.C. Copies may be obtained through Keuffel and Esser Company, 1521 North Danville Street, Arlington, VA 22201.

(b) Adjacent segments are joined in a manner such that throughout the range of motion and also under crash-impact conditions, there is no contact between metallic elements except for contacts that exists under static conditions.

(c) The weights, inertial properties and centers of gravity location of component assemblies shall conform to those listed in drawing 78051–338.

(d) The structural properties of the dummy are such that the dummy conforms to this part in every respect both before and after being used in vehicle tests specified in Standard No. 208 of this Chapter (§ 571.208).

§ 572.31 Head.

(a) The head consists of the assembly shown in drawing 78051–61 and conforms to each of the drawings subtended therein.

(b) When the head (78051–61) with neck transducer structural replacement (78051–383) is dropped from a height of 14.8 inches in accordance with paragraph (c) of this section, the peak

resultant accelerations at the location of the accelerometers mounted in the head form in accordance with 572.35(c) shall be not less than 225g, and not more than 275g. The acceleration/time curve for the test shall be unimodal to the extent that oscillations occurring after the main acceleration pulse are less than ten percent (zero to peak) of the main pulse. The lateral acceleration vector shall not exceed 15g (zero to peak).

(c) *Test Procedure.* (1) Soak the test material in a test environment at any temperature between 66°F to 78°F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

(2) Clean the head's skin surface and the surface of the impact plate with 1,1,1 Trichloroethane or equivalent.

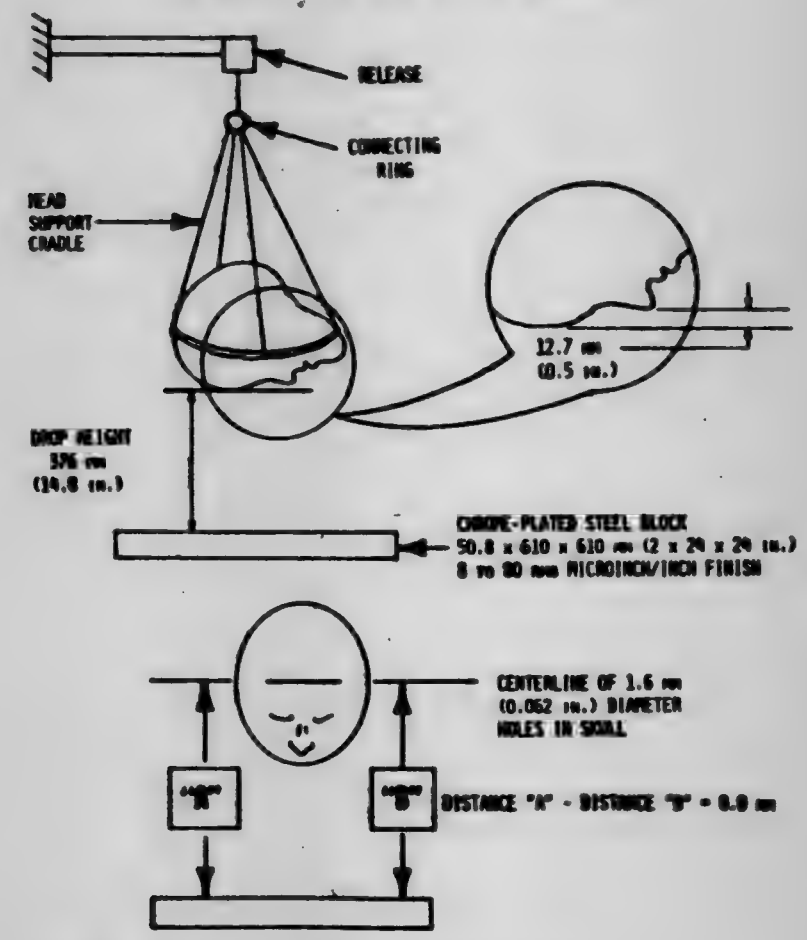
(3) Suspend the head, as shown in Figure 19, so that the lowest point on the forehead is 0.5 inches below the lowest point on the dummy's nose when the midsagittal plane is vertical.

(4) Drop the head from the specified height by means that ensure instant release onto a rigidly supported flat horizontal steel plate, 2 inches thick and 2 feet square, which has a clean, dry surface and any microfinish of not less than 8 microinches (rms) and not more than 80 microinches (rms).

(5) Allow a time period of at least 2 hours between successive tests on the same head.

FIGURE 19

TEST SET-UP FOR HEAD IMPACT RESPONSE



NOTE: TOLERANCE ON TEST SETUP DIMENSIONS ±1 mm (0.04 in.)

§ 572.32 Neck.

(a) The neck consists of the assembly shown in drawing 78051–90 and conforms to each of the drawings subtended therein.

(b) When the neck and head assembly, consisting of parts 78051–61, –98, –307, –303, –84, –305, –90, –306, –96, is tested in accordance with paragraph (c) of this section, it shall have the following characteristics:

(1) *Flexion.* (i) Plane D, referenced in test setup of Figure 20, shall rotate, when tested in accordance with procedures specified in paragraph (c) of this section, between 67° to 79° and between 54 milliseconds (ms) and 64 ms from time zero. In first rebound, the rotation of plane D shall cross 0 deg. between 109 ms and 119 ms.

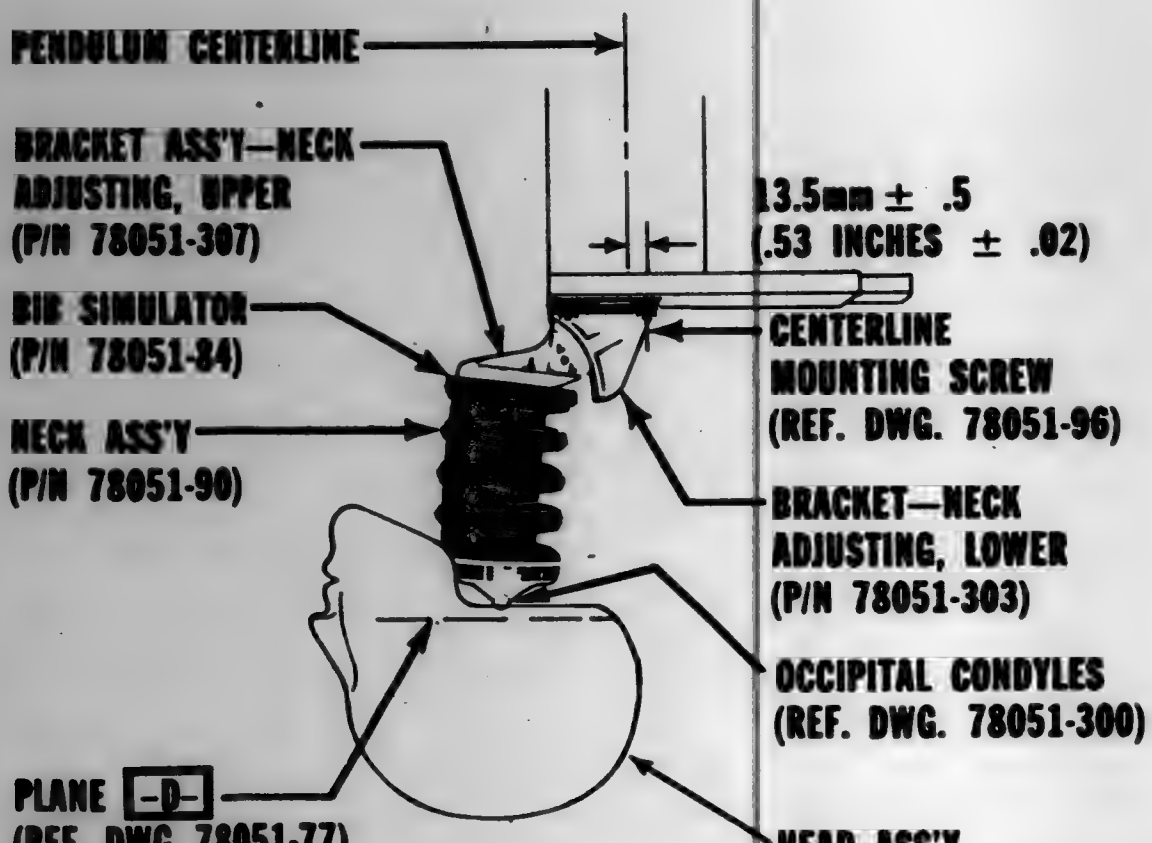
(ii) The moment measured by the neck transducer (78051–300) about the occipital condyles, referenced in test set up of Figure 20 and in conformance with 572.35(d), shall have a minimum value of −15 lbs-ft to −22 lbs-ft occurring between 12 ms and 16 ms from time zero, a maximum value between 72 lbs-ft and 90 lbs-ft occurring between 46 ms, and 56 ms, and the positive moment shall decay for the first time to 0 lb-ft between 95 ms and 105 ms.

(2) *Extension.* (i) Plane D, referenced in test set up of Figure 21, shall rotate, when tested in accordance with the procedure specified in paragraph (c) of this section, between 94° and 106° and between 72 and 82 ms from time zero. In first rebound, the rotation of plane D shall cross 0° between 157 ms and 167 ms.

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FIGURE 20

TEST SET-UP FOR NECK FLEXION



NOTE: PENDULUM SHOWN AT TIME ZERO POSITION

BILLING CODE 4910-59-C

(ii) The moment measured by the neck transducer (78051–300) about the occipital condyles, referenced in the test set up of Figure 21, and in conformance with S572.35, shall have a maximum value between 12 lbs-ft to 18 lbs-ft occurring between 12 ms and 18 ms from time zero and a minimum value between −52 lbs-ft and −63 lbs-ft occurring between 69 ms and 77 ms.

(3) Time zero is defined as the time of contact between the pendulum striker plate and the aluminum honeycomb material.

(c) *Test procedure.* (1) Soak the test material in a test environment at any temperature between 66 °F to 78 °F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

(2) Torque jamnut (78051–64) on neck cable (78051–301) to 1.5 lbs-ft ± .2 lbs-ft.

(3) Mount the head-neck assembly, defined in paragraph (b) of this section, on a rigid pendulum as specified in Figure 22 so that the head's midsagittal plane is vertical and coincides with the plane of motion of the pendulum's longitudinal axis.

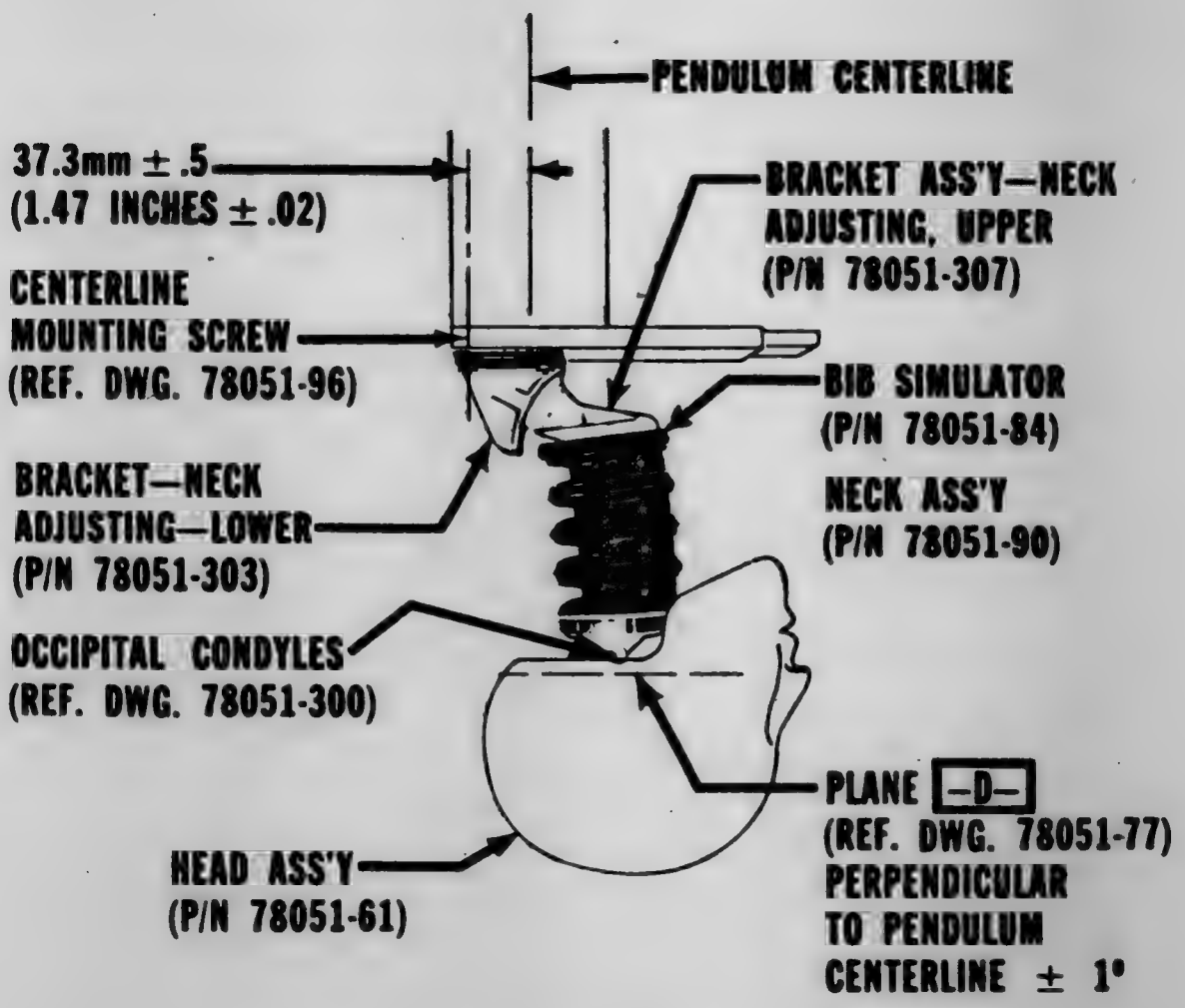
(4) Release the pendulum and allow it to fall freely from a height such that the tangential velocity at the pendulum accelerometer centerline is 23.6 ft/sec ± 2.0 ft/sec. for flexion testing and 19.7 ft/sec ± 1.6 ft/sec. for extension testing with the pendulum deceleration vs. time pulse conforming to the following characteristics:

Time (ms)	Flexion acceleration level (g)
10	22.50–27.50
20	17.60–22.50
30	12.75–17.75
Any other time	29 maximum

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FIGURE 21

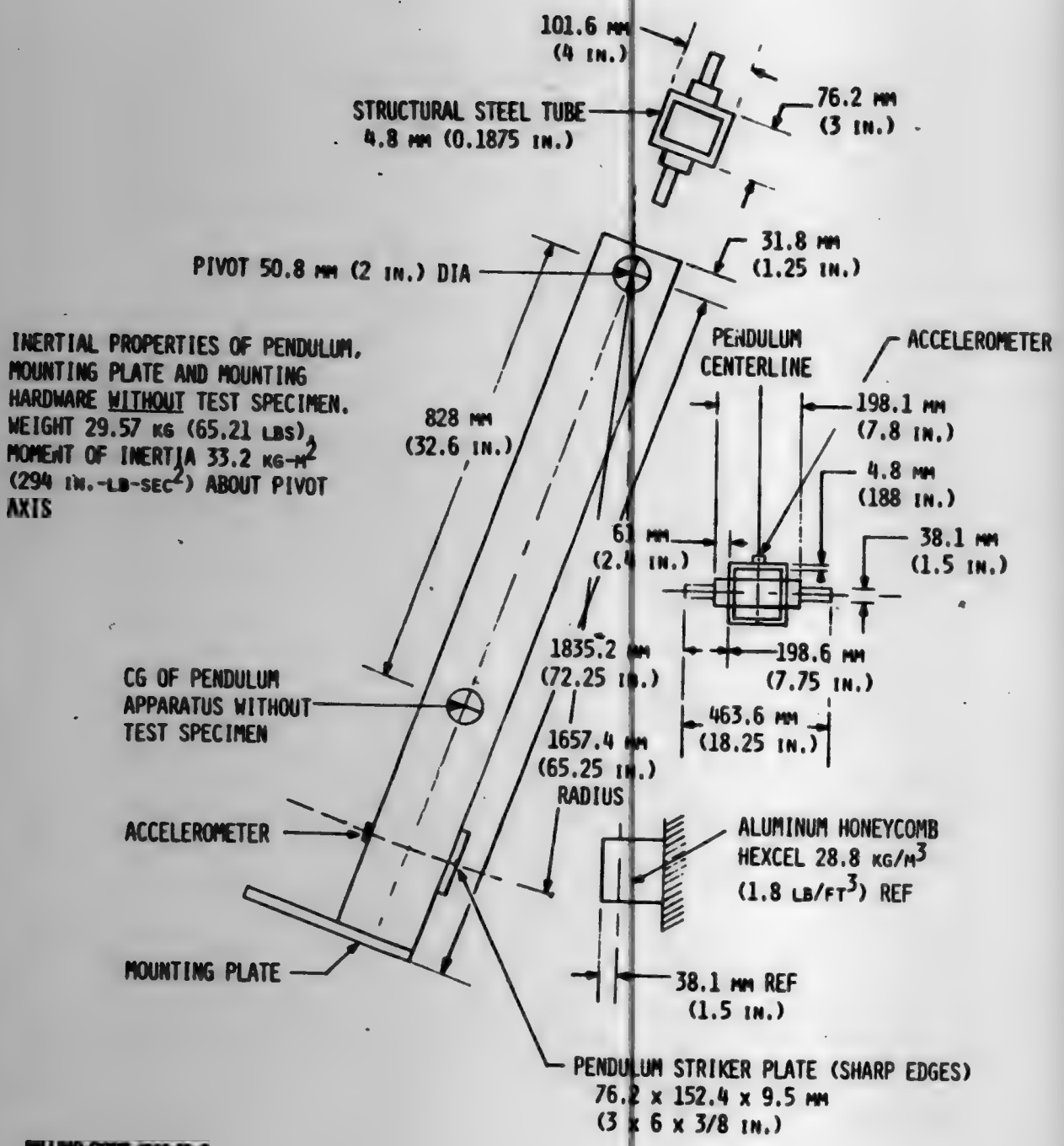
TEST SET-UP FOR NECK EXTENSION



NOTE: PENDULUM SHOWN AT TIME ZERO POSITION

FIGURE 22

PENDULUM SPECIFICATIONS FOR NECK TESTING



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The decaying deceleration-time curve shall first cross 5g between 34 ms and 42 ms.

Time (ms)	Extension deceleration level (g)
10	17.20–21.20
20	14.20–18.20
30	11.00–15.00
Any other time	22 maximum

The decaying deceleration-time curve shall cross 5g between 38 ms and 46 ms.

(5) Allow the neck to flex without impact of the head or neck with any object other than the pendulum.

§ 572.33 Thorax.

(a) The thorax consists of the upper torso assembly in 78051–89 and conforms to each of the drawings subtended.

(b) When impacted by a test probe conforming to S572.35 at 14 fps and 22 fps in accordance with paragraph (c) of this section, the thorax of a complete dummy assembly (78051–281) with left and right shoes (78051–294 and –295) removed, shall resist with forces measured by the test probe from time zero and sternum displacement measured relative to spine as follows:

Impact velocity (fps)	Time (ms)	Sternum displacement (in)	(ms)	Time thorax load (lbs)
14	25	2.63±.12	19	1242±56
22	25	1.46±.12	19	814±55

The internal hysteresis in each impact shall be more than 75% but less than 80%. The forces measured are a product of pendulum mass and deceleration. Time zero is defined as the time of contact between the upper thorax and pendulum face.

(c) *Test procedure.* (1) Soak the test dummy for at least four hours in an environment at a temperature of between 69° F and 72° F and at a relative humidity from 10% to 70%.

(2) Seat the dummy without back support on a surface as specified in S572.35 and in the orientation as shown in Figure 23.

(3) Place the longitudinal centerline of the test probe so that it is .5±.04 in. below the horizontal centerline of the No. 3 Rib (ref. 78051–32) as shown in Figure 23.

(4) Align the test probe specified in S572.35 so that at impact its longitudinal centerline coincides within .5° of a horizontal line in the dummy's midsagittal plane.

(5) Impact the thorax with the test probe so that its longitudinal centerline falls within 2° of a horizontal line in the dummy' midsagittal plane at the moment of impact.

(6) Guide the probe during impact so that it moves with no significant lateral, vertical, or rotational movement.

(7) Measure the horizontal deflection of the sternum relative to the thoracic spine along the line established by the longitudinal centerline of the probe at the moment of impact, using a petentiometer mounted inside the sternum.

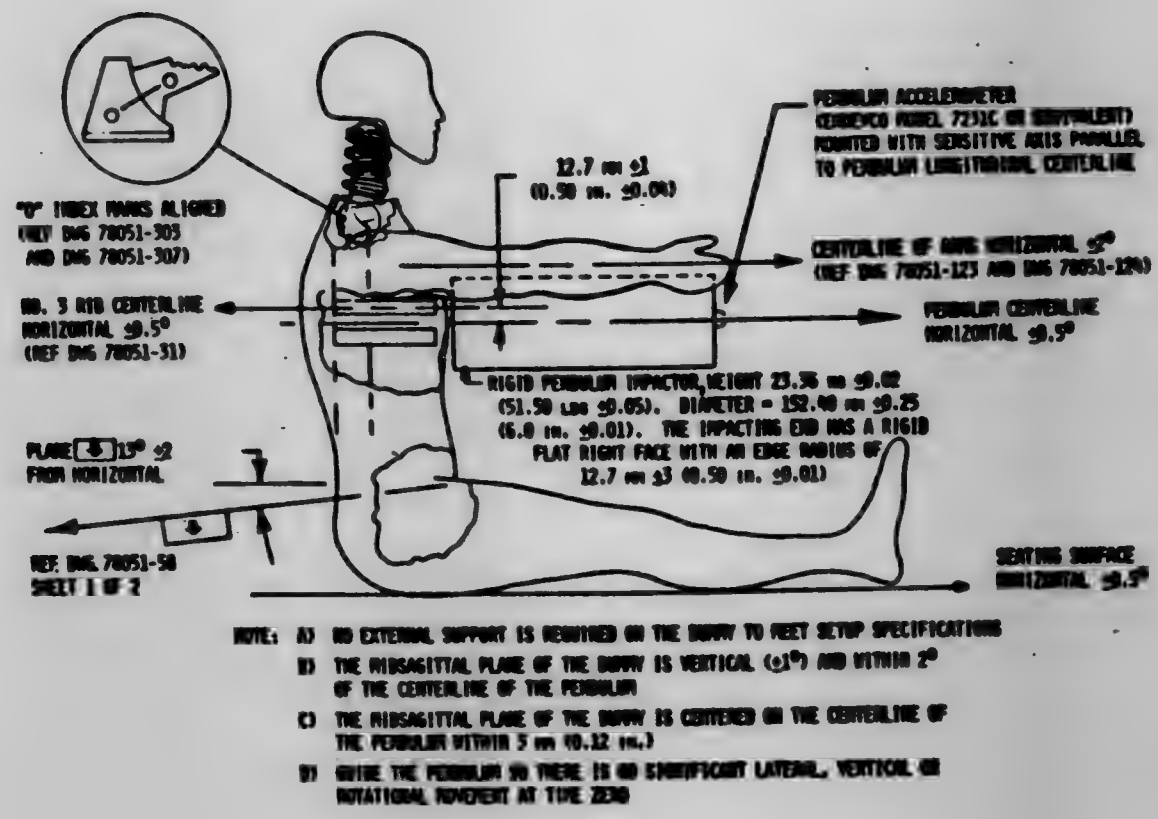
(8) Measure hysteresis by determining the ratio of the area between the loading and unloading portions of the force deflection curve to the area under the loading portion of the curve.

§ 572.34 Limbs.

(a) The limbs consist of assemblies 78051–56 and –57 and 78051–123 and –124 and conform to the drawings subtended.

FIGURE 23

TEST SET-UP FOR THORAX IMPACT RESPONSE



NOTE: A) NO EXTERNAL SUPPORT IS REQUIRED ON THE DUMMY TO MEET SETUP SPECIFICATIONS

B) THE MIDSAGITTAL PLANE OF THE DUMMY IS VERTICAL (±1°) AND WITHIN 2° OF THE CENTERLINE OF THE PENDULUM

C) THE MIDSAGITTAL PLANE OF THE DUMMY IS CENTERED ON THE CENTERLINE OF THE PENDULUM WITHIN 3 mm (0.12 in.)

D) GUIDE THE PENDULUM SO THERE IS NO SIGNIFICANT LATERAL, VERTICAL OR ROTATIONAL MOVEMENT AT TIME ZERO

(b) When each knee of the leg assemblies defined in paragraph (c) of this section are impacted by a pendulum defined in S572.35 in accordance with paragraph (c) of this section at 6.9 ft/sec.±.05 ft/sec., the peak knee impact force, which is a product of pendulum mass and acceleration, shall have the following values:

Pendulum weight (pounds)	Peak knee impact force (pounds)	
	Minimum	Maximum
1.1±.02	157	269
3.3±.06	407	717
11.0±.20	998	1565

(c) *Test Procedure.* (1) The test material consists of leg assemblies (78051–56) left and (–57) right with upper leg assemblies (78051–46) left and (78051–47) right removed. The load cell simulator (78051–319) is used to secure the knee cap assemblies (78051–71) left and (78051–72) right as shown in Figure 6.

(2) Soak the test material in a test environment at any temperature between 66 °F to 78 °F and at a relative humidity from 10% to 70% for a period of at least four hours prior to its application in a test.

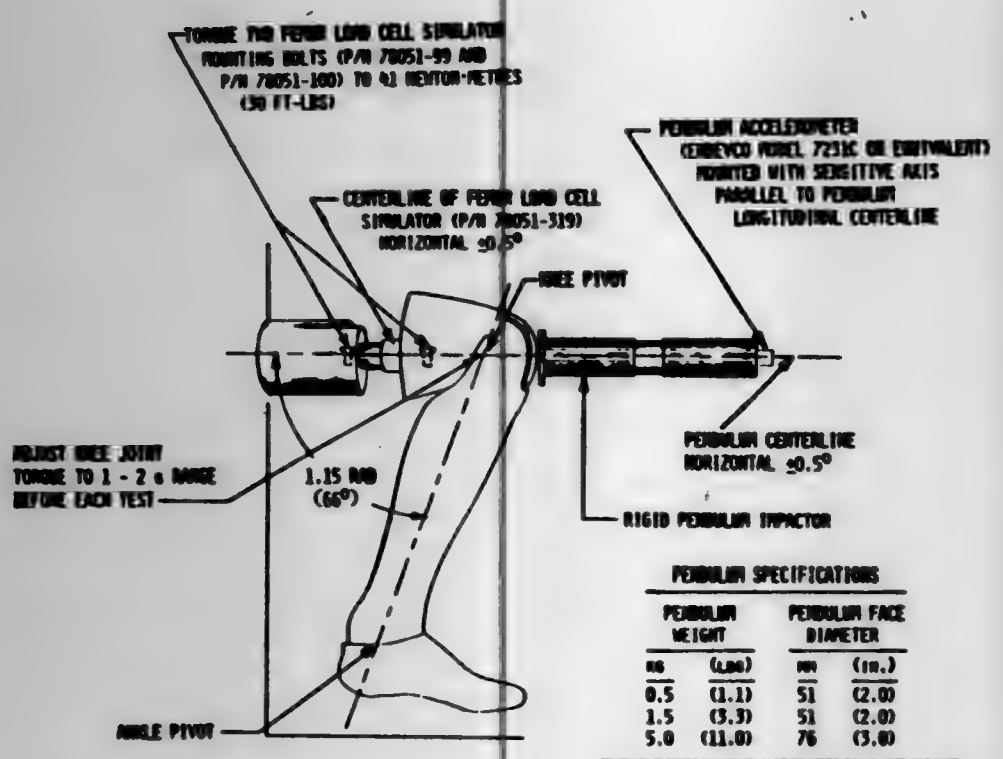
(3) Mount the test material to set up conditions shown in Figure 24 with no contact permitted between the foot and any other exterior surfaces.

(4) Place the longitudinal centerline of the test probe so that at contact with the knee it is parallel and colinear within 2 degrees with the centerline of the femur load cell simulator.

(5) Guide the pendulum so that there is no significant lateral, vertical or rotational movement at time zero.

FIGURE 24

TEST SET-UP FOR FEMUR IMPACT RESPONSE



PENDULUM SPECIFICATIONS

PENDULUM WEIGHT		PENDULUM FACE DIAMETER	
kg	(Lbs)	mm	(in.)
0.5	(1.1)	51	(2.0)
1.5	(3.3)	51	(2.0)
5.0	(11.0)	76	(3.0)

THE IMPACTING END HAS A RIGID FLAT RIGHT FACE WITH AN EDGE RADIUS OF 0.5 mm (0.020 in.) MAXIMUM

NOTE: A) GUIDE THE PENDULUM SO THAT THERE IS NO SIGNIFICANT LATERAL, VERTICAL, OR ROTATIONAL MOVEMENT AT TIME ZERO

B) IMPACT THE KNEE SO THAT THE LONGITUDINAL CENTERLINE OF THE PENDULUM FALLS WITHIN TWO DEGREES OF A HORIZONTAL LINE PARALLEL TO THE FEMUR LOADCELL SIMULATOR AT TIME ZERO

(6) Impact the knee with the test probe so that its longitudinal centerline falls within .5 degrees of a horizontal line parallel to the femur load cell simulator at time zero.

(7) Time zero is defined as the time of contact between the test probe and the knee.

§ 572.35 Test conditions and instrumentation.

(a) The test probe used for thoracic impact tests is a cylinder 6 inches in diameter that weighs 51.5 pounds including instrumentation. Its impacting end has a flat right face that is rigid and that has an edge radius of 0.5 inches. Test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis parallel and colinear to the longitudinal centerline of the cylinder.

(b) The test probe used for impact tests is a cylinder with a rigid flat right face perpendicular to its longitudinal axis for striking as defined in the table below.

Pendulum weight (lbs) (pounds)	Pendulum face diameter (inches)	Edge radius (inches)
1.1	2.0	.02
3.3	2.0	.02
11.0	3.0	.02

The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis parallel and colinear to the longitudinal centerline of the cylinder.

(c) Head accelerometers shall have dimensions and characteristics specified in drawing 78051–136 or equivalent and be mounted in the head as shown on 78051–61 and in the assembly shown in drawing 78051–218.

(d) The neck transducer shall have dimensions and characteristics specified in drawing 78031–300 and be mounted for testing as shown in 70951–63 and in the assembly shown in drawing 78051–218.

(e) The chest accelerometers shall have dimensions and characteristics specified in drawing in 78051–136 or equivalent and be mounted as shown with adaptor assembly 78051–116 for assembly into 78051–218.

(f) The chest deflection transducer shall have dimensions and characteristics specified in drawing 78051–342 or equivalent and be mounted in the chest deflection transducer assembly 87051–317 for assembly into 87051–218.

(g) The thorax and femur impactor transducers shall have dimensions and characteristics of Endevco 7231 or equivalent and be mounted with its sensitive axis parallel to the pendulum's longitudinal centerline.

(h) The femur load cell shall have dimensions and characteristics specified in drawing 78051–265 or equivalent and be mounted in assemblies 78051–46 and –47 for assembly into 78051–218.

(i) The knee slider transducer shall have dimensional and response characteristics specified in 83–5002–01 and be mounted into 79051–16 for assembly into 78051–218.

(j) The tibia and knee clevis and ankle clevis transducers shall be as specified in drawings 83–5003–005, 83–5003–001–002, –005, and 83–5005–001 having response characteristics specified in drawing 83–5003–005 for mounting in 78051–56 and –57 and for assembly into 78051–218.

(k) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAF Recommended Practice J211a, December 1971, with channel classes as follows:

(1) Head acceleration—Class 1000.

(2) Neck force—Class 60.

(3) Thorax acceleration—Class 180.

(4) Thorax deflection—Class 180.

(5) Fermur force—Class 600.

(6) Tibia force and bending moments—Class 600.

(l) Coordinate signs for instrumentation polarity conform to the sign convention shown in Figures 25 and 26.

(m) The mountings for sensing devices have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(n) Limb joints are set at 1g, barely restraining the weight of the limb when it is extended horizontally. The force required to move a limb segment does not exceed 2g throughout the range of limb motion.

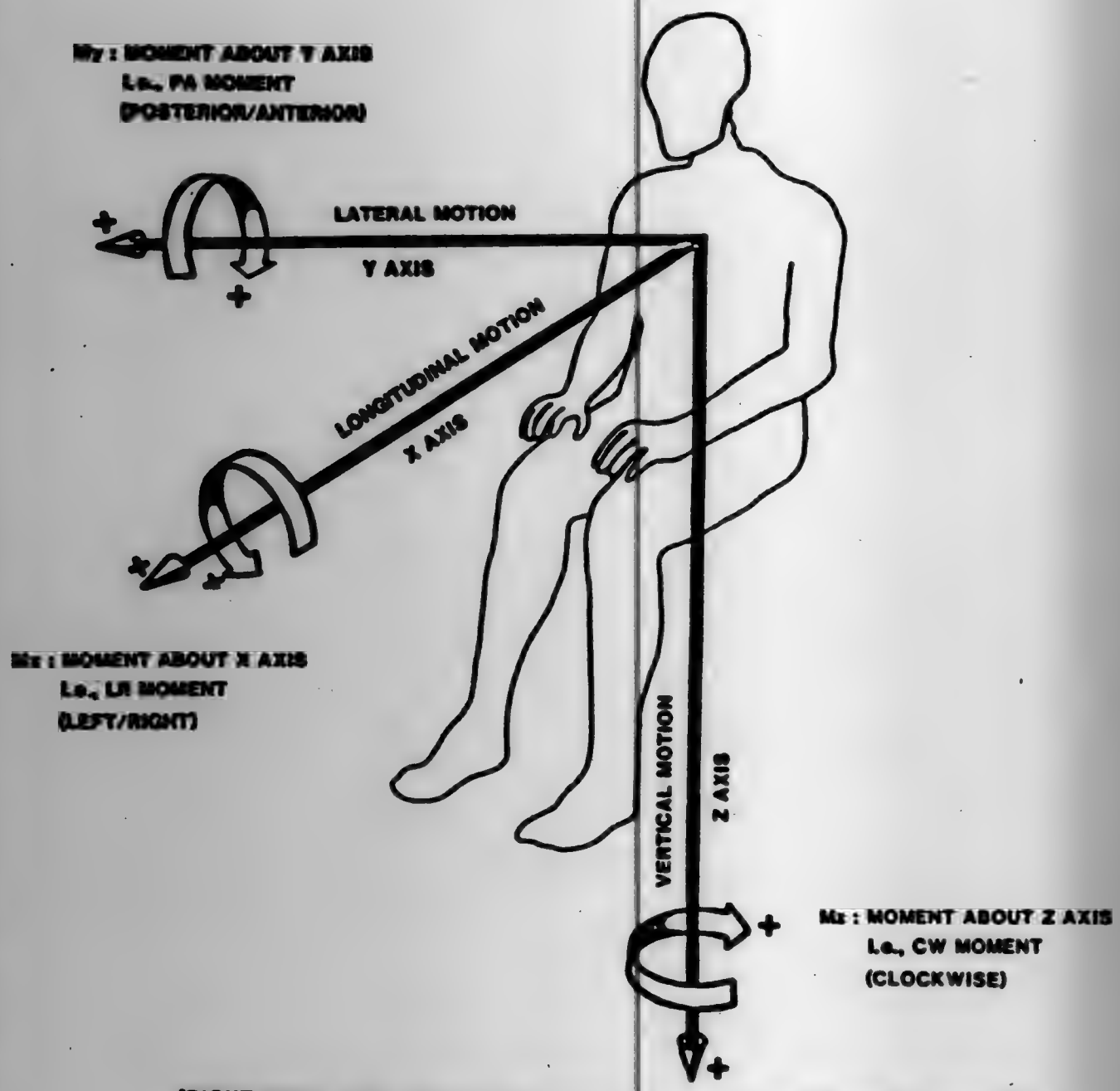
(o) Performance tests are conducted, unless otherwise noted, at any temperature from 69 °F to 72 °F and at any relative humidity from 10 percent to 70 percent after exposure of the dummy to these conditions for a period of not less then 4 hours.

(p) Performance tests of the same component, segment, assembly, or fully assembled dummy are separated in time by a period of not less than 30 minutes unless otherwise noted.

(q) Surfaces of dummy components are not painted except as specified in this part or in drawings subtended by this part.

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FIGURE 25 - COORDINATE SIGN CONVENTIONS

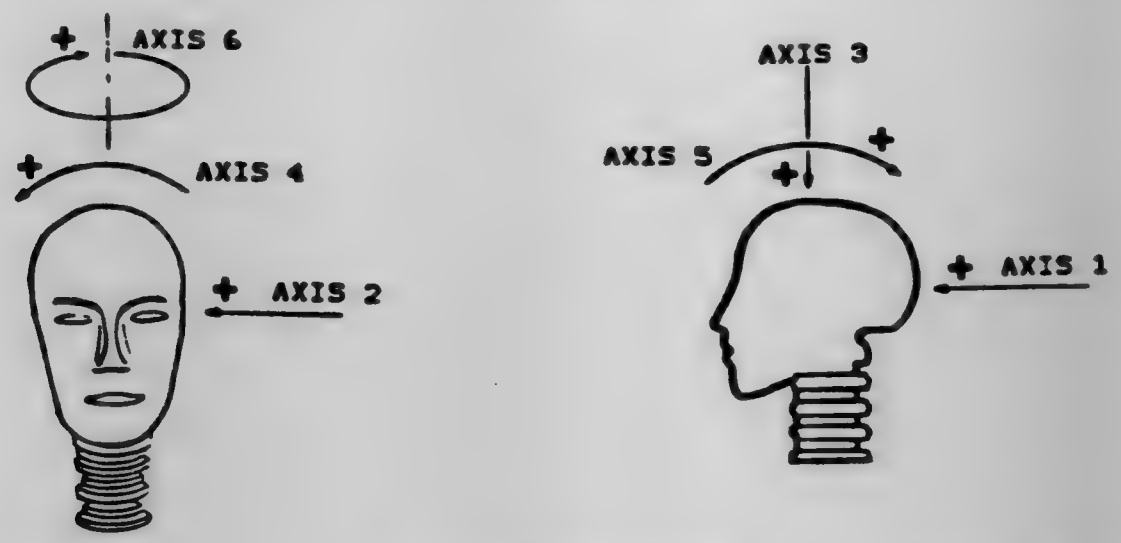


(RIGHT HAND RULE RELATES MOMENT POLARITY TO ITS AXIS POLARITY)

ANY PHYSICAL EVENT IN THE DIRECTION OF ARROWS IS TO BE CONSIDERED POSITIVE

FIGURE 26 - HYBRID III NECK LOAD SIGN CONVENTION

AXIS NO.	DESIG.	MEASUREMENT	OUTPUT POLARITY	CONNECTOR LABELING
1	Fx	PUSH REAR TO FRONT	POSITIVE	AXIS 1 LONG SHEAR
2	Fy	PUSH LEFT TO RIGHT	POSITIVE	AXIS 2 LAT SHEAR
3	Fz	PUSH DOWNWARD	POSITIVE	AXIS 3 VERT LOAD
4	Mx	BEND LEFT TO RIGHT	POSITIVE	AXIS 4 LR MOMENT
5	My	BEND FRONT TO REAR (EXTENSION)	POSITIVE	AXIS 5 AP MOMENT
6	Mz	TWIST CLOCKWISE	POSITIVE	AXIS 6 CW MOMENT



PART 571—[AMENDED]

2. Section S5 of Standard No. 208 (49 CFR 571.208) would be amended by revising S5.1 to read as follows:

§ 571.208 [Amended]

S5. Occupant crash protection requirements.

S5.1 Vehicles manufactured before September 1, 1989, shall comply with either, at the manufacturer's option, 5.1 (a)(1) or (b)(1). Vehicles manufactured on or after September 1, 1989, shall comply with 5.1 (a)(2) or 5.1(b)(2). Vehicles manufactured on or after September 1, 1991, shall comply with 5.1(b)(3).

(a) Impact a vehicle traveling longitudinally forward at any speed, up to and including 30 mph, into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30° in either direction from the perpendicular to the line of travel of the vehicle under the applicable conditions of S8.

(1) For vehicles manufactured before September 1, 1989, the anthropomorphic test devices specified in S8.1.8.1 placed at each front outboard designated seating position shall meet the injury criteria of S6.1.1, 6.1.2, 6.1.3, and 6.1.4.

(2) For vehicles manufactured on or after September 1, 1989, the anthropomorphic test devices specified in S8.1.8.1 placed at each front outboard designated seating position shall meet the injury criteria of S6.1.1, 6.1.2, 6.1.3, 6.1.4 and 6.1.5.

(b) Impact a vehicle traveling longitudinally forward at any speed, up to and including 30 mph, into a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30° in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8.

(1) For Vehicles manufactured before September 1, 1989, the anthropomorphic test devices specified in S8.1.8.2 placed at each front outboard designated seating position shall meet the injury criteria of S6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6, 6.2.7, 6.2.8, and 6.2.9.

(2) For vehicles manufactured on or after September 1, 1989, the anthropomorphic test devices specified in S8.1.8.2 placed at each front outboard designated seating position shall meet the injury criteria of S6.2.1, 6.2.2, 6.2.3, 6.2.4, 6.2.5, 6.2.6, 6.2.7, 6.2.8, 6.2.9, and 6.2.10.

(3) For vehicles manufactured on or after Spetember 1, 1991, the anthropomorphic test devices specified in S8.1.8.2 placed at each front outboard designated seating position shall meet all of the injury criteria of S6.2.

3. Section S5.2 of Standard No. 208 would be revised to read as follows:

S5.2 *Lateral moving barrier crash.*

S5.2.1 Vehicles manufactured before September 1, 1991, shall comply with

either, at the manufacturer's option, 5.2.1 (a) or (b). Vehicles manufactured on or after September 1, 1991, shall comply with 5.2.1(b).

(a) When the vehicle is impacted laterally under the applicable condition on either side by a barrier moving at 20 mph, with a test device specified in S8.1.8.1, which is seated at the front outboard designated seating position adjacent to the impacted side, it shall meet the injury criteria of S6.1.2, and S6.1.3.

(b) When the vehicle is impacted laterally under the applicable conditions of S8, on either side by a barrier moving at 20 mph, with a test device specified in S8.1.8.2, which is seated at the front outboard designated seating position adjacent to the impacted side, it shall meet the injury criteria of S6.2.2, and S6.2.7.

4. Section S5.3 of Standard No. 208 would the revised to read as follows:

S5.3 *Rollover.*

S5.3.1 When the vehicle is subjected to a rollover test under the applicable conditions of S8, in either lateral direction at 30 mph with either, at the manufacturer's option, a test device specified in S8.1.8.1 or S8.1.8.2, which is seated in the front outboard designated seating position on its lower side as mounted on the test platform, it shall meet the injury criteria of either S6.1.1 or S6.2.1.

5. Section S6 of Standard No. 208 would be revised to read as follows:

S6. *Injury criteria.*

S6.1 Injury Criteria for the Part 572, Subpart B, 50th percentile Male Dummy.

S6.1.1 All portions of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S6.1.2 [One of the following two alternatives would be adopted].

Alternative One: S6.1.2 would be revised to read as follows and a new section S6.1.6 would be added.

S6.1.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as multiple of acceleration (the acceleration of gravity), and t1 and t2 are any two points in time during the crash of the vehicle when there is evidence of head contact with any part of the vehicle other than the belt system.

S6.1.6 If there is no evidence of head contact, then the acceleration measured at the center of gravity of the head shall not exceed either of the following:

(a) The upper limits of the curve shown in Figure 1 when measured by the accelerometer whose sensitive axis is oriented to record longitudinal fore and aft accelerations, and

(b) The upper limits of the curve shown in Figure 2 when measured by the accelerometer whose sensitive axis is oriented to record inferior-superior accelerations.

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FIGURE 1 - INJURY ASSESSMENT CRITERION DUE TO FORE/AFT ACCELERATION OF THE HEAD

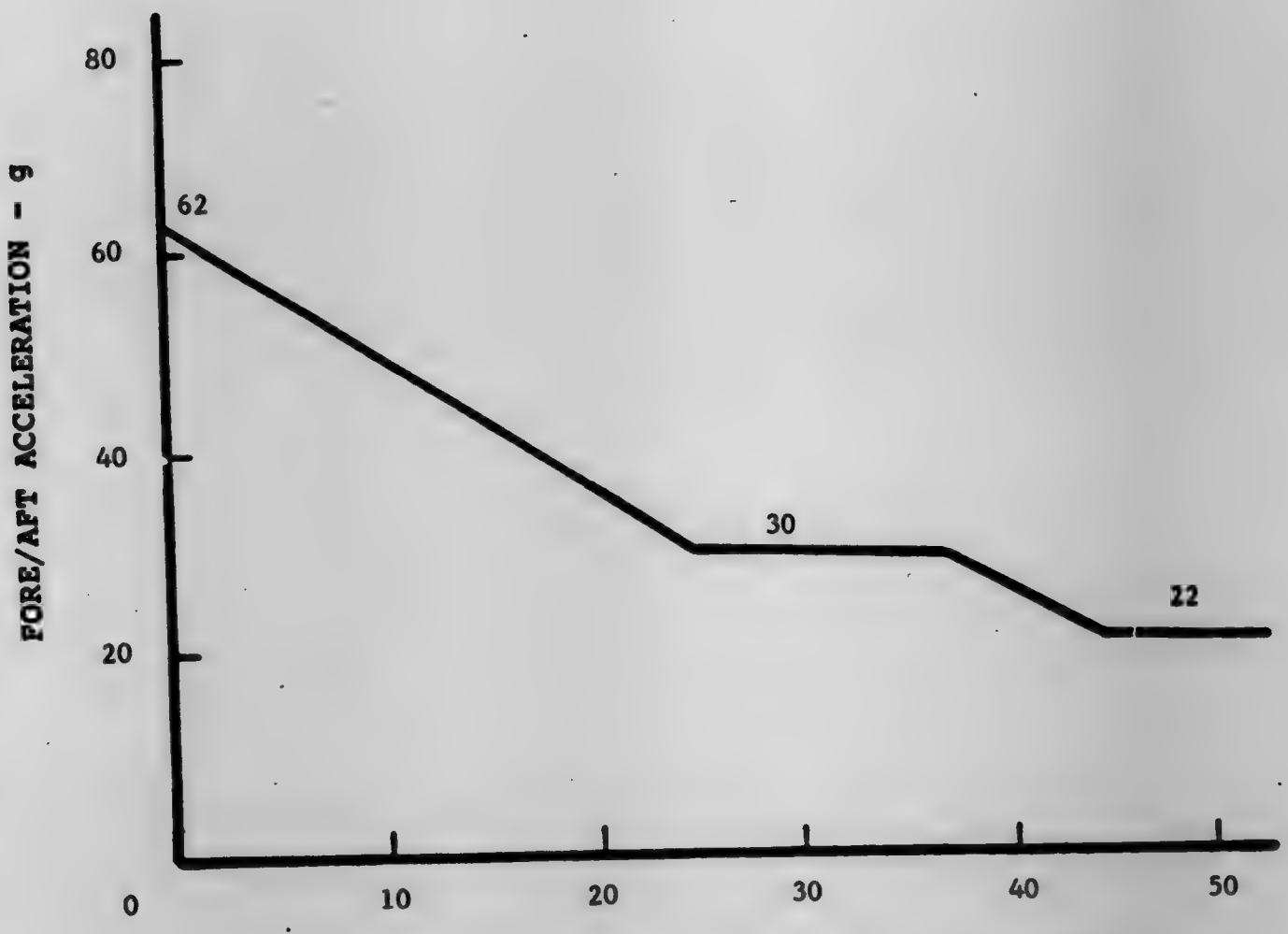
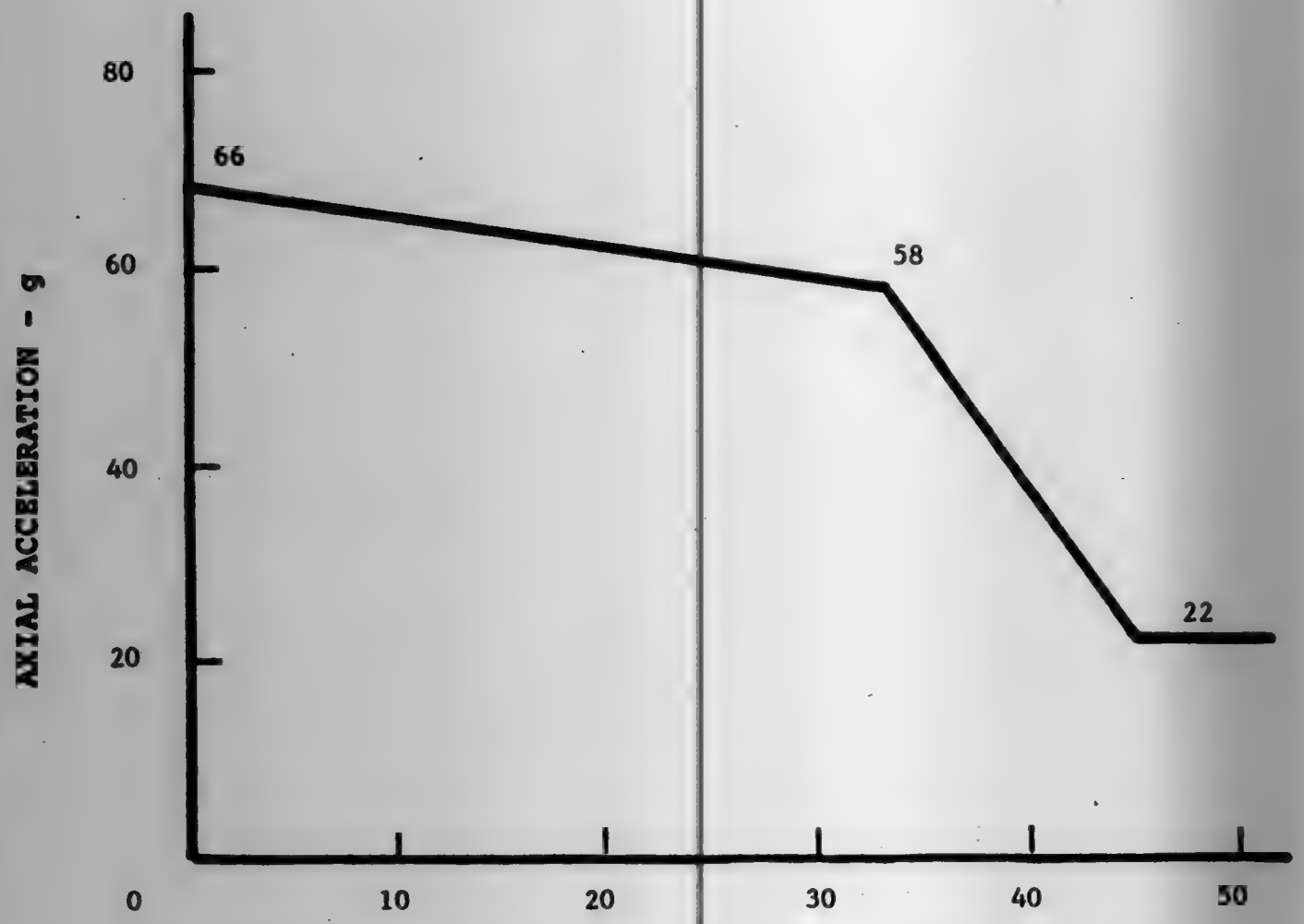


FIGURE 2 - INJURY ASSESSMENT CRITERION DUE TO AXIAL ACCELERATION OF THE HEAD



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Alternative Two: Section S6.1.2 would be revised to read as follows:

S6.1.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity) and t1 and t2 are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

S6.1.3 The resultant acceleration at the center of gravity of the upper thorax shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S6.1.4 The compressive force transmitted axially through each upper leg shall not exceed 2,250 pounds.

S6.1.5 The inner layer of the chamois skin covering the face of the anthropomorphic test dummy shall have not any cuts, tears, or lacerations. The presence of any cuts, tears, or lacerations shall be determined by spreading the inner layer of the chamois skin over a flat translucent surface and examining it to see whether any light is transmitted through the skin.

S6.2 Injury Criteria for the Part 572, Subpart E, Hybrid III Dummy.

S6.2.1 All portions of the test device shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test.

S6.2.2 [One of the following two alternatives would be adopted]

Alternative One: S6.2.2 would be revised to read as follows:

S6.2.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000, where a is the resultant acceleration expressed as multiple of acceleration (the acceleration of gravity), and t1 and t2 are any two points in time during the crash of the vehicle when there is evidence of head contact with any part of the vehicle other than the belt system.

Alternative Two: Section S6.2.2 would be revised to read as follows:

S6.2.2 The resultant acceleration at the center of gravity of the head shall be such that the expression:

$$\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt\right]^{2.5}(t_2-t_1)$$

shall not exceed 1,000 where a is the resultant acceleration expressed as a multiple of g (the acceleration of gravity) and t1 and t2 are any two points in time during the crash of the vehicle which are separated by not more than a 36 millisecond time interval.

S6.2.3 At any time during the crash, the resultant moment (RM) in the neck shall not exceed 140 lbs-ft in flexion (−My) and 42 lbs-ft in extension (+My) when calculated using the expression:

RM=My (lbs-ft)+[.0287(ft)× Fx (lbs)]

(My (bending moment) and Fx (force) are determined from measurements using the equipment specified in drawing 78051–300 incorporated by reference in Part 572, Subpart E of this Chapter.)

S6.2.4 Axial neck compression loads (+z direction) shall not exceed the loading boundaries of the curve shown in Figure 3.

S6.2.5 Axial neck tension forces (−z direction) shall not exceed the loading boundaries of the curve shown in Figure 4.

S6.2.6 Neck shear forces (x direction) shall not exceed the loading boundaries of the curve shown in Figure 5.

S6.2.7 The resultant acceleration calculated from the thoracic instrumentation shown in drawing 78051–218 incorporated by reference in Part 572, Subpart E of this Chapter shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 millisections.

S6.2.8 Compression deflection of the sternum relative to spine, as determined by instrumentation shown in drawing 78051–317 incorporated by reference in Part 572, Subpart E of this Chapter, shall not exceed 2 inches for loadings applied through any impact surface except for those systems which symmetrically load the torso during a crash. For systems which symmetrically load the torso, the thorax deflection shall not exceed 3 inches.

S6.2.9 The force transmitted axially through each femur shall not exceed 2250 pounds.

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FIGURE 3 - INJURY ASSESSMENT CRITERION DUE TO AXIAL NECK COMPRESSION LOADING

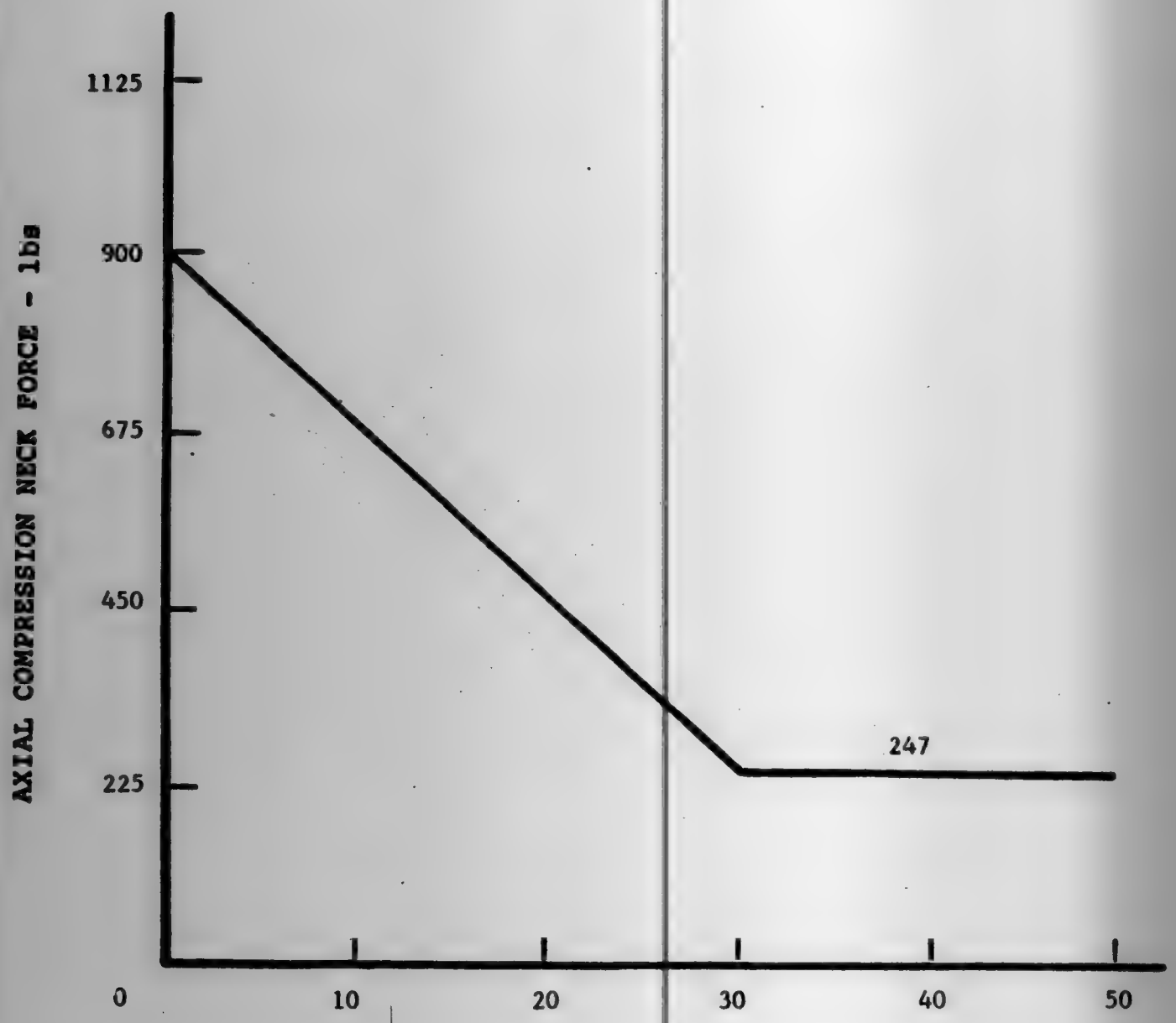


FIGURE 4 - INJURY ASSESSMENT CRITERION DUE TO AXIAL NECK TENSION LOADING

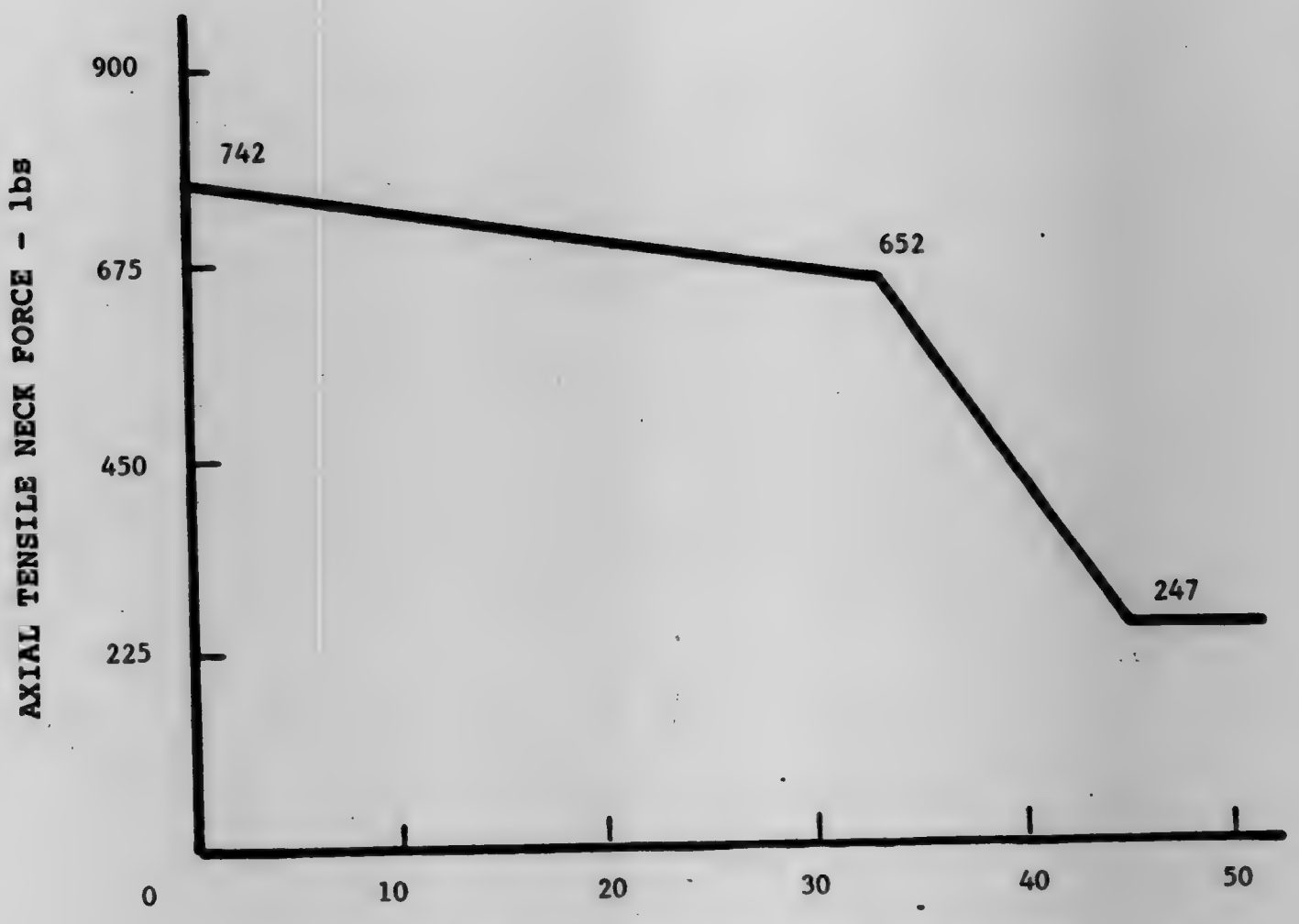
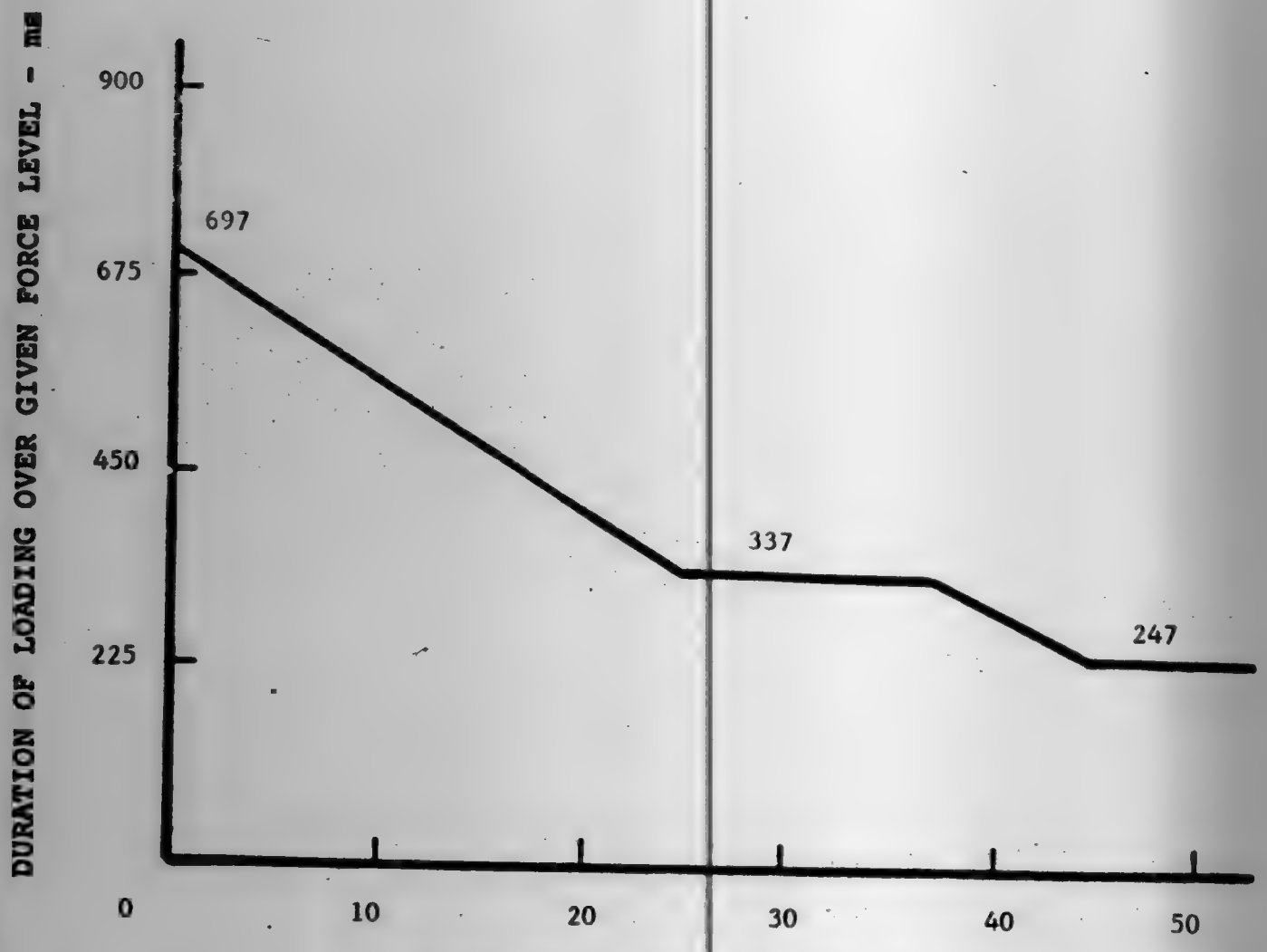


FIGURE 5 - INJURY ASSESSMENT CRITERION DUE TO SHEAR FORCES IN THE NECK IN THE FORE/AFT DIRECTION



BILLING CODE 4910-59-C

S6.2.10 The inner layer of the chamois skin covering the face of the anthropomorphic test dummy shall have not any cuts, tears, or lacerations. The presence of any cuts, tears, or lacerations shall be determined by spreading the inner layer of the chamois skin over a flat translucent surface and examining it to see whether any light is transmitted through the skin.

S6.2.11 Relative translation of femur and tibia at the knee joint measured using the knee shear module assembly specified in drawing 79051–16 incorporated by reference in Part 572, Subpart E of this Chapter shall not exceed 0.6 inch.

S6.2.12 When measured using the equipment and instrumentation specified in drawing 83–5003–001 incorporated by reference in Part 572, Subpart E of this Chapter, the compressive forces on the inside and outside (medial and lateral) legs of the knee clevis shall not exceed 900 lbs on each leg of the clevis.

S6.2.13 Combined bending and compressive loading of the lower leg, when measured using the equipment and instrumentation specified in drawing 83–5003–001 and 83–5005–001 incorporated by reference in Part 572, Subpart E of this Chapter, shall not exceed a value of 1 when calculated using the expression:

$$\frac{M}{M_C} + \frac{P}{P_C} < 1$$

Where M is the resultant bending moment and P is the corresponding axial compression force when measured either at the knee or at the ankle using the tibia specified in drawing 85–5003–001 incorporated by reference in Part 572, Subpart E of this Chapter and

$M_C = 168$ lbs-ft and $P_C = 7{,}920$ lbs.

S6.2.14 Compressive forces on the inside and outside (medial and lateral) ankle clevis shall not exceed 900 lbs on each leg of the clevis.

6. Section S8.1.8 of Standard No. 208 would be revised to read as follows:

S8.1.8 *Anthropomorphic test devices.*

S8.1.8.1 Anthropomorphic test devices used for the evaluation of occupant protection systems manufactured pursuant to applicable portions of paragraphs S4.1.2, S4.1.3, and S4.1.4 shall conform to the requirements of Subpart B of Part 572 of this Chapter for a 50th percentile male dummy.

S8.1.8.2 Anthropomorphic test devices used for the evaluation of occupant protection systems manufactured pursuant to applicable portions of paragraphs S4.1.2, S4.1.3, and S4.1.4 shall conform to the requirements of Subpart E of Part 572 of this Chapter for a Hybrid III male dummy.

7. Section S8.1.9 of Standard No. 208 would be revised to read as follows:

S8.1.9 *Clothing.*

S8.1.9.1 Each Part 572, Subpart B test dummy specified in S8.1.8.1 is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants. Each foot of the dummy is equipped with a size 11EE shoe which meets the configuration, size, sole, and heel thickness specifications of MIL–S–13192 and weighs 1.25±0.2 pounds.

S8.1.9.2 Each Part 572, Subpart E test dummy specified in S8.1.8.2 is clothed in formfitting cotton stretch garments with short sleeves and midcalf length pants specified in drawings 78051–292 and –293 incorporated by reference in Part 572, Subpart E of this Chapter, respectively or their equivalents. Each foot of the dummy is equipped with a size 11EE shoe specified in drawings 78051–294 (left) and 78051–295 (right) or their equivalents.

S8.1.9.3 The head of the Part 572 Subpart B and E test dummy shall be covered with two layers, an inner and an outer, of chamois skin (Napa goat-dry). The total thickness of the pair of chamois skins at the center shall be 1.5±0.1 mm (0.06±0.004 in.) and each chamois skin shall be 0.8±0.2 mm (0.03±0.008 in) thick at its center. The average thickness of each chamois skin, computed from four representative measurements including one at the center, shall also be 0.8±0.2 mm (0.03±0.008 in). The chamois skin with the smaller center thickness shall be used as the outer layer. The two chamois skins shall be taut over the skull cap and secured so that they will maintain their position on the headform during the test. The method of securing shall not interfere with possible laceration to the chamois skins.

8. Section S8.1.13 of Standard No. 208 would be revised to read as follows:

S8.1.13 *Temperature of the test environment*

S8.1.13.1 The stabilized temperature of the test instrument specified by S8.1.8.1 is at any level between 66 °F and 78 °F.

S8.1.13.2 The stabilized temperature of the test instrument specified by S8.1.8.2 is at any level between 69 °F and 72 °F.

9. A new second sentence would be added to the introductory text of section S10 to read as follows:

* * * Unless specified otherwise, the positioning procedures specified in this section apply to both the Part 572 Subpart B and Subpart E test dummies.

10. Section S10.4.3.1 would be added to read as follows:

S10.4.3.1 *Initial pelvic bone adjustment for Part 572 Subpart E test dummy.*

S10.4.3.1.1 *H point location.* Remove the 50 pound force and record the H point location of the test dummy with respect to vehicle reference surfaces vertically and horizontally.

S10.4.3.1.2 *Pelvic bone orientation.* Rotate the pelvic bone until the 3 inch flat surface of the gage (GM drawing 78051–532 incorporated by reference in Part 572, Subpart E of this Chapter) inserted into the gaging hole in the pelvic bone makes an angle 22½±2½ degrees relative to the horizontal. Remove the gage.

11. Section S10.6 would be revised to read as follows:

S10.6. *Head adjustment.*

S10.6.1 *Part 572, Subpart B test dummy.*

S10.6.1.1 Without inducing torso movement, adjust the head so that the surface of the transverse instrumentation mounting platform in the head is horizontal and the head's midsagittal plane coincides with the longitudinal-vertical plane of the vehicle.

S10.6.2 *Part 572, Subpart E test dummy.*

S10.6.2.1 *H point final adjustment.* If needed, adjust the H point location to within ±0.2 in of the horizontal and vertical dimensions established in section S10.4.3.1.1.

S10.6.2.2 *H point final orientation.* Insert into the gaging hole of the pelvic bone the gaging tool (GM drawing 78051–532) and measure the inclination of the centerline of the gaging tool. If the inclination of the gaging tool exceeds ± ½ degree, adjust the pelvic bone assembly by lightly rocking it either clockwise or counterclockwise in the transverse plane without moving the upper part of the torso and without affecting the tolerances of the H point location specified in S10.6.2.1 until the ½ degree is attained. Remove the gage.

S10.6.2.3 *Head adjustment.* If necessary, adjust the upper torso by

rocking it manually and lightly only in the direction which will produce a horizontal orientation ± ½ degree of the transverse instrumentation platform of the head and the midsagittal plane coincides with the longitudinal-vertical plane of the vehicle.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: April 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8671 Filed 4-8-85; 3:14 pm]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Mr. Van Storm to resume rulemaking to improve the fit of the torso portion of lap/shoulder belts. The agency has previously proposed requirements to improve the fit of lap/shoulder belts. Based on the comments received in response to that proposal concerning test repeatability, compromise of belt effectiveness and potential effectiveness of the rule in promoting comfort and convenience, the agency decided not to adopt the proposed requirement. The petitioner has not presented any data to warrant reproposing a belt fit requirement.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Nelson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: In March 1984, Mr. Van Storm filed a petition requesting the agency to reopen its rulemaking to improve the comfort and convenience of safety belts. Mr. Storm's petition was based on his experience with the lap/shoulder belt system in his 1983 Ford F-250 pickup truck. He said, in effect, that the upper torso anchorage point for the torso portion of the driver's safety belt is too high, resulting in the edge of the belt rubbing on the side of his neck when he sits directly behind the steering wheel.

The agency has previously issued a notice of proposed rulemaking proposing to increase the comfort and convenience of safety belts. That December 1979 notice (44 FR 77210) included a provision addressing the problems associated with the fit of the shoulder portion of lap/shoulder belts. However, based on an analysis of the comments received on the proposal, the agency in December 1980 (46 FR 2060) decided not to adopt the proposed belt fit requirements. The decision to drop the proposed requirement was based on the issues, which are discussed in detail in the December 1980 notice, of test repeatability, compromise of safety belt effectiveness and the prospect that the proposal would not provide a satisfactory fit for the segment of the belt user population that have made the most complaints about belt fit (i.e., the user smaller than the 5th percentile female or larger than the 95th percentile male).

The agency continues to believe that the presence of, or the lack of, comfortable safety belts are important factors in whether or not automobile occupants may use safety belts. A proper fitting shoulder belt is certainly an important factor and accordingly, the agency will continue to investigate likely methods and/or procedures that will assure a proper belt fit for as large a user population as possible. Although as a part of the implementation of the automatic restraint requirements of Standard No. 208 the agency intends to apply comfort and convenience requirements to automatic belts, the agency is not in possession of any new information and the petitioner has not presented sufficient information that would justify the resumption of rulemaking on the previous proposal regarding the fit of the torso portion of a Type II seat belt assembly.

(Secs. 103, 119 and 124 Pub. L. 89-563; 80 Stat. 718 (15 U.S.C. 1392, 1407 and 1410); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on April 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8670 Filed 4-8-85; 3:14 pm]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition by the Committee of Common Market Automobile Constructors (CCMC) to amend the Head Injury Criterion (HIC) limit of Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). The petitioner sought to increase the HIC value from 1000 to 1500. After reviewing the data presented by the petitioner, NHTSA has determined that CCMC has not provided sufficient justification to change the current HIC value. The agency considers that HIC value to be the best currently available head injury indicator and the best currently available quantitative estimator of the protective levels of vehicle restraint systems.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley H. Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: This notice denies a petition for rulemaking to amend Safety Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208), offered by the Committee of Common Market Automobile Constructors (CCMC). Safety Standard No. 208 specifies performance requirements, based in part on forces and accelerations measured in test crashes, for automatic restraint systems. Although the standard also regulates manual belts, it set no dynamic crash protection requirements for those belts. The purpose of the performance requirements of Safety Standard No. 208 is to reduce the number of fatalities and the severity of the injuries in motor vehicle crashes.

The use of a Head Injury Criterion (HIC) limit of 1000 for the protection of occupants was first proposed and adopted by the agency in 1972 (37 FR 5507). The HIC is calculated from readings from instrumented test dummies in simulated crashes. Based on available research, the agency concluded that prohibiting the HIC from exceeding 1000 would prevent or reduce injuries in actual crashes.

CCMC Petition

This notice addresses the portion of the petition that requested the standard be amended to change the HIC from 1000 to 1500. CCMC also petitioned for an amendment that would make the HIC applicable only to those instances in which a specific head contact occurs. That portion of CCMC's petition is addressed in a separate notice appearing elsewhere in today's **Federal Register** which proposes a number of

amendments to Standard No. 208. The technical material supporting the petition is based primarily on information gathered from tests and crash data on manual lap/shoulder belt systems. The portion of the petition concerning raising the HIC value to 1500 is based on four principal agruments:

(1) The original Wayne State impact tolerance data, on which the HIC limit of 1000 was based, does not reflect the interior surface impact characteristics of modern vehicles which consist of head contacts of longer time duration and permit accordingly higher HIC values.

(2) Cadaver research shows that moderate brain injuries only begin to occur when the HIC exceeds 1500 for long durations.

(3) Test dummy impact responses exaggerate the HIC values up to 80 percent over equivalent cadaver responses.

(4) The HIC limit of 1500 would permit a better selection of optimized designs and a better redistribution of impact forces on various portions of the human body.

Wayne State University Impact Study

CCMC's first basic assertion was that the original Wayne State impact tolerance data, from which the HIC limit of 1000 was developed, do not take into account the interior surface impact characteristics of modern vehicles. The CCMC petition argues that the Wayne State study shows a HIC of 1000 is valid for impacts of time intervals less than 8 milliseconds. CCMC claims that the head contact zones in modern cars deform in a manner that leads to much longer time periods of contact and therefore a HIC limit of 1000 is inappropriate.

During the calculation of the HIC, a maximum value for the HIC function is generated for each possible time period. CCMC did not, however, in its petition consider whether HIC calculations of head contacts at shorter time periods may exceed the critical HIC value. CCMC relied on the assumption that modern car designs produce only longer time periods of contact that those addresses in the Wayne State study.

A NHTSA study has found that shorter duration head contacts are a major safety problem and must be considered. (W.R.S. Fan. *Head Impacts with A-Pillar and Roof Edge Components.* NHTSA Interim Report S4–T01, November 10, 1982.) Raising the HIC level to 1500 during contact would expose the head to considerably higher impulse levels than is currently allowed. Experimental data indicate that increasing the HIC level to 1500 would increase the probability of serious injury from 16 percent of 56 percent. (Position Paper on HIC Levels. Technical Report by the Ad Hoc Committee to the U.S. Delegation to ISO/TC22/SC12/WG6, Detroit, MI, May 1983.)

Cadaver Research

The second basic argument by CCMC is that serious brain injuries only start to occur when HIC values exceed 1500 for head impacts. Using a medical technique which detects vascular bran lesions. CCMC argues that its research supports an increased HIC level of 1500.

CCMC's claim that brain injuries only start to occur at levels in excess of a HIC of 1500 for longer duration impacts appears to be contradicted by the petitioner's own data. Figure 5 of the CCMC petition illustrates that in 19 frontal drop tests a HIC of 1500 or above would produce six injuries at severe/dangerous head injury levels and above. The same figure shows that a HIC 1000 unit would result in two injuries. Also, Figure 6 of the CCMC petition demonstrates that, in case of direct head impacts, the HIC limit of 1500 would produce a much higher probability of head injuries at moderate, serious and severe/dangerous levels than the HIC 1000 limit.

Furthermore, clinical studies of injured patients strongly suggest that neurological lesions may be just as predominant and life threatening in car crashes as the vascular lesions identified in the tests cited by CCMC. At present, there is no known technique capable of identifying neurological lesions in cadavers. Because of the clinical evidence on the importance of neurological lesions and the lack of technology to identify neurological lesions in cadavers, the agency cannot accept CCMS's argument that the HIC level be rasied to 1500 on the basis that there have been no observed vascular injuries in cadavers.

Test Dummy Response

CCMC also criticized present HIC measurement test devices by stating that the deceleration response of current test dummies for short duration contacts of less than 8 milliseconds is about 80 percent higher than instrumented cadavers for HIC values in the 1000 to 2000 range. It is true that for very short duration impacts, the test dummy's head response in frontal impacts is somewhat higher. However, for longer duration contacts, greater than 8 milliseconds, this difference is nearly eliminated. (Dennis Schneider *et al. ATD and Cadaver Head Response to Impact Loading,* presentation at the 11th Annual International Workshop on Human Subjects for Biomechanical Research, October 16, 1983, San Diego, California.)

Further, CCMC's reference to the incompatability between dummy and cadaver responses points to a 1971 report which preceded the Part 572 dummy by 4 to 5 years and was prior to the agency's regulation of test dummies. The Part 572 dummy's head performance results, while not mirroring the response range of cadavers, shows a reasonably good overlap under similar test conditions.

Efficient Vehicle Design

CCMC's final basic assertion is that the HIC limit of 1500 would permit a better selection of fuel and material efficient vehicle designs and a more appropriate loading distribution between various vehicle occupant body segments. This claim appears to be focused on the petitioner's inclination to provide more restraint of the lower torso at the pelvis area and permit more upper body movement, which may increase the possibility of head impact contacts.

NHTSA's extensive test work with restrained vehicle occupants illustrates that it is not in the interest of safety to allow the occurrence of head impacts at the suggested levels until clear scientific and safety data are established in terms of magnitudes, load distributions, directions and duration justifying such impacts. Furthermore, CCMC fails to support its assertion that a HIC 1500 value is more efficient and cost effective with any analysis or examples.

Conclusion

Any revision of the HIC value must be based on solid scientific evidence and sound biomechanical research data. CCMC's petition fails to provide an adequate basis for revising the current HIC value.

The agency recognizes that more detailed head injury prevention criteria are needed. To this end, NHTSA and other interested organizations are continuing multipronged research efforts using experimental, analytical, statistical, and accident investigation techniques to develop new criteria. In particular the agency is working to develop new test equipment and instruments to measure precisely such critical injury parameters as the angular acceleration of the head, pressure distribution on the face, direction and phasing of loading, and the characteristics of the neck which are critical in the control of head rotations.

Various available field injury and experimental data support the continued use of a HIC of 1000 until new head injury criteria are developed. C.W. Gadd

in the Dulles Head-Neck Injury Workshop reviewed the Wayne State data and found broad support for it and the HIC 1000 limit. (Proceedings—*Consensus Workshop on Head Neck Injury Criteria.* Dulles Airport, March 1981. Report published by NHTSA, Washington, D.C., June 1983.) Since then other experts in the field have published additional supportive material. (M. Nakamura, et al. SAE No. 801303. Proceedings, 24th Stapp Car Crash Conference. SAE, Warrendale, PA, 1980; *Position Paper on HIC Levels.* Technical Report by the Ad Hoc Committee to the U.S. Delegation to ISO/TC22/SC12/WG6. Detroit, MI, May 1983.)

NHTSA's judgment, as well as that of the Ad Hoc Committee of Group of Experts to the U.S. ISO delegation, is that a HIC of 1000 is a more conservative protection criteria than HIC 1500 and provides a better assurance of protection to a larger portion of U.S. vehicle occupants. Based on the foregoing, NHTSA denies CCMC's request for proposed rulemaking to raise the HIC limit to 1500.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–8667 Filed 4–8–85; 3:14 pm]

BILLING CODE 4910–59–M

federal register

Friday
April 12, 1985

Part V

Department of Transportation

Federal Highway Administration and National Highway Traffic Safety Administration

49 CFR Parts 393 and 584

Splash and Spray Suppression Devices

Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Docket No. MC-115; Notice No. 85-4]

Splash/Spray Suppression Devices

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to require: (1) The installation of splash/spray suppression devices on all truck tractors and certain semitrailers and trailers built beginning 1 year from the effective date of the Final Rule on this subject, and operated on the Interstate Highway System on and after a date 4 years from the effective date of a final rule; and (2) the maintenance of all such devices, whether retrofitted or installed when the vehicle was manufactured. This rulemaking is intended to implement section 414 of Pub. L. 97-424 signed January 6, 1983, concerning the reduction of splash and spray from truck combination units operated on the Interstate Highway System.

DATE: Comments must be received on or before May 28, 1985.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, D.C. 20590. All comments will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Congress, in section 414 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424, 96 Stat. 2097, 2161, January 6, 1983, declared that "visibility on wet roadways on the Interstate Highway System should be improved by reducing, by a practicable and reliable means, splash and spray from truck tractors, semitrailers, and trailers."

The Act also provides that "The Secretary shall by regulation . . . establish minimum standards with respect to the performance and installation of splash and spray suppression devices." These standards would apply to new vehicles manufactured after 1 year from the effective date of a final rule, and to 4 years from the effective date of a final rule. The Secretary has delegated to the Federal Highway Administration (FHWA) the responsibility for establishing minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, or trailers in use which would conform to National Highway Traffic Safety Administration (NHTSA) performance standards contained in 49 CFR Part 584.

The NHTSA and FHWA have been assigned joint responsibility to establish minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, or trailers. The NHTSA has been delegated the authority to establish minimum standards for new vehicles. The FHWA was delegated the authority to establish minimum standards for vehicles in use.

Traditional "mud flaps" are intended to reduce the rearward projection of mud, stones, and other materials. Many states require mud flaps on heavy commercial motor vehicles. Unfortunately, research has proven that these conventional flaps made of hard rubber or plastic help increase the generation of vehicle spray because of water striking their hard surfaces. Consequently, the search for solutions to reduce splash and spray has gone beyond the traditional "mud flap." Field and full scale testing of many designs has been conducted over the past 17 years, with gains in spray reduction achieved in some cases.

The latest research in this area was performed for the NHTSA by Systems Technology, Inc.[1] (STI), and provides most of the information in support of this rulemaking. This study was a follow-up to the previous research completed by STI for the FHWA, and was intended to both develop an inexpensive laboratory test method for testing effectiveness and to obtain real world operational performance and life cycle cost data on representative products. These products are marketed for their spray reduction performance by various manufacturers for use by the trucking industry. It appears that certain of these flaps may have the potential to be effective, reliable, and practical.

[1] Johnson, Walter. A., Shapiro, Steve, "Assessment of Truck Splash and Spray Suppression Devices," System Technology, Inc., Technical Report No. 1170-1, March 1983.

The NHTSA has published elsewhere in today's Federal Register proposed minimum standards for the performance and installation of splash and spray suppression devices for all new truck tractors, semitrailers, and trailers manufactured on or after a year from the effective date of the final rule. The detailed discussion on the causes of spray, the proposed standards, and the various research efforts set forth in the NHTSA proposed rule will not be repeated here. The FHWA proposes to require these vehicles to be maintained in accordance with the standards established by the NHTSA. It is also proposed that vehicles manufactured prior to one year from the effective date of the final rule be retrofitted by a date 4 years from the effective date of the final rule, with flaps and side skirts that comply with the NHTSA performance standards in effect at that time.

It is being proposed that when suppression devices are replaced they shall comply with the NHTSA performance standards in effect at the time of replacement. This will ensure use of devices that provide the greatest visibility improvement. It is also being proposed that these devices be maintained in conformity with the standard in effect at the time they were installed on the vehicle or when replaced.

It is also anticipated that there will be certain configurations of vehicles in use on which it will be impossible to install the devices in accordance with the installation standard promulgated by the NHTSA. Our purpose in this rulemaking action is to achieve a significant reduction in splash and spray at the least possible cost to the trucking industry. Therefore, modification of a vehicle's configuration will not be required inasmuch as we believe that the cost of such modification would outweigh the benefits to be achieved. However, it is proposed that backflaps be installed at any designated location unless it is impractical, such as between a steering axle wheel and battery box where there is less than 2 inches clearance. Auto carriers may be an example of a vehicle configuration that cannot be retrofitted in conformity with the requirements of the installation standard. Comments from industry would be helpful in establishing retrofit requirements on these types of combinations. Comments to the docket describing vehicles having retrofit problems will be addressed in the final rule.

Currently, there is no Federal requirement for any type of flap or suppressant device for vehicles using

the Interstate System. Various alternatives were considered for requiring in-use vehicles to be retrofitted with suppressant devices. These included flaps with a tunnel test visibility improvement of 35 percent or greater, to be located as follows: (1) Flaps behind the rearmost wheels of the trailer or semitrailer only; (2) flaps behind each of the three axle groups, i.e., steering, drive and rearmost axle of the semitrailer; (3) side skirts, in addition to (2) outboard of the rearmost axle group on the trailer (both sides); and (4) the same as three plus side skirts outboard of both the steering axle and drive axle groups. ("Drive axle group" is referred to by NHTSA in its proposal as the "nose of the trailer"). Options 5 through 8 are identical to 1 through 4, respectively, but use flaps with a minimum tunnel test visibility improvement of 75 percent. Option number (8) is being proposed herein since the manufacturers of the suppression devices have until (4 years from the effective date of the final rule).

It should be noted that we not know the relationship between the rating produced in the spray tunnel tests and visibility improvement in real world situations. (This is also addressed in the NHTSA document.) Data developed by installing current spray suppressant flaps on test vehicles show that spray/suppressant flap with a rating of 75 percent (tunnel test generated) or better may be required to produce improvements in visibility that are generally perceptible. Data developed during vehicle testing of one of the spray suppressant flaps conducted by the NHTSA indicate that the spray reduction percentage registered in the spray tunnel tests may have to be reduced by a factor of 3 to approximate real world visibility improvement. Comment is invited on this relationship as well as on the relationship of various degrees of spray reduction or visibility improvement to actual safety benefits (e.g., reduction in accidents). However, further tests are being conducted to verify the real world performance factor for a number of different spray suppression devices. Meanwhile, the spray tunnel rating for flaps cited above should not be considered as the percentage of perceptible visibility improvement when those flaps are used on vehicles operated over the highways.

After careful consideration of all of the alternatives set forth above, we propose that suppression devices that meet the NHTSA standard (35% or 50% or 75%, as discussed in the NHTSA document) be installed as follows:

1. Behind both wheels of the steering axle of a truck tractor;
2. Behind each wheel of the rearmost truck tractor axle;
3. Behind each wheel of the rearmost semitrailer axle;
4. Behind each wheel of the forward axle or rearmost axle of a forward dual axle of a full trailer;
5. Behind each wheel of the rearmost axle of a full trailer;
6. Behind each wheel of the rearmost axle of a converter dolly.

One device would be permitted behind the dual wheels as long as that device is as wide as both wheels. Side skirts would also be required on the front and rear of all van, flat bed, and tank semitrailers, and full trailers. Tests show that the combination of flaps and side skirts provide a greater reduction in spray than flaps only. We propose, however, to exempt certain trailers from the side skirt requirement. These include containers, container chassis, and pole trailers. This action will provide industry additional time to develop a satisfactory skirt before its use is required on all vehicles.

Allowing for new, properly equipped vehicles, the NHTSA estimates that 1.2 million tractors and 3.2 million trailers will have to be retrofitted between 1 and 4 years from the effective date of the final rule. The majority of the trailers are either vans, platform flatbeds, or tank trailers. It is on these configurations that the backflap/side skirt systems have been tested. These configurations of vehicles are the most predominant combination units in operation. Installation of the device on these types of units would appear to provide the greatest benefit that such service can have.

This rulemaking does not intend to limit suppression devices to those proposed herein. There may be other systems or devices developed that will reduce splash and spray to the same extent or greater. Therefore, this notice solicits comments in response to the questions set forth below regarding devices currently available and other systems or devices that may be effective. Comments received will also be considered in the NHTSA rulemaking.

Questions

Information is solicited regarding the effectiveness of current splash and spray devices:

1. To what extent, if any, do the devices currently used reduce spray?
2. Does the snow buildup behind the wheels of the steering axle have any effect on the steering ability of the vehicle?
3. Do the current devices withstand the extreme cold and buildup of ice or snow?
4. Will the current mud flap brackets withstand the additional weight of the spray suppressant flaps or will they have to be replaced?

Other Systems or Devices

5. What other systems or devices now available or being developed should be considered that will effectively reduce splash and spray?
6. What performance standard, i.e., vehicle performance, etc., should be used in determining the effectiveness of the system or device specified above?
7. What documentation should be required to support the results?

Regulatory Impact

This proposed regulation is considered to be major under Executive Order 12291 and significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The agency's determination that this proposed rule is major and significant is based primarily on the substantial cost that could result from retrofitting and maintaining spray suppression devices. The estimated costs are explained below. A preliminary regulatory impact analysis and initial regulatory flexibility analysis have been prepared and are available for inspection in the public docket. Copies may also be obtained by contacting Mr. Neill Thomas at the address provided under the heading "FOR FUTHER INFORMATION CONTACT."

With regard to the assessment of the impact this proposal will have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96-354), the reasons for, objectives, and legal basis for this proposed action have been previously explained in this notice. The impacts of this proposed regulation on small entities are discussed in the initial regulatory flexibility analysis. This proposal appears to be favorable to small manufacturers of splash/spray suppression devices if they are capable of meeting performance levels established by the rule. However, there are also a large number of independent truck-tractor/trailer owner-operators who would be required to purchase flaps and skirts. The cost of the approximately 140,000 owner-operators is estimated to be $33,320,000. In keeping with the intent of the Regulatory Flexibility Act, the FHWA encourages all small entities to comment on the impacts of this NPRM.

Estimated Costs

It is estimated that the initial retrofit cost per tractor/semitrailer combination for back flaps at three axle locations and side skirts at both steering axle wheels and both sides at the front and the rear of the trailers, based on 1982 dollars, would be between $238 and $306. It has also been estimated that the total cost to the industry, including maintenance/replacement and decreased fuel efficiency associated with the added weight, would bring the lifetime retrofit cost to approximately $620 million (1982 dollars).

It is estimated that the purchaser of a new tractor/semitrailer combination will incur additional costs of $100 per tractor and $61 per semitrailer.

In the NHTSA NPRM published concurrently with this document, a number of questions are raised and comments requested concerning issues related to the cost, reliability, and practicability of splash and spray suppression devices. We direct commenters' attention to this discussion since the decisions made by NHTSA in its rulemaking will directly affect the requirements and costs imposed on the motor carrier industry as a result of this rulemaking by FHWA.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers—parts and accessories.

(Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety)

(49 U.S.C. 2314 and 3102; 49 CFR 1.48)

Issued on: April 8, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

In consideration of the foregoing, the Federal Highway Administration proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 393 as set forth below.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Part 393, Subpart G, is amended by adding a new § 393.74:

Subpart G—Miscellaneous Parts and Accessories

§ 393.74 Splash/spray suppression devices.

All truck tractors, semitrailers, and trailers being operated on the Interstate Highway System shall be equipped with splash and spray suppression devices as follows:

(a) *Vehicles manufactured on and after (a date 1 year from the effective date of this Subpart)*—Truck tractors, semitrailers, full trailers, and converter dollies manufactured on and after (a date 1 year from the effective date of this Subpart) equipped with splash and spray suppression devices in conformity with standards contained in Part 584 of this title shall be maintained in conformity with the standard in effect at the time of manufacture or replacement of the suppression devices.

(b) *Vehicles manufactured before (a date 1 year from the effective date of this Subpart)*—Truck tractors, van, flatbed and tank semitrailers, trailers, and converter dollies manufactured before (a date 1 year from the effective date of this Subpart), shall be equipped with splash/spray suppression devices on or before (a date 4 years from the effective date of this Subpart), as follows:

(1) Devices that conform to the minimum performance standard, in effect on (a date 4 years from the effective date of this Subpart), as specified in Part 584 of this title, shall be installed in accordance with the installation requirements of that part, or as near thereto as the vehicle configuration permits.

These devices shall be installed behind—

(i) Both wheels of the steering axle of a truck tractor;

(ii) Each wheel of the rearmost axle of a truck tractor;

(iii) Each wheel of the rearmost semitrailer axle;

(iv) Each wheel of the forward axle or rearmost axle of a forward dual axle of a full trailer;

(v) Each wheel of the rearmost axle of a full trailer;

(vi) Each wheel of the rearmost axle of a converter dolly.

(2) Skirts that conform to the standard specified in Part 584 of this title are required on both wheels of the steering axle and each side at the front and rear of van, flat bed, and tank semitrailers and all full trailers.

[FR Doc. 85-8748 Filed 4-9-85; 1:42 pm]

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National Highway Traffic Safety Administration

49 CFR Part 584

[Docket No. 83-05; Notice 1]

Splash and Spray Suppression Devices

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Assistance Act declares that visibility on wet roads should be improved by using practicable and reliable means for reducing splash and spray generated by truck tractors, trailers, and semitrailers. To this end, Congress directed the Department of Transportation to establish three types of standards. These are:

(1) Minimum standards for the performance of spray suppression devices to be installed on truck tractors, trailers, and semitrailers;

(2) Installation standards for those spray suppression devices on new truck tractors, trailers, and semitrailers, and a requirement that all such vehicles for use on the Interstate system be equipped with the devices beginning one year after the standards are established under paragraph (1); and

(3) Installation standards for those spray suppression devices on truck tractors, trailers, and semitrailers already in service, and a requirement that all such vehicles in service on the Interstate system be equipped with the devices beginning four years after the standards are established under paragraph (1).

This notice proposes to establish standards regarding the first two requirements shown above. The third requirement will be addressed in a separate notice published elsewhere in today's **Federal Register** by the Federal Highway Administration.

With respect to the first requirement listed above, NHTSA has tentatively determined that the only splash and spray suppression devices which could be practicable and reliable at this time are spray suppressant flaps and side skirts. Spray suppressant flaps are similar to plain mudflaps, but the surface of these flaps which faces the tires is designed so as to reduce the amount of spray formed by the water striking that surface.

This notice seeks comments on several alternative requirements for spray suppressant flaps installed on new vehicles manufactured on and after the day one year after a final rule has been published for this rulemaking action. The preferred alternative is to require those flaps to achieve a spray reduction of at least 35 percent, as measured in a spray tunnel described herein. The other alternatives are to specify a reduction of either 50 percent or 75 percent for those flaps. It may not be feasible for most flap manufacturers to design and produce flaps that achieve a spray reduction greater than 35 percent within one year after publication of a final rule. The agency

tentatively concludes, however, that production of flaps that achieve a reduction of 75 percent would in any event be feasible four years after publication of a final rule, and therefore proposes that spray suppressant flaps used on vehicles manufactured on and after that date achieve a spray reduction of at least 75 percent.

Side skirts are flat surfaces which hang down from the side of a vehicle and prevent water from escaping into the area where it could generate spray next to the wheels. The data currently available to this agency indicate that size is the key variable governing side skirt performance and that skirts which are similar in size, although different in shape, offer substantially identical performance. Hence, this notice does not propose any performance requirements for side skirts.

With respect to the second statutory requirement shown above, this notice proposes detailed installation requirements for mounting spray suppressant flaps and side skirts on new vehicles. The flaps would be required to be installed behind the drive and sterring axles of all new tractors, and behind the rearmost tires for each axle position on new trailers and semitrailers manufactured one year after publication of a final rule. Side skirts would be required to be installed over the rear axle position of all new flatbeds, vans and tank trailers and semitrailers manufactured on and after the same date. Side skirts would be required to be installed over the steering axle position of new tractors and over the nose of new trailers and semitrailers beginning with those manufactured four years after publication of a final rule.

DATES: Comments must be submitted not later than June 11, 1985. The proposed effective date for the requirements, except § 584.5(c)(2)(iii) and § 584.6(a)(2) is one year after publication of a final rule. The more stringent requirements in § 584.5(c)(2)(iii) and § 584.6(a)(2) would become effective four years after publication of a final rule.

ADDRESS: Comments should refer to Docket No. 83–05 and be submitted to: Docket Section, Room 5109, National Highway Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8:00 a.m. to 4:00 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Arthur H. Neill, Jr., Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1750).

SUPPLEMENTARY INFORMATION: On January 6, 1983, the President signed into law the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) (hereinafter "STAA"). Section 414 of the STAA (49 U.S.C. 2314), as amended by section 223 of the Motor Carrier Safety Act of 1984, reads as follows:

(a) The Congress declares that visibility on wet roadways on the Interstate system should be improved by reducing, by a practicable and reliable means, splash and spray from truck tractors, semitrailers, and trailers.

(b) The Secretary shall by regulation—

(1) Within one year after the date of the enactment of this title, establish minimum standards with respect to the performance and installation of splash and spray suppression devices for use on truck tractors, semitrailers, or trailers;

(2) Within one year after the date on which the standards are established under paragraph (1) of this subsection, require that all new truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection; and

(3) Within four years after the date on which the standards are established under paragraph (1) of this subsection, require that all truck tractors, semitrailers, and trailers operated on the Interstate system be equipped with any splash and spray suppression device which satisfies the standards established pursuant to paragraph (1) of this subsection.

* * * * *

The NHTSA and the Federal Highway Administration have been jointly assigned the responsibility for carrying out the mandate of section 414(b) by the Secretary of Transportation. In this notice, the NHTSA is proposing to establish minimum standards for the performance of splash and spray suppression devices, as well as installation standards for the spray suppression devices on new vehicles only. In a separate notice appearing elsewhere in today's **Federal Register**, the Federal Highway Administration will issue proposed minimum standards for the installation of splash and spray suppression devices for vehicles in use on the Interstate System.

Splash and Spray Problem

The terms "splash" and "spray" are commonly used together to describe the adverse effects on visibility caused by vehicles travelling on wet roads. However, the two terms refer to very different phenomena.

"Splash" consists of large liquid droplets that fall quickly and ballistically to the ground, while "spray" consists of very small liquid droplets that remain airborne for a period of time in the form of a fog cloud, before falling to the ground. Truck-induced splash does not usually contribute greatly to the reduced visibility experienced either by motorists travelling adjacent to the truck or by the truck driver because the splashed droplets typically remain close to the ground, out of the line of other drivers' vision. Splash may strike adjacent vehicles' windshields, however, if there is puddling or uneven wetting of the roadway surface in front of the truck. In this case, the splashing would totally obscure vision for a brief period.

Spray generally is formed when three elements are present: (1) Water; (2) a hard or smooth surface which is struck by the water; and (3) a turbulent air flow which then picks up and carries away the water. The interaction of these three elements produces very small droplets of water which remain airborne for a time, in the form of a fog cloud around the area of the surface they have struck. The cloud is continuously replenished as long as the water is present, with new droplets forming as others fall to the ground. The airborne droplets obscure the vision of the motorist travelling adjacent to the truck and the vision of the truck driver through his rear view mirrors.

This proposal is directed primarily at reducing visibility problems caused by spray. These problems arise far more frequently than the problems caused by splash. Further, spray remains airborne much longer. However, this proposal would also address splash problems by reducing the distance between flaps and the ground and by requiring installation of flaps in positions where they are not currently installed.

Available Technology for Reducing Splash and Spray

The problem of reducing splash and spray from heavy trucks has been studied by the trucking industry and many governments over the past 20 years. Many different devices designed to reduce splash and spray have been examined.

Conventional fenders and mudflaps were the starting point in this search, with several States and European nations then considering requiring these items of equipment to be installed on all heavy trucks. However, the research showed that, while these items were effective at reducing low speed splash, they are ineffective at reducing the amount of spray generated by trucks at highway speeds.

A DOT spray protector would have been required on most kinds of heavy trucks under a notice of proposed rulemaking issued by NHTSA (35 FR 14091, September 4, 1970). The DOT

spray protector, which was a combination fender, modified side skirt, and mudflap, was developed in laboratory tests sponsored by the Motor Truck Division of the Automobile Manufacturers Association. The final report on those tests indicated that the DOT spray protector would significantly reduce spray at speeds up to 50 miles per hour, but the reduction would not be significant at higher speeds. Comments received in response to that notice stated that a hazardous brake heat buildup would occur if the DOT spray protectors were used on heavy trucks, and that this heat buildup would also damage the tires. When agency testing verified these comments, NHTSA withdrew its proposal (38 FR 28840, October 17, 1973).

Air and water deflectors have also been tested. Both these devices provide benefits by reducing the amount of spray generated, but both are dependent upon the aerodynamics and other characteristics of the tractor/trailer or tractor/semitrailer combination. Since different types of tractors are routinely coupled with different trailers and semitrailers, and vice versa, the effectiveness of air and water deflectors would vary widely.

The only devices which current research indicates might be both practicable and reliable for use on existing vehicle designs are spray suppressant flaps and side skirts. Spray suppressant flaps are flaps which hang down behind the tires and are designed to absorb some of the energy in the oncoming stream of water from the tires, contain and channel most of that water out of the area where spray could be formed, or otherwise reduce the formation of spray clouds behind those tires. Side skirts are flat surfaces which hang down from the side of a vehicle and prevent the water coming off the top of the wheel wells and tires and off the bottom of the vehicle from forming into spray clouds alongside the wheels.

The Federal Highway Administration sponsored tests of many different types of spray suppression devices at Fort Stockton, Texas in 1977. For these tests, lasers were used to measure the density of the spray clouds formed by actual vehicles equipped with the spray suppression devices and driven down a test track. Additionally, checkerboards were set up on the test track so that photographs could be taken through the spray clouds formed by the vehicles. Both the objective (laser) and subjective (visual) comparisons found that a combination of spray suppressant flaps and side skirts was the most effective of the tested devices at suppressing spray.

NHTSA has conducted a series of tests beginning in the summer of 1983 to learn more about the effectiveness of the various spray suppression devices on vehicles in full-scale outdoor testing. NHTSA considered three categories of spray suppression devices in this testing program. The first category consisted of devices which theoretically provide a reduction in the spray generated and also may be reliable and practicable under normal operating conditions. These devices were spray suppressant flaps behind the axles and side skirts mounted over the rear axles of semitrailers.

The second category consisted of devices which provide a theoretical reduction in the spray generated, but which have been shown to have some problems under normal operating conditions. These problems should be correctable with a minimal amount of product development. Examples of devices in this category are side skirts mounted on the nose of semitrailers, which extend to the drive axle tires of the truck tractor when the semitrailer is coupled with the tractor.

The third category consists of devices which are theoretically effective but have not been proven in actual services and for which a test of effectiveness under controlled conditions has not been developed. An example of these devices are inserts which fill the space between the tire and the surrounding vehicle structure and which may not introduce operational difficulties such as excessive heat buildup.

This testing was conducted in three phases. The purpose of the first phase of the testing conducted in 1983 was to develop testing techniques and to make a preliminary evaluation of the effectiveness of several configurations of devices from the first and second categories set forth above. It appeared to the agency that the devices tested provided only minimal spray reduction. However, it was also apparent to the agency that it was necessary to add a target, such as the checkerboard used in the 1977 Fort Stockton tests, to provide more definition of the extent and density of the spray cloud formed by the test trucks.

Accordingly, a second phase of testing was undertaken, again in 1983. A target eight feet high and 12 feet wide using the checkerboard pattern similar to that employed for the 1977 Fort Stockton tests was set up on the test track. The tests were recorded on video tape and on 35 millimeter slides. Many of the devices tested in the first phase of testing were retested, and some of the devices in the third category were also tested. The results of this testing led the agency to four conclusions. These were:

(1) There is a large amount of variability in the amount of spray reduction achieved when using any of these devices to suppress spray.

(2) The wind velocity during the tests has a major impact on the effectiveness of spray suppression devices.

(3) An extensive enclosure between the tire and the surrounding vehicle structure appears to be necessary to obtain consistently perceptible visibility improvements; and

(4) The results raised some significant questions about the ability of flaps and side skirts to reduce spray sufficiently so that the difference is perceptible to the unaided eye.

Because of these concerns and the need for further information on this subject, NHTSA conducted a third phase of testing in 1984 using laser measurements as well as photographs to measure the spray clouds. Each vehicle was equipped with the various spray suppression devices and run a number of times on the same Fort Stockton test track which showed that the spray suppression devices were effective in 1977.

The results of this third phase of testing, which was conducted by STI, demonstrate that the use of extensive spray suppression treatment generally reduces the density of the spray cloud. These reductions are measurable and visible. In addition, the study found that less extensive treatments provide some incremental visibility benefits. However, this research also confirmed that crosswinds have a significant negative impact on the effectiveness of the devices.

The Motor Vehicle Manufacturers Association (MVMA) also conducted research in 1984. The research, which was similar to NHTSA's phase III tests, led MVMA's contractor to conclude that "trucks fitted with a combination of spray reduction devices can reduce splash and spray as much as 50 percent over trucks that use the standard hard rubber flaps only." However, MVMA cautioned that test results could not be repeated consistently, that no specific combination of devices was found best for all vehicles, and that these devices can decrease, but not eliminate, splash and spray.

This mixed pattern of research results leaves the agency with misgivings about the appropriateness of proceeding with rulemaking at this time. Section 414(b) of the STAA specifies: "The Secretary shall by regulation . . . establish minimum standards with respect to the performance and installation of splash

and spray suppression devices . . ." However, section 414(a) of the Act sets forth a Congressional declaration that visibility on wet Interstate roadways should be improved by reducing splash and spray "by a practicable and reliable means." NHTSA is presently unable to conclude whether there are such "practicable and reliable means" for improving visibility, and the agency specifically requests comments on what factors should be considered in determining whether a specific means of splash and spray suppression is practicable and reliable. For the purposes of this proposed action, NHTSA has tentatively determined that "practicable and reliable" splash and spray suppression devices should—

(1) Reduce spray sufficiently so that the unaided eye can perceive a reasonable improvement in visibility under normal wet weather conditions, i.e., wind and rain;

(2) Be capable of being manufactured and installed on today's designs of truck tractors, trailers, and semitrailers; and

(3) Not fail or substantially lose their effectiveness unreasonably soon after they are installed.

It is possible that the costs imposed by requiring splash and spray suppression devices would significantly exceed any benefits which might accrue from such a requirement. NHTSA requests public comments on the extent to which it can and should consider the relationship of the costs to the benefits in any rulemaking action under section 414 of the STAA.

Because NHTSA is unaware of any other spray suppression devices that would be practicable and reliable, the agency is issuing this proposal regarding flaps and skirts. We solicit comments on whether there are any other devices that would be appropriate. (Although various manufacturers have designed aerodynamically efficient vehicles which promote spray suppression, NHTSA does not believe that those systems are universally applicable. Further, those vehicles would have to be tested over the road to measure their performance and therefore determine their compliance. That type of testing is inherently variable, expensive and difficult to repeat.)

NHTSA solicits comments and information from interested persons on the degree of the effectiveness of flaps and side skirts in reducing spray generated by vehicles. NHTSA is interested in obtaining data and test results from the manufacturers of this equipment as to the effectiveness of the various devices in real world conditions or on outdoor testing on vehicles. The agency also requests comments from persons who have driven trucks equipped with these spray suppression devices and motorists who have observed the on-the-road performance of such trucks.

NHTSA has placed photographs and videotapes of the tests it has conducted thus far into the docket for this rulemaking action. The agency specifically solicits views and comments from all interested members of the public on the effectiveness of splash and spray suppression devices, as measured by this testing, and on the procedures followed in the tests.

The agency also specifically requests comments on what course of action it should follow if the available testing and public comments on this notice lead the agency to the conclusion that there are currently no spray suppression devices which are consistently effective in reducing spray such that the reductions can be perceived by the unaided eye. As a related area for comment, NHTSA is interested in the public's view of what course of action should be taken if comments show that devices that provide lower levels of spray suppression are currently practicable for flap and skirt manufacturers, but cannot reliably achieve on-road visibility improvements while devices that provide higher levels of spray suppression can reliably achieve such improvements, but are not currently practicable.

As noted above, NHTSA believes that the STAA's finding concerning practicable and reliable devices means in part that the devices should not fail or substantially lose their effectiveness unreasonably soon after they are installed. The need for overly frequent replacement of the devices would greatly increase the anticipated costs of achieving that goal. Thus, the durability of any equipment which is required to be included on all new trucks is a consideration in this rulemaking action, as is the establishment of warranty requirements.

To be certain that the agency is fully informed on this subject, NHTSA specifically solicits comments and answers to the three questions set forth below. Any other comments related to the durability of the equipment, but not directly addressed in these questions, are also solicited.

(1) What is the expected useful life of spray suppressant flaps, and how does that compare with the expected useful life of ordinary mudflaps? What is the expected useful life of side skirts?

(2) Should any final rule on this subject include some minimum durability requirements for any mandated equipment and, if so, what form should that requirement take?

(3) Does the agency have authority to impose warranty requirements on any mandated equipment?

Test Procedures for Measuring Effectiveness

The agency considered a number of alternative test procedures for measuring the effectiveness of the devices chosen by vehicle manufacturers to reduce the amount of splash and spray. First, the agency had to choose between proposing actual on-road tests of vehicles or proposing controlled laboratory testing of the devices not attached to any vehicle. The on-road tests would offer some advantages, such as measuring the actual performance which might be expected of the total vehicle in service, and measuring the effectiveness of all vehicle systems in reducing splash and spray. However, this approach has been tentatively rejected. The test conditions such as wind speed and direction, ambient light, and road surface conditions, would have to be controlled more carefully than is currently possible. Further, this approach would require large investments of time and money to run each test. Finally, since tractors and trailers are sold separately, and used in many different combinations, it would be necessary to develop a standard reference test tractor (for testing trailers and semitrailers) and a standard reference test trailer (for testing truck tractors). Such specifications do not exist at this time, and considerable research would have to conducted to develop a fair set of criteria.

NHTSA is proposing that, instead of conducting on-road tests of entire vehicles, individual spray suppression components be tested on a mock up of a portion of a vehicle under controlled laboratory conditions. This leaves the question of what controlled conditions should be proposed. The British Standards Institution (BSI) recently adopted a standard for splash and spray suppression for heavy trucks, which includes a laboratory procedure for measuring the effectiveness of spray suppressant flaps. That test employs a procedure in which a specified volume of water is directed onto the flap surface designed to face the tire, and a large container is positioned beneath that flap to catch the water which comes off the bottom of the flap. The water which runs off the bottom of the flap and is collected in the container will, in theory, not be disseminated as spray. The volume of water collected in the

container is then divided by the total volume of water which was sprayed on the flap. The resultant percentage is assigned to the flap as its performance value. NHTSA is interested in receiving comments on what effect, if any, the adoption and implementation of a spray suppression standard by Great Britian should have on this agency's decisions in this rulemaking action.

Since NHTSA is aware of the strong interest in favor of international harmonization of standards, it gave considerable thought to proposing the BSI test as the test procedure in this standard. However, that procedure has been tentatively rejected for the following reasons. That test does not attempt to measure the density of the spray cloud generated by the flap, and therefore is not attempting to test directly the visibility improvements offered by the flap. It is possible that two flaps which measure the same in the test could offer significantly different levels of spray suppression while in use. NHTSA believes that the proposed testing procedure should attempt to measure the actual effectiveness of these devices in suppressing spray clouds.

A 1982 study completed for this agency by Systems Technology, Inc. (STI) evaluated the performance of spray suppressant flaps in a wind tunnel. This procedure uses periscopes to actually look through the spray cloud formed off the flap at targets on a wall behind the resulting cloud. By following this testing procedures, it is possible to approximate the conditions which would be faced by drivers attempting to pass a vehicle with these flaps in place.

The tunnel test procedure is relatively simple to conduct. Two black targets are installed, one on top of the other, on the far end of the tunnel. Flap mounting hardware and spray nozzles to shoot water at the flaps are installed ahead of the targets. A fan is set to cover one end of the tunnel to simulate the air flow around the tires. Two periscopes are inserted through the walls of the tunnel, upwind of the spray nozzles, at the same height as the targets on the far wall. Photometer readings can then be taken through the periscopes to guage the density of the spray clouds formed.

The actual testing begins by taking a photometer reading through each periscope on the targets before the water is turned on. This reading in decibels is designated as DRY. Then a plain untreated rubber flap is installed in the mounting hardware, and the fan and water are turned on. A photometer reading of the top target is taken through the upper periscope over a 30 second period. The highest photometer reading in decibels maintained for at least ½ second is recorded. Immediately following the taking of those readings, a photometer reading of the bottom target is taken over a 30 second period. Again, the highest photometer reading in decibels maintained for at least ½ second is recorded. This procedure is repeated four times, so that a total of five readings have been taken of each target. The ten readings thus obtained are then averaged together and this value is designated as PR. The water is then turned off, and the plain flap is replaced with the spray suppressant flap to be tested. The water is turned on again, and the same photometer reading procedures are followed as were used for the plain flap, until a total of ten photometer readings has been taken, 5 of each target. These ten readings are averaged, and the value is designated as F_1. The visibility improvement from using the treated spray suppressant flap, termed V_T, is then calculated according to the following equation:

$$V_T = 100\left(\frac{1 - \frac{1}{(PR - F_1)}}{1 - \frac{1}{(PR - DRY)}}\right)$$

Proposed Requirements for Equipment

This notice proposes to establish minimum performance standards for spray suppressant flaps, and would require the flap manufacturer to certify that each flap met those requirements. No vehicle need be certified as to its actual performance with these flaps installed. The reasoning behind this approach is that if the flaps achieve the specified performance level in the tunnel test, and if they are installed on the vehicle in accordance with the proposed installation requirements applicable to vehicles, the amount of splash and spray generated by those vehicles will be reduced. Hence no vehicle performance tests are necessary.

This notice proposes several alternative levels of requirements for spray suppressant flaps to be installed on new vehicles beginning one year after publication of the final rule. The preferred alternative would require those flaps to achieve a V_T in the tunnel test of at least 35 percent. This value is preferred because the available leadtime before that date may be insufficient for manufacturers of spray suppressant flaps to redesign, test, produce and distribute flaps which are significantly better than existing designs. Compliance with a requirement for 35 percent reduction appears feasible since testing by STI of currently produced flaps indicated that all but one existing flap could achieve a V_T rating of at least 35 percent.

However, higher levels of performance for spray suppressant flaps to be installed on new vehicles manufactured beginning one year after publication of the final rule might be practicable. One company has already produced a flap which has a V_T rating of 83 percent in the spray tunnel.

Accordingly, the agency is considering two alternatives to the proposal for one year after publication of the final rule that would require new vehicles to be equipped with spray suppressant flaps that achieve a V_T rating of not less than 35 percent. In tunnel tests, flaps which achieve that level of spray suppression do reduce the density of the spray clouds formed, as compared with conventional mudflaps located in certain positions, and this reduction can be detected by sophisticated equipment, like lasers. However, the spray suppression achieved by 35 percent flaps may not be readily perceptible to the naked eye. NHTSA doubts that the improved visibility which Congress delcared was a goal of section 414 of the STAA referred to improvements detectable by sophisticated equipment but not seen by drivers of vehicles on the Interstate system.

The first alternative requirement being considered for the level for one year after the final rule would be a V_T rating of 50 percent or better. The performance of flaps rated at that level together with the performance of side skirts mandated for vehicles could offer perceptible visibility improvements. However, selecting this alternative would eliminate all but two of the flaps tested in the spray tunnel from being used on new vehicles, and would force the manufacturers of all other flaps to begin an accelerated program to produce flaps which could achieve this level of spray suppression. There is not likely to be sufficient time between the publication of the final rule and its effective date to complete such a program.

The second alternative would require that new vehicles manufactured beginning one year after the final rule be equipped with flaps which achieve a V_T rating of not less than 75 percent. In determining the 75 percent figure, NHTSA acted on the basis of the 1982 STI analysis of testing which indicated

that visibility improvements registered in the spray tunnel must be divided by 3 to approximate the visibility improvements which will show up on the road. Improvements of real world visibility above any given level cannot be perceived by the naked eye until they reach a level of 15 to 20 percent, and become clearly perceptible only at a level of 25 percent. Thus, clearly perceptible improvements in visibility should be shown by spray suppressant flaps alone (without side skirts) if those flaps had a V_T rating of not less than 75 percent.

However, there is only one spray suppressant flap, the one that has a rating of 83 percent, that has been shown in tunnel testing to be capable of achieving this level of spray reduction. Hence, selecting this alternative would force all other flap manufacturers to abandon the new vehicle market until they were able to produce flaps which could achieve this level of spray suppression.

Since considerations of leadtime and competitive problems may lead the agency to adopt the preferred alternative of a 35 percent reduction for one year after the final rule, NHTSA is also proposing a later date for implementation of the 75 percent reduction figure. The agency believes that the possible leadtime and competitive problems associated with specifying this level of performance for one year after the final rule could be avoided by specifying an effective date of four years after publication of the final rule. Accordingly, NHTSA is proposing that all spray suppressant flaps manufactured on or after that date have a V_T of not less than 75 percent.

The agency requests comment on the relationship between the tunnel test results and actual performance on the roadway as well as on the adequacy of the proposals for one year after the final rule and for four years after the final rule. Additionally, the agency is interested in obtaining comments on whether the visibility improvements sought by section 414 of the STAA should include actual reductions in the spray clouds which are not clearly visible to the unaided eye.

Additionally, this proposal would require the flap manufacturers to label the symbol "DOT" permanently on their flaps as a certification that the spray suppressant flap complies with the standard, and indicate whether the requirement to which compliance is being certified is the level of 35 percent for one year after the final rule or the level of 75 percent for four years after the final rule. Flap manufacturers would be permitted to certify that their flaps comply with either of these levels in advance of the effective date for that level.

Side skirts, like spray suppressant flaps, would be required to be installed on vehicles to reduce splash and spray. However, no performance requirements are proposed for side skirts. This is because the 1982 STI testing of side skirts in the spray tunnel showed that there were no significant variations in the performance of those devices. The wider side skirts (i.e., those with greater vertical height) worked better than the narrower side skirts, but all those of the same dimensions performed virtually identically. The need for performance requirements for flaps but not side skirts can be explained by the different functions of these devices. Flaps have water striking them at high speeds directly off the back of the tires. They must absorb some of the energy of the striking water and channel it out of the turbulent air flow to prevent the formation of a spray cloud. Thus, differences in design could affect energy absorption and have a large impact on the effectiveness of the flaps in performing this function. The side skirt, on the other hand, serves only as a surface on which the droplets can coalesce. Accordingly, the side skirt is a much simpler piece of equipment, typically, a simple flat surface. Given this, NHTSA does not believe it is necessary to establish any performance requirements for side skirts. Specifying dimensional requirements for skirts and requiring those devices to be installed in particular locations will serve the purpose of reducing the amount of spray generated by heavy trucks.

The notice proposes to require both flaps and skirts because each is more effective when used in conjunction with the other. Requiring one but not the other would allow the water thrown up by the wheels to escape because of insufficient containment.

Proposed Requirements for Vehicles

At the outset of this discussion, the agency wishes to emphasize again that these standards proposed by NHTSA apply only to new vehicles, not any vehicles already in use. The Federal Highway Administration addresses this latter group of vehicles in its proposal. In doing so, that agency takes into account any particular problems which might arise when equipping vehicles in use with spray suppressant flaps and side skirts.

Single unit trucks and small trailers and semitrailers. Congress did not include single unit trucks within the enumerated types of vehicles to be regulated under section 414. (Single unit trucks are vehicles in which the portion of the vehicle in which the driver is seated and which supplies the power to move the vehicle is connected to the cargo carrying portion by a common chassis.) Similarly, Congress defined trailers and semitrailers as only those vehicles designed to be used in combination with a truck tractor. Hence, neither single unit trucks nor small trailers and semitrailers designed to be used in combination with a passenger car or light truck are covered in these proposed requirements.

Truck tractors. This proposal would require all truck tractors to be equipped with spray suppressant flaps behind the rearmost tires on the drive axle and behind the tires on the steering axle. Flaps in these positions could suppress much of the splash and spray generated by the tractor. In 1982, STI tested flaps in these positions on tractors and found no problems in service, in terms of causing more frequent damage to the flaps or restricting access for tire and wheel maintenance. Further, it should be feasible for manufacturers to equip the tractors with this equipment.

Additionally, all tractors manufactured during the period beginning four years after the final rule would be required to be equipped with side skirts over the steering axle tires. The reasons for providing longer leadtime for compliance with this requirement is that these skirts are not currently installed on trucks sold in the U.S. market. Such devices have been installed on European tractors, but those vehicles have different fender configurations which come down lower on the tires than do the fenders on American tractors. By allowing manufacturers an additional three years to develop and test side skirts compatible with the steering axles of U.S. tractors, NHTSA believes that the products would be practicable and reliable at the time.

Trailers, semitrailers, and converter dollies. This proposal would require that all trailers, semitrailers, and converter dollies manufactured during the period beginning one year after the final rule be equipped with spray suppressant flaps behind the rearmost tires at each axle position. The spray suppressant flaps are already available on the market, and are easily capable of being integrated into the vehicle design by that date. Converter dollies were not expressly mentioned by Congress in the Act. However, these devices, which consist of a trailer chassis equipped with one or more axles a lower half of a fifth wheel and a drawbar, are used to convert semitrailers into full trailers. If

no spray suppressant flaps are required on these vehicles, potential visibility improvements would be forgone. Given Congress' reference to semitrailers and trailers, the relationship between converter dollies and semitrailers and the need for spray suppression on converter dollies, NHTSA believes that converter dollies fall within the purview of section 414. Accordingly, NHTSA is proposing that these vehicles be equipped with spray suppressant flaps behind the rearmost tires.

Also effective one year after the final rule, side skirts would be required to be mounted over the rear axle position of all trailers and semitrailers which are flatbeds, vans, or tanks. These terms are defined in the proposed rule. These three types of vehicles comprise about 77 percent of the semitrailers and trailers on the road. Vans and tanks were tested in the 1982 STI study with skirts over the rear axle position. No significant problems were reported. NHTSA believes that the motoring public could experience reductions in the density of spray clouds formed on wet roads as a result of the combined effect of side skirts and spray suppressant flaps.

NHTSA has no data showing whether or not side skirts would be equally practicable and reliable on all other types of trailers and semitrailers, which make up the remaining 23 percent of the fleet. Accordingly, these vehicles would not be required to be equipped with rear side skirts one year after the final rule. Some types of trailers and semitrailers are totally excluded from the proposed skirt requirements. NHTSA believes that it would not be practicable to mount front or rear side skirts on these vehicles because of their design and construction (these vehicles generally are skeletal frames, with no area in which to contain the water coalescing on the side skirt) and because of the type of operation and use they receive (these vehicles generally spend a significant amount of time off the public roads, and when they are used on the public roads, it is generally over short distances on roads other than the Interstate system). For these reasons, and because the vehicles are comparatively few in number, NHSTA has tentatively concluded that excluding these vehicles from the side skirt requirements is the most appropriate course of action. The excluded vehicles are pole trailers, intermodal containers, intermodal container chassis, agricultural commodity trailers, pulpwood trailers, and straddle trailers.

For the other types of trailers and semitrailers which are not totally excluded from the proposed side skirt requirement and are not flatbeds, vans, or tanks, NHTSA has tentatively determined that it should be possible for the vehicle manufacturers to make the adjustments necessary to permit side skirts to be effectively mounted on the vehicles. Given appropriate leadtime, NHTSA believes these adjustments could be accomplished with minimal cost and technical difficulty. Vehicles in this group include auto haulers, dump trailers, garbage/refuse trailers, and boat racks. NHTSA has tentatively determined that side skirts over the rear axle position could be practicable and reliable on these vehicles by the date four years after the final rule. This notice proposes that those vehicles be so equipped if they are manufactured on or after that date.

The 1982 STI study indicated that there were problems with placing side skirts at the front of trailers and semitrailers to limit the spray from the rear tractor wheels. These skirts were vulnerable to damage during coupling and uncoupling, and during turns when the rear tractor tires ran over some object and moved up to contact the skirt. The failure rate for these skirts was so high that they were removed before the study was completed. Hence, NHTSA has tentatively decided that installation of side skirts at this position would not be practicable one year after publication of a final rule.

INSTALLATION REQUIREMENTS

Vehicles	1 yr after the final rule	4 yrs after the final rule
Truck tractors(all)	Steering axle flaps, drive axle flaps	Steering axle side skirts.
Trailers and semitrailers:		
Vans, tanks, and flatbeds	Rear axle flaps, rear axle side skirts	Nose side skirts.
Pole trailers, intermodal containers, intermodal container chassis, agricultural commodity trailer, pulpwood trailer, straddle trailer.	Rear axle flaps	
All other trailers and semitrailers not listed previously.	...do	Rear axle side skirts, nose side skirts.
Converter dollies(all)	...do	

Note.—The FHWA notice on this subject sometimes refers to "nose side skirts" on trailers and semitrailers as side skirts over the "drive axle group" of the truck tractors. These terms both refer to the same location.

However, the 1977 STI study also indicated that side skirts at this position are very important to reduce the spray clouds generated by tractors and trailers. Given this importance, the agency is herein proposing that skirts be installed at this position at a later date. NHTSA believes that the problems encountered in the 1982 STI study can be overcome, since they concern only the issue of how to effectively mount the side skirt. The side skirts themselves are currently available and effective. By hinging the mounting equipment, or using flexible side skirts produced by one manufacturer, it should be possible to overcome the problems encountered in 1982 STI study.

Accordingly, this notice proposes that all trailers and semitrailers except those excluded from complying with the side skirt requirements (pole trailers, intermodal containers, intermodal container chassis, agricultural commodity trailers, pulpwood trailers, and straddle trailers) and which are manufactured beginning four years after the final rule be equipped with side skirts over the front wheel position. The following table summarizes the installation requirements proposed in this notice.

Flap and skirt installation. Since the spray suppressant devices can reduce splash and spray effectively only if they are properly installed by the manufacturers, this proposal specifies the locations in which those devices must be installed. Spray suppressant flaps would have to be installed not less than 2 nor more than 12 inches behind the tires whose spray they are intended to suppress. Specifying a range instead of single distance would allow the manufacturers flexibility in mounting these devices on the different types of vehicles covered by this proposed standard, while ensuring that the flaps are in a location where they would be effective. Within this range, the key variables are, as noted below, the relationship of the upper edge of the flap to the top of the tire and of the lower edge to the angle at which water is thrown rearward and upward by the tire.

The agency is proposing that the upper edge of the flaps be required to be at least as high as the top of the tire or tires behind which it is mounted. It is important to contain spray and prevent it from passing over the top of the flap without touching it, and forming a spray cloud as though there were no flap on that tire. However, NHTSA believes that it would not be physically possible to mount the flaps this high on some vehicles. In that situation, this notice

proposes that the flap be mounted at least as high as the bottom of the frame rail.

A special provision is proposed to deal with the problem posed on some vehicles, most frequently tractors, by the presence of a fender or other body structure (most often a battery box) near the tire and to the rear of it. If the flap were attached to the bottom of the frame rail on these vehicles, a significant gap would exist between the flap and body structure. Water would be propelled through this gap onto the hard surface of the fender or battery box, thereby generating a spray cloud. To prevent this, this notice proposes that, in situations where the distance between the fender or other body structure and the tire in front of it is less than 1½ times the radius of the tire, the upper edge of the flap would have to be attached to the fender or body structure such that there would not be a gap of more than one inch between the upper edge of the flap and the fender or body structure.

The lower edge of the spray suppressant flaps would be required to be mounted so that a plane formed between that lower edge and the ground beneath the vertical centerline of the tire behind which the flap is mounted was not more than 10 degrees in the case of flaps mounted behind the steering axle of tractors and not more than 15 degrees in the case of flaps mounted behind any other axle. NHTSA believes that it is more appropriate to propose to allow manufacturers flexibility in locating the bottom edge of the flaps, instead of specifying that the lower edge shall be a fixed number of inches from the ground. This approach addresses the key issue which is the trajectory of the water thrown up by the tire. This approach also allows the manufacturer to select where on the vehicle to mount the flaps, and makes sure that the flaps are low enough to be effective. It also avoids the problems which arise in individual situations where a flap cannot be mounted so that the lower edge is a fixed number of inches from the ground.

The proposal of one flap height for steering axles on tractors and another for all other vehicle axles arises from a concern over the reliability of the flaps. The closer the skirts are to the ground, the more effective they are in preventing splash and spray. On the other hand, the lower the flaps are to the ground, the more likely they are to break while in service. The greatest danger of breakage occurs when tires hit a curb or other elevated surface and pinch the flap against the tire. This tears the flap off its mount or breaks it. (Were it not for this breakage problem, NHTSA would propose an angle of 5 degrees because this would most effectively reduce splash and spray. However, flaps this close to the ground would be subject to frequent breakage.) The currently available data indicate that the tires on the steering axle of truck tractors hit curbs and other objects far less often than the other tires. Accordingly, this proposal would require that those flaps be mounted lower than the other flaps.

An additional mounting requirement is that the flaps cover the full width of the space created by the rearward projection of the tires. That area is where most of the water on the wet roadway will be thrown. To ensure that the flaps fill this area, this notice would require that flaps be at least as wide as the maximum section width of the tires behind which they are mounted, and that they be mounted so as to cover that area. In the case of flaps installed behind dual mounted tires, the flaps would be required to be at least as large as the distance between the most inboard point on the inboard tire and the most outboard point on the outboard tire. They would also have to be mounted so as to cover that entire area.

The proposed side skirt mounting requirements are similar to the flap mounting requirements in that the agency would require the skirts to also be located in the area where they would be most effective in reducing spray. However, these requirements allow less flexibility because there are not as many areas in which skirts could be mounted and be effective. This proposal would require side skirts to hang down from the vehicle at least to the level of the top of the tires which they are protecting, at all points along the required length of the side skirt. This requirement will ensure that most of the spray is prevented from moving into the turbulent air flow around the tires. Further the skirts would be required to be at least as long as the distance between the front of the tire whose spray is being suppressed and its rear, and be mounted so as to at least cover that length. In the case of a side skirt mounted over dual axles, the side skirt would be required to be at least as long as the distance between the forwardmost point of the front tire and the rearmost point of the rear tire, and be mounted so as to cover that space.

There is one situation where side skirts would be required to be mounted over a position where there are no tires to use as a reference point. Skirts will be required to be mounted on the nose of semitrailers. The reason for this requirement is that skirts cannot be required to be mounted over the drive axle of tractors because that would not be practicable. This is true both because there is currently no structure there to which skirts can be attached, and because the addition of such a structure would interfere with the coupling and operation of the tractor with certain trailers. However, the 1977 STI study indicated that it was very important to have side skirts for the drive axle on the tractor. The only way to do this in the case of semitrailers is to mount side skirts on the semitrailer in such a way that they will protect the drive axle tires. To achieve this result, the agency is proposing that skirts to be mounted on the semitrailer so that the gap between the side skirt and the vehicle on which it is mounted is not more than one inch at any point along its length. This will ensure that the side skirts are positioned properly to trap the spray from escaping into the area of turbulent air flow.

Further, the skirt would have to be at least 8 feet long and be mounted with its forward edge even with the most forward point on that side of the semitrailer. This length of 8 feet was chosen because that would protect the drive axle tires on almost all tractors which would be attached to the semitrailer. Finally, the skirt would have to hang down at least six inches from the point on which it was installed. Although 8 inch high skirts were shown to be more effective in the 1982 STI study, the breakage problems associated with side skirts mounted at this position would be lessened if the vertical height of the skirts were less.

Impact Analyses

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. NHTSA believes that these requirements, if adopted, would impose an annual burden of no more than $20.6 million on the manufacturers and operators of truck tractors, semitrailers, and trailers to comply with the proposed requirements for the period beginning four years after the final rule is published. The annual burden of the less stringent, preferred proposal for the period one to four years after the final rule would be somewhat lower. The figure for the former proposal is below the annual threshold of $100 million for classifying a rule as major in the Executive Order. That proposal would increase the sales for the manufacturers of the spray suppression devices. Drivers on the Interstate system may

benefit from improved visibility on wet roadways, but, because of the paucity of relevant accident data, the agency is currently unable to quantify any specific safety benefits. A preliminary regulatory evaluation regarding these impacts has been prepared and placed in Docket No. 83-05. A copy of this evaluation may be obtained free of charge by writing the Docket Section or by calling it at (202) 426-2768.

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that this rule will not significantly affect the human environment. Most vehicles already are equipped with mudflaps, and the amount of plastic and petroleum needed to manufacture spray suppressant flaps is only negligibly greater than the amount needed to manufacture plain mudflaps.

The proposed labeling requirements for spray suppressant flaps are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, those labeling requirements will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Finally, the agency has considered the impacts of this proposed action on small entities, as required by the Regulatory Flexibility Act. That Act requires that any significant economic impacts on a substantial number of small entities be identified, and this has been done in the preliminary regulatory evaluation. Those impacts may be summarized as follows: The manufacturers of spray suppression devices which are small entities may lose up to 44 percent of their business if they are unable to produce rubber flaps which can comply with the proposed requirement of 75 percent spray reduction in the test tunnel. The only flap which has achieved this level of spray reduction to date is made of plastic. They could possibly recapture almost all of this business by producing more side skirts. The vehicle manufacturers and vehicle purchasers will be minimally affected by this proposed rule by slightly increased prices for new vehicles. For a more complete discussion of these impacts, interested persons are urged to read the preliminary regulatory evaluation.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 584

Motor carriers, Motor vehicles, Plastic and plastic products, Rubber and rubber products.

In consideration of the foregoing, it is proposed that Title 49, Code of Federal Regulations, be amended by adding a new Part 584 to read as follows:

PART 584—SPLASH AND SPRAY SUPPRESSION

Sec.

584.1 Scope.
584.2 Purpose.
584.3 Application.
584.4 Definitions.
584.5 Vehicle requirements.
584.6 Spray suppressant flap requirements.
584.7 Test procedures for evaluating spay suppressant flaps.
Appendix A—Design of Spray Tunnel Test Facility

Authority: Sec. 414, Pub. L. 97-424, 96 Stat. 2161 (49 U.S.C. 2314).

§ 584.1 Scope.

This part establishes performance requirements for spray suppressant flaps, and requires that flaps and side skirts be mounted at various wheel positions on truck tractors, trailers, semitrailers, and converter dollies.

§ 584.2 Purpose.

The purpose of this part is to improve driver visibility on wet roadways by reducing the amount of splash and spray generated by truck tractors, trailers, and semitrailers.

§ 584.3 Application.

This part applies to spray suppressant flaps, and to truck tractors, trailers, semitrailers, and truck converter dollies.

§ 584.4 Definitions.

"Agricultural commodity trailer" is used as defined in section 54 of 49 CFR 571.121.

"Container chassis" means a trailer or semitrailer consisting of a wheeled undercarriage and support chassis designed exclusively to transport intermodal containers.

"Flatbed" means a trailer or semitrailer which has a platform that effectively spans the entire length and width of the vehicle and which has no sides, ends, roofs, or other enclosing superstructure higher than the platform. Low-bed heavy haulers and gooseneck trailers are not included within this term.

"Intermodal container" means a cargo container as defined in 49 CFR 450.3(a)(2).

"Pole trailer" means a trailer as defined at 49 CFR 390.8.

"Pulpwood trailer" is used as defined in section 54 of 49 CFR 571.121.

"Semitrailer" means a trailer so constructed that a substantial portion of its weight rests upon or is carried by a truck tractor.

"Side skirt" means a device which is attached to the side or frame of a vehicle at an axle position and which hangs down on the outboard side of the most outboard tire at the axle position and blocks the passage of spray outward from the tires.

"Spray suppressant flap" means a device which is attached to a vehicle which hangs down behind a tire or tires, and whose side facing the tire has a surface designed to absorb some of the energy of the water striking that surface and to channel the water out of the area where it would generate splash and spray.

"Straddle trailer" is used as defined in section 54 of 49 CFR 571.121.

"Tank" means a trailer or semitrailer with a platform on top of which is mounted a fully enclosed pressurized or nonpressurized vessel. The vessel acts as a hermetically sealed contained for cargo in transit.

"Trailer" means a motor vehicle designed for carrying persons or property and for being drawn by a truck tractor.

"Truck converter dolly" means a trailer chassis equipped with one or more axles, a lower half of a fifth wheel, and a drawbar.

"Truck tractor" means the noncargo carrying power unit that operates in combination with a semitrailer or trailer(s).

"Van" means a trailer or semitrailer constructed with a flat or multi-height floor that spans its entire length and width, and has walls on sides and ends, and, in some cases, has a roof. Bottom unloading trailers, open top bin trailers and open top bulk commodity trailers are not included within this term.

§ 584.5 Vehicle requirements.

(a) *Required equipment—truck tractors.* Each truck tractor shall comply with paragraph (a)(1) or (a)(2) of this section, as applicable, and with paragraph (c) of this section.

(1) Each truck tractor manufactured on or after [date one year after publication of the final rule] shall be equipped with spray suppressant flaps, which meet the requirements of § 584.6(a)(1) and § 584.6(b) and which are located behind the rearmost axle tires on the drive axle and behind the tires on the steering axle.

(2) Each truck tractor manufactured on or after [date four years after publication of the final rule] shall be equipped with spray suppressant flaps which meet the requirements of § 584.6(a)(2) and § 584.6(b) located behind the rearmost axle tires on the drive axle and behind the tires on the steering axle, and with side skirts mounted at both the left and right wheel positions on the steering axle.

(b) *Required equipment—trailers, semitrailers, and truck converter dollies.* Each new trailer, semitrailer, and truck converter dolly shall comply with paragraph (b)(1) or (b)(2) of this section, as appropriate, and with paragraph (c) of this section.

(1) (i) Each trailer and semitrailer manufactured on or after [date one year after publication of the final rule] shall be equipped with spray suppressant flaps which meet the requirements of § 584.6(a)(1) and § 584.6(b) and which are located behind the rearmost axle tires and, in the case of trailers, behind the rearmost tires on the forward axle. Each trailer and semitrailer manufactured on or after [date four years after publication of the final rule] shall be equipped with spray suppressant flaps which meet the requirements of § 584.6(a)(2) and § 584.6(b) installed at the same positions.

(ii) Each truck converter dolly manufactured on or after [date one year after publication of the final rule] shall be equipped with spray suppressant flaps which meet the requirements of § 584.6(a)(1) and § 584.6(b) behind the rearmost axle tires. Each truck converter dolly manufactured on or after [date four years after publication of the final rule] shall be equipped with spray suppressant flaps which meet the requirements of § 584.6(a)(2) and § 584.6(b) behind the rearmost tires.

(iii) Each flatbed, tank, and van manufactured on or after [date one year after publication of the final rule] shall be equipped with side skirts mounted over both the left and right wheel positions of the rear axle position.

(2) Each trailer and semi-trailer, except pole trailers, intermodal containers, intermodal container chassis, agricultural commodity trailers, pulpwood trailers, and straddle trailers, manufactured on or after [date four years after publication of the final rule] shall be equipped with side skirts over all wheel positions of all axle positions. Each semi-trailer shall be equipped with side skirts on the nose of the vehicle, as specified in paragraph (c)(2)(iii) of this section.

(c) *Installation and size requirements.*—(1) *Spray suppressant flaps.—(i) Flap location.* A flap required by paragraph (a) or (b) of this section to be installed behind a tire shall be mounted not less than 2 inches nor more than 12 inches behind the vertical tranverse plane tangent to the rearmost surface of that tire. In the case of a flap required to be installed behind a tire on a sliding axle assembly, the flap shall move with the axle assembly so that the distance between the rearmost surface of the tire and the flap remains within the range specified by this section.

(ii) *Flap height.*—(A) *Upper edge.* The upper edge of the flap shall, at all points along its required width, not be less than the height of the horizontal plane tangent to the top of the tire or tires in front of the flap as shown in Figure 1. If it is not physically possible to mount the flap so as to satisfy this requirement, the upper edge of the flap shall be mounted at a height not less than the height of the horizontal plane tangent to the bottom of the frame rail of the vehicle at all points along the required width of the flap. However, if there is a fender or other body structure located behind the wheel for which the flap is to be installed and the distance between that structure and the center of the tire on that wheel is not more than a distance equal to 1⅛ times the radius of the tire and that structure is more than 2 inches but less than 12 inches behind the vertical transverse plane tangent to the rearmost surface of the tire, the upper edge of the flap shall be attached to the fender or other body structure in such a way that there is not more than a one inch gap between the upper edge of the flap and the fender or other body structure, measured at any point along the upper edge of the flap.

(B) *Lower edge.* At any point along its required width, the lower edge of the flap shall be tangent to or lower than a transverse plane passing through the intersection of the ground plane and the vertical centerline of the wheel on which the tire is mounted and continuing in a rearward and upward angle, as shown in Figure 1. In the case of flaps mounted behind the steering axle of truck tractors, this angle shall not exceed 10 degrees. In the case of flaps mounted at any other position or on any other vehicle, the angle shall not exceed 15 degrees. All measurements shall be made with the axle loaded to its gross axle weight rating.

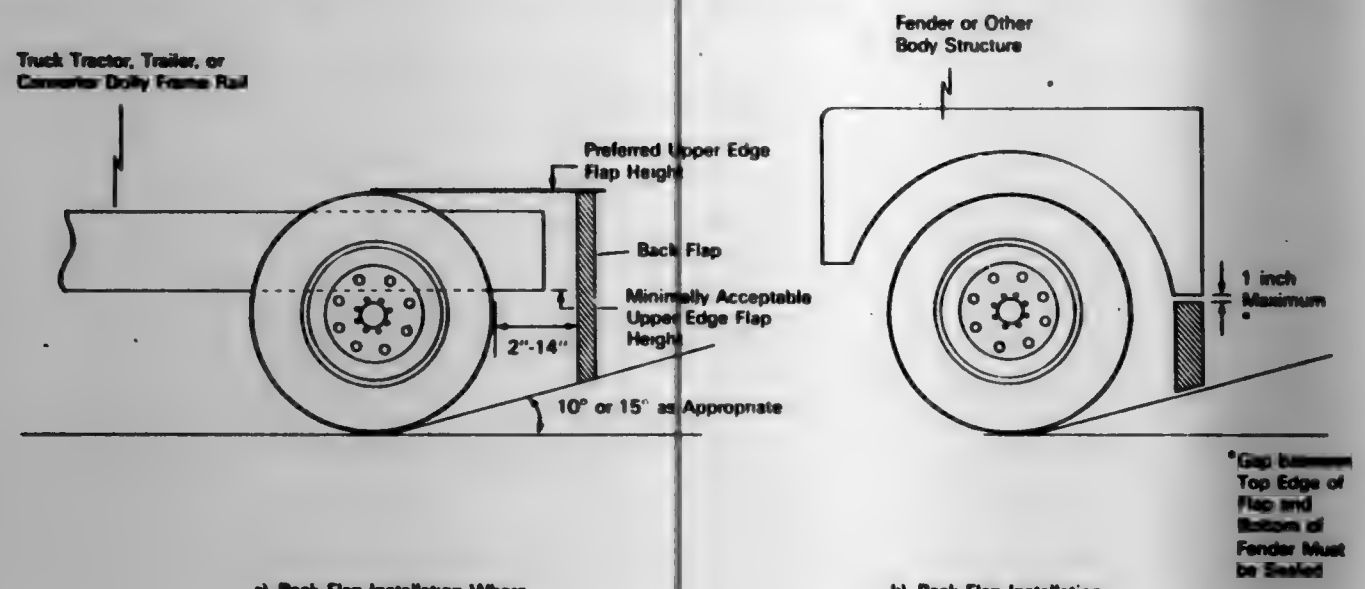


Figure 1. Back Flap Installations

(iii) *Flap width.* At all points along its required height, the width of the flap shall be not less than the maximum section width of the tire behind which it is mounted. In the case of dual mounted tires, the width of the flap shall be not less than the distance between the vertical longitudinal plane tangent to the most inboard point on the inboard tire and the vertical longitudinal plane tangent to the most outboard point on the outboard tire. The flap shall be mounted so as to be tangent to or intersect each of the planes for the entire required height of the flap.

(2) *Side skirts.*—(i) *Side skirt location and size.* Except as provided in paragraph (c)(2)(iii) of this section, the side skirt for a tire or set of tires on one end of an axle shall extend continuously between—

(A) The lowermost edge of the vehicle body, frame, or platform which extends out beyond the vertical longitudinal plane tangent to the most outboard point of the outboard tire on that side of the axle.

(B) The horizontal plane tangent to the top of the tire or tires.

(C) The vertical transverse plane tangent to the forwardmost point of the tire or tires.

(D) The vertical transverse plane tangent to the rearmost point on the tire or tires.

(ii) *Vehicle with movable axle assembly.* In the case of vehicles with movable axle assemblies, the side skirts shall meet the requirement in paragraph (c)(2)(i) of this section for any position to which the axle can be adjusted.

(iii) *Side skirts on the nose of semitrailers.*

Semitrailers which are required to have side skirts installed on the nose shall meet the following requirements:

(A) The side skirt shall be attached so that a vertical transverse plane tangent to its forward edge is tangent to the most forward point on that side of the semitrailer, and shall extend rearward from that plane a distance of 8 feet.

(B) There shall be no more than a one inch vertical gap at any point along the required length of the side skirt between the upper edge of the side skirt and the portion of the semitrailer to which it is attached.

(C) The vertical height of the side skirt, measured from its upper edge to its lower edge, shall be not less than six inches.

§ 584.6 Spray suppressant flap requirements.

(a) *Effectiveness.* The effectiveness of a spray suppressant flap is evaluated by measuring the improvement in visibility provided by a spray suppressant flap as compared with a plain rubber flap under the same controlled conditions in a spray tunnel. This measurement is conducted and calculated according to the procedures specified in § 584.7, and the visibility improvement registered by a spray suppressant flap is termed V_T.

(1) Each spray suppressant flap manufactured on or after [date one year after publication of the final rule] shall have a value for V_T of 35 percent or greater/50 percent or greater/75 percent or greater.

(2) Each spray suppressant flap manufactured on or after [date four years after publication of the final rule] shall have a value for V_T of 75 percent or greater.

(b) *Labeling.* Each spray suppressant flap subject to paragraph (a) of this section shall be permanently labeled on the side of the flap which faces away from the tires in block capital letter and numerals not less than 2 inches high with the following information:

(1) The symbol DOT, constituting a certification by the flap manufacturer that the flap conforms to all requirements of this standard; and

(2) Either the number "35", "50" or "75", if the flap is certified as complying with the requirement of paragraph (a)(1) of this section, or the number "75", if the flap is certified as complying with the requirement of paragraph (a)(2) of this section.

§ 584.7 Test procedures for evaluating spray suppressant flaps.

(a) *Test conditions.* Spray suppressant flaps are tested in a spray tunnel, constructed so as to conform to the specifications in Appendix A.

(b) *Calculations of values for V_T.*

(1) *Measurements.* Test measurements are the highest photometer readings in decibels maintained for at least ½ second. Ten separate measurements are taken as specified in paragraphs (b)(1)(i)–(b)(1)(viii) of this section and averaged together.

(i) Turn on the photometers and the fluorescent lights above the tunnel. Wait at least 30 seconds to allow the photometers and lights to warm up.

(ii) Record photometer readings of the top target through the upper periscope and the bottom target through the lower periscope, with no water turned on inside the tunnel. The average of these two values is used as the DRY value, when making the calculation required in paragraph (b)(2) of this section.

(iii) Install a plain rubber flap in the mounting brackets inside the tunnel. This flap has the same dimensions as the spray suppressant flaps to be tested.

(iv) Turn on the fan and allow the air flow to stabilize.

(v) Turn on the water so that the water flow through the header is constant, and the water pressure through the header is 62 pounds per square inch, as measured by the pressure gauge.

(vi) Take a photometer reading of the top target through the upper periscope. Record the highest photometer reading (in decibels) that is maintained for at least ½ second during a 30 second viewing period. Immediately take a photometer reading of the bottom target through the lower periscope for a 30 second period, and record the highest photometer reading (in decibels) that is maintained for at least ½ second during that time. Repeat this procedure until five readings each have been taken for the top and bottom target, for a total of ten readings. Average the 10 values to produce a single value. This value is used as the value PR, when making the calculation required in paragraph (b)(2) of this section.

(vii) Shut off the water, and replace the plain rubber flap with the spray suppressant flap to be tested.

(viii) Repeat the procedures specified in paragraphs (b)(1)(iv) through (b)(1)(vi) of this section. The average of the ten readings taken for the spray suppressant flap shall be used as F_i, when making the calculation required in paragraph (b)(2) of this section.

(2) *Analysis of results.* Calculate the V_T for the spray suppressant flap using the following equation:

$$V_T = 100 \left(\frac{1 - \frac{1}{(PR - F_i)^2}}{1 - \frac{1}{(PR - DRY)^2}} \right)$$

Appendix A.—Design of Spray Tunnel Test Facility

Background

This Appendix describes the design and construction details of a tunnel intended to simulate a water spray and aerodynamic environment analogous to that found when a combination unit truck is operated at highway speeds. It is used to test the performance of spray suppressing, water impact attenuating, backflaps or mudflaps; fenders; and side skirts or valances. Many of the design details of this tunnel are critical in terms of their effect on the performance measurements that are taken in the tunnel. These dimensions will be noted throughout this text and the accompanying drawings with an asterisk (*). Many other features of the tunnel, while not critical to the performance measurements, are important in terms of the proper functioning of the tunnel, its durability, and ease of use. These features will be described throughout the text but it is not absolutely essential that these dimensional or descriptive characteristics be adhered to rigidly in order for the tunnel to function properly. Design flexibility is therefore permissible in these instances, but to the extent possible the dimensions should be followed.

Overall Description

The tunnel is comprised of a rectangular test section nominally 4 feet high, 5 feet wide, and 24 feet long. It is open on the downwind end of the tunnel. The test section is connected at that end to an octagonal transition section which is 8 feet long. This section is rectangular at its downwind end and circular at its upwind end. Attached to the circular end of the transition section is a 60 inch (*) diameter fan which delivers air downwind through the test section. The intake side of the fan is covered except for a small slit to choke down the volumetric flow of air through the tunnel.

The tunnel is supplied with water to an array of nozzles which are mounted behind the above two sets of dual 10.00–20 truck tires positioned within the tunnel to simulate one-half of the truck tandem axle set. The water is pumped in a closed-loop system from a water recovery reservoir, through the pump, to the nozzles. From there, water sprayed in the tunnel is eventually captured and drains back into the recovery reservoir.

The tunnel is lighted from above for the middle 16 feet of the test section with fluorescent lights. Photometric light intensity measurements are made of spray clouds within the tunnel with the use of a periscope system, viewing from the upwind end of the tunnel looking downwind.

The entire facility must be housed indoors to minimize the effects of sunlight on the measurements and, generally, to facilitate testing ease.

The facility is shown schematically in Figure 1.

Test Section Construction Details

The test section of the tunnel is comprised of six sections, each nominally 4 feet long, on centers. It is

constructed of 2 inch x 4 inch framing and is lined on the sides with ¼ inch masonite, and on the floor with ¾ inch plywood. The entire ceiling of the first and last sections are also lined with masonite. The inside dimensions of the tunnel test section are 60 inches wide (*) by 47 inches high (*). The inside surfaces of the sixth section (counting from the upwind end of the tunnel), excluding the floor, are painted flat black (*). The inside surfaces of the remaining sections, excluding the floor and viewing windows, are painted semi-gloss white (*). Construction details are shown in Figures 2 and 3.

The plywood floor of the tunnel is covered over its entire length with a linoleum or vinyl floor covering to capture and drain the water that is generated with the test section. The floor slopes from the upwind end towards the downwind end at a 3° angle. Details of the installation of this covering are shown in Figures 4 and 5.

Referring to Figure 1, and counting from the upwind end of the tunnel, one side of the second and third sections of the test section is covered with ¼ inch plexiglass to enable viewing of the flap hanger and test fixture assembly area and also to provide access to the inside of the tunnel. The plexiglass panel on the second section is fixed (see Figure 6). The panel on the third section is hinged to provide an access door and is shown in Figures 7 and 8.

Two sets of dual 10.00–20 truck tires are mounted inside the test section portion of the tunnel, flush against the side wall opposite the window and access door, in sections 1, 2, and 3 as shown in Figure 9. Wooden blocks are used to brace the tires in these locations. The longitudinal spacing of these tires within the test section is critical (*), and is shown in figure 9.

Transition Section Construction Details

The transition section of the tunnel is intended to accommodate a 60 inch diameter circular fan (*) at the upwind end and translate that shape to a rectangular cross section at its downwind end (see Figure 10). A cross section upwind end of the transition section is shown in Figure 11. It is octagonal. The circular fan shroud shown in Figure 12 fits inside this octagonal cross sectional area shown in Figure 13. Gaps created at the interface between the shroud and the octagonal cross section must be filled with a suitable material to seal it off from outside air flow. The walls of the transition section are made of eight ¼ inch masonite panels. The design of these panels is shown in Figure 14.

At the extreme upwind end of the transition section, a wire mesh guard (see Figure 15) is attached to the back of the fan shroud to protect tunnel users from hazard and also to provide a support for the air intake enclosure. Intake air for the fan is admitted only through the air intake slit shown in Figure 15, the dimensions of which are 64 inches x 1 inch (*). All other areas of the enclosure are sealed airtight with duct tape and cardboard or other suitable materials.

A honeycomb diffuser and turbulent air generator is located at the downwind end of the transition section (see Figure 16). It is constructed from ½ inch thick x 9/16 inch square panels of white translucent fluorescent light diffuser grids 10 of which arranged to create an overall diffuser that is nominally 5 inches thick and covers the intake throat of the test section portion of the tunnel. Where necessary, any gaps that are created between the walls of the octagonal transition section and the diffuser grid panels shall be filled with suitable material to create an effective airtight barrier such that air flow originating from the fan is directed entirely into the throat of the upwind entrance of the test section portion of the tunnel.

Fan Assembly

The fan used to deliver air to the tunnel is a six blade, 60 inch blade diameter (*) fan which rotates at a nominal speed of 505 revolutions per minute. Under conditions of ¼ inch (water) of intake static back pressure this fan will deliver 44,100 cubic feet per minute (CFM) (*) of air. An example of a fan meeting these requirements is shown in Figure 17. The fan is mounted to the upwind end of the transition section of the tunnel as shown in Figures 12 and 13 and is sealed with the air intake guard and enclosure as shown in Figure 15. Air gaps at the interface between the fan shroud and transition section shall be sealed with duct tape or other suitable materials.

Lighting System Design Details

The lighting system mounted in the ceiling of the tunnel is intended to provide a uniform light source from which measurements of spray cloud veiling luminance can be made. It is installed in the second, third, fourth, and fifth sections of the test section portion of the tunnel, above plexiglass panels that are mounted in the ceiling of these sections as shown in Figure 18. Two fluorescent lamp fixtures, each 4 feet long, and each having two 40 watt lamps/tubes (*) shall be mounted side by side above the plexiglass panel installed in the ceiling of each of these sections. Thus, a total of 8 fixtures will be installed with a total of 16 (*) 40 watt lamps, in the test section portion of the tunnel. The mounting of these lamps and the sealed box in which they are enclosed is also shown in Figure 18.

In order to facilitate changing light fixtures/bulbs, either the top or one of the sides of the box containing the fluorescent lamp fixtures should be removable.

Water Delivery System Design Details

Water is pumped to an array of spray nozzles through a closed loop delivery/recovery system shown schematically in Figure 19. If the pump used is a gasoline powered engine, experience has shown it is preferable to install the pump outside the building which houses the tunnel to minimize noise and exposure to exhaust fumes. Water is delivered to the nozzle headers at supply line water pressure of 62 psig (*). An example of a pump capable of delivering this pressure is shown in Figure 20. Water is supplied to the pump from a collection trough and reservoir system located at the downwind end of the sixth section of the test section portion of the tunnel, as shown schematically in Figure 1. Details of the reservoir design are shown in Figure 21. Water is delivered from the pump to the nozzle header arrays via supply lines shown in Figures 22, 23, and 24.

The header arrays are located horizontally and vertically within the second and third sections of the test section portion of the tunnel as shown in Figure 25. These dimensions are critical (*). Inside the tunnel, there are three headers as shown in Figure 26. Headers 1 and 2 each contain two "H" nozzles (Spraco Inc., Model No. 2057190 [*])** oriented to spray vertically upward at angles (*) as shown in Figure 26. These headers are only used when studying fender or side skirt performance and are not necessary for compliance verification testing of backflap performance. Header No. 3 contains four "1" nozzles (Spraco Inc., Model No. 23200804 [*]) oriented to spray rearward in the downstream direction as shown in Figure 25. The transverse orientation of the nozzles, relative to the tires around and behind which they are mounted is shown in Figure 27. These dimensions are critical (*).

The distance between the tip of these "I" nozzles and the rearward-most edge of the flap (see Figure 28) which is being tested is 20 inches (*). If necessary,

**Spraco Inc., East Spit Brook Road, Nashua, NH 03060.

either the flap or the nozzle must be moved longitudinally up or down the test section of the tunnel to ensure that this distance is maintained.

Test Flap and Fender Attaching System/ Design Details

The third section of the test section contains a backflap attachment bracket assembly designed to maintain the rearward-most edge of the test flap 20 inches (*) behine the "I" nozzle array of header No. 1. The details of this assembly are shown in Figure 28.

Fender and/or side skirt systems which may be tested on an optional basis in the tunnel are mounted as shown in Figures 28, 29, and 30.

Ahead of the forward-most set of dual tires, in the first section of the test section, an air flow blocking plate is mounted. The details of this installation are shown in Figure 32.

Performance Measurement System/ Design Details

Photometer measurement of veiling luminance, and hence spray cloud density, are made with the use of a system of two periscopes aimed to view two black targets at the downwind end of the tunnel. The two periscopes are located in the first section of the test section, and are shown in Figures 33, 34, and 35.

The viewing targets are mounted in the sixth section and are shown in Figures 36 and 37. A convenient distance beyond the end of the test section, downwind of the sixth section, a black drape is hung so that when viewing through the periscopes, the entire visual field behind the targets is black.

When measurements are being taken, the room in which the tunnel is housed should be darkened to the extent practicable, to avoid extraneous effects of ambient light sources outside the tunnel.

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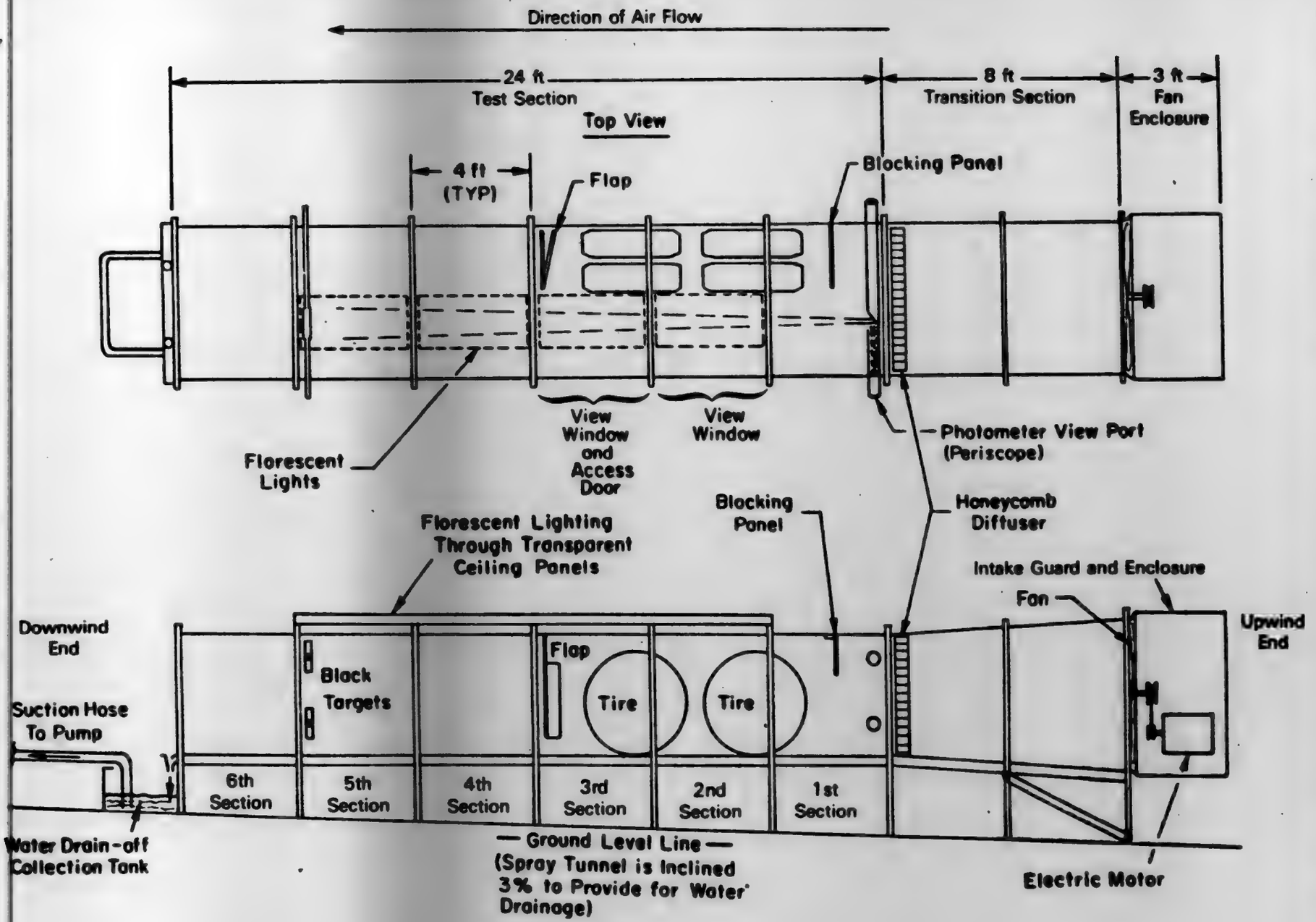


Figure 1. General Layout of Spray Tunnel

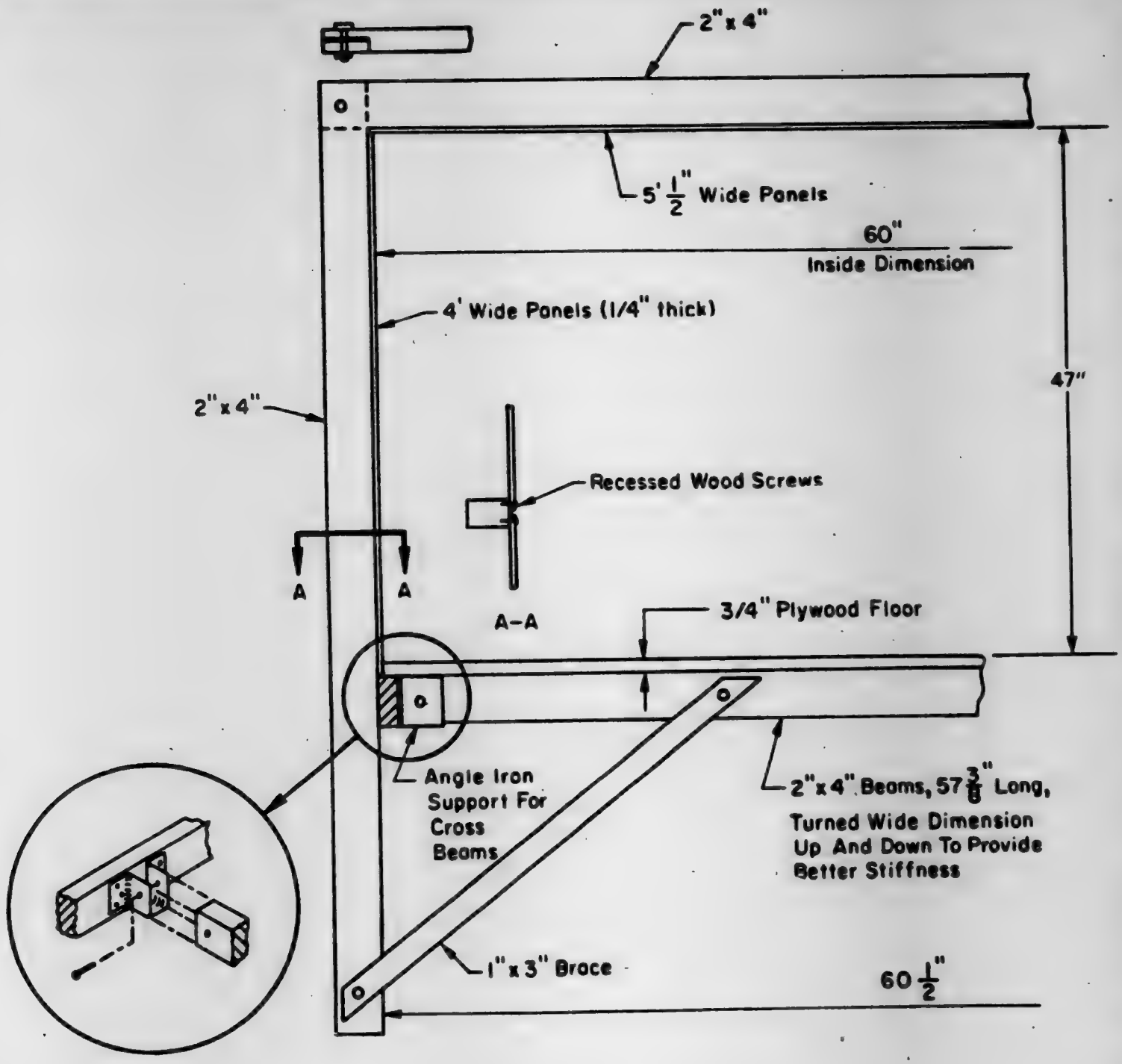
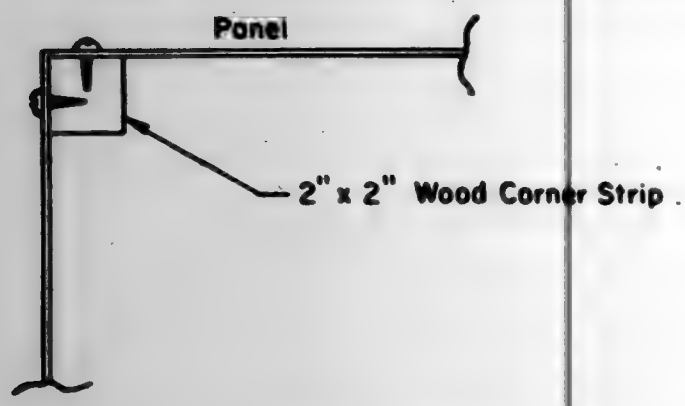


Figure 2. Details of 2" x 4" Framing for Tunnel Support



2"x2" wood corner strips used to attach panels along longitudinal seams.

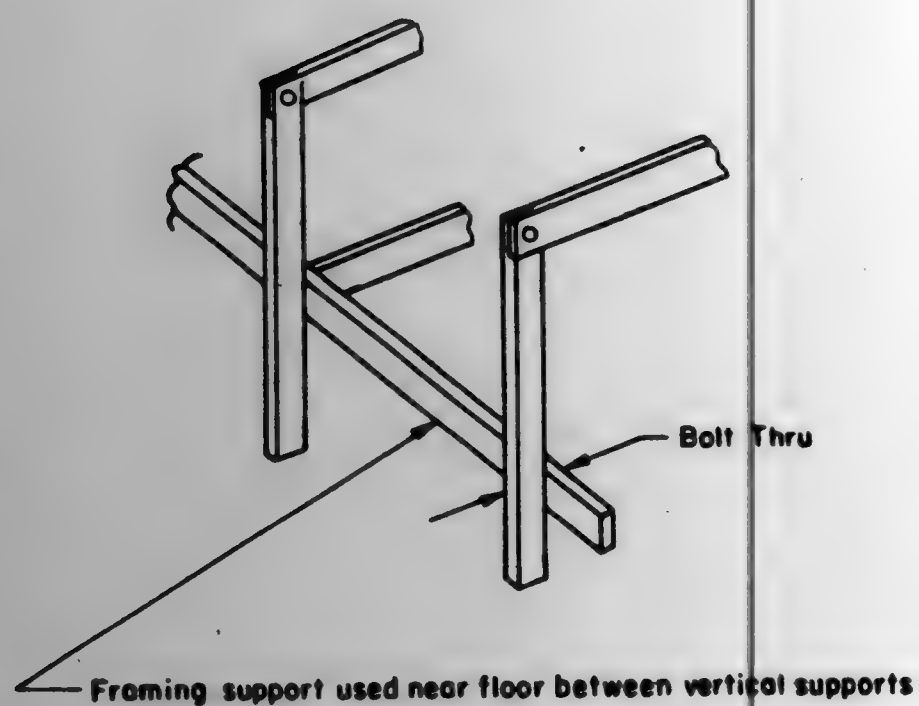


Figure 3. Details of Tunnel Framing and Wall Panel Attachment

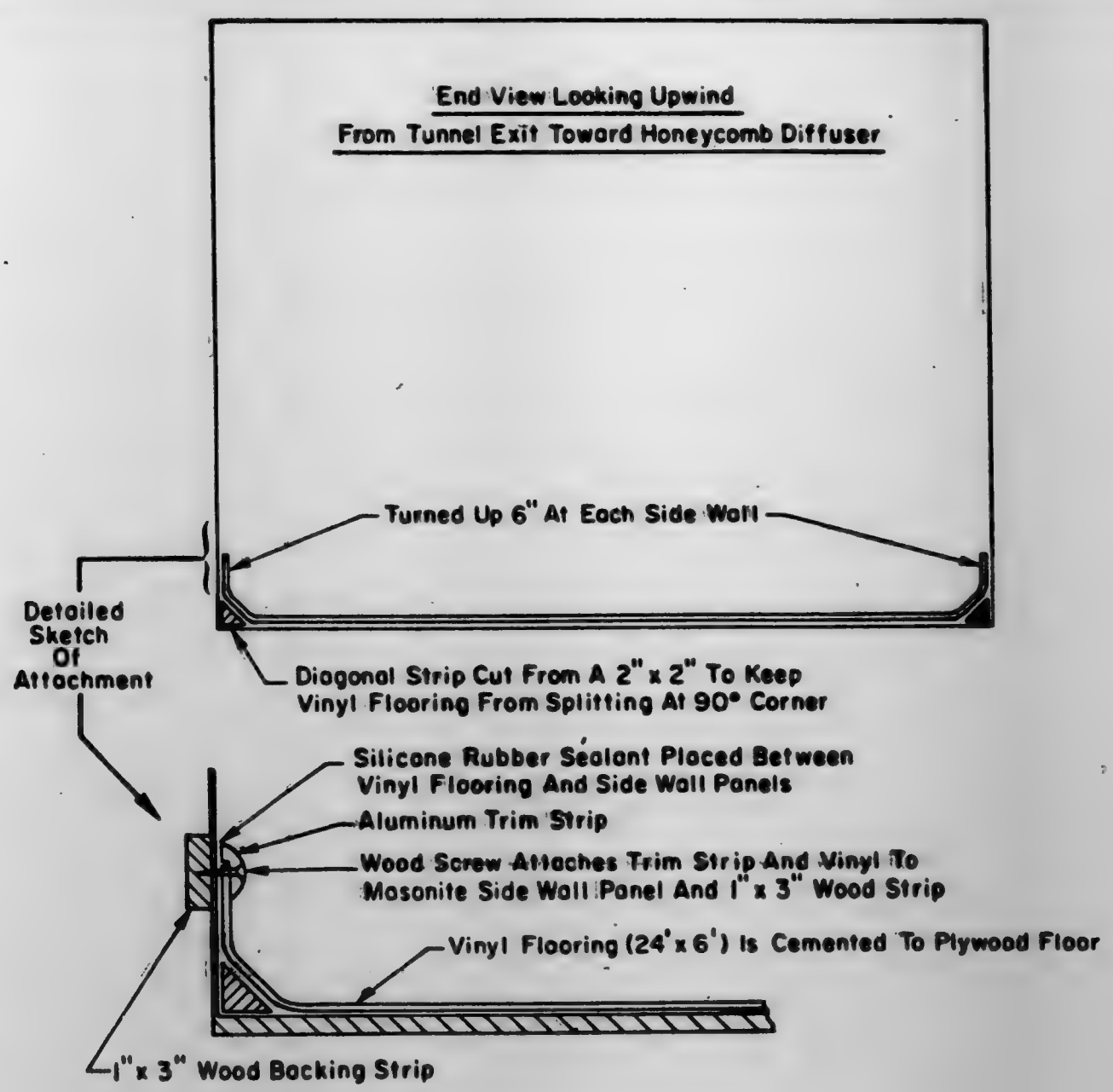
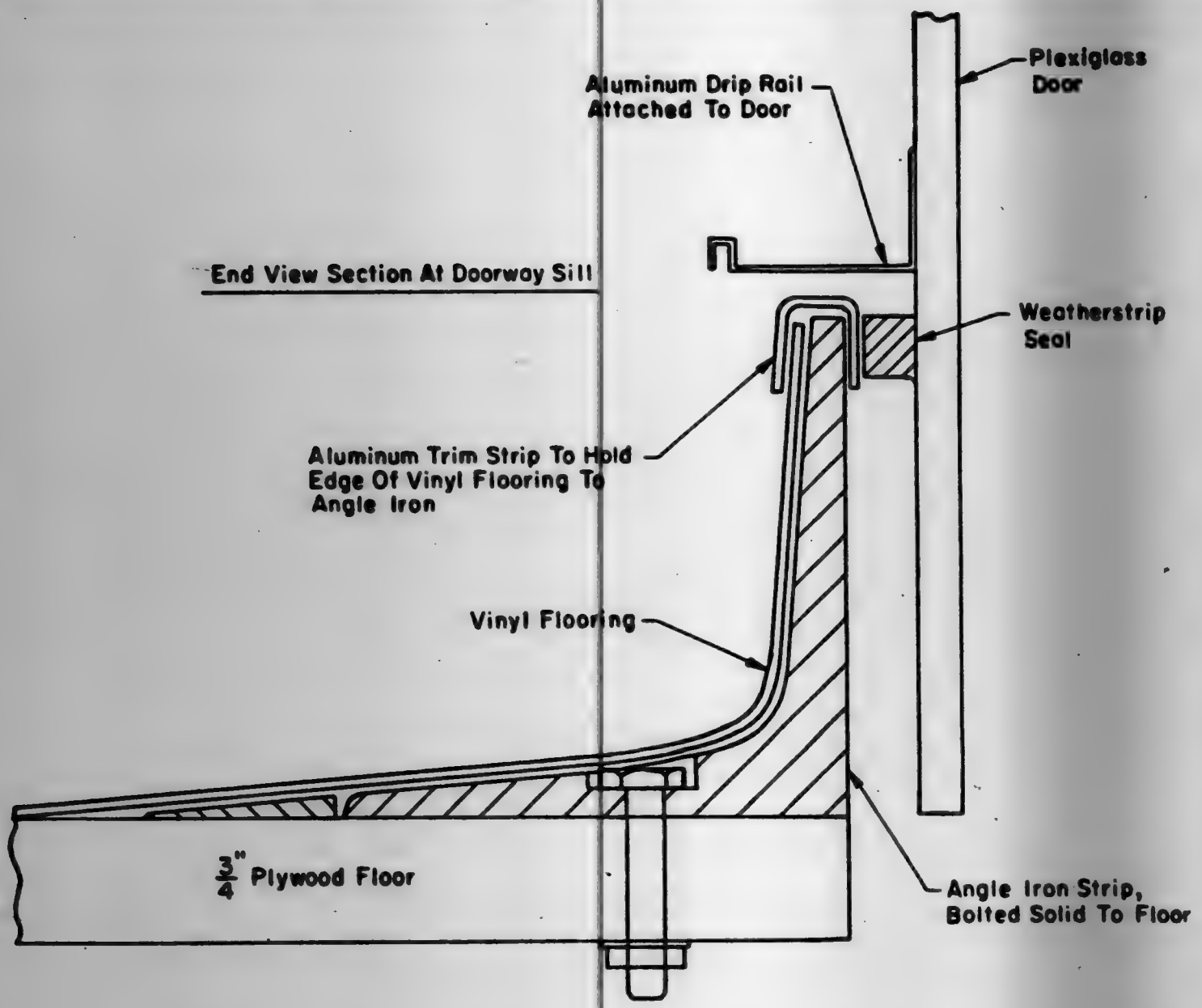


Figure 4. Vinyl Flooring (for Water Collection and Drainage)



The Purpose Of The Above Construction Is To Seal Against Water Leakage At The Doorway, And Also To Provide A Solid Support (via the angle iron) For Stepping On During Entry And Exit Through Doorway.

Figure 5. Details of Vinyl Flooring and Water Drainage at Access Doorways/Sill (See Figures 7 & 8 for Details of the Access Door)

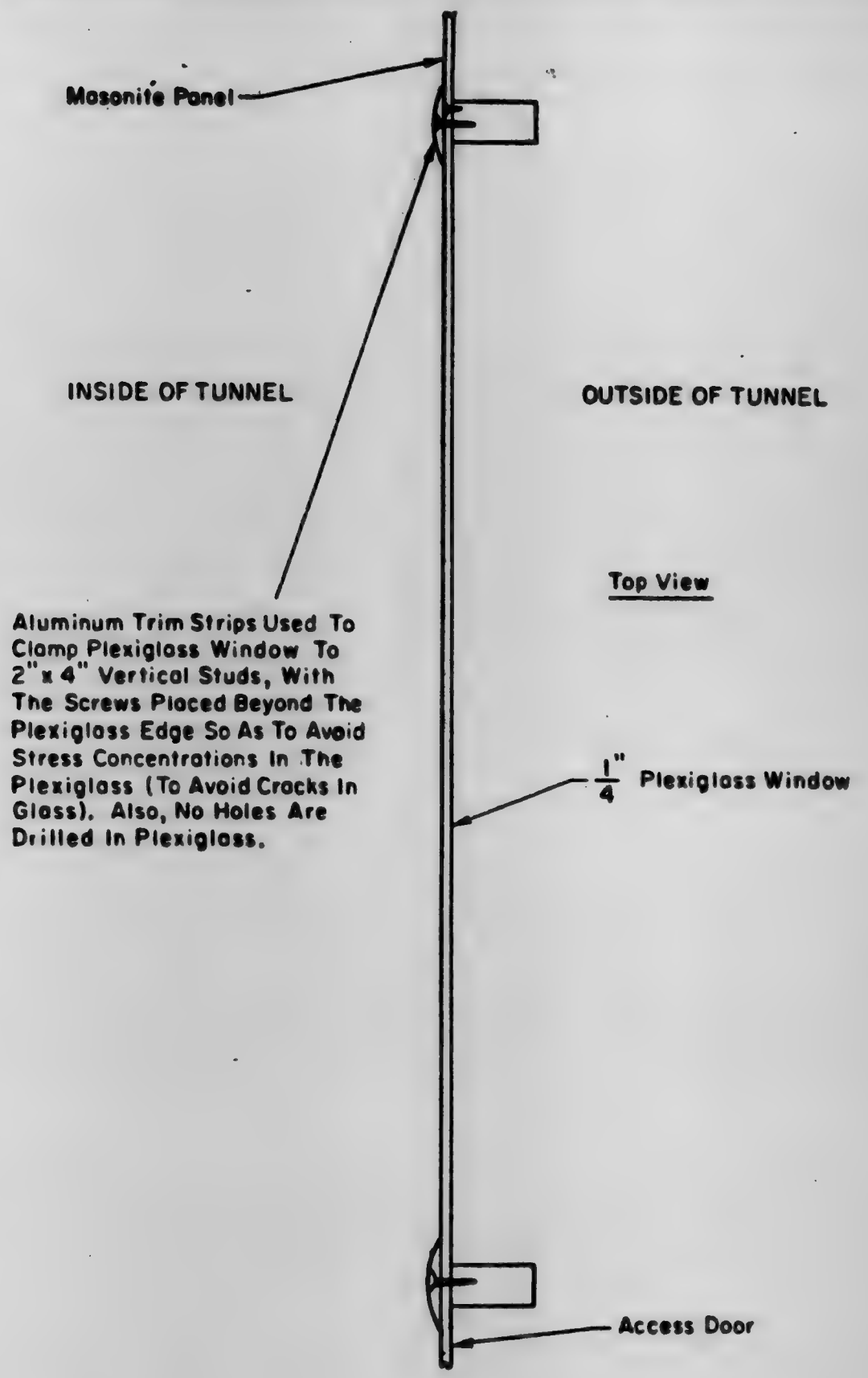


Figure 6. 48" x 48" x 1/4" Plexiglass View Window (Window is Located in the 2nd Section of the Test Section Portion of the Tunnel as Seen in Figure 1)

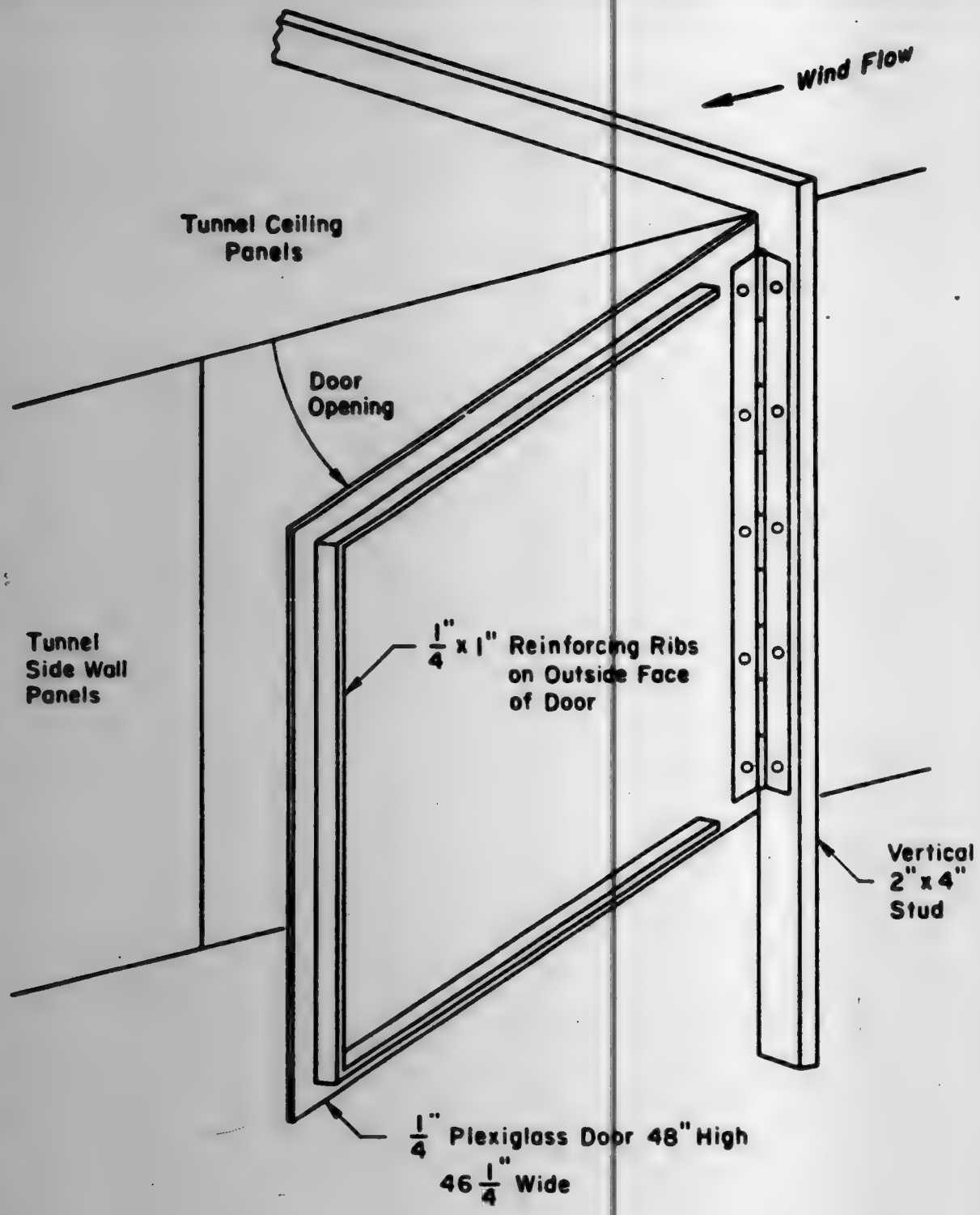


Figure 7. Access Door Details as Seen from Outside of Tunnel
(Door is Located in the 3rd Section of Test
Section Portion of the Tunnel as Seen in Figrue 1)

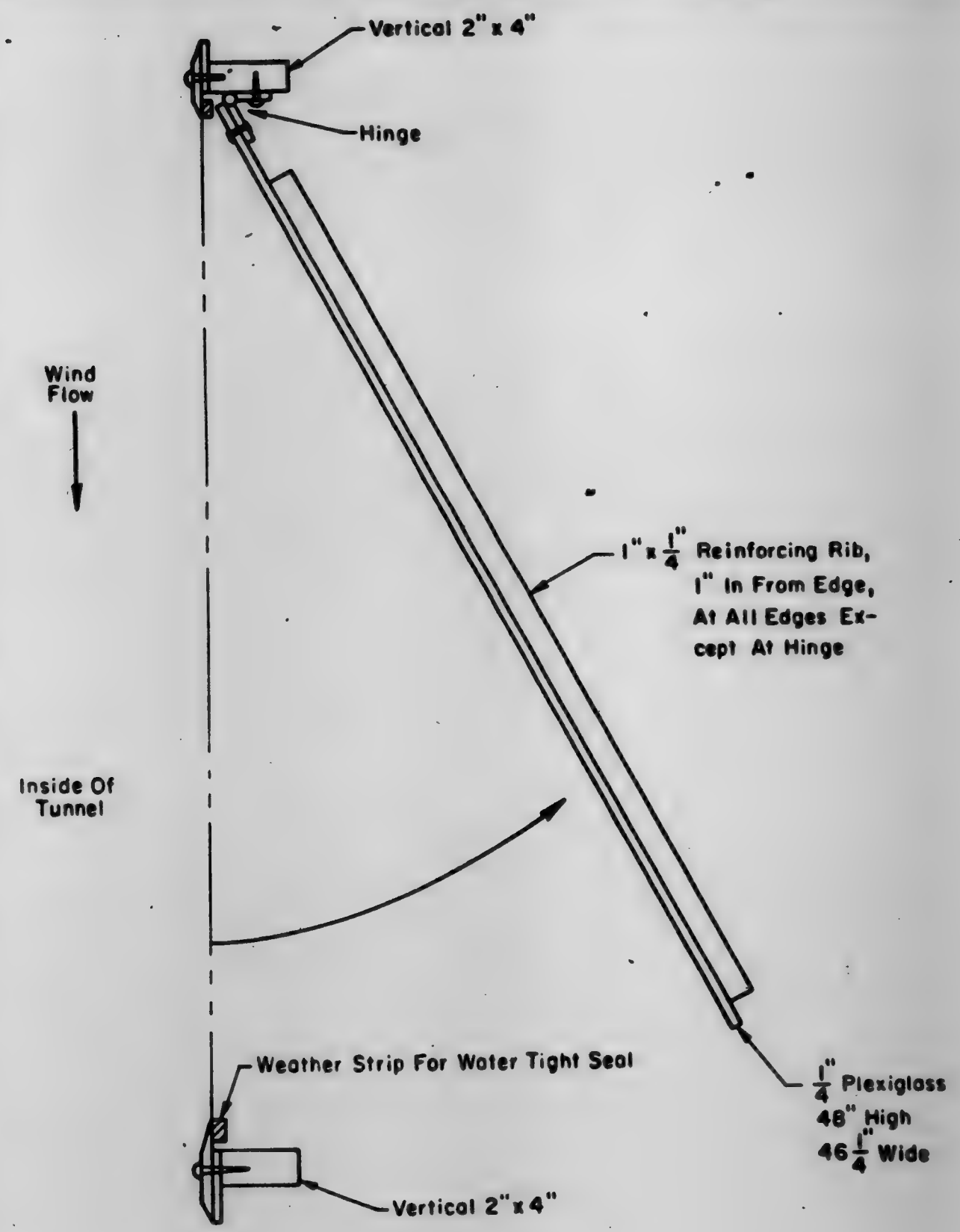


Figure 8. Top View of Access Door Details

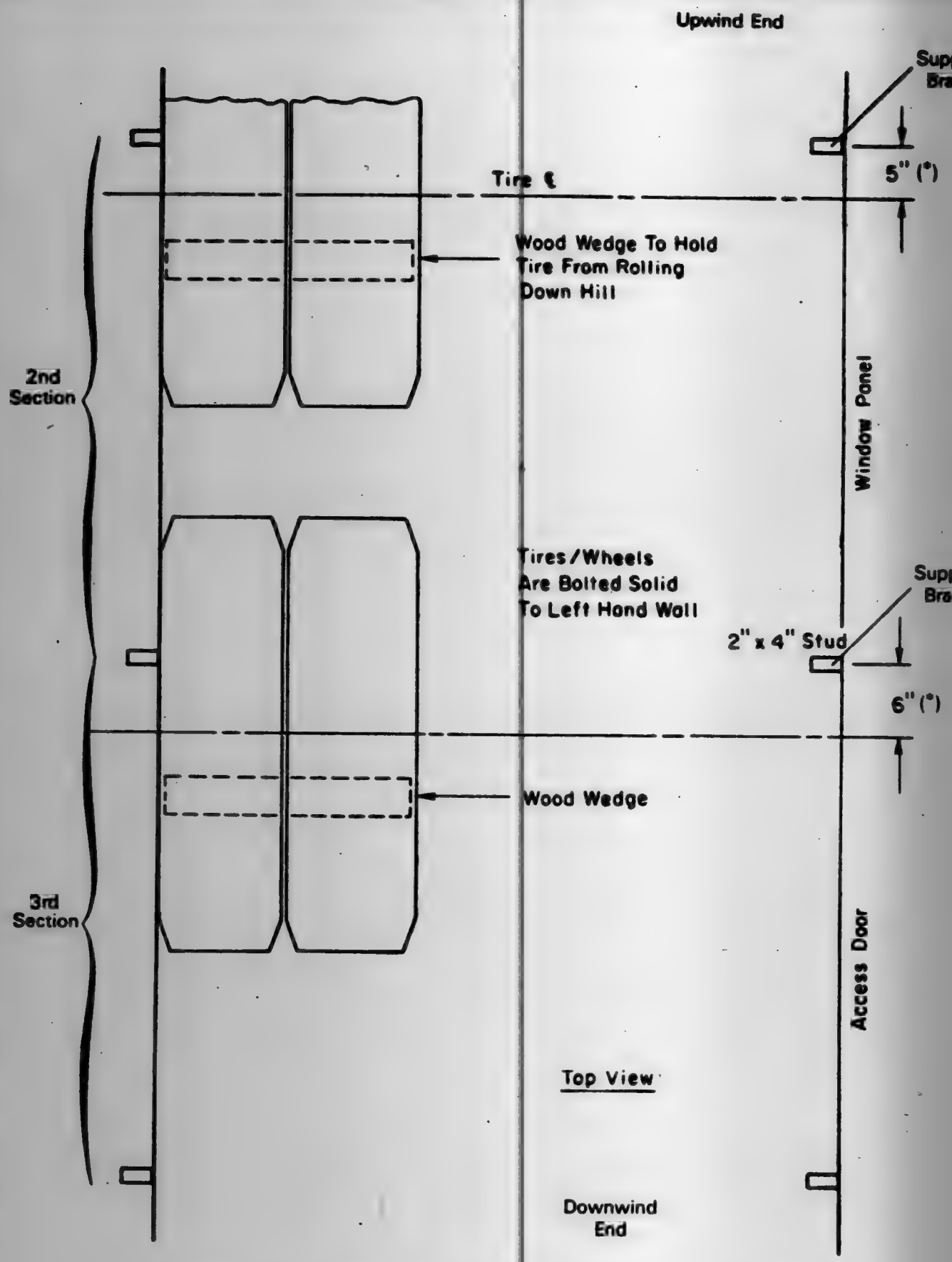


Figure 9. Tire Locations with the Test Section Portion of the Spray Tunnel

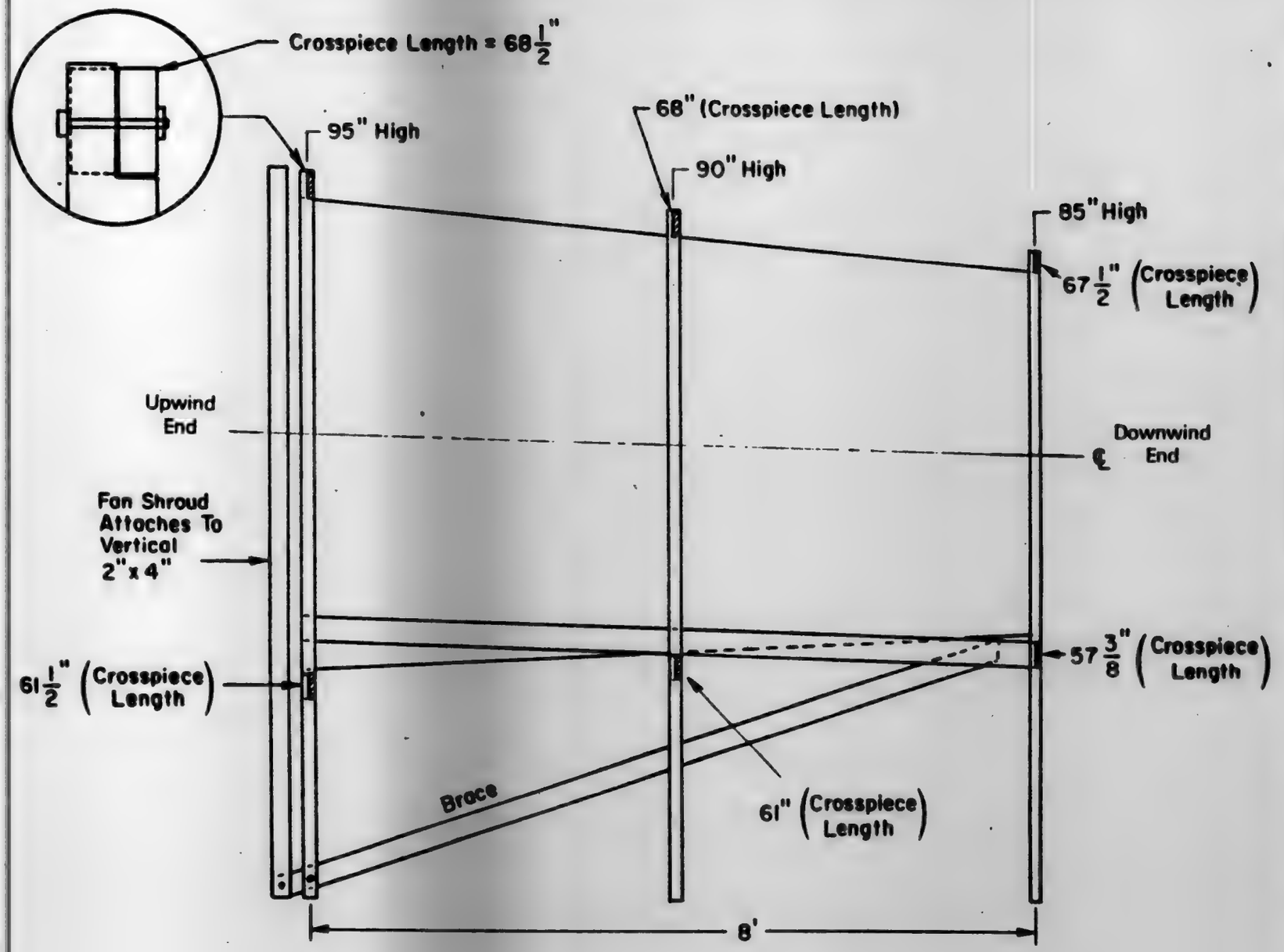


Figure 10. Side View Details of 8' Long Tunnel Transition from Octagon Shape to Rectangular Shape

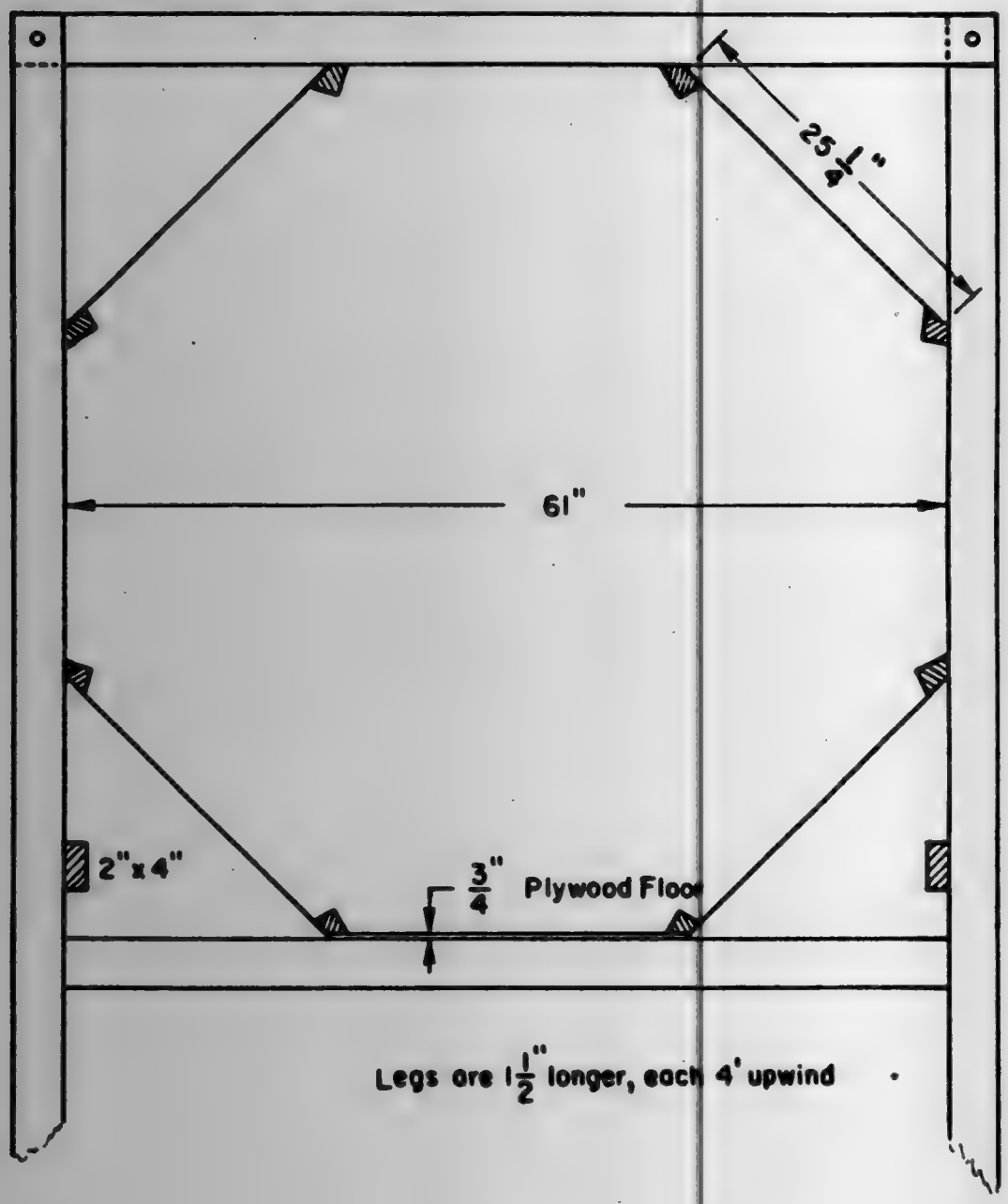


Figure 11. Details of Octagon Extreme Upwind End of Tunnel

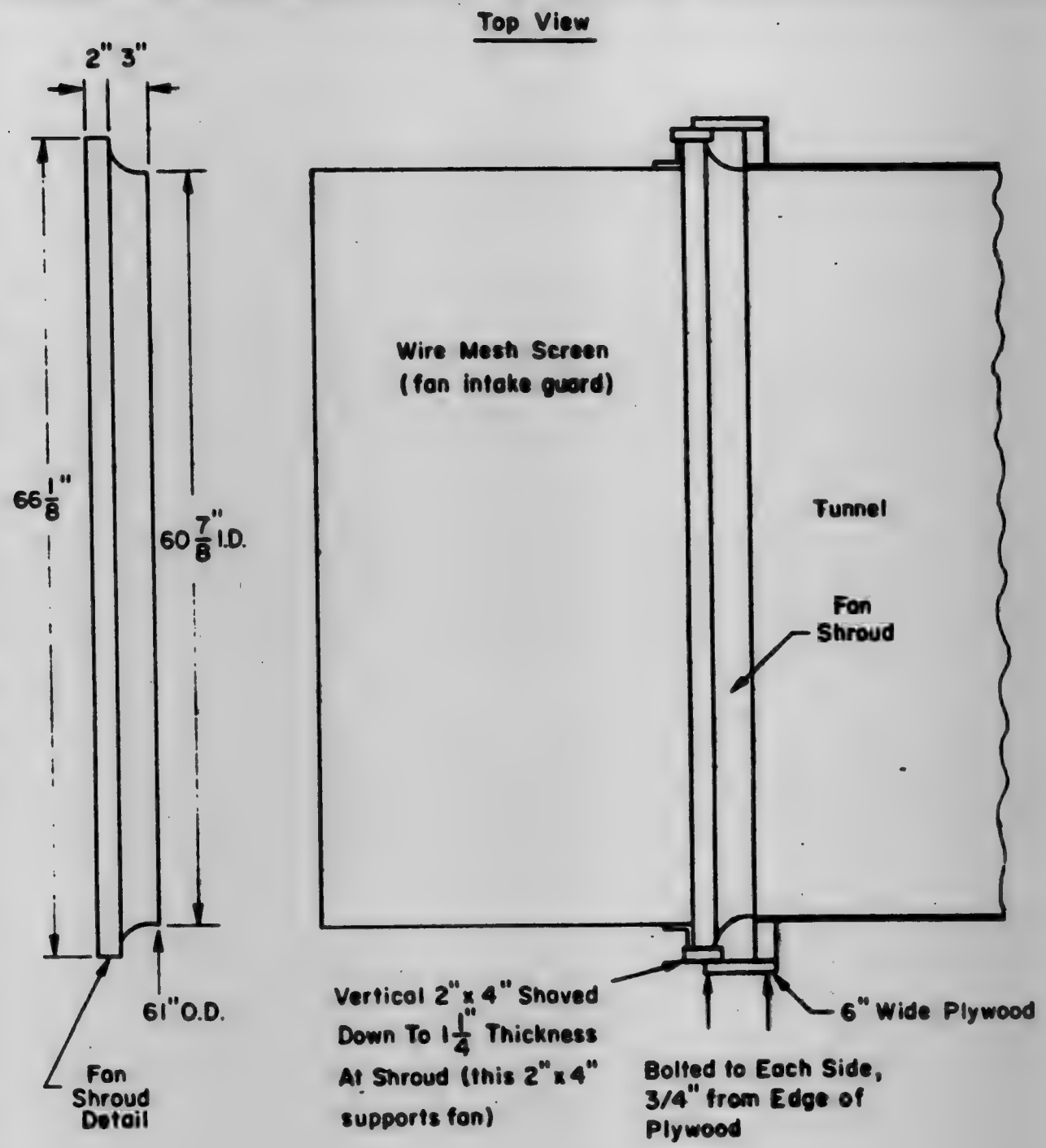


Figure 12. Geometry of Fan Shroud/Transition Section Interface

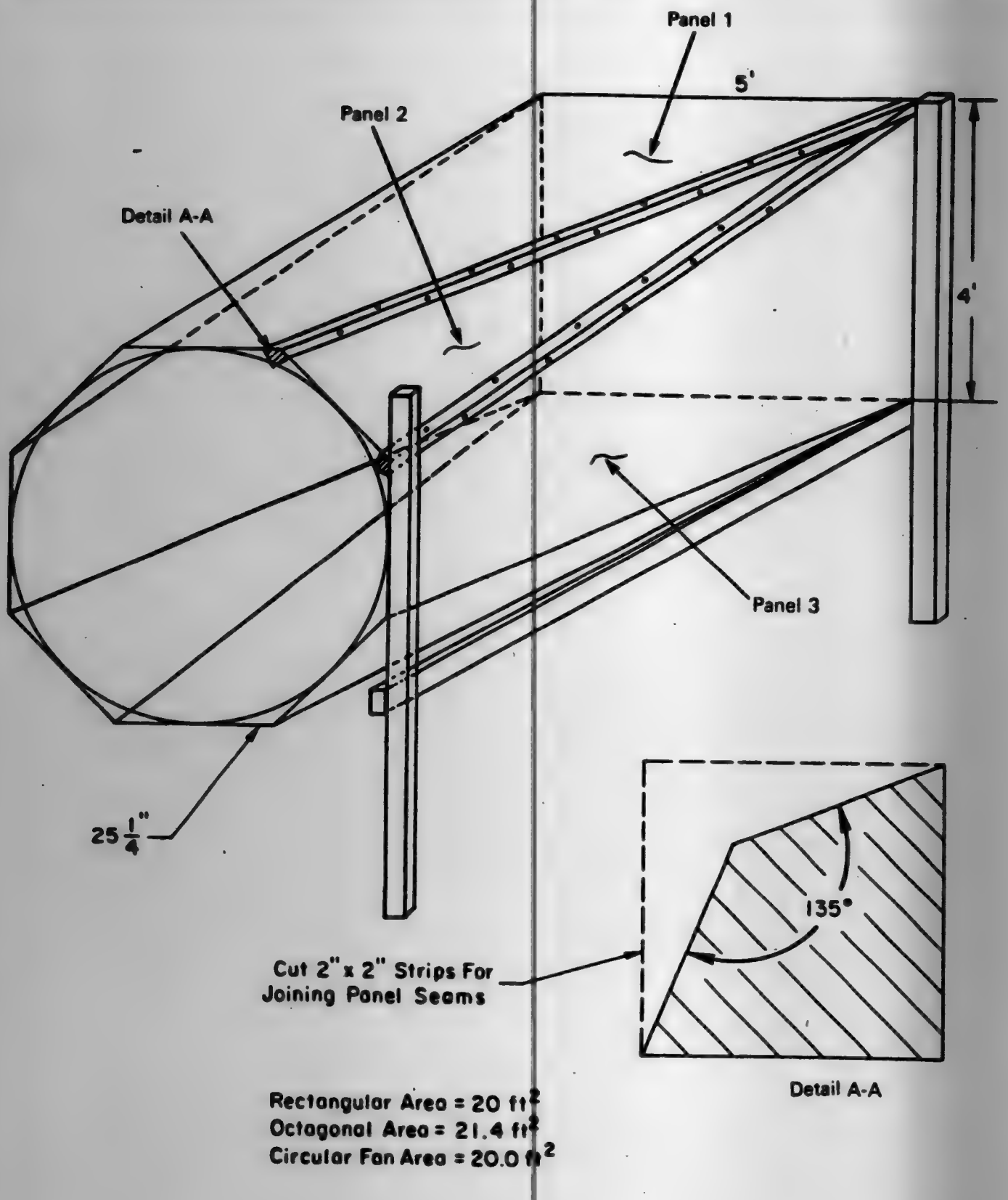
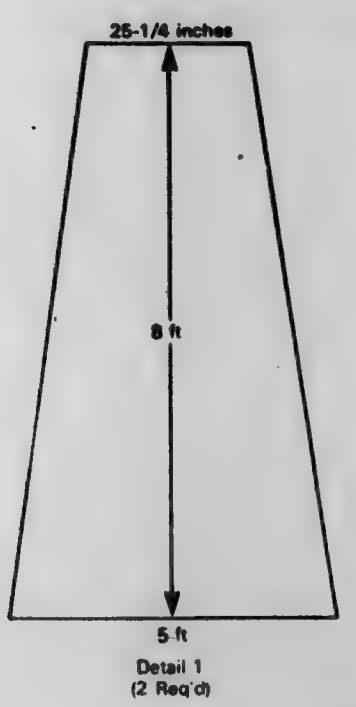
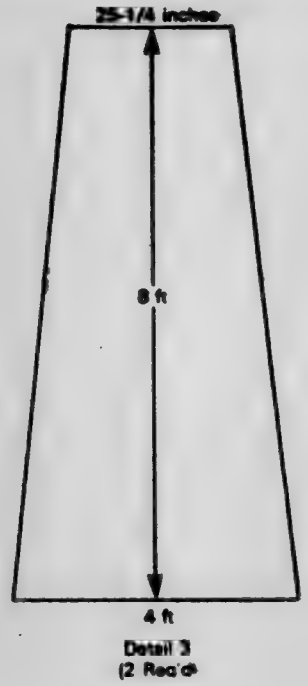


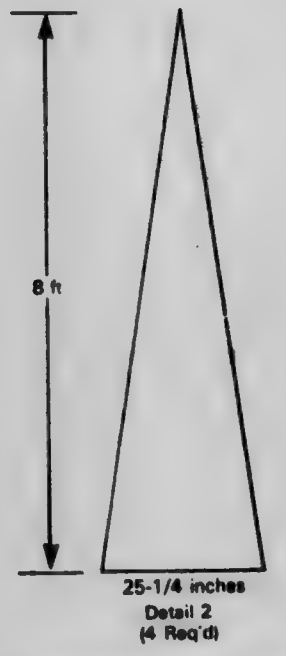
Figure 13. Panel Shapes for Transition from Circular Fan to Rectangular Tunnel (See Figure 13 for Details or Details of Panel 1, 2, & 3)



Detail 1
(2 Req'd)



Detail 3
(2 Req'd)



Detail 2
(4 Req'd)

Material: 1/4 inch Masonite

Figure 14. Transition Section Panel Design Details

A wire mesh material is folded to form a box, with the box edges wired or welded together.

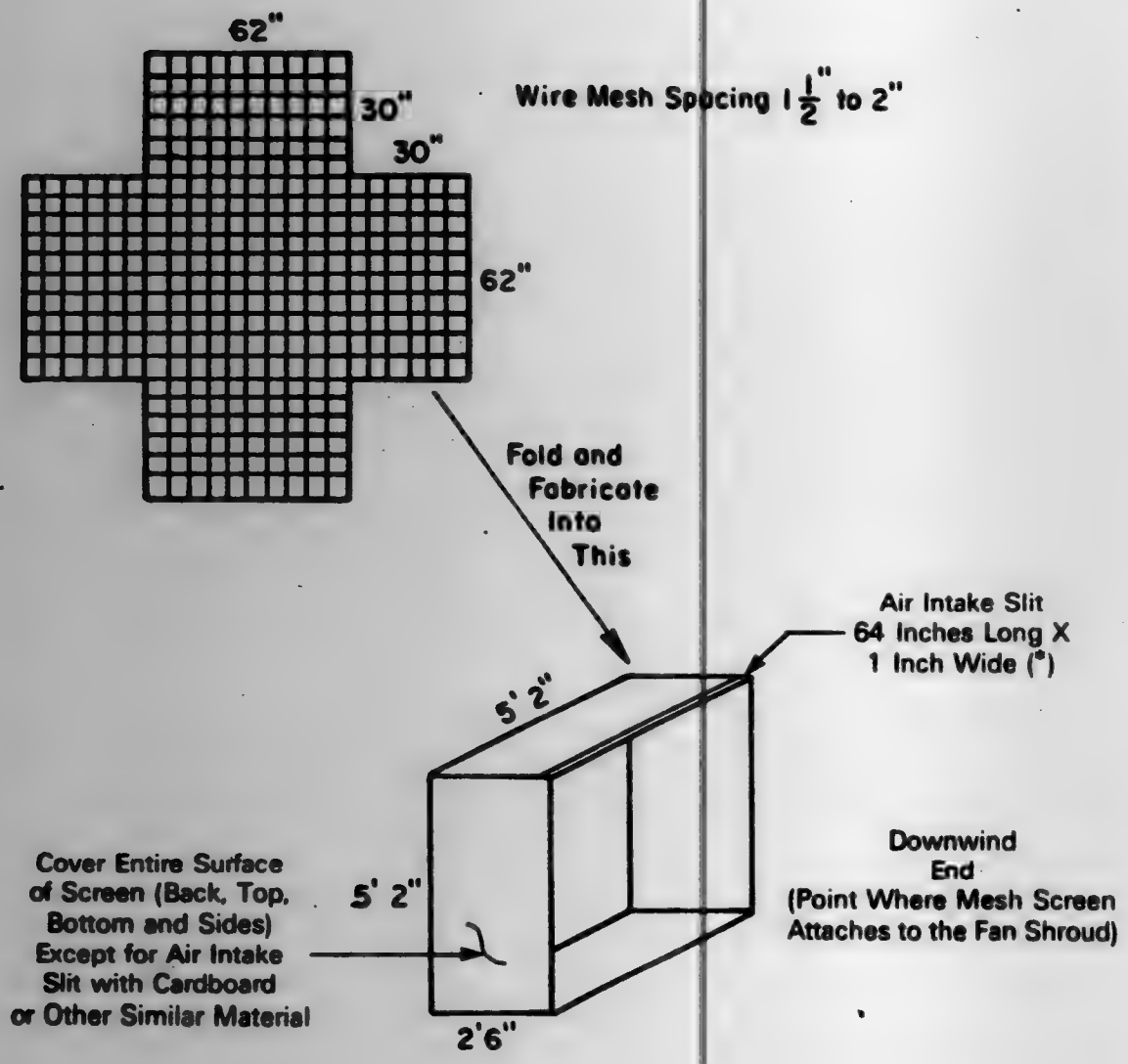
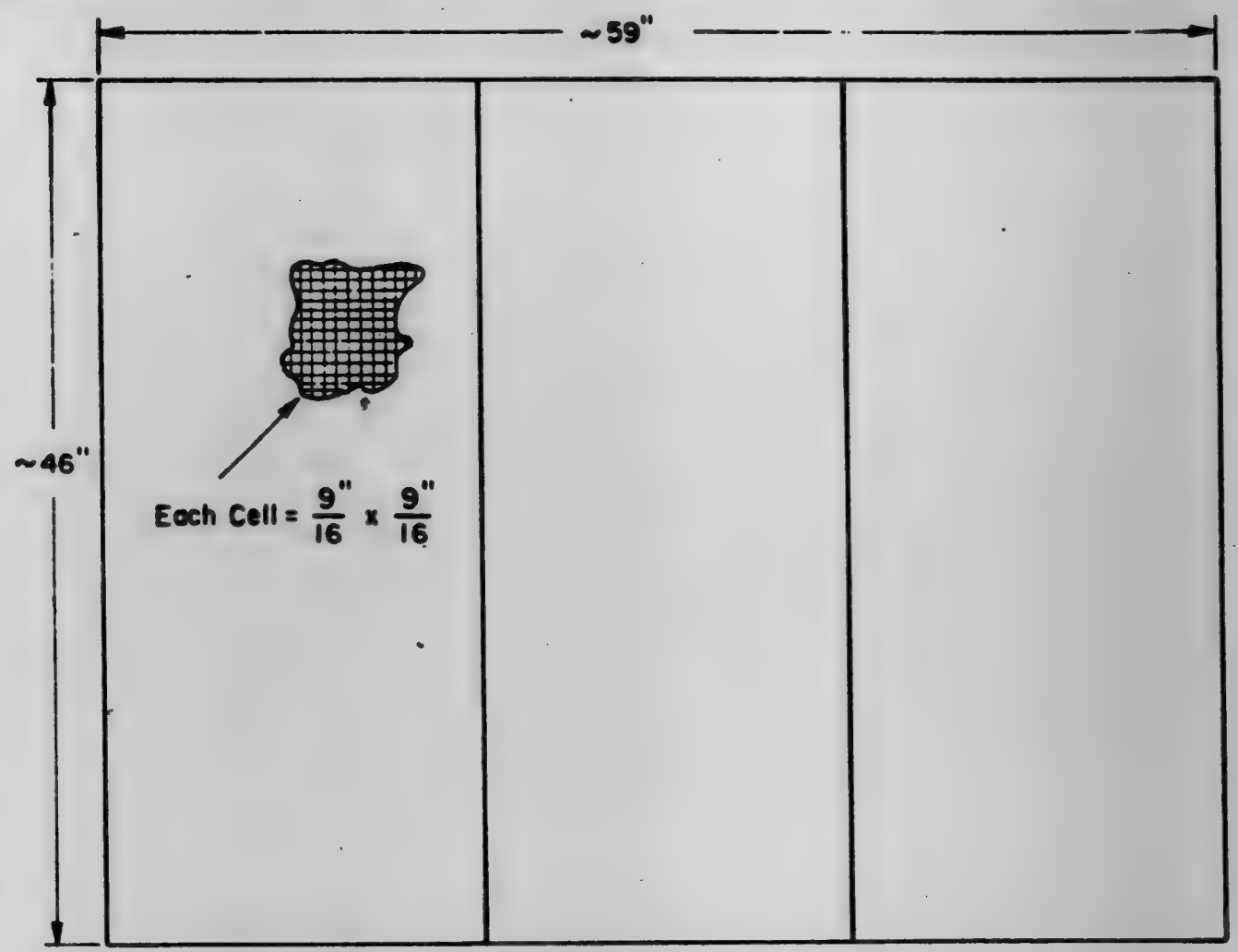


Figure 15. Fan Intake Guard & Enclosure and Air Intake Slit



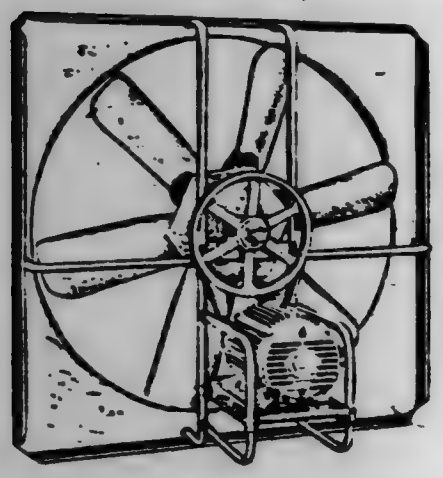
Built in 3 sections so that it can be carried into tunnel for final assembly

Material: 1/2 Inch Thick by 9/16 Inch Square Fluorescent Light Fixture Diffusers. —10 Panels are Used Creating a Diffuser Section Which is Nominally 5 Inches Thick. The Cells of Each Panel are Aligned Longitudinally With Each Other to Create Cells Nominally 5 Inches Long and 9/16 Inches Square

Figure 16. Honeycomb Diffuser and Turbulent Air Generator

36 to 60" EXTRA-HIGH-VOLUME EXHAUST FANS

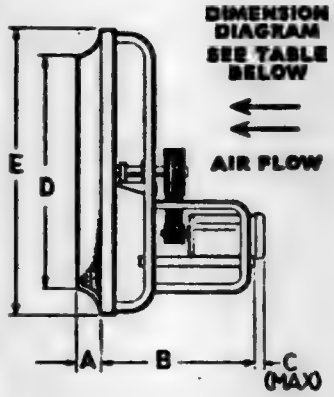
Up to 43,100 CFM at 1/8" Sp. Air Deliveries Based on Standard Test Codes of AMCA



$116.85
36" Fan, Less Motor & Drive

Dayton

Prepaid Freight on Shipments of 200 Lbs. & Over



"C" DIMENSION WILL VARY WITH MOTOR TYPE USED

Heavy-duty, extra high-volume, 36, 42, 48, 54 & 60" wall-mounted industrial exhaust-ventilating fans. These fans are widely used in factories, warehouses, foundries, laundries, mine tunnels, cooling towers, etc. Also efficiently used in duct installations up to ¾" SP. Self-aligning, heavy-duty, prelubricated ball bearing pillow blocks permit mounting in wall, air duct, penthouse, etc. Fan air deliveries listed in table below are based on independent tests conducted by the Texas Engineering Experiment Station, at Texas A & M University, in accordance with standard test codes of AMCA. Fan has heavy-duty statically balanced, 6-wing steel fan blade with heavy-duty, split taper bushing. Heavy-duty steel panel with deep-drawn venturi and adjustable motor base pre-drilled for standard NEMA frame motors of horsepower ratings specified below. Motors are heavy-duty, ball bearing, 3-phase type. Motor, cast iron sheaves and belts packed separately when fan is ordered complete. For shutter, see Index under Shutter, Fan.

EXTRA-HIGH-VOLUME FANS LESS MOTOR & DRIVE

Blade Dia.	DIMENSIONS (See diagram above) A	B	C	D	E	Shaft Dia.	Stock No.	Retail	Each	Shpg. Wt.
36"	2⅜"	22⅜"	1⅝"	36¾"	42"	1⅛"	3C220	$195.15	$116.85	125
42	2⅜	26⅜	⅞	43	48	1⅛	3C221	234.80	140.60	160
48	3	26	2⅝	49	54	1⅛	3C222	284.30	170.25	190
54	3	32	0	55	60	1⅛	3C223	465.65	278.85	240
60	3	34⅛	2¼	61	66	1⅛	3C224	523.90	313.70	280

EXTRA-HIGH-VOLUME FANS COMPLETE WITH MOTOR & DRIVE

Blade Dia.	1/8" SP	1/4" SP	3/8" SP	1/2" SP	5/8" SP	3/4" SP	Fan RPM	HP 1725 RPM	WITH 230/460V, 60 Hz 3 PHASE MOTOR Dripproof Stock No.	Dripproof Each	TEFC Stock No.	TEFC Each
36"	13,200	11,250	8,250	3,900	2,350	—	600	1½	7F290(*)	$210.55	7F294	$217.10
	14,800	13,300	10,700	8,200	4,100	2,600	660	2	7F291(*)	217.76	7F295	224.75
	17,400	16,300	14,650	12,500	10,200	6,000	760	3	7F292	241.12	7F296	264.32
	20,600	19,800	18,600	17,400	15,200	13,600	890	5	7F293	253.76	7F297	283.92
42	17,900	16,200	13,000	10,300	8,100	6,600	565	2	7F298(*)	240.20	7F302	247.15
	20,700	19,600	17,600	14,400	11,800	9,900	645	3	7F299	261.84	7F303	285.04
	24,900	24,100	23,000	21,400	18,900	16,100	765	5	7F300	282.02	7F304	312.18
	28,700	28,100	27,300	26,300	24,800	22,800	875 —	7½	7F301	337.64	7F305	368.96
48	25,400	24,200	21,700	15,600	9,800	—	535	3	7F306	301.37	7F310	324.57
	29,800	28,400	27,000	25,200	21,800	15,000	625	5	7F307	317.73	7F311	347.89
	34,500	33,500	32,300	31,100	29,700	27,700	720 —	7½	7F308	380.19	7F312	411.51
	38,300	37,200	36,000	34,600	32,900	30,800	795	10	7F309	414.53	7F313	451.65
54	33,500	31,400	28,400	21,500	14,400	10,300	495	5	7F314	446.28	7F318	476.44
	38,400	36,900	34,500	32,100	26,400	19,100	565 —	7½	7F315	495.43	7F319	526.75
	43,100	41,400	39,600	37,500	34,900	29,000	620	10	7F316	527.67	7F320	564.79
	49,900	48,300	46,300	44,100	43,300	40,600	710	15	7F317	597.75	7F321	647.63
60	46,400	44,100	41,400	37,500	30,500	19,600	505 —	7½	7F322	536.88	7F326	568.20
	51,000	48,500	46,100	43,400	39,000	32,800	550	10	7F323	568.97	7F327	606.09
	59,200	57,400	56,000	53,400	50,900	48,200	645	15	7F324	645.17	7F328	695.05
	63,100	61,600	60,000	58,200	56,100	53,700	675	20	7F325	707.49	7F329	770.13

(*) Also 220/440V, 60 Hz.

AIR MOVING EQUIPMENT FUNDAMENTALS—SEE PAGES 556 AND 557
Includes Equipment Description, Characteristics and Glossary of Terminology

60" Blade Diameter
7 1/2 HP Motor

Figure 17. Fan and Motor Used in Tunnel

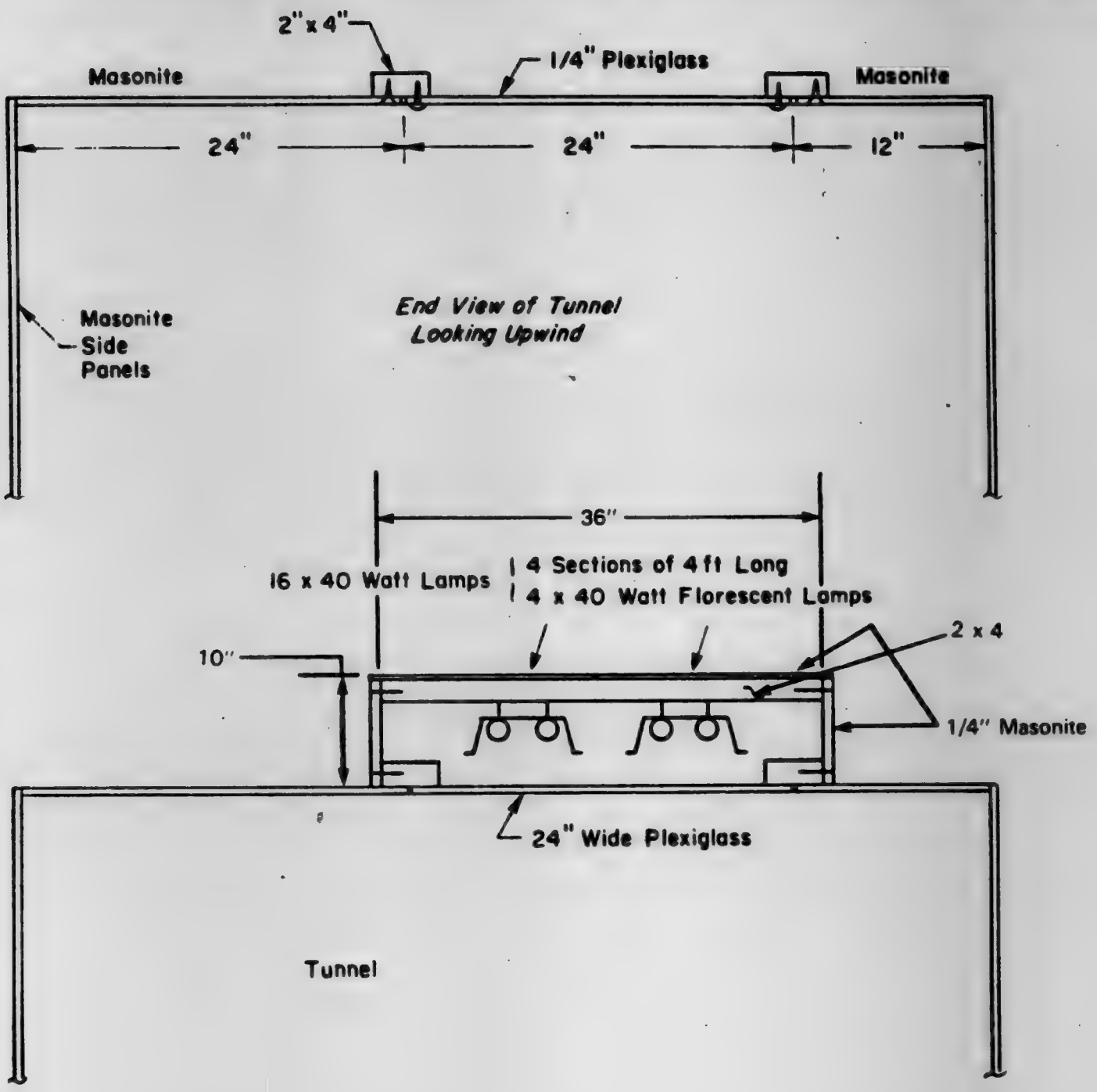


Figure 18. Overhead Lighting Installation

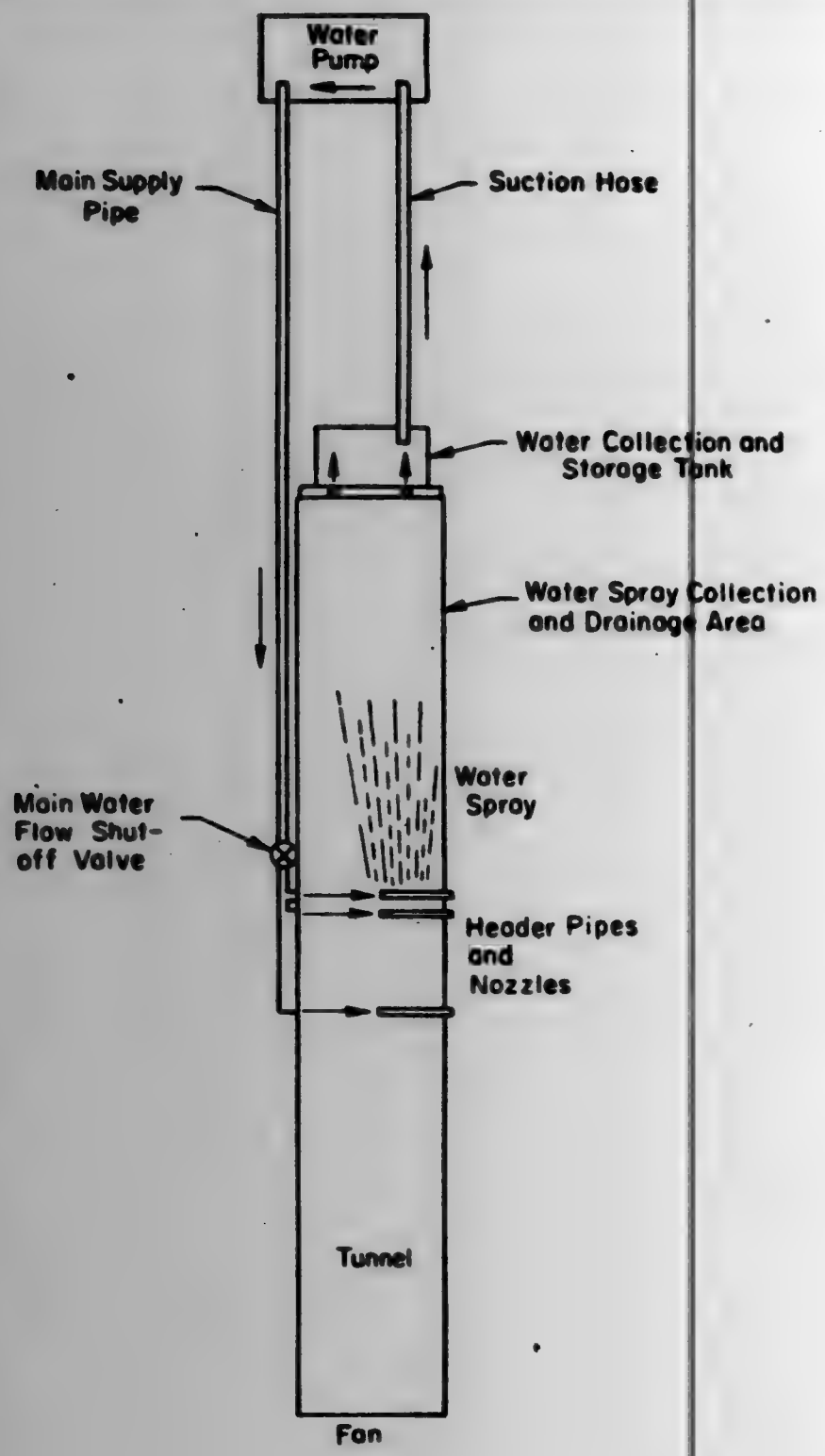
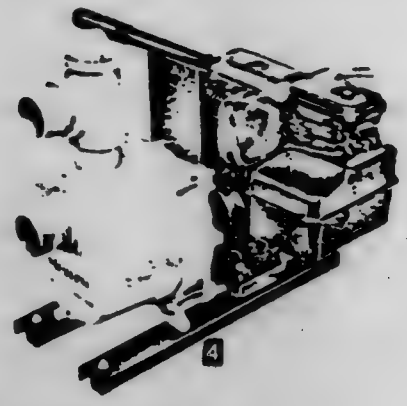


Figure 19. General Layout of Recirculating Water Flow System

Gas-powered 5-HP High-pressure Pump includes gas engine

Heavy-duty portable pump delivers huge volume of water at high pressure for irrigation, lawn and garden sprinkling, dewatering, etc. Ideal for fighting small fires, too, to help protect buildings, stock and equipment



PERFORMANCE Delivers up to 60 lbs. pressure. Maximum suction lift 20 ft. *Typical performance at 10-ft. lift:* 65 gallons per minute (GPM) at 20-lb. pressure for dewatering (draining flooded basements, etc.); 58 GPM at 30-lb. pressure for sprinkling; 26 GPM at 55-lb. pressure for fire-fighting. Ideal for use where electricity is not available.

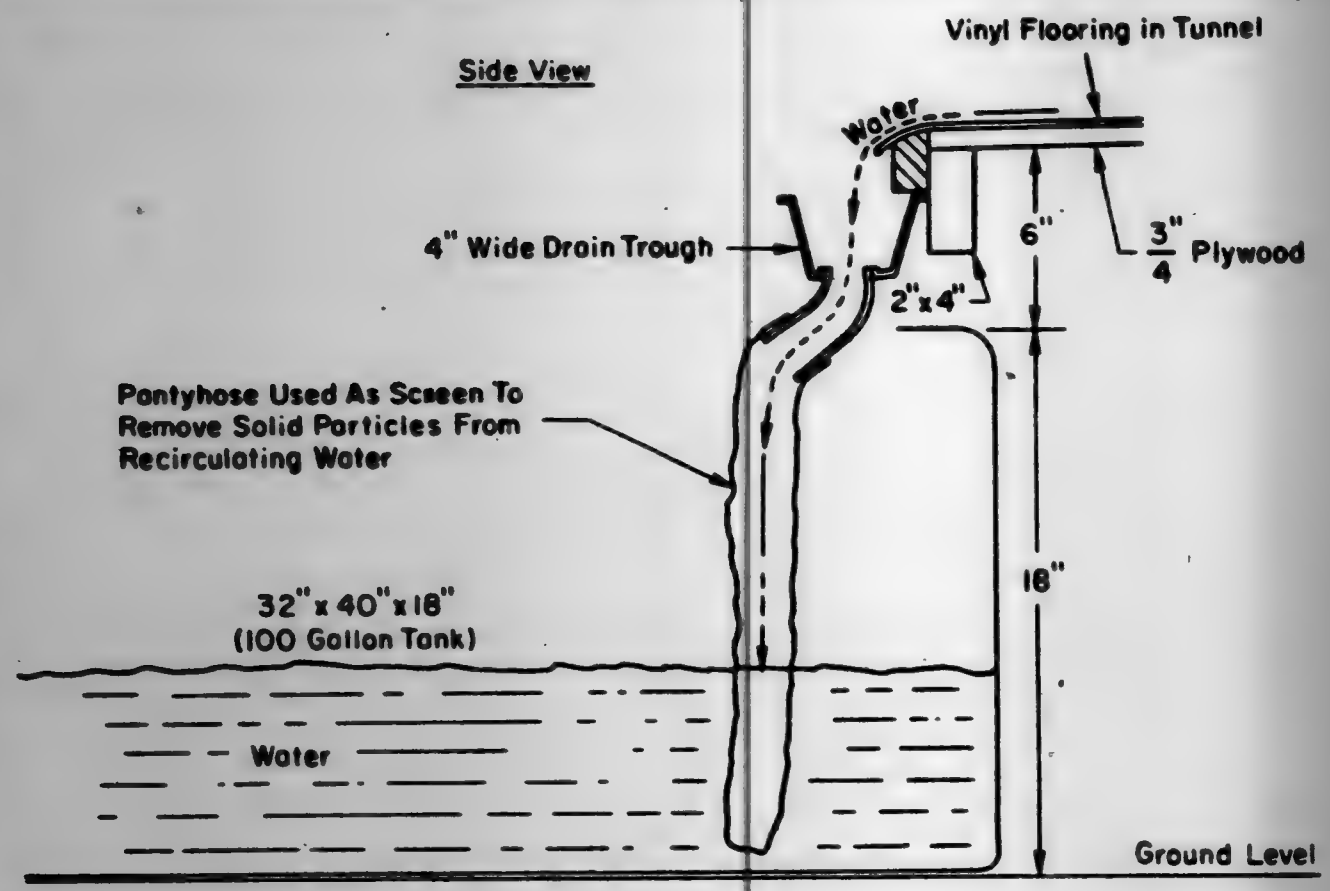
CONSTRUCTION Cast aluminum alloy. Replaceable cast iron at wear points. Semi-open, self-cleaning impeller will handle even muddy, dirty water. 1½-inch suction and discharge ports. Overall dimensions: 20½x18½x17 inches high.

ENGINE Direct-drive, 4-cycle, 3600-RPM. Recoil starter.

ORDERING INFO See warranty (T) on facing page. For fire-fighting, order Hose and Fog Nozzle (5) at right.

42 WE 2640L—Shipping weight 70 pounds.....

Figure 20. High Pressure Water Pump



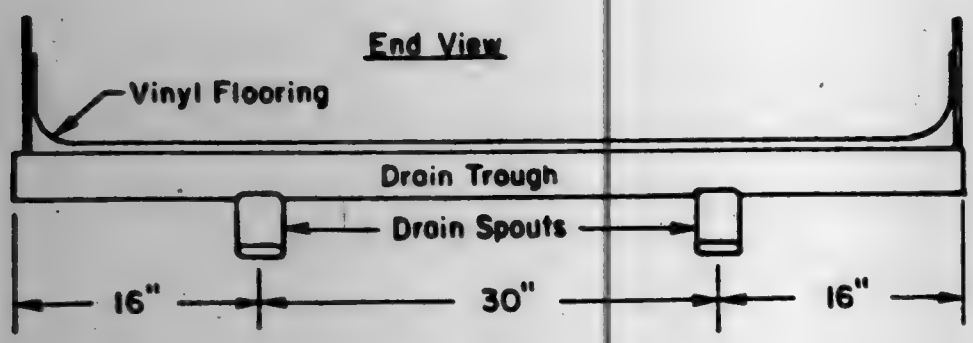


Figure 21. Collection of Water in Reservoir at End of Tunnel

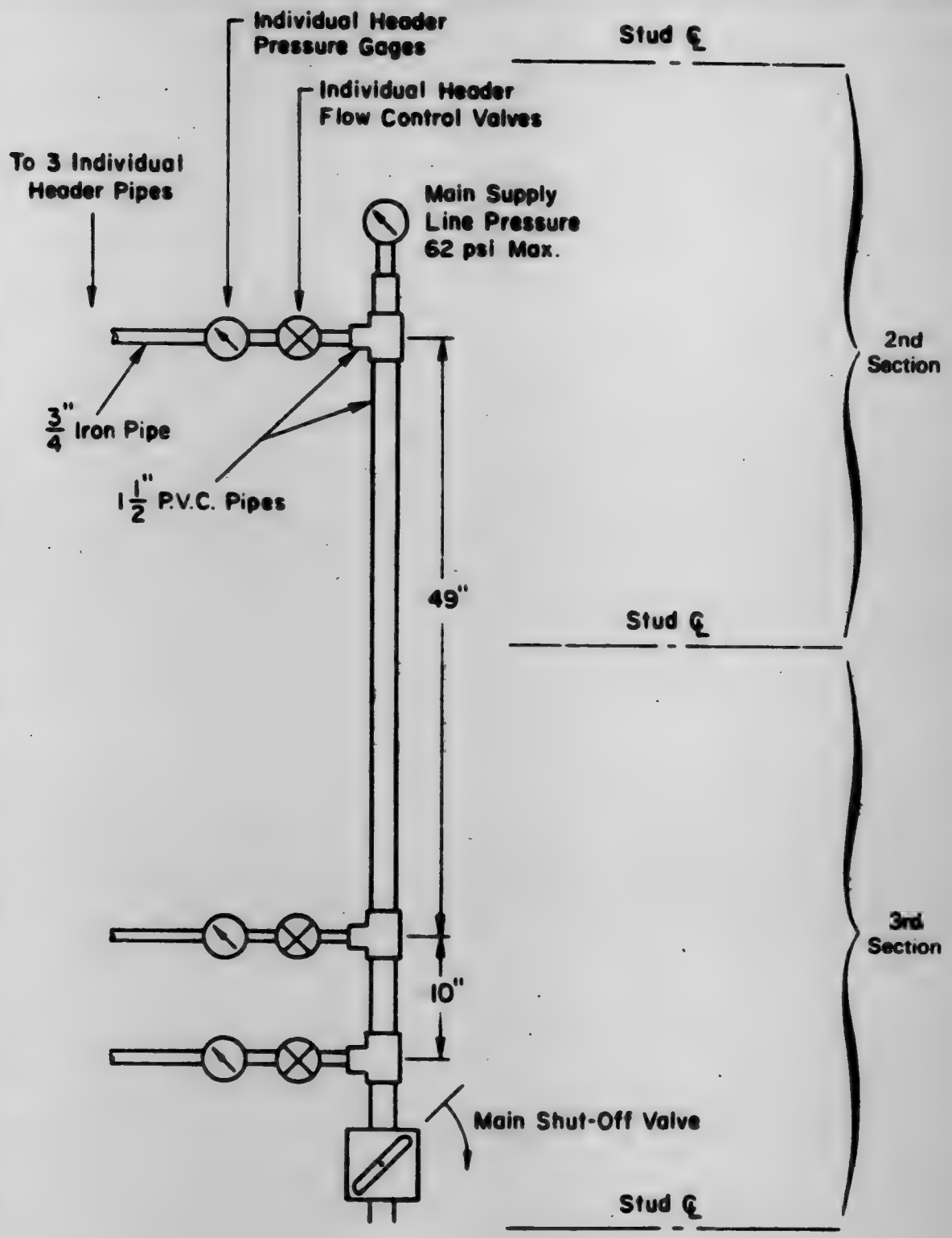


Figure 22. Top View Details of Main Water Supply Pipe, Valves, and Pressure Gages

End View Of Tunnel Looking Upwind

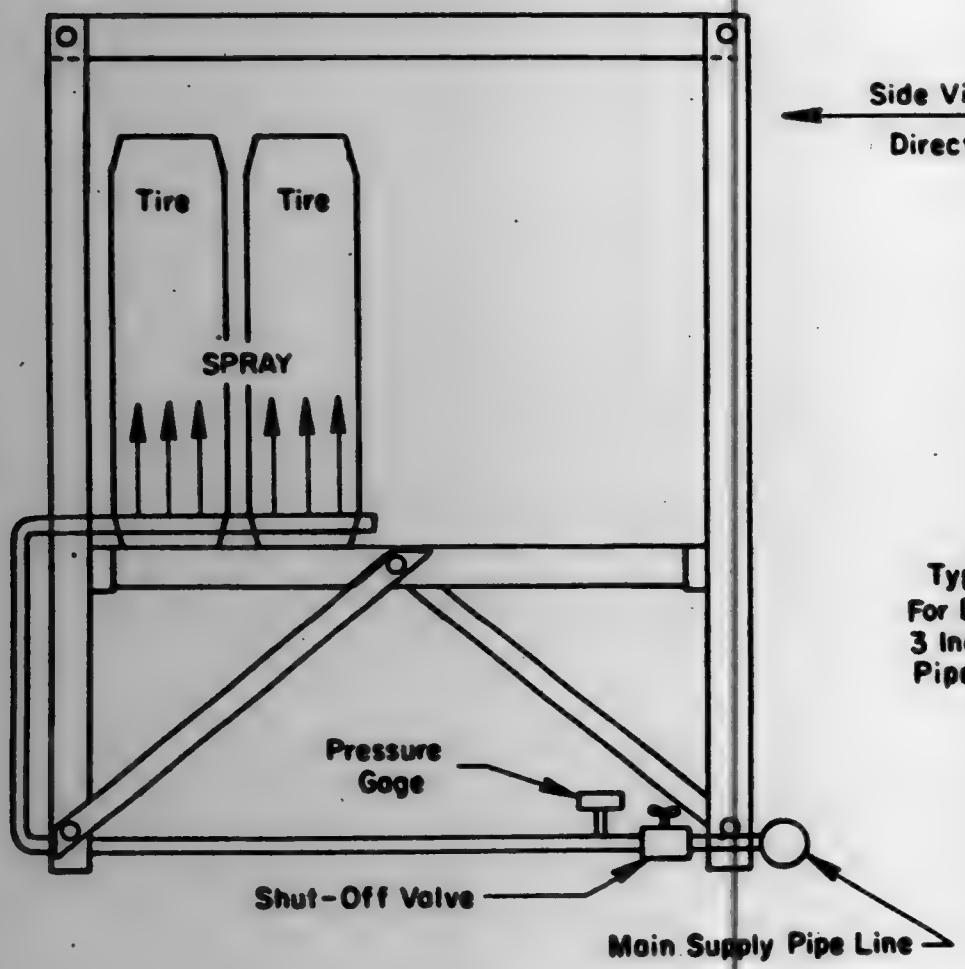


Figure 23. End View of General Layout of Plumbing

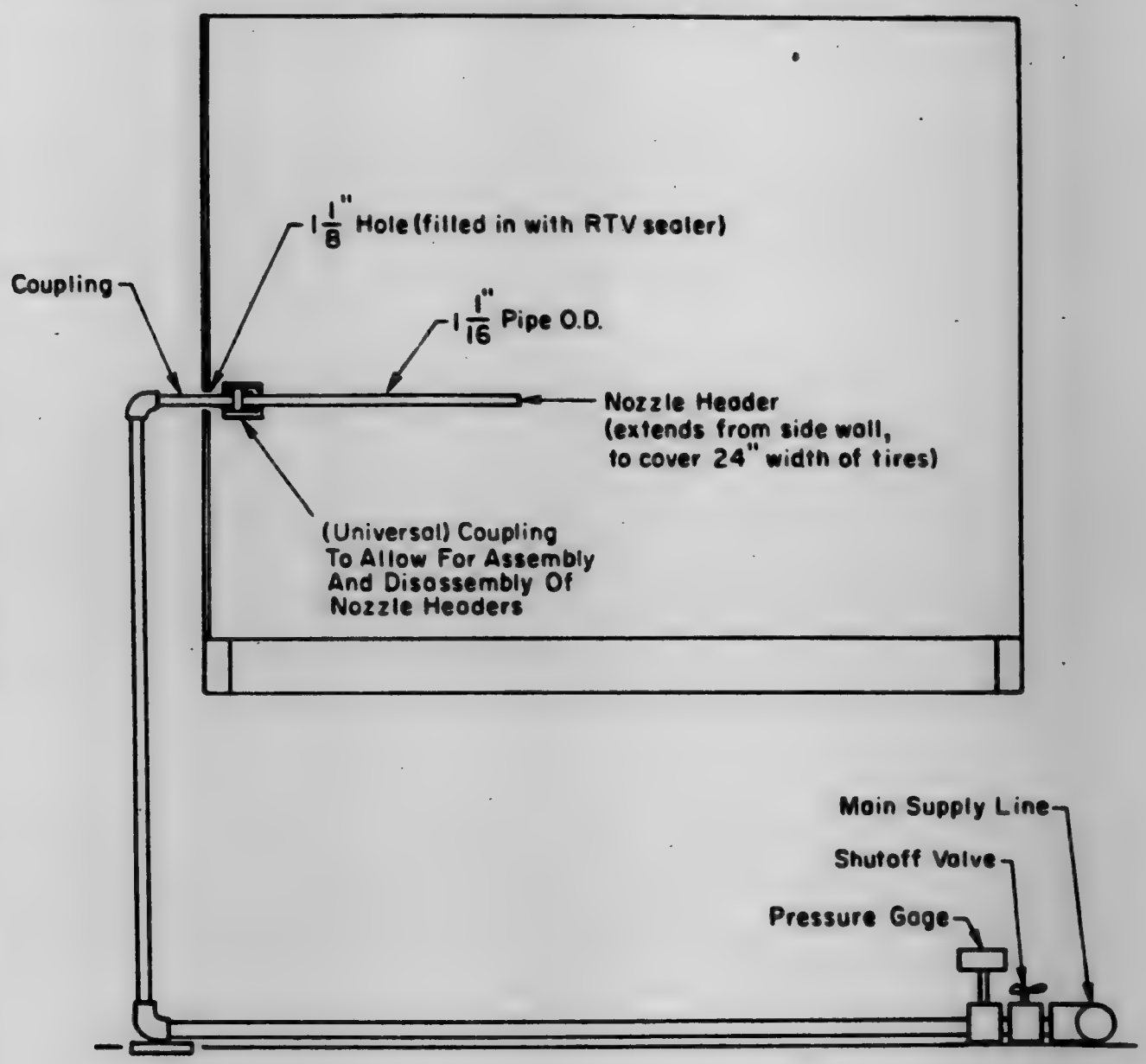


Figure 24. End View Details of Typical Plumbing Layout from Main Supply Line to Nozzle Header

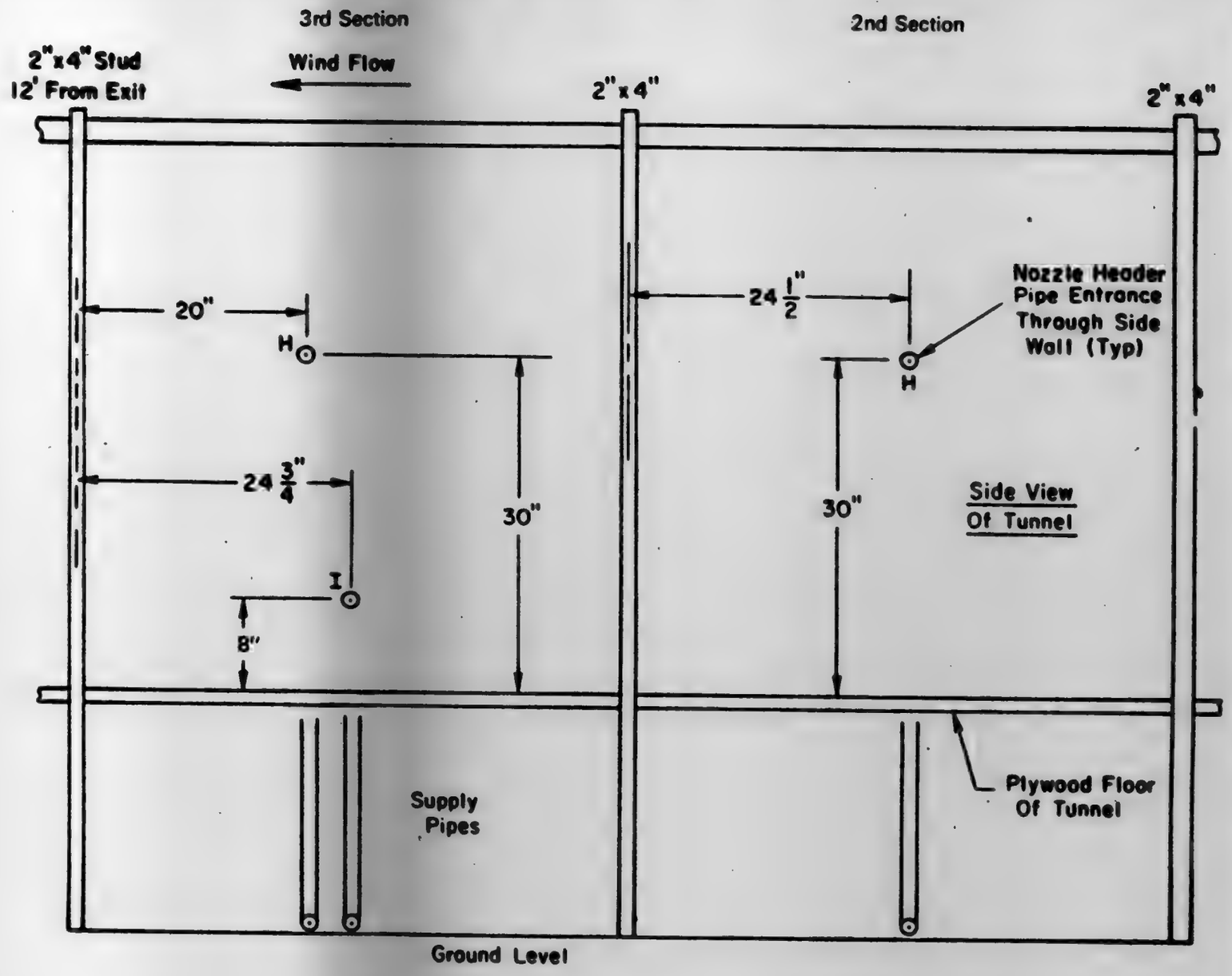


Figure 25. Details of Header Locations

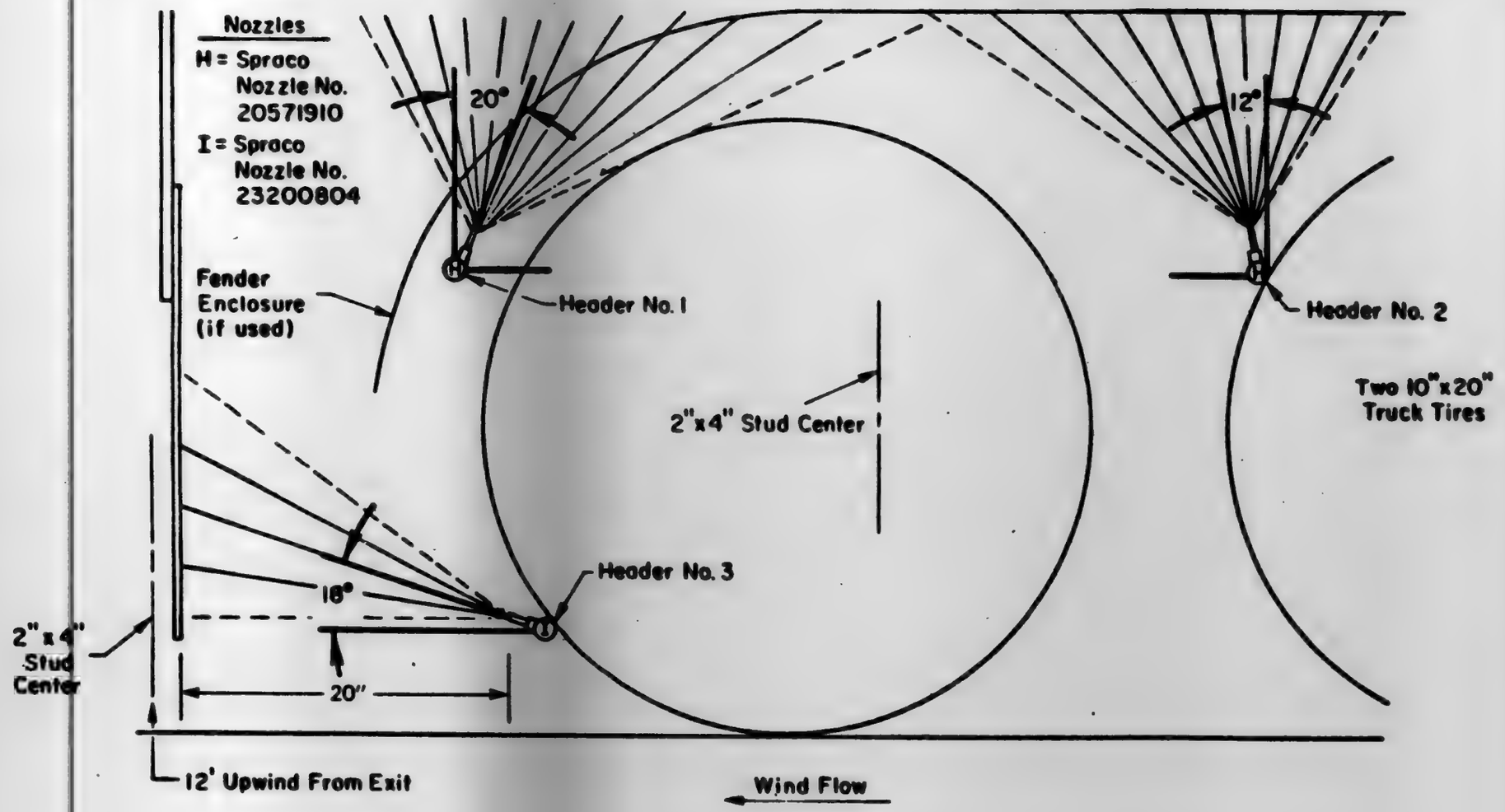
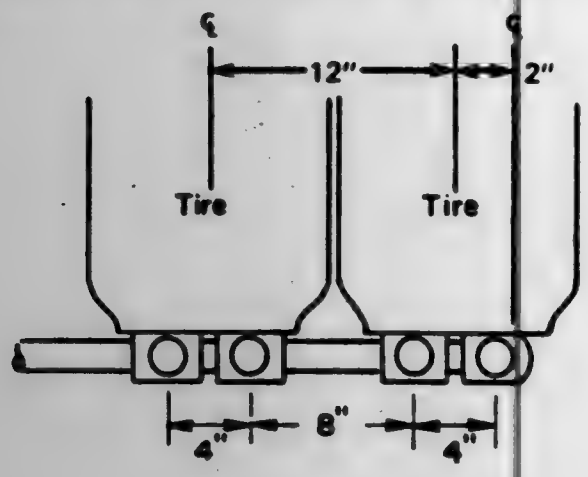


Figure 26. Side View of Nozzle Locations and Spray Patterns

"I" Nozzles - positioned at tire surface and aimed upwards 18° from horizontal. There a 4 nozzles on the header, with a pair of nozzles centered on each tire.



END VIEW

"I" Nozzles are 7" Above Tunnel Floor

"H" Nozzles - are positioned 30" above tunnel floor, with the rear nozzles aimed 20° forward from vertical at a position 5" rearward from the tire. The nozzles between the tires are positioned at the forward tire surface and 12° away from vertical (Aft). There are 2 "H" nozzles on each header, spaced 6" apart and and centered between the tire pair.

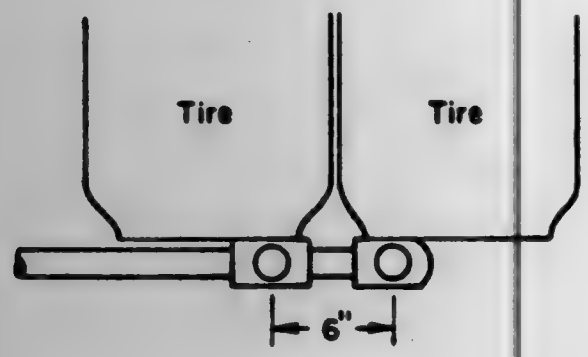


Figure 27. Nozzle Transverse Location Details

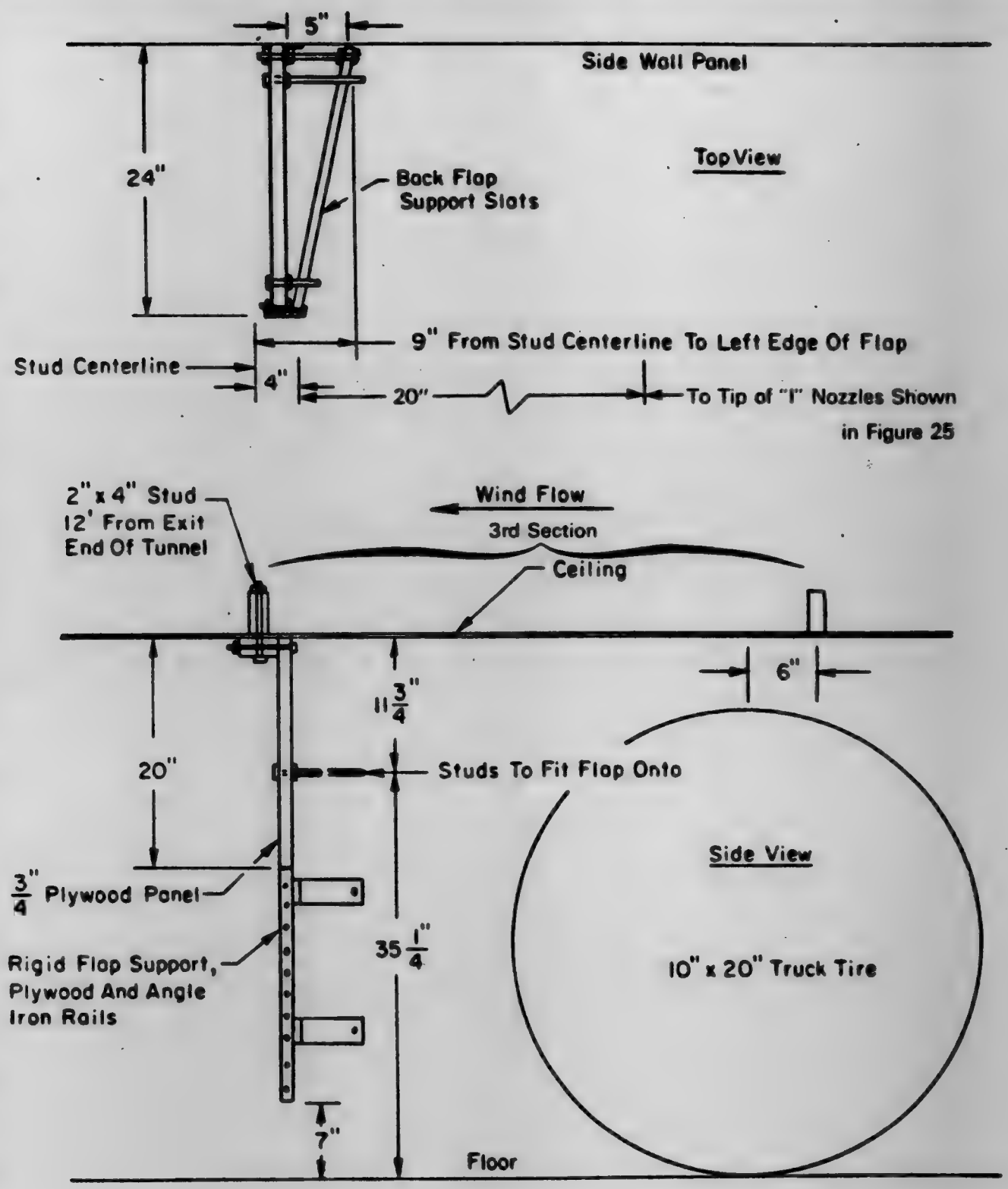
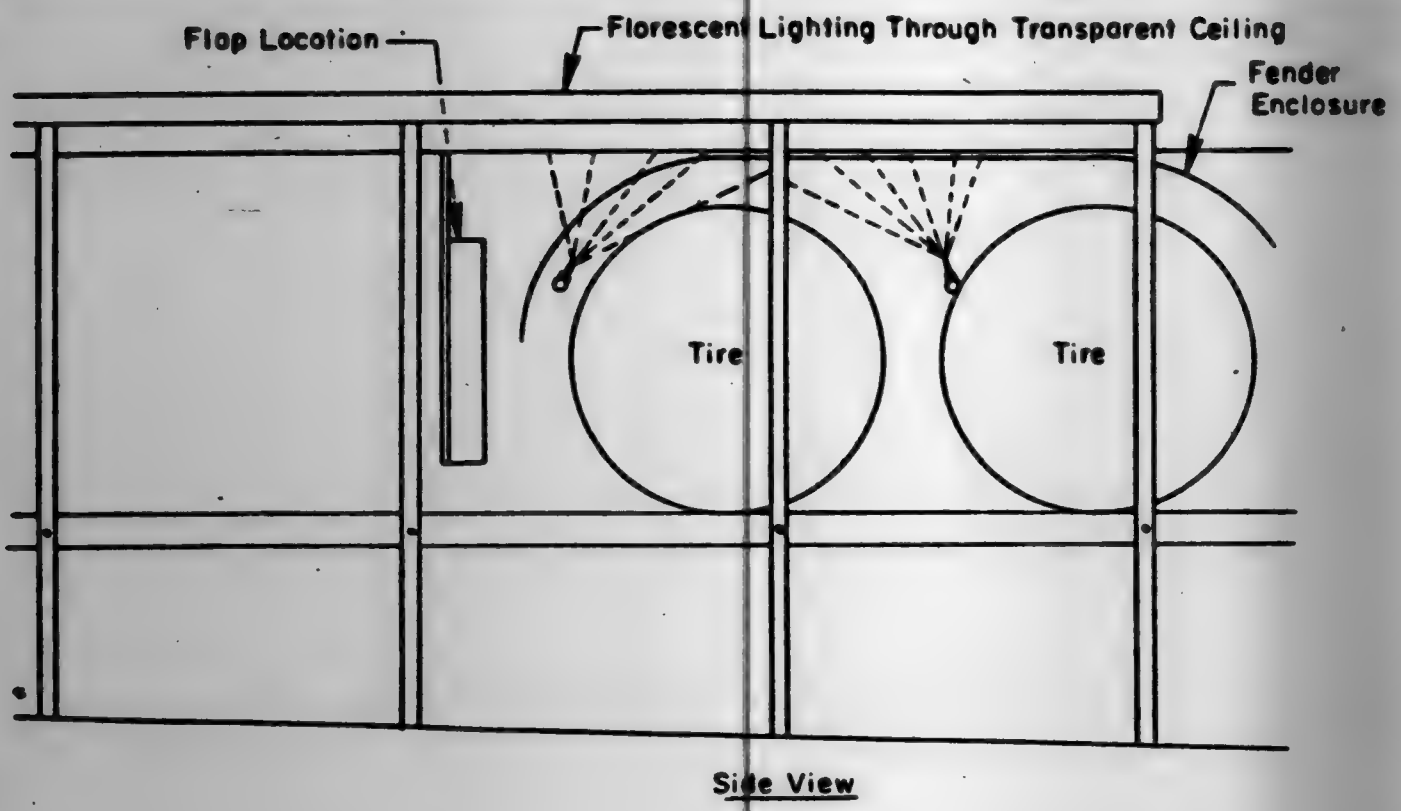


Figure 28. Test Back Flap Attachment Details



Side View

Figure 29. Nozzle Spray Pattern for Fender Testing

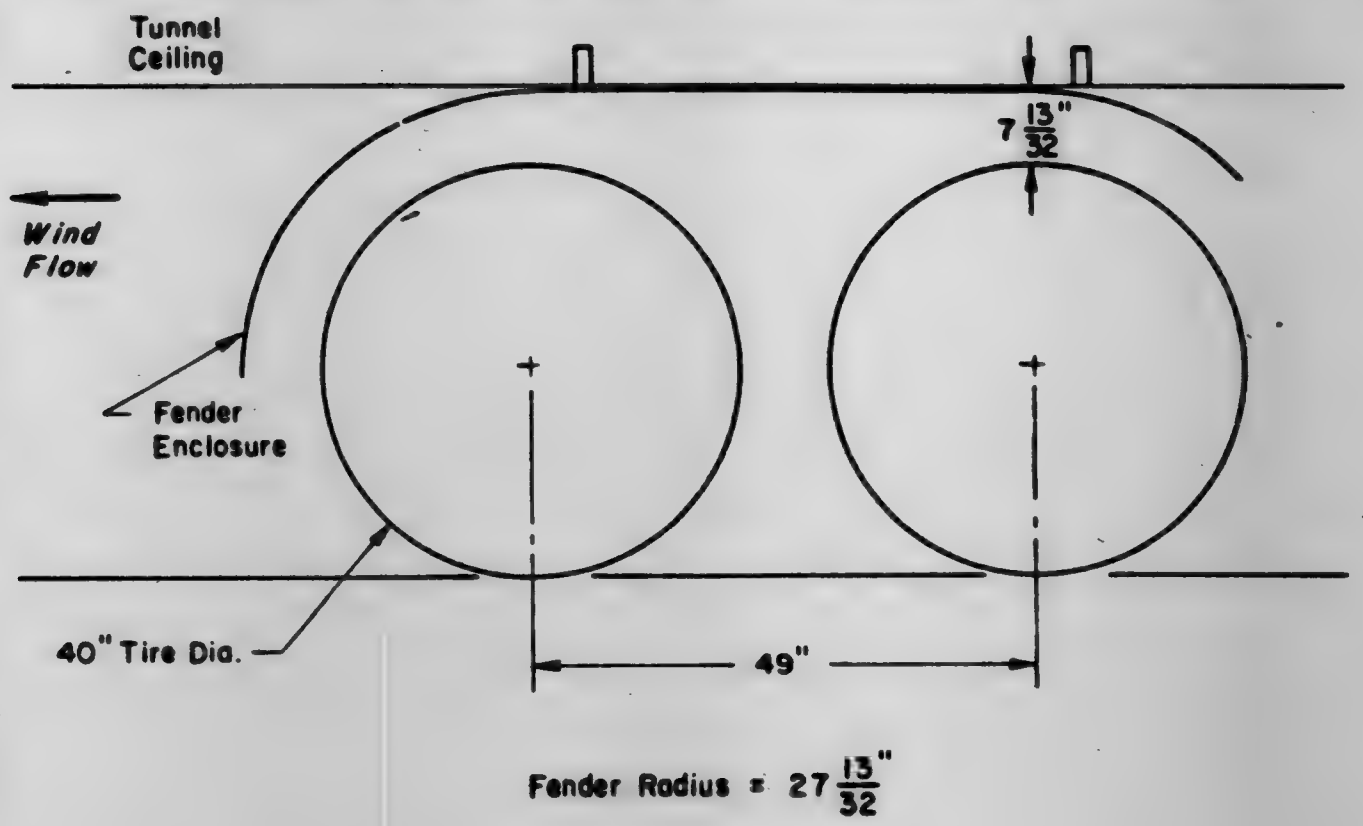


Figure 30. Fender Mounting in Tunnel

End View Of Tunnel Looking Upwind

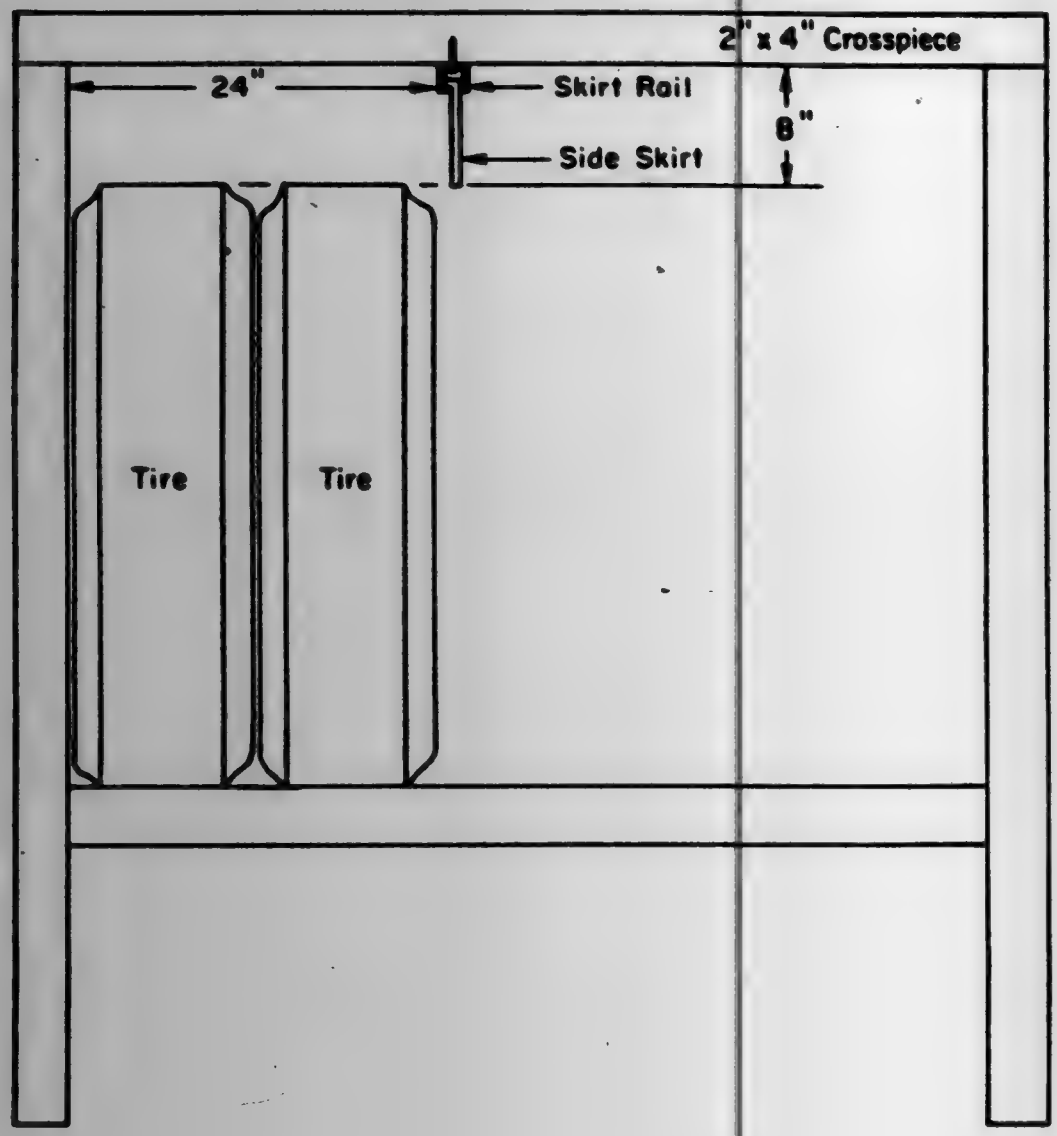


Figure 31. Details of Side Skirt Attachment

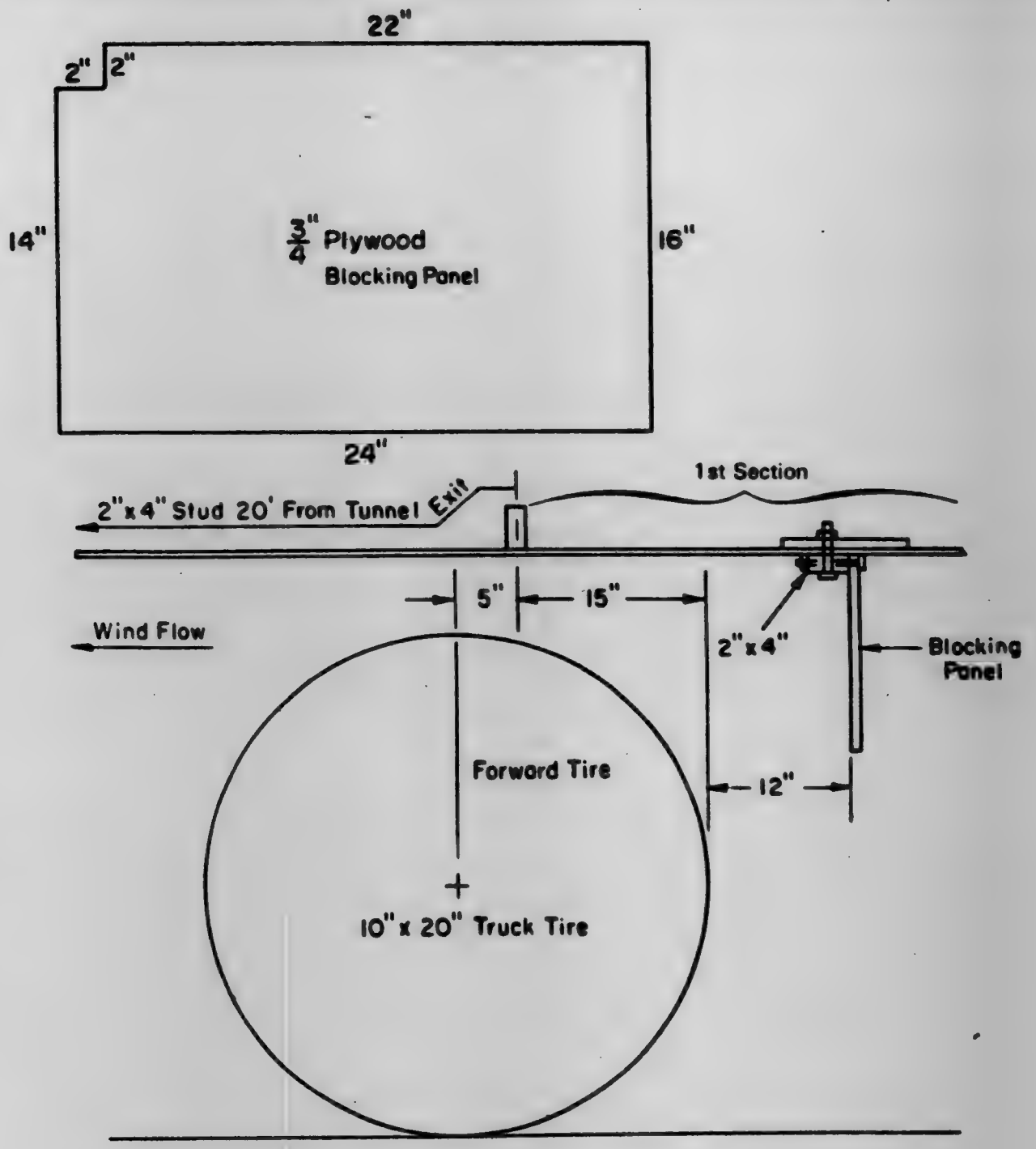


Figure 32. Air Flow Blocking Panel

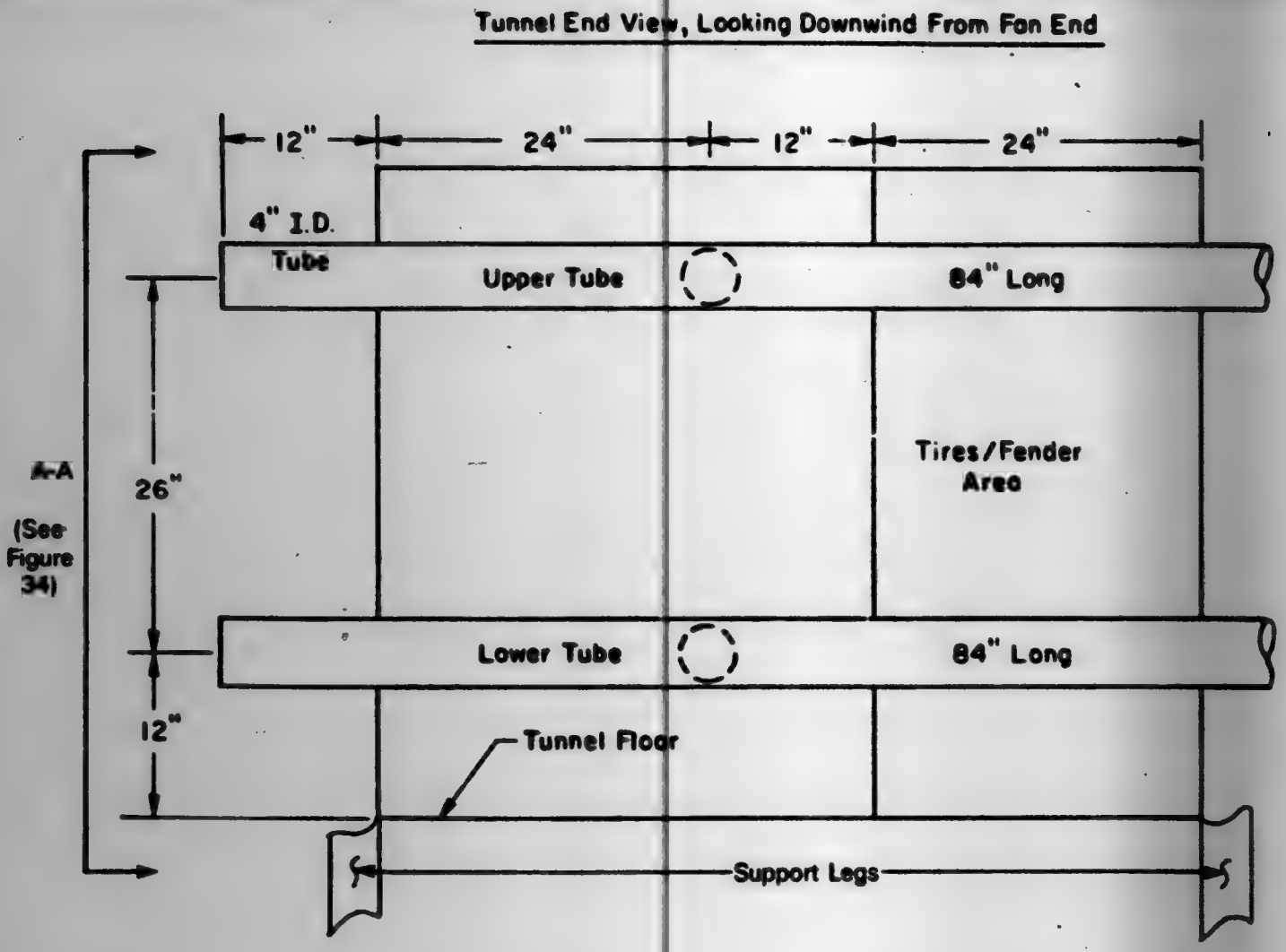


Figure 33. Periscope Tube Size and Locations

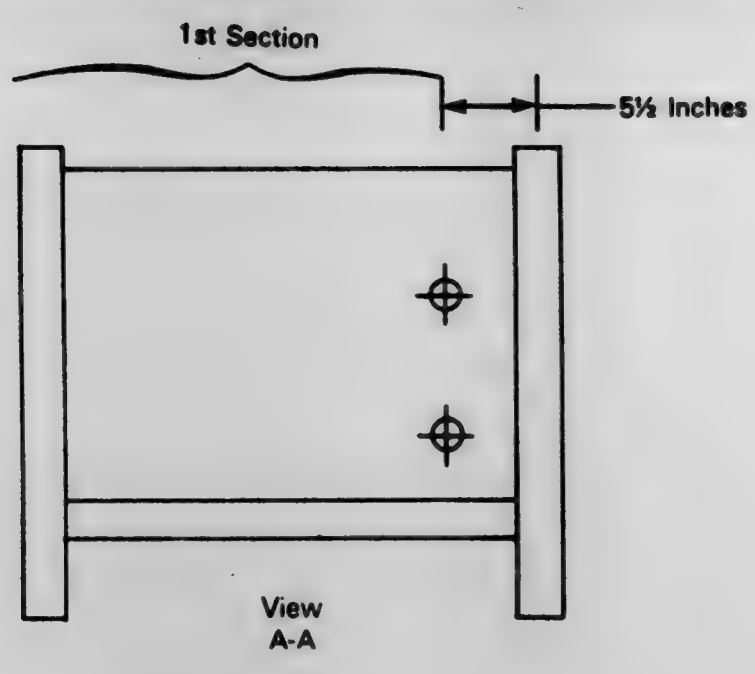


Figure 34. Side View Detail of Periscope Installation

End View Of Tunnel Looking Upwind

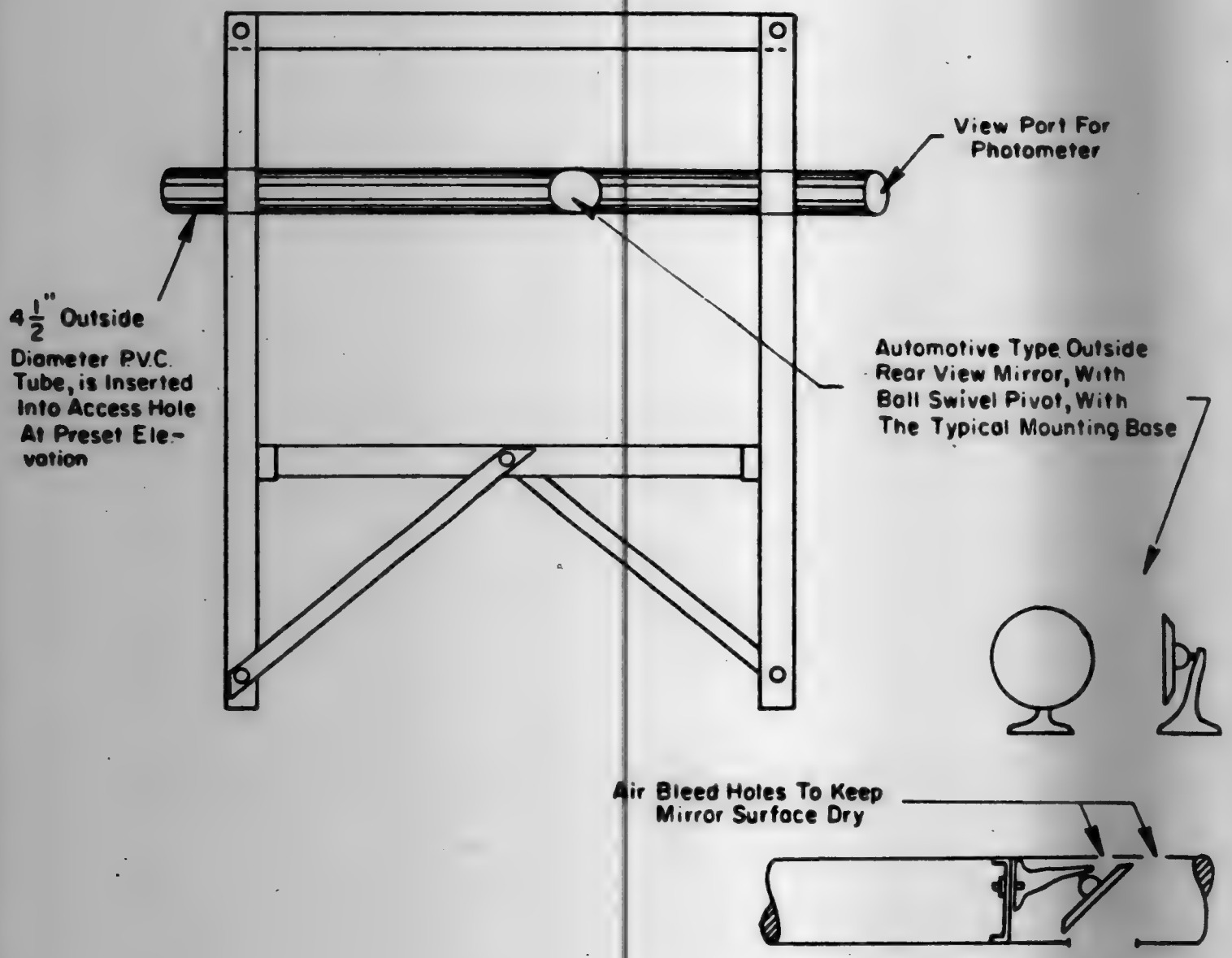
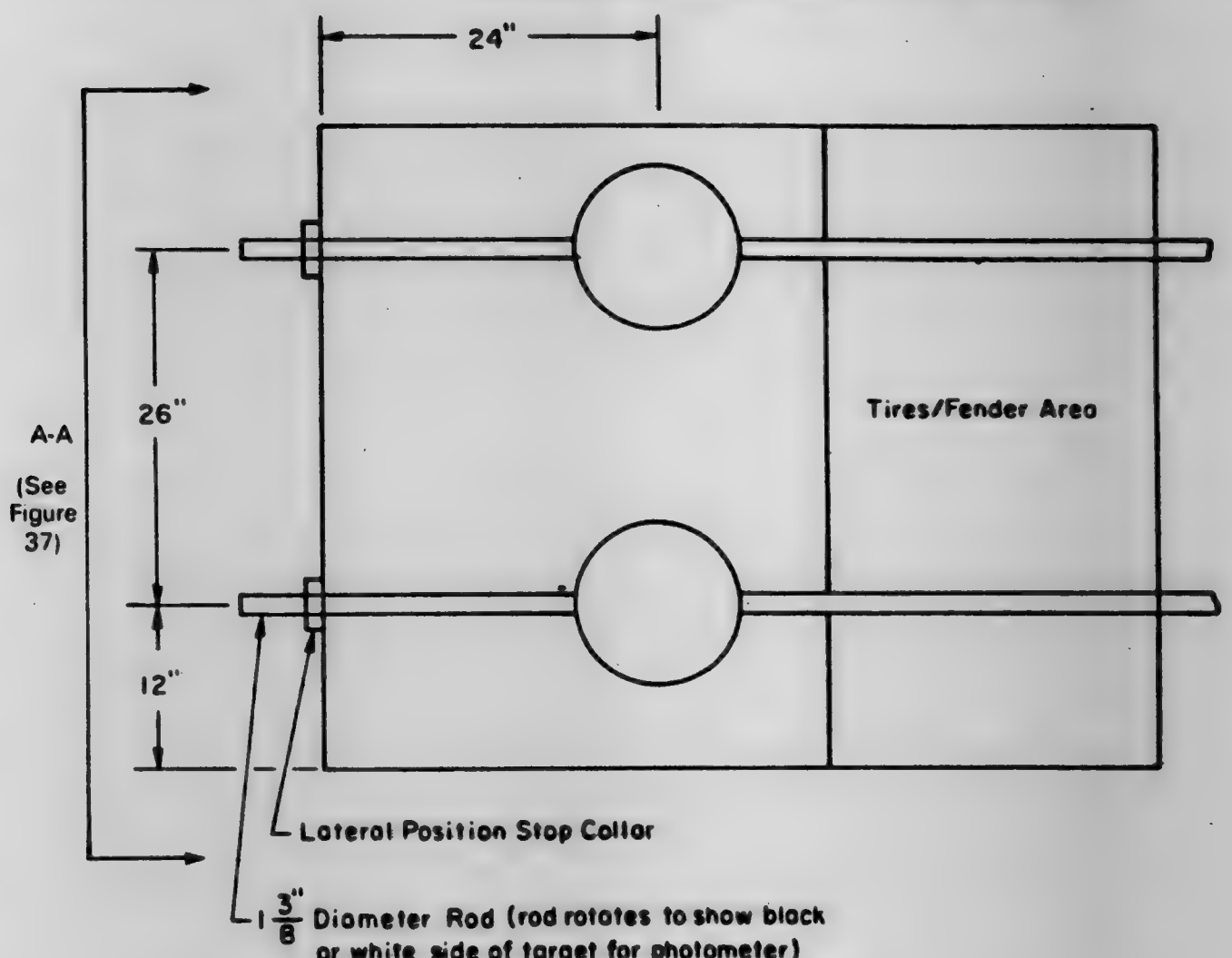


Figure 35. Periscope View Port for Photometer Readings



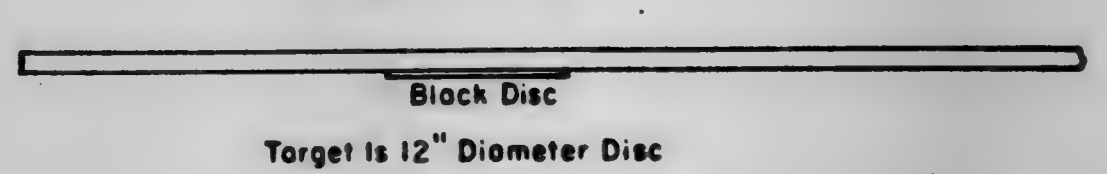


Figure 36. Photometer Target Locations

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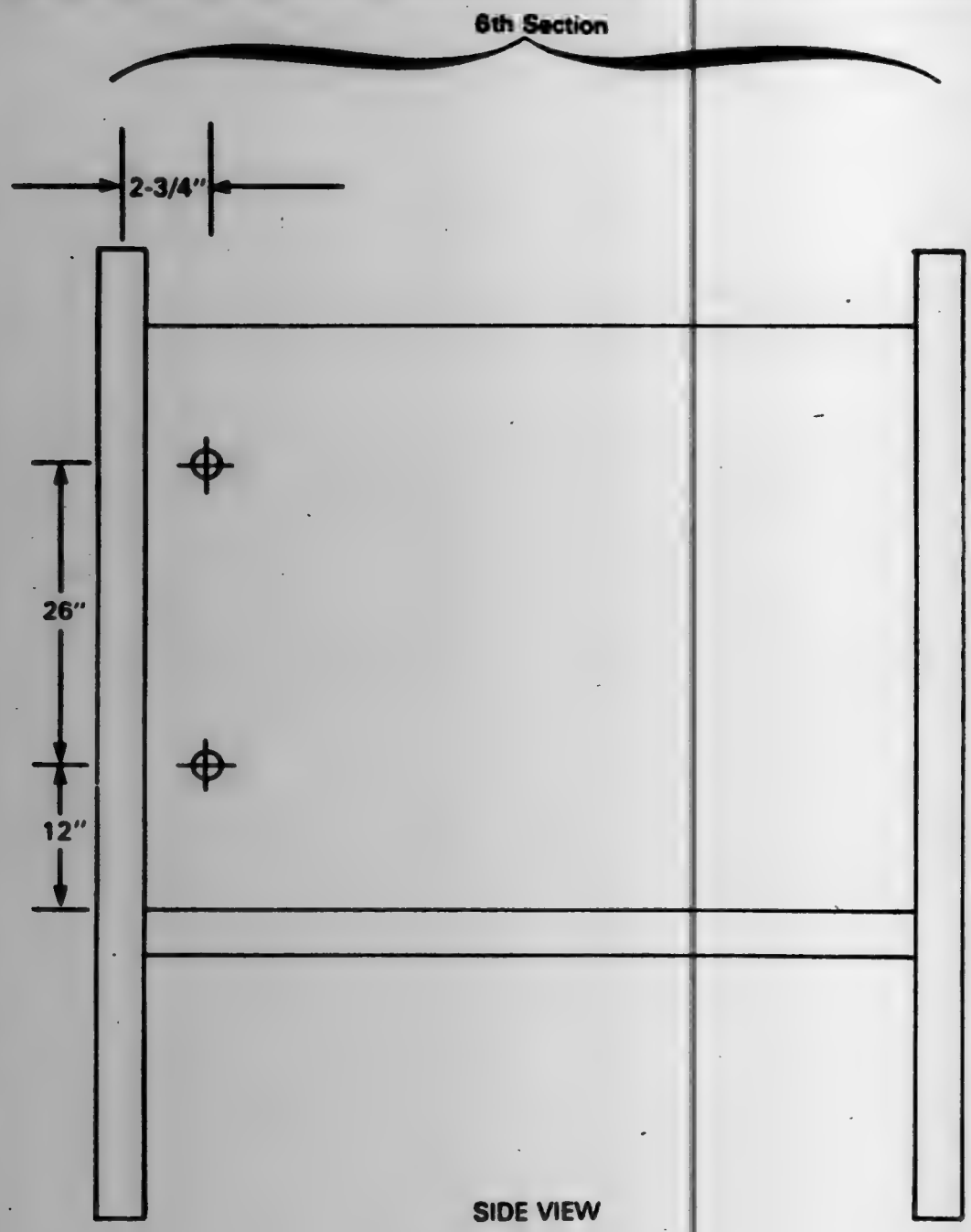


Figure 37. Viewing Target Location

Issued on April 8, 1985.

[redacted]

Associate Administrator for Rulemaking.

[FR Doc. 85-8652 Filed 4-9-85; 1:42 pm]

BILLING CODE 4910-59-M

federal register

Friday
April 12, 1985

Part VI

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1985, Solicitation of Applications; Correction

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DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1985; Solicitation of Applications; Correction

SUMMARY: This document corrects a notice of solicitation for Rangeland Research grant applications that appeared at page 12737 in the **Federal Register** of Friday, March 29, 1985, (50 FR 12737). The action is necessary to correct the provisions relating to indirect costs.

The following correction is made in FR Doc. 85–7581 appearing on page 12737 in the issue of March 29, 1985:

On page 12737, column one, the third full paragraph is corrected to include, after the second sentence, the following statement: "Notwithstanding any provision of these adopted regulations, indirect costs and tuition remission costs are not allowable costs for purposes of this program pursuant to Sec. 1473, Pub. L. 95–113, 91 Stat. 961 (7 U.S.C. 3319)."

Done at Washington, D.C., this 9th day of April 1985.

J. Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85–8881 Filed 4–11–85; 8:45 am]

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federal register

Friday
April 12, 1985

Part VII

Office of Management and Budget

Issuance of Attachment 2 and Other Revisions to OMB Circular A-125, "Prompt Payment"; Notice

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Attachment 2 and Other Revisions to OMB Circular A–125, "Prompt Payment"

AGENCY: Office of Management and Budget.

ACTION: Final issuance of Attachment 2 to OMB Circular A–125, "Prompt Payment," and other revisions to circular

SUMMARY: This notice revises OMB Circular A–125, "Prompt Payment," originally published on August 19, 1982. The notice adds an Attachment 2 to the basic circular providing additional guidance to Federal agencies on the proper timing of payments to contractors. It also revises the definition of meat in the basic circular to include poultry and eggs, pursuant to the Supplemental Appropriations Act of 1984, Pub. L. 98–181, and revises reporting requirements.

Following enactment of the Prompt Payment Act, Pub. L. 97–177, OMB issued Circular A–125, "Prompt Payment." The circular and an attachment to it issued on July 10, 1984, provide that payments will be made when due, generally 30 days after acceptance of goods and services.

The *Federal Acquisition Regulations* (FAR) permit agencies in certain instances to make payments to vendors based upon vendor assurance that goods have been shipped, rather than waiting for goods to be received and accepted. These "fast pay" procedures are necessary in unusual circumstances, but they should not be used for deliveries to depot stocks nor in other instances where receipt and acceptance are routine.

Experience has shown that payments made without evidence of receipt are more subject to error than those made after the goods are received, inspected, and accepted. A recent Inspector General report disclosed that millions of dollars of material purchased and paid for by the Federal Government under "fast pay" procedures was not received. The auditors attributed these discrepancies to inadequate internal control over the award and administration of "fast pay" contracts. Attachment 2 to Circular A–125 limits the use of "fast pay" procedures.

The Supplemental Appropriations Act of 1984, provides that the terms "meat" and "meat food products" as used in the Prompt Payment Act, shall include edible fresh or frozen poultry meat, perishable poultry meat food products, fresh eggs and perishable egg products. This notice revises Circular A–125 to include the provisions of the Act.

This notice also revises the standard for reporting early payments to include all payments made more than three days before the due date.

EFFECTIVE DATE: These revisions to Circular A–125 are effective immediately.

FOR FURTHER INFORMATION CONTACT: Financial Management Division, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, D.C. 20503, (202) 395–3993.

SUPPLEMENTARY INFORMATION: Relating to Attachment 2: Notice of the proposed attachment was published for comment in the Federal Register on December 7, 1984, (49 FR 47944). In response, OMB received 12 comments from Federal agencies, contractors, and a trade association. Most of the comments suggested clarifications to the language of the proposed attachment.

The proposed attachment has been revised. Following is a summary of the major comments grouped by subject and a response to each.

Reference to Receiving and Disbursing Activity Locations

Comment: The terms "remote location" and "adequate communication facilities," which were used in the proposed attachment to describe receiving activities, should be clarified.

Response: The language in paragraph 3 now refers to the "geographical separation" between receiving and disbursing activities which, when coupled with a lack of adequate communication facilities, makes it impracticable to process evidence of receipt in a timely manner.

Each department and agency should decide on the adequacy of its communication facilities. However, facilities served by networks such as FTS, Autovon, Autodin, and Defense Data Network should generally be considered to have adequate communication facilities for the purpose of complying with this circular.

Exceptions to $25,000 Limitation

Comment: The attachment should recognize the FAR exception to the $25,000 upper limit on payments made without evidence of receipt. The exception permits this for higher amounts where approved by an agency head.

Response: Paragraph 3a has been amended to permit exceptions to the $25,000 upper limit where approved by the head of the executive agency.

Applicability of Paragraph 3

Comment: Must all of the factors listed in paragraph 3 be present before payment without evidence of receipt is authorized, or can each individual factor listed be a basis?

Response: Paragraph 3 has been clarified to require that all four cited conditions must be met.

Darrell Johnson,

Acting Deputy Associate, Director for Administration.

Circular No. A–125, Transmittal Memorandum

March 29, 1985.

To: The Heads of Executive Departments and Establishments

Subject: Prompt Payment

This Transmittal Memorandum revises the definition of meat in OMB Circular No. A–125, "Prompt Payment," to include poultry, poultry products, eggs, and egg products as required by the Supplemental Appropriations Act of 1984 (Public Law 98–181). It renames the attachment of July 10, 1984, as Attachment 1, revises the standard for reporting early payments, and adds a new Attachment 2, entitled "Prompt Payment Standards."

David A. Stockman,

Director.

Revision to Paragraph 7, OMB Circular A–125

Paragraph 7, OMB Circular A–125 is revised to replace the third subparagraph as follows:

"—Payment for meat or meat food products, as defined in Section 2(a)(3) of the Packers and Stockyards Act of 1921 (7 U.S.C. 182 (3)), and as further defined in the Supplemental Appropriations Act of 1984 (Public Law 98–181), will be made as close as possible to, but not later than, the seventh day after the date of delivery."

Revision to Paragraph 11, OMB Circular A–125

Paragraph 11, OMB Circular A–125 is revised to replace the fourth subparagraph as follows:

"—Number, total amount, and relative frequency, on a percentage basis, of payments made 3 days or more before the due date, except where cash discounts are taken."

Revision to July 10, 1984, Attachment to OMB Circular A–125

The attachment of July 10, 1984, to OMB Circular A–125 is renamed as Attachment 1.

Attachment 2 to Circular A–125

Subject: Prompt Payment Standards

1. This attachment establishes standards for payment procedures to be used in certain circumstances where the general provisions in paragraph 6, "Payment Standards," of the basic Circular may be difficult to apply.

2. In limited situations payment may be made without evidence that supplies have been received. Instead, a vendor certification that supplies have been shipped may be used as a basis for authorizing payment.

3. These payment procedures may be employed only when all of the following conditions are present:

a. Individual orders do not exceed $25,000 (except that heads of executive agencies may permit a higher limit on a case-by-case basis).

b. Deliveries of supplies are to occur where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities, that make it impracticable to make timely payments based on evidence of Federal acceptance.

c. Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination, or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

d. The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

4. Agencies shall promptly inspect and accept supplies acquired under these procedures and shall ensure that receiving reports and payment documents are matched, and steps are taken to correct discrepancies.

5. Agencies shall ensure that specific internal controls are in place to assure that supplies paid for are received.

[FR Doc. 85–8946 Filed 4–11–85; 8:45 am]
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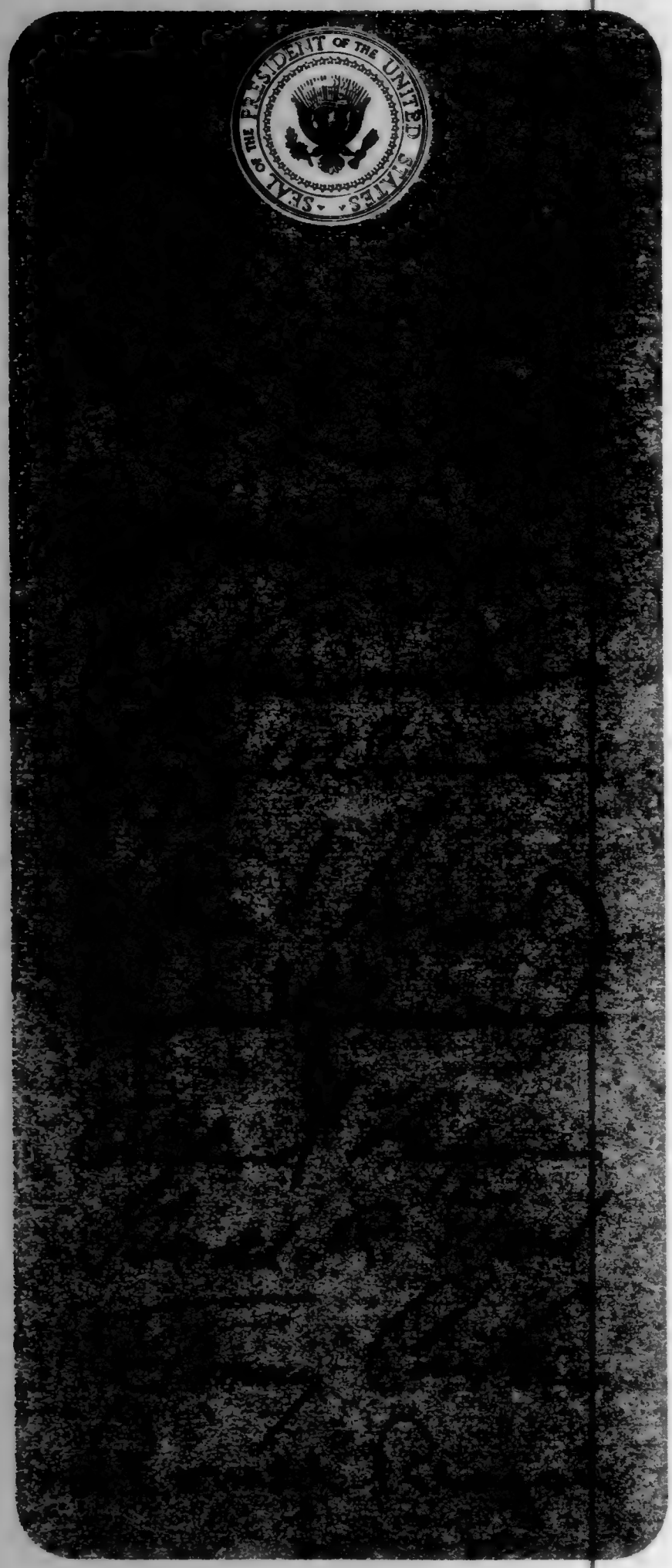
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-317]

Importation of Grapefruits, Oranges, and Tangerines from Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change, an interim rule published in the **Federal Register** on October 3, 1984, which amended the "Subpart—Fruits and Vegetables" quarantine and regulations by adding a methyl bromide treatment and other provisions which provided a means for allowing for the importation into the United States of grapefruits, oranges, and tangerines from Mexico without presenting a significant risk of causing the introduction of fruit flies of the genus *Anastrepha*.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: C.M. Amyx, Senior Staff Officer, Technology Assessment and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION: A document was published in the **Federal Register** on an emergency basis on October 3, 1984, (49 FR 39038-39040) which amended the "Subpart—Fruits and Vegetables" quarantine and regulations (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) by adding a methyl bromide treatment and other provisions in order to provide a means for allowing the importation into the United States of grapefruits, oranges, and tangerines from Mexico without presenting a significant risk of causing the introduction of fruit flies of the genus *Anastrepha*. The document explained that under the regulations, grapefruits, oranges, and tangerines from Mexico are prohibited from being imported into the United States unless, among other things, they are treated to prevent the introduction and establishment of *Anastrepha* into the United States. The document indicated that, of the three treatments that had been previously approved, one was no longer available for such fruits because of action taken by the Environmental Protection Agency, and the other two were no longer commercially feasible.

Comments were solicited for 60 days after publication of the amendment. No comments were received in response to the amendment. The factual situation set forth in the document of October 3, 1984, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the **Federal Register** on October 3, 1984.

Executive Order and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been determined that this amendment will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The addition of the provisions for grapefruits, oranges, and tangerines from Mexico has allowed the importation of these fruits from Mexico to continue. Almost all importers and sellers of the affected articles are involved with a wide range of commodities. Activities involving these articles comprise an insignificant portion of such businesses.

Under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant pests, Plant disease, Plants (agriculture), Quarantine, Transportation, Fruit.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 39038-39040 on October 3, 1984, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 161, 162; 7 CFR 2.17, 2.51, 3.71.2(c). Done at Washington, D.C., this 10th day of April, 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-8990 Filed 4-12-85; 8:45 am]

BILLING CODE 3410-34-M

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7 CFR Part 353

[Docket No. 85-312]

Phytosanitary Export Certificates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on November 20, 1984, which amended the "Phytosanitary Export Certification" regulations by deleting the list of specific locations for inspectors available for issuing phytosanitary certificates for the export of plants and plant products, and providing, instead, a list of area offices where such information can be obtained. The interim rule also amended the regulations by providing that phytosanitary certificates for the export of terrestrial plants protected by the Endangered Species Act of 1973, as amended, (Act) and the Convention on

International Trade in Endangered Species of Wild Fauna and Flora (Convention) shall only be issued at the port where the plant is to be exported. These amendments are necessary to adequately inform the public of where services pertaining to the issuance of phytosanitary export certificates can be obtained, and to administratively consolidate the enforcement responsibilities of the Department of Agriculture under the Act and Convention with the issuance of phytosanitary export certificates.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 663, Federal Building, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on November 26, 1984, (49 FR 46333–46335) amended the "Phytosanitary Export Certification" regulations by deleting the list of specific locations for inspectors available for issuing phytosanitary certificates for the export of plants and plant products, and providing instead, a list of area offices where such information can be obtained. The document explained that the number of locations where inspectors would be available had increased from the 74 previously listed locations to approximately 200 locations, and that these locations change frequently because of the reallocation of personnel. The document indicated that in order to provide the public with up-to-date information on locations where inspectors are available, the public should contact the area Plant Protection and Quarantine offices listed in the amendment.

The document further amended the regulations by providing that phytosanitary certificates for the export of terrestrial plants protected by the Endangered Species Act of 1973, as amended (referred to below as Act; 16 U.S.C. 1531 *et seq.*) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (referred to below as Convention; MIAS 8249; 27 U.S.C. 1087), and which are listed in 50 CFR 17.12 or 23.23 shall be issued only at the port where the plant is to be exported. The document indicated that this action was necessary in order to consolidate for administrative efficiency the responsibilities of the Department with respect to the issuance of phytosanitary certificates under the Organic Act of September 21, 1944, as amended (7 U.S.C. 147a(e)), and with respect to responsibilities under the Act and Convention for the inspection, issuance, and validation of documents accompanying terrestrial plants listed in 50 CFR 17.12 and 23.23 which are offered for export.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of November 20, 1984, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the Federal Register on November 20, 1984.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this amendment will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action notifies individuals of the availability of inspectors to issue phytosanitary export certificates and provides that such certificates for terrestrial plants listed in 50 CFR 17.12 or 23.23 shall only be issued at certain ports of export. The listing of area offices is merely for informational purposes and is a nonsubstantive amendment. The requirement that plants listed in 50 CFR 17.12 or 23.23 be inspected and exported through designated ports is required by the Act and the Convention and, as such, this action will have no effect on entities, large or small, that request phytosanitary certificates for plants listed in 50 CFR 17.12 or 23.23 and offered for export since it imposes no additional or different requirements on such entities.

Therefore, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 353

Agricultural commodities, Exports, Plant diseases, Plant pests, Plants (agriculture).

PART 353—PHYTOSANITARY EXPORT CERTIFICATION

Accordingly, the interim rule published at 49 FR 46333–46335 on November 26, 1984, is adopted as a final rule.

Authority: 7 U.S.C. 147a; 7 CFR 2.17, 2.51, 371.2(c).

Done at Washington, D.C., this 10th day of April, 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–8991 Filed 4–12–85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40 and 70

Regional Nuclear Materials Licensing for Certain Federal Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations concerning the domestic licensing of source, byproduct, and special nuclear material (collectively referred to as nuclear materials) to provide for further decentralization of the NRC licensing process. This amendment extends to the five Regional Offices the same licensing authority for certain Federal activities as they now possess for non-Federal activities.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Donald R. Chapell, Deputy Director, Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4152.

SUPPLEMENTARY INFORMATION: On May 27, 1982 (47 FR 23138), April 14, 1983 (48 FR 16030) (effective April 1, 1983), and May 9, 1984 (49 FR 19630) the Nuclear Regulatory Commission (NRC) published rules decentralizing most domestic licensing of nuclear materials. The NRC is amending its regulations to include certain Federal licensees in its decentralization program. Revisions to 10 CFR 30.6, 40.5, and 70.5 require certain Federal facilities with licenses issued pursuant to 10 CFR Part 30 through 35, 40, and 70 to contact the appropriate Regional office, rather than NRC Headquarters offices, for license applications, renewals, and revisions. This action now incorporates into the Regional materials licensing programs these Federal facility licensees.

The only Federal licensees not affected by this action are the United States Air Force and United States Navy. Their submittals under Parts 30 through 35, 40, and 70 will be sent to the Office of Nuclear Material Safety and Safeguards (NMSS). These licensees have not been included because they are currently in the process of submitting proposals for "broad" materials licenses with the NRC, which would, if approved, consolidate over one hundred individual licenses into one license each. Following these consolidations, it is intended that the licensing authority for the Air Force and the Navy also will be extended to the appropriate Regions.

This action also adds another item to the list of exceptions to the authority delegated to the Regions under the decentralization program. This exception, included as paragraph (b)(1)(v) in 30.6, 40.5 and 70.5, codifies current practice requiring NMSS to review new uses or techniques for use of nuclear material.

These amendments apply to NRC licensees and applicants in non-Agreement States, Guam, Puerto Rico, the Virgin Islands, and the District of Columbia, and to NRC Federal licensees and applicants wherever they are located within the NRC's jurisdiction except for the United States Air Force and Navy. Delegations of authority to the Regional Administrators are contained in NRC Manual Chapter 0128. The changes to §§ 30.6, 40.5, and 70.5 are nonsubstantive amendments. The revised sections indicate the type of licensing authority delegated to Regional Administrators.

Since these are minor, procedural amendments relating to agency organization and management, notice, opportunity for comment and a delay of effective date are not required by the Administrative Procedure Act under 5 U.S.C. 553.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3)(i). Accordingly, pursuant to 10 CFR 51.22(b), neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval numbers 3150–0017 for Part 30, 3150–0016 for Part 31, 3150–0001 for Part 32, 3150–0015 for Part 33, 3150–0007 for Part 34, 3150–0010 for Part 35, 3150–0020 for Part 40, and 3150–0009 for Part 70.

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552, the following amendments to 10 CFR Parts 30, 40, and 70 are published as a document subject to codification.

The authority citation for this document is:

Authority: Sec. 161b., i., o., and p., Pub. L. 83–703, 68 Stat. 948, 949, 950, as amended (42 U.S.C. 2201(b), (i), (o), and (p)); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. In § 30.6, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of Federal facilities, the regional licensing program involves" to read "With the exception of the United States Air Force and Navy, the regional licensing program involves all Federal facilities in the region and non-Federal licensees in . . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 30.6 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Air Force and Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices, and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extraction of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant to 10 CFR 32.11 through 32.28.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

2. In § 40.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the

exception of Federal facilities, the regional licensing program involves" to read "With the exception of the United States Air Force and Navy, the regional licensing program involves all Federal facilties in the region and non-Federal licensees in . . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 40.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its decentralized licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program includes authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40, and 70 to all persons except the United States Air Force and Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrator.

(ii) Health and safety design review of sealed sources and devices, and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extraction of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant to 10 CFR 32.11 through 32.28.

(v) New uses or techniques for use of byproduct, source, or special nuclear material.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

3. In § 70.5, paragraphs (b)(2) (i), (ii), (iii), (iv), and (v) are amended by changing the phrase, "With the exception of Federal facilities, the regional licensing program involves" to read "With the exception of the United States Air Force and Navy, the regional licensing program involves all Federal facilties in the region and non-Federal licensees in. . . ." Also, the introductory text of paragraph (b) and paragraph (b)(1) are revised to read as follows:

§ 70.5 Communications.

* * * * *

(b) The Commission has delegated to the five Regional Administrators licensing authority for selected parts of its regional licensing program for nuclear materials as described in paragraph (b)(1) of this section. Any communication, report, or application covered under this licensing program must be submitted as specified in paragraph (b)(2) of this section.

(1) The delegated licensing program including authority to issue, renew, amend, cancel, modify, suspend, or revoke licenses for nuclear materials issued pursuant to 10 CFR Parts 30 through 35, 40 and 70 to all persons except the United States Air Force and Navy for academic, medical, and industrial uses, with the following exceptions:

(i) Activities in the fuel cycle and special nuclear material in quantities sufficient to constitute a critical mass in any room or area. This exception does not apply to license modifications relating to termination of special nuclear material licenses that authorize possession of larger quantities when the case is referred for action from NRC's Headquarters to the Regional Administrators.

(ii) Health and safety design review of sealed sources and devices, and approval, for licensing purposes, of sealed sources and devices.

(iii) Processing of source material for extraction of metallic compounds (including Zirconium, Hafnium, Tantalum, Titanium, Niobium, etc.).

(iv) Distribution of products containing radioactive material to persons exempt pursuant to 10 CFR 32.11 through 32.28.

(v) New uses or techniques for use of byproduct, source or special nuclear material.

* * * * *

Dated at Bethesda, MD, this 2d day of April 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85-8983 Filed 4-12-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-13]

Alteration of VOR Federal Airways, Badger, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters several Federal Airways in the vicinity of Badger, WI, to improve flight planning and traffic flow management. Due to numerous technical problems which preclude the commissioning of the Timmerman, WI, very high frequency omni-directional radio range tactical air navigational aid (VORTAC), airways that were proposed to utilize the new Timmerman VORTAC have not been adopted.

EFFECTIVE DATE: June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

History

On March 5, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several VOR Federal Airways located in the vicinity of Badger, WI (49 FR 8004). However, technical problems which preclude the commissioning of the upgraded Timmerman, WI, VORTAC, FAA is not certain the problems with Timmerman can be resolved at its current location. Therefore, until the technical problems are resolved, the airways that have been proposed for establishment based on the Timmerman VORTAC in their descriptions have been deleted from this final rule action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for the foregoing, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters 13 VOR Federal Airways in the vicinity of Badger, WI, V–9, V–10, V–24, V–69, V–92, V–97, V–116, V–172, V–173, V–227, V–228, V–422 and V–429.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexbility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

V–9 [Amended]

By removing the words "Pontiac, IL; INT Pontiac 008° and Joliet, IL, 316° radials; INT Rockford, IL, 136° and Badger, WI, 209° radials; Badger; Oshkosh, WI;" and substituting the words "Pontiac, IL, INT Pontiac 332° and Rockford, IL, 180° radials; Rockford; Janesville, WI; Madison, WI; Oshkosh, WI;"

V–10 [Amended]

By removing the words "to Chicago O'Hare, IL." and substituting the words "INT Bradford 056° and Joliet, IL, 351° radials."

V–24 [Amended]

After "via Waukon, IA" add "; INT Lone Rock 147° and Janesville, WI, 281° radials; Janesville; INT Janesville 112° and Northbrook, IL, 290° radials; to Northbrook."

V–69 [Amended]

By removing the words "Joliet, IL; Kedzie, IL, RBN." and substituting the words "Joliet, IL; INT Joliet 067° and Du Page, IL, 129° radials."

V–92 [Amended]

By removing the words "From Joliet, IL, Chicago Heights, IL;" and substituting the words "From INT Chicago Heights, IL, 358° and Chicago O'Hare, IL, 127° radials; Chicago Heights;"

V–97 [Amended]

By removing the words "to Chicago Heights, IL. From Chicago-O'Hare, IL; INT Chicago-OHare 316° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI, including a W alternate via INT Janesville 281° and Lone Rock 147° radials; Nodine, MN;" and substituting the words "Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials, Janesville; Lone Rock, WI; Nodine, MN;"

V–116 [Amended]

By removing the words "to Joliet, IL. From INT Keller, MI, 256° and Knox, IN, 335° radials; Keeler;" and substituting the words "Joliet, IL; to INT Joliet 067° and Du Page, IL, 129° radials. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler;" and by deleting "The airspace at and above 10,000 feet MSL from Quincy to 26 miles southwest of Peoria is excluded during the time that the Allen MOA is activated by NOTAM.

V–172 [Amended]

By removing the words "INT Polo 088° and Du Page, IL, 283° radials; Du Page; Chicago-O'Hare, IL; INT Chicago-O'Hare 091° and South Bend, IN, 290° radials; South Bend." and substituting the words "INT Polo 088° and Du Page 320° radials."

V–173 [Amended]

By removing the words "INT Roberts 008° and Joliet, IL, 067° radials; Kedzie, IL, RBN." and substituting the words "INT Roberts 008° and Joliet, IL, 067° radials."

V–227 [Amended]

By removing the words "Pontiac, IL; INT Pontiac 332° and Rockford, IL, 180° radials; to Rockford." and substituting the words "Pontiac, IL; INT Pontiac 008° and Chicago O'Hare, IL, 237° radials; to INT Joliet, IL, 351° and Chicago O'Hare 237° radials."

V–228 [Amended]

By removing the words "From Northbrook, IL; INT Northbrook, IL," and substituting the words "From Stevens Point, WI, via Dells, WI; Madison, WI; Janesville, WI; INT Janesville 112° and Northbrook IL, 290° radials; Northbrook; INT Northbrook"

V–422 [Amended]

By removing the words "From Chicago Heights, IL," and substituting the words "From INT Chicago O'Hare, IL, 127° and Chicago Heights, IL, 358° radials; Chicago Heights;"

V–429 [Amended]

By removing the words "INT Joliet 351° and Chicago O'Hare, IL, 237° radials; Chicago O'Hare." and substituting the words "INT Joliet 351° and Chicago O'Hare, IL, 237° radials."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on April 8, 1985.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–8976 Filed 4–12–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ASO–1]

Revocation of Control Zone, Knoxville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Knoxville Downtown Island Airport, Tennessee, control zone. The effect of this action is to raise the floor of controlled airspace, in the vicinity of the airport, from the surface to 700 feet above ground level. One of the basic requirements for retention of a control zone is that weather observations be taken at least hourly and reported to the air traffic control facility having jurisdiction over the control zone. Knoxville Downtown Island Airport no longer meets this basic requirement since weather observation reports are not available.

EFFECTIVE DATE: 0901 G.m.t., June 6, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, February 14, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revoking the Knoxville Downtown Island Airport, Tennessee, control zone and raising the floor of controlled airspace in the vicinity of the airport from the surface to 700 feet above ground level. (49 FR 6197). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will provide additional controlled airspace for the conduct of Visual Flight Rules aeronautical activity.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Knoxville Downtown Island Airport, Tennessee, control zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, as follows:

§ 71.171 Knoxville Downtown Island Airport, TN [Removed]

By removing the title and text.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in East Point, Georgia, on April 4, 1985.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 85-8979 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket Nos. 79F-0451 and 79F-0452]

Indirect Food Additives; Adhesives and Components of Coatings; Paper and Paperboard Components; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that amended the food additive regulations to provide for the safe use of a mixture containing 5-chloro-2-methyl-4-isothiazolin-3-one, 2-methyl-4-isothiazolin-3-one, and magnesium nitrate as an antimicrobial agent for polymer latex emulsions in adhesives and in paper coatings which contact food. This document corrects an editorial error.

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-2601 appearing on page 4643 in the issue of Friday, February 1, 1985, the following correction is made on page 4645: In the third column under § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* in the table in paragraph (b)(2) in the "Limitations" column, the fourth line that reads "emulsions in paper" is corrected to read "emulsions in".

Dated: April 8, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8918 Filed 4-12-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8019]

Procedure and Administration; OMB Control Numbers Under the Paperwork Reduction Act; Public Inspection of Exempt Organization Returns

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the public inspection of returns of certain tax exempt organizations. The regulations clarify the rules relating to the disclosure of certain information of exempt organizations. Additionally, the regulations reflect changes made by Pub. L. 96-603 and Pub. L. 95-488.

DATES: Effective April 15, 1985. The amendments which delete references to Code section 6056 are applicable for taxable years beginning after December 31, 1980. The amendments concerning section 501(c)(21) trusts are applicable for taxable years beginning after December 31, 1977. The provisions of paragraphs (b) (1), (2) and (3) of § 301.6104(b)-1 are applicable for returns and reports filed after December 31, 1969.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1983, the Federal Register published proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6104 of the Internal Revenue Code. The regulations were proposed to clarify the rules relating to the disclosure of certain information of exempt organizations. The proposed regulations also reflected changes made by Pub. L. 96-603 and Pub. L. 95-488.

These regulations are issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Statutory Provision

Section 6104(b) provides for the disclosure to the public of the information required to be furnished by

sections 6033, 6034, and 6058. However, the section does not authorize the disclosure of the name or address of any contributor to any organization or trust that is required to furnish such information. This exception does not apply to any private foundation, as defined in section 509(a).

Nondisclosure of Certain Information

The regulation continues the rule that the names and addresses of contributors to an organization (other than a private foundation) will not be made available to the public. However, the amounts of contributions and bequests to such an organization shall be disclosed to the public unless disclosure can reasonably be expected to identify the name or address of any contributor. This amendment is necessary to reflect current Service procedure with respect to the disclosure of the amounts of contributions and bequests to organizations or trusts that are not private foundations.

Comments Received and Actions Taken

Only one comment was received on the proposed regulations. That comment expressed concern about the Service's definition of integrated auxiliary of a church in § 1.6033–2(g)(5). The commentator suggested that by requiring the disclosure of contributions to certain nonprofit organizations, the Service was moving in the direction of requiring similar information from religious organizations.

No action was taken in response to this comment.

Accordingly, the regulations will be adopted as proposed, with minor conforming changes.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this regulation is not subject to review under Executive Order 12291.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for interpretative regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of this regulation is William D. Gibbs of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Accordingly:

1. Paragraphs 1 and 3 of the notice of proposed rulemaking are withdrawn.

2. The remaining amendments to 26 CFR Part 301 are hereby adopted as proposed, subject to the changes set forth below:

Paragraph 1. The heading of § 301.6104 (b)–1 is amended by removing "and annual reports".

Par. 2. Paragraph (a)(3) of § 301.6104 (b)–1 is revised to read as follows:

Section 301.6104 (b)–1 Publicity of information on certain information returns.

(a) *In general.* * * *

(3) The information required to be furnished by section 6058.

* * * * *

Par. 3. Paragraph (b), as redesignated paragraph (c) by paragraph 2 of the notice of proposed rulemaking, of § 301.6104(b)–1 is amended by removing "and annual reports".

Par. 4. Paragraph (c), as redesignated paragraph (d) by the notice of proposed rulemaking, of § 301.6104(b)–1 is amended by:

(1) Removing "and annual reports" in the first sentence of subparagraph (1),

(2) Removing "paragraph (b)" and inserting in lieu thereof "paragraph (c)" in the second sentence of subparagraph (1) and the fourth sentence of subparagraph (4),

(3) Removing "or report" each time it appears in the third sentence of subparagraph (1),

(4) Removing "6033 and 6034 and the annual report required by section 6056" and inserting in lieu thereof "6033, 6034, and 6058" in subparagraph (2),

(5) Removing "and reports" in subparagraph (3), and

(6) Removing "or 6056" and inserting in lieu thereof "or 6058" in subparagraph (3).

Part 602—OMB Control Numbers Under the Paperwork Reduction Act

Par. 5. Section 602.101(c) is amended by inserting in the appropriate places in the table

"§ 301.6104(b)–1.....1545–0742".

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Disclosure of information.

26 CFR Part 602

OMB control numbers, Paperwork Reduction Act.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805). Approved by the Office of Management and Budget under control number 1545–0742.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: March 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

Adoption of Amendments to the Regulations

PART 301—[AMENDED]

1. Section 301.6104(b)–1 is revised to read as follows:

§ 301.6104(b)–1 Publicity of information on certain information returns.

(a) *In general.* The following information, together with the name and address of the organization or trust furnishing such information, shall be a matter of public record:

(1) Except as otherwise provided in section 6104 and the regulations thereunder, the information required by section 6033.

(2) The information furnished pursuant to section 6034 (relating to returns by certain trusts) on Form 1041–A.

(3) The information required to be furnished by section 6058.

(b) *Nondisclosure of certain information*—(1) *Names and addresses of contributors.* The names and addresses of contributors to an organization other than a private foundation shall not be made available for public inspection under section 6104 (b).

(2) *Amounts of contributions.* The amounts of contributions and bequests to an organization shall be available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor. Notwithstanding the preceding sentence, the amounts of contributions and bequests to a private foundation shall be available for public inspection.

(3) *Foreign organizations.* The names, addresses, and amounts of contributions or bequests of persons who are not citizens of the United States to a foreign

organization described in section 4948(b) shall not be made available for public inspection under section 6104(b).

(4) *Confidential business information.* Confidential business information of contributors to any trust described in section 501(c)(21) (black lung trusts) shall not be available for public inspection under section 6104(b) provided:

(i) A request if filed with the office with which the trustee filed the documents in which the information to be withheld is contained.

(ii) Such request clearly specifies the information to be withheld and the reasons supporting the request for withholding, and

(iii) The Commissioner determines that such information is confidential business information.

Information such as the contributor's estimated total liability for black lung benefits, the contributor's coal pricing policies, or any background information necessary to establish estimated total liability or coal pricing policies are examples of confidential business information that shall not be disclosed to the public under this subparagraph.

(c) *Place of inspection.* Information furnished on the public portion of returns (as described in paragraph (a) of this section) shall be made available for public inspection at the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, and at the office of any district director.

(d) *Procedure for public inspection—*(1) *Requests for inspection.* Information furnished on the public portion of returns (as described in paragraph (a) of this section) shall be available for public inspection only upon request. Requests for public inspection must be in writing to or at any of the offices mentioned in paragraph (c) of this section. Persons submitting requests for inspection must provide the name and address of the organization that filed the return, the type of return, and the year for which the organization filed.

(2) *Time and extent of inspection.* A person requesting public inspection in the manner specified in subparagraph (1) of this paragraph shall be notified by the Internal Revenue Service when the material he desires to inspect will be made available for his inspection. Information on returns required by sections 6033, 6034, and 6058 will be made available for public inspection at such reasonable and proper times, and under such conditions, that will not interfere with their use by the Internal Revenue Service and will not exclude other persons from inspecting them. In addition the Commissioner, Director of the Service Center, or district director may limit the number of returns to be made available to any person for inspection on a given date. Inspection will be allowed only in the presence of an internal revenue officer or employee and only during the regular hours of business of the Internal Revenue Service office.

(3) *Retruns available.* Returns filed before January 1, 1970, shall be available for public inspection only pursuant to the provisions of sectin 6104 in effect for such years. The information furnished on all returns filed after December 31, 1969, purusant to the requirements of section 6033, 6034, or 6058, shall be available for public inspection in accordance with the provisions of section 6104.

(4) *Copies.* Notes may be taken of the material opened for inspection under this section. Copies may be made manually or, if a person provides the equipment, photographically at the place of inspection, subject to reasonable supervision with regard to the facilities and equipment to be employed. Copies of the material opened for inspection will be furnished by the Internal Revenue Service to any person making request therefor. Requests for such copies shall be made in the same manner as requests for inspection (see subparagraph (1) of this paragraph) to the office of the Internal Revenue Service in which such material is available for inspection as provided in paragraph (c) of this section. Copies may also be obtained by written request to the director of any service center. If made at the time of inspection, the request for copies need not be in writing. Any copies furnished will be certified upon request. The Commissioner may prescribe a reasonable fee for furnishing copies of information pursuant to this section.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

2. Section 602.101 (c) is amended by inserting in the appropriate place in the table.

"§ 301.6104 (b)–1 ..... 1545–.742".

[FR Doc. 85–8636 Filed 4–11–85; 10:12 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Cotton Dust

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Administrative stay.

SUMMARY: The current OSHA cotton dust standard (29 CFR 1910.1043) requires that by March 27, 1984, all textile operations to which the standard applies must be in compliance with the permissible limit using engineering and work practice controls. Pending completion of an ongoing review of the standard, OSHA issued a stay of the effective date of this provision until Janaury 27, 1985 for some operations or ring spinning of coarse count cotton yarns (Feb. 23, 1984; 49 FR 6717. November 28, 1984; FR 46737). OSHA has not completed its review, and it is therefore extending the stay for the same operations until March 27, 1986 or until publication of the amended final standard for occupational exposure to cotton dust whichever date comes first. During this period all other applicable provisions of the standard apply. It appears that some coarse count cotton ring spinning operations have feasibility problems coming into compliance, and the stay will give OSHA time to review the record and make final determinations.

DATE: This stay is effective from January 27, 1985 to March 27, 1986 or until publication of the amended final standard for occupational exposure to cotton dust, whichever date comes first.

FOR FURTHER INFORMATION CONTACT: James Foster, Occupational Safety and Health Administration, Room N–3657, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Act requires OSHA to set occupational health standards which most adequately assure employee safety and health "to the extent feasible." In the preamble to the 1978 OSHA cotton dust standard (43 FR 27350, June 23, 1978), the Agency presented a substantial amount of evidence to demonstrate the technical feasibility of the standard in the textile industry based on the evidence then available.

Beginning in 1981 as evidence of actual implementation of the cotton dust standard became available, OSHA

undertook a further review of the feasibility of the standard. As part of this review, OSHA hired a consulting firm, Centaur Associates, to examine a number of issues including the current state of compliance and to review the technological feasibility of completing the compliance programs within the deadline specified by the standard (March 27, 1984).

After visiting 15 plants and interviewing numerous industrial engineers and manufacturers of dust control equipment, Centaur reported that textile experts generally consider the requirements of the 1978 standard to come into compliance with the engineering control provisions by March 27, 1984 to be feasible. The Centaur Report (Exhibit 185) documented that in 1982, a large percentage of textile operations were already in compliance with the permissible exposure limit.

Nevertheless, Centaur found that a problem does exist for specific processes in the manufacturing of certain types of yarn to come into compliance with engineering controls by March 27, 1984. These problem areas were concentrated in the ring spinning operations for high cotton content, coarse court yarn. These yarns are used in denim, duck, heavy terry cloth, and heavy industrial fabrics. Recent experience with these particular ring spinning processes indicates that ventilation systems may not always be effective and that this production equipment cannot generally be isolated.

There are several possible solutions to the dust control problem, including the rapid advent of open-end spinning systems. This relatively new technology reduces the dust levels because the fibers are spun within enclosed rotors and ventilation is designed into the machinery. There are, however, currently some problems with open-end spun yarn. For instance, open-end yarn is generally weaker than ring-spun yarns, and broken ends in weaving operations may sometimes result in negative wear and appearance properties in the finished fabric. These factors have led some garment manufacturers to insist that fabric for their apparel be made with ring-spun yarn.

It appeared, therefore, that it might not be feasible for employers to lower dust levels to the permissible exposure limit by March 27, 1984 for high-cotton-content, coarse count ring spinning operations. However, it also appeared that these problems could be overcome in several years. Control technology, including open-end spinning, is rapidly advancing, and compliance with the standard through engineering controls should be possible in all operations in the relatively near future.

Based on this information, OSHA proposed in its June 10, 1983 **Federal Register** notice (48 FR 26962) to extend the deadline for compliance using engineering and work practice controls found in § 1910.1043(m)(2)(ii). The deadline was proposed to be extended from March 27, 1984 to March 27, 1986. The proposed extension would cover only ring spinning, spooling and winding of coarse (yarn count of 14 or lower), high-cotton-content (equal to or greater than 80%) yarn.

This proposal was discussed at length by some of the commenters and additional evidence and testimony were presented on this issue at the hearings. Percy Thackston, Executive Vice President of the Bahnson Company, a supplier of ventilation equipment, testified to the inadequacy of control equipment for these operations (Tr. at 676). James A. King, Vice President of the Textile Manufacturing Division of Cone Mills Corporation, gave examples of his company's efforts to reduce dust levels below the PEL in the ring spinning of coarse count yarns (Tr. at 662–683). Commissioner John Brooks of North Carolina stated that these operations were the primary component of spinning areas which are not in compliance with the PEL in the State of North Carolina and concurred that a two-year extension would be reasonable (Tr. 1274, 1283). However, the evidence indicated that there are some coarse count, high-cotton-content yarn spinning operations which have already achieved the limit by switching to open-end spinning.

The post-hearing briefs of both the Amalgamated Clothing and Textile Workers Union (Exhibit 279) and the American Textile Manufacturers Institute (Exhibit 280) recommended, based on the above evidence, that the two-year extension proposed by OSHA be granted but with some slight modification to the specifications that OSHA originally proposed for the yarn.

The record for OSHA's June 10, 1983 proposal closed December 14, 1983. In February 1984, it became clear that OSHA could not complete the analysis of the record by the March 27, 1984 deadline to achieve compliance with the engineering control requirements. However, based on its preliminary review of the evidence and the recommendations of both the affected union and industry association, it appeared likely that OSHA's final decision would be to incorporate an extension similar to that recommended by the union and trade association. In addition, if the original deadline is extended, it would be wasteful for employers in the meantime to have to install ventilation equipment which would probably not achieve the permissible exposure limit, since better and more efficient equipment would be available shortly which would achieve the level. Based on this factor, the evidence in the record, and the recommendation of the interested parties, OSHA stayed the effective date of the engineering control requirement for ring spinning of coarse count cotton yarns as defined until January 27, 1985 (February 23, 1984; 49 FR 6717. November 28, 1984; 49 FR 46737).

Final review of the amendments to the standard resulting from the June 10, 1983 proposal has not been completed. For the reasons just stated, it continues to be appropriate to stay the enforcement of the engineering control provisions solely for ring spinning using coarse count, high-cotton-content cotton yarns as defined in this notice. Accordingly, OSHA is hereby staying the effective date of the engineering control requirement of 29 CFR 1910.1043(m)(2)(ii) for the operations of ring spinning and winding, twisting, spooling, beaming, and warping following ring spinning, where the yarns meet the following criteria:

Where the weight of the yarn being run is 100 percent cotton, the stay applies where the average yarn count by weight is 18 or below.

Where the average by weight of the yarn being run is 80 percent or more cotton, the stay applies where the average yarn count by weight is 16 or below.

Where the average by weight of the yarn being run is 50 percent or more cotton, the stay applies where the average yarn count by weight is 14 or below.

This stay of enforcement is for a period, beginning on January 27, 1985 and ending either on March 27, 1986 or the date of **Federal Register** publication of the amended final standard for occupational exposure to cotton dust, whichever date comes first. This stay will permit the Agency to make appropriate final decisions with full rationale. In the interim, all the other provisions of the standard are in effect for these operatons including the respiratory protection provisions which should reduce employee exposures below the permissible exposure limit. Expect for this stay, all provisions of the cotton dust standard, 29 CFR 1910.1043, became full effective for yarn production and slashing and weaving operations on March 27, 1984.

The matters temporarily stayed have already been subject to a specific proposal and comment by interested parties. The extent of the stay reflects both the record evidence and the views

of both union and industry participants. The stay is for a fixed period to permit appropriate final decisions to be taken after careful and complete review of the record. Accordingly, the agency determines that further notice and comment on this limited stay would serve no useful informational purpose and that further notice and comment is therefore unnecessary within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b).

List of Subjects in 29 CFR Part 1910

Cotton dust, Occupational safety and health.

Authority: This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupatonal Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. It is issued pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act.

(84 Stat. 1593, 1600, 29 U.S.C. 655, 667, 29 CFR Part 1911; Secretary of Labor's Order No. 9–83 (48 FR 35736) and 5 U.S.C. 551 et seq.)

Signed at Washington, DC, this 2nd day of April 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–8409 Filed 4–12–85; 8:45 am]

BILLING CODE 4510–26–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning May 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after May 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–6476 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-Multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. With the exception of the months of September and January, the PBGC has published in the ensuing months new rates and factors for plans terminating during the months of August, 1984 through April, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, 50 FR 6342, and 50 FR 10498).

At this time, changes in the financial and annuity markets require an increase in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after May 1, 1985, which set reflects an increase of ¼ percent in the interest rate to 10 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after May 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29 Code of Federal Regulations, is hereby amended as follows:

PART 2619—VALUATION OF PLAN BENEFITS IN NON-MULTIEMPLOYER PLANS

1. The authority citation for Part 2619 reads as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 55 of Appendix B is revised and Rate Set 56 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate percent	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
55	Apr. 1, 1985	May 1, 1985	9.75	1.0900	1.0775	1.0400	7	8
56	May 1, 1985		10.00	1.0925	1.0900	1.0400	7	8

Royal S. Dellinger,
Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 8948 Filed 4-12-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 85-022]

Safety and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of Temporary Rules Issued.

SUMMARY: This document gives notice of temporary safety zones, security zones, and special local regulations. Periodically the Coast Guard must issue safety zones, security zones, and special local regulations for limited periods of time in limited areas. Safety Zones are established around areas where there has been a marine casualty or when a vessel carrying a particularly hazardous cargo is transiting a restricted or congested area. Security zones are temporarily established in response to a risk to national security present in a particular area. Special local regulations are issued to assure the safety of participants and spectators of regattas and other marine events.

DATES: The following list includes safety zones, security zones, and special local regulations that were established between January 1, 1985 and March 31, 1985 and have since been terminated. Also included are several zones established earlier but inadvertently omitted from the last published list.

ADDRESS: The complete text of any temporary regulations may be examined at, and is available on request from, Executive Secretary, Marine Safety Council (G-CMC), U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Novak, Deputy Executive Secretary, Marine Safety Council at (202) 426-1477.

SUPPLEMENTARY INFORMATION: The local Captain of the Port must be immediately responsive to the safety needs of the waters within his jurisdiction; therefore, he has been delegated the authority to issue these regulations. Since Marine events and emergencies usually take place without advance notice or warning, timely publication of notice in the **Federal Register** is often precluded. However, the affected public is informed through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed in the zone to keep the pubic informed of the regulatory activity. Because mariners are notified by Coast Guard officials on scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulations, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of sustantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard publishes a periodic list of these temporary special local regulations, security zones, and safety zones. Permanent safety zones are not included in this list. Permanent zones are published in their entirety in the **Federal Register** just as any other rulemaking. Temporary zones are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated.

Non-major safety zones, special local regulations, and security zones have been exempted from review under E.O. 12291 because of their emergency nature and temporary effectiveness.

The following regulations were placed in effect temporarily during the period January 1, 1985, through March 31, 1985 unless otherwise indicated:

Docket No.	Location	Type	Date
COTP Providence, RI, Reg. 85-01	Rhode Island Sound, Narragansett Bay.	Safety zone	Jan. 14, 1985.
COTP Memphis, TN, Reg. 85-01.	Arkansas River, Mile 361 to 365.	do	Mar. 16, 1985
COTP St. Louis, MO, Reg. 017-84.	Upper Mississippi River, Mile 180.0 to 178.2.	do	Dec. 12, 1984.
COTP Memphis, TN, Reg. 84-14	Lower Mississippi River, Mile 736.7 to 736.0.	do	Dec. 20, 1984
CGD3 85-10.	Rockaway Inlet, Jamaica Bay.	do	Mar. 28, 1985.
CGD3 85-09.	New York Upper Bay, Lower Hudson River.	do	Mar. 28, 1985
CGD3 84-77.	Lower East River.	do	Jan 1, 1985.
CGD3 85-1.	Riverhead, Long Island, New York.	do	Jan 12, 1985.
CGD3 85-7.	Riverhead, Long Island, New York.	do	Mar 14, 1985
COTP Wilmington, NC, Reg. 85-01.	Core Creek, Swing Bridge, NC.	do	Feb. 26, 1985
COTP Jacksonville, FL, Reg. 12-85.	St. Augustine, FL.	do	Apr. 3, 1985
COTP Miami, FL, Reg. 7-85-05.	Biscayne Bay, Causeway Island, Miami Beach, FL.	do	Jan. 14, 1985.

Docket No.	Location	Type	Date
COTP Miami, FL, Reg. 7-85-05.	Atlantic Ocean, 1 Mile South of Lake Worth Inlet, FL. 26-47.1N, 080-02W.	do.	Jan. 11, 1985.
COTP New Orleans, LA, Reg. 85-03.	Lower Mississippi River, Mile 0.8.	do.	Jan. 14, 1985.
COTP New Orleans, LA, Reg. 85-01.	Lower Mississippi River, Mile 20.0.	do.	Jan. 5, 1985.
COTP New Orleans, LA, Reg. 84-17.	Lower Mississippi River, Mile 145.9.	do.	Nov. 30, 1984.
COTP New Orleans, LA, Reg. 84-16.	Lower Mississippi River, Mile 18.5.	do.	Dec. 24, 1984.
COTP Port Arthur, TX, Reg. 85-01.	Gulf Intracoastal Waterway, Mile 260 to 270.	do.	Jan. 2, 1985.
COTP Port Arthur, TX, Reg. 84-02.	Port of Beaumont, TX and Sabine Neches Waterway.	do.	Dec. 28, 1984.
COTP New Orleans, LA, Reg. 84-15.	Mile 0.8 Algiers Alternate Route, Gulf Intracoastal Waterway.	do.	Dec. 1, 1984.
COTP New Orleans, LA, Reg. 85-05.	Red River, Mile 123.8.	do.	Jan. 22, 1985.
COTP New Orleans, LA, Reg. 85-02.	Mile 66.9 W. of Harvey Locks (WHL) (EMW).	do.	Jan. 14, 1985.
COTP New Orleans, LA, Reg. 85-04.	Lower Mississippi River, Mile 1.5.	do.	Jan. 18, 1985.
COTP Mobile, AL, Reg. 85-01.	Mile 2.9, Cochrane Bridge, Mobile River.	do.	Feb. 25, 1985.
COTP Chicago, IL, Reg. 85-01.	Illinois River, Channahon, IL.	do.	Feb. 2, 1985.
COTP Chicago, IL, Reg. 84-03.	N.T.C. Great Lakes, IL.	do.	Nov. 6, 1984.
COTP Chicago, IL, Reg. 85-02.	Illinois River, Joliet, IL.	do.	Feb. 26, 1985.
COD11-85-09.	Colorado River, Mile 185 to 179.	Special local regulation.	Feb. 16, 1985.
COTP LA/LB, CA, Reg. 84-13.	Los Angeles Harbor, Berth 174.	Safety Zone.	Nov. 28, 1984.
COTP LA/LB, CA, Reg. 84-12.	Long Beach Harbor, CA.	do.	Dec. 3, 1984.
COTP LA/LB, CA, Reg. 84-14.	Long Beach Harbor, CA.	do.	Dec. 10, 1984.
COTP LA/LB, CA, Reg. 85-02.	Santa Cruz Island, CA.	do.	Feb. 1, 1985.
COTP LA/LB, CA, Reg. 85-04.	Long Beach Harbor, CA.	do.	Feb. 28, 1985.
COTP LA/LB, CA, Reg. 85-05.	Long Beach Harbor, CA.	do.	Mar. 5, 1985.
COTP LA/LB, CA, Reg. 845-03.	Long Beach Harbor, CA.	do.	Feb. 14, 1985.
COTP LA/LB, CA, Reg. 85-01.	Long Beach Harbor, CA.	do.	Jan. 15, 1985.
CGD11-84-06.	Del Rey, CA.	Special local regulation.	Feb. 2, 1985.
COTP San Diego, CA, Reg. 85-03.	Coronado Roads and San Diego Bay.	Security zone.	Feb. 7, 1985.
COTP San Diego, CA.	N.A.S. North Island, Reg. 85-02.	Security zone, San Diego, CA.	Jan. 23, 1985.
COTP San Diego, CA, Reg. 85-01.	Coronado Roads and San Diego Bay.	Safety zone.	Jan. 12, 1985.

Dated: April 9, 1985.

C.M. Holland,

Captain, U.S. Coast Guard Executive Secretary, Marine Safety Council.

[FR Doc. 85-8974 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CCGD-84-05]

Drawbridge Operation Regulations: Northeast River, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is amending the regulations that govern the operation of the drawbridge across the Northeast River, mile 27.0, at Castle Hayne, North Carolina, to permit the draw to remain closed during certain periods. This change is being made because the demand for draw openings has decreased over the past two years. This action will reduce the number of draw openings and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Wayne J. Creed, Bridge Administrator, Aids to Navigation Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23705, (804) 398-6227.

SUPPLEMENTARY INFORMATION: On November 19, 1984 the Coast Guard published a proposed rule (49 FR 45596) concerning this amendment. The Commander, Fifth Coast Guard District, also published this proposal in Public Notice (5-587) dated November 16, 1984. Interested persons were requested to submit comments by December 19, 1984.

Drafting Information

The drafter of these regulations is W.J. Creed, project officer, and the project attorney is Lcdr. W.J. Brudzinski.

Discussion of Comments

No comments that pertain to the operation of the bridge or the amended regulations were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that the new regulations will reduce the number of draw openings required, thereby reducing the costs of operation and maintenance to the railroad. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—[AMENDED]

Regulations

In consideration of the foregoing, Part 117 of Title-33, Code of Federal Regulations is amended by revising § 117.829 to read as follows:

§ 117.829 Northeast River.

The draw of the Seaboard System Railroad bridge across the Northeast River, 27.0, at Castle Hayne, North Carolina shall open on signal if at least 4 hours notice is given.

(33 U.S.C. 499.49 CFR 1.46(c)(5); 33 CFR 1.05–1(g)(3))

Dated: April 1, 1985.

James C. Irwin,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 85–8973 Filed 4–12–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Diego Reg. 85–06]

Safety Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is amending 33 CFR 165.1107 to expand an existing safety zone in the vicinity of Coast Guard Air Station San Diego. The safety zone is needed to protect vessels anchored in the area of Air Station San Diego, and Coast Guard aircraft and Coast Guard vessels operating out of Air Station San Diego. Vessels may transit this zone without restriction, but are prohibited from remaining or anchoring in this zone, or approaching within 100 yards (92 meters) of the air station unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on April 5, 1985. Comments on this regulation must be received on or before July 5, 1985.

ADDRESS: Comments should be mailed to U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101. The comments will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT Steven P. Mojonnier, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Following the normal rulemaking process would have been contrary to the public interest since immediate action is needed to respond to potential hazards to aircraft, vessels and persons in the area. Although this regulation is published as an interim final rule without prior notice, an opportunity for public comment is nevertheless desirable so that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the end of the comment period will be considered before final action is taken on this regulation. No public hearing is planned, but one may be held if written requests are received and it is determined that an opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LT Steven P. Mojonnier, project officer for the Captain of the Port, and LT Catherine McNally, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from an increase in the number of vessels anchoring in the approach and departure areas around Coast Guard Air Station San Diego, which are used by Coast Guard aircraft and vessels on an increasingly frequent basis.

Coast Guard aircraft operate regularly in this area, and frequently depart the air station in a heavy condition, in which their ability to climb to clear an obstacle such as an anchored vessel is limited, and their ability to maneuver around vessels anchored in the area is severely impaired. Coast Guard HH–3F aircraft departing the air station from a standing start in a heavy condition or adverse wind conditions frequently require as much as 1,000 feet (horizontal) to clear an obstacle the height of many vessels anchoring in this area. Airspeed during this type of takeoff is typically slow, and maneuverability is severely reduced, producing an unacceptable risk both to the anchored vessels and to the aircraft and aircrew if maneuvers to avoid vessels are required. In addition to the danger of an aircraft colliding with a vessel in this area, the downwash from the aircraft rotors is capable of severely damaging a vessel, of causing injury to persons on deck, and of overturning a small vessel.

The addition of a new 32 foot boat operating out of Air Station San Diego has increased the number of boats operating in this area to three. These vessels operate from the air station boat dock daily at all hours, and frequently are required to depart the dock at high speed to respond to vessels in distress or port emergencies.

This expanded area has been described in such a way as to restrict anchorage in this area without impeding vessels transiting the area. It provides for a 250 yard (229 meter) wide area adjacent to the boat dock to allow clear space for boat operations, a 375 yard (342 meter) long area adjacent to the aircraft departure area to allow sufficient room for aircraft to take off and clear anchored vessels, and a 100 yard (92 meter) area along the southeast side of the air station. Vessels may transit this area without restriction, but are prohibited from remaining or anchoring in the zone unless authorized by the Captain of the Port.

It is anticipated that this regulation will have no significant impact on users of San Diego Bay. Sufficient alternate anchorage areas are available to accommodate the vessels now anchoring in this area. These alternate areas are as close to shore and as convenient to use as the area of this zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, § 165.1107 of Title 33, Code of Federal Regulations, is revised to read as follows:

§ 165.1107 San Diego Bay, California—Safety Zone.

(a) The waters of San Diego Bay enclosed by the following boundaries are a safety zone:

From a point located on the boundary of Coast Guard Air Station San Diego, California at latitude 32°43'37.2" N, longitude 117°10'45.0" W (point A), for a point of beginning; thence southeasterly to latitude 32°43'36.2" N, longitude 117°10'41.5" W (point B); thence southwesterly to latitude 32°43'20.2" N, longitude 117°10'49.5" W (point C); thence northwesterly to latitude 32°43'25.7" N, longitude 117°11'04.6" W (point D); thence northeasterly to latitude 32°43'35.7" N, longitude 117°10'58.5" W (point E); thence generally easterly along the air station boundary to the point of beginning (point A).

(b) (1) In accordance with the general regulations in § 165.23 of this Part, entry into the area of this zone is prohibited

unless authorized by the Captain of the Port, except as provided for below.

(2) Vessels may transit the area of this safety zone without permission, but may not anchor, stop, remain within the zone, or approach within 100 yards (92 meters) of the land area of Coast Guard Air Station San Diego or structures attached thereto.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 160.5)

Dated: April 4, 1985.

E.A. Hermes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 85-8975 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Emergency Dental Treatment

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: The Veterans Administration is amending a medical regulation regarding emergency dental care to clearly state when and to what extent treatment will be provided, and that individuals who are ineligible for such treatment will be billed. This action is required to clarify the wording in this regulation to allow for consistent interpretation in the provision of outpatient dental care. This amendment will assure systemwide application of the provision of outpatient dental care which has been administered sporadically and inconsistently in the past.

EFFECTIVE DATE: This regulation is effective April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, Chief, Policies and Procedures Division, Medical Administration Service, 810 Vermont Avenue NW, Washington, DC 20420, 202-389-2051.

SUPPLEMENTARY INFORMATION: On pages 32864 and 32865 of the **Federal Register** of August 17, 1984, the proposed regulation was published for 38 CFR 17.124. Interested persons were given 30 days to submit comments, suggestions or recommendations. One comment was received. It expressed concern that veterans who are entitled to dental treatment from the VA might be billed for such treatment. That is not the intent of the regulation. No veteran who is eligible for the dental treatment he/she receives from the VA will be billed for such treatment. It is also the intent of this regulation that it only be applicable to emergency outpatient dental treatment provided as a humanitarian service. However, in the case of a veteran who is furnished dental care, for which he or she is not otherwise eligible, as an emergency, humanitarian measure, the failure to pay for such emergency care in accordance with 38 CFR 17.62 may result in an offset to a benefit, pursuant to 38 U.S.C. 3114 and 38 CFR 1.911a, et seq., which the individual is receiving or may receive in the future. Therefore, in order to avoid any confusion related to inpatient treatment, the proposed regulation is adopted with removal of references to treatment provided after admission to a VA hospital, nursing home care unit, or domiciliary, and is set forth below. Additionally, the title of the regulation is changed to "Emergency outpatient dental treatment." The Administrator has determined that this amendment to VA regulations is non-major under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect of $100 million or more on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse economic effects.

The Administrator certifies that this proposed amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), this proposed amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This rule governs the conduct of VA employees, not that of the private sector. It will only be applicable in the case of certain individuals who receive emergency outpatient dental treatment at VA health care facilities.

The Catalog of Federal Domestic Assistance Numbers are 64.009 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug Abuse, Foreign relations, Government contracts, Grants programs, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: February 6, 1985, by direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

In 38 CFR Part 17, *Medical*, § 17.124 is revised to read as follows:

§ 17.124 Emergency dental treatment.

When outpatient emergency dental care is provided, as a humanitarian service, to individuals who have no established eligibility for outpatient dental care, the treatment will be restricted to the alleviation of pain or extreme discomfort, or the remediation of a dental condition which is determined to be endangering life or health. The provision of emergency treatment to persons found ineligible for dental care will not entitle the applicant to further dental treatment. Individuals provided emergency dental care who are found to be ineligible for such care will be billed. (38 U.S.C. 210(c))

[FR Doc. 85-8967 Filed 4-12-85; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 580

[Docket No. 84-27]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States; Co-Loading Practices by NVOCCs

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This Final Rule addresses the practices of Non-Vessel-Operating Common Carriers (NVOCCs) combining cargo, usually for the purpose of attaining full container loads, such practices being commonly known as co-loading. The rule requires each NVOCC to describe in its tariffs the undertaking to offer or perform co-loading. Further, the Rule requires that NVOCCs give actual notice to a shipper that its cargo has been co-loaded and of the identity of the other NVOCC(s) involved in the co-loading. Special rates published by one NVOCC for the exclusive use of other, co-loading NVOCCs will be prohibited.

EFFECTIVE DATE: May 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5796

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5827.

SUPPLEMENTARY INFORMATION: The Commission initiated this rulemaking proceeding by publication of a Notice of Proposed Rulemaking in the **Federal Register** on July 25, 1984, 49 FR 29980.

The Commission received 15 comments on the Proposed Rule. Commenting parties or groups of parties are: 1) 3-Way Ocean; 2) Airport Brokers Corporation; 3) John v. Carr & Son, Inc.; 4) F.X. Coughlin Co.; 5) Greene Companies International Inc.; 6) Hemisphere Forwarding, Inc.; 7) F.W. Myers & Co., Inc.; 8) New England Groupage; 9) Reardon Export, Inc.; 10) Associated Latin American Freight Conferences; Atlantic & Gulf/West Coast of South America Conference; East Coast Colombia Conference; South Atlantic & Gulf/Guatemala, El Salvador & Honduras Rate Agreement; South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; United States Atlantic & Gulf/Ecuador Freight Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States Atlantic & Gulf/Southeastern Caribbean Conference; United States Atlantic & Gulf/Venezuela Freight Association; United States Florida/Ecuador Steamship Conference; West Coast of South America Northbound Conference; 11) 8900 Lines; Greece/U.S. Atlantic Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Italy, South France, South Spain, Portugal/U.S. Gulf and the Island of Puerto Rico Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Mediterranean-North Pacific Coast Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; West Coast of Italy Sicilian and Adriatic Ports/North Atlantic Range Conference; 12) Japan/Korea-Atlantic and Gulf Freight Conference; New York Freight Bureau; Philippines North America Conference; Trans Pacific Freight Conference (Hong Kong); Trans Pacific Freight Conference of Japan/Korea; 13) Council of European & Japanese National Shipowners' Associations; 14) International Association of NVOCCs; and 15) National Customs Brokers and Forwarders Association of America, Inc.

In general, the commenters views were as follows:

Individual NVOCC's Comments

New England Groupage (New England) supports the Proposed Rule without any changes. New England states that the abuses of co-loading greatly exceed any benefit that the shipping public might derive from the practice.

Three other commenters, 3-Way Ocean (3-Way), John v. Carr & Son, Inc. (Carr), and F.X. Coughlin Co. (Coughlin), support the Commission's Proposed Rule, in part. These commenters essentially object to the documentation requirements and the prohibition of special co-loading rates. Further details of these and other commenters' views are outlined herein under the various sub-parts of the Proposed Rule.

The five other commenting NVOCCs, Airport Brokers Corporation (Airport), Greene Companies International, Inc. (Greene), Hemisphere Forwarding, Inc. (Hemisphere), F.W. Myers & Co., Inc. (Myers) and Reardon Export, Inc. (Reardon) do not support the Proposed Rule, because in their opinion co-loading does not require special treatment with a special tariff filing rule. Hemisphere urges the Commission to enter into an investigation prior to pursuing a final rule which might result from the instant rulemaking procedure. Hemisphere, Airport, Greene, Myers and Reardon are of the opinion that the public is aware of the liability and responsibilities inherent in co-loading and that the present tariffs and rate structures of the NVOCCs and the VOCCs accommodate the economics and efficiencies of co-loading. Further, Greene is of the opinion that the Commission lacks jurisdiction in the matter of co-loading agreements.

Conferences' Comments

The Conferences support the Commission's effort to promulgate a rule covering co-loading. The Conferences, however, would modify the rule to provide: (a) additional documentation requirements which would require NVOCCs to notify the shipper prior to booking of the fact that the shipper's cargo would be co-loaded; (2) a restriction to allow co-loading only for LCL shipments; and (3) a clarification of the rule as it relates to NVOCCs' co-loading activities which involve agreements.

Transportation Organizations' Comments

The Council of European & Japanese National Shipowners' Associations (CENSA) support the Proposed Rule, but suggest that the Commission review and clarify its jurisdiction in any circumstance where an NVOCC also acts as an ocean freight forwarder or undertakes other activities in connection with export or import shipments.

The International Association of NVOCCs (IANVOCCs) shares Greene's views with respect to the Commission's jurisdiction over NVOCC agreement matters. The IANVOCCs supports the Proposed Rule in principle, but urges that the Commission delete any reference in the rulemaking that suggests that NVOCCs can avoid their responsibility in publishing tariff information concerning co-loading by merely mentioning that such an activity is performed under the terms of an agreement.

Lastly, the National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) is of the opinion that the Proposed Rule will impede lawful NVOCC activities which are regarded as beneficial to U.S. exports and thus requests that the Commission grant its request for oral argument in order to develop further details in this rulemaking. Briefly, NCBFAA states that the proposed requirements relating to the explanation of liability in both the tariff and in shipment documentation in § 580.17(b)(3) and the proposed prohibition of special co-loading rates in § 580.17(d) are burdensome to the NVOCCs, harmful to the shipping public, and will curtail the viability of the forwarder/NVOCC.

Comments directed to specific portions of the proposed rule are discussed below:

Section 580.17 Special Rules and Regulations applicable to co-loading activities of Non-Vessel-Operating Common Carriers (NVOCCs).

(a) *Definition.* For the purposes of this section, "Co-loading" means the combining of cargo by two or more NVOCCs for tendering to an ocean carrier under the name of only one of the NVOCCs.

* * * * *

The National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) suggests that where the term "ocean carrier" appears in section 580.17(a) it should be amended to state "ocean *common* carrier" to be consistent with the statutory term and definition. We will not adopt this suggestion because it would unnecessarily narrow the scope of the regulations. An NVOCC is a common carrier regardless of whether the cargo it handles is ultimately transported by an ocean common carrier or by some other type of ocean carrier, such as a contract or tramp carrier.[1] The ability to co-load

[1] The definition of NVOCC found in section 3(17) of the Shipping Act of 1984 (46 U.S.C. App. 1702(17)) states that an NVOCC is a shipper in its relationship with an *ocean common carrier*. We view this language as a clarification of the relationship between an NVOCC and the only type of ocean carrier that is regulated by the 1984 Act when the NVOCC tenders cargo to that type of carrier. We do not believe that Congress intended, by that language, to limit regulation of NVOCCS to only those which tender cargo to *ocean common carriers*. The activities of the NVOCC which are sought to be regulated—i.e., its holding out to the public as a common carrier—are not affected by the type of vessel operating carrier to which the NVOCC chooses to tender the cargo.

and the necessity for notice to and equal treatment of shippers are unaffected by the NVOCC's choice of underlying vessel operator.

Greene states that the definition ignores the important distinctions between co-loading by agreement and co-loading through published tariffs. While there may be important distinctions between these two types of co-loading arrangements, the definition is not the place in which these distinctions need be reflected. We believe that co-loading by either type of arrangement does and should meet the definition set forth in the Rule. As indicated below, the substantive requirements of this Rule are made applicable only to those co-loading arrangements where a shipper/carrier relationship exists between the tendering and receiving NVOCCs, regardless of the existence of an agreement.

The Associated Latin American Freight Conferences, *et al.* (ALAFC) suggest that the words, "in the import or export foreign commerce of the United States" be added to the definition of co-loading to make it clear that these regulations apply equally to foreign—based NVOCCs operating in U.S. import trades. It was the intent of the Commission to apply these rules to all NVOCCs subject to the Shipping Act of 1984 and we will, therefore, adopt ALAFC's suggestion in the interest of clarity.

The U.S. Atlantic & Gulf/Australia-New Zealand Conference, *et al.* (AGANZ) suggest that the definition be amended to delete the words, "under the name of only one of the NVOCCs". Their concern is that the regulations would arguably not apply if cargoes are tendered to an ocean common carrier under the name of more than one NVOCC. The Commission is unaware of present co-loading arrangements by which cargo is tendered to an ocean common carrier under the name of more than one NVOCC. However, the possibility would appear to exist as suggested by AGANZ and, if so, could circumvent the intent of the rule. Therefore, we will adjust the definition to accommodate AGANZ's concern, but will leave intact the concept that the cargo must be tendered to the ocean carrier in the name of one (or more) of the NVOCCs involved in the co-loading. To delete the phrase completely would broaden the scope of the regulations and could arguably encompass activities beyond the Commission's jurisdiction, such as those of shippers' agents, freight brokers, etc. One or more of the NVOCCs involved in the co-loading must be named as the shipper on the ocean carrier's bill of lading.

Section 580.17

* * * * *

(b) *Filing Requirements.* (1) All tariffs filed by an NVOCC shall contain a rule which describes its co-loading activities. If co-loading is accomplished pursuant to the terms of an agreement between or among NVOCCs, it is only necessary to note the existence of such agreement in each of the applicable NVOCC tariffs. If a co-loading service is not offered or performed by an NVOCC, its tariffs shall contain a rule which states that co-loading is "not offered or performed" by the publishing carrier.

* * * * *

Greene argues that the Commission lacks jurisdiction to promulgate regulations which require information concerning the implementation of private co-loading agreements and that none of the proposed sections of the rule effectively deal with co-loading when offered or performed pursuant to an agreement between NVOCCs.

The IANVOCCs shares the same view as Greene with respect to the Commission's jurisdiction over NVOCC agreement matters. The IANVOCCs, however, supports the Commission's proposed rule in principle, and suggests that the Commission delete any reference in the rulemaking which infers that NVOCCs can avoid their responsibility in publishing tariff information concerning co-loading by merely mentioning that such an activity is performed under an agreement.

ALAFC are of the opinion that NVOCCs should be required to append any agreement it has executed on co-loading to its tariff so that shippers are made aware of any arrangements between NVOCCs.

AGANZ and the Transpacific Freight Conference of Japan/Korea *et al.* (Trans-Pac) suggest that section 580.17 be amended to accommodate co-loading activities which are implemented through an agreement. It is AGANZ's and Trans-Pac's opinion that agreement matters relating to co-loading must be viewed as a "practice" subject to tariff filing requirements.

AGANZ further suggests that a distinction should be drawn between co-loading agreements which do not involve the furnishing of common carrier services and co-loading agreements which do involve the furnishing of common carrier services by the receiving NVOCC to the tendering NVOCC. In the latter case, AGANZ argues that the tariffs of the receiving NVOCC should be required to reflect the terms of the arrangement, regardless of the existence of an agreement.

AGANZ also comments that co-loading agreements could be required to be filed under the Shipping Act of 1984 when an NVOCC party to such an agreement is otherwise subject to agreement—filing requirements of either the 1984 Act or the Shipping Act, 1916. Attention is called to the Commission's Notice of Proposed Rulemaking of August 29, 1984 (49 FR 34253) in which the Commission announced an opinion that section 15 of the 1916 Act continued to apply to agreements between freight forwarders.

This last suggestion is one that is beyond the scope of this rulemaking proceeding and one that we believe addresses an unlikely situation. Since AGANZ filed its comments, Congress has acted to remove agreements among freight forwarders from the filing and approval requirements of the Shipping Act, 1916 (HR. 5833, Pub. L. No. 98-595, 98 Stat. 3130 (1984). See 49 FR 46174 November 23, 1984. The only two entities now required to file agreements with the Commission relating to foreign commerce are ocean common carriers and marine terminal operators, neither of which is a typical affiliate of an NVOCC. Should such a situation arise in which ocean common carriers or marine terminal operators enter into an NVOCC co-loading agreement, we would address that situation on an *ad hoc* basis.

The general subject of co-loading performed pursuant to the terms of an agreement requires some clarification. As we said in the Notice of Proposed Rulemaking (p. 4 note 1), we express no opinion on the relationship that may be created between two or more NVOCCs by the terms of a private agreement. However, we agree with the comments that suggest that all shipper/carrier relationships between two or more NVOCCs should be reflected in appropriate NVOCC tariffs regardless of the existence of a separate agreement. Section 8 of the Shipping Act of 1984 is very explicit in its requirement that each common carrier file:

> Tariffs showing all its rates, charges, classifications, rules, and practices between all points or points on its own route and on any through transportation route that has been established.

Complementing the filing requirement of section 8 are the prohibitions of section 10(b) of the act.

> (b) Common Carriers.—No common carrier, either alone or in conjunction with any other person, directly or indirectly may—
>
> (1) Charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates

and charges that are shown in its tariffs or service contracts; [or] . . .

(3) Extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its tariffs or service contracts; . . .

As long ago as 1935, the Commission's predecessor, the United States Shipping Board Bureau recognized that.

The law prohibits special arrangements between shippers and carriers unless the terms thereof are fully disclosed in the tariff.[3]

The important question pertinent to this proceeding is whether a shipper/carrier relationship exists between the NVOCCs in a co-loading arrangement. If it does, the statute require that the "carrier" party to that arrangement include all of the applicable rates, charges, concessions, privileges etc. in its tariffs. The rate in the effective tariff affords the only legal basis upon which freight charges may be collected, any agreement to the contrary notwithstanding.[4]

A shipper/carrier relationship is established in a co-loading arrangement when the receiving NVOCC issues a bill of lading to the tendering NVOCC for the transportation of the co-loaded cargo. In such instances, the tendering NVOCC looks to the receiving NVOCC in the event of loss or damage to the co-loaded cargo, and the tendering NVOCC has no privity of contract or other type of direct relationship with the oceam carrier or other carrier which forms the next link in the transportation chain.

In contrast, one example of a carrier/carrier relationship would appear to be where two NVOCCs hold themselves out jointly to the shipping public to co-load and transport cargo. In such cases, we would expect that a joint or common bill of lading would be issued to the originating shipper and that the cargo would be tendered to the ocean carrier in the names of both co-loading NVOCCs. Other types of carrier/carrier relationships may be created by co-loading agreements and are not meant to be excluded by this example.

We have clarified § 580.17(b)(1) to distinguish between co-loading agreements which create a shipper/carrier relationship and those which create a carrier/carrier relationship. The issuance of a bill of lading by the receiving NVOCC to the tendering NVOCC will create a presumption that a shipper/carrier relationship exists. In neither case are we suggesting that the agreement itself must be filed with the Commission, nor are we asserting any other type of jurisdiction over the agreement *per se*. We are only taking the position that a common carrier's tariff must include all of the terms and conditions of its offering to the shipping public and that this fundamental principle cannot be circumvented or avoided by a private agreement.

A final comment on § 580.17(b)(1) is made by Trans-Pac, who suggests that NVOCCs should be restricted to co-loading only less-than-containerload (LCL) cargo. Trans-Pac states that the Commission and NVOCCs have relied upon LCL service as justification for the activity and it should, therefore, be so restricted.

The Commission will not adopt this suggestion. The fact that co-loading of LCL cargo is more prevalent and more likely than co-loading of full container loads is no reason to prevent the latter. The concern that Trans-Pac expresses over possible delay and unnecessary expense to shippers and consignees is one that the market should be able to control given the notice that these rules will require concerning the co-loading activities of NVOCCs.

Section 580.17

* * * * *

(b) * * *

(2) In the event an NVOCC tenders cargo to another NVOCC for co-loading, its tariffs shall provide a clear explanation of its liability to the shipper and its responsibility to pay any other common carrier's rates and charges necessary in order to transport the shipper's cargo to its destination.

* * * * *

Hemisphere is of the opinion that NVOCC tariffs are clear and definite with respect to the liability of NVOCCs participating in co-loading activities. If that is true, then this part of the rule presents no additional burden or imposition upon the NVOCC industry.

However, the Commission's concern here is that confusion may exist in the minds of both shippers and NVOCCs in a situation where there is a failure of performance or damage to the cargo at some intermediate step in the transportation network. We want the initial NVOCC to make it absolutely clear to its shippers that it will live up to its obligations as a common carrier regardless of lower liability limits by subsequent NVOCCs, lack of privity with the ocean carrier, the absence of its own employees or facilities at particular destinations, or a myriad of other problems which may arise when cargo is co-loaded.

Section 580.17

* * * * *

(c) Documentation Requirements. NVOCCs which tender cargo to another NVOCC for co-loading shall notify each shipper of such action by annotating each applicable bill of lading with: (a) a summary statement of its liability and its responsibility to pay any other rates and charges necessary to transport the cargo to its destination; and (b) the identity of any other NVOCC with which its shipment has been co-loaded.

* * * * *

3-Way states that the requirements of the proposed rule relative to documentation, i.e., to provide a "summary statement of liability" and the "identity of any other NVOCC with which its shipment has been co-loaded", is redundant and ineffective. 3-Way is of the opinion that NVOCCs' tariffs already contain provisions setting forth liability.

3-Way does not support the "identity" requirement unless the "other" co-loading NVOCC's liability is also stated. 3-Way further states that if there is any justification for the "identity" requirement it should be expanded to include the identification of the VOCC.

3-Way contends that the question is not one of identity, but one of demonstrating the capability of liability. 3-Way's answer is that capability probably means licensing and bonding.

Carr objects to the proposed requirement to identify the name of the "other" NVOCC on the bill of lading because it could compromise its relationship with the shipper. According to Carr, NVOCCs not only co-load because of short freight commitments (less-than-containerload) but also because of overflow conditions.

Coughlin supports 3-Way's views that the separate documentation requirements are unnecessary so long as liability requirements are clearly set forth in the tariff.

Greene argues that the documentation requirements are burdensome.

Reardon is of the opinion that "the liability issue is really between the NVOCC and the ocean carrier with the responsibility being passed up to the master loader and the steamship company."

The NCBFAA is of the opinion that it is unnecessary to require NVOCCs to state separately their liability and responsibility to pay any other NVOCCs charges. First, NCBFAA states that the NVOCC's liability is already provided in its specimen bill of lading regardless of co-loading and that it is common

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[3] *Intercoastal Investigation, 1935*, 1 USSBB 400, 416 (1935) While that case was decided under the Intercoastal Shipping Act, 1933, (46 U.S.C. app. 843 *et seq.*) the tariff filing and adherence provisions of that Act are virtually identical to those now contained in the Shipping Act of 1984, with the exception of the new provisions for Service Contracts contained in the 1984 Act. Since only *ocean* common carriers, and not NVOCCs may offer such contracts, this difference has no relevance to the instant proceeding.

[4] *C.W. Spence* v. *Pacific-Atlantic S.S. Co.* 1 USSBB 624, 626 (1936)

knowledge that a shipper is not responsible for any charges beyond those charged by the NVOCC which receives its cargo. NCBFAA alleges that the Commission's proposed rule is unnecessary and discriminatory in that there are situations involving the handling and custody of cargo by VOCCs which are analagous to co-loading which are not subject to special tariff filing requirements, e.g., an intermodal movement wherein a VOCC uses an inland carrier to whom a portion of the through rate is due.

ALAFC suggests that the Commission require the NVOCC which engages in co-loading to advise the shipper in writing of such fact prior to booking cargo. ALAFC has provided suggested language to accommodate the added requirement.

In view of these comments, the Commission is deleting the requirement for annotating each applicable bill of lading with a summary statement of the NVOCC's liability and responsibility to pay any other rates and charges necessary to transport the cargo to its destination. We are persuaded that the inclusion of such information in the NVOCC's tariffs and specimen bill of lading will be sufficient to avoid possible confusion over liability and the responsibility for payment of transportation charges.

However, we will continue the requirement that an NVOCC provide a shipper with notification of the identify of other NVOCCs with which the shipper's cargo has been co-loaded. We view this notice as an essential ingredient of our goal of ensuring that the shipping public is fully aware of an NVOCC's co-loading activities.

A shipper which tenders cargo to an NVOCC does so with the clear understanding that the cargo will, in turn, be tendered to a vessel-operating carrier. Many shippers would be surprised, however, to learn that their cargo had been tendered to another NVOCC for co-loading. If this is the type of service offered by an NVOCC, then shippers have a right to know that fact. They can then make an intelligent choice of the type of service they prefer.

We believe that the method we have chosen for identifying other NVOCCs—annotating the bill of lading—is straightforward and of minimal burden to the industry. Because of this, we are rejecting the suggestion of ALAFC that the NVOCC should notify the shipper in writing prior to booking the cargo. This requirement would appear to be not only more burdensome but also unrealistic in that a decision to co-load cargo may not be made prior to its booking.

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* * * * *

(d) *Co-Loading Rate Application.* No NVOCC tariff shall contain special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to the general public.

* * * * *

3-Way states that the Commission has apparently considered the status of NVOCC's as "shippers" only, rather than as shippers/carriers since it has proposed to prohibit any special rates which apply for the account of another NVOCC. 3-Way questions why the prohibition for NVOCCs to publish special rates for the account of other NVOCCs does not apply in the instance of VOCCs which publish rates to apply only for the account of NVOCCs. 3-Way is of the opinion that NVOCCs are a distinct "class of shipper" because they are also a common carrier. According to 3-Way, without the Commission's recognition of the above distinction (which would permit special co-loading rates between NVOCCs), the economic incentive to the NVOCCs to co-load and the advantages of co-loading services will be lost.

Airport supports 3-Way's position that the Commission should recognize NVOCCs as a distinct class of shippers for the purpose of allowing special co-loading rates which are applicable only for the account of another NVOCC. Airport is of the opinion that the proposed rule will result in NVOCCs: (1) holding shipments for consolidations until they build a volume large enough to fill a container; (2) going out of business; and/or (3) diverting cargo through the unregulated Canadian/Mexican ports. Airport views the proposed rules as discriminatory when "other" entities are permitted to "pool" cargoes. Airport describes the operation of an Export Trading Company and the Japanese space charter arrangement as being analogous to co-loading.

Airport maintains that special rates are justified since co-loading eliminates sales calls, extraordinary assistance in setting up shipments and documents, credit checks, rate quotes for shipments that might never be shipped and various other services that require the publication of higher rates to general shippers.

Hemisphere argues that no discrimination is involved in the practice of NVOCCs co-loading or in the application of the rates for such services. Hemisphere indicates that the only instruction received by NVOCCs from shippers is to obtain the most economical and expedient manner of handling their shipments that is available. Further, Hemisphere states inasmuch as NVOCCs are not a major force in all trading areas, the publication of special rates by NVOCCs which are restricted to other NVOCCs is beneficial to the shipping public by allowing NVOCCs as a group of shippers/carriers to take advantage of full containerload rates offered by VOCCs.

Myers sets forth the same views as 3-Way, Airport and Hemisphere in attempting to justify the continuation of special co-loading rates among NVOCCs. Additionally, Myers suggests that NVOCCs and other shippers are not similarly situated, and is of the opinion that the elimination of co-loading rates would create discrimination in favor of large and specialized NVOCCs which would enjoy VOCC Freight-All-Kinds (FAK) rates exclusively.

Carr, Coughlin, Greene, Reardon and NCBFAA share the views of 3-Way, Airport, Hemisphere and Myers in the matter of the Commission's proposed rule prohibiting special rates.

The ALAFC, AGANZ, Trans-Pac, and CENSA support the Commission's rule prohibiting special rates. ALAFC suggests that the Commission's analysis was not comprehensive enough to conclude that co-loading was beneficial to the shipping public. ALAFC suggests that co-loading and the special tariff rates only benefit the NVOCCs and not the actual shippers using NVOCCs which co-load.

The suggestion that NVOCCs and other shippers are not "similarly situated", or that NVOCCs are a "distinct class of shippers" is one that must be supported by transportation factors. The fact that they can all be identified as NVOCCs or that they are also carriers is not sufficient. It is well settled that the identity of a shipper is not a legitimate transportation factor.[5]

The fact that NVOCCs have a carrier alter-ego is irrelevant to their status as shippers when tendering cargo to another carrier. They are acting solely as shippers in that capacity and the question to be resolved here is whether their shipments can be distinguished from those of other shippers of like commodities.

Some effort is made in the comments to distinguish between NVOCC shipments and those tendered by other shippers. One suggestion is that the greater volume of the shipments

[5] *I.C.C.* v. *Delaware, Lackawenna* v. *Western Railroad Co.*, 220 U.S. 235, 252 (1911); *I.C.C.* v. *United States*, 289 U.S. 385 (1933); *Mitchell* v. *United States*, 313 U.S. 80, 94 (1941).

received from other NVOCCs warrants lower rates. If that is the case, volume discounts could certainly accommodate the cargo and would not suffer from the infirmity of being offered only to certain shippers on the basis of their identity.

Another suggested distinction is alleged savings in costs of sales, customer service, documentation etc. inherent in shipments from other NVOCCs. While cost savings could certainly warrant a difference in rates, very few specifics are offered which could be identified solely with NVOCC co-loaded cargo. For example, it would appear that cargo tendered by a freight forwarder would entail savings in sales, services and documentation similar to those alleged to be realized in connection with NVOCC co-loaded cargo.

Several of the commenters also suggest that special co-loading rates for NVOCCs should not be prohibited because some VOCCs offer special FAK rates for consolidated cargo tendered by NVOCCs, consolidators and freight forwarders. We do not find this argument persuasive. Any VOCC rates which are so limited would be evaluated on the same principles discussed in connection with this rule. Without focusing specifically on the VOCC rates to which the commenters make reference, we cannot make any judgment as to whether any such rates may be justified on the basis of transportation characteristics. At the very least, it seems clear that the VOCC tariff description referred to in these comments is not identical to the special NVOCC co-loading rates addressed in this rule.

The Commission is not attempting to prohibit legitimate discounts which may apply to NVOCC co-loaded cargo. However, on the basis of the comments herein, we are still not persuaded that co-loaded cargo tendered by NVOCCs is sufficiently distinct in and of itself to warrant a rate based solely upon the fact that the cargo is tendered by an NVOCC.

There are numerous other, legitimate, means of offering discounts to this type of cargo, so long as the same rates would apply to any other shippers of the same type of cargo. For example, FAK rates, time/volume rates, and consolidated cargo rates are all conventional ratemaking devices which would be used to offer reduced rates to other NVOCCs without the stigma of excluding other shippers of like commodities.

Our intent in this rule is not to eliminate or to discourage co-loading activity, but rather to raise the level of shipper awareness of this activity and to ensure that it is not being used as a device for unjust preference, prejudice or discrimination among shippers. To that end, this rule is being added to 46 CFR Part 580.

Inasmuch as NVOCCs will be required to describe co-loading activities in each of their tariffs, the Commission is amending its tariff filing regulations so that such information will appear in a uniform location. Paragraph 5(d)(14) of Part 580, (presently listed as "Reserved") will, therefore, be assigned to the subject rule and shall be captioned "Special Rules and Regulations applicable to co-loading activities of Non-Vessel-Operating Common Carriers (NVOCCs)."

Oral argument has been requested by NCBFAA. The Commission has determined to deny this request because it believes that the issues have been duly considered in this proceeding. NCBFAA has had the same opportunity as other commenters to argue its position and it has, in fact, done so eloquently in its comments. No other commenter has either filed a similar request or indicated support for the request of NCBFAA.

The Commission has determined that this final rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government jurisdictions.

Collection of Information requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned control number 3072.0046.

List of Subjects in 46 CFR Part 580

Cargo, Cargo vessels, Exports, Harbors, Imports, Maritime carriers, Rates and fares, Reporting and recordkeeping requirements, Water carriers, Water transportation.

Therefore, pursuant to 5 U.S.C. 553 and sections 8 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707 and 1716) the Federal Maritime Commission is amending Title 46 CFR Part 580 as follows:

PART 580—[AMENDED]

1. The authority citation to Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

2. Section 580.5 is amended by adding paragraph (d)(14) to read as follows:

§ 580.5 Tariff contents.

* * * * * *

(d) * * *

(14) *Special Rules and Regulations applicable to co-loading activities of Non-Vessel-Operating Common Carriers (NVOCCs).*—(i) *Definition.* For the purpose of this section, "Co-loading" means the combining of cargo, in the import or export foreign commerce of the United States, by two or more NVOCCs for tendering to an ocean carrier under the name of one or more of the NVOCCs.

(ii) *Filing Requirements.*

(A) (*1*) All tariffs filed by an NVOCC shall contain a rule which describes its co-loading activities.

(*2*) If co-loading is accomplished pursuant to the terms of an agreement which establishes a carrier-to-carrier relationship between or among NVOCCs, it is only necessary to note the existence of such agreement in each of the applicable NVOCC tariffs. But, if two or more NVOCCs enter into a co-loading agreement which establishes a shipper/carrier relationship between or among the NVOCCs, the co-loading activities must be described in a tariff rule pursuant to paragraph (d)(14)(ii)(A)(*1*) of this section.

(*3*) A shipper/carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(*4*) If a co-loading service is not offered or performed by an NVOCC, its tariffs shall contain a rule which states that co-loading is "not offered or performed" by the publishing carrier.

(B) In the event an NVOCC tenders cargo to another NVOCC for co-loading, its tariffs shall provide a clear explanation of its liability to the shipper and its responsibility to pay any other common carrier's rates and charges necessary in order to transport the shipper's cargo to its destination.

(iii) *Documentation Requirements.* NVOCCs which tender cargo to another

NVOCC for co-loading shall notify each shipper of such action by annotating each applicable bill of lading with the identity of any other NVOCC with which its shipment has been co-loaded.

(iv) *Co-Loading Rates Application.* No NVOCC tariff shall contain special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shipments with similar transportation characteristics.

* * * * *

3. § 580.91 is amended by adding the following to the Table at the end:

§ 580.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *	
580.5(d)(14)	3072–0046
* * * * *	

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–8923 Filed 4–12–85; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 50, No. 72
Monday, April 15, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84-003P]

Nitrite Levels in Bacon

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal meat inspection regulations by providing two alternative procedures for controlling the levels of ingoing nitrite in bacon. The current regulations require that 120 ppm of sodium nitrite or 148 ppm of potassium nitrite and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used in bacon. Under this proposal, processors could continue to use 120 ppm ingoing sodium nitrite (or an equivalent amount of potassium nitrite) and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); or could (1) use 100 ppm ingoing sodium nitrite (or the equivalent amount of potassium nitrite) and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate), with an approved partial quality control program to precisely control the level of ingoing nitrite and other factors; or (2) use a level between 40 and 80 ppm ingoing sodium nitrite (or the equivalent amount of potassium nitrite) and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) plus added sugar and starter cultures (lactic acid producing bacteria), with an approved partial quality control program to precisely control the level of ingoing nitrite, added starter cultures (lactic acid producing bacteria) and other factors.

Under the proposal, the process used by an establishment would affect the intensity of nitrosamine monitoring to which the establishment would be subject, by having the level of sampling reflect the likelihood of nitrosamines occurring, taking into account such factors as the level of nitrite used, plant history, and, as applicable, data from the plant's quality control program. For plants choosing one of the new alternative procedures, samples for nitrosamine analyses would be randomly selected throughout the production of a lot. The proposal would retain the current provisions for action if the presence of nitrosamines is detected. Additionally, the chart in 9 CFR 318.7(c)(4) would be amended to reflect the use of harmless lactic acid producing bacteria as preventing the growth of *Clostridium botulinum*.

Implementation of the proposal would permit manufacturers to lower the amount of nitrite added to bacon. This would reduce the incidence of formation of nitrosamines at confirmable levels while retaining the same high level of protection against botulinal toxin formation. Implementation of the proposal would also offer flexibility to establishments preparing bacon, and the modification of the nitrosamine monitoring program would permit better utilization of the Department's laboratory resources.

DATE: Comments must be received on or before: June 14, 1985.

ADDRESS: Written comments to: Regulations Office, Attention: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Johnston, Director, Microbiology Division, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 477-4212.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." The proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The proposal would reduce the amount of nitrite levels in bacon and would provide establishments preparing bacon added flexibility thus providing less burden on establishments. The options proposed are voluntary and could result in less costs to the processors of bacon.

Paperwork Requirements

Under the proposal's two alternative procedures for controlling nitrite in bacon, establishments would be required to develop and submit to the Administrator for approval a partial quality control program designed to assure compliance with the provisions of the chosen alternative. The partial quality control programs would require establishments to maintain certain records. The recordkeeping and reporting requirements for Federal meat inspection quality control programs (9 CFR 318.4) have been cleared by the Office of Management and Budget (OMB Clearance No. 0583-0015).

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be submitted in duplicate to the Regulations Office and should reference the docket number appearing in the heading of this document. All comments will be available for inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Nitrite has been used for many years in curing meat. Until the late 1960's, the U.S. Department of Agriculture (USDA) believed that acute toxicity from excessive use of nitrite was the only concern with its use. In 1971, USDA and Food and Drug Administration (FDA) analysts reported levels of nitrosamines in the parts per billion (ppb) range in some meat food products (especially bacon) that had nitrite added. Nitrite, when combined with secondary amines

that occur in cured bacon under certain conditions, forms nitrosamines, some of which have been found to cause cancer in animals. Nitrosamines can be formed when bacon is fried and nitrite and amines are present. However, nitrite provides necessary protection against growth of *Clostridium botulinum* and the production of its toxin which causes botulism, an often fatal food poisoning.

In 1972, the Department was petitioned by consumer groups to ban or greatly reduce the use of nitrite in meat in order to reduce the concentration of nitrosamines. The Department denied the petition indicating that additional information was needed on the chemistry associated with nitrosamine formation.

A major step in controlling nitrosamines in cured products followed a 1973 finding by scientists from the Canadian Department of Agriculture of nitrosamines in premixed cures containing spices and nitrite. USDA subsequently confirmed those findings and banned premixed cures.

In 1973 the Secretary of Agriculture appointed an Expert Panel on Nitrites, Nitrates, and Nitrosamines to assess the public health significance of the nitrosamine question and to determine if alternate methods for processing cured meats were available. The Panel held 15 meetings from 1973–1977 at which it heard testimony on the problems associated with nitrosamine formation. In July 1974, the Panel submitted to the Secretary some preliminary recommendations seeking to limit the use of nitrite whenever it was not essential for protection against botulism. The Panel recommended that nitrite, a source for nitrite, be eliminated in most products (since nitrite is actually the curing agent and residual nitrite could be better controlled by using nitrite instead of nitrate), that the level of nitrite be limited to 156 ppm in most products, and that the permitted level of nitrite be decreased in various products to reflect what is achievable with advanced technology. Action on bacon and several other products was deferred pending additional research data.

In 1975, the Department published proposed regulations (40 FR 52614) concerning the use of nitrate and nitrite in meat food products, including bacon. The proposal, which incorporated some of the preliminary recommendations of the Panel, would have limited the use of sodium nitrite in bacon to 125 ppm with the required addition of 550 ppm sodium ascorbate or erythorbate which inhibits nitrosamine formation. The Department also called on industry to accelerate its studies exploring processing changes that would prevent nitrosamine formation in bacon.

The Department was concerned about growing evidence that fried bacon posed a special problem. The temperature (approximately 340 degrees F.) normally used to fry bacon to its desired crispness can result in the formation of nitrosamines in the fried bacon. Although nitrosamines are not found consistently in all cured meat food products in which nitrite is an additive, nitrosopyrrolidine, a nitrosamine, had been confirmed repeatedly in fried bacon. In the 1975 proposal, the Department recognized this unique problem noting that "greater efforts need to be directed toward the removal of nitrosamines from bacon."

In 1977, the Community Nutrition Institute (CNI) petitioned the Department to ban totally the use of nitrite in meat food products, including bacon. Also in 1977, the American Meat Institute (AMI) petitioned the Department to amend the regulations with respect to bacon to prohibit the use of nitrate, and to require the use of 120 ppm sodium nitrite and 550 ppm sodium ascorbate. In October 1977, the Department published a Notice requesting information as to whether carcinogenic nitrosamines are formed in cured meat food products as a result of ordinary processing and/or preparation for eating. Data submitted in response to this Notice indicated that the nitrosamine problem was generally limited to pumped and dry-cured bacon, with most other products being free of nitrosamines when cooked in their normal manner. Pumped bacon is nearly 99 percent of all bacon produced.

The Expert Panel's final report was published in 1978. The final recommendations included the reduction of nitrite levels for all products, the use of chemical inhibitors in bacon to minimize nitrosamine formation, and the use of the nitrosamine inhibitors in other cured products for a period of 2 years while more data were collected. The Panel recommended an ingoing level of 120 ppm sodium nitrite (or 148 ppm potassium nitrite) for bacon.

In recommending varying levels of nitrite for different products, the Panel recognized the differences in degree of botulinal and nitrosamine hazards from product to product. Because the cooking procedures commonly used for bacon drive the chemical reactions leading to nitrosamine formation, and because the risk of botulism is relatively low in bacon compared to other cured meats, the nitrosamine hazard was weighed very heavily in recommending a considerably lower nitrite level for bacon than for other cured products.

In 1978, the Department published a final regulation which was based on the 1975 proposal with changes. This action amended the Federal meat inspection regulations (43 FR 20992) to prohibit the use of nitrate in bacon, to require 120 ppm ingoing sodium nitrite (or an equivalent amount of potassium nitrite—148 ppm) and 550 ppm sodium ascorbate or sodium erythorbate be used in the preparation of bacon, and to provide for a nitrosamine monitoring and regulatory control program. The nitrosamine monitoring program was designed to provide additional protection against the possibility of nitrosamine hazard in bacon. Under the monitoring program, the Department collects samples of bacon from producing plants and analyzes them for the level of nitrosamines. If tests confirm nitrosamines, all bacon in the producing establishment and future production of the sampled product are retained until the establishment tightens or changes processing controls or methods and subsequently produces bacon which is in compliance. These regulatory actions were taken in order to protect the consumer from confirmable levels of nitrosamines in bacon.

In a 1982 report [1] prepared at the request of USDA and FDA, the National Academy of Sciences/National Research Council (NAS/NRC) encouraged regulatory agencies to seek alternatives to the use of nitrite but cautioned them not to abandon the use of nitrite without alternative means of adequate protection against botulism. NAS/NRC also recommended periodic review concerning the use of nitrite on a product-by-product basis. The report examined the status of research on proposed alternatives to the use of the nitrite in cured meats and recommended strategies for long-term research on alternatives to nitrite.

The report reviewed alternatives to the conventional use of nitrite in two general categories—agents or treatments that serve as partial or complete replacements for nitrite, and agents that block the formation of nitrosamines in products containing conventional concentrations of nitrite. The report concluded "the following proposed alternatives to be most promising at present: The combination of ascorbate, alpha-tocopherol, and nitrite; irradiation (with or without nitrite); lactic-acid-producing organisms (with or without nitrite); potassium

[1] This report is available for public inspection in the office of the FSIS hearing Clerk.

sorbate with low concentrations of nitrite; sodium hypophosphite (with or without nitrite); and several fumarate esters."

Current Petition

The Department, along with scientific, industry, and consumer groups, has recognized the desirability of utilizing nitrite at levels no higher than necessary to achieve optimum safety. The determination of this level of nitrite usage entails achieving a balance between controlling the outgrowth of *Clostridium botulinum* and preventing the formation of nitrosamines. The Department periodically reassesses this balance in the light of new data and advances in processing procedures.

In August 1983, the American Meat Institute (AMI) submitted a Citizen's Petition [2] to the Department requesting an amendment to the regulations to reduce the quantity of sodium nitrite used for curing pumped bacon from 120 ppm to 100 ppm and the equivalent quantity of potassium nitrite from 148 ppm to 123 ppm. AMI is a national trade association representing meat packers and processors, and asserts it is petitioning for "practical procedures which will approach the goal of eliminating potential health hazards from meat products * * *."

The AMI Petition states that AMI views the 1978 regulation as a first step toward eliminating nitrosamines. The Petition points out that the level of 120 ppm sodium nitrite combined with 550 ppm of sodium ascorbate or sodium erythorbate (isoascorbate) has proven safe for the past 5 years. The Petition states that since 1978 the industry has brought processing procedures under even tighter control. It characterizes the proposal to lower sodium nitrite from 120 ppm to 100 ppm as an important second step in assuring the consumer of the safety of bacon by taking advantage of technological improvements which allow a modest reduction in nitrite without compromising safety.

Two industry groups, the Western States Meat Association and the American Association of Meat Processors, have written to the Department objecting to the AMI petition. The Western States Meat Association stated that smaller manufacturers with less precise technological capabilities would have difficulty controlling ingoing nitrite levels precisely at 100 ppm. The American Association of Meat Processors (AAMP) stated that both small and large processors sometimes unintentionally vary from the 120 ppm ingoing sodium nitrite standard. AAMP expressed concern that a 100 ppm ingoing sodium nitrite standard, combined with the possibility that processors would vary from this standard could lead to safety problems. The AAMP letter also raised several other concerns with the AMI petition and suggested that the Department consider changes in its nitrosamine monitoring program.

The issue raised by the AMI Petition is whether an ingoing sodium nitrite level in bacon of 100 ppm will adequately protect against botulinal toxin while lowering the possibility of nitrosamine formation. The Petition was not accompanied by analytical data supporting the safety of the reduced level. The reduction requested is a modest 20 ppm (16.6 percent) and the product would still have 100 ppm sodium nitrite to function as an anticlostridial agent. AMI did state that "current research has led us to conclude that the amount of nitrite used in pumped bacon can be modestly reduced without compromising the product's safety." The Petition cited improved processing controls in the pumped bacon industry and a recent assessment of the botulism hazard in bacon derived from 11 inoculated pack studies (Hauschild, A.H.W. 1982, *Food Technology.*) [3] It also cited deliberations of the USDA Expert Panel where sodium nitrite levels of 80 to 100 ppm were discussed and considered.

Also, in May 1984, FSIS received a report entitled "A *Clostridium botulinum* Challenge Study on Bacon Made by the Wisconsin Process—A Three Plant Study." [4] The study and the report ws done under contract with USDA by members of the Food Research Institute at the University of Wisconsin. The process requires the incorporation of 0.7 percent sugar and harmless lactic acid producing bacteria in the curing fluid. The study shows that the process allows for sodium nitrite reduction to as low as 40 ppm, the lowest level studied, with no loss of antibotulinal protection. Since the process is one that permits reduced nitrite, it is incorporated in this proposal along with the response to the AMI Petition.

Available Data

As stated before, the AMI Petition was not accompanied by analytical data supporting the safety of the reduced nitrite level. However, since implementation of the 1978 regulation, there have been many scientific studies concerning the effect of nitrite in retarding the production of botulinal toxin in meat food products.[5] The majority of these studies, as well as data available before 1978, involve several levels of nitrite. Other variables were also considered such as differing combinations of nitrite and potassium sorbate as an anticlostridial agent. While many of the reports studied bacon, valuable studies were also conducted on other types of meat food products. In all of the studies, levels of *Clostridium botulinum* spores used greatly exceeded expected natural levels, and the temperature and time of abusive storage also exceeded those anticipated during retail and home storage. The purpose of these excessive conditions was to determine a base line response, usually at zero nitrite, so that the effect of various nitrite levels could be comparatively evaluated.

Although these studies showed variations, there were some common conclusions. At any given level, the antibotulinal activity of nitrite is enhanced by other factors such as sodium chloride, pH, sugar, and lactic acid producing bacteria. These enhancement factors appear to be the primary factors responsible for the variations observed in bacon studies. Although these other factors influence the antibotulinal effect of nitrite, nitrites currently appear to be the most effective compounds in commercial use for protection against botulism. It is significant that the degree of antibotulinal effect of nitrite was dependent on the level of concentration in all of the studies conducted, when all of the other factors, such as salt and pH, were relatively constant.

There have been approximately 30 studies on the antibotulinal aspects of nitrite when used to cure bacon. Unfortunately, none of these directly compared levels of 100 and 120 ppm sodium nitrite. In many of the studies, 0 and 120 ppm sodium nitrite levels were used as controls. In a few, other sodium nitrite levels such as 50, 100, and 150, and 80 and 120 ppm were studied. The Department has evaluated several of these studies, and has estimated from them the antibotulinal effects of using sodium nitrite to cure bacon at the 100 ppm level.

One such study,[6] as mentioned above, utilizing inoculated pack studies

[2] Petition is available for public inspection in the office of the FSIS Hearing Clerk, Regulations Office.

[3] [4] These studies are available for public inspection in the office of the FSIS Hearing Clerk.

[5] These studies are available for public inspection in the office of the FSIS Hearing Clerk.

[6] L.N. Christiansen, R.B. Tompkin, A.B. Shaparis, T.V. Kueper, R.W. Johnston, D.A. Kautter, and O.J.

Continued

assessed the outgrowth of *Clostridium botulinum* in vacuum-packaged bacon. The study concluded that bacon has a relatively high degree of safety even without the use of nitrite, and among most cured meats, bacon appears to be best protected.

The Wisconsin Process

In June of 1980, scientists from the Food Research Institute (FRI) at the University of Wisconsin published a report in the scientific literature on the inhabition of botulinum toxin formation in bacon by acid development.[7] In this bacon process, harmless lactic acid producing bacteria and 0.7 percent sugar were added to the bacon. Bacon was prepared from the lactic acid/sugar pickle at 0, 40 and 120 ppm ingoing sodium nitrite. The final product was sliced and subsequently inoculated with high numbers of *Clostridium botulinum* spores. The bacon was then packaged, temperature abused and tested for botulinum toxin at regular intervals. The control variables for the study were bacon containing 120 ppm ingoing sodium nitrite without added lactic acid producing bacteria and with and without added sugar. The results of this study were very impressive as regards botulinum toxin prevention. Bacon made with the added lactic acid producing bacteria, added sugar and 0 or 40 ppm added sodium nitrite was more inhabitory to botulinum toxin development than was 120 ppm sodium nitrite bacon without added lactic acid producing bacteria.

The bacteria inoculated into the bacon survive the bacon smoking process and are retarded from growth by refrigeration. When the bacon is temperature abused, the bacteria multiply rapidly, convert the sugar present to acid and rapidly reduce the pH of the bacon. The rapid development of acid produces an environment that is inhibitory to the growth of *Clostridium botulinum*. This is a biological preservation method similar to fermentation in products such as cheese, buttermilk, sauerkraut and fermented sausage, which has been utilized for centuries to preserve and protect foods. The major difference is that in the Wisconsin bacon process, acid development only occurs if the bacon is temperature abused. Properly prepared and refrigerated bacon would not develop either acid or acid flavors. The 1980 report was impressive and appeared to offer an alternative processing procedure which would permit reduced nitrite levels in bacon without compromising safety. However, the study was done on laboratory produced products and many questions arose concerning applicability of the process to commercial bacon. Concerns about the survival of the lactic acid producing bacteria in the pickle and during the smoking procedure of commercial production were critical unanswered questions.

To verify that the conclusions of the laboratory would be valid for commercially prepared bacon, USDA funded a commercial plant study by FRI. A copy of the final report was received in May 1984.[8] This report described bacon produced by the Wisconsin Process in three commercial establishments. The variables included bacon produced at 40 and 80 ppm ingoing sodium nitrite with added sugar and lactic acid producing bacteria, and control bacon prepared with 120 ppm sodium nitrite and no added sucrose and lactic acid producing bacteria. In addition, nitrosamine testing was done on samples of each nitrite level prepared at each plant. The results from the three-plant study verified the original laboratory work. Bacon prepared with 40 or 80 ppm sodium nitrite, 0.7 percent sugar and lactic acid producing bacteria had greater antibotulinal protection and lower incidence of nitrosamines at confirmable levels than control bacon. The lactic acid producing bacteria were not substantially effected by either the pickle or the smoking processes used in the three plants. When cooked, bacon prepared by the Wisconsin Process was as acceptable to experienced taste panelists as control bacon. During processing, the addition of lactic acid producing bacteria and sugar did not create any unusual formulation or usage problems. The visual evaluation of uncooked bacon showed that all were acceptable. However, for uncooked bacon the 120 ppm sodium nitrite control bacon was most preferred, and the 40 ppm sodium nitrite least preferred due to reduced color intensity. Cooked bacon either with 40 or 80 ppm sodium nitrite, and lactic acid producing bacteria and sugar was as acceptable, if not preferred, then control bacon processed with 120 ppm sodium nitrite and no added sugar and lactic producing bacteria.

Nitrosamine Monitoring Program

Since 1978, the Department has been testing pumped bacon for the presence of nitrosamines. Section 318.7(b)(2) of the Federal meat inspection regulations (9 CFR 318.7(b)(2)) provides the manner of sample collection, the methods of analyses for nitrosamines, and actions to be taken when confirmable levels of nitrosamines are found. Violations have generally deceased since 1978, but are still occasionally found.

The Proposal

Based on the available scientific infomation, including the recent work by FRI on bacon prepared with lactic acid producing bacteria, the Administrator has determined that certain alternatives to the requirements for nitrite usage in bacon could reduce the incidence of nitrosamines at confirmable levels and would not result in an increase in the risk of botulism. The predominant factors associated with this determination are: (1) The nitrite reduction in the AMI proposal is relatively small; (2) the potential for outbreaks of botulism resulting from bacon has been recently quantified and found to be lower than expected; (3) 100 ppm of ingoing sodium nitrite as part of the curing solution or 40 to 80 ppm of ongoing sodium nitrite, added sugar, and inoculum of lactic acid producing bacteria will retard growth of *Clostridium botulinum* and subsequent toxin production in bacon; and (4) the incidence of nitrosamines at confirmable levels is reduced at lower levels of ingoing nitrite.

In response to the report on the three-plant study using the Wisconsin Process to produce bacon, the observed superiority for antibotulinum activity coupled with reduced nitrosamine levels necessitates that FSIS consider this as an alternative procedure for nitrite reduction in bacon. The cost of the lactic acid producing bacteria culture appears to be the only unknown factor. This is not known at the present time but is not expected to be a significant factor. Similar cultures are commercially used in fermented sausage and fermented dairy products. These costs also become less in reponse to utilization and volume production. The advantages of the Wisconsin Process strongly indicate that FSIS should consider voluntary nitrite reductions to as low as 40 ppm sodium nitrite or 49 ppm potassium nitrite and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) when combined with the use of lactic acid producing bacteria and sugar. The Department believes that lactic acid producing bacteria are considered as GRAS by the Food and Drug Administration (FDA). The proposal to permit the use of lactic acid producing

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Kolari, Effect of Sodium Nitrite on Toxic Production by *Clostridium Botulinum* in Bacon, Applied Microbiology, Vol. 27, No. 4 (1974), pages 733–737.

[7] This study is available for public inspection in the office of the FSIS Hearing Clerk.

[8] This report is available for public inspection in the office of the FSIS Hearing Clerk.

bacteria in bacon to prevent the growth of *Clostridium botulinum* is premised on this belief. The Department is in the process of clarifying with FDA the regulatory status of lactic acid producing bacteria, and solicits the submission of any data or information which has a bearing on that status. The publication of a final rule permitting the use of this substance to prevent the growth of *Clostridium botulinum* will depend in part on the clarification of the regulatory status of the substance.

The Department therefore proposes to amend the current requirements for sodium nitrite in bacon to provide processors with the following two alternatives to the current requirement of 120 ppm ingoing sodium nitrite or 148 ppm ingoing potassium nitrite, and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate):

(1) To use sodium nitrite at a level of 100 ppm ingoing or potassium nitrite at 123 ppm ingoing, and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate), and institute an approved partial quality control program to control the ingoing nitrite and other factors; or

(2) To use sodium nitrite at a level between 40 to 80 ppm ingoing or potassium nitrite at a level between 49 ppm and 99 ppm ingoing and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) in conbination with added sugar and inoculum of lactic acid producing bacteria, and institute an approved partial quality control program to control the ingoing nitrite, lactic acid producing bacteria, and other factors.

As is the case under current regulations, the frequency of sampling for the nitrosamine montoring program would be based on the likelihood of presumptive positive nitrosamine levels, using plant history of nitrosamine levles as a predictor of future levels. In addition, other variables would be considered as appropriate, such as, the level of nitrite used, and data from a plant's partial quality control program. Since the likelihood of confirmable nitrosamine levels at 100 ppm ingoing sodium nitrite is smaller than the likelihood at 120 ppm ingoing sodium nitrite. Plants using the option of 40–80 this option would be sampled less frequently than those plants using the current level of 120 ppm ingoing sodium nitrite. Plants using the option of 4–80 ppm ingoing sodium nitrite with lactic acid producing bacteria will be assumed to have an extremely low incidence of nitrosamines at confirmable levels and thus should be subject to a yet less frequent sampling than under the other procedures. Further, for plants producing bacon under the new alternatives, the samples for nitrosamine analyses would be randomly selected throughout the production of a lot. The actual sampling plans and methods of analysis that would be used would result in approximately the same likelihood as currently exists to producers of having presumptive violations, when the true mean level of nitrosamines in a lot is 10 ppb. The current regulation requires the use of methodology and procedures that would detect the presence of any nitrosamines at 10 ppb.

This proposal would maintain the present high degree of protection against the risks of botulism and lessen the likelihood of confirmable levels of nitrosamines while providing flexibility to processors. As stated, the Administrator has determined, based on the available scientific information and the good safety record of commercial bacon since 1978 that a reduction of sodium nitrite usage in bacon to 100 ppm together with an approved partial quality control program would not result in an increase in the risk of botulism. A partial quality control program to closely control the level of ingoing nitrite and other crtical control factors would control the risk of botulinal toxin formation from an inadvertently low level of nitrite and the incidence of formation of nitrosamines at confirmable levels from an inadvertently high level of nitrite.

The option of using a level of between 40 and 80 ppm sodium nitrite in combination with lactic acid producing bacteria and added sugar has been shown to produce a product with a high degree of protection from botulinal toxin formation. At this low level of ingoing nitrite, the incidence of nitrosamines being formed at confirmable levels would be extremely low. A partial quality control program to control levels of nitrite and lactic acid producing bacteria would provide additional protection. Nitrosamine monitoring samples could be taken less frequently because of the extremely low incidence of formation of nitrosamines at confirmable levels.

This proposed action is in accord with the NAS/NRC reports which recommend that the need for antimicrobials in various cured meat food products should be reassessed periodically. In this case, bacon has been commercially produced since 1978 with 120 ppm added sodium nitrite.

In order to make the proposal consistent with other provisions of the regulations, the chart of approved substances (9 CFR 318.7(c)(4)) would be amended to allow for the use of lactic acid producing bacteria in bacon for the purpose of preventing the growth of botulinum toxin. The chart specifies substances that are acceptable under stated conditions for use in the preparation of meat food products. Other conditions for use may be given elsewhere in the regulations (9 CFR Parts 317 and 318) and other substances acceptable in preparing specific products may be given in 9 CFR Part 319.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection, Preparation of products.

PART 318—[AMENDED]

Accordingly, Part 318 of the Federal meat inspection regulations would be amended to read as follows:

1. The authority citation for Part 318 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 21 U.S.C. 71 *et seq.*, 601 *et seq.*; unless otherwise noted.

2. Section 318.7 would be amended by adding new paragraphs (b) (3) and (4) as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(b) * * *

(3) Notwithstanding the provisions of paragraph (b)(1), sodium nitrite may be used at:

(i) 100 ppm ingoing (potassium nitrite at 123 ppm ingoing); and 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate) shall be used; provided that the plant has an approved partial quality control program as provided in § 318.4(d), (e), and (g) such as to result in compliance with this provision, or

(ii) A predetermined level between 40 and 80 ppm (potassium nitrite at a level between 49 and 99 ppm); 550 ppm sodium ascorbate or sodium erythorbate (isoascorbate); and additional sucrose or other similar fermentable carbohydrate at a minimum of 0.7 percent and an inoculum of lactic acid producing bacteria such as *Pediococcus acetolactii* or other bacteria demonstrated to be equally effective in preventing formation of botulinum toxin at a level sufficient for the purpose of preventing the formation of botulinum toxin; provided that the plant has an approved partial quality control program as provided in § 318.4(d), (e), and (g) of this title such as to result in compliance with this provision.

(4) The Department shall collect samples of bacon from plants producing under paragraph (b)(3) of this section and analyze them for the level of nitrosamines. Samples shall be

randomly selected throughout the production of a lot. The actual sampling plans and methods of analysis that are used will result in approximately the same likelihood as under paragraph (b)(2) of this section of having a presumptive positive result when the true mean level of nitrosamines in a production lot is 10 ppb. In the event of a presumptive positive result, the plant shall become subject to the provisions of paragraph (b)(2) of this section.

* * * * *

3. Under the Class of Substance identified as "Flavoring agents; protectors and developers" in the chart in § 318.7(c)(4), the "Substance" after "Harmless bacteria starters" and before "Benzoic acid (sodium, potassium and calcium salts)" would be revised to read as follows:

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
	Harmless lactic acid producing bacteria effective for purpose.	To prevent growth of *Clostridium botulinum*.	Bacon	Sufficient for purpose.
*	*	*	*	*

Done at Washington, D.C., on March 4, 1985.

Donald L. Houston,

Administrator, Inspection Service.

[FR Doc. 85-8945 Filed 4-12-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ANE-6]

Airworthiness Directives; Facet (Marvel-Schebler) Aerospace Products Co., Subsidiary of Facet Enterprises, Inc.; All Model Aircraft Carburetors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This document withdraws an NPRM which proposed the adoption of an airworthiness directive (AD) for replacing composite carburetor floats with floats constructed of metal within a specified time limit. This AD was proposed because a review of maintenance or defect (M or D) reports was indicating a heavy float condition due to fuel absorption. Upon further consideration of the relative accident/incident data available and the information received from the user community, the FAA has determined that the proposed AD is not required at this time and, accordingly, the NPRM is withdrawn.

EFFECTIVE DATE: April 23, 1985.

FOR FURTHER INFORMATION CONTACT: Hal Ferris, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7031.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of carburetor composite floats with metal floats was published in the Federal Register on August 24, 1984, (49 FR 33694). Comments were requested from the public.

The proposal resulted from a determination that composite carburetor floats were absorbing fuel and becoming less buoyant leading, eventually, to carburetor flooding. The determination was based on an analysis of several carburetors returned by FAA field offices, and a 5-year M or D computer analysis which indicated that of the approximately 200 service difficulties reported, 66% were related to fuel-saturated composite floats. The proposed AD would have mandated modification of some 120,000 carburetors at an estimated cost of $197 per carburetor, or $23,640,000 total.

Several comments were received on the proposal. One commenter, the carburetor manufacturer, supported the proposal. The manufacturer cited the increased use of oxygen enhancers and oxygenated compounds by fuel refiners to maintain octane levels in low lead aviation fuel and auto gas as a cause of deterioration of the composite materials used in the subject floats. The manufacturer suggested that this situation seemed to be confirmed by the increase in service difficulty reports mentioning float saturation. In the opinion of the manufacturer, the proposed AD is timely and justified.

The other commenters objected to the proposed AD. Several commenters objected to the scope of the proposed AD, noting that the problem may be related to the use of automobile fuel, 100 LL aviation fuel, or fuel additives. They suggested that the AD should be directed only to engines using such fuel. Most commenters objected to the compliance time in the proposed AD, suggesting that it would be more appropriate to require compliance at the next engine or carburetor overhaul. Finally, commenters stated that the FAA's estimated $197 cost for the modification was unrealistically low. They reported the actual cost to be closer to $400 or $500 when all labor involved is considered.

A major U.S. aircraft owners and pilots association opposed the proposed AD, questioning both the statistical basis and the analysis used by the FAA. A major Canadian owners and pilots association also expressed reservations. A major U.S. aircraft engine manufacturer expressed the view that the significant (estimated) economic impact of the proposed AD would not be justified in view of the lack of evidence of any problem when proper fuels are used, as recommended by aircraft engine manufacturers.

After consideration of all comments, the FAA has reassessed the need for the proposed AD. It also appears that operational conditions provide adequate warning of impending float saturation which, with normal maintenance practices, should preclude an in-flight engine shut-down. The anticipated benefits to the public have been reevaluated in view of the unexpectedly higher cost of compliance.

Therefore, the FAA is withdrawing the NPRM at this time. Should further investigation and analysis demonstrate a continuing safety problem in this area, another NPRM may be promulgated in the future for public comment. As a related matter, the FAA also will publish a proposal to rescind AD 66-05-04, which presently requires replacement of all metal floats with composite floats.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, and Aviation safety.

The Withdrawal

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, the proposed AD, Rules Docket No. 84-ANE-6, published in the Federal Register on August 24, 1984, (49 FR 33694), is hereby withdrawn.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised,

Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Issued in Burlington, Massachusetts, on April 2, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-8978 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-4]

Airworthiness Directives; Marvel-Schebler Products Division

AGENCY: Federal Aviations Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revoke Airworthiness Directive (AD) 66-05-04 (Amendment 39-189) which replaced metal floats in Marvel-Schebler carburetors with composite floats. The FAA has determined that AD 66-05-04 did not adequately correct the condition of carburetor bowl flooding for which it was intended. For this reason, AD 66-05-04 is no longer appropriate or required.

DATES: Comments must be received on or before June 12, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Rules Docket No. 85-ANE-4, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to the above address, to Room 311.

Comments delivered must be marked: Docket No. 85-ANE-4.

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Ferris, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7130.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communciations received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 85-ANE-4." The postcard will be date/time stamped and returned to the commenter.

This notice proposes to revoke AD 66-05-04 (Amendment 39-189) which replaced metal floats in Marvel-Schebler carburetors with composite floats and established inspection and installation procedures for this float type. The composite floats have experienced problems in service by becoming saturated by certain types of fuels and sinking in the carburetor float bowl. An improved metal float which solves the problem of the original metal float and the saturation problem of the composite float has been developed and FAA approved. The manufacturer will produce carburetors only with the improved metal floats and will provide overhaul and repair kits with improved metal floats. For these reasons, AD 66-05-04 is no longer appropriate or required.

Conclusion

The FAA has determined that this proposed regulation has no significant financial impact on the user community because it merely eliminates an AD which has proven to be ineffective. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revoking AD 66-05-04 applicable to:

§ 39.13 [Amended]

Marvel-Schebler: Applies to models MA-3, MA-3A, MA3-PA (Marvel-Schebler Part No. 10-2948 only), MA-35PA, MA-45PA, MA-4-5, MA-4-5AA, and MA-6 carburetors used on various Franklin (Aircooled), Continental, Lycoming, and Ranger Engines.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Burlington, Massachusetts, on April 2, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-8977 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 85-AWA-17]

Proposed Alteration of Hours of Operations for Restricted Areas, Fort Huachuca, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the times of designation for Restricted Areas R-2303A and B from "Continuous" to the actual times of use or by NOTAM. This amendment is at the request of the user and will provide more efficient use of the airspace.

DATES: Comments must be received on or before May 30, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-17, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3856.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 73.23 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to amend the time of designation for Restricted Areas R-2303A and B from "Continuous" to the actual times of use or by NOTAM. This amendment is proposed at the request of the user and this action will increase the availability of the affected airspace for public use. Section 73.23 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Restricted areas.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 73.23 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

R-2303A Fort Huachuca, AZ [Amended]

By removing the word "Continuous." and substituting the words "Monday-Saturday, 0700-1600 local time; other times by NOTAM at least 24 hours in advance."

R-2303B Fort Huachuca, AZ [Amended]

By removing the word "Continuous." and substituting the words "Monday-Saturday, 0700-1600 local time; other times by NOTAM at least 24 hours in advance."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65.)

Issued in Washington, D.C., on April 8, 1985.

Shelomo Waugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-8980 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Domestic Exchange-Traded Commodity Options; Expansion of Pilot Option Program for Options on Agricultural Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment on petition for rulemaking.

SUMMARY: On January 17, 1984, the Commission adopted rules establishing a three-year pilot program for the trading of options on futures contracts in domestic agricultural commodities. 49 FR 2752 (January 23, 1984). This pilot program provides that a board of trade may be designated as an option contract market on not more than two domestic agricultural futures contracts. The Commission has received two petitions to amend Commission Rule 33.4(a)(6)(i) in order to expand the pilot program for options on futures contracts on domestic agricultural commodities from the current level of two per exchange to five per exchange. The Commission is publishing for public comment the substance of the rule suggested by the petitioners as a proposed rule amendment.

DATE: Comments must be received on or before June 14, 1985.

ADDRESS: Comments should make reference to "Expansion of Pilot Agricultural Option Programs" and should be sent to Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC, Attn: Secretariat.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission at the above address. Telephone (202) 254-6990.

SUPPLEMENTARY INFORMATION: On January 17, 1984, the Commission adopted rules establishing a three-year pilot program for the trading of options on futures contracts on domestic agricultural commodities.[1] 49 FR 2752

[1] These commodities are enumerated in section 2(a)(1)(A) of the Act and include: Wheat, cotton,

Continued

(January 23, 1984). Previously, the Commission had adopted regulations establishing a three-year pilot programs to permit the trading of options on non-agricultural commodities on domestic boards of trade. 46 FR 54500 (November 3, 1981). That pilot program initially permitted trading in options on one commodity futures contract per exchange. *Id.* at 54530. The pilot program was subsequently expanded to permit the trading of one additional option per exchange on a physical commodity. 47 FR 56996 (December 22, 1982). At that time Section 4c of the Commodity Exchange Act, 7 U.S.C. 6c (1976), prohibited the trading of options on domestic agricultural commodities.

The statutory bar to trading options on domestic agricultural commodities was repealed by section 206 of the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294, 2301 (1983). That amendment to the Commodity Exchange Act permitted the Commission to establish a pilot program for a period not to exceed three years for the trading of options on domestic agricultural commodities.

The rules establishing the pilot program for the trading of options on domestic agricultural futures contracts were incorporated into the existing options pilot program wherever possible. By this time, the rules governing the initial pilot program had been amended to permit a total of two options, either on futures or physicals, to be traded on each exchange. 48 FR 41575 (September 16, 1983). The pilot program for options on domestic agricultural futures also provided that a board of trade could be designated for no more than two option contract markets and these were limited to options on futures contracts. In determining that the program should be limited to not more than two futures options per exchange, the Commission stated that:

> consistent with the approach adopted in the initial pilot program, the Commission believes that in light of the past abuses associated with options trading, caution is warranted. Accordingly, the Commission believes that initially the total number of options which may be traded should be limited to two per exchange.
>
> In this regard, several commentators noted that although they occurred [sic] in and supported the Commission's initial limitation of the program to options on two futures contracts, they hoped that after sufficient experience had been gained the program would be expanded. One commentator representing an association of producers based its support of an expanded pilot program on its desire to have options offered for each sector of the agricultural community. The Commission does not disagree that producers in every sector of the domestic agricultural economy should have access to the benefits of option trading, after those benefits have been demonstrated. However, in light of the past history of agricultural options trading and the general lack of experience with them, caution is warranted in order to assure the success of the program and to minimize possible adverse occurrences. Thus, although cognizant of the desire of some to see the program expanded, the Commission believes that the more prudent approach is to hold any determination on further expansion of the program in abeyance until experience has been gained with the trading of options on domestic agricultural commodities.

49 FR 2754, 2755.

On October 29, 1984, the Commission designated six exchanges as contract markets in options on domestic agricultural futures contracts. They were: the Chicago Board of Trade ("CBT") (soybeans); the Chicago Mercantile Exchange ("CME") (live cattle); Kansas City Board of Trade ("KCBT") (wheat); MidAmerica Commodity Exchange ("MCE") (wheat); Minneapolis Grain Exchange ("MGE") (wheat); and New York Cotton Exchange ("NYCE") (cotton). Subsequently, on January 29, 1985, three additional domestic agricultural options contract markets were designated. They were live hogs (CME); soybeans (MCE); and corn (CBT).

Based upon the two-year experience of the non-agricultural pilot program, the Commission on August 20, 1984 expanded the number of options on non-agricultural commodities to no more than five per exchange, of which no more than two could be options on physicals. 49 FR 336341, 33644 (August 24, 1984). In expanding the pilot program, the Commission noted that:

> its experience to date had 'largely mitigated its earlier concerns' with respect to the adequacy of the programs established by the self-regulatory organizations (*i.e.*, the exchanges and National Futures Association) to monitor and enforce compliance with the special sales practice safeguards for option customers that had been established by the Commission's pilot program regulations. The Commission further observed that 'continuing to provide the exchanges with greater flexibility in the selection of option contracts will foster the further development of the pilot program and, correspondingly, will provide the Commission with data essential to the Commission's continuing evaluation of that program . . . (and) should permit a fuller test of commercial interest in the use of options on futures contract and . . . of the exchanges' abilities to conduct effective surveillance of active option markets. . . .'

Id. at 33642 (citations omitted).

The National Association of Wheat Growers ("Association") has petitioned the Commission pursuant to Commission Rule 13.2, 17 CFR 13.2 (1984), to amend Commission Rule 33.4(a)(6)(i) by expanding the pilot program for options on futures contracts on domestic agricultural commodities from the current level of two per exchange to five per exchange. The Association supports its request by noting that, "(s)uch an action by the Commission would put options on agricultural futures on an equal footing with options on non-agricultural futures." The Association further maintains that:

> The narrow effect—and the result which is of most interest to the members of the National Association of Wheat Growers—would be to permit the Chicago Board of Trade to apply to list options on its wheat futures.
>
> The National Association of Wheat Growers applauds the Commission's efforts in the introduction of commodity options. We believe the Commission has now gathered enough evidence to date from the trading in all futures options to be convinced of options' usefulness to producers and of the Commission's ability to regulate them.

The Chicago Board of Trade ("CBT") has also petitioned to amend Commission Rule 33.4(a)(6)(i) by expanding the number of options on domestic agricultural futures contracts to no more than five per exchanges. The CBT's Petition, similar to the Association's, also contends that expansion o the program "would allow the agricultural futures markets the same benefits it allows non-agricultural markets." The CBT notes that this result is consistent with the Commission's approach of integrating the rules governing options on domestic agricultural futures contracts into the rules governing the pilot program for non-agricultural commodities.

In addition, the CBT asserts that the Commission's initial cautious approach to the pilot options program, in light of a five decade prohibition on the trading of such instruments, was unsound and was unfair to the CBT. The Commission cannot agree with this position, especially in light of the fact that the initial pilot program (for non-agricultural commodities) was not expanded to permit five rather than two options per exchange until after nearly two years experience and subsequent to the adoption of the pilot program for options on domestic agricultural futures contracts. Further, in establishing the

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rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Irish potatoes, wool, wool tops, fats and oils (including lard, other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

pilot program for options on domestic agricultural commodities, the Commission stated that "(a)s more experience is gained with these contracts, the Commission will re-evaluate the limitation on the number of options contracts permitted." 49 FR 2752, 2756. The Commission also noted at that time that the limitations on the numbers and types of options permitted under the pilot programs had, and would have, a varying impact on many exchanges at each point in the programs' phased development. 49 FR 2752, 2754.

The CBT also contends that sufficient evidence to support broadening the agricultural options pilot program exists based on the overall successful record of exchange-traded options, especially the "very positive record created by the exchanges * * *." as a result, the CBT concludes that:

> the exchanges and the CFTC have the ability to regulate and monitor effectively additional options contracts which may result from the modification of Commission Regulation 33.4(a)(6)(1) [sic].

Finally, the CBT suggests that the current restriction on the number of permitted options on domestic agricultural commodities will vitiate the test results of the pilot program.

In publishing the substance of the rule amendment as proposed by the Association and the CBT, the Commission requests comment on the following issues: (1) the extent to which the trading experience of the non-agricultural pilot program is applicable to agricultural options, especially in light of possible differences relating to deliverable supplies; (2) whether sufficient trading experience with agricultural options exists to warrant this expansion, particularly since to date there have been only seven expirations of agricultural options, two expirations in the soybean option and one each in the three wheat, one live cattle, and one cotton option contracts; and (3) whether, in light of the limited number of actively traded section 2(a)(1)(A) commodities and the current diversity of option market designations covering all agricultural sectors, an expansion to five options per exchange is necessary for the pilot program to be a valid test of agricultural options trading.

Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules would permit and govern the trading of options on domestic agricultural futures contracts on various contract markets and therefore, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, for the above reason and pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe the promulgation of these rule amendments might have a significant impact upon their activities.

List of Subjects in 17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options, Consumer protection, Fraud, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1)(A), 4c(b), 4c(c), and 8a thereof, 7 U.S.C. 2, 6c(b), 6c(c), and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. Section 33.4 is proposed to be amended by revising paragraph (a)(6)(i) to read as follows (the introductory text has not been changed but is included for the convenience of the reader):

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery on any commodity regulated under the Act, or for options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in section 2(a)(1)(A) of the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

* * * * *

(6)(i) For commodities specifically enumerated in section 2(a)(1)(A) of the Act, is not designated as a contract market for more than four other commodity options; and

* * * * *

Issued in Washington, DC, on April 9, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-8921 Filed 4-12-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 635

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Supplemental proposed rule.

SUMMARY: The Department of Labor proposes to revise the proposed regulations for implementing the program of trade adjustment assistance for workers (TAA Program) provided under Chapter 2 of Title II of the Trade Act of 1974 (Pub. L. 93-618), as amended by Title XXV of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35).

These proposed regulations implement the amendments to the Trade Act of 1974 in sections 2671 and 2672 of Pub. L. 98-369—the Deficit Reduction Act of 1984. Implementation of these sections necessitates revising the proposed rule on Trade Adjustment Assistance for Workers published Friday, March 4, 1983 in the **Federal Register** at 48 FR 9444.

The proposed rule at 20 CFR Part 635 will be published at 20 CFR Part 617 as a final rule. Part 635 was subsequently assigned to Job Training Partnership Act (JTPA) regulations now published as a final rule.

Proposed rule for sections 2671 and 2672 of Pub. L. 98-369 will correspond to existing proposed rule at 20 CFR Part 635 published on March 4, 1983 but will be renumbered to Part 617 when published as a final rule.

Sections 2671 and 2672 of Pub. L. 98-369 amend the Trade Act of 1974 (1) to enable workers to receive up to 26 additional weeks of Trade Readjustment Assistance (TRA) allowance by beginning the additional 26-week period

with the first week the worker is in training, if such training was applied for in a timely manner and is approved after the last week of basic TRA entitlement, and (2) to increase the maximum amount payable for job search allowances and maximum lump sum amount payable for relocation allowances from $600 to $800.

DATE: Written comments on these proposed regulations must be received by the Department of Labor on or before May 15, 1985.

ADDRESS: Send comments on these proposed regulations to the U.S. Department of Labor, Employment and Training Administration, Room 6434, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours, in Room 6434 at the above address.

FOR FURTHER INFORMATION CONTACT: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213: telephone (202) 376-2646 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Trade Act of 1974 made major changes in the TAA program for workers displaced from employment because of increased imports of articles like or directly competitive with articles produced by the workers. On the filing of a petition by a group of workers or their representative, the Department of Labor conducts a factfinding investigation of adverse impact of imports and if it finds that the workers of a firm or a subdivision of a firm have been adversely affected by import competition, a certification is issued declaring that the adversely affected workers are eligible to apply for Trade Adjustment Assistance (TAA). In the Deficit Reduction Act of 1984 further changes were made in the TAA Program. The amendments proposed in this document implement those changes.

The amended TAA provisions are designed to help certified workers who apply for occupational training and additional weeks of TRA on a timely basis to avoid losing weeks of TRA because of delays in approving training for reasons beyond workers' control. The amendments are also designed to pay higher job search allowances and relocation allowances to bring the levels more in line with present costs for these activities.

Drafting Information

This document was prepared under the direction and control of the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213; telephone: (202) 376-2646 (this is not a toll-free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. Any added costs to the extent that they exist do not represent new burdens imposed by the proposed regulations. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b), as provided in the Regulatory Flexibility Act. While this rule will affect those agencies in small States that adminster the TAA Program, most current TAA Program recipients are generally concentrated in larger industrial States, where jobs have been "hardest hit" by foreign import competition.

States may find some increased administrative costs for reviewing worker applications for training and TRA payments on file when the statutory changes are implemented. However, most of the operating mechanisms needed for the proposed TAA program are in place through the State Employment Security Agencies, including benefit payments, appeals, work search and work test procedures and relocation allowances payment and approval of training assistance. This will assure that any additional administrative costs are minimal. Moreover, these costs will decline over time as adversely affected workers find reemployment in substantially equivalent jobs. The Under Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 635

Labor, Trade adjustment assistance, Job search assistance, Reemployment services, Relocation assistance, Trade readjustment allowances, Vocational education, and Unemployment compensation.

Words of Issuance

For the reasons set out in the preamble, proposed Part 635 to Title 20 of the Code of Federal Regulations (as published on March 4, 1983; 48 FR 9444) is proposed to be amended as follows:

1. The authority for Part 635 is revised to read as follows:

Authority: Sec. 248, Pub. L. 93-618, 88 Stat. 2029, 19 U.S.C. 2320, Secretary's Order No. 3-81, 46 FR 31117; Pub. L. 97-35; and Pub. L. 98-369.

2. Paragraphs (b) and (c) of § 635.15 are revised to read as follows:

§ 635.15 Duration of TRA.

* * * * *

(b) *Additional weeks.* (1) To assist an individual to complete training approved under Subpart C of this Part 635, payments may be made as TRA for up to 26 additional weeks in the 26-week period that—

(i) Follows the last week of entitlement to basic TRA otherwise payable under this Part 635 to the individual; or

(ii) Begins with the first week of such training, if the training is approved after the last week described in paragraph (b)(1)(i) of this section.

(2) To be eligible for TRA for additional weeks, an individual must make a bona fide application for such training—

(i) Within 210 days after the date of the first certification under which the individual is covered; or

(ii) If later, within 210 days after the date of the individual's first qualifying total or partial separation.

(3) Payment of TRA for additional weeks may be made only for those weeks in the 26-weeks period during which the individual is actually engaged in training and has not been determined under § 635.18(b)(2) of this Part to be failing to make satisfactory progress in the training.

(c) *Limit.* In no case may an individual receive TRA for more than 78 weeks on the basis of a single certification of eligibility to apply for adjustment assistance.

* * * * *

3. Paragraph (b) of § 635.34 is revised to read as follows:

§ 635.34 Amount

* * * * *

(b) *Limit.* The total job search allowances paid to an individual under a certification may not exceed $800, regardless of the number of job searches undertaken by the individual. The amounts otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbursed for such expenses from any other source.

* * * * *

4. Paragraph (a)(3) of § 635.45 is revised to read as follows:

§ 635.45 Amount.

(a) *Items allowable.* The amount payable as a relocation allowance shall include the following items:

* * * * *

(3) A lump sum payment, equal to 3 times the individual's average weekly wage, not to exceed $800.

* * * * *

5. Section 635.65 is added as follows:

§ 635.65 Transition procedures for Amendments in sections 2671 and 2672 of Pub. L. 98-369 (Deficit Reduction Act of 1984).

The procedures for administering the Trade Act of 1974 as amended by the Deficit Reduction Act are as follows:

(a) *TRA.* The provisions in Subpart B of this Part 635 apply to workers who would lose additional weeks of TRA payments because of delays in approving applications for training. Workers who filed timely bona fide applications for training and additional weeks of TRA on or after December 18, 1983 shall be eligible to receive additional weeks of TRA payments beginning the first week of training when their applications for training are approved on or after July 18, 1984, and the first week of such training begins later than the first week which follows the last week of entitlement to basic TRA. Workers whose applications for training were approved prior to July 18, 1984, are covered under the provisions of the Trade Act of 1974 as in effect prior to July 18, 1984, and are not entitled to additional weeks of TRA by reason of the amendment in section 2671 of the Deficit Reduction Act of 1984 or § 635.15(b) of this Part.

(b) *Job Search Allowances.* (1) The provisions in Subpart D of this Part 635 shall apply to timely applications for job search allowances that are approved on or after July 18, 1984.

(2) Workers whose applications for job search allowances that were filed timely but were approved before July 18, 1984 would be covered under the provisions of the Trade Act of 1974 in effect prior to July 18, 1984 and would not be entitled to receive the increase in the allowance level provided in section 2672 of the Deficit Reduction Act of 1984 and § 635.34(b) of this Part.

(c) *Relocation Allowances.* (1) The provisions in Subpart E of this Part 635 shall apply to timely applications for relocation allowances that are approved on or after July 18, 1984.

(2) Workers whose applications for relocation allowances were filed timely but were approved before July 18, 1984 would be covered under the provisions of the Trade Act of 1974 in effect prior to July 18, 1984, and would not be entitled to receive the increase in the lump sum allowance level provided in section 2672 of the Deficit Reduction Act of 1984 and 635.45(a)(3) of this Part.

6. The Table of Contents for Part 635 is amended by adding at the end thereof "635.65 Transition Procedures for amendments in section 2671 and 2672 of Pub. L. 98-369 (Deficit Reduction Act of 1984)."

Signed at Washington, D.C., on April 8, 1985.

Frank C. Casillas,

Assistant Secretary of Labor.

[FR Doc. 85-8898 Filed 4-12-85; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 85-7, Notice 2]

General Materials Requirements; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (FHWA Docket No. 85-7, 50 FR 4234, January 30, 1985) requesting information on how the use of warranties and guarantees would affect the quality of construction and competition on Federal-aid projects. A series of issues were raised to assist with this determination. All comments to the docket were to be received on or before April 1, 1985. The comment period is being extended to May 15, 1985. This extension is being provided in response to a request by the Associated General Contractors of America that additional time was needed to prepare comments.

DATE: Comments must be received on or before May 15, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-7, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 4:15 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. P.E. Cunningham, Chief, Construction and Maintenance Division, (202) 426-0392, or Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426-0780, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued: April 9, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-9016 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 100

[CGD13 85-05]

Regatta; Annual Clarkston, Washington Limited Hydroplane Races

AGENCY: Coast Guard DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal for permanent special local regulations for a part of the Snake River at Clarkston, Washington from the area west of the confluence of the Snake and Clearwater Rivers, to the area east of the Red Wolf Crossing Bridge. The special regulations would be in effect daily on Friday and Saturday, July 5 and 6, 1985, during the hours 8:00 a.m. to 6:00 p.m., and on Sunday July 7, 1985 from 8:00 a.m. until one hour after the conclusion of the last race; and thereafter annually on the first Friday, Saturday, and Sunday in July as published in the Local Notice to Mariners. This action is being considered to permit the safe conduct of the Clarkston, Washington Limited Hydroplane Race scheduled for this time period. It is intended to restrict general navigation in the area for the safety of spectators and participants in this event.

DATES: Comments must be received on or before May 27, 1985.

ADDRESSES: Comments should be mailed to Commanding Officer, Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217. The comments and other materials referenced in this notice will be available for inspection and copying at the Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, Room 1124, Mt. St. Helens Building. Normal office hours are between 8:00 a.m. and 3:45 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDM M.P. Troseth, Chief, Group Operations Department, U.S. Coast Guard Marine Safety Office, 6767 North Basin Avenue, Portland, Oregon 97217, (503) 240–9317

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identity this notice (CGD13 85–05) and the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped, self addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LT M.P. Rand, USCG, Project Officer, U.S. Coast Guard Marine Safety Office, Portland, Oregon, and LCDR D.G. Beck, USCG, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Proposed Regulations

Each year, the Clarkston, Washington Chamber of Commerce sponsors a limited hydroplane race on the Snake River near Clarkston, Washington. The event draws a large number of spectators to the beaches and waters surrounding the race course. A large number of spectators watch the event from numerous pleasure craft anchored near the race course. To promote the safety of both the spectators and the participants, a special navigation regulation providing Coast Guard personnel with the authority to control and coordinate general navigation in the water surrounding the race course during the event is required. The Coast Guard has previously published temporary regulations for this annual event. The regulations were essentially republished from year to year without change. These regulations are being made permanent with specific event dates and other information being published annually in the Local Notice to Mariners.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation affects a short section of the Snake River with only light commercial traffic and will be in effect for only three (3) days, two of those being Saturday and Sunday. During the hours of the race, July 5 through 7, 1985, and annually thereafter, the Patrol Commander will allow commercial traffic to transit the area between races.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations by adding section 100.1302 to read as follows:

§ 100.1302 Annual Clarkston, Washington Limited Hydroplane Races.

(a) On Friday and Saturday, 5 and 6 July 1985, this regulation will be in effect from 8:00 a.m. to 6:00 p.m. On Sunday, 7 July 1985, this regulation will be in effect from 8:00 a.m. until one hour after the conclusion of the last race. This section will be effective thereafter annually on the first Friday, Saturday, and Sunday in July as published in the Local Notices to Mariners.

(b) The Coast Guard will restrict general navigation and anchorage by this regulation during the hours it is in effect on the waters of the Snake River at Clarkston, Washington from the area west of the confluence of the Snake and Clearwater Rivers, to the area east of the Red Wolf Crossing Bridge.

(c) When deemed appropriate, the Coast Guard may establish a patrol consisting of active and auxiliary Coast Guard vessels in the area described in paragraph (b) of this section. The patrol shall be under the direction of a Coast Guard officer or petty officer designated as Coast Guard Patrol Commander. The Patrol Commander is empowered to forbid and control the movement of vessels in the area described in paragraph (b) of this section.

(d) The Patrol Commander may authorize vessels to be underway in the area described in paragraph (b) of this section during the hours this regulation is in effect. All vessels permitted to be underway in the controlled area (other than racing or official vessels) shall do so only at speeds which will create minimum wake consistent with maintaining steerageway, and not to exceed seven (7) miles per hour. This speed limit may be adjusted at the discretion of the Patrol Commander to enhance the level of safety.

(e) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the patrol vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(33 U.S.C. 1233; 49 U.S.C. 108; 40 CFR 1.46(b); and 33 CFR 100.35)

Dated: April 5, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 85–8972 Filed 4–12–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 110

[CGD8–84–23]

Special Anchorage Area; Destin Harbor (Old Pass Lagoon) Destin, Florida

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Coast Guard is withdrawing the proposed anchorage regulation calling for the establishment of a Special Anchorage Area in Destin Harbor (Old Pass Lagoon), Destin, Florida. At the present time navigation

safety is not best served by establishment of a Special Anchorage Area.

FOR FURTHER INFORMATION CONTACT: LTJG Christopher, c/o Commander (mps), Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp St., New Orleans, LA 70130, Tel: (504) 589-6901.

SUPPLEMENTARY INFORMATION: The Coast Guard received a request from the Board of Commissioners, Okaloosa County, Florida, in September 1982 to establish a Special Anchorage Area in Destin Harbor (Old Pass Lagoon). As a result of the anchorage request the Coast Guard surveyed vessels anchored in Destin Harbor from July 20, 1984 to September 4, 1984. This survey indicated there was an average of three to four vessels anchored daily during this time, with six vessels being the maximum observed on any one occasion. Almost without exception, vessels were anchored in the southwestern corner of the lagoon in the general area of the proposed anchorage. During this survey 90 percent of the vessels transiting the area did so by passing north of the proposed anchorage area.

The Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** on January 7, 1985. Comments were solicited to determine if establishment of the anchorage would be beneficial to navigation safety in the area.

The Coast Guard received numerous comments that were supporting or opposing the Special Anchorage Area before the Notice of Proposed Rulemaking was published. The comments in favor of the anchorage were concerned with navigation safety and/or loss of an anchorage area if the Special Anchorage Area was not established. Comments against the anchorage addressed environmental concerns and whether property owners in the area of the proposed anchorage would be allowed to build docks if the anchorage was established. Specific concerns were voiced by M & B Properties regarding their plans to build a marina for East Pass Towers Condominiums. M & B Properties obtained a Corps of Engineers permit, # 82G-0373, on April 29, 1983 for a 39-slip marina that fell within the proposed Special Anchorage Area. M & B Properties had not received approval to build the marina from the State of Florida at that time. On January 8, 1985 the State of Florida, Board of Trustees of the Internal Improvement Trust Fund gave its approval and granted a submerged lands lease to M & B Properties.

Discussion of Comments

A total of 86 comments were received: 8 in favor and 75 opposed. Forty-nine of the comments were identical letters pointing out that "both Okaloosa County Commissioners and the Destin Chamber of Commerce reversed their support and are now opposed to locating the anchorage in Destin Harbor." The Coast Guard was aware of the reversal. We believed, however, that public interest expressed in support of establishment of a Special Anchorage Area justified publication of a Notice of Proposed Rulemaking in order to determine whether the requested action would enhance navigation safety.

Twenty-two other identical letters expressed concerns that "Special Anchorages attract, too often, an undisciplined, uncaring low-income quality boater who is seeking a cheap way of being part of an expensive luxurious environment. Too often this type of boater is not a caring person and does not protect the environment, the property rights of other people or the rules necessary for orderly conduct." These comments are subjective and do not address matters of navigation safety.

Six commenters sent in both the aforementioned letters and one commenter sent in a letter combining the text of both letters.

Two commenters were concerned with garbage washing up on the beach. They believe the garbage is attributable to boaters anchoring in the harbor. One commenter noted "disturbances by parties on board the vessels docked in the area." Since these are existing problems reportedly caused by vessels anchoring in the lagoon in the past, they may be expected to continue, regardless of the establishment of the proposed anchorage. Destin Harbor is currently noted as an excellent anchorage in the U.S. Coast Pilot. The Coast Guard believes that establishing the anchorage would not increase its use above traditional levels. In addition, one of these commenters proposed an alternate site 300 yards west of the Coast Guard Station Destin. This location would interfere with Coast Guard Search and Rescue operations, it is exposed to weather to the north, and it would be restricted to vessels with less than 50 foot vertical height.

Two commenters dealt with the negative economic consequences to owners of East Pass Towers Condominiums that would be caused by establishing the proposed anchorage.

One commenter stressed the interference with construction of the marina for East Pass Towers Condominiums and water quality in Destin Harbor.

Eight commenters were in favor of the anchorage. All eight believed the anchorage is needed for safety reasons. In addition, three of the commenters were concerned that if the anchorage was not established private developers would build into this area reducing or eliminating a safe anchorage. Establishing a special anchorage area would not necessarily preclude shoreside development. Four of the commenters pointed out that Destin Harbor is the only protected anchorage for approximately 100 miles between Pensacola, Florida and Panama City, Florida. Designation of a special anchorage area is not necessary to permit use of this protected anchorage. One commenter stated that "If no anchorage is designated, boats will be free to anchor at random throughout the harbor". By not establishing an anchorage, current anchoring practices may continue and current regulations remain in effect.

No comments were received regarding co-locating the Special Anchorage Area and the proposed marinas.

Conclusion

The Coast Guard has concluded that the establishment of the Special Anchorage Area would cause no significant adverse effects. However, since the State of Florida has given approval for marina for East Pass Towers Condominiums to be built, the Coast Guard believes that navigation safety is not best served by co-locating the Special Anchorage Area and the marina. Although the Special Anchorage Area proposal is being withdrawn, anchoring in Destin Harbor continues to be permissible subject to applicable vessel marking and lighting regulations.

Notice of Proposed CGD8-84-23 (50 FR 860) is withdrawn. No further rulemaking on this subject is under consideration; the matter may be re-opened, however, should the need for a Special Anchorage Area occur.

Drafting Information

The drafters of this notice are LTJG K. D. Christopher, project officer, Commander Eighth Coast Guard District(mps), and LCDR W. B. Thomas, project attorney, Eighth Coast Guard District Legal Office.

Dated: April 8, 1985.

T.T. Matteson,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 85-8871 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 85-2]

Compulsory License For Cable Systems; Notice of Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: On January 17, 1985, the Federal Communications Commission [FCC] published in the **Federal Register** (Final rule, MM Docket No. 84-111, RM 4557, 50 FR 2565-2570) a final rule amending the list of major television markets in § 76.51 of its rules. Effective February 19, 1985, this action revises § 76.51(b)(55) of 47 CFR to include Melbourne and Cocoa, Florida within the Orlando-Daytona Beach hyphenated market. The Copyright Office received a formal request to open a public proceeding to review the copyright implications of this amendment, and similar possible future amendments. By this notice, the Office invites public comment, views and information on the impact of this FCC action on the cable compulsory licensing system established under section 111 of the Copyright Act of 1976.

DATES: Comments should be received on or before May 15, 1985.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail, to: Library of Congress, Department D.S., Washington, D.C. 20540.

If delivered by hand, copies should be brought to: Office of General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 76.51 of 47 CFR contains a list of the major television markets and their designated communities. This list was first published by the FCC in its 1972 cable rulemaking proceeding. *See Cable Television Report and Order*, 36 F.C.C.2d 143, 220 (1972). In adopting this list, the FCC was concerned that the table of major television markets remain stable in order to allow plans and investment to go forward with confidence and to avoid any disruptive impact on the viewing public. *Id.* at 173. A cable system looks to this list to determine whether it may be required under the remaining FCC carriage rules to carry a particular television broadcast station. For example, under § 76.61(a)(4) of the FCC rules, where a cable system serves a community that is located in whole or in part within a major television market, the cable system or a portion of the system may, or upon appropriate request must, carry the signals of "[t]elevision broadcast stations licensed to other designated communities of the same major television market . . ." 47 CFR 76.61(a)(4)(1984). Further, before repeal by the FCC of its distant signal carriage rules (*see Report and Order in Docket Nos. 20988 and 21284*, 79 F.C.C.2d 663 (1980)), the presence of a cable system within a major television market would subject it to a specific market quota of distant signals; systems in "smaller" television markets were subject to more limited quotas.

When Congress enacted a general revision of the federal copyright statute in 1976, it provided in § 111 for the establishment of a compulsory licensing system for the secondary transmission to the public by a cable system of a primary transmission made by a broadcast station. 17 U.S.C. 111. Under this system, a large cable system, *i.e.*, a system having gross receipts above a certain level (presently, $214,000 or more per 6 month accounting period), is generally required to calculate its royalty payments on the basis of the number of primary transmitters it carries beyond their local service area. In the case of a television broadcast station, the "local service area of a primary transmitter" is defined in section 111(f) of the 1976 Act as comprising "the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976 . . .."

In view of the close relationship between specific rules and regulations of the FCC and the cable compulsory licensing system in the copyright law, Congress created the Copyright Royalty Tribunal and authorized it to adjust the royalty rates for cable systems where certain changes are made in the FCC rules. Section 801(b)(2)(B) of the 1976 Act provides that the Tribunal may, upon receipt of a petition filed under section 804, decide to adjust the royalty rates: "In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of such signals . . .." 17 U.S.C. 801(b)(2)(B). In accordance with this provision, the Tribunal acted in 1982 to adjust the rates for cable systems following repeal of the FCC distant signal carriage and syndicated exclusivity rules. *See Adjustment of the Royalty Rates for Cable Systems*, 47 FR 52146-52159, published November 19, 1982. Under these adjusted rates, in certain instances, cable systems must compute 3.75 per centum of their gross receipts for each distant signal equivalent [DSE] or any fraction thereof.[1] *See* 37 CFR 308.2(c)(1984). Pursuant to section 801(b)(2)(B) of the 1976 Act, this rate adjustment does not apply to any DSE or fraction thereof represented by: (i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or (ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

On January 17, 1985, the Federal Communications Commission published a final rule that raises questions concerning the interplay between the FCC "must" carry rules for cable systems in major television markets, the calculation of royalties under the cable compulsory licensing system in Section 111 of the Copyright Act of 1976, and the role of the Copyright Royalty Tribunal in adjusting royalty rates for cable systems following certain FCC rule changes. The FCC decided to amend its list of major television markets in § 76.51 of 47 CFR to include Melbourne and Cocoa, Florida in the Orlando-Daytona Beach, Florida hyphenated market in response to petitions for rulemaking filed by Southern Broadcasting Corporation and by Good Life Broadcasting, Inc. *See* 50 FR 2565-2570, published January 17, 1985. In opposition to this rule change, Micro-Cable Communications Corp. argued in comments submitted to the FCC that: "If the Commission now revised Rule 76.51(b)(55) to include Melbourne, the Orlando and Daytona Beach stations will be entitled to insist

[1] "Distant signal equivalent" is defined in section 111(f) of the 1976 Act as "the value assigned to the secondary transmission of any nonnetwork television programing carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programing . . .." 17 U.S.C. 111(f).

upon carriage on the Vero Beach system [within 35 miles of Melbourne], not under the rules in effect in 1976, but under revised rules in effect in 1984. Thus, the Orlando and Daytona Beach stations will *not* be 'local' for copyright purposes but, rather, will be 'distant' stations for which Florida Cablevision will be obligated to pay a royalty fee. Worse yet, because Florida Cablevision was not entitled to carry the Orlando and Daytona Beach stations, even as distant signals prior to the 1981 distant signal deregulation [repeal by the FCC of its distant signal carriage rules], the Commission's change in rules obligating Florida Cablevision to carry the Orlando and Daytona Beach stations will require payment of the CRT's 3.75% 'penalty fee' for inconsistent signals." Group W Cable, Inc. also expressed concern that the proposed amendment of the FCC major television market rules "would risk imposing *both* mandatory carriage of WMOD (which would become a local signal for FCC purposes) *and* a copyright penalty for carriage of a *distant* signal." In reply, Southern Broadcasting Corporation asserted that "[w]hether and to what extent any copyright liability will ensue from the hyhenated market redesignation must be decided by the Copyright Royalty Tribunal or the Congress and not by the Commission." It also argued that the inclusion of Melbourne in the Orlando-Daytona Beach hyphenated market should be viewed in the same way as significantly viewed signals. Under that theory, a station is treated as "local" for both FCC and copyright purposes, where the station was deemed significantly viewed after April 15, 1976.

In deciding to revise its major television market list in § 76.51, the FCC noted the copyright concerns of Micro-Cable Communications Corp. and Group W. The FCC concluded that, after the rule change, "the Melbourne and Cocoa stations are considered local for purposes of the Copyright Act. Section 76.61 [the FCC 'must' carry rules for major television markets] is unaffected by Commission action here." 50 FR, at 2570. The FCC found that: "Although additional stations will henceforth be able to insist on mandatory signal carriage, that is a consequence of the market situation, not of a change in the Commission's Rules in effect on April 15, 1976. This situation is similar to that where, under §76.54, a television signal is determined to be significantly viewed and thereby falls under the mandatory carriage provisions. A signal determined to be significantly viewed subsequent to April 15, 1976 is considered as local for both mandatory carriage and copyright purposes." *Id.* The FCC determined that the inclusion of Melbourne and Cocoa, Florida in the Orlando-Daytona Beach hyphenated market did not constitute a change in either § 76.51 or § 76.61 of the cable television rules in effect on April 15, 1976. Although additional television broadcast stations acquired mandatory carriage rights following the change in the list in § 76.51, the FCC reasoned that they would do so pursuant to § 76.61 which was in effect on April 15, 1976. The FCC recognized, however, that the Copyright Royalty Tribunal was not bound by the FCC's determination of the copyright consequences of its action.

A representative of Group W Cable, Inc. in the FCC proceeding in the matter of the Orlando-Daytona Beach hyphenated market formally requested the Copyright Office by letter dated February 19, 1985, to open a public hearing or a notice and comment proceeding in which the copyright issues may be aired. They stressed that the issues involved in the Florida case were of concern to the FCC, cable operators and copyright owners. It was also noted that, in addition to the Melbourne, Cocoa, Florida decision, the FCC made comparable changes in a California major market,[2] and that more than 400 additional changes were possible.

The Copyright Office agrees that the copyright consequences of the FCC decisions to redefine two of the markets in the FCC's list of 100 major television markets, 47 CFF 76.51, should be addressed in a public proceeding. Accordingly, the Office decided to initiate this notice of inquiry. The Copyright Office believes, however, that the legal issues raised by the FCC action can be explored fully by written comments and without a public hearing. Although public comment, views and information are invited on the following specific questions, comments on related issues are welcome.

Public Comment Invited on the Following Issues

1(a). What is the impact on the copyright law of a change by the FCC in the major television market list, which has the effect for FCC purposes of making a formerly "distant" signal a "local" must-carry signal? (b) How should the 1982 cable rate adjustment (both the 3.75% rate and the syndicated exclusivity surcharge) be applied in these changed circumstances? (c) Is the FCC correct in its assumption that § 76.61 of its rules is unchanged by the amendment to the list of major television markets and that, although a cable system may be required under § 76.61(a)(4) to carry additional stations after the change in § 76.51(b)(55), it is a "consequence of the market situation, not of a change in the Commission's Rules in effect on April 15, 1976?"

2. Should a distinction be drawn between the copyright consequences of any amendments to the list of major television markets in § 76.51 and any changes in the stations deemed significantly viewed under § 76.54 of the FCC rules after April 15, 1976?

3(a). If the amendment made in § 76.51(b)(55) of the FCC rules to include Melbourne and Cocoa, Florida in the Orlando-Daytona Beach market would have expanded the former signal carriage quota of a cable system in Melbourne or Cocoa, to permit the system to carry an additional independent television broadcast station beyond the local service area of that station as defined in Section 111(f), is the Copyright Royalty Tribunal, upon receipt of a petition filed under section 804 of Title 17 U.S.C., authorized to institute a proceeding to determine whether an adjustment in the royalty rates under § 111 should be made to accommodate this amendment? (b) Alternatively, since the FCC *eliminated* the distant signal rules in 1981, has the Tribunal already addressed the impact of any FCC changes in the "distant signal" rules, including changes in the major television market list, pursuant to 17 U.S.C. 801(b)(2)(B), in its 1982 cable rate adjustment?

4. What action, if any, should the Copyright Office take to clarify the issues raised by FCC changes in the major television market list?

List of Subjects in 37 CFR Part 201

Cable television, Compulsory license.

(17 U.S.C. 111; 702)

Dated: April 2, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved by:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-8940 Filed 4-12-85; 8:45 am]

BILLING CODE 1410-03-M

[2] The FCC amended the list of major television markets in § 76.51(b)(72) of its rules by adding Visalia, Hanford and Clovis, California to the existing Fresno, California market. 50 FR 7915-7918, published Febrdary 27, 1985.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket Nos. 78-72 and 80-286]

MTS and WATS Market Structure; Amendment of the Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Order requesting comments.

SUMMARY: In this *Order*, the Federal-State Joint Board requests comments on a number of issues related to the development of further measures designed to assist low income households in affording telephone service. The measures under consideration here would be in addition to the assistance measures previously recommended by the Joint Board and adopted by the Commission in its December 19, 1984 *Decision and Order* in this proceeding. The Joint Board is requesting comments on these issues in order to develop a complete record on which to base future recommendations. This will facilitate a sound resolution of these issues.

DATES: Comments are to be filed on Apri 26, 1985. Replies are to be filed on May 17, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Margot Bester or Claudia Pabo at (202) 632-6363.

Order Inviting Comments

Before the Federal Communications Commission in the matter of MTS and WATS market structure amendment of part 67 of the Commission's rules and establishment of a Joint Board, CC Docket No. 78-72; CC Docket No. 80-286.

By the Federal-State Joint Board:

Adopted: March 27, 1985.
Released: March 29, 1985.

I. Introduction

A. Summary

1. The Federal-State Joint Board hereby requests comments on a number of issues related to the development of measures designed to assist low income households in affording telephone service. The measures under consideration here would be in addition to the assistance measures to ensure the continuation of universal services previously recommended by the Joint Board and adopted by the Commission in its December 19, 1984 *Decision and Order* in this proceeding.[1] Those measures effectively allow a waiver of subscriber line charges for low income households and help to keep local exchange rates lower than they otherwise would be in areas where the cost of providing telephone service is unusually high. This request for comments focuses on four basic issues: (1) The proper state and federal roles in implementing assistance measures to ensure the continuation of universal service for low income households; (2) criteria for determining eligibility for such assistance; (3) the type or types of lifeline telephone service which should or could be made available to eligible subscribers; and (4) the mechanism for funding these assistance measures. We are requesting these comments pursuant to the Commission's December 19, 1985, *Decision and Order* adopting our recommendation for expedited study of broader lifeline assistance measures for low income households. Pursuant to this *Order*, the Joint Board is to complete preparation of its recommendations on these issues within 180 days of release of this *Order Inviting Comments*.

B. Background

2. The preservation of universal telephone service has been a major Commission objective in the *MTS and WATS Market Structure* proceeding, CC Docket No. 78-72. In the *Third Report and Order*[2] in that proceeding, the Commission defined its universal service objective to mean "avoiding actions that would cause a significant number of local exchange service subscribers to cancel [telephone] service".[3] Accordingly, the Commission stated that it would entertain requests by the local exchange carriers for waiver of the mandatory flat subscriber line charge designed to ameliorate the effects of these charges on low income

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[1] On November 15, 1984, the Joint Board recommended that the Commission: (1) Implement a $1.00 per month subscriber line charge for residential and single line business subscribers effective June 1, 1985, with an increase to $2.00 per month on June 1, 1986; (2) revise the high cost assistance provided through the Universal Service Fund to direct more aid to smaller telephone companies; and (3) adopt measures which effectively allow a waiver of the subscriber line charge for low income households and move forward expeditiously with study of broader lifeline assistance measures. *Recommended Decision and Order, MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984). On December 19, 1984, the FCC adopted the Joint Board recommendation. *Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985).

[2] CC Docket No. 78-72, 93 FCC 2d 241 (1983).

[3] *Id.* at 286.

households which might not be able to afford telephone service. In the *Reconsideration Order* reaffirming the subscriber line charge concept, the Commission noted that it had not received any petitions for waiver.[4] However, requests for lifeline service waivers were subsequently filed by the New York Telephone Company and the Pacific Telephone and Telegraph Company.[5] In the *Second Reconsideration Order*, the Commission found that the existing record did not contain sufficient information to allow the development of a federal assistance mechanism, and stated that it would conduct supplemental proceedings to consider an exemption from subscriber line charges for those who might otherwise be unable to afford telephone service. The Commission requested additional comments concerning a lifeline exemption or other assistance measures for low income subscribers in the *Further Notice of Proposed Rulemaking*, in *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78–72 and 80–286, released April 11, 1984.[6] The *Further Notice*, also requested that the Joint Board prepare recommendations concerning this issue.[7]

3. In the *Recommended Decision and Order*, in CC Docket Nos. 78–72 and 80–286,[8] we concluded that implementation of limited subscriber line charges would not undermine universal service. However, we recognized that implementation of subscriber line charges in conjunction with general upward pressure on local rates generated legitimate concern regarding the protection of universal service. Accordingly, we recommended a two-phase plan for dealing with these concerns. As the initial step, we recommended that the Commission provide an optional program for a 50 percent reduction in the subscriber line charge for customers who satisfy a state determined means test which is subject to verification. The shortfall in subscriber line charge revenues resulting from this would be recovered through an increase in the nationwide average carrier common line charge. We also recommended that the states wishing to take advantage of this assistance mechanism be required to implement an equal monetary reduction in the local exchange rate for qualifying subscribers. We also recommended that the decision to implement this joint federal-state assistance mechanism be left to the individual states. As a second step in dealing with these issues, we recommended expedited study of broader measures to assist low income households in affording telephone service. The Commission adopted these recommendations in its December 19, 1984 *Decision and Order* in CC Docket Nos. 78–72 and 80–286.[9] In this *Order*, the Commission reaffirmed its commitment to universal service and directed the Joint Board to begin a study of broader assistance measures by the end of March 1985, and to compete preparation of its recommendations concerning these issues within 180 days after initiation of this study.

II. Issues

4. In order to assist interested parties in analyzing these matters, we have listed a number of issues concerning broader lifeline assistance measures. Where appropriate, a brief review of relevant background information concerning the issue is also included.[10]

(1) *Proper Federal and State Roles.* What are the proper federal and state roles in ensuring that measures are available to assist low income households in financial need in obtaining access to the switched telephone network? Does the FCC have authority and responsibility under the Communications Act to ensure that the states adopt assistance measures that are properly designed to assist in maintaining universal service? Should a threshold level of subscriber drop-offs or rate inceases be established which, when crossed, would trigger a federally mandated assistance program for low income households designed and administered by the states? If so, what level of subscriber drop-offs should trigger a response? Over what time period should this be measured? If such a threshold is tied to local rate increases, should a percentage or a fixed dollar amount increase in local rates or a specific local rate level be used? In its *Decision and Order* in this proceeding, the Commission stated that it expected most states to institute appropriate measures on their own initiative if necessary to protect universal service. The Commission expressed the view that the states should have primary responsibility for designing and administering lifeline assistance measures consistent with the guidelines developed in this proceeding. The Commission also expressed concern that some states might not have the ability to adopt lifeline plans on their own. What action should the Commission take in the case of states which decline to, or are unable to act, or which propose plans that do not adequately maintain universal service?

(2) *Eligibility for Assistance.* What eligibility criteria or standards should be established to determine who qualifies for assistance? For example, should a minimum income level be established for eligibility? Should the criteria be analogous to those established by states to determine which individuals are eligible for public assistance such as welfare or energy assistance? What other eligibility criteria should be considered? What methods of verifying eligibility should be used? Is self-certification of eligibility sufficient? What enforcement mechanisms exist which do not involve significant administrative burdens? In this regard, we wish to consider the eligibility standards and verification methods for existing and proposed assistance plans and ask that interested parties submit information on these plans with their comments.

(3) *Type of Service Offered.* What type of lifeline service should be made available to those individuals or households deemed eligible for assistance? Should the service provided be similar to that proposed in recent legislative proposals, allowing the subscriber to receive calls and make calls without regard to the duration or distance (within a local calling area) of the call? [11] Would a form of local measured service priced on a time or distance sensitive basis with a limited call allowance represent an adequate form of assistance? Would a "dail tone" service with a reduced price for some or all calls be adequate? What other service options should be considered? How do telephone company charges for

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[4] CC Docket No. 78–72, 48 FR 42984 (September 21, 1983). In the *Reconsideration Order*, The FCC stated that its decision to reaffirm subscriber line charges should not be interpreted as foreclosing petitions for waiver of these charges for needy residential customers.

[5] *Second Reconsideration Order*, CC Docket No. 78–72, 49 FR 7810 (March 2, 1984).

[6] 49 FR 18318 (April 30, 1984).

[7] The *Further Notice* requested commenting parties to: (1) Explain the type of assistance which they believe is needed, for example a subscriber line charge waiver, and (2) explain how the assistance would be funded.

[8] 49 FR 48325 (December 12, 1984).

[9] 50 FR 939 (January 8, 1985).

[10] Interested parties are directed to the following two studies performed by the Commission for general background information: (1) *Local Telephone Service* (*"Michigan Report"*), 96 FCC 2d 491 (1983); and (2) *Further Report on the Effects of Federal Decisions on Universal Telephone Service*, FCC 84–636, released January 4, 1985. These reports provide references to numerous other studies. Parties may also wish to review the National Association of Regulatory Utility Commissioners' "Survey of State Lifeline Telephone Service" (revised Feburary 22, 1985).

[11] H.R. 151, 99th Cong., 1st Sess., 131 Cong. Rec. H71 (1985).

the initiation of telephone service affect universal service? Should the level of these charges be considered in designing a lifeline assistance plan? Again, we are asking interested parties to submit information on the type of service offered under existing or proposed assistance plans.

(4) *Funding.* How should any revenue shortfall produced by these assistance measures be calculated and funded? Should funding come from both intrastate sources (as determined by each state) and an increase in the nationwide average interstate carrier common line charge? If this approach is used, how should funding responsibility be divided between the state and federal jurisdictions? Could assistance measures be funded through a uniform monthly surcharge on the subscriber line charge for non-eligible customers in the state or should funding for these plans be generated solely through a surcharge on toll calls? Should these plans be funded from general tax revenues? What other options for funding these plans should be considered? Interested parties are asked to submit information on the funding mechanisms for existing or proposed assistance plans.

Interested parties are also encouraged to address any additional issues in this area which they believe require consideration. Comments concerning the issues discussed above are to be filed with the Secretary, Federal Communications Commission no later than April 26, 1985. Replies are to be filed by May 17, 1985.

III. Ordering Clauses

5. Accordingly, it is ordered, that comments concerning the development of measures to assist low income households in affording telephone service are to be filed with the Secretary, Federal Communications Commission no later than April 26, 1985. Replies are to be filed on May 17, 1985.

6. It is further ordered, that all parties filing comments and/or replies are to serve copies on the Joint Board members and staff listed in Attachment A.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment A

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, 1919 M Street, NW., Room 814, Washington, D.C. 20554

Commissioner Henry M. Rivera, Federal Communications Commission, 1919 M Street NW., Room 822, Washington, D.C. 20554

Commissioner Mimi Weyforth Dawson, Federal Communications Commission, 1919 M Street NW., Room 826, Washington, D.C. 20554

Commissioner Marvin R. Weatherly, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Charima Edward F. Burke, Rhode Island Public Utilities Commission, 100 Orange Street, Providence Rhode Island 02903

Commissioner Edward P. Larkin, New York Public Service Commission, 400 Broome Street, New York, New York 10013

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 991, Raleigh, North Carolina 27602

Federal-State Joint Board Staff

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909

Commissioner Kathleen Whiteaker, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Elton Calder, Georgia Public Service Commission, 244 Washington Street S.W. Atlanta, Georgia 30334

Robert E. Osborn, Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319

Guy E. Twombly, Maine Public Utilities Commission, State House, Station 18, Augusta, Maine 04330

Paul Popenoe, Jr., California Public Utilities Commission, 350 McAllister Street, San Francisco, California 94102

Timothy J. Devlin, Deputy Director, Auditing and Financial Analysis Department, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32301

Hugh L. Gerringer, Public Staff—NCUC Communications Division, Box 991, Raleigh, North Carolina 27602

Jim Lanni, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Allan Bausback, New York Public Service Commission, 3 Empire State Plaza, Albany, New York 12223

Gary A. Evenson, Director, Communications Bureau, Utility Rates Division, Public Service Commission, P.O. Box 7864, Madison, Wisconsin 53707

Karen L. Hochstein, Assistant Director, Congressional and Public Relations National Association of Regulatory Utility Commissioners, 1102 ICC Building, P.O. Box 684, Washington, D.C. 20044

Claudia R. Pabo (4 copies), Acting Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street NW., Room 544, Washington, D.C. 20554.

[FR Doc. 85-9022 Filed 4-12-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 67

[CC Docket Nos. 78-72 and 80-286]

MTS and WATS Market Structure; and Amendment of the Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: Recommended interim order and request for comments.

SUMMARY: In this Recommended Interim Order, the Federal-State Joint Board presents its recommendations concerning interim measures for the allocation of Account 645, Local Commercial Operations, between the federal and state jurisdictions. The Joint Board also requests comments on permanent measures for the allocation and recovery of Account 645 costs and the need for changes in the allocation and recovery of Account 662 (an account associated with the provision of billing and collection services by the local exchange companies) to reflect the post-divestiture environment in which AT&T may choose to perform its own billing and collection services. In addition, the Joint Board requests further comments concerning the proper definition and allocation of expenditures by AT&T and the Bell Operating Companies to reconfigure the Bell System telephone network to implement the divestiture and the costs of implementing equal access. The Joint Board is recommending interim measures for the allocation of Account 645 because it finds that this is necessary to prevent sudden and substantial shifts in costs between the interstate and intrastate jurisdictions pending adoption of permanent measures concerning the allocation and recovery of Account 645 costs. A Joint Board recommendation on this matter will assist the Commission in determining whether to adopt interim allocation procedures for Account 645. The Joint Board is requesting comments on the issues described above in order to develop a complete record on which to base future recommendations. This will facilitate a sound resolution of these issues.

DATES: Comments are to be filed on April 22, 1985. Replies are to be filed May 13, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Margot Bester or Claudia Pabo (202) 632-6363.

List of Subjects in 47 CFR Part 67

Communications common carriers, Telephone.

Recommended Interim Order and Request for Comments

In the matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 78-72, CC Docket No. 80-286.

Adopted: March 21, 1985.
Released: March 25, 1985.

By the Federal-State Joint Board.

I. Introduction

1. The Federal-State Joint Board hereby presents its recommendations in response to the Petition for Rulemaking filed on November 15, 1984 by the New York State Department of Public Service (New York State) seeking an interim freeze of the customer contact factor [1] used in Part 67 of the Commission's rules to allocate Account 645, Local Commercial Operations,[2] between the state and interstate jurisdictions. In its Petition, New York State also requested institution of a rulemaking proceeding to amend the Part 67 rules concerning the allocation of Account 645 and costs in other related Accounts. The Joint Board recommends that the Commission adopt interim measures for the allocation of Account 645 between the jurisdictions, and act expeditiously to consider permanent revisions in the rules governing the allocation of Account 645. Accordingly, the Joint Board requests comments concerning permanent measures for the allocation and recovery of Account 645 costs.[3] In conjunction with this, the Joint Board is requesting comments on the need for changes in the allocation and recovery of Account 662, Accounting Department costs, to reflect the post-divestiture environment in which the American Telephone and Telegraph Co. (AT&T) may choose to perform its own billing and collection services.[4] In addition, the Joint Board is requesting further comments concerning the proper definition and allocation of expenditures by AT&T and the Bell Operating Companies (BOCs) in reconfiguring the Bell System telephone network to implement the divestiture and the costs of providing equal access as required by the *Modification of Final Judgment (MFJ) in United States* v. *American Telephone and Telegraph Co.*[5]

2. This *Recommended Interim Order and Request for Comments* is divided into two sections. The first section deals with interim measures for the allocation of the costs in Account 645, Local Commercial Operations. A detailed summary of our recommendations concerning interim measures for the allocation of Account 645 is contained in this section. The first section also requests comments concerning permanent measures for the allocation and recovery of Account 645 as well as the need for changes in the provisions for the allocation of Account 662, Accounting Department costs (which includes most of the costs of providing billing and collection services) to conform to the new post-divestiture environment. The second section requests further comments concerning the definition and allocation of equal access and network reconfiguration costs.

II. Allocation of Local Commercial Operation Expenses (Billing Inquiry)

A. Summary

3. The Joint Board recommends that the Commission freeze the customer contact factor [6] which is applicable to study areas for which AT&T has begun or will begin to handle its own billing inquiries at the average level for the twelve months preceding that date. We recommend application of this factor from the date on which AT&T began use of its own billing inquiry facilities through May 31, 1985. Beginning June 1, 1985, the frozen customer contact factor for these study areas should be reduced by 1/24th each month for the following twelve months or until adoption of permanent measures for the allocation of Account 645, whichever comes first.[7] In the case of study areas for which AT&T begins to handle its own billing inquiries after June 1, 1985, the customer contact factor would be frozen at the average level for the twelve months preceding that date with the factor reduced by 1/24th for each of the following twelve months pending adoption of permanent allocation measures. These measures are intended to prevent a sudden and substantial shift in costs to the intrastate jurisdiction while the Joint Board is developing recommendations concerning permanent provisions for the allocation of Account 645. The Joint Board is also requesting comments concerning revised measures for the allocation of Account 645 costs between the jurisdictions, pursuant to Part 67 of the Commission's rules, as well as provisions for the recovery of the interstate portion of these costs, pursuant to Part 69 of the Commission's access charge rules. This will allow the Commission to adopt permanent measures for the allocation and recovery of these costs as expeditiously as possible. In addition, we are requesting comments concerning the need for changes in the Part 67 rules for the allocation and the Part 69 rules for the recovery of Account 662, Accounting Department costs.

B. Background

4. As previously indicated, the issues discussed in this *Recommended Interim Order* were initially raised by a Petition for Rulemaking filed by New York State. In its Petition, New York State noted that AT&T planned to discontinue its subscription to the billing inquiry service offered by New York Telephone Company (New York Telephone) effective January 1, 1985. This is part of an overall plan on the part of AT&T to terminate subscription to the billing inquiry services offered by the BOCs. In the future, AT&T will respond to inquiries concerning the charges for its interexchange telephone services through billing inquiry centers operated

[1] Pursuant to § 67.385(a)(1)(i) of the Commission's rules, the portion of Account 645 costs categorized as message toll expense is apportioned between the state and interstate jurisdictions on the basis of "the relative number of business office contacts relating to state toll and interstate toll messages." 47 CFR § 67.385(a)(1)(i) (1984). This is referred to herein as the customer contact factor.

[2] Account 645 reflects the costs involved in maintaining the local commercial operations of the telephone company other than promotional or directory services. These offices are responsible for service order processing for local customers and interexchange carriers, billing inquiry, collection of coins from pay telephones as well as certain billing and collection functions.

[3] The Joint Board plans to complete preparation of its recommendations on these issues two or three months after completion of the pleading cycle set out in this *Order*.

[4] The majority of the costs associated with the provisions of billing and collection services by the local exchange companies are reflected in Account 662, Accounting Department costs.

[5] 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub. nom., Maryland* v. *United States*, 460 U.S. 1001 (1983).

[6] *See* note 1 *supra*.

[7] If AT&T implements its own billing and collection service, the local telephone companies would no longer have complete information concerning the number of users for toll service. This could require adjustments in the transition plan to assure a proper allocation of Account 645 costs since Account 645 costs are assigned to message toll and telegram and three other categories based on the relative number of users of each of these services with each subscriber counted once for each service which he or she uses.

by its own employees.[9] AT&T began operation of its first billing inquiry center during the first quarter of 1984 in Providence, Rhode Island.[9] AT&T stated that it planned to initiate its own billing inquiry service in 22 states by January 1, 1985. AT&T added that it will complete the transition to use of its own billing inquiry centers for the areas served by the BOCs by August 1985. AT&T stated that it has no current plans to terminate its use of billing inquiry service offered by the independent telephone companies.

5. Under the existing Part 67 provisions for the allocation of Account 645, AT&T's decision to discontinue billing inquiry service provided by the BOCs will result in a substantial increase in the intrastate allocation of Account 645 costs. Pursuant to § 67.365 of the Commission's rules, the costs in Account 645, Local Commercial Operations, are assigned to the following categories: (1) Message toll and telegram; (2) exchange, including semi-public; (3) directory advertising; and (4) TWX and private line services. This assignment is based on the relative number of users of these services. Each subscriber is counted once for each service which he or she uses. The message toll and telegram expense is segregated between message toll and telegram on the basis of billed messages. Message toll expense is allocated between the jurisdictions on the basis of the relative number of business office contacts concerning state and interstate toll service. This is referred to as the customer contact factor. The expense associated with telegram service is assigned to the local exchange operation. The costs in the exchange and directory advertising categories are alsq assigned to the exchange operation. The costs in the TWX category are apportioned based on billed TWX connections. Private line expenses are allocated based on the relative number of private line service accounts.

6. Setting aside the expenses in the TWX and private line categories, the Account 645 assignment to interstate is attributable to the customer contact factor. However, since the billing inquiry function appears to represent a very small portion of the work performed by the local exchange business office, the BOCs will probably not be able to reduce their costs substantially when AT&T begins to perform this service for itself. The allocation of Account 645 also affects the allocation of other related Accounts, thereby magnifying the effect of a shift in Account 645 costs to the intrastate jurisdiction.[10] A number of the commenting parties estimated that this shift in cost allocations would increase the annual intrastate revenue requirement by approximately $1 billion on a nationwide basis.[11]

7. At present, a large portion of the interstate allocation of Account 645 is assigned to the billing and collection rate elements in the exchange carriers' access charge tariffs. A number of the local exchange carriers have a separate access charge rate element for billing inquiry service. When this is the case, AT&T will usually be able to discontinue payment of these charges when it begins to perform its own billing inquiry service. A number of the local exchange carriers do not have a separate billing inquiry access charge rate element. Instead, these costs are combined with other costs associated with performing billing and collection services and recovered through bundled rate elements. In such situations, AT&T would normally still pay the full billing and collection charges, absent an adjustment in these rates, even though it is performing its own billing inquiry services. A portion of the interstate Account 645 costs is also recovered through other access charge elements. The payment of these charges by AT&T is not to be affected by AT&T's decision to perform its own billing inquiry services. As previously mentioned, the allocation of Account 645 between the jurisdictions also affects the allocation of a number of other accounts. A large portion of these costs is treated as overhead and reflected in the charges for all of the access charge rate elements. Once again, payment of these charges by AT&T is not affected.

C. Comments and Replies

8. In its Petition for Rulemaking, New York State pointed out that the scheduled January 1, 1985 date for termination of AT&T's subscription to billing inquiry service provided by New York Telephone Company would have the unintended effect of shifting a substantial amount of costs to the intrastate jurisdiction. New York State argued that this result was unreasonable because it would: (1) Deviate from the usage based allocation of common costs originally contained in the separations procedures; (2) allow double recovery of costs by the local telephone companies since the existing interstate access charge tariffs reflect the previous interstate allocation of Account 645 and other related costs; and (3) burden local exchange ratepayers in a manner not intended by the separations procedures. New York State asked the Commission to freeze the customer contact factor at its present level pending adoption of permanent changes in the jurisdictional separations procedures through the Joint Board process. On November 30, 1984, the Commission issued a Public Notice requesting comments on the New York State Petition for Rulemaking.[12] Comments were filed on December 10, 1984 and reply comments were filed on December 14, 1984.

9. In its comments, AT&T stated that under the current separations procedures the interstate allocation of local business office costs is far in excess of the cost of providing interstate billing inquiry service. AT&T took the position that a shift of costs to the intrastate jurisdiction was entirely appropriate. It argued that a reduction in the interstate allocation of these costs should be allowed to occur under the existing provisions of Part 67 of the Commission's rules. AT&T stated that a two year phase-down in the interstate allocation of Account 645 costs, beginning on January 1, 1985 would be acceptable. AT&T also asserted that billing inquiry costs should not be recovered through increases in other billing and collection rate elements.

10. The Ameritech Operating Company (Ameritech) supported the New York State Petition urging a freeze of the customer contact factor as of the date when AT&T began providing its own billing inquiry service, pending completion of further rulemaking proceedings to adopt new permanent allocation measures. Ameritech also noted that interim revisions in the interstate charges for recovery of these costs might be necessary. The Bell Atlantic Company (Bell Atlantic) urged

[8] AT&T stated that it is taking this action primarily for customer relations reasons. It emphasized that direct control over the handling of billing inquiries for its services is critical to successful operation in a competitive environment. AT&T stated that if inquiries concerning the bills for its services are not handled properly, the customers involved may become dissatisfied and turn to another interexchange carrier for service.

[9] AT&T stated that it first began to notify local exchange carriers in 1983 that it intended to terminate billing inquiry service.

[10] The accounts affected include, among other things, Account 640, General Commercial Expenses, Account 261, Furniture and Office Equipment, Account 672, Relief and Pensions, Account 307, Social Security Taxes and thne wage portion of Accounts 661 through 667, General Expenses.

[11] AT&T did not endorse this estimate of the revenue effect under the present rules, but agreed that the shift in costs would be "substantial."

[12] Public Notice, "The Commission Seeks Comments on Petition for Rulemaking on and Interim Freeze of Billing Inquiry Contact Provisions of Part 67," released November 30, 1984.

immediate referral of this matter to the Joint Board. It also argued that the Commission should take steps to allow the exchange carriers to recover the revenues lost due to AT&T's discontinuation of billing inquiry service through other interstate rates. BellSouth Corporation (BellSouth) argued that the Commission should freeze the customer contact factor at the date on which AT&T cut over its billing inquiry center for the affected area and should institute expedited proceedings before the Joint Board designed to achieve a permanent resolution of the questions related to the allocation of Account 645.

11. The NYNEX Telephone Company (NYNEX) stated that it supported the general approach proposed by New York State. It recommended freezing the allocation of Account 645 at the level prior to AT&T's discontinuation of billing inquiry service with a two-step phased transfer of these costs to the intrastate jurisdiction over two years. NYNEX also argued that the local exchange companies should be allowed to make interim changes in their interstate access charges to recover the costs previously recouped through the charges for billing inquiry service. NYNEX also stated that the recovery of these costs during the transition period should not be structured so as to increase the charges for the other billing and collection rate elements. Mountain States Telephone and Telegraph Company, Northwest Bell Telephone Company and Pacific Northwest Bell Telephone Company (U.S. West) supported the NYNEX proposal for a freeze on the customer contact factor with a two-year phased transfer of these costs to the intrastate jurisdiction. It also stated that the Joint Board should be asked to study new allocation methods for Account 645. Pacific Bell and Nevada Bell (Pacific) supported the New York State Petition, urging a freeze on the interstate allocation of Account 645, pending adoption of permanent revisions in the relevant allocation procedures. Pacific also stated that it expected AT&T to begin performing its own billing and collection for WATS service in the near future, reducing the interstate allocation of revenue accounting expense and producing distortions in the assignment of costs to the various access charge rate elements pursuant to Part 69 of the Commission's rules. Accordingly, Pacific urged a freeze on the Part 69 assignment of Account 645 costs to the various access charge elements.

12. GTE Service Corporation (GTE) supported a freeze of the customer contact factor for an interim peirod with a gradual transfer of these costs to the intrastate jurisdiction. During this period, GTE recommended that Account 645 costs be treated as overhead and recovered through the carrier common line charge or spread over all of the access charge rate elements. GTE also recommended that billing and collection costs associated with revenue accounting be treated in this fashion in light of the fact that AT&T will probably be discontinuing use of the billing and collection services offered by the local exchange carriers. United Telephone System Inc. (United) recommended freezing the customer contact factor at the January 1, 1984 level for one year with a referral of the issue to the Joint Board for development of a long-term plan for phasing down the interstate allocation of these costs. Continental Telecom Inc. (Contel) endorsed an immediate freeze of the interstate allocation of Account 645 and recommended referral of this matter to the Joint Board for development of a new allocation plan.

13. The Southern New England Telephone Company (SNET) supported a short-term freeze on the allocation of Account 645 while the Joint Board develops recommendations concerning a new allocation methodology. It urged expedited Joint Board action on this matter. Rochester Telephone Corporation (Rochester Telephone) supported a freeze of the billing inquiry factor to maintain the status quo until May 31, 1985 with expedited development of a new allocation factor to be reflected in the new access charge tariffs.[13] During the period of the freeze, Rochester Telephone urged recovery of Account 645 costs through other billing and collection rate elements. It also recommended review of the separations procedures applicable to the costs associated with billing and collection services in light of the fact that AT&T may discontinue use of the services provided by the local exchange companies. The United States Telephone Association (USTA) supported a temporary freeze of the interstate allocation of Account 645 at current levels with referral to the Joint Board for preparation of recommendations concerning a new permanent allocation methodology and a reasonable transition period for implementation of the new allocation measures. The New York State Telephone Association (N.Y. Association) which represents forty-one local exchange companies within New York State supported the New York Petition.

14. The New England Conference of Public Utilities Commissioners (New England Conference) urged an emergency freeze on the interstate allocation of Account 645 and related Accounts or the customer contact factor at the January 1, 1984 level through the end of 1985 with a referral to the Joint Board for development of a reasonable transition plan as well as a new permanent allocation plan. The New Jersey Board of Public Utilities (New Jersey) supported the Petition for Rulemaking filed by New York State, urging an immediate freeze, at the level prior to AT&T's institution of its own billing inquiry service, of the interstate allocation of Account 645 and other related Accounts, with referral to the Joint Board for development of interim and permanent procedures for the allocation of Account 645 costs. The Vermont Public Service Board (Vermont) urged a freeze of the interstate allocation of Account 645 and other related Accounts at the level prior to AT&T's discontinuation of billing inquiry service through the end of 1985. It recommended referral of this matter to the Joint Board for development of an interim allocation plan as well as a long-term plan to phase-down the interstate allocation of Account 645. The National Association of Regulatory Utility Commissioners (NARUC) also recommended an immediate freeze on the customer contact factor or the interstate allocation of Account 645 as well as related Accounts at the level as of January 1, 1984 through the end of 1985 with referral to the Joint Board for development of an interim allocation plan, as well as a long range plan to phase-down the interstate allocation of Account 645.

15. In its reply, AT&T reiterated its proposal for a two-year monthly phase-out of the interstate allocation of Account 645 costs beginning January 1985. MCI Telecommunications Corporation (MCI) filed reply comments stating that it did not oppose a phase-down of the interstate allocation of Account 645 over a maximum two-year period so long as these Account 645 costs are recovered through the interstate billing and collection rate elements. MCI strongly opposed any approach which would recover Account 645 costs from the Other Common Carriers (OCCs) during this transition period.

16. NYNEX again urged a freeze on the interstate allocation of Account 645 at the level preceding AT&T's

[13] These comments were filed prior to the Commission's extension, until October 1, 1985, of the effective date for the revised access charge tariff filings.

discontinuation of billing inquiry service, combined with a phase-down of the interstate allocation pending Joint Board development of new separations procedures. NYNEX also emphasized the need for waivers of Part 69 of the Commission's rules to allow recovery of the interstate allocation of Account 645 costs during the transition period. It opposed recovery of these costs through the remaining billing and collection rate elements. Pacific urged an interim freeze of the customer contact factor at the level prior to AT&T's discountinuation of billing inquiry service effective January 1, 1985, with the development of new allocation procedures to be effective June 1, 1985. Pacific strongly opposed AT&T's position that no change is necesary in the separations procedures for Account 645. It argued that, absent changes in the separations procedures, the interstate allocation of Account 645 would be virtually eliminated, resulting in an improper over-allocation of costs to the intrastate jurisdiction. Pacific stated that the Commission should freeze the assignment of Account 645 costs to the different access charge elements pursuant to Part 69 of the Commission's rules. Southwestern Bell Telephone Company (Southwestern Bell) argued that the current separations procedures result in an improper allocation of Account 645 costs, and urged expedited separations changes to allocate Account 645 on the basis of representative worktime studies. Southwestern Bell stated that a freeze was a less desirable alternative than expedited implementation of new allocation procedures and urged that any freeze be limited to a maximum of one year or accompanied by a two-year phased transfer of these costs to intrastate. Southwestern Bell supported recovery of the Account 645 costs through a surcharge on all access charge rate elements except billing and collection during any interim period.

17. GTE repeated its call for an interim freeze, followed by a gradual phase-down of the interstate allocation with a revison of the separations procedures to provide for a more rational allocation of these costs. GTE also urged similar treatment of billing and collection costs associated with revenue accounting expense. United supported an interim freeze of the allocation of Account 645 pending development of premanent revisions to the procedures for allocating these costs. United supported recovery of the interim interstate allocation of these costs through charges for billing and collection services. It also urged the Commission to address the allocation of revenue accounting expense. Rochester Telephone supported a temporary freeze on the customer contact factor pending completion of expedited action on revisions to the separation procedures and implementation of the revised 1985 access charge and interstate toll tariffs. Rochester opposed increasing the carrier common line charge to offset the loss of interstate billing inquiry revenues. The National Telephone Cooperative Association (NTCA) and the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) supported the New York State Petition, requesting institution of rulemaking proceedings to revise the separations procedures and related provisions of the access charge rules, with a freeze on the existing allocation factor pending completion of these proceedings.

18. In its reply, New York State again urged an interim freeze on the customer contact factor pending development of permanent revisions to the separations procedures. It argued that any other changes in the separations procedures should be developed after careful and deliberate notice and comment rulemaking proceedings. New York State argued that in light of the way local commercial operations are performed, there is no reason to shift any costs to the intrastate jurisidction as a result of AT&T's decision to terminate billing inquiry services offered by the local exchange companies. The Colorado Public Utilities Commission supported favorable action on the New York Petition, and urged expeditious FCC action to develop reasonable transition procedures to prevent a disruptive shift in costs to the intrastate jurisdiction. Vermont urged a freeze on the allocation of Account 645 costs at the level prior to AT&T's establishment of its billing inquiry centers, with further proceedings to develop a new methodology for allocating these costs. Vermont argued that this proceeding should include issues related to the allocation of commercial and revenue accounting expenses as well. The North Dakota Public Service Commission (North Dakota) supported New York State's request for a freeze on the customer contract factor pending adoption of permanent amendments to the separations procedures and reasonable measures for a phase-down of the interstate allocation of these costs through the Joint Board process.[14]

19. The International Communications Association (ICA) opposed implementation of an interim freeze on the interstate allocation of Account 645 costs or other changes in separations procedures which would produce artificially high interstate rates. It argued that the existing record did not justify such actions. However, ICA stated that it did not oppose institution of a rulemaking proceeding to study this matter. ICA also took the position that any shift in costs to the intrastate jurisdiction should be accompanied by a requirement that AT&T flow through its savings in the form of reductions in its interstate rates.

D. Discussion

20. As previously stated, the Joint Board recommends that the Commission freeze the customer contact factor which is applicable to study areas for which AT&T has begun to handle its own billing inquires at the average level for the twelve months preceding that date. The Joint Board recommends application of this factor from the date on which AT&T began use of its own billing inquiry facilities through May 31, 1985. The customer contact factor would also be frozen at the average level for the preceding twelve months in the cas of study areas for which AT&T begins to handle its own billing inquiries after June 1, 1985. The frozen customer contact factor applicable to these study areas would be reduced by ½₄th each month for the following twelve months or until adoption of permanent measures for the allocation of Account 645, whichever comes first. These interim separations provisions will prevent a sudden shift in costs to the intrastate jurisdiction pending adoption of permanent measures for the allocation of Account 645. The new post-divestiture environment in which AT&T would be free to terminate its subscription to the billing inquiry service offered by the BOCs was not contemplated when these separations procedures were adopted. A shift of costs to the intrastate jurisdiction of the magnitude and rapidity which could occur under the existing separations procedures should not be allowed to occur while new permanent separations procedures are being developed. As

[14] The Big Bend Telephone Company filed reply comments concerning the New York State Petition with the Commission on February 15, 1985. Chairman Philip F. Ricketts of the Texas Public Utility Commission also wrote a letter to Chairman Fowler of the FCC, dated February 13, 1984, supporting the New York State Petition. In addition, XIT Rural Telephone Cooperative wrote a letter, dated February 25, 1985, in support of the New York State Petition to Commissioner Rivera of the FCC. These filings will be placed in the Docket file in this proceeding and considered in conjunction with the comments filed in response to this *Order*.

discussed in more detail below, changes in the allocation of these costs during this interim period should be limited and gradual.

21. Freezing the customer contact factor at the average level for the twelve month period prior to the point at which AT&T begins to perform its own billing inquiry service for a particular study area will assure that the factor on which the interim transition is based is representative of the allocation factor during the period when the local exchange company provided billing inquiry service for AT&T. Freezing the customer contact factor, as opposed to the interstate allocation of Account 645, will also produce more accurate results since it will allow the reflection of changes in underlying Account 645 cost levels. This will also prevent changes in the allocation of other Accounts which are affected by the allocation of Account 645. Tying the freeze to the point at which AT&T begins to provide its own billing inquiry service for a particular study area is appropriate since AT&T is implementing this change gradually over a two-year period with different effective dates in different parts of the country. Tying the freeze to a single date for all companies would freeze the allocation factor for companies which were still providing billing inquiry service. There is no reason to do this since the existing separations procedures do not produce a shift in cost allocations until AT&T implements its own billing inquiry service. Tying the freeze to a single date could also freeze the allocation factor at a reduced level, reflecting the implementation of AT&T's billing inquiry service, for study areas where this change occurred before the date chosen. Use of a twelve month average for the frozen customer contact factor will ensure that the frozen factor is representative of previous allocation levels since the customer contact factor changes monthly. Applying the frozen customer contact factor from the date on which AT&T began use of its own billing inquiry facilities through May 31, 1985 will cushion the effect on intrastate ratepayers by delaying the shift of costs to the intrastate jurisdiction. This will also give the states time to reflect the gradual shift of these costs in the local exchange companies' intrastate revenue requirements, so that these cost shifts can be recovered through intrastate rates in a timely fashion.[15] While freezing the customer contact factor through May 31, 1985 is desirable, we cannot justify a longer freeze period. A long-term freeze on the customer contact factor would essentially force AT&T to continue paying for billing inquiry service twice—once through charges imposed by the local exchange carriers and a second time through the costs of its billing inquiry centers.[16]

22. The Joint Board recommends that beginning June 1, 1985, the frozen customer contact factor for study areas for which AT&T has already begun provision of its own billing inquiry service be reduced by 1/24th each month for the following twelve months or until the adoption of permanent measures for the allocation of Account 645, whichever comes first. For study areas for which AT&T begins to handle its own billing inquiries after June 1, 1985, the customer contact factor would be frozen at the average level for the twelve months preceding this date and reduced by 1/24th for each of the following twelve months pending adoption of permanent allocation measures.[17]

23. Since AT&T will be performing for itself a service previously performed by the local exchange companies, it appears reasonable to expect that new permanent procedures for the allocation of Account 645 will result in a lower interstate allocation of these costs than the present methodology. As previously stated, absent some reduction in the interstate allocation of these costs, AT&T would effectively pay for the cost of billing inquiry service twice, assuming that the local exchange carriers revise their tariffs to ensure full recovery of their interstate allocation of Account 645. In light of our expectation that the new permanent procedures for the allocation of Account 645 will result in a somewhat lower interstate allocation than the present procedures, initiating the transition to a reduced interstate allocation in June 1985 will also allow a more smooth and gradual transfer of costs. The amount of the reduction in the interstate allocation which we expect to result from revise separations procedures cannot be determined at this time. Therefore, we are recommending a reduction of only 1/24th per month in the customer contact factor for a twelve-month period or until permanent allocation procedures are adopted, whichever comes first. Since we intend to prepare our recommendations concerning permanent allocation procedures within two to three months after completion of the pleading cycle set out herein, it is highly unlikely that the interim measures which we are recommending will result in an interstate allocation which is lower than that which will be produced by the permanent allocation procedures. As previously indicated, the interim transition would not apply to local exchange companies from which AT&T continues to obtain billing inquiry service.

24. The changes that the Joint Board is recommending in the allocation of Account 645 costs will require certain adjustments in the lcoal exchange carriers' access charge tariffs in order to ensure proper recovery of the interstate allocation of these costs. Adjustments may also be necessary to reflect changes in the interstate allocation of other costs which are allocated, in part, on the basis of Account 645. The Joint Board expects that these questions will be dealt with by the Commission.

E. Request for Comments

25. Although the Joint Board is recommending interim measures for the allcoation and recovery of Account 645 costs, we conclude that the present record is not adequate to allow adoption of permanent measures. Accordingly, we are requesting interested parties to file comments on permanent measures for the categorization and allocation of Account 645 costs. In order to facilitiate the analysis of these issues by interested parties, we ahve attached summaries of tow possible plans for the separations treatment of Account 645.[18]

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[15] Local exchange companies with rate structures containing a separate billing inquiry rate element are presently experiencing interstate revenue shortfalls in areas for which AT&T has already implemented its own billing inquiry service.

Allowing a temporary shift of Account 645 costs to the intrastate jurisdiction would not alleviate this situation since it appears that, in most cases, the local companies would not be able to reflect these costs in their intrastate rates immediately. Under all of the existing circumstances, retroactive application of the frozen customer contact factor in order to limit the degree of change in the allocation of Account 645 pending adoption of revise permanent measures for the allocation of these costs is reasonable. *Iowa Power and Light Co.* v. *Burlington Northern, Inc.*, 647 F. 2d 796 (8th Cir. 1981), *cert. denied*, 455 U.S. 907 (1981).

[16] As stated in the preceding footnote, AT&T is no longer paying the billing inquiry rate element (assuming that it is set out as a separate charge in the tariff) in most areas where it has implemented its own billing inquiry service. However, if the customer contact factor were frozen for an extended period of time, thus maintaining the interstate cost allocation at approximately the current level, the local exchange companies would undoubtedly modify their tariffs to ensure recovery of these costs. Under revised tariffs designed to ensure recovery of the full interstate allocation of Account 645 costs, AT&T would pay for billing inquiry service twice.

[17] Independent local exchange companies which continue to provide billing inquiry services to AT&T would not be affected by the freeze or phase-down measures until AT&T begins to provide its own billing inquiry services for their study areas.

[18] Inclusion of these summaries is intended solely to facilitate analysis of these issues by interested

Continued

We are also requesting comments concerning the recovery of these costs pursuant to Part 69 of the Commission's rules. In this regard, interested parties should justify any proposals which treat the BOCs' carrier customers differently from their end user customers for revenue recovery purposes.[19] In addition, the Joint Board is requesting comments on the need for changes in the procedures for the allocation [20] and recovery of Account 662, Accounting Department costs, in light of the post-divestiture environment in which AT&T may discontinue its use of the billing and collection services offered by the local exchange companies. Commenting parties should also bear in mind that the Commission has raised the possibility of detariffing billing and collection services.[21]

26. We are also asking the regional Bell holding companies to provide annual calendar year estimates for the years 1983, 1984, 1985, and 1986 showing (for the regional holding company as well as for each BOC): (1) the amounts in Accounts 645 and 662; (2) the dollar amount and the percentage of these costs that would be allocated to the intrastate and interstate jurisdictions under the existing separations procedures (absent the interim measures recommended herein), and the amounts assigned to each jurisdiction under the approaches set out in Attachments A and B as well as any other approach advocated by the filing company; and (3) the same information requested in (1) and (2) for any other accounts, the allocation of which would be affected by the changes in this area. This information as well as comments concerning these matters are to be filed with the Secretary, Federal Communications Commission on April 22, 1985. Replies are to be filed on May 13, 1985. Parties are to serve copies of the comments and replies on the Joint Board members and staff listed in Attachment C.

III. Equal Access Network Reconfiguration (EANR) Costs

27. The Joint Board is also requested additional comments concerning the allocation of equal access and network reconfiguration costs between the intrastate and interstate jurisdications. In conjunction with this, we are also requesting comments on the expenditures which should be included in these categories and information concerning the amount of these costs. The expenditures for implementation of equal access and network reconfiguration were required by the *MFJ*. In general terms, expenditures for equal access are related to providing all interexchange carriers with exchange access which is basically equal in type, quality and price to that provided to AT&T. Equal access expenditures include the cost of modifications to the local switching equipment as well as certain changes in trunking facilities, among other things. Expenditures for network reconfiguration generally involve modifications to the telephone network necessary to conform to the Local Access and Transport Area (LATA) boundaries approved in the divestiture proceeding.

28. In an *Order Inviting Comments* released April 11, 1984,[22] the Joint Board requested comments concerning the allocation of these costs. This *Order* also requested information on equal access and network reconfiguration expenditures by separations plant category. The Joint Board concludes that additional comments and data are necessary before we can make recommendations in this area. In the further comments on these issues, we are asking interested parties to address the definition of both equal access and network reconfiguration costs, including the question of what expenditures should be included in each of these two categories and what costs should be treated as normal telephone company expenditures. In addition to general comments concerning the allocation of these costs between the intrastate and interstate jurisdictions, the Joint Board also requests interested parties to discuss whether different separations treatment is appropriate for network reconfiguration costs and equal access costs. Interested parties should also address the question of separate treatment of costs associated with the presubscription process. Other proposals for categorization of these investments and expenses with different separations procedures for the different categories are also welcome. Comments are to be filed with the Secretary, Federal Communications Commission by April 22, 1985. Replies are to be filed by May 13, 1984. Parties are to serve copies of the comments and replies on the Joint Board members and staff listed in Attachment C.

29. The Joint Board is also requesting the regional Bell holding companies to file information concerning their actual and projected investment, expenses, and revenue requirements for network reconfiguration and implementation of equal access. Aggregated information for each regional Bell holding company (as well as information on each BOC) is to be provided showing annual calendar year actual and projected expenditures and total revenue requirements (intrastate) for equal access and network reconfiguration separately. Separate amounts for equal access and network reconfiguration are to be shown for each relevant account and each relevant separations investment and expense category where possible. The projections for equal access are to be based on the accounting treatment and cost recovery periods used in the NYNEX tariff for recovery of equal access costs which recently became effective.[23] In addition, each regional Bell holding company is to provide estimates of the equal access and network reconfiguration costs which would be allocated to each jurisdiction using: (1) The present separations procedures; (2) relative intrastate and interstate access minutes as the allocation factor; (3) relative intrastate and interstate Feature Group D access minutes as the allocation factor; and (4) relative toll minutes as the allocation factor.[24] The percentage allocation for

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parties. It should not be interpreted as suggesting that the Joint Board supports either of these approaches or wishes to exclude consideration of other options.

[19] Section 202(a) of the Communications Act prohibits "unjust or unreasonable discrimination in charges, practices, or regulations . . . for or in connection with like communication service. . . ." 47 U.S.C. § 202(a). Interested parties should comment on whether differential treatment of the BOCs' carrier and end user customers for revenue recovery purposes with regards to local commercial functions which both use could raise questions in this regard.

[20] The procedures for allocating Account 662, Accounting Department costs, were revised by Commission earlier in this proceeding. *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, FR 7934, (March 2, 1984).

[21] *Memorandum Opinion and Order, (First Reconsideration Order) MTS and WATS Market Structure*, CC Docket No. 78-72, 97 FCC 2d 682 at 741 (1984); *Memorandum Opinion and Order, Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, 97 FCC 2d 1082 at 1285 (1984).

[22] *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, 49 FR 18746 (May 2, 1984).

[23] *New England Telephone and Telegraph Company and New York Telephone Company*, Transmittal Nos. 725, 735, 608 and 675, Mimeo No. 2636, released February 20, 1985. These tariff filings are designed to recover interstate equal access costs. For purposes of this filing, NYNEX used toll minutes to allocate equal access costs between the jurisdictions.

[24] For purposes of this estimate, access minutes are to be measured in the manner prescribed for application of the interstate carrier common line charge. All AT&T, and other common carrier (OCC) minutes are to be included. BOC interexchange traffic would be excluded. Feature Group D access minutes would be limited to traffic using equal access facilities. Toll minutes should be measured based on the number of intrastate and interstate toll minutes billed by all carriers providing

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equal access costs and for network reconfiguration costs is to be stated separately under each of these four approaches. All of this information is to be provided for the period 1983 through 1990. This information is to be filed with the Secretary, Federal Communications Commission on April 22, 1984.[26] The BOCs are to serve copies of this information on the Joint Board members and staff listed in Attachment C.

IV. Ordering Clauses

30. Accordingly, the Joint Board RECOMMENDS, That the Commission adopt the interim revisions to Part 67 of the Commission's rules set forth in Attachment D.[26]

31. Comments and the data requested herein are to be filed with the Secretary, Federal Communications Commission on April 22, 1985. Replies are to be filed May 13, 1985.[27]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment A—Procedures for the Allocation of Account 645 [1]

The expense in this Account is first assigned to the following categories based on an analysis of actual local commercial work functions:

(1) Coin Collection and Administration.
(2) Customer Payment and Collection.
(3) Toll Inquiry Service.
(4) Interexchange Access Service.
(5) Other Commercial Service.
(a) Local Service.
(b) Directory.
(c) TWX.
(d) Private Line.
(e) Toll.

(a) *Coin Collection and Administration* includes all costs related to coin collection and administration as determined by an analysis of the work performed for this function.

Coin Collection and Administration expenses are allocated among the operations in proportion to the jurisdictional assignment of coin telephone revenue.

(b) *Customer Payment and Collections* includes the cost (as determined by an analysis of work functions) of customer payment and collection activities, excluding interexchange access service and coin collection. These costs are subdivided into the following five categories on the basis of current billings related to these services and for which collection and customer payment activities are performed (excluding interexchange access and coin collection service):

(1) Local Service.
(2) Directory Advertising.
(3) TWX.
(4) Private Line.
(5) Toll.

Local Service costs are allocated between the intrastate and interstate jurisdictions in the same proportion as (e)(1).

The costs in the remaining subcategories are allocated on the basis of the current billings for each service for which collection and customer payment activities are performed.

(c) *Toll Inquiry Service* includes the cost of handling customer inquiries related to intrastate and interstate toll service.

Toll Inquiry Service costs are allocated between the jurisdictions on the basis of the relative number of toll related inquiries.

(d) *Interexchange Access Service* includes the cost of service order processing and other activities related to the provision of interexchange access service to interexchange carriers and resellers.

Interexchange Access Service costs are allocated between the jurisdictions in proportion to the billing for access service, excluding billings for subscriber line charges.

(e) *Other Commercial Service* costs include all costs not assigned to Categories (a) through (d), such as service order negotiation and processing for local, private line, TWX, toll carrier subscription services and directory advertising activities. The costs in this category are subdivided into the following subcategories based on an analysis of actual work functions, with all costs not specifically attributable to the other subcategories included in Local Service:

(1) *Local Service* includes all costs associated with the provision of basic and other local service excluding customer payment and collection costs and costs associated with coin collection and administration. This subcategory is further divided into the following service subcategories based on the relative number of users of these subcategories:

(i) Basic Service includes the provision of access to the switched public network.

Basic Service costs are apportioned to interstate in the same proportion as Category 1.33 Outside Plant.

(ii) Other Local Service includes costs associated with the provision of local services that are not essential for a customer to obtain access to the public switched network such as customer calling service and local network usage.

Other Local Service costs are allocated to the intrastate jurisdiction.

(2) *Directory Advertising* costs are assigned to the intrastate jurisdiction.

(3) TWX costs are allocated between the intrastate and interstate jurisdictions on the basis of the relative number of sent paid and received collect TWX connections billed by the company.

(4) *Private Line* costs are allocated between the jurisdictions in proportion to billings for private line service excluding billings for interexchange access.

(5) *Toll* costs include the costs associated with the provision of carrier designation service to customers.

Toll costs are allocated between the jurisdictions in proportion to the usage on equal access facilities.

Attachment B—Procedures to Allocate Account 645: [2]

The expense in this Account for each study area is first segregated on the basis of an analysis of job functions into the following categories: Coin Collection and Administration, Customer Payment and Collection, Service Order Processing Expense, Billing Inquiries, and Interexchange Carrier Service Orders.

(a) *Coin Collection and Administration* includes expenses incurred for collection and counting of money obtained from public or semi-public phones. It also includes expenses incurred for required travel, coin security, checking the service ability of the phones, etc.

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interexchange service including AT&T, the OCCs and the BOCs (with respect to intra-LATA toll service.)

[25] The BOCs are presently filing certain information concerning equal access and network reconfiguration costs with the Commission in the context of other proceedings, although that information is substantially less detailed and more limited in scope than the material which we are requesting in this *Order*. To the extent there is overlap, we are asking all of the regional Bell holding companies to provide complete responses to this information request in order to facilitate staff analysis.

[26] This recommendation is adopted pursuant to section 4(i) and (j), 221, and 410 of the Communications Act, as amended, 47 U.S.C. 154 (i) and (j), 221, and 410.

[27] The comments and replies as well as the information concerning Account 645 and 662 costs and equal access and network reconfiguration costs are to be served on the Joint Board members and staff listed in Attachment C.

[1] This is the first of two plans for the separations treatment of Account 645 which we have attached to this *Order* to facilitate analysis of these issues by interested parties. Inclusion of these summaries should not be interpreted as suggesting that the Joint Board supports either of these approaches or wishes to exclude consideration of other options.

[2] *See* Attachment A at footnote 1 *supra*.

Coin Collection and Administration expenses are assigned between interstate and state on the basis of sent paid coin revenue.

(b) *Customer Payment and Collections* includes expenses incurred in public phone centers where customers pay their bills. It also includes commissions paid to collection agencies and to payment agencies (who receive payment on customer accounts).

Customer Payment and Collection expenses is apportioned between interstate and state operations on the basis of the ratio of interstate revenues to total revenues with regards to which the local company performs billing and collection functions.

(c) *Service Order Processing* includes the expense of the Business and Residence Service Centers that receive and process customers' order for service, and customers' inquiries regarding their service. Since these expenses are incurred due to customer initiated telephone contacts, these costs are separated on the basis of contacts.

Service Order Processing expenses is first segregated on the basis of relative number of contacts into the following: directory advertising, state private line, interstate private line, and all other (largely local telephone service orders).

(1) Directory advertising is assigned to the exchange operations.

(2) State private line is assigned to state operations.

(3) Interstate private line is assigned to interstate operations.

(4) All other expenses (largely related to local telephone service orders) are assigned to the state operations.

(d) *Billing Inquiry* includes expenses of the Business and Residence Service Centers related to handling customer billing inquiries. These costs will be allocated directly based on actual contacts.

Billing inquiries are first segregated based on the relative number of contacts into the following categories: interstate message toll, state message toll, interstate private line, state private line, and all others.

(1) The expenses associated with interstate message toll are directly assigned to the interstate jurisdiction.

(2) The expenses associated with state message toll are directly assigned to state toll operations.

(3) The expenses associated with interstate private line are directly assigned to interstate operations.

(4) The expenses associated with state private line are directly assigned to state operations.

(5) The expenses associated with all the other categories are assigned to state operations.

(e) *Interexchange Carrier Service Orders* includes the expenses of receiving and processing interexchange carriers' orders for lines and their inquiries about lines. Interexchange carrier service order expense is further segregated between: interstate private line, state private line and message lines.

(1) Interstate private line expense is assigned to the interstate operations.

(2) State private line expense is assigned to the state operations.

(3) Message line expenses are apportioned between the state and interstate operations on the basis of the study area access minutes for message service.

Attachment C

Joint Board Members

Chairman Mark S. Fowler, Federal Communications Commission, 1919 M Street NW., Room 814, Washington, D.C. 20554

Commissioner Henry M. Rivera, Federal Communications Commission, 1919 M Street NW., Room 822. Washington, D.C. 20554

Commissioner Mimi Weyforth Dawson, Federal Communications Commission, 1919 M Street NW., Room 826, Washington, D.C. 20554

Commissioner Marvin R. Weatherly, Alaska Public Utilities Commission 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Chairman Edward F. Burke, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Commissioner Edward P. Larkin, New York Public Service Commission, 400 Broome Street, New York, New York 10013

Commissioner Edward B. Hipp, North Carolina Utilities Commission, Box 991, Raleigh, North Carolina 27602

Federal-State Joint Board Staff

Ronald Choura, Chairman, Federal-State Joint Board Staff, Michigan Public Service Commission, 6545 Mercantile Way, P.O. Box 30221, Lansing, Michigan 48909

Commissioner Kathleen Whiteaker, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, Alaska 99501 (Use Express Mail or Courier Service)

Elton Calder, Georgia Public Service Commission, 244 Washington Street SW., Atlanta, Georgia 30334

Robert E. Osborn, Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319

Guy E. Twombly, Maine Public Utilities Commission, State House, Station 18, Augusta, Maine 04330

Paul Popenoe, Jr., California Public Utilities Commission, 350 McAllister Street, San Francisco, California 94102

Timothy J. Devlin, Deputy Director, Auditing and Financial Analysis Department, Florida Public Service Commission, 101 East Gaines Street, Tallahassee, Florida 32301

Hugh L. Gerringer, Public Staff—NCUC, Communications Division, Box 991, Raleigh, North Carolina 27602

Jim Lanni, Rhode Island Public Utilities Commission, 100 Orange Street, Providence, Rhode Island 02903

Allan Bausback, New York Public Service Commission, 3 Empire State Plaza, Albany, New York 12223

Gary A. Evenson, Director, Communications Bureau, Utility Rates Division, Public Service Commission, P.O. Box 7864, Madison, Wisconsin 53707

Karen L. Hochstein, Assistant Director, Congressional and Public Relations, National Association of Regulatory Utility Commissioners, 1102 ICC Building, P.O. Box 684, Washington, D.C. 20044

Claudia R. Pabo (4 copies), Acting Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, 1919 M Street NW., Robm 544, Washington, D.C. 20554

Attachment D

1. The Joint Board recommends amending § 67.365(a)(1)(i) of the Commission's Rules to read as follows:

§ 67.365 [Amended]

(a) * * *

(1) * * *.

(i) In the case of study areas for which the American Telephone and Telegraph Co. (AT&T) subscribes to the billing inquiry service offered by the local exchange company, message toll expense is apportioned between state toll and interstate toll operations on the basis of the relative number of business office contacts relating to state toll and interstate toll messages. In the case of study areas for which AT&T begins to handle its own billing inquiries, the relative number of business office

contacts relating to state toll and interstate toll messages is to be frozen at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service. In the case of study areas for which AT&T begins to handle its own billing inquiries before May 31, 1985, the frozen factor described above will remain in effect through this date. For these study areas, beginning June 1, 1985, the frozen factor is to be reduced by 1/24th each month for twelve consecutive months or until adoption of permanent allocation procedures for Account 645, whichever comes first. In the case of study areas for which AT&T begins to handle its own billing inquiries after May 31, 1985, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the level described above. Beginning on the date on which AT&T begins to perform its own billing inquiry service for that study area, the frozen factor will be reduced by 1/24th each month for twelve consecutive months or until adoption of permanent allocation procedures for Account 645, whichever comes first.

[FR Doc. 85-9021 Filed 4-12-85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 72
Monday, April 15, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Agreement Regarding Activities of the Department of the Army at Fort Leonard Wood, MO

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: This notice provides information about and invites comments on a proposed Programmatic Memorandum of Agreement that provides for the development of a Preservation Plan for the identification, evaluation, and treatment of historic and cultural properties at Fort Leonard Wood, Missouri.

DATE: Comments must be sumitted on or before May 15, 1985.

ADDRESS: Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 803, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas F. King, Director, Office of Cultural Resource Preservation, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave, N.W., Room 803, Washington, D.C. 20004.

SUPPLEMENTARY INFORMATION: The Council proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of its regulation (36 CFR Part 800) with the Department of the Army and the Missouri State Historic Preservation Officer. The proposed Agreement establishes standards and a requirement for a Preservation Plan at Fort Leonard Wood, which will coordinate the management of historic and cultural properties with the activities of the Army on the Fort. The Army's responsibilities at the Fort pursuant to section 106 of the National Historic Preservation Act will be fulfilled by implementation of the proposed Agreement. Interested parties are encouraged to obtain a copy of the proposed Agreement from the Council and submit comments.

Dated: April 9, 1985.

John M. Fowler,

Deputy Executive Director.

[FR Doc. 85-8969 Filed 4-12-85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 85-004]

Trichina Enzyme Immunoassay Method

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Food Safety and Inspection Service is announcing a public meeting to provide detailed information on the Agency's recently developed trichina enzyme immunoassay method.

DATE: April 18, 1985 from 8:00 a.m. until 4:30 p.m.

ADDRESS: U.S. Department of Agriculture, Room 107A Administration Building, 14th and Independence, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Jack C. Leighty, Director, Pathology and Epidemiology Division, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, BARC East, Building 318-C, Beltsville, MD 20705, (301) 344-2460.

SUPPLEMENTARY INFORMATION: A written synopsis of information presented at the meeting will be available. To obtain a copy, write or call Dr. Alan R. Post, Office of the Deputy Administrator, Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 475-3658.

Done at Washington, DC on April 9, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-8944 Filed 4-12-85; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Establishment of Purchase Units and Change in Boundary of Ouachita National Forest

Correction

In FR Doc. 85-1722 appearing on page 3004 in the issue of Wednesday, January 23, 1985, make the following corrections:

1. In the second column, in the first complete paragraph, in the first line, "invested" should read "vested".

2. Also in the second column, below *Ashley County*, in the eighth line, "29 links" should read "28 links".

3. In the third column, below *McCurtain County*, insert a sixth line to read "Containing in aggregate 27.00 acres more or less."

BILLING CODE 1505-01-M

Soil Conservation Service

ALTA Dutch School RC&D Measure, CA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 94616; telephone (916) 449-2848.

NOTICE

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Alta Dutch School RC&D Measure, Placer County, California.

The environmental assessment of this Federal action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Eugene E. Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for the installation of critical area treatment facilities. The planned works of improvement include post and timber retaining walls and vegetation to stabilize eroding slopes near the Alta Dutch School.

The Notice of a Finding of No Significant Impact has been forwarded to the Environmenal Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Eugene E. Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616 (916) 449–2848. An environmental assessment and finding of no significant impact has been prepared and sent to various Federal, State and local agencies and interested parties. A limited number of copies of the finding of no significant impact are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Paul H. Calverley,

Deputy State Conservationist.

March 29, 1985.

[FR Doc. 85–8988 Filed 4–12–85; 8:45 am]

BILLING CODE 3410-16-M

Yamhill County Roadside Critical Area Treatment RC&D Measure, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 202(2)(c) of the National Environmental Policy Act of 1980; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines. (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yamhill County Roadside Critical Area Treatment RC&D Measure, Yamhill County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 S.W. Third Avenue, 16th Floor, Portland, Oregon 97204, telephone 503–221–2751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack P. Kanalz, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to significantly reduce soil erosion on certain Yamhill County roadsides and subsequent sediment deposition in streams and drainageways. The planned works of improvement include the installation of land shaping, 3,266 cubic yards of rock riprap, and planting vegetation to stabilize severe erosion on 12 sites adjacent to Yamhill County roads.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack P. Kanalz.

No administrative action on implementation of the proposal will be taken until May 15, 1985.

(Catalog of Federal Domestic Assistance Program No. 10.901. Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Jack P. Kanalz,

State Conservationist.

April 4, 1985.

[FR Doc. 85–8950 Filed 4–12–85; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Georgia Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:30 p.m. and will end at 6:00 p.m. on May 17, 1985, at the Marriott Hotel Downtown, Courtland & International Boulevard, Atlanta Georgia. The purpose of the meeting is to discuss program plans for 1985.

Persons desiring additonal information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson John Ruffin, or Bobby Doctor of the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provision of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–9031 Filed 4–12–85; 8:45 am]

BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 3:30 p.m. on April 26, 1985, at U.S. Commission on Civil Rights, 230 S. Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is to develop plans for future projects and programs.

Persons desiring additonal information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353–7371.

The meeting will be conducted pursuant to the provision of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–9032 Filed 4–12–85; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda for Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:30 p.m. on April 30, 1985, at the Walthall Hotel, 225 East Capitol Street, the Longstreet room, Jackson, Mississippi. The purpose of the meeting is to hold a community forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Mary Ramberg, or Bobby Doctor of the Southern Regional Office at (404) 221–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9033 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Mississippi Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 8:30 a.m. and will end at 6:00 p.m., on May 28, 1985, at the Walthall Hotel, 225 East Capitol Street, the Longstreet Room, Jackson, Mississippi. The purpose of the meeting is to hold a community forum.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Mary Ramberg, or Bobby Doctor of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9034 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 9:00 p.m., on April 30, 1985, at City Hall, 126 Daniel Street, City Council Chambers, Portsmouth, New Hampshire. The purpose of the meeting is to conduct a community forum on civil rights issues in Portsmouth.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Andrew Stewart, or Jacob Schlitt of the New England Regional Office at (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9035 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 7:00 p.m., and will end at 9:00 p.m., on May 3, 1985, at Steven Walther's Law Firm Office, 3500 Lakeside Drive, (Lakeside Professional Plaza, 2nd floor), the Conference Room, Reno, Nevada. The purpose of the meeting is to discuss the Committee's proposed casino employment project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Susan DeLuca, or Philip Montez of the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9036 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 4:00 p.m., on May 2, 1985, at the AMEAC Hotel, 2910 Yale Boulevard, S.E., Albuquerque, New Mexico. The purpose of the meeting is to plan and discuss affirmative action issues in higher education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Roberto Mondragon, or J. Richard Avena of the Southwestern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9037 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

North Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1:00 a.m. and will end at 4:00 p.m., on April 30, 1985, and May 1, 1985 at the Adam's Mark Hotel, 555 South McDowell Street, the Parlor Room, Charlotte, North Carolina. The purpose of the meeting is to discuss program plans for 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Donald Horowitz, or Bobby Doctor in the Southern Regional Office (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9038 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 9:30 a.m. and will end at 2:30 p.m. on April 27, 1985, at the Clarion Hotel, 141 W. 6th Street, the Warren Room, Cincinnati, Ohio. The purpose of the meeting is to review plans for a proposed project on equity issues in education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, director of the Midwestern Regional Office, at (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9039 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 1:00 p.m. and will end at 3:00 p.m. on April 29, 1985, at Channel 10, 111 Doname, the Conference Room, Providence, Rhode Island. The purpose of the meeting is to meet with representatives of the Providence Human Relations Commission, the Rhode Island Commission for Humnn Rights and the Community Relations Service on current programs and developments; and to review the draft of its redistricting report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Dorothy Zimmering, or Jacob Schlitt in the New England Regional Office (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9040 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 3:30 p.m. and will end at 6:00 p.m., on May 8, 1985, at the Marriott Hotel-Nashville, 1 Marriott drive, The Knoxville Room, Nashville, Tennessee. The purpose of the meeting is to discuss program plans for 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson James Blumstein or Bobby Doctor of the Southern Regional Office at (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 5, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9041 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:30 p.m., on May 9, 1985, at the Hilton Inn, 2401 E. Lamar Boulevard, Arlington, Texas. The purpose of the meeting is to discuss program plans for 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Adolfo Canales, or J. Richard Avena of the Southeastern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9042 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 9:30 p.m., on May 10, 1985, at the Hilton Inn, 2401 E. Lamar Boulevard, Arlington, Texas. The purpose of the meeting is to hold a briefing on housing issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Adolfo Canales, or J. Richard Avena of the Southwestern Regional Office at (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-9043 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and will end at 10:00 p.m., on May 2, 1985, at the Howard Johnson Motor Lodge, 122 W. South Temple Street, the Uintah Room, Salt Lake City, Utah. The purpose of the meeting is to discuss plans for future projects and review of report draft.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson Denzer Burk, or William Muldrow of the Rocky Mountain Regional Office at (303) 844-2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 9, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 9044 Filed 4-12-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare an EIS/EIR for a Regulatory Permit Action To Excavate and Place Fill in a Large Tidal Marsh Near the Town of Antioch, CA, Contra Costa County, About 40 Miles East of San Francisco, CA, in the Sacramento-San Joaquin Delta

AGENCY: Sacramento District, Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare EIS/EIR.

SUMMARY: The EIS process was started when Chiltern Development Company submitted an application for a Department of the Army Section 404 and Section 10 permit to construct a large marina complex and residential/industrial development, adjacent to the San Joaquin River.

The proposed project will be constructed on a 483 acre site. The project will include development in 160 acres of tidal marsh. About 650,000 cubic yards of wetland material will be dredged to accommodate construction of a thousand berth marina; most the fill material will be used at the upland sites to create areas for hotels, offices, homes, restaurants and roads. Some of the fill will be used in the marsh to elevate ground level to create sites for buildings. About 200,000 cubic yards of the fill will be used to create berm islands that will serve as a breakwater for the marina.

The development will occur in six different phases. Phase I will include dredging of the marsh to obtain the fill material. Phase I construction will also include construction of roads and area development for the light industrial sites. Part of the industrial sites will be developed in the wetland. Phase II will include development of the marina, one hotel and restaurant, and will also include the beginning of construction of the residential and recreational sites. Construction will continue on the marina during Phase III which will also include development of additional residential buildings. Phase IV will include construction of the yacht club. Also during Phase IV, final development of the industrial sites will begin. Phase IV will also include continuing development of office and residential buildings. Phase V and VI will include final construction of office, restaurants, hotels and the residential development. During the construction of the phases I through VI, the contractor will be developing open space recreation areas (berm islands) that will provide wildlife habitat.

At present, the 483 acre site is undeveloped. The property has been zoned for heavy industrial use by the City of Antioch; heavy industrial includes the marina development.

The project will destroy most of the 168 acres of shallow water wetland. This type of wetland is indigenous to the Sacramento-San Joaquin Delta, and was the predominant, riparian habitat, prior to development along the shores of the San Joaquin River. The wetland provides habitat for a variety of wildlife species. Mitigation for loss of the wetland and other ecological impacts will be covered in the EIS/EIR.

Alternatives. The following alternatives are being considered:

1. Project construction at alternate site.
2. Reduced scope of project.
3. No development in the wetland.
4. Change in siting of development features.

Other alternatives identified during the scoping process will also be considered.

Significant issues that have been indentified to date that will be discussed in the EIS:

1. Ecological resources.
2. Hydrology and water quality.
3. Social and economic effects.
4. Impacts on wildlife habitat and endangered species.

Other issues identified during the scoping will be discussed in the EIS.

Currently, the Sacramento District has distributed a public notice and a scoping notice. The notice was sent to all known interested parties and requests comments on the scope of the EIS.

Scoping Process

March 5, 1985: Public Scoping Notice: Written comments will be received until April 15.

April 3, 1985: A public hearing will be held by the Planning Commission in City Hall, Antioch.

April 9, Agency Scoping Meeting.

Other environmental review and consultation requirements which will be conducted concurrently with the NEPA process includes Sections 401 and 404 of the Clean Water Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Endangered Species Act, and Executive Order 11988 on Flood Plain Management.

We estimate the *draft* EIS/EIR will be made available to the public on June 1, 1985.

Environmental Impact Planning Corporation (EIP) has been selected by the Corps to prepare the EIS/EIR for the Chiltern Development Corporation. Questions concerning the proposed actions and EIS/EIR should be directed to Tom Coe, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814 (916) 440–2541, (FTS 448–2541).

Albert E. McCollam, Jr.,

Lieutenant Colonel, Corps of Engineers. Acting District Engineer.

[FR Doc. 85–8954 Filed 4–12–85; 8:45 am]

BILLING CODE 3710-GH-M

DEPARTMENT OF EDUCATION

Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages

AGENCY: Department of Education.

ACTION: Notice of proposed list of critical foreign languages.

SUMMARY: The Secretary of Education (the Secretary) proposes a list of foreign languages which have been determined to be critical to national security, economic, and scientific needs. Publication of this list is required by section 212(d) of Title II of the Education for Economic Security Act (EESA), Pub. L. 98–377, Stat. 1282 (20 U.S.C. 3972(d)).

DATES: Comments must be received on or before April 15, 1985.

ADDRESS: Comments should be addressed to Dr. Richard T. Thompson, Center for International Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 3923, ROB#3, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, (202) 245–2146 or at the address above.

SUPPLEMENTARY INFORMATION:

Background

Section 212(d) of Title II of the Education for Economic Security Act (EESA), Pub. L. 98–377, 98 Stat. 1282 (20 U.S.C. 3972(d)) requires the Secretary to publish a list of foreign languages which have been determined to be critical to national security, economic, and scientific needs.

The list has been developed by the Secretary in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, and the Director of the National Science Foundation, as required by section 212(d).

Under section 207(c) of Title II, State agencies for higher education must use a percentage of the funds they receive under Title II for cooperative programs for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages. Similarly, under section 212(b)(1), the Secretary makes grants for programs of natioal significance in mathematics and science instruction, computer learning, and foreign language instruction in critical languages. In addition, under section 212(c), the Secretary must use 25 percent of the funds to make grants to institution, of higher education for the improvement and expansion of instruction in critical foreign languages. Also, under the proposed regulations for the Secretary's Discretionary Program (published as an NPRM on November 28, 1984, 49 FR 46761), the Secretary would be authorized to choose, as annual funding priorities, particular languages from this list.

Language teaching, learning, and research are critical to national security, economic, and scientific needs. The

languages on this list are included after considering:

—The national security interest in diplomatic and military situations, or strategic geographic locations;
—The economic security interest of the United States in our economic ties with other nations; and
—Scientific inquiry and research which have significant world-wide or regional importance.

List of Critical Foreign Languages

Achinese
Acoli
Afrikaans
Akan (Twi-Fanta)
Albanian
Amharic
Arabic (all dialects)
Armenian
Assamese
Aymara
Azerbaijani
Bahasa Indonesia
Balinese
Baluchi
Bambara
Bashkir
Bassa
Bemba
Bengali
Berber (all languages)
Bhojpuri
Bikol
Bulgarian
Burmese
Buryat
Byelorussian
Cambodian (Khmer)
Catalan
Chinese (all dialects)
Chukwe
Chuvash
Czech
Danish
Dari (Afghan Persian)
Dinka
Dutch
Efik
Eskimo
Estonian
Ewe-Fon
Fijian
Finnish
French
Fulani
Ga
Ganda
Gbeya
Georgian
German
Greek, Modern
Guarani
Gujarati
Haitian Creole
Hausa
Hebrew, Modern
Hindi
Hmong
Hungarian
Iban (Sea Dayak)
Icelandic
Igbo
Ilocano
Irish
Italian
Japanese
Javanese
Kamba
Kannada
Kanuri
Kashmiri
Kazakh
Kikuyu
Kirghiz
Kongo
Korean
Kpelle (Guerze)
Krio
Kumaoni
Kurdish
Lahnda
Lamani
Latvian
Lithuanian
Luba
Macedonian
Madurese
Maithili
Malagasy
Malayalam
Manchu
Mandekan (Bambara)
Manipuri
Marathi
Mayan (all languages)
Mende
Minangkabao
Mixtec
Mongolian
Mordvin
Moro (Massi)
Mundari-Ho
Nahuatl
Neo-Melanesian
Nepali
Newari
Ngala (Bangala)
Norwegian
Nyanja (Chewa)
Oriya
Oromo (Galla)
Papiamentu
Pashto
Persian (Farsi)
Polish
Polynesian
Portuguese
Punjabi
Quechua
Rappang Buginese
Rumanian
Romany
Rundi
Russian
Rwanda (Ruanda)
Sango (Ngbandi, Yakoma)
Santali
Serbocroatian
Shona
Sindhi
Sinhalese
Slovak
Slovene
Somali
Songhai (Djerma)
Sotho
Spanish
Sunda
Swahili
Swedish
Tagalog
Tajik
Tamil
Tatar
Telugu
Temne
Thai-Lao
Tibetan
Tigrinya
Tiv
Toba Batak
Tsonga
Tungus
Turkish
Turkmen
Tuvin
Uigur
Ukrainian
Urdu
Uzbek
Vietnamese
Visayan (Cebuano; Hiligaynon-Ilonggo)
Wolof
Yakut
Yao
Yiddish
Yoruba
Yucatec
Zapotec
Zulu-Khosa

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed list of critical foreign languages. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted in response to this notice will be available for public inspection, during and after the comment period in Room 3923, ROB 3, 7th & D Streets SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m. Monday through Friday of each week except Federal holidays.

(20 U.S.C. 3972(d))

(Catalog of Federal Domestic Assistance Number 84.168F for the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages)

Dated: April 8, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-9015 Filed 4-12-85; 8:45 am]
BILLING CODE 4000-01-M

National Advisory Committee on Accreditation and Institutional Eligibility; Public Meeting

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

DATES: April 29, 30 and May 1, 1985, 8:30 a.m. to 4:30 p.m., local time. Requests for oral presentations before the Committee must be received on or before April 23, 1985. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

ADDRESS: Barnard Auditorium, Horace Mann Learning Center, 400 Maryland Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Morris L. Brown, Director, Division of Eligibility and Agency Evaluation, 400 Maryland Avenue, SW (Room 3030, ROB-3), U.S. Department of Education, Washington, D.C. 20202 (202/245-9703).

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by Section 1205 of the Higher Education Act as amended by Pub. L. 96-374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting both the recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs. The meeting on April 29–May 1 will be open to the public. The Advisory Committee will review petitions and interim reports relative to initial or continued recognition by the Secretary of Education. The Committee will also discuss select policy issues.

On April 29, the following policy issues are scheduled for discussion:

May recognition by a voluntary professional body engaged in recognition of accrediting agencies be accepted as having fulfilled all or part of the prescribed criteria for recognition by the Secretary of Education.

Should the Secretary of Education limit the scope of recognition of specialized accrediting agencies to only free-standing institutions and to units or programs that are not located within institutionally accredited institutions.

Possible action to be taken regarding a list of institutions that had limitation, suspension, or termination action during fiscal year 1984 [with accompanying identification of accrediting agency(ies) involved for each institution].

Department of Education options for action on institutional eligibility of foreign medical schools.

Options available to U.S. postsecondary educational institutions

with respect to access to accrediting agencies.

On April 30 and May 1, the Advisory Committee will review petitions from the following accrediting and State approval agencies relative to initial or continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties. The agencies having petitions pending before the Committee are:

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. *Petition for Initial Recognition*

Commission on Opticianry Accréditation

B. *Petitions for Continued Recognition*

Accrediting Bureau of Health Education Schools

American Academy of Microbiology, Committee on Postdoctoral Educational Programs

American College of Nurse-Midwives, Division of Accreditation

American Physical Therapy Association, Committee on Accreditation in Education

American Speech-Language-Hearing Association, Council on Professional Standards in Speech-Language Pathology and Audiology

Liaison Committee on Medical Education of the Council on Medical Education of the American Medical Association and the Executive Council of the Association of American Medical Colleges

National Association of Schools of Theatre, Commission on Accreditation

National Association of Trade and Technical Schools, Accrediting Commission

National Home Study Council, Accrediting Commission

Western Association of Schools and Colleges, Accrediting Commission for Schools

Petitions for Recognition as State Agencies for the Approval of Public Postsecondary Vocational Education

A. *Petitions for Continued Recognition*

Missouri State Board of Education

New Jersey State Board of Education

Utah State Board of Vocational Education

Petition for Recognition as a State Agency for the Approval of Nurse Education

A. *Petition for Initial Recognition*

Maryland State Board of Examiners of Nurses

A portion of this meeting will be used by the Advisory Committee to make final recommendations to the Secretary on the interim reports of agencies reviewed under a special review procedure. The list of agencies whose interim reports were reviewed under the special procedure and a description of the procedure were published in the **Federal Register** in April 1985.

Requests for oral presentations before the Committee should be submitted in writing to Morris L. Brown (see "For Further Information Contact" for address). Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested. Requests should be received on or before April 23, 1985. Time constraints may limit oral presentations. All written materials will be considered by the Advisory Committee.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, 7th and D Streets, SW (Room 3030–ROB–3), U.S. Department of Education, Washington, D.C. 20202 from 8:00 a.m. to 4:30 p.m. (local time), Monday through Friday.

Signed at Washington, D.C. on April 9, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85–8924 Filed 4–12–85; 8:45 am]

BILLING CODE 4000–01–M

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before May 15, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 9, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Educational Research and Improvement

Type of Review Requested: New

Title: A Study of Local Implementation of Chapter 1 of the Education Consolidation and Improvement Act

Agency Form Number: G50–0P

Frequency: Non-recurring

Affected Public: State or local governments

Reporting Burden: Responses: 2,250; Burden Hours: 2,250

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The information will provide nationally representative data on the way districts implement Chapter 1 of the Education Consolidation and Improvement Act (ECIA) for use by Congress in its 1987 reauthorization hearings on ECIA of 1981. This study will collect information from local government officials, especially those involved with the Chapter 1 program at the district level.

Office of Educational Research and Improvement

Type of Review Requested: Extension
Title: Application for Grants Under Strengthening Research Library Resources Program
Agency Form Number: ED 502
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 100; Burden Hours: 1,600
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This application is used by major research libraries to apply annually on a competitive basis for grants under the Strengthening Research Library Resources Program, P.L. 89–329, as amended by the Education Amendments of 1980.

Office of Vocational and Adult Education

Type of Review Requested: Reinstatement
Title: Vocational Education Accountability Report
Agency Form Number: ED 576–4
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 53; Burden Hours: 4,611
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: The Vocational Education Act of 1963, as amended by P.L. 94–482, requires that any State desiring to receive funds under the Act submit an annual accountability report. It is important that this report be continued in FY 1985 and FY 1986 so that information on State accomplishments can be ascertained and program weaknesses can be identified and improved through technical assistance.

Office of Postsecondary Education

Type of Review Requested: Reinstatement
Title: Financial Status and Performance Reporting for International Education Programs
Agency Form Number: ED 1294
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 425; Burden Hours: 425
Recordkeeping Burden: Recordkeepers: 425; Burden Hours: 34

Abstract: This form is used to obtain information on the financial status and performance of grant recipients under International Education Programs. The information is used to determine program accountability and compliance with audit requirements.

Office of Postsecondary Education

Type of Review Requested: Extension
Title: Student Confirmation Report for the Federal Insured Student Loan Program
Agency Form Number: ED 1072
Frequency: Semi-annually
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions
Reporting Burden: Responses: 22,500; Burden Hours: 22,500
Recordkeeping Burden: Recordkeepers: 11,250; Burden Hours: 8,438

Abstract: The Student Confirmation Report for the Federal Insured Student Loan (FISL) Program is completed twice a year by postsecondary institutions and records information on the status of students who have Federal insured student loans outstanding.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Removal of Architectural Barriers to the Handicapped Program Financial Report
Agency Form Number: E20–6P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 57
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This financial report for the Removal of Architectural Barriers to the Handicapped Program, Section 607 of the Handicapped Act, Pub. L. 91–230, as amended, must be submitted by the State educational agencies to the Department at the termination of the grant.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Removal of Architectural Barriers to the Handicapped Program Application for Federal Assistance
Agency Form Number: E20–7P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden: Responses: 57; Burden Hours: 57
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This form is needed to enable State educational agencies (SEAs) to apply annually for grants under the Removal of Architectural Barriers to the Handicapped Program, Section 607 of the Handicapped Act, Pub. L. 91–230, as amended. An SEA must submit an application form to the Secretary in order to receive a grant. SEAs in turn make subgrants to local educational agencies and intermediate educational units.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Training Personnel for the Education of the Handicapped
Agency Form Number: E20–8P
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden: Responses: 885; Burden Hours: 885
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This form is used to collect data from grantees receiving funds under Section 634 of the Education of the Handicapped Act, Pub. L. 91–199, as amended. The data will be submitted annually to the Department for use in decision making and reporting.

[FR Doc. 85–9012 Filed 4–12–85; 8:45 am]
BILLING CODE 4000–1–M

DEPARTMENT OF ENERGY

National Petroleum Council Worldwide Refining Trends Task Group; Meeting

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in April 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Worldwide Refining Trends Task Group will address previous Council refining studies and evaluate refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its fifth meeting on Tuesday, April 30, 1985, starting at 9:00 a.m., in the Lubbock Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the Worldwide Refining Trends Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Discuss the individual study assignments of the Worldwide Refining Trends Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Worldwide Refining

Trends Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Worldwide Refining Trends Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Carolyn Klym, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on April 8, 1985.

William A. Vaughan,

Assistant Secretary, Fossil Energy.

[FR Doc. 85-9028 Filed 4-12-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-406-000, et al.]

Alamito Co. et al.; Electric Rate and Corporate Regulation Filings

April 10, 1985.

Take notice that the following filings have been made with the Commission:

1. Alamito Company

[Docket No. ER85-406-000]

Take notice that on April 1, 1985, Alamito Company (Alamito) tendered for filing Amendment No. 4 to the Tucson-San Diego Ten Year Power Sale and Interconnection Agreement. The purpose of Amendment No. 4 is to set forth new capitalization ratios and contract deemed capacity related to Springville Unit 1 during the Revised Phase Four Period of the Tucson-San Diego Ten Year Power Sale and Interconnection Agreement.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company

[Docket No. ER85-205-000]

Take notice that on February 28, 1985, Central Power and Light Company (CPL), submitted for filing a refund report pursuant to the Commission's Letter Order dated January 18, 1985. CPL submitted data that reflects the monthly overcollections for 1984, with interest calculated pursuant to the terms of the transmission service agreement, as agreed to by Houston Lighting and Power Company (HLP).

The refund amount is due $142,022.00. HLP has concurred with CPL's proposal to reimburse it for the overcharges plus interest through credits on HLP's bills for January and February, 1985.

Comment date: April 22, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Central and South West Services, Inc.

[Docket No. ER85-412-000]

Take notice that on April 2, 1985, Central and South West Services, Inc. ("CSWS") tendered for filing an Interim Loss Compensation Procedure for the Central and South West System Prior to Energy Management Program Implementation, on behalf of the four Central and South West Corporation Operating Companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company. The procedure establishes a method for handling transmission losses resulting from energy transfers among the four Operating Companies. CSWS requests that the procedure be made effective as of December 14, 1984 and, accordingly, requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utilities Commission of Texas. Copies of the filing are also available for inspection in the main office and the division offices of each of the CSW operating subsidiaries.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER85-407-000]

Take notice that on April 1, 1985, Florida Power Corporation (Florida) tendered for filing a Letter of Commitment dated March 25, 1985 providing for 10 MW of firm interchange service between Florida Power and the Sebring Utilities Commission. Florida Power states that the Letter of Commitment is executed pursuant to Service Schedule D of the Contract for Interchange Service dated February 1, 1980 between Florida Power and the Sebring Utilities Commission which contract is designated as Florida Power's Rate Schedule FERC No. 90. The Letter of Commitment is submitted for inclusion as a supplement to Service Schedule D.

Florida Power requests that the letter of Commitment be permitted to become effective April 1, 1985, and therefore, requests waiver of the sixty day notice requirements.

Copies of this filing have been served upon the Sebring Utilities Commission and the Florida Public Service Commission.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER85-413-000]

Take notice that on April 2, 1985, Idaho Power Company (Idaho) tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during February 1985, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company, Supplement 40
Sierra Pacific Power Company, Supplement 36
Portland General Electric Company, Supplement 33
Montana Power Company, Supplement 33
Los Angeles Water & Power Company, Supplement 23
Puget Sound Power & Light Company, Supplement 13
City of Burbank, Supplement 21
City of Glendale, Supplement 22
City of Pasadena, Supplement 20

Idaho requests an effective date of February 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Georgia Power Company

[Docket No. ER85-408-000]

Take notice that on April 1, 1985, Georgia Power Company (Georgia Power) tendered for filing Revised Tariff Sheet No. 16 to its FERC Electric Tariff, Original Volume No. 2. Georgia Power states that its current partial requirements tariff will terminate by its own terms on May 31, 1985, because it has not received service contracts from any customers for service after the date

as required by the tariff. The revised tariff sheet will extend the deadline for twelve months.

Georgia Power states that it has served copies of its filing on all of its partial requirements customers.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Orange and Rockland Utilities

[Docket No. ER85-381-000]

Take notice that on March 11, 1985, Orange and Rockland Utilities, Inc., submitted for filing a Certificate of Concurrence with regard to the notice of termination of Rate Schedule FERC No. 49 filed by Consolidated Edison Company of New York, Inc.

Comment date: April 18, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER85-410-000]

Take notice that on April 1, 1985, Pacific Power & Light Company (Pacific) an assumed business name of PacifiCorp, tendered for filing Exhibit A, Revision No. 8, dated October 29, 1984, to the Transmission Agreement (Pacific's Rate Schedule No. 123), between Pacific and Tri-State Generating and Transmission Association, Inc. (Tri-State).

Exhibit A to the Transmission Agreement dated February 25, 1976 is revised annually in accordance with Article 6(b) of this Agreement, specifying commitments for service for a three-year rolling period.

Copies of the filing were supplied to Tri-State and the Wyoming Public Service Commission.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company

[Docket No. ER85-414-000]

Take notice that on April 3, 1985, Tucson Electric Power Company (Tucson) tendered for filing a Short Term Energy Agreement between Tucson and Southern California Edison Company (Edison). The primary purpose of this Agreement is to provide the terms and conditions relating to the sale by Tucson and the purchase by Edison of energy between May 1, 1985 and midnight, April 30, 1986.

Tucson requests waiver of the Commission's notice requirements to allow an effective date of May 1, 1985.

Tucson states that copies of the filing were served upon Edison.

Comment date: April 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Washington Water Power Company

[Docket No. ER85-411-000]

Take notice that on April 2, 1985, the Washington Water Power Company (Washington) tendered for filing a Transmission Wheeling Tariff, Schedule 62. This tariff is related to transmission wheeling service for borderline customer loads provided only to the Bonneville Power Administration under a currently existing General Transfer Agreement. The tariff reflects a change in the method used to calculate the charges for this service. The provided change would increase revenues from transmission wheeling services provided to the Bonneville Power Administration by approximately $990,000 based on the 12-month period ending December 31, 1984.

Washington states that the proposed tariff is submitted for the purpose of compensating Washington for increases in its cost of capital, labor, materials, supplies and taxes.

A copy of the filing has been served upon the Bonneville Power Administration.

Comment date: April 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power & Light Company

[Docket No. ER84-576-000]

Take notice that on March 11, 1985, Wisconsin Power & Light Company submitted for filing a revised fuel clause increasing the base cost of fuel to that as was filed in ER84-576-000 and to correct a clerical error that was made in the compliance filing in Docket No. ER85-576-003.

WPL is hereby filing revised under bond tariff sheet Nos. 9.01, 9.21, 9.42 and 9.53. The only change from the corresponding sheets filed earlier in this docket is the fuel cost base update from 1.7330 ¢/kwh to 1.7637 ¢/kwh. The latter base cost is consistent with the rest of the revised under bond rates as filed December 3, 1984.

Beginning with the fuel adjustment clause factor applied to March 1985 wholesale billings, WPL will use the revised fuel cost base of 1.7637 ¢/kwh.

WPL will refund, without offset, January and February 1985 overcollections with interest from the date of customer payment to the date of refund. That refund will be accomplished on or before March 29, 1985. Interest will be calculated in accordance with the provisions of Section 35.19a of FERC Regulations.

Customers who have not paid February's bill will be encouraged to pay the corrected amount and avoid the refunding process.

Within 30 days of the refund WPL will submit to FERC a summary of the amounts billed, the corrected billings, the amounts refunded and the interest calculations for each affected customer.

Comment date: April 24, 1985, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8961 Filed 4-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-314-000, et al.]

Bella Rosa Winery et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Bella Rosa Winery, Inc.

[Docket No. QF85-314-000]

April 5, 1985.

On March 25, 1985, Bella Rosa Winery, Inc. (Applicant), of 5700 Stockdale Highway, Suite 605, Bakersfield, California 93309 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located two miles south of the City of Delano, in Kern County, California. The electric power production capacity will be 5.5 megawatts. The primary energy source will be biomass in form of orchard and vineyard prunings. Natural gas will be used for combustion chamber startup (preheating) and will amount to no more than two percent of the total annual fuel consumption.

2. Calaveras County Water District

[Docket No. QF85-315-000]

April 5, 1985.

On March 28, 1985, Calaveras County Water District (Applicant), of P.O. Box 846, 427 E. Charles Street, San Andreas, California 95249 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5.7 megawatt hydroelectric facility will be located on Highland Creek in Tuolume County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption for licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Flow Manager's Partnership (BLM Property Windfarm

[Docket No. QF85-325-000]

April 9, 1985.

On March 29, 1985, Flow Managers' Partnership (Applicant), of 1183 Quarry Lane, Pleasanton, California 94566 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.5 megawatt windfarm facility wil be located in Kern County, California. The facility will consisit of 30 wind turbine generators each with a rating of 150 kilowatts.

4. Pyropower Corporation, et al.

[Docket No. QF85-324-000]

April 10, 1985.

On March 29, 1985, Pyropower Corporation, *et al.* (Applicant), of One River Road, Schenectady, New York 12345 and 5120 Shoreham Place, San Diego, California 92122, respectively, submitted a joint application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal consitutes a complete filing.

The proposed topping-cycle congeneration facility will be located at Shell Oil Company's Mount Poso site in Bakersfield, California. The facility will consist, in part, of a circulating atmospheric fluidized bed combustor-boiler unit and an extraction-condensing steam turbine/generator unit. The net electric power production capacity of the facility will be 49.9 MW. The electric energy will be sold to Pacific Gas and Electric Company. The primary energy source will be coal and/or petroleum coke.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8941 Filed 4-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-33-002]

El Paso Natural Gas Co.; Motion for Leave To File Revised Tariff Sheets

April 10, 1985.

Take notice that on April 3, 1985, El Paso Natural Gas Company ("El Paso"), pursuant to Rule 212 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, filed a motion for leave to file revised tariff sheets in substitution for the counterpart tariff sheets filed March 1, 1985 at Docket No. TA85-2-33-000 as part of El Paso's regularly scheduled semi-annual purchased gas cost adjustment ("PGA") to its rates.

El Paso states that it estimated it would overrecover the Account 191 balance upon which its October 1, 1984, surcharge was calculated by some $12,458,338. El Paso asked the Commission to waive its Regulations in order to allow this early transfer of an estimated credit to Account 191. The Commission's suspension order issued March 29, 1985 at Docket Nos. TA85-2-33-000 and TA85-2-33-001 (PGA85-2) granted, by waiver of its Regulations and El Paso's tariff, El Paso's request to reduce the surcharge in this PGA by the estimated credit that would otherwise impact El Paso's October 1, 1985, PGA. The Commission stated, however, that it would require El Paso to assume the risk of any underrecovery of its gas costs associated with the proposal. Furthermore, the Commission stated that the burden would be on EL Paso to justify recovery of any underrecovered amounts. El Paso's latest estimate indicates that the actual overrecovery it will experience could be some $600,000 less than what it estimated when it filed the March 1, 1985 PGA.

Accordingly, El Paso has requested that the Commission grant El Paso leave to file and place into effect the revised tariff sheets tendered herewith to be effective April 1, 1985 in substitution for their respective counterparts, made effective on April 1, 1985. The resulting surcharge is $0.0676 in lieu of $0.0662 as initially filed. When combined with the base gas cost reduction of $0.0246, the net PGA reduction is $0.1015 in lieu of a reduction of $0.1029.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before April 17, 1985. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8962 Filed 4-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-129-000]

El Paso Natural Gas Co.; Notice of Tariff Filing

April 10, 1985.

Take notice that on April 5, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Section 4 of the Natural Gas Act and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission ("Commission"), the following revised tariff sheets to its proposed Original Volume No. 1-A FERC Gas Tariff:

Original Volume No. 1-A

First Revised Sheet No. 20
First Revised Sheet Nos. 101 and 102

El Paso states that it has filed a transportation tariff which, when made effective by the Commission, will permit El Paso to provide interruptible transportation service for and-users pursuant to Section 157.209 of the Commission's Regulations. The rates reflected in said transportation tariff were established by the Stipulation and Agreement in settlement of Rate Proceedings which was approved by the Commission by letter order dated May 31, 1983, at Docket No. RP82-33-000, *et al.* Subsequent to the effectiveness of said rates, El Paso on December 31, 1984 at Docket No. RP85-58-000, filed a notice of rate change for, among other things, transportation and other related services which rates are reflected on Sheet No. 1-D.2 of El Paso's Third Revised Volume No. 2 Tariff. By order issued January 31, 1985, at Docket No. RP85-58-000, and letter order dated March 5, 1985, at Docket No. RP85-58-002, the Commission accepted said tariff sheet for filing and suspended its effectiveness until July 1, 1985, subject to refund. Therefore, El Paso filed revised tariff sheets to its proposed Original Volume No. 1-A Tariff to reflect those rates proposed at Docket No. RP85-58-000 to be effective July 1, 1985.

El Paso requested that waiver be granted of all applicable rules and regulations of the Commission as may be necessary to permit the revised tariff sheets tendered herewith to become effective as of July 1, 1985.

El Paso states that copies of the instant filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file the motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Captiol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this Chapter.

All such notions or protests should be filed on or before April 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8963 Filed 4-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-130-000]

El Paso Natural Gas Co.; Notice of Tariff Filing

April 10, 1985.

Take notice that on April 5, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Section 4 of the Natural Gas Act and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission ("Commission"), the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and proposed Original Volume No. 1-A:

First Revised Volume No. 1

First Revised Sheet No. 2
First Revised Sheet No. 10

Original Volume No. 1-A

Original Sheet Nos. 1 through 400

El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective, will implement a separate transportation tariff for El Paso's interstate pipeline system, establish an initial end-user transportation rate schedule (TEU-1) and make reference to the transportation tariff in El Paso's First Revised Volume No. 1 Tariff. The transportation tariff proposed is consistent with the Commission's Final Rule (Order No. 319) issued July 20, 1983 at Docket No. RM81-29-000, wherein the Commission expanded its blanket certificate program to include, *inter alia*, the transportation of natural gas for high priority end-users pursuant to § 157.209 of the Commission's Regulations.[1] Order No. 319 contained a proviso that prior to implementing transportation arrangements pursuant to § 157.209, the transporting interstate pipeline must have established a generally applicable transportation tariff. Accordingly, in order to position itself to transport gas for end-users under the blanket certificate program, El Paso is filing a transportation tariff which, when accepted for filing and permitted to become effective, will provide for interruptible transportation service for end-users on the terms and conditions otherwise promulgated as part of that program.

El Paso further states that in its written comments filed in response to the Commission's Notice of Inquiry at Docket No. RM85-1-000 (Phase I), El Paso urged the Commission to permit pipelines to establish transportation rate structures which would give pipeline managements greater flexibility to vary transportation rates as necessary to meet competition and otherwise to accommodate rapidly changing market conditions. Proposed initial Rate Schedule TEU-1 reflects El Paso's specific proposal in this regard; namely, in lieu of fixed and stated transportation rates, the proposed initial rate schedule incorporates a range or "band" of possible rates, the under and lower limits of which are six cents (6.0¢) more of less, respectively, of the mid-point rates.

El Paso requested that the Commission waive its Regulations, as may be appropriate and necessary, so that the primary tariff sheets tendered comprising El Paso's proposed Original Volume No. 1-A Tariff, including Rate Schedule TEU-1, be accepted for filing and permitted to become effective immediately. However, the event that the Commission is not disposed to permit primary Original Sheet Nos. 101 and 102 reflecting the rate "band" approach to take effect immediately, El Paso requested that the Commission nevertheless accept for filing and permit immediate effect to be given to primary Original Sheet Nos. 1 through 100 and 103 through 400, and to alternative

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[1] Concurrent with the issuance of Order No. 319, the Commission issued Final Rule (Order No. 234-B) which amended § 157.209 of the Commission's Regulations by providing that any end-user will be eligible for transportation through June 30, 1985. By Notice of Proposed Rulemaking issued March 22, 9185, at Docket Nos. RM81-19-000 and RM81-29-000, the Commission, among other things, proposed to extend such eligibility until December 31, 1985.

Original Sheet Nos. 101 and 102 on which the transportation rates established in El Paso's Docket No. RM82–33 rate settlement are set forth as fixed and stated rates. Further, in the event that the Commission is disposed to establish a hearing procedure for the purpose of giving further consideration to any issues raised by any portion of proposed Original Volume No. 1–A, including the rate "band" approach reflected on primary Original Sheet Nos. 101 and 102, El Paso requested that such hearing be conducted on a consolidated basis with the hearing which the Commission has already directed be held concerning El Paso's Notice of Rate Change filing at Docket No. RM85–58. Finally, and in any event, El Paso requested that proposed Original Volume No. 1–A, including primary Original Sheet Nos. 101 and 102, be permitted to be made effective no later than July 1, 1985, concurrent with the effectiveness of the proposed rates at Docket No. RM85–58.

El Paso states that copies of the instant filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before April 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–8964 Filed 4–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP85–661–002 et al.]

Panhandle Eastern Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Panhandle Eastern Pipe Line Company

[Docket No. CP85–661–002]

April 5, 1985.

Take notice that on March 21, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84–661–002 a request pursuant to Section 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to increase the quantity of gas transported for Caterpillar Tractor Company (Caterpillar) pursuant to the authorization granted in Docket No. CP84–661–000 under the certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to the authorization in Docket No. CP85–661–000, as amended by Compliance Report of January 18, 1985, Panhandle receives gas at existing points of interconnection between Panhandle and Union Texas Products Company in Major, Woods and Woodward Counties, Oklahoma. Panhandle explains that it then transports and redelivers the gas to Central Illinois Light Company which in turn makes ultimate delivery to Caterpillar for its end-use at its facility in Peoria, Illinois.

Panhandle proposes to increase the maximum daily quantity of gas transported from 11,000 Mcf to 12,500 Mcf. Other than this increase in volumes, Panhandle proposes no other changes to the activity and states that the service is on behalf of the same end-user, at the same end-user location within the same maximum annual volumes authorized in this docket, and under the same terms and conditions authorized in the basic service.

Comment date: May 20, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Mississippi River Transmission Corporation

[Docket No. CP85–402–000]

April 5, 1985.

Take notice that on March 29, 1985, Mississippi River Transmission Corporation (Applicant), 9900 Clayton Road, St. Louis, Missouri 63123, filed in Docket No. CP85–402–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas for direct end-use sales under three new rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Applicant's system throughput has changed dramatically over the last five years, declining from about 222,000,000 Mcf of gas in 1979 to 156,000,000 Mcf in 1984, and that as recently as 1970 system usage was as high as 247,000,000 Mcf. It is contended that competition between natural gas and alternative fuels in Applicant's service area has contributed in part to this sales decline, and in addition gas-to-gas competition is becoming more prevalent in the marketing efforts of natural gas supply systems in general and those operating within or near Applicant's service area. Applicant claims this is evidenced by a proliferation of non-traditional marketing vehicles such as special marketing programs (SMP's), discount rate schedules, new transportation rate schedules, and off-system sales arrangements that have been approved by the Commission and encouraged by various state commissions in Applicant's service area.

Applicant asserts it has had success in its efforts to reduce its overall cost of gas, which it claims has declined by over 17 percent since March 1983. In addition it is stated that reductions in non-gas costs instituted by Applicant from March 1983 to the present have resulted in an overall reduction in its firm industrial sales rate of approximately $1.17 per million Btu. It is asserted that despite such success, certain of Applicant's direct sales customers continue to desire the opportunity to participate in end-user transportation arrangements.

Applicant believes certain of its gas sales already lost to alternative fuels may be recoverable and that implementation of the proposed transportation service would mitigate the potential loss of existing load. Applicant bases both assumptions upon Applicant's belief that it would continue to succeed in reducing its system gas costs through the purchase of less expensive supplies and that it would succeed in bringing its contracted pipeline supply more in balance with its current market requirements.

Applicant states it has not encouraged or participated in end-user transportation on its system because of its concern about a potentially detrimental shift to non-participating customers of not only its own system's fixed costs, but demand gas costs and minimum commodity bill charges of its pipeline suppliers as well. Additionally, Applicant claims its high ratio of pipeline-to-producer-supplied gas makes a conventional SMP program inappropriate on its system. It is averred that increased alternative fuel and gas-on-gas competition, however, threaten additional and potentially irreversible loss of Applicant's system throughput.

Applicant seeks to halt and restore gas throughput lost to such competition by making available on an experimental basis through December 31, 1985, the proposed limited-term transportation service. Applicant believes the proposed service is desirable because it would accomplish two important objectives for Applicant's customers: (i) it would provide transportation as an option for energy cost reductions during Applicant's gas cost reduction transition and (ii) it would protect the remaining customers from fixed cost shifts which would occur if such volumes were not moved through Applicant's system. Authorization for the proposed service is being requested for a limited term because Applicant believes that the program would be needed only during a transitional period in which it expects to reduce its gas supply costs, thereby enhancing its competitiveness with nontraditional marketing programs and alternative fuels.

Applicant proposes to add to Second Revised Volume No. 1 of its FERC Gas Tariff three transportation rate schedules and related forms of service agreements. It is stated one rate schedule would be applicable to direct end-user sales customers on Applicant's system whose purchases of gas from third parties result in sales displacement on the system. The other two rate schedules would be applicable to new end-uses not currently served by Applicant. It is claimed that in each case, the end-user would provide fuel and loss volumes under the proposed rate schedules. Such volumes are said to be based on the 3 percent relationship of fuel and loss volumes to systemwide sales reflected in Applicant's stipulation and agreement in Docket No. RP84-63.

It is indicated that Rate Schedule DT would be available for direct end-user load presently served by Applicant which may be susceptible to loss to alternative fuel or gas-on-gas competition and that Applicant has chosen to place volume limitations on Rate Schedule DT transportation so that Applicant and interested parties can assess the impact of the program on other system customers and make subsequent adjustments, if necessary. Service to any end-user under Rate Schedule DT would be limited to 25 percent of the actual average daily volumes purchased by such end-user from Applicant for the twelve months ended August 31, 1984, it is stated. It is further stated direct end-use sales made during such period generally correspond to the 25,000,000 Mcf aggregate direct sales volumes utilized in the design of Applicant's presently effective jurisdictional rates. The 25 percent limitation would be established as a ceiling because Applicant believes the sales volume displaced as a consequence of that level of Rate Schedule DT transportation is significant to it and its customers but can be incrementally cut back from available supply sources with minimal effect on its system gas cost.

Applicant asserts the rate under Rate Schedule DT is designed to reflect the same fully allocated non-gas costs as contained in its presently effective jurisdictional rates, including the costs of production and gathering, storage, and transmission services. It is claimed the Rate Schedule DT rate was designed to include both the demand and commodity components of Applicant's non-gas cost of service. Rate Schedule DT transportation would be provided on a firm basis because the volumes moved thereunder would displace existing sales, it is claimed.

Applicant's proposed Rate Schedule NDT-1 would be available for volumes which would not displace existing sales, such as volumes which have been lost to alternative fuels or volumes not previously delivered by Applicant. Rate Schedule NDT-1 service would be made available on a non-firm, best-efforts basis. It is asserted that the rate under Rate Schedule NDT-1 is designed to reflect only Applicant's fully allocated commodity transmission cost of service and that Applicant does not propose to include demand costs in the NDT-1 rates because those costs would be recovered through its existing sales rates and under Rate Schedule DT. Therefore, it is claimed the Rate Schedule NDT-1 rate should enhance Applicant's ability to recover load previously lost to alternative fuels or gas-on-gas competition.

Applicant's proposed Rate Schedule NDT-2 would also be available for volumes which would not displace existing sales. It is stated Rate Schedule NDT-2 service would be made available on a firm basis if the end-user desires. It is claimed that the Rate Schedule NDT-2 rate is designed on the same basis and is identical, except as to eligible users, to Rate Schedule DT.

Applicant states the transportation of gas under Rate Schedules DT, NDT-1 and NDT-2 would be limited to gas sale requirements that are being or could otherwise be served by

(1) Alternative fuels whether alternative fuel capability is installed or not,

(2) Producer direct sales arrangements,

(3) Gas made available under industrial sales programs, or other similar programs,

(4) Gas sold by pipelines under special discount rates or in off-system sales,

(5) Propane or synthetic natural gas, or

(6) Interruptible sales service rate schedules.

Applicant proposes a flat unit transportation rate for Rate Schedules DT, NDT-1 and NDT-2 service. It is asserted that a flat unit transportation rate is presently utilized for non-end-user transportation services because of the relatively short straight line nature of Applicant's pipeline system. Approximately 95 percent of Applicant's market requirements are located in the greater St. Louis metropolitan area on the north end of its system, while its major supply sources including its large East and West Unionville storage fields are located at the foot of the pipeline in northern Louisiana, it is asserted. Applicant asserts that service provided pursuant to the proposed rate schedules, no matter where such gas it introduced into its pipeline, would have an impact on the balancing of its supply and market which are located at opposite ends of the pipeline system.

Applicant proposes to retain the revenues generated under Rate Schedule DT and to credit the revenues generated under Rate Schedules NDT-1 and NDT-2, less 1 cent per million Btu, to Account No. 191. Applicant contends its presently effective rates are designed on total sales of 149,000,000 Mcf (including 124,000,000 Mcf jurisdictional and 25,000,000 Mcf non-jurisdictional) and no end-user transportation. Applicant states it sells gas to its jurisdictional customers under a single part commodity rate with no minimum purchase or fixed cost recovery charge. Applicant believes that a significant amount of the end-user supply it agrees to transport would be under proposed Rate Schedule DT and that those volumes would be expected to displace corresponding sales volumes on which Applicant's rates are presently designed. It is stated that if Applicant were required to credit revenues from service under Rate Schedule DT, it would be deprived of revenues it would have received if its firm sales had not been displaced and that given the foregoing and the fact that Applicant is providing such service on a voluntary basis during its current transition period, it should be permitted to retain Rate Schedule DT revenues to avoid such loss of revenue. Applicant believes that its revenue retention proposal is appropriate and

consistent with the treatment by the Commission of similar revenues.

Applicant also proposes that revenues generated under Rate Schedules NDT–1 and NDT–2, less 1 cent per million Btu, be credited to Account 191 in a manner consistent with Section 157.206(h) of the Commission's Regulations.

Applicant is requesting such blanket authorization as may be required to permit any existing direct industrial sales customer with which it negotiates a mutually beneficial end-user transporation agreement to utilize such service through December 31, 1985. Such blanket authorization would apply only to existing customers where there is no change in approved delivery points or authorized volumes, it is stated. It is further stated Applicant would follow the Commission's formal notice and protest procedure for end-user transportation provided to a new end-user.

In order for the Commission and interested parties to monitor Applicant's end-user transportation program Applicant states it would file reports with the Commission on July 31, 1985, and January 31, 1986, containing the following information:

(1) The name of each end user purchaser,

(2) The rate schedule utilized,

(3) The volumes of transportation gas delivered to each purchaser,

(4) The transportation charge for each transaction, and

(5) Affidavits by end-user purchasers attesting whether the transport was either a displacement of an exisiting sale or requirements not currently delivered by Applicant.

Comment date: April 26, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Carnegie Natural Gas Company

[Docket No. CP85–406–000]

April 10, 1985.

Take notice that on April 1, 1985, Carnegie Natural Gas Company (Applicant), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP85–406–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to New Jersey Natural Gas Company (New Jersey) and the approval of tariff sheets proposed to be included as part of Applicant's FERC Gas Tariff for the aforesaid sales, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to sell a maximum quantity of 4,000,000 dt equivalent of gas and a mimum quantity of 3,000,000 dt equivalent, with a maximum daily entitlement of 27,000 dt equivalent, to New Jersey during the winter period, November 1 through March 31, for a term of fifteen years and year-to-year thereafter until terminated by the parties. Applicant proposes to make such sale on a firm basis pursuant to the proposed new tariff, Rate Schedule LVWS, attached as Exhibit P to the application, which would offer firm winter service to any distribution or pipeline company. In addition to the firm service of up to 27,000 dt equivalent per day during the winter period, Applicant seeks authorization to sell an interruptible sales quantity of natural gas predicated upon the requirements of New Jersey and the available gas supply of Applicant. Applicant states that such interruptible service is to be provided under the proposed new tariff, Rate Schedule LVIS, attached as Exhibit P to the application, and would be available on a year-round basis to any customer which has executed a service agreement as provided under the proposed new rate schedule for firm winter service, Rate Schedule LVWS, and on any given day has taken its maximum daily winter entitlement during the winter period, November 1 through March 31. Applicant states that it has entered into a precedent agreement dated March 27, 1985, with New Jersey to provide the firm winter and interruptible natural gas service for the fifteen-year period, and from year-to-year thereafter. This agreement is attached to the application as Exhibit I.

Applicant requests authorization to place into effect First Revised Sheet No. 4, Original Sheet Nos. 4a, 4b, 4c, 4d and 4e, Original Sheets 47 through 92, and the new revised FERC Gas Tariff, Second Revised Volume No. 1 cover page. It is indicated that the proposed tariff sheets would implement Rate Schedules LVWS and LVIS and other specific terms and conditions contained in the service agreements attached as Exhibit P of the application.

Applicant states further that the gas sold would be delivered to New Jersey at Waynesburg, Pennsylvania, and transportation of said volumes would be accomplished by displacement of natural gas through the pipeline system of Texas Eastern Transmission Corporation (TETCO), which supplies natural gas to both Applicant and New Jersey. It is indicated that New Jersey would enter into a transportation agreement with TETCO for the transportation of gas from Waynesburg, Pennsylvania, to its facilities at their inter-connection with TETCO's pipeline in New Jersey. Applicant states that TETCO has indicated to Applicant and New Jersey that it would be willing and able to provide such transportation service.

Applicant states that it has adequate gas supply to justify the addition of the proposed commitment and that no additional facilities would be constructed to implement this sale.

Comment date: May 1, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP85–377–000]

April 9, 1985.

Take notice that on March 19, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–377–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon metering facilities formerly used to sell and deliver natural gas to Natural Gas Pipeline Company of America (Natural) at the Five Mile sales meter station (Five Mile) located in Moore County, Texas, under the authorization issued in Docket No. CP83–21–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the Five Mile station was constructed and operated under authority granted in Docket No. CP77–74. It is explained that the metering facilities to be abandoned consist of two 8-inch meter runs, meter building, appurtenant surface piping and perimeter fencing. It is further stated that the Five Mile station has been inactive and not used for sales since March 1979 and that Applicant and Natural have determined that the metering facilities would not be needed to provide service to Natural in the future. Applicant asserts that Natural has provided written consent to the proposed abandonment of the Five Mile station.

Comment date: May 24, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Equitable Gas Company, a Division of Equitable Resources, Inc.

[Docket No. CP85–403–000]

April 10, 1985.

Take notice that on March 29, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Applicant), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No.

CP85-403-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas service to Revere Natural Gas Company (Revere), and the facilities appurtenant to said service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it sells natural gas to Revere for resale to ultimate customers pursuant to authorization issued September 17, 1979, in Docket No. CP79-280, *et al.* Applicant states that beginning in early 1983, Revere became delinquent in its payments for gas service provided by Applicant and has remained in arrears to this date. Applicant claims that the situation has deteriorated to the point that, as of March 1, 1985, Revere owes Applicant a total of $200,213.98. Applicant asserts that meetings have been held between representatives of Applicant, Revere and staff members of the Pennsylvania Public Utility Commission, which has jurisdiction over Revere's retail sales, but no acceptable resolution of the problem has been found to date. Applicant states that investigation of Revere's financial situation indicates that Applicant cannot expect payment of the amounts owed it in the near future, since Revere does not appear to be financially sound.

Applicant indicates that it is proposing the subject abandonment authorization only as a last resort and states that the public convenience and necessity are not served by requiring it to continue service to a customer which does not, and, apparently, cannot comply with the terms of the Applicant's FERC tariff.

Comment date: May 1, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Southern Natural Gas Company, United Gas Pipe Line Company

[Docket No. CP84-708-001]

April 10, 1985.

Take notice that on March 18, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-708-001 an amendment to Southern's application filed in Docket No. CP84-708-000 to request pursuant to Section 7(b) of the Natural Gas Act permission and approval to abandon certain metering, pipeline and appurtenant facilities in the Carthage field area, Panola County, Texas, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Southern and United amend Southern's application in Docket No. CP84-708-000 to include United as a co-applicant in requesting permission and approval to abandon the above facilities.

Comment date: May 1, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP-85-366-000]

April 10, 1985.

Take notice that on March 15, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-366-000 an application pursuant to Section 7 of the Natural Gas Act for permission and approval to abandon, as necessary, certain natural gas services rendered to Texas Eastern Transmission Corporation (Texas Eastern), and for a certificate of public convenience and necessity authorizing new service to Texas Eastern pursuant to certain agreements, all as more fully set forth in the application on file with the Commission and open to public inspection.

United proposes to sell to Texas Eastern up to 600,000 Mcf per day effective November 1, 1985, and up to 500,000 Mcf of gas per day effective November 1, 1986, and to construct a 3,300 horsepower compressor station and related facilities at a cost of $4.128 million, to be financed from funds on hand, to increase the delivery pressure from 400 psia to 815 psia at United's Longview, Texas, delivery point. Additionally, United proposes to add the following six secondary delivery points at existing exchange and transportation points between United and Texas Eastern: (1) Near the City of Castor, Bienville Parish, Louisiana; (2) near the City of Ganado, Jackson, County, Texas; (3) near the Sharon Compressor Station, Clairborne Parish, Louisiana; (4) near the City of Valentine, LaFourche Parish, Louisiana; (5) near Texas Eastern's Huntsville Compressor Station, San Jacinto County, Texas; and (6) near the City of Opelouses, St. Landry Parish, Louisiana.

United further proposes (1) to change Texas Eastern's Minimum Volume, as set forth in Paragraph 5 of Rate Schedule PL-N, to equal the lesser of 66⅔ percent of Texas Eastern's annualized Maximum Daily Quantity (MDQ) or 14.68 percent of its total sales for the Minimum Bill Year (effective November 1, 1985), and then to the lesser of 66⅔ percent of Texas Eastern's annualized MDQ or 12.38 percent of its total sales for the Minimum Bill Year (effective November 1, 1986); and (2) change Texas Eastern's Minimum Bill Year to run from November 1 to October 31 of the following year.

It is stated that the rate paid by Texas Eastern would be pursuant to Rate Schedule PL-N. United states that the new service agreement would replace the contract obligation underlying the certificated service United is presently rendering Texas Eastern under the April 23, 1963, and August 7, 1963, service agreements between the parties.

Comment date: May 1, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. United Gas Pipe Line Company

[Docket No. CP85-372-000]

April 10, 1985.

Take notice that on March 18, 1982, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-372-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas for Southern Natural Gas Company (Southern) under United's Rate Schedule X-98, all as more fully set forth in the application on file with the Commission and open to public inspection.

United states that it is authorized to transport up to 10,000 Mcf of natural gas per day for Southern from various points on the Carthage field gathering system to an existing interconnection between the systems of United and Southern at Perryville, Ouachita Parish, Louisiana, under the gas transportation agreement between United and Southern dated September 19, 1977. It is indicated that this gas transportation agreement expired by its terms on October 31, 1984, and that Southern has given United notice of its desire to terminate the service in accordance with the agreement. Therefore, United requests permission and approval to abandon the gas transportation service for Southern under United's Rate Schedule X-98.

Comment date: May 1, 1985, in accordance with Standard Paragraph F at the end of this notice.

9, Wyoming Interstate Company, Ltd.

[Docket No. CP83-63-001]

April 10, 1985.

Take notice that on March 18, 1985, Wyoming Interstate Company, Ltd. (WIC), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No.

CP83-63-001 an amendment to its pending application filed November 4, 1982, in Docket No. CP83-63-000 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act, authorizing the transportation of gas on a firm basis on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

WIC proposes to add the ability to redeliver firm transportation gas not to exceed a total of 75,000 Mcf per day, plus any authorized overrun volumes as may be transported by WIC for the account of Tennessee to either, or in combination, Colorado Interstate Gas Company (CIG) or Trailblazer Pipeline Company (Trailblazer). It is stated that the points of redelivery would be the existing interconnection with the facilities of CIG and Trailblazer at the Rockport Delivery Point, the eastern terminus of the WIC system in Colorado.

Comment date: May 1, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-8943 Filed 4-12-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Health and Environmental Research Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Health and Environmental Research Advisory Committee (HERAC).

Date and time: May 14, 1985—9:00 a.m.–5:00 p.m.; May 15, 1985—9:00 a.m.–Noon.

Place: Conference Room A-410, Department of Energy, Germantown, Maryland 20545.

Contact: David A. Smith, Department of Energy, Office of Health and Environmental Research (ER-72), Office of Energy Research, Washington, D.C. 20545, Telephone: 301/353-2289.

Purpose of the committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Health and Environmental Research (HER) program.

Tentative agenda: Briefings and discussions of:

Tuesday, May 14, 1985

- Discussion of HER Planning.
- Report from HERAC Subcommitee on Risk Analysis.
- Public comment (10 minute rule).

Wednesday, May 15, 1985

- Report from HERAC Subcommittee on Ecology.
- Discussion of New Business.
- Public comment (10 minute rule).

Public participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David A. Smith at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on April 10, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-9029 Filed 4-12-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2817-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC

20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

• *Title:* Claim for Indemnification, Request for Federal Disposal for Silvex/2,4,5-T (EPA #1241). (This request is for a new collection.)

Abstract: EPA requires holders of Silvex and 2,4,5-T pesticide products suspended under FIFRA regulatory actions to file claim forms in order to request indemnification for, and federal disposal of, the products so suspended. The information provided will be used by EPA to document the claimants' rights to indemnification.

Respondents: Holders of Silvex and 2,4,5-T pesticide products suspended under FIFRA regulatory actions.

• *Title:* Leaking Underground Storage Tank Survey—Reimbursement Amendment (EPA #1174).

Abstract: This is an amendment to the Leaking Underground Storage Tank Survey, OMB No. 2070–0037, to collect information for reimbursement to owners or operators for costs, including loss of business opportunity, due to closure or interruption of an underground tank for tightness testing. Reimbursement is required by RCRA as amended, section 9009(f).

Respondents: Underground storage tank owners or operators who incurred costs due to responding to survey.

Water Programs

National Pollutant Discharge Elimination System (NPDES)

EPA is consolidating several Information Collection Requests for NPDES application forms and related requirements into a single justification document. The Agency is *not* proposing any changes to forms or regulations at this time; the consolidation merely asks for continued OMB approval.

• *Title:* Application for Permit to Discharge Wastewater, and Associated Regulations (EPA #0226).

Abstract: Facilities intending to discharge any pollutant (effluent) into national waters must obtain a permit. Applicants submit data, form(s) and/or supplemental data to the permit authority, describing facility location, receiving waters, and nature of discharge. The permit authority approves/disapproves the request and sets permit conditions.

Respondents: Businesses, farms, state and local governments, and other facilities discharging wastewater.

Agency PRA Clearance Requests Completed by OMB

EPA #0612, Affirmation of Non-Multinational Status for Pesticide Information, was approved 2/22/85 (OMB #2070–0047: expires 2/29/88).

EPA #0246, Contractor's Cumulative Claim and Reconciliation (EPA Form 1900–10), was approved 3/1/85 (OMB #2000–0005: expires 3/31/88).

EPA #0814, Reporting and Recordkeeping Requirements for Storage and Treatment Facilities, was approved 3/20/85 (OMB #2050–0009: expires 3/31/88).

EPA #0857, Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, and Distribution in Commerce Exemptions, was approved 3/22/85 (OMB #2070–0021: expires 3/31/88).

EPA #1160, New Source Performance Standards for Wool Fiberglass Insulation Manufacturing Industry—Reporting and Recordkeeping, was approved 3/11/85 (OMB #2060–0114: expires 1/31/87).

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, DC 20460

Carlos Tellez (for #1241 and #1174) or Rick Otis (for #0226), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: April 8, 1985.

Odelia Funke,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85–8826 Filed 4–12–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Clapp and Auel Microwave Communications, et al.; Memorandum Opinion and Order

In re Applications of:

Clapp and Auel Microwave Communications.	CC Docket No. 85–101; File No. 10374–CM–P–80.
Lipper Larue	File No. 50068–CM–P–81.

For Construction Permit in the Multipoint Distribution Service for a new station at Redding, California.

Adopted: April 1, 1985.
Released: April 9, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Redding, California. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Clapp and Auel Microwave Communications, Lipper LaRue and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-9007 Filed 4-12-85; 8:45 am]

BILLING CODE 6712-01-M

Christian County Television, Ltd., et al.; Hearing Designation Order

In re Application of:

D.J. Everett and Kentucky New Era., Inc., d/b/a Christian County Television, Ltd.	MM Docket No. 85-96; File No. BPCT-841011KL.
Green River Group, Ltd.....	File No BPCT-841129LM.

For Construction Permit For New Television Station Hopkinsville, Kentucky.

Adopted: March 28, 1985.
Released: April 8, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of D.J. Everett and Kentucky New Era., Inc., d/b/a Christian County Television, Ltd. (Christian County) and Green River Group, Ltd. (Green River) for authority to construct a new commercial television station on Channel 51, Hopinsville, Kentucky.

2. No determination has been made that the tower height and location proposed by Green River would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

3. Green River states that it is a limited partnership. Section II, Item 5(a), FCC Form 301, requires that if the applicant is a partnership, the requested information must be given for each general or limited partner. Green River's application identifies only the general partner and states that the identity of its limited partners would be submitted later. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and if the limited partner is not involved in any material respect in the business or operation of the station. *Id.* at 1023. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Green River can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Green River will be required either to state that its limited partners have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interests.

4. Christian County amended its application on January 16, 1985, to include a new map of its coverage contours. However, the map did not show the Grade A contour. Christian County will be required to submit as an amendment a corrected map showing the three proposed contours, to the presiding Administrative Law Judge, within 20 days after this Order is released.

5. Section V-C, Item 10, FCC Form 301, requires an applicant to submit the area and population within its predicted Grade B contour. Christian County has not submitted this information. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Christian County will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. If it is determined that there is a significant disparity between the areas and populations, the presiding Administrative Law Judge will consider it under the standard comparative issue.

6. Christian County is a limited partnership with one limited partner, Kentucky New Era, Inc. (New Era). New Era holds an 80% equity interest in the applicant and is also the publisher of *Kentucky New Era*, a daily newspaper of general circulation in Hopkinsville. Section 73.3555(c) of the Commission's Rules proscribes a party from directly or indirectly owning, operating, or controlling a television station and a daily newspaper, where the station's predicted Grade A contour encompasses the entire community in which the newspaper is published. We have recently held, however, that limited partnership interests are nonattributable where the limited partnership agreement comports with the ULPA and where the limited partner would not be involved in any material respect in the management or operation of the broadcast station. *Attribution of Ownership Interests, supra.* The Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. In adopting the new atttribution standards, the Commission stated that its action did not affect the substantive aspects of the cross-interest policy, which it would continue to administer on a case-by-case basis. New Era has certified that its interest in Christian County complies in all respects with the ULPA, and that neither it, nor any of its principals or employees will have any say in the operation of the proposed station or the management of the affairs of Christian County. Notwithstanding the fact that New Era's interest in Christian County is nonattributable, its publication of a daily newspaper in Hopkinsville and the substantial equity interest which it holds in Christian County indicate that a full record, developed in a hearing, is required. *Scott Neisler*, MM Docket No. 84-865 (released September 14, 1984). Accordingly, a cross-interest issue will be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consoldiated proceeding on the issues specified below.

8. Accordingly, IT IS ORDERED, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Green River would constitute a hazard to air navigation.

2. To determine, with respect to Christian County, whether grant of the application would be consistent with the

Commission's cross-interest policy, and if not, whether the ownership, operation or control of the newspaper *Kentucky New Era* and the proposed television station would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, better served the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, Green River shall submit the certification, statement and/or information required by paragraph 3, *supra*, to the presiding Administrative Law Judge within 20 days after this Order is released.

10. It is further ordered, That Christian County shall submit a corrected map of its coverage contours showing the three proposed contours, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

12. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

13. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-8005 Filed 4-12-85; 8:45 am]

BILLING CODE 6712-01-M

Pentecostal Revival Association, Inc., et al.; Hearing Designation Order

In re Applications of:

Pentecostal Revival Association, Incorporated.	MM Docket No. 85-94; File No. BPCT-841015KN.
Palatka Television, Inc	File No. BPCT-841129LK.
American Communications and Television, Inc.	File No. BPCT-841129KN.

For Construction Permit for New TV Station, Palatka, Florida.

Adopted: March 28, 1985.
Released: April 5, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Pentecostal Revival Association, Incorporated (Pentecostal Revival), Palatka Television, Inc. and American Communications and Television, Inc. (American) for authority to construct a new commercial television station on Channel 63, Palatka, Florida.

2. No determination has been made that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

3. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would be served by each. Consequently, the areas and populations which would receive television service of 64 dBu (Grade B) or greater intensity, together with the availability of other Grade B television services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. In response to Section II, Item 5(a), FCC Form 301, Pentecostal Revival provided a list of its principals whose interests total 125 percent. Pentecostal Revival will be required to submit an appropriate amendment showing the correct interest of each principal, to the presiding Administrative Law Judge within 20 days after this Order is released.

5. The transmitter site proposed by Pentecostal Revival now meets all of the Commission's minimum mileage separation requirements. There is, however, a rulemaking proposal pending in Docket No. 84-374 (RM 4722) which would allocate Channel 64 to Williston, Florida. If this proposal is adopted, Pentecostal Revival's transmitter site would be 51 miles from the reference point in Williston. Section 73.610 of the Commission's Rules requires a minimum separation of 55 miles between a station operating on Channel 63 and a Channel 64 station or reference point. Pentecostal Revival would be 4 miles short-spaced. An issue would then be required to determine whether circumstances exist which would warrant a waiver of the rule. In assessing the circumstances to determine whether a waiver would be warranted, the presiding Administrative Law Judge would consider the fact that the other applicants have specified sites which would comply with the separation requirements. Accordingly, a contingent issue with respect to the potential short-spaced proposal will be specified.

6. American proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a UHF directional antenna to 15 dB. American proposes a directional antenna with a maximum-to-minimum ratio of 21.2 dB, and has requested a waiver. Accordingly, an issue regarding this matter will be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues.

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

2. In the event the Commission adopts the pending rulemaking proposal in Docket No. 84-374 to allocate Channel 64 to Williston, Florida, to determine with respect to Pentecostal Revival, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's Rules.

3. To determine with respect to American whether circumstances exist which would warrant a waiver of § 73.685(e) of the Commission's Rules.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That Pentecostal Revival shall submit an amendment to Section II, Item 5(a), showing the correct interest of each of its principals, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-9023 Filed 4-12-85; 8:45 am]

BILLING CODE 6712-01-M

John R. Powley et al.; Hearing Designation Order

In re applications of:

John R. Powley	MM Docket No. 85-103; File No. BPCT-840813KM.
Greater Huron Broadcasting Corporation.	File No. BPCT-841005KX.

For Construction Permit, Huron, South Dakota.

Adopted: April 3, 1985.
Released: April 11, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John R. Powley, and Greater Huron Broadcasting Corporation (GHB) for authority to construct a new commercial television station on Channel 12, Huron, South Dakota.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the areas and populations that each proposes to serve. Consequently, the areas and populations which would be within the predicted 56 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Section II, item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligations; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. GHB gave a negative response to item 10 but did not include the required exhibit. Accordingly, GHB will be required to file an amendment explaining the negative response with the presiding Administrative Law Judge within 20 days after the release of this Order.

4. No determination has been made that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. John R. Powley's proposed site is 189 miles from the site of co-channel Station KXMB-TV, Bismarck, North Dakota, whereas § 73.610(b)(1) of the Commission's Rules requires a minimum separation of 190 miles. The applicant, therefore, would be short-spaced 1 mile. An issue will be specified to determine whether circumstances exist warranting a waiver.

6. GHB's proposed site is 184 miles from the site of co-channel Station KRNE-TV, Merriman, Nebraska, whereas § 73.610(b)(1) of the Commission's Rules requires a minimum separation of 190 miles. GHB, thereof, would be short-spaced 6 miles to Station KRNE-TV. An issue will be specified to determine whether circumstances exist warranting a waiver.

7. Section V-C, item 10(c), requires that the applicant file a map showing the City Grade contour, clearly indicating the legal boundaries of the principal city to be served. Powley has submitted a contour map, but the predicted contours do not clearly indicate whether the entire principal community will be within the predicted City Grade contour. The scale of miles provided is not sufficiently accurate or detailed to enable a determination to be made. Powley will be required to comply with the requirements of Section V-C, item 10. If the amendment does not clearly show that all of Huron will be within the City Grade contour, the Administrative Law Judge will add an appropriate issue.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

(2) To determine whether the proposal of John R. Powley is consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and if not, whether circumstances exist which would warrant a waiver of the Rule.

(3) To determine whether the proposal of Greater Huron Broadcasting Corporation is consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and if not, whether circumstances exist which would warrant a waiver of the Rule.

(4) To determine which of the proposal's would, on a comparative basis, better serve the public interest.

(5) To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

10. It is further ordered, That Greater Huron Broadcasting Corporation shall submit an appropriate amendment explaining its negative answer to question 10, Section II, FCC Form 301, to

the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

11. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

12. It is further ordered, That John R. Powley shall submit an appropriate contour map as required by item 10(c) of Section V–C, FCC Form 301, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

13. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Video Services Division, Mass Media Bureau.

[FR Doc. 85–9006 Filed 4–12–85; 8:45 am]

BILLING CODE 6712–01–M

Radio Telephone Co. of Daytona Beach, Inc., et al.; Order Designating Applications for Hearing

In re applications of:

Radio Telephone Company of Daytona Beach, Inc. For additional paging facilities for Station KUC852 operating on frequency 152.24 MHz in the Public Land Mobile Service in Deland, FL and in Edgewater, FL.	CC Docket No. 85–84; File Nos. 24731–CD–P–1–83, 25128–CD–P–2–83.
Leesburg Communications & Answering Service, Inc. For an additional paging facility for Station KWU497 operating on frequency 152.24 MHz in the Public Land Mobile Service in Orange City, FL.	File No. 24937–CD–P–1–83.
AnswerRite Metro Communications, Inc.	File No. 25334–CD–P–1–83.

For an additional paging facility for Station KQZ713 operating on frequency 152.24 MHz in the Public Land Mobile Service in Deland, Florida.

Adopted March 25, 1985.
Released April 8, 1985.

By the Common Carrier Bureau.

1. Before the Chief, Mobile Services Division, is one application by Radio Telephone Company of Daytona Beach, Inc. ("Daytona") for additional paging facilities in Deland, Florida and additional paging facilities in Edgewater, Florida,[1] one application by Leesburg Communications and Answering Service, Inc. ("Leesburg") for an additional facility in Orange City, Florida, and one application filed by AnsweRite Metro Communications, Inc. ("AnsweRite") for an additional facility in Deland, Florida. All four applications are electrically mutually exclusive.

2. Daytona filed two informal objections, one each against Leesburg and AnswerRite, charging that the proposed facilities would cause interference to Daytona's proposed facility at Holly Hill, Florida. Because the AnswerRite and Leesburg applications were filed more than 60 days after the public notice of the Daytona Holly Hill application, Daytona argued, they are not entitled to a comparative hearing under § 22.31(b) of the Commission's Rules.[2]

3. AnswerRite and Leesburg responded to Daytona's objections by submitting amendments to reduce their proposed contours, thereby avoiding interference with the Holly Hill application. However, Daytona objected to the applications, as amended, on the grounds that the amendments propose a "substantial and material alteration in the proposed service" and as such are major amendments which should be "cut-off" pursuant to § 22.31 of the rules. Accordingly, Daytona argues, the Leesburg and AnswerRite applications are not entitled to comparative consideration with Daytona's Deland application.[3] On March 28, 1984, Daytona filed a "Supplement to Informal Petition to Dismiss" citing the recent case of *Arnold Anderson d/b/a Concho Communications* (Mimeo 2543, released February 27, 1984). In *Concho*, the Bureau held that a defective mutually exclusive application could not be cured by a major amendment filed after the 60-day cut-off period. Accordingly, if Leesburg's and AnsweRite's amendments are major, they are subject to dismissal.

Discussion

4. We reject Daytona's argument that Leesburg's and AnswerRite's amendments are major. Section 22.23 of the Commission's Rules states that all amendments shall be classified as minor except for specifically enumerated situations. Regarding amendments to proposed base station facilities, the *only* major amendment possible is an enlargement of the reliable service area by more than one mile. Here, applicants propose a diminishment of their service area. Accordingly, the amendments are minor. Since the applications were filed within 60 days of Daytona's Deland application,[4] they are properly filed and all the applications will be designated for comparative hearing.[5]

5. We find that all three applicants are legally, technically, and otherwise qualified to build and operate the proposed facilities. The four applications are electrically mutually exclusive, and will therefore be designated for comparative hearing.

6. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Radio Telephone Company of Daytona Beach, Inc. (File Nos. 24731–CD–P–83 and 25128–CD–P–2–83), Leesburg Communications & Answering Service, Inc. (File No. 24937–CD–P–83), and AnsweRite Metro Communications, Inc. (File No. 25334–CD–P–83) to operate on frequency 152.24 MHz, are designated for hearing in a consolidated proceeding upon the following issues:

(a) to determine on a comparative basis, the nature and extent of service proposed by

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[1] A second location requested in the same application (Bunnell, Florida) will be granted separately in view of the unopposed Amendment filed November 15, 1984. That amendment removed the potential for electrical interference by the proposed Bunnell facilities.

[2] Daytona's Holly Hill application, pending file number 23975–CD–P–1–83, was placed on public notice April 6, 1983. Leesburg and AnswerRite filed their above-captioned applications on June 13, 1983 and July 5, 1983, respectively.

[3] As proof that Leesburg's and AnsweRite's contour changes constitute a major amendment, Daytona points out that § 22.109 and 22.121 require Commission approval of any equipment alternation which results in a power change of 1.5 dB or greater from the level requested in the application upon which a grant was made. AnsweRite's 30.91 percent reduction in transmitter RF power output (from −13.01 DBC to −18.83 DBC) results in a 51.24 percent area reduction, and 23.3 percent population reduction. Leesburg's 22.85 percent reduction in transmitter RF power output (from −10.03 dBk to −13.00 dBk) results in a 55.1 percent area reduction, and a 64.5 percent population reduction.

[4] Daytona filed on June 3, 1983. The application was placed on public notice on June 15, 1983. Leesburg filed on June 13, 1983, AnsweRite on July 5, 1983. Daytona filed a second application on June 16, 1983.

[5] Since all applications are for expansion of existing facilities, lottery procedures will not be utilized. *See* Gen. Docket No. 81–768, FCC 84–596 (released Dec. 4, 1984) 49 FR 49486 (Dec. 20, 1984) as corrected 50 FR 5583 (Feb. 11, 1985).

each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) to determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[6] based upon the standards set forth in Section 22.504(a) of the . . . Commission's rules,[7] and to determine and compare the relative demand for the proposed services in said areas; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

7. It is further ordered that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

8. It is further ordered that the Chief, Common Carrier Bureau, is made a party to the proceedings.

9. It is further ordered that the applicants shall file written notices of appearances under § 1.221 of the Commission's rules, within 20 days of the release date of this order.

10. It is further ordered that the informal petitions of Daytona are dismissed.

11. This Order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-9006 Filed 4-12-85; 8:45 am]

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[FCC 85-99]

Tel-Optik Ltd., et al.; Memorandum Opinion and Order

In the matter of:

Tel-Optik Limited. Application for a license to land and operate in the United States a submarine cable extending between the United States and the United Kingdom.	File Nos. I-S-C-L-84-002, I-S-C-L-84-003.
In the matter of:	
Submarine Lightwave Cable Company. Application for a license to land and operate in the United States a high capacity fiber optic digital submarine cable extending between the United States and other North American countries, on the one hand, and European countries, on the other hand.	File No. S-C-L-85-001.

Adopted: March 1, 1985.
Released April 5, 1985.

By the Commission.

1. The Commission has before it applications filed by Tel-Optik Limited ("Tel-Optik") and Submarine Lightwave Cale Company ("SLC") pursuant to the provisions of "An Act relating to the landing and operation of submarine cables in the United States," 47 U.S.C. 34-39 (1964); (hereafter referred to as the Cable Landing License Act) for licenses to land and operate in the United States high capacity fiber optic digital transatlantic submarine cable systems. Both applicants propose privately owned systems in which they would sell or lease capacity to private users on a non-common carrier basis. Tel-Optik has filed applications for two fiber optic cables; SLC has filed an application for one fiber optic cable.

2. The two Tel-Optik applications were placed on public notice on October 3, 1984. Comments were filed by the National Telecommunications and Information Administration ("NTIA"), American Telephone and Telegraph Company ("AT&T"), Communications Satellite Corporation "(Comsat"),[1] and RCA Global Communications, Inc. ("RCA"). Tel-Optik filed consolidated reply comments. Comsat also filed reply comments and ITT World Communications Inc. ("ITT") filed a partial opposition to AT&T's comments.

3. The SLC application was placed on public notice on October 24, 1984. Comments were filed by NTIA, AT&T, Comsat, ITT, RCA and Tel-Optik. Both SLC and Comsat filed reply comments.

4. The applications before us present the Commission and the executive branch an opportunity to continue U.S. government support in the development of a diversity of international communications technologies and modes and to achieve more meaningful competition in the provision of North Atlantic transmission facilities. We beleive that competition in the form of private submarine cable transmission facilities will result in the same desirable user-benefits now available as a result of our domestic satellite transponder sales policy[2] and we find no public interest reason to require these facilities to be made available on a common carrier basis. The purpose of this order is to provide the Commission's general policy direction on alternative submarine cable systems for the North Atlantic region, to reach preliminary conclusions regarding the particular applications before us, and to solicit the approval of the Secretary of State before taking any final action on the applications.

I. The Applications

5. Tel-Optik is a U.S. corporation in which all directors, officers and stockholders are U.S. citizens with the exception of one Canadian citizen serving as an officer, director and stockholder. Tel-Optik has entered into an agreement with Cable and Wireless PLC ("C&W"), a pubic limited company organized under the laws of the United Kingdom, for the purpose of constructing, owning and operating two fiber optic cables between the United States and the United Kingdom. Tel-Optik and Cable & Wireless each owns fifty percent of this joint venture. The proposed system, to be called "Market-Link," will consist of a northern cable ("PTAT-1") to be placed in operation in 1989, a southern cable ("PTAT-2") to be placed in operation in 1992. Each cable will contain three working optical fiber pairs and associated regenerators and supervisory circuits. Each fiber pair will be capable of carrying a minimum of two basic system moduels of 140 Mbps. A basic system module for the Market-Link system will consist of a 139,264,000 bps both-way digital line section with interface in accordance with CCITT Recommendation G. 703 (Yellow Book Vol. III-Fascicle III-3, November, 1980).

6. The proposed system has been divided into segments for purposes of determining ownership and operational responsibility. Segment A will consist of

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[6] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[7] Section 22.504(a) of the Commission's rules describes a field strength contour of 43 decibels above one microvolt per meter as the limits of reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

[1] Comsat filed a motion to file comments one business day out of time because of the need to secure final review of its pleading by Comsat senior management and word processing delays caused by the preparation of another pleading. We will grant this motion and accept the comments.

[2] Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), *aff'd*, Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984).

all submersible plant of each cable between the U.S. and U.K. beach joints;[3] Segment B will consist of all plant between the beach joints and interface points in the United States for each cable and all land and buildings in the United States associted with each cable; Segment C will consist of all plant between the beach joints and interface points in the United Kingdom for each cable and all land and buildings in the United Kingdom associated with each cable.[4] Segment A will be owned in common in equal undivided shares by Tel-Optik and C&W. Segment B will be owned by Tel-Optik and Segment C will be owned by C&W. According to Tel-Optik, C&W is already authorized to install and operate the proposed cables in England through its wholly owned subsidiary, Mercury Communications, Ltd. "(Mercury"). Mercury will provide facilties over its own and other networks to enable Market-Link to be interconnected with terminals in the United Kingdom and Continental Europe. Tel-Optik expects to land both cables in the United States on the eastern New Jersey coastline to the North of Atlantic City. The cable landing points will connect with a common terminal station to be located in the New York area, which will interconnect with U.S. private and interexchange systems. (In the United Kingom, the cables are to land on the southwest coast with the southern landing between Widemouth Bay and Bristol and the northern landing either to be at this same coastal area or on the South Wales coast to the west of Bristol.) Tel-Optik states that these landing points will enable secure routes to common terminal stations in London where interconnection will be made with Mercury.

7. SLC is a U.S. corporation in which all directors, officers and stockholders are U.S. citizens. SLC states that it intends to construct a fiber optic transatlantic submarine cable designed primarily to serve the video market, although its application describes a variety of other services that may be available through purchase of capacity in the cable (*see* para. 9 *infra*). The TAV–1 system (for Transaltantic Video submarine cable system) would extend between the United States and other North American countries to various European points. SLC plans to land TAV–1 in the United States in the vicinity of New York City, with other possible U.S. landing points north and south of New York City. SLC states that other cable terminals may be located in Canada and in the Caribbean region. Unlike Tel-Optik, SLC has not yet determined specific European landing points, but is seeking to make arrangements to locate cable terminals in several of the European nations bordering the Atlantic Ocean and North Sea, as well as extensions to the Mediterranean Basin. The applicant states that "conversations are taking place with foreign entities with respect to the location of foreign terminals and other necessary support for the TAV–1 cable project."

8. SLC states that the TAV–1 cable system will have 12 working fibers each operating at 560 Mbps for a total transmission speed of over 6.7 Gbps. The planned twelve working fibers will be three times that of TAT–8.[5] At a 6.7 Gbps transmission speed, TAV–1 could be arranged for at least 144 broadcast quality video channels, each operating at 45 Mbps. Alternatively, the applicant states that TAV–1 could be arranged for at least 72 video channels and over one thousand 1.544 Mbps channels or various combinations thereof. If the entire capacity were to be dedicated to voice use, the cable could carry approximately 50,000 simultaneous two-way telephone conversations, transmitted at 64 kbps, or up to 250,000 such conversations if circuit multiplication equipment were used. The applicant estimates a total cost of approximately $450 million for TVA–1, as compared to the TAT–8 estimate of $350 million, assuming the same rate of inflation and the same number of landing points as TAT–8, with twelve times the capacity. SLC expects the unit cost for TAV–1 to be less then 15% of the cost of a comparable unit of capacity in TAT–8, whether the unit is a video channel, a 1.544 Mbps channel, a 64 kbps channel, or a "bit" of transmission.

9. The applicant will offer TAV–1 capacity on both a half-circuit and a "through-circuit, shore-to-shore" basis. It will offer such services as (1) broadcast quality video channels operated at 45 Mbps, (2) closed circuit television, (3) public switched videophone, (4) teleconferencing video channels at 1.544 Mbps, (5) electronic document transmission channels at 64 kbps, (6) 64 kbps voice-grade channels for message telephone, private line and other services, (7) 9.6 kbps to 6.0 Mbps high-speed data channels, and (8) restoration services. SLC believes that potential customers for lease or sale of bulk capacity in TAV–1 will include (1) the broadcast and cable television industry, (2) the theater industry, (3) bulk suppliers of domestic fiber optics facilities, (4) U.S. communications carriers, foreign telecommunications carriers and similar entities, (5) government agencies, (6) private commercial corporations, and (7) associations and common affinity groups. SLC states that digital units packaged in large quantities will be made available to meet the specialized needs of these purchasers. The applicant plans to have TAV–1 in service in 1989.

10. Both applicants believe that their proposals will result in significant public benefit. They believe that the lease or purchase of bulk capacity in transatlantic fiber optic submarine cables will provide users with the same advantages that users now enjoy in the long-term lease or purchase of domestic satellite capacity. These benefits include the ability to make future business plans with the assurance that capacity will be available when needed at a known price. The applicants believe that the sale of satellite transponders is equivalent to the distribution of large segments of digital cable capacity since, in both cases, the one-time distribution of communications capacity is involved which need not be classified as a common carrier activity. Both applicants point out that by this approach, users will be able to obtain facilities specifically tailored to their specialized usage requirements. And both applicants emphasize that the U.S. ratepayers will not directly bear the financial risks of the proposed cable systems since the cost will not be part of any common carrier rate base. At the same time, the applicants beleive that their proposed systems will be an attractive alternative to currently available and planned carrier facilities and services, and that Commission authorization of the systems will promote North Atlantic facilities competition in the area of specialized services, drive charges for international circuits toward costs, permit a further introduction of the latest fiber optic technology through innovative marketing techniques, and possibly result in the stimulation of new services as a result of heretofore unforeseen demand.

II. Comments

11. In its comments, AT&T states that it supports a fully competitive environment with minimal regulation,

[3] The Tel-Optik—C&W agreement defines a beach joint as a connection between the submersible cable and the land cable.

[4] An interface point will be the 140 Mbps digital input/output ports on the digital distribution frame which is the interface location where the 139, 264.000 bps digital line section connects with other transmission facilities or equipment.

[5] For a description of TAT–8, see American Telephone and Telegraph Co., FCC 84–240, (released June 8, 1984).

and believes that the grant of the requested licenses would be consistent with the development of greater competition in the international telecommunications marketplace. However, AT&T only supports the cable applications provided the Commission reconsiders its Title II regulation of AT&T and removes itself as arbiter of carriers' facilities loading decisions. AT&T also requests the Commission to condition a grant of the applications by stating that the Commission will not entertain any request by Tel-Optik or SLC to compel common carriers to use any capacity in their cable systems. And, AT&T requests that the Commission make it clear that the proposed cable systems are not subject to, and should not be a part of, the North Atlantic Consultative Planning process.

12. NTIA supports a fully competitive environment and encourages new entry into the international communications marketplace. Therefore, NTIA supports the grant of these license applications, but only if authorized for non-common carrier purposes. In addition, NTIA urges the Commission to impose three conditions on the licenses should they be granted to assure that authorization of the private systems now proposed will not preclude such additional systems at a later time and to assure that foreign firms are not given preferential treatment over U.S. firms in either the acquisition of capacity or in interconnection arrangements at the foreign ends of the proposed cables. Furthermore, NTIA states that, if the cable systems would be used by common carriers to provide common carrier services, the Commission should examine the significance for the Consultative Process of authorizing facilities outside of the process, and consider the effect on the proposed transatlantic cable facilities already authorized and on U.S. trade opportunity and technology development.[6]

13. RCA also supports the applications as an alternative private enterprise initiative in the international telecommunications marketplace. However, RCA states that the applications pose legal and policy issues which should be addressed in a rulemaking proceeding before any licenses are issued. It notes that some of the issues raised by the applications are already the subject of Commission proceedings, including Docket No. 79–184 concerning policies to be followed in the authorization of common carrier facilities to meet North Atlantic telecommunications needs during the 1985–1995 period,[7] and Docket No. 83–1230 considering, in part, questions involving the grant of indefeasible rights of use (IRUs) in international facilities to non-common carriers.[8] In addition, RCA believes that the fact that a major interest in Tel-Optik's proposed cable system is to be held by foreign interests presents an opportunity for such interests to gain an unfair advantage in the market. Therefore, RCA maintains that the Commission should include appropriate conditions in the cable licenses which would maintain the ability of U.S. companies to compete fairly in the international telecommunications marketplace. RCA also states that the Commission should deny AT&T's request for immediate deregulation. RCA contends that the review of the cable applications is not the appropriate forum in which to consider the future regulation of AT&T and is clearly outside the scope of the proceedings.

14. In its comments, Comsat asserts that the cable applications present significant public policy issues which the Commission should address before granting any landing licenses. Comsat supports RCA's proposal that the Commission initiate a rulemaking proceeding. It argues that a rulemaking proceeding would be the proper forum to consider not only these two cable applications but also the broader question of the specific criteria that should govern the consideration of any similar applications that may be filed. Comsat further argues that the Commission should examine the effect of the applications on the integrity of the Consultative Process and on the proceeding in Docket No. 83–1230. In addition, Comsat contends that the cable applications raise the question of whether Title II authorization may be needed, questions whether any public benefits would result from authorizing these systems,and asserts that there will be an increase in the costs of common carrier circuits that would have to be paid by the ratepayers caused by diversion of traffic from common carrier systems should the proposed private systems be authorized.

15. ITT takes no position on the ultimate disposition of the applications. ITT submits, though, that the proposed cable applications should be considered in the North Atlantic facilities planning proceeding in Docket No. 79–184. It contends that, since such facilities are proposed to be available during the 1985–1995 planning period and could be made available to common carriers for their North Atlantic services, the potential availability of the cables could affect the timing or necessity for future facility in the planning period. In addition, ITT argues that the Commission should not grant AT&T request to remove Title II regulation of AT&T's facilities loading choices. ITT states that, since these proceedings do not involve Title II regulation of AT&T and there is no notice or record on which to base a proper finding, it would be reversible error for the Commission to make any such findings.

16. In reply comments, Tel-Optik and SLC contend that their cable applications should not be considered in the Consultative Process or the related Commission proceedings because the Consultative Process and those proceedings only apply to common carriers. The applicants state that the Commission's authority for its involvement in the Consultative Process and for considering the issues before it in Docket No. 79–184 and Docket No. 83–1230 stems from Title II of the Communications Act to which only common carriers are subject. The applicants argue that they propose to sell bulk capacity on the cable systems to private users on a non-common carrier basis, and therefore are not subject to Title II of the Communications Act. Further, in response to arguments of potential economic harm because of traffic diversion, applicants contend first that diversion is not an issue the Commission need consider because the cable will be privately owned and the ratepayers will not bear the financial risk. In addition, the applicants also contend that to the extent diversion does occur, (1) it will not be substantial because there will be a significant increase in demand for video services which will allow all systems to be sufficiently used, and (2) it will only cause Comsat to lower its rates to a competitive level. Moreover, the applicants argue that subjecting the cable applications to the Consultative Process would be contrary to the deregulatory goals of the Commission. As to the Commission's proceeding in Docket 83–1230 addressing whether non-common carriers have a right to own IRUs in common carrier facilities, the applicants contend that this is not raised by their applications because capacity

[6] With respect to Tel-Optik's application, NTIA urges the Commission to consider the relationship between Tel-Optik's implied traffic projection and the current Consultative Process traffic projections.

[7] Policies for Overseas Common Carriers, 73 FCC 2d 193 (1979) (Notice of Inquiry), issues specified, 76 FCC 2d 522 (1980) (Second Notice of Inquiry), 82 FCC 2d 407 (1980) (Notice of Proposed Rulemaking), 84 FCC 2d 780 (1981) (Report and Order).

[8] International Communications, 96 FCC 2d 627 (1983).

in the proposed systems is specifically intended to be sold to provate entities. And, as to NTIA's proposed conditions regarding acquisition of cable capacity and access to foreign networks by U.S. firms, the applicants contend that they could not comply with the such conditions and maintain their non-common carrier status.

17. Finally, in comments specifically directed to SLC's application, Tel-Optik, Comsat, and NTIA state that the application itself is flawed because it fails to include the required information. Specifically, the parties note that the application fails to include ownership and controlling interest information and does not specify the landing points of the cable or the foreign countries with which it would interconnect. In its reply comments, SLC notes that it is wholly owned and controlled by U.S. citizens. SLC also states that it would raise the necessary funds to build its cable once it receives a cable landing license and that it would get an operating agreement with a foreign entity within three years of receiving the license.

Discussion

A. General Policy Considerations

18. Upon initial review of the applications and comments, we conclude that alternative private cable systems in which bulk capacity will be sold or leased on a non-common carrier basis would introduce more meaningful competition in the provision of North Atlantic transmission facilities. We further conclude that this increased competition will provide many of the same user-benefits that are now offered by the private sale of domestic satellite transponders and will further stimulate technology and service development to the benefit of international communications users.[9] We further find no need to require these applicants to operate as common carriers.

19. The introduction of private cable systems would provide users of North Atlantic transmission capacity with new alternatives to satisfy their needs. Bulk users of broadband and high-speed digital satellite circuits will be able to use cable to satisfy their transmission capacity needs and any special operational and technical requirements. We found in our *TAT–8 Authorization Order* that fiber optic technology will permit the use of cable for services that heretofore have only been available via satellite.[10] The application of this technology to cable in combination with the provision of transmission capacity on a non-common carrier basis will result in the same user-benefits that are now offered by the private sale of domestic satellite transponders. In our *Transponder Sales* decision, we concluded that the private sale of transponder capacity on a non-tariffed basis would (1) permit the providers of capacity to make tailored and flexible arrangements with customers that are not possible under the regimen of a tariffed service offering, (2) enable customers to make long-term plans for the use of facilities with assurance as to facility availability and price, (3) permit systems to be specifically designed to customer needs, and (4) result in positive market development for new and innovative service offerings.[11] We find that users with bulk capacity needs of special service requirements for international services should enjoy the same benefits. They could acquire their needed transmission capacity by contract to satisfy any special service needs with the assurance that it would be available for the period of time desired at an established price.[12] They could not be assured that transmission capacity will be so available from current common carrier offerings since carriers must offer capacity indiscriminately as it is available and may change the price and other terms and conditions of their offer through tariff filings. To the extent that users with bulk capacity needs or special service requirements choose to satisfy their special technical and operational needs by acquiring transmission capacity in the proposed private cable systems, there will be pressure on existing providers of both cable and satellite transmission capacity to respond competitively be developing common carrier services that would be more attractive than the long-term lease or sale of capacity.[13]

20. In addition to new service development, the introduction of private transatlantic fiber optic submarine cable systems could stimulate technological development. In the *TAT–8 Authorization Order*, we found that the introduction of digital fiber optic technology in the North Atlantic would have attendant service benefits—i.e., lower noise levels, lower data error rates, and a greater range of services over analog technology.[14] We also noted that the new digital fiber optic technology prompted the development of new circuit multiplication techniques.[15] Private fiber optic cable systems could provide an opportunity for additional technological development. In addition, as noted in the *TAT–8 Authorization Order*, an increase in the use of transatlantic digital cable services could complement the spread of fiber optic technology within the U.S. domestic communications market.

B. Review Under the Cable Landing License Act

21. In acting upon the applications before us, we need not look beyond the Cable Landing License Act. The Cable Landing License Act provides in part that "no person shall land or operate in the United States any submarine cable directly or indirectly connecting the United States with any foreign country . . . unless a written license to land and operate such cable has been issued by the President of the United States." 47 U.S.C. § 34 (1976). The statute was enacted in 1921. In 1934, the function of processing cable landing licenses under the 1921 statute was delegated to the Commission through executive order. The President continued to carry out the responsibility of issuing cable landing licenses until 1954 when, by a new executive order, the Commission was delegated the responsibility of both

[9] We recently took one step toward the introduction of greater competition in the provision of international transmission facilities by modifying our *Authorized User* policy to permit Comsat to (1) provide space segment capacity directly to common carriers and non-common carriers alike pursuant to tariff, and (2) offer end-to-end services directly to users on a common carrier basis through a separate subsidiary. Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation, CC Docket No. 80–170, FCC 84–633 (released January 11, 1985). We determined that this policy would enhance both intramodal and intermodal competition and spur providers of both international satellite and cable services to keep their services innovative and prices low. The introduction of private transatlantic fiber optic cable systems would add additional facility providers to the market which will provide users of transmission capacity new alternatives to satisfying their needs, and further enhance both intermodal and intramodal competition.

[10] American Telephone and Telegraph, FCC 84–240 at para. 75.

[11] Domestic Fixed-Satellite Transponder Sales, *supra* note 2, at 1251–1252, 1255.

[12] For example, television broadcasters which require large digital "bit" streams to transmit their programming could purchase video channels at about 45 Mbps, while newspaper wire services could purchase electronic document transmission channels at 64 kbps.

[13] Comsat asserts that authorization of the proposed private systems will lead to excess capacity and higher per-circuit costs as a result of diversion of traffic. We find here that the long-run benefits offered by the proposed system that are described below will outweigh any short-run problems caused by traffic diversion, and that U.S. carriers and INTELSAT will be able to adjust their long-term facility construction plans to respond to new competition.

[14] American Telephone and Telegraph Co., *supra* note 5 at para. 15, n. 6.

[15] *Id.* at para. 18.

processing applications and issuing licenses.[16] This delegated authority was made subject to the proviso that the Commission may not grant or revoke licenses without first obtaining approval of the Secretary of State and any advice from any executive branch department or establishment of the Government as it may deem necessary. The Commission's rules reflect this requirement.

22. The Cable Landing License Act is intended to achieve reciprocal treatment of United States interests which might desire to lay cables from the United States to foreign points, and otherwise is intended to protect the interests of the United States and its citizens in foreign countries in connection with the issuance of cable landing rights.[17] It both prohibits a cable from being landed without prior authorization and permits revocation of an existing authorization if a country fails to grant United States nationals reciprocal rights. While it was enacted at a time when transoceanic cables between the United States and foreign points were owned entirely by one entity, the Act applies in situations where the cable ownership is shared by United States and foreign entities, as is the case with existing transatlantic cables jointly owned by U.S. carriers and foreign administrations. In cases of joint ownership, the objectives of the Act are satisfied if only the United States joint owner is required to obtain a cable landing license. The desired reciprocal treatment of the United States joint owner by the foreign administration is achieved because the essence of the joint ownership system is one of partnership and reciprocity.

23. Upon preliminary review of the applications before us, we find that Tel-Optik's applications contain the information required by the Commission's rules and otherwise satisfy the requirements of the Cable Landing Licensing Act. Section 1.767 of the Commission's rules requires an application to contain the name and address of the applicant; the corporate structure and citizenship of officers if the applicant is a corporation; a description of the submarine cable, including the type and number of channels and the capacity thereof; the location of points on the shore of the United States and in foreign countries where cable will land (including a map); the proposed use, need, and desirability of the cable; and such other information as may be necessary to enable the Commission to act on the application. 47 CFR 1.767(a). Tel-Optik has provided this information, as described above. In addition, Tel-Optik satisfied the threshold reciprocity requirement of the Cable Landing License Act since it has entered into an agreement with Cable & Wireless for the joint ownership and operation of the proposed cables between the United States and the United Kingdom. The two parties will each maintain a fifty percent ownership share in the joint venture. Cable & Wireless is authorized to install and operate the proposed cables in the United Kingdom through its wholly-owned subsidiary, Mercury Communications, Ltd. Subject to further review by the Secretary of State, we conclude that the Tel-Optik-Cable & Wireless agreement contains sufficient reciprocal treatment for each party and otherwise appears to be consistent with United States interests.

24. Three parties contend that the SLC application is incomplete and does not contain sufficient information for the Commission to grant a cable landing license. NTIA states that cable landing license applications are reviewed under the Cable Landing License Act for foreign policy, competition and trade concerns in view of foreign participation in the ownership and operation of cable systems. NTIA contends that the SLC application does not contain sufficient information relevant to these issues, such as information on financing, configuration, operations and foreign participation. NTIA believes that the applicant should be required to provide this information subject to public comment before the Commission acts on the application. Tel-Optik contends that the SLC application does not comply with § 1.767(a) of the Commission's rules. Tel-Optik states that the application fails: (1) To provide information on the identity or percentage of ownership of its stockholders; (2) to specify the location of points on the shore of the United States and in foreign countries where the cable will land (including a map); or (3) to name the foreign country or countries where the cable will land. Tel-Optik submits that SLC has not complied with the Commission's rules until it discloses the identity of those who own and control the company and concludes an agreement to land the other end of the cable in at least one specified country. Comsat contends that the Commission should not grant a cable landing license to SLC without requiring sufficient information about the legal, technical, operational and financial qualifications of the applicant, including the names of SLC's principals and their relative ownership shares, the financial arrangements for cable construction, and the foreign countries in which the cable will land and whether these countries will permit landing and use of the cable.

25. In reply, SLC provides information showing the relative ownership shares of its shareholders. SLC argues that there is no existing requirement by the Commission that an applicant for a cable landing license need submit financing plans prior to grant of its application, nor should there be one in a competitive situation. SLC states that it will raise the necessary capital funds following a grant of its cable landing licnese, and suggests the need for a license before financing can be arranged. In addition, SLC states that it will obtain the necessary foreign agreement for its proposed cable following grant of its cable landing license and that such a grant will facilitate the necessary agreement for foreign landing points. SLC cites past Commission actions in granting Section 214 facility construction and service authorizations without the prior acquisition of necessary foreign agreements as support for not requiring it to acquire a foreign agreement prior to grant of a cable landing license. SLC believes that its application is in substantial compliance with the Commission's rules and requests a waiver of § 1.767(a) to the extent that a waiver is necessary to bring this older rule in conformity with modern policies.

26. Upon review of SLC's application and reply comments, we find that the applicant has provided sufficient information regarding its corporate structure and citizenship of its officers. We agree with SLC that the Commission's rules do not specifically

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[16] The current delegation to the Commission is provided in Executive Order No. 10530, dated May 10, 1954, which states: Sec. 5. (a) The Federal Communications Commission is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, all authority vested in the President by the act of May 27, 1921, ch. 12, 42 Stat. 8 [sections 34 to 39 of title 47], including the authority to issue, withhold or revoke licenses to land or operate submarine cables in the United States: Provided, That no such license shall be granted or revoked by the Commission except after obtaining approval of the Secretary of State and such advice from any executive department or establishment of the Government as the Commission may deem necessary. The Commission is authorized and directed to receive all applications for the said licenses.

[17] Section 35 of the Act provides, in part: The President may withhold or revoke such license when he shall be satisifed after due notice and hearing that such action will assist in securing rights for the landing or operation of cables in foreign countries, or in maintaining the rights or interests of the United States or of its citizens in foreign countries, or will promote the security of the United States, or may grant such license upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed.

require that an applicant for a cable landing license present information as to its financial qualifications. However, notwithstanding the Commission's policy of not requiring applicants to show the existence of an operating agreement with its foreign correspondent before issuing Section 214 authorizations, § 1.767(a) specifically requires an applicant for a cable landing license to specify the location of points in foreign countries where the cable will land and to provide a map showing the proposed landing points. This information is necessary for proper review of the application under the Cable Landing License Act. Without information as to the final ownership and control of the cable system and the foreign points in which it will land, we cannot determine under section 35 of the Cable Landing License Act whether reciprocal treatment is being accorded to United States interests. In other words, unless we have information as to what countries the applicant is dealing with and the terms and conditions of arrangements for ownership and operation of the system, we do not believe that we can fully review the application under the Cable Landing License Act. Therefore, SLC must provide this information before we will take final action on its application.

C. Need for Title II Authority

27. In its comments, Comsat contends that Tel-Optik and SLC may need Title II authority to construct and operate their proposed cable systems and the applicants provide no basis for the Commission to forbear from exercising its Title II authority. Comsat argues that Tel-Optik's and SLC's distinction between private and common carrier is illusory because of the types of services for which the systems may be used; the absence of any mechanism that would preclude or prevent the applicants' customers from interconnecting with the public switched network; the fact that C&W, a 50% owner of the proposed Market-Link system, is a carrier under U.K. law; and the fact that the applicants cannot show that the traffic, which would be carried by the proposed systems, is not presently being carried on common carrier facilities.

28. We find Comsat's argument unpersuasive. We find no need to require applicants to apply for Title II authority or to decide whether to forbear from exercising Title II jurisdiction. The applicants satisfy the test of the NARUC I decision which held that certain offerings need not be classified as common carrier operations. First, the nature of their proposed offerings is outside the definition of common carriage. The applicants propose to sell bulk cable capacity through individual negotiations with potential customers in order to meet the customers' particular technological and marketing requirements. They state that they will be entering into sales or long-term contracts for a particular amount of digital capacity. The Commission previously found in its *Transponder Sales* decision that the sale or long-term lease of domestic satellite transponders by satellite owners does not constitute common carrier activity.[18] In that decision, the Commission considered the definition of common carriage as set forth in the *NARUC I* decision and concluded that the sellers of domestic satellite transponders do not hold themselves out indifferently to serve the user public.[19] We find no distinction between what the cable applicants propose and what we found to be non-common carrier activity in our *Transponder Sales* decision. Thus, we find theat Tel-Optik and SLC would not be engaged in common carrier activity by selling or leasing bulk capacity in their proposed cables.

29. The second part of the *NARUC I* test as stated in *Transponder Sales* is whether there is a public interest reason for the Commission to require facilities to be offered on a common carrier basis. In our *Transponder Sales* decision, we found that, due to the wide-scale availability of common carrier transponders and the likelihood that small users could finance the lease or purchase of non-common carrier transponders, we did not need to compel the continued offering of all transponders on a common carrier basis. The facts before us here present even less reason to require that these cables be offered on a common carrier basis. There is currently no shortage of common carrier-provided cable or satellite capacity in the North Atlantic. Unlike domestic satellites, cable capacity is not limited by problems of spectrum allocation or orbital slot assignment.[20] In addition, due to the nature of the planned offerings, we do not believe diversion from common carrier cables should be a major concern. The proposed private cables are intended for use by customers with bulk capacity or special service needs. These users are generally private line customers. In the North Atlantic, the area for which these systems are proposed, non-switched services provided by U.S. carriers accounts for only about ten percent of international circuits, while switched services account for about 90 percent of international circuits (89 percent is IMTS and one percent is telex).[21] In addition, some customers with bulk capacity or special service needs may require satellite facilities to carry their traffic. As a result, the proposed cables are not likely to divert but a small part of total common carrier circuits. Some users may be able to use their non-switched facilities for voice traffic by attaching PBXs and refiling with other countries. However, the potential for switched traffic diversion in this manner appears to be relatively small.

30. Neither do we anticipate significant common carrier use of the proposed cables. AT&T has stated that it does not intend to use the cables and the international record carriers (IRCs) have not indicated an interest in the cables. We have no reason to expect AT&T and the IRCs to change their positions in view of the significant cable capacity that already exists or is planned and the carriers' significant investment in these facilities, particularly TAT–8. Since nearly 90 percent of Comsat's traffic is switched services, we do not believe the effect on INTELSAT from diversion of bulk capacity or special service customers would be harmful to INTELSAT.[22] Should AT&T or other carriers propose to use private cable facilities, we will have an opportunity to consider the potential effect of traffic diversion from existing or planned satellite or cable common carrier facilities in the Section 214 application process. Common carriers which propose to purchase and use bulk capacity on these systems still would be required to file for Title II authority before acquiring capacity and providing service over the cables. Therefore, if common carriers seek to divert major amounts of traffic from existing transmission facilities, we can take any steps necessary at that time to determine whether significant economic harm to common carriers owning and using existing cables would occur and would be contrary to the public interest.

31. Thus, the issues raised by Comsat do not persuade us that the proposed

[18] Transponder Sales, *supra* note 2, at 1256.

[19] *Id.* at 1257; *see* National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.) *cert. denied* 425 U.S. 999 (1976) ("NARUC I").

[20] For these reasons we find it unnecessary, as we decided in *Transponder Sales*, to review each transaction concerning these cables on a case-by-case basis to ensure adequate transatlantic capacity.

[21] Data derived from December 1984 circuit status reports.

[22] Since satellite facilities are not proposed by the applicants, no Article XIV(d) coordination with INTELSAT will be required.

offerings will in fact be common carrier offerings, and do not present reasons justifying the denial of a cable landing license. As we have concluded that these applications are for non-common carrier offerings, we have only to consider the requirements of the Cable Landing License Act in acting on them.[23]

D. Relationship With the North Atlantic Consultative Process and Related Commission Proceedings

32. Several parties contend that the applications should be considered within the ongoing North Atlantic Consultative Process and other related Commission proceedings. The Consultative Process is essentially an ongoing process to discuss facility planning options for the North Atlantic among Canadian (Teleglobe Canada), European (CEPT), and American (the Commission, other U.S. governmental agencies, and U.S. carriers) entities. It is intended to consider demand, technology, costs, usage, and facility options before we are called upon to make a determination of a facilities authorization. Comsat believes that authorization of the proposed cable facilities outside of the Consultative Process would compromise the integrity of the process by foresaking it in favor of an *ad hoc* approach and by failing to consider the views of foreign entities. Similarly, ITT contends that consideration of the proposed cable systems must be incorporated into Docket No. 79–184. Docket No. 79–184 was initiated by the Commission as an adjunct to the Consultative Process, to develop U.S. policies and guidelines governing the construction and use of North Atlantic facilities during the 1985–1995 period.

33. On the other hand, AT&T contends that the Commission should make it clear that the proposed cables are not subject to, and should not be part of, the Consultative Process. Both applicants strongly oppose incorporation of their proposals in either the Consultative Process or Docket No. 79–184. The applicants and AT&T argue that the Commission's involvement in the Consultative Process flows from its Section 214 authority, that the proposals under consideration are for non-common carrier systems, and that they are therefore unrelated to the Consultative Process and Docket No. 79–184. NTIA believes that there are some ambiguities in the applications that indicate that capacity in the proposed cable systems could be acquired by carriers to provide common carrier services. If the systems are to be used by common carriers, NTIA states that the Commission should consider: (a) The effect of authorizing, outside of the Consultative Process, facilities which may carry common carrier services; (b) the effect on facilities already authorized to be used for common carrier services; (c) the traffic projections implied by the applicant which appear to be much greater than the projections by the Consultative Process; and (d) the effect on U.S. trade opportunity and technology development.[24]

34. We believe that the decision as to whether or not to grant cable landing licenses to the applicants should not be incorporated into either the Consultative Process or Docket No. 79–184. The Consultative Process and Docket No. 79–184 deal with North Atlantic transmission facilities which are used by authorized U.S. common carriers and their foreign correspondents for the joint provision of services. As we have found, neither applicant proposes to provide common carrier services. Both intend to make private investments in their respective systems at their own risk to sell or lease bulk capacity to users. The risk of investment will not directly fall on any common carrier ratepayers and the scrutiny given by the Commission under Section 214 for facilities investments is not required here.

35. We agree with NTIA that the applicants appear to have reserved the possibility to provide capacity over their systems to common carriers. Any carrier which may want to use either proposed cable system to provide its services clearly must seek Section 214 authority from the Commission to acquire and operate such facilities. To the extent that any U.S. carriers may intend to use the proposed facilities, we believe that any capacity so employed could be considered within the Consultative Process. Since no carrier has stated plans to use the proposed private cable systems, and absent specific information as to the extent of such use, we need not consider at this time the relationship to the Consultative Process or the issues raised by NTIA (*see* para. 33, *supra*).[25] In the meantime, we do not believe that potential future common carrier use should delay final action on the applications. Any such delay would deny the benefits that will flow from the proposed systems to users other than common carriers.

E. Request for a Rulemaking

36. RCA and Comsat both request the Commission to initiate a rulemaking proceeding to address legal and policy issues raised by the cable applications. They argue that a rulemaking proceeding is a necessary forum in which to consider not only the specific applications but also the broader question of what specific criteria to apply when considering additional applications. In a rulemaking, they believe that the Commission specifically should examine (1) the effect of the applications on the Consultative Process and Docket No. 79–184, and (2) their effect on questions of ownership in cable facilities that are now being considered in the Docket No. 83–1230. In response, Tel-Optik and SLC maintain that the applications do not raise any material issues of law or policy which would warrant the initiation of a rulemaking proceeding or a delay in the grant of their applications. They argue that each of RCA's and Comsat's stated concerns is sufficiently addressed in their applications and comments.

37. We find that a rulemaking proceeding at this time is unwarranted. Tel-Optik and SLC have submitted proposals which request authority which is unprecedented. We have broad authority to proceed by rulemaking or by *ad hoc* adjudication. *Sec v. Chenery Corp.*, 332 U.S. 194, 203 (1947). We find the record in this proceeding to be fully adequate to resolve the applications before us. Numerous parties have participated in this proceeding, including primary providers of competing services. In addition, we rejected above the contentions of RCA and Comsat that action on the applications need to be related to Docket No. 79–184 and the Consultative Process. *See* paras. 32–35, *supra*. We also conclude that the applications are not related to Docket No. 83–1230 because that proceeding concerns, among other issues, non-carrier acquisition of IRU's in common carrier transmission facilities.

F. Suggested Conditions for the Cable Landing Licenses

38. Some parties propose that certain conditions be imposed on any cable landing license that may be granted to the applicants. AT&T proposes that we

[23] In addition, the trade and technology issues raised by NTIA, see para. 24, *supra* are unsupported. We note that the executive branch will have the opportunity to pass on the applications.

[24] *See* note 20, *supra*.

[25] There may be a need to consider the presence of such private systems in the Consultative Process because of their effect upon the demand for additional common carrier provided facilities that are subject to the Consultative Process. However, this question is better addressed when the cables are constructed and we know what type of traffic and how much is being carried.

condition any license by specifically stating that we "will not entertain" any request by the applicants to compel common carriers to use their cable systems. AT&T believes that by such a condition, the Commission would explicitly recognize that the applicants' proposals do not seek any special treatment and must succeed or fail on their own merits. AT&T also believes that such a condition would send the proper signal to the investor community and lead to the appropriate economic allocation of capital resources. Tel-Optik states that it has not requested that the Commission compel common carrier use of the proposed system, does not envisage making such a request and thus does not seek special treatment. SLC does not believe that any conditions are necessary other than those that it proposed be inserted in its own license.

39. We agree that the applicants should not be guaranteed any market share or services. Should we ultimately grant cable landing licenses for the proposed private cable systems, we will do so without any guarantee of traffic from U.S. international common carriers or other sources. It shall be this Commission's policy that any such private systems succeed or fail on their own merits and not through Commission action that would guarantee common carrier use of the systems. At the same time, we will not prohibit common carrier use of the system and will consider any proposed common carrier purchase of capacity in the context of our normal facility planning and authorization procedures. In view of this approach, we see no need to impose AT&T's proposed condition.

40. In addition, although AT&T fully supports the authorization of private cable systems in the transatlantic, it does so only if the Commission reconsiders and withdraws from regulating AT&T's facility loading choices. RCA and ITT contend that the Commission should deny AT&T's request, because this proceeding is not the forum in which to make such a determination. We agree. We are only considering here whether to grant cable landing licenses to the applicants to land and operate private transatlantic cable systems. We are not considering issues relating to our Title II regulation of AT&T's facility loading choices. Since the proposed systems are not scheduled for operation until 1989 at the earliest, we will have sufficient opportunity to consider AT&T's proposals. Any consideration of the merits of AT&T's request within the context of these applications would be beyond the language of the Cable Landing License Act.

41. NTIA requests that any cable landing license granted to the applicants be conditioned: (1) Not to preclude approval of additional cable systems between the United States and Europe; (2) to require that cable capacity should be made available to authorized entities on a non-discriminatory basis under Commission imposed terms and conditions; and (3) to require that subscribers of cable capacity be given the same interconnection rights with non-U.S. facilities as foreign entities would be given to interconnect with U.S. facilities. The applicants do not oppose NTIA's first proposed condition. However, they do oppose the second two conditions which they believe would be inconsistent with and not permit them to maintain their non-common carrier status. As to the second condition, the applicants point out that the sale of bulk cable capacity under individual terms and arrangements made with each private entity is the essence of their proposal and that the proposed second condition may not permit them to operate in this manner. In sum, they state that individualized sales or leases may, almost by definition, raise discrimination issues. The applicants also state that they could not comply with the third condition, because they would have no control over the interconnection arrangements negotiated between the acquirer of capacity and C&W (or Mercury). They emphasize that they would merely be selling capacity that another entity would use.

42. NTIA's first proposed condition is intended to maintain the rights of U.S. companies which may desire, own, and operate cable transmission facilities in the future by assuring that the authorization of the proposed private cable systems will not preclude future authorization of other systems. We believe this condition is unnecessary in light of our finding concerning the long term benefits of increased intramodel competition. *See* paras. 18–20, *supra*. As to the second and third conditions proposed by NTIA, we conclude that they would be inconsistent with the concept upon which we have found the proposed systems to be beneficial—the applicants' ability to lease or sell bulk capacity through individual negotiations to meet specific customer needs. To require the Commission to set the terms, conditions, and procedures under which cable capacity would be made available to purchasers could eliminate the applicants' ability to deal with customers on an individual basis, which is an important factor in the applicants' obtaining status as non-common carriers.[26] In addition, under the current proposals, it appears that the applicants would have no control over the interconnection between the cable facilities and the land facilities on either end once the cable capacity is sold. The purchasers of the bulk capacity would be responsible for making their interconnection arrangements.

Conclusion

43. In this order, we have expressed our general policy direction on private alternative submarine cable systems for the North Atlantic region. We have concluded that private systems in whch bulk transmission capacity is sold or leased on a non-common carrier basis would introduce more meaningful competition in the provision of North Atlantic transmission capacity, and that such increased competition would provide the same user benefits that are now offered by the private sale of domestic satellite transponders and would further stimulate technology and service development to the benefit of international users. In addition, we have reviewed the two applications before us within the context of the Cable Landing License Act. We have preliminarily concluded that the Tel-Optik applications contain the information required by the Commission's rules, meet the threshold reciprocity showing of the Cable Landing License Act, and otherwise appear to be consistent with United States interests under the Act. However, we will not take final action on the applications until receiving approval by the Secretary of State. In addition, we have preliminarily concluded that the SLC application does not contain the information requested to make these findings. Therefore, SLC must provide certain information to the Commission before we seek approval from the Secretary of State to grant its application under the Cable Landing License Act. As discussed above, we conclude that the applications are not properly part of the North Atlantic Consultative Process, should not be

[26] We would be concerned if, in practice, a foreign owner or co-owner of a cable were to provide capacity to an affiliated switched or enhanced service provider, for example, on terms far more favorable than those offered to U.S. companies providing similar services. We would view such discrimination undertaken for the purpose of, or resulting in, manipulation of competition in a particular service to be inconsistent with the terms of the Cable Landing License Act. We will reserve the right to condition licenses if practices develop that are antithetical to the reciprocal rights of the U.S. carriers, switched or enhanced service providers, or other U.S. citizens.

considered within the context of associated rulemaking proceedings, and do not otherwise require initiation of a separate rulemaking proceeding. We further conclude that imposition of the conditions proposed by certain parties have not been shown to be justified under the Cable Landing License Act and would be inconsistent with the nature of the applicants' proposed operations as private systems.

44. Accordingly, it is ordered that this Order by forwarded to the Secretary of State and that approval be sought to issue Cable Landing licenses to Tel-Optik.

45. It is further ordered that SLC must file the information necessary to make its application comply with § 1.767 of the Commission's rules before the Commission will seek approval from the Secretary of State to grant SLC a cable landing license.

46. It is further ordered that Comsat's motion to accept late-filed comments on the Tel-Optik application is granted.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-9024 Filed 4-12-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 221-010741.

Title: Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (City)

Los Angeles Cruise Ship Terminals, Inc.

(LACST)

Synopsis: This agreement provides that LACST will modify an existing City wharf to accommodate the unloading of automobiles from its vessels. While LACST operates primarily a cruise line, it will allow passengers to take automobiles with them to certain destinations. The city will permit LACST to perform the necessary work at the wharf and to be reimbursed for the cost of the construction not to exceed $200,000. The agreement provides for this credit. The parties requested a shortened review period for the agreement.

Agreement No. 224-010742.

Title: Los Angeles Terminal Agreement.

Parties:

American President Lines (APL)

Eagle Marine Services, Inc. (Eagle)

Hoegh Lines (Hoegh)

Synopsis: This agreement provides that APL through its wholly-owned subsidiary, Eagle, will provide terminal and stevedoring services for the benefit of Hoegh Line vessels at berths Nos. 121-126 San Pedro, California. The agreement will run for a period of three years. The parties requested a shortened review period for the agreement.

Agreement No. 224-010743.

Title: Tampa Terminal Agreement.

Parties:

Tampa Port Authority (Authority)

Air-Line Freight, Ltd. (ALF)

Synopsis: The agreement provides for the lease by the Authority of ALF of a cattle holding facility to ALF at cattle loading dock No. 179 also known as Berth No. 232, Tampa, Florida. ALF will perform terminal operations at the facility in the performance of exporting live cattle. The agreement will run for a period of nine months commencing on the first day of the month following the effective date of the agreement as determined by the Commission. The parties requested a shortened review period for the agreement.

Dated: April 10, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-8922 Filed 4-12-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

United Bancorp of Kentucky, Inc., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 1, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *United Bancorp of Kentucky, Inc.*, Lexington, Kentucky; to acquire 100 percent of the voting shares of Richmond Bank, Richmond, Kentucky.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Cicero Banc Corporation*, Chicago, Illinois; to merge with First Harvey Banc Corporation, Oak Brook, Illinois, thereby indirectly acquiring First National Bank in Harvey, Harvey, Illinois; and to merge with La Grange Park Banc Corporation, Oak Brook, Illinois, thereby indirectly acquiring Bank of La Grange Park, La Grange Park, Illinois.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Southeast Minnesota Bancshares, Inc.*, Altura, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Altura State Bank, Altura, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Holdings, Inc.*, Louisville, Colorado; to acquire 100 percent of the voting shares of Boulder Valley National Bank, Boulder, Colorado.

Board of Governors of the Federal Reserve System, April 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-8057 Filed 4-12-85; 8:45 am]

BILLING CODE 6210-01-M

The Chase Manhattan Corporation; Proposed Acquisition of Savings and Loan Associations

The Chase Manhattan Corporation has applies under section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the voting securities of Federal Savings Bank, Cincinnati, Ohio, and Mentor Savings Bank, Mentor, Ohio, two state chartered stock savings and loan associations. The Chase Manhattan Corporation will thereby engage in the activity of operating two savings and loan associations from offices located in Ohio.

Although the Board has not added the operation of a savings and loan association to the list of nonbanking activities permissible for bank holding companies set forth in section 225.25(b) of the Board's Regulation Y (12 CFR 225.25(b)), the Board has determined by individual order that the operation of a savings and loan association is closely related to banking.

Interested persons may express their views in writing on the question whether consummation of the proposed acquisitions can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in effeciency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

The Ohio Superintendent of Savings and Loan Associations has requested that the Board act expeditiously on these applications. In light of the Ohio Superintendent's request and the facts of record, a shortened comment period is resonable and appropriate in this case. Comments regarding each of these applications must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on April 17, 1985. Each application is available for immediate inspection at the offices of the Board of Governors and at the Federal Reserve Banks of New York and Cleveland.

Board of Governors of the Federal Reserve System, April 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9156 Filed 4-11-85; 4:48 pm]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Review of Bid Protests Regarding Sales by Federal Agencies

AGENCY: General Accounting Office.

ACTION: Notice.

SUMMARY: On December 20, 1984, the General Accounting Office published in the **Federal Register** (49 FR 49,917) its Bid Protest Regulations, effective January 15, 1985. This notice advises of the federal agencies which have agreed to have the General Accounting Office consider protests regarding sales under § 21.11 of the Bid Protest Regulations.

EFFECTIVE DATE: April 15, 1985.

FOR FURTHER INFORMATION CONTACT: James W. Vickers, Managing Attorney, General Accounting Office, 441 G Street, NW., Washington, DC 20548; telephone (202) 275-6181.

SUPPLEMENTARY INFORMATION: Pursuant to § 21.11, "Nonstatutory Protests", the General Accounting Office may consider protests concerning sales by a federal agency if the agency agrees in writing to have its protests decided by the General Accounting Office.

The following federal agencies have advised the General Accounting Office that they wish our Office to consider protests concerning sales: (1) Department of Agriculture, Forest Service until February 6, 1986 subject to renewal on an annual basis and (2) General Services Administration until further notice.

Charles A. Bowsher,

Comptroller General of the United States.

[FR Doc. 85-8916 Filed 4-12-85; 8:45 am]

BILLING CODE 1610-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0132]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene-carbon monoxide copolymer as a component of adhesives for use in articles intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5890.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3855) has been filed by The Dow Chemical Co., 1803 Bldg., Door 7, Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of ethylene-carbon monoxide copolymer (CAS Reg. No. 25052-62-4) as a component of adhesives for use in articles intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Dated: April 8, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-8920 Filed 4-12-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85G-0103]

Novo Laboratories, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Novo Laboratories, Inc., has filed a petition (GRASP 5G0297) proposing to affirm that mixed carbohydrase (pectinases, cellulases, and hemicellulases) enzyme preparation derived from a nonpathogenic and nontoxigenic strain of *Aspergillus aculeatus* is generally recognized as safe

(GRAS) as a direct human food ingredient.

DATES: Comments by June 14, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 5G0297) has been filed by Novo Laboratories, Inc., 59 Danbury Rd., P.O. Box D, Wilton, CT 06897–0820. This petition proposes to affirm that mixed carbohydrase (pectinases, cellulases, and hemicellulases) enzyme preparation derived from a nonpathogenic and nontoxigenic strain of *Aspergillus aculeatus* is generally recognized as safe (GRAS) as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

Interested persons may, on or before June 14, 1985, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is or is not GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 8, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–8919 Filed 4–12–85; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Cancer Resources and Repositories Contracts Review Committee; Open Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Resources and Repositories Contracts Review Committee, National Cancer Institute, National Institutes of Health, May 31, 1985, Building 31C, Conference Room 9, Bethesda, Maryland 20205. This meeting will be open to the public on May 31, from 9:00 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 31 from approximately 10:00 a.m. until adjournment, for the review, discussion and evaluation of contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Courtney Michael Kerwin, Executive Secretary, Cancer Resources and Repositories Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7421) will furnish substantive program information.

Dated: April 2, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8936 Filed 4–12–85; 8:45 am]

BILLING CODE 4160–01–M

Interagency Technical Committee on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources; Meeting

Notice is hereby given of the meeting of the Interagency Technical Committee (IATC) on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources sponsored by the National Heart, Lung, and Blood Institute, on June 4, 1985, from 9:00 a.m. to 12 noon, National Institutes of Health, Building 31, C Wing, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting is open to the public. The Interagency Technical Committee (IATC) is meeting to examine and coordinate Federal research activities that concern heart, blood vessel, lung, and blood diseases and blood resources. The meeting will focus on asthma. Keynote presentations will include Dr. Michael Kaliner, National Institute of Allergy and Infectious Diseases, speaking on Clinical Immunological Aspects of Asthma, Dr. Millicent Higgins, National Heart, Lung, and Blood Institute (NHLBI), speaking on the Epidemiology of Asthma, and Dr. Sydney Parker, NHLBI, on the Self-Management Programs of Asthma. Other speakers will present topics on asthma and related activities. Attendance by the public will be limited to space available.

For further program information, and an agenda and minutes of the meeting, contact: Ms. Joan Long, Office of Program Planning and Evaluation, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 5A03, 9000 Rockville Pike, Bethesda, Maryland 20205, (301–496–5031).

Dated: April 9, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8931 Filed 4–12–85; 8:45 am]

BILLING CODE 4160–01–M

National Advisory Child Health and Human Development Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, June 3–4, 1985, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on June 3 from 8:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on June 3 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Acting Director, NICHD, an overview of the Intramural Research Program, and a presentation by the Endocrinology, Nutrition, and Growth Branch, Center for Research for Mothers and Childern. The meeting be open on June 4 immediately following the review of applications if any policy issues are

raised which need further discussion. The Subcommittee meeting will be open on June 3 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L 92–463, the meeting will be closed to the public on June 4 from 9:00 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C06, National Institutes of Health, Bethesda, Maryland 20205, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: April 2, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8935 Filed 4–12–85; 8:45 am]

BILLING CODE 4140–01–M

National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on May 3, 1985, 8:30 a.m. to adjournment, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, P.O. Box 30174, Bethesda, Maryland 20205, (301) 496–6045, will provide an agenda and rosters of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: April 9, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8933 Filed 4–12–85; 8:45 am]

BILLING CODE 4140–01–M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on May 7, 1985, 8:30 a.m. to adjournment, at the Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue the evaluation of the implementation of current digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the Hotel lobby.

Mr. Raymond Kuehne, Executive Director, National Digestive Diseases Advisory Board, P.O. Box 30174, Bethesda, Maryland 20205, (301) 496–6045, will provide an agenda and roster of the members. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496–6917.

Dated: April 9, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8934 Filed 4–12–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Advisory Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a public briefing meeting to be sponsored by the National Heart, Lung, and Blood Advisory Council, National Institutes of Health, May 3, 1985, in the auditorium of the Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

The meeting will be open to the public from 9:00 a.m. to adjournment for the purpose of informing biomedical scientists, administrators, volunteer health organizations, and the public about the status of the National Heart, Lung, and Blood Institute and about possible strategies for achieving and maintaining a balance of program mechanisms for protecting the number of research grants awarded by the Institute. This briefing meeting is designed as an educational effort that will also provide the opportunity for the Council and the National Heart, Lung, and Blood Institute to hear directly from those interested in and concerned about the future of the Institute's extramural programs.

Those who wish to speak at this briefing meeting must submit a written request to Dr. Jay Moskowitz, address given at the end of this notice, no later than April 26, 1985. The request to speak must include the following:

(1) the name of the person who wishes to address the Council; (2) the professional affiliation of the requesting speaker, if appropriate; (3) a brief summary of the statement that would be presented; and (4) the address and telephone number where the requesting speaker can be reached during business hours.

Speakers will be selected from the constituencies who look to the Institute to advance knowledge about heart, lung, and blood diseases and from others whose interests correspond to the extramural programs of the National Heart, Lung, and Blood Institute.

Each speaker will be allowed about ten minutes. Additional written comments of any length may be submitted, at any time, for distribution to the Council. The results of this meeting, including the texts of the speakers and all other materials submitted, will be available in the winter of 1985.

Further information concerning the meeting and the results of this briefing meeting can be obtained from: Dr. Jay Moskowitz, Public Briefing Meeting, National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, Building 31, Room 5A–03, Bethesda, Maryland 20205 (301/496–7548).

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: April 9, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8932 Filed 4–12–85; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Evnironmental

Health Science Council, May 20–21, 1985, in Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on May 20 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public May 20, from approximately 1:00 p.m. to adjournment on May 21, for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Wilford L. Nusser, Associate Director for Extramural Program, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 2, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8938 Filed 4–12–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Notice of Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for May and June 1985.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20205 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are each listed below each committee.

Name of committee: Genetic Basis of Disease Review Committee
Executive secretary: Ms. Linda Engel, Room 950 Westwood Building, Telephone: 301–496–7125
Date of meeting: May 20, 1985
Place of meeting: Conference Room 3, Westwood Building, National Institutes of Health, Bethesda, Maryland
Open: May 20, 1985, 9:00 a.m.–11:30 a.m. There will be a scientific presentation at the open portion of the meeting.
Closed: May 20, 1985, 11.30 a.m.–adjournment.

Name of committee: Cellular and Molecular Basis of Disease Review Committee
Executive secretary: Dr. Helen Sunshine, Room 950, Westwood Building, Telephone: 301–496–7125
Date of Meeting: June 6, 1985
Place of meeting: Conference Room 740, Westwood Building, National Institutes of Health, Bethesda, Maryland
Open: June 6, 1985, 8:30 a.m.–10:30 a.m.
Closed: June 6, 1985, 10:30 a.m.–adjournment.

Name of committee: Minority Access to Research Careers Review Committee
Executive secretary: Dr. Harriet Gordon, Room 949, Westwood Building, Telephone: 301–496–7585
Dates of meeting: June 10–11, 1985
Place of meeting: Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland
Open: June 10, 1985, 8:30 a.m.–10:30 a.m.
Closed: June 10, 1985, 10:30 a.m.–5:00 p.m.; June 11, 1985, 8:30 a.m.–adjournment.

Name of committee: Pharmacological Sciences Review Committee
Executive secretary: Dr. Rodney Ulane, Room 952, Westwood Building, Telephone: 301–496–4772
Dates of meeting: June 13–14, 1985
Place of meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland
Open: June 13, 1985, 8:30 a.m.–10:30 a.m.
Closed: June 13, 1985, 10:30 a.m.–5:00 p.m.; June 14, 1985, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 13–863, 13–862, 13–860, 13–859, National Institute of General Medical Science, National Institutes of Health)

Dated: April 2, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85–8937 Filed 4–12–85; 8:45am)

BILLING CODE 4140–01–M

Division of Research Grants Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for May 1985, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meeting will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	May 1985 meetings	Time	Location
Behavioral and Neurosciences-1, Mr. Gene Headley, Rm. 4k5, Tel. 301-496-7795.	May 13-14	8:30	Holiday Inn, Georgetown, DC.
Behavioral and Neurosciences-3, Dr. Bertha Woolf, Rm. A23, Tel. 301-496-7298.	May 13-14	8:30	Holiday Inn, Georgetown, DC.
Behavioral and Neurosciences-4, Ms. Janet Cook, Rm. 1A14, Tel. 301-496-5352.	May 24	9:00	Room 7, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-2, Ms. Joan D. Fredericks, Rm. A19, Tel. 301-496-1067.	May 13-15	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-3, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150.	May 14-15	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-4, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150.	May 21-22	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-5, Dr. W. Elbert Wilson, Rm. A25, Tel. 301-496-7298.	May 6-7	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301-496-7510.	May 16-17	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-2, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477.	May 16-17	8:30	Room 7, Bldg. 31C, Bethesda, MD.
Clinical Sciences-3, Dr. Lynwood Jones, Jr., Rm A19, Tel. 301-496-7510.	May 9-10	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-4, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477.	May 30-31	8:30	Wellington Hotel, Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: April 2, 1985.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 85-8939 Filed 4-12-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Monday, April 29, from 8:30 a.m. until 12:00 noon, or until business is concluded. The meeting will convene at the Hacienda Hotel, 3950 Las Vegas Blvd., Las Vegas, Nevada.

It will be open to the public.

The proposed agenda is:

8:30–9:00—Report by the Chairman. Status of previous Committee recommendations and pending Committee business.

9:00–9:30—Briefing on issues facing higher education in the minerals and materials field.

9:30—Conclusion—Reports from working groups; recommendations for consideration by the Committee; discussion of future agenda.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Committee Executive Director (see below) of their intention to appear. Written statements for the record should be submitted prior to May 15, 1985.

For Further Information Contact: Wayne Marchant, Department of the Interior, Washington, D.C. Room 6649. (202) 343-5791.

Dated: April 12, 1985.

Miriam Walter,

Acting, Executive Director.

[FR Doc. 85-9066 Filed 4-12-85; 8:45 am]

BILLING CODE 4310-10-M

Alaska Lands Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, section 1201, paragraph (h), the Alaska Land Use Council will meet at 11:00 a.m.[1], Wednesday, May 15, 1985, in the Council's Conference Room, located at 1689 C Street, Room 107, Anchorage, Alaska.

The agenda will include Council consideration of:

—Long Range Goals and Objectives 1985–90,
—Council Work Program 1985–86,
—The Kenai National Wildlife Refuge Comprehensive Conservation Plan,
—The Becharof National Wildlife Refuge Comprehensive Conservation Plan,
—The Izembek National Wildlife Refuge Comprehensive Conservation Plan,
—The Togiak National Wildlife Refuge Comprehensive Conservation Plan,
—Outfitter/Guide Policy Recommendations,
—Conservation System Unit Management Plan Implementation, Memorandum of Understanding, Gulkana Wild and Scenic River; and
—Upland Oil and Gas Leasing Project Group Report.

For further information contact: Alaska Land Use Council, P.O. Box 100120, Anchorage, Alaska 99510 (907–272–3422 or (FTS) 271–5485).

The public is invited to attend.

William P. Horn,

Deputy Under Secretary.

April 8, 1985.

[FR Doc. 85-8969 Filed 4-12-85; 8:45 am]

BILLING CODE 4310-10-M

[1] The Alaska Land Use Council meeting will be preceded by a joint session with the Council's Land Use Advisors Committee beginning at 9:00 a.m., and lasting approximately two hours. The Land Use Advisors Committee will present recommendations to the Council on the 1985–86 Work Program and discuss State/Federal land use planning activities in Alaska. The Council's meeting will immediately follow this joint session.

Bureau of Land Management

New Mexico; Filing of Plat of Survey

March 22, 1985.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on March 22, 1985.

The dependent resurvey of a portion of the north boundary of the San Antonio Del Rio Colorado Grant, certain small holding claim boundaries and the survey of lots in sections 11, 12 and 13 in Township 29 North, Range 12 East, NMPM, New Mexico, under Group 774.

This survey was requested by the Albuquerque District, Bureau of Land Management.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-8998 Filed 4-12-85; 8:45 am]

BILLING CODE 4310-FB-M

Intent To Amend the Sierra Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.2(c) notice is hereby given that the Sierra Management Framework Plan will be amended by the Folsom Resource Area,

Bakersfield District. Comments and recommendations on issues to be addressed will be received for a thirty (30) day period from the date of publication of this notice.

DATES: Identification of issues and concerns will be completed by August 30, 1985. Management alternatives will be defined by December 1985 with the draft plan amendment to be finished by May 1986..

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Resource Area Manager, Bureau of Land Management, 63 Natoma St., Folsom, California 95630. Telephone: (916) 985–4474.

SUPPLEMENTARY INFORMATION: The Folsom Resource Area administers federal land and resources in Alameda, Amador, Calaveras, El Dorado, Mariposa, Nevada, Placer, Sacramento, San Joaquin, Stanislaus, Sutter, Tuolumne, and Yuba counties. The primary issues are land retention and disposal patterns, management intensity for specific management areas, forest management practices, mining and recreation. An interdisciplinary team consisting of realty specialists, outdoor recreation planners, a wildlife biologist, foresters, an archaeologist and associated skills will develop the plan. Opportunities for public participation and comment will be announced well in advance of any scheduled public meeting. Times, dates and locations of public meetings will be announced through the media, mail, and the **Federal Register.**

Dated: April 3, 1985.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 85–8952 Filed 4–12–85; 8:45 am]

BILLING CODE 4310–40–M

[CA 868]

California; Termination of Proposed Withdrawal and Reservation of Land

April 4, 1985.

Notice of Corps of Engineers, Department of the Army, application CA–868 for withdrawal and reservation of the following described land for the Marysville Lake Project from all general land laws, including the mining laws (30 U.S.C., Ch. 2) and the mineral leasing laws for construction of a multi-purpose dam, reservoir, power plant, afterbay, and appurtenant facilities for flood control, additional water supply and power integration with the Central Valley Project was published as FR Doc 77–27668 on pages 47883 and 47884 of the issue of September 22, 1977. The applicant has withdrawn its application in its entirety.

Mount Diablo Meridian

T. 16 W., R. 5 E.,
- Sec. 22, Lots 2, 3, 5, 6;
- Sec. 26, Lot 5;
- Sec. 27, Lots 1, 2, 3, 4, and 5, and NE¼SW¼;
- Sec. 28, Lot 5;
- Sec. 32, Lots 1, 2, 3, 5, 6, 7, and 8, and SW¼SE¼.

T. 16 N., R. 6 E.,
- Sec. 22, S½SE¼SE¼NW¼, SE¼SW¼SE¼NW¼
- Sec. 27, W½SW¼NW¼, NW¼NW¼SW¼.

The area described contains 417.22 acres more or less in Yuba County, California. Therefore, pursuant to the regulations contained in 43 CFR 2310.2–1, these lands shall immediately be relieved of the segregative effect of the above-mentioned application.

Nancy J. Alex,

Chief, Lands and Locatable Minerals Section, Branch of Lands and Minerals Operations.

[FR Doc. 85–8951 Filed 4–12–85; 8:45 am]

BILLING CODE 4310–84–M

Bureau of Mines

Information Collection Requirements Submitted to OMB for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Water Use in the Nonfuel Minerals Industry.

Abstract: The Bureau needs access to mineral industry water data by individual mines in order to correlate these findings with other data on mine characteristics. These data will assist in identifying potential shortages, in determining mining and processing costs for problem areas, and in determining solutions and recommendations for government action.

Bureau Form Number: 6–P118.

Frequency: Single-time.

Description of Respondents: Mine and Mill Producers of Metals and Nonmetals.

Annual Responses: 3,096.

Annual Burden Hours: 774.

Bureau Clearance Officer: James T. Hereford, (202) 634–1125.

Robert C. Horton,

Director.

April 8, 1985.

[FR Doc. 85–8997 Filed 4–12–85; 8:45 am]

BILLING CODE 4310–53–M

Bureau of Reclamation, National Park Service

Jackson Lake Safety of Dams Project, WY–ID; Availability of Record of Decision; Final Environmental Impact Statement

The Bureau of Reclamation and The National Park Service have jointly reommended adoption of the proposed action described in the Final Environmental Impact Statement for the project. The Assistant Secretary—Water and Science and the Assistant Secretary—Fish and Wildlife and Parks have approved adoption of the proposed action. In accordance with the Safety of Dams Act, the modification report has been forwarded to the appropriate committees of Congress. Copies of the Record of Decision, which discusses issues considered in the decision, may be obtained from the offices listed below:

Regional Director, Attn. Code RMR/PC, National Park Service, Rocky Mountain Region, P.O. Box 25287, 655 Parfet St. Denver, CO 80225, Telephone—(303) 234–4942

Superintendent, Grand Teton National Park, P.O. Drawer 170, Moose, WY 83012

Project Superintendent, Minidoka Project Office, Bureau of Reclamation, 1359 Hansen Ave., Burley, ID 83318

Regional Director, Attn. Code 150, Bureau of Reclamation, Pacific Northwest Region, Box 043, 550 West Fort St., Boise ID 83724, Telephone—(208) 334–1207

Dated: March 28, 1985.

Robert A. Olson,

Acting Commissioner, Bureau of Reclamation.

Dated: April 1, 1985.

Mary Lou Grier,

Acting Director, National Park Service.

[FR Doc. 85–9004 Filed 4–12–85; 8:45 am]

BILLING CODE 4310–00–M

[DES 85-8]

Lake Andes—Wagner Unit, Pick-Sloan Missouri Basin Program, South Dakota Public Hearing on Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the development of 45,000 acres for irrigation in the Lake Andes-Wagner Unit in South Dakota. This statement (DES 85-8) was made available to the public on February 28, 1985.

This environmental statement presents and analyzes a proposal to irrigate about 45,000 acres near Lake Andes and Wagner with water pumped from nearby Lake Francis Case on the Missouri River. The project also includes a fish rearing pond to enhance the fishery in Lake Francis Case.

A public hearing will be held in Wagner, South Dakota, at the Wagner High School Theater on May 14, 1985, beginning at 7:00 p.m., to receive views and comments from interested organizations and individuals relating to the environmental impact of this project. Oral statements will be limited to a period of 15 minutes. Speaker will not be allowed to trade their time to obtain a longer oral presentation; however, the person authorized to conduct the hearing may allow any speaker to provide additional oral comments after all persons wishing to make comments have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request, whenever possible, and any scheduled speaker not present when called will lose his or her position in the scheduled order, and his or her name will be recalled at the end of the scheduled speakers. Requests for presentation will be accepted up to 4:00 p.m., May 9, 1985, and any subsequent requests will be handled on a first-come, first-served basis following the scheduled presentation.

Organizations or individuals desiring to present their statement at the hearing should contact Mr. Eley P. Denson, Jr., Regional Evironmental Affairs Officer, Bureau of Reclamation, P.O. Box 2553, Billings, Montana 59103, telephone (406) 657-6558, and announce his or her intention to participate. Written comments from those unable to attend, and from those wishing to supplement their oral presentation at the hearing should be sent to Mr. Denson on or before May 29.

Dated: April 8, 1985.

Robert A. Olson,

Acting Commissioner.

[FR. Doc. 85-8928 Filed 4-12-85; 8:45 am]

BILLING CODE 4310-09-M

Power and Modification Study—Boise River Basin Portion Boise Project, Idaho-Oregon; Intent To Prepare a Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare a draft environmental impact statement (EIS) on the Boise River Basin Portion of the Power and Modification Study, Boise Project, Idaho-Oregon. The purposes of the study are evaluation of the potential for increased hydroelectric power generation at Arrowrock Dam and the Boise River Diversion Dam; improvement of reservoir operations for fisheries and other purposes; improvement of instream flows in the Boise River; and improvement of wetland and upland habitat for fish and wildlife at two locations in the Boise Valley, Lake Lowell in the Deer Flat National Wildlife Refuge and the Cloverdale Pond area.

The major elements of the recommended plan are the construction of a 60-megawatt powerplant at Arrowrock Dam, the construction of a 5-megawatt powerplant to replace the existing obsolete powerplant at Boise River Diversion Dam, the provision of improved minimum flows in the Boise River to enhance fish habitat, the provision of a minimum pool in Arrowrock Reservoir, the development of a wetland area at Lake Lowell in the Deer Flat National Wildlife Refuge, and the improvement of fish and wildlife habitat at Cloverdale Pond. A no action alternative will also be considered in the EIS. Other potential developments were included in earlier study efforts but have been excluded from further consideration. These included pumped storage power development, low head hydropower potential, new irrigation development, new storage sites, and improvement of recreation areas in the basin.

The recommended plan would enhance fish and wildlife resources in the basin through the proposed improvements in instream flows, reservoir minimum pool, and fish and wildlife habitat. Other areas of primary environmental concern already identified include cultural resource documentation for Arrowrock and Boise River Diversion Dams and effects on recreation facilities at Lucky Peak Lake, downstream from Arrowrock Dam. Mitigation plans are being developed for these and other potential impact areas and will be addressed in the EIS.

An extensive public involvement program was carried out during planning for the study. Attendees at a series of public sessions provided comments on alternative measures and environmental issues. No formal scoping meetings are planned, therefore, in connection with preparation of the draft EIS.

Interested public entities and individuals may obtain information on the proposed project and provide input to the draft environmental statement. A combined planning report/draft environmental statement is expected to be completed and available for review and comment by July 1985.

The contact person for this draft environmental statement is Robert Adair, Bureau of Reclamation, Box 043—550 West Fort Street, Boise, Idaho 83724, telephone (208) 334-1209.

Dated: April 9, 1985.

Robert A. Olson,

Acting Commissioner.

[FR Doc. 85-8927 Filed 4-12-85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

A.I.D. Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on May 6-7, 1985 at the Pan American Health Organization Building, 525—23rd Street NW., Washington, DC, Conference Room C. The Committee will discuss recent developments in A.I.D. research policy.

The meeting will begin at 9:00 a.m. and adjourn at 5:30 p.m. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Erven J. Long, Director, Office of Technical Review and Information, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Long, 1601 N. Kent Street,

Arlington, Virginia 22209 or call area code (703) 235–8929.

Dated: April 2, 1985.

Erven J. Long,

A.I.D. Representative, Research Advisory Committee.

[FR Doc. 85–8999 Filed 4–12–85; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30641]

Rail Carriers; Borinstein Railroad Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10901 the operation by Borinstein Railroad Company of a 0.407-mile line of railroad from the west side of the Interstate Highway 65 Bridge (approximately milepost 0.7) to the end of the line (approximately milepost 1.12), in Indianapolis, Marion County, IN.

DATES: This exemption will be effective on April 12, 1985. Petitions to reopen must be filed by May 6, 1985.

ADDRESSES: Send pleadings referring to Finance Docket 30641 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Zeff A. Weiss, One American Square, Box 82001, Indianapolis, IN 46282–0002

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: April 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–8955 Filed 4–12–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30616]

Rail Carriers; Guilford Transportation Industries, Inc., et al.—Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 *et seq.*, the acquisition by Guilford Transportation Industries, Inc., and Timothy Mellon of control of Guilford Motor Express, Inc., subject to standard employee protective conditions.

DATES: This exemption will be effective on May 14, 1985. Petitions to stay must be filed by April 25, 1985, and petitions for reconsideration must be filed by May 6, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30616 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: James E. Howard, Suite 310, One Boston Place, Boston, MA 02108

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: April 4, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–8956 Filed 4–12–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30629]

Rail Carriers; Staten Island Railway Corp.—Exemption From 49 U.S.C. 10901; Delaware Otsego Corporation and Staten Island Railway Corp.—Exemption From 49 U.S.C. 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Staten Island Railway Corporation (SIRY) from the requirements of (a) 49 U.S.C. 10901 with respect to the acquisition of trackage rights through assignment of a trackage rights agreement from Staten Island Railroad Corporation (SIRC) permitting operation over a 14.48-mile segment of line of Staten Island Rapid Transit Operating Authority, between St. George (MP 0.00) and Tottenville, NY (MP 14.48); and (b) 49 U.S.C. 11301 with respect to (1) the issuance of 200 shares of no par value capital stock to The New York, Susquehanna and Western Railway Corporation, and (2) the issuance of a $1.2 million promissory note to finance the purchase from SIRC of a 16.68-mile line. The Commission also exempts the Delaware Otsego Corporation from the requirements of 49 U.S.C. 11301 with respect to the assumption of obligation and liability as guarantor of the $1.2 million promissory note to be issued by SIRY. The parties have also filed a notice of exemption under 49 CFR 1180.2(d)(3), in Finance Docket No. 30635, *Delaware Otsego Corporation and The New York, Susquehanna and Western Railway Corporation—Control Exemption—Staten Island Railway Corporation.*

DATES: These exemptions will be effective on April 12, 1985. Petitions to reopen must be filed by May 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30629 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' Representative: William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: April 4, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–8957 Filed 4–12–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Amended Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 14, 1985 a proposed amended consent decree in *United States* v. *Town of Franklin*, Civil No. 77–0188 was lodged with the United States District Court for the Northern District of West Virginia. The proposed amended consent decree requires the Town of Franklin, West Virginia, to prepare and implement a Municipal Compliance Plan in accordance with the objectives of the Environmental Protection Agency's Municipal Policy Guidance to meet the final effluent limitations in its NPDES Permit No. WV0224970, and to comply with interim effluent limitations until 180 days after completion of construction of the treatment technology identified in the Plan or until such earlier time as such technology becomes operational.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed amended consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Town of Franklin*, D.J. Ref. 90–5–1–1–791.

The proposed amended consent decree may be examined at the Office of the United States Attorney, Room 243, Federal Building, 1125–1141 Chapline Street, Wheeling, West Virginia 26003, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA. 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1522, Ninth Street and Pennsylvania Ave., N.W., Washington, D.C. 20530. A copy of the proposed amended consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the proposed amended consent decree, refer to the case, proposed decree, and D.J. reference number.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–8998 Filed 4–12–85; 8:45 am]

BILLING CODE 4410–01–M

LEGAL SERVICES CORPORATION

One-Time IOLTA Grants; Request for Comments

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Statute 378, 42 U.S.C. 2996, as amended. Public Law 95–222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicily * * * such grant, contract, or project * * * ."

The Legal Services Corporation hereby announces that it is considering applications for IOLTA implementation grants submitted by the following organizations:

Connecticut bar foundation	$24,825
New Hampshire bar foundation	10,500
Rhode Island bar foundation	25,000
New Mexico State bar foundation	25,000
Ohio public defender commission	23,000
Missouri lawyer trust account foundation	25,000
District of Columbia bar foundation	25,000
Arkansas IOLTA foundation	6,980

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development and Substantive Support Unit of the Legal Services Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Heidi J. Ackerman, Esq., IOLTA Project Coordinator, Office of Field Services, Program Development and Substantive Support Unit, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272–4356.

SUPPLEMENTARY INFORMATION: If awarded, these grants will be made pursuant to the Legal Services Corporation's announcement of the continued availability of funds to develop and implement Interest on Lawyers' Trust Account (IOLATA) programs (49 FR 22809, 50320). The deadline for submitting grant applications to LSC was February 28, 1985. These IOLTA grants are intended to develop and foster IOLTA programs which will serve as a source of private sector funding to supplement federal funding for the direct delivery of civil legal services to poor individuals.

Under an IOLTA program, attorneys holding client funds which are "nominal in amount" or being held for a "short period of time" pool these funds in trust Negotiable Order of Withdrawal (NOW) accounts. Traditionally, such funds have been placed in non-interest bearing accounts. The interest generated by the NOW accounts is transferred to a designated not-for-profit corporation which disburses the funds to appropriate law-related public service projects. Before an IOLTA program can be established in a state, it must be approved by either the state's Supreme Court or its Legislature. Each of the previously named grant applicants has received the necessary approval.

All Legal Services Corporation IOLTA grants must be matched dollar-for-dollar by the grant applicants. Any grant applicant which has not satisfied this requirement but has met all the other requirements for receiving a grant, may be awarded a contingent grant for a period not exceeding three months. The Corporatoin also requires a commitment from the grant applicant that it will use its best efforts to develop and implement an IOLTA program which expends no less than two-thirds of the IOLTA proceeds, excluding administrative costs and a reserve, for the delivery of civil legal services to poor individuals.

Thomas J. Opeut,

Interim President Legal Services Corporation.

[FR Doc. 85–8981 Filed 4–12–85; 8:45 am]

BILLING CODE 6820–35–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85–22]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission. The NASA Supplement to the Federal Acquisition Regulation has been previously cleared by OMB (2700–0043), subject to submission of clearance requests for specific reporting and recordkeeping requirements.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed

should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by April 25, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Reports

Title: NASA FAR Supplement, Part 18–12, Contract Delivery and Performance.

Type of Request: Existing regulation (no change proposed.)

Frequency of Report: On occasion.

Type of Respondent: Small and large businesses, state and local governments and non-profit institutions.

Annual Responses: 107.

Annual Burden Hours: 107.

Abstract-Needs/Uses: Contractor provides notice of anticipated delay in performance of contract.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division.

[FR Doc. 85–8914 Filed 4–12–85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85–22]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: April 30, 1985, 9 a.m. to 5 p.m., and May 1, 1985, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 6, Maryland Avenue SW, Washington, DC 20546, Room 7002.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of twenty-five members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and Earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 4 p.m. to 5 p.m. on April 30 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

AGENDA

April 30, 1985

9 a.m.—Introductory Remarks.
9:15 a.m.—Final Report of Solar System Exploration Committee.
10:45 a.m.—Interim Report of Earth Systems Science Committee.
1 p.m.—Studies of Automation and Robotics.
4 p.m.—Closed Session on Membership.
5 p.m.—Adjourn.

May 1, 1985

8:30 a.m.—Applications of Tethers in Space.
10 a.m.—International Space Program Topics.
1 p.m.—Status of Solar System Exploration Projects.
2 p.m.—Committee Reports.
3 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director Logistics Management and Information Programs Division Office of Management.

[FR Doc. 85–9047 Filed 4–12–85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Instrumentation; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92–463, the National Science Foundation announces the following meetings.

Name: Advisory Panel for Biological Instrumentation.

Date and time: Wednesday, May 1, 1985 from 5:00 p.m. to 9:00 p.m. and Thursday and Friday, May 2 and 3, 1985 from 8:30 a.m. to 5:00 p.m.

Place: Airlie House, Airlie, Virginia 22186.

Type of meeting: Closed.

Contact person: John C. Wooley, Program Director, Biological Instrumentation Program, Room 325E, Telephone: 202/357–7852.

Purpose of advisory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9016 Filed 4–12–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Molecular and Cellular Neurobiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Molecular and Cellular Neurobiology Program.

Date and time: May 1, 2, and 3, 1985: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 628 National Science Foundation, 1800 G. St., NW., Washington, DC.

Type of meeting: Open May 2—1:00 p.m. to 3:00 p.m. Closed—remainder of scheduled time.

Contact person: Dr. Joel S. Colton, Program Director, Molecular and Cellular Neurobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357–7471.

Summary minutes: May be obtained from the Contact Person at the above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in the Molecular and Cellular Neurobiology Program.

Agenda: Open—General discussion of the current status and future plans of the Molecular and Cellular Neurobiology Program. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated by the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9019 Filed 4–12–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Social and Developmental Psychology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Social and Developmental Psychology.

Date and time: May 1–3, 1985, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, D.C.

Type of meeting: Part Open—Open May 2–9:00 a.m.–11:00 a.m.; Closed May 1–9:00 a.m.–5:00 p.m.; Closed May 2–11:00 a.m.–5:00 p.m.; and Closed May 3–9:00 a.m.–5:00 p.m.

Contact person: Dr. Jean B. Intermaggio, Program Director for Social and Developmental Psychology, Room 320, National Science Foundation, Washington, D.C. 20550, telephone/202–357–9485.

Summary minutes: May be obtained from the contact person as listed above.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Social and Developmental Psychology.

Agenda: Open—May 2, 9:00 a.m.–11:00 a.m. General discussion of research trends and opportunities in Social and Developmental Psychology. Closed—to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c) Government in Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9020, Filed 4–12–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Boston Edison Co. (Pilgrim Nuclear Power Station); Issuance of Director's Decision

By a Petition/Request for Show Cause Order (Petition) dated October 20, 1984 to the Director of the Office of Nuclear Reactor Regulation of the Nuclear Regulatory Commission (the Commission or NRC), Mr. John F. Doherty (Petitioner) requested that the NRC issue an order to Boston Edison Company requiring it to show cause why its operating license for the Pilgrim facility should not be suspended or revoked due to alleged environmental qualification deficiencies of certain equipment items in its Pilgrim Station. The Petition has been treated under 10 CFR 2.206 of the Commission's regulations.

The Petitioner asserts as the basis for the requested action a concern about safe operation of the Pilgrim facility with 23 specific items of electrical equipment which had not been found environmentally qualified in a Technical Evaluation Report prepared by the Franklin Research Center for the NRC in 1983 and one item of mechanical equipment which is under review by the NRC staff to verify its ability to perform following an accident.

Upon review of information pertaining to these items and the information provided by the Petitioner, the Director of the Office of Nuclear Reactor Regulation has determined that the action requested by the Petitioner is not warranted. Accordingly, the Petition has been denied. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–85–5) which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Local Public Document Room for the Pilgrim Nuclear Station, located at the Plymouth Library, 11 North Street, Plymouth, Massachusetts 02360. The Decision in this matter also addresses the comments specific to the Pilgrim facility which were filed by the Petitioner on May 9, 1984 and August 10, 1984 in response to the Notice of Proposed Rule Making on environmental qualification of electric equipment issued on March 7, 1984 (49 FR 8445).

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will become the final action of the Commission twenty-five (25) days after issuance, unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Bethesda, Maryland, this 5th day of April, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–8965 Filed 4–12–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–407]

Finding of No Significant Environmental Impact Regarding Proposed Amendment To Facility Operating License No. R–126; University of Utah

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Amendment to Facility Operating License No. R–126 for the University of Utah TRIGA reactor located on the campus in Salt Lake City, Utah.

The Amendment will renew the Operating License for twenty years from its date of issuance, in accordance with the licensee's application dated March 8, 1983, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on July 14, 1983 at 48 FR 32244.

Continued operation of the reactor will not require alteration of buildings or structures, will not lead to changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment, the Commission concludes that renewal of the license will not

result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action, dated March 27, 1985, and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts As Described in the Environmental Assessment

The proposed action would authorize the licensee to continue operating the reactor in the same manner that it has been operated since initial licensing in 1975. The environmental impacts associated with the continued operation of the facility are discussed in an Environmental Assessment associated with this action. The Assessment concluded that continued operation of the University of Utah reactor for an additional 20 years will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the following:

(a) The excess reactivity available under the technical specifications is insufficient to support a reactor transient generating enough energy to cause overheating of the fuel or loss of integrity of the cladding;

(b) At a thermal power level of 100 kilowatts, the inventory of fission products in the fuel cannot generate sufficient radioactive decay heat to cause fuel damage even in the hypothetical event of instantaneous total loss of coolant, and

(c) The hypothetical loss of integrity of the cladding of the maximum irradiated fuel rod will not lead to radiation exposures in the unrestricted environment that exceed guidelines values of 10 CFR Part 20.

For further details with respect to this proposed action, see the application for license renewal dated March 8, 1983, as supplemented, the Environmental Assessment, and the Safety Evaluation Report prepared by the staff (NUREG–1096). These documents and this Notice of Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H–Street NW., Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Director, Division of Licensing.

Copies of NUREG–1096 may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 9th day of April, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing.

[FR Doc. 85–8984 Filed 4–12–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322–OL–4 (Low Power—Remand); ASLBP No. 77–347–010–OL]

Long Island Lighting Co. (Shoreham Nuclear Power Plant, Unit 1); Order (Raising Further Board Questions and Setting Time and Place for Conference)

1. The hearing on the Part 50 exemption focused primarily on the time within which emergency power could be made available following a LOCA (*see* Findings at 20 NRC 1388–89) and not on the off-site radio-logical consequences of the most serious credible LOCA at low power. However, it seems to have been assumed that a low-power LOCA could involve releases that would result in exposures in excess of Part 100 values. For absent such an assumption, one can logically argue that Part 73 should not even come into play. *See Pacific Gas and Electric Co.* (Diablo Canyon Plant), 16 NRC 55, 58–59 (1981); Applicant's Response of March 12, 1985, p. 17; Staff Response of March 12, 1985, p. 3. However, at least one other decision (involving a larger reactor) indicates that the exposures associated with the most severe low-power LOCA may not exceed Part 100 values or, for that matter, have any significant off-site radiological effects. *See Southern California Edison Co.* (San Onofre Station), 15 NRC 61, 188–90 (1982). In light of these considerations, the Board asks the parties to respond to the following questions:

(a) Would the present record support findings about the magnitude of off-site releases likely to be associated with the most serious credible low-power LOCA at Shoreham?

(b) Apart from the present evidentiary record, would such a LOCA, in your technical judgment, be likely to cause exposures significantly in excess of 10 CFR 100.11 values?

(c) Could a knowledgeable saboteur intentionally increase the levels of off-site radiation that would otherwise be associated with an accidential LOCA?

(d) If (1) the answers to questions (b) and (c) are negative, (2) the off-site radiation exposures to be expected from the most serious, credible low-power LOCA are unlikely to exceed § 100.11 values, and (3) an adequate on-site emergency plan is in place to protect plant employees, why should Part 73 have any application to low-power operations?

(e) Is Part 73, as drafted, literally applicable to low-power operations, even it it can be shown that the off-site radiation effects to be expected from the most serious credible low-power LOCA would not exceed § 100.11 values and, furthermore, would be negligible?

2. The Board has said that LILCO may attempt to demonstrate that its proposed safeguards measures for low power are "equivalent" to full power safeguards "because the safeguards risks associated with low power are lower than those associated with full power." March 22 Order, at 2. It may be debatable, however, whether that seemingly reasonable premise can be carried to its logical conclusion. Assume, for example, that a low-power LOCA might have relatively small, but nevertheless significant, off-site consequences such that, say, 50–100 members of the public might be exposed to radiation in excess of 10 CFR 100.11 values, but no fatalities would result. Assume, further, that the same LOCA at full power might have severe off-site consequences, with hundreds of people being exposed to radiation in excess of § 100.11 values, and with the possibility of fatalities and the need to evacuate large residential areas. If one thinks of risks as the product of probabilities and consequences, and if one assumes that the "design basis threat" remains the same at low and full power, then the risks associated with the low-power LOCA would appear to be much lower than those associated with the same LOCA as full power. We ask the parties to comment on whether, under the postulated scenarios and all other things being equal, one could justify any reduction in safeguards measures at low power? To put it another way, once a certain minimum level of risk to the public is involved, should Part 73 apply in full force, regardless of possible fluctuations in risk above that minimum level?

Answers to the foregoing questions may be brief. With respect to technical

(as distinguished from legal) questions, we would appreciate an affidavit from a qualified expert. However, in view of the short time involved, such affidavits are not required.

The Applicants and Staff are to have their submissions *in the hands* of the Board and other parties by Noon, Monday, April 15, 1985. The Board would also appreciate having the County's and State's submission at that time. Recognizing, however, that they are working on replies for a Friday, April 12 deadline, the County and State may serve their submission at the conference of counsel.

Time and Place of Conference of Counsel. The date of the conference is *changed* from April 15 to April 16, 1985. The conference will take place in Bethesda, Maryland at 4350 East-West Highway, 5th floor, Appeal Board Conference Room, beginning at 10:30 a.m.

This Order was made available to the parties on April 9, 1985.

For the Atomic Safety and Licensing Board.

James L. Kelley, Chairman,

Administrative Judge.

April 9, 1985.

[FR Doc. 85-8982 Filed 4-12-85; 8:45 am]

BILLING CODE 7590-01-M

Publication of Subagreement No. 3 Between the U.S. NRC and the Washington State Energy Facility Site Evaluation Council

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Subagreement No. 3 Between the U.S. NRC and the Washington State Energy Facility Site Evaluation Council [1].

SUMMARY: On September 6, 1978, an "unbrella" memorandum of understanding was signed by the NRC and the State of Washington, providing principles of cooperation between the State and NRC is areas of concern to the State.

Subagreement No. 3 identifies specific areas of information exchange and cooperation which are mutually acceptable to the State of Washington, its agent the Energy Facility Site Evaluation Council (EFSEC), and the United States Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT: Dean Kunihiro, Region V, U.S. Nuclear Regulatory Commission, 1450 Maria Lane, 210, Walnut Creek, California 94596, (Telephone: (415) 943-3714).

Dated at Walnut Creek, CA this 10th day of Arpil, 1985.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,

Regional Administrator.

Subagreement 3 Between the United States Nuclear Regulatory Commission and the Washington State Energy Facility Site Evaluation Council Regarding the Inspection and Operation of Nuclear Powered Steam Electric Generating Stations Located in the State of Washington

This Subagreement is promulgated under the provisions of the Memorandum of Agreement between the state of Washington and the United States Nuclear Regulatory Commission, dated September 6, 1978.

Purpose

The objective of this Subagreement is the establishment of a procedure mutually acceptable to the State of Washington (hereafter "State"), its agent the Energy Facility Site Evaluation Council (EFSEC), and the United States Nuclear Regulatory Commission (hereafter NRC) for the exchange of information concerning maintenance, engineering, quality assurance, security, emergency planning and operation of nuclear powered steam electric generating stations located in the State of Washington.

It is the intent of this Subagreement that cooperative efforts should enhance understanding, reduce duplication of effort and provide wherever possible a unified position on matters of joint concern.

Implementation

1. The NRC conducts its inspection program through resident inspectors and special inspections originating from Region V, Walnut Creek, California, and NRC Headquarters, Washington, D.C. EFSEC conducts its inspection through Council members and staff and agency inspectors operating under interagency agreements.

2. EFSEC and NRC agree to the greatest extent possible and in good faith to provide the other party with information relative to the spirit of this Memorandum.

3. EFSEC and NRC agree to meet at the call of either party at mutually agreeable times and places to exchange information on matters of common concern. Regardless of intervening meetings the parties agree to meet annually to keep each other apprised of planned activity for the ensuing year.

4. The EFSEC inspectors will not duplicate the regulatory activities of the NRC. To the extent possible EFSEC inspectors will coordinate their schedules and inspection activities with NRC so that their on-site activities avoid interruption to normal plant operations and maintenance.

5. EFSEC agrees to share with NRC information relative to its water chemistry, radiological, industrial safety and environmental monitoring programs. Consistent with requirements to protect confidential, proprietary, predecisional, and safeguards information, NRC agrees to share with EFSEC information relative to its plant construction and operation, radiological, health and safety monitoring programs. Each agency agrees to be sensitive to the needs of the other when designing its respective monitoring programs.

6. To the extent practicable EFSEC inspectors may observe NRC audits, reviews, inspections, drills and meetings. In the same way, the NRC inspectors may observe EFSEC audits, reviews, inspections, drills and meetings. The parties recognize that there will be occasions when, because of the sensitive nature of certain meetings, it may be necessary for the parties to conduct their activities privately and separately.

7. The parties agree as a routine procedure to provide the other party with information copies of inspection reports and final enforcement actions conducted under the authority of either party.

8. EFSEC and NRC agree to work cooperatively and to share information during actual emergency response events and during all emergency response drills and exercises. Upon arrival at the site, each party will advise the other of its presence and confer upon the status and adequacy of emergency response operations.

9. The NRC will use its best efforts to make available space in its inspector training courses, seminars and special orientation programs to accommodate the training needs of the EFSEC inspectors.

10. Nothing in this Subagreement is intended to restrict or extend the statutory or regulatory authority of either EFSEC or NRC.

11. This Subagreement shall take effect immediately upon signing by the Chairman of EFSEC and the Regional Administrator, NRC Region V and may be terminated upon 30 days written notice by either party.

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[1] The Nuclear Regulatory Commission published this notice in the Federal Register of March 28, 1985 (50 FR 11982), but inadvertantly committed the attachment. This notice includes the complete text.

12. The principal NRC point of contact for this Subpagreement shall be the Regional Administrator, NRC Region V. The principal Washington State contact shall be the Chairman of EFSEC.

13. If any provision of this Subagreement, or the application of any provision to any person or circumstance is held invalid, the remainder of this Subagreement and the application of such provisions to other persons or circumstances shall not be affected.

For the U.S. Nuclear Regulatory Commission.

John B. Martin,

Regional Administrator.

Dated: March 7, 1985.

For the Washington Energy Facility Site Evaluation Council.

Curtis Eschles,

Chairman.

Dated: February 19, 1985.

[FR Doc. 85-8849 Filed 4-12-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Establishment; Losses and Goals Advisory Committee, Production Planning Advisory Committee and Advisory Committee on Resident Fish Substitutions

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of establishment of advisory committees.

SUMMARY: On March 14, 1985 in Portland, Oregon, the Northwest Power Planning Council established three new committees as advisory committees to the Council. This notice describes the committees, provides information on how to obtain notices of committee meetings, and explains how to request copies of the committees' charters.

ADDRESS: Individuals and entities wishing to receive notices of committee meetings or copies of the committee's advisory committee charters should contact Dulcy Mahar, Director of Public Information and Involvement, by writing her at the Council's central office, 850 SW. Broadway, Suite 1100, Portland, Oregon 97205, or by calling her at (toll-free) 1-800-222-3355, from Montana, Idaho, Washington and California; (toll-free) 1-800-452-2324 in Oregon; or (503) 222-5161. The charters also are available for inspection and copying in the public reading room of the Council's central office at the above address on weekdays between 8:30 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Janis Chrisman, Director of Fish and Wildlife, at (toll-free) 1-800-222-3355 from Montana, Idaho, Washington and California; (toll-free) 1-800-452-2342 in Oregon; or (503) 222-5161 from other states.

SUPPLEMENTARY INFORMATION: The Council recently established three new advisory committees to assist it and its staff with the implementation of different facets of the anadromous fish goals and losses study, Section 201 and Section 1504 (Action Item 36.2) of the Columbia River Basin Fish and Wildlife Program. Those committees are the Losses and Goals Advisory Committee, Production Planning Advisory Committee and the Advisory Committee on Resident Fish Substitutions.

The Council established the committees, selected committee chairmen, and adopted charters for the committees in a public meeting held on Mrch 14, 1985 in Portland, Oregon. The charters describe the objectives and activities of the committees, their authority, and related matters. They also contain rules for committee procedures on meeting notices, public particpation, minutes, records, conflicts of interest, and reimbursement of certain committee member expenses. Under section 4(a)(4) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839 *et seq.*), the terms of the Federal Advisory Committee Act (5 U.S.C. App. I, 1-14) apply "to the extent appropriate" to the Council's advisory committees.

Edward Sheets,

Executive Director.

[FR Doc. 85-8953 Filed 4-11-85; 8:45 am]

BILLING CODE 6000-01-M

DEPARTMENT OF STATE

[CM-8/840]

The Secretary's Advisory Panel on Overseas Security; Meeting

The Secretary's Advisory Panel on Overseas Security will hold a meeting on Thursday, April 18, 1985 from 11:00 a.m. until 4:00 p.m. at the Department of State, 2201 C Street, NW., Washington, D.C. 20510.

Due to the national security information that will be discussed, this meeting will be closed to the public.

Due to scheduling difficulties with Panel members who do not live in the Washington D.C. area, the normal 15-day advance notice of this meeting was not given.

For further information, please contact the Advisory Panel staff on (202) 653-8533.

Victor H. Dikeos,

Executive Secretary, The Secretary's Advisory Panel on Overseas Security.

April 10, 1985.

[FR Doc. 85-9122 Filed 4-12-85; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB, Feb. 21, 1985-Apr. 2, 1985

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period Feb. 21, 1985-Apr. 2, 1985, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, D.C. 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from Feb. 21, 1985–Apr. 2, 1985.

DOT No.: 2544.
OMB No.: 2127–0518.
By: National Highway Traffic Safety Administration.
Title: 49 CFR Part 571, Motorcycle Helmets, Standard No. 218.
Forms: None.
Frequency: On occasion.
Respondents: Businesses.
Need/Use: Standard 218 requires all motorcycle helmets to be permanently labeled with certain information. Without this labeling requirement, the purchaser could not be sure the helmet met the safety standards of the U.S. DOT.

DOT No.: 2545.
OMB No.: New.
By: National Highway Traffic Safety Administration.
Title: National Perspectives on Occupant Protection Systems.
Forms: None.
Frequency: On occasion.
Respondents: Ind/households.
Need/Use: Conduct biannual nationally representative telephone surveys of 1,200 individuals over 17 years of age to assess and track perceptions, knowledge, and attitudes towards mandatory restraint use laws and occupant protection systems.

DOT No: 2548.
OMB No: New.
By: United States Coast Guard.
Title: Vital System Automation.
Forms: None.
Frequency: On occasion.
Respondents: Automated vessel designers, manufacturers, owners, and crewmembers.
Need/Use: The information is needed to ensure safety of life at sea; to respond to the marine industry's request to replace outdated Navigation and Vessel Inspection Circular (NVIC 1–69); to ensure that U.S. flag vessels conform to the automation regulations of the 1981 Amendments to the International Convention for the Safety of Life at Sea, 1974) (SOLAS '74); and to facilitate delegation of automation evaluation to the American Bureau of Shipping (ABS). The information collected will be used by the Coast Guard to determine compliance with the proposed safety regulations and to evaluate the necessary minimum manning consistent with the safe operation of the vessel.

DOT No: 2549.
OMB No: New.
By: United States Coast Guard.
Title: Carriage and Use of Liquefied or Nonliquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire.
Forms: None.
Frequency: On occasion.
Respondents: Owners and operators of passenger-carrying vessels who elect to install these appliances are affected.
Need/Use: The Coast Guard is proposing to allow the use of LPG and CNG cooking appliances on passenger-carrying vessels provided certain existing industry standards are met. Information as to operating instructions and safety precautions for the gas system and the gas cooking appliance would be posted on two placards for any person operating the cooking appliance to ensure it is operated in a safe manner.

DOT No: 2550.
OMB No: 2127–0004.
By: National Highway Traffic Safety Administration.
Title: 49 CFR Part 573, Defect and Noncompliance Reports.
Forms: None.
Frequency: On occasion.
Respondents: Business/small business or organizations.
Need/Use: Manufacturers of motor vehicles and motor vehicle equipment are required to report to this agency when they determine that defects or noncompliances with safety standards exist in their equipment, so that the agency can monitor recalls.

DOT No: 2551.
OMB No: 2105–0510.
By: Office of the Secretary.
Title: Quarterly Report of MBE–DBE/WBE Awards Commitments.
Forms: One.
Frequency: Quarterly.
Respondents: Recipients of DOT financial assistance funds.
Need/Use: This quarterly reporting form is needed in order to provide a uniform format which recipients of Department of Transportation financial assistance funds will use to report awards to MBE–DBE's/WBE's as required by DOT regulations.

Issued in Washington, D.C. on April 10, 1985.

Jon H. Seymour,
Acting Assistant Secretary for Administration.

[FR Doc. 85–9011 Filed 4–12–85; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Stark and Mahoning Counties, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) is being prepared for a proposed highway project in Stark and Mahoning Counties, Ohio.

FOR FURTHER INFORMATION CONTACT:
Mr. Marvin I. Espeland, Division Administrator, or Mr. Thomas M. Wahtola, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215. Telephone (614) 469–6896 or 469–5138.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Ohio Department of Transportation, is preparing an environmental impact statement on the proposed construction of approximately 9.58 miles of four-lane, divided, limited access highway on new location, with interchanges at selected crossroads, in Stark and Mahoning Counties, Ohio. The proposed facility is a relocation of U.S. Route 62 and would extend from a partially completed interchange with State Route 225 northeast of Alliance to a recently completed section of four-lane, divided, limited access highway at State Route 14 northeast of Salem. The highway proposed for construction would be a gap closure, joining an improved section of U.S. Route 62 now serving as the Alliance Bypass with an improved section of highway connecting with the Salem Bypass.

Studies for the improvement of U.S. Route 62 in Stark and Mahoning Counties have been carried on since before 1960. In the studies several alternative routes were considered. However, the completion of substantial portions of a relocated facility along the line selected and journalized in 1964 has

determined the termini for the current proposal.

Currently, therefore, only one build alignment is being considered, the one which was selected following the earlier studies, adopted after public involvement, and incorporated in local and regional planning. The no-build alternative is also being considered.

The proposed highway facility would support existing and future industrial activity in the area and aid planned development. It would also contribute to the fulfillment of state and local transportation plans, meet expected traffic demands, and relieve congestion on the existing route, allowing it to better serve local needs.

Public involvement and coordination with federal, state, and local agencies has been conducted. It is envisioned that involvement with the public and other agencies will continue throughout the development of the project and, therefore, it is not anticipated that a formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action and the EIS should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.

Issued on: April 3, 1985.

Marvin L. Espeland,

Division Administrator, Columbus, Ohio.

[FR Doc. 85-8949 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

[Docket No. S-766]

American President Lines, Ltd.; Application for a Waiver To Permit Certain Foreign-Flag Operations

American President Lines, Ltd. (APL), by application dated March 8, 1985, requests the following waivers of the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended, for foreign-flag operations of APL, or related companies, such waivers to run concurrently with the period of Operating-Differential Subsidy Agreement, Contract No. MA/MSB-417, on the one hand, and, on the other hand, to expire upon termination of the Agreement.

1. To own, operate and/or charter foreign-flag feeder vessels of a size and number to be determined by APL, said vessels to be operated between a foreign port on Line A or Line B as described in proposed Appendix A of Contract No. MA/MSB-417 (see Attachment 4 of this Notice), on the one hand, and, on the other hand, Singapore (or an adjacent port in Malaysia) and/or a foreign port or ports on the Pacific and Indian Oceans, and all bodies of water appendage or tributary thereto, not included on said Line A and Line B.

2. To own, operate and/or charter two foreign-flag vessels of approximately 200 FEU capacity, said vessels to be operated between a foreign port on Line A or Line B as described in proposed Appendix A of Contract No. MA/MSB-417 (see Attachment 4 of this Notice) and a port or ports in the Peoples Republic of China.

3. To own, operate and/or charter two foreign-flag vessels of approximately 250 FEU capacity, said vessels to be operated between a foreign port on Line A or Line B as described in proposed Appendix A of Contract No. MA/MSB-417 (see Attachment 4 of this Notice) and Thailand.

APL's Existing Services

APL now performs four subsidized containership services. Its two transpacific services cover the range of TR 29 to/from California on up to 108 annual sailings (Line A) and to/from Oregon/Washington on up to 80 annual sailings (Line B). Its two Extension services add authority to serve the ports of Southeast and South Asia and the Persian Gulf on up to 28 sailings to/from California and up to 80 sailings to/from Oregon/Washington. APL is permitted by its contract to provide any part of the service by transfer or relay of cargo between subsidized vessels at any authorized foreign port on the routes. APL's current subsidized services are described in Attachment 1 of this Notice.

APL performs its Line A and Line B services primarily with line-haul vessels making direct calls at most major foreign TR 29 ports. Korea, the Philippines and Guam are served by APL subsidized feeder vessels, and Thailand is served via Singapore by foreign-flag common carrier due to draft limitations at Bangkok that preclude service by APL line-haul ships.

The APL Extension services are currently performed by a feeder network that includes three subsidized U.S.-flag APL owned vessels providing service on a relay basis to Singapore and Indonesia, Colombo and Fujairah via Kaohsiung. The APL owned vessels are supplemented by foreign-flag common carrier services which-on-carry cargo from Singapore and Fujairah to India-Pakistan and portions of the Persian Gulf and Malaysia. The details of the current configuration of the APL Extension services are given in Attachment 2 of this Notice.

APL's Application

APL believes that the most efficient and competitive way to operate its extension services is by use of foreign-flag feeder vessels relaying cargo from the APL line-haul vessels at Kaohsiung. APL's current plans for restructuring the operation of the Extension services are set out in Attachment 3. APL indicates that it will take considerable time to acquire the required vessels–by purchase or charter—so the transition to APL's use of the foreign-flag feeders would be phased in over a period of up to two years, during which APL would continue to employ its subsidized container vessels on the Extension services. APL also indicates that given the changing economic and commercial conditions of these evolving markets, APL must have the flexibility to adjust its operations of the Extension services in terms of port coverage, capacity, frequency of service and vessels, so as to remain competitive.

APL advises that its request to employ foreign-flag feeder vessels on the Extension services is not tied to any given number of vessels, capacity or port coverage, but represents a request for general authority to operate foreign-flag feeder vessels on a relay basis from APL's line-haul services on TR 29 to foreign ports beyond TR 29 on the Pacific and Indian Oceans, including ports not currently within the Line A an Line B Extension route descriptions.

APL intends to use Kaohsiung—where APL has constructed a major terminal facility—as the relay port between its subsidized line-haul service on TR 29 and the proposed unsubsidized Extension service of ports beyond TR 29. Kaohsiung is currently the principal relay port between the APL line-haul and Extension services. APL points out, however, that one cannot forecast the economic or political conditions that may evolve in the area of the next decade, and it is conceivable that use of Singapore (or an adjacent port in Malaysia) as the relay port may at some future date prove more advantageous or indeed necessary. Thus, APL is proposing to retain Singapore (or an adjacent port in Malaysia) as an authorized port in APL's basic subsidized line-haul authority.

APL indicates that government restrictions and/or physical port limitations at two TR 29 countries—

China and Thailand—preclude service to those countries by U.S.-flag non-self-sustaining modern line-haul container vessels. In consequence, APL currently serves Bangkok using a foreign-flag common carrier via Singapore, and serves China via Hong Kong to which cargo is brought by rail, truck or small Chinese vessels. Accordingly, APL has included a request to serve China and Thailand by foreign-flag feeder.

APL advises that the conditions that exist in the Extension services for containership operations have no application to APL's C5 vessels, which frequently call at Extension service ports. APL's application thus contemplates that the C5 vessels would continue to operate on a subsidized basis on the Line B Extension service (as well, of course, as on the basic Line B service).

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 40 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on May 6, 1985. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies (ODS)).

By Order of the Maritime Administrator.

Dated: April 9, 1985.

Murray A. Bloom,

Acting Secretary, Maritime Administration, Maritime Subsidy Board.

Attachment 1—Current Appendix A—Contract MA/MSB-417

American President Lines, Ltd.; Subsidized Service

The description of the services required pursuant to this agreement shall be as follows:

(1) Transpacific Services

Line A—A minimum of 72 and a maximum of 108 sailings per annum between a port or ports in California and a port or ports in the following described area:

Required—Japan, Hong Kong, Philippines, Taiwan, Korea, Vietnam, Cambodia, Thailand.

Privilege—A port or ports in:
China;
U.S.S.R. in Asia;
Marshall Islands;
Midway Islands (not more than 54 sailings);
Alaska (only for overseas carriage);[1]
Guam,[2] to provide service between California and Guam and to Guam from foreign ports served under this contract, only; provided, that vessels calling at Guam under this privilege may provide service between Guam and the Philippines; provided further, that vessels calling at Guam under this privilege may load cargoes destined for Washington-Oregon for delivery by vessels in this contract or other vessels;
Ensenada, Mexico for the purpose of carrying cargo between Ensenada and Far East ports on the service;
U.S. Atlantic ports on not more than 28 sailings, via the Panama Canal in each direction, but via Los Angeles only, in California, eastbound; and in connection with U.S. Atlantic port calls;
(1) Pacific coast of Mexico for the purpose of carrying cargo between Mexican ports and other foreign ports on this service,
(2) Canadian Atlantic and St. Lawrence River ports before departure outbound from U.S. Atlantic ports,
(3) Panama Canal Zone, but not for loading or discharging U.S. Atlantic nor California cargoes (including transshipment cargoes), and
(4) Cargoes for discharge at U.S. Atlantic ports may not be loaded at extension area ports in the Persian Gulf-Gulf of Oman (including all of Oman);

Line B—A minimum of 54 and a maximum of 80 sailings per annum between a port or ports in Washington-Oregon and a port or ports in the following described area:

Required—Japan, Korea, Taiwan, Hong Kong, Philippines, Vietnam, Cambodia, Thailand.

Privilege—A port or ports in:
China;
U.S.S.R. in Asia;
Brunei;
Alaska (only for overseas carriage);[3]
British Columbia (only for overseas carriage);
California on a maximum of 20 sailings with breakbulk ships only;
Guam,[4] to provide service between Washington-Oregon and Guam and to Guam from foreign ports served under this contract, only; provided, that vessels calling at Guam under this privilege may provide service between Guam and the Philippines; provided further, that vessels calling at Guam under this privilege may load cargoes destined for California for delivery by vessels in this contract or other vessels.

(2) Trade Route No. 17 and Trade Route No. 28 Southeast and South Asia and Persian Gulf-Red Sea Services (as extension of Line A or Line B service)

Line A Extension—A minimum of 16 and a maximum of 28 Line A sailings shall also serve a port or ports in the following described area:

Required—Indonesia, Malaysia (except Sarawak and Sabah) and Singapore.

Privilege—
Bay of Bengal area (Burma, east coast of India, Bangladesh, and Ceylon (Sri-Lanka)), west coast of India, Pakistan, the Persian Gulf-Gulf of Oman (including all of Oman), and Diego Garcia.[5]

Privilege—
Bay of Bengal area (Burma, east coast of India, Bangladesh and Ceylon (Sri-Lanka)), west coast of India, Pakistan, the Persian Gulf-Gulf of Oman (including all of Oman), the Red Sea-Gulf of Aden, ports in Somalia on the Indian Ocean, and Diego Garcia.

Dual Service Privileges

The Line A and Line B service requirements, including extension requirements, described above, may be met by full containerships calling at ports in both California and Washington-Oregon. A containership voyage that originates in California shall be designated as a Line A sailing, and a containership voyage that originates in Washington-Oregon shall be designated as a Line B sailing. Any Line A sailing

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[1] Notwithstanding any other provision of this contract, not more than 80 sailings per annum may call Alaska.

[2] Notwithstanding any other provision of this contract, not more than 28 calls annually shall be made at Guam.

[3] Notwithstanding any other provision of this contract, not more than 80 sailings per annum may call Alaska.

[4] Notwithstanding any other provision of this contract, not more than 28 calls annually shall be made at Guam.

[5] Provided that operating-differential subsidy shall be paid for not more than 3½ days of the total excess time (steaming and port time) required by reason of the call at Diego Garcia.

that also calls at Washington-Oregon shall be counted toward the maximum sailings specified for Line B, and any Line B containership sailing that also calls at California shall be counted toward maximum sailings specified for Line A, with the outbound and inbound portion of the sailing being counted and applied separately. Until such time after April 1983 when new regulations defining the procedures for determining substantiality and extent of foreign-flag competition shall become effective, and pursuant to which actual ports of call are the bases upon which the competitive area is determined, any containership exercising the dual service privilege here described shall receive subsidy calculated in the same manner as that effective on January 1, 1983.

Feeder Service

The Operator may provide any part of the services authorized above by transshipment or relay of cargo at any foreign port in the authorized service to another subsidized United States-flag vessel covered by this contract. A feeder vessel voyage shall be considered as an extension of a line-haul voyage performing service pursuant to this contract. Subsidy applicable for a feeder vessel voyage will be at the same rates as the United States shall find applicable to the linking line-haul service. Subsidy shall be payable under normal procedures on each feeder vessel voyage at the end of the month in which the line-haul voyage with which it is linked terminates, provided that the feeder vessel vayage itself has terminates, and provided further that the feeder has carried a significant amount of cargo in the U.S. foreign commerce. There shall be no increase in the number of voyages calling at any port beyond those authorized by this contract as a consequence of any feeder service. No subsidy shall be payable for crew repatriation costs or any other item of expense which may be determined to be an additional cost incurred by keeping the feeder vessel continuously employed in a foreign area.

As regards Guam service permitted as described in Appendix A, such service is subject to the following provisions:

1. If, during the period of six months from December 20, 1984, a U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced, from a date of six months from December 20, 1984, all Guam cargoes carried by APL shall be on an unsubsidize basis, that is, all Guam cargoes, foreign and domestic, shall be subject to the subsidy reduction formula prescribed in section 605(a) of the Act. In computing such subsidy reduction a feeder vessel voyage which serves Guam shall be considered as an extension of the linking line haul vessel to which the feeder voyage is linked, and the carryings of the two vessels together shall be considered as one voyage in computing the subsidy reduction.

2. If, by a date six months from December 20, 1984, no U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from Foreign Far East ports to Guam has commenced and there is no definite planned service, the Guam authority described in Appendix A hereof shall become permanent, that is, APL's vessels in Guam service shall be eligible for subsidy for all Guam/foreign carryings permitted by this contract, and subsidy reduction shall be required only for domestic Guam carryings as specified by applicable statue and regulations.

3. If, by a date six months from December 20, 1984, no U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced but there is a definite planned service, APL may continue to provide service as described in Appendix A hereof, on a subsidized basis, for three more months.

4. If, after nine months from December 20, 1984, a U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced, from a date nine months from December 20, 1984, all Guam cargoes carried by APL shall be on an unsubsidized basis, that is, all Guam cargoes, foreign and domestic, shall be subject to the subsidy reduction formula prescribed in section 605(a) of the Act. In computing such subsidy reduction a feeder vessel voyage which serves Guam shall be considered as an extension of the linking line haul vessel to which the feeder voyage is linked, and the carryings of the two vessels together shall be considered as one voyage in computing the subsidy reduction.

5. If, after nine months from December 20, 1984, no U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced, APL's vessels in Guam service shall be eligible for subsidy for all Guam/foreign carryings permitted by Appendix A hereof, and subsidy reduction shall be required only for domestic Guam carryings as specified by applicable statute and regulations.

ATTACHMENT 2—CURRENT APL EXTENSION FEEDER SERVICES

	APL Feeder		Common Carrier					
Port rotation:	Kaohsiung Singapore Colombo Fujairah Colombo Singapore Hong Kong	Kaohsiung Singapore Jakarta Singapore Hong Kong	Fujairah Dubai Dammam Bahrain Fujairah Karachi	Fujairah Muscat Bombay	Singapore Colombo Bombay Cochin Colombo Madras	Singapore Pt. Kelang Penang	Singapore Bangkok	Singapore Chittagong.
Ships:	2 Pacesetters 600 FEU	1 Seamaster 500 FEU						
Frequency:	FTNTLY	FTNTLY	FTNTLY	FTNTLY	FTNTLY	Weekly	Weekly	FTNTLY.

ATTACHMENT 3—ANTICIPATED APL FOREIGN-FLAG FEEDER SERVICE

	Extension Service								TR 29	
Port rotation:	Kaohsiung Singapore Colombo or Madras Fujairah Colombo Singapore	Kaohsiung Singapore Jakarta Surabaya Singapore	Fujairah Dubai Dammam Kuwait Bandar Shapur Bandar Abbas Bahrain	Fujairah Karachi	Fujairah Bombay Muscat	Colombo or Madras Bombay Cochin Colombo Madras Calcutta	Singapore Pt. Kelang Penang	Singapore Chittagong Chalna	Kobe Tsingtao Tinsing Dalian Shanghai	Kaohsiung Bangkok Singapore.
Ships:	4-650 FEU	1-250 FEU	2-250 FEU	1-250 FEU	1-200 FEU	2-200 FEU	1-125 FEU	1-100 FEU	3-200 FEU	2-250 FEU.
Frequency:	Weekly	FTNTLY	Weekly	Weekly	FTNTLY	FTNTLY	Weekly	FTNTLY	FTNTLY	Weekly.

Certain conventions have been used to highlight the proposed revisions in Attachment 4. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

Attachment 4—American President Lines, Ltd

Subsidized Service

The description of the services required pursuant to this agreement shall be as follows:

(1) Transpacific Services

LINE A—A minimum of 72 and a maximum of 108 sailings per annum between a port or ports in California and a port or ports in the following described area:

Required—Japan, Hong Kong, Philippines, Taiwan, Korea, Vietnam, Cambodia, Thailand.

Privilege—A port or ports in:

China;

U.S.S.R. in Asia;

Marshall Islands;

Midway Islands (not more than 54 sailings);

Alaska (only for overseas carriage)*;

Guam**, to provide service between California and Guam and to Guam from foreign ports served under this contract, only; provided, that vessels calling at Guam under this privilege may provide service between Guam and the Philippines; provided further, that vessels calling at Guam under this privilege may load cargoes destined for Washington-Oregon for delivery by vessels in this contract or other vessels;

Ensenada, Mexico for the purpose of carrying cargo between Ensenada and Far East ports on the service;

▶Singapore or an adjacent port in Malaysia (on a maximum of 28 sailings);**◀**

U.S. Atlantic ports on not more than 28 sailings, via the Panama Canal in each direction, but via Los Angeles only, in California, eastbound; and in connection with U.S. Atlantic port calls;

(1) Pacific coast of Mexico for the purpose of carrying cargo between Mexican ports and other foreign ports on this service,

(2) Canadian Atlantic and St. Lawrence River ports before departure outbound from U.S. Atlantic ports,

(3) Panama Canal Zone, but not for loading or discharging U.S. Atlantic nor California cargoes (including transshipment cargoes), and

(4) Cargoes for discharge at U.S. Atlantic ports may not be loaded at extension area ports in the Persian Gulf-Gulf of Oman (including all of Oman);

LINE B—A minimum of 54 and a maximum of 80 sailings per annum between a port or ports in Washington-Oregon and a port or ports in the following described area:

Required—Japan, Korea, Taiwan, Hong Kong, Philippines, Vietnam, Cambodia, Thailand.

Privilege—A port or ports in:

China;

U.S.S.R. in Asia;

Brunei;

Alaska (only for overseas carriage)*;

British Columbia (only for overseas carriage);

California on a maximum of 20 sailings with breakbulk ships only;

Guam**, to provide service between Washington-Oregon and Guam and to Guam from foreign ports served under this contract, only; provided, that vessels calling at Guam under this privilege may provide service between Guam and the Philippines; provided further, that vessels calling at Guam under this privilege may load cargoes destined for California for delivery by vessels in this contract or other vessels;

▶Singapore or an adjacent port in Malaysia with containerships**◀**

(2) Trade Route No. 17 and Trade Route No. 28 Southeast and South Asia and Persian Gulf-Red Sea Services (as extension of [Line A or] Line B service)

[*LINE A EXTENSION*—A minimum of 18 and a maximum of 28 Line A sailings shall also serve a port or ports in the following described area:

Required— Indonesia, Malaysia (except Sarawak and Sabah) and Singapore.

Privilege—

Bay of Bengal area (Burma, east coast of India, Bangladesh, and Ceylon (Sri-Lanka)), west coast of India, Pakistan, the Persian Gulf-Gulf of Oman (including all of Oman), and Diego Garcia.***

*LINE B EXTENSION***▶** *(with C5–S–75a vessels only)***◀** A minimum of 6 Line B sailings shall also serve a port or ports in the following described area:

Required—Indonesia, Malysia, Singapore

Privilege—

Bay of Bengal area (Burma, east coast of India, Bangladesh and Ceylon (Sri-Lanka)), west coast of India, Pakistan, the Persian Gulf-Gulf of Oman (including all of Oman), the Red-Gulf of Aden, ports in Somalia on the Indian Ocean, and Diego Garcia.* * *

Dual Service Privileges

The Line A and Line B service requirements [including extension requirements, described above,] may be met by full containerships calling at ports in both California and Washington-Oregon. A containership voyage that originates in California shall be designated as a Line A sailing, and a containership voyage that originates in Washington-Oregon shall be designated as a Line B sailing. Any Line A sailing that also calls at Washington-Oregon shall be counted toward the maximum sailings specified for Line B, and any Line B containership sailing that also calls at California shall be counted toward maximum sailings specified for Line A, with the outbound and inbound portion of the sailing being counted and applied separately. Until such time after April 1983 when new regulations defining the procedures for determining substantiality and extent of foreign-flag competition shall become effective, and pursuant to which actual ports of call are the bases upon which the competitive area is determined, any containership exercising the dual service privilege here described shall

*—Notwithstanding any other provision of this contract, not more than 80 sailings per annum may call Alaska.

**—Notwithstanding any other provision of this contract, not more than 26 calls annually shall be made at Guam.

*—Notwithstanding any other provision of this contract, not more than 80 sailings per annum may call Alaska.

**—Notwithstanding any other provision of this contract, not more than 26 calls annually shall be made at Guam.

***—Provided that operating-differential subsidy shall be paid for not more than 3½ days of the total excess time (steaming and port time) required by reason of the call at Diego Garcia.

receive subsidy calculated in the same manner as that effective on January 1, 1983.

Feeder Service

The Operator may provide any part of the services authorized above by transshipment or relay of cargo at any foreign port in the authorized service to another subsidized United States-flag vessel covered by this contract. A feeder vessel voyage shall be considered as an extension of a line-haul voyage performing service pursuant to this contract. Subsidy applicable for a feeder vessel voyage will be at the same rates as the United States shall find applicable to the linking line-haul service. Subsidy shall be payable under normal procedures on each feeder vessel voyage at the end of the month in which the line-haul voyage with which it is linked terminates, provided that the feeder vessel voyage itself has terminated, and provided further that the feeder has carried a significant amount of cargo in the U.S. foreign commerce. There shall be no increase in the number of voyages calling at any port beyond those authorized by this contract as a consequence of any feeder service. No subsidy shall be payable for crew repatriation costs or any other item of expense which may be determined to be an additional cost incurred by keeping the feeder vessel continuously employed in a foreign area.

As regards Guam service permitted as described in Appendix A, such service is subject to the following provisions:

1. If, during the period of six months from December 20, 1984, a U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced, from a date of six months from December 20, 1984, all Guam cargoes carried by APL shall be on an unsubsidized basis, that is, all Guam cargoes, foreign and domestic, shall be subject to the subsidy reduction formula prescribed in section 605(a) of the Act. In computing such subsidy reduction a feeder vessel voyage which serves Guam shall be considered as an extension of the linking line haul vessel to which the feeder voyage is linked, and the carryings of the two vessels together shall be considered as one voyage in computing the subsidy reduction.

2. If, by a date six months from December 20, 1984, no U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam has commenced and there is no definite planned service, the Guam authority described in Appendix A hereof shall become permanent, that is, APL's vessels in Guam service shall be eligible for subsidy for all Guam/foreign carryings permitted by this contract, and subsidy reduction shall be required only for domestic Guam carryings as specified by applicable statute and regulations.

3. If, by a date six months from December 20, 1984, no U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced but there is a definite planned service, APL may continue to provide service as described in Appendix A hereof, on a subsidized basis, for three more months.

4. If, after nine months from December 20, 1984, a U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced, from a date nine months from December 20, 1984, all Guam cargoes carried by APL shall be on an unsubsidized basis, that is, all Guam cargoes, foreign and domestic, shall be subject to the subsidy reduction formula prescribed in section 605(a) of the Act. In computing such subsidy reduction a feeder vessel voyage which serves Guam shall be considered as an extension of the linking line haul vessel to which the feeder voyage is linked, and the carryings of the two vessels together shall be considered as one voyage in computing the subsidy reduction.

5. If, after nine months from December 20, 1984, no U.S.-flag service involving Sea-Land and/or Guam Shipping Lines from foreign Far East ports to Guam shall have commenced, APL's vessels in Guam service shall be eligible for subsidy for all Guam/foreign carryings permitted by Appendix A hereof, and subsidy reduction shall be required only for domestic Guam carryings as specified by applicable statute and regulations.

[FR Doc. 85-8911 Filed 4-12-85; 8:45 am]
BILLING CODE 4910-61-M

National Highway Traffic Safety Administration

[Docket No. IP85-6; Notice 1]

Firestone Tire & Rubber Co.; Receipt of Petition for Determination of Inconsequential Noncompliance

Firestone Tire & Rubber Company, of Akron, Ohio, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires—Passenter Cars." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph § 4.3.5 of Standard No. 109 requires each tire with a maximum inflation pressure of 60 psi to have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high (12.7 mm), the words, "Inflate to 60 psi." Ohtsu Tire & Rubber Company of Japan produced approximately 22,000 T105/60D13 bias tubless Tempa Spare tires for the Firestone Tire & Rubber Company that failed to comply with this requirement of Standard No. 109 of which 19,000 could have been mounted in vehicles shipped to the United States. The requisite information is presented in characters only 7 mm. high. Petitioner believes that the information is clearly legible, and consumers will not be misled. The tire were produced from July 15, 1984, through February 24, 1985, and all molds involved have been corrected as of March 11, 1985.

Interested persons are invited to submit written data, views and arguments on the petition of Firestone Tire & Rubber Company described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5109, Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Art Casanova and Taylor Vinson, respectively.

Comment closing date: May 15, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1471); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: April 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-8925 Filed 4-12-85; 8:45 am]

BILLING CODE 4910-62-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Durer to Delacroix: Great Master Drawings from Stockholm" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between The Nationalmuseum, Stockholm, Sweden, the National Gallery of Art, the Kimbell Art Museum, and the Fine Arts Museums of San Francisco. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about October 27, 1985, to on or about January 5, 1986; the Kimbell Art Museum, Fort Worth, Texas, beginning on or about February 1, 1986, to on or about April 13, 1986; and the Fine Arts Museums of San Francisco, San Francisco, California, beginning on or about May 10, 1986, to on or about July 20, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 10, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-8917 Filed 4-12-85; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 72
Monday, April 15, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

April 5, 1985.

Deletion of Agenda Item from April 11th Open Meeting

The following item has been deleted at the request of Mass Media Bureau from the list of agenda items scheduled for consideration at the April 11, 1985; Open Meeting and previously listed in the Commission's Notice of April 4, 1985.

Agenda, Item No., and Subject

Mass Media—5—Title: Reexamination of the Commission's Rules and Policies Regarding the Attribution of Ownership Interests in Broadcast, Cable Television and Newspaper Entities (MM Docket No. 83-46, incorporating Docket Nos. 50521, 20548 and BC 78-239). Summary: By this *Memorandum Opinion and Order*, the Commission will consider, on reconsideration, whether or not to revise the standards governing the means by which it attributes interests in broadcast, cable television and newspaper properties and the manner in which these interests are reported.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-9025 Filed 4-10-85; 4:25 am]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

April 5, 1985.

Deletion of Agenda Item from April 11th Open Meeting

The following item has been deleted at the request of the Common Carrier Bureau from the list of agenda items scheduled for consideration at the April 11, 1985, Open Meeting and previously listed in the Commission's Notice of April 4, 1985.

Agenda, Item No., and Subject

Common Carrier—4—Title: American Telephone & Telegraph Company, AT&T Communications Tariff F.C.C. Nos. 9, 10, and 11. (Transmittal Nos. 285, 318). Summary: The Commission will consider AT&T's proposed private line tariffs, scheduled to take effect April 12, 1985.

William T. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-9026 Filed 4-10-85; 4:25 pm]

BILLING CODE 6712-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 25, 1985, 49 FR 11783.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 27, 1985, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No. and Company

RP-2
RP83-137-000, Transcontinental Gas Pipe Line Corporation
RP 83-11-000 through 006 and RP 83-30-000, Transcontinental Gas Pipe Line Corporation
CP83-279-002, Producer-Suppliers of Transcontinental Gas Pipe Line Corporation
CP83-340-003, Producer-Suppliers of Transcontinental Gas Pipe Line Corporation
CP83-428-001 through 014, Producer-Suppliers of Transco Gas Supply Company and Transcontinenal Gas Pipe Line Corporation

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9129 Filed 4-11-85; 4:01 p.m.]

BILLING CODE 6712-02-M

4

FEDERAL HOME LOAN BANK BOARD

Federal Savings & Loan Advisory Council.

TIME AND DATE: 9:00 a.m., Thursday, April 25, 1985.

PLACE: The Hyatt Regency Hotel in Atlanta, Georgia.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Crista G. Martin (202-377-6924).

MATTERS TO BE CONSIDERED: The FSLIC Fund.

No. 4, April 11, 1985.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85-9052 Filed 4-11-85; 10:44 am]

BILLING CODE 6720-01-M

federal register

Monday
April 15, 1985

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Availability of Environmental Assessment for Public Comment; Request for Comments on Need for a Programmatic Environmental Impact Statement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Availability of Environmental Assessment for Public Comment; Request for Comments on Need for a Programmatic Environmental Impact Statement

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: This notice announces the availability for public comment of the "Environmental Assessment and Finding of No Significant Impact," dated January 21, 1985, "concerning the application to the National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules, of Drs. Steven Lindow and Nickolas Panopoulos of the University of California, Berkeley, to field test ice-nucleation-minus bacteria prepared by recombinant DNA techniques for purposes of biological control of frost damage to plants." In addition, this notice requests comments on the need for a programmatic Environmental Impact Statement in connection with NIH approvals of proposals to release into the environment organisms containing recombinant DNA molecules.

DATE: Comments must be received by May 15, 1985.

ADDRESS: The January 21, 1985, Environmental Assessment and Finding of No Significant Impact is available upon a request to the NIH Office of Recombinant DNA Activities (ORDA), Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20205. Phone: (301) 496–6051. Comments should be submitted to the same address and will be available for inspection and copying on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Gartland, ORDA, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland, 20205, (301) 496–6051.

SUPPLEMENTARY INFORMATION:

I. Background

The NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266, November 23, 1984) require that recombinant DNA experiments "conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health" (section I–C of Guidelines) which involve "deliberate release into the environment of any organism containing recombinant DNA, except certain plants as described in Appendix L" (section III–A of Guidelines) must have prior approval from NIH before the experiment is conducted.

The NIH approved the application of Drs. Lindow and Panopoulous to field test ice-nucleation-minus bacteria prepared by recombinant DNA techniques on June 1, 1983 (48 FR 24549). Prior to the conduct of the field test, a lawsuit was filed challenging the approval on the grounds that NIH violated the National Environmental Policy Act (NEPA), (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500–1508), by failing to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) in connection with the approval of the field test.

On May 16, 1984, the United States District Court for the District of Columbia, in Civil Action No. 83–2714 (*Foundation on Economic Trends et al.*, v. *Margaret M. Heckler et al.*), issued a preliminary injunction which enjoined NIH from "approving or continuing to approve experimentation involving the deliberate release of recombinant DNA under * * * the * * * NIH Guidelines * * * until such time as the Court enters final judgment." The University of California was enjoined from proceeding with the Lindow-Panopoulos experiment "until such time as the Court enters final judgment."

The order of the District Court was appealed by the NIH and the University of California and on February 27, 1985, the United States Court of Appeals for the District of Columbia vacated the District Court's injunction as it applied to future approvals of deliberate release experiments by NIH, but upheld the preliminary injunction as it applied to the University of California experiment, concluding that the injunction should remain in effect until completion of an appropriate Environmental Assessment.

II. The Environmental Assessment

The NIH had begun preparation of an Environmental Assessment of the University of California experiment after the entry of the District Court order and that assessment and a Finding of No Significant Impact (FONSI) were completed on January 21, 1985.

This notice announces the availability for public comment of this 64-page EA–FONSI.

For convenience, the Table of Contents of the EA–FONSI

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Comments on the EA and FONSI will be considered by the Director, NIH, when he decides whether to reapprove the field test proposed by the University of California.

III. The Need for A Programmatic Environmental Impact Statement

In its February 27, 1985, decision the Appeals Court stated that, "If NIH gives adequate environmental consideration to each deliberate release experiment . . . then we cannot, at this point, say that such consideration will obstruct environmental review. We thus reverse the District Court's finding that plaintiffs are likely to succeed in showing, at this point, that the governing law requires NIH to complete a programmatic EIS on deliberate release experiments." However, the Appeals Court went on to state that, "NIH should at least consider whether a programmatic EIS is required to fulfill the agency's legal obligations

under NEPA and the CEQ regulations." The NIH is initiating such a consideration and hereby requests comments on whether a programmatic EIS is required to fulfill NIH's obligations under NEPA and the CEQ regulations in connection with NIH approvals of proposals to release into the environment organisms containing recombinant DNA. The following information is provided to assist the public in commenting on this issue.

A. When is a Programmatic EIS Required?

In its decision of February 27, 1985, (p. 30 of the *Slip Opinion*) the Court of Appeals quoted a definition of a programmatic EIS from one of its previous decisions:

> A programmatic EIS reflects the broad environmental consequences attendant upon a wide-ranging federal program. The thesis underlying programmatic EISs is that a systematic program is likely to generate disparate yet related impacts. * * * Whereas the programmatic EIS looks ahead and assimilates 'broad issues' relevant to [the program], the site-specific EIS addresses more particularized considerations * * *. *Nat'l Wildlife Federation* v. *Appalachian Regional Comm'n*, * * * 677 F.2d at 888.

The Court of Appeals also referred (pp. 30–31 of the *Slip Opinion*) to criteria for determining when a programmatic EIS should be prepared:

> Under CEQ regulations a programmatic EIS should be prepared if actions are 'connected,' 'cumulative,' or sufficiently 'similar' that a programmatic EIS is 'the best way' to identify the environmental effects. 40 CFR § 1508.25. As this court has noted, 'Two considerations are especially helpful in reviewing the responsible officials' decision not to prepare a programmatic EIS: (a) Could the programmatic EIS be sufficiently forward looking to contribute to the decisionmakers' basic planning of the overall program? and (b) Does the decisionmaker purport to 'segment' the overall program, thereby unreasonably constricting the scope of * * * environmental evaluation?' *Nat'l Wildlife Federation* v. *Appalachian Regional Comm'n*, * * * 677 F.2d at 889. Thus a programmatic EIS should be prepared if it can be forward-looking and if its absence will obstruct environmental review.

B. Field Tests Approved by NIH

To date, NIH has approved three field tests of organisms containing recombinant DNA. One involved tomato and tobacco plants. When this was reviewed by the NIH Recombinant DNA Advisory Committee (RAC) on October 25, 1982, the statement was made that "the probability that the experiment would be successful is very low." In fact, the researcher found that the experiment did not succeed under laboratory conditions, and therefore for scientific reasons he does not wish to proceed with the field test.

This leaves only two cases of NIH approval for field tests of organisms containing recombinant DNA in which the investigators wish to proceed. One is the Lindow-Panopoulos experiment involving ice-nucleation-minus bacteria on which the January 21, 1985, EA–FONSI was prepared. The other, from Dr. Ronald Davis of Stanford University, involves corn plants (*Zea mays*) transformed with corn DNA. The environmental concerns raised by these two proposals are totally different and can only be meaningfully considered individually through an evaluation of the specific details of the proposed field test and the characteristics of the organisms proposed to be released, including their ecological niche, pathogenicity, viability and ability to escape from the field test site.

C. NIH's Role in the Approval or Disapproval of Proposals for the Release into the Environment of Organisms Containing Recombinant DNA

The Federal action for purposes of NEPA and the CEQ regulations is reviewing proposals for deliberate release experiments submitted to NIH by institutions which receive NIH funds for recombinant DNA research. There is no Federal program for the planning, conduct, and support of deliberate release experiments; there is only a Federal requirement that deliberate release experiments by NIH-funded institutions be approved by NIH.

This Federal requirement does not involve federally planned or initiated actions that are directed toward a particular objective. Proposals are submitted by different researchers from different fields at undetermined times for quite different experiments. Of the three proposals approved to date, two were not funded by NIH. They were submitted for approval because the institutions proposing to conduct the field tests received some NIH funds for recombinant DNA research.

The NIH's Guidelines are not "aimed at developing new technology which, when applied, will affect the environment." Rather, the Guidelines are aimed at scrutinizing the development of technology to ensure the safety of that development. In the course of this scrutiny of proposals for the field testing of organisms containing recombinant DNA, NIH has not identified any common environmental effect which could arise for the field tests that have been approved by NIH thus far.

The NIH does not know what proposals for deliberate release experiments may be submitted for approval in the future since most of the experiments are investigator initiated and are not planned by NIH.

D. NIH's Future Role in the Review and Approval of Proposals for the Deliberate Release Into the Environment of Organisms Containing Recombinant DNA

Until recently, the NIH was the only Federal agency reviewing and approving proposals involving the deliberate release into the environment of organisms containing recombinant DNA. That is no longer the case.

(1) On October 17, 1984, the Environmental Protection Agency (EPA) published in the **Federal Register** (49 FR 40659) and Interim Policy on Small Scale Field Testing of Microbial Pesticides which requires notification to EPA of proposed field tests involving certain microbial pesticides after which EPA will determine whether an Experimental Use Permit is required.

Advance Genetic Sciences, Inc. (AGS), had previously voluntarily submitted a proposal for NIH review and approval dealing with a field test of *Pseudomonas* strains containing recombinant DNA. The NIH gave notice of the upcoming review (49 FR 17672, April 24, 1984), and the proposal was considered at the June 1, 1984, RAC meeting. The NIH still had the proposal under review when AGS in a letter of February 11, 1985, withdrew the proposal from the NIH review process, deciding to rely only on EPA review under the October 17, 1984, **Federal Register** notice.

(2) On December 31, 1984, the Office of Science and Technology Policy published in the **Federal Register** (49 FR 50856) for public comment a Proposal for a Coordinated Framework for Regulation of Biotechnology. It includes a proposal to establish agency-based scientific advisory committees modelled after the NIH RAC in four other agencies (EPA, the Food and Drug Administration (FDA), the Department of Agriculture (USDA) and the National Science Foundation (NSF)).

If this new scientific advisory structure is established, proposals for deliberate release of organisms containing recombinant DNA that would have previously come to NIH for review and approval may go instead to EPA, USDA or NSF.

Dated: April 3, 1985.

James B. Wyngaarden,

Director, National Institutes of Health.

(OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official Government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program, but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected)

[FR Doc. 85-8798 Filed 4-12-85; 8:45 am]

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federal register

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April 15, 1985

Part III

Department of Transportation

Office of the Secretary

48 CFR Ch. 12
Acquisition Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 12

[Docket No. 19, Amdt. 7]

Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation Acquisition Regulation (TAR) is established to implement and supplement the Federal Acquisition Regulations (FAR), (48 CFR Chapter 1). The FAR are promulgated as the uniform acquisition regulations and supersede the procurement regulations previously published by the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration. The Department's acquisition regulation implements the FAR where required and supplements the FAR in areas where there is no FAR coverage of policies unique to DOT. Lack of a particular subject area in the TAR means the Department accepts the FAR coverage without further implementation.

DATE: Effective date is April 15, 1985.

FOR FURTHER INFORMATION CONTACT: Roger Martino, Chief, Procurement Management Division, telephone (202) 426–4237.

SUPPLEMENTARY INFORMATION:

1. Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is the current system of procurement policies that vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR was published in the **Federal Register** on September 19, 1983 with an effective date of April 1, 1984. (See 48 FR 42102). The FAR was codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes the agencies to issue regulations to implement or supplement FAR policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulation being published today represents the Department's implementation and supplementation of the FAR.

Generally, this rule does not establish new policy. To a large extent, it is the result of: (1) Reformatting the existing DOT Procurement Regulations (41 CFR Chapter 12); (2) removing old portions which would duplicate new FAR coverage of subject matter not previously contained in Federal Procurement Regulations (41 CFR Chapter 1); and (3) inserting necessary Departmental procedures at those places where the FAR requires agency implementation. (Existing regulations in 41 CFR Chapter 12 are superseded by these regulations, but remain in effect in Title 41 for those contracts entered into before the effective date of the new acquisition regulations.)

Since the FAR is to be the uniform Government-wide acquisition regulation, reviewers of this rule must remember that lack of coverage of a particular topic in the DOT Acquisition Regulation (TAR) means that the Department accepts the FAR coverage of the topic without need for further implementation.

The TAR was published in the **Federal Register** on June 1, 1984, 49 FR 22922, as an interim final rule. Interested persons were afforded 60 days to submit written comments. Changes were made where appropriate to incorporate the comments as well as other administrative, editorial, and typographical corrections discovered by the Department.

2. Statutory and Regulatory Requirements

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, has exempted procurement regulations from the requirements of a regulatory impact analysis and review required by Executive Order 12291. The Department of Transportation certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rule contains few changes to the current acquisition regulations. In addition, all information collection requirements which require approval by OMB under 44 U.S.C. 3501 et seq. have been submitted to OMB. In those cases where an OMB control number has been assigned, the control number is included in the regulation.

3. Public Comments

The Department of Transportation (DOT) published an interim rule on June 1, 1984, to establish the DOT Acquisition Regulation (49 FR 22922). That notice provided for a 60-day comment period, which expired on July 31, 1984. Comments were received from five university research organizations. These comments are addressed below.

Comment: The Council on Governmental Relations (COGR) commented that in Part 1245—Government Property, DOT had dropped the designations of "Special Test Equipment" and "Special Tooling". COGR stated the terms "capitalized equipment" and "noncapitalized equipment" in 1245.101 are contrary to the definition of "equipment" in the cost principals for educational institutions and for nonprofit organizations prescribed by FAR 31.303 and 31.703 (i.e., OMB Circular A–21 Cost Principles for Educational Institutions and OMB Circular A–122 Cost Principles for Nonprofit Organizations). It was recommended that a single definition of equipment in accordance with the language of these cost principles be substituted.

Response: It is not clear based on the comment from the COGR how use of the terms "capitalized equipment" and "noncapitalized equipment" in accounting for Government property adversely affect educational institutions or nonprofit organizations. In reviewing OMB Circulars A–21 and A–122, we find no conflicts between the DOT regulations covering Government-furnished property and the OMB circulars dealing with the allowability of certain costs under Government contracts. By using the terms "capitalized equipment" and "noncapitalized equipment", DOT does not redefine the term "equipment". These terms merely breakout "plant equipment" into two segments for property accountability purposes. The terms have been used consistently in DOT since establishment of property coverage in the DOT Procurement Regulations in 1977. DOT is required by the Comptroller General to capitalize property at $1,000 and to maintain individual records for such property. The term capitalized equipment is used to reflect this requirement clearly. The term "noncapitalized" is used to cover

items below the $1,000 threshold. "Special Test Equipment" and "Special Tooling" are recognized cost items. the definitions in 1245.101 and reporting requirements in 1245.505–4 have been revised to clarify the Department's treatment of special test equipment and special tooling as to Government property accountability. The OMB Circulars reference in FAR 31.303 and 31.703 continue to apply for reimbursements of costs as stated.

Comment: The COGR recommended that universities should be granted an exception to the application of cost proposal instructions set out in 1252.215–72. I claimed that they should be permitted to use a cost proposal more in keeping with their normal cost accounting procedures and with the terminology prescribed by the federal cost principles.

Response: The use of the provision in 1252.215–72 is left to the discretion of the contracting officer. The terminology used in this provision is consistent with FAR 15.804–6, including "breakdown of labor hours, rates, and cost". We do not agree that special test equipment is not descriptive of equipment used in research and development. The requirements of cost breakdown in competitive solicitations is essential for evaluation of offers, particularly for cost-reimbursement contracts for applied research. The Department finds no reason to exempt universities from the cost proposal instructions.

Comment: The COGR suggested that most institutions of higher education will not be familiar with "NHTSA principles and procedures for the protection of human subjects" as set out in the clause 1252.223–7. Instead, these institutions have on file with the Department of Health and Human Services (HHS) a general assurance for the protection of human beings who are the subjects of research. It recommended that DOT waive any further requirements for contractors that have approved HHS clearances.

Response: The Department agrees and the clause has been revised to provide for this consideration.

Comment: The COGR strongly objected to the clause at 1252.242–72, Dissemination of Contract Information, which requires that a contractor "shall not publish, permit to be published or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract without the prior written consent of the contracting officer."

Response: An alternate clause has been included at 1252.242–70 which may be used in contracts with educational institutions. While the clause 1252.242–72 requires written consent of the contracting officer prior to presentation or publication of any information concerning the results of work being performed under a DOT contract, this clause permits educational institutions to publish (subject to the provisions of the data and patent rights clauses of the contract) research results in professional journals, books, trade publications or other appropriate media without the prior written consent of the contracting officer. Such articles published must contain acknowledgement of DOT's sponsorship of the research effort and a disclaimer stating the published material represents the position of the author(s) and not necessarily that of DOT.

Comment: The University of Michigan Transportation Research Institute objected to the use of a "conflict of interest" clause in a recent solicitation.

Response: It is assumed the commenter is addressing the provision at 1252.209–70, Disclosure of Conflicts of Interest. It is intended that this provision be used consistent with the requirements in FAR Subpart 9.5.

Comment: The Texas A&M University System, the Texas Transportation Institute, and the University of Tennessee Transportation Center, each proposed identical language, to be added to 1219.201–71(b)(3), which would exempt contracting activities from the requirement for consideration of small business set-asides when the activity has awarded as much as 5 percent of its extramural research and development program to small business firms.

Response: The intent of this TAR is merely to implement and supplement the FAR, not establish new policy. Therefore, the proposed change is not being incorporated. Note that in a related area, adequate competition and "rule of two" for small business set-asides is currently being reviewed by the Office of Federal Procurement Policy.

In addition to the changes resulting from public comments, the following areas have been added or changed in the final rule: Subpart 1222.1070 has been added, supplementing Item VII, Service Contract Act of 1965, in the Federal Acquisition Circular (FAC) 84–1 and the appropriate clauses included in 1252.2222; changes have been made in Subpart 1217.70, Fixed Price Contracts for Vessel Repair, Alteration or Conversion, and the clauses set forth in 1252.217; and editorial revisions have been made to Subpart 1201.3, Section 1214.407, and Subpart 1233.1 to incorporate the changes set forth in Items I and III of the FAC 84–6 regarding publicizing provisions of Pub. L. 98–577 and the new procedures for submitting protests to the General Accounting Office or the General Services Board of Contract Appeals.

Other changes involve numerous administrative, editorial, and typographical corrections discovered by the Department.

List of Subjects in 48 CFR Ch. 12

Government procurement.

For the reasons set out in the preamble, Chapter 12 of Title 48 of the Code of Federal Regulations is established as set forth below.

Dated: April 3, 1985.

Jon H. Seymour,

Acting Assistant Secretary for Administration.

Structure of the Transportation Acquisition Regulation

Subchapter A—General

Part 1201—Federal Acquisition Regulations System
Part 1202—Definitions of Words and Terms
Part 1203—Improper Business Practices and Personal Conflicts of Interest
Part 1204—Administrative Matters

Subchapter B—Acquisition Planning

Part 1205—Publicizing Contract Actions
Part 1207—Acquisition Planning
Part 1208—Required Sources of Supplies and Services
Part 1209—Contractor Qualifications
Part 1210—Specifications, Standards, and Other Purchase Descriptions
Part 1212—Contract Delivery or Performance

Subchapter C—Contracting Methods and Contract Types

Part 1213—Small Purchases and Other Simplified Purchase Procedures
Part 1214—Formal Advertising
Part 1215—Contracting by Negotiation
Part 1216—Types of Contracts
Part 1217—Special Contracting Methods

Subchapter D—Socioeconomic Programs

Part 1219—Small Business and Small Disadvantaged Business Concerns
Part 1222—Application of Labor Laws to Government Acquisitions
Part 1223—Environment, Conservation, and Occupational Safety
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Subchapter E—General Contracting Requirements

Part 1227—Patents, Data and Copyrights
Part 1228—Bonds and Insurance
Part 1229—Taxes
Part 1230—Cost Accounting Standards
Part 1231—Contract Cost Principles and Procedures
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Subchapter F—Special Categories of Contracting

Part 1234—Major System Acquisition
Part 1235—Research and Development Contracting
Part 1236—Construction and Architect-Engineer Contracts
Part 1237—Service Contracting

Subchapter G—Contract Management

Part 1242—Contract Administration
Part 1244—Subcontracting Policies and Procedures
Part 1245—Government Property
Part 1246—Quality Assurance
Part 1249—Termination of Contracts
Part 1250—Extraordinary Contractual Actions

Subchapter H—Clauses and Forms

Part 1252—Solicitation Provisions and Contract Clauses
Part 1253—Forms

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 1201.1—Purpose, Authority, Issuance

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Subpart 1201.6—Contracting Authority and Responsibilities

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1201.670 Ratification of unauthorized commitments.
1201.670–1 Definitions.
1201.670–2 Authority.
1201.670–3 Procedures.
1201.670–4 Limitations on exercise of authority.
1201.670–5 Nonratifiable commitments.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.58.

Subpart 1201.1—Purpose, Authority, Issuance

1201.101 Purpose.

(a) The Department of Transportation Acquisition Regulation (TAR), is issued as Chapter 12, Title 48, the Federal Acquisition Regulations System, to establish uniform acquisition policies and procedures within the Department.

(b) The purpose of the TAR is to implement and supplement the Federal Acquisition Regulation (FAR).

1201.102 Authority.

The TAR is prescribed by the Assistant Secretary for Administration and the Senior Procurement Executive under a delegation of authority from the Secretary.

1201.103 Applicability.

(a) The FAR and the TAR apply to all acquisitions within the Department of Transportation except where expressly excluded in the FAR or in this Regulation.

(b) The Maritime Administration may depart from the requirements of the FAR and TAR as authorized by 40 U.S.C. 474(16), but shall adhere to those regulations to the maximum extent practicable. Deviations from the FAR/TAR requirements shall be documented in administration regulations or procedures, or in each contract file.

1201.104 Issuance.

1201.104–1 Publication and code arrangement.

(a) The TAR is published in: (1) the **Federal Register**, (2) cumulated form in the Code of Federal Regulations (CFR), and (3) a separate loose-leaf form.

(b) The TAR is issued as Chapter 12 of Title 48 of the CFR.

1201.104–2 Arrangement of regulations.

(a) *General.* The TAR conforms with the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104–2(b) are equally applicable to the TAR.

(b) *Numbering.* (1) All coverage in the TAR that is unique to DOT will use Part, Subpart, Section and Subsection numbers 70–89.

(2) All coverage in the TAR, other than that identified with a 70 or higher number, implements the FAR and will bear the identical number sequence and title of the FAR segment being implemented down to the subsection level with the Department's "12" prefix (e.g., 1215.402 implements FAR 15.402).

1201.104–3 Copies.

Copies of the TAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the TAR in loose-leaf form are distributed within DOT and may be obtained from the Chief, Procurement Management Division, Office of the Secretary.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201–1 The two councils.

The Senior Procurement Executive shall appoint the Department of Transportation representative to the CAA Council.

1201.270 Amendment of regulation.

This Regulation will be amended from time to time as determined necessary by the Senior Procurement Executive. Requests for changes to the TAR should be submitted to the Senior Procurement Executive, Office of the Secretary (M–60).

1201.270–1 Revisions.

This Regulation will be amended by issuance of TAR Directives (TDs) containing loose-leaf replacement pages which revise Parts, Subparts, or paragraphs (also see 1201.270–2 below). Each replacement page will bear at the top the TD number, page number and date. A vertical bar at the beginning or end of a line indicates that a change has been made within that line.

1201.270–2 TAR Notices.

(a) TAR Notices (TNs) shall also be published as often as may be necessary or advisable under any of the following circumstances:

(1) To promulgate as rapidly as possible selected material revising this Regulation, in a general or narrative manner, in advance of a specific page replacement to this Regulation.

(2) To disseminate material applicable to the acquisition process which is not suitable for insertion in this Regulation.

(3) When the policy and/or procedure is expected to be effective for a period of 1 year or less.

(b) Unless otherwise indicated, each item in a TN will remain in effect until the effective date of that subsequent revision which incorporates the item or until specifically cancelled.

1201.270–3 Effective date.

(a) Statements in TDs and TNs to the effect that the material published therein is "effective upon receipt," upon a specified date, or that changes set forth

in the Directive or Notice are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms included in the Directive or Notice shall be included in solicitations, contracts or modifications issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this Regulation shall be in accordance with the TD or TN which contains the revision.

(c) Unless otherwise stated, solicitations which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended if the amendment would delay the acquisition action.

1201.270–4 Numbering.

TAR Directives and Notices will be numbered consecutively on a calendar year basis beginning with number 1 prefixed by the last two digits of the calendar year, e.g., 84–1; 84–2; 84–3, etc.

Subpart 1201.3—Agency Acquisition Regulations

1201.303 Publication and codification.

(a) The TAR is codified as Chapter 12 in Title 48, Code of Federal Regulations, Parts 1201—1285.

(b) Public participation in promulgation of the TAR shall be in the same manner as specified for the FAR in FAR 1.501.

1201.303–70 Administration regulations.

Administration regulations implementing or supplementing the TAR will be included as separate appendices to 48 CFR Chapter 12 as follows:

OST—Office of the Secretary
FAA—Federal Aviation Administration
USCG—United States Coast Guard
FHWA—Federal Highway Administration
NHTSA—National Highway Traffic Safety Administration
FRA—Federal Railroad Administration
UMTA—Urban Mass Transportation Administration
SLSDC—Saint Lawrence Seaway Development Corporation
MARAD—Maritime Administration
RSPA—Research and Special Programs Administration

Supplementary material for which there is no counterpart in the TAR shall be identified using chapter, part, subpart, section, or subsection numbers of 90 and up (e.g., for the U.S. Coast Guard, whose assigned acronym is "USCG", an agency-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 1252.246–90").

1201.304 Agency control and compliance procedures.

(a) All administration acquisition regulations, and all TAR Directives and Notices, shall be approved by the Senior Procurement Executive prior to promulgation to assure compliance with FAR Part 1.

(b) Prior to approval submission:

(1) All TAR issuances shall be reviewed by the OST Office of the General Counsel.

(2) Administration acquisition regulations shall be reviewed by appropriate administration counsel.

Subpart 1201.4—Deviations

1201.401 Definition.

A deviation to the TAR is defined in the same manner as a deviation to the FAR.

1201.403 Individual deviations.

Requests for individual deviations from the FAR and the TAR shall be submitted by the head of the contracting activity (HCA) to the agency head for approval. Requests submitted shall cite the specific part of the FAR or TAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The agency head shall transmit copies of approved individual FAR and TAR deviations to the Senior Procurement Executive.

1201.404 Class deviations.

Requests for class deviations to the TAR shall be submitted to the Senior Procurement Executive for approval. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 1201.403.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.601 General.

In accordance with 49 CFR 1.45(a)(2), the authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the agency heads. Provided it is not inconsistent with the FAR, any authority established at or below the agency head level by this regulation may be redelegated, unless authority to redelegate is specifically withheld.

1201.602 Contracting officers.

The head of the contracting activity (HCA) shall maintain information on the limits of contracting officer authority.

1201.603 Selection, appointment, and termination of appointment.

1201.603–1 General.

The agency head shall select and appoint contracting officers and terminate such appointments. This authority may be altered upon establishment of the "DOT Contracting Officer Warrant Program."

1201.670 Ratification of unauthorized commitments.

1201.670–1 Definitions.

"Ratification," as used in this section, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1201.670–2 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts, and modifications thereto, on behalf of the Government. Subject to the limitations in 1201.670–4 below, the HCA may ratify an unauthorized commitment, *provided:*

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The HCA could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been proper if made by an authorized contracting officer.

1201.670–3 Procedures.

DOT components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims.

1201.670–4 Limitations on exercise of authority.

The authority in 1201.670–1 above may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) An opinion has been obtained from legal counsel as to whether the acquisition is ratifiable;

(d) The contracting officer recommends payment;

(e) Funds are available and were available at the time the unauthorized commitment was made;

(f) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978; and

(g) Ratification action by the HCA is documented, in writing, in the acquisition file.

1201.670–5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Subpart 1202.1—Definitions

1202.170 Definitions.

(a) "Department of Transportation" means all of the administrations, including the Office of the Secretary.

(b) "Administration" means the following:

Office of the Secretary (OST)
Federal Aviation Administration
U.S. Coast Guard
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration
Urban Mass Transportation Administration
St. Lawrence Seaway Development Corporation
Maritime Administration
Research and Special Programs Administration

(c) "Head of the agency" (also called "agency head") means the Assistant Secretary for Administration for OST acquisitions; and for acquisitions within their administrations, the Administrators of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, Maritime Administration, St. Lawrence Seaway Development Corporation, Research and Special Programs Administration, and the Commandant, U.S. Coast Guard, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, the Assistant Secretary for Administration shall exercise the authority for the administrations.

(d) "Head of the contracting activity" (HCA) means the following:

In the Office of the Secretary

The Chief, Procurement Division, Washington, D.C.

In the Federal Aviation Administration

The Director, Acquisition and Materiel Service, Washington, DC
The Director, Metropolitan Washington Airports, Arlington, VA
The Director, Alaskan Region, Anchorage, AL
The Director, Western Pacific Region, Los Angeles, CA
The Director, Southern Region, Atlanta, GA
The Director, Northwest Mountain Region, Seattle, WA
The Director, Central Region, Kansas City, MO
The Director, Eastern Region, Jamaica, NY
The Director, Southwest Region, Fort Worth, TX
The Director, Aeronautical Center, Oklahoma City, OK
The Director, FAA Technical Center, Atlantic City, NJ
The Director, New England Region, Burlington, MA
The Director, Great Lakes Region, Des Plaines, IL

In the Coast Guard

Chief, Procurement Division (G–FCP), Washington, DC [1]
Commander, First Coast Guard District, Boston, MA
Commander, Second Coast Guard District, St. Louis, MO
Commander, Third Coast Guard District, New York, NY
Commander, Fifth Coast Guard District, Portsmouth, VA
Commander, Seventh Coast Guard District, Miami, FL
Commander, Eighth Coast Guard District, New Orleans, LA
Commander, Ninth Coast Guard District, Cleveland, OH
Commander, Eleventh Coast Guard District, Long Beach, CA
Commander, Twelfth Coast Guard District, Alameda, CA
Commander, Thirteenth Coast Guard District, Seattle, WA
Commander, Fourteenth Coast Guard District, Honolulu, HI
Commander, Seventeenth Coast Guard District, Juneau, AL
Superintendent, U.S. Coast Guard Academy, New London, CT

In the Federal Highway Administration

Associate Administrator for Administration, Washington, DC
Associate Administrator for Engineering and Operations, Direct Federal Construction Program, Washington, DC

In the Federal Railroad Administration

Director, Office of Procurement, Washington, DC

In the National Highway Traffic Safety Administration

Director, Office of Contracts and Procurement, Washington, DC

In the Urban Mass Transportation Administration

Director, Office of Procurement and Third Party Contract Review, Washington, DC

In the Research and Special Programs Administration

Chief, Procurement Division, Washington, DC
Chief, Acquisition Division, Transportation Systems Center, Cambridge, MA

In the Maritime Administration

Associate Administrator for Policy and Administration, Washington, DC
Associate Administrator for Shipbuilding, Operations and Research, Washington, DC
Central Region Director, New Orleans, LA
Western Region Director, San Francisco, CA
Assistant Superintendent for Administration, U.S. Merchant Marine Academy

(e) "Senior Procurement Executive" means that individual formally designated by the Secretary, currently the Director of Installations and Logistics, Office of the Secretary.

(f) "Acquisition executive" means the Deputy Secretary for programs defined as major systems in accordance with OMB Circular A–109 and DOT Order 4200.14A, Major Systems Acquisition Review and Approval.

(Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

[1] HCA for other Designated Headquarters Units.

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

Sec.
1203.101 Standards of conduct.
1203.101–1 General.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

Subpart 1203.70—Contracts Between DOT and Former DOT Employees

1203.7001 Policy.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1203.1—Safeguards

1203.101 Standards of conduct.

1203.101–1 General.

(a) Personnel involved in contracting activities must familiarize themselves with a number of Federal criminal

statutes prohibiting certain acts by Government officials or employees and, in varying degrees, special Government employees (as defined in 18 U.S.C. 202), which generally provide, among other things, the following:

(1) *18 U.S.C. 201:* Prohibits the asking, demanding, exacting, soliciting, seeking, acceptance, or receipt of or agreement to accept anything of value for him or herself or for any other person or entity in return for being influenced in the performance or non-performance of their official duties or other conduct of their office (i.e., "bribes").

(2) *18 U.S.C. 203:* Prohibits compensation for services rendered by any officer, employee, or another, such as partnership income in an accounting firm in relation to any particular matter in which the United States is a party.

(3) *18 U.S.C. 205:* Prohibits acting as an agent or attorney in prosecuting any claim against the United States or before any United States agency in relation to any matter in which the United States is a party, with or without compensation.

(4) *18 U.S.C. 208:* Prohibits personal and substantial participation in any particular matter in which an individual or an individual's spouse, minor child, partner, organization in which the individual serves as an officer, director, trustee, partner, or employee, or potential employer (with whom the individual is negotiating or has an arrangement for future employment) has a financial interest.

(5) *18 U.S.C. 209:* Prohibits receipt of any salary or supplementation of salary (anything of value) from a non-Government source as compensation for services as an officer or employee.

(b) Under 18 U.S.C. 218, a conviction under one of these statutes in relation to a contract makes the contract voidable.

(c) In addition to these statutory provisions, personnel involved in contracting activities must familiarize themselves with the Department's Employee Responsibilities and Conduct regulations in 49 CFR Part 99. These regulations, among other things, set forth standards of employee conduct and prohibit an employee's doing anything which could result in, or create the appearance of having, a conflict of interest.

(d) Personnel involved in contracting activities must be particularly aware of the prohibitions against accepting gifts. In general, contracting personnel must not accept a gift from anyone who has, is seeking, or is likely to seek a contract with the Department. Gifts include meals (lunches, dinners, etc.), entertainment (theater or sporting event tickets, weekends at private retreats, private cocktail parties, hospitality suites, etc.), and travel expenses (airplane tickets, hotel accommodations, etc.), as well as tangible gifts. The only general exception is gifts of unsolicited advertising or promotional material, such as pens, calendars, or desk toys, that are worth $10 or less.

(e) Refer any questions concerning the matters discussed in this subpart to administration legal counsel.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-kickback Act through the head of the contracting activity to administration legal counsel.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

The agency head has the authority to authorize an exception to the policy in FAR 3.601. This authority may be redelegated to a level not below the head of the contracting activity for contracts under $25,000. Before an exception is granted in any case, consult administration legal counsel as to the effect of the conflict of interest laws.

Subpart 1203.70—Contracts Between DOT and Former DOT Employees

1203.7001 Policy.

(a) For either a competitive or non-competitive contract, all possible precautions must be taken to ensure that no preferential treatment is given to an individual who has been employed by DOT within the last two years or a firm in which such a former employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by such former employees. All such contracts must be approved by the agency head.

(b) When current DOT employees are contacted by a former DOT official or employee on behalf of him or herself or a contractor, appropriate administration legal counsel shall be notified, in writing, for a determination of impact on the acquisition involved, and to take action, as necessary, regarding violation of post-employment laws.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.6—Contract Reporting

Sec.
1204.601 Federal Procurement Data System.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.
1204.804–5 Detailed procedures for closing out contract files.

Subpart 1204.70—Procurement Requests

1204.7001 General.
1204.7002 Forms.

Authority: Sec. 205(C), Federal Property and Administrative Services Act; as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1204.6—Contract Reporting

1204.601 Federal Procurement Data System.

(a) The DOT Contract Information System (CIS) collects the information required to comply with the reporting required for the Federal Procurement Data System (FPDS). Each contracting officer is responsible for proper reporting of contracts under his/her cognizance.

(b) DOT Order 1340.5, Contract Information System, provides detailed reporting instructions.

(c) The Data Input Form (DOT F.4220.11) shall be used to provide acquisition records and statistics in lieu of the SF 279, Individual Contract Action Report (over $10,000). A copy of each individual procurement action report affecting the contract shall be included in the contract life.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

1204.804–5 Detailed procedures for closing out contract files.

(a) In addition to those procedures set forth in FAR 4.804–5, the contracting officer shall, before final payment is made under a cost-reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred shall be obtained in the form of a final audit certification, unless the contract is below the threshold for audit certification. Similar verification of actual costs must be made for fixed-price contracts when cost incentives or price redeterminations are involved.

(b) DOT contracting officers may utilize quick-closeout procedures on cost-type contracts not exceeding $250,000, *provided* the stipulations at FAR 42.708(a)(1) through (3) are met and:

(1) All terms and conditions of the contract have been met satisfactorily;
(2) Actual costs are consistent with original cost estimates;
(3) There is no suspected fraud or wrongdoing; and
(4) The Contracting Officer determines that the use of this procedure will be beneficial to the Government.

Subpart 1204.70—Procurement Requests

1204.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with administration procedures.
(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:
(1) Such action is necessary to meet critical program schedules;
(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;
(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and
(4) The solicitation document clearly indicates that the award is subject to the availability of funds.
(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare pre-solicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

1204.7002 Forms.

Procurement Request Forms DOT F.4200.1 and DOT F.4200.2 (continuation sheet) shall be used to request the acquisition of supplies, services, or construction and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single-or multi-line requestioning methods.

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.2—Synopses of Proposed Contracts

Sec.
1205.270 Use of synopses to perform market surveys.

Subpart 1205.4—Release of Information

1205.402 General public.
1205.402–70 Furnishing additional contract information to the general public.

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301; 49 CFR 1.59.

Subpart 1205.2—Synopses of Proposed Contracts

1205.270 Use of synopses to perform market surveys.

(a) The issuance of either a notice of the proposed noncompetitive acquisition ("Notice of Intent"), or a sources-sought synopsis that is detailed enough to permit submission of meaningful responses and subsequent evaluation of the responses by the Government, constitutes an acceptable market survey.
(b) As a minimum, the synopsis shall include:
(1) A clear statement of the supplies or services being procured;
(2) Required contractor capabilities, experience, and any other factors salient to the requirement; and
(3) Criteria to be used in the evaluation of responses.

Subpart 1205.4—Release of Information

1205.402 General public.

1205.402–70 Furnishing additional contract information to the general public.

(a) *Policy.* (1) In addition to publicizing proposed contracts and contract awards in the Commerce Business Daily, it is DOT policy to furnish the general public, upon request, the following information on proposed contracts and contract awards.
(i) The names of firms invited to submit bids or proposals;
(ii) The names of firms which attended pre-proposal briefing conferences when held;
(iii) After the award of contracts, names of firms which submitted proposals; and
(iv) After the date established for receipt of bids, names of firms which submitted bids.
(2) Exceptions to this policy will be permitted only when the head of the contracting activity determines that the disclosure of such information would be prejudicial to the interests of DOT.
(b) *Procedures.* Contracts or modifications requiring either approval by the Assistant Secretary for Administration or release by the Assistant Secretary for Governmental Affairs will not be executed, distributed, or any information given to any source outside of DOT that the contract has been approved until the Director, Office of Public Information, has advised the contract activity that the contract can be released.

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the head of the contracting activity.

PART 1207—ACQUISITION PLANNING

Subpart 1207.1—Acquisition Plans

Sec.
1207.102 Policy.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.
1207.307 Appeals.

Subpart 1207.4—Equipment Lease or Purchase

1207.401 Acquisition considerations.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1207.1—Acquisition Plans

1207.102 Policy.

The Department has implemented its acquisition planning system in DOT Orders in the 4200 Series, which are available for inspection in DOT contracting offices. This system meets the criteria prescribed in FAR Subpart 7.1 covering major projects. Planning for smaller projects is the responsibility of the agency head.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

The Department's implementation of OMB Circular A–76 and FAR Subpart 7.3 is set forth in DOT Order 4400.2C, Performance of Commercial Activities, which is available for inspection in DOT Contracting Offices.

1207.307 Appeals.

The Department's appeals procedures required by OMB Circular A–76 and FAR 7.307 are set forth in DOT Order 4400.2C.

Subpart 1207.4—Equipment Lease or Purchase

1207.401 Acquisition considerations.

The evaluation required by FAR 7.401 shall be documented whenever contracting for the lease of equipment.

PART 1208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1208.4—Ordering From Federal Supply Schedules

1208.470 Ordering from nonmandatory schedules.

When ordering from an optional or nonmandatory schedule, competition is required unless a noncompetitive acquisition is appropriate and justified. If only one source is available on the schedule, outside sources shall be solicited.

(Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301, 49 CFR 1.59)

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.3—First Article Testing and Approval

Sec.
1209.302 General.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

Subpart 1209.5—Organizational Conflicts of Interest

1209.503 Waiver.
1209.508 Solicitation provision and contract clause.
1209.508–1 Solicitation provisions.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1209.3—First Article Testing and Approval

1209.302 General.

The procurement request initiator shall prepare a written statement addressing the factors enumerated in FAR 9.302 whenever first article testing and approval is required. This statement shall be forwarded with the procurement request.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

DOT procedures to implement the policy of FAR 9.402 are set forth in DOT Order 4200.5 "Government-Wide Debarment, Suspension and Ineligibility."

Subpart 1209.5—Organizational Conflicts of Interest

1209.503 Waiver.

In the rare instances, when necessary, the agency head is authorized to approve waivers in accordance with FAR 9.503. This authority may not be redelegated below the level of HCA.

1209.508 Solicitation provisions and contract clause.

1209.508–1 Solicitation provisions.

In addition to the provision discussed at FAR 9.508–1 (used where appropriate), the contracting officer may insert the provision at 1252.209–71 "Disclosure of Conflicts of Interest" in solicitations for negotiated acquisitions (see also 1215.407(a)).

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1210.004 Selecting specifications or descriptions for use.
1210.004–70 Brand name products or equal.
1210.004–71 Limits on the use of brand name or equal purchase descriptions.
1210.004–72 Solicitations, brand name or equal descriptions.
1210.004–73 Offer evaluation and award, brand name or equal descriptions.
1210.007 Deviations.
1210.011 Solicitation provisions and contract clauses.
1210.011-70 Solicitation provision.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1210.004 Selecting specifications or descriptions for use.

1210.004–70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(b)(2), DOT acquisitions will generally *not* be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference thereto shall be deleted from subsequent purchase descriptions.

(c) *Specifying essential characteristics.* (1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. (See 1210.004–73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g. a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1210.004–71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 1252.210–71 would be impracticable, the requirement to include the entry described in 1210.004–72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal

purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) *Small purchases.* In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(c) *Approval required.* A statement approved at least one level above the contracting officer shall be included in the contract file to justify use of brand name products or brand name or equal purchase descriptions.

1210.004-72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brand name or equal purchase description applies.

Bidding on:
Manufacturer's Name _____
Brand _____
No. _____

(b) Because bidders frequently overlook the requirements of the provision at 1252.210-70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "brand name or equal" set forth in section 1252.210-70 of the Transportation Acquisition Regulation.)

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1210.004-73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirement, using a purchase description that sets forth the essential characteristics.

1210.007 Deviations.

The head of the contracting activity is the designated official responsible for ensuring that Federal specifications are used and exceptions and deviations are justified in accordance with FAR 10.007(a).

1210.011 Solicitation provisions and contract clauses.

1210.011-70 Solicitation provision.

The contracting officer shall include the provision at 1252.210-70. "Brand Name or Equal" in solicitations for which a brand name or equal purchase description is used.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Subpart 1212.70—Delays

1212.7001 Delays.

The contracting officer shall insert the clause at 1252.212-71 "Notice of Delay" in all DOT contracts except fixed-price construction solicitations and contracts. The notice requirements may be modified for short-term contracts, as appropriate.

(Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1213.1—General

Sec.
1213.106 Competition and price reasonableness.
1213.106-70 Data to support small purchases over $1,000.
1213.107 Solicitation and evaluation of quotations.

Subpart 1213.2—Blanket Purchase Agreements

1213.201 General.
1213.203 Establishment of blanket purchase agreements.
1213.203-1 General.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.
1213.404 Conditions for use.
1213.405 Procedures.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.
1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1213.1—General

1213.106 Competition and price reasonableness.

1213.106-70 Data to support small purchases over $1,000.

Form DOT F 4230.1, Small Purchase Summary, may be used to satisfy documentation requirements of FAR 13.106(c).

1213.107 Solicitation and evaluation of quotations.

Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an administration equivalent form has been authorized for use by the Senior Procurement Executive. (See FAR 53.103).

Subpart 1213.2—Blanket Purchase Agreements

1213.201 General.

The head of the contracting activity may require that only contracting officers make purchases under a blanket purchase agreement (BPA).

1213.203 Establishment of blanket purchase agreements.

1213.203-1 General.

Optional Form 347, Order for Supplies Or Services, shall be used for BPAs unless an administration equivalent form has been authorized for use by the agency head.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.

(a) Regulations governing the use and administration of Imprest Funds within the Department are contained in DOT Order 2770.7A, Imprest Fund Manual.

(b) Heads of contracting activities (HCAs) shall establish procedures for designation of personnel authorized to approve requisitions and make purchases using imprest funds. HCAs may require that only contracting officers may approve requisitions using imprest funds.

1213.404 Conditions for use.

Imprest funds may be used for small purchases when the transaction does not exceed $250 ($500 under emergency conditions).

1213.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with the documentation requirements of FAR 13.405(f) and DOT Order 2770.7A, Chapter 6.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements mandated by DOT Order 2770.7A, Chapter 6, Paragraph 2a.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.

1213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an administration equivalent form has been authorized for use by the agency head. Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for overprinting (FAR 53.104) is not needed.

1213.505–3 Standard Form 44 Purchase Order-Invoice-Voucher.

(a) In addition to the procedures in FAR 13.505–3; DOT Order 4230.2 Standard Form 44 (SF 44), Purchase Order-Invoice-Voucher contains guidance on the use of Standard Form 44.

(b) Agency heads are responsible for establishing procedures to control the use of Standard Form 44 and accounting for all purchases made using the form, including:

(1) Maintenance of a list of designated individuals authorized to make purchases using the form;

(2) Controls for issuance of the form to authorized individuals; and

(3) Review of purchase transactions using the form to assure compliance with authorized procedures.

PART 1214—FORMAL ADVERTISING

Subpart 1214.2—Solicitation of Bids

Sec.
1214.201 Preparation of invitations for bids.
1214.201–1 Uniform contract format.
1214.202 General rules for solicitation of bids.
1214.202–4 Bid samples.
1214.202–5 Descriptive literature.
1214.205 Solicitation mailing lists.
1214.205–1 Establishment of lists.
1214.208 Amendent of invitations for bids.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.
1214.406–3 Other mistakes disclosed before award.
1214.406–4 Mistakes after award.
1214.408 Information to bidders.
1214.408–2 Award of classified contracts.

Authority: Section 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1214.2—Solicitation of Bids

1214.201 Preparation of invitations for bids.

1214.201–1 Uniform contract format.

In those cases where the uniform contract format need not be used, the contract still should be structured to conform to the various uniform contract format sections as closely as is practicable.

1214.202 General rules for solicitation of bids.

1214.202–4 Bid samples.

The justification required by FAR 14.202–4(d) shall be prepared by the requiring activity and approved, in writing, by the contracting officer.

1214.202–5 Descriptive literature.

The justification required by FAR 14.202–5(c) shall be prepared by the requiring activity and approved, in writing, by the contracting officer.

1214.205 Solicitation mailing lists.

1214.205–1 Establishment of lists.

Requests for supplemental information shall be attached to the Standard Form 129 and forwarded to potential suppliers for completion.

1214.208 Amendment of invitations for bids.

Amendments which are substantive in nature shall be subject to the same review process as was required for issuance of the solicitation.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

As permitted by FAR 14.302(b), a telegraphic bid may be communicated by means of a telephone call to the designated office.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.

1214.406–3 Other mistakes disclosed before award.

The head of the contracting activity is authorized to make the determinations under FAR 14.406–3 (a), (b), (c), and (d). This authority may not be redelegated. Any doubtful case under FAR 14.406–3 may be forwarded for advance decision to the Comptroller General, with a copy to the procurement executive.

1214.406–4 Mistakes after award.

The contracting officer shall make the determination required by FAR 14.406–4(b) after coordination with legal counsel.

1214.408 Information to bidders.

1214.408–2 Award of classified contracts.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

PART 1215—CONTRACTING BY NEGOTIATION

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Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1215.1—General Requirements for Negotiation

1215.105 Competition.

1215.105–70 Noncompetitive acquisition approval.

(a) The contracting officer is the approving authority for the following proposed noncompetitive actions:

(1) Estimated cost under $25,000;

(2) Federal Supply Schedule orders;

(3) 8(a) set-asides;

(4) Educational services from nonprofit institutions; and

(5) Utility contracts.

(b) For proposed noncompetitive acquisition from $25,000 up to and including $100,000, the approving authority, not subject to any redelegation, is:

(1) For OST acquisitions—Assistant/Deputy Assistant Secretary for Administration

(2) For the Coast Guard Districts—HCA, and for all other Coast Guard acquisitions—Comptroller;

(3) For Federal Aviation Administration Regions—HCA, and for all other FAA acquisitions—Associate Administrator for Administration

(4) For the Federal Highway Administration—the Associate Administrator for Administration/the Associate Administrator for Engineering and Operations

(5) For the Maritime Administration Regions—HCA and for all other Maritime Administration acquisitions—the Associate Administrator for Administration

(6) For all other DOT Administrations—Associate Administrator for Administration.

(c) The head of the agency is the approving authority for all proposed noncompetitive procurement actions over $100,000. This authority may not be redelegated.

(d) The format and specific procedures for obtaining the required approvals for noncompetitive procurement shall be established by each administration. All such procedures shall be approved by the Senior Procurement Executive prior to implementation by the administrations.

1215.105–71 Justification for noncompetitive procurement.

(a) The Justification for Noncompetitive Procurement (JNCP) shall be prepared by the office which initiates the procurement request, and shall be submitted to the contracting officer. The JNCP shall:

(1) *Fully* express the circumstances which make competitive negotiation impractical or not feasible;

(2) Explain in detail the exclusive or predominant capability the proposed contractor possesses which meets the requirements of the procurement; and

(3) Contain in the first sentence an appropriate recommendation (e.g., "I recommend that negotiations be conducted only with the (name of company) * * * for * * *".).

(b) Each JNCP shall state the degree of consideration which has been given to other sources in the particular field and the reasons they lack the capability which the proposed contractor evidences. The following illustrations represent factors which should be considered, as appropriate, in preparing the JNCP:

(1) What capability, important to the specific effort, does the proposed contractor have which makes it clearly more desirable than another firm in the same general field?

(2) What prior experience of a highly specialized nature does the contractor possess which is vital to the proposed effort?

(3) What facilities and test equipment does the contractor have which are specialized and vital to the proposed effort?

(4) Does the contractor have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?

(5) If schedules are involved, why are they critical and why can only the proposed contractor meet them?

(6) If lack of drawings or specifications is a guiding factor, why can only the proposed contractor perform under these conditions? Why are drawings and specifications lacking? What is the lead time required to get drawings and specifications suitable for competition?

(7) Are Government-owned facilities involved?

(8) State whether the acquisition is/is not a continuation of previous effort performed by the proposed contractor. If a continuation, include the following:

(i) The basis on which the initial selection was made (i.e., competitive or noncompetitive and, if noncompetitive, a summary of the reasons therefor), contract number, contract period, dollar value, and a brief description of the scope of work.

(ii) A resume of all subsequent awards up to the current action, including contract number, scope, dollar value and title.

(9) Does the proposed contractor have personnel considered predominant experts in the particular field?

(10) Is competition precluded because of the existence of patent rights, copyrights, or secret processes?

(11) Are parts or components being acquired as replacement parts in support of equipment specially designed by a manufacturer where data available are not adequate to assure that the parts or components will perform the same function in the equipment as those parts or components being replaced?

(12) State if the potential for continuation of the acquisition does/does not exist. If the potential exists, state whether it will be competitive or noncompetitive, and identify the contemplated performance period.

(13) Identify what steps have or will be taken to foster competition in the future.

(c) The justification shall be signed and dated by the person responsible for the technical requirement.

1215.106 Contract clauses.

1215.106–70 Key personnel and facilities.

Whenever contractor selection (either sole source or competitive acquisition) has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1252.215–71 "Key Personnel and Facilities" in the awarded contract.

1215.170 Pre-contract costs.

(a) Except as authorized in 1215.170(b), no DOT employee shall encourage or authorize any potential contractor to incur costs prior to contract award.

(b) No contract provision for reimbursement of a contractor's pre-

contract costs shall be negotiated or included in any contractual document prior to approval of such provision by the head of the contracting activity. The request for HCA approval shall include the following:

(1) Identification of the requirement;

(2) Name of the proposed contractor;

(3) Brief description of the work for which precontract costs are necessary;

(4) Total amount of pre-contract costs involved and approximate duration of the period over which costs will be incurred;

(5) Reason(s) why use of pre-contract costs are necessary and in the best interest of the Government.

Subpart 1215.2—Negotiation Authorities

1215.211 Experimental, developmental, or research work.

1215.211-70 Reporting requirement.

(a) Reports required by 10 U.S.C. 2304(e) to be made to the Congress on May 19 and November 19 of each year shall be submitted by the U.S. Coast Guard to the Senior Procurement Executive by May 1 and November 1 of each year for purchases and contracts made under FAR 15.211 since the date of the last report.

(b) Reports shall contain the following information:

(1) Name of contractor;

(2) Dollar amount of contract (including modifications); and

(3) Brief description of the work required to be performed under the contract (when necessary, because of the national security, the word "Classified" may be used in lieu of the description).

1215.213 Technical equipment requiring standardization and interchangeability of parts.

Each administration using this negotiation authority shall establish procedures for periodically reviewing Determinations and Findings made under FAR 15.213, and shall maintain the list of items procured which cite 10 U.S.C. 2304(a)(13) or 41 U.S.C. 252(c)(13) as the negotiation authority (see FAR 15.213(c)(4)).

1215.217 Purchases in the interest of national defense or industrial mobilization.

1215.217-70 Reporting requirements.

The reporting procedures specified in 1215.211-70 also apply to those contracts negotiated under 10 U.S.C. 2304(a)(16).

Subpart 1215.3—Determinations and Findings to Justify Negotiations

1215.304 Content.

1215.304-70 Format for negotiation authority D & F.

Each administration shall establish formats to be used for determinations and findings authorizing negotiation.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.405 Solicitations for information or planning purposes.

All determinations to issue solicitations for information or planning purposes shall be approved at least one level above the contracting officer.

1215.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1215.406-1 Uniform contract format.

In those cases where the uniform contract format is optional or does not apply, the solicitation and contract should be structured to conform to the various uniform contract format sections as closely as is practicable.

1215.407 Solicitation provisions.

(a) The contracting officer shall insert the provision at 1252.209-71 "Disclosure of Conflicts of Interest", in accordance with 1209.508-1.

(b) The contracting officer may insert a provision substantially the same as that at 1252.215-72, Cost Proposal Instructions, in requests for proposal when cost or pricing data are to be obtained.

(c) When automatic data processing (ADP) hardware and/or software will be acquired either as part or all of the acquisition, contracting officers shall include Form DOT F. 4220.21 in the request for proposal (see 1253.215-70(a)). The form shall be completed by offerors and submitted with SF 1411 and other supporting data.

1215.408 Issuing solicitations.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

1215.411 Receipt of proposals and quotations.

The requirement set forth in 1215.408 applies.

1215.413 Disclosure and use of information before award.

The alternate procedure at FAR 15.413-2 shall be used in lieu of those prescribed at FAR 15.413-1. Each administration shall establish procedures to implement this section. In so doing, the principles in FAR 15.413-1 (a) and (b) and the stipulations contained in FAR 15.413-2(f) shall be followed.

Subpart 1215.5—Unsolicited Proposals

1215.506 Agency procedures.

(a) Each administration shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

(b) A central receiving office shall be established to implement these procedures. Each central receiving office shall:

(1) Serve as the point of contact with the submitter;

(2) Maintain records showing the receipt and status of unsolicited proposals; and

(3) Coordinate with other administrations or other Federal agencies when appropriate.

(c) An information copy of central office designations and any implementing instructions will be furnished to the Senior Procurement Executive.

Subpart 1215.6—Source Selection

1215.605 Evaluation factors.

Actual numerical weights, which may be employed in the evaluation of technical proposals, shall not be disclosed in the solicitation.

1215.612 Formal source selection.

1215.612-70 Scope.

(a) Formal source selection procedures, as set forth in DOT Order 4200.11, Source Selection, shall apply to competitively negotiated acquisitions when:

(1) The estimated cost exceeds $2,000,000; or

(2) The estimated cost does not exceed $2,000,000, but the selected source is likely to receive funding for a future phase or phases of the same project and the aggregrate amount of such funding (including the current acquisition) is estimated to exceed $2,000,000; or

(3) The estimated cost exceeds $1,000,000, and the acquisition has for its principal purpose research, development, test, or evaluation of a product or process that is likely to have widespread commercial application, usage, or sale.

(b) Formal source selection procedures do not apply to the acquisition of Architect-Engineer services, acquisitions from other Government (including State and local) agencies, or any other acquisition which

is specifically exempted by the Secretary, Deputy Secretary, or Assistant Secretary for Administration.

1215.612-71 Source selection official.

(a) The Secretary or Deputy Secretary normally shall serve as the Source Selection Official (SSO) for acquisitions, when:

(1) The estimated cost exceeds $5,000,000; or

(2) The estimated cost does not exceed $5,000,000, but the selected source is likely to receive funding for a future phase or phases of the same project and the aggregate amount for such funding (including the current acquisition) is estimated to exceed $5,000,000.

(b) The Assistant Secretary for Administration normally shall serve as SSO for all other formal source selections.

(c) The authorities in 1215.612-71(a) and 1215.612-71(b) may be delegated for individual acquisitions.

Subpart 1215.7—Make-or-Buy Programs

1215.704 Items and work included.

As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) $500,000, whichever is greater.

Subpart 1215.8—Price Negotiation

1215.803 General.

(a) The procurement request initiator shall provide, as part of the procurement request, an independent Government estimate for all acquisitions in excess of $25,000. This estimate shall include, to the extent applicable, the major cost areas of labor (by category), materials, travel, consultant, computer usage, etc. The level of detail and rationale for the estimate shall be commensurate with the complexity and value of the acquisition. Any prior cost experience the Government has had in buying the same, or like items, should be referenced. The contracting officer may require, at his/her discretion, an estimate where the anticipated cost is less than $25,000. Under no circumstances should the estimate be based on information furnished solely by a potential contractor who may be considered for award.

(b) Unreasonable profit or fee demands made by an offeror, if not resolved by the contracting officer, shall be referred to the HCA.

1215.804 Cost or pricing data.

1215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Administrations shall establish monitoring procedures to ensure that exemptions from the requirement to submit certified cost or pricing data are properly applied.

(b) Waivers should rarely be granted and utmost discretion must be exercised.

1215.805 Proposal analysis.

1215.805-4 Technical analysis.

(a) The head of the agency shall ensure that contracting activities are properly supported by agency technical personnel in the proposal evaluation process.

(b) A copy of the technical evaluation should be provided to the auditor for incorporation into the audit report whenever feasible.

1215.805-5 Field pricing support.

(a) Contracting officers normally shall allow a minimum of 30 days for receipt of an audit report. Exceptions to this 30-day minimum period may be made only when unusually urgent program considerations require a shorter time. Urgency caused by end of year funding considerations shall not be used as a justification for requiring a shorter period for advisory audit review.

(b) Administrations shall establish procedures for monitoring audit waivers. Urgency caused by end of year funding considerations shall not be used as justification for waiving audit.

(c) Administrations shall establish procedures for requesting and handling audit or other field pricing reports.

1215.807 Prenegotiation objectives.

(a) Administrations shall establish procedures for review and approval of prenegotiation objectives. These procedures shall require Prenegotiation Memoranda (see 1215.807-70 below) for each administration's high dollar and/or complex acquisitions. The approval levels established should be commensurate with the value and complexity of the proposed acquisition. Under no circumstances shall the procedures undermine the contracting officer's responsibility for determining a fair and reasonable price.

(b) Written documentation of all prenegotiation objectives is required and shall be made a part of the permanent contract file. (See also 1215.808(c) below).

1215.807-70 Content of prenegotiation memorandum.

The Prenegotiation Memorandum (PM) shall fully explain the Government's position as well as identify and justify the elements that are acceptable as proposed. Since the PM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the Price Negotiation Memorandum (see FAR 15.808 and 1215.808). Generally, the PM should address the following subjects in the order presented.

(a) *Introduction.* Include a brief description of the acquisition and a brief history indicating the extent of competition and results thereof. Identify the prospective contractor(s) and the place(s) of performance (if not evident from the description of the acquisition), summarize the negotiation schedule, and identify the Government negotiating team members by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition including such items as:

(1) Letter contract or pre-contract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization thereof to be provided by the contractor/Government); and

(5) Any deviations, special clauses or conditions anticipated.

(c) *Cost and profit/fee analysis.* Include a parallel tabulation by element of cost and profit/fee of the offeror's proposal, the Government's negotiation objective, the auditor/field pricing position, and the Government's maximum position. For each element of cost, compare the offeror and Government estimates and explain how the latter was developed, including the estimating assumptions and projection techniques employed. Further, explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective. Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or offeror's proposal should be highlighted and explained. Also, technical evaluation results which caused the Government's cost negotiation objectives to significantly differ from the offeror's proposed costs, such as differences in staffing, should be highlighted and explained. Further, there should be an identification and brief

discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition, the rationale for the Government's profit/fee objectives, and a completed copy of the DOT "Weighted Guidelines, Profit/Fee Objective" (DOT Form 4220.32), shall be included.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award fee contracts, describe the planned profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought, e.g. total dollar amount, special clauses/conditions not constituting deviations, type of contract, fee/profit objectives, and so forth.

1215.808 Price negotiation memorandum.

(a) A price negotiation memorandum is required for all negotiated acquisitions, regardless of dollar value. The extent and complexity of the memorandum shall depend upon the nature of the individual contract. The contracting officer shall include an affirmative statement in the memorandum that the price is fair and reasonable and give the basis for the determination. For those unusual circumstances where a fair and reasonable price is not readily achievable by the contracting officer, and the matter is referred to a higher level in the administration, the manager who makes the final decision on the matter shall sign an affirmative statement that the price finally established is acceptable.

(b) The price negotiation memorandum serves as a detailed summary of: (1) The technical, business, contractual, pricing, and other aspects of the contract negotiated, and (2) the methodology and rationale used in arriving at the final negotiated agreement.

(c) Normally, the price negotiation memorandum is a "stand alone" document. However, when a prenegotiation memorandum (see 1215.807–70) has been prepared, the subsequent price negotiation memorandum need explain: (1) Only the differences between the prenegotiation position and the final negotiated settlement, and the basis for those differences; and (2) the areas identified in FAR 15.808(a).

(d) The contracting officer shall sign and date the memorandum.

Subpart 1215.9—Profit

1215.902 Policy.

(a) Use of a structured approach for determining profit or fee is mandatory for all negotiated actions over $500,000 except:

(1) Architect-engineering contracts;

(2) Management contracts for operation and/or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee-contracts;

(7) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be authorized by the head of the contracting activity.

(b) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in 1215.902(a) other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. (See also FAR 15.905–1.) It is intended that the methods will result in profit objectives for non capital-intensive contracts that are below those generally developed for capital-intensive contracts.

1215.905 Profit-analysis factors.

1215.905–70 Methods.

(a) DOT Form 4220.32, "Weighted Guidelines Profit/Fee Objective", shall be used to compute profit or fee for actions covered under 1215.902.

(b) Profit/fee objectives shall be computed according to the following criteria:

(1) The profit/fee objective for manufacturing contracts shall be computed, except as provided in the following sentence, using the manufacturing weighted guidelines method which provides profit opportunity based on facilities capital investment. Certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities; in such cases, the research and development weighted guidelines method shall be used.

(2) The profit/fee objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(3) The profit/fee objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(4) In determining whether a particular contract shall be classified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed.

(5) Generally, assignment of specific percentages from within the "profit weight ranges" shown in columns 6 (c), (d) or (e) of DOT Form 4220.32 can be established after appropriate analysis of the elements of cost (i.e. items 7 through 12 of DOT Form 4220.32). However, to ensure consistency of contract risk assessment for DOT acquisitions, the assigned weight (%) shall generally be selected as follows:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee:	
With cost incentives only	1 to 2.
With multiple incentives	1.5 to 3.
Fixed-price-incentive:	
With cost incentives only	3 to 5.
With multiple incentives	4 to 6.
Prospective price redetermination	4 to 6.
Firm fixed-price	6 to 8.

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee:	
With cost incentives only	1 to 2.
With multiple incentives	1.5 to 3.
Fixed-price-incentive:	
With cost incentives only	2 to 4.
With multiple incentives	3 to 5.
Prospective price redetermination	3 to 5.
Firm fixed-price	5 to 7.

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

	Percent
Cost-plus-fixed fee	0 to 0.5.
Cost-plus-incentive fee	1 to 2.
Fixed-price-incentive	2 to 3.
Firm fixed-price	3 to 4.

(iv) Time and material and labor-hour contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(6) For "manufacturing" contracts where contractor facilities are required and will benefit the fulfillment of contract requirements, DD Form 1861 "Contract Facilities Capital Cost of Money" shall be completed in accordance with the instructions on the reverse thereof, and the dollar amount of "Contract Facilities Capital Employed" (line 8 of DD Form 1861) shall be inserted in column 6(b), item 16 of DOT Form 4220.32.

1215.905–71 Profit/fee objective for non-commercial enterprises.

(a) In determining the fee or profit, consideration must be given to the tax posture of the organization. A fair and reasonable profit to a non-profit or not-for-profit organization with tax exempt status should be considerably lower than a fee to a commercial enterprise with no tax exempt status.

(b) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and non-profit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for non-profit organizations. Therefore, the policy of the Department is to use the weighted guidelines method, as modified in paragraph (b)(2), below, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to Government oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract as calculated under the weighted guidelines method.

(1) As used in this Subpart, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings accrue to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method:

(i) An adjustment of minus one percent of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of minus three percent of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

(ii) The weight range under "Contractor Cost Risk" shall be minus one percent to zero in lieu of zero percent to eight percent for contracts with those nonprofit organizations.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.2—Fixed-Price Contracts

Sec.
1216.203 Fixed-price contracts with economic price adjustment.
1216.203–4 Contract clauses.
1216.203–4–70 Adjustment based on cost indices of labor or material.
1216.203–4–71 Evaluation of proposals.
1216.206 Fixed-ceiling-price contracts with retroactive price determination.
1216.206–3 Limitations.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.
1216.301–3 Limitations.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.
1216.404 Cost-reimbursement incentive contracts.
1216.404–2 Cost-plus-award-fee contracts.
1216.404–2–70 Contract clauses.

Subpart 1216.5—Indefinite Delivery Contracts

1216.503 Requirements contracts.
1216.504 Indefinite-quantity contracts.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.
1216.603–70 Procedures.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203.4 Contract clauses.

When none of the clauses prescribed in FAR 16.203–4 is appropriate, the contracting officer may use an alternate clause approved by the head of the contracting activity.

1216.203–4–70 Adjustment based on cost indices of labor or material.

(a) All economic price adjustment clauses utilizing indices must be approved by the head of the contracting activity.

(b) The contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

1216.203–4–71 Evaluation of proposals.

The contracting officer shall insert the provision at 1252.216–71, "Evaluation of Proposals Subject to Economic Price Adjustment" in all solicitations that contain an economic price adjustment clause.

1216.206 Fixed-ceiling-price contracts with retroactive price redetermination.

1216.206–3 Limitations.

The head of the contracting activity may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.

1216.301–3 Limitations.

Each administration shall establish a format for the determination and findings (D&F) required by FAR 16.301–3(c). The D&F shall cover all the elements set forth in FAR 16.301–3 and shall be executed by the contracting officer.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) shall be executed by the contracting officer.

1216.404 Cost-reimbursement incentive contract.

1216.404–2 Cost-plus-award-fee contracts.

1216.404–2–70 Contract clauses.

The contracting officer shall insert the following clauses in award fee contracts. Each clause may be modified to meet individual situations.

(a) 1252.216–72, Estimated Cost, Base Fee, and Award Fee;

(b) 1252.216–73, Payment of Base and Award Fee;

(c) 1252.216–74, Determination of Award Fee;

(d) 1252.216–75, Performance Evaluation Plan;

(e) 1252.216–76, Distribution of Award Fee.

Subpart 1216.5—Indefinite-Delivery Contracts

1216.503 Requirements contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under a requirements contract. This statement shall be forwarded with the procurement request.

1216.504 Indefinite-quantity contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the specified minimum and estimated maximum quantity. This statement shall be forwarded with the procurement request.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603–70 Procedures.

(a) Requests for authority to issue letter contracts shall be approved by the head of the contracting activity. The request shall include the following:

(1) Name and address of proposed contractor.

(2) Location where contract is to be performed.

(3) Contract number, including modification number if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed (fixed price, cost-plus-award-fee, etc.).

(10) Statement that the definitive contract will contain all required clauses or that deviations therefrom have been approved.

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract, and that no other contract type is suitable.

(12) If a modification, date of letter contract approval and of execution.

(b) As a minimum, information in the letter contract shall include:

(1) Signature of the contracting officer.

(2) Provision for written acceptance by the contractor.

(3) Statement of work.

(4) Provision for delivery or performance schedule and place of inspection and acceptance.

(5) Maximum dollar amount of Government liability and a statement that expenditure or obligation in excess of that amount shall be at the contractor's own risk.

(6) Target date for negotiation and execution of a definitive contract and a statement of the type of contract contemplated.

(7) Statement that no profit or fee shall be paid under the letter contract.

(8) Statement that appropriate FAR and TAR provisions and clauses are applicable and that the definitive contract shall contain all required clauses.

(c) It is DOT policy to pay profit or fee on definitized contracts only.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart 1217.1—Multiyear Contracting

Sec.
1217.102 Policy.
1217.102–3 Objectives.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7001 Clauses.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)) 48 CFR 1.301; 49 CFR 1.59.

Subpart 1217.1—Multiyear Contracting

1217.102 Policy.

1217.102–3 Objectives.

The head of the contracting activity is designated as the approval authority for all clause modifications described in FAR 17.102–3(d). This authority may not be redelegated.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Leader company contracting shall not be used without the written authorization of the Senior Procurement Executive.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7001 Clauses.

(a) Clauses set forth in 1252.217–71 through 1252.217–80 shall be included in formally advertised fixed-price contracts for vessel repair, alteration or conversion, and which are to be performed within the United States, its possessions, or Puerto Rico. Unless inappropriate, the clauses should also be included in negotiated contracts and contracts to be performed outside the United States. The Maritime Administration may deviate from these requirements, as appropriate, in accordance with 1201–103(b).

(b) The clause at 1252.217–81, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer. When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract. The customary guarantee period, to be inserted in the first sentence of the clause at 1252.217–81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances, and where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted for the usual 60 days. Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such fact and the reason for the need for such longer period shall be set forth in letter form to the head of the contracting activity, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted in the first sentence of the clause at 1252.217–81, Guarantee.

(c) The clause at 1252.217–70, Index for Specifications, shall be used when appropriate.

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1219.2—Policies

Sec.
1219.201 General Policy.
1219.201–70 Director, Office of Small and Disadvantaged Business Utilization.
1219.201–71 Small and Disadvantaged Business Utilization Specialists.

Subpart 1219.5—Set-Asides for Small Business

1219.501 General.
1219.503 Setting aside a class of acquisitions.
1219.503–70 Class set-aside for construction.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

Sec.
1219.602 Procedures.
1219.602–1 Referral.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1219.705–2 Determining the need for a subcontracting plan.
1219.705–6 Postaward responsibilities of the contracting officer.
1219.705–70 Synopsis of contracts containing Pub. L. 95–507 subcontracting plans and goals.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1219.2—Policies

1219.201 General policy.

The heads of the agencies shall be responsible for recommending goals for small, and small disadvantaged business utilization for programs under their cognizance. The recommended goals shall be developed in collaboration with the supporting head of the contracting activity, program officials, the Small and Disadvantaged Business Utilization Specialists (SDBUS) and shall take into account both past performance relative to such goals and the number, type, and dollar value of acquisitions projected for the ensuing fiscal year.

1219.201–70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Department in discussions with other Government agencies on small and small disadvantaged business matters.

1219.201–71 Small and Disadvantaged Business Utilization Specialist.

(a) SDBUSs shall be appointed by the heads of contracting activities.

(b) The SDBUS shall perform the following duties, as appropriate:

(1) Maintain a program designed to locate capable small and small disadvantaged business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small disadvantaged business concerns on acquisition matters;

(3) Review procurement requests to: (i) Assure that small business concerns will be afforded an equitable opportunity to compete; (ii) as appropriate, initiate recommendations for small business set-asides, (individual and class) or offers of requirements to the SBA for the 8(a) program; (iii) identify possible breakout of items or services suitable for acquisition from small business and small disadvantaged business concerns;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Advise small business with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs;

(8) Make available to SBA copies of solicitations when so requested;

(9) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small and small, disadvantaged business programs; and

(10) May participate, if required, in Business Opportunity/Federal Procurement Conference, and other Government-industry conferences and meetings.

Subpart 1219.5—Set-Asides for Small Business

1219.501 General.

The SDBUS shall initiate recommendations to the contracting officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

1219.503 Setting aside a class of acquisitions.

1219.503–70 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost from $2,000 to $2,000,000 shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside preferences for construction acquisition in excess of $2,000,000 shall be considered on a case-by-case basis.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.

1219.602–1 Referral.

A copy of the documentation supporting the determination that a small business concern is *not* responsible, as required by FAR 19.602–1(a), shall be transmitted to the Director, OSDBU, concurrently with the submission of a copy of the documentation to the appropriate SBA Regional Office.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1219.705–2 Determining the need for a subcontracting plan.

A copy of all determinations that there are no subcontracting opportunities (see FAR 1219.705–2(c)) shall be provided to the Director, OSDBU.

1219.705–6 Postaward responsibilities of the contracting officer.

A copy of each approved small business subcontracting plan, shall be provided to the Director, OSDBU.

1219.705–70 Synopsis of contracts containing Pub. L. 95–507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95–507 subcontracting plans and goals.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

Sec.
1222.101 Labor relations.
1222.101–3 Reporting labor disputes.
1222.101–70 Admittance of union representatives to DOT installations.
1222.101–71 Contract clauses.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.
1222.305 Contract clauses.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.
1222.608–2 Determination of eligibility.
1222.608–3 Protests against eligibility.
1222.608–4 Award pending final determination.
1222.608–6 Postaward.

Subpart 1222.1070—Service Contract Act of 1965

1222.1070–1 General.
1222.1070–2 Contract clauses.

Subpart 1222.70—Administration Labor Advisor

1222.7001 Administration labor procedures.

Subpart1222.71—Fair Labor Standards Act of 1938

1222.7101 General.

Subpart 1222.72—Notification to 8(a) Subcontractors

1222.7201 Requirements.

Authority: Section 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101–3 Reporting labor disputes.

(a) When a strike or labor dispute occurs or is anticipated which has, or is expected to have, a serious impact on DOT operations or when for any other reason notification of the administration's headquarters is warranted, the contracting officer shall report the following information to the administration labor advisor, if appointed or designated official, in accordance with administration procedures (see Subpart 1222.70):

(1) Identification and location of strike, contract number, contractor's name, and name of contractor's representative at the plant or construction site.

(2) Urgency or criticality of affected contract.

(3) Date strike began or may begin.

(4) Main issues involved.

(5) Name and number of local union and name and address of cognizant local union official.

(6) Evaluation of strike situation with regard to possibilities of settlement.

(7) Current apparent temper of the work site situation with regard to ingress and egress.

(8) Number of employees affected.

(9) Participation, if any, by the Federal Mediation and Conciliation Service or by a state mediation agency.

(10) If the acquisition is urgent and the strike appears likely to be one of extended duration, include comment on the feasibility of acquisition from an alternate source.

(b) When a strike or labor dispute at the plant of a subcontractor is an actual or potential threat to timely completion of the DOT contract and when such delay will be a serious handicap to operations, the above report shall contain the following in lieu of the information indicated above.

(1) Urgency or criticality of affected contract.

(2) Description and quantity of the material tied up by strike.

(3) Percent completion of contractor's order in supplier's plant.

(4) Evaluation of strike situation with regard to possibilities of settlement. (This may be obtained from the DOT contractor or from the subcontractor.)

(5) Contractor's position as to use of alternate supply sources.

(c) Upon settlement of a strike or labor dispute reported under paragraph (a) or (b) above, the administration labor advisor, or designated official, shall be informed as to the date on which work was resumed.

1222.101–70 Admittance of union representatives to DOT installations.

It is the Department's policy to admit accredited labor union representatives of contractor employees to DOT installations to visit work sites for the purpose of transacting business with contractors, their employees, or union stewards pursuant to existing collective bargaining agreements; provided that their presence and activities will not interfere with the work progress or violate the safety or security regulations applicable to installation visitors. Restrictions in excess of those imposed on other visitors transacting business at the installation should not be imposed on such employee representatives. Permission to visit an installation shall not include the right to hold meetings, collect dues, or make speeches. In the event employee representatives are denied entry to a work site for any reason, a report of such denial will immediately be sent to the administration labor advisor, or designated official. Such report shall include the reasons for denial, including names of representatives denied entry and their union affiliation, including local union number.

1222.101–71 Contract clauses.

(a) The contracting officer shall insert the clause at 1252.222–71, "Strikes or Picketing Affecting Timely Completion of the Contract Work", in all FAA construction contracts. The clause may also be used in construction contracts awarded by other administrations.

(b) The contracting officer shall insert the clause at 1252.222–72, "Strikes or Picketing Affecting Access to FAA Facility", in all contracts requiring work at an FAA facility. The clause, appropriately modified, may also be used by other administrations.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.

The contracting agency has primary responsibility for administration and enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act. While the contractor is not required to submit payrolls to the contracting officer unless the Davis-Bacon Act applies, the contracting officer is responsible for assuring by other means that laborers and mechanics are paid any overtime premium due them under the Contract Work Hours and Safety Standards Act. This may be done by reviewing payroll records at the contractor's office and by interviewing employees.

1222.305 Contract clauses.

The contracting officer shall insert the clauses at 1252.222–73 and 1252.222–74 in lieu of the clause at 52.222–4 until such time as the latter is updated to reflect the requirements of DOL Regulations, 29 CFR 5.5(c), published at 48 FR 19532, 19540, April 29, 1983, effective June 28, 1983, implemented by FPR Temp. Reg. 70, dated June 28, 1983 (48 FR 31028, July 6, 1983).

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.

1222.608–2 Determination of eligibility.

The contracting officer shall transmit the information described in FAR 22.608–2 (f)(1)(ii) and (f)(2). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, or designated official (see Subpart 1222.70).

1222.606-3 Protests against eligibility.

The contracting officer shall transmit the information described in FAR 22.606-3(b). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, or designated official.

1222.606-4 Award pending final determination.

Award may be made immediately, as provided in FAR 22.606-4(a), if the contracting officer's certification is approved in writing by the head of the contracting activity. The contract file documentation addressed at FAR 22.606-4(b) is the approved certification required by FAR 22.606-4(a). A copy of the written notice shall be furnished to the administration's labor advisor, or designated official.

1222.606-6 Postaward.

(a) See 1249.1 for procedures regarding contract termination.

(b) A copy of notification furnished the Department of Labor as required by FAR 22.606-6(c) shall be furnished the administration's labor advisor, or designated official.

Subpart 1222.1070—Service Contract Act of 1965

1222.1070-1 General.

Pending future coverage in the FAR, administrations shall continue to follow policies and procedures in FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, and administration procedures instituted thereunder.

1222.1070-2 Contract clauses.

(a) *Clause for contracts of $2,500 or less.* The contracting officer shall insert the clause at 1252.222-70, Service Contract Act of 1965—Contracts of $2,500 or Less, in soliciations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 12-month period.

(b) *Clauses for contracts over $2,500.* The contracting officer shall insert the following clauses in solicitations and contracts when the contract is subject to the Service Contract Act of 1965:

(1) The clause at 1252.222-75, Service Contract Act of 1965, when the contract is (i) for over $2,500 or (ii) for an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period.

(2) The clause at 1252.222-76, Civil Service Classifications and Rates.

(3) The clause at 1252.222-77, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts), when the contract is expected to be a fixed-price service contract and is a multiyear contract or is a contract with options to renew.

(4) The clause at 1252.222-78, Fair Labor Standards Act and Service Contract Act—Price Adjustment, when the the contract is expected to be a fixed-price service contract and is not a multiyear contract or is not a contract with options to renew.

(5) The clause at 1252.222-79, Service Contract Act Requirements as to Vacation Pay.

(6) The clause at 1252.222-73, Contract Work Hours and Safety Standards Act—Overtime Compensation.

(7) The clause at 1252.222-74, Payrolls and Basic Records.

Subpart 1222.70—Administration Labor Advisor

1222.7001 Administration labor procedures.

Each administration shall establish procedures to assure compliance with this Part. Each administration may appoint a labor advisor or designate an official responsible for coordinating labor policy and procedures as they pertain to the acquisition process. The individual so designated shall be located in its headquarters and the appointment shall be made by memorandum, with a copy sent to each of the administration's contracting offices.

Subpart 1222.71—Fair Labor Standards Act of 1938

1222.7101 General.

The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219), establishes minimum wage and maximum hour standards applicable to employees, unless otherwise exempted, engaged in interstate or foreign commerce or in the production of goods for such commerce. Thus, the statute may or may not cover employees on a Government contract, depending upon the nature of the contract work. The Department of Labor has responsibility for administering and enforcing this statute. A Labor Department investigation in connection therewith may be of vital concern to DOT because it may divulge violations of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-kickback) Act for which DOT has enforcement responsibility. When access to a contractor's submitted records is requested by the Department of Labor in connection with its investigation under the Fair Labor Standards Act, the contracting officer shall cooperate fully, and shall immediately request the Labor Department representative to furnish promptly any information developed indicating violation of the above statutes for which DOT has enforcement responsibility.

Subpart 1222.72—Notification to 8(a) Subcontractors

1222.7201 Requirements.

Contracting officers shall assure that firms receiving 8(a) subcontracts subject to the Davis-Bacon Act, Service Contract Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback) Act and Walsh-Healy Act are made aware during contract negotiation of the requirements of these Acts.

PART 1223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1223.1—Pollution Control and Clean Air and Water

Sec.
1223.106 Delaying award.
1223.107 Compliance responsibilities.

Subpart 1223.70—Safety Requirements for Selected DOT Contractors

1223.7001 Contract clauses.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1223.1—Pollution Control and Clean Air and Water

1223.106 Delaying award.

The contracting officer shall submit all notifications initiated under FAR 23.106 to the Environmental Protection Agency through the procurement executive.

1223.107 Compliance responsibilities.

Notification required by FAR 23.107 shall be submitted in the same manner as required by 1223.106.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7001 Contract clauses.

(a) Where all or part of a contract will be performed on Government owned or leased property, the contracting officer shall insert the clause at 1252.223-71 "Accident and Fire Reporting."

(b) For all NHTSA solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at 1252.223–72 "Protection of Human Subjects Compliance." Copies of the NHTSA directives shall be made available to the successful contractor.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1224.1—Protection of Individual Privacy

Sec.
1224.102 General.
1224.102–70 Applicability.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1224.1—Protection of Individual Privacy

1224.102 General.

DOT rules and regulations implementing the Privacy Act are located at 49 CFR Part 10.

1224.102–70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act *applies* include the following:

(1) Records which are maintained for administrative functions of a Federal agency, such as personnel and payroll records.

(2) Health records which are maintained by a contractor engaged to provide health services to agency personnel.

(b) Illustrations of systems of records to which the Act does *not* apply include the following:

(1) Records which are maintained by a contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government.

(2) Under contracts with a State or private educational organization to provide training, the records generated on contract students pursuant to their attendance (admission forms, grade reports), provided that they are similar to those maintained on other students and are commingled with records on other students.

(3) A system used by a contractor as a result of management discretion, for example, systems of personnel records maintained by contractors on their own behalf.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) are located in 49 CFR Part 7.

PART 1225—FOREIGN ACQUISITION

Subpart 1225.1—Buy American Act—Supplies

Sec.
1225.102 Policy.

Subpart 1225.2—Buy American Act—Construction Materials

1225.202 Policy.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.
1225.304 Excess and near-excess foreign currencies.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1225.1—Buy American Act—Supplies

1225.102 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.102(b) for contracts exceeding $1 million.

Subpart 1225.2—Buy American Act—Construction Materials

1225.202 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.202(b) for cost of construction materials exceeding $100,000.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.

The head of the contracting activity shall make the determinations/provide the authorization required by FAR 25.302 (b)(2), (b)(3) and (c).

Subpart 1225.304—Excess and Near-Excess Foreign Currencies.

The head of the contracting activity shall make the determination required by FAR 25.304(c).

PART 1227—PATENTS, DATA AND COPYRIGHTS

Subpart 1227.4—Rights in Data and Copyrights

Sec.
1227.401–70 Definitions.
1227.401–71 Procedures.
1227.401–72 Acquisition of data.
1227.401–73 Solicitation provisions and contract clauses.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1227.4—Rights in Data and Copyrights

1227.401–70 Definitions.

(a) "Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes computer software. The term does not include information incidental to contract administration, such as contract cost analysis or any financial, business and management information required for contract administration purposes.

(b) "Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

(c) "Form, fit, and function data," as used in this subpart, means data relating to, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

(d) "Limited-rights data," as used in this subpart, means data that embodies trade secrets or is commercial or financial and confidential or privileged, to the extent that such data pertains to items, components or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition: "Limited-rights data," as used in this subpart, means data developed at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.)

(e) "Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is published copyrighted computer software.

(f) "Unlimited rights," as used in this subpart, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(g) "Limited rights," as used in this subpart, means the rights of the Government in limited-rights data, as set forth in a Limited Rights Notice if

included in the data rights clause of the contract.

(h) "Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice if included in a data rights clause of the contract or as otherwise may be included or incorporated in the contract.

1227.401-71 Procedures.

(a) *General.* All contracts that require data be produced, furnished, or acquired must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from formal advertising that require only existing data (other than limited-rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule, the data rights clause at 1252.227-71, Rights in Data—General, including Alternates I–V where determined appropriate by the administration (agency) as discussed in paragraph (b) below, is to be used for this purpose. However, certain types of contracts, the particular subject matter of a contract, or the intended use of the data, may require the use of other clauses or no clause at all, as discussed in paragraphs (c) and (d) below.

(b) *Basic Rights in Data.* (1) *Summary.* The clause at 1252.227-71, Rights in Data—General, is structured to strike a balance between DOT's needs in carrying out its missions and programs and the contractor's needs to protect property rights and valid economic interests in certain data arising out of private investment. This clause enables the contractor to protect from unauthorized use and disclosure data that qualified as limited-rights data or restricted computer software (see paragraph (b)(2) below for an alternate definition of limited-rights data). This clause also specifically delineates the categories or types of data that DOT is to acquire with unlimited rights (see paragraph (b)(3) below). The contractor may protect qualifying limited-rights data and restricted computer software under this clause by either withholding such data from delivery to DOT, or when DOT has a need to obtain delivery of limited-rights data or restricted computer software, by delivering such data with limited rights or restricted rights with authorized notices on the data. (See paragraphs (b) (4) and (5) below.) In addition, this clause enables contractors to establish and/or maintain copyright protection for data first produced and/or delivered under the contract, subject to certain license rights in the Government. (See paragraph (b) (6) below.) This clause also includes procedures that apply when the Government questions whether notices on data are authorized (see paragraph (b)(7) below) or when a contractor wishes to add or correct omitted or incorrect notices on data (see paragraph (b)(8) below); addresses the contractor's right to release, publish or use certain data involved in contract performance (see paragraph (b)(9) below); and provides for the possibility for the Government to inspect certain data at the contractor's facility (see paragraph (b)(10) below).

(2) *Alternate definition of limited-rights data.* In the clause at 1252.227-71, Rights in Data—General, in order for data to qualify as limited-rights data, in addition to being data that either embodies a trade secret or is data that is commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, where appropriate, the contracting officer may determine to adopt in the clause the alternate definition for limited-rights data that does not require that such data pertain to items, components, or processes developed at private expense; but rather that the data that either embodies a trade secret or is commercial or financial and confidential or privileged be produced at private expense in order to qualify as limited-rights data. As an example, this alternate definition may be used where the principal purpose of a contract does not involve the development, use or delivery of items, components, or processes that are intended to be acquired for use by or for the Government (either under the contract in question or any anticipated follow-on contracts relating to the same subject matter). Other examples include contracts for market research and surveys, economic forecasts, socio-economic reports, educational material, health and safety information, management analysis, and related matters. This alternate definition of limited-rights data may be adopted, where appropriate, by using the clause with its Alternate I.

(3) *Unlimited-rights data.* Under the clause at 1252.227-71, Rights in Data—General, the Government acquires unlimited rights in the following data except as provided in paragraph (b)(6) below for copyrighted data: (i) Data first produced in the performance of a contract; (ii) form, fit, and function data delivered under contract; (iii) data (except as may be included with restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair delivered under a contract; and (iv) all other data delivered under the contract unless such data qualifies as limited-rights data or restricted computer software. If any of the foregoing data is published copyrighted data, the Government acquires it under a copyright license as set forth in paragraph (b)(6) below rather than with limited rights or restricted rights.

(4) *Protection of limited-rights data.* (i) The contractor may protect data (other than unlimited rights data or published copyrighted data) that qualifies as limited-rights data under the clause at 1252.227-71, Rights in Data—General, by withholding such data from delivery and providing form, fit, and function data in lieu thereof; or, if the clause is used with its Alternate II and DOT specifies the delivery of the data, by delivering such data with limitations on its use and disclosure. These two modes of protection afforded the contractor (i.e., withhold, or deliver with limited rights) are provided for in paragraph (g) of the clause at 1252.227-71, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold limited-rights data and provide form, fit, and function data in lieu thereof. Alternate II adds subparagraph (g)(2) to this clause to enable DOT selectively to obtain the delivery of withheld or withholdable data with limited rights. The limitations on the Government's right to use and disclose limited-rights data when the clause is used with its Alternate II are set forth in a "Limited Rights Notice" that the contractor is required to affix to such data. The specific limitations in the Notice are described below.

(ii) Limited-rights data delivered to the Government with the Limited Rights Notice contained in subparagraph (g)(2) (Alternate III) will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain limited purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be selected by an agency and added to the Limited Rights Notice of subparagraph (g)(2) of the clause (Alternate II):

(A) Use by support service contractors.

(B) Evaluation by nongovernment evaluators.

(C) Use by other contractors participating in the DOT program of which this contract is a part, for information and use in connection with the work performed under their contracts.

(D) Emergency repair or overhaul work.

(E) Release to a foreign government, as the interests of the United States may require, for information or evaluation, or for emergency repair or overhaul work by such Government.

(iii) As an aid in determining whether the clause should be used with its Alternate II, the provision at 1252.227–72, Notification of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1252.227–71, Rights in Data—General. In addition, the need for Alternate II should be considered during the negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1252.227–71, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by amendment during contract performance should the need arise for delivery of limited-rights data that has been withheld or identified as withholdable.

(5) *Protection of restricted computer software.* (i) If computer software qualifies as restricted computer software, the clause at 1252.227–71, Rights in Data—General, permits the contractor to protect such software by either withholding it from delivery and providing form, fit, and function data in lieu thereof; or if the clause is used with its Alternate III and DOT specifies delivery of the software, by delivering the software with restricted rights regarding its use, disclosure, and reproduction. The two modes of protection afforded the contractor (i.e. withhold or deliver with restricted rights) are provided for in paragraph (g) of the clause at 1252.227–71, Rights in Data—General. Subparagraph (g)(1) of this clause allows the contractor to withhold restricted computer software and provide form, fit, and function data in lieu thereof. Alternate III adds subparagraph (g)(3) to this clause to enable DOT selectively to obtain delivery of the withheld or withholdable computer software with restricted rights. The restrictions on the Government's right to use, disclose, and reproduce restricted computer software when the clause is used with its Alternate III are set forth in "Restricted Rights Notice" that the contractor is required to affix to such computer software. When restricted computer software delivered with such Notice is published copyrighted computer software, it is acquired with a restricted copyright license, without disclosure prohibitions, as also set forth in the Notice. The specific restrictions in the Notice are set forth below.

(ii) Restricted computer software delivered with the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be:

(A) Used, or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(B) Used, or copied for use in or with a backup computer if the computer or computers for which it is acquired is inoperative;

(C) Reproduced for safekeeping (archives) or backup purposes;

(D) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights; and

(E) Disclosed and reproduced by support contractors or their subcontractors, subject to the same restrictions under which DOT acquired the software.

(iii) The restricted rights set forth in 1227.401–71(b)(5)(ii) above are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) (Alternate III) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified in the contract. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract; or, with approval of the contracting officer, in a collateral agreement incorporated in and made part of the contract. (See paragraph (d)(2) below.)

(iv) As an aid in determining whether the clause should be used with its Alternate III, the provision at 1252.227–72, Notification of Limited-Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 1252.227–71, Rights in Data—General. In addition, the need for Alternate III should be considered during negotiations of a contract, particularly if negotiations are based on an unsolicited proposal. However, use of the clause at 1252.227–71, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by amendment during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(6) *Copyrighted data.*—(i) *Data first produced in the performance of a contract.* (A) In order to enhance the transfer or dissemination of information produced at Government expense, contractors may be permitted to establish claim to copyright subsisting in data first produced in the performance of work under a contract containing the clause at 1252.227–71, Rights in Data—General. This right is granted in subparagraph (c)(1) of the clause for any data first produced under the contract. DOT may, however, specifically exclude items or categories of data from the right of the contractor to establish claim to copyright when appropriate; for example, where the data is to be disseminated in useful form by the Government. Also, agencies having programs for the transfer or dissemination of information resulting from its programs may, by use of the clause with its Alternate IV, include a substitute subparagraph (c)(1) in the clause to limit the right of the contractor granted in subparagraph (c)(1) to establish claim of copyright to scientific and technical articles based on or derived from work performed under the contract and published in academic, professional, or technical journals. However, when Alternate IV is used, permission may be granted to establish claim to copyright in all other data in accordance with the procedures set forth below.

(B) Usually permission for a contractor to establish claim to copyright for data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data. The request for permission must be in writing, and may be made either at the time of contracting or subsequently during contract performance. It should identify the data involved or furnish a copy of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be

granted unless: (*1*) The data consists of a report that represents the official views of DOT or that DOT is required by statute to prepare; (*2*) the data is intended primarily for internal use by the Government; (*3*) the data is of the type that DOT itself distributes to the public under an established program; or (*4*) DOT determines that limitation on distribution of the data is in the national interest.

(C) Whenever a contractor establishes claim to copyright subsisting in data first produced in the performance of a contract, the Government normally is granted a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 1252.227–71, Rights in Data—General. However, DOT may on a case-by-case basis or on a class basis obtain on equitable terms a license of lesser scope than set forth in subparagraph (c)(1) of the clause if DOT determines that such lesser license will substantially enhance the transfer or dissemination of any data first produced under the contract.

(ii) *Data not first produced in the performance of a contract.* (A) Contractors are not to incorporate in data delivered under contract any data not first produced under the contract with the copyright notice of 17 U.S.C. 401 or 402 without either: Acquiring for, or granting to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data; or obtaining permission from the contracting officer to do otherwise. However, if computer software not first produced under contract is delivered with the copyright notice of 17 U.S.C. 401 or 402, the Government's license will be as set forth in subparagraph (g)(3) (Alternate III) if included in the clause at 1252.227–71, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(B) Contractors delivering data with an authorized limited rights or restricted rights notice and a copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws." If this statement is omitted, the contractor may be afforded opportunity to correct it in accordance with 1227.401–71(b)(8). Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in paragraph (b)(6)(ii)(*A*) above, without disclosure limitations or restrictions.

(C) If contractor action causes limited rights or restricted rights data to be published with copyright notice after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government and request that a copyright notice be placed on the data, and acknowledge that the applicable copyright license set forth in paragraph 1227.401–71(b)(6)(ii) above applies.

(*7*) *Unauthorized marking of data.* The Government has, in accordance with paragraph (e) of the clause at 1252.227–71, Rights in Data—General, the right either to return to the contractor data containing markings not authorized by that clause or to cancel or ignore such markings. However, markings will not be cancelled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to substantiate the propriety of the markings. The contracting officer will also give the contractor notice of any determination made based on any response by the contractor. Any such determination to cancel or ignore the markings shall be a final decision under the Contract Disputes Act. Failure of the contractor to respond to the contracting officer's inquiry within the time afforded may, however, result in Government action to cancel or ignore the markings. The above procedures may be modified in accordance with DOT regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(8) *Omitted or incorrect notices.* (i) Data delivered under a contract containing the clause at 1252.227–71, Rights in Data—General, without a limited-rights notice or restricted rights notice, or without a copyright notice, shall be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within six months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(A) Identifies the data for which a notice is to be added or corrected;

(B) Demonstrates that the omission of the proposed notice was inadvertent;

(C) Establishes that use of the proposed notice is authorized; and

(D) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(ii) The contracting officer may also (A) permit correction at the contractor's expense of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (B) correct any incorrect notices.

(9) *Release, publication and use of data.* (i) In the clause at 1252.227–71, Rights in Data—General, paragraph (d) provides that contractors normally have the right to use, release to others, reproduce, distribute, or publish data first produced or specifically used by the contractor in the performance of a contract; however, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract and the data contains restrictive markings, the contractor agrees to treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(ii) DOT may, on a case-by-case basis, or on a class basis, place further limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute or publish any data first produced (but not data specifically used) in the performance of the contract. Such restrictions are not to be imposed on a class basis unless they are pursuant to statutory requirements, determined to be necessary in the furtherance of DOT mission objectives, or determined to be necessary in support of specific DOT programs.

(10) *Inspection of data at the contractor's facility.* DOT may obtain the right to inspect data at the contractor's facility by use of Alternate V, which adds paragraph (j) to provide that right in the clause at 1252.227–71, Rights in Data—General. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause, or any data specifically used in the performance of the contract. Such inspection may be made by the contracting officer or representative for the purpose of verifying a contractor's

assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) (Alternate V). If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(c) *Production of special works.* (1) The clause at 1252.227–74, Rights in Data—Special Works, applies to contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(i) The production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(ii) Histories of the respective agencies, departments, services, or units thereof;

(iii) Works pertaining to recruiting, morale, training, or career guidance;

(iv) Surveys of Government establishments;

(v) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(vi) The compilation of reports, studies, surveys, or similar documents that do not involve research, development, or experimental work performed by the contractor;

(vii) The collection of data containing identifiable personal information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(viii) Investigatory reports; or

(ix) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(d) *Acquisition of existing data other than limited-rights data.* (1) *Existing audiovisual and similar works.* The clause at 1252.227–75, Rights in Data—Existing Works, is for the use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are: (i) Means of exhibition or transmission, (ii) time, (iii) type of audience, and (iv) geographical location. If the contract requires that works of the type indicated above are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form), the clause at 1252.227–74, Rights in Data—Special Works, is to be used. (See 1227.401–71(c))

(2) *Separate acquisition of existing computer software.* (i) If the contract is for the separate acquisition of existing computer software, no specific contract clause prescribed in this subpart need be used. However, the contract must specifically address the Government's rights to use, disclose, and reproduce the software, and must contain terms obtaining sufficient rights for the Government to fulfill the need for which the software is being acquired. The restricted rights set forth in 1227.401–71(b)(5) should be used as a guide and are usually the minimum the Government should accept. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disc pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with paragraph (d)(2)(i) above. Caution should be exercised in accepting a vendor's terms and conditions since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract, and the contract terms shall take precedence over the vendor's standard commercial agreement.

(iii) If a prime contractor under a contract containing the clause at 1252.227–71, Rights in Data—General, with subparagraph (g)(3) (Alternate III) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to the Government, the contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of subparagraph (g)(3) in a collateral agreement incorporated in and made part of the contract. (See also 1227.401–71(b)(5).)

(3) *Other existing works.* Except for existing audiovisual and similar works pursuant to paragraph (d)(1) above, and existing computer software pursuant to paragraph (d)(2) above, no clause contained in this subpart need be included in: (i) Contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e. the off-the-shelf purchase of such items) unless reproduction rights of such items are to be obtained; or (ii) contracts resulting from formal advertising that require only existing data to be delivered unless reproduction rights for such data (other than limited-rights data) are to be obtained. If reproduction rights are to be obtained, such rights must be specifically set forth in the contract.

1227.401–72 Acquisition of data.

(a) *General.* (1) It is important to recognize and maintain the conceptual distinction between contract terms whose purpose is to identify the data required for delivery to, or made available to, the Government (i.e. data requirements); and those contract terms whose purpose is to define the respective rights of the Government and the contractor in such data (i.e. data rights). This section relates to data

requirements; 1227.401–71 relates to the data rights.

(2) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements are subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum.

(3) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data, shall be specified in the contract.

(b) *Additional data requirements.* Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be possible or appropriate to ascertain all the data requirements at the time of contracting, the clause at 1252.227–73, Additional Data Requirements, is provided to enable the subsequent ordering by the Government of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. Data may be ordered under the clause at any time during contract performance or within a period of three years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. Any data ordered under the clause will be subject to the Rights in Data—General clause in the contract and data authorized to be withheld under that clause will not be required to be delivered under this Additional Data Requirements clause.

1227.401–73 Solicitation provisions and contract clauses.

(a) *Rights in Data—General.* (1) The contracting officer shall insert the clause at 1252.227–71, Rights in Data—General, (see 1227.401–71(b)) in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 1227.401–71(c). In this circumstance, the contracting officer shall include the clause at 1252.227–71, Rights in Data—General, and make it applicable to data other than special works, as appropriate;

(ii) For the separate acquisition of existing works, as described in 1227.401–71(d);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case the contracting officer may prescribe different clauses (see paragraph (h) below);

(iv) For architect-engineer services or construction work, in which case the contracting officer may prescribe different clauses (see paragraph (i) below), but the clause at 1252.227–71, Rights in Data—General, may be included in the contract and made applicable to data pertaining to other than architect-engineer services and construction work;

(v) A Small Business Innovative Research (SBIR) contract, in which case the contracting officer shall prescribe clauses consistent with the requirements of Pub. L. 97–219 (the Small Business Innovation Development Act of 1982) and the Small Business Administration Policy Directive No. 65–01 (see paragraph (j) below);

(vi) For the operation of a Government-owned facility to perform research, development or production work, in which case the contracting officer may prescribe different clauses (see paragraph (k) below).

(2) If the contracting officer determines, in accordance with 1227.401–71(b)(2), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause at 1252.227–71 shall be used with its Alternate I.

(3) If DOT needs to obtain the delivery of limited-rights data (see 1227.401–71(b)(4)), the clause shall be used with its Alternate II. The contracting officer shall, when Alternate II is used, assure that the purposes, if any, for which limited-rights data is to be disclosed outside the Government are included in the "Limited Right Notice" of subparagraph (g)(2) of the clause in accordance with 1227.401–71(b)(4). The contract may exclude identified items of data from delivery under subparagraph (g)(2) of the clause. Alternate II may be used at the time of contracting or subsequently by amendment if the need to acquire limited-rights data arises during contract performance.

(4) If an administration needs to obtain the delivery of restricted computer software (see 1227.401–71(b)(5)), the clause shall be used with its Alternate III. Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract. Alternate III may be used at the time of contracting or subsequently by amendment if the need to acquire restricted computer software arises during contract performance.

(5) If DOT wishes to limit the automatic right of the contractor to establish claim to copyright subsisting in data first produced in the performance of the contract, to scientific and technical articles based on or derived from the work performed under the contract and published in academic, technical, or professional journals, the clause shall be used with its Alternate IV. (See 1227.401–71(b)(6).) Alternate IV provides a substitute subparagraph (c)(1) in the clause with such limitation. This subparagraph (c)(1) does, however, allow the contracting officer to give permission to the contractor to establish claim to copyright subsisting in other data first produced in the performance of the contract, either at the time of contracting or subsequently during contract performance, in accordance with 1227.401–71(b)(6).

(6) If DOT needs to have the right to inspect certain data at a contractor's facility, (see 1227.401–71(b)(10)), the clause shall be used with its Alternate V. Alternate V adds a paragraph (j) to the clause to provide for such right, including the limitations thereon. Inspection may be by the contracting officer or representative and may be made at all reasonable times up to three years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not to be subject to inspection under paragraph (j) of the clause. If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

(b) If DOT desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited-rights data or restricted computer software is likely to be used in meeting the data requirements set forth in the solicitation, the contracting officer shall insert the provision at 1252.227–72, Notification of Limited-Rights Data and Restricted Computer Software, in any solicitation containing the clause at 1252.227–71, Rights in Data—General. The

contractor's response will aid in determining whether the clause should be used with Alternate II and/or Alternate III. (See 1227.401–71(b) (4) and (5).)

(c) The contracting officer shall insert the clause at 1252.227–73, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 1227.401–72.) This clause may also be used in other contracts when considered appropriate. If the clause at 1252.227–71, Rights in Data—General, is used in the contract with its Alternates II or III, the contracting officer may permit the contractor to identify data the contractor does not wish to deliver, and may specifically exclude in the contract any requirement that such data be delivered under paragraphs (g)(2) or (g)(3) of that clause or ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in subparagraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data.

(d) The contracting officer shall insert the clause at 1252.227–74, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited-rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 1227.401–71(c). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(e) The contracting officer shall insert the clause at 1252.227–75, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 1227.401–71(d)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 1252.227–74, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(f) While no specific clause of this subpart need be included in contracts for the separate acquisition of existing computer software, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 1227.401–71(d)(2).

(g) While no specific clause of this subpart need be included in contracts solely for the acquisition of books, publications and similar items in the exact form in which such items exists prior to the request for purchase (i.e., the off-the-shelf purchase of such items), if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 1227.401–71(d)(3).)

(h) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of FAR 27.401 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(i) The contracting officer may prescribe, as appropriate, clauses consistent with the policy in FAR 27.401 in contracts for architect-engineer services and construction work.

(j) The contracting officer shall prescribe clauses consistent with the requirements of Pub. L. 97–219 (the Small Business Administration Development Act of 1982) and the Small Business Innovative Policy Directive No. 65–01 in Small Business Innovative Research (SBIR) contracts.

(k) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of FAR 27.401 in contracts for the operation of Government-owned research, development, or production facilities.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds

Sec.
1228.106 Administration.
1228.106–6 Furnishing information.
1228.106–7 Withholding contract payments.
1228.106–70 Execution and administration of bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.
1228.306–70 Contracts for lease of aircraft.
Sec.
1228.306–70–1 Clauses.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106–6 Furnishing information.

(a) The contracting officer shall upon request furnish the name and address of the prime contractor's surety to employees, suppliers, and subcontractors having a contractual or employment relationship with the prime contractor or a first-tier subcontractor. When furnishing such information, the inquirer may also be informed that:

(1) An employee, supplier, or subcontractor having a contractual or employment relationship with a prime contractor or first-tier subcontractor has the right to sue the prime contractor's surety under the Miller Act for amounts owed for work performed or materials delivered; and

(2) In order to avail himself of legal remedies provided by the Miller Act, an employee, supplier, or subcontractor having a contractual or employment relationship with a first-tier subcontractor must act within the following time frames:

(i) Inform the prime contractor within 90 days after the day on which the last of his work was performed or the day on which the last of his material was delivered, that he has not fully paid for such work or material; and

(ii) File against the surety within one year after the day on which the last of his work was performed or the day on which the last of his material was delivered, any required court action for collection of amounts due. "Employees" as used in this paragraph means both supervisory and nonsupervisory employees who have furnished or have been requested to furnish labor in prosecution of the work required by the contract in question. See 1228.106–6(b) below for the contracting officer's responsibility with respect to laborers, mechanics, apprentices, trainees, watchmen and guards.

(b) On construction contracts exceeding $2,000, if the contracting officer is informed, either through routine compliance checking, a complaint, or a request for information, that a laborer, mechanic, apprentice, trainee, watchman or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in

accordance with FAR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-kickback) Act for assuring proper payment to such employees. Claims of such employees, along with claims of the United States referred to in 1228.106-7 take precedence over claims of sureties.

1228.106-7 Withholding contract payments.

A surety which, pursuant to a Miller Act payment bond, has satisfied debts owed by the contractor to an employee of the contractor, a first-tier subcontractor, or a materialman supplying the contractor, obtains a right of subrogation to contract funds due the contractor and held by the Government. However, the surety's subrogation rights are subject to any claims of the United States based on the contractor's debts to it and the Government's right to make payment to the contractor from withheld funds if necessary to achieve timely completion of the contracts.

1228.106-70 Execution and administration of bonds.

(a) When required by Instruction Number 2 of the standard bond forms, the evidence of authority of a principal's representative shall be a duly executed power of attorney reciting that the individual executing the bond or consent of surety is authorized to do so. A corporation, in lieu of such power of attorney, may submit a "Certificate as to Corporate Principal" in the format shown below.

Certificate as to Corporate Principal

I, ———, certify that I am ——— (Office held) of the corporation named as principal in the (performance) (and) (payment) bond(s); that ——— who signed the said bond(s) on behalf of the principal was then (*Capacity of which bond was executed*) of said corporation; That I know his signature and that his signature therefore is genuine; and that said bond(s) was (were) duly signed, sealed, and attested for and on behalf of said corporation by authority of its governing body.

——— (Affix Corporate Seal)

(b) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(c) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must appear.

(d) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(e) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross reference the applicable bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306-70 Contracts for lease of aircraft.

1228.306-70-1 Clauses.

(a) The clauses at 1252.228-71 through 1252.228-73 shall, unless otherwise indicated by the specific instructions for their use, be inserted in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) Insert the clause in 1252.228-71 except in the following circumstances:

(1) When the hourly rental rate does not exceed $250.00 and the total rental cost for any single transaction is not in excess of $2,500 or

(2) Where the cost of hull insurance does not exceed 10% of the contract rate, or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) When fair market value of the aircraft can be determined, insert the clause at 1252.228-72.

(d) Section 504 of the Federal Aviation Act of 1958 provides "* * * no lessor of any such aircraft * * * under a *bona fide* lease of thirty days or more, shall be liable * * * by reason of his interest as lessor or owner of the aircraft * * * for any injury to or death of persons, or damage to or loss of property * * * *unless such aircraft * * * is in the actual possession or control of such person* at the time of such injury, death, damage or loss * * *" (*Underscoring* supplied.) On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause prescribed in paragraph (d)(1) below shall be used.

(1) Insert the clause in 1052.228-73 in any contract for out-service flight training or for the lease of aircraft where the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract Schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel be permitted to take command of the aircraft.

PART 1229—TAXES

Subpart 1229.1—General

1229.101 Resolving tax problems.

(a) The Office of General Counsel will represent the Department in all negotiations under FAR Part 29.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the administration legal counsel. The forwarding of tax problems to the General Counsel is particularly important where:

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action to be taken.

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures with recommendations.

(f) Information copies of tax-related correspondence shall be sent to the procurement executive.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1230—COST ACCOUNTING STANDARDS

Subpart 1230.3—CAS Contract Requirements

1230.304 Waiver.

The head of the contracting activity is authorized to waive CAS requirements for nondefense contracts.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 1231.1—Applicability

1231.101 Objectives.

Requests for individual deviations to the cost principles shall be submitted to the agency head. Requests for administration supplements and class deviations shall be submitted through the Senior Procurement Executive who will coordinate the request with the Civilian Agency Acquisition Council.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1232—CONTRACT FINANCING

Subpart 1232.1—General

Sec.
1232.102 Description of contract financing methods.

Subpart 1232.4—Advance Payments

1232.402 General.

Subpart 1232.5—Progress Payments Based on Costs

1232.501 General.
1232.501–2 Unusual progress payments.
1232.502 Preaward matters.
1232.502–2 Contract finance office clearance.
1232.504 Subcontracts.

Subpart 1232.7—Contract Funding

1232.702 Policy.
1232.703 Contract funding requirements.
1232.703–1 General.

Subpart 1232.70—Prompt Payments

Sec.
1232.7001 Prompt payments.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1232.1—General

1232.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOT contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 1232.5, of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the head of the contracting activity when a determination is made that progress payments based on costs cannot be practically employed and that it is feasible to administer progress payments based on a percentage or stage of completion.

Subpart 1232.4—Advance Payments

1232.402 General.

(a) The head of the contracting activity shall have the responsibility and authority for making findings and determinations concerning advance payments, except advance payments in excess of $50,000 pursuant to Pub. L. 85–804, as amended, must be approved by the Secretary of Transportation. This authority may not be redelegated.

(b) Before requesting authorization for any advance payment arrangements, the proposed advance payments shall be coordinated with the finance office.

Subpart 1232.5—Progress Payments Based on Costs

1232.501 General.

1232.501–2 Unusual progress payments.

Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract, provided the bid or proposal is not conditioned on approval of such request.

1232.502 Preaward matters.

1232.502–2 Contract finance office clearance.

The approving authority for actions specified in FAR 32.502–2 is the head of the contracting activity.

1232.504 Subcontracts.

The head of the contracting activity is the approving official for *unusual* progress payments to subcontractors.

Subpart 1232.7—Contract Funding

1232.702 Policy.

In addition to the requirements of (a) in the second sentence of FAR 32.702, and for fixed price incentive or redeterminable contracts, the contracting officer shall prior to award ensure that sufficient funds are available to cover the ceiling price thereof.

1232.703 Contract funding requirements.

1232.703–1 General.

Incrementally funded cost reimbursement contracts shall state:

(a) The limit of the Government's liability (i.e., amount of funds available);

(b) The portion of the contract scope (i.e. specific property or services, or period of time) for which funds are available;

(c) The proportionate cost and fee for the property, services or period identified per (b) above; and

(d) For contracts containing separately priced portions (e.g. Task Order contracts), the individual cost and fee for each incrementally funded portion.

Subpart 1232.70—Prompt Payments

1232.7001 Prompt payments.

Pending future coverage in the FAR, administrations shall implement Pub. L. 97–177 (the Prompt Payment Act) and Office of Management and Budget (OMB) Circular A–125, by continuing to follow the policies and procedures in FPR Temporary Regulation 66, Prompt Payment Procedures (dated October 5, 1982) and Supplement 1 thereto (dated September 29, 1983), and administration procedures instituted thereunder.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.1—Protests

Sec.
1233.103 Protests to the agency.
1233.104 Protests to GAO.
1233.105 Protests to GSBCA.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.212 Contracting officer's duties upon appeal.
1233.213 Obligation to continue performance.
1233.270 Department of Transportation Contract Appeals Board.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1233.103 Protests to the agency.

The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the Senior Procurement Executive.

1233.104 Protests to GAO.

(a) *General.* Prior to submitting a protest response to GAO, the completed response shall be submitted to the Senior Procurement Executive for review and coordination. The head of the contracting activity has the responsibility to provide GAO with the information required by FAR 33.103(a)(6).

(b) *Protests before award.* The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the Senior Procurement Executive.

1233.105 Protests to GSBCA.

Prior to submitting a protest response to GSBCA, the completed response shall be submitted to the Senior Procurement Executive for review and coordination.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "* * * the Board of Contract Appeals * * *" with: "Department of Transportation Contract Appeals Board (S–20), 400 7th Street, SW., Washington, D.C. 20590."

1233.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify administration legal counsel who will appoint an attorney to represent the Government before the Contract Appeals Board.

1233.213 Obligation to continue performance.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I where continued performance is vital to national security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

1233.270 Department of Transportation Contract Appeals Board.

Title 49, Subchapter A, establishes the Department of Transportation Contract Appeals Board, pursuant to Pub. L. 95–563, prescribes its functions and procedures, provides for the appointment of a Chair, a Vice-Chair, and members of the Board, and sets forth their duties.

PART 1234—MAJOR SYSTEM ACQUISITION

1234.002 Policy.

DOT's implementation of OMB Circular No. A–109 and FAR Part 34 is contained in DOT Orders 4200.9A Acquisition of Major Systems, and 4200.14B Major Systems Acquisition Review and Approval.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1235.003 Policy.
1235.010 Scientific and technical reports.
1235.070 Contract clause.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1235.003 Policy.

Recoupment. It is DOT policy in negotiating contracts under which the Government pays a part or all of the costs of research or development to recover a fair share of its investment when the product(s) thus developed or their related technology is sold or licensed to a foreign government, international organization, foreign commercial firm or domestic organization (all of which are collectively termed "customers"). (See 1235.70 below for instructions on use of the recoupment clause).

1235.010 Scientific and technical reports.

When the statement of work calls for a scientific and technical report which presents interim and final results of R&D work, the contracting officer shall insure that DOT document DOT–TST–75–87 (Appendix 1 to DOT Order 1700.18 Acquisition, Publication and Dissemination of DOT Scientific and Technical Reports) is included in the contract.

1235.070 Contract clause.

Contracting officers shall insert the clause at 1252.235–71 "Recoupment of Development Costs" in contracts which: (a) Totally or partly require design, research, development, test or experimental (D, R, D, T or E) work; (b) call for a product (e.g., equipment, hardware, software or a combination thereof) to be delivered as an end item; and (c) involve D, R, D, T or E valued at $1,000,000 or more.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.2—Special Aspects of Contracting for Construction

Sec.
1236.203 Government estimate of construction costs.
1236.206 Liquidated damages.
1236.209 Construction contracts with architect-engineer firms.

Subpart 1236.3—Special Aspects of Formal Advertising in Construction Contracting

1236.305 Preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.
1236.602–1 Selection criteria.
1236.602–2 Evaluation boards.
1236.603–3 Evaluation board functions.
1236.602–4 Selection authority.
1236.602–5 Short selection processes for contracts not to exceed $10,000.
1236.603 Collecting data on and appraising firms' qualifications.
1236.606 Negotiations.
1236.606–70 General.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1236.2—Special Aspects of Contracting for Construction

1236.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply: (1) The overall amount of the Government's estimate shall not be disclosed prior to award; (2) at the time of award the "For

Official Use Only" designation on the Government's estimate shall be removed; and (3) after award, the Government's estimate may be revealed, upon request.

1236.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FAR Subpart 12.2. However, inclusion of liquidated damages provisions may be inappropriate in situations such as a construction contract consisting of repairs, alterations or improvements where any delay in the completion would still permit the user to continue its normal function in an uninterrupted manner, without resulting in added expense to the Government.

1236.209 Construction contracts with architect-engineer firms.

(a) As provided in FAR 36.209, no contract for construction shall be awarded (as the result of *either* a solicited or unsolicited proposal) to the architect-engineer (A–E) firm responsible for the design of the facility to be constructed, or to any subsidiary or affiliate of that firm, without the approval of the agency head. This approval authority may not be redelegated.

(b) Unless a construction award to an A–E design firm is approved per (a) above, an A–E firm selected for negotiation of an architect-engineer services contract which, together with its subsidiaries or affiliates, possesses construction capabilities, shall be advised of the policy set forth in paragraph (a) above prior to the initiation of negotiations. The firm shall have the option of either:

(1) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm (including its subsidiaries or affiliates) will be ineligible to compete for the related construction contract. This understanding shall be certified by the architect-engineer firm upon the completion of negotiation, and the certification shall be entered into the official contract file.

(c) Architect-Engineer firms awarded a construction contract under 1236.209(a) shall not be engaged to supervise and inspect, on behalf of the Government, the construction of the facility under the contract.

Subpart 1236.3—Special Aspects of Formal Advertising in Construction Contracting

1236.305 Preconstruction conference.

(a) When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

(b) DOT Form F 4220.3 titled "Preconstruction Conference Agenda and Checklist", or a similar checklist, shall be used as the agenda of, or checklist for, the preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at 1252.236–71 in the solicitation and contract.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602–1 Selection criteria.

(a) Appropriate criteria in addition to those under FAR 36.602–1 (a) may include, but are not limited to, the criteria listed below. The extent to which these criteria are used will depend on the size and the complexity of the project. For instance, for small and straightforward projects, particularly those under $10,000, the data provided by the Standard Forms 254 and 255 may provide an adequate measure of the firm's experience and qualifications required for the project. However, on larger and more complex projects, the evaluation criteria should be extended to consider such factors as the firm's suggested design approach, plus methods, design ability, such as:

(1) Specialized Experience of the Firm-Relevant recent experience of the firm (including joint venture or association) in projects similar to the one being solicited.

(2) Capability and Capacity of Firm to Accomplish the Work—

(i) Relevant recent experience and technical knowledge of key project personnel, and key outside consultants.

(ii) Total number of personnel the A–E firm employs in the technical disciplines required for the proposed work.

(iii) Firm's current workload. Total number of ongoing projects, their construction value or A–E fee, and percentage of completion.

(3) Design Ability and Understanding of the Requirements—

(i) Technical approach (planning and design process, overall planning and design philosophy), possible concepts (narrative), special design opportunities, innovative design possibilities (including environmental), and provisions for the handicapped.

(ii) Understanding of, and Experience in, Energy Conservation Design.

(A) Approach to maximizing energy conservation.

(B) Project building and equipment systems that would significantly impact energy consumption.

(C) Criteria and engineering considerations to be used in building and equipment design.

(D) Examples of previously used design techniques and measure of results (in Btus consumed per square foot or energy costs).

(iii) Proposed project schedule and man-loading plan.

(iv) Quality of examples of previous work.

(v) Design Recognition. Major awards and other major recognition the firm or members of the firm have received for design excellence.

(4) Organization and Management:

(i) Project team organization and key personnel roles and responsibilities.

(ii) Project management procedures such as coordination of design effort among technical disciplines.

(iii) Methods used to control project schedule and construction cost estimates.

(iv) Quality control procedures.

(v) A–E client relationship.

(5) Past Record of Performance:

(i) DOT and other Government contracts.

(ii) Contracts with private industry.

(iii) Quality of work.

(iv) Ability to meet contractual performance/delivery schedules.

(v) Accuracy of construction cost estimates (compared to construction bids received and value of awarded construction contract).

(vi) Number, dollar amount and reason for construction change orders.

(vii) A–E/client relationship. (For Government contracts, the above information is available from SF 1421-Performance Evaluation (A–E)).

(b) If design competition is to be used (see FAR 36.602–1(b)), written approval by the agency head shall be obtained prior to soliciting proposals.

(c)(1) The following evaluation criterion reflects Department policy and shall be used in the A–E evaluation process for A–E acquisitions above $10,000. It shall be used separately from the other criteria in terms of bonus or penalty points to the basic numerical evaluation rating.

(2) Minority/Women Employment—Percentage of minority employees in all job classifications and pay scales, noting the percentage of minorities in the immediate locality and general surrounding area. In addition, the number of women in all job classifications and pay scales shall also be considered.

1236.602–2 Evaluation boards.

Heads of contracting activities shall establish an ad-hoc architect-engineer evaluation board for each acquisition of architect-engineer (A–E) services. This authority may be redelegated not lower than one level above the contracting officer. For acquisitions where the estimated A–E fee is $200,000 or more, the HCA shall notify the Senior Procurement Executive prior to establishing the A–E evaluation board. For A–E acquisitions above $10,000, the following requirements apply in addition to those set forth in FAR 36.602–2:

(a) The A–E evaluation board shall be composed of the following members:

(1) One member with experience in acquisition of A–E services. This member will normally be the contracting officer or the contract negotiator.

(2) One or more members with technical experience in the fields of architecture, engineering or construction. These members will normally be from the organization responsible for establishing the A–E work requirements.

(3) One member with technical knowledge of the functional (user) requirements of the project.

(4) One member from OST if appointed by the Senior Procurement Executive, where the A–E fee is $200,000 or more.

(5) Other special members as are deemed necessary.

(b) A–E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction or related professions. When a proposed architect-engineer evaluation board includes a member from the private sector, the Senior Procurement Executive shall be notified before the board is established.

(c) Administrations that do not have: (1) Personnel experienced in A–E selection procedures; or (2) personnel with the necessary technical disciplines to evaluate A–E firms for a particular project, may request the assistance of the Senior Procurement Executive in establishing the A–E evaluation board.

1236.602–3 Evaluation board functions.

For A–E acquisitions above $10,000, the A–E evaluation board shall perform the following functions in addition to, or in combination with, those of FAR 36.602–3, and in the sequence indicated:

(a) Analyze the nature and scope of the project work requirements.

(b) Develop the evaluation criteria and rating systems to be used in screening firms for the pre-selection list and in the final selection. The screening criteria should be based only on information provided by the Standard Forms 254 and 255.

(c) Prepare the public announcement for the project and provide it to the contracting office for publication.

(d) Screen the Standard Forms 254 and 255 and any other qualification data received in response to the public announcement of the project and prepare a pre-selection list of the best qualified firms for further consideration. The pre-selection list must consist of at least three firms.

(e) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see 1236.602–1(a)) not provided by the Standard Forms 254 and 255 which are needed to evaluate the firms using the criteria established for final selection. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist the firm in its response. The A–E firms shall be advised not to submit price proposals, design sketches, drawings or design data at the time the qualification and past performance information is due.

(f) Conduct interviews with the firms on the pre-selection list. As part of the interview, the architect-engineer firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(g) Whenever it is practical and advantageous, the A–E evaluation board should visit the offices of the A–E firms on the pre-selection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(h) Review the Standard Forms 254 and 255 and other experience and qualification data for each firm on the pre-selection list, and perform a systematic numerical evaluation rating of the firms.

(i) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the pre-selection list.

(j) Prepare a report to the HCA, or the official holding authority to establish A–E boards, which shall include in sufficient detail: (1) The extent of the board's review and evaluation; (2) the list described in (i) above; (3) recommendations; and (4) considerations on which the recommendations are based.

1236.602–4 Selection authority.

(a) The HCA or the official holding authority to establish A–E boards shall review the recommendations of the A–E evaluation board. The recommendations of the A–E evaluation board will normally be approved, unless the report does not adequately support the recommendations. If the recommendations are not approved, the A–E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon.

(b) The approved report shall serve as authorization for the contracting officer to commence negotiations with the A–E firm ranked number one by the A–E evaluation board.

1236.602–5 Short selection processes for contracts not to exceed $10,000.

Administrations are authorized to use either of the short selection processes of FAR 36.6025–5.

1236.603 Collecting data on and appraising firms' qualifications.

Because it is the Department's policy to establish ad hoc evaluation boards instead of permanent boards to select architect-engineers, each administration shall establish, or designate, an office or offices to meet the requirements of FAR 36.603(a). Administrations may choose not to maintain A-E qualification data files and arrange to use existing data files of other DOT organizations including the files available in the Office of Installations and Logistics, OST (M–60). If any organization chooses this option, it should forward all A-E qualification data it receives from interested firms to the organization maintaining the data file.

1236.606 Negotiations.

1236.606-70 General.

The limitation on architect-engineer fees of 6% of the estimated construction cost applies to all services that are an integral part of the production and delivery of plans, designs, drawings and specifications of a construction project. (See FAR 15.903(d).) The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

(a) Development of program requirements (scope of work).

(b) Determination of project feasibility.

(c) Preparation of drawings of an existing facility, where current drawings are not available.

(d) Subsurface investigations (soil borings).

(e) Structural, electrical and mechanical investigations of an existing building, where current information is not available.

(f) Surveys: topographic, boundary, utility.

(g) Preparation of models, color renderings, photographs or other presentation materials.

(h) Travel and per diem for special presentations.

(i) Supervision and inspection of construction.

(j) Preparation of operating and maintenance manuals.

(k) Master planning.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

Sec.

1237.104 Personal services contracts.
1237.104-70 Taxes.
1237.104-71 Administrative treatment.
1237.110 Solicitation provisions and contract clauses.

Subpart 1237.2—Consulting Services

1237.204 Policy.
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1237.7000 Scope of subpart.
1237.7001 Acquisition by contract.
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1237.7003 Schedule format.
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1237.7005 Solicitation provisions and contract clauses.

Authority: Sec. 205 (C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1237.1—Service Contracts—General

1237.104 Personal services contracts.

1237.104-70 Taxes.

Where the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment Compensation), and Federal income withholding taxes. It may also be necessary to report or withhold state income tax under 5 U.S.C. 5517. The contracting officer shall take appropriate steps in coordination with the cognizant personnel office to have deductions and reports made where required by law.

1237.104-71 Administrative treatment.

Individuals who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointments. Also, the cognizant personnel office must maintain certain records on individuals who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant personnel office before award of a contract for personal services and may also designate the appropriate personnel officer as his representative for the purpose of obtaining necessary data from the contractor for tax withholding purposes, for suitability investigation under Executive Order 10450, and for administering applicable conflict of interest provisions.

1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the provision at 1252.237-71 "Qualifications of Employees" in all solicitations and contracts for services which require performance at a Government facility.

Subpart 1237.2—Consulting Services

1237.204 Policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c), the following apply:

(a) Consulting services shall normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements shall not be used to acquire consulting services.

1237.205 Management controls.

DOT management controls, including approvals required, are set forth in DOT Order 4200.15, Criteria and Guidelines for the Use of Consulting Services.

1237.270 Contracts for stenographic reporting services.

Stenographic reporting services normally are provided by Federal Government employees appointed under the usual civil service procedures. However, these services may be acquired by contract from individuals or firms pursuant to 5 U.S.C. 3109 or other statutory authority where there are variable requirements or insufficient qualified personnel, and necessity of economy to the Government demands acquisition by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary material (typewriter, paper, bindings, etc.). These contracts are subject to all provisions of this subpart.

Subpart 1237.70—Mortuary Services

1237.7000 Scope of subpart.

This subpart is applicable only to the Coast Guard. It sets forth acquisition procedures peculiar to contracts for mortuary services (the care of remains) of Coast Guard personnel.

1237.7001 Acquisition by contract.

(a) Where an existing contract for the care of remains is not available for Coast Guard use, acquisition of such services shall be accomplished by sealed bidding except where negotiation is authorized.

(b) The contract format and terms and conditions set forth in this subpart are appropriate for inclusion in a requirements type contract. They should be altered as deemed necessary by the contracting officer to fit a different contract type or acquisition situation.

1237.7002 Area of performance.

Each contract for care of remains shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, and other features such as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly

used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

1237.7003 Schedule format.

Set forth below is an example of a schedule format suitable for use in solicitations.

Item No. and supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
1. For a type I casket, standard size, supplies and services in accordance with specifications		(1)		
2. For a type II casket, standard size supplies and services in accordance with specifications		(1)		
3. For a shipping case, standard size, in accordance with specifications. (For use with items 1 and 2.)		(1)		
4. For a type I casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
5. For type II casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
6. For shipping case, exceeding standard size, in accordance with specifications. (To be used with items 4 and 5.)		(1)		
7. For transportation of remains, in accordance with specifications and as provided for in parts (b) and (c) of the area of performance clause of this contract		(2)		

[1] Each.
[2] Loaded mile.

1237.7004 Small purchases.

Purchases under $25,000 which cannot be covered by any existing contract shall be handled in accordance with FAR Part 13.

1237.7005 Solicitation provisions and contract clauses.

(a) All the regulatory citations in this 1237.7005 are to the Department of Defense (DOD) FAR Supplement (except that to FAR 52.245–4 in paragraph (e) below).

(b) The contracting officer shall insert the DOD provision at 52.237–7100, "Award to Single Bidder," in sealed bid solicitations for mortuary services contracts.

(c) The contracting officer shall insert the DOD provision at 52.237–7101, "Award to Single Offeror," in negotiated solicitations for mortuary services contracts.

(d) The contracting officer shall insert the following DOD clauses in mortuary services solicitations and contracts except those for port of entry requirements:

52.237–7102, Requirements;
52.237–7103, Area of Performance;
52.237–7104, Specifications;
52.237–7105, Using Activities;
52.237–7106, Delivery Orders and Invoices;
52.237–7107, Delivery and Performance;
52.237–7108, Subcontracting;
52.237–7109, Additional Default Provisions;
52.237–7110, Group Interment;
52.237–7111, Professional Requirements;
52.237–7112, Facility Requirements;
52.237–7113, Preparation History.

(e) In port of entry solicitations and contracts for mortuary services, the contracting officer shall insert the Government-Furnished Property (Short Form) clause at FAR 52.245–4 and all of the DOD clauses in paragraph (d) above except the "Area of Performance" and "Facility Requirements" clauses.

PART 1242—CONTRACT ADMINISTRATION

Subpart 1242.1—Interagency Contract Administration and Audit Services

Sec.
1242.101 Policy.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.
1242.203–70 Contract clauses.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.
1242.705–2 Auditor determination procedure.
1242.708 Quick-closeout procedure.

Subpart 1242.12—NOVATION and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.
1242.1203 Processing agreements.

Authority: Sec. 205(C) Federal Property and Administrative Services, Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1242.1—Interagency Contract Administration and Audit Services

1242.101 Policy.

It is the policy of the Department of Transportation to make optimum use of the contract administration, audit and related support functions available from the Department of Defense and other Government agencies. However, technical direction of all contracts awarded, regardless of the agency responsible for administration, shall remain with DOT.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.

(a) Except as provided elsewhere in FAR 42.203, DOT contracting officers shall retain contract administration responsibility when it is clear that the contracting office can best perform this function.

(b) In all cases, the contracting officer shall retain the responsibility for contract administration related to the clause entitled "Contractor Testimony" (see 1242.203–70).

1242.203–70 Contract clauses.

(a) The contracting officer shall insert the clause at 1252.242–71 "Contractor Testimony" in all solicitations and contracts issued by the National Highway Traffic Safety Administration. The clause may be used by other administrations, as deemed appropriate.

(b) The contracting officer shall insert the clause at 1252.242–72 "Dissemination of Contract Information" in all DOT contracts except those whose statement of work requires the release or coordination of information.

(c) The contracting officer may use the clause at 1252.242–70 "Dissemination of Information—Educational Institutions" in lieu of the clause at 1252.242–72 in DOT research contracts with educational institutions, except those whose statement of work requires the release or coordination of information.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.

1242.705–2 Auditor determination procedure.

DOT contracting officers shall request final indirect cost rate determinations in accordance with DOT Order 8000.1A.

1242.708 Quick-closeout procedure.

DOT contracting officers may utilize quick-closeout procedures, in accordance with 1204.804–5(b), on contracts not exceeding $250,000, provided the stipulations at FAR 42.708(a) (1) through (3) are met.

Subpart 1242.12—Novation and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.

When more than one administration has outstanding contracts with a contractor seeking a novation or change of name agreement, a single agreement covering all such contracts shall be executed by the administration having the largest unsettled (unbilled plus

billed but unpaid) dollar balance. Such agreements shall be executed by a contracting officer of the appropriate office listed below:

Federal Aviation Administration

Director, Acquisition and Materiel Service, 800 Independence Avenue, SW., Washington, D.C. 20591

Federal Highway Administration

Office of Contracts and Procurement, 400 7th St., SW., Washington, D.C. 20590

U.S. Coast Guard

Commandant (GFCP), 2100 Second Street, SW., Washington, D.C. 20593

Federal Railroad Administration

Office of Procurement, 400 7th St., SW., Washington, D.C. 20590

St. Lawrence Seaway Development Corporation

Office of Procurement and Supply, 800 Independence Avenue, SW., Washington, D.C. 20591

Research and Special Programs Administration

Procurement Division, DMA-14, 400 7th Street, SW., Washington, D.C. 20590
Transportation Systems Center, Acquisition Division, DTS-85, Kendall Square, Cambridge, Massachusetts 02142

National Highway Traffic Safety Administration

Office of Contracts and Procurement, NAD-30, 400 7th Street, SW., Washington, D.C. 20590

Office of the Secretary of Transportation

Procurement Division (M-43), 400 7th St., SW., Washington, D.C. 20590

Urban Mass Transportation Administration

Office of Procurement and Third Party, Contract Review, 400 7th St., SW., Washington, D.C. 20590

Maritime Administration

Office of Management Services and Procurement, 400 7th St., SW., Washington, D.C. 20590

1242.1203 Processing agreements.

(a) The administration processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by FAR 42.1203(b)(2), to the other administrations having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed in 1242.1202 above. Within 30 days after receipt of such notice, the administration(s) may submit comments to the processing administration. These comments shall be considered prior to execution of the proposed agreement. The absence of comment from an administration within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that administration.

(b) Where substantial alteration or additions to the formats set forth in FAR 42.1204 and FAR 42.1205 are considered appropriate by the administration processing the proposed agreement, that administration shall coordinate the agreement with the other administrations affected by the agreement prior to execution. Any objection shall be resolved before the agreement is executed.

(c) A signed copy of the executed novation agreement or change of name agreement shall be forwarded to the contractor. A signed copy shall be retained in the administration executing the agreement. Where more than one administration is involved, two copies of the agreement shall be distributed to the appropriate addressee listed in 1242.1202.

(d) After execution and distribution of an agreement, a modification (Standard Form 30) shall be prepared by the processing activity incorporating a summary of the agreement and attaching a complete list of the contracts affected. For single administration agreements, three copies of the Standard Form 30 shall be furnished for each contract to the contracting offices concerned and, for multi-administration agreements, to the appropriate addressee listed in 1242.1202.

PART 1244—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 1244.3—Contractors' Purchasing Systems Reviews

1244.302 Requirements.

In those cases where contractor purchasing system review (CPSR) approval may be required, the contracting officer will obtain the following information from prospective contractors:

(a) Date of most recent CPSR;

(b) Name, address, and telephone number of the administrative contracting officer who conducted the most recent CPSR; and

(c) Expected total dollar value of negotiated sales to the Government over the next 12 month period.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.1—General

Sec.
1245.101 Definitions.
1245.102 Policy.
1245.102-70 Reporting of contractor-held property by DOT administrations.
1245.102-71 Contract property control file.
1245.102-72 Special test equipment and special tooling.
1245.104 Review and correction of contractors' property control system.
1245.104-70 Evaluation and approval of contractors' property control system.
1245.104-71 Review of contractors' property control system during contract performance.

Subpart 1245.3—Providing Government Property to Contractors

1245.302-1 Policy.

Subpart 1245.4—Contractor Use and Rental of Government Property

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Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definitions.
1245.502-1 Receipts for Government property.
1245.505 Records and reports of Government property.
1245.505-4 Records of special tooling and special test equipment.
1245.505-5 Records of plant equipment.
1245.505-11 Records of transportation and installation costs of plant equipment.
1245.505-14 Reports of Government property.
1245.506 Identification.
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Subpart 1245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1245.603 Disposal methods.
1245.603-70 Plant clearance function.
1245.607 Scrap.
1245.607-2 Recovering precious metals.
1245.608-3 Agency screening.
1245.608-5 Special items screening.
1245.610-4 Contractor inventory in foreign countries.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1245.1—General

1245.101 Definitions.

"Capitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit cost of $1000 or more.

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $1000, and other items of personal property regardless of cost when so designated by the Government.

1245.102 Policy.

1245.102-70 Reporting of contractor-held property by DOT administrations.

By October 31 each year, each DOT administration shall report the following information to the Director, Office of Installations and Logistics (M-60):

(a) Name and address of each contractor with DOT property in its possession, or in the possession of their subcontractors (do not include grants, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOT contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOT Office, Defense Contract Administration Service, etc.).

(d) Separate dollar totals of DOT real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) as reported in the contractor's annual financial report for each DOT contract administered by the contracting activity.

1245.102-71 Contract property control file.

Upon award of a contract, the property administrator will establish a contract property control file which will include as a minimum:

(a) Copy of the contract or extract of provisions thereof establishing requirements for property administration (except when the property control file is maintained as an adjunct to the contract working file);

(b) Letters designating authorized representatives of the contracting officer for property matters;

(c) Report of initial review, evaluation, and approval of the contractor's property control system;

(d) Record of visits, property system examinations and analyses, and appropriate work papers;

(e) Documents evidencing the furnishing of Government property;

(f) Contractor's receipts for Government furnished property;

(g) Contractor's notices of acquisitions of contractor purchased or fabricated Government property;

(h) Contractor's physical inventory and financial property reports as prescribed;

(i) Documents evidencing the removal of Government property from the custody of the contractor, the transfer of Government property to another contract or another contractor, and the disposal of Government property;

(j) Documents evidencing relief of the contractor from responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract;

(k) Any other correspondence affecting that status of Government property under the contract; and

(l) Statement of closure of the contract property account.

1245.102-72 Special test equipment and special tooling.

Special test equipment and special tooling are not recognized in DOT *as separate categories of property* (see 1245.505-4). Property of this nature will be controlled in the same way as other items of plant equipment.

1245.104 Review and correction of contractors' property control system.

When review of the contractor's property control system is not delegated to DOD, the DOT contracting officer or property administrator will conduct the review as required by § 1245.104-70 and 1245.104-71.

1245.104-70 Evaluation and approval of contractors' property control system.

(a) The choice of the methods to be used for evaluation and approval of the contractor's property control system is a matter of judgment by the property administrator, predicated on the nature and amount of Government property involved in any particular contract. Regardless of the methods used, it is the responsibility of the property administrator to determine that the contractor's system will meet the requirements of FAR 45.5, and of 1245.5 and other contract requirements, as appropriate.

(b) It is normal contractor practice to provide for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. However, depending on the number of contractor employees and the nature, quantity, and value of the property, a contractor may not need written procedures for effective management of Government property. In such cases, the property administrator, if he/she agrees that written procedures are not required, will evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and prepare a brief description of the applicable procedures for inclusion in the contract property control file.

(c) Upon completing the evaluation of the contractor's system, the property administrator will prepare a written summary of findings to support approval of the system or requirement for corrective action prior to such approval. The property administrator will forward to the contractor a listing of any deficiencies found as a result of the evaluation. The contractor will be requested to indicate, within 30 days after receipt of the listing, its willingness to correct the deficiencies or to forward to the property administrator a statement of its position.

(d) When the property administrator is not successful in obtaining compliance with contract requirements, he/she will advise the contracting officer. The contracting officer shall take appropriate action in accordance with FAR 45.104(c). If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the contracting officer will so inform the contractor in writing, and state that approval of its property control system is withheld or withdrawn, as the case may be. A copy of that advisement shall be provided to the property administrator.

(e) When the contractor's property control system is acceptable, the property administrator will so advise the contractor in writing. When the contract involves Government property at subcontractor plants or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval will be expanded to include the procedures governing Government property at such locations.

1245.104-71 Review of contractors' property control system during contract performance.

(a) While the contractor has an incurred obligation to comply with the property control requirements of the contract, it is incumbent upon the Government to ensure that the contractor does in fact comply. The preferred method for carrying out this responsibility is for the Government to periodically conduct system reviews at the contractor's premises. The need for, and frequency of, such reviews should be based on case-by-case determinations, considering the particular circumstances relative to a given contract or contractor. When the property administrator feels that a system review is necessary, then he/she must arrange for the conduct of such a review by any appropriate means.

(b) Notwithstanding the requirements of paragraph (a) of this section, it is the continuing responsibility of the property administrator to be alert to any indications that the contractor's

property control system may be deficient. Examples of such indications are as follows:

(1) Failure of the contractor to acknowledge receipt of Government furnished property;

(2) Failure of the contractor to provide notices of contractor acquisitions of Government property when the contract provides for such acquisition;

(3) Failure of the contractor to submit the annual financial property and physical inventory reports specified in 1245.505–14 and 1245.508;

(4) Discrepancies in contractor's records and weaknesses in control as reflected by the contractor's physical inventory reports;

(5) Contractor's financial property reports do not reconcile with DOT financial control accounts;

(6) Analysis of contractor's costs indicates consumption of material in excess of that considered reasonable;

(7) Inability of the contractor to furnish property listings when requested to do so; or

(8) Analysis of contractor's request for relief of responsibility due to loss or damage indicates inadequate control.

(c) When the property administrator has reason to believe that the contractor's property control system is deficient or inadequate, the property administrator must take prompt action to obtain correction of such problems. In some cases, discussions with the contractor may suffice. In other cases, it may be necessary to arrange for an on-site system review as discussed in paragraph (a) of this section. Another alternative is to request the conduct of an audit by the appropriate Government contract audit activity. If the situation demands, the procedures set forth in 1245.104–70(d) will be applied.

(d) Records and accounts of Government property will be audited by the Government as frequently as conditions warrant or as may be specifically requested by the contracting officer. Audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. Audits will include records maintained by the contractor and Government-maintained records for the property involved. Government personnel and the contractor are required to make all property records, including correspondence related thereto, available to the auditors.

Subpart 1245.3—Providing Government Property to Contractors

1245.302–1 Policy.

Contracting officers have been designated to make determinations required by FAR 45.302–1(a)(4) on providing Government facilities.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.407 Non-Government use of plant equipment.

The prior written approval of the contracting officer is required for any non-Governmental use of active Government-owned plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the head of the contracting activity shall be obtained.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definition.

To supplement the definition at FAR 45.501, "property administrator", as used in this subpart, means an authorized representative of the contracting officer, when designated, *or* the contracting officer.

1245.502–1 Receipts for Government property.

Immediately upon receipt of any Government-furnished property, the contractor shall sign and return the Government transfer document to the property administrator. For contractor-acquired capitalized equipment, the contractor shall submit itemized reports as a condition for the reimbursement of costs incurred in the purchase or fabrication of such property. Each item shall be adequately described, including unit cost. Reports shall be provided by the contractor not later than the time it submits its application for payment (public voucher) for the property. Upon request of the Government, the contractor shall submit supporting data for any material cost or noncapitalized equipment included in the voucher.

1245.505 Records and reports of Government property.

1245.505–4 Records of special tooling and special test equipment.

Since special test equipment and special tooling are not recognized in DOT *as separate categories of property*, no special property management controls will be established. Property of this nature shall be controlled in the same way as other items of "capitalized" and "noncapitalized" equipment.

1245.505–5 Records of plant equipment.

The individual records requirements of FAR 45.505–5 apply to plant equipment (capitalized equipment) having a unit cost of $1000 or more. Summary stock records may be maintained for plant equipment (noncapitalized equipment) costing less than $1000 per unit, except where the property administrator determines that individual item records are necessary for effective control, calibration, or maintenance.

1245.505–11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505–11 apply to plant equipment having a unit cost of $1000 or more.

1245.505–14 Reports of Government property.

(a) *Control system.* The contractor's property control system shall be such as to provide, at any time, the dollar amount of Government property for which it is accountable under each contract in the following classifications:

(1) Real property;

(2) Capitalized equipment;

(3) Noncapitalized equipment; and

(4) Material maintained in stocks.

The contractor's accounts shall be susceptible to reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(b) *Submissions of financial property reports.* (1) The contractors shall prepare a report as of July 31 each year, for each contract, showing the dollar amount of Government real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) in the possession of the contractor and his subcontractors. Reports shall be prepared in the format shown below and shall be furnished to the property administrator not later than September 15 each year. Subcontract reports shall be consolidated with prime contract reports. The contractor shall certify that the reports have been reconciled and are in balance with the contract property records. If specifically requested by the property administrator, the contractor shall submit similar reports for Government noncapitalized equipment and material maintained in stocks when value is less than $50,000.

(2) *Financial property report format.*

	Real property	Capitalized equipment	Material ($50,000 or over)	Total
Balance Beginning of Period				

	Real property	Capitalized equipment	Material ($50,000 or over)	Total
Acquisitions During Period: Government Furnished				
Contractor Acquired				
Dispositions During Period: Government Furnished				
Contractor Acquired				
Balance End of Period				

(3) Contractor's reports of physical inventory shall be submitted on an annual basis as set forth in 1245.508.

1245.506 Identification.

The requirements of FAR 45.506 apply to Government property having a unit cost of $1000 or more.

1245.509 Physical inventories.

(a) *Annual inventories.* The contractor shall perform an annual physical inventory of the following categories of Government property in its possession or control and shall require such inventories of any subcontractors that are in possession of Government property provided under the contract: (1) Capitalized property; (2) noncapitalized property; (3) material maintained in stocks.

(b) *Reporting results of annual inventories.* Within 30 days after the completion of an annual inventory, the contractor shall submit the following information to the property administrator:

(1) A list, on both a quantitative and monetary basis, of all discrepancies disclosed by the inventory in each category of Government property.

(2) A signed statement that physical inventory of Government property under the contract was completed on a specified date and that the contractor's official property records were found to be in agreement with the physical inventory except for the discrepancies noted; and

(3) If specifically requested by the property administrator, a list of all items of capitalized equipment.

Subpart 1245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1245.603 Disposal methods.

1245.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer must assume all responsibilities of the plant clearance officer identified in FAR 45.6.

1245.607 Scrap.

1245.607-2 Recovering precious metals.

DOT Order 4430.5, Recovery and Utilization of Precious Metals, establishes procedures for the recovery and acquisition of precious metals.

1245.608-3 Agency screening.

Excess and residual contract inventory is subject to the same Departmental redistribution requirements as are prescribed for internal Departmental excess property. Accordingly, contracting officers shall assure that excess and residual contract property are screened within the Department in accordance with DOT Order 4600.1E, Redistribution of Excess Personal Property.

1245.608-5 Special items screening.

Excess automatic data processing equipment shall be screened internally within the Department as required by DOT Order 4000.6A, Reassignment of Excess Automatic Data Processing Equipment.

1245.610-4 Contractor inventory in foreign countries.

DOT contractor inventory located in foreign countries shall be utilized and disposed of in accordance with FPMR 101-43.5.

PART 1246—QUALITY ASSURANCE

Subpart 1246.6—Material Inspection and Receiving Reports

Sec.
1246.601 Material inspection and receiving reports.

Subpart 1246.7—Warranties

1246.704 Authority for use of warranties.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1246.6—Material Inspection and Receiving Reports

1246.601 Material inspection and receiving reports.

Each administration shall use FAA Form 256 or an alternate procedure.

Subpart 1246.7—Warranties

1246.704 Authority for use of warranties.

Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty clause is to be included. This determination shall document that the procurement request initiator has recommended inclusion of a warranty and identified the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply. The determination shall address the criteria set forth in FAR 46.703.

PART 1249—TERMINATION OF CONTRACTS

Subpart 1249.1—General Principles

1249.111 Review of proposed settlements.

All proposed settlement agreements shall be coordinated with legal counsel.

(Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59)

PART 1250—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

Sec.
1250.202 Contract adjustment boards.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

1250.202 Contract adjustment boards.

DOT Order 1100.60, Department of Transportation Organizational Manual establishes the Contract Appeals Board as the approving authority to consider and dispose of requests for extraordinary contractual adjustments for DOT contractors.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

It is DOT policy *not* to use the "residual powers" authorized by the Act and FAR Subpart 50.4. Contracting officers shall *not* include in DOT contracts the clause at FAR 52.250-1, Indemnification Under Pub. L. 85-804, unless specifically authorized by the Secretary or designee.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1252.000 Scope of part.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.
1252.102 Incorporating provisions and clauses.
1252.102-2 Incorporation in full text.

1252.104 Procedures for modifying and completing provisions and clauses.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209–70 [Reserved]
1252.209–71 Disclosure of conflicts of interest.
1252.210–70 Brand name or equal.
1252.212–70 [Reserved]
1252.212–71 Notice of delay.
1252.215–70 [Reserved]
1252.215–71 Key personnel and facilities.
1252.215–72 Cost proposal instructions.
1252.216–70 [Reserved]
1252.216–71 Evaluation of proposals subject to economic price adjustment.
1252.216–72 Estimated cost, base fee, and award fee.
1252.216–73 Payment of base and award fee.
1252.216–74 Determination of award fee earned.
1252.216–75 Performance evaluation plan.
1252.216–76 Distribution of award fee.
1252.217–70 Index for specifications.
1252.217–71 Delivery and shifting of vessel.
1252.217–72 Performance.
1252.217–73 Inspection and manner of doing work.
1252.217–74 Subcontracts.
1252.217–75 Lay days.
1252.217–76 Liability and insurance.
1252.217–77 Title.
1252.217–78 Discharge of liens.
1252.217–79 Delays.
1252.217–80 Department of Labor Safety and Health Regulations for Ship Repairing.
1252.217–81 Guarantee.
1252.222–70 Service Contract Act of 1965—Contracts of $2,500 or less.
1252.222–71 Strikes or picketing affecting timely completion of the contract work.
1252.222–72 Strikes or picketing affecting access to FAA facility.
1252.222–73 Contract Work Hours and Safety Standards Act—Overtime Compensation.
1252.222–74 Payrolls and basic records.
1252.222–75 Service Contract Act of 1965.
1252.222–76 Civil Service Classifications and Rates.
1252.222–77 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).
1252.222–78 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
1252.222–79 Service Contract Act Requirements as to Vacation Pay.
1252.223–70 [Reserved]
1252.223–71 Accident and fire reporting.
1252.223–72 Protection of human subjects compliance.
1252.227–70 [Reserved]
1252.227–71 Rights in data—general.
1252.227–72 Notification of limited-rights data and restricted computer software.
1252.227–73 Additional data requirements.
1252.227–74 Rights in data—special works.
1252.227–75 Rights in data—existing works.
1252.228–70 [Reserved]
1252.228–71 Loss of or damage to leased aircraft.
1252.228–72 Fair market value of aircraft.
1252.228–73 Risk and Indemnities.
1252.235–70 [Reserved]
1252.235–71 Recoupment of development costs.
1252.236–70 [Reserved]
1252.236–71 Special precautions for work at operating airports.
1252.237–70 [Reserved]
1252.237–71 Qualifications of employees.
1252.242–70 Dissemination of Information—Educational Institutions.
1252.242–71 Contractor testimony.
1252.242–72 Dissemination of contract information.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1252.000 Scope of part.

This part, in conjunction with FAR Part 52, contains the DOT provisions and clauses whose use is prescribed elsewhere in this regulation.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.

Administrations which prescribe or develop provisions or clauses under the authority of FAR 52.101(b)(2)(i) (B) or (C) shall ensure that the requirements of 1201.4 and FAR Subpart 1.4 are met.

1252.102 Incorporating provisions and clauses.

1252.102–2 Incorporation in full text.

All provisions and clauses prescribed or developed by administrations shall be incorporated in solicitations and/or contracts in *full text* as required by FAR 52.102–2(a)(4).

1252.104 Procedures for modifying and completing provisions and clauses.

TAR provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by this regulation, and when so authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1252.2—Texts of Provisions and Clauses

1252.209–70 [Reserved].

1252.209–71 Disclosure of conflicts of interest.

As prescribed in 1209.508–1 and 1215.407 insert the following provision in solicitations for negotiated acquisitions:

Disclosure of Conflicts of Interest (Apr. 1984)

It is the Department of Transportation's (DOT's) policy not to award contracts to offerors whose objectivity may be impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(1) The offeror shall provide a statement in its technical proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under the request.

The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Affected organizations shall include, but are not limited to, the insurance industry. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(2) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (1) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(3) In the absence of any relevant interest identified in (1) above, the offeror shall submit in its technical proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(4) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT will be used to determine whether an award to the offeror may create a conflict of interest. If such conflict of interest is found to exist, the Contracting Officer may (a) disqualify the offeror, or (b) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(5) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to this contract which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer which shall include a description of the action the contractor has taken or proposes to take to avoid or mitigate such conflict. The DOT Contracting Officer may, however, terminate the contract for convenience if it deems that termination is in the best interest of the Government.

(End of Provision)

1252.210–70 Brand name or equal.

As prescribed in 1210.011–70 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Jan. 1985)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Offers offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, its offer shall be considered as offering the brand name product referenced in the solicitation.

(c)(1) If the offeror proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting office. CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its offer a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after sealed bid opening to make a product conform to a brand name product reference in the solicitation will not be considered.

(End of Provision)

1252.212-70 [Reserved]

1252.212-71 Notice of delay.

As prescribed at 1212.7001, insert the following clause in all contracts:

Notice of Delay (Apr. 1984)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1252.215-70 [Reserved]

1252.215-71 Key personnel and facilities.

As prescribed in 1215.106-70 insert the following clause in appropriate contracts:

Key Personnel and Facilities (Apr. 1985)

The personnel and/or facilities as specified in the Schedule of this contract are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *provided*, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities as specified in the Schedule of this contract may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of Clause)

1252.215-72 Cost Proposal Instructions.

As prescribed in 1215.407(b) a provision substantially as follows may be inserted in RFPs when cost or pricing data are to be obtained:

Cost Proposal Instructions (Jan. 1985)

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. Where proposed rates are not based upon catalog or list prices, the basis for the proposed rates shall be identified.

The cost proposal shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with the instructions in FAR 15.804-6. Summary data shall be placed on SF 1411 and the line item summaries (by element of cost) described in paragraph 7 A. of FAR Table 15-3. The following format shall be followed in preparing the supporting attachments referenced in column (4) of the line item summaries. Clearly identify all subcontracted items and include the name and address of the proposed subcontractor. Written quotations for all subcontracted services must be included with the cost proposal.

1. Direct material

a. *Purchased Parts*—Provide a consolidated price summary of individual material quantities for the proposed contract. Give details on an attached schedule.

b. *Subcontracted Items*—Show the total cost of subcontract effort in line b. below and provide supporting data for each subcontractor.

c. *Other*: (1) Raw Material—Show total cost on line c.(1) below and give details on an attached schedule.

(2) Standard Commercial Items—Show total cost on line c.(2) below and give details on an attached schedule.

Direct material	Estimated cost (dollars)	Reference
a. Purchased parts		
b. Subcontracted items		
c. Other:		
(1) Raw material		
(2) Your standard commercial items		
Total direct material		

2. Material overhead

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead or G&A.

Material Overhead Rate ——%×$—— base =—— Reference ——

3. Direct labor

Show the hourly rate and the total hours for each category of direct labor proposed. Indicate whether actual rates or projected rates are used.

Direct labor	Estimated hours	Rate/hour	Estimated cost (dollars)	Reference
Total direct labor				

4. Labor overhead

Use the overhead rate(s) and base(s) approved by a Government audit agency for use in proposals. If no such approval has

been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising overhead and the base(s) upon which the burden(s) is(are) computed.

Labor overhead	Overhead rate	Times base equals	Estimated cost (dollars)	Reference
Total labor overhead				

5. Equipment

Identify specific equipment and unit prices or usage rates as shown below. Equipment rates may be proposed on any basis (i.e., hourly, daily, weekly, monthly).

Item description	Estimated usage	Rate (dollars)	Estimated cost (dollars)
Total equipment cost			

6. Travel

Identify each trip proposed and the persons (or labor categories) designated to make each trip. Identify transportation and per diem rates.

(a) Transportation:

No. of persons	Location		Mileage or fare	Cost per trip	Estimated cost (dollars)
	From	To			
Transportation subtotal					

(b) Subsistence:

No. of persons	Days	Per diem	Estimated cost (dollars)	Reference

(c) Miscellaneous Travel Expenses (incl. car rental, taxis, airport limos., etc.):

Type of expense	Estimated cost (dollars)
Miscellaneous subtotal	
Total travel and per diem	

7. Individual consultant service

Identify the contemplated consultant(s). State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

Name	Estimated hours/days	Rate	Estimated cost (dollars)
Total consultant			

8. Other direct costs

List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

Item description	Estimated quantity	Unit amount	Estimated cost (dollars)	Reference
Total other direct cost				

9. General and administrative expense

Use the G&A rate and base approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising G&A and the base(s) upon which the burden(s) is (are) computed.

G&A Rate——% of Cost Element Nos.——
Reference——

10. Royalties

$ _____

11. Contract facilities capital cost of money

$ _____

(End of Provision)

1252.216-70 [Reserved]

1252.216-71 Evaluation of proposals subject to economic price adjustment.

As prescribed in 1216.203-4-71 insert the following provision in all solicitations that contain an economic price adjustment clause:

Evaluation of Proposals Subject to Economic Price Adjustment (Apr. 1984)

Notwithstanding the requirements of the clause entitled ""(insert the title of the clause for economic price adjustment)", proposals shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Proposals which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Proposals which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

1252.216-72 Estimated cost, base fee, and award fee.

As prescribed in 1216.404-2-70(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Estimated Cost, Base Fee, and Award Fee (Apr. 1984)

The estimated cost of this contract is $(insert amount). A base fee of $(insert amount) and a maximum Award Fee of $(insert amount) are payable in accordance with 1252.216-73 "Payment of Base and Award Fee."

(End of clause)

1252.216-73 Payment of base and award fee.

As prescribed in 1216.404-2-70(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Payment of Base and Award Fee (Apr. 1985)

(a) The Government will make payment of the base fee in (insert number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

(b) The Government will promptly make payment of any Award Fee upon the submission by the Contractor to the Contracting Officer, or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated as specified in the clause 1252.216-74 "Determination of Award Fee Earned". Payment shall be made without the need for a contract modification.

(End of clause)

1252.216-74 Determination of award fee earned.

As prescribed in 1216.404-2-70(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated.

Determination of Award Fee Earned (Apr. 1984)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the Contractor's performance for a determination of award fee earned. The Contractor agrees that the determination as to the amount of award fee earned will be made by the Government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of Contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the clause entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination and the reasons why it was or was not earned. It is further agreed that the Contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

(c) The FDO may, in his/her discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that event, the clause 1252.216-76 "Distribution of Award Fee" shall be adjusted to reflect such allocations.

(End of clause)

1252.216-75 Performance evaluation plan.

As prescribed in 1216.404-2-70(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Performance Evaluation Plan (Apr. 1984)

(a) A Contractor Performance Evaluation Plan, upon which the determination of award fee shall be based (including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area), will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor (insert number) calendar days prior to the start of the first evaluation period.

(b) The Performance Evaluation Plan shall set forth the criteria upon which the Contractor will be evaluated for performance relating to any: (1) Technical (including Schedule) requirements if appropriate; (2) Management; and (3) Cost Functions selected for evaluation.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216-76 Distribution of award fee.

As prescribed in 1216.404-2-70(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Distribution of Award Fee (Apr. 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period ———————————
Available Award Fee ———————————

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

(End of clause)

1252.217-70 Index for specifications.

As prescribed at 1217.7001(c), insert the following clause in solicitations and contracts:

Index for Specifications (Jan. 1985)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.217-71 Delivery and Shifting of Vessel.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Delivery and Shifting of Vessel (Jan. 1985)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the contracting officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217-72 Performance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Performance (Jan. 1985)

(a) The Contractor shall make the necessary arrangements for receiving the vessel on the specified date, such arrangements to be satisfactory to the contracting officer or his duly authorized representative.

(b) The Contractor shall promptly commence the work required by the contract and shall diligently prosecute same to completion to the satisfaction of the contracting officer.

(c) Except as otherwise provided in this contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities and such other things and services as are necessary for accomplishing the work specified in this contract subject to the right reserved in the Government under the "Government-furnished Property" clause of the contract.

(d) The Contractor shall without charge and without specific requirement therefor:

(1) Make available at the plant to personnel of the vessel, while in drydock or on a marine railway, toilet and similar facilities acceptable to the contracting officer as adequate in number and sanitary standards. For vessels fitted with pollution abatement systems, provide for disposal of shipboard waste (non-oily) by installing a portable hose between the vessel's weather deck sewage overboard discharge connection and either a shore-side holding facility, sewage treatment plant, or a municipal sewage system. Directing of shipboard waste to waters covered by the Federal Water Pollution Control Act, as amended, will not be allowed. In freezing conditions the Contractor will provide protection to the hook up system.

(2) Supply and maintain, in such condition as the contracting officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel (access to vessel shall be lighted by the Contractor during the periods of darkness).

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of work as though they were items of Government-furnished property in accordance with provisions of the "Government-furnished Property" clause of this contract.

(4) Perform, or pay the cost of, any repairs, reconditioning or replacements necessary as a result of the use by the Contractor of any of the vessel's machinery, equipment or fittings including, but not limited to winches, pumps, rigging or pipelines.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the specifications. Unless otherwise expressly provided in the contract, during the conduct of such trials the vessel shall be under the

control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified herein which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the contracting officer; any such dock trials shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract, plans and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

(End of clause)

1252.217-73 Inspection and Manner of Doing Work.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Inspection and Manner of Doing Work (Jan. 1985)

(a) All work and material shall be subject to the approval of the contracting officer or his/her duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any change order issued under the "Changes" clause in this contract.

(b) Unless otherwise specifically provided for herein, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work thereunder shall be in accordance with American Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter J, 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J, 46 CFR), U.S. Coast Guard Navigation and Vessel Inspection Circular No. 4-60 (Part IV—Notes on Repair), and U.S.P.H.S. Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or execution of the contract, if negotiated), and the best commercial maritime practices, except when Navy specifications are specified, in which case such standards of material and workmanship shall be followed. Where the detailed specifications do not require a Navy standard, or the requirements are not clearly or specifically covered by one of the aforementioned standards, the contracting officer or his designated representative shall prescribe a Navy or industrial standard for the work wherever applicable, and the decision shall be final: *Provided*, however, that where the requirements of the representative for development of detailed drawings, selection of materials and equipment, standards of workmanship, which are not specifically required in the specifications result in a change in unit price, total contract price, quantity, or delivery schedule, the contracting officer will be advised accordingly and the Contractor will not proceed with the work until specifically directed to do so by the contracting officer.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality, and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government, in addition to its rights under any "Guarantee" clause which may be contained in this contract shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the contracting officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of sixty days after completion of all work required by the contract.

(d) No welding, including welding and brazing, shall be permitted in connection with repairs, completions, alterations, or additions to hulls, machinery, or components of vessels, by a welder or procedure not qualified in accordance with MIL-STD-248C. Procedure qualifications tests shall be conducted in accordance with the requirements of MIL-STD-248C.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the contracting officer shall be furnished with a "gas-free" or "safe-for-hotwork" certificate before any hotwork is done on a tank. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguards and/or effect such safety precautions as necessary, including suitable and sufficient lighting for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance of work performed by the Government.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on or hooked up to the vessel drained to avoid damage from freezing, or if this is not practical, the vessels shall be kept heated to prevent such damage. It shall be the Contractor's responsibility to insure adequate circulation in the firemain water supply to prevent freezing of the water lines. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(h) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workmen. The Contractor shall provide messing and sanitary facilities for its employees, subcontractors and agents separate from the vessel.

(i) The Government does not guarantee the correctness of the dimensions, sizes and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clean" unless more exactly specified in this contract.

(k) Any question regarding or rising out of the interpretations of plans and specifications of this contract or any discrepancies between the plans and specifications shall be determined by the contracting officer or his/her duly authorized representative; *Provided*, however, that any interpretations or determinations by the authorized representative which affect the price or delivery time specified in this contract must be approved in writing by the contracting officer prior to proceedings with the requirements of such interpretations or determinations.

(l) While in drydock or on a marine railway, the commanding officer of the vessel, if then in commission, shall be responsible for the proper closing of openings to the ship's bottom upon which no work is being done by the Contractor. The Contractor shall be responsible for the closing, before

the end of working hours, of all valves and openings upon which work is being done by its workmen when such closing is practicable. The Contractor shall keep the commanding officer cognizant of the closure status of all valves and openings upon which the Contractor's workmen have been working.

(End of clause)

1252.217-74 Subcontracts.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Subcontracts (Jan. 1985)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217-75 Lay Days.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Lay Days (Apr. 1984)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or Marine Railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No cost for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all cost except for the direct cost of performing the changed work.

(End of clause)

1252.217-76 Liability and Insurance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Liability and Insurance (Jan. 1985)

(a) The Contractor shall exercise reasonable care and use his best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall not, unless otherwise directed or approved in writing by the Contracting Officer, carry or incur the expense of any insurance against any form of loss or damage to the vessels or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the vessels and such materials and equipment. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Contracting Officer; *Provided, further,* that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or renewal of any defects themselves in the vessel(s) or such materials and equipment due to (1) defective workmanship or defective materials or equipment performed by or furnished by, the Contractor or its subcontractors or, (2) workmanship or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such non-conformance is the result of negligence; *Provided, further,* that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business or (ii) all or substantially all of the Contractor's operation at any one plant *Provided,* however, that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; *Provided, further,* that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a codefendant in any action against the Contractor's liability or for any other purpose. Notwithstanding the foregoing the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands, (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury, and property damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, his or their servants, agents or employees; *Provided,* that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within ninety (90) days after redelivery of the vessel; and with respect to any such suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; *Provided,* however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at his own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the contracting officer, insuring the performance of his obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering his employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government.

(e) No allowance shall be made to the Contractor in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer. This notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor

as a result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by him or his representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

(g) In the event of loss of or damage to any of the vessels or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government, either:

(1) Order the Contractor to proceed with replacement or repair in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such request as being submitted under the "Insurance" Clause of the contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of such replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance Clause are outside the scope and shall not affect the pricing structure of the contract (firm fixed-price or incentive-type arrangement, as applicable), and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, (i) Modify the contract appropriately consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage, or (ii) Terminate the repair of any part or all of the vessel(s) under the clause of this contract entitled "Termination for Convenience of the Government."

(End of clause)

1252.217-77 Title.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Title (April 1984)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the Contract for the performance of the work: *Provided, however,* that the provisions of this clause or other provisions of this contract shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this contract, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the contracting officer at any time during the performance of the contract, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

1252.217-78 Discharge of liens.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Discharge of Liens (Apr. 1984)

The Contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under this contract with respect to the machinery, fittings, equipment or materials for any vessel. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

1252.217-79 Delays.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Delays (Apr. 1984)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

1252.217-80 Department of Labor Safety and Health Regulations for Ship Repairing.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Department of Labor Safety and Health Regulations for Ship Repairing (Apr. 1984)

Attention of the contractor is directed to Pub. L. 85-742, approved August 23, 1958 (72 Stat. 835, 33 U.S.C. 941), amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act and to the Safety and Health Regulations for Ship Repairing promulgated thereunder by the Secretary of Labor (29 CFR Part 1501). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1252.217-81 Guarantee.

As prescribed at 1217.7001(b), insert the following clause in solicitations and contracts:

Guarantee (Apr. 1984)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within *—days from date of delivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government, be corrected and repaired by the Contractor at his expense to the satisfaction of the contracting officer: *Provided,* however, that with respect to any individual work item incomplete at the delivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs himself, but when, because of conditions or the location of the vessel or for any other reason, it is impracticable or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the contracting officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where

* To be inserted by the contracting officer (see 1217.7001(b)).

corrections and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability under this clause shall, however, in no event extend beyond the correction of such defects or deficiencies or payment for the cost thereof: *Provided*, however, that nothing in this clause shall be deemed to limit or relieve the Contractor of his responsibilities as set forth in the clause entitled "Liability and Insurance" and the clause entitled "Inspection" of this contract. At the option of the contracting officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the Contract price, as agreed by the Contractor and contracting officer, shall be made therefor. If the Contractor and contracting officer fail to agree upon the equitable deduction from the contract price to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract.

(End of clause)

1252.222-70 Service Contract Act of 1965—Contracts of $2,500 or Less.

As prescribed in 1222.1070-2(a), insert the following clause in solicitations and contracts:

Service Contract Act of 1965—Contracts of $2,500 or Less (Jan. 1985)

Except to the extent that an exemption, variation, or tolerance would apply under 29 CFR Part 4.6 if this contract were in excess of $2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

(End of clause)

1252.222-71 Strikes or Picketing Affecting Timely Completion of the Contract Work.

As prescribed in 1222.101-71(a), insert the following clause in solicitations and contracts:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Apr. 1984)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such disputes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of Clause)

1252.222-72 Strikes or Picketing Affecting Access to FAA Facility.

As prescribed in 1222.101-71(b), insert the following clause in solicitations and contracts:

Strikes or Picketing Affecting Access to FAA Facility (Apr. 1984)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (1) Is directed at the Contractor or any subcontractor or any employee of either, and (2) impedes or threatens to impede access by any person to the DOT facility or facilities where the site(s) of the work is (are) located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board of the utilization of any other available judicial or administrative remedies.

(End of Clause)

1252.222-73 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 1222.305 or 1222.1070-2(b), insert the following in solicitations and contracts:

Contract Work Hours and Safety Standards Act—Overtime Compensation (Apr. 1984)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 8 hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of forty hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the text of paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include that text in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor of whatever tier with paragraphs (a) through (d) of this clause.

(End of Clause)

1252.222-74 Payrolls and Basic Records.

As prescribed in 1222.305 or 1222.1070-2(b), insert the following in solicitations and contracts:

Payrolls and Basic Records (Apr. 1984)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by the Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(c) The Contractor shall insert paragraphs (a) through (c) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(End of clause)

1252.222-75 Service Contract Act of 1965.

As prescribed in 1222.1070-2(b), insert the following clause in solicitations and contracts:

Service Contract Act of 1965 (Jan. 1985)

This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) *Compensation.* Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(b) *Conforming procedure.* (1) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this clause have been approved by the Office of Management and Budget under OMB control number 1215–0150.)

(2) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(3) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(4) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this clause, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(5) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(1) and (2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(6) Upon discovery of failure to comply with paragraphs (b)(1) through (5) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(c) *Adjustment.* If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(d) *Obligation to furnish fringe benefits.* The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(f) *Obligations attributable to predecessor contracts.* If this contract exceeds a contract subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of a minimum wage attachment for this contract setting forth such collectively bargaining wage rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in section 4.10 of 29 CFR Part 4, that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in section 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in

accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(h) *Safe and sanitary working conditions.* The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified in the following paragraphs (i)(1) (A) through (F) of this clause for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. [Items (i)(1) (A) through (D) approved by the Office of Management and Budget under OMB control number 1215–0017 and items (i)(1) (E) and (F) approved under OMB control number 1215–0150.]:

(A) Name and address and social security number of each employee.

(B) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefits payments in lieu thereof, and total daily and weekly compensation of each employee.

(C) The number of daily and weekly hours so worked by each employee.

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(E) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph (b) of this clause. A copy of the report required by paragraph (b)(2) of this clause shall be deemed to be such a list.

(F) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to paragraph (q).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(j) *Interviews with employees.* The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(k) *Timing of payments.* The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(l) *Withholding of payment and termination of contract.* The contracting officer shall withhold or cause to be withheld from the Government prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests, or such sums as the contracting officer decides may be necessary, to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(m) *Subcontracts.* The contractor agrees to insert this clause relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in this clause in any subcontract be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(n) *Service employees.* As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractural relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(o) *Civil Service rates.* The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only: The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits.

Employee class	Monetary wage-fringe benefits
See clause in Schedule titled "Civil Service Classifications and Rates"	

(p) *Contractor report on collective bargaining agreement.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime contractor shall report such fact to the contracting officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office

of Management and Budget under OMB control number 1215-0150.)

(q) *Contractor list of employee names.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (section 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(r) *Rulings and interpretations.* Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(s) *Ineligible contractors and subcontractors.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(t) *Penalty for false statements.* The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(u) *Special employees.* Notwithstanding any of the provisions in paragraphs (a) through (r) of this clause relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to tis amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annual, or cancel such certificates in accordance with the regulations in Part 525 and 528 of Title 29 of the Code of Federal Regulations.

(v) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(w) *Tip credit.* An employee engaged in an occupation in which he or she customarily and regularly receives more than $30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(x) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

1252.222-76 Civil Service classifications and rates.

As prescribed in 1222.1070-2(b), insert the following clause in the schedule of solicitations and contracts containing the clause Service Contract Act of 1965:

Civil Service Classifications and Rates (Jan. 1985)

Civil Service classifications, wage rates, and fringe benefits referred to in paragraph (o) of the clause entitled "Service Contract Act of 1965" are listed below:

Classifications	Wage rates

Fringe Benefits

Annual Leave: Two hours per week for service of less than three years; three hours per week for service of three years but less than 15 years; four hours per week for service of 15 years or more.

Paid Holidays: Nine per year.

Government's contribution to sick leave and to life, accident, and health insurance: 5.1 percent of basic hourly rate.

Government's contribution to retirement pay: 7 percent of basic hourly rate.

Note.—The wage rates and fringe benefits listed in this clause are included in the contract as required by section 2(a)(5) of the Service Contract Act of 1965, as amended, and are not minimum wage rate and fringe benefits required to be paid on this contract.

(End of clause)

1252.222-77 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts).

As prescribed in 1222.1070-2(b), insert the following clause in solicitations and contracts:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) (Jan. 1985)

(a) The Contractor warrants that the prices in this contract do not include any allowance

for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351–358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and worker's compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

1252.222–78 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 1222.1070–2(b), insert the following clause in solicitations and contracts:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Jan. 1985)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

1252.222–79 Service Contract Act Requirements as to vacation pay.

As prescribed in 1222.1070–2(b), insert the following clause in solicitations and contracts:

Service Contract Act Requirements as to Vacation Pay. (Jan. 1985)

(a) *Employee Credit for Service with a Predecessor Contractor.* This paragraph (a) applies if the contract wage determination contains a provision referring to a "successor" contractor, as, e.g., "1 week paid vacation after 1 year of service with a contractor or successor." "Successor" as used in such provision means the Contractor on this contract when the Contractor employs, without a break in service, a service employee formerly employed by the immediately preceding contractor under a similar Government contract at the same location ("predecessor contractor"). Consequently, if the Contractor employs without a break in service, any service employee who was employed by its predecessor contractor for similar work at the same location, the Contractor in computing the employee's "year of service" shall include all continuous service for the predecessor contractor subsequent to the later of the following dates: (1) the date of employment by the predecessor contractor; or (2) if, while employed by the predecessor contractor, the employee had an anniversary date or dates on which the employee became entitled to vacation benefits, the most recent of such anniversary dates. Thus, the Contractor is liable for such employee's full vacation benefit on such anniversary date even though during part of the "year of service" the employee had been employed by the predecessor contractor.

(b) *When Predecessor Contractor Not Involved.* This paragraph (b) applies if the contract wage determination does not refer to a "successor" contractor, but contains a provision such as "1 week paid vacation after 1 year of service with an employer." The term "an employer" in such provision means the Contractor on this contract. The Contractor in computing a service employee's "year of service" shall include all continuous service performed by the employee subsequent to the later of the following dates: (1) The date of employment by the Contractor, or (2) the employee's most recent anniversary date for which a paid vacation was granted.

(c) *Part-time Employees.* If the contract wage determination contains either type of provision quoted in paragraph (a) or (b) above, part-time service employees working a regularly scheduled work week shall receive a paid vacation on a pro-rata basis. For example, an employee who has worked for the Contractor two days per week for a year [or, without a break in service, for the Contractor and a predecessor contractor where the wage determination contains language like that quoted in (a) above] shall be entitled to two days paid vacation or two-fifths of the vacation benefits to which full-time employees are entitled.

(d) *Break in Service.* For purposes of this provision, the term "break in service" does not include an employee's change in employment status from an employee of a predecessor contractor to an employee of the Contractor.

(End of clause)

1252.223-70 [Reserved]

1252.223-71 Accident and Fire Reporting.

As prescribed in 1223.7001(a) insert the following clause in solicitations and contracts:

Accident and Fire Reporting (Apr. 1984)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

1. A fatality or as much as one lost workday on the part of any employee of the Contractor or any subcontractor at any tier;

2. Damage of $1,000 or more to Federal property either real or personal;

3. Damage to Contractor or subcontractor owned or leased motor vehicles or mobile equipment;

4. Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

1. Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal) the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his authorized representative and shall be confirmed by telegram within 24 hours to the Contracting Officer. Such telegram shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

2. Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or contractor accident report form which provides for the statement of: (1) The extent of injury; and (2) the damage and cause of the accident or fire. Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223-72 Protection of Human Subjects Compliance.

As prescribed in 1223.7001(b) insert the following clause in solicitations and contracts:

Protection of Human Subjects Compliance (Jan. 1985)

The contractor shall comply with the NHTSA principles and procedures (in accordance with NHTSA Orders 700-1, 700-3, and 700-4) for the protection of human subjects participating in activities supported directly or indirectly by grants or contracts from NHTSA. In fulfillment of this assurance:

A committee competent to review projects and activities that involve human subjects shall be established and maintained by the contractor.

The committee shall be assigned responsibility to determine for each activity planned and conducted that:

The rights and welfare of subjects are adequately protected.

The risks to subjects are outweighed by potential benefits.

The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from reviews of projects or activities in which they have an active role or a conflict of interests.

Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participation in an activity shall be provided.

The committee shall maintain records of committee reviews of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any reviews that adversely affect the rights or welfare of the individual subjects. Such materials shall be made available to NHTSA upon request.

Periodic reviews shall be conducted by the contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

Note: If the contractor has a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700-1, 700-3, and 700-4, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

1252.227-71 Rights in Data—General.

(a) As prescribed in 1227.401-73(a)(1) insert the following clause:

Rights in Data—General (Apr. 1984)

(a) *Definitions.*

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article 1, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analysis or financial, business, and management information required for contract administration purposes.

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Form, fit, and function data," as used in this clause, means data describing, and sufficient to enable, physical and functional interchangeability; as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements.

"Limited-rights data," as used in this clause, means data that embodies trade secrets or is commercial or financial and confidential or privileged, but only to the extent that the data pertains to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret, is commercial or financial data which is confidential or privileged, or is published copyrighted computer software.

"Unlimited rights," as used in this clause, means the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

"Limited rights," as used in this clause, means the rights of the Government in limited-rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) below regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitutes manuals or instructional and training material for installation, operation, or routine maintenance and repair; and

(iv) All other data delivered under this contract unless otherwise provided for limited-rights data or restricted computer software in accordance with paragraph (g) below.

(2) The contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract unless provided otherwise in paragraph (d) below;

(ii) Protect from unauthorized disclosure and use that data which is limited-rights data or restricted computer software to the extent provided in paragraph (g) below;

(iii) Substantiate use of, add, or correct limited rights or restricted rights notices, and to take other appropriate action, in accordance with paragraphs (e) and (f) below; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) below.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) *Data not first produced in the performance of this contract.* The contractor shall not, without prior written permission of the contracting officer, incorporate into data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402 unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above; *provided,* however, that if such data is computer software, the Government shall acquire a copyright license as set forth in subparagraph (g)(3) below if included in this contract, or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, except as may be provided otherwise below in this paragraph.

(2) The contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contains restrictive markings, the contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract is marked with the notices specified in subparagraphs (g)(2) or (g)(3) below and use of such is not authorized by this clause, the contracting officer may either return the data to the contractor, or cancel or ignore the markings. However, markings will not be cancelled or ignored unless—

(i) The contracting officer makes written inquiry to the contractor concerning the propriety of the markings, providing the contractor 30 days to respond; and

(ii) The contractor fails to respond within the 30 day period (or such longer time approved by the contracting officer for good cause shown), or the contractor's response fails to substantiate the propriety of the markings.

(2) The contracting officer shall consider the contractor's response, if any, and determine whether the markings shall be cancelled or ignored. The contracting officer shall furnish written notice to the contractor of the determination, which shall be a final decision under the Contract Disputes Act.

(3) The above procedures may be modified in accordance with DOT administrations' regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request for data thereunder.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (g) below, or without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may request, within six months (or such longer time approved by the contracting officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the contractor's expense, and the contracting officer may agree to do so if the contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited-rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) above, is specified to be delivered under this contract and qualifies as either limited-rights data or restricted computer software, the contractor, if it desires to continue protection of such data, shall withhold such data and not furnish it to the Government under this contract. As a condition to this withholding, the contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited-rights data that is formatted as a computer data base for delivery to the Government is to be treated as limited-rights data and not restricted computer software.

(2)–(3) [Reserved]

(h) *Subcontracting.* The contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the contractor shall promptly bring such refusal to the attention of the contracting officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(b) *Alternate I* (APR 1984). As prescribed in 1227.401–73(a)(2), substitute the following definition for "Limited-Rights Data" in paragraph (a) of the clause:

"Limited-rights data," as used in this clause, means data produced at private expense that embodies trade secrets or is commercial or financial and confidential or privileged.

(c) *Alternate II* (APR 1984). As prescribed in 1227.401–73(a)(3), insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of limited-rights data, or the contracting officer may require by written request the delivery of limited-rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) above, in accordance with such Notice:

Limited Rights Notice (Apr. 1984)

(a) This data is submitted with limited rights under Government contract No——— (subcontract———, if appropriate). It may be reproduced and used by the Government with the express limitation that it will not, without permission of the contractor, be used for purposes of manufacture or disclosed outside the Government; except that the Government may disclose this data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

———(The contracting officer may list additional purposes as set forth in 1227.401–71(b)(4).)

(b) This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of Notice)

(d) *Alternate III* (APR 1984). As prescribed in 1227.401–73(a)(4), insert the following subparagraph (g)(3) in the clause:

(g)(3)(i) Notwithstanding subparagraph (g)(1) above, the contract may identify and specify the delivery of restricted computer software, or the contracting officer may require by written request the delivery of

restricted computer software that has been withheld. If delivery of such computer software is so required, the contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) above, in accordance with the Notice:

Restricted Rights Notice (Apr. 1984)

(a) This computer software is submitted with restricted rights under Government contract No. ——— (and subcontract ———, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided below or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer for which it was acquired, including use at any Government installation to which such computer may be transferred;

(2) Used with a backup computer if the computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and

(5) Disclosed and reproduced for use by support contractors or their subcontractors in accordance with subparagraphs (1) through (4) above, provided the Government makes such disclosure subject to these restricted rights.

(d) Any other rights or limitations regarding the use, duplication or disclosure of this computer software are to be expressly stated in the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the above Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

Restricted Rights Notice (Short Form) (Apr. 1984)

Use, reproduction, or disclosure is subject to restrictions set forth in contract No ——— (and subcontract ——— if appropriate) with ——— (name of contractor and subcontractor).

(End of Notice)

(e) *Alternate IV* (APR 1984). As prescribed in 1227.401–73(a)(5), substitute the following subparagraph (c)(1) in the clause:

(c)(1) *Data first produced in the performance of this contract.* Unless provided otherwise in subparagraph (d) below, the contractor may establish claim to copyright subsisting in scientific and technical articles based on or derived from data first produced in the performance of this contract and published in academic, technical, or professional journals. The prior, express written permission of the contracting officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract in accordance with Transportation Acquisition Regulation 1227.401–71(b)(8). When claim to copyright is made, the contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 to the data when such data is delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(f) *Alternate V* (APR 1984). As prescribed in 1227.401–73(a)(6), add the following paragraph (j) to the clause:

(j) The contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the contracting officer or an authorized representative may, at all reasonable times up to three years after acceptance of all items to be delivered under this contract, inspect at the contractor's facility, any data withheld under subparagraph (g)(1) of this clause, or any data specifically used in the performance or verifying the contractor's assertion pertaining to the limited rights or restricted rights status of the data. Where the contractor whose data is to be inspected demonstrates to the contracting officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the contracting officer shall designate an alternative inspector.

(End of clause)

1252.227–72 Notification of Limited-Rights Data and Restricted Computer Software.

As prescribed in 1227.401–73(b) insert the following provision in solicitations that include the clause at 1252.227–71, Rights in Data—General:

Notification of Limited-Rights Data and Restricted Computer Software (Apr. 1984)

(a) This solicitation sets forth the work to be performed and the Government's known requirements for data (as defined in Transportation Acquisition Regulation, 1227.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause (Transportation Acquisition Regulation 1252.227–73) if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause (Transportation Acquisition Regulation 1252.227–71) that is to be included in this contract. Under this clause, a contractor may withhold from delivery data that qualifies as limited-rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. This clause also may be used with Alternates II and/or III to obtain delivery of limited-rights data or restricted computer software with limited rights or restricted rights. In addition, use of Alternate V with this clause provides the Government with the right to inspect such data at the contractor's facility.

(b) As an aid in determining the Government's need to include any of the above Alternates in the clause at 1252.227–71, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, either state that none of the data qualifies as limited-rights data or restricted computer software, or identify which of the data qualifies as limited-rights data or restricted computer software. Any identification of limited-rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(End of provision)

1252.227–73 Additional Data Requirements.

As prescribed in 1227.401–73(c), insert the following clause in solicitations and contracts involving experimental, developmental or research work, except those awards using small purchase procedures. This clause may be used in solicitations and contracts for other types of work after consultation with legal counsel:

Additional Data Requirements (Apr. 1984)

(a) In addition to the data (as defined in the Rights in Data—General clause included in this contract) specified elsewhere in this contract to be delivered, the contracting officer may at any time during contract performance or within a period of three years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the contractor to deliver any data: (1) The withholding of which is authorized by the Rights in Data—General clause of this contract; or (2) which is specifically identified in this contract as not subject to this clause.

(c) When data is to be delivered under this clause, the contractor will be compensated for: (1) Converting the data into the prescribed form, (2) reproduction; and (3) delivery.

(d) The contracting officer may release the contractor from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in (a) above.

(End of clause)

1252.227–74 Rights in Data—Special Works.

As prescribed in 1227.401–73(d), insert the following clause:

Rights in Data—Special Works (Apr. 1984)

(a) *Definitions.*

"Data" as used in this clause, means recorded information regardless of form or the media on which it may be recorded. The term shall be construed broadly; it includes all writings within the scope of Article I, Section 8, Clause 8 of the United States Constitution, as well as all works subject to copyright under Title 17, United States Code. The term does not include information incidental to contract administration, such as contract cost analyses or financial, business, and management information required for contract administration purposes.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) below for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) below.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) below.

(2) The contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) below, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.*

(i) The contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the contracting officer. When claim to copyright is made, the contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 to such data when delivered to the Government, and include that notice as well as acknowledgement of Government sponsorship on the data when published or deposited in the U.S. Copyright Office. The contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted, as set forth in subdivision (i) above, the contracting officer may direct the contractor to establish, or authorize the establishment of, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The contractor shall not, without prior written permission of the contracting officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (1) above.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the contractor shall not use for purposes other than the performance of this contract, nor release, reproduce, distribute or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the contracting officer.

(e) *Indemnity.* The contractor shall indemnify the Government and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the contractor, as soon as practicable, of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction, and do not apply to material furnished to the contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1252.227-75 Rights in Data—Existing Works.

As prescribed in 1227.401-73(e), insert the following clause:

Rights in Data—Existing Works (Apr. 1984)

(a) Except as otherwise provided in this contract, the contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract or for which this clause is specifically made applicable.

(b) The contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or

(2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the contractor, as soon as practicable, of any claim or suit, affords the contractor an opportunity under applicable laws, rules, or regulations, to participate in the defense thereof, and obtains the contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction. The provisions of this paragraph also do not apply to material furnished to the contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

1252.228-70 [Reserved]

1252.228-71 Loss of or Damage to Leased Aircraft.

As prescribed in 1228.306-70-1 (a) and (b) insert the following clause in solicitations and contracts:

Loss of or Damage to Leased Aircraft (Apr. 1984)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in the clause "Fair Market Value of Aircraft", less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be: (1) credited to the Government in determining the amount of the Government's liability; or (2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228-72 Fair Market Value of Aircraft.

As prescribed in 1228.306-70-1(c) insert the following clause in solicitations and contracts.

Fair Market Value of Aircraft (Apr. 1984)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft", it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $ ———— or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract. (End of clause)

1252.228–73 Risk and indemnities.

As prescribed in 1228.306–70–1(d) insert the following clause in solicitations and contracts:

Risk and Indemnities (Apr. 1984)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.235–70 [Reserved].

1252.235–71 Recoupment of Development Costs.

As prescribed in 1235.070 insert the following clause in solicitations and contracts:

Recoupment of Development Costs (Apr. 1984)

(a) As may be determined by the contracting officer to be fair, reasonable and equitable, the contractor shall pay to the Government up to five percent (5%) of sums hereafter received by or credited to the Contractor or its privies (including subcontractors) on sales or leases (exclusive of sales or leases to the U.S. Government, either directly or indirectly through Government prime contractors or subcontractors) of any product which is substantially the same in design as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(b) In selling or leasing the product identified in paragraph (a) above to the Government, either directly or indirectly through Government prime Contractors or subcontractors, the Contractor or its privies (including subcontractors) shall notify the purchaser or lessee in writing that the product was developed under a Department of Transportation contract containing a Recoupment of Development Costs clause and that the purchase or lease price of such product is less than the price of such product when sold or leased to other than the Government by an amount no less than the Government's share under the Recoupment of Development Costs clause. A copy of each such notice shall be sent to the Contracting Officer. In the event the product is sold or leased to the Government, the amount by which the sales or lease price was reduced by virtue of this clause shall be credited to the amount recoverable under this clause.

(c) As may be determined by the Contracting Officer to be fair, reasonable and equitable, the Contractor shall also pay to the Government up to 33 percent of all sums hereafter received by, or credited to, the Contractor or its privies (including subcontractors) as payments under technical agreements permitting others (1) to sell, lease, or manufacture the product identified in paragraph (a) above, and (2) to use any process which is substantially the same as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(d) Recoupment by the Government under this clause shall be limited to amounts paid and credited to the Contractor under this contract. Payments to the Government under this clause shall not be so high as to destroy the Contractor's competitive position for the product involved, provided that the product is otherwise reasonably priced and efficiently and economically produced.

(3) The Contractor shall report to the Government all sales, leases, licensing agreements, royalties and receipts which might reasonably be considered to be subject to this clause; and the Contractor shall promptly render accurate, certified accounts thereon to the Government at reasonable intervals.

(End of clause)

1252.236–70 [Reserved]

1252.236–71 Special Precautions for Work at Operating Airports.

As prescribed in 1236.570 insert the following clause in solicitations and contracts:

Special Precautions for Work at Operating Airports (Apr. 1984)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and materials in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and, when directed by the Contracting Officer, with red obstruction lights at night. All equipment operating on the apron, taxiway, runway and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flagmen shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be as established by the airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237–70 [Reserved]

1252.237–71 Qualifications of employees.

As prescribed in 1237.110 insert the following clause in solicitations and contracts:

Qualifications of Employees (Apr. 1984)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be

fingerprinted. Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

(End of clause)

1252.242-70 Dissemination of information—Educational institutions.

As prescribed in 1242.203-70(c), the following clause may be used in research contracts with educational institutions in lieu of the clause 1252.242-72.

Dissemination of Information—Educational Institutions (Jan. 1985)

The Department desires widespread dissemination of the results of funded transportation research. The contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results as dissemination will not be sufficiently widespread.) All costs of publication pursuant to this clause shall be borne by the contractor and shall not be charged to the Government under this or any other Federal contract. Any copy of material published under this clause must contain acknowledgment of the Department of Transportation's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of the Department of Transportation. Articles for publication or papers to be presented to professional societies do not require the authorization of the contracting officer prior to release.

However, two copies of each article shall be transmitted to the contracting officer at least two weeks prior to release or publication. Press releases concerning the results or conclusions from the research under this contract, shall not be made or otherwise distributed to the public without prior written approval of the contracting officer. Publication under the terms of this clause does not release the contractor from the obligation of preparing and submitting to the contracting officer a final report containing all findings and results of research, as set forth in the schedule of this contract.

(End of clause)

1252.242-71 Contractor testimony.

As prescribed in 1242.203-70(a) insert the following clause in solicitations and contracts:

Contractor Testimony (Apr. 1984)

All requests for the testimony of the contractor or its employees, and any intention to testify as an expert witness relating to: (1) Any work required by, and/or performed under, this contract; or (2) any information provided by any party to assist the contractor in the performance of this contract, shall be immediately reported to the contracting officer. Neither the contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the contracting officer or required by a judge in a final court order.

(End of clause)

1252.242-72 Dissemination of contract information.

As prescribed in 1242.203-70(b) insert the following clause in solicitations and contracts:

Dissemination of Contract Information (Apr. 1984)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. (Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.)

(End of clause)

PART 1253—FORMS

Sec.

1253.000 Scope of part.

Subpart 1253.1—General

1253.103 Exceptions.
1253.107 Obtaining forms.

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.
1253.204 Administrative matters.
1253.204-2 Contract reporting (DOT F. 4220.11).
1253.204-70 Procurement request forms (DOT F. 4200.1 and 4200.2).
1253.213 Small purchase and other simplified purchase procedures.
1253.213-70 Small purchase summary (DOT F. 4230.1).
1253.215 Contracting by negotiation.
1253.215-70 Price negotiation (DOT F. 4220.21; DOT F. 4220.32; and DD 1861).
1253.222 Application of labor laws to Government acquisitions.
1253.222-70 Labor standards interviews (DD Form 1567).
1253.222-71 Employee claim for wage restitution (DOT F. 4220.7).
1253.222-72 Labor standards investigation summary sheet (DD Form 1568).
1253.222-73 Summary of underpayments (DOT F. 4220.8).
1253.222-74 Establishment of additional wage rates (DOT F. 4220.10).
1253.227 Patents, data, and copyrights.
1253.227-70 Report of inventions and subcontracts (DD Form 882).
1253.236 Construction and architect-engineer contracts.
1253.236-70 Preconstruction conference agenda and checklist (DOT F. 4220.3).
1253.242 Contract administration (FAA Form 4450-2 and DD Form 375).
1253.242-70 Contract close-out (DOT F. 4220.4, 4220.5 and 4220.6).
1253.246 Quality assurance.
1253.246-70 Material inspection and receiving (FAA 256).

Subpart 1253.3—Illustrations of Forms

1253.300. Scope of subpart.
1253.370. Agency forms.
1253.370-4200.1 Form DOT F 4200.1, Procurement Request.
1253.370-4200.2 Form DOT F 4200.2, Procurement Request Continuation Sheet.
1253.370-4220.3 Form DOT F 4220.3, Preconstruction Conference Checklist.
1253.370-4220.4 Form DOT F 4220.4, Contractor's Release.
1253.370-4220.5 Form DOT F 4220.5, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
1253.370-4220.6 Form DOT F 4220.6, Cumulative Claim and Reconciliation.
1253.370-4220.7 Form DOT F 4220.7, Employee Claim for Wage Restitution.
1253.370-4220.8 Form DOT F 4220.8, Summary of Underpayments.
1253.370-4220.10 Form DOT F 4220.10, Establishment of Additional Wage Rates.
1253.370-4220.11 Form DOT F 4220.11, Contract Information System Data Input Sheet.
1253.370-4220.21 Form DOT F 4220.21, ADP Equipment and Services.
1253.370-4220.32 Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective.
1253.370-4230.1 Form DOT F 4230.1, Small Purchase Summary.
1253.370-FAA-256 FAA Form 256, Inspection Report of Material and/or Services.
1253.370-FAA-4450-2 FAA Form 4450-2, Post-Award Conference Report.
1253.370-FHWA-1140 FHWA Form 1140, Additional Classification and Wage Rate Request.
1253.370-DD-375 DD Form 375, Production Progress Report.
1253.370-DD-882 DD Form 882, Report of Inventions and Subcontracts.
1253.370-DD-1567 DD Form 1567, Labor Standards Interview.
1253.370-DD-1568 DD Form 1568, Labor Standards Investigation Summary Sheet.
1253.370-DD-1861 DD Form 1861, Contract Facilities Capital and Cost of Money.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Editorial note: Forms reference in Part 1253 do not appear in the Code of Federal Regulations.

1253.000 Scope of part.

This part (a) prescribes Department of Transportation (DOT) forms for use in acquisition of supplies and services, including construction and (b) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1253.

Subpart 1253.1—General

§ 1253.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR Part 53 shall be submitted, as prescribed in FAR 53.103, to the Senior Procurement Executive for further action.

(b) Requests for exceptions to DOT forms in Part 1253 shall be handled as deviations (see 1201.4).

1253.107 Obtaining forms.

(a) Copies of the DOT forms are available from the Chief, Procurement Management Division, Office of the Secretary, 400 7th St., SW., Washington, D.C. 20590.

(b) Requests for any Department of Labor forms or publications required for compliance with the following FAR subparts should be addressed to the offices indicated below.

(1) Subparts 22.2, 22.3, 22.4, 22.6, and 22.10

Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

(2) Subparts 22.8, 22.9, 22.13, and 22.14

Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, D.C. 20210.

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.

Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the TAR in which the form usage requirements are addressed.

1253.204 Administrative matters.

1253.204–2 Contract reporting (DOT F.4220.11)

The DOT Form F.4220.11, prescribed in DOT Order 1340.5C, Contract Information System, shall be used to provide acquisition records and statistics in lieu of the SF 279, Individual Contract Action Report (over $10,000). A copy of each Data Input Form shall be retained in the individual contract file.

1253.204–70 Procurement request forms (DOT F.4200.1 and 4200.2).

Procurement request forms DOT F.4200.1 and DOT F.4200.2 (continuation sheet) shall be used to request the acquisition of supplies, services, or construction, and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multi-line requisitioning methods.

1253.213 Small purchase and other simplified purchase procedures.

1253.213–70 Small purchase summary (DOT F.4230.1).

DOT Form F.4230.1 may be used to satisfy the small purchase documentation requirements set forth in FAR 13.106.

1253.215 Contracting by negotiation.

1253.215–70 Price negotiation (DOT F.4220.21; DOT F.4220.32; and DD 1861).

(a) ADP equipment and services. As prescribed in 1215.407(c), the form DOT F.4220.21 shall be included in solicitations and required to be completed by offerors in addition to SF 1411 and other supporting documents.

(b) Weighted guidelines profit/fee objective. The following forms shall be used to compute profit or fee for actions covered under 1215.905–70 and FAR 15.9:

(1) DOT F.4220.32 Weighted Guidelines Profit/Fee Objective.

(2) DD 1861 Contract Facilities Capital and Cost of Money.

1253.222 Application of labor laws to Government acquisitions.

The following forms are prescribed for use in connection with DOT construction contracts.

1253.222–70 Labor standards interviews (DD Form 1567).

The DD Form 1567 shall be used to record the results of interviews with contractor employees working at the construction site. Sec. 5.6(a)(3) of the Labor Department regulations (29 CFR) requires Federal agencies to make such investigations as are deemed necessary to insure compliance with the labor standards provisions contained in the contract. These investigations include interviews with employees to ascertain whether laborers and mechanics are being or have been properly classified and paid.

1253.222–71 Employee claim for wage restitution (DOT F.4220.7).

The DOT Form F.4220.7 shall be used by contractor employees to file claim for unpaid wages when contract funds have been transferred to the General Accounting Office to cover such underpayment. (Even though contract funds have been transferred to GAO to cover the underpayment, GAO requires that a claim be submitted before it will make payment directly to the employee.)

1253.222–72 Labor standards investigation summary sheet (DD Form 1568).

The DD Form 1568 shall be used as the first page of reports on special labor standards investigations to summarize the findings of the investigation.

1253.222–73 Summary of underpayments (DOT F. 4220.8).

The DOT Form F. 4220.8 shall be used to summarize the findings of wage underpayment and liquidated damages and shall be included in the investigation report when a special labor standards investigation is made.

1253.222–74 Establishment of additional wage rates. (DOT F. 4220.10 and FHWA-1140).

(a) Except as provided in (b) below, DOT Form F. 4220.10 shall be used by the contractor to obtain the contracting officer's approval or disapproval of the contractor's proposed classification and wage rate for any category of laborers or mechanics not listed in the contract wage determination but needed in performance of the contract work. Procedures shall be established to assure contracting officer approval of additional classifications and rates prior to their use by the contractor.

(b) FHWA Form 1140 may be used by the Federal Highway Administration for direct Federal contracts and Federal-aid contracts in lieu of DOT Form F. 4220.10.

1253.227 Report of inventions and subcontracts (DD Form 882).

The DD Form 882, Report of Inventions and Subcontracts, may be used as prescribed in administration procedures.

1253.227–70 Report of inventions and subcontracts (DD Form 882).

1253.236 Construction and architect-engineer contracts.

1253.236–70 Preconstruction conference agenda and checklist (DOT F. 4220.3).

The DOT Form F. 4220.3 Preconstruction conference agenda and checklist, or a similar checklist, shall be used as prescribed in 1236.305(b).

1253.242 Contract administration (FAA Form 4450–2 and DD Form 375).

The following forms may be used in the administration of contracts as prescribed by administration procedures.

Post-Award Conference Record (FAA Form 4450–2).

Production Progress Report (DD Form 375).

1253.242–70 Contract close-out (DOT F. 4220.4, 4220.5 and 4220.6).

The following forms shall be used to facilitate and document the close-out of cost-reimbursement contracts. Form DOT F. 4220.4 Contractor's Release shall also be used for construction contracts

when the contracting officer requires a release, and may be used for any other type of contract when the contracting officer determines its use to be appropriate.

(a) DOT Form 4220.4 Contractor's Release.

(b) DOT Form 4220.5 Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts.

(c) DOT Form 4220.6 Cumulative Claim and Reconciliation.

1253.246 Quality assurance.

1253.246-70 Material inspection and receiving (FAA Form 256).

The FAA Form 256, Inspection Report of Material and/or Services, or a substantially similar form, shall be used as prescribed in 1246.6.

Subpart 1253.3—Illustrations of Forms

1253.300 Scope of subpart.

This subpart contains illustrations of Department of Transportation (DOT) and other agency forms referenced in this regulation.

1253.370 Agency forms.

The forms are illustrated in numerical order. The subsection numbers correspond with the DOT or other agency form number.

1253.370-4200.1 Form DOT F 4200.1, Procurement Request.

1253.370-4200.2 Form DOT F 4220.2, Procurement Request Continuation Sheet.

1253.370-4220.3 Form DOT F 4220.3, Preconstruction Conference Checklist.

1253.370-4220.4 Form DOT F 4220.4, Contractor's Release.

1253.370-4220.5 Form DOT F 4220.5, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.

1253.370-4220.6 Form DOT F 4220.6, Cumulative Claim and Reconciliation.

1253.370-4220.7 Form DOT F 4220.7, Employee Claim for Wage Restitution.

1253.370-4220.8 Form DOT F 4220.8, Summary of Underpayments.

1253.370-4220.10 Form DOT F 4220.10, Estsblishment of Additional Wage Rates.

1253.370-4220.11 Form DOT F 4220.11, Contract Information System Data Input Sheet.

1253.370-4220.21 Form DOT F 4220.21, ADP Equipment and Services.

1253.370-4220.32 Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective.

1253.370-4230.1 Form DOT F 4230.1, Small Purchase Summary.

1253.370-FAA-256 FAA Form 256, Inspection Report of Material and/or Services.

1253.370-FAA-4450-2 FAA Form 4450-2, Post-Award Conference Report.

1253.370-FHWA-1140 FHWA Form 1140, Additional Classification and Wage Rate Request.

1253.370-DD-375 DD Form 375, Production Progress Report.

1253.370-DD-882 DD Form 882, Report of Inventions and Subcontracts.

1253.370-DD-1567 DD Form 1567, Labor Standards Interview.

1253.370-DD-1568 DD Form 1568, Labor Standards Investigation Summary Sheet.

1253.370-DD-1861 DD Form 1861, Contract Facilities Capital and Cost of Money.

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Monday
April 15, 1985

Part IV

Department of Energy

Office of Energy Research

10 CFR Part 605
Special Research Grants Program; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Research

10 CFR Part 605

[Docket No. ER-RM-84-100]

Special Research Grants Program

AGENCY: Office of Energy Research DOE.

ACTION: Final rule.

SUMMARY: The final rule being issued today by the Department of Energy (DOE) implements a program of special research grants for basic and applied research and related activities. This rule will facilitate the use of grants by the DOE Office of Energy Research (OER) when grants are the appropriate instrument for the conduct of these OER activities.

DATE: The effective date of this rule is May 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert A. Zich, Director, Acquisition Management Division, Office of Energy Research, ER-64, Department of Energy, Washington, DC 20545 (301) 353-5544

Joshua P. Smith, Office of General Counsel, GC-12, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252-9507

SUPPLEMENTARY INFORMATION:

Table of Contents

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II. Discussion of Comments on Proposed Rule
III. Review under Executive Order 12291
IV. Review under the Regulatory Flexibility Act
V. Review under the Paperwork Reduction Act
VI. Review under the National Environmental Policy Act
VII. Intergovernmental Review
VIII. List of Subjects in 10 CFR Part 605

I. Introduction

On November 7, 1984 (49 FR 44590), the Department of Energy (DOE) published proposed rules to amend Chapter II of Title 10 of the Code of Federal Regulations by adding a new Part 605 to facilitate the use of grants by the Office of Energy Research (OER) in its program of support for basic and applied research and related activities. In order to allow for public participation, DOE provided for written comments by December 24, 1984 and scheduled a public hearing for November 29, 1984.

In response to the notice, DOE received written comments from a nonprofit association of research universities' representatives and from several universities. Although the hearing was convened as scheduled, no one requested to speak.

II. Discussion of Comments on Proposed Rule

One commenter requested that DOE modify § 605.8(c) to clarify which application forms are required and that DOE also modify § 605.9(b)(1) to indicate clearly that the face sheet of an application be only page 1 of the SF-424. DOE has modified these provisions accordingly.

A commenter pointed out that proposed § 605.9(d) might be interpreted to permit a scientist to propose a project without the concurrence of his employing organization. The section has been modified to prevent such an interpretation. While the SF-424 provides space for the signature of either an unaffiliated individual or organization official, the Budget Form requires the signature of both the organization official and the principal investigator of the proposed project.

Several commenters regretted the failure of § 605.14 to provide for pre-award costs under the Special Research Grant. These commenters are reminded that the DOE Financial Assistance Rules also apply to these grants. The Financial Assistance Rules at § 600.103(g) provide for reimbursement of pre-award costs if approved in writing, prior to incurrence, by a DOE Contracting Officer and assuming a grant is ultimately awarded.

The fact that proposed § 605.15 permits the payment of fees under a Special Research Grant was criticized by one commenter who asserted that fees confused the distinction between grants and contracts. DOE does not believe payment of fees in appropriate instances crosses the line from grants to contracts. Rather, the availability of fees, when appropriate, has been a feature of certain Federal Government grant programs.

As stated in the preamble to the proposal, DOE is concerned that failure to allow for the payment of a fee could, at the practical level, effectively preclude participation by certain of the smaller, for-profit research oriented organizations. Accordingly, § 605.15 as proposed and as prescribed, would allow payment of a fee, in appropriate circumstances, to permit participation by small businesses.

DOE, in order to clarify its intent and assist in its implementation, has added some language to § 605.15. This supplemental language: (1) Makes explicit that the only for-profits eligible for fee under this Rule are small business concerns; (2) specifies application procedures for fee; (3) specifies guidelines for the determination of the fee amount; and (4) provides for manner of, and conditions affecting, payment of fee.

Anyone interested in commenting on these clarifications to § 605.15 may do so by addressing such comments to the first Information Contact at the beginning of the preamble on or before June 14, 1985. All comments will be carefully considered in determining whether to propose to amend § 605.15.

One commenter suggested that § 605.17(a)(2) which requires prior approval for transfer of funds from a DOE grant to a project not supported by the DOE grant, be revised or deleted since the funds transfers contemplated would be of "doubtful legality". DOE has specifically provided for prior approval in order to ensure that such transfers are scrutinized for their propriety and legality. The commenter's suggested revision, to substitute the word "expenditures" for the word "funds," does not enhance the meaning of this provision. Accordingly, DOE has chosen to retain this section as proposed.

One commenter objected to § 605.18, *National Security*, on three grounds: first, that no period of time was specified for determination of classification; second, that the institution had no systems established for the protection of classified information; and third, that the clause was read as suggesting that the grantee would have to bear some of the costs of handling and protecting classified information. A clause to be used in certain procurement contracts was suggested as an alternative.

DOE does not find the suggested clause appropriate for the circumstances contemplated in the Notice of Proposed Rulemaking and believes the proposed language should be retained. Section 605.18 clearly specifies that a Special Research Grant shall never be intentionally used to fund classified activities. Therefore, any classified involvement will be unusual and unanticipated. To set a time limit under such circumstances for the resolution of classification status would be impractical. DOE will, however, move to resolution as promptly as possible. To the extent that an institution has no system for protecting classified information, the use of the proposed language versus any procurement clause would appear to provide no benefit. Regarding cost determination, the intent is to take all cost considerations into account in negotiations by the parties in determining whether to proceed, and in the case of cost shared agreements, the

extent of cost sharing in any additional costs will be considered.

DOE has decided to delete the requirement at § 605.19(c) for separate distribution of applications and reports by the grantee to the awarding and program offices. This practice would have permitted more timely consideration of renewal and continuation applications by the program office. However, based on comments received, this section has been amended to have all applications and reports received by the awarding office.

DOE has reviewed its requirements for the numbers of applications and reports, also in response to comments. After consideration, DOE has determined that the quantities specified in the proposed Rule are the minimum necessary to permit proper review and evaluation and, accordingly, has retained these requirements as proposed.

One commenter suggested that § 605.19(d) be revised to preclude disruptive onsite reviews of grantee performance. DOE believes that no revision is necessary as DOE always coordinates such reviews with the principal investigators.

Several commenters found § 605.20(a) to be confusing insofar as the second sentence appeared unnecessarily to restrict the first sentence. They feared that although the first sentence encourages dissemination of research results, the second sentence might be interpreted as generally requiring DOE approval of publication of research results. They may also have been confused by the fact that the discussion in the preamble of the proposed § 605.20 referred mistakenly to 10 CFR 600.119, whereas the rule itself correctly referenced 10 CFR 600.118 as the appropriate section.

The second sentence of the proposed § 605.20(a) was included to cover situations involving the Federal government's having a patentable interest that might be damaged by premature publication. It was intended not to restrain in general, but rather to provide reassurance in those cases to which it might apply. Since, however, the protection of the government's patent interests is provided for in § 605.20(c), DOE has acceded to the commenter's recommendation and deleted the offending sentence.

In addition to the revisions noted above, DOE has made some minor editioral changes and has corrected typographic or printing errors.

III. Review Under Executive Order 12291

This rule has been reviewed by OMB under Executive Order 12291 (46 FR 13193, February 17, 1981).

Prior to publication of the proposed rule, DOE concluded that the rule is not a "major rule" becaue its promulgation will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or pricees for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. No comments were received which addressed this determination.

IV. Review Under Regulatory Flexibility Act

As indicated in the preamble to the proposed rule (49 FR 44592), the proposed rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 95 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small business, small organizations, and small governmental jurisdications. DOE concluded that the proposed rule would only affect small entities as they apply for and receive grants and does not create additional economic impacts on small entities. Accordingly, DOE certified that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

In the absence of any public comment on the DOE certification in the proposed rule, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no final regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

The collection of information requirements contained in this rule have been approved by OMB under control numbers 1910–0400 and 1910–1410.

In the preamble to the proposed rule, DOE invited the public to submit comments on information collection requirements, to Mr. Vartkes Broussalian at OMB or Mr. Howard H. Raiken at DOE. Neither of these gentlemen received any comments.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly procedural rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require and environmental impact statement pursuant to NEPA.

VII. Intergovernmental Review

This program is generally not subject to the intergovernmental review requirements of EO 12372 as implemented by 10 CFR 1005. However, certain grant applications may be.

All applications from governmental or non-governmental entities which involve research, development, or demonstration activities when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under NEPA; or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public are subject to the provisions of the Executive Order and 10 CFR Part 1005. Those planning to submit covered applications should immediately contact OER for further information.

VIII. List of Subjects in 10 CFR Part 605

Administrative practice and procedure, Applications, Copyright, Educational institutions, Eligibility, Energy, Financial assistance, For-profit organizations, Grant programs—energy, Grant programs, science and technology, Individuals, Inventions and patents—nonprofit organizations, Reporting and recordkeeping requirements, Research, Solicitations, Science and technology, State—local and Indian tribal governments.

In consideration of the foregoing, Chapter II of Title 10 of Code of Federal Regulations is amended by establishing Part 605 as set forth below.

Issued in Washington, D.C. April 5, 1985.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

Chapter II of Title 10, Code of Federal Regulations, is amended by adding Part 605 to read as follows:

PART 605—SPECIAL RESEARCH GRANTS PROGRAM

Sec.
605.1 Purpose and scope.
605.2 Applicability.
605.3 Definitions.
605.4 Deviations.
605.5 Special research grants.
605.6 Eligibility.
605.7 Limitations.
605.8 Solicitation.
605.9 Applications.
605.10 Application evaluation and selection.
605.11 Additional requirements.
605.12 Funding.
605.13 Cost sharing.
605.14 Budget flexibility and limitation of DOE liability.
605.15 Fee.
605.16 Budget and project changes.
605.17 Additional approvals.
605.18 National security.
605.19 Reports.
605.20 Dissemination of results.
Appendix A

Authority: Sec. 31 of the Atomic Energy Act, as amended, Pub. L. 83–703, 68 Stat. 919 (42 U.S.C. 2051); sec. 107 of the Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1240 (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, 88 Stat. 1878 (42 U.S.C. 5901); Secs. 644 and 646 of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7256 and 7254); Federal Grant and Cooperative Agreement Act, as amended (31 U.S.C. 6301 *et seq.*).

§ 605.1 Purpose and scope.

This part sets forth the policies and procedures applicable to the award and administration of special research grants by the DOE Office of Energy Research for basic and applied research and related conference and training activities.

§ 605.2 Applicability.

(a) This part applies to new, renewal, or continuation special research grants awarded on or after the effective date of this part.

(b) Except as otherwise provided by this part, the award and administration of special research grants shall be governed by 10 CFR Part 600 (DOE Financial Assistance Rules).

§ 605.3 Definitions.

In addition to the definitions provided in 10 CFR Part 600, the following definitions are provided for purposes of this part—

(a) "Basic and applied research" means any scientific or engineering activity which (1) constitutes a systematic, intensive study directed specifically toward greater knowledge or understanding of the subject studied and contributes to a continuing flow of new knowledge; or (2) is directed toward applying new knowledge to meet a recognized need, and which may contribute to producing an adequate supply of suitably trained scientists or enable the grantee to strengthen its research programs; and/or, (3) applies such knowledge toward the production of useful materials, devices and systems or methods, including design, development and improvement of prototypes and new processes to meet established requirements.

(b) "Related conference" means scientist or technical conferences, symposia, workshops or seminars for the purpose of communicating or exchanging information or views pertinent to the basic and applied research of OER.

(c) "Principal investigator" means the scientific or other individual designated by the recipient to direct the project.

(d) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities.

(e) "Grantee obligation" means the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

§ 605.4 Deviations.

(a) Single-case deviations from this part may be authorized in writing by the Director or Deputy Director of OER or the Head of a Contracting Activity upon the written request of DOE staff, an applicant for an award, or a recipient. A request from an applicant or a recipient must be submitted to or through the cognizant contracting officer. Whenever a proposed deviation from this part would be a deviation from 10 CFR Part 600, the deviation must also be authorized in accordance with the procedures prescribed in that part.

(b) A separate deviation provision for § 605.7 of this part is contained in that section.

§ 605.5 Special research grants.

(a) DOE may make special research grants under this Part for basic and applied research and related conference and training activities in the OER program areas set forth in paragraph (b) of this section and described in the Appendix A to this part.

(b) The program areas are:

(1) Basic Energy Sciences, which includes:
(i) Biological Energy;
(ii) Chemical Sciences;
(iii) Carbon Dioxide Research;
(iv) Geosciences;
(v) Engineering Research;
(vi) Materials Sciences;
(vii) Advanced Energy Projects;
(viii) Applied Mathmatical Sciences; and
(ix) Nuclear Sciences (Isotope Preparation, Heavy Element Chemistry, Synchrotron Radiation Laboratory).

(2) High Energy and Nuclear Physics, which includes:
(i) Nuclear Physics;
(ii) High Energy Physics; and
(iii) Nuclear Sciences (Nuclear Data and Heavy Ion Fusion Accelerator Research)

(3) Health and Environmental Research, which includes:
(i) Physical and Technological Research;
(ii) Ecological Research;
(iii) Health Effects Research; and
(iv) Human Health and Assessments

(4) Fusion Energy, which includes
(i) Applied Plasma Physics;
(ii) Toroidal Confinement Systems;
(iii) Mirror Confinement Systems, and
(iv) Development and Technology.

(5) Other program areas as may be described by notice published in the **Federal Register**.

§ 605.6 Eligibility.

Any university or other institution of higher education or other non-profit or for-profit organization, non-Federal agency, or entity is eligible for a special research grant. An unaffiliated individual also is eligible for a special research grant.

§ 605.7 Limitations.

A Special Research Grant awarded under this part shall not exceed an average of $2,000,000 per year and shall not exceed $3,000,000 in any one year during the project period supported by DOE. Testing for these levels shall be based on the approved application and shall be applied separately to the original project period and each renewal period, if any. Deviations from this section only require the approval of both the Director or Deputy Director of ER and the Head of the Contracting Activity and shall be limited to grants which do not exceed $5 million in any one year during the project period supported by DOE.

§ 605.8 Solicitation.

(a) The Catalog of Federal Domestic Assistance number for this program is 81.049, and its solicitation control number is SRG 10 CFR Part 605.

(b) To be considered for a new grant under this Solicitation an applicant shall submit an application to DOE at the address specified in paragraph (c) of this section at any time but not later than

4:30 e.s.t. on April 15 of the Federal fiscal year for the fiscal year in which financial assistance is sought, or at such other location or date or time as DOE may establish by the notice under paragraph (d) of this section. Applications received after April 15th shall be considered for funding during the current fiscal year only if time permits and otherwise shall be considered for funding in the subsequent fiscal year.

(c) Applicants may obtain application forms, described in §605.9(b), and additional information from the Acquisition Management Division, Office of Energy Research, ER–64, Department of Energy, Washington, D.C. 20545, (301) 353–5544, and shall submit applications to the same address.

(d) DOE shall publish annually, in the **Federal Register**, a notice of the availability of special research grants. DOE shall also publish in the *Commerce Business Daily* an abbreviated notice citing the **Federal Register** notice of availability and this part, and DOE may also publish notices or abbreviated notices of availability in trade and professional journals, and news media, and use other means of communication, as appropriate.

(1) Each notice of availability shall cite this part and shall include:

(i) The Catalog of Federal Domestic Assistance number and control number of the program;

(ii) The amount of money available or estimated to be available for award;

(iii) The name of the responsible DOE program official to contact for additional information, and an address where application forms may be obtained;

(iv) The address for submission of applications; and

(v) Any evaluation criteria in addition to those set forth in § 605.10 of this part.

(2) The notice of availability may also include any other relevant information helpful to applicants such as

(i) Program objectives,

(ii) A research agenda or potential areas for research initiatives,

(iii) Problem areas requiring additional research, and

(iv) Any other information which identifies areas in which grants may be made.

(e) DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

(f) DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted.

(g) To be considered for a continuation or renewal award under this part, an incumbent grantee shall submit a continuation or renewal application as provided in § 605.9 (c) and (h) of this part.

§ 605.9 Applications.

(a) An original and six copies of the application for initial support must be submitted except that State governments, local governments, or Indian tribal governments shall not be required to submit more than the original and two copies of the application.

(b) Each new or renewal application in response to this part must include—

(1) A facesheet containing basic identifying information. The facesheet of the application shall be the facesheet of the Standard Form (SF) 424 (approved by OMB under OMB control number 0348–0009).

(2) A detailed description of the proposed project, including the objectives of the project, its relationship to DOE's program and the applicant's plan for carrying it out.

(3) Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the applicant, and the cost-sharing arrangements, if any.

(4) A budget with supporting justification sufficient to evaluate the costs of the proposed project.

(i) State and local government and Indian tribal government applicants shall use the budget forms contained in the Application for Federal Assistance—Nonconstruction Projects in Attachment M to OMB Circular A–102, as duplicated in the DOE Uniform Reporting System for Federal Assistance (approved by OMB under OMB control numer 1900–0127). All other applicants shall use ER Form 4620.1 (approved by OMB under OMB control number 3145–0058).

(ii) DOE may, subsequent to receipt of an application, request additional budgetary information from an applicant when necessary for clarification or to make informed preaward determinations under 10 CFR 600.103.

(5) Any preaward assurances required pursuant to 10 CFR 600.12 and § 605.11 of this part.

(c) Applications for a continuation or a renewal award must be submitted in an original and seven copies, except that State governments, local governments, or Indian tribes are required to submit only an original and two copies, and for continuation awards need submit only those pages of the application form that contain information different from that provided in the original application (approved by OMB under OMB control numbers 0348–0005–0348–0009).

(d) The application must be signed by an official who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the grant, if awarded, or by an unaffiliated individual applicant.

(e) All applications which involve research, development, or demonstration activities when such activities: (1) Have a unique geographic focus and are directly relevant to the governmental responsibilities of a State or local government within the geographic area; (2) necessitate the preparation of an Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)); or (3) are to be initiated at a particular site or location and require unusual measures to limit the possibility of adverse exposure or hazard to the general public, are subject to the provisions of Executive Order 12372 and 10 CFR Part 1005. Anyone planning to submit such applications should contact OER for further information about compliance requirements.

(f) DOE may return an application which does not include all information and documentation required by statute, this part, 10 CFR Part 600 and the notice of availability of grants, when the nature of the omission precludes review of the application.

(g) During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

(h) Except as provided in § 605.9(c) above, each application for a continuation award must be submitted no later than four months before the expiration of the current budget period, must be on the same forms as required for initial applications, as appropriate, and must include the information specified by 10 CFR 600.106(b).

(i) In addition to including the information described in paragraphs (b), (c), and (d) of this section, an application for a renewal award must be submitted no later than four months prior to the scheduled expiration of the project period and must be on the same forms and include the same type of information as that required for initial applications. The renewal application must outline and justify a program and budget for the proposed project period, showing in detail the estimated cost of the proposed project, together with an indication of the amount of funds needed and the amount of cost sharing, if any. The application also shall describe and explain the reasons for any change in the scope or objectives of the proposed project, and shall compare and

explain any differences between the estimates in the proposed budget and actual costs experienced as of the date of the application.

(j) DOE is not required to return to the applicant an application which is not selected or funded.

§ 605.10 Application evaluation and selection.

(a) DOE employees designated by OER shall evaluate the applications. OER may supplement DOE review resources with personnel from other Federal agencies, and may use external review, such as peer review, in addition to Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available.

(b) DOE shall select evaluators on the basis of their professional qualifications and expertise in the field of research. Outside evaluators shall be required to comply with 10 CFR 600.16(c) and any other applicable DOE rules or directives concerning the use of outside evaluators.

(c) DOE shall evaluate new and renewal applications based on the following criteria:

(1) The overall scientific and technical merit of the project;

(2) The relevance of the stated objectives to the OER program;

(3) The appropriateness of the proposed method or approach;

(4) The competence and experience and known past performance of the applicant, principal investigator and/or key personnel;

(5) The adequacy of the applicant's facilities and resources;

(6) The appropriateness and adequacy of the proposed budget; and

(7) Other appropriate factors, established and set forth by OER in a notice of availability or in a specific solicitation.

(d) DOE shall consider other available advice or information as well as program policy factors such as ensuring an appropriate balance among the program areas listed in § 605.5(b) of this part.

(e) In addition to the evaluation criteria set forth in paragraphs (c) and (d), DOE shall consider the grantee's performance under the existing grant during the evaluation of a renewal or continuation application.

(f) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will make an award.

§ 605.11 Additional requirements.

(a) A grantee performing research, development, or related activities involving the use of human subjects must comply with DOE regulations in 10 CFR Part 745 "Protection of Human Subjects" and any additional provisions which may be included in the Special Terms and Conditions of the grant.

(b) A grantee performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules; June 1983" (48 FR 24556, June 1, 1983).

(c) Any grantee performing research on warm-blooded animals is required to comply with the Federal Laboratory Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture at 9 CFR Chapter I, Subchapter A, pertaining to the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal awards. The grantee shall comply with the guidelines described in DHHS Publication No. [NIH] 78-23, "Guide for the Care and Use of Laboratory Animals" or succeeding revised editions. (This guide is available from the Office for Protection from Research Risks, Office of the Director, National Institutes of Health, Building 31, Room 4B09, Bethesda, Maryland 20205.)

§ 605.12 Funding.

(a) The project period during which DOE expects to provide grant support for an approved project under this part shall generally not exceed three years and may exceed five years only if DOE makes a renewal award or allows an extension to a grantee. However, the project period for conference support shall not exceed 12 months. The project period shall be specified on the Notice of Financial Assistance Award (DOE Form 4600.1).

(b) Each budget period for a grant under this part shall generally be 12 months and may be as much as 24 months.

(c) This section supplements 10 CFR 600.100.

§ 605.13 Cost sharing.

While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process unless otherwise provided under § 605.10(c)(7) of this part.

§ 605.14 Budget flexibility and limitation of DOE liability.

(a) Grants awarded under this part are subject to the requirement that the maximum DOE obligation to the recipient is the amount shown in the Notice of Financial Assistance Award as the amount of DOE funds obligated. DOE shall not be obligated to make any additional, supplemental, continuation, renewal or other award for the same or any other purpose.

(b) Notwithstanding the requirements of 10 CFR 600.108 (b) and (c), a grantee may obligate up to 110% of the amount awarded by DOE for a budget period, during that period, without prior authorization by DOE. Obligations in excess of 110% of the amount awarded by DOE require prior DOE authorization. (A prior approval made in accordance with the provisions of paragraph (c) of this section would constitute such prior approval.) Such authorized grantee obligations in excess of the amount awarded by DOE for a budget period shall be funded from unobligated funds remaining from the prior budget period to the extent they are available; or such obligations may be incurred at the grantee's own risk, subject to the following conditions:

(1) If the grantee receives a continuation or renewal award, the amount obligated in excess of 100% may be charged against the subsequent continuation or renewal award to the extent not funded from any unobligated balance from an earlier budget period.

(2) Even if prior authorization required by this paragraph has been obtained, the grantee shall not be entitled to reimbursement, or have any claim against DOE, for any amount obligated by the grantee in excess of the total funds obligated by DOE, if a continuation or renewal award is not made.

(c) When the funds remaining unobligated by the grantee in any given budget period are 10% or less of the amount awarded by DOE for the subsequent budget period, the grantee may use the unobligated funds during the subsequent budget period to pay for costs (1) budgeted for in either budget period and (2) subject to any applicable prior approval requirements. If funds remaining unobligated by the grantee at the end of a budget period exceed 10% of the amount awarded for the subsequent budget period, use of the amount in excess of 10% must receive the prior approval of the contracting officer.

(d) Nothing in paragraph (b) or (c) of this section shall in any way require

DOE to increase the total amount obligated for the project period.

§ 605.15 Fee.

(a) Notwithstanding 10 CFR 600.103(h), a fee may be paid under this part, in appropriate circumstances, to a grantee which is a small business concern as qualified under the criteria and size standards of 13 CFR Part 121 in order to permit the concern to participate in the Special Research Grant Program. Fees shall not be paid to other entities except as a deviation from 10 CFR 600.103(h) pursuant to 10 CFR 600.4, nor shall fees be paid under grants in support of conferences.

(b) To request a fee, a small business concern shall submit with its application a written self certification that it is a small business concern qualified under the criteria and size standards in 13 CFR Part 121. In addition, the application must state the amount of fee requested for each budget period and the basis for requesting that amount, and must also state why payment of fee by DOE would be appropriate.

(c) If DOE determines that payment of a fee is appropriate under paragraph (a) of this section, the amount of fee shall be that determined to be reasonable by the Contracting Officer. The Contracting Officer shall, at a minimum, apply the following guidelines in determining the fee amount:

(1) The grant fee base shall include the estimated allowable cost of direct salaries and wages and allocable fringe benefits. This fee base shall exclude all other direct and indirect costs.

(2) The grant fee amount expressed as a percentage of the appropriate fee base pursuant to paragraph (c)(1), shall not exceed the percentage rate of fee that would result if a Federal agency contracted for the same amount of salaries, wages, and allocable fringe benefits under a cost reimbursement contract.

(3) Grant fee amounts, determined pursuant to (c)(1) and (c)(2) of this paragraph, above, shall be appropriately reduced when:

(i) Advance payments are provided; and/or

(ii) Title to property acquired with DOE grant funds vests in the grantee (10 CFR 600.117).

(d) Notwithstanding 10 CFR 600.112, any fee awarded shall be a fixed fee and shall be paid upon satisfactory submission and acceptance by DOE of all reports required by § 605.19 of this part for the applicable budget period. If a budget period is shortened due to termination, the fee may be reduced by an appropriate amount.

§ 605.16 Budget and project changes.

(a) The grantee shall obtain the prior written approval of the Contracting Officer whenever any of the following actions is anticipated:

(1) Any revision of the scope or objective of the project regardless of whether there is an associated budget revision requiring prior approval under paragraphs (b)(1) or (b)(3) of 10 CFR 600.114. These revisions include changes in the phenomenon or phenomena under study, and the methodology or experiment if they are a specific objective of the research work as set forth in the approved application.

(2) Change of a principal investigator or a significant change in responsibilities or level of effort of the principal investigator or, in certain cases, other key personnel identified as such in the special terms and conditions of the grant. In addition, any continuous absence of the principal investigator in excess of 3 months or plans for the principal investigator to become substantially less involved in the project than was indicated in the grant application as accepted requires DOE approval. The grantee is encouraged to contact DOE immediately after becoming aware that any of these changes are likely to be proposed but in any event must do so and receive DOE approval before effecting any such changes.

(3) Contracting, subgranting or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award if such activities are treated as direct costs. This approval requirement does not apply to the procurement of equipment, supplies and general support services. The requirements of 10 CFR 600.119(c)(1)(i) notwithstanding, prior approval of the Contracting Officer is required only where the value of a contract for the procurement of equipment, supplies and general support services is expected to exceed $25,000.

(4) Special Research Grants awarded under this part shall not be subject to 10 CFR 600.114(b)(1)(iv) which requires prior approval of cumulative budget transfers among direct cost categories which exceed or are expected to exceed five percent of the approved budget.

(b) This section supplements 10 CFR 600.114.

§ 605.17 Additional approvals.

(a) The grantee shall obtain the prior written approval of the contracting officer before taking any of the following actions:

(1) Acquisition of an item of equipment or other capital asset not specifically contained in an approved budget, the cost of which is $500 or more, and in the case of special purpose equipment, $1000 or more.

(2) Transfers of funds between DOE grants, and transfers of funds from a DOE grant to a project (or portion of a project) not supported by the DOE grant.

(3) Foreign travel for each separate trip, unless funds for each trip are specifically identified by destination and amount and are included in the approved budget. Foreign travel is any travel outside Canada and the United States and its territories and possessions or, for grantees located in another country, travel outside that country. Foreign travel may be approved only if it is directly related to the project objectives.

(4) Expenditures for domestic travel exceeding the amount contained in an approved budget by 25% or $500, whichever is greater.

(b) In requesting prior approval under this section, the provisions of 10 CFR 600.114(e) shall apply.

§ 605.18 National security.

(a) Activities under a Special Research Grant shall not involve classified information (i.e., Restricted Data, formerly Restricted Data, National Security Information). However, if in the opinion of the grantee or DOE such involvement becomes expected prior to the closeout of the grant, the grantee or DOE shall notify the other in writing immediately. If the grantee believes any information developed or acquired may be classifiable, the grantee shall not provide the potentially classifiable information to anyone, including the DOE officials with whom the grantee normally communicates except the Director of Classification, and shall protect such information as if it were classified until notified by DOE that a determination has been made that it does not require such handling. Correspondence which includes the specific information in question shall be sent by registered mail to U.S. Department of Energy, Attn: Director of Classification, DP–32, Washington, D.C. 20545. If the information is determined to be classified the grantee may wish to discontinue the project in which case the grantee and DOE shall terminate the grant by mutual agreement. If the grant is to be terminated, all material deemed by DOE to be classified shall be forwarded to DOE, in a manner specified by DOE, for proper disposition. If the grantee and DOE wish to continue the grant, even though classified information is involved, the grantee shall be required to obtain both personnel and facility security

clearances through the Office of Safeguards and Security for Headquarters awarded grants, or from the cognizant field office Division of Safeguards and Security for grants obtained through DOE field organizations. Costs associated with handling and protecting any such classified information shall be negotiated at the time that the determination to proceed is made.

§ 605.19 Reports.

(a) A grantee shall periodically report to DOE on the grantee's progress in meeting the project objectives of the grant award. The following types of reports shall be used:

(1) *Performance reports.* Performance reports shall include:

(i) A description of the research carried out during the reporting period including a comparison of the grantee's accomplishments with the objectives established for that reporting period.

(ii) If applicable, reasons why established objectives were not met;

(iii) Where there are significant deviations from the estimates in the budget, the rationale for increases or decreases in the time expended on the project by the principal investigator or other researchers; and

(iv) Other pertinent information, including, when appropriate, reports of travel, both foreign and domestic, analysis and explanation of cost overruns (underruns) or high (low) unit costs. Annual performance reports shall be submitted with any renewal or continuation application if there is one; if not, they shall be submitted within 90 days after the end of the budget period covered by the report. For budget periods exceeding twelve months, a performance report is also required 90 days after the first 12 months of the budget period unless waived by the Contracting Officer. If a report is part of a continuation or renewal application it shall be bound separately.

(2) *Notice of Energy R&D Project.* A Notice of Energy R&D Project, DOE Form 538, which summarizes the purpose and scope of the project, must be submitted in accordance with the Distribution and Schedule of Documents set forth at the end of this section. Copies of the form may be obtained from the Contracting Officer.

(3) *Special Reports.* The grantee shall report the following events to DOE as soon after they occur as possible: (i) Problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, or prevent the meeting of time schedules and goals. The report must describe the remedial action the grantee has taken or plans to take and any action DOE should take to alleviate the problems. (ii) Favorable developments or events which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

(4) *Final Report.* A final report summarizing the entire investigation must be submitted by the grantee within 90 days after the project period ends or the grant is terminated. Satisfactory completion of a grant will be contingent upon the receipt of this report. The final report shall follow the outline agreed upon for the performance reports, if any, or when a project has been renewed, the final report may refer to previously submitted performance report for details and may be a synopsis of the entire project. Manuscripts prepared for publication should be appended.

(5) *Financial Status Report* (FSR) (OMB Nos. 0348–0001 and 1900–0127). The FSR is required within 90 days after completion of each budget period; for budget periods exceeding 12 months, an FSR is also required within 90 days after this first 12 months unless waived by the Contracting Officer.

(b) DOE may extend the deadline date for any report if the grantee submits a written request before the deadline which adequately justifies an extension.

(c) A table summarizing the various types of reports, time for submission, number of copies is set forth below. The schedule of reports shall be as prescribed in this table, unless the award document specifies otherwise. These reports shall be submitted by the grantee to the awarding office.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of Copies for Awarding office
1. Summary: 200 words on scope and purpose (Notice of Energy R&D Project).	Immediately after a grant is initially awarded and with each application for renewal.	3
2. Renewal or continuation application	4 months before the budget period ends	7
3. Annual performance reports	With renewal or continuation application, if any; otherwise within 90 days after the end of each budget period. For budget periods exceeding 12-months, a report is also required 90 days after the first 12 month period.	7
4. Other progress reports, brief topical reports, etc. (Desired when significant results develop or when work has direct programmatic impact).	As deemed appropriate by the grantee	3
5. Reprints, Conference papers	Same as 4 above	3
6. Final report	Within 90 days after completion or termination of the project.	3
7. Financial Status Report	Within 90 days after completion of each budget period; for budget periods exceeding 12 months an FSR is also required within 90 days after the first 12-month period.	3

NOTE.—Report types 3, 4, 5 and 6 require with submission two copies of DOE Form 1332.16, University-Type Contractor and Grantee Recommendations for Disposition of Scientific and Technical Document.

(d) *DOE review of grantee performance.* DOE or its authorized representatives may make site visits, at any reasonable time, to review the project. DOE may provide such technical assistance as may be requested.

(e) *Subrecipient performance reporting.* Grantees may place performance reporting requirements on a subrecipient consistent with the provisions of this section.

§ 605.20 Dissemination of results.

(a) Grantees are encouraged to disseminate research results promptly to the scientific community. DOE reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from research grants.

(b) DOE may waive the technical reporting requirement of any performance report set forth in § 605.19(a)(1) if the grantee submits to DOE a copy of its own report which is published or accepted for publication in a recognized scientific or technical journal and which satisfies the information requirements of the program.

(c) Grantees are urged to publish results through normal publication channels in accordance with the applicable provisions of 10 CFR 600.118.

(d) The article shall include an acknowledgement that the research was supported, in whole or in part, by a DOE grant, and specify the grant number, but state that such support does not constitute an endorsement by DOE of the views expressed in the article.

Appendix A

The Office of Basic Energy Science

This program supports basic science research efforts in a variety of disciplines to

broaden the energy supply and technology base of knowledge. The major science divisions and their objectives are as follows:

(i) *Biological Energy*

The primary objective of this program is to generate a base of understanding of fundamental biological mechanisms in the areas of botanical and microbiological sciences. This work serves as the underpinning of DOE's efforts in biomass production of fuels and chemicals, microbial conversions of biomass, and biological systems for the conservation of energy.

(ii) *Chemical Sciences*

This program has as its primary objectives: increased understanding of basic chemical or physical phenomena which are likely to be important to existing or future technological concepts for production or conversion of energy; discovery of new phenomena bearing on chemical or physical aspects of energy processes; elucidation of fundamentally new general techniques for separation of energy-related mixtures or for the chemical analysis of energy-related substances.

(iii) *Carbon Dioxide Research*

This program's goal is to develop a sound, quantitative atmospheric carbon dioxide knowledge base to aid in energy policy decision making. This goal involves the following objectives: improve knowledge of the carbon cycle; improve estimates of future atmospheric carbon dioxide; improve understanding of the effects of atmospheric carbon dioxide on climate; improve understanding of the direct carbon dioxide effects on productivity of nature and agricultural systems; develop and verify methods for the detection of climate change due to increasing atmospheric carbon dioxide; identify, define and quantify indirect effects; define possible options for mitigating long-term consequences of a higher CO_2 atmosphere.

(iv) *Geosciences*

The goal of this program is to develop a quantitative, predictive understanding of the energy-related aspects of geological, geophysical and geochemical processes within the earth and at the solar-terrestrial interface. This understanding and knowledge base is needed to provider for long-range requirements of U.S. efforts in energy resources recognition, evaluation, utilization, and their long-term environmental implications.

(v) *Engineering Research*

This program's objectives are: (1) To extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output and performance quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies.

(vi) *Materials Sciences*

The objective of this program is to increase our understanding of phenomena and properties important to materials behavior which will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

(vii) *Advanced Energy Projects*

The objective of this program is to support exploratory research on novel concepts related to energy. The concepts may be in any field related to energy. The research is usually aimed at establishing the scientific feasibility of a concept and, where appropriate, also at estimating its economic viability.

(viii) *Applied Mathematical Sciences*

The goal of this program is to advance the understanding of the fundamental concepts of mathematics, statistics, and computer science underlying the complex mathematical models of the key physical processes in energy systems. Broad emphasis is given in three major categories: analytical and numerical methods, information analysis techniques, and advanced computer concepts.

(ix) *Nuclear Sciences (Isotope Preparation, Heavy Element Chemistry and Stanford Synchrotron Radiation Laboratory)*

Included in the objective of this research effort is a study of the basic chemical and physical properties of the actinide elements and their compounds. This program also supports the operation of the Stanford Synchrotron Radiation Laboratory and the production of a broad variety of isotopically enriched research materials.

Office of High Energy and Nuclear Physics

This program supports 90% of the U.S. effort in high energy and nuclear physics. The objective of these programs are indicated below.

(i) *Nuclear Physics*

The primary objectives of this program are an understanding of the interactions, properties, and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature by using nuclei as a proving ground.

(ii) *High Energy Physics*

The primary objectives of this program are to understand the nature and relationships among the fundamental forces of nature and to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents.

(iii) *Nuclear Sciences (Nuclear Data and Heavy Ion Fusion Accelerator Research)*

The goal of the Nuclear Data activity is to establish and maintain an accurate, complete and accessible national data base to meet long-term, nuclear-data needs of the fission and fusion energy technologies and to support nuclear waste management and weapons development activities of the Department. The Heavy Ion Fusion Accelerator Research (HIFAR) program is an applied research program to develop high-current heavy-ion accelerator technology and perform appropriate ion beam experiments to the point where an adequate data base exists for evaluation of this type of accelerator as a driver for inertial confinement fusion.

Office of Health and Environmental Research

The goals of this research program are as follows:

Provide, through basic and applied research, the scientific information required to understand the effects of and reduce the health and environmental uncertainties associated with those energy technologies, policies and operations required to meet the Nation's future energy and national security needs.

Develop new applications of nuclear science and technology for use in the diagnosis and treatment of human diseases.

The goals of the program are accomplished through the effort of its divisions, which are:

(1) *Physical and Technological Research*

The objectives of this program are to develop new concepts, procedures, and instrumentation for detecting and measuring energy-related physical and chemical agents released to the occupational and general environment; to characterize the atmospheric transport and chemical transformation processes of radionuclides and energy-related chemical effluents in order to improve estimates of dispersion and potential human exposure; and to determine the physical mechanisms of radiation action in biological systems.

(ii) *Ecological Research*

The objectives of this program are to identify the physical, chemical, and biological processes that cycle nutrients and energy-related materials through terrestrial and aquatic ecosystems, including the coastal oceans; and to determine the resiliency of ecosystems to natural and energy-related stresses and identify processes used by plants and animals for degrading or detoxifying energy-related materials.

Fundamental research on the hydrological transport, mobility, and degradation of energy substances at shallow depths will receive increased attention in 1985–1990.

(iii) *Health Effects Research*

The objectives of this program are to quantify the delayed biological effects of exposure to ionizing radiation through long-term experimental animal research; to resolve the uncertainties associated with carcinogenic, mutagenic, and toxicological effects of energy-related chemicals and complex mixtures of chemicals; and to define mechanisms involved in the induction of biological damage following exposure to low levels of energy-related pollutants by supporting fundamental research on biomolecular structure, gene functions and control, genetic damage and repair, and cell transformation. Future support for basic biological research will be substantially increased with emphasis on human cellular systems.

(iv) *Human Health and Assessments*

The goals of this program are to ascertain by epidemiologic study the potential spectrum of risks to human health associated with occupational and environmental exposures in DOE operations and in emerging energy technologies; to detect and measure

significant subclinical changes in humans exposed to radiation and energy-related chemicals that can serve as early indicators of latent disease induction or to identify particularly susceptible individuals; to develop new techniques for stable and radioactive isotope production, labeled pharmaceuticals, imaging devices, and radiation beam applications for the improved diagnosis and therapy of human diseases or the study of human physiological processes.

Increased emphasis for the future will be on the development of sensitive marker systems which can be directly applied to humans and new isotopes and radiopharmaceuticals for studies of human nutrition, cardiac function, neurological discorders and disease control.

Office of Fusion Energy

The magnetic fusion energy program is an applied research and development program whose goal is to develop the scientific and technological information required to design and construct magnetic fusion energy systems. This goal is pursued by four divisions, whose major functions are as listed below.

(i) *Applied Plasma Physics*

This program seeks to develop that body of physics knowledge which permits advancement of the fusion program on a sound basis. APP programs provide: (1) The theoretical understanding of fusion plasmas necessary for interpreting results from present experiments, and the planning and design of future confinement devices; (2) the data on plasma properties, atomic physics and new diagnostic techniques for operational support of confinement experiments; and (3) critical tests and evaluation of promising alternate fusion concepts that may lead to more economic fusion reactor systems.

(ii) *Toroidal Confinement Systems*

This program has as its primary objective the conduct of research programs to investigate and resolve basic physics issues associated with medium- to large-scale toroidal confinement devices. These devices are used to experimentally explore the limits of specific confinement concepts as well as to study associated physical phenomena. Specific areas of interest include: the production of increased plasma densities and temperatures, the understanding of the physical laws governing plasma energy transport and confinement scaling, equilibrium and stability of high plasma pressure, the investigation of plasma interaction with radio-frequency waves, and the study and control of particle transport in the plasma.

(iii) *Mirror Confinement Systems*

This program has as its objective research programs to investigate, resolve and understand basic science critical to the continued development of the magnetic mirror fusion concept. The basic issues are plasma energy and particle transport, not only in the radial direction, but in the axial dimension; the establishment and maintenance of appropriate electro-static fields; stability, both MHD and microstability; and various plasma/wave interactions such as ICRF, GCH and plasma generated waves. Non-Maxwellian distributions play a major role in mirrors and need to be measured and understood.

(iv) *Division of Development and Technology*

This program supports the technology which is necessary for the fabrication and operation of present and next-generation plasma devices. The program also pursues technological investigations and systems studies pertaining to critical feasibility issues of fusion technology.

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DEPARTMENT OF ENERGY

Office of Energy Research

Program Announcement, 1985

I. Introduction

The Office of Energy Research (OER), Department of Energy, invites any university or other institutions of higher education, not-for-profit or for-profit organizations, non-Federal agency, or other entity to submit competitive proposals for a contract for the conduct of *Basic* research in any of the areas set forth in Appendix A. An unaffiliated individual also is eligible for a competitive award. The project period for which DOE expects to provide funding for an approved project shall generally not exceed three years and may exceed five years only if DOE makes a renewal award or allows an extension of the contract.

II. Definitions

Basic Research: Basic research means research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

III. Proposals

An original and seven copies of an initial proposal for new work must be submitted to: Division of Acquisition and Assistance Management, ER–64, Office of Energy Research, U.S. Department of Energy, Washington, DC 20545.

IV. Information To Be Provided In Proposals

Each proposal should include the following information:

A. Basic Information

1. Name and address of the offeror;

2. If an organization, indicate type, e.g., profit, not-for-profit, educational institution, small business, non-Federal agency;

3. Name(s) and telephone number(s) of the offeror's technical and business personnel whom the Department may contact for information or for negotiation purposes;

4. Names of any other Federal, State, local agencies or other parties who are (or will be) receiving a proposal for the same effort or activity and/or who are (or will be) receiving funds for the effort or activity;

5. Date of submission; and

6. Signature of a responsible official or authorized representative of the organization or a person authorized to contractually obligate the organization.

B. Detailed Information

1. A detailed description of the proposed project, including the objectives of the project, its relationship to the program description(s) set forth in Appendix A and the proposer's plan for carrying it out. Such information should provide a basis upon which DOE can evaluate the proposal in view of the criteria provided in Section V.C. below.

2. Detailed information about the background and experience of the principal investigator(s) (including references to publications), the facilities and experience of the proposer, and the cost-sharing arrangements, if any. (While cost sharing is encouraged, it is not required nor is it to be considered as a criterion in the evaluation and selection process.)

3. A budget with supporting justification sufficient to evaluate the costs of the proposed project. (Standard Form 1411 may be used.)

4. A description of the proposer's management capability (including cost management techniques), experience and past performance, and subcontracting practices.

5. The proposal must be signed by the individual who is applying or by an individual who is authorized to act for the proposing organization and to commit the proposer to comply with the terms and conditions of the contract, if awarded.

C. Other Information for Proposers

Proposals may be submitted to DOE at the address specified in Section III of this Announcement at any time. Proposals received after April 15, 1986 shall be considered for funding during the current fiscal year only if time permits; otherwise, such proposals shall be considered for funding in the subsequent fiscal year. After DOE has held a proposal for 6 months, the proposer shall, in response to DOE's request, be required to revalidate the terms of the original proposal.

DOE is under no obligation to pay for any costs associated with the preparation or submission of proposals.

DOE reserves the right to fund, in whole or in part, any, all or none of the proposals submitted.

DOE is not required to return to the proposer a proposal which is not selected or funded.

D. Continuation/Renewal Proposals

Proposals for a continuation or a renewal award must be submitted in an original and seven copies to the DOE contracting officer at the DOE Office administering the current contract.

V. Proposal Evaluation and Selection

A. DOE employees shall evaluate the proposals using scientific or peer review against the criteria set forth in C. below. OER may supplement DOE review resources with peer review, in addition to Federal evaluation, with the objective of having the technical/scientific evaluation conducted by the most qualified individuals available.

B. DOE shall select evaluators on the basis of their professional qualifications and expertise in the field of research. Evaluators shall be required to comply with all applicable DOE rules or directives concerning the use of outside evaluators.

C. DOE shall evaluate new and renewal proposals based on the following criteria:

(1) The overall scientific and technical merit of the project;

(2) The relevance of the stated objectives to the OER program;

(3) The appropriateness of the proposed method or approach;

(4) The competence and experience and known past performance of the proposer, principal investigator and/or key personnel;

(5) The adequacy of the proposer's facilities and resources;

(6) The appropriateness and adequacy of the proposed budget; and

(7) Other appropriate factors, established and set forth by OER by a modification to this Program Announcement or in a superseding Program Announcement.

D. In addition to the evaluation criteria set forth in paragraph C., DOE shall consider the proposer's performance under the existing contract during the evaluation of a renewal or continuation proposal.

E. After the selection of a proposal for funding, DOE may, if necessary, enter into negotiations with a proposer. Such negotiations are not a commitment that DOE will make an award.

Issued in Washington, DC on April 5, 1985.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

Appendix A—Basic Research Programs of the Office of Energy Research

OER Research Programs also are set forth and described as follows:

The Office of Basic Energy Science

This program supports basic science research efforts in a variety of disciplines to broaden the energy supply and technology base of knowledge. The

major science divisions and their objectives are as follows:

(i) *Biological Energy.* The primary objective of this program is to generate a base of understanding of fundamental biological mechanisms in the areas of botanical and microbiological sciences. This work serves as the underpinning for DOE's efforts in biomass production of fuels and chemicals, microbial conversions of biomass, and biological systems for the conservation of energy.

(ii) *Chemical Sciences.* This program has as its primary objectives: increased understanding of basic chemical or physical phenomena which are likely to be important to existing or future technological concepts for production or conversion of energy; discovery of new phenomena bearing on chemical or physical aspects of energy processes; elucidation of fundamentally new general techniques for separation of energy-related mixtures or for the chemical analysis of energy-related substances.

(iii) *Carbon Dioxide Research.* This program's goal is to develop a sound, quantitative atmospheric carbon dioxide knowledge base to aid in energy policy decisionmaking. This goal involves the following objectives: improve knowledge of the carbon cycle; improve estimates of future atmospheric carbon dioxide; improve understanding of the effects of atmospheric carbon dioxide on climate; improve understanding of the direct carbon dioxide effects on productivity of nature and agricultural systems; develop and verify methods for the detection of climate change due to increasing atmospheric carbon dioxide; identify, define and quantify indirect effects; define possible options for mitigating long-term consequences of a higher CO_2 atmosphere.

(iv) *Geosciences.* The goal of this program is to develop a quantitative, predictive understanding of the energy-related aspects of geological, geophysical and geochemical processes within the earth and at the solar-terrestrial interface. This understanding and knowledge base is needed to provide for long-range requirements of U.S. efforts in energy resources recognition, evaluation, utilization, and their long-term environmental implications.

(v) *Engineering Research.* This program's objectives are: (1) to extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output and performance quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies.

(vi) *Materials Sciences.* The objective of this program is to increase our understanding of phenomena and properties important to materials behavior which will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials.

(vii) *Advanced Energy Projects.* The objective of this program is to support exploratory research on novel concepts related to energy. The concepts may be in any field related to energy. The research is usually aimed at establishing the scientific feasibility of a concept and, where appropriate, also at estimating its economic viability.

(viii) *Applied Mathematical Sciences.* The goal of this program is to advance the understanding of the fundamental concepts of mathematics, statistics, and computer science underlying the complex mathematical models of the key physical processes in energy systems. Broad numerical methods, information analysis techniques, and advanced computer concepts.

(ix) *Nuclear Sciences (Isotope Preparation, Heavy Element Chemistry and Stanford Synchrotron Radiation Laboratory).* Included in the objectives of this research effort is a study of the basic chemical and physical properties of the actinide elements and their compounds. This program also supports the operation of the Stanford Synchrotron Radiation Laboratory and the production of a broad variety of isotopically enriched research materials.

Office of High Energy and Nuclear Physics

This program supports 90% of the U.S. effort in high energy and nuclear physics. The objective of these programs are indicated below.

(i) *Nuclear Physics.* The primary objectives of this program are an understanding of the interactions, properties, and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature by using nuclei as a proving ground.

(ii) *High Energy Physics.* The primary objectives of this program are to understand the nature and relationships among the fundamental forces of nature and to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents.

(iii) *Nuclear Sciences (Nuclear Data and Heavy Ion Fusion Accelerator Research).* The goal of the Nuclear Data activity is to establish and maintain an accurate, complete and accessible national data base to meet long-term, nuclear-data needs of the fission and fusion energy technologies and to support nuclear waste management and weapons development activities of the Department. The Heavy Ion Fusion Accelerator Research (HIFAR) program is an applied research program to develop high-current heavy-ion accelerator technology and perform appropriate ion beam experiments to the point where an adequate data base exists for evaluation of this type of accelerator as a driver for inertial confinement fusion.

Office of Health and Environmental Research

The goals of this research program are as follows:

Provide, through basic and applied research, the scientific information required to understand the effects of and reduce the health and environmental uncertainties associated with those energy technologies, policies and operations required to meet the Nation's future energy and national security needs.

Develop new applications of nuclear science and technology for use in the diagnosis and treatment of human diseases.

The goals of the program are accomplished through the effort of its divisions, which are:

(i) *Physical and Technological Research.* The objectives of this program are to develop new concepts, procedures, and instrumentation for detecting and measuring energy-related physical and chemical agents released to the occupational and general environment; to characterize the atmospheric transport and chemical transformation processes of radionuclides and energy-related chemical effluents in order to improve estimates of dispersion and potential human exposure; and to determine the physical mechanisms of radiation action in biological systems.

(ii) *Ecological Research.* The objectives of this program are to identify the physical chemical, and biological processes that cycle nutrients and energy-related materials through terrestrial and aquatic ecosystems, including the coastal oceans; and to determine the resiliency of ecosystems to natural and energy-related stresses and identify processes used by plants and animals for degrading or detoxifying energy-related materials.

Fundamental research on the hydrological transport, mobility, and degradation of energy substances at shallow depths will receive increased attention in 1985–1990.

(iii) *Health Effects Research.* The objectives of this program are to quantify the delayed biological effects of exposure to ionizing radiation through long-term experimental animal research; to resolve the uncertainties associated with carcinogenic, mutagenic, and toxicological effects of energy-related chemicals and complex mixtures of chemicals; and to define mechanisms involved in the induction of biological damage following exposure to low levels of energy-related pollutants by supporting fundamental research on biomolecular structure, gene functions and control, genetic damage and repair, and cell transformation. Future support for basic biological research will be substantially increased with emphasis on human cellular systems.

(iv) *Human Health and Assessments.* The goals of this program are to ascertain by epidemiologic study the potential spectrum of risks to human health associated with occupational and environmental exposures in DOE operations and in emerging energy technologies; to detect and measure significant subclinical changes in humans exposed to radiation and energy-related chemicals that can serve as early indicators of latent disease induction or to identify particularly susceptible individuals; to develop new techniques for stable and radioactive isotope production, labeled pharmaceuticals, imaging devices, and radiation beam applications for the improved diagnosis and therapy of human diseases or the study of human physiological processes.

Increased emphasis for the future will be on the development of sensitive marker systems which can be directly applied to humans and new isotopes and radiopharmaceuticals for studies of human nutrition, cardiac function, neurological disorders and disease control.

Office of Fusion Energy

The magnetic fusion energy program goal is to develop the scientific and technological information required to design and construct magnetic fusion energy systems. This goal is pursued by four divisions, whose major functions are as listed below.

(i) *Applied Plasma Physics.* This program seeks to develop that body of physics knowledge which permits advancement of the fusion program on a sound basis. APP programs provide: (1) The theoretical understanding of fusion plasmas necessary for interpreting results from present experiments, and the planning and design of future confinement devices; (2) the data on plasma properties, atomic physics and new diagnostic techniques for operational support of confinement experiments; and (3) critical tests and evaluation of promising alternate fusion concepts that may lead to more economic fusion reaction systems.

(ii) *Toroidal Confinement Systems.* This program has as its primary objective the conduct of research programs to investigate and resolve basic physics issues associated with medium- to large-scale toroidal confinement devices. These devices are used to experimentally explore the limits of specific confinement concepts as well as to study associated physical phenomena. Specific areas of interest include: the production of increased plasma densitities and temperatures, the understanding of the physical laws governing plasma energy transport and confinement scaling, equilibrium and stability of high plasma pressure, the investigation of plasma interaction with radio-frequency waves, and the study and control of particle transport in the plasma.

(iii) *Mirror Confinement Systems.* This program has as its objective research programs to investigate, resolve and understand basic science critical to the continued development of the magnetic mirror fusion concept. The basic issues are plasma energy and particle transport, not only in the radial direction, but in the axial dimension; the establishment and maintenance of appropriate electro-static fields; stability, both MHD and microstability; and various plasma/wave interactions such as ICFR, GCH and plasma generated waves. Non-Maxwellian distributions play a major role in mirrors and need to be measured and understood.

(iv) *Division of Development and Technology.* This program supports the technology which is necessary for the fabrication and operation of present and next-generation plasma devices. The program also pursues technological investigations and systems studies pertaining to critical feasibility issues of fusion technology.

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federal register

Monday
April 15, 1985

Part V

Department of Education

Office of the Secretary

National Institute of Handicapped Research; Funding Priorities for Fiscal Year 1985; and Invitation for Applications; Notices

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Funding Priorities for Fiscal Year 1985

AGENCY: Department of Education.

ACTION: Final Funding Priorities for the National Institute of Handicapped Research for Fiscal Year 1985.

SUMMARY: The Secretary announces final funding priorities for research to be supported by the National Institute of Handicapped Research (NIHR) in Fiscal Year 1985. NIHR program regulations authorize the Secretary to establish priorities by reserving funds to support particular research activities. A notice of proposed funding priorities was published in the **Federal Register** on November 29, 1984. These final priorities inform potential grant applicants and others of the research areas in which NIHR intends to hold grant competitions during Fiscal Year 1985.

EFFECTIVE DATE: These priorities will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 732–1139. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: Nine priorities were proposed in the **Federal Register** on November 29, 1984 (49 FR 46924). In that Notice, interested parties were invited to comment on both the merits of the proposed priorities, including suggested modifications to the priorities, and on the program authority considered most appropriate for funding research in each of the priority areas. The Notice indicated that the final funding priorities would be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. Nine priorities are being announced for funding.

In response to public comment, some changes were made in these priorities. Some changes have also been made to reflect the comments of other Federal agencies that will provide funding support to some of the projects which may result from these funding priorities. These changes are discussed in detail in the "Summary of Comments and Responses" section of this Notice.

NIHR is authorized to support research and related activities ties in a variety of areas and through several program authorities. The priorities identified in this Notice cover research and related activities to be conducted through Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects. Following are brief overview descriptions of these programs.

Research and Training Centers (RTCs) conducted coordinated and advanced programs of rehabilitation research, and provide training to rehabilitation personnel engaged in research or the provision of services. RTCs must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally, each Center conducts a program of research, scientific evaluation, and training activities in an area which contributes substantially to the solution of problems in that area, advances the state-of-the-art, and becomes a recognized Center of excellence in a given subject area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as development of, or contribution to, undergraduate and graduate texts and curricula, in-service training, and continuing education.

Rehabilitation Engineering Centers (RECs) conduct coordinated programs of advanced research of an engineering or technological nature. RECs are also encouraged to develop systems for the exchange of technical and engineering information and to improve the distribution of technological devices and equipment to handicapped individuals. Each REC must be located in a clinical rehabilitation setting and is encouraged to collaborate with institutions of higher education.

Ideally, each REC conducts a program of research, scientific evaluation, and training that advances the state-of-the-art in technology or its application, contributes substantially to the solution of rehabilitation problems, and becomes an acknowledged center of excellence in a given subject area. RECs are encouraged to develop practical applications for their research—through scientific evaluation activities that validate their findings as well as related findings of other centers. RECs generally conduct training programs to disseminate and encourage utilization of new rehabilitation engineering knowledge through such means as development of or contribution to undergraduate and graduate texts and curricula, in-service training, continuing education, and distribution of information and appropriate technology.

Research and Demonstration Projects have been supported to conduct research and/or demonstrations in single project areas on problems encountered by handicapped individuals in their daily activities. These projects may conduct research on rehabilitation techniques and services, including analysis of medical, industrial, vocational, social, sexual, psychiatric, psychological, economic, and other factors affecting the rehabilitation of handicapped individuals.

Knowledge Dissemination and Utilization Projects are supported to ensure that rehabilitation knowledge generated from projects and Centers funded by NIHR and other sources is fully utilized to improve the lives of handicapped persons.

The following priorities are grouped by research program. Following each identified research area is a brief statement of national need and a description of the specific research activities that must be conducted.

Funding Priorities

The Secretary announces the following research areas are funding priorities for NIHR for Fiscal Year 1985:

Priorities for Research and Training Centers (4)

Research and Training Centers will be funded for periods up to 60 months.

Rehabilitation of Elderly Disabled Individuals

The elderly population, and particularly the disabled elderly, presents one of the biggest challenges to health and social service systems facing the United States today. The number of persons over age 65 is currently about 23.5 million persons or about 11 percent of the total population.

Elderly people are at a greater risk for acquiring illnesses, disabilities, and resulting functional limitations, with the result that a large proportion of the handicapped and chronically impaired elderly have major physical, mental, social, and independent living deficits. Some additional data reported by NIHR-supported researchers elaborate the status of the elderly in America:

—Eighty-six percent of all elderly persons incur one or more chronic conditions of varying degrees of severity.
—Fifty-six percent of those over age 75 are limited in activities of daily living due to chronic conditions. Approximately 50 percent of the physically handicapped elderly also have psychiatric disabilities severe enough to warrant assistance.
—The majority of persons over age 65 living alone are eventually institutionalized.

Societal attitudes towards the elderly are complex and often may include negative stereotyping, avoidance, neglect, and failure to acknowledge potential productivity and contributions to society.

An RTC is proposed which would address the rehabilitation needs of disabled persons who become elderly as well as those who become disabled after they are elderly.

An RTC would—

• Conduct research to demonstrate the efficacy of coordinated and comprehensive physical, psychological, social, and vocational rehabilitation techniques and modalities, including new technology, directed toward restoring, preserving, or enhancing the older disabled person's ability to function productively and independently;

• Develop and conduct long-term and short-term multidisciplinary training programs for health-and-rehabilitation related personnel and others concerned with rehabilitation of elderly disabled persons and develop curricula for rehabilitation-related graduate and undergraduate training programs, short- and long-term inservice training, continuing education, and other training mechanisms;

• Develop methods for early detection of emerging impairments and for successful early rehabilitation interventions;

• Devise research-based strategies to prevent institutionalization of elderly disabled persons;

• Disseminate to a broad audience and promote the utilization of multidisciplinary concepts and other new knowledge to improve policies, programs, and techniques for rehabilitation of elderly persons.

Improvement of Independent Living Programs

Disabled persons have begun to organize around the theme of Independent Living (IL). It is a theme that includes such goals as self-determination, self-help, deinstitutionalization, and barrier-free access to services and opportunities previously denied to persons with disabilities. Congress acknowledged the importance of this theme in the passage of Title VII of the rehabilitation Amendments of 1978, establishing a separate authority for independent living service programs to be managed and directed largely by persons with disabilities. Independent living has emerged as a concept, a service system, and a social movement.

Implementation of the independent living programs of the Rehabilitation Act requires an understanding of the boundaries of the program (e.g., eligibility, types of services) and of the goals, philosophy, and social policy implications of independent living, as well as high quality program management. Continuing research is needed to support the development and refinement of the independent living concept and to enhance the quality of services.

An RTC would—

• Develop an operational definition of independence which could be used to evaluate the efficacy of independent living programs and activities;

• Assess the impact of community service systems on independent living outcomes, and devise mechanisms to coordinate service delivery systems to facilitate living with maximum independence;

• Define, through research, the optimum roles of consumers, peer counselors, rehabilitative service agencies, and others in programs to facilitate living with maximum independence;

• Demonstrate effective models for training consumers, IL program staff, and staff of other service agencies in the concepts and techniques to facilitate independent living;

• Study the role of the family, peers, and personal support systems in enhancing independent living;

• Explore the potential for IL programs to include persons with all types of physical and mental disabilities in their services and evaluate the benefits of these expanded program models.

• Provide technical assistance to Independent Living programs through management systems and program models, and to State rehabilitation agencies and other service providers in the development and implementation of independent living programs.

Improved Rehabilitation of Psychiatrically Disabled Individuals

There are approximately 2,000,000 severely psychiatrically disabled persons living in communities and 900,000 in institutions. Nearly 200,000 severely psychiatrically disabled persons are discharged into the care of their families each year. The rate of recidivism for psychiatric institutions is over 60 percent. Less than 10 percent of this population is employed and the employment prospects for this group are very poor.

There is a major need for additional knowledge and techniques to improve the vocational and independent living outcomes for these individuals, and to assist their families to contribute to successful adjustment outcomes. Studies have indicated the relation between vocational/independent living success and the specific skills of the disabled individual; recent research has documented positive impacts from teaching vocational and coping skills to psychiatrically disabled individuals.

Community living is further complicated for this group by uncertainties concerning eligibility for Social Security Disability Income benefits, the criteria for assessing that eligibility, and alternatives for economic security.

An RTC would—

• Assess the factors in the rehabilitation process which lead to successful rehabilitation of clients with a disability of mental illness in the State vocational rehabilitation programs;

• Devise strategies to assist families and professionals to collaborate most effectively in providing rehabilitative services, including the identification of optimum roles for families and professionals, and development of models of respite care;

• Assess and develop models to address the rehabilitation needs of homeless psychiatrically disabled individuals;

• Assess, the rehabilitation needs of, and develop models to address, the young adult chronically psychiatrically disabled population (aged 18–35);

• Assess the appropriate roles of staff and clients in community-based programs, including those based on the "clubhouse" models;

• Study the problems of psychiatrically disabled individuals involved in the criminal justice system, develop models to divert appropriate individuals to the mental health system, and develop programs to train criminal justice personnel to work with psychiatrically disabled individuals;

• Develop and test models for teaching community living skills and enhancing community adjustment for psychiatrically disabled or restored individuals; and

• Develop and test training programs to train professionals in the core disciplines of psychiatry, nursing, social work, and psychology to work more productively with seriously psychiatrically disabled populations.

Community Integration Resource Support

The move to establish least-restrictive living environments for disabled persons has resulted in a proliferation of community residences without a knowledge base of the most appropriate characteristics and components for community-based residences for individuals with various types of disabilities. There is a need to identify and share information about best programs and practices, including residential staffing, intake policies, program components, and service system linkages.

An RTC would—

• Identify and evaluate innovative and best practices in the operation of community-based residences;

• "Package" information suitable for dissemination to increase the utilization of these practices;

• Develop and conduct training programs for State representatives on the use of the information packages and the stimulation of best practices;

• Establish and operate a technical assistance network to assist communities in implementing best practices;

• Identify, recruit, and work with a consortium of successful program operators and innovators who would provide consultation and technical assistance and assist in the identification, recruitment, and training of State representatives;

• Develop and work with a National Advisory Council of parents, professionals, and consumers to advise on criteria for identifying best practices and for selecting participating States; and

• Develop training curricula and develop staff capacity to conduct technical assistance within States.

Priority for Rehabilitation Engineering Centers (1)

Technology for Blind and Visually Impaired Individuals

Blind and visually impaired persons, including those with one or more additional disabilities, infants, children, and elderly persons experience problems in written communication, mobility, orientation, and employment. A Rehabilitation Engineering Center (REC) is needed to devote its efforts to the study of these problems and the development of technological systems and devices to provide solutions to these problems; and to the development of innovative methods designed to produce new scientific knowledge.

An REC would—

• Evaluate the vocational and personal use of interface devices designed to meet the specific needs of blind people;

• Develop a comprehensive theory of the "mobility process" of blind pedestrians, to provide a scientific basis for improving training in the critical area of mobility for blind persons;

• Identify the problems of partially sighted individuals in mobility tasks, and the appropriate optical electronic aids for this population;

• Investigate possible lightweight optical aids which provide high contrast and high magnification for persons with visual impairments;

• Develop very early (neonatal and early infancy) identification techniques and devices for sensory disorders, methods and devices for monitoring these early systems, and the related intervention methods and devices;

• Develop functional visual performance tests designed to both assess residual vision characteristics, and predict performance in daily living tasks;

• Refine new methods of early identification of the major handicapping eye disease (macular), utilizing new medical and scientific knowledge of the pathophysiology of this disease, in order to facilitate earlier prophylactic therapy;

• Develop new scientific knowledge relating to the visual characteristics of peripheral retinal functioning in order to promote the manipulation and utilization of appropriate assistive visual aids;

• Develop new communication aids for the deaf-blind population (utilizing tactile, Braille, and other technologies);

• Apply innovative sensory aids technology to assist those blind persons who are also confined to wheelchairs and currently face severely restricted mobility;

• Develop new techniques and devices which will detect and compensate for modest imbalances in sensory perceptual inputs (visual and/or auditory) and for the effect of binocular vision processing and binaural auditory processing, developing applications to both testing methods (audiograms and visualgrams), and treatment methods equalizing perceptual inputs.

• Evaluate existing speech output devices for use in conjunction with computer terminals, with appropriate software or hardware, to enable the blind user to access the desired parts of the information displayed on the terminal;

• Develop mobility and orientation devices, closed circuit television uses, magnification systems, Braille and other tactile output devices, and special adaptive vocational programs for low-vision individuals;

• Develop a portable, solid-state, closed-circuit television system for reading of printed material by low-vision individuals, and evolve plans for distribution to consumers;

• Identify the problems of partially sighted individuals in mobility tasks, and the appropriate optical electronic aids for this population;

• Design filter systems which permit the user to adjust the bandwidth of illumination transmitted to enhance viewing under a wide variety of environmental conditions; and

• Investigate possible lightweight optical aids which provide high contrast and high magnification for persons with visual impairments.

Priorities for Research and Demonstration Projects (3)

Delivery of Rehabilitation Engineering Services

Disabled people and service providers alike have argued that advances in rehabilitation engineering and technology are not fully utilized through regular application to problems of disabled individuals in classrooms, worksites, or residences. Rehabilitation engineering needs to be integrated into all phases of the rehabilitation process.

A research and demonstration project would devise mechanisms for integrating engineering services and the rehabilitation engineer into all components of rehabilitation, including rehabilitation in school settings, to assist in restoration of physical function, communication, education and vocational functioning, mobility, and community living. The project shall also investigate and implement methods to establish a low-cost, volunteer-operated, information and service delivery network for aids and devices.

Computer-Adaptations for Severely Disabled Persons

Computer technology makes possible a broad range of advances in personal functioning and mastery of the environment by disabled individuals.

A research and demonstration project would develop computer adaptations for severely disabled persons for restoration of physical function, interaction with the environment, and enhancement of vocational and social

functioning. The project scope should include the development of software, hardware adaptations, and the operating systems to accommodate those adaptations.

Economics of Disability

The current system of economic transfer payments to workers who become disabled has been termed a "disabling system." To become eligible for benefits, persons must prove inability to work; once eligible for disability benefits, persons worry about losing their hard-won disability status and in addition face stigma and pressures associated with disability. NIHR-sponsored research has identified medical, psychological, economic, and social advantages inherent in beginning the disability management process as soon as an impairment which interferes with a person's major life activities is identified.

A research and demonstration project would—

- Examine the effectiveness of alternative disability management strategies at worksites;
- Document experiences of individuals assisted by model management programs as contrasted with persons not assisted; and
- Develop model methods to communicate the value of disability management approaches to workers, employers, insurers, family members, human service providers, and relevant others who must change their policies and procedures in order for effective disability management systems to be implemented.

Priority for Knowledge Dissemination and Utilization Project (1)

Satellite Broadcast of Programs of Low-Cost Technology

There is an assortment of efficient, low-cost aids and equipment devised to assist disabled persons with a variety of tasks. Disabled persons and professionals who work with them need information on inexpensive, easy-to-use aids and equipment to enhance employment and educational potential and daily living skills.

- A knowledge dissemination and utilization project would—
- Identify low-cost aids and equipment including simple adaptations to commercially available devices;
- Select aids for dissemination based on criteria of cost, ease of use, and needs of disabled persons;
- Prepare a series of tapes on workshops which demonstrate the use of these aids by disabled individuals, including interaction between the user and rehabilitation professionals such as rehabilitation engineers and occupational therapists;
- Broadcast the workshops via satellite to rehabilitation centers across the nation;
- Make the tapes available on loan to interested organizations, including local organizations of disabled persons; and
- Elicit feedback from disabled viewers about their experience with the demonstrated devices and with similar aids.

(This Appendix will not be codified in the Code of Federal Regulations)

Appendix

Summary of Comments and Responses

On November 29, 1984, the Secretary published nine priorities in proposed form in the **Federal Register**, (49 FR 46924), for public comment. The comments on the proposed priorities were generally favorable, and a number of additional priorities were suggested. Some changes were made to some of the priorities as a result of these comments. Summaries of the comments received and the Secretary's responses to these comments are printed below.

Comment: Several commenters urged that NIHR should focus its efforts on *vocational* rehabilitation and should not fund the RTCs on rehabilitation of the elderly or psychiatrically disabled, as other agencies have primary responsibility in these areas.

Response: No change has been made. NIHR has a statutory mandate to address rehabilitation needs for all disabled groups of all ages. NIHR has obtained some funding support for these particular Centers from other concerned federal agencies and is seeking additional funding from similar sources.

Comment: Several commenters suggested additional priorities, noting needs for research in such areas as deafness and head trauma.

Response: No change has been made. The Secretary notes that these are priorities for new grants in certain programs. NIHR is continuing to support a substantial body of research in both head trauma and deafness. Furthermore, there are opportunities for further research in these areas to be funded under the Field-Initiated Research Program.

Comment: Many commenters stated that the most important focus of an RTC in independent living was the provision of technical assistance and training to IL programs and others.

Response: A change has been made. The focus of this priority has been shifted to provide a greater emphasis on technical assistance and training for independent living programs as well as for State rehabilitation agencies and other community agencies.

Comment: Some commenters noted that many of the activities included in the description of the RTC on psychiatrically disabled individuals were somewhat duplicative of ongoing research, while certain other critical areas such as psychiatrically disabled youth, homeless mentally ill individuals, and problems with the criminal justice system were not addressed.

Response: A change has been made. The emphasis within this priority has been shifted to include research on young adults, homeless individuals, and psychiatrically disabled persons in contact with the criminal justice system.

Comment: Some commenters stated that the scope of activities described in the priority for an RTC on aging was too extensive, and that the focus should be narrowed to concentrate on certain key rehabilitation issues.

Response: A change has been made. The scope of the priority has been altered to focus on a narrower range of rehabilitation issues.

Comment: A number of respondents expressed concern that the needs of infants/children, the elderly, and individuals with other handicaps who have visual disabilities, were not specifically targeted for attention in the announcement.

Response: A change has been made. The ambiguity noted has been resolved by specific language that now includes such subgroups along with the broad blind/low vision population.

Comment: Some commenters said there should be increased emphasis on research on the needs of the low vision, partially-sighted population.

Response: A change has been made. The announcement now clearly states that this population is to be included.

Comment: Some commenters stated that there is a need to incorporate a vigorous and sustained evaluation component within such a Center.

Response: No change has been made. Although the Secretary recognizes the need for careful evaluation of a Center's activities and requires an evaluation activity at each Center, the method of evaluation is left to the discretion of the applicant.

Comment: One respondent stated that some areas mentioned in the proposed announcement might be redundant, in view of some recent technological developments.

Response: A change has been made. Certain parts of the announcement have been modified to reflect new developments noted by the respondent.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research.)

(29 U.S.C. 761a, 762)

Dated: April 4, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-8814 Filed 4-12-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Notice of Application

ACTION: Application Notice for Research and Training Centers, Rehabilitation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects for the National Institute of Handicapped Research for Fiscal Year 1985.

SUMMARY: Applications are invited for new Research and Training Centers, Rehabiliation Engineering Centers, Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects, as described in the Notice of Final Funding Priorities for Fiscal Year 1985 published in this issue in the Federal Register.

Authority for these programs is contained in Sections 204(a), 204(b)(1), and 204(b)(2) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 and Pub. L. 98-221. (29 U.S.C. 762(a), (b)(1), and (b)(2)).

Closing date for transmittal of applications: Applications for new awards must be mailed or hand delivered on or before June 10, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: NIHR is authorized to support research and related activities under several program authorities. The priorities identified in this Notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers (RTCs), Rehabilitation Engineering Centers (RECs), Research and Demonstration Projects, and Knowledge Dissemination and Utilization Projects. Descriptions of each of these programs are contained in the Notice of Final Funding Priorities for Fiscal Year 1985 which is published in this issue of the Federal Register. Awards are made under these programs to State and public or private agencies and organizations including institutions of higher education.

NIHR is permitted to make awards for up to 60 months. It is the intention of NIHR to provide financial assistance to successful applicants through grants or cooperative agreements. If, at the time of the award, NIHR determines that substantial Federal programmatic involvement is warranted, it will negotiate cooperative agreements with the successful applicants.

The purpose of the awards is for planning and conducting research, demonstrations, and related activities. These activities have a direct bearing on the development of methods, procedures, and devices to assist in providing vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

Available funds: The Secretary has reserved approximately $2,900,000 for the support of the following Centers and projects. NIHR anticipates that some additional funds will also be applied to funding these priorities through interagency agreements with other Federal agencies.

NIHR expects to fund new Research and Training Centers in each of these priority areas:

- Rehabilitation of Psychiatrically Disabled Individuals—NIHR expects to fund one center in an amount up to $500,000 per year for up to 60 months.
- Rehabilitation of Elderly Disabled Individuals—NIHR expects to fund up to two Centers in amounts ranging from $300,000–$400,000 per year for up to 60 months.
- Improvement of Independent Living Programs—NIHR expects to fund one center in this area in an amount up to $400,000 per year for up to 60 months.
- Support to Community Integration Services—NIHR expects to fund one Center in this area in an amount up to $350,000 per year for up to 60 months.

NIHR expects to fund a Rehabilitation Engineering Center in the following priority area:

- Development of Technology for Blind and Visually Impaired Persons—NIHR expects to fund one Center in this area in an amount up to $600,000 per year for up to 60 months.

NIHR expects to fund Research and Demonstration Projects in the following priority areas:

- Delivery of Rehabilitation Engineering Services—NIHR expects to fund one project in this area in an amount up to $150,000 per year for up to 36 months.
- Computer Adaptations for Severely Disabled Persons—NIHR expects to fund one project in this area in an amount up to $150,000 per year for up to 24 months.
- Economics of Disability—NIHR expects to fund one project in this area in an amount up to $100,000 per year for up to 24 months.

NIHR expects to fund a Knowledge Dissemination and Utilization Project in the following priority area:

- Satellite Broadcast of Programs on Low-Cost Technology—NIHR expects to fund one project in an amount up to $75,000 per year for up to 24 months.

A full description of each priority area is contained in the Notice of Final Funding Priorities for Fiscal Year 1985 which is published in this issue of the Federal Register. The Secretary intends to fund one or more grants or cooperative agreements in each priority area, in the numbers and amounts noted above.

However, these estimates do not bind the U.S. Department of Education to fund a specified number of grants, or to the amount of any grant, unless that

amount is otherwise specified by statute or regulation.

Application forms: Application forms and program information packages may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit), Telephone (202) 732–1207. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. Requests should refer to applications for research priority awards, 84.133.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable regulations: The following regulations are applicable to these programs:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350, 351, 352, 353, and 355).

FOR FURTHER INFORMATION CONTACT: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732–1238; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. To request an application kit, call (202) 732–1207.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

(29 U.S.C. 760–762)

Dated April 4, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–9013 Filed 4–12–85; 8:45 am]

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Part VI

Department of Health and Human Services

Office of Human Development Services

45 CFR Part 1340
Child Abuse and Neglect Prevention and Treatment Program; Final Rule

Model Guidelines for Health Care Providers To Establish Infant Care Review Committees; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1340

Child Abuse and Neglect Prevention and Treatment Program

AGENCY: Office of Human Development Services, HHS.

ACTION: Final rule.

SUMMARY: This rule contains a new basic State grant requirement to implement the Child Abuse Amendments of 1984 (Pub. L. 98–457). As a condition of receiving State grants under the Child Abuse Prevention and Treatment Act, States must establish programs and/or procedures within the State's child protective service system to respond to reports of medical neglect, including reports of the withholding of medically indicated treatment for disabled infants with life-threatening conditions.

Other changes in regulations required by these Amendments will be published as a separate NPRM at a later date.

DATES: This rule is effective May 15, 1985. However, as specified in Pub. L. 98–457 and the rule, operative requirements become effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Jay Olson, (202) 245–2859.

SUPPLEMENTARY INFORMATION:

Program Description

The Child Abuse Prevention and Treatment Act (Public Law 92–247, 42 U.S.C. 5101, *et seq.*) was signed into law in 1974. It established in the Department of the National Center on Child Abuse and Neglect. The National Center is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

Under this Act, the National Center carries out the following responsibilities:

- Makes grants to States to implement State child abuse and neglect prevention and treatment programs.
- Funds public or nonprofit private organizations to carry out research, demonstration, and service improvement programs and projects designed to prevent, identify and treat child abuse and neglect.
- Collects, analyzes, and disseminates information, e.g., compiles and disseminates training materials, prepares an annual summary of recent and on-going research on child abuse and neglect, and maintains an information clearinghouse.
- Assists States and communities in implementing child abuse and neglect programs.
- Coordinates Federal programs and activities, in part through the Advisory Board on Child Abuse and Neglect.

The Act has been extended and amended several times since its passage. Regulations for the State grant and discretionary fund programs are found at 45 CFR Part 1340; the most recent revisions were published on January 26, 1983 (48 FR 3698). The fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands are eligible to apply for State grants. Fifty-one of the fifty-seven eligible jurisdictions meet the requirements of the Act and the regulations and currently receive State grant funds. We will refer to these jurisdictions as "States" in this preamble discussion.

State Child Protective Service System

Funds from the State grant program are used to support the activities of the State Child Protective Service (CPS) system. State CPS agencies are the agencies designated in the State to respond to reports of child abuse and neglect. (All States have a CPS system and CPS agency whether they receive State grant funds under the Act or not.)

The CPS agency responds to reports of abuse and/or neglect, investigates, refers situations to law enforcement officials as appropriate, and provides treatment and services. The focus of the agency's efforts is on the family—to protect the child, preserve the home, prevent separation of the child from the family if at all possible, prevent further abuse or neglect, and alleviate or correct the factors leading to the report. The agency generally regards its contact with the family as a demonstration of community concern and evidence of a desire to be of help to both parents and children.

Anyone in a State may report known or suspected abuse and neglect. Local (city, county) telephone numbers for reporting are found in local telephone directories. States that have a State-wide 24-hour hot line typically give that number wide publicity. The list of CPS agency contacts in the NPRM was provided for general information purposes regarding the overall child protective service system, not for reporting specific instances of abuse or neglect.

Investigations, services, and other activities may be provided by CPS agency staff, by law enforcement agencies, by multidisciplinary teams (many of which are located in major hospitals), and by utilizing the services of other public and voluntary agencies in the community. Most CPS workers have specialized training, and multidisciplinary fact-finding teams often have some expertise in medicine, law and law enforcement, as well as in social work.

Notice of Proposed Rulemaking

On December 10, 1984, the Department published a Notice of Proposed Rulemaking (NPRM) (49 FR 48160) to implement a major new requirement in Pub. L. 98–457, the Child Abuse Amendments of 1984. This requirement, applicable to CPS agencies, is found in a new clause (K) in section 4(b)(2) of the Child Abuse Prevention and Treatment Act. It mandates that, in order to qualify for basic State grants under the Act, States must, by October 9, 1985 (within one year of enactment), have programs or procedures or both in place within the State's CPS system for the purpose of responding to reports of medical neglect, including instances of the withholding of medically indicated treatment (including appropriate nutrition, hydration and medication) from disabled infants with life-threatening conditions.

A definition of "withholding of medically indicated treatment" is given in section 3 of the Act and means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions. Exceptions to the requirement to provide treatment (but not the requirement to provide appropriate nutrition, hydration, and medication) may be made only in cases in which:

(1) The infant is chronically and irreversibly comatose; or

(2) The provision of such treatment would merely prolong dying or not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(3) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

The Amendments also required the Department to publish interim model guidelines to encourage hospitals to

establish committees to educate hospital personnel and families of disabled infants with life-threatening conditions, recommend institutional policies and guidelines concerning withholding of medically indicated treatment from such infants, and offer counsel and review in cases involving such disabled infants. Interim Model Guidelines were also published on December 10, 1984 (49 FR 48170).

We received more than 116,000 letters in response to the NPRM and the Interim Model Guidelines from a wide range of associations and individuals. The overwhelming majority of these comments expressed general support for the regulation. Many letters strongly endorsed the requirement that all disabled infants, regardless of their condition, receive appropriate nutrition and hydration, and the Department's interpretation that the law did not permit life and death treatment decisions to be made on the basis of subjective opinions regarding the future "quality of life" of a retarded or disabled person. Many of these commenters recommended the addition of more specific requirements they believed would more effectively protect disabled infants.

A number of commenters disapproved of the proposed rule. Some of them objected to any governmental action that they believed interfered with an individual's right to make personal decisions in this matter. Some commenters urged deletion of specific provisions of the proposed rule they believed were excessive or distorted the intent of Congress. Frequently identified in this connection were the clarifying definitions the Department proposed to support the basic statutory definition.

In addition, during the comment period, we met with representatives of a number of right-to-life, disability rights and medical organizations. A summary of the issues discussed and recommendations made at these meetings is included in the Department's public comment record.

Summary of the Final Rule

In the NPRM, the Department sought to adhere closely to the letter and spirit of the legislation. As noted at that time, this legislation was the product of an extraordinary effort on the part of several Senators and Congressmen and representatives of a wide range of medical, right-to-life and disability organizations to forge a substantial consensus on an effective and workable program to assure the provision of appropriate medical care to disabled infants. It was and continues to be of great importance to the Department to preserve and advance this consensus in order to most effectively implement this program.

It is clear that the legislation represented a careful balance between the need to establish effective protection of the rights of disabled infants and the need to avoid unreasonable governmental intervention into the practice of medicine and parental responsibilities. In the NPRM, the Department's principal objective was to replicate this careful balance achieved in the legislation. Commenters on the NPRM gave the Department "mixed reviews" on how well this objective was accomplished.

Of special significance to the Department were the more than 115,000 letters from concerned citizens who strongly endorsed the compelling objective of assuring the provision of medically indicated treatment to disabled infants with life-threatening conditions. This was an overwhelming outpouring of letters from concerned citizens from all walks of life which significantly contributed to and reinforced the Department's commitment to develop an effective and workable regulation. Several major themes clearly emerged from this extraordinary volume of comments.

First, many of these commenters urged continued emphasis on the basic principle inherent in the statute that medical treatment decisions are not to be made on the basis of subjective opinions about the future "quality of life" of a retarded or disabled person. Many of these comments included personal and positive experiences and anecdotes relating to raising, being raised with, adopting, working with, or teaching disabled individuals. Some of these comments included photographs of natural or adopted disabled children or family members.

Second, these commenters urged adoption of requirements for child protective services agencies to implement program and/or procedures to fully effectuate the compelling statutory purpose. Suggestions were made for additional procedures dealing with access to medical records and the opportunity to obtain an independent medical examination, when necessary.

Third, many commenters strongly endorsed the Department's interpretations of key terms included in the basic statutory definition on the grounds that these clarifications were proper and important supplements to the statutory definition.

The Department also received a number of comments from medical associations whose support was essential to accomplishing the legislative compromise who argued that the careful balance evident in the statute was distorted by inclusion in the proposed rule of an inflexible catalog of binding definitions that counterproductively constrained the ability of reasonable medical judgment to react thoughtfully to the myriad of real-life problems in intensive care nurseries. These commenters made clear that their support for the legislation was based on inclusion in the compromise of deference to reasonable medical judgment, and that this element was insufficiently reflected in the proposed rule to allow their continued support.

In addition to the large number of comment letters we received, also noteworthy was a letter to Secretary Heckler from the six principal sponsors of the "compromise amendment" that became the provisions of the Child Abuse Amendments of 1984 dealing with services and treatment for disabled infants. This letter from Senators Hatch, Denton, Cranston, Nickles, Dodd and Kassebaum is especially important in reflecting the spirit of the extraordinary consensus reached through what the Senators referred to as the "painstaking negotiations" involving the diverse coalition.

The principal sponsors made several significant points. First, they noted that each word of the statutory definition "was chosen with utmost care" and indicated they were aware that the Department received numerous comments asking that the clarifying definitions be deleted. Although the principal sponsors did not specifically endorse these recommendations, they urged that they be given "every consideration" to ensure that the final rule is crafted with the same degree of care as was the statutory definition.

Second, the principal sponsors strongly urged that the word "imminent" not be used to characterize the proximity in time at which death is anticipated regardless of treatment in the context of situations in which treatment (other than nutrition, hydration, and medication) need not be provided. They stated:

> In the negotiations leading to the final language, there was much discussion about whether or not to include the word "imminent" in the statutory definition. It became apparent that "imminent" would create undue confusion both because it was ambiguous and because the expected time of death cannot be predicted with precision. A decision was made, therefore, not to include "imminent", and we urge that it be dropped in the regulations as well. Should the law in its present form prove ineffective, or harmful to infant care, we will seek appropriate legislative remedies.

Third, they urged avoidance of the use of examples of specific medical conditions in a way that would be interpreted as "establishing federally-prescribed medical standards for approved treatment for specific cases."

Fourth, the principal sponsors urged clarifications concerning references to Infant Care Review Committees to "specifically make clear that the use of such committees is voluntary."

Finally, they recommended that the "existing cooperative relationship between state child protective services agencies and hospitals" be advanced by providing that the names, telephone numbers and titles of designated persons in the hospital be made known to the appropriate hospital staff and agency staff.

The Department has considered carefully the recommendations of the many commenters and the principal sponsors. This consideration has led to a number of revisions to the rule. These revisions reflect a reaffirmation of the Department's objective of replicating the careful balance accomplished in the legislation by the six principal sponsors, the diverse coalition of medical, pro-life and disability organizations, and the Congress as a whole between the need for an effective program and the need to prevent unreasonable governmental intervention.

This balancing effort has produced a number of decisions. First, the Department has adopted a recommendation that appeared to be unanimous among all of the medical associations whose endorsement was central to accomplishing the legislative compromise to delete the proposed rule's clarifying definitions from the text of the final rule. Only two of the clarifying definitions, those that appeared in the Conference Committee Report, have been adopted in the final rule.

Second, because the Department continues to believe that guidance relating to interpretations of key terms used in the statutory definition of "withholding of medically indicated treatment" will aid in effective implementation of the statute (a belief shared by many commenters), the Department is stating clearly its interpretative guidelines regarding these key terms in an appendix to the final rule. This appendix will be codified as an appendix to 45 CFR Part 1340. In publishing these interpretative guidelines, the Department is not seeking to establish them as binding rules of law, nor to prejudge the exercise of reasonable medical judgment in responding to specific circumstances. Rather, this guidance is intended to assist in interpreting the statutory definition so that it may be effectively and rationally applied in specific cases so as to fully effectuate the statutory purpose of protecting disabled infants.

The third conclusion arising from this balancing effort is that the Department's interpretative guidelines included in the appendix to the final rule continue to make clear the Department's interpretation that the statute unambiguously directs reasonable medical judgments to matters regarding treatment (including appropriate nutrition, hydration and medication) which "will be most likely to be effective in ameliorating or correcting" all of the infant's life-threatening conditions, and that it does not sanction decisions based on subjective opinions about the future "quality of life" of a retarded or disabled person.

Fourth, in offering the interpretative guidelines in the appendix and in providing the rationale for the interpretations, the Department will avoid using examples of specific diagnoses to elaborate on meaning. This action should avoid the essential thrust of the interpretative guidelines being lost amidst uncertainty regarding how the addition or subtraction of particular complications or medical nuances might affect the examples. It should also allay concerns that the proposed rule presented what some commenters referred to as a "cookbook approach" to the practice of medicine.

Fifth, the term "imminent" that appeared in the proposed rule in connection with the prognosis that no treatment will prevent death of the infant has been deleted from the Department's interpretative guidelines that appear in the appendix. This revision will assure no deviation from the resolution of a matter specifically decided during the legislative negotiations. The guidelines, however, continue to make clear that treatment may not be withheld solely due to a distant prognosis of death.

Sixth, the Department has adopted the recommendations of many commenters that specific provisions of the rule address child protective services agency procedures to gain access to medical records when necessary, to obtain a court order for an independent medical examination when necessary, and to identify the designated hospital liaison persons to facilitate coordination with the child protective services agency.

The Department believes these revisions will ensure that the final rule reaffirms the legislative commitment to a program that deserves the support of a diverse coalition of associations and individuals. The section-by-section analysis in this preamble and the appendix to the final rule describe these revisions in greater detail, and discuss the significant comments received by the Department.

In addition, Model Guidelines for Health Care Providers to Establish Infant Care Review Committees are being published elsewhere in today's **Federal Register**, along with a discussion of the comments received.

Section-by-Section Discussion of the Comments

Before beginning the section by section discussion, we would like to respond to some basic questions and concerns expressed in the comment letters. Many commenters asked for clarification regarding who was the decision maker for the treatment of the infant, what was the focus of the CPS agency's concern, and exactly how these new requirements should be implemented.

In the NPRM, we described the new requirements in the context of a discussion of the role and function of the CPS system and its focus on the family. The decision to provide or withhold medically indicated treatment is, except in highly unusual circumstances, made by the parents or legal guardian. Parents are the decision makers concerning treatment for their disabled infant, based on the advice and reasonable medical judgment of their physician (or physicians). The counsel of an Infant Care Review Committee (ICRC) might also be sought, if available. Therefore, if a report is made to the CPS agency, either by a physician, a nurse, the person designated by the hospital/health care facility, or by any other person, the focus of the CPS agency's work will be, as it is in responding to other reports of child abuse or neglect, to protect the child and assist the family.

We want to emphasize that it is not the CPS agency or the ICRC or similar committee that makes the decision regarding the care of and treatment for the child. This is the parents' right and responsibility. Nor is the aim of the statute, regulations, and the child abuse program to regulate health care. The parents' role as decision maker must be respected and supported unless they choose a course of action inconsistent with applicable standards established by law. Where hospitals have an ICRC or similar committee and the review and counsel of the ICRC is sought, it is the role of the ICRC to review the case, provide additional information as needed to insure fully informed decision-making, particularly in difficult cases, and recommend that the hospital

seek CPS agency involvement when necessary to assure protection for the infant and compliance with applicable legal standards.

With respect to reporting, we also want to emphasize that anyone at any time may report cases of known or suspected abuse or neglect to the local CPS agency. Reporting may be required of certain categories of persons by State law, but reporting is not limited to physicians, ICRC members, designated individuals in health care facilities, or any others. We hope this statement will reassure and resolve the concerns of many commenters who appeared to believe that reports could come only from individuals designated by the hospital or health care facility, or other hospital personnel, e.g., an ICRC member.

With respect to how the new requirements are to be carried out, several key points clearly emerge from the statute and the legislative history.

First, procedural requirements should build upon existing mechanisms at the state level, rather than creating a new system and a new bureaucracy to respond to reports of known or suspected instances of the withholding or medically indicated treatment from infants with life-threatening conditions.

Second, in responding to such reports, CPS agencies are to coordinate and consult with individuals designated by and within the hospital in order to avoid unnecessary disruption of ongoing hospital activities.

Third, the legislation was not intended to require child protection workers to practice medicine or second guess reasonable medical judgments. Rather, Congress intended that the child protective agency respond to reports of suspected medical neglect under procedures designed to ascertain whether any decision to withhold treatment was based on reasonable medical judgment consistent with the definition of "withholding of medically indicated treatment."

Finally, if the CPS agency determines there is a withholding of medically indicated treatment from a disabled infant with a life threatening condition(s), the agency is to pursue the appropriate legal remedies provided by State law to prevent the withholding.

The Department is not prescribing any particular process or investigative steps that must be followed by the CPS agency in every case. Under the Act and existing regulations, basic standards are established but detailed procedures are not dictated. Each CPS agency has the flexibility to work out its own internal investigative procedures and develop mechanisms to provide for coordination and consultation with local health care facilities and other organizations and agencies. Therefore, this rule does not require the CPS agency to consult with State or local agencies representing the disabled or any other organizations or agencies in the development of their programs and procedures or publish the procedures for public comment.

Section 1340.14 Eligibility requirements.

We have made a technical change in the lead-in sentence in § 1340.14 to include the eligibility requirements in § 1340.15.

Section 1340.15(a) Purpose.

In response to several comments, we have added, for specificity, the words "with life-threatening conditions" to the end of the sentence in paragraph (a).

Section 1340.15(b) Definitions.

1. *The term "medical neglect"—§ 1340.15(b)(1).* Paragraph (b)(1) defines the term "medical neglect," used in the final rule. This term is also used in the new section 4(b)(2)(K) of the Act, which requires states to have programs and/or procedures "for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions)." The term "medical neglect" is not defined in the statute, nor in the existing regulation. However, section 3 of the Act, prior to the 1984 amendments, defined "child abuse and neglect" to include "negligent treatment or maltreatment," and the existing regulation (§ 1340.2(d)(3)(i)) defines this latter term to include the "failure to provide adequate food, clothing, shelter, or medical care." The new law and its legislative history make clear that Congress understood and intended that "medical neglect" is a form of "child abuse and neglect" within the meaning of the Act and the present regulations, and that the "withholding of medically indicated treatment from disabled infants with life-threatening conditions" is a form of medical neglect.

Because of these factors, paragraph (b)(1) simply "closes the loop" by defining "medical neglect" as the failure to provide adequate medical care, and by stating that medical neglect includes, but is not limited to, the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

2. *The term "withholding of medically indicated treatment"—§ 1340.15(b)(2).* Paragraph (b)(2) of the final rule defines the term "withholding of medically indicated treatment" with a definition identical to that which appears in section 3(3) of the Act (as amended by section 121(3) of the Child Abuse Amendments of 1984).

As clearly documented in the legislative history of the Child Abuse Amendments of 1984, this statutory definition was the central element of what was repeatedly referred to as the "compromise amendment" that emerged from lengthy negotiations among senators and representatives of medical, disability and right-to-life organizations. *See* H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 40 (1984); 130 Cong. Rec., S. 9312 (Daily Ed., July 26, 1984) (remarks of Sen. Denton). The essence of this compromise was to reach a careful balance between the need for meaningful protections of the rights of disabled infants to receive appropriate medical care with the need to avoid unreasonable governmental intervention into the practice of medicine or parental responsibilities.

In the proposed rule, the Department proposed a number of clarifying definitions of terms used in the statutory definition. Because the Department was not represented in the lengthy negotiations that produced the compromise amendment, the Department specifically solicited comments on these clarifying definitions. Many were received.

A significant number of comments from medical associations that were major participants in the Congressional negotiations argued that the careful balance evident in the compromise amendment they endorsed was insufficiently reflected in the proposed rule. These commenters uniformly argued that the clarifying definitions, taken as a whole, could be construed so as to have the effect of distorting the legislative compromise, which, they said, did not contemplate regulatory elaborations of the definition.

It was not the Department's intent in the proposed rule to deviate from the letter or the spirit of the compromise amendment. HHS believes it is important to the successful implementation of this law to seek to maintain the statute's careful balance and to preserve and advance the substantial consensus that joined to support the legislative compromise. The Department also continues to believe that successful implementation of this statute will be advanced by offering guidance that will assist in understanding the statutory definition. Thus, the clarifying definitions have been deleted from the text of the regulation, except for the two that were adopted by Congress in the Conference

Committee Report. However, as noted above, the Department's interpretations of these terms are set forth and explained in the appendix to the final rule, which will become an appendix to this rule in the Code of Federal Regulations. The Department believes that these interpretative guidelines can and should be referred to by interested parties in understanding, interpreting and applying the statutory definition. Changing the Department's interpretations from regulatory definitions to interpretative guidelines should allay concerns that the proposed rule could have been construed so as to distort the Congressional compromise by establishing binding rules of law that may compound rather than resolve the myriad of real-life problems in intensive care nurseries, while still giving all parties the benefits of very relevant interpretations of the statute by the agency charged with its implementation.

3. *The term "infant"—§ 1340.15(b)(3)(i).* The Conference Committee Report included a definition of "infant," which has been adopted in very similar terms in paragraph (b)(3)(i). The apparent reason Congress defined the term is that "infant" does not have a single, commonly accepted meaning. *Dorland's Medical Dictionary*, for example, states that infancy is frequently regarded as extending "to the time of assumption of erect posture (12 to 14 months)"; but is also sometimes regarded "to extend to the end of the first 24 months." *Dorland's Illustrated Medical Dictionary* (26th Edition, 1981), p. 663.

The Conference Committee made clear that its principal focus was on infants less than one year of age. However, the Committee made several other points obviously designed to ensure that the one-year definition would not be applied so arbitrarily and rigidly that infants over one year old would not receive appropriate attention from child protective services systems. Thus, the Conference Committee stated that the principal focus on infants less than one year old did not imply "that treatment should be changed or discontinued when an infant reaches one year of age," nor was it intended "to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age." H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

Thus, as a general rule, issues of medical treatment for infants over one year of age are to be considered under the less precisely defined, but clearly applicable, standards of "medical neglect." Issues of medical treatment for disabled infants under one year of age with life-threatening conditions must be considered under the more precisely defined standards of the definition of "withholding of medically indicated treatment."

One more factor was added by the Conference Committee. For certain infants over one year of age, the Conference Committee believed the more precisely defined standards of the definition of "withholding of medically-indicated treatment" might be more appropriate to use in considering the question of medical treatment than the more general standards of "medical neglect." Thus, the Conference Committee stated that the more precisely defined standards "may" be applied to those infants over one year of age "who have been continuously hospitalized since birth, who were born extremely prematurely or who have long-term disabilities." *Id.* The apparent Congressional intent is to recognize that these three categories of infants, although over one year of age, share important characteristics with those infants under one year of age who are the principal focus of the statutory provision.

The Department has incorporated these points into the definition of "infant." On the last point discussed, the definition has been revised somewhat from that which appeared in the proposed rule. The proposed rule stated that the term "infant" always included the three categories of infants over one year of age described above, or in other words, that the standards of the more precise definition of "withholding of medically indicated treatment" would always apply to the consideration of medical neglect of these infants. In response to comments that this deviated from the "may include" standard of the Conference Committee, the provision has been revised to assure consistency with Congressional intent. The Department interprets the "may include" language relating to these categories of infants over one year of age as indicating Congress' intent that the standards of the more precise definition should be consulted thoroughly in the evaluation of any issue of medical neglect regarding these infants. Thorough consideration of these standards will permit an informed judgment on whether these standards in fact constitute the most appropriate basis for evaluation of the medical neglect issue.

A number of other comments were made regarding the definition of "infant," particularly regarding inclusion in the term of the three categories of infants over one year of age. Some commenters suggested that this provision be expanded, such as to include all children. Other commenters argued that the provision should be revised to prevent the inclusion of adults who, for example, have had a long-term disability since birth. Other commenters suggested specific inclusion of infants born alive after attempted abortions.

The definition of the term "infant" has not been revised in response to these suggestions. As explained above, the Congressional intent was that the standards of "medical neglect," rather than the more precisely articulated standards of the definition of "withholding of medically indicated treatment" apply to older children. The definition does make clear, however, that this shall not be construed to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age.

In addition, no revision is necessary to clarify that "infant" does not include older children and adults. The potential appropriateness of applying the more precisely stated standards of the definition of "withholding of medically indicated treatment" to certain infants over one year of age is still stated, as it was in the proposed rule and in the Conference Report, in terms of *infants* over one year of age. Older children and adults are not "infants over one year of age."

Finally, no change is necessary to clarify that infancy begins at the point of live birth, regardless of the circumstances of the live birth.

4. *The term "reasonable medical judgment"—§ 1340.15(b)(3)(ii).* Clause (b)(3)(ii) defines the term "reasonable medical judgment" used in the statutory definition of "withholding of medically indicated treatment." It is identical to the definition contained in the Conference Committee Report. H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984).

Section 1340.15(c) Eligibility

We have made three additions to paragraph (c). First, many commenters believed that the name, title and telephone number of the person designated by the health care facility should be widely publicized, e.g., made known not only to the CPS agency but to all employees of the facility, to all parents of disabled children being treated in the facility, and to the community at large. We agree that in order for the CPS agency to carry out its responsibilities in paragraph (c)(2) of

this section for coordination and consultation with and receipt of prompt notification from individuals designated by and within appropriate health care facilities, it must at least know the name, title and telephone number of the designated person(s). Therefore, we have added a new paragraph (c)(3) to require that the CPS agency promptly contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by the facility as responsible for coordinating and consulting with and promptly notifying the State CPS agency of cases of known or suspected medical neglect. We have also required that, at least annually, this information be verified for accuracy.

With respect to the recommendation that we require hospitals to publicize the identification of the designated contact person with the hospital, this is not mandated because matters relating to the internal affairs of hospitals are beyond the scope of this regulation. However, we strongly encourage hospitals to make this information known within the facility as a way of assuring the protection of infants.

Essentially, paragraphs (c)(2)(i) and (ii) require the development of a coordination and communications system whose purpose is to assure that reports of suspected medical neglect are made at optimum speed. This communications system should operate whether the reports are made by the designated individual(s) or by any other person, and whether they are reports requesting CPS agency intervention and legal protection of an infant or reports requesting an initial CPS agency investigation. Under all these circumstances, rapid communication is of the utmost importance. Many letters from health care facilities indicated their plans that the designated individual will also assist the CPS agency staff and/or agency medical consultant in investigating a report and in facilitating other protective actions as needed.

We have not accepted the recommendation that the individual designated by the health care facility must, in all cases, be a member of the ICRC in order to assure that the CPS agency will receive reports of medical neglect. We do not have statutory authority to require ICRCs or similar committees and must adhere to the statutory requirement that the selection of the designated individual be made by the health care facility.

We have not accepted the recommendation that the name, title, and telephone number of persons designated by health care facilities be published annually in the newspaper of general circulation in the geographic area served by the facility. Commenters appeared to believe that this would enable the public to report suspected instances of medical neglect to the hospital and the hospital could report it to the CPS agency. As we have stated above, anyone may report such cases directly to the CPS agency.

Second, we agree with the many commenters who recommended that the State CPS agency may, in some cases, need access to an infant's medical records and an opportunity to conduct an independent medical examination of the infant. We have added language to paragraph (c)(4) to require that as a part of the development of programs and/or procedures required in paragraph (c), the State child protective system must specify the procedures to be followed, consistent with State law, to carry out these actions. Paragraph (c)(4)(i) requires that procedures be developed, consistent with State law, to obtain access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect; paragraph (c)(4)(ii) requires that procedures be developed, consistent with State law, to obtain a court order for an independent medical examination of the infant, or otherwise effect such as examination in accordance with the process established under State law, when necessary to assure an appropriate resolution of a report of medical neglect.

These two additions elaborate on the requirement included in paragraph (3) of the proposed rule that the State's programs and/or procedures must conform with the requirements of section 4(b)(2) of the Act and § 1340.14 of the existing regulations. The Act and existing regulations require States to have procedures for adequate investigations and the provision of protective services. Existing regulations also make reference to medical examinations, the provisions of medical services, and related actions. See section 4(b)(2)(C) of the Act and § 1340.14(d), (f), and (h). These additions to paragraph (c)(4) of the final rule clarify that, in connection with this conformity requirement, the State's programs and/or procedures must make provision, consistent with State laws, for access to medical records and medical examinations when necessary. Although these actions will not be needed in every investigation of reported medical neglect, the specific identification of these procedures for use by agency staff increases the protections for disabled infants.

We have not adopted other recommendations for specific State agency investigative procedures or requirements, e.g., that the CPS agency must obtain a full consultation with the attending physicians and consultants and with an independent medical consultant prior to taking any enforcement action. We believe that any such special limitations would be inconsistent with Congressional intent that existing procedures and methods be utilized.

Other comments regarding § 1340.15(c) and our response are as follows:

Designation of the CPS Agency. A few commenters stated that it was not clear whether the intent of the regulations was to expand existing CPS agency programs to include the population defined or whether a parallel system was contemplated. One national professional social service organization recommended that States be mandated to establish an agency or agencies responsible for responding to reports of medical neglect of disabled infants and observed that child welfare agencies traditionally have given lower priority to handicapped children than mental health or mental retardation agencies, for example.

We believe it is the clear intent of Congress that States utilize their existing child protective service system to carry out this new responsibility. As indicated in the legislative history, however, States have the flexibility to determine the specific agency or agencies within their child protective service system to exercise the authority to institute legal proceedings on behalf of the disabled infants referenced in new clause (K) of section 4(b)(2) of the Act. (See H. Conf. Rept. 98–1038, pp 41–2.)

Requirement for a new State statutory definition. One commenter suggested that States be required to amend their State statutes to include the definition of "withholding of medically indicated treatment." Neither the statute nor the legislative history indicates that Congress intended that States enact this definition. Rather, the legislative history indicates Congress' understanding that States currently can receive reports concerning, and provide protection to, disabled infants with life-threatening conditions under present statutes and definitions. The documentation requirements in paragraph (d) are designed to be consistent with this understanding.

Funding. Several letters raised the matter of funding, not only for treatment costs of disabled infants but also for

CPS agency costs of additional staff, training, medical consultation, and development of procedures.

For FY 1985, Congress provided funds under the Act as follows: the basic State grant funds were increased from $7 million to $9 million and new funds totaling $3 million were appropriated specifically to assist States to implement provisions related to section 4(b)(2)(K). In addition, HDS will make funds available under section 4(c)(2) of the Act to enable States to obtain training and technical assistance to carry out section 4(b)(2)(K) requirements. HDS also plans to award approximately $2 million in "special grant" funds to assist States in implementing several priority child abuse prevention initiatives, including the provisions of section 4(b)(2)(K).

We do not have statutory authority and decline to require States to assume full financial responsibility for the maintenance and medical costs of all such disabled children.

Waiver of effective date. Paragraph (c)(4) of the NPRM (now paragraph (c)(5) of the final rule) stated that the eligibility requirements under § 1340.15 are effective October 9, 1985, the effective date established in the Child Abuse Amendments of 1984. One State social service agency questioned whether it was possible to meet the requirements by October 9, 1985 and asked about the availability of a waiver. The Act, however, does not permit the new waiver provision in section 4(b)(3) of the Act to apply to the section 4(b)(2)(K) requirements.

It should be noted that, consistent with standard agency practice, the final rule becomes effective 30 days from the date of publication in the **Federal Register**. However, as specified in paragraph (c)(5), the actual effective date for State agency programs and/or procedures to be in place is October 9, 1985. See section 4(b)(2)(K) of the Act and section 128 of Pub. L. 98–457.

Increased Federal involvement and enforcement. Because the Act so clearly places the responsibility for implementation on State CPS agencies, the Department does not see a need to establish a Federal hot-line for reporting suspected instances of medical neglect as requested by some commenters. Such a federal reporting system would not be the most effective in assuring the most prompt reporting to State or local CPS agencies. Again, we urge that interested persons note the telephone number of the local agency that receives reports of abuse and neglect.

Implementation. Section 4(c)(2)(A)(ii) of the Act requires the Department to provide for the establishment and operation of national and regional information and resource clearinghouses for the purpose of providing the most current and complete information regarding medical treatment procedures and resources and community resources for the provision of services and treatment for disabled infants with life-threatening conditions. Many letters expressed strong support for these and other educational efforts that may be undertaken by the Department, particularly in the field of neonatology. Currently, we are in the process of determining how best to implement these clearinghouse requirements. Once they are in operation, we will inform the health care community, the State CPS agencies, and the national disability and right to life associations of procedures for accessing the information. Therefore, we do not believe it is necessary or appropriate to require that CPS agencies be responsible for informing health care facilities of the clearinghouses and access procedures. We also decline to require that the CPS agency consult with the clearinghouse) (or the ICRC or similar committee consult with the clearinghouse) in every CPS agency investigation or ICRC review. We believe that these decisions are best made based on the circumstances of each individual case.

We understand that in several States the CPS agency and State and local medical associations and other organizations have begun to work together to implement reporting, coordination, and procedural development requirements. As a point of information, the American Bar Association is preparing a series of suggested legal procedures for States, hospitals, physicians, and prosecutors that will assure that investigations and decisions regarding disabled infants will comport with State and Federal law. The results of this project, funded by the National Center on Child Abuse and Neglect, are expected in late summer.

Section 1340.15(d) Documentation.

Regarding suggestions to amend paragraph (d), several commenters recommended that each hospital or health care facility be required to provide the State CPS agency with a written copy of its internal procedures for responding to internal reports of possible withholding of medically indicated treatment, including procedures for review by ICRCs or similar committees. Other commenters recommended requiring documentation that the State CPS agency routinely review the procedures used by health care facilities to ensure that both hospital personnel and patient families are fully informed of the existence and functions of any ICRC or other relevant decision-making body established by or operating within the health care facility.

While we encourage hospitals and health care facilities to establish ICRCs, or similar committees, and necessary implementing policies and procedures, we do not believe it is appropriate to require CPS agency review of health care facility procedures or necessary as a documentation requirement. Regulation of internal management procedures of hospitals is not required in the Act, is beyond the scope of the State child protective service system, and thus, is not a proper matter to be dealt with in this rule. Another comment letter on the first point, however, suggested that useful training for CPS and hospital staff might include an introduction to the decision-making processes and procedures within each agency/organization.

Section 1340.15(e) Regulatory construction.

Paragraph (e) of the final rule sets forth two provisions regarding the impact of this section. Both of these provisions are based on similar provisions contained in section 127 of the Child Abuse Amendments of 1984.

Section 127(a) of the Amendments states:

> No provision of this Act or any amendment made by the Act is intended to affect any right or protection under section 504 of the Rehabilitation Act of 1973.

Section 504 of the Rehabilitation Act is the Federal law that prohibits discrimination on the basis of handicap in programs and activities that receive Federal financial assistance. The HHS implementing regulations for section 504 are at 45 CFR Part 84.

Consistent with the statutory provision, paragraph (e)(1) states that no provisions of this regulation will affect any right, protection, procedure or requirement of the HHS regulations implementing section 504, 45 CFR Part 84.

This reference to Part 84 includes 45 CFR 84.55 (48 FR 1622, January 12, 1984), which establishes certain procedures relating to health care for handicapped infants. This regulation is based on the Department's interpretation that under section 504 of the Rehabilitation Act of 1973, health care providers may not, solely on the basis of present or anticipated physical or mental impairments of an infant, withhold treatment or nourishment from the infant who, in spite of such impairments, will medically benefit from the treatment or nourishment.

This regulation establishes certain procedural requirements and guidelines. First, it encourages hospitals to establish Infant Care Review Committees and provides a model committee. Second, it requires each State child protective services agency that receives Federal financial assistance to establish and maintain procedures to assure that the agency utilizes its full authority pursuant to State law to prevent instances of unlawful medical neglect of handicapped infants. Third, it establishes certain procedures relating to the Department's interpretation of its authority to conduct investigations of complaints of alleged discriminatory withholding of treatment from handicapped infants.

In June of 1984, a Federal court invalidated this regulation and enjoined further investigations of alleged discriminatory withholding of medical treatment from handicapped infants under section 504. *American Hospital Association* v. *Heckler*, et al., 585 F. Supp. 541 (S.D.N.Y.), *aff'd*, Nos. 84–6211, 84–6231 (2d Cir., Dec. 27, 1984), *petition for cert. filed* (Mar. 27, 1985). The Solicitor General, on behalf of the Department, has petitioned the Supreme Court to accept this case for decision.

Consistent with section 127(a) of the Child Abuse Amendments of 1984 and the clear legislative history establishing a Congressional "policy of neutrality" on this legal controversy concerning the applicability of section 504 to health care for handicapped infants, (*see Congressional Record*, Vol. 130, S–12392, daily edition September 28, 1984 (letter from Senators Hatch, Denton, Nickles, Kassebaum, Dodd, and Cranston)), paragraph (e) of this regulation makes clear that this regulation in no way affects the prior regulation under section 504.

The Department received a number of comments regarding this provision of the proposed rule. Some commenters argued that because of the enactment of the Child Abuse Amendments of 1984, HHS should discontinue its efforts to deal with the issue of medical care for disabled infants under the authority of section 504. Other commenters suggested that the Department take some action in the context of this regulation that would establish a direct interrelationship between 45 CFR 1340.15 and 45 CFR Part 84.

The Department believes that the efforts previously undertaken under the authority of section 504 were, and continue to be, necessary and appropriate, both as a matter of law and important national policy. There are substantial similarities between the section 504-based rule and the Child Abuse Amendments of 1984. Both seek to assure the provision of medically indicated treatment, and incorporate into this goal respect for reasonable medical judgment, exclusion of futile treatments, and the like. Both approaches encourage the formation by hospitals of Infant Care Review Committees. Both approaches also recognize the need for State child protective services agencies to have specific procedures in place to deal with this form of medical neglect.

The major difference between the section 504-based approach and that of the Child Abuse Amendments of 1984 is that the former is implemented and enforced directly by the Federal government, whereas the latter, within the framework of the Child Abuse Prevention and Treatment Act, relies on State implementation and enforcement regarding individual instances of child absue and neglect (which includes medical neglect, which, in turn, includes the withholding of medically indicated treatment from disabled infants with life threatening conditions). The section 504-based system, thus, is fully compatible with the Child Abuse Amendments of 1984 approach, but has the additional element of a compliance mechanism of direct Federal intervention as a "back-up" to the mechanisms of Infant Care Review Committees (where implemented) and child protective services systems.

The Department believes that the compatibility of these two authorities strongly suggests the utility of assuring, if both are operational, that they are fully coordinated. The Department's goal in pursuing, through litigation, reinstatement of the section 504-based authority, is to clear the way for action to forge such an effective interrelationship between the two authorities.

But the Department also believes that it would conflict with clearly stated Congressional intent to now undertake efforts to establish such an interrelationship in the context of this regulation. The legislative history of the Child Abuse Amendments clearly reflects a "policy of neutrality" concerning the section 504-based program. This final rule is fully in accord with this policy of neutrality. When the controversy regarding the section 504-based program is resolved in the context of the present litigation, the question of the most effective interrelationship between the two authorities will, if the Department's position prevails, then be addressed.

Other commenters questioned why the statutory formulation of disavowing any intent to "affect any right or protection" under section 504 was expanded in the proposed rule to "affect any right, protection, procedure, or requirement" under the section 504 regulations. The reason is simply that whereas the statute establishes broadly-worded rights and protections, the regulation, in addition to fleshing out those rights and protections, establishes enforceable procedures and requirements. Thus, the transition from the statutory "policy of neutrality" to the regulatory "policy of neutrality" gives rise to the inclusion of these regulatory procedures and requirements. For example, if 45 CFR 84.55 (the section 504-based regulation that established certain procedures relating to health care for handicapped infants, but was invalidated by court order) is reinstated through further litigation, the procedures and requirements included in that section will be back in full force, unaffected by anything in this final rule. (It will then be for the Department to decide whether any changes in § 84.55 should be made to establish the most effective interrelationship between the two authorities.) Nothing more or less is intended or effectuated by paragraph (e)(1).

Paragraph (e)(2) is a new provision; it did not appear in the proposed rule. Similar to paragraph (e)(1), paragraph (e)(2) adopts, for purposes of regulatory construction, a provision corresponding to the Act's statement of statutory construction. Section 127(b) of the 1984 Amendments states:

> No provision of this Act or any amendment made by this Act may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that such standards are authorized by other laws.

In response to suggestions from commenters, paragraph (e)(2) adopts in the regulation the same rule of construction in identical operative terms.

Impact Analysis

A number of commenters raised questions about possible costs and related impacts of these rules. Most common was a concern that the definitions created by these rules might lead to large numbers of cases involving costly treatments. Others expressed concern as to who might pay for the costs of expensive treatment. A few pointed out that early treatment could avoid even more costly future treatment in some cases. And a number expressed concerns over administrative aspects of these rules, such as involvement of child abuse agencies or creation of infant care

review committees, which might create substantial administrative or legal costs, including disruption of existing arrangements.

Our view was, and remains, that these rules are not likely to result in an "annual effect on the economy of $100 million or more", or a "significant economic impact on a substantial number" of health care providers, as provided in Executive Order 12291 and the Regulatory Flexibility Act, respectively. We have, as previously discussed, eliminated many of the definitions which gave rise to these concerns.

More importantly, the role of these rules in the larger context of medical care for infants is minor. Nonetheless, there are large costs involved in medical care of infants with life-threatening conditions and we agree that such costs are in the aggregate quite high. Our point was simply that the costs of a rule include only those costs which the rule itself causes, and aggressive and sometimes quite costly care for such infants is already an established and growing feature of the American health care system, quite apart from passage of the Child Abuse Amendments of 1984.

The Larger Context of Newborn Care

Early in this century, very large advances in public health measures and medical treatment led to significant reductions in infant mortality and a huge increase in life expectancy. In recent years such advances have continued. From 1970 to 1980, infant deaths per thousand live births dropped from 20 to 13. In the same period, fetal death rates dropped form 14 to 9 per 100,000 live births, and neonatal deaths from 15 to 8 per thousand live births. Similar reductions continue in the 1980's.

These recent advances reflect a variety of factors ranging from generally better nutrition, improved access to medical care both pre and post-partum, advances in diagnosis and treatment, new surgical techniques, and improved organization and management of infant care (as reflected in the creation of "tertiary care" hospital units specializing in intensive neonatal care). Many of these most recent advances do not involve saving the lives of normal infants brought to normal term—those infants were already surviving. Instead, we are now routinely saving infants who would surely have died even a decade ago.

Such improvements are costly. One recent study points out that the great majority of cases (80%) at a tertiary care center are relatively inexpensive (costing an average of $8,000) but that most of the rest cost $20,000 or more and some involve hospital costs in the hundreds of thousands of dollars. Cost of hospital treatment for all these infants averages over $20,000. Further, some of the infants who now survive will require costly services for the rest of their lives.

About 2½% of all births involve a significant physical defect of some kind. Most of these, however, are not life threatening and do not require immediate, major medical intervention. For example, club foot and cleft lip and palate are among the most common defects, as are a variety of heart defects. Children with birth defects affecting mental functions such as Down Syndrome or Spina Bifida, are much rarer. Indeed, the majority of the most expensive infant care cases come from the 40,000 infants born each year with birth weights of 1500 grams or less who are normal in other respects. In many cases their care will involve life and death decisions, and some fraction of these will pose ethical and medical dilemmas, such as whether a particular child can be treated effectively or without inhumane pain and suffering. The crucial point is that virtually all such infants now, and in the future will, receive "state of the art" medical care, often at great expense, quite irrespective of the new statutory provisions of this rule.

Similarly, the vast majority of these infants have their care paid for by private health insurance or, in a minority of cases, by the Medicaid program.

The Maternal and Child Health Block Grant and other State funds can also pay for care, at State discretion. Some small fraction of parents do not have sufficient insurance coverage, or will face subsequent costs not covered by any medical insurance. Again, these problems exist quite irrespective of the new statutory provision or this rule. (In response to a Congressional mandate, the Department is preparing a special report dealing with financial resources for care of disabled infants with life-threatening conditions.)

Overall Effects of the Statute and Rule

Against this backdrop, the statute and this rule can readily be placed in perspective. In some unknown but very small fraction of infants, medically indicated treatment may have been or would have been withheld but for the response to the "Baby Doe" cases (including not only the law and this rule, but also public awareness and prior rules). However, the great majority of expensive interventions would occur—and are already occurring at annual costs in the range of several billion dollars—regardless of this change.

A considerable number of examples were used by commenters asserting that the statute or the rule would force inappropriate medical intervention, would force unnecessary and expensive evaluation by expert physicians and referral to expert facilities (e.g., neonatal tertiary care centers), or even inappropriate care for infants who were dying and for whom attempted treatment would be inhumane. Our response to these allegations is found elsewhere in this preamble. However, even if these assertions had all been correct, the examples involved rare conditions for which the potentially affected population is extremely small. Regardless, the changes made in this final rule should eliminate any doubt on this point.

Other commenters argued that the statute or rule would force use of truly experimental research procedures. Nothing in the statute or rule forces use of experimental procedures. To the contrary, medical ethics, federal regulations, and many State laws require that patients (or their parents) provide "informed consent" based on free choice and without coercion when physicians propose human experimentation. These rules do not require such experimentation.

Some commenters raised the possibility that the potential for legal action would lead to inappropriate "defensive" practices such as treatment of infants who were in fact dying and for whom attempted treatment would be inhumane. Such a possibility clearly exists, simply because human decisions are never perfect. Moreover, prudent persons would take care not to expose themselves to possible governmental or legal challenge and one way to do so is to pursue treatment in cases right on the "margin." However, substantial protection against such challenges arises from the deference provided reasonable medical judgment by the statute; it would be purely speculative to assume that any substantial number of inappropriate interventions would be caused by the statute. Regardless, we do not believe that anything in the rule requires or fosters such a result.

We cannot make a confident estimate as to just how many cases there may be in which either the statute or the rule would make a difference. No comments provided a sound basis for such estimates. However, only a very small fraction of births involve any serious question of survival. Of these, only a fraction would not be treated appropriately under current medical

practice, and would involve even a potential allegation of medical neglect. These considerations suggest that the potential number of cases which the statute might impact is not large. The number differentially affected by any particular wording of the rule itself would be far smaller. Taking into account typical costs of treatment for infants requiring intensive neonatal care, we conclude that the total costs due to the rule would not reach the thresholds of the Executive Order.

Procedural, Legal, and Administrative Costs

Similar reasoning applies to procedural and administrative costs. Here, we agree that the statute may make a larger relative difference, since it newly involves most States' child abuse agency and procedures, and encourages hospitals to create new Infant Care Review Committees. And here the relevant universe includes not only the cases where decisions are different, but also the potentially far larger number of cases undergoing review as well as the need to train staff and develop procedures.

With respect to the State agencies, real or suspected cases of abuse are already handled routinely. Infant care cases, though involving complex medical issues which may require the use of medical consultants, are no different in principle than other cases. And, as pointed out above, medical neglect is already covered by State laws. Federal grants to State agencies have increased from $6.7 million in fiscal year 1984 to $9 million plus $3 million specifically for implementation of these new requirements in fiscal year 1985. While we do not have a quantitative estimate of incremental costs to State agencies at this time, we do not believe that a serious resource problem exists.

With the emphasis on the voluntary nature of the suggested guidelines for Infant Care Review Committees, most of the specific concerns as to disruption of or overlap with other hospital functions should be eliminated. Many hospitals already have some kind of review process, and the number of committees, though small, has increased in recent years. Others will elect to create a new process, similar if not identical to our guidelines. Because any such process is voluntary, costs are not caused by this rule. Regardless, in the light of extensive parental, medical, and other consultative involvement which almost invariably occurs already in extreme cases, net additional resources need not be large. This is particularly so because the clearinghouses which the Department is funding will make obtaining expert medical advice and information relatively easy. Relative to both overall hospital revenues and resources devoted to intensive care of infants, these costs should be exceedingly low.

Legal and enforcement costs for cases in controversy will depend largely on the number of violations and suspected violations of the law. Very few cases should require legal action to assure needed treatment, particularly if Infant Care Review Committees or alternative arrangements perform their duties conscientiously.

Conclusion

In the light of the factors discussed above, the Department has determined that this is not a major rule under E.O. 12291, and certifies that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980 the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any information collection requirements in a proposed or final rule. The Department did submit § 1340.15 of the NPRM to OMB for their review under section 3504(h) of the Paperwork Reduction Act of 1980, and OMB assigned a control number (0980–0165). However, since the requirements are being revised by adding a new § 1340.15(c)(3) and expanding § 1340.15(c)(4), we are required to resubmit the information collection requirements contained in § 1340.15 to OMB for their approval. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects in 45 CFR Part 1340

Child welfare, Disabled, Family violence, Grants programs-health, Grant programs-social programs.

(Catalog of Federal Domestic Assistance Program No. 13.628, Child Abuse and Neglect Prevention and Treatment)

For the reasons set forth in the preamble, 45 CFR Part 1340 is amended as follows:

1. The Table of Contents is amended by adding a new section, § 1340.15 "Services and treatment for disabled infants," and a new listing "Appendix—Interpretative Guidelines Regarding 45 CFR 1340.15—Services and Treatment for Disabled Infants." As revised, the table of contents reads as follows.

PART 1340—CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT

Subpart A—General Provisions

Sec.
1340.1 Purpose and scope.
1340.2 Definitions.
1340.3 Applicability of Department-wide regulations.
1340.4 Coordination requirements.

Subpart B—Grants to States

1340.10 Purpose of this subpart.
1340.11 Allocation of funds available.
1340.12 Application process.
1340.13 Approval of applications.
1340.14 Eligibility requirements.
1340.15 Services and treatment for disabled infants.

Subpart C—Discretionary Grants and Contracts

1340.20 Confidentiality.

Appendix—Interpretative Guidelines Regarding 45 CFR 1340.15—Services and Treatment for Disabled Infants.

2. The authority citation for Part 1340 is revised to read as follows:

Authority: Child Abuse Prevention and Treatment Act, Pub. L. 93–247, 88 Stat. 4; Pub. L. 95–266, 92 Stat. 205, Sections 609–610; Pub. L. 97–35, 95 Stat. 488; Pub. L. 98–457, 98 Stat. 1749 (42 U.S.C. 5101 et seq. and 42 U.S.C. 5101 note).

3. The introductory text of § 1340.14, Eligibility requirements is revised to read as follows:

§ 1340.14 Eligibility requirements.

In order for a State to qualify for an award under this subpart, the State must meet the requirements of § 1340.15 and satisfy each of the following requirements:

* * * * *

4. A new § 1340.15 is added to Subpart B—Grants to States, to read as follows:

§ 1340.15 Services and treatment for disabled infants.

(a) *Purpose.* The regulations in this section implement certain provisions of the Child Abuse Amendments of 1984, including section 4(b)(2)(K) of the Child Abuse Prevention and Treatment Act governing the protection and care of disabled infants with life-threatening conditions.

(b) *Definitions.* (1) The term "medical neglect" means the failure to provide adequate medical care in the context of the definitions of "child abuse and neglect" in section 3 of the Act and § 1340.2(d) of this part. The term "medical neglect" includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

(2) The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

(i) The infant is chronically and irreversibly comatose:

(ii) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or

(iii) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(3) Following are definitions of terms used in paragraph (b)(2) of this section:

(i) The term "infant" means an infant less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under State laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in paragraph (b)(2) of this section should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

(ii) The term "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(c) *Eligibility Requirements.* (1) In addition to the other eligibility requirements set forth in this Part, to qualify for a grant under this section, a State must have programs, procedures, or both, in place within the State's child protective service system for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(2) These programs and/or procedures must provide for:

(i) Coordination and consultation with individuals designated by and within appropriate health care facilities;

(ii) Prompt notification by individuals designated by and within appropriate health care facilities of cases of suspected medical neglect (including instances of the withholding of medically indicated treatment from disabled infants with life-threatening conditions); and

(iii) The authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

(3) The programs and/or procedures must specify that the child protective services system will prompty contact each health care facility to obtain the name, title, and telephone number of the individual(s) designated by such facility for the purpose of the coordination, consultation, and notification activities identified in paragraph (c)(2) of this section, and will at least annually recontact each health care facility to obtain any changes in the designations.

(4) These programs and/or procedures must be in writing and must conform with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part.

In connection with the requirement of conformity with the requirements of section 4(b)(2) of the Act and § 1340.14 of this part, the programs and/or procedures must specify the procedures the child protective services system will follow to obtain, in a manner consistent with State law:

(i) Access to medical records and/or other pertinent information when such access is necessary to assure an appropriate investigation of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions); and

(ii) A court order for an independent medical examination of the infant, or otherwise effect such an examination in accordance with processes established under State law, when necessary to assure an appropriate resolution of a report of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life threatening conditions).

(5) The eligibility requirements contained in this section shall be effective October 9, 1985.

(d) *Documenting eligibility.* (1) In addition to the information and documentation required by and pursuant to § 1340.12(b) and (c), each State must submit with its application for a grant sufficient information and documentation to permit the Commissioner to find that the State is in compliance with the eligibility requirements set forth in paragraph (c) of this section.

(2) This information and documentation shall include:

(i) A copy of the written programs and/or procedures established by, and followed within, the State for the purpose of responding to the reporting of medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions:

(ii) Documentation that the State has authority, under State law, for the State child protective service system to pursue any legal remedies, including the authority to inititate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. This documentation shall consist of:

(A) A copy of the applicable provisions of State statute(s); or

(B) A copy of the applicable provisions of State rules or regulations, along with a copy of the State statutory provisions that provide the authority for such rules or regulations; or

(C) A copy of an official, numbered opinion of the Attorney General of the State that so provides, along with a copy of the applicable provisions of the State statute that provides a basis for the opinion, and a certification that the official opinion has been distributed to interested parties within the State, at least including all hospitals; and

(iii) Such other information and documentation as the Commissioner may require.

(e) *Regulatory construction.* (1) No provision of this section or part shall be construed to affect any right, protection, procedures, or requirement under 45 CFR Part 84, Nondiscrimination in the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

(2) No provision of this section or part may be so construed as to authorize the Secretary or any other governmental entity to establish standards prescribing specific medical treatments for specific conditions, except to the extent that

such standards are authorized by other laws or regulations.

5. 45 CFR Part 1340 is further amended by adding at the end thereof the following Appendix:

APPENDIX TO PART 1340—Interpretative Guidelines Regarding 45 CFR 1340.15—Services and Treatment for Disabled Infants

This appendix sets forth the Department's interpretative guidelines regarding several terms that appear in the definition of the term "withholding of medically indicated treatment" in section 3(3) of the Child Abuse Prevention and Treatment Act, as amended by section 121(3) of the Child Abuse Amendments of 1984. This statutory definition is repeated in § 1340.15(b)(2) of the final rule.

The Department's proposed rule to implement those provisions of the Child Abuse Amendments of 1984 relating to services and treatment for disabled infants included a number of proposed clarifying definitions of several terms used in the statutory definition. The preamble to the proposed rule explained these proposed clarifying definitions, and in some cases used examples of specific diagnoses to elaborate on meaning.

During the comment period on the proposed rule, many commenters urged deletion of these clarifying definitions and avoidance of examples of specific diagnoses. Many commenters also objected to the specific wording of some of the proposed clarifying definitions, particularly in connection with the proposed use of the word "imminent" to describe the proximity in time at which death is anticipated regardless of treatment in relation to circumstances under which treatment (other than appropriate nutrition, hydration and medication) need not be provided. A letter from the six principal sponsors of the "compromise amendment" which became the pertinent provisions of the Child Abuse Amendments of 1984 urged deletion of "imminent" and careful consideration of the other concerns expressed.

After consideration of these recommendations, the Department decided not to adopt these several proposed clarifying definitions as part of the final rule. It was also decided that effective implementation of the program established by the Child Abuse Amendments would be advanced by the Department stating its interpretations of several key terms in the statutory definition. This is the purpose of this appendix.

The interpretative guidelines that follow have carefully considered comments submitted during the comment period on the proposed rule. These guidelines are set forth and explained without the use of specific diagnostic exmples to elaborate on meaning.

Finally, by way of introduction, the Department does not seek to establish these interpretative guidelines as binding rules of law, nor to prejudge the exercise of reasonable medical judgment in responding to specific circumstances. Rather, this guidance is intended to assist in interpreting the statutory definition so that it may be rationally and thoughtfully applied in specific contexts in a manner fully consistent with the legislative intent.

1. *In general: the statutory definition of "withholding of medically indicated treatment."*

Section 1340.15(b)(2) of the final rule defines the term "withholding of medically indicated treatment" with a definition identical to that which appears in section 3(3) of the Act (as amended by section 121(3) of the Child Abuse Amendments of 1984).

This definition has several main features. First, it establishes the basic principle that all disabled infants with life-threatening conditions must be given medically indicated treatment, defined in terms of action to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration or medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

Second, the statutory definition spells out three circumstances under which treatment is not considered "medically indicated." These are when, in the treating physician's (or physicians') reasonable medical judgment:

—The infant is chronically and irreversibly comatose;
—The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of survival of the infant; or
—The provision of such treatment would be virtually futile in terms of survival of the infant and the treatment itself under such circumstances would be inhumane.

The third key feature of the statutory definition is that even when one of these three circumstances is present, and thus the failure to provide treatment is not a "withholding of medically indicated treatment," the infant must nonetheless be provided with appropriate nutrition, hydration, and medication.

Fourth, the definition's focus on the potential effectiveness of treatment in ameliorating or correcting life-threatening conditions makes clear that it does not sanction decisions based on subjective opinions about the future "quality of life" of a retarded or disabled person.

The fifth main feature of the statutory definition is that its operation turns substantially on the "reasonable medical judgment" of the treating physician or physicians. The term "reasonable medical judgment" is defined in § 1340.15(b)(3)(ii) of the final rule, as it was in the Conference Committee Report on the Act, as a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

The Department's interpretations of key terms in the statutory definition are fully consistent with these basic principles reflected in the definition. The discussion that follows is organized under headings that generally correspond to the proposed clarifying definitions that appeared in the proposed rule but were not adopted in the final rule. The discussion also attempts to analyze and respond to significant comments received by the Department.

2. *The term "life-threatening condition".*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term "life-threatening condition." This term is used in the statutory definition in the following context:

[T]he term "withholding of medically indicated treatment" means the failure to respond to the infant's *life-threatening conditions* by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions [, except that] * * *. [Emphasis supplied].

It appears to the Department that the applicability of the statutory definition might be uncertain to some people in cases where a condition may not, strictly speaking, by itself be life-threatening, but where the condition significantly increases the risk of the onset of complications that may threaten the life of the infant. If medically indicated treatment is available for such a condition, the failure to provide it may result in the onset of complications that, by the time the condition becomes life-threatening in the strictest sense, will eliminate or reduce the potential effectiveness of any treatment. Such a result cannot, in the Department's view, be squared with the Congressional intent.

Thus, the Department interprets the term "life-threatening condition" to include a condition that, in the treating physician's or physicians' reasonable medical judgment, significantly increases the risk of the onset of complications that may threaten the life of the infant.

In response to comments that the proposed rule's definition was potentially overinclusive by covering any condition that one could argue "may" become life-threatening, the Department notes that the statutory standard of "the treating physician's or physicians' reasonable medical judgment" is incorporated in the Department's interpretation, and is fully applicable.

Other commenters suggested that this interpretation would bring under the scope of the definition many irreversible conditions for which no corrective treatment is available. This is certainly not the intent. The Department's interpretation implies nothing about whether, or what, treatment should be provided. It simply makes clear that the criteria set forth in the statutory definition for evaluating whether, or what, treatment should be provided are applicable. That is just the start, not the end, of the analysis. The analysis then takes fully into account the reasonable medical judgment regarding potential effectiveness of possible treatments, and the like.

Other comments were that it is unnecessary to state any interpretation because reasonable medical judgment commonly deems the conditions described as life-threatening and responds accordingly. HHS agrees that this is common practice followed under reasonable medical judgment, just as all the standards incorporated in the

statutory definition reflect common practice followed under reasonable medical judgment. For the reasons stated above, however, the Department believes it is useful to say so in these interpretative guidelines.

3. *The term "treatment" in the context of adequate evaluation.*

Clause (b)(3)(ii) of the proposed rule proposed a definition of the term "treatment." Two separate concepts were dealt with in clause (A) and (B), respectively, of the proposed rule. Both of these clauses were designed to ensure that the Congressional intent regarding the issues to be considered under the analysis set forth in the statutory definition is fully effectuated. Like the guidance regarding "life-threatening condition," discussed above, the Department's interpretations go to the applicability of the statutory analysis, not its result.

The Department believes that Congress intended that the standard of following reasonable medical judgment regarding the potential effectiveness of possible courses of action should apply to issues regarding adequate medical evaluation, just as it does to issues regarding adequate medical intervention. This is apparent Congressional intent because Congress adopted, in the Conference Report's definition of "reasonable medical judgment," the standard of adequate knowledge about the case and the treatment possibilities with respect to the medical condition involved.

Having adequate knowledge about the case and the treatment possibilities involved is, in effect, step one of the process, because that is the basis on which "reasonable medical judgment" will operate to make recommendations regarding medical intervention. Thus, part of the process to determine what treatment, if any, "will be most likely to be effective in ameliorating or correcting" all life-threatening conditions is for the treating physician or physicians to make sure they have adequate information about the condition and adequate knowledge about treatment possibilities with respect to the condition involved. The standard for determining the adequacy of the information and knowledge is the same as the basic standard of the statutory definition: reasonable medical judgment. A reasonably prudent physician faced with a particular condition about which he or she needs additional information and knowledge of treatment possibilities would take steps to gain more information and knowledge by, quite simply, seeking further evaluation by, or consultation with, a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the conditions(s) involved.

Thus, the Department interprets the term "treatment" to include (but not be limited to) any further evaluation by, or consultation with, a physician or physicians whose expertise is appropriate to the condition(s) involved or further evaluation at a facility with specialized capabilities regarding the condition(s) involved that, in the treating physician's or physicians' reasonable medical judgment, is needed to assure that decisions regarding medical intervention are based on adequate knowledge about the case and the treatment possibilities with respect to the medical conditions involved.

This reflects the Department's interpretation that failure to respond to an infant's life-threatening conditions by obtaining any further evaluations or consultations that, in the treating physician's reasonable medical judgment, are necessary to assure that decisions regarding medical intervention are based on adequate knowledge about the case and the treatment possibilities involved constitutes a "withholding of medically indicated treatment." Thus, if parents refuse to consent to such a recommendation that is based on the treating physician's reasonable medical judgment that, for example, further evaluation by a specialist is necessary to permit reasonable medical judgments to be made regarding medical intervention, this would be a matter for appropriate action by the child protective services system.

In response to comments regarding the related provision in the proposed rule, this interpretative guideline makes quite clear that this interpretation does not deviate from the basic principle of reliance on reasonable medical judgment to determine the extent of the evaluations necessary in the particular case. Commenters expressed concerns that the provision in the proposed rule would intimidate physicians to seek transfer of seriously ill infants to tertiary level facilities much more often than necessary, potentially resulting in diversion of the limited capacities of these facilities away from those with real needs for the specialized care, unnecessary separation of infants from their parents when equally beneficial treatment could have been provided at the community or regional hospital, inappropriate deferral of therapy while time-consuming arrangements can be affected, and other counterproductive ramifications. The Department intended no intimidation, prescription or similar influence on reasonable medical judgment, but rather, intended only to affirm that it is the Department's interpretation that the reasonable medical judgment standard applies to issues of medical evaluation, as well as issues of medical intervention.

4. *The term "treatment" in the context of multiple treatments.*

Clause (b)(3)(iii)(B) of the proposed rule was designed to clarify that, in evaluating the potential effectiveness of a particular medical treatment or surgical procedure that can only be reasonably evaluated in the context of a complete potential treatment plan, the "treatment" to be evaluated under the standards of the statutory definition includes the multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions. Some commenters stated that it could be construed to require the carrying out of a long process of medical treatments or surgical procedures regardless of the lack of success of those done first. No such meaning is intended.

The intent is simply to characterize that which must be evaluated under the standards of the statutory definition, not to imply anything about the results of the evaluation. If parents refuse consent for a particular medical treatment or surgical procedure that by itself may not correct or ameliorate all life-threatening conditions, but is recommended as part of a total plan that involves multiple medical treatments and/or surgical procedures over a period of time that, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, that would be a matter for appropriate action by the child protective services system.

On the other hand, if, in the treating physician's reasonable medical judgment, the total plan will, for example, be virtually futile and inhumane, within the meaning of the statutory term, then there is no "withholding of medically indicated treatment." Similarly, if a treatment plan is commenced on the basis of a reasonable medical judgment that there is a good chance that it will be effective, but due to a lack of success, unfavorable complications, or other factors, it becomes the treating physician's reasonable medical judgment that further treatment in accord with the prospective treatment plan, or alternative treatment, would be futile, then the failure to provide that treatment would not constitute a "withholding of medically indicated treatment." This analysis does not divert from the reasonable medical judgment standard of the statutory definition; it simply makes clear the Department's interpretation that the failure to evaluate the potential effectiveness of a treatment plan as a whole would be inconsistent with the legislative intent.

Thus, the Department interprets the term "treatment" to include (but not be limited to) multiple medical treatments and/or surgical procedures over a period of time that are designed to ameliorate or correct a life-threatening condition or conditions.

5. *The term "merely prolong dying."*

Clause (b)(3)(v) of the proposed rule proposed a definition of the term "merely prolong dying," which appears in the statutory definition. The proposed rule's provision stated that this term "refers to situations where death is imminent and treatment will do no more than postpone the act of dying."

Many commenters argued that the incorporation of the word "imminent," and its connotation of immediacy, appeared to deviate from the Congressional intent, as developed in the course of the lengthy legislative negotiations, that reasonable medical judgments can and do result in nontreatment decisions regarding some conditions for which treatment will do no more than temporarily postpone a death that will occur in the near future, but not necessarily within days. The six principal sponsors of the compromise amendment also strongly urged deletion of the word "imminent."

The Department's use of the term "imminent" in the proposed rule was not intended to convey a meaning not fully consonant with the statute. Rather, the Department intended that the word "imminent" would be applied in the context of the condition involved, and in such a context, it would not be understood to specify

a particular number of days. As noted in the preamble to the proposed rule, this clarification was proposed to make clear that the "merely prolong dying" clause of the statutory definition would not be applicable to situations where treatment will not totally correct a medical condition but will give a patient many years of life. The Department continues to hold to this view.

To eliminate the type of misunderstanding evidenced in the comments, and to assure consistency with the statutory definition, the word "imminent" is not being adopted for purposes of these interpretative guidelines.

The Department interprets the term "merely prolong dying" as referring to situations where the prognosis is for death and, in the treating physician's (or physicians') reasonable medical judgment, further or alternative treatment would not alter the prognosis in an extension of time that would not render the treatment futile.

Thus, the Department continues to interpret Congressional intent as not permitting the "merely prolong dying" provision to apply where many years of life will result from the provision of treatment, or where the prognosis is not for death in the near future, but rather the more distant future. The Department also wants to make clear it does not intend the connotations many commenters associated with the word "imminent." In addition, contrary to the impression some commenters appeared to have regarding the proposed rule, the Department's interpretation is that reasonable medical judgments will be formed on the basis of knowledge about the condition(s) involved, the degree of inevitability of death, the probable effect of any potential treatments, the projected time period within which death will probably occur, and other pertinent factors.

6. *The term "not be effective in ameliorating or correcting all of the infant's life threatening conditions" in the context of a future life-threatening condition.*

Clause (b)(3)(vi) of the proposed rule proposed a definition of the term "not be effective in ameliorating or correcting all the infant's life-threatening conditions" used in the statutory definition of "withholding of medically indicated treatment."

The basic point made by the use of this term in the statutory definition was explained in the Conference Committee Report:

> Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of those conditions, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hydration, and medication) concerning the withholding of medically indicated treatment.

H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1980).

This clause of the proposed rule dealt with the application of this concept in two contexts: first, when the nontreatable condition will not become life-threatening in the near future, and second, when humaneness makes palliative treatment medically indicated.

With respect to the context of a future life-threatening condition, it is the Department's interpretation that the term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" does not permit the withholding of treatment on the grounds that one or more of the infant's life-threatening conditions, although not life-threatening in the near future, will become life-threatening in the more distant future.

This clarification can be restated in the terms of the Conference Committee Report excerpt, quoted just above, with the italicized words indicating the clarification, as follows: Under the definition, if a disabled infant suffers from more than one life-threatening condition and, in the treating physician's or physicians' reasonable medical judgment, there is no effective treatment for one of these conditions *that threatens the life of the infant in the near future*, then the infant is not covered by the terms of the amendment (except with respect to appropriate nutrition, hyrdation, and medication) concerning the withholding of medically indicated treatment; *but if the nontreatable condition will not become life-threatening until the more distant future, the infant is covered by the terms of the amendment.*

Thus, this interpretative guideline is simply a corollary to the Department's interpretation of "merely prolong dying," stated above, and is based on the same understanding of Congressional intent, indicated above, that if a condition will not become life-threatening until the more distant future, it should not be the basis for withholding treatment.

Also for the same reasons explained above, the word "imminent" that appeared in the proposed definition is not adopted for purposes of this interpretative guideline. The Department makes no effort to draw an exact line to separate "near future" from "more distant future." As noted above in connection with the term "merely prolong dying," the statutory definition provides that it is for reasonable medical judgment, applied to the specific condition and circumstances involved, to determine whether the prognosis of death, because of its nearness in time, is such that treatment would not be medically indicated.

7. *The term "not be effective in ameliorating or correcting all life-threatening conditions" in the context of palliative treatment.*

Clause (b)(3)(iv)(B) of the proposed rule proposed to define the term "not be effective in ameliorating or correcting all life-threatening conditions" in the context where the issue is not life-saving treatment, but rather palliative treatment to make a condition more tolerable. An example of this situation is where an infant has more than one life-threatening condition, at least one of which is not treatable and will cause death in the near future. Palliative treatment is available, however, that will, in the treating physician's reasonable medical judgment, relieve severe pain associated with one of the conditions. If it is the treating physician's reasonable medical judgment that this palliative treatment will ameliorate the infant's *overall* condition, taking all individual conditions into account, even though it would not ameliorate or correct *each* condition, then this palliative treatment is medically indicated. Simply put, in the context of ameliorative treatment that will make a condition more tolerable, the term "not be effective in ameliorating or correcting *all* life-threatening conditions" should not be construed as meaning *each and every* condition, but rather as referring to the infant's *overall* condition.

HHS believes Congress did not intend to exclude humane treatment of this kind from the scope of "medically indicated treatment." The Conference Committee Report specifically recognized that "it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor [humaneness] in selecting among effective treatments." H. Conf. Rep. No. 1038, 98th Cong., 2d Sess. 41 (1984). In addition, the articulation in the statutory definition of circumstances in which treatment need not be provided specifically states that "appropriate nutrition, hydration, and medication" must nonetheless be provided. The inclusion in this proviso of medication, one (but not the only) potential palliative treatment to relieve severe pain, corroborates the Department's interpretation that such palliative treatment that will ameliorate the infant's overall condition, and that in the exercise of reasonable medical judgment is humane and medically indicated, was not intended by Congress to be outside the scope of the statutory definition.

Thus, it is the Department's interpretation that the term "not be effective in ameliorating or correcting all of the infant's life-threatening conditions" does not permit the withholding of ameliorative treatment that, in the treating physician's or physicians' reasonable medical judgment, will make a condition more tolerable, such as providing palliative treatment to relieve severe pain, even if the overall prognosis, taking all conditions into account, is that the infant will not survive.

A number of commenters expressed concerns about some of the examples contained in the preamble of the proposed rule that discussed the proposed definition relating to this point, and stated that, depending on medical complications, exact prognosis, relationships to other conditions, and other factors, the treatment suggested in the examples might not necessarily be the treatment that reasonable medical judgment would decide would be most likely to be effective. In response to these comments, specific diagnostic examples have not been included in this discussion, and this interpretative guideline makes clear that the "reasonable medical judgment" standard applies on this point as well.

Other commenters argued that an interpretative guideline on this point is unnecessary because reasonable medical judgment would commonly provide ameliorative or palliative treatment in the circumstances described. The Department agrees that such treatment is common in the exercise of resaonable medical judgment, but believes it useful, for the reasons stated, to provide this interpretative guidance.

8. *The term "virtually futile".*

Clause (b)(3)(vii) of the proposed rule proposed a definition of the term "virtually futile" contained in the statutory definition.

The context of this term in the statutory definition is:

[T]he term "withholding of medically indicated treatment" * * * does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment, * * * the provision of such treatment would be *virtually futile* in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane. Section 3(3)(C) of the Act [emphasis supplied].

The Department interprets the term "virtually futile" to mean that the treatment is highly unlikely to prevent death in the near future.

This interpretation is similar to those offered in connection with "merely prolong dying" and "not be effective in ameliorating or correcting all life-threatening conditions" in the context of a future life-threatening condition, with the addition of a characterization of likelihood that corresponds to the statutory word "virtually." For the reasons explained in the discussion of "merely prolong dying," the word "imminent" that was used in the proposed rule has not been adopted for purposes of this interpretative guideline.

Some commenters expressed concern regarding the words "highly unlikely," on the grounds that such certitude is often medically impossible. Other commenters urged that a distinction should be made between generally utilized treatments and experimental treatments. The Department does not believe any special clarifications are needed to respond to these comments. The basic standard of reasonable medical judgment applies to the term "virtually futile." The Department's interpretation does not suggest an impossible or unrealistic standard of certitude for any medical judgment. Rather, the standard adopted in the law is that there be a "reasonable medical judgment." Similarly, reasonable medical judgment is the standard for evaluating potential treatment possibilities on the basis of the actual circumstances of the case. HHS does not believe it would be helpful to try to establish distinctions based on characterizations of the degree of general usage, extent of validated efficacy data, or other similar factors. The factors considered in the exercise of reasonable medical judgment, including any factors relating to human subjects experimentation standards, are not disturbed.

9. *The term "the treatment itself under such circumstances would be inhumane."*

Clause (b)(3)(viii) of the proposed rule proposed a definition of the term "the treatment itself under such circumstances would be inhumane," that appears in the statutory definition. The context of this term in the statutory definition is that it is not a "withholding of medically indicated treatment" to withhold treatment (other than appropriate nutrition, hydration, or medication) when, in the treating physician's reasonable medical judgment, "the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane." § 3(3)(C) of the Act.

The Department interprets the term "the treatment itself under such circumstances would be inhumane" to mean the treatment itself involves significant medical contraindications and/or significant pain and suffering for the infant that clearly outweigh the very slight potential benefit of the treatment for an infant highly unlikely to survive. (The Department further notes that the use of the term "inhumane" in this context is not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context; rather, it is recognized that it is appropriate for a physician, in the exercise of reasonable medical judgment, to consider that factor in selecting among effective treatments.)

Other clauses of the statutory definition focus on the expected *result* of the possible treatment. This provision of the statutory definition adds a consideration relating to the *process* of possible treatment. It recognizes that in the exercise of reasonable medical judgment, there are situations where, although there is some slight chance that the treatment will be beneficial to the patient (the potential treatment is considered *virtually* futile, rather than futile), the potential benefit is so outweighed by negative factors relating to the process of the treatment itself that, under the circumstances, it would be inhumane to subject the patient to the treatment.

The Department's interpretation is designed to suggest the factors that should be taken into account in this difficult balance. A number of commenters argued that the interpretation should permit, as part of the evaluation of whether treatment would be inhumane, consideration of the infant's future "quality of life."

The Department strongly believes such an interpretation would be inconsistent with the statute. The statute specifies that the provision applies only where the treatment would be "virtually futile in terms of the survival of the infant," and the "treatment *itself* under such circumstances would be inhumane." (Emphasis supplied.) The balance is clearly to be between the very slight chance that treatment will allow the infant to survive and the negative factors relating to the process of the treatment. These are the circumstances under which reasonable medical judgment could decide that the treatment itself would be inhumane.

Some commenters expressed concern about the use of terms such as "clearly outweight" in the description of this balance on the grounds that such precision is impractical. Other commenters argued that this interpretation could be construed to mandate useless and painful treatment. The Department believes there is no basis for these worries because "reasonable medical judgment" is the governing standard. The interpretative guideline suggests nothing other than application of this standard. What the guideline does is set forth the Department's interpretation that the statute directs the reasonable medical judgment to considerations relating to the slight chance of survival and the negative factors regarding the process of treatment and to the balance between them that would support a conclusion that the treatment itself would be inhumane.

Other commenters suggested adoption of a statement contained in the Conference Committee Report that makes clear that the use of the term "inhumane" in the statute was not intended to suggest that consideration of the humaneness of a particular treatment is not legitimate in any other context. The Department has adopted this statement as part of its interpretative guideline.

10. *Other terms.*

Some comments suggested that the Department clarify other terms used in the statutory definition of "withholding of medically- indicated treatment," such as the term "appropriate nutrition, hydration or medication" in the context of treatment that may not be withheld, notwithstanding the existence of one of the circumstances under which the failure to provide treatment is not a "withholding of medically indicated treatment." Some commenters stated, for example, that very potent pharmacologic agents, like other methods of medical intervention, can produce results accurately described as accomplishing no more than to merely prolong dying, or be futile in terms of the survival of the infant, or the like, and that, therefore, the Department should clarify that the proviso regarding "appropriate nutrition, hydration or medication" should not be construed entirely independently of the circumstances under which other treatment need not be provided.

The Department has not adopted an interpretative guideline on this point because it appears none is necessary. As noted above in the discussion of palliative treatment, the Department recognizes that there is no absolutely clear line between medication and treatment other than medication that would justify excluding the latter from the scope of palliative treatment that reasonable medical judgment would find medically indicated, notwithstanding a very poor prognosis.

Similarly, the Department recognizes that in some circumstances, certain pharmacologic agents, not medically indicated for palliative purposes, might, in the exercise of reasonable medical judgment, also not be indicated for the purpose of correcting or ameliorating any particular condition because they will, for example, merely prolong dying. However, the Department believes the word "appropriate" in this proviso of the statutory definition is adequate to permit the exercise of reasonable medical judgment in the scenario referred to by these commenters.

At the same time, it should be clearly recognized that the statute is completely unequivocal in requiring that all infants receive "appropriate nutrition, hydration, and medication," regardless of their condition or prognosis.

Dated: March 29, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: April 5, 1985.

Margaret M. Heckler,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

Services and Treatment for Disabled Infants; Model Guidelines for Health Care Providers To Establish Infant Care Review Committees

AGENCY: Office of Human Development Services, HHS.

ACTION: Model Guidelines for Health Care Providers to Establish Infant Care Review Committees.

SUMMARY: These are model guidelines to encourage the establishment within health care facilities, especially facilities with tertiary level neonatal care units, of committees for the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment (including appropriate nutrition, hydration, and medication) from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions. The publication of these model guidelines is required by section 124(b) of the Child Abuse Amendments of 1984, Pub. L. 98–457.

FOR FURTHER INFORMATION CONTACT: Jay Olson at (202) 245–2859.

SUPPLEMENTARY INFORMATION: These model guidelines are being issued in accordance with section 124(b) of the Child Abuse Amendments of 1984, Pub. L. 98–457. Pursuant to this section, these guidelines encourage hospitals that provide health care to infants to establish Infant Care Review Committees (ICRCs).

As required by the Act, interim model guidelines were published for public comment December 10, 1984, 45 FR 48170, and a 60–day comment period was provided. The Department received many comments regarding the interim model guidelines. These comments have been carefully considered. The appendix to the model guidelines is an analysis of significant comments received during the comment period.

The principles, policies and procedures set forth in this model represent the Department's best judgments, informed by a careful review of the comments submitted, regarding the most effective formulation for review committees. The Department encourages hospitals that provide care to infants, especially facilities with tertiary level neonatal care units, to establish ICRC's, and to consider fully the provisions set forth in the Department's suggested model.

Infant Care Review Committees—Model Guidelines

I. Introduction

In the past several years there has been substantially heightened public attention to issues relating to treatment and services for disabled infants. This increased attention has fueled, and has been fueled by, controversy regarding existing patterns of medical care decision-making and various proposals and initiatives to affect those patterns.

Amidst this controversy, one proposal that has gained widespread support is the establishment of hospital-based committees as the forum and focal point for efforts to assure that medical treatment decisions are informed, thoughtful and consistent with proper medical standards. The thrust of this proposal was well articulated in the March 1983 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research:

> The Commission concludes that hospitals that care for seriously ill newborns should have explicit policies on decisionmaking procedures in cases involving life-sustaining treatment for these infants. . . . Such policies should provide for internal review whenever parents and the attending physician decide that life-sustaining therapy should be foregone. . . .
>
> Such a review could serve several functions and the review mechanism may vary accordingly. First, it can verify that the best information available is being used. Second, it can confirm the propriety of a decision that providers and parents have reached or confirm that the range of discretion accorded to the parents is appropriate. Third, it can resolve disputes among those involved in a decision, if necessary, by siding with one party or another in a dispute. Finally, it can refer cases to public agencies (child protection services, probate courts, or prosecuting attorneys) when appropriate.

Subsequent to this report, a broad range of medical and health associations endorsed the concept of hospital review committees to deal with issues relating to medical care for disabled infants. These associations include the American Academy of Pediatrics, the National Association of Children's Hospitals and Related Institutions, the American Hospital Association, the American Medical Association, the Catholic Health Association, the Federation of American Hospitals, the American College of Hospital Administrators, the American College of Physicians, the American Nurses Association, and others. Some of these associations, as well as other organizations, have developed model guidelines for committees.

Most recently, this proposal was strongly endorsed by the United States Congress in Pub. L. 98–457, the "Child Abuse Amendments of 1984." In addition to provisions in that legislation requiring State child protective services agencies to establish procedures to prevent the "withholding of medically indicated treatment from disabled infants with life-threatening conditions," the law made it a matter of national policy to encourage the establishment of hospital committees. More specifically, this law, which was supported by an extraordinary coalition of medical associations and disability and other advocacy organizations, requires that:

> [T]he Secretary [of Health and Human Services] shall publish . . . model guidelines to encourage the establishment within health care facilities of committees which would serve the purposes of educating hospital personnel and families of disabled infants with life-threatening conditions, recommending institutional policies and guidelines concerning the withholding of medically indicated treatment . . . from such infants, and offering counsel and review in cases involving disabled infants with life-threatening conditions.
>
> Pub. L. No. 98–457, section 124.

The Department of Health and Human Services fully endorses the recommendation of the President's Commission and the adoption by Congress of the policy of encouraging the formation of these committees. What follows are the HHS model guidelines for the establishment and operation of Infant Care Review Committees.

The guidelines are purely advisory. They are not mandatory in any way. The establishment of an ICRC is not required by any Federal law, regulation, administrative policy, or condition of participation in any Federal program. Similarly, if a hospital chooses to establish an Infant Care Review Committee, there is no requirement of any kind that follows this model. In addition, the Department offers no legal, regulatory or administrative inducements or rewards for establishing an ICRC and/or following this model. Moreover, no legal responsibilities of the hospital, including those related to child protective services activities of the State, are removed or reduced by the establishment of an ICRC and/or adoption of this model.

Rather, the Department's recommendation that hospitals establish Infant Care Review Committees and consider the elements of this model is based solely on the Department's firm agreement with the various

endorsements, listed above, of the hospital review committee concept and the Department's judgment that the elements of this model are important to make the committee effective. The Department thus strongly encourages hospitals that provide care to infants, especially those with tertiary level neonatal care units, to establish Infant Care Review Committees, and to consider the provisions of these model guidelines.

II. Establishment and Purpose

HHS recommends that the hospital establish an Infant Care Review Committee (ICRC) or join with one or more other hospitals to create a joint ICRC. The purposes and functions of the Infant Care Review Committee are:

1. To educate hospital personnel and families of disabled infants with life-threatening conditions;

2. To recommend institutional policies and guidelines concerning the withholding of medically indicated treatment from disabled infants with life-threatening conditions; and

3. To offer counsel and review in cases involving disabled infants with life-threatening conditions.

III. Membership and Administration

A. *Membership of ICRC.*—The Department strongly recommends that the ICRC membership consist of individuals from varied disciplines and perspectives. A multi-disciplinary approach is important for the ICRC to have sufficient expertise to supply and evaluate all pertinent information to assist the committee in effectively carrying out its functions. The committee size should be large enough to represent diverse perspectives, but not so large as to hinder effectiveness. The Department recommends that the ICRC consists of at least the following core members:

1. A practicing physician (e.g., a pediatrician, a neonatologist, or a pediatric surgeon),

2. A practicing nurse,

3. A hospital administrator,

4. A social worker,

5. A representative of a disability group,

6. A lay community member, and

7. A member of the facility's organized medical staff, who shall serve as chairperson.

Consistent with the multi-disciplinary approach, the ICRC should consider supplementing the core membership with other permanent members, or through other formal methods, such as designating certain individuals as "advisors" to the ICRC, or through informal or ad hoc involvement. Among those that could be considered for such supplementation are: a representative of the clergy, a representative of the legal community (i.e., an attorney or judge), physicians with particular specialities pertinent to a policy or particular case under consideration, individuals with knowledge of issues affecting children and the families of children with certain disabilities, and other individuals with knowledge and perspectives valuable to effective action on particular functions and activities of the ICRC.

B. *Administration of the ICRC.*—The Department makes the following recommendations regarding administration of the ICRC:

1. The hospital should provide staff support for the ICRC, including legal counsel. The ICRC should meet on a regular basis or as recomended below in connection with review of specific cases. It should adopt or recommend to the appropriate hospital official or body such administrative policies as terms of office and quorum requirements.

2. The ICRC should recommend procedures to ensure that both hospital personnel and patient families are fully informed of the existence and functions of the ICRC and its availability to meet on a 24-hour basis.

3. The ICRC should carefully inform itself of all pertinent legal requirements and procedures, including pertinent provisions of State law requiring a report or notification to the appropriate State child protective services agency of known or suspected instances of medical neglect, including the withholding of medically indicated treatment (including appropriate nutrition, hydration, and medication) from disabled infants with life-threatening conditions and related procedures of the State agency.

4. The ICRC should maintain records of all of its deliberations and summary descriptions of specific cases considered and the disposition of those cases. Such records should be kept in accordance with institutional policies on confidentiality of medical information. They should be made available to appropriate government agencies, or upon court order, or as otherwise required by law.

IV. Educational Activities

A. *Basic Functions.*—The ICRC should act as a resource to hospital personnel and families of disabled infants with life-threatening conditions to provide current and complete information concerning medical treatment procedures and resources in the hospital and in other hospitals with which the hospital has referral agreements or to which patients may otherwise be referred. The ICRC should also act as a resource concerning available community services which may be needed for the provision of services and treatment for disabled infants with life-threatening conditions.

B. *Specific Activities.*—In order to carry out these functions, the ICRC should determine and make available to hospital personnel and families of disabled infants information regarding:

1. Available national and regional information and resource clearinghouses that provide pertinent information, such as the Computerized Handicapped Assistance Information Network ("CHAIN");

2. Facilities and agencies in the community and area that provide treatment and services, such as rehabilitative services and ongoing support, to disabled infants and children and their families;

3. Public and private programs and activities in the community and area, including organizations and associations that provide counselling and support for disabled children and their families and, when appropriate, adoption placement counselling and services; and

4. Other informational materials regarding medical treatment and rehabilitation procedures and resources and support activities.

V. Policy Development

A. *Basic Policy.* In recommending institutional policies and guidelines, the basic policy should be to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions. The definitions set forth below offer guidance regarding the substance of this basic policy. The definition of the term "withholding of medically indicated treatment" is that set forth in the Child Abuse Amendments of 1984 and specifically referenced by Congress in the provision of that law that encourages establishment of hospital committees.

1. The term "withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating

physician's or physicians' reasonable medical judgment—

(a) The infant is chronically and irreversibly comatose:

(b) The provision of such treatment would—

(1) Merely prolong dying,

(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or

(3) Otherwise be futile in terms of the survival of the infant; or

(c) The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

2. The following are definitions of terms used in the definition of "medically indicated treatment."

(a) The term "infant" means an infant less than one year of age. The reference to one year of age does not imply that treatment should be changed or discontinued when an infant reaches one year of age or to affect or limit proper standards of medical care for children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth in the definition of "withholding of medically indicated treatment" in paragraph (1) should be consulted thoroughly in the evaluation of any issue of medical treatment involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

(b) The term "reasonable medical judgment" means medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

3. HHS recommends that ICRC's also carefully review the Department's interpretative guidelines regarding terms used in the definition of "withholding of medically indicated treatment" (set forth in paragraph (1)) that appear in the appendix to the final rule implementing the provisions of the Child Abuse Amendments of 1984. The final rule will be codified at 45 CFR 1340.15, and the appendix will appear as an appendix to 45 CFR Part 1340.

B. *Development of Specific Policies and Guidelines.* 1. The Department recommends that the ICRC develop prospectively and recommend for adoption by the hospital institutional policies concerning the withholding or withdrawal of medical treatment for infants with life-threatening conditions. These could include guidelines for management of specific types of cases or diagnoses that are likely to be seen in that facility and might present dilemmas in medical management, and procedures to be followed in such recurring circumstances. The hospital, upon recommendation of the ICRC, may wish to require attending physicians to notify the ICRC of the presence of the facility of an infant with a diagnosis specified by the ICRC.

2. In recommending these policies and guidelines, the ICRC should consult with medical and other authorities on issues involving treatment and services for disabled individuals, e.g., neonatologists, pediatric surgeons, and county and city agencies and disability advocacy organizations which provide services for the disabled. It should also consult with appropriate committees of the medical staff, to ensure that the ICRC policies and guidelines build on existing staff by-laws, rules and regulations concerning consultations and staff membership requirements. The ICRC should also make itself available to assist the hospital in its activities to inform and educate hospital staff on the policies and guidelines adopted by the hospital.

3. The Department recommends that the ICRC review existing procedures used by the hospital and/or recommend the adoption of new procedures to facilitate effective coordination and cooperation between the hospital and the State child protective services system with respect to that system's activities relating to preventing the withholding of medically indicated treatment from disabled infants with life-threatening conditions. These procedures should include: (a) Provisions regarding the responsibilities under State law for the hospital, physicians and other medical professionals to report to the child protective services agency suspected instances of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions); (b) provisions regarding the designation of individuals (hereafter referred to as "designated individuals") within the hospital (who may, but need not be, members of the ICRC) to serve the liaison function with the child protective services agency in connection with the agency's programs and procedures for responding to the reporting of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening conditions); (c) procedures for coordination between the designated individuals and the ICRC in response to consultations initiated by the agency; (d) procedures for prompt notification by the designated individuals to the agency of suspected medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions); (e) procedures to facilitate compliance by the hospital and medical personnel of any and all other requirements of State law relating to activities of the child protective services system in connection with the system's programs and/or procedures concerning the withholding of medically indicated treatment from disabled infants with life-threatening conditions; and (f) such other procedures as may be appropriate to facilitate effective coordination and consultation between the hospital and medical personnel and the child protective services agency.

VI. Council and Review in Specific Cases

A major function of the Infant Care Review Committee is to review and offer counsel in specific cases involving disabled infants with life-threatening conditions. Set forth below are the procedures HHS recommends for carrying out this function in two contexts. The first context is prospective review of cases regarding infant patients concerning whom treatment decisions are being made or about whom there are otherwise issues of present or future treatment. The second context is retrospective review of cases concerning which there is then no issue of present or future treatment.

A. *Prospective Review and Counsel.* In addition to regularly scheduled meetings, emergency ICRC meetings should take place under specified circumstances to permit review of individual cases. The hospital should, to the extent possible, require in each case that life-sustaining treatment be continued, until the ICRC can review the case and provide advice.

1. Because of the need for prompt review and counsel, emergency ICRC meetings may have to be convened within 24 hours (or less if indicated). Such meetings should be convened when there is disagreement between the family of an infant and the infant's physician as to the withholding or withdrawal of treatment, when a preliminary decision to withhold or withdraw life-sustaining treatment has been made in certain categories of cases identified by the ICRC in its specific policies, when there is disagreement between members of the hospital's medical and/or nursing staffs, or when otherwise appropriate.

2. Such emergency ICRC meetings should take place upon the request of

any member of the ICRC or hospital staff or parent or guardian of the infant. The ICRC should have procedures to preserve the confidentiality of the identity of persons making such requests, and such persons should be protected from reprisal. When appropriate, the ICRC or a designated member should inform the requesting individual of the ICRC's recommendation.

3. The ICRC may provide for telephone and other forms of review when the timing and nature of the case, as identified in policies developed by the ICRC, make the convening of an emergency meeting impracticable.

4. Emergency meetings should be open to the affected parties. When appropriate to ensure informed discussion, a physician(s) experienced in the evaluation and treatment of the relevant disability(ies) or life-threatening condition(s) should be invited to attend. The ICRC should ensure that the interests of the parents, the physician, and the child are fully considered; that family members have been fully informed of the patient's condition and prognosis and that appropriate counselling services have been made available to them; and that they have been provided with a listing which describes, and any further information they need to facilitate their access to, the services furnished by parent support groups and public and private agencies in the geographic vicinity to infants with conditions such as that before the ICRC.

5. HHS recommends that to ensure a comprehensive evaluation of all options and factors pertinent to the committee's deliberations, the chairperson designate one member of the ICRC to act, in connection with that specific case, as "special advocate" for the infant. The special advocate should seek to ensure that all considerations in favor of the provision of additional treatment are fully evaluated and considered by the ICRC. The chairperson should make clear to all participants and observers that the designation of a "special advocate" is a standard procedural practice to ensure thorough deliberation, and that it does not imply that any other participant is less concerned about the welfare of the infant.

6. In cases in which there is disagreement on treatment between a physician and an infant's family, and the family wishes to continue life-sustaining treatment, the ICRC should counsel that the family's wishes be carried out, for as long as the family wishes, unless such treatment is medically contraindicated. When there is physician/family disagreement and the family refuses consent to life-sustaining treatment, and the ICRC, after due deliberation, in accordance with the policies, principles and procedures set forth above, agrees with the family, the ICRC should counsel that the treatment (other than appropriate nutrition, hydration, and medication) be withheld. When there is physician/family disagreement and the family refuses consent, but the ICRC disagrees with the family, the ICRC should counsel that the hospital board or appropriate official immediately refer the matter to an appropriate court or child protective services agency in accordance with applicable reporting requirements and related procedures, and that every effort be made to continue treatment, preserve the status quo, and prevent worsening of the infant's condition until such time as the court or agency renders a decision or takes other appropriate action. The ICRC should also follow this procedure in cases in which the family and physician agree that life-sustaining treatment should be withheld or withdrawn, but the ICRC disagrees.

B. *Retrospective Record Review.* For the purpose of monitoring the effectiveness of policies and procedures of the hospital and ICRC, the Department recommends that the ICRC, at its regularly-scheduled meeting, review all records involving withholding or termination of medical or surgical treatment to infants consistent with hospital policies developed by the ICRC, unless the case was previously before the ICRC for emergency review. If the ICRC finds that a deviation was made from the institutional policies in a given case, it should conduct a review and report the findings to appropriate hospital personnel for appropriate action. If the ICRC finds that revisions to institutional policies are necessary or appropriate, it should develop appropriate recommendations.

Approved:

Dated: April 1, 1985.

C. Everett Koop,

Surgeon General, U.S. Public Health Service.

Dated: March 29, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Dated: April 5, 1985.

Margaret M. Heckler,

Secretary.

Appendix

Analysis of Model Guidelines for Health Care Providers to Establish Infant Care Review Committees and Comments Submitted Regarding Interim Model Guidelines.

1. Introduction

Section I of the model guidelines includes introductory information to lay the foundation for the Department's recommendation that hospitals establish ICRC's. The Department believes the factors identified are particularly pertinent with respect to hospitals with tertiary level neonatal care units, and thus especially recommends ICRC's for such hospitals.

A number of comments submitted in connection with the interim model guidelines expressed concern that although the interim guidelines were identified as advisory, the format, structure and wording could give the impression that they were mandatory or that there were some legal, regulatory or administrative enducements associated with them. Some commenters expressed the view that the interim guidelines were too inflexible to accommodate diversity among hospitals, and suggested that a different type of model, such as one that identified significant concepts and suggested alternative approaches, would be better. Some commenters who indicated misgivings about the potential effectiveness of ICRC's suggested the Department soften the degree to which it recommends ICRC's.

In response to these concerns, the Department has revised some of the introductory material to clarify that the guidelines are *purely* advisory, that establishment of an ICRC and/or adoption of this model does not relieve any legal responsibilities of the hospital (including responsibilities relating to State child protective services activities), and that every hospital is completely free to adopt, adapt, or ignore the model. In short, these model guidelines are accompanied by neither carrots nor sticks.

The comments, however, have not shaken the Department's belief that ICRC's can be very valuable in advancing the objective of assuring the provision of appropriate medical care to disabled infants with life-threatening conditions, and that the Department's legislative charge is to develop a model that includes those principles and procedures the Department believes are important for ICRC's to realize their potential efficacy. The Department recognizes that realization of this potential will require not only dedication to the concept of ICRC's, but also persistence in evaluating and sharing information about experience with ICRC's, including those that are based on different models, to facilitate

informed judgments about possible refinements and improvements.

With all of these considerations in mind, the introductory information continues to recommend strongly ICRC's, especially for hospitals with tertiary level neonatal care units, and to urge careful consideration of all elements of this model.

2. Establishment and Purpose

This section of the model guidelines lists the purposes and functions of the ICRC in the terms set forth in the Act. It is not materially changed from the provision included in the interim guidelines. Some commenters suggested a different name for the committee, such as "Infant Bioethics Committee" or some other term that emphasized the committee's function of considering questions of medical ethics. The Department has not changed the title of the committee because nothing in the authorizing statute corroborates the notion that the focus of the committee should be "medical ethics," at least to the extent that term connotes considerations different than those involved in evaluating medical treatment possibilities that "will be most likely to be effective in ameliorating or correcting" all life-threatening conditions. Thus, the Department continues to believe the title "Infant Care Review Committee" best characterizes the purposes and functions of the committee.

3. Memberships of the ICRC

Section III–A of the model guidelines recommends the membership of the ICRC. The Department received numerous comments regarding this section of the interim guidelines. Some commenters suggested that no particular membership should be specified to permit more flexibility, such as an option to limit membership to the hospital's medical staff. Some commenters suggested that more specific qualifications and credentials should be required for membership, such as requiring that the nurse be a registered professional nurse, that the physician be a neonatologist, that the social worker have certain credentials, that the representative of a disability group have certain training or professional standing, and the like. Some commenters urged that members from other disciplines should be represented, such as a special education teacher, an ethicist, a family physician, and the like. Some commenters proposed that the ICRC should have a more formal mechanism for advocacy for disabled infants, such as the inclusion of a trained child advocate appointed by an independent entity, the inclusion of a permanent "special advocate," or the like. Some commenters recommended that the ICRC should have a higher number or percentage of physicians and other medical professionals.

In response to these comments, the Department has made several changes to the model from what appeared in the interim guidelines. First, the model now identifies the key concept that should be the basis for decisions on membership: That the ICRC should consist of individuals from varied disciplines and perspectives. Second, the model now identifies a recommended core membership that is designed to implement this multi-disciplinary approach, and provides further suggestions for supplementing the core membership on a permanent or other formal or informal basis. Third, a representative of the legal profession has been dropped from the recommended core membership and included in the list of individuals to be considered for supplementation of the core membership because legal counsel for the ICRC is elsewhere (in section III–B–1) provided.

The Department believes these revisions strike an appropriate and workable balance between the need for a multi-disciplinary approach and the unworkability of forming a committee with a representative of every discipline, perspective or group that might have a more refined or more general or more expert or different point of view. The use of one or more of the suggested mechanisms for supplementing the disciplines and perspectives represented by the core membership reinforces the prime concept of a multi-disciplinary approach without making the ICRC unworkable.

The Department rejects the argument that no committee membership should be recommended because the Department believes adoption of the multi-disciplinary approach is vital to the effectiveness of the ICRC. However, although the Department recommends the selection of highly qualified individuals, the Department believes it unnecessary to specify certain educational or other credentials for members.

In addition, the Department has not adopted the various suggestions for formal advocacy for disabled infants. In judicial proceedings involving a neglected child, it is vital that the child have a skilled, independent advocate. For this reason, section 4(b)(2)(G) of the Federal Child Abuse Prevention and Treatment Act requires that a guardian ad litem be appointed to represent the child in all such proceedings. But the Department believes the functions of the ICRC are much different from those of a court. A court makes a binding decision on the rights and responsibilities of the parties before it. In contrast, the function of the ICRC is, as set forth in the statutory directive for HHS to issue these guidelines, to educate hospital personnel and families, to recommend institutional policies, and to "offer counsel and review" in specific cases. Therefore, the Department believes it is neither necessary nor appropriate to replicate a guardian ad litem function on the ICRC.

4. Administration of the ICRC

Section III–B of the guidelines addresses several matters regarding the administration of the ICRC. Paragraph two calls for procedures to ensure that both hospital personnel and patient families are fully informed of the existence and functions of the ICRC and its availability on a 24-hour basis. Some commenters suggested this information also be widely publicized to the public to facilitate requests from persons other than hospital personnel and patient families for review of specific cases. The Department has not adopted this suggestion. Although child protective services agencies permit any person to make reports of suspected child abuse and neglect, including suspected medical neglect involving the withholding of medically indicated treatment from disabled infants with life-threatening conditions, HHS does not view the functions of the ICRC in the same light. The ICRC is not designed to be an arm of the State child protective services system, and thus procedures appropriate for that system are not necessarily appropriate for the ICRC. The purpose of the ICRC is to assist the hospital in assuring the provision of medical care and related service that are consistent with good medical standards and the obligations of the hospital and medical personnel under applicable law. Rather than replicate procedures of the child protective services system, the guidelines, in section V–B, call for the ICRC to develop recommended policies to facilitate effective coordination and cooperation between the hospital and the child protective services system.

Paragraph three calls for the ICRC to inform itself of pertinent legal requirements and procedures, including those relating to child protective services agency activities. In response to comments, a sentence in the interim guidelines that called for the ICRC to

consult with the child protective services agency has been deleted from this model. A new provision has been added to section V–B to deal with the issue of the relationship between the ICRC and the State child protective services agency.

Paragraph four relates to maintenance and confidentiality of records. Some commenters suggested a more limited provision concerning the confidentiality of records than the provision in the interim model guideline that records be made available to appropriate government agencies, or upon court order, or as otherwise required by law. Other commenters proposed more detailed record-keeping requirements, such as maintaining taped or detailed written minutes of all meetings, and a provision for regular transmittal of these materials to the State child protective services agency. HHS has made no material change in this provision. Matters regarding the confidentiality of medical records and the availability of those records to courts, administrative agencies, and the like, are already specifically dealt with under the law. The Department does not believe it appropriate to try to establish a new or different set of standards for this purpose. The Department has also not adopted more detailed recordkeeping standards of the ICRC. HHS does not believe the standard procedures applicable to judicial proceedings or certain administrative activities, which may require transcripts or other detailed records, are necessary or appropriate in relation to the purposes and functions of ICRC's.

Some commenters suggested a provision be added to the guidelines to provide immunity or idemnification for the ICRC and its members against any potential civil liability for actions taken by the ICRC. The Department has no power to grant immunity, nor does HHS have sufficient familiarity with the pertinent provisions of State law that might have a bearing on the issue to recommend that hospitals and ICRC's take any particular action on this question. Hospitals and ICRC's that believe it appropriate to explore this question further should consult with their counsel.

5. Educational Activities

Section IV of the guidelines outlines recommended ICRC activities relating to its function of educating hospital personnel and families of disabled infants with life-threatening conditions. In response to public comments, one change has been made from the interim guidelines, adding that, when appropriate, the ICRC make available to hospital personnel and families information concerning adoption placement counselling and services in the community.

No changes have been made in response to some comments that the educational activities listed exceed the capabilities of ICRC's or would require a full-time staff member, or to other comments that the activities listed are duplicative or other activities already being performed by hospital staff. The Department believes the activities listed are not excessive, and nothing in the model suggests that an ICRC is supposed to isolate itself from the ongoing activities of various units of the hospital that normally engage in social services counselling and assistance, in-house educational activities, the provision of information to patients and their families, and the like.

6. Policy Development

Section V of the model guidelines outlines activities relating to the function of the ICRC to recommend institutional policies and guidelines concerning the withholding of medically indicated treatment from disabled infants with life-threatening conditions. Section V–A sets forth the basic policy that should guide the ICRC.

Some commenters sought clarification of what they viewed as an inconsistency between the reference at some places in the interim guidelines to "developing" policies and guidelines and the reference at other places in the model to "recommending" policies and guidelines. The statutory provision that directed the Secretary to issue these model guidelines refers to this purpose of the ICRC as "recommending institutional policies and guidelines." Nothing in the interim guidelines was intended to deviate from this standard, and several changes have been made in section V to avoid any lack of clarity on this point.

Some comments suggested that the statement of the ICRC's "basic policy," stated in the model as "to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions," was too narrow in that it dealt with only one function of the ICRC, and that it should be made more general. The Department, in making no material change to this statement, is guided by the statutory language, which decribes the "policy" purpose of the committee as "recommending institutional policies and guidelines concerning the withholding of medically indicated treatment (as that term is defined in clause (3) of section 3 of the Act . . .)" from disabled infants with life-threatening conditions. The incorporation of the definition of the term "withholding of medically indicate treatment" contained in section 3 of the Child Abuse Prevention and Treatment Act, as amended by the Child Abuse Amendments of 1984, and the context of the 1984 amendments make clear that policies "regarding" the withholding of medically indicated treatment should be guided by the principle that policies and guidelines should be designed "to prevent" such withholding. Thus, the Department believes that in developing recommended institutional policies and guidelines, the guiding principle should be to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions.

Paragraph one of section V–A sets forth the statutory definition of "withholding of medically indicated treatment," which, as noted above, is incorporated into the statutory directive that the Secretary issue these model guidelines. Paragraph two sets forth two definitions of terms contained in the basic statutory definition. These two definitions are taken from the Conference Committee Report on the Child Abuse Amendments of 1984.

The interim model guidelines also included provisions relating to definitions of other terms used in the definition of "withholding of medically indicated treatment," provisions that were identical to definitions included in the proposed regulation to implement the Child Abuse Amendments of 1984. In response to comments regarding these provisions in the proposed rule and interim model guidelines, they were not adopted in the final rule, and have similarly not been adopted in these final model guidelines.

The appendix to the final rule, however, includes the Department's interpretative guidelines regarding terms used in the statutory definition. It also includes a detailed discussion of these interpretations, as well as the comments received by the Department. The information contained in the appendix to the final rule may assist the ICRC in understanding dimensions of the definition of "withholding of medically indicated treatment." The Department recommends in paragraph (3) that the ICRC carefully review the appendix to the final rule.

7. Development of Specific Policies and Guidelines

Section V–B of the model guidelines recommends specific activities of the ICRC relating to its function of recommending institutional policies and guidelines. A new paragraph (three) has been added to the material that appeared in the interim model guidelines. Paragraph three is included in response to many comments that urged revisions or clarifications to the model in connection with the issue of the interaction among: (a) The ICRC; (b) the child protective services system; and (c) other individuals within the hospital with responsibilities relating to the child protective services system's activities.

This issue involves several factors. First, under the Child Abuse Amendments of 1984, State child protective services agencies must, as a condition of eligibility for Federal assistance, have in place certain programs and/or procedures "for the purpose of responding to the reporting of medical neglect (including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions)." Second, these programs and/or procedures must provide for "coordination and consultation with individuals designated by and within" hospitals. Third, they must also provide for "prompt notification" by such individuals of suspected medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions. And fourth, other provisions of State law relating to child protective services activities, including reporting obligations of medical personnel and hospitals, investigative authorities, responsibilities and procedures, and the like, are applicable to reports of suspected medical neglect, including instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions.

The issue, thus, is how the ICRC should relate to these various responsibilities and activities. The model does not provide a specific answer because the procedures implemented in particular hospitals should take into account the pertinent provisions of State law and local agency procedure, which are not necessarily uniform throughout the United States. The model, therefore, calls on the ICRC to look into these matters and to develop, in connection with its other policy development activities, recommended procedures for the hospital to implement in order to facilitate effective coordination with the child protective services system, as well as coordination between the ICRC and other hospital officials in relation to matters of interest to the child protective services agency in connection with the withholding of medically indicated treatment for disabled infants with life-threatening conditions.

It should be noted that the model does not specifically call for the ICRC chairperson or members to be the "designated individuals" for the liaison function with the child protective services agency. Such a designation, however, might best facilitate effective coordination and cooperation with the child protective services agency. On the other hand, some hospitals might prefer to incorporate this into existing coordination mechanisms applicable to the full range of potential child abuse and neglect issues. Therefore, although there are strong reasons for assigning the ICRC chairperson or other member the liaison function, the model does not specifically call for this, but rather recommends that the ICRC itself address this and the related issues.

A number of other comments were received concerning this section of the interim model dealing with development of specific policies and guidelines. Some commenters argued that the activities called for in the interim model guidelines were excessively prescriptive and would lead to unreasonable interference in medical management. The Department intended nothing unusual or overly prescriptive in suggesting that ICRC's develop recommended guidelines for management of particular types of cases and procedures to be followed in recurring circumstances. Some revisions to the language have been adopted to clarify this intent.

Other commenters suggested that the model provide that all specific policies developed by the ICRC for recommended adoption by the hospital be submitted to and approved by the State child protective services agency prior to adoption by the hospital. This suggestion has not been adopted because the Department does not believe the legislative directive to the Secretary to issue these model guidelines can be construed to support a concept that ICRC's are to be directly regulated by child protective services agencies or that they are to be functionaries of the agencies.

8. Prospective Review and Counsel

Section VI–A sets forth recommended procedures for the ICRC to carry out its function of offering prospective review and counsel in cases involving disabled infants with life-threatening conditions. Paragraphs 1 and 2 outline circumstances under which emergency ICRC meetings should be convened. Because of the need for prompt review and counsel, HHS recommends that the ICRC have the capability to convene an emergency meeting within 24 hours (or less if indicated) to consider such cases.

The Department received many comments regarding these paragraphs. Some commenters suggested that in order to avoid unnecessary or excessive meetings, the model not call for emergency meetings when requested by any member of the ICRC or hospital staff or parent or guardian of the infant, and that instead the model should recommend a screening process, such as for the chairperson to decide whether a meeting is appropriate. Other commenters suggested that the model also call for emergency meetings when requested by any interested person on the grounds that some cases that should be reviewed may not come to the attention of the ICRC under the criteria included in the model. HHS has not adopted either suggestion. The Department believes that until each ICRC has gained some experience, it may not adequately be able to judge whether review of certain cases covered by the criteria would actually be unnecessary. Similarly, HHS is unaware at this stage of ICRC experience of the likelihood that cases which should be reviewed would not involve at least one of the seven criteria listed in paragraphs one and two (including when it is "otherwise appropriate"). In the absence of some basis to believe it is necessary, HHS is disinclined to suggest that medical professionals and other ICRC members deal with cases that do not meet any of the criteria upon request of any person with the same urgency and priority as cases that do meet the criteria.

Some commenters suggested that convening meetings on 24-hours notice would be impracticable. Other commenters suggested that the provision in the model (paragraph three) permitting telephone conferences or other methods of review when convening an emergency meeting is impracticable should be deleted because they lack the effectiveness of in-person meetings. HHS has made no material revision to the model in this regard. The Department continues to recommend that ICRC's respond to cases that meet the criteria identified on an urgent (24 hours, or less if necessary) basis, and to recognize that the timing and nature of a case may in certain circumstances make in-person meetings impracticable.

Two additional provisions have been added, in response to comments, to the version of paragraph four that appeared in the interim guidelines. First, consistent with one of the revisions to section III–A (regarding membership of the ICRC), the model suggests that a physician(s) experienced in the evaluation and treatment of the relevant disability(ies) or life-threatening condition(s) be invited, if appropriate, to the emergency meeting. The second revision recommends the ICRC ensure that parents receive appropriate counselling, as well as full information regarding the patient's condition and prognosis.

The Department received many comments regarding the recommendation in paragraph five that the chairperson designate a "special advocate" to ensure that all considerations in favor of additonal treatment are fully considered. Some commenters suggested that the model specify that the "special advocate" must be a trained child advocate independent of the hospital. Other commenters suggested this provision be deleted because it would create an adversarial relationship; it implies other ICRC members are less concerned about the infant's best interests; and it will confuse parents to have someone advocating treatment in every case, even if unjustified.

HHS has made no material change in response to these comments. As noted above in the discussion of section III–A (regarding membership of the ICRC), HHS does not believe the guardian ad litem model is necessary or appropriate for the ICRC. Thus, the model does not recommend formal representation for the infant by a trained advocate. On the other hand, the Department continues to believe that the "special advocate" feature will contribute to a comprehensive evaluation of all options and factors pertinent to the committee's deliberations. It should be noted that the model does not call for the "special advocate" to be a "treatment advocate," if nontreatment is appropriate and permissible under applicable standards. Rather, the special advocate is to ensure that all considerations in favor of additional treatment are fully *evaluated and considered* by the ICRC. This does not require that the special advocate argue, just for the sake of argument, with the judgments of other ICRC members who have fully evaluated and considered all pertinent factors and who believe nontreatment is not inappropriate. It should also be noted that the model guidelines call for the chairperson to make clear to all participants and observers that the designation of a "special advocate" is a standard procedural practice to ensure thorough deliberation, and that it does not imply that any other participant is less concerned about the welfare of the infant.

Paragraph six suggests the kinds of recommendations the ICRC should make in certain circumstances. Some commenters urged revisions to the wording of this paragraph which they thought could be construed as recommending that the ICRC was to act as a decision maker, rather than perform the function of "offering counsel and review," as it is stated in the legislative provision that required the Secretary to issue these model guidelines. No deviation from the statutory concept of "offering counsel and review" was intended, and several revisions to the wording have been made to avoid any misunderstandings in this regard.

A number of commenters recommended revised or additional provisions in the model guidelines relating to the interaction between the ICRC and the child protective services agency. Some commenters suggested that if life-sustaining treatment is not being provided, the ICRC should make a report to the child protective services agency at the conclusion of its meetings, regardless of whether the ICRC believes "medically indicated treatment" is being withheld, in order to permit an independent review by the agency. Some commenters suggested a similar report as soon as the ICRC learns of a case that it intends to review, in order to permit simultaneous review by the agency or monitoring by the agency of the ICRC's deliberations. Some commenters suggested that consideration by the ICRC should permit a delay in reporting to the child protective services agency.

The Department has made no revisions or additions to the model guidelines in response to these comments. As stated above in the discussion of section V–B (regarding the development of specific policies and guidelines), the existence and activities of the ICRC do not amend the responsibilities under State law of medical professionals and the hospital to report to the child protective services agency suspected instances of medical neglect (including the withholding of medically indicated treatment from disabled infants with life-threatening

conditions). Nor does the existence of the ICRC reduce or affect the rights of other persons to report suspected cases to the agency. Although the child protective services agency and the ICRC are to be guided by similar principles and standards regarding the best interests of the child, the Department believes they have separate and distinct functions. The primary function of the ICRC in this context is to offer counsel to the attending physician(s), the hospital and the family to assure that the parents have the benefit of prudent, knowledgeable and professional evaluations, recommendations and services, consistent with appropriate medical standards, to assist them in making sound decisions regarding the welfare of their child. The function of the child protective services agency is to determine those circumstances in which the power of the State must be invoked to protect the infant, and then to take appropriate action to do so. Linkages between child protective services agencies and health care institutions and professionals are already establish in law, and the legislative history of the Child Abuse Amendments of 1984 makes clear these existing mechanisms are to apply in connection with instances of withholding of medically indicated treatment from disabled infants with life-threatening conditions. In view of these factors, the model does not enlarge, contract, or amend the applicable legal standards for reporting to child protective services agencies.

9. Retrospective Record Review

Section VI–B of the model guidelines recommends that the ICRC retrospectively review records in certain categories of cases as a method of monitoring the effectiveness of the policies and procedures of the ICRC and hospital.

In response to some comments that the description of this activity in the interim guidelines gave the impression of an unproductive, after-the-fact fault-finding mission, this section has been revised somewhat to clarify its purpose. Some commenters suggested that the model call for ICRCs to report to the child protective services agency any discovered deviations from hospital policies. Other commenters suggested annual reports to the agency of the results of the ICRC review of all cases, to be followed by compilations by the agency and by HHS for publication. For the reasons set forth in the discussion above regarding section VI–A (concerning prospective counsel and review), the Department has not adopted these suggestions. The reports the ICRC and/or the hospital make to the child protective services agency or any other entity should be those indicated by applicable requirements. With respect to the objective of adding to professional and public knowledge of the potential benefits and difficulties of ICRCs, the Department agrees that activities relating to this objective should be encouraged through the mechanisms of professional and public communications, but believes it is beyond the intended scope of these model guidelines to seek to organize some comprehensive information compilation and distribution system.

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Part VII

Federal Emergency Management Agency

44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

National Flood Insurance Program; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

[Docket No. FEMA-FIA]

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National Flood Insurance Program (NFIP) regulations dealing with flood plain management standards, risk premium rate zone designations, reimbursement for FEMA engineering review, flood insurance coverage, the Standard Flood Insurance Policy terms and provisions, and the sale of flood insurance.

DATE: Comments must be received on or before June 14, 1985.

ADDRESS: Send comments to—Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646–3419.

SUPPLEMENTARY INFORMATION: These proposed amendments are the result of a continuing reappraisal of the National Flood Insurance Program (NFIP) from the standpoint of maintaining a business-like approach to the administration of the NFIP by emulating successful property insurance programs in the private sector while, at the same time, supporting the major FEMA goals of achieving greater administrative and fiscal effectiveness in the operation of the NFIP and encouraging sound flood plain management so that reductions in loss to life and property and in disaster expenditures can be realized. This reappraisal includes, in addition to the claims, coverage, rating, and sale of insurance component, the loss reduction (i.e., flood plain management) and risk assessment (i.e., mapping of flood hazard areas and flood-risk zones) components of the NFIP.

In this regard, to encourage participating communities to manage their flood plains wisely, the proposed rule would establish, in § 59.24 Suspension of Community Eligibility, a probation procedure for participating communities that fail to adequately enforce flood plain management requirements. This procedure would provide FEMA with a means of formally notifying these communities that their flood plain management programs were regarded as not compliant. The proposed rule provides for an additional premium to be paid on all new or renewal policies issued for a year after the community is placed on probation and for successive one year periods if the community continues to be on probation. The amount of the additional premium, a flat charge per policy of $50, is roughly 25% of the average premium now being charged. This additional premium in communities that do not adequately regulate development reflects the added liability to the program that results from increases in potential flood damages. Public comment is solicited on which is the appropriate method of charging the probation additional premium: the proposed flat charge per policy or the alternative of a percentage increase applied to the premium for each policy. (A percentage increase of 25% would produce roughly the same total revenue as the proposed flat charge of $50.) Communities that do not bring their program into compliance while on probation would still be subject to suspension from the NFIP as now provided for in NFIP regulations. By establishing this probation procedure and charging this additional premium, FEMA expects to be able to obtain community compliance with Program requirements prior to reaching the point where there is no alternative but to suspend a community which results in loss of coverage to all policyholders in that community at the next policy anniversary for each of their policies. Also, communities must remedy violations to the maximum extent possible to avoid suspension or to be reinstated into the Program. The word "abrogate" in the existing regulations has been changed to "remedy" since, in common usage, "remedy" more accurately reflects the kinds of actions that must be taken by a community.

The proposed rule also clarifies and expands on other provisions of § 59.24 Suspension of Community Eligibility. Under the proposed revision, the section would include a separate paragraph on procedures for the suspension of communities that repeal, allow to lapse, or amend regulations so that they become non-compliant.

Provisions are also included regarding procedures for communities which wish to voluntarily withdraw from the Program. In addition, a paragraph has been added that explicitly allows the Administrator to withhold the reinstatement of a community that permits actions to take place that aggravate flood hazards until such time as the increased hazard is remedied to the maximum extent possible. The intent of this provision is to discourage communities from being suspended or withdrawing from the Program, using the period of ineligibility to conduct actions inconsistent with NFIP flood plain management criteria, and then later applying for reinstatement.

Another change proposed by this rule is to make the report required of participating communities on their participation in the NFIP a biennial report instead of an annual report. The definition of "elevated building" is being revised, and definitions of "breakaway walls" and of "finished area" are being added.

The proposed rule provides more specific performance standards regarding the design and construction of breakaway walls built to enclose areas below the base flood elevation in V-zones (coastal high hazard areas). FEMA has received a number of requests over the past several years for these more definite standards. The proposed rule contains a general definition of breakaway walls. In addition, it allows for the use of (1) open wood lattice work, (2) insect screening or (3) breakaway walls of non-masonry construction that have a loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. The loading values indicated have been selected in consideration of minimum standards for wall design established for resisting wind loads. This range (10–20 pounds per square foot) would assure that walls would, on the one hand, be strong enough to withstand non-design windstorm events, and on the other hand, would prevent use of stronger wall designs which either would not collapse under loading stress, or which would adversely affect the structural stability of the building. The established upper loading value is of particular importance for low-rise, non-engineered construction in that the lesser foundation strengths normally associated with such construction make them more vulnerable to collapse due to loading forces. Breakaway walls with a loading resistance of greater than twenty (20 pounds per square foot, or built using masonry construction are not prohibited. However, a registered professional engineer or architect must certify that the walls will collapse under wind and water loads associated with the base flood without damaging either

the elevated portion of the building or the supporting foundation system.

A review of a breakaway wall design by a professional engineer or architect is considered necessary under these circumstances because of the higher risk of structural failure due to debris and impact loads (particularly in the case of masonry construction), and because the use of the more resistant wall materials and connection strengths would generally require that stronger foundation system designs be utilized.

Finally, such enclosed space is not to be a "finished area", as that term is being defined. This provision is similar to the provision in the existing regulation prohibiting the use of such enclosures for human habitation. FEMA believes that the revised language regarding these issues should clarify the existing general performance standards and provide those impacts by the regulations with the more definitive standards that have been requested.

The proposed rule makes several changes to the requirements that communities obtain and maintain copies of elevation certificates for all new construction and substantial improvements in special flood hazard areas. The provisions of § 60.3(b)(5) and § 60.3(e)(2) would be changed to require that elevation certificates be obtained for both flood plain management and insurance purposes. Since elevation certificates are already required for insurance purposes, these changes impose no new burden on communities. Additional changes in § 60.3(e)(2) include the delegation of the references to floodproofing, which is not permitted in V-zones, and a revision to require that the elevation of the lowest floor be obtained rather than the elevation of the lowest habitable floor. The latter change makes the elevation certificate requirements consistent with the V-zone elevation requirements now in force as well as with current flood insurance rating procedures for such structures in V-zones.

The proposed rule revises the requirements that a registered engineer or architect certify the design of floodproofed non-residential structures in A-zones and of all structures in V-zones. The certification language now contained in the regulations conflicts with the requirements of professional liability insurers. In addition, the engineer or architect could not reasonably make the certification that is now required since he is normally not at the construction site during all phases of construction. A provision that allowed communities to propose a local regulation containing floodproofing specifications in lieu of certification by a registered engineer or architect has been deleted. No community has requested and obtained approval of such a local regulation. In addition, FEMA believes that the differences between floodproofed structures and varying flooding characteristics at each site support the need for an individual review of the designs of each floodproofed structure by a registered engineer or architect.

In regard to mapping, the proposed rule would make a change in the flood-risk zone designations of Flood Insurance Rate Maps for consistency with a change in the rate tables made effective October 1, 1983, that collapsed the rates for Zones A1–30 to treat them as one zone for rating purposes and likewise collapsed the rates for Zones V1–30 to treat them as one zone for rating purposes. Similarly, the rates for Zones B and C were collapsed to treat them as one zone for rating purposes. The proposed rule would give Zone AE as a replacement designation for Zones A1–30, Zone VE as a replacement for Zones V1–30, and Zone X as a replacement for Zones B and C. The new maps would continue to delineate the 500-year flood plain and the floodway. The replacement designations would be used on new maps, thus gradually replacing the current designations. The proposed rule also provides for a zone designating a coastal high hazard area without water surface elevations.

The proposed rule makes a number of changes to the requirements for the anchoring and placement of mobile homes. These changes reflect a number of the comments received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** on January 13, 1982. The proposed changes also reflect the findings of a special study conducted for FIA on methods of placement of mobile homes in flood plains. Additional changes in mobile home standards, including changes to make terminology consistent with the Department of Housing and Urban Development's Manufactured Home Safety and Construction Standards (24 CFR 3280.2), are being considered for possible proposed rulemaking in FY 1986.

NFIP regulations now require that mobile homes be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. The regulations specify the number, types and locations of ties required and that all components of the anchoring system be capable of carrying a force of 4,800 pounds.

The proposed rule would delete the specific performance standards related to over-the-top and frame ties and substitute a more general performance standard. Under the proposed rule mobile homes must be elevated and anchored to resist flotation, collapse and lateral movement. Methods of anchoring can include, but are not limited to, over-the-top and frame ties. This more general performance standard will serve two purposes. First, conflicts with mobile home manufacturing standards and State and local regulations in regard to the number, types and locations of ties will be eliminated. Second, the change will permit the use of alternative anchoring techniques that are effective in resisting flood loads.

Two additional changes are proposed to the mobile home installation provisions of § 60.3(c) (5) and (6). These provisions now require that mobile homes be elevated so that their lowest floor is at or above the base flood elevation through use of fill or a specified piling foundation. The present standards are unnecessarily restrictive since they do not permit use of other equally acceptable elevation techniques. The proposed rule would require the lowest floor of the mobile home be elevated to or above the base flood elevation but not specify the elevation technique to be used. Mobile homes would have to be anchored to their foundation systems in accordance with the anchoring provisions of § 60.3(b)(8) of the proposed rule. FIA will be publishing a manual on the installation of mobile homes in flood plains that will discuss a range of elevation methods.

The Standard Flood Insurance Policy (SFIP) of the NFIP currently distinguishes between a "mobile home" and a "doublewide mobile home", with mobile homes having to meet certain requirements in special flood hazard areas and in coastal high hazard areas to be eligible for flood insurance and not being eligible for replacement cost coverage. The definition of "doublewide mobile home" is being revised by adding quantitative criteria relating to the structure's dimensions.

In recognition of certain leases where a private individual leases land from the Federal Government with the lease holding the Federal Government harmless for flood damage it causes, the proposed rule would provide for not covering such losses since the individual knowingly assumed that flooding risk.

The proposed rule would provide the basis for insuring more than one building on a policy using a form approved by the Administrator. Also, to clarify the intent of the NFIP not to cover bailees' goods, the Contents paragraph of the Property Covered section of the SFIP General Property

Form (Appendix A(2) of Part 61) would be revised to make it clear that bailees' goods are not covered. A recent court decision held that bailees' goods were covered, so this revision would carry out the intent of the NFIP not to cover them.

When a limitation of coverage for finished basements (and their contents) and for enclosures (and contents) beneath the lowest elevated floor of elevated buildings was placed in effect on October 1, 1983, coverage was continued for certain equipment and other machinery vital to a building's intended use. While oil tanks and well-water tanks were specified as being covered, there was no mention of the oil in an oil tank or the pump for a well-water tank. The proposed rule would clarify that there is coverage for these items. It would also specify that there is coverage for cisterns (and the water in them) despite this basement/elevated building limitation, inasmuch as cisterns are integral parts of the building in certain communities particularly in the Virgin Islands, and often provide the only source of water for the building.

In furtherance of loss prevention, as an insurance concept, and of hazard mitigation, which is one of the major goals of FEMA, an October 1, 1984, change in the SFIP made coverage available for sandbags under certain conditions. This proposed rule would extend that development by also providing coverage for fill for temporary levees, pumps, and wood under the same conditions except that, for both sandbags and the new items proposed, the provision referring to the purpose of preserving the building at the premises after a flood loss is being deleted.

Another change in the SFIP effective October 1, 1984, was the addition of a provision for building coverage and one for contents coverage to make it clear that dwelling units in condominium buildings can only be covered, along with the policyholder's insurable tenant in common interest in property covered under any condominium association flood insurance coverage provided under the National Flood Insurance Act of 1968, or any Acts amendatory thereof, up to the statutorily permissible limits of coverage available for the insuring of single-family dwelling owners under the Act. This proposed rule would add a provision making the same clarification for contents coverage involving nonresidential units in a condominium building.

A number of other changes would be made in the SFIP for clarity, and in some cases, for consistency between the two SFIP forms, the Dwelling Form and the General Property Form.

FEMA receives a large number of requests for map amendments and revisions resulting from the completion of flood plain fills, stream channelizations, levee construction, or other flood control projects. FEMA also receives a large number of requests to provide the service of reviewing proposed projects. This service has led to the issuance of conditional Letters of Map Amendment (LOMAs) and conditional Letters of Map Revision (LOMRs) that provide FEMA assurance to individuals, developers, and communities that their projects would be accepted for map revision upon completion. The conditional LOMA and conditional LOMR are often needed by developers to obain construction loans and building permits and attract prospective buyers. Thus, to reduce expenses to the general taxpayer, FEMA is proposing a reimbursement procedure to allow for the recovery of costs associated with these actions. Under the proposal, an initial fee, the amount determined by the type of project, would be required of those seeking a conditional LOMA or conditional LOMR before any review commences. The initial fee represents the minimum cost required to review that type of project. FEMA would then determine the actual cost associated with the review of a particular project and the requestor would be billed for any additional costs incurred. In this way FEMA proposes to recover for the U.S. Treasury the entire cost associated with the review and processing of conditional LOMAs and conditional LOMRs.

FEMA has determined that the costs associated with the technical review and administrative processing of a conditional LOMA or conditional LOMR request vary in proportion to the number of submittals required of an appellant to accurately show the effects of his proposed project, as well as with the type of project involved. Review time does not vary significantly for two similar projects, one twice as large as the other, providing the analyses submitted for both are complete and accurate. However, an incomplete submittal, or one with significant problems in the technical analyses, does take longer to process since it must be reviewed, an additional data request letter prepared and sent, and the new submittal re-reviewed. Similarly, while administrative processing time varies between conditional LOMAs and conditional LOMRs, it does not differ significantly within each category of project. It was also determined that for each category of project, there are certain minimum review and processing elements common to all requests. These minimum review and processing costs were used to develop the initial fees for the various projects.

The conditional LOMRs were first categorized by the type of project. Each category was then examined and minimum review and processing times were determined for engineering review, engineering administration, word processing and quality control. This basic processing common to each type of project was then converted to a dollar amount using direct labor rates, overhead, and fee, which FEMA pays for these services.

The determination of review and processing time for conditional LOMAs was simplified in that there is a distinct difference between single-lot and multi-lot/subdivision requests. Administrative processing was the same for each, but engineering review time for multi-lot/subdivision requests was approximately double that for single-lot determinations. The range of processing times for each type of LOMA was also narrower. The minimum times determined for each type were then converted to a dollar amount as described above.

FEMA has determined, based upon an Environmental Assessment, that the proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Officer of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, D.C. 20472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Federal Emergency Management Agency, New Executive Office Building, Washington, D.C. 20503. The Federal Emergency Management Agency

(FEMA) requests that persons submitting comments on these requirements to OMB also send copies of those comments to FEMA.

List of Subjects in 44 CFR Parts 59, 60, 61, 64, 66, 70, 72, and 75

Flood insurance, Flood plains, Intergovernmental relations.

Accordingly, it is proposed to amend 44 CFR Chapter 1, Subchapter B as follows:

PART 59—GENERAL PROVISIONS

§ 59.1 [Amended]

1. Section 59.1 is amended in the following particulars:

a. By removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE, A99" in the definitions of "Area of special flood hazard" and "Special hazard area".

b. By removing the phrase "or V1–30" and adding in its place the phrase "V1–30, VE, or V" in the definition of "Area of special flood hazard".

c. By adding after the phrase "V1–30" the phrase ", VE, or V" in the definition of "Coastal high hazard area".

d. By removing the phrase "V1–30," and adding in its place the phrase "V1–30, VE, V," in the definition of "Special hazard area".

e. By adding, alphabetically, a definition of "Breakaway wall" to read as follows:

* * * * *

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

* * * * *

f. By removing the definition of "Elevated Building" and adding in its place, alphabetically, a definition of "Elevated building" to read as follows:

* * * * *

"Elevated building" means a non-basement building built, in the case of a building in Zones A1–30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1–30, VE, or V, to have the bottom of the lowest horizontal structural member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building. In the case of Zones A1–30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zones V1–30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway walls if the breakaway walls meet the standards of § 60.3 (e)(5).

* * * * *

g. By adding, alphabetically, a definition of "Finished area" to read as follows:

* * * * *

"Finished area" means an enclosed area having more than 20 linear feet of finished walls (paneling, etc.) or equipped for use as kitchen, dining room, living room, family or recreational room, or bedroom, or office, or professional or private school or studio occupancies, workshop, or other such uses.

* * * * *

h. In the definition of " 'Flood' or 'Flooding' ", paragraph (a) (3) is amended by removing "or precipitated by accumulations of water on or under the ground." and adding in its place the phrase "caused by flooding as defined in paragraph (a)(2) above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.".

i. By removing the phrase "or under" in the first sentence of the definition of "Mudslide".

§ 59.22 [Amended]

2. In § 59.22, paragraph (b)(2) is amended by removing the phrase "an annual" and adding in its place the phrase "a biennial".

3. Section 59.24 is amended by removing paragraphs (b) and (c) and by adding paragraphs (b) through (g) to read as follows:

§ 59.24 Suspension of community eligibility.

* * * * *

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Prior to imposing probation, the Administrator shall inform the community upon 30 days prior written notice of the impending probation and of the specific deficiencies relative to the failure to enforce. During this period the community shall have the opportunity to demonstrate compliance with Program requirements. Probation shall represent formal notification to the community that the Administrator regards the community's actions as not compliant with Program requirements. Probation may be continued for up to one year after the community remedies to the maximum extent possible the action(s) which caused the probation to be imposed. A community that does not take adequate remedial action during a period of probation is subject to suspension of its eligibility under paragraph (c) of this section. Flood insurance may be sold or renewed in a community placed on probation. An additional premium of $50.00 shall be charged on each policy sold or renewed within the community during a one year period beginning on the date the community is placed on probation and during any successive one year periods during which the community continues on probation for any part thereof.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not take adequate remedial action during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the **Federal Register** under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to remedy, to the maximum extent possible, the action(s) which caused the suspension. In certain cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the

community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations so lapse, or amends its regulations to that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the Federal Register under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Administrator shall withdraw the community from the Program and publish in the Federal Register under Part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if it submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Administrator shall promptly notify the servicing agent and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

§ 60.3 [Amended]

4. Section 60.3 is amended in the following particulars:

a. By adding after "FHBM" the phrase "or FIRM" in the following paragraphs: (b), (b)(1), (b)(2), (b)(5), and (b)(6).

b. By removing in paragraph (b)(5) the words "For the purpose of the determination of applicable flood insurance risk premium rates within" and adding in their place the word "Within".

c. By revising paragraph (b)(6) to read as follows:

* * * * *

(b) * * *

(6) Require that all mobile homes to be placed within zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, mobile homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top and frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

* * * * *

d. By removing in paragraph (c)(1) the word "unnumbered" and adding in its place the phrase ", AE zones,".

e. By adding after the phrase "A1–30" the phrase ", AE" in the following paragraphs: (c)(2) and (c)(3).

f. By revising paragraphs (c)(4), (c)(5), and (c)(6) to read as follows:

* * * * *

(c) * * *

(4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (i) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of (c)(3)(ii) or (c)(6)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(8)(iii);

(5) Require that all mobile homes to be placed within Zones A1–30 and AE on the community's FIRM in new mobile home parks and mobile home subdivisions, in expansions to existing mobile home parks and mobile home subdivisions, and in existing mobile home parks and mobile home subdivisions where the repair, reconstruction or improvement of the streets, utilities and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced, have the lowest floor of the mobile home elevated to or above the base flood level.

(6) Require that all mobile homes to be placed within zones A1–30 and AE on the community's FIRM, which are not to be placed into a mobile home park or mobile home subdivision, have the lowest floor of the mobile home elevated to or above the base flood level.

* * * * *

g. By adding after the phrase "A1–30" the phrase "and AE" in paragraph (c)(10).

h. In paragraph (d) by adding after the phrase "A1–30" the phrase "and/or AE" and by removing the phrase "A99 zones and unnumbered" and adding in its place the phrase ", AH zones, A99 zones, and ".

i. By removing the phrase "(c)(9)" and adding in its place the phrase "(c)(11)" in paragraph (d)(1).

j. By revising paragraph (e) to read as follows:

* * * * *

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1–30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1–30, VE, and/or V, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (c)(11) of this section;

(2) Within Zones V1–30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement, and (ii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1–30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide that all new construction and substantial improvements in Zones

V1–30, VE, and V (where base flood elevation data is available) on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to combined wave and wind loads to which they may be subjected during the base flood; and (iii) a registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (e)(4) (i) and (ii) of this section;

(5) Provide that all new construction and substantial improvements within Zones V1–30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads associated with the base flood without causing damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakaway wall shall be of non-masonry construction and have a loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which do not meet the above material and strength criteria may be permitted only if a registered professional engineer or architect certifies that the designs proposed will permit the breakaway wall to collapse under wind and water loads associated with the base flood without causing damage to the elevated portion of the building or supporting foundation system. Such enclosed space shall not be a finished area.

(6) Prohibit the use of fill for structural support of buildings within Zones V1–30, VE, and V on the community's FIRM;

(7) Prohibit the placement of mobile homes, except in existing mobile home parks and mobile home subdivisions, within Zones V1–30, VE, and V on the community's FIRM;

(8) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1–30, VE, and V on the community's FIRM which would increase potential flood damage.

§ 60.6 [Amended]

5. Section 60.6 is amended by removing in (a)(6)(ii) the word "annual" and adding in its place the word "biennial".

§ 60.22 [Amended]

6. Section 60.22 is amended by adding after the phrase "V1–30" the phrase ", VE, and V" in paragraph (c)(14) and by removing the phrase "and V1–30" and adding in its place the phrase ", AE, V1–30, and VE" in paragraph (c)(15).

PART 61—INSURANCE COVERAGE AND RATES

§ 61.3 [Amended]

7. Section 61.3 is amended by adding to the end of the third sentence the phrase ", unless application to cover more than one building is made on a form approved for that purpose by the Administrator".

§ 61.4 [Amended]

8. Section 61.4 is amended by adding paragraph (e) to read as follows:

* * * * *

(e) The policy does not cover loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

§ 61.5 [Amended]

9. Section 61.5 is amended by removing from paragraph (f)(9) the phrase "V1–V30" and adding in its place the phrase "V1–30, VE, and V" and by removing from paragraph (f)(10) the phrase "oil tanks," and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them,".

§ 61.6 [Amended]

10. Section 61.6 is amended by revising the chart in paragraph (a) to read as follows:

	Regular Program		
	Emergency Program 1		
	First layer	Second layer	Total amount available
Single family residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	35,000	150,000	185,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	2 150,000	185,000
Other residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	150,000	3 150,000	250,000
Small business	100,000	150,000	250,000
Churches and other properties	100,000	100,000	200,000
Contents			
Residential	10,000	50,000	60,000
Small business	100,000	200,000	300,000
Churches, other properties (per unit)	100,000	100,000	200,000

1 NOTE: Only first layer available under Emergency Program
2 NOTE: Add to 35,000.
3 NOTE: Add to 100,000.

§ 61.11 [Amended]

11. Section 61.11 is amended by adding in paragraph (c) after the words "new policy" the words "or added coverage or increase in the amount of coverage".

§ 61.16 [Added]

12. Section 61.16 is added to Part 61 to read as follows:

§ 61.16 Probation additional premium.

The additional premium charged pursuant to § 59.24(b) on each policy sold or renewed within a community

that has been placed on probation is $50.00.

Appendix A(1) of Part 61—[Amended]

13. Appendix A(1) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. In Article II—Definitions, the definition of "Building" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form approved for that purpose by the Administrator".

b. In Article II—Definitions, the definition of "Doublewide Mobile Home" is amended by adding after the words "permanent building" and before the semi-colon the words "and which when so assembled is at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

c. In Article II—Definitions, the definition of "Policy" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form approved for that purpose by the Administrator".

d. In Article II—Definitions, a definition of "Probation additional premium" is added, alphabetically, to read as follows:

* * * * *

"Probation additional premium" means a flat charge of $50.00 per policy term paid by the insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

* * * * *

e. In Article III—Losses Not Covered, the opening clause beginning "We only. . ." is amended by adding after the word "by" and before the word "flood" the phrase "or from".

f. In Article III—Losses Not Covered, paragraph A.2 is revised to read as follows:

* * * * *

2. Loss caused (i) by rain, snow, sleet, hail or water spray; or (ii) by freezing, thawing, the pressure or weight of ice or water, sewer backup or seepage of water unless your insured property has been, at the same time, damaged by a flood.

* * * * *

g. In Article III—Losses Not Covered, paragraph A.3 is amended by removing the word "or" between the words "Water" and "moisture" and adding a comma in its place and by adding the phrase "or mudslide (i.e., mudflow)" after the word "moisture".

h. In Article III—Losses Not Covered, paragraph B.1 is amended by adding between the word "of" and the word "sandbags" the phrase "(i)"; by adding between the phrase "with them," and the phrase "for the purpose" the following: "(ii) fill for temporary levees, (iii) pumps, and (iv) wood, all"; by removing the phrase "and preserving the building at the premises after a flood loss"; and by adding between the phrase "loss in an" and the word "amount" the word "aggregate".

i. In Article III—Losses Not Covered, paragraph B is amended by adding paragraphs 6 and 7 to the end thereof to read as follows:

* * * * *

6. Loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the insured property is located, caused by the peril insured against.

7. Loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

j. In Article IV—Property Covered, the heading is amended by adding "(Subject to 'Property Not Covered' Provisions)" as a second line of heading.

k. In Article IV—Property Covered, paragraph C is amended by removing the comma between the word "art" and the word "glass" and by adding a closing parenthesis between the phrase "antique silver" and the following comma.

l. In Article V—Property Not Covered, paragraph B is revised to read as follows:

* * * * *

B. A building, and its contents, located seaward of mean high tide, or entirely in, on, or over water, if the building was newly constructed or substantially improved on or after October 1, 1982;

* * * * *

m. In Article V—Property Not Covered, paragraph F is amended by removing the phrase "oil tanks," and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them,".

n. In Article V—Property Not Covered, paragraph H is amended by removing the phrase "On and after October 1, 1982, a" and adding in its place the word "A".

o. In Article V—Property Not Covered, paragraph J is amended by removing the phrase "V1–V30" and adding in its place the phrase "V1–30, VE, and V".

p. In Article VII—Replacement Cost Provisions, paragraph I is added to read as follows:

* * * * *

I. If the community in which your property is located has been converted from the Emergency Program to the Regular Program during the current policy term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the National Flood Insurance Program at the beginning of the current policy term instead of at the time of loss.

q. In Article VIII—General Conditions and Provisions, paragraph C is amended by adding at the end of the first sentence a sentence to read as follows:

* * * * *

In other words, if you obtain additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then you must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

* * * * *

r. In Article VIII—General Conditions and Provisions, paragraph F.2. (ii)a is amended by removing in the last sentence the comma after the word "year" and adding in its place a closing parenthesis, by removing the closing parenthesis before the semi-colon, and by adding the word "or" after the semi-colon.

s. In Article VIII—General Conditions and Provisions, paragraph O is amended by removing the word "Mortgagee" in the heading and adding in its place the word "Mortgage".

Appendix A(2) of Part 61—[Amended]

14. Appendix A(2) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. That part of the heading of Appendix A(2) that is enclosed in brackets is revised to read as follows:

* * * * *

(Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof, and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B)

* * * * *

b. In the Definitions section, the definition of "Building" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form approved for that purpose by the Administrator".

c. In the Definitions section, the definition of "Doublewide Mobile Home" is amended by removing the word "an" and adding in its place the

word "and" and by adding after the words "permanent building" and before the semi-colon the words "and which when so assembled is at least 16 feet wide with an area within its perimeter walls of at least 600 square feet".

d. In the Definitions section, the definition of "Policy" is amended by adding to the end of the last sentence the phrase ", unless application to cover more than one building is made on a form approved for that purpose by the Administrator".

e. In Definitions section, a definition of "Probation additional premium" is added, alphabetically, to read as follows:

* * * * *

"Probation additional premium" means a flat charge of $50.00 per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

* * * * *

f. In the Perils Excluded section, paragraph A is amended by adding a comma between the word "water" and the word "moisture" in item (3).

g. In the Perils Excluded section, paragraph F is amended by removing the phrase "purpose of sandbags" and adding in its place the phrase "purchase of (i) sandbags"; by adding between the phrase "with them," and the phrase "for the purpose of saving" the following: "(ii) fill for temporary levees, (iii) pumps, and (iv) wood, all"; by removing the phrase "and preserving the building at the premises after a flood loss"; and by adding between the phrase "loss in an" and the word "amount" the word "aggregate".

h. In the Perils Excluded section, paragraph K is added to read as follows:

* * * * *

K. To any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

i. In the Property Covered section, the heading is amended by adding "(Subject to 'Property Not Covered' Provisions)" as a second line of heading.

j. In the Property Covered section, paragraph B.1 is amended by removing the semi-colon between the word "description" and the word "furniture" and adding in its place a comma and by adding to the end of paragraph B.1 the following sentence: "Bailees' goods are specifically excluded from coverage under this policy."

k. In the Property Covered section, paragraph B is amended by adding "3." before the paragraph beginning "The Insurer shall not be liable * * *" and by removing "3." before the paragraph beginning "When the insurance under this policy covers improvements * * * *" and adding in its place "4.".

l. In the Property Covered section, paragraph B is amended by adding paragraph 5 to read as follows:

* * * * * *

5. In the case of contents owned by the Insured in a condominum building, as a condominum unit owner, as well as in common with other condominium unit owners, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to the Insured as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available under the Act for the insuring of risks of the class (residential, non-residential, or small business) of the Insured, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

* * * * * *

m. In the Property Not Covered section, paragraph B is revised to read as follows:

* * * * * *

B. A building, and its contents, located seaward of mean high tide, or entirely in, on, or over water, if the building was newly constructed or substantially improved on or after October 1, 1982.

* * * * * *

n. In the Property Not Covered section, paragraph E is amended by removing the phrase "equipment; and business property." and adding in its place the phrase "equipment."

o. In the Property Not Covered section, paragraph F is amended by removing the phrase "oil tanks, furnaces", and adding in its place the phrase "well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, furnaces, hot water heaters, clothes washers and dryers, food freezers, air conditioners,".

p. In the Property not Covered section, paragraph H is amended by removing the phrase "On and after October 1, 1982, a" and adding in its place the word "A".

q. In the Property not Covered section, paragraph J is amended by removing the phrase "V1–V30" and adding in its place the phrase "V1–30, VE, and V".

r. In the General Conditions and Provisions section, paragraph C is amended by removing "Insured" in the first sentence and adding in its place "Insurer" and by adding at the end of the first sentence a sentence to read as follows:

* * * * * *

In other words, if the Insured obtains additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then the Insured must acquire the maximum amount of available flood insurance under said Act is order to avoid the imposition of proration as described in the preceding sentence.

* * * * *

s. In the General Conditions and Provisions section, paragraph M is amended by removing the word "Mortgagee" in the heading and adding in its place the word "Mortgage".

t. The in witness whereof clause and the signature lines appearing after paragraph V of the General Conditions and Provisions section and before Endorsement 1 are revised to read as follows:

In witness whereof, the Insurer has executed and attested these presents.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

§ 64.3 [Amended]

15. Section 64.3 is amended in the following particulars:

a. In the chart in paragraph (a)(1) by removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE" and by adding after this amended entry in the chart the following entry:

A99	Area of special flood hazard where enough progress has been made on a protective system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.

b. In the chart in paragraph (a)(1) by adding after the "AH" entry the following entry:

V	Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area).

c. In the chart in paragraph (a)(1) by adding after the phrase "V1–30" the phrase ", VE" and by adding in this entry the chart after "flood hazards," the word "with water surface elevations determined and".

d. In the chart in paragraph (a)(1) by adding both after the phrase "B" and after the phrase "C" the phrase ",X".

e. In paragraph (b), by removing the phrase "A1–99" and adding in its place the phrase "A1–30, AE, A99" and by adding after the phrase "V1–30," the phrase "VE, V",.

PART 66—CONSULTATION WITH LOCAL OFFICIALS

§ 66.1 [Amended]

16. Section 66.1 is amended by removing the phrase "A1–99 and" and adding in its place the phrase "A1–30, AE, A99" and by adding after the phrase "V1–30" the phrase ", and VE".

PART 70—PROCEDURE FOR MAP CORRECTION

§§ 70.1, 70.3, 70.4, and 70.5 [Amended]

17. Part 70 is amended by removing the phrase "A1–99" and adding in its place the phrase", "A1–30, AE, A99" in the following sections: §§ 70.1, 70.3(a), 70.4(a) 70.4(b), and 70.5(c).

18. Part 70 is amended by removing the phrase "and V1–30" and adding in its place the phrase, "V1–30, VE and V" in the following sections: §§ 70.1 and 70.3(a).

19. Part 70 is amended by removing the phrase "or V1–30" and adding in its place the phrase", V1–30, VE, or V" in the following sections: §§ 70.4(a), 70.4(b), and 70.5(c).

20. Part 72 is is added to 44 CFR Chapter 1, Subchapter B to read as follows:

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

Sec.

72.1 Purpose of part.
72.2 Definitions.
72.3 Initial fee schedule.
72.4 Submittal/payment procedures.
72.5 Exemptions.
72.6 Unfavorable response.
72.7 Resubmittals.

Authority: U.S.C. 9701; section 1360(a), National Flood Insurance Act, (42 U.S.C. 4101); Reorganization Plan No. 3 of 1978, (3 CFR 1978 Comp. p. 329); E.O. 12127, dated March 31, 1979 (3 CFR 1979 Comp. p. 376); delegation of authority to Federal Insurance Administrator (44 CFR Part 2).

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for engineering review and processing associated with the issuance of Conditional Letters of Map Amendment (conditional LOMAs) and Conditional Letters of Map Revision (conditional LOMRs).

§ 72.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a Conditional Letter of Map Amendment (conditional LOMA) is FEMA's comment on a proposed project to be located in and affecting only that portion of the area of special flood hazard outside the regulatory floodway and having no impact on the existing regulatory floodway or effective base flood elevations.

(c) For the purpose of this part, a Conditional Letter of Map Revision (conditional LOMR) will be FEMA's comment on a proposed project that would affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway or effective base flood elevations.

§ 72.3 Initial fee schedule.

(a) For conditional Letters of Map Amendment, the initial fee shall be paid by the requestor in the following amounts:

(1) Single-lot	$125
(2) Multi-lot/subdivision	$175

(b) For conditional Letters of Map Revision, the initial fee shall be paid by the requestor in the following amounts:

(1) New bridge or culvert (no channelization)	$350
(2) Channel modifications only	$400
(3) Channel modification and new bridge or culvert	$525
(4) Levees, berms, or other structural measures	$675

(c) For projects involving combinations of the above actions which are not separately identified, the initial fee shall be that charged for the most expensive of the actions comprising the combination.

§ 72.4 Submittal/payment procedures.

(a) Initial fees should be submitted with the request for FEMA review and processing of conditional LOMAs and conditional LOMRs.

(b) Initial fees must be received by FEMA before the review can be initiated for any conditional LOMA or conditional LOMR request.

(c) Following completion of FEMA review for any conditional LOMA or conditional LOMR, the requestor will be billed at the prevailing private sector labor rate (currently $25.00 per hour) for any actual costs exceeding the initial fee incurred during the review.

(d) Payment of this final invoice must be received by FEMA before the conditional LOMA or conditional LOMR will be issued.

(e) Payment of both the initial fee and final cost shall be by check or money order payable to the United States Treasury.

§ 72.5 Exemptions.

Federal, state, and local governments and agencies shall be exempt from fees if the requestor demonstrates that the primary purpose of the proposed project is to benefit the general public.

§ 72.6 Unfavorable response.

A conditional LOMA or conditional LOMR may be denied or may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the letter contains such comments, concerns, or conditions, of if the letter is denied. A requestor is not entitled to any refund if the requestor is unable to obtain required authorizations, permits, financing, etc., for which the letter was sought.

§ 72.7 Resubmittals.

At a minimun, a new initial fee will apply to any resubmittal of a request more than 90 days after FEMA notification that a request has been denied or a review has been terminated due to insufficient information or other reasons. A new initial fee will also apply if the project has been significantly altered in design or scope other than that necessary to respond to previously issued comments, concerns, or conditions, by FEMA.

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

§§ 75.1, 75.10, 75.11, and 75.13 [Amended]

21. Part 75 is amended by removing the phrase "M, V, VO" and inserting in its place the phrase "AH, A1–30. AE, A99, M, V, V0, V1–30, VE" in the following sections: §§ 75.1, 75.10, 75.11(a)(4) (twice), 75.11(a)(5), 75.11(a)(7), and 75.13(c).

Authority: National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41923); E.O. 12127, dated March 31, 1979 (44 FR 19367); E.O. 11988, dated May 24, 1977; and 44 CFR 2, Delegation of Authority to Federal Insurance Administrator.

Dated: March 12, 1985.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 85–9030 Filed 4–12–85; 8:45 am]
BILLING CODE 6718–01–M

federal register

Monday
April 15, 1985

Part VIII

Department of Transportation

Federal Highway Administration

23 CFR Part 625

Design Standards for Highways; Final Rule With Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 80-2, Notice 5]

Design Standards for Highways

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The Federal Highway Administration (FHWA) is issuing amendments to the design standards which apply to most highway construction and reconstruction project eligible to receive funding under the Federal-aid highway program. A new publication issued by the American Association of State Highway and Transportation Officials (AASHTO) entitled "A Policy on Geometric Design of Highways and Streets" is being adopted by the FHWA and will constitute the FHWA's policy on the geometric design of all federally-assisted construction and reconstruction projects with the exception of those standards that currently apply to Interstate highways. This AASHTO document is being substituted for several existing publications which are now incorporated by reference in 23 CFR Part 625. The two primary documents that are being replaced are: "A Policy on Geometric Design of Rural Highways," AASHO, 1965 (GDRH), and "A policy on Design of Urban Highways and Arterial Streets," AASHO, 1973 (DUHAS). The FHWA is also requesting comments on the new adopted standards in order to assist the FHWA in planning additional design research activities.

DATES: This final rule is effective May 15, 1985. Comments must be received August 13, 1985. Incorporation by reference approved by the Director of the Office of the Federal Register on May 15, 1985.

ADDRESSES: Submit written comments, preferably in triplicate, to FHWA Docket No. 80-2, Notice 5, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed stamped postcard. The revised design standards are on file at the Office of the Federal Register in Washington, D.C., and are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional Offices as prescribed in 49 CFR Part 7, Appendix D. Copies of past and current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT: Mr. Wilson B. Harkins, Highway Design Division, Office of Engineering, (202) 426-0313, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The standards, policies, and guides that have been approved by the FHWA for application on all Federal-aid highway projects are incorporated by reference in 23 CFR Part 625. Those provisions that apply to roadway geometric design and are the subject of this rulemaking are listed in 23 CFR 625.3(a).

As stated in prior notices, the American Association of State Highway and Transportation Officials (AASHTO) is an organization which represents the 52 State highway and transportation agencies (including the District of Columbia and Puerto Rico). Its members consist of the duly constituted heads and other chief directing officials of those 52 agencies. The Secretary of the United States Department of Transportation (DOT) is an ex officio member. Prior to 1974, the AASHTO was known as the American Association of State Highway Officials (AASHO).

Among other functions, the AASHTO develops and issues standards, specifications, policies, guides, and related materials for use by the States on all highway projects in the nation. Due to the AASHTO's recognized expertise and representation of all State highway and transportation agencies, the FHWA has worked with the AASHTO over the years in the development of design standards pursuant to the provisions of Federal law (Title 23, U.S.C.) which direct the FHWA to consult and cooperate with the States in that regard. Many of the standards, policies, and guides approved by the FHWA and incorporated in 23 CFR Part 625 were developed and issued by AASHTO. Revisions made to such documents by the AASHTO must be independently reviewed and adopted by the FHWA before they can be applied on Federal-aid projects.

Background

On February 14, 1980, the FHWA published a notice of proposed rulemaking (NPRM) at 45 FR 10236 requesting comments on proposed changes to the above geometric design standards. The changes would be based on the substitution of a new AASHTO publication, "A Policy on Geometric Design of Highways and Streets" (Policy), 1984, for several of the existing documents now referenced in 23 CFR Part 625. As stated in the NPRM, the primary reasons for development of the new Policy document are: To incorporate the latest available research findings on design concepts; to provide for vehicle characteristics which have changed since the previous criteria were issued; to incorporate current practices; to eliminate material covered elsewhere; and to combine the criteria now contained in at least five different publications.

The FHWA extended the original 90-day comment period by 30 days (45 FR 34302, May 22, 1980) from May 14, 1980, to June 13, 1980, in order to provide interested parties additional time to respond to the NPRM.

A "Notice regarding status of proposed rule" was published on November 17, 1980 (45 FR 75690). This status notice discussed the comments received as a result of the NPRM, concentrating on procedural comments as opposed to the comments pertaining to technical aspects of the proposed standards. The November 17 notice also announced procedures that would be followed leading to publication of this final rule:

1. The FHWA would categorize all comments responding to the NPRM into: (a) Nontechnical/editorial; (b) minor technical; (c) major technical; and (d) technical in need of new research.

2. The comments would be reviewed and analyzed and the AASHTO would be notified of FHWA's conclusions and recommendations.

3. The FHWA would then receive a formal submission of a revised Policy from AASHTO.

4. The FHWA would review the modified Policy. If at the time of issuance of a final rule, the Policy contains material not acceptable to the FHWA, such material would be noted and excluded and, as required, alternative criteria will be adopted for use on Federal-aid projects.

On May 21, 1981, the FHWA published in the **Federal Register** a "Notice regarding status of proposed rule" (46 FR 27722) which announced that a response had been transmitted to

AASHTO commenting upon its proposed new publication entitled "A Policy on Geometric Design of Highways and Streets" (Policy). A copy of the response was placed in the public docket (80–2) and was available for review by interested parties.

The AASHTO reviewed FHWA's conclusions and recommendations to the proposed Policy. The modified Policy has been formally submitted to the FHWA and it has been determined that the Policy is in conformance with the requirements set forth by the FHWA.

Therefore by this document, the FHWA is approving the Policy for use on Federal-aid projects by incorporating it by reference into 23 CFR Part 625.

Discussion of Comments and FHWA's Response to AASHTO

Sixty-nine comments were received in response to the NPRM issued on February 14, 1980. Comments were submitted by representatives from the following interest groups:
4 congressional, 5 Federal agencies, 23 State highway agencies, 14 local government agencies, 4 academia, 4 highway consultants, 6 public interest organizations, and 9 from other interested parties. The majority of the comments (55) either expressed support or no position on the Policy. Only 10 commenters (counting for duplication) expressed opposition to the Policy.

After carefully reviewing the proposed Policy together with the comments received, the FHWA prepared a formal response to the proposed Policy. The response consisted of four parts:

1. Category A: Editorial Revisions (corrections to spelling, grammar, punctuation, additional references, etc.).

2. Category B: Recommendations Warranting Thorough Investigation (recommendations for modifications which while not mandatory for FHWA approval were considered as enhancing the Policy).

3. Category C: Recommendations for Criteria Requiring Modification For Acceptance (value or standards which need to be revised before approval for application to Federal-aid projects).

4. Category D: Criteria Accepted on Interim Basis Subject to Modification (values or standards allowed on a conditional basis until research demonstrates they are appropriate or provides supportable alternative criteria).

Category A consisted of 27 pages of double-spaced commentary; Category B, 93 pages; Category C, 8 pages, and Category D, 2 pages. The response to AASHTO incorporated the majority of the significant issues raised by the commenters concerning the technical aspects of the proposed Policy.

The AASHTO initially agreed to incorporate all the changes recommended in Category A, to incorporate a large percentage of the recommended changes in Category B, and to institute action in the areas of needed research set forth in Category D.

With regard to Category D, AASHTO agreed to initiate research efforts in the following six technical areas: (1) Cross-over crowns; (2) parameters affecting sight distance; (3) truck tractive power criteria; (4) side friction factors for superelevation; (5) acceleration and deceleration lengths for terminals; and (6) shoulder contrast. Research has been completed on maximum allowable cross-over crowns (pavement-shoulder break) and the results have been incorporated into the text of the Policy. Research has been initiated in the 5 remaining areas except for "shoulder contrast" which is presently being actively considered for future research. Therefore, the technical areas listed above as 2 through 6 are approved pending resolution or modification by research.

With regard to Category C, there were 42 general subject issues and/or specific values which the FHWA determined could not be approved for application on Federal-aid projects as written in the proposed Policy. The FHWA also determined that four of these issues were paramount: (1) That portion of the "Foreword" which emphasized use of minimum and below minimum values, thus placing the burden on the designer to justify the use of larger values even when the value is within the established range; (2) lack of an adequate discussion concerning the necessity for providing clear roadsides; (3) inconsistent pavement and bridge widths within each chapter and the lack of provisions prescribing equal or increasing values for each higher type facility; and (4) a lack of new procedures and equations for railroad/highway grade crossings. The AASHTO agreed with the recommendations and made the revisions to the Policy along with 35 of the remaining 38 issues cited.

The three remaining issues not resolved were: (1) Provisions for 8-foot minimum parking lanes on collectors in low volume residential areas in lieu of the 7-foot lanes proposed; (2) a requirement for minimum clearance of 2 feet behind face of curbs for fixed objects such as fire hydrants, light standard utility poles, etc., in lieu of the 16-inch clearance proposed; and (3) limit on low or lower speed urban classification to a maximum of 40 m.p.h. as opposed to the 50 m.p.h. maximum proposed. By letter of October 13, 1981, AASHTO notified FHWA of its exceptions to these recommendations and attached supporting documentation. Based on the strong supporting data and after thorough consideration, FHWA accepted the AASHTO proposed standards for the first two items, but rejected the third item in a letter to AASHTO dated November 23, 1981. The FHWA further stated that if the 40 m.p.h. maximum low speed requirement was not accepted, the 50 m.p.h. standard would be listed as an exception in the final rule for Federal-aid projects. In September of 1982, the AASHTO Task Force responsible for preparing the "Policy" agreed to the FHWA standard of a maximum low speed urban classification of 40 m.p.h. With the resolution of this issue, the AASHTO and FHWA reached total agreement on the contents of the Policy. Therefore, the publication has been determined to be in conformance with the requirements as set forth by the FHWA.

Summary of Policy

The Policy combines the geometric design considerations from both the DUHAS and GDRH. In general, the Policy utilizes the format of the GDRH with the following significant differences: addition of a chapter on "Highway Functions"; expansion of the "Highway Types" chapter into four functional chapters—"Local Roads and Streets," "Collector Roads and Streets," "Arterial Roads and Streets," and "Freeways"; and incorporation of the information from the current GDRH chapters "Controlled Access Highways" and "Intersections Design Elements" into various chapters. The geometric design material from "Part III—Highway Design" of the DUHAS is incorported in the new Policy. The DUHAS material on planning ("Part I—Transportation Planning") and location ("Part II—Highway Location") is omitted in that these provisions are intended to be issued separately in order to give them the full coverage and particular exposure they warrant.

The following paragraphs provide a brief synopsis of the information that is included in each of the ten chapters of the proposed Policy and, as appropriate, any significant additions, revisions, or deletions made to the currently approved AASHTO publications.

Chapter I—Highway Functions

This chapter is made up of information not contained in previous publications. The concept of functional classification is presented and the various components considered in

detail. This serves as both an introduction to functional classification and an explanation of how the concept is employed in this publication.

Chapter II—Design Controls and Criteria

This chapter is primarily an expansion of the current chapter in the GDRH. The expansion includes new material and data from the DUHAS. The new material consists of: A totally new section discussing driver performance; a revision of the current material to develop a section on highway capacity compatible with the "Highway Capacity Manual," [1] which establishes levels of service for the various functional classifications; and essentially new sections on pedestrian characteristics and safety.

Chapter III—Elements of Design

This chapter is based on and derived from much of the material from the comparable chapter in GDRH. There are a few significant changes and several additions. The height of eye and height of vehicle used in sight distance determinations is lowered. The climbing lanes discussion is changed to utilize the method in the "Highway Capacity Manual." Sections discussing decision sight distance and emergency escape ramps for heavy vehicles on steep downgrades are added, while a new discussion is added to the "Horizontal Alignment" section covering the employment of superelevation on lower speed urban streets.

Chapter IV—Cross Section Elements

This chapter is based primarily on its counterpart in the GDRH. The differences generally involve the addition of new material, including a discussion on skid resistance to supplement the section on pavements, and sections dealing with traffic barriers, noise control, park and ride facilities, ramps for the physically handicapped, and on-street parking.

Chapter V—Local Roads and Streets

The first of the four functional classification chapters, Chapter V represents an essentially new concept although most of the data is derived from the AASHTO publication "Geometric Design Guide for Local Roads and Streets," 1971 (GDG), except for the material pertaining to special purpose roads.

The "Special Purpose Roads" part of this chapter is an outgrowth of work done by a Federal advisory group in an effort to provide guidelines for designs where the combination of volumes, use, and conditions dictate minimum criteria. One of the significant items in this discussion provides guidelines for the use of two-directional, one-lane roadways with turnouts. The sections that constitute the special purpose part of the chapter are "Recreational Roads," "Resource Development Roads," and "Local Service Roads."

Chapter VI—Collector Roads and Streets

This chapter continues the functional classification concept. The values that are established range from the higher values contained in the chapter on local roads and streets to the lower values in the chapter on arterials. Because the values represent such a blend, it could not be derived from one primary source. Rather, it combines pertinent information from all five of the AASHTO publications that are superseded.

Chapter VII—Arterial Roads and Streets

The third of the four functional chapters, Chapter VII excludes coverage of freeways even though they are considered a type of arterial. The chapter is based primarily on information extracted from the related chapters in the GDRH and DUHAS, with the addition of values from the AASHTO publication "Geometric Design Standards for Highways Other Than Freeways," 1969 (GDS). The variation between criteria presented in this chapter and the criteria currently used for arterials is minimal.

Chapter VIII—Freeways

While freeways are a part of the arterial functional classification, as previously recognized, a separate chapter is provided because there are sufficient distinctions to make such a division desirable. Urban freeway material is taken from the chapter on this subject in the DUHAS. The rural discussion essentially consists of original material, and is quite brief because urban and rural freeways share many of the same characteristics and, therefore, many of the detailed urban values are applicable to rural conditions.

Chapter IX—At-Grade Intersections

This chapter essentially updates the chapter with the same title in the GDRH, with the incorporation of relevant material from the "Intersection Design Elements" chapter of the same publication and pertinent information from the DUHAS. Significant changes include: a new section describing the human, traffic, physical, and economic elements of intersection design; a new table listing the appropriate simple curve radius with taper to affect minimum edge of pavement designs for turns at intersections; an extension to the safe sight distances discussion to include vehicles turning left onto two-lane highways from a stopped position; and a new procedure for determining sight distance needs at railroad crossings.

Chapter X—Grade Separations and Interchanges

Like the preceding chapter, Chapter X is patterned after the chapter with the same title in the GDRH. It incorporates pertinent data from the "Intersection Design Elements" chapter of the GDRH and from the DUHAS. Significant changes that are made are: elimination of the presentation on rotary interchanges; a new discussion discouraging use of left-hand entrances and exits; and new or expanded material on interchange determination, route continuity, lane balance, collector-distributor roads within an interchange, double versus single exits at interchanges, wrong-way entry, and gore treatments.

Regulatory Impact

The NPRM published on February 14, 1980, was processed under procedures related to rulemaking under Executive Order (E.O.) 12044. E.O. 12044 was revoked and superseded by E.O. 12291 on February 17, 1981 (46 FR 13193). The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, under the regulatory policies and procedures of the Department of Transportation, this regulation is considered significant because of the substantial public interest in the subject matter. The Policy however is primarily an updating and consolidation of information and the cost impacts, when compared to currently applicable criteria, are not major or adverse.

The FHWA has determined that the expected impact of this amendment is minimal. This determination is based on the fact that, although the Policy contains a considerable amount of new material and an extensively reorganized format, the basic geometric design criteria remain essentially the same. Examples of such basic criteria include

[1] The "Highway Capacity Manual," Highway Research Board, Special Report 87, 1965, is available for inspection and copying from the FHWA pursuant to 49 CFR Part 7, Appendix D, and for purchase from the Transportation Research Board, 2101 Constitution Avenue, NW., Washington, D.C. 20418.

lane and shoulder widths and horizontal and vertical alignment requirements.

Other criteria are revised to a slightly greater extent. One example is the criteria for stopping sight distance. Because cars have become lower over the years, the dimension for the height of the driver's eyes is reduced from 3.75 feet to 3.50 feet to cover the majority of the vehicle population. That change increases the stopping sight distance requirement by approximately 5 percent. The impact of such a small increase is minimal compared to the greater impact of many other variables involved in highway design, such as terrain.

Much of the new material in the Policy is not in fact a policy or standard, but simply provides guidance for use at the discretion of the designer. Examples of such material include the discussions of the decision sight distance concept, emergency escape ramps for out-of-control vehicles, and special purpose roads. Special purpose roads are park roads, logging roads, fire roads, etc., which have limited and specialized use. The criteria for emergency escape ramps are based on successful designs that have been used in various States. The criteria for special purpose roads are generally based on the standards that have been used by other Federal agencies. Such criteria have only a limited application on Federal-aid projects. Impact on the overall highway program is negligible.

In some instances the changes that are made to the criteria are compensatory, i.e., the application of the new criteria results in essentially the same design as would have been achieved under the old criteria. Such is the case with determining the length of truck climbing lanes. The new criteria reduce, for the sake of improved safety, the tolerable speed differential between cars and trucks from 15 m.p.h. to 10 m.p.h. That change in itself requires considerably longer climbing lanes in some cases. However, when the new truck characteristics were investigated it was found that truck performance in terms of weight-to-horsepower ratio has improved considerably since the original design assumptions were made. When the new tolerable speed differential is combined with the greatly improved performance of the current trucks, the final length requirements for the climbing lanes are only minimally changed. As a result, the impact on the highway program is very minimal.

For the reasons stated above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), it is certified that this action will not have a significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference.

In consideration of the foregoing and under the authority of 23 U.S.C. 101(e), 109, 315, and 402; and 49 CFR 1.48(b), the FHWA amends 23 CFR 625.3 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The following text is added to the introductory paragraph of § 625.3:

§ 625.3 Standards, specifications, policies, guides, and references.

* * * The following design standards are incorporated by reference and are on file at the Office of the Federal Register in Washington, D.C. They are available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division and Regional offices as prescribed in 49 CFR Part 7, Appendix D. Copies of current AASHTO publications are also available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, D.C. 20001.

* * * * *

2. Remove paragraphs (a)(1), (a)(2), (a)(4), (a)(5), and (a)(11);

3. Add a new paragraph (a)(1) to read as follows:

* * * * *

(a) * * *

(1) A policy on Geometric Design of Highways and Streets, AASHTO, 1984.[2]

* * * * *

4. Redesignate paragraph (a)(3) as paragraph (a)(2);

5. Redesignate paragraphs (a)(6) through (a)(10) as paragraphs (a)(3) through (a)(7), respectively; and

6. Redesignate paragraphs (a)(12) through (a)(21) as paragraphs (a)(8) through (a)(17), respectively.

Issued on: April 9, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85–9017 Filed 4–12–85; 8:45 am]

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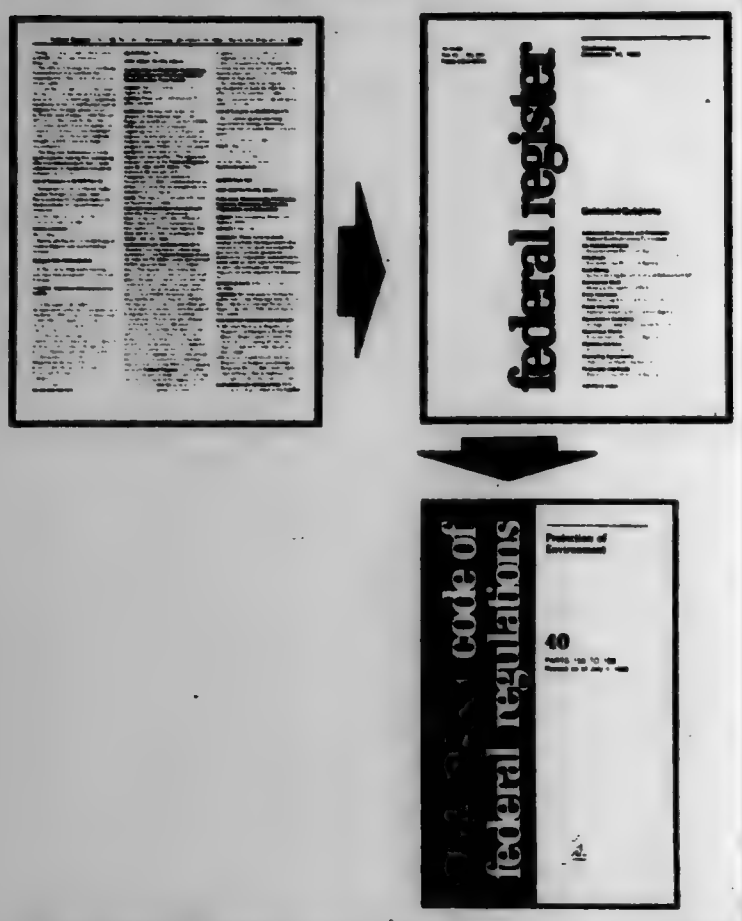
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Mortgage Insurance
Housing and Urban Development Department

National Parks
National Park Service

Quarantine
Animal and Plant Health Inspection Service

Radio Broadcasting
Federal Communications Commission

Rent Subsidies
Housing and Urban Development Department

Television Broadcasting
Federal Communications Commission

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-030]

Importation of Horses From Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of certain horses by removing Australia from the list of countries in which contagious equine metritis (CEM) exists. It has been determined that CEM no longer exists in Australia. This action relieves restrictions on the importation into the United States of certain horses from Australia.

EFFECTIVE DATE: April 16, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6305 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR 92 (referred to below as the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

In a document published in the **Federal Register** on February 13, 1985 (50 FR 5999-6000), the Department proposed to amend the regulations by removing Australia from the list of countries in which CEM exists. Comments were solicited concerning the proposal for a 30-day period ending March 15, 1985. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

The effect of this rule is to relieve restrictions on the importation of certain horses from Australia.

Effective Date

This final rule is made effective on the date of publication. The final rule relieves certain restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete these restrictions.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individuals industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

No significant change in the number of horses imported into the United States or in the number of persons importing horses into the United States is anticpated as a result of this rule.

Based on the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Therefore, 9 CFR Part 92 is amended as follows:

§ 92.2 [Amended]

1. In § 92.2(i)(1) "Australia" is removed.

2. In § 92.2(i)(2)(iii) "and Standardbred horses from Australia" is removed and "and" is inserted before "France".

Authority: 21 U.S.C. 111, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 11th day of April 1985.

G. J. Fichtner,
Acting, Deputy Administrator, Veterinary Services.

[FR Doc. 85-9089 Filed 4-15-85; 8:45 am]
BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-CE-36-AD; Amdt. 39-5040]

Airworthiness Directives; Piper Models PA-31/PA-31-300, PA-31-325, PA-31-350, PA-31-350 T-1020, PA-31P, PA-31T, PA-31T1, PA-31T2 and PA-31T3 T-1040 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain models of Piper PA-31 series airplanes which requires visual inspection of the main and nose landing gear struts and the replacement of upper bearing retaining pins. Field reports have been received of distorted, distressed or sheared landing gear upper bearing retaining pins which resulted in separation of the strut piston tube and wheel. Additionally, certain airplanes may have main and nose landing gear upper bearings with rough surfaces or ridges which could score strut housing walls, generate aluminum dust and cause premature wear of strut

components. The inspections and pin replacement will prevent strut damage or separation.

DATES: *Effective date:* May 20, 1985. *Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Piper Service Bulletin (S/B) No. 779A, dated July 16, 1984, applicable to this AD may be obtained from Piper Aircraft Corporation, 3000 Medulla Road, Lakeland, Florida 33803. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations was issued to include an AD requiring replacements of the main and nose landing gear strut upper bearing retaining pins, visual inspection of the main and nose landing gear strut assemblies and if necessary, replacement of the upper bearings or housing assembly on certain Piper Models PA-31/PA-31-300, PA-31-325, PA-31-350, PA-31-350 T-1020, PA-31P, PA-31T, PA-31T1, PA-31T2, PA-31T3 T-1040 and PA-42 airplanes. This proposal was published in the **Federal Register** on January 4, 1985 (50 FR 479). The proposal resulted from two instances of main landing gear separation on Piper Model PA-31-350 airplanes. The FAA determined that the landing gear strut upper bearings, which also are strut extension stops, had separated when the upper bearing retaining pins failed. The failure of these pins allows the bearing to separate from the piston tube and permits unrestricted extension of the piston from the strut housing. Loss of the piston tube and wheel results. In addition, it was determined by the manufacturer that other models of the PA-31 series airplanes may have main and nose landing gear upper bearings with rough surfaces or ridges which may score strut housing walls, generate aluminum dust and cause premature wear of strut components. This damage can cause fluid leakage, loss of strut pressure and shock absorbing capability.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Subsequent to the issuance of the proposal the manufacturer has advised the FAA that Piper Model PA-42 airplanes already comply with the corrective action prescribed by the AD. Accordingly, this model is being deleted from the applicability statement of the AD. Therefore, except as mentioned above, the proposal is adopted without change.

The cost of compliance with the AD is so small that it will not have a significant economic impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Piper: Applies to Models PA-31/PA-31-300 and PA-31-325 (S/Ns 31-2 through 31-8312014); PA-31-350 (S/Ns 31-5001 through 31-8352042); PA-31-350 T-1020 (S/Ns 31-8153001 through 31-8353007); PA-31P (S/Ns 31P-1 through 31P-7730012); PA-31T (S/Ns 31-7400002 through 31T-8120104); PA-31T1 (S/Ns 31T-7804001 through 31T-8304003 and 31T-1104004 through 31T-1104006; PA-31T2 (S/Ns 31T-8166001 through 31T-8166071, 31T-8166073, and 31T-8166078) and PA-31T3 T-1040 (S/Ns 31T-8275001 through 31T-8275003) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To preclude loss of the main and nose landing gear, accomplish the following:

(a) On all applicable airplanes, remove each piston tube assembly from its strut housing in accordance with instructions in the appropriate Maintenance Manual.

(1) Inspect the interior walls of each strut housing for abnormal wear or damage (gouges, scoring, ridges, non-concentric wear). Replace housing assembly if such wear or damage is indicated.

(2) Remove and replace the retaining pins connecting the upper bearing to the piston tube in accordance with either paragraph (a)(4)(i) or (a)(4)(ii) of this AD. The bearing and piston tube are drilled to allow slip fit, and the pins should come out easily. Seizing or deformation of pins is an indication of the damage described in paragraph (a)(4)(i), below.

(3) On Models PA-31/PA-31-300 and PA-31-325 (S/Ns 31-2 through 31-8312014); PA-31-350 (S/Ns 31-5001 through 31-8352042); PA-31P (S/Ns 31P-1 through 31P-7730012); PA-31T (S/Ns 31-7400002 through 31T-8020088); PA-31T1 (S/Ns 31T-7804001 through 31T-8004005); PA-31T2 (S/Ns 31T-8166001 through 31T-8166013) airplanes only:

Remove the upper bearing and inspect the area shown in Sketch A of Piper Service Bulletin No. 779A dated July 16, 1984. If ridges are found in the designated inspection area, replace the bearing. Inspect replacement bearings in accordance with Sketch A prior to installation.

(4) Visually inspect the pin holes in the piston tube.

(i) If holes are found to be elongated, deformed, chamferred, or out of tolerance (holes should be concentric with nominal dimension of .250-.251), or if standard Piper Part Number 01821-06 or 0821-07 pins cannot be pressed easily into holes, install oversize pins in accordance with either Piper Kit 764 417 or Piper Kit 764 418.

(ii) If holes are acceptable, replace pins with new harder retaining pins, Piper Part Number 01821-06 or 0821-07, as applicable for the strut involved.

(5) Reassemble the strut, replacing all seals, rings and wipers with new parts per applicable parts catalog and reinstall landing gear in accordance with appropriate Maintenance Manual.

(b) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a) 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and section 11.89 of the Federal Aviation Regulations (14 CFR 11.89)

This amendment becomes effective on May 20, 1985.

Issued in Kansas City, Missouri, on April 4, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-9051 Filed 4-15-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 205

[Docket No. R-85-1174; FR-1779]

Mortgage Insurance for Land Development (Title X) Refinancing of Existing Mortgage

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the proposed rule providing for HUD-insured refinancing of existing mortgages insured under Title X of the National Housing Act. The provision for refinancing provides relief to mortgagors when interest rates decline and reduces the risk of foreclosure to the Department.

EFFECTIVE DATE: May 17, 1985.

FOR FURTHER INFORMATION CONTACT: Brian J. Chappelle, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, D.C. 20410; telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1002 of the National Housing Act, 12 U.S.C. 1749bb (the "Act") authorizes the Secretary to insure mortgages for the acquisition and development of real property to be used for residential purposes. The regulations governing eligibility of these mortgages for insurance are contained in 24 CFR Part 205. Although section 223(a)(7) of the Act authorizes the Secretary to refinance an existing mortgage insured under the Act, there have been no provisions in the regulations to govern the refinancing of existing mortgages insured under Title X.

On June 12, 1984, the Department published a proposed rule in the **Federal Register** (49 FR 24147), proposing to amend 24 CFR Part 205 by adding a new § 205.68 to allow Title X mortgagors to refinance their mortgages. A technical correction was also proposed to § 205.47(b)(3) to correct a misnomer. This section was intended to provide that a maturity in excess of 10 years may be approved in order to avoid undue hardship to the *mortgagor*, not the mortgagee.

After a 60-day comment period and a review of the public comments received during that period, the Department is now making final the proposed rulemaking without change. Two comments were received (one from a mortgage company and one from the National Association of Home Builders). Both comments were very favorable. Below is a discussion of two recommendations included in the comments, and the Department's responses to each.

1. Section 205.68 should allow the inclusion of any cost involved to complete the land development. This would accommodate any unpaid bills and possible liens.

The purpose of § 205.68 is to allow refinancing of Title X mortgages to secure the benefits of lower interest rates, when such rates are available. The Department believes that, under those circumstances, refinancing could provide relief to mortgagors whose mortgages are current. This rule is not intended to provide a mechanism for refinancing of troubled projects. Troubled projects already have recourse to relief through forbearance, mortgage modification or other workout solutions. Refinancing should not be a technique for increasing the allowable mortgage for a troubled project.

2. The regulations should allow for a cash payoff in case of an assignment, instead of a debenture payoff.

24 CFR 207.259(a) (cross referenced in Part 205) allows the Federal Housing Commissioner to determine whether insurance claims will be paid in cash or in debentures. The current policy of the Commissioner is in favor of cash payments upon assignment of Title X mortgages. A mortgagee receiving a commitment while this policy is in effect will be paid in cash upon assignment, even if a future Commissioner adopts a debenture payment policy applicable to future commitments.

The rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the final rule indicates it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is listed at 49 FR 41704 as item number 61 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684), under Executive Order 12291 and the Regulatory Flexibility Act.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act) the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because there are only a few projects that carry mortgages at higher interest rates and that would contemplate refinancing.

The Catalog of Federal Domestic Assistance program number is 14.125—Mortgage Insurance—Land Development and New Communities (Title X).

List of Subjects in 24 CFR Part 205

Community facilities, Mortgage insurance, Land development.

PART 205—[AMENDED]

Accordingly, 24 CFR Part 205 is amended as follows:

1. By revising § 205.47(b)(3) as follows:

§ 205.47 Mortgage amortization and maximum maturity.

* * * * *

(b) * * *

(3) In a case where the Commissioner determines that unusual or unforseen circumstances make such longer maturity necessary in order to avoid undue hardship to the mortgagor.

2. By adding a new § 205.68, to read as follows:

§ 205.68 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage may be insured under this subpart. The principal amount and the term of the new mortgage shall not exceed the unpaid amount and the unexpired term of the existing insured mortgage.

Authority: Sec. 223(a)(7), National housing Act, 12 U.S.C. 1715n.

Dated: April 10, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-9109 Filed 4-15-85; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. R-85-1154; FR-1904]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Existing Housing and Moderate Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The United States Housing Act of 1937 requires the Department to publish at least annually Fair Market Rents (FMRs) for its Section 8 Housing Assistance Payments Programs. The Department published an interim rule on July 5, 1984, establishing FMRs for the Section 8 Existing Housing and Moderate Rehabilitation Programs, including space rentals by owners of manufactured homes. These FMRs were effective October 1, 1984, but the Department also requested comments on the rent levels. Today's document adopts as final the interim rents, with changes made in rent levels where local data submitted in response to the interim rule justified a change in the FMR level. The FMRs also are used as the basis for the Payment Standard for the Department's Section 8 Housing Voucher Program.

EFFECTIVE DATES: The interim rents were effective on October 1, 1984. Changes to the interim rents, published at the end of this document, will be effective May 17, 1985. The effective date for purposes of calculating the Public Housing Agency earned administrative fee was March 29, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing, telephone (202) 755-5720. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Ellis V. St. Clair, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5590. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe and sanitary housing. This program, which includes housing assistance payments for moderate rehabilitated housing and existing housing, is administered by Public Housing Agencies (PHAs) under regulations found in 24 CFR Part 882. (The existing housing program includes assistance to the owner of a manufactured home for renting a manufactured home space.) Section 8(c)(1) of the Act requires HUD to publish the Fair Market Rents (FMRs) at least annually in the **Federal Register**. The Department published interim rents on July 5, 1984, which were effective on October 1, 1984, and which reflect estimated rent levels as of April 1, 1985. (see 49 FR 27658.)

The interim rents included FMRs for existing housing and for manufactured home spaces. (The FMRs for the Moderate Rehabilitation Program are 120 percent of the FMRs for existing housing.) The rents were determined by using the same criteria adopted by the Department in 1983. These criteria (HUD's measure of modest housing) include: (1) The 45th percentile rent (*i.e.*, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who move within two years before the date of the survey data used in the rent calculations); and (3) the exclusion from the data base of all public housing units and recently completed housing (units completed within two years of the survey dates.) In addition, the rents included proportionally larger increases for unit sizes of three bedrooms or more. FMRs also are used as the basis for establishing the payment standard for the Housing Voucher Program.

While the interim FMRs announced an effective date of October 1, 1984, the Department solicited comments on FMR levels for specific areas. The comments and responses to the comments are discussed below.

Public Comment

HUD received 45 comments on the FMRs, including seven from HUD Field Offices and 38 comments from PHAs, including joint comments from contiguous PHAs, and housing advocates.

All the comments concerned the adequacy of the FMR levels, while several raised related program issues. All but one comment stated that the FMRs are too low. All public comments concerning rent levels were reviewed initially by HUD Field Office staffs who are familiar with current housing market conditions and trends in the localities within their jurisdictions. Field Office-initiated evaluations and recommendations (which in seven cases included Field Office recommendations for increased limits for particular jurisdictions) were reviewed by Regional and Headquarters Economic and Market Analysis staff to ensure that all available market data and program guidelines were adequately considered. Where the re-evaluation in light of data submitted justified a revision in the interim FMRs (determined by HUD review) the FMR schedules have been revised.

Thirteen commenters stated that the 45th percentile rent, published for the commenter's Metropolitan Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or non-metropolitan area (all generally referred to throughout the rest of this document as FMR area) is *lower* than the 45th percentile rent for the commenter's specific jurisdiction. Some of these commenters indicated that they thought it might be appropriate to further break down the designation of the area covered by the FMR determination.

While the Department recognizes that portions of a FMR area may have rent levels that exceed the FMR, and that this may create specific problems for a Family seeking a unit within the FMR area, each FMR reflects a rent level generally appropriate for a designated housing market area. The Department (with many other Federal agencies (has used and will continue to use the definitions of metropolitan and non-metropolitan areas adopted by the Office of Management and Budget. (For a discussion of a recent revision in these definitions, see the September 23, 1983 final rule on the FMRs, 48 FR 43578.) For administrative practicability and utility, the Department has determined that these OMB determinations constitute a rational basis for determining housing market areas. Since FMRs in any geographic area reflect the number below which 45 percent of the rents will fall, actual rents will vary within each area, with one portion having higher rents than the average and another portion having actual rents below the average.

Several commenters criticized the Department for its method of granting exception rents. These commenters stated that they lose several months each year trying to catch up with the changing FMRs. Under the Department's

current regulations (24 CFR 882.106), a PHA may approve Gross Rents on a unit-by-unit basis (for up to 20 percent of its authorized units) that exceed the FMR by up to ten percent. The PHA may also request that HUD permit the PHA to approve Gross Rents of up to 20 percent above the applicable FMR for all units of a given size or type in an area, or to meet unique needs of a Family. Beyond this, the Section 8 Existing Handbook (HUD Handbook 7420.3) allows a PHA to choose the new FMR or its already-approved exception rent, whichever is higher. New exception rents, keyed, to new FMRs, must go through the request and approval procedure provided for in 24 CFR 882.106. The Department does not believe that this is unduly burdensome for PHA, since exception rents are discretionary and must be justified in each case by the particular facts.

One PHA stated that it was unfair to operate under an exception rent, while having its administrative fee based on the published two-bedroom FMR. The Department believes that keying the administrative fee to the published two-bedroom FMR is a valid method of determining the administrative fee. The rent is used as an indicator of costs in the area. The Department will continue to use the two-bedroom FMR as the basis for relative cost comparison area-to-area and as the basis for the administrative fee. However, as stated previously, the Department is continuing to evaluate different methods of determining the administrative fee to provide more equitable compensation to the PHAs based on specific circumstances applicable to individual PHAs.

In addition to the above comments, there were several miscellaneous comments. Four commenters observed that the new FMRs are lower than older FMRs adjusted by the Annual Adjustment Factors and that this can lead to the seemingly incongruous result of a new unit in a building not qualifying for the program because of too-high rents, while existing Section 8 Families already in the building can stay in the program, operating under the older FMRs with Annual Adjustments.

The situations described in these comments can exist. The long-term Families in the building probably began in the Section 8 program when different criteria were used by the Department (50th percentile rent levels). These units are entitled to adjustments using the Annual Adjustment Factors. Assuming the units meet the test of rent reasonableness (see 24 CFR 882.106(b)), it is possible that the authorized rents for these units will be higher than the most recently published FMRs. In 1983, the Department determined that the 45th percentile of standard quality units in the survey provides a sufficient inventory of units for the program. Any unit which came into the program under the previous 50th percentile level will potentially have a higher rent cap.

One PHA criticized the Department for using December 1983 CPI data instead of June 1984 CPI data. According to this comment, using 1983 data results in one percent lower FMRs. It was not possible for the Department to use June 1984 data and publish the rents, as it did, on July 5, 1984. The complete listing of rents takes several months to prepare, and the December 1983 data was the most current data the Department could use and still publish during the 1984 calendar year. Any cost increases indicated in the June 1984 CPI data most likely will be reflected in next year's rents.

Three commenters noted that too-low FMR levels will affect two related HUD programs—the Housing Voucher Program and the Rental Rehabilitation Program. Since the payment standard used in the Housing Voucher Program is based on the FMR, there was some concern that too-low FMRs would result in an ineffectual Housing Voucher demonstration. The comment on the Rental Rehabilitation Program expressed concern about the chances of success for the program if the FMRs are too low. The Department affirms what it said last year, which is that the participants in the Rental Rehabilitation Program are expected to deliver at least 80% of the rehabilitated units at rents *below* the FMRs. Local officials are responsible for selecting appropriate buildings and neighborhoods and for developing methods to finance the rehabilitations that ensure affordability for 80 percent of the units.

One commenter requested the ability to deny a program participant access to luxury units. The Section 8 Certificate FMR limits are intended to make available decent, safe and sanitary modest (non-luxury) housing, and the Department believes that cases in which a Family can rent a luxury unit within the FMR limit (and subject also to the rent reasonableness limitation) will be exceedingly rare.

Finally, one commenter requested that the Department return to the 50th percentile of rent (rather than the 45th percentile) to determine FMRs, to attempt to get more units meeting housing quality standards into the survey. The Department's experience is inconsistent with this commenter's. The Department has determined that the 45th percentile of standard quality units provides sufficient inventory of housing to run the Section 8 program in a cost-effective and successful manner.

The Document

This rule adopts as final the interim rents published on July 5, 1984, and effective October 1, 1984. The FMRs that are adopted without change are not reprinted. Areas that have new FMRs are set out in Schedules B and D at the end of this document.

Other Matters

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Section 8 Existing Housing program is categorically excluded under HUD regulations at 24 CFR 50.20(d).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because FMRs reflect the rents for similar quality units in the area. Therefore, FMRs do not change the rent from that which would be charged if the project were not in the Section 8 program.

This rule was listed as item 119 under the Office of Housing in the Department's Semi-Annual Agenda of Regulations published on October 22, 1984 (49 FR 41684, 41715) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 888

Rent subsidies.

Accordingly, 24 CFR Part 888 is amended as follows:

The interim rule published on July 5, 1984 (49 FR 27658) is adopted as final without change, except as indicated in the list of specific new rents appearing in Schedules B and D at the end of this document.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 8 U.S. Housing Act of 1937 (42 U.S.C. 1437f).

Dated: April 10, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

SCHEDULE B—FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 022585 FMR AREA BY HUD JURISDICTION

[SEE NOTES AT END OF SCHEDULE]

	0 bedrooms	1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
Region 1, Hartford, Connecticut Office					
MSA: Bristol, CT	285	350	410	510	575
MSA: Norwalk, CT	390	475	560	700	780
MSA: Stamford, CT	400	490	575	720	800
Region 2, New York, New York Office					
MSA: Nassau-Suffolk, NY	385	470	550	690	770
MSA: Poughkeepsie, NY	315	380	450	580	630
Region 2, Newark, New Jersey Office					
PMSA: Atlantic City, NJ	310	375	440	550	615
PMSA: Philadelphia, PA–NJ	310	375	440	550	615
PMSA: Trenton, NJ	370	445	525	650	735
PMSA: Vineland-Millville-Bridgeton, NJ	295	355	420	525	585
PMSA: Allentown-Bethlehem, PA–NJ	275	325	380	475	530
PMSA: Jersey City, NJ	280	340	400	500	560
PMSA: Middlesex-Somerset-Hunterdon, NJ	350	425	500	625	700
PMSA: Newark, NJ	325	385	450	580	630
Region 3, Baltimore, Maryland Office					
MSA: Washington, DC–MD–VA–Columbia (U) MD	340	415	485	595	650
	400	485	570	690	765
Region 3, Philadelphia, Pennsylvania Office					
PMSA: Allentown-Bethlehem, PA–NJ	275	325	380	475	530
PMSA: Philadelphia, PA–NJ	310	375	440	550	615
Region 3, Richmond, Virginia Office					
MSA: Washington, DC–MD–VA	340	415	485	595	650
Region 3, Washington, D.C. Office					
MSA: Washington, DC–MD–VA	340	415	485	595	650
Region 4, Atlanta, Georgia Office					
MSA: Albany, GA	235	275	325	375	425
Region 5, Columbus, Ohio Office					
County: Tuscarawas, OH	215	265	310	385	435
Region 6, Dallas, Texas Office					
MSA: Las Cruces, NM	230	280	330	415	460
County: Hunt, TX	225	270	320	400	450
County: Nacogdoches, TX	217	261	309	379	420
Region 6, Oklahoma City, Oklahoma Office					
County: Carter, OK	195	235	275	345	385
Region 7, Kansas City, Missouri Office					
MSA: Kansas City, MO–KS	270	325	380	475	525
County: Harvey, KS	210	250	300	375	420
Region 7, St. Louis, Missouri Office					
County: Phelps, MO	235	285	335	425	475
Region 9, Los Angeles, California Office					
MSA: Santa Barbara-Santa Maria-Lompoc, CA	385	465	550	690	770
County: Yuma, AZ	280	340	400	490	545
MSA: Anaheim-Santa Ana, CA	400	490	575	750	830
Region 9, San Francisco, California Office					
MSA: Oakland, CA	395	470	560	730	795
MSA: San Jose, CA	450	510	595	775	850
MSA: Santa Rosa-Petaluma, CA	400	450	526	648	755

Note.—Calculation of FMRS for five- or more Bedroom units. The FMRS for unit sizes larger than four-bedrooms shall be calculated by adding 15 percent to the four-bedroom FMR for each additional bedroom. To illustrate the Calculation of the FMR for a five-bedroom unit would be 1.15 times the four-bedroom FMR, and the calculation of FMR for a six-bedroom unit would be 1.30 times the four-bedroom FMR, etc.

Schedule D—Fair Market Rents for Manufactured Home Spaces

[Section 8 Existing Housing Program]

	Single wide space	Double wide space
Baltimore, Maryland Office: Exception County: St Marys	145	145
San Francisco, California Office: PMSA: San Jose	215	270

[FR Doc. 85–9159 Filed 4–15–85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Alaska State Plan; Final Approval Determination; Correction

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Final State plan approval.

SUMMARY: In FR Doc. 84–25840 published September 28, 1984 (49 FR 38252), OHSA announced an affirmative final approval determination on the Alaska State plan under section 18(e) of the Occupational Safety and Health Act, and amended 29 CFR Part 1952 to reflect this decision and to make related revisions. The document which redesignated § 1952.241 as § 1952.245 inadvertently omitted the deletion of the previously codified § 1952.245, which related to approval of miscellaneous plan changes. This is to correct that omission.

EFFECTIVE DATE: September 28, 1984.

FOR FURTHER INFORMATION CONTACT: James Foster, (202) 523–8148.

Accordingly, Subpart R of 29 CFR Part 1952 is hereby amended as follows.

PART 1952—[AMENDED]

Former § 1952.245, Changes to approved plans, is removed.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, D.C. this 9th of April 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–8869 Filed 4–15–85; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action 1511, 1512, 1533; A-7-FRL-2819-2]

Approval and Promulgation of State Implementation Plans; MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves two revisions to the State air pollution control regulations as part of the Missouri State Implementation Plan (SIP). The approved revisions regulate volatile organic compounds (VOC) emissions from paint manufacturing and from painting of plastic parts in the St. Louis ozone nonattainment area. Approval of a third regulation is deferred at State request.

EFFECTIVE DATE: This action will be effective May 16, 1985.

ADDRESSES: Copies of the State submission, an additional letter from the State and the EPA Technical Support memo are available at the Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106, and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101. A copy of the State's submission is also available at the Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C., and The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler at (816) 374–3791, FTS 758–3791.

SUPPLEMENTARY INFORMATION: On October 24, 1984 (49 FR 42749), EPA proposed to approve three new regulations as part of the required SIP for St. Louis ozone nonattainment area. The State developed these regulations to meet the Clean Air Act requirement that all major sources be required to install reasonably available control technology (RACT).

The rules proposed for approval set a limit of 1 pound of VOC emissions per gallon applied (minus water) for deadeners and adhesives, set a limit of 3.5 lb/gal (minus water) for plastic parts painting and require a series of equipment specifications and work practices to be applied to the paint manufacturing industry. For a fuller discussion, the reader should refer to the October 24, 1984, proposal.

During the comment period, the State requested that EPA delay the final rulemaking on the deadeners and adhesives rule until the State can reevaluate and, if necessary, revise the limit set. No public comments were received.

This State submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove a proposed revision is based on the comments received and on a determination of whether or not the revision meets the requirements of Sections 110 and 172 of the Clean Air Act, of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

In accordance with these criteria, I hereby find that the paint manufacturing and plastic parts painting revisions are approvable. In accordance with the State request. I am deferring action on the deadeners and adhesives regulation. I find that this deferral has no effect on the approval status of the Missouri SIP or on the final attainment date for the ozone air quality standard in the St. Louis area. The State has committed to submit, by August 1, 1985, a revised demonstration containing all additional control strategies necessary to attain the standard by December 31, 1987. (See 49 FR 40164, October 15, 1984.) The revised demonstration will either reaffirm the adhesives and deadeners limit, revise it, or determine that it is not reasonable to control this category of source and provide the needed emission reductions from other categories. When the State has completed its reevaluation and formally notified EPA of its intent, with respect to the adhesives and deadeners regulation, EPA will publish a notice approving the regulation, proposing a revised regulation or withdrawing the existing proposal, as appropriate.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements.

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of sections 110 and 301 of the Clean Air Act (42 U.S.C. 7410 and 7601).

List of Subjects in 40 CFR Part 52

Air Pollution Control, Ozone, Hydrocarbons, Incorporation-by-reference.

Dated: April 9, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

1. Section 52.1320 is amended by adding a new paragraph (c)(50) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(50) The Missouri Department of Natural Resources submitted an amendment to Rule 10 CSR 10–5.330 "Control of Emissions from Industrial Surface Coating Operations," limiting emissions from surface coating of plastic parts and new Rule 10 CSR 10–5.370 "Control of Emissions from the Application of Deadeners and Adhesives" on January 24, 1984; and new Rule 10 CSR 10–5.390, "Control of Emissions from Manufacture of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products" and an amendment to 10 CSR 10–6.020, "Definitions" on April 10, 1984. (Approval action was deferred on 10 CSR 10–5.370.)

[FR Doc. 85–9080 Filed 4–15–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–10–FRL–2819–3]

Approval and Promulgation of State Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves amendments to the Oregon Department of Environmental Quality (ODEQ) civil penalty rules as revisions to the Oregon State Implementation Plan (SIP). These amended rules were submitted on

December 10, 1984, after adequate opportunity for public, private and industry input.

EFFECTIVE DATE: This action will be effective on June 17, 1985 unless notice is received before May 16, 1985 that someone wishes to submit adverse or critical comments. If such a notice is received, EPA will open a formal thirty-day comment period on this action.

ADDRESSES: Copies of materials submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Air Programs Branch (10A–84–4), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 SW. Fifth, Yeon Building, Portland, Oregon 97207

Copy of the State's submittal may be examined at: The Office of the Federal Register, 1101 L Street NW., Room 8401, Washington, D.C.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone (206) 442–4253, (FTS) 399–4253.

SUPPLEMENTARY INFORMATION:

I. Plan Revisions

On December 10, 1984, DEQ submitted amendments to its rules for civil penalties (OAR 340–12) which delete Sections 005 through 025, and 052 through 068; revise Sections 030, 040 and 050; add Sections 070 and 075; and retain Sections 035 and 045. The amended civil penalty rules now apply consistently to air, water and hazardous waste violations and have uniform penalty schedules from $25 to the maximum allowed by statute ($20,000).

II. Summary of Action

EPA views as noncontroversial and routine the approval of state regulations which do not allow increases in actual emissions or are only procedural in nature. EPA today is therefore approving, without prior proposal, the following as revisions to the Oregon SIP:

In OAR 340–12—

(1) Deleting Sections 005 to 025 and 052 to 068;

(2) Revising Sections 030 (Definitions), 040 (Notice of Violation), 050 (Air Quality Schedule of Civil Penalties); and

(3) Adding Sections 070 (Written Notice of Assessment of Civil Penalty: When Penalty Payable) and 075 (Compromise or Settlement of Civil Penalty by Director).

Sections 035 (Consolidation of Proceedings) and 045 (Mitigating and Aggravating Factors) are retained as previously approved.

The public should be advised that this action will be effective on June 17, 1985. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the action on those revisions will be withdrawn and to subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on those revisions and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under sections 110, 161, and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

(Sec. 110(a) and 301(a) of the Clean Air Act (42 U.S.C. 7410(a) and 7601(a)))

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Oregon was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 9, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart MM—Oregon

1. In § 52.1970, paragraph (c)(70) is added as set forth below:

§ 52.1970 Identification of plan

* * * * *

(c) * * *

(70) On December 10, 1984, the Oregon Department of Environmental Quality submitted revisions to its Civil Penalty Rules (OAR 340–12) which deleted Sections 005 through 025 and 052 through 068; amended Sections 030, 040 and 050; and added Sections 070 and 075. Sections 035 and 045 were retained.

[FR Doc. 85–9086 Filed 4–15–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA 6653]

44 CFR Part 64

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction

from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will will be published in the **Federal Register**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and County	Location	Community Number	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special Flood Hazard Area identified	Date certain Federal Assistance no longer Available in Special Flood Hazard Areas
Region I					
Maine: Cumberland	South Portland, city of	230053D	Oct. 15, 1974, Emerg.; Aug. 17, 1981, Reg.; Apr. 17, 1985, Susp.	Feb. 22, 1974, Sept. 3, 1976, July 8, 1979 and Aug. 17, 1981.	Apr. 17, 1985.
Massachusetts: Barnstable	Chatham, city of	250004C	July 9, 1975, Emerg.; Aug. 1, 1980, Reg.; Apr. 17, 1985, Susp.	May 31, 1974, Feb. 7, 1978 and Aug. 1, 1980.	Do.
Region II					
New Jersey: Morris	Danville, township of	345292B	July 10, 1970, Emerg.; June 25, 1971, Reg.; Apr. 17, 1985, Susp.	June 25, 1971, July 1, 1974 and Dec. 5, 1975.	Do.
Middlesex	Monroe, township of	340269B	Feb. 25, 1973, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Mar. 8, 1974 and Jan. 7, 1977	Do.
New York: Sullivan	Bloomingburg, village of	361473B	Nov. 28, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Nov. 15, 1974 and June 11, 1976.	Do.
Westchester	Cortlandt, town of	360906B	May 23, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	May 31, 1974 and Aug. 13, 1976.	Do.
Region IV					
Louisiana: LaFourche Parish.	Unincorporated area	225202C	July 24, 1970, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	May 8, 1971, Jan. 10, 1978 and Oct. 1, 1983.	Do.
Minimal Conversions					
New York: Washington	Fort Ann, town of	361231	Feb. 2, 1976, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Dec. 6, 1974	Apr. 17, 1985.
Do.	Jackson, town of	361444	Dec. 16, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Jan. 17, 1975.	Do.
Madison	Smithfield, town of	361294A	Nov. 24, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Oct. 25, 1974 and June 18, 1976.	Do.
Washington	White Creek, town of	361238	Mar. 1, 1977, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Oct. 18, 1974 and July 23, 1976.	Do.
Region III					
Maryland: Worcester	Berlin, town of	240141	Mar. 21, 1978, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Jan. 21, 1977	Do.
Washington	Clear Spring, town of	240078	Sept. 21, 1977, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Feb. 18, 1977	Do.

State and County	Location	Community Number	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special Flood Hazard Area Identified	Date certain Federal Assistance no longer Available in Special Flood Hazard Areas
Pennsylvania: Lycoming	Mifflin, township of	422590	Sept. 15, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	Dec. 13, 1974	Do.
Crawford	Hydetown, borough of	420350	May 13, 1975, Emerg.; Apr. 17, 1985, Reg.; Apr. 17, 1985, Susp.	May 21, 1976	Do.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 29, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: April 10, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–9055 Filed 4–15–85; 8:45 am]

BILLING CODE 6718-03-M

[Docket No. FEMA 6654]

44 CFR Part 64

List of Communities Eligible for the Sale of Insurance Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain flood plain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fourth colum of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553 (b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subject in 44 CFR Part 64

Flood insurance, flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and County	Location	Community	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special Flood Hazard Areas Identified
Maine: Hancock	Brooklin, town of	230275	Mar. 8, 1985, Emerg	Dec. 24, 1976.
Pennsylvania: Mifflin	Menno, township of	421681A	...do	Nov. 22, 1974 and Mar. 4, 1982.
Fayette	Ohiopyle, borough of	421615A	...do	Jan. 31, 1971 and Mar. 19, 1976.
West Virginia: McDowell	Keystone, town of	540119B	May 21, 1975, Emerg.; Feb. 1, 1985, Reg.; Feb. 1, 1985, Susp.; Mar. 8, 1985 Rein.	May 17, 1974 and June 4, 1976.
Missouri: Moniteau	Lupus, city of	290239	Mar. 13, 1985, Emerg	
Utah: Cache	Millville, city of	490021	...do	Oct. 22, 1976.
Michigan: Jackson	Blackman, township of	260714B	May 23, 1978, Emerg.; Dec. 18, 1984, Reg.; Dec. 18, 1984, Susp.; Mar. 13, 1985, Rein.	Feb. 9, 1979.
Louisiana: Allen Parish	Elizabeth, town of	220324	Mar. 19, 1985, Emerg	July 25, 1975.
Michigan: Allegan	Wayland, city of	260744 New	...do	
Oklahoma: Stephens	Unincorporated areas	400496A	...do	Apr. 20, 1982.
Texas: Knox	Knox City, city of	480590A	...do	Aug. 15, 1975 and July 23, 1976.

State and County	Location	Community	Effective dates of authorization/ cancellation of sale of Flood Insurance in community	Special Flood Hazard Areas Identified
Region II				
New York: Orange	Greenville, town of	3606158	Mar. 4, 1985, Suspension withdrawn;	Jan. 8, 1977.
	Wawayanda, town of	3606398	do	May 10, 1974 and Sept. 24, 1976.
Region III				
West Virginia:				
Raleigh	Mabscott, town of	5402858	do	Nov. 20, 1981.
Wood	Unincorporated areas	540213A	do	Jan. 17, 1975.
Region IV				
North Carolina: Calerat	Indian Beach, town of	370433A	do	
Region V				
Ohio:				
Defiance	Defiance, city of	390144D	do	May 17, 1974, July 23, 1976, June 1, 1979 and Apr. 17, 1984.
Delaware	Powell, village of	390528B	do	Oct. 18, 1974 and June 4, 1976.
Logan	West Liberty, village of	390343D	do	Apr. 12, 1974 July 30, 1976, Dec. 24, 1976 and Dec. 5, 1980
Wisconsin: Sauk	Reedsburg, city of	550402C	do	Dec. 17, 1973, May 28, 1976 and Oct. 26, 1978.
Region VI				
Texas:				
Calhoun	Port Lavaca, city of,	480099B	do	July 27, 1971, Aug. 27, 1971, July 1, 1974 and Sept. 5, 1975.
Aransas	Rockport, city of	485504D	do	July 2, 1977, July 1, 1974, Sept. 9, 1977 and Jan. 16, 1979.
Region VII				
Missouri: Wright	Hartville, city of	290454B	do	June 28, 1974 and Oct. 10, 1975.
Region I				
Massachusetts:				
Dukes	Edgartown, town of	250068D	Mar. 18, 1985, suspension withdrawn	May 31, 1974, Oct. 22, 1976, July 2, 1980 and Oct. 1, 1983
Do	Oak Bluffs, town of	250072C	do	Mar. 22, 1974, July 19, 1977 and July 2 1980.
Bristol	Westport, town of	255224B	do	July 16, 1971, July 1, 1977, May 14, 1978 and Oct. 1, 1983.
Region II				
New York: Allegany	Scio, town of	360034C	do	May 3, 1974, June 3, 1977 and Oct. 24, 1975.
Region III				
West Virginia: Kanawha	Unincorporated areas	540070B	do	Apr. 25, 1975, Dec. 12, 1975 and Dec. 24, 1982.
Region V				
Illinois: LaSalle	LaSalle, city of	170401B	do	Mar. 22, 1974 and Mar. 19, 1976.
Region VI				
Texas.				
Refugio	Bayside, city of	481588A	do	
San Patricio	Ingleside, city of	485480C	do	June 28, 1971, July 1, 1974, May 2, 1975.
Matagorda	Unincorporated areas	485459C	do	May 1, 1971, July 1, 1974, Mar. 5, 1976 and Oct. 1, 1983.
Nueces	do	485494C	do	Sept. 27, 1972, Nov. 30, 1973, July 1, 1974 and Sept. 3, 1976.
Nueces	Port Aransas, city of	485496E	do	June 28, 1971, Sept. 8, 1972, July 1, 1974, Aug. 13, 1976 and Dec. 8, 1976
Refugio	Unincorporated areas	485501C	do	Oct. 22, 1971, July 1, 1974 and Sept. 17, 1976.
San Patricio	do	485509C	do	Nov. 27, 1971, July 1, 1974 and May 2, 1975.
Calhoun	Seadrift, city of	480100C	do	Dec. 4, 1970, July 1, 1974 and May 2, 1975.
Region VII				
Missouri: Taney	Hollister, city of	290437B	do	June 7, 1974 and Nov. 14, 1975.
Region I				
Rhode Island: Washington	New Shoreham, town of	4400388	April 3, 1985, suspension withdrawn	Jan. 3, 1975 and Oct. 1, 1983.
Region II				
New Jersey: Essex	North Caldwell, township of	3401908	do	June 7, 1974 and June 11, 1976.
New York:				
Oneida	Kirkland, town of	360531B	do	Aug. 2, 1976 and May 14, 1976.
Onondaga	Lafayette, town of	360581B	do	Aug. 2, 1974 and July 16, 1976
Orange	Minisink, town of	360620C	do	Apr. 12, 1974 and July 9, 1976.
Madeon	Sullivan, town of	360409B	do	Oct. 8, 1976.
Region V				
Indiana: Allen	Fort Wayne, city of	180003	do	Feb. 15, 1974 and Jan. 30, 1976.
Ohio:				
Champaign	Unincorporated areas	390055B	do	Dec. 23, 1977.
Hamilton	Harrison, city of	390020C	do	Feb. 15, 1974, May 21, 1976 and Dec. 24, 1976.
Region VI				
Texas: Tarrant	Eulees, city of	480583B	do	Mar. 22, 1974 and Dec. 17, 1976.

State and County	Location	Community	Effective dates of authorization/ cancellation of sale of Flood Insurance in community	Special Flood Hazard Areas Identified
Region VII				
Missouri:				
Butler	Unincorporated areas	290044B	do	Sept. 1, 1985.
Warren	Unincorporated areas	290443B	do	Sept. 1, 1983.
Nebraska: Gage	Barneston, village of	310090B	do	Sept. 6, 1974 and Nov. 21, 1975.
Region X				
Oregon: Linn and Benton	Albany, city of	410137C	do	Feb. 22, 1974, Feb. 11, 1977 and Apr. 4, 1978.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: April 10, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-9056 Filed 4-15-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 41270-5026]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of size limit adjustment and request for comment.

SUMMARY: NOAA issues this notice of size limit adjustment for the surf clam fishery for the 1985–1986 fishing year. This action is necessary because the Regional Director has determined that the minimum size limit for surf clams of 5¼ inches is necessary to achieve the Mid-Atlantic Fishery Management Council's objective of reducing discard rates to below 30 percent, on average, of trip catches.

EFFECTIVE DATE: April 12, 1985. Comments will be accepted until May 1, 1985.

ADDRESS: Send comments to Monique Rutledge, Northeast Regional Office, NMFS, NOAA, State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments of Surf Clam size limit."

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617–281–3600, ext. 351.

SUPPLEMENTARY INFORMATION: Amendment 5 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) (50 FR 11166; March 20, 1985) made effective a minimum size limit for surf clams of 5½ inches in length in all areas of fishery and implemented an FMP frame work management measure which allows adjustment of this minimum size limit for surf clams by authorizing the Director of the Northeast Region, NMFS (Regional Director), in consultation with the Mid-Atlantic Fishery Management Council (Council), to select minimum size limit for surf clams from among the following values: 5½, 5¼, 5, and 4¾ inches. The size limit is selected to reduce discards of surf clams to less than 30 percent, on average, of trip catches. The Regional Director monitors current stock assessments, catch reports, and other relevant information concerning the size distribution of the surf clam resource in determining if any adjustment in the size limit is appropriate.

The current minimim size limit of 5¼ inches for surf clams was implemented by emergency interim rule on October 17, 1984 (49 FR 40580), and extended on January 16, 1985 (50 FR 2292). The emergency interim rule expires on April 12, 1985.

Analysis of discarding patterns indicates that the implementation of the 5¼ inch minimum size limit has resulted in substantial reductions in the discard rate of undersized surf clams and has achieved the Council's objective of reducing discard rates to below 30 percent, on average, of trip catches. Copies of the documents used in this analysis are available from the Regional Director at the above ADDRESS.

The Council votes at its March 1985 meeting to recommend that the Regional Director keep the minimum size limit for surf clams at 5¼ inches.

The Regional Director has determined that the minimum size limit for surf clams should continue to be 5¼ inches. NOAA therefore issues this notice to continue the minimum size limit of 5¼ inches in all areas of the surf clam fishery. Comments on this action are invited from the public, and will be accepted for 15 days following the publication of this notice. After consideration of public comments, the Secretary may publish notice in the **Federal Register** of any changes in this size limit.

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: April 11, 1985.

[FR Doc. 85-9107 Filed 4-11-85; 5:06 p.m.]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 73
Tuesday, April 16, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 83-061]

Pseudorabies; Interstate Dissemination Prevention Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This document proposes to amend portions of the pseudorabies regulations which regulate the interstate movement of livestock to prevent the interstate dissemintion of pseudorabies. It is proposed to provide an alternative method by which a herd of swine can be removed from the "known infected herd" classifiction; to provide an alternative method by which a herd of swine can attain or regain status as a qualified pseudorabies negative herd; to provide an improved method by which the pseudorabies disease status of swine in pseudorabies controlled vaccinated herds can be monitored; to give shippers alternative means by which swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies can be moved interstate to approved livestock markets, quarantined feedlots, and quarantined herds; and to give shippers alternative means by which swine infected with or exposed to pseudorabies can be moved interestate for slaughter. The intended effect of this action is to clarify the regulations and allow more latitude for the interstate movement without increasing the danger of spreading pseudorabies.

This proposed rule is a proposal, with certain changes, of a proposed rule published in the **Federal Register** on November 3, 1982.

DATE: Written comments must be received on or before May 31, 1985.

ADDRESS: Written comments conecerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Also, copies of the proposed rule of November 3, 1982, may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Dr. L. W. Schnurrenberger, Special Diseases Staff, VS, APHIS, USDA, Room 822, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8487.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule have been cleared by the Office of Management and Budget (OMB). The information collection provisions have been given the OMB clearance number 0579-0069.

Background

Pseudorabies, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is primarily a disease of swine caused by a herpes virus. Pseudorabies regulations (contained in 9 CFR Part 85 and referred to below as the regulations) were initially established in 1979 (See 44 FR 10306-10313) for the purpose of helping to prevent the interstate spead of pseudorabies. On November 3, 1982, the Department published a document in the **Federal Register** (referred to below as the first proposal and set forth at 47 FR 49930-49937) proposing numerous amendments to the regulations; however, a final rule has not been promulgated. Considerable time had elapsed since persons had an opportunity to comment on the first proposal. It has been determined that another opportunity should be for persons to comment concerning what changes should be made to regulations before final action is taken in order to help ensure that the final rule includes any changes that should be made based on reevaluation of the proposal. Under these circumstances, this document reproposes the first proposal with changes based on the comments that were submitted in response to the first proposal.

The document of November 3, 1982, proposed to provide an alternate method by which a herd of swine can be removed from the "known infected herd" classification; to provide an alternate method by which a herd of swine can attain or regain status as a qualified pseudorabies negative herd; to provide an improved method by which the pseudorabies disease status of swine in psuedorabies controlled vaccinated herds can be monitored; to give shippers alternate means by which swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies can be moved interstate to approved livestock markets, quarantined feedlots, feedlots, and quarantined herds; and to give shippers alternate means by which swine infected with or exposed to pseudorabies can be moved interstate for slaughter.

The first proposal invited the submission of written comments on or before January 3, 1983. Thirty-one comments were received. These comments were from State Departments of Agriculture, individual pork producers, veterinary associations, and other representatives of the swine and farm industry and related groups. All of these comments have been carefully considered. Further, all of the comments, except for those comments indicating approval of the first proposal without any basis for approval beyond the rationale contained in the first proposal, are discussed below. Except as explained below, the provisions in the first proposal are reproposed by this document.

General Comments

Several commenters suggested that the pseudorabies regulations be rescinded, based on assertions that the program is uneforceable and that a "funded and established program is not possible." No changes from the first proposal are made based on these comments. The pseudorabies program established under the regulations is funded. Further, it appears that an effective and enforceable pseudorabies program can be maintained.

Known Infected Herd

Section 85.1(l) of the current regulations, among other things, provides two methods by which a herd of swine which is classified as a "known infected herd" may be removed from that classification. One of these methods requires, among other things, that, after the positive swine are removed from the premises all exposed swine in the herd must be subjected to an official pseudorabies serologic test and found negative. In the first proposal it was proposed to amend these provisions by exempting pigs which are nursing from their mothers from the testing provisions.

Several commenters suggested that all swine under six months of age should be exempted from the testing provisions instead of only pigs nursing from their mothers. The suggestions were based on the assertion that including any swine under six months of age in the testing would be costly and impractical and would give no better indication of infection than testing swine over six months of age for a period of time. Another commenter suggested that a sampling of swine under six months of age should be subject to testing and that otherwise swine under six months of age should be exempted from the testing provisions. It was asserted that the results of the sample would reflect the status of the entire group.

No changes from the first proposal are made based on these comments. Accordingly, it is proposed that only pigs nursing from their mothers be exempt from the testing provisions. Although this would be more costly than the adoption of either of the commenters' suggestions because more swine would be included in the testing, it appears that the proposed provisions are necessary to help ensure that pseudorabies no loger exists in a herd removed from classification as a known infected herd. Based on the rationale set forth in the first proposal, it appears that it would not be necessary to subject pigs nursing from their mothers to the testing requirement. In this connection, the first proposal stated at 47 FR 49931 that:

> The result of an official pseudorabies serologic test on a mother of a nursing pig constitutes sufficient evidence of the pseudorabies disease status of the nursing pig to forego the test on such pig. If the mother of a nursing swine was infected with pseudorabies during gestation, the pig would acquire maternal antibodies and would react to pseudorabies tests in the same manner as the mother swine. The disease status of the mother of a nursing swine, even if a positive status is acquired after gestation, constitutes a good indication of the pseudorabies disease status of the nursing swine because they are maintained in the same environment and are in frequent physical contact with their mother.

It appears that all other swine under six months of age must be tested in order to determine whether the herd is free of pseudorabies, since, based on Departmental expertise, it appears that any of such swine could be infected without other swine in the herd being infected. Accordingly, it appears that if all pigs under six months of age were exempt from the testing requirement or if such pigs were merely subjected to testing based on sampling, the test results would not be adequate to determine the pseudorabies status of the herd.

In the first proposal, it was proposed to amend § 85.1(1)(2) by providing an additional method for removing certain swine herds from the "known infected herd" classification. In this connection, it was proposed that a herd of swine would be eligible to be removed from classification as a "known infected herd" if the herd of swine has been released from pseudorabies quarantine in accordance with the following provisions:

> In a herd of swine in which swine are positive to an official pseudorabies serologic test but no swine are positive at titers greater than 1:8, all titered swine are subjected to another official pseudorabies serologic test and found negative; and all other swine in the herd which an epidemiologist, approved by the State animal health official and the Area Veterinarian in Charge, requires to be subjected to an official pseudorabies serologic test are tested and found negative.

One commenter suggested that the serologic titer response to trigger possible further testing should be 1:4 instead of 1:8, based on the assertion that experience has shown that a titer of 1:8 has always been evidence of infection with pseudorabies and that animals can be tested to the 1:4 standard without excessive numbers of false positives. No changes from the first proposal are made based on this comment. The Department does not agree with the assertion that a titer of 1:8 has always been evidence of infection with pseudorabies. As stated in the first proposal (47 FR 49931), it is possible that questionable (false positive) laboratory results can be encountered when testing for pseudorabies at dilutions of 1:8 or less. Certain animals may have nonspecific titers from other antigens and have a low titer (1:8 or less) response for pseudorabies.

Another commenter suggested the following as an additional method by which a herd of swine could be released from known infected herd status: "require all swine in a quarantined herd to be vaccinated with an approved vaccine for six months. If no clinical signs are found, ten percent of the progeny four months of age or older must be tested with an official pseudorabies test each month for six months and all found negative." No changes from the first proposal are made based on this comment. It appears that the adoption of the suggestion would allow vaccinated but potentially infected or exposed swine to remain in the herd. Vaccinated swine can be infected with pseudorabies and can spread infection. Since the pseudorabies infection status of vaccinated swine cannot be determined, it appears that there would be no means of determining whether swine in the herd were pseudorabies infected or free. Further, it appears that testing ten percent of the progeny four months of age or older each month for six months would not be an adequate indication of the absence of the disease in the progency, since as noted above, any swine in a herd could be infected without other swine in the herd being infected.

From Known Infected Herd to Qualified Pseudorabies Negative Herd

In the proposal it was proposed to amend the procedures in § 85.1(ee) for attaining qualified pseudorabies negative herd status to require that such status could not be attained by a herd which has been classified as a "known infected herd" within 30 days days of the test necessary to qualify the herd as a qualified pseudorabies negative herd. One commenter suggested that the 30 day requirement be changed to 90 days, apparently based on the assertion that under the provisions of §§ 85.1(ee) and 85.1(l)(2)(i) this proposed change would allow a herd determined to have been infected with pseudorabies to become a pseudorabies negative herd within a minimum of 30 days after having had infected swine in the herd. Further, in this connection, it was asserted that 30 days would not provide a sufficient safeguard against the possibility that pseudorabies would be dormant in the herd or on the premises. No changes from the first proposal are made based on this comment.

Under the proposed provisions of §§ 85.1(ee) and 85.1(l)(2)(i), a previously infected herd could not become a qualified pseudorabies negative herd for a minimum of 60 days. A herd determined to have had pseudorabies would not be eligible to be removed from "known infected herd" status unless swine in the herd were tested and found negative 30 days or more

after removal of the infected swine. Then it would take an additional 30-day period before a herd could be tested to qualify as a "qualified pseudorabies negative herd." Based on Departmental expertise, it appears that these procedures for changing the designation of herds would be adequate to allow such herds to be designated as "qualified pseudorabies negative herd" without the herds having a significant risk that pseudorabies would be present in the herd or on the premises.

Qualified Pseudorabies Negative Herd

Section 85.1(ee) of the current regulations requires that the herd premises be cleaned and disinfected in accordance with § 85.13 after swine found positive to an official pseudorabies test conducted in a qualified pseudorabies negative herd or to attain qualified pseudorabies negative herd status are removed. In the first proposal it was proposed to delete the cleaning and disinfection requirements.

In support of deleting the cleaning and disinfecting requirements, the first proposal (47 FR 49932) stated that:

> This document proposes the deletion of this requirement because it is not productive. An effective cleaning and disinfecting procedure cannot be conducted unless all or most of the swine are removed from a premises and removal of all swine is not a requirement for attaining or regaining qualified pseudorabies negative herd status; and in many situations most of the swine are not removed to attain or regain qualified pseudorabies negative herd status.

One commenter cited such cleaning and disinfection as a good management practice but agreed with the proposed deletion. Another commenter opposed the proposed deletion, based on the assertion that such a requirement is necessary for sound disease control. Upon further consideration, it appears that such a requirement is necessary for sound disease control. Therefore, this document does not propose to remove the cleaning and disinfection provisions. Based on a reassessment, it appears that, although such a cleaning and disinfection procedure is not easily accomplished, cleaning and disinfecting adequate to prevent further spread of the disease can be accomplished in accordance with the provisions of the regulations regardless of whether all or most of the swine are removed from the premises.

Section 85.1(ee) of the current regulations provides, among other things, that after the test positive swine are removed, qualified pseudorabies negative herd status is attained or regained by subjecting all swine over six months of age to an official pseudorabies serologic test, and finding all swine so tested negative. In the first proposal it was proposed to amend this provision to require that to attain or regain qualified pseudorabies negative herd status, all swine in the herd, regardless of age, except pigs nursing from their mother, must be subjected to an official pseudorabies serologic test and found negative.

One commenter recommended that all swine 16 weeks or younger, rather than only pigs nursing from their mother, be exempt from the testing provisions. This recommendation was based on the assertion that pigs that have maternal antibodies for pseudorabies normally do not lose their maternal antibodies for pseudorabies until they are 14 to 16 weeks old. No changes from the first proposal are made based on this comment. Swine 16 weeks of age or younger could not only test positive because of maternal antibodies from an infected or vaccinated mother but could also test positive because of being infected. A herd would not qualify for designation as a qualified pseudorabies negative herd if any of the swine were found to be infected with pseudorabies or if any of the swine had been vaccinated. As explained above, it does not appear to be necessary to subject pigs nursing from their mothers to the testing provisions. However, it is necessary to subject the other swine 16 weeks of age or younger to the testing provisions since they could be the only infected swine in the herd. Therefore, the commenter's recommendation is not included in this proposal.

It was further asserted that the amendment would require testing of such large numbers of swine as to make attaining qualified pseudorabies negative herd status impractical. Another commenter opposed the inclusion of any swine under six months of age in the testing requirement, based on the assertion that such testing is burdensome and counterproductive to encouraging producer participation in the pseudorabies program. This comment recommended:

> testing all swine 6 months of age or older and 10 percent or a statistically significant number of swine held separate and apart in facilities or premises. After attaining the qualified pseudorabies negative herd status, recertification tests of the breeding herd should be 10 percent per month for 6 months. The producer can then choose the approved recertification testing schedule he desires.

This comment was based on the assertion that experience indicates that after pseudorabies infection, the presence of serologic response is relatively uniform in groups of animals held together. No changes from the first proposal are made based on these comments.

As indicated above, exempting all swine 16 weeks or younger, rather than only pigs nursing from their mother, from the testing requirement would not provide an adequate assessment of the pseudorabies status of the herd since swine 16 weeks or younger could be the only infected swine in the herd and subsequent to the herd test could spread pseudorabies to other swine in the herd. Swine so exposed could be moved to another herd without testing and could further spread pseudorabies.

With respect to the assertion that such testing is burdensome and counterproductive to encouraging producer participation in the pseudorabies program, the Department acknowledges that this is the perception of some producers. However, many pork producers have indicated that it is worth the effort to ensure that herds have qualified pseudorabies negative herd status because the value of swine from such herds is higher than for swine from other herds.

Section 85.1(ee) of the current regulations provides, in part, that all additions to the qualified pseudorabies negative herd must test negative on two official pseudorabies tests not less than 30 days or more than 60 days apart before being added to the herd or be from another qualified pseudorabies negative herd.

In the first proposal it was proposed to amend these provisions as follows:

> All swine intended to be added to a qualified pseudorabies negative herd shall be isolated until the swine have been found negative to two official pseudorabies serologic tests, one conducted 30 days or more after the swine have been placed in isolation, the second test being conducted 30 days or more after the first test; except (i) swine intended to be added to a qualified pseudorabies negative herd directly from another qualified pseudorabies negative herd may be added without isolation or testing; (ii) swine intended to be added to a qualified pseudorabies negative herd from another qualified pseudorabies negative herd, but with interim contact with swine other than those from a single qualified pseudorabies negative herd, shall be isolated until the swine have been found negative to an official pseudorabies serologic test, conducted 30 days or more after the swine have been placed in isolation; (iii) swine returned to the herd after contact with swine other than those from a single qualified pseudorabies negative herd shall be isolated until the swine have been found negative to an official pseudorabies serologic test conducted 30 days or more after the swine have been placed in isolation.

One commenter suggested that any swine that are required to be tested as a condition of being added to a qualified pseudorabies negative herd should only be subjected to one test. This suggestion was based on the assertion that the risk of infection with pseudorabies was the same for all of these swine. Another commenter asserted that producers know the penalty for introducing the disease and that testing requirements do not belong in the regulations. No changes from the first proposal are made based on these comments. The Department does not agree with the assertion that the risks are the same or that such requirements are unwarranted. Experience has shown that even though producers are aware of the need for testing, some have not tested merely on their own initiative. The swine required to be tested would have had an opportunity to have become exposed to pseudorabies and thereby introduce pseudorabies into the herd if allowed to be added without testing. The requirement for two negative tests for swine of unknown status appears to be necessary because these swine present much more of a risk of carrying pseudorabies compared to the other swine which come from qualified pseudorabies negative herds.

Several commenters asserted that the isolation and testing practices in proposed § 85.1(ee)(3) would be excellent herd health management, but that they should not be included as a requirement because they would be difficult to enforce. No changes from the first proposal are made based on these comments. It appears that these requirements are needed in order to help prevent the introduction of pseudorabies into a herd. Further, it is anticipated that most affected persons would readily comply with the provision if adopted.

One commenter requested that the regulations include a definition of "contact" with respect to these requirements. Contacts was intended to mean "direct access to other swine, their excrement, or discharges; or sharing a building with a common ventilation system with other swine; or being within ten feet of other swine if not sharing a building with a common ventilation system." Therefore, a definition of the term "contact" is added to the proposal to correspond with the intended meaning.

Also, as noted above, § 85.1(ee)(3) contains provisions concerning "isolation." Several comments requested a definition of the term "isolation." "Isolation" was intended to mean "separation of swine by a physical barrier in such a manner that other swine do not have access to the isolated swine's body, excrement, or discharges; not allowing the isolated swine to share a building with a common ventilation system with other swine; and not allowing the isolated swine to be within ten feet of other swine if not sharing a building with a common ventilation system." Therefore, a definition of the term "isolation" is added to the proposal to correspond with the intended meaning.

Pseudorabies Controlled Vaccinated Herd

The provisions of § 85.1(ff) for attaining and maintaining pseudorabies controlled vaccinated herd status require, among other things, that all swine over six months of age in pseudorabies controlled vaccinated herds be vaccinated for pseudorabies. In the first proposal it was proposed to amend these provisions to provide that a minimum of ten percent of the swine over six months of age in a pseudorabies controlled vaccinated herd be unvaccinated swine.

Two commenters suggested that the current provisions be retained but that the proposed provision be added as an alternate method of attaining pseudorabies controlled vaccinated herd status. Several commenters objected to the proposed provision, based on assertions that such a provision could create unnecessary burdens without improving herd surveillance, and that unvaccinated animals susceptible to pseudorabies could propagate the virus and jeopardize the immunity of the rest of the herd. One commenter suggested an alternate testing procedure for maintaining pseudorabies controlled vaccinated herd status by suggesting that consideration should be given to testing ten percent of the swine four months and older and allowing vaccination of all adult swine. The provisions in the first proposal to provide that a minimum of ten percent of the swine over six months of age be unvaccinated swine are included in this proposal. This change appears to be necessary to secure an improved means of determining the pseudorabies status of the herd. It appears that without this change, there frequently would be insufficient swine in the herd that could be tested to determine herd status. Positive serologic findings are not unusual on vaccinates and the offspring of vaccinates until they reach 16 weeks of age. Also, it is not unusual for a herd to have no swine in the herd between four months and six months old. It appears that under the proposed provisions the pseudorabies disease status of the herd could readily be monitored by testing the ten percent of the swine over six months of age that must remain unvaccinated and their offspring.

Two commenters objected to provisions that would require that a minimum of ten percent of the swine over six moths of age in a pseudorabies controlled vaccinated herd be unvaccinated swine, based on the assertion that such a policy would be at variance with other disease control programs. No changes from the first proposal are made based on these comments. It appears that without these provisions there would be more of a chance of spread of pseudorabies since pseudorabies might be undetected in a vaccinated herd.

Section 85.1(ff) of the current regulations also sets forth procedures for attaining or regaining pseudorabies controlled vaccinated herd status if any swine tested are found positive to pseudorabies on the qualifying official pseudorabies serologic test or any subsequent official pseudorabies test. Section 85.1(ff) provides, in part, that after the test positive swine are removed, pseudorabies controlled vaccinated herd status is attained or regained by tests conducted on all swine over six months of age, and finding all swine so tested negative. In the first proposal it was proposed to amend § 85.1(ff) to require that to attain or regain pseudorabies controlled vaccinated herd status, all swine in the herd over 16 weeks of age must be subjected to official pseudorabies serologic testing and found to be negative.

One commenter suggested that the requirement be changed to require a serologic test of ten percent or a statistically significant number of progeny, based on the assertion that such a requirement would achieve the same results without causing undue hardship on producers or compromising the information received. No changes from the first proposal are made based on this comment. It appears that the suggested procedure would not be adequate because there is no statistically sound procedure for determining with assurance the absence of pseudorabies in a herd based on testing a limited group of swine.

In the first proposal it was also proposed to amend § 85.1(ff) to require that all swine intended to be added to the pseudorabies controlled vaccinated herd must be isolated until found negative to the required official pseudorabies serologic test. Several comments requested that the regulations clarify what is meant by "must be

isolated." This proposed rule includes a definition of the term "isolation," as explained above.

Official Pseudorabies Serologic Test

The regulations in § 85.1(q) list official pseudorabies tests. These include the Microtitration Serum-Virus Neutralization Test. One commenter suggested that criteria be established to provide that animals reacting positive with a titer of 1:4 or greater to the Microtitration Serum-Virus Neutralization Test be classified as official reactors. The criteria for the Microtitration Serum-Virus Neutralization Test are referred to in a footnote to § 85.1(q) and, as explained in the footnote to § 85.1(q), are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. These criteria already provide that reactions at 1:4 or greater indicate exposure to pseudorabies antigens and are presumptive evidence of infection.

Interstate Movement of Infected Swine or Exposed Swine

With respect to the interstate movement of infected or exposed swine for slaughter, § 85.5(a)(3) of the current regulations requires that the permit or owner-shipper statement, which must accompany such swine, list the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved. In the first proposal it was proposed to amend § 85.5(a)(3) to provide that if such swine are moved interstate and the identity of the farm of origin of each swine is maintained, the permit or owner-shipper statement need not list the identification of the swine if the swine are identified to the farm of origin at the recognized slaughtering establishment or the first slaughter market.

Several commenters objected to the proposed amendment. Some asserted that swine should be individually identified at the farm of origin. Others contended that such identification is not needed for any swine, based on the assertion that cost and practicality make identification to the farm of origin unrealistic. Other commenters suggested that the requirement in § 85.5(a)(3) for owner-shipper statements be removed, based on the assertion that such statements are already required by other regulations, and the assertion that removal of the requirement would reduce paperwork and reduce confusion about necessary statements for interstate movements.

No changes from the first proposal are made based on these comments. Without the requirement for a permit or owner-shipper statement, infected or exposed swine moved interstate for slaughter would no longer be required to comply with uniform identification provisions. It appears necessary that swine be identified so that if an animal is found to be infected with pseudorabies, its movement can be traced back through marketing channels to its herd of origin and thereby help identify the source and extent of spread of the disease. However, it appears that this can be accomplished if the swine are merely identified to the farm of origin. Further, the Department does not agree with the assertion that cost and practicality make identification to the farm of origin unrealistic.

Some commenters questioned the enforceability of provisions of § 85.5(a)(3) discussed above, with or without the proposed change. No changes from the first proposal are made based on these comments. The proposed requirement contained in this document appears to be a reasonable requirement, and it is anticipated that affected persons would comply. Further, it appears that this provision would be no more difficult to enforce than other aspects of the regulations.

Interstate Movement of Swine Not Vaccinated for Pseudorabies and Not Known To Be Infected With or Exposed to Pseudorabies

Section 85.7 of the regulations sets forth requirements for the interstate movement of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies. The current provisions in § 85.7(b) allow such swine to move interstate from any source to an approved livestock market and then directly to a feedlot, quarantined feedlot, or quarantined herd. In the first proposal it was proposed to amend this provision to allow swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies to move from a farm of origin through two approved livestock markets before being moved to a feedlot, quarantined feedlot, or quarantined herd. Several commenters objected to this proposed amendment based on the assertion that it would increase the potential for spreading pseudorabies. No changes from the first proposal are made based on these comments. Additional movements through additional approved livestock markets would increase the risk of swine becoming infected with pseudorabies. However, in the normal course of business, it is frequently necessary that the swine move through more than one approved livestock market, and it appears on balance that such swine can be moved through two approved livestock markets without significantly increasing the risk of spread of pseudorabies.

The current provisions in § 85.7(b) require that swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies be identified to the farm of origin prior to movement and be accompanied by a certificate. In the first proposal it was further proposed to amend these provisions to allow such swine to move interstate from a farm of origin to an approved livestock market when accompanied by an owner-shipper statement in lieu of a certificate. The swine would then be identified to the farm of origin by an identification tag after arrival at the first approved livestock market.

Commenters opposed this requirement concerning the owner-shipper statement, based on the assertion that such a requirement would be duplicative and unproductive. It was also stated that the use of such a statement would only result in collecting bad information, based on the assertion that such statements would be signed by drivers who simply want to unload swine from their trucks. Also, one commenter suggested that changes should be made to allow the owner-shipper to sign the market check-in slip or equivalent document at the place of consignment in lieu of providing an owner-shipper statement. No changes from the first proposal are made based on these comments. It appears that the owner-shipper statement is essential to identify a shipment of animals. The statement would be required to be signed by the owner or shipper of the swine. Such persons would have knowledge of the status and origin of the swine. A driver, unless that person is the owner or shipper, would not be eligible to sign the owner-shipper statement. The Department would take action to enforce the requirement that such statements be signed only by owners or shippers. Also, it appears that it is necessary that the owner-shipper statement accompany the swine from the farm of origin. Otherwise, there would be no assurance that the swine would be identified during interstate movement.

Section 85.7(c) of the current regulations contains provisions for the interstate movement of swine not vaccinated for pseudorabies and not known to be infected with or exposed to

pseudorabies if moved other than for slaughter and other than directly to a feedlot, quarantined feedlot, quarantined herd or if moved to an approved livestock market for subsequent movement directly to a feedlot, quarantined feedlot, or quarantined herd. Consistent with the first proposal this document proposes to amend the regulations to allow such swine to be moved interstate to any destination if:

(1) The swine are accompanied by a certificate and such certificate is delivered to the consignee; and

(2) The certificate, in addition to the information described in § 85.1(cc), states: (i) The identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each animal being moved; and (ii) that each animal to be moved: (A) Was subjected to an official pseudorabies serologic test within 30 days prior to the interstate movement and was found negative, the test date and the name of the laboratory conducting the test; or (B) is part of a currently recognized qualified pseudorabies negative herd and the date of the last qualifying test; or, (C) is part of a pseudorabies controlled vaccinated herd and is one of the offspring that was subjected to the official pseudorabies serologic test to achieve or maintain the status of the herd as a pseudorabies controlled vaccinated herd, and the date of the last test to maintain said status.

One commenter objected to these provisions based on the assertion that the requirement that the swine originate in a qualified pseudorabies negative herd or be individually tested is too stringent. No changes from the first proposal are made based on this comment. The commenter did not suggest alternatives, and the Department is not aware of other feasible methods for allowing the interstate movement of such swine to any location without presenting a significant risk of causing the spread of pseudorabies.

Permits and Certificates

In the first proposal it was proposed to amend § 85.10(b) to read as follows:

A copy of each permit or certificate issued in accordance with this part shall be sent by the person issuing such document to the State animal health official of the State of destination in accordance with instructions issued by the State animal health official of the State of origin within 3 days of the issuance of the document.

The proposed language is included in this proposal except for "in accordance with instructions issued by the State animal health official of the State of origin." These words are not included in this proposed rule because not all States have established such instructions. In addition to complying with this regulation, accredited veterinarians must comply with any additional instructions, consistent with the regulations which are issued by the State animal health official or the Area Veterinarian in Charge regarding the distribution of such documents, such as also sending copies of the permit or certificate to the State of origin. However, in every instance the regulation requires the person issuing the certificate or permit to send a copy of the certificate or permit to the State animal health official of the State of destination within three days of its issuance.

Miscellaneous

Also, nonsubstantive changes are included in this proposed rule for purposes of clarity.

Availability of Proposal of November 3, 1982

Copies of the proposed rule of November 3, 1982, may be obtained from Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12291 and Certification Under the Regulatory Flexibility Act

This proposed action is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has determined that this action would have an annual effect on the economy of less than one hundred million dollars; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document proposes to provide an alternate method by which a herd of swine which has been classified as a known infected herd could be removed from such classification; to provide an alternate method by which a herd of swine could attain or regain status as a qualified pseudorabies negative herd; to provide alternate methods by which swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies could be moved interstate to approved livestock markets, quarantined feedlots, quarantined herds, and feedlots; and to provide an alternate method by which shippers could move swine infected with or exposed to pseudorabies to slaughter.

The Department believes that the above-mentioned proposed amendments would, if adopted, result in a small economic impact upon swine producers on some occasions. This document also proposes to restrict the interstate movement from an approved livestock market of certain swine which are not vaccinated for or known to be infected with or exposed to pseudorabies. Few shippers of swine would be affected by this restriction. This document also proposes to add testing requirements to maintain qualified pseudorabies negative herd status. Fewer than one percent of the swine herds in the country are qualified pseudorabies negative herds. This document further proposes to provide an improved method by which the pseudorabies disease status of a pseudorabies controlled vaccinated herd could be monitored. Fewer than one percent of the swine herds in the country are pseudorabies controlled vaccinated herds.

The alternatives considered are:

1. Do not amend the present regulations. This would continue known inequities in the present regulations and provide no relief to affected persons. Therefore, this alternative was not adopted.

2. Rescind the regulations. This would permit the disease to spread unchecked. Therefore, this alternative was not adopted.

3. Amend the regulations as set forth in the text portion of this document. This alternative would relieve the affected persons of some regulatory burdens which do not appear to be necessary for the prevention of the interstate dissemination of pseudorabies. Therefore, this alternative was adopted.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this proposal if adopted would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock and livestock products, Quarantine, Transportation, Pseudorabies.

PART 85—PSEUDORABIES

Accordingly, it is proposed to amend 9 CFR Part 85 in the following respects:

1. In § 85.1, paragraph (l) would be revised and footnote 1 and a reference thereto would be added to read as follows:

§ 85.1 Definitions.

* * * * *

(l) *Known infected herd.* Any herd in which any livestock has been determined to be infected with pseudorabies by an official pseudorabies test or diagnosed by a veterinarian as having pseudorabies.

(1) A herd of livestock, other than swine, shall no longer be classified as a known infected herd after 10 days since the last clinical case of pseudorabies in the herd.

(2) A herd of swine which has been released from pseudorabies quarantine in accordance with the following provisions shall no longer be classified as a known infected herd if:

(i) All swine positive to an official pseudorabies test have been removed from the premises; all swine which remain in the herd, except swine nursing from their mother, are subjected to an official pseudorabies serologic test and found negative 30 days or more after removal of swine positive to an official pseudorabies test; and no livestock on the premises have shown clinical signs of pseudorabies after removal of the positive swine; or

(ii) All swine have been depopulated for 30 days and the herd premises have been cleaned and disinfected in accordance with § 85.13; or

(iii) In a herd of swine in which are positive to an official pseudorabies serologic test but no swine are positive at titers greater than 1:8, all titered swine are subjected to another official pseudorabies serologic test and found negative; and all other swine in the herd which an epidemiologist, approved by the State animal health official and the Area Veterinarian in Charge, requires to be subjected to an official pseudorabies serologic test are tested and found negative.[1]

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[1] The epidemiologist shall consider the following epidemiologic evidence to determine which swine in the herd, in addition to the titered swine must be subjected to an official pseudorabies serologic test and found negative: (a) The percentage and number of titered swine in the herd; (b) the number of titered swine as compared to the number of swine tested; (c) the extent of the contact of members of the herd with the titered swine; (d) the prevalence of pseudorabies in the area; (e) the herd management practices and (f) any other reliable epidemiologic evidence.

* * * * *

2. In § 85.1, paragraph (n) would be amended by removing the term "21 consecutive days" and inserting the term "10 consecutive days" in lieu thereof.

3. In § 85.1, paragraph (q) would be amended by changing the number of footnote 1 and the reference thereto to 1a.

4. In § 85.1, paragraph (v) would be amended by removing the words "pseudorabies test" and inserting the words "pseudorabies serologic test" in lieu thereof.

5. Section 85.1(dd) would be revised to read as follows:

* * * * *

(dd) *Owner-shipper statement.* A statement signed by the owner or shipper of swine which states: (1) The number of swine to be moved; (2) the points of origin and destination; (3) the consignor and consignee; and (4) any additional information required by the applicable sections of this part.

* * * * *

6. In § 85.1, paragraph (ee) would be revised to read as follows:

* * * * *

(ee) *Qualified pseudorabies negative herd.* (1) Qualified pseudorabies negative herd status is attained by subjecting all swine over 6 months of age to an official pseudorabies serologic test and finding all swine so tested negative. The herd must not have been a known infected herd within the past 30 days. A minimum of 90 percent of the swine in the herd must have been on the premises and part of the herd for at least 90 days prior to the qualifying official pseudorabies serologic test or have entered directly from another qualified pseudorabies negative herd.

(2)(i) If on a qualifying official pseudorabies serologic test or any subsequent official pseudorabies test, any swine so tested are positive, qualified pseudorabies negative herd status is attained or regained by: removing all positive swine and cleaning and disinfecting the herd premises in accordance with § 85.13; subjecting all swine in the herd, except swine nursing from their mother, to an official pseudorabies serologic test 30 days or more after removal of the positive swine and finding all swine so tested negative; and after an interval of 30 to 60 days after the first such negative official pseudorabies serologic herd test, subjecting all swine in the herd, except swine nursing from their mother, to another official pseudorabies serologic test and finding all swine so tested negative; or

(ii) If on any qualifying official pseudorabies serologic test or any subsequent official pseudorabies serologic test, any swine so tested are positive, but no swine are positive at titers greater than 1:8, qualified pseudorabies negative herd status is attained or regained by: subjecting all titered swine and all other swine required to be tested by an epidemiologist, approved by the State animal health official and the Area Veterinarian in Charge, to an official pseudorabies serologic test and finding all such swine negative.[1]

(3) Qualified pseudorabies negative herd status is maintained by subjecting all swine over 6 months of age in the herd to an official pseudorabies serologic test at least once each year (this must be accomplished by testing 25 percent of swine over 6 months of age every 80–105 days and finding all swine so tested negative, or by testing 10 percent of the swine over 6 months of age each month and finding all swine so tested negative; no swine shall be tested twice in 1 year to comply with the 25 percent requirement or twice in 10 months to comply with the 10 percent requirement). All swine intended to be added to a qualified pseudorabies negative herd shall be isolated until the swine have been found negative to two official pseudorabies serologic tests, one conducted 30 days or more after the swine have been placed in isolation, the second test being conducted 30 days or more after the first test; except (i) swine intended to be added to a qualified pseudorabies negative herd directly from another qualified pseudorabies negative herd may be added without isolation or testing; (ii) swine intended to be added to a qualified pseudorabies negative herd from another qualified pseudorabies negative herd, but with interim contact with swine other than those from a single qualified pseudorabies negative herd, shall be isolated until the swine have been found negative to an official pseudorabies serologic test, conducted 30 days or more after the swine have been placed in isolation; (iii) swine returned to the herd after contact with swine other than those from a single qualified pseudorabies negative herd shall be isloted until the swine have been found negative to an official pseudorabies serologic test conducted 30 days or more after the swine have been placed in isolation.

* * * * *

7. In § 85.1, paragraph (ff) would be revised to read as follows:

* * * * *

(ff) *Pseudorabies controlled vaccinated herd.* (1) Pseudorabies controlled vaccinated herd status is attained by subjecting all swine over 6 months of age to an official pseudorabies serologic test and finding all swine so tested negative. The herd must not have been a known infected herd within the past 30 days. Any swine in the herd over 6 months of age may be vaccinated for pseudorabies within 15

days after being subjected to an official pseudorabies serologic test and found negative; *Provided that*, at least 10 percent of the swine in the herd over 6 months of age remain unvaccinated.

(2) If on the qualifying official pseudorabies serologic test or any subsequent official pseudorabies test, any swine so tested are positive, pseudorabies controlled vaccinated herd status is attained or regained by: removing all positive swine; cleaning and disinfecting the herd premises in accordance with § 85.13; subjecting all swine in the herd over 16 weeks of age to an official pseudorabies serologic test 30 days or more after removal of the positive swine and finding all swine so tested negative; and after an interval of 30 to 60 days after the first such negative official pseudorabies serologic herd test, subjecting all swine in the herd over 16 weeks of age to another official pseudorabies serologic test and finding all swine so tested negative.

(3)(i) Pseudorabies controlled vaccinated herd status is maintained by subjecting all unvaccinated swine over 6 months of age in the herd to an official pseudorabies serologic test every 80–105 days and finding all swine so tested negative or by subjecting 25 percent of the offspring between 16 and 20 weeks of age to an official pseudorabies serologic test and finding all swine so tested negative.

(ii) Any swine in the herd over 6 months of age may be vaccinated for pseudorabies within 15 days after being subjected to an official pseudorabies serologic test and found negative; *Provided that*, at least 10 percent of the swine in the herd over 6 months of age remain unvaccinated.

(iii) All swine intended to be added to a pseudorabies controlled vaccinated herd shall be isolated until the swine have been found negative to an official pseudorabies serologic test conducted 30 days or more after the swine have been placed in isolation. Not more than 90 percent of the swine over 6 months of age added to the herd may be vaccinated for pseudorabies. All additions to the herd which are to be vaccinated for pseudorabies shall be vaccinated within 15 days after being subjected to such official pseudorabies serologic test. All additions to the herd shall be added to the herd within 30 days after such official pseudorabies serologic test.

(iv) Swine which have not been vaccinated for pseudorabies shall be mingled with, penned with, or randomly interspersed with pseudorabies vaccinates so that the pseudorabies vaccinates can physically touch nonvaccinates or so that the pseudorabies vaccinates are within 10 feet of nonvaccinates while sharing a direct common ventilation system with such nonvaccinates.

* * * * *

8. Section 85.1 would be amended by adding new paragraphs (jj), (kk) (ll), and (mm) to read as follows:

* * * * *

(jj) *Official pseudorabies serologic test.* An official pseudorabies test, as defined in paragraph (q) of this section, conducted on swine serum to detect the presence or absence of pseudorabies antibodies.

(kk) *Area veterinarian in charge.* The veterinary official of Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

(ll) *Contact.* Direct access to other swine, their excrement, or discharges; or sharing a building with a common ventilation system with other swine; or being within ten feet of other swine if not sharing a building with a common ventilation system.

(mm) *Isolation.* Separation of swine by a physical barrier in such a manner that other swine do not have access to the isolated swine's body, excrement, or discharges; not allowing the isolated swine to share a building with a common ventilation system with other swine; and not allowing the isolated swine to be within ten feet of other swine if not sharing a building with a common ventilation system.

9. In § 85.4, paragraph (b) would be revised to read as follows:

§ 85.4 Interstate movement of livestock.

* * * * *

(b) Livestock that have been exposed to an animal showing clinical evidence of pseudorabies shall not be moved interstate within 10 days of such exposure.

* * * * *

10. In § 85.5, paragraph (a)(3) would be revised to read as follows:

§ 85.5 Interstate movement of infected swine or exposed swine.

* * * * *

(a) * * *

(3) The permit, in addition to the information in § 85.1(bb), or the owner-shipper statement, in addition to the information in § 85.1(dd), lists the identification tag, tattoo, earnotch recognized by a breed association, or similar identification of each swine being moved; *except* if the swine are moved interstate and the identity of the farm of origin of each swine is maintained, the permit or the owner-shipper statement need not list the individual identification required by this paragraph, if such swine are identified to the farm of origin at the recognized slaughtering establishment or the first slaughter market; and

* * * * *

11. In § 85.5, paragraph (b)(5)(iii) would be amended by removing the words "pseudorabies test" and inserting the words "pseudorabies serologic test" in lieu thereof.

12. In § 85.7, paragraph (b) would be revised to read as follows:

§ 85.7 Interstate movement of swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies.

* * * * *

(b) *Movement to a feedlot, quarantined feedlot, quarantined herd, or approved livestock market.* Swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies may be moved interstate only if:

(1) The swine are moved from a qualified pseudorabies negative herd directly to a feedlot, quarantined herd or approved livestock market; or

(2) The swine are moved directly to a feedlot, quarantined feedlot, quarantined herd, or to an approved livestock market for subsequent movement to a feedlot, quarantined feedlot or quarantined herd in accordance with paragraph (c) of this section; or

(3) The swine are moved from a State which requires the State animal health official of that State to be immediately notified of any suspected or confirmed case of pseudorabies in that State and which requires that exposed or infected livestock be quarantined, such quarantine to be released only after having met quarantine release standards no less restrictive than those in § 85.1(ll), and

(i) The swine are accompanied by an owner-shipper statement and are moved from a farm of origin directly to an approved livestock market, and

(A) The owner-shipper statement is delivered to the consignee, and

(B) The swine are identified at the approved livestock market to the farm of origin by an identification tag, or

(ii) The swine are accompanied by a certificate and such certificate is delivered to the consignee; the certificate, in addition to the information in § 85.1(cc), states the identification of

the farm of origin of each swine being moved by an earnotch recognized by a breeding association, identification tag, tattoo, or similar identification, and approval for the interstate movement has been issued by the State animal health official of the State of destination prior to the interstate movement of the swine, and

(A) The swine are moved directly to a feedlot, quarantined feedlot, quarantined herd or approved livestock market from a farm of orgin; or

(B) The swine are moved directly to a feedlot, quarantined feedlot, quarantined herd or approved livestock market from an approved livestock market which received the swine directly from a farm of orgin, or

(C) The swine are moved directly to a feedlot, quarantined feedlot or quarantined herd from an approved livestock market, which received the swine from another approved livestock market, which received the swine directly from a farm of origin.

* * * * *

13. In § 85.7, the introduction to paragraph (c) would be revised to read as follows:

* * * * *

(c) *General movements.* Swine not vaccinated for pseudorabies and not known to be infected with or exposed to pseudorabies may be moved interstate only if:

* * * * *

14. In § 85.7, paragraph (c)(2)(ii)(A) would be amended by removing the words "pseudorabies test" and inserting the words "pseudorabies serologic test" in lieu thereof.

15. In § 85.7, paragraph (c)(2)(ii)(C) would be amended by removing the words "official test" and inserting the words "official pseudorabies serologic test" in lieu thereof.

§ 85.9 [Amended]

16. Section 85.9 would be amended by removing the words "pseudorabies test" and inserting the words "pseudorabies serologic test" in lieu thereof.

17. In § 85.10, paragraph (b) would be revised to read as follows:

§ 85.10 Permits and certificates.

* * * * *

(b) A copy of each permit or certificate issued in accordance with this part shall be sent by the person issuing such document to the State animal health official of the State of destination within 3 days of the issuance of the document.

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 11th day of April, 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-9070 Filed 4-15-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASO-32]

Proposed Alteration of VOR Federal Airway V-51—Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airway V-51 from Alma, GA, Direct to Jacksonville, FL. This action would improve flight planning and reduce the flight time between Macon, GA, and Jacksonville, FL.

DATE: Comments must be received on or before May 27, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 84-ASO-32, Federal Avaition Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information, Division Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8526.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASO-32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future MPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V-51 in the vicinity of Jacksonville, FL. Traffic between Jacksonville and Macon is normally routed V-267 and operates without radar coverage and with opposite direction traffic. In order to avoid this situation when possible, controllers routinely route southbound traffic over Alma, GA, direct to Jacksonville. The action would provide an airway in an area where aircraft are vectored. This action would aid flight planning, reduce controller workload and improve safety. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact of a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

V–51 [Amended]

By removing the words "Waycross, GA; Alma, GA; and substituting the words "Alma, GA;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.65)

Issued in Washington, D.C., on April 5, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–9050 Filed 4–15–85; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 110

[CGD8–85–02]

Anchorage Ground, Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the anchorage regulations on the Lower Mississippi River by establishing a permanent anchorage in the vicinity of Kenner, Louisiana. It will be called the Lower Kenner Bend Anchorage. This action is necessary to provide needed additional anchorage space for deep draft vessels.

DATE: Comments must be received on or before May 31, 1985.

ADDRESS: Comments should be mailed to Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117. The comments will be available for inspection or copying at the above address. Normal office hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR L.L. Hereth, Port Safety Officer, Captain of the Port, New Orleans, LA, U.S. Coast Guard, 4640 Urquhart Street, New Orleans, LA 70117. Tel: (504) 589–7118.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD8–85–02), the specific section of the proposal to which their comments apply, and give the reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this notice are LTJG K. D. Christopher, project officer, c/o Commander, Eight Coast Guard District (mps) and LT R. M. Wallar, project attorney, Eight Coast Guard District Legal Office.

Discussion of Proposed Rule

In recent years, the Lower Mississippi River in general, and the New Orleans to Baton Rouge segment in particular, has experienced a considerable increase in commercial development.As a result, anchorages are needed near these areas of commercial development. Because of the nature of the Lower Mississippi River, a narrow, twisting waterway which is affected by strong currents and in an effort to ease navigation in the area, and to increase safety and facilitate commerce, it is necessary that anchorages be relatively close to, and downriver from, the berths they serve. Because it is extremely difficult to predict when a vessel will actually vacate a berth, an incoming vessel may find no open berths upon arrival.

Anchoring above a facility creates an unnecessary element of risk. When a vessel is left with no downstream anchorage space, a hazardous situation results when a vessel is required to anchor upriver. Anchoring upriver from a facility is unacceptable because the vessel would then have to "round down" and proceed past the facility and then turn back upriver. Rounding a vessel on a major waterway is an inherently hazardous maneuver that should be avoided when possible. In addition, the greater the distance between the anchorage and the berth, the greater the amount of non-productive time involved while the berth awaits arrival of the next vessel.

The establishment of the Lower Kenner Bend Anchorage will increase anchorage space downriver from an area that contains many facilities. In addition, establishing the Lower Kenner Bend Anchorage will reduce overcrowding of the anchorages between New Orleans and Baton Rouge. The greater the occupancy of the anchorage, the closer together vessels must anchor. Because of the limited maneuverability of most merchant vessels, the risk of accident increases as vessels anchor closer to each other.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This anchorage is not expected to have any significant effect on navigation and therefore it is determined that the impact will be minimal. It is believed, however, that any economic impacts provided by this regulation are expected to be positive as the establishment of this anchorage should decrease vessel transit time and facilitate midstream cargo operations.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations, by amending § 110.195 as follows:

1. In § 110.195, paragraph (a) is amended by redesignating (a)(17) through (a)(29) as (a)(18) through (a)(30) and by adding a new paragraph (a)(17) to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA including South and Southwest Passes.

(a) * * *

(17) *Lower Kenner Bend Anchorage.* An area 0.8 miles in length along the right descending bank of the river, 700 feet wide, extending from mile 113.5 to mile 114.3 above Head of Passes.

* * * * *

Authority: 33 U.S.C. 471; 49 CFR 1.46; and 33 CFR 1.05–1(g).

Dated: April 8, 1985.

T.T. Matteson,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 85–8970 Filed 4–15–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[AD–FRL–2789–4]

Equipment Leaks of VOC From Synthetic Organic Chemical Manufacturing Industry, Petroleum Refineries; Equipment Leaks of Benzene; Benzene Emissions From Coke By-Product Recovery Plants; Distillation Unit Operations; Volatile Organic Liquid Storage Vessels; and General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Grant of petition for reconsideration and proposed rules.

SUMMARY: The EPA is granting a petition for reconsideration of one aspect of the standards of performance for equipment leaks of volatile organic compounds (VOC) in the synthetic organic chemical manufacturing industry (SOCMI). Based on new data on flare performance, EPA is proposing a change in the exit velocity limits for flares covered by these standards. The EPA is proposing a change in the exit velocity limits for flares covered by several other standards: Subparts VV, GGG, NNN, and Kb of 40 CFR Part 60 and Subparts L and V of 40 CFR Part 61. In addition, EPA is proposing to place flare requirements in the General Provisions of Part 60 for easy reference by all subparts in Parts 60 and 61.

DATES: *Public Hearing.* If anyone contacts EPA requesting to speak about the proposed rule at a public hearing by April 25, 1985, a public hearing will be held on May 8, 1985, beginning at 9:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony about the proposed rule must contact EPA by May 1, 1985.

Comments. Comments about the proposed rule must be received by June 17, 1985.

ADDRESSES: *Comments.* Comments about the proposed rule should be submitted (in duplicate, if possible) to: Central Docket Section (A–130), Attention: Docket No. OAQPS–A–79–32, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. If a public hearing is held (see **DATES:** *Public Hearing*), the public hearing will be held at the Environmental Research Center, corner of Alexander Drive and Hwy 54, Research Triangle Park, N.C. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Persons wishing to present oral testimony about the proposed rule should notify Ms. Shelby Journigan, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

Docket. The docket, No. A–79–32, containing supporting information used in developing the proposed revision is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

Documents. The background information documents (BID's) for the current standards for equipment leaks of VOC within SOCMI may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry: Background Information for Proposed Standards," (EPA–450/3–80–033a, PB81–152167); "Fugitive Emission Sources of Organic Compounds: Additional Information on Emissions, Emission Reductions and Costs," (EPA–450/3–82–010, PB82–217128); and "VOC Fugitive Emissions in Synthetic Organic Chemicals Manufacturing Industry: Background Information for Promulgated Standards," (EPA–450/3–80–033b, PB84–105311). The document mainly considered in evaluating the proposed changes to the standards is "Evaluation of the Efficiency of Industrial Flares: Test Results," (EPA–600/2–84–095, PB84–199371).

FOR FURTHER INFORMATION CONTACT:

Mr. Fred Dimmick or Mr. Gil Wood, Standards Development Branch [telephone number (919) 541–5578] concerning policy and regulatory matters and Mr. Leslie B. Evans or Mr. Robert Rosensteel [telephone number (919) 541–5671], Chemicals and Petroleum Branch concerning technology information; Emission Standards and Engineering Division; U.S. Environmental Protection Agency; Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Background

Standards of performance under section 111 of the Clear Air Act were proposed and comments were requested on January 5, 1981 (46 FR 1136) for equipment leaks of VOC in SOCMI. After proposal of the standards, several relevant reports concerning equipment leaks became available. A **Federal Register** notice was published (46 FR 21789) to announce the availability of and inviting comments on these reports. Based on a review of these reports and the comments on them, EPA published its findings in an additional information document (AID) and requested comments on the AID in the **Federal Register** (47 FR 19724). After review of public comments on the proposed standards and on the AID, EPA promulgated the final standards of performance as Subpart VV of 40 CFR Part 60 on October 18, 1983 (48 FR 48328).

On December 15, 1983, CMA submitted to EPA a petition to reconsider. The petition took issue with the appropriateness of the exit velocity limitations on flares used as control devices under Subpart VV of 40 CFR Part 60. The CMA stated that some flares currently in use would not be allowed by the current exit velocity

limitations even though CMA thought the flares were effective VOC control devices. The CMA further stated that a recent study of flares demonstrates that flares with high velocities are effective VOC control devices, and, therefore, should be allowed by the standards. After reviewing CMA's petition, reviewing the additional information in the study, and meeting with CMA for additional clarification of the issue, EPA decided to convene a proceeding to reconsider the exit velocity limitation set forth at 40 CFR 60.482–10(d)(4).

Criteria for Review of the Petitions for Reconsideration

The petitioners have requested reconsideration under section 307(d)(7)(B) of the Clean Air Act. This action is limited both in time and scope. Specifically, section 307(d)(7)(B) provides that EPA shall convene a proceeding to reconsider the rule in question if a person raising an objection can demonstrate that: (1) It was impractical to raise such an objection during the comment period or that the grounds for such an objection arose after the comment period but within the time specified for judicial review under section 307(b); 42 U.S.C. 7607(b)(1); and (2) such an objection is of central relevance to the outcome of the rule. The EPA has consistently held that such objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. *See:* Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653, 81654 (December 11, 1980); Denial of Petitions for Reconsideration of Final Regulations for Electric Utility Steam Generating Units, 45 FR 8210 (February 6, 1980); and decisions cited therein.

CMA Petition and EPA Response

Issue. The CMA asked EPA for reconsideration of the exit velocity limitation placed on flares affected by the standards of performance for equipment leaks of VOC in SOCMI. The CMA considers high velocity flares to be effective VOC control devices and thus thinks they should be allowed. Because CMA believes that the recent study on flare efficiencies supports their view of high velocity flares, they are asking EPA to reconsider this limitation. In addition, CMA requested that EPA clarify how to determine the actual exit velocity for flares.

Response. After review of CMA's petition and the recent study of flare control efficiencies, EPA determined that new information is available and that this information provides substantial support for a change in the current requirements that ensure efficient flare operation and is, therefore, of central relevance to the exit velocity limitation. Because the flare control efficiency study was completed at the end of the initial rulemaking, EPA was unable to include the study results in earlier considerations. Therefore, EPA decided to review the study to determine if high velocity flares are as effective in controlling VOC as the technologies selected as the "best demonstrated technology" during the initial rulemaking. Accordingly, EPA has decided to convene a proceeding to reconsider the exit velocity limitation on flares.

The CMA requested that EPA reconsider the exit velocity limitation in light of a study (Docket No. VII–B–1) recently completed by EPA's Office of Research and Development (ORD). After review of the new information generated in the ORD study of flares, EPA determined that the current exit velocity limitations should be revised. The new limitations would allow more existing flares to be used in achieving compliance with the exit velocity requirements by allowing higher exit velocities to be used in flaring gases with sufficiently high heating values. The revision to the standard would allow steam-assisted and nonassisted flares that are designed and operated with any exit velocity less than 122 m/sec (400 ft/sec) to be used in complying with the standards if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf). Thus, EPA is proposing these requirements as additional provisions to those already included in the standards.

The EPA's reconsideration of the flare exit velocity restriction is based on review of currently available flare efficiency data, including an analysis of results recently obtained from a study of the combustion efficiency of flares conducted on behalf of EPA. The EPA will continue to evaluate all relevant data concerning flare efficiency and, as further information becomes available, willl continue to review the propriety of restrictions on the use of flares in the NSPS in light of such information. The EPA will, if such information warrants, revise the NSPS as appropriate.

The petitioner requested that EPA clarify that the velocity limitations at § 60.482–10(d)(4) apply only during representative performance of flares and not during startup, shutdown, and malfunction conditions. Methods 2, 2A, 2C, or 2D (see § 60.485(g)(4)) are used in performance tests to determine the actual exit velocity of flares. These tests must be performed under representative flare operating conditions. Exceedances of velocity limitations during periods in which one or more processes (that vent to the flare) start up, shut down, and malfunction are not considered a violation (see § 60.8(c)). These tests are used to ensure that the flare is designed to be and capable of being operated within the velocity limitation during representative process conditions. During nonperformance test periods, operators must maintain and operate flares used to comply with Subpart VV in a manner consistent with good air pollution control practices for minimizing emissions, even during periods of startup, shutdown and malfunction (see § 60.11(d)).

The petitioner requested that EPA clarify the appropriate method for determining exit velocity of a flare. The formula specified at § 60.485(g) requires that Method 2, 2A, 2C, or 2D be used as the test method to determine the volumetric flowrate. This flowrate should be determined in the flare header or headers that feed the flare because the volumetric flowrate determined in these headers reflects the flowrate in the flare. After this flowrate is determined, an operator would use design and engineering principles to determine the unobstructed cross sectional area of the flare tip. With these two factors, the actual exit velocity is determined.

Flare Provisions for Other Standards

Several other standards of performance have been recently proposed or promulgated with flare limitations. The EPA knows no reason that the flare limitations for those standards should not be the same as the flare limitations being proposed here. The EPA's analysis shows that all flares meeting these limitations can achieve the best demonstrated technology levels selected by EPA for other standards in Part 60 and Part 61. Therefore, EPA is proposing the same limitations for the other standards that include flare provisions. The other standards for which EPA is proposing to add the same limitations are:

—Standards of Performance for New Stationary Sources; VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI); Distillation Unit Operations—proposed on December 30, 1983 (48 FR 57538–57561)

—Standards of Performance for New Stationary Sources; Equipment Leaks of VOC; Petroleum Refineries—promulgated on May 30, 1984 (49 FR 22598–22608)

—National Emission Standards for Hazardous Air Pollutants; Equipment

- Leaks (Fugitive Emission Sources)—promulgated on June 6, 1984 (49 FR 23498–23520)
- —National Emission Standards for Hazardous Air Pollutants; Benzene Emissions from Coke By-Product Recovery Plants—proposed on June 6, 1984 (49 FR 23522–23555)
- —Standards of Performance for New Stationary Sources; Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) constructed after July 23, 1984—proposed on July 23, 1984 (49 FR 29698–29718)

Because several standards in 40 CFR Part 60 would contain the same requirements for flares, EPA believes that it would be administratively prudent to locate these requirements in one place in 40 CFR Part 60. The flare requirements reflect EPA's judgment concerning the "best demonstrated technology" level for flares and, therefore, could apply to all VOC standards requiring minimum VOC destructions less than or equal to 98 percent. Thus, EPA believes the flare requirements should appropriately be placed in the General Provisions (Subpart A) of the 40 CFR Part 60, and is accordingly proposing to do so. When EPA promulgates flare requirements in the General Provisions, the requirements in the specific subparts will be deleted and a reference to the General Provisions will be added.

Miscellaneous

Under Executive Order 12291, the Administrator is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The Administrator has determined that this regulation would result in none of the adverse economic impacts set forth in section 1 of the Order as grounds for finding a regulation to be a "major rule." This proposal makes complying with the existing standards less expensive, and thus would serve to decrease the economic impact. The Administrator has concluded that this rule is not "major" under any of the criteria established in the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments are available for public inspection, in Docket No. A–79–32, Central Docket Section, at the address given in the **ADDRESS** section of this preamble.

The Administrator certifies that a regulatory flexibility analysis under 5 U.S.C. 601 *et seq.*, is not required for this rulemaking because the rulemaking would not have significant impact on a substantial number of small entities. This proposal has no significant cost impact.

The information collection requirements in this proposed rule have been submitted for review to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* However, burden estimates have not been made for this action. Instead, burden estimates are made for each of the standards to which flare provisions apply. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Benzene, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Vinyl chloride.

Dated: March 27, 1985.

Lee M. Thomas,

Administrator.

It is proposed to amend 40 CFR Part 60 and Part 61 as follows:

PART 60—[AMENDED]

§ 60.482–10 [Amended]

1. By revising paragraph (d)(4) of § 60.482–10 of Subpart VV of Part 60 as follows:

* * * * *

(d) * * *

(4) (i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in § 60.485(g)(4), less than 18 m/sec (60 ft/sec), except as provided in paragraph (d)(4)(ii).

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.485(g)(4), equal to or greater than 18 m/sec (60 ft/sec) but less than 120 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf).

* * * * *

(Sec. 111, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)))

§ 60.662 [Amended]

2. By revising paragraph (b)(4) of § 60.662 of Subpart NNN of Part 60 as follows:

* * * * *

(b) * * *

(4) (i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in § 60.664(c), less than 18 m/sec (60 ft/sec), except as provided in paragraph (d)(4)(ii).

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.664(c), equal to or greater than 18 m/sec (60 ft/sec) but less than 120 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1000 Btu/scf).

* * * * *

(Sec. 111, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)))

§ 61.242–11 [Amended]

3. By revising paragraph (d)(4) of § 61.242–11 of Subpart V of Part 61 as follows:

* * * * *

(d) * * *

(4)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in § 60.245(e)(4), less than 18 m/sec (60 ft/sec), except as provided in paragraph (d)(4)(ii).

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 61.245(e)(4), equal to or greater than 18 m/sec (60 ft/sec) but less than 120 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

* * * * *

(Sec. 111, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)))

§ 60.112b [Amended]

4. By revising paragraph (a)(3)(ii) (B) and (C) of § 60.112b of Subpart Kb of Part 60 as follows:

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(B) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as

determined by the methods specified in § 60.113b(d)(4), less than 18 m/sec (60 ft/sec), except as provided in paragraph (3)(ii)(c).

(C) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.113b(d)(4), equal to or greater than 18 m/sec (60 ft/sec) but less than 120 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted, as determined by methods specified in § 60.113(b)(d)(3), is greater than 373 MJ/scm (1,000 Btu/scf).

* * * * *

(Sec. 111, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)))

PART 61—[AMENDED]

§ 61.132–14 [Amended]

5. By revising paragraph (a)(3)(ii) (B) and (C) of § 61.132–14(d)(4) of Subpart L of Part 61 as follows:

* * * * *

(3)(ii)(B) Steam-assisted and nonassisted flares shall be designed and operated with an exit velocity, as determined by the methods specified in § 60.113b(d)(4), less than 18 m/sec (60 ft/sec), except as provided in paragraph (3)(ii)(c).

(C) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in § 60.113b(d)(4), equal to or greater than 18 m/sec (60 ft/sec) but less than 120 m/sec (400 ft/sec) are allowed if the net heating value of the gas being combusted, as determined by methods specified in § 60.113(b)(d)(3), is greater than 373 MJ/scm (1,000 Btu/scf).

* * * * *

(Sec. 112, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)))

6. By adding § 60.18 to Part 60 as follows:

§ 60.18 General control device requirements.

(a) *Introduction.* This section contains requirements for control devices used to comply with applicable Subparts of Part 60 and Part 61. The requirements are placed here for administrative convenience and only apply to facilities covered by subparts referring to this section.

(b) *Flares.* Paragraphs (c) through (f) apply to flares.

(c)(1) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (f), except for periods not to exceed to total of 5 minutes during any 2 consecutive hours.

(2) Flares shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f).

(3) Flares shall be used only with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the new heating value of the gas being combusted being 7.45 MJ/scm or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (f).

(4)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (f)(4), less than 18.3 m/sec (60 ft/sec), except as provided in paragraph (a)(4)(ii) and (iii).

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in paragraph (f)(4), equal to or greater than 18.3 m/sec but less than 122 m/sec are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the methods specified in paragraph (f)(g)(4), less than the velocity, V_{max}, as determined by the method specified in paragraph (f)(g)(5), and less than 122m/sec are allowed.

(5) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (f)(6).

(6) Flares used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(d) Owners or operators of flares used to comply with the provisions of this subpart shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs. Applicable subparts will provide provisions stating how owners or operators of flares shall monitor these control devices.

(e) Flares used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(f)(1) Reference Method 22 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(3) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K \sum_{i=1}^{n} C_i H_i$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20°C;

$$K = \text{Constant, } 1.740 \times 10^{-7} \left(\frac{1}{\text{ppm}}\right)\left(\frac{\text{g mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for

$$\left(\frac{\text{g mole}}{\text{scm}}\right)$$

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 and measured for hydrogen and carbon monoxide by ASTM D1946–67 (reapproved 1972) (incorporated by reference as specified in § 60.17); and

H_i = Net heat of combustion of sample component i, kcal/g mole at 25°C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 60.17) if published values are not available or cannot be calculated.

(4) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

(5) The maximum permitted velocity, V_{max}, for flares complying with paragraph (c)(4)(iii) shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

V_{max} = Maximum permitted velocity, m/sec
28.8 = Constant
31.7 = Constant
H_T = The net heating value as determined in paragraph (f)(3).

(6) The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation.

$V_{max} = 8.706 + 0.7084 (H_T)$
V_{max} = Maximum permitted velocity, m/sec
8.706 = Constant
0.7084 = Constant
H_T = The net heating value as determined in paragraph (f)(3).

(Sec. 111, 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)))

[FR Doc. 85-9089 Filed 4-15-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-9-FRL-2818-5]

Arizona; Final Authorization of State Hazardous Waste Program; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction to notice of tentative determination on application of Arizona for final authorization, public hearings and comment period.

SUMMARY: The Environmental Protection Agency is today correcting a notice for the tentative determination on Arizona's application for final authorization. That notice, as published in the **Federal Register** on March 20, 1985 (50 FR 11186, 11187) contained an error in the "Supplementary Information" portion concerning the dates on which the Agency will hold public hearings. This notice intends to correct that error in the March 20 tentative determination notice so that it reads as originally envisioned.

FOR FURTHER INFORMATION CONTACT: Chuck Flippo, Program Manager, U.S.E.P.A. Region IX, RCRA Programs Section (T-2-1), 215 Fremont St., San Francisco, CA 94105, (415) 974-8128.

The following correction is made to Vol. 50, No. 46 **Federal Register** issue of March 20, 1985 appearing on page 11186, third column, section entitled II. Arizona, second paragraph, lines 11 and 12. The dates Thursday, April 11, 1985 at Phoenix, and Friday, April 12, 1985 at Tucson are changed to Thursday, April 18, 1985 at Phoenix, and Friday, April 19, 1985 at Tucson. The final date for submitting written comments is changed from April 12, 1985 to April 19, 1985.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Dated: March 29, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85-9085 Filed 4-15-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3200

Geothermal Resources Leasing; General; Change in Lease Acreage and Application Fees

AGENCY: Bureau of Land Mangement, Interior Department.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would exercise the authority granted the Secretary of the Interior by section 7 of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025), to increase the per State limitation on acreage that can be held by a lessee under Federal geothermal leases from 20,480 acres to 51,200 acres. The proposed rulemaking would also change the geothermal lease application fee from $50 to $150, to reflect more closely the actual costs incurred by the Bureau in processing geothermal leaese applications.

DATE: Comments should be submitted by June 17, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 at the above address during regular working hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Karl F. Duscher, (202) 653-2187.

SUPPLEMENTARY INFORMATION: The present acreage limit of 20,480 acres was established in the Geothermal Steam Act. The Act also provides that, at any time after fifteen years from the effective date of the Act, December 24, 1970, the Secretary of the Interior may, after public hearings, increase the limit up to 51,200 acres. Public hearings on this proposal to increase the acreage limitation in accordance with the Act will be held in room 5071 of the Main Interior Building, Washington, D.C. from 2:00 p.m. to 4:00 p.m. on April 25, 1985, and in room 3037, Federal Building, 300 Booth Street, Reno, Nevada, from 2:00 p.m. to 4:00 p.m. on April 25, 1985. If comments received indicate a need for additional hearings, they will be scheduled for later this year.

The principal author of this proposed rulemaking is Karl F. Duscher, Division of Fluid Mineral Leasing, assisted by the staff of the Office of Legislation and Regulatory Managment, Bureau of Land Managment.

It is hereby determined that this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibiltiy Act (5 U.S.C. 601 et seq.).

The increase in lease size, which would be accomplished by this proposed rulemaking, will be equally favorable to anyone offering to lease the geothermal resources on the public lands.

There are no new information collection requirements contained in this rulemaking requiring approval by the Office of Managment and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands—classification, Public lands—mineral resources, Surety bonds.

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025), it is proposed that Part 3200 of Group 3200, Subchaper C, Chapter II of the Code of Federal Regulations be amended as set forth below:

PART 3200—[AMENDED]

§ 3201.2 [Amended]

1. Section 3201.23(a) is amended by removing the figure "20,480" where it appears and replacing it with the figure "51,200"

§ 3205.2 [Amended]

2. Section 3205.2(b) is amended by removing the figure "$50" where it appears and replacing it with the figure "$150".

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85-9054 Filed 4-15-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-70; RM-4754]

FM Broadcast Stations in Juneau, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of FM Channel 225 to Juneau, Alaska, as that community's sixth allocation, at the request of Denali Broadcasting Company, Inc.

DATES: Comments must be filed on or before May 30, 1985, and reply comments on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Juneau, Alaska); MM Docket No. 85-70, RM-4754.

Adopted: March 11, 1985.
Released: April 8, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition to allot Class C FM Channel 225 to Juneau, Alaska, as that community's sixth channel, filed by Denali Broadcasting Company, Inc. ("petitioner"). Petitioner states that it will apply for the channel, if allotted.

2. Channel 225 can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. However, since Juneau is located within 320 kilometers (200 miles) of the U.S.-Canada border, the concurrence of the Canadian Government must be obtained.

4. In view of the fact that the proposal could provide Juneau with an additional local FM service, we believe the public interest would be served by proposing to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Juneau, AK	254, 274, 282, 286, and 292A.	225, 264, 274, 282, 288, and 292A.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. **Note:** A showing of continuing interest is required before a channel will be assigned.

6. Interested parties may file comments on or before May 30, 1985, and reply comments on or before June 14, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: John Lindauer, President, Denali Broadcasting Company, Inc., 3933 Geneva Place, Anchorage, Alaska 99508.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, the will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-9121 Filed 4-15-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-67; RM-4854]

TV Broadcast Station in Gu Achi, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to the assignment of UHF Television Channel 35 to Gu Achi, Arizona as that community's first television assignment, in response to a petition filed by the Freedom Development Corp.

DATES: Comments must be filed on or before May 31, 1985, and reply comments must be filed on or before June 17, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Gu Achi, Arizona); MM Docket No. 85-67, RM-4854.

Adopted: March 13, 1985.
Released: April 9, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by the Freedom Development Corp. ("petitioner") requesting the assignment of UHF TV Channel 64 to Gu Achi, Arizona, as that community's first television assignment. An engineering review has determined that Channel 64 cannot be assigned due to short spacings to proposed assignments at Cortaro, Arizona (Channel 49) and Ague Prieta, Sonora, Mexico (Channel 64). However, a staff study has found that UHF TV Channel 35 can be assigned to Gu Achi in compliance with the Commission's minimum distance separation requirements. Although petitioner has stated his intention to apply for authorization on Channel 64, he is requested to specify in his comments that he would now apply for Channel 35, should it be assigned.

2. Gu Achi (not listed in the 1980 census), is according to petitioner, a community located in Pima County (population 531,443) [1] on the Papago Indian Reservation, approximately 80 kilometers (50 miles) south of Phoenix, Arizona. Although listed as a location in the Rand McNally "Road Atlas" we have been able to substantiate its "community" [2] status since it is not listed in the 1980 U.S. Census or in the National Atlas Index. In the absence of recognizable community status, the petitioner is requested to provide the Commission with sufficient information to demonstrate that this place has social, economic or cultural indicia to qualify as a "community" for assignment purposes. See *Ansley, Alabama*, 46 FR 58688, published December 3, 1981; *Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983; *Gayles, Louisiana*, 48 FR 28495, published June 22, 1982, and cases cited therein.

3. In view of the above, and based on the information submitted by petitioner, the Commission does not believe that a final determination can be made as to the status of Gu Achi as a community. Therefore, we believe it appropriate to further investigate this matter through the solicitation of comments. Accordingly, petitioner is requested to submit more information about Gu Achi, including any businesses, social organizations, or governmental units that identify themselves with Gu Achi, in order to demonstrate how Gu Achi may qualify as a "community" for assignment purposes.

4. As noted above, UFH Television Channel 35 can be assigned to Gu Achi in compliance with the minimum distance separation requirements and other technical criteria. However, since the proposed assignment is within 400 kilometers (250 miles) of the U.S.-Mexico border, concurrence of the Mexican government is required.

5. In view of the foregoing, and the interest expressed by petitioner in initiating a first local television service to Gu Achi, we believe it is in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rues, as indicated below:

City	Channel No.	
	Present	Proposed
Gu Achi, AZ		35+

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contaned in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before May 31, 1985, and reply comments on or before June 17, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows: Mr. Dan Mahoney, c/o Freedom Development Co., 8 Arlington Street, Auburn, Massachusetts 01501.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commisison's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation

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[1] Population figures were extracted from the 1980 U.S. Census.

[2] Pursuant to section 307(b) of the Communications Act of 1934, as amended, the Commission is required to distribute broadcast frequencies only to a "community" that is an indentifiable population grouping. Generally, if the locality is listed in the U.S. Census, or is incorporated, that is sufficient to satisfy its status as a community.

required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporated by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered it advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-9118 Filed 4-15-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-71; RM-4856]

TV Broadcast Stations in Agate, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action herein proposes the assignment of UHF TV Channel 63 to Agate, Colorado, at the request of Freedom Development Co. The assignment could provide Agate with its first local television service.

DATES: Comments must be filed on or before May 30, 1985, and reply comments on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Agate, Colorado); MM Docket No. 85-71, RM-4856.

Adopted: March 11, 1985.
Released: April 8, 1985.

By the Chief, Policy and Rules Division.

1. The Commission had before it consideration a petition for rule making submitted by Freedom Development Co. ("petitioner") seeking the allocation of UHF TV Channel 69 to Agate, Colorado, as that community's first local television channel. Petitioner has indicated its intention to apply for the channel, if assigned.

2. Although Channel 69 can be assigned to Agate in compliance with the Commission's minimum distance separation and other technical requirements, we are, on our own motion, proposing the assignment of UHF TV Channel 63 instead. Channel 63 can be assigned in compliance with all Commission rules and will not pose any potential problems with land mobile licensees in the area which may be licensed on the adjacent 806-816 MHz band.

3. Agate (population 369) [1], in Elbert County (population 6,850), is located in eastern Colorado, approximately 96 kilometers (59 miles) southeast of Denver, Colorado.

4. Based on the fact that the allocation could provide Agate with its first local television service, we believe the public interest would be served by proposing to amend the Television Table of Assignments, §73.606(b) of the Rules, as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Agate, CO		63

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 30, 1985, and reply comments on or before June

[1] Population figures are taken from the 1980 U.S. Census.

14, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Freedom Development Co., 8 Arlington Street, Auburn, Massachusetts 01501, (Petitioner).

7 The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73. 202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For Further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–9120 Filed 4–15–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–79; 4855]

TV Broadcast Station in Maunaloa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of UHF TV Channel 68 to Maunaloa, Hawaii, in response to a petition filed by Freedom Development Corporation, as that community's first television assignment.

DATES: Comments must be filed on or before May 31, 1985, and reply comments must be filed on or before June 17, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Maunaloa, Hawaii); MM Docket No. 85–79, RM–4855.

Adopted: March 13, 1985.
Released: April 9, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by Freedom Development Corporation ("petitioner") requesting the assignment of UHF TV Channel 69 to Maunaloa, Hawaii as that community's first television assignment. A staff study has found that UHF Channel 68 can be assigned instead to Maunaloa in compliance with the minimum distance separation requirements and other technical criteria. Although petitioner has indicated it would apply for authorization on Channel 69, we wish to avoid the potential for future interference problems to land mobile users on the adjacent band.

2. Maunaloa (unlisted in the 1980 U.S. Census) in Maui County (population

70,847) [1] is located on Molokai Island, approximately 75 kilometers (45 miles) southeast of Honolulu, Hawaii. Although petitioner indicates Maunaloa is a "community", we have been unable to substantiate its "community" [2] status since it is not listed in the 1980 U.S. Census or in the National Atlas Index. The petitioner is requested to provide the Commission with sufficient information to demonstrate that this place has social, economic or cultural indicia to quality as a "community" for assignment purposes. See *Ansley, Alabama*, 46 FR 58688, published December 3, 1981; *Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983; *Gayles, Louisiana*, 48 FR 28495, published June 22, 1982, and cases cited therein.

3. The Commission does not believe that a final determination can be made as to the status of Maunaloa as a community. We believe it appropriate to further investigate this matter through the solicitation of comments. Accordingly, petitioner is requested to submit more information about Maunaloa, including any businesses, social organizations, or governments that identify themselves with Maunaloa, in order to demonstrate how Maunaloa may qualify as a "community" for assignment purposes.

4. In view of the foregoing, and the interest expressed by petitioner in initiating a first local television service to Maunaloa, we believe it is in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as indicated below:

City	Channel No.	
	Present	Proposed
Maunaloa, HI		6

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.— A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

[1] Population figure was extracted from the 1980 U.S. Census.

[2] Pursuant to section 307(b) of the Communications Act of 1934, as amended, the Commission is required to assign broadcast frequencies only to a "community" that is an identifiable population grouping. Generally, if the locality is listed in the U.S. Census or is incorporated, that is sufficient to satisfy its status as a community.

6. Interested parties may file comments on or before May 31, 1985, and reply comments on or before June 17, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Freedom Development Corporation, c/o Dan Mahoney, 8 Arlington Street, Auburn, Massachusetts 01501.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comment in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments,

reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-9117 Filed 4-15-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-69; RM-4889]

TV Broadcast Stations in Poplar Bluff, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 55 to Poplar Bluff, Missouri, in response to a petition filed by Bluff Communications Co. The proposed assignment could provide Poplar Bluff with its second commercial television service.

DATES: Comments must be filed on or before May 30, 1985, and reply comments must be filed on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Poplar Bluff, Missouri); MM Docket No. 85-69, RM-4889.

Adopted: March 11, 1985.
Released: April 8, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Bluff Communciations Co. ("petitioner"), proposing the assignment of UHF television Channel 55 to Poplar Bluff, Missouri, as that community's second commercial television service. Petitioner states that it will apply for the channel, if assigned.

2. Poplar Bluff (population 17,139),[1] the seat of Butler County (population 37,693), is located in southeastern Missouri, approximately 210 kilometers (130 miles) south of St. Louis. Currently, it is served by Station KPOB-TV (Channel 15), and is assigned noncommercial educational Channel *26, which is unoccupied.

3. UHF television Channel 55 may be assigned to Poplar Bluff consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. We believe the petitioner's proposal warrants consideration since it could provide a second commercial outlet, as well as a first competitive television broadcast service, to Poplar Bluff.

4. In view of the foregoing, the Commission herein proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Poplar Bluff, MO.	15+ and *26+	15+, *26+, and 55.

5. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 30, 1985, and reply comments on or before June 14, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John H. Midlen, Jr., Chartered, 1100-15th Street, N.W., Suite 1200, Washington, D.C. 20005, (Counsel for Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§73.202(b), 73.505, and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner or Stanley Schmulewitz, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any such comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the preceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the

[1] Population figures were extracted from the 1980 U.S. Census.

proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Services.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regualr business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-9115 Filed 4-15-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-72; RM-4899]

TV Broadcast Stations in Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of UFH TV Channel *27 for noncommercial educational Channel *19 at Altus, Oklahoma, at the request of Thornberry Television, Ltd. The substitution of channels at Altus could allow Thornberry, permittee of Station KJTL-TV, Wichita Falls, Texas, to relocate its antenna and upgrade its facilities.

DATES: Comments must be filed on or before May 30, 1985, and reply comments on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Altus, Oklahoma); MM Docket No. 85-72, RM-4899.

Adopted: March 11, 1985.
Released: April 8, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making submitted by Thornberry Television, Ltd. ("Thornberry") requesting the substitution of noncommercial educational UFH TV Channel *27 for Channel *19 at Altus, Oklahoma. Channel *19 is currently unoccupied and unapplied for.

2. Thornberry is the permittee of Station KJTL-TV, Channel 18, at Wichita Falls, Texas, and has applied for a construction permit to relocate its transmitter and upgrade its facilities. It states that should its application be granted, KJTL would be able to expand its service area over an additional 1,787 square miles encompassing 169,346 persons. However, the site which Thornberry proposes to utilize at Wichita Falls would create a 9 mile short-spacing to the reference coordinates for Channel *19 at Altus.

3. Channel *27 can be assigned to Altus in compliance with the Commission's minimum distance separation requirements and will negate the short-spacing to Thornberry's application. We believe the public interest would be served by proposing to substitute the noncommercial educational channel at Altus which could then permit improved service to the Wichita Falls area by Station KJTL-TV. Accordingly, we propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with regard to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Altus, OK	*19-	*27

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before May 30, 1985, and reply comments on or before June 14, 1985, and are advised to read the Appendix for the proper procedures. Additional, a copy of such comments should be served on the petitioners or their counsel, or consultant, as follows: Goldberg & Spector, 1920 N Street, N.W., Suite 650, Washington, D.C. 20036 (Counsel to Thornberry Television, Ltd.).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-9119 Filed 4-15-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-66; RM-4674]

TV Broadcast Stations in Klamath Falls, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF Television Channel 31 to Klamath Falls, Oregon, in response to a petition filed by Sunshine Television, Inc. The proposal could provide a second commercial television channel to that community.

DATES: Comments must be filed on or before May 30, 1985, and reply comments on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Klamath Falls, Oregon); MM Docket No. 85-66, RM-4674.

Adopted: March 13, 1985.

Released: April 8, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration a petition for rule making filed by Sunshine Television, Inc.[1] ("petitioner") seeking the amendment of the Television Table of Assignments, § 73.606(b), by removing the reservation from Channel *22 at Klamath Falls, Oregon, in order to assign a second commercial channel there. If the reservation is removed and a channel assigned, petitioner will apply for the channel and operate a commercial station.

2. Klamath Falls (population 16,661)[2] seat of Klamath County (population 59,117), is located in southern Oregon approximately 90 kilometers (55 miles) southeast of Medford, Oregon.

3. Petitioner's request was originally presented as a counterproposal to the *NPRM* in Docket 84-714 (49 FR 30543, published July 31, 1984). In the counterproposal, petitioner suggested that Channel 22 be assigned to Medford, Oregon instead of Channel 27 and that we delete Channel *22 (vacant) in Klamath Falls, so as to make Channel 19 available for commercial use there. It also proposed that Channel *25 be set aside for noncommercial educational use in place of Channel *22 at Klamath Falls. Petitioner states that it intends to operate a satellite station for KDRV in Medford. The Commission generally does not remove the reservation of educational channels, particularly where another channel is available for assignment, as is the case here. Therefore, we propose to assign Channel 31 to Klamath Falls, as its second commercial service.

4. UHF Television Channel 31 can be assigned to Klamath Falls, Oregon, in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules. However, petitioner must show that it would operate with facilities and a transmitter site such that there would be no signal overlap with its currently licensed station KDRV in Medford, Oregon.

5. Comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Klamath Falls, OR	2-, *22+	2-, *22+, and 31.

[1] Licensee of Television Station KDRV, Channel 12, Medford, Oregon.

[2] Population figures are from the 1980 U.S. Census.

6. Interested parties may file comments on or before May 30, 1985, and reply comments on or before June 14, 1985, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows: Ben C. Fisher, Clifford M. Harrington, Fisher, Wayland, Cooper & Leader, 1125 Twenty-Third Street West, Washington, D.C. 20037, (counsel for the petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.203(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued unitl the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See §1.420(d) of the Commission's Rules:)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–9116 Filed 4–15–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–68; RM–4859]

TV Broadcast Stations in Killeen, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 62 to Killeen, Texas, as that community's first television channel, in response to a petition filed by C. Joe Evans.

DATES: Comments must be filed on or before May 30, 1985, and reply comments must be filed on or before June 14, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Proposed Rule Making

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations, (Killeen, Texas); MM Docket No. 85–68, RM–4859.

Adopted: March 13, 1985.
Released: April 8, 1985.
By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by C. Joe Evans ("petitioner") requesting the assignment of UHF Television Channel 62 to Killeen, Texas as that community's first television channel. Petitioner has filed information in support of the proposal and indicated an interest in applying for the channel, if assigned.

2. Killeen (population 46,296),[1] in Bell County (population 157,889), is located

[1] Population figures were extracted from the 1980 U.S. Census.

in central Texas, approximately 95 kilometers (60 miles) north of Austin, Texas.

3. UHF Television Channel 62 can be assigned to Killeen, Texas in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

4. Based on the above facts, we believe that the public interest would be served by seeking comments on petitioner's request. Accordingly, it is proposed to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the community listed below:

City	Channel No.	
	Present	Proposed
Killeen, TX		62

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before May 30, 1985, and reply comments on or before June 14, 1985, and and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Sterling Communications, Inc., c/o A.G. Thiessen, President, Uptain Building—Suite 418, Chattanooga, TN 37411–4065, (Consultant to Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is direced, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel it if is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–9114 Filed 4–15–85; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 50, No. 73
Tuesday, April 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Bureau of Land Management Land Transfers to the State of California

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations (36 CFR Part 800) with the Bureau of Land Management, the California State Lands Commission, and the California State Historic Preservation Officer providing for the management of historic properties on lands that may be transferred by the Bureau to the State. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic properties will be identified, evaluated and treated in order to satisfy the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: May 16, 1985.

ADDRESS: Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, Telephone (303) 236–2682.

Dated: April 11, 1985.

John M. Fowler,

Deputy Executive Director.

[FR Doc. 85–9108 Filed 4–15–85; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Science and Education Research Grants Program Advisory Committee, Subcommittee for Acid Precipitation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Acid Precipitation, Technical Advisory Committee for Science and Education Research Grants Program.

Date: June 10–12, 1985.

Time: 8:30 a.m. to 6:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Acid Precipitation program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of meeting: Closed

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Contact Person: Olga Owens, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 4th day of April 1985.

Olga Owens,

Executive Secretary, Subcommittee for Acid Precipitation.

[FR Doc. 85–9139 Filed 4–15–85; 8:45 am]

BILLING CODE 3410-MT-M

Science and Education Research Grants Program Advisory Committee, Subcommittee for Animal Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Animal Science, Technical Advisory Committee for Science and Education Research Grants Program.

Date: June 24–26, 1985.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Animal Science program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of section 10(d) of Pub. L. 92–463.

Contact Person: Doris Balinsky, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 4th day of April 1985.

Doris Balinsky,

Executive Secretary, Subcommittee for Animal Science.

[FR Doc. 85–9138 Filed 4–15–85; 8:45 am]

BILLING CODE 3410-MT-M

Science and Education Research Grants Program Advisory Committee Subcommittee for Growth and Development of Plants; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Growth and Development of Plants, Technical Advisory Committee for Science and Education Research Grants Program.

Date: May 16–18, 1985.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Growth and Development of Plants program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason For Closing: The proposals being reviewed include information of a proprietary

or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Machi Dilworth, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 4th day of April 1985.

Machi Dilworth,

Executive Secretary, Subcommittee for Growth and Development, Plants (Biotech).

[FR Doc. 85–9140 Filed 4–15–85; 8:45 am]

BILLING CODE 3410-MT-M

Science and Education Research Grants Program Advisory Committee, Subcommittee for Insect Pest Science; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Insect Pest Science, Technical Advisory Committee for Science and Education Research Grants Program.

Date: June 3–4, 1985.

Time: 8:30 a.m. to 5:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommittee: To provide advice and recommendation concerning support for research in the Insect Pest Science program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Anne Holiday Schauer, Associate Chief, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 4th day of April 1985.

Anne Holiday Schauer,

Executive Secretary, Subcommittee for Insect Pest.

[FR Doc. 85–9142 Filed 4–15–85; 8:45 am]

BILLING CODE 3410-MT-M

Science and Education Research Grants Program Advisory Committee, Subcommittee for Response to Stress; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the U.S. Department of Agriculture announces the following meeting:

Name: Subcommittee for Response to Stress, Technical Advisory Committee for Science and Education Research Grants Program.

Date: May 29–31, 1985.

Time: 8:30 a.m. to 6:00 p.m.

Place: U.S. Department of Agriculture, Room 024 Morrill Hall, Washington, D.C.

Purpose of Subcommitte: To provide advice and recommendation concerning support for research in the Response to Stress program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Type of Meeting: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Secretary of Agriculture pursuant to provisions of Section 10(d) of Pub. L. 92–463.

Contact Person: Olga Owens, Associate Program Manager, Competitive Research Grants Office, Office of Grants and Program Systems, USDA, Room 112 Morrill Hall, Washington, D.C. 20251.

Done at Washington, D.C., this 4th day of April 1985.

Olga Owens,

Executive Secretary, Subcommittee on Response to Stress (Biotech).

[FR Doc. 85–9141 Filed 4–15–85; 8:45 am]

BILLING CODE 3410-MT-M

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: May 14, 1985.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis, Drive, Raleigh, North Carolina 27605.

Time: 1 p.m.

Purpose: To establish marketing areas, submarketing areas, and selling schedules for the 1985 flue-cured tobacco marketing season. Also, other matters as specified in 7 CFR Part 29 will be discussed.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300–12th Street, SW., Washington, D.C. 20250, (202) 447–2567. Written statements should be submitted prior to or at the meeting.

Dated: April 10, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–9143 Filed 4–15–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Northwestern Pacific Acquiring Corp. and Eureka Southern Railroad Co. From Objection of the California Coastal Commission

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal of appeal.

SUMMARY: On December 14, 1984, Northwestern Pacific Acquiring Corporation and Eureka Southern Railroad Company (Appellants) appealed to the Secretary of Commerce (Secretary) an objection of the California Coastal Commission to the acquisition and operation of the Eel River rail line, northern California, in connection with Appellants' exemption petitions to the Interstate Commerce Commission (ICC) under 49 U.S.C. 10505. The consistency appeal was filed pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A) and implementing regulations at 15 CFR Part 930, Subpart H.

The ICC issued a decision granting Appellants' exemption petitions to acquire and operate the Eel River rail line. On December 13, 1984, the California Coastal Commission

petitioned the United States Court of Appeals for the Ninth Circuit to review and set aside the ICC's decision (No. 84–7845).

In the interest of administrative economy, for good cause, the Secretary dismissed the appeal without prejudice on March 26, 1985, pursuant to 15 CFR 930.128, and notified the Appellants that they may refile their appeal should the Ninth Circuit Court of Appeals set aside the ICC's decision.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: April 5, 1985.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85–9092 Filed 4–15–85; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Thailand To Review Trade in Category 337 (Cotton Playsuits)

April 10, 1985.

On March 29, 1985, the Government of the United States requested consultations with the Government of Thailand with respect to Category 337 (cotton playsuits). This request was made on the basis of the bilateral agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments within 90 days of the request for consultations, CITA, pursuant to the terms of the bilateral agreement, may establish a prorated specific limit of 67,738 dozen for the entry and withdrawal from warehouse for consumption of textile products in Category 337, produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on March 29, 1985 and extends through December 31, 1985.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers as published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1984 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

The Government of the United States, pending agreement in consultations on a mutually satisfactory solution, has decided to control imports in this category during the 90-day consultation period (March 29, 1985–June 27, 1984) at 26,033 dozen. In the event the level established for Category 337 during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter, shall be charged to the prorated twelve-month period described above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register**.

Effective Date: April 16, 1985.

Anyone wishing to comment or provide data or information reqarding the treatment of Catgegory 337 under the Bilateral Cotton, Wool and Man-Made Agreement with the Government of Thailand, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category 337 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of comments regarding any respect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 337—Cotton Playsuits, Sunsuits and Washsuits

March 1985.

Summary and Conclusions: United States imports of Category 337 from Thailand were 74,400 dozens during 1984. These imports compare with only 4,300 dozens in 1983 and 9,800 dozens in 1982. This represents a sharp and substantial increase into a market that was already disrupted by imports. A continued increase in imports from Thailand creates a real risk of market disruption in the U.S. for these products.

U.S. Production: From 1974 to 1983, U.S. production of Category 337 goods declined from 5.591 million dozen to 3.361 million dozen, a 40 percent decline. Average production from 1979 to 1983 was only 3.4 million dozens per year, as compared to 4.3 million dozen per year from 1974–1978.

Imports: U.S. imports of Category 337 from all sources increased by 60.4 percent between 1979 and 1981 and then by 6.5 percent between 1981 and 1983. In 1984, imports rose sharply by 51.3 percent to a record level of 2,768,000 dozens.

Imports from Thailand averaged 6,100 dozens in the 5 year period from 1979 to 1983. Previous to 1984, the highest level of imports of Category 337 from Thailand was 9,800 dozens in 1982. In 1984, imports mushroomed to 74,400 dozens.

Imports to Production Ratio: The import-to-production ratio for Category 337 has grown substantially from a level of 33.1 in 1979 to 54.4 in 1983. With the large increase in imports, the ratio will reach an all time high in 1984.

Domestic Producers' Market Share: Domestic producers' share of this market has declined from 75.1 percent in 1979 to 64.8 percent in 1983. In 1984 the share may drop below 60 percent due to the large increase in imports.

Imports Value vs Domestic Producer's Price: The majority (79.4 percent) of Thailand's exports to the U.S. of Category 337 have been concentrated in these TSUSA numbers: 383.5049—women's and girls' other cotton playsuits not ornamented, not knit; 383.5036—girls' and infants' cotton playsuits not ornamented, not knit; 383.0335—WGI playsuits, etc. cotton knit, ornamented. The duty paid value for these products are below the U.S. producer price for comparable items.

Committee for the Implementation of Textile Agreements

April 10, 1985.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the

directive issued to you on December 21, 1984, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Thailand.

Effective on April 16, 1985, the directive of December 21, 1984 is amended to include a level of 26,033 dozen [1] for textile products in Category 337 produced or manufactured in Thailand and exported during the ninety-day period which began on March 29, 1985 and extends through June 27, 1985.

Textile products in Category 337 which have been exported to the United States before March 29, 1985 shall not be subject to this directive.

Textile products in Category 337 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under the directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 5509), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-9224 Filed 4-15-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to relect any imports exported after March 28, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement

Application of Annuity (RSFPP&SBP) DD-1884

Pub. L. 92-425 provides for an annuity, as determined by the retiree, to be paid to widows/widowers, dependent children and other natural interest persons. The DD-1884 collects information necessary to establish an annuity to the eligible beneficiary of a deceased retired service members. The form must be completed and submitted by the surviving beneficiary of a service member to enable the Uniformed Services Finance Center to ascertain eligibility and determine other conditions affecting entitlement to an annuity.

Responses 12,000
Burden hours 12,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 763-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD MI&L (PI), Room 3C800, Pentagon, Washington, DC 20301-4000, telephone (202) 695-0643.

Dated: April 11, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-9065 Filed 4-15-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 9 May 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 10, 1985.

[FR Doc. 85-9059 Filed 4-15-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Defense Intelligence College; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College has been scheduled as follows:

DATES: Tuesday-Thursday, 14-16 May 1985, 9:00 a.m. to 4:00 p.m., 14 and 15 May, 9:00 a.m. to 11:30 a.m., 16 May.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Gross, Provost, DIA Defense Intelligence College, Washington, D.C. 20301-6111 (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Committee will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 10, 1985.

[FR Doc. 85-9060 Filed 4-15-85; 8:45 am]

BILLING CODE 3810-01-M

President's Chemical Warfare Review Commission (CWRC); Meeting

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory

Committee Act (Pub. L. 92–463), announcement is made of the following committee meetings.

DATES OF MEETINGS: Friday, 5 April; Tuesday, 9 April; Wednesday, 10 April; Thursday, 11 April; Wednesday, 17 April; Thursday, 18 April; Tuesday, 23 April; Wednesday, 24 April; Thursday, 25 April; Wednesday, 1 May; and Thursday, 2 May 1985.

Time of Meeting

Friday, 5 April (Closed)

0900–1000 Office of the Secretary of Defense—Policy & Guidance for Retaliatory Capability
1015–1030 Determination of Munitions Requirements—Qualitative and Quantitative
1030–1130 Joint Services Chemical Studies

Tuesday, 9 April (Closed/Open)

0900–0930 Executive Session (Closed)
0930–1000 United Church of Christ (Open)
1015–1115 Arms Control and Disarmament Agency (Closed)
1200–1230 Kroesen Report (Closed)
1230–1400 Why today's Stockpile is not sufficient and why binary munitions satisfy operational needs (Closed)
1415–1515 Why today's stockpile is sufficient and why binary munitions do not satisfy operational needs (Open)
1515–1615 Panel discussion (Open)

Wednesday, 10 April (Closed)

0900–0930 Executive Session
1000–1200 Defense Intelligence Agency—Threat intent
1330–1600 Executive Session

Thursday, 11 April (Closed)

0900–1200 Executive Session
1300–1600 Executive Session

Wednesday, 17 April (Closed)

0900–0930 Executive Session
0930–1015 BIGEYE BOMB, 155mm Artillery shell, and Multiple Launch Rocket System Programs
1030–1100 Binary Production Program
1530–1630 Arms Control and Disarmament Agency

Thursday, 18 April (Open)

Congressional Panel

Tuesday, 23 April (Closed)

0900–1000 Destruction of existing stockpile
1000–1100 Current stockpile joint maintenance requirement
1100–1200 Joint Chiefs of Staff Task on the issue of stockpile
1300–1500 Executive Session

Wednesday, 24 April (Open)

Open Hearings:
National Conference of Catholic Bishops

Thursday, 25 April (Closed/Open)

Allied perspective (Closed)
Open Hearings (Open)

Wednesday, 1 May (Closed)

Executive Session

Thursday, 2 May (Closed)

Executive Session

Agenda

The President's Chemical Warfare Review commission (CWRC) will hold the remainder of its meetings to receive classified and unclassified briefings. The CWRC will also hold executive sessions during which classified material will be discussed. (For further information contact Peter Hannaford, 202–653–0145).

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 10, 1985.

[FR Doc. 85–9061 Filed 4–15–85; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 8:30 a.m., Wednesday, 15 May 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense of Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. the review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 10, 1985.

[FR Doc. 85–9062 Filed 4–15–85; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group D (Production) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9:30 a.m., Friday, 17 May 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, Suite 307, Arlington, Virginia 22202..

FOR FURTHER INFORMATION CONTACT: Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices

The working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic

component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 10, 1985.

[FR Doc. 85–9063 Filed 4–15–85; 8:45 am]

BILLING CODE 3810–01–M

Defense Equal Opportunity Management Institute Board of Visitors; Advisory Committee Meeting

The Defense Equal Opportunity Management Institute (DEOMI) Board of Visitors will meet at Patrick Air Force Base, Florida, 9–10 May 1985.

The purpose of the meeting will be to review actions taken by DEOMI in response to the recommendations of the BOV and the Human Relations Education Board.

The meeting will convene at 8:30 a.m. on 9 May 1985, and adjourn on 10 May 1985 at 11:30 a.m. The meeting is open to the public. For further information, contact the DEOMI Public Affairs Office at (305) 494–6096.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 10, 1985.

[FR Doc. 85–9064 Filed 4–15–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board, Ad Hoc Subgroup on Chemical Biological Warfare, Intelligence; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thurday and Friday, 2 and 3 May 1985.

Times of Meeting: 0830–1700 hours on both days (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Chemical/Biological Warfare Intelligence will meet for classified briefings and discussions on technical collection, CW/BWI analysis and production and methods of dissemination. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–9068 Filed 4–15–85; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Ad Hoc Subgroup on Soldier Research Issues and Functional Subgroup on Human Capabilities and Resources; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday–Thursday, 6–9 May 1985.

Times of Meeting: 0830–1700 hours (Open) on 6 May; 0830–1245 hours (Open) and 1245–1700 hours (Closed) on 7 May; 0800–1700 hours (Closed) on 8 May; and 0800–0930 hours (Closed) on 9 May, if necessary.

Place: The Presidio of Monterey in Monterey, California.

Agenda: Both the Army Science Board Ad Hoc Subgroup on Soldier Research Issues and the Functional Subgroup on Human Capabilities and Resources will meet (the former 6 May, the latter 7–9 May) for orientation briefings and discussions and to consider manpower, personnel, training, health, and medical factors in the context of the Light Infantry Division, and to examine research conducted by the ARI (U.S. Army Research Institute for the Behavioral and Social Sciences) Field Unit at Monterey, California. The meeting will also serve as a tutorial for new members of the Functional Subgroup. Both efforts were combined for cost effectiveness since all the Ad Hoc Subgroup members are also members of the Functional Subgroup. Topics to be addressed include: (1) An overview of the Light Infantry Division concept, (2) training for the Light Infantry Division, (3) presentations on soldier-oriented research and development for the Light Infantry Division and medical research and development for the Light Infantry Division. The open portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to he public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed in this portion of the meeting are so inextricably intertwined so as to preclude opening them to the public. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–9067 Filed 4–15–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Advisory Council on Dependents' Education; Open Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education and of two standing committees concerning education programs and administration. This notice also describes the functions of the council. Notice of these meetings is required under section 10(1)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATE: The Advisory Council on Dependents' Education: May 1 and 3, 1985, 9:00 a.m. to 2:30 p.m. and 9:00 a.m. to 12:00 p.m., respectively. The committees: May 1 and 2, 2:30 p.m. to 5:00 p.m. and 9:00 a.m. to 4:00 p.m., respectively.

ADDRESS: The Quality Inn, Pentagon City, Terrance Room #2, 300 Army Navy Drive, Arlington, Va. 22202.

FOR FURTHER INFORMATION, CONTACT: Dr. William F. Keough, Administrator of Education for Overseas Dependents, Mailstop 6337, 400 Maryland Avenue SW., Washington, D.C. 20202, (202) 245–8011.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under section 1411 of the Defense Dependents' Education Act of 1978, as amended (20 U.S.C. 929). The Council is established to recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system.

The meeting of the Council is open to the public. The proposed agenda for the full Council on May 1 includes: a report of the Administrator on Council matters, a progress report by the Director, a report by the Director on previously expressed ACDE concerns, and presentations by DoDDS staff members. These presentations will include the following subjects: special programs, including the Bay Area Writing Project, the Advanced Placement Program, and

the International Baccalaureate Program in DoDDS; the alcohol and drug abuse program; sex education; the BOSS supply system; and the master teacher pilot program. The proposed agenda for the full Council on January 30 includes the reports of the two standing committees, with discussion and voting on proposed recommendations.

The proposed agenda for the Education Program Committee on May 1 and 2 includes a joint session with the Administration Committee and the DoDDS Talented and Gifted (TAG) Coordinator concerning the TAG program, followed by discussion of the cultural bias problems, the special programs described above, the TAG program, alcohol and drug abuse, weighted grades and the standardization of the grading system, scheduling of testing in relation to school holidays, sex education, acquisition of computer hardware and software for class use, the prekindergarten pilot program, the Seven-Year Curriculum Development Plan, the pilot master teacher program, the seven-period instructional day in secondary schools, the reduction of qualification requirements for nurses and for teachers of mathematics and science, and other recent educational changes in the system.

The proposed agenda for the Administration Committee includes a joint session with the Education Program Committee and the DoDDS Talented and Gifted (TAG) Program Coordinator concerning the TAG program, followed by discussion of chief school administrators and local school advisory committees, revision of DOD Instruction 5105.49, school construction in Japan, the BOSS supply system, Atari computer delivery for Germany, alternatives to suspension, quality circles, and the morale of local school advisory committees.

Records are kept of all Council proceedings and are available for inspection at the office of the Advisory Council on Dependents' Education, Room 3047, Mailstop 6337, 400 Maryland Avenue SW., Washington, D.C., from the hours of 8:30 a.m. to 5:00 p.m.

Dated: April 8, 1985.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 85-9058 Filed 4-15-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Auxiliary Activities; Innovative Programs for Severely Handicapped Children

Correction

In FR Doc. 85-8193, appearing on page 13731 in the issue of Friday, April 5, 1985, make the following correction: In the first column, the "**DATE**" paragraph should read:

DATE: Comments must be received on or before May 6, 1985.

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale: Contract Number S-EU-830, to Kernforschungszentrum Karlsruhe Gmbh, Karlsruhe, the Federal Republic of Germany, three test rods, containing a total of approximately 10 grams of uranium, enriched to 93% in U-235, to be used for calibration of the delayed neutron detection system in the KNK II reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 10, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-9095 Filed 4-15-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following retransfer: RTD/SW(EU)-131, from Nukem Gmbh, Hanau, the Federal Republic of Germany to the Studsvik Science Research Laboratory, Studsvik, Sweden, 120 grams of uranium enriched to 90% in U-235, for use in the study of nuclear fission and short lived fission products.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 10, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-9096 Filed 4-15-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the Government of Japan

Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/JA(EU)-34, from Nukem, Hanau, the Federal Republic of Germany to the Power Reactor and Nuclear Fuel Development Corp., Japan, 431 kilograms of U.S origin low enriched uranium, containing approximately 85.123 kilograms of U-235 (19.75% enrichment), for use in the fabrication of fuel elements for the JOYO reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 10, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-9093 Filed 4-15-85; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Subsequent Arrangement, Turkey

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a "subsequent arrangement" under the safeguards and guarantee provisions of the Agreement for Cooperation Between the Government of the United States of America and the Republic of Turkey Concerning Civil Uses of Atomic Energy, as amended. While this agreement expired by its term on June 9, 1981, the safeguards and guarantee provisions were acknowleged to continue with respect to materials, equipment, or devices held by Turkey through an exchange of notes concluded June 9, 1981.

The subsequent arrangement to be carried out under the above mentioned safeguards and guarantee provisions of the expired Agreement for Cooperation involves the suspension of the application of safeguards by the IAEA under the trilateral safeguards agreement between the International Atomic Energy Agency, the Government of the Republic of Turkey and the Government of the United States of America signed on September 30, 1968. The application of IAEA safeguards in Turkey under the trilateral agreement shall remain suspended during the time and to the extent the Turkey-IAEA NPT Safeguards Agreement is in force and safeguards are being applied by the IAEA pursuant to that agreement. The application of IAEA safeguards in the United States under the trilateral agreement shall be suspended during the time and to the extent that the 1980 U.S.-IAEA voluntary safeguards agreement is in force and safeguards specified therein are being applied by the IAEA.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

Dated: April 10, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 85-9094 Filed 4-15-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI85-41-001]

Application of Fina Oil & Gas, Inc. for Partial Redesignation of Certificate of Public Convenience and Necessity as Successor-in-Interest; American Petrofina Co. of Texas and Petrofina Delaware, Inc.

April 11, 1985.

Take notice that Fina Oil & Gas, Inc. (FOG), filed an application for partial redesignation of a certificate of public convenience and necessity as a successor-in-interest to Petrofina Delaware, Incorporated.

Effective December 31, 1984, FOG acquired by assignment all of Petrofina Delaware, Incorporated's (PDI's) interest in certain leases. The assignment did not alter the nature of the ownership of any of the producing properties nor any of the terms or conditions of any contracts for the sale of gas therefrom. FOG merely succeeded to the interest previously held by PDI in each of the assigned leases.

In order for FOG to be able to market its production and that of its working interest co-owners under FinaGas, the special marketing program authorized in the subject docket, from leases in which American Petrofina Company of Texas (APCOT) owns no interests, FOG seeks by this application to have that portion of the subject certificate formerly designated in the name of "Petrofina Delaware, Incorporated", which is applicable to the assigned properties, redesignated in the name of "Fina Oil & Gas, Inc.", as successor-in-interest to Petrofina Delaware, Incorporated. FOG does not seek by this application to alter the status of PDI as certificate holder with respect to leases not assigned by PDI.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9098 Filed 4-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7221-001]

Surrender of Preliminary Permit; Muskingum River Hydro Assoc.

April 10, 1985.

Take notice that the Muskingum River Hydro Associates, Permittee for the Philo Lock and Dam No. 9, Project No. 7221, located on the Muskingum River in Muskingum County, Ohio has requested that its preliminary permit be terminated. The preliminary permit was issued on October 13, 1983, and would have expired on September 30, 1985. The Permittee states that analysis of the Philo Lock and Dam No. 9 Project did not indicate feasibility for development.

The Permittee filed the request on March 29, 1985, and the preliminary permit for Project No. 7221 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided

for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9099 Filed 4-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1988]

Issuance of Annual License; Pacific Gas and Electric Co.

April 10, 1985.

On March 5, 1985, Pacific Gas and Electric Company, (PG&E) Licensee for the Haas-Kings River Project No. 1988 filed an application for a new license pursuant to the Federal Power Act and Commission regulations thereunder. Project No. 1988 is located on the Kings River, the North Fork Kings River, and Helms Creek in Fresno County, California.

The license for Project No. 1988 was issued for a period ending March 31, 1985. In order to authorize the continued operation and maintenance of the project, pending Commission action on the Licensee's application, it is appropriate and in the public interest to issue an annual license to PG&E.

Take notice that an annual license was issued to Pacific Gas and Electric Company for a period effective April 1, 1985, to March 31, 1986, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintence of the Project No. 1988 subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before March 31, 1986, a new annual license will be issued each year thereafter, effective April 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9100 Filed 4-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7788-001]

Surrender of Preliminary Permit; Richard R. Gresham

April 12, 1985.

Take notice that Richard R. Gresham, Permittee for the Nancy No. 3 Project, FERC No. 7788, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 7788 was issued on June 7, 1984, and would have expired on November 30, 1985. The project would have been located on Flume Creek, in Pend Oreille County, Washington.

The Permittee filed the request on February 28, 1985, and the preliminary permit for Project No. 7788 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9101 Filed 4-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-290-000]

Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization; Union Oil Company of California, and Eugene Shoal Oil Co., et al.

April 11, 1985.

Take notice that on March 18, 1985, Union Oil Company of California, Eugene Shola Oil Company and Breton Resources Company (Union), of Union Oil Center, Box 7600, Los Angeles, California 90051, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f, and Part 157 of the Commission Regulations, 18 CFR Part 157, requesting that the Commission issue a limited partial abandonment authorization and a blanket limited-term certificate of public convenience and necessity authorizing Union to conduct a short-term sales marketing program; hereinafter indentified as the Union Spot Marketing Program (UNIMART). The certificate would (1) authorize the sale of natural gas by Union for resale in interstate commerce; [1] (2) authorize the sale of natural gas of other joint working interest owners, which is produced from the same well and same reservoir as Union's gas, for resale in interstate commerce; (3) permit limited-term partial abandonment of certain natural gas sales; (4) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (5) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in UNIMART; (6) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate; and (7) waive the reporting requirements of section §§ 157.24, 157.25 and 157.30 of the Commission's Regulations.

Under the UNIMART Union will sell on a spot-basis natural gas qualifying for the sections 102, 103, 107 and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3433.

Only contractually committed gas owned by Union and contractually committed gas owned by other working interest owners produced from the same well in the same producing reservoir from which gas is sold by Union will be sold and delivered under this program. Union will seek temporary releases of gas from the purchasers to whom it is committed in order to sell such gas under the UNIMART Program. Volumes of gas released, sold and delivered under this program will be credited against the releasing purchasers' take-or-pay liabilities. Transportation of the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9102 Filed 4-15-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] Applicable only to gas for which rates are fixed under Subsections 102(d), 107(c)(5) and section 108 of the Natural Gas Policy Act; see Subsections 601(a)(1) (A) and (B) of that Act.

[Project No. 8491-000, et al.]

Hydroelectric Applications (San Juan Hydro, Inc. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory

Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 8491–000.

c. Date Filed: August 2, 1985.

d. Applicant: San Juan Hydro, Inc.

e. Name of Project: Paonia Reservoir.

f. Location: North Fork of the Gunnison River in Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kenneth T. Meredith, P.O. Box 582, Lake City, Colorado 81235.

i. Comment Date: May 13, 1985.

j. Competing Application: Project No. 8390, Date Filed: June 6, 1984, Notice expired: November 19, 1984.

k. Description of Projects: The proposed project would utilize the existing Bureau of Reclamation Paonia Dam and would consist of: (1) A proposed 7-foot-diameter, 650-foot-long penstock; (2) a powerhouse containing a generating unit with a rated capacity of 2,000 kW; (3) a proposed 14-kV, 3-mile-long transmission line tying into the Delta-Montrose Rural Power Lines Association; and (4) appurtenant facilities. The Applicant estimates an average annual energy production of 21,000,000 kWh.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

2 a.Type of Application: Preliminary Permit.

b. Project No: 8867–000.

c. Date Filed: January 4, 1985, and supplemented February 6, 1985.

d. Applicant: Gainesville Hydroelectric Partners.

e. Name of Project: Gainesville Hydro Project.

f. Location: On the Tombigbee River near Gainesville, Greene County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce J. Wrobel, 91 Newbury Street, Boston, Massachusetts 02116.

i. Comment Date: May 13, 1985.

j. Competing Application: Project No. 8812–000, Date Filed: December 24, 1984, Comment Due Date: April 1, 1985.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Gainesville Lock and Dam, and would consist of: (1) A proposed powerhouse, located on the east side of the river, integral with the dam and housing two 12.5-MW generators for a total installed capacity of 25 MW; (2) a proposed 69-kV transmission line approximately 12 miles long interconnecting with Alabama Power Company's transmission system; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 120 GWh. All project energy would be sold to Alabama Power Company.

l. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 8849–000.

c. Date Filed: December 28, 1984.

d. Applicant: St.Vrain Mutual Reservoir & Water Company, and Marigold 41 Partnership.

e. Name of Project: Dowe Flats Dam Hydro.

f. Location: Near the St. Vrain Supply Canal in Boulder County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Larry Gucho, 1700 Lincoln, Suite 3800, Denver, Colorado 80203.

i. Comment Date:

j. Description of Project: The proposed project would consist of the following all new facilities: (1) An earthen dam approximately 6,000 feet long and 105 feet high; (2) a new reservoir with an estimated storage capacity of 70,000 acre-feet with a normal pool elevation of 5,450 m.s.l.; (3) intake works consisting of a control structure; (4) a 36-inch-diameter penstock about 600 feet long, running through the dam; (5) a powerhouse approximately 30 feet by 20 feet, housing one turbine-generator with an installed capacity of 250 kW; (6) a tailrace channel; (7) approximately one mile of 13.2-kV transmission line; and (8) appurtenant facilities. Applicant anticipates that the average annual energy would be 2,300,000 kWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Public Service Company of Colorado.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $100,000. Applicant will perform preliminary field reconnaissance, drill core holes at 1,000-foot intervals along the axis of the dam and at locations of major hydraulic structures, and prepare test pits at ten locations in the reservoir area. Applicant states that the field studies, tests, and other activities will not adversely effect cultural resources or endangered species and will cause only minor alterations or disturbances, and any land altered or disturbed will be adequately restored.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 8965–000.

c. Date Filed: February 20, 1985.

d. Applicant: Chalk Mountain Ranch.

e. Name of Project: Burr Creek Power Project.

f. Location: On Burr Creek, near Bridgeville, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David G. DeMera, P.O. Box 628, Murphys, California 95247.

i. Comment Date: May 31, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high, 20-foot-long diversion dam at elevation 1,760 feet; (2) an 8-inch-diameter, 100-foot-long diversion conduit; (3) an 8-inch-diameter, 5,400-foot-long penstock; (4) a power-house

with a total installed capacity of 100 kW; and (5) a 500-foot-long, 12.5-kV transmission line to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 0.2 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $15,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

5 a. Type of Application: License (5MW or Less).

b. Project No: 8836–000.

c. Date Filed: February 6, 1985.

d. Applicant: BES Hydro Company.

e. Name of Project: Power Canal.

f. Location: On East Fork Russian River in Medocino County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James Helmich, JBS Energy, Inc. 311 D Street, Broderick, California 95605.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam on the powerhouse canal of Potter Valley Project No. 77 of Pacific Gas and Electric Company (PG&E); (2) an intake structure; (3) a 150-foot-long, 49-foot-square flume; (4) a 36-inch-diameter, 28-foot-long penstock; (5) a powerhouse containing two units each with an installed capacity of 200 kW; and (6) a 60-foot-long, 12.7-kV transmission line connecting with existing PG&E transmission line.

No recreational facilities are proposed by the Applicant.

k. Purpose of Project: The estimated 2.1 million kWh generated annually by the project will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

6 a. Type of Application: Major License.

b. Project No.: 7909–002.

c. Date Filed: December 18, 1984.

d. Applicant: Allegheny County, Pennsylvania.

e. Name of Project: Allegheny River Lock and Dam No. 4.

f. Location: On the Allegheny River in Allegheny and Westmoreland Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: County of Allegheny, 119 Courthouse, Grant Street, Pittsburgh, Pennsylvania 15219, Attn: James W. Knox.

i. Comment Date: May 13, 1985.

j. Competing Application: Project No. 7705–000, Date Filed: October 7, 1983.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Allegheny River Lock and Dam No. 4 and would consist of: (1) A new powerhouse containing an installed generating capacity of 15 MW, (3 units of 5 MW each); (2) a proposed 0.3-mile-long, 25-kV transmission line; and (3) appurtenant facilities. The Applicant estimates the average annual energy generation will be 60,000 MWh. The Applicant intends to use some of the power generated and the balance will be sold to the Allegheny Power Services System. The proposed powerhouse will replace approximately 180 feet of the present dam and spillway.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

7 a. Type of Application: Amendment of License.

b. Project No: 3451–002

c. Date Filed: November 15, 1984.

d. Applicant: Beaver Falls Municipal Authority.

e. Name of Project: Townsend Dam Project.

f. Location: On the Beaver River in Beaver County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles M. Andrews, Beaver Falls Municipal Authority, 1425 Eighth Avenue, P.O. Box 400, Beaver Falls, Pennsylvania 15010.

i. Comment Date: May 13, 1985.

j. Description of Project: The project as licensed consists of: (1) The Townsend Dam, approximately 450 feet long and 17.5 feet high, constructed of rock-filled timber cribs encased in concrete with a crest elevation 699.3 feet m.s.l., (2) a reservoir having minimal pondage; (3) a short entrance channel to be excavated in rock near the left dam abutment; (4) an intake structure, with trashracks and fish deflector, integral with (5) a powerhouse containing two turbine-generator units rated at 1,600 kW and 1,650 kW for a total rated capacity of 3,250 kW; (6) a tailrace, to be excavated in rock, returning flow to the Beaver River approximately 180 feet downstream of the dam; and (7) appurtenant facilities.

The Applicant proposes to amend the license by including a 500-foot-long, 23-kV transmission line which would connect to Duquesne Light Company's Valley-Beaver Falls No. 1, 23-kV transmission line.

k. This notice also consists of the following standard paragraphs: B, C, and D1.

8 a. Type of Application: Preliminary Permit.

b. Project No: 8872–000.

c. Date Filed: January 7, 1985.

d. Applicant: W. A. Vachon and Associates, Inc.

e. Name of Project: Welch Brook & Swift River.

f. Location: Welch Brook & Swift River in Franklin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. W. A. Vachon, W. A. Vachon and Associates, Inc. P.O. Box 149, Manchester, Massachusetts 01944.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) Two proposed 2-foot-high, 25-foot-long concrete dams, one each on Welch Brook and Swift River; (2) two proposed reservoirs, each at elevation 1,570 feet ASL, with an area of 375 square feet and impounding 4,000 gallons of water; (3) two proposed 16-inch-diameter, 300-foot-long conduits, one from each dam; (4) one proposed 1.3-mile-long, 16-inch-diameter conduit; (5) a proposed powerhouse containing one 99-kW turbine/generator; (6) a proposed 1,300-foot-long, 480-volt transmission line; and (7) appurtenant facilities. The estimated average annual generation is 599 MWh.

k. Purpose of Project: Project energy would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $8,000.

9 a. Type of Application: Exemption from Licensing (5MW or Less).

b. Project No.: 8727–001.

c. Date Filed: January 22, 1985.

d. Applicant: G. Wesley White.

e. Name of Project: Upper Pine Creek Microhydro.

f. Location: On Pike Creek, Partially within Kootenai National Forest lands, near Troy, Lincoln County, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. G. Wesley White, 228 White Drive, Troy, Montana 59935.

i. Comment Date: May 13, 1985.

j. Description of Project: The proposed project would consist of: (1) An intake structure located on Pine Creek at an elevation of 3,650 feet; (2) a 3600-foot-long, 6-inch-diameter pvc pipeline; and (3) a powerhouse containing one generating unit with an installed capacity of 13 kW. The estimated average annual generation would be 43,200 kW. The estimated cost of the project would be $11,200 in 1985 dollars.

k. Purpose of Project: The project power would be for personal use by the Applicant.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

10 a. Type of Application: Exemption from Licensing (5 MW or Less).

b. Project No.: 8359–001

c. Date Filed: December 26, 1984.

d. Applicant: Chester and Irelene Allen.

e. Name of Project: Strawberry Creek Hydroelectric.

f. Location: On Strawberry Creek, near Livingston, in Park, County, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705, and 2708 as amended.

h. Contact Person: Mr. Roger Kirk, Hydrodynamics, Inc., P.O. Box 413, Red Lodge, Montana 59068.

i. Comment Date: May 13, 1985.

j. Description of Project: The proposed project would consist of: (1) An intake structure located on Strawberry Creek at an elevation of 6,200 feet; (2) a 6,700-foot-long, 14-inch-diameter penstock; (3) a powerhouse containing one generating unit with an installed capacity of 275 kW; and (4) a 0.3-mile-long, 7.2-kV transmission line connecting to an existing Park Electric Coop. transmission line. The estimated average annual energy generation would be 1.2 million kWh. The estimated cost of the project would be $360,000 in 1985 dollars.

k. Purpose of Project: The project power would be sold to Park Electric Coop. or Montana Power Company.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

11 a. Type of Application: Minor License.

b. Project No.: 7805–001.

c. Date Filed: October 15, 1984.

d. Applicant: Gerald and Glenda Ohs.

e. Name of Project: Cataract Creek.

f. Location: On Cataract Creek in Madison County, Montana, near the town of Pony.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Rhett Hurless, C.C. Bowman and Associates, P.O. Box 3474, Bozeman, MT 59715.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high intake structure at an elevation of 6,045 feet; (2) a 20-inch-diameter, 6,440-foot-long buried penstock; (3) a powerhouse containing a single generating unit rated at 500 kW operating under a head of 538 feet; (4) a 24-inch-diameter, 24-foot-long tailrace; and (5) a 1.2-mile-long transmission line tying into an existing Montana Power Company line. The average annual energy production would be 3 million kWh.

The estimated project cost is $280,000.

This application has been accepted for filing as of November 4, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Company, et al., 28 FERC ¶ 61,061 issued July 18, 1984.

k. Purpose of Project: Project Power will be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C and D1.

m. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

The provision is subject to the following exception: If an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

12a. Type of Application: Preliminary Permit.

b. Project No.: 8985–000.

c. Date Filed: March 1, 1985.

d. Applicant: Quincy Hydroelectric Project.

e. Name of Project: Quincey Hydroelectric Project.

f. Location: On Mississippi River in Marion County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, 8 Peabody Terrace, #32, Cambridge, Massachusetts 02138.

i. Comment Date: May 31, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Lock and Dam No. 21 and Reservoir, and would consist of: (1) Two new penstocks, each about 9.8 feet in diameter and 25 feet long; (2) a new powerhouse, 500 feet by 100 feet, housing two turbine-generators with a total rated capactiy of 10 MW; (3) a proposed tailrace; (4) a proposed 69-kV transmission line about 1.4 miles long; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 48.0 GWh.

k. Purpose of Project: The proposed purchaser of the project energy would be the Northeast Missouri Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance time it would prepare studies of a hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

13a. Type of Application: Preliminary Permit.

b. Project No.: 8984–000.

c. Date Filed: March 1, 1985.

d. Applicant: Hannibal Associates.

e. Name of Project: Hannibal Hydroelectric Project.

f. Location: On Mississippi River, in Pike County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Hannibal Associates, c/o Joel Kirk Rector, 8 Peabody Terrace; #32, Cambridge, Massachusetts 02138.

i. Comment Date: May 31, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Lock and Dam No. 22 and Reservoir, and would consist of: (1) Two new penstocks, each about 9.8 feet in diameter and 25 feet long; (2) a new powerhouse, approximately 500 feet by 100 feet, housing two turbine-generators with a total rated capacity of 10 MW; (3) a proposed tailrace; (4) a proposed 69-kV transmission line about 6.3 miles long; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 65.0 GWh.

k. Purpose of Project: The proposed purchaser of the project energy would be the Western Illinois Power Cooperative.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: a preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period 36 months during which time it would prepare studies of a hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant estimates the cost of the studies under the permit would be $125,000.

14a. Type of Application: Major License.

b. Project No: 5495–000.

c. Date Filed: June 21, 1984, as amended on January 30, 1985.

d. Applicant: Hydro Resource Company.

e. Name of Project: Dungeness River Water Power.

f. Location: On Dungeness River, within Olympic National Forest, near Sequim, in Clallam County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William L. Devine, Hydro Resources Company, P.O. Box 68, 8040 Mt. Baker Highway, Maple Falls, Washington 98266.

i. Comment Date: May 15, 1985.

j. Competing Application: Project No. 6617, Date Filed November 15, 1985, Project No. 6840, Date, Filed November 15, 1984.

k. Description of Project: The proposed project would consist of: (1) A 9-foot-high, 50-foot-long concrete diversion dam with crest elevation of 2,490 feet; (2) a 50-foot-long, 10-foot-wide inlet structure with 300 square-feet of fish screen; (3) a 21,000-foot-long, 60-inch-diameter low pressure pipeline, (4) a 6,500-foot-long, 60-inch-diameter steel penstock; (5) a 60-foot-long, 36-foot-wide, 25-foot-high concrete powerhouse containing two generating units with a total installed capacity of 12,000 kW at a design head of 1,050 feet; (6) a switchyard adjacent to the powerhouse; and (7) a 22,000-foot-long, 37.5-kV transmission line connecting to an existing Clallam County PUD transmission line.

The Applicant estimates an average annual energy production of 57.55 million kWh. The estimated cost to construct the project would be $21.16 million in 1987 dollars.

l. Purpose of Project: The project power would be sold to Clallam County PUD and/or nearby service utilities.

m. This notice also consists of the following standard paragraphs: A3, A9, B and C.

15 a. Type of Application: Exemption from Licensing.

b. Project No: 7390–000.

c. Date Filed: June 22, 1983 as amended on January 24, 1985.

d. Applicant: Harder Farms, Inc. and Scott Ranch.

e. Name of Project: Little Palouse Falls Hydroelectric.

f. Location: On Palouse River, near Washtucha, In Franklin, Whitman and Adams Counties, Washington.

g. Filed Pursuant to: Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Harry P. Hosey, Hosey and Associates Engineering Company, 2820 Northup Way, Suite 190, Bellevue, WA 98004.

i. Comment Date: May 20, 1985.

j. Description of Project: The proposed project would consist of: (1) An intake structure located on the right bank of Palouse River, just above Gildersleeve Falls at RM 14.4, utilizing a natural pool of water; (2) a 2,500-foot-long, 12-foot-wide concrete canal; (3) a 3,000-foot-long, 102-inch-diameter steel penstock; (4) a powerhouse containing two generating units with a total installed capacity of 5,000 kW at a design head of 95 feet; and (5) a 2.8-mile-long, 24-kV transmission line.

The Applicant estimates that the average annual energy generation would be 17.4 million kWh.

k. Purpose of Project: The project power would be sold to Washington Water Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C and D3a..

m. Competing Applications: Exemption for Small Hydroelectric Power Project under 5 MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 8890–000.

c. Date Filed: January 22, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Newton Upper Falls.

f. Location: On the Charles River in Middlesex and Norfolk Counties, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project will consist of: (1) An existing 15-foot-high, 60-foot-wide concrete buttress dam; (2) an existing reservoir with negligible storage capacity at the normal maximum surface elevation of 86 feet m.s.l.; (3) an existing powerhouse adjacent to the dam which is part of a 300-foot-long, 250-foot-wide, and 40-foot-high building, and which will contain two generating units, each with an installed capacity of 175 kW; (4) a proposed 400-foot-long, 35,400 V transmission line; (5) an existing 140-foot-long, 26-foot-wide tailrace; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 1.75 GWh. The owner of the existing dam and water rights is the Metropolitan District Commission. The Applicant proposes to sell the power generated to the Boston Edison Company..

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under permit would be $17,500.

17 a. Type of Application: Minor Lincense.

b. Project No.: 8457–000.

c. Date Filed: July 20, 1984.

d. Applicant: Locks Hydro Associates.

e. Name of Project: Appomattox Canal Water Power.

f. Location: On the Appomattox River, in Dinwiddie and Chesterfield Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 971(a)–825(r).

h. Contact Person: Mr. Robert E. Hedden, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403.

i. Comment Date: June 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing concrete and stone dam approximately 690 feet long and maximum height of 12 feet, built in two sections between Sycamore Island and the opposite banks; (2) a small impoundment with an existing gross storage capacity of 200 acre-feet and reservoir surface area of 20 acres at water surface elevation 119 feet m.s.l.; (3) replacement of four existing slide gates each 5 feet, 8 inches wide by 8 feet high; (4) an existing power canal 2.5 miles long and 50 feet in width; (5) an existing earthen dam and concrete spillway, 30 feet wide and 40 feet high, located at the terminus of the canal; (6) a new 6-foot-diameter penstock 140 feet long, connecting from the power canal to bifurcation at the powerhouse; (7) a proposed new concrete powerhouse, 30 feet by 45 feet housing two turbine-generator units with a total installed capacity of 1,025 kW; (8) a proposed tailrace; (9) a new transformer substation; (10) 100 feet of 34.5-kV transmission line; (11) existing access roads; and (12) appurtenant facilities. Applicant estimates that the average annual energy generation would be 5.0 GWh. The dams and power canal are owned by the City of Petersburg, Virginia.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Virginia Electric Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18. a. Type of Application: Minor License.

b. Project No.: 7804–001.

c. Date Filed: October 15, 1984.

d. Applicant: Gerald and Glenda Ohs.

e. Name of Project: North Willow Creek.

f. Location : On North Willow Creek in Madison County, Montana, near the town of Pony.

g. Filed Pursuant to: Federal Power Act., 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Rhett Hurless, C.C. Bowman and Associates, P.O. Box 3474, Bozeman, Montana 59715.

i. Comment Date: May 28, 1985.

j. Description of Project: The proposed project would consist of: (1) A 3-foot-high steel intake structure at an elevation of 5,920 feet; (2) a 20-inch-diameter, 8,700-foot-long steel buried penstock; (3) a powerhouse containing a single generating unit rated at 400 kW operating under a head of 480 feet; (4) a 24-inch-diameter, 20-foot-long tailrace; and (5) a 14.4-kV, . 75-mile-long transmission line tying into a Montana Power Company existing line, to be upgraded. The average annual energy production would be 3.5 million kWh.

The estimated cost of the project is $340,000.

This application has been accepted for filing as of November 4, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Company, et al., 28 FERC ¶ 61,061, issued July 18, 1984.

k. Purpose of Project: Project Power would be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C and D1.

m. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

19 a. Type of Application: Exemption Under 5 MW.

b. Project No.: 7611–002.

c. Date Filed: November 15, 1984.

d. Applicant: Iron Mountain Mines, Inc.

e. Name of Project: Iron Mountain Spring Creek.

f. Location: On Spring Creek, near Keswick, in Shasta County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. T.W. Arman, Iron Mountain Mines, Inc., 1900 Point West Way, Suite 164, Sacramento, CA 95815, (916) 922–8821; Mr. P.H. Eichenberger, Eichenberger & Assoc., 4020 El Camino Avenue, B–4, Sacramento, CA 95821, (916) 486–1851.

i. Comment Date: May 22, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-diameter, 150-foot-long steel diversion pipe with a flared inlet to collect cascading water at a 5-foot-high waterfall on Spring Creek at approximate elevation 1,800 feet msl; (2) a 50-foot by 10-foot by 15-foot sediment trap/regulating box structure; (3) a 36-inch-diameter, 12,200-foot-long pipeline/penstock; (4) a 30-foot by 40-foot by 15-foot concrete powerhouse containing a single 3,500 kW impulse turbine-generator unit producing an estimated average annual generation of 14.82 GWh; (5) a 300-foot-long concrete spillway tailrace discharging through an existing conduit to the Sacramento River; and (6) a 2,400-foot-long, 12-kV transmission line to interconnect the project to an existing line. Project power would be sold to Pacific Gas and Electric Company. The project would be partially located on U.S. Bureau of Reclamation lands.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9005–000.
c. Date Filed: March 7, 1985.
d. Applicant: Conejos Water Conservancy District.
e. Name of Project: Platoro Dam Power Project.
f. Location: On the Conejos River in Conejos County, Colorado.
g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)–825(r).
h. Contact Person: Kelly Sowards, President, Conejos Water Conservancy District, 318 Main Street, P.O. Box 40, Manassa, CO 81141.
i. Comment Date: June 3, 1985.
j. Competing Application: Project No. 8388, Date Filed June 26, 1984.
k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the Bureau of Reclamation (BR). The proposed project would consist of: (1) A proposed 48-inch diameter steel penstock which would be connected to the BR existing horseshoe tunnel; (2) a proposed powerhouse containing one generating unit rated at 200 kW and two generating units rated at 425 kW for a total installed capacity of 1,050 kW; (3) a proposed tailrace; (4) a proposed 14.4-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project is 2,600,000 kWh.
l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alterantives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates that the cost of the studies under the permit would be $90,000.
m. This notice also consists of the following standard paragraphs: A8, A9, B, C, and D2.
21 a. Type of Application: Exemption (5MW or Less).
b. Project No.: 8822–000.
c. Date Filed: December 24, 1984.
d. Applicant: City of New York.
e. Name of Project: Merriman Dam.
f. Location: Rondout Creek in Ulster County, New York.
g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).
h. Contact Person: Mr. Joseph T. McGough Jr., Commissioner, Department of Environmental Protection, City of New York, Municipal Building, Rm. 2358, New York, New York 10007.
i. Comment Date: May 20, 1985.
j. Description of Project: The proposed project would consist of: (1) An existing 195-foot-high, 2,400-foot-long earth embankment dam owned by the Applicant with a crest elevation of 860 feet MSL; (2) an existing reservoir with a capacity of 160,200 acre-feet; (3) a proposed generating facility connected to the release line in the right abutment and containing a generating unit with a rated capacity of 103 kW; (4) a short length of transmission line tying into the existing Central Hudson Gas and Electric System; and (5) appurtenant facilities. The Applicant estimates a 700 MWh average annual energy production.
k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.
22 a. Type of Application: Exemption For Small Conduit Hydroelectric Facility.
b. Project No.: 8827–000.
c. Dated Filed: December 28, 1984.
d. Applicant: Municipality of Anchorage, Alaska.
e. Name of Project: Eklutna Energy Recovery Station and Ship Creek Energy Recovery Station.
f. Location: On the Municipality of Anchorage Water and Wastewater Treatment pipelines, in the Municipality of Anchorage.
g. Filed Pursuant to: Energy Security Act, 1980 (16 U.S.C. 2705 and 2780 as amend).
h. Contact Person: Mr. Charley L. Bryant, Project Manager, Eklutna Water Project, Anchorage Water and Wastewater Utility, 237 E. Fireweed Lane, Suite 201, Anchorage, Alaska 99503.
i. Comment Date: May 16, 1985.
j. Description of Project: The proposed project would consist of two developments. The Eklutna Energy Recovery Station would consist of a powerhouse containing a single generating unit with a rated capacity of 750 kW operating under a head of 164 feet, located near the Eklutna River Road. Flows from the powerhouse will discharge into a water transmission pipeline. The average annual energy output would be 3,500 MWh.
The Ship Creek Energy Recovery Station, located near Orlwell Road, would consist of a powerhouse containing three generating units with a combined rated capacity of 510 kW operating under a head of 185 feet. Flows from the powerhouse would discharge into the water distribution system. The average annual energy output would be 2,600 MWh.
k. Purpose of Project: Project power would be sold to Alaska Power Authority.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.
23 a. Type of Application: Preliminary Permit.
b. Project No.: 8827–000.
c. Dated Filed: October 18, 1984.
d. Applicant: Ochoco Irrigation District.
e. Name of Project: Prineville.
f. Location: At the Bureau of Reclamation's Arthur R. Bowman Dam, on the Crooked River, in Crook County, Oregon.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–823(r).
h. Contact Person: Keith Palmer, Ochoco Irrigation District, P.O. Box 6, 1001 North Deer, Prineville, Oregon 97754.
i. Comment Date: May 20, 1985.
j. Competing Application: Project No. 8579–000, date Filed: Sept. 4, 1984.
k. Description of Project: The proposed project would utilize the Bureau of Reclamation's Arthur R. Bowman Dam and Reservoir and would consist of: (1) A 6-foot-diameter steel penstock lining a new 130-foot-long, 10-foot-diameter concrete tunnel that would divert flow from the outlet tunnel to the powerplants; (2) a power plant, to be built in a newly excavated cavern 178 feet below the crest of the dam, housing a single generating unit with a capacity of 2,900 kW and an averaqe annual generation of 17,070,000 kWh; and (3) the upgrading of an existing distribution line to a three-phase 24.9-kV transmission line.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $75,000. No new roads would be constructed or drilling conducted during the feasibility study.
l. Purpose of Project: The project power would be sold to Pacific Power and Light Company.
m. This notice also consists of the following standard paragraphs: A8, A9, B, C and D2.
24 A. Type of Application: Exemption from Licensing (5MW or less).
b. Project No: 8875–000.

c. Date Filed: January 7, 1985.
d. Applicant: Armstrong Keta, Inc.
e. Name of Project: Armstrong-Keta.
f. Location: On Baranof Island, near the town of Port Armstrong, in Southwest Alaska.
g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).
h. Contact Person: Joe Smatlan, 2215 N. Jordan Ave., Juneau, Alaska 99801.
i. Comment Date: May 20, 1985.
j. Description of Project: The proposed project would use flows from Jetty Lake and would consist of: (1) A powerhouse containing two generating units with a total installed capacity of 100 kW. The average annual generation would be 876 MWh.
k. Purpose of Project: The project power would be used by a hatchery.
l. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to

and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's represesntatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 11, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–9097 Filed 4–15–85; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 8754-000, et al.]

Applications Filed With the Commission; Hydroelectric Project Applications (Jason M. Hines et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

(1) a. Type of Application: Preliminary Permit.
b. Project No. 8754-000.
c. Dated Filed: November 30, 1984.
d. Applicant: Mr. Jason M. Hines.
e. Name of Project: Buck Street.
f. Location: Suncook River in Merrimack County, New Hampshire.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Jason M. Hines, 84 Amherst Street, Amherst, New Hampshire 03031.
i. Comment Date: May 20, 1985.
j. *Description of Project:* The proposed project would consist of: (1) An existing 12.5-foot-high, 143-foot-long concrete dam (west) and a 16-foot-high, 53.5-foot-long concrete dam (east); (2) a reservoir with a surface area of 2 acres, no usable storage capacity, and a normal water surface elevation of 288 feet m.s.l. with; (3) 18-inch-high flashboards on each dam; (4) a new intake structure located east of the west dam; (5) a new 8-foot-diameter, 300-foot-long steel penstock; (6) a new powerhouse containing two generating units with a capacity of 110 kW each for a total installed capacity of 220 kW; (7) a new transmission line, 300 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 850,000 kWh. The existing dams are owned by the New Hampshire Water Resources Board, Concord, New Hampshire.
k. *Purpose of Project.* Project power would be sold to the Public Service Company of New Hampshire.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
m. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 12 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $9,500.

(2) a. Type of Application: Preliminary Permit.
b. Project No: 8616-000.
c. Date Filed: September 26, 1984.
d. Applicant: Edwin F. Slowick.
e. Name of Project: Hennicker Falls.
f. Location: Contoocook River in Merrimack County, New Hampshire.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. David B. Ward, Flood & Ward, 1000 Potomac Street, N.W., Suite 402, Washington, D.C. 20007.
i. Comment Date: April 29, 1985.
j. *Description of Project.* The proposed project would consist of: (1) A proposed 19-foot-high, 110-foot-long concrete dam; (2) a proposed reservoir with a surface area of 9-acres, and a gross storage capacity of 75 acre-feet at elevation 544 feet msl; (3) a proposed powerhouse at the base of the dam containing a generating unit with a rated capacity of 1,600-kW; and (4) a proposed 300-foot-long transmission line tying into the existing Public Service Company of New Hampshire system. The Applicant estimates a 6,000,000 kWh average annual energy production.
k. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36-months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, project power potential, test borings, and land surveying. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $120,000.
1. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

(3) a. Type of Application: Amendment of License.
b. Project No: 2814-004.
c. Date Filed: June 26, 1984.
d. Applicant: Paterson Municipal Utilities Authority and Great Falls Hydroelectric Company.
e. Name of Project: Great Falls.
f. Location: Passaic River, City of Paterson, Passaic County, New Jersey.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: John Topalian, Project Director, Paterson Municipal Utilities Authority, 72 McBride Avenue, Paterson, New Jersey 07510.
i. Comment Date: April 29, 1985.
j. *Description of Project.* The project as licensed consists of: (a) The existing S.U.M. dam, an overflow granite stone gravity structure about 315 feet long, with a maximum height of 15 feet and having a crest elevation of 114.6 feet (m.s.l.); (b) an existing forebay inlet structure; (c) an existing reservoir with negligible storage; (d) an existing headgate control structure containing four trashracks and four steel gates each approximately 10 x 10 feet; (e) four existing steel lined penstocks each 8.5 feet in diameter and approximately 55 feet long; (f) an existing concrete powerhouse containing four new turbine-generators with a total rated capacity of 7.5 MW; (g) an existing 50-foot long 5-kV cable connecting the powerhouse to a 4.61/26.4-kV step-up transformer which in turn is connected to the City of Paterson Substation via a 1,500-foot-long 26-kV aerial and underground cable; and (h) appurtenant facilities.

The applicant proposes to amend the license by: (a) restoring the upstream face of the dam by constructing an 18-inch concrete facing slab, regrading, and placing protective rip rap on its upper surface; (b) replace the walkway bridge across the forebay with a new walkway bridge and a trash diverter; (c) three steel gates instead of four, with new continuous trashracks with an automatic cleaner; (d) three repaired or replaced steel lined penstocks; (e) increasing the installed capacity from 7.5 MW to 10.95 MW; and (f) a new 37-foot-long 4.16-kV underground cable connecting the powerhouse to a 4.16/26.4-kV step-up transformer which ties into the City of Paterson's substation via a 1,500-foot-long 26.4-kV underground and aerial cable. The applicant estimates a 33 million kWh average annual energy production.
k. *Purpose of Project.* All project power would be sold to a local utility.
l. This notice also consists of the following standard paragraphs: B, C, and D1.

(4) a. Type of Application: License (Less than 5 MW).
b. Project No: 6588-001.
c. Date Filed: November 29, 1984.
d. Applicant: James M. Rea.
e. Name of Project: Milton Three Ponds.
f. Location: Salmon Falls River, Strafford County, New Hampshire and York County, Maine.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: James M. Rea, Swain Road, Barrington, New Hampshire 03825.
i. Comment Date: May 17, 1985.
j. *Description of Project.* The proposed project would consist of: (1) The existing Milton Three Ponds Dam, 19 feet high

and 156 feet long; (2) a reservior having a storage capacity of 15,000 acre-feet, a surface area of 1,400 acres, and a normal pool elevation of 413.8 feet NGVD; (3) a new 7-foot-diameter steel penstock 60 feet long; (4) a new powerhouse containing 1 unit with a generating capacity of 180 kW; (5) a new tailrace; (6) a new 12.47-kV transmission line 100 feet long; and (7) appurtenant facilities. The existing project facilities are owned by the State of New Hampshire. The Applicant estimates the annual average energy production would be 900,000 kWh. the estimated cost of constructing the project would be $330,000.

k. *Purpose of Project.* All project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

(5) a. Type of Application: Preliminary Permit.

b. Project No.: 8516–000.

c. Date Filed: August 13, 1985.

d. Applicant: Energy Gap.

e. Name of Project: Upper Teton River.

f. Location: On lands administered by the Bureau of Reclamation, on the Teton River, in Teton County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Persons: Tim Jones, Hydrodesign Ltd., P.O. Box 2465, Twin Falls, Idaho 83303.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The project features would consists of: (1) A 14-foot-high inlet structure on the right bank of the Teton River at elevation 5,788 feet; (2) a 10,620-foot-long, 86-inch-diameter penstock; (3) a powerhouse containing two generating units with a combined capacity of 5,700 kW and an average annual generation of 28,764 MWh; and (4) a 1,500-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $35,000. No new roads will be constructed or drilling conducted during the feasibility study.

k. *Purpose of Project.* Project power would be sold to Utah Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

(6) a. Type of Application: Preliminary Permit.

b. Project No.: 8781–000.

c. Date Filed: December 7, 1984.

d. Applicant: Great Western Power & Light, Inc.

e. Name of Project: Battle Creek Hydro Project.

f. Location: Battle Creek in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, President, Great Western Power & Light, Inc., 484 East 300 North Manti, Utah 84642.

i. Comment Date: May 16, 1985.

j. *Description of Project.* The proposed project would utilize an abandoned site of the Utah Power & Light Company (UP&L), would be located entirely in the Uinta National Forest, and would consist of: (1) A new diversion structure taking flows from two springs and part of the flow from Battle Creek; (2) a renovated penstock, 12-inches in diameter and about 9,750 feet long; (3) a new powerhouse, at the same location of the former one, to contain two turbine-generator units rated at 500 KW and 1,000 KW for a total rated capacity of 1,500 KW; (4) a tailrace returning flow to Battle Creek; (5) a new 2,000-foot-long transmission line connecting to an existing UP&L line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7,956,000 KWh.

k. *Purpose of Project.* Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

m. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $35,000.

(7) a. Type of Application: Preliminary Permit.

b. Project No.: 8888–000.

c. Date Filed: January 22, 1985.

d. Applicant: Brookfield Power Company, Inc.

e. Name of Project: Oliverian Brook.

f. Location: On the Oliverian Brook in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard A. Mauser, RFD 336 Governor's Road, Brookfield, New Hampshire 03872.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project would consist of: (1) A proposed reinforced concrete weir-intake structure, with a maximum hight of four feet and length of twenty feet; (2) a proposed samll reservoir with negligible storage capacity at 460 feet m.s.l.; (3) a proposed 4-foot-diameter steel penstock approximately 200 feet long; (4) a proposed powerhouse to contain an installed generating capaicity 210 KW; (5) a proposed 300-foot-long, 8–kV transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 960 mWh. The Applicant proposed to sell the power generated to the Connecticut Valley Power Company.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending upon the outcome of the studies, Applicant would prepare an application for FERC license. Applicant estimates that the cost of the studies under permit would be $15,000.

(8) a. Type of Application: Preliminary Permit.

b. Project No: 7206–001.

c. Date Filed: November 9, 1984.

d. Applicant: Union Village Hydroelectric Company.

e. Name of Project: Union Village.

f. Location: On the Ompopmpanoosuc River in Orange County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John L. Warshow, Union Village Hydroelectric Company, 26 State Street, Montpelier, Vermont 05602.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The proposed project will utilize the existing U.S. Army Corps of Engineers' Union Village Dam and consist of: (1) A 6-foot-diameter, 650-foot-long, steel penstock; (2) a proposed powerhouse with an installed generating capacity of 650 kW; (3) a proposed 600-foot-long, 7.2-kV transmission line; and (4) appurtenant facilities. The Applicant estimates the average annual energy generation to be approximately 2.0 GWh. It is anticipated that the power will be sold either to the interconnecting utility or to the Vermont Power Exchange.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

1. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

(9) a. Type of Application: Preliminary Permit.

b. Project No: 8716–000.

c. Date Filed: November 13, 1984.

d. Applicant: New Hope Hydro Partners.

e. Name of Project: Union Mills.

f. Location: Delaware River in Bucks County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ingolf Hermann, New Hope Hydro Partners, Ridgehill Professional Bldg., Suite 380, 2000 Plymouth Road, Minnetonka, Minnesota 55343.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The proposed project would consist of: (1) An existing 11-foot-high, 1,290-foot-long rock filled with concrete cap wingwall dam; (2) a reservior with a surface area of 620 acres, storage capacity of 930 acre-feet, and a normal water surface elevation of 50 feet m.s.l.; (3) an existing intake structure on the right bank; (4) a new powerhouse on the right bank containing four generating units with a capacity of 1,409 kW each for a total installed capacity of 5,636 kW, adjacent to an old powerhouse, which would not be used for power production; (5) an existing tailrace; (6) a new transmission line, 300 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 40,219,800 kWh. The existing dam is owned by the Commonwealth of Pennsylvania.

k. *Purpose of Project.* Project power would be sold to Philadelphia Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $60,000.

(10) a. Type of Application: Minor License.

b. Project No.: 7931–001.

c. Date Filed: October 3, 1984.

d. Applicant: Larry Hensley.

e. Name of Project: 29 Mile Creek.

f. Location: Unnamed tributary of the South Fork American River, near Kyburz, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Larry Hensley, 9240 Central Avenue, Orangevale, California 95662, (916) 988–2164.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project would consist of: (1) A 2-foot-high, 15-foot-wide concrete diversion dam across the tributary at elevation 4,040 feet msl; (2) a 6-inch-diameter, 1,500-foot-long steel penstock; (3) a powerhouse located at elevation 3,850 feet msl containing a single Pelton turbine-generator unit with a rated capacity of 30 kW and producing an estimated average annual generation of 0.13 GWh; (4) a 6-inch-diameter, 30-foot-long steel pipe tailrace; and (5) a 200-foot-long, 440 volt transmission line to interconnect the project to an existing Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would occupy less than 1 acre of Eldorado National Forest lands. No recreational facilities are proposed by the Applicant.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

l. This application has been accepted for filing as of December 20, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. *et. al.*, 28 FERC ¶61,062, issued July 18, 1984.

(11) a. Type of Application: Minor License.

b. Project No.: 7856–001.

c. Date Filed: November 8, 1984.

d. Applicant: Potosi Power Company, Inc.

e. Name of Project: Potosi Power Company Water Power Project.

f. Location: On the South Willow and Potosi Creeks, near Pony, in Madison County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Rhett Hurless, Bowman, Hurless & Associates, P.O. Box 3474, Bozeman, Montana 59772–3474.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The project would consist of: (1) An existing powerhouse containing one generating unit rated at 25 kW located on the Potosi Creek; (2) a proposed 6-foot-high, 20-foot-long diversion structure at the South Willow Creek below the Potosi creek powerhouse; (3) a proposed 2300-foot-long, 27-inch-diameter penstock bifurcating into 18-inch-diameter and 12-inch-diameter pipelines at the new powerhouse; (4) a proposed powerhouse containing two generating units, one rated at 240 kW and the other rated at 119 kW; and (5) a proposed 10,000-foot-long underground transmission line and a 1.5 to 2.5-mile-long overhead transmission line connecting to an existing Montana Power Company transmission line. The estimated average annual energy production would be 1.4 million kWh at a total installed capacity of 384 kW. The total cost to construct the project would be $360,000 in 1984 dollars.

k. *Purpose of project.* The project energy would be sold to the Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

(12) a. Type of Application: Preliminary Permit.

b. Project No.: 8922–000.

c. Date Filed: February 1, 1985.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Celina Hydroelectric.

f. Location: On the Cumberland River, in Monroe, Cumberland, Clinton, and Russell Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. G. William Miller, 919 18th Street, N.W., Suite 750, Washington, D.C. 20006.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The proposed project would consist of: (1) A new earth dam approximately 1,200 feet long and having a maximum height of 60 feet; (2) a gated concrete spillway structure about 300 feet long; (3) a reservoir with a water surface area of about 6,030 acres at normal water surface elevation of 540 feet, m.s.l.; (4) a new concrete powerhouse housing two turbine/generating units with a total installed capacity of 42 MW; (5) approximately 20 miles of new 161=kV transmission line;

and (6) appurtentant facilities. Applicant estimates that the average annual generation would be 177,000,000 kWh.

k. *Purpose of Project.* The energy generated at the proposed project would be sold to a nearby utility.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

(13) a. Type of Application: Preliminary Permit.

b. Project No.: 8895–000.

c. Date Filed: January 29, 1985.

d. Applicant: Warren A. Harris III.

e. Name of Project: Tannery Dam.

f. Location: On the Millers River in Winchendon, Worchester County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Warren A. Harris III, P.O. Box 246, 28 Front Street, Winchendon, Massachusetts 01475.

i. Comment Date: May 16, 1985.

j. *Description of Project.* The proposed project would consist of: (1) An existing 248-foot-long, 10-foot-high concrete dam; (2) a reservoir having a surface area of 9 acres, a storage capacity of 51 acre-feet, and normal water surface elevation of 939.3 feet NGVD; (3) a new intake structure; (4) a new powerhouse containing generating units having an installed capacity of 125 kW; (5) an existing 700-foot-long discharge channel; (6) a new undergound 125-foot-long transmission line; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 650,000 kWh. The Applicant owns the existing dam and project facilities.

k. *Purpose of Project.* All project energy would be sold to either the Massachusetts Electric Co. or other local municipal lighting plants.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope and Cost of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $40,000.

(14) a. Type of Application: Major License (Over 5MW).

b. Project No.: 3913–001.

c. Date Filed: August 1, 1983.

d. Applicant: Puget Sound Power & Light Company.

e. Name of Project: Thunder Creek.

f. Location: On Thunder Creek, a tributary to the Baker River, near Concrete, in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Robert V. Myers, Puget Power Building, Bellevue, Washington 98009.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The proposed run-of-river project would consist of: (1) An 85-foot-long 13-foot-high concrete-gravity overflow-type dam having crest elevation 1,018.0 feet msl; (2) a small impoundment; (3) a gated intake structure and sluiceway at the right (north) bank; (4) a 5,830-foot-long 6-foot-diameter concrete-pipe conduit; (5) a 950-foot 5½-foot-diameter steel penstock; (6) a powerhouse containing two generating units operated at a net head of 535 feet and comprising: (a) a generating unit rated at 5,625-kw at a flow of 146 cfs; and (b) a generating unit rated at 3,800-kW operated at a flow of 99 cfs; (7) a tailrace having normal water surface elevation 464 feet msl; (8) a 1,000-foot-long 4.16=kV transmission line; (9) a 4.16/115=kV switchyard; and (10) an upgraded access road to the dam and a new access road to the powerhouse.

Applicant estimates that the average annual generation would be 50.8 MkWh and that the project construction cost would be $11,959,000. Project energy would be sold to Bonneville Power Administration or would be used to serve Applicant's system needs.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D2.

(15) a. Type of Application: Preliminary Permit.

b. Project No: 8898–000.

c. Date Filed: January 30, 1985.

d. Applicant: Bear Hydro Company.

e. Name of Project: Bear Creek Project.

f. Location: On Bear Creek, near Hyampom, within Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Ave. B–4, Sacramento, California 95821.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project would consist of: (1) A 5-foot-high, 62-foot-long diversion dam at elevation 1,730 feet; (2) a 48-inch-diameter, 3,700-foot-long diversion conduit or a 5-foot-wide and 2.5-foot-deep, 3,700-foot-long channel; (3) a 32-inch-diameter, 1,050-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 1,450 kW operating under a head of 320 feet; and (5) a 0.5-mile-long, 12.5=kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual energy generation of 5.7 million kWh.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

(16) a. Type of Application: Preliminary Permit.

b. Project No.: 8897–000.

c. Date Filed: January 30, 1985.

d. Applicant: Horse Linto Hydro Company.

e. Name of Project: Horse Linto Creek Project.

f. Location: On Horse Linto Creek, near Hoopa, within Six Rivers National Forest, in Humboldt County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Paul Eichenberger, Eichenberger and Associates, 4020 El Camino Avenue B–4, Sacramento, California 95821.

i. Comment Date: May 17, 1985.

j. *Description of Project.*—The proposed project would consist of three facilities:

I Upper Facility.—(1) a 5-foot-high, 20-foot-long diversion dam at elevation 3,010 feet; (2) a 5-foot-high, 80-foot-long diversion dam at elevation 3,010 feet; (3) a 30-inch-diameter or 3-foot-wide and 1.5-foot-deep, 10,200-foot-long diversion conduit or channel; (4) a 48-inch-diameter or 5-foot-wide and 2.5-foot-deep, 10,200-foot-long diversion conduit or channel; (5) a 36-inch-diameter, 1,000-foot-long steel penstock; (6) a powerhouse with a total installed capacity of 4,500 kW operating under a head of 662 feet; and (7) a 1.5-mile-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual generation of 5.7 million kWh.

II Middle Facility.—(1) a 5-foot-high, 88-foot-long diversion dam at elevation

2,025 feet; (2) a 50-inch-diameter or 5-foot-wide and 2.5-foot-deep, 8,300-foot-long diversion conduit or channel; (3) a 36-inch-diameter, 900-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 3,000 kW operating under a head of 447 feet; and (5) a 1-mile-long, 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual energy generation of 13.2 million kWh.

III Lower Facility.—(1) a 5-foot-high, 45-foot-long diversion dam at elevation 2,060 feet; (2) a 39-high-diameter or 4-foot-wide and 2-foot-deep, 4,500-foot-long diversion conduit or channel; (3) a 28-inch-diameter, 1,500-foot-long steel penstock; (4) a powerhouse with a total installed capacity of 2,050 kW operating under a head of 638 feet; and (5) a 6-mile-long 12.5-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates an average annual energy generation of 8.1 million kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 36-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $125,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

(17) a. Type of Application: Minor License.

b. Project No.: 7178–001.

c. Date Filed: September 17, 1984.

d. Applicant: Ronald F. and Carlene A. Ott.

e. Name of Project: Arbuckle Mountain.

f. Location: On Middle Fork Cottonwood Creek, near Platina, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ronald F. Ott, Ott Water Engineers, Inc., 2334 Washington Avenue, Redding California 96001, (916) 244–1920.

i. Comment Date: May 17, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 15-foot-high, 65-foot-long rock diversion dam across Middle Fork Cottonwood Creek at elevation 1,900 feet msl with an intake structure diverting up to 130 cfs.; (2) a 72-inch-diameter, 1,400-foot-long steel pipeline; (3) a transition structure; (4) a 60-inch-diameter, 100-foot-long steel penstock; (5) a powerhouse containing a single cross-flow turbine-generator unit with a rate capacity of 400 kW and producing an estimated average annual generation of 0.95 GWh; (6) a switchyard; and (7) a 4-mile-long, 12 kV transmission line to interconnect the project with a Pacific Gas & Electric Company (PG&E) line. Project power would be sold to PG&E. The project would occupy 7.5 acres of Bureau of Land Management lands in addition to private lands. Applicant estimates project cost at $1 million. No recreational facilities are proposed.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

(18) a. Type of Application: Preliminary Permit.

b. Project No.: 8825–000.

c. Date Filed: December 24, 1984.

d. Applicant: Morley Hydro Company.

e. Name of Project: Morley Dam.

f. Location: In Mecosta County, Michigan on the Little Muskegon River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Gary F. Croskey, 336 University Drive, East Lansing, Michigan 48823.

i. Comment Date: May 17, 1985.

j. Description of Project: The proposed project would consist of: (1) A 12-foot-high and 430-foot-long existing dam to be renovated including spillway at elevation 883.4 feet m.s.l. owned by Mr. Jim Goodfellow; (2) an existing reservoir with a surface area of 56 acres and a storage capacity of 400 acre-feet at elevation 883.0 m.s.l.; (3) an existing powerhouse 48 feet long and 20 feet wide to be renovated and to contain one turbine/ generator with a rated capacity of 225 kW and flows discharging directly into the Little Muskegon River; (4) an existing 12-kV tranmission line 100 feet long; and (5) appurtenant facilities. The estimated average annual energy produced by the project would be 750,000 kilowatt hours operating under a net hydraulic head of 13.5 feet. The project power would be sold to the Consumers Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. *Proposed Scope of Studies under Permits.* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $32,000.

(19) a. Type of Application: Preliminary Permit.

b. Project No: 8757–000.

c. Date Filed: December 3, 1984.

d. Applicant: Braddock Associates.

e. Name of Project: Monongahela River Locks and Dam No. 2.

f. Location: Monongahela River in Allegheny County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, Braddock Associates, 8 Peabody Terrace No. 32, Cambridge, Massachusetts 02138.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project would utilize the existing Corps of Engineers Monongahela River L/D No. 2 and would consist of: (1) A new intake structure; (2) a new 9-foot-diameter, 25-foot-long penstock; (3) a new powerhouse containing one generating unit with a capacity of 6,500 kW; (4) a new 100-foot-long tailrace; (5) a new transmission line, 750 feet long; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 35,300,000 kWh.

k. *Purpose of Project.* Project power would be sold to the municipalities of Pittsburgh, West Mifflin, and McKeesport.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

(20) a. Type of Application: Preliminary Permit.

b. Project No: 8803–000.

c. Date Filed: December 14, 1984.

d. Applicant: Great Bear Hydropower, Inc.

e. Name of Project: Paulina.

f. Location: On the Paulins Kill River in Warren County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David Yaffe, Duncan, Allen, and Mitchell, 1575 Eye St., N.W., Washington, D.C. 20005.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project will consist of: (1) The existing 11-foot-high, 150-foot-long dam; (2) the existing 18-acre reservoir with a normal surface level of 328 feet m.s.l.; (3) an existing powerhouse which contains an existing 45-kW generating unit and will also include a proposed 115-kW generating unit; (4) a proposed 25-foot-long, 10-foot-wide, pipe; (5) a proposed 30-foot-long, 480-V transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation of the proposed unit is 375 mWh. The annual generation of the existing unit is unknown. All existing project facilities are currently owned by Blairstown Water Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. *Proposed Scope of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $20,000.

(21) a. Type of Application: Preliminary Permit.

b. Project No: 8923–000.

c. Date Filed: February 1, 1985.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Morven Hydro Project.

f. Location: On the Pee Dee River near Morven, Anson County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: G. William Miller Independence Electric Corporation 919 18th Street., N.W. Suite 750 Washington, D.C. 20006.

i. Comment Date: May 20, 1985.

j. *Description of Project.* The totally unconstructed project would consist of: (1) A 900-foot-long and 30-foot-high earth dam; (2) a reservoir with a surface area of 650 acres at a normal pool elevation of 110 feet m.s.l.; (3) a powerhouse housing two 3.9-MW generators for a total installed capacity of 7.8 MW; (4) a 115-kV transmission line approximately 2 miles long; and (5) appurtenant facilities. The Applicant estimates the average annual generation would be 50,000 MWh. The proposed project would not be located on any Federal lands. All project energy generated would be sold to Carolina Power and Light Company.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

l. *Proposed Scope of Studies under permit.* A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $50,000.

(22) a. Type of Application: Preliminary Permit.

b. Project No: 8928–000.

c. Date Filed: February 4, 1985.

d. Applicant: Jason M. Hines.

e. Name of Project: LaFayette Street Dam.

f. Location: On the Sugar River in the town of Claremont, Sullivan County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Jason M. Hines 84 Amherst Street Amherst, New Hampshire 03031.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project would consist of: (1) An existing dam in three sections, a 100-foot-long, spillway section, a 100-foot-long, 6-foot-high training wall section, and a 25-foot-long, 12-foot-high concrete section with a wooden gatehouse on top; (2) a reservior having a surface area 0.25 acre, a storage capacity of 1 acre-foot, and a normal water surface elevation of 422.1 feet msl; (3) an existing 25-foot-wide, 225-foot-long power canal; (4) an existing 25-foot-long, 10-foot-diameter steel penstock; (5) an existing powerhouse containing a new generating unit with an installed capacity of 425 kW; (6) an existing tailrace; (7) a new 225-foot-long transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,300,000 kW. The existing dam is owned by the Central Vermont Public Service Co.

k. *Purpose of project.* All project energy generated would be sold to the Connecticut Valley Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2

m. *Proposed Scope and cost of Studies under Permit.* A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $8900.

(23) a. Type of Application: Preliminary Permit.

b. Project No.: 8896–000.

c. Date Filed: January 29, 1985.

d. Applicant: Blue Creek Hydro Company.

e. Name of Project: Lower Blue Creek Project.

f. Location: On Blue Creek, within Stanislaus National Forest in Calaveras County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. James E. Helmich, JBS Energy Inc., 311 D Street, Broderick, California 95605.

i. Comment Date: May 17, 1985.

j. *Description of Project.* The proposed project would consist of: (1) A 15-foot-high diversion structure at elevation 3,600 feet; (2) a 40-inch-diameter, 9,240-foot-long conduit; (3) a 36-inch-diameter, 2,940-foot-long penstock; (4) a powerhouse to contain a single generating unit with a rated capacity of 1,700 kW operating under a head of 600 feet; and (5) a 12.5-kV, 8,000-foot-long transmission line will connect the project with an existing Pacific Gas and Electric Company (PG&E) 115-kV line north of the powerhouse.

k. *Purpose of project.* The estimated annual generation of 6 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

Competing Applications

A1. *Exemption for Small Hydroelectric Power Project under 5MW Capacity*— Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application

must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. *Exemption for Small Hydroelectric Power Project under 5MW Capactiy*—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in the project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. *License or Conduit Exemption*—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: If an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. *License or Conduit Exemption*—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notice of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit.*—Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A6. *Preliminary Permit.*—No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.33 (a) and (d).

A7. *Preliminary Permit*—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A8. *Preliminary Permit*—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) A preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (d).

A9. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an

unequivocal statement of intent to submit, if such an application may be filed, either (1) A preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 26, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–9136 Filed 4–15–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85–371–000, et al.]

Natural Gas Certificate Filings; ANR Pipeline Company et al.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP85–371–000]

April 11, 1985.

Take notice that on March 18, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85–371–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport up to 900 million Btu of natural gas per day for an end-user under ANR's blanket certificate issued in Docket No. CP82–480–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 900 dt equivalent of natural gas per day, on a best-efforts basis, for an end-user, Butler Manufacturing Company (Butler), pursuant to a transportation agreement, between the parties dated January 7, 1985. It is explained that the agreement for the transportation service, which commenced January 16, 1985, provides that Petro Source Energy (Petro), supplier of the gas to Butler, would deliver the gas to Transok, Inc. (Transok), at various interconnecting points with Petro in Oklahoma for transport and delivery,[1] less 2 percent of

[1] Transok's transportation is rendered pursuant to Docket No. ST80–260, it is explained.

the gas for compressor fuel, to ANR's system in Oklahoma for the account of Butler. ANR states that it would then transport and deliver the gas to Illinois Power Company (IPC), a local distribution company, at an interconnection with IPC in Henry County, Illinois, for delivery to Butler at its Galesburg, Illinois, manufacturing facility. It is explained the gas would be used for space heating and process equipment.

ANR asserts for all the gas it transports and delivers, it would charge Butler 44.6 cents per dt equivalent based upon ANR's Rate Schedule EUT–1, on file with the Commission in its FERC Gas Tariff, Original Volume No. 1. ANR indicates that the transportation rate is based upon a haul distance of 716.3 miles times 3.6 cents per 100 miles or 25.8 cents plus a fuel charge of 18.8 cents.

ANR requests authorization to transport gas for Butler beyond the automatic 120-day period permitted by § 157.209(e)(1). Current regulations provide for end-user transportation through June 30, 1985. Specifically, ANR requests authority to transport gas for Butler through December 31, 1986, or for such lesser period as the Commission may permit its end-user transportation program to continue. ANR asserts that in the event authority is obtained to provide the service requested for a period extending beyond the current date authorized in the Commission's Regulations, ANR and Butler would amend the transportation agreement to conform the term of service to the period authorized.

ANR also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. ANR will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP80–437–007]

April 9, 1985.

Take notice that on March 11, 1985, Colorado Interstate Gas Company (Petitioner), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP80–437–007 a petition to amend further the order of March 4, 1981, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Sinclair Oil Corporation (Sinclair) to a new delivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By Commission order issued in Docket No. CP80–437–000, as amended, Petitioner is said to be authorized to transport natural gas for Sinclair and to construct and operate facilities for the redelivery of natural gas to Sinclair near Rawlins, Wyoming. By an amendment to a gas transportation agreement a new redelivery point from Petitioner to Northern Utilities, Inc., for Sinclair's account is said to have been added in Natrona County, Wyoming. Petitioner, therefore, petitions the Commission to amend further the order of March 4, 1981, to provide authorization to transport natural gas to the additional redelivery point.

It is stated that Petitioner would require new facilities to provide for an interconnection with Northern Utilities, Inc., consisting of tie-in and measurement facilities estimated to cost $85,000, for which Sinclair would reimburse Petitioner.

Comment date: April 23, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP85–396–000]

April 11, 1985.

Take notice that on March 28, 1985, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–396–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a new transportation tariff and blanket certificate authorization to provide firm and interruptible transportation service pursuant to that tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to implement a new transportation tariff in addition to blanket authorization to permit new transportation agreements between Applicant and various shippers and existing transportation agreements between Applicant and various shippers with which Applicant is able to negotiate a mutually beneficial agreement to convert to the tariff and rate schedules proposed.

Applicant states that its markets have declined drastically over the past several years in response to market sensitivity to the increased price of natural gas. Applicant, it is said, has taken several significant steps to maintain its sales level including substantial decreases in sales rate. It is further said that Applicant has implemented a discount rate schedule for high volume customers. Applicant states that a second discount rate schedule is pending Commission approval.

Applicant states that its markets have declined drastically over the past several years in response to market sensitivity to the increased price of natural gas. Applicant, it is said, has taken several significant steps to maintain its sales level including substantial decreases in sales rate. It is further said that Applicant has implemented a discount rate schedule for high volume customers. Applicant states that a second discount rate schedule is pending Commission approval.

Applicant asserts that in spite of these efforts, its sales continue to decline. It is stated that total system sales were 326,500,000 Mcf, 275,100,000 Mcf, and 270,200,000 Mcf in fiscal years 1982, 1983 and 1984, respectively. It is said that the cause of these declining sale volumes has been a combination of customer energy conservation, an increase in alternative energy sources, and improved energy technology including the increased use of energy-efficient appliances.

Applicant states that its transportation volume levels have increased from approximately 9,000,000 Mcf per year in 1977 for approximately ten shippers to over 70,000,000 Mcf in 1984 for some thirty entities. Applicant states further that its transportation activity is expected to continue to increase in terms of both volume handled and number of transactions.

It is stated that the rate schedules and other material to be contained in Original FERC Tariff Volume No. 1–A, as proposed, would apply to non-owner shippers. It is stated further that at present, Applicant transports gas for various shippers pursuant to single commodity rates. It is said that currently, those rates are 36.08 cents per Mcf for off-system shippers and 56.60 cents per Mcf for transportation volumes that displace sales on Applicant's system. It is further said that both rates are subject, when appropriate, to an

additional Gas Research Institute (GRI) charge of 1.25 cents per Mcf.

The proposed tariff, it is said, would provide much greater flexibility in rates and service than is now available. It is further said that both a firm and interruptible rate schedule would be available for off-system or new on-system shippers and a firm and interruptible rate schedule would be available for transportation that displaces sales on Applicant's system. The proposed rates and rate structure, it is said, would vary commensurate with the service provided.

Applicant states that proposed Rate Schedule TF–1 provides for firm transportation service by Applicant for a minimum term of five years. The rate schedule, it is said, is applicable to off-system shippers serving markets not located on Applicant's system and on-system shippers proposing to serve markets not previously served by Applicant. A two-part rate for service under Rate Schedule TF–1 is proposed consisting of a $1.55 per Mcf demand component and a 26.53 cents per Mcf commodity component.

In addition, it is said, when applicable, a 1.25-cent per Mcf GRI charge would be added to the commodity rate. The demand charge, it is said, would be based upon a transportation contract demand volume included in a transportation service agreement between Applicant and shipper and is applicable regardless of the volume of gas actually transported. It is said that the demand charge would be adjusted if Applicant on any day fails to accept from shipper volumes tendered up to the transportation contract demand volume. It is further said that the commodity rate is applicable to all volumes transported by Applicant for the account of shipper. Applicant states that an overrun charge of 31.63 cents per Mcf is applicable when Applicant transports volumes in excess of the transportation contract demand volume on any given day.

Applicant states that proposed Rate Schedule TI–1 is for interruptible service provided by Applicant for off-system shippers serving markets not located on Applicant's system and on-system shippers proposing to serve markets not previously served by Applicant. It is said that there is no minimum term applicable to this rate schedule. The rate proposed for Rate Schedule TI–1 is a commodity of 31.63 cents per Mcf and is applicable to all volumes transported by Applicant for the account of shipper. It is further said that the same rate is applicable for service provided in excess of the maximum delivery volume to be included in a transportation service agreement to be negotiated between Applicant and shipper. A 1.25-cent per Mcf GRI charge would be added when appropriate, it is said.

Applicant states that proposed Rate Schedule SDT–1 provides for firm transportation by Applicant for a minimum term of five years. The rate schedule, it is said, is applicable to those on-system end-users and full requirement customers of Applicant where sales by Applicant would be displaced by the transportation service. The rate proposed for Rate Schedule SDT–1 consists of a two-part rate of $3.17 per Mcf demand component and 56.60 cents per Mcf commodity component. In addition, when appropriate, a 1.25-cent per Mcf GRI charge would be added to the commodity rate. The demand charge, it is said, would be based upon a transportation contract demand volume included in a transportation service agreement to be negotiated between Applicant and a shipper and would be payable regardless of the volume of gas actually transported. It is said that the demand charge would be adjusted if Applicant on any day fails to accept from a shipper volumes tendered up to the transportation contract demand volume. It is further said that the commodity rate would be applicable to all volumes transported by Applicant for the account of the shipper. Applicant states that an overrun charge of 67.02 cents per Mcf would be applicable when Applicant transports volumes in excess of the transportation contract demand on any given day.

Applicant states that it cannot dedicate system capacity to these new firm shippers and at the same time reserve system capacity and gas supply to provide sales service at levels established under the general daily entitlements in Volume No. 1 of Applicant's tariff for the sales customer affected by the transportation service. It is said that a revised service agreement under Volume No. 1 of Applicant's tariff providing for a reduction in general daily sales entitlements and total annual sales entitlements equivalent to shipper's transportation contract demand would be required before Applicant would provide transportation service under Rate Schedule SDT–1. It is said further that should a shipper be an end-user served by an on-system distribution company, the revised service agreement would be that of the distribution company serving such end-user.

Applicant states that the demand charge has been developed based upon the demand charge for sales under Applicant's Rate Schedule G–1 as shown in Applicant's FERC Gas Tariff, Original Volume No. 1, Sheet No. 7. The commodity charge, it is said, is Applicant's margin for its Rate Schedule G–1 commodity rate as settled in Docket No. RP82–54. Applicant states further that the transportation rate is Applicant's full margin to offset the loss of sales and provides for equivalent rate treatment whether service is for sales or transportation. It is said that even this rate does not obviate all risk to Applicant because there continues to be potential take-or-pay obligations resulting from decreased sales.

Applicant states that the firm sales obligations by Applicant to a shipper would be reduced an equivalent volume to accommodate the new firm transportation obligations under Rate Schedule SDT–1. It is said that once a shipper has reduced its purchase entitlement, Applicant would not be obligated to increase that shipper's purchase entitlement unless mutually agreed between the parties and such increase is certificated by the FERC. It is further said that should shipper be an end-user served by an on-system distribution company, the revised service agreement would be that of the distribution company serving such end-user.

Applicant states that proposed Rate Schedule SDT–2 provides for interruptible service for on-system end-users and full requirement customers of Applicant where sales by Applicant would be displaced by the transportation service. It is said that there is no minimum service term required for this rate schedule. It is further said that the rate proposed is 56.60 cents per Mcf for gas transported. A 1.25-cent per Mcf GRI charge would be added when appropriate, it is said.

Applicant states that this proposed rate is Applicant's margin for its Rate Schedule G–1 commodity charge as settled in Docket No. RP82–54. It is said that as with the rate proposed for service under Rate Schedule SDT–1, this charge does not obviate all risk to Applicant because there continues to be potential take-or-pay obligations resulting from decreased sales.

Applicant states that it recognizes that the rates proposed are based on the settlement in Docket No. RP82–54. It is stated that a new filing pursuant to section 4 of the Natural Gas Act is being submitted concurrently with this application. It is further stated that the proposed changes in rates, to be effective in all likelihood on or about September 28, 1985, would alter the rates contained in the rates schedules proposed. It is said that subsequent rate

filings may affect the proposed rate schedules. Applicant states that the proposed rate schedules would be subject to change, from time to time, when new rates are approved by the Commission.

Applicant states that the transportation service pursuant to purposed Rate Schedules TF–1 and SDT–1 would be a firm service equal in priority to the transportation of gas for service under applicant's firm sales rate schedules contained in its FERC Gas Tariff, Original Volume No. 1. It is said that firm sales and firm transportation services would have priority over interruptible sales and interruptible transportation services when the request for all such services, on any day, exceeds the available transmission capacity.

Applicant states that in the event curtailment is initiated on a day when the available capacity on Applicant's existing transmission system is such that Applicant is unable to transport the volumes of gas tendered for firm transportation service and the volumes of gas necessary for service under Applicant's firm sales rate schedules, then the available capacity would be shared in proportion to the respective sales general daily entitlement volumes and transportation contract demand volumes after recognizing any adjustments required to forestall irreparable injury to life, property or for minimum plant protection.

It is said that the sequence for the priority of service for interruptible service is specified in Article 3.3 of the General Terms and Conditions of the proposed Volume No. 1–A tariff.

Applicant states that the rates developed for firm service under Rate Schedules TF–1 and SDT–1 include the full allocated cost of Applicant's transmission cost-of-service both as to the demand component and commodity component exclusive of gas costs. It is stated further that since the rates to be charged for the proposed firm transportation service are on a par with other firm services provided by Applicant the public convenience and necessity require that the priority of service applicable to the proposed firm transportation service be equal to Applicant's other firm services.

Applicant states that it currently provides firm transportation service for certain shippers. This service, it is said, is provided under specific certificate authority granted pursuant to applications filed under section 7 of the Natural Gas Act. It is said that the contracts providing for such service are filed as X rate schedules in Applicant's FERC Gas Tariff, Original Volume No. 2. Applicant requests authority to provide future firm transportation service under Rate Schedules TF–1 and SDT–1 pursuant to blanket certificate authority. Applicant proposes to advise the Commission of all such transactions by filing an appropriate change to the Index of Shippers to reflect commencement and termination of such transportation service. It is stated that these filings are proposed to be made by Applicant within thirty days of such change. Applicant states that it would no longer be necessary for Applicant to file section 7(c) applications and releated tariff filings as rate schedules to be included in its FERC Gas Tariff, Original Volume No. 2, for the firm transportation services enumerated in Rate Schedule TF–1 and SDT–1.

Applicant asserts that its customers and the Commission would benefit by the reduced workload and lower cost resulting from the reduction in numbers of both certificate applications and tariff filings. It is further asserted that the producer and the ultimate consumer would benefit from the shorter time required for the commencement of the firm transportation service.

Applicant states that it also currently provides interruptible transportation service pursuant to specific certificate authorizations and X rate schedules. In addition, Applicant holds certificates issued in Docket Nos. CP80–169–000 and CP83–21–000 for authority to provide self-implementing interruptible transportation service pursuant to Part 284 and Part 157, respectively, of the Commission's Regulations. Applicant requests blanket certificate authority to provide future interruptible transportation service under Rate Schedules TI–1 and SDT–2. Applicant proposes to keep the Commission advised of all such transactions by filing an appropriate change to the Index of Shippers to reflect commencement and termination of service. It is said that these filings are proposed to be made by Applicant within thirty days of such change. It is further said that filing changes to the Index of Shippers would reduce other filing requirements and negate numerous reports now required for Part 284 and Part 157 transactions. Applicant states that substantial portions of the information required in the self-implementing reporting requirements would be included in the filing of changes to the Index of Shippers.

Applicant states that it would no longer have to file prior notice requests and related reports for cetain self-implementing transportation service to be provided under Rate Schedules TI–1 and SDT–2. It is further stated that Applicaant would no longer be required to file section 7(c) applications and related tariff filings as a rate schedule to be included in its FERC Gas Tariff, Original Volume No. 2, for other interruptible service that would now be provided under Rate Schedules TI–1 and SDT–2.

Applicant states that it currently provides both firm and interruptible transportation service to shippers under specific section 7(c) cetificate authorization with corresponding transportation agreements filed in its FERC Gas Tariff, Original Volume No. 2, as X rate schedules. It is further stated that Applicant provides interruptible transportaiton service to customers under Part 157 and Part 284 of the Commission's Regulations for which no X rate schedules are required.

Applicant states that some of these existing transportation shippers may prefer service under the proposed new Volume No. 1–A tariff to service under their current contract. It is further stated that it may be mutually beneficial to both Applicant and an existing shipper to negotiate a new agreement which would permit the shipper to convert to the appropriate new rate schedules as proposed. It is said that although Applicant is not obligated to permit existing shippers to change to the new rate schedules, Applicant is requesting such blanket authorization as may be required to permit any existing shipper to change to the appropriate new rate schedule. Such blanket authorization would be applicable only for the same service, firm or interruptible, and for the same volumetric authorization, it is said.

Applicant states that blanket cetificate authority requested, whether for firm or interruptible service under all four proposed rate schedules, would be applicable only when such service can be provided without need for the construction of additional mainline facilities to increase capacity. It is said that Applicant would install those facilities required to effect transportation services that are authorized pursuant to its blancket certificate issued in Docket No. CP83–21–000. It is further said that Applicant would request separate section 7(c) authorization for facilities to increase mainline capacity or facilities for which it does not have existing authorization.

Applicant states that it currently has capacity available on most segments of its transmission system to accommodate additional transportation gas. It is said that much of its capacity results from reductions in sales commitments. It is further said that in the pending application in Docket No. CP85–381–000,

Applicant's firm sales peak day markets are proposed to be reduced. Applicant indicates that capacity is, and would be, available to allocate pursuant to the blanket certificate transportation authority sought.

Comment date: May 2, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Company

[Docket No. CP84–595–003]

April 11, 1985.

Take notice that on March 18, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket NO. CP84–595–003 an amendment to reflect a change in its pending application, filed in Docket No. CP84–595–000, as amended, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By the instant amendment, CIG proposes to increase the maximum daily volume of natural gas which CIG proposes to transport for Tennessee on a firm basis from 32,000 Mcf per day to 107,000 Mcf per day. CIG further proposes to add a delivery point for the receipt of up to 75,000 Mcf of natural gas per day for the account of Tennessee at an existing point of interconnection between the facilities of Wyoming Interstate Company, Ltd. (WIC), and CIG at the Rockport delivery point in Weld County, Colorado.The application states that the volumes of natural gas delivered by WIC to CIG for Tennessee's account would be transported on a firm basis and redelivered for the account of Tennessee to Natural Gas Pipeline Company of America, Northern Natural Gas Company, a division of InterNorth, Inc., Northwest Pipeline Corporation, or any combination, thereof, at the redelivery points specified in the January 1984 agreement, as amended, or such other redelivery point mutually agreed to by CIG and Tennessee.

CIG states that no facilities would currently be required on its system to effectuate the transportation for the account of Tennessee. The proposal in the instant amendment is said to be an alternative to the transportation service proposed by Trailblazer for the account of Tennessee in Trailblazer's application pending in Docket No. CP83–302–000. CIG states that upon the grant of the authorization requested herein, it is willing to provide a firm transportation service for Tennessee at rates considerably less than would be offered by Trailblazer. CIG avers that the initial rates it proposes to charge Tennessee for its transportation service would be at least 28.0 cents per Mcf less than the rate Tennessee would have to pay as a firm shipper utilizing the Trailblazer facilities.

All other aspects of CIG's original application, as amended, remain unchanged.

Comment date: May 2, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85–362–000]

April 11, 1985.

Take notice that on March 13, 1985, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74102, filed in Docket No. CP85–362–000 an application pursuant to section 7 of the Natural Gas Act for permission and approval to abandon and for a certificate of public convenience and necessity authorizing the installation of compression facilities in the South Welda Storage Field in Anderson County, Kansas, all as more fully set-for th in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon and reclaim a 270 horsepower rental compressor unit and replace it with a 230 horsepower company-owned compressor unit and to install an additional 280 horsepower company-ownd compressor unit and appurtenant facilities to compress for delivery into Applicant's facilities storage gas which is produced with oil production from existing and projected producer oil wells within Applicant's South Welda storage field boundaries.

Applicant states that the estimated cost of the proposed facilities is $483,000, which would be paid from treasury cash.

Comment date: May 2, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP85–374–000

April 11, 1985.

Take notice that on March 19, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–374–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.20) for authorization to transport natural gas on behalf of A. B. Chance Company (Chance) on an interuptible basis under Panhandle's blanket certificate issued in Docket No. CP83–83–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is indicated that Chance has entered into a gas purchase contract dated December 14, 1984, with Yankee Resources, Inc. (Yankee), acting as agent for certain off-system producers. In order for Chance to receive its gas, Panhandle indicates that pursuant to a December 14, 1984, gas transportation contract it would receive up to 1,100 Mcf of gas on a peak day, 625 Mcf of gas on an average day and 228,125 Mcf of gas per year from Union Texas Products Corporation in Major County, Oklahoma, and Phillips Petroleum Company in Kingfisher and Woodward Counties, Oklahoma. Panhandle states that it would redeliver the gas, less a four percent reduction for fuel, to Union Electric Company (Union) at an existing point of interconnection between Panhandle and Union in Boone County, Missouri, for further transportation to Chance's plant in Centralia, Missouri. It is stated that Chance would use the gas for manfacturing and heating process for producing, distribution and transmission equipment primarily for the electric utility industry. It is further stated that Panhandle would charge a rate based on its currently effective OST tariff.

The term of the proposed transportation is from the date that the automatic authorization expires until the earlier of (1) eighteen months from the effective date of the agreement, (2) terminaiton of authorization as provided by Subpart F of Part 157, of the Commission's Regulations, or (3) termination of the agreement by either of the parties, it is stated. Panhandle states that it would neither construct nor add to its existing facilities to provided this service. No intermediary is involved in between Chance and Yankee, it is stated.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to

constitute the transportation quantities herein and not to increase those quantities.

Comment date: May 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corporation

[Docket No. CP85-336-000]

April 10, 1985.

Take notice that on March 6, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-336-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Brownsville Utility Department, City of Brownsville, Tennessee (Brownsville), as agent for the Haywood Company (Haywood), under the certificate issued in Docket No. CP82-407-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

Texas Gas proposes to transport up to 250 million Btu of natural gas per day for Brownsville as agent for Haywood until June 30, 1985, with an extension for a term to end no later than October 31, 1985, should the Commission extend the end-user transportation program beyond June 30, 1985. Texas Gas indicates that the gas to be transported would be purchased by Haywood from Golden Resources Corporation (Golden Resources) and would be used for low-priority space heating, boiler fuel and generator fuel at Haywood's plant in Brownsville, Tennessee.

Texas Gas states that it would receive such gas for Haywood's account from United Gas Pipe Line Company (United) in Ouachita Parish, Louisiana. Golden Resources proposes to deliver to United in Richland Parish, Louisiana, upon construction of a gathering pipeline and metering facilities to connect production from Golden Resources' Terry No. 1 production well to the transmission system of United. Texas Gas states that Brownsville is the existing distribution company that serves Haywood in Brownsville, Tennessee.

Texas Gas indicates that it would charge Brownsville its Rate Schedule TSC-1 rate for Rate Schedule SG customers, currently 45.28 cents per Mcf, plus a 1.25-cent GRI surcharge for each million Btu of natural gas transported. In addition, Texas Gas states that it would retain 1.86 percent of the gas delivered to it for fuel, company use, and unaccounted-for and loss volumes.

Texas Gas also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by Haywood. The flexible authority requested would apply only to points related to sources of gas supply not to delivery points in the market area. Texas Gas would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not increase those quanitites.

Comment date: May 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP84-577-006]

April 11, 1985.

Take notice that on March 14, 1985, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in an amendment in Docket No. CP84-577-006 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to make an off-system sale of natural gas. The request is pursuant to authorization received in the Commission's order issued October 29, 1984, in Docket No. CP84-577-000, authorizing sales for take-or-pay relief program (STOPR), all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Trunkline proposes to make an off-system sale of gas to Louisiana Industrial Gas Supply System (Louisiana Industrial) pursuant to a gas sales agreement dated February 28, 1985, between Louisiana Industrial and Trunkline (agreement). It is explained that the agreement provides for Trunkline to deliver up to 75,000 Mcf of gas per day on an interruptible basis for Louisiana Industrial's general system supply for resale within Louisiana Industrial's service areas. Trunkline states it would deliver the gas to an existing point of interconnection between Trunkline and Southern Natural Gas Company located in West Carroll Parish, Louisiana, or to Louisiana Industrial at an existing point of interconnection located in St. Mary Parish, Louisiana. It is stated that the sales price which Louisiana Industrial would pay Trunkline is $3.1438 per dt equivalent of gas. The sales price consists of Trunkline's current average cost of gas, the GRI Surcharge, and an added margin pursuant to the authorization received in the STOPR order, it is indicated.

Further, it is stated that this service is conditioned upon the availability of capacity sufficient to provide service without detriment or disadvantage to Trunkline's existing customers which are dependent on Trunkline's general system supply. The term of the service requested herein would be from the date of first delivery, with termination to coincide with the expiration under the STOPR program, it is stated.

Comment date: May 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or

notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9137 Filed 4-15-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SW-FRL-2816-6]

Hazardous Waste Enforcement Policy

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: The Agency is today extending the deadline for public comment on its interim CERCLA settlement policy for an additional 30 days. The settlement policy was published on February 5, 1985 at 50 FR 5034. It governs private party cleanup and contribution proposals under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"). The comment period is being extended by 30 days to allow additional time for public comment on the policy.

DATE: Comments must be provided on or before May 8, 1985.

FOR FURTHER INFORMATION CONTACT: Debbie Wood at 202-3824-4829.

ADDRESS: Comments may be submitted to Debbie Wood, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, WH-527, 401 M Street SW., Washington, D.C. 20460.

Dated: April 8, 1985.

Gene A. Lucero,

Director, Office of Waste Programs Enforcement.

[FR Doc. 85-9084 Filed 4-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Caddo Broadcasting Corp.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City and State	File No.	MM Docket No.
A. Caddo Broadcasting Corp.	Marlow, OK	BPH-830124AR	85-98
B. Sherry Lynn Austin	Marlow, OK	BPH-830915AB	

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B
2. Comparative, A,B
3. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-9113 Filed 4-15-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 1985 Funding Preferences for Special Initiative Grants for Area Health Education Centers

The Bureau of Health Professions announces the final funding preferences for the second grant cycle for Fiscal Year 1985 Special Initiative Grants for Area Health Education Center programs authorized under the authority of section 781(a)(2) of the Public Health Service Act, as amended by Pub. L. 98-619.

Section 781(a)(2) authorizes Federal assistance to medical and osteopathic schools, which have previously received Federal financial assistance for the area health education centers (AHEC) program under either section 802 of Pub. L. 94-484 in Fiscal Year 1979 or under seciton 781. Applications submitted under this authority will be for the purpose of improving the distribution, supply, qualify, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps scholarship program to provide effective health services in health manpower shortage areas.

Proposed funding preferences were published for public comment in the **Federal Register** dated February 21, 1985, (50 FR 7232) and no comments were received during the 30-day comment period.

Therefore, in making Fiscal Year 1985 awards under this review cycle for

Special Initiative Grants for Area Health Education Center programs, the following funding preferences will be used:

1. Projects which will place increased emphasis on advancing the clinical education of health professions students and/or health professionals in the care of the elderly.

2. Projects which include the recruitment and training (including appropriate clinical experiences) of underrepresented minorities in the health professions.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: April 10, 1985.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 85-9105 Filed 4-15-85; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-85-1519; FR-1959]

Announcement of the HUD Multifamily Urban Homesteading Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of solicitation of proposals from eligible applicants to participate in a Multifamily Urban Homesteading Demonstration Program.

SUMMARY: HUD is soliciting applications from localities (units of general local government and their designated special purpose public agencies) to participate in a Multifamily Urban Homesteading Demonstration Program authorized by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181). HUD will award up to $3 million of Section 810 Urban Homesteading funds to approximately 10 localities for their purchase of HUD-owned, multifamily projects. This Demonstration will encourage localities to develop affordable homeownership opportunities using HUD-owned multifamily projects and multifamily projects already owned by the locality or acquired with non-urban homesteading funds. Additionally, this Demonstration will test the feasibility of using a variety of homeownership development and financing methods.

The purpose of the Demonstration is to show that it is practical and cost-effective for localities to help lower income tenants to acquire and rehabilitate multifamily projects for homeownership. The long-term objective is to develop a more complete body of knowledge about multifamily homesteading and to develop a cadre of experienced local government officials so that other local governments will be encouraged to develop multifamily homesteading projects in their own portfolios.

Approved applicants (recipients) will be expected to provide assistance for: Program administration, interim project management, arranging rehabilitation financing, rehabilitation management, conversion to tenant ownership, tenant training in management and project operation, and overall technical assistance.

DATE: Letter of intent due date—Two copies of the letter of intent to participate in the Multifamily Urban Homesteading Demonstration Program must be received or postmarked by 5:00 p.m., May 16, 1985.

ADDRESSES: One copy of the letter of intent shall be submitted to the Director, Office of Community Planning and Development (CPD), in the Field Office having jurisdiction over the applicant. A second copy shall be addressed to HUD Headquarters, at the address listed under "For Further Information Contact".

FOR FURTHER INFORMATION CONTACT: Richard R. Burk, Director, Urban Homesteading Program, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755-5324. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Previously, HUD attempted to demonstrate the feasibility of Multifamily Urban Homesteading by providing a demonstration grant in 1977 to the Urban Homesteading Assistance Board (UHAB) to extend New York City's homesteading activities to certain multifamily projects.

Using financing programs that existed in New York City at that time, the UHAB developed a model for developing low income, cooperative housing in New York. This model used "IN REM housing" (buildings to which the city takes title through tax foreclosure) which the city transferred to homesteaders for a nominal cost, sweat-equity rehabilitation, and job training funds from the CETA Program. Working closely with local neighborhood organizations that selected homesteaders, UHAB provided technical assistance on rehabilitation, packaging of loan applications, and training of homesteaders in rehabilitation techniques and cooperative management. UHAB worked closely with the city in identifying appropriate IN REM buildings for the demonstration and in securing loan approval. One innovative feature of the demonstration was the commitment by a consortium of New York banks to provide non-recourse construction loans that were replaced by Section 312 monies as permanent financing upon completion of construction.

The New York City homesteading demonstration was initially established in two neighborhoods, the South Bronx and the Lower East Side, and eventually was expanded to include two Brooklyn neighborhoods. In terms of rehabilitating all the buildings originally planned, the New York demonstration was a mixed success. Although several buildings were successfully completed and continue to provide affordable housing, other projects were halted in mid-construction, and some were never begun.

Some of the lessons learned from this experience were:

—It is possible to overwhelm the capacities of local development corporations. Organizations that had limited development experience were catapulted into major rehabilitation contracts, with 5-10 projects simultaneously in development.

—The reliance on CETA job training funds caused extensive problems, since the source of payments for labor expenses was administered separately from the remainder of the project funds.

—Many of the projects were located in extremely distressed areas and were unable to escape the prevailing atmosphere of deterioration and decline.

—Projects were initiated before there was a full complement of families and individuals committed to cooperatively restoring the building. The need to select and involve homesteaders early in the planning and work is essential in seeing a homesteading project through to successful completion.

Then, in 1978, an additional HUD grant to UHAB, plus CETA funds to train homesteaders in construction skills, plus Section 312 rehabilitation loan funds, were used to extend the New York experiment to seven other

cities: Springfield, Massachusetts, Hartford, Boston, Chicago, Cleveland, Oakland and Cincinnati. HUD envisioned a partnership of four principal actors at the local level in developing the housing: the city, a city-wide technical assistance organization, a neighborhood organization, and the homesteaders. Each of the cities that rehabilitated units used a cooperative housing model, although the condominium model was seriously explored. The cities contributed administrative support and Community Development Block Grant (CDBG) funds to write down front-end costs such as acquisition, legal fees, architect fees and closing costs. Section 312 funds, with a three percent interest rate, were used to finance the rehabilitation and the project team assisted in packaging loans in each city. In one site, Cleveland, a HUD-owned multifamily property was acquired through the Property Disposition staff in the Columbus Area Office. The results of the demonstration were described in a report prepared by the project staff and Dialoge Systems.

The seven-city technical assistance project uncovered a high degree of interest in multifamily homesteading. Most of the cities had no direct experience in cooperative housing development. Many of the local governments were aware of grassroots interest in multifamily homesteading but required assistance in implementing a project. Participating local governments contributed substantial resources in the form of: Community development grants to projects; nominal cost transfer of municipally held real estate; and management contracts with non-profit sponsors. As in the earlier New York City demonstration, an experienced development sponsor and a committed group of homesteaders were the keys to successful project implementation.

Also in 1978, Congress authorized HUD to explore the feasibility of expanding homeownership opportunities for lower income families by rehabilitating and converting multifamily properties to cooperatives and condominiums. This project, called the Section 510 Demonstration, started in three neighborhoods in New York City in 1979 and was then expanded to six cities and seven neighborhoods in 1980, including Buffalo, Phoenix, Baltimore, Chicago, St. Louis and Los Angeles. In this project, HUD provided technical assistance and administrative grants, as well as Section 8 subsidies, for improving other buildings located in the Section 510 Demonstration neighborhoods, with a percentage of syndication proceeds going to assist the multifamily homeownership experiment.

In addition, HUD, in its Multifamily Property Disposition Program, has sold several multifamily projects directly to lower income tenant cooperatives.

Mix of Ownership Types and Financing Models Sought in This Demonstration

Previous demonstrations have had varying components and successes. HUD would now like to use the knowledge gained from these previous demonstrations, test additional approaches to multifamily homeownership, and develop additonal expert knowledge in local governments regarding the disposition of publicly held multifamily projects for homeownership.

Ownership Types

HUD is interested in testing the feasibility of a variety of multifamily homeownership options in this demonstration. Tenants can own units under cooperative, condominium, or mutual housing legal structures. Within any of these legal structures, there are several potential variations that might fit particular circumstances in the demonstration.

Cooperatives

Under a cooperative structure, a cooperative housing corporation owns and operates the project. The corporate stockholders are the residents, who by virtue of their stock ownership have the right to occupy units under long-term proprietary leases.

The financial advantages of the cooperative ownership model for lower income homesteaders are several: individual cooperative members may not have to qualify for mortgages or other financing except with reference to their stock ownership; individual members may not be personally liable except to the cooperative; and cooperatives sometimes can assume old conventional finanacing. Additionally, tenant subsidies such as Section 8 rental assistance can be used in some cooperatives.

Cooperatives also have been popular for lower income housing because they are able to control their individual members through lease agreements, and they have several mechanisms whereby they can control the sale price of individual memberships.

Limited Equity Cooperatives. Cooperatives can control the initial and future prices of their stock. In lower income cooperatives, the price can be controlled so that the housing remains affordable to lower income families. Limited equity cooperatives derive a formula for calculating the value of stock at any time. The formula usually takes into account wage and price inflation, mortgage amortization and other financial contributions of the individual while a member.

Cooperatives can also control resale by automatically repurchasing the stock from the old member, retaining a right of first refusal on any intended sale, or controlling the selection of new members.

Leased Cooperatives. With this model, the cooperative corporation does not have full ownership of the property; instead, the property is leased from another owner. Managerial and financial responsibilities of the cooperative and its members are similar. The primary financial advantage for lower income families is that the cooperative need not raise money to purchase the property outright, and lease payments may be lower than loan payments on an acquisition loan. The leased cooperatives might serve as an interim model to be used when it is deemed inadvisable to transfer ownership of the property to the tenants immediately. This Demonstration allows for up to four years of transition to full ownership of the project by the cooperative housing corporation.

Syndicated Cooperatives. A limited partnership owns the housing project with the cooperative as one (or the only) general partner. The cooperative housing corporation enters into a financing agreement with the partnership to manage and occupy the project as a cooperative with payment of an agreed amount periodically to the partnership (a variation of the leased cooperative). The cooperative still has managerial and financial responsibilities, but the limited partners contribute a portion of the equity in return for tax benefits.

Condominiums

Under the condominium form of ownership, individual members own the units they occupy, and share ownership of common areas and facilities through a condominium association.

Condominiums have not been a popular vehicle for lower income ownership because: the individual owners must be able to qualify for any loans made to purchase the units; the property taxes on condominiums usually run high; the condominium association has limited powers over the individual with regard to maintenance, lifestyle, and other issues; and it is difficult to control the resales of condominium units. Rental assistance programs such a

Section 8 cannot be used in a condominium.

There is interest in testing condominium ownership in a lower income setting. The key to the model is a right of repurchase which is guaranteed to the managing entity (the condominium association or its agents) at a formula price. Under this model, the managing entity could be in a position to resell the unit to another lower income family at an affordable price.

Mutual Housing Associations

Mutual Housing Associations (MHAs) are organizations that may be: (a) Cooperatives, in which case they are eligible for participation as an ownership type in this Demonstration, or (b) sponsors prompting cooperative housing and other forms of affordable housing, in which case they are eligible as interim owners until ownership of the cooperative or condominium units is conveyed to individuals.

Financing Models

HUD is also interested in testing three types of financing models in this Demonstration, with emphasis on one model which separates the building construction subsidy from the occupant subsidy—sometimes called the "split subsidy" model. This is the same concept that underlies the Department's new Rental Rehabilitation Program, which was also authorized by the Housing and Urban-Rural Recovery Act of 1983. However, HUD encourages localities to use a broad mix of financing models. These can include, in addition to the "Split-subsidy model" (also called the "tenant-based subsidy model"), the "internal subsidy model" and the "project-based subsidy model."

The tenant-based subsidy or split subsidy model is one in which the project acquisition cost (if any) and the rehabilitation cost (if any) are subsidized separately from the subsidy given to individual eligible tenants to make the housing affordable for them. Both federally and locally owned projects could be used in this model. Acquisition and rehabilitation financing could be accomplished using a variety of Federal, State, and local subsidy programs, although primary emphasis would probably be with the Rental Rehabilitation Program, 24 CFR PART 511. (The demonstration property can participate in the Rental Rehabilitation Program. Rental Rehabiliation funds would subsidize the rehabilitation costs, but may not be used in the acquisition cost of the property.) Where Rental Rehabilitation grants are used, tenant subsidy could be made available from Section 8 Housing Vouchers (See Notice published at 49 FR 24858, July 12, 1984) or section 8 Existing Housing Certificates (24 CFR Part 882) where these resources are available in connection with the Rental Rehabilitation Program. In other cases, tenants who receive Vouchers or Certificates from the local PHA may be able to use that subsidy in the project if program requirements are met. However, *no Section 8 assistance will be provided specifically for this Demonstration.*

Any cooperative or mutual housing project would have to meet the requirements specified in Section 8 program regulations and procedures if the design depends on Section 8 Certificate or Voucher funds being used. In addition, the project would have to comply with terms established by HUD's Office of Property Disposition. Condominium projects are not eligible for Rental Rehabilitation or Section 8 Program Assistance.

The *internal subsidy* model would use only the initial upfront capital writedown inherent in transferring a property for little or no consideration to a cooperative or condominium association or an equivalent ownership entity. In this case, either a federally owned project or a locally owned project would be conveyed to the owner by the locality *for nominal consideration*, and the rehabilitation work and subsequent operations would be funded through innovative uses of conventional financing techniques. These might include homesteader down payment requirements, with the project probably requiring little rehabilitation work, and the mortgage repayment terms being spread out over a fairly long period of time. Limited equity or rent control provisions could be applied or not, depending on local design.

The *project-based subsidy* would be one in which the property acquisition cost (if any), the rehabilitation cost, and the operational subsidy for the project to maintain its affordability for lower income residents would be combined. HUD-owned projects would be used exclusively in this model, and Section 8 project-based subsidies under 24 CFR Part 886, Subpart C may be provided by HUD to assist up to 100 percent of the units, or a lesser number of units sufficient to prevent displacement of eligible tenants and to assure financial feasibility. This model will be restricted to cooperatives eligible for Section 8 assistance, and projects will be required to be maintained as lower income housing for a specified period after acquisition. The provision of Section 8 assistance is in no case guaranteed. Any locality interested in using this model should be aware that HUD's property disposition office may determine that the project should not receive such assistance.

HUD will not require one program design model for all participants in the Demonstration. Instead, in making preliminary choices of program participants, HUD will seek to select a representative mix of models and locations.

Information on Property Availability

Lists of HUD-owned multifamily projects not already sold or processed for sale are available from the property disposition staff of the HUD field office having jurisdiction over the locality.

HUD may use Section 810 funds only to reimburse the FHA insurance fund for the transfer of HUD-owned projects. However, localities may also obtain a list from the property disposition staff in the HUD field office of projects in the jurisdiction to which the Secretary of HUD has not yet acquired title, but which are in receivership or where HUD is mortgagee-in-possession. By acquiring this list, the locality will be able to determine the projects that may soon become HUD-owned. The locality may also be able to approach the owners of listed projects and attempt to negotiate with them and with HUD to acquire the project with other than Section 810 funds.

Program Requirements

1. *Eligible Applicants.* Any unit of general local government, as defined in 24 CFR Part 590, may apply to participate in the Multifamily Urban Homesteading Demonstration Program. A unit of general local government may, if it chooses, designate an independent local public agency to accept title to and to convey properties, and otherwise carry out the program. Both the unit of general local government and the designated public agency, if any, shall execute the Demonstration participation agreement with HUD.

HUD encourages applicants to submit innovative program designs meeting the purposes of the Demonstration. There is not specific preference for applicants that have an existing urban homesteading program.

2. *Eligible Projects.* The types of projects that may be used in the Multifamily Homesteading Demonstration include:

a. HUD-owned, formerly FHA-insured multifamily residential structures (5 or more units) that HUD determines to be suitable for a multifamily homesteading program meeting the standards of this Notice; and

b. Multifamily, nonresidential, and mixed-use property, to which title is held or can quickly be acquired by the participating locality, that is suitable for a multifamily homesteading program meeting the standards of this Notice. (HUD will not reimburse, or advance Section 810 funds to, localities for acquisition of such projects.)

In proposing HUD projects for the Demonstration, localities should keep in mind the limited amount of available funds, the possibility that HUD disposition processing for a specific project may have advanced too far to consider urban homesteading or any other disposition alternatives, and the regulatory policies and procedures governing property disposition.

Note.—HUD-owned properties that were formerly FHA-insured are the only properties that may be acquired with Section 810 funding for reimbursement under the Demonstration. A locality may still participate in the Demonstration by acquiring other suitable privately or publicly held properties with its own resources (See 2(b) above). Such localities must comply with the requirements of this Notice (including the signing of a Multifamily Urban Homesteading Agreement in accordance with paragraph 10), but will not be counted as part of HUD's anticipated 10 recipients under this Demonstration. Additional localities are, however, eligible to receive technical assistance from HUD's contractor.

Localities should be aware that 24 CFR Part 290, "Management and Disposition of HUD-Owned Multifamily Housing Projects", applies to conveyances of HUD-Owned (formerly FHA-Insured) multifamily projects under this demonstration. (See paragraph 10(b) of this notice.)

3. *Resources Provided by HUD.*

a. During Fiscal Year 1985, HUD will make available up to $3,000,000 of amounts appropriated under Section 810 to reimburse the FHA mortgage insurance fund in an amount approved by HUD not to exceed fair market value plus allowable closing costs, for the HUD-owned projects used in this Demonstration.

HUD will apply the cost of acquisition of the project and allowable closing costs to reduce the recipient's Section 810 allocation for the Demonstration. If the cost of a project exceeds a recipient's allocation, the recipient will be required to make up the shortfall from other resources. Recipients may acquire as many projects as their resources, management abilities, and the availability of suitable HUD-owned multifamily properties will permit.

b. During the first two years of the Demonstration, HUD will also provide a small amount of training and technical assistance from approved contractors receiving funds from the Secretary's Discretionary Fund under the CDBG program to assist interested localities in developing and implementing their program designs.

c. HUD encourages the uses of the new Rental Rehabilitation Program, 24 CFR Part 511, to carry out the split-subsidy financing model. Localities currently participating in the Rental Rehabilitation Program may use these grants and the accompanying housing Vouchers and Certificates for projects in the Demonstration, provided that the projects qualify for rental Rehabilitation Programs assistance under applicable regulations. Only forms of cooperative and mutual housing are eligible under these programs. The housing will be required to have a resale structure that maintains affordability for lower income families.

d. Section 8 project-based subsidies (24 CFR Part 886, Subpart C) may be available for HUD-owned properties in this Demonstration. For such projects, Section 8 Certificates under 24 CFR Part 882 and Section 8 Voucher assistance may be available from HUD on units that meet Housing Quality Standards. Where Rental Rehabilitation funds are used, certificates and vouchers allocated for use in connection with that Program will be available for eligible families for use in the Demonstration property or in other residences of their choosing. However, no Rental Rehabilitation funds, Housing Vouchers or Certificates will be provided specifically for the Demonstration.

4. *Eligible Costs.* No local program administrative costs or costs of property rehabilitation may be paid with Section 810 funds. The maximum amount charged to the Section 810 funds reserved for an approved applicant shall be the as-is value of an eligible HUD-owned project, plus reasonable charges customarily paid by a purchaser of real property in the jurisdiction (e.g., closing fees, acceptable title evidence, title policy, legal fees), as may be approved by HUD.

5. *Program Design.* Each applicant has flexibility to design its program to meet local needs within the limits of this Demonstration. However, all programs designs must contain the following:

a. *Sale of Properties:* The properties will be transferred by participating localities for such consideration as is determined to be appropriate, given each property's value and the financial feasibility of the proposed homesteading arrangement. Income to the recipient from such a sale is program income as defined in OMB Circular A–102 and must be used for urban homesteading activities, i.e., writedown of other costs associated with homesteading of the project, or for to the acquisition or rehabilitation of other properties for urban homesteading.

b. *Lower Income Occupancy:* For the first five years following completion of conversion or rehabilitation, whichever occurs later, at least 75 percent of the residential units in each project must be occupied by lower income families. Where Federal housing subsidy programs are used, limits on how many (and how long) units in a project would have to be affordable to lower income families, may exceed the above-stated basic requirements.

"Lower income families" means that the family's annual income does not exceed 80 percent of the median income for the area, with adjustments for family size, as determined by the Secretary. The family's annual income shall be determined in according with the requirements for the Section 8 Program in 24 CFR Part 813. The area income limits for defining lower income families for the Section 8 housing Assistance Payments Program shall apply. "Family" as used in this notice includes single person housesholds.

c. *Primary Use and Forms of Ownership:* The primary use (i.e., more than 50 percent of available floor space) of all multifamily homestead properties following conversion or rehabilitation, whichever occurs later, shall be residential. Residential use includes condominium, cooperative or mutual housing association forms of ownership under the law of the State in which the property is located.

d. *Displacement and Relocation:* Localities must design programs that minimize displacement. The following provisions are required for each participating locality:

(1) Existing tennants of homestead properties shall be given a right of first refusal to become homesteaders if they meet the local criteria for supporting homeownership responsibilities (e.g., ability to qualify for mortgage financing or ability to contribute sweat equity).

(2) Lower income tenant families who do not come within the provisions of paragraph (d)(4)(i) and who elect not to become homesteaders or who fail to meet the local criteria shall be offered relocation assistance similar to the provisions of 24 CFR Part 42—Uniform Relocation Assistance and Real Property Acquisition, as modified by this Notice. This assistance shall include:

(i) Payment for moving expenses—either $500 or actual reasonable costs;

(ii) Replacement housing—either a rental assistance payment (Section 8 Certificate or Voucher) or a down

payment assistance payment up to $4,000; and

(iii) Referrals to available comparable replacement housing, and information and counseling concerning individual rights under Title VIII of the Civil Rights Act of 1968.

(3) Tenants not covered by paragraph (4)(i) whose incomes exceed 80% of the area median, who elect not to become homesteaders, or who fail to meet the local criteria shall be offered the information and counseling assistance provided for under paragraph (d)(2)(iii).

(4) (i) Where Community Development Block Grant Funds are used to provide administrative and direct program delivery services, *all* tenants who do not become homesteaders must be afforded appropriate benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and HUD's regulations at 24 CFR Part 42 shall apply.

(ii) Where Community Development Block Grant funds are used to substantially rehabilitate any property, and tenants not covered by paragraph (d)(4)(i), above, are involuntarily and permanent displaced, *all* such tenants who do not become homesteaders must receive reasonable relocation benefits, but such benefits may be established at levels below those required by paragraph (d)(4)(i).

Localities may elect to provide additional assistance appropriate to the needs of the tenants.

e. *Civil Rights and Affirmative Action:* All program participants, except individual homesteaders, shall:

(1) Comply with the requirements of Title VI of the Civil Rights Act of 1964; Executive Order 11063; Title VIII of the Civil Rights Act of 1968; section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, which authorities prohibit discrimination on the basis of race, color, religion, sex, national origin, handicap, or age in any program or activity under this Demonstration;

(2) Employ affirmative marketing procedures in the advertising of units in homesteading properties. In order to provide all eligible persons an opportunity to participate as homesteaders in the Demonstration, the recipient shall advertise and use media, including minority outlets, that will reach persons who otherwise would be least likely to apply for participation; and

(3) Require each property owner of five units or more units who is participating in the Demonstration to certify that he or she will affirmatively market vacant units in the homestead buildings.

f. *Interim Conveyances:* A for-profit or not-for-profit developer, a local government agency, or a tenant group organized as a legal entity under State law, may accept interim conveyance of a project from the locality for rehabilitation and management before final conveyance to the lower income ownership cooperative, condominium or mutual housing association. Notwithstanding any such interim conveyance, HUD shall continue to hold the locality responsible for compliance with all the requirements of the Demonstration. Any independent agency or group which accepts interim conveyance shall sign an agreement with the locality, binding it to comply with the terms of the Demonstration and the locality's proposed program.

g. *Rehabilitation:* (1) The property must be rehabilitated to meet local code standards, within one year of initial conditional conveyance to a developer, agency or tenant group. If a Federal project-based subsidy is used, the developer, agency or tenant group must complete specified repairs required by HUD within one year, except where tenants agree to extend the time to up to two years. If Rental Rehabilitation funds are used, applicable Rental Rehabilitation requirements must be met within one year, except where tenants agree to extend the time to up to two years. If Section 8 Housing Vouchers or Certificates are used, dwelling units occupied by assisted tenants must meet Section 8 Existing Program Housing Quality Standards.

(2) Rehabilitation activity that meets the definition of "substantial improvement" in the National Flood Insurance Program regulations at 44 CFR 59.1 must meet the floodproofing standards of the National Flood Insurance Program if the property is located in a designated Flood Hazard Area;

(3) Rehabilitation activity that affects property included in or eligible for the National Register of Historic Places must be planned in accord with the Secretary of the Interior's *Standards for Rehabilitation;* and the State Historic Preservation Officer must be given an opportunity to comment on work affecting such historic property;

(4) All rehabilitation activity and properties acquired under this Demonstration shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801, et seq.) and the HUD Lead-Based Paint Regulations, 24 CFR Part 35 to:

(i) Assure the elimination of the immediate lead-based paint hazards; and

(ii) Notify potential homesteaders of the hazards of lead-based paint poisoning in residential units constructed before 1950; and

(5) All rehabilitation activity must comply with any energy conservation measures designated by the recipient as part of the repairs.

h. *Conversion Deadline:* The property must be converted to lower income homeownership by eligible homesteaders no later than four years after interim conveyance (if any) to a developer, agency or tenant group.

i. *Homesteader Training and Technical Assistance:* Where appropriate, participating recipients shall provide training and technical assistance for homesteaders performing sweat equity and self-help. Additional training and technical assistance are encouraged for long-term home maintenance and management.

j. *NEPA:* Recipients shall assist HUD in the environmental review process under 24 CFR Part 50, to the extent applicable. Before any specific property is acquired, the recipient shall submit to HUD a draft environmental review prepared in accordance with 24 CFR Part 50, Subpart E (and 24 CFR 58.40 where Community Block Grant or Rental Rehabilitation funds are used as part of the Demonstration).

The recipient's environmental review should address acquisition and any expected rehabilitation activity. However, the recipient may report activities as categorically excluded under 24 CFR 58.35, and those which the recipient finds do not trigger requirements under the related authorities listed at 24 CFR 58.5. The review should include an assessment for activities, if any, not categorically excluded, and state the nature of activities, if any, that trigger one or more of the related authorities. The resulting review is to be transmitted to HUD, which will complete the final review, including public notice or consultation requirements, if any. HUD will notify the recipient of its review and any conditions. In preparing its review documents, the recipient may prepare a single review for each project or a combined review covering all projects in the same neighborhood area or jurisdiction.

k. *Remedial Action:* The locality may be required to reimburse HUD for the amount of section 810 funds used to acquire a HUD-owned multifamily project if the conditions of the section 810 transfer to the locality are not

carried out in accordance with the time periods specified in this Notice, the Demonstration participation agreement or the documents executed with respect to the transfer of the property. HUD will make this determination on a case-by-case basis.

l. *Self-Help and Sweat Equity:* HUD encourages recipients to permit self-help and sweat equity in connection with the Demonstration. The recipient shall identify the degree to which self-help and sweat equity are permitted in its program. Although the terms "self-help" and "sweat equity" are frequently used interchangeably, self-help is the more general term. Sweat equity projects normally involve homesteader participation in the physical rehabilitation and construction work itself, while self-help may take other forms: for example, participation in planning, design, decision making or management.

m. *Citizen Participation:* Recipients shall offer to meet with, or shall invite written comments from, community and neighborhood groups in connection with developing the application.

n. *Interim Liability:* By accepting title to a project for homesteading, the recipient shall assume liability for injury or damage to persons or property by reason of a defect in the dwelling, its equipment or appurtenances, or for any other reason related to its ownership of the project.

6. *Letter of Intent Requirements for the Demonstration.*

a. Localities interested in participating in the HUD Multifamily Urban Homesteading Demonstration Program must submit (or have postmarked) a letter of intent to the HUD Field Office having jurisdiction, with a copy to HUD Central Office, no later than 5 p.m. on May 16, 1985. The letter of intent shall include, in ten pages or less, the following:

(1) A description of the ownership and financing design characteristics and specific financing methods the locality proposes to follow;

(2) A description of how the applicant's participation in the Demonstration will complement any other urban homesteading or community development activities that the locality is undertaking or intends to undertake;

(3) A list of the HUD-owned projects or locally owned projects it proposes to use;

(4) An estimate of the section 810 funds required to acquire listed HUD-owned projects;

(5) An estimate of the number and bedroom sizes of units it expects to be occupied by homesteaders;

(6) A description of the strategy the locality will use to assist existing tenants, especially lower income tenants, to continue to live in the project by purchasing a unit, and for tenants who wish to move out of the project, the type of relocation assistance the locality will provide;

(7) A description of the locality's previous experience, if any, in mulitifamily homesteading and conversion of multifamily property to lower income cooperative or condominium forms of ownership;

(8) A tentative dollar commitment of local resources identified by source, for:

- Rehabilitation;
- Interim Management;
- Relocation;
- Training and Technical Assistance;
- Administration; and
- Conversion.

(9) Designation of the public agency responsible for implementing the Demonstration, including its administrative, managerial, and legal relationship to the applicant, and a description of its experience in acquisition, rehabilitation, homesteading, training and technical assistance or similar programs that are providing or assisting homeownership for lower income persons;

(10) Certification: The locality shall certify that:

(i) Submission of the letter of intent and any subsequent application is authorized under State and local law (as applicable) and the locality, or its designated agency, possesses the legal authority to carry out a Multifamily Urban Homesteading Demonstration in accordance with this Notice; and

(ii) The locality will conduct and administer its Multifamily Urban Homesteading Program and, if applicable, ensure that its designated public agency or interim developer conducts and administers its program, in accordance with the requirements of this Notice; and

(11) Any additional documentation that HUD requests.

7. *Review and Approval of Letter of Intent.* HUD Field Office staff and Headquarters staff will review the letters of intent. The overall quality of each design will be the predominant factor in HUD's selection process. In evaluating designs of equal quality, HUD will attempt to maximize design variations and thereby increase the amount of information likely to be derived from the Demonstration.

a. Letters of intent will be reviewed by HUD Field Office CPD and Housing staff, and the Regional Office will make recommendations to the Assistant Secretary for Community Planning and Development within 15 calendar days of the original due date of the letters.

The Field Office evaluation shall consider:

(1) The feasibility of the program design and the probable ability of an applicant to implement and successfully carry out the project on schedule, given the resources available;

(2) The amount and relevance of the applicant's stated experience, compared to other applicants, with multifamily homesteading or other similar programs that provide for conversion of properties for lower income homeownership;

(3) Previous experience of the Field Office with the locality in community development, housing, and fair housing and equal opportunity matters;

(4) The suitability and economic feasibility of the properties selected for multifamily homesteading, under the standards of this Notice;

(5) Regulatory waivers (of 24 CFR Part 290) that may be needed in order to secure property through the HUD multifamily property disposition program for homesteading models other than the project-based subsidy model;

(6) The soundness of the section 810 funding request and the applicant's statement of any other resources for acquisition, rehabilitation financing, training, or other project activities; and

(7) The preliminary judgment of the Field Office as to the probability that the proposed program would help to achieve the purpose of the Demonstration.

b. The Assistant Secretary for CPD and the Assistant Secretary for Housing will review the Field Office recommendations and make an initial determination on participants within 15 calendar days of the date of submission by the Field Office. HUD assumes that approximately twice the number of cities (about 20) will be selected as will eventually participate in the Demonstration. Selections will be made so as to obtain a variety of financing models, locations and program designs.

c. Localities designated on the basis of their letters of intent will undergo a preapplication needs assessment conducted by the HUD Field Office and the HUD Technical Assistance Contractor. A plan to provide technical assistance during application preparation will be developed and implemented to correct any identified areas of weakness in the applicant's proposed homesteading program, such as financing mechanisms, conversion mechanics or tenant training.

8. *Applications.*

a. Within 45 calendar days of selection under paragraph 8(b), with the

guidance of the HUD Field Office (CPD and Housing staff) and HUD's Technical Assistance Contractor, the localities selected in the first review will be invited to prepare and submit a program application to the Field Office which will include:

(1) A Management and Work Plan with schedules for completion of all tasks;

(2) Firm section 810 funding request;

(3) Firm commitment of the local resources noted in the letter of intent, plus tentative commitment of private financial resources;

(4) Local and HUD-owned project selection (including new suitability and economic feasibility descriptions if a project differs from that identified in the letter of intent);

(5) Specific homesteading program design, including all implementation steps, such as detailed feasibility studies, financing plan, interim management plan, rehabilitation plan, marketing and conversion plan, relocation and tenant training plan, and final operating plan;

(6) Designation of any agency or group selected to implement any phase of the project;

(7) Identification of any necessary additional technical assistance; and

(8) Request for any regulatory waivers that may be needed in order to secure multifamily projects with other than a project-based subsidy.

b. Within 15 calendar days of the final application due date, the Regional Administrator (or Manager through the Regional Administrator in the case of Category A Field Offices) will make recommendations to the Assistant Secretary for Community Planning and Development, based on Field Office staff estimates of:

(1) The feasibility of the Management and Work Plan;

(2) The availability and suitability of any other HUD-controlled funds, as noted in the application;

(3) The feasibility of the final program design;

(4) The capability and suitability of agencies and groups designated to participate;

(5) The amount of additional technical assistance required; and

(6) The application's compliance with Demonstration requirements as described in this Notice.

9. *Selection.* Beginning 15 calendar days after receipt of the Regional Administrator's recommendations, the Assistant Secretary for Community Planning and Development and the Assistant Secretary for Housing shall review the applications, and select and announce the localities that will participate in the Demonstration. HUD anticipates that about 10 localities will be selected. Those not selected may be able to proceed on their own, without HUD funding, based on preapplication technical assistance provided by HUD and the localities' own resources.

10. *Multifamily Urban Homesteading Agreement.*

a. Within 30 days after the announcement of selected localities, HUD intends to begin executing Multifamily Urban Homesteading Agreements with the selected Demonstration recipients. This agreement will be executed by HUD, the locality and any designated independent agency, based on the approved program design. The agreement will set out implementation time schedules and will be the basis for reserving the required section 810 funds, as well as continuing HUD contractor-provided technical assistance and training as agreed upon between HUD and the locality. The agreement shall also provide that the locality shall require a certification from any interim conveyance participant, in a form prescribed by HUD, that the participant will affirmatively market all vacant units. Alternatively, if the locality is also a grantee participating in HUD's Rental Rehabilitation Program, the locality may require from each project participant a certification that the participant will affirmative by market units in accordance with the requirements of the locality's affirmative marketing strategy which developed for the purpose of participating in the Rental Rehabilitation Program. The agreement should also state that project participants will market units and select homesteaders in accordance with paragraph 5(e) of this Notice, Civil Rights and Affirmative Action.

b. HUD has determined to apply the requirements of 24 CFR Part 290 to conveyances of HUD-owned multifamily projects to localities for the purpose of this Demonstration. The provisions of Part 290 relating to disposition of multifamily projects apply to sales of such projects for purposes of the Demonstration, but selected provisions may have to be waived for such sales. Waivers will be considered on a case-by-case basis as the need arises and are not specifically addressed in this Notice. Technical assistance on these issues will be provided by the HUD Technical Assistance Contractor in conjunction with the HUD Office of Housing, Multifamily Property Disposition Office.

11. *Monitoring and Reporting.*

a. HUD staff will monitor the recipient's progress and the recipient will report quarterly, in a format to be specified by HUD, for the duration of the Demonstration on its problems and experiences. HUD will require approval of changes in the program design previously incorporated as part of the Multifamily Urban Homesteading Agreement. HUD reserves the right to suspend or terminate HUD's participation in the locality's homesteading program for noncompliance with the Multifamily Urban Homesteading Agreement or the terms of this Notice, and to withdraw unexpended section 810 funds and technical assistance support.

b. As required by Congress, HUD will evaluate the Demonstration. The recipient will cooperate with HUD by providing needed program information and by facilitating HUD's access to project participants and project financial records.

12. *Waiver Authority.* HUD may waive any requirement of this Notice not required by law whenever it determines that undue hardship would result from applying the requirement or where applying the requirement would adversely affect achievement of the purpose of the Demonstration.

13. *Retention of Records.* The recipient shall maintain adequate financial records, property closing documents, supporting documents, statistical records, and all other records pertinent to the Demonstration for one year after completion of the five-year occupancy requirement under paragraph 5b.

14. *Access to Records and Audits.*

a. *Access to records:* The Secretary, the Comptroller General of the United States or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property of the recipient pertaining to funds or property transferred under this Notice, for the purpose of making surveys, audits, examinations, excerpts and transcripts.

b. *Audit:* The recipients's financial management system shall provide for audits in accordance with audit guidelines prescribed by Office of Management and Budget (OMB) Circular A–102, Attachment P—Audit Requirements.

Other Matters

Under 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certified that this Notice does not have a significant economic impact on a substantial number of small entities because of the limited funding level of the Demonstration and the anticipated selection of only approximately 10 applicants.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h). No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50. A copy of this Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410–7000.

The Catalogue of Federal Domestic Assistance program number and title are 14.222, Urban Homesteading.

Authority: Sec. 810(h) of the Housing and Community Development Act of 1974 (12 U.S.C. 1708e); section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 35 35 (d)).

Dated: April 10, 1985.

Jack R. Stokvis,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 85–9110 Filed 4–15–85; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. N–85–1520; FR–2105]

Application Submission Dates for HUD-Administered Small Cities Program

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice advises prospective applicants of the dates for submission of applications to HUD offices for the HUD-administered Small Cities Program in Maryland and New York under the Community Development Block Grant Program for Fiscal Year 1985.

FOR FURTHER INFORMATION CONTACT: Helen Duncan, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410–5000. Telephone (202) 755–6322. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established dates for the submission of applications for Small Cities grants in the States of Maryland and New York for Fiscal Year 1985. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-administered Small Cities Program will be accepted only during the designated time period. Applications received in HUD offices after the deadline must be postmarked no later than the applicable deadline submission date. Any applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose Grants under 24 CFR 570.430, or applications for Comprehensive Grants under 24 CFR 570.426, are required to be submitted to HUD in accordance with the following schedule:

Maryland and New York	No earlier than April 15, 1985	No later than April 29, 1985

Applicants in Maryland should submit their applications to the Baltimore Field Office. Applicants in New York in the Counties of Sullivan, Ulster and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau and Suffolk Counties should submit applications to the New York Regional Office. All other nonentitled communities in New York should submit applications to the Buffalo Field Office.

The applications requirements related to this program have been approved by OMB and assigned approval number 2506–0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: April 10, 1985.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 85–9112 Filed 4–15–85; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–85–1518; FR–2096]

Indian Prototype Cost Determinations Issued Under the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of prototype cost determinations.

SUMMARY: This Notice establishes prototype limits for development of Indian housing new construction projects under the United States Housing Act of 1937. The prototype cost determinations stated in this Notice supersede the prototype cost schedules previously published, and all amendments and additions to such schedules published before the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Andrew Suski, Office of Indian Housing, Room 4234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755–6522. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 6(b) of the United States Housing Act of 1937 (42 U.S.C. 1437d) requires HUD to determine costs in different areas for construction and equipment (prototype costs) of new dwelling units suitable for occupancy by lower income families. This determination must be published in the **Federal Register.** The prototype costs constitute a limit on development cost for the construction and equipment of new housing projects.

The schedules in this Notice represent updates of the per unit prototype cost limits for development of Indian housing under 24 CFR Part 905 (§§ 905.213 and 905.214(b)), last published and effective December 7, 1982 (47 FR 55136). This Notice does not affect the schedules for public housing prototype costs published December 6, 1984 (49 FR 47772). Additionally, this notice does not govern prototype costs for Indian housing projects located in areas not identified in the appendix to this notice (e.g., Oklahoma). These projects will be governed by the prototype costs set forth in the December 6, 1984 public housing notice.

The prototype cost determinations for the update are based on actual public and Indian housing project data from HUD field offices and on construction

cost information published by the private sector of the housing industry. The update includes approximately a 3.4 percent national average increase to reflect inflation. This increase should be sufficient based on our experience that the prototype limits last published have been more than sufficient to permit Indian housing development to proceed during the past two years.

Since Section 6(b) of the U.S. Housing Act of 1937 provides that the prototype costs shall become effective upon publication in the **Federal Register**, this Notice is effective today, the day of publication.

The following factors were considered in developing prototype costs:

(1) Prototype cost comprises the cost of dwelling structures, (Account No. 1460), and dwelling equipment, (Account No. 1465), as described in HUD Low-Rent Housing Accounting Handbook 7510.1, Chapter 3, Section 15, and includes a pro rata share of the builders' fee and overhead, insurance, social security, sales tax, and bonds.

(2) Prototype cost does *not* include the costs of site acquisition, site improvement, nondwelling structures or spaces (and equipment), planning (architectural-engineering fees, permit fees, inspection, and similar costs), relocation, interest or IHA administrative costs, all of which are described in HUD Low-Rent Housing Accounting Handbook 7510.1, Chapter 3, Section 15.

(3) Section 6(b) of the Act identifies eight factors the Secretary is to consider in determining prototype costs, which include such things as the effectiveness of existing cost limits in the area, advice of local housing producers, maximization of energy conservation for heating, lighting and other purposes, and the extra durability required for safety, security and economical maintenance of the housing. (See 42 U.S.C. 1437d).

(4) Prototype costs are ceiling amounts that may be approved for a particular project. Development of Indian housing under Part 905 also must take into account compliance with applicable design requirements in the Indian housing regulations. The HUD Minimum Property Standards are taken into account but are not controlling. (See § 905.212(a)).

Written comments will be considered, and additional amendments will be published, if the Department determines that acceptance of the comments is appropriate. Comments with respect to the cost limits for a given location should be sent to the local HUD office having jurisdiction for that location. A list of these offices follows:

	Area(s) served
Region 5, Office of Indian Programs, 300 S. Wacker Drive, Chicago, Illinois 60606.	Regions 1–5 and Iowa.
Region 6, Indian Programs Division, 200 N.W. Fifth Street, Oklahoma City, Oklahoma 73102.	Oklahoma, Kansas, Missouri, Texas, Arkansas and Louisiana.
Region 8, Office of Indian Programs, 1404 Curtis Street, Denver, Colorado 80202.	Region 8 and Nebraska
Region 9, Office of Indian Programs, 101 North First Ave., Phoenix, Arizona 85003.	Region 9 and New Mexico.
Region 10, (Seattle) Office of Indian Programs, 1321 Second Ave., Seattle, Washington 98101.	Region 10, except Alaska.
Region 10, (Anchorage) Office of Indian Programs, 701 C Street, Box 64, Anchorage, Alaska 99513.	Alaska.

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since statutorily required prototype costs are categorically excluded under 24 CFR 50.20(1).

The Catalog of Federal Domestic Assistance program is: 14. 147, Low-Income Housing-Homeownership for Low-Income Families (Turnkey III, Mutual Help for Indians).

The prototype per-unit cost schedule for all prototype cost areas issued under 24 CFR 905.213 are hereby established as shown on the tables set forth below entitled "Prototype Per-Unit Cost Schedule."

Authority: Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Sec. 6(b), U.S. Housing Act of 1937, 42 U.S.C. 1437(b).

Dated: April 10, 1985.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

APPENDIX—PROTOTYPE PER UNIT COST SCHEDULE—INDIAN HOUSING

Indian prototype area	State	Design type	One bedroom prototype	Two bedroom prototype	Three bedroom prototype	Four bedroom prototype	Five bedroom prototype
Region I							
Mashantucket	Connecticut	Detached	36,293	40,068	47,823	57,749	64,160
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Old Town	Maine	do	31,744	33,805	40,016	48,184	53,606
			27,918	30,958	36,914	44,462	49,425
			28,073	32,106	37,689	43,842	48,081
Calais	do	do	30,917	34,225	40,791	49,218	54,802
			28,435	31,589	37,844	45,696	50,356
			28,280	32,364	38,206	44,255	48,443
Region III							
Big Cypress	Florida	Detached	24,558	29,986	36,655	43,687	48,029
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Brighton	do	do	24,558	29,986	36,655	43,687	48,029
			0	0	0	0	0
			0	0	0	0	0
Cherokee	North Carolina	do	22,851	28,125	33,553	39,861	44,152
			0	0	0	0	0
			0	0	0	0	0
Region V							
Manistique	Michigan	Detached	30,762	37,741	44,927	53,923	60,437
		Row	26,574	32,674	38,827	43,460	52,165
		Walk-up	26,005	31,951	38,051	45,703	51,183
Cass Lake	Minnesota	do	36,035	44,410	53,098	63,694	71,036
			31,847	38,240	45,892	55,250	62,764
			28,177	35,880	42,784	49,012	52,114
Red Lake	do	do	32,881	40,843	48,598	56,163	64,760
			29,252	36,087	42,963	51,597	57,545

APPENDIX—PROTOTYPE PER UNIT COST SCHEDULE—INDIAN HOUSING—Continued

Indian prototype area	State	Design type	One bedroom prototype	Two bedroom prototype	Three bedroom prototype	Four bedroom prototype	Five bedroom prototype
			25,850	32,933	38,930	44,887	49,929
Lac Du Flambeau	Wisconsin	do	32,623	40,171	47,978	57,897	64,367
			28,900	35,570	42,342	50,673	56,612
			25,281	32,106	37,793	43,790	48,184
Red Cliff	do	do	31,279	38,517	46,013	56,257	61,730
			27,556	33,915	40,585	48,806	54,233
			24,144	30,656	36,190	41,826	46,220
		Region VI					
		Detached	34,122	38,000	45,341	54,462	60,954
		Row	29,004	32,364	38,485	46,013	51,235
		Walk-up	27,866	31,744	37,483	43,583	47,874
Isleta	do	do	31,537	35,311	42,084	50,821	56,663
			25,643	28,538	34,225	40,791	45,589
			22,845	25,643	30,400	35,208	38,566
Laguna	do	do	32,313	35,826	42,911	51,752	57,542
			29,159	32,571	38,878	46,662	51,752
			25,592	29,211	34,536	38,964	43,997
Mescalero	do	do	32,416	36,035	42,963	51,752	57,697
			29,966	33,243	39,706	47,357	52,734
			26,160	29,728	35,206	40,595	44,824
Penasco	do	do	32,571	36,293	43,221	52,165	58,318
			30,400	33,812	40,326	48,184	53,561
			27,677	30,245	35,828	41,360	45,651
Pojoaque	do	do	33,036	36,862	43,945	52,631	58,938
			30,555	33,790	40,326	48,184	53,665
			26,677	30,400	35,932	41,670	45,703
Zuni	do	do	31,227	38,723	46,116	55,526	61,730
			28,177	35,001	41,567	48,787	55,629
			25,333	32,054	37,948	43,738	48,236
Standing Rock	do	do	32,674	40,429	48,061	58,007	64,367
			31,123	39,757	45,961	54,905	61,420
			27,763	35,104	41,619	47,874	52,837
Nageezi	do	do	33,140	41,102	48,857	58,895	65,401
			31,589	39,240	46,582	56,730	62,454
			28,228	35,821	42,187	49,610	53,581
Alamo	do	do	32,674	40,429	48,061	58,007	64,367
			31,123	38,568	45,961	54,905	61,420
			27,763	35,104	41,619	41,619	47,874
		Region VII					
		Detached	28,987	33,450	39,654	47,771	53,146
		Row	25,436	31,227	37,121	44,888	49,891
		Walk-up	23,730	30,245	36,986	42,911	45,393
Halton	Kansas	do	27,763	34,381	40,740	49,063	54,647
			26,387	32,778	38,982	46,995	52,424
			26,936	34,174	40,326	48,737	51,648
Santee	Nebraska	do	31,744	39,240	46,840	56,353	63,022
			27,556	34,122	40,636	48,857	54,440
			26,626	33,760	39,964	48,375	51,336
Winnebago	do	do	31,744	39,240	46,840	56,353	63,022
			27,556	34,122	40,636	48,857	54,440
			26,626	33,760	39,964	48,375	51,336
		Region VIII					
		Detached	33,450	39,861	45,981	55,422	61,782
		Row	30,451	36,242	41,825	50,511	56,198
		Walk-up	29,676	35,311	40,791	49,218	54,802
Browning	do	do	34,432	40,740	46,892	56,405	62,971
			31,175	37,017	42,549	51,183	57,077
			30,451	36,035	41,463	49,829	55,629
Harlem	do	do	35,518	42,291	48,857	58,930	65,659
			32,313	38,466	44,410	53,561	59,682
			31,486	37,483	43,325	52,217	58,111
Wolf Point	do	do	35,156	41,722	48,701	58,366	65,245
			31,951	37,948	44,204	53,044	59,197
			31,123	36,966	43,056	51,597	57,646
Lodge Grass	do	do	36,242	41,877	48,340	58,266	64,935
			32,157	37,172	42,911	51,700	57,646
			30,400	36,190	41,774	50,356	56,146
Ft. Totten	North Dakota	do	39,137	44,869	49,994	58,266	63,901
			35,518	40,533	45,393	52,868	58,007
			34,277	39,034	43,887	50,976	55,836
Mission (SD)	South Dakota	do	35,415	42,187	48,857	58,835	65,452
			33,657	40,066	45,375	55,888	62,143
			30,059	35,880	41,515	50,048	55,681
Ft. Thompson	do	do	36,759	43,790	50,718	61,109	68,089
			34,898	41,670	48,184	58,058	64,677
			31,227	37,224	43,118	51,928	57,904
McLaughlin	do	do	37,741	44,824	51,907	62,350	69,588
			35,880	42,653	49,270	59,197	66,073
			32,157	38,155	44,100	52,993	58,145
Wagner	do	do	34,070	40,585	46,995	56,580	63,074
			32,313	38,568	44,662	53,768	59,920
			28,952	34,484	39,964	48,029	53,561
Sisseton	do	do	34,742	41,205	47,564	57,129	63,850
			33,036	39,137	44,152	54,287	60,696
			29,521	35,001	40,429	48,548	54,285

APPENDIX—PROTOTYPE PER UNIT COST SCHEDULE—INDIAN HOUSING—Continued

Indian prototype area	State	Design type	One bedroom prototype	Two bedroom prototype	Three bedroom prototype	Four bedroom prototype	Five bedroom prototype
		Region IX					
Kaibab	Arizona	Detached	32,261	39,851	47,564	57,180	69,860
		Row	29,366	36,190	43,273	51,803	67,801
		Walk-up	27,504	35,208	41,412	49,029	62,837
Ft. Mojave	do	do	28,228	35,104	41,987	50,048	65,733
			26,626	33,066	39,189	47,202	62,527
			24,144	29,966	35,466	42,808	47,867
Sacaton	do	do	27,763	34,010	40,898	48,966	64,366
			25,126	30,917	36,892	44,389	59,529
			23,937	30,089	35,672	41,152	45,340
San Carlos	do	do	28,435	35,156	41,722	50,304	65,981
			25,953	32,054	38,258	45,910	61,121
			24,681	31,020	36,962	42,497	46,882
Salts	do	do	29,004	35,673	42,497	51,235	66,922
			26,470	32,466	38,723	46,582	61,959
			25,128	31,537	37,379	43,221	47,816
White River	do	do	28,538	35,415	42,084	50,614	66,198
			26,419	32,571	38,827	46,633	62,185
			24,816	31,227	37,121	42,236	47,306
Camp Verde	do	do	28,073	34,794	41,102	49,787	65,474
			25,902	31,947	37,948	45,586	60,876
			24,296	30,710	36,367	41,926	46,220
Kearns Canyon	do	do	34,587	42,859	50,976	61,368	68,244
			32,830	40,666	48,477	57,852	64,780
			29,314	36,966	43,780	50,511	55,029
Ft. McDowell	do	do	27,815	34,587	40,895	48,322	54,857
			25,850	31,847	37,844	45,341	50,825
			23,986	30,503	36,067	41,515	46,095
Parker	do	do	29,366	36,035	42,858	51,752	57,646
			26,729	32,881	39,292	41,150	52,662
			25,230	31,899	37,636	43,450	48,133
Peach Springs	do	do	31,744	39,292	46,833	56,250	62,660
			29,252	36,087	43,014	51,648	57,542
			27,401	34,742	41,102	47,387	62,372
Rough Rock	do	do	36,100	44,772	53,303	64,211	71,294
			34,225	42,549	50,666	60,541	67,675
			30,606	38,672	46,805	52,788	58,165
Steamboat	do	do	34,432	42,901	50,686	61,006	67,779
			32,571	40,429	48,133	57,543	64,315
			29,159	36,759	43,531	50,201	55,297
Kaibito	do	do	38,000	47,047	55,991	67,417	74,995
			36,025	44,669	53,199	63,591	71,139
			32,157	40,636	48,133	55,474	61,056
Lone Pine	California	do	33,036	41,774	49,374	57,180	62,971
			31,537	39,861	47,096	54,595	60,127
			30,038	37,948	44,876	51,959	57,232
Ft. Bidwell	do	do	41,515	51,493	58,301	62,350	66,124
			39,395	48,960	53,510	56,145	61,471
			35,725	44,359	48,301	53,013	55,733
Susanville	do	do	40,843	50,769	57,284	64,316	66,944
			36,827	46,091	54,544	60,599	64,760
			35,208	43,531	49,322	54,805	58,690
Granstone	do	do	36,759	46,599	51,597	57,594	61,368
			35,001	43,460	49,912	54,802	58,318
			31,744	39,344	44,410	48,425	52,789
Hoopa	do	do	37,483	46,582	50,686	58,198	66,421
			35,570	44,100	48,133	53,458	55,319
			32,209	39,912	43,531	48,184	50,046
Tule River	do	do	35,465	47,771	51,959	57,846	59,972
			36,500	45,238	49,374	54,802	58,716
			33,036	40,825	44,589	49,425	51,338
Barona	do	do	22,490	34,484	42,446	50,576	56,979
			21,094	32,261	39,602	47,512	53,096
			20,525	32,261	39,395	45,551	50,097
Campo	do	do	20,163	24,704	42,859	51,483	57,490
			18,871	32,571	40,016	46,029	53,613
			18,509	32,726	40,016	46,323	50,621
Morongo	do	do	21,559	33,066	40,791	48,980	54,595
			20,370	30,966	38,208	45,755	51,169
			19,543	30,813	37,826	43,563	47,825
Torrez-Martinez	do	do	29,409	36,604	43,897	52,578	58,473
			27,896	34,225	40,695	48,332	54,750
			27,901	34,225	40,869	47,089	51,597
Chemehuevi	do	do	30,658	37,686	44,721	54,027	60,075
			28,900	35,259	42,032	50,673	56,406
			28,487	35,053	41,619	50,252	55,909
Santa Ynez	do	do	30,245	37,224	44,255	53,354	59,455
			29,934	33,191	41,102	52,063	58,063
			26,574	32,965	39,189	47,409	52,882
Rincon	do	do	22,076	33,864	41,619	49,991	55,784
			20,732	31,940	38,930	46,685	52,269
			20,163	31,940	38,779	44,576	49,218
Pala	do	do	21,404	32,630	40,481	48,495	54,130
			20,215	30,710	37,998	45,363	50,799
			19,396	30,555	37,327	43,221	47,481
Elko	Nevada	do	37,636	41,825	48,990	58,524	64,994
			35,776	39,757	46,530	55,578	61,679
			32,778	36,500	42,704	50,976	56,612
Fallon	do	do	37,636	41,825	48,990	58,524	64,994

APPENDIX—PROTOTYPE PER UNIT COST SCHEDULE—INDIAN HOUSING—Continued

Indian prototype area	State	Design type	One bedroom prototype	Two bedroom prototype	Three bedroom prototype	Four bedroom prototype	Five bedroom prototype
			35,776	39,757	46,530	55,578	61,678
			32,778	36,500	42,704	50,976	56,612
Gardnerville	do	do	37,638	38,517	45,269	54,162	59,869
			35,776	39,757	46,530	55,578	61,678
			32,002	35,518	41,619	49,684	55,164
		Region X					
			32,881	40,636	46,340	56,310	64,864
		Detached	30,958	38,103	45,186	54,802	60,696
Coeur D'Alene	Idaho	Row	27,660	35,466	41,619	48,081	53,096
		Walk-up	34,019	41,877	50,304	60,366	67,055
Mission (OR)	Oregon	do	32,261	39,757	46,995	56,870	63,229
			31,175	39,499	46,530	54,162	59,610
Warm Springs	do	do	31,847	39,240	47,047	56,508	62,712
			29,966	37,017	43,738	52,941	58,835
			29,055	36,759	43,325	50,459	55,474
Taholah	Washington	do	29,676	36,397	43,531	52,320	58,163
			28,590	35,156	42,032	50,459	56,196
			27,298	32,630	40,016	48,081	53,510
Neapelium	do	do	30,762	37,741	45,134	54,162	60,127
			28,900	35,466	42,291	50,821	56,456
			28,332	34,742	41,515	49,836	55,319
Yakutat	Alaska	do	40,378	49,839	59,300	71,066	79,618
			0	0	0	0	0
			0	0	0	0	0
Ft. Yukon	do	do	56,405	69,795	83,030	101,229	0
			0	0	0	0	0
			0	0	0	0	0
Galena	do	do	60,748	74,965	89,338	108,777	0
			0	0	0	0	0
			0	0	0	0	0
Coastal Area North of Aleutians	do	do	68,451	84,530	100,505	122,809	0
			0	0	0	0	0
			0	0	0	0	0
Tok Junction	do	do	52,579	64,780	77,188	94,176	0
			0	0	0	0	0
			0	0	0	0	0
Barter Island North Coastal Area	do	do	70,415	86,959	103,555	126,407	0
			0	0	0	0	0
			0	0	0	0	0
Island Area North of Aleutians	do	do	78,119	96,524	114,929	140,159	0
			0	0	0	0	0
			0	0	0	0	0

[FR Doc. 85-9111 Filed 4-15-85; 8:45 am]
BILLING CODE 4210-33-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Multiple Use Advisory Council Meeting, Salt Lake City, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Multiple Use Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92-463, that a meeting/tour of the Salt Lake District Multiple Use Advisory Council will be held on May 6, 1985, beginning at 8:00 a.m. in the FAA Training Room at the Executive Air Terminal on the east side of the Salt Lake International Airport.

The agenda of the meeting will include a briefing and aerial tour related to the West Desert Pumping Project for the Great Salt Lake. Other agenda items will include proposed BLM wilderness areas, the BLM/Forest Service interchange, update on the grasshopper problem, grazing fee study and the election of a chairman for the Advisory Council.

Anyone wishing to make a statement to the Council must notify the District Manager, 2370 South 2300 West, Salt Lake City, Utah 84119 at (801) 524-5348, before 4 p.m. on May 3rd. A time limit may be established per person by the District Manager.

Frank Snell,

District Manager.

[FR Doc. 85-9087 Filed 4-15-85; 8:45 am]
BILLING CODE 4310-DQ-M

[A-20348-A]

Realty Action: Exchange of Public Lands, Pinal County, AZ

Correction

In FR Doc. 85-6798 beginning on page 11580 in the issue of Friday, March 22, 1985, make the following correction: In the third column, **Gila and Salt River Meridian, Arizona,** line four, remove the second land description reading, "SW¼ NW½".

BILLING CODE 1505-01-M

[A20633]

Public Lands; Proposed Classification Decision; Pinal County, AZ

Correction

In FR Doc. 85-6802 appearing on page 11581 in the issue of Friday, March 22, 1985, make the following corrections:

In the first column, the third line in the heading should appear as it does above; also the last of the land description, "Sec. 36, Lots 7-12, SE¼." should read "Sec. 36, Lots 7-12, SW¼."

BILLING CODE 1505-01-M

[N-41323; 5-00253]

Realty Action—Competitive Sale; Public Lands in Washoe County, NV

Correction

In FR Doc. 85-7221 beginning on page 12085 in the issue of Wednesday, March 27, 1985, make the following corrections: On page 12086, in the first column, in the second paragraph, in the second line, "bed" should read "bid"; also, in the

seventh paragraph, in the second line, "at cost" should read "at a cost".

BILLING CODE 1505-01-M

[5-0025-1-6P5]

Salt Lake District, UT; Availability; Preliminary Box Elder Resource Management Plan; Draft Environmental Impact Statement and Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of preliminary Box Elder Resource Management Plan and draft environmental impact statement and public hearing.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act (FLPMA) and section 102(2)(C) of the National Environmental Policy Act (NEPA), the Bureau of Land Management (BLM) has prepared a proposed Resource Management Plan (RMP) and final Environmental Impact Statement (EIS) for Box Elder Planning Area. The Box Elder Planning Area is essentially Box Elder County, Utah.

The preliminary RMP considers the management choices of four alternatives analyzed in the EIS. Alternatives include: No action, protection and enhancement of environmental values, resource development and commodity production, and most-balanced use.

Copies of the Draft RMP/EIS are available from: Dennis Oaks, RMP/EIS Team Leader; Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 524–5348. Public reading copies area available for review at the following two locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, NW, Washington, D.C. 20240

Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111–2303.

Written comments on the Draft EIS should be submitted to the Salt Lake District Manager by July 25, 1985.

Notice is hereby given that oral and/or written comments will be received at a public hearing at the following date, time and location: June 6, 1985; 7:00 p.m.; Commission Chambers, Box Elder County Courthouse, Brigham City, Utah.

Requests to submit oral and/or written testimony at the hearing will be received at the door.

Written and oral comments concerning the adequacy of the Draft EIS will be considered in the preparation of the proposed Box Elder RMP and Final EIS.

John H. Stephenson,

Acting Salt Lake District Manager.

[FR Doc. 85-9088 Filed 4-15-85; 8:45 am]

BILLING CODE 4310-DQ-M

National Park Service

Intention To Negotiate Concession Contract; Miss Green River Boat Concession, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Miss Green River Boat Concession, Inc., authorizing it to continue to provide a sightseeing boat tour service for the public at Mammoth Cave National Park, Kentucky, for a period of five years from January 1, 1986, through December 31, 1990.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Southeast Region, National Park Service, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed contract.

Dated: March 6, 1985.

Robert M. Baker,

Regional Director, Southeast Region.

[FR Doc. 85-9073 Filed 4-15-85; 8:45 am]

BILLING CODE 4310-70-M

Availability of Finding of No Significant Impact for the Draft General Management Plan Addendum, With Development Concept Plan and Environmental Assessment; Veterans Lake, Chickasaw National Recreation Area, Murray County, OK

Pursuant to the National Environmental Policy Act of 1969, and Title 40 of the Code of Federal Regulations, the National Park Service has prepared a Finding of No Significant Impact for the Draft General Management Plan Addendum, with Development Concept Area, Murray County, Oklahoma.

In March 1983, City of Sulphur, Oklahoma, voters passed a referendum in favor of the donation of the 343-acre Veterans Lake tract to Chickasaw National Recreation Area. On November 14, 1983, the city council formally conveyed title to the Federal Government. The Draft General Management Plan Addendum, with Development Concept Plan and Environmental Assessment, addressed proposals for integrating Veterans Lake management and development strategies with existing park-wide strategies set forth in the 1980 General Management Plan. Based on public review comments received and on management decisions, the National Park Service is adopting the proposals for Veterans Lake as described in the draft plan. The public review period extended from January 24 through February 22, 1985. The proposals will provide guidance for the preservation, use, development and operation of the Veterans Lake area for the next 10–15 years.

In conclusion of the National Park Service that the proposals are not a major Federal action that will significantly affect the human environment. Therefore, an environmental impact statement will not be prepared. The National Park Service will proceed with development of the final general management plan addendum for implementation.

Copies of the Finding of No Significant Impact are available from Chickasaw National Recreation Area, Post Office Box 201, Sulphur, Oklahoma 73086; and the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: March 28, 1985.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 85-9078 Filed 4-15-85; 8:45 am]

BILLING CODE 4310-70-M

Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, June 1, 1985, at 1:00 p.m. at the National Park Service Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established by *Pub. L. 91–664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, D.C.
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Ms. Bonnie Troxell, Cumberland, Maryland
Mr. John D. Millar, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, D.C.
Mr. Barry Passett, Washington, D.C.
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

Matters to be discussed at this meeting include:

1. Old and new business
2. Superintendent's report
3. Committee reports
Plans and Projects Committee
Recreation Policies and Issues Committee
Resource Protection Committee
5. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: April 8, 1985.

Robert Stanton,

Acting Regional Director, National Capital Region.

[FR Doc. 85–9076 Filed 4–15–85; 8:45 am]

BILLING CODE 4310–70–M

National Park Service Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PST) on Wednesday, April 24, 1985 at Building 201, Fort Mason, San Francisco, California.

The advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco, and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Mr. Charles Gould
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Jacobs
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items are the Commission vote on recommendations for future use and development of Sweeney Ridge and the Point Reyes and Trail Committee report.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Shirwin Smith, Staff Assistant of Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by May 24, 1985, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: April 2, 1985.

William P. Thomas,

Regional Director, Western Region.

[FR Doc. 85–9074 Filed 4–15–85; 8:45 am]

BILLING CODE 4310–70–M

Mining Plan of Operations: Pfizer Inc.

Notice is hereby given that pursuant to the provisions of Section 2 of the Act of September 28, 1976, 16 U.S.C 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR Part 9, Pfizer Inc. has filed a plan of operations in support of proposed mining on lands embracing its Contact mining claim within Death Valley National Monument. The plans are available for public inspection during normal business hours at the Death Valley National Monument Headquarters, Death Valley, California.

Dated: March 6, 1985.

Edwin L. Rothfuss,

Superintendent, Death Valley National Monument.

[FR Doc. 85–9075 Filed 4–15–85; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 6, 1985. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 1, 1985.

Patrick Andrus,

Acting Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham, *Ideal Department Store Building*, 111 19th St. North

ALASKA

Bristol Bay Division

Dillingham, *Pilgrim 100B Aircraft*, Dillingham Municipal Airport

CONNECTICUT

Hartford County

East Windsor, *Brood Brook Company*, Main St.
Hartford, *Saint Anthony Hall*, 340 Summit St.

Litchfield County

Harwinton, *Skinner, Jason, House*, Off South Rd.
Harwinton, *Wilson, Cyrus, Farm*, 230 Plymouth Rd.

Windham County

Pomfret, *Putnam, Israel, Wolf Den*, Off Wolf Den Dr.

GEORGIA

Appling County

Baxley, *Citizens Banking Company*, 112–116 N. Main St.

Barrow County

Winder vicinity, *Rockwell Universalist Church*, GA 53 & Rockwell Church Rd.

Chatham County

Savannah, *Charity Hospital*, 644 W. 36th St.

DeKalb County

Atlanta, *Gentry, William T., House*, 132 E. Lake Dr., SE

Jackson County

Hoschton, *Hillcrest-Allen Clinic and Hospital*, GA 53 & Peachtree Rd.

Macon County

Montezuma, *DeVaughan-Lewis House*, 510 S. Dooly St.

McDuffie County

Thompson vicinity, *Sweetwater Inn*, Off GA 17 on Old Milledgeville Rd.

Stewart County

Richland vicinity, *Prothro, Nathaniel, Plantation*, Old Americus Rd.

Toombs County

Lyons, *Lyons Woman's Club House*, East Liberty St.

IDAHO

Elmore County

Glenns Ferry vicinity, *Oregon National Historic Trail-Alkali Creek Segment*, Alkali Creek Segment

KENTUCKY

Jefferson County

Louisville, *Preston-St. Catherine Street Historic District*, Roughly bounded by Roland, Preston, Jackson, St. Catherine and Floyd Sts.

McCracken County

Paducah, *Paducah Downtown Commercial District (Boundary Increase)*, Roughly bounded by First, Clark, Seventh and Monroe Sts.

LOUISIANA

Jefferson Parish

Gretha, *Gretna Historic District*, Roughly bounded by First, Amelia and Ninth Sts., Gulf Dr., Fourth, and Huey P. Long Ave.

MISSOURI

Buchanan County

St. Joseph vicinity, *Pleasant Ridge School*, R.F.D. #4

Jackson County

Kansas City, *Grand Avenue Temple and Grand Avenue Temple Building*, 205 E. 9th St. & 903 Grand Ave.
Kansas City, *Ivanhoe Masonic Temple*, E. Linwood Blvd. and 3201 Park Ave.

St. Louis (Independent City)

Immaculate Conception School, 2912 Lafayette
Mount Pleasant School, 4528 Nebraska Ave.
OLive Street Terra Cotta District, 600–622 Olive St.
Plaza Hotel Complex, 307 N. Leonard, 3301–3321 Olive, 3300–3322 & 3301–3339 Lindell, 3322–3334 Locust & 308–310 Channing

MONTANA

Jefferson County

Boulder, *Montana Deaf and Dumb Asylum*, Off MT 281

NEW HAMPSHIRE

Cheshire County

Dublin, *Amory Ballroom (Dublin MRA)*, Off Old Troy Rd.
Dublin, *Amory-Appel Cottage (Dublin MRA)*, Off Old Troy Rd.

NEW JERSEY

Bergen County

Alpine, *Upper Closter-Alpine Historic District*, Roughly bounded by Forest St., Old Dock Rd, School House Lane, Church St. And Closter Dock Rd.

NEW MEXICO

Chaves County

Roswell, *C–A Bar Ranch (Roswell New Mexico MRA)*, US 82
Roswell, *Chaves County Courthouse (Roswell New Mexico MARA)*, 400 Blk. N. Main
Roswell, *Chihuahuita Historic District (Roswell New Mexico MRA)*, Roughly bounded by Brown St., the Rio Hondo, Garden Ave., Tilden & Elm Sts.
Roswell, *Diamond A Ranch House and Bunkhouse (Roswell New Mexico MRA)*, 14 miles W. on U.S. 380
Roswell, *Downtown Roswell Historic District (Roswell New Mexico MRA)*, Roughly bounded by 8th St., Richardson Ave., Albuquerque st. and Missouri Ave.
Roswell *Flying H. Ranch (Roswell New Mexico MRA)*, Off US 70 between Hope and Elk Area
Roswell, *Goddard, Robert H., House (Roswell New Mexico MRA)*, Rt 3 E. on Mescalero Rd.
Roswell, *Massey, Louise, House (Roswell New Mexico MRA)*, 209 W. Alameda St.
Roswell, *Millhiser-Baker Farm (Roswell New Mexico MRA)*, Rt 1 Box 31 D
Roswell, *Milne-Bush Ranch and Barn (Roswell New Mexico MRA)*, Rt 3, Box 264 E.
Roswell, *New Mexico Military Institute HJistoric District (Roswell New Mexico MRA)*, Roughly bounded by 19th and N. Main Sts., College Blvd. and Kentucky Ave.
Roswell, *Saunders-Crosby House (Roswell New Mexico MRA)*, 200 E. Deming
Roswell, *Southspring Ranch (Roswell New Mexico MRA)*, *NM 2, Box 159 C.*

Taos County

Ojo Caliente, *Ojo Caliente Mineral Springs*, NM, 414

NEW YORK

Queens County

Rockaway-Peninsula vicinity, *Riis, Jacob, Park Historic District (Boundary Increase)*, Rockaway Beach Blvd.

OHIO

Cuyahoga County

Cleveland, *McKinley Terrace*, 1406–1426 W. 81st St.
Independence to Akron, *Valley Railway Historic District*, Cuyahoga Valley between Rockside Rd. at Cuyahoga National Recreation Area and Howard St. at Little Cuyahoga Valley (also in Summit Cty.)

Hamilton County

Mt. Healthy, *Mt. Health Public School*, Compton & Harrison Aves.

Stark County

Alliance, *First Methodist Episcopal Church of Alliance, Ohio* 470 E. Broadway St.

TENNESSEE

Washington County

Jonesboro vicinity, *Plum Grove-Jackson Farm*, TN 107 & Jackson Bridge Rd.

TEXAS

Comal County

New Braunfels, *Hotel Faust*, 240 S. Seguin St.

Hartley County

Channing, *XIT General Office*, Railroad Ave, and Fifth St.

Kaufman County

Terrell, *Terrell Times Star Building*, 108 S. Catherine St.

Witchita County

Witchita Falls, *Hodges-Hardy-Chambers House*, 1100 Travis St.

WISCONSIN

Racine County

Racine, *United States Post Office*, 803 Main St.

[FR Doc. 85–9077 Filed 4–15–85 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use By ALK Associates, Inc.

The Commission has received a request from ALK Associates Inc. (ALK) on behalf of its client, Consolidated Rail Corporation for permission to use the Commission's 1983 Carload Waybill Sample, to analyze possible anti-competitive effects of the proposed purchase of Conrail by Norfolk Southern.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40238, September 6, 1983).

Accordingly, if any parties object to ALK's request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-0907.

James H. Bayne,

Secretary.

[FR Doc. 85-9071 Filed 4-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-33 (Sub-29X) and AB-37 (Sub-15X)]

Union Pacific Railroad Co. and Oregon-Washington Railroad & Navigation Co. Exemption Discontinuance of Trackage Rights

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the requirements of 49 U.S.C. 10903 *et seq.* the discontinuance by Union Pacific Railroad Company and Oregon-Washington Railroad & Navigation Company of trackage rights over a 9.25-mile line of railroad of the Camas Prairie Railroad Company in Clearwater County, ID, subject to protective conditions for rail employees.

DATES: The exemption is effective on May 16, 1985. Petitions for reconsideration must be filed by May 6, 1985. Petitions for stay must be filed by April 26, 1985.

ADDRESSES: Send pleadings referring to Docket Nos. AB-33 (Sub-No. 29X) and AB-37 (Sub-No. 15X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: April 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-9072 Filed 4-15-85; 8:45 am]

BILLING CODE 7035-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Westin Hotel, 909 North Michigan Avenue, Chicago, Illinois on May 13, 1985 beginning at 8:00 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirements set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: April 10, 1985.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 85-9046 Filed 4-15-85; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15,410, TA-W-15,422]

Burlington Industries; Negative Determination Regarding Application for Reconsideration

By an application dated January 14, 1985, the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Burlington Industries' Textured Woven Division in Bristol and Mountain City, Tennessee. The negative determination was published in the **Federal Register** on December 21, 1984 (49 FR 49733).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company challenges the negative determination from the following three

perspectives: (1) There was a 35 percent increase in imports of textiles and apparel in 1984. (2) The results of the customer survey especially for the seven month period chosen by the Department are unacceptable. (3) There was an increase of polyester woven fabrics in 1982 and 1983 which impacted on the company's decision to close its Bristol plant and reduce production at the Mountain City plant.

The investigative case file shows that the Burlington Textured Woven Division has several plants and that production lost of the Bristol and Mountain City plants would be consolidated at other company plants. Findings also show increased production of polyester woven fabrics at the Bristol and Mountain City plants and increased company sales in 1983 compared to 1982. These data do not support the company's argument that increased imports in 1983 adversely affected its sales and production. Neither loss of potential sales nor the profitability of the product provide a basis for certification.

The application for reconsideration cites increased imports of fabric and apparel as the reason for a weakening fabric market and for Burlington's actions at the Bristol and Mountain City plants. Finished articles such as apparel cannot be considered like or directly competitive with component materials such as polyester woven fabric within the meaning of the Trade Act. U.S. imports of polyester woven fabric decreased, in quantity, in the first nine months of 1984 compared to the same period in 1983.

The Department's survey of Burlington's customers showed that none of the respondents, which represented a significant portion of the Textured Woven Division's sales decline in the first seven months of 1984 compared to the same period in 1983, increased their reliance on imported polyester woven fabrics for the same period. Only data for the first seven months of 1984 were used in the Department's survey since production at both plants and corporate sales of polyester woven fabrics increased in 1983 compared to 1982. Several respondents to the survey reported reduced purchase from Burlington because new fashion styling is toward blends of polyester and wool and polyester and cotton. The Bristol and Mountain City plants produced 100 percent polyester woven fabric.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 15th day of February 1985.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 85-9049 Filed 4-15-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Burlington Industries, Inc., et al.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 227) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 1, 1985–April 5, 1985

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) The increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,664; Burlington Greige Sales Division (Filament Unit), Burlington Industries, Inc., Franklinton, NC

TA–W–15,650; National Can Corp., Foster Forbes Glass Div., Millville, NJ

TA–W–15,687; Adelaide Mills, Inc., Anniston, Al

TA–W–15,609; Levi Strauss & Co., Memphis, TN

TA–W–15,628; Gary Lilly of Florida, Miami, FL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,669; Stedfast Rubber Co., Inc., North Easton, MA

Aggregate U.S. imports of shoe linings are negligible.

TA–W–15,791; Eli's Place, Limited, New York, NY

The company produced samples which were used in the overseas production of garments.

Affirmative Determinations

TA–W–15,667; Pako Corp., Golden Valley, MN

A certification was issued covering all workers separated on or after December 21, 1983 and before February 28, 1985.

TA–W–15,689; Dynapac Manufacturing, Inc., Stanhope NJ

A certification was issued covering all workers separated on or after August 1, 1984.

TA–W–15,707; Ohio Ferro Alloys Corp., Philo, OH

A certification was issued covering all workers separated on or after July 1, 1984.

TA–W–15,661; Aero Manufacturing Div., of Misty Harbor, Ltd, Baltimore, MD

A certification was issued covering all workers separated on or after December 3, 1983 and before December 21, 1984.

TA–W–15,668; Marlboro Footwear Corp., Marlboro, MA

A certification was issued covering all workers separated on or after April 1, 1984 and before January 1, 1985.

TA–W–15,688; Corona Plastics, Inc., Denville, NJ

A certification was issued covering all workers separated on or after June 1, 1984.

TA–W–15,688; Roller Derby Skate Corp., Litchfield, IL

A certification was issued covering all workers separated on or after July 1, 1984 and before February 22, 1985.

TA–W–15,688A; Roller Derby Skate Corp (West Coast Skate Sales), Garden Grove, CA

A certification was issued covering all workers separated on or after July 1, 1984 and before February 22, 1985.

TA–W–15,620; Nannette Manufacturing Co., Inc., Elkon, MD

A certification was issued covering all workers separated on or after November 7, 1983 and before February 28, 1985.

TA–W–15,696; Southwestern Portland Cement Co., El Paso, TX

A certification was issued covering all workers separated on or after June 1, 1984.

TA–W–15,640; The Georgia Boot Co., Centerville, TN

A certification was issued covering all workers separated on or after September 1, 1984 and before February 1, 1985.

I hereby certify that the aforementioned determinations were issued during the period April 1, 1985–April 5, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Steet, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 9, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–9048 Filed 4–15–85; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[V–85–2]

AMAX Lead Company of Missouri; Application for Permanent Variance

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of Applications for Permanent Variance.

SUMMARY: This notice announces the application of AMAX Lead Company of Missouri for permanent variance from the standard prescribed in 29 CFR 1910.1025(f)(2), concerning the lead concentration in air limitation on use of half-mask, air-purifying (negative pressure) respirators equipped with high efficiency filters.

DATES: The last date for interested persons to submit comments is May 16, 1985. The last date for affected employers and employees to request a hearing is May 16, 1985.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street & Constitution Avenue, NW., Room N–3656, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

Mr. James J. Concannon, Director, Office of Variance Determination, at the above address, Telephone: (202)523–7193

or the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 911 Vermont Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor, Occupational Safety and Health Administration, 4300 Goodfellow Boulevard, Building 105E, St. Louis, Missouri 63120.

Notice of Application

SUPPLEMENTARY INFORMATION:

Notice is hereby given that AMAX Lead Company of Missouri, Boss, Missouri 65440, has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the standard prescribed in 29 CFR 1910.1025(f)(2), respirator selection.

The address of the place of employment that will be affected by the application is as follows: AMAX Lead Company of Missouri, Boss, Missouri 65440.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1910.1025(f)(2), which states that where respirators are required, a half-mask, air-purifying respirator equipped with high efficiency filters shall be used only when the airborne concentration of lead is not in excess of 0.5 mg/m^3 (10 times the permissible exposure limit (PEL)).

AMAX Lead Company of Missouri, the applicant, states that it operates a lead mine-mill-smelter complex in southest Missouri with a smelter design capacity of 140,000 tons annually. This capacity, according to AMAX, represents approximately 18 percent of the total United States refined lead capacity. In 1983, it further contends, the smelter produced 142,953 tons of refined lead.

The applicant states that under the provisions of the lead standard it currently is required to implement engineering controls, work practice and administrative controls, to the extent feasible, to reduce and maintain employee exposure to airborne lead to or below 100 micrograms per cubic meter (μg/m^3) of air, averaged over an 8-hour period, referred to in the standard as the interim permissible exposure limit (PEL). This PEL is to be further reduced to 50 μg/m^3 by June 29, 1991, through the use of engineering and work practice controls, except to the extent the company can demonstrate that such controls are not feasible.

During the time period necessary to install the above-referenced controls, or in work situations where such controls are not sufficient to reduce exposures to or below the PEL, AMAX states that it may utilize respiratory protection.

When respirators are utilized, Table II of the standard (section 1910.1025(f)(2)) specifies the type of respiratory protection to be used, depending on the airborne concentration of lead or condition of use. Table II assigns a protection factor of 10 for negative pressure half-mask respirators, thereby establishing a maximum airborne lead concentration of 500 μg/m^3 on the use of such a respirator. In response to what the applicant refers to as "this restrictive protection factor", it is seeking a permanent variance.

The applicant is seeking this permanent variance from § 1910.1025(f)(2), Table II, in order to allow it to utilize these negative pressure half-mask respirators at air lead concentrations up to 5000 μg/m^3 (up to 100 times the PEL).

The applicant alleges that airborne lead levels within the smelter may exceed the level of 500 μg/m^3 (10 times the PEL) for some operations. Moreover, it contends, during upset conditions or maintenance operations, airborne lead levels may often exceed 500 μg/m^3. Consequently, the applicant alleges that compliance with Table II in these situations is infeasible due to the variability in duration of exposure and the inability to determine the need for greater protection measures until industrial hygiene sampling has been conducted and laboratory results returned. In light of these factors, AMAX Lead seeks to utilize a protection factor of 100 (equivalent to 5000 μg/m^3) for negative pressure half-mask respirators.

The applicant states that it has developed an extensive respirator protection program at the smelter which provides, in part, quantitative face-fit testing and employee training in respirator usage. Based on this program and available evidence, it has determined that a protection factor greater than 10 can be assigned to a negative pressure respirator.

Quantitative face-fit test results performed by the applicant on its employees, it contends, yielded a protection factor with a geometric mean of 4099 from the period from July 1, 1982 to June 30, 1983. During this time period, no employee had a protection factor less than 120. Distribution of face-fit test

results for this time period was as follows:

FREQUENCY DISTRIBUTION OF PROTECTION FACTORS

[July 1, 1982–June 30, 1983]

Range	Frequency	Cumulative frequency	Percent	Cumulative percent
200	3	3	0.49	0.49
200 to 999	29	32	4.78	5.27
1000 to 4999	398	430	65.57	70.84
5000	177	607	29.16	100.00

The applicant further alleges that the American National Standards Institute (ANSI) has also concluded that a protection factor higher than 10 can be assigned to a negative pressure respirator. Specifically, the ANSI has indicated that a protection factor of 100 can be assigned if the employee has been quantitatively fitted (ANSI Z88.2–1980). Moreover, the applicant alleges that "unpublished data from the National Institute for Occupational Safety and Health's work at the St. Joe Minerals Corporation Herculaneum smelter indicates that a half-mask negative pressure respirator with high efficiency filters will provide a minimum protection factor of 100 while 'working' in a smelter environment". Therefore, AMAX Lead is confident that by the strict enforcement of its respirator protection program, a protection factor of 100 can be assigned to a negative pressure half-mask respirator.

The applicant states that it will provide respirators, at no cost to its employees, and shall require the use of said respirators during the time period necessary to install engineering or work practice controls, in work situations in which engineering and work practice controls are not sufficient to reduce airborne lead exposures to or below 50 $\mu g/m^3$, and/or whenever any employee requests a respirator.

When respirators are required, it contends further, half-mask negative pressure respirators, with high-efficiency filters, will be provided to employees who work in operations having airborne concentrations of lead not exceeding 5000 $\mu g/m^3$, provided said employees demonstrate a quantitative face-fit test protection factor of 250 or greater. Quantitative face-fit tests will be performed at the time of initial fitting and at least semiannually for all exposed employees.

The applicant further alleges that for any employee who is wearing a half-mask negative pressure respirator in accordance with this permanent variance, should it be granted, and who has a confirmed rise of 10 $\mu g/100g$ of whole blood or greater in his/her blood lead level from the previous sampling test results, it will perform a quantitative face-fit test to ensure that the protection factor is 250 or greater. In addition, the applicant will evaluate the employee's respirator usage, hygiene habits and lead-related work practices. Based on the quantitative face-fit test and the evaluations, AMAX Lead will take all reasonable and appropriate corrective steps to protect the health of the employee including, if necessary, requiring the employee to wear a powered air-purifying respirator in lieu of a half-mask negative pressure respirator.

According to the applicant, it will also continue to enforce and, if warranted, revise its written respirator program. The applicant states that the respirator program provides, in part, that the applicant itself cleans its respirators at the end of each shift, and that after the respirators have air-dried they are put into the individual employee's storage bin.

AMAX Lead will also provide powered air-purifying respirators in lieu of half-mask negative pressure respirators whenever an employee requests the use of said respirators, as presently required by the lead standard, and when its use is necessary to protect the health of an employee.

The applicant alleges further that it shall select respirators from those approved for protection against lead dust, fume and mist by the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health under the provisions of 30 CFR Part 11.

In summary, the applicant contends that it has demonstrated by a preponderance of the evidence that the practices and conditions it proposes to use will provide a place of employment which is as safe and healthful as that provided under § 1910.1025(f)(2), Table II, the provision from which the variance is sought.

All interested persons, including employers and employees who believe they would be affected by the grant or denial of the application for variance are invited to submit written data, views, and arguments relating to the issues raised in the application no later than May 16, 1985. In addition, employers and employees who believe they would be affected by a grant or denial of the variances may request a hearing on the application no later than May 16, 1985, in conformance with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be in quadruplicate, and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, D.C., this 10th day of April 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85–9158 Filed 4–15–85; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Second Announcement of Availability of Funds for the Provision of Legal Services in the States of Arkansas and Mississippi

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces the availability of grant funds for the provision of legal services to the eligible migrant client population in the states of Arkansas and Mississippi. No applications were received following the February 13, 1985, **Federal Register** notice of the availability of these funds. Therefore, the deadline for receipt of applications has been extended to the date noted below.

DATE: All applications for grant funds must be received on or before May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20005, (202) 272–4080.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally-funded system of legal services for low income people, announces the availability of grant funds for the provision of legal services to the eligible migrant client population in the states of Arkansas and Mississippi.

The annualized level of Legal Services Corporation funding for these service areas will be $46,349 and $169,949, respectively, for calender year 1985. The exact level of funding for the remainder of 1985 will be contingent on staff recommendations concerning the successful applicant(s) needs.

All groups and persons interested in applying for these grant funds should request a grant application from the Grants Assistant, Grants and Budget Unit, Office of Field Services, 733 Fifteenth Street NW., Washington, D.C. 20005. Applications will be considered

for individual or joint coverage of these service areas. Subsequent to the application deadline, May 15, 1985, a public hearing may be held at which applicants and other interested parties can make presentations regarding provision of legal services in the applicable service area.

Three copies of the application should be submitted to the Regional Director, Atlanta Regional Office, 915 Peachtree Street N.E., Ninth Floor, Atlanta, Georgia 30308; and, one copy of the grant application should be sent to the Grants Assistant at the Washington, D.C. address noted above.

Any grant application recommended by the Legal Services Corporation will, pursuant to section 1007(f) of the LSC Act, be announced in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-9091 Filed 4-15-85; 8:45 am]

BILLING CODE 6820-35-M

Second Announcement of Availability of Funds for the Provision of Legal Services in the State of Louisiana

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Services Corporation (LSC) announces the availability of grant funds for the provision of legal services to eligible clients residing in the Louisiana parishes of Catahoula, Concordia, and La Salle. No applications were received following the January 30, 1985 **Federal Register** notice of the availability of these funds. Therefore, the deadline for the receipt of applications has been extended to the date noted below.

DATE: All applications for grant funds must be received on or before May 15, 1985.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street NW., Washington, D.C. 20050, (202) 272-4080.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation, the national, independent organization charged with implementing the federally funded system of legal services for low income people, announces the availability of grant funds for the provision of legal services to eligible clients residing in the Louisiana parishes of Catahoula, Concordia, and La Salle.

The annualized level of Legal Services Corporation funding for the service area is $123,354 for calendar year 1985. The exact level of funding for the remainder of 1985 will be contingent of staff recommendations concerning the successful applicant's needs.

All groups and persons interested in applying for this grant should request a grant application from the Grants Assistance, Grants and Budget Unit, Office of Field Services, 733 Fifteenth Street NW., Washington, D.C. 20005. Subsequent to the application deadline, May 15, 1985, a public hearing may be held at which applicants and other interested parties can make presentations regarding provision of legal services in the service area.

Three copies of the application should be submitted to the Regional Director, Atlanta Regional Office, 915 Peachtree Street NW., Ninth Floor, Atlanta, Georgia 30308; and, one copy of the grant application should be sent to the Grants Assistant at the Washington D.C. address noted above.

Any grant application recommended by the Legal Services Corporation will, pursuant to section 1007(f) of the LSC Act, be announced in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-9090 Filed 4-15-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

April 11, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on May 10, 1985, in the Concourse Ballroom "D" of the Breckenridge Concourse Hotel, St. Louis, Missouri.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss export expansion programs should contact the Commission staff at (202) 488-1961.

Future meetings are scheduled as follows:

June 10—Atlanta, Georgia.
July 12—Washington, D.C.
August 12—Denver, Colorado.
September 13—Fresno, California.

Kenneth L. Bader,

Chairman.

[FR Doc. 85-9053 Filed 4-15-85; 8:45 am]

BILLING CODE 3410-05-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Electrical, Computer, and Systems Engineering; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Electrical, Computer, and Systems Engineering.

Date: May 2 and 3, 1985.

Time: 8:30 AM to 5:00 PM.

Place: National Academy of Sciences, Joseph Henry Building, Conference Room 453, 2122 Pennsylvania Avenue, NW., Washington, D.C.

Type of meeting: Open.

Contact person: Dr. Blake E. Cherrington, Division Director, Division of Electrical Communications and Systems Engineering, Room 1151, National Science Foundation, Washington, D.C., Telephone: 202-357-9618.

Purpose of committee: To discuss research trends and opportunities and to advise on priorities in resource management.

Agenda: Presentations by individual ECSE Program Directors; Management of Resources: Issues and Priorities; Trends and Opportunities in Electrical Engineering Research.

Dated: April 11, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85-9132 Filed 4-15-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time: May 2 & 3, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. John L. Brooks, Acting Program Director, Population Biology and Physiological Ecology (202) 357-9728, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, no July 6, 1979.

Dated: April 11, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9131 Filed 4–15–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience.

Date and time: May 2 and 3, 1985; 9:00 a.m. to 5:00 p.m. each day.

Place: Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

Type of meeting: Part Open—Open 5/2—1:00 p.m. to 2:00 p.m. Closed 5/2—9:00 a.m. to 12:00 p.m.Closed 5/2—2:00 a.m. to 5:00 p.m. Closed 5/3—9:00 a.m. to 5:00 p.m.

Contact person: Dr. Jean Lauder, Program Director, Developmental Neuroscience, Room 320 National Science Foundation, Washington, DC 20550, telephone (202) 357–7042.

Summary minutes: May be obtained from the Contact Person at the above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in developmental neuroscience.

Agenda: Open—General discussion of the current status and future plans of the Developmental Neuroscience Program. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

Dated: April 11, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9133 Filed 4–15–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Ethics and Values in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ethics and Values in Science and Technology.

Date and time: May 2 and 3, 1985; 8:30 a.m. to 6 p.m. each day.

Place: May 2—8:30 a.m. to 6 p.m., Room 430, National Endowment for the Humanities, 1100 Pennsylvania Avenue, N.W., Washington, D.C. May 3—8:30 a.m. to 6 p.m., Room 1242B, National Science Foundation, 1800 G Street NW., Washington, D.C.

Type of meeting: Part Open; Open, 5/3: 10:30 a.m.–6 p.m.; Closed—5/3 8:30 to 10:30; 5/2 8:30 to 6:00 p.m.

Contact person: Dr. Rachelle Hollander, Program Director, Ethics and Values in Science and Technology, National Science Foundation, Washington, D.C. 20550, Telephone 202/357–7552.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research and related activities in this field.

Agenda: Open—General discussion of current status and future plans to encourage research on ethical or value issues in science or technology. Closed—To review and evaluate research proposals.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: April 11, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9134 Filed 4–15–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Computer Research; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463 as amended, the National Science Foundation announce the following meeting:

Name: Advisory Committee for Computer Research.

Date and time: May 2, 1985—9:00 a.m. to 5:00 p.m. May 3, 1985—8:00 a.m. to 3:00 p.m.

Place: Room 1242–A, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550.

Type of meeting: All Open—May 2 Open—9:00 a.m. to 5:00 p.m. May 3 Open—8:00 a.m. to 3:00 p.m.

Contact person: Mr. Kent K. Curtis, Division Director, Division of Computer Research, Room 304, National Science Foundation, 1800 G. Street, NW., Washington, D.C. 20550. Telephone: (202) 357–9747. Anyone planning to attend this meeting should notify notify Mr. Curtis no later than April 29, 1985.

Purpose of committee: To provide advice and recommendations concerning support of Computer Research.

Summary minutes: May be obtained from the contact person at the above address.

Agenda

Thursday, May 2, 1985, Room 1242–A—9:00 a.m. to 5:00 p.m.—Open

9:00 a.m.—Division of Computer Research Program Activities and Priorities.

12:30 p.m.—Lunch.

1:30 p.m.—Initiatives involving DCR and Other Parts of NSF—Engineering; Language and Information; Computational Mathematics; Scientific Computing.

Friday, May 3, 1985, Room 1242–A—9:00 a.m. to 3:00 p.m.—Open

9:00 a.m.—Planning Issues in Computer Research, Paul Young and Kent K. Curtis.

12:00 Noon—Lunch.

1:00 p.m.—Committee Business, Lawrence Snyder.

3:00 p.m.—Meeting Adjourn.

Dated: April 11, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9135 Filed 4–15–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following

incidents were determined to be abnormal occurrences using the criteria published in the Federal Register on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 7, No. 3 ("Report to Congress on Abnormal Occurrences: July–September 1984"). This report, which will be available in the NRC's Public Document Room, 1717 H Street NW, Washington, D.C. about three weeks after the publication date of this Federal Register Notice, also contains one additional abnormal occurrence (i.e., "Loss of Offsite and Onsite AC Electrical Power," which occurred at Susquehanna Unit 2) which was published in the Federal Register (50 FR 1140) on January 9, 1985.

NUCLEAR POWERPLANTS

Degraded Isolation Valves in Emergency Core Cooling Systems

Example I.D.4 of the abnormal occurrence criteria notes that recurring incidents which create major safety concern can be considered an abnormal occurrence.

Date and Place

Several events have occurred which involved open valves, including check valves (valves designed to allow water to flow only in one direction), located in the emergency core cooling systems of various General Electric designed, boiling water reactors. Some of the events resulted in the high pressure reactor coolant system overpressurizing piping in either the low pressure coolant injection (LPCI) system (the low pressure mode of the residual heat removal, RHR, system), the high pressure coolant injection (HPCI) system (the low presure suction portion), or the low pressure core spray system, all systems being designed to mitigate the consequences of a loss of coolant accident (LOCA). These events are considered to be significant because they substantially reduced safety margins for preventing an interface LOCA. For some reactor designs, the possible interface LOCA could bypass containment, with radioactive material discharged to the environment. One event resulted in a partial draining of the reactor vessel. Most of the events were due to personnel errors, and therefore could have been prevented.

The date and place of each of the events are as follows:

Plant	Date	Licensee	Plant location
Vermont Yankee	12/12/75	Vermont Yankee Nuclear Power	Windham County, VT.
Cooper Station	1/21/77	Nebraska Public Power Dist.	Nemaha County, NE.
LaSalle Unit 1	9/14/83	Commonwealth Edison	LaSalle County, IL.
Pilgrim	9/29/83	Boston Edison	Plymouth County, MA.
Hatch Unit 2	10/28/83	Georgia Power	Appling County, GA.
Browns Ferry Unit 1	5/14/84	Tennessee Valley Authority	Limestone County, AL.

Nature and Probable Consequences

Vermont Yankee

While performing monthly LPCI pump and motor-operated valve operability surveillance testing with the plant operating at 99% power, LPCI injection valve V–10–25A failed to respond to an open signal generated from its remote control switch. In order to determine if the failure was caused by an excess differential pressure across the valve seat, or a specific mechanical/electrical malfunction, V–10–25A was manually cracked open. Then the valve was successfully cycled fully open and closed. Immediately following the cycling of V–10–25A, a steam-water mixture was observed to discharge from three RHR system relief valves and the RHR heat exchanger tube sheet to shell flange area, indicating an overpressurized condition.

Applicable subsystems of the RHR system were declared inoperable. Redundant systems were proven available. Following successful pressure and operability testing of the subsystems which had been declared inoperable, the subsystems were declared operable. Plant operation continued in a degraded mode, as permitted by the technical specification limiting conditions for operation, while the event cause was determined, repairs were made, and the subsystems tested. As discussed later, the "A" LPCI loop was found to have been momentarily pressurized in excess of system design pressure.

Cooper Station

During performance of high pressure coolant injection (HPCI)—turbine trip and initiation logic functional test, with the plant operating at about 97% power, the HPCI testable check valve failed to seat (i.e., be fully closed) which allowed feedwater to flow backwards through the HPCI injection line into the HPCI suction piping. The isolation valve in series with the check valve was closed and the licensee declared HPCI to be inoperable.

Appropriate surveillance tests were completed. The HPCI piping was inspected and HPCI operated through the test loop. A technical specification amendment was requested, and approved by the NRC, to extend plant operation with HPCI inoperable for another seven days. HPCI could be operated in a manual mode, but the extent of flow through the check valve was not known. The reactor was shut down on February 3, 1977, for evaluation of the problem and corrective actions.

Inspection showed that a broken sample probe was loosely wedged under the edge of the check valve disc, which prevented full check valve closure but had no affect on full opening of the valve. The probe was removed and the check valve inspected, reassembled and satisfactorily tested. A leak check on the valve was also satisfactorily completed. HPCI was then returned to an operable status.

LaSalle Unit 1

The plant was in cold shutdown for an extended maintenance outage. Plant operators were conducting a routine surveillance test of the RHR system relay logic. As part of the test, an RHR system lineup was established for the "B" loop which opened both containment spray valves and the suppression pool spray valve. The test procedure then called for opening the "B" loop RHR injection valve, which left only the injection check valve to isolate the RHR system from the reactor cooling system.

At this point, a rapid decrease in the reactor water level was observed. Water in the reactor vessel drained from the reactor vessel for about three minutes until it was terminated by a combination of operator action and an automatic containment isolation triggered by the low reactor vessel water level. However, the reactor core was covered at all times. The water level dropped 50 inches during the event, but remained 161.5 inches above the top of the reactor core. Normal reactor water level was restored about 45 minutes after the event using the control rod drive pumps.

Subsequent investigation determined that the injection check valve was stuck in the open position instead of being in its normally closed position. The water (between 5,000 and 10,000 gallons) drained through the injection check valve and into the suppression pool through the open suppression pool

recirculation valve and into the containment through the open containment spray valves.

Pilgrim

With the plant operating at about 96% power, the licensee was performing functional testing of the HPCI system logic when a HPCI high suction pressure alarm and HPCI area smoke detector alarm were received in the control room. Investigation showed that a feedwater pressure transient occurred and involved the HPCI suction piping. The low pressure section of the piping was briefly overpressurized due to backflow of feedwater into the piping.

Investigation showed that miscommunication between two station personnel, while conducting more than one surveillance test at the same time, resulted in both HPCI pump discharge valves being inadvertently opened. This left only the testable injection check valve to isolate the HPCI from the RCS. However, the movable internals of the latter valve were bound by rust which apparently held the valve partially open during normal operation. This allowed feedwater pressure to overpressurize the low pressure piping through the open discharge valves.

The check valve was repaired and tested. Analysis, and a system inspection, indicated no damage to piping or supports. Therefore, the licensee concluded that the HPCI piping and supports were operable.

Hatch Unit 2

With the plant in cold shutdown, operations personnel found that an isolation check valve was open, and would not close, during performance of a valve operability testing procedure. The valve is located in the "B" train of the RHR system and is equipped with an air actuator for periodic testing purposes. The valve was being held open by its air actuator which was incorrectly connected. A subsequent investigation by plant personnel verified that the check valve had been open for approximately four months while the plant operated at close to full power.

The valve is a swing-type testable check valve with an air actuator controlled by a four-way solenoid pilot valve. The rotary type air actuator is used to perform in-service testing of the valve when the plant is in a cold shutdown condition. The valve, and its actuator and solenoid valve, are installed on the 24-inch LPCI line inside the primary containment structure. The valve serves as one of the two isolations between the high pressure RCS and the low pressure RHR system. The second isolation valve is located immediately outside containment and is a normally closed, motor-operated injection gate valve. This gate valve is desiged to open automatically when the RCS pressure drops below the low pressure permissible setpoint. The gate valve is interlocked with a third valve in a manner which prevents both valves being opened if excessive RCS pressure is present.

Even though no overpressurization of low pressure piping actually occurred, the event is significant since the check valve had been held open for such a long period of time. During the period, a postulated failure or inadvertent opening of the gate valve could allow discharge of high-pressure reactor coolant into the low pressure RHR system.

The consequences of such an event are uncertain, depending upon the continued integrity of possibly overpressurized RHR system piping and the actuation of the RHR system relief valve which discharges to the clean radioactive waste system. At worst, a pipe break (LOCA) outside containment could have occurred, releasing radioactive material to the environment.

The event resulted from a series of errors. On June 7, 1983, during maintenance on the valve actuator, the two air supply lines were installed backwards. The air supply line to the right-hand cylinder of the actuator was incorrectly connected to the left-hand cylinder, and vice versa. Failure to use a vendor maintenance manual appears to have contributed to this error. Inadequate post-maintenance functional testing of the valve allowed the initial error to go undetected. The check valve position is indicated in the control room. It is not known with certainty why this did not lead to early detection. However, it appears likely that, after maintenance, the indication was readjusted to show a closed position in the belief that the check valve must actually be closed.

When this condition was discovered, plant personnel took immediate action to correctly connect the air supply lines to the check valve air actuator. The valve returned to the normal closed position, was satisfactorily functionally tested, and subsequently returned to service on October 28, 1983.

Browns Ferry Unit 1

With the plant operating at about 100% power, a core spray (CS) logic functional test was being performed. For this test, the outboard injection valve remains in its normally open position, and the inboard injection valve is supposed to be closed. Since the test would simulate automatic core spray actuation (which would normally open the inboard valve), procedures specify that the valve breaker to this valve should be opened so that the valve remains closed during the test. However, a licensed operator failed to open the breaker; therefore, the valve opened during the test.

With both the inboard and outboard injection valves open, isolation of the high pressure RCS to the CS system is provided by a testable check valve. However, as later investigation indicated, improper maintenance previously performed on the check valve caused it to be held open while indicating closed. This came about as a result of an incorrect plunger being installed in the solenoid pilot valve of the actuator leading to a pneumatic pressure reversal holding the check valve open. The check valve position indicators were also reversed by personnel in the belief that the valve was not mispositioned. Therefore, the high pressure RCS (about 1050 psi) was open directly to the low pressure CS system (designed for 500 psi).

During the test, the control room operator did not notice a system pressure change, and the CS system high pressure annunciator, located outboard of the outboard isolation valve, did not alarm. Several minutes into the test, a roving fire watch noticed smoke near the loop 1 CS piping and phoned in a fire alarm (the smoke was caused by the pipe paint overheating when hot reactor coolant backflowed into the CS piping). The fire brigade entered the reactor building and correctly assessed the reason for the pipe paint smoking. The CS system's one inch relief valve, set at approximately 400 psig, had lifted. The assistant shift engineer phoned the Unit 1 operator and instructed him to close the inboard isolation valve to isolate the system. This action terminated the overpressurization event which lasted approximately 13 minutes. Steam and/or water was seen coming from the CS pump "A" seal and several fire brigade members were slightly contaminated due to this water.

The CS loop 1 was isolated, placing the plant in a seven day limiting condition for operation, and investigation of the event began. The plant was shut down on August 21, 1984 to complete the investigation.

Licensee engineering and maintenance staffs examined all components and piping and found no damage. The maximum temperature experienced by the piping was estimated to be below 400°F. The CS pump "A" seal was removed and no damage was observed. The apparent

seal leakage was attributed to backflow through the seal leakoff which drains to the clean radwaste drain system (the CS system relief valve also discharges to the clean radwaste drain system).

Examination of similar installations on the CS system, RHR system, HPCI system, and reactor core isolation cooling system on all three Browns Ferry units did not reveal any similar problems.

The licensee's engineering evaluation of the affected piping and supports on Unit 1 indicated that the transient did not affect system integrity for continued use.

Cause or Causes

Most of the events were caused primarily by personnel errors. The discussion above briefly mentioned causes for some of the events. The causes for all of the events are discussed further below.

Vermont Yankee

Injection valve V–10–27A had been closed from the control room, prior to opening injection valve V–10–25A, but it failed to shut fully. This fact was unknown to the control room operators due to a full-closed indication on the V–10–27A valve's control room indicator lights. This valve was later found to be one inch open.

It was also found that testable check valve V–10–46A was leaking past its seat causing an excessive differential pressure across valve V–10–25A. Since neither valve V–10–46A nor V–10–27A were fully closed, opening valve V–10–25A caused a flow path to exist from the reactor vessel to the "A" LPCI, thereby pressurizing the loop in excess of its 450 psig system design pressure.

Cooper Station

A 14½ inch length of sample probe was found loosely wedged under the edge of the check valve disc. This prevented the check valve from fully closing. The broken probe came from a sample point on a 24" feedwater line, upstream of the HPCI junction.

Although the sample probe prevented full closure of the testable check valve, the valve would have fully opened and would have passed full HPCI flow to the feedwater line in the event it would have been required. The sample probe would have remained in a no or low flow area of the valve body and would not have entered the flow stream to the feedwater line.

LaSalle Unit 1

The licensee determined that the gears on a pneumatic valve opener were not properly aligned following maintenance on the actuator. The actuator was therefore holding the valve in a partially open position. The valve position indicator was subsequently aligned assuming that the valve was fully closed. Therefore at the time of the test, the valve indicator showed that the check valve was closed, while in fact it was partially open.

Following the event, a second factor was identified during a local leak rate test performed after the valve was properly aligned. In this test, the check valve did not perform properly. An inspection of the valve found the packing gland on the valve shaft to be too tight, thus preventing the valve from fully closing. A different operating crew had previously performed this same surveillance on another RHR loop. Prior to performing the test, the crew had identified a potential leakage path through the check valve and instituted a temporary change in the procedure to close the manual isolation valve on the loop being tested. This change, however, was not made applicable to subsequent tests.

Pilgrim

As previously discussed, the testable injection valve was held open since its internals were bound by rust. Then, personnel error while performing more than one surveillance test allowed both discharge valves to be open at the same time. This resulted in a direct path for the feedwater pressure to overpressurize the low pressure HPCI suction piping.

Hatch Unit 2

Improper maintenance on the valve actuator resulted in the two air supply lines being installed backwards. The causes involved the performance of work without documented instructions, procedures, or drawings appropriate to the circumstances, i.e., (1) no vendor manual was used during maintenance, (2) proper functional testing was not specified, and (3) other non-documented maintenance was performed.

Browns Ferry Unit 1

The causes for this event involved the following deficiencies:

1. Maintenance personnel overhauling the check valve solenoid had installed a wrong component which altered the function such that the valve opened when it should have closed, and vice versa.

2. Maintenance personnel altered the valve position indicating circuitry for the check valve such that the position indicator showed closed when the valve wa actually open.

3. An operator failed to accomplish the procedural step that would open the inboard injector valve circuit breaker. The procedural step to open the circuit breaker contained two separate actions in one step, and no independent verification was required for these actions.

4. Maintenance instructions did not contain adequate post-maintenance instructions to ensure proper mechanical or electrical valve assembly. Also, post-maintenance testing did not verity proper operation of the check valve or indication.

Actions Taken To Prevent Recurrence

Vermont Yankee

Licensee—The defective components were repaired. The affected loop piping was inspected and tested and the system returned to operation. The system was later modified to preclude recurrence.

NRC—The NRC monitored the licensee's response to the event.

Cooper Station

Licensee—The probe was removed and the valve was inspected and satisfactorily leak tested. The exterior part of the failed probe was removed from its weld-o-let to confirm location of the failed probe. The weld-o-let was then plugged because the sample point was not needed.

The HPCI system was returned to an operable status.

NRC—The NRC monitored the licensee's response to this event.

LaSalle Unit 1

Licensee—The similar testable check valves were inspected by the licensee to assure that their actuator gears were properly aligned and that the valve position indicators were accurate. No problems were identified. Maintenance logs were also examined for the valves to determine if any had had valve packing gland adjustments. Two valves which had had no local leak rate tests performed after packing maintenance were successfully tested.

The licensee revised its procedures to require that a manual valve be closed during the RHR loop test. Changes in maintenance procedures for the valve actuators were also being considered to preclude a recurrence of the alignment error. The licensee has also revised its maintenance procedures to require that local leak rate tests be performed on valves after packing maintenance.

NRC—The resident inspectors monitored the licensee's response to this event. The event was also discussed at an NRC Enforcement Conference, becoming a factor in the licensee

deciding to add another person to its operating shift to monitor shift activities.

Pilgrim

Licensee—By analysis and inspections, the licensee concluded that there was no damage to piping or supports. The testable check valve was scheduled for replacement during a station-wide valve betterment program. Instructions for verbal communications among station personnel were implemented.

NRC—The NRC monitored the licensee's response to this event. Resident and region-based inspectors inspected the valve test and surveillance programs, and the valve betterment program and its implementation, during the 1984 outage.

Hatch Unit 2

Licensee—Involved plant personnel were counseled on the importance of performing equipment maintenance correctly. Plant personnel were reminded of the need to perform maintenance in accordance with the appropriate valve maintenance manual and to perform thorough post-maintenance testing before returning a valve to service. For the long term, the licensee is considering adopting an alternative testing method for the LPCI isolation check valves. This alternative test method, which is in accordance with ASME Section XI, IWV–3520, allows in-service testing of the isolation check valves to be performed by passing shutdown cooling flow through the valve during each cold shutdown.

On January 30, 1984, a management overview committee was established to ensure, prior to performance of maintenance, that all safety-related maintenance requests included proper work instructions and adequate post-maintenance functional testing requirements.

NRC—NRC Region II inspectors performed a special inspection on November 21—December 16, 1983, regarding the circumstances associated with the event. A violation was identified involving the lack of proper functional testing, the failure to prescribe that maintenance be performed in accordance with the appropriate vendor manual, and the performance of other, non-documented maintenance, on the check valve.

The NRC's Office for Analysis and Evaluation of Operational Data (AEOD) performed an engineering evaluation of the Hatch 2 event. The report (Engineering Evaluation Report No. AEOD/E414, "Stuck Open Isolation Check Valve on the Residual Heat Removal System at Hatch Unit 2"), issued on June 1, 1984, pointed out the safety significance of a possible interfacing LOCA between the high pressure RCS and the low pressure RHR system. The report also mentioned the similarities of the Pilgrim event regarding possible consequences.

Based on the AEOD recommendations, the NRC's Office of Inspection and Enforcement began to prepare an Information Notice which is discussed later.

Browns Ferry Unit 1

Licensee—The licensee stated that the following actions have been taken:

1. Procedures have been revised to be more descriptive in valve and actuator maintenance and return to service checks. The licensee will now procure the solenoid as a complete assembly and will not overhaul the solenoid on site.

2. Operator training on this event has conducted with particular attention to valve circuit breaker manipulation.

3. The surveillance instruction has been revised to be more specific on the circuit breaker working.

NRC—The following NRC actions were performed:

1. The onsite resident inspectors reviewed this event shortly after its occurrence.

2. An enforcement conference was held with senior licensee management on September 26, 1984.

3. Based on violations related to this event, together with several violations related to inadequate implementation of the licensee's quality assurance program, on January 28, 1985, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $100,000. The licensee paid the civil penalties.

4. The NRC will thoroughly review all licensee corrective actions.

5. The NRC is considering the event as a potentially new generic issue.

In addition, NRC Inspection and Enforcement Information Notice No. 84–74 ("Isolation of Reactor Coolant System from Low Pressure Systems Outside Containment") was issued on September 28, 1984, to all nuclear power reactor facilities holding an operating license or a construction permit. The notice described the Pilgrim, Hatch Unit 2, and Browns Ferry Unit 1 events, pointed out the possible serious consequences, and offered suggestions to licensees regarding avoiding degradations of valves which provide isolation barriers between the high pressure RCS and low pressure systems. The LaSalle Unit 1 event was included in NRC Inspection and Enforcement Information Notice No. 84–81 ("Inadvertent Reduction in Primary Coolant Inventory in Boiling Water Reactors During Shutdown and Startup") which was issued on November 16, 1984, to all boiling water reactor facilities holding an operating license or construction permit.

In addition, the NRC's AEOD office is performing a more detailed study on this subject.

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Degraded Shutdown Systems

One of the general abnormal occurrence criteria notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence.

As discussed below, the event is still under review regarding the causes of the event and the corrective actions to be taken. When this information becomes known, it will be reported in a succeeding issue(s) of the quarterly abnormal occurrence reports to Congress (NUREG–0090 series).

Date and Place

On June 23, 1984, 6 out of the total 37 control rod pairs at Fort St. Vrain failed to insert upon receipt of an automatic scram signal from the plant protective system. At the time of the event, the plant was operating at 23% power. A somewhat similar event had occurred previously on February 22, 1982, when two control rod pairs failed to insert automatically during a manual scram (i.e., a scram initiated by the operator); however, for this event, the reactor was already in a subcritical condition during routine startup operations.

During July 1984, the licensee reported that numerous control rod position instrumentation anomalies had occurred.

On November 5, 1984, with the plant still shut down since the June 23, 1984, event, a portion of the plant's redundant rapid shutdown system was tested and failed to operate properly.

Fort St. Vrain is a high-temperature, gas-cooled reactor (HTGR) operated by Public Service Company of Colorado (the licensee); the plant is located in Weld County, Colorado.

Nature and Probable Consequences

Control rod drive mechanisms (CRDMs) are used to withdraw and insert the reactor's control rods, which constitutes the reactor's primary shutdown system. Each CRDM controls two separate boron-bearing control rods. There is a CRDM located in each of 37 refueling penetrations in the top head of the prestressed concrete reactor vessel (PCRV). The principal components of each CRDM include a

drive motor, a motor brake, a duplex cable drum, reduction gearing, limit switches, and two flexible steel, ¼-inch-diameter suspension cables. The control rod drives are basically electrically driven winches that raise or lower the control rods by means of the suspension cables. Each CRDM cable drum winds or unwinds its two control rod suspension cables simultaneously in separate winding grooves. The drive motor is directly coupled to the drum via the reduction gearing. Therefore, when the motor brake is energized, it retains the control rod pair at a set position. During a scram, the brake is de-energized and control rods fall into the core due to gravitational force. The free-fall speed is controlled by a velocity limiting system, which is a motor circuit capacitor array that causes the drive motor to function as an induction generator as it spins during the scram. Bearings, cables, and gears in the drive assembly are all treated with dry film lubricants that have a molybdenum disulfide base.

The reactor also has a reserve shutdown system for emergency use which was designed to provide an independent, alternate means of achieving shutdown conditions. Neutron absorbing material, in the form of small (approximately ½-inch-diameter) boronated graphite balls, is stored in a hopper in each refueling penetration from which it can be released, if required, by the operator and allowed to fall into channels in the core. There are two hopper subsystems (one with seven hoppers and the other with 30 hoppers) each of which can be independently initiated by manual control.

If the balls from all 37 hoppers are released into the core, this will provide sufficient negative reactivity to shut the reactor down to refueling temperature from any reactor operating condition without any movement of the control rods. This condition can be met with two hoppers inoperative.

On June 22, 1984, the plant was being shut down from about 40% power in a controlled manner because of high moisture content in the helium coolant. As the reactor power was being reduced, ice formation in the nitrogen-cooled, low-temperature adsorber of the on-line helium purification train resulted in a loss of normal helium letdown flow. However, helium continued to enter the PCRV by way of normal inleakage through the helium circulator seals. Consequently, at about 12:30 a.m. (MDT) June 23, 1984, with reactor power at 23%, the reactor tripped on a high pressure signal resulting from an incongruous combination of the increasing helium inventory and the automatic down programming of the high pressure trip setpoint as reactor power was being reduced.

Although the reactor was verified to be subcritical following the automatic scram, it was noted that 6 of the 37 control rod pairs had failed to automatically insert. These rods were then manually driven to the full-in position during the following 20-minute interval. Subsequent analysis by the licensee showed that even with the 6 control rod pairs not inserted, there was sufficient shutdown margin.

On its own merit, the June 23, 1984 event is a safety concern. The failure of six control rods to automatically insert upon receipt of a valid scram demand signal is a common-mode failure that constitutes a partial ATWS event (i.e., Anticipated Transient Without Scram). Independent of any backup shutdown system, the control rod system should have an "extremely high probability" of shutting down the reactor in the event of an anticipated operational occurrence.

When viewed in the context of related other occurrences at this facility, the June 23, 1984 event takes on additional safety significance. In an earlier event, two of the same control rods failed to insert during testing. In a later event, a portion of the backup shutdown system failed during testing. Further, anomalies have occurred in the instrumentation , which have led to uncertainties as to the positions of the control rods. These other related occurrences are described below.

On February 22, 1982, the reactor was subcritical and routine startup operations were in progress. Due to high moisture conditions and loss of helium purge flow, operators initiated a manual scram of all control rods in order to comply with the plant technical specifications. The reactor operator observed that two of the rod pairs failed to insert. (These same rod pairs also failed to insert subsequently during the June 23, 1984 event.) These rods were then manually driven in. The CRDMs for all control rod pairs were manually exercised until sticking tendencies were no longer apparent. The licensee speculated that the probable cause for the binding or sticking was corrosion or debris in the CRDMs. Exercising was continued on a daily basis during plant shutdown operations and on a monthly basis during power operation. No other maintenance or inspection was conducted.

On November 5, 1984, the reactor was still shutdown and testing of the backup shutdown system was in progress. The first hopper apparently operated satisfactorily. However, when the second hopper was tested, it failed in that only about half of the borated balls were released. This failure has generated a new safety concern regarding the reliability of the backup shutdown system, which will require resolution prior to the plant being allowed to resume operations.

During July 1984, the licensee reported to the NRC that numerous control rod position instrumentation anomalies had occurred for various control rods. With all rods supposedly fully inserted, eleven anomalies included: analog indication of partial rod withdrawal, rod out-limit lights being on, disagreement between analog position indication and digital position indication, simultaneous rod out-limit and rod in-limit indications on the same rod, no rod position indications at all for a rod, and a "slack cable" indication. The staff review of this matter concluded that the anomalous indications were most likely caused by exposure to hot helium containing excessive moisture followed by a reactor depressurization. In some cases, erroneous readings were caused by physical damage due to reactor operators manually driving the rods beyond the in-limit position. The staff concluded that the installed rod position instrumentation is inadequate to reliably determine control rod positions under post-trip adverse conditions.

During CRDM refurbishment efforts, the licensee experienced a significant setback on August 30, 1984. After a CRDM was hoisted out of the PCRV into the auxiliary transfer cask, it was found that the cask shutter valve could not be closed. An examination disclosed that one of the two control rod strings associated with CRDM was not fully retracted into the cask and thereby prevented the closure of both the shutter and the reactor isolation valve. During July 1984, the instrumentation for this CRDM indicated a "slack-cable." This indication could be caused by: a broken cable, a stuck control rod, or a malfunction of the "slack-cable" instrumentation. While the indication was believed to be most likely invalid and due to misadjustment during a recently completed CRDM refurbishment activity, the licensee failed to plan and provide for the possibility that indication was valid. This CRDM was placed in the licensee's hot service facility for further examination, and it was observed that one of the two suspension cables was snarled in the CRDM. The cable was chewed by the drive mechanism, partially unraveled, and broken into several pieces. This problem is being

pursued by the licensee, including whether it may be related to the June 23, 1984, event.

An additional problem regarding the shutdown systems developed on November 5, 1984. The licensee was testing the operation of two hoppers of the reserve shutdown system. The first hopper apparently operated satisfactorily; however, when the second one was tested, it failed to release all of its contained boronated graphite balls. Therefore, there was concern regarding the reliability of this backup shutdown system; this too would require resolution before plant operation could resume.

Cause or Causes

As of early November 1984, the root causes for the failures of the shutdown systems have not been definitively identified. In regard to the control rod system, the repeated situations of high helium moisture and loss of purge flow to the CRDMs cannot be ignored. Possible root causes, or contributing causes, include: bearing wear debris from within the CRDM drive motors, elevated CRDM ambient temperatures, and excessive moisture. The causes reman under investigation.

Actions Taken To Prevent Recurrence

Corrective actions remain under review by both the licensee and the NRC. The actions taken as of early November 1984 are described below.

Licensee—The licensee is committed to maintain the plant in a shutdown condition until the cause of the failures are identified, corrective measures are completed, and NRC authorizes return to power operations.

Actions taken include (a) a visual examination and partial refurbishment of about six CRDMs and (b) the development and implementation of a new in-situ testing method that has been used to ascertain overall control rod drive train performance. In regard to the CRDMs, visual examinations have revealed evidence of moisture condensation, minor oxidation of steel components, and small quantities of unidentified particulate matter. There has been as yet no definitive reason identified for control mechanism binding, but it is believed possible that it is associated with small amounts of debris in the drive motor bearings, alone or in conjunction with elevated temperatures and a moist helium atmosphere. The licensee is developing a test method which measures the back-electromagnetic force (EMF) generated by the rotation of the control rod drive motor as the rod is falling during a scram. Back-EMF recordings might serve as an indicator of red operability by measuring the dynamic frictional resistance within the gear train and the drive motor. To date, the licensee has performed back-EMF testing on 36 CRDMs and has detected anomalous voltage-signature characteristics associated with CRDMs that are known or suspected to have degraded performance.

NRC—The June 23, 1984, event was the subject of a special inspection at the plant by NRC Region IV personnel. This inspection report was issued to the licensee on September 11, 1984.

In addition, at the request of the Director, NRC Office of Nuclear Reactor Regulation, an assessment of the licensee's overall operation was conducted. The assessment team found significant weakness in every area of the operation that was audited. The report on this assessment includes both short-term and long-term recommendations. The overall conclusion of the assessment team was that the Fort St. Vrain facility should not be allowed to restart until all weaknesses are addressed.

The assessment report ("Preliminary Report Related to the Restart and Continued Operation of Fort St. Vrain Nuclear Generating Station"), which was sent to the licensee on October 16, 1984, is preliminary in that various options to solve the staff's findings are available to the licensee and need to be discussed with the NRC prior to final resolution.

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Refueling CavityWater Seal Failure

Example I.D. 3 of the abnormal occurence criteria notes that a major deficiency in design, construction, or operation having safety implications requiring immediate remedial action can be considered an abnormal occurrence.

Date and Place

During a refueling outage on August 21, 1984, Connecticut Yankee Atomic Power Company (the licensee) notified the NRC that the reactor refueling cavity water seal had failed at the Haddam Neck Plant, draining the refueling pool water to the containment floor. Haddam Neck utilizes a Westinghouse-designed pressurized water reactor and is located in Middlesex County, Connecticut.

Nature and Probable Consequences

The plant was shut down for refueling on August 1, 1984. After several days of surveillance testing, reactor disassembly began on August 12 in preparation for refueling. Core cooling was maintained using the residual heat removal (RHR) system. The cavity seal, which covers the 28-inch annuals between the reactor and the bottom of the reactor pressure vessel refueling cavity, was installed and tested on August 18 and the refueling pool was filled early on August 21.

At 7:58 a.m. on August 21, the seal assembly failed, dumping water around the neutron shield tank surrounding the reactor vessel and into the containment sump below the vessel. This sump overflowed in the containment floor drains and onto the lower level of containment. Water also leaked out around the reactor coolant loop penetration piping and wetted components inside the loop areas of containment.

During the first three minutes of the event, operators were responding to control room alarms and indications including 480 volt grounds, high containment sump level, and decreasing reactor cavity level. Flooding was reported in containment. Upon identification of the loss of refueling cavity integrity, the operators took action to minimize the drainage to containment by realigning the RHR system to pump the cavity water (and subsequently containment sump water) to the refueling water storage tank (RWST). By 8:22 a.m., the refueling cavity had emptied and the RHR system was returned to a normal lineup. Core cooling was maintained throughout the event and reator coolant temperature did not change. About 200,000 gallons of borated reactor coolant had drained to the containment floor. The containment lower level filled to a depth of 18 inches, and 40,000 gallons of coolant were returned to the RWST. The licensee notified NRC and State authorities of a declaration of an unsual Event in accordance with the Emergency Plan at 8:25 a.m., August 21. This Unusual Event was terminated on August 23 after the water in the containment had been pumped out.

The licensee restricted containment access and replaced the reactor vessel head to minimize radiation exposure and protect the reactor core internals. The licensee suspended refueling operations until a failure analysis and corrective actions were completed and until the NRC reviewed and approved the plant recovery program. This program was approved by the NRC on October 2, 1984, and refueling operations resumed October 5, 1984.

Since the spent fuel transfer tube was isolated and all of the spent fuel assemblies were located in either the spent fuel pool (SFP) or the reactor vessel, no fuel was uncovered during this event. Radioactivity in the ongoing

releases of air from the reactor containment building increased, but remained well within allowable limits. The only significant actual consequences were exposing equipment and structures in the containment to water damage, and extensive cleanup efforts.

However, there were serious potential safety consequences which could have occurred not only during this refueling but also could have occurred during the previous refueling operations when the same design of seal was used. For example, the SFP gates would have been opened within an hour of the seal design failure and handling of spent fuel assemblies in the refueling cavity coud hae been in progress within 18 hours. If refueling had been in progress, as many as four spent fuel assemblies could have been partially or fully uncovered as the reactor cavity drained. In addition, the top three feet of all fuel assemblies in the SFP would have been uncovered if the pool had drained through the transfer tube. Fuel assemblies recently removed from the reactor vessel would be even more radioactive (and generate considerably more decay heat) than spent elements stored for some time in the SFP. In all cases, there was a potential for fuel rod damage from overheating with subsequent release of gaseous fission products from the damaged fuel rods.

In addition, loss of the water would reduce the radiation shielding for spent fuel. This would have increased the radiation field in the refueling areas which could have precluded those operator actions necessary to prevent overheating of fuel being moved to or stored in the SFP.

The top of the reactor vessel is at the bottom of the refueling cavity, with a 28-inch annulus between the vessel and the bottom of the cavity. This annulus is sealed using a 2-foot-wide stiffened annular plate with pneumatic seals (inflatable rubber bladders) around the inside and outside diameters. This seal assembly fits around the reactor vessel and is held in place by nine strongbacks resting on the reactor vessel flange on the inside and on the refueling cavity bearing plate on the outside. When the bladders are inflated, the bulging of the lower bladder section pulls a wedge-shaped upper seating surface of the bladders down onto the two 2-inch gaps. This was intended to create and maintain a second tight seal. the refueling cavity is then filled with borated reactor coolant to cool and shield the spent fuel elements moved during refueling. This is a new seal assembly design first implemented in January 1983 and used successfully on two occasions during the 1983 refueling outage.

Cause or Causes

The event was caused by inadequate design of the bladders used in the seal assembly. The bladders were neither specified nor suitably tested to withstand, with a suitable safety margin, the hydrostatic pressure expected to occur during normal use. Post-event inspection of the seal assembly revealed that the outer bladder had extruded between the steel plates for about one quarter of the seal circumference. After subsequent testing, the licensee concluded that there was not sufficient margin in the seal design to prevent extrusion of the bladder through the 2-inch gap. The design verification by an independent engineer, the safety evaluation, and the review by the onsite and offsite review committees all failed to identify the inadequate seal design.

Actions Taken to Prevent Recurrence

Licensee—The licensee immediately initiated a recovery program which included:

1. NRC notification. Industry notification was made via the Institute of Nuclear Power Operations (INPO) network.
2. Containment dewatering/decontamination.
3. Equipment damage assessment.
4. Seal failure analysis.
5. Seal modifications.
6. Integrated event safety analysis.
7. Procedure review.

The standing water in the containment, which was mildly contaminated (0.01 mCi/ml), was pumped to the RWST through the filter and ion exchanger of the refueling purification system. Removal of this water was completed on August 23, 1984. Two days of manual decontamination and cleanup followed. On August 25, 1984, routine access to the containment lower level was restored.

The licensee conducted inspections of equipment and structures in the containment in order to assess the potential for equipment damage. A comprehensive list of submerged or water-soaked equipment was developed. Each item was repaired, flushed and/or evaluated to reaffirm the ability of each component to perform its design function. Major equipment affected included the reactor vessel, reactor coolant piping, nuclear instrument detectors, motor-operated valves, electrical cables and conduits, and containment sump pumps.

As stated previously, the licensee's failure analysis identified that there was insufficient design margin to prevent the bladders in the seal assembly from extruding through the 2-inch gap in the seal structure. To correct this design error, the licensee reinforced the upper portion (solid rubber) of the bladders by pressing 3/16-inch steel pins through the elastomer at 3-inch intervals around the circumference of the seals. Subsequent testing confirmed that a safety factor of 4 with respect to extrusion of the bladder had been established by this modification.

In addition, the licensee installed a leak-limiting back-up cavity seal and a 5-foot high cofferdam at the mouth of the refueling transfer canal. In the event of another failure of a bladder, the back-up seal limits the leak rate such that operators have enough time to recognize and react to the event and return spent fuel in the reactor cavity to a safe position prior to uncovering any fuel. The back-up seal also provides a measure of impact protection to the primary rubber seals. The cofferdam prevents uncovering fuel in the spent fuel pool for any future reactor cavity seal problem.

The licensee performed an integrated safety analysis for reactor cavity seal failure events. This analysis showed that a significant reduction in the probability and consequences of such an event had been achieved, and that public health and safety would not be jeopardized during a subsequent seal failure event.

NRC—As stated previously, the NRC reviewed and approved the licensee's recovery program prior to the resumption of refueling operations at the site.

On August 24, 1984, the NRC issued Inspection and Enforcement Bulletin No. 84–03 ("Refueling Cavity Water Seal") which informed licensees of this occurrence. The bulletin required each licensee to evaluate the potential for a similar event at their facility and to summarize this evaluation in writing to the NRC prior to refueling.

NRC Region I performed inspections to determine the circumstances associated with this event. An enforcement conference was held in the Region I (Philadelphia) office with the licensee on October 1, 1984. The licensee presented its corrective actions resulting from this event, which were acknowledged by the NRC staff.

On December 13, 1984, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of $80,000; in addition, an Order modifying the license was imposed. The Order requires a review and appraisal by an independent

organization of (1) design modification packages approved since January 1, 1979, to determine the adequacy of design control and to determine whether each such modification introduced any previously unalyzed failure mode or mechanism, and (2) the process for initiating, evaluating, reviewing, approving, and implementing design change modifications to determine if deficiencies exist in the process, and to provide recommendations for improvement. The licensee paid the civil penalty in January 1985.

The NRC will monitor the actions taken by the licensee to assure that corrective actions taken are satisfactory.

On December 17, 1984, the NRC issued Inspection and Enforcement Information Notice No. 84-93 ("Potential for Loss of Water From the Refueling Cavity"), which informed licensees of features in some pressurized water reactors and boiling water reactors that may have a significant potential to cause loss of water in the refueling cavity.

FUEL CYCLE FACILITIES (OTHER THAN NUCLEAR POWER PLANTS)

Degraded Material Access Area Barriers

Example I.D. 3 of the abnormal occurrence criteria notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

Date and Place

On May 22, 1984, an NRC Physical Security Inspector, while conducting a routine physical security inspection of the Nuclear Fuel Services (the licensee) facility, discovered three areas of degradation in a material access area (MAA) boundary which lessened the overall effectiveness of the security barrier. A subsequent survey by the licensee of all MAA barriers identified four additional boundary degradations. The licensee's facility, located in Erwin, Tennessee, manufactures nuclear fuel for the Department of Energy.

Nature and Probable Consequences

The degradations in the MAA boundaries were created by previous modification and maintenance activities in which barrier penetrations, consisting primarily of deleted piping, were not adequately sealed or secured. The unprotected barrier penetrations provided a possible diversion path for special nuclear material.

Cause or Causes

Review of the circumstances of the event by NRC Region II management and the licensee determined that the barrier degradations occurred as a result of inadequate communication and interface between the facility maintenance and security personnel relative to modification and maintenance impact on security effectiveness. It was further determined that the licensee's management and administrative control systems failed to promptly detect and correct the degradations of the MAA boundaries.

Actions Taken To Prevent Recurrence

Licensee—The licensee implemented compensatory protection measures immediately upon discovery of the degraded MAA boundaries. The licensee conducted a survey of all MAA facilities to identify any additional uprotected boundary penetrations. All penetrations identified were appropriately sealed. In addition, the licensee conducted an engineering study and evaluated all utility-type lines within the facility with respect to securing them from unauthorized use. A formal procedure which upgrades the safeguards controls over maintenance and repair activities was prepared by the licensee. After receiving NRC "Licensee Safeguards Guidance Group Bulletin No. 38," described below, the licesee submitted a plan for comprehensive preventive action which included commitments and scheduled completion dates. The more immediate corrective measures have been completed.

NRC—The NRC Physical Security Inspector who discovered the degradations of the MAA boundaries remained on site until completion of the initial survey of all MAA boundaries by the licensee and implementation of appropriate corrective actions or compensatory measures.

An enforcement conference was held in the NRC Region II Office on June 13, 1984. The licensee presented findings that contributed to the occurrence of the event, and proposed actions to prevent recurrence. Subsequent management meetings were held between NRC Region II and the licensee at the licensee's facility on July 19, 1984, and August 8–9, 1984, to review progress on licensee commitments to improve safeguards control of maintenance and modification activities associated with MAA barrier penetrations, and to improve engineering drawings of special nuclear material process lines, and non-special nuclear material pipes and drains. Additionally, the results of the licensee's survey of all MAA barrier penetrations and their significance were reviewed.

On July 27, 1984, the NRC Region II Office forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $100,000. The licensee responded on September 14, 1984. Based on the licensee's prompt and extensive corrective actions, the NRC decided to reduce the proposed civil penalty. On January 22, 1985, the NRC issued an Order Imposing a Civil Monetary Penalty in the amount of $80,000.

On August 3, 1984, the NRC Office of Nuclear Material Safety and Safeguards forwarded to the licensee and all other licensed fuel fabrication facilities a copy of "Licensee Safeguards Guidance Group Bulletin No. 38," which provides guidance relative to pipes, conduits, duct work, and similar necessary penetrations of MAA barriers.

OTHER NRC LICENSEES (INDUSTRIAL RADIOGRAPHERS, MEDICAL INSTITUTIONS, INDUSTRIAL USERS, ETC.)

Contaminated Radiopharmaceuticals Used in Diagnostic Administrations

Example I.D. 4 of the abnormal occurrence criteria notes that a series of events which create major safety concern can be considered an abnormal occurrence. In addition, one of the general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place On May 18, 1984, two nuclear pharmacies (i.e., Nuclear Pharmacy, Inc., located at Chicago, Illinois, and Syncor International, Inc., located at Blue Ash, Ohio) received faulty devices from the Medi-Physics, Inc. facility located at Tuxedo, New York, which were used for preparing doses of technetium-99m, a radiopharmaceutical widely used for diagnostic medical tests. The radiopharmaceutical was contaminated with molybdenum-99, another radioactive material. Contrary to NRC license conditions, the contaminated radiopharmaceuticals were shipped by the nuclear pharmacies to hospitals, which resulted in 28 patients receiving unnecessary exposures during diagnostic medical tests.

Nature and Probable Consequences

Technetium-99m is a radiopharmaceutical which is widely used in hospitals and doctors' offices for diagnosing a variety of diseases. It has a short halflife of 6 hours (i.e., it loses half of its radioactivity every 6 hours.) It is a product of the decay of another radioactive material, molybdenum-99.

The technetium-99m producing devices, called generators, contain molybdenum-99. Technetium-99m, the short-lived product, is removed from the

generator as needed by using a saline solution which combines with the technetium-99m, but leaves most of the molybdenum-99 in place. Molybdenum-99 has no medical application and is considered a contaminant; NRC requirements permit no more than 5 microcuries molybdenum-99 contaminant in a dose of technetium-99m.

Both Syncor and Nuclear Pharmacy received a defective generator from Medi-Physics on May 18, 1984, and both proceeded to prepare technetium-99m radiopharmaceuticals for use by their medical customers.

The NRC requires that the solution removed from the generators be tested to assure that there had not been a "breakthrough" of the molybdenum-99 to contaminate the technetium-99m.

However, as discussed under "Cause or Causes" below, contaminated technetium-99m was distributed to various medical customers of the two nuclear pharmacies.

Some of the medical customers performed independent surveys, detected abnormal radiation levels, and did not use the contaminated technetium-99m. Others, however, administered the technetium-99m for diagnostic tests. Inspections by the NRC and reviews by the licensees determined that 16 patients received contaminated technetium-99m distributed by Syncor and 12 patients received contaminated technetium-99m distributed by Nuclear Pharmacy.

The highest confirmed quantity of molybdenum-99 as a contaminant in a specific dose was 234 microcuries, although other patients could have recieved somewhat higher doses. (A microcurie—one millionth of a curie—is a standard measure of radioactivity.)

According to an NRC medical consultant, 234 microcuries of molybdenum-99 would have resulted in an additional total body radiation exposure of 100 to 150 millirems, which is not considered to be medically significant. (For comparison, a typical chest x-ray involves an exposure of 20–50 millirems and individuals receive approximately 100 millirems of radiation each year from natural environmental sources.)

However, it is possible that the molybdenum-99 may have concentrated in certain organs (e.g., kidneys, bladder, liver) which would have resulted in organ exposures higher than the whole body exposure estimated above. The NRC is not aware of any subsequent tests performed by the medical clients which might provide evidence of higher exposures to specific organs.

In any case, the additional radiation to the patients represented unnecessary exposures which could have been avoided had the nuclear pharmacies not released contaminated technetium-99 to the medical clients.

Cause or Causes

Even though the molybdenum-99/technetium-99m generators were defective and produced contaminated technetium-99m, it is the responsibility of the nuclear pharmacies to detect such contamination and not permit these products to be given to the medical clients for patient use.

Based on NRC inspections, the causes of the violations at the licensees are as follows:

(1) At Syncor, the responsible radiopharmacist apparently at first misinterpreted the test results. However, after becoming aware of the contaminated technetium-99m, he apparently made no attempt to notify clients or recover technetium-99m shipments he knew were contaminated.

(2) At Nuclear Pharmacy, no breakthrough tests were performed. In addition, until the NRC became involved, the licensee, even after being aware that a breakthrough had occurred, did not take action to notify its clients and to determine whether contaminated material had actually been used on patients. Even after the licensee began investigating the matter, the licensee did not provide the NRC with reliable information.

Actions Taken To Prevent Recurrence

Licensees—Both licensees have upgraded their procedures to assure that the NRC-required molybdenum-99 breakthrough tests are completed and fully evaluated before the technetium-99m is distributed to customers. Both licensees operate other nuclear pharmacies as well as the facilities involved in this situation; their other facilities have taken similar steps to prevent the occurrence of a similar problem with distribution of contaminated technetium-99m.

In addition, both licensees are required to take other corrective actions in response to the NRC enforcement actions described below.

NRC—Special inspections were conducted by the NRC's Region III Office into the handling of the molybdenum-99 contamination by the two licensees.

On August 23, 1984, the NRC forwarded to Syncor a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $8,500. As stated in the forwarding letter, the NRC emphasized the importance of the violations and the need to ensure implementation of effective management and quality control over the licensee's radiation safety program, including the need to take prompt corrective action when problems are identified. The licensee responded on September 19, 1984. On January 2, 1985, the NRC issued an Order Imposing a Civil Penalty in the amount of $8,500. The licensee paid the civil penalty, which was received by the NRC on January 22, 1985.

On October 26, 1984, the NRC forwarded to Nuclear Pharmacy an Order Modifying Licenses, Effective Immediately. As stated in the forwarding letter, the NRC identified numerous violations at the licensee's Chicago, Illinois; Des Moines, Iowa; Wauwatosa, Wisconsin; Philadelphia, Pennsylvania; and Harrisburg, Pennsylvania, facilities. The inspections showed that the licensee had not maintained adequate control of its licensed activities. The licensee's ineffective and belated investigation of the molybdenum-99 breakthrough incident and the licensee's pervasive record-keeping problems were of particular concern. The Order included specific changes in the licensee's procedures and weekly audits by each facility manager of all NRC-licensed activities. In addition, the licensee shall obtain the services of one or more qualified independent organizations to assess the qualifications and adequacy of the licensee's employees, and the adequacy of the licensee's operating procedures, records, and radiation protection quality assurance program. The licensee shall submit a written response to the NRC in regard to the independent organization(s) assessment and recommendations.

After the Order was issued, the NRC Region III received allegations that the terms of the Order were not being fully met at the Chicago facility. Consequently, a special NRC inspection was performed on November 16 and 17, 1984; ten violations of the Order were identified. The licensee voluntarily suspended distribution of radiopharmaceuticals on November 17, 1984.

Because the licensee is a major supplier of radiopharmaceuticals in the Chicago region and a continued shutdown could affect the quality of health care in the region, NRC Region III permitted the licensee to resume operations at 11 p.m., on November 18, 1984, following extensive corrective measures. During the shutdown, radiopharmaceuticals were provided to the licensee's customers by other suppliers in the Chicago area and by the

licensee's Waukesha, Wisconsin, facility.

The licensee added staff to its Chicago facility from its corporate staff and provided extensive reorganization and retraining for processing and distribution activities. Consultant personnel supervised the revamping of the Chicago operations.

NRC Region III personnel observed the licensee's activity when they resumed on November 18–19, 1984. No violations of the Order of NRC requirements were observed. NRC Region III intends to continue to closely monitor the licensee's activities at the Chicago facility and at its other NRC-licensed facilities.

On November 30, 1984, the NRC issued Inspection and Enforcement Information Notice No. 84–85 ("Molybdenum Breakthrough from Technetium-99m Generators") to all NRC medical licensees and radiopharmaceutical suppliers, to notify them of the problems of molybdenum-99 breakthrough from the technetium-99m generators.

* * * * *

Therapeutic Medical Misadministration

One of the general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurence.

Date and Place

On July 3, 1984, Washington University Medical Center (the licensee), St. Louis, Missouri, reported to the NRC that a 64-year old patient had received a series of radiation treatments totaling 6,400 rads and radiation instead of the precribed dose of 4,000 rads.

Nature of Probable Consequences

The patient, a 64-year old woman, was to be treated for cancer of the brain utilizing a cobalt-60 radiation therapy device. The prescribed dose was 4,000 rads to the head over a series of 20 equal treatments. The treatments were to consist of 100 rads to the right and left sides of the head for a total radiation dose of 200 rads per treatment.

Through an error in preparing the treatment plan for the patient, the patient received 200 rads to each side of the haad during each treatment for a total of 400 rads per treatment. The patient received sixteen doubled treatments before the error was discovered during a routine review of the patient's records.

The hospital has reported that the patient has had no acute, serious side effects as a result of the higher radiation doses. An NRC medical consultant, retained to evaluate this case, stated that the total radiation dose to the head was still within the acceptable range for such treatments.

Cause or Causes

The misadministration was caused by an error in recording the radiation doses on the patient's treatment plan. The total radiation dose for each treatment was interpreted as being the dose to be administered to each side of the head, thus doubling the dose for each treatment. The calculations used in administering the radiation treatment were subsequently checked several times by hospital personnel, as required by therapy department procedures. These checks determined that were no mathematical errors made, but failed to detect the deviation from the original treatment prescription.

Actions Taken To Prevent Recurrence

License—The license has reviewed its procedures used in checking patient records during a treatment series and has provided retraining to its staff on the handling of radiation treatments involving doses delivered from multiple locations.

The misadministration was the first in approximately 30,000 radiation treatments using the licensee's radiation therapy equipment in the past five years.

NRC—The NRC conducted a special inspection of the licensee's radiation therapy program on July 16–17, 1984, to review the circumstances of the misadministration. The licensee's corrective actions are considered to be acceptable, and no violations of NRC requirements were identified in the inspection.

* * * * *

Significant Internal Exposure to Iodine-125

One of the general abnormal occurrence criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and Place

On August 8, 1984, the NRC Region I office was notified by the Veterans Administration Medical Center, Bronx, New York, that on August 3, 1984, an individual (Individual A) working at the licensee's facility had been found to have a thyroid burden of approximately 524 microcuries of iodine-125 (apparently received on July 28, 1984), an amount which greatly exceeded the allowable NRC limits. Three co-workers (Individuals B, C, and D) also showed thyroid burdens, but the values were within regulatory limits.

Nature and Probable Consequences

The following description is based upon the licensee's investigations and the results of an NRC inspection regarding the circumstances of the incident.

Although initially it was reported that the exposure had resulted from poor technique during an iodination (preparation of a tracing compound), it has not conclusively been determined how the uptake occurred. The licensee believes that up to seven millicuries of iodine-125 was accidentally swallowed by Individual A or absorbed through his skin as a result of contamination, because seven millicuries of iodine-125 were found missing and unaccounted for from the inventory.

Individual A admitted he worked with this quantity of iodine-125 on July 28, 1984, using poor laboratory practices, such as not wearing a glove on his right hand. The lesser uptakes by Individuals B, C and D, who live with Individual A, were probably the result of ingestion of contaminated food prepared by Individual A. All four individuals live on Veterans Administration property where the food was consumed. Other individuals who may have consumed contaminated food received a thyroid bioassay and were found to have no uptake. The licensee is continuing to monitor the four individuals involved.

Licensee surveys of the apartment occupied by the individuals found contamination ranging from 1,000 to 3,000,000 distinegrations per minute. The pillow of Individual A was reading 60 millirems/hour on contact. The contamination found in the apartment was either carried by Individual A on his hands or from his own perspiration. The apartment, which is owned by the licensee, was decontaminated. Individual A was temporarily moved to other living quarters to avoid further contamination to the other three individuals who remained at the decontaminated apartment.

The licensee projected a total absorbed dose to Individual A's thyroid of approximately 2000 rads, based on maximum measured uptake of 524 microcuries. The licensee's consulting physician does not anticipate significant thyroid damage to occur, although some loss of thyroid function is possible. The licensee's physician reports that the individual is progressing satisfactorily from a medical standpoint. NRC Region I retained a medical consultant who agreed with the licensee's assessment. The thyroid burdens for Individuals B,

C, and D were approximately 156, 94, and 68 nanocuries respectively. These would result in small thyroid exposures, well within NRC regulatory limits.

Cause or Causes

The direct cause of the incident has not been determined. The most likely cause appears to be mouth pipetting or other poor laboratory practice in the handling of iodine-125. Based on the licensee's and the NRC Region I's investigations, it is unlikely that a clearer understanding of the cause will be possible.

Actions Taken To Prevent Recurrence

Licensee—The licensee increased the frequency of thyroid bioassays from quarterly (every three months) to weekly for all individuals handling iodine-125 as sodium iodide. They reviewed their training program to ensure that required safety procedures have been communicated to all personnel. The licensee's Radiation Safety Officer is making frequent visits to the laboratory to monitor work in progress and to perform surveys. They plan to reduce the frequency of surveys in the future if experience continues to be that few instances of contamination are found.

NRC.—Inspectors from the NRC Region I office reviewed the circumstances of the incident during an inspection on August 9 and 10, 1984. Subsequently, an enforcement conference was held with the licensee. Enforcement action is pending.

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Therapeutic Medical Misadministration

The general abnormal occurrence criteria notes that a major reduction in the degree of protection of the public health or safety can be considered an abnormal occurrence.

Date and Place

On August 15, 1984, the NRC was notified by the United States Air Force Medical Center (the licensee), at Keesler Air Force Base near Gulf Port, Mississippi, of a therapeutic medical misadministration which had been discovered on August 9, 1984.

Nature and Probable Consequences

The patient was an 18-year-old female with Hodgkin's disease, who had been treated with six courses of chemotherapy. Subsequent to the chemotherapy treatments, the patient underwent consolidation irradiation to the diseased portion of the body under a physician's supervision. This therapy, beginning on June 3, 1984, was applied to the mediastinum, hilar areas, supraclavicular areas, and low and mid neck. The initial prescribed dose was 3,000 rads to all involved fields. Because the physician felt that the volume of lung involved would not tolerate this dose, he intended to reduce the area of lung irradiated after 1,500 rads to 1,800 rads of exposure. However, this decision was only recorded on the initial simulation films and not on the radiotherapy treatment sheet or the consult notes. As a result, the physician did not remember to actually reduce the field, and the irradiation resulted in a total exposure to a large portion of the patient's left lung of 2,475 rads instead of the intended 1,500 to 1,800 rads.

No immediate adverse health effects were detected as a result of the overexposure; however, the licensee agreed that the risk of radiation pneumonitis and radiation-induced fibrosis were significantly increased as a result of this event.

Cause or Causes

The overexposure occurred because the administrative procedures for control of the treatment were inadequate in that they placed total dependence on the memory of the person administering the treatment.

Actions Taken to Prevent Recurrence

Licensee—As a result of conversations with NRC Region II personnel and commitments documented in an NRC Region II Confirmation of Action letter, the licensee agreed to take the following actions to prevent recurrence: evaluate the circumstances that led to the event; prepare a new treatment plan form and implementing instructions; conduct training of personnel involved; and report the results of these actions to the NRC.

NRC—An inspection was performed resulting in a reporting violation and the NRC Region II Confirmation of Action letter described above.

NRC Region II will review the actions proposed by the licensee to assure they are satisfactory.

Dated in Washington, D.C. this 11th day of April 1985.

John C. Hoyle,

Acting Secretary of the Commission.

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Cincinnati Gas & Electric Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Revoking Construction Permit No. CPPR-88 which authorized construction of the Wm. H. Zimmer Nuclear Power Station, Unit 1 located in Moscow, Ohio, approximately 24 miles southeast of Cincinnati, Ohio. The construction permit is held by Cincinnati Gas and Electric Company (CG&E or permittee), on its own behalf, and on behalf of Dayton Power and Light Company and Columbus and Southern Ohio Electric Company. The latest construction completion date in the permit, as amended, was December 31, 1982. On November 24, 1982, Cincinnati Gas & Electric Company filed a timely request to extend the latest completion date to December 31, 1984.

Environmental Assessment

Identification of Proposed Action

The proposed action is to issue an order that would terminate Construction Permit No. CPPR-88 for the Wm. H. Zimmer Nuclear Power Station, Unit 1. This action was requested by the Cincinnati Gas & Electric Company because it does not plan to complete the Station as a nuclear fueled unit.

On January 27, 1984, Cincinnati Gas & Electric Company informed the Commission that the owners of Zimmer Unit 1 planned to convert the nuclear fueled facility to a coal-fueled plant. By motion, dated March 20, 1984, CG&E requested the Atomic Safety and Licensing Board (ASLB) to authorize withdrawal of its application for a license to operate the Zimmer plant. CG&E proposed to remove all nuclear fuel from the site. Also, CG&E proposed to cut and cap the main steam lines from the reactor and the main feedwater lines to the reactor, and to remove control rod drive mechanisms from the reactor so that it could not be operated as a utilization facility. These actions have been completed and verified by the NRC staff. As part of termination of the licensing proceeding by letter dated June 1, 1984, CG&E proposed a site restoration program to restore the site to stable environmental conditions. The ASLB authorized withdrawal of the operating license application by its Memorandum and Order, dated August 29, 1984, subject to satisfactory completion of the site restoration program. A Notice of Withdrawal of Application for Operating License and Termination of Proceeding was published in the Federal Register on November 8, 1984 (49 FR 44695). By letter dated October 18, 1984, CG&E advised that site restoration was completed and requested that the construction permit be terminated.

CG&E is also a holder of two other NRC licenses, a special nuclear materials license for possession of nuclear reactor fuel and incore neutron flux monitors and a byproduct material license. These two licenses will be terminated by separate actions of the NRC. Since fuel has been shipped offsite and the reactor has been disabled so it cannot be used as a nuclear power plant, termination or revocation of the construction permit is the next appropriate administrative action.

CG&E's site restoration plan consisted of five components: (1) Removal of all trailers and temporary buildings not believed useful for conversion of the site to a coal burning facility; (2) grading; (3) the addition of crushed rock; (4) limited modification to site drainage patterns; and (5) reseeding bare areas. After evaluation of the additional information, a site visit was made by NRC staff on June 11–12, 1984. The primary objective of the site visit was to determine whether the site restoration plan considered all critical site areas. A particular effort was made to inspect areas of the site which potentially could be subject to continued erosion and contribute silt to surface waterbodies, as well as identify areas where standing water could result in saturated soils. The entire site, including the sedimentation pond was examined. The two areas with meteorological towers, which are offsite, were also examined. The NRC staff did not identify any area that required attention that was not covered in the applicants' restoration plan. In addition, NRR staff flew the transmission lines from the Zimmer Station to the Silver Grove substation and from the Silver Grove substation to the Terminal Line substation. These transmission lines are currently energized and will continue to form part of the licensee's transmission grid. Outside of a few areas where trail bikes apparently have killed the herbaceous vegetation and soil erosion was evident, the transmission line right-of-ways are in excellent condition.

The NRC staff conducted an inspection of the Zimmer site on December 11 and 12, 1984 to determine, among other things, whether the CG&E's site restoration plan had been satisfactorily completed. (Letter from C.J. Paperiello, NRC to J.R. Schott, Cincinnati Gas and Electric Company, dated January 11, 1985.) At the exit interview, the NRC inspector stated that all the conditions of CG&E's June 1, 1984 site restoration plan appeared to have been met except that seeding had not been done around the settling basin perimeter and native vegetation on the south bank of the basin appeared to be inadequate to control erosion. The NRC staff has considered the potential environmental impact of erosion of the south bank and concluded that since the soil from this erosion will remain in the basin, continued erosion will not have a detrimental offsite environmental impact. Continued erosion would slightly increase the size of the settling basis but would not cause a significant detrimental onsite environmental impact.

The Staff concludes, based on its review and inspection that the Zimmer Nuclear Power Station has been brought to an environmentally stable condition and that the licensee has satisfied its commitments in connection, with the termination of the licensing proceeding.

Need for Proposed Action

The license has terminated construction of the nuclear power plant and has disabled the facility so that it cannot be operated as a utilization facility. This action terminates the Construction Permit reflecting the fact that construction of the utilization facility has ceased and the system is no longer a utilization facility.

Environmental Impact

This action is a simple ministerial act of terminating the outstanding license to reflect the fact that there is no longer a utilization facility under construction at the Zimmer site. This ministerial act has no environmental impact.

Alternative Use of Resources

This ministerial action for which there are no appropriate alternatives does not involve the use of and therefore will not affect available resources.

Agencies and Persons Contacted

The NRC staff reviewed CG&E's request for termination of the construction permit and conducted the environmental review and inspection of the facility. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this proposed action. Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the CG&E's request for termination of Construction Permit No. CPPR–88, dated October 18, 1984, CG&E's site restoration plan transmitted by letter dated June 1, 1984, and NRC staff's inspection report transmitted by letter dated January 11, 1985. These documents regarding the NRC staff's environmental assessment of the proposed action are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Clermont County Library, Third and Broadway Streets, Batavia, Ohio 45103. Correspondence concerning this facility will continue to be maintained at these locations for at least one year.

Dated at Bethesda, Maryland, this 9th day of April 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85–9162 Filed 4–15–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Fluid Dynamics and Emergency Core Cooling System; Meeting

The ACRS Subcommittees on Fluid Dynamics and Emergency Core Cooling Systems will hold a joint meeting on May 1, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 1, 1985—8:30 a.m. until the conclusion of business.

The Subcommittee will: (1) Review the status of the hydrodynamic loads issue for GE BWR Mark I–III containments; (2) continue the discussion of C. Michelson's concerns regarding the USI A–43 issue relating to the effects of insulation debris on containment sump performance post-LOCA; (3) hear a report on the status of the BNL Plant Analyzer Program; and (4) discuss the status of ECCS-related current licensing actions by NRC–NRR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intitial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–9161 Filed 4–15–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14458; 811–3875]

Application and Opportunity for Hearing; Separate Account One of Maine Fidelity Life Insurance Company

April 8, 1985.

Notice is hereby given that Separate Account One of Maine Fidelity Life Insurance Company ("Applicant"), 55 West Street, Keene, New Hampshire 03431, an insurance company separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on March 12, 1985, pursuant to Section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On February 27, 1984, Applicant filed a notification of registration on Form N–8A and a registration statement on Form S–6. The registration statement was never declared effective.

Applicant states that it has never made a public offering of any of its securities, which would have been variable life insurance contracts ("contracts"), and that it has no contractholders. Applicant further states that it never made any sales of contracts or of any other securities. Applicant represents that it has no assets, debts or other liabilities, and that it is not a party to any litigation or administrative proceedings.

Applicant maintains that it is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. On February 28, 1985, the Board of Directors of Maine Fidelity Life Insurance Company authorized the termination of the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–9154 Filed 4–15–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–13688]

Application and Opportunity for Hearing; Storage Equities, Inc.

April 10, 1985.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an application under clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Trust Services of America, Inc., a California corporation ("TSA") (as successor trustee to First Interstate Bank of California, a California banking corporation) under a fourth supplement of an existing indenture qualified under the Act is not so likely to involve material conflicts of interest as to make it necessary in the public interest or for the protection of investors to disqualify TSA from acting as trustee under such fourth supplement.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. TSA, as successor trustee, currently is acting as trustee under an indenture (the "Indenture") and four supplements thereto under which the Applicant is an obligor. The Indenture, dated as of August 9, 1983, is between Applicant and TSA and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This Indenture was filed as Exhibit 4.3 to Applicant's Registration Statement No. 2–80850 filed under the Securities Act of 1933, and has been qualified under the Trust Indenture Act in connection with a Form T–1 filing, File No. 22–12633. Applicant has also entered into and filed, by way of post-effective amendments to the Registration Statement stated above, a First, Second, Third and Fourth Supplemental Indenture under which TSA is a trustee, and such supplements appear as Exhibit 4.4, 4.6, 4.12 and Exhibit 4.13, respectively, to the Registration Statement. Applicant issued Series 1 through 9 of its secured notes under the First Supplemental Indenture, Series 10 under the Second Supplemental Indenture, Series 11 under

the Third Supplemental Indenture and Series 12 under the Fourth Supplemental Indenture. Applicant has filed a post-effective amendment to the above Registration Statement containing the form of its Series 12 secured notes.

2. On March 14, 1984, and on November 7, 1984, Applicant filed with the Commission applications under Section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the Indenture and the First, Second and Third Supplements thereto were not so likely to involve a material conflict of interest as to make it necessary in the public interest or the protection of investors to disqualify the Trustee from acting as trustee under the Indenture or the First, Second or Third Supplement thereto. By orders dated May 14, 1984 and February 15, 1985, the Commission granted these applications.

3. Applicant wishes TSA to continue as Trustee under the Fourth Supplemental Indenture.

4. The Applicant is not in default in any respect under the Indenture, or the First, Second, Third or Fourth Supplement thereto.

5. Each series of secured notes issued under the Indenture, or the First, Second, Third or Fourth Supplement thereto are secured by separate and distinct assets of Applicant, so that should TSA have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of the other trusteeships should not inhibit or discourage TSA's actions under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice is further given that any interested person may , not later than April 30, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9144 Filed 4-15 85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14486; 811-1938]

Beacon Income Fund, Inc.; Application for an Order Declaring That Applicant Has Ceased to be an Investment Company

April 10, 1985.

Notice is hereby given that Beacon Income Fund, Inc. ("Applicant"), 46 Homestead Park, Needham, Massachusetts 02194, registered as an open-end, diversified management investment company under the Investment Company Act of 1940 ("Act"), filed an application on March 12, 1985, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that it has ceased to be an investment company and terminating Applicant's registration under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and regulations thereunder for the text of the applicable provisions.

Applicant states that it is a Delaware corporation that registered with the Commission as the Churchill Fund, Inc., and filed a registration statement with the Commission pursuant to the Securities Act of 1933 on September 4, 1969. Applicant intends to file a Certificate of Dissolution with the Secretary of State of Delaware if and when the Commission issues an order declaring that it has ceased to be an investment company.

Applicant further states that in connection with the plan of liquidation, Applicant sold all its holdings of securities and by Board of Director Resolution, authorized its officers to take all action necessary to effect a winding-up of Applicant's affairs.

Applicant also states that on January 31, 1985, a liquidating dividend, in the aggregate amount of $71,213.13, at $1.92 per share, was declared and distributed to Applicant's shareholders on a pro rata basis. Applicant retained a reserve of $12,849.46 in cash or cash equivalents to pay any unbilled expenses or liabilities. Having terminated operations and distributed its assets, Applicant accordingly requests an order of the Commission pursuant to Section 8(f) of the Act declaring that it has ceased to be an investment company.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 6, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9150 Filed 4-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23657; 70-7065]

Consolidated Natural Gas Co.; Proposed Revision of Stock Incentive Plan; Order Authorizing Solicitation of Proxies

April 8, 1985.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(5), 62, and 65 promulgated thereunder.

On March 19, 1982, the Commission issued an order (HCAR No. 22424) authorizing Consolidated to adopt, subject to stockholder approval, a Long-Term Incentive Plan ("Plan") and to issue up to 1,170,000 shares of its common stock, $4 par value under said Plan. The Plan was thereafter approved by the stockholders.

Consolidated's Board of Directors, at its meeting of February 14, 1985, adopted resolutions which, subject to stockholder approval, revised the 1982 Plan and increased the number of shares

that might be sold or awarded thereunder to 2,000,000.

The revised Plan includes Incentive Stock Options ("ISO's") which will be available to all employees on the executive payroll (approximately 130) and in the top two classified pay grades (approximately 240). The Incentive Stock Option grants will be based on individual performance and individual salaries and will range from approximately 30% to 250% of base salary, but in no case will a grant exceed $100,000 in a calendar year. ISO's generally will be granted on a two-year cycle and must be exercised within seven years.

Non-Qualified Stock Options ("NQSO's") will be available to all employees on the executive payroll (approximately 130). The NQSO's shall be granted to an eligible employee when that employee's Incentive Stock Option grant eligibility exceeds the annual statutory maximum as defined in Section 422 A of the Internal Revenue Code. These options shall be exercisable at any time following vesting, without regard to the sequence of grants, up to ten years from date of grant.

For both ISO's and NQSO's the options prices of the stock will be not less than fair market value set on the date of each grant. The options shall ordinarily be exercisable as to 25% of the number of shares granted on the second grant anniversary and an additional 25% of such shares on each grant anniversary thereafter, with the effect that the grants can be fully exercisable on the fifth grant anniversary.

Restricted Stock Awards ("Awards") will have limited availability among senior executives in the Consolidated System (approximately 30). The awards will be based on individual salary and performance. Awards may be increased in the event of future upward adjustment of salary grade. Additional Awards may be issued only after all restrictions have lapsed on an initial award. The price of the stock and therefore the number of shares awarded will be set at the time the award is made; however, it will not be less than the fair market value on that date. While an award shall not be transferable during the restricted period, there exists the right to vote those shares and to receive dividends on them. The restrictions on 25% of the shares will ordinarily lapse on the third anniversary of the award and 25% on each anniversary thereafter, with all restrictions having lapsed by the sixth anniversary. If a participating employee leaves the company, those shares on which the restrictions have not been lifted will be forfeited.

Consolidated proposes to solicit proxies in this regard for voting at the 1985 Annual Meeting. Consolidated has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 2, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be granted.

It appearing to the Commission that Consolidated's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of proxies by, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-0145 Filed 4-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14465; File No. 811-1843]

Highland Capital Corp.; Application and Opportunity for Hearing

April 9, 1985.

Notice is hereby given that Highland Capital Corporation ("Applicant"), 635 Madison Avenue, New York, New York 10022, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified, management investment company, filed an application on November 5, 1984, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the relevant provisions thereof.

According to the application, on November 18, 1983, Applicant's board of directors approved a plan of complete liquidation and dissolution of Applicant ("Plan"). Applicant states that the Plan was approved by its stockholders on January 24, 1984. The Plan authorized Applicant to enter into a liquidating trust agreement ("Liquidating Trust Agreement") providing for the deposit of Applicant's securities holdings which are not readily marketable and cannot be sold before the final liquidity distribution into a liquidating trust ("Liquidating Trust"). Applicant states that on April 10, 1984, Applicant made its first liquidity distribution of $3.00 in cash per share to its stockholders. A second liquidity distribution of $2.00 in cash per share and a distribution in kind of certain publicly-traded securities held in Applicant's portfolio, was made on August 27, 1984. The second liquidity distribution had a value of approximately $6.51 per share. Applicant states that the final liquidity distribution was payable on November 13, 1984, and as of October 31, 1984, has a value of approximately $1.69 per share.

Applicant states that on November 13, 1984, it would distribute in kind to its stockholders its holdings of securities of Leisure & Technology, Inc. Applicant further states that it will transfer two restricted securities valued by Applicants Board of directors at $325,000 as of September 30, 1984, to the Liquidating Trust because there is no public market presently available for these restricted securities.

Applicant represents that as of October 31, 1984, its total remaining assets were valued at approximately $1,282,650 (except for the shares of Leisure & Technology, Inc. and the restricted securities referred to above) and consisted of cash, short-term United States government securities and receivables of $134,613 including a receivable of approximately $125,000 relating to the termination of Applicant's pension plan in connection with the liquidation. Applicant states that of such liquid assets, $997,100 will be distributed on November 13, 1984 to stockholders in cash as part of the final liquidating distribution.

A reserve fund of approximately $266,000 was established by Applicant

to be used for payment of specific expenses, including rent, salaries, and legal and accounting fees, accrued in connection with the liquidation and dissolution of the Applicant. Applicant further states that any assets in the reserve fund on November 13, 1984 will be transferred to the Liquidating Trust.

Finally, Applicant states that in accordance with the Liquidating Trust Agreement, the liquid assets transferred to the Liquidating Trust will be invested only in (i) short-term certificates of deposit or money market accounts maintained by or issued by domestic banks having in excess of $100,000,000 in capital and surplus, (ii) savings accounts or certificates of deposit maintained by or issued by any savings institution or commercial bank insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation and (iii) short-term marketable direct obligations of, or guaranteed as to principal and interest by, the United States Government or any agency thereof. Applicant represents that as of October 31, 1984, the only outstanding liabilities of Applicant are approximately $49,000 of accrued expenses.

As of the date of this application, Applicant represents that there are approximately 616 holders of record of Applicant's common stock, its only outstanding security. The application represents that upon dissolution shares of Applicant's common stock will be treated as completely redeemed and that at the time of the initial distribution by the liquidating trustees, beneficiaries will be required to surrender their old stock certificates to the liquidating trustees. Applicant states that in the event that the Liquidating Trust does not incur all its estimated expenses, funds transferred to the Trust to cover such expenses will be distributed to the beneficiaries.

The application represents that Applicant is not now engaged in, nor does it propose to engage in any business activities other than those necessary for the winding up of its affairs. Applicant further represents that it is not a party to any litigation or administrative proceeding. Finally, Applicant states that it has not within the past 18 months transferred any of its assets to a separate trust other than the Liquidating Trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9152 Filed 4-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14461, File No. 812-6019]

Salomon Brothers Unit Investment Trust; Application for an Order

April 8, 1985.

Notice is hereby given that Salomon Brothers Unit Investment Trust, Insured Tax-Exempt Series One ("Series One"), and subsequent and similar series of trusts (collectively "Trusts"), unit investment trusts registered or to be registered under the Investment Company Act of 1940 ("Act"), and its sponsor, Salmon Brothers Inc. ("Sponsor" or "Salomon Brothers") (hereinafter both Sponsor and Trusts are collectively referred to as "Applicants"), One New York Plaza, New York, New York 10004, filed an application on January 10, 1985, and an amendment thereto to March 21, 1985, pursuant to Sections 6(c), 11(a), 17(b) and 17(d) of the Act and Rule 17d–1 thereunder for an order of the Commission exempting Applicants from the provisions of Sections 11(c), 17(a), 17(d) and 26(a)(2)(C) of the Act and Rule 17d–1 promulgated under the Act to the extent necessary to engage in certain dstransactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

According to the applicaton, Series One is, and each future Trust will be governed by a trust indenture (the "Indenture") under New York law and a Standard Terms and Conditions of Trust (the "Agreement") for that Trust (hereinafter collectively referred to as the "Indenture and Agreement"), under which the Sponsor will act as Depositor, United States Trust Company of New York will act as Trustee and Standard & Poor's Corporation and Kenny Information Systems will act as Evaluator.

The application states that the investment objectives of the Trust are the receipt of federally tax-exempt interest income consistent with the preservation of capital through an investment in a diversified portfolio of municipal bonds (the "securities"). Each insured series of the Trust will invest only in insured securities. Applicants further state that an insured series of the Trust may contain securities that have been insured by the issuer at the time of issuance, or the Sponsor may obtain an insurance policy insuring some or all of the securities until their maturity or earlier redemption, or the Trust may obtain an insurance policy insuring the securities while they are held in the Trust's portfolio, or any combination of the above.

Applicants represent that holders of units ("unitholders") can dispose of their units through their brokers or dealers or through redemption by the Trustee. Applicants further represent that while the Sponsor is not obligated to do so, it is the Sponsor's present intention to purchase units tendered to brokers and dealers or the Trustee and to resell those units in the secondary market as described in the prospectus.

According to the application, the Sponsor proposes to offer an Exchange Option to unitholders of Series One and any subsequent series of the Trust and for unitholders of any other unit investment trust (the "Exchange Trust") for which the Sponsor wishes to establish such an Exchange Option subject to a reduced sales charge.

Applicants represent that the Sponsor intends to hold the Exchange Option open under most circumstances, but it does, however, reserve the right to modify, suspend or terminate the Exchange Option at any time without further notice to unitholders. The application states that the Sponsor has represented that it will not solicit unitholders with respect to the Exchange Option with a view to churning unitholders accounts.

According to the application, the Exchange Option would apply only to units of Exchange Trusts as to which a secondary market is being maintained. A unitholder wishing to dispose of those of his units would have the option to exchange his units into units of an Exchange Trust for which a secondary market is maintained. Applicants represent that when a unitholder notifies his broker, dealer or the Trustee of his

desire to exercise the exchange Option, he will be delivered a current prospectus for one or more Exchange Trusts in which the unitholder has indicated an interest and for which units are available in the secondary market.

Applicants further represent that a purchase effected pursuant to the Exchange Option would operate in a manner essentially identical to any secondary transaction, except that the Sponsor seeks authority to effect the exchange subject to a reduced sales charge. Applicants seek authority to permit the Sponsor to sell units of the Exchange Trusts pursuant to the Exchange Option at a price based upon the value of the underlying securities divided by the number of units outstanding (the "unit offering price"), plus a sales charge of $15 (approximately 1.5% of the public offering price) in the case where a unitholder exchanges a Salomon Brothers Trust, and $20 (approximately 2% of the public offering price) in the case where any other unit investment trust is being exchanged. Applicants state that the Sponsor reserves the right to increase or decrease such charge from time to time in the vent of fluctuations in the costs of professional assistance and operation expenses in connection with these exchange transactions.

Applicants state that a unitholder who has purchased units of a series and paid a per unit sales charge which was less than the per unit sales charge of the series of the Exchange Trust for which such unitholder desires an exchange to be effectuated would be allowed to exercise the exchange Option at the unit offering price plus the reduced sales charge, provided the unitholder has held his units for a period of at least eight months. Any such unitholder who has not held the units to be exchanged for the eight month period would be required to exchange such units at the public offering price plus a sales charge based on the greater of (i) the reduced sales charge per unit or (ii) an amount which, together with the initial sales charge paid in connection with the acquisition of the units being exchanged, equals the sales charge of the series of the exchange Trust which such unitholder wishes to acquire, determined as of the date of the exchange.

The application states that a unitholder would be permitted to make up the difference between the amount representing the units being submitted for exchange and the units being acquired by rounding up to the next highest number of units.

Applicants request an order of the Commission pursuant to Section 11(a) of the Act exempting them from the provisions of Section 11(c) of the Act to the extent necesary to permit them to proceed with the Exchange Option.

Applicants believe that the proposed exchange at a reduced sales charge would be beneficial to all unitholder. Applicants state that, under the proposed Exchange Option, a person desiring to dispose of units of a trust and acquire units of another Exchange Trust may wish to do so for a number of reasons, such as changes in his or her particular investment goals or requirements or in order to take advantage of possible tax benefits flowing from the exchange. Applicants state that requiring a unitholder of a trust with a lower sales charge to have held his units for an eight month period eliminates the discriminatory nature of his effecting an exchange to a trust having a higher sales load.

The application also states that each series of the Salomon Brothers Unit Investment Trust designated an insured series will invest entirely in insured securities. The securities will either be (1) insured by the issuer thereof with premiums paid by the issuer (the "Pre-Insured Securities"); (2) insured by the Trust for the period held in the Trust portfolio with premiums paid by the Trust (the "Portfolio Insurance"); or (3) insured to maturity by the Sponsor with the premiums paid by the Sponsor (the "Sponsor Insurance"). According to the application, the Sponsor proposes to deposit Pre-Insured Securities in the Trust which have been insured by Bond Investors Guaranty Insurance Co. ("BIG"), or to cause the Trust to obtain Portfolio Insurance covering its securities from BIG or to purchase Sponsor Insurance covering each security deposited in the portfolio from BIG or to deposit all or any combination of insured securities into an insured Trust.

Applicants represent that BIG is a wholly-owned subsidiary and the principal asset of Bond Investors Group, Inc., a holding company. Phibro-Salomon Inc., who owns 100% of the Sponsor, has entered into an agreement with American International Group, Inc., Bankers Trust New York Corporation, Xerox Credit Corporation and Government Employees Insurance Corporation to become a shareholder in Bond Investors Group, Inc. Applicants state that because Phibro-Salomon Inc. will own 20% of BIG's parent corporation, BIG could be considered an affiliate of an affiliate of the Sponsor.

Applicants represents that while there are several companies which currently insure municipal bonds, none of the companies can assure the Sponsor that it will have sufficient insuring capacity to provide Portfolio Insurance or Sponsor Insurance to all series of the Trust. Applicants state that reserve requirements of various state insurance commissions and demand from municipal bond issuers and unit investment trust sponsors may prevent existing companies from providing insurance at the level necessary to market Trusts in the volume contemplated by the Sponsor. Applicants also represent that Pre-Insured Securities issued by BIG will represent an excellent value in the market, which should not be denied to the Trusts solely because of such affiliation.

Applicants submit that the terms of the insurance are reasonable and fair, do not involve overreaching and are consistent with the purposes of the Act.

Applicants request an exemption from Section 17(a) of the Act to the extent necessary to permit the sponsor to deposit with the Trustee of the unit investment trusts Pre-Insured Securities insured by BIG. Applicants represent that where the securities deposited are Pre-Insured securities, the Sponsor and the Trusts have not participated in the insurance arrangements. Premiums for such insurance are negotiated and paid by the issuer of the securities.

Applicants also request an exemption from Section 17(a)(1) to the extent necessary to permit the Sponsor to deposit with the Trustee of the unit investment trusts securities covered by Sponsor Insurance obtained from BIG. Applicants represent that the price of such insurance is paid for by the Sponsor and not the Trust. In addition, Applicants represent that the terms of the insurance will conform, in all material respects, to the terms of insurance available from other insurance companies and to the terms of insurance made available by BIG to other unit investment trust sponsors.

In lieu of a Trust containing securities insured to maturity, the Sponsor may decide to market a Trust with securities insured by Portfolio Insurance. In that case, the Trust would purchase a Portfolio Insurance policy from BIG with annual premiums to be paid by the Trust to BIG. Applicants request an exemption from Section 17(a)(1) of the Act to the extent that the provision by BIG of insurance to the Trust might be deemed the sale to the Trust of property by an affiliate acting as principal.

Applicants also request an order pursuant to Section 6(c) of the Act exempting them from the provisions of Section 26(a)(2)(C). Applicants state that the proposed Portfolio Insurance transaction involves the payment by the Trustee on an annual basis of the insurance premiums necessary to keep the proposed insurance in force, and such payments may be deemed to be made to an affiliated person of the depositor of or principal underwriter of the Trust. Applicants contend, however, that, even if the Commission permits the purchase of such insurance on behalf of the Trust, the Trustee will not agree to the proposed transaction unless it is entitled to charge the Trust for the expense of the required insurance premiums.

Applicants also request an order pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder to permit BIG to provide Portfolio Insurance to the Trust. According to Applicants, the proposed transactions would involve the payment by the Trust to BIG of annual premiums. The premium rates will be determined by BIG within a rate framework applicable to all trust sponsors and filed with applicable state insurance regulatory authorities, based upon its determinations of the creditworthiness of the issuer of the bonds, the risk of default by the bond issuer, the potential liability arising from insuring such bond issue, and the demand of sponsors to apply for such insurance on behalf of their trusts. Applicants represent that the premium rates for such Portfolio Insurance will be at least as favorable as the rates charged by BIG to unaffiliated entities and comparable to prevailing rates charged by non-affiliated insurers of similar stature and creditworthiness. Applicants represent that the setting of BIG's premiums will not be controlled by the Trust, Sponsor or Phibro-Salomon Inc. Applicants state that once bonds have been deposited in a Trust, the premium rates for each issue of bonds is protected by the terms of the Portfolio Insurance policy obtained by the Trust. Applicants further state that the Portfolio Insurance Policy is non-cancellable and continues in force so long as the Trust is in existence, the insurer is still in business, and the bonds continued to be held by such Trust.

In addition to the request for exemption from Section 17(a)(1), Applicants also request an exemption from Sections 17(a)(2) and 17(d) of the Act and Rule 17d–1 thereunder to the extent that, in the event of a default of any security, BIG as the Pre-Insured Security insurer or issuer of Portfolio or Sponsor Insurance acquires an interest in either the interest or principal payments on the security.

It is stated that the proposed arrangement with BIG will be identical or substantially identical to insurance currently being offered to all the sponsors of insured municipal bond trusts. Applicants represent that Phibro-Salomon Inc. will indirectly have only a 20% interest in the earnings of BIG while it maintains a 100% interest in Salomon Brothers, Inc., whose success in the Unit investment trust business is largely dependent upon competitively priced Trusts.

Applicants state that to eliminate any potential conflict of interest between the Sponsor, the Trust, and any affiliated person of the Sponsor or the Trust in connection with Portfolio Insurance and as a condition to the granting of this exemptive request, the Sponsor undertakes that it will not direct the Trustee to sell securities subject to Portfolio Insurance when those securities are in default or in danger of being in default. As long as the securities are adequately insured (as determined by the Trustee) the Indenture and Agreement will permit sales only to meet redemptions or in the event a security becomes taxable. Sales will be determined by the Trustee in its sole discretion.

Applicants represent that the order requested is appropriate in the public interest, consistent with the protection of investors and the purposes and policies of the Act and consistent with the investment policies of the Trusts.

Accordingly, Applicants request that the Commission issue an order pursuant to Sections 6(c), 11(a) and 17(b) and 17(d) of the Act and Rule 17d–1 thereunder exempting Applicants from the provisions of Sections 11(c), 17(a) and 17(d), 26(a)(2)(C), of the Act and Rule 17d–1 thereunder to the extent necessary to permit sales of units of the Trust pursuant to the Exchange Option at the reduced sales charge as described above and to permit the affiliated transactions described above.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 30, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–9151 Filed 4–15–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23661; 70–7089]

Southeastern Michigan Gas Enterprises, Inc.; Proposed Acquisition of Battle Creek Gas Co.

April 9, 1985.

Southeastern Michigan Gas Enterprises, Inc. ("Enterprises"), 405 Water Street, Port Huron, Michigan, 48060, a Michigan corporation and an exempt holding company under Section 3(a)(1) of the Public Utility Holding Company Act of 1935 ("Act"), has filed an application with this Commission pursuant to Sections 9(a)(2) and 10 of the Act.

Enterprises is in the business of owning and providing management services for its wholly owned subsidiaries, Southeastern Michigan Gas Company ("Gas Utility"), a Michigan corporation, Southeastern Michigan Engine Specialists, Inc. ("Engine Specialists"), a Michigan corporation and Southeastern Exploration Company ("Exploration Company"), a Michigan corporation. Gas Utility, a "gas utility company" within the meaning of Section 2(a)(4) of the Act, is engaged in the business of purchasing, distibuting and selling natural gas to almost 68,000 customers located in southeastern and southcentral Michigan. Engine Specialists is engaged in the business of leasing vehicles and equipment, maintaining and repairing automotive and heavy equipment, and selling used cars and trucks. Exploration Company is engaged in the business of exploring for oil and gas in and near Gas Utility's service areas. Exploration Company has also entered into an agreement with a local paper manufacturer to jointly construct and operate a cogeneration plant which would utilize natural gas as a fuel to produce electricity and steam to be used in the manufacturing process.

Acquisition Corporation was incorporated in the State of Michigan on March 22, 1985 as a new subsidiary of Enterprises. It was created for the purpose of engaging in a merger with

Battle Creek Gas Company ("Battle Creek").

Battle Creek, a Michigan corporation, is a "gas utility company" within the meaning of Section 2(a)(4) of the Act and distributes natural gas to approximately 31,000 customers in the greater Battle Creek, Michigan area.

The Merger Agreement provides that at the effective time of the merger ("Effective Time"), Acquisition Corporation will be merged into Battle Creek in accordance with the laws of the State of Michigan. As a result of the merger, Acquisition Corporation will cease to exist and Battle Creek will become a wholly owned subsidiary of Enterprises and will continue its business under its current name.

The Merger Agreement also provides that after consummation of the merger each share of Battle Creek common stock outstanding at that time (other than common stock held by Enterprises) will be converted into the right to receive $83.78 net, in cash, without interest and that the shareholders of such common stock will cease to have any rights with respect to this common stock other than the rights to receive said $83.78. At the effective time, 298,414 shares of Battle Creek common stock will be issued and outstanding, so that the aggregate consideration to be paid to shareholders of Battle Creek will be approximately $25,000,000.

The Merger Agreement provides that immediately after the Effective Time, Enterprises will take such steps as may be necessary to: (a) Cause at least two members of the Board of Directors of Battle Creek in office on the date of the Merger Agreement to be elected to the Board of Directors of Enterprises; and (b) cause a representative number of the members of the Board of Directors of Battle Creek in office on the date of the Merger Agreement to be elected to the Board of Directors of Battle Creek after the Merger.

The Merger Agreement further provides that, after the Effective Time, or such earlier date as Enterprises acquires control of Battle Creek, Enterprises will cause Battle Creek, for a period of six years following the Effective Time, to: (a) Maintain Battle Creek's directors' and officers' insurance and indemnification policy in effect on the date of the Merger Agreement, or an equivalent policy, to cover acts and omissions of directors and officers of Battle Creek occuring prior to the Effective Time; and (b) indemnify all directors and officers of Battle Creek as of the date of the Merger Agreement against any losses, claims, damages, liabilities, and expenses incurred in connection with any claim, action, suit, proceeding or investigation that arises from actions taken or omissions to act as officers or directors of Battle Creek or its subsidiaries prior to the Effective Time or which arises out of or pertains to any of the transactions contemplated by the Merger Agreement.

In order to induce Enterprises to enter into the Merger Agreement, certain shareholders of Battle Creek, holding in the aggregate 41,317 shares of the issued and outstanding Battle Creek Common Stock, have executed a Shareholders Agreement dated March 22, 1985 with Enterprises ("Shareholders Agreement"), pursuant to which Enterprises has been granted an irrevocable proxy to vote their share in favor of the Merger and against any corporate action which would violate or frustrate the purpose of the Merger Agreement. The Shareholders Agreement will terminate on the earlier of the consummation of the Merger or the date on which the Merger Agreement is terminated in accordance with its terms.

Enterprises and Battle Creek entered into the Merger Agreement as a result of a bidding process conducted by Battle Creek. If an unsuccessful participant in the bidding process or another third party makes an offer to acquire Battle Creek which is not approved by the Board of Directors of Battle Creek, Enterprises and Battle Creek may restructure the acquisition to ensure the success of Enterprises' acquisition of Battle Creek. The most likely alternative structure of the acquisition would be a tender offer by Enterprises or Acquisition Corporation for any and all of the issued and outstanding shares of Battle Creek at the agreed upon consideration of $83.78 per share. In such event, it would be the intent of Enterprise (assuming it were able to obtain control of Battle Creek) to eliminate any remaining minority interest in Battle Creek at the same consideration of $83.78 per share.

Enterprises states that it has pursued and desire to consummate the merger because it believes that the proximity of Battle Creek's service area to Enterprises' Albion service area makes the acquisition of Battle Creek a natural expansion of Enterprises' activities. As part of Enterprises' holding company system, Battle Creek will enjoy new operational and financial advantages that will allow it to become a profitable asset of Enterprises while continuing to provide efficient service to its customers. As a result of its affiliation with Enterprises, Battle Creek will have more capital available to use to expand its facilities and customer base. In addition, the affiliation will result in a reduction of Battle Creek's operating expenses as a result of elimination of duplicated management and other services.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be authorized.

For the Commission, by the Divison of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9153 Filed 4-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14464 (File No. 811-2999)]

Western Daily Income Fund, Inc.; Application

April 10, 1985.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 (the "Act"), to declare by order on its own motion that Western Daily Income Fund, Inc. (the "Fund"), Hawkins, Delafield & Wood, c/o Elwood Collins, Esq., 67 Wall Street, New York, New York 10005 registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund filed a notification of registration on February 7, 1980 and a registration statement on February 15, 1980 under the Act. The Fund did not file a registration statement under the Securities Act of 1933. The Commission was informed by counsel for the Fund that the Fund had never made a public offering and does not propose to make a public offering or engage in business of any kind. Counsel for the Fund was advised by a letter dated October 11, 1984, from the Commission staff that an

application should be filed under Section 8(f) of the Act requesting an order of the Commission declaring that the Fund has ceased to be an investment company. There is no record in the Commission's files to indicate that such application was made.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, upon its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of that order the registration of the investment company shall cease to be in effect.

Notice is hereby given that any interested person wishing to request a hearing on the matter may, not later than May 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Fund at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the matter will be issued unless the Commission orders a hearing upon request or upon its own motion.

For Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9149 Filed 4-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21927; SR-Amex-85-5]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange

April 9, 1985.

On March 20, 1985, the American Stock Exchange ("AMEX") filed with the Securities and Exchange Commission a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder. The proposed rule change would permit AMEX listed companies to act in a dual transfer agent/registrar capacity. The Commission is publishing this Notice to solicit comment on the proposed rule change.

The proposed rule change would modify AMEX's rules to permit listed companies to act as transfer agents and/or registrars for their own securities. Alternatively, listed companies would be permitted to designate other qualified organizations to act as transfer agents and/or registrars for their securities. However, listed companies that choose to act as both transfer agents and registrars for their securities must agree to separate those functions, establish sufficient internal accounting controls, and subject those controls to an annual review by independent auditors. In addition, listed companies acting in a dual capacity must agree to maintain offices, staffed by qualified personnel, with adequate facilities for the safekeeping of securities in their possession where transfer and registration may be completed within 48 hours.[1] AMEX rules currently require all listed companies to engage the services of a registrar that must be a bank or trust company not affiliated with the issuer. As a result, listed companies that act as transfer agents for their own securities must retain an independent registrar.

The AMEX states in its filing that the proposed rule change eliminates a prohibition enacted many years ago that was designed to avert problems associated with overissuance of securities, but that today, through a combination of automation, internal control and outside auditors, the possibility of overissuance has been greatly reduced. Moreover, the proposed rule change should result in significant operational efficiencies and cost savings for listed companies. In particular, the AMEX notes that eliminating the independent registrar requirement should promote economical and efficient transfer of securities, eliminate issuer and transfer agent expenditures for separate registrar facilities and reduce securities certificate handling problems that occur during the transfer and registrar process. In addition, the AMEX states that changes in auditing standards and improved security transfer controls signficantly lessen the risk of securities overissuances. As a result, the AMEX believes it is no longer appropriate to deprive listed companies of the potential savings and efficiencies the proposed rule change offers.

To assist the Commission in determining whether to approve the proposed rule change or to institute disapproval proceedings, you are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. If you decide to comment on this filing, please file six copies of your views in writing with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Reference should be made to File No. SR-AMEX-85-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all other written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and coping at the Commission's Public Reference Room, 450 5th Street NW., Washington, D.C. 20549. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of AMEX.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9148 Filed 4-15-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Amex Rule 891.

[Release No. 34-21933; File No. 4-283]

Self-Regulatory Organizations; National Association of Securities Dealers; Filing of a Proposed Amendment to the Fingerprinting Plan

April 10, 1985

On October 29, 1984, the National Association of Securities Dealers ("NASD") submitted an amended fingerprinting plan for Commission approval pursuant to Rule 17f-2(c) (17 CFR 240.17f-2(c)) under the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this Notice to solicit public comment on the amended plan. Under the amended fingerprinting plan, the NASD would retain, on behalf of its members, microfilmed records of processed fingerprint cards that did not contain any criminal history information. Currently, the NASD returns to submitting organizations all processed fingerprint cards together with any criminal history information. The NASD, under the amended plan, would return to its members only those fingerprint cards with criminal history information.

Under the amended plan, after FBI processing, the NASD will sort the fingerprint cards into three major

categories: (1) Cards submitted by member organizations with criminal history information; (2) cards submitted by non-member organizations; and (3) cards submitted by member organizations with no criminal history information attached, *i.e.*, "clean" fingerprint cards. NASD processing of fingerprint cards in the first two categories will not be changed by the amended plan.[1] The proposal only changes the NASD's processing of member organizations' "clean" fingerprint cards.

The NASD will re-examine member organizations' "clean" fingerprint cards to ensure that the FBI did not attach to the card any criminal history information. Then the NASD will microfilm the cards and, after microfilming, destroy the original fingerprint cards. The microfilmed records will be kept by the NASD on behalf of its member organizations for a period of twenty-five (25) years. Each month submitting member organizations will receive a roster containing the names of fingerprinted persons and the dates the cards were returned to the NASD from the FBI. In addition, copies of the microfilmed cards will be available to the submitting organization, its designated examining authority and the Commission upon request.

The NASD believes that the proposed amended fingerprinting plan is consistent with Section 17(f)(2) of the Act and with the public interest and the protection of investors. More specifically, the NASD believes that the amended plan provides increased efficiencies in the processing and maintenance of fingerprinting cards without sacrificing the integrity of the fingerprinting process or Rule 17f–2.

To assist the Commission in determining whether to approve the NASD's amended fingerprinting plan, interested persons are invited to submit data, views and arguments concerning the proposed amended plan within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Reference should be made to File No. 4–263.

Copies of the proposed amended plan, any written statements with respect to the proposed amended plan which are filed with the Commission, and all written communications relating to the proposed amended plan between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–9155 Filed 4–15–85; 8:45 am]

BILLING CODE 8010–01–M

[1] The NASD will continue to return to submitting non-member organizations, including registered transfer agents, all fingerprinting cards together with any criminal history information. Moreover, the NASD will continue to review criminal history data attached to FBI processed fingerprint cards submitted by member organizations for statutory disqualifications and will record relevant data in its internal files to comply with its responsibility under the Act. The cards and the criminal history information then will be returned to the submitting member organization. In addition, the NASD will continue to make available to designated examining authorities and the Commission criminal history information upon request.

[Release No. 34–21930; File Nos. SR–PCC–85–02; SR –PSDTC–85–02]

Self-Regulatory Organizations; Pacific Clearing Corp. and Pacific Securities Depository Trust Co.; Filing of Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 23, 1985, the Pacific Clearing Corporation ("PCC") and Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule changes described below. The Comission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

The proposals provide that stock dividends and other non-cash rights and distributions held by PCC/PSDTC [1] that are not claimed within one year of payable date would be converted to cash by PCC/PSDTC at prevailing market rates. PCC/PSDTC members and others claiming liquidated non-cash rights and distributions would be entitled only to cash proceeds from the liquidation less a pro rata portion of commissions payable for liquidation. The proposals state that no interest or other proceeds or rights shall accrue to the cash or cash-in-lieu held by PCC/PSDTC for their members. In addition, the proposals would permit PCC/PSDTC to alter any of the above procedures for any particular transaction.[2]

PCC/PSDTC state in their filings that the proposals are consistent with Section 17A(b)(3)(F) of the Act because they will facilitate the safeguarding of securities and funds in PCC/PSDTC's custody or control or for which they are responsible.

In order to assist the Commission in determining whether to approve the proposals or to institute disapproval proceedings, comments are invited within 21 days from the date of publication in the **Federal Register**. Six copies of comments should be filed with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File Nos. SR–PCC–85–02 and PSDTC–85–02.

Copies of the submissions and all documents relating to the proposals, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC and at PCC's and PSDTC's principal offices.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–9147 Filed 4–15–85; 8:45 am]

BILLING CODE 8010–01–M

[1] Because the proposals are identical, PCC and PSDTC are referred to collectively as PCC/PSDTC.

[2] In conversations with Division of Market Regulation staff, PCC/PSDTC stated that the procedures in the proposals might be altered, for example, if the costs of liquidation exceeded the value of unclaimed stock dividends. In such a case, PCC/PSDTC could decide not to liquidate those dividends.

[Release No. 34–21928; SR–PSE–85–6]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing of Proposed Rule Change Relating to the Trading of Currency Index Options

The Pacific Stock Exchange, Inc. ("PSE"), 301 Pine Street, San Francisco, CA 94104, submitted on March 22, 1985, copies of a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change follows:

Rule XXII—Currency Index Options

Introduction

In general, the Rules of the PSE's Board of Governors applicable to the trading of stock options (Rule VI) and in particular Rule XXI applicable to the trading of Index Options shall be applicable to the trading of Currency Index Options. Rule XXII supplements or replaces those rules when required by the nature of Currency Index Options. In cases where Rule XXII is silent on an issue, the applicable section of the rules relating to Index Options shall be read so as to apply to Currency Index Options.

Definitions

Sec. 1. (a) The term index shall mean the value that results from the defined calculation on the applicable group of foreign currencies. This calculation is included as Appendix B.

(b) The term index value shall mean the level of the index that is derived from the prices obtained by the vendor.

(c) The term closing index value shall mean the last index value reported by the reporting authority on a business day.

Currency Index Multiplier

Sec. 2. The Exchange has determined that the Currency Index Multiplier shall be $1,000.

Designation of the Index

Sec. 3. (a) The currencies comprising the index shall be selected by the Exchange.

(b) The weights assigned to each currency may be changed from time to time.

Dissemination of Information

Sec. 4. The Exchange shall assure that the index value is disseminated to the public after the close of business and from time to time on days on which Currency Index Options are traded on the Exchange.

Hours of Trading

Sec. 5. Options on the Currency Index shall trade from 5:30 a.m. until 11:40 a.m., Pacific Time.

Position Limits

Sec. 6. In determining compliance with Rule VI, Section 5, Currency Index Option contracts shall be subject to position limits as follows:

5,000 contracts during the first 6 months of trading; 10,000 contracts thereafter.

Exercise Limits

Sec. 7. In determining compliance with Rule VI, Section 6, Currency Index Option contracts shall be subject to the same exercise limits as the established position limit.

Terms of Option Contracts

Sec. 8. Rule XXI, Section 8, shall apply.

Trading Halts or Suspensions

Sec. 9. Trading on the Exchange in Currency Index Options shall be halted whenever prices in currencies whose weighted average exceeds 25% of the index value become unavailable. Trading in a Currency Index Option shall also be halted whenever the Exchange deems such action appropriate in the interests of a fair and orderly market or to protect investors.

Trading in Currency Index Options of a class or series that has been the subject of a halt or suspension by the Exchange may resume if the Exchange determines that the conditions which led to the halt or suspension are no longer present, or that the interests of fair and orderly markets are best served by a resumption of trading.

Meaning of Premium Bids and Offers

Sec. 10. Bids and offers shall be expressed in terms of dollars and fractions per unit of the index (e.g., a bid of 5½ would represent a bid of $5.50 per unit).

Trading Rotation

Sec. 11. Section 10 of the Rule XXI shall establish the procedures utilized for the "Currency Index."

Exercise of Option Contracts

Sec. 12. Rule XXI, Section 15, shall apply.

Margins

Sec. 13. Rule XXI, Section 16 (excluding Commentaries .01–.05), shall apply.

Settlement

Sec. 14. Rule XXI, Section 17, shall apply.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the PSE Currency Index is to provide an index which will allow investors to hedge the risk of fluctuations in currency exchange rates. Currently, contracts only exist to hedge the risk of specific currency exchange rate changes relative to the U.S. Dollar.

There does not exist any option product that attempts to combine all of the major foreign currencies into a single collection, and to trade options on that collection. The limitation in the currently available products is that although they are useful if a hedger's risk is limited to one currency, they are less useful if the hedger's exposure is related to a more generalized currency risk. The products of many manufacturers and service suppliers are sold in many foreign countries, and their overall risk is complicated by different interest rates and institutional factors. The Pacific Stock Exchange believes that options on the PSE Currency Index will allow investors to establish a hedge position relative to their current foreign currency exposure.

The purpose of the proposed currency index options rules as they apply to the PSE Currency Index are set forth below:

Sec. 1. This section sets forth the definitions which are essential to the establishment, pricing, trading and settlement of Currency Index Options.

The "index" as defined in section 1(a) of Rule XXII shall be calculated by using prices supplied to the vendor from a variety of large international banking and currency trading sources. The calculation is referred to as a geometiric averaging and is designed to avoid certain biases that are associated with arithmetic averaging.

The "closing index value" shall be the actual numeric result of applying the specified calculation to the foreign current prices. The index value shall provide the basis for determining the dollar amounts a purchaser or seller of the Currency Index Option will receive or deliver upon exercise.

The "index value" shall be the actual numeric result of the calculation applied to the foreign currency prices supplied to the vendor. The index value shall be disseminated during the trading day.

Sec. 2. The currency index multiplier represents $1,000. Thus if the Index value equalled 100 the value of the Currency Index Option contract would be $100,000, the product of the currency index multiplier and the currency index value.

Sec. 3. The PSE has specified the currencies in the index (Appendix A) and the method of calculation (Appendix B). The basis for this composition is that the PSE Currency Index is designed to mirror the Federal Reserve's Index of the Weighted Average Exchange Value of the United States Dollar. The Exchange would only propose making changes in the components of the index or method of calculation in order to maintain comparableness with the Federal Reserve's Index. Attached are historical values of the Federal Reserve's index (Appendix C).

Sec. 4. This section provides that the Index value will be widely disseminated during those times in which the options on the index are traded. This section also provides that the closing index value will be disseminated through a major daily business periodical.

Sec. 5. The PSE belives that the options on the Currency Index should be available for trading during the hours when futures on foreign currencies and options on foregn currencies are available for trading in the United States.

Sec. 6. The PSE Currency Index represents a new kind of trading instrument in the foreign currency area. It is in consideration of these new features that the PSE requests a lower postion limit initially. It is the PSE's belief that after an initial period, during which investors familiarize themselves with the contract, the position limits should be raised to the 10,000 contract level.

Sec. 7. The PSE believes exercise limits should be identical with position limits. The alternative could cause unforeseen distortions in prices and/or markets.

Sec. 8. The PSE believes that the current exercise price intervals and expiration dates for its Technology Index options are applicable and appropriate to its Currency Index Options.

Sec. 9. Trading on the Exchange in a Currency Index Option will be halted when quotations in 25% of the weighted index value of the currencies comprising the index become unavailable. The PSE believes that this policy will provide adequate protection for investors. The PSE shall also halt trading in the Currency Index Options whenever it is necessary for the maintenance of a fair and orderly market or to protect investors.

Trading in the Index options shall be resumed if the conditions which led to the halt or suspension are no longer present or the interests of a fair and orderly market are best served by a resumption of trading.

Sec. 10. Bids or offers for Currency Index Options will be expressed in the same terms as bids and offers for index options.

Sec. 11. The PSE proposes that trading rotations for the Currency Index should be conducted in the same manner as those which are used for the PSE Technology Index.

Sec. 12. The PSE believes the exercise procedures for Index options should apply to Currency Index Options.

Sec. 13. The PSE believes the margin standards currently applied to Index Options should be applied to Currency Index Options. The PSE believes that the PSE Currency Index is broad-based, given the size and liquidity of foreign currency markets.

Sec. 14. The PSE believes that the cash settlement procedure and rationale is specifically applicable to Currency Index Options.

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 which provides that the Rules of the Exchange be designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and unanimously approved by the New Products Committee, comprised of members of the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 7, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

April 9, 1985.

John Wheeler,

Secretary.

Appendix A

Description: The Index would be based on ten currencies with the indicated weights.

Country	Base rate	Weight
West Germany	35.548 cents per mark	0.206
Japan	0.3619 cents per yen	.136
France	22.191 cents per franc	.131
United Kingdom	247.24 cents per pound	.119
Canada	100.33 cents per dollar	.091
Italy	0.176 cents per lira	.090
Netherlands	34.834 cents per guilder	.063
Belgium	2.5377 cents per franc	.054
Sweden	22.582 cents per kronin	.042
Switzerland	31.084 cents per franc	.034

Appendix B

The proposed Calculator of the PSE Foreign Currency Index is:

$$100 \times \exp\left[\sum_{i=1}^{10} (w_i \times \ln R_{it})\right]$$

Where:

R_{it} = Base period exchange rate of currency i divided by Exchange rate of currency i at time t.

w_i = Trade weight for currency i.

Appendix C

Historical values of Federal Reserve's Weighted-Average Exchange Value of the United States Dollar-Index.

1984	
November	144.92
October	147.56
September	145.70
August	140.21
July	139.30
June	134.31
May	133.99
April	130.01
March	128.07
February	131.71
January	135.07
1983	
December	132.84
November	130.26
October	127.50
September	129.74
August	129.77
July	126.62
June	125.16
May	122.05
April	121.82
March	120.71
February	119.70
January	117.73
1982	
December	119.22
November	124.27

[FR Doc. 85-9146 Filed 4-15-85; 8:45 am]

BILLING CODE 6010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice CM-8/843]

Advisory Committee on Private International Law; Meeting

The 38th meeting of the subject Advisory Committee will take place at 10 a.m. on Friday, May 3, 1985, in room 6226 of the Department of State in Washington, D.C. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The meeting agenda will include reports on the Third Inter-American Specialized Conference on Private International Law in May, 1984 and the 15th session of the Hague Conference on Private International Law in October, 1984, as well as on other law unification/harmonization activities. Specifically to be discussed, among other projects, will be the 1984 Hague Convention on the Law Applicable to Trusts and on Their Recognition; the draft Hague convention on the law applicable to contracts for the international sale of goods that is to be adopted at an extraordinary session of the Hague Conference in October, 1985; the model law on international commercial arbitration prepared by a working group of the UN Commission on International Trade Law (UNCITRAL) that is to receive final review at the 18th session of the Commission in June, 1985; the planned submission of the 1980 Hague Convention on the Civil Aspects of International Child Abduction to the President for transmission to the Senate; and the status of Senate consideration of the 1980 UN Convention on Contracts for the International Sale of Goods. The work of UNCITRAL on a legal guide on the drawing up of contracts for the construction of industrial works and on rules dealing with the liability of operators of international transport terminals will also be reviewed.

There will be consideration of possible further means better to keep the general public informed of U.S. participation in international work on such projects, including proposals for publication in the **Federal Register** of notices about pending efforts to harmonize private law beyond the advance notices routinely published in the **Federal Register** to inform the public of meetings of the Advisory Committee and its specialized study groups, all of which are open to the public.

Entry to the Department of State building is controlled and members of the general public should use the main diplomatic entrance at 22nd and C Streets NW. As entry will be considerably facilitated by advance arrangements, members of the general public planning to attend should, prior to May 3, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, Washington, D.C. 20520 (telephone: (202) 632-8134) of their name, affiliation, address and telephone number.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 85-9125 Filed 4-15-85; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice CM-8/842]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Stability, Load Lines, and on Safety of Fishing Vessels; Meeting

The Working Group on Stability, Load Lines, and on safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on 7 May 1985 in room 1303 at 10:00 A.M. at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to discuss actions taken at the 30th Session of International Maritime Organization (IMO) Subcommittee on Stability, Load Lines, and Fishing Vessels (Feb. 85) and preparation for matters to be discussed at the 31st Session of the Subcommittee (Tentatively Feb. 86) and in particular:

Intact Stability

—Form of information to Master
—General Formulae for all sizes of ships

Subdivision

—Watertight Doors on all Cargo Ships
Residual Stability after Damage
Mobile Offshore Drill Unit Code
Load Line Interpretation
Revision of Load Line Convention
Timber Deck Cargoes
Tonnage
Safety of Fishing Vessels
Icing

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W.A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MTH-5), 2100 Second Street, SW., Washington, DC. 20593, Telephone: (202) 426-2187 or 2188.

Dated: April 8, 1985.

Samuel V. Smith,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85-9214 Filed 4-15-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application

for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in March 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: (1) Motor vehicle, (2) Rail freight, (3) Cargo vessel, (4) Cargo-only aircraft, (5) Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2582-P	DOT-E 2582	Syntheticon Corp. Parsippany, NJ	49 CFR 175.3, Part 173, Subparts D, F, G.	To become a party to Exemption 2582. (Modes 1, 2, 3, 4)
2709-X	DOT-E 2709	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/polyethylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1)
2709-X	DOT-E 2709	Hercules, Inc. Wilmington, DE	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/polyethylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1)
2709-X	DOT-E 2709	United Technologies Corp. San Jose, CA.	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/polyethylene containers or non-DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1)
3109-X	DOT-E 3109	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.301(e), 173.302(a)(1), 173.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, 5)
3109-X	DOT-E 3109	HR Textron, Inc. Pacoima, CA	49 CFR 173.301(e), 173.302(a)(1), 175.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, 5)
3109-X	DOT-E 3109	Raytheon, Co. Lowell, MA	49 CFR 173.301(e), 173.302(a)(1), 175.3.	To authorize use of non-DOT specification pressure vessels, for shipment of a nonflammable, nonliquefied compressed gas. (Modes 1, 2, 3, 4, 5)
5315-X	DOT-E 5315	U.S. Department of the Army, Falls Church, VA.	49 CFR 173.87	To authorize transport of a rocket engine containing nitrogen tetroxide, methyl-hydrazine and helium contained in a specially designed temperature controlled semi-trailer. (Mode 1)
6484-X	DOT-E 6484	Dow Chemical Co., Freeport, TX	49 CFR 172.101, 173.149a	To authorize butylene oxide to be returned in the same cargo tank which previously contained a nitromethane-butylene oxide mixture. (Mode 1)
6536-P	DOT-E 6536	Precise International, Suffern, NY	49 CFR 173.304(d)(3)(ii), 178.33	To become a party to Exemption 6536. (Modes 1, 3)
7546-X	DOT-E 7546	Grumman Aerospace Corp., Bethpage, NY.	49 CFR 173.119, 173.302(a)(1), 173.304(a), 173.305(a), 173.34(d), 175.3.	To authorize an additional size heat pipe radiator assembly (Modes 1, 4)
7595-X	DOT-E 7595	Rhone-Poulenc Inc., Monmouth Junction, NJ.	49 CFR 173.358, 173.359	To request party status and to authorize an additional class B poison. (Mode 1)
7625-X	DOT-E 7625	Hydrite Chemical Co., Milwaukee, WI	49 CFR 173.245, 173.249, 173.263, 173.268, 173.272.	To renew and to authorize shipment of sodium hydrogen sulfite solution 38% and acetic acid 56% as additional commodities. (Mode 1)
7638-X	DOT-E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To authorize two additional cylinder models for shipment of carbon dioxide, liquefied and nitrous oxide liquefied. (Modes 1, 2, 3, 4)
7657-X	DOT-E 7657	Welker Engineering Co., Sugar Land, TX.	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To authorize cargo vessel and rail as additional modes of transportation. (Modes 1, 2, 3, 4)
7725-X	DOT-E 7725	Economics Laboratory, Inc., St. Paul, MN.	49 CFR 172.201(a)(3)	To authorize shipping description on shipping papers to contain coded information. (Modes 1, 2, 3)
7769-X	DOT-E 7769	Brunswick Corp., Lincoln, NE	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT Specification fiber reinforced plastic full composite cylinder, for transportation of certain nonflammable compressed gas. (Modes 1, 2, 3, 4, 5)
7862-X	DOT-E 7862	General Electric Co., Milwaukee, WI	49 CFR 173.302, 175.3	To authorize use of non-DOT specification aluminum, single trip, inside containers, or transportation of a nonflammable gas. (Modes 1, 4, 5)
7879-X	DOT-E 7879	Gearhart Industries, Inc., Fort Worth, TX.	49 CFR 173.246, 175.3, 178.42	To authorize shipment of bromine trifluonde, in non-DOT specification seamless cylinders. (Modes 1, 2, 3, 4)
8214-X	DOT-E 8214	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 173.153, 173.154, 175.3	To authorize fiberboard containers for shipment of passive restraint systems. (Modes 1, 2, 3, 4)
8220-X	DOT-E 8220	Applied Environments Corp., Woodland Hills, CA.	49 CFR 173.320(a), 175.3	To authorize use of non-DOT specification girth welded steel cylinders, for transportation of nonflammable compressed gas. (Modes 1, 2, 4)
8221-X	DOT-E 8221	Applied Environments Corp., Woodland Hills, CA.	49 CFR 173.302(a), 175.3	To authorize use of non-DOT specification high pressure cylinders of welded construction for military missile systems use only (Modes 1, 2, 4)
8299-X	DOT-E 8299	HTL Industries, Inc., Duarte, CA	49 CFR 173.304(a)(1), 175.3, 178.44	To authorize an additional pressure vessel design. (Modes 1, 2, 4, 5)
8516-X	DOT-E 8516	Atlas Powder International, Limited, Miami, Fl.	49 CFR 176.83(b)	To authorize stowage of certain oxidizers and blasting agents in the same hold, compartment or freight container (Mode 3)
8526-P	DOT-E 8526	Beko Corp., Westminster, CO	49 CFR 177.834(L)(2)(i)	To become party to Exemption 8526. (Mode 1)
8851-X	DOT-E 8851	Process Engineering Inc., Plaistow, NH.	49 CFR 173.315	To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for transportation of nonflammable gases. (Modes 1, 3)
8864-X	DOT-E 8864	Miller Transporters, Inc., Jackson, MS.	49 CFR 173.242(a), 178.340-10, 178.340-8, 178.341-3, 178.341-4, 178.341-5, 178.341-7.	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC-306, for transportation of a corrosive liquid. (Mode 1)
8886-X	DOT-E 8886	Amerex Corp., Trussville, AL	49 CFR 173.34(e)(9)	To authorize a longer period time period between retests of DOT Specification 4B or 4B240ET cylinders containing nonflammable gas. (Modes 1, 2, 4)
8938-X	DOT-E 8938	Cryogenic Services Inc., Canton, GA	49 CFR 173.304(a), 175.3	To authorize manufacture, marking and sale of DOT Specification 4L welded cylinders, for transportation of nonflammable gases. (Modes 1, 2, 3, 4)
8953-X	DOT-E 8953	Foseco, Inc., Brookpark, OH	49 CFR 173.206	To authorize shipment of metallic sodium fused solid, in a non-DOT specification aluminum can, overpacked in a non-DOT specification removable head, single trip steel drum. (Mode 1)
8955-X	DOT-E 8955	Dresser Industries, Inc., Houston, TX	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To authorize transport of charged oil well guns with detonators attached. (Modes 1, 3)
8988-P	DOT-E 8988	Flopetrol Johnson, Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to Exemption 8988. (Modes 1, 3, 4)
9201-X	DOT-E 9201	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.370	To authorize highway and rail as additional modes of transportation. (Modes 1, 2, 3)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9294-P	DOT-E 9294	Occidental Chemical Corp., Niagara Falls, NY.	49 CFR 173.247	To become a party to Exemption 9294. (Modes 1, 3)
9329-X	DOT-E 9329	Baker Sand Control, Anchorage, AK	49 CFR 172.101, column 6, 173.110, 173.80, 175.30.	To renew exemption previously issued as an emergency to provide for routine shipments and to convert it from air carrier to shipper type exemption (Mode 4)
9374-P	DOT-E 9374	Poly Cal Plastics, Inc., Stockton, CA	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To become a party to Exemption 9374. (Modes 1, 2, 3)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6563-X	DOT-E 9351	Bemco Inc., Chatham, Ontario, Canada.	49 CFR 173.302(a)(1), 175.3, 178.42	To authorize shipment of certain nonflammable gases in non-DOT specification steel spheres made in compliance with DOT Specification 3E, with certain exceptions. (Modes 1, 2, 3, 4, 5)
8169-X	DOT-E 9361	Pacific Smelting Co., Torrance, CA	49 CFR 173.154	To authorize transportation of a water reactive solid, which evolves hydrogen slowly when wet, in open packagings such as drums, hopper trucks and gondola cars. (Modes 1,2)
8234-N	DOT-E 9234	AMVAC Chemical Corp., Los Angeles, CA.	49 CFR 173.359	To authorize use of one gallon glass bottles packed in DOT Specification 33A polystyrene cases, for transportation of organic phosphorus compound mixture, liquid. (Mode 1)
9113-N	DOT-E 9313	Corco Chemcial Corp., Fartess Hills, PA.	49 CFR 173.245, 173.263, 173.266, 173.272, 178.17.	To authorize shipment of various corrosive materials and an oxidizer in once-used DOT Specification 1D glass carboys overpacked in new, unused DOT Specification 1M expanded polystyrene over packs. (Mode 1)
9341-N	DOT-E 9341	International Champack Corp., Hurst, TX.	49 CFR 173.3(c)	To authorize manufacture, marking and sale of polyethylene, removable head, salvage drums, for transportation of damaged or leaking packages of hazardous materials. (Modes 1, 2)
9344-N	DOT-E 9344	Industrial Farm Tank, Inc., Lewiston, OH.	49 CFR 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, linear medium-density polyethylene portable tanks, for shipment of corrosive liquids. (Mode 1)
9363-N	DOT-E 9363	Columbia University in the City of New York, New York, NY.	49 CFR 173.302(a)(1)	To authorize use of non-DOT specification cylinders manufactured from monel to DOT Specification 3A with certain exceptions, for transportation of certain flammable and nonflammable gases. (Mode 1)
9374-N	DOT-E 9374	Poly Processing Company, Inc., Monroe, LA.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes, 1, 2, 3)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9410-N	DOT-E 9410	Black & Decker (U.S.), Inc., Hampstead, MD.	49 CFR 173.234	To authorize use of non-DOT specification metal tanks, for transportation of an oxidizer. (Mode 1)
EE 9412-N	DOT-E 9412	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 173.301(d) (2), 173.302(a) (3).	To authorize use of certain DOT Specification 3AAX2400 clyinders, for transportation of flammable gases. (Mode 1)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8319-N	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To manufacture, mark and sell non-DOT specification girth welded stainless steel pressure vessel patterned after a DOT Specification 3HT, for shipment of nitrogen classed as a nonflammable gas. (Modes 1, 2, 3)

Denials

9373-N—Repeat by T. H. Baylis Company, Warwick, RI to authorize transport of approximately 70% nitric acid, in a tank constructed of 304 stainless steel to DOT Specification 57 requirements denied March 5, 1985.

9387-N—Request by Virginia Chemicals, Inc., Portsmouth, VA to authorize transport of certain mixtures of 2,2-Dichlorovinyl Dimetyl Phospahte (DDV) and compressed gas in packagings which are not authorized for those mixtures denied March 26, 1985.

9397-N—Request by Austin Powder Company, Cleveland, OH to authorize shipment of Petaerythrite Tetranitrate (PETN) wetted with not less than 25% water contained in either plastic or rubberized textile bags over packed in specially constructed fiber drums denied March 26, 1985.

Issued in Washington, DC, on April 1, 1985.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulations, Materials Transporation Bureau.

[FR Doc. 85-9157 Filed 4-15-85; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Marc Chagall"

(included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between various foreign lenders and the Philadelphia Museum of Art of Philadelphia, Pennsylvania. I also determine that the temporary exhibition or display of the listed exhibit objects at the Philadelphia Museum of Art, Philadelphia, Pennsylvania, beginning on or about May 12, 1985, to on or about July 7, 1985, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 10, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-8987 Filed 4-15-85; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85-69]

Recordation of Trade Name; "Crissair Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On February 5, 1985, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Crissair Inc." was published in the **Federal Register** (50 FR 5028). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in opposition to the recordation and received not later than April 8, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "Crissair Inc." is recorded as the trade name used by Crissair, Inc., a corporation organized under the laws of the State of California, located at 38905 Tenth Street East, Palmdale, California 93550. The trade name is used in connection with the following merchandise manufactured in the United States: hydraulic, fuel, and pneumatic system components (such as valves and actuators) for both military and civilian aircraft and helicopters.

DATE: April 16, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

Dated: April 11, 1985.

Steven I. Pinter,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-9104 Filed 4-15-85; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 85-68]

Recordation of Trade Name; "Neenah Foundry Co."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On January 30, 1985, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Neenah Foundry Co." was published in the **Federal Register** (50 FR 4296). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in opposition to the recordation and received not later than April 1, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "Neenah Foundry Co." is recorded as the trade name used by "Neenah, Foundry Co.," a corporation organized under the laws of the State of Wisconsin, located at 2121 Brooks Avenue (P.O. Box 729), Neenah, Wisconsin 54956. The trade name is used in connection with construction castings manufactured in the United States.

DATE: April 16, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765)

Dated: April 11, 1985.

Steven I. Pinter,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-9103 Filed 4-15-85; 8:45 am]

BILLING CODE 4820-02-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 73
Tuesday, April 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

AFRICAN DEVELOPMENT FOUNDATION

Board Meeting

TIME: 10:00 a.m.

PLACE: African Development Foundation.

DATE: Saturday, May 4, 1985.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report.
2. President's Report.
3. Advisory Council Report—Arterbery/Robinson.
4. External Committee Report—Mr. A.C. Arterbery.
5. Program Committee Report—Dr. Patsy Blackshear.
6. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Ms Marjorie S. Cook (634–9853).

Leonard H. Robinson, Jr.,

President.

[FR Doc. 85–9255 Filed 4–12–85; 3:54 p.m.]

BILLING CODE 6116-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Special Open Commission Meeting, Thursday, April 11, 1985

April 11, 1985.

The Federal Communications Commission will hold a Special Open Meeting on the subject listed below on Thursday, April 11, 1985, which is scheduled to commence at 4:00 p.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Mass Media—1—In re application of the Committee for Full Value of Storer Communications, Inc.

The prompt and orderly conduct of Commission business requires that less than 7-days notice be given consideration of this item.

Action by the Commission April 11, 1985. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–9188 Filed 4–12–85; 11:54 am]

BILLING CODE 6712-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:17 p.m. on Wednesday, April 10, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits in State Bank of Alexandria, Alexandria, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Wednesday, April 10, 1985.

At that same meeting, the Board of Directors also approved the application of The Ohio Bank and Savings Company, Findlay, Ohio, an insured State member bank, for consent to merge, under its charter and title, with The Ottawa Home and Savings Association, Ottawa, Ohio, a non-federally-insured institution.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 11, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–9187 Filed 4–12–85; 11:44 am]

BILLING CODE 6714-01-M

4

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, April 26, 1985 and continue until all official business is completed.

PLACE: Legal Services Corporation Headquarters, 733 Fifteenth Street, NW., Eighth Floor Conference Room, Washington, D.C. 20005.

STATUS OF MEETING: Open (A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c)(2), (6), (7), (9), (B), and (10) and 45 CFR 1622.5 (a), (e), (f), (g), and (h)).

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes—March 8, 1985.
3. Report from Interim Corporation President.
4. Report from Special Committee on Presidential Search.
5. Action on Recommendations of the Operations and Regulations Committee:

—45 CFR Part 1601 (By-Laws)
—45 CFR Part 1622 (Sunshine Act)
—45 CFR Part 1620 (Priorities)
—45 CFR Part 1614 (Private Attorney Involvement)

6. Action on Recommendations of the Audit and Appropriations Committee:

—First Quarter Budget Review
—Reorganization of the Office of Field Services
—Allocation of Fiscal Year 1984 Carryover funds
—Allocation Formula for Fiscal Year 1986 Basic Field Grants

7. Discussion of litigation and investigatory matters (Closed).
8. Discussion of personnel and personal matters (Closed).

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Offices, (202) 272–4040.

Dated: April 11, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-9164 Filed 4-12-85; 9:55 am]

BILLING CODE 6830-35-M

5

LEGAL SERVICES CORPORATION

Special Committee on Presidential Search

TIME AND DATE: Meeting will commence at 8 p.m., April 23, 1985 and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Jupiter Room, 550 C Street, SW., Washington, D.C. 20024.

STATUS OF MEETING: Closed to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c) (2), (6) and (9)(B)) and 45 CFR 1622.5 (a), (e), and (g) and 1622.6(b).

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda.
2. Adoption of Draft Minutes—April 14, 1985.
3. Review of Procedures (Closed).
4. Status Report (Closed).

CONTACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

Dated: April 11, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-9165 Filed 4-12-85; 9:55 am]

BILLING CODE 6830-35-M

6

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE Meeting will commence at 9:00 a.m., Thursday, April 25, 1985 and continue until all official business is completed.

PLACE: Legal Services Corporation Headquarters, 733 Fifteenth Street, NW., Eighth Floor Conference Room, Washington, D.C. 20005.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes:

—February 22, 1985
—March 7 and 8, 1985

3. Report from the Office of General Counsel:

—45 CFR 1601 (By-Law)
—45 CFR 1622 (Sunshine Act)
—45 CFR 1614 (Private Attorney Involvement)
—45 CFR 1620 (Priorities)
—45 CFR 1612 (Lobbying)

4. Recommendations to full Board on above cited Regulations.
5. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Dated: April 11, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-9166 Filed 4-12-85; 9:55 am]

BILLING CODE 6830-35-M

7

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations

TIME AND DATE: The meeting will commence at 1:30 p.m. on Thursday, April 25, 1985 and continue until all official business is completed.

PLACE: Legal Services Corporation Headquarters, 733 Fifteenth Street, NW., Eighth Floor Conference Room, Washington, D.C. 20005.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Draft Minutes—March 7, 1985.
3. First Quarter Budget Review.
4. Reorganization of the Office of Field Services.
5. Allocation of Fiscal Year 1984 Carryover funds.
6. Allocation formula for Fiscal Year 1986 Basic Field Grants.

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

Dated: April 11, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-9167 Filed 4-12-85; 9:55 am]

BILLING CODE 6830-35-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published.]

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Friday, April 5, 1985.

CHANGE IN THE MEETING: Rescheduling. The following open item scheduled for Tuesday, April 16, 1985, at 10:00 a.m., has been rescheduled for Tuesday, April 23, 1985, at 2:30 p.m.

Consideration of whether to issue a release proposing technical amendments to Rule 3A-02 of Regulation S-X, "Consolidated financial statements of the registrant and its subsidiaries." For further information, please contact Dorothy Walker at (202) 272-7343.

Chairman Shad and Commissioners Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alan Dye at (202) 272-2014.

Dated: April 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-9130 Filed 4-11-85; 4:40 pm]

BILLING CODE 8010-01-M

federal register

Tuesday
April 16, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25 and 121

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25 and 121

[Docket No. 24594; Notice No. 85-10]

Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to upgrade the fire safety standards for cabin interior materials in transport category airplanes by: (1) Establishing new fire test criteria for type certification; (2) requiring that the cabin interiors of airplanes manufactured after a specified date and used in air carrier service comply with these new criteria; and (3) requiring that the cabin interiors of all other airplanes type certificated after January 1, 1958, and used in air carrier service comply with these new criteria upon the first replacement of the cabin interior. These proposals are the result of fire testing and are intended to increase airplane fire safety.

DATES: Comments must be received on or before July 15, 1985.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24594, 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington D.C. 20591. Comments delivered must be marked: Docket No. 24594. Comments may be inspected in Room 916 weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be inspected in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m..

FOR FURTHER INFORMATION CONTACT: Richard Nelson, Regulations Branch (ANM-112), Regulations and Policy Office, Aircarft Certification Division, FAA, Norhwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by sumitting such written data, views, or arguments as they may desire. Comments relating to the environomental, energy, or economic impact that might result from adoption of proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address specified above. All comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No., 24594." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591; or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

During the nearly post-World War II period, a number of regulatory steps were taken to improve transport category airplanes from a fire safety standpoint. Among the areas of concern was flammability of the various materials used in the interiors of the pasenger cabins. Accordingly, Part 4b of the former Civil Air Regulations (CAR) was amended in 1947 to provide a test standard for such materials. The standard adopted at that time consisted of a requirement to show that the material was slow burning while in a horizontal orientation. This standard was upgraded periodically as the state-of-the-art in interior materials improved. The current standard, which was adopted in May of 1972 and is contained in § 25.853 of the Federal Aviation Regulations (FAR), specifies that all large-usage material must be self-extinguishing in a vertical orientation when subjected to a small flame. The test method used to show compliance with this standard is often referred to as the "vertical Bunsen burner test". The use of materials which meet this standard reduces the probability of ignition by a small flame, and the rate of flame propagation beyond the ignition source.

Which the current standard provides protection from small flames, it does not ensure that interior materials will not ignite and burn when subjected to a larger, external fire. The materials used in nonstructural applications in cabin interiors are almost exclusively organic in nature and, when ignited by an intense external fire, emit heat, smoke, combustibles and toxic gases. Although these emissions affect the survivability of the occupants of the airplane, the extent depends on a number of factors, such as fuselage integrity, fire locations and involvement, ambient wind conditions, exit locations and airplane configurations.

Because the standard adopted in 1972 considered only the flammability of interior materials, the FAA made two regulatory proposals pertaining to toxicity and smoke: Advance Notice of Proposed Rulemaking (ANPRM) No. 74-38 (39 FR 45044; December 30, 1974) and NPRM No. 75-3 (40 FR 6505; February 12, 1975), respectively. Advance Notice of Proposed Rulemaking No. 74-38 was issued to invite public participation in developing standards governing the toxic gas emission characteristics of compartment interior materials when subjected to fire. Notice of Proposed Rulemaking No. 75-3 was issued to solicit comments on proposed amendments of Parts 25 and 121 of the FAR concering standards for the smoke emission characteristics of compartment interior materials. The rules proposed in NPRM No. 75-3 would have required that certain material used in each compartment occupied by the crew or passengers meet certain test criteria pertaining to smoke emission. The materials that would have had to be tested would have been specified either in terms of their use in a compartment or in terms of the processes involved in their manufacture. In addition to type certification requirements, NPRM No.

75–3 proposed retrofit provisions to ensure that cabin interiors of airplanes already in service were upgraded with respect to the smoke emission characteristics of the compartment interior materials. Also, in 1975, the FAA proposed in NPRM No. 75–31 (40 FR 29410; July 11, 1975) to require the retrofit of certain transport category airplanes already in service with cabin materials meeting the flammability standard adopted in 1972. The public response to these proposals was negative. Commenters cited inadequate development of test methodology and the high cost of compliance coupled with questionable safety benefit. Of particular concern was an inadequate understanding of the interrelationship of flammability, smoke and toxicity. Following evaluation of the public comments, these proposals were withdrawn for further study.

As part of this study, public hearings on aircraft fire safety were held, and, in June of 1978, the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee was established by the FAA. This Committee was directed to "examine the factors affecting the ability of the aircraft cabin occupant to survive in the post-crash environment and the range of solutions available." The Commitee consisted of 24 representatives of a wide range of aviation and general public interests. Technical support groups included approximately 150 of the world's top experts in fire research, accident investigation, materials development, and related fields. At the conclusion of its investigation into cabin materials technology, the Committee issued findings and formal recommendations pertaining to long-range research, design, testing, and the problems of smoke and toxic gas emission. The SAFER Advisory Committee recommended that further research and development be undertaken in regard to cabin materials, and that a test method using radiant heat for screening cabin materials be evaluated and implemented as soon as available. The FAA concurred with these recommendations and initiated the necessary reserach and development. See Report No. FAA-ASF–80–4, Final Report of the Special Aviation Fire and Explosion Reduction (SAFER) Advisory Committee, dated June 26, 1980. A copy of this report has been included in the Rules Docket and is available for public inspection. This document is available for purchase from the National Technical Information Service (NTIS) in Springfield, Virginia 22161.

The reseach and development program, managed and conducted primarily at the FAA Technical Center in Atlantic City, New Jersey, was designed to study aircraft fire characteristics, develop practical test methods and investigate the feasibility of the various new standards being considered at that time. Further study concerning toxicity was conducted at the FAA Civil Aeromedical Institute (CAMI) in Oklahoma City, Oklahoma. This program encompassed a number of other areas related to aircraft fire safety in addition to the flammability of interior materials. As a result, new standards have been adopted for floor proximity emergency escape path markings and flammability of seat cushions in Amendments Nos. 25–58 and 121–183 (49 FR 43182; October 26, 1984), and 25–59, 29–23 and 121–184 (49 FR 43188; October 26, 1984), respectively; and new standards have been proposed for cargo or baggage compartments in NPRM No. 84–11 (49 FR 31830; August 8, 1984) and for smoke detector and hand held fire extinguishers in NPRM No. 84–5 (49 FR 21010; May 17, 1984). Also, Technical Standard Order (TSO) C69 has been amended to improve the fire resistance of evacuation slides.

Among the tests conducted at the Technical Center were full-scale fire tests using the fuselage of a military C–133, configured to represent a wide-body jet transport airplane. The test conditions simulated typical post-crash, external fuel-fed fires. Among other aspects of cabin fires, the phenomenon known as "flashover" was investigated. ("Flashover" is a condition in which certain gases and other products emitted during the combustion process and trapped in the upper portions of the cabin reach their auto-ignition temperature and are ignited spontaneously. Due to the almost total involvement of the cabin atomosphere, survival after flashover is virtually impossible.) Numerous laboratory tests were also conducted to correlate possible material qualification test methods with the full-scale tests. As a result of these tests, the Ohio State University (OSU) rate of heat release apparatus standardized by the American Society of Testing and Materials (ASTM), ASTM–E–906, as modified with an oxygen analyzer for heat release measurement, was determined to be the most suitable for material quaification. This is a test method employing radiant heat, as recommended by the SAFER Advisory Committee. The feasibility of this test method and the proposed standards was then verified by testing a number of representative materials. The overall approach is outlined in Report No. FAA–ED–18–7, Engineering and Development, Program Plan, Aircraft Cabin Fire Safety, dated June 1980, revised February 1983. A copy of this report has been placed in the Rules Docket and is available for public inspection. It is available for purchase from the NTIS at the address given earlier.

Discussion

As noted, testing with the modified OSU test apparatus was found to be the most suitable means of assuring that prospective interior materials meet acceptable standards for flammability. Consideration was also given to establishing separate test methods and standards for such materials with respect to smoke and toxicity.

The full-scale fire tests demonstrated a correlation between flammability and smoke emission characteristics in the materials tested. Material flammability, as represented by an increase in air temperature, was also reflected in increased smoke emission in a growing fire enironment. Because of this correlation between flammability and smoke emissions, and the fact that fire growth is a more significant survivability factor than smoke alone, it is not considered ncessary to establish a separate test method and standards for measurieng smoke emission characteristics. For a further discussion of these tests and their results, see Report No. DOT/FAA/CT–83/43, entitled, "Aircraft Seat Fire Blocking Layers: Effectiveness and Benefits Under Various Scenarios" (available for purchase from the NTIS at the address stated earlier), and Draft Report No. 85–0393, "Evaluation of Aircraft Interior Panels Under Full-Scale Cabin Fire Test Conditions," which has been prepared for presentation at the American Institute of Aeronautics and Astronautics 23rd Aerospace Sciences Meeting, January 14–17, 1985. These document have been placed in the Rules Docket and are available for public inspection.

With respect to toxic emissions, the test program, including testing of individual panels in the C-133 airplane, showed that: (1) There is a correlation between flammability characteristics and toxic emissions; and (2) the severe hazard from toxic emissions occurs as a result of flashover in fires involving interior materials. The levels of toxic gases measured before flashover, or when flashover did not occur, were below levels estimated to prevent occupant survival. After flashover, occupant survival is virtually

impossible, regardless of the level of toxic emissions.

The proposed flammability standards address the toxicity problem in two ways. First, they require the use of cabin interior materials with higher ignition temperatures, reducted heat release rates, and lower content of thermally unstable components, thereby reducing toxic emission levels as well as smoke levels before flashover. Second, they delay or prevent the onset of flashover, where high levels of toxic emissions occur.

In view of the demonstrated improvements in toxicity characteristics which these standards will represent, and the fact that a satisfactory separate test for toxicity is not available, it is not considered practical or necessary to establish an entirely separate test method or standard for toxicity. For additional information concerning toxic emissions see Report No. DOT/FAA/CT-83-43, and draft Report No. 85-0393, referenced earlier in this document.

As proposed in this notice, all larger interior surface materials used from the floor up in compartments occupied by the crew or passengers would have to be qualified to the new flammability standards. This would include sidewalls, ceilings, bins and partitions, galley structures, and any coverings on these surfaces, but would not include smaller items, such as windows, window shades, or curtains. Floor coverings and floor structure would not have to meet these standards because the full-scale tests showed very little involvement of flooring until after flashover had occurred. Seats would not be tested because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats. In addition to the testing required to meet the new flammability standards, interior materials would still have to meet the current vertical Bunsen burner test. This test would be retained because it is possible that an extremely thin material might not release enough heat to exceed the proposed standards, yet be highly flammable. The vertical Bunsen burner is a relatively simple and inexpensive test to perform, and its retention should cause little or no additional burden.

Service items, such as pillows or blankets, magazines, food, and alcoholic beverages, are not part of the certification process and would not have to meet the new flammability standards. While these items are flammable, it is not considered practical or feasible to establish flammability standards for them at this time. Similarly, passenger carry-on items and even the clothing worn by passengers represent a significant quantity of flammable material; however, it is considered that it would be impracticable to establish and enforce flammability standards for such items.

Many of the fatalities in crashes involving transport category airplanes have been attributed to the effects of post-crash fire rather than from trauma at impact, and there have been at least three major accidents, world wide, with fatalities due to in-flight cabin fires since 1973. The recently-adopted standards for seat cushions will eliminate or delay involvement of a large quantity of flammable material during a cabin fire; however, the other interior materials also represent a significant quantity of flammable material. The FAA research and development program has shown that interior materials with improved flammability characteristics are feasible and would further reduce the number of fatalities from both post-crash and in-flight cabin fires. It is, therefore, considered essential that cabin interior materials meeting the proposed standards, based on the modified Ohio State University test method, be introduced into service—particularly air carrier service—as early as economically and technologically feasible. Accordingly, it is proposed to amend Part 25 to require the use of cabin interior materials meeting the new flammability standards for all transport category airplanes for which application for type certification is made after the effective date of the amendment. Concurrently, Part 121 is proposed to be amended to require such materials in all airplanes newly manufactured two years or more after the effective date of the amendment and operated under the provisions of Part 121 or 135, regardless of the basis for type certification. (Section 135.169(a) incorporates the provisions of § 121.312 by reference, insofar as operations with large airplanes are concerned.) The two year compliance period for newly manufactured airplanes is intended to allow the airplane manufacturers time to select and qualify prospective cabin interior materials and incorporate them with a minimum of disruption to the assembly line. In addition, all other large airplanes type certificated after January 1, 1958, and operated under the provisions of Part 121 or 135 would have to be modified to use such materials the first time the cabin interior is replaced after a date two years from the effective date of this proposed amendment. ("Replaced", as used in this context, means an essential complete replacement of the cabin interior. Replacement of individual panels on a piece-meal basis would not significantly increase the level of safety and might result in parts incompatibility.) Unlike the coverings on seat cushions which must be replaced frequently due to wear, the interior materials addressed by this notice are more durable and, at the same time, more costly to replace. It is, therefore, not considered economically feasible to require these materials to be replaced with materials that meet the new flammability standards within the same time frame as required for seat cushion materials meeting the new seat cushions flammability standards.

A general retrofit requirement is not being proposed at this time because of a number of practical and cost-benefit considerations. By relating introduction of new materials to normal interior replacement cycles, the financial burden and the resultant cost to the traveling public would be reduced. Based on FAA testing of a number of representative materials, many airplanes in service presently incorporate materials that would meet the proposed new standards; and many more have interior materials that come very close to meeting these standards. For these airplanes, the increase in safety resulting from a retrofit requirement would be negligible. Many other airplanes will be retired from air carrier service in the near future due to obsolescence. The interiors of most of the remaining airplanes will be replaced for other reasons, such as wear or modernization. It is impossible to predict exactly how rapidly new materials would be phased into these airplanes under the proposed rules, because the service life of an interior depends on a number of factors. Recently, interiors have typically been replaced after seven to ten years of service. This may, however, have been accelerated somewhat due to the introduction of the "wide-body look" in narrow-body airplanes. Nevertheless, it appears that there would be few, if any, airplanes in which the interiors are not replaced for other reasons within a reasonable period of time. If materials not meeting the proposed new standards do remain in service in a significant number of air carrier airplanes because routine interior replacements are not accomplished as anticipated, and a substantial increase in overall safety could be realized, the FAA would consider proposing a mandatory retrofit requirement in a subsequent rulemaking action.

Airplanes type certificated on or before January 1, 1958, are not included because their advanced age and very

limited numbers in Part 121 or 135 operation would make compliance impractical from an economic standpoint. That date was selected because it would include the Boeing 707 and Douglas DC–8 vintage and later airplanes and exclude older models, such as the Douglas DC–6/7 and Convair 340/440. It should be noted that the replacement provisions of this notice do not apply to airplanes that are not operated under the provisions of Part 121 or 135, such as executive airplanes.

The term "replacement" would be substituted for the terms "major overhaul" and "refurbishing" currently used in § 121.312 because the latter terms have been found to be technically inappropriate. Interiors are not "overhauled" in the sense of Part 43 of this subpart, and "refurbishing" implies renovation or refinishing, rather than replacement of components. As noted earlier, "replacement", as used in this context, means an essentially complete replacement of the interior rather than replacement of individual components on a piecemeal basis.

Regulatory Evaluation

I. Cost Benefit Analysis

The proposals contained in this notice would upgrade the fire safety standards for cabins in transport category airplanes. Such airplanes would have to comply with new fire test criteria if application for type certificate is made after the effective date of the proposed rule, or, for airplanes used in air carrier service only, if they are manufactured after a specified date or if substantial sections of their interiors are replaced after that date.

The proposals result from FAA research efforts recommended by the FAA sponsored SAFER Advisory Committee. The proposals address flammability, smoke and toxicity considerations of cabin materials by an improved flammability test. Compliance with the proposals is possible utilizing the current state-of-the-art in cabin materials. The cabin components covered will be all high volume usage, surface materials above the floor of the airplane cabin, including sidewalls, ceiling, bins, and partitions.

There are minimal costs in complying with the proposed tests. The test procedure is a relatively simple one, and tests already conducted indicate that a number of materials presently used comply with the proposed standards. Further, the materials which meet the standards are basically the same cost as other materials used today, which might not pass the test. Also, there is no apparent problem in substituting these materials for components which fail to meet the standards. For new certification programs, there should be no increased design engineering or material costs, and only a small cost for the required testing. To introduce the materials into the production of airplanes which have already been certificated, the costs are expected to total about $2.3 million for design, engineering and certification testing to assure compliance for a specific group of panel materials. Of this total, approximately $600,000 is expected to be required for initial testing, engineering and certification. This is based on the FAA estimate that such activities will require the equivalent of approximately 12,000 engineer-hours, at $26 per hour, plus an additional $300,000 for materials, test equipment, consultants, and other nondirect labor costs. These are not recurring costs, and future costs are expected to be negligible. Data indicate that the materials used in specific components do not change frequently over the production life of an airplane, so that any future testing cost is incurred infrequently. There is no cost associated with switching over manufacturing processes to use only materials which comply with the proposed tests.

The balance, approximately $1.7 million, involves redesign of components in current production airplanes to comply with the new standards. It is estimated approximately half of the components, as presently constructed, will pass the proposed tests. While the number of engineering hours required to redesign each of the remaining components will vary considerably, it is estimated that the total for all of these remaining components will approximate 33,000 engineer-hours. Again, a cost of $26 per engineer-hour is used. An equivalent amount can also be expected for other resources, including inventory adjustment costs and similar costs.

The benefits from these proposals result from the increased likelihood of surviving an in-flight cabin fire or a crash which involves a post-crash fire. The improved flammability standards proposed in this notice would provide an additonal increment of time for passengers trapped in a burning airplane to escape. This, in turn, would allow more passengers to survive in a given situation. The benefits of these proposals are in addition to those resulting from the improved seat cushion standards contained in Amendments 25–59 and 121–184 because of the additional survival time increment gained and resultant additonal lives saved. Unlike the costs, which would be incurred largely over the first two years, the benefits would not start until a year later and would increase gradually thereafter as airplanes with new materials are phased into service.

The National Bureau of Standards (NBA), on FAA's behalf, recently conducted an extensive review of all commercial accidents worldwide in which fire was a factor in fatalities. While the NBS study dealt primarily with standards for seat cushions, the conclusion reached with respect to escape time versus survivability are equally applicable to these proposals. A copy of the NBS study, Report No. DOT/FAA/CT–84/8, entitled "Decision Analysis Model for Passenger-Aircraft Fire Safety with Application to Fire-Blocking of Seats" and dated April 1984, has been placed in the Rules Docket and is available for public inspection. Based on the results of the NBS study and a monetized value of $650,000 per life, the FAA estimates that the cumulative difference in lives saved and damage reduced by the year 2000 would amount to a benefit of approximately $8.8 million dollars. These benefits are discounted to a present value using a ten percent discount rate. The benefit to cost ratio is, therefore, approximately four to one.

The complete economic analysis for these proposals has been placed in the Rules Docket and is available for public inspection.

II. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among othe things, that small entities are not disproportionately affected by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The entities potentially affected by these proposals are airplane manufacturers and, assuming that airplane costs go up moderately, the operators of large airplanes. The FAA has issued guidance on the meaning of small entities and significant economic impact for both of these entity types. (Order 2100.14, *Regulatory Flexibility Criteria and Guidance*, FAA, July 1983.)

With respect to airplane manufacturers, the FAA has determined that airplane and airplane parts manufacturers are small if they have 75 or fewer employees. The airplane manufacturers subject to the terms of this proposal are all large firms. Only five current U.S. firms have certificated airplanes under Part 25, and the smallest, Gates Lear Jet, has an estimated 6,500 employees. (*Million*

Dollar Directory—1983, Dunn and Bradstreet Inc.)

Since the proposal may add a small amount to the price of new airplanes, there may be an impact on small entities which are operators of airplanes. The FAA has determined that for operators of airplanes for hire, small entities are those which own nine or fewer airplanes. The significant cost thresholds for "operators of airplanes for hire" are $85,070 for scheduled operators with airplanes having 60 or more seats, $47,506 for other scheduled operators and $3,315 for unscheduled operators (1983 values). The cost increase for new airplanes manufactured under the standards of this proposal is expected to be under $10,000 per airplane. The typical small entity operator of large airplanes would have to buy so many airplanes per year to reach this level of impact, that the operator would cease to be a small entity. There are thousands of small entities who are unscheduled operators, but only a few which operate large airplanes. In this type of entity, the cost increase could seemingly reach a level of significant economic impact because of the low annual cost threshold. However, the overwhelming majority of unscheduled operators are on demand air taxis; which operate small airplanes that are not subject to the requirements of this proposal.

In view of the above, FAA finds that compliance with these proposals would not result in a significant economic impact for a substantial number of small entities.

III. International Trade Assessment

This proposal, if adopted, would have little or no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S. The proposal affects the rules for certificating new airplanes. Also, newly manufactured airplanes for the U.S. market, whether made by U.S. or foreign manufacturers, would have to comply with the rule. Any cost of compliance is negligible, however, when compared to the cost of a new airplane.

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this action is significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it has been determined under the criteria of the Regulatory Flexibility Act that this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Flammable materials, Transportation, Common carriers.

The Proposed Amendment

Accordingly, the FAA proposes to amend Parts 25 and 121 of the Federal Aviation Regulations (FAR) 14 CFR Parts 25 and 121, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. By amending § 25.853, be adding a new paragraph (a–1).

§ 25.853 Compartment interiors.

* * * * *

(a–1) In addition to the flammability requirements prescribed in paragraph (a) of this section, interior ceiling panels, interior wall panels, partitions, galley structure, large cabinet walls and materials used in the construction of stowage compartments (other than underseat stowage compartments and compartments for stowing small items, such as magazines and maps) must also meet the test requirments of Part III of Appendix F of this part or other approved equivalent method.

* * * * *

2. By amending Appendix F by adding a new Part III to read as follows:

Appendix F

* * * * *

Part III—Test Method to Determine the Heat Release Rate From Cabin Materials Exposed to Radiant Heat

(a) *Summary of Method.* The specimen to be tested is injected into an environmental chamber through which a constant flow of air passes. The specimen's exposure is determined by a radiant heat source adjusted to produce the desired total heat flux on the specimen of 5.0 W/cm^2. The specimen is tested so that the exposed surface is vertical. Combustion is initiated by piloted ignition. The combustion products leaving the chamber are monitored in order to calculate the release rate of heat.

(b) *Apparatus.* The Ohio State University (OSU) rate of heat release apparatus standarized by the American Society of Testing and Materials (ASTM), ASTM E–906, as modified with an oxygen analyzer for heat release measurement, is used.

(1) This apparatus is shown in Figure 1. All exterior surfaces of the apparatus, except the holding chamber, shall be insulated with 25 mm thick, low density, high-temperature, fiberglass board insulation. A gasketed door through which the sample injection rod slides forms an airtight closure on the specimen hold chamber.

(2) *Oxygen Depletion Measurement.* (i) A sample probe for measuring the oxygen concentration in the calorimeter is located 50 mm below the point of innner and outer pyramidal sections flow convergence in the middle of and perpendicular to the long axis of the inner section. The probe is constructed of 6.3 mm outside diameter, 0.8 mm wall thickness stainless steel tubing with three #20 holes drilled such that one hole is in the geometric center of the inner pyramidal section and the other two holes are one-third the distance from the wall of the inner section to the middle hole. The holes are oriented up, away from the sample.

(ii) The oxygen analyzer is protected with a heated fiberglass filter located upstream of the sample pump, which is upstream of the analyzer. A 120 ml cartridge of indicator drierite and ascarite shall be in between the pump and the analyzer to remove water and CO_2 (This cartridge must be replaced whenever the drierite is exhausted.) The pump shall be a positive displacement type made of stainless steel construction. The pressure and flow to the analyzer shall remain constant during the test. A mercury-filled, open-end manometer shall be between the pump and filter to assure that the filter and probe remain obstructed. The maximum pressure drop from clogging of the filter and probe may not exceed 5 mm Hg. A calibration check of the oxygen depletion method for heat release rate measurement shall be made simultaneously with the calibration of the thermopile (see paragraph (c)), but shall be only for comparison between methods to verify the system is functioning properly.

(3) *Thermopile.* The temperature difference between the air entering the environmental chamber and that leaving is monitored by a thermopile having three hot and three cold, 24 gauge Chromel-Alumel junctions. The hot junctions are spaced across the top of the exhaust stack. Two hot junctions are located 25 mm from each side on diagonally opposite corners, and the third in the center of the chimney's cross-section 10 mm below the top of the chimney. The cold junctions are located in the pan below the lower air distribution plate (see paragraph (b)(5)).

(i) *Thermal Inertia Compensator.* A compensator tab is made from 0.55 mm stainless steel sheet, 10 by 20 mm. An 800 mm length of 24 gauge Chromel-Alumel glass insulated duplex thermocouple wire shall be welded or silver soldered to the tab as shown in Figure 2, and the wire bent back so that is is flush against the metal surface.

(ii) The compensator tab shall be mounted on the exhaust stack as shown in Figure 3 using a 6–32 round head machine screw, 12 mm long. Add small (approximately 4.5 mm O.D., 9 mm O.D.) washers between the head of the machine screw and the compensator tab to give the best response to a square wave input. (One or two washers should be adequate.) The "sharpness" of the square wave can be increased by changing the ratio

of the output from the thermopile and compensator thermocouple which is fed to the recorder. The ratio is changed by adjusting the 1–K ohm variable resistor (R_1) of the thermopile bleeder shown in Figure 4. When adjusting compensation, Keep R_3 as small as possible. Adjustment of compensator shall be made during calibration (see paragraph (c)(1)) at a heat release rate of 7.0 plus or minus 0.5 kW.

(iii) Adjust washers and variable resistor (R_1) so that 90 percent full scale response is obtained in 8 to 10 seconds. There shall be no overshoot as shown in Figure 5A. If an insufficient number of washers is added, or R_1 is too small, the output with square wave input will look like Figure 5B; if too many washers are added and R_3 is too large, the output will look like Figure 5A.

(iv) Subtract the output of the compensator from the thermopile. The junctions enclosed in the dotted circle of Figure 4 are kept at the same constant temperature by electrically insulating the junctions and placing them on the pipe carrying air to the manifold, then covering them and the pipe with thermal insulation.

(v) Thermopile hot junctions shall be cleared of soot deposits daily.

(4) *Radiation Source.* A radiant heat source for generating a flux up to 100 kW/m^2, using four silicon elements, Type LL, 20×12×5/8; nominal resistance 1.4 ohms, is shown in Figures 6A and 6B. The silicon carbide elements are mounted in the stainless steel panel box by inserting them through 15.9 mm holes in 0.8 mm thick ceramic fiber board. Location of the holes in the pads and stainless steel cover plates are shown in Figure 6B. The diamond shaped mask of 24 gauge stainless steel is added to provide uniform heat flux over the area occupied by the 150 by 150 mm vertical sample. A power supply of 12.5 kVA, adjustable from 0 to 270 volts is required. (If a heat flux of up to 100 kW/m^2 is desired, a separate power supply for each pair of elements can be used where maximum voltage is less than 270 volts.)

(5) *Air Distribution System.* The air entering the environmental chamber is distributed by a 6.3 mm thick aluminum plate having 8, No. 4 drill holes, 51 mm from sides on 102 mm centers, mounted at the base of the environmental chamber. A second plate of 18 gauge steel having 120, evenly spaced, No. 28 drill holes is mounted 150 mm above the aluminum plate. A well-regulated air supply is required. The air supply manifold at the base of the pyramidal section has 48, evenly spaced, No. 28 drill holes 10 mm from the inner edge of the manifold so that 0.03 m^3/second of air flows between the pyramidal sections and 0.01 m^3/second flows through the environmental chamber when total air flow to apparatus is controlled at 0.04 m^3/second.

(6) *Exhaust Stack.* An exhaust stack, 133 by 70 mm in cross section, and 254 mm long, fabricated from 28 gauge stainless steel, is mounted on the outlet of the pyramidal section. A 25 by 76 mm plate of 31 gauge stainless steel is centered inside the stack, perpendicular to the air flow, 75 mm above the base of the stack.

(7) *Specimen Holders.* A vertical specimen holder shall be attached to the injection rod using the vertical support shown in Figure 7. The 150 mm by 150 mm specimen is tested in a vertical orientation (Figure 8). The holder is provided with a "V" shaped spring pressure plate and 12.7 mm backing plate of rigid insulation board having a density of 320 plus or minus 80 kg/m^3 and thermal conductivity of 0.08 plus or minus 0.01 W/m, K. ("Kaowool" M–Board, Surface, Rigidized, Babcock/Wilcox Refractories, Augusta, Georgia, or its equivalent, is satisfactory.) The position of the spring pressure plate may be changed to accommodate different specimen thickness for inserting a retaining rod in different holes of the specimen holder frame. The adjustable radiation shield (Figure 1) on the vertical specimen holder, which covers the opening made when the radiation doors are in their open position and the specimen is inserted, is adjusted to position the front surface of the specimen 100 mm from the entrance to the environmental chamber.

(8) *Radiometers.* Total-flux meters (calorimeters) shall be used to measure the total heat flux at the point where the center of the specimen's surface is located at the start of the test. The total-flux meters shall have view angles of 180 degrees and be calibrated for incident flux. When positioned to measure flux, the sensing surface of the flux meter for vertical specimens shall extend beyond any solid supporting device so that air heated by such a support does not contact the sensing surface of the flux meter.

(9) *Pilot-Flame Positions.* Pilot ignition of the specimen shall be accomplished by simultaneously exposing the specimen to a lower pilot burner and an upper pilot burner, as described in paragraphs (b)(9)(i) and (b)(9)(ii) respectively.

(i) *Lower Pilot Burner.* Pilot-flame tubing shall be 6.3 mm O.D., 0.8 mm wall, stainless steel tubing. Fuel shall be methane or natural gas having 90 percent or more methane. A methane-air mixture, 120 cm^3/min gas and 850 cm^3/min air shall be the fuel mixture fed to the lower pilot flame burner. Normal position of the end of the pilot burner tubing is 10 mm from and perpendicular to the exposed vertical surface of the specimen. The centerline at the outlet of the burner tubing shall intersect the vertical centerline of the sample, 5 mm above the lower edge of the specimen.

(ii) *Upper Pilot Burner.* The pilot burner shall be a straight length of 6.3 mm O.D., 0.8 mm wall, stainless steel tubing 360 mm long. One end of the tubing shall be closed, and three No. 40 drill holes, 60 mm apart, drilled into the tubing for gas ports, all radiating in the same direction. The first hole shall be 5 mm from the closed end of the tubing. The tube is inserted into the environmental chamber through a 6.6 mm hole drilled 10 mm above the upper edge of the window frame. The tube is supported and positioned by an adjustable "Z" shaped support mounted outside the environmental chamber, above the viewing window. The tube is positioned above and 20 mm behind the exposed upper edge of the specimen. The middle hole shall be in the vertical plane perpendicular to the exposed surface of the specimen which passes through its vertical centerline and shall be pointed toward the radiation source. Fuel gas to the burner shall be methane or natural gas with at least 90 percent methane, adjusted to produce flame lengths of 25 mm.

(c) *Calibration of Equipment*—(1) *Heat Release Rate.* A burner as shown in Figure 9 shall be placed over the end of the pilot flame tubing using a gas tight connection. The gas to the pilot flame shall be accurately metered, e.g., by a wet test meter, and set at a low flow rate. The gas shall be at least 0 percent methane and have an accurately known net heating value. The output of the recorder is "zeroed". Then the gas flow to the burner shall be increased to a higher, preset value and allowed to burn for 4.0 minutes, after which the gas flow is again returned to its low flow rate. The sequence is repeated until a constant increase and consistent return to the "zero" base line is achieved. The difference in flow between the low and high settings for gas flow, multiplied by its net heating value, shall be used as the rate of heat release. The output of the differential temperature recorder, after reaching a steady state value, is the output corresponding to that heat release rate. At least three levels of heat release shall be used. The heat release rate shall not exceed 7.75 kW, nor be less than 1.5 kW when calibrating.

(2) *Flux Uniformity.* Uniformity of flux over the specimen shall be periodically checked and checked after each heating element change to determine if it is within acceptable limits of plus or minus 5 percent.

(d) *Sample Preparation.* (1) The standard size for vertically mounted specimens is 150 by 150 mm exposed surface with thickness up to 100 mm.

(2) *Conditioning.* Specimens shall be conditioned as described by Part 1 of this appendix (70° F. plus or minus 5° F. and 50 percent plus or minus 5 percent relative humidity).

(3) *Mounting.* Only one surface of a specimen shall be exposed during a test. Specimens having a slab geometry shall be insulated on five sides. A double layer of 0.025 mm aluminum foil wrapped tightly on sides and back is satisfactory. For products whose exposed surface is not a plane, the mounting and method of calculating surface area exposed must be described when reporting results.

(e) *Procedure.* (1) The pilot flames are lighted and their position as described in paragraph (b)(9) is checked.

(2) The power supply to the radiant panel is set to produce a radiant flux of 5.0 W/cm^2. The flux is measured at the point the center of the specimen surface will occupy when positioned for test. The radiant flux is measured with the lower pilot flame displaced to the side of the environmental chamber and after air flow through the equipment is adjusted to the desired rate. The sample should be tested in its end use thickness.

(3) The air flow to the equipment is set at 0.04 plus or minus 0.001 m^3/s atmospheric pressure and 70° F. plus or minus 5° F.). The stop on the vertical specimen holder rod is adjusted so that the exposed surface of the specimen shall be positioned 100 mm from the entrance when injected into the environmental chamber.

(4) Steady state conditions, such that the radiant flux does not change more than 0.5 kW/m^2 over a ten minute period, shall be maintained before the specimen is injected.

(5) The specimen is placed in the hold chamber with the radiation shield doors closed. The airtight outer door is secured, recording devices started, and output oxygen analyzer set to "zero" on the recorder. "Zero" conditions are those existing at the time immediately before the specimen is injected. The specimen shall be retained in the hold chamber 60 seconds plus or minus 10 seconds before injection.

(6) When the specimen is to be injected, the radiation doors are opened, and specimen is injected into the environmental chamber.

(7) Unless immediate ignition occurs, a negative heat release will occur at elevated exposures due to heat absorption by the cold specimen holder. Data-acquistion devices shall have the capability of following these negative outputs, and correcting the sample burn with a "blank" test result.

(8) Injection of the specimen marks time zero. A continuous record of the output from the oxygen analyzer shall be made during the time the specimen is in the environmental chamber.

(9) Test duration time is five minutes.

(10) A minimum of three replicate tests shall be made.

(f) *Calculations*—(1) *Heat Release Rate by Oxygen Depletion.* Heat release rate is calculated by the oxygen depletion method by multiplying the change in oxygen mole fraction by the OSU flow rate ($0.1 m^3/sec$) by the heat of combustion ($16.7 MJ/m^3$) to CO_2. The final result is the heat release rate in kilowatts. This number shall then be standardized per unit sample area as appropriate.

Heat Release $= Q = 1.67 \times 10^4 (.01 m^3/sec) (X_o - X_a) A (m^2)$

Heat Release $= 7.189 (X_o - X_a)$ (Kilowatts/m^2)

Where the sample area is .0232 m^2, and X_o is the initial mole fraction of oxygen and X_a is the measured mole fraction of oxygen.

(2) *Heat Release Rate by Thermopile Measurement.* Heat release rates may also be calculated from the reading of the thermopile output, the exposed surface area of the specimen and the constant "k_H". "k_H" is obtained from calibration runs:

$$k_H = \frac{\textit{Heat Release Rate (kW)}}{\text{Chart Reading}}$$

Then: Heat Release Rate (kW/m^2) $= kH$ (Chart Rdg.)/A

where:

A = exposed surface area of specimen (m^2).

Chart Reading = millivolts above the baseline thermopile output minus the "blank" test result.

(i) Heat release rates are determined from chart reading as a function of time.

(g) *Criteria.* The total heat release over the first two minutes of sample exposure shall not exceed 40 kilowatt-minutes per square meter if measurement is by thermopile or, alternatively, 70 kilowatt-minutes per square meter if measurement is by oxygen depletion.

(h) *Report.* The test report shall include the following:

(1) Description of specimen.

(2) Radiant heat flux to specimen, expressed in kW/m^2.

(3) Data giving release rates of heat (in kW/m^2) as a function of time, either graphically or tabulated at intervals no greater than 10 seconds. The data shall be integrated to give total heat release as a function of time for the five-minute test, as well as for the first two minutes of sample exposure.

(4) The time which total fire involvement is reached shall be noted.

(5) If melting, sagging delaminating, or other behavior that affects exposed surface area or mode of burning occur, these behaviors shall be reported, together with the time as which such behaviors were observed.

BILLING CODE 4910-13-M

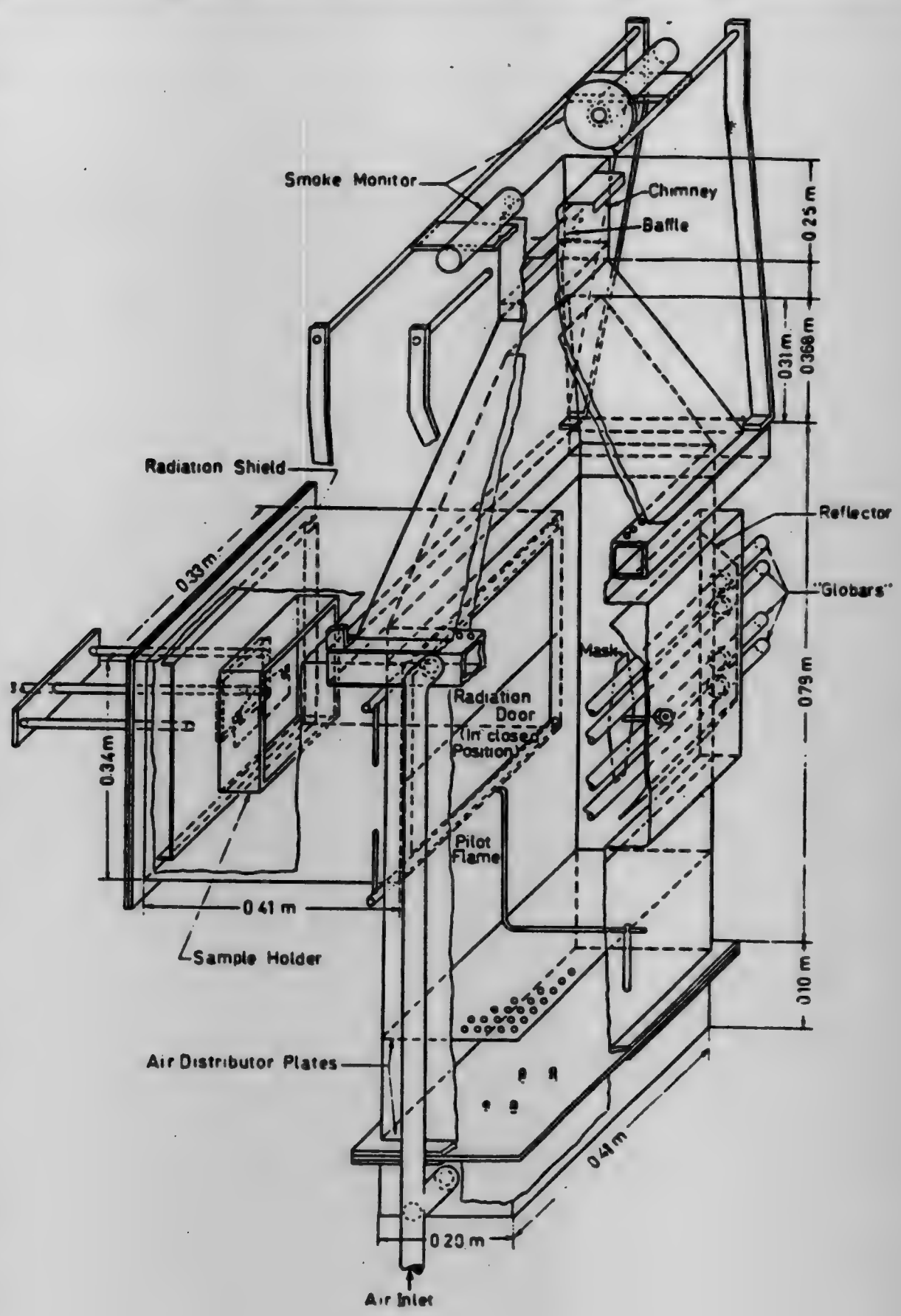
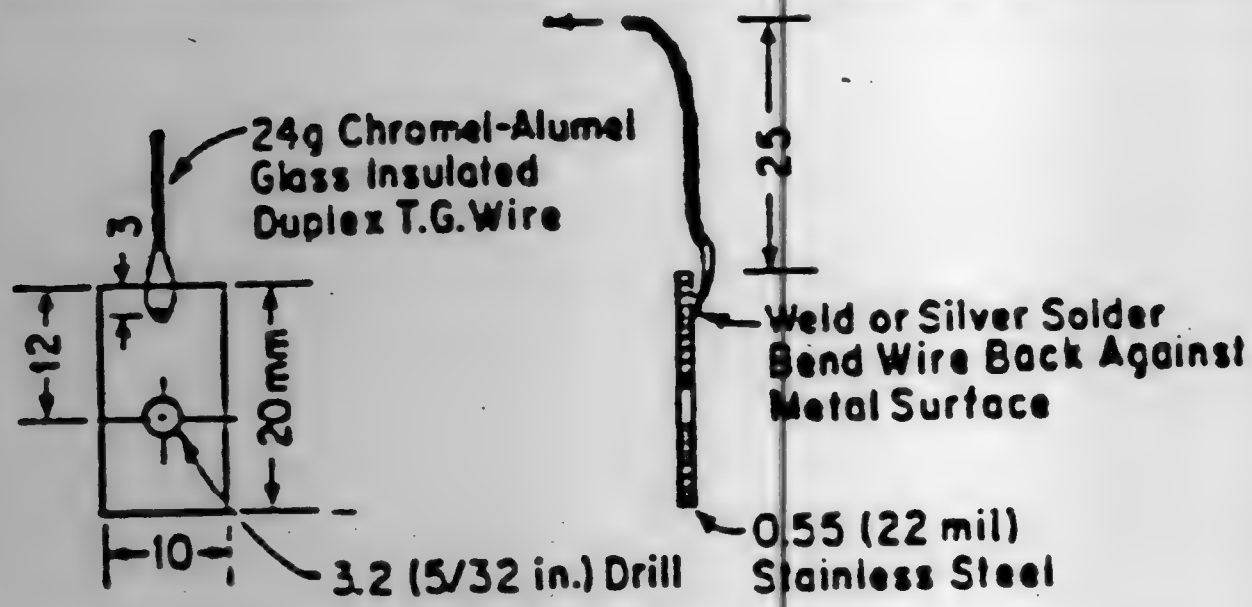


Figure 1. Release Rate Apparatus



(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 2. Compensator Tab

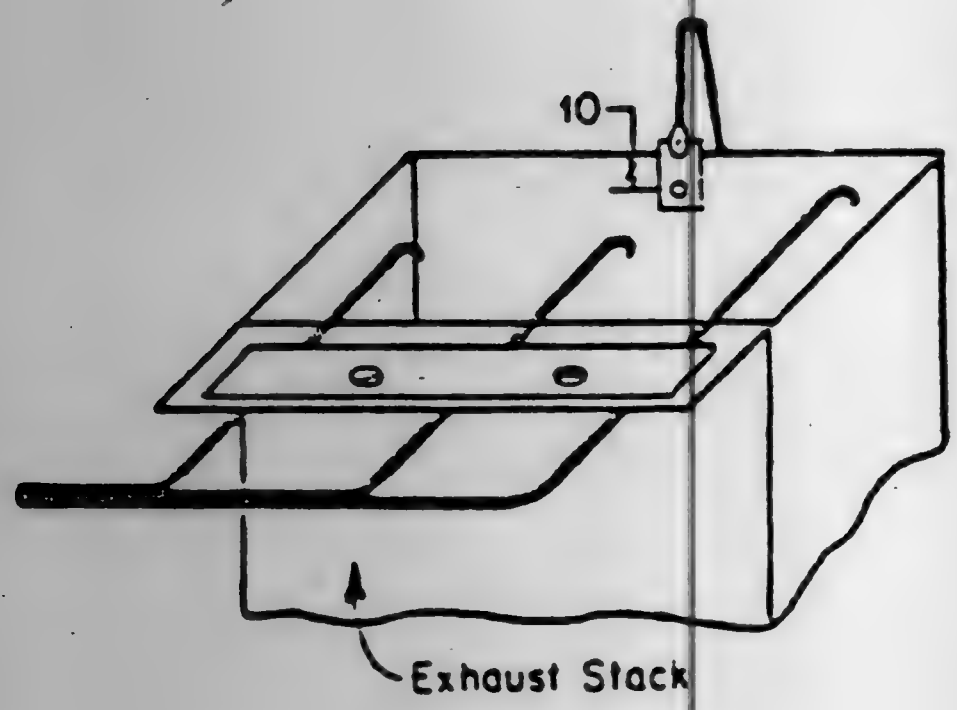


Figure 3. Compensator Tab Mount

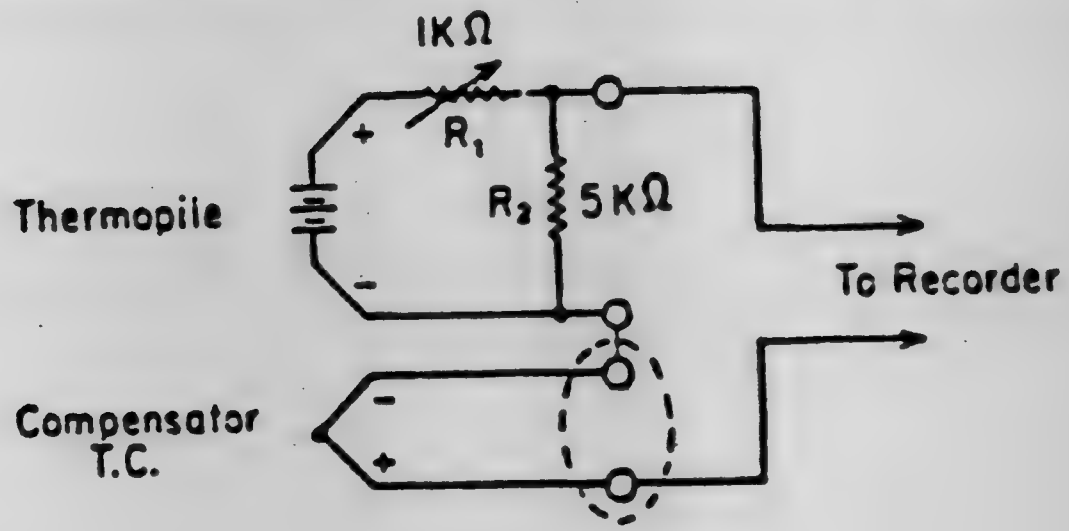


Figure 4. Wiring Diagram

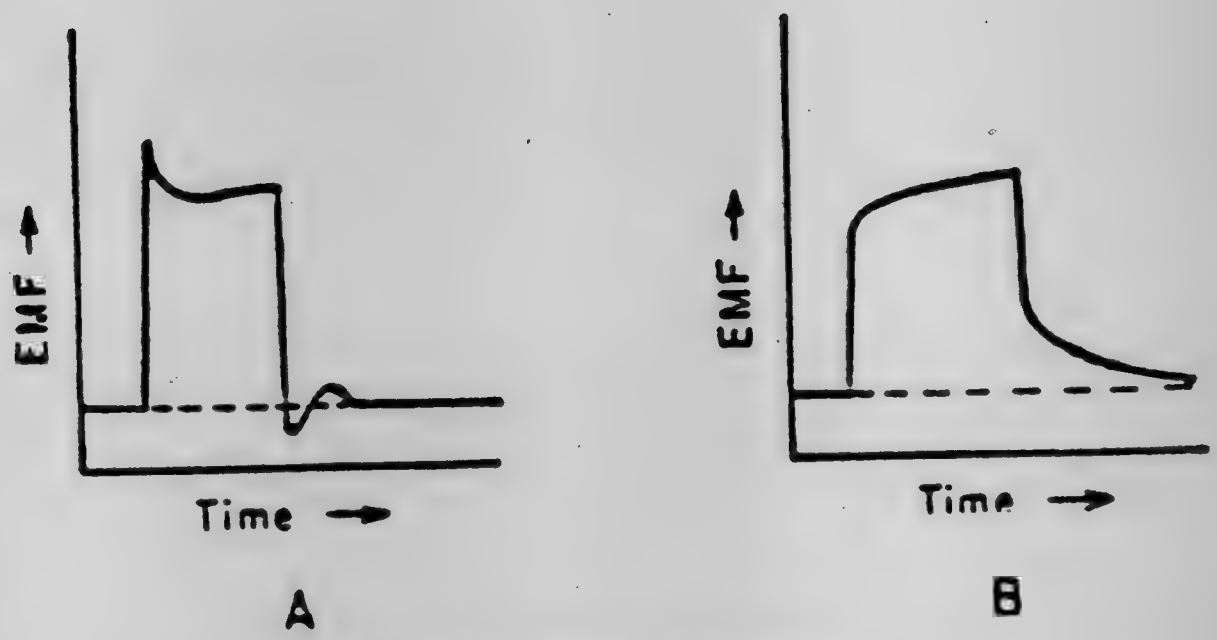
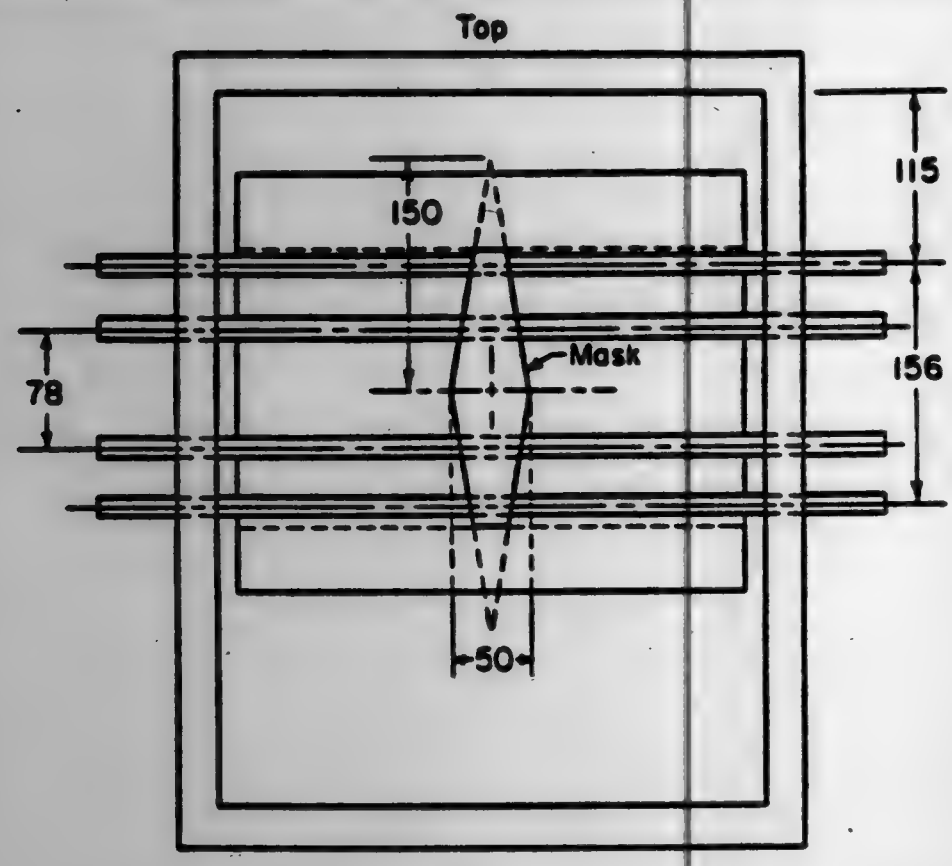
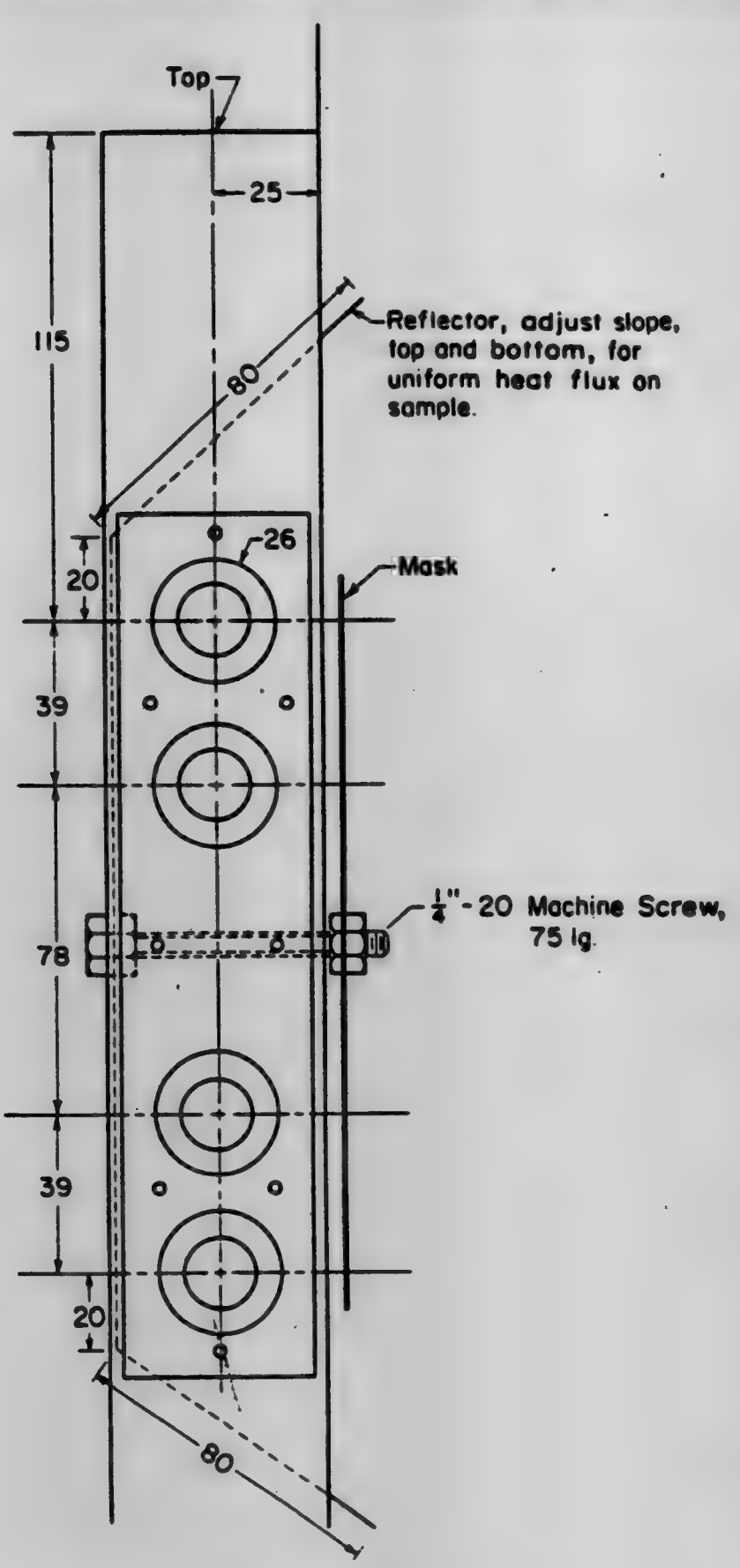


Figure 5. Square Wave Response



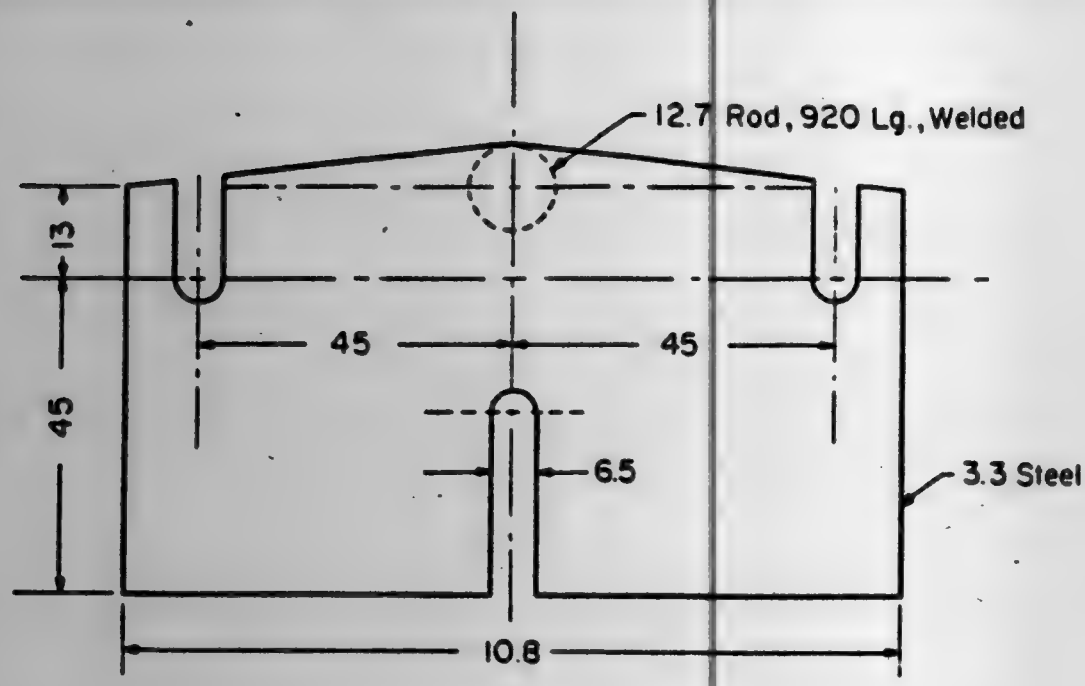
(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 6A. "Globar" Radiant Panel



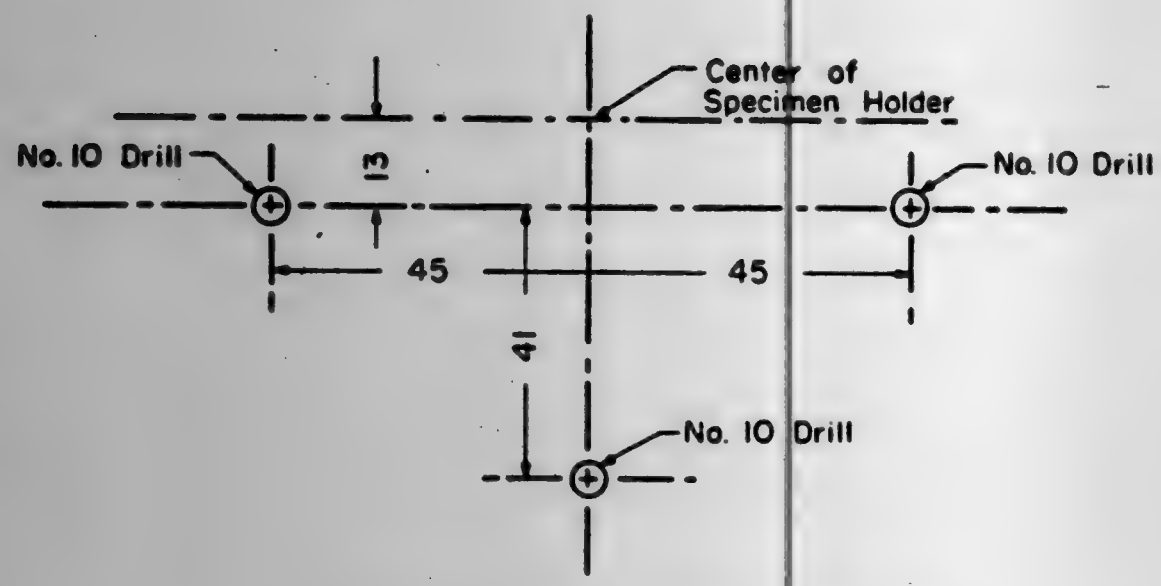
(Unless demonted otherwise, all dimensions are in millimeters.)

Figure 6B. "Globar" Radiant Panel



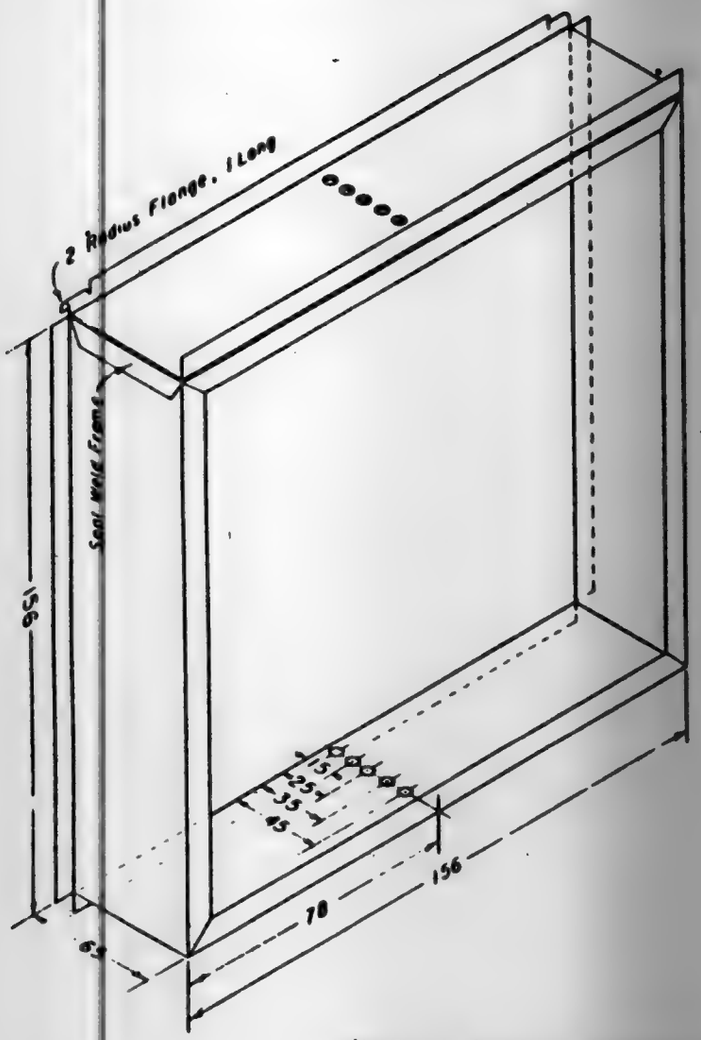
VERTICAL SUPPORT

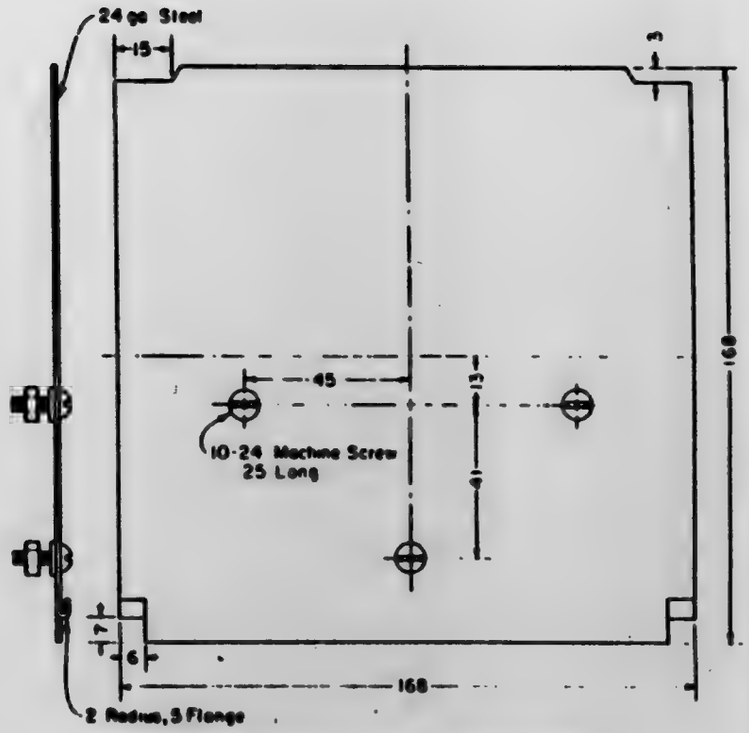
(Unless denoted otherwise, all dimensions are in millimeters.)



TEMPLATE FOR MOUNTING BOLTS
VERTICAL MOUNT

Figure 7. Vertical Holder Mount

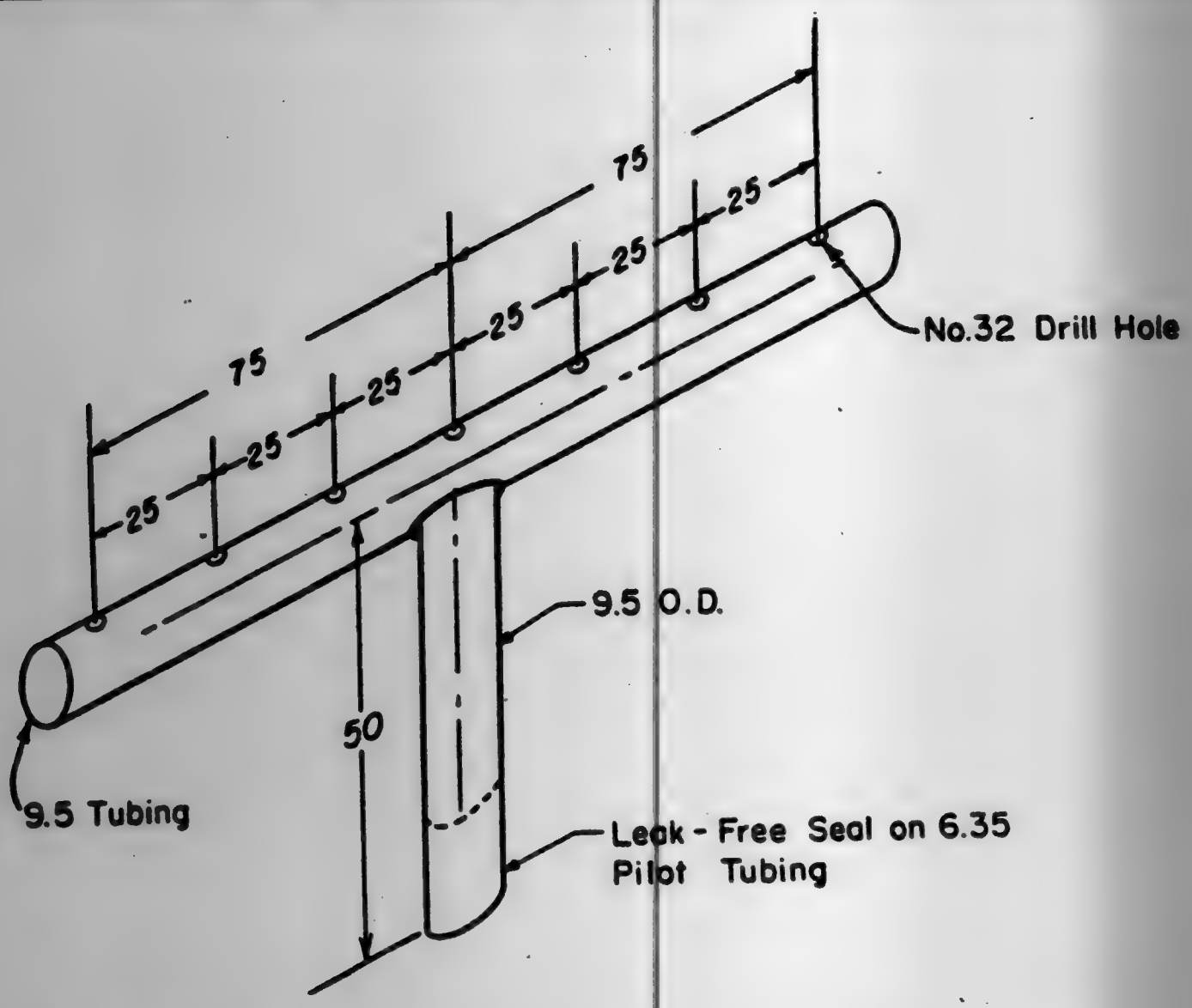




MOUNTING BRACKET

(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 8. Vertical Specimen Holder



(Unless denoted otherwise, all dimensions are in millimeters.)

Figure 9. Calibration Burner

BILLING CODE 4910-13-C

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. By revising § 121.312 to read as follows:

§ 121.312 Materials for compartment interiors.

(a) Except for those materials covered by paragraph (b) of this section, all materials in each compartment used by the crew or passengers must meet the requirements of § 25.853 of this chapter in effect as follows or later amendment thereto:

(1) All airplanes manufactured on or after (a date two years after the effective date of this amendment) must comply with the provisions of § 25.853 in effect (the effective date of this amendment).

(2) Upon the first replacement of the cabin interior prior to (a date two years after the effective date of this amendment):

(i) An airplane for which the application for type certificate was filed prior to May 1, 1972, must comply with the provisions of § 25.853 in effect on April 30, 1972;

(ii) An airplane for which the application for type certificate was filed on or after May 1, 1972, must comply with the materials requirements under which the airplane was type certificated.

(3) Upon the first replacement of the cabin interior on or after (a date two years after the effective date of this amendment):

(i) Airplanes type cerificated after January 1, 1958 must comply with the provisions of § 25.853 in effect (the effective date of this amendment).

(ii) Airplanes type certificated on or before January 1, 1958 must comply with the provisions of § 25.853 in effect on April 30, 1972.

(b) For airplanes type certificated after January 1, 1958, after Novermber 26, 1987, seat cushions, except those on filightcrew seats, in any compartment occupied by crew or passengers must comply with the requirements pertaining to fire protection of seat cushions in § 25.853(c), effective November 26, 1984.

(Sec. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.45)

Issued in Seattle, Washington, on April 8, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–9045 Filed 4–11–85; 9:51 am]

BILLING CODE 4910-13-M

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federal register

Tuesday
April 16, 1985

Part III

Department of the Interior

National Park Service

36 CFR Part 7

Cape Cod National Seashore, MA.; Off-Road Vehicle Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Cape Cod National Seashore, MA; Off-Road Vehicle Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: These regulations will specifically designate the off-road vehicle routes at Cape Cod National Seashore. Oversand routes were first officially designated in the Off-Road Vehicle Management Plan for the Seashore which took effect on April 15, 1981. These rules modify the previous Plan to take into account new information regarding allocation of areas for off-road vehicle use. In addition, commercial dune taxi and guide fees have been increased to levels commensurate with other off-road vehicle fees and dune taxi permits are limited to the numbers issued in the 1981 season. These regulations will generally facilitate the management of off-road vehicle within Cape Cod National Seashore.

DATES: Written comments, suggestions or objections will be accepted until May 16, 1985.

ADDRESS: Comments should be addressed to: Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

FOR FURTHER INFORMATION CONTACT: Peter M. Hart, Chief Ranger, Cape Cod National Seashore, South Wellfleet, MA 02663, Telephone: (617) 349–3785.

SUPPLEMENTARY INFORMATION:

Background

Off-road vehicle use on the beaches, primarily for fishing, predates Seashore authorization in 1961. The University of Massachusetts, under contract to the National Park Service, completed a comprehensive five-year study of the Impacts of Off-Road Vehicles on Cape Cod National Seashore in 1979. The National Park Service then published a series of management alternatives and held hearings. On March 27, 1981, it released a Management Plan for the Use of Off-Road Vehicles, which became effective on April 15, 1981.

The Plan, which has been in effect for four years, closed the high dunes of the Province Lands and a fragile area of outer beach between Herring Cove and Long Point, Provincetown. It essentially limited off-road vehicles to a corridor defined on the outer beach. Seashore protected beaches and town beach closures limited off-road vehicle use on a 16-mile section of outer beach during the summer season. The number of permits issued has steadily declined from a high of 4,469 in 1979 prior to plan implementation to 2,870 in 1984.

On April 15, 1981, the Conservation Law Foundation and others filed suit to terminate all off-road vehicle use at the Seashore. On May 25, 1984, the U.S. District Court for the District of Massachusetts rule that the Management Plan adequately protected Seashore resources but remanded issues of appropriateness and user conflict to the agency for further consideration. The National Park Service Cooperative Research Unit at City University of New York completed a survey of beach users in the summer and fall of 1984. Route modifications are based on the results of this survey, experience with the Management Plan over four years, ecological considerations, geographical configurations of the Seashore, legal duties and responsibilities, public safety, visitor use and off-road vehicle statistics, existing local laws and regulations, scenic and aesthetic impacts, management feasibility and guidance given by the Court.

The ocean beach from the opening of Hatches Harbor around Race Point to High Head, a distance of 8 miles, will be open from April 15 through November 15, except when tide, beach configuration or bird nesting make the route impassable.

The beach area from High Head south to Coast Guard Beach in Eastham, a distance of 17.5 miles, previously open during all but the summer season, will be closed to all off-road vehicle use. This closure in an area of only limited off-road vehicle use will eliminate user conflicts while providing an additional area of vehicle-free beach throughout the year. In this section, there are 12 Seashore and town beaches and parking areas which will provide pedestrian access to fishing and other uses throughout the year. The closure between High Head and Head of the Meadow during the summer season will provide a mile and a-half buffer north of Head of the Meadow protected beach.

The corridor designation extends from a point 10 feed seaward of the Spring high tide drift line to the berm crest and is designed to protect vegetation in the drift line deposits, including any developing rhisomes. The utilization of the berm crest as the seaward limit of vehicle travel year-around is designed to protect pedestrians by maintaining a separation between pedestrians and vehicles. This restriction has been in effect since the Plan was adopted in 1981, although under the prior regulation it only applied during the period from May 15 to October 15.

All beach routes will be closed to general off-road vehicle use from November 16 through April 14. This closure is necessary to protect dormant beachgrass and rhisomes during the winter period of abnormally high storm tides when the corridor is narrow or nonexistent and the delineator posts are removed to prevent loss by storms. However, to accommodate certain specialized uses, a limited access pass will be used. This pass will permit infrequent but traditional winter uses such as shellfishing in the town shellfish beds at Hatches Harbor, caretaker maintenance at dune cottages, and removal of flotsam and jetsam materials from the beach. The pass will be tightly controlled and the holder will not be allowed to travel the beach within two hours on either side of high tide. Dune cottage residents with stipulated access rights will continue to have access to their individual cottage at any time that the route is passable. Dune taxi operations are limited to the period from April 15 through November 15.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following individual participation in the writing of this regulation: Peter M. Hart, Chief Ranger, Cape Cod National Seashore, South Wellfleet, MA. 02663.

Paperwork Reduction Act

The information collection requirements contained in § 7.67(a)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the Superintendent to issue off-road vehicle permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and that this document will not have a

significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This conclusion is based on the finding that no costs should result for any small entity.

As required by the National Environmental Policy Act (42 U.S.C. 4332, *et seq.*), the Service prepared an Analysis of Management Alternatives including an environmental assessment and a Record of Decision on Off-Road Vehicle Use in 1981 and an amended Record of Decision in March 1985 on those portions of this rulemaking which are other than correcting or clarifying in nature. Copies of these documents are available for review at the address noted at the beginning of the rule.

List of Subjects in 36 CFR Part 7

National parks.

Authority: The Service's authority for promulgating these regulations is 16 U.S.C. 1 and 3 and 16 U.S.C. 459 relating specifically to Cape Cod National Seashore.

PART 7—[AMENDED]

In consideration of the foregoing, it is proposed to amend 36 CFR Part 7 as follows:

1. In § 7.67, paragraph (a) is revised to read as follows:

§ 7.67 Cape Cod National Seashore.

(a) *Off-road operation of motor vehicles*—(1) *Route designations.* The operation of motor vehicles, other than on established roads and parking areas, is limited to the following oversand routes during the prescribed dates:

(i) From April 15 through November 15 on the outer beach between the opening to Hatches Harbor, around Race Point to High Head, and including the beach access routes at Race Point and High Head and the bypass route at Race Point Light.

(ii) From January 1 through December 31 on controlled access routes for residents of individual dune cottages in the Province Lands.

(iii) From April 15 through November 15 on commercial dune taxi routes following portions of the outer beach and cottage access routes as described in the commercial vehicle permit.

(iv) Except as described in paragraph (a)(1)(ii), from November 16 through April 14 oversand travel is restricted to uses and routes approved in writing or by permit by the Superintendent on a single-trip daily basis.

(2) *Travel restrictions.* The operation of a motor vehicle on oversand routes is subject to all applicable provisions of Parts 2 and 4 of this chapter, as well as the specific provisions of this section.

(i) *Route Limits.* (A) On the beach, a vehicle operator shall drive in a corridor extending from a point 10 feet seaward of the Spring high tide drift line to the berm crest. An operator may drive below the berm crest only to pass a temporary cut in the beach but shall regain the crest immediately following the cut. Delineator posts mark the landward side of the corridor in critical areas.

(B) On an inland oversand route, a vehicle operator shall drive only in a lane designated by pairs of delineator posts showing the sides of the route.

(ii) An oversand route is closed at any time that tides, nesting birds or surface configuration prevent vehicle travel within the designated corridor.

(iii) When two vehicles meet on the beach, the operator of the vehicle with the water on the left shall yield.

(iv) When two vehicles meet on a single-lane oversand route, the operator of the vehicle in the best position to yield shall pull out of the track and then shall back into the established track before resuming the original direction of travel.

(v) When the process of freeing a vehicle which has been stuck results in ruts or holes, the operator shall fill the ruts or holes created by such activity before removing the vehicle from the immediate area.

(vi) The following are prohibited:

(A) Driving off a designated oversand route.

(B) Exceeding a speed of 15 miles per hour.

(C) Parking a vehicle in an oversand route so as to interfere with traffic.

(D) Riding on a fender, tailgate, roof or any other location on the outside of a vehicle.

(E) Driving a vehicle across a protected swimming beach at any time when it is posted with a sign prohibiting vehicles.

(F) Operating a motorcycle on an oversand route.

(3) *Equipment Requirements.* (i) Each vehicle operated on an oversand route shall be equipped as follows:(A) Shovel;

(B) Tow rope, chain, cable or other similar towing device;

(C) Jack;

(D) Jack support board;

(E) Low pressure tire gauge; and

(F) Five tires that meet or exceed standards established and made available by the Superintendent. These standards describe the approved tires for oversand travel and are subject to frequent revision due to technological and nomenclature changes by tire manufacturers.

(ii) Operating a vehicle on an oversand route without the required equipment is prohibited.

(4) *Oversand Permits.* No oversand vehicle, other than an authorized emergency vehicle, shall be operated on a designated oversand route without an oversand permit issued by the Superintendent.

(i) *Private oversand permits.* The Superintendent may establish a system of special recreation permits for oversand vehicles and establish special recreation permit fees for these permits consistent with the conditions and criteria of Part 71 of this chapter.

(A) Prior to being issued a permit, an operator of an oversand vehicle shall:

(*1*) Demonstrate that the vehicle is equipped as required in paragraph (a)(3) of this section; and

(*2*) Demonstrate evidence of compliance with all federal and state regulations that apply to licensing, registering, inspecting and insuring such a vehicle.

(B) Prior to being issued a permit, an applicant for an oversand permit and any other operator of the applicant's vehicle shall view an oversand vehicle operation educational program prescribed by the Superintendent.

(C) The Superintendent shall affix an oversand permit to the permitted vehicle at the time of issuance.

(D) Transfer of an oversand permit from one vehicle to another is prohibited.

(E) During the period from November 16 through April 14 the Superintendent may issue a single day, limited-access pass to the holder of an oversand permit.

(*1*) Travel under this pass is limited to that portion of the beach between High Head and Hatches Harbor only.

(*2*) Vehicle travel under this pass is prohibited within two hours either side of high tide.

(*3*) The pass may be issued for the following purposes:

(*i*) Access to town shellfish beds at Hatches Harbor;

(*ii*) Recovery of personal property, flotsam and jetsam from the beach; or

(*iii*) Caretaker functions at a dune cottage.

(ii) *Commercial Vehicle Permits.* The operation of a passenger vehicle for hire on a designated oversand route is permitted only pursuant to a commercial vehicle permit issued by the Superintendent, subject to all applicable regulations in this section and all applicable Federal, State and local regulations concerning vehicles for hire.

(A) Commercial vehicle permits are limited to 18, which is the number issued in the 1981 permit year.

(B) Each operator of a passenger vehicle for hire who is engaged in carrying passengers for a fee on a designated oversand route shall obtain a guide permit issued by the Superintendent. Such permit may only be issued upon a showing that the applicant possesses adequate knowledge of the Seashore's off-road system and points of interest and has complied with all applicable Federal, State and local regulations.

(C) *Annual Permit Fees.*—(*1*) *Commercial Vehicle Permit:* $10 for each passenger carrying seat in the vehicle to be operated.

(*2*) *Guide Permit:* $15 for the calendar year or any part thereof.

(iii) Failure to comply with any provision of an oversand permit or with any regulation listed in this section or Part 2 or Part 4 of this chapter is prohibited and is grounds for immediate revocation of an oversand permit.

(5) *Camping.* (i) Camping is allowed only in two designated self-contained vehicle areas on the beach having a maximum capacity of 100 vehicles.

(ii) Only an operator and occupants of a vehicle having a self-contained water or chemical toilet and a permanently installed holding tank with a minimum capacity of 3 days' waste material may camp on the beach.

(A) An operator shall drive such vehicle off the beach for the purpose of emptying holding tanks at a dumping station at intervals of no more than 72 hours.

(B) Before returning to the beach, a vehicle operator shall check in as specified by the Superintendent.

(iii) An operator shall not drive a self-contained vehicle outside the limits of a designated camping area except when entering or leaving the beach by the most direct route.

(iv) Each oversand permit holder is limited to a maximum of 21 days camping on the beach from July 1st through Labor Day.

(v) Tents and camping trailers are prohibited on the beach.

(vi) Beach camping in any manner other than authorized by this section is prohibited.

(6) *Information collection.* The information collection requirements contained in § 7.67(a)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0026. The information is being collected to solicit information necessary for the Superintendent to issue off-road vehicle permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

2. In § 7.67, paragraph (b), (c), and (h) are removed.

3. In § 7.67, paragraph (d) is redesignated as (b), (e) as (c), (f) as (d), (g) as (e), and (i) as (f).

Dated: April 3, 1985.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–9079 Filed 4–15–85; 8:45 am]

BILLING CODE 4310-70-M

federal register

Tuesday
April 16, 1985

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year 1985, Saltonstall-Kennedy funds are available to assist persons in carrying out research and development projects which address any aspect of a U.S. fishery involving the U.S. fishing industry (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infra-structures. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications it will fund.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Hutchinson, Industry Development Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone: 202–634–7451.

SUPPLEMENTARY INFORMATION:

Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" within the context of the Order or its implementing guidelines because the solicitation does not significantly affect the economy, costs or prices, competition, employment, investment, or productivity. Because the solicitation is issued without prior opportunity for public comment, it is not subject to the provisions of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act and have been assigned OMB #0648–0135.

This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*.

Introduction

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–2–713c–3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use at least 60 percent of these funds each year to make available grants to assist persons in carrying out research and development projects which address any aspect of United States fisheries, including, but not limited to, harvesting, processing, and marketing. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. For fiscal year 1985, about $7 million of Saltonstall-Kennedy monies are available to fund fisheries research and development projects. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

Funding Priorities

Fisheries research, development, and utilization applications should relate to one or more of the priority areas in the Regional and National sections. The NMFS will also consider other projects, however, funding will only be available for exceptionally good projects outside the priority areas if sufficient projects adequately addressing the specific priorities are not received.

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will *not* be provided for projects primarily involving the following activities: (1) Infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to artificial reefs or fish aggregating devices; and (6) extension activities such as newsletters or technology transfer unless identified as a necessary part of a specific project.

The NMFS identified fisheries and priorities on a Regional basis in conjunction with fishing industry groups, other organizations, and local governmental units having an interest in the development and use of fisheries in the Region. Some priorities were found to relate to several species or Regions and are listed as national priorities. The fisheries and the major needs related to their development or full use which the NMFS will give priority for funding follow:

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

A. Northeast Region Priorities

1. *Squid, Mackerel, Butterfish:* a. Examine means to locate, assess and harvest fishery resources which have identifiable capacity for significant production.

b. Conduct in-plant demonstrations of new or innovative processing equipment to allow processors to evaluate opportunities to make greater use of nontraditional species of fish. Projects must assess the technical and economic feasibility of using the equipment.

c. Execute regional domestic and export marketing programs, including product development activities, in cooperation with states, media, industry and other interests.

d. Conduct feasibility review of economic viability of fishery efforts on nontraditional species, ideally, combining, a, b, and c above into overview.

e. Identify measurable factors which reflect quality differences in current and potential squid products and develop proposed quality standards for use by industry.

2. *Atlantic demersal finfish:* Proposals should build and expand on the results obtained from past, completed S-K funded studies, developing new leads where appropriate.

a. Evaluate existing techniques or develop new methods to process and use fish wastes (including waste treatment) and determine technical and economic feasibility of their application through in-plant demonstrations.

b. Conduct on-board demonstrations of methods (1) to increase the effectiveness of fisheries gear; (2) to improve product quality through improved on-board handling and holding procedures; and (3) to reduce operating costs of commercial fishing vessels. Projects must determine the technical and economic feasibility of these methods through demonstrations on vessels.

c. Conduct training activities for industry personnel in procedures to maintain the quality of fish as it moves through processing and distribution channels.

d. Evaluate the technical and economic feasibility of shifting fishing effort to other species, such as hake, and resolve problems associated with this.

e. Conduct regional domestic and export marketing programs to develop new markets for traditional species.

f. Consider vessel safety programs working with fishermens' associations and insurance carriers to maintain the availability of insurance to responsibly maintained and operated fishing vessels.

3. *Coastal, estuarine, Great Lakes fisheries:* Projects should address the following:

a. Expansion of domestic and foreign markets for freshwater fishery products. This may include new product development.

b. Expansion and implementation of strategies to integrate marine recreational fishing into tourism industry promotion programs.

B. Southeast Region

Commercial and recreational projects should concentrate on shifting current harvesting activity from traditional fisheries to alternate fisheries or should contribute to solutions for the specific problem areas identified in the following sections.

1. *Latent Resources:* Proposals should contribute to the increased use of any species of finfish which is underutilized, including the coastal herrings. Proposals should—

a. Assess the commercial significance of stocks.

b. Develop, evaluate, and demonstrate new technology for the commercial harvest of midwater schooling species in deeper offshore waters.

c. Develop, evaluate, and demonstrate new technology for on-board or shoreside handling, grading and storage systems which support commercial activity.

d. Develop new commercial products or processes including canned products which provide evidence of market potential and a determination of economic feasibility.

e. Develop indices of chemical metabolites/end products that form during harvesting, processing, or storage in small pelagic species which reflect changes in quality as perceived by sensory methods.

f. Investigate use of multiple species in surimi-based products.

g. Conduct market research and develop export or domestic markets for latent resources or freshwater catfish and crayfish.

h. Develop a profile of traditional marine recreational fishing in the Southeast to assist public and private sector organizations in stimulating economic development based on marine recreational fishing. This profile should synthesize and summarize existing information on fishing patterns, target species, demographic characteristics of anglers, trip expenditure information, and any other pertinent data.

i. Evaluate access and infrastructure needs of the U.S. Virgin Islands and Puerto Rico to support increased marine recreational fishing activity.

j. Develop and implement strategies to integrate marine recreational fishing into tourism industry programs giving special emphasis to the needs of charter and headboat fishing businesses.

k. Develop and implement programs to increase the use of underutilized sport-caught species.

2. *Menhaden.* Proposals should develop human food or other high value uses of menhaden. Areas of work should concentrate on the use of menhaden surimi or mince in development and comparison of analog products (ongoing projects should result in menhaden surimi being available for use by successful applicants). Proposals for the use of menhaden in canned, cured, or minced products will also be considered. Proposals should provide for test marketing to determine consumer acceptance. Potential domestic as well as export markets will be considered. In addition, priority will also be given (1) to conduct a study to characterize the amino acid profile of menhaden fish meal based on a statistically sound data base; and (2) to continue research on the use of high pressure carbon dioxide to extract and refine fish oil.

3. *Shrimp.* Proposals designed to stabilize the shrimp industry at its current economic value will be considered. Proposals can address quality issues including inspection of imports and an assessment of the relative value of different alternatives to bisulfites. Applicants must demonstrate a knowledge of current work in these areas. Proposals addressing problems of increasing insurance costs will also be given priority.

4. *Molluscan Shellfish.* Proposals should (1) address the development of product forms/products which reduce public health concerns associated with raw products; (2) provide for more effective monitoring control of existing shellfish growing areas, specifically to yield useful predictive indices of fecal contamination or pollutant loads; or (3) develop and demonstrate procedures, suitable for field use, to detect and measure human pathogenic viruses, i.e., hepatitis A, Norwalk, and rotaviruses, in oysters, including the correlation of virus levels with bacterial indicators. Proposals for new technology to address depuration or allied techniques to kill or eliminate enteric viruses will be considered only if the applicant can demonstrate potential economic feasibility. Proposers must demonstrate knowledge of ongoing efforts in these areas.

5. *Reef Resources.* Proposals in this area are limited (1) to those addressing development needs of deepwater reef resources in Puerto Rico and the U.S. Virgin Islands or (2) to the development and demonstration of a field test that can be used to remove ciguatoxic fish from commerce. Applicants proposing to develop a field test to detect ciguatoxic fish must demonstrate a knowledge of current research and have the ability to obtain the supplies of ciguatoxic fish required in the project. Proposals may build on the contemporary immunological approach seeking a specific antigen-antibody relationship or may be based on established chromatographic separation and chemical detection methods. Applicants must demonstrate that the proposed work has a reasonable chance of yielding a practical, cost-effective field test.

C. Southwest Region

The Southwest Region is compromised of two distinct geographic areas—the central and western Pacific Islands and the California coast. The island fisheries differ significantly in many instances form the mainland fisheries. Accordingly, we have established a list of funding priorities for each of the geographic areas. In both geographic areas, preference will be given to those proposals which—

a. Request continuation funding for ongoing projects which have demonstrated success, and can justify continued funding,

b. Have regionwide implications, and

c. Are consistent with established fishery development plans and policy or long range regional fishery development programs.

1. *Central and Western Pacific.* In the central and western Pacific, priority consideration will be given to projects that contribute to the fishery development goals of Hawaii, Gaum, American Samoa, the Commonwealth of the Northern Mariana Islands and the Trust Territories of the Pacific Islands. All proposals should be consistent with cultural and social perspectives of island people.

The NMFS will not fund projects related to fish aggregation devices (FADs) during this year's funding cycle. The key problem affecting FADs throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a recent mooring design study sponsored by the South Pacific Commission, NMFS has approved funding for FAD projects in Yap and American Somoa. Until this new system is evaluated, NMFS does not plan to support the use of S–K funds for further FAD research.

Proposals which address problems in the following areas will also be given priority for funding.

a. *Industry Development.* Projects to develop shoreside fisheries facilities and seafood marketing outlets by providing business management expertise, quality control systems, and marketing assistance will be considered. Projects designed to develop new markets and promote Pacific Island seafood products will also be considered. Such projects should have the ultimate goal of creating selfsustaining business enterprises or creating new marketing opportunities.

b. *Tuna.* Projects which investigate handlining for sashimi-grade tuna and pole-and-line bit fishing.

c. *Other Pelagic Species.* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus upon developing local and overseas market outlets. Particular attention should be focused on maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing and storage methods.

d. *Trochus and Giant Clams.* Proposals for continued research and development on trochus and giant clams and projects that focus on transfer of reseeding technology to other island areas.

e. *Deepwater Shrimp.* Proposals should focus on gear development, area surveys, quality control, and the development of shrimp marketing outlets.

f. *Bottomfish.* Projects that would expand harvesting opportunities and development marketing channels (local and export) for these species. Projects for bottomfish development in areas where the resources may be distressed and unable to withstand added fishing pressure will not be funded.

g. *Vessel Support Facilities.* Proposals for the design, engineering and construction of fishing vessel support facilities (e.g., boat launch ramps, docks, etc.). Proposals requesting construction funds should contribute matching funds equal to the level of requested federal S–K funding. Proposals should demonstrate a need by local fishermen.

h. *Baitfish Culture.* Only innovative projects demonstrating use of cultured baitfish in trial fishing in order to determine technical and economic feasibility.

2. *California.* Proposals which address problems in the following areas will be given priority for funding.

a. *Groundfish.* Pacific whiting and shortbelly rockfish are recognized as being the highest priority groundfish species for commercial development. However, projects that demonstrate innovative fishing techniques, handling, processing, waste disposal, and quality assurance and control technology, and projects that investigate alternative product from and markets for all groundfish species will be considered.

b. *Albacore.* Projects that develop alternative product forms and markets, projects to educate consumers, and projects that develop quality controls for fresh and frozen marketing will receive high priority. Consideration will also be given to projects that propose to develop new fishing techniques and areas.

c. *Coastal Pelagics.* Jack mackerel is recognized as being the highest priority species for commercial development off Southern California. Product development and marketing promotion projects will be considered for all coastal pelagic species.

d. High priority consideration will also be given to projects that assist in the development of recreational fisheries including, but not limited to, programs that promote marine recreational activities and programs that investigate site feasibility for artificial reefs.

D. Northwest Region

The Northwest fishing industry requires a development program which focuses primarily on fully using groundfish resources off Oregon and Washington and groundfish found in the EEZ off Oregon, Washington and Alaska. The priorities expressed below will further development in these areas and continue to strengthen the base of the Region's industry.

1. Develop programs to reduce fishing vessel insurance costs.

2. Develop new and/or improved processing technology and product forms. Particular research might include use of minced fish and developing quality standards.

3. Develop marketing techniques contributing to full use of groundfish. Of particular interest are activities which generate market analyses and research with a goal towards measurable results to use in establishing strategies to penetrate the domestic markets for these species.

4. Develop data to support seafood nutrition claims and prepare educational and promotional materials emphasizing the nutritional qualities of seafood.

5. Conduct export promotion activities including development of export market analyses, export promotional material, and export trade missions, seminars, and trade shows.

6. Conduct surveys to identify and evaluate consumer preferences and biases for target species, angling, methods, and supporting facilities in marine recreational fisheries, and develop an advanced marketing program coordinating industry efforts with the travel and tourism industry to increase the awareness of, opportunity, and participation in marine recreational fisheries for non-salmonid species. These target species may include lingcod, black rockfish, and true cod.

7. Develop and demonstrate methods to detect and remove parasites from processed fish products.

E. Alaska Region

Proposals which address impediments to full use of Alaska groundfish in the following areas will be given priority consideration:

1. *Harvesting:* a. Develop and demonstrate new technology to improve the quality of fish delivered to processing facilities.

b. Prepare handling guidelines and design of delivery systems for quality assurance education efforts.

c. Address problems associated with obtaining insurance coverage for fishing vessels.

2. *Processing Activities:* a. Develop new product forms, which can involve the use of minced fish or surimi, having technical and economic potential for increasing use of groundfish.

b. Demonstration projects which produce by-products through application of existing technology and target on existing markets.

c. Develop technology to increase efficiencies of processing lines.

d. Develop quality assurance procedures and design of delivery systems to maximize effectiveness of in-plant educational efforts.

e. Develop methods to reclaim water used during surimi processing and determine technical and economic feasibility through in-plant demonstrations.

f. Research to develop and support a standard of identity for surimi as an ingredient in surimi-based foods that will obviate the need for imitation and multi-species labeling.

g. Research on vacuum packaged seafoods including shelf life, microbiological, and packaging studies.

3. *Marketing Activities:* a. Well focussed projects with measurable results that expand domestic and export markets for traditional and new product forms.

b. Develop and refine promotional or educational material for expanding industrial markets for Alaska pollock products.

F. National

Proposals addressing problems in the following areas must apply to *any* species of fish, unless otherwise indicated.

1. Identify and examine options and strategies to reduce fishing vessel insurance costs and stabilize availability of coverage including—

a. Analyze fishing vessel insurance systems and costs in selected countries;

b. Analyze the feasibility of self-supporting alternative insurance programs such as one patterned after the National Flood Insurance Program;

c. Develop manuals describing how to establish group insurance programs and how to organize self-insurance or mutual insurance associations with reinsurance, coinsurance, or stop-loss insurance; and

d. Develop guidelines for use by the marine insurance industry for evaluating risks associated with fishing vessel activities.

2. Develop and implement a standard nomenclature and numbering system for random-weight fish and seafood items for inclusion in the Uniform Product Code.

3. Develop public service announcements focusing on the health and nutritional benefits of seafood in the diet.

4. Conduct foodservice seminars to explain how to participate in the various Federal government purchasing programs including the school lunch and military feeding programs.

5. Develop training materials and conduct seminars for industry food inspection and production personnel: (1) To provide instruction in hygienic and technological practices in the handling, processing and storage of U.S. fishery products; (2) to provide instruction in the evaluation of the quality and manufacture of commercially significant fishery products for sale in domestic and export markets; (3) to develop self training courses in topics dealing with seafood quality and safety such as acceptance sampling, plant hygiene, product quality, characteristic species identification, etc.

6. Analyze the inspection programs for fish and fishery products of selected foreign countries (Canada, Iceland, Japan, New Zealand, Norway) in comparison to inspection of fishery products in the U.S. The analysis must include an economic impact analysis of adopting like controls or monitoring measures in the U.S., considering cost of implementation and maintenance, as well as anticipated sales/revenue increases.

7. Consistent with the FDA's advance notice of proposed rulemaking and previous food product irradiation research, determine (1) the effectiveness of low dosage radiation in extending the shelflife of fresh fish and shellfish, and (2) the feasibility for commercial use of radiation preservation technology used exclusively or in combination with other preservation techniques for extending the active shelflife of fish and shellfish.

8. Develop and demonstrate a standard objective method for routine determination of the thawed, drained weight of block frozen seafood based on performance criteria available from NMFS.

9. Develop and demonstrate a rapid method, for use in field locations, for determining the level of condensed phosphates in fresh/frozen seafoods based on performance criteria available from NMFS.

10. Provide information on, and coordinate the use of, existing techniques to facilitate and properly site artificial reefs to support marine recreational fisheries development.

11. Develop standard quality and storage indicators for fabricated food products made from minced fish meat and demonstrate use of the indicators in measuring changes in the quality of fabricated food products during refrigerated and/or frozen storage under typical domestic market conditions.

12. Develop test methods to measure the essential edibility characteristics (texture, color, odor, flavor) of natural crab leg meats, scallops, and shrimp in their ready-to-eat form and develop product specifications for use in evaluating minced fish/surimi products that simulate the natural product.

How-To-Apply

A. Eligible-Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice by:

1. Any individuals who is a citizen or national of the United States;

2. Any individuals who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any fishery development foundation or other private non-profit corporation located in Alaska;

4. Any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private non-profit corporation not located in Alaska), non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[3]

[3] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For fiscal year 1985, the NMFS will have an estimated $7 million available to fund fishery research and development projects. Although grants or cooperative agreements will generally be awarded for a period of 1 year, multi-year projects are encouraged. Once approved, multi-year projects would not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives are met during the

prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds available. Funding for successful applications generally will be provided by October 1985.

C. Cost-Sharing Requirements

The NMFS must provide at least 50 percent of the total cost of the project, but will provide no more than 80 percent of total project costs. The non-Federal share may include funds received from private sources or from State or local Governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the cost of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to nonprofit, public interest organizations which demonstrate no financial ability to meet cost-sharing requirements and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the U.S. Virgin Islands under the provisions of 48 U.S.C. 1469a. The total project costs and the percentage of cost sharing required will be determined as described below.

1. *Determining Total Project Cost.* The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant, cooperative agreement, or contract award between the applicant and an authorized representative of the United States government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine the appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circulars. In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

2. *Determining the Level of Cost Sharing Required.* The percentage of the total costs that must be provided from non-Federal sources follows—

a. *20 percent.* For projects that would benefit the general public as well as the fishing industry but offer no unique advantage to specific industry sectors, the non-Federal cost share will be no less than 20 percent of the total project cost, and no greater than 50 percent. These projects would ordinarily involve research on the safety of fishery products or other activities for which members of the fishing industry would not necessarily receive direct benefits.

b. *30 percent.* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share will be no less than 30 percent of the total project cost. Most applications will be in this category.

c. *40 percent.* For projects which involve significant fishing industry participation, entail a limited risk, and in which the prospects for immediate future gain for the project are significant, the non-Federal cost share will be no less than 40 percent of the total project cost.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to developing and strengthening the U.S. fishing industry and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by line item with appropriate justification. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application.

Applications must be submitted in the following format:

1. *Cover Sheet.* An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices, NMFS Washington Office or Department of Commerce Regional Administrative Support Centers (RASC); addresses are listed under the "Application Submission" section which follows.

2. *Project Summary.* Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing).

c. Project duration: (beginning and ending dates).

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Project objective.

g. Summary of work to be performed. For continuing projects the applicant is to briefly describe progress to date in addition to work proposed with the additional funds.

h. Total Federal funds requested (initial and total amount and percentage of total project costs).

i. Project costs to be provided from non-Federal Government sources (initial and total amount and percentage of total project costs).

j. Total project costs.

3. *Project Description.* Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. *Identification of Problem(s).* For new projects described how exsiting conditions prevent the U.S. fishing industry from developing a fishery or using existing fisheries. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery the fishery resources. If the application is for the continuation of an

existing S–K funded project, describe progress to date and explain why continuation funding is necessary.

b. *Project Goals and Objectives.* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government Financial Assistance.* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe (1) the level of participation by the NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or local government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones must be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the application for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, and their level of involvement in the project. If any tasks will be conducted through subcontracts, provide copies of any agreements between the applicant and the proposed subcontractors which describe the specific tasks they will perform. If no subcontractor has been chosen, indicate this. All subcontracts must be awarded on a competitive basis. If a subcontractor is chosen prior to application submission, the competitive process used must be documented.

h. *Monitoring of Project Performance.* Identify who will participate in monitoring the project. Generally, those monitoring the project will provide expertise the applicant does not have. For example, an applicant who has little fishing industry experience should have fishing industry representatives monitoring project progress.

i. *Project Impacts.* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

j. *Evaluation of Project Impacts.* The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Costs for the following must be provided: (1) Personnel salaries by position title; (2) total personnel benefits; (3) Consultant and contract services; (4) Travel; (5) Space costs and rentals; and (6) other costs. Costs must be allocated to the Federal share and matching provided by the applicant. Applicant matching costs are to be divided into cash and in-kind contributions. A standard budget form is available from the offices listed in Section E. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, applicants submitting multi-year projects must submit two budgets—one covering total project costs and one covering its initial funding request. Initial funding requests should only cover funds required during the first 12-month period. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions.

4. *Project Consolidation.* Applicants may submit two or more projects under one proposal but must identify project costs including administrative costs, separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. *Supporting Documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline.* The NMFS will accept applications for funding under this program between April 15, 1985 and June 7, 1985. An application will be accepted if the application is received by any of the offices listed below on or before June 17, 1985.

2. *Submission of Applications to the NMFS.* Applicants must submit one signed original and two (2) copies of the complete application. *Applications are not to be bound in any manner.*

a. Applications relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota):

Regional Director, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, MA 01930, Telephone No.: (617) 281–3600.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas,

Nebraska, Iowa, Puerto Rico, Virgin Islands):

Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893–3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands, Northern Mariana Islands):

Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone No.: (213) 548–2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota):

Regional Director, National Marine Fisheries Service, Bin C15700, 7600 Sand Point Way, N.E., Seattle, Washington 98115, Telephone No.: (206) 527–6150.

Alaska Region (Alaska):

Regional Director, National Marine Fisheries Service, P.O. Box 1668, 709 West Ninth Street, Juneau, AK 99802, Telephone No.: (907) 586–7221.

b. Applications addressing national priorities should be sent to:

Director, Office of Industry Services, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

c. Questions of an administrative nature should be referred to the offices listed below.

Northeast

NOAA RAS/EC32, Eastern Administrative Support Center, 253 Monticello Avenue, Norfolk, Virginia 23510.

Southeast

NOAA RAS/CC31, Central Administration Support Center, Federal Bldg. Room 1758, 601 East 12th Street, Kansas City, Missouri 64106.

Northwest/Southwest/Alaska

NOAA RAS/WC33, Western Administrative Support Center, BIN C15700, 7600 Sandpoint Way, NE, Seattle, Washington, 98115.

Washington

NOAA RAS/DC33, National Capital Administrative Support Center, NBOC1 Room 106, 11420 Rockville Pike Rockville, Maryland 20852.

Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which Office should evaluate the proposed work. This will normally be the office where the application is filed. The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. The regional and Washington offices of the NMFS will make project descriptions available for review as follows:

1. *Public review* and *comment.* Regional applications may be inspected at the office to which they are submitted. All applications will be available for inspection at the NMFS Office of Industry Services, 3300 Whitehaven Street NW., Room 324, Washington, D.C. from June 24, 1985 to July 3, 1985. Written comments will be accepted at the regional or Washington offices until July 3, 1985.

2. *Consultation with members of the fishing industry.* The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government agencies.* Applications will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, RASC Grants/Contracts Offices and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following evaluation criteria:

Evaluation Criteria

a. Adequacy of research/development/demonstration for resolving an impediment and possibilities of securing productive results (20 points).

b. Soundness of design/technical approach for resolving an impediment (20 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (20 points).

e. Justification and allocation of the budget in terms of the work to be performed (20 points).

After the technical evaluation, each reviewing Office will solicit comments from the fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. This review will consider the significance of the problem addressed in the project along with the technical evaluation and will rank each project in terms of importance or need for funding. This review will provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated, the reviewing offices will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries for review who will determine the number of projects to be funded based on the recommendations provided, consistency of projects with the identified fisheries objectives, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in preaward negotiations between the applicant and NOAA/NMFS Program and grants management representatives. The Department of Commerce (DOC) will review and clear all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by RASC Grants Officers. Projects may not be initiated until a notice of award document is received.

Administrative Requirements

A. Obligations of the Applicant

An Applicant must—

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within thirty days after the end of each calendar quarter to the individual specified as the technical monitor in the funding agreement. The content of these reports will include, at a minimum:

a. a summary of work conducted which includes a description of specific accomplishments and milestones achieved;

b. the degree to which goals or objectives were achieved as originally projected;

c. where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefore.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. This report must describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget (OMB) Circulars, and Department of Commerce and NOAA policies. Copies of all circulars are available from the RASC Offices listed above.

8. Submit 25 copies of all publications or reports printed with grant funds.

B. Obligations of the National Marine Fisheries Service

The NMFS will—

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals;

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

C. RASC Grants Officer Responsibility

The RASC Grants Officer is responsible for the administrative processing of NOAA federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Officer. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, State and Federal Laws.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: April 11, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-9128 Filed 4-15-85; 8:45 am]

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April 16, 1985

Part V

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

April 1, 1985.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of April 1, 1985, of 242 rescission proposals and 69 deferrals contained in the first eight special messages of FY 1985. These messages were transmitted to the Congress on October 1, October 31, and November 29, 1984; and January 4, February 6 (two special messages), March 1, and March 22, 1985.

Rescissions (Table A and Attachment A)

As of April 1, 1985, rescission proposals totaling $1,805.9 million were pending before the Congress. Attachment A shows the history and status of each rescission proposal reported during FY 1985.

Deferrals (Table B and Attachment B)

As of April 1, 1985, $5,796.1 million in 1985 budget authority was being deferred from obligation and $9.1 million in 1985 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1985.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 49, FR p. 39464, Friday, October 5, 1984
Vol. 49, FR p. 44870, Friday, November 9, 1984
Vol. 49, FR p. 47804, Thursday, December 6, 1984
Vol. 50, FR p. 1420, Thursday, January 10, 1985
Vol. 50, FR p. 6582, Friday, February 15, 1985
Vol. 50, FR p. 6648, Friday, February 15, 1985
Vol. 50, FR p. 9410 Thursday, March 7, 1985
Vol. 50, FR p. 12504 Thursday, March 28, 1985

David A. Stockman,
Director, Office of Management and Budget.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1985 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,805.9
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	$1,805.9

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TABLE B

STATUS OF 1985 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$14,846.6
Routine Executive releases through April 1, 1985 (OMB/ Agency Releases of $9,204.6 million and cumulative adjustments of $163.1 million)	-9,041.4
Overturned by the Congress	0
Currently before the Congress	$ 5,805.2 a/

a/ This amount includes $9.1 million in outlays for a Department of the Treasury deferral (D85-13).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs	R85-1		99,000	2-6-85				
International Development Assistance Functional development assistance program	R85-2		5,168	2-6-85				
Peace Corps Peace Corps operating expenses	R85-3		1,231	2-6-85				
Overseas Private Investment Corporation Overseas Private Investment Corporation	R85-4		838	2-6-85				
DEPARTMENT OF AGRICULTURE								
Office of the Secretary Office of the Secretary	R85-5		114	2-6-85				
Departmental Administration Departmental Administration	R85-6		149	2-6-85				
Office of Governmental and Public Affairs Office of Governmental and Public Affairs	R85-7		497	2-6-85				
Office of the Inspector General Office of the Inspector General	R85-8		41	2-6-85				
Office of the General Counsel Office of the General Counsel	R85-9		24	2-6-85				
Agricultural Research Service Agricultural Research Service	R85-10		1,313	2-6-85				
Buildings and facilities	R85-11 R85-12		16,950 20,950	2-6-85 2-6-85				
Cooperative State Research Service Cooperative State Research Service	R85-13		151	2-6-85				
Extension Service Extension Service	R85-14		118	2-6-85				
National Agricultural Library National Agricultural Library	R85-15		11	2-6-85				
Statistical Reporting Service Salaries and expenses	R85-16		206	2-6-85				
Economic Research Service Salaries and expenses	R85-17		132	2-6-85				
World Agricultural Outlook Board World Agricultural Outlook Board	R85-18		32	2-6-85				
Foreign Agricultural Service Foreign Agricultural Service	R85-19		424	2-6-85				
Office of International Cooperation and Development Salaries and expenses	R85-20		52	2-6-85				
Scientific activities overseas (special foreign currency program)	R85-21		9	2-6-85				
Agricultural Stabilization and Conservation Service Salaries and expenses	R85-22		108	2-6-85				
Dairy indemnity program	R85-23		88	2-6-85				
Federal Crop Insurance Corporation Administrative and operating expenses	R85-24		1,906	2-6-85				
Commodity Credit Corporation Commodity Credit Corporation fund	R85-25		31	2-6-85				
Office of Rural Development Policy Salaries and expenses	R85-26		36	2-6-85				
Rural Electrification Administration Salaries and expenses	R85-27		208	2-6-85				
Reimbursement to the Rural Electrification and Telephone revolving fund	R85-28		215,964	2-6-85				
Purchase of Rural Telephone Bank capital stock	R85-29		30,000	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Farmers Home Administration								
Salaries and expenses	R85-30		1,315	2-6-85				
Soil Conservation Service								
Conservation operations	R85-31		5,174	2-6-85				
River basin surveys and investigations	R85-32		235	2-6-85				
Watershed planning	R85-33		133	2-6-85				
Watershed and flood prevention operations	R85-34		918	2-6-85				
Great plains conservation program	R85-35		178	2-6-85				
Resource conservation and development	R85-36		188	2-6-85				
Animal and Plant Health Inspection Service								
Salaries and expenses	R85-37		1,464	2-6-85				
Federal Grain Inspection Service								
Salaries and expenses	R85-38		94	2-6-85				
Agricultural Marketing Service								
Marketing services	R85-39		150	2-6-85				
Office of Transportation								
Office of Transportation	R85-40		18	2-6-85				
Food Safety and Inspection Service								
Salaries and expenses	R85-41		2,473	2-6-85				
Food and Nutrition Service								
Food stamp administration	R85-42		684	2-6-85				
Food stamp program	R85-43		8,762	2-6-85				
Human Nutrition Information Service								
Human Nutrition Information Service	R85-44		34	2-6-85				
Packers and Stockyards Administration								
Packers and Stockyards Administration	R85-45		117	2-6-85				
Agricultural Cooperative Service								
Salaries and expenses	R85-46		58	2-6-85				
Forest Service								
Forest research	R85-47		923	2-6-85				
State and private forestry	R85-48		463	2-6-85				
National forest system	R85-49		12,134	2-6-85				
Construction	R85-50		1,922	2-6-85				
Land acquisition	R85-51		68	2-6-85				
DEPARTMENT OF COMMERCE								
General Administration								
Salaries and expenses	R85-52		3,700	2-6-85				
	R85-53		499	2-6-85				
Economic Development Administration								
Salaries and expenses	R85-54		128	2-6-85				
Economic development assistance programs	R85-55		24,000	2-6-85				
	R85-56		179,000	2-6-85				
Bureau of the Census								
Salaries and expenses	R85-57		241	2-6-85				
Periodic censuses and programs	R85-58		791	2-6-85				
Economic and Statistical Analysis								
Salaries and expenses	R85-59		433	2-6-85				
International Trade Administration								
Operations and administration	R85-60		2,783	2-6-85				
	R85-60A		18,750	2-6-85				
Participation in United States expositions	R85-61		6	2-6-85				
Minority Business Development Agency								
Minority business development	D85-62		305	2-6-85				
United States Travel and Tourism Administration								
Salaries and expenses	R85-63		468	2-6-85				
	R85-63A		3,417	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
National Oceanic and Atmospheric Administration								
Operations, research, and facilities	R85-64		4,140	2-6-85				
	R85-64A		100,200	2-6-85				
Fisheries loan fund	R85-65		1,550	2-6-85				
Patent and Trademark Office								
Salaries and expenses	R85-66		1,472	2-6-85				
National Bureau of Standards								
Scientific and technical research and services	R85-67		1,019	2-6-85				
National Telecommunications and Information Administration								
Salaries and expenses	R85-68		183	2-6-85				
Public telecommunications facilities, planning and construction	R85-69		32	2-6-85				
	R85-69A		9,968	2-6-85				
DEPARTMENT OF DEFENSE - CIVIL								
Corps of Engineers - Civil								
General investigations	R85-70		2,000	2-6-85				
Construction, general	R85-71		4,000	2-6-85				
Operation and maintenance, general	R85-72		8,000	2-6-85				
General expenses	R85-73		1,200	2-6-85				
Flood control, Mississippi River and tributaries	R85-74		1,000	2-6-85				
Revolving fund	R85-75		3,900	2-6-85				
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Special programs	R85-76		80,000	2-6-85				
Office of Bilingual Education and Minority Languages Affairs								
Grants to schools with substantial numbers of immigrants	R85-77		30,000	2-6-85				
Office of Postsecondary Education								
Higher education	R85-78		59,750	2-6-85				
Departmental Management								
Salaries and expenses	R85-79		4,189	2-6-85				
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Atomic energy defense activities	R85-80		8,280	2-6-85				
Energy Programs								
General science and research activities	R85-81		38	2-6-85				
Energy supply, research and development activities	R85-82		2,676	2-6-85				
Uranium supply and enrichment activities	R85-83		968	2-6-85				
Fossil energy research and development	R85-84		3,276	2-6-85				
	R85-84A		860	2-6-85				
Naval petroleum and oil shale reserves	R85-86		181	2-6-85				
Energy conservation	R85-87		931	2-6-85				
Strategic petroleum reserve	R85-88		156	2-6-85				
Energy Information Administration	R85-89		846	2-6-85				
Emergency preparedness	R85-90		51	2-6-85				
Economic regulation	R85-91		156	2-6-85				
Federal Energy Regulatory Commission	R85-92		204	2-6-85				
Alternate fuels production	R85-93		23	2-6-85				
Power Marketing Administration								
Operation and maintenance, Alaska Power Administration	R85-94		29	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Operation and maintenance, Southeastern Power Administration	R85-95		15	2-6-85				
Operation and maintenance, Southwestern Power Administration	R85-96		243	2-6-85				
Construction, rehabilitation, operation and maintenance, Western Area Power Administration	R85-97		432	2-6-85				
Departmental Administration Departmental administration	R85-98		2,706	2-6-85				
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Food and Drug Administration Salaries and expenses	R85-99		2,194	2-6-85				
Health Resources and Services Administration Health resources and services	R85-100		2,263	2-6-85				
Indian health	R85-101		161	2-6-85				
Centers for Disease Control Disease control	R85-102		2,261	2-6-85				
National Institutes of Health National Cancer Institute	R85-103		4,362	2-6-85				
National Heart, Lung and Blood Institute	R85-104		1,401	2-6-85				
National Institute of Dental Research	R85-105		166	2-6-85				
National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases	R85-106		1,171	2-6-85				
National Institute of Neurological and Communicative Disorders	R85-107		462	2-6-85				
National Institute of Allergy and Infectious Diseases	R85-108		428	2-6-85				
National Institute of General Medical Sciences	R85-109		211	2-6-85				
National Institute of Child Welfare and Human Development	R85-110		309	2-6-85				
National Eye Institute	R85-111		173	2-6-85				
National Institute of Environmental Health Sciences	R85-112		542	2-6-85				
National Institute on Aging	R85-113		196	2-6-85				
Research resources	R85-114		250	2-6-85				
John E. Fogarty International Center	R85-115		241	2-6-85				
National Library of Medicine	R85-116		354	2-6-85				
Office of the Director	R85-117		182	2-6-85				
Alcohol, Drug Abuse, and Mental Health Administration Alcohol, drug abuse, and mental health	R85-118		3,972	2-6-85				
Office of Assistant Secretary for Health Public health service management	R85-119		481	2-6-85				
Health Care Financing Administration Program management	R85-120		1,540	2-6-85				
Human Development Services Human development services	R85-121		1,334	2-6-85				
Family social services	R85-122		396	2-6-85				
Community services block grant	R85-123		34	2-6-85				
Departmental Management General departmental management	R85-124		1,246	2-6-85				
Office of the Inspector General	R85-125		496	2-6-85				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing Programs Payments for operation of low income housing projects	R85-126		253,138	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amounts Rescinded	Amount Made Available	Date Made Available	Congressional Action
Management and Administration Salaries and expenses	R85-127		6,919	2-6-85				
DEPARTMENT OF INTERIOR								
Bureau of Land Management Management of lands and resources	R85-128		5,778	2-6-85				
Oregon and California grant lands	R85-129		679	2-6-85				
Working capital fund	R85-130		2,951	2-6-85				
Minerals Management Service Minerals and royalty management	R85-131		1,764	2-6-85				
Office of Surface Mining Reclamation and Enforcement Regulation and technology	R85-132		546	2-6-85				
Abandoned mine reclamation fund	R85-133 R85-133A		333 2,900	2-6-85 2-6-85				
Bureau of Reclamation Construction program	R85-134		2,571	2-6-85				
General investigations	R85-135		209	2-6-85				
Operation and maintenance	R85-136		1,540	2-6-85				
General administrative expenses	R85-137		1,468	2-6-85				
Geological Survey Surveys, investigations and research	R85-138		4,519	2-6-85				
Bureau of Mines Mines and minerals	R85-139		1,355	2-6-85				
United States Fish and Wildlife Service Resource management	R85-140		3,869	2-6-85				
Construction	R85-141		40	2-6-85				
National Park Service Operation of the national park system	R85-142		8,598	2-6-85				
National recreation and preservation	R85-143		94	2-6-85				
Construction	R85-144		397	2-6-85				
Land acquisition and state assistance	R85-145 R85-146		52 30,000	2-6-85 2-6-85				
Bureau of Indian Affairs Operation of Indian programs	R85-147		5,570	2-6-85				
Office of Territorial Affairs Administration of territories	R85-148		107	2-6-85				
DEPARTMENT OF JUSTICE								
General Administration Salaries and expenses	R85-149		166	2-6-85				
Working capital fund	R85-150		3,000	2-6-85				
Legal Activities Salaries and expenses, General Legal Activities	R85-151		470	2-6-85				
Salaries and expenses, Antitrust Division	R85-152		65	2-6-85				
Salaries and expenses, United States Attorneys and Marshals	R85-153		889	2-6-85				
Fees and expenses of witnesses	R85-154		309	2-6-85				
Salaries and expenses, Community Relations Service	R85-155		43	2-6-85				
Federal Bureau of Investigation Salaries and expenses	R85-156		3,505	2-6-85				
Drug Enforcement Administration Salaries and expenses	R85-157		876	2-6-85				
Immigration and Naturalization Service Salaries and expenses	R85-158		947	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Now Available	Date Now Available	Congressional Action
Federal Prison System								
Salaries and expenses	R85-159		451	2-6-85				
National Institute of Corrections	R85-160		894	2-6-85				
Buildings and facilities	R85-161		13	2-6-85				
Office of Justice Programs								
Justice assistance	R85-162		2,031	2-6-85				
DEPARTMENT OF LABOR								
Employment and Training Administration								
Program administration	R85-163		218	2-6-85				
	R85-163A		1,703	2-6-85				
Training and employment services	R85-164		11,447	2-6-85				
	R85-164A		244,291	2-6-85				
Labor-Management Services Administration								
Salaries and expenses	R85-165		1,678	2-6-85				
Employment Standards Administration								
Salaries and expenses	R85-167		1,635	2-6-85				
	R85-167A		600	2-6-85				
Occupational Safety and Health Administration								
Salaries and expenses	R85-168		1,694	2-6-85				
Mine Safety and Health Administration								
Salaries and expenses	R85-169		1,776	2-6-85				
Bureau of Labor Statistics								
Salaries and expenses	R85-170		765	2-6-85				
	R85-170A		5,000	2-6-85				
Departmental Management								
Salaries and expenses	R85-171		728	2-6-85				
Inspector General salaries and expenses	R85-172		3,766	2-6-85				
Special foreign currency program	R85-173		20	2-6-85				
DEPARTMENT OF STATE								
Administration of Foreign Affairs								
Salaries and expenses	R85-174		2,432	2-6-85				
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Motor carrier safety	R85-175		164	2-6-85				
National Highway Traffic Safety Administration								
Operations and research	R85-176		767	2-6-85				
Trust fund share of operations and research	R85-177		408	2-6-85				
Highway traffic safety grants	R85-178		250	2-6-85				
Federal Railroad Administration								
Office of the Administrator	R85-179		100	2-6-85				
Railroad research and development	R85-180		170	2-6-85				
Rail service assistance	R85-181		90	2-6-85				
Railroad safety	R85-182		140	2-6-85				
Northeast corridor improvement program	R85-183		700	2-6-85				
Urban Mass Transportation Administration								
Urban mass transportation fund, administrative expenses	R85-184		265	2-6-85				
Federal Aviation Administration								
Operations	R85-185		10,000	2-6-85				
Headquarters administration	R85-186		1,065	2-6-85				
Operation and maintenance, Washington metropolitan airports	R85-187		17	2-6-85				
Facilities and equipment (Airport and airway trust fund)	R85-188		10,000	2-6-85				

Attachment A - Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Coast Guard Operating expenses	R85-189		14,724	2-6-85				
Acquisition, construction and improvements	R85-190		500	2-6-85				
Reserve training	R85-191		441	2-6-85				
Research, development, test, and evaluation	R85-192		135	2-6-85				
Maritime Administration Operations and training	R85-193		888	2-6-85				
Office of the Inspector General Salaries and expenses	R85-194		300	2-6-85				
Office of the Secretary Salaries and expenses	R85-195		435	2-6-85				
Transportation planning, research and development	R85-196		65	2-6-85				
DEPARTMENT OF THE TREASURY								
Office of the Secretary Salaries and expenses	R85-197		969	2-6-85				
Office of Revenue Sharing Salaries and expenses	R85-198		90	2-6-85				
Federal Law Enforcement Training Center Salaries and expenses	R85-199		75	2-6-85				
Financial Management Service Salaries and expenses	R85-200		972	2-6-85				
Bureau of Alcohol, Tobacco and Firearms Salaries and expenses	R85-201		397	2-6-85				
United States Customs Service Salaries and expenses	R85-202		1,223	2-6-85				
Bureau of the Mint Salaries and expenses	R85-203		81	2-6-85				
Bureau of the Public Debt Administering the public debt	R85-204		52	2-6-85				
Internal Revenue Service Salaries and expenses	R85-205		198	2-6-85				
Processing tax returns and executive direction	R85-206		781	2-6-85				
Examinations and appeals	R85-207		1,588	2-6-85				
Investigation, collection, and taxpayer service	R85-208		1,633	2-6-85				
United States Secret Service Salaries and expenses	R85-209		1,465	2-6-85				
ENVIRONMENTAL PROTECTION AGENCY								
Salaries and expenses	R85-210		1,863	2-6-85				
Research and development	R85-211		4,125	2-6-85				
Abatement, control, and compliance	R85-212		7,413	2-6-85				
GENERAL SERVICES ADMINISTRATION								
Real Property Activities Federal buildings fund	R85-213		3,204	2-6-85				
Personal Property Activities Operating expenses	R85-214		300	2-6-85				
General supply fund	R85-215		30,848	2-6-85				
Office of Information Resources Management Operating expenses	R85-216		41	2-6-85				
Consumer information center fund	R85-217		83	2-6-85				
Federal telecommunications fund	R85-218		415	2-6-85				

Attachment A.- Status of Rescissions - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Automatic data processing fund	R85-219		145	2-6-85				
Federal Property Resources Activities								
Operating expenses	R85-220		207	2-6-85				
Expenses, disposal of surplus real and related personal property	R85-221		1,832	2-6-85				
General Activities								
General management and administration, salaries and expenses	R85-222		403	2-6-85				
Office of the Inspector General	R85-223		35	2-6-85				
Allowances and staff for former Presidents	R85-224		19	2-6-85				
Working capital fund	R85-225		8	2-6-85				
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and program management	R85-226		4,000	2-6-85				
OFFICE OF PERSONNEL MANAGEMENT								
Salaries and expenses	R85-227		1,161	2-6-85				
SMALL BUSINESS ADMINISTRATION								
Salaries and expenses	R85-228		3,781	2-6-85				
VETERANS ADMINISTRATION								
Medical care	R85-229		10,761	2-6-85				
Medical and prosthetic research	R85-230		323	2-6-85				
Medical administration and miscellaneous operating expenses	R85-231		2,109	2-6-85				
General operating expenses	R85-232		4,334	2-6-85				
Construction, minor projects	R85-233		377	2-6-85				
OTHER INDEPENDENT AGENCIES								
ACTION								
Operating expenses	R85-234		1,139	2-6-85				
Federal Emergency Management Agency								
Salaries and expenses	R85-235		786	2-6-85				
Emergency management planning and assistance	R85-236		1,287	2-6-85				
National Archives and Records Administration								
Operating expenses	R85-237		166	2-6-85				
National Labor Relations Board								
Salaries and expenses	R85-238		1,070	2-6-85				
National Science Foundation								
Research and related activities	R85-239		2,002	2-6-85				
Nuclear Regulatory Commission								
Salaries and expenses	R85-240		4,329	2-6-85				
Tennessee Valley Authority								
Tennessee Valley Authority fund	R85-241		1,538	2-6-85				
United States Information Agency								
Salaries and expenses	R85-242		433	2-6-85				
Subtotal, rescissions			1,805,913					

Attachment B - Status of Deferrals - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 4-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D85-1	10,000		10-1-84					10,000
International Security Assistance									
Foreign military sales credit.....	D85-24	4,939,500		11-29-84	-4356000				583,500
Economic support fund.....	D85-2	280,580		10-1-84					
	D85-2A		3,826,000	11-29-84	-3440550				739,183
	D85-2B		73,233	1-4-85					
Military assistance.....	D85-3	18,500		10-1-84					
	D85-3A		782,770	11-29-84	-695145				106,125
International military education and training.....	D85-25	55,521		11-29-84	-55521				[illegible]
Peacekeeping operations.....	D85-38	7,000		1-4-85					7,000
African Development Foundation									
African Development Foundation.....	D85-40	2,287		2-6-85					2,287
DEPARTMENT OF AGRICULTURE									
Forest Service									
Timber salvage sales.....	D85-4	9,704		10-1-84					
	D85-4A		3,471	3-1-85	-5000				8,175
Expenses, brush disposal.....	D85-5	55,850		10-1-84					
	D85-5A		22,063	3-1-85					77,913
Soil Conservation Service									
Watershed and flood prevention operations.....	D85-59	8,365		3-1-85					8,365
DEPARTMENT OF COMMERCE									
Patent and Trademark Office									
Salaries and expenses.....	D85-41	15,993		2-6-85					15,993
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D85-6	300,008		10-1-84					
	D85-6A		906,322	11-29-84	-392474				813,856
Family Housing									
Family housing, all services.....	D85-26	230,790		11-29-84	-100				230,690
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D85-7	1,127		10-1-84					
	D85-7A		64	1-4-85	-150		135		1,177
DEPARTMENT OF ENERGY									
Energy Programs									
Uranium Supply and Enrichment Activities...	D85-65	90,000		3-22-85					90,000
Fossil energy research and development.....	D85-27	4,871		11-29-84					
	D85-27A		43,525	2-6-85	-3582				44,815
Fossil energy construction.....	D85-28	2,165		11-29-84					
	D85-28A		2,973	2-6-85					5,137
Naval petroleum and oil shale reserves....	D85-29	23		11-29-84					
	D85-29A		155,644	2-6-85					
	D85-29B		1	3-22-85					155,668
Energy conservation.....	D85-30	3,398		11-29-84					
	D85-30A		2,174	3-22-85					5,772
Strategic petroleum reserve.....	D85-31	401		11-29-84					
	D85-31A		270,337	2-6-85					270,738

Attachment B - Status of Deferrals - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 4-1-85
SPR petroleum account	D85-42	827,028		2-6-85					827,028
Energy security reserve and alternative production	D85-32	852		11-29-84					
	D85-32A		297	2-6-85					
	D85-32B		89	3-22-85					1,238
Power Marketing Administrations									
Southeastern Power Administration, Operation and maintenance	D85-16	12,467		10-31-84					
	D85-16A		3,494	2-6-85					15,961
Southwestern Power Administration, Operation and maintenance	D85-17	7,260		10-31-84					
	D85-17A		1,514	2-6-85					8,774
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D85-18	3,000		10-31-84					
	D85-18A		27,300	2-6-85					30,300
Departmental Administration									
Departmental administration	D85-43	8,501		2-6-85					8,501
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D85-8	424		10-1-84					
	D85-8A		590	1-4-85					1,013
Health Care Financing Administration									
Program management	D85-66	4,271		3-22-85					4,271
Social Security Administration									
Limitation on administrative expenses (construction)	D85-9	15,488		10-1-84					
	D85-9A		224	3-1-85					15,712
Limitation on administrative expenses (information technology systems)	D85-44	81,926		2-6-85					81,926
Limitation on administrative expenses	D85-67	9,176		3-22-85					9,176
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of water, Mineral Leasing Act of 1920, sec. 40 (d)	D85-10	49		10-1-84					49
National Park Service									
Construction (trust fund)	D85-45	38,172		2-6-85			-3500		34,672
Land Acquisition	D85-68	3,356		3-22-85					3,356
Bureau of Indian Affairs									
Construction	D85-33	8,918		11-29-84			-893		8,025
DEPARTMENT OF JUSTICE									
General Administration									
Salaries and expenses	D85-46	3,890		2-6-85					3,890
Legal Activities									
Support of United States prisoners	D85-47	5,319		2-6-85					5,319
Federal Prison System									
Buildings and facilities	D85-19	44,534		10-31-84					44,534
Office of Justice Programs									
Justice assistance	D85-60	13,026		3-1-85					13,026
DEPARTMENT OF LABOR									
Employment and Training Administration									
Program administration	D85-61	162		3-1-85					162
State unemployment insurance and employment service operations	D85-34	3,767		11-29-84					
	D85-34A			3-1-85					3,767
	D85-62	37,000		3-1-85					37,000

Attachment B - Status of Deferrals - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 4-1-85
Unemployment trust fund (veterans employment and training).....	D85-63	119		3-1-85					119
Pension Benefit Guaranty Corporation Pension Benefit Guaranty Corporation.....	D85-64	228		3-1-85					228
Bureau of Labor Statistics Salaries and expenses.....	D85-35	5,000		11-29-84	-5000				0
DEPARTMENT OF STATE									
Other United States emergency refugee and migration assistance fund.....	D85-20 D85-20A	32,928	153	10-31-84 1-4-85	-24905				8,175
DEPARTMENT OF TRANSPORTATION									
Federal Highway Administration Limitation on general operating expenses...	D85-48	2,155		2-6-85					2,155
Federal Railroad Administration Rail service assistance.....	D85-49	413		2-6-85					413
Northeast corridor improvement program.....	D85-50	30,000		2-6-85					30,000
Railroad rehabilitation and improvement financing funds.....	D85-51	7,200		2-6-85					7,200
Urban Mass Transportation Administration Research, training and human resources.....	R85-52	25,206		2-6-85					25,206
Federal Aviation Administration Construction, metropolitan Washington airports.....	D85-53	910		2-6-85					910
Facilities and equipment (airport and airway trust).....	D85-11 D85-11A D85-11B	537,205	652,957 93,731	10-1-84 1-4-85 2-6-85	-163000			161,000	1,283,894
Maritime Administration Operations and training.....	D85-54	8,500		2-6-85					8,500
Office of the Secretary Salaries and expenses.....	D85-55	800		2-6-85					800
Payments to air carriers.....	D85-69	14,741		3-22-85					14,741
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....	D85-12 D85-13	55,400 19,900		10-1-84 10-1-84	-32458 -10802				22,942 9,098
GENERAL SERVICES ADMINISTRATION									
National Archives and Records Service Operating expenses.....	D85-36	4,700		11-29-84					4,700
OTHER INDEPENDENT AGENCIES									
Board for International Broadcasting Grants and expenses.....	D85-21	4,408		10-1-84	4408				0
National Science Foundation Science and engineering education activities.....	D85-56	31,450		2-6-85					31,450
Panama Canal Commission Operating expenses.....	D85-37	6,346		11-29-84	6086				260
Pennsylvania Avenue Development Corporation Land acquisition and development fund.....	D85-14	14,300		10-1-84	5000				4,300
Railroad Retirement Board Milwaukee railroad restructuring, administration.....	D85-15 D85-15A	108		10-1-84 2-6-85					115

Attachment B - Status of Deferrals - Fiscal Year 1985

As of April 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 4-1-85
Limitation on administration.....	D85-57	3,098		2-6-85					3,098
Limitation on Railroad Unemployment Insurance Administration fund.....	D85-58	502		2-6-85					502
U. S. Information Agency									
Salaries and expenses.....	D85-22	2,433		10-31-84					2,433
Salaries and expenses, special foreign currency program.....	D85-23	852		10-31-84					852
U.S. Institute of Peace									
U.S. Institute of Peace.....	D85-39	4,000		1-4-85					4,000
TOTAL, DEFERRALS.....		7,977,489	6,869,133		-9,204,574	0		163,135	5,805,183

Notes: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D85-13) of outlays only.

The Bureau of Labor Statistics deferral of $5.0 million (D85-35) was released and the funds were proposed for rescission as part of R85-170A.

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Part VI

Department of Labor

Occupational Saftey and Health Administration

29 CFR Part 1928
Field Sanitation; Final Determination

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1928

Field Sanitation

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final Determination: Statement of reasons.

SUMMARY: After a careful examination of the record in the field sanitation rulemaking and a review of a broad range of policy considerations, including prioritization of available resources, enforcement and inspection mechanisms, the impact of other state and federal standards, considerations of the most effective way to protect field workers from the relevant hazards, and considerations of federalism and the relationship of field sanitation facilities to traditional state public health activities, OSHA has determined that a federal field sanitation standard will not be issued at this time.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW. Washington, D.C. 20210, Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

1. Events Leading to This Action

A. Background

On September 1, 1972, the Migrant Legal Action Program, Inc. (MLAP), on behalf of the National Congress of Hispanic American Citizens and several other organizations representing migrant and seasonal farm workers, petitioned OSHA to issue a standard for agricultural workers in the field requiring potable drinking water, handwashing facilities, and toilet facilities. The petition stated that agricultural workers are not adequately provided such facilities. It alleged that because of these existing inadequacies, communicable diseases are spread and other health problems are created. In 1973, dissatisfied with OSHA's progress, MLAP filed suit in U.S. District Court to compel OSHA to issue a standard.

On April 27, 1976, OSHA published a notice in the **Federal Register** (41 FR 17576) proposing a field sanitation standard. That notice of proposed rulemaking was withdrawn and replaced with the new proposal published on March 1, 1984 (49 FR 7589).

The 1976 proposal was based substantially upon the recommendations of the Standards Advisory Committee for Agriculture and existing standards in California and New Jersey. It required potable drinking water, handwashing facilities, toilet facilities and, where food was prepared, sanitary preparation facilities. Specifically, toilet and handwashing facilities were to be made available to employees in a ratio of one facility for every forty workers or fraction thereof, and to be located within a five minute walk of the workplace. If five or fewer employees were in the work group, however, the facilities were not required to be physically located in the field as long as they were easily accessible by readily available transportation. If workers were in the field for two hours or less on any day, toilet and handwashing facilities were not required.

The 1976 notice (41 FR 17576) requested comments and information on issues relating to the proposed standard. A total of 1113 comments were received and reviewed by OSHA. Thereafter, in the face of other priorities, development of the standard was discontinued.

In order to settle pending litigation, OSHA resumed work on the standard in 1982. On March 1, 1983, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) informing the public and interested parties that the Agency was considering developing a new field sanitation standard and soliciting relevant data and comment on the incidence of disease among farmworks (48 FR 8493). 448 public comments were received in response to that ANPR. Supporters of a standard included farm workers and public interest groups (Ex. 2–99, 2–291, 2–237, 2–400, 2–414. Of those opposed, most questioned the need for and anticipated impact of such a regulation (ex. 2–63). Many of them, nonetheless, commented on provisions for a field sanitation standard (ex. 2–80, 2–252, 2–323, 2–415). A sizable portion of those opposed were small farm operators, employing mostly family members, who expressed concern that such a field sanitation standard would apply to them. Other groups having reservations and/or opposing the standard consisted mainly of small farm operators, loggers one farmworker association and various agricultural trade associations.

Consistent with the settlement agreement, OSHA published a Notice of Proposed Rulemaking (NPRM) and a request for comments on March 1, 1984 (49 FR 7589). OSHA stated that "[a]t issue is whether an OSHA standard is reasonably necessary and appropriate to deal with these health effects in the context of agricultural field labor." [49 FR 7590] This proposal would have required employers of 11 or more field workers to provide toilets, potable drinking water and handwashing facilities to farmworkers in the field. The rationale for the increase in the minimum numbers of employees is that Congress, through an express provision of law, has required OSHA to exempt small farming operations that employ 10 or fewer employees [ex. 11–109.]

The current rulemaking record, which includes 500 prehearing comments, 4,418 pages of testimony by 270 witnesses, and 221 additional exhibits, contains sufficient information to serve as a basis for decision. Public participation in the development of the record was broadly based, as illustrated by the following analysis of the affiliation of witnesses: Health experts, 30; state or federal government officials, 10; employer advocates, 15; employers, 30; economic experts, 4; employees, 63; employee advocates, 80; sanitation facility providers, 12; and others.

The proposed field sanitation standard was supported by health experts, representatives of major health associations (ex. 13–286, 35), religious organizations (ex. 13–278), employee organizations (ex. 29, 40, 218), and the Portable Sanitation Association (ex. 36). Opposition came from the American Farm Bureau Federation and its state and local subsidiaries (ex. 2–36, 13–71, 2–292, 2–145, 2–205), the National Council of Agricultural Employers (ex. 13–469), the forestry industry, (13–497, 13–483, 13–413) numerous individual (Tr. W3, p675; W3, p. 771; Tl, p. 251) farmers and others opposed to increased federal regulation on the farm (Tr. W3, p. 711).

B. Legal History

The litigation that commenced in 1973 has continued to the present. In the initial suit seeking to compel OSHA to make a determination on whether to issue a field sanitation standard, the U.S. District Court for the District of Columbia granted the relief sought by the National Congress of Hispanic American Citizens in October 1975. It held that the statutory guidelines of section 6(b)(1)–(4) of the Occupational Safety and Health Act of 1970 (OSH–Act) constituted mandatory time frames, which were triggered once the Secretary of Labor began action on the standard, and that the Secretary had violated these mandatory time frames. *National Congress of Hispanic American Citizens* v. *Dunlop*, 425 F. Supp. 900 (D.D.C. 1975).

On appeal by the Secretary, the Court of Appeals reversed the lower court's decision. *National Congress of Hispanic American Citizens* v. *Usery*, 554 F. 2d 1196 (D.C. Cir. 1977) (also known as *El*

Congresso I). The appeals court held that the Act's time frames are not mandatory and that the Secretary may "rationally order priorities and reallocate his resources at any rulemaking stage" so long as "his discretion is honestly and fairly exercised." Remanding the case to the District Court for action, the U.S. Court of Appeals for the District of Columbia ordered the Secretary to file a report on the proposed field sanitation standard, including a timetable for its development.

In September 1978, the Secretary submitted a report indicating that because of existing priorities no action would be taken on the standard for eighteen months. In December 1978, the District Court rejected the Secretary's report and ordered the Secretary "to complete development of a field sanitation standard . . . as soon as possible." *National Congress of Hispanic American Citizens* v. *Marshall*, No. 2142–73 (D.D.C. December 21, 1978). The Secretary again appealed, and the District Court's decision again was reversed. *National Congress of Hispanic American Citizens* v. *Marshall*, 626 F. 2d 882 (D.C. Cir. 1979) (also known as *El Congresso II*). The appeals court ruled that the lower court had "impermissibly substituted its judgement" for OSHA's.

In remanding the case once more to the District Court, the Court of Appeals directed the District Court to require the Secretary to provide a timetable reflecting his "good faith representation . . . regarding his reasonable expectation as to when the standard will be forthcoming." The Court of Appeals recognized that modifications in such a timetable might be justified by circumstances requiring readjustments of priorities. Such readjustments, the Court held, are proper so long as made in good faith.

Under the agreement, in June 1980, OSHA filed another timetable, indicating that completion work on the issue would take at least forty-five months. In December 1980, the District Court (D.D.C. Civ. Action No. 2142–73) conducted a five-day hearing to determine whether that timetable was consistent with the criteria set down in *El Congresso II*, 626 F. 2d 882 (D.C. Cir. 1979). At the hearing, the plaintiffs presented expert testimony and exhibits to show that medical and scientific opinion supported the need for field sanitation facilities. The Agency agreed that the absence and inadequacy of sanitation facilities may result in disease, but contended that the existing administrative record was an inadequate basis for issuance of a final standard and that further information was needed.

In 1981, the Secretary asked the District Court for time to permit the newly designated Assistant Secretary for OSHA to evaluate the June 1980 timetable before the court ruled on it (*National Congress of Hispanic American Citizens* v. *Raymond J. Donovan*, Civil Action No. 2142–73). The Secretary stated that intervening circumstances required a review of priorities and the timetable. The District Court approved the Secretary's request, and on August 17, 1981, the Assistant Secretary filed another timetable stating that the standard would be developed in a 34–39 month period, following an initial two-year deferral. The Agency asserted that a deferral period was necessary because in the interim all available resources would be allocated to the development of higher priority standards. The plaintiffs asked the court to order OSHA to complete a standard within a period they claimed to be feasible: 23–39 months.

On October 30, 1981, the District Court rejected the OSHA timetable. The Court ruled in favor of plaintiffs and ordered OSHA to make a good faith effort to promulgate a standard within 18 months. *National Congress of Hispanic American Citizens* v. *Raymond J. Donovan*. No 2142–73. OSHA appealed to the D.C. Court of Appeals, seeking a stay of the lower court's order pending a decision on the merits. *National Congress of Hispanic American Citizen* v. *Raymond J. Donovan*. (D.C. Cir. Nos. 81–2344, 81–2376). The stay was granted. Before the appellate hearing, the Agency negotiated a settlement with complainants. The District Court approved the settlement on July 16, 1982.

Under the terms of the settlement, OSHA agreed to make a good faith effort to develop, propose and complete a field sanitation standard or, alternatively, to publish in the **Federal Register** a determination that no such standard is needed . Should the agency determine that no standard is needed, and should the plaintiffs disagree with the Agency's published reasons for not promulgating a standard, under the court order the plaintiffs reserved the right to return to court to challenge the Agency's decision. An agreed-upon schedule for proceeding was negotiated. The schedule provided for the Agency to make a good faith effort to publish a proposal within 15–18 months, to hold hearings on any published proposal within 20–30 months, and to publish a final standard or determination not to publish a standard within 31 months. The proposal was issued in compliance with that settlement agreement.

Under the agreement, if the Agency was unable to meet any of these deadlines, OSHA was required to file an affidavit with the D.C. District Court explaining why the deadline could not be met and estimating when the task will be completed. If the plaintiffs then petition the court to compel the Agency to comply with the dates provided in the agreement, OSHA has the burden of demonstrating that the proposed deviation reflects a good faith effort to complete the standard.

On January 2, 1985, OSHA filed an affidavit in the U.S. District Court for the District of Columbia pursuant to the District Court's order of July 16, 1982 (Civil Action No. 73–2142) notifying the court and the parties to the settlement agreement that OSHA's effort could not be completed until April 16, 1985 or later.

On March 6, 1985, pursuant to Rule 7, Fd. R. Civ. P. and OSHA's request, the U.S. District Court for the District of Columbia transferred this case (Civil Action No. 73–2142) to the exclusive jurisdiction of the U.S. Court of Appeals for the District of Columbia Circuit.

II. Final Determination

OSHA has carefully examined the rulemaking record, weighed the role of the states in public health, and the preemptive effects of a Federal standard, considered its available enforcement mechanisms, taken into account other health and safety demands on OSHA's resources, and evaluated the most effective way to protect field workers from the relevant hazards, as well as other relevant factors, and has determined that a federal field sanitation standard will not be issued at this time.

III. Explanation of Findings

Historically, OSHA's response to a perceived need for health regulations has been based not only on credible scientific and technological evidence put forth to support the rulemaking process as outlined in section 6(b)5 of the OSH Act (29 U.S.C. 655(b)), but also on a broad range of policy considerations. Considerations such as risk prioritization, and available resources for development, implementation and enforcement of issued standards have also been given weight in the Secretary's decision to promulgate a final standard. These policy constraints affect the daily operation of the Agency and its capacity to accomplish its overall mission.

The Secretary has made the determination announced today for the following reasons. First, a federal field sanitation standard, if promulgated, would, in accordance with well-settled OSHA policy, be given a very low priority in enforcement relative to most other OSHA health standards already in effect and in development (e.g. asbestos, lead, various chemical carcinogens). It would not be appropriate to divert resources from the enforcement of other OSHA health standards already in effect and protecting workers from more life threatening chemical exposures. The promulgation of a field sanitation rule would, of necessity, reduce scarce resources available to enforce these high priority toxic chemical standards. Second, since the states having standards regulating field sanitation already cover more than three-quarters of the affected workers, OSHA believes it more appropriate that the states, which increasingly are moving to regulate this problem, be allowed to do so in accordance with each state's specific concerns for public health and particular conditions in agriculture. Third, most of the states currently regulating field sanitation do not enforce their own OSHA regulations under section 18 of the OSH Act as state plans. Nearly all of these states provide broader coverage of agricultural employees than would the proposed federal standard because they are not restricted by the Congressional mandate limiting OSHA from enforcing standards on farms employing ten or fewer farm workers. (See chart herein and 49 FR 7590). Consequently, promulgation of OSHA's proposed standard would likely reduce protection for workers in the many important agricultural states where state statutes and standards would be preempted by the federal standard. See discussion below. Although in some states where agricultural interests are relatively insignificant, protection might be increased, promulgation of the proposed federal standard would lead to a net diminution of overall protection.

A. Priorities

Section 6(g) of the OSH Act vests responsibility with the Secretary for establishing priorities:

> In determining the priority for establishing standards under this section, the Secretary shall give due regard for the urgency of the need for mandatory safety & health standards for particular industries, trades, crafts, occupations, businesses, workplaces, or work environments.

Moreover, OSHA is expressly authorized under section 6(b)(4) of the OSH Act to "make a determination that a rule should not be issued." In the absence of statutory criteria for making such determinations, OSHA presumably has broad discretion in this area, subject, of course, to the limitation that any determination must be rational in the context of the purposes and provisions of the Act and of the rulemaking record.

OSHA also must have broad discretion to order its priorities. That discretion is central to the efficient allocation of its limited resources. The Agency cannot possibly carry out all potential rulemakings or inspect all workplaces for every potential violation of existing standards. OSHA's discretion extends necessarily to the ordering of priorities in enforcement. With any level of resources the Agency must still set priorities to maximize protection of the largest number of employees from the worst occupational safety and health hazards. OSHA has a rationally ordered priorities system in place designed to protect the most endangered workers from the worst hazards.

Since October, 1983, OSHA has operated under field Instruction (CPL 2.25D) entitled, "Scheduling System For Programmed Inspections." On September 10, 1984, OSHA updated this Instruction with CPL 2.25E continuing the Agency's established policy of risk prioritization for programmed health inspections. This policy is summarized below. It is implemented as a Health Inspection Plan (HIP), a scheduling system for programmed health inspections. The targeting or selection criteria for OSHA health inspections is based on identification of those industries whose past record indicates they pose the greatest risk to workers (CPL 2.25E Appendix A). Under the current OSHA Instruction CPL 2.25E, the HIP identifies industries which OSHA determines to have the greatest potential for health problems.

This instruction provides as follows: The HIP is based on OSHA's previous inspection experience as recorded in the Integrated Management Information System (IMIS). Industries are selected by 4-digit Standard Industrial Classification (SIC) codes on the basis of the average number of *serious* health violations found during the previous 5 years of OSHA health inspections of that industry. The Occupational Safety & Health Act draws a distinction between serious and non-serious violations of the Act. See section 17 of the OSH Act. A serious violation is defined at section 17(k) as follows:

> [A] serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment . . . .

Thus serious violations merit particular attention from OSHA. Serious violations pose the greatest danger to workers. A ratio is calculated for all industries of the number of serious violations found to the number of inspections conducted within that industry over a recent five year period. Once an industry rank report for health (Health SIC List) has been created, a commercially available employer mailing list obtained from Dun's Marketing Services is used to identify all the establishments (with more than 10 employees) belonging to these industries to develop a Health Establishment List. Establishments are listed separately by OSHA Area or District office jurisdiction. Health Inspection schedules for OSHA's industrial hygienists are arranged according to this procedure to focus inspection resources on high hazard industries.

The overall task of providing service to a vast number of employees (80,000,000 or more) exposed to thousands of different and dangerous hazards in more than 5,000,000 workplaces with only 1,200 total person-years of inspection capability is most effectively accomplished if a priority system based on inspection experiences is used. OSHA area offices are, by design, placed in locations near the most hazardous industries (normally located in highly industrialized areas) in order to replace travel time with more productive inspection time. In consideration of the risks associated with field sanitation, it is unwise to assume an additional rural enforcement obligation which should properly be assigned a low priority because of the absence of life threatening situations.

A field sanitation standard misallocates OSHA's protective response capability in other ways, as well. In recent standards, OSHA has estimated the health impacts of its final rules in terms of lives saved. For example, the emergency temporary standard and proposed rule for asbestos noted that adoption of the standard would result in approximately 8500 cancer deaths avoided over the next 45 years [49 FR 14138]. Promulgation of the final ethylene oxide standard is expected to reduce the number of excess ethylene oxide-related cancer deaths from a range of 532 to 1017 deaths, to a range of 75 to 146 deaths, an 86 percent

reduction [49 FR 25768]. The inorganic arsenic standard, promulgated in 1978, predicted that reducing exposures from 500 μg/m³ to 10 μg/m³ would prevent approximately 11 lung cancer cases per year of exposure among copper smelter workers alone [Docket H–037C, Ex. 201–2A, p. 20]. Similarly, a recent analysis of the draft proposed standard for benzene predicated that 822 deaths from leukemia and aplastic anemia would be avoided over a working lifetime [Draft benzene proposal dated 2/15/85, p. 149].

OSHA has promulgated appropriately 25 standards since the Occupational Safety and Health Administration was established in 1971. A list of those standards follows, along with an identification of the health hazards they are intended to abate or address.

COMPREHENSIVE HEALTH STANDARDS PROMULGATED 1971–1985 [1]

[Listed in order of promulgation]

Standard	Health effects associated with
Asbestos	Asbestosis, Mesothelioma, Lung cancer.
4-Nitrobiphenyl	Cancer.
alpha-Naphthylamine	Do.
Methyl chloromethyl ether	Lung cancer.
3,3'-Dichlorobenzidine (and its salts	Cancer.
bis-Chloromethyl ether	Lung cancer.
beta-Naphthylamine	Bladder cancer.
Benezidine	Do.
4-Aminodiphenyl	Do.
Ethyleneimine	Cancer
beta-Propiolactone	Do.
2-Acetylaminofluorene	Liver and bladder cancer.
4-Dimethylaminoazobenzene	Lung, liver, and bladder cancer.
n-Nitrosodimethylamine	Do.
4,4'-Methylene bis (2-chloroaniline) [MOCA] [3].	Cancer.
Vinyl Chloride	Liver cancer.
Coke Oven Emissions	Lung cancer, urinary tract cancer, respiratory disease.
Benzene [3]	Leukemia, aplastic anemia, chromosome mutations.
1,2-Dibromo-3-chloropropane	Infertility, sterility.
Arsenic	Respiratory and lymphatic cancer.
Cotton Dust	Bysainosis, chronic bronchitis, emphysema.
Acrylonitrile	Cancer.
Lead	Damage to kidneys, central and peripheral nervous system, oxygen-carrying capacity of blood, and reproductive system. Anemia, miscarriage, sterility, brain damage, death and various behavioral effects.
Hazard Communication	All diseases associated with chemical exposure, including cancer, reproductive effects and others.
Hearing Conservation [4]	Hearing loss.
Ethylene Oxide	Cancer, mutagenic, teratogenic and reproductive effects.

[1] Standards promulgated pursuant to Section 6(b) of the OSHAct.
[2] MOCA was overturned on procedural grounds by the 3rd Circuit Court of Appeals in 1974.
[3] Vacated by the Supreme Court in July 1980.
[4] Standard overturned by U.S. Court of Appeals in 1984; rehearing *en banc* granted April, 1985.

There is a sharp contrast between the risks and diseases that the OSHA standards adopted since 1971 have dealt with and the risks and diseases that a filed sanitation standard would address. The various chemical standards prevent life-threatening diseases such as cancer, as well as reproductive and mutagenic effects. The field sanitation standard would deal with one major health effect, heat stroke, and a number of infectious diseases that are not typically life threatening and which often require no medical care for patient recovery, such as intestinal viruses, protozoal parasites, intestinal bacteria, and parasitic round worms.

There were no deaths in the record attributable to communicable disease, chronic pesticide exposure (regulation of which is an EPA duty), or urinary tract infections. Initial attacks of acute urinary tract infection in the absence of obstruction, tend to subside with treatment or spontaneously.

OSHA's ordering of priorities is further confirmed by the discussion in *OSHA, History, Law and Policy* by former Associate Solicitor of Labor, Benjamin W. Mintz. OSHA, Mr. Mintz states, has persistently given the highest priority in standards development of regulating carcinogenic substances:

> All of OSHA's health standards, except for those regulating cotton dust and lead, have related to carcinogens. The priority treatment for cotton dust and lead was based on the severe hazards involved, the large numbers of employees at risk and the excellent studies available on the hazards of cotton dust and lead. In 1983, OSHA stated that its highest health priorities were asbestos, ethylene dibromide, both carcinogens, and hazard communication, affecting numerous chemicals. (p. 84)

OSHA's determination of its priorities for enforcing OSHA standards reflects the Agency's expert judgment on the relative risk to employees from the various regulated hazards.

In the litigation discussed above the U.S. Court of Appeals for the District of Columbia Circuit broadly interpreted the Secretary's discretion in setting priorities under the act. In reaching this decision, the court pointed out that even the plaintiff agreed that "The secretary has discretion to allocate his limited resources among their contending uses. "The court then went on to say:

> The Act has built in flexibilities that the Secretary may use, such as his right to initially determine whether or not there will be a standard; what the standard will be; the priorities between the various occupations that may require standards; the altering and changing of these priorities even though once set; *the forgiving of inaction where the Secretary makes a contemporaneous statement of reasons;* the right to delay hearings; to process higher-priority standards more quickly than initiated ones; and, finally, *the Secretary's right to refuse to adopt any standards even though the whole process has been exhausted. National Congress of Hispanic American Citizens* v. *Usery*, 554 F. 2d 1196, 1199 (1977), (italics added).

From this analysis of the Secretary's broad discretion the court concluded:

> If the Secretary may rationally order priorities and reallocate his resources at the point which 6(b)(1) becomes applicable, he should be able to do so *at any rulemaking stage*, so long as his discretion is honestly and fairly exercised. (Ibid, 1200; italics added).

This decision was followed in a later, related case by the D.C. Court of Appeals in which the Secretary was again accused of unreasonable delay in issuing a field sanitation standard. Holding once again in favor of the Secretary, the court reiterated that:

> So long as his action is rational in the content of the statute, and is taken in good faith, the Secretary has authority to delay development of a standard at any stage as priorities demand. (*National Congress of Hispanic American Citizens* v. *Marshall*, 626 F. 2nd 882, 888 (1979); italics added)

In analyzing whether the Secretary's actions were "rational" and "in good faith," the court deferred to the Secretary's capacity to make comparative judgments regarding his own priorities. It recognizes that the Secretary's criteria for setting priorities, which weighed such factors as the number of workers exposed to particular unregulated hazards, the severity of the hazards in question and other factors affecting the enforceability of the standard, "adequately reflect the purposes and provisions of the statute, and are rational within that context" (*Ibid*, 889). The court also deferred to the Secretary's judgment that regulating other hazards deserved higher priority than regulating field sanitation. Thus, in overturning the lower court's summary judgment for plaintiff, the Court of Appeals said:

> This court is of the view that greater respect is due the Secretary's judgment that promulgation of a cancer policy, a lead standard, an anhydrous ammonia standard and the like, merited higher priority than a field sanitation standard. (Ibid, 889)

These same criteria, criteria the court validated, have been used to determine that a field sanitation standard shall not be issued at this time.

OSHA notes there is some evidence of risk to employee health as a result of the absence of field sanitation facilities (ex. 18, 19, 20, 26, 70, 81, 83, 94) evidence disputed by some parties to this proceeding (Ex. 2–63, 2–424, 13–71 Tr. W3, pp. 675–738; T1, pp. 251–324). The

Agency, in a risk balancing process, states that the risks faced by field workers are generally not life threatening and must be compared to the health risks associated with other, life threatening risks, identified above. Moreover, these risks to field workers, as explained below, are being addressed by the various states.

This position is further supported by the fact that whatever risk that is present from lack of adequate sanitation in fields where people work (with the exception of heat stroke) is extremely difficult to separate from the risk presented from non worksite conditions of these same workers. Thus while an increase in disease can be documented among farm workers it is far more difficult to establish within any reasonable degree of certainty that this increase can be attributed to a lack of sanitation facilities in the field.

The difficulties in establishing this causal relationship, coupled with the obvious interconnection between exposures in the field and those from non-worksite conditions, further supports the Agency's position that this issue is better handled by the states.

Consequently, OSHA believes that the risk of disease to field workers owing to the inadequacy of field sanitation facilities is substantially less than the risk to the health of other workers from potentially life threatening hazards which require a higher priority of protective effort under the OSH Act. It is injudicious to take inspectors out of high-hazard worksites and put them in farmer's fields. In the exercise of its discretion under section 6 (b)(4) and its discretion to order its priorities for establishing standards under section 6(g) of the Act, OSHA concludes that there is no need for a field sanitation standard. Thus, in the language of the Occupational Safety and Health Act, it is not "reasonably necessary or appropriate" to issue a field sanitation standard at this time.

B. Federalism

"Federalism" involves a concept designed to restore an appropriate balance of responsibility between state & federal government and is appropriately applied in those instances where states are already taking charge of their police power responsibilities.

OSHA recognizes that it is authorized generally under the OSH Act to take regulatory action to control agricultural hazards where necessary. OSHA's authority to deal with the agricultural sector, however, is extremely limited as a result of subsequent Congressional Action. The Agency also recognizes that it is authorized generally to regulate sanitation at the work place. Indeed, OSHA already has standards requiring adequate sanitation at most industrial work sites.

But the Agency believes that regulating sanitation for tens of thousands of farms spread out across the entire United States and exhibiting widely varying conditions in terms of size, climate, terrain, workforce density and labor intensity is best left to the various states and their operational agencies, as they are best able to adapt their standards and enforcement policies to the particular conditions of agriculture in each state. OSHA also believes that it would be especially unfortunate and premature at this time for OSHA to intervene in an undifferentiated way just when the states appear to be exercizing their responsibility for regulating the relevant hazard on the local level. Under the circumstances, the federal government should focus its responsibility on regulation of toxic chemical exposures, where its resources and expertise can be effectively brought to bear on complex scientific and technical issues and where the need for uniform national standards is especially acute.

Thirteen states (California (ex. 11–035), Colorado (ex. 11–072), Connecticut (ex. 11–082), Florida (ex. 11–073), Idaho (ex. 11–077), Illinois (ex. 11074), Maine (ex. 31), New Jersey (ex. 11–079), New York (ex. 11–075), North Carolina (ex. 11–080), Oregon (ex. 11–076), Pennsylvania (ex. 11–078) and Texas (ex. 11–081)) currently have field sanitation standards (Table I). These include the big four agricultural states of California, Florida, North Carolina and Texas, which alone account for over 60 percent of the total person-years of agricultural labor annually expanded in the United States (ex. 21, pp. 24–25). Together, these 13 states account for between 75 and 90% of total person-years of hand labor annually expended in the agricultural field and over 75% of the farms affected by the proposed standard (Ex. 16; 13–71).

Of the 13 states with field sanitation standards, 10 do not have their own OSHA-approved occupational safety and health state plans, which, among other things, requires adoption by the state of a comparable standard within six months after publication of a final federal standard (§ 18 of the OSH Act). For those 10 states and for any other non-state-plan states that might issue a state field sanitation standard before promulgation of a federal standard, promulgation of a federal standard would preempt the state standards, whether the standards are more or less protective of the health of agricultural workers than the federal standard.

Of the 13 states that have field sanitation standards, five (Texas, North Carolina, Oregon, Maine and Illinois) have issued their standards within the past few years. Another two states (Wisconsin and Minnesota) are in the process of developing comparable standards. Thus, the states, especially those with substantial populations working in agriculture, currently are moving ahead vigorously to regulate field sanitation in the context of public health activities. James A. Graham, Commissioner of Agriculture, State of North Carolina supports this position in his submission to the record (ex. 13–54) as follows:

> Federal standards are unnecessary because of the existence of state standards. Each state should have the opportunity to determine whether such regulations are necessary and if so, to adapt such regulations to conditions in the state. The North Carolina Department of Labor has recently adopted field sanitation standards following very lengthy consideration of the issue. Also, the North Carolina Pesticide Board has recently adopted regulations to protect farm workers from exposure to pesticides. To preempt state efforts with single nationwide federal standard would be unproductive and inefficient.

As the data show, the workforce covered by a standard is localized in a few states. Moreover the size of the workforce engaged in hand labor in fields appears to be dropping. As the size of the workforce decreases, the aggregate health problems associated with ths workforce will decrease and the ability of states to deal with it should increase. The American Farm Bureau observed in its comments to the record:

> The most reliable source of data on agricultural employment is "The Hired Farm Working Force," published by the U.S. Department of Agriculture, based on data from the U.S. Census. The last available report is for 1981. It shows that although the number of hired farmworkers stayed about the same between 1968 and 1981, that since 1970 the number of migrant farmworker's decreased by 47 percent to 115,000 representing about 5 percent of the hired farm workforce. . . . [E]arlier reports have shown that migrants clearly represent less than 10 percent of the hired farm workforce in agriculture, and that the employment of migrant workers is concentrated in a few states. It is clear that migrancy in agricultural employment is fading out of the picture and within a few years will be virtually nonexistant. [Ex. 13–71]

OSHA's Contractor, Centaur, makes the same point, but goes further. (Ex. 16, p. 33) Centaur found that employment for all farm-workers had decreased from

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TABLE I A COMPARISON OF STATE FIELD SANITATION REGULATIONS

STATE	TOILET FACILITIES REQUIRED	TOILET FACILITIES RATIO: FACILITY/ NUMBER OF WORKERS	HANDWASHING FACILITIES REQUIRED	HANDWASHING FACILITIES MOIST TOWELETTES ALLOWED AS SUBSTITUTE FOR WATER	MAXIMUM TIME/DISTANCE TO FACILITIES	DRINKING WATER REQUIRED***	MINIMUM NUMBER OF WORKERS FOR COVERAGE
CALIFORNIA (Food)	YES	1/40	YES	NO	Within 5 min. walk or	YES	5
(Non-Food Crops)	YES	VARIOUS RATIOS*	NO	N/A	or closest vehicular access within 200 ft (61m) - For Non-Food Crops	YES	1
COLORADO++	YES	1/10	YES	YES	Within 1/4 mile (402m)	YES	NO MINIMUM
CONNECTICUT	YES	1/20 MALE 1/10 FEMALE	YES	NO	"Readily Accessible"	YES	1
FLORIDA	YES	1/40	YES	YES	if <10 workers, "available" if > 9 workers, "at location"	YES	1 (WATER) 10 (OTHER FACILITIES)
IDAHO	YES	1/40	NO	N/A	Within 1/4 mile (402m) or closest vehicular access	NO	8
ILLINOIS	YES	1/35	YES	YES	Within 1/6 mile (268m); if <10 workers, 1/2 mile (805m) or 5 min.	YES	10
NEW JERSEY	YES	SUITABLE NUMBER	YES	YES	Not more than 5 min. walk	YES	6
NEW YORK	NO	N/A	NO	N/A	"Reasonably Accessible"	YES	5
NORTH CAROLINA	NO	N/A	YES	YES	for drinking water, 200 yds (183m); for handwashing (if requested) at point of customarily used access	YES	11
OREGON	YES	1/40 1/25 IF 5 OR MORE HRS WORKED/DAY	YES	YES	"Readily Accessible"	YES	NO MINIMUM
PENNSYLVANIA	YES	VARIOUS+ RATIOS	YES	YES	"Reasonable distance"	YES	NO MINIMUM
TEXAS	YES	1/30	YES	NO**	Within unimpeded walk of 440 yd, or 400 m, or 1/4 mile	YES	6

Notes:

* Ratio: from one toilet/15 workers (1 toilet/each gender) to 6 toilets/150 workers, and toilet/each gender.

\+ Ratio from one toilet/10 workers within 1000 feet of worksite to one additional toilet for 11-15 workers with in 500 feet of worksite.

** Except on temporary basis.
N/A means not applicable.

++ Standard for the provision of field sanitation facilities excludes those employees not housed in temporary labor camps.

*** Minnesota requires employers of corn detasselers to provide an easily accessible supply of potable water for field employees.

+++ Alternatively, under a written agreement in the native language of workers, the employer will provide transportation to a toilet or handwashing facility at least once during any continuous 4 hours of work

**** Maine issued field sanitation standards that were effective July 21, 1984 for blueberry pickers based on the provisions of the OSHA proposal (49 FR 7589).

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3,488,000 in 1961 to 2,492,000 in 1981, with a continuing trend downward. And Centaur states the migrant farmworker, population dropped from 385,000 in 1961 to 115,000 in 1981. Indeed, the Centaur evidence indicates a dramatic downward trend in total farm employment.

Preemption

Since the major agricultural states already have field sanitation standards and since between 75% and 90% quarters of the total person-years expended in agricultural labor are covered by existing state standards, a very practical issue which OSHA must address is whether the health of agricultural workers would be better protected by the issuance of a federal field sanitation standard. This question arises because, as indicated above, any federal standard would automatically preempt all state standards in states that do not have OSHA-approved state programs for occupational safety and health.

Federal preemption arises directly from the language of the OSH Act. Section 18 of the Act provides as follows:

> Sec. 18(a). Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety and health issue with respect to which no standard is in effect under section 6.
>
> (b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

The preemptive effect was dramatically illustrated in recent litigation (*New Jersey State Chamber of Commerce et al.* v. *Hughey et al.* C.A. No. 84–3255; U.S. Dist. Ct., D.N.J.) between New Jersey and industry interests over implementation of that state's new right-to-know law. The issue was whether OSHA's hazard communication standard preempted the State law. The court observed:

> Section 18(a) has been consistently interpreted by OSHA and the courts to bar the exercise of state jurisdiction over issues addressed by an OSHA standard . . . (citations omitted). Slip opinion at p. 30.

The short answer is that in non-state-plan states that have state standards, it is likely that fewer agricultural workers will be protected with a federal standard. OSHA, by law, is prohibited from taking any actions toward regulating farms with fewer than 11 employees. A federal field sanitation standard, therefore, cannot protect any employee on a farm with fewer than 11 employees. This means, based on estimates by OSHA's contractor, Centaur Associates (Ex. 21, p. 6) that over 90% of all farms in the U.S. and nearly 80% of all hand laborers in agriculture would be excluded from any protection under a federal field sanitation standard.

The 13 states listed above already provide more expansive coverage than could be provided by the federal government. The minimum number of employees required by those state standards for coverage of farms ranges from, at the low end, no minimum number (Colorado and Pennsylvania) to at the high end, a minimum of 10 employees (Illinois), which is still lower than the mandated minimum for a federal standard (see Table I). More importantly, the majority of these state standards either have no minimum, a minimum of one employee (Connecticut and Florida, for water) or minimum numbers that are at least substantially below what the federal minimum would be (e.g., New York, 5; New Jersey, 6; Texas 6; and Idaho, 8). Considerably fewer employees, thus, would be protected in these states if a federal standard were promulgated.

As to states with field sanitation standards that operate their own occupational safety and health plans under section 18 of the OSH Act, promulgation of a federal standard would not result in any expansion in coverage since two of these states have minimum numbers that are lower than the federal minimum (California and Oregon) and the third, North Carolina, has the same minimum.

The only potential increase in the number of employees protected, would occur in states that do not already have state field sanitation standards, which account for between 10 and 25 percent of hired labor expended in agriculture (Ex. 16, 13–71). In those states, assuming national averages are applicable, approximately one-third of the field laborers not currently protected by any standard would be protected by a federal standard (or, in the case of a state-plan state, by a comparable state standard to be promulgated after the federal standard). The entire potential for increased coverage from promulgation of a federal standard, thus, appears to be limited to between 4% and 9% of all person-years of hired labor expended in agriculture. The net result of this limited increase combined with the decreases in coverage in other states described above, would actually result in a decrease in overall coverage.

Going beyond such quantitative comparisons to compare the quality of protection afforded by existing state standards with the quality of protection that would be afforded by a federal standard is much more difficult. Such a comparison involves two factors that are exceedingly difficult to evaluate: First, whether enforcement and compliance would be greater under a state or federal standard, and second, whether on the whole a particular state standard is more or less protective in its requirements when compared to the proposed federal standard.

Estimates of the current provision of facilities by employers indicate that over 63% of affected farm workers are currently provided toilets, over 79% are provided drinking water and over 45% are provided handwashing facilities. Moreover, these estimates incorporate voluntary provisions in states without standards, indicating that private sector market incentives also operate to promote improved public health.

Testimony in the record (ex. 87, Tr. 1.1. p. 2122) that the requirements of a federal standard offer protection equal to or greater than the protection provided by various state standards is not true. There is certainly record evidence that state standards are being enforced. (ex. 220). No reasoned basis for believing that a federal standard would be more stringently enforced than a state standard emerged from the record.

Conclusion

For the reason set forth above, OSHA decides today not to issue a final standard governing field sanitation at this time.

Authority

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave., NW., Washington, D.C. 20210.

This action is taken pursuant to sections 4(b), 6(b), and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 1598, 29 U.S.C. 653, 655, 657) Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

Dated: April 12, 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

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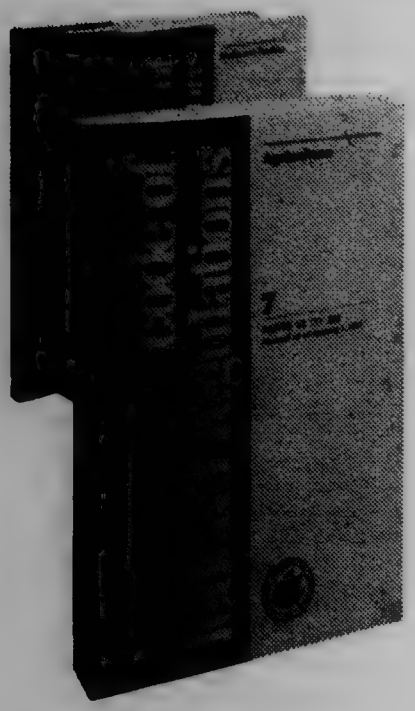
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Presidential Documents

Title 3—

The President

Executive Order 12509 of April 14, 1985

Technical Review Group on Inertial Confinement Fusion

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 1633 of the Department of Defense Authorization Act, 1985 (Public Law 98–525), and in order to establish an advisory committee to review the inertial confinement fusion program, it is hereby ordered as follows:

Section 1. There is established the Technical Review Group on Inertial Confinement Fusion. The Technical Review Group shall be composed of two members, the Director of the Office of Science and Technology Policy, who shall also serve as Chairman, and the Director of the Office of Energy Research of the Department of Energy.

Sec. 2. (a) The Task Force shall review thoroughly the accomplishments, management, goals, and anticipated contributions of the defense inertial confinement fusion program and shall advise the President and the Congress concerning its findings of fact and recommendations regarding priorities for future work in the inertial confinement fusion program. In conducting its review and recommendations, the Technical Review Group shall contract with an appropriate independent, nationally recognized organization of scientists to study the inertial confinement fusion program and to submit its evaluation to the Technical Review Group for consideration in preparation of its reports.

(b) The Technical Review Group shall submit an interim report to the President and the Committees on Armed Services of the Senate and the House of Representatives before June 1, 1985, and shall submit its final report before May 1, 1986.

Sec. 3. (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Technical Review Group with such information as may be necessary for the effective performance of its functions.

(b) Members of the Technical Review Group shall serve without compensation for their work on the Group.

(c) The Director of the Office of Science and Technology Policy shall, subject to the availability of funds, provide the Technical Review Group with such administrative services, facilities, staff, and other support services as may be necessary.

Sec. 4. The Technical Review Group shall terminate upon the submission of its final report.

Ronald Reagan

THE WHITE HOUSE,
April 14, 1985.

[FR Doc. 85-9353
Filed 4-15-85; 2:36 pm]
Billing Code 3195-01-M

Presidential Documents

Proclamation 5318 of April 15, 1985

Pan American Day and Pan American Week, 1985

By the President of the United States of America

A Proclamation

The countries of the Western Hemisphere are bound together by their humanitarian ideals, their respect for individual liberty, and their yearning for peace and prosperity—goals eloquently expressed in the Charter of the Organization of American States. Just as our Revolution of 1776 was an inspiration for Simon Bolivar and Jose de San Martin, so we in the United States took inspiration from the struggle of our neighbors to be free from foreign domination. We continue to take courage from those great struggles for liberty today, when new forms of tyranny and modern totalitarian systems threaten the peace and security of the Hemisphere, especially in Central America.

The Organization of American States, embodying the Inter-American System, links together this diverse group of nations, with their Spanish, Portuguese, French, English, African, and Indian heritages. But whatever their creeds, languages, or cultures, the peoples of our Hemisphere are united in the common cause of ending poverty, disease, and illiteracy. The O.A.S. has played a notable role in this cause.

More and more countries of the Hemisphere are turning to democratic institutions to solve political, social, educational, and economic problems. They realize that peace, prosperity, and freedom are best served when the people, faced with a real choice of political parties, freely elect their own governments.

On this Pan American Day of 1985, the people of the United States extend warm greetings to all their neighbors in the Americas and reaffirm their active support for the Organization of American States and the principles for which it stands.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Sunday, April 14, 1985, as Pan American Day, and the week beginning April 14, 1985, through April 20, 1985, as Pan American Week. I urge the Governors of every State of the Union, and the Governor of the Commonwealth of Puerto Rico, and officials of the other areas under the flag of the United States of America to honor these observances with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 85-9480
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Rules and Regulations

Federal Register
Vol. 50, No. 74
Wednesday, April 17, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 911

Limes Grown in Florida; Amendment to Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule specifies new lime size designations to be used in marking containers of seedless limes based on the number of seedless limes in a ten pound sample. This rule is necessary to prevent misrepresentation of the size of seedless limes in containers, facilitate sales of seedless limes between buyers and sellers, and promote orderly marketing of Florida seedless limes. This action also updates references to the United States Grade Standards for Florida Limes used in this regulation.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The final rule is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by pack under § 911.311 Lime Pack Regulation 9 (7 CFR Part 911). The pack regulation, which is effective on a continuing basis, establishes pack and container marking requirements for fresh limes. This action was unanimously recommended by the Florida Lime Administrative Committee.

This action requires the marking of containers of seedless limes with one of seven specified lime size designations. These seven size designations are defined in terms of the number of limes in a ten pound sample. Handlers of limes use several different sizes and weights of containers in shipping limes. The committee reports that handlers currently designate lime sizes by count or number of fruit in the container. The has caused some buyer confusion since the number of limes will vary with the size of the container. In some instances, the number of limes in a container has been misrepresented to the buyer. This action is designed to alleviate this situation by standardizing lime sizes so that the same lime size designation is shown regardless of the size and weight of the container in which the limes are packed. These size designations are currently used by many handlers on a voluntary basis. This action is necessary to facilitate sales between buyers and sellers of limes and promote orderly marketing of Florida seedless limes.

A proposed rule was published in the March 8 issue of the **Federal Register** (50 FR 9452), with a 15 day comment period. One comment was received from the Florida Lime Administrative Committee. The committee met on March 20, 1985 and voted unanimously to change the requirement that the size be marked on the top and two sides to requiring that the size be marked on two sides only. The committee reports that marking the size on the top of the container would require extensive changes in the packing line for most handlers and increase costs. The final rule adopts the less restrictive size marking requirement as recommended by the committee.

It is hereby found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that a notice of proposed rulemaking concerning this regulation, with an effective date of April 1, 1985 specified, was published in the **Federal Register** (50 FR 9452) and no objection to that date was received; one comment was filed by the Florida Lime Administrative Committee and the views expressed in that comment have been incorporated in this final rule. Shipments of the current crop of limes are in progress and this regulation should be effective immediately in order to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

PART 911—[AMENDED]

The final rule amends paragraphs (a)(1) and (b) in § 911.311 by removing the reference to "7 CFR 2851.1000–2851.1016" and inserting in its place the reference to "7 CFR 51.1000–51.1016" and adding a new paragraph (a)(5) to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(5) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked on two sides with letters at least one inch in height with one of the size designations shown in column 1 of the following table: *Provided,* that the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation.

TABLE 1

Column 1 size designations	Column 2 size range
72	66 to 76.
63	60 to 66.
54	51 to 57.
48	46 to 50.
42	40 to 44.
36	34 to 38.
28	27 to 29.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: April 11, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-9185 Filed 4-16-85; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1872, 1942, 1944, 1951, 1955 and 1962

Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received

Correction

In FR Doc. 85-7809 beginning on page 12969 in the issue of Tuesday, April 2, 1985, make the following correction: On page 12969, in the second column, the first line should read: "**EFFECTIVE DATE:** May 2, 1985."

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule changes the position title of the Director for Anti-Smuggling to Assistant Commissioner, Anti-Smuggling. This change is made with a view toward more effective Service management.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3291.

SUPPLEMENTARY INFORMATION: On March 30, 1983 at 48 FR 13146 the Immigration and Naturalization Service published the reorganization of its central and regional offices as approved by the Attorney General and Congress. The Office of Anti-Smuggling was placed under the direction of the Associate Commissioner for Enforcement with the office being under the immediate supervision of the Director for Anti-Smuggling. Since that time, the position of Director has been changed to Assistant Commissioner for Anti-Smuggling.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates solely to agency organization and management.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 as it relates to agency organization and management.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority designation (government agencies), Organization and functions.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

§ 103.1 [Amended]

In § 103.1, paragraph (c)(4) is revised to read as follows:

* * * * *

(c) * * *

(4) Assistant Commissioner for Anti-Smuggling, and

* * * * *

(Sec. 103 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1103)

Dated: April 10, 1985.

Raymond M. Kisor,

Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 85-9215 Filed 4-16-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-13; Amdt. 39-5029]

Airworthiness Directives; Teledyne Continental Motors IO-470 and O-470 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an inspection for cylinder assemblies with P/Ns 646680A4 and 646680A5 and replacement of exhaust valve P/N 626540 with P/N 637781 in these assemblies. These cylinder assemblies were installed on certain Teledyne Continental Motors (TCM) new and rebuilt IO-470 and O-470 series engines and sold over the counter in the aftermarket. The AD is needed to prevent possible wear and seizure of the exhaust valve stem caused by incompatible materials and insufficient clearance between the valve stem and its valve guide which, if left uncorrected, could result in total loss of engine power.

DATES: Effective—April 15, 1985.

Compliance Schedule—as indicated in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on April 15, 1985.

ADDRESSES: The applicable Service Bulletin (SB) M85-3 and Maintenance and Overhaul Manual, Form No. X30022A, may be obtained from:

Teledyne Continental Motors, Aircraft Products Division, P.O. Box 90, Mobile, Alabama 36601, Telephone (205) 438-3411

A copy of the SB is contained in the Rules Docket, located in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, and in the Central File Room of the Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337, telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: The FAA has determined that some TCM new and rebuilt IO-470 and O-470 engines and all cylinder assemblies with P/Ns 646680A4 and 646680A5 sold in the aftermarket for installation on these engines were assembled with exhaust valves and valve guides which have material incompatibility and insufficient stem to guide clearance. If left uncorrected, these conditions could cause valve stem wear, oil contamination, valve seizure, and total loss of engine power. Since this condition is likely to exist or develop on other engines or cylinder assemblies of the same type design, an AD is being issued which requires the replacement of the exhaust valves, P/N 626540 with P/N 637781, in all cylinder assemblies with P/Ns 646680A4 and 646680A5 installed on TCM new and rebuilt IO-470 and O-470 series engines and those cylinder assemblies (P/Ns 646680A4 and 646680A5) sold in the aftermarket.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Teledyne Continental Motors: Applies to TCM new and rebuilt engines, IO–470–C, S/Ns 242071 through 242076; O–470–K, S/Ns 49390 through 49394; O–470–L, S/Ns 69840 through 69843; O–470–M, S/Ns 54141 and 54142; O–470–R, S/Ns S/N 238170, 238171, 238176 through 238197, 2138199 through 238211, 238213, 238215 through 238218, 238223, 238224, 466653 and 466654; O–470–S S/N 226443, 226444, 226446 through 226457; and all cylinder assemblies P/N 646680A4 and 646680A5 in inventory or installed on engines IO–470–C, O–470–G, –K, –L, –M, –R, –S since March 1984.

After the effective date of this AD, compliance is required as indicated unless already accomplished:

(a) Compliance required within the next 10 hours time in service for the affected engines with cylinder assemblies having P/Ns 646680A4 and 646680A5 installed.

(b) Compliance is required prior to installation on an engine for uninstalled cylinder assemblies with P/Ns 646680A4 and 646680A5.

To prevent possible valve stem wear, oil contamination, valve seizure, and total loss of engine power, accomplish the following:

(a) Inspect each specified engine and cylinder assembly for the P/N stamped on the base flange of the cylinder.

Note:—This AD applies only to the specified engines and cylinder assemblies having P/Ns 646680A4 and 646680A5.

(1) If an inspection reveals no specified engines or cylinder assemblies in stock, no further action is required by this AD.

(2) If inspection of any of the specified engines reveals no cylinder assemblies with P/Ns 646680A4 or 646680A5, make appropriate engine log book entry stating in effect that this engine has been inspected in accordance with this AD. Return engine to service. No further action is required by this AD.

(3) If inspection of any of the specified engines or aftermarket stock reveals cylinder assemblies having P/Ns 646680A4 or 646680A5, comply with paragraphs (b), (c), (d), (e), and (f).

(b) Remove the cylinder assemblies (P/N 646680A4 and/or P/N 646680A5) from stock or from the engine, as applicable, and replace the exhaust valve, P/N 626540, with P/N 637781 exhaust valve.

Note.—The exhaust valves, gaskets, and seals necessary to accomplish this modification are listed by P/N in TCM SB M85–3, dated February 4, 1985, and can be purchased through TCM distributors.

(c) Inspect the valve guide for any metal transferred from the valve stem. If present, remove using a ¼–inch diameter by approximately 8–inch long mandrel wrapped with 180 grit crocus paper. Polish the guide only enough to remove the transferred material. After polishing, the guide inside diameter must not exceed the service limit of 0.4405 inch.

(d) Restamp the cylinder assemblies with P/N 646680A7 after replacing the valves and polishing the valve guides, if required.

(e) Return the cylinder assemblies to stock or reinstall on the engine, as applicable.

Note.—Reinstall cylinder assemblies using the procedures outlined in the Maintenance and Overhaul Manual for O–470 and IO–470 Series Aircraft Engine published by TCM under Form No. X30022A.

(f) Make appropriate maintenance record entry showing compliance with this AD.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Teledyne Continental Motors, Aircraft Products Division, P.O. Box 90, Mobile, Alabama 36601. These documents also may be examined at the Office of the Regional Counsel, FAA New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and in the Central File Room of the Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337, weekdays, except Federal holidays, between the hours of 8:00 a.m. and 4:40 p.m.

This amendment becomes effective on April 15, 1985.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

Issued in Burlington, Massachusetts, on March 26, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85–9241 Filed 4–12–85; 4:01 p.m.]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 83–ASW–30; Amdt. 39–5017]

Airworthiness Directives; Sikorsky Model S–76A Helicopters

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires frequent repetitive inspections of the vertical pylon on certain Sikorsky Model S–76A helicopters. An approved helicopter modification is available to strengthen the pylon. Inspections of a strengthened pylon are not necessary. Therefore, this amendment excludes these modified helicopters from further AD inspections.

DATES: Effective April 22, 1985.

The incorporation by reference of certain publications listed in this amendment is approved by the Director of the Federal Register as of April 22, 1985.

Compliance: As prescribed in the body of AD.

ADDRESSES: The applicable customer service notice may be obtained from Sikorsky Aircraft, Division of United Technologies, North Main Street, Stratford, Connecticut 06601.

A copy to the customer service notice is contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Section, ANE–152, Boston Aircraft Certification Office, Federal Aviation Administration,

New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-4711 (46 FR 39052), AD 83-17-07, which currently requires a frequent repetitive inspection for cracks in the vertical pylon front spar caps and web on certain Sikorsky Model S-76A helicopters that have attained 2,400 hours' time in service. After issuing AD 83-17-07, the FAA determined that after a specific and optional modification of the vertical pylon has been accomplished, the repetitive inspections specified in the AD are no longer necessary. Therefore, the FAA is amending Amendment 39-4711 by removing the inspection requirement for those helicopters that have incorporated a specific pylon forward and aft spar enforement modification.

Since this amendent provides for incorporation of an optional design feature which would eliminate an existing repetitive inspection requirement, but does not mandate adoption of the modification, it is found that notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

The FAA determined that this amendment could involve up to 230 aircraft with an estimated cost of $2,800 for each vertical pylon forward and aft spar modification whenever chosen by an operator. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

§ 39.13 [Amended]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4711 (46 FR 39052), AD 83-17-07, by adding the following new paragraph (f):

* * * * *

(f) For helicopters that have been modified in accordance with Sikorsky's Customer Service Notice No. 76-141B, Part 1, paragraphs A-F(1), or Part 2, paragraphs A-E(1), dated January 25, 1985, vertical stabilizer forward and aft spar reinforcement kits, the inspection requirements in paragraphs (a), (b), and (c) are not applicable.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Division of United Technologies, North Main Street, Stratford, Connecticut 06601. These documents also may be examined at the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g), (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective April 22, 1985.

This amendment amends Amendment 39-4711 (46 FR 39052), AD 83-17-07.

Issued in Fort Worth, Texas, on March 19, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-8240 Filed 4-15-85; 9:22 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Parts 300 and 303

Amendment to Rules and Regulations Under the Wool Products Labeling Act of 1939 and Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Notice of final rulemaking.

SUMMARY: Title III of Pub. L. 98-417 amended the Wool Products Labeling Act of 1939 (Wool Act) (15 U.S.C. 68) and the Textile Fiber Products Identification Act (Textile Act) (15 U.S.C. 70) effective December 24, 1984. On November 13, 1984, the Commission published a notice of rulemaking (49 FR 44913) that proposed amendments to the rules and regulations under each Act to reflect the amendments to these Acts. Written comments were invited until December 13, 1984. Approximately seventy-one comments were received and placed on the public record. This notice contains the statement of basis and purpose for the amendments and the text of the rules and regulations as amended.

EFFECTIVE DATE: Title III of Pub. L. 98-417 became effective on December 24, 1984. The amended rules and regulations will become effective on and after May 17, 1985.

ADDRESS: Requests for copies of the amendments to the rules and regulations and the statement of basis and purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Earl Johnson, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, D.C. 20580. Tel: (202) 376-2891.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction
II. The Amended Rules
  A. Country of Origin
    1. Origin of Imported Products
    2. Origin of Domestic Products
  B. Location of the Label
  C. Labeling Packaged Products
  D. Origin in Mail Order Catalogs and Promotional Materials
  E. Other Rule Changes
    1. Wool Act § 300.3 and Textile Act § 303.16.
    2. Wool Act § 300.5 and Textile Act § 303.15.
    3. Wool Act § 300.10.
III. Regulatory Flexibility Act
IV. Paperwork Reduction Act
V. Effective Date

Statement of Basis and Purpose

I. Introduction

The Wool Products Labeling Act of 1939 was enacted by Congress for the expressed purpose of protecting producers, manufacturers, distributors and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted or otherwise manufactured wool products, and for other purposes.[1] Basically, the Act required that each wool product contain a stamp, tag or label showing the fiber content and the name of the manufacturer or the name of someone in the line of distribution of that product.[2]

The Textile Fiber Products Identification Act was enacted by Congress in 1958 with the expressed purpose of protecting producers and consumers against misbranding and false advertising of the fiber content of textile fiber products, and for other purposes.[3] Like the Wool Act, this Act

[1] Pub. L. 850, 76th Cong., 54 Stat. 1128 (1939), 15 U.S.C. 68.

[2] 15 U.S.C. 68b.

[3] Pub. L. 85-897, 72 Stat. 1717 (1958), 15 U.S.C. 70.

basically required each textile product to contain a stamp, tag or label showing the fiber content and the name of the manufacturer or someone in the line of distribution of the product.[4] In addition, the Textile Act required that the label contain the name of the country of origin if the product was imported.[5]

Under each of the Acts the Federal Trade Commission was authorized and directed to issue such rules and regulations as may be necessary for their administration and enforcement.[6] Regulations under the Wool Act were first issued effective July 15, 1941[7] and regulations under the Textile Act were made effective March 3, 1960.[8]

On September 24, 1984, amendments to both Acts were enacted to become effective 90 days thereafter, or on December 24, 1984.[9] The Wool Act was amended to require imported products to be labeled with the country of origin. Both the Textile and Wool Acts were amended to require domestically manufactured products to be labeled with the country of origin. The Senate Committee, in a report on the legislation that became Public Law 98–417, stated that the objective of the legislation was to clarify and improve country of origin labeling requirements for textiles and to increase consumer awareness at the time of purchase.[10]

In addition to the amendments requiring the disclosure of the country of origin, both Acts were amended to require:

(1) The country of origin disclosure to be placed in the neck of garments having necks, or for garments without necks, on a conspicuous spot on the inside or on the outside of the product;

(2) All products to be separately labeled, except hosiery in a retail package;

(3) All packages, in addition to the products, to be labeled unless the packaging is transparent and the individual product label can be seen through the package; and

(4) Mail order catalogs and mail order promotional materials to disclose in the description of each textile and wool product whether the product is made in U.S.A., imported or both.[11]

On November 13, 1984, the Commission published a notice of proposed rulemaking in the **Federal Register**[12] containing alternative procedures for labeling domestic origin and questions relating to the alternatives. The public was asked to comment in writing by December 13, 1984. In response to its request for comment, the Commission received approximately 71 comments and placed these on the public rulemaking record.

II. The Amended Rules

In this section each of the four major aspects of Pub. L. 98–417, i.e., country of origin, location of the label, labeling of packaged products, and country of origin information in printed mail order advertising, is separately discussed. In each subsection, the discussion begins with a description of the statutory changes to the Textile and Wool Acts. The discussion then turns to the proposals and questions raised by the Commission regarding how to implement the changes. Next, the major relevant comments on the issues are discussed. The discussion concludes with an explanation of the regulatory provision adopted by the Commission.

A. Country of Origin

Prior to the passage of Pub. L. 98–417, the disclosure of the country of origin of imported goods was mandated only for goods covered under the Textile Act.[13] For imported goods covered under the Wool Act, the Commission had required the disclosure of foreign origin under Section 5 of the FTC Act.[14] Under Section 5, the Commission also had required disclosure of foreign origin for other imported products such as machinery.[15] Additionally, the Commission had advised importers that a product partially made in a foreign country and partially made in the U.S.A. must have a label disclosing that the product was made in the U.S.A. and that it contained imported components.[16] Prior to the enactment of Pub. L. 98–417 there was no requirement to disclose the country of origin of goods made entirely in the United States, although this information could be voluntarily disclosed.[17]

1. *Origin of Imported Products.* Pub. L. 98–417 amends the Wool Act to require the disclosure of country of origin on labels for imported wool products.[18] As a result, the Wool Act's country of origin disclosure requirement now parallels the requirement under the Textile Act for labeling imported products with the country of origin.[19] The U.S. Customs Service (Customs) of the U.S. Department of Treasury administers two Acts that also require all imported textile and wool products to be labeled with the country of origin.[20] Under those Acts, a single country of origin is used for the purpose of assessing tariffs, enforcing quotas and marking the products. In the past, regulations under the Textile Act have paralleled the regulations issued by Customs.[21]

These final regulations do not change current requirements under the Textile Act for disclosing the country of origin of imported goods.[22] The regulations under the Wool Act for imported wool products have been drafted to implement this statutory amendment to this Act and to parallel the regulations under the Textile Act.[23] Some of the comments on these regulations requested that the Commission adopt a policy statement that the regulatory scheme under the Textile and Wool Acts with respect to country of origin on imported products is intended to be consistent with Customs regulations.[24] Other comments requested that the Commission confirm that the amended rules will not affect the labeling of "807" materials.[25] To the maximum extent consistent with the legislative intent, the Commission intends the final regulations for the disclosure of the country of origin of imported textile and wool products, including those under the 807 program, to be construed in a manner consistent with Customs regulations.[26]

2. *Origin of domestic products.* Pub. L. 98–417 amends both the Textile and Wool Acts to mandate, for the first time, the disclosure of the country of origin for domestic products. The Senate Committee Report on the legislation that eventually became Pub. L. 98–417 states that the amendment adding a requirement for country of origin for

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[4] 15 U.S.C. 70b.
[5] Id.
[6] 15 U.S.C. 68d and 15 U.S.C. 70e.
[7] 6 FR 3426 (1941). Also see 16 CFR Part 300.
[8] 24 FR 4480 (1959). Also see 16 CFR Part 303.
[9] Title III, Pub. L. 98–417, 98 Stat. 1585 (1984).
[10] S. Rep. 529, 98th Cong. 2d Sess. (1984).
[11] *Supra*, Note 9.
[12] 49 FR 44913 (1984).
[13] 16 CFR 303.33 (1984).
[14] 16 CFR 300.25(c) (1984). (see note following this section).
[15] See 16 CFR 15.221.
[16] See 16 CFR 15.282 and 15.307 (1984).
[17] See 16 CFR 15.315 and 15.326 (1984).
[18] Supra, Note 9 at section 304.
[19] 15 U.S.C. 70b.
[20] Tariff Act of 1930, 19 U.S.C. 66 and Agriculture Act of 1956, 7 U.S.C. 1854.
[21] Compare 19 CFR Part 134 (1984) and 16 CFR 303.33 (1984).
[22] 16 CFR 303.33 (1984).
[23] See § 300.25a as amended.
[24] FTC Public Record 204–17–1, Comments, Pages 119, 128, 242, 311.
[25] "807" materials are textile or wool products assembled and sewn together in a foreign country of components that came from the United States. The finished products are given special tariff treatment under Item 807.00 of the Tariff Schedules of the United States, 19 U.S.C. 1202.
[26] See 19 CFR Part 134 and 19 CFR 10.22.

domestic products is intended to be consistent with current FTC country of origin labeling requirements.[27]

The Commission's proposed regulations implementing this statutory amendment codified FTC advisory opinions. The proposed regulations required: (1) Items entirely made in the U.S.A. to be labeled with "Made in USA"; (2) items made in the U.S.A. using imported materials to be labeled with that fact, e.g., "Made in U.S.A. of fabric from ————"; and (3) items made partially in a foreign country and partially in the U.S.A. to disclose those facts, e.g., "Assembled and sewn in U.S.A. of components made in ————." The Commission also published an alternative set of proposed regulations and posed several questions concerning these alternatives.[28]

Comments on the proposed regulations and the alternatives that two of the principal sponsors of the Bill submitted, emphasized that the Senate Committee Report language stated that the amendments were intended to be consistent with existing FTC country of origin labeling requirements. The comments also pointed out that advisory opinions issued by the Commission in the past have required products of mixed domestic and foreign origin to specify that the product was made in the United States of imported materials. The comment further stated that the intent of Congress to codify existing Commission precedent in determining appropriate labeling requirements was also articulated in the hearings conducted by the House Committee.[29]

Several other comments proposed that the Commission's regulations adopt the substantial transformation test, which was proposed by the Commission as an alternative regulation and is used by Customs for determining a single country of origin for an imported product.[30] Still other comments favored using the proposed alternative "Principally made in the USA," which was another of the proposed alternatives published for comment.[31] However, other comments noted that such a statement would be vague and uninformative. The comments also noted that a proposed test for determining where the product was principally made, i.e., where more then 50% of the value was added, would be difficult to use.[32]

Comments filed by the American Fiber Textile Apparel Coalition (AFTAC) recommended that the regulations modify existing precedent slightly, by requiring only a statement of origin such as "Made in USA of imported cloth."[33] Several other comments also favored a simplified disclosure, stating that disclosing the identity of the individual countries, in which imported components of American made goods originated, would entail substantial additional costs to maintain and properly dispense large inventories of labels.[34] Similarly, the comment from two of the principal sponsors of the legislation stated the use of "imported" for goods of mixed origin would not be inconsistent with Congressional intent and would preserve the basic goal of the Act. Their comment recommended adoption of the "Made in USA of imported fabric" approach.[35]

Other comments addressed the Commission's discussion regarding how far back in the manufacturing process the Commission would look to determine whether goods made in the United States contain foreign components. In the proposed regulations the Commission stated that it would look at where the cloth or yarn used in the manufacturing process was made.[36] Some comments recommended that this standard be clarified to indicate that each manufacturer would only have to look back *one* step to determine the country of origin, e.g., yarn manufacturers would look to the fiber source, cloth manufacturers to the yarn source, and garment manufacturers to the cloth or yarn source.[37]

Another group of comments addressed the question raised in the proposed regulations, regarding whether items excluded by Section 12 of the Textile Act, such as trim, thread and linings for structural purposes, should be excluded when determining the origin of goods.[38] The comment filed by two of the principal sponsors of this legislation noted that the Senate Report stated that the labeling provisions of the legislation do not apply to goods not covered by the Textile Act. The comment then stated that given this language, these excluded items should not be included in origin determinations.[39] The same treatment applies to items excluded under a similar exemption provision in the Wool Act.[40]

Comments were also received from the United States Customs Service concerning products partially made in a foreign country and partially made in the United States. Customs commented that its regulations may be interpreted to require that the largest component or part of an unfinished product entering the United States be marked with the foreign country of origin in cases which Customs determines that substantial transformation had taken place abroad.[41] Customs noted that its required label might conflict with the Commission's proposed label requirements, i.e., Customs' label with a single country of origin based on substantial transformation compared to an FTC required label disclosing the foreign and domestic aspects of disclosure.

After considering the comments, the statute, and the legislative history and intent, the Commission has decided to adopt final regulations under the Textile Act and Wool Act that provide for three different categories of domestic origin disclosures.[42] First, for products made entirely in the United States, the regulation provides that the words "Made in USA" or some other clear and equivalent term must be used. Thus, terms such as "Product of USA", "Crafted with pride in USA", "Tailored in USA", "Manufactured in USA," "Made in New York, USA" and other equivalent markings are acceptable.[43]

Second, for products made in the United States using foreign materials, the regulation requires a disclosure that the product was, for example, "Made in USA of imported fabric," or equivalent terms. Finally, for products partially manufactured in the United States and partially manufactured in a foreign country, the regulation requires a disclosure that the product was, for example, "Sewn in USA of imported components" or a similar disclosure.

For all the categories, the Commission is only requiring that the manufacturer go back one manufacturing step to determine origin. Thus, a manufacturer of yarn would look back to the source of its fiber. A manufacturer of cloth would look back to the source of its yarn and the garment manufacturer would look back to the source of the yarn in garments that are knitted or to the

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[27] Supra, Note 10 at section 2.
[28] Supra, Note 12 at page 44917.
[29] Supra, Note 24 at page 54.
[30] Supra, Note 24 at pages 34, 37, 41, 47, 85, 193, 217, 219, 305.
[31] Supra, Note 24 at pages 128, 170, 282, 274, 276.
[32] Supra, Note 24 at pages 119, 272, 298, 303.
[33] Supra, Note 24 at page 311.
[34] Supra, Note 24 at pages 18, 34, 193, 242.
[35] Supra, Note 24 at page 54.
[36] Supra, Note 12, page 44014.
[37] Supra, Note 24 at pages 242, 311, 318.
[38] Supra, Note 12 at question 3.
[39] Supra, Note 24 at page 54.
[40] 15 U.S.C. 68b (d).
[41] Supra, Note 24 at page 189.
[42] See Amendments § 300.25a and § 303.33.
[43] See Amendments § 300.25a(a)(2) and § 303.33(a)(2).

source of the cloth. Additionally, in determining origin, materials that are otherwise excluded under the Acts do not have to be considered.

For the last two categories of products (i.e., those having both domestic and imported components or aspects of manufacturer to be disclosed), the regulations permit the foreign components or manufacturing operation to be disclosed by using the general term imported or similar terms rather than specifying the foreign country or countries involved.

Similarly, in the last two categories, if the country of origin disclosure required by the Customs Service appears in the neck of the product, that disclosure would also satisfy the Commission's requirement that the country of origin be disclosed in the neck of the product.

B. Location of the Label

The Textile and Wool Acts, as amended by Pub. L. 98–417, now state that the required label must be located in the inside neck of a garment that has a neck, midway between the shoulder seams.[44] According to the legislative history, the purpose of this requirement is to standardize the location of this information.[45] Other provisions of the existing regulations state that all information required to be disclosed by the Act must be disclosed in one place.[46] The Commission proposed an amended regulation under each Act that mandated location of the label in the neck of garments with a neck midway between the shoulder seams. Under the proposed regulation labels for other garments would be located in a conspicuous spot on the inside or outside of the garment.[47]

Many comments noted that the center of the back of the neck was the common location for the brand label and that displacement of the brand label could cause a serious hardship on established sales practices.[48] They suggested that the origin label be allowed to be located adjacent to the brand label. Other comments stated that requiring all the information to be placed in the neck also could cause that area to be crowded or be unsightly.[49] The comments suggested permitting the information to be separated, i.e., allowing the country of origin to be disclosed in the neck alone as long as the other required information, e.g., fiber content and name of the company or RN, was located elsewhere on the garment.

Comments submitted by two of the principal sponsors of the legislation indicated the underlying goal of the location requirement was to standardize the location of the country of origin disclosure so that consumers could find the information quickly and easily. The comment further stated that to the extent the location requirement would displace other label information, the legislation's goal would be satisfied if the origin label was placed immediately next to the other label, as long as it was conspicuous to the consumer.[50]

On the basis of the information provided by all the comments, the Commission has added two provisos to the final regulations requiring the country of origin information to be disclosed on a label on the inside center of the neck. The first proviso permits the required disclosures of origin, fiber content, and name of the manufacturer or RN to be placed in close proximity to a label such as a brand label already affixed to the inside center of the neck, providing the required lable remains conspicuous to the consumer. This means that the required label should not be placed so far from the center of the neck that it can not be seen as readily as the label in the center neck position. This approach is also consistent with the Customs Service requirement that origin information be placed in the immediate area of the neck.

A second proviso allows the manufacturer to put all the required information, i.e., origin, fiber content, name or RN of the manufacturer, on a hang tag or a label attached to a conspicuous place on the inside or outside of the garment, provided a label with country of origin appears on the inside neck either in the center or just adjacent to the center label. Thus, the Congressional purpose of providing a standard location for the country of origin is preserved, the crowding of other information in the neck area is alleviated, and the pre-existing requirement that all required information appear on the label together, is retained.[51]

C. Labeling Packaged Products

Prior to the amendments, the Textile Act provided that a label was not required on products in a package if (1) the products were intended for sale to the ultimate consumer in such package, (2) the package had a label containing the required information regarding the products and (3) the information on the label was equally applicable to each product in the package.[52] Pub. L. 98–417 alters this provision to make it only applicable to hosiery products, but extends the exemption to hosiery under the Wool Act as well as the Textile Act.

The Commission's proposed regulations implemented the amended statute by requiring that all products covered by the Textile and Wool Acts, except hosiery in a package as described above, bear the required label.[53] Further, as the amended Acts provide, the proposed regulations required any package of textile or wool products intended for sale to the ultimate consumer to be labeled with the required information unless the information pertaining to the products can be clearly seen through the packaging.[54]

Two comments stated that the term "package" as used in the proposed rules could be mistakenly interpreted to include shipping packages and the dust covers that are used to protect hanging garments until they are put on display by the retailer.[55] Another comment stated that table linens were commonly packaged with all information on the package or on a label that was slipped inside transparent packaging. The comment suggested that an exemption be granted from attaching a label to the product for this type of packaging.[56]

The Commission's final amended regulations emphasize that the type of package that is required to be labeled is one which is intended to remain unbroken and intact until sale to the ultimate consumer.[57] Thus, packaging or wrapping used only for shipping or delivering packages to consumers or packaging that is used as a protective cover until the product is put on display for retail sale is not the type required to be labeled. As to the suggestion that exemptions be granted for other types of packaging, the Commission notes that the Senate Committee report states that the Committee intended the exception to individual product labeling to apply only to hosiery.[58]

D. Origin in Mail Order Catalogs and Promotional Materials

Pub. L. 98–417 amended both the Textile and Wool Acts to mandate that

[44] Supra, Note 9 at section 303 and section 305.
[45] Supra, Note 10 at Section 4.
[46] See 16 CFR 300.10 and 303.16 (1985).
[47] 49 FR 44913, 44916, 44918 (1984).
[48] Supra, Note 24 at pages 20, 80, 82, 133.
[49] Supra, Note 24 at pages 45, 47, 85, 119, 126, 182, 193, 237, 311.
[50] Supra, Note 24 at page 54.
[51] See Amendments at § 300.5(b) and § 303.15(b).
[52] 15 U.S.C. 70b (e).
[53] Supra, Note 9 at section 302 and section 308.
[54] Id.
[55] Supra, Note 24 at pages 219, 266.
[56] Supra, Note 24 at pages 186.
[57] See Amendments § 300.15 and § 303.28.
[58] Supra, Note 10 at Section 3.

each description of a textile or wool product contained in a mail order catalog or in mail order promotional material must contain a clear and conspicuous statement that such product is processed or manufactured in the United States of America, or imported or both.[58]

In addition to implementing this requirement, the Commission's proposed regulations included a definition of "mail order catalog" and "mail order promotional material." [60] The proposed regulations also permitted other words or phrases with the same meaning to be used in place of made in USA, imported or both.[61] Further, the Commission posed two questions concerning this requirement. First, whether the disclosure "Made in USA and imported" should be allowed for goods made in USA with imported materials, and for goods partially made in a foreign country and partially made in the U.S.A.[62] Second, whether general disclaimers should be permitted as alternatives to putting a disclosure in the description of each product.[63]

In response to the first question, a number of comments favored the use of "Made in USA and Imported" for goods made in the U.S.A. out of imported materials, and for goods partially made in the U.S.A. and partially made in a foreign country.[64] Comments from two of the principal sponsors of the legislation noted that using the term "Made in USA and Imported" to convey mixed origin may be confusing to consumers. The comment suggested that the Commission consider requiring a legend in each catalog to explain the meaning of the origin terms until consumers became familiar with their meanings.[65]

In response to the second question, a number of comments supported the use of general disclaimers.[66] Two comments, however, stated that the only way to transmit effectively the origin information of each product was to put it in each description.[67] The comment of the two principal sponsors of the legislation noted that the statutory language expressly requires the origin disclosure to be in each product description that the legislative history supporting this requirement is very clear.[68]

Finally, two comments suggested clarifying the definitions of "mail order catalog" and "mail order promotional material" to make clear that a general advertisement does not fall within the Act simply because some consumer may make purchases by telephone from the store placing the advertisement.[69]

The Commission's final regulations containing definitions of the terms "mail order catalog" and "mail order promotional material" have been clarified to indicate that the statute and regulations cover advertising that solicits the retail buyer to purchase a product by telephone, mail or some other similar method without first examining that product.[70] The requirement to disclose the origin of the product does not apply to regular advertising that is used solely to attract the retail buyer to the store to purchase the product. Additionally, the definitions now make clear that the requirement to disclose origin information in mail order advertising applies only to printed advertising that is going to retail consumers. The requirement does not apply to advertising by manufacturers or wholesalers that is meant only for retailers.

The final regulations also implement the statutory requirement that each description contain a clear and conspicuous statement that the product was made in the U.S.A., imported or both.[71] Although general disclosures of the origin of all products in the mail order catalog or any part thereof are permissible, such general statements or disclaimers do not satisfy the requirements of the Act or the regulations. The regulations also provide that words or phrases other than "Made in USA" or "Imported" may be used provided they have the same meaning. Further, the regulations also indicate that the origin statement used in mail order materials must be consistent with the origin labeling on the product being advertised. For example, a product labeled "Made in USA of imported fabric" could be advertised as "Made in USA and imported," "Made in USA of imported fabric", Made in USA of (X Country) fabric" or by other words of similar meaning; but "Made in USA" alone would be inconsistent and therefore prohibited.

Because the required disclosures in each product description are extremely short and not necessarily self-explanatory, it is important that the permitted terms be used in a clear and consistent manner. For example, "Made in USA and Imported" should be used to indicate partial manufacture in USA and partial manufacture in a foreign country, while "Made in USA or Imported" should be used to reflect that a product was being obtained both from a domestic source and a foreign source. To assist consumers, particularly at the outset, the Commission strongly encourages mail order advertisers to include a legend in their advertising explaining the meaning of their country of origin disclosures.

E. Other Rule Changes

A few minor changes to other regulations under both the Wool and Textile Acts were necessary to ensure all regulations correspond with the requirements of the amendments to these Acts. These minor changes are briefly explained below.

1. *Wool Act § 300.3 and Textile Act § 303.16.* Each of these sections lists the required information that must appear on the label, e.g., fiber content, name or RN of the manufacturer, and in the case of the Textile Act, origin of imported products. In addition to the information previously required, the final regulations now list the origin of domestic products, for the Textile Act, and origin of imported and domestic products under the Wool Act as required information.

2. *Wool Act § 300.5 and Textile Act § 303.15.* Subsection (a) of each of these regulations now makes it clear that every product, whether packaged or unpackaged, must have a label bearing the required information. The exemption for hosiery under certain packaging conditions is contained in subsection (c) of each rule.

3. *Wool Act § 300.10.* This rule contains an example of the information the Act requires to be disclosed. Until now, the Wool Act did not require disclosure of the country of origin. Therefore, the country of origin disclosure has been added to the example in this rule.

III. Regulatory Flexibility Act

In publishing the proposed amendments, the Commission determined that the provisions of the Regulatory Flexibility Act[72] requiring an initial regulatory analysis were not applicable to the amendments because the regulations do not appear to have a significant economic impact on a substantial number of small entities.[73]

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[58] Supra, Note 9 at section 303 and section 305.
[60] Supra, Note 12 at page 44916 and 44918.
[61] Supra, Note 12 at page 44917 and 44918.
[62] Supra, Note 12 at page 44916.
[63] Id.
[64] Supra, Note 24 at pages 170, 266, 318.
[65] Supra, Note 24, at page 54.
[66] Supra, Note 24 at pages 60, 61, 133, 170, 193, 219, 266, 272, 293, 296, 324.
[67] Supra, Note 24 at pages 119, 318.
[68] Supra, Note 24 at pages 54, 346.
[69] Supra, Note 24 at pages 191, 193.
[70] See amendments § 300.1 and § 303.1.
[71] See amendments § 300.25b and § 303.34.
[72] 5 U.S.C. 603, 604.
[73] Supra, Note 12 at Section C.

The Commission noted that the economic costs are primarily statutorily imposed and the Commission's amendments impose few, if any, independent additional costs. In light of the above, it was certified under the provisions of section 3 of the Regulatory Flexibility Act[74] that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

The Commission requested comments on the effects of these amendments and asked for numerical estimates if the amendments were believed to affect costs, profitability, competitiveness, or employment in small entities. The comments, however, appear to address the compliance obligations that have been statutorily, rather than administratively, imposed, noting generally that compliance could be burdensome. On the basis of all the information before it, the Commission has determined the final regulations will not have a significant economic impact on a substantial number of small entities. Consequently, the Commission concludes that a final regulatory flexibility analysis is not required and has filed a certificate with the Small Business Administration to that effect.

IV. Paperwork Reduction Act

In the publication of the proposed amendments, the Commission noted that the amended rules contain provisions that constitute information collection requirements under the Paperwork Reduction Act.[75] Consequently, a supplement to existing clearances was submitted to the Office of Management and Budget.[76] The supplement was approved by OMB on Decemeber 4, 1984.[77]

V. Effective Date

Title III of Pub. L. 98–417 amending the Textile and Wool Labeling Acts became effective on December 24, 1984. Therefore, all textile and wool products covered by these Acts that enter production on or after December 24, 1984 must be labeled in accordance with the amended Acts. All mail order catalogs and mail order promotional materials that are prepared and sent to the printer on or after December 24, 1984 must contain the origin information as required by the amended Acts.

[74] 5 U.S.C. 605(b).

[75] Supra, Note 12 at Section D.

[76] See OMB Clearances Nos. 3084–0052 and 3084–0053.

[77] Notice of Correction Made By OMB to Carl Hevener, Federal Trade Commission, dated Dec. 4, 1984.

These amended regulations become effective on May 17, 1985. They apply to all textile and wool products covered by the Acts that enter production on or after that date and all mail order catalogs and mail order promotional material prepared and sent to the printer on or after that date.

List of Subjects

16 CFR Part 300

Labeling, Textile, Trade practices, Warranties, Wool.

16 CFR Part 303

Labeling, Textile, Trade practices.

Accordingly, it is proposed that Chapter I of 16 CFR Part 300 be amended as follows:

Authority: 15 U.S.C. 68 *et seq.* and 15 U.S.C. 70 *et seq.*

PART 300—RULES AND REGULATIONS UNDER THE WOOL ACT

1. In § 300.1, paragraphs (g), (h) and (i) are added as follows:

§ 300.1 Terms defined.

* * * * *

(g) The term *United States* means the several States, the District of Columbia, and the territories and possessions of the United States.

(h) The terms "mail order catalog" and "mail order promotional material" mean any printed materials used in the direct sale or direct offering for sale of wool products that are distributed or shown to ultimate consumers and solicit the ultimate consumers to purchase such wool products by mail, telephone or some other method without examining the actual product purchased.

(i) The terms label, labels, labeled, and labeling mean the stamp, tag, label, or other means of identification, or authorized substitute therefore, required to be on or affixed to wool products by the Act or Regulations and on which the information required is to appear.

2. In § 300.3 add paragraph (a)(4) as follows:

§ 300.3 Required label information.

(a) * * *

(4) The name of the country where the wool product was processed or manufactured.

* * * * *

3. Section 300.5 is revised to read as follows:

§ 300.5 Required label and method of affixing.

(a) A label is required to be affixed to each wool product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

(b) Each wool product with a neck must have the label affixed to the inside center of the neck midway between the shoulder seams *provided,* however, that the required label may appear in close proximity to another label affixed to the inside center of the neck as long as the required label remains conspicuous to the consumer and, *provided further,* that if the country of origin is disclosed on a label affixed to the inside center of the neck or in close proximity, the label containing the country of origin, fiber content and RN or name of the company may appear in another conspicuous location on the inside or on the outside of the garment. All other wool products shall have the label affixed to a conspicuous spot on the inner side of the product or in a conspocuous place on the outside of the product.

(c) In the case of hosiery products, this section does not require affixing a label to each hosiery product contained in a package if, (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a label bearing the required information for the hosiery products contained in the package, and (3) the information on the label affixed to the package is equally applicable to each wool product contained therein.

4. In § 300.10 paragraph (a) is revised to read as follows:

§ 300.10 Arrangement of label information.

(a) All items or parts of the information required to be shown and displayed in the label of the product, shall be set forth consecutively and separately on the outer surface of the label, in immediate conjunction with each other, and in type or lettering plainly legible and conspicuous, and all parts of the required fiber content information shall appear in type or lettering of equal size and conspicuousness; such as for example:

Distributed by:
John Q. Doe Co., Inc.,
New York, N.Y.
Made of
60% WOOL
40% RECYCLED WOOL
EXCLUSIVE OF ORNAMENTATION
Made in U.S.A.

provided, however, that the required name or registered identification number may appear on the reverse side

of the label if it is plainly legible, conspicuous and accessible. On products as to which sectional disclosure is used, an additional non-deceptive label may be used showing the complete fiber content information with percentages as to a particular section or area of the product and specifying the section or area referred to.

* * * * *

5. Section 300.15 is revised to read as follows:

§ 300.15 Labeling of containers or packaging of wool products.

When wool products are marketed and delivered in a package which is intended to remain unbroken and intact until after delivery to the ultimate consumer, each wool product in the package, except hosiery, and the package shall be labeled with the required information. If the package is transparent to the extent it allows for a clear reading of the required information on the wool product, the package is not required to be labeled.

§ 300.25 [Amended]

6. Section 300.25 is amended by removing the last four words in the title and removing paragraph (c) and the note that follows.

7. Section 300.25a is added as follows:

§ 300.25a Country where wool products are processed or manufactured.

(a) In addition to the other information required by the Act and Regulations:

(1) Each imported wool product shall be labeled with the name of the country where such imported product was processed or manufactured;

(2) Each wool product completely made in the United States of materials that were made in the United States shall be labeled using the term "Made in U.S.A." or some other clear and equivalent term.

(3) Each wool product made in the United States, either in whole or part, of imported materials shall contain a label disclosing these facts; for example:

"Made in USA of imported fabric"

or

"Knitted in USA of imported yarn" and

(4) Each wool product partially manufactured in a foreign country and partially manufactured in the United States shall contain on the label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

"Imported cloth, finished in USA",

or

"Sewn in USA of imported components

or

"Made in (foreign country), finished in USA"

(ii) When the U.S. Customs Service requires an origin label on the unfinished product, the manufacturing processes as required in paragraph (a)(4)(i) of this section or the name of the foreign country required by Customs, for example:

"Made in (foreign country)"

(b) For the purpose of determining whether a product should be marked under paragraphs (a) (2), (3), or (4) of this section, a manufacturer needs to consider the origin of only those materials that are covered under the Act and that are one step removed from that manufacturing process. For example, a yarn manufacturer must identify fiber if it is imported, a cloth manufacturer must identify imported yarn and a household product manufacturer must identify imported cloth or imported yarn for household products made directly from yarn, or imported fiber used as filling for warmth.

(c) The term country means the political entity known as a nation. Except for the United States, colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries, and the name thereof shall be deemed acceptable in designating the country where the wool product was processed or manufactured unless the Commission shall otherwise direct.

(d) The country where the imported wool product was principally made shall be considered to be the country where such wool product was processed or manufactured. Further work or material added to the wool product in another country must effect a basic change in form in order to render such other country the place where such wool product was processed or manufactured.

(e) The English name of the country where the imported wool product was processed or manufactured shall be used. The adjectival form of the name of the country will be accepted as the name of the country where the wool product was processed or manufactured, provided the adjectival form of the name does not appear with such other words so as to refer to a kind of species of product. Variant spellings which clearly indicate the English name of the country, such as Brasil for Brazil and Italie for Italy, are acceptable. Abbreviations which unmistakenly indicate the name of a country, such as *Gt. Britain* for *Great Britain*, are acceptable.

(f) Nothing in this Rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.

8. Section 300.25b is added as follows:

§ 300.25b Country of origin in mail order advertising.

When a wool product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE ACT

1. In § 303.1, paragraph (u) is added as follows:

§ 303.1 Terms defined.

* * * * *

(u) The terms "mail order catalog" and "mail order promotional material" mean any printed materials used in the direct sale or direct offering for sale of textile products that are distributed or shown to ultimate consumers and solicit the ultimate consumers to purchase such textile products by mail, telephone or some other method without examining the actual product purchased.

2. Section 303.15 is revised to read as follows:

§ 303.15 Required label and method of affixing.

(a) A label is required to be affixed to each textile product and, where required, to its package or container in a secure manner. Such label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer.

(b) Each textile fiber product with a neck must have the label affixed to the inside center of the neck midway between the shoulder seams *provided,* however, that the required label may appear in close proximity to another label affixed to the inside center of the neck as long as the required label remains conspicuous to the consumer and, *provided further,* that if the country of origin is disclosed on a label affixed to the inside center of the neck or in close proximity, the label containing the country of origin, fiber content, and RN

or name of the company may appear in another conspicuous location on the inside or on the outside of the garment. All other textile products shall have the label affixed to a conspicuous spot on the inner side of the product or in a conspicuous place on the outside of the product.

(c) In the case of hosiery products, this section shall not be construed as requiring the affixing of a label to each hosiery product contained in a package if, (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a label bearing the required information for the hosiery products contained in the package, and (3) the information on the label affixed to the package is equally applicable to each textile fiber product contained therein.

3. In § 303.16, paragraph (a)(3) is revised to read as follows:

§ 303.16 Arrangement and disclosure of information on labels.

(a) * * *

(3) The name of the country where such product was processed or manufactured as provided for in Rule 33.

* * * * * *

4. Section 303.28 is revised to read as follows:

§ 303.28 Products contained in packages.

When textile products are marketed and delivered in a package which is intended to remain unbroken and intact until after delivery to the utlimate consumer, each textile product in the package, except hosiery, and the package shall be labeled with the required information. If the package is transparent to the extent it allows for a clear reading of the required information on the textile product, the package is not required to be labeled.

5. In § 303.33, paragraph (a) is revised, paragraphs (b) through (e) are redesignated (c) through (f), a new paragraph (b) is added, and newly redesignated paragraph (c) is revised to read as follows:

§ 303.33 Country where textile fiber products are processed or manufactured.

(a) In addition to the other information required by the Act and Regulations:

(1) Each imported textile fiber product shall be labeled with the name of the country where such imported product was processed or manufactured;

(2) Each textile fiber product completely made in the United States of materials that were made in the United States shall be labeled using the term "Made in U.S.A." or some other clear and equivalent term.

(3) Each textile fiber product made in the United States, either in whole or part, of imported materials shall contain a label disclosing these facts; for example:

"Made in USA of imported fabric"

or

"Knitted in USA of imported yarn" and

(4) Each textile product partially manufactured in a foreign country and partially manufactured in the United States shall contain on the label the following information:

(i) The manufacturing process in the foreign country and in the USA; for example:

"Imported cloth, finished in USA",

or

"Sewn in USA of imported components",

or

"Made in (foreign country), finished in USA"

(ii) When the U.S. Customs Service requires an origin label on the unfinished product, the manufacturing processes as required in paragraph (a)(4)(i) of this section or the name of the foreign country required by Customs, for example:

"Made in (foreign country)"

(b) For the purpose of determining whether a product should be marked under paragraphs (a) (2), (3), or (4) of this section, a manufacturer needs to consider the origin of only those materials that are covered under the Act and that are one step removed from that manufacturing process. For example, a yarn manufacturer must identify fiber if it is imported, a cloth manufacturer must identify imported yarn and a household product manufacturer must identify imported cloth or imported yarn for household products made directly from yarn, or imported fiber used as filling for warmth.

(c) The term country means the political entity known as a nation. Except for the United States, colonies, possessions or protectorates outside the boundaries of the mother country shall be considered separate countries, and the name thereof shall be deemed acceptable in designating the country where the textile fiber product was processed or manufactured unless the Commission shall otherwise direct.

* * * * * *

6. Section 303.34 is revised to read as follows:

§ 303.34 Country of origin in mail order advertising.

When a textile fiber product is advertised in any mail order catalog or mail order promotional material, the description of such product shall contain a clear and conspicuous statement that the product was either made in U.S.A., imported, or both. Other words or phrases with the same meaning may be used. The statement of origin required by this section shall not be inconsistent with the origin labeling of the product being advertised.

Dated: April 12, 1985.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-8282 Filed 4-15-85; 10:46 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 444 and 448

[Docket No. 80N-0012; DESI Nos. 9824 and 10826]

Oligosaccharide and Peptide Antibiotic Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by (1) revising monographs to provide public standards for two combination antiinfective dermatological products by increasing the minimal levels of bacitracin and polymyxin B, deleting neomycin sulfate, and providing for over-the-counter use, and (2) adding new monographs to provide public standards for two additional combination dermatological products that heretofore have been released pending a final determination of effectiveness. The products were subject to the Drug Efficacy Study Implementation (DESI) program; reformulations covered by these public standards have been found to be effective.

DATES: Effective April 17, 1985; comments, notice of participation, and requests for hearing by May 17, 1985; data, information, and analyses to justify a hearing by June 17, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the Federal Register, FDA is announcing the effectiveness classification and marketing conditions for a reformulation of one prescription antiinfective/corticosteroid dermatological product (DESI 10628). In another notice to be published in the near future, FDA is withdrawing approval of three prescription topical antiinfective products (DESI 8024). The three prescription products have been reformulated and will continue to be marketed for over-the-counter (OTC) use. As part of these actions, the agency is, in this final rule, amending the antibiotic drug regulations Parts 444 and 448 (21 CFR Parts 444 and 448) to provide accepted standards for these four reformulated products.

I. Three Reformulations for OTC Use

The product described in one of the new monographs in this document, § 444.5421, is a reformulation of a cream product that originally contained neomycin sulfate, polymyxin B sulfate, a gramicidin. The products described in the revisions for §§ 448.513d and 448.513e are reformulations of aerosol and powder products that originally contained neomycin sulfate, polymyxin B sulfate, and bacitracin zinc. The original formulations of these three products, marketed for prescription use, were initially classified in 1972 as possibly effective, along with other topical antiinfective products evaluated in the DESI program (37 FR 11281; June 6, 1972). The products were allowed to remain on the market while data submitted for the ongoing review of OTC drugs were evaluated.

On July 9, 1982, FDA published a notice of proposed rulemaking to establish conditions under which OTC topical first aid antibiotic drug products are generally recognized as safe and effective and not misbranded (47 FR 29966). Based on recommendations of the Advisory Review Panel on OTC Topical Antimicrobial II Drug Products and on public comments and additional data, the agency concluded that certain antibiotics can be used safely and effectively, without a prescription, as first aid to help prevent infection in minor cuts, scrapes, and burns.

In the July 9, 1982 notice, FDA specified concentrations considered acceptable for the first aid antibiotic ingredients, including neomycin sulfate, bacitracin and bacitracin zinc, and polymyxin B sulfate. The agency proposed that two or three of the listed active ingredients may be combined provided the combination meets certain conditions. FDA also proposed labeling for such OTC "first aid antibiotics."

The products described in the new monograph § 444.5421 and in the revisions for §§ 448.513d and 448.513e meet the requirements for OTC topical first aid antibiotics that were proposed in the July 9, 1982 notice. The concentrations of the antibiotic ingredients are revised in accordance with specifications for topical antimicrobial drug products for OTC use (proposed § 333.110). Gramicidin is not included in the combination described in § 444.5421 because there is insufficient evidence for its safety and effectiveness, either alone or in combination. Neomycin sulfate is removed from the aerosol and topical powder combinations described in existing §§ 448.513d and 448.513e because of concerns about the safety of administering neomycin in these dosage forms over extensive burns or wounds, and because of the lack of evidence of their effectiveness. Approval of the previously marketed prescription formulations of these three products will be withdrawn in a future notice.

II. A Reformulation for Prescription Use

The prescription product described in the other new monograph, § 444.542k, is a reformulation of a cream product that originally contained neomycin sulfate, polymyxin B sulfate, gramicidin, and hydrocortisone. The original formulation was initially classified in the 1972 DESI notice as possibly effective (37 FR 12856; June 29, 1972). On March 28, 1984, FDA reclassified certain topical antiinfective combination drugs containing neomycin sulfate and a corticosteroid as effective for treatment of corticosteroid-responsive dermatoses (49 FR 11888). In a notice published in the Federal Register of May 4, 1984, the reclassification was extended to an ointment product containing neomycin sulfate, bacitracin zinc, polymyxin B sulfate, and hydrocortisone on the ground that the additional antibiotics broaden the antimicrobial spectrum with little, if any, increase in risk (49 FR 19147). Reformulating the combination cream product by removing gramicidin permits FDA to reclassify it as effective on the same basis as the combination ointment product. That reclassification is published elsewhere in this issue of the Federal Register.

III. Amendments to the Antibiotic Drug Regulations

The agency has determined pursuant to 21 CFR 25.24(b)(23) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 444

Antibiotics (oligosaccharide).

21 CFR Part 448

Antibiotics (peptide).

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Chapter I of Title 21 of the Code of Federal Regulations is amended in Parts 444 and 448 as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

1. By adding new § 444.542k to read as follows:

§ 444.542k Neomycin sulfate-polymyxin B sulfate-hydrocortisone acetate cream.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfate-polymyxin B sulfate-hydrocortisone acetate cream contains, in each gram, neomycin sulfate equivalent to 3.5 milligrams of neomycin, polymyxin B sulfate equivalent to 10,000 units of polymyxin B, and 5.0 milligrams of hydrocortisone acetate in a suitable and harmless vehicle. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The neomycin sulfate used in making the batch for potency, loss on drying, pH, and identify.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, and identity.

(*c*) The batch for neomycin content and polymyxin B content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The neomycin sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 6 immediate containers.

(b) *Tests and methods of assay; potency*—(1) *Neomycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Transfer an accurately weighed representative portion of the sample into a high-speed glass blender jar containing 1.0 milliliter polysorbate 80 and sufficient 0.1 *M* potassium phosphate buffer, pH 8.0 (solution 3), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Dilute an aliquot of the stock solution with solution 3 to the reference concentration of 1.0 microgram of neomycin per milliliter (estimated).

(2) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, except add to each concentration of the polymyxin B standard response line a quantity of neomycin to yield the same concentration of neomycin as that present when the sample is diluted to contain 10 units of polymyxin B per milliliter. Prepare the sample for assay as follows: Transfer an accurately weighed representative portion of the sample into a high-speed glass blender jar containing 1.0 milliliter polysorbate 80 and sufficient 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Dilute an aliquot of the stock solution with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

2. By adding new § 444.542l to read as follows:

§ 444.542l Neomycin sulfate-polymyxin B sulfate cream.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfate-polymyxin B sulfate cream is a cream containing, in each gram, neomycin sulfate equivalent to 3.5 milligrams of neomycin and polymyxin B sulfate equivalent to 10,000 units of polymyxin B in a suitable and harmless vehicle. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter.

(2) *Labeling*—(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark;

(*b*) The name and quantity of each active ingredient contained in the drug; and

(*c*) An expiration date that conforms to the requirements prescribed by § 432.5(a)(3) of this chapter.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate directions under which the layman can use the drug safely and efficaciously.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The neomycin sulfate used in making the batch for potency, loss on drying, pH, and identity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, and identity.

(*c*) The batch for neomycin content and polymyxin B content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The neomycin sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of six immediate containers.

(b) *Tests and methods of assay; potency*—(1) *Neomycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Transfer an accurately weighed representative portion of the sample into a high-speed glass blender jar containing 1.0 milliliter polysorbate 80 and sufficient 0.1 *M* potassium phosphate buffer, pH 8.0 (solution 3), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Dilute an aliquot of the stock solution with solution 3 to the reference concentration of 1.0 microgram of neomycin per milliliter (estimated).

(2) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, except add to each concentration of the polymyxin B standard response line a quantity of neomycin to yield the same concentration of neomycin as that present when the sample is diluted to contain 10 units of polymyxin B per milliliter. Prepare the sample for assay as follows: Transfer an accurately weighed portion of the sample into a high-speed glass blender jar containing 1.0 milliliter polysorbate 80 and sufficient 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Dilute an aliquot of the stock solution with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

PART 448—PEPTIDE ANTIBIOTIC DRUGS

1. In § 448.513d, by revising paragraphs (a) and (b)(1) to read as follows:

§ 448.513d Bacitracin zinc-polymyxin B sulfate topical powder.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin zinc-polymyxin B sulfate topical powder contains bacitracin zinc and polymyxin B sulfate in a suitable and harmless base. Each gram contains 500 units of bacitracin and 10,000 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 7.0 percent. It contains not more than an average of 10 microorganisms per gram. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

(2) *Labeling*—(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(*c*) An expiration date that conforms to the requirements prescribed by § 432.5(a)(3) of this chapter.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate

directions under which the layman can use the drug safely and efficaciously.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of test and assays on:

(*a*) The bacitracin zinc used in making the batch for potency, loss on drying, pH, zinc content, and identity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, and identity.

(*c*) The batch for bacitracin content, polymyxin B content, moisture, and a microorganism count.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The bacitracin zinc used in making the batch: 10 packages, each containing approximately 1.0 gram.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 1.0 gram.

(*c*) The batch: A minimum of 12 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Bacitracin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Wash an accurately weighed sample (usually 2 grams) into a 100-milliliter volumetric flask with 0.01N hydrochloric acid. Dilute to volume with 0.01N hydrochloric acid. Further dilute an aliquot with solution 1 to the reference concentration of 1.0 unit of bacitracin per milliliter (estimated).

Note.—The final sample solution must contain the same amount of hydrochloric acid as the reference concentration of the working standard.

(ii) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed representative portion of the sample (usually 1 gram) in 20 milliliters of sterile distilled water. Wash into an appropriate-sized volumetric flask with 10 percent potassium phosphate buffer, pH 6.0 (solution 6). Further dilute with solution 6 to the reference concentration of 10 units of polymyxin B per milliliter (estimated).

* * * * *

2. In § 448.513e, by revising paragraphs (a) and (b)(1) to read as follows:

§ 448.513e Bacitracin zinc-polymyxin B sulfate topical aerosol.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin zinc-polymyxin B sulfate topical aerosol is bacitracin zinc, polymyxin B sulfate in a suitable and harmless vehicle, packaged in a pressurized container with suitable and harmless inert gases. Each container contains 10,000 units of bacitracin and 200,000 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. It contains not more than an average of 10 microorganisms per container. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter.

(2) *Labeling*—(i) On the label of the immediate container and on the outside wrapper or container, if any:

(*a*) The batch mark.

(*b*) The name and quantity of each active ingredient contained in the drug.

(*c*) An expiration date that conforms to the requirements prescribed by § 432.5(a)(3) of this chapter.

(ii) On the label of the immediate container or other labeling attached to or within the package, adequate directions under which the layman can use the drug safely and efficaciously.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The bacitracin zinc used in making the batch for potency, loss on drying, pH, zinc content, and identity.

(*b*) The polymyxin B sulfate used in making the batch for potency, loss on drying, pH, and identity.

(*c*) The batch for bacitracin content, polymyxin B content, moisture, and a microorganism count.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The bacitracin zinc used in making the batch: 10 packages, each containing approximately 1.0 gram.

(*b*) The polymyxin B sulfate used in making the batch: 10 packages, each containing approximately 1.0 gram.

(*c*) The batch: A minimum of 12 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Sample preparation.* Spray, as directed in the labeling, the entire contents of each container to be tested into a separate 2-liter Erlenmeyer flask, held in a horizontal position. Add 500 milliliters of 0.01N hydrochloric acid and shake to dissolve the contents. Immediately remove aliquots of this sample solution and proceed as directed paragraph (b)(1)(i)(*a*) and (*b*) of this section for each antibiotic to be tested

(*a*) *Bacitracin content.* Proceed as directed in § 436.105 of this chapter, diluting an aliquot of the sample solution with 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to the reference concentration of 1.0 unit of bacitracin per milliliter (estimated).

Note.—The final sample solution must contain the same amount of hydrochloric acid as the reference concentration of the working standard.

(*b*) *Polymyxin B content.* Proceed as directed in § 436.105 of this chapter, diluting an aliquot of the sample solution with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to the reference concentration of 10.0 units of polymyxin B per milliliter (estimated).

(ii) [Reserved]

* * * * *

This final rule announces standards that FDA has accepted in a request for approval of antibiotic drugs. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective April 17, 1985. However, interested persons may, on or before May 17, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before May 17, 1985, a written notice of participation and request for hearing, and (2) on or before June 17, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the

action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of the order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: April 17, 1985.

(Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357))

Dated: April 9, 1985.

Paul Parkman,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-9174 Filed 4-16-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 728

Medical and Dental Care for Eligible Persons at Navy Medical Department Facilities

AGENCY: Naval Medical Command, Navy, DOD.

ACTION: Final rule.

SUMMARY: The Naval Medical Command has promulgated this regulation to delineate and promulgate the policies and procedures for providing medical and dental care to eligible persons at Navy Medical Department facilities. This promulgation enumerates those persons eligible to receive medical and dental care at Navy Medical Department facilities and prescribes the extent and conditions under which medical and dental care may be provided such persons. It updates a Department of the Navy instruction for conformity with Department of Defense directives.

EFFECTIVE DATE: October 11, 1984.

ADDRESS: Commander, Naval Medical Command, Washington, DC 20372-5120.

FOR FURTHER INFORMATION CONTACT: Herbert L. Pelham, Program Analyst, Naval Medical Command, Washington, DC 20372-5120, 202-653-1179.

List of Subjects in 32 CFR Part 728

Dental health, Government employees, Health care, Military personel.

W.M. McDermott, Jr.,

Commander, Naval Medical Command.

Accordingly, 32 CFR Part 728 is revised to read as follows:

PART 728—MEDICAL AND DENTAL CARE FOR ELIGIBLE PERSONS AT NAVY MEDICAL DEPARTMENT FACILITIES

Subpart A—General

Sec.
728.1 Mission of Navy Medical Department Facilities.
728.2 Definitions.
728.3 General Restrictions and Priorities.
728.4 Policies.

Subpart B—Members of the Uniformed Services on Active Duty

728.11 Eligible Beneficiaries.
728.12 Extent of Care.
728.13 Application for Care.

Subpart C—Members of Reserve Components, Reserve Officers' Training Corps, Navy and Marine Corps Officer Candidate Programs, and National Guard Personnel

728.21 Navy and Marine Corps Reservists.
728.22 Members of Other Reserve Components of the Uniformed Services.
728.23 Reserve Officers' Training Corps (ROTC).
728.24 Navy and Marine Corps Officer Candidate Programs.
728.25 Army and Air Force National Guard Personnel.

Subpart D—Retired Members and Dependents of the Uniformed Services

728.31 Eligible Beneficiaries.
728.32 Health Benefits Authorized.
728.33 Application for Care.
728.34 Nonavailability Statement (DD Form 1251).
728.35 Care Beyond the Capabilities of a Naval MTF.

Subpart E—Members of Foreign Military Services and Their Dependents

728.41 General Provisions.
728.42 NATO.
728.43 Members of Other Foreign Military Services and Their Dependents.
728.44 Members of Security Assistance Training Programs, Foreign Military Sales, and Their ITO Authorized Dependents
728.45 Civilian Components (Employees of Foreign Military Services) and Their Dependents.

Subpart F—Beneficiaries of Other Federal Agencies

Sec.
728.51 General Provisions—the "Economy Act".
728.52 Veterans Administration Beneficiaries (VAB).
728.53 Department of Labor, Office of Workers' Compensation Programs (OWCP) Beneficiaries.
728.54 U.S. Public Health Services (USPHS), Other Than Members of the Uniformed Services.
728.55 Department of Justice Beneficiaries.
728.56 Treasury Department Beneficiaries.
728.57 Department of State and Associated Agencies.
728.58 Federal Aviation Administration (FAA) Beneficiaries.
728.59 Peace Corps Beneficiaries.
728.60 Job Corps and Volunteers in Service to America (VISTA) Beneficiaries.
728.61 Medicare Beneficiaries.

Subpart G—Other Persons

728.71 Ex-Service Maternity Care.
728.72 Applicants for Enrollment in the Senior Reserve Officers' Training Program.
728.73 Applicants for Enlistment or Reenlistment in the Armed Forces, and Applicants for Enlistment in the Reserve Components.
728.74 Applicants for Appointment in the Regular Navy or Marine Corps and Reserve Components, Including Members of the Reserve Components Who Apply for Active Duty.
728.75 Applicants for Cadetship at Service Academies and Applicants for the Uniformed Services University of Health Sciencies (USUHS).
728.76 Naval Home Residents.
728.77 Secretarial Designees.
728.78 American Red Cross Representative and Their Dependents.
728.79 Employees of Federal Contractors and Subcontractors.
728.80 U.S. Government Employees.
728.81 Other Civilians.
728.82 Individuals Whose Military Records are Being Considered for Correction.
728.83 Persons in Military Custody and Nonmilitary Federal Prisoners.

Subpart H—Adjuncts to Medical Care

728.91 General.
728.92 Policy.
728.93 Chart of Adjuncts.

Subpart I—Reservists—Continued Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

728.101 General.
728.102 Care From Other Than Federal Sources.

Authority: The provisions of this Part 728 issued under secs. 5031, 6011, 70A Stat. 278, 375, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301; 10 U.S.C. 5031, 6011. Interpret or apply R.S. 4807, sec. 4, 57 Stat. 81, secs. 5537, 6148, 6201-6203, 70A Stat. 319, 383, 387, secs. 1071-1088, 72 Stat. 1445-1450, as amended; 10 U.S.C. 1071-1088, 2104, 2107, 2109, 2110, 5537, 6148, 6201-6203; 22 U.S.C. 1158, 2357, 2504,

2505, 2507, 2522; 5 U.S.C. 8101; 24 U.S.C. 15, 34, 35; 42 U.S.C. 249, 253.

Subpart A—General

§ 728.1 Mission of Navy Medical Department Facilities.

The primary mission of Navy Medical Department facilities is to provide medical and dental care for members of the Navy and Marine corps and for members of the other uniformed services who may be sick, injured, or disabled. In addition, Navy Medical Department facilities may provide medical and dental care to dependents of military personnel, to members not on active duty, and to such other persons as authorized by law. U.S. Navy regulations, and Department of Defense directives. These authorizations also provide that Navy Medical Department facilities may sometimes be called upon to furnish medical and dental care, pursuant to the laws of humanity or principles of international courtesy, to civilians and to other persons not otherwise entitled to medical and dental care.

§ 728.2 Definitions.

Unless otherwise qualified herein, the following terms when used throughout this part are defined as follows:

(a) *Active Duty.* Full-time duty in the active military service of the United States. This includes duty on the active list; full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active Duty for Training.* Duty performed in the active military service by a member of the Reserve Components under orders by competent Federal authority for a specified period which provides for automatic reversion to inactive duty when the period of active duty is completed. Includes not only the period of time from reporting to the time of release but also the time of travel to and from the duty station, not in excess of the allowable constructive travel time.

(c) *CHAMPUS.* Civilian Health and Medical Program of the Uniformed Services.

(d) *Catchment Area.* The geographical area surrounding each USMTF as specified in the Military Health Services System (MHSS) Catchment Area Directory except for those portions listed in the Directory as excluded because of geographic barriers.

(e) *Chronic Condition.* Any medical or surgical condition marked by long duration or frequent recurrence—or likely to be so marked—which, in light of medical information available, will ordinarily resist efforts to eradicate it completely; a condition which needs health benefits to achieve or maintain stability that can be provided safely only by or under the supervision of physicians, nurses, or persons authorized by physicians.

(f) *Civilian Employee.* A nonmilitary individual employed by the Federal Government and paid from nonappropriated or appropriated funds.

(g) *Cooperative Care.* Medical services and supplies for which CHAMPUS will share in the cost under circumstances specified in § 728.4(aa), even though the patient remains under the primary control of a USMTF.

(h) *Cooperative Care Coordinator.* Designated individual in a CHAMPUS contractor's office who serves as the point of contact for health benefits advisors on all matters related to supplemental-cooperative care or services provided or ordered for CHAMPUS-eligible beneficiaries by USMTF providers.

(i) *Dental Care.* Treatment which will prevent or remedy diseases, disabilities, and injuries to the teeth, jaws, and related structures and thereby contribute to maintenance or restoration of the dental health of an individual.

(j) *Dependent.* (1) *General.* When used throughout this part in reference to other than those individuals enumerated in § 728.2(j)(2), "dependent" is defined as an individual who relies for support on an individual who is eligible for services provided for in this part or qualifies for care in naval MTFs through law or some other legal agreement.

(2) *Members or Former Members, Of.* A person who bears any of the relationships in § 728.2(j) (3), (4), (5), and (6) to:

(i) An active duty or retired member of a uniformed service.

(ii) A deceased individual who, at the time of death, was an active duty or retired member of a uniformed service.

(iii) A member or former member who:

(A) Is, or was at the time of death, entitled to retired or retainer pay or equivalent pay; or

(B) Died before attaining age 60 and at the time of death:

(*1*) Would have been eligible for retired pay under title 10 U.S.C. 1331–1337 but for the fact that he or she was under 60 years of age, and

(*2*) Had elected to participate in the Survivor Benefit Plan established under title 10 U.S.C. 1447–1455, except that

(*3*) Such dependents as enumerated in § 728.2(j) (3), (4), (5), and (6) may not be rendered care derived from the sponsor's entitlement under title 10 U.S.C. 1331–1337 until the date on which such members or former members would have attained age 60.

(3) *Spouse.* (i) Wife or husband regardless of whether actually dependent on the active duty or retired member.

(ii) Unremarried widow or widower, regardless of whether actually dependent on the active duty or retired member at the time of his or her death.

(4) *Child.* (i) A legitimate child, an illegitimate child of a male member whose paternity has been judicially determined, an illegitimate child of record of a female member, an adopted child, or a legitimate stepchild, who is unmarried and—

(A) Under 21 years of age regardless of whether dependent on the active duty of retired member; or

(B) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday and is, or was at the time of death of the sponsor, dependent on the sponsor for over one-half of his or her support; or

(C) Twenty-one or 22 years of age and pursuing a full-time course of education that is approved by the Secretary of Defense or Secretary of Health and Human Services (formerly HEW), as applicable, or that is approved by a State agency pursuant to chapter 32 (Post-Vietnam Era Veterans' Educational Assistance), chapter 34 (Veterans' Educational Assistance), or chapter 35 (Survivors' and Dependents' Educational Assistance) of title 38 U.S.C., for the purposes of those chapters, and is, or was at the time of death of the active duty or retired member, dependent on such member for over one-half of his or her support.

(ii) An unmarried illegitimate child (not cover in § 728.2(j)(4)(i)) or illegitimate stepchild who is, or was at the time of death of the active duty or retired member, dependent on the member or retired member for more than one-half of his or her support; residing with or in a home provided by the member parent or the parent who is the spouse of the member or retired member, and is—

(A) Under 21 years of age; or

(B) Twenty-one years of age or older but incapable of self-support because of a mental or physical incapacity that existed prior to the individuals's 21st birthday; or

(C) Twenty-one or 22 years of age an pursuing a full-time course of education that is approved in accordance with § 728.2(j)(4)(i)(C).

(5) *Former Spouse.* (i) An unremarried former spouse of a member or former

member whose divorce became final on or after 1 February 1983 and who:

(A) On the date of the final decree of divorce, dissolution, or annulment had been married to the member or former member for a period of a least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and

(B) Does not have medical coverage under an employer-sponsored health plan.

(ii) A former spouse of a deceased retired sponsor who meets the requirements of § 728.2(j)(5)(i) may be provided medical and dental care as a dependent when the sponsor:

(A) Died before attaining age 60, and

(B) At the time of his or her death would have been eligible for retired pay under chapter 67 of title 10 U.S.C. but for the fact that such sponsor was under 60 years of age.

(C) Regardless of the fact that such sponsor did not elect to participate in the Survivor Benefit Plan established under title 10 U.S.C. 1447–1455.

(6) *Parent.* Natural parent, or bona fide adoptive parent, parent-in-law, step-parent, or step-parent-in-law who is, or was at the time of death of the active duty or retired member, dependent on the member or retired member for over one-half of such parent's support and residing in a dwelling place provided or maintained by the member. (Does not include a person who stood in loco parentis.)

(k) *Designated USTFs.* The following former U.S. Public Health Service (USPHS) facilities continue to operate as "designated USTFs" for the purpose of rendering medical and dental care to active duty members and all CHAMPUS-eligible individuals.

(1) *Hospitals.* (i) Wyman Park Health Systems, 3100 Wyman Park Drive, Baltimore, MD 21211, Telephone (301) 338–3000.

(ii) Allston-Brighton Aid and Health Group, 77 Warren Street, Boston, MA 02135, Telephone (617) 782–3400.

(iii) Hospital of St. John, 2050 Space Park Drive, Nassua Bay, TX 77058, Telephone (713) 757–7430.

(iv) Seattle Public Health Hospital 1131 14th Avenue South, Seattle, WA 98144, Telephone (206) 324-7650.

(v) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 103304, Telephone (212) 447–3010.

(2) *Clinics.* (i) Coastal Health Service, 331 Veranda, Street, Portland, ME 04103, Telephone (207) 780–3210.

(ii) Lutheran Medical Center, Downtown Health Care Services, New Post Office Bldg., W. 3rd St. & Prospect Avenue, Cleveland, OH 44113, Telephone (216) 522–4524.

(iii) St. Mary's Hospital, 440 Avenue North, Galveston, TX 77550, Telephone (713) 757–7430.

(iv) St. Joseph Ambulatory Care Center, 204 U.S. Customs Bldg., 701 San Jacinto Street, Houston, TX 77002, Telephone (713) 757–7430.

(v) Family Practice Center, Port Arthur, TX 77640, Telephone (713) 757–7430.

(l) *Disability Separation.* Temporary or permanent retirement and discharge for physical disability, with or without entitlement to receive severance pay.

(m) *Elective Care.* Medical, surgical, or dental care desired or requested by the individual or recommended by the physician or dentist which, in the opinion of other cognizant professional authority, can be performed at another place or time without jeopardizing life, limb, health, or well-being of the patient, e.g., surgery for cosmetic purposes and nonessential dental prosthetic appliances.

(n) *Emergency Care.* Medical treatment of patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention to prevent undue suffering or loss of life or limb and dental treatment of painful or acute conditions.

(o) *Health Benefits Advisors (HBA).* Designated individuals at naval facilities who are responsible for advising and assisting beneficiaries covered herein concerning medical and dental benefits in uniformed services facilities and under CHAMPUS. They also provide information regarding Veterans Administration, Medicare, MEDICAID, and such other local health programs as are known to be available to beneficiaries (see § 728.4(o)).

(p) *Hospitalization.* Inpatient care in a medical treatment facility.

(q) *Inactive Duty Training (drill).* A period of training for Reserve personnel on inactive duty which includes not only that time between muster and dismissal, but also the travel to or from such drills, not in excess of the allowable constructive travel time.

(r) *Indigent.* A person who has insufficient funds or income to meet the cost of necessary medical care and services is considered to be indigent (medically).

(s) *Legitimate Care.* Those medical and dental services legally performed and not contrary to governing statutes.

(t) *Maximum Hospital Benefit.* That point during inpatient treatment when the patient's progress appears to have stabilized and it can be anticipated that additional hospitalization will not directly contribute to any further substantial recovery. A patient who will continue to improve slowly over a long period of time without specific therapy or medical supervision, or with only a moderate amount of treatment on an outpatient basis, may be considered as having attained maximum hospital benefit.

(u) *Medical Care.* Treatment required to maintain or restore the health of an individual. Medical care may include, but is not limited to the furnishing of inpatient treatment, outpatient treatment, nursing service, medical examinations, immunizations, drugs, subsistence, transportation, and other adjuncts such as prosthetic devices, spectacles, hearing aids, orthopedic footwear, and other medically indicated appliances or services.

(v) *Medically Inappropriate.* A situation arising when denial of a Nonavailability Statement would result in significant risk to the health of a patient.

(w) *Medically Necessary.* The level of services and supplies (i.e., frequency, extent, and kinds) adequate for the diagnosis and treatment of illness or injury, including maternity care. Medically necessary includes the concept of appropriate medical care.

(x) *Medical Treatment Facility (MTF).* Any duly authorized medical department center, hospital, clinic, or other facility that provides medical, surgical, or dental care.

(y) *Member of a Uniformed Service.* A person appointed or enlisted in, or conscripted into a uniformed service.

(z) *Military Patient.* A member of a United States uniformed service on active duty, active duty for training, or inactive duty training (drill), or an active duty member of the armed forces of a foreign government who is receiving inpatient or outpatient care.

(aa) *Occupational Health Services.* Includes medical examinations and tests related to preemployment, preplacement, periodic, and pretermination; tests required for protecting the health and safety of naval personnel; job-related immunizations and chemoprophylaxis; education and training related to occupational health; and other services provided to avoid lost time or to improve effectiveness of employees. The latter shall include the

furnishing of emergency treatment of illnesses or injuries occurring at work. Such health services shall be furnished both active duty military personnel and naval civilian employees in accordance with current directives.

(bb) *Outside the United States.* All areas except the 50 States and the District of Columbia.

(cc) *Retired Member of a Uniformed Service.* A member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, as a result of service in a uniformed service. This includes a member or former member who is:

(1) Retired for length of service;

(2) Permanently or temporarily retired for physical disability;

(3) On the emergency officers' retired list and is entitled to retired pay for physical disability;

(4) Otherwise in receipt of retired pay under 10 U.S.C. 1331–1337.

(dd) *Routine Care.* Medical and dental care necessary to maintain health or dental functions other than care of an emergency or elective nature.

(ee) *Supplemental Care or Services.* When medical or dental management is retained by a naval MTF and required care is not available at the facility retaining management, any additional material, professional diagnostic or consultative services, or other personal services ordered by qualified uniformed service providers, and obtained for the care of that patient are supplemental. See § 728.12 concerning the management of active duty member patients.

(ff) *Uniformed Services.* The Navy, Marine Corps, Air Force, Army, Coast Guard, Commissioned Corps of the Public Health Service, and the Commissioned Corps of the National Oceanic and Atmospheric Administration.

(gg) *United States.* The 50 States and the District of Columbia.

(hh) *USMTF.* Uniformed services medical treatment facility.

§ 728.3 General Restrictions and Priorities.

Naval MTFs shall provide care to all eligible beneficiaries subject to the capabilities of the professional staff and the availability of space and facilities. In those instances when care cannot be rendered to all eligible beneficiaries, the priorities in the following chart shall prevail. No distinction as to the sponsoring uniformed service shall be made when providing care or deciding priorities.

PRIORITIES FOR THE VARIOUS CATEGORIES OF PERSONNEL ELIGIBLE FOR CARE IN NAVY MEDICAL DEPARTMENT FACILITIES

Priority and category	Degree of entitlement
1A: Members of the uniformed services on active duty (including active duty for training and inactive duty training (drill)) and comparable personnel of the NATO nations meeting the conditions prescribed in this part.	See subpart B.
1B: Members of a Reserve Component of the Armed Forces and National Guard personnel not on active duty.	See subpart C.
2: Dependents of active duty members of the uniformed services, dependents of persons who died while in such a status, and the dependents of active duty members of NATO nations meeting the conditions prescribed in subpart E of this part.	See subparts D and E.
3: Members of the Senior Reserve Officers' Training Corps of the Armed Forces.	See § 728.23.
4: Retired members of the uniformed services and their dependents and the dependents of deceased retired members.	See subpart D.
5: Civilian employees of the Federal Government under the limited circumstances covered by the Federal Employees' Health Service Program.	See § 728.80.
6: All others, including ex-service maternity eligibles.	See subparts F and G.

§ 728.4 Policies.

(a) *Admissions to Closed Psychiatric Wards.* Patients will be admitted to closed psychiatric wards only when they have a psychiatric or emotional disorder which renders them dangerous to themselves or others, or when a period of careful closed psychiatric observation is necessary to determine whether such a condition exists. When a patient is admitted to a closed psychiatric ward, the reason for admission must be clearly stated in the patient's clinical record by the physician admitting the patient to the ward. The provisions of § 728.4(d)(3) on obtaining consent are applicable to all nonmilitary patients. These same policies apply equally in those instances when it is necessary to place a patient on an open ward under constant surveillance.

(b) *Absence From the Sick List.* See § 728.4(e), (y), and (z).

(c) *Charges and Collection.* The charges for services rendered vary and are set yearly by the Office of Management and Budget and promulgated by a yearly NAVMEDCOMNOTE 6320 (Medical, dental, subsistence rates, and hospitalization bills, cost elements of). Billing and collection actions also vary according to entitlement or eligibility and are governed by the provisions of NAVMED P–5020, Resource Management Handbook.

(d) *Consent by Nonmilitary Patients to Medical Care.* (1) Nonmilitary individuals may not be furnished medical care in any naval MTF without either their consent or the consent of a person authorized to consent on their behalf in accordance with the provisions of applicable local laws or the order of a court having jurisdiction over the individual. Consent may be either expressed or implied. This rule applies even though an individual may be entitled by law to medical care in naval MTFs; it applies worldwide, except as it may be modified by local laws or international agreements.

(2) Implied consent is one that may be derived from actions of the patient or other circumstances, even though specific words of consent are not used. For example, a patient's application for admission to an MTF is an implied consent for hospitalization; if a patient is a minor incapable of giving consent, an implied consent of the parent may be found in actions of the parent in requesting or not objecting to medical care for the minor. Moreover, consent to treatment is implied in certain emergency situations wherein a patient is incapable of giving or denying consent, and the patient's condition represents a serious or imminent threat to life, health, or well-being.

(3) Expressed consent involves an interchange of language by which the patient, or person authorized to act on the patient's behalf, specifically states that consent is given to proposed medical care. An expressed consent may be valid whether oral or in writing, but a written consent is required (except in emergency situations as defined in § 728.4(d)(2)) and must be recorded on Standard Form 522 (Request for Administration of Anesthesia and for Performance of Operations and Other Procedures) in connection with the following when nonmilitary patients (both inpatients and outpatients) are involved:

(i) Any major or minor surgery which involves an entry into the body, either through an incision or through one of the natural body openings.

(ii) Any procedure or course of treatment in which anesthesia is used, except dental local infiltration or dental block anesthesia, whether or not an entry into the body is involved. An SF 522 is mandatory in inhalation sedation/analgesia and intravenous sedation/analgesia.

(iii) Any nonoperative procedure which involves more than a slight risk of harm to the patient, or which involves the risk of a change in the patient's body structure.

(iv) Any procedure where roentgen ray, radium, or other radioactive substance is used in the treatment of the patient.

(v) All procedures which involve electroshock or insulin coma therapy.

(vi) Admission of patients with psychotic disorders.

(vii) Admission of patients to closed wards.

(viii) All other procedures which, in the opinion of the attending physician or dentist, chief of service, commanding officer, or officer in charge, require a written consent. Any questions as to the necessity or advisability of obtaining a written consent from or on behalf of the patient should be resolved in favor of procuring such a consent.

(4) For a consent to be legally sufficient, whether implied or expressed, it must be given by a person legally capable of giving consent.

(i) The sufficiency of a consent by a nonmember minor to any medical examination or treatment will be determined by the statutory and judicial laws of the United States and the State in which the medical facility is located (e.g., many States allow the treatment of venereal disease with the consent of the minor alone and the parents need neither be informed nor their consent obtained). In instances where the consent of the minor alone is legally sufficient, the minor's decision authorizing or rejecting the proposed treatment is binding. In the absence of any law on the subject, it should be determined from the maturity of the minor involved whether he or she may give a legally sufficient consent. In these instances, particular attention shall be paid to the minor's age and level of intelligence and to the minor's understanding of the complicacy and seriousness of the proposed treatment. If there is a question as to the sufficiency of the minor's consent, the advice of a judge advocate or other Government attorney should be sought. Consent of the parents will be required only when it is determined that the consent of the minor alone is not legally sufficient. Even in those circumstances where the consent of the minor is not legally sufficient, the consent of the minor patient will, nevertheless, be obtained in addition to the consent of the parents in all instances in which the minor is able to understand and fully comprehend the significance of the procedure contemplated. Further, when a situation arises in which the interest of the facility and the interest of a patient or a patient's parent or guardian are adverse, the facility may have to seek a court order empowering the facility to render the necessary care (e.g., where a parent refuses, on religious grounds, to give consent to a blood transfusion for the benefit of a minor child). Application for such a court order must be made to a Federal court pursuant to 28 U.S.C. 1345, and such court must also have jurisdiction over the patient. Some States require a minor patient's parent or guardian to obtain court approval for procedures such as organ transplants, even though the interest of the facility and that of the patient, parent, or guardian are not adverse. Under these circumstances, it is the responsibility of the parent or guardian to obtain such an order and the court need not have jurisdiction over the facility.

(ii) If valid under the laws of the State in which the MTF is located, parents may grant powers of attorney to:

(A) Their mature minor children authorizing them to consent to medical care for themselves and other minor children of the family.

(B) Individuals standing in a temporary loco parentis status authorizing them to consent to medical care for minor children of the family.

(iii) Except in an emergency, when a patient for some reason other than mental incompetency is unable to respond, the consent of the spouse or next of kin must be obtained. If the spouse or next of kin cannot be reached, the question of authority or need to consent will be referred to the appropriate judge advocate or other Government attorney for advice.

(iv) When a judicial interpretation of mental incompetency has been made, consent must be obtained from the individual appointed by the court to act for the incompetent patient.

(v) When a question of mental incompetency arises and a judicial determination of mental incompetency has not been made, the question of authority to consent or render treatment will be referred to the appropriate judge advocate or other Government attorney for advice.

(vi) Without an appropriate court order or the consent of the patient or a person authorized to act on the patient's behalf, the commanding officer may temporarily detain a nonmilitary individual with a psychiatric disorder which makes the person dangerous to him or herself or to others, when such individual is found on the military reservation where the MTF is located. When an individiual, not otherwise eligible for naval MTF services, is located off the military reservation, such temporary detention should be avoided, unless medically dictated in emergency situations (as defined in § 728.4(d)(2)) where civilian services are clearly unavailable. In such an instance, if proper consent to, or authorization for admission to the facility cannot be obtained, local civilian authorities should be notified immediately, and the individual should be transferred to those authorities. The temporary involuntary detention of a nonmilitary individual should conform with local laws and statutes governing involuntary detention, particularly where the United States does not possess exclusive jurisdiction. To provide for situations herein discussed, arrangements should be made in advance with local civilian authorities to accept forthwith those nonmilitary psychotic individuals who may not be admitted to or retained in naval MTFs because of lack of consent or appropriate court order. In making these arrangements, the point should be made, if necessary, that such individuals who are not residents of the locality are entitled to the same care and treatment by local civilian authorities as would be transients or tourists not connected with the Federal Government.

(vii) Movement to or from a naval MTF of nonmilitary psychotic individuals without proper consent or court order normally will not be performed under the auspices of a naval MTF.

(viii) The validity of a court order directing involuntary confinement or treatment of a patient in any naval MTF is a matter for review, in each instance, by the appropriate judge advocate or other Government attorney.

(ix) When a written consent is required, it will be personally signed by the patient, or the person authorized to act on the patient's behalf.

(x) Consent for dental procedures which come under the provisions of § 728.4(d)(3)(i) and (ii) may be obtained at the time a course of treatment is started. One SF 522 may be used for a complete course of treatment.

(5) Consent Validity. One of the elements affecting the validity of a consent, whether implied or expressed, is whether the person giving consent understands that to which consent is being given and, to a sufficent degree, the possible consequences of the procedure for which consent is given. The physician or dentist who is to perform or supervise the performance of a procedure will counsel the patient or the consenting individual in a medically sound fashion as to the nature or expected results of the proposed procedure, and all known material risks peculiar to the propoèed procedure, which in fact is attested to by the patient or person authorized to give consent and by the counseling physician or dentist on SF 522. This information must be provided to the patient or the person authorized to give consent on behalf of the patient in order for the consent to be informed. There are four generally recognized exceptions to this duty of the physician or dentist:

(i) Where the patient requires emergency treatment and time does not permit a discussion of the risks involved; and

(ii) Where, in the physician's or dentist's sound medical judgment (as concurred in by the commanding officer or chief of service), the risk of harm to the patient from such disclosure would far outweigh the benefits of a full informed consent.

(iii) When medical personnel are called upon to perform police-ordered procedures upon criminal suspects, medical personnel must follow State law regarding what procedures may be performed. When such a patient refuses to give consent, legal advice should be obtained before attempting to perform police-ordered procedures.

(iv) The last is a situation where consent may not be required. A so-called "therapeutic privilege" to withhold information from a patient may be recognized to exist in those situations where it is believed that full disclosure would have a detrimental effect on the patient; i.e., where it is believed that full disclosure would result in the patient being unable to make a rational decision, where disclosure would interfere or complicate continued treatment of the patient, or where disclosure would damage the patient psychologically. Even though courts have acknowledged the existence of this privilege in theory, they are reluctant to apply it to actual situations. Only in extreme cases, where the medical record sets forth fully those circumstances giving rise to the health care provider's belief that disclosure would be detrimental to the patient, is it likely that the "therapeutic privilege" would be upheld. Fear or belief that a patient might decide to forego treatment if disclosure of attendant risks were made is insufficient to trigger operation of the privilege. Judicial interpretation of the privilege has suggested that, when it is believed that disclosure would be detrimental to the patient, the only legally acceptable alternative to obtaining consent from the patient might be consent from the patient's family. Thus, while there may be a technical recognition of the "therapeutic privilege" to withhold information from the patient in certain situations, this privilege affords little or no protection for the health care provider who fails to obtain informed consent.

(e) *Convalescent Leave.* Convalescent leave, a period of authorized absence granted to active duty members under medical care when such persons are not yet fit for duty, may be granted by a member's commanding officer or the hospital's commanding officer in accordance with the following:

(1) Unless otherwise indicated, such leave shall be granted only when recommended by COMNAVMEDCOM, Washington, DC, through action taken upon the report by a medical board, or the recommended findings of a phyical evaluation board or higher authority.

(2) Member's commanding officer (upon advice of attending physician); commanding officers of Navy, Army, or Air Force medical facilities; commanders of regional medical commands for persons hospitalized in designated USTFs or in civilian facilities within their respective areas of authority; and managers of Veterans Administration hospitals within the 50 United States or in Puerto Rico may grant convalescent leave to active duty naval patients, with or without reference to a medical board, physical evaluation board, or higher authority provided the:

(i) Convalescent leave is being granted subsequent to a period of hospitalization.

(ii) Member is not awaiting disciplinary action of separation from the service for medical or administrative reasons.

(iii) Medical officer in charge:

(A) Considers the convalescent leave beneficial to the patient's health.

(B) Certifies that the patient is not fit for duty, will not need hospital treatment during the contemplated convalescent leave period, and that such leave will not delay final disposition of the patient.

(3) When considered necessary by the attending physician and approved on an individual basis by the commander of the respective geographic regional medical command, convalescent leave in excess of 30 days may be granted. This authority may not be redelegated to hospital commanding officers. Member's permanent command must be notified of such extensions (see MILPERSMAN 3020360).

(4) Care shall be exercised in granting convalescent leave to limit the duration of such leave to that which is essential in relation to diagnosis, prognosis, estimated duration of treatment, and probable final disposition of the patient.

(5) Upon return from convalescent leave:

(i) One copy of original orders of officers, bearing all endorsements, shall be forwarded to the Commander, Naval Military Personnel Command (COMNAVMILPERSCOM) (NMPC–4) or the Commandant of the Marine Corps (CMC), as appropriate.

(ii) An entry shall be made on the administrative remarks page (page 13 for Navy personnel) of the service records of enlisted personnel that convalescent leave was granted and showing the dates of departure and return.

(6) If considered beneficial to the patient's health, commanding officers of hospitals may grant convalescent leave as a delay in reporting back to the parent command.

(f) *Cosmetic Surgery.* (1) Defined as that surgery which is done to revise or change the texture, configuration, or relationship of contiguous structures of any feature of the human body which would be considered by the average prudent observer to be within the broad range of "normal" and acceptable variation for age or ethnic origin, and in addition, is performed for a condition which is judged by competent medical opinion to be without potential for jeopardy to physical or mental health on an individual.

(2) Commanding officers will monitor, control, and assure compliance with the following cosmetic surgery policy:

(i) Certain cosmetic procedures are a necessary part of training and retention of skills to meet the requirements of certification and recertification.

(ii) Insofar as they meet minimum requirements and serve to improve the skills and techniques needed for reconstructive surgery, the following cosmetic procedures may be done as low priority surgery when time and space are available.

(A) Cosmetic facial rhytidectomies (face lifts) shall be part of all training programs required by certifying boards.

(B) Cosmetic augmentation mammaplasties will be done only by properly credentialed surgeons and residents within surgical training programs to meet requirements of certifying boards.

(g) *Cross-Utilization of Uniformed Services Facilities.* To provide effective cross-utilization of medical and dental facilities of the uniformed services, eligible persons, regardless of service affiliation, will be given equal opportunity for health benefits. Catchment areas (zone boundaries), designated by zip codes, have been established by the Department of Defense for each USMTF (see § 728.2(d)). Eligible beneficiaries residing within such a catchment area are expected to utilize that inpatient facility for care. EXCEPTION: Dental care, other than emergency treatment, for members of the Army and Air Force shall be provided only to those members who are either on active duty in localities where their own dental services are not available, or to those

assigned to detached duty with the Navy. Provisions shall be made to assure that:

(1) Eligible beneficiaries residing in the catchment area served by a USMTF not of the sponsor's own service may obtain care at that facility or at a facility of the sponsor's service located in another catchment area.

(2) If the facility to which an eligible beneficiary applies cannot furnish the needed care, the other facility or facilities in overlapping catchment areas will be contacted to determine whether care can be provided thereat.

(h) *Disengagement.* Applicable only to CHAMPUS-eligible individuals.

(1) Discontinuance of medical management by naval MTFs for only a specific episode of care. (Patient or sponsor should be advised to return to the naval MTF for any care required subsequent to receiving the care for which disengagement is made.) Considered accomplished only after alternative sources of care and attendant costs, if applicable, have been fully explained to patient or sponsor.

(2) Patients referred to civilian sources for total care (disengaged) under the CHAMPUS will be issued a Nonavailability Statement (DD Form 1251) in accordance with § 728.34, when appropriate. CHAMPUS-eligible patients referred for total care, who do not otherwise require a DD Form 1251 (referred for outpatient care or those referred whose residence is outside the catchment area of all USMTFs), will be given a properly completed DD Form 2161, Referal For Civilian Medical Care, which clearly indicates that the patient is disengaged for total care under CHAMPUS. CHAMPUS-eligible beneficaries will be disengaged for services under CHAMPUS when:

(i) Required services are beyond the capability of the naval MTF and such services cannot be appropriately provided through one of the alternative means listed in § 728.4(aa), or

(ii) The naval MTF cannot effectively provide the required service or manage the overall course of care even if augmented by services procured from other Government or civilian sources utilizing naval MTF operation and maintenance funds as authorized in § 728.4(aa).

(i) *Domiciliary/Custodial Care.* The type of care designed essentially to assist an individual in meeting the normal activities of daily living, i.e., services which constitute personal care such as help in walking and getting in or out of bed, assistance in bathing, dressing, feeding, preparation of special diets, and supervision over medications which can usually be self-administered and which does not entail or require the continuing attention of trained medical or paramedical personnel. The essential characteristics to be considered are the level of care and medical supervision that the patient requires, rather than such factors as diagnosis, type of condition, or the degree of functional limitation. Such care will not be provided in naval MTFs except when required for active duty members of the uniformed services.

(j) *Emergency Care.* Patients authorized only emergency care and those admitted as civilian emergencies will be treated only during the period of the emergecy. Action will be initiated to effect appropriate disposition of such patients as soon as the emergency period ends.

(k) *Evaluation After Admission.* Each patient will be evaluated as soon as possible after admission and reevaluation will continue until disposition is made. Each patient's probable type and date of disposition will be anticipated and necessary processing by the various medical and administrative entities will take place concurrently with the treatment of the patient. It is especially important that the medical disposition decision be made as early as possible for U.S. military patients inasmuch as immediate transfer to a VA medical center or to a VA spinal cord injury center may be in the best interest of the patient (see BUMEDINST 6320.11D). The disposition decision for military personnel of NATO nations shall be made in conformance with § 728.42(d).

(l) *Extent of Care.* Eligible persons shall be provided medical and dental care to the extent it is authorized, required, and available. When a person is accepted for care, all care and adjuncts thereto, such as nonstandard supplies, as determined by the commanding officer to be necessary, will be provided from resources available to the commanding officer unless specifically prohibited elsewhere in this instruction. EXCEPTION: Hospitalization and outpatient services may be provided outside the continental limits of the United States and in Alaska to the officers and employees of any department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to the accompanying dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *provided,* that such services shall be permitted only where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities. When a patient has been accepted and required care is beyond the capabilities of the accepting naval MTF, the commanding officer thereof will arrange for the required care by one of the means shown below. The method of choice will be based upon professional considerations and travel economy.

(1) Transfer the patient in accordance with § 728.4(bb).

(2) Procure from civilian sources the necessary materials or professional personal services required for the proper care and treatment of the patient. Payment for the cost of such care or service depends upon the category of beneficiary being treated (see § 728.4(aa)).

(3) The care authorized in § 728.4(l)(2) will normally be accomplished in the naval MTF. However, when such action is not feasible, supplementation may be obtained elsewhere. Patients may be sent to other Federal or civilian facilities for specific treatment or services under § 728.4(l)(3) *provided* they remain under the medical management of the commanding officer of the sending facility during the entire period of care.

(m) *Family Planning Services.* Family planning services shall be provided in accordance with the provisions of SEC NAVINST 6300.2A.

(n) *Grouping of Patients.* Hospitalized patients will be grouped according to their requirements for housing and medical care, including nursing care, and will be furnished quarters, facilities, and professional supervision on that basis. Patients who must be retained under medical supervision (medical hold) solely for administrative reasons or for medical conditions which can be treated on a clinic basis will be provided quarters and messing facilities, where practicable, separately from other hospitalized patients. Medical care for such patients will be furnished on a periodic clinic appointment basis (see § 728.4(q) for handling enlisted convalescent patients). Maximum use will be made of administrative personnel in the supervision of such patients.

(o) *Health Benefits Advising.* (1) *General.* A Health Benefits Advising Program if not established must be implemented at all commands having one or more medical officers. The number of health benefits advisors (HBAs) of a command shall be commensurate with counseling and assistance requirements. The purpose of the program is to provide health benefits information and counseling to beneficiaries of the Uniformed Services Health Benefits Program (USHBP) and to others who may or may not qualify for

care in USMTFs. Office location of HBAs, their names, and telephone numbers shall be widely publicized locally. HBAs at shore establishment activities shall report workload and any changes in HBA personnel and telephone numbers on NAVMED 6320/23, Health Benefits Advisor Workload. The report (report symbol MED 6320-25) shall be submitted to the Commander, Naval Medical Command, MEDCOM-333, Washington, DC 20372 quarterly with the information for each preceding month of the quarter in its proper column. If assistance is required, contact MEDCOM-333 on Autovon 294-1127 or commercial (202) 653-1127. In addition to the duties described in § 728.4(o)(2), HBAs shall:

(i) Maintain a depository of up-to-date officially supplied information for availability to all beneficiaries.

(ii) Provide information and guidance to beneficiaries and generally support the medical and dental staff by providing assistance to eligible beneficiaries seeking or obtaining services from USMTFs, civilian facilities, VA facilities, Medicare, MEDICAID, and other health programs.

(iii) Assure that when a referral or disengagement is required:

(A) Patients are fully informed that such action is taken to provide for their immediate medical or dental requirements and has no bearing on whether care may be available in the naval MTF for other aspects of current or other future medical conditions.

(B) CHAMPUS-eligible patients are provided the services and counseling outlined in § 728.4(o)(2) *prior* to their departure from the facility when such beneficiaries are referred or disengaged because care required is beyond the naval MTF's capability. In an emergency, or when the patient or sponsor cannot be seen by the HBA prior to leaving, these services and counseling assistance will be accomplished as soon thereafter as possible.

(2) *Counseling and Assisting CHAMPUS-Eligible Individuals.* HBAs, as a minimum, will:

(i) Explain alternatives available to the patient.

(ii) If appropriate, explain CHAMPUS as it relates to the particular circumstance, including the cost-sharing provisions applicable to the patient, allowable charges, provider participation, and claim filing procedures. The patient or sponsor must be fully informed that when a patient is disengaged for care under CHAMPUS or when cooperative care is to be considered for payment under the provisions of § 728.4(aa) (5) and (6), the naval MTF is not responsible for monetary amounts above the CHAMPUS-determined allowable charge or for charges CHAMPUS does not allow.

(iii) Explain why the naval MTF is paying for the supplemental care, if appropriate (see § 728.4(aa) (3) and (4)). Complete a DD Form 2161, Referral For Civilian Medical Care, marking the appropriate source of payment with the concurrence of the naval MTF commanding officer or CO's designee. Explain to the patient or sponsor how the bill will be handled.

(iv) Brief patient or sponsor on the use of the DD Form 2161 in USMTF payment procedures and CHAMPUS claims processing, as appropriate. Provide sufficient copies of DD Form 2161 and explain that CHAMPUS contractors will return claims submitted without required DD Form 2161. Obtain signature of patient or sponsor on the form.

(v) Advise patient or sponsor on arrangements for a completed copy of the DD Form 2161 to be returned to the naval MTF for payment, if appropriate, and inclusion in patient's medical record.

(vi) Arrange for counseling from appropriate sources when the patient is eligible for VA, Medicare, or MEDICAID benefits.

(vii) Serve as liaison between civilian providers and naval MTF on administrative matters related to the referral and disengagement process.

(viii) Serve as liaison between naval MTF and cooperative care coordinators on matters relating to care provided or recommended by naval MTF providers, as appropriate.

(ix) Explain why the patient is being disengaged and, in accordance with § 728.4(h)(2), provide a DD Form 1251, Nonavailability Statement, or DD Form 2161, Referral For Civilian Medical Care, as appropriate.

(p) *Immunizations.* Immunizations shall be administered in accordance with the provisions of BUMEDINST 6230.1H, unless otherwise stipulated.

(q) *Medical Holding Companies.* Medical holding companies (MHC) have been established at designated activities to facilitate handling of enlisted convalescent patients whose medical conditions are such that, although they cannot be returned to full duty, they can perform light duty ashore commensurate with their condition while completing their medical care on an outpatient basis. Where feasible, such patients shall be processed for transfer.

(r) *Notifications.* (1) *General.* The interests of the Navy, Marine Corps, and DOD have been adversely affected by past procedures which emphasized making notifications only when an active duty member's condition was classed as either seriously ill or injured or classed as very seriously ill or injured. However, temporary disabilities which preclude communication with the next of kin have generated understandable concern and criticism, especially when emergency hospitalization has resulted. Accordingly, naval MTFs shall effect procedures to make notifications required below upon admission of the members specified. The provisions of § 728.4(r) supplement articles 1810520 and 4210100 of the Naval Military Personnel Manual and chapter 5 of Marine Corps Order P3040.4A, Marine Corps Casualty Procedures Manual; they do not supersede them.

(2) *Active Duty Flag or General Officers and Retired Marine Corps General Officers.* Message reports (Hospitalized Active Duty Flag or General Officer and Retired Marine Corps General Officer Report, MED 6320-10) shall be submitted to the Commander, Naval Medical Command, Washington, DC containing the following upon admission of subject officers:

(i) *Admission.* The initial report shall include:

(A) Officer's name, grade, social security number, and designator.

(B) Duty assignment in ship or station, or other status.

(C) Date of admission.

(D) Present condition, stating if serious or very serious.

(E) Diagnostic number only (see § 728.4(r)(2)(v)), prognosis, and estimated period of hospitalization.

(ii) *Progress Reports.* Submission frequency and content shall be at the discretion of the commanding officer. Changes in condition or status, however, shall be reported promptly.

(iii) *Termination Report.* A message shall be submitted upon termination of hospitalization which provides appropriate details for informational purposes.

(iv) *Information Addressees.* When members of the uniformed services are hospitalized, the following shall be made information addressee(s) on all messages, as appropriate:

(A) Navy—Chief of Naval Operations and Commander, Naval Military Personnel Command

(B) Marines—Chief of Naval Operations (for active duty members only) and the Commandant of the Marine Corps

(C) Army—Deputy Chief of Staff for Personnel, Department of the Army, (General Officer Management Office)

(D) Air Force—Surgeon General, United States Air Force

(v) *Privacy Act.* The right to privacy of the individual for whom hospitalization reports are made shall be safeguarded as required by the Privacy Act, implemented in the Department of the Navy by SECNAVINST 5211.5C, U.S. Navy Regulations, the Manual of the Judge Advocate General, the Marine Corps Casualty Procedures Manual, and the Manual of the Medical Department. To prevent possible invasion of privacy, the diagnosis required in § 728.4(r)(2) shall be reported only in International Classification of Diseases Annotated (ICDA) code designator.

(3) *Active Duty Members.* As part of the admission procedure, all patients shall be encouraged to communicate expeditiously and regularly with their next of kin. When a patient's incapacity makes timely personal communication impractical, i.e., fractures, burns, eye pathology, psychiatric or emotional disorders, etc., the notification process shall be initiated by MTF personnel *unless* the patient specifically declines such notification or where it is clear that the next of kin already has knowledge of the admission. Once notification has been made, progress reports shall be made by the facility until the patient is again able to communicate with the next of kin.

(i) *Navy Personnel.* When Navy personnel are admitted, the following notification procedures shall be effected.

(A) Outside the Contiguous 48 States and the District of Columbia. When the next of kin has accompained the patient on the tour of duty and is in the immediate area, hospital personnel shall notify the next of kin in person, by telephone, telegraph, or by other expenditious means. If the next of kin is located in the 48 contiguous United States or the District of Columbia, telegraphic means shall be used to notify COMNAVMILPERSCOM who will provide notification to the next of kin.

(B) Within the Contiguous 48 States and the District of Columbia. Hospital personnel shall notify the next of kin in person, by telephone, telegraph, or by other expeditious means. This shall include notification of the next of kin upon arrival of all Navy patients received in the medical air-evacuation system.

(ii) *Marine Corps Personnel.* When Marine Corps personnel are admitted, the following notification procedures shall be effected.

(A) Within the Contiguous 48 States and the District of Columbia. Directors of Marine Corps districts have responsibility for in-person notification of the next of kin of seriously ill or injured and very seriously ill or injured Marine Corps personnel. Naval MTF personnel shall assure that liaison is established with the appropriate director when such personnel are admitted. Naval MTF personnel shall notify only the appropriate Marine Corps district by telephone and request that cognizance be assumed for in-person initial notification of the next of kin of those Marine Corps patients admitted with an incapacity that makes personal and timely communication impractical and for those arriving via the medical air-evacuation system.

(B) Outside the Contiguous 48 States and the District of Columbia. Casualty notification for Marine Corps personnel hospitalized in naval MTFs outside the contiguous 48 States and the District of Columbia will be made to the Commandant of the Marine Corps (Code MSPA–1).

(C) Within and Outside the United States. The Commandant of the Marine Corps desires and encourages medical officers to communicate directly with the next of kin only *after* the initial in-person notification has been effected by the appropriate Marine Corps district office and notification thereof has been effected to the MTF treating the patient.

(iii) *Nonactive Duty Patients.* At the discretion of individual commanding officers, the provisions of § 728.4(r)(3) may be extended to the admission of nonactive duty patients; e.g., dependents of members on duty overseas.

(iv) *Other Uniformed Services Patients.* Liaison shall be established with other uniformed services to assure proper notification upon admission of active duty members of other services.

(4) *Messages.* (i) *Content.* Contents of message traffic (and telephonic notifications) should be phrased in lay terms and should provide sufficient details of the patient's condition, prognosis, and diagnosis. When appropriate for addressal, psychiatric and other sensitive diagnoses shall be related with discretion. When indicated, specific comment should also be included as to whether the presence of the next of kin is medically warranted.

(ii) *Information Addressee.* The Naval Medical Command requires information copies of messages *only* when a patient has been placed on the seriously ill or injured or the very seriously ill or injured list.

(s) *Outpatient Care.* Whenever possible, diagnostic procedures, preoperative and post operative care, surgical care, convalescence, and followup observations and treatment will be accomplished on an outpatient basis.

(t) *Performance of Duties While In An Inpatient Status.* U.S. military patients may be assigned duties in and around naval MTFs when such duties will be, in the judgement of the attending physician, of a therapeutic value. Physical condition, past training, and other acquired skills must all be considered before assigning any patient a given task. Patients will not be assigned duties which are not within their capabilities or which require more than a very brief period of orientation.

(u) *Prolonged Definitive Medical Care.* Prolonged definitive medical care in naval MTFs will not be provided for U.S. military patients who are unlikely to return to duty. The time at which a patient should be processed for disability separation must be determined on an individual basis, taking into consideration the interest of the patient as well as those of the Government. A long-term patient roster will be maintained and updated at least once monthly to enable commanding officers and other appropriate staff members to monitor the progress of all patients with 30 or more continuous days of hospitalization. The roster will include basic patient identification data (name, grade or rate, register number, ward or absent status, clinic service, and whether assigned to a medical holding company), projected disposition (date, type, and profile), diagnosis, and cumulative hospital days (present facility and total).

(v) *Remediable Physical Defects of Active Duty Members.*

(1) *General.* When a medical evaluation reveals that a Navy or Marine Corps patient on active duty has developed a remediable defect while on active duty, the patient will be offered the opportunity of operative repair or other appropriate remediable treatment, if it is medically indicated.

(2) *Refusal of Treatment.* In accordance with MANMED art. 16–15, when a member refuses to submit to recommended therapeutic measures for a remediable defect or condition which has interfered with the member's performance of duty and following prescribed therapy, the member is expected to be fit for full duty, the following procedures shall apply:

(i) After being counseled concerning the matter, any member of the naval service who refuses to submit to recommended medical, surgical, dental, or diagnostic measures, other than routine treatment for minor or temporary disabilities, shall be transferred to a naval MTF for further

evaluation and appearance before a medical board.

(ii) The board shall study all pertinent information, inquire into the merits of the individual's refusal to submit to treatment, and report the facts with appropriate recommendations.

(iii) As a general rule, refusal of minor surgery should be considered unreasonable in the absence of substantial contraindications. Refusal of major surgical operations may be reasonable or unreasonable, according to the circumstances. The age of the patient, previous unsuccessful operations, existing physical or mental contraindications, and any special risks should all be taken into consideration.

(iv) Where surgical procedures are involved, the board's report shall contain answers to the following questions:

(A) Is surgical treatment required to relieve the incapacity and restore the individual to a duty status, and may it be expected to do so?

(B) Is the proposed surgery an established procedure that qualified and experienced surgeons ordinarily would recommend and undertake?

(C) Considering the risks ordinarily associated with surgical treatment, the patient's age and general physical condition, and the member's reason for refusing treatment, is the refusal reasonable or unreasonable? (Fear of surgery or religious scruples may be considered, along with all the other evidence, for whatever weight may appear appropriate.)

(v) If a member needing surgery is mentally competent, surgery shall not be performed over the member's protestation.

(vi) In medical, dental, or diagnostic situations, the board should show the need and risk of the recommended procedure(s).

(vii) If a medical board decides that a diagnostic, medical, dental, or surgical procedure is indicated, these findings must be made known to the patient. The board's report shall show that the patient was afforded an opportunity to submit a written statement explaining the grounds for refusal, and any statement submitted shall be forwarded with the board's report. The patient should be advised that even if the disability originally arose in line of duty, its continuance would be attributable to the member's unreasonable refusal to cooperate in its correction; and that the continuance of the disability might, therefore, result in the member's separation without benefits.

(viii) The patient shall also be advised that:

(A) Title 10 U.S.C. 1207 precludes disposition under chapter 61 of 10 U.S.C. if such a member's disability is due to intentional misconduct, willful neglect, or if it was incurred during a period of unauthorized absence.

(B) Benefits from the Veterans Administration will be dependent upon a finding that the disability was incurred in line of duty and is not due to the member's willful misconduct.

(ix) The Social Security Act contains special provisions relating to benefits for "disabled" persons and certain provisions relating to persons disabled "in line of duty" during service in the Armed Forces. In many instances persons deemed to have "remediable" disorders have been held not "disabled" within the meaning of that term as used in the statute, and Federal courts have upheld that interpretation. One who is deemed unreasonably to have refused to undergo available surgical procedures may be deemed both "not disabled" and to have incurred the condition "not in the line of duty."

(x) The board's report shall be forwarded direct to the Central Physical Evaluation Board except in those instances when the convening authority desires that the medical board report be referred for Departmental review.

(xi) In accordance with MANMED art. 18–15, a member who refuses medical, dental, or surgical treatment for a condition that existed prior to entry into the service (EPTE defect), not aggravated by a period of active service but which interferes with the performance of duties, should be processed for reason of physical disability, convenience to the Government, or enlisted in error rather than under the refusal of treatment provisions. Procedures are delineated in BUMEDINST 1910.2G and SECNAVINST 1910.4.

(3) *Other Uniformed Services Patients.* When a patient of another service is found to have a remediable physical defect developed in the military service, the matter will be referred to the nearest headquarters of the service concerned.

(w) *Responsibilities of the Commanding Officer.* In connection with the provisions of this instruction, commanding officers of naval MTFs shall:

(1) Determine which persons within the various categories authorized care in a facility will receive treatment in, be admitted to, and be discharged from that specific facility.

(2) Supervise care and treatment, including the employment of recognized professional procedures.

(3) Provide each patient with the best possible care in keeping with accepted professional standards and the assigned primary mission of the facility.

(4) Provide for counseling patients and naval MTF providers when care required is beyond the naval MTF's capability. This shall include:

(i) Establishing training programs to acquaint naval MTF providers and HBAs with the uniformed services' referral for supplemental/cooperative care or services policy outlined in § 728.4(aa).

(ii) Implementing control measures to ensure that:

(A) Providers requesting care under the provisions of § 728.4(aa) are qualified to maintain physician case management when required.

(B) Care requested under the supplemental/cooperative care criteria is medically necessary, legitimate, and otherwise permissible under the terms of that part of the USHBP under which it will be considered for payment.

(C) Providers explain to patients the reason for the referral and the type of referral being made.

(D) Attending physicians properly refer beneficiaries to the HBA for counseling and services in accordance with § 728.4(o).

(E) Uniform criteria is applied in determining cooperative care situations without consideration of rate, grade, or uniformed service affiliation.

(F) All DD Form 2161's are properly completed and approved by the commanding officer or designee.

(G) A copy of the completed DD Form 2161 is returned to the naval MTF for inclusion in the medical record of the patient.

(x) *Sick Call.* A regularly scheduled assembly of sick and injured military personnel established to provide routine medical care. Subsequent to examination, personnel medically unfit for duty will be admitted to an MTF or placed sick in quarters; personnel not admitted or placed sick in quarters shall be given such treatment as is deemed necessary. When excused from duty for medical reasons which do not require hospitalization, military personnel may be authorized to remain in quarters, not to exceed 72 hours.

(y) *Sicklist—Authorized Absence From.* Commanding officers of naval MTFs may authorize absences of up to 72 hours for dependents and retired personnel without formal discharge from the sicklist. When absences are authorized in excess of 24 hours, subsistence charges of dependent's rate, as applicable, for that period shall not be collected and the number of

reportable occupied bed days shall be appropriately reduced. Prior to authorizing such absences, the attending physician shall advise patients of their physical limitations and of any necessary safety precautions, and shall note in the clinical record that patients have been so advised. For treatment under the Medical Care Recovery Act, reporting shall be consistent with § 728.4(bb).

(z) *Subsisting Out.* A category in which officer and enlisted patients on the sicklist of a naval MTF may be placed when their daily presence is not required for treatment nor examination, but who are not yet ready for return to duty. As a general rule, patients placed in this category should reside in the area of the facility and should be examined by the attending physician at least weekly. Enlisted personnel in a subsisting out status should be granted commuted rations.

(1) Granting of subsisting out privileges is one of many disposition alternatives; however, it is recommended that other avenues (medical holding company, convalescent leave, limited duty, etc.) be considered before granting this privilege.

(2) Naval MTF patients in a subsisting out status should not be confused with those enlisted personnel in a rehabilitation program who are granted liberty and are drawing commuted rations, but are required to be present at the treating facility during normal working hours. These personnel are not subsisting out and must have a bed assigned at the naval MTF.

(3) Naval MTF patients who are required to report for examinations or treatment more often than every 48 hours should not be placed in a subsisting out status.

(aa) *Supplemental/Cooperative Care or Services.* (1) *General.* When such services as defined in § 728.2(ee) are rendered to other than CHAMPUS-eligible individuals, the cost thereof is chargeable to the operation and maintenance funds available for the operation of the facility requesting the care or services. EXCEPTION: See § 728.12 for care of active duty members. Cooperative care applies to CHAMPUS-eligible patients receiving inpatient or outpatient care in a USMTF who require care or services beyond the capability of that USMTF. The following general principles apply to such CHAMPUS-eligible patients:

(i) *Cooperation of Uniformed Services Physicians.* USMTF physicians are required to cooperate in providing CHAMPUS contractors and OCHAMPUS additional medical information. SECNAVINST 5211.5C delineates policies, conditions, and procedures that govern safeguarding, using, accessing, and disseminating personal information kept in a system of records. Providing information to CHAMPUS contractors and OCHAMPUS shall be governed thereby.

(ii) *Physician Case Management.* Where required by BUMEDINST 6320.58 (CHAMPUS Regulation; implementation of), uniformed services physicians are required to provide case management (oversight) as would an attending or supervising civilian physician.

(iii) *CHAMPUS-Authorized Providers.* CHAMPUS contractors are responsible for determining whether a civilian provider is CHAMPUS-authorized and for providing such information, upon request, to USMTFs.

(iv) *Psychiatric/Psychotherapeutic Services.* If psychiatric care is being rendered by a psychiatric or clinical social worker, a psychiatric nurse, or a marriage and family counselor, and the uniformed services facility has made a determination that it does not have the professional staff competent to provide required physician case management, the patient may be (partially) disengaged for the psychiatric or psychotherapeutic service, yet have the remainder of required medical care provided by the naval MTF.

(v) *Forms and Documentation.* A DD Form 2161, Referral For Civilian Medical Care, will be provided to each patient who is to receive supplemental or cooperative care or services. When supplemental care is required under the provisions of § 728.4(aa)(3) and (4), the provisions of § 728.4(aa)(3)(iii) shall apply. When cooperative care or services are required under the provisions of § 728.4(aa)(5) and (6), the provisions of § 728.4(aa)(5)(iv) shall apply.

(vi) *Clarification of Unusual Circumstances.* Commanding officers of naval MTFs shall submit requests for clarification of unusual circumstance to OCHAMPUS or CHAMPUS contractors via the Commander, Naval Medical Command (MEDCOM–33) for consideration.

(2) *Care Beyond a Naval MTF's Capability.* When, either during initial evaluation or during the course of treatment of CHAMPUS-eligible beneficiaries, it is determined that required services are beyond the capability of the naval MTF, the commanding officer will arrange for the services from an alternate source in the following order, subject to restrictions specified. The provisions of § 728.4(aa)(2)(i) through (iii) must be followed before either supplemental care, authorized in § 728.4(aa)(4), is considered for payment from Navy Operations and Maintenance funds, or cooperative care, authorized in § 728.4(aa)(6), is to be considered for payment under the terms of CHAMPUS.

(i) Obtain from another USMTF or other Federal MTF the authorized care necessary for continued treatment of the patient within the naval MTF, when such action is medically feasible and economically advantageous to the Government.

(ii) When the patient is a retired member or dependent, transfer in accordance with § 728.4(cc)(3(i), (ii), (iii), or (iv), in that order. When the patient is a dependent of a member of a NATO nation, transfer in accordance with § 728.4(cc)(4)(i), (ii), or (iii), in that order.

(iii) With the patient's permission, the naval MTF may contact State programs, local health agencies, or health foundations to determine if benefits are available.

(iv) Obtain such supplemental care or services as delineated in § 728.4(aa)(4) from a civilian source using local operation and maintenance funds, or

(v) Obtain such cooperative care or services as delineated in § 728.4(aa)(6) from a civilian source under the terms of CHAMPUS.

(3) *Operation and Maintenance Funds.* When local operation and maintenance funds are to be used to obtain supplemental care or services, the following guidelines are applicable:

(i) Care or services must be legitimate, medically necessary, and ordered by a qualified USMTF provider.

(ii) The naval MFT must make the necessary arrangements for obtaining the required care or services from a specific source of care.

(iii) Upon approval of the naval MTF commanding officer or designee, the patient of sponsor will be provided a properly completed DD Form 2161, Referral For Civilian Medical Care. The DD Form 2161 will be marked by the health benefits advisor or other designated individual to show the naval MTF as the source of payment. Copy must also be forwarded to the MTF's contracting or supply officer who is the point of contact for coordinating obligations with the comptroller and thus the proper processing for payment.

(iv) Care on an inpatient or outpatient basis will be authorized for the minimum period necessary for the civilian provider to perform the specific test, procedure, treatment, or consultation requested. Patients receiving inpatient services in civilian medical facilities will not be counted as an occupied bed in the naval MTF, but will be continued on the MTF's inpatient

census and pay patients will continue to be charged the USMTF inpatient rate appropriate to their patient category.

(v) Naval MTF physicians will maintain professional contact with civilian providers.

(4) *Care and Services Authorized.* Referral to civilian sources for supplemental care or services, using local operation and maintenance funds, can be made for the following types of care or services:

(i) All specialty consultations for the purpose of establishing or confirming diagnoses or recommending a course of treatment.

(ii) All diagnostic tests, diagnostic examinations, and diagnostic procedures (including genetic tests and CAT scans), ordered by qualified USMTF providers.

(iii) Prescription drugs and medical supplies.

(iv) Civilian ambulance service ordered by USMTF personnel.

(5) *CHAMPUS Funds.* When payment is to be considered under the terms of CHAMPUS for cooperative care, even though the beneficiary remains under naval MTF control, the following guidelines are applicable.

(i) Charge for care will be processed under the terms of CHAMPUS.

(A) If the charge for the covered service or supply is above the CHAMPUS-determined reasonable charge, the direct care system will not assume any liability on behalf of the patient where a civilian provider is concerned, although a USMTF physician recommended or prescribed the service or supply.

(B) Payment consideration for all care or services meeting cooperative care criteria will be under the terms of CHAMPUS and payment for such care or services will not be made from naval MTF funds. Conversely, any care or services meeting naval MTF supplemental care or services payment criteria will not be considered under the terms of CHAMPUS.

(ii) Care must be legitimate and otherwise permissible under the terms of CHAMPUS and must be ordered by a qualified USMTF provider.

(iii) USMTF personnel will provide assistance to beneficiaries referred or disengaged under CHAMPUS. Although USMTF personnel are not authorized to refer beneficiaries to a specific civilian provider for care under CHAMPUS, the health benefits advisor is authorized to contact the cooperative care coordinator of the appropriate CHAMPUS contractor for assistance in determining authorized providers with the capability of providing the required services. Such information may be provided to the beneficiary. Beneficiaries will also be encouraged to obtain required medical services only from providers willing to participate in the CHAMPUS. Subject to the availability of space, facilities, and capabilities of the staff, USMTFs will provide consultative and such other ancillary assistance as required by the civilian provider selected by the beneficiary.

(iv) Such patients who are referred (versus disengaged) to civilian sources under the terms of CHAMPUS for cooperative care will be provided a properly completed DD Form 2161, Referral For Civilian Medicare Care. The DD Form 2161 will be marked by the health benefits advisor, or other designated individual, to show CHAMPUS as the source of payment consideration. All such DD Form-2161's must be approved by the commanding officer or designee. The patient will be given sufficient copies to ensure a copy of the DD Form 2161 accompanies each CHAMPUS claim submitted for this treatment. Patients will be advised that CHAMPUS contractors will return claims received without the DD Form 2161. Also advise patients to arrange for return of a completed copy of the DD Form 2161 to the naval MTF for inclusion in their medical record.

(v) Such patients receiving inpatient or outpatient care or services will pay the patient's share of the costs as specified under the terms of CHAMPUS for their beneficiary category. Patients receiving inpatient services will not be continued on the naval MTF's census and will not be charged the USMTF inpatient rate.

(vi) Certain ancillary services authorized under CHAMPUS require physician case management during the course of treatment. USMTF physicians will manage the provision of ancillary services by civilian providers when such services are obtained under the terms of CHAMPUS. Examples include physical therapy, private duty (special) nursing, rental or lease/purchase of durable medical equipment, and services under the CHAMPUS Program for the Handicapped. USMTF providers exercising physician case management responsibility for ancillary services under CHAMPUS will be subject to the same benefit limitations and certification of need requirements applicable to civilian providers under the terms of CHAMPUS for the same types of medical care. USMTF physicians exercising physician case management responsibility will maintain professional contact with civilian providers of care.

(6) *Care and Services Authorized.* Referral to civilian sources for cooperative care or services can be made for the following under the terms of CHAMPUS:

(i) Authorized nondiagnostic medical services such as physical therapy, speech therapy, radiation therapy, and private duty (special) nursing.

(ii) Preauthorized (by OCHAMPUS) adjunctive dental care, including orthodontia related to surgical correction of cleft palate.

(iii) Durable medical equipment. (CHAMPUS payment will be considered only if the equipment is not available on a loan basis from the naval MTF.)

(iv) Prosthetic devices (limited benefit), orthopedic braces and appliances.

(v) Optical devices (limited benefit).

(vi) Civilian ambulance service to a uniformed service facility when service is ordered by other than direct care personnel.

(vii) All care under the CHAMPUS Program for the Handicapped.

(viii) Psychotherapeutic or psychiatric care.

(ix) Except for those types of care or services delineated in § 728.4(aa)(4), all other CHAMPUS authorized medical services not available in the naval MTF (for example, neonatal intensive care).

(bb) *Third Party Liability Case.* In accordance with chapter 24, section 2403, JAG Manual, naval MTFs shall use the following guidelines to complete and submit a NAVJAG 5890/12, Hospital and Medical Care, 3rd Party Liability Case, when a third party may be liable for the injury or disease being treated:

(1) *Preparation.* The front of NAVJAG 5890/12 shall be used by all naval MTFs to report the value of medical care furnished to any patient when (i) a third party may be legally liable for causing the injury or disease, or (ii) when a Government claim is possible under workmen's compensation, no-fault insurance (see responsibilities for apprising the insurance carrier in § 728.4(bb)(5)), or under medical payments insurance (e.g., in all automobile accident cases). Block 4 of this form requires an appended statement of the patient or an accident report, if available. Prior to requesting such a statement from a patient, the person preparing the front side of NAVJAG 5890/12 shall show the patient the Privacy Act statement printed at the bottom of the form and shall have the patient sign his or her name beneath the statement.

(2) *Submission.* (i) *Naval Patients.* The completed front side of the NAVJAG 5890/12 shall be submitted to the appropriate action JAG designee listed

in section 2401 of the JAG Manual at the following times for naval patients:

(A) *Initial.* An initial submission shall be made as soon as practicable after a patient is admitted for any period of inpatient care, or if it appears that more than 7 outpatient treatments will be furnished. This submission should not be delayed pending the accumulation of all potential charges from the treating facility. This submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available), should be appended to the form.

(B) *Interim.* Interim submissions shall be made every 4 months after the initial submission until the patient is transferred or released from the facility, or changed from an inpatient status to an outpatient status.

(C) *Final.* A final submission shall be made upon completion of treatment or upon transfer of the patient to another facility. The facility to which the patient is transferred should be noted on the form. Report control symbol 5890–1 is assigned to this report.

(ii) *Nonnaval Patients.* When care is provided to personnel of another Federal agency or department, that agency or department generally will assert any claim in behalf of the United States. In such instances, the NAVJAG 5890/12's (initial, interim, and final) shall be submitted directly to the appropriate of the following addressees:

(A) *U.S. Army.* Commanding general of the Army or comparable area commander in which the incident occurred.

(B) *U.S. Air Force.* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided.

(C) *U.S. Coast Guard.* Commandant (G–LCL/43), U.S. Coast Guard, 2100 Second Street, S.W., Washington, DC 20593.

(D) *Department of Labor.* The appropriate Office of Workers' Compensation Programs (OWCP).

(E) *Veterans Administration.* Director of the Veterans Administration hospital responsible for medical care of the injured party.

(F) *Department of Health and Human Services (DHHS).* Regional attorney's office in the area where the incident occurred.

(3) *Supplementary Documents.* An SF 502 should accompany the final submission in all cases involving inpatient care. Additionally, when Government care exceeds $1,000, inpatient facilities should complete and submit the back side of NAVJAG 5890/12 to the action JAG designee. On this part of the form, the determination of "patient status" may be based on local hospital usage.

(4) *Health Record Entries.* Copies of all NAVJAG 5890/12's shall be retained in the Health Record of the patient. Action JAG designees shall be notified immediately when a patient receives additional treatment subsequent to the issuance of a final NAVJAG 5890/12 if the subsequent treatment is related to the condition which gave rise to the claim.

(5) *No-Fault Insurance.* When no-fault insurance is or may be involved, the naval legal service office at which the JAG designee is located shall be responsible for apprising the insurance carrier that the Federal payment for the benefits of this instruction are secondary to any no-fault insurance coverage available to the injured individual.

(6) *Additional Guidance.* Chapter 24 of the JAG Manual and BUMEDINST 5890.1A contain supplemental information.

(cc) *Transfer of Patients.* (1) *General.* All patients will be treated at the lowest echelon equipped and staffed to provide necessary care; however, when transfer to another MTF is considered necessary, Government transportation shall be used when available. Medical regulating shall be accomplished in accordance with the provisions of OPNAVINST 4630.25B and BUMEDINST 6320.1D.

(2) *U.S. Military Patients.* U.S military patients will not be retained in acute care MTFs longer than the minimum time necessary to attain the mental or physical state required for return to duty or separation from the service. When required care is not available at the facility providing area inpatient care, patients will be transferred to the most readily accessible USMTF or designated USTF possessing the required capability. Transportation of the patient and a medical attendant or attendants, if required, is authorized at Government expense. The administrative procedures outlined in BUMEDINST 6320.11D shall be followed when:

(i) A patient has received the maximum benefit of hospitalization in a naval MTF but requires a protracted period of nursing home type care. The Veterans Administration can provide this type care or arrange for it from a civilian source.

(ii) It is determined that there is or may be spinal cord injury necessitating immediate medical and psychological attention. The VA is staffed and equipped to provide all necessary care in the most expeditious manner.

(iii) A determination has been made by the Secretary concerned that a member on active duty has a drug dependency or drug abuse disability.

(3) *Retired Members and Dependents.* When a retired member or a dependent requires care beyond the capabilities of a facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF located in an overlapping catchment area of the transferring facility if either has the required capability.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF having the required capability, regardless of its location.

(iii) Arrange for transfer to the Veterans Administration MTF nearest the patient's residence if the patient is a retired member.

(iv) Provide assistance in releasing the patient to a civilian provider of the patient's choice under the terms of Medicare, if the patient is entitled. Beneficiaries entitled to Medicare, Part A, because they are 65 years of age or older or because of a disability or chronic renal disease, lose CHAMPUS eligibility but remain eligible for care in USMTFs.

(v) If the patient is authorized benefits under CHAMPUS, disengage from medical management and issue a Non-availability Statement (DD Form 1251) in accordance with the provisions of § 728.34, for care under CHAMPUS. This step should only be taken after due consideration is made of the supplemental/cooperative care policy addressed in § 728.4(aa).

(4) *Dependents of Members of NATO Nations.* When a dependent, as defined in § 728.41, of a member of a NATO nation requires care beyond the capabilities of the facility and a transfer is necessary, the commanding officer of that facility may:

(i) Arrange for transfer to another USMTF or designated USTF having the required capability if it is located in an overlapping catchment area of the transferring facility.

(ii) If the patient or sponsor agrees, arrange for transfer to the nearest USMTF or designated USTF having the required capability, regardless of its location.

(iii) Effect disposition in accordance with § 728.42(d).

(5) *Others.* Section 34 of title 24, United States Code, provides that hospitaiization and outpatient services may be provided outside the continental limits of the United States and in Alaska to the officers and employees of any

department or agency of the Federal Government, to employees of a contractor with the United States or the contractor's subcontractor, to the dependents of such persons, and in emergencies to such other persons as the Secretary of the Navy may prescribe: *provided*, that such services shall be permitted only where facilities are not otherwise available in reasonably accessible and appropriate non-Federal facilities. In addition, the hospitalization of such persons in a naval MTF is limited by section 35 of title 24, United States Code, to the treatment of acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Section 35 of title 24 also limits dental care for such persons to treatment that is an adjunct to inpatient hospital care and excludes any dental prosthesis or orthodontia. The transfer and subsequent treatment of such patients shall be in accordance with the aforementioned provisions of law.

(dd) *Verification of Patient Eligibility.* (1) *General.* Defense Enrollment Eligibility Reporting System (DEERS) eligibility verification checks shall be used in conjunction with the identification card system as a basis for determining eligibility for medical and dental care in USMTFs. For other than emergency care, patients are required to have a valid ID card in their possession and, under the circumstances described in § 728.4(dd)(1)(ii), are also required to meet certain DEERS criteria before treatment or services are rendered. Although DEERS and the ID card system are related , there may be instances where a beneficiary is in possession of an apparently valid ID card and the DEERS data base shows that eligibility has been terminated or vice versa. Consequently, eligibility indication in one system cannot override indication of ineligibility in the other without some other type of collateral documentation. Until the vast majority of eligible beneficiaries are included in the data base, dependents receiving DEERS checking shall be deemed ineligible for the reasons stated in § 728.4(dd)(3)(i) (A), (B), (C), (D), and (E).

(i) *Priorities.* With the following initial priorities, DEERS eligibility checks shall be conducted with a CRT terminal, single-digit dialer telephone, or special 800 number provided for the specific purpose of DEERS checking to:

(A) Confirm beneficiary eligibility.

(B) Determine whether a beneficiary is enrolled.

(C) Identify any errors on the data base.

(ii) *Minimum Checking Requirements.* The minimum DEERS eligibility checking requirements are:

(A) Twenty five percent of all outpatient visits.

(B) One hundred percent of all admissions.

(C) One hundred percent of all dental visits by nonactive duty patients to dental treatment facilities in areas designated as dentally underserved.

(D) One hundred percent of pharmacy outpatients presenting prescriptions written by a civilian provider.

(2) *Identification Cards.* All individuals, including members of the uniformed services in uniform, shall provide valid identification when requesting health benefits, except as indicated in § 728.4(dd)(3). Although a DD Form 1173 (Uniformed Services Identification and Privilege Card) may be issued to children under 10 years of age, under normal circumstances they are not required. Accordingly, certification and identification of children under 10 years of age are the responsibility of the member or retired member, accompanying parent, legal guardian, or acting guardian. Either the DD Form 1173 issued the spouse of a member or former member or the identification card of the member or former member (DD Form 2, DD Form 2 (Ret), Form PHS–1066–1, or Form PHS–1066–3 (Ret)) is acceptable for the purpose of establishing the eligibility of a child under 10 years of age.

(i) The fact that the word "indefinite" may appear in the space for the expiration date on a *member's* card does not lessen its acceptability for identification of a child.

(ii) To be valid, a dependent's DD Form 1173 *must* have an expiration date. Should a DD Form 1173 be presented with an expiration date of "indefinite", it is invalid and shall not be honored. Furthermore, such a card shall be confiscated and forwarded to the Commander, Naval Military Personnel Command, (NMPC-(641D)/Pers 7312), Department of the Navy, Washington, DC 20370 for investigation and final disposition. If emergency treatment is necessary for such a person, it shall be rendered with action and followup action initiated in accordance with the provisions of NAVMED P–5020.

(3) *Identification Procedures.* Although the most widely recognized and acceptable forms of identification are DD Form 1173, DD Form 2, Form PHS–1066–1, and Form PHS–1066–3 (Ret), individuals presenting for care without such identification may be rendered care upon presentation of other identification as outlined in this part. Under the circumstances enumerated, the following procedures shall be followed when individuals present without the required proof of eligibility or when a DEERS check does not establish eligibility as long as a clear audit trail is maintained to support required actions and followup actions in each instance.

(i) *Minimum Requirements.* Patients presenting at USMTFs are required to be processed for DEERS eligibilty verification in accordance with minimum checking requirements described in § 728.4(dd)(1)(ii). Routine nonemergency care will be denied, unless eligibility can be determined through other appropriate means (see § 728.4(dd)(3)(iii)), when a DEERS verification check is performed and eligibility cannot be verified for any of the following reasons:

(A) Sponsor not enrolled.

(B) Sponsor has separated from active duty and is no longer entitled to benefits.

(C) Spouse has a final divorce decree from sponsor and not entitled to continued eligibility as a former spouse.

(D) Dependent child is married.

(E) Dependent becomes an active duty member of a uniformed service. (This would only apply to CHAMPUS benefits since the former dependent becomes entitled to direct care benefits in his or her own right as an active duty member.)

(ii) *Emergency Situations.* Admission or treatment shall be initiated and satisfactory collateral identification, i.e., official orders, letters, or other documentation may be accepted in lieu of an identification card or in lieu of a positive verification through a DEERS check. For dependents, collateral documentation must clearly show the relationship of the dependent to an eligible sponsor. If an emergency admission or emergency outpatient treatment is accomplished for an individual whose proof of eligibility is in question, the provisions of NAVMED P–5020 shall be initiated to minimize the write-off of uncollectible accounts. NAVMED P–5020 also specifies that followup action shall be aggressively pursued to recoup costs of care when the facility has not been reimbursed as a result of the initial action taken to collect costs due.

(iii) *Nonemergency Situations.* (A) When a prospective patient cannot present required identification and the DEERS verification process does not verify eligibility, the facility shall require the signing of a statement by the member, patient, patient's parent, legal guardian, or acting guardian attesting to the fact that eligibility has been

established in accordance with appropriate directives and stating the reason identification is not in his or her possession. Form NAVMED 6320/9, Dependent's Eligibility for Medical Care, shall be used to document such instances. The aforementioned responsible individual shall be apprised of the provisions on the form NAVMED 6320/9 requiring proof of eligibility within 2 working days. Persons refusing to sign the certification on the NAVMED 6320/9 shall be denied treatment or admission in nonemergency situations. If proof of eligibility is not received by the end of the second working day after treatment is rendered, action shall be taken in accordance with the provisions of NAVMED P–5020 to recoup the cost of care rendered.

(B) Possession of an ID card alone does not constitute sufficient proof of eligibility when the DEERS check does not verify eligibility. What constitutes sufficient proof will be determined by the reason the patient failed the DEERS check (see § 728.4(dd)(3)(i)). For example, the groups most expected to fail DEERS eligibility checks are members who are recent accessions and their dependents. Guard or Reserve members recently activated for training periods of 30 to 180 days and their dependents, and parents and parents-in-law with expired cards.

(*1*) When recent accessions are called to active duty or National Guard or Reserve Units are called to active duty for a period of 30 days or more and their dependents do not yet have DD Form 1173's, satisfactory collateral identification may be accepted in lieu thereof, i.e., official documents which establish the individual's status as a dependent of a member of a unit called to duty for a period which is not specified as 30 days or less or a telephone call to a unit orderly room or personnel office to verify that the claimed sponsor is assigned to that unit. For a child, the collateral documentation shall include satisfactory evidence that the dependent is within age limiting criteria outlined in § 728.2(j)(4). A dependent's eligibility, under the provisions of § 728.4(dd)(3)(iii)(B)(*1*), commences on the first day of the sponsor's active service and ceases as of midnight on the last day of active service.

(*2*) When parents or parents-in-law (including step-parents and step-parents-in-law) request care in naval MTFs with invalid (expired) DD Form 1173's, care shall be rendered if they or their sponsor sign a statement that an application has been submitted for a new DD Form 1173, that the beneficiary is dependent upon the service member for over one-half of his or here support, and that there has been no material change in the beneficiary's circumstances since the previous determination of dependency and issuance of the expired card. This statement shall be placed in the beneficiary's medical record. The patent or sponsor should be informed that if eligibility is not reinstated, the facility will initiate action to recoup the cost of care. Action and followup action shall be initiated and aggressively pursued in accordance with the provisions of NAVMED P–5020.

(C) When it becomes necessary to make a determination of eligibility on other categories of individuals not covered in § 728.4(dd)(2), patient affairs personnel shall be requested to obtain a determination from the purported sponsoring agency, if appropriate. When it is necessary to treat or admit a person who is not verified as eligible by the DEERS check and cannot otherwise present proof of eligibility for care at the expense of the Government, care shall not be denied based solely on the lack of verification of eligibility through DEERS. In such instances the procedures of NAVMED P–5020 shall be followed to minimize, to the fullest extent possible, the write-off of uncollectible accounts.

(iv) *Appointments.* To prevent difficulties for the MTF, DEERS check of prospective patients with future appointments made through a central appointment desk or clinic appointment desk are necessary. Without advanced DEERS checking, patients could arrive at a clinic with an ID card but may fail the DEERS check or arrive without an ID card but is identified in the DEERS check as being eligible. Records, including the full social security number, of central appointment systems and clinic appointment systems shall be passed daily to the DEERS representative for a prospective DEERS check. This will enable appointment clerks to notify those with appointments of any apparent problem and refer them to the appropriate authority to resolve the problem prior to the appointment.

(v) *Retrospective Processing.* Medical services daily logs for walk-in patients, emergencies, or patients replacing last minute appointment cancellations shall be passed to the DEERS representative for retrospective batch processing. For DEERS processing, the last four digits of a social security number are insufficient. Accordingly, when restrospective processing may be necessary, it is essential that the full social security number is included in the daily log for each patient.

Subpart B—Members of the Uniformed Services on Active Duty

§ 728.11 Eligible beneficiaries.

(a) A member or a uniformed service, as defined in subpart A, who is on active duty is entitled to and shall be provided medical and dental care and adjuncts thereto. For the purpose of this part, the following are also considered on active duty:

(1) Members of the National Guard in active Federal service pursuant to a "call" under 10 U.S.C. 3500 or 8500.

(2) Midshipmen of the United States Naval Academy.

(3) Cadets of the United States Military Academy.

(4) Cadets of the Air Force Academy.

(5) Cadets of the Coast Guard Academy.

(b) The following categories of personnel who are on active duty are entitled to and shall be provided medical and dental care and adjuncts thereto to the same extent as is provided for active duty members of the Regular service (except reservists when on active duty for training (ACDU TRA) as delineated in § 728.21).

(1) Members of the Reserve components.

(2) Members of the Fleet Reserve.

(3) Members of the Fleet Marine Corps Reserve.

(4) Members of the Reserve Officers' Training Corps.

(5) Members of all officer candidate programs.

(6) Retired members of the uniformed services.

§ 728.12 Extent of care.

Members who are away from their duty stations or are on duty where there is no MTF of their own service may receive care at the nearest available Federal MTF (including designated USTFs) having the capability to provide the required care. Care shall be provided without regard to whether the condition for which treatment is required was incurred or contracted in line of duty.

(a) *All Active Duty Members.* (1) All eligible beneficiaries covered in this subpart are entitled to and shall be rendered the following treatment and services upon application to a naval MTF whose mission includes the

rendering of the care required. This entitlement provides that when required care and services are beyond the capabilities of the facility to which the members applies, the commanding officer of that facility shall arrange for care from another USMTF, designated USTF, or other Federal source or may authorize and arrange for direct utilization or supplemental services and supplies from civilian non-Federal sources. The cost of services from civilian non-Federal sources shall be borne by the facility's operation and maintenance funds.

(i) Necessary hospitalization and other medical care.

(ii) Occupational health services as defined in § 728.2(aa).

(iii) Necessary prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and other orthopedic appliances (see subpart H). When these items need repair or replacement and it is determined that the items were not damaged or lost through negligence, repair or replacement is authorized at Government expense.

(iv) Routine dental care. EXCEPTION: Other than emergency dental treatment for members of the Army and Air Force shall be provided only to those who are either on active duty in localities where their own dental services are not available, or to those assigned to detached duty with the Navy (MANMED art. 6-98(1)(e)).

(2) When a USMTF, with a mission of providing the care required, releases the medical management of an active duty member of the Navy, Marine Corps, Army, or Air Force, the resulting civilian health care costs will be paid by the referring facility. The member's uniformed service will be billed for care provided by the civilian facility only when the referring MTF is not organized nor authorized to provide needed health care (see 732 of this chapter for naval members). Saturation of service or facilities does not fall within this exception. When a naval MTF retains medical management, the costs of supplemental care purchased from civilian sources is paid from funds available to operate the MTF which manages care of the patient.

(b) *Maternity Episode for Active Duty Female Members.* A pregnant active duty member who lives outside the MHSS catchment area of all USMTFs is permitted to choose whether she wishes to deliver in a closer civilian hospital or travel to the USMTF for delivery. If such a member chooses to deliver in a naval MTF, makes application, and presents at that facility at the time for delivery, the provisions of § 728.12(a) apply with respect to the furnishing of needed care, including routine newborn care (i.e., nursery, newborn examination, PKU test, etc.); arrangements for care beyond the facility's capabilities; or the expenditure of funds for supplemental care or services. Expenses incurred for the infant in USMTFs or civilian facilities (once the mother has been admitted to the USMTF) shall be paid from funds available for the care of active duty members, unless the infant becomes a patient in his or here own right either through an extension of the birthing hospital stay because of complications, subsequent transfer to another facility, or subsequent admission. If the Government is to assume financial responsibility for:

(1) Care of pregnant members residing within the MHSS catchment area of a uniformed services hospital or in the catchment area of a designated USTF, such members are required to:

(i) Make application to that facility for care, or

(ii) Obtain authorization, in accordance with part 732 of this chapter for delivery in a civilian facility.

(2) Non-Federal care of pregnant members residing outside catchment areas of USMTFs, the member must request and receive authorization in accordance with part 732 of this chapter.

(c) *Reserve and National Guard Personnel.* In addition to those services covered in § 728.12 (a) and (b), Reserve and National Guard personnel are authorized the following under conditions set forth. (See § 728.25 for additional benefits for National Guard personnel.)

(1) Personnel whose units have an active Army mission of manning missile sites are authorized spectacle inserts for protective field masks.

(2) Personnel assigned to units designated for control of civil disturbances are authorized spectacle inserts for protective field masks M17.

§ 728.13 Application for care.

Possession of an ID card (a green colored DD Form 2 (with letter suffix denoting branch of service). Armed Forces Identification Card; a green colored PHS 1866-1, Identification Card; or a red colored DD Form 2 Res (Reservists on active duty for training)) alone does not constitute sufficient proof of eligibility. Accordingly, a DEERS check shall be made in accordance with § 728.4(dd) before care, other than emergency care, is rendered to the extent authorized.

Subpart C—Members of Reserve Components, Reserve Officers' Training Corps, Navy and Marine Corps Officer Candidate Program, and National Guard Personnel

§ 728.21 Navy and Marine Corps Reservists.

(a) *Scope.* This § 728.21 applies to reservists ordered to active duty for training or inactive duty training (drill) as those terms are defined in subpart A. Reservists on extended active duty shall be treated as members of the Regular servcie in accordance with subpart B.

(b) *Entitlement.* (1) *Reservists on Active Duty for Training (ACDUTRA).* (i) Pursuant to 10 U.S.C. 1074(a), reservists who sustain injury, contract disease, or otherwise become ill while on active duty for training are entitled to medical and dental care to the same extent as members of the Regular service during the training period (see subpart B) subject to the provisions of § 728.21(d).

(ii) Pursuant to 10 US.C. 6148(a), reservists who are disabled from an injury incurred in line of duty while on active duty for training for any period of time are entitled to medical and dental care in USMTFs and designated USTFs beyond the period of training to the same extent as members of the Regular service (see subpart B) subject to the provisions of § 728.21(d).

(iii) Pursuant to 10 U.S.C. 6148(d), reservists ordered to active duty for training and reservists ordered to involuntary active duty for training for any period of time who become disabled as a result of illness or disease contracted in line of duty while so employed are entitled to medical and dental care in USMTFs beyond the period of training subject to the provisions of § 728.21(d). Such care, however, shall not extend beyond 10 weeks without either authorization from Commander, Naval Medical Command or upon approval of a medical board. When reservists require care for an extended period of time under 10 U.S.C. 6148(d), not in excess of 6 months, the provisions of subpart I are applicable.

(2) *Reservists Performing Inactive Duty Training (drill).* (i) Pursuant to 10 U.S.C. 6148(a), reservists ordered to perform inactive duty training (drill) for any period of time who are disabled in line of duty from injury sustained while so employed are entitled to medical and dental care during and beyond the training period to the same extent as members of the Regular service (see subpart B) subject to the provisions of § 728.21(d).

(ii) Pursuant to 10 U.S.C. 6148(d), reservists ordered to perform inactive duty training (drill) for any period of time who become ill or contract disease in line of duty while so employed are entitled to medical and dental care during the period of training. Beyond the training period, medical and dental care shall be provided in accordance with § 728.21(b)(1)(iii) and § 728.21(b)(2)(iii), including subpart I.

(iii) Pursuant to 10 U.S.C. 1074a, members of the uniformed services are entitled to medical and dental care for an injury incurred or aggravated while the member is traveling directly to or from a place at which the member is to perform, or has performed, inactive duty training, provided:

(A) The injury is not incurred nor aggravated as a result of the member's own gross negligence or misconduct.

(B) The care rendered is limited to that appropriate for treatment of the injury until the resulting disability cannot be materially improved by further hospitalization or treatment.

(3) *Questionable Circumstances.* In situations involving questionable circumstances, referral to the office of medical affairs or office of dental affairs is appropriate. If necessary, make referral to the Naval Medical Command (MEDCOM–33 for medical and MEDCOM–32 for dental) on determinations of entitlements.

(c) *Line of Duty.* For the purpose of this subpart C, an injury, illness, or disease which is incurred or becomes manifest while a reservist is employed in the performance of active duty for training (including authorized leave and liberty), or inactive duty training (drill), will be considered to have been incurred in line of duty (LOD) unless the condition was incurred as the result of the reservist's own misconduct or under other circumstances enumerated in JAG Manual, chapter VIII. While the LOD investigation is being conducted, such reservists remain entitled to care. If the investigation determines that the injury or illness was not incurred in line of duty, the reservist shall be charged at the civilian humanitarian nonindigent rate if futher care is required in naval MTFs. While reservists on active duty for training are authorized care for all conditions which are incurred or become manifest while en route to or from such training, reservists enroute to or from inactive duty training (drill) may only be rendered care as a result of injuries. (See DOD Military Pay and Allowances Entitlement Manual for the allowable constructive travel time.)

(d) *Treatment and Services Authorized.* Reservists covered by this subpart may be provided medical and dental care subject to the following:

(1) The following treatment or services are not authorized routinely and therefore must be approved by either the appropriate office of medical affairs or office of dental affairs, or the Commander, Naval Medical Command (MEDCOM–33 for medical and MEDCOM–32 for dental), prior to initiation of services.

(i) Conditions that existed prior to a reservist's period of training duty.

(A) Remediable physical defects.

(B) Remediable treatment for other conditions.

(C) Elective surgery.

(ii) All dental care other than emergency treatment and that treatment necessary to correct an injury incurred in the line of duty.

(2) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that are lost or have become damaged during training duty, not through the negligence of the individual, may be repaired or replaced at Government expense.

(e) *Authorization for Care.* (1) Reservists covered by this subpart may be provided inpatient or outpatient care during a period of training duty without written authorization.

(2) Except in emergencies or when inpatient care initiated during a period of training duty extends beyond such period, reservists will be required to furnish written official authorization from their unit commanding officer, or higher authority, incident to receiving inpatient or outpatient care beyond the period of training duty. The letter of authorization will include name, grade or rate, social security number, and organization of the reservist; type of training duty being performed or that was being performed when the condition manifested; diagnosis (if known); and a statement that the condition was incurred in line of duty and that the reservist is entitled to care. If the reservist has been issued a notice of eligibility (NOE) (subpart I), the NOE may then be accepted in lieu of the letter of authorization. When authorization has not been obtained beforehand, care may be provided on a civilian humanitarian basis (see subpart G) pending final determination of eligibility.

§ 728.22 Members of Other Reserve Components of the Uniformed Services.

(a) Members of reserve components of the Coast Guard may be provided care the same as Navy and Marine Corps reservists.

(b) Members of reserve components of the Army and Air Force may be provided care in naval MTFs to the same extent that they are eligible for such care in MTFs of their respective services. Consult current Army Regulation 40–3, Medical, Dental, and Veterinary Care, or Air Force Regulation 168–6, Persons Authorized Medical Care, as appropriate, for particular eligibility requirements or contact the nearest appropriate service facility.

(c) When the service directive requires written authorization, such authorization shall be obtained from the reservist's unit commanding officer or other appropriate higher authority.

(d) Naval MTFs in the United States are authorized to conduct physical examinations of and administer immunizations to inactive reserve Public Health Service commissioned officers upon presentation of a written request from the Commissioned Personnel Operations Division, OPM/OAM, 5600 Fishers Lane, Rockville, MD 20852.

§ 728.23 Reserve Officers' Training Corps (ROTC).

(a) *Eligible Beneficiaries.* (1) Members of the Senior Reserve Officers' Training Corps of the Armed Forces including students enrolled in the 4-year Senior ROTC Program or the 2-year Advanced Training Senior ROTC Program.

(2) Designated applicants for membership in the Navy, Army, and Air Force Senior ROTC Programs during their initial 6-weeks traning period (practice cruises or field training).

(3) Medical, dental, pharmacy, veterinary or science allied to medicine students who are commissioned officers of a reserve component of an Armed Force who have been admitted to and training in a unit of a Senior Reserve Officers' Training Corps.

(b) *Extent of Care.* (1) While attending or en route to or from field training or practice cruises:

(i) Medical care for a condition incurred without reference to line of duty.

(ii) Routine dental care. EXCEPTION: See § 728.12(a)(4) for Army and Air Force beneficiaries.

(iii) Prosthetic devices, including dental appliances, hearing aids, spectacles, and orthopedic appliances that have become damaged or lost during training duty, not through the negligence of the individual, may be repaired or replaced as necessary as Government expense.

(iv) Care of remediable physical defects, elective surgery or other remediable treatment for conditions that existed prior to a period of training duty are not authorized without approval from the appropriate office of medical

affairs or office of dental affairs, or from the Commander, Naval Medical Command (MEDCOM-32 for medical and MEDCOM-33 for dental).

(v) Medical examinations and immunizations.

(vi) ROTC members are authorized continued medical care, including hospitalization, upon expiration of their field training or practice cruise period, in accordance with the provisions of § 728.21(b)(1) (ii) and (iii) and § 728.22.

(2) While attending a civilian educational institution:

(i) Medical care, including hospitalization, for a condition incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for the purposes of making visits of observation, including participation in service-sponsored sports, recreational, and training activities.

(ii) Medical examinations, including hospitalization necessary for the proper conduct thereof.

(iii) Required immunizations, including hospitalization for severe reactions therefrom.

(c) *Authorization.* A letter of authorization will be prepared by the individual's commanding officer and addressed to the commanding officer of the MTF concerned.

(d) *ROTC Members as Beneficiaries of the Office of Workers' Compensation Programs (OWCP).* Under circumstances described therein, members of the ROTC shall be rendered care as outlined in § 728.53 as beneficiaries of OWCP.

§ 728.24 Navy and Marine Corps Officer Candidate Programs.

Members of the Reserve Officers Candidate Program and Platoon Leaders Class are entitled to the same medical and dental benefits as are provided members of the Navy and Marine Corps Reserve Components. Accordingly, the provisions of § 728.21 are applicable for such members. Additionally, candidates for, or persons enrolled in such programs, including members of the Women Officer's Training Class, are authorized admission to naval MTFs for the purpose of conducting special physical examination procedures which have been requested by the Commander, Naval Medical Command to determine their physical fitness for appointment to, or continuation in such a program. Upon a request from the individual's commanding officer, the officer in charge of cognizant Navy and Marine Corps recruiting stations, or officer selection officer, naval MTFs are authorized to admit such persons when, in the opinion of the cognizant officer, hospitalization is deemed necessary for the proper conduct of the special physical examinations. Hospitalization should be kept to a minimum and treatment other than for humanitarian reasons, except as provided herein, is not authorized.

§ 728.25 Army and Air Force National Guard Personnel.

(a) *Medical Care.* Upon presentation of a letter of authorization, naval MTFs may render care as set forth in AR 40-3 (Medical, Dental, and Veterinary Care) and AFR 168-6 (Persons Authorized Medical Care) to members of the Army and Air Force National Guard who are not in a duty status. The authorizing letter shall include the name, social security number, grade, and organization of the patient; type and period of duty in which engaged (or in which engaged when the injury or illness occurred); diagnosis (if known); and will state that the injury suffered or disease contracted was in line of duty and that the individual is entitled to medical care. Entitlement determinations are a responsibility of the parent service.

(b) *Dental Care.* Dental care is limited to that adjunctive to the medical condition upon which eligibility is based and in emergencies.

(c) *Physical Examinations.* AR 40-3 and AFR 168-6 also authorize physical examinations for National Guard personnel. Accordingly, when requested by an Army or Air Force National Guard unit's commanding officer, naval MTFs may perform the requested physical examination in accordance with the appropriate service directive, subject to the availability of space, facilities, and the capabilities of the staff.

Subpart D—Retired Members and Dependents of the Uniformed Services

§ 728.31 Eligible beneficiaries.

(a) *Retired Members of the Uniformed Services.* Individuals defined in § 728.2(cc).

(b) *Dependents of.* (1) Members of the uniformed services ordered to active duty for more than 30 days.

(2) Retired members of the uniformed services, including retired and former members who are in receipt of retired pay under 10 U.S.C. 1331-1337.

(3) Members or former members who:

(i) Are, or were at the time of their deaths, entitled to retired or retainer pay or equivalent pay; or

(ii) Died before attaining age 60 and at the time of their deaths:

(A) Would have been eligible for retired pay under 10 U.S.C. 1331-1337 but for the fact they were under 60 years of age, and

(B) Had elected to participate in the Survivor Benefit Plan established under 10 U.S.C. 1447-1455, except that

(*1*) Dependents, other than former spouses, who are otherwise eligible may not be rendered care derived from their sponsor's entitlements under 10 U.S.C. 1331-1337 until the date on which such members or former members would have attained age 60.

(*2*) Former spouses, eligible in accordance with § 728.2(j)(5) are entitled regardless of the fact that their sponsor did not elect to participate in the Survivor Benefit Plan established under 10 U.S.C. 1447-1455.

(4) Members of a uniformed service ordered to active duty for more than 30 days who died while on that duty.

(5) Deceased retired members.

§ 728.32 Health benefits authorized.

(a) *Retired Members.* Retired members are authorized the same medical and dental benefits as active duty members subject to the availability of space, facilities, and the capabilities of the professional staff and the priorities listed in § 728.3, except that

(1) Periodic medical examinations for members on the Temporary Disability Retired List, including hospitalization in connection with the conduct thereof, will be furnished on the same priority basis as active duty members.

(2) When vision correction is required, one pair of standard issue spectacles, or one pair of nonstandard spectacles are authorized when required to satisfy patient need. Two pairs of spectacles may be furnished only when professionally determined to be essential by the examining officer. Occupational type spectacles, such as aviation, industrial safety, double segment and mask insert, will not be furnished by military ophthalmic laboratories for retired military personnel (BUMEDINST 6810.4G).

(b) *Dependents.* Subject to the availability of space, facilities, and the capabilities of the professional staff and the priorities listed in § 728.3, dependents are authorized the following in naval MTFs:

(1) Inpatient care including services and supplies normally furnished by the MTF.

(2) Outpatient care and services.

(3) Drugs (see chapter 21, MANMED).

(i) Prescriptions written by officers of the Medical and Dental Corps, civilian physicians and dentists employed by the Navy, designated officers of the Medical Service Corps and Nurse Corps, independent duty hospital corpsmen,

and others designated to write prescriptions will be filled subject to the availability of pharmaceuticals, and consistent with control procedures and applicable laws.

(ii) Prescriptions written by civilian physicians and dentists (non-Navy employed) for eligible beneficiaries may be filled if:

(A) The commanding officer or designee determines that pharmacy personnel and funds are available.

(B) The items requested are routinely stocked.

(C) The prescribed quantity is within limitations established by the command.

(D) The prescriber is in the local area (limits designated by the commanding officer).

(E) The provisions of chapter 21, MANMED are followed when such services include the dispensing of controlled substances.

(4) Treatment on an inpatient or outpatient basis of:

(i) Medical and surgical conditions.

(ii) Contagious diseases.

(iii) Nervous, mental, and emotional disorders.

(iv) Chronic conditions and diseases.

(5) Physical examinations, including eye examinations and hearing evaluations, and all other tests and procedures necessary for a complete physical examination.

(6) Immunizations.

(7) Maternity (obstetrical) and infant care, routine care and examination of the newborn infant and well-baby care for those mothers and infants meeting the eligibility requirements of § 728.31(b). The newborn infant of an unmarried dependent minor daughter shall be classed as a civilian humanitarian nonindigent inasmuch as the infant is not a dependent of the active duty or retired service member as defined in § 728.31(b). Therefore, the minor daughter's sponsor (parent) should be counseled concerning the possibility of Secretarial designee status for the infant (see § 728.77).

(8) Diagnostic tests and services, including laboratory and x-ray examinations. Physical therapy, laboratory, x-ray, and other ambulatory diagnostic or therapeutic measures requested by non-Navy employed physicians may be provided upon approval of the commanding officer or designated department heads. The rendering of such services shall be subordinate to and shall not unduly interfere with providing inpatient and outpatient care to active duty personnel and others whose priority to receive care is equal to or greater than such dependents. The release of information to non-Navy employed physicians shall be in consonance with applicable provision of SECNAVINST 5211.5C.

(9) Family planning services as delinated in SECNAVINST 6300.2A.

(10) Routine dental care may be provided to beneficiaries residing outside the United States. Within the United States, routine dental care may be provided only at installations which have been authorized, on an individual basis, to provide such care. At these designated installations, routine dental care may be provided only to those dependents who reside in the dentally underserved area (the MHSS catchment area of the facility), or as otherwise determined by the Secretary of the Navy. At installations within the United States not authorized to provide routine dental care, dental care is limited to:

(i) Emergency dental or oral care.

(ii) Dental care, including restorative dentistry and dental prosthetic devices, deemed necessary as an adjunct to medical or surgical treatment of a disease, condition, or injury.

(iii) Preventive measures including the fluoridation of water and the preventive dentistry program.

(iv) Consultation, examination, and disagnosis.

(11) Government ambulance services, surface or air, to transport dependents to, from, or between medical facilities when determined by the medical officer in charge to be medically necessary.

(12) Home calls when determined by the medical officer in charge to be medically necessary.

(13) Artificial limbs and artificial eyes, including initial issue, fitting, repair, replacement, and adjustment.

(14) Durable equipment such as wheelchairs, hospital beds, and resuscitators may be issued on a loan basis.

(15) Orthopedic aids, braces, crutches, elastic stockings, walking irons, and similar aids.

(16) Prosthetic devices (other than artificial limbs and eyes), hearing aids, orthopedic footwear, and spectacles or contact lenses for the correction of ordinary refractive error may not be provided dependents. These items, however, may be sold to dependents at cost to the Government outside the United States and at specific installations within the United States which have been designated by the Secretary of the Navy as remote.

(17) Special lenses (including intraocular lenses) or contact lenses for those eye conditions which require these items for complete medical or surgical management of the condition.

(18) Visa examinations for alien dependents of Armed Forces personnel at overseas locations having one or more medical officers. Normally such examinations will consist of a superficial history and an interview to exclude present mental illness, drug addiction, psychopathic personality, or chronic alcoholism; a rather limited physical examination for overt evidence of venereal disease or leprosy; and a chest x-ray, and serology. Guidelines for examinations and procedures beyond those normally required may be found in the Manual for Examination of Aliens. This manual may be acquired from U.S. officials at American Embassies, Consular Posts, or other U.S. visa issuing offices.

§ 728.33 Application for Care.

Possession of an ID card alone (DD Form 2 (Retired), PHS–1866–3 (Retired), or DD Form 1173 (Uniformed Services Identification and Privilege Card)) does not constitute sufficient proof of eligibility. Accordingly, a DEERS check shall be instituted in accordance with § 728.4(dd) before medical and dental care may be rendered except in emergencies. When required inpatient or outpatient care is beyond the capabilities of the naval MTF, the provisions of § 728.35 shally apply. When required inpatient care cannot be rendered and the decision is made to disengage a CHAMPUS-eligible beneficiary, the provisions of § 728.34 apply.

§ 728.34 Nonavailability Statement (DD Form 1251).

(a) *General.* Pursuant to DOD Instruction 6015.19 of 15 June 1983, the following guidelines are effective as of 15 June 1983. All previously issued Nonavailability Statement guidelines and reporting requirements are superseded.

(b) *Applicability.* The following provisions are applicable to nonemergency inpatient care only. A DD Form 1251 is not required for either:

(1) Emergency care (see § 728.34(d)(1)); or

(2) When the beneficiary has other insurance paying at least 75 percent of the covered service.

(c) *Reasons for Issuance.* DD Form 1251's may be issued for only the following reasons:

(1) Proper facilities are not available.

(2) Professional capability is not available.

(3) It would be medically inappropriate (as defined in § 728.2(v)) to require the beneficiary to use the USMTF and the attending physician has specific prior approval from the facility's commanding officer or higher authority to make such determination.

(i) Issuance for this reason should be restricted to those instances when denial of the DD Form 1251 could result in a significant risk to the health of any patient requiring any clinical specialty.

(ii) Issuing authorities have discretionary authority to evaluate each situation and issue a DD Form 1251 under the "medically inappropriate" reason if:

(A) In consideration of individual medical needs, personal constraints on an individual's ability to get to the USMTF results in an unreasonable limitation on that individual's ability to get required medical care, and

(B) The issuing authority determines that obtaining care from a civilian source selected by the individual would result in significantly less limitations on that individual's ability to get required medical care than would result if the individual was required to obtain care from a USMTF.

(d) *Guidelines for Issuing.* (1) *Emergency Care.* Claims for emergency care do not require a Nonavailability Statement, however, the nature of the service or care must be certified to be an emergency by the attending physician, either on the claim form or in a separate signed and dated statement. Otherwise, CHAMPUS-eligible beneficiaries who are subject to the provisions of § 728.34 require a DD Form 1251.

(2) *Emergency Maternity Care.* Unless substantiated by medical documentation and review, a maternity admission would not be deemed as an emergency since the fact of the pregnancy would have been established well in advance of the admission. In such an instance, the beneficiary would have had sufficient opportunity to obtain a DD Form 1251 if required in her residence catchment area.

(3) *Newborn Infant(s) Remaining in Hospital After Discharge of Mother.* A newborn infant remaining in the hospital continuously after discharge of the mother does not require a separate DD Form 1251 for the first 15 days after the mother is discharged. Claims for care beyond this 15-day limitation must be accompanied by a valid DD Form 1251 issued in the infant's name. This is due to the fact that the infant becomes a patient in his or her own right (the episode of care for the infant after discharge of the mother is not considered part of the initial reason for admission of the mother (delivery), and is therefore considered a separate admission under a different diagnosis).

(4) *Beneficiary Responsibilities.* Beneficiaries are responsible for determining whether a Nonavailability Statement is required for their area of residence and for obtaining one, if required, by first seeking nonemergency inpatient care in the USMTF serving the catchment area. Beneficiaries cannot avoid this requirement by arranging to be away from their residence when nonemergency inpatient care is obtained, e.g., staying with a relative or traveling. Individuals who require a Nonavailablity Statement because they reside in the catchment area of a USMTF also require a Nonavailability Statement for nonemergency care received while away from their catchment area.

(e) *Issuing Authority.* Under the direction of the Commander, Naval Medical Command, exercised through geographic commanders of naval medical commands, naval MTFs shall issue Nonavailability Statements only when care required is not available from the naval MTF and the beneficiary's place of residence is within the catchment area (as defined in § 728.2(d)) of the issuing facility or as otherwise directed by the Secretary of Defense. When the facility's catchment area overlaps the catchment area of one or more other USMTFs with inpatient capability and the residence of the beneficiary is within the catchment area of one of more other USMTFs with inpatient capability, the issuing authority shall:

(1) Determine whether the required care is available at any of the other USMTFs whose catchment area overlaps the beneficiary's residence. Should it be available, the beneficiary shall be referred to that facility for care and a DD Form 1251 shall not be issued.

(2) Implement measures ensuring that an audit trail related to each check and referral is maintained, including the check required before retroactive issuance of a DD Form 1251 as delineated in § 728.34(g). When other than written communication is made to ascertain capability, a record shall be made in the log required in § 728.34(h) that "Telephonic (or other) determination was made on *(date)* that required care was not available at *(name of other USMTF(s) contacted)*". This notation shall be signed by the individual ascertaining this information.

(3) Once established that a DD Form 1251 is authorized and will be issued, the following shall apply:

(i) Patients shall not be referred to a specific source of care.

(ii) Nonavailability Statements issued at commands outside the United States are not valid for care received in facilities located within the United States. Statements issued within the United States are not valid for care received outside the United States.

(iii) The issuing officer shall:

(A) Prepare each DD Form 1251 in accordance with instructions on the reverse of the form. After completion, if authorized by the facility commanding officer, the issuing authority shall sign the DD Form 1251 (four-part set). Three copies shall be furnished the patient: one for the participating civilian provider, or for submission with the claim of a nonparticipating provider; one for the inpatient civilian facility; and one for retention by the sponsor or patient. The remaining copy shall be retained by the issuing facility for reporting in accordance with § 728.34(j).

(B) Explain to the patient or other responsible family member the validity period of the DD Form 1251 (see § 728.34(f)).

(C) Ensure that beneficiaries are clearly advised of the cost-sharing provisions of CHAMPUS and of the fact that the issuance of a Nonavailability Statement does not imply that CHAMPUS will allow any and all costs incurred through the use of the DD Form 1251. The issuance of a DD Form 1251 indicates only that the care requested is not available in the USMTF.

(D) Review, with the patient or responsible family member, instructions 1 through 6 on the face of the DD Form 1251 and have the patient or responsible family member sign acknowledgement that such review has been made and is understood.

(f) *Validity Period.* DD Form 1251's issued for:

(1) Other than maternity care are valid for a hospital admission occurring within 30 days of issuance and remain valid from the date of admission until 15 days after discharge from the facility rendering inpatient care. This allows for any follow-on treatment related directly to the original admission.

(2) Maternity episodes are valid if out patient or inpatient treatment related to the pregnancy is initiated within 30 days of its issuance. They remain valid for care of the mother through termination of the pregnancy and for 30 days thereafter to allow for postnatal care to be included in the maternity episode.

(g) *Retroactive Issuance.* Nonavailability Statements shall be issued retroactively only if required care could not have been rendered in a USMTF as specified in § 728.34(e) at the time services were rendered in the civilian sector. Accordingly, at the time a retroactive issuance is requested, the facility receiving the request shall determine whether capability existed at the USMTF serving the catchment area wherein the beneficiary resides (resided) or at any of the facilities in the

overlapping area described in § 728.34(e).

(h) *Annotating DD Form 1251's.* Before issuance, each DD Form 1251 shall be annotated in accordance with the instructions for completion on the reverse of each DD Form 1251. DD Form 1251's issued under the CO's discretionary authority for the "medically inappropriate" reason (§ 728.4(c)(3)(ii)) shall be annotated in the remarks section documenting the special circumstances necessitating issuance, the name and location of the source of care selected by the beneficiary, and the approximate distance from the source selected to the nearest USMTF with capability. A consecutively numbered log shall be established and maintained to include for each individual to whom a DD Form 1251 is issued:

(1) Patient's name and identifying data.

(2) The facility unique NAS number (item number 1 on the DD Form 1251).

(i) *Appeals Procedures.* Beneficiaries may appeal the denial of their request for a DD Form 1251. This procedure consists of four levels within Navy, any one of which may terminate action and order issuance of a Nonavailability Statement if deemed warranted:

(1) The first level is the chief of service, or director of clinical services if the chief of service is the cognizant authority denying the beneficiary's original request.

(2) The second level is the commanding officer of the naval MTF denying the issuance. Where the appeal is denied and denial is upheld at the commanding officer's level, beneficiaries shall be informed that their appeal may be forwarded to the geographic commander having jurisdictional authority.

(3) The third level is the appropriate geographic commander. If the appeal is denied at this level, beneficiaries shall be informed that their appeal may be forwarded to the Commander, Naval Medical Command, Washington, DC.

(4) The Commander, Naval Medical Command, the fourth level of appeal, will evaluate all documentation submitted and arrive at a decision. The beneficiary will be notified in writing of this decision and the reasons therefor.

(j) *Data Collection and Reporting.* Naval MTFs with inpatient capability shall establish and maintain a system of data collection on the number of DD Form 1251's issued according to reason for issuance, clinical specialty, and the category of beneficiary to whom issued. Report this information to the Commander, Naval Medical Command (MEDCOM–31) quarterly within 15 days after the end of the quarter, commencing with the quarter ending after the date of this instruction. When reporting the number of DD Form 1251's issued for the "medically inappropriate" reason, annotate format to provide the number included in the body of the report that were issued under the provisions of § 728.34(c)(3)(ii). Provide copies to the commander of the geographic region for information and evaluation. Inasmuch as COMNAVMEDCOM (MEDCOM–31) must compile and reconcile statistics from all activities, assure that information is reported only in the proper format. Modified reports received at COMNAVMEDCOM must be rectified causing delays in reporting to higher authority.

§ 728.35 Care Beyond the Capabilities of a Naval MTF.

When, either during initial evaluation or during the course of treatment of an individual authorized care in this subpart, it is determined that required care or services are beyond the capability of the naval MTF, the provisions of § 728.4(aa) apply.

Subpart E—Members of Foreign Military Services and Their Dependents

§ 728.41 General provisions.

(a) *Dependent.* As used in this subpart, the term "dependent" denotes a person who bears one of the following relationships to his or her sponsor:

(1) A wife.

(2) A husband if dependent on his sponsor for more than one-half of his support.

(3) An unmarried legitimate child, including an adopted or stepchild who is dependent on the sponsor for over one-half of his or her support and who either:

(i) Has not passed the 21st birthday; or

(ii) Is incapable of self-support due to a physical or mental incapacity that existed prior to reaching the age of 21; or

(iii) Has not passed the 23rd birthday and is enrolled in a full-time course of study in an accredited institution of higher learning.

(b) *Transfer to Naval MTFs in the United States.* Personnel covered in this subpart shall not be transferred to the United States solely for the purpose of obtaining medical care at naval MTFs. Consideration may be given however, in special circumstances pursuant to the laws of humanity or principles of international courtesy. Transfer to naval MTFs in the United States of such persons located outside the United States requires approval of the Secretary of the Navy. Naval commands, therefore, shall not commit the Navy by a promise of treatment in the United States. Approval generally will not be granted for treatment of those who suffer from incurable afflictions, who require excessive nursing or custodial care, or those who have adquate facilities in their own country. When a request is received concerning transfer for treatment at a naval MTF in the United States, the following procedures shall apply:

(1) The request shall be forwarded to the Chief of Naval Operations (OP–61), with a copy to the Commander, Naval Medical Command, Washington, DC, for administrative processing and shall include:

(i) Patient's full name and grade or rate (if dependent, the sponsor's name and grade or rate also).

(ii) Country of which a citizen.

(iii) Results of coordination with the chief of the diplomatic mission of the country involved.

(iv) Medical report giving the history, diagnosis, clinical findings, results of diagnostic tests and procedures, and all other pertinent medical information.

(v) Availability or lack thereof of professional skills and adequacy of facilities for treatment in the member's own country.

(vi) Who will assume financial responsibility for costs of hospitalization and travel.

(2) The Chief of Naval Operations (OP–61) will, if appropriate, obtain State Department clearance and guidance and advise the Secretary of the Navy accordingly. The Commander, Naval Medical Command will furnish the Chief of Naval Operations information and recommendations relative to the medical aspects and the name of the naval MTF having the capability to provide the required care. If approved, the Chief of Naval Operations will furnish, through the chain of command, the commanding officer of the designated naval MTF authorization for admission of the beneficiary for treatment.

(c) *Reimbursement.* Pub. L. 98–527 and subsequent appropriation acts contain provisions prohibiting the expenditure of appropriated funds ". . . to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department of Defense is reimbursed for the costs of providing such care: *Provided,* that reimbursements . . . shall be credited to the appropriations against which charges have been made for providing such care." Accordingly, naval MTFs in

the 50 United States shall collect full costs (full reimbursement rate (FRR)) for inpatient care provided to all foreign military personnel (not connected with a Foreign Military Sales (FMS) case number), foreign diplomatic personnel, and the dependents of both whether they are in the United States on official duty or for other reasons. (Chapter II, part 4 of NAVMED P–5020 is applicable to the collection of and accounting for such charges.)

§ 728.42 NATO.

(a) *NATO SOFA Nations.* Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

(b) *Beneficiaries.* The following personnel are beneficiaries under the conditions set forth, subject to reimbursement for inpatient care by the responsible NATO nation or individual concerned.

(1) *Members of NATO Military Services and Their Dependents.* Military personnel of NATO nations who, in connection with their official duties, are stationed in or passing through the United States, and their dependents residing in the United States with the sponsor may be provided care in naval MTFs to the same extent and under the same conditions as comparable U.S. uniformed services personnel and their dependents. Accordingly, the provisions of § 728.12 are applicable to military personnel and § 728.32(b) to accompanying dependents.

(2) *Military Ships and Aircraft Personnel.* Crew and passengers of visiting military aircraft and crews of ships of NATO nations which land or come into port at NATO or U.S. military airfields or ports within NATO countries.

(3) *NATO Liaison Officers.* In overseas areas, liaison officers from NATO Army Forces or members of a liaison detachment from such a Force.

(c) *Application for Care.* Military personnel of NATO nations stationed in the United States and their dependents shall present valid Uniformed Services Identification and Privilege Cards (DD Form 1173) when applying for care. For other eligible persons passing through the United States on official business and those enumerated in § 728.42(b) (2) and (3), orders or other official identification may be accepted in lieu of the DD Form 1173.

(d) *Disposition.* When it becomes necessary to return individuals to their home country for medical reasons, immediate notification shall be made to the NATO unit sponsoring the member or dependent's sponsor. This notification shall include all pertient information regarding the physical and mental condition of the individual concerned. Below are details of agreements among the Armed Forces of NATO, CENTO, and SEATO Nations on procedures for disposition of allied country patients by DOD medical installations.

(1) *Transfer of Patients.*

(i) The patient's medical welfare must be the paramount consideration. When deciding upon the transfer of a patient, due consideration should be given to any increased medical hazard which the transfer might involve.

(ii) Arrangements for disposition of patients should be capable of being implemented by existing organizations. Consequently, no new establishment should be required specially for dealing with the transferring of allied casualties.

(iii) Patients will be transferred to their own national organization at the earliest practicable opportunity consistent with the observance of principles established in § 728.42(d)(1) (i) and (ii) and under any of the following conditions:

(A) When a medical facility of their own nation is within reasonable proximity of the facility of the holding nation.

(B) When the patient is determined to require hospitalization in excess of 30 days.

(C) Where there is any question as to the ability of the patient to perform duty upon release from the MTF.

(iv) The decision as to whether a patient, other than one requiring transfer under § 728.42(d)(1)(iii), is fit for release from the MTF is the responsibility of the facility's commanding officer.

(v) All clinical documents, to include x-rays, relating to the patient will accompany such patients on transfer to their own national organization.

(vi) The decision of suitability for transfer and the arrangements for transfer will be the responsibility of the holding nation.

(vii) Final transfer channels should be arranged by local liaison before actual movement.

(viii) Patients not suitable for transfer to their own national organization must be dealt with for treatment and disposition purposes as patients of the holding nation until they are transferred, i.e., they will be dealt with in military hospitals, military medical installations, or in civilian hospitals that are part of the military medical evacuation system of the holding nation.

(2) *Classification of Patients.* Different channels for disposition will be required for the following two types of patients:

(i) Patients Not Requiring Admission. Patients not requiring admission to an MTF will be returned to their nearest national unit under arrangements to be made locally.

(ii) Patients Admitted to Medical Installations. All such patients will be dealt with in accordance with § 728.42(d)(1).

(e) *Care Authorized Outside the 48 Contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only, *provided*, the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to authorized inpatient care and shall not include dental prostheses or orthodontia.

§ 728.43 Members of Other Foreign Military Services and Their Dependents.

(a) *Foreign Military Service Members.* For the purpose of § 728.43, members of foreign military services include only:

(1) Military personnel who are carried on the current Diplomatic List (Blue) or on the List of Employees of Diplomatic Missions (White) published by the Department of State.

(2) Military personnel assigned or attached to United States military units for duty; military personnel on foreign military supply missions accredited to and recognized by one of the military departments; and military personnel on duty in the United States at the invitation of the Secretary of Defense or one of the military departments. For the purpose of § 728.43, members of foreign Security Assistance Training Programs (SATP) and Foreign Military Sales (FMS) are not included (see § 728.44).

(3) Foreign military personnel accredited to joint United States defense boards or commissions when stationed in the United States.

(4) Foreign military personnel covered in agreements entered into by the Secretary of State, Secretary of Defense, or one of the military departments to include, but not limited to, United Nations forces personnel of foreign governments exclusive of NATO nations.

(b) *Care Authorized in the United States.* Subject to reimbursement for inpatient care as outlined in § 728.41(c),

military personnel of foreign nations not covered in § 728.42 and their dependents residing in the United States with the sponsor may be provided medical care in naval MTFs to the same extent and under the same conditions as comparable personnel of the U.S. uniformed services and their dependents, *provided*, the sponsor is in the United States in a status officially recognized by an agency of the Department of Defense. Hospitalization generally will not be granted to members or dependents who require prolonged treatment for chronic conditions, nervous or mental disorders, or domiciliary care, except in an emergency to preserve life or prevent suffering. Dental care is limited to emergencies only.

(c) *Application for Care.* All personnel covered by § 728.43 shall present orders or other official U.S. identification verifying their status when applying for care.

(d) *Disposition.* When it becomes necessary to return individuals covered by § 728.43 to their home country for medical reasons, immediate notification shall be made to the sponsoring unit of the patient or patient's sponsor with a copy to the Chief of Naval Operations (OP–61). Such notification shall include all pertinent information regarding the physical and mental condition of the individual concerned and full identification, diagnosis, prognosis, estimated period of hospitalization, and recommended disposition. Additionally, the provisions of §728.42(d) (1) and (2) above apply.

(e) *Care Authorized Outside the 48 Contiguous United States.* Major overseas commanders may authorize care in naval MTFs subject to the availability of space, facilities, and the capabilities of the professional staff in emergency situations only, *provided*, the required care cannot reasonably be obtained in medical facilities of the host country or in facilities of the patient's own country, or if such facilities are inadequate. Hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to authorized inpatient care and shall not include dental prostheses or orthodontia.

§ 728.44 Members of Security Assistance Training Programs, Foreign Military Sales, and Their ITO Authorized Dependents.

(a) *Policies.* (1) *Invitational Travel Orders Screening.* Prior to determining the levels of care authorized or the government or person responsible for payment for care rendered, ITOs should be carefully screened to detect variations applicable to certain foreign countries. For example, Kuwait has a civilian health plan to cover medical expenses of their trainees; trainees from the Federal Republic of Germany are personally responsible for reimbursing for inpatient care provided to their dependents; and all inpatient medical services for trainees from France and their dependents are to be borne by the individual trainee.

(2) *Elective and Definitive Surgery.* The overall policy with respect to elective and definitive surgery for Security Assistance Training Program (SATP), Foreign Military Sales (FMS) personnel and their dependents is that conservatism shall at all times prevail, except bona fide emergency situations which might threaten the life or health of an individual. Generally, elective care is not authorized nor should be commenced. However, when a commanding officer of a naval MTF considers such care necessary to the early resumption and completion of training, the complete facts shall be submitted to the Chief of Naval Operations (OP–63) for approval. Such a submission shall include the patient's name (sponsor's also if patient is an ITO (Invitational Travel Orders) authorized dependent), grade or rate, country of origin, diagnosis, type of elective care being sought, and prognosis.

(3) *Prior to Entering Training.* Upon arrival of an SATP or FMS trainee in the United States or at an overseas training site, it is discovered that the trainee cannot qualify for training by reason of a physical or mental condition which will require a significant amount of treatment before entering or completing training, such trainees shall be returned to their home country immediately or as soon thereafter as travel permits.

(4) *After Entering Training.* When trainees require hospitalization or are disabled after entering a source of training, they shall be returned to their home country as soon as practicable when, in the opinion of the commanding officer of the medical facility, hospitalization or disability will prevent training for a period in excess of 30 days. A copy of the patient's clinical records shall be forwarded with the patient. When a trainee is accepted for treatment that is not expected to exceed 30 days, the commanding officer of the training activity will be so notified. Further, when a trainee is scheduled for consecutive training sessions convening prior to the expected date of release from a naval MTF, the next scheduled training activity shall be made an information addressee. Upon release from the MTF, the trainee shall be directed to resume training.

(b) *Care Authorized.* Generally, all SATP and FMS personnel and their ITO authorized dependents are entitled to care to the same extent. However, certain agreements require that they be charged differently and that certain exclusions apply.

(1) *NATO Members and Their ITO Authorized Dependents.*

(i) *Foreign Military Sales (FMS).* Subject to reimbursement in accordance with § 728.41(c), FMS personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and their accompanying ITO authorized dependents shall be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International Military Education and Training (IMET).* Subject to reimbursement for inpatient care at the appropriate IMET rate for members or at the full reimbursement rate for dependents, IMET personnel of NATO nations who are in the United States or at U.S. Armed Forces installations outside the United States and accompanying dependents shall be provided medical and dental care in naval MTFs to the same extent and under the same conditions as comparable United States military personnel and their accompanying dependents except that:

(A) Dependent dental care is not authorized.

(B) Dependent are not authorized cooperative care under CHAMPUS.

(2) *Other Foreign Members and ITO Authorized Dependents.*

(i) *Foreign Military Sales.* Subject to reimbursement for both inpatient and outpatient care at the full reimbursement rate, FMS personnel of non-NATO nations and ITO authorized accompanying dependents may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, *provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for the military member and is not authorized for dependents.

(D) Outpatient care is chargeable on a full reimbursable basis from either foreign military trainees or from their government.(E) Dependents are not authorized cooperative care under CHAMPUS.

(ii) *International Military Education and Training.* Subject to reimbursement for both inpatient and outpatient care at the appropriate rates for members and dependents, IMET personnel of non-NATO nations may be provided medical and dental care on a space available basis when facilities and staffing permit except that:

(A) Prosthetic devices, hearing aids, orthopedic footwear, and similar adjuncts are not authorized.

(B) Spectacles may be furnished when required to enable trainees to perform their assigned duties, *provided* the required spectacles are not available through civilian sources.

(C) Dental care is limited to emergency situations for military members and is not authorized for dependents.

(D) Dependents are not authorized cooperative care under CHAMPUS.

(c) *Application for Care.* Trainees and accompanying dependents shall present official U.S. identification or orders verifying their status when applying for care. If any doubt exists as to the extent of care authorized, ITOs should be screened (see § 728.44(a)(1)).

(d) *Notification.* When trainees require hospitalization as a result of illness or injury prior to or after entering training, the training activity (the hospital if patient has been admitted) shall make a message report through the normal chain of command to the Chief of Naval Operations (OP–63) with information copies to MAAG, COMNAVMEDCOM, Navy International Logistics Control Office (NAVILCO), Unified Commander, the affected office, and the foreign naval attache concerned. The report shall include details of the incident, estimated period of hospitalization, physical or mental condition of the patient, and diagnosis. For further amplification, see OPNAVINST 4950.1G and NAVCOMPTMAN 032103. (Report Control Symbol OPNAV 3100–11 applies.)

§ 728.45 Civilian Components (Employees of Foreign Military Services) and Their Dependents.

(a) *Care Authorized.* Beneficiaries covered in § 728.45 are only authorized care in naval MTFs in the United States and then only civilian humanitarian emergency care rendered at installations which have been designated as remote by the Secretary of the Navy. Arrangements will be made to transfer such beneficiaries to a civilian facility as soon as their condition permits.

(b) *Potential Beneficiaries.* (1) *NATO.* Civilian employee personnel (and their dependents residing with them) accompanying military personnel in § 728.42(b)(1), *provided,* the beneficiaries are not stateless persons nor nationals of any state which is not a party to the North Atlantic Treaty, nor nationals of, nor ordinarily residents in the United States.

(2) *Others.* Civilian personnel not covered in § 728.45(b)(1) (and their dependents residing with them) accompanying personnel of foreign nations on duty in the United States at the invitation of the Department of Defense or one of the military departments.

(c) *Application for Care.* Personnel covered by the provisions of § 728.45 shall present orders or other official U.S. identification verifying their status when applying for care.

Subpart F—Beneficiaries of Other Federal Agencies

§ 728.51 General Provisions—the "Economy Act."

Under the provisions of 31 U.S.C. 686, any executive department or independent establishment of the Government, or any bureau thereof, if funds are available therefor and if it is determined by the head of such executive department, establishment, bureau, or office to be in the best interest of the Government so to do, may place orders with any other such department, establishment, bureau, or office for services of any kind that such requisitioned Federal agency may be in a position to supply or equipped to render. This is commonly known as the "Economy Act." Unless otherwise stipulated in this subpart F, the provisions of § 728.51 shall apply when other Federal agencies request medical or dental care for beneficiaries for whom they are responsible, including occupational health services as defined in § 728.2(aa).

§ 728.52 Veterans Administration Beneficiaries (VAB).

(a) *Eligible Beneficiaries.* Those who have served in the Armed Forces, have been separated under conditions other than dishonorable, and have been determined by the Veterans Administration (VA) to be eligible for care at VA expense.

(b) *Inpatient Control.* Each VAB admitted shall be required to conform to regulations governing the internal administration of the naval facility. Restrictive or punitive measures, including disciplinary action or denial of privileges, shall conform as nearly as possible to VA instructions.

(c) *Resolution of Problems.* All problems pertaining to VABs, including admission, medical or other records, and all correspondence shall be matters of resolution between the commanding officer of the naval facility and the VA office of jurisdiction authorizing admission. Questions of policy and administration which cannot be so resolved shall be forwarded, through the normal chain of command, to the Administrator of Veterans Affairs via COMNAVMEDCOM for resolution.

(d) *Care in the United States.* (1) *Inpatient Care.* An eligible VAB may be admitted to a naval MTF on presentation of a written authorization for admission signed by an official of the VA office of jurisdiction. Neurological and certain neuropsychiatric patients without obvious evidence of psychosis and not requiring restraints, and instances of suspected tuberculosis may be admitted for diagnosis. When diagnosed, instances of psychosis, psychoneurosis, and tuberculosis of present clinical significance shall be reported promptly to the VA office of jurisdiction with a request for transfer to a VA facility.

(i) Extent of Care. Eligible VABs shall be furnished medical and surgical care, including prostheses such as eyes and limbs, and appliances such as hearing aids, spectacles, or orthopedic appliances when required for the proper treatment of the condition upon which eligibility is based.

(ii) Disposition of Emergency Admissions. Commanding officers of naval MTFs shall notify the appropriate VA office of jurisdiction by message or other expeditious means within 72 hours after the date and hour of an emergency admission of a potential VAB. This notification shall contain a request for an authorization for admisión and emergency treatment. If VA denies VAB status to such a person admitted in an emergency, the provisions of § 728.81(a) are applicable. Once admitted in an emergency situation, a VAB shall be discharged promptly upon termination of the emergency unless arrangements have been made with the VA office of jurisdiction:

(A) For transfer to a VA treatment facility if further treatment is required.

(B) To retain the patient as a VAB in the naval MTF.

(2) *Outpatient Care.* Outpatient care, including post hospitalization outpatient care, may be provided upon authorization by the VA office of jurisdiction. When outpatient followup care is requested, commanding officers are responsible for determining whether capabilities and workload permit providing such care. In an emergency, necessary care shall be provided.

(3) *Physical Examinations.* Upon a determination by a naval MTF commanding officer that space, facilities, and capabilities exist, naval MTFs may provide physical examinations when requested by the VA for the purpose of adjudicating claims for VA physical disability compensation. If authorized by the VA, patients may be admitted when the examination requires more than one day.

(4) *Dental Care.* Dental treatment shall be limited to inpatients who require services adjunctive to medical or surgical conditions for which hospitalized.

(e) *Care Outside the United States.* (1) *Eligible Beneficiaries.* Beneficiaries described in § 728.52(a) who are citizens of the United States and residing or sojourning abroad may, within the capabilities of the facility as determined by the commanding officer, be provided inpatient and outpatient care upon presentation of an authorization from the appropriate VA office of jurisdiction listed in § 728.52(e)(3).

(2) *Emergency Care.* Overseas naval MTFs furnishing emergency care to potential VABs shall promptly notify the appropriate VA office of jurisdiction and request authorization for treatment and instructions for disposition of the patient.

(3) *Offices of Jurisdiction.* The following activities are vested with the responsibility for issuing authorizations for care and furnishing disposition instructions for VABs in overseas naval MTFs:

(i) In the Trust Territory of the Pacific (Micronesia), VA Office, Honolulu, Hawaii.

(ii) In the Philippines, VA Regional Office, Manila, Philippines.

(iii) In Canada, Canadian Department of Veterans Affairs, Ottawa, Canada.

(iv) In all other foreign countries, consular offices of U.S. embassies.

(f) *Forms Required.* (1) VA Form 10–10 (Application for Medical Benefits) will be completed for those potential VABs admitted for emergency care without prior authorization.

(2) VA Form 10–10m (Medical Certificate and History) will be prepared by naval MTFs when care is rendered. All information required in the medical certificate thereon will be furnished whether the admission is subsequently approved or disapproved by the VA office of jurisdiction.

(3) Since the completion of VA Form 10–10m requires an examination of patients, admissions which are disapproved shall be reported as medical examinations on DD Form 7A, Report of Treatment Furnished Pay Patients, Outpatient Treatment Furnished (Part B).

(4) DD Form 7, Report of Treatment Furnished Pay Patients, Hospitalization Furnished (Part A) will be prepared and submitted on all VABs and potential VABs admitted.

(5) Standard Form 502 (Narrative Summary) or Standard Form 539 (Abbreviated Clinical Record), as appropriate, will be completed when a VAB or potential VAB is discharged or otherwise released. When an interim report of hospitalization is requested by the VA office of jurisdiction, it may be prepared on Standard Form 502.

§ 728.53 Department of Labor, Office of Workers' Compensation Programs (OWCP) Beneficiaries.

(a) *Potential Beneficiaries.* The following may be beneficiaries of one of the programs sponsored by the Office of Workers' Compensation Programs (OWCP) under the conditions set forth. They are not beneficiaries of OWCP until authorized as such by the appropriate district office of OWCP. However, they may be carried as potential beneficiaries pending OWCP determination of eligibility. DOD civilian employees provided medical services under a Defense or service health program are not included under this authority (see subpart G).

(1) Members and applicants for membership in the Reserve Officers' Training Corps of the Navy, Army, and Air Force, provided the condition necessitating treatment was incurred in line of duty and the care rendered is solely after termination of duty for injury (a disease or illness which is the proximate result of performance of training is considered an injury) incurred while engaged in:

(i) Training.

(ii) Flight instructions.

(iii) Travel to or from training or flight instructions.

(2) The following employees of the Government of the United States, regardless of nationality or place of work, are entitled to receive care as outlined in § 728.53(e) for work incurred injuries, at the expense of OWCP. (In addition to injury by accident, a disease or illness which is the proximate result of performance of employment duties is considered an injury. OWCP payment for treatment of a nontraumatic injury or a disease depends upon favorable adjudication of the case by OWCP even though the individual presents with a CA–16 signed by the individual's supervisor.) This category includes but is not limited to:

(i) Civilian student employees in training at Navy and Marine Corps facilities.

(ii) Civilian seamen in the service of vessels operated by the Department of the Army (see § 728.53(a)(7) and § 728.80(c)(2) for civilian Military Sealift Command (MSC) personnel).

(iii) All civilian employees of the Government except nonappropriated-fund-activity employees.

(3) Civilian members of the Civil Air Patrol (except Civil Air Patrol Cadets) for injury or disease which is the proximate result of active service or travel to and from such service, rendered in performance or support of operational missions of the Civil Air Patrol under the direction and written authority of the Air Force.

(4) Former Peace Corps enrollees for injury or disease which is the proximate result of their former employment with the Peace Corps or which was sustained or contracted while located with the Peace Corps outside the United States and its territories.

(5) Former Job Corps enrollees for injury or disease which is the proximate result of employment with the Jobs Corp.

(6) Former VISTA (Volunteers in Service to America) enrollees for injury or disease which is the proximate result of employment with VISTA.

(7) Military Sealift Command (MSC) civilian marine personnel (CIVMARPERS or CIVMARS) (including temporary employees, intermittent employees, and employees with less than 1 year's service) are entitled to occupationally related care at the expense of OWCP. CIVMARS are in a crew status only after reporting to their assigned ship. They are in a travel status from crewing point to ship and return. While in a travel status, they are entitled to the same health care benefits as other Federal civil service employees in a travel status (5 U.S.C. 8101). CIVMARS presenting for treatment with a properly completed CA–16, Request for Examination and/or Treatment, shall:

(i) Enter the naval MTF's system through the occupational medicine service.

(ii) Be treated for any injury or disease proximately caused by their employment. Although the actual

determination of whether an illness or injury is occupationally related is a function of OWCP, determinations are based on the injury report required in each instance along with the treatment record from the attending physician. Therefore, when doubt exists as to the relationship of the condition to the potential patient's employment, the physician should report an unbiased medical conclusion and the medical rationale therefore, indicating the conditions which are responsible for the claimant's disability. As a general rule, the following may be initially considered as occupationally related, however, it should be emphasized that OWCP is the final approval authority:

(A) Any injury or illness occurring as a direct result of employment. May occur on a ship, at a Government installation ashore, or in an aircraft while performing a requirement of employment.

(B) Any injury or illness which becomes manifest while away from work (on leave or liberty) while in a crew status or travel status as long as the condition may be directly related to job activities or to exposures incident to travel to ship assignment.

(c) Required immunizations.

(D) Required physical examinations.

(E) Periodic medical surveillance screening examinations for DOD occupational and industrial health programs, i.e., asbestos medical surveillance, hearing conservation, etc.

(iii) Be referred to a non-Federal source of care where back-to-work care may be provided at the CIVMAR's expense after, if necessary, the immediate emergency is alleviated when a reasonable determination can be made that injury or illness is not occupationally related.

(A) Pursuant to 5 U.S.C. 7901(c)(3), the health service program for Federal civilian employees is limited to referral of employees, upon their request, to private sources of care.

(B) Long term extended care of chronic illnesses such as hypertension, diabetes, etc., is not authorized in naval MTFs at the expense of OWCP nor at the CIVMAR's personal expense.

(C) Patients who cannot be referred, because of medical reasons or because non-Federal sources are not available or available but inadequate, may be retained in naval MTFs at the expense of the CIVMAR or of his or her private insurance until transfer becomes possible. Although the means of access to the naval MTF may have been through the occupational medicine service, retention in the naval MTF is on a civilian humanitarian basis. This is also applicable when OWCP disallows a CIVMAR's claim (see § 728.53(c) below).

(b) *Authorization Required.* Personnel in § 728.53(a) (1) through (6) may be rendered inpatient and outpatient care as outlined in § 728.53(e), unless otherwise stipulated in § 728.53, upon presentation of a properly prepared and signed Authorization Form CA–16 (Request for Examination and/or Treatment). If the condition for which treatment is requested appears related to employment, treatment of beneficiaries in § 728.53(a) (1) through (7) may be initiated without said authorization. Patients provided treatment without Form CA–16 may be carried as OWCP beneficiaries from the time of initial treatment, provided the appropriate district office of OWCP is notified and requested to submit Form CA–16 within 48 hours giving authorization as of the date of actual treatment. OWCP will not be liable for the payment of bills for unauthorized treatment. Post hospitalization care following authorized inpatient care does not require an additional authorization. First aid treatment rendered civilian employees does not require an authorization form.

(c) *Disallowance by OWCP.* When OWCP determines that any claim should be disallowed, OWCP will advise the naval facility rendering care that no further treatment shall be rendered at OWCP expense. The patient ceases to be an OWCP beneficiary as of the date of receipt of the notice of disallowance by the naval MTF and the patient shall be so notified. Any treatment subsequent to the date of receipt of the notice of disallowance shall be at the personal expense of the patient (see § 728.81(a)).

(d) *Authorization for Transfer.* Prior approval of OWCP is required before a transfer can be effected, except in an emergency or when immediate treatment is deemed more appropriate in another Federal facility. When transfer is effected without approval, the transferring facility shall immediately request such authorization from the appropriate district office of OWCP. When authorized by OWCP, evacuation to the United States shall be effected in accordance with OPNAVINST 4630.25B. Medical records and Form CA–16 will accompany such patients.

(e) *Care Authorized.* (1) *Inpatient Care.* Medical and surgical care necessary for the proper treatment of the condition upon which eligibility is based. Specific OWCP authorization is required before major surgical procedures can be performed unless the urgency of the situation is such that time does not permit obtaining said authorization. All necessary prostheses, hearing aids, spectacles, and orthopedic appliances shall be furnished when required for proper treatment of the condition upon which eligibility is based. Damaged or destroyed medical braces, artificial limbs, and other prosthetic devices shall be replaced or repaired, except that eyeglasses and hearing aids shall not be replaced or repaired unless their damage or destruction is incidental to a personal injury requiring medical services.

(2) *Outpatient Care.* Complete medical and surgical care not requiring hospitalization, and posthospitalization services following authorized inpatient care in a naval MTF for the proper treatment of the conditon upon which eligibility is based.

(3) *Dental Care.* Dental treatment shall be limited to emergencies and that necessary as an adjunct to inpatient hospital care. Such care shall not include dental prostheses or orthodontic treatment.

(f) *Reports and Records.* (1) Copies of medical records will accompany OWCP patients being transferred from one medical treatment facility to another. Records accompanying OWCP patients to a debarkation hospital will be the same as for military personnel and will clearly identify the patient as an OWCP beneficiary.

(2) Form CA–20 (Attending Physician's Report) shall be forwarded to the appropriate district office of OWCP on discharge of the partient unless hospitalization exceeds 1 month. In such instances, a report shall be submitted every 30 days. When extensive hospitalization is required, use SF 502 of a narrative format in lieu of CA–20. When submitted to OWCP, the physician's report shall include:

(i) History.

(ii) Physical findings.

(iii) Laboratory findings.

(iv) Abstract of hospital records.

(v) Diagnosis for conditions due to injury and not due to injury.

(vi) Rationalized medical opinion for the physician's belief that the illness or disease treated was causally related to a specific condition or set of conditions to which the claimant was subjected.

(vii) Condition on discharge with opinion as to degree of impairment due to injury, if any.

§ 728.54 U.S. Public Health Service (USPHS), Other Than Members of the Uniformed Services.

(a) *Potential Beneficiaries.* The following may be beneficiaries of the USPHS for care in naval MTFs upon submission of the necessary form from

appropriate officials as outlined in § 728.54(b).

(1) Within and Outside the United States. Any individuals the USPHS may determine to be eligible for care on an interagency reimbursable basis.

(2) Within the 48 Contiguous United States and the District of Columbia. American Indians, Alaskan Natives, Eskimos, and Aleuts.

(3) In Alaska. American Indians, Eskimos, and Aleuts.

(b) *Authorization Required.* (1) *Normal Circumstances.* An American Indian or Alaskan Native may be rendered inpatient care upon presentation of HRSA Form 43 (Contract Health Service Purchase Order for Hospital Services Rendered) or HRSA Form 64 (Purchase/Delivery Order for Contract Health Services Other Than Hospital Inpatient or Dental). Either form must be signed by an appropriate Indian Health Service or Alaska Native Health Service area official.

(2) *Emergencies.* In an emergency, care may be rendered upon written request of patient's commanding officer or superior officer, or the patient if neither of the above is available. When emergency care is rendered without prior authorization, the facility rendering care must notify the service unit director of the patient's home reservation within 72 hours from the time such care is rendered unless extenuating circumstances preclude prompt notification.

(c) *Care Authorized.* Unless limited by the provisions stipulated in § 728.54(a) and subject to the provisions of § 728.3, the following care may be rendered, when requested, to all beneficiaries enumerated in § 728.54(a).

(1) *Inpatient Care.* Necessary medical and surgical care.

(2) *Outpatient Care.* Necessary medical and surgical care.

(3) *Dental Care.*

(i) Dental care in the United States, its territories, possessions, and the Commonwealth of Puerto Rico is limited to emergencies for the relief of pain or acute conditions and that necessary as an adjunct to inpatient hospital care. Prosthetic dental appliances and permanent restorations are not authorized.

(ii) In overseas areas, dental care is authorized to the extent necessary pending the patient's return to the United States, its territories, possessions, or the Commonwealth of Puerto Rico.

§ 728.55 Department of Justice Beneficiaries.

Upon presentation of a letter of authorization that includes disposition of SF 88 (Report of Medical Examination), SF 93 (Report of Medical History), and address for submission of claim, the following personnel may be furnished requested care as beneficiaries of the Department of Justice.

(a) *Federal Bureau of Investigation.* Investigative employees of the Federal Bureau of Investigation (FBI) and applicants for employment as special agents with the FBI may be provided:

(1) Immunizations.

(2) Physical examinations and hospitalization when required to determine physical fitness. This period of hospitalization shall be used for diagnostic purposes only, and not to correct disqualifying defects.

(b) *U.S. Marshals.* U.S. Marshals may receive physical examinations and hospitalization when required to determine physical fitness. This period of hospitalization shall be used for diagnostic purposes only, and not to correct disqualifying defects.

(c) *Claimants Against the United States.* Claimants whose suits or claims against the United States are being defended by the Department of Justice may be furnished physical examinations to determine the extent and nature of the injuries or disabilities being claimed. Hospitalization is authorized for proper conduct of the examination. Upon completion, the report of the examination shall be furnished promptly to the U.S. Attorney involved.

§ 728.56 Treasury Department Beneficiaries.

(a) *Potential Beneficiaries.* The following may be beneficiaries of the Treasury Department and may be rendered care as set forth below.

(1) Secret Service Special Agents.

(2) Secret Service Agents providing protection to certain individuals.

(3) Persons being provided protection by the Secret Service.

(4) Agents of the U.S. Customs Service.

(5) Prisoners (detainees) of the U.S. Customs Service.

(b) *Care Authorized.* (1) Secret Service Special Agents may be provided routine annual physical examinations upon request and presentation of a letter of authorization. Such examinations shall be conducted and recorded in the same manner as routine examinations rendered naval officers except that they shall be conducted on an outpatient basis only. If hospitalization is considered desirable in connection with the examination, a statement to that effect will be entered in item 73 or 75 of the SF 88, as appropriate, before forwarding to the Director, United States Secret Service.

(2) Secret Service Agents providing protection to certain individuals and those persons being provided such protection shall be rendered all required medical services including hospitalization subject to the provisions of § 728.3.

(3) Agents of the U.S. Customs Service and their prisoners (detainees) may be provided emergency medical treatment and evacuation services to the nearest medical facility (military or civilian) in those remote areas of the United States where no other such services are available. Evacuation will be limited to the continental United States and borders will not be crossed. The Navy's responsibility for medical care of such prisoners terminates once the medical emergency has been resolved. The guarding of prisoners, while they or their captors are receiving treatment at naval MTFs, remains the responsibility of the U.S. Customs Service or other appropriate Federal (nonmilitary) law enforcement agencies.

(c) *Reports and Records.* When examinations are rendered to Secret Service Special Agents, one copy of the SF 88 and one copy of the SF 93 shall be forwarded to the Director, United States Secret Service, Personnel Division, Employee Relations Branch, 1800 G Street, NW., Room 941, Washington, DC 20223 or as otherwise directed by the letter of authorization. An information copy shall be provided to the Deputy Comptroller of the Navy.

§ 728.57 Department of State and Associated Agencies.

Eligibility for care under the provisions of § 728.58 shall be determined by the Department of State, Office of Medical Services.

(a) *Beneficiaries.* Officers and employees of the following agencies, their dependents, and applicants for appointment to such agencies are authorized inpatient and outpatient medical care as set forth below in addition to that care that may be authorized elsewhere within this instruction (i.e., § 728.53, 728.55, 728.56, and 728.58). Dental care shall be limited to that delineated in § 728.57(b)(6).

(1) Department of State—U.S. Arms Control and Disarmament Agency and the Office of International Conferences.

(2) U.S. Agency for International Development.

(3) International Communications Agency.

(4) ACTION—Peace Corps Staff.

(5) Department of Agriculture—Foreign Agriculture Service.

(6) Department of Commerce—Bureau of Public Roads.

(7) Department of Interior—Bureau of Reclamation and the U.S. Geological Survey.

(8) Department of Transportation—Federal Aviation Administration and the Federal Highway Administration.

(9) Department of Justice—Drug Enforcement Agency.

(10) Department of Treasury—U.S. Customs, U.S. Secret Service, Office of International Affairs (OIA), U.S.-Saudi Arabian Joint Commission for Economic Cooperation (JECOR), and the Internal Revenue Service.

(11) National Aeronautics and Space Administration.

(12) Library of Congress.

(13) Beneficiaries of such other agencies as may be included in the Department of State Medical Program.

(b) *Care Authorized.* (1) *General.* Care delineated below is authorized by the Foreign Service Act of 1946, as amended. Subject to the restrictions and priorities of § 728.3 and the restrictions of § 728.57, care may be rendered at naval MTFs at the expense of the Department of State or one of the agencies listed in § 728.57(a). The law allows for payment when care is furnished for an illness or injury which results in hospitalization or equal treatment. Out-patient care is only authorized as an adjunct to hospitalization.

(2) *Overseas.*

(i) When, in the opinion of the principal or administrative officer of an overseas post of the Department of State, an individual meets the conditions of eligibility, the post will furnish authorization to the naval MTF for care at the expense of the Department of State or one of the agencies listed above.

(ii) Should the Department of State official determine that the illness or injury does not meet the conditions of eligibility for care at the expense of one of the agencies, all care provided shall be at the expense of the patient or patient's sponsor and charged at the full reimbursement rate.

(3) *In the United States.*

(i) Care is not authorized for an injury or illness incurred in the United States. Authorizations and other arrangements for care in the United States for individuals incurring injury or illness outside the United States will be provided by the Deputy Assistant Secretary for Medical Services, Department of State, using appropriate authorization form(s). When personnel are admitted in an emergency without prior authorization, the commanding officer of the admitting naval MTF shall immediately request authorization from the Deputy Assistant Secretary for Medical Services.

(ii) The extent of care furnished in the United States, to individuals above who are evacuated to the United States for medical reasons, will be comparable in all respects to that which is authorized or prescribed for these individuals outside the United States. When determined appropriate by the Deputy Assistant Secretary for Medical Services, officers and employees and their accompanying dependents who have returned to the United States for nonmedical reasons may be furnished medical care at the expense of one of the above agencies for treatment of an illness or injury incurred while outside the United States.

(4) *Physical Examinations.* The Secretary of State is authorized to provide for comprehensive physical examinations, including dental examinations and other specific testing, of applicants for employment and for officers and employees of the Foreign Service who are U.S. citizens and for their dependents, including examinations necessary to establish disability or incapacity for retirement purposes. An authorization will be executed by an appropriate Department of State official and furnished in duplicate to the naval MTF, listing the type of examination required and stating that the individual is entitled to services at the expense of the Department of State. Reports shall be furnished in accordance with the letter of authorization.

(5) *Immunizations.* Inoculations and vaccinations are authorized for officers, employees, and their dependents upon written authorization from an appropriate Department of State official. This authorization, in duplicate, will include the type of inoculation or vaccination required and shall state that the individual is entitled to services at the expense of the Department of State. Reports shall be furnished in accordance with the letter of authorization.

(6) *Dental Care.* Dental care at the expense of the Department of State is limited to emergency care for the relief of pain or acute conditions, or for dental conditions as an adjunct to inpatient care. Such care will not include the provision of prosthetic dental appliances.

(c) *Evacuation to the United States.* Should a beneficiary in an overseas naval MTF require prolonged hospitalization, the commanding officer of the overseas facility shall report the requirement to the nearest Department of State principal or administrative officer and request authority to return the patient to the United States. Dependents in such instances who decline evacuation shall be released to the custody of their sponsor. Aeromedical evacuation may be used in accordance with OPNAVINST 4630.25B. Travel of an attendant or attendants is authorized at Department of State expense when the patient is too ill or too young to travel unattended.

§ 728.58 Federal Aviation Administration (FAA) Beneficiaries.

(a) *Beneficiaries.* Air Traffic Control Specialists (ATCS) of the FAA when appropriate authorization has been furnished by the FAA regional representative.

(b) *Authorization.* Written authorization from an FAA Regional Flight Surgeon is required and it shall include instructions for forwarding the results of services rendered.

(c) *Care Authorized.* Subject to the provisions of § 728.3, authorized personnel shall be rendered chest x-rays, electrocardiograms, basic blood chemistries, and audiograms, without interpretation in support of the medical surveillance program for ATCS personnel established by the FAA.

§ 728.59 Peace Corps Beneficiaries.

(a) *Potential Beneficiaries.*

(1) Applicants for the Peace Corps.

(2) Peace Corps Volunteers.

(3) Applicants for the Peace Corps.

(2) Minor children of a Peace Corps volunteer living with the volunteer.

(b) *Care Authorized in the United States.* Upon written request of a Peace Corps official, stating care to be provided and disposition of reports, the following may be provided subject to the provisions of § 728.3.

(1) *Physical Examinations.* Pursuant to BUMEDINST 6120.17B, physical examinations are authorized on an outpatient basis only. Except as outlined in BUMEDINST 6120.17B, no assessment will be made of the physical qualifications of examinees.

(i) Preselection physical examinations may be provided applicants (volunteers) for the Peace Corps.

(ii) Separation or other special physical examinations may be provided volunteers and their dependents as listed in § 728.59(a)(3).

(2) *Immunizations.* Immunizations, as requested, may be provided all beneficiaries listed in § 728.59(a).

(3) *Medical Care.* Both inpatient and outpatient care may be provided volunteers for illnesses or injuries occurring during their period of service which includes all periods of training. Dependents of volunteers specified in

§ 728.59(a)(3) are authorized care to the same extents as their sponsor.

(4) *Dental Care.* Dental care is limited to emergencies. Only that care essential to relieve pain or prevent imminent loss of teeth shall be rendered. All beneficiaries seeking dental care shall be requested, whenever possible, to furnish advanced authorization for such care.

(c) *Care Authorized Outside the United States.* (1) *Physical Examinations.* Termination physical examinations may be provided volunteers and eligible dependents of volunteers. In most instance, these examinations will be provided by Peace Corps staff physicians; however, assistance may be required of naval MTFs for ancillary services (see BUMEDINST 6120.17B).

(2) *Immunizations.* When requested, immunizations may be provided all beneficiaries listed in § 728.59(a).

(3) *Medical Care.* When requested in writing by a representative or physician of a Peace Corps foreign service post, volunteers, eligible dependents of volunteers, and trainees of the Peace Corps may be provided necessary medical care at Peace Corps expense. When emergency treatment is rendered without prior approval, a request shall be forwarded to the Peace Corps foreign service post as soon as possible.

(4) *Dental Care.* Dental care is limited to emergencies. Only that care essential to relieve pain or prevent imminent loss of teeth shall be rendered. Beneficiaries seeking dental care shall be requested, whenever possible, to furnish advanced authorization for such care.

(5) *Evacuation to the United States.* When a beneficiary in an overseas naval MTF requires prolonged hospitalization, the commanding officer of the overseas facility shall report the requirement to the nearest Peace Corps foreign service post and request authorization to return the patient to the United States. Dependents in such instances who decline evacuation shall be released to the custody of their sponsor. Aeromedical evacuation may be utilized in accordance with OPNAVINST 4630.25B. Travel of attendant(s) is authorized when the patient is too ill or too young to travel unattended. (Symbol OPNAV 4630–1 applies.)

§ 728.60 Job Corps and Volunteers in Service to America (VISTA) Beneficiaries.

(a) *Beneficiaries.* Job Corps and VISTA enrollees and applicants may be provided services as set forth. For former members, see § 728.53.

(b) *Authorization Required.* (1) Job Corps Enrollees. Presentation of a Job Corps Identification Card after appointment has been made by the corpsmember's Job Corps center.

(2) Job Corps Applicants. Presentation of a letter from a screening agency (e.g., State Employment Service) after an appointment has been made by that agency.

(3) VISTA Volunteers and VISTA Trainees. A valid "Blue-Cross and Blue Shield Indentification Card" is issued to such personnel as identification. Each card has a VISTA identification number which shall be used on all records and correspondence.

(c) *Care Authorized.* Normally, medical services are provided only when civilian or VA facilities are not available, or if available, are incapable of providing needed services. However, upon presentation of appropriate authorization, the following services may be rendered subject to the provisions of § 728.3.

(1) Job Corps enrollees are authorized emergency medical care upon presentation of their Job Corps Identification Card, however, the corpsmember's Job Corps center should be notified immediately.

(2) Job Corps application may be provided preenrollment physical examinations and immunizations on an outpatient basis only.

(3) Job Corps enrollees, VISTA trainees, and VISTA volunteers are authorized:

(i) Outpatient medical examinations, outpatient treatment, and immunizations.

(ii) Inpatient care for medical and surgical conditions which, in the opinion of the attending physician, will benefit from definitive care within a reasonable period of time. When it is found probable that a patient will require hospitalization in excess of 45 days, the Commander, Naval Medical Command (MEDCOM–33) shall be notified by the most expeditious means.

(iii) Dental care is limited to emergencies. Only that care essential to relieve pain or prevent imminent loss of teeth shall be rendered. Beneficiaries seeking dental care shall be requested to furnish, whenever possible, advanced authorization for such care.

§ 728.61 Medicare beneficiaries.

(a) *Care Authorized.* Hospitalization is authorized for beneficiaries who reside in the 50 United States and the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Such hospitalization shall be rendered when emergency services are necessary to prevent death or serious impairment to the health of the individual and which, because of the threat to life or health, necessitates the use of the most accessible hospital that is equipped to furnish such services. Such care is authorized beneficiaries of the Social Security Health Insurance Program for the Aged and Disabled (Medicare).

(b) *General Provisions.* (1) *Limitations.* Benefit payments for emergency services under Medicare can be made for only that period of time during which the emergency exists. Therefore, when the emergency is terminated and it is permissible from a medical standpoint, the patient should be discharged or transferred to a facility that participates in Medicare.

(2) *Notification.* The nearest office of the Social Security Administration shall be notified as soon as possible when a Medicare beneficiary is rendered treatment.

Subpart G—Other Persons

§ 728.71 Ex-service maternity care.

(a) *Eligible Beneficiaries.* Former women members of the Armed Forces who have been separated from active duty under honorable conditions because of pregnancy, or separated from the service under honorable conditions for reasons other than pregnancy and found to have been pregnant at the time of separation, and their newborn infant(s) may be provided care as set forth in § 728.71, subject to the provisions of § 728.3. When certified by medical authorities that the pregnancy existed prior to entry into service (EPTE), maternity benefits are not authorized.

(b) *Care Authorized.* (1) Former women members shall be rendered medical and surgical care in naval MTFs incident to that pregnancy, prenatal care, hospitalization, postnatal care, and, when requirements of SECNAVINST 6300.2A are met, abortions. Postnatal care is limited to 6 weeks following delivery. Under no circumstances will care from civilian sources be promised for either the mother or the infant as it is not authorized.

(2) Treatment of the newborn infant in USMTFs includes care, both inpatient and outpatient, only during the first 6 weeks (42 days) following delivery. If the newborn infant requires care beyond the 6-weeks postnatal period, arrangement shall be made by the mother, or other responsible family member, for disposition to private, State, welfare, or other Federal facility.

(c) *Application for Care.* In making application for care authorized by § 728.71, former women members should

apply either in person or in writing to the Armed Forces inpatient MTF nearest their home and present either their DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) or DD Form 256A (Honorable Discharge Certificate) as proof of eligibility for requested care. In areas with more than one Armed Forces MTF available and capable of providing required care, application should be made to the MTF of the service from which separated. Referral to other services MTFs may be made only when space is not available or capability does not exist in the MTF of the service from which the individual was separated.

§ 728.72 Applicants for Enrollment in the Senior Reserve Officers' Training Program.

When properly authorized, designated applicants (including applicants for enrollment in the 2-year program and Military Science II enrollees applying for Military Science III) may be furnished medical examinations at naval MTFs including hospitalization necessary for the proper conduct thereof. Medical care, including hospitalization, is authorized for diseases contracted or injuries incurred in line of duty while at or traveling to or from a military installation for the purpose of undergoing medical or other examinations or for visits of observation.

§ 728.73 Applicants for Enlistment or Reenlistment in the Armed Forces, and Applicants for Enlistment in the Reserve Components.

(a) Upon referral by a commander of a Military Enlistment Processing Station (MEPS), formerly Armed Forces Examining and Entrance Station (AFEES), applicants shall be furnished necessary medical examinations, including hospitalization when qualifications for service cannot otherwise be determined. Such a period of hospitalization shall be used only for diagnostic purposes, and not to correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.74 Applicants for Appointment in the Regular Navy or Marine Corps and Reserve Components, Including Members of the Reserve Components Who Apply for Active Duty.

(a) Necessary medical examinations shall be furnished, including hospitalization when qualifications for service cannot otherwise be determined. Such a period of hospitalization shall be used only for diagnostic purposes, and not to correct disqualifying defects.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.75 Applicants for Cadetship at Service Academies and Applicants for the Uniformed Services University of Health Sciences (USUHS).

(a) Upon presentation of a letter of authorization from the Department of Defense Medical Examination Review Board (DODMERB), applicants for cadetship at Service Academies (Navy, Army, Air Force, Coast Guard, and Merchant Marine) and applicants for the Uniformed Services University of Health Sciences (USUHS) shall be furnished medical examinations at facilities designated by the DODMERB. Hospitalization is authorized when qualifications for service cannot otherwise be determined. Such a period of hospitalization shall be used for diagnostic purposes only, and not to correct disqualifying or other defects. Examinations shall be performed and disposition of completed forms made in accordance with BUMEDINST 6120.3M.

(b) Applicants who suffer injury or acute illness while awaiting or undergoing processing at Navy and Marine Corps facilities or at MEPS may be furnished emergency medical and dental care, including emergency hospitalization, for that injury or illness.

§ 728.76 Naval Home Residents.

Necessary medical and dental care, both inpatient and outpatient, shall be furnished residents of the Naval Home when requested by the Governor of the Home. In an emergency, care may be rendered without prior approval of the Governor; however, the Governor of the Home should be contacted immediately and requested to furnish authorization.

§ 728.77 Secretarial Designees.

(a) Upon a showing of sufficient cause, the Secretary of the Navy may authorize individuals, not otherwise authorized by law, to receive such care as is available in naval MTFs in the United States. This discretionary authority is exercised most conservatively, on an individual basis. Civilian health care however cannot be authorized. Favorable action is usually taken on requests involving the following situations:

(1) Preadoption proceedings wherein an active duty member or a retired member has taken affirmative action to adopt a child.

(2) Custodianships and guardianships authorized by a court order wherein the member is designated by the court as the custodian or guardian and the child is fully dependent upon the active duty or retired member sponsor.

(3) Evaluation and selection of nonbeneficiaries who are donor candidates for an organ or tissue transplant procedure in behalf of a military service beneficiary.

(4) Nonbeneficiary participants in officially approved clinical research studies.

(5) Designation of designees of other military departments.

(6) Unremarried former spouses:

(i) Divorced before 1 February 1983, and

(ii) On the date of the final decree of divorce, dissolution, or annulment, has been married to the active duty or retired member for 20 or more years during which time the member or former member performed at least 20 years of service creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and

(iii) Requires care for a condition incurred during or caused/aggravated by conditions associated with the member's or former member's creditable service, and

(iv) Does not have medical coverage under an employer-sponsored health plan which will provide for the care required.

(7) In other instances wherein the circumstances clearly merit the providing of treatment in naval MTFs, and in which the best interest of the patient, the Navy, *and* the Government will be served, favorable Secretarial action may result. The mere need of medical care by a former beneficiary or other person, alone, will not support approval of such a request.

(b) Requests for consideration shall be submitted to the Commander, Naval Medical Command (MEDCOM–33) by applicants via their command, when applicable, or by the Medical Department command concerned. Requests should include any pertinent information which will support resolution requests:

(1) Involving preadoption must include a legible reproducible copy of the court order which names the sponsor and identifies the other participating parties.

(2) Involving custodianships and guardianships must include a legible reproducible copy of the court order, identification of the parties, and also

identify any amounts of income to which the ward is entitled.

(3) In behalf of participants in clinical research studies must include:

(i) Sufficient clinical information concerning the nature of the study.

(ii) Benefits which may accrue to the individual.

(iii) The extent, if any, to which access by other authorized beneficiaries will be impaired.

(iv) Benefits which will accrue to the command, e.g., enhancement of training, maximum utilization of specialized facilities, etc.

(v) Recommended duration of designation.

(vi) Whether the consenting individual has been informed concerning the nature of the study, its personal implications, and freely consents.

(4) In behalf of unremarried former spouses must include:

(i) A notarized copy of the marriage license.

(ii) A statement attesting to the fact that the former husband achieved 20 or more years of creditable military service during the time of the marriage.

(iii) Copy of divorce decree with official date.

(c) Secretarial designee status has been granted by the Secretary of Defense for full-time Schedule "A" faculty members of the Uniformed Services University of Health Sciences (USUHS) who have been provided documentation substantiating their eligibility and, where necessary, an eligibility termination date. These personnel are authorized routine care at the Naval Hospital, Bethesda, MD. Only emergency treatment is authorized these personnel at other naval MTFs while they are traveling on official university business. The letter of authorization excludes routine dental care, prosthetic appliances, and spectacles.

(d) The following civilian officials within the Government, the Department of Defense, and military departments have been granted blanket Secretarial designation for medical and emergency dental care in naval MTFs in the United States at interagency inpatient and outpatient rates. EXCEPTION: Charges for outpatient care provided in the National Capital Region shall be waived:

(1) The President.

(2) The Vice President.

(3) Members of the Cabinet.

(4) Article III Federal Judges.

(5) U.S. Court of Military Appeals Judges.

(6) Members of Congress.

(7) The Secretary, Deputy Secretary, and the Assistant Secretaries of Defense.

(8) The Under Secretary of Defense for Policy.

(9) The Under Secretary of Defense for Research and Engineering.

(10) The Secretaries, Under Secretaries, and the Assistant Secretaries of the Military Departments.

§ 728.78 American Red Cross Representatives and Their Dependents.

(a) *Potential Beneficiaries.*

(1) Volunteer workers.

(2) Full-time, paid employees.

(3) Dependents of personnel enumerated in § 728.78(a) (1) and (2) when accompanying their sponsor outside the continental United States or in Alaska.

(b) *Care Authorized.* (1) When services of the American Red Cross (ARC) have been accepted in behalf of the Federal Government under applicable DOD regulations, beneficiaries in § 728.78(a)(1) are considered "employees" of the Government for the purpose of this part and are authorized health care in USMTFs, both in and outside the United States for work-related conditions. See § 728.53(a)(2) regarding the specific application of this authorization.

(2) Beneficiaries enumerated in § 728.78(a) (1) and (2) are authorized health care in USMTFs located outside the United States on a reimbursable basis for both work and nonwork-related conditions. Those enumerated in § 728.78(a)(1), however, are not required to reimburse the Government for treatment of work-related conditions under the OWCP (see § 728.53(a)(2)).

(3) Beneficiaries identified in § 728.78(a) (1), (2), and (3) are authorized emergency care on a reimbursable basis in USMTFs outside the continental United States and in Alaska where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prosthesis or orthodontia.

(c) *Records Disposal.* Upon completion of treatment of accredited representatives of the American Red Cross or their dependents, medical records, including all clinical records and x-ray films, shall be forwarded to the Medical Director, National Headquarters, American Red Cross, 20th and D Streets, N.W., Washington, DC 20006.

§ 728.79 Employees of Federal Contractors and Subcontractors.

(a) *Beneficiaries.* (1) U.S. citizen contractor, engineering, and technical service personnel designated as U.S. Navy Technicians.

(2) Civilian employees of contractors and subcontractors operating under U.S. Government contracts.

(3) Dependents of personnel enumerated in § 728.79(a) (1) and (2) when accompanying their sponsor outside the continental United States or in Alaska.

(b) *Care Authorized.* (1) Beneficiaries identified in § 728.79(a) (1) and (2) may be provided emergency care in naval MTFs, on a reimbursable basis, for illnesses and injuries occurring at work in or outside the United States.

(2) While serving outside the continental United States or in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals, beneficiaries identified in § 728.79(a) (1), (2), and (3) may receive hospitalization and necessary outpatient services in naval MTFs on a reimbursable basis. Except for beneficiaries in § 728.79(a)(1) who are serving aboard naval vessels, all other enumerated beneficiaries may only be hospitalized for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prosthesis or orthodontia.

§ 728.80 U.S. Government Employees.

(a) Civil service employees of all Federal agencies, including teachers employed by the Department of Defense Dependents' Schools (DODDS), and their dependents may be provided hospitalization and necessary outpatient services, on a reimbursable basis, outside the continental limits of the United States and in Alaska, where facilities are not otherwise available in reasonably accessible and appropriate non-Federal hospitals. Except for employees who are serving aboard naval vessels, hospitalization shall be furnished only for acute medical and surgical conditions, exclusive of nervous, mental, or contagious diseases or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prosthesis or orthodontia.

(b) Such civilian employees and their dependents may be provided medical, surgical, dental treatment, hospitalization, and optometric care on

a reimbursable basis at installations in the United States which have been designated remote by the Secretary of the Navy for the purpose of providing medical care.

(c) The major objective of the following programs for civil service employees, regardless of location, is emergency treatment to relieve minor ailments or injuries with the idea of keeping the employee on the job:

(1) The Department of Labor, Office of Workers' Compensation Programs (OWCP) governs the overall medical care program for employees of the Government who sustain injuries while in the performance of duty, including diseases proximately caused by conditions of employment (see § 728.53).

(2) Federal civil service employees and applicants for such employment are authorized services as outlined in chapter 22, section XIII, of the Manual of the Medical Department. Military Sealift Command (MSC) civilian marine personnel (authorized additional care and services as outlined in BUMEDINST 6320.52 and that care in § 728.53(a)(7)) and members of the National Oceanic and Atmospheric Administration (NOAA) serving with the Navy are also included.

(3) Under the technical control of the Surgeon General of the Army, the DOD Civilian Employees' Health Service is responsible for administering the health program for all Federal civil service employees in the District of Columbia area.

§ 728.81 Other Civilians.

(a) *General.* In an emergency, any person may be rendered care in naval MTFs to prevent undue suffering or loss of life or limb. Care shall be limited to that necessary only during the period of the emergency, and if further treatment is indicated, action shall be initiated to transfer the patient to a private physician or civilian facility as soon as possible. Further, subject to the provisions of § 728.3, the following personnel are authorized care as set forth.

(b) *Beneficiaries and Extent of Care.* (1) Civilian employees paid for nonappropriated funds, including Navy exchange employees and service club employees, shall be provided all occupational health services. Treatment of occupational illnesses and injuries other than emergency care shall be in accordance with rules and regulations of the Office of Workers' Compensation Programs (see § 728.53).

(2) Civilians attending the Federal Bureau of Investigation (FBI) Academy, Marine Corps Development and Education Command, Quantico, VA may be rendered care at the Naval Medical Clinic, Quantico, VA for emergencies. Such persons who are in need of hospitalization for injuries or disease may be hospitalized and classed as civilian humanitarian nonindigents with the approval of the cognizant hospital's commanding officer. EXCEPTION: Certain individuals, such as employees of the Federal Bureau of Investigation who are injured in the line of duty, may be entitled to care at the expense of the Office of Workers' Compensation Programs (OWCP) (see § 728.53).

(3) The following civilians who are injured or become ill while participating in Navy or Marine Corps sponsored sports, recreational or training activities may be rendered care on a temporary (emergency) basis until such time as disposition can be effected to an appropriate source.

(i) Members of the Naval Sea Cadet Corps.

(ii) Junior ROTC/NDCC (National Defense Cadet Corps) cadets.

(iii) Civilian athletes training or competing as part of the U.S. Olympic effort.

(iv) Civilians competing in Navy or Marine Corps sponsored competitive meets.

(v) Members of Little League teams and Youth Conservation groups.

(vi) Boy Scouts and Girl Scouts of America.

(4) Other civilian personnel included below are not normally eligible for care in naval MTFs; however, under the conditions set forth, care may be rendered.

(i) Potential Beneficiaries.

(A) Civilian representatives of religious groups.

(B) Educational institutions representatives.

(C) Athletic clinic instructors.

(D) USO representatives.

(E) Celebrities and entertainers.

(F) Social agencies representatives.

(G) Others in a similar status to those in § 728.81(b)(4)(i) (A) through (F).

(H) News correspondents.

(I) Commercial airline pilots and employees.

(J) Volunteer workers. This category includes officially recognized welfare workers, other than Red Cross.

(ii) Care Authorized.

(A) Persons enumerated in § 728.81(b)(4)(i) (A) through (G), who are contracted to provide direct services to the Armed Forces and who are acting under orders issued by the Department of Defense or one of the military departments to visit military commands overseas, and their accompanying dependents, may be provided medical care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate. Inpatient care shall be limited to acute medical and surgical conditions exclusive of nervous, mental, or contagious diseases, or those requiring domiciliary care. Dental treatment shall be administered only as an adjunct to inpatient hospital care and shall not include dental prostheses or orthodontia.

(B) Persons enumerated in § 728.81(b)(4)(i) (H) and (I) are authorized emergency medical and dental care in naval MTFs outside the 48 contiguous United States and the District of Columbia provided local civilian facilities are not reasonably available or are inadequate.

(C) Persons enumerated in § 728.81(b)(4)(i)(J), both within and outside the 48 contiguous United States and the District of Columbia, may receive care in naval MTFs for injuries or diseases incurred in the performance of duty as beneficiaries of OWCP (see § 728.53). Additionally, if such volunteers are sponsored by an international organization (e.g., the United Nations) or a voluntary nonprofit-relief agency registered with and approved by the Advisory Committee on Voluntary Aid (e.g., CARE), they may receive other necessary nonemergency medical care and occupational health services on a reimbursable basis while serving outside the 48 contiguous United States and the District of Columbia.

§ 728.82 Individuals Whose Military Records are Being Considered for Correction.

Individuals who require medical evaluation in connection with consideration of their individual circumstances by the Navy, Army, and Air Force board or Correction of Military Records are authorized evaluation, including hospitalization when necessary for the proper conduct thereof.

728.83 Persons in Military Custody and Nonmilitary Federal Prisoners.

(a) Potential Beneficiaries.

(1) Military prisoners.

(2) Nonmilitary Federal prisoners.

(3) Enemy prisoners of war and other detained personnel.

(b) *Care Authorized.*

(1) Military Prisoners:

(i) Whose punitive discharges have been executed but whose sentences have not expired are authorized all necessary medical and dental care.

(ii) Whose punitive discharges have been executed and who require hospitalization beyond expiration of sentences are not eligible for care but may be hospitalized as civilian humanitarian nonindigents until final disposition can be made to some other appropriate facility.

(iii) On parole pending completion of appellate review or whose parole changes to an excess leave status following completion of sentence to confinement while on parole are members of the military service and as such are authorized care as outlined in subpart B. An individual on parole whose punitive discharge has been executed is not a member of the military service and is therefore not entitled to care authorized by § 728.82. If the circumstances are exceptional, individuals herein who are not authorized care may request Secretarial designee status under the provisions of § 728.77.

(2) Nonmilitary Federal Prisoners. Under the provisions of § 728.82, nonmilitary Federal prisoners are authorized only emergency medical care. When such care is being rendered, the institution to which prisoners are sentenced must furnish necessary guards to effectively maintain custody of prisoners and assure the safety of other patients, staff members, and residents of the local area. Under no circumstances will military personnel be voluntarily utilized to guard or control such prisoners. Upon completion of emergency care, arrangements will be made immediately to transfer the prisoners to a nonmilitary MTF or to return the prisoners to the facility to which sentenced.

(3) Enemy Prisoners of War and Other Detained Personnel. Subject to the provisions of § 728.3, enemy prisoners of war and other detained personnel are entitled to and may be rendered all necessary medical and dental care.

Subpart H—Adjuncts to Medical Care

§ 728.91 General.

Adjuncts to medical care include but are not limited to prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, wheel chairs, hospital beds, and similar medical support items or aids which are required for the proper care and management of the condition being treated. Generally, the expenses incurred for procurement of such items, either from civilian sources as supplemental care or from stocks maintained by the facility, are payable from operation and maintenance funds available for the support of naval MTFs. However, certain adjuncts may be cost-shared under CHAMPUS for CHAMPUS-eligible individuals under the circumstances enumerated in the cooperative care or service criteria of § 728.4(aa).

§ 728.92 Policy.

(a) Adjuncts to medical care shall be provided at naval MTFs to eligible beneficiaries receiving inpatient or outpatient care when, in the opinion of the attending physician, such adjuncts will offer substantial assistance in overcoming the handicap or condition and thereby contribute to the well-being of the beneficiary.

(b) Unless necessary for humanitarian reasons, orthopedic and prosthetic appliances are not to be furnished on an elective basis to members of the naval service with short periods of service remaining when the defect requiring the appliance existed prior to entry into service and when such members are to be separated from the service because of these defects.

(c) For active duty members, the initial allowance of orthopedic footwear and orthopedic alterations to standard footwear shall be in the same quantity as provided in the initial clothing allowance.

(d) The number of orthopedic and prosthetic appliances issued or replaced for other authorized recipients shall be based upon the individual's requirements as determined by the attending physician and shall be consistent with the highest standards of modern medicine.

(e) Former members of the uniformed service should be advised that they may obtain durable medical equipment, medical care, and adjuncts from Veterans Administration facilities.

(f) Dependents are authorized certain adjuncts in accordance with the provisions of § 728.32 and in instances where items are not normally authorized at the expense of the Government, they may be provided at cost to the United States if available from Government stocks under the following conditions:

(1) Outside the United States.

(2) At specific stations within the United States which have been authorized by the Secretary of the Navy to sell these items.

§ 728.93 Chart of Adjuncts.

The following chart and footnotes provide information relative to adjuncts which may be furnished the several categories of beneficiaries eligible for medical care at naval MTFs.

Adjuncts	Active duty and retired members	Others authorized the same benefits as active duty or retired members [1]	Dependents authorized the same benefits	Other beneficiaries [8]
Ambulance Service	Yes	Yes	Yes [1]	No.
Artificial Eyes	Yes	Yes	Yes	Maybe. [3]
Artificial Limbs	Yes	Yes	Yes	Maybe. [3]
Contact or Special Lenses [11]	Yes [4]	Yes [4]	Maybe [2 4 6]	No.
Crutches [7]	Yes	Yes	Yes	Yes.
Dental Prostheses	Yes	Yes	Maybe [9]	Maybe. [9]
Elastic Stockings	Yes	Yes	Yes	Yes.
Hearing Aids [10]	Yes [5]	Yes [5]	Maybe [2]	Maybe. [3]
Hearing Aid Parts and Batteries.	Yes [10]	Yes [10]	Maybe [2 10]	No.
Hospital Beds [7]	Yes	Yes	Yes	Yes.
Joint Braces	Yes	Yes	Yes	Yes.
Orthopedic Footwear	Yes	Yes	Maybe [2]	Maybe. [3]
Prosthetic Devices, Other [7]	Yes	Yes	Maybe [2]	No.
Respirators and Inhalators [7]	Yes	Yes	Yes	Yes. [4]
Resuscitators [7]	Yes	Yes	Yes	Yes. [4]
Spectacles	Yes	Yes	Maybe [2 6]	No.
Walking Irons [7]	Yes	Yes	Yes	Yes.
Wheel Chairs [7]	Yes	Yes	Yes	Yes.

[1] When considered medically appropriate by the attending physician.
[2] See § 728.92(f).
[3] Outside the United States and at designated remote stations when considered medically appropriate by the attending physician.
[4] Contact or special lenses are not to be issued solely for cosmetic reasons. Further guidelines are contained in BUMEDINST 6810.4G.
[5] Initial issue will include, in addition to the hearing aid, one spare receiver cord, approximately 1 month's supply of batteries, and a statement indicating make, model, type of receiver, serial number, code, part numbers, "B" battery voltage, and type of "A" and "B" batteries, as appropriate. Replacement of hearing aids shall be upon the same basis as the initial issue and, except in unusual circumstances, shall not be effected within 2 years of the initial furnishing or the last replacement of the appliance.
[6] Spectacles, contact lenses, or intraocular lenses may be provided those dependents with eye conditions which require these items for complete medical or surgical management of a condition other than ordinary refractive error. For further information, consult BUMEDINST 6810.4G.
[7] May be loaned on a custody basis at the discretion of the attending physician.
[8] See subpart of this part relating to specific beneficiary.
[9] When considered by the attending physician and dentist to be an adjunct to a medical or surgical condition other than dental and when in consonance with existing legislation and directives.
[10] For further guidelines, consult BUMEDINST 6320.41B.
[11] Include intraocular lenses required for implantation upon removal of cataracts.

Subpart I—Reservists—Continued Treatment, Return to Limited Duty, Separation, or Retirement for Physical Disability

§ 728.101 General.

(a) *Notice of Eligibility (NOE).* While the NOE is basically a document that substantiates entitlement to a disability benefit equal to pay and allowances, it may be accepted when required to substantiate eligibility for benefits other than pay and allowances, i.e., treatment in USMTFs under the provisions of 10 U.S.C. 6148(d).

(b) *Title 10 United States Code 6148(d).* This code states, in part, that a . . . "member of the Naval Reserve or the Marine Corps Reserve who, in time of peace, becomes ill or contracts disease in line of duty while he is on active duty or performing inactive-duty training is entitled to receive at Government expense medical, hospital, and other treatment appropriate for that illness or disease. The treatment shall be continued until the disability resulting from the illness or disease cannot be materially improved by further treatment. Such a member is also entitled to necessary transportation and subsistence incident to treatment and return to his home upon discharge from treatment."

(c) *Physical Disability Benefits.* The following, excerpted and paraphased from SECNAVINST 1770.3, paragraph 10, is applicable when a reservist may be entitled to physical disability benefits.

(1) When a notice of eligibility (NOE) has been issued to a member hospitalized in a naval MTF and the attending physician is of the opinion that recovery is not anticipated or that the reservist is not expected to be fit for return to full duty within a reasonable period, a medical board shall be convened and the case shall be managed the same as that of a Regular member. A copy of the NOE shall accompany the medical board report forwarded to the Central Physical Evaluation Board. Disability benefits, equal to pay and allowances, shall continue in such cases until final disposition.

(2) There is no limited duty status, per se, for inactive reservists. However, if it is the opinion of the attending physician that a reservist is temporarily unfit for full duty, but will be fit for full duty following a period of convalescence or following duty with physical limitations, not to exceed 6 months, the physician may return the reservist to duty with a summary of the hospitalization or treatment. The summary shall set forth the limitations posed by the member's disability and the period of such limitations. Followup hospitalization, treatment, and evaluation for the same condition may be provided at USMTFs during the period of restricted duty, if required. If, during the period of the restricted duty, it appears that the reservist will be *permanently* unfit for full duty, he or she should be promptly authorized to report for evaluation, treatment if required, and appearance before a medical board at the nearest naval MTF capable of accomplishing same. Admission to the sicklist is authorized, when required. Should the medical board recommend appearance before a physicial evaluation board, disability benefits equal to pay and allowances should continue until final disposition is effected.

§ 728.102 Care from other than Federal sources.

The provisions of this subpart shall not be construed as authorizing care for reservists at other than Federal facilities or out of funds available for operation of USMTFs (supplemental care) after a period of active duty or a period of training duty ends, including travel to and from such training.

[FR Doc. 85-9127 Filed 4-16-85; 8:45 am]
BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2819-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On March 28, 1983 Indiana submitted as a revision to its total suspended particulate (TSP) State Implementation Plan (SIP) an alternative opacity limit for the underfire stack at Bethlehem Steel Corporation's Coke Battery No. 2 in Porter County. The alternative limit is 20% opacity averaged over a 2-hour period. On March 1, 1984 (49 FR 7606), USEPA proposed to approve the limit as an equivalent visible emission limitation (EVEL) to Indiana's mass limit for this source and, today, is approving this EVEL.

EFFECTIVE DATE: This final rulemaking becomes effective on May 17, 1985.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Robert B. Miller, at (312) 886-6031, before visiting the Region V Office.)

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On March 28, 1983, Indiana submitted as a revision to its TSP SIP an alternative visible emission limit for the underfire stack at Bethlehem Steel Corporation's Coke Battery No. 2 in Porter County. (Porter County is designated "unclassifiable" with respect to whether the county has attained the National Ambient Air Quality Standards (NAAQS).)[1] Additional information and documentation were submitted on May 12, 1983. The proposed alternative visible emission limit would prohibit Bethlehem's Coke Battery No. 2 from emitting visible emissions in excess of 20% opacity, as averaged over a 2-hour period. The current opacity limitation is 40%.

In order to qualify for an alternative visible emission limitation, a source must conduct opacity observations simultaneously during the performance of a representative particulate mass stack test which complies with the requirements of applicable mass emission limitation.

Indiana submitted simultaneous opacity observation and stack test data from this source. The stack test data showed compliance with the applicable

[1] The primary TSP NAAQS are violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary TSP NAAQS is violated when, it a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

SIP mass limit contained in Indiana's particulate regulations.[2] In examining the stack test/opacity data developed for the Bethlehem No. 2 Coke Battery EVEL, the 2-hour 20% opacity limit is equivalent to 0.037 grains/dry standard cubic foot (gr/dscf) or to 0.076 lbs/MMBTU for this source. This is more stringent for this source than the mass emission limit currently in the SIP, and USEPA proposed to approve the 2-hour 20% alternative visible emission limit on March 1, 1984.

Only Counsel for Bethlehem Steel commented on this proposal. The comments consisted of submittal of depositions of USEPA staff, with attachments, on various subjects taken in litigation between Bethlehem and USEPA. Bethlehem did not specify what portions, if any, of these depositions are relevent to today's rulemaking. In rulemaking, the burden is on those submitting comments to articulate a position or raise an issue. In the absence of an articulated position, the rulemaker is not required to sift through documents in an attempt to ascertain their relevance. Therefore, USEPA is not responding to the submitted documents.

The 2-hour 20% opacity limit that Indiana submitted as an EVEL for the Bethlehem No. 2 Coke Oven Battery Underfire Stack is correlated to a mass emission level of 0.037 gr/dscf. Because that level is lower than the level reflected in the current underlying SIP mass emission limit, EPA approves the EVEL for so long as the current SIP mass limit applies. In the event USEPA ultimately approves a revised mass limit for this source different from the current mass limit, the 2-hour 20% opacity limit might not be equivalent to the new mass limit and thus should no longer be used to determine compliance with the mass limit. Therefore, should USEPA at any time give final approval to a new mass limit, the EVEL EPA approves today will automatically cease to be part of the SIP. Then, unless the State submits and USEPA approves a new EVEL for the stack at the same time, the opacity limit for the stack will revert to the then applicable general Indiana opacity SIP requirements.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

This notice is issued under authority of sections 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601).

Dated: April 9, 1985.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. Section 52.770 is amended by adding new paragraph (c)(49).

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(49) On March 28, 1983, Indiana submitted a 20% 2-hour opacity limit as an "equivalent visible emission limit" (EVEL) for the underfire stack at Bethlehem Steel Corporation's Coke Battery No. 2 in Porter County. This EVEL is approved for as long as the SIP mass emission limit determined from 325 IAC 6–2 (October 6, 1980, submittal) for this source remains in the SIP See (c)(6), (35), and (42).

* * * * *

2. Section 52.776 is amended by adding new paragraph (h).

§ 52.776 Control Strategy: Particulate Matter.

* * * * *

(h) Equivalent Visible Emission Limits (EVEL). (1) A 20% 2-hour opacity limit for the underfire stack at Bethlehem Steel Corporation's Coke Battery No. 2 in Porter County is approved as an EVEL to determine compliance with the 325 IAC 6–2 SIP limit of 0.33 lbs/MMBTU. This EVEL is approved for as long as the SIP mass emission limit for this source remains the same as determined by 325 IAC 6–2 (October 6, 1980, submittal). See § 52.770(c)(6), (35), and (42).

* * * * *

[FR Doc. 85–9204 Filed 4–16–85; 8:45 am]

BILLING CODE 6560–50–M

[2] The SIP mass emission limitation in 325 IAC 6–2 for this coke battery stack is 0.33 pounds per million British Thermal Units (lbs/MMBTU) (December 6, 1983, 48 FR 54599). On November 7, 1984, Indiana promulgated a new mass emission limit for the Bethlehem No. 2 Coke Battery, which is contained in 325 IAC 6–6. This mass emission limit was submitted to USEPA on December 13, 1984, and limits the Bethlehem No. 2 Coke Battery to 0.129 lb/ton of coal. This mass limit is equivalent to 0.0171 grains/dry standard cubic foot (gr/dscf), based on 1980 production. The State has not submitted a new EVEL for the Bethlehem No. 2 Coke Battery which is equivalent to 0.0171 dg/dscf. USEPA recommends that the State submit such an EVEL to be acted upon in conjunction with the revised mass limit. Nevertheless, USEPA will rulemake on the new mass emission limit by itself in future **Federal Register** notices.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6600

[ES 31023]

Michigan; Public Land Order No. 6571; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects an error in Paragraph 1 of Public Land Order No. 6571 of September 17, 1984.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT: Joyce Troy, BLM Eastern States Office, 350 S. Pickett Street, Alexandria, Virginia 22304, (703)–274–0117.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

In FR Doc. 84–25481 published on page 37760 in the issue of Wednesday, September 26, 1984, the third line of Paragraph 1 which reads "3,500 acres in Marquette County, is" is corrected to read "3,500 acres in Chippewa, Schoolcraft, Alger, and Delta Counties, is."

Robert N. Broadbent,

Secretary of the Interior.

April 8, 1985.

[FR Doc. 85–9199 Filed 4–16–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-706; RM-4610]

TV Broadcast Stations in Anchorage, AK

Correction

In FR Doc. 85-8093, appearing on page 13335 in the issue of Thursday, April 4, 1985, make the following correction:

The docket number in the heading, should have appeared as set forth above.

BILLING CODE 1505-01-M

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47 CFR Part 73

[MM Docket No. 84-706; RM-2958; FCC 85-162]

Frequency Assignments for the International Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends § 73.702(f) of the Commission's Rules by allowing international broadcast stations located in Region 3 to use the 7100–7300 kHz frequency band in addition to the bands already authorized in § 73.702(f). This action is taken to help reduce frequency congestion and increase flexibility in frequency selection for international broadcast stations.

EFFECTIVE DATE: May 16, 1985.

FOR FURTHER INFORMATION CONTACT: Charles H. Breig, Mass Media Bureau, (202) 254–3394.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.702(f) Regarding Frequency Assignments for the International Broadcast Service; MM Docket No. 84-706, RM-2958.

Adopted: April 5, 1985.
Released: April 9, 1985.

By the Commission: Commissioner Rivera not participating.

Background

1. The Commission has before it the *Notice of Proposed Rule Making* ("*Notice*") 49 FR 31303 (August 6, 1984) in this proceeding and comments filed by Trans World Radio Pacific ("Trans World"), Far East Broadcasting Company, Inc. ("Far East") and The American Radio Relay League (the "League"), as well as comments by nine amateur radio operators, and reply comments filed by Trans World and Far East.

2. The *Notice* invited comments on a proposal to amend § 73.702(f) of the Commission's Rules which sets forth the frequencies which can be used by FCC licensed international broadcast stations.[1] The proposed amendment would make it possible for stations with Region 3 locations[2] to use the 7100–7300 kHz band. Unlike Region 3 where such use is possible, international regulations do not permit the use of this band in the United States or elsewhere in Region 2, (the Western Hemisphere). No provision for use of this band in Region 3 was included because until recently, there were no Commission licensed stations outside of Region 2. Now that there are Commission licensed stations in Region 3, use of the 7100–7300 kHz band was proposed as a means of helping to alleviate frequency congestion.[3]

3. However, in making the proposal, the Commission noted that this band was allocated to the Amateur Radio Service in Region 2 and that it was in fact used for this purpose. Because of the potential for increased interference to amateur radio transmissions, the Commission raised that issue and offered an outline of a possible approach in this regard.

Comments Received

4. The comments by Trans World and Far East support the proposal and urge the Commission to adopt the rule change as proposed. They assert that the availability of this band could increase the choice of frequencies which could be used by FCC licensed stations in Region 3, while at the same time help to ease congestion in the other frequency bands allocated to international broadcasting. As to its own situation, Trans World also notes the prediction of lower sunspot numbers over the next few years. This will reduce propagation in the higher frequency bands and will require use of the lower frequency bands so that availability of the 7100–7300 kHz band would make an important contribution to satisfying its broadcast requirements and thereby assure continued good reception in Region 3 target areas. Finally, Trans World notes that other international broadcast stations in Region 3 already have been using this band and that the only stations excluded from such use are those licensed by the Commission.

5. In contrast to this support for the proposal, the concerns of the League regarding possible interference to Region 2 radio amateurs led it to oppose the proposal unless suitable measures were included to minimize the potential for interference. To do this, the League suggests that it would be more appropriate to specify limits on the hours of frequency use rather than limit the radiation toward Region 2 as originally was suggested. This, it says, would better take into account the propagation characteristics of this band which vary with time of day, season of the year and sunspot activity. Because signals propagate better in the evening, the League urges that broadcasting in Region 3 should be prohibited between two hours before sunset at transmitting sites in Region 3 and two hours after sunrise at any location in Region 2. As to the signal levels to be radiated toward Region 2, it urges enforcement of the existing rules regarding directionalization of antennas to target areas in Region 1 or 3 (and thus away from Region 2).

6. In its reply comments, Far East suggests that if the Commission were to limit its licensees to certain hours of operation, as was urged by the League, this would open the way to other international broadcast stations not licensed by the Commission to occupy these frequencies instead. Moreover, because the Commission licenses only a small fraction of the total number of international broadcast operations, Far East doubts that the restriction proposed by the League would bring about any measurable lessening of the interference which otherwise would occur. Trans World takes a similar position and asserts that compliance with any needed restrictions could easily be ensured through the Commission's process of reviewing seasonal broadcast schedules for the stations in Region 3. In addition, Trans World states that FCC licensed international stations in Region 3 almost exclusively target their signals to the west, thereby orienting their directional antennas in a way which would avoid high signal levels toward Region 2.

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[1] These are short-wave stations, operating under private auspices from locations in the United States or its territories to reception areas in foreign countries.

[2] Region 3 consists of the Asian/Pacific area and includes serveral U.S. possessions where the Commission is responsible for station licensing.

[3] The stations currently authorized to operate in Region 3 are: Trans World Radio Pacific KTWR, Agana, Guam; Marcos, Inc. KYOI, Agingan Point, Saipan; and Far East Broadcasting Company, Inc., KFBS, Marpi, Saipan. Also Adventist Broadcasting Service, Inc. has been granted a construction permit for a station at Agat, Guam, but it has not yet gone on the air.

Discussion

7. Based on the record in this proceeding and the Commission's own experience in administering this area of its responsibilities, making the 7100–7300 kHz band available for international broadcasting could help ease the increasing congestion in the frequencies now available for such purposes. The benefits would come through two means: the stations in Region 3 would have additional frequencies available to address their needs, and to the degree to which stations in Region 3 use these newly added frequencies, the stations in Region 2 should face less congestion in the use of the other bands set aside for international broadcasting. Before proceeding to make this band available, the Commission must consider the possible impact of such a step on radio amateur operations in this band in Region 2. Amateur radio operations provide a significant service to the citizens of the United States and to people throughout the world. Their availability in times of local disasters often provide the only means of communication when normal circuits are disrupted. Their presence constitutes a valuable national resource.[4]

8. Because of the high transmitting powers employed by international broadcast stations as well as their use of highly directional antennas, they have a potential for causing substantial amounts of interference to radio amateur stations located in Region 2. Even though the Commission is not in a position to prevent interference caused by stations by other countries, this does not mean the Commission should ignore the substantial additional impact the FCC licensed operations could have, especially since they often operate with directional radiated power equivalent to a level of one megawatt or more. If such signal levels were directed toward Region 2, serious disruption in the use of this radio amateur band in Region 2 would result. Conversely, excessive restrictions would ignore the fact that radio amateur operations already receive interference from other Region 3 international broadcast stations, and their imposition would prevent the new band from being effectively used to accomplish its intended purpose. The question, then, is how to balance these conflicting considerations.

9. The League would deal with this situation by precluding operation of international broadcast stations in Region 3 during (the essentially nighttime) hours when they would have the greatest potential for causing interference. Thus, for example, if average sunrise and sunset times are used and the transmitter site is assumed to be in Guam, in a worst-case situation, the station would have to be off the air as much as 16 hours per day. While this might avoid interference, such an approach would make it impossible to put the band to effective use. On the other hand, it would be equally inappropriate to permit use of the band without regard to its possible consequences for radio amateur operations. Fortunately, there is an arrangement which effectively responds to both of these concerns.

10. It is important to recognize that it is not necessary to preclude all international broadcast operations by U.S. stations in Region 3 in order to minimize interference. Interference problems arise when the broadcast operations in question would put high signal levels into locations in Region 2. This results from the orientation of the directional antenna the station uses and the hours of its operation. If the antenna is oriented directly toward a location in Region 2 and if the path to the target area is in darkness, the potential for interference is great. Conversely, if the antenna is oriented away from Region 2 and the path is in daylight, interference would not be anticipated.

11. With these aspects in mind, it is possible to fashion a rule that provides effective protection and at the same time imposes only a minimal restriction on international broadcast operations. This would involve a rule having two parts. The first would preclude having any operation at any time oriented directly toward a location in Region 2. This restriction would have virtually no effect on transmissions to target areas in Region 1 or 3. The only effect would occur in those rare instances in which the Region 3 station was oriented toward a target area to the east and thus toward Region 2. This arrangement, however, is contrary to the experience with Commission licensed Region 3 station which normally are oriented toward the west.

12. The second part of the rule would deal with the increased potential for interference during nighttime hours and the fact that high signal levels could occur in areas not directly in the signal path. Thus, during the hours of 0600 to 1600 UTC (Coordinated Universal Time) a station would be required to operate so that the radiated power would be reduced by a stated amount in azimuths toward locations in Region 2. These hours are those during which interference to radio amateurs in Region 2 would most likely occur. The amount of reduction of radiated power would be related to gain of the antenna in use. Higher gain antennas would need a 12 dB reduction relative to the maximum power radiated in the major lobe and lower gain antennas a 6 dB reduction. This results in substanial radiated power reductions toward Region 2 during such periods operation equivalent to 1/8 and 1/4 the radiated power in the major lobe, respectively. It provides for reasonable protection at the extreme edges of Region 2, but more importantly, because FCC licensed international broadcasters are required to use highly directional antennas which have a rapid reduction (roll-off) in radiation away from the main beam, it will provide substantially greater protection within Region 2. These restrictions would result in little impact on present or future uses while avoiding what otherwise could be substantial interference. On this basis, use of the band for international broadcasting is clearly justified.

13. Accordingly, pursuant to the authority contained in section 4(i), 303, and 307(b) of the Communications Act of 1934, as amended, it is ordered that § 73.702(f) of the Commission's Rules is amended, as set forth in the attached appendix, effective May 16, 1985.

14. It is further ordered That this proceeding it terminated.

Paperwork Reduction Act

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Final Analysis

I. Need for and Purpose of the Rule

The proposal was designed to increase flexibility in the choice of frequencies for Commission licensed international broadcast stations in Region 3 thereby easing congestion for continental U.S. international broadcast stations.

[4] Two recent Commission actions should help minimize any impact upon amateur operations resulting from international broadcasting in Region 3 in the 7100–7300 kHz band. Amateur stations near Region 3, but in Region 2, have been authorized 7075–7100 kHz for telephony. See, *Second Report and Order* in PR Docket No. 82–83. Additional HF frequencies in the 12 and 30 meter bands also have been proposed. See, *Notice of Proposed Rule Making* in PR Docket No. 84–260.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made As a Result

A. *Issues raised.* None of the commenting parties disagreed with the Commission's assessment. However, the League did express concern about possible interference which could be caused to the Amateur Service in Region 2 and asked the Commission to impose safeguards to minimize the possibility of interference.

B. *Assessment.* The original assessment about the potential for interference was a correct one, substantiated by the record.

C. *Changes as a result.* No change was required other than those involved in selecting the means of avoiding interference.

III. Significant Alternatives Considered and Rejected

The League suggestions regarding imposing a limit on the hours of operation and engineering characteristics of these operations were used as a basis for the limitations in the rule adopted by the Commission.

16. For further information concerning this proceeding, contact Charles H. Breig, Mass Media Bureau, (202) 254–3300.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission

William J. Tricarico,

Secretary.

Appendix

47 CFR Part 73 is amended by revising § 73.702(f) to read as follows:

§ 73.702 Assignment and use of frequencies.

* * * * *

(f) Frequencies assigned by the Commission shall be within the following bands which are allocated exclusively to the international broadcast service:

5,950–6,200 kHz
9,500–9,775 kHz
11,700–11,975 kHz
15,100–15,450 kHz
17,700–17,900 kHz
21,450–21,750 kHz
25,600–26,100 kHz

In addition, the following band is allocated exclusively to the international broadcast service in Region 3:

7,100–7,300 kHz [1]

The carrier frequencies assignable shall begin 5 kHz above the frequency specified above for the beginning of each band and shall be in successive steps of 5 kHz to and including 5 kHz below the frequency specified as the end of each band.

* * * * *

[FR Doc. 85–8248 Filed 4–16–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 84–414; FCC 85–85]

Interconnection of Private Land Mobile Radio Stations With the Public Switched Telephone Network in the Radio Spectrum Below 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Part and Order* amending Part 90 of the Commission's Rules to allow greater flexibility in the interconnection of private land mobile radio stations with the public switched telephone network in the spectrum below 800 MHz.

EFFECTIVE DATE: May 2, 1985.

FOR FURTHER INFORMATION CONTACT: Nia Chirigos Cresham, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio service, Radio.

Report and Order

In the matter of amendment of Part 90 of the Commission's Rules to Prescribe Policies and Regulations to Govern the Interconnection of Private Land Mobile Radio Stations with the Public Switched Telephone Network in the Radio Spectrum below 800 MHz; PR Docket No. 84–414.

Adopted: March 1, 1985.

By the Commission.

Released: March 26, 1985.

Introduction

1. On June 12, 1984, the Commission released a *Notice of Proposed Rule Making* to amend Part 90 of the Commission's rules governing how private land mobile radio stations licensed in the bands below 800 MHz might be interconnected to enable communications between the vehicles of licensees and positions in the public switched telephone network (PSTN).[1] More specifically the *Notice* proposed: (1) To allow interconnection in those cities and radio services where it is now prohibited;[2] (2) to permit licensees and users to share telephone service and interconnection equipment rather than to have to continue obtaining it separately; (3) to modify the requirements for special channel monitoring equipment for interconnected operations; and (4) to eliminate the rules which placed time limitations on the length of interconnected communications.[3]

2. The deadline for filing comments on the proposal was July 19, 1984 and the deadline for filing reply comments was August 3, 1984. Eleven comments and one reply comment were timely received.[4] [5] All of the comments

[1] Assignments in this frequency band will be limited to international broadcast stations located in the area designated as Region 3 by No. 395 of the International Radio Regulations and authorized only to transmit to zones and areas of reception situated outside Region 2 as defined in No. 394 of the International Radio Regulations. In addition, during the hours of 0800–1600 UTC (Coordinated Universal Time), radiation in any easterly direction that would intersect any area in Region 2 shall be limited to at least 12 dB below the maximum radiation in the major lobe for antennas with gains greater than 15 dB and at least 6 dB below the maximum radiation in the major lobe for antennas with gains of 15 db or less.

[1] *Notice of Proposed Rule Making*, Docket No. 84–414, 49 FR 25,255 (June 20, 1984).

[2] Radio transmitters licensed for operation in the Automobile Emergency, Business, Special Emergency, Special Industrial and Taxicab Radio Services may not be interconnected with the public switched telephone network within 75 miles of the nation's 25 largest urban areas. These areas are: New York, NY; Los Angeles, CA; Chicago, IL; Philadelphia , PA; Detroit, MI; San Francisco, CA; Boston, MA; Washington, DC; Cleveland, OH; St. Louis, MO; Pittsburg, PA; Minneapolis-St. Paul, MN; Houston, TX; Baltimore, MD; Dallas, TX; Milwaukee, WI; Seattle-Everett, WA; Miami, FL; San Diego, CA; Atlanta, GA; Cincinnati, OH-KY; Kansas City, MO-KS; Buffalo, NY; Denver, CO; San Jose, CA.

[3] 47 CFR 90.483 currently requires automatic monitoring equipment to be installed at the base station transmitter to prevent interference to on-going communications. This section also imposes time limitations on interconnected communications. The rule also limits initial access calls to mobile operators from the PSTN to a three second tone, after which time the transmitter closes down and no additional signals can be transmitted until a response in received from the mobile operator. In single frequency systems, interconnected conversations are limited to thirty seconds, and special equipment is installed to activate the base station receiver to monitor the frequency for a minimum of three seconds before the communication can commence. All other interconnected communications are limited to three minutes, at which time the transmitter closes down, disconnecting all circuits between the base station and the PSTN.

[4] We received comments from the following parties: The Operating Telephone Companies

Continued

recognized that the interconnection of private land mobile radio stations with the PSTN expands significantly the communications capability of licensees and can improve the efficiency of small business operations by permitting the vehicle operator to talk to persons in the telephone network. The commenters were in favor of reducing regulatory burdens on licensees who employ interconnected systems, since this would facilitate the use of interconnection and improve effectiveness of their communications systems. However, most of the commenters expressed concern that the elimination of all of the current restrictions on the use of interconnection below 800 MHz could significantly increase congestion and interference on private radio frequencies in major cities. These commenters requested us to reconsider some aspects of the proposal in light of these concerns.

Background

3. In 1976 when the Commission began Docket No. 20846, our purpose was to develop specific rules to better define and regulate the interconnection of private land mobile radio systems with the PSTN.[6] After receiving public comment on our proposals we completed the first phase of the proceeding by adopting rules to govern the interconnection of private land mobile radios with the PSTN in the frequency bands below 800 MHz.[7] Our *First Report and Order* adopted rules which completely barred the interconnection of private radio stations with the telephone network within 75 miles of the largest 25 cities in five service groups. (*See* footnote 2, *supra.*) We also placed several equipment requirements on licensees using interconnected stations below 800 MHz and set time limitations on the duration of interconnected communications. Finally, we did not allow interconnection to occur at a point common to several licensees when the radio equipment was provided by a third party.[8]

4. In 1982 we adopted a *Second Report and Order* to address the interconnection of private land mobile radios with the PSTN in the radio spectrum above 800 MHz.[9] In that action we adopted substantially less burdensome rules for the use of interconnection by private licensees and users. For example, we did not impose any geographic restrictions as to where interconnection could occur. Instead we permitted interconnection to be employed anywhere. We also did not require special monitoring equipment to be used at the transmitter site and did not place time limitations on interconnected communications. Finally, we allowed multiple licensees and authorized users to share telephone service and interconnection equipment, as long as the telephone service was provided on a non-profit, cost-shared basis. Soon after the *Second Report and Order* was adopted, Congress enacted "The Communications Amendments Act of 1982" which addressed the interconnection of private land mobile radio transmitters with the PSTN.[10] The new legislation was applied in 1983 by our *Memorandum Opinion and Order* which affirmed our actions regarding interconnection in the bands above 800 MHz.[11] We also further liberalized our rules on interconnection above 800 MHz in conformance with the new legislation. We made no changes, however, to the rules in the *First Report and Order* governing interconnection in the bands below 800 MHz.

5. In this current phase of our interconnect proceedings, our objective is to review the restrictions we imposed on interconnection below 800 MHz in 1978 and to see if technical devleopments during the past six years warrant relaxation of our rules. Of particular concern are those restrictions which ban completely the use of interconnection within 75 miles of the 25 largest cities, prohibit common point interconnection, and impose special monitoring equipment and time limitations on interconnected communications below 800 MHz.[12] We proposed the elimination of these restrictions in our *Notice* in order to reduce the burdens on licensees seeking to employ interconnected communications. We recognized, however, that most of the channels below 800 MHz are shared channels and we were aware that increased channel congestion due to longer transmission times could result from an increase in the number of interconnected transmitters. However, we felt that this problem could be controlled through mutual cooperation and coordination among licensees, particularly since our rules give us broad discretion to impose solutions on a case-by-case basis should cooperation fail.[13] We also proposed to make the use of interconnection secondary to dispatch operations in order to assure the primacy of dispatching. This method has proven to be successful for the bands above 800 MHz.

Decision

6. After extensive consideration of the comments, we have determined to modify and to eliminate several of our rules governing interconnection of private land mobile radio stations with the PSTN in the bands below 800 MHz. We are modifying the absolute ban on interconnection in the five specified services within 75 miles of the 25 largest cities to allow interconnection within 75 miles of these cities in the five services, if a licensee has obtained the consent of all co-channel licensees located both (1) Within 75 miles of the center of the city; and (2) within 75 miles of the interconnected base station transmitter. More specifically, consent is required of all co-channel licensees located within the intersection of the following two circles: (1) A circle with a radius of 75 miles around the center of the city; and (2) a circle with a radius 75 miles around the interconnected base station transmitter. We are also eliminating the prohibition on common point interconnection and will allow multiple licensees and authorized users to interconnect at a common point as long as the telephone service is provided on a non-profit, cost-shared basis. We are

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(OTC's); Pennzoil Company (Pennzoil); Utilities Telecommunications Council (UTC); Special Industrial Radio Service Association, Inc. (SIRSA); Central Committee on Telecommunications of the American Petroleum Institute (API); Motorola, Inc. (Motorola); General Electric Company (GE); National Association of Business and Educational Radio (NABER); Association of American Railroads (AAR); Dallas County Hospital District (Dallas County). We received reply comments from UTC.

[5] Comments were also received by Telocator Network of America (Telocator). Telocator asserts that the rule and policy changes at issue are in conflict with the "The Communications Amendments Act of 1982," Pub. L. 97–259, 96 Stat 1087, September 13, 1982; See section 120 (Section 331 of the Communications Act of 1934, as amended, is codified at 47 U.S.C. 332). Telocator did not argue the issues *de novo*, but incorporated by reference its Petition for Reconsideration in Docket No. 20846, filed on July 26, 1983. The arguments raised by Telocator in its comments were considered and addressed in our *Memorandum Opinion and Order*, Docket No. 20846, 49 FR 26,096 (June 26, 1984). Telocator has not raised any new issues to be considered at this time. The *Memorandum Opinion and Order* has been appealed to the United States Court of Appeals, District of Columbia Circuit, *Telocator Network of America* v. *FCC & USA*, No. 84–1005.

[6] *Notice of Inquiry and Notice of Proposed Rule Making*, Docket No. 20846, 41 FR 28540 (July 12, 1976).

[7] *First Report and Order*, Docket No. 20846, 69 FCC 2d 1631 (1978), 43 FR 36396 (August 2, 1978).

[8] *See* 47 CFR 90.477(d)(1), (3) and 90.483.

[9] *Second Report and Order*, Docket No. 20846, 89 FCC 2d 741 (1982).

[10] *The Communications Amendments Act of 1982*, *supra* at section 331, 47 U.S.C. 332.

[11] *Memorandum Opinion and Order*, Docket No. 20846, 48 FR 28512 (June 27, 1983).

[12] 47 CFR 90.477(d)(1), (3) and 90.483.

[13] *See* 47 CFR 90.173.

modifying the time limitations and the special equipment requirements to allow licensees to operate without these restrictions if they have obtained the consent of co-channel licensees located within a 75 miles radius of the interconnected base station transmitter.

Discussion

75 Mile Rule

7. Our rules currently prohibit any interconnection in the Automobile Emergency, Business, Special Emergency, Special Industrial, and Taxicab Radio Services within 75 miles of the 25 cities listed in footnote 2, *supra*, and in § 90.477(d)(3). The initial purpose of this rule was to prevent further congestion on shared channels in highly populated areas. Our concern was that typical telephone conversions tend to last longer than typical dispatch transmissions. It does, however, deny a significant communications capability to a larger number of licensees. We proposed to eliminate the rule in order to enable licensees to make greater and more effective use of their communications systems by enabling them to talk from their vehicles to positions in the public switched telephone network, and vice versa, thereby generally improving their communications capability and the overall quality of service to the public. We proposed to accomplish this by making interconnected communications secondary to dispatch and by allowing co-channel licensees to coordinate among themselves the operation of interconnected transmitter to avoid interference.

8. Most of the commenters favored the retention of the geographic restrictions on the use of interconnection within 75 miles of the nation's 25 largest cities. The major concern of those who wished to retain the rule was the amount of congestion which already exists in the major urban areas. NABER, AAR, Motorola, SIRSA, and API argued that the vast majority of stations operating below 800 MHz share frequencies, and that licensees below 800 MHz do not receive the co-channel separation protection that licensees receive above 800 MHz. AAR stated that there are too many licensees below 800 MHz to achieve any kind of cooperation, particularly since channels are often shared by diverse users. The OTC's Pennzoil, GE, and Dallas County, however, favored the elimination of the rule. GE felt that the liberalization of the rules would increase system efficiency. GE also pointed out that the cost of air time for the licensees of shared transmitters such as "community repeaters" would deter the excessive use of interconnection. Motorola proposed that the rule be retained only in the Business Radio Service and that it be eliminated in the other private radio services. API proposed that the Commission allow interconnection in urban areas, but strictly enforce the time, signal, and equipment limitations contained in Section 90.483.

9. After weighing the concerns, we believe a middle course is possible which will permit interconnection where feasible, but which will assure that excessive interference to dispatch systems will not occur. This approach will permit co-channel users to decide for themselves whether or not their particular operating environment will support interconnection. If all of the co-channel users can agree to permitting interconnection, it will be allowed; if they cannot it will not be allowed. Thus, we are modifying this rule to allow licensees in these five services to interconnect within 75 miles of the 25 cities if they have obtained the consent of all co-channel licensees located both (1) within 75 miles of the center of the city; and (2) within 75 miles of the interconnected base station transmitter. More specifically, consent is required of all co-channel licensees located within the intersection of the following two circles: (1) A circle with a radius of 75 miles around the center of the city; and (2) a circle with a radius of 75 miles around the interconnected base station transmitter. The consensual agreements among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that co-channel licensees have consented to the use of interconnection. Interconnection, however, would continue to be subordinate to dispatch operations. If a licensee has agreed to the use of interconnection on the channel, but later decides against the use of interconnection, the licensee may request that the co-channel licensees reconsider the use of interconnection. If the licensee is unable to reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. Frequency coordinators currently consider the compatibility of co-channel licensees' radio systems prior to recommending a frequency assignment to the Commission. In recommending frequencies for applicants, frequency coordinators should consider whether an applicant proposes to interconnect its radio system and would be compatible with interconnected co-channel licensees.[14] However, if a new licensee is assigned to a frequency where all the co-channel licensees have agreed to the use of interconnection and the new licensee does not agree, the new licensee may request that the co-channel licensees reconsider the use of interconeection. If the new licensee can not reach an agreement with co-channel licensees, it may request that the Commission reassign it to another channel. Such an approach, we are persuaded, will give licensees maximum flexibility in the operation of their systems, while at the same time assuring that interconnection does not impair the operation of dispatch systems.

Restriction on Common Point Interconnection

10. Our current rules prohibit interconnection at a common point when the radio equipment is provided by a third party, except where the third party involvement is limited to the sale or lease of radio equipment and incidental maintenance, and the station and the telephone service are cost-shared on a non-profit basis with costs prorated among the users.[15] In 1978, we specifically deferred the adoption of new rules allowing interconnection at a common point pending resolution of the regulatory status of third party arrangements.[16] Since that time we have allowed the sharing of private land mobile transmitters and the third party provision of radio equipment.[17] We have also allowed third parties, including Specialized Mobile Radio Service licensees, to act as agents in obtaining telephone service for other licensees or users above 800 MHz, as long as the telephone service is provided on a non-profit, non-resale basis in conformance with "The Communications Amendments Act of 1982." Further, we have determined that the interconnection device or "patch" is an unlicensed piece of electronic gear widely manufactured and available from many sources and that there is no public interest reason for regulating the manner in which it is obtained.[18] We proposed,

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[14] *See* Frequency Coordination in the Private Land Mobile Radio Services, *Notice of Proposed Rule Making*, Docket No. 83-737, 49 FR 45454 (November 16, 1984).

[15] 47 CFR 90.477(d)(1).

[16] *First Report and Order*, *supra* at paragraph 47.

[17] *Report and Order*, Docket No. 18921, 47 FR 19527 (May 6, 1982); *Memorandum Opinion and Order on Reconsideration*, Docket No. 18921, 48 FR 28621 (June 9, 1983).

[18] *Memorandum Opinion and Order*, Docket No. 20846, *supra*.

therefore, to allow common point interconnection below 800 MHz as we had already done above 800 HMz, and to allow third parties to act as ordering agents as long as telephone service is obtained from an authorized provider and shared on a non-profit basis.

11. The comments unanimously favored the elimination of this rule as long as the telephone service is cost-shared on a non-profit basis. Motorola and Pennzoil both indicated that this action would provide significant savings to licensees and improve the quality or service. We agree. The effect of the current rule is inefficient because it denies private radio licensees and users below 800 HMz the ability to share telephone service on a non-profit basis and to share interconnection equipment. Accordingly, we will eliminate this rule and allow interconnection to be accomplished at any location through a separate or shared interconnection device. When land stations are multiple licensed or shared by authorized users, we will allow arrangements for the telephone service to be made with a duly authorized carrier by users, licensees, or their authorized agents on a non-profit, cost-shared basis.

Equipment and Time Restrictions

12. Section 90.483 of our rules provides that when a frequency is shared by more than one station each licensee must install automatic monitoring equipment at the base station to prevent the activation of the transmitter when communications are in progress.

13. Section 90.483 of our rules also contains specific time limitations on the duration of interconnected communications. Calls to mobile operators from points in the PSTN are limited to the transmission of a three second tone, after which time the transmitter automatically closes down. No additional signals can be transmitted until a response from the mobile operator is received. In single frequency systems, special equipment must be installed to limit any single transmission from the PSTN to thirty seconds. In all other systems transmitters must have a timer installed to limit interconnected communications to three minutes. After the three minutes, the transmitter must close down, disconnecting all circuits between the base station and the PSTN. The purpose of the time limitations is to limit the length of interconnected calls in order to minimize the likelihood of channel congestion.

14. In order to comply with the requirements of Section 90.483, licensees are required to install equipment at the base station transmitter which automatically monitors the frequencies and closes down the transmitter at the end of the allotted time for communications. Even where there is a single licensee on the channel, the licensee must still install this monitoring equipment under the current rule. We proposed to eliminate these requirements in order to allow licensees to reduce their equipment expenses and to facilitate interconnnected communications.

15. The majority of the comments favored the retention of our rule requiring special monitoring equipment and time limitations for interconnection below 800 MHz. UTC, SIRSA, AAR, and Motorola wanted to retain these rules because they did not feel that our proposal to allow interconnection only on a secondary basis would be sufficient to prevent increased channel congestion and interrupted communications. API proposed to retain these rules for only the 25 largest cities. NABER favored the elimination of the time restrictions and stated that monitoring equipment was not necessary in all instances. The OTC's, Pennzoil, GE, and Dallas County favored the elimination of the rules.

16. We are aware of the congestion problems that exist on shared channels and that, absent our rules, it might be difficult to coordinate reasonable time limits on interconnected communications on channels often shared by users with diverse or competing interests. Due to the large number of licensees on most private radio channels, we must make every attempt to minimize congestion and interference. On the other hand, our current rules place these burdens on licensees whether or not there are co-channel users in the area. After considering this matter, we conclude in situations in which there are no other licensees on a frequency within a given geographic area, there is no need to require licensees to install monitoring equipment *ab initio*. We will allow co-channel licensees to decide whether to use monitoring equipment. We will also allow co-channel licensees to decide whether to use the Commission's time limitations, or to set their own time limitations, or to use no time limitations. We will dispense with these requirements where there are multiple licensees on the channel if they have obtained the consent of all co-channel licensees located within a 75 mile radius of the interconnected base station transmitter. The consensual agreements among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with the co-channel licensees, it should request a new channel from the Commission. This approach will allow licensees maximum flexibility in the operation of their systems and encourage cooperation among co-channel licensees.

17. All of the comments endorsed the editorial amendments we proposed in the *Notice*. Therefore, we will adopt the new definition of interconnection to conform to the language contained in "The Communications Amendments Act of 1982", *supra*. We will also amend and clarify our rule on the use of interconnection on the offset frequencies.[19] A number of comments requested that we further amend our rules on paging operations to allow paging signals to be transmitted from telephone positions in the PSTN in all private radio bands as we have allowed in the 929–930 MHz band.[20] Our *Notice* did not discuss such an amendment and we did not request comments on this issue. We, therefore, will not address such an amendment in this proceeding.

Final Regulatory Flexibility Analysis

The Objectives

18. The Commission seeks to promote rapid and efficient communications and encourage larger and more effective use of the radio by enhancing the ability of small and large businesses to employ interconnection in their private communications systems in furtherance of the public interest.

Description, Potential Impact and Number of Small Entities Affected

19. This action may impact both small and large businesses, licensees, and users since it will allow for more liberal

[19] 47 CFR 90.7 and 90.476.
[20] 47 CFR 90.490 (c) and (d).

use of interconnection between private land mobile radio stations licensed to operate below 800 MHz with the PSTN. We did not receive any comments from interested parties on this particular issue. We did receive comments which indicated some concern that the total elimination of restrictions on interconnection would cause increased congestion on the channels below 800 MHz. Therefore, we adopted an approach which allows licensees to choose whether or not to implement these restrictions. Since private radio communications which are interconnected with the PSTN may be longer than typical dispatch communications, the channels may be more congested than they would be in the absence of interconnection. However, the possibility of increased channel congestion must be balanced against the increased flexibility private licensees will have in meeting their communications needs. This action will give licensees the opportunity to cooperate in the use of their communications systems in order to increase their service options.

Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent With the Stated Objectives

20. None.

Paperwork Reduction Act Statement

21. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

22. Accordingly, it is ordered, that effective May 2, 1985, Part 90 of the Commission's Rules, 47 CFR Part 90, is amended as set forth in the attached Appendix and that this proceeding is terminated. Authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and 303.

23. For further information on this proceeding contact Nia Chirigos Cresham, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 90.7 is amended by revising the definition for "Interconnection" to read as follows:

§ 90.7 Definitions.

* * * * *

Interconnection. Connection through automatic or manual means of private land mobile radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by private land mobile radio stations. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private, internal system of communication or as an integral part of dispatch point circuits in a private land mobile radio station are not considered to be interconnection for purposes of this rule part.

2. Section 90.476 is revised to read as follows:

§ 90.476 Interconnection of fixed stations and certain mobile stations.

(a) Fixed stations and mobile stations used to provide the functions of fixed stations pursuant to the provisions of paragraphs (c)(4) and (c) (36) of § 90.75 and § 90.267 are not subject to the interconnection provisions of § 90.477 and § 90.483 and may be interconnected with the facilities of common carriers.

(b) Mobile stations used to provide the functions of base and mobile relay stations pursuant to the provisions of paragraphs (c) (4) and (c) (36) of § 90.75 and § 90.267 are not subject to the provisions of paragraph (d)(3) of § 90.477 and may be interconnected with the facilities of common carriers subject to the provisions of paragraph (d)(1), (d)(2) and (e) of § 90.477 and § 90.483.

3. Section 90.477, paragraphs (b)(1) and (d)(1) through (d)(3) are revised to read as follows:

§ 90.477 Interconnected System.

* * * * *

(b) * * *

(1) Interconnected operation is on a secondary basis to dispatch operation. This restriction will not apply to trunked systems or on any channel assigned exclusively to one licensee.

* * * * *

(d) * * *

(1) Interconnected operation is on a secondary basis to dispatch operation. This restriction will not apply to trunked systems or on any channel assigned exclusively to one licensee.

(2) Interconnection may be accomplished at any location through a separate or shared interconnection device. When land stations subject to this part are multiple licensed or shared by authorized users, arrangements for telephone service must be made with a duly authorized carrier by users, licensees, or their authorized agents on a non-profit cost sharing basis. When telephone service costs are shared, at least one licensee participating in the cost sharing arrangement must maintain cost sharing records and the costs must be distributed at least once a year. Licensees, users, or their authorized agents may also make joint use arrangements with a duly authorized carrier and arrange that each licensee or user pay the carrier directly for the licensee's or user's share of the joint use of the shared telephone service. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request. In all cases, arrangements with the duly authorized carrier must disclose the number of licensees and users and the nature of the use.

(3) In the Special Emergency Radio Service (Subpart C of this part), except for medical emergency systems in the 450–470 MHz band, the Business and Special Industrial Radio Services (Subpart D of this part), and the Automobile Emergency and Taxicab Radio Services (Subpart E of this part), interconnection will be permitted only where the base station site or sites of proposed stations are located 75 miles or more from the designated centers of the urbanized areas listed below. If licensees seek to interconnect in these five services within 75 miles of the 25 cities they must obtain the consent of all co-channel licensees located both within 75 miles of the center of the city; and within 75 miles of the interconnected base station transmitter. The consensual agreements among the co-channel licensees must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of

interconnection. If a licensee has agreed to the use of interconnection on the channel, but later decides against the use of interconnection, the licensee may request that the co-channel licensees reconsider the use of interconnection. If the licensee is unable to reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed to the use of interconnection and the new licensees does not agree, the new licensee may request that the co-channel licensees reconsider the use of interconnection. If the new licensee can not reach an agreement with co-channel licensees it may request that the Commission reassign it to another channel.

Urbanized area	North latitude	West longitude
New York, N.Y. northeastern N.J.	40°45'06"	73°59'39"
Los Angeles-Long Beach, Calif.	34°03'15"	118°14'26"
Chicago, Ill.	41°52'28"	87°38'22"
Philadelphia, Pa.-New Jersey	39°56'58"	75°09'21"
Detroit, Mich.	42°19'48"	83°02'57"
San Francisco-Oakland, Calif.	37°46'39"	122°24'40"
Boston, Mass.	42°21'24"	71°03'25"
Washington, D.C.-Maryland-Virginia	38°53'51"	77°00'33"
Cleveland, Ohio	41°29'51"	81°41'50"
St. Louis, Mo.-Illinois	38°37'45"	90°12'22"
Pittsburgh, Pa.	40°26'19"	80°00'00"
Minneapolis-St. Paul, Minn.	44°58'57"	93°15'43"
Houston, Tex.	29°45'26"	95°21'37"
Baltimore, Md.	39°17'26"	76°36'45"
Dallas, Tex.	32°47'09"	96°47'37"
Milwaukee, Wis.	43°02'19"	87°54'15"
Seattle-Everett, Wash.	47°36'32"	122°20'12"
Miami, Fla.	25°46'37"	80°11'32"
San Diego, Calif.	32°42'53"	117°09'21"
Atlanta, Ga.	33°45'10"	84°23'37"
Cincinnati, Ohio-Kentucky	39°06'07"	84°30'35"
Kansas City, Mo.-Kansas	39°04'56"	94°35'20"
Buffalo, N.Y.	42°52'52"	78°52'21"
Denver, Colo.	39°44'56"	104°59'22"
San Jose, Calif.	37°20'16"	121°53'24"

4. Section 90.483, paragraphs (b)(1)(ii), (b)(2)(i), (b)(2)(ii), (c), and (d) are revised to read as follows:

§ 90.483 Permissible methods and requirements of interconnecting private and public systems of communications.

* * * * *

(b) * * *

(1) * * *

(ii) When a frequency is shared by more than one system, automatic monitoring equipment must be installed at the base station to prevent activation of the transmitter when signals of co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without the monitoring equipment if they have obtained the consent of all co-channel licensees located within a 75 mile radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems on frequencies above 800 MHz are exempt from this requirement.

(2) * * *

(i) When a frequency is shared by more than one system, automatic monitoring equipment must be installed at each base station to prevent its activation when signals of other co-channel stations are present and activation would interfere with communications in progress. Licensees may operate without this equipment if they have obtained the consent of all co-channel licensees located within a 75 mile radius of the interconnected base station transmitter. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commission. Systems above 800 MHz are exempt from this requirement.

(ii) Initial access from points within the public switched telephone network must be limited to transmission of a 3 second tone, after which time the transmitter shall close down. No additional signals may be transmitted until acknowledgement from a mobile station of the licensee is received. Licensees are exempt from this requirement if they have obained the consent of all co-channel licensees located within a 75 mile radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new license may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach an agreement with co-channel licensees, it should request a new channel from the Commisison. Systems above 800 MHz are exempt from this requirement.

(c) In single frequency systems, equipment must be installed at the base station which will limit any single transmission from within the public switched telephone network to 30 seconds duration and which in turn will activate the base station receiver to monitor the frequency for a period of not less than three (3) seconds. The mobile station must be capable of terminating the communications during the three (3) seconds. Licensees are exempt from this requirement if they have obtained the consent of all co-channel licensees located within a 75 mile radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later

decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider thematter and assign itot another channel. If a new licensee is addigned to a frequency where all the co-channel licensees have agreed tht the use of monitoring equipment. If the new licensee cannot rech an agreement with co-channel licensees, it should request a new channel from the Commission.

(d) A timer must be installed at the base station transmitter which limits communications to three (3) minutes. After three (3) minutes, the system must close down, with all circuits between the base station and the public switch telephone network disconnected. This provision does not apply to systems licensed in the Police, Fire, Local Government, Special Emergency, Power, Petroleum, Railroad Radio Services, or above 800 MHz. All systems must be equipped with a timer that closes down the transmitter within three minutes of the last transmission. Licensees may operate without these requirements if they have obtained the consent of all co-channel licensees located within a 75 mile radius of the interconnected base station transmitter. However, licensees may choose to set their own time limitations. A statement must be submitted to the Commission indicating that all co-channel licensees have consented to operate without the monitoring equipment. If a licensee has agreed that the use of monitoring equipment is not necessary, but later decides that the monitoring equipment is necessary, the licensee may request that the co-channel licensees reconsider the use of monitoring equipment. If the licensee cannot reach an agreement with co-channel licensees, the licensee may request that the Commission consider the matter and assign it to another channel. If a new licensee is assigned to a frequency where all the co-channel licensees have agreed that the use of monitoring equipment is not necessary, and the new licensee does not agree, the new licensee may request the co-channel licensees to reconsider the use of monitoring equipment. If the new licensee cannot reach a agreement with co-channel licensees, it should request a new channel from the Commission.

[FR Doc. 84-9249 Filed 4-16-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 16]

Child Restraint Systems for Use in Motor Vehicles and Aircraft

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends the inversion test added Standard No. 213, *Child Restraint Systems*, to allow those manufacturers which choose to do so to certify their restraints for use in both motor vehicles and aircraft. These amendments specify more objective criteria for the testing procedures and determining compliance with the inversion tests. This rule adopts what was proposed, except that the rate of acceleration and deceleration at the start and finish of the test is now specified. The rule also specifically allows manufacturers the option of using any of the specified aircraft seats and safety belts. In addition, several typographical errors have been corrected.

EFFECTIVE DATE: This rule becomes effective April 17, 1985.

ADDRESS: Petitions for reconsideration may be submitted within 30 days after publication of this rule in the Federal Register to: Administrator, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: During the latter half of 1982, the Department of Transportation had two standards for child restraints. Child restraints for use in motor vehicles had to be certified as complying with the requirements of this agency's Standard No. 213 (49 CFR 571.213). That standard specifies performance and labeling requirements applicable to child restraints. Child restraints for use in aircraft had to be certified as complying with the requirements of the Federal Aviation Administration's (FAA) Technical Standard Order C100. That standard required child restraints to satisfy differing performance and labeling requirements if they were to be used in aircraft.

The result of these differing requirements was that only a few of the child restraints certified for use in motor vehicles were also certified for use in aircraft. In eary 1983, the National Transportation Safety Board considered the safety problems posed for young children traveling in motor vehicles and aircraft and urged that a variety of actions be taken to promote increased use of child restraints. One of those recommendations was that the Department of Transportation simplify its two different standards setting forth requirements for child restraints, by combining the standards into a single standard.

After considering the benefits which would result from the increased use of child restraints, the FAA and NHTSA jointly concluded that the process of certifying child restraints for use in both motor vehicles and aircraft could and should be simplified and expedited. By combining the separate NHTSA and FAA standards into a single standard under the jurisdiction of a single agency, child restraint manufacturers could avoid the difficulties of dealing with different standards, methods of certification, and test procedures promulgated by the two different agencies. Accordingly, a notice of proposed rulemaking (NPRM) was published at 48 FR 36849, August 15, 1983.

This notice proposed that NHTSA would be the sole agency responsible for administering the new Standard No. 213, which would be applicable to both child restraints designed for use in motor vehicles and child restraints designed for use in aircraft. In essence, the notice proposed that the requirements in both agencies' standards be adopted *in toto* and simply combined in an expanded version of Standard No. 213. This would eliminate the problems inherent in dealing with the differing certification and testing procedures of the two agencies and consolidate all the requirements into one standard.

After publication of the NPRM, NHTSA and FAA undertook a joint testing program of all 42 models of child restraints being manufactured at that time and certified as complying with the requirements of Standard No. 213. The purpose of the joint testing program was to determine whether these child restraints could also be certified as complying with the FAA standard for child restraints for use in aircraft. The joint testing program showed that some of the FAA requirements proposed to be added to Standard No. 213 were simply less severe tests of performance capabilities which had already been

measured in testing to satisfy the NHTSA requirements. Hence, those requirements were deemed redundant and not necessary to ensure adequate protection of restraint occupants in aircraft.

NHTSA published a final rule amending Standard No. 213 at 49 FR 34357, August 30, 1984. That rule added one additional test to Standard No. 213 which had to be satisfied by those child restraint manufacturers which chose to certify their products for use in both motor vehicles and aircraft. The additional test was an inversion test, whose purpose is to ensure that child restraints certified for use in aircraft adequately protect occupants against the dangers posed by sudden air turbulence. The procedures to be followed were adopted exactly as proposed in the NPRM, which was in turn drawn verbatim from the FAA standard.

A number of the comments received in response to the NPRM agreed with the proposal to include an inversion test in Standard No. 213, but questioned the "vagueness and subjectivity" associated with the inversion test as proposed. After reviewing both the proposed criteria and the comments received on that proposal, NHTSA concluded that the test procedure should be clarified. However, the rulemaking procedures of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) precluded the agency from adopting the modifications to the test procedure in the final rule. This was because 5 U.S.C. 553 requires that interested persons receive notice of proposed rulemaking, and that such notice shall include either the terms or substance of the proposed rule or a description of the subjects and issues involved. The NPRM did not give the public notice that NHTSA was even considering different criteria than those which were proposed, so the final rule could not adopt such criteria.

To correct this perceived shortcoming of the final rule, NHTSA published another NPRM on the same day as the final rule, at 49 FR 34374, August 30, 1984. That notice proposed to establish the procedures and criteria used by NHTSA and the FAA in the joint testing program as the procedures and criteria to be followed in the inversion test just added to Standard No. 213. Only one commenter responded to this NPRM.

This notice proposed that, to prepare for the inversion test, the subject child restraint should be attached to a representative aircraft passenger seat using only an FAA-approved aircraft safety belt and FAA-approved aircraft safety belt extensions, if needed. A representative aircraft passenger seat was defined as either an FAA-approved production aircraft passenger seat or a simulated aircraft passenger seat conforming to Figure 6.

The commenter stated that this procedure failed to specify objective criteria, as required by section 102(2) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391(2)), because it was not clear that every FAA-approved production passenger seat is the equivalent of the simulated passenger seat shown in Figure 6. In the same vein, the commenter argued that it was not clear that all FAA-approved safety belts and safety belt extensions were equivalent for the purposes of the inversion test. If they are not equivalent, the commenter argued, the outcome of the inversion test would depend on the particular seat and/or safety belt chosen for the tests. When the outcome of the test is influenced by something other than the properties of what is being tested, the test is not objective. To remedy this, the commenter urged that the inversion test be amended to either specify the exact seat and safety belt combinations which would be used for testing or specify that the seat and safety belts may be chosen at the manufacturer's option from among any of the specified seats and safety belts.

The inversion test in Standard No. 213 is a qualitative test, the results of which are mainly dependent upon the geometry of the aircraft seat and safety belt combination. The test results will not be significantly affected by the seat's structural and padding characteristics or by the seat belt properties. Nevertheless, the commenter is correct in asserting that the properties of the particular aircraft seat and safety belt used in a test *might* make the difference between the restraint passing and failing the test in a very marginal case. The agency wishes to emphasize that this is a possibility, but it has not been demonstrated. In the joint testing program in which all currently produced models of child restraints were tested, all restraints passed the inversion test, using the criteria adopted in this rule.

To address this possibility, the rule adopts the commenter's suggestion that the proposed language be amended to specify that child restraint manufacturers may at their option select any of the specified passenger seats and aircraft safety belts for use in the inversion test. A complete listing of all FAA-approved aircraft passenger seats and safety belts can be found in the FAA's Advisory Circular AC 20-36, which is updated annually. By adopting this approach, NHTSA is assuming that the simulated passenger seat shown in Figure 6 and each of the FAA-approved passenger seats are equivalent for the purposes of the inversion test, and that the slight differences between those seats will not make a difference in whether a restraint passes or fails the inversion test. A similar assumption is made with respect to each of the FAA-approved safety belts. The agency has adopted a similar approach in some other standards. *See, e.g.*, S3 of Standard No. 214, *Side door strength* (49 CFR 571.214). Should the agency assumption of equivalence be shown to be incorrect, NHTSA would amend the standard to specify those seats and safety belts which must be used for the inversion test. However, there is no reason to be that restrictive at this time.

Once the child restraint and test dummy have been secured in place in the representative aircraft passenger seat, the notice proposed that the seat be rotated around a horizontal axis at a rate of 35 to 45 degrees per second to an angle of 180 degrees, and the rotation would be stopped when it reaches an angle of 180 degrees. The commenter stated that this language was indefinite because it did not specify the starting acceleration and stopping deceleration for the rotation. The commenter stated that the test would be more severe if the rotation is begun with a sudden jerk and halted by banging the combination against a stop positioned at 180 degrees than if it were started and stopped more gradually. However, the proposed language does not indicate which of these procedures is to be used for the testing.

NHTSA agrees with the commenter on this point, and the language of this final rule specifies that the inversion test should be conducted to allow not less than ½ second and not more than 1 second for the seat to achieve the required rate of rotation and to be stopped from that rate of rotation. These rates of acceleration and deceleration were the ones used in the NHTSA–FAA joint testing program.

The commenter also stated that there were some minor typographical errors in section S8.2.3, S8.2.4, and S8.2.5, and that the explanatory language beneath Figure 6 needed to be slightly clarified. NHTSA has made each of these requested changes in this final rule.

As discussed above, NHTSA has decided to clarify the test procedures and criteria for determining compliance with the inversion test specified in Standard No. 213. These requirements of this inversion test are optional, and need only be followed by those manufacturers which choose to certify their child restraints for use in aircraft as well as in motor vehicles.

Manufacturers which choose to certify their products only for use in motor vehicles will not be adversely affected by an early effective date for these amendments. The amendments made by this notice do not change the fundamental performance requirement that those manufacturers which choose to also certify their products for use in aircraft will have to meet; the amendment benefits the manufacturers by clarifying the test procedure. Accordingly, I find good cause for making the amendments in this rule effective upon publication in the Federal Register.

The NHTSA has analyzed this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. No additional requirements are imposed for restraints to be certified for use in aircraft, and no additional requirements are imposed for those restraints to be certified only for use in motor vehicles. These amendments simply clarify the testing procedures to be followed for child restraint systems which the manufacturer chooses to certify for use in aircraft. Since the impacts of this rule are minimal, a full regulatory evaluation has not been prepared.

In accordance with the Regulatory Flexibility Act, the NHTSA has evaluated the impacts of this action on small entities. Based upon this evaluation, I certify that these amendments to Standard No. 213 will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. This certification is based on the discussion above pursuant to Executive Order 12291: That is, these amendments only clarify the existing requirements without adding any further requirements. Thus, there should be no impact on child restraint manufacturers nor on any small organizations and small governmental units which purchase child restraints.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that this rule will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571.213 is amended to read as follows:

1. Paragraph S4 is amended by revising the definition of "representative aircraft passenger seat" to read as follows:

"Representative aircraft passenger seat" means either a Federal Aviation Administration approved production aircraft passenger seat or a simulated aircraft passenger seat conforming to Figure 6.

2. Paragraph S8 is revised to read as follows:

S8. Requirements, test conditions, and procedures for child restraint systems manufactured for use in aircraft.

Each child restraint system manufactured for use in both motor vehicles and aircraft must comply with all of the applicable requirements specified in Section S5 and with the additional requirements specified in S8.1 and S8.2.

S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in the English language that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing the system to the seat, positioning a child in the system when it is installed in aircraft, and adjusting the system to fit the child. In the case of each child restraint which is not intended for use in aircraft at certain adjustment positions, the following statement, with the manufacturer's restrictions inserted, shall be included in the instructions.

DO NOT USE THE——ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT IN AIRCRAFT.

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5 and adjusted in any position which the manufacturer has not, in accordance with S8.1, specifically warned against using in aircraft, each child restraint system manufactured for use in aircraft shall meet the requirements of S.8.2.1 through S8.2.6. The manufacturer may, at its option, use any seat which is a representative aircraft passenger seat within the meaning of S4.

S8.2.1 A representative aircraft passenger seat shall be positioned and adjusted so that its horizontal and vertical orientation and its seat back angle are the same as shown in Figure 6.

S8.2.2 The child restraint system shall be attached to the representative aircraft passenger seat using, at the manufacturer's option, any Federal Aviation Administration approved aircraft safety belt, according to the restraint manufacturer's instructions for attaching the restraint to an aircraft seat. No supplementary anchorage belts or tether straps may be attached; however, Federal Aviation Administration approved safety belt extensions may be used.

S8.2.3 In accordance with S6.1.2.3.1 through S6.1.2.3.3, place in the child restraint any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.5 and S8.1.

S8.2.4 If provided, shoulder and pelvic belts that directly restrain the dummy shall be adjusted in accordance with S6.1.2.4.

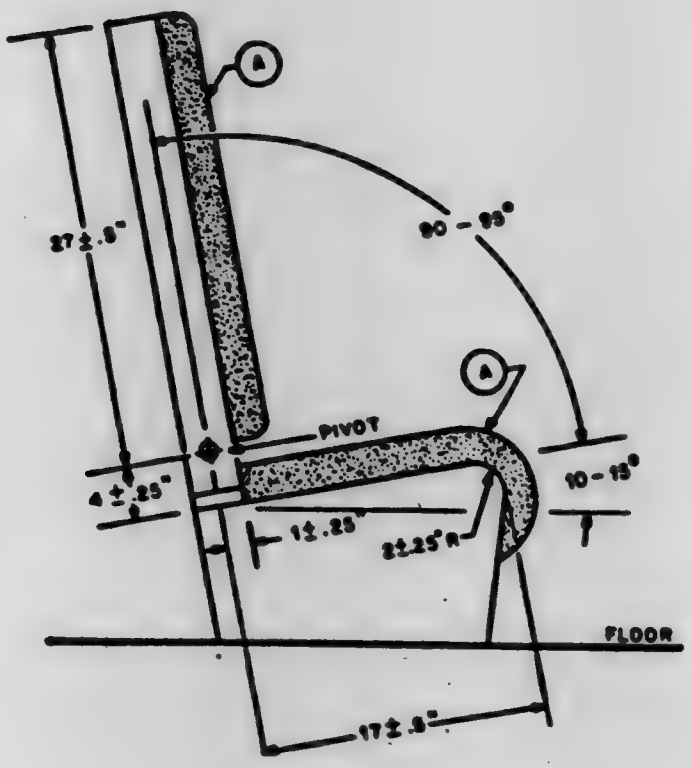
S8.2.5 The combination of representative aircraft passenger seat, child restraint, and test dummy shall be rotated forward around a horizontal axis which is contained in the median transverse vertical plane of the seating surface portion of the aircraft seat and is located one inch below the bottom of the seat frame, at a speed of 35 to 45 degrees per second, to an angle of 180 degrees. The rotation shall be stopped when it reaches that angle and the seat shall be held in this position for three seconds. The child restraint shall not fall out of the aircraft safety belt nor shall the test dummy fall out of the child restraint at any time during the rotation or the three second period. The specified rate of rotation shall be attained in not less than one half second and not more than one second, and the rotating combination shall be brought to a stop in not less than one half second and not more than one second.

S8.2.6 Repeat the procedures set forth in S8.2.1 through S8. 2.4. The combination of the representative aircraft passenger seat, child restraint, and test dummy shall be rotated sideways around a horizontal axis which is contained in the median longitudinal vertical plane of the seating surface portion of the aircraft seat and is located one inch below the bottom of the seat frame, at a speed of 35 to 45 degrees per second, to an angle of 180 degrees. The rotation shall be stopped when it reaches that angle and the seat shall be held in this position for three seconds. The child restraint shall not fall out of the aircraft safety belt, nor shall the test dummy fall out of the child restraint at any time during the rotation or the three second period. The specified rate of rotation shall be attained in not less than one half second and not more than one second, and the rotating

combination shall be brought to a stop in not less than one half second and not more than one second.

3. A new Figure 6 would be added at the end of § 571.213, appearing as follows:

12A



"A" represents a 2- to 3-inch thick polyurethane foam pad, 1.5-2.0 pounds per cubic foot density, over 0.020-inch-thick aluminum pan, and covered by 12- to 14-ounce marine canvas. The sheet aluminum pan is 20 inches wide and supported on each side by a rigid structure. The seat back is a rectangular frame covered with the aluminum sheet and weighing between 14 and 15 pounds, with a center of mass 13 to 16 inches above the seat pivot axis. The mass moment of inertia of the seat back about the seat pivot axis is between 195 and 220 ounce-inch-second^2. The seat back is free to fold forward about the pivot, but a stop prevents rearward motion. The passenger safety belt anchor points are spaced 21 to 22 inches apart and are located in line with the seat pivot axis.

FIGURE 6: SIMULATED AIRCRAFT PASSENGER SEAT

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegation of authority at 49 CFR 1.50)

Issued on April 10, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-0211 Filed 4-16-85; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 50, No. 74
Wednesday, April 17, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: Under the authority of 5 U.S.C. 2951(2) and Executive Orders 12107 and 12196, the Office of Personnel Management (Office) proposes to establish an Employee Medical File System to manage Federal Civilian employee medical records. Therefore, the Office is proposing new regulations to provide more effective management of Federal civilian employee medical records. These regulations are necessary to bring about effective records management of these highly sensitive records. Elsewhere in this issue is a related Privacy Act System Notice pertaining to these records.

DATE: Written comments will be considered if received June 17, 1985.

ADDRESS: Send or deliver written comments to the Assistant Director for Workforce Information, Office of Personnel Management, Room 5415, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, (202) 632–5433.

SUPPLEMENTARY INFORMATION: The proposed regulations provide uniform policies and procedures for maintaining and disposing of medical records for Federal civilian employees. Management of Federal civilian employee medical records will be accomplished through procedures governing a newly established Employee Medical File System (EMFS) which, in accordance with the Privacy Act, identifies records included in the system, describes retention and storage requirements, and describes necessary access and disclosure procedures.

E.O. 12291, Federal Regulation

The Office has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it is concerned only with the administration of medical records for Federal civilian employees.

List of Subjects in 5 CFR Part 293

Archives and records, Government employees, Privacy.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office proposes to add a new Subpart E to Part 293, Title 5, Code of Federal Regulations, to read as follows:

PART 293—PERSONNEL RECORDS

* * * * *

Subpart E—Employee Medical File System Records

Sec.
293.501 Applicability of regulations.
293.502 Definitions.
293.503 Implementing instructions.
293.504 Composition of, and access to, the Employee Medical File System.
293.505 Establishment of Employee Medical Folder.
293.506 Ownership of the Employee Medical Folder.
293.507 Maintenance and content of the Employee Medical Folder.
293.508 Type of folder to be used.
293.509 Use of existing Employee Medical Folders upon transfer or reemployment.
293.510 Disposition of Employee Medical Folders.
293.511 Retention schedule.

Authority: 5 U.S.C. 2951(2); E.O. 12107 and 12196.

Subpart E—Employee Medical File System Records

§ 293.501 Applicability of regulations.

The applicability of this subpart is identical to that contained in § 293.301.

§ 293.502 Definitions.

For the purpose of this Subpart:

"Agency" means an executive agency as defined in 5 U.S.C. 105.

"Employee" is defined at 5 U.S.C. 2105 and does not include student volunteers or contractors employees.

"Employee Assistance and Counseling Record" means the record created when an employee participates in the agency assistance/counseling program (e.g., drug or alcohol abuse or personal counseling programs under Pub. L. 91–616, 92–255, and 79–658, respectively).

"Employee Medical File System (EMFS)" means the agency's complete system (automated, microformed, and paper records) for employee medical records.

"Employee Medical Folder (EMF)" means a separate file folder established to contain all of the medical records designated for long-term retention, which will be maintained by the employing agency during the employee's Federal service and ultimately be stored in the National Personnel Records Center for the life of the record.

"Epidemiological Record" means a record maintained by an agency or subelement thereof as a result of an official medical research study conducted under the authority of that agency.

"Implementing Instructions" means any form of internal agency issuance that provides the guidance required in § 293.503 and any other implementing instructions the agency deems appropriate.

"Medical Record" means a chronological, cumulative record, regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, or automatic data processing media), of information about health status developed on an employee and related to employment including personal and occupational health histories and the opinions and written evaluations generated in the course of diagnosis and/or treatment by medical health care professionals and technicians. For the purposes of these regulations the term medical records also means employee on-the-job exposure and injury records.

"Non-personal Record" means any agency aggregate/statistical record or report resulting from studies covering employees or resulting from studies of the work-site environment.

"Patient Record" means a record of treatment created when the person is admitted to or voluntarily seeks treatment at a health care facility for

non job-related reasons that are maintained by that health care facility. Records maintained by an agency dispensary are not patient records for the purposes of these regulations when they result as a condition of employment or relate to an on-the-job occurrence.

§ 293.503 Implementing instructions.

Agencies must issue internal instructions describing how their EMFS is to be implemented. These instructions must—

(a) Describe overall operation of the system within the agency including the designation of the agency official (the agency medical officer, if there is one) who will manage these records.

(b) Be prepared with joint participation by agency medical, health and safety, and personal officers;

(c) Describe where and under whose custody employee medical records will be physically maintained;

(d) Designate which agency office(s) will be responsible for deciding when and what medical records are to be disclosed either to other agency officials or outside the agency;

(e) Ensure proper records retention and security, preserve confidentiality of doctor/patient relationships, and provide that personnel management decisions based on the records are appropriate and justified;

(f) Be consistent with Office regulations relating to personnel actions when medical evidence is a factor (5 CFR Parts 339, 432, 630, 752, and 831);

(g) Provide guidance on how an accounting of any record disclosure, as required by the Privacy Act (5 U.S.C. 552a(c)), will be done in a way that ensures that the accounting will be available for the life of the EMF;

(h) Provide for the creation of an EMF for all employees transferring to another agency or who leave government service and describe when the EMF is to be created on an employee transferring within the same agency;

(i) Ensure a right of access (consistent with any special Privacy Act handling procedures invoked) to the records, in whatever format they are maintained, by the employee or a designated representative;

(j) Ensure that a knowledgeable official determines that all appropriate long-term medical records are in an EMF prior to its transfer to another agency, the National Personnel Records Center (NPRC), or to another office within the same employing agency;

(k) Ensure that all long-term medical records an agency receives in an EMF are maintained, whether in that same EMF or by some other agency procedure, and forwarded to a subsequent employing agency or to NPRC;

(l) Ensure that, if medical records are to be physically located in the same office as the Official Personnel Folder (OPF), the records are maintained physically apart from each other;

(m) Sets forth a different policy, particularly regarding the disclosure of records, for records in the nature of physician treatment records (generally not appropriate for disclosure to non-medical officials) as distinguished from other medical reports properly available to officials making management decisions concerning the employee;

(n) Provide guidance that distinguishes records properly subject to this part from those subject to different rules (e.g., Postal Service or Foreign Service employee medical records), particularly in Privacy Act and Freedom of Information Act matters;

(o) Ensure that guidance regarding the processing of Privacy Act matters is consistent with Office regulations at 5 CFR Parts 293 and 297 implementing this statute; and

(p) Ensure that no security classification is assigned to an EMF by including therein a medical record that has such a classification. In this regard, the agency creating the classified medical record is required to retain it separately from the EMF while placing a notice in the EMF of its existence and describing where requests for this record are to be submitted.

§ 293.504 Composition of, and access to, the Employee Medical File System.

(a) All employee medical records (except employee assistance/counseling, patient, non-personal, and epidemiological records) whether they are maintained in an automated, microform, or paper mode, and wherever located in the agency, are part of the EMFS. The records maintained in the EMFS are part of a Government-wide Privacy Act system of records established by the Office. Agencies have the responsibility to ensure that such documents are maintained in accordance with the Office's Privacy Act regulations in Part 297 of this chapter, with the agency's instructions implementing those regulations, and with the retention schedule for employee medical records stipulated in § 293.511.

Note.—While patient records pertaining to an employee are not required to be included as a medical record within the EMFS, under certain conditions, copies of such records may be included in the system.

(b) Agencies must provide employees access to their own medical records consistent with Office regulations contained in § 297.204(c) of this chapter. When access can be provided directly to the employee, it must also be provided to the employee's representative designated in writing. Disclosure of an employee's medical records to agency officials (both medical and non-medical) will be granted only when the specific information sought is needed for the performance of official duties and consistent with agency implementing instructions, particularly § 293.503(m).

(c) Other requests for employee medical files made to the custodian of the records must be processed in accordance with the disclosure provisions of the Privacy Act (5-U.S.C. 552a(b)) and the Office's regulations at 5 CFR 297.

(d) Processing of a Privacy Act request for amendment of medical records must be consistent with the Office's regulations contained in Part 297 of this chapter regarding amendment of records.

§ 293.505 Establishment of Employee Medical Folder.

(a) As provided by the Office's instructions and in FPM Supplement 293–31, agencies must establish an EMF when the employee leaves the employing agency; agencies may also establish an EMF for active employees if the agency chooses. An agency must request the transfer of an existing EMF at the same time it requests the transfer of an employee's OPF only when the conditions described in § 293.510 exist, using the procedures contained in § 293.306.

(b) Neither the original medical documents nor duplicates are to be retained in the OPF. Prior to the establishment of an EMF for a separating employee, as such records are created, they must be maintained physically apart from the OPF, although they may be kept in the same office.

(c) Records in an EMF, whether or not located in an office other than where the OPF is maintained, must be properly safeguarded using procedures ensuring equal or greater levels of protection as those in § 293.106 of this part. Disclosures must be made only to those authorized to receive them, as described in § 293.504(b), and employees must be able to ascertain from agency implementing instructions the location of all of their medical records. An EMF must be under the control of a specifically designated medical, health, safety, or personnel officer as prescribed in the agency's implementing internal issuance.

§ 293.506 Ownership of the Employee Medical Folder.

The EMF of each employee in a position subject to civil service rules and regulations is part of the records of the Office. When the EMF also contains medical records created during employment in a position not subject to the civil service (e.g., with the Postal Service), the EMF is then part of the records of both the Office and the former employer.

§ 293.507 Maintenance and content of the Employee Medical Folder.

The agency head must maintain all appropriate employee medical records in the EMFS, as specified in the Office's instructions and in FPM Supplement 293–31. When an EMF is established for an employee, as required in § 293.504, the agency's EMFS must be searched to obtain all records designated for retention in the EMF.

§ 293.508 Type of folder to be used.

Each agency must use a folder that (1) has been specifically provided, pursuant to a request by the Office, by Federal Supply Service contracts; (2) has been authorized by the Office for use by a specific agency; or (3) in the case of an EMF containing records under joint control of the Office and another agency, has been jointly authorized.

§ 293.509 Use of existing Employee Medical Folders upon transfer or reemployment.

The requirements of § 293.306, regarding the use of existing OPFs, apply to the use of existing EMFs upon the employee's transfer to or reemployment in a new employing agency (consistent with § 293.510).

§ 293.510 Disposition of Employee Medical Folders.

(a) When an employee transfers to another Federal agency, the EMF must be transferred to the gaining agency at the same time as the employee's OPF. The EMF is only to be transferred directly to the gaining agency's designated manager (medical, health, safety, or personnel officer) of the EMFS.

(b) In accordance with the instructions in § 293.307, when an employee is separated from the Federal service, the EMF must be forwarded to NPRC with the OPF.

(c) When a former Federal employee is re-employed by an agency, and that agency believes that an EMF exists, either at the last employing agency or at the NPRC, the agency will request the EMF, but no sooner than 30 days after the date of the new appointment. No EMF will be routinely retrieved during the initial review process (as is done with the OPF) except where authority exists for the agency to require a medical evaluation prior to reaching a decision on employability. EMFs are to be transferred by the NPRC only to the agency designated manager (medical, health, safety, or personnel officer) of that agency's EMFs.

§ 293.511 Retention schedule.

(a) Temporary medical records, as defined in FPM Supplement 293–31, must not be placed in a newly-created EMF for a separating employee and must be removed from an already existing EMF, before transfer to another agency or to the NPRC. Such records must be disposed of in accordance with General Records Schedule (GRS) 1, item 21, issued by National Archives and Records Administration (NARA).

(b) Medical records considered to be long-term records, as defined in FPM Supplement 293–31, must be maintained for the duration of employment, plus 30 years. Therefore, upon separation the records must be provided to the employee's new agency or they must be transferred to the NPRC, which will dispose of them in accordance with General Records Schedule (GRS) 1, item 21, issued by NARA.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Clingstone Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Prposed rule.

SUMMARY: The purpose of this proposed rule is to revise the voluntary U.S. Standards for Grades of Canned Clingstone Peaches. The proposed rule was developed by the United States Department of Agriculture (USDA) at the request of major segments of the canned clingstone peach industry. Its effect would be to better serve the needs of the canned clingstone peach industry and allow for more orderly marketing of canned clingstone peaches.

DATE: Comments must be received on or before May 17, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Paul Jennings, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

Based on industry recommendations, the voluntary grade standards for canned clingstone peaches were revised to institute an "attributes standards" type of grading on July 1, 1978. Before that time, the grade standards utilized the "variables standards" type of grading. Even though the attributes standards may have greater statistical validity, the clingstone peach processing industry claims that they are more cumbersone in their practical application than the former variables standards. Therefore, major segments of the canned clingstone peach industry now believe that attributes standards do not best serve their needs. They believe it is difficult to communicate quality levels between processors, buyers, brokers, and other users through these standards.

Under the attributes standards, one type or several types of physical defects may be present in each classification. The classifications are minor, major, severe, and critical. This allows more of

an individual type of defect to be present than under the variables standards in the absence of other types of defects within the classification. For example, defects such as color, blemishes, and mechanical damage are grouped and their sum is used to determine compliance with the classification tolerance. Such determinations of tolerance compliance could be based solely on blemishes if no color defects or mechanical damage is present. The clingstone peach industry has asked for standards, such as the previous variables standards, that require each defect to be separately classified without grouping with other defects. Therefore, in the above example, if the variables standards were used, the number of blemishes allowed to meet the tolerance would be set without regard to whether color defects or mechanical damage were present. In addition to the individual tolerances, the sample would also have to meet a minimum total score. The previous standards used this concept and this proposal would revise the current attributes standards type of grading to variables standards type of grading that would be basically the same as the former standards.

List of Subjects in 7 CFR Part 52

Fruits and vegetables, Food grades, Standards.

PART 52—[AMENDED]

Accordingly, the United States Standards for Grades of Canned Clingstone Peachs (7 CFR 52.2561–52.2576) are proposed to be amended as follows:

1. The Table of Contents of the Subpart is amended by revising the following section headings to read as follows:

* * * * *

52.2562 Styles.
52.2563 Grades.
52.2564 Grades of canned "solid pack" clingstone peaches.
* * * * *
52.2570 Ascertaining the grade.
52.2571 Ascertaining the rating for the factors which are scored.
52.2572 Color.
52.2573 Uniformity of size and symmetry.
52.2574 Absence of defects.
52.2575 Character.
52.2576 Ascertaining the grade of a lot.
* * * * *

2. In Part 52, §§ 52.2562, 52.2563 and 52.2564 are revised to read as follows:

§ 52.2562 Styles.

(a) *"Halves" or "Halved"* canned peaches are peeled and pitted peaches, cut approximately in half along the suture from stem to apex.

(b) *"Quarters" or "Quartered"* canned peaches are halved peaches cut into two approximately equal parts.

(c) *"Slices" or "Sliced"* canned peaches are peeled and pitted peaches cut into sectors smaller than quarters.

(d) *"Dice" or "Diced"* canned peaches are peeled and pitted peaches cut into approximate cubes.

(e) *"Whole"* canned peaches are peeled, unpitted, whole peaches with or without stems removed.

(f) *"Mixed pieces of irregular sizes and shapes"* are peeled, pitted, and cut units of canned peaches that are predominantly irregular in size and shape which do not conform to a single style of halves, quarters, slices, or dice and which may consist of:

(1) Units (commonly called "salad cuts" or "salad pieces") which may have been prepared originally as peach halves but which are irregular in size and shape in that more than one-fourth of the unit appears to have been removed at the outer curved surface and which have been cut further into pieces;

(2) Units which may have been prepared originally as peach slices but which are irregular in size and shape in that they have been cut further into pieces; or

(3) Mixtures of two or more of the following styles which may or may not be of normal shape: Halves, quarters, slices, or diced.

§ 52.2563 Grades.

(a) *"U.S. Grade A"* is the quality of halves, quarters, slices, dice, or whole canned clingstone peaches that possess similar varietal characteristics, that possess a normal flavor and odor, that possess a good color, that are practically uniform in size and symmetry for the applicable style, that are practically free from defects, that posses a good character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 90 points: Provided, that halves, quarters, slices, dice, or whole canned clingstone peaches may possess a reasonably good color, may be reasonably uniform in size and symmetry, and may possess a reasonably good character, if the total score is not less than 90 points.

(b) *"U.S. Grade B"* is the quality of halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess similar varietal characteristics; that possess a normal flavor and odor, that possess a reasonably good color; that are reasonably uniform in size and symmetry for the applicable style, that are reasonably free from defects, that posses a reasonably good character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 80 points, Provided, that halves, quarters, slices, dice, or whole canned clingstone peaches may be fairly uniform in size and symmetry if the total score is not less than 80 points.

(c) *"U.S. Grade C"* is the quality of halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess similar varietal characteristics; that possess a normal flavor and odor, that possess a fairly good color, that are fairly uniform in size and symmetry for the applicable style, that are fairly free from defects, that possess a fairly good character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(d) *"U.S. Grade D"* is the quality of halves, quarters, slices, diced, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that may possess dissimilar varietal characteristics; that possess a normal flavor and odor, that possess a fairly good color, that may vary in size and symmetry for the applicable style; that are fairly free from defects except for crushed and broken units in the styles of halves, quarters, or whole style; that possess a noticeable variability in character, and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 60 points. Canned clingstone peaches of this grade may or may not meet the minimum standards of quality for canned peaches issued pursuant to the Federal Food, Drug, and Cosmetic Act.

(e) *"Substandard"* is the quality of canned clingstone peaches that fails to meet the applicable requirments of U.S. Grade C or of U.S. Grade D and is the quality of canned clingstone peaches that may or may not meet the minimum standards of quality for canned peaches issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.2564 Grades of canned "solid-pack" clingstone peaches.

(a) *"U.S. Grade C Solid-Pack"* is the quality of halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that possess a normal flavor and odor; that possess a fairly good color; that are fairly free from defects for canned "solid-pack"

clingstone peaches; that possess a fairly good character for "solid-pack" clingstone peaches; and that for those factors which are scored in accordance with the scoring system outlined in this subpart the total score is not less than 70 points.

(b) *"Substandard Solid-Pack"* is the quality of halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of "U.S. Grade C Solid-Pack."

3. In Part 52, §§ 52.2570 through 52.2575 are revised to read as follows:

§ 52.2570 Ascertaining the grade.

(a) *General.* In addition to considering other requirements outlined in the standards the following quality factors are evaluated:

(1) Factors not rated by score points in canned clingstone peaches other than "solid-pack" clingstone peaches are:

(i) Varietal characteristics.

(ii) Flavor and odor.

(2) Factor not rated by score points in "solid-pack" clingstone peaches: Flavor and odor.

(3) Factors rated by score points. The relative importance of each factor which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given such factors are:

	Points
(i) Color	20
(ii) Uniformity of size and symmetry	20
(iii) Absence of defects	30
(iv) Character	30
Total score	100

(b) Definition of flavor and odor.—"Normal flavor and odor" means that the canned peaches are free from objectionable flavors and odors of any kind.

§ 52.2571 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "18 to 20 points" means "18, 19, or 20 points").

§ 52.2572 Color.

(a) *General.* (1) The color of canned clingstone peaches other than canned "spiced" peaches refers to the predominant and characteristic color on the surface of whole units, and the outside surfaces of other units, except the cut surfaces of such units are also considered when adversely affected by discoloration. Units other than whole on which the pit cavity is abnormally discolored are considered under the factor of absence of defects only.

(2) The factor of color for canned "spiced" peaches is not based on any detailed requirement and is not scored but the color shall be normal for canned "spiced" peaches; the other three factors (uniformity of size and symmetry, absence of defects, and characters as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *"A" classification.* Canned clingstone peaches that possess a good color may be given a score of 18 to 20 points. Mixed pieces of irregular sizes and shapes that score 18 to 20 points shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Good color" means that the peaches possess a bright color ranging from yellowish orange to orange yellow; and that there may be present units which possess "reasonably good color" as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent by count, of the units may possess "reasonably good color"; or one unit in a container is permitted to possess "reasonably good color"; Provided, that in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units; and

(2) In the styles of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may possess "reasonably good color".

(c) *"B" classification.* Canned clingstone peaches that possess a reasonably good color may be given a score of 16 or 17 points. Mixed pieces of irregular sizes and shapes that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good color" means that the canned clingstone peaches possess a reasonably bright color that may fail to meet minimum color requirements for Grade A but is equal to or better than light orangish-yellow, that the units may possess slight discoloration due to oxidation, pit pigmentation, or other causes which does not more than slightly affect the appearance or eligibility, or both, of the product; and that there may be present units which possess "fairly good color" as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may possess "fairly good color;" or one unit in a container is permitted to possess color:" Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units; and

(2) In the style of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may possess "fairly good color."

(d) *"C", "D", and "C–SP" classification.* Canned clingstone peaches and canned solid-pack clingstone peaches that possess a fairly good color may be given a score of 14 or 15 points. Canned clingstone peaches or canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C or U.S. Grade C Solid-Pack, whichever is applicable, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means that the peaches possess a color that may fail to meet minimum color requirements for Grade B, but is equal to or better than greenish-yellow; that the units may possess slight discoloration due to oxidation, pit pigmentation or other causes which do not materially affect the appearance or edibility, or both, of the product; and that the units may possess other color as follows:

(1) In the style of halves, quarters, slices, or whole, not more than 10 percent, by count, of the units may fail to meet the minimum color for Grade C or may be off-color; or one unit in a container is permitted to possess such color: Provided, That in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units.

(2) In the style of dice or mixed pieces of irregular sizes and shapes, not more than 10 percent, by weight, of the drained peaches may consist of units that fail to meet the minimum color for Grade C or may be off-color: Provided, That such units do not materially affect the appearance of the product.

(e) *"SStd" and "SStd-SP" classification.* Canned clingstone peaches and canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (d) of this section may be given a score of 0 to 13 points and shall not be graded above Substandard or Substandard Solid-Pack, whichever, is applicable, regardless of the total score for the product (this is a limiting rule).

§ 52.2573 Uniformity of size and symmetry.

(a) *General.* The factor of uniformity of size and symmetry for mixed pieces of irregular sizes and shapes of canned clingstone peaches and all applicable styles of canned "solid-pack" clingstone peaches is not based on any detailed requirements and is not scored; the other three factors (color, absence of defects, and character, as applicable) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score.

(b) *Off-suture cuts.* "Off-suture cut" in halved or quartered canned clingstone peaches means a halved or quartered unit which has been cut at a distance from the suture greater than three-eights inch at the widest measurement from the suture.

(c) *Partially detached or detached piece.* A "partially detached or detached piece" in halved canned clingstone peaches means a unit which has the appearance of a slice resulting from an off-suture cut or from improper cutting and which may or may not be attached to the half from which cut. In determining the applicable allowances in terms of percentage by count, a partially detached piece together with the half to which it is partially attached is considered as one unit or a detached piece with the half from which detached or together with any other half is considered as one unit.

(d) *Partial slice.* A "partial slice" in the style of slices is a unit that has had the semblance of a slice with respect to thickness and shape but is less than three-fourths of an apparent full slice and that does not bear marks of crushing. In determining the allowances in terms of percentage by count, partial slices aggregating the equivalent of an average size slice shall be considered as one unit.

(e) *Sliver.* A "sliver" in the style of slices is a sector that is substantially smaller than the general size of slices or that weighs 3 grams or less.

(f) *Slab.* A "slab" in the style of slices is a portion of a unit which does not conform to the shape of a definite slice due to improper cutting.

(g) *"A" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are practically uniform in size and symmetry may be given a score of 18 to 20 points. "Practically uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* The units are very symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 40 percent; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths-tenths oz; and not more than 10 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof. One unit in a container is permitted to possess an off-suture cut or partially detached or detached piece if such unit exceeds the allowance of 10 percent, by count: Provided, that in all containers comprising the sample such units do not exceed an average of 10 percent of the total number of units.

(2) *Slices.* Not more than a total of 5 percent, by count, of the units may be partial slices, slivers, and slabs: Provided, that not more than 2½ percent, by count, are slabs: and excluding partial slices, slivers, and slabs that may be present, the variation in size and symmetry of the other units does not affect more than slightly the appearance of the product.

(3) *Dice.* Not more than 10 percent, by weight, of the drained clingstone peaches may be units that are more than three-fourths inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(h) *"B" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are reasonably uniform in size and symmetry may be given a score of 16 or 17 points. "Reasonably uniform in size and symmetry" has the following meanings with respect to the follows styles of canned clingstone peaches.

(1) *Halves, quarters, and whole.* The units are reasonably symmetrical and the weight of the largest full-size unit does not exceed the weight of the smallest full-size unit by more than 60 percent; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 20 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces. or any combination thereof. One unit in a container is permitted to possess an off-suture cut or partially detached or detached piece if such unit exceeds the allowance of 20 percent, by count: Provided, that in all containers comprising the sample such units do not exceed an average of 20 percent of the total number of units.

(2) *Slices.* Not more than a total of 10 percent, by count, of the units may be partial slices, slivers, and slabs: provided, that not more than 5 percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the variation in size and symmetry of the other units does not more than materially affect the appearance of the product.

(3) *Dice.* Not more than 15 percent, by weight of the drained clingstone peaches may be units that are more than three-fourths inch in their greatest edge dimension or are of such size as to pass through a five sixteenth inch square opening.

(i) *"C" Classification.* Halves, quarters, slices, dice, or whole canned clingstone peaches that are fairly uniform in size and symmetry may be given a score of 14 or 15 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Fairly uniform in size and symmetry" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* The units may vary in size, thickness, and symmetry and the weight of the largest full-size unit may be not more than twice the weight of the smallest full-size unit; the weight of each half is not less than three-fifths oz; the weight of each quarter is not less than three-tenths oz; and not more than 40 percent, by count, of the units in the style of halves or quarters may possess off-suture cuts or partially detached or detached pieces, or any combination thereof: Provided, that the presence of such units does not give the appearance of canned peaches of "Mixed Pieces of Irregular Sizes and Shapes" or canned peaches that are "Unevenly Trimmed."

(2) *Slices.* Not more than a total of 20 percent, by count of the units may be partial slices, slivers, and slabs: Provided, that not more than 10 percent, by count, are slabs; and excluding partial slices, slivers, and slabs that may be present, the balance of slices may vary noticeably in size, thickness and symmetry.

(3) *Dice.* Not more than 20 percent, by weight of the drained clingstone peaches may be units that are more than three-quarters inch in their greatest edge dimension or are of such size as to pass through a five-sixteenth inch square opening.

(j) *"D" and "SStd" Classification.* Canned clingstone peaches of the applicable styles which fail to meet paragraph (i) of this section may be given a score of 0 to 13 points and shall not be graded above the following stated grade, regardless of the total score for the product (this is a limiting rule):

(1) Halves, quarters, or whole canned clingstone peaches in which the weight of the largest full-size unit is more than twice the weight of the smallest full-size unit shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Mixed Sizes."

(2) Halves of canned clingstone peaches in which the weight of any half is less than three-fifths oz shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Small Halves."

(3) Quarters of canned clingstone peaches in which the weight of any quarter is less than three-tenths oz shall not be graded above U.S. Grade D and are also "Below Standard in Quality—Small Quarters."

(4) Slices and dice canned clingstone peaches shall not be graded above U.S. Grade D.

§ 52.2574 Absence of defects.

(a) *General.* The factor of absence of defects refers to the degree of freedom from harmless extraneous material (such as stems or leaves and portions thereof), from pit material, from units that are crushed or broken for the applicable style, and from any other defects which detract from the appearance or edibility of the product.

(1) *Blemished.* "Blemished" or "blemished units" means units that are blemished with scab, hail injury, discoloration, or other abnormality which affects materially the appearance or edibility, or both, of the unit.

(2) *Crushed or broken.* "Crushed or broken" means that:

(i) A unit in halves, quarters, or whole style of canned clingstone peaches is "crushed" if the unit has definitely lost its normal shape and bears marks of crushing or is otherwise crushed not due to ripeness; and

(ii) A unit in halves, quarters, or whole style of canned clingstone peaches is "broken" if severed into definite parts; halves of canned clingstone peaches that are slightly or partially split from the edge to the pit cavity are not considered broken. Portions equivalent to a full-size unit that has been broken are considered as one unit in determining the percentage by count.

(3) *Pit material.* "Pit material" means any whole pit in all styles other than whole style or any portion of a peach pit, regardless of size, except when whole peach pits or peach kernels are permitted as seasoning ingredients in other than whole style.

(b) *"A" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are practically free from defects may be given a score of 27 to 30 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that score 27 to 30 points shall not be graded above U.S. Grade B regardless of the total score for the product (this is a partial limiting rule). "Practically free from defects" means that the canned clingstone peaches are practically free from pit material, from harmless extraneous material, and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average one-eighth square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed, or broken; and not more than 5 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceeds the respective allowances of 5 percent by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 5 percent of the total number of units.

(2) *Sliced.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present: And more than 3 percent, by count, of the units may be blemished. One unit in a container is permitted to be blemished if such unit exceeds the allowance of 3 percent by count: Provided, That in all containers comprising the sample such blemished units do not exceed an avarage of 3 percent of the total number of units.

(3) *Dice.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 3 percent, by weight, of drained clingstone peaches may consist of units that are blemished.

(4) *Mixed pieces or irregular sizes and shapes.* Not more than an average of one-eighth square inch of peel for each pound of total contents may be present; and not more than 1 blemished unit for each 32 oz of total contents may be present.

(c) *"B" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are reasonably free from defects may be given a score of 24 to 26 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade B regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the canned clingstone peaches are practically free from pit material, are reasonably free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; not more than 5 percent, by count of the units may be crushed, or broken; and not more than 10 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceed the respective allowances of 5 percent and 10 percent, by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 10 percent of the total number of units.

(2) *Sliced.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; and not more than 6 percent by count, of the units may be blemished. One unit in a single container is permitted to be blemished if such unit exceeds the allowance of 6 percent, by count; Provided, That in all containers comprising the sample such blemished units do not exceed an average of 6 percent of the total number of units.

(3) *Dice.* Not more than an average of one-half square inch of peel for each pound of total contents may be present; and not more than 6 percent, by weight, of drained clingstone peaches may consist of units that are blemished.

(4) *Mixed pieces of irregular sizes and shapes.* Not more than an average of one-half square inch or peel for each pound of total contents may be present; and not more than 1 blemished unit for each pound of total contents may be present.

(d) *"C" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are fairly free from defects may be given a score of 21 to 23 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade C regardless of the total

score for the product (this is a limiting rule). "Fairly free from defects" means that the canned clingstone peaches are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, has the following meanings with respect to the following styles of canned clingstone peaches:

(1) *Halves, quarters, and whole.* Not more than an average of one square inch of peel for each pound of total contents may be present; not more than 5 percent, by count, of the units may be crushed or broken; and not more than 20 percent, by count, of the units may be blemished. One unit in a container is permitted to be crushed or broken and one unit in a container is permitted to be blemished if any of such units exceed the respective allowances of 5 percent and 20 percent, by count: Provided, That in all containers comprising the sample such crushed or broken units do not exceed an average of 5 percent of the total number of units and such blemished units do not exceed an average of 20 percent of the total number of units.

(2) *Slices, dice, and mixed pieces of irregular sizes and shapes.* Not more than an average of one square inch of peel for each pound of total contents may be present; and not more than 20 percent, by count, of the units may be blemished.

(e) *"D" classification.* Canned clingstone peaches of any style which fail to meet the requirements of paragraph (d) of this section but which meet the requirements of this paragraph may be given a score of 0 to 20 points and shall not be graded above U.S. Grade D, regardless of the total score for the product (this is a limiting rule). Halves, quarters, or whole canned clingstone peaches that are thereby U.S. Grade D may also be "Below Standard in Quality—Blemished" or "Partly Crushed or Broken" or "Unevenly Trimmed", or combinations thereof. Canned clingstone peaches of U.S. Grade D with respect to "absence of defects" are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect materially the appearance or edibility of the product, and in addition:

(1) Not more than an average of one square inch of peel for each pound of total contents may be present;

(2) In the style of halves, quarters, or whole, any amount of crushed or broken units may be present; and

(3) Not more than 20 percent, by count, of the units may be blemished. One unit in a container is permitted to be blemished if such unit exceeds the allowance of 20 percent, by count: Provided, That in all containers comprising the sample such blemished units do not exceed an average of 20 percent of the total number of units.

(f) *"SStd" classification.* Canned clingstone peaches that fail to meet the applicable requirements of paragraph (e) of this section may be given a score of 0 to 20 points and shall not be graded above the following stated grades, as applicable, regardless of the total score for the product (this is a limiting rule).

(1) Halves, quarters, or whole canned clingstone peaches shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

(i) Not well peeled;

(ii) Partly crushed or broken;

(iii) Unevenly trimmed;

(iv) Blemished.

(2) Slices, dice, or mixed pieces of irregular sizes and shapes of canned clingstone peaches shall not be graded above Substandard and may also be "Below Standard in Quality" for the applicable reasons:

(i) Not well peeled;

(ii) Blemished.

(g) *"C–SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that are fairly free from defects for canned "solid-pack" clingstone peaches may be given a score of 21 to 23 points. Canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C Solid-Pack, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects for canned 'solid-pack' clingstone peaches" means that the canned "solid-pack" clingstone peaches are practically free from pit material, are fairly free from harmless extraneous material and from any defects not specifically mentioned that affect the appearance or edibility of the product, and in addition, there may be present:

(1) Not more than an average of one square inch of peel for each pound of total contents; and

(2) Not more than 2 blemished units for each pound of total contents.

(h) *"SStd-SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above Substandard Solid-Pack, regardless of the total score for the product (this is a limiting rule).

§ 52.2575 Character.

(a) *General.* The factor of character refers to the degree of ripeness, the texture, and tenderness of the product.

(b) *"A" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a good character may be given a score of 27 to 30 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that score 27 to 30 points shall not be graded above U.S. Grade B regardless of the total score for the product (this is a partial limiting rule). "Good character" has the following meanings with respect to the various styles of canned clingstone peaches:

(1) Halves, quarters, slices, and mixed pieces of irregular sizes and shapes. The units are pliable and possess a tender, fleshy texture typical of nature, well-ripened, properly prepared, and properly processed canned clingstone peaches; and units are intact and possess reasonably well-defined edges; and not more than 10 percent, by count, of the units may possess a "reasonably good character". One unit in a container is permitted to possess a "reasonably good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(2) *Dice.* The product generally possesses a texture typical of mature, well-rippened, properly prepared, and properly processed canned clingstone peaches; not more than 3 percent, by weight, of the drained clingstone peaches may be excessively frayed or mushy; and the product is otherwise reasonably free from crushed units.

(3) *Whole.* The units possess a tender texture typical of mature, well-ripened, properly prepared, and properly processed canned clingstone peaches; the units are uniformly intact and firm; and not more than 10 percent, by count, of the units may possess a "reasonably good character". One unit in a container is permitted to possess a "reasonably good character" if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not more than slightly affected by the character of such unit.

(c) *"B" classification.* Halves, quarters, slices, dice, whole, or mixed pieces or irregular sizes and shapes of canned clingstone peaches that possess a reasonably good character may be given a score of 24 to 26 points. Mixed pieces of irregular sizes and shapes of canned clingstone peaches that fall into this classification shall not be graded

above U.S. Grade B, regardless of the total score for the product (this is a partial limiting rule). "Reasonably good character" has the following styles of canned clingstone peaches:

(1) *Halves, quarters, slices, and mixed pieces if irregular sizes and shapes.* The units possess a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; the texture is reasonably fleshy, and the units are reasonably tender or the tenderness may be variable within the unit; the units are reasonably intact with not more than slightly frayed edges and may be slightly firm or slightly soft but are not mushy; and not more than 10 percent, but count, of the unit may possess a faily good character. One unit in a container is permitted to possess such fairly good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance of such unit.

(2) *Dice.* The product generally possess a texture typical of mature, properly ripened, properly perpared, and properly processed canned clingstone peaches; not more than 5 percent by weight, of the drained clingstone peaches may be excessively frayed or mushy; and the product is otherwise reasonably free from crushed units.

(3) *Whole.* The units possess a texture typical of mature, properly ripened, properly prepared, and properly processed canned clingstone peaches; the units are reasonably tender or the tenderness may be variable within the unit; the units may be slightly firm or slightly soft but are not mushy; and not more than 10 percent by count of the units may possess a fairly good character, except for mushy or "not tender" units. One unit in a container is permitted to possess such fairly good character if such unit exceeds the allowance of 10 percent, by count: Provided, That the appearance or eating quality, or both, is not affected materially by the character of such unit.

(d) *"C" classification.* Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that possess a fairly good character may be given a score of 21 to 23 points. Canned clingstone peaches that fall into this classification shall not be graded above U.S. Grade C regardless of the total score for the product (this is a limiting rule). "Fairly good character" has the following meanings with respect to the following styles of canned clingstone peaches:

(1) Halves, quarters, slices, and mixed pieces of irregular sizes and shapes. The units possess a texture typical of mature, properly prepared, and properly processed canned clingstone peaches which may be variable in fleshness but the texture is fairly fleshy; the units may be lacking uniformity of tenderness; the units may be frayed but not excessively frayed or may be soft; and not more than 10 percent, by weight, of the drained clingstone peaches may be mushy or units that are so firm as to be "not tender."

(2) *Dice.* The product generally possesses a texture typical of mature, properly prepared, and properly processed canned clingstone peaches; not more than 10 percent, by weight, of drained clingstone peaches may be excessively frayed or mushy or are so firm as to be "not tender;" and the product is otherwise fairly free from crushed units.

(3) *Whole.* The units possess a texture typical of mature, properly prepared, and properly processed canned clingstone peaches which may be variable; the units may be lacking uniformity of tenderness; the units may be markedly firm or markedly ragged or soft; and not more than 10 percent, by count, of the units may be mushy or so firm as to be "not tender." One unit in a container is permitted to be mushy or "not tender" if such unit exceeds the allowance of 10 percent, by count: Provided, That in all containers comprising the sample, such units do not exceed an average of 10 percent of the total number of units.

(e) *"D" classification.* Canned clingstone peaches of any style that meet the requirements of paragraph (d) of this section with respect to units that are so firm as to be "not tender" but which otherwise possess a noticeably variable texture with not more than 25 percent, by weight, of the drained canned clingstone peaches that consist of mushy fruit may be given a score of 0 to 20 points and shall not be graded above U.S. Grade D, regardless of the total score for the product (this is a limiting rule).

(f) *"SStd" classification.* Canned clingstone peaches of any style that fail to meet the applicable requirements of paragraph (d) or (e) of this section may be given a score of 0 to 20 points and shall not be graded above standards, regardless of the total score for the product (this is a limiting rule). Halves, quarters, slices, dice, whole, or mixed pieces of irregular sizes and shapes of canned clingstone peaches that are "not tender" are also "Below Standard in Quality—Not Tender."

(g) *"C–SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that possess a fairly good character for canned "solid-pack" clingstone peaches may be given a score of 21 to 23 points. Canned "solid-pack" clingstone peaches that fall into this classification shall not be graded above U.S. Grade C Solid-Pack regardless of the total score for the product (this is a limiting rule). "Fairly good character for canned 'solid-pack' clingstone peaches" means the product generally possesses a texture of properly prepared and properly processed "solid-pack" clingstone peaches which may be variable in tenderness, may be soft, or may consist of fairly firm units.

(h) *"SStd–SP" classification.* Halves, quarters, slices, dice, or mixed pieces of irregular sizes and shapes of canned "solid-pack" clingstone peaches that fail to meet the requirements of paragraph (g) of this section may be given a score of 0 to 20 points and shall not be graded above substandard solid-pack, regardless of the total score for the product (this is a limiting rule).

4. In Part 52, § 52.2576 is added to read as follows:

§ 52.2576 Ascertaining the grade of a lot.

The grade of a lot of canned clingstone peaches covered by these standards is determined by the procedures set forth in the regluations governing inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products (7 CFR 52.1 to 52.87).

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624))

Dated: April 12, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-9186 Filed 4-16-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 78

[Docket No. 83-089]

Individual Identification Devices for Cattle and Swine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations in 9 CFR Parts 71 and 78 for the purpose of requiring that certain individual identification devices remain on cattle and swine while such animals are being moved in interstate

commerce, from the point of origin of the interstate movement to final destination. The current regulations require that the devices remain on the animals only for the movement interstate. The adoption of the proposal would require that the devices remain on such animals from the point of origin of the interstate movement to final destination if such animals are being moved in interstate commerce. It appears that the adoption of the proposal would strengthen the tools available for use against the spread of communicable diseases of cattle and swine by helping establish a more effective means of tracing infected and exposed animals.

DATE: Written comments must be received on or before June 17, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Wagner, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8884.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to amend the "General Provisions" regulations and the "Brucellosis" regulations (contained in 9 CFR Parts 71 and 78 and referred to below as the regulations) by making changes concerning individual identification devices.

Interstate Movement and Interstate Commerce

Under the provisions of §§ 71.18 and 78.30 of the regulations, certain cattle and swine are required to be identified by backtags, eartags, brands, or tattoos at the time of interstate movement of the animals. These individual identification devices are necessary as a tool for helping to trace the interstate spread of communicable animal diseases. For example, they can help identify the source of diseases by allowing an animal found to be infected with a disease to be traced back through marketing channels to the herd of origin, and to determine the extent of spread of a disease from the source by allowing animals to be traced from the herd of orign to the final destination. The animals can be traced by examining transaction records kept by owners, market agencies, dealers, government agencies, and others. These records identify each animal by an individual identification device number or brand. The provisions in §§ 71.17 and 78.30 require that the individual identification devices remain on the animal only for the movement interstate. In many cases the person shipping the animals merely intends that they be shipped interstate to a stockyard or other place short of the final destination. Further, individual identification devices are sometimes replaced or altered during movement in marketing channels prior to the animals reaching their final destination. This can frustrate the purpose of the individual identification device. For example, if an animal found infected with a communicable disease does not have any individual identification or has inaccurate identification, it may be impossible to trace its movement back to its herd of origin and a possible foci of infection.

There is authority in the animal quarantine laws to require that individual identification devices on animals remain on the animals while they are being moved in interstate commerce. Utilization of this authority would mean that the devices would be required to remain on the animals while such animals are being moved from the point of origin interstate to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising. The movement in interstate commerce would include any temporary stops prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale. In order for tracing to be effective, it appears that it is necessary to amend §§ 71.18 and 78.30 to require that such identification remain on the animals while they are being moved in interstate commerce.

Except for animals moved for slaughter, such identification would also likely allow the tracing of an animal for an extended period of time after movement in interstate commerce since the records that are kept concerning the movement of animals are usually kept for at least one year and it is customary practice for livestock owners on farms or ranches to leave such identification on the animals indefinitely.

Consistent with the discussion above, a definition of "moved (movement) in interstate commerce" would be added to §§ 71.1 and 78.1 to read as follows:

> Moved from the point of origin of the interstate movement to the animal's final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

Removal or Tampering

In addition, §§ 71.18 and 78.30 of the regulations contain certain provisions concerning who is responsible for the identification of the animals in question and contain provisions concerning the removal of or tampering with the individual identification devices. In this connection, § 71.18(a)(3) provides:

> Each person who ships, transports, or otherwise causes the movement of the cattle interstate is responsible for the identification of the animals as required by this section. No such person shall remove or tamper with or cause the removal of or tampering with an identification backtag or eartag required in this section for interstate movement of animals, except as authorized by the Deputy Administrator, Veterinary Services, upon request in specific cases and under such conditions as he may impose to insure continuing identification.

Also, § 78.30(c) provides:

> Each person who causes the movement of the swine interstate is responsible for the identification of the animals as required by this section. No such person shall remove or tamper with or cause the removal of or tampering with an identification tattoo or approved swine identification tag [9] required in this section for interstate movement of swine, except at the time of slaughter, or as may be authorized by the Deputy Administrator, Veterinary Services, upon request in specific cases and under such conditions as he may impose to insure continuing identification.

Consistent with the proposal to provide the individual identification devices remain on the animals while the animals are being moved in interstate commerce, it is also proposed to amend §§ 71.18(a)(3) and 78.30(c) to require that after application the individual identification devices not be removed or tampered with as long as the animals are being moved in interstate commerce.

As noted above, the quoted provisions in §§ 71.18(a)(3) and 78.30(c) currently specify that certain persons responsible for the identification of the animals are prohibited from removing or tampering with identification backtags or eartags and identification swine tattoos or approved swine identification tags. It is proposed to amend the quoted provisions to require that the prohibition against removal of or tampering with such devices apply to all identification devices required by §§ 71.18 and 78.30 rather than only the devices specified. Further, it is proposed to amend the quoted provisions to require that such prohibited apply to all persons while the animals are being moved in interstate commerce rather than only to those

persons responsible for the identification of the animals. It appears to be necessary to make these changes since an effective tracing program could be frustrated if any of the devices were allowed to be removed or tampered with by anyone.

Also, as noted above, § 78.30(c) indicates that the individual identification devices are allowed to be removed at the time of slaughter; however, § 71.18(a)(3) does not contain similar language. The individual identification devices are removed from the carcasses at the time of slaughter; and it appears necessary to clarify § 71.18(a)(3) to also provide that the devices are allowed to be removed at the time of slaughter.

Responsibility for Identification

In addition, as noted above, § 71.18(a)(3) places responsibility for the identification of animals on "each person who ships, transports, or otherwise causes the movement" of the animals and § 78.30(c) places such responsibility on "each person who causes the movement of" the animals. These provisions are intended to place such responsibility on "each person who ships, transports, or otherwise causes the movement" of the animals. Therefore, it appears that it is necessary to clarify § 78.30(c) to specify that such responsibility is placed on each person who ships, transports, or otherwise causes the movement of the animals.

Miscellaneous

In addition, this document proposes to make certain nonsubstantive changes for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would not have a significant effect on the economy, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The adoption of the proposal would not impose additional activities on the part of anybody since it would merely require that individual identification devices, which are already required to be applied to certain animals, remain on such animals while the animals are being moved in interstate commerce, from the point of origin of the interstate movement to final destination.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Quarantine, Transportation.

9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

Accordingly, it is proposed to amend 9 CFR Parts 71 and 78 as follows:

PART 71—GENERAL PROVISIONS

1. A new paragraph (p) would be added to § 71.1 to read as follows:

§ 71.1 Definitions.

* * * * *

(p) *Moved (movement) in interstate commerce.* Moved from the point of origin of the interstate movement of the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

2. The heading for § 71.18 would be revised to read:

§ 71.18 Individual identification of certain cattle 2 years of age or over for movement in interstate commerce.

3. In the first sentence of § 71.18(a), "being moved interstate" would be changed to "being moved in interstate commerce" and "shall be moved interstate" would be changed to "shall be moved in interstate commerce".

4. In the second sentence of § 71.18(a), "All interstate movements" would be changed to "Any movement in interstate commerce."

5. In § 71.18(a)(1)(i), "May be moved interstate" would be changed to "May be moved in interstate commerce"; "when moved interstate," would be changed to "when moved in interstate commerce,"; and "such cattle are accompanied" would be changed to "such cattle when moved interstate are accompanied".

6. In § 71.18(a)(1)(ii), "May be moved interstate" would be changed to "May be moved in interstate commerce".

7. In the first proviso of § 71.18(a)(1)(ii), "if such cattle are moved interstate" would be changed to "if such cattle are moved in interstate commerce" and "when moved interstate," would be changed to "when moved in interstate commerce,".

8. In the second proviso of § 71.18(a)(1)(ii), "when such cattle are moved interstate" would be changed to "when such cattle are moved in interstate commerce".

9. In § 71.18(a)(1)(iii), the material preceding the first colon would be revised to read: "May be moved in interstate commerce for any purpose other than slaughter if such cattle, when moved in interstate commerce, are identified by Animal and Plant Health Inspection Service-approved eartags in lieu of backtags, and are accompanied when moved interstate by an owner's statement or other document [2] stating:".

10. In the proviso in § 71.18(a)(1)(iii), "which are moved interstate" would be changed to "which are moved in interstate commerce".

11. In § 71.18, paragraph (a)(3) would be revised and paragraph (a)(4) would be added. (Paragraph (a)(3) would be divided into paragraphs (a)(3) and (a)(4)).

§ 71.18 Individual identification of certain cattle 2 years of age or over for movement in interstate commerce.

(a) * * *

(3) Each person who ships, transports, or otherwise causes the cattle to be moved in interstate commerce is responsible for the identification of the cattle as required by this section.

(4) No person shall remove or tamper with or cause the removal of or tampering with a backtag, eartag, brand, or other identification device required to be on cattle pursuant to this section while such cattle are being moved in interstate commerce, except at the time of slaughter, or as may be authorized by the Deputy Administrator, Veterinary Services, upon request in specific cases and under such conditions as the Deputy Administrator, Veterinary Services, may impose to ensure continuing identification.

* * * * *

PART 78—BRUCELLOSIS

12. A new paragraph (iii) would be added to § 78.1 to read as follows:

§ 78.1 Definitions.

* * * * *

(iii) *Moved (movement) in interstate commerce.* Moved from the point of origin of the interstate movement to the animals' final destination, such as a slaughtering establishment or a farm for breeding or raising, and including any temporary stops for any purpose prior to movement to final destination, such as stops at a stockyard or dealer premises for feed, water, rest, or sale.

13. In the heading for Subpart E, in 9 CFR Part 78, the word "Interstate" would be removed.

14. In § 78.26 the words "or in interstate commerce" would be added immediately after the word "interstate".

15. In the first sentence of § 78.30(a) "sows and boars moved interstate" would be changed to "sows and boars moved in interstate commerce" and "prior to such interstate movement" would be changed to "prior to such movement in interstate commerce".

16. In the second sentence of § 78.30(a), "may be moved interstate," would be changed to "may be moved in interstate commerce".

17. In the first sentence of § 78.30(b), "all breeding swine moved interstate" would be changed to "all breeding swine moved in interstate commerce" and "prior to such interstate movement" would be changed to "prior to such movement in interstate commerce".

18. In § 78.30, paragraph (c) would be revised and paragraph (d) would be added. (Paragraph (c) would be divided into paragraphs (c) and (d)).

§ 78.30 Identification of sows and boars.

* * * * *

(c) Each person who ships, transports, or otherwise causes the swine to be moved in interstate commerce is responsible for the identification of the swine as required by this section.

(d) No person shall remove or tamper with a tattoo, approved swine identification tag, or other identification device required to be on swine pursuant to this section while such swine are being moved in interstate commerce, except at the time of slaughter, or as may be authorized by the Deputy Administrator upon request in specific cases and under such conditions as the Deputy Administrator may impose to ensure continuing identification.

Authority: Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, and 3, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended, 41 Stat. 699, sec. 101(a), 58 Stat. 734, as amended, sec. 2, 65 Stat. 693, secs. 3 and 11, 76 Stat. 130 and 132; 21 U.S.C. 111–113, 114a, 114a–1, 115, 116, 117, 120–126, 134b, 134f, 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 10th day of April 1985.

G. J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–8995 Filed 4–16–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 1985–4]

Contribution and Expenditure Limitations and Prohibitions: Contributions by Persons and Multicandidate Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on the proposed revision of its regulations governing limitations on contributions by persons and multicandidate political committees at 11 CFR 110.1 and 110.2. These regulations implement 2 U.S.C. 441a(a)(1) and (2), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), 2 U.S.C. 431 *et seq.* The proposed revisions are intended to clarify the scope of the contribution limitations prescribed by each section by addressing several issues which have arisen since the present regulations were promulgated in 1977. Further information on the proposed amendments is provided in the supplementary information which follows.

DATES: Comments must be received on or before May 17, 1985.

ADDRESSES: Comments should be made in writing and addressed to Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 523–4143 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The primary purpose of the proposed amendments to 11 CFR 110.1 and 110.2 is to address several issues raised in the administration of these provisions since they were adopted in 1977. Through this Notice, the Commission is seeking comment on §§ 110.1 and 110.2 using several different approaches to present the issues. The Commission notes that with respect to some issues, specific results are proposed in the attached draft rules, although a variety of approaches are under consideration. The alternatives are set forth below for public comment. Additionally, the Commission is initiating this rulemaking in order to solicit comments on several broader questions for which no specific regulatory language is proposed at this time. Possible approaches to the broader issues are summarized below for public consideration. Finally, the Commission is interested in receiving public comment on the current language of sections 110.1 and 110.2.

Current Language of Sections

Section 110.1 Contributions by persons other than multicandidate political committees.

Section 110.1(a) Scope.

The Commission proposes to retitle § 110.1 "Contributions by persons other than multicandidate political committees," and to provide a "Scope" paragraph to explain who is subject to the contribution limitations of this section. These changes are proposed in response to questions the Commission receives from time to time as to whether § 110.1 applies to multicandidate political committees or permits contributions by corporations and labor organizations. The Commission notes that this confusion arises from the inclusion of corporations and labor organizations in the definitions of "person" in 2 U.S.C. 431(11) and 11 CFR 100.10. Therefore, the Commission is publishing for public comment a new paragraph 110.1(a), entitled "Scope" which is designed to clarify that the limitations prescribed by this section apply only to contributions made by persons other than multicandidate political committees (which are covered under § 110.2) and other than entities which are prohibited from making contributions under 11 CFR 110.4, and 11 CFR Parts 114 and 115, such as foreign nationals, corporations, labor organizations and Federal contractors. As revised, § 110.1 would still apply to individuals, partnerships, unincorporated associations and political committees other than multicandidate political committees.

Section 110.1(b) Contributions to candidates.

1. *Statutory limitation on contributions.* Paragraph § 110.1(b) of the proposed regulations would continue to set forth the rules governing contributions to candidates that are currently contained in § 110.1(a). Thus, paragraph (b)(1) would restate the $1,000 statutory limitation in present § 110.1(a)(1) for contributions to a candidate and his or her authorized political committees and agents with

respect to any election for Federal office.

2. *Designation of contributions for particular elections.* In the administration of the campaign financing laws the Commission has encountered problems because the Act establishes separate contribution limitations for primary and general elections. *See* 2 U.S.C. 431(1) and 441a(a)(1) and (2). These provisions require the Commission to determine for which election a contribution is made. In making this determination, the Commission relies on the contributor's written designation for a particular election. If the contribution is undesignated, the present rule states that the contribution is for the next election. 11 CFR 110.1(a)(2)(ii). Different problems have arisen with regard to designated and undesignated contributions. For example, a contribution may be designated for a primary election, caucus or convention but received after the date of that election. The current regulations provide that such contributions shall be made only to the extent that they do not exceed net debts outstanding from such election. 11 CFR 110.1(a)(2)(i). However, the present regulation does not indicate what should be done with such designated contributions if the recipient candidate or his committee has no outstanding primary debts. The Commission is considering whether to revise its rules to provide that the candidate or authorized committee must return or obtain a written redesignation of contributions to the extent that they exceed net debts outstanding. *See* proposed 11 CFR 110.1(b)(1)(i). Under this proposed rule, the redesignation may be for any other election but must result in excessive contributions for that election.

The Commission recently received a request for advice on this issue from Congressman Don Pease. *See* Advisory Opinion ("AO") 1984–32 1 Fed. Election Camp. Fin. Guide (CCH) ¶ 5777 at 11,094 (Aug. 17, 1984). In response, the Commission stated that the Pease Committee must either "return the contribution to the contributor or . . . have the contributor designate in writing that the contribution is for the . . . general election . . . ." *Id.* at 11,095. The Commission requests comments as to whether the regulations should provide a particular length of time within which the recipient must make a refund or obtain a redesignation, and whether 10 days, 30 days, or 60 days would be appropriate. The Commission notes that under 11 CFR 103.3(a) all receipts by a political committee must be deposited within 10 days of the treasurer's receipt. Contributions which appear to be illegal may be deposited pending a determination as to their legality under 11 CFR 103.3(b). In revising § 110.1 the Commission wishes to avoid any apparent conflict with § 103.3.

Under the present rule, only designated contributions made after a primary election are limited by the amount of outstanding debts. The Commission is considering broadening this rule so that it would also apply to designated contributions received after a general election, runoff election, or special election. Thus, proposed § 110.1(b)(2)(i) would provide that contributions for one of these elections, if made after the date of the election, may be made only to the extent that there are either net debts outstanding from such election or may be designated for a different election. This rule also provides that any amounts exceeding net debts outstanding must be returned or redesignated, as discussed above.

3. Net debts outstanding. In the context of the designation problems discussed above, the issue arises as to whether a candidate or his authorized committee has outstanding debts from a primary election. The present regulation does not define the term "net debts outstanding".

In AO 1984–32 Congressman Pease asked the Commission how to calculate net debts outstanding. The Commission responded that in its view, net debts outstanding "means the difference between (i) the total of the committee's debts and obligations incurred with respect to the primary election and (ii) the total of the committee's cash on hand and receivable available to pay those debts and obligations as of the date that a contribution designated for the primary election is made." AO 1984–32 at 11,095. The Commission is now interested in receiving comments as to whether the new regulations should include this formula. Therefore, the draft amendments which follow propose a definition for net debts outstanding which is modeled after the language in AO 1984–32. *See* § 110.1(b)(3). The proposed definition contains fuller descriptions of cash on hand and amounts owed to the committee. The Commission also requests suggestions as to other items that should be figured into the calculation of net debts outstanding. For example, funds carried over from a previous election could be included. The formula could also take into account the fair market value of capital assets and other assets without requiring their liquidation. *See e.g.* 11 CFR 9034.5(b) (1) and (2).

The Commission recognizes the practical difficulties that can arise for campaigns if they are expected to determine the existence of a primary debt as of a particular date, such as the date on which they received the contribution or the date of the election. AO 1984–32 suggests that the calculation should use the date on which the contribution was "made". Though this date is also included in proposed § 110.1(b)(3)(iii), the Commission requests comments as to whether one of the alternatives is preferable. Additional problems concerning the determination of when a contribution is "made" and "received" are discussed below.

The Commission also seeks public comment on whether to permit committees receiving such designated contributions to deposit them until they can determine the existence of a debt. *Compare* 11 CFR 103.3. The recipient could note this situation on the appropriate report filed with the Commission. Another issue concerns the appropriate length of time that should be allowed for determining the existence of a debt. Possible time limits include ten or thirty days from either the date of receipt or the date of deposit, or the end of the reporting period. In this context the Commission notes that often designated contributions received after the primary may have been contributed in connection with a joint fundraiser for several candidates. Hence, it may take some time for the recipients to determine the financial status of their campaigns. As discussed above, the Commission also requests comments as to the total amount of time that should be allowed for recipients to return contributions or obtain their redesignation if the recipient did not have debts.

The Commission occasionally receives inquiries as to whether the present regulations permit candidates to incorporate their primary debts into their general election funds and to pay their primary election debts with contributions properly received for the general election. Accordingly, the Commission requests comments as to whether the revised regulations should be clarified to specifically permit this, and how such a rule would affect the contribution limitations for both elections.

The Commission recognizes that many of the foregoing difficulties in administering and enforcing the contribution limitations result from the statutory establishment of limits on a per election basis rather than an election cycle basis. With respect to designated contributions, the

Commission requests suggestions as to how to avoid the need to determine whether the recipient committee is in a deficit position. One approach would be to provide that whenever excess primary funds are transferred to the general election account, they will count towards the contributor's ceiling for general election contributions. The recipient committee would determine which primary contributions are transferred on a last-received-first-transferred basis. If the committee has no excess primary funds to transfer, it need not go through this procedure. This approach would reduce the advantage currently enjoyed by candidates who are unopposed in the primary. The Commission also requests comments on applying this approach to contributions designated for a general election which are transferred to the next election cycle. Another way to eliminate the net debts outstanding problem would be to permit designated contributions to be made for a primary or general election regardless of whether the recipient candidate or committee has outstanding debts for that election and regardless of whether the contribution is made before or after the election. The Commission requests comments on this approach and on other possible ways to avoid calculation of net debts outstanding.

4. *Procedure for designating contributions.* In the administration and enforcement of the Act, the Commission has encountered recurring problems regarding the methods by which contributions are designated for particular elections. The Commission wishes to ensure greater uniformity in the reporting of designated contributions by their recipients and those donors subject to the reporting requirements of the Act. To achieve this goal, the Commission is proposing new §110.1(b)(4) which would provide that designations must be indicated on the negotiable instrument comprising the contribution or in an attached or accompanying writing signed by the contributor. This new provision would require the written designation to be contemporaneous with the making of the contribution. This would ensure the communication of the designation to the recipient candidate or committee. Thus, the fact that a contributor has attempted to designate a contribution for a particular election in its reports filed with the Commission would not suffice for purposes of effecting a written designation under proposed § 110.1(b)(4).

The Commission recognizes that proposed § 110.1(b)(4), by requiring contemporaneous designations, would preclude recipients from obtaining after-the-fact written designations or redesignations of contributions that appear to be excessive when received. Yet, written redesignations would be permitted under §110.1(b)(2)(i) in the situation where the contribution is originally designated for a previously held election for which there are no outstanding debts. Accordingly, the Commission requests comments as to whether redesignation should be allowed at all, and if so, under what circumstances.

5. *Determining when a contribution is made and who is an agent.* The Commission has encountered several recurring problems with regard to undesignated contributions. Under the present rule, the determination as to whether an undesignated contribution counts against the contributor's limit for the primary or general election depends on when the contribution is "made." *See* 11 CFR 110.1(a)(2)(ii). However, the regulations do not define when a contribution is made. A question as to when a contribution is made can also arise when designated contributions are received after the date of the election designated. The Commission has also, encountered problems with regard to when contributions are "received." Recipients are required to report the date of receipt under 11 CFR 104.3 and 104.8, but "receipt" is left undefined. Moreover, in establishing date of receipt, questions may arise as to who is an agent of the recipient committee for the purposes of receiving contributions on its behalf. Accordingly, the Commission requests comments as to whether the terms "made," "received" and "agent" should be defined, and if so, what to include in the definitions.

Though the attached proposed rules do not contain draft definitions for these terms, the Commission nonetheless requests comments on several alternatives. For example, the regulations could state that the contribution is made on the date that the contributor relinquishes control over it, whether by mailing it or hand delivering it. However, this definition could result in the contributor reporting that the contribution was made on a date prior to the date on which the recipient would report having received the contribution. Recipient committees are required to report the date of receipt under 11 CFR 104.3 and 104.8. If the contributor and the recipient report different dates that do not fall within the same reporting period or that straddle an election, there is a problem in determining the appropriate election to which contributions should be attributed. This might necessitate weighing additional evidence provided by the contributor or the recipient in substantiating their claims. This problem would not arise if the regulation, instead, provided that the contribution is made on the date it is received by the candidate or committee. Though a single date would result in greater uniformity in reporting, it nonetheless ignores the statutory distinction between making and receiving or accepting illegal contributions. *Cf. United States* v. *Hankin*, 607 F.2d 611 (3d Cir. 1979). Further, in the case of a contribution sent by mail or through an intermediary, it would be difficult for the contributor to ascertain the appropriate date to be reported. Of course, the contributor could avoid this problem simply by designating the contribution. Alternatively, the regulations could state that a contribution shall be considered to be made on the date that appears on the negotiable instrument. This date has the advantage of being readily ascertainable by all parties but has the disadvantage of possibly encouraging predating or post dating of checks. Moreover, checks are often not delivered on the same date they are written. Finally the regulations could provide that the date the contribution is made is the date it is deposited by the recipient. This alternative would give the recipient considerable latitude in determining when contributions are made. The Commission notes that in *United States* v. *Hankin*, 607 F.2d 611, 615 (3d Cir. 1979) the Third Circuit held that for the purposes of the Act's statute of limitations and given the circumstances of that case, cestain contributions were made prior to the day on which they were deposited. This decision noted the statutory distinction between making and accepting illegal contributions. *Id.* at 613. The Court also cited the inclusion of pledges in the statutory definitions of "contribution." *Id.* at 614. It should be noted that after this case was decided, Congress amended the statutory definition of contribution to exclude contracts, promises or agreements to make contributions, whether or not legally enforceable.

As noted above, the question of when a contribution is made is related to the questions of when it is received and who has received it on behalf of the recipient committee. Hence it may be advisable to define who is an agent of a committee for the purpose of receiving contributions on its behalf. Therefore, the Commission welcomes suggestions as to whether to define "agent" and if so, what to include in the definition. As

an alternative, the revised rules could simply provide examples of situations in which an agency relationship would exist.

Section 110.1(c) Contributions to political party committees.

Section 110.1(b) of the present regulations restates the statutory limitation of $20,000 for contributions to political committees established and maintained by national political parties. This provision would not be substantially modified under the proposed rules, but would be redesignated as § 110.1(c). However, the proposed rules would clarify that the national committee of a political party may receive contributions up to the $20,000 limit even if it is the authorized committee of a Presidential candidate under 11 CFR 9002.1.

Section 110.1(d) Contributions to other political committees.

The proposed regulations would combine current paragraphs (c) and (d) into new paragraph (d) which would govern contributions to other political committees, including those making independent expenditures under 11 CFR Part 109.

Section 110.1(e) Contributions by partnerships.

A number of questions have arisen regarding § 110.1(e), which governs contributions by partnerships. This rule requires contributions by a partnership to be attributed to both the partnership and to the individual partners. This provision avoids creating the opportunity for members of partnerships to evade their individual contribution limitations. However, it has been suggested that the attribution rule is unnecessary for large partnerships because the amount attributed to individual partners may be nominal. Accordingly, the Commission requests suggestions for alternatives that would prevent evasion of the contribution limitations without imposing unnecessary requirements on large partnerships. Should the Commission decide to retain the present attribution rule, it is considering clarifying that the contribution counts against the limits for both the partnership and the individual partners. However, no portion of the contribution may be attributed to the corporate partners. An alternative approach would be to eliminate the limitation on partnership contributions and to attribute these contributions only to the individual partners.

The Commission recognizes that a number of partnerships have established plans in order to facilitate the making of political contributions by members of the partnership. Accordingly, the Commission requests comments as to whether, as a result of such plans, these partnerships should be considered to be conduits or intermediaries subject to the requirements of 11 CFR 110.6 or to be political committees if they otherwise meet the definition of a political committee.

The Commission also requests comments concerning nonconnected political committees consisting of contributors who are partners of a particular partnership. In particular, comments are requested as to whether to permit such partnerships to institute check off systems whereby noncorporate partners and employees of corporate partners may authorize the partnership to withhold amounts from their shares of the profits or salaries and to forward such contributions directly to the partnership political action committee. The Commission is concerned that part of the administrative expenses incurred in running the checkoff system would be attributed, inevitably, to the corporate partners. The Commission also requests comments as to whether such a system would result in excessive contributions by the partnership to the nonconnected political committee. Such a checkoff system was approved in AO 1982–63, 1 Fed. Election Camp. Guide (CCH) ¶5704 at 10,948 (Feb. 10, 1983).

Section 110.1(f) Contributions to candidates for more than one federal office.

Section 110.1(f) of the proposed rules follows the current regulations as to the conditions under which a single contributor may donate up to $1,000 for each election for each office if a candidate is running for more than one office. In this context, the Commission has received inquiries as to the application of paragraph (f), where, for example, a candidate receives contributions for a House race, then declares his candidacy for the Senate, but subsequently abandons his Senate bid and wishes to renew fundraising for his House campaign. *See e.g.*, AO 1984–38 1 Fed. Election Camp. Guide (CCH) ¶ 5780 at 11,098 (Aug. 22, 1984). Proposed § 110.1(f) is intended to clarify that a candidate's principal campaign committee or other authorized committee for one election to one office may not make transfers to, loans to, contributions to or expenditures on behalf of that candidate's other committees for his or her election to another office if such transaction would contain contributions which would be in violation of the Act.

Section 110.1(g) Contributions to retire debts.

Paragraph 110.1(g), governing contributions made to retire debts, would not be substantively amended under the proposed revisions.

Section 110.1(h) Aggregation of contributions.

The rules proposed today would make several modifications to § 110.1(h). These amendments are intended to clarify that contributions made to a particular candidate and his or her authorized committee must be aggregated with contributions made to unauthorized political committees for the purposes of the contribution limitations under certain circumstances. Such aggregation is designed to protect the contribution limitations when authorized committees seek contributions to support a candidate or a contribution earmarks a contribution made to an unauthorized committee for a particular candidate. The Commission requests comments as to whether this purpose is more clearly conveyed by the current wording of § 110.1(h) or by the new language. Under either version of paragraph (h), such aggregation would occur in any one of three situations. Hence, the "and" in present § 110.1(h) would be changed to "or" in the revised provision. The order in which the contributions are made does not affect the required aggregation. As under the current regulations, revised paragraphs (h)(1) and (h)(3) would govern situations when the recipient political committee is a principal campaign committee, authorized committee, or single candidate committee or when the contributor retains control over the funds.

Proposed paragraph (h)(2) would provide indicia of a contributor's "knowledge or belief" that a contribution will in turn be contributed to or expended on behalf of a particular candidate. As drafted, paragraph (h)(2) would also clarify that it even applies to contributions to a political committee which supports a candidate by making only independent expenditures on his or her behalf. This issue was specifically addressed in AO 1976–20 1 Fed. Election Campaign Guide (CCH) ¶6014 at 17,014 (Aug. 17, 1976), requested by Delaware Volunteers for Reagan. The Commission notes that the application of § 110.1(h) to contributions to committees making independent expenditures would not alter the circumstances under which political committees may make independent expenditures from the

funds they receive subject to the requirements of 11 CFR Part 109.

The Commission has also considered the question of whether § 110.1(h) applies to contributions made to a multicandidate political committee which makes representations to the contributor that a substantial portion of his or her contribution will be contributed to or expended on behalf of a particular candidate. *See* AO 1984–2 1 Fed. Election Camp. Guide (CCH) ¶5748 at 11,032 (Feb. 13, 1984). The proposed regulations would clarify that such contributions to multicandidate committees are subject to aggregation under § 110.1(h).

Section 110.1(i) Contributions by spouses and minors.

Several questions have arisen as to the making of joint contributions by spouses. The Commission has stated that both spouses "must sign either the instrument or an accompanying writing specifying that each is a contributor and the amount to be attributed to each." AO 1980–67. 1 Fed. Election Camp. Guide (CCH) ¶5527 at 10,621 (Aug. 12, 1980). The proposed rules would not alter the requirement of both signatures on joint contributions. *See* proposed 11 CFR 110.1(k).

Paragraph 110.1(i) was promulgated to permit both spouses in a single income family to make contributions to candidates. The Commission now requests comments as to whether § 110.1(i)(1) should be deleted because it does not add anything. Should the Commission decide to eliminate § 110.1(i)(1), contributions by both spouses in a single income family would still be allowable. Alternatively, the Commission requests comments on expanding § 110.1(i)(1) to include contributions to political committees. Similarly, the Commission is considering revising § 110.1(i)(2) to permit contributions by minors to political committees. Finally, the Commission requests comments as to whether to clarify the reference to "the proceeds of a trust" for which the minor is a beneficiary. 11 CFR 110.1(i)(2)(ii). "Assets" or "income" could be substituted for "proceeds."

Section 110.1(j) Contribution limitations for certain elections.

Paragraph 110.1(j), as revised, would retain the current rules regarding the types of elections that may be considered to be separate elections for purposes of the contribution limitations of this section. A cross reference to the definition of "election" at 11 CFR 100.2 would be included in § 110.1(j)(1) under the proposed regulations. This proposed amendment is intended to clarify that, generally, there is a separate contribution limit for each general, primary, runoff, or special election and for a caucus or convention that qualifies as an election for purposes of the Act.

The Commission recently received an advisory opinion request that indirectly raised the issue of whether a general election which is not held because a candidate received a majority of votes in a primary election is nevertheless a separate election for the purposes of the contribution limitations. *See* AO 1984–54 1 Fed. Election Camp. Guide (CCH) ¶ 5794 at 11,127 (Nov. 13, 1984). Specifically, the treasurer of Representative Bob Livingston's principal campaign committee asked whether pre- and post-election reports need be filed where no general election for members of Congress was held in Louisiana on November 6, 1984. The Commission replied that such reports were required and that Representative Livingston was permitted to accept otherwise lawful contributions for the November general election in which he did not participate. Section 110.1(j)(3), as redrafted, would be broadened to follow this decision. The Commission therefore requests comments as to whether this result, or its opposite, should be expressly stated in the revised rules.

The Commission is also considering redrafting the corresponding reporting regulation to clarify whether pre- and post-election reports must be filed for a general election in which the candidate did not participate. *See* 11 CFR 104.5(a). For example, if the Commission ultimately decides against a separate contribution limitation, § 104.5 could be revised to clarify that pre- and post-election reports need not be filed for that general election. On the other hand, if the Commission decides to follow the result in AO 1984–54, then it should be apparent that reports must be filed under the present wording of § 104.5(a). However, this provision could nevertheless be revised to remove any uncertainty on this point. Therefore, the Commission requests comments as to which of these alternatives should be adopted with respect to § 104.5. However, the Commission does not intend to undertake a more extensive review or revision of § 104.5 in connection with this notice.

A similar problem arises when a primary election is not held under State law because a candidate was selected by a caucus or convention with authority to nominate a candidate. Under these circumstances, the Commission has decided that the candidate may receive contributions for the caucus or convention that nominated the candidate but not for the primary election. *See* AO 1982–49 1 Fed. Election Camp. Guide (CCH) ¶5693 at 10,922 (OCT. 8, 1982). Proposed § 110.1(j)(4) would formalize this result. However, the Commission is interested in receiving comments as to whether the regulation should expressly follow this result or its opposite.

Section 110.1(k) Attribution of joint contributions.

Proposed § 110.1(k) is intended to suggest a possible approach to some problems which have arisen with regard to joint contributions. The proposed rule would continue the present requirement that all contributors sign the joint contribution. Frequently, the recipients of contributions drawn on joint accounts may not know how much should be attributed to each contributor. The proposed rule would, therefore, require that a written attribution accompany the contribution. In the present draft, however, this written attribution would not be required for contributions by spouses. Instead, the recipient may presume that one half of the contribution is attributable to each spouse in the absence of a statement to the contrary. The Commission requests comments on this provision and also on whether to extend the presumption of equal contributions to any contribution drawn on a joint account. The Commission notes that a similar provision is currently located in 11 CFR 104.8(d). It would be placed in 11 CFR 110.1, instead, because Part 104 primarily concerns reporting requirements.

Section 110.2 Contributions by multicandidate political committees.

Many of the problems regarding contributions by persons under §110.1 also arise with regard to contributions by multicandidate committees under § 110.2. Therefore, proposed § 110.2 would generally follow the solutions suggested above for § 110.1. However, the Commission welcomes comments that suggest reasons for adopting different approaches in sections 110.1 and 110.2. In addition, the Commission requests comments as to whether the format of present § 110.2 should be reorganized to more closely parallel the format of § 110.1. For example, proposed § 110.2(a) would provide a new "Scope" paragraph which would state that this section applies to contributions made by multicandidate committees as defined at 11 CFR 100.5(e)(3). This follows current § 110.2(b).

The proposed rules would also separate the various limitations on

contributions by multicandidate committees presently contained in § 110.2(a) into separate sections. Thus, § 110.2(b) would set forth the limitations on contributions to candidates made by multicandidate committees. Paragraphs (b)(2) and (b)(3) of this proposed section would provide that the terms "with respect to any election" and "net debts outstanding" have the same meanings as in proposed § 110.1. Similarly, proposed paragraph (b)(4) would follow proposed § 110.1(b)(4) regarding acceptable methods for designating a contribution for a particular election. Proposed § 110.2(c) would state the $15,000 limitation on contributions by multicandidate committees to political committees established and maintained by a national political party. Paragraph (d) would contain the limitation on contributions to other political committees by multicandidate committees and would provide that this limitation applies to contributions by committees making independent expenditures.

Proposed § 110.2(e) would follow § 110.2(c) of the present regulations to prescribe special limitations on contributions by the Republican and Democratic senatorial campaign committees to senatorial candidates in accordance with 2 U.S.C. 441a(h). The second sentence of this paragraph would be revised for clarity and consistency.

The proposed regulations would also include several new provisions in § 110.2 based on current § 110.1 (f), (g), and (h). These paragraphs govern contributions by multicandidate political committees to candidates for more than one Federal office, to retire debts, and to political committees supporting the same candidate. The current regulations do not state whether these sections apply to contributions by multicandidate political committees. Inclusion of these provisions is intended to clarify that these rules do apply to contributions made by multicandidate committees.

Proposed § 110.2(i) would explain which types of elections are separate elections for purposes of the contribution limitations of this section. This paragraph is largely based on current § 110.2(d). The changes in this provision would be identical to those which would be made to proposed § 110.1(j).

The Commission welcomes comments on the foregoing proposed amendments to 11 CFR 110.1 and 110.2, and the issues raised by this notice.

Statutory Authority

11 CFR Part 110; 2 U.S.C. 438(a)(8), 441a.

List of Subjects in 11 CFR Part 110

Campaign funds, Elections, Political candidates, Political committees and parties.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act].

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the primary purpose of the proposed revision is to clarify the Commission's rules governing limitations or contributions to political committees and candidates. This does not impose any significant economic burden because any entities affected are already required to comply with the Act's contribution limitations.

It is proposed to amend 11 CFR Part 110 as follows:

1. By revising 11 CFR 110.1 to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any person as defined in 11 CFR 100.10, except multicandidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.4 and 11 CFR Parts 114 and 115.

(b) *Contributions to candidates.* (1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office which, in the aggregate, exceed $1,000.

(2) For purposes of this section, "with respect to any elections" means—

(i) In the case of a contribution designated in writing by the contributior for a particular election, the election so designated except that a contribution designated in writing for a particular election, whether primary election, general election, runoff election caucus or convention, or special election as defined in 11 CFR 110.2 (b)–(f), but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceeds net debts outstanding, the candidate or the candidate's authorized political committee shall within 10 days so notify the contributor and shall—

(A) Return the contribution to the contributor, or

(B) Obtain written redesignation by the contributor for another election but only to the extent that the applicable limitations on contributions made with respect to such other election would not be exceeded by such redesignation of the contribution. A contribution redesignated for a previous election shall not exceed net debts outstanding from the election.

(ii) In the case of a contribution not designated in writing by the contributor for a particular election,

(A) The next primary election, caucus, or convention if made on or before the date of such primary election, caucus or convention, but after the date of the last general election for that Federal office which precedes such primary election, caucus or convention, or

(B) The next general election if made on or before the date of such general election but after the date of the primary election which precedes such general election.

(3) For purposes of this section, "net debts outstanding" means the total amount of unpaid debts and obligations incurred with respect to an election less the sum of:

(i) The total cash on hand available to pay those debts and obligations, including currency, traveler's checks, certificates of deposit, treasury bills, and balance on deposit in state banks, federally chartered depository institutions (including a national bank), and depository institutions the depositor accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporations, or the National Credit Union Administration; and

(ii) The total amounts owed to the candidate or political committee in the form of credits, refunds of deposits, return, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

(iii) Net debts outstanding shall be calculated as of the date the contribution is made.

(4) For purposes of this section, a contribution shall be considered to be designated in writing for a particular election if—

(i) The contribution is made by check, money order, or othr negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; or

(ii) The contribution is attached to or accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made.

(c) *Contributions to political party committees.* (1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar

year, which, in the aggregate, exceed $20,000.

(2) For purposes of this section, "political committees established and maintained by a national political party" means—

(i) The national committee;

(ii) The House campaign committee; and

(iii) The Senate campaign committee.

(3) Each recipient committee referred to in 11 CFR 110.1(c) (2) may receive up to the $20,000 limitation from a contributor, but the limits of 11 CFR 110.5 shall also apply to contributions made by an individual.

(4) The recipient committee shall not be an authorized political committee of any candidate, except as provided in 11 CFR 9002.1(c).

(d) *Contributions to other political committees.* (1) No person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(2) The limitation on contributions of this paragraph also applies to contributions made to political committees making independent expenditures under 11 CFR Part 109.

(e) *Contributions by partnerships.* A contribution by a partnership shall—

(1) Be attributed to each partner in direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the political committee or candidate; or

(2) Be attributed by agreement of the partners, as long as—

(i) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and

(ii) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them; and

(3) Not exceed the limitations on contributions in paragraph (b), (c), and (d) of this section.

(f) *Contributions to candidates for more than one Federal office.* If an individual is a candidate for more than one Federal office, a person may make contributions which do not exceed $1,000 to the candidate, or his or her authorized political committees for each election for each office, as long as—

(1) Each contribution is designated in writing by the contributor for a particular office;

(2) The candidate maintains separate campaign organizations, including separate principal campaign committees and separate accounts; and

(3) No principal campaign committee or other authorized political committee of that candidate for one election for one Federal office transfers funds to, loans funds to, makes contributions to, or makes expenditures on behalf of another principal campaign committee or other authorized political committee of that candidate for another election for another Federal office, except as provided in 11 CFR 110.3(a) (2) (iv).

(g) *Contributions to retire debts.* (1) Contributions made to retire debts resulting from elections held prior to January 1, 1975 are not subject to the limitations of this Part 110, as long as contributions and solicitations to retire these debts are designated in writing and used for that purpose.

(2) Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110.

(h) *Contributions to committees supporting the same candidate.* No person who makes contributions to a candidate or his or her authorized political committees with respect to any election for Federal office shall make contributions to a political committee which has supported or anticipates supporting such candidate for the same election which in the aggregate exceed the applicable limitations on contributions of this section if:

(1) The political committee is the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The contributor knows or believes that a substantial portion of the contribution will be contributed to, or expended on behalf of, that candidate for the same election. This includes contributions to a multicandidate political committee and contributions to a political committee which has supported or anticipates supporting that candidate only by making independent expenditures on his or her behalf. Indicia of such knowledge or belief may include representations made by the political committee in the solicitation received by the contributor, and contributions which are in any way earmarked for a particular candidate; or

(3) The contributor retains control over the funds.

(i) *Contributions by spouses and minors.*

(1) The limitations on contributions of this section shall apply separately to contributions made by each spouse in a single income family.

(2) Minor children (children under 18 years of age) may make contributions to any candidate or political committee which in the aggregate do not exceed the limitations on contributions of this section, if—

(i) The decision to contribute is made knowingly and voluntarily by the minor child;

(ii) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(iii) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

(j) *Application of limitations to elections.* (1) The limitations on contributions of this section shall apply separately with respect to each election as defined in 11 CFR 100.2, except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election.

(2) An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions of this section.

(3) A primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for the purposes of the limitations on contributions of this section. The date on which the election would have been held shall be considered to be the date of the election.

(4) A primary election which is not held because a candidate was nominated by a caucus or convention with authority to nominate is not a separate election for the purposes of the limitations on contributions of this section.

(k) *Attribution of contributions.* (1) Any contribution made by more than one person, except a contribution made by spouses, shall indicate on the check, money order, or other negotiable instrument, or in a contemporaneous writing signed by all contributors, the amount to be attributed to each contributor.

(2) If a contribution made by spouses does not indicate the amount to be attributed to each spouse, one half of the amount of the contribution shall be attributed to each spouse.

(3) Any contribution made by more than one person shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a contemporaneous writing.

2. By revising 11 CFR 110.2 to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a) *Scope.* This section applies to all contributions made by any multicandidate political committee as defined in 11CFR 100.5(e)(3).

(b) *Contributions to candidates.* (1) No multicandidate political committee shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office which, in the aggregate, exceed $5,000.

(2) For purposes of this section, "with respect to any election" has the same meaning as in 11 CFR 110.1(b)(2).

(3) For purposes of this section, "net debts outstanding" has the same meaning as in 11 CFR 110.1(b)(3).

(4) For purposes of this section, a contribution shall be considered to be designated in writing for a particular election if the requirements set forth in 11 CFR 110.1(b)(4) (i) or (ii) are satisfied.

(c) *Contributions to political party committees.* (1) No multicandidate political committee shall make contributions to the political committees established and maintained by a national political party in any calendar year which, in the aggregate, exceed $15,000.

(2) For purposes of this section, "political committees established and maintained by a national political party" means—

(i) The national committee;

(ii) The House campaign committee; and

(iii) The Senate campaign committee.

(3) Each recipient committee referred to in 11 CFR 110.2(c)(2) may receive up to the $15,000 limitation from a multicandidate political committee.

(4) The recipient committee shall not be an authorized political committee of any candidate, except as provided in 11 CFR 9002.1(c).

(d) *Contributions to other political committees.* (1) No multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(2) The limitation on contributions of this paragraph also applies to contributions made to political committees making independent expenditures under 11 CFR 109.

(e) *Contributions by political party committees to Senatorial candidates.* Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of $17,500 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(f) *Contributions to candidates for more than one Federal office.* If an individual is a candidate for more than one Federal office, a multicandidate political committee may make contributions which do not exceed $5,000 to the candidate, or his or her authorized political committees for each election for each office, provided that the requirements set forth in 11 CFR 110.1(f) (1), (2), and (3) are satisfied.

(g) *Contributions to retire debts.* (1) Contributions made to retire debts resulting from elections held prior to January 1, 1975 are not subject to the limitations of this Part 110, as long as contributions and solicitations to retire these debts are designated in writing and used for that purpose.

(2) Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110.

(h) *Contributions to committees supporting the same candidate.* No multicandidate political committee which makes contributions to a candidate or his or her authorized political committees with respect to any election for Federal office shall make contributions to a political committee which has supported or anticipates supporting such candidate for the same election which in the aggregate exceed the applicable limitations on contributions of this section if:

(1) The political committee is the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The multicandidate political committee or the treasurer of such committee knows or believes that a substantial portion of the contribution will be contributed to, or expended on behalf of, that candidate for the same election. This includes contributions to another multicandidate political committee and contributions to a political committee which has supported or anticipates supporting that candidate only by making independent expenditures on his or her behalf; or

(3) The multicandidate political committee retains control over the funds.

(i) *Application of limitations to elections.*

(1) The limitations on contributions of this section (other than paragraph (e) of this section) shall apply separately with respect to each election as defined in 11 CFR 100.2, except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election.

(2) An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions of this election.

(3) A primary or general election which is not held because a candidate is unopposed or received a majority of votes in a previous election is a separate election for the purposes of the limitations on contributions of this section. The date on which the election would have been held shall be considered to be the date of the election.

(4) A primary election which is not held because a candidate was nominated by a caucus or convention with authority to nominate is not a separate election for the purposes of the limitations on contributions of this section.

Dated: April 11, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-9179 Filed 4-16-85; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 225 and 277

[Docket Nos. RM80-8-001, RM80-8-002, RM80-8-003, RM80-8-004, and RM80-8-005]

Bona Fide Offers; Right of First Refusal; Notice of Extension of Time for Comments

April 12, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of request for additional comments; extension of comment period.

SUMMARY: On March 11, 1985, the Commission issued a Notice of Request for Additional Comments on issues raised by petitions for rehearing, reconsideration, and clarification of Order No. 95, concerning bona fide offers and right of first refusal (50 FR 10243, March 14, 1985). The comment period is being extended at the request of the Interstate Natural Gas Association of America.

DATE: Comments must be submitted on or before April 30, 1985.

ADDRESS: Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357-8400.

SUPPLEMENTARY INFORMATION:

Notice of Extension of Time

In the matter of Bona Fide Offer; Right of First Refusal; Docket Nos. RM80-8-001, RM80-8-002, RM80-8-003, RM80-8-004, and RM80-8-005.
April 12, 1985.

On April 8, 1985, the Interstate Natural Gas Association of America (INGAA) filed a motion for an extension of time to file comments in response to the Commission's Notice of Request for Additional Comments issued March 11, 1985, in the above-docketed proceeding. In its motion, INGAA states that it requires additional time because the association's staff and its member companies are involved in addressing numerous judicial and administrative matters pertaining to notices and orders issued in other pending Commission proceedings.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including April 30, 1985.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-9271 Filed 4-16-85; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 78P-0052]

Food Ingredient Labeling; Emulsifiers and Stabilizers; Exemptions

AGENCY: Food and Drug Administration.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to permit ingredients used as stabilizers and emulsifiers in food (e.g., carob bean gum, cellulose gum, lecithin) to be identified in the ingredient statement by the appropriate generic term ("stabilizers" or "emulsifiers") and listed in the order of predominance of the total amount of stabilizers or emulsifiers. The specific common or usual name of the ingredient would appear in parentheses following the generic term. FDA also is proposing that the stabilizer or emulsifier ingredients listed within parentheses be permitted to appear in other than descending order of predominance, and is proposing to allow the declaration of those stabilizing and emulsifying agents that may not always be present. This action responds to a petition filed by the National Association of Fruits, Flavors, and Syrups, Inc.

DATE: Comments by June 17, 1985.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0177.

SUPPLEMENTARY INFORMATION: FDA received a petition from the National Association of Fruits, Flavors, and Syrups, Inc. (NAFFS) that requested that the food ingredient labeling regulations be revised to provide manufacturers using blends of stabiliers and emulsifiers with greater flexibility in formulating their products. Specifically, NAFFS requested that blends of stabilizers and/or emulsifiers be optionally declared in the ingredient list by a collective name such as "stabilizers and/or emulsifiers" with the individual stabilizers and emulsifiers listed in parentheses without respect to the order of predominance requirements of § 101.4 (21 CFR 101.4). In addition, the petition requested that FDA allow manufacturers to list in parentheses those stabilizers and emulsifiers which are used intermittently in the manufacture of a food even though all of the listed ingredients may not be present in the food.

Stabilizers (e.g., carob bean gum, cellulose gum, gum arabic) and emulsifiers (e.g., lecithin, monoglycerides and diglycerides, polysorbates) are present in many manufactured foods in small quantities (usually less than 3 percent of the total weight). They are added for technological functions such as establishing and maintaining emulsions.

NAFFS pointed out that many food manufacturers find it expedient to vary the stabilizers and emulsifiers used in a food according to manufacturing locality. Consequently, firms with manufacturing plants in various locations in the United States must either maintain numerous label stocks, thereby increasing costs which will be passed on to the consumer, or sacrifice the advantages of local formulation and purchase the stabilizers and emulsifiers from one proprietary source. NAFFS contends that if such sacrifices are made, trade is restrained and technical progress is hampered. More localized firms are also adversely affected by the present regulations. These firms do not have the flexibility to purchase the most economical stabilizers and emulsifiers without maintaining numerous label stocks. In addition, NAFFS contended that stabilizers and emulsifiers should not have to be listed in descending order of predominance because (1) their amount in a food is normally less than 3 percent of the total weight of the food, (2) they are often used interchangeably in foods, and (3) the predominance of one stabilizer of emulsifier over another is of little importance to the consumer. Further, NAFFS stated that FDA has already established a precedent for the requested revisions by promulgating in 1976 similar revisions in the labeling regulations pertaining to fats and oils in § 101.4(b)(14).

FDA delayed action on the NAFFS petition to complete an evaluation of the views and comments received as a result of the 1978 food-labeling hearings (announced in 43 FR 25296, June 9, 1978), FDA's December 21, 1979 notice announcing its tentative positions on issues considered at these hearings (44 FR 75990; December 21, 1979), and the 1980 hearings on FDA's tentative positions (announced in 44 FR 75990; December 21, 1979).

Only a few comments received in response to the December 21, 1979 notice or during the 1978 and 1980 food-labeling hearings pertain directly to the NAFFS petition. These comments, all from industry, endorsed the types of ingredient labeling exemptions requested by NAFFS and stated that food costs would rise unnecessarily without these exemptions.

Other comments indirectly pertain and take a position contrary to the NAFFS petition. Many of these comments, primarily from consumers, requested more, rather than less, food-labeling information. Also, many consumers who stressed the importance of avoiding certain ingredients for health, religious, or other reasons objected to the use of "and/or" labeling to declare the source of fats and oils. Conversely, other comments confirm that many consumers are quite concerned about rising food costs. Some consumer comments suggested that less labeling information might be justified if food costs could be reduced. Few of the

consumers advocating more food labeling appeared to have considered the economic impact of additional labeling requirements.

In the past, where practicable, FDA has increased flexibility in ingredient labeling regulations in order to reduce manufacturing costs that would be otherwise passed on to the consumer. Executive Order 12291 clearly supports this policy by directing that regulatory relief to the public be provided to the extent permitted by law. The agency acknowledges that the NAFFS-requested exemptions are similar not only to exemptions already granted for fats and/or oils (§ 101.4(b)(14)), but also to those granted for leavening agents (§ 101.4(b)(16)), yeast nutrients (§ 101.4(b)(17)), dough conditioners (§ 101.4(b)(18)), and firming agents (§ 101.4(b)(19)).

The exemptions requested by NAFFS appear to be reasonable in those situations where the manufacturer is unable to adhere to a constant pattern of stabilizers and/or emulsifiers in the food. Exemptions appear to be unnecessary where these ingredients are constant. Accordingly, FDA is proposing to establish the requested exemptions, but to limit their applicability to situations where stabilizer and emulsifier use patterns do not remain constant.

Although NAFFS requested that the collective name "stablilizers and/or emulsifiers" be used for these exemptions, FDA believes that this use would be misleading in light of the differing functions of stabilizers and emulsifiers. FDA is not aware of any substance that is used as both a stablizier and an emulsifier. Accordingly, the agency is proposing that ingredients within these categories be ground according to their function with the collective name "stabilizers" or "emulsifiers," as appropriate.

Ingredients used as stabilizers or emulsifiers are currently required to be listed in the ingredient statement along with other ingredients in descending order of predominance solely by their common or usual or chemical names, and are therefore not identified as stabilizers or emulsifiers. If the proposed exemption is adopted and a manufacturer elects to use it, these ingredients will be identified, in order of predominance, by the common or usual name in parenthesis following the collective term "stabilizers" or "emulsifiers." Additionally, if a manufacturer is unable to adhere to a constant pattern of stabilizers or emulsifiers in the food products, the listing of the individual stabilizers or emulsifiers need not be in descending order of predominance as long as it follows identifying words such as "or", "and/or", or "contains one or more of the following:". FDA believes that the parenthetical information will provide consumers enough information to avoid the ingredients if desired. Consumers wanting to avoid a particular stabilizers or emulsifiers would have to avoid those foods that have labels indicating that the ingredient may be present because it is used interchangeably with another.

The agency believes that the concerns of both consumers and industry about rising food costs should not be ignored. If it grants the requested exemptions, manufacturers would not have to change their labels each time they use a different stabilizer or emulsifier. Under current regulations, this type of change requires a different label. Manufacturers would also be able to take advantage of price fluctuations of stabilizers or emulsifiers. The exemptions would enable manufacturers to purchase ingredients on the basis of price and availabilty, fostering competition in pricing. The net effect of these benefits to manufacturers would be to help keep their production costs down. These lower production costs should help keep down the price that consumers pay for the finished food.

In accordance with actions taken on similar exemptions pending issuance of a final regulation (see 47 FR 16347), FDA will not initiate regulatory action against any food product on the basis of improper ingredient declaration of stabilizers and emulsifiers, provided such ingredient declarations are in accordance with this proposal.

In accordance with Executive Order 12291, the economic effects of this proposal have been reviewed, and it has been determined that the proposed rule is not a major rule as defined by the Order. This proposal, if adopted, will provide an optional exemption for some foods containing stabilizers and/or emulsifiers from an existing mandatory requirement that each stabilizers and/or emulsifiers be listed in descending order of predominance. Manufacturers would therefore not be required to change existing labels, and they may be provided with greater flexibility in listing mandatory information on new labels. No increase in manufacturers' labeling costs is therefore expected.

FDA, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), has considered the effect this proposed rulemaking would have on small entities, including small businesses. Because the effect of this proposed regulation is to provide an optional exemption for some foods containing stabilizers and/or emulsifiers from certain labeling requirements, the agency has determined that it may reduce labeling costs for all affected manufacturers. FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will result from the proposal, if adopted.

The agency has determined in accordance with 21 CFR 25.24(d)(13) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

This proposed rule modifies paragraph (b) of 21 CFR 101.4 that provides exemptions from the information collection requirement contained in paragraph (a) of § 101.4. FDA has submitted § 101.4(a) to the Office of Management and Budget (OMB) for its review as stipulated in 5 CFR 1320.14. The requirement has been approved and assigned OMB control number 0910-0200.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 403, 701(a), 52 Stat. 1047-1048 as amended, 1055 (21 U.S.C. 343, 371(a))) and under 21 CFR 5.11, it is proposed that Part 101 be amended in § 101.4 by adding new paragraph (b)(23), to read as follows:

PART 101—FOOD LABELING

§ 101.4 Food; designation of ingredients.

* * * * *

(b) * * *

(23) Ingredients that act as stabilizers or emulsifiers may be declared in the ingredient statement, in order of predominance appropriate for the total of all stabilizers or emulsifiers in the food, by stating the specific common or usual name of each stabilizer and emulsifier in descending order of predominance to parentheses following the collective name "stabilizers," or "emulsifiers," as appropriate, e.g., "stabilizers (carob bean gum, cellulose gum, gum arabic)." if the manufacturer is unable to adhere to a constant pattern of stabilizers or emulsifiers in the food, the listing of the individual stalizers of emulsifier agents need not be in descending order of predominance. Stabilizers and emulsifiers not present

in the product may be listed if they are sometimes used in the product. Such ingredients shall be identified by words indicating that may not be present, such as "or", "and/or", contains one or more of the following;".

* * * * *

Interested persons may, on or before June 17, 1985, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 18, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-9238 Filed 4-16-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225]

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration [OSHA], Labor.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice announces the initiation of the rulemaking process by OSHA with respect to reducing exposures to formaldehyde under section 6(b) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b). This regulatory action occurs following a public meeting held by OSHA in Washington, D.C. on February 13–15, 1985, to collect information on the health effects and risks of exposure for formaldehyde. The notice summarizes information currently available to OSHA concerning production and use of formaldehyde, health effects, and estimates of employee exposure. The notice invites interested parties to submit data, views, and comments regarding OSHA's development of a new standard for formaldehyde and the appropriate scope of coverage.

DATE: Comments in response to this Advance Notice should be submitted by August 15, 1985.

ADDRESS: Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-225, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Office of Information, Room N-3641, Washington, D.C. 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

1. Introduction

The present occupational health standard for formaldehyde (CAS Registry No. 50-00-0) requires employers to assure that employee exposure to formaldehyde does not exceed 3 parts per million parts of air (3 ppm), determined as an 8-hour time-weighted average (TWA), 5 ppm as a ceiling concentration, and 10 ppm as a maximum peak for a total of up to 30 minutes during an 8-hour workshift. This standard is codified at 29 CFR 1910.1000, Table Z-2 and was adopted in 1971 pursuant to section 6(a) of the Act. The source of this standard was a national consensus standard developed in 1967 by the American National Standards Institute, Inc. (ANSI) [Ex.42-9].

In 1976, the National Institute for Occupational Safety and Health (NIOSH) transmitted a criteria document on occupational exposure to formaldehyde to OSHA. In this criteria document [Ex. 42-85]. NIOSH recommended that formaldehyde be controlled so that no employee receives exposure at a concentration greater than 1.2 milligrams per cubic meter (1.2 mg/m^3) (equivalent to 1 ppm) for any 30-minute sampling period. In addition, NIOSH included provisions for employee exposure monitoring and recordkeeping, medical surveillance, labeling, personal protective equipment, work practices and engineering controls, and training to inform employees of the hazards of exposure to formaldehyde. These recommendations for a reduction in the permissible exposure level and other protective requirements for formaldehyde were based on its irritant properties.

In October 1978, the Chemical Industry Institute of Toxicology (CIIT) sent preliminary findings of a carcinogenicity study which was being conducted at Battelle Columbus Laboratories to the Environmental Protection Agency (EPA) under procedures established by the Toxic Substances Control Act (TSCA) for notification of substantial risk (section 8(e)). This notification (No. 79-314) indicated that squamous cell carcinoma of the nasal cavity had been observed at interim sacrifice in some rats exposed to formaldehyde at 14.3 ppm. When the study was completed in 1981, final results showed nasal cancers in rats exposed at 5.6 and 14.3 ppm and in mice exposed at 14.3 ppm [Ex. 12].

Based on its concerns about the potential for adverse effects from chronic exposure to formaldehyde, NIOSH published Current Intelligence Bulletin 34, "Formaldehyde—Evidence of Carcinogenicity" on April 15, 1981 [Ex. 42-86]. In this bulletin, NIOSH recommended that formaldehyde be handled in the workplace as a potential occupational carcihogen. This recommendation was based on the finding of cancer of the nasal cavities in experimental animals exposed by inhalation to formaldehyde.

In 1983, the American Conference of Governmental Industrial Hygienists (ACGIH) established a threshold limit value (TLV) of 1 ppm as an 8-hour TWA for formaldehyde and included this chemical on the list of industrial substances suspect of carcinogenic potential for man. The ACGIH list also includes a short-term exposure limit (STEL) of 2 ppm for formaldehyde [Ex. 42-8].

A number of other groups have evaluated available information on formaldehyde and published their conclusions. In 1982, the International Agency for Research on Cancer (IARC) concluded that although there was sufficient evidence that formaldehyde gas is carcinogenic to rats, epidemiolgical studies provided inadequate evidence to assess the carcinogenicity of formaldehyde in man [Ex. 42-70]. In its Third Annual Report of Carcinogens, published in September, 1983, the U.S. Department of Health and Human Services listed formaldehyde among the substances or groups of substances that may reasonably be anticipated to be carcinogens [Ex. 52]. On May 23, 1984, the EPA announced that two categories of formaldehyde exposures, that occurring from apparel manufacture and that associated with residence in manufactured housing, showed a potential for significant risk of widespread harm, which warranted designation for priority review under section 4(f) of TSCA. Action under section 4(f) is based on a substance's ability to induce cancer, gene mutations, or birth defects. EPA did not examine

the irritant properties of formaldehyde in reaching its conclusions [Ex. 42–41].

2. Petition for Emergency Temporary Standard (ETS)

On October 26, 1981, the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), joined by 13 other unions, petitioned OSHA to issue an ETS which would impose a number of protective requirements for the handling of formaldehyde. On January 29, 1982, OSHA denied the request and the petitioners appealed the decision to the District Court of the District of Columbia. On July 2, 1984, the Court remanded the formaldehyde case to the Agency for reconsideration (*UAW* v. *Donovan*, 590 F. Supp. 747 (D.D.C. 1984)). The Court concluded, based on consideration of several factors involving the statutory framework and the posture of the case, that reappraisal by OSHA would be preferable to judicial review based on the record as it existed in January, 1982, when the ETS petition was denied. The Court observed that the issues surrounding the regulation of formaldehyde were much more sharply defined that they had been when the ETS petition was denied, citing as an example the accomplishments of the Consensus Workshop on Formaldehyde.

The Consensus Workshop on Formaldehyde convened on October 3–6, 1983, with the objective of developing general agreement on important controversies surrounding the scientific status of formaldehyde. Over 60 government, industry, university, and public interest organization scientists served on the following eight panels: (1) Exposure; (2) Epidemiology; (3) Carcinogenicity, Histopathology, Genotoxicity; (4) Immunology, Sensitization, Irritation; (5) Structure Activity, Biochemistry, Metabolism; (6) Reproduction, Teratology; (7) Behavior, Neurotoxicity, Psychological Effects; and (8) Risk Estimation. Each panel reviewed the major scientific studies relevant to its area and prepared a consensus report addressing discussion topics brought before the panel. The other seven panels supplied reports to the Risk Estimation Panel, the group charged with the task of determining how the data could be used to make reasonable risk estimates for humans exposed to formaldehyde at various levels and through different routes. A compilation of the panel reports has been prepared through the National Center for Toxicological Research and these deliberations were published recently in *Environmental Health Perspectives* [Ex. 70–56].

On November 5, 1984, OSHA's Office of Risk Assessment (ORA) submitted a report, Preliminary Assessment of the Health Effects of Formaldehyde (The ORA Report) [Ex. 43], which reviewed the health issues raised in the Court's remand order. This report relied heavily on a draft report of the Concensus Workshop [Ex. 42–30] in updating OSHA's information on formaldehyde. The ORA Report was distributed for peer review to members of OSHA's National Advisory Committee for Occupational Safety and Health and to certain government and industry scientists who had research or regulatory interests in formaldehyde. Several members of the public also volunteered comment on the ORA Report. These comments have been placed in the public record [Exs. 44–1 to 44–24, 45–1 to 45–7] and are available from the Docket Office upon request. Based on the entire record before the Agency, with particular emphasis on the new information presented in the ORA Report and in the peer review and public comments, OSHA again denied the petition for an ETS on formaldehyde on January 7, 1985 [Ex. 61].

3. Present Status of OSHA's Deliberation

The decision of the District Court directs OSHA to consider the UAW petition not only as a request for an ETS under section 6(c) of the Act, but also as a request for revision of the permanent standard for formaldehyde under section 6(b). OSHA's reply to the petitioners is due by April 15, 1985. Because of a recent court decision regarding subject matter jurisdiction, the formaldehyde case has been transferred to the U.S. Circuit Court of Appeals for the District of Columbia. However, the Circuit Court has indicated its intention to enforce the schedule imposed by the District Court (*UAW* v. *Donovan*, No. 85–1003, D.C. Circuit, March 5, 1985).

On January 11, 1985, OSHA announced that a public meeting would be held in Washington, D.C., on February 13–15, 1985 [50 FR 1547]. This meeting was designed to generate information and dialogue, which would help OSHA determine whether or not occupational exposure to formaldehyde constitutes a significant risk of material impairment of health. Final posthearing comments were due by March 8, 1985, and, at present, OSHA is evaluating the health data received in the course of this public meeting. OSHA's assessment of the health effects associated with exposure to formaldehyde indicates, at this point, that the existing occupational health standard is inadequate.

Simultaneously, OSHA has been examining information on current conditions in the formaldehyde industry and available control technology to determine what exposure levels are technologically and economically feasible. Substantial data gaps have been identified, and the primary purpose of this ANPR is to obtain some of this missing information. After OSHA has collected information needed to determine what constitutes a necessary and feasible exposure limit, the Agency will publish a Notice of Proposed Rulemaking requesting comments on a revised standard for occupational exposure to formaldehyde.

4. Health Effects

There is a substantial volume of scientific information regarding the possible hazards of occupational exposure to formaldehyde. OSHA is reviewing this information to determine (1) the extent of the health hazards that exist at the present permissible exposure limits of 3 ppm (TWA), 5 ppm (ceiling), and 10 ppm (peak); (2) the extent to which current conditions of occupational exposure of formaldehyde pose health risks, and (3) the availability of effective measures to reduce any existing risk.

The ability of formaldehyde to cause a reversible sensory irritation of the eyes, nose, and throat at levels permitted by the present standard has been well documented.

Based on a review of the available epidemiologic studies and the Consensus Panel's report, OSHA concludes that the evidence presently available from human studies alone is inadequate to make any determination with regard to formaldehyde's potential carcinogenicity. Several studies presently available, although suggestive of an effect, do not provide conclusive evidence of a causal relationship between formaldehyde exposure and cancer. For example, excess deaths from brain cancer and leukemia have been reported in professional groups including morticians, anatomists, and pathologists [Exs. 42–81, 42–113, 42–124]. Levine estimates that, overall, the increased incidence is approximately 2-fold [Ex. 64]. Similar findings have not been reported in groups which were exposed only to formaldehyde gas instead of formalin. Several commenters have hypothesized alternative explanations for these results [Exs. 44–3, 45–1, 69–19b; Tr. 243–246, 621–626], including social class bias, changes in diagnostic techniques over recent years, and slow-growing viruses. The Epidemiolgy Panel of the Consensus

Workshop examined and rejected detection bias for the excess brain cancer among anatomists, but they also concluded that "the association between professional groups engaged in preservation of human tissues and brain cancer does not necessarily implicate formaldehyde" [Ex. 70–58, p. 338]. OSHA has not yet determined how the data on professional groups should influence its decisions regarding regulation of formaldehyde.

5. Production and Use

Formaldehyde (CH_2O) is the simplest member of the aldehyde class of chemicals. Pure monomeric formaldehyde is a colorless, pungent gas at ordinary temperatures. Aqueous formaldehyde, or formalin, is a clear, colorless solution which is about 37% dissolved formaldehyde by weight and generally contains 10–15% methanol added to prevent polymerization [Ex. 42–41].

Formaldehyde is produced commercially from the catalytic oxidation of methanol, using either silver oxide or mixed metal oxide as the catalyst [Ex. 70–1]. Formaldehyde is a major industrial chemical, having the 26th highest production volume in the United States. In 1983, about 5.4 billion pounds of formaldehyde (as a 37% aqueous solution) were manufactured [Ex. 42–127].

Formaldehyde is primarily used as an intermediate in the manufacture of a variety of derivatives, with about 53% of production consumed in the manufacture of thermosetting resins including phenol-formaldehyde resins, urea-formaldehyde resins, and melamine-formaldehyde resins [Ex. 8]. An additional 7% is consumed in the production of thermoplastic acetal resins. About 35 % is used in synthesis of high volume chemicals including pentaerythritol, hexamethylenetetramine, and butanediol. Two percent is used in textile treating. Small amounts of formaldehyde are present as preservatives or bacteriocides in consumer products such as cosmetics, shampoos, and glues. The general population and workers in downstream industries can also be exposed to formaldehyde through offgassing from (1) urea-formaldehyde foam insulation; (2) formaldehyde resins used in wood products such as kitchen cabinets, particleboard, and hardwood plywood; and (3) textile resins used for the permanent press process.

The EPA [Exs. 14, 42–41, 70–2] has defined three categories of exposure to formaldehyde based on nonconsumptive use, pseudoconsumptive use, and consumptive use. In nonconsumptive use, chemical identity does not change. Examples of such uses are disinfectants and preservatives including embalming fluid. In pseudoconsumptive use, chemical identity changes, but not irreversibly. In pseudoconsumptive use, formaldehyde can be regenerated and released during numerous downstream uses, which leads to potential exposure for large numbers of workers and consumers. Three pseudoconsumptive uses are production of urea formaldehyde resins and concentrates and production of hexamethylenetetramine. Consumptive use results in irreversible change of chemical identity. Examples include manufacture of phenol-formaldehyde and melamine-formaldehyde resins, acetyl resins, pentaerythitol, trimethylolpropane, and butanediol. In consumptive use, formaldehyde serves as a feedstock for preparation of other chemicals. Thus, exposure potential is limited to manufacture of the product with little, if any, formaldehyde release expected from the product under normal conditions of use.

6. Potential for Occupational Exposure

OSHA has four estimates of the total number of workers potentially exposed to formaldehyde. Based on a 1972–1974 survey of 5,000 industries, NIOSH estimated that 1.6 million workers are potentially exposed to formaldehyde [Ex. 42–86]. In 1979, the study conducted by Booz, Allen, Hamilton, Inc. for the Formaldehyde Subgroup of the Synthetic Organic Chemical Manufacturers Association (The SOCMA study) [Ex. 8] estimated that 1.4 million workers are exposed to formaldehyde in 57,000 plants. Based on the SOCMA report and projections from OSHA inspection data, the Center for Policy Alternatives (CPA) estimated in 1981 that 1.34 million workers are potentially exposed to formaldehyde [Ex. 70–1]. About 850,000 exposures were believed to be below 0.25 ppm, 243,000 between 0.25 and 0.49 ppm, 117,000 between 0.5 and 0.99 ppm, 82,000 between 1.0 and 1.9 ppm, and 52,000 at or above 2 ppm. According to the authors, estimates for some exposure categories were much more accurate than for others. In a 1982 study [Ex. 16], Clement Associates estimated that about 1.3 million persons are potentially exposed to formaldehyde, based on review of NIOSH and OSHA inspections, a 1981 EPA study, and the SOCMA report. Based on information in the Clement study, the ORA report estimated that 3% of the workers were exposed at levels above 2 ppm. It was estimated that another 8% were exposed at concentrations between 1 and 2 ppm, that 77% were exposed to levels between 0.5 and 1 ppm, and that 12% were exposed to levels below 0.5 ppm [Ex. 43].

Information on workers exposure to formaldehyde in selected industries is available from EPA [Ex. 42–41]. This information has been updated from earlier reports [Exs. 14, 70–2], received public scrutiny in 1983, and is the most recent exposure assessment available. However, it does not include all of the industries examined by Clement and CPA and cannot be used to provide an estimate of overall potential exposure. There are indications from review of information in the EPA study that, for certain industries, exposure levels reported in studies that are several years old may no longer be relevant to present conditions since the data do not reflect recent industry attempts to reduce formaldehyde levels.

Although the studies available to OSHA indicate consistency in determining the overall number of persons exposed to formaldehyde, they show considerable divergence on estimates of levels of exposure that occur. This divergence occurs even though the reports interlock and build upon each other, with subsequent studies relying on the SOCMA report. For example, the CPA study estimated that 90% of the exposures are below 1 ppm, which agrees with the ORA estimate of 89%. However, ORA estimated that only 12% are below 0.5 ppm and CPA estimated 80% are below 0.5 ppm. In order to better determine the consequences of various regulatory options, OSHA seeks to obtain information that accurately reflects prevailing conditions as they now exist in the formaldehyde industry along with information about new uses or shifts in usage patterns that would indicate a decrease or increase in hazard potential. OSHA solicits all public comment that would assist in determining present levels of occupational exposure to formaldehyde.

The ORA Report selected apparel industry workers, funeral service employees, foundry workers, resin manufacture employees, pathologists, and wood furniture manufacture workers as groups at potentially high rish from exposure to formaldehyde, either because of high exposure concentrations or widespread exposure potential [Ex. 43]. The ORA Report also identified the following groups as having either a large number of persons exposed or a potential for exposure to high levels of formaldehyde: Formaldehyde production workers, plywood and particleboard manufacture

workers, plastics manufacture workers, high school and university instructors, and hospital laboratory technicians and assistants. Other groups known to be exposed to formaldehyde include workers in photographic processing, industrial and specialty chemical manufacture, textile manufacture, paper and paperboard manufacture, abrasive products manufacture, mobile home manufacture, and building construction [Exs. 8, 70–1]. OSHA seeks information on the nature of employee exposure in these industries and in any other industry where formaldehyde exposure occurs. OSHA is particularly interested in how this exposure occurs, what levels are involved, whether exposure is full-time or part-time, whether exposure is solely to formaldehyde gas, formalin, or to other forms of formaldehyde, and what percentage of the overall workforce is exposed to formaldehyde.

7. Control Options

Many uses have been found for formaldehyde due to its status as a highly reactive and relatively low cost chemical. Exposure to formaldehyde occurs in many sectors of U.S. industry. Not only do the types of exposure differ (e.g., part-time vs. full-time, liquid vs. gas), but the processes used are diverse and the problems of each industry sector are often unique. Given this situation, control measures which are considered technologically and economically feasible for one sector of industry may be irrelevant to another sector. Even though the problems in various industries with potential for employee exposure to formaldehyde may differ greatly, a standard for formaldehyde must ensure the protection of the health of all workers exposed to formaldehyde.

Information available to OSHA indicates that control measures in some sectors of the formaldehyde industry are not unique. Primary formaldehyde producers and other large scale chemical synthesis operations using formaldehyde appear to be typical of large scale continuous operations that rely on modifications of process equipment [Ex. 8] and leak tightening [Ex. 70–1] to reduce exposure. Other industry sectors, such as resin manufacture and production of specialty chemicals, appear to be typical batch operations, relying primarily on local ventilation to control exposure [Exs. 8, 70–1].

There is substantial evidence available to OSHA which indicates that some industries have achieved considerable success in lowering formaldehyde emissions from their products through non-traditional methods. For example, over 95% of the hardwood plywood manufactured in the U.S. uses urea-formaldehyde resins [Exs. 69–7, 70–5]. The industry has substantially lowered formaldehyde emissions from its products by reformulating resins to contain less formaldehyde and by coating or laminating wood surfaces to provide a barrier to prevent formaldehyde's escape [Exs. 69–7, 70–5, 70–15]. Some companies have explored the use of scavenging solutions to reduce the amount of formaldehyde in the final product [Ex. 70–5]. However, this industry has been unable to substitute phenol-formaldehyde resins, as used in softwood plywood, for urea-formaldehyde resins because an undesirable color is often imparted to the wood [Ex. 70–5]. Changes in hardwood plywood industry products have occurred as the result of demands from downstream users, but these changes have also benefitted employees in the upstream industry [Ex. 69–7]. The particleboard industry has also used new resin formulations, board finishes, and scavengers to substantially reduce the formaldehyde emissions from their products [Exs. 69–9, 70–8, 70–9, 70–16]. It appears that the particleboard industry may be able to use phenol-formaldehyde resins and isocyanate resins as product substitutes, but such substitutes would increase production costs [Exs. 70–8, 70–9, 70–16].

Resins containing formaldehyde have been used for about the last 25 years to impart permanent press characteristics and crease and shrink resistance to a wide variety of fabrics, primarily cellulose (cotton, rayon, linen) and cellulose/polyester blends [Exs. 8, 70–14]. An estimated 60–85% of all apparel fabrics, or approximately 7 billion yards of textiles produced in the U.S., are finished with formaldehyde resins [Ex. 69–13]. Formaldehyde resins are applied at a late stage in textile manufacture. This tends to limit the number of workers exposed in the industry [Ex. 69–13]. However, these processes use steam heat and can be very difficult to control [Ex. 8]. Textile manufacturers have relied primarily on process modification and resin reformulation to reduce employee exposure to formaldehyde. The wash-and-wear technology of the 1950s, when formaldehyde released from textiles was in the range of 2,000 to 4,000 micrograms per gram ($\mu g/g$) of fabric, was replaced by the permanent press process in the mid-1960s. Information collected by the American Textile Manufacturers Institute (ATMI) [Ex. 70–14] shows that further advances in resin formulation have continued to reduce formaldehyde levels from an average of 534 $\mu g/g$ in 1975 to 345 $\mu g/g$ in 1983. ATMI expects that the new low-formaldehyde resins will gain wider usage, even though a lower quality permanent press finish is produced.

The apparel manufacturing industry employs the largest group of workers potentially exposed to formaldehyde. The most recent estimate is 777,000 persons [Ex. 42–41]. This industry has a number of unique characteristics. Among apparel workers, 81% are women and 27% are members of minority groups. Competition from foreign countries with low-cost labor is strong. In fact, according to the American Apparel Manufacturers Association (AAMA), imports from foreign sources currently account for 25% of the U.S. apparel market [Ex. 69–25d]. Many plants would be considered small businesses, and they tend to rent both space and equipment. According to ATMI, in 1981, rental expenses constituted 57% of this industry's expenditures on capital outlays compared to 13% for all industry. The apparel manufacturing industry also spent an average of $500 per employee for capital items compared to a textile industry average of $4,000 per employee [Ex. 70–14]. About 80% of the workers in an apparel plant are sewing machine operators [Ex. 69–25d].

Because of the nature of apparel manufacturing work, the reduction of in-plant exposure would probably require general dilution ventilation in most cases. The cost for installing general ventilation equipment to achieve as 1 ppm, 30 minute ceiling was estimated by the SOCMA report to be $265 per employee for firms with 20 or fewer employees and $150 per employee for those with over 500 employees [Ex. 8]. The possible cost disadvantage to smaller firms may be underestimated, however, since, as pointed out by ATMI, companies in a landlord-tenant relationship may have special problems in performing the building modifications required to install ventilation [Ex. 70–14].

8. Cost Estimates for Control of Formaldehyde

There are three studies available to OSHA which examine the potential costs of controlling exposure to formaldehyde. Two of these, the SOCMA report of 1979 [Ex. 8] and the CPA study of 1981 [Ex. 70–1] examine the overall industry. However, they have limited usefulness because they address only a ceiling exposure and their estimates are based on exposure levels that appear to have been lowered voluntarily by industry. Some cost

estimates, in retrospect, were probably also too high since they were based on conventional engineering controls. For example, the trend in industries that use resins has been to reduce formaldehyde levels in their products by reformulating the resins to decrease the amount of excess formaldehyde, a relatively inexpensive method as compared to conventional control technology [Ex. 42-41]. A third study conducted by A.D. Little [Ex. 50] for the Formaldehyde Institute contains recent figures for two industries, apparel manufacture and manufactured housing. The report evaluated different exposure conditions applicable to EPA's authority under TSCA, and does not address control to various permissible exposure limits, such as would be considered by OSHA. The SOCMA study stated that it would cost less to implement controls which would achieve a 1 ppm TWA than it would to achieve a 1 ppm ceiling, but it did not address this alternative in depth.

Given these limitations, information available from the SOCMA study indicates an estimated capital cost of $840 million with an annual cost of $327 million to control the exposures of 1.4 million employees to 1 ppm or below, as a 30-minute ceiling. The CPA study provides a "most likely estimate" of capital costs for a 1 ppm ceiling of $458 million annual operating costs of $171 million. CPA estimated that these costs would be $373 million in capital costs and $140 million in annual operating costs for a 2 ppm ceiling compared to $690 million in capital costs and $254 million in annual operating costs to achieve a 0.5 ppm ceiling. The costs of other provisions such as medical surveillance and exposure monitoring are not included in any of the above figures. The A.D. Little study estimated an investment of $399 million and operating costs of $95.6 million to achieve a 33% reduction in formaldehyde levels in the apparel industry through installation of general ventilation. It also predicted that a number of plants would close, resulting in the loss of 135,000 jobs in apparel manufacture. There would also be upstream consequences in industries such as textile manufacturing and cotton growing. Using EPA's estimate that occupational exposure in the apparel industry averaged 0.64 ppm, a 33% reduction would reduce levels to below 0.5 ppm as a TWA.

Request for Comments

OSHA solicits information and comments relevant to the reduction of formaldehyde exposure. The public is invited to express opinions as to what provisions, including but not limited to those which set the permissible exposure limit(s), should be included in the revised formaldehyde standards that will be published by OSHA. OSHA is especially interested in methods, costs, and effectiveness of control strategies that have already been employed to reduce exposure to formaldehyde. The questions below will provide specific guidance on OSHA's request for information.

A number of submissions concerning the health effects of formaldehyde and concomitant risks have been received by OSHA in response to the rent request for information and public meeting. While the public is invited to submit any relevant information regarding regulation of formaldehyde, information submitted in the past need not be resubmitted for consideration in the upcoming rulemaking.

Permissible Exposure Limit

In order to provide adequate protection of employee health, should a standard for formaldehyde contain an 8-hour time-weighted average (TWA), a short-term exposure limit (STEL), or some combination of both exposure limits? What should these exposure limits be? What methods of sampling and analysis are available to measure exposure at these level? Please provide the rationale for your answers.

Both the Celanese Chemical Corporation and the E.I. Du Pont de Nemours Company indicated at the public meeting that they have established corporate standards of 1 ppm as an 8-hour TWA with a STEL of 2 ppm for formaldehyde [Tr. 27, Tr. 640]. Which other companies have internal standards for formaldehyde? What are the standards? What are the bases for such standards?

Action Level

In certain occupational health standards, some provisions apply only when an action level, often set at one-half of the permissible exposure limit, is exceeded. When health risks are low, action levels are appropriate because they can reduce or eliminate regulatory burdens. OSHA requests comments and information on the following:

(a) Is an action level appropriate for some or all segments of the formaldehyde industry? What impact would an action level have on employee health?

(b) What are appropriate action levels in the various industry segments? Which regulatory provisions should be modified or eliminated when exposures are under the action level?

(c) What would be the cost savings expected to result from incorporation of an action level provision?

Methods of Compliance

For OSHA to promulgate a revised standard for formaldehyde, all provisions of the standard must be economically and technologically feasible. Consideration of this issue most often focuses on the availability of engineering and work practice controls and personal protection to limit employee exposure to toxic substances or materials. In the case of formaldehyde, OSHA will also consider other approaches, such as product substitution.

In describing the technologies available to achieve control of exposure to formaldehyde, please discuss in detail how these controls are used, how long it would take to implement controls not currently in use, the costs of controls, and the levels of airborne formaldehyde that can be achieved through their use. OSHA is particularly interested in the following information:

(a) Under what circumstances are engineering controls (including local and general ventilation), substitution of products or processes with materials not containing formaldehyde, modification of processes to use materials containing less formaldehyde, or modification of equipment (e.g., booths, islands, cabs), useful for limiting worker exposure to formaldehyde?

(b) Under what circumstances would work practices, housekeeping, or administrative controls, such as worker rotation, be useful for limiting employee exposure to formaldehyde?

(c) Are there conditions in any sector of industry which would make it unreasonable to use engineering controls and work practices to reduce exposure to formaldehyde?

(d) In what operations should personal protective equipment, including respirators, be required?

(e) Have there been technological advances or changes aimed at improving productivity, product quality, or consumer exposure to formaldehyde which have also resulted in reductions in formaldehyde exposures at the worksite?

(f) What are the availability, price, and serviceability of substitutes for products containing formaldehyde?

(g) How have regulatory activities of state agencies and other Federal agencies affected worker exposure to formaldehyde?

Exposure Monitoring

Do employers presently monitor employee exposure to formaldehyde? What factors are used to determine monitoring frequency and the employees whose exposure is to be measured? What sampling and analytical methodologies are used for exposure monitoring?

Medical Examinations

Do employers provide medical examinations for formaldehyde-exposed workers? What procedures are appropriate for monitoring the health of formaldehyde-exposed workers formaldehyde? What formaldehyde-related illnesses have been observed? How prevalent are such illnesses? Have any employees transferred away from or left a given job because they were unable to tolerate their exposure to formaldehyde?

Employee Training

How are employees currently informed of the hazards associated with formaldehyde? What types of training programs are appropriate for formaldehyde-exposed employees?

Economic Data

OSHA's rulemaking will comply with Executive Order 12291, which requires the preparation of a regulatory impact analysis of all major actions; and with the Regulatory Flexibility Act, which requires the preparation of regulatory flexibility analyses for actions having a significant economic impact on a substantial number of small entities. To this end, OSHA is soliciting information on the financial condition of the affected industries to calculate the economic implications of compliance with the present formaldehyde standard as compared with anticipated modifications of this standard. OSHA requests comments and information on the following:

(a) For each industry potentially affected by a new formaldehyde standard, what are the major production processes in which workers are exposed to formaldehyde? What are the sources of exposure? How many workers are exposed? What are the concentrations, the durations, and the frequencies of such exposures?

(b) What costs have been incurred by industry to implement controls introduced for the purpose of lowering employee exposure to formaldehyde? How effective have these controls been in reducing formaldehyde exposures? Have these controls affected productivity? Have any of these measures helped to reduce workplace hazards in downstream industries using products containing formaldehyde?

(c) What were the total annual volume and dollar value of formaldehyde product output, shipments, and inventories for at least the last 5 years?

(d) What was the total annual investment, appropriately categorized as either replacement, expansion, modernization, or environmental health and safety related expenditures for at least the last 5 years?

(e) What were the retained earnings, after tax income, total assets, stockholders' equity, net worth, debt equity ratios, and depreciation charges for at least the last 5 years.

(f) What were the rates of return on assets, equity, or net worth for at least the last 5 years.

(g) What is the degree of market concentration in the industry? (Please give special attention to the role of small businesses and approximate numbers of firms in the industry each year.)

(h) What is the geographic dispersion of the industry and its customers?

(i) What were the annual volume and dollar value of imports and exports for at least the last 5 years? How would this be affected by a more stringent U.S. occupational health standard for formaldehyde?

(j) What were the total annual employment and labor turnover for the industry for at least the last 5 years?

(k) Can you identify any unique characteristics of your industry (e.g., rental of capital equipment, unique employee skills) that could affect your ability to achieve compliance with a formaldehyde standard?

Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) regulations (40 CFR Part 1500; 43 FR55978, November 29, 1978), and the Department of Labor (DOL) NEPA Compliance Regulations (29 CFR Part II; 45 FR 51187 *et seq.*, August 1, 1980) require that Federal agencies give appropriate consideration to environmental issues and impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that may occur outside of the workplace as a direct or indirect result of promulgation of a revised standard for occupational exposure to formaldehyde. Such information should include any negative or positive environmental effects that could be expected to result from a revised regulation.

OSHA requests comments and information on the following:

(a) How would alternative regulations of worker exposure to formaldehyde alter ambient air quality, water quality, solid waste disposal, or land use?

(b) How would product substitutions, performed to comply with a formaldehyde regulation, affect the general public's exposure to formaldehyde?

Public Participation

Interested persons are invited to submit comments on these and other pertinent issues relating to the development of a revised standard for occupational exposure to formaldehyde by August 15, 1985. Comments should be sent in quadruplicate to the Docket Officer, at the address noted above where they will be available for inspection and copying. The data received will be carefully reviewed by OSHA for use in preparation of a Notice of Proposed Rulemaking for formaldehyde.

This Advance Notice of Proposed Rulemaking was prepared under the direction of Robert A. Rowland, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (84 Stat. 1593; 29 U.S.C. 655).

List of Subjects in 29 CFR Part 1910

Occupational safety and health.

Signed at Washington, D.C. this 9th day of April 1985

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-8868 Filed 4-15-85; 8:45 am]

BILLING CODE 4510-10-M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals—General; Rules of Practice

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: As a result of recent changes in legislation, the Veterans Administration is amending the Appeals Regulations of the Board of Veterans Appeals to reflect the expansion of the Board's jurisdiction to include questions concerning certain benefits for surviving spouses and children of deceased veterans. The Board of Veterans Appeals Rules of Practice are also being revised to provide for: informal hearings;

requests for opinions from the General Counsel of the Veterans Administration in individual appeals; reconsideration involving allegations of the use of false or fraudulent evidence to obtain benefits from the Board; and vacating decisions.

DATE: Comments must be received by May 17, 1985.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 3, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach, phone (202) 389–2978.

SUPPLEMENTARY INFORMATION: Pub. L. 97–377 replaced certain benefits to surviving spouses and children of members of the Armed Forces who died on active duty before August 13, 1981, and former members who died as a result of service-connected disability incurred or aggravated before August 13, 1981. These benefits are intended to replace certain Social Security benefits withdrawn by Pub. L. 97–35, (The Omnibus Budget Reconcilation Act of 1981). Pursuant to Pub. L. 97–377, section 156, by Executive Order 12436 of July 29, 1983, the President designated the Veterans Administration as the Agency responsible for administering these benefits. The Veteran's Administration is amending section 19.2(b), the regulation listing examples of the subject matter of appeals to the Board of Veterans Appeals, to reflect the Board's expanded jurisdiction to cover questions involving these benefits.

The proposed amendments to §§ 19.157 and 19.176 are intended to formalize, respectively, the traditional practices with respect to informal hearings by the authorized representatives of appellants and the procurement of opinions of the General Counsel on legal questions in individual appeals.

The proposed amendment to § 19.179 is designated to afford appellants notice when opinions of the General Counsel are obtained under amended § 19.176, as is now done in the case of advisory medical opinions.

The proposed amendments to §§ 19.180, 19.185, 19.186 and 19.187 and the new § 19.201(c) are designed to provide a formal procedure for reconsidering decisions based upon the allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant. This procedure is designed to ensure an equitable uniformity in the limited number of cases involved, which are now handled individually under § 19.101(b).

The new § 19.201 is designed to formalize traditional practice in vacating decisions.

The Administrator has certified that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation therefore is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the impact of these regulations is only upon individual benefit claimants. It will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions).

The Agency has also determined that these regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation, inasmuch as they will only effect individual claimants seeking Veterans Administration benefits, they will not result in any significant effect on the economy, they will not have any significant impact upon private or governmental costs, and they will not effect business enterprises or otherwise have any adverse effect on the economy.

There is no Catalog of Federal Domestic Assistance number involved.

List of subjects in 38 CFR Part 19

Adminstrative practice and procedure, Claims Veterans.

By direction of the Administrator.

Approved: April 9, 1985.

Everett Alvarez, Jr.,
Deputy Administrator.

PART 19—BOARD OF VETERANS APPEALS

38 CFR Part 19 Board of Veterans Appeals is amended as follows:

1. Section 19.2 is amended by adding an additional subject to the end of the listing contained in that section, to read as follows:

§ 19.2 Subject matter of appeals.

* * * * *

Benefits for surviving spouses and children of deceased veterans under Pub. L. 97–377, section 156. (38 CFR 3.812(d))

2. Section 19.157 is amended by adding a new paragraph (d) to read as follows:

§ 19.157 Rule 57; General.

* * * * *

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative in Washington, DC, may present oral arguments to the Board without personally appearing before the Board of Veterans Appeals hearing panel. These arguments will be recorded and transcribed by Board personnel for subsequent review by the panel members. This procedure will not be construed to satisfy an appellant's request to appear in person. (38 U.S.C. 4002)

3. Section 19.176 is amended by revising the title and by adding a new paragraph (c) to read as follows:

§ 19.176 Rule 76; Medical opinions and opinions of the General Counsel.

* * * * *

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Veterans Administration on legal questions involved in the consideration of an appeal. (38 U.S.C. 4004(c))

§ 19.179 [Amended]

4. Section 19.179 is amended by removing the word "medical" from the title.

5. In § 19.180, paragraph (b) is revised to read as follows:

§ 19.180 Rule 80; The decision.

* * * * *

(b) *Disposition of issues.* (1) The decision of the Board will dispose of each issue on appeal by allowance, denial, remand or dismissal, in whole or in part; or (38 U.S.C. 4004(a))

(2) If on reconsideration it is determined that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision of the Board will be vacated and the appeal voided with respect to those benefits.

* * * * *

6. In § 19.185, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 19.186 Rule 186; When reconsideration is accorded.

* * * * *

(b) Upon discovery of new and material evidence in the form of records or reports of the military, naval or air service department concerned or officially correctly service department record; or (38 U.S.C. 4003, 4004(b))

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

7. In § 19.186, paragraph (b)(1) is revised to read as follows:

§ 19.186 Rule 86; Filing and disposition of a motion for reconsideration.

* * * * * * *

(b) *Disposition.* * * *

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will be signed by the Chairman and will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

* * * * * * *

8. Section 19.187 and the cross-reference following it are revised to read as follows:

§ 19.187 Rule 87; Evidence considered.

(a) *Reconsideration based upon an allegation of obvious error of fact or law or new and material service department records or reports.* Reconsideration of an appellate decision for error shall be limited to review of the evidence of record at the time the decision was entered, but the Board may secure additional medical or legal opinion. Additional evidence, apart from service department records, submitted following the decision being reconsidered is subject to the provisions of Rule 94 (§ 19.194) concerning new and material evidence. (38 U.S.C. 4003, 4009)

(b) *Reconsideration based upon an allegation of false or fraudulent evidence.* Reconsideration of an appellate decision based upon the allegation that an allowance of benefits by the board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant will be limited to a review of the evidence of record at the time the decision was entered and only such additional evidence as it is required, in the Board's judgement, to establish the veracity of the evidence in question. The reconsideration panel will not readjudicate the underlying issue(s).

Cross Reference: When reconsideration is accorded. See Rule 85, § 19.185. Disposition of issues. See Rule 88, § 19.188. Vacating a decision. See Rule 101, § 19.201.

9. The center heading "MISCELLANEOUS" is added directly preceding § 19.200.

10. New § 19.201 is added to read as follows:

§ 19.201 Rule 101; Vacating a decision.

An appellate decision may be vacated by the Board of Veterans Appeals at any time upon request of the appellant or his/her representative or on the Board's own motion:

(a) *Due process.* Where there has been a prejudicial failure to afford the veteran the due process of law. Where there has been a failure to honor a request for a hearing, and a hearing is subsequently scheduled but the appellant fails to appear, the decision will not be vacated.

(b) *False or fraudulent evidence.* Where it is determined that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issued or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

Cross Reference: The decision. See Rule 80; § 19.180. When reconsideration is accorded. See Rule 85; § 19.185.

(38 U.S.C. 210(c)(1); Pub. L. 97-377, Sec. 156)

[FR Doc. 85-9212 Filed 4-16-85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A-4-FRL-2819-6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; South Carolina: Revision in 111(d) Plan for TRS From Existing Kraft Pulp Mills; Negative Declaration for Primary Aluminum Plants

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a source-specific revision in South Carolina's 111(d) plan for total reduced sulfur (TRS) emissions from existing kraft pulp mills. On December 13, 1984, the State submitted a revised emission standard and an extended compliance schedule for two emission points at Stone Container Corporation's facility in Florence which are presently exceeding TRS emission standards. This submittal included economic and technical information justifying the new limit and compliance schedule. The approval of this 111(d) plan revision is consistent with EPA policy on welfare-related pollutants.

In addition, on May 3, 1983, South Carolina certified that there were no primary aluminum plants in the state which were subject to the requirements of section 111(d) of the Clean Air Act. EPA proposes to approve South Carolina's negative declaration for existing primary aluminum plants.

DATES: To be considered, comments must be received on or before May 17, 1985.

ADDRESSES: Written comments should be addressed to Janet Hayward of EPA Region IV's Air Management Branch (see Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV Office, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Management Branch, at the above address and following phone: 404/881-3866, or FTS 257-3866.

SUPPLEMENTARY INFORMATION: On February 12, 1980, the South Carolina Board adopted regulations for existing kraft pulp mills. At that time, Stone Container Corporation began to develop a strategy to bring their Florence mill into compliance with the new regulation emission standards. Since 1980, Stone Container has worked with the State and EPA towards achieving TRS compliance in a cost-effective manner. On February 8, 1984, the South Carolina Department of Health and Environmental Control (SCDHEC) submitted a 111(d) plan revision for Stone Container which included alternate emission limits for the digesters and an extended compliance schedule for the evaporator hot-well vents. Complete documentation justifying the State's proposed plan revision was lacking in the February 8, 1984, submittal. Therefore, EPA requested that more comprehensive cost information be submitted. On December 13, 1984, South Carolina sent EPA a complete submittal containing adequate justification for the revised digester

emission limit and extended evaporator compliance schedule.

Under South Carolina Regulation 62.5, Standard No. 4, Section VIII, Part B, the digester system at Stone Container's mill is subject to a TRS emission standard of 5 ppm (.02 lb TRS per ton of air-dried pulp). The State intends to relax this limit to 1847 ppm, or .29 lb TRS per ton of air-dried pulp (TADP). This is the current actual emission level resulting from the digester blow gases. This equates to a change in allowable TRS emissions of approximately 66 tons per year, or about 16 pounds per hour.

The evaporator hot-well vents at the Stone Container facility are presently emitting .39 lb TRS/TADP, which is above their regulation emission limit of .02 lb TRS/TADP (5 ppm). The company plans to construct a TRS incineration system which would bring the evaporator system into compliance with regulation standards. Final compliance will be required forty-nine weeks after EPA approval of this plan revision.

South Carolina's Regulation 62.5, Standard No. 4, Section VIII, Part C, provides for case-by-case exceptions to the regulatory TRS emission limits in Section VIII, Part B," * * * if the owner or operator of a source of total reduced sulfur compounds * * * can demonstrate that compliance with applicable portions of Part B would not be economically feasible." The regulation requires that all pertinent cost information be submitted with the source's request for alternate emission limits and that the request be submitted to EPA for approval as a revision to the South Carolina 111(d) plan for TRS. Under Regulation 62.5, Standard No. 4, Section VIII, Part G, sources may request alternate compliance schedules if adherence to the existing schedule is not technically feasible.

Except for the evaporators and digesters, all significant emission points at Stone Container's Florence mill are being controlled to guideline levels. Stone Container Corporation has documented that the digesters are already emitting low levels of TRS (20 percent of the typical uncontrolled levels) and that the estimated costs to control the digesters at their Florence mill would be $2.48 per ton of air dried pulp. The Company has agreed to control TRS emissions from the evaporator hot-well vents by incinerating the noncondensable gases in an existing power boiler. They have also requested a new compliance schedule which will bring the evaporators, and thus the entire mill, into compliance with regulatory TRS standards forty-nine weeks after the plan revision is approved by EPA.

Stone Containers has modeled the total TRS emissions from their mill to determine the air quality impact of this plan revision. Modeled concentrations at selected population points three to ten miles from the mill were below detectible threshold levels. The company has also substantiated their request for an alternate digester emission limit by such factors as rural mill location and lack of public complaints. This information was submitted to EPA on December 13, 1984 with the State's final request for EPA approval of the TRS plan revision.

EPA has reviewed this documentation and has found that the State's request is adequately justified by economic, technical, and other related criteria. EPA therefore proposes to approve the emission limit relaxation and extended compliance schedule as submitted by South Carolina for Stone Container Corporation.

Further details pertaining to this source-specific plan revision are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

In addition, South Carolina is required to submit a 111(d) plan for the control of fluoride emissions from existing primary aluminum plants. If there is no facility of this type in the State, the State is to submit a letter to that effect (negative declaration). The absence of such plants in the State was certified by a letter from John E. Jenkins, P.E., Deputy Commissioner for Environmental Quality Control, to Mr. Charles R. Jeter, Regional Administrator, on May 3, 1983. Today, EPA also proposed to approve South Carolina's negative declaration for primary aluminum plants.

All interested persons are invited to submit written comments on the proposed actions. After reviewing all comments submitted, the Administrator of USEPA will publish the Agency's final action in the **Federal Register**.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that 111(d) approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements.

(Sec. 111(d) of the Clean Air Act (42 U.S.C. 7411(d)))

Dated: March 22, 1985.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 85-8202 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[Docket No. AM107-VA-6; A-3-FRL-2819-7]

Proposed Approval of Redesignation of Attainment Status for the Commonwealth of Virginia With Respect to Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces EPA's proposed approval of air quality designation change for Fairfax County in Virginia, from "Does not meet primary standards" to "Cannot be classified or better than national standards", for the primary and secondary National Ambient Air Quality Standards (NAAQS) for carbon monoxide (CO). This proposed revision is based on eight consecutive calendar quarters of air quality data submitted by Virginia demonstrating attainment. EPA proposes approval of this redesignation request as it meets the necessary requirements of section 107 of the Clean Air Act and current EPA policy.

DATE: Comments must be submitted on or before May 17, 1985.

ADDRESSES: Copies of the proposed 107 redesignation and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Program Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patrica Guaghan (3AM13)

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219, Attn: James Watson

All comments on the proposed revision submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, DELMARVA/DC Section at the above EPA Region III address. Please reference the EPA Docket Number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 597-1325 or Cynthia H. Stahl, (215) 597-8337 at the Region III address above.

SUPPLEMENTARY INFORMATION: On November 20, 1984, the Commonwealth of Virginia State Air Pollution Control Board submitted a request to redesignate three municipalities in the Northern Virginia portion of the National Capital Interstate AQCR as attainment areas for carbon monoxide (CO) under section 107 of the Clean Air Act. These municipalities are Alexandria City, Arlington County, and Fairfax County. However, recent data shows violations of the 8-hour CO standard in Alexandria City and Arlington County. Therefore, on March 18, 1985 Virginia requested that EPA only consider Fairfax County for redesignation.

This proposed redesignation would change the carbon monoxide classification from "Does not meet primary standards" to "Cannot be classified or better than national standards" under 40 CFR 81.347 for Fairfax County. All other air quality designations for carbon monoxide remain unchaged.

There are four monitoring stations in Fairfax County; two, inside the Beltway and two, outside the Beltway. The air quality data from January 1980 through December 1984 submitted by the Commonwealth show that none of the monitoring stations in this county show violations of National Ambient Air Quality Standards (NAAQS). EPA has examined the air quality data collected from the monitoring sites on which this redesignation request is based and has determined that the data were collected in accordance with all EPA requirements. Accordingly, EPA is proposing approval of the Commonwealth's request for redesignation of Fairfax County with respect to CO.

In addition, EPA has approved the CO control stretegy applicable to Fairfax County as part of the federally-enforceable Virginia SIP. See 49 FR 3083 (1984). This redesignation does not change any requirements of Virginia's approved SIP.

Conclusion

The Regional Administrator's decision to propose approval of the section 107 redesignation for Fairfax County was based on a determination that it meets the requirements of section 107 of the Clean Air Act and current EPA policy pertaining to redesignation requests.

The public is invited to submit comments, to the address stated above, on whether or not the proposed section 107 redesignation of Fairfax County in Northern Virginia should be allowed.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that the redesignation will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas, Intergovernmental relations.

Authority: 42 U.S.C. 7407.

Dated: March 22, 1985.

Stanley L. Laskowski,

Regional Administrator.

[FR Doc. 85-9201 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[OPP-300127; FRL-2818-7]

Linoleic Diethanolamide; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that linoleic diethanolamide be exepted from the requirement of a tolerance when used as an inert ingredient as a surfactant in pesticide formulations applied to growing crops only. This proposed regulation was requested by Finetex, Inc.

DATE: Comments, identified by the document control number [OPP-300127], must be received on or before May 17, 1985.

ADDRESS: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: At the request of Finetex, Inc., the Administrator proposes to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for linoleic diethanolamide when used as a surfactant in pesticide formulations.

Inert ingredients are all ingredients which are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting and spreading agents; and propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient. Linoleic diethanolamide.

Name and address of requestor. Finetex, Inc., Elmwood Park, NJ 07470.

Bases for approval. 1. The related compound *N,N*-bis-(2-hydroxyethyl) dedecanamide is cleared under 21 CFR 178.3130 for use as an antistatic and/or antifogging agent in food-packaging materials.

2. The linoleic diethanolamide consists of linoleic acid and

diethanolamine, which are the most likely biodegradable products.

3. Linoleic acid is generally regarded as safe under 21 CFR 182.5065 as a dietary supplement and under 21 CFR 182.8065 as a nutrient.

4. Diethanolamine is cleared under 21 CFR 176.170 for use as components of paper and paperboard in contact with aqueous and fatty foods.

5. Diethanolamine is cleared under 40 CFR 180.1001(d) for use as a stabilizer, inhibitor for formulations used before crop emerges from soil.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number [OPP-300127]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 5, 1985.

Robert V. Brown,

Deputy Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(d) be amended by adding and alpahabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
• • • • •		
Linoleic (CAS Reg. No. 60943-02-0).	———	Surfactant.
• • • • •		

* * * * *

[FR Doc. 85-9063 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 00600/P364; FRL-2818-9]

Sodium Metasilicate and Sodium Propionate; Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes to add sodium metasilicate and expand the exemption for sodium propionate for the additional use as a plant desiccant in the pesticide chemicals listed as generally recognized as safe (GRAS) when used as plant desiccants for the purposes of section 408(a) of the Federal Food, Drug, and Cosmetic Act. These proposed amendments were requested by the PQ Corp.

DATE: Comments, identified by the document control number [00600/P364], must be received on or before May 17, 1985.

ADDRESS: Written comments by mail to:

Information Service Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 716, CM#2, 1921 Jefferson Davis Highway Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: N. Bhushan Mandava, Registration Support and Emergency Response Branch, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 724A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7700).

SUPPLEMENTARY INFORMATION: This proposed rule is sought in conjunction with the expected use of a mixture of sodium metasilicate, sodium propionate, and sodium carbonate for the purpose of accelerating the field drying (desiccation) of freshly cut hay. Sodium metasilicate and sodium propionate are currently exempt from the requirement of a tolerance under 40 CFR 180.1001(c) when used in accordance with good agricultural practices as inert (or occasionally active) ingredients for use as surfactants, emulsifiers, wetting agents, dispersing agents, buffers (sodium metasilicate), and preservatives for formulations (sodium propionate) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. Sodium propionate is cleared from the requirement of a tolerance under 40 CFR 180.1015 when used as a fungicide in the production of garlic and for postharvest application as a preservative on salad greens and vegetables intended for consumption as salads. Sodium propionate is currently cleared under 40 CFR 180.2(a) as being generally recognized as safe when used as a postharvest fungicide.

Based on the long history of safe use of these chemicals in foods and on their GRAS status under 21 CFR 184.1769e (proposed 48 FR 18831; April 26, 1983 (sodium metasilicate)) and 21 CFR 182.3784 (sodium propionate), the

Agency concludes that neither material should be considered as poisonous or deleterious, and that they are recognized as safe pursuant to 40 CFR 180.2.

Based on the information considered by the Agency, the Agency concludes that the proposed regulation would protect the public health. It is proposed, therefore, that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 00000/P364]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 5, 1985.

Robert V. Brown,

Deputy Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.2(a) be revised by adding alphabetically an entry for sodium metasilicate and expanding the use for sodium propionate to include its use as a plant desiccant. As revised, § 180.2(a) reads as follows:

§180.2 Pesticide chemicals considered safe.

(a) As a general rule, pesticide chemicals other than benzaldehyde (when used as a bee repellent in the harvesting of honey), ferrous sulfate, lime, lime-sulfur, potassium carbonate, potassium polysulfide, potassium sorbate, sodium carbonate, sodium chloride, sodium hypochlorite, sodium polysulfide, sodium sesquicarbonate, sorbic acid, sulfur, and, when used as plant desiccants, sodium metasilicate (not to exceed 4 percent by weight in aqueous solution) and sodium propionate, and when used as postharvest fungicides, citric acid, fumaric acid, oil of lemon, oil of orange, sodium benzote, and sodium propionate are not for the purposes of section 408(a) of the Act generally recognized as safe.

* * * * *

[FR Doc. 85-9081 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-6-FRL-2819-3]

Approval and Promulgation of State Implementation Plan; Reopening of Comment Period: Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice of reopening of comment period.

SUMMARY: On January 4, 1985, at 50 FR 493, the Environmental Protection Agency (EPA) proposed to promulgate a federal compliance date for the Texas Lead State Implementation Plan (SIP) for El Paso County for compliance with certain lead pollution control measures at the ASARCO smelter in El Paso, Texas. On February 1, 1985, and February 4, 1985, ASARCO Incorporated submitted comments on EPA's proposed rulemaking. In addition, ASARCO requested that a public hearing be held and the comment period be extended for an additional 30 days. In a letter dated March 7, 1985, ASARCO withdrew its request for a public hearing and reiterated the request to reopen the comment period. This notice announces that the comment period is reopened for 30 days.

DATE: Comments must be received by May 17, 1985.

ADDRESSES: The rulemaking docket (No. 6A–84–01) may be inspected at the following locations between 8:00 a.m. and 4:40 p.m. on weekdays, and a reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Central Docket Section, West Tower, Lobby, Gallery No. 1, 401 M Street, S.W., Washington, D.C. 20460

U.S. Environmental Protection Agency, Region 6, Library, 1201 Elm Street, 28th Floor, Interfirst Two Building, Dallas, Texas 75270

Copies of EPA's technical support document may also be inspected in El Paso, Texas at the following location: El Paso City Health Department, 222 South Campbell, El Paso, Texas 79901.

FOR FURTHER INFORMATION CONTACT: John R. Hepola, Chief, State Implementation Plan Section, Air Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767–1518, (FTS) 729–1518.

SUPPLEMENTARY INFORMATION: Under the Clean Air Act, on January 4, 1985, at 50 FR 493, EPA proposed to promulgate a federal compliance date for the Texas Lead State Implementation Plan (SIP) for El Paso County for compliance with certain lead air pollution control measures at the ASARCO smelter in El Paso, Texas. That action was in response to a court ordered schedule resulting from a Settlement Agreement reached on July 26, 1983, between EPA and the Natural Resources Defense Council, Inc. (NRDC et al v. Ruckelshaus et al, Civil Action No. 82–2137) in the U.S. District Court for the District of Columbia. The State of Texas submitted a final lead SIP for El Paso on June 29, 1984, EPA approved it on August 13, 1984, (49 FR 32184), except for a disapproval of one compliance date which the State had included in the SIP. For SIPs or portions of SIPs which EPA has disapproved, EPA is required by the Settlement Agreement to propose a federal SIP by October 1, 1984. The January 4, 1985, notice proposed a federal compliance date for the installation of certain control measures required by the Texas lead SIP for El Paso, requested public comments on EPA's proposed action and offered the opportunity to request a public hearing.

On February 1, 1985, and February 4, 1985, ASARCO Incorporated submitted comments regarding EPA's proposed action of January 4, 1985. In addition, ASARCO requested that a public

hearing be held and the comment periods be exended for an additional 30 days. In a letter dated March 7, 1985, ASARCO withdrew its request for a public hearing and reiterated the request to reopen the comment period.

This notice announcds that EPA will reopen the public comment period for an additional 30 days.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead.

(Sec. 110, Clean Air Act)

Dated: April 4, 1985.

Dick Whittington,

Regional Administrator.

[FR Doc. 85-8980 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-4625]

Addendum to Proposed Flood Elevation Determinations; Maryland

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Fruitland, Wicomico County, Maryland.

Due to recent engineering review, this proposed rule would augment the proposed determinations of base (100-year) flood elevations published in the Federal Register at 49 FR 40915 on October 18, 1984, and hence would supersede that previously published proposed rules.

DATES: The period for comment will be thirty (30) days following the second publication of this notice is a newspaper of local circulation in each community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed flood elevations are available for review at the Fruitland City Hall, Fruitland, Maryland.

Send comments to: Honorable Rick Pollitt, Fruitland City Manager, P.O. Box F, Fruitland, Maryland 21826.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Fruitland, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

List of Subjects in 44 CFR Part 67

Food insurance, Flood plains.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tuxents Branch	At downstream corporate limits	*8
	At upstream side of Covered Bridge Road	*16
	At upstream side of South Camaden Avenue	*21
Slab Bridge Creek	At downstream corporate limits	*22
	At upstream corporate limits	*22
Sharps Creek (Tidal Flooding from Wicomico River)	At downstream corporate limits	*6
	Approximately 1,900 feet upstream of corporate limits	*6

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: April 4, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-9182 Filed 4-16-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 85-88; FCC 85-146]

Detariffing of Billing and Collection Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The notice proposes to detariff billing and collection services provided by local exchange carriers (LEC) to interexchange carriers (IC) and also solicits comment on the jurisdictional and technical aspects of local cut-offs, or denial of local exchange service for nonpayment of interstate toll charges. The proposed action is necessary because Title II regulation does not seem appropriate for billing and collection insofar as it is essentially a financial and administrative service. Furthermore, to the extent billing and collection services are subject to competition, market forces should be able to supplant tariff regulation. The intended effects of the proposed action are to give LECs more flexibility in responding to the billing needs of ICs while also fostering the growth of competition in the billing and collection market and to eliminate unnecessary regulations.

DATES: Comments regarding the notice are due May 10, 1985; replies are due May 24, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Barry Lambergman, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

In the matter of detariffing of billing and collection services; CC Docket No. 85-88, FCC 85-146.

Adopted: March 28, 1985.
Released April 9, 1985.

By the Commission:

I. Introduction and Background

1. In this proceeding we propose to detariff billing and collection services.[1]

[1] Billing and collection, in this context, refers to a service provided by a local exchange carrier to an interexchange carrier (IC), whereby the former bills and collects from end users subscribing to an IC's service. More specifically, this service includes recording IC message detail, aggregating the details to create individual messages (a completed call originated by an IC's end user), applying the IC's rates to such messages, processing these rated messages into customer invoice form, mailing bills,

Continued

From the outset of the Commissions's brief regulatory experience with billing and collection, we have expressed doubt as to the necessity of subjecting such services to regulation under Title II of the Communications Act, 47 U.S.C. 201 *et seq.*[2] These misgivings were confirmed when the Commission encountered difficulties in reviewing the billing and collection section of the access tariffs.[3] The difficulties stemmed from the Commission's lack of experience in regulating billing and collection [4] and the fact that billing and collection does not seen to be a communications service *per se*. It appeared to us that to the extent billing and collection is, or at least has the potential to become, a competitive service, marketplace regulation should be able to supplant tariff regulation. Hence, we decided to institute a proceeding to examnine the possibility of detariffing billing and collection services.[5]

2. Billing and collection is presently offered under tariff to accommodate a Modification of Final Judgment (MFJ) [6] requirement that if a Bell Operating Company (BOC) offers such service to even one IC, the charge must be included in the BOC's access tariff. Because only common carrier services can be tariffed, however, we required that an exchange carrier offering a billing and collection service to one IC must offer the same service to all ICs.[7] Although we initially declined to impose a rate of return constraint on the billing and collection rate element,[8] the level of the proposed charges gave us cause to reconsider that decision.[9] Anticipating that the American Telephone and Telegraph Company (AT&T) would pass these excessive billing charges along to long distance customers, we decided to limit exchange carriers to a return of no more than 12.75 percent on billing and collection service. [10]

3. One issue raised by the billing and collection tariffs which has been of particular concern to us, and which to a large extent is at the fulcrum of this proceeding, is the so-called local cut-off problem: that is, denial of local exchange service for nonpayment of IC service charges. In the *February 17 Order*,[11] we questioned the reasonableness of this practice because in the post-divestiture era local and long distance services are generally no longer provided by related companies. The exchange carrier's relationship to the end user with respect to the service provided by the IC is merely that of billing agent or holder of IC receivables. We noted that a serious question of fairness to end users is raised where a subscriber's local telephone service is placed in jeopardy by an exchange carrier acting in such a capacity. At the same time, however, we recognized that there may be technical limitations inherent in certain types of switching equipment which could effectively preclude compliance with a prohibition on local cut-offs. Hence, we required carriers to submit technical justification for this provision by showing what operational restraints would prevent separate termination of local and interexchange service.

4. The justification proferred by the carriers was found to be materially incomplete. Thus, we required that all local cut-off provisions be deleted from the tariffs.[12] Carriers subsequently applied for waivers [13] of this prohibition, further alleging that the technical limitations of most switching systems make separate screening and blocking of interstate toll calls impossible in some end offices and difficult in others. They also maintained that these technical problems are compounded by administrative burdens, given the inability of current mechanized billing systems to process partial payments for multiple balances due on a single customer account. Moreover, AT&T contended that unless carriers were permitted to continue local cut-offs, AT&T uncollectibles would double, causing a serious decline in its rate of return. Given this information we decided to modify our treatment of this ussue on a temporary basis by allowing local cut-offs where permitted by state authority.[14]

II. Discussion

5. We approach this subject from the standpoint of our role as a regulator of communications services. Inasmuch as billing and collection is essentially a financial and administrative service, it may not be an appropriate subject for Title II regulation. On the other hand, to the extent that the billing and collection function has an effect on services which are within our purview, we do have a regulatory interest and must deal with it accordingly. For example, the fact that ICs pass billing costs along to end users by bundling them into long distance rates led us to impose a rate of return constraint on billing and collection services. Indeed, the high level of the charges proposed prior to our setting a return is perhaps evidence that carriers do not view billing and collection as a competitive service at the present time. Nevertheless, any need for such regulation should be short-term. In the immediate aftermath of divestiture, AT&T has little choice but to continue its billing arrangements with the BOCs. There are already indications, however, that AT&T is developing its own billing system.[15] ICs other than AT&T have

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collecting payments, accepting customer deposits, handling customer inquiries and investigating billing evasion activities.

[2] *See* MTS/WATS Market Structure (Phase I), CC Docket No. 78–72, 97 FCC 2d 682, 741 (1984) (*First Reconsideration Order*).

[3] *See* Investigation of Access and Divestitute Related Tariffs, CC Docket No. 83–1145, 97 FCC 2d 1082, 1283 (1984) (February 17 Order).

[4] Prior to the divestiture of the Bell System, billing and collection was traditionally performed either by the carrier itself or by contract. Consequently, there was virtually no historical data by which to judge the reasonableness of the proposed rates and practices.

[5] *February 17 Order*, 97 FCC 2d at 1285.

[6] United States v. AT&T, 552 F. Supp. 131, 234 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[7] *See* Section 69.114(a) of the Commission's Rules, 47 CFR 69.114(a) *See also* MTS/WATS Market Structure, CC Docket No. 78–72, Phase I, 93 FCC 2d 241, 313 (1983) (*Access Charge Order*).

[8] *Access Charge Order*, 393 FCC 2d at 314. Section 69.114(b) of the Commission's Rules, 47 CFR 69.114(b), did require, however, that charges for these services be both reasonable and nondiscriminatory. *See also First Reconsideration Order*, 97 FCC 2d at 742.

[9] Representatives of the exchange carriers had informed us that, at the filed rates, industry earnings for billing and collection would be about $479 million above a 12.75 percent return. Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, and MTS/WATS Market Structure, CC Docket No. 78–72, Phase I, 49 FR 23924 (June 8, 1984), at para. 82.

[10] *Id.* at para. 83.

[11] 97 FCC 2d at 1289.

[12] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, FCC 84–188, released Apr. 27, 1984, at 8–2 (*April 27 Order*).

[13] We had invited carriers to apply for temporary waivers provided that a complete technical showing could be made in support thereof.

[14] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I, Mimeo No. 4246, released May 16, 1984 (*Waiver Order*). Since state rules would apply while this matter was under review, we decided there was no need for any reference to local cut-offs in tariffs on file with this Commission.

[15] For example, AT&T recently dropped billing inquiry service, a sub-offering of billing and collection service, provided by the New York Telephone Company. In fact, the Joint Board recently noted that AT&T had stated that it planned to initiate its own billing inquiry service in 22 states by January 1, 1985 and to complete the transition to use of its own billing inquiry centers for the areas served by the BOCs by August 1985. AT&T has stated that it is taking this action primarily for customer relations reasons. *See* Recommended Interim Order and Request for Comments, CC Docket Nos. 78–72 and 80–286, Mimeo No. 3400, released Mar. 25, 1985, at para. 4 (*Joint Board Order*). In addition, according to the Mountain States Telephone and Telegraph Company, AT&T has indicated that it is considering providing its own billing and collection services for its largest

Continued

never had to rely on local telephone companies to do their billing. They have either set up their own systems or contracted with commercial billing firms such as major credit card companies to do it for them.

6. Hence, there appears to be no reason to believe that exchange carriers would be able to extract monopoly profits from billing and collection services if those services are detariffed. As we recognized in the *First Reconsideration Order*, billing and collection performed for third parties is not inherently part of a local exchange carrier's bottleneck monopoly.[16] Because billing and collection functions can be performed internally or be obtained from competing vendors, we expect that market forces can readily respond to excessive rates or unreasonable practices. We therefore seek comment on the extent to which competition in billing for interstate telephone services presently exists or can be expected to develop.

7. The ability of exchange carriers to impose local cut-offs for nonpayment of IC services could conceivably hinder the development of such competition by deterring market entry by other billing agencies. While we are not prepared to say that this ability would enable carriers to monopolize, or even acquire a larger share of, the broader commercial billing market, we do believe that use of their leverage over a monopoly communications service to coerce payment represents an abuse of their power to control access to such monopoly service. Inasmuch as billing and collection is not inherently a communications service, the systems set up by the carriers for the purpose of billing telephone calls can be used to bill other products and services as well.[17] Thus, for example, a consumer's local telephone service could be discontinued for nonpayment of a department store bill. In our view it is unfair for a person's local telephone service to be terminated for nonpayment of an unrelated service when in fact he is paying his local service bill.

8. A number of the pleadings concerning reconsideration of the *April 27 Order* and the *Waiver Order* took the position that the Commission should defer to state regulatory authorities with respect to local cut-offs because the issues involved are better suited to state resolution.[18] AT&T, on the other hand, argued that there should be a federal solution to this problem in order to ensure consistency.[19] As matters stand, we have deferred to the states on a temporary basis. We would like to receive additional comment as to whether this approach should be adopted on a permanent basis or whether there is a federal interest in imposing a nationwide probibition of local cut-offs for nonpayment of charges unrelated to the local carrier's service. Such a prohibition would apply independent of any detariffing action the Commission may decide to take. We also solicit further information from carriers as to their technical ability to perform interstate-only cut-offs. More specifically, information is sought as to the scheduled availability of different generations of software which would make it possible to discontinue toll service without also discontinuing local service, and taking that one step further, to discontinue interstate toll separately from intrastate toll service.[20] Similarly, we will need information as to software which allows carriers to block access to an individual IC without also restricting access to other ICs with points of presence in the local access and transport area involved.

9. Although we tentatively conclude that Title II regulation may not be necessary for billing and collection,[21] at least not to the extent that it is considered a financial service, the billing and collection rate element does include one function which appears to be directly ancillary to a communications service—recording.[22] As noted in the *February 17 Order*, "the facilities involved in recording are clearly germane to the telephone company. To the extent that recording is performed in the normal course of network operations, there would be a wasteful duplication of facilities were it to be done by some other entity."[23] Therefore, because the recording function does not seem to be potentially competitive and does exhibit some of the characteristics of a communications service, we propose to draw the line here and keep the recording function under tariff.

10. As to the mechanics of detariffing, carriers would, of course, be required to remove the costs associated with billing and collection from their regulated accounts and revenue requirements.[24] In this regard, we seek comment on whether all carriers should simply be required to maintain separate accounting for their billing and collection activities or whether the BOCs (as dominant carriers) should be required to offer these detariffed services through a separate subsidiary. We also solicit comment on the types of separate accounting requirements which should be established.

11. Furthermore, the removal of billing and collection costs from carriers' rate bases and operating expense accounts may raise questions with respect to jurisdictional separations. The Federal-State Joint Board recently solicited comments concerning permanent changes in the procedures for allocating Account 645, Local Commercial Operations (which are reflected in the charges for billing inquiry service), as well as "the need for changes in the procedures for the allocation and recovery of Account 662, Accounting Department costs, in light of the post-divestiture environment in which AT&T may discontinue its use of the billing

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customers and certain smaller customers. Mountain States Telephone and Telegraph Company Special Permission Application No. 32, filed Feb. 14, 1985. *Cf.* Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), CC Docket No. 81-893, Memorandum Opinion and Order on Reconsideration, FCC 85-35 (released Jan. 28, 1985) at para. 61 & n.82 (AT&T phasing out reliance on BOCs for embedded customer premises equipment billing services).

[16] *First Reconsideration Order*, 97 FCC 2d at 742.

[17] To the extent that carriers do perform billing and collection for noncommunications services they may be subject to other state or federal regulations.

[18] *See* Petition for Reconsideration of the New York State Department of Public Service, CC Docket No. 83-1145, June 8, 1984; Reply Comments of the Telephone Companies, CC Docket No. 83-1145, Aug. 1, 1984; Comments of Bell Atlantic, CC Docket No. 83-1145, July 17, 1984.

[19] *See* Petition for Partial Reconsideration of AT&T, CC Docket No. 83-1145, May 7, 1984.

[20] To the extent that these might not be severable, we might find it necessary to preempt state authority should we find that there is a federal interest in addressing this issue. There is the possibility, however, of referring such a matter to a Federal-State Joint Board under section 410(c) of the Communications Act, 47 U.S.C. 410(c), which could then propose uniform rules with respect to service disconnections.

[21] To the extent that it may be argued that detariffing would be inconsistent with the MFJ, we are of the view that the court did not intend to impose a regulatory obligation upon this Commission which conflicts with our statutory mandate. We suspect that the court simply saw tariffs as a mechanism for assuring that ICs have nondiscriminatory access to billing and collection services and that the rates BOCs charged AT&T for these services fully covered costs.

[22] Recording is the entering on magnetic tape or other acceptable medium of the details of IC messages originating through Switched Access Service. The assembly and editing function then identifies the message details for a particular IC, aggregates the details to create individual messages and verifies that the data required for rating is present.

[23] *February 17 Order*, 97 FCC 2d at 1284-85.

[24] To the extent that carriers jointly bill their own services and IC services in a single mailing there will be joint and common costs such as postage and envelopes. We seek comment on how the allocation of such costs should be treated.

and collection services offered by the local exchange companies."[25]

Comments and replies in that proceeding are due April 22 and May 13, 1985, respectively. This should give interested parties in the present proceeding ample time to comment before the Joint Board on any separations changes that might be appropriate in light of the action we are proposing herein.[26]

12. We propose to make detariffing permissive initially, but mandatory at a later date so that all carriers will be required to withdraw their billing and collection tariffs by a date to be determined later in this proceeding.[27] Carriers will be free to withdraw their tariffs any time during this initial period. We propose, however, that carriers choosing to keep tariffs on file at the Commission during the permissive stage will be subject to the same notice and cost support requirements as are applicable to other tariffs and will be limited to a fixed rate of return.

13. Regardless of whether carriers withdraw their tariffs during the permissive or mandatory stage, there will still be the possibility of residual regulation through the complaint process under Section 208 of the Act, 47 U.S.C. 208. Such complaints, however, would have to be limited to billing problems that have a direct and immediate effect on a communications service. Our expectation is that most billing-related complaints, such as unlawfully high interest rates, will be handled in a different forum.[28]

14. This Notice of Proposed Rulemaking is being issued to determine whether the detariffing of billing and collection services provided by local exchange carriers to ICs is just, fair and reasonable, and in the public interest. We expect to develop in this notice and comment rulemaking all the relevant material and probative data and information needed to make the public interest determination.[29]

III. Ordering Clauses

15. Accordingly, It is ordered, that a rulemaking proceeding is instituted to determine whether the detariffing of billing and collection services is just, fair and reasonable, and in the public interest. This proceeding is instituted pursuant to sections 2(a), 4(i), 4(j), 201, 202, 203, 205, and 403 of the Communications Act, 47 U.S.C. 152(a), 154(i), 154(j), 201, 202, 203, 205, and 403.

16. It is further ordered, that interested persons may file written comments on or before May 10, 1985 and reply comments on or before May 24, 1985. In reaching its decision in this matter the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. All comments and reply comments shall be filed in accordance with §§ 1.411–1.419 of the Commission's Rules, 47 CFR 1.411–1.419. Materials filed in this proceeding will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M St., N.W., Washington, D.C.

17. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission offical receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding ot which it relates. *See generally* §1.1231 of the Commission's Rules, 47 CFR 1.1231.

18. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354) it is certified, that sections 603 and 604 of the Act do not apply to this proceeding because this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603, 604 605(b). It is our expectation that marketplace alternatives will afford interexchange carriers adequate protection against any unreasonably high rates which may be set by local exchange carriers for billing and collection services. Further, we propose to dispose of the issue of local service disconnections for nonpayment of interstate toll charges in such a way that the interests of end users will be accommodated in the detariffing process.

19. It is further ordered, that the Secretary shall cause this Notice of Proposed Rulemaking to be published in the Federal Register.

20. It is further ordered, pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i), that the Secretary shall serve a copy of this Notice on each state commission.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–9247 Filed 4–16–85; 8:45 am]

BILLING CODE 6712–01–M

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[25] *Joint Board Order* at para. 25.

[26] In their filings before the Joint Board, interested parties need not limit their comments solely to the allocation and recovery of costs in Account 662. Any other separations issues raised by our proposals in this proceeding should also be addressed in the Joint Board filings.

[27] We seek comment as to what would be a reasonable time frame for this purpose.

[28] Should a dispute be properly before us, we might require under Section 211(b) of the Act, 47 U.S.C. 211(b), that any relevant contracts be filed with the Commission.

[29] The Joint Board recently recommended that the Commission adopt interim separations procedures to prevent a sudden and substantial shift of costs to the intrastate jurisdiction as a result of AT&T's decision to implement its own billing inquiry service and discontinue use of these services offered by the BOCs. Deregulation of billing inquiry as well as other billing and collection services should not complicate potential cost allocation and recovery issues associated with AT&T's discontinuation of these services. Rather, deregulation will give the BOCs greater flexibility in structuring and pricing these service offerings, and enhance their ability to attract and retain customers.

As previously noted, the Joint Board has requested comments concerning the need for changes in the procedures for allocating the accounts related to the provision of billing inquiry and other billing and collection services. *See* para. 11, *supra*. Any separations questions raised by the possible deregulation of these services will be considered in the context of the Joint Board proceeding.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 85-104; RM-4872; FCC 85-168]

Telephony Operation in the 7075–7100 kHz Frequency Band in the Caribbean Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to allow FCC-licensed amateur operators in the Caribbean Insular Areas to use telephony in the 7075–7100 kHz segment of the 40 meter band. This action is proposed to provide these operators relief from broadcast interference in the 7100–7300 kHz segment of that band and to enable them to communicate with amateur operators in surrounding nations using the 7075–7100 kHz segment for telephony.

DATE: Comments are due by June 17, 1985 and replies by July 17, 1985.

ADDRESS: Federal Communications Commission, 1919 M. Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Proposed Rule making

In the matter of amendment of Part 97 of the Commission's Rules to Permit Telephony Operation in the 7075–7100 kHz Frequency Band in the Caribbean Insular Areas; PR Docket No. 85–104, RM–4872.

Adopted: April 5, 1985.
Released: April 9, 1985.

By the Commission.

Background

1. On November 6, 1984, David Novoa filed a Petition for Rule Making [1] [2] in which he requested that telephony privileges be authorized for General, Advanced and Amateur Extra operators when their stations are in the Caribbean Insular Areas (the Commonwealth of Puerto Rico, Navassa Island or the United States Virgin Islands).[3] In support of the petition he stated that FCC-licensed amateurs in the Caribbean are situated similarly to amateurs in Hawaii and Alaska who were recently granted telephony privileges identical to those he has requested.

2. In the *Second Report and Order* in PR Docket No. 82–83, 49 FR 30469 (July 31, 1984), we authorized telephony operation in the 7075–7100 kHz segment of the 40 meter band (7000–7300 kHz) in Hawaii and in areas near Region 3, including Alaska. We did so in order to permit FCC-licensed amateur operators near Region 3 to communicate with amateur operators in Region 3 already authorized for telephony operation in this band. We also sought to provide these amateur operators with relief from the interference they were experiencing from broadcast stations in Regions 1 and 3.

3. Petitioner argues that the Caribbean is now the only area outside of the continental United States under U.S. jurisdiction in which U.S. amateur operators may not operate radio telephony in the 7075–7100 kHz segment. Petitioner further argues that circumstances in the Caribbean are equivalent to those in the Pacific, namely, use of this segment for telephony by surrounding nations and broadcast interference which renders the 7100–7300 kHz segment of the 40 meter band almost useless at night. Mr. Novoa argues that U.S. amateur telephony operation in the 7075–7100 kHz band in the Caribbean would promote international goodwill and would not cause detrimental interference to telegraphy operators in the continental United States because of the limited number of potential users.

Comments

4. We received nine comments upon the Petition for Rule Making, all in support of the petition. The comments were from the DX Club of Puerto Rico, the Puerto Rico Amateur Radio Club, Inc., Ernesto J. Cardona, Hector F. Davila, Frank E. Dobek, Fernando Hernandez, Eduardo Negron, Isaac Novoa and Randall F. Sobol. All the comments concur that interference in the Caribbean from broadcast stations makes the 7100–7300 kHz band virtually useless in the Amateur Radio Service, particularly at night. Several commenters stated that almost all emergency, weather and DX nets in the Caribbean are run between 7000 and 7100 kHz in order to avoid broadcast interference. According to these commenters, amateurs in Puerto Rico and the U.S. Virgin Islands are currently excluded from Caribbean emergency nets and drills because they do not operate telephony in the segment most used for this purpose: 7075 to 7100 kHz. All of the comments emphasize that U.S. jurisdictions in the Caribbean are the only locations in the Caribbean where telephony is completely prohibited between 7000 kHz and 7100 kHz. Many commenters agreed that U.S. amateur privileges between 7075 and 7100 kHz would promote international goodwill.

5. Some of the commenters proposed alternative features. In order to insure minimum interference to amateur telegraphy and radioteleprinting operations in the continental United States, the Puerto Rico Amateur Radio Club, Inc. would limit the proposed telephony privileges to Advanced and Amateur Extra operators. Isaac Novoa also recommended this approach. Randall F. Sobol recommended expanding the size of the proposed telephony segment to 7050–7100 kHz because authorization is pending for a commerical shortwave station to operate above 7100 kHz. He would also expand the proposed rule to permit telephony in this segment for all amateur stations located outside the continental forty-eight states.

Proposal

6. In view of the above, we propose to expand telephony privileges in the 7075–7100 kHz segment of the 40 meter band to include the Caribbean Insular Areas, as shown in the attached Appendix. We seek comment not only on the proposal itself, but also on the alternatives recommended by the Puerto Rico Amateur Radio Club, Inc., Isaac Novoa and Randall Sobol.

Other Matters

7. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted

[1] On November 19, 1984 petitioner indicated that the North Latitude in his proposed rule should be 19 degrees instead of 17 degrees. We have incorporated this change by proposing a broad rule which would permit telephony operation anywhere outside the continental United States.

[2] On January 17, 1985, petitioner filed a "Motion Ancillary to Petition" which sought immediate grant of his petition without notice-and-comment proceedings on the basis that the proposed rule is an interpretative rule or a general statement of policy. However, we prefer to allow public comment on expanding operating capabilities in an area. Therefore, this motion is denied.

[3] Petitionre has also requested telephony operation in these bands for Desecheo Island. Desecheo Island is part of the Commonwealth of Puerto Rico. When we refer to the United States Virgin Islands, we mean the fifty islets and cays which comprise this group.

by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554 (202) 632–7000.

8. Authority for issuance of this Notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before June 17, 1985, and reply comments on or before July 17, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW. Washington, D.C. 20554.

9. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

10. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), we certify that this rule change would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radio communication. (See 47 CFR 97.3(b)).

11. It is ordered, That the Petition for Rule Making filed by David Novoa on November 6, 1984 (RM–4872) is granted.

12. It is further ordered, that the Motion Auxiliary to Petition filed by David Novoa on November 19, 1984 is granted.

13. It is further ordered, that the Motion Ancillary to Petition filed by David Novoa on January 17, 1985 is denied.

14. It is further ordered, that the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration.

15. For information concerning this proceeding, contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554 (202) 632–4964.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. Paragraph (b)(1) of Section 97.61 would be revised to read:

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) Limitations:

* * * * * *

(1) The use of A3E and F3A in this band is limited to amateur radio stations transmitting from any location other than the forty-eight contiguous states.

* * * * *

[FR Doc. 85–8250 Filed 4–16–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 97

[PR Docket No. 85–105; RM–4879; FCC 85–169]

Amateur Radio Service Rules to Permit Automatic Control of Amateur Radio Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Amateur Radio Service Rules to allow any amateur radio station to be under automatic control, except when transmitting on frequencies below 29.5 MHz and when transmitting third-party traffic. The proposed rule is necessary in order to utilize new technology in the service. The effect of this proposed rule is to encourage greater experimentation in the service, particularly with automatic control of digital communications.

DATES: Comments are due by June 25, 1985 and replies by July 25, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio.

Notice of Proposed Rule Making

In the matter of Amendment of Part 97 of the Commission's Rules to permit automatic control of amateur radio stations; PR Docket No. 85–105, RM–4879.

Adopted: April 5, 1985.
Released: April 11, 1985.

By the Commission.

1. Notice of Proposed Rule Making in the above-captioned matter is hereby given.

2. The Commission has received a petition (RM–4879) from the American Radio Relay League, Inc., (ARRL) seeking to amend the Amateur Radio Service Ruels to permit automatic control of digital communications on all amateur frequencies above 30 MHz.[1] The ARRL notes that Part 97 currently contains provisions for automatic control of stations in repeater, auxiliary and beacon operation but makes no provision for automatic control of

[1] The ARRL said that it was not requesting automatic control for frequencies below 30 MHz (HF frequencies) because heavy frequency usage below 30 MHz made manual control of digital communications on those frequencies more appropriate.

routine digital communications. In support of its petition, the ARRL states that a variety of digital codes, such as radioteleprinter, transfer of computer programs, direct computer-to-computer communications and "packet switching" systems lend themselves to a mode of amateur radio transmission where a control operator need not be present. According to the ARRL, present microprocessor and computer technology now routinely present at amateur stations can automatically transmit and receive digital communications, verify receipt of messages and respond to inquiries. The ARRL notes that the use of Computer Based Message Systems (CBMS) are something new in amateur communications and should be encouraged by more experimentation, including automatic control which is both feasible and necessary to facilitate further development in the art of amateur radio. Two timely comments were filed. Both supported the petition for rule making.

3. Automatic control in the Amateur Radio Service has previously been approved for repeater, auxiliary links and beacon operations.[2] With an evergrowing list of amateur operations where automatic control is permitted, we believe that now may be the appropriate time to expand automatic control to all amateur operations, prohibiting its use only in those situations where there is a justifiable reason why automatic control should not be allowed. Therefore, we invite amateur radio operators in general, and amateurs experienced in automatic control in particular, to submit comments calling to our attention any problems that may arise by expanding automatic control to encompass all amateur radio operations. Our goal is to keep the amateur service abreast of technological developments and to utilize new technology, such as CBMS, where appropriate. On the other hand, we do not want to introduce any innovations into the service which would be disruptive of amateur communications or which would essentially change the character of the service.

4. We propose that any amateur radio station may be under automatic control, except when transmitting on frequencies below 29.5 MHz. As noted earlier, the petitioner did not request automatic control below 30 MHz. However, since automatic control is already permitted for repeater operation between 29.5–29.7 MHz, it is reasonable to make the lower limit for automatic control 29.5 MHz, rather than 30 MHz.

5. These proposed rule amendments would still prohibit automatic control operation in any instance where the station is transmitting third-party traffic. This is in accord with § 97.79(d) of the amateur rules which specifies that a control operator must always be present when a third party is participating in amateur radio communications.[3]

6. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/ pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation, addressing matters not fully covered in any previously-filed comments in the proceeding, must prepare a written summary of that presentation; on the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

7. Authority for issuance of this Notice is contained in sections 4(i) and (303) (g) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and (303) (g) and (r). Pursuant to applicable procedures set forth in § 1.415, 47 CFR 1.415, of the Commission's Rules, interested persons may file comments on or before June 25, 1985, and reply comments on or before July 25, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided further that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

9. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities because these entities may not use the Amateur Radio Service for commercial radiocommunication (see 47 CFR 97.3(b)). In addition, the proposed rules concerning expansion of automatic control in the Amateur Radio Service would not significantly impact on the manufacturers of amateur radio equipment since devices installed to secure the radio equipment from unauthorized use or to detect transmitter malfunction are not usually purchased from such manufacturers.

10. In view of the foregoing, rule making petition RM–4879 filed by the ARRL is granted.

11. It is ordered, That the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and the Secretary shall

[2] For automatic control of stations in repeater and auxiliary operation, see Report and Order in Docket No. 20112, adopted June 11, 1975; FCC 75–708; 40 FR 28524, June 24, 1975. For automatic control of beacon operations, see Report and Order in PR Docket No. 81–823, adopted October 21, 1982; FCC 82–455; 47 FR 50702, November 9, 1982.

[3] See also News Release, Report No. 2020, Mimeo No. 8832, October 25, 1978.

also cause a copy of this Notice to be published in the Federal Register.

12. For information concerning this proceeding, contact Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 97 —[AMENDED]

Appendix

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended, as follows:

1. Section 97.3(m)(3) would be revised to read:

§ 97.3 Definitions.

* * * * *

(m) * * *

(3) *Automatic control* means the use of devices and procedures for control of an amateur station without the control operator being present at the control point.

2. Section 97.79(b) would be revised to read:

§ 97.79 Control operator requirements.

* * * * *

(b) Every amateur radio staton, when transmitting, must have a control operator. The control operator must be present at the control point of the station, except when the station is transmitting under automatic control. The control operator must be a licensed amateur radio operator or permittee designated by the station licensee. The control operator and the station licensee are both responsible for the proper operation of the station. For purposes of enforcement of the rules of this part, the FCC will presume that the station licensee is the control operator of the station, unless documentation exists to the contrary.

3. A new § 97.80 would be added as follows:

§ 97.80 Operation under automatic control.

(a) An amateur radio station may be operated under automatic control:

(1) When in beacon operation on frequencies 28.20–28–30 MHz; and

(2) When transmitting on frequencies above 29.5 MHz, except when in beacon operation:

MHz: 50.00–50–06; 50.06–54.0; 144.00–144.05; 144.06–148.00; 220.00–220.05; 220.06–222.05; 222.06–225.00; 420.00–432.07; 432.08–450.00.

(b) When under automatic control, devices must be installed and procedures must be implemented which will ensure compliance with the rules when the control operator is not present at the control point of the station.

(c) No amateur radio station may be operated under automatic control while transmitting third-party traffic.

(d) Automatic control of a station must cease upon notification by the Engineer-in-Charge of a Commission field office that the station is transmitting improperly or causing harmful interference to other stations. Automatic operation must not be resumed without prior approval of the Engineer-in-Charge.

§ 97.85 [Amended]

4. Section 97.85(e) would re removed. Paragraphs (f), (g) and (h) would be redesignated as paragraphs (e), (f) and (g), respectively.

§ 97.86 [Amended]

5. Section 97.86(a) would be removed. Paragraphs (b), (c) and (d) would be redesignated as paragraphs (a), (b) and (c), respectively.

§ 97.87 [Amended]

6. Section 97.87 (b) and (c) would be removed. Paragraph (d) would be redesignated as paragraph (b) and paragraph (e) would be redesignated as paragraph (c). In redesignated paragraph (b), the last sentence would be amended to read: "In such cases, the rules of § 97.85(e) (1), (2) and (3) apply." A new paragraph (d) would be added to Section 97.87 to read, as follows:

* * * * *

(d) Beacons under automatic control transmitting below 432.08 MHz are restricted to the following emissions: N0N, A1A, F1B, and J2A.

7. Section 97.114 would be amended by adding a new paragraph (d) as follows:

§ 97.114 Limitations on third-party traffic.

* * * * *

(d) Third-party traffic from any amateur radio station under automatic control.

[FR Doc. 85–9246 Filed 4–16–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Docket No. MC–112; Notice No. 85–5]

Citizen Band Radios on Buses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing the advance notice of proposed rulemaking concerning the use of citizen band radios on buses. This action is being taken for lack of data or evidence to support further rulemaking. There were no adverse comments submitted to the docket against the recommendation of the National Academy of Sciences (NAS) that the DOT retain the status quo and allow motor carriers of passengers to continue to decide whether their drivers should be permitted to use CB's in buses, subject to collective bargaining.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755–1011; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh St., SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: A study of the use of CB's on buses was undertaken by the NAS as directed by Congress in the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261, 96 Stat. 1120). In addition, the Secretary of Transportation was directed to initiate rulemaking to determine whether bus drivers should be permitted to use CB's on such vehicles. An advance notice of proposed rulemaking (ANPRM) was published in the **Federal Register**, January 11, 1985 (50 FR 1603) requesting comments on a recommendation by the NAS that the DOT retain the status quo and allow motor carriers of passengers to continue to decide whether their drivers should be permitted to use CB's in buses, subject to collective bargaining.

The NAS, in its report prepared by its Transportation Research Board (TRB),

entitled "Study of Safety Benefits and Costs of Using Citizen Band Radios on Intercity Buses", recommended that the Federal policy remain unchanged, and that individual companies determine for themselves whether or not to permit their drivers to use CB radios while on the job.

There were six comments submitted in response to the ANPRM. All six comments supported the recommendation of the TRB. In brief, the TRB concluded that the use of CB radios on intercity buses does not appear to encourage speeding, does not appear either to distract or stimulate drivers, nor does it appear to cause annoyance to passengers. Neither is there evidence of a significant number of on-board or external incidents or accidents, the effects of which might have been ameliorated by the use of a CB. Therefore, while CB's on intercity buses do not appear to do any harm, neither do they appear to make a meaningful contribution to the health, safety, and convenience of the intercity bus riding public.

Background

In response to a petition for rulemaking and to a number of inquiries concerning the action certain for-hire motor carriers of passengers had taken to prohibit the use of CB radios on intercity buses, two public hearings were conducted jointly by the FHWA and the National Highway Traffic Safety Administration during April 1979. Meaningful evidence that CB radios have a direct effect on the safety of operation of motor vehicle did not surface from the data submitted at the hearings.

A Federal policy had previously been adopted by the Department of Transportation, the Interstate Commerce Commission and the Federal Communications Commission. The agencies involved stated that CB radios can offer a significant contribution to safety and service on the highways and their use was encouraged to promote highway safety and service.

The FHWA issued a Notice of Policy Statement on the Use of Citizen Band Radios (45 FR 3419, January 17, 1980) encouraging use of CB's because as an in-vehicle communication system, it can offer a significant contribution to safety and emergency service on the highways.

Congress instructed the Secretary of Transportation to give substantial weight to the recommendations and conclusions of the NAS. There were no adverse comments submitted to the docket. All six comments received supported the recommendation of the NAS. The ANPRM clearly stated that the FHWA would continue to support its current policy unless comments to the docket contained meaningful evidence that indicated CB radios have a direct and positive effect on the safety of operation of motor passenger vehicles that would warrant further rulemaking. No such data was submitted. Therefore, this rulemaking is hereby withdrawn.

The FHWA has determined that this document contains neither a major proposal under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation has been prepared and is available in the public docket for review.

This action will not have a significant economic impact on small entities.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

(49 U.S.C. 3102; 49 CFR 1.48)

(Catalog of Federal Domestic Assistance Program number 20.217, Motor Carrier Safety)

Issued on: April 9, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 85-9290 Filed 4-16-85; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 50, No. 74
Wednesday, April 17, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes and Governmental Tort Claims; Public Meetings

Committee on Governmental Processes

Date: Friday, May 3, 1985. Time: 9:30 AM. Location: Main Conference Room (11th floor), Covington & Burling, 1201 Pennsylvania Avenue, M.W., Washington, D.C. Agenda: Research projects before the committee. Proposed recommendation and draft report by Professors Barry B. Boyer and Errol E. Meidinger, concerning lawsuits brought by citizens under the federal environmental laws. Contact: David M. Pritzker, 202–254–7065.

Committee on Governmental Tort Claims

Date: Friday, April 26, 1985. Time: 10:00 AM. Location: 2120 L. Street, N.W., Suite 500, Washington, D.C. Agenda: Organizational meeting of the ad hoc Committee on Governmental Tort Claims, which is charged with seeking implementation of prior Administrative Conference recommendations in the area and developing recommendations for further Conference research, statutory change, agency reform, or other action leading to a rationalization of the current system. Contact: Charles Pou, Jr., 202–254–7065.

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairman may permit members of the public to present appropriate oral statements at the meeting. Any member of the public may file a written statement with a committee before, during, or after the meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, D.C. 20037. These meetings are subject to the Federal Advisory Committee Act (Pub. L. 92–463).

Richard K. Berg,
General Counsel.
April 15, 1985.
[FR Doc. 85–9311 Filed 4–16–85; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: May 6–8, 1985.
Time: 8:30 a.m.–11:30 a.m., May 6–8, 1985.
Place:
Forest Products Laboratory (May 6, 1985), North Walnut Street, Madison, Wisconsin
Wisconsin Center (May 7, 1985), University of Wisconsin, 702 Langdon, Madison, Wisconsin
The Edgewater (May 8, 1985), Lake Mendota at Wisconsin Avenue, Madison, Wisconsin

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be preparing a report to the Secretary of Agriculture assessing agricultural research and extension on policies, priorities, and programs.

Contact Person for Agenda and More Information: Marshall Tarkington, National Agricultural Research and Extension Users Advisory Board; Room 319–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–3684.

Done in Washington, DC, this 10th day of April 1985.

Marshall Tarkington,
Acting Executive Secretary.
[FR Doc. 85–9291 Filed 4–16–85; 8:45am]
BILLING CODE 3410–RT–M

Commodity Credit Corporation

1985 Tobaccco Price Support Levels

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of Proposed Determination of 1985 Tobacco Price Support Levels.

SUMMARY: The purpose of this Notice of Proposed Determination is to request comments with respect to levels of price support for all eligible kinds of tobacco (except flue-cured) for the 1985 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

DATE. Comments must be received on or before May 17, 1985, to be assured of consideration.

ADDRESS: Written comments should be sent to the Director, Commodity Analysis Dividion, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT Robert H. Miller, (202) 447–8839 or Robert Tarczy, (202) 447–5187. A Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since producers are making plans to plant their crops and must be aware of these determinations as soon as possible, the comment period is limited to 30 days.

Determination of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers at a level which is determined in accordance with a formula prescribed in section 106 of the Agricultural Act of 1949, as amended (the "Act"). With respect to the 1985 crop of burley tobacco, the level of support is determined in accordance with sections 106 (b), (d), and (f) of the Act. With respect to the 1985 crop of other kinds of tobacco, except flue-cured and burley tobacco, the respective level of support is determined in accordance with section 106(b) of the Act.

Burley Tobacco

Section 106(f)(4) of Act provides that the level of support for the 1985 crop of burley tobacco shall be the level in cents per pound at which the 1984 crop of burley tobacco was supported, plus or minus, respectively, the amount by which (A) the support level for the 1985 crop, as determined under section 106(b) of the Act, is greater or less than (B) the support level for the 1984 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (A) is greater than the support level under clause (B). Accordingly, under section 106(f)(4) of the Act, the support level for the 1985 crop of burley tobacco will be the 1984 level, adjusted by the difference between (plus or minus) the 1985 "basic support level" and the 1984 "basic support level".

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of burley tobacco (57.2 cents per pound) by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1985-crop year, the average parity indexes for the three previous years are: 1982—1076; 1983—1104; and 1984—1130. The average of the parity indexes for these years is 1103 and the ratio of the 1982–84 index to the 1959 index is 3.70. Accordingly, the "basic support level" for 1985 burley tobacco equals 211.6 cents per pound. For the 1984-crop year, the average parity indexes used to calculate the 1984 "basic support level" were: 1981—1035; 1982—1076; 1983—1105. The ratio of the 1981–83 index to the 1959 index equaled 3.60. Thus, the "basic support level" for the 1984 crop of burley tobacco equaled 205.9 cents per pound. The difference between the "basic support levels" for the 1984 and 1985 crops of burley tobacco is 5.7 cents per pound.

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of burley tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

Supplies of burley tobacco are excessive (491 million pounds above the reserve supply level). In addition, by the end of the 1984 marketing year the two associations handling burley tobacco through which price support loans are made available to producers will hold an estimated 500 million pounds of burley tobacco which has been pledged as collateral for CCC price support loans. This loan inventory consists of almost all grades of burley tobacco. This inventory is equal to almost an entire season's use of burley tobacco.

Accordingly, it is proposed that the 1985 price support level for burley tobacco be 178.8 cents per pound. This is an increase of 3.7 cents per pound from the 1984 support level of 175.1 cents per pound, or 65 percent of the increase that otherwise would be established (5.7 cents).

Other Kinds of Tobacco

Section 106(f)(3) of the Act provides that for the 1985 crop of any kind of tobacco (other than burley and flue-cured tobacco) for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers, the Secretary of Agriculture shall establish the support price at such level as will not narrow the normal price support differential between flue-cured tobacco and such other kind of tobacco. In establishing the support level under section 106(f)(3) for any such kind of tobacco, the Secretary shall take into consideration the cost of producing such kind of tobacco, the supply and demand conditions of such kind of tobacco, the comments received in response to this notice of proposed determinations, and such other relevant factors as the Secretary determines appropriate. In accordance with section 106(f)(2), the Secretary determined on February 28, 1985 that the support level for the 1985 corp of flue-cured tobacco would be 169.9 cents per pound, the same support level which was established for the 1984 crop of flue-cured tobacco. Accordingly, the support level for these other kinds of tobacco may not be increased from the 1984 support levels but may be decreased.

The levels of price support for the 1984 crops of the various kinds of tobacco, which were determined in

accordance with Sections 106(f) of the 1949 Act, are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	118.8
KY-TN fire-cured, types 22–23	123.0
Dark air-cured, types 35–36	105.7
Virginia sun-cured, type 37	109.4
Cigar-filler and binder, types 42–44, 53–55	80.7
Puerto Rican, type 46	74.0

As noted in the following table, the supplies of all these kinds of tobacco for which price support is made available are currently at, or in excess of, the supply deemed adequate to meet domestic use and export needs. As a result of these increased supplies of tobacco, the quantity of tobacco pledged as collateral for CCC price support loans has also become excessive.

Kind and type	1984/85 production	1984/85 total supply	1984/85 reserve supply level	CCC loan collateral	1984/85 CCC loans as percent of production
	Million pounds				
Virginia fire-cured, type 21	5.8	13.8	12.9	1.3	22.4
Kentucky-Tennessee fire-cured, types 22–23	47.8	112.0	102.2	11.7	24.5
Dark air-cured, types 35–36	17.5	60.2	55.1	6.7	38.3
Virginia sun-cured, type 37	.6	2.0	2.0	.3	50.0
Cigar-filler and binder, types 42–44, 53–55	17.7	82.1	75.6	.5	2.8
Puerto Rican, type 46	.8	6.9	[1] 3.8	.8	100.0

[1] Three times annual disappearance past 3 marketing years.

Because of the oversupply situation for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, Puerto Rican filler, and cigar-filler and binder (types 42–44; 53–55), a range of respective 1985 price support levels is proposed consisting of a maximum level of support equal to the 1984 level of support and a minimum level of support which is 20 percent less than the 1984 level of support.

Proposed Determinations

Accordingly, the Secretary of Agriculture proposes to determine and announce 1985-crop price support levels for the following kinds of tobacco at the level or within the ranges set forth below:

Kind and type	Range (cents per pound)
Burley	178.8
Virginia fire-cured, type 21	95.0–118.8
KY-TN fire-cured, types 22–23	98.0–123.0
Dark air-cured, types 35–36	84.5–105.7
Virginia sun-cured, type 37	87.5–109.4
Cigar-filler and binder, types 42–44, 53–55	72.0–80.7
Puerto Rican filler (type 46)	60.0–74.0

Comments are requested with respect to the appropriate level of price support for such kinds of tobacco.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended, 15 U.S.C. 714b, 714c; Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 1055, 7 U.S.C. 1441, 1445, 1421, 1423, 1428.

Signed at Washington, D.C., on April 12, 1985.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-9292 Filed 4-16-85; 8:45 am]

BILLING CODE 3410-05-M

1985 Tobacco Price Support Level (Flue-Cured)

AGENCY: Commodity Credit Corporation (CCC).

ACTION: Notice of Determination of 1985 Price Support Level for Flue-cured Tobacco.

SUMMARY: The purpose of this notice is to affirm the determination made by the Secretary of Agriculture for the 1985 crop of flue-cured tobacco in accordance with the Agricultural Act of 1949, as amended. The level of price support for flue-cured tobacco is required to be determined under the provisions of section 106 of the Agriculture Act of 1949, as amended. On February 28, 1985, the Secretary of Agriculture determined that the 1985–86 average support level for flue-cured tobacco shall be 169.9 cents per pound.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447–8839 or Robert Tarczy, (202) 447–5187. A Regulatory Impact Analysis describing the impacts of this notice is included in the Preliminary Regulatory Impact Analysis of the 1985 crop support levels for tobacco and is available on request from Mr. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers at a level which is determined in accordance with a formula prescribed in section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(b) of the Act provides that the "basic support level" for any crop of a kind of tobacco for which marketing quotas are in effect shall be determined

by multiplying the support level for the 1959 crop tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (parity index) for the three previous calendar years to the average index for 1959 (298). For the 1985-crop year, the average parity indexes for the three previous years are: 1982—1076; 1983—1104; and 1984—1130, making the 3-year average 1103. This ratio multiplied by the 1959 support level (55.5 cents per pound) results in the "basic support level" for 1985 flue-cured tobacco of 205.4 cents per pound. For the 1984 crop year calculation, the average parity indexes were: 1981—1035; 1982—1076; 1983—1105, making the average of 1072 and the ratio of the 1981–83 index to the 1959 index 3.60. That ratio (3.60) multiplied by the 1959 support (55.5 cents) results in the "basic support level" for the 1984 crop of 199.8 cents per pound. Thus, the 1985 "basic support level" is 2.8 percent above the 1984 level.

Section 106(f)(2) of the Act provides that the support level for the 1985 crop shall be the level in cents per pound at which the 1982 crop was supported if the support level otherwise determined under section 106(b) of the Act for the 1985 crop would not be more than 5 percent greater than the support level determined under section 106(b) for the 1984 crop. Therefore, the 1985 support level must equal the 1982 support level, which was 169.9 cents per pound.

Determination

Accordingly, it has been determined that the level of price support for the 1985 crop of flue-cured tobacco is 169.9 cents per pound. The grade loan rates reflecting this level of price support for the 1985 crop of tobacco will be available at county Agricultural Stabilization and Conservation Service offices, producer associations, and the Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, Washington, D.C.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051 as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 63 Stat. 1055, as amended (7 U.S.C. 1441, 1445, 1421, 1423, 1428).

Signed at Washington, D.C. on April 12, 1985.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–9293 Filed 4–16–85; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

Organization, Functions and Delegations of Authority

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of Agency Organization, Functions, and Delegations of Authority.

SUMMARY: This notice sets forth the organization, functions, and delegations of authority for the Food and Nutrition Service (FNS).

SUPPLEMENTARY INFORMATION: FNS was established by the Secretary of Agriculture on August 8, 1969, pursuant to authority under Reorganization Plan No. 2 of 1953. Authority is delegated by the Secretary of Agriculture to the Assistant Secretary for Food and Consumer Services in 7 CFR 2.15, and from the Assistant Secretary to the Administrator, FNS in 7 CFR 2.93 to administer the various food and nutrition programs, including the Food Stamp Program, School Lunch Program, child nutrition programs and commodity distribution programs. This notice supersedes the notice of FNS Organization, Functions and Delegations of Authority published at 48 FR 24156 (1983).

Section 1. General

The principal office of FNS is located in Alexandria, Virginia. Program activity in the field is carried on through seven regional offices. In addition, there are a number of special purpose offices geographically located in the field, which perform food stamp compliance, appeals review and certain automated data processing services.

Section 2. Organization and Functions

(a) *The Administrator.* The Administrator reports to the Assistant Secretary for Food and Consumer Services. He/she serves as the chief executive officer of FNS and is responsible for the overall planning, direction and control of FNS programs and activities. He/she must establish and maintain working relationships and lines of communication with the Secretary and Deputy Secretary of Agriculture, Assistant Secretary, Congress, heads of other operating administrations, other agencies and the general public.

(b) *Associate Administrator.* The Associate Administrator reports to the Administrator and shares with the Administrator responsibility for the overall develoment, administration and coordination of FNS activities, providing executive leadership in developing, administering, executing and coordinating operational programs of the Agency; reviewing proposed programs, policies, and procedures inherent in Agency operations to determine that they are coordinated internally with other agencies of the Department, Federal, State and local government, or cooperating agencies; and providing liaison with General Accounting Office (GAO) and coordinating GAC activities within FNS.

(c) *Director, Office of Analysis and Evaluation.* The Director, Office of Analysis and Evaluation, provides to the Administrator valid and timely analysis and evaluation information to support decisions regarding the legislative, budgetary, regulatory and program management processes.

(d) *Director, Office of Government Affairs and Public Information.* The Director, Office of Governmental Affairs and Public Information, establishes clear and continuing lines of communication between Congress and FNS, prepares legislative reports, monitors and reports on legislation status and other appearances before legislators and their staffs. He/she is responsible for the planning, development, coordination and implementation of information programs in support of FNS' policies and programs.

(e) *Deputy Administrator for Family Nutrition Programs.* The Deputy Administrator for Family Nutrition Programs provides direction and leadership in the formulation of Food Stamp policies and requirements, and in the developoment of program regulations and directives, the oversight of food assistance program grants and the review and evaluation of FNS Regional Offices' and States' efforts to implement Food Stamp Program regulations, policies and requirements.

(f) *Deputy Administrator for Special Nutrition Programs.* The Deputy Administrator for Special Nutrition Programs participates with the Administrator in the overall planning and formulation of all special nutrition policies, programs and activities of FNS and provides direction and leadership in the administration of Special Nutrition Programs.

(g) *Regional Administrators.* The Regional Administrators are responsible for administering the Food Stamp amd Special Nutrition Programs including Child Nutrition, Special Supplemental Food and Food Distribution within the geographical boundaries of assigned region activities. The United States and its territories are divided into the following seven regions:

(1) Mid-Atlantic Regional Office: Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, Virginia, Puerto Rico, and the Virgin Islands.

(ii) Midwest Regional Office: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio.

(iii) Mountain Plains Regional Office: Montana, Wyoming, North Dakota, South Dakota, Nebraska, Iowa, Utah, Colorado, Kansas, and Missouri.

(iv) Northest Regional Office: Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York.

(v) Southeast Regional Office: Tennessee, Mississippi, Alabama, Georgia, North Carolina, South Carolina and Florida.

(vi) Southwest Regional Office: Texas, Oklahoma, Arkansas, and Louisiana.

(vii) Western Regional Office: Washington, Oregon, Idaho, California, Nevada, Arizona, Alaska, Hawaii, American Samoa, and Northern Marianas.

(h) *Director, Office of Regional Operations.* The Director, Office of Regional Operations, provides staff assistance to the Administrator to assure uniformity, consistency and timeliness in the development and conveyance of FNS policy which affects the operation of Regional offices, and provides leadership for administrative reviews of certain Agency actions appealed by program cooperators.

(i) *Deputy Administrator for Financial Management.* Deputy Administrator for Financial Management participates with the Administrator in the overall planning and formulation of all financial policies, programs and activities of FNS and directs and administers the Agency's financial management program through the development, maintenance and operation of comprehensive systems that meet management needs.

(j) *Deputy Administrator for Management.* The Deputy Administrator for Management is responsible for participating with the Administrator in the overall planning, formulation, and direction of all administrative management policies and program activities of FNS, and providing executive direction to FNS administrative management activities and operation.

Section 3. Delegations of Authority

(a) *Associate Administrator.* The Associate Administrator is hereby delegated the authority to perform all the duties and to exercise all the functions and powers which are now or which may hereafter be vested in the Administrator, except such authority as is, or may be, reserved to the Administrator.

(b) *Depty and Regional Administrators.* In carrying out their responsibilities, the Deputy Administrators for Family Nutrition Programs, Special Nutrition Programs, Financial Management, and Management, and Regional Administrators are hereby delegated authority to perform all the duties and to exercise all the functions and powers which are now or which may hereafter be vested in the Administrator (including the power of redelegation except when prohibited) except may hereafter be vested in the Administrator (including the power of redelegation except when prohibited) except such authority as is or may be reserved to the Administrator. Each Deputy and Regional Administrator shall be primarily responsible for the program and activities of FNS assigned them.

(c) *Concurrent Authority and Responsibility.* No delegation or authorization prescribed herein shall preclude the Administrator, the Associate Administrator, each Deputy Administrator, or Regional Administrator from exercising any of the powers of functions or from performing any of the duties conferred herein, and any such delegation or authorization is subject at all times to withdrawal or amendment by the Administrator and, in their respective fields, each Deputy Administrator or Regional Administrator. The officers to whom authority is delegated herein shall maintain close working relationships with the officers to whom they report, keep them advised with respect to major problems and developments especially major policy questions or other important considerations or questions including matters involving relationships with other Federal agencies, other agencies of the Department, other divisions or offices of FNS or other governmental or private organizations or groups.

(d) *Authority to Act as Administrator.* In the Administrator's absence the person designated by the Adminstrator or Acting Administrator as Acting Administrator is hereby delegated authority to perform all duties and to exercise all the functions and powers which are now or which hereafter may be vested in the Administrator.

(e) *Prior Authorizations and Delegations.* All prior delegations and redelegations of authority relating to any functions, program or activity covered by this Statement of Organization, Functions and Delegations of Authority, shall remain in effect except as they are inconsistent herewith or are hereafter amended or revoked. Nothing herein shall affect the validity of any action heretofore taken under prior delegations or redelegations of authority or assignments of functions.

Dated March 18, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-9217 Filed 4-16-85; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Coronado National Forest Grazing Advisory Board; Meeting

The Coronado National Forest Grazing Advisory Board will meet at 10 a.m., Room 4B, May 21, 1985, at the Federal Building, 301 West Congress, Tucson, Arizona. The purpose of this meeting is to discuss allotment management planning and the use of range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify Larry Allen, Coronado Supervisor's Office, telephone 602-629-6418. Written statements will be filed with the board before or after the meeting.

The board has established the following rule for public participation: Nonmembers are asked to withhold comments until the close of business.

R.B. Tippeconnic,

Forest Supervisor.

April 9, 1985.

[FR Doc. 85-9209 Filed 4-16-85; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Written Assurance for Exports of Technical Data Under General License

Form number: Agency—EAR 379.4(f); OMB—0625-014

Types of request: Extension of the expiration date of a currently approved collection

Burden: 250 respondents; 125 reporting hours

Needs and uses: Before certain technical data can be exported from the

U.S. under the General License for Technical Data (GTDR), the foreign importer must submit to the U.S. exporter a written assurance that he will not reexport directly or indirectly the technical data and/or product to specific countries. The purpose of the written assurance is to prevent technical data capable of producing strategic commodities from being shipped to Soviet Bloc countries.

Affected public: Businesses or other for-profit institutions, small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 12, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–9219 Filed 4–16–85; 8:45]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: NOAA

Title: Flood Damage Report

Form number: Agency—None; OMB—0648–0001

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 750 respondents; 4,500 reporting hours

Needs and uses: Information on specific flood events is to be obtained from Federal, state and local officials and selected private citizens to evaluate the effectiveness of forecast and warning services, to learn what actions agencies and citizens take in response to warnings, and to determine what improvements should be made.

Affected public: Individuals and households, Federal, state, and local governments, farms, businesses and other for-profit non-profit institutions, and small businesses and organizations.

Frequency: On occasion

Respondent's obligation: Voluntary

OMB desk officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 11, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–9223 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-CW-M

Office of the Secretary

Frequency Management Advisory Council; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, CFR Part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Frequency Management Advisory Council is in the public interest in connection with the performance of duties imposed on the Department by law.

The Council was first established on July 19, 1965, and was to terminate on April 11, 1985. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until that office was merged by Executive order 12046 of March 27, 1978, into the Department of Commerce, National Telecommunications and Information Administration.

In reviewing the need for the Council, the Secretary has reaffirmed its original purpose of providing advice on radio frequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. Research indicates that the Council's function cannot be accomplished by any organizational element or other committee of the Department.

The Council shall continue with a balanced representation of 15 members, chaired by the Assistant Secretary for Communications and Information or designee, and will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Council's revised Charter will be filed with appropriate committees of Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4706, Washington, D.C. 20230, telephone: (202) 377–0805, or the Department Committee Management Analyst, telephone: (202) 377–4217.

Dated: April 9, 1985.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 85–9221 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-DS-M

Foreign-Trade Zones Board

[Order No. 298]

Approval for Expansion of Foreign-Trade Zone No. 50 at a Site in Ontario, CA, Adjacent to the Los Angeles-Long Beach Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Board of Harbor Commissioners of the City of Long Beach, California, Grantee of Foreign-Trade Zone No. 50 in Long Beach, has applied to the Board for authority to expand its general-purpose zone to include an additional site in Ontario, California, adjacent to the Los Angeles-Long Beach Customs port of entry;

Whereas, the application was accepted for filing on August 24, 1984, and notice inviting public comment was given in the **Federal Register** on September 10, 1984 (Docket No. 37–84, 49 FR 35534);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve zone services in the Los Angeles area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade

Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed August 24, 1984. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C., this 2nd day of April 1985.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration; Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-9277 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 292]

Approval for Expansion of Foreign-Trade Zone No. 86, Tacoma, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Puget Sound Foreign-Trade Zone Association, Grantee of Foreign-Trade Zone No. 86, has applied to the Board for authority to expand its general-purpose zone to include additional acreage within the Port of Tacoma Customs port of entry;

Whereas, the application was accepted for filing on September 10, 1984, and notice inviting public comment was given in the **Federal Register** on September 21, 1984 (Docket No. 43-84, 49 FR 37132);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve zone services in the Tacoma area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed September 10, 1984. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C., this 3rd day of April 1985.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr,

Executive Secretary.

[FR Doc. 85-9278 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 293]

Approval for Relocation of Foreign-Trade Zone No. 18, San Jose, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the City of San Jose, California, Grantee of Foreign-Trade Zone No. 18, has applied to the Board for authority to relocate its general-purpose zone to a larger site on Cinnabar Street in San Jose, within the San Francisco-Oakland Customs port of entry;

Whereas, the application was accepted for filing on October 29, 1984, and notice inviting public comment was given in the **Federal Register** on November 8, 1984 (Docket No. 46-84, 49 FR 44659);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the relocation is necessary to improve zone services in the San Jose area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to relocate its zone in accordance with the application filed October 29, 1984. The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, D.C., this 3rd day of April 1985.

William T. Archey,

Acting Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-9279 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[Case No. 663]

Josef Forstner, Forson Elektronische Geraete GmbH; Order Denying Export Privileges

The U.S. Department of Commerce (Department), pursuant to the provisions of § 387.8(c) of the Export Administration Regulations (15 CFR Parts 368-399 (1984)) (Regulations), has petitioned the Hearing Commissioner for an order denying all export privileges to Josef Forstner (Forstner), individually and doing business as Forson Elektronische Geraete GmbH (Forson) Forson Elektronische Geraete GmbH; Breitenfurterstrasse 183, A-1120 Vienna, Austria.

The Department states that Forstner and Forson are under investigation by the Department's Office of Export Enforcement (OEE). During the course of OEE's investigation, Forson, on or about June 5, 1984, denied permission for an on-site post-shipment inspection. Forstner subsequently acknowledged receipt of certain U.S.-origin equipment; however, he refused to state its location. By letter of December 13, 1984, which was personally served that day by the Department's representative in Vienna, OEE asked Forstner and Forson, in connection with a post-shipment check and pursuant to § 387.8 of the Regulations, to answer written interrogatories and to produce records in their possession within 20 days of

receipt of the letter. To date, neither Forstner nor Forson has furnished answers to the interrogatories, produced the requested records, or given any reason for their failure to do so.

Based upon the showing made by the Department, I find: (i) That respondents have neither answered the interrogatories, produced the requested records, nor shown good cause for their continued failure to answer the interrogatories or to produce the requested records, and (ii) that an order denying all export privileges to Josef Forstner, individually and doing business as Forson Elektronische Geraete GmbH, is required in the public interest to facilitate enforcement of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (1982)), and the Regulations.[1]

Anyone who is now or may in the future be dealing with the respondents or anyone who is now or may be subsequently named as a related party in transactions that in any way involve U.S.-origin commodities or technical data is specifically alerted to the provisions set forth in Paragraph IV below.

Accordingly, it is hereby ordered.

I. All outstanding validated export licenses in which any respondent or any related party appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Administration for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (1) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application, or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. Such denial of export privileges shall extend not only to the respondents, but also to their agents and employees and to any successors. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which respondents are now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. One business organization now known to be related to Forstner and Forson through an affiliation in the conduct of trade, and which is accordingly subject to the provisions of this order, is:

Fuchs GmbH, Schoenbrunnerstrasse 237, A–1120, Vienna, Austria

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Administration, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 387.8(c) and § 388.19(b) of the Regulations, any respondent or any related party may, after answering the written interrogatories and producing the requested materials, or providing information that would constitute good cause for failure to do so, move at any time to vacate or modify this denial order by filing with the Hearing Commissioner, International Trade Administration, U.S. Department of Commerce, Room H6716, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, an appropriate motion for relief and may also request an oral hearing thereon, which, if requested, shall be held before the Hearing Commissioner at the earliest convenient date.

VI. This Order is effective immediately. It remains in effect until respondents furnish responsive answers to the written interrogatories and produce the requested reports, or until they give adequate reason for their failure or refusal to do so, or until five years from the date of this Order, whichever occurs earlier. A copy of this Order and Parts 387 and 388 of the Regulations shall be served upon each respondent and related party.

Date: April 10, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85–0220 Filed 4–16–85; 8:45 am]

BILLING CODE 3510–DT–M

[1] The authority granted by the Act terminated on March 30, 1984. The Regulations have been continued in effect by Executive Order 12470, 49 FR 13099, April 3, 1984, under the authority of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)).

Management-Labor Textile Advisory Committee; Open Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held Tuesday, May 7, 1985 at 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on October 16, 1961 to advise Department officials on problems and conditions in the textile and apparel industry).

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: April 10, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-9225 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Importers and Retailers' Textile Advisory Committee; Open Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held Wednesday, April 24, 1985 at 2:30 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

Agenda: Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: April 10, 1985.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 85-9226 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-DR-M

[C-560-401, C-565-401 and C-489-401]

Termination of Countervailing Duty Investigations; Certain Textile Mill Products and Apparel From Indonesia, the Philippines, and Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On April 8, 1985, the petitioners withdrew their countervailing duty petitions on certain textile mill products and apparel from Indonesia, the Philippines and Turkey. Their letters of withdrawal appear as Appendix A to this notice. Based on the Withdrawals, we are terminating the countervailing duty investigations.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3464.

SUPPLEMENTARY INFORMATION:

Petitions

We received petitions on July 20, 1984, concerning Indonesia and Turkey and on August 2, 1984, concerning the Philippines, from counsel for the American Textile Manufacturers Institute (ATMI), the Amalgamated Clothing and Textile Workers Union (ACTWU), and the International Ladies' Garment Workers Union (ILGWU), on behalf of the U.S. industries producing certain textiles and textile products. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petitions alleged that manufacturer, producers, or exporters in Indonesia, Turkey, and the Phillippines of certain textiles and textile products receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Traffic Act of 1930, as amended (the Act).

We found that the petitions contained sufficient grounds upon which to initiate countervailing duty investigations, and we initiated such investigations on Turkey and Indonesia on August 9, 1984, (49 FR 32641 and 32642) and on the Philippines on August 30, 1984, (49 FR 34381). We stated that we expected to issue preliminary determinations by October 15, 1984, on Turkey and Indonesia and by October 25, 1984, on the Philippines. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations by 65 days until December 17, 1984, for Indonesia and Turkey, and until December 31, 1984, for the Philippines (49 FR 40198).

On December 3, 1984, the petitioners amended their petitions to include the following ATMI member firms as individual petitioners with respect to textile mill products:

- Belton Industries, Inc., of Belton, S.C.;
- Burlington Industries, Inc., of Greensboro, N.C.;
- Chatham Manufacturing Company of Elkin, N.C.;
- Milliken & Company of Spartanburg, S.C.;
- Mount Vernon Mills, Inc., of Greensville, S.C.;
- Shuford Mills, Inc., of Hickory, N.C.;
- J.P. Stevens & Co., Inc., of New York, N.Y.; and
- West Point-Pepperell, Inc., of West Point, Ga.

On December 17, 1984, the Department determined that ATMI is not an "interested party" under section 771(9)(E) of the Act, and has no standing as a petitioner in these investigations. The Department accepted the amendment to add the eight firms listed above as petitioners with respect to textile mill products.

We issued our preliminary determinations that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of certain textile mill products and apparel from Indonesia and Turkey on December 17, 1984, and from the Philippines on December 31, 1984 (49 FR 49672; 49 FR 49661; and 50 FR 1607).

The Office of the U.S. Trade Representative announced on February 25, March 4, and March 15, 1985, that Turkey, Indonesia and the Philippines, respectively, are "countries under the Agreement" as set out in section 701(b) of the Act (50 FR 8428; 50 FR 9342; and 50 FR 11471). As a result, title VII of the Act became applicable to the countervailing duty investigations. According to section 102 of the Trade Agreements Act of 1979, once title VII becomes applicable any pending investigation under section 303 of the Act must terminate. Where a preliminary determination, but not a final determination, has been made under section 303, the case is to be treated as if the preliminary determination under section 703 was made the day title VII first applied to that country. Therefore, we terminated the investigations we initiated under section 303 of the Act and issued preliminary determinations under title VII of the Act (50 FR 9816; 50 FR 9861; 50 FR 11925).

On April 3, 1985, petitioners amended the petitions in these cases with respect to the description of the textile mill products by removing a number of *Tariff Schedules of the United States Annotated (TSUSA)* item numbers from the scope of the investigation.

Scope of the Investigations

The products covered by these investigations are certain textile mill products and apparel which are described in Appendices B, C and D attached to this notice.

Withdrawal of Petitions

On April 8, 1985, petitioners notified us that they were withdrawing their petitions. Under section 704(a)(1) of the Act (19 U.S.C. 1671c(a)(1)), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have

notified all parties to the investigation of petitioners' withdrawal and our intention to terminate and have consulted the International Trade Commission. Pursuant to § 355.30(a) of our regulations (19 CFR 355.30(a)), we have determined that termination of these cases is in the public interest.

For these reasons, we are terminating our investigations of certain textile mill products and apparel from Indonesia, the Philippines and Turkey.

Termination of Suspensions of liquidation

Pursuant to section 705(c)(2) of the Act, the suspensions of liquidation of all entries entered, or withdrawn from warehouse, for consumption of certain textile mill products and apparel from Indonesia, the Philippines and Turkey effective December 17 and December 31, 1984, respectively, as directed in our notices of "Preliminary Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel from Indonesia, the Philippines and Turkey" (49 FR 49672; 50 FR 1607 and 49 FR 49661) are hereby terminated. Any cash deposits on entries of certain textile mill products and apparel from Indonesia, the Philippines and Turkey pursuant to these suspensions of liquidation shall be refunded and any bonds shall be released.

Dated: April 11, 1985

C. Christopher Parlin,

Acting Deputy Assistant Secretary for Import Administration.

Appendix A

Wilmer, Cutler & Pickering,
1666 K Street, NW., Washington, D.C. 20006
April 8, 1985.

Inv. No. C–560–401
Total number of pages: 2
This document does not contain privileged, confidential or business proprietary information or information subject to administrative protective order

By Hand

Secretary
U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436

Secretary of Commerce
Attention: Import Administration, Central Records Unit, Room B–099
Department of Commerce,
Pennsylvania Avenue at 14th Street, NW., Washington, D.C. 20230

Re: Textile Mill Products and Apparel From Indonesia

Gentlemen: Petitioners in the above-captioned investigation hereby withdraw their petition.

Very truly yours,

Deborah M. Levy.

Wilmer, Cutler & Pickering,
1666 K Street, NW., Washington, D.C. 20006
April 8, 1985.

Inv. No. C–565–401
Total number of pages: 2
This document does not contain privileged, confidential or business proprietary information or information subject to administrative protective order

By Hand

Secretary
U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436

Secretary of Commerce
Attention: Import Administration, Central Records Unit, Room B–099
Department of Commerce,
Pennsylvania Avenue at 14th Street, NW., Washington, D.C. 20230

Re: Textile Mill Products and Apparel From The Phillippines

Gentlemen: Petitioners in the above-captioned investigation hereby withdraw their petition.

Very truly yours,

Deborah M. Levy.

Wilmer, Cutler & Pickering,
1666 K Street, NW., Washington, D.C. 20006
April 8, 1985.

Inv. No. C–489–401
Total number of pages: 2
This document does not contain privileged, confidential or business proprietary information or information subject to administrative protective order

By Hand

Secretary
U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436

Secretary of Commerce
Attention: Import Administration, Central Records Unit, Room B–099
Department of Commerce,
Pennsylvania Avenue at 14th Street, NW., Washington, D.C. 20230

Re: Textile Mill Products and Apparel From Turkey

Gentlemen: Petitioners in the above-captioned investigation hereby withdraw their petition.

Very truly yours,

Deborah M. Levy.

TURKEY—Appendix B

[The products covered by these investments are certain textile mill products and apparel, which are currently classified under the item numbers of the Tariff Schedules of the United States, Annotated (TSUSA) listed below]

A. Textile Mill Products

Yarns

301.1100	301.2000	301.3000	301.4000	302.1022	302.1024	303.2042
307.6810	307.6830	307.6850	310.0214	310.4027	310.6045	310.6050
310.9000	310.9120					

Fabric

320.1019	320.1034	320.1045	320.1071	320.1077	321.4016	321.4023
321.4069	321.4073	322.2015	322.2017	322.2029	322.2036	322.2040
322.2047	322.2055	322.2056	322.2065	322.2070	322.2079	322.2097
336.6447	338.1574	338.1578				

Special construction Fabrics

346.6050

Textile Furnishings

360.4215	360.4815	360.4825	360.4855	360.8400	361.0510	361.2405
361.5000	360.7000	361.5630	361.5650	363.1040	363.2580	363.5130
363.6540	363.7500	364.1300	364.2300	365.7825	366.1880	366.2180
366.2460	366.2480	366.2780	366.4800	366.7925	366.7930	367.3424
367.3428	367.4500					

Miscellaneous

388.0600	388.5045	388.4000	389.6265	706.3400	706.3850	706.4108
706.4111						

B. Apparel

Apparel

370.8440	372.1020	372.1030	372.1040	372.1050	372.1540	372.3500
372.4500	372.6520	373.1000	373.2200	374.3530	374.3550	374.5040
374.6040	378.1030	378.1540	379.3915	379.3925	379.3930	379.4020
379.4030	379.4050	379.4060	379.4110	379.4140	379.4640	379.4670
379.4910	379.4920	379.5520	379.5545	379.5550	379.5565	379.6220
379.8240	379.7805	379.7820	379.8358	379.8357	379.8358	379.8359
379.9020	379.9562	379.9564	379.9566	379.9566	383.0213	383.0219
383.0222	383.0218	383.0238	383.0305	383.0306	383.0390	383.0505
383.0606	383.0622	383.0631	383.0630	383.0805	383.0820	383.0641
383.0660	383.1319	383.1321	383.1610	383.2205	383.2305	383.2706
383.2710	383.2712	383.2714	383.2715	383.2716	383.2718	383.2721

TURKEY—Appendix B—Continued

[The products covered by these investments are certain textile mill products and apparel, which are currently classified under the item numbers of the Tariff Schedules of the United States, Annotated (TSUSA) listed below]

383.2722	383.2724	383.2726	383.2728	383.2730	383.2732	383.2736
383.2738	383.2750	383.2752	383.2754	383.2756	383.2807	383.2809
383.2814	383.2816	383.2818	383.2821	383.2820	383.2830	383.2835
383.2910	383.3010	383.3020	383.3030	383.3040	383.3037	383.3035
383.3060	383.3080	383.3200	383.3445	383.3448	383.3465	383.3486
383.3710	383.3770	383.4200	383.4300	383.4702	383.4705	383.4709
383.4711	383.4721	383.4724	383.4726	383.4747	383.4761	383.476
383.4764	383.4816	383.4821	383.4825	383.5026	383.5027	383.5051
383.5054	383.5060	383.5305	383.6310	383.6330	383.6345	383.6360
383.6371	383.6385	383.7010	383.7020	383.7205	383.7210	383.7510
383.7522	383.7533	383.7534	383.7536	383.7538	383.7542	383.7544
383.7548	383.7549	383.7552	383.7554	383.7556	383.7529	383.7558
383.7561	383.7585	383.7764	383.7768	383.7769	383.7770	383.7771
383.7780	383.7881	383.7883	383.7884	383.7887	383.7889	383.7892
383.8012	383.8045	383.8069	383.8071	383.8073	383.8300	383.8400
383.8620	383.8883	383.9015	383.9025	383.9050	383.9055	383.9057
383.9058	383.9059	383.9061	383.9062	383.9063	383.9066	383.9066
383.9225	702.0800	702.8000	704.2000	704.8500	704.8550	704.9000

APPENDIX C.—IMPORTS OF CERTAIN TEXTILE MILL PRODUCTS AND APPAREL FROM THE PHILIPPINES IN 1983

[TARIFF SCHEDULE NUMBERS SUBJECT TO INVESTIGATIONS]

A. TEXTILE MILL PRODUCTS						
Yarns						
303.1000	303.2040	307.6810	307.6820	307.6830	310.5049	
Cordage						
315.3500	315.4500	316.3000	316.5800			
Fabrics						
326.1062	326.1063	326.4021	326.4022	326.4024	326.4031	326.4038
326.4042	326.4049	326.4054	326.4057	326.4065	326.4072	326.4074
326.4080	326.4096	335.7500				
Special Constructional Fabrics						
347.6040	348.0082	348.0085	348.0095	348.0575	349.1060	351.0500
351.3000	351.4010	351.4610	351.4660	351.8060	352.8060	353.5052
355.2500	355.4530	357.1500	357.7060	357.8060	358.0210	
Textile Furnishings						
360.1515	360.1520	360.4225	360.4825	360.7000	360.7800	360.8300
361.4500	361.4800	361.5420	361.5426	361.5620	361.5660	363.0120
363.0515	363.0525	363.2562	363.2564	363.2575	363.2580	363.3020
363.5115	363.8506	363.8509	363.8555	365.5060	365.7825	365.7855
365.7865	365.8100	365.8300	365.8640	365.8660	365.8670	365.8680
366.1540	366.1840	366.1855	366.4600	366.4700	366.4820	366.4840
366.5100	366.5400	366.5740	366.7200	366.7700	366.7925	366.7930
367.5500	367.6025	367.6040	367.6060	367.6500	.....	727.8200
Miscellaneous						
385.5000	385.6120	385.6140	385.6300	385.7040	386.0830	386.2000
386.5050	387.3700	389.3000	389.4000	389.5000	389.6270	389.7000
B. APPAREL						
Wearing Apparel						
370.0800	370.1200	370.1600	370.8420	372.1010	372.1020	372.1030
372.1036	372.1040	372.1060	372.1540	372.1560	372.3600	372.6020
372.7000	372.7520	372.7540	372.2200	374.1000	374.2600	374.3530
374.3550	374.4000	374.8020	376.1600	376.2425	376.2430	376.2470
376.2625	376.2630	376.2646	376.2666	376.5406	376.5606	376.5612
376.5618	378.0545	378.0550	378.0553	378.0560	378.0571	378.0576
378.1035	378.1535	378.1540	378.6030	378.6530	379.0211	379.0212
379.0220	379.0230	379.0340	379.0490	379.0607	379.0609	379.0615
379.0620	379.0624	379.0640	379.0646	379.0640	479.2620	379.2320

APPENDIX C.—IMPORTS OF CERTAIN TEXTILE MILL PRODUCTS AND APPAREL FROM THE PHILIPPINES IN 1983—Continued

[TARIFF SCHEDULE NUMBERS SUBJECT TO INVESTIGATIONS]

379.2360	379.2610	379.2630	379.2830	379.2840	379.3120	379.3130
379.3140	379.3180	379.3334	379.3336	379.3540	379.3905	379.3915
379.3925	379.3930	379.4020	379.4030	379.4040	379.4050	379.4060
379.4140	379.4330	379.4615	379.4620	379.4640	379.4650	379.4660
379.4670	379.5220	379.5520	379.5530	379.5535	379.5540	379.5545
379.5550	379.5560	379.5565	379.5700	379.5800	379.6210	379.6217
379.6219	379.6220	379.6230	379.6240	379.6250	379.6260	379.6270
379.6280	379.6430	379.6470	379.7259	379.7540	379.7547	379.7550
379.7555	379.7580	379.7610	379.7620	379.7630	379.7650	379.8311
379.8318	379.8356	379.8357	379.8358	379.8359	379.8360	379.8420
379.8906	379.8911	379.8915	379.8930	379.8935	379.8940	379.9010
379.9020	379.9030	379.9035	379.9040	379.9100	379.9510	379.9525
379.9530	379.9535	379.9540	379.9550	379.9555	379.9562	379.9564
379.9566	379.9568	379.9575	379.9580	379.9585	379.9650	383.0207
383.0208	383.0212	383.0213	383.0214	383.0216	383.0217	383.0218
383.0219	383.0222	383.0226	383.0228	383.0232	383.0234	383.0236
383.0238	383.0242	383.0246	383.0248	383.0272	383.0305	383.0306
383.0320	383.0330	383.0335	383.0335	383.0340	383.0350	383.0361
383.0390	383.0505	383.0506	383.0507	383.0509	383.0570	383.0606
383.0608	383.0612	383.0614	383.0616	383.0618	383.0622	383.0630
383.0631	383.0638	383.0640	383.0657	383.0805	383.0810	383.0815
383.0820	383.0825	383.0830	383.0835	383.0838	383.0841	383.0844
383.0855	383.0856	383.0859	383.0860	383.1802	383.1804	383.1805
383.1806	383.1807	383.1809	383.1811	383.1812	383.1822	383.1824
383.1841	383.1843	383.1846	383.1848	383.1852	383.1854	383.1880
383.1910	383.1920	383.1922	383.1924	383.1926	383.1928	383.1935
383.1940	383.2005	383.2013	383.2014	383.2016	383.2020	383.2025
383.2035	383.2040	383.2050	383.2052	383.2054	383.2058	383.2060
383.2205	383.2210	383.2212	383.2214	383.2216	383.2225	383.2227
383.2228	383.2229	383.2231	383.2232	383.2233	383.2234	383.2236
383.2237	383.2241	383.2243	383.2245	383.2248	383.2251	383.2255
383.2305	383.2310	383.2315	383.2320	383.3325	383.2330	383.2335
383.2340	383.2350	383.2351	383.2352	383.2354	383.2556	383.2360
383.2365	383.2550	383.2580	383.2590	383.2706	383.2710	383.2712
383.2714	383.2715	383.2716	383.2718	383.2721	383.2722	383.2724
383.2726	383.2728	383.2730	383.2732	383.2736	383.2736	383.2750
383.2814	383.2816	383.2818	383.2820	383.2821	383.2826	383.2828

Headwear

702.1400

Gloves

704.4010	704.4025	704.4504	704.4506	704.4508	704.5015

NOTE.—With regard to the woven cotton fabrics subject to these investigations, the U.S. Department of Commerce has used the U.S. Import Statistical Numbers, which closely parallel the *TSUSA* numbers, in preparing this appendix. For example, U.S. Import Statistical Number 320.0001 represents *TSUSA* Numbers 320.0101 through 320.0901, and 326.3098 represents *TSUSA* Numbers 326.3098 through 326.3998.

Appendix D.—Imports of Certain Textile Mill Products and Apparel From Indonesia in 1983

[Tariff Schedule Numbers Subject to Investigations]

A. Textile Mill Products

Yarns and Threads

310.0250	310.5049

Woven Fabrics

320.0001	320.0012	320.0013	320.0019	320.0032	320.0033	320.0034
320.0043	320.0044	320.0045	320.0062	320.0063	320.0071	320.0077
320.1019	320.1034	320.1045	320.1071	320.1077	322.1015	322.1017
322.1029	322.1036	322.1040	322.1047	322.1055	322.1056	322.1085
322.1088	322.1070	322.1079	322.1097	322.3003	322.3018	322.3021
322.3022	322.3024	322.3027	322.3038	322.3042	322.3049	322.3054
322.3057	322.3065	322.3072	322.3074	322.3080	322.3096	322.4003
322.4021	322.4022	322.4024	322.4031	322.4038	322.4042	322.4049
322.4054	322.4057	322.4065	322.4072	322.4074	322.4080	322.4098
322.5021	322.5022	322.5024	322.5031	322.5038	322.5042	322.5049
322.5054	322.5057	322.5065	322.5072	322.5074	322.5080	322.5096

Appendix D.—Imports of Certain Textile Mill Products and Apparel From Indonesia in 1983—Continued

[Tariff Schedule Numbers Subject to Investigations]

322.8003	322.8021	322.8022	322.8024	322.8036	322.8042	322.8049
322.8054	322.8057	322.8065	322.8072	322.8074	322.8089	322.8098
325.8021	325.8022	325.8024	325.8031	326.1050	326.1051	326.1052
326.1085	326.1089	326.1091	326.1095	326.3016	326.3018	326.3021
326.3022	326.3023	326.3024	326.3027	326.3031	326.3036	326.3042
326.3049	326.3054	326.3057	326.3065	326.3069	326.3072	326.3073
326.3074	326.3080	326.3096	332.4040	338.5021	338.5024	338.5030
338.5031	338.5035	338.5036	338.5039	338.5064	338.5069	

Special Construction Fabrics

347.3380

Textile Furnishings

361.4500	363.4500	363.5115	365.7825	365.7865	366.2740	366.2780
366.4600	366.4700	366.7925	366.7930	727.8630		

Luggage and Handbags

706.3400	706.3640	706.3650	706.3680	706.4106	706.4110	706.4140
706.4150						

Miscellaneous

366.1500	366.4000	366.5045	369.3000	369.7000

B. Apparel

Wearing Apparel

372.1060	372.1540	372.1560	372.2000	372.7000	372.7520	378.1540
379.0220	379.0620	379.0640	379.0642	379.0648	379.0810	379.2350
379.2630	379.3120	379.3940	379.4010	379.4020	379.4040	379.4050
379.4330	379.4630	379.4640	379.4650	379.4660	379.4670	379.5210
379.5220	379.5510	379.5520	379.5525	379.5530	379.5535	379.5540
379.5545	379.5550	379.5580	379.5585	379.5800	379.5210	379.5220
379.6230	379.6240	379.6250	379.6470	379.8915	379.9025	379.9030
379.9040	379.9250	379.9530	379.9535	379.9540	379.9545	379.9550
379.9555	379.9570	379.9575	379.9580	379.9585	379.9641	379.9650
383.0219	383.0222	383.0226	383.0228	383.0232	383.0234	383.0238
383.0242	383.0246	383.0248	383.0262	383.0284	383.0286	383.0288
383.0272	383.0305	383.0335	383.0361	383.0505	383.0506	383.0507
383.0509	383.0606	383.0608	383.0612	383.0614	383.0618	383.0622
383.0631	383.0616	383.0630	383.0636	383.0640	383.0605	383.0635
383.0638	383.0641	383.0656	383.0659	383.0660	383.1305	383.1802
383.1804	383.1805	383.1806	383.1807	383.1822	383.1824	383.1841
383.1910	383.1915	383.1920	383.1922	383.1924	383.1926	383.1928
383.2005	383.2013	383.2014	383.2020	383.2025	383.2035	383.2040
383.2050	383.2052	383.2058	383.2060	383.2205	383.2210	383.2212
383.2214	383.2225	383.2227	383.2228	383.2229	383.2231	383.2232
383.2233	383.2234	383.2235	383.2236	383.2237	383.2239	383.2241
383.2243	383.2245	383.2248	383.2251	383.2255	383.2305	383.2315
383.2320	383.2325	383.2330	383.2335	383.2340	383.2350	383.2352
383.2354	383.2356	383.2360	383.2365	383.2535	383.2550	383.2590
383.2710	383.2712	383.2714	383.2715	383.2716	383.2718	383.2721
383.2722	383.2724	383.2726	383.2728	383.2730	383.2732	383.2736
383.2738	383.2814	383.2816	383.2818	383.2821	383.2826	383.2828
383.2835	383.2910	383.3030	383.3040	383.3060	383.3080	383.3090
383.3200	383.3430	383.3435	383.3445	383.3446	383.3448	383.3450
383.3460	383.3465	383.3466	383.3770	383.4015	383.4300	383.4702
383.4704	383.4705	383.4707	383.4709	383.4711	383.4716	383.4717
383.4718	383.4720	383.4721	383.4724	383.4726	383.4747	383.4748
383.4750	383.4753	383.4754	383.4756	383.4761	383.4762	383.4764
383.4765	383.4821	383.4825	383.4900	383.5026	383.5027	383.5028
383.5031	383.5034	383.5037	383.5043	383.5051	383.5078	383.5082
383.5084	383.5086	383.5068	383.5090	383.5295	383.5365	383.6371
383.7887	383.7888	383.7892	383.8002	383.8007	383.8009	383.8011
383.8012	383.8014	383.8017	383.8019	383.8024	383.8026	383.8028
383.8030	383.8045	383.8048	383.8050	383.8052	383.8069	383.8071
383.8073	383.8115	383.8137	383.8139	383.8145	383.8162	383.8164
383.8605	383.8630	383.8635	383.8645	383.8660	383.8663	383.8669
383.8670	383.8810	383.9005	383.9010	383.9015	383.9020	383.9025

Appendix D.—Imports of Certain Textile Mill Products and Apparel From Indonesia in 1983—Continued

[Tariff Schedule Numbers Subject to Investigations]

383.9027	383.9029	383.9050	383.9051	383.9056	383.9057	383.9058
383.9059	383.9061	383.9062	383.9063	383.9064	383.9066	383.9068
383.9069	383.9070	383.9210	383.9220	383.9225	383.9235	383.9240
383.9245	383.9255	383.9267	383.9270	383.9276	383.9290	383.9291
383.2835	383.2910	383.3010	383.3020	383.3030	383.3037	383.3038
383.3040	383.3060	383.3069	383.3080	383.3085	383.3090	383.3200
383.3405	383.3415	383.3420	383.3430	383.3435	383.3445	383.3446
383.3450	383.3452	383.3460	383.3465	383.3466	383.3600	383.4015
383.4200	383.4300	383.4702	383.4704	383.4705	383.4707	383.4709
383.4711	383.4716	383.4717	383.4718	383.4720	383.4721	383.4724
383.4725	383.4747	383.4748	383.4750	383.4753	383.4754	383.4756
383.4758	383.4760	383.4761	383.4762	383.4784	383.4785	383.4816
383.4815	383.4820	383.4821	383.4823	383.4825	383.5028	383.5028
383.5029	383.5031	383.5032	383.5033	383.5034	383.5037	383.5040
383.5041	383.5042	383.5043	383.5044	383.5051	383.5054	383.5057
383.5080	383.5082	383.5086	383.5088	383.5090	383.5295	383.5304
383.5305	383.5316	383.5369	383.5385	383.5395	383.5825	383.5845
383.6330	383.6340	383.6371	383.6395	383.7205	383.7210	383.7510
383.7520	383.7522	383.7532	383.7534	383.7536	383.7538	383.7542
383.7544	383.7546	383.7548	383.7552	383.7554	383.7556	383.7581
383.7883	383.7886	383.7887	383.7888	383.7892	383.8002	383.8007
383.8009	383.8011	383.8012	383.8014	383.8017	383.8019	383.8024
383.8026	383.8028	383.8030	383.8045	383.8048	383.8050	383.8052
383.8069	383.8071	383.8073	383.8108	383.8110	383.8114	383.8115
383.8116	383.8117	383.8137	383.8139	383.8141	383.8143	383.8147
383.8156	383.8158	383.8162	383.8164	383.8300	383.8605	383.8620
383.8621	383.8622	383.8630	383.8635	383.8645	383.8650	383.8660
383.8661	383.8663	383.8665	383.8669	383.8670	383.9010	383.9015
383.9020	383.9025	383.9027	383.9029	383.9032	383.9035	383.9040
383.9042	383.9050	383.9051	383.9056	383.9057	383.9058	383.9059
383.9061	383.9062	383.9063	383.9064	383.9066	383.9068	383.9069
383.9070	383.9072	383.9074	383.9076	383.9205	383.9210	383.9211
383.9215	383.9225	383.9230	383.9235	383.9240	383.9245	383.9246
383.9265	383.9270	383.9273	383.9276	383.9291	383.9562	383.9564
383.9566	383.9568	383.9570	383.9572	383.9574	383.9576	383.9578
383.9579						

Headwear

702.5600	703.0510	703.0520	703.0530	703.0540	703.0550	703.0560
703.1000	703.1610	703.1620	703.1630	703.1640	703.1650	.....

Gloves

704.1020	704.2000	704.2500	704.3210	704.3215	704.3240	704.4010
704.4504	704.4506	704.4508	704.5015	704.6500	704.8515	704.8525
704.8550	704.9000	705.8520	.....			

Luggage and Handbags

706.3410	706.3420	706.3430	706.3200	706.3640	706.3680	706.3840
706.3850	706.4106	706.4121	706.4140	706.4144	706.4152	.....

[FR Doc. 85-9276 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Glen Oak Zoo

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Glen Oak Zoo (P357), Peoria Park District.

b. Address 2218 N. Prospect Road, Peoria, Illinois 61603.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: California sea lions *(Zalophus californianus)* 2.

4. Type of Take: Captive maintenance.

5. Location of Activity: No take from the wild is involved.

6. Period of Activity: One (1) year.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.,

Regional Director, Southeast Region, National Marine Fisheries Service, Southeast Region, 4950 Koger Boulevard, St Petersburg, Florida 333702; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachussetts, 01930–3799.

Dated: April 11, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-9191 Filed 4-16-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Ms. Susan Shane

On February 27, 1985, notice was published in the **Federal Register** (50 FR 7946) that an application had been filed by Ms. Susan Shane, 250 Cottini Way, Santa Cruz, California 95060, for a Permit to take an unspecified number of

Atlantic bottlenose dolphins (Tursiops truncatus) for the purpose of scientific research.

Notice is hereby given that on April 11, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C., and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731

Dated: April 11, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc 85–9190 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Center for Coastal Marine Studies

On January 9, 1985, notice was published in the **Federal Register** (50 FR 1100) that an application has been filed by the Center for Coastal Marine Studies, University of California, Santa Cruz, California, for a permit to take 4,940 northern elephant seals (*Mirounga angustirostris*) a year for five years for tagging and physiological studies.

Notice is hereby given that on April 8, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 9, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–9195 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-22-M

Request for a Modification to a General Permit

On February 15, 1985, a General Permit in Category 1: Towed or Dragged Gear was issued to Scan Ocean, Inc. to take 5 harbor seals and 15 cetaceans during commercial fishing operations in the North Atlantic Ocean during 1985.

During the spring mackerel fishing seasons, the Netherland fleet reported an incidental take of 18 cetaceans; 8 common dolphins and 10 pilot whales. In order to cover this incidental take and to conduct fishing operations throughout the rest of the year, the Permit Holder has requested a modification of their general permit to allow an incidental take of an additional cetaceans.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Interested parties may submit written comments on this application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: April 11, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–9196 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-22-M

Request for a Modification to a General Permit

On February 21, 1985, a General Permit in Category 1: Towed or Dragged Gear was issued to FEDERPESCA, Rome, Italy, to take 5 harbor seals and 10 cetaceans during commercial fishing operations in the North Atlantic Ocean during 1985.

During the spring squid fishing season, the Italian fleet reported an incidental take of 32 cetaceans; 28 common dolphins and 4 unidentified. In order to cover this incidental take and to conduct summer squid fishing commencing in July, the Permit Holder has requested a modification of their general permit to allow an incidental take of an additional 25 cetaceans.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Interested parties may submit written comments on the application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: April 11, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–9194 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals: Application for Permit; Sea World, Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Sea World, Inc. (P2P).

b. Address: 1720 South Shores Road, Mission Bay, San Diego, California 92109.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: false killer whales (Pseudorca crassidens), 6.

4. Type of Take: Import.

5. Location of Activity: Import from Japan.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Adminstrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application

would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street. Gloucester, Massachusetts 09130–3799.

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 11, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–9296 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Fisheries Advisory Committee; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Marine Fisheries Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law. The Committee was first established in February 1971, and is due to terminate on April 11, 1985. Its original purpose was to advise the Secretary of Commerce on all living marine resource matters which are the responsibility of the Department of Commerce. It served to ensure that the living marine resource policies and programs of this Nation were adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, and other national interests. This objective is being achieved. The Committee is playing an important role in the discussion and development of fisheries policy for the Department of Commerce. Its recommendations are of substantial value to the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service as well as the Department.

In renewing the Committee, the Secretary has established for it the continuation of this objective for the next two years. Drawing on its experiences and the expertise of its individual members, the Committee is to advise the Secretary of Commerce on all living marine resource matters which are the responsibility of the Department of Commerce and to ensure that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, and other national interests. Research indicates that the Committee's function cannot be accomplished by any organizational element or other committee of the Department.

The Committee will continue with a balanced representation of 21 members, chaired by the Administrator of the National Oceanic and Atmospheric Administration, and will operate in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised charter will be filed with appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be addressed to the Committee Control Officer, Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C., 20234, telephone: (202) 634–0563, or the Department's Committee Management Analyst, telephone: (202) 377–4217.

Dated: April 11, 1985.

Katherine M. Bulow,

Assistant Secretary for Administration.

[FR Doc. 85–9222 Filed 4–16–85; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Water Supply Impoundment on Crump's Millpond in the City of Suffolk, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. Proposed Action: The City of Suffolk proposes to build an earthen impoundment structure across Crump's Millpond, an existing impoundment of Chuckatuck Creek, north of the Chuckatuck area of Suffolk, Virginia. The impounded lake would have a normal pool area of approximately 485 acres with a normal pool elevation of approximately 40 feet mean sea level. As a water supply reservoir, the lake could supply a maximum safe yield of 2.4 million gallons per day. A significant portion of the area to be flooded consists of wetlands.

2. Alternatives: Alternatives which will be investigated include, but will not be limited to site alternatives in and around the Chuckatuck area of Suffolk, groundwater use, conservation and no project.

3. Scoping Process: Informal pre-application scoping meetings were held with State and Federal agencies in the fall of 1984. Significant issues which have already been identified include wetland destruction and mitigation, impacts to anadromous fishes and watershed development. A public notice requesting written scoping comments will be published on or about April 8, 1985.

4. Public Meetings: The public notice mentioned above will also announce the date and location of a public scoping meeting.

5. DEIS Availability: It is estimated that the DEIS will be available to the public for review and comments in the fall of 1985.

ADDRESS: Questions about the proposed actions and DEIS can be answered by: Ms. Pamela Painter, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510, (804) 441–3654–COM, 827–3654–FTS.

Dated: April 8, 1985.

Ronald L. Hawthorne,

Major, Corps of Engineers, Acting District Engineer.

[FR Doc. 85–9197 Filed 4–16–85; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Guaranteed Student Loan Program and PLUS Program

AGENCY: Department of Education.

ACTION: Notice of Special Allowance for Quarter Ending March 31, 1985.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP) or the PLUS Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1). Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending March 31, 1985, the special allowance will be paid at the following rates:

	Applicable interest rate (percent)	Annual special allowance rate (percent)	Special allowance rate (percent) for quarter ending Mar. 31, 1985
GSLP loans or PLUS loans made prior to Oct. 1, 1981.	7	5.00	1.25
	9	3.00	0.75
GSLP loans or PLUS loans made on or after Oct. 1, 1981.	7	4.95	1.24
	8	3.96	0.99
	9	2.96	0.74
	12	0.00	0.00
	14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act for loans at each applicable interest rate by making the following four calculations:

(a) *Step 1.* Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies;

(b) *Step 2.* Subtract from that average the applicable interest rate (7, 8, 9, 12, or 14 percent) of loans for which a holder is requesting payment;

(c) *Step 3.* (1) Add 3.5 percent to the remainder; and

(2) In the case of loans made before October 1, 1981, round the sum upward to the nearest one-eighth of one percent;

(d) *Step 4.* Divide the resulting percent in Step 3 (either (c)(1) or (c)(2), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Nancy Eakin, Program Specialist, or Larry Oxendine, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

Dated: April 12, 1985.

(Catalog of Federal Domestic Assistance No. 84–032, Guaranteed Student Loan Program and PLUS Program)

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85–9254 Filed 4–16–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and time: May 8–9, 1985 from 9:00 a.m. to 5:00 p.m.

Location: University of California at Los Angles, Ackerman Student Union, 2nd Floor Lounge.

Contact: Rosalie Weller, Office of Fusion Energy, ER–50, U.S. Department of Energy, Mail Stop G–226, Washington, D.C. 20545, Phone: (301)–353–3347.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Tentative Agenda Outline

1. Status of International Fusion Planning—Clarke
2. Report of MFAC Panel X Reviewing High Power Density Systems
   - A. Panel Charge and Process—Davidson, Gross
   - B. Introduction, Background and Issues—Linford
   - C. Panel, Findings
     - Physics Issues—Logan
     - Parametric Studies, Reactor and Technology Issues—Baker
   - D. Panel Recommendations—Conn
3. MFAC Discussion and Recommendations
4. Public Discussion
5. MFAC Panel Reviewing Fusion System Studies—Status Report—Stacey
6. TFTR Results and Status—Meade
7. Initial Phase of Technical Planning Activity—Baker
8. New Charge Areas—Clarke, Davidson
9. MFAC Discussion and Recommendations
10. Public Discussion

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and resonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available approximately 30 days following the meeting.

Issued at Washington, D.C., on April 12, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–9242 Filed 4–16–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER84–531–002, et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

Take notice that the following filings have been made with the Commission:

1. **Arizona Public Service Company**

[Docket No. ER84–631–002]

April 11, 1985.

Take notice that on March 20, 1985, Arizona Public Service Company (APS), submitted for filing a compliance report pursuant to the Commission's Letter Order dated October 1, 1984.

APS submitted copies of the Rate Sheets, entitled Amendment No. 1, which are appended for inclusion in SCE's FERC Rate Schedule No. 120. APS requests that the Rate Sheets be designated accordingly, and that this Docket be terminated with regard to the wholesale power rates for SCE.

Comment date: April 26, 1985, in accordance with standard Paragraph H at the end of this notice.

2. **Holyoke Water Power Company, Holyoke Power and Electric Company**

[Docket No. ER84–554–001]

April 11, 1985.

Take notice that on February 15, 1985, Holyoke Water Power Company (HWP) and Holyoke Power and Electric Company (HP&E) submitted for filing a

refund report pursuant to the Commission's letter dated January 29, 1985, approving the Settlement Agreement between the parties.

The enclosure to the Commission's letter incorrectly identified the effective date as June 30, 1985 for HP&E's tariff applicable to the Town of South Hadley. The effective date should have been listed as June 20, 1985. Further, HWP and HP&E hereby inform the Commission that there will be no refunds to report.

Comment date: April 26, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. **Kentucky Utilities Company**

[Docket No. EC85-12-000]

April 12, 1985.

Take notice that on April 1, 1985, Kentucky Utilities Company (KU) submitted for filing an application for authority pursuant to section 206 of the Federal Power Act, to acquire from Old Dominion Power Company (Old Dominion) certain of the latter's securities.

Specifically, KU seeks to acquire from Old Dominion unsecured promissory notes of Old Dominion from time to time during the years 1985 and 1986 provided that the maximum aggregate principal amount of such note outstanding at any time shall not exceed $41,750,000.

Comment date: May 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. **El Paso Electric Company**

[Docket No. ES85-36-000]

April 12, 1985.

Take notice that on April 2, 1985, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to section 204 of the Federal Power Act to issue up to 300,000 shares of Common Stock, no par value, pursuant to the Employee Stock Compensation Plan and applying for an exemption of such issuance from the competitive bidding requirements of the Commission.

Comment date: May 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol street, NE., Washington D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9274 Filed 4-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-105-001]

Proposed Change in FERC Gas Tariff; Lawrenceburg Gas Transmission Corp.

April 12, 1985.

Take notice that on April 4, 1985, Lawrenceburg Gas Transmission Corporation tendered for filing one (1) substitute gas tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, dated as issued on April 2, 1985, proposed to become effective February 28, 1985, and identified as follows:

Substitute Thirty-six Revised Sheet No. 4

Lawrenceburg states that its substitute tariff sheet modifies its previously approved restatement of its base tariff rates in this docket pursuant to § 154.38(d)(4)(vi), because of a subsequent reduction in its February 1, 1985 purchased gas adjustment (PGA) rate that was rolled into its restated base rate.

Lawrenceburg states that copies of its filing were served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9272 Filed 4-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-14-000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Filing

April 12, 1985

Take Notice that on April 5, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1, Thirteenth Revised Sheet No. 96.

This sheet reflects a revision in the Directory of Communities served concerning the Operational Zone listing for Interstate Power Company.

Any person desiring to be heard or to protect said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR) 385.211, 385.214). All such petitions or protests should be filed on or before April 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-9273 Filed 4-16-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30242; PH-FRL 2817-8]

Janssen Pharmaceutica; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by May 17, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP–30252] and the file number (43813–O) to:

Information Services Section (TS–757C), Program Management and Support Division, Attn: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236 CM#2, Attn: PM 21, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concering this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, PM 21, (703–557–1900).

SUPPLEMENTARY INFORMATION: Janssen Pharmaceutica, PO Box 344, Bear Tavern Road, Washington Crossing, NJ 08560, has submitted an application to EPA to register the wood preservative fungicide, Rodewod Technical, EPA File Symbol 43813–O, containing the active ingredient 1-[(2-(2,4-dichlorophenyl)-1,3-dioxolan-2-yl)methyl]-1*H*-1,2,4-triazole at 85 percent, pursuant to the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use for formulation of wood preservatives only. Notice of receipt of this application does not imply a decision by the Agency on the applicauen.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in receiving the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

(Sec. 3(c)(4) of FIFRA, as amended)

Dated: March 29, 1985.

Douglas O. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–8819 Filed 4–16–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50637; FRL–2819–5]

Sodium Fluoroacetate (Compound 1080); Receipt of Application for an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from the United States Department of the Interior (USDI) Fish and Wildlife Service for an Experimental use permit (EUP), 6704–EUP–EI. The application proposes allowing the use of 0.66 pound of sodium fluoroacetate (Compound 1080) in single lethal dose baits on Kiska Island, Alaska, to eradicate the Arctic fox in order to benefit the endangered Aleutian Canada Goose. USDI proposes to treat a total of 6,128 acres. The application also proposes that the permit run for 2 years starting in the fall of 1985.

DATE: Written comments must be received on or before May 17, 1985.

ADDRESS: Comments, in triplicate, should bear the docket control number OPP–50637 and be submitted to:

Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

A copy of the USDI application and copies of any public comments filed regarding this notice will be made available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: William Miller, Product Manager (PM) 16, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: The USDI's experimental use permit application requests that EPA approve experimental use of Compound 1080 in up to 100,000 single lethal dose baits to control the Arctic fox. The USDI has requested that the EUP be granted to allow it to develop information relating to the efficacy of single lethal dose baits (SDSs). The application proposed that the testing be conducted on Kiska Island, Aleutian Islands, Alaska. Kiska is about 22 miles long and 1.5. to 6.2 miles wide and contains 69,598 acres.

The USDI contends that prior to the introduction of Arctic foxes by man, the Aleutian Canada Goose (ACG) was a common breeding bird throughout the Aleutian Islands. Foxes subsequently eradicated the ACG on all islands except Buldir (these predators were not introducted on Buldir because the island is very difficult to access by boat). If the ACG population is to recover from its current endangered status, its breeding range must be expanded beyond Buldir Island. The breeding range is apparently limited only by the presence of Arctic foxes on the islands. Foxes were eradicated on several small islands through a combination of trapping, shooting, and use of M–44s. The logistical difficulties involved in maintaining a successful operational program in the remote Aleutian Islands makes the eradication of Arctic foxes on any of the large islands an extremely difficult, time-consuming, and expensive task. The USDI believes that if expansion of the breeding population of the endangered ACG and its subsequent recovery is to be achieved, a more efficient and effective method to eliminate Arctic foxes must be found.

The USDI proposes a three-part experimental design to (1) determine the acute toxicity of sodium fluoroacetate to Arctic foxes, (2) develop well-accepted and consistently lethal Compound 1080-treated SDBs, and (3) determine the feasibility of using 1080 treated SDBs as the primary tool for eradicating Arctic foxes on the Aleutian Islands Unit, Alaska Maritime National Wildlife Refuge (AMNWR).

If upon completion of this study positive effects outweigh the negative, the USDI intends to pursue a section 3 registration of this specific use.

Because of the regulatory history of Compound 1080, the Agency has determined that this application may be of regional or national significance. Therefore, in accordance with 40 CFR 171.11(a), the Agency is soliciting public comments on this request by the USDI for an experimental use permit for SDBs containing Compound 1080.

Dated: April 5, 1985.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-9203 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-407; FRL-2819-8]

Certain Companies, Pesticide Tolerance Petitions; Monsanto Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, food/feed additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-407] and the petition number, attention Product Manager (PM-25), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, (PM-25), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), food/feed additive petitions (FAP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 5F3157* and *FAP 5H5446*. Monsanto Co., 1101 17th St., NW, Washington, D.C. 20036. Proposes to amend 40 CFR 180.364(a) (raw agricultural commodities) and 21 CFR 561.253 (feed additive) by establishing tolerances for the combined residues of the herbicide glyphosate (*N*-(phosphonomethyl)glycine and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on the following commodities:

Petition ID	CFR affected	Commodities	Parts per million (ppm)
PP 5F3157	40 CFR 180.364	Peanuts	2.0
		Peanut hulls	2.5
FAP 5H5446	21 CFR 561.253	Peanut meal	3.0

The proposed analytical method for determining residues is high pressure liquid chromatography (HPLC) with a flourescence detector.

2. *PP 5F3170*. Monsanto Co. Proposes to amend 40 CFR 180.364(b) by revising the tolerance expression to read:

Tolerances are established for the combined residues of glyphosate (N-(phosphonomethyl)glycine) and its metabolite aminomethylphosphonic acid resulting from application of glyphosate isopropylamine salt for herbicidal and plant growth regulator purposes or the sodium sesqui salt for growth regulator purposes in or on the following raw agricultural commodities:

The tolerance levels for the commodities listed therein remain the same.

3. *PP 5F3186*. E.I. du Pont de Nemours & Co., Agricultural Chemical Division, Barley Mill Plaza, Wilmington, DE 19898. Proposes to amend 40 CFR Part 180 by establishing tolerances for residues of the herbicide DPX-F6025 (ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]-carbonyl]amino]sulfonyl]benzonate) in or on soybeans at 0.05 ppm. The proposed analytical method for determining residues is HPLC using a photo-conducting detector.

4. *PP 5F3188*. Chevron Chemical Co., 540 Hensley St., Richmond, CA 94804. Proposes to amend 40 CFR 180.205 by establishing tolerances for the residues of the herbicide paraquat (1,1-dimethyl-4,4'-bipyridinium-ion) derived from application of either the bis(methyl sulfate) or the dichloride salt (both calculated as the cation) in or on rice grain and straw at 0.05 ppm. The proposed analytical method for determining residues is freeing of the paraquat cation with ammonium chloride, reduction by sodium dithionite and determination by spectrophotometry.

5. *FAP 5H3456*. Doe Chemical, USA, P.O. Box 1706, Mulland, MI, 48640. Proposes to amend 21 CFR 193.350 by establishing a regulation permitting residues of the herbicide picloram (4-amino-3,5,6-trichloropicolinic acid in or on the palm oil at 0.05 ppm.

6. *PP 5F3192*. Rhone-Poulenc Inc., 125 Black Horse Lane, Monmouth Junction, NJ 08852. Proposes to amend 40 CFR Part 180 by establishing tolerances for the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic acid ester in or on the raw agricultural commodities, sweet corn and sweet corn forage, at 0.1 ppm. The proposed analytical method of determining residues is gas liquid chromatography.

7. *PP 5F3195*. Burst AgriTech, 6871, W. 63rd St., Suite 304, Overland Park, KS 66202. Proposes to amend 40 CFR 180.1042 by establishing an exemption from the requirement of tolerance for the residues of the plant growth regulator aqueous extract of seaweed meal derived from *Laminaria digitata, Laminaria hyperborea, Fucus serratus, Ascophyllum nodosum* in or on the commodities alfalfa, barley, beets, endive, escarole, grape fruit limes, peas, pecans, popcorn, pumpkin, small grains, sugarcane, sweet corn, and turnips.

8. *PP 5F3213*. Platte Chemical Co., P.O. Box 667, Greely, CO 80632. Proposes to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance on all crops for the plant growth regulator cytokinin derived from cactus.

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)), 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

Dated: April 5, 1985.

Robert V. Brown,

Deputy Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-9082 Filed 4-16-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Stephen G. McGowan d.b.a. McGowan Broadcasting; Mary Esther, FL	BPH-850625AD	85-95
B. Dorothy C. Pennington and William J. Pennington, Jr. d.b.a. Golden Sands Broadcasting; Mary Esther, FL	BPH-850703AF	
C. Richard A. Humphrey et al., d.b.a. Mary Esther Broadcasting Company; Mary Esther, FL	BPH-850723AG	
D. Julia N. Frew; Mary Esther, FL	BPH-831028AI	
E. H. French Brown; Mary Esther, FL	BPH-831027AI	
F. Breeze Broadcasting Company, Ltd. a Limited Partnership; Mary Esther, FL	BPH-831027AK	
G. Harry A. Shelter; Mary Esther, FL	BPH-831027AO	
H. Mary Esther Broadcasting, Inc. Mary Esther, FL	BPH-831028AP	
I. Mary Esther Communications, Inc.; Mary Esther, FL	BPH-831028AQ	
J. Marion F. Walker et al., d.b.a. CMW Communications; Mary Esther, FL	BPH-831028AS	
K. Rahe Broadcasting Company, Ltd., a Limited Partnership; Mary Esther, FL	BPH-831028AT	
L. LuLu Two Communications, Inc.; Mary Esther, FL	BPH-831028AW	
M. Clay E. Holladay; Mary Esther, FL	BPH-831028AX	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose hearings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B, D, E, H, I, K, L
2. Ultimate, All
3. Comparative, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 85-9253 Filed 4-16-85; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order

Adopted: March 29, 1985.
Released: April 11, 1985.

By the Chief, Video Services Division:

In re Applications of Holiday Group, Limited, Venice Broadcasting Corporation,[1] Santa Rosa Broadcasting, Inc., Venice Communications Limited Partnership, Channel 62 of Venice Limited Partnership, Todd Broadcasting Corporation, Pauline Zlotolow and Associates, Ltd., for construction permit for new television station Venice, FL, MM Docket No. 85-99; File No. BPCT-840507KF; File No. BPCT-840920KF; File No. BPCT-840921KV; File No. BPCT-840921KW; File No. BPCT-840921KX; File No. BPCT-840921KY; File No. BPCT-840921LD (Application Dismissed).

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it: (a) The above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 62, Venice, Florida; (b) a petition to deny filed by Venice Communications Limited Partnership; and (c) related pleadings.[2]

2. On November 14, 1984, Venice Communications Limited Partnership, (Venice Communications), an applicant for Channel 62, Venice, Florida, filed a petition to deny Pauline Zlotolow and Associates, Ltd.'s competing application. The petitioner alleges that the application is patently defective and should not have been accepted for filing, on the grounds that: (a) The applicant failed to submit a seven-and-one-half minute map of its proposed antenna location; and (b) the applicant specified five different sets or coordinates for the antenna site.

3. Zlotolow filed its opposition to the petition to deny on November 27, 1984. Attached to Zlotolow's opposition was an affidavit executed by its technical consultant in which the consultant states that the technical matters raised in the petition resulted from omissions and errors made by his staff during a period when he was unable to prepare or adequately supervise the preparation of the final technical documents due to an illness. After reviewing the application and pleadings in this matter, we do not believe that Zlotolow's application was substantially complete on the "cut-off" date. The coordinates given for the transmitter site are used to determine whether the proposed site meets spacing requirements to other television authorizations, applications and pending rulemaking proceedings, to assure air safety, and to assure that the proposed operation will not affect other radio services. Thus, correct coordinates are an essential part of the processing of an application. We recognize that occasional errors can occur in setting out the coordinates, but we can often understand the correct coordinates by looking at other information in the application. In this case, however, the coordinates given by Zlotolow are inconsistent throughout, the map of the antenna site was missing when filed, the material given to the FAA is also inconsistent, and there is no other map or explanation found within the application, as initially filed, to provide any assurance as to which of the many sites was intended. Thus, the application lacked essential information, could not be processed, and was therefore not substantially complete when filed. Amendments submitted after the cut-off date are permissible in some cases to correct errors and omissions of applications that are

[1] Venice Broadcasting Corporation filed an amendment on December 21, 1984 after the "B" cut-off date. Since the amendment was required by § 1.65 of the Rules in order to maintain the accuracy and completeness of the application, the amendment will be accepted for § 1.65 purposes only.

[2] Channel 62 of Venice filed its application on September 21, 1984, (the cut-off date for competing applications), with a facsimile signature. The original signature page was subsequently filed as an amendment on October 29, 1984. It is settled Commission policy that ameliorative amendments may be filed after the "cut-off" date so long as the application was substantially complete when originally filed and the amendment is not the type which would require the assignment of a new file number under § 73.3572(b)(1). *See, Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976). Since the Channel 62 of Venice application was complete in all respects, except for an original signature page, on the "cut-off" date, the October 29, 1984 amendment will be accepted for filing.

substantially complete when filed, but amendments filed after the cut-off date to establish substantial completeness cannot be accpeted. To hold otherwise would mean that no firm cut-off date exists. *See, Advance, Inc.*, 88 FCC 2d 100 (1981), *recon. denied*, 89 FCC 2d 177 (1982). Accordingly, the application must be dismissed.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. In the pending rulemaking proceeding in RM–4861, the Commission proposed to allocate channel 66 to Bradenton, Florida. If that proposal is adopted, the transmitter sites now proposed by Holiday Group Limited (Holiday) and Santa Rosa Broadcasting, Inc. (Santa Rosa) would be 19 miles and 9 miles, respectively, from the reference point of channel 66 in Bradenton, whereas § 73.610 of the Commission's Rules would require a minimum separation of 20 miles. Holiday and Santa Rosa would, therefore, be 1 and 11 miles, respectively, short-spaced. An issue would then be required to determine whether circumstances exist which would warrant a waiver of the rule. In assessing those circumstances, the presiding Administrative Law Judge would consider the fact that the other applicants have specified sites which would comply with the separation requirements. Accordingly, a contingent issue will be specified with respect to each of these proposals. *Delaware Valley Television, Ltd.*, mimeo number 4088, released May 11, 1984 (Channel 48, Burlington, New Jersey).

7. Venice Communications' proposed tower is to be located 1.87 miles from the directional array of AM Station WAMR, Venice, Florida. Because of the proximity of the proposed tower to WAMR, grant of a construction permit to Venice Communications will be conditioned to ensure that WAMR's radiation pattern is not adversely affected by the construction of the proposed station.

8. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Channel 62 of Venice Limited Partnership has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

9. Section II, Item 5(a), FCC Form 301, requires that Table I be completed with respect to all parties to the application. Further, § 73.3514(a) of the Commission's Rules requires applicants to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 55 R.R. 2d 1484 (1984), the Commission stated that, henceforth, limited partnership interests were not attributable for the purpose of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and "if the limited partner is not involved in any material respect in the business or operation of the station." *Id.* at 1485. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards. *Id.* at 1493. Although changes in the form have not yet been made, there is now no need to provide information as to the Limited partners if an applicant can submit the necessary certification. If the certification is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Channel 62 Limited Partnership has certified that its limited partnership agreement conforms in all respects to the ULPA. It has further certified that the limited partner has no other media interest subject to the cross-interest policy. However, the applicant did not certify that the limited partner is not involved in any material respect in the operation of the station. Accordingly, Channel 62 of Venice Limited will be required to submit a statement with respect to its limited partner's involvement in the business or operation of the station.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. In the event that the Commission adopts the pending rule making proposal in RM–4861 and allocates channel 66 to Bradenton, Florida, to determine whether the application of Holiday Group Limited and the application of Santa Rosa Broadcasting, Inc., would be consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that, Channel 62 of Venice Limited Partnership, shall amend its application to furnish the information required by Paragraph 9 of this Order, within 20 days after this Order is released.

14. It is further ordered that, Channel 62 of Venice Limited Partnership shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

15. It is further ordered, that, in the event of a grant of the application of Venice Communications Limited

Partnership, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station WAMR, Venice, Florida, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

16. It is further ordered, that the amendment filed by Channel 62 of Venice on October 29, 1984, is accepted for filing.

17. It is further ordered, that the Petition to Deny filed by Venice Communications Limited Partnership is granted, and the application filed by Pauline Zlotolow and Associates, Ltd. is dismissed.

18. It is further ordered, that the petition for leave to amend filed by Venice Broadcasting Corporation on December 21, 1984, is hereby granted and the amendment filed on the same date is hereby accepted for filing for 1.65 purposes only.

19. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

20. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

21. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-9251 Filed 4-16-85; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order

Adopted: March 29, 1985.
Released: April 11, 1985.

By the Chief, Video Services Division:

In re Applications of Wise County Messenger, Inc., Karen L. Hicks, Chavela Broadcasting, Inc., for construction permit Decatur, Texas, MM Docket No. 85-100; File No. BPCT-841026KE; File No. BPCT-850107KG; File No. BPCT-850106KK.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 29, Decatur, Texas.[1]

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Karen L. Hicks did not certify her financial qualifications, but she indicated that certification would be forthcoming. Ms. Hicks will be given 20 days from the release date of this Order to review her financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in section III, FCC Form 301, as to her financial qualifications. If Ms. Hicks cannot make the required certification, she shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378 (released July 15, 1982).

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent with respect to issue 1.

8. It is further ordered, that Karen L. Hicks shall, within 20 days after this order is released, submit a financial certification in the form required by section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

10. It is further ordered, that the applicants herein shall, pursuant to

[1] Chevala Broadcasting, Inc., states in its application that Mr. Raul Tapia, its President, will divest certain broadcast interests within a period to be specified by the Commission, if such a divestiture "is decisionally significant." All broadcast interests are decisionally significant in the comparative process. The decision to divest, until the end of the period when amendments can be made as a matter of right, is for the applicant to make, not the Commission. The applicant did not make an election in this case, and it cannot now upgrade its comparative posture.

section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-9252 Filed 4-16-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0026.

Title: Application for Loan Cancellation.

Abstract: The form was developed for use by local governments in conjunction with the community Disaster Loan Program (Section 414, Pub. L. 93-288). The form was utilized to request cancellation of a Community Disaster Loan in accordance with the provisions of the law and regulations pertaining to Community Disaster Loans.

Type of Respondents: State or Local Governments.

Number of Respondents: 5.

Burden Hours: 30.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Laboratories and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 10, 1985.

Walter A Girstantas,

Director, Administrative Support.

[FR Doc. 85-9183 Filed 4-16-85; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0034.

Title: Application for Community Disaster Loan.

Abstract: The Community Disaster Loan Program an aspect of the Disaster Relief Act of 1974, Pub. L. 93-288, offers loans to disaster affected local governments with the possibility that all or part of the loan could be cancelled. Basic Authorities are contained in section 414, PL 93-288 and Federal Regulation 44 CFR 205 subpart F.

Type of Respondents: State or Local Governments.

Number of Respondents: 5.

Burden Hours: 30.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 10, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-9184 Filed 4-16-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council; Public Meeting

Correction

FR Doc. 85-9052 which announced a meeting on April 25, 1985, of the Federal Savings and Loan Advisory Council was published in the issue of Monday, April 15, 1985, on page 14791 in the section of the issue reserved for Sunshine Act meetings. It should have been published in the Notices section of the issue.

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-11]

Armada Great Lakes/East Africa Service, Ltd. and Great Lakes Transcaribbean Line; Order of Investigation and Hearing

Armada Great Lakes/East Africa Service Ltd. (Armada/East Africa) and Great Lakes Transcaribbean Line (GLTL) are common carriers in United States foreign commerce.

The above named carriers appear to have been implementing a joint service agreement continuously from 1981 until October 20, 1984, despite its being unapproved and not legally effective. The joint service operates under the name Armada/GLTL East Africa Service (Armada/GLTL Line). In early 1983 this came to the attention of the Commission and the agreement parties were informed that their agreement was subject to the filing and approval requirements of section 15, Shipping Act, 1916, 46 U.S.C. 814, which was then in effect. Although Armada/East Africa and GLTL immediately filed an agreement, they continued to implement their agreement without benefit of Commission approval. In order to resolve doubts which had been raised by the parties concerning Commission jurisdiction over the agreement (No. 10464), Docket No. 83-39, *Armada/GLTL East Africa Service (Agreement No. 10464)* was instituted on September 9, 1983. The sole issue in that proceeding was whether the Commission had jurisdiction over the agreement referred to above. On November 23, 1983, after full participation by the agreement parties, the Administrative Law Judge served his Initial Decision, finding jurisdiction. There were no exceptions filed and the decision became administratively final on January 5, 1984. Although the parties initiated discussions with Commission staff regarding the approval of their agreement, they nevertheless continued its implementation. This continued despite warnings from Commission staff that to do so was unlawful and at the parties' peril. On April 12, 1984, the parties filed an amended agreement which, like the original version, was protested. On June 13, 1984, the Commission returned the agreement to the parties as unapprovable, noting that it had not been processed to completion prior to the effective date of the Shipping Act, 1984. Armada/East Africa and GLTL subsequently filed an amended agreement on September 5,

1984, which was designated No. 207–010640 and became effective on October 20, 1984.

Because the parties continually implemented their joint service agreement during the time outlined above despite its being unapproved and not legally effective, the Commission's Bureau of Hearing Counsel, after consultation with the Commission, asserted a claim for civil penalties against both. At no point has either party denied implementing the agreement or that such implementation constitutes a violation. Because a satisfactory compromise of the subject claims could not be reached, the Commission has decided to institute this proceeding to determine and assess the appropriate penalty for the violations referred to above.

Therefore, it is ordered That, pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 831) and section II of the Shipping Act of 1984 (46 U.S.C. app. 1710), a formal investigation and hearing is instituted to determine:

1. Whether Armada Great Lakes/East Africa Service, Ltd. and Great Lakes Transcaribbean Line violated section 15, Shipping Act, 1916 (46 U.S.C. app. 814) and section 10 of the Shipping Act of 1984 (46 U.S.C. app. 1709) by implementing Agreement No. 207–010640 prior to its lawful effective date [1];

2. Whether, in the event that Armada Great Lakes/East Africa Service Ltd. and/or Great Lakes Transcaribbean Line are found to have violated section 15, Shipping Act, 1916 and/or section 10 of the Shipping Act of 1984, either or both should be assessed penalties and, if so, the appropriate level of penalty;

It is further ordered That Armada Great Lakes/East Africa Service Ltd. and Great Lakes Transcaribbean Line be named Respondents in this proceeding;

It is further ordered That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents, or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered That, pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the presiding officer in this proceeding shall be issued by April 15, 1986, and the final decision of the Commission shall be issued by August 14, 1986;

It is further ordered That notice of this Order be published in the **Federal Register**, and a copy thereof be served upon the Respondents and the Commission's Bureau of Hearing Counsel;

It is further ordered That, in accordance with Rule 42 of the Commission's Rules of Practices and Procedure (46 CFR 502.42), the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered That all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered that all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

Bruce A. Dombrowski,

Acting Secretary.

Appendix A

The following is a partial list of advertisements by which Armada/GLTL East Africa Service held out to provide common carrier service. Parenthetical listings refer to illustrative voyage confirmations in Lloyd's Voyage Record.

Journal of Commerce:

April 29, 1981, Page 32
June 15, 1981, Page 20–B
August 17, 1981, Page 20–B
October 15, 1981, Page 20–B
December 15, 1981, Page 20–B
February 16, 1982, Page 20–B
April 15, 1982, Page 20–B
June 15, 1982, Page 20–B
August 16, 1982, Page 20–B
October 15, 1982, Page 20–B
December 15, 1982, Page 20–B
January 14, 1983, Page 20–B
January 14, 1983, Page 5–B
January 14, 1983, Page 15–B
February 15, 1983, Page 20–B
March 15, 1983, Page 20–B
April 15, 1983, Page 20–B
May 16, 1983, Page 20–B
June 15, 1983, Page 20–B
July 15, 1983, Page 20–B
August 15, 1983, Page 20–B
September 15, 1983, Page 20–B
October 14, 1983, Page 20–B
November 15, 1983, Page 20–B
December 15, 1983, Page 20–B
December 20, 1983, Page 5–B
December 20, 1983, Page 15–B
January 10, 1984, Page 20–B
January 10, 1984, Page 5–B
January 10, 1984, Page 15–B
January 20, 1984, Page 20–B
January 20, 1984, Page 5–B
January 20, 1984, Page 15–B
February 10, 1984, Page 20–B
February 10, 1984, Page 5–B
February 10, 1984, Page 15–B
February 21, 1984, Page 20–B
February 21, 1984, Page 15–B
March 9, 1984, Page 20–B
(*NAXOS ISLAND*, May 29, 1984, Page 156)
March 20, 1984, Page 20–B
April 10, 1984, Page 20–B
(*HEROINAE*, July 24, 1984, Page 95)
May 10, 1984, Page 20–B
(*SHENANDOAH*, June 12, 1984, Page 205)
May 21, 1984, Page 20–B
(*OCEANIS*, August 7, 1984, Page 164)
June 11, 1984, Page 20–B
June 20, 1984, Page 20–B
(*REGIN A*, August 7, 1984, Page 166)
July 10, 1984, Page 20–B
July 20, 1984, Page 20–B
(*WILHELM SCHULTE*, August 21, 1984, Page 242)
August 10, 1984, Page 20–B
August 20, 1984, Page 20–B
(*RENATE SHULTE*, September 25, 1984, Page 187)
September 10, 1984, Page 20–B
September 20, 1984, Page 20–B
(*HEROINAE*, November 13, 1984, Page 95)
October 10, 1984, Page 20–B
October 19, 1984, Page 20–B
(*G HIK AS*, November 27, 1984, Page 84)

Illustrative advertisements for landbridge service from the U.S. West Coast can be found in:

Pacific Shipper, February 14, 1983, Page 52
Pacific Shipper, April 23, 1984, Page 52

[FR Doc. 85–9189 Filed 4–16–85; 8:45 am]
BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each

[1] Appendix A is a partial list of advertisements by which the parties held out to perform common carriage through their joint service.

agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004079–001.

Title: Oakland Terminal Agreement.

Parties:

The Port of Oakland (Port)

Westwood Shipping Lines (Westwood)

Synopsis: This agreement modifies the basic agreement between the Port and Westwood whereby the Port assigns certain marine terminal facilities in the Port's Outer Harbor Terminal, Berth 6 to Westwood. The amendment provides for the suspension of the operation of the agreement during the period in which Westwood transfers its operations to the facility preferentially assigned by the Port to American President Lines (APL), and uses said APL assigned facility as it published regularly scheduled Northern California port of call. It provides for the extension of the term of the agreement to and including March 31, 1990, with an option to extend the agreement for an additional two year period.

Agreement No.: 221–010619–001.

Title: Oakland Terminal Agreement.

Parties:

The Port of Oakland (Port)

East Asiatic Co., Ltd. (EAC)

Synopsis: This agreement modifies the basic agreement between the parties whereby the Port assigns certain marine terminal facilities in the Port's Charles Howard Terminal to EAC. The amendment provides that provisions of the agreement with respect to User's payment of dockage and wharfage shall apply to User's vessels and cargo handled to Mitsui O.S.K. Lines' assigned Port of Oakland Public Container Terminal as a result of User's FMC approved Joint Service Agreement with Mitsui O.S.K. Line.

Agreement No.: 224–010744.

Title: Oakland Terminal Agreement.

Parties:

The Port of Oakland (Port)

Mitsui O.S.K. Lines, Ltd. (Mitsui)

Synopsis: Agreement No 224–010744 between the Port and Mitsui is a terminal use agreement providing that Mitsui shall have the nonexclusive right to assigned premises at the Port's Outer Harbor Terminal, Berth 6, for the handling of its vessels and related operations in its transpacific container service. Mitsui will have the right to transfer its rights and obligations under the agreement to other of the Port's public container terminals. Mitsui agrees that the assigned premises shall be its published Northern California port of call. As a consideration Mitsui shall pay to the Port 90 percent of the tariff dockage and wharfage revenues, instead of 100 percent. If Mitsui's usage generates in excess of 31,000 revenue tons in a contract year, wharfage payment for such tonnage in excess of that amount will be refunded to Mitsui. The term of the agreement commences upon the first of the month following the determination of effectiveness by the Commission and terminates March 31, 1990.

Agreement No.: 231–010745.

Title: Duluth-Superior Terminal Agreement.

Parties:

Meehan Seaway Service, Inc.—Superior, Wisconsin

Seaway Port Authority—Duluth, Minnesota

Synopsis: This agreement will permit marine terminal operators in the adjacent ports of Superior and Duluth to discuss and establish terminal rates, charges, classifications, rules, regulations and practices applicable to and governing the use and operation of marine terminal facilities at Superior and Duluth. Any agreed upon rates shall be published in a tariff on file with the Commisison. Any party may withdraw from the agreement or take independent action upon giving 30 days' notice to the other party.

Agreement No.: 217–010746.

Title: Columbus/Pace Cross Charter Agreement.

Parties:

Columbus Line

Pace Line

Synopsis: The proposed agreement would establish a space chartering arrangement between the parties in the trade between ports on the Atlantic and Gulf Coasts of the United States, Puerto Rico, the Virgin Islands, American Samoa and Eastern Canada and inland and coastal points via such ports and ports and inland and coastal points in Australia, New Zealand, Eastern Canada, Cook Islands, Fiji, New Caledonia, Vanuatu, Western Samoa, Solomon Islands, Society Islands, Tonga, Kiribati, Tuvalu and Papua New Guinea. It would permit the parties to charter space on each other's vessels and share terminal facilities and equipment.

Dated: April 12, 1985.

By order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–9269 Filed 4–16–85; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 224–002813–004]

Agreement Between the Port of San Francisco (Port) and California Stevedore and Ballast Company (CS&B); Erratum

The **Federal Register** Notice published on March 15, 1985, (Vol. 50, No. 51, Pg. 10543) incorrectly described the title of Agreement No. 224–002813 as "The Port of San Francisco (Port), California Stevedore and Ballast Company (CS&B), "whereas it should have been shown as "San Francisco Terminal Agreement".

Dated: April 12, 1985.

By Order of the Federal Maritime Commission

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–9270 Filed 4–16–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the Offices of the Board of Governors not later than May 7, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to expand *de novo* its data processing and management consulting services, nationwide, through its subsidiary BancBoston FBC Inc., Boston, Massachusetts.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Interstate Corporation of Wisconsin,* Sheboygan, Wisconsin; to engage *de novo* through its subsidiary, First Interstate Trust Company of Wisconsin, Sheboygan, Wisconsin, in providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts, and cash management accounts. Such securities brokerage services are to be restricted to buying and selling securities solely for the account of customers and will not include securities underwriting or dealing, or investment advice or research services.

Board of Governors of the Federal Reserve System, April 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9177 Filed 4-16-85; 8:45 am]

BILLING CODE 6210-01-M

DuPage Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 10, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *DuPage Financial Corporation,* Lake Forest, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Washington Bank and Trust Company of Naperville, Naperville, Illinois.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ventura County National Bancorp,* Oxnard, California; to acquire 50.1 percent of the voting shares of Camarillo Community Bank, Camarillo, California.

Board of Governors of the Federal Reserve System, April 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9178 Filed 4-16-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreement for a Project to Study Approach to Health Promotion Consistent with 1990 Health Promotion/ Disease Prevention, Objectives for the Nation; Availability of Funds for Fiscal Year 1985

The Centers for Disease Control announces the availability of funds in Fiscal Year 1985 for a cooperative agreement with Emory University School of Medicine, Department of Community Medicine (EUSM/DCM), to conduct a demonstration project. The EUSM/DCM will study an approach to health promotion in an underserved, predominantly low income, black community which has existing hypertension and nutrition problems in an endeavor to improve the health status, help reduce risk factors, and increase public awareness of the health problems that exist in this community. Catalog of Federal Domestic Assistance Number 13.183. This program is authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended.

Assistance will be provided only to the Emory University School of Medicine, Department of Community Medicine, for this project. The EUSM/DCM has a long-standing and distinguished record of community service to the needy in Georgia. This record is marked by ongoing communication and collaboration with the State department of health and county health departments. With structures in the Kirkwood Community that are already in place—a citizens advisory group from that community, workers in the DeKalb-Grady Clinic (i.e., EUSM/DCM, DeKalb County Health Department, Grady Hospital) and services already being delivered to the citizens of Kirkwood by EUSM/DCM with the DeKalb Grady Clinic and through Grady Hospital—EUSM/DCM is the only institution that has access to the information necessary to carry out this project. Therefore, this is not a formal request for applications. It is expected that approximately $103,000 will be available during Fiscal Year 1985 to support this project. It is anticipated that the cooperative agreement will be funded for an initial budget period of 12 months with a 3-year project period. Continuation awards will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, telephone (404) 262-6575 or FTS 236-6575.

Dated: April 5, 1985.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85-9205 Filed 4-16-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 84N-0067; DESI No. 10826]

Certain Drugs Containing Antibiotic, Corticosteroid, and Antifungal Components; Reevaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) (1) classifies combination products containing triamcinolone acetonide and nystatin in cream and ointment form as effective for the treatment of cutaneous candidiasis, and (2) announces the conditions for their approval and marketing.

DATE: Supplements due on or before June 17, 1985.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 10826, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Anti-Infective Drug Products (HFN-815), Center for Drugs and Biologics.

Original abbreviated new drug applications and supplements thereto (indentify as such): Division of Generic Drug Monographs (HFN-230), Center for Drugs and Biologics.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics:

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In response to **Federal Register** notices of June 29, 1972 (37 FR 12856); October 9, 1974 (39 FR 36365); and September 25, 1981 (46 FR 47408), E.R. Squibb & Sons, Inc., submitted data to demonstrate the effectiveness of Mycolog Cream and Ointment, which contain triamcinolone acetonide, nystatin, neomycin sulfate, and gramicidin. On October 20, 1981, Squibb requested a hearing on FDA's proposal in the September 1981 **Federal Register** notice to withdraw approval of the drug products. FDA's proposal was based on its finding that the four-ingredient products were lacking in substantial evidence of effectiveness. A notice of hearing was published on September 17, 1984 (49 FR 36439).

Squibb has proposed to reformulate the Mycolog products to contain only triamcinolone acetonide and nystatin. The agency has evaluated Squibb's data, including an unpublished, large multicenter study, on the four-ingredient combinations to determine whether there is substantial evidence of effectiveness of the proposed two-ingredient combinations. Specifically, the agency addressed the question whether the proposed triamcinolone acetonide-nystatin combinations provide earlier relief of signs and symptoms than the antifungal ingredient (nystatin) alone, for the treatment of cutaneous candidiasis. FDA has determined that there is substantial evidence that the proposed two-ingredient products provide a significant improvement in the clinical severity of cutaneous candidiasis during the first few days of treatment.

Accordingly, the Director of the Center for Drugs and Biologics classifies the drug products listed below as effective for the treatment of cutaneous candidiasis. The original formulations of these drug products are still the subject of a pending hearing and will be addressed at a later time.

1. The part of NDA 60-572 pertaining to the ointment preparation containing triamcinolone acetonide 0.1 percent and nystatin 100,000 units/g; E.R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540; and

2. The part of NDA 60-576 pertaining to the cream preparation containing triamcinolone acetonide 0.1 percent and nystatin 100,000 units/gram (g).

These drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for the drugs. An approved new drug application is a requirement for marketing the drug products.

In addition to the holder of the applications specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufactuer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

A. Effectiveness Classification.

FDA has reviewed all available evidence and concludes that the drug products are effective for the indication in the labeling conditions below.

B. Conditions for Approval and Marketing.

FDA is prepared to approve abbreviated new drug applications and supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* These preparations are in cream or ointment form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispersing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

For the treatment of cutaneous candidiasis; it has been demonstrated that the nystatin-steriod combination provides greater benefit than the nystatin component alone during the first few days of treatment.

3. *Marketing status.* a. Marketing of a drug product that is now the subject of an approved or effective new drug application may be continued provided that on or before June 17, 1985, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)).

b. Approval of an abbreviated new drug application (21 CFR 314.1) must be obtained before marketing these products. The requirements for bioavailability testing are waived for topically applied preparations (21 CFR 320.22). Marketing the drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 507, 52 Stat. 1050-1053, as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 355, 357)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: April 9, 1985.
Harry M. Meyer, Jr.,
Director, Center for Drugs and Biologics.
[FR Doc. 85-9175 Filed 4-16-85; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 80N-0012, DESI 10828]

Drugs for Human Use; Drug Efficacy Study Implementation; Certain Topical Anti-Infective Drug Products; Cortisporin Cream; Amended Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) amends a notice of opportunity for hearing that proposed to withdraw approval of the entire new drug application (NDA) for Cortisporin Cream, a topical antibiotic combination drug product containing neomycin sulfate, polymyxin B sulfate, gramicidin, and hydrocortisone. As amended, the proposal applies to the NDA only as it pertains to the old formulation of the product. FDA also announces the conditions for marketing the reformulated and renamed product for the indication for which it is regarded as effective.

EFFECTIVE DATE: April 17, 1985.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 10828, and directed to the attention of the appropriate office named below.

Original abbreviated new drug applications (original antibiotic Form 6's) and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN-230), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20857.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1981 (46 FR 47408), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) reclassified certain topical anti-infective drug products for dermatologic use to lacking substantial evidence of effectiveness proposed to withdraw approval of the new drug applications for those products in their entirety, and offered an opportunity for a hearing on the proposal.

Among the products identified in the September 1981 notice for which hearing requests were submitted was:

NDA 50-218; Cortisporin Cream containing neomycin sulfate EQ 3.5 milligram (mg) base/gram (gm), polymyxin B sulfate 10,000 units, gramicidin .25 mg, and hydrocortisone 0.5 percent; Burroughs Wellcome Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.

Burroughs Wellcome has supplemented NDA 50-218 to provide for a reformulation that deletes gramicidin from the formulation above.

The hearing request on the gramicidin-containing formulation is still pending. This product will be the subject of a future **Federal Register** notice.

(Final rules amending the antibiotic drug regulations have exempted antibiotic-containing drugs for dermatologic use (45 FR 71354, October 28, 1980) and, later, all classes of antibiotic-containing drugs (47 FR 39155, September 7, 1982) from certification requirements. Under these provisions, approved antibiotic Form 5's and Form 6's are regarded as new drug applications (NDA's) and abbreviated new drug applictions (ANDA's), respectively, and subject to section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The Old formulation of the drug product identified above was being certified until it was exempted from that procedure. It then was released without certification pending a final determination of its effectiveness. In a notice published elsewhere in this issue of the **Federal Register**, the antibiotic regulations are being amended to provide the public standards for the reformulated drug product.)

Therefore, FDA now amends the September 1981 notice: The proposal to withdraw approval of NDA 50-218 does not apply to the NDA as supplemented to provide for the formulation described above.

Among the drugs included in the September 1981 notice were products containing neomycin in combination with a corticosteroid. In a notice published in the **Federal Register** of March 28, 1984 (49 FR 11888), the Director reclassified as effective topical anti-infective combination drug products containing neomycin sulfate and a corticosteroid that were labeled for the treatment of corticosteroid-responsive dermatoses with secondary infection.

The Director has now determined that the addition of polymyxin B sulfate to the combination product of neomycin sulfate and hydrocortisone broadens the antimicrobial spectrum with little, if any, increase in risk. Accordingly, he reclassifies the reformulated drug product named above as effective for the treatment of corticosteroid-responsive dermatoses with secondary infection. It should be noted, however, that the steroid-antibotic combination has not been shown to provide greater benefit than the steroid component alone after 7 days of treatment.

The notice is also amended to include the following conditions for approval and marketing of the reformulated product described above.

A. Effectiveness Classification

FDA has reviewed all available evidence and concludes that the drug product is effective for the indication listed in the labeling conditions below. The drug product lacks substantial evidence of effectiveness in its old formulation, and for other indications. This notice does not prevent FDA, in any future OTC drug monograph, from including any of the ingredients listed above, and requiring labeling different from that approval for prescription use.

B. Conditions for Approval and Marketing

FDA is prepared to approve abbreviated new drug applications (antibiotic Form 6 applications) for the formulation now evaluated as effective under conditions described herein.

1. *Form of drug.* This preparation is in cream form suitable for topical administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

> For the treatment of corticosteroid-responsive dermatoses with secondary infection. It has not been demonstrated that this steroid-antibiotic combination provides greater benefit than the steroid component alone after 7 days of treatment. (See "WARNINGS" section.)

c. The "WARNINGS" section contains the following statement:

> Because of the concern of nephrotoxicity and ototoxicity associated with neomycin, this combination product should not be used over a wide area or for extended periods of time.

3. *Marketing status of the reformulated product.* The approval and marketing of such drugs are governed by the regulations applicable to antibiotic-

containing drugs. In a notice published elsewhere in this issue of the **Federal Register**, the antibiotic regulations are being amended to provide the public standards for this product. Approval of an abbreviated new drug application (21 CFR 314.2) as an antibiotic Form 6 application (21 CFR 433.1) must be obtained before marketing such product. An abbreviated application will be acceptable only for the formulation specifically named in this notice. Any new combination requires a new drug application, as an antibiotic Form 5 application, and appropriate studies.

The requirements for bioavailability testing are waived for topically applied preparations (21 CFR 320.22). Marketing the drug product before approval of a new drug application will subject that product, and those persons who caused the product to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 507, 52 Stat. 1050–1053 as amended, 59 Stat. 463 as amended (21 U.S.C. 352, 355, 357)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: April 9, 1985.

Paul Parkman,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-9173 Filed 4-16-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0126; DESI 8943]

Oral Acetazolamide; Drugs for Human Use; Request for Revised Labeling

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that oral acetazolamide is safe and effective for use in preventing or ameliorating acute mountain sickness, and requests that manufacturers of the drug include a recommendation for this use in their labeling. The agency also provides a guideline for adding such a recommendation to labeling.

DATE: This notice is effective on April 17, 1985.

ADDRESSES: Communications in response to this notice should be identified with reference number DESI 8943 and sent to the appropriate office named below:

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFN-110), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFN-230), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Published studies supporting action: Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Requests for an opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice (previously Docket No. FDC-D-306; now Docket No. 85N-0128) published in the **Federal Register** of July 25, 1972 (37 FR 14828), FDA announced its final effectiveness evaluations of the labeling claims made for Diamox Tablets, a conventional release tablet containing 125 milligrams (mg) or 250 mg of acetazolamide (NDA 8-943; held by Lederle Laboratories, Division of American Cyanamide, Pearl River, NY 10965). This notice announced that acetazolamide conventional release tablets are effective for adjunctive treatment of edema due to congestive heart failure; drug-induced edema, centrencephalic epilepsies (petit mal, unlocalized seizures); chronic simple (open angle) glaucoma, secondary glaucoma, and preoperatively in acute angle closure glaucoma where delay of surgery is desired in order to lower intraocular pressure.

Later, in a notice published in the **Federal Register** of March 1, 1973 (38 FR 5490), FDA announced its final effectiveness evaluations of the labeling claims made for Diamox Sequels, a controlled-release formulation containing 500 mg of acetazolamide (NDA 12-945; held by Lederle Laboratories). This notice announced that the controlled-release formulation of acetazolamide is effective for adjunctive treatment of chronic simple (open angle) glaucoma, secondary glaucoma, and preoperatively in acute angle closure glaucoma where delay of surgery is desired in order to lower intraocular pressure.

The above notices, as modified by a notice published in the **Federal Register** of September 22, 1975 (40 FR 43531), set forth conditions for approval and marketing of such drug products. Under these conditions, FDA approved Diamox Tablets and Sequels as effective. In addition, FDA has approved the following abbreviated new drug applications (ANDA's) for acetazolamide 250 mg tablets.

ANDA 84-498; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726;

ANDA 84-840; The Lannett Co., Inc., 9000 State Rd., Philadelphia, PA 19136;

ANDA 87-654; Vangard Laboratories, Division of M.W.M. Corp., 103 Samson St., Glasgow, KY 42141; and

ANDA 87-686; Ascot Hospital Pharmaceuticals, Inc., 3055 N. Ridgeway, Skokie, IL 60076.

Recently, under FDA's orphan products development program, which includes evaluations of published data concerning unlabeled uses of marketed drugs where there is evidence of potential benefit in serious conditions or evidence of therapeutic advantage over existing therapy, the agency evaluated published data concerning the use of oral acetazolamide for acute mountain sickness. The agency concluded that the drug is safe and effective for use in the prevention or amelioration of symptoms associated with acute mountain sickness in climbers attempting rapid ascent, and in those who are very susceptible to acute mountain sickness despite gradual ascent (see "Acetazolamide for Acute Mountain Sickness," *FDA Drug Bulletin*, 13(3):27, Nov. 1983). Copies of the published data supporting this conclusion have been placed on file under Docket No. 85N-0128. They may be seen between 9 a.m. and 4 p.m., Monday through Friday, at the Dockets Management Branch (address given above).

Because the agency has concluded that oral acetazolamide is safe and effective for acute mountain sickness, the Director of the Center for Drugs and Biologics requests that the above listed manufacturers add this recommendation for use to their products' labeling. In order to maket an oral acetazolamide product that is the subject of an approved application, with a recommendation for use in preventing or ameliorating acute mountain sickness, the holder of the application must supplement the application with revised labeling in accord with this notice and obtain approval of the supplement. The Director also requests that any person seeking approval of an ANDA for an

oral acetazolamide product add to the proposed labeling a recommendation for use in preventing or ameliorating acute mountain sickness, in addition to those labeling recommendations allowed by the July 1972 or March 1973 notices. Guideline labeling is provided below.

Guideline for Adding to Labeling a Recommendation for Use of Oral Acetazolamide in Preventing or Ameliorating Acute Mountain Sickness

The following sections of the labeling should be revised to include the following information (editorially adapted to a specific product's labeling as appropriate):

Indications: Acetazolamide is indicated for the prevention or amelioration of symptoms associated with acute mountain sickness in climbers attempting rapid ascent and in those who are very susceptible to acute mountain sickness dispite gradual ascent.

Clinical Pharmocology: Placebo-controlled clinical trials have shown that prophylactic administration of acetazolamide at a dose of 250 mg every 8–12 hours (or a 500 mg controlled release capsule once daily) before and during rapid ascent to altitude results in fewer and/or less severe symptoms (such as headache, nausea, shortness of breath, dizziness, drowsiness, and fatigue) of acute mountain sickness (AMS). Pulmonary function (e.g., minute ventilation, expired vital capacity, and peak flow) is greater in the acetazolamide treated group, both in subjects with AMS and asymptomatic subjects. The acetazolamide-treated climbers also had less difficulty in sleeping.

Precautions: Gradual ascent is desirable to try to avoid AMS. If rapid ascent is undertaken and acetazolamide is used, it should be noted that such use does not obviate the need for prompt descent if severe forms of high altitude sickness occur, i.e., high altitude pulmonary edema (HAPE) or high altitude cerebral edema.

Dosage and Administration: Acetazolamide 250 mg every 8 to 12 hours (or 500 mg controlled-release capsules every 24 hours) has been shown to be effective in expeditioners and tourist-trekkers. Medication should be initiated 24 to 48 hours prior to and continued during ascent, with continuation at altitude as necessary to control symptoms.

For active duty military personnel, the recommended dose is 100 mg daily for 48 hours prior to ascent to high altitude and for 48 hours after arrival (Dept. of Army, 1975, TB Med. 288:10).

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70).

Dated: April 9, 1985.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 85-9176 Filed 4-16-85; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) FR, Vol. 48, No. 198, pp. 46439–46440, dated Wednesday, October 12, 1983, and FR, Vol. 49, No. 133, pg. 28117, dated July 10, 1984) is amended to reflect the reorganization of the Office of Program Operations Procedures (OPOP), Bureau of Program Operation (BPO), Office of the Associate Administrator for Operations (OAAO).

The OPOP is being reorganized to make the Office more responsive to program changes by grouping similar program responsibilities. This new structure will eliminate functional overlap and will more evenly distribute workloads.

The specific amendments to the Federal Register are as follow:

Section FP.20.A.3. Office of Program Operations Procedures (FPA4) is amended by deleting the functional statements and organizational titles for the office and the four subordinate divisions and replacing them with new functional statements and organizational titles. The new Section FP.20.A.3. reads as follows:

3. Office of Program Operations Procedures (FPA8)

Develops and promulgates specifications, requirements, methods, systems, standards, and procedures to implement and maintain operational systems for the Medicare and Medicaid programs including detailed definitions of the relative responsibilities of providers, State agencies, contractors HCFA, and the beneficiaries of HCFA's programs. Manages the Medicare contractor workload, establishes priorities, and monitors implementation of major systems changes. Reviews and evaluates systems, systems plans and proposals, and Automated Data Processing acquisition and modifications involving carriers, intermediaries, and State agencies, and approves Federal Financial Participation in State Medicaid systems. Plans, directs, and coordinates operational policy, systems, and procedures for the establishment and maintenance of Medicare entitlement, premium billing and collection, and Medicaid eligibility activities. Provides oversight of regional offices in managing State Medicaid Management Information Systems (MMIS) and develops systems requirements and specifications for the operation of MMIS. Maintains a National Coding System for use in processing Medicare claims. Provides national oversight of Medicare Management Information Systems.

a. Division of Provider Procedures (FPA81)

Directs the development and issuance of specifications, requirements, procedures, functional standards, and instructional material to implement and maintain operational systems for processing Medicare Part A and outpatient claims and defining their applications to Medicare contractors, providers, suppliers of services, and HCFA. Develops productivity investments and data initiatives designed to promote efficiency and uniformity of operations. Maintains contractor and provider instuctional manuals. Serves as the Bureau resource for implementing legislative changes impacting on Part A program operations. Prepares general systems plans and develops requirements for the detailed design and programming for model systems used by Medicare contractors. Plans, conducts,and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicare program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Develops, directs, and coordinates systems plans and studies for the effective integrationof all Medicare automated and nonautomated processing systems at the contractor level. Designs and conducts studies, demonstrations, and surveys to improve Medicare operational systems, methods, and procedures. Designs and tests new automated information systems and model systems. Conducts reviews and performs analyses for future development and model systems functions in such areas as data management, data base systems analysis and design, distributed processing, terminal operations, minicomputers, and operational

security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related application projects. Provides direction to, and liaison with, HCFA components involved in the maintenance of health insurance utilization records. Manages contractor-HCFA data exchange systems.

b. Division of Carrier Procedures (FPA82)

Directs the development and issuance of specifications, requirements, procedures, functional standards and instructional material to implement and maintain operational systems for processing Medicare Part B claims and defining their applications to Medicare carriers, providers, suppliers of services, beneficiaries, and HCFA. Manages contractor workloads and sets priorities for workloads which compete for contractor resources. Develops and monitors the implementation of productivity investments and data initiatives designed to promote efficiency and uniformity of operations. Serves as the Bureau resource for implementing legislative changes impacting on Part B program operations. Maintains and issues Medicare Carrier Manual instructions. Manages the annual reasonable charge update process. Prepares general systems plans and develops requirements for the detailed design and programming for carrier systems. Assists in developing systems plans and studies for the effective integration of all Medicare Part B automated and nonautomated processing systems at the contractor level. Assists in studies, demonstrations, and surveys to improve Medicare Part B operational systems, methods, and procedures. Designs and tests new Part B automated information systems. Conducts reviews and performs analyses for the future development of new systems functions in such areas as data management, data base systems analysis and design, distributed processing, terminal operations, minicomputers, and operational security. Coordinates systems demonstration projects and participates in the review and evaluation of systems-related application projects. Assists in the development of systems requirements for Medicare and coordinates systems requirements for related programs. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relate to the administration of the Medicare program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Provides direction to, and liaison with, HCFA components involved in the maintenance of health insurance utilization records. Provides for contractor-HCFA data exchange systems.

c. Division of Medicaid Procedures (FP A83)

Develops requirements, standards, procedures, guidelines, and methodologies pertaining to the review, evaluation, and assessment of the operations, development, and funding of State agency automated systems to determine their compliance with published Federal requirements. Designs and employs test criteria to determine the accuracy and effectiveness of Medicaid claims processing systems. Provides technical guidance to other HCFA components involved in Medicaid Management Information Systems (MMIS) oversight functions such as the annual systems performance reviews. Reviews State agency MMIS for approval of increased Federal Financial Participation (FFP). Provides technical assistance to the Office of Program Administration, Bureau of Program Operations, and regional offices with respect to Electronic Data Processing (EDP) procurements and reviews proposed hardware and software modifications and/or equipment upgrades for approval of increased FFP. Establishes technical specifications for EDP procurement procedures and, where appropriate, conducts onsite reviews to determine the necessity and compliance of such procurement requests with the Department of Health and Human Services and HCFA requirements. Develops and maintains a central State data profile to support States and regions in improving operations and serves as a clearinghouse for technical innovations and cost-effective methodologies pertaining to the state of the art in EDP development. Develops, directs, and coordinates systems plans and studies for the effective integration of all Medicaid automated processing systems at the State agency level. Designs and conducts studies, demonstration projects, and surveys to improve Medicaid operational systems, methods, and procedures. Plans, develops, and monitors systems requirements for Medicaid and coordinates systems requirements for related Federal programs such as Child Health Assurance, Child Support Enforcement, Food Stamps, and Aid to Families with Dependent Children. Directs the development and issuance of regulations, specifications, requirements, procedures, functional standards, and instructional material to implement and maintain operational systems for processing Medicaid claims and defines their application to States and beneficiaries of HCFA programs. Prepares general systems plans and develops requirements for the detailed design and programming for model systems used by States in the administration of the Medicaid program. Plans, conducts, and evaluates studies aimed at long-range improvements in systems, methods, and procedures as they relates to the administration of the Medicaid program. Integrates systems within the framework of HCFA policies, goals, and objectives in an efficient and cost-effective manner. Develops and performs national oversight for MMIS related activity including monitoring regional office responsibilities including automated data processing approvals and MMIS FFP issues in this area. Develops and approves cost allocation plans involving multi-agency programs. Develops data initiatives which will promote efficiency and uniformity in Medicaid operations and directs the implementation of national Title XIX data initiatives such as common coding, uniform bills, and electronic media claims. Develops standards for cost and benefit analysis and monitoring of MMIS design, development, installation, and operations. Serves as HCFA focal point for contact with States and the private sector on MMIS issues. Develops and implements a program for the exchange of information to improve the operation of MMIS systems, methods, and procedures including conferences and other media.

d. Division of Entitlement Requirements (FP A84)

Plans, directs, and coordinates the development of operational policy, systems, and procedures for establishing and maintaining Medicare entitlement records, billing and collecting Medicare premiums, administering State buy-in agreements, and coordinating entitlement for individuals covered under the Medicare program. Assesses the impact of operating systems on beneficiaries of HCFA programs and develops proposals to better meet their needs. Manages use by contractors of telephone, written, and personal communications to provide quality services to Medicare beneficiaries. Reviews the adequacy of services furnished by the Social Security Administration (SSA) in establishing

entitlement for Medicare beneficiaries and collecting premiums. Prepares and releases instructional material to SSA district offices on the entitlement, premium, and buy-in processes. Issues instructions to SSA and SSA Field offices on resolving entitlement, premium, and buy-in problems and assists in resolving individual problems of beneficiaries when normal processes fail. Manages premium collections for billable individuals, third-party groups, and the State buy-in program.

Dated: March 8, 1985.

James L. Scott,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-9161 Filed 4-16-85; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

Advisory Council; Establishment

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. App. I), the National Center for Health Services Research and Health Care Technology Assessment announces the establishment by the Secretary, HHS, of the National Advisory Council on Health Care Technology Assessment on March 20, 1985, pursuant to Pub. L. 98-551, the Health Promotion and Disease Prevention Amendments of 1984.

Designation: National Advisory Council on Health Care Technology Assessment.

Purpose: The Council will provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment concerning health care technology issues and to assist in developing criteria and methods to determine whether specific health care technologies should be reimbursable under federally-financed health care programs. The Council will also review and make recommendations on research grant and contract applications over $50,000 in the area of health care technology.

Authority for this is in statute so the Council will continue in existence until the statute is modified.

Dated: April 4, 1985.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 85-9193 Filed 4-16-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. 4-20703-ILM]

Proposed Withdrawal and Opportunity for Public Meeting, Petroglyph Canyon and Weatherman's Draw Prehistoric Rock Art Sites, Carbon, County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 840 acres of public land for administrative purposes associated with Petroglyph Canyon and Weatherman's Draw Prehistoric Rock Art Sites, Carbon County, Montana. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for public meetings should be received by July 16, 1985.

ADDRESS: Comments and meeting requests should be sent to: Montana State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, Montana State Office, 406-657-6090.

SUPPLEMENTARY INFORMATION:

On March 29, 1985, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights.

Principal Meridian, Montana

T. 9 S., R. 26 E.,
Sec. 35, lots 2, 3, 6, 7, SW¼NE¼ and SE¼NW¼.
T. 8 S., R. 24 E.,
Sec. 20, SE¼SW¼ and S½SE¼;
Sec. 29, E½ and E½W½.

The area described contains 840 acres in carbon County.

The purpose of the proposed withdrawal is to protect prehistoric rock art sites.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application wil be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. No temporary uses will be permitted during this segregative period.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

April 8, 1985.

[FR Doc. 85-9210 Filed 4-16-85; 8:45 am]

BILLING CODE 4310-DN-M

Wyoming; Worland District Multiple Use Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Worland District Office, Worland, Wyoming.

ACTION: Meeting of the Worland District Multiple Use Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 91-463, 94-579, and 95-514, and 43 CFR Part 1780, that a meeting of the Worland District Multiple Use Advisory Council will be held on May 16, 1985, at 10:00 a.m., at the Worland Elk's Lodge.

Agenda items for the meeting are the following:

1. Washakie Resource Management Plan
2. Grass Creek/Cody Wilderness EIS
3. BLM/USFS Interchange Program
4. Resource Area Adjustments
5. Grazing Issues
6. Realty Actions
7. Access
8. Habitat Management Plans
9. Allotment Categorization
10. Worland District Office Building
11. North Fork Well EIS
12. Wild Horses

The meeting is open to the public. Interested persons may make oral statements to the Council at specified times during the meeting, or file written statements for the consideration of the

Council. Anyone wishing to make an oral statement must notify the District Manager by May 9, 1985. Depending on the number of persons wanting to make oral statements, a per-person time limit may be established.

SUPPLEMENTARY INFORMATION: Summary minutes of this meeting will be maintained in the Worland District Office and will be available for public inspection during regular business hours.

DATE: May 16, 1985, 10:00 a.m.

ADDRESS: Elk's Lodge, 604 Coburn Avenue, Worland, Wyoming.

FOR FURTHER INFORMATION CONTACT: Chester E. Conard, District Manager, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, Telephone: (307) 347–9871.

Edward L. Fisk,

Associate District Manager.

[FR Doc. 85–9206 Filed 4–16–85; 8:45 am]

BILLING CODE 4310–22–M

Minerals Management Service

Alaska Offshore; Availability of the Final Environmental Impact Statement for Proposed Oil and Gas Lease Sale 89 in the St. George Basin

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement (EIS) for proposed oil and gas Lease Sale 89 in St. George Basin.

Single copies of the final EIS can be obtained from the Office of the Regional Director, Minerals Management Service, Alaska Region, P.O. Box 101159, Anchorage, Alaska 99510.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK 99501; Anchor Point Public Library, Anchor Point, AK 99556; Department of the Interior Resource Library, Box 36, 701 C Street, Anchorage, AK 99513; Cordova Public Library, Box 472, Cordova, AK 99574, Kenai Community Library, Box 157, Kenai, AK 99611; Elim Learning Center, Elim, AK 99739; Haines Public Library, P.O. Box 36, Haines, AK 99827; North Star Borough Library, Fairbanks, AK 99701; University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK 99801; Homer Public Library, Box 356, Homer, AK 99603; Z.J. Loussac Public Library, 427 F Street, Anchorage, AK 99801; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK 99824; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK 99811; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK 99901; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK 99501; Kodiak Public Library, P.O. Box 985, Kodiak, AK 99615; Metlakatla Extension Center, Metlakatla, AK 99926; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK 99802; Petersburg Extension Center, Box 289, Petersburg, AK 99833; Seldovia Public Library, Drawer D, Seldovia, AK 99663; Seward Community Library, Box 537, Seward, AK 99664; University of Alaska Juneau Library, P.O. Box 1447; Juneau, AK 91447; Sitka Community Library, Box 1090, Sitka, AK 99835; Douglas Public Library, Box 469, Douglas, AK 99824; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK 99504; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK 99701; Wrangell Extension Center, Box 651; Wrangell, AK 99929.

Ralph D. Fazio,

Acting Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 85–9218 Filed 4–16–85; 8:45 am]

BILLING CODE 4310–MR–M

Corpus Christi Oil and Gas Co.; Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4258, Block 436, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

DATE: The subject DOCD was deemed submitted on April 4, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 5, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–9206 Filed 4–16–85; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–189 (Final)]

Calcium Hypochlorite From Japan

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673(b)(1)), that an industry in the United States is materially injured by reason of imports from Japan of calcium hypochlorite, provided for in item 418.22 of the Tariff Schedules of the United States, which have been found by the department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 9, 1984, following a preliminary determination by the Department of Commerce that imports of calcium hypochlorite from Japan were being sold at LTFV within the meaning of section 731 of the Act (19

[1] The record is defined in sec. 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Lodwick dissenting

U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 31, 1984 (49 FR 43807). A notice revising the Commission's schedule for the conduct of the investigation was published in the **Federal Register** of November 28, 1984 (49 FR 46817). The hearing was held in Washington, DC, on February 26, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinaiton in this investigation to the Secretary of Commerce on April 8, 1985. The views of the Commission are contained in USITC Publication 1672 (April 1985), entitled "Calcium Hypochlorite from Japan: Determination of the Commission in Investigation No. 731–TA–189 (Final) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation."

Issued: April 8, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9228 Filed 4–16–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation Nos. 701–TA–243 and 244 (Preliminary) and 731–TA–256 Through 258 (Preliminary)]

Carbon Steel Wire Rod From Poland, Portugal, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–243 and 244 (Preliminary) under section 703(a) of the Tariff act of 1930 (19 U.S.C. 16716(a)) and of preliminary antidumping investigations Nos. 731–TA–256, 257, and 258 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Portugal and Venezuela of carbon steel wire rod, provided for in item 607.17 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Portugal and Venezuela, and of carbon steel wire rod from Poland, Portugal, and Venezuela which are alleged to be sold in the United States at less than fair value. As provided in sections 703(a) and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by May 23, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

EFFECTIVE DATE: April 8, 1985.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202–523–0481), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.

These investigations are being instituted in response to petitions filed on April 8, 1985, by Atlantic Steel Co., Atlanta, GA; Continental Steel Corp., Kokomo, IN; Georgetown Steel Corp., Georgetown, SC; Nother Star Steel Texas, Inc., Beaumont, TX; and Raritan River Steel Co., Perth Amboy, NJ.

Participation in the investigations.

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), as amended by 49 FR 32569, Aug. 15 1984), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on April 30, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact George L. Deyman (202–523–0481) not later than April 26, 1985 to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.

Any person may submit to the Commission on or before May 3, 1985 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6, as amended by 49 FR 32569, Aug. 15, 1984).

AUTHORITY: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: April 11, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9232 Filed 4–16–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-195]

Certain Cloisonne Jewelry; Commission Decision Not To Review Initial Determination; Deadline for Filing Written Submission on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the administrative law judge's initial determination that there is a violation of section 337 in the above-captioned investigation. The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding.

SUMMARY: On March 6, 1985, the administrative law judge issued in initial determination that there is a violation of section 337 in the importation and sale of certain cloisonne jewelry. No petitions for review or comments from government agencies or the public have been received. Having examined the record in this investigation, including the initial determination, the Commission has determined not to review the initial determination. Consequently, the initial determination has become the Commission determination on violation of section 337 in this investigation.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–56 of the Commission's rules of practice and procedure (as amended by 49 FR 46123 (November 23, 1984) to be codified at 19 CFR 210.53–.56).

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: *Written submissions:* Inasmuch as the Commission has found that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission contemplates some form of relief, it must consider the effects of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions concerning the effect, if any, that granting relief would have on the public interest.

If the Commission orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond, if any, which should be imposed.

The parties to the investigation and interested Government agencies are requested to file written submissions on the issues of remedy, the public interest, and bonding. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding must be filed not later than the close of business on the day which is fourteen (14) days from the date this notice appears in the **Federal Register.** Written submissions in reply to the submissions on remedy, the public interest, and bonding must be filed not later than the close of business on the day which is twenty-one (21) days from the date this notice appears in the **Federal Register.**

Commission hearing: The Commission does not plan to hold a public hearing in connection with final disposition of this investigation.

Additional information: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadline stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published on the **Federal Register** of June 6, 1984 (49 FR 23461).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

By order of the Commission.

Issued: April 9, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9230 Filed 4–16–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-197]

Certain Compound Action Metal Cutting Snips and Components Thereof; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: U.S. General Supply Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the

Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on April 10, 1985.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

By order of the Commission.

Issued: April 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9229 Filed 4–16–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–239 (Preliminary) and 731–TA–248 (Preliminary)]

Certain Ethyl Alcohol From Brazil

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Brazil of certain ethyl alcohol, [2] provided for in item 427.88 of the Tariff schedules of the United States, which are alleged to be subsidized by the Government of Brazil (investigation No. 701–TA–239 (Preliminary)) and which are alleged to be sold in the United States at less than fair value (LTFV) (investigation No. 731–TA–248 (Preliminary)).

Background

On February 25, 1985, petitions were filed with the Commission and the Department of Commerce by Counsel on behalf of the Ad Hoc Committee of Domestic Fuel Ethanol Producers, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain ethyl alcohol from Brazil. Accordingly, effective February 25, 1985, the Commission instituted preliminary countervailing duty investigation No. 701–TA–239 (Preliminary) and preliminary antidumping investigation No. 731–TA–248 (Preliinary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 6, 1985 (50 FR 9136). The conference was held in Washington, DC, on March 19, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 11, 1985. The views of the Commission are contained in USITC Publication 1678 (April 1985), entitled "Certain Ethyl Alcohol from Brazil: Determination of the Commission in Investigation No. 701–TA–239 (Preliminary) and Investigation No. 731–TA–248 (Prelimiary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: April 12, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9233 Filed 4–16–85; 8:45 am]

BILLING CODE 7020–02

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[1] The record is defined in sec. 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] The ethyl alcohol (ethanol) included in these investigations is fuel ethanol (fuel-grade ethanol) imported under item 427.88 of the Tariff Schedules of the United States (TSUS) and subject to additional duties under TSUS item 901.50.

[Investigation No. 337–TA–185]

Certain Rotary Wheel Printing Systems; Commission Decision To Review Initial Determination and Schedule for Filing of Written Submissions on Violation and on Relief, the Public Interest, and Bonding; Notice of Commission Hearing; Notice of Extension of Administrative Deadline for Completion of Investigation

AGENCY: U.S. International Trade Commission..

ACTION: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination that there is a violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

AUTHORITY: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in sections 210.53–.56 of the Commission's rules of practice and procedure (49 FR 46123 (Nov. 23, 1984); to be codified at 19 CFR 210.53–.56).

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1626.

SUPPLEMENTARY INFORMATION: On February 15, 1985, the administrative law judge issued an initial determination that there is a violation of section 337 in the importation and sale of certain rotary wheel printing systems. Respondents petitioned for review of various parts of the initial determination pursuant to § 210.54(a) of the Commission's rules.

After examining the petitions for review and the responses thereto, the Commission has concluded that there are issues that warrant review. Specifically, the commission will review the following questions:

1. Whether U.S. Letters Patent 4,118,129 (the '129 patent) is invalid by virtue of anticipation within the meaning of 35 U.S.C. 102(g).

2. Whether the '129 patent is invalid as obvious within the meaning of 35 U.S.C. 103.

3. Whether the '129 patent is invalid for failure to disclose "best mode" as required by 35 U.S.C. 112.

4. Whether the '129 patent is unenforceable by reason of inequitable conduct before the United States Patent and Trademark Office in connection with the patent applicant's alleged failure to disclose relevant prior art consisting of the Hy Type I printer and manual and certain optical encoders manufactured by Litton and Disc.

5. Whether the devices manufactured and imported by respondents infringe claim 8 of the '129 patent. The Commission is especially interested in the effect, if any, of prosecution history estoppel on the question of infringement under the doctrine of equivalents.

6. Whether the importation or sale of respondents' devices has the effect or tendency to destroy or substantially injure an "industry, * * * in the United States."

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders which could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or indirectly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond, which should be imposed.

Extension of Administrative Deadline

Because of the complex nature of the issues in this case, the Commission, under section 337(b)(1) and § 210.59 of the Commission's rules of practice and procedure (49 FR 46139, Nov. 23, 1984), designated this investigation "more complicated" and extended the original deadline for completion of the investigation by 61 days, i.e., until May 7, 1985, 49 FR 35873 (September 12, 1984). In light of the relatively short period of time remaining before the expiration of that deadline, the extent of the review undertaken, and the need for a Commission hearing, the Commission has extended the administrative deadline for completion of the investigation to August 12, 1985.

Commission Hearing

The Commission will hold a public hearing on May 28, 1985, in the Commission's Hearing Room, 701 E Street, NW, Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First the Commission will hear oral arguments on the issues under review. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden upon the parties.

Oral Arguments

Parties to the investigation and interested Government agencies may present oral arguments concerning the issues under review. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the administrative law judge.

Oral Presentations on Relief, the Public Interest, and Bonding

Following the oral arguments on the issues under review, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, the public interest, and bonding. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the administrative law judge, and may include testimony of witnesses. Oral presentations on relief, the public interest, and bonding will be heard in this order: complaint, respondents, Government agencies, the Commission investigative attorney, public interest groups, and interested members of the public.

Time Limit for Oral Argument and Oral Presentation

Complainant, respondents (taken together), the Commission investigative attorney, and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument on violation and oral presentations on relief, the public interest, and bonding. Persons making presentations solely on relief, the public interest, and bonding will be limited to 10 minutes (exclusive of time consumed by questions from the Commission or its advisory staff. The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

Written Submissions

In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file written submissions on the legal issues under review and on the issues of relief, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commisson's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of relief, the public interest, and bonding.

Written submissions on the issues under review must be filed not later than the close of business on April 24, 1985, and submissions on relief, the public interest, and bonding must be filed not later than the close of business on May 3, 1985. Reply submissions on the issues under review and on relief, the public interest, and bonding must be filed not later than May 10, 1985.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must

include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of March 7, 1984 (49 FR 85027).

Copies of the nonconfidential version of the administrative law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: April 10, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9231 Filed 4–16–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701–TA–238 (Preliminary)]

Low-Fuming Brazing Copper Wire and Rod From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On March 27, 1985, the Commission was notified by the United States Trade Representative that, effective April 1, 1985, the obligations of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) will not apply between the United States and New Zealand. Accordingly, as of that date, New Zealand is no longer a "country under the Agreement" within the meaning of the Tariff Act of 1930 and is not entitled to an injury determination in countervailing duty investigations. The Commission is, therefore, terminating preliminary countervailing duty investigation No. 701–TA–238 (Preliminary).

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202–523–0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: April 5, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9234 Filed 4–16–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–244 (Preliminary)]

Natural Bristle Paint Brushes From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury [2] by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, provided for in item 750.65 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 19, 1985, a petition was filed with the Commission and the Department of Commerce by the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, Washington, DC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of natural bristle paint brushes from the People's Republic of China. Accordingly, effective February 19, 1985, the Commission instituted preliminary antidumping investigation No. 731–TA–244 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 6, 1985 (50 FR 9138). The conference was held in Washington, DC, on March 15, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 5, 1985. The views of the Commission are contained in USITC Publication 1674 (April 1985), entitled "Natural Bristle Paint Brushes from the People's Republic of China: Determination of the Commission in Investigation No. 244 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: April 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–9227 Filed 4–16–85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in sec. 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Commissioners Eckes and Rohr also determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, which are alleged to be sold in the United States at LTFV.

INTERSTATE COMMERCE COMMISSION

Forms under review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275–6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Avenue., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395–7340.

Type of Clearance: New
Bureau/Office: Office of Proceedings
Title of Form: Applications for Certificates of Registration for certain Motor Carriers of Property under Section 10530 of the IC Act
OMB Form No.: N/A
Agency Form No.: OP–2
Frequency: Annual
Respondents: Foreign motor carriers of Property
No. of Respondents: 5,000
Total Burden Hrs.: 5,000

James H. Bayne,

Secretary.

[FR Doc. 85–9235 Filed 4–16–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–19 (Sub.104X)]

The Baltimore & Ohio Railroad Co.; Abandonment in Fayette County, PA; Exemption

Applicant has filed a notice of

exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between valuation station 21+40 and valuation station 66+23, at or near Uniontown, PA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 17, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by April 29, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 7, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Lawrence H. Richmond, Suite 2204, 100 North Charles Street, Baltimore, MD 21201

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44101.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 8, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-9236 Filed 4-16-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-31 (Sub-21X)]

Grand Trunk Western Railroad Co.; Discontinuance of Service in Saginaw County, MI; [1] Corrected Notice of Exemption

On March 4, 1985, Grand Trunk Western Railroad Company (GTW) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*, to abandon a portion of former Michigan Central Saginaw Branch railroad line extending between milepost 92.5 and milepost 98.6, a distance of approximately 6.1 miles, in Saginaw County, MI.

The notice of exemption served March 29, 1985, inadvertently misdescribed the type of action that would exempt. The notice of exemption described the line as one to be abandoned by (GTW), but did not reflect that a portion of this line is used by The Chesapeake and Ohio Railway Company (C&O) under a trackage rights agreement and that portion has been offered for sale to C&O.

Since GTW has not described the portion that may be sold to C&O, the extent of the remaining portion that will be abandoned can not be determined. Accordingly, the notice of exemption is corrected to reflect the fact that the exemption involves only a discontinuance of service for the entire 6.1 mile line. At such time that Grand Trunk determines the portion of the line which C&O will acquire, it can file a notice of exemption to abandon the remainder.

GT has certified (1) that no local traffic has moved over the line for at least 2 years, (2) the line does not handle overhead traffic, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period preceding this notice. The Public Service Commission or equivalent agency in the State of Michigan has been notified. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.,-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on May 17, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by April 29, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by May 7, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representatives: John C. Danielson, Grand Trunk Western Railroad Company, 131 West Lafayette Boulevard, Detroit, MI 48226.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use condition.

Decided: April 11, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-9239 Filed 4-16-85; 8:45 am]

BILLING CODE 7035-01-M

[1] Previously entitled *Grand Trunk Western Railroad Company—Abandonment—In Saginaw County, MI.*

[Finance Docket No. 30639]

Louisiana & Arkansas Railway Co.; Trackage Rights Exemption; Illinois Central Gulf Railroad Co. and New Orleans Terminal Co.; Exemption

On March 18, 1985, Louisiana & Arkansas Railway Company (L&A) filed a notice of exemption under 49 CFR 1180.4(g) to relocate a line of railroad.

L&A and Illinois Central Gulf Railroad Company (ICG) operate paralled tracks for a considerable distance in Jefferson Parish, LA. The close proximity of these tracks to each other has resulted in duplicate grade crossings and traffic congestion on a major thoroughfare. To alleviate this problem, the Louisiana Department of Transportation and Development reached an agreement with L&A, ICG, and New Orleans Terminal Company (NOT) that contemplates removal of certain grade crossings and the consolidation of the operations of L&A and ICG on certain lines of ICG and NOT. In particular, L&A will (1) abandon (a) 4,060 feet of its line between milepost 855.60 and milepost 856.37 and (b) 28,275 feet of its line extending between the westerly right-of-way line of Worth Street at

milepost 858.78 and the easterly right-of-way lines of Turnbull Drive at milepost 862.14; (2) acquire trackage rights (a) over the line of ICG between Alliance Avenue near Frellsen and East Bridge Junction in Shrewsbury, a distance of approximately five miles in Jefferson Parish, and (b) over those portions of the lines of NOT in Shrewsbury between milepost 0.05–A and milepost 0.90–A and over that portion of NOT Track 1–9 between the southwesterly switching point of this line and the point of connection with L&A, a distance of approximately 352 feet; and (3) construct (a) two connections between its line and the line ICG, and (b) certain tracks on an easement of NOT.[1]

Joint projects involving the relocation of a line of railroad which does not disrupt service to shippers are categorically exempt from 49 U.S.C 11343. *See* 49 CFR 1180.2(d)(5). In *D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981), the Commission determined that line relocations embrace trackage rights transactions like the one involved here. The relocation of L&A's line does not affect any shippers. In fact, the only shipper located on the existing line has not shipped any traffic within the past two years and has advised L&A that it does not oppose relocation of the line. Accordingly, the relocation of the L&A line meets the criteria of 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, L&A has proposed that any employees affected by the transaction be protected by the conditions set forth in *Norfolk and Western Ry. Co.—Trackge Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). However, since the relocation project involves not only trackage rights but an incidental abandonment as well, we also must impose the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). Together these conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2).

Decided: April 9, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–9237 Filed 4–16–85; 8:45 am]

BILLING CODE 7035–01–M

[1] Transactions that fall into one of the exempt categories in 49 CFR 1180.2(d) are exempt from prior approval under 49 U.S.C. 11343. If elements of the transaction also require approval under other sections of 49 U.S.C Subtitle IV, a separate authority or exemption under 49 U.S.C 10505, from those sections must be obtained. A separate decision will follow concerning the construction phase of the transaction.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Chrysler Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 4, 1985 a proposed consent decree in *United States* v. *Chrysler Corporation*, Civil Action No. 85–CV–71482–DT was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. The United States simultaneously filed a complaint against the Chrysler Corporation which alleges violations of Section 307 of the Clean Water Act resulting from the failure of three of Chrysler's vehicle assembly plants to meet the Act's electroplating pretreatment standards by the June 30, 1984 compliance date. The three plants are: the Warren Plant, located at 21500 Mound Road, Warren, Michigan; the Jefferson Avenue Plant, located at 12220 East Jefferson Avenue, Detroit, Michigan: and the Newark Plant, located at 550 South College Avenue, Newark, Delaware.

The complaint seeks injunctive relief to require Chrysler to comply with the applicable pretreatment standards at the three assembly plants and to submit a detailed plan for bringing the plants into compliance. The complaint also seeks a court order requiring Chrysler to pay civil penalties for violation of the standards.

The key terms of the proposed consent decree are as follows:

1. Chrysler agrees to pay a civil penalty of $1.5 million for failure to bring the three plants into timely compliance with the applicable pretreatment standards;

2. Chrysler agrees to construct permanent treatment systems, and to demonstrate and achieve final compliance with the standards, by July 15, 1985—subject to stipulated penalties for noncompliance;

3. Chrysler agrees to take specified interim measures to reduce heavy metal discharges prior to achieving final compliance; and

4. Chrysler agrees to sample and monitor for compliance three times per week at each plant over the live of the decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to

United States v. *Chrysler Corporation*, D.J. Ref. 90–5–1–1–2239.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency (EPA):

EPA Region III

Contact: Shanna Halpern, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–3439.

EPA Region V

Contact: Linda Szempruch, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL 60604, (312) 886–6831

United States Attorneys Office

Contact: Geneva Halliday, Assistant United States Attorney, Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48707, (313) 226–2163

Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check in the amount of $2.80 payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–9207 Filed 4–16–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D–5324, et al.]

Employee Benefit Plans; Proposed Exemptions; Operating Engineers Pension Trust et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department)

of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefits Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Operating Engineers Pension Trust (the Pension Plan) and Operating Engineers Journeyman and Apprenticeship Training Trust (the Training Plan; together, the Plans) Located in Los Angles, California

[Application Nos. D–5324 and D–5325]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed use by the Training Plan of a parcel of real property (the Property) owned by the Pension Plan, under the terms described in this notice of proposed exemption, provided such terms are at least as favorable to the Plans as those obtainable in an arm's-length transaction with unrelated parties.

Summary of Facts and Representations

1. The Pension Plan is a collectively bargained multiemployer Pension Plan with approximately 28,760 participants. The Training Plan is a collectively bargained multiemployer employee welfare plan with approximately 13,181 participants. As of June 30, 1984, the Pension Plan had assets of approximately $566 million, and the Training Plan has assets of approximately $2,330,161 as of August 31, 1984.

2. The Training Plan pays contributions to the Pension Plan on behalf of employees of the Training Plan pursuant to a written agreement providing for such contributions. The applicants acknowledge that as a result, the Training Plan is a party in interest with respect to the Pension Plan under section 3(14) (C) of the Act as an employer whose employees are covered by the Pension Plan. Therefore, exemptive relief from the restrictions of section 406(a) of the Act is necessary for the subject transaction, as well as relief from the restrictions of section 406(b)(2) [see representation 9 below].

3. The Property, which is owned by the Pension Plan, consists of approximately 4,367 acres of primarily undeveloped real property known as Rancho Dos Viento, located near Thousand Oaks, California. The Pension Plan acquired the Property for $12 million on April 12, 1982. Upon acquisition of the Property, the Pension Plan retained the services of Haaland & Associates (Haaland), an independent civil engineering firm, to represent the Pension Plan's interests in relation to the governmental authorization of specific plans for use of the Property, with particular regard to the anticipated annexation of a substantial portion of the Property by the City of Thousand Oaks (the City). The Pension Plan also obtained the professional services of an architect to provide architectural consultation in support of the land planning. The Plan further retained special counsel on matters relating to the annexation of the Property and approval of specific use plans by the City.

4. The Plans now wish to enter into an agreement whereby the Property is to be used as a training site for apprentices and journeymen participating in the Training Plan program. The term of the agreement will be for one year, and the agreement shall be automatically renewed from year to year thereafter unless one Plan gives the other 90 days written notice prior to the end of the term. In addition, either Plan may terminate the agreement on 90 days written notice to the other Plan.

5. The use of the Property shall be rent-free to the Training Plan. In exchange, the Pension Plan will be receiving improvements on the Property. The agreement calls for the Training Plan to perform such improvements as building roads, excavation of earth for drainage channels and sewers, grading of earth, construction of equestrian trails and recreational facilities, and construction of tunnels. The Training Plan shall pay all ordinary operating expenses incurred in the undertaking of training projects on the Property, except the costs of special materials or services identified by the Training Plan and approved by the Pension Plan.

6. The applicants represent that preserving and enhancing the value of such a substantial real estate parcel as the Property involves comprehensive planning and coordination with other affected parties. Such activities have necessarily been conducted continuously since the Pension Plan acquired the Property, and as a result, the Planning Staff of the City is presently reviewing a proposed preliminary plan for use and development of the Property. The City is

also in the process of preparing an Environmental Impact Report concerning the potential uses and development of the Property. Formal review and public hearings regarding planned uses of the Property are expected to begin shortly. In due course, the City is expected to approve a specific plan and pre-zone the Property, subject to annexation, and finally annex approximately 2,346 acres of the Property which are within the sphere of influence of the City sometime in 1985 or early 1986.

7. The specific uses of the Property likely to be authorized by the City are expected to include approval of development of certain parcels as "affordable housing", according to the terminology of local government land planning authorities. Applicable planning and zoning regulations allow development of property as "affordable housing" to be exempted from much of the time-consuming process required to obtain building permits. Accordingly, the Pension Plan believes that the City will issue "affordable housing" exemptions applicable to certain parts of the Property in about April, 1985, which should enable preliminary work relating to site preparation of those parcels to begin at that time. Specifically, grading and excavating to prepare roads for access to the "affordable housing" parcels would provide substantial projects within the capability of Training Plan apprentices and trainees.

8. The Training Plan has in past years found appropriate training projects by responding to requests to repair and maintain fire roads, to repair storm damage to camp grounds of the Boy Scouts of America, by grading or repairing fields for Little League Baseball or public parks, and similar kinds of endeavors. Among the current projects undertaken by the Training Plan are the building, repairing and maintenance of fire roads providing access to wilderness areas under a cooperative agreement with the Kern County (California) Fire Department. Since 1977, the Training Plan has maintained fire roads and conducted related training activities on property owned by Lockheed Properties, Inc., under a cooperative agreement with the owner. These training projects and other current similar ones are comparable to the subject training projects. The applicants represent that the proposed training projects on the Property would provide greater variety, magnitude and continuity of training projects than any current site. All projects undertaken by the Training Plan pursuant to the subject agreement will be projects needed by the Pension Plan in connection with the overall governmentally-approved plan of development for the Property.

9. The Pension Plan has a board of 14 trustees, and the Training Plan has a board of 12 trustees. There are 7 trustees who are common to the two Plans. However, for purposes of the subject transaction, the Pension Plan has appointed an independent fiduciary, Buss-Shelger Associates (BSA). BSA represents that it is qualified by training and experience in the field of real estate management and development, particularly in Southern California. BSA acknowledges its status as a fiduciary to the Pension Plan under the Act, and it understands and accepts its duties, liabilities and responsibilities as such. The trustees of the Training Plan will represent that Plan in the subject transaction.

10. BSA has reviewed the proposed agreement on behalf of the Pension Plan, and represents that entering the agreement would be in the best interests of the Pension Plan and its participants and beneficiaries. In making this determination, BSA has considered the general investment objectives of the Pension Plan and has determined that the agreement is reasonably designed to further the purposes of the Pension Plan, taking into consideration the risk of loss and the opportunity for gain or other return associated with entry into the agreement. In addition, BSA has considered a report prepared by Haaland of cost estimates for the 2,145 dwelling units to be developed by the Pension Plan on the Property in the initial development stage. Haaland has determined that the equipment and labor savings to the Pension Plan of entering into the subject agreeement with the Training Plan would be $12,522,000.

11. BSA further represents that it will monitor the performance of the parties to the agreement to determine whether the agreement is desirable and beneficial to the Pension Plan on a continuing basis. In performing such duties, BSA shall consider all relevant facts and circumstances, including the long-term advantages of the agreement and the investment objectives of the Pension Plan with respect to the Property. If at any time BSA determines that the continuation of the agreement may no longer be in the interest of the Pension Plan, and the agreement cannot be modified to BSA's satisfaction, then BSA shall terminate the agreement in accordance with its terms.

12. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The Training Plan will benefit by the use of the Property for training purposes at no cost to the Training Plan; (2) the Pension Plan will benefit by the improvements which will be performed on the Property at no charge to the Pension Plan; (3) BSA, the Pension Plan's independent fiduciary, has determined that the transaction is in the best interests of the Pension Plan; and (4) BSA will monitor the transaction and make any decision to terminate the transaction if it believes such action would be in the best interests of the Pension Plan.

Notice to Interested Persons: Within 30 days of the publication of this proposed exemption in the **Federal Register**, notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicants and the Department. Comments and hearing requests are due within 60 days of the date of publication.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Simpson Manufacturing Co., Inc. Profit Sharing Plan (the Plan) Located in San Leandro, California

[Application No. D–5544]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406 (a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to 1) the leasing of real property located at 1450–1532 Doolittle Drive, San Leandro, California (the Property) by the Plan to Simpson Strong Tie Company, Inc. (Strong-Tie) and Simpson Structures, Inc. (Structures), under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party; and 2) the continuation beyond June 30, 1984, of a loan to the Plan by Bank of America, N.T. & S.A. (the Bank), provided the terms of the loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Effective Dates: If this proposed exemption is granted, it will be effective from December 4, 1984 through December 31, 1987 as to the lease, and effective July 1, 1984 as to the loan.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which had 109 participants and approximately $5,775,200 of total assets as of December 31, 1983. Simpson Manufacturing Co., Inc. (Simpson), the Plan sponsor, and its wholly owned subsidiaries, Strong-Tie and Structures, are manufacturers of pre-fabricated housing products.

2. In December, 1972, the Plan purchased the Property located at 1450–1532 Doolittle Drive, San Leandro, California for $327,799.50, subject to a $260,000 note and deed of trust. The $260,000 was loaned (the Loan) to the Plan by the Bank, which was also the Plan trustee. Also in December, 1972, the Plan entered into a 10 year lease agreement with Simpson. Simpson agreed to lease the Property from the Plan at an initial rate of $4,000 per month, to be adjusted triennially in accordance with a specific Consumer Price Index (CPI) factor. Effective December 1, 1982, the lease was renewed with Strong-Tie and Structures as lessees, at a total monthly lease rate of $13,500, to be adjusted December 1, 1985 and biennially thereafter in accordance with a specific CPI factor. The lease was modified on November 21, 1984 to provide that the biennial rent adjustments shall be to the higher of the change in the CPI or the fair market rental value of the Property as determined by independent appraisal. The rent revision shall be the higher of the two, but not less than the current rent. The applicants represent that the December, 1972 lease and the December, 1982 renewal thereof were statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4975 of the Code by virtue of sections 414(c)(2) and 2003(c)(2)(B) of the Act.[1]

3. The applicants have requested an exemption to permit the continued leasing of the Property by the Plan to Strong-Tie and Structures. In this regard, the Plan has appointed an independent fiduciary, Mr. William E. Figara (Mr. Figara), president of the Alpha Capital Company, an independent investment advisor located in Emeryville, California. Mr. Figara represents that he has directed the investment of a portion of the assets of the Plan for six years and is therefore familiar with the operation of the Plan and its investment portfolio. In addition to the Plan, Mr. Figara directs the investment of assets of numerous other qualified plans and is aware of the duties and responsibilities of fiduciaries under the Act. Mr. Figara represents that he has not been involved with the subject lease in the past, and has no relationship with Simpson and its affiliates other than as described herein. Mr. Figara has been appointed as independent fiduciary with respect to the lease transaction as of December 4, 1984.

4. Mr. Figara represents that the continuation of the lease would be appropriate for the Plan and in the best interests of its participants and beneficiaries. He has based this determination on an examination of the rate of return generated by the Property over a five year period. Over that time, the Property has produced an average annual return of 39.3% to the Plan. Mr. Figara believes that, based on the monthly rentals being paid to the Plan, the appreciation history of the Property, and the potential future increases in value of the Property, the Property will continue to be an excellent Plan investment. Mr. Figara further represents that he will monitor the lease during the period of its continued existence in order to make sure that it continues to be in the best interests of Plan participants and beneficiaries. Mr. Figara is authorized to select the independent appraiser who will determine the fair market rental value of the Property biennially. Mr. Figara represents that he will take whatever steps are appropriate to enforce the Plan's rights under the lease.

5. The Property currently represents approximately 29.5% of the Plan's assets. The applicants represent that for the four years prior to 1983, the Property represented between 17.4% and 23.5% of the Plan's assets. However, due to an extremely high rate of appreciation during 1983, the Property now constitutes a higher percentage of the Plan's assets, i.e., 29.5% Mr. Figara represents that it is still in the Plan's best interest to retain ownership of the Property despite the current percentage of Plan assets represented by the Property. The applicants represent that if the temporary prohibited transaction exemption for the lease proposed herein is granted, the fair market value of the Property will be reduced to 25% or less of total Plan assets by December 31, 1987. The applicants represent that on or before December 31, 1987, the Property will be sold by the Plan or otherwise disposed of, or an additional exemption to continue the arrangement beyond December 31, 1987 will be sought.[2]

6. Mr. Steven Chan, M.A.I. (Mr. Chan), an independent real estate appraiser in San Leandro, California, has represented that the fair market rental value of the Property as of July 1, 1984 was $256,350 annually, or $21,362.50 per month. Since that amount is greater than the $13,500 monthly rent currently called for in the lease, the difference of $7,862.50 per month will be paid to the Plan, together with interest at a rate determined by Mr. Figara, retroactively, for the period commencing July 1, 1984. The lease was amended to provide for the increased rental per Mr. Chan's appraisal of the fair market rental value of the Property. In addition, any excise tax which is due as a result of the lease arrangement for the period from July 1, 1984 to December 4, 1984, the effective date of the exemption for the lease, will be paid by the applicants within 60 days of the date of the granting of the exemption proposed herein.

7. The applicants have also requested an exemption to permit the continuation of the Loan beyond June 30, 1984. The applicants represent that the Loan was statutorily exempt until June 30, 1984 by reason of section 414(c)(1) and 2003(c)(2)(A) of the Act.[3] The Loan was for $260,000, at 8¼% fixed interest, payable at the rate of $2,525 per month over a period of 179 successive months until January 1, 1988, when the entire balance of principal and interest becomes due. The applicants represent that the Bank is a directed trustee, and the decision to enter the Loan transaction was made on behalf of the Plan by its Administrative Committee. The Committee consists of individuals who are independent of the Bank.

8. The applicants represent that the Loan was made at the Bank's going rate for such loans at the time of the transaction. As of June 30, 1984, the outstanding balance on the Loan was $92,988.76. The Bank represents that as of June 30, 1984, its going rate for adjustable rate loans was between 14¾% and 15¾%. The Plan Administrative Committee represents that the continuation of the Loan beyond

[1] The Department expresses no opinion as to whether the December, 1972 lease or the renewal thereof were statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4975 of the Code by reason of sections 414(c)(2) and 2003(c)(2)(B) of the Act.

[2] The Department provides no assurance that such exemption, if sought at such time, will be granted.

[3] The Department expresses no opinion as to whether the Loan was statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act and section 4975 of the Code by reason of sections 414(c)(1) and 2003(c)(2)(A) of the Act.

June 30, 1984 is clearly in the Plan's best interest as the rate for the Loan is significantly less than the rate the Plan would pay for a new loan. In addition, Mr. Figara represents that it is in the Plan's best interest to continue the Loan under its present terms. The Committee has monitored the Loan throughout its duration, and will continue to monitor the Loan to ensure that the Loan remains in the best interest of the Plan and its participants and beneficiaries.

9. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) The Plan's independent fiduciary, Mr. Figara, has determined that the lease is appropriate for the Plan and in the Plan's best interest; (2) Mr. Figara will monitor the lease and take whatever action is necessary to enforce the Plan's rights; (3) the lease provides for the fair market rental value of the Property as determined by an independent appraiser; (4) the Plan's Administrative Committee, which is independent of the Bank, approved the Loan and will continue to monitor it to determine that it remains in the Plan's best interest; and (5) the Loan is at a rate considerably advantageous to the Plan in comparison to current rates.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

First Citizens National Bank, Tupelo, Mississippi, Investment Funds for Qualified Employee Benefit Plans—Funds A and B (the Funds) Located in Tupelo, Mississippi

[Application No. D-5560]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past sale by the Funds of all mortgage notes (the Notes) held by First Citizens National Bank, Tupelo, Mississippi (the Bank) as trustee of the Funds, to the Bank, provided that the sales price was no less than the greater of the fair market value of the Notes or the unpaid principal amount plus accrued interest.

Effective Date: The effective date of this proposed exemption, if granted, is March 21, 1984.

Summary of Facts and Representations

1. The Funds are common trust funds under the trusteeship of the Bank. As of June 21, 1984, 64 employee benefit plans were participants in the Funds. The Bank is responsible for the investment of the assets of the Funds. Among the assets of the Funds were the Notes. The Notes are 46 mortgage notes originated by the Funds with interest rates ranging from 8% to 16%.

2. The applicant represents that in August, 1983, the Comptroller of the Currency (the Comptroller) examined the Bank's trust department. The examiners questioned the Bank's valuation of the Notes at their book value (i.e. the unpaid principal balance of the Notes) rather than at their "fair value" as required by 12 CFR 9.18(b)(1). The applicant further represents that the Bank inquired of the Comptroller as to the permissible circumstances under which the Notes might be purchased by the Bank, proposing that the Bank obtain a prohibited transaction exemption from the Department for such a purchase.

3. On January 30, and 31, 1984, the Funds were examined by the Department's Nashville Area Office (the Area Office). By letter dated February 17, 1984, the Area Office questioned the Bank's valuation of the Notes at their book values rather than their "current value". The Area Office agreed to the Bank's proposal to purchase the Notes from the Funds at a price equal to the greater of the fair market value or unpaid principal balance plus accrued interest of the Notes, and requested that the Bank immediately proceed with the purchase.

4. On February 29, 1984, the Bank advised the Area Office that it would proceed with the purchase and that it was so informing the Comptroller by letter of the same date. The Bank further advised the Area Office that it requested the Comptroller to submit any negative comments concerning the proposed purchase by March 16, 1984. On March 20, 1984, the Bank, having received no negative comments from the Comptroller, calculated the fair market value and unpaid balance of each Note. The aggregate fair market value of the Notes was $2,997,706.28 as of that date. The Bank arrived at this amount by calculating the present value of each Note based upon the stream of income payments being received on each Note until maturity. In the case of a Note with a balloon payment, the present value of the balloon balance at maturity was added to the present value of the stream of income payments. The calculations were based on rates of U.S. Treasury securities with maturity dates coinciding with the balloon payment or final maturity payment dates. The applicant represents that this formula was approved by the Bank's independent auditors prior to March 20, 1984.

5. On March 21, 1984, the Bank purchased the Notes for $3,070,801.02 in cash, representing the unpaid balance of the Notes plus accrued interest. The purchase price was $73,094.74 higher than the fair market value of the Notes as determined by the Bank. The applicant represents that the Bank purchased the Notes from the Funds prior to the receipt of a prohibited transaction exemption because the Area Office specifically advised the Bank that an exemption would not be required. By letter dated April 19, 1984, the Area Office advised the Bank that it appeared that the Bank had taken the corrective action suggested by the Area Office. The Area Office further advised the Bank that it had determined that an exemption was required. Accordingly, the Bank filed the above referenced application.

6. The applicant represents that one of the 46 Notes secures a loan that was made to F.M. Bush, III, a party in interest with respect to the Funds. The applicant further represents that Mr. Bush will pay all applicable excise taxes within 60 days of the granting of this proposed exemption. In addition, the applicant represents that no other loans were made to parties in interest with respect to the Fund.

7. In summary, the applicant represents that the sale of the Notes met the requirements of section 408(a) of the Act because: (a) The Funds received a price higher than the fair market value of the Notes; (b) the Bank purchased the Notes at the direction of the Area Office; and (c) the formula used to calculate the fair market value of the Notes was approved by the Bank's independent auditors.

For further information contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Smart Chevrolet Co. Employees' Profit Sharing Retirement Plan (the Profit Sharing Plan) and Smart Chevrolet Co. Employees Retirement Plan (the Retirement Plan) (collectively, the Plans) Located in Pine Bluff, Arkansas

[Application Nos. D-5669 and D-5670]

Proposed Exemption

The Department is considering granting an exemption under the

authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed loans (the Loans) by the Plans to Motors Finance Company (Motors), a party in interest with respect to the Plans, provided that the terms and conditions of the Loans are at least as favorable as those which the Plans could receive in similar transactions with an unrelated party; and (2) the guarantee of the Loans by Smart Chevrolet Company (Smart Chevrolet), and the individual partners of Motors.

This notice of pendency was originally published in the **Federal Register** on March 1, 1985 (50 FR 8416). However, because of material omissions in the facts and representations in the original notice this notice of pendency is being republished as follows:

Summary of Facts and Representations

1. The Profit Sharing Plan is a profit sharing Plan which, as of March 30, 1984, had 54 participants and assets of $945,588. The Retirement Plan is a defined contribution target benefit money purchase plan which as of March 30, 1984 had nine participants and assets of $581,557. The Retirement Plan was terminated on January 1, 1976, and continues as a frozen plan. The sponsor of the Plans is Smart Chevrolet which is engaged in the sale of automobiles. Motors is engaged in the business of financing new and used cars which are sold by Smart Chevrolet. Certain of the principal owners of Smart Chevrolet are also the principal partners of Motors. The National Bank of Commerce of Pine Bluff (NBC) which is located in Pine Bluff, Arkansas is the trustee of the Plans (the Trustee). NBC is a subsidiary bank of the First Arkansas Bank Corporation (FABCO), a holding company, and has total assets of approximately $218,000,000. Mr. Richard Smart (Mr. Smart), a 25% shareholder in Smart Chevrolet and a 5% partner in Motors, owns 42 shares of FABCO and is one of 18 directors of NBC. Mr. Smart represents that he will abstain from making any decisions in his capacity as director of NBC which will affect the business of Motors and Smart Chevrolet. The partners in Motors and the shareholders of Smart Chevrolet maintain personal deposits at NBC the average balance of which does not exceed $2,500 and individual retirement accounts the largest of which is less than $10,000. The operating funds used by Motors and Smart Chevrolet are merged on a daily basis at NBC. The applicant represents that the daily balance concerning any line of credit or any investment account for NBC and Smart Chevrolet has not exceed $200,000 over the past three months. Further, it is represented that the cumulative financial involvement of NBC with Motors and Smart Chevrolet and their respective partners and shareholders constitutes .1376% of the assets of NBC.

The First National Bank of Altheimer (FNBA), located in Altheimer, Arkansas will serve as the independent fiduciary on behalf of the Plans for the transactions which are the subject of this exemption request. Mr. J.P. Walt (Mr. Walt), president of FNBA, represents that none of the partners in Motors, the stockholders in Smart Chevrolet or the officers and directors of Smart Chevrolet Company are officers or directors of FNBA. In addition, Mr. Walt represents that none of these persons are stockholders of FNBA, except Felix Smart who owns 35 shares, which represents an ownership percentage of FNBA of .466%. Felix Smart owns a 15% partnership interest in Motors. The partners of Motors, the Smart Chevrolet, stockholders and officers and directors of Smart Chevrolet do not have any loans or accounts at FNBA, except a non-interest bearing checking account in the names of Mr. and Mrs. Felix Smart.

2. The applicant is requesting an exemption which will permit the Loans in an amount of up to 25% of the assets of each of the Plans. Each of the Plans will participate in the Loans on an equal percentage basis. For example, if Motors borrows 10% of the assets of the Profit Sharing Plan, it will also borrow 10% of the assets of the Retirement Plan. All Loans will bear interest at a rate which is two percentage points above the federal discount rate and will have a maturity of 90 days. The Loans will be secured by a perfected security interest in all installment sale contracts (Contracts) of Motors. If additional financing is needed to finance its business, Motors will have the right to have certain Contracts released but the Plans will always be secured by Contracts having a face value of at least 150% of the amount of the Loans. In addition, since Motors is a partnership, all of the partners are jointly and severally liable for the debts of the partnership, specifically including the Loans. The collective net worth of the partners of Motors as of December 31, 1983, was 1983, was $4,927,256. All of the Contracts also are with recourse against Smart Chervolet, which has a net worth as of December 31, 1983 of $1,421,114. The net worth of Motors as of the end of its most recent fiscal year, which was September 30, 1983, was $359,059.31. In addition, the notes payable from Motors to the partners and related parties will be subordinated to the Loans. The amount of the notes payable to be subordinated as of December 31, 1983, was $987,983. The net worth of the partners of Motors includes their respective interests in Motors, Smart Chevrolet, and the notes payable from Motors. As of March 31, 1984, Motors had 324 Contracts outstanding with balances totaling $1,561,203, with an average balance of $4,819 per Contract.

3. The applicant represents that the wide diversity of customers executing the Contracts significantly spreads the risk of the Plans. In selecting the customers for the Loans, NBC will monitor Motors to insure that it will continue to follow its current loan policy in financing vehicles, which includes obtaining a complete credit history for each prospective customer and analyzing the customer's credit history together with the terms of the loans. No loans will be made to persons who currently have a bankruptcy, loan default, or other credit problem. Depending on the use of the vehicle, a customer equity of form 10% to 30% will be required and maximum length of contracts will be 48 months on new and current used vehicles, 42 months on one year vehicles, 36 months on two and three year old vehicles, 30 months on four year old vehicles and 24 months on five year old or older vehicles. The applicant also represents that each purchaser is required to carry comprehensive insurance on the vehicle. A collector is employed full time by Motors and the applicant represents that strict supervision will be maintained daily in this area. All loan defaults will be paid off immediately by Smart Chevrolet after legal notice is given to the customer under Arkansas law. All of the Loans will be evidenced by a properly executed promissory note. The security interest in the installment sale contracts will be perfected by properly filed financing statements in conformity with the Uniform Commercial Code as adopted in Arkansas. NBC will verify that the installment sale contracts securing the indebtedness are at all times equal to or greater than 150% of the outstanding balances of the Loans. NBC will obtain periodic financial statements on Motors, Smart Chevrolet, and the partners of Motors. If there are any material decreases in the net worth

of any of the parties involved, NBC will liquidate the Loans at the next maturity date. In the case of a default, NBC will have the responsibility of enforcing all of the rights of the Plans. Further, if, as determined by NBC, a rate of two percentage points above the discount rate is not reflective of a reasonable rate of return on a 90 day investment of this type, the Loans will be liquidated at the next maturity date, or the yield on the Loans will be brought up to reasonable rate.

4. FNBA has reviewed the proposed transactions and represents that they will be in the best interests of the participants and beneficiaries of the Plans. In its analysis, FNBA represents that taking into account the quality and diversity of the Contracts, the net worth of Motors, the net worth of the partners in Motors, the net worth of Smart Chevrolet, and the subordination of the debts owed by Motors to its partners, the Loans are extremely well collateralized and the risk of loss to the Plans almost non-existent. As to liquidity and the rate of return to the Plans, the current investment philosophy of the Plans is to make secure short term investments with fixed yields. FNBA notes that the Loans will have a 90 day maturity. This gives liquidity to the Plans and will enable them to shift their investments away from the Loans in a short period of time if that is determined to be appropriate. FNBA represents that based on the short maturity of the Loans and almost complete lack of risk of loss, FNBA would consider a rate of return equal to two percentage points over the discount rate an appropriate rate of return. Considering the discount rate from a historical point of view, a rate of return which is two percentage points over the discount rate would have yielded a premium over 90 day certificates of deposits from 0 to 200 basis points in recent years. In the event the discount rate should lag behind increases in interest rates, the Plans can liquidate all or any part of the Loans in a period of 90 days or less. In addition, FNBA represents that it would make the Loans on the same terms, including the interest rate.

5. In summary, the applicant represents that the Loans will satisfy the criteria of section 408(a) of the Act as follows: (1) FNBA, the independent fiduciary of the Plans, represents that the Loans will be in the best interests of the participants of the Plans; (2) the Loans will be short term loans limited to 25% of the assets of the Plans; (3) NBC, the Trustee, will monitor the Loan prgram on behalf of the Plans; (4) the Loans will be secured by the Contracts, by the guarantees of Smart Chevrolet, Motors, and the partners of Motors, and (5) the Plans will receive a fair market rate of return on the Loans.

For further information contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll free-number.)

Farmers National Bank of Webster City Profit Sharing Plan (the Plan) Located in Webster City, Iowa

[Application No. D–5909]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase of participations (the Participations) in loans (the Loans) by the Plan for Commercial State Bank of Pocahontas, Iowa (Commercial) a party in interest with respect to the Plan, for a period of five years from the date of a grant of this proposed exemption, provided that the terms of the transactions are not less favorable to the Plan than the terms generally available in arm'-length transactions between unrelated parties.

Summary of Facts and Representations

1. The Plan is not a profit sharing plan with 35 participants. The Plan's assets totaled $872,057.55 as of October 31, 1984. The trustee (the Trustee) of the Plan is Valley National Bank of Des Moines, Iowa.

2. The Trustee administers nearly 110 tax qualified employee benefit plans with over $70,00,000 in assets and has experience in administering a wide variety of assets, including loans, in the portfolios of such plans. The Trustee represents that none of the parties to the transaction, or any of the other parties in interest with respect to the Plan, has any relationship with the Trustee as owner, director or officer. Farmers National Bank of Webster City (the Employer) and Commercial maintain deposit account with the Trustee, in the aggregate totalling 0.47% of the Trustee's deposits.

3. The Plan proposes to purchase the Participations from Commercial, the originator of the Loans. In turn, Mr. Lenus Schramm (Mr. Schramm), the borrower, uses the Loan proceeds for the purpose of purchasing feeder cattle. The cattle will be maintained at a feedlot owned by Poky Feeders, Inc. (Poky), Scott City, Kansas.

4. Commercial is a party in interest because Rodney Amlie (Mr. Amlie) is the majority owner of both the Employer and Commercial. The Trustee represents that Mr. Amlie and Mr. Schramm each own minority interests in Poky, and that their combined ownership of Poky is less than 50%.

5. The Loans will mature in 120 to 165 days and will be secured by the cattle purchased with the Loan proceeds (the Collateral). Interest rates will be set by Commercial at then current market rates, which the Trustee represents are currently 14%. Principal and interest will be paid at the time a Loan matures. The Trustee represents that the Collateral will equal at least 200% of the face value of the Plan's Participation in a Loan at the time of closing and throughout the term of the Loan. If the value of the Collateral falls below 200% of the face value of the Participation, the Trustee will have the option to require Mr. Schramm to pledge additional collateral sufficient to maintain 200% collateralization of the Participation or to require Commercial to purchase at face value plus accrued interest a sufficient portion of the subject Participation to cause the Collateral to equal or exceed 200% of the Participation.

6. The Trustee represents that its policy is for the Plan to purchase no more than a 25% Participation in any one Loan, and in no event will it ever acquire a 50% or more Participation in any one Loan. Immediately after the purchase of any Participation, no more than 10% of the fair market value of the Plan's assets will be invested in Participations.

7. Commercial will process, administer, and collect all Loans, and will then transfer payments of principal and interests to the Plan. In the event of a default, the Plan will have first priority to proceeds from disposition of the Collateral. The Trustee will have the authority to declare a default and take all actions necessary to protect the Plan's interests. The Plan will pay no fee or commission with respect to the purchase of a Participation or the servicing of a Loan.

8. The Plan will be named as the first or primary lienholder in the security agreement between Commercial and Mr. Schramm and in the UCC–1 financing statement. In addition, Commercial will enter into an agreement with the Plan subordinating its rights to the Collateral in favor of the Plan.

9. In order to determine the value of the Collateral the Trustee will obtain a price quote from the Dodge City, Kansas office of the U.S. Department of Agriculture for the same type of cattle on the date a new Loan is effected and will obtain similar quotes on a weekly basis to ensure that the Collateral remains at least equal to 200% of the Participation.

10. Before approving the Plan's purchase of a Participation in a Loan from Commercial, the Trustee will determine that: (a) Mr. Schramm is credit-worthy at the time of the transaction based upon current financial statements; (b) the interest rate is at least the current fair market rate; (c) the rate of return will exceed the return on Treasury investments of comparable maturity by at least 400 basis points; (d) the investment will not cause the aggregate investment in Participations to exceed 10% of the fair market value of the Plan's assets at the time of purchase; and (e) that all necessary representations and conditions of this proposed exemption including representations that the status and relationships of all parties have not materially changed, have been received.

11. The Trustee represents that it will make the decision of how much to invest in a Participation solely on the basis of the Plan's investment portfolio strategy and current needs in light of such strategy.

12. The Trustee represents that the Plan's purchase of Participations is not part of an arrangement whereby a Loan to Mr. Schramm would be contingent on the Plan's purchase of a Participation in that or any other Loan.

13. The Trustee represents that the Participations are good investment for the Plan: (a) The interest rate on the Loans will be at least 400 basis points higher than the return on certificates of deposit or Treasury bills of like maturity; (b) the current 14% return compares favorably with the 11.27% return on a pooled fixed income fund which, along with new contributions, would be the source of funds for purchase of the Participations; (c) the purchase of Participations allows further diversification of the Plan's portfolio; (d) the Plan's investment will be protected in that the Collateral will be at least 200% of the Plan's Participation in a Loan at the time of closing and throughout the term of the Loan, and the Plan will have first priority to proceeds from disposition of the Collateral in the event of a default; and (e) all of the terms and conditions of the Participations will be at least as favorable to the Plan as those available to the Plan in an arm's-length transaction with an unrelated party.

14. In summary, the Trustee represents that the proposed transactions meet the statutory criteria of section 408(a) because: (a) The Plan's purchase of a Participation will be reviewed and approved by the Trustee; (b) the Plan's Participation will be secured by Collateral worth at least 200% of the value of the Participation; (c) the Participations will be limited to a 5 year period; and (d) the Trustee has determined that the Participations are in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

Profit-Sharing Plan & Trust Agreement of John V. Krippaehne, D.M.D., P.C. (the P/S Plan) Money-Purchase Pension Plan & Trust Agreement of John V. Krippaehne, D.M.D., P.C. (the M/P Plan) Located in Portland, Oregon

[Application Nos. D-5912 and D-5913]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to proposed lease, effective January 1, 1985, of certain real property by the above named plans (collectively, the Plans) to Dr. John V. Krippaehne (Dr. Krippaehne), a party in interest with respect to the Plans, provided that (a) the terms of the transaction are at least as favorable to the Plans as those the Plans could obtain in a similar transaction with an unrelated party, and (b) Form 5330 is filed and excise taxes are paid as stated in representation 5, below.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 1, 1985.

Summary of Facts and Representations

1. Each of the Plans covered three participants as of June 29, 1984, including Dr. Krippaehne, who is also an officer, shareholder, and director of the employer (the Employer) of such participants. As of August 31, 1984, the P/S Plan's assets totalled $269,509 and the M/P Plan's assets totalled $195,833.

2. On or before June 28, 1984, Pacific Western Bank Trust Group (the Bank), of Portland, Oregon, agreed to serve as an independent trustee with respect to the proposed transaction and began reviewing same. It is represented that the Bank is independent of Dr. Krippaehne and the Employer. The Bank has been in existence since 1969. Its Employee Benefits section administers approximately 1,000 accounts, with a total value of approximately $250,000,000, and serves in various capacities, including trustee, custodian, investment advisor, and administrator. The Bank's Trust Real Estate Division is responsible for the collection of all note payments, mortgages, and contracts for those types of assets in the various accounts it maintains. This division is responsible for approximately $30,000,000 in real estate assets and has extensive experience in lease negotiations. The trust officer heading the Bank's real estate section is, according to the Bank, completely conversant with the real estate market in the Portland area as this section is responsible for managing, purchasing, selling, and monitoring real estate held in various trust accounts by the Bank. The Bank believes it has developed, over the years, the necessary expertise in both real estate and the Act in order to fulfill its role as an independent fiduciary with regard to these types of transactions.

3. The P/S Plan owns a ¾ interest as tenant in common in a parcel of land (the Land), described below. The M/P Plan owns the remaining ¼ interest as tenant in common. The Land, known as Tall Trees Townhouses Land, comprises .91 acres located at 10750 N.E. Halsey Street, Portland, Oregon 97220, and is improved by a 17-unit apartment complex presently owned by Dr. Krippaehne. The Land is landscaped, treed, and because of its location off of Halsey Street, is located in a somewhat quiet neighborhood. The Land has good access from N.E. Halsey Street and is not far from access to two interstate freeway systems. The Light-Rail System being established in the Portland area will pass nearby, thus providing public transportation to and from the Portland area.

4. The Land was appraised by John E. Slocom, MAI, of Curtis, MacKenzie & Slocom, Inc., a licensed real-estate appraiser in the State of Oregon, who has worked as an appraiser since 1973 and is a member of the American Institute of Real Estate Appraisers. Mr. Slocom certifies that he has no present

or contemplated future interest in either the Land or the parties involved. Mr. Slocom has determined that as of July 23, 1984, the air market value of the Land was $54,000 and the fair market rent of the Land was $5,400 and the fair market rent of the Land was $5,400 for the next annual period. His appraisal does not contain a representation as to whether or not a greater fair rental value should obtain because the Land is leased to Dr. Krippaehne, who owns both the improvements and the Employer, which sponsors the Plans, which own the Land.

5. The Plans acquired the Land on June 1, 1974, from Piper Investment Properties, Ltd., for $24,000, $18,000 of which was paid by the P/S Plan and the remaining $6,000, by the M/P Plan. By agreement dated June 1, 1974 (the Original Lease), the Plans leased the Land to Dr. Krippaehne for an initial 10-year term, which expired May 31, 1984. The Original Lease permitted Dr. Krippaehne to remain on the Land after May 31, 1984 as a tenant from month to month, subject to all of the Original Lease provisions except those for termination. The applicant states that Dr. Krippaehne has consistently complied with the Original Lease from its inception to the present. The applicant represents that the Original Lease met the requirements of section 414(c)(2) of the Act because the transaction was entered into pursuant to a binding contract which was in effect prior to July 1, 1974, the Original Lease remained at least as favorable to the Plans as an arm's-length transaction with an unrelated party would have been, and the execution of the Original Lease agreement was not, at the time of execution, a prohibited transaction under the Code.[4] Dr. Krippaehne has continued to use the Land after June 30, 1984. The applicant represents that if such use constitutes a prohibited transaction and is not granted exemptive relief, Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans, will be filed with the Internal Revenue Service and the excise taxes due will be paid within 60 days of the date the Department concludes its action on this exemption application.[5]

6. The Bank, as independent trustee for the Plans, and Dr. Krippaehne propose to enter into a new lease (the New Lease) regarding the Land effective January 1, 1985, if the proposed exemption is granted. The New Lease provides for an initial term of 9 years, may be renewed for successive 3-year terms if Dr. Krippaehne is not in default of any provision of the New Lease, and also permits Dr. Krippaehne to remain on the Land after the New Lease expires under a month-to-month tenancy (Holding Over) which the Bank may terminate at will at any time. The Bank represents that prior to executing any extension, renewal, or Holding Over, the Bank must first determine that exercising these provisions would be in the best interest of the Plans and their participants and beneficiaries. The rent required under the New Lease is $450 per month initially and will be adjusted every 3 years during the initial term, any renewal period, and any Holding Over to equal the greater of: (a) The then current fair market rental value as determined by an independent appraiser who is a SRA or MAI member, or (b) the rent required for the immediately preceding period. If the proposed exemption is granted, the initial rent will be increased to equal the fair market rental value of the Land as of the effective date of the New Lease as determined by the Bank, taking into consideration Dr. Krippaehne's ownership of the improvements on the Land. The New Lease is a triple net lease in which the Plans are required to bear no expenses, or incur any cost during the duration of the New Lease. All costs and expenses, including liability insurance covering both the Plans and Dr. Krippaehne, are Dr. Krippaehne's responsibility. The New Lease specifies that the Plans have absolutely no responsibility for the property except not to place any liens or encumbrances on the Land.

7. The Bank, as independent trustee, has reviewed the terms and conditions of the New Lease, which was submitted to the Department by letter dated January 2, 1985. The Bank's review included a review of Mr. Slocom's appraisal and discussions with him concerning his appraisal as it relates to the real estate environment in the Portland area and to this particular investment by the Plans. The Bank states that its review was done prior to and during the drafting of the New Lease. The Bank represents that based upon this review, as well as the Bank's experience in the real estate markets and its review of the Plans' assets, the Bank concludes that the proposed transaction is in the best interest of each of the Plans and their participants and beneficiaries. The Bank also states that it feels the New Lease is as good and as fair a lease as any to which two independent parties would agree. The Bank feels the New Lease reflects the market conditions in the Portland Metropolitan area and should not be considered as being favored because the owner of the apartment complex (i.e., Dr. Krippaehne, the tenant) is in a position to control the owner of the Land to be leased (i.e., the Plans).

8. In reaching the conclusions stated in 7, above, the Bank found that: (a) There are very few, if any, liquidity requirements of the Plans, and 51% of the Plans' combined assets are in liquid investments which could be used if the Plans needed to raise funds; (b) all costs and expenses under the Proposed Lease are Dr. Krippaehne's responsibility; and (c) regarding diversification, the Plans' combined assets are 17% in real estate, 15% in stocks, 14% in bonds, and 37% in money market instruments and certificates of deposit, and the balance in receivables. The Bank states that as the independent trustee for the Plans, the Bank will receive all payments under the New Lease, will insure proper payment of taxes and insurance, will periodically inspect the Land, will act in good faith at all times in the best interest of the Plans and their participants, will have all the authority necessary to insist upon fairness of terms for the Plans, and will not show any type of favoritism toward Dr. Krippaehne because he is the owner of the apartment complex and is in a position to control the Plans, which own the Land.

9. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The initial rent under the New Lease will be no less than the fair market rental value of the Land as of the effective date of the New Lease; (b) the rent will be increased every 3 years to equal the then current fair market rental value of the Land, as determined by a qualified independent appraiser, if such value exceeds the rent payable during the immediately preceding period; (c) the Plans will not be responsible for any costs or expenses under the New Lease; (d) an independent fiduciary, the Bank, has reviewed the Plans' assets and the

[4] Section 414(c)(2) of the Act provides an exemption until June 30, 1984, from the prohibited transaction provisions of the Act for leases meeting specified requirements. The Department is expressing no opinion herein as to whether the Original Lease is exempt under this section.

[5] The Department notes that Dr. Krippaehne's continued use of the Land after June 30, 1984, constitutes a prohibited transaction, within the meaning of sections 406 and 407 of the Act, which is not covered by this proposed exemption prior to January 1, 1985, the effective date of the New Lease (described in 6, below). As mentioned in footnote 1, above, the Department is expressing no opinion as to whether Dr. Krippaehne's use of the Land for any period prior to July 1, 1974, also constitutes a prohibited transaction.

terms and conditions of the New Lease prior to and during it drafting and has determined that the proposed transaction is in the best interest of the Plans and their participants and beneficiaries; and (e) the Bank will be the lessor, on behalf of the Plans, under the New Lease and represents that it will act in good faith and in the best interests of the Plans and their participants in enforcing and exercising the provisions of the New Lease.

For further information contact: Mrs. Miriam Freund, of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Raleigh Medical Group, P.A. Profit Sharing Plan (the Plan) Located in Raleigh, North Carolina

[Application No. D–5935]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a parcel of unimproved real property (the Property) to BEDB Realty Associates (the Partnership), a partnership which is a party in interest with respect to the Plan, provided that the price received is no less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution pension plan with sixteen participants and total assets of $566,127.83 as of April 30, 1984. The Plan is sponsored by the Raleigh Medical Group, P.A. (the Employer), a North Carolina professional corporation engaged in a multi-specialty medical practice in Raleigh, North Carolina. The trustees of the Plan (the Trustees) are three shareholders and employees of the Employer. The Partnership is comprised of the four sole shareholders of the Employer, three of whom are the Trustees.

2. The Property is Lot #13 in the North Hills Office Center on Six Forks Road in Raleigh, North Carolina. The Plan purchased the Property on April 26, 1983 from Central Carolina Realty, Inc., an unrelated party, for a purchase price of $210,000, consisting of a cash down payment of $105,000 and a sixty-day, no-interest promissory note of $105,000, which has been paid. The Plan also paid closing costs of $867.50 and as of December 18, 1984 had paid $3,470.20 in taxes and carrying expenses on the Property. As of April 30, 1984, the Property had a fair market value of $6.00 per square foot, according to Algie Stephens (Stephens), a real estate broker with the firm of Central Carolina Realty, Inc. in Raleigh, North Carolina. The Property consists of 61,482 square feet. According to an appraisal performed on February 21, 1985 by Worthy & Wachtel and Associates (WSA), a commercial real estate firm in Raleigh, North Carolina, the fair market value of the Property as of that date was $5.00 per square foot. As of April 30, 1984, the most recent year end for the Plan, the Property constituted approximately 65 percent of the total assets of the Plan and the Trustees have determined that it creates a liquidity problem for the Plan. The Plan currently receives no income from the Property. Although the Property has appreciated substantially since its acquisition by the Plan, the Trustees have determined that further appreciation of the Property is unlikely due to recent rapid development in the surrounding area resulting in a saturation of office space. The Trustees have determined that the Plan should divest itself of the Property at this time in order to realize the Property's recent appreciation and to enable the Plan to diversify its assets and relieve a liquidity problem.

3. The Partnership is currently in need of a parcel of unimproved real property to develop in pursuit of its partner's objective, which is the commercial development of real property and the lease of such developed property to the Employer. The Trustees are requesting an exemption to permit the Partnership to purchase the Property from the Plan under the circumstances described herein. According to the terms proposed by the Partnership, if the exemption is granted the Partnership will pay the Plan cash for the Property in an amount no less than the Property's fair market value and will pay all fees and closing costs related to the sale, including recent appraisal fees. While the Property's fair market value was rounded to $310,000 as of February 21, 1985, according to WSA's appraisal, since April 31, 1984, the Property has been valued as a Plan asset at $368,892, based on Stephens' appraisal of $6.00 per square foot as of April 30, 1984. The purchase price to be paid by the Partnership will be the higher figure of $368,892.

4. The Trustees have appointed the United Carolina Bank (the Bank) of Raleigh, North Carolina, to act as an independent fiduciary on behalf of the Plan with respect to the proposed sale by making an independent determination as to whether such proposed transaction will be in the best interests and protective of the participants and beneficiaries of the Plan. The Bank represents that it is independent of and unrelated to the Partnership and the Employer. After a review and analysis of all proposed terms of the Plan's proposed sale of the Property to the Partnership, the Bank represents that such transaction will be in the best interests of the participants and beneficiaries of the Plan. The Bank notes that the sale will be a one-time transaction for cash in an amount which is no less than the fair market value of the Property. The Bank finds that the proposed transaction will advantage the Plan by divesting it of a non-income producing asset which constitutes a high percentage of Plan assets and presents a liquidity problem. In recommending that the Plan proceed with the proposed sale, the Bank also notes that all costs associated with the sale will be borne by the Partnership. If the required exemption is granted, the Bank will remain as the Plan's independent fiduciary with respect to the Property through the closing of the sale transaction under the terms described herein.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan with respect to the proposed transaction are and will be represented by a fiduciary, the Bank, which is independent of the Partnership and the Employer; (2) after a review and analysis of the proposed transaction, the Bank has determined that it will be in the best interests of the participants and beneficiaries of the Plan; (3) the proposed transaction will enable the Plan to divest of an asset which produces no income for the Plan; (4) the proposed sale will be a one-time transaction for cash; (5) the proposed sale will enable the Plan to address a liquidity problem, as the Property constitutes approximately 65 percent of the assets of the Plan; (6) the Plan will receive a purchase price for the Property which is no less than the Property's fair market value; and (7) the Partnership will pay all costs associated with the sale transaction.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Dow Chemical Company Voluntary Group Accident Plan (the Plan) Located in Midland, Michigan

[Application No. D-6057]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406 (a) and (b) of the Act shall not apply, effective October 1, 1984, to the reinsurance of risks and the receipt of premiums therefrom by Dorinco Reinsurance Company (Dorinco) from the insurance contracts sold by American Home Assurance Company (American) to provide benefits to employees of Dorinco and the Dow Chemical Company (Dow) under the Plan, provided the following conditions are met:

(a) Dorinco—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Dow that is described in section 3(14) (E) or (G) of the Act,

(2) Is licensed to sell insurance in at least one of the United States or in the District of Columbia,

(3) Has obtained a Certificate of Compliance from the Department of Insurance of its domiciliary state, Michigan, which has neither been revoked nor suspended; and

(4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Michigan) by the Michigan Department of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of Dorinco, the gross premiums and annuity considerations received in that taxable year by Dorinco for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Dorinco is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by Dorinco. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by Dorinco. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by Dorinco.

(2) All premium and annuity considerations written by Dorinco for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Effective Date: If granted, this proposed exemption will be effective October 1, 1984.

Preamble

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied.

In PTE 79-41, the Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction.

The Department further stated that as of the date of publication of PTE 79-41, it had received applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

Summary of Facts and Representations

1. Dow is a large, publicly-held corporation organized under the law of the State of Delaware. The dominant portion of Dow's business consists of the manufacture and sale of chemicals, metals, plastic materials and products, and pharmaceutical, agricultural and consumer products.

2. Dorinco, a wholly-owned subsidiary of Dow, is a licensed insurer and reinsurer incorporated in 1977 under the laws of the State of Michigan. Dorinco actively solicits reinsurance business in the state in which it is licensed. Dorinco is currently qualified to do business in 38 states and the District of Columbia. At the end of 1983, Dorinco had capital paid up of $10 million and surplus of $43,936,000. During 1983, Dorinco collected $63,986,000 in total gross premiums.

3. The Plan is a welfare benefit plan providing death and disability benefits upon the accidental death or disability of Dow employees. As of September 24, 1984, there were approximately 43,000 covered participants under the Plan.

4. Dow has provided benefits under the Plan through insurance contracts sold by American since 1965. American is a stock insurance company owned by its shareholders and it is not related to Dow or Dorinco. On October 1, 1984, American entered into a reinsurance contract with Dorinco with respect to risks American insures. The Plan is not a party to this agreement. By its terms, the agreement provides that American will pay Dorinco 50 percent of the premiums it receives in exchange for which Dorinco has agreed to insure American for 50 percent of the risk. The anticipated amount of the premium which is reinsured by Dorinco is less than $1 million and it does not exceed 5 percent of the total net premiums received by Dorinco for the year 1983 ($55,926,239). According to the exemption application, American's liability for all of the benefits promised under its contract will not be affected by the reinsurance contract.

5. The applicant represents that the subject reinsurance transactions meet all of the conditons of PTE 79-41 covering direct insurance transactions:

(a) Dorinco is a party in interest with

respect to the Plan as described in section 3(14)(G) of the Act by reason of its stock affiliation with Dow.

(b) Dorinco is licensed to sell insurance in at least one of the United States.

(c) Dorinco obtained a Certificate of Compliance, which has never been revoked or suspended, from the Department of Insurance of the State of Michigan, on March 16, 1977. Such authorization is automatically renewed each year and continues to be effective unless rescinded.

(d) Dorinco has undergone a financial examination by the Department of Insurance of the State of Michigan as of June 30, 1982, and expects to undergo such financial examinations every three years in the future. During the course of future examinations, it is anticipated that the proposed reinsurance contracts with American will also be examined.

(e) Dorinco has undergone in the past, and will continue to undergo in the future, an annual examination by an independent certified public accounting firm.

(f) The Plan pays no more than adequate consideration for the insurance contracts. Moreover, the proposed reinsurance contracts will not in any way affect premium costs.

(g) After October 1, 1984, no commissions will be paid with respect to either the insurance contracts with American or the reinsurance contact between American and Dorinco.

(h) The gross premiums received by Dorinco during any taxable year from the reinsurance transactions, when considered along with any other premiums or annuity considerations received by Dorinco from employee benefit plans (and their employers) with respect to which Dorinco is a party in interest by reason of a 50 percent or more ownership affiliation, will not exceed 50 percent of the total premiums and annuity considerations received by Dorinço during such taxable years.

6. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (a) The insurance could not be purchased directly from Dorinco more economically than it is purchased from American; (b) participants and beneficiaries of the Plan are afforded insurance protection by American, a large insurer in the United States, at competitive rates arrived at through arm's length negotiations; (c) Dorinco is a sound, viable insurance company which has been in business for many years, and which does a substantial amount of business outside its affiliated group of companies; and (d) each of the protections provided to the Plan by PTE 79–41 will be met under the subject reinsurance transactions.

For further information contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of April 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–9192 Filed 4–16–85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and Time: May 6, 9 am–5 pm and 7:30 pm–10:00 pm; May 7, 9 am–5 pm.

Place: Open Seasons: Main Conference Room, Kitt Peak National Observatory Headquarters, Tucson, AZ; Closed Sessions: Holiday Inn–Broadway, 180 W. Broadway, Tucson, AZ.

Type of Meeting: Partially Closed—May 6, 7:30–10:00 pm.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 202 357–9488.

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short range and long range plans in astronomy, including a recommendation of relative priorities.

Agenda:

Monday, May 6

9 am–5 pm Open Session: Status of Selected Items in NSF's FY 1986 Budget, Proposed Program Changes at the National Optical Astronomy Observatories, Needs and Priorities for FY 1987 Outlook.

7:30 pm–10:30 pm Closed: Closed Session for Discussion of Selected Proposals under Review.

Tuesday, May 7

9 am–5 pm Open Session: Continuation of Discussions from Previous Day, Future Large Optical/Infrared Telescopes.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 12, 1985.

[FR Doc. 85–9257 Filed 4–16–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Physics; Meeting

In accordance with the Federal Advisory Committee Act Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Committee for Physics.

Date and Time: May 9, 1985: 10:00 a.m.–6:00 p.m. (Open); May 10, 1985: 8:30 a.m.–Noon (Open); 1:00 p.m.–2:30 p.m. (Closed); 2:30 p.m.–5:00 p.m. (Open).

Place: National Science Foundation, 1800 G Street NW., Washington, D.C. 20550, room 540 each day.

Type of meeting: Part Open.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–7985.

Summary of Minutes: May be obtained from Mrs. Phyllis Hurley, Division of Physics, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda: *May 9, 1985,* 10:00 a.m.–6:00 p.m. (Open). Oversight review of NSF support of atomic, molecular, and plasma physics, including presentations by NSF staff and the report of the Subcommittee for Review of the NSF Atomic, Molecular, and Plasma Physics Program.

May 10, 1985, 8:30 a.m.–Noon; 2:30 p.m.–5:00 p.m. (Open). Continuation of previous day's discussions.

May 10, 1985, 1:00 p.m.–2:30 p.m. (Closed). Review of proposals for FY 1987 budget planning.

Reason for Closing: The proposals being discussed include information of a proprietary or confidential nature including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These discussions are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9258 Filed 4–16–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Law and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended the National Science Foundation announces the following meeting:

Name: Advisory Panel for Law and Social Sciences.

Date/Time: May 10th and 11th, 1985; 9:00 a.m. to 6:00 p.m.

Place: Room 1242–B, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Felice J. Levine, Program Director, Law and Social Sciencies Program, Room 312, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550; telephone 202/357–0567.

Purpose of Panel: To provide advice and recommendation concerning support for research in Law and Social Sciences.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C., 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(c) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 12, 1985.

[FR Doc. 85–9261 Filed 4–16–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Regulatory Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463 the National Science Foundation announces the following meeting.

Name: Advisory Panel for Regulatory Biology.

Date and Time: May 8, 9, and 10, 1985 8:30 a.m. to 5:00 p.m. each day.

Place: May 8, 1985, room 523, 8:30 a.m. to 12:00 p.m.; room 421, 12:00 p.m. to 5:00 p.m.; May 9 and 10, 1985 Room 421.

Type of Meeting: Closed.

Contact Person: Dr. Lewis Greenwald, Program Director, Regulatory Biology Program, Room 332, National Science Foundation Washington, DC 20550 Telephone 202/357–7975.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

April 12, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9259 Filed 4–16–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Sociolgy; Meeting

In accordance with the Federal Advisory Committee Act. Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date and Time: May 6–7, 1985—Monday—9:00 am to 5:30 pm; Tuesday—9:00 am 4:00 pm.

Place: National Science Foundation, 1800 G Street NW., Washington, DC, Room 523.

Type of Meeting: Closed.

Contact Person: Joanne Miller, Program Director for Sociology or Thomas M. Guterbock, Associate Program Director for Sociology, Room 316, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–7802.

Purpose of Subpanel: To provide advice and recommendation concerning support for research in the Sociology Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority ot make such determinations by the Director, NSF, of July 6, 1979.

April 12, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–9258 Filed 4–16–85; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Technology and of its Subcommittees; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meetings:

Names/Dates/Times/Places:

Full Committee–May 9, 9:00–12:00 Noon, Room 543.

Subcommittee on Women—May 9, 1:30–5:00 p.m., Room 543.

Subcommittee on Minorities—May 9, 1:30–5:00 p.m., Room 1242B.

Full Committee—May 10, 9:00–12:00 Noon, Room 543.

Subcommittee on Disabled Scientists—May 10, 1:30–3:30 p.m., Room 543—National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact Person: Ms. Jane Stutsman, Executive Secretary of the Committee, National Science Foundation, Rm. 425, 1800 G Street NW., Washington, D.C. 20550, Telephone: 202/357–9418.

Purpose of Subcommittees: Responsible for all Committee matters relating to the participation in and opportunities for education, training, and research for minorities, women and handicapped persons in science and technology, and the impact of science and technology on them.

Summary Minutes: May be obtained from the contact person at the above stated address.

Agenda: The Subcommittees will consider mechanisms to increase participation of minorities, women and handicapped persons in Foundation programs, research projects, and on all NSF advisory committees. They will also advise the Director on how to modify NSF policies and procedures relating to minority, women and handicapped persons as well as the internal distribution of funds to implement this program.

M. Rebecca Winkler,

Committee Management Officer.

April 12, 1985.

[FR Doc. 85–9260 Filed 4–16–85; 8:45 am]

BILLING CODE 7555-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Options Evaluation Task Force; Regular Meeting

AGENCY: Options Evaluation Task Force of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Update on Council's Decision Analysis Model.
- Discussion of Load/Conservation Uncertainty Treatment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Evaluation Task Force.

DATE: Monday, April 29, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Council Central Office at 850 SW. Broadway; Suite 1100, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Wally Gibson, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–9196 Filed 4–16–85; 8:45 am]

BILLING CODE 0000-00-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of a Proposed New System of Records and an Amendment of an Existing System

AGENCY: Office of Personnel Management.

ACTION: Notice; Publication of a proposed new system of records and an amendment of an existing system.

SUMMARY: This notice propose the establishment of OPM/Govt–10, Employees Medical File System Records, which is a new Government-wide system of records for Federal employee medical records retained by agencies on active civilian employees and in Federal Records Storage Centers for inactive employees. Because some of the records to be included in this new system are now included in OPM-GOVT–1, General Personnel Records, system, necessary amendments to that system's notice are also being proposed. Elsewhere in this issue are proposed rules pertaining to the records in the new system.

DATE: Comments must be received on or before May 17, 1985. The notice, including the routine uses, becomes effective on June 17, 1985 without further notice, unless comments necessitate otherwise.

ADDRESS: Send or deliver written comments to the Assistant Director for Workforce Information, Office of Personnel Management, Room 5415, 1900 E Street, NW, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: William H. Lynch, Workforce Records Management Division, (202) 632–5433.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (hereafter referred to as "the Office") is proposing to establish a new Privacy Act System of records to cover employees medical records (manual, automated, microfilmed, or microfiched) maintained by agencies including employee on-the-job exposure and injury records (1) at the work site; (2) in agency dispensary, medical, health, or safety offices; and (3) in servicing personnel or other designated offices. Records included in this system are those created during the application for Federal employment process (when the individual is subsequently hired) and during the employee's career. These records are retained to ensure protection of employees' health and safety, as well as governmental interests, and to meet requirements of the Office, the Occupational Safety and Health Administration (OSHA), and the Office of Workers' Compensation Programs (OWCP).

This system does not include (1) patient records; i.e., those normally associated with treatment of individuals admitted to or who voluntarily seek treatment at health care facility concerning matters not pertaining to a condition of employment or arising as a result of an on-the-job occurrence; (2) records created as a result of epidemiological research studies; or (3) case files; i.e., the files maintained by the Office (medical disqualification decisions and disability retirement files), OSHA (relating to unsafe/unhealthy work conditions), and the OWCP compensation claim files). However, in some instances these case files will contain medical records that are included in this system, and it is possible that the proposed system would continue to retain copies of them after the creation of such case files. Efforts will be made to ultimately prevent unnecessary duplication of records. In order to ensure Privacy Act coverage on a transition basis, these types of records

are described as being part of the proposed system.

This proposal results from the recommendations made by an Interagency Task Group on Federal Employee Medical Records, February 1981. The Task Group was co-chaired by the Office and OSHA and was established to review what was widely agreed by agencies and employee representatives to be a widespread problem (i.e., the lack of consistent, Government-wide medical records management policy) and to make recommendations for the problem's solution. After 18 months of examination, including advice from agencies, labor organizations, and other interested public and private sector medical practitioners and records managers, the Task Group recommended that (1) agencies establish an Employee Medical Folder (EMF) as a permanent repository for the medical records of a Federal civilian employee; (2) the Office establish polices and regulations governing the control and disposition of such records, incouding guidance on access to and release of medical information; and (3) medical records accompany an active employee as he or she moves within an agency or to another agency and be stored along with his or her Official Personnel Folder (OPF) when no longer employed. With the concurrence and active participation of OSHA, OWCP, and the National Archives and Records Administration (NARA) as the Government's records manager, the Office's Director approved the establishment of the Employee Medical Records File System (EMFS) which includes an EMF.

It is essential that regularization of medical records management provide for the retention of records vital to the employee's and the Government's interests on a long-trem basis, and provide protection of personal privacy and compliance with the Privacy Act. Additionally, agencies and interested parties must be provided with adequate guidance on how and when such sensitive personal records may be disclosed both to officials of the custodial agency as well as to others outside that agency.

Therefore, consistent with the Office's long-standing Privacy Act policy as approved by the Office of Management and Budget regarding the inclusion of those employee personnel records that are under the Office's direct management or necessary to enable the Office to exercise its legal oversight responsibilities, the Office proposes to establish this new system of records. This action, along with the issuance of minimally necessary regulations and Federal Personnel Manual guidance, will accomplish the Task Group's recommendations and will greatly improve medical records management and protection of personal privacy.

The Office believes that agency, employees, and other interested parties will be better served and agency costs will be reduced by placing such records in a separte system of records because such a system (1) establishes minimum essential uniformity and standards in medical recordkeeping; (2) facilitates accuracy in the description of records to be maintained; (3) more clearly defines the purposes for which the records are retained; (4) ensures that records are disclosed within the custodial agency and under routine uses only for purposes for which they are maintained; and (5) specifically identifies records appropriate for long-term retention, thus enabling compliance with OSHA recordkeeping standards; and (6) provides a reduction in the volume of medical records now being unnecessarily retained. This notice also modifies the existing notice for OPM/GOVT–1, General Personnel Records, to remove from that system those medical records to be retained in the new system. These actions are considered subject to the provisions of the Privacy Act (5 U.S.C. 552a(o)) requiring advance notice to Congress and the Office of Management and Budget. A "Report on New Systems" has been filed, concurrent with this publication, with Congress and the Office of Management and Budget. Because the records will remain covered by either OPM/GOVT–1 or an agency-specific system during the advance notice period, no waiver of this 60-day period has been requested.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office gives notice of changes to the OPM/GOVT–1, General Personnel Records' system and proposes a new system to be identified as the OPM/GOVT–10, Employee Medical file System Records, as follows:

OPM/GOVT–1

SYSTEM NAME:

General Personnel Records.

* * * * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records may include identifying information such as name(s), date of birth, home residence, mailing address, social security number, and home telephone. This system includes contents of the OPF as specified in Federal Personnel Manual Supplement 293–31. Records in this system are:

a. Records reflecting work experience, educational level achieved, and specialized education or training occurring outside of Federal service.

b. Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about past and present positions held; grades; salaries; duty station locations; and notices of all personnel actions such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, the Office of Personnel Management (hereafter referred to as "the Office") approval of disability retirement applications, retirement, and removals.

c. Records on enrollment or declination of enrollment in the Federal Employees Group Life Insurance Program and Federal Employee Health Benefit programs, as well as forms showing designation of beneficiary.

d. Records relating to an Intergovernmental Personnel Act assignment or Federal-private sector exchange program.

Note.—Some of these records may also become part of the OPM/CENTRAL–7, Intergovernmental Personnel Act Assignment Records system.

e. Records relating to participation in an agency federal executive or Senior Executive Service (SES) Candidate Development Program.

Note.—Some of these records may also become part of the OPM/CENTRAL–3, Federal Executive Development Records; or OPM/CENTRAL–13, Senior Executive Service Records systems.

f. Records relating to Government-sponsored training or participation in an agency's upward mobility program or other personnel programs designed to broaden an employee's work experiences and for purposes of advancement (e.g., an administrative intern program).

g. Records contained in the Central Personnel Data File (CPDF) maintained by the Office and exact substantive representations thereof in agency manual or automated personnel information systems. These data elements include many of the above records along with handicap and race/national origin codes. A definitive list of CPDF data elements is contained in Federal Personnel Manual Supplement 292–1, Personnel Data Standards.

h. Records on the SES, maintained by agencies for use in making decisions

affecting incumbents of these positions (e.g., relating to sabbatical leave programs, training, reassignments, and details) that are perhaps unique to the SES and which may be filed in the employee's OPF. These records may also serve as the basis for reports submitted to the Office's Workforce Effectiveness and Development Group for implementing the Office's oversight responsibilities concerning the SES.

i. Records concerning an employee's activities on behalf of the labor organization representing agency employees, including accounting of official time spent and documentation in support of per diem and travel expenses.

Note.—Alternatively, such records may be retained by an agency payroll office and thus subject to the agency's internal Privacy Act system for payroll records. The OPM/GOVT–1 system does not cover general agency payroll records.

j. To the extent that the records listed here are also maintained in an agency automated personnel or microform records system, those versions of the records are considered to be covered by this system notice. Any additional copies of these records (excluding performance appraisal and conduct-related documents maintained by first line supervisors and managers covered by the OPM/GOVT–2 system) maintained by agencies at field or administrative offices remote from where the original records exists are considered part of this system.

Note.—It is not the intent of the Office to limit this system of records only to those physically within the OPF. Records may be filed in other folders located in the offices other then where the OPF is located. Further, as indicated in the records location section, some of these records may be duplicated for maintenance at a site closer to where the employee works (e.g., in an administrative office or supervisor's work folder) and still be covered by this system.

OPM/GOVT–10

SYSTEM NAME:

Employee Medical File System Records.

SYSTEM LOCATION:

a. For current employees, records are located in agency medical, personnel, dispensary, health, safety, or other designated offices within the agency.

b. For former employees, most records will be located in an Employee Medical Folder (EMF) stored in Federal Records Storage Centers operated by the National Archives and Records Administration (NARA). In some cases, agencies may retain for a limited time (e.g., up to 1 year) some records on former employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include:

a. Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

b. Medical records, forms, and reports completed during employment as a condition of employment, either by the employing agency or by another agency, State or local government entity, or a private sector entity under contract to the employing agency;

Note.—Records maintained by an agency dispensary are included in the system only when they are the result of a condition of employment or related to an on-the-job occurrence.

c. Reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a claim for Workers' Compensation, whether the claim is accepted or not. (The official compensation claim file is not covered by this system; rather, it is part of the Department of Labor's Office of Workers' Compensation Program (OWCP) system of records.)

d. All other medical records, forms, and reports created on an employee during his/her period of employment, including any, retained on a temporary basis (e.g., those designated to be retained only during the period of service with a given agency) and those designated for long-term retention (i.e., those retained for the entire duration of Federal service and for some period of time after).

Note.—Records pertaining to employee drug or alcohol abuse counseling or treatment, and those pertaining to other employee counseling programs conducted under Health Service Programs established pursuant to 5 U.S.C. Chapter 79, are *not* part of this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12107 and 12196 and 5 U.S.C. Chapter 11, 31, 33, 43, 61, 63, and 83.

PURPOSE:

Records in this system of records are maintained for a variety of purposes, which include the following:

a. To ensure that records required to be retained on a long-term basis in order to meet the mandates of law, Executive order, or regulations (e.g., the Department of Labor's Occupational Safety and Health Administration (OSHA) and OWCP regulations), are so maintained.

b. To provide data necessary for proper medical evaluations and diagnoses, to ensure that proper treatment is administered, and to maintain continuity of medical care.

c. To provide an accurate medical history of the total health care and medical treatment received by the individual as well as job and/or hazard exposure documentation and health monitoring in relation to health status and claims of the individual.

d. To enable the planning for further care of the patient.

e. To provide a record of communications among members of the health care team who contribute to the patient's care.

f. To provide a legal document describing the health care administered and any exposure incident.

g. To provide a method for evaluating quality of health care rendered and job-health-protection including engineering protection provided, protective equipment worn, workplace monitoring, and medical exam monitoring required by OSHA or by good practice.

h. To ensure that all relevant, necessary, accurate, and timely data are available to support any medically-related employment decisions affecting the subject of the records, (e.g., in connection with fitness-for-duty and disability retirement decisions).

i. To document claims filed with and the decisions reached by the OWCP and the individual's possible reemployment rights under statutes governing that program.

j. To document employee's reporting of on-the-job injuries or unhealthy or unsafe working conditions, including the reporting of such conditions to the OSHA and actions taken by that agency or by the employing agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or a national, State, or local social security type agency, when necessary to adjudicate a claim (filed by or on behalf of the individual) under a retirement, insurance, or health benefit program.

b. To disclose information to a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable diseases.

c. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena.

d. To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

e. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congresssional office made at the request of that individual.

h. To disclose information to officials of the Merit Systems Protection Board including the Office of Special Counsel, the Federal Labor Relations Authority and its general counsel, the Equal Employment Opportunity Commission, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties.

i. To disclose information to survey team members from the Joint Commission on Accreditation of Hospitals (JCAH) when requested in connection with an accreditation review, but only to the extent that the information is relevant and necessary to meet the JCAH standards.

j. To disclose information to the National Archives and Records Service in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

k. To disclose information to health insurance carriers contracting with the Office of Personnel Management (hereafter referred to as "the Office") to provide a health benefits plan under the Federal Employees Health Benefits Program information necessary to verify eligibility for payment of a claim for health benefits.

l. By the agency maintaining or responsible for generating the records to locate individuals for health research or survey response and in the production of summary descriptive statistics and analytical studies (e.g., epidemiological studies) in support of the function for which the records are collected and maintained. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study might be structured in such a way as to make the data individually identifiable by inference.

m. To disclose information to the Office of Federal Employees Group Life Insurance that is relevant and necessary to adjudicate claims.

n. To disclose information, when an individual to whom a record pertains is mentally incompetent or under other legal disability, to any person who is responsible for the care of the individual, to the extent necessary.

o. To disclose to the agency-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee, in connection with the examination ordered by the agency under:

(1) Medical evaluation (formerly Fitness for Duty) examinations procedures; or

(2) Agency-filed disability retirement procedures.

p. To disclose to a requesting agency, organization, or individual the home address and other information concerning those individuals who it is reasonably believed might have contracted an illness or been exposed to or suffered from a health hazard while employed in the Federal work force.

q. To disclose information to a Federal agency, in response to its request or at the initiation of the agency maintaining the records, in connection with the retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, or the lawful, statutory, administrative, or investigative purposes of the agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

r. To disclose to any Federal, State, or local government agency, in response to its request or at the initiation of the agency maintaining the records, information relevant and necessary to the lawful, statutory, administrative, or investigatory purpose of that agency as it relates to the conduct of job related epidemiological research or the ensurance of compliance with Federal, State, or local government laws on health and safety in the work environment.

s. To disclouse to officials of labor organizations recognized under 5 U.S.C. Chapter 71, analysis using exposure or medical records and employee exposure records, in accordance with the records access rules of the Department of Labor's OSHA, and subject to the limitations at 29 CFR 1910.20(e)(2)(iii)(B).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in automated record systems, and on file cards, X-rays, or other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the employee's name, date of birth, social security number, or any combination of those identifiers.

SAFEGUARDS:

Records are stored in locked file cabinets or locked rooms. Automated records are protected by restricted access procedures and audit trails. Access to records is strictly limited to agency officials with a bona fide need for the records.

RETENTION AND DISPOSAL:

Some records are retained for the duration of employment with a given agency. Other records are retained for the duration of Federal employment, plus 30 years. Records are destroyed by shredding, burning, or by erasing the disk.

SYSTEM MANGER AND ADDRESS:

Assistant Director for Workforce Information, Compliance and Investigations Group, U.S. Office of Personnel Management, Room 5415, 1900 E Street, NW, Washington D.C. 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains records on them should follow the appropriate procedure listed below.

a. Current employees. Current employees should contact their employing agency's personnel, dispensary, health, safety, medical, or other designated office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Individuals must furnish such identifying information as required by the agency for their records to be located and identified.

b. Former employees. Former employees should contact their former agency's personnel, dispensary, health, safety, medical, or other designated

office responsible for maintaining the records, as identified in the agency's internal issuance covering this system. Additionally, for access to their EMF, they should submit a request to the Office's regional office nearest their residence. (See list of the Office's regional and area office addresses in the Appendix.) Individuals submitting requests to the Office's regional and area offices must submit the following information for their records to be located and identified:

1. Full name.
2. Date of birth.
3. Social security number.
4. Agency name, dates, and location of last Federal service.

RECORDS ACCESS PROCEDURE:

a. Current employees should contact the appropriate agency office as indicated in the "Notification Procedure" section and furnish such identifying as required by the agency in order to locate and identify the records sought.

b. Former employees should contact the appropriate agency office as indicated in the Notification Procedure section and furnish such identifying information as required by the agency in order to locate and identify the records sought. Former employees may also submit a request to the Office's regional or area office nearest their residence for access to their EMF. (See list of the Office's regional and area office addresses in the Appendix.) When submitting a request to the Office, the individual must furnish the following information in order to locate and identify the record sought:

1. Full name.
2. Date of Birth.
3. Social Security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals requesting access must also comply with the Office's Privacy Act regulations on vertification of identify and access to records (5 CFR 297.201 and 297.203).

CONTESTING RECORDS AND PROCEDURE:

Since medical practitioners often provide differing but equally valid medical judgments and opinions when making medical evaluations of an individual's health status, review of requests from individuals seeking amendment of their medical records, beyond correction and updating of the records, will be limited to consideration of including the differing opinion in the record rather than attempting to determine whether the original opinion is accurate.

Individuals wishing to amend their records should:

a. For current employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency in order to locate and identify the records to be amended.

b. For a former employee, contact the appropriate agency office identified in the Notification Procedure section and furnish such identifying information as required by the agency in order to locate and identify the record to be amended. Former employees may also submit such a request to amend records in their EMF to the system manager. When submitting a request to the system manager, the individual must furnish the following information in order to locate and identify the records to be amended:

1. Full name.
2. Date of Birth.
3. Social security number.
4. Agency name, date, and location of last Federal service.
5. Signature.

c. Individuals seeking amendment of their records must also follow the Office's Privacy Act regulations on verification of identity and amendment of records (5 CFR 297.201 and 297.208).

RECORDS SOURCE CATEGORIES:

Records in this system are obtained from:

a. The individual to whom the records pertain.
b. Agency employee health unit staff.
c. Federal and private sector medical practitioners and treatment facilities.
d. Supervisors/managers and other agency officials.
e. Other agency records.

Appendix

CHICAGO REGION

John Kluczynski Building, 230 South Dearborn Street, Chicago, IL 60604

Area Offices

Illinois—219 South Dearborn Street, Chicago, IL 60604
Indiana—U.S. Courthouse and Federal Building, 46 East Ohio Street, Indianapolis, IN 46204
Michigan—477 Michigan Avenue, Room 565, Detroit, MI 48226
Mimesota—Federal Building, Room 501, Fort Snelling, Twin Cities, MN 55111
Ohio—U.S. Courthouse and Federal Building, Room 507, 200 West 2nd Street, Dayton, OH 45402

DENVER REGION

Building 20, Denver Federal Center, Denver, CO 80225

Area Offices

None

DALLAS REGION

1100 Commerce Street, Dallas, TX 75242

Area Offices

Louisiana—Federal Building, 610 South Street, New Orleans, LA 70130
New Mexico—421 Gold Avenue, SW, Albuquerque, NM 87102
Oklahoma/Arkansas—200 5th Street, NW, Oklahoma City, OK 73102
Texas—643 East Durango Blvd., San Antonio, TX 78205

NEW YORK REGION

Jacob K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278

Area Offices

New Jersey—Peter W. Rodino, Jr. Federal Building, 970 Broad Street, Newark, NJ 07102
New York—U.S. Courthouse and Federal Building, 100 South Clinton Street, Syracuse, NY 13260
Puerto Rico—Federico Degetau Federal Office Building, Carlos E. Chadron Street, Hato Rey, PR 00918

PHILADELPHIA REGION

William J. Green, Jr. Federal Building, 600 Arch Street, Philadelphia, PA 19106

Area Offices

Maryland—Edward A. Garmatz Federal Building and Courthouse, 101 West Lombard Street, Baltimore, MD 21201
Pennsylvania—Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222
Virginia—Federal Building, 200 Granby Mall, Norfolk, VA 23510

ST. LOUIS REGION

300 Old Post Office Building, 815 Olive Street, St. Louis, MO 63103

Area Offices

Kansas—120 South Market Street, Wichita, KS 67202
Missouri—East 12th Street, Kansas City, MO 64106

SAN FRANCISCO REGION

525 Market Street, 23rd Floor, San Francisco, CA 94105

Area Offices

Arizona—522 North Central Avenue, Phoenix, AZ 85004
California—
845 South Figueroa Street, Los Angeles, CA 90017
1029 J Street, Room 202, Sacramento, CA 95814
880 Front Street, San Diego, CA 92188
Hawaii—300 Ala Moana Blvd., P.O. Box 50028, Honolulu, HI 96850

SEATTLE REGION

Federal Building, 26th Floor, 915 2nd Avenue, Seattle, WA 98174

Area Offices

Alaska—Federal Building and Courthouse, 700 C Street, Box 22, Anchorage, AK 99513
Oregon—Federal Building, Room 376, 1220 3rd Street, SW, Portland, OR 97204

ATLANTA REGION

Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, GA 30303

Area Offices

Alabama—Southerland Building, 806 Governors Drive, SW., Huntsville, AL 35801
Florida—Federal Building, 80 North Hughey Avenue, Orlando, FL 32801
North Carolina—310 New Bern Avenue, P.O. Box 25069, Raleigh, NC 27611
South Carolina—Federal Office Building, 334 Meeting Street, Charleston, SC 29403
Tennessee—100 North Main Building, Memphis, TN 38103

BOSTON REGION

John W. McCormack Post Office and Courthouse, Boston, MA 02109

Area Offices

Connecticut—Federal Building, 450 Main Street, Hartford, CT 06103
Massachusetts—3 Center Plaza, Boston, MA 02108
New Hampshire—Federal/Post Office Building, Portsmouth, NH 03801

[FR Doc. 85-9285 Filed 4-16-85; 8:45 am]

BILLING CODE 8320-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-21936; SR-Amex-85-7]

Self-Regulatory Organizations; American Stock Exchange, Inc; Notice of Filing of Proposed Rule Change and Order Granting Accelerated Approval of Proposed Rule Change

April 11, 1985.

On March 22, 1985, the American Stock Exchange, Inc. ("Amex") submitted a proposed rule change, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] to amend Amex Rule 959 to permit the entry of opening orders in the cabinet, at a limit price of $1.00 per contract, under certain circumstances. Currently, Amex Rule 959 permits cabinet orders to be entered for closing transactions only. Under the proposed rule change, specialists shall effect all cabinet transactions by pairing closing purchase or sale orders which have been placed in the cabinet or, provided there are no closing purchase or sale orders in the cabinet to be paired, by pairing closing purchase or sale orders in the cabinet with opening purchase or sale orders. The proposed rule change would permit specialists, customers, firms and traders to enter opening orders only in cases were closing orders already exist in the cabinet. For example, under the proposal, if the cabinet already contains a closing sell order but no closing buy order, then a person may enter an opening buy order in the cabinet, and the closing sell order will be executed.

Specialists effect cabinet transactions as an accommodation to investors by pairing off closing purchase and sale orders. A closing order will remain unexcuted, however, if there is no closing cabinet order with which it can be paired. The Amex states that the purpose of the proposed rule change is to facilitate the closing out of cabinet orders, by permitting opening orders to be paired with closing orders in the cabinet under certain circumstances. Amex states that the statutory basis of the proposed rule change is section 6(b)(5) of the Act.

The Commission is publishing this release to solicit comment on the proposed rule change. Persons interested in commenting on the proprosal should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the proposed rule change, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also are available at the Amex.

The Commission finds that the proposed rule change may facilitate the closing out of cabinet orders and thereby accommodate investors who wish to close out positions in inactive, out-of-the-money options series for which there are no displayed bids or offers at the lowest fractional price per contract. For this reason, the Commission finds that the proposed rule change is consistent with the requirements of the Act applicable to a national securities exchange and, in particular, the requirements of Section 6.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposal is substantially similar to a rule change proposed by the Philadelphia Stock Exchange, Inc. ("Phlx") and recently approved by the Commission.[3] No comments were submitted in response to the Phlx rule proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 85-9286 Filed 4-16-85; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1984).
[2] 17 CFR 240.19b–4 (1984).
[3] *See* File No. SR–Phlx–84–20, Securities Exchange Act Release Nos. 21390 (October 10, 1984), 49 FR 40752 (October 17, 1984) and 21515 (November 21, 1984), 49 FR 46859 (November 28, 1984).

[Release No. 34-21929; SR-CBOE-85-1, SR-AMEX 85-5]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated, and American Stock Exchange, Inc., Order Granting Approval to Proposed Rule Change and Notice of and Order Granting Accelerated Approval to Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE") and the American Stock Exchange, Inc., have submitted proposed rule changes, on January 24, and March 22, 1985, respectively, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] to codify certain policies and amend others concerning new options series.[3] The Commission solicited comment on the CBOE proposal, but received none.[4]

I. Description of the Proposals, Their Purpose and Statutory Basis

Both CBOE's and Amex's proposed rule changes would amend their respective rules to allow: (1) Strike price intervals of $2.50 for individual stock options with strike prices of $25.00 or less; and (2) the addition of series of individual stock options until the first calendar day of the month in which the options expires, or until the fifth business day prior to expiration in "unusual market conditions." [5]

[1] 15 U.S.C. 78s(b) (1984).
[2] 17 CFR 240.19b–4 (1984).
[3] On February 20, 1985, CBOE submitted Amendment No. 1 to the proposed rule change, unrelated to the instant proposal, which was noticed and approved, together with that part of the original proposal which was only notice in Securities Exchange Act Release No. 21794 (February 26, 1985), 50 FR 8691 (March 4, 1985) and which is being approved herein.
[4] Because the Amex proposal is substantially similar to the CBOE proposal, it was not separately noticed for comment.
[5] By letter from Heidi Lift, Staff Attorney, Options Division, Amex, to Heidi Steinberg, Coppola, Attorney, Division of Market Regulation, SEC, dated April 1, 1985, Amex requested the authority to add new equity options series until five business days prior to expiration under unusual market conditions.

Currently, CBOE's and Amex's rules require strike price intervals of $5.00 for stocks trading below $200.00, and $10.00 for stocks trading at or above $200.00. In addition the rules of both exchanges allow the introduction of new individual stock option series only until 45 days prior to the series' expiration.

In their respective filings, both exchanges state that permitting strike price intervals of $2.50 for options with strike prices of less than $25.00 would enhance depth and liquidity in lower options by making at-the-money or near-the-mnoney puts and calls in these options series more readily available. In this connection, Amex and CBOE noted that the greater availability of at-the-money and near-the-money puts and calls should increase the opportunities for covered call writing and other trading strategies.[6]

In addition, Amex and CBOE note that the portion of their respective proposals which authorize the addition of new option series until the beginning of the month of expiration of new option series until the beginning of the month of expiration is consistent with the policy, recently approved by the Commission, concerning adding new series of index options.[7] Similarly, the Commission has approved the addition of new index options series until five business days prior to expiration, under unusual market conditions.[8] In their filings, Amex and CBOE stated that this would provide useful hedging tools in near-term series when a stock makes a dramatic move several weeks before expiration. Currently, when this occurs, investors are offered only deep in-the-money calls and far out-of-the money puts, or vice versa in the near-term cycle.

II. Solicitation of Comments

The Commission is publishing this Release to solicit comment on the Amex proposed rule change. Persons interested in commenting on this proposal should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 5th Street NW., Washington, D.C. 20549. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings are also available at the Amex.

III. Approval of Proposals

As indicated above, by using $2.50 strike price intervals for options on lower priced securities, the proposed rule changes by CBOE and Amex may enhance the depth and liquidity of the market for these options. Similarly, by allowing the introduction of new option series until the beginning of the series' expiration month, the proposals may provide more effective hedging vehicles and further enhance depth and liquidity in the options markets, generally. In this connection, the Commission recognizes that the exchanges recently have amended their rules to expand the number of individual stock option series which may be introduced and maintained at any given time,[9] and that the instant rule changes would cause further proliferation of new stock option series. Nevertheless, the Commission believes that the narrower strike price intervals for options on stock priced at or below $25.00 and the introduction of new series until the first calendar day of the expiration month should provide the additional flexibility for hedging and other options trading strategies that has been requested by many market participants.

The Amex proposal also permitted the exchange to introduce and maintain two in-the-money and two out-to-the-money option series until 45 days prior to expiration. (CBOE's proposal contained a similar plan for the introduction and maintenance of more than one in-the-money and out-of-the-money stock option series.)

The Commission believes that the exchanges have struck an appropriate balance between accommodating the needs of market participants and causing an excessive proliferation of option series.[10] Accordingly, for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act applicable to national securities exchange and, in particular, section 6 and the rules and regulations thereunder. In addition, the Commission finds good cause for approving the Amex's proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that CBOE's proposed rule change, which is substantially similar, was published for comment over 30 day ago, and no comments were received in response to that publication.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that both proposed rule changes are approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

April 10, 1985.

[FR Doc. 85-9284 Filed 4-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21932; SR-NYSE-85-6]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change; Relating to the Amendment of Certain NYSE Rules and Practices Concerning Individual Stock Options and Stock Index Options

The New York Stock Exchange, Inc. ("NYSE"), submitted on March 6, 1985, a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to amend certain NYSE rules and policies concerning the trading of options on individual listed stocks and stock index options.[3]

I. Description of the Proposals, Their Purpose and Statutory Basis

In pertinent part, the NYSE proposal amends the following rules and policies. The NYSE proposes to amend Rules 700 (a) and (b) and 758 (Supplementary Material .10) to clarify the definition of Options Floor. In this connection, Rule 700(b) defines "floor" as the Options

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[6] In addition, CBOE indicated that the use of $2.50 strike price intervals for lower priced securities will help certain member firms obtain favorable tax consequences. Telephone conversation between Frederic M. Kreiger, Assistant General Counsel, CBOE, and Heidi Steinberg Coppola, Attorney, Division of Market Regulation, SEC, April 3, 1985.

[7] In securitiees Exchange Act Release No. 21362 (September 28, 1984), 49 FR 39135 (October 3, 1984), the Commission approved a CBOE rule change allowing the addition of series of index options until the first calendar day of the month in which the series expires.

[8] *See* Securities Exchange Act Release No. 21794, *supra*, note 3.

[9] In Securities Exchange Act Release No. 21644 (January 9, 1985), 50 FR 2360 (January 16, 1985), the Commission approved an Amex proposal narrowing strike price intervals to $5.00, form $10.00, for options on stocks whose value is between $100.00 and $200.00 per share. Subsequently, the Commission approved a substantially similar proposal for CBOE, Securities Exchange Act Release No. 21794 (February 26, 1985), *supra*, note 3.

[10] *See Cf.* Securities Exchange Act Release Nos. 21644 and 21794, *supra*, notes 10 and 3.

[1] 15 U.S.C 78s(b) 1984).

[2] 17 CFR 240.19b-4 (1984).

[3] In its filing, the NYSE indicates that in view of the Commission's recent approval of its proposal to trade individual listed stock options (Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250 (February 21, 1985)), the NYSE is proposing to amend several of its rules to conform its individual stock options rules to those of the other option exchanges.

Floor,[4] and both paragraphs (a) and (b) indicate that, unless specifically stated otherwise, it is this definition which is to be used in interpreting the NYSE rules governing options transactions. Amendments to Rule 758.10(b) consist of deletions that clarify which orders must yield priority to orders entered from off the Options Floor. As amended, Rule 758.10(b) indicates that under certain circumstances, all member organizations entering options orders who are in contact with the Options Floor or whose proprietary orders are handled in a manner similar to the order of a Competitive Options Trader ("COT")[5] present on the floor, are subject to the same restrictions as a COT.[6]

In addition, the proposal amends Rules 703(e) and 717.10(c) concerning closing rotations, to conform these rules to the rules of the Chicago Board Options Exchange, Inc. ("CBOE") and others. As amended, these rules would allow the NYSE to hold closing rotations for expiring listed stock options series on the last trading day prior to the series' expiration date, at the time the last trade is disseminated, in those instances when the last trade is reported after 4:00 p.m.[7]

The proposal also amends NYSE Rule 716 to conform to recent proposed rule changes by CBOE and the American Stock Exchange, Inc. ("Amex"). In particular, the proposal adds a new provision to Rule 716 (Supplementary Material .30), which provides that the NYSE may delist options series with no open interest after notification to member organizations.[8]

In addition, the NYSE proposes to amend Rule 750, subparagraphs (c)(i), (ii) and (iii), respectively, to define spread, straddle, and combination orders to cover adjusted stock option contracts, in a manner consistent with the rules of other options exchanges.[9] As amended, the rule would allow spread, straddle and combination orders involving different numbers of contracts in each leg to receive the same priority, provided that the same number of shares of the underlying security are the subject of each leg of the spread, straddle or combination order. The NYSE also added subparagraph (c)(v) to this Rule, to define a "stock-option order," similar to certain other exchanges.[10]

With respect to options trade comparison procedures, the NYSE proposal amends Rules 764 and 770, by specifying more detailed deadlines and requirements for members to meet when reconciling uncompared options trades. The NYSE states that these requirements are consistent with the rules of certain other exchanges. In particular, the cut-off time for reconciling uncompared transactions is extended from 9:00 to 9:45 a.m. to reflect the obligations of Exchange members and member organizations to resolve promptly unmatched trades under amended NYSE Rule 764, Supplementary Material .10 through .50.[11] In addition, the new Supplementary Material (.10 through .50) states that during the trade resolution process, verbal commitments are binding on both parties and misrepresentations are inconsistent with just and equitable principles of trade.[12]

The NYSE proposal further amends NYSE Rule 762 to clarify the obligations of holders and writers of index options upon exercise and assignment in a manner consistent with the other exchanges trading index options. In its filing, the NYSE states that the amended language does not substantively change the settlement procedures for index options.

Finally, the proposal amends the NYSE exercise price policies for stock options to conform them to those of other options exchanges in that they would allow: (1) the listing of series with exercise prices of $5.00 as long as the series had not met delisting standards; and (2) the listing of strike price intervals of $5.00 (rather than $10.00), when the underlying stock price is between $100 and $200 (strike price intervals of $10 would remain unchanged for underlying stocks with prices above $200).[13]

III. Solicitation of Comments

The Commission is publishing this notice to solicit comment on the NYSE's proposed rule changes. Persons interested in commenting on these proposed changes should submit six copies of their comments within 21 days from the date of publication of this notice in the **Federal Register**. Comments should be sent to the Secretary of the Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the proposed rule changes, including any amendments and documents relating to the proposed change, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing also are available at the NYSE.

III. Approval of the Proposals

As indicated above, the NYSE's proposed amendments to their rules and policies concerning stock options and stock index options are substantially similar to those rules of the existing options exchanges, several of which the Commission recently has approved.[14] For the reasons discussed in the orders approving those proposals, the Commission finds that the NYSE proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6. The Commission finds good cause for approving these proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof, in that the NYSE proposal does not present any new or unique issues. In addition, the substance of the amendments described above have been the subject of proposals submitted by the existing options exchanges and approved by the Commission. In this connection, the Commission notes that no adverse comments were received regarding those proposed rule changes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

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[4] NYSE Rule 700(b)(24A) cross-references Rule 758.10(a), which has been amended to describe the "Options Floor" as "the area where options trading occurs and those areas immediately adjacent used for options trading, such as the booths of floor brokers."

[5] New subparagraph (b)(i)(E) to Rule 758 also clarifies the Rule by providing that all orders entered by a member or clearing member while they are within the "line-of-sight" of the Options Floor similarly are subject to these restrictions. In its filing, the NYSE states that the characteristics of these orders and the substance of restrictions to which they are subject are not affected by the amendment.

[6] For example, subparagraphs (b) (i), (ii), and (iii) of NYSE Rule 758 restrict COTS from initiating an exchange transaction in a kind of option in which he is registered for any account in which he has an interest, except under limited circumstances; effecting an exchange option transaction for an account in which he has an interest and executing an off-floor order in an option of the same class having the same expiration date and exercise price during the same trading session, while on the floor; and congregating in a particular option contract if the class is not assigned to the COT and if he has a desire to purchase or sell option contracts in that class for accounts in which he has an interest.

[7] *See* CBOE Rule 6.2 (Interpretation .03).

[8] Securities Exchange Act Release No. 21644 (January 9, 1985), 50 FR 2360 (January 16, 1985). *See* Securities Exchange Act Release No. 21794 (February 26, 1985), 50 FR 8891 (March 4, 1985) (order approving similar rule proposals by the CBOE, Pacific, and Philadelphia Stock Exchanges).

[9] *See e.g.*, Amex Rule 958(e)(i), (ii), and (iii).

[10] *See e.g.*, CBOE Rule 1.1(ii).

[11] *See* CBOE Rule 6.61 (Interpretations .01–.05).

[12] In addition, Supplementary Material .50 mandates detailed procedures for index options and stock options trading ex-dividend or ex-distribution the next day.

[13] *See* Securities Exchange Act Release No. 21644, *supra* note 7.

[14] *See* note 7, *supra*.

proposed rule changes described above are approved.

For the Commission, by the Division of Market Regulation, pursuant to delgated authority.

John Wheeler,

Secretary.

April 10, 1985.

[FR Doc. 85-9265 Filed 4-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14467 (File No. 812-5697)]

Paine Webber Programmed Amortization Term Securities, Inc.; Application and Opportunity for Hearing

April 11, 1985.

Notice is hereby given that Paine Webber Programmed Amortization Term Securities, Inc. ("Applicant"), 4060 Interfirst Two, Dallas, Texas 75270, filed an application on November 14, 1983, and an amendment thereto on January 28, 1985, for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the provisions referred to herein and in the application.

According to the application, Applicant is a wholly-owned, limited purpose finance subsidiary of Paine Webber Incorporated. The Applicant has not engaged and will not engage in any activities other than (i) issuing and selling bonds ("Bonds") under the Indenture (as defined below) collateralized by "fully modified pass-through" mortgage-backed certificates issued and serviced by a mortgage banking company or other financial concern (an "Issuer") and guaranteed by the Government National Mortgage Association ("GNMA Certificates") and acquiring, owning, holding and pledging the related GNMA Certificates, and (ii) issuing and selling obligations ("Obligations") and acquiring, owning, holding and pledging as collateral therefor other mortgage-related instruments. Applicant represents that it will not issue any Bonds or Obligations unless they are rated in the highest bond rating category by two nationally recognized statistical rating agencies.

The Applicant states that it is seeking an order solely for the purpose of eliminating the requirement that it maintain a portion of its assets in "whole pool" GNMA Certificates. Although Applicant may acquire mortgage-related securities other than GNMA Certificates to collateralize an offering of its debt securities, Applicant agrees that in those cases it will satisfy the "whole pool" requirement.

The Applicant proposes to issue and sell the Bonds in series. Each series of Bonds will be issued pursuant to one or more indentures between the Applicant and a qualified trustee ("Trustee"), as supplemented by one or more supplemental indentures ("Indenture"). The Indenture for each series of Bonds will be qualified under the Trust Indenture Act of 1939. The Bonds of each series will be secured by assignments to the Trustee of collateral consisting of GNMA Certificates, together with the payments thereon, having an outstanding principal balance at the date of issuance of the Bonds of not less than the principal amount of Bonds being issued. The Trustee will have a first priority perfected security interest in all of the collateral pledged to secure each such series of Bonds. The collateral securing each series of Bonds will serve as collateral only for that series of Bonds. The Applicant will not add any GNMA Certificates to, or substitute other GNMA Certificates for, the original GNMA Certificates included in the collateral. Scheduled distributions on the GNMA Certificates together with an initial cash deposit by the Applicant (and, if applicable, reinvestment income) shall be sufficient to make timely payments of interest on the Bonds and to retire each class of Bonds not later than its stated maturity. Reserve funds and other cash held by the Trustee as collateral for the Bonds may only be invested in obligations of the United States or of any agency thereof backed by the full faith and credit of the United States or cash equivalents meeting rating agency requirements. Except in an event of default, the terms of the Bonds will provide bondholders neither the right to request redemption nor the right to compel liquidation of the GNMA Certificates in order to redeem Bonds prior to maturity. The Bonds will be subject to special redemption at 100% of their unpaid principal amount plus accrued interest, if, as a result of substantial prepayments on the GNMA Certificates and low reinvestment yields, the Applicant determines that current interest requirements of the Bonds cannot be met. Any such redemption is limited to a principal amount of Bonds that would otherwise be required to be paid on the next payment date out of such principal receipts. The Bonds are not otherwise subject to call at the option of the Applicant except that a class of Bonds within a series may be redeemed in whole (but not in part) on any payment date on which the outstanding principal amount of such class of Bonds has declined to 10% or less of the original principal amount of such class.

The Applicant submits that granting the requested exemptive relief is justified in two respects: (1) While investment in "partial pool" GNMA Certificates may raise questions as to whether the investment is technically in a security separate from the underlying mortgage, this distinction has no substantive meaning to the Applicant. Therefore, while there may not be literal compliance with the section 3(c)(5)(C) exclusion from the Act, the Applicant is the type of entity which was intended to be exempt from the Act by virtue of such Section; (2) The Applicant was formed for the limited purpose of issuing debt securities secured by GNMA Certificates and other mortgage-related securities. However, Applicant submits that if it issues debt securities not secured by GNMA Certificates it will comply with the "whole pool" requirement. The Applicant will not trade or deal in securities or engage in any activities other than those incidental to and necessary for such purpose. The debt securities to be offered to the public are low risk securities receiving the highest rating from two nationally recognized rating agencies. Because of these factors, the Applicant is not the type of entity which was intended to be regulated under the Act and its limited activities do not require the protection of the Act. Furthermore, the Applicant submits that there are strong policy reasons for granting the exemptive relief in that its activities supply capital to the secondary mortgage market and thereby facilitate the financing of mortgages, a critical national need.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 7, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a

hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9288 Filed 4-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21935; SR-PSE-85-5]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE"), submitted a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] to amend PSE Rule VI, Sections 36(b) and 79, respectively, to provide a more detailed procedure for closing rotations, and to clarify the bid-ask differential rule. The Commission solicited comment on the proposal, but received none.[3]

Specially, the proposed rule change would amend section 36(b) to provide PSE with the ability to use trading rotations in additional, limited situations not permissible under PSE's current rules. In this connection, the proposal would permit the use of a trading rotation when a delayed opening or reopening of trading in the underlying security occurs after 12:30 p.m. (San Francisco Time), and when a "fast market" is declared by two PSE Options Floor Officials, in accordance with guidelines established by PSE in Options Floor Procedure Advice G-9. The decision to employ a trading rotation after 12:30 p.m. would be publicly announced on the trading floor at least 10 minutes prior to the commencement of such rotation, and only one trading rotation may be commenced in any givern options class after 1:00 p.m.

As a related matter, when a closing rotation is necessary the PSE Order Book Official would be required to use a single price closing procedure. This would prohibit free trading after the closing rotation so that all trades would be required to be executed at the established closing price. In addition, the proposed rule change would provide that public customer orders receive the same priority as they do during opening rotations, (*i.e.*, priority over market-makers, firm proprietary orders, etc.).

Currently, PSE Rule VI, section 36(b) only authorizes the use of a closing rotation if trading in the underlying security either opens or reopens after 12:45 p.m. In addition, the rule currently does not specify whether a single price procedure should be used, rather than free trading in each series, or whether customer orders will receive the same priority they now have in connection with opening rotations.

In its filing, PSE indicated that it is amending the trading rotation rule to provide for its expanded use, in part, as a result of PSE's recent experience with the existence of a fast market. In addition, PSE indicated that further amendment to the trading rotation rule is necessary to clarify that the Order Book Official is required to use a single price procedure and that public customer orders have the same priority over market-maker and others during the extraordinary trading rotations, as they do now in the ordinary opening and closing rotations. Finally, PSE stated that new section 36(b) of Rule VI is consistent with the rules of CBOE and other options exchanges.[4]

With respect to PSE Rule VI, section 79, the proposed rule change would clarify the bid-ask differentials by conforming the language in Commentary .02 to the language in paragraph (b)(1) of that Rule. Paragraph (b)(1) of section 79 uses the current "bid" for an options series as the reference point for establishing the bid-ask differential, and defines the maximum bid-ask differential in terms of the bid price (*i.e.*, the difference shall be no more than ¼ of $1 between the bid and the offer for each option contract for which the bid is $.50 or less). Commentary .02 of Section 79 repeats the bid-ask differential formula contained in paragraph (b)(1), except that it uses the "last sale" of the option as the reference point to establish the bid-ask differential, instead of the current "bid" price. To make the Commentary consistent with the Rule, the proposed rule change would delete the "last sale" language from Commentary .02 and use the current "bid" price as the sole reference point in determining the bid-ask differential for an option.

In its filing, PSE indicated that in July 1984, Section 79 was amended to reduce the maximum bid-ask differentials in order to create tighter options markets. PSE noted, however, that "in a recent effort to circumvent the tighter markets, some market makers have seized upon the 'last sale' language contained in Commentary .02 to lay wider markets in options that trade irregularly." As a result, the Options Floor Trading Committee, on November 13, 1984, directed the PSE staff to clarify the bid-ask differential Rule and Commentary, as described above. In this connection, PSE also stated that "the clear intent of Section 79 is that the current 'bid,' as the best reflection of the existing market, should be the reference point for the bid-ask differential, not a last sale which may be hours or days old."

PSE stated that it believes the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder in that the new closing procedure will ensure customer priority when a rotation is used, and the amendment of Section 79 will guarantee that the narrower bid-ask differentials can be enforced under all market conditions. Therefore, PSE stated that the proposed rule change is consistent with section 6(b)(5) of the Act.

By authorizing the use of trading rotations in connection with delayed openings and reopenings, and fast markets, as described above, the Commission believes that the proposed rule change should help enable the PSE to maintain fair and orderly markets in these unusual circumstances. Similarly, by clarifying that the bid-ask differential rule makes the current bid and not the last-sale price the reference point for the bid-ask differential formula, in conformity with PSE's original intent, the proposed rule change also should help PSE maintain tighter markets. In addition, to the extent this clarification would prohibit member firms from circumventing the intent of the rule, and require all member firms to operate under the same principle, the Commission believes the proposed rule change also would promote just and equitable principles of trade. Accordingly, the Commission finds that the PSE proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the proposal is consistent with Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

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[1] 15 U.S.C. 78s(b) (1984).

[2] 17 CFR 240.19b-4 (1984).

[3] The proposed rule change was noticed in Securities Exchange Act Release No. 21799 (March 1, 1985), 50 FR 9340 (March 7, 1985).

[4] The text of the proposed rule change is modeled after a similar rule of the Chicago Board Options Exchange, Inc. ("CBOE") (CBOE Rule 6.2, Commentary .02).

April 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-9267 Filed 4-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21931; SR-NYSE-85-5]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change; Order granting Accelerated Approval of Proposed Rule Change; Relating to Opening New Options Series.

I. Description of the Proposals and Their Purpose

The New York Stock Exchange, Inc. ("NYSE") submited a proposed rule change on March 6, 1985, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] to amend NYSE Rule 703, Supplementary Material .30, regarding the opening of new options series and exercise prices.[3]

The proposed rule change would amend NYSE Rule 703, Supplementary Material .30, to allow the addition of stock group index options series in the near-term expiration month until five days prior to the current month's expiration.[4] In addition, the proposal would allow the NYSE to list at least two in-the-money, to out-of-the-money and one at-the-money exercise prices for index options upon introduction of a new expiration month, and to add strike prices in response to changes in the underlying index so as to maintain two in-the-money, two out-of-the-money and one at-the-money strike prices at all times until the last day for adding new strike prices.[5]

The NYSE proposes to maintain two in-the-money and two out-of-the-money strikes by adding strike prices that are two price intervals (or $10) above (or below) the underlying index value when the index value rises (or falls) to an existing strike price.[6] For example, under this proposal, when an index rises to 95, strike prices of 105 could be added. An additional strike price would be authorized in unusual market conditions.

As the NYSE explains in its filing, with regard to NYSE Rule 703, Supplementary Material .30(a), the purpose of the proposed rule change is to allow the Exchange greater flexibility and efficiency in adding new option series in response to changes in an index value. The NYSE states that the change will assist in preventing situations where a major movement in an index value has left no series at-the-money or slightly out-of-the-money in the near-term expiration month. With regard to subparagraph (c), the NYSE explains that it is necessary to maintain at least two, rather than one, in-the-money and out-of-money series in all expiration months open for trading (in addition to one at-the-money series) to provide flexibility for investors during volatile market periods.

The NYSE further states that these amendments derive support from the arguments made in a previous NYSE filing (File No. SR-NYSE-84-2), which proposed a trigger price for the addition of new strike prices of 2.5 points lower or higher than the highest or lowest exercise price then trading and the introduction of series of index options up to the beginning of the calendar month in which the options series expires.[8] In that filing, the NYSE demonstrated the manner in which, under existing policy, the Exchange may be deprived of its ability to trade in-the-money and out-of-the-money series which may unjustifiably restrict an investor's ability to trade and transfer risk through strategies using the Exchange's cash-settled index options.[9] In addition, in the present filing, the NYSE states that its proposal is consistent with the policy the Commission recently approved for trading additional series of index options,[10] and that the NYSE proposal complies with the statutory requirements of Section 6(b)(5) of the Act.

Finally, the NYSE proposal eliminates from the provision concerning the trigger price for adding new option series [Supplementary Material .30(b)] any reference to stock index options, thereby making this provision exclusively applicable to individual stock options.[11] As amended, this provision would allow the NYSE to introduce series with new exercise prices and subsequently add new strike prices when the price of the underlying stock coincides with the exercise price of the series that are currently open for trading.[12]

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[1] 15 U.S.C. 78s(b)(1) (1984).

[2] 17 C.F.R. 240. 19b-4 (1984).

[3] With respect to stock index options, the NYSE proposal is substantially similar to recent proposals by the American ("Amex"), Chicago Board Options ("CBOE"), and Pacific ("PSE") Stock Exchanges. The Commission solicited comment on all of these proposals but received none. *See* Securities Exchange Act Release Nos. 21644 (January 9, 1985), 50 FR 2380 (January 16, 1985) (Amex); and 21794 (February 26, 1985), 50 FR 8691 (March 4, 1985)(CBOE and PSE). With respect to individual stock options, the NYSE proposal substantially conforms to Amex's rules.

[4] Currently, the NYSE allows the listing of new strike prices for index options up to the first calendar day of the month in which the series expires. Because index options expire on the third Saturday following the third Friday of their expiration month, this means that under NYSE's current rules new strike prices cannot be added for the last 16-21 calendar days prior to the expiration of the series. The NYSE proposal does not amend this provision with regard to individual stock options, but rather continues to provide that for stock options additional series may be introduced until 45 days prior to the expiration of the option.

[5] Currently, the NYSE allows the listing of one in-the-money, one Out-of-the-money and one at-the-money strike price for index options upon the introduction of a new expiration month, and adds new strike prices thereafter so as to maintain one in-the-money, one out-of-the-money and one at-the-money strike price at all times prior to the expiration of the series. Thus, under the NYSE's existing policy, when the index value rises to 95, a strike price of 100 would be added.

[6] As a related matter, in File No. SR-NYSE-85-6, submitted to the Commission simultaneously with the instant proposal, the NYSE proposes to amend its rules to allow it to delist series with no open interest; thus should the NYSE list a new series in anticipation of a large market movement that does not materialize, it would be able to delist that series if it attracts no trading interest. The Commission recently approved a substantially identical proposal by Amex. *See* Security Exchange Act Release No. 21644, *supra* note 3.

[8] Although the Commission only approved the portion of this proposal concerning the introduction of new index options series, the arguments cited by the NYSE are equally applicable to both parts of the proposal. Securities Exchange Act Release No. 21067 (June 19, 1984), 49 FR 26173 (June 28, 1984).

[9] *See* File No. SR-NYSE-84-2, Item 3, at 5-17. Similarly, as described above, a recent order approving the Amex's proposal to narrow strike price intervals for stock options and to allow one at-the-money and two in-the-money and out-of-the-money strike prices for index options, the Commission determined that the Amex proposal "strikes an appropriate balance by accommodating market participants without causing excessive proliferation of options series." *See* Securities Exchange Act Release No. 21644, *supra* note 3.

[10] *See Securities Exchange Act Release Nos. 21644 and 21794, supra* note 3.

[11] This section provides that, "[o]rdinarily, the Exchange will introduce series with new exercise prices when the price of the underlying stock coincides with the exercise price of the series that are currently open for trading." NYSE Rule 703, Supplementary Material .30(b), as amended.

[12] The CBOE recently codified its policy with regard to the introduction and subsequent addition of series of individual stock options to provide that if the underlying stock is within 2% of a strike price interval, three strike prices would be listed upon the introduction of a new expiration month, one strike price closest to the underlying stock price and one strike price above and below that one. If the price of the underlying stock is more than 2% away from a strike price interval, two strike prices, one above and one below the strike price, would be listed upon the introduction of a new expiration cycle. Similar to NYSE's proposed rule change, CBOE's rule provides that when the price of the underlying stock rises (or falls) to an existing strike price, a new strike price one interval above (or below) would be added. See Securities Exchange Act Release No. 21794, *supra* note 3.

II. Solicitation of Comments

The Commission is publishing this notice to solicit comment on the NYSE's proposed rule changes described above. Persons interested in commenting on the proposed rule changes should submit six copies of their comments within 21 days from the date of publication of this notice in the Federal Register. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the proposed rule changes, and any amendments and documents relating to the proposed rule changes, except those that may be withheld from the public pursuant to 15 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filing are also available at the NYSE.

III. Approval of the NYSE Proposal

As indicated above; the NYSE's proposal concerning stock index options is essentially identical to various provisions of Amex, CBOE and PSE rules which the Commission recently approved. In addition, the stock option portion of the NYSE proposal is substantially similar to CBOE's rules regarding the introduction and addition of strike price intervals for equity options. For the reasons discussed in the orders approving those proposed rule changes,[14] the Commission finds that the NYSE's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6. The Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that over 30 days ago, in two separate instances, the Commission published orders requesting comment and approving substantially identical proposals submitted by Amex, CBOE and PSE, and no adverse comments were submitted in response to those publications.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change described above is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[14] *See* note 3, *supra.*

Dated: April 10, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-9263 Filed 4-16-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirement Under OMB Review

ACTION: Notice of reporting and recordkeeping requirement submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35, agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the Federal Register that the agency has made such a submission.

DATE: Comments must be received on or before May 10, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies

Copies of the form, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., NW., Room 200, Washington, D.C. 20416 Telephone: (202) 653-8538

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503, Telephone: (202) 395-3785

Information Collection Submitted for Review

Title: Informal Investor Survey in the Eastern Great Lakes

Frequency: One-time, non recurring

Description of Respondents: Information is needed to identify investors characteristics and their types of business investments in the Eastern Great Lakes area for small business advocacy policy.

Annual Responses: 383

Annual Burden Hours: 165

Type of Request: Extension

Dated: April 10, 1985.

Richard Vizachero

Acting Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85-9168 Filed 4-16-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 03/03 0178]

DC Bancorp Venture Capital Co.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing SBIC's (13 CFR 107.102 (1984)) under the name of DC Bancorp Venture Capital Company, 1801 "K" St., NW., Washington, D.C. 20001 for a license to operate in the Washington, D.C. area as a Corporation under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The Applicant will begin operations with private capital of $1,500,000.

The officers, directors and their shareholders of the Applicant are as follows:

Allan A. Weissburg, 6800 Fleetwood Rd., McLean, VA 22101—President, General Manager

Thomas D. Walsh, Suite 490, 1050 Connecticut Ave., Washington, D.C. 20036—Vice President, Director

Albert A. D'Alessandro, 1801 "K" St., NW., Washington, D.C. 20006—Secretary, Treasurer

Joanne McDowell, 1801 "K" St., NW., Washington, D.C. 20006—Assistant Secretary

Jeffry R. Reider, Suite 350, 919 18th St., NW., Washington, D.C. 20006—Director

John Cralle, 4922 Fairmont Ave., Bethesda, MD 20814—Director

DC Bancorp Investment Co., 1801 "K" St., Washington, D.C. 20006—⅓ Shareholder

Money Management Associates, 4922 Fairmont Ave. Bethesda, MD 20814—⅓ Shareholder

IMW Investment Partnership, Suite 490, 1050 Connecticut Ave., NW., Washington, D.C. 20036—⅓ Shareholder

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company

under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 10, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-9172 Filed 4-16-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5485]

Formosa Capital Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Formosa Capital Corp., 605 King George Post Road, Fords, New Jersey 08863, with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1985).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title of relationship	Percent of ownership
Philip Sheng-Fu Chen, 17 Arthur Place, Montville, NJ 07045.	Chairman of the Board, President, Director.	30
Maurice Shun-Nan Hsu, M.D., 11 Greenwood Road, Old Tappan, NJ 07675.	Treasurer, Secretary, Director.	15
Peter Shih-Shiung Ho, 3rd Floor, Lane 157, Hsin Shan South Road Sec. 1, Taipei, Taiwan.	Director	30
Che Hsiung Cheng, 3 Fl., No. 41, Lane 621, Pei-An Road, Taipei, Taiwan.	Director	15
Wen Ling Lee, 97 Taylor Drive, Closter, NJ 07624.	Director	10

The Applicant, a New Jersey corporation, will begin operations with a capitalization of $1,000,000 and will conduct its operations in the State of New Jersey and the New York City Metropolitan area.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and managerial assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Application includes the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Fords, New Jersey.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 9, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-9170 Filed 4-16-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 05/05-0203]

Sea Gate Small Business Investment Co.; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing SBIC's (13 CFR 107.102 (1984)) under the name of Sea Gate Small Business Investment Company, Suite 1403, 245 Summit St., Toledo, Ohio 43603 for a license to operate in the Ohio area as a Corporation under the provisions of the Small Business Investment Act of 1958 (Act), as amended (15 U.S.C. 661 *et seq.*).

The Applicant will begin operations with private capital of $1,010,000.

The officers, directors and shareholder of the Applicant are as follows:

George W. Haigh, 4206 Bonnie Brae Circle, Toledo, Ohio 43606—Chairman of the Board of Directors

Edwin M. Bergsmark, 4544 Crossfields Rd., Toledo, Ohio 43623—President

Donald E. Breese, 3033 Dorian Drive, Toledo, Ohio 43614—Senior Vice President, General Manager

David A Snavely, 4908 Courville Rd., Toledo, Ohio 43623—Secretary

Richard E. Cautman, 5712 Firethorn, Toledo, Ohio 43615—Treasurer

Chester Devenow, 3000 Valleyview Drive, Toledo, Ohio 43615—Director

Edwin D. Dodd, 29620 Gleneagles Road, Perrysburg, Ohio 43251—Director

Avery C. Hand, Jr., 1130 By-the-Shore, Huron, Ohio 44839—Director

Robert J. Lowgan, 6206 Valley Park Drive, Toledo, Ohio 43623—Director

Duane Stranahan, Jr., 26281 West River Road, Perrysburg, Ohio 43551—Director

H.L. Thompson, 29953 Sussex Road, Perrysburg, Ohio 43551—Director

Robert G. Wingerter, 29800 Sussex Road, Perrysburg, Ohio 43551—Director

Toledo Trustcorp, Inc., Three SeaGate, Toledo, Ohio 43603—Sole Shareholder

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Toledo, Ohio

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 10, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-9169 Filed 4-16-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/841]

Reform Observation Panel for UNESCO: Closed Meeting

The Reform Observation Panel for UNESCO will meet on May 1, 1985 in Room 6323 of the Department of State, 21st and C Streets, N.W. Washington, D.C. The meeting will begin at 10:00 a.m.

The principal agenda items will be:

—Briefing from Assistant Secretary of State Gregory J. Newell;
—Reports from Panel members who have held consultations;
—UNESCO's Executive Board Temporary Committee meeting, April 17–22; and
—The Executive Board meeting May 6–June 21.

The purpose of the meeting will be to discuss UNESCO reform progress, means to encourage reform in UNESCO, and U.S. policy towards UNESCO. A classified briefing by Department of State officials and discussion of classified documents pursuant to Executive Order 12356 requires that the meeting be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B).

Requests for further information on the meeting should be directed to the Panel's Assistant Executive Secretary: Ms: D. Jamie Miller, Room 4334A, Department of State, 21st and C Streets, NW., Washington, D.C. 20520 (202) 632–1534.

Dated: April 4, 1985.

Jean C. Bergquist,

Executive Secretary, Reform Observation Panel.

[FR Doc. 85-9123 Filed 4-16-85; 8:45 am]

BILLING CODE 4710-19-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-11]

Florida Citrus Commission et al.; Hearing on Proposed Recommendation

The Office of the United States Trade Representative (USTR) has scheduled a public hearing pursuant to Sec. 304(b)(1) of the Trade Act of 1974, as ameded (19 U.S.C. 2414(b)(1)) for May 10, 1985 at 10:00 a.m. in Room 403, 600 17th Street, NW., Washington, D.C. 20506. The purpose of the hearing is to invite public comment concerning the substance of the recommendation which USTR is required to make under Sec. 304(a) of the Trade Act of 1974 regarding its investigation of preferential tariff treatment granted by the European Economic Community (EC) on certain citrus imports.

On November 12, 1976 USTR initiated an investigation under Sec. 301 on the basis of petitions filed by the Florida Citrus Commission, the California-Arizona Citrus League, the Texas Citrus Mutual and the Texas Citrus Exchange. The petitions alleged that the EC grants preferential tariff on imports on a wide range of citrus products when imported from certain Mediterranean countries and that these preferences have an adverse affect on U.S. citrus exports to the EC. The U.S. and EC were unable to resolve the issue through consultations held pursuant to the procedures of the General Agreement on Tariffs and Trade (GATT); therefore, the U.S. requested the GATT to establish a dispute settlement panel to review the U.S. complaint. The panel found that the EC preferences nullified and impaired U.S. benefits under GATT with respect to U.S. exports of oranges and lemons and recommended that the EC reduce the most-favored-nation tariff rate on these items. The panel's findings and recommendation were considered by the GATT Council on March 12 but no action was taken. They will be discussed again at the next meeting on April 30.

Under Sec. 304(a)(1), USTR, on the basis of its investigation, its consultations with the EC, and the GATT dispute settlement procedure, must recommend what action, if any, the President should take under Sec. 301 with respect to the issues raised in the petition. Under Sec. 301 President is authorized to take all appropriate and feasible action within his power to enforce U.S. rights under a trade agreement or to obtain the elimination of an act, policy, or practice of a foreign government or instrumentality that denies U.S. benefits under a trade agreement or is unjustifiable, unreasonable or discriminatory and a burden or restriction on U.S. commerce.

Sec. 301(b) specifically authorizes the President, *inter alia*, to suspend or withdraw the benefits of trade agreement consessions and to impose duties or other import restrictions on the products of, and fees or restrictions on the services of, a foreign country for such time as he deems appropriate. Measures under Sec. 301 may be taken on a discriminatory or non-discriminatory basis at the discretion of the President.

The Section 301 Committee therefore invites public comment as to what, if any, action USTR should recommend to the President in this case.

In accordance with 1,5 CFR 2006.9, requests to present oral testimony should be submitted to the Chairman, Section 301 Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. 20506 no later than May 3, 1985. Written briefs accompanying oral testimony must be submitted no later than May 8, 1985 and must conform to the requirements of 15 CFR 2006.8. Those interested parties who do not wish to present oral testimony but nevertheless wish to present written views should submit wirtten briefs in accordance with 15 CFR 2006.8 no later than May 10, 1985. Rebuttal briefs may be submitted in accordance with 15 CFR 2006.8(c) no later than May 20.

Jeanne S. Archibald,

Chairman, Section 301 Committee.

[FR Doc. 85-9351 Filed 4-16-85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-85-6]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 7, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800

Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraph (c), (e), and (g) of § 11.27 of Part II of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 10, 1985.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24486	Midwest Aviation, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
20048	Chalk's International Airlines	14 CFR 135.75(a)	To allow petitioner to conduct day visual flight rules (VFR) operations in Grumman G-73 Mallard airplanes without having approved airborne radar equipment installed in the airplanes.
24449	St. Lucia Airways Ltd.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a master minimum equipment list.
24475	Rinker Materials Corp.	14 CFR 21.181	To allow petitioner to operate Beech King Air 200 aircraft utilizing the provisions of a minimum equipment list.
24483	R & F 727, Inc.	14 CFR 21.181	To allow petitioner to operate B-727 aircraft utilizing the provisions of a minimum equipment list.
24491	Old Ben Coal Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24489	New York State Dept.	14 CFR 21.181	To allow petitioner to operate King Air 200 aircraft utilizing the provisions of a minimum equipment list.
24488	Nekoosa Papers, Inc.	14 CFR 21.181	To allow petitioner to operate a DH-125 aircraft utilizing the provisions of a minimum equipment list.
24485	National Medical Enterprises	14 CFR 21.181	To allow petitioner to operate Falcon 10 and Falcon 50 aircraft utilizing the provisions of a minimum equipment list.
24482	MacLean-Fogg Co.	14 CFR 21.181	To allow petitioner to operate a Citation I aircraft utilizing the provisions of a minimum equipment list.
24492	Harrah's Hotels & Casinos	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24469	Hach Company	14 CFR 21.181	To allow petitioner to operate a Beech King Air 200 aircraft utilizing the provisions of a minimum equipment list.
24470	Farm & Home Savings Association	14 CFR 21.181	To allow petitioner to operate a Falcon 20 aircraft utilizing the provisions of a minimum equipment list.
23430	Douglas Aircraft Co.	14 CFR 61.57(c)	To extend the May 1 termination date of Exemption 3754. That exemption allows pilots to meet the pilot-in-command landing recency requirements by using a Phase I advanced simulator.
23565	Cigna Service Co.	14 CFR 21.181	To extend the June 30 termination date of Exemption 3800 and amend the exemption to add an aircraft. Exemption 3800 allows petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
23545	Buckeye Cellulose Corp.	14 CFR 21.181	To extend the July 31, 1985, termination date of Exemption 3834. That exemption allows petitioner to operate a Cessna 500 aircraft utilizing the provisions of a minimum equipment list.
24474	B.F. Goodrich Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24487	AT & T Resource Management	14 CFR 21.181	Do.
24490	United Technologies	14 CFR 21.181	Do.
24546	United States Parachute Association	14 CFR 91.47	To allow the petitioner to carry up to 40 passengers in its Douglas DC-3/C-47 aircraft during the 1985 United States National Skydiving Championships in Muskogee, Oklahoma during the period of June 20 through July 17, 1985.
24559	Fort Howard Paper Co.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24555	Rich Products Corp.	14 CFR 21.181	Do.
24558	TRW, Inc.	14 CFR 21.181	Do.
24556	Modine Manufacturing Company	14 CFR 21.181	Do.
24557	W.W. Grainger, Inc., Doerr Electric Corp.	14 CFR 21.181	Do.
24563	ANR Pipeline Co.	14 CFR 21.181	Do.
24562	Briston-Myers Co.	14 CFR 21.181	Do.
24554	Champion Int'l Corp.	14 CFR 21.181	Do.
24561	Weis Markets, Inc.	14 CFR 21.181	Do.
22635	Sierra Academy of Aeronautics	14 CFR Appendix C of Part 63	Extension of Exemption 3564 to allow petitioner to continue to conduct a Federal Aviation Administration (FAA) test program for flight engineer applicants who do not possess at least a commercial pilot certificate with an instrument rating to reduce the required 5 hours of flight training in an airplane and by incorporating static ground training in airplanes, subject to certain conditions and limitations.
24537	Wackenhut Services Incorporated	14 CFR 61.161(b)	To allow Mr. James T. Riddle to apply for an airline transport pilot certificate (ATCP) with a rotorcraft category rating without meeting the, at least 1,200 hours of flight time within the preceeding 6 years requirement.
24553	Eastern Airlines Incorporated	14 CFR 121.391(a)(3)	To allow petitioner to block-off 2 of the 252 passenger seats on its A300-B4 aircraft for nighttime operation and carry only 5 flight attendants.
11144	American Airlines Flight Academy	14 CFR 121.99 and 121.351(a)	To extend the June 30 termination date of Exemption 1332, as amended. That exemption allows petitioner to operate airplanes between Wilmington, NC, and St. Croix and St. Thomas, via Nassau, without maintaining two-way radio communications between each airplane and the dispatch office.
24573	The Clorox Company	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24567	U.S. Jet Aviation	14 CFR 135.261(b)	To permit petitioner to operate its aircraft in a hospital emergency medical evacuation service without complying with the duty time limitations.
24565	Horizon Air	14 CFR 121.371(a) and 121.378	To allow Braathens S.A.F.E. to perform maintenance on petitioner's Fokker F-28 Mark 1000 aircraft.
24539	Masco Flight Operations	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24534	World Airways, Inc.	14 CFR 121.391(a)(1)	To allow petitioner to block off 4 of the 354 seats and operate its Douglas DC-10 aircraft with 7 flight attendants when the 8th attendant cannot be made available without undue delay or flight cancellation.

Petitions for Exemption—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
[illegible]	United Airlines	14 CFR 121.434(c)(1)	To allow a pilot initially qualifying or upgrading as a pilot in command to be observed either by an FAA inspector of a United Airlines FAA-designated pilot examiner.
24244	Imperial International Incorporated	14 CFR 135.261(b)	To allow petitioner to operate its helicopter in hospital emergency medical evacuation service without complying with the duty time limitations.
21774	Finnair	14 CFR Parts 21 and 91	To allow petitioner to operate a leased U.S.-registered DC-10-30 aircraft, N345HC, using a Federal Aviation Administration (FAA)-approved minimum equipment list in conjunction with an FAA-approved continuous airworthiness maintenance program.
22706	Bankair, Inc.	14 CFR 135.225(e)(1)	Amendment to Exemption 3553A to permit petitioner to operate from several additional military airports using takeoff visibility minimums which are less than 1 mile and equal to or greater than the landing minimums established for that airfield, subject to certain conditions and limitations. Exemption 3553A, as amended, allows petitioner's pilots to operate from Myrtle Beach Air Force Base and Beaufort Marine Corps Air Station using those visibility minimums.
[illegible]	Penn Corp Financial, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
[illegible]	Boeing Commercial Airplane Company	14 CFR 91.45	To permit petitioner to conduct turbine powered transport category airplanes ferry flights with one engine inoperative.
[illegible]	Union Camp Corporation	14 CFR 91.45	To permit petitioner to conduct Lockhead JetStar 731's (N47UC, N48UC, and N49UC) ferry flights with one engine inoperative.
24432	Susquehanna Airlines	14 CFR 135.175	To allow petitioner to operate DeHaviland Heron Aircraft without radar equipment.
23869	The Relative Workshop	14 CFR 105.43(a)	Extension of Exemption 4047 to allow petitioner and Strong Enterprises, Inc.'s respective employees, representatives, and other volunteer experimental parachute test jumpers under their direction and control to allow such persons to make tandem parachute jumps. The exemption also allows pilots in command of aircraft involved in these operations to allow such persons to make these jumps wearing a dual parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a), subject to certain conditions and limitations.
24469	Parks College of St. Louis University	14 CFR Part 141	To allow students enrolled in the Associate and Bachelor of Science Degree in the Professional Pilot Degree Program to graduate from the appropriate courses when they have been trained to a performance standard.
21762	Aeronaves de Mexico, S.A.	14 CFR 21.181	To extend the June 30 termination date of Exemption 3266, as amended. It could allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list.
24578	Skystar International Airways	14 CFR 91.303	To allow petitioner to operate four Stage 1 Boeing 707 aircraft obtained after January 1, 1985 in noncompliance with the operating noise limits until hush kits are installed.
23225	Hughes Helicopters, Inc.	14 CFR 93.113	To allow special VFR operations in the Los Angeles, CA, control zone.

Dispositions of Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24382	Royal Air Maroc	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707-320 aircraft for back-up service in noncompliance with the operating noise limits until June 30, 1985. *Denied 3/21/85.*
[illegible]-15	Aircraft Technical Service, Inc	CAR 4b. 722	To permit certification of a Convair Model 440 for operation up to a maximum altitude of 35,000 ft. MSL with cabin pressure limited to currently approved pressure differential. *Granted 3/19/85.*
24231	Rich Int'l Airways, Inc.	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended partial grant 3/14/85.*
[illegible]	Alaska Helicopters Inc	14 CFR 135.225(d) and 121.652(a)	To amend Exemption 4109 which allows petitioner to operate BV-234 helicopters, with a passenger seating configuration of more than 30 seats and a payload capacity of more than 7,500 pounds, under Part 135, subject to certain conditions and limitations. It would allow petitioner to comply with § 135.225(d) instead of § 121.652(a). *Partial grant 3/19/85.*
[illegible]	MCI Communications Corp.	14 CFR 21.181	To allow petitioner to operate a Falcon 50 aircraft utilizing the provisions of a minimum equipment list. *Granted 3/19/85.*
22262	Regional Airline Association	14 CFR 135.261(b)	To extend the 2/26/85 termination date of Exemption 3535C. That exemption allows petitioners members to assign a flight crewmember for duty during flight time if that assignment provides for at least 8, rather than 10, consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment. *Granted 2/27/85.*
19881	Int'l Aerobatic Club (ICB)	14 CFR 91.22(a)(1)	To extend the March 31, 1985, termination date of exemption 2689, as amended. It would allow members of the ICB to participate and practice in aerobatic competitions without meeting the fuel requirements for VFR flight. *Granted 2/20/85.*
24435	Aeronautica and Astronautica, Inc.	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing 707 airplane to Miami International Airport for maintenance purposes. *Denied 3/1/85.*
24442	Southern Air Transport	14 CFR 91-303	To allow petitioner to operate up to three Stage 1 Boeing 707-320C aircraft until hush kits are installed but in no event, beyond September 30, 1985. *Partial grant 3/12/85.*
23290	Bell Helicopter Textron, Inc.	14 CFR 133.1 and 133.45	To extend the termination date of Exemption 3718 that allows petitioner to perform external-load operations to exercise the Dallas/Ft. Worth Metroplex Helicopter Emergency Lifesaver Plan which involves lifting personnel in a Billy Pugh safety net on various occasions and at different locations, subject to certain conditions and limitations. *Granted 3/29/85.*
23718	World Balloon Corp.	14 CFR 47.15(b)	To allow relief from the conventional registration identification as provided in said section, and to request a special registration of N-WORLD. *Denied 10/26/85*
24347	Ports of Call Travel	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Partial grant 3/27/85.*
[illegible]3718	World Balloon Corp	14 CFR 47.15(b)	To allow petitioner to obtain special registration marks "N-WORLD" instead of the normal "N" number for its new balloon. *Denied 10/26/84.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24118	Int'l. Air Service Co., Ltd	14 CFR 121.613	To allow petitioner to release an aircraft to a destination airport when that airport's terminal forecast predicts at or above minimum weather at estimated arrival time, but also contains conditional language predicting the possible occurrence of below minimum weather during that period. *Denied 3/27/85.*
24069	Arro-Gun	14 CFR 91.42	To allow petitioner to conduct commercial agricultural ultra low volume spraying operations in a Tierra II aircraft under an experimental certificate. *Denied 3/15/85.*
24142	General Electric Co	14 CFR 21.181	To permit petitioner to operate four Canadair Challenger CL-600-2A12 airplanes, N372G, N373G, N374G, and N375G, using a Federal Aviation Administration (FAA)-approved minimum equipment list (MEL). *Granted 3/15/85.*
20894	Trans-Colorado Airlines, Inc	14 CFR 135.181(a)(2)	To allow petitioner to operate over V95 between Baloo Intersection and Treas Intersection and over V66/V421 between Powes Intersection and Zeans Intersection and allow an alternate means of compliance with the performance requirements and use of procedures for compliance with the en route limitations. *Granted 3/29/85.*
23890	Simulator Training, Inc	14 CFR 61.63(d)(2)	To allow certain practical test maneuvers and procedures to be performed in petitioner's Lockheed Electra L-188 training device in lieu of nonvisual simulator. *Partial grant 4/2/85.*
17681	Kenmore Air Barbor, Inc	14 CFR 135.203(a)(1)	To renew Exemption 2528, as amended, to permit petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace, subject to certain conditions and limitations. *Granted 4/1/85.*
24263	American Flyers	14 CFR 1841.85	To allow petitioner to develop and administer certain written tests for airman certification. *Granted 3/18/85.*
24262	Commonwealth of Pennsylvania	14 CFR 21.181	To allow petitioner to operate PA Piper Navajo and King Air 1300 aircraft utilizing the provisions of minimum equipment lists. *Granted 3/15/85.*
24206	Precision Airlines	14 CFR 61.31 and 135.243	To allow the operation of Dornier 228-201 aircraft at a gross weight exceeding 12,500 pounds without the pilot holding a type rating. *Granted 3/18/85.*
23468	Arabian American Oil Company	14 CFR 21.181	To allow the operation of aircraft under Part 91 utilizing the provisions of a minimum equipment list. It would extend the March 31, 1985, termination date of Exemption 3720, as amended. *Granted 3/22/85.*
21266	Flight Management Company	14 CFR 91.169 and 91.181	To extend the January 31, 1985, termination date of Exemption 3294A. It would allow petitioner to continue to operate certain small civil aircraft under the provisions of §§ 91.163 and 91.215. *Denied 3/18/85.*
23147	Boeing Commercial Airplane Company	14 CFR 91.195(a)(1)	To renew Exemption 2661 to allow petitioner to conduct noise measurement tests, ground proximity warning system research and development, and certification flight tests at altitudes lower than 1,000 feet above the surface. *Granted 3/15/85.*
18718	FlightSafety Int'l.	14 CFR 61.58(c) and 61.78(d)(2)	To extend the March 31, 1985, termination date of Exemption 2736, as amended. That exemption allows petitioner's trainees to complete a 24-month pilot-in-command check and a Category II pilot authorization check in an FAA-approved flight simulator. *Granted 3/29/85.*
24216	Pan American World Airways, Inc	14 CFR Appendix H of Part 121	Relief from the limits on the conduct of Phase IIA training and checking utilizing the Phase I simulator to 3½ years from the date such approval was received from the Federal Aviation Administration (FAA). *Partial grant 3/21/85.*
24219	Eastern Air Lines, Inc	14 CFR Appendix H of Part 121	Relief from the limit on the conduct of Phase IIA training and checking utilizing a Phase I simulator to 3½ years from the date such approval was received from the Federal Aviation Administration (FAA). *Granted 3/21/85.*

[FR Doc. 85-9163 Filed 4-16-85; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

[BMCS Notice No. 85-6]

Driver's Record of Duty Status

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of granting of exemption.

SUMMARY: Notice is hereby given that the FHWA has granted an exemption to Frito Lay, Inc., Dallas, Texas, from certain requirements of § 395.8, Driver's record of duty status, of the Federal Motor Carrier Safety Regulations (FMCSR) conditioned upon the use of an on-board computer system.

EFFECTIVE DATE: April 10, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: Frito-Lay, Inc. requested a waiver of certain DOT regulations found at 49 CFR 395.8 to permit the use of an on-board computer system that electronically records and monitors driver and equipment performance in lieu of recording the required hours of service information in the driver's own handwriting. An exemption has been issued to Frito-Lay, Inc., that permits the use of an on-board computer system which, on demand, displays the information pertaining to hours of service and driver's record of duty status required by the FMCSR.

Deviation from the following provisions of 49 CFR 395.8 has been authorized:

(1) That portion of paragraph (a) that requires the driver to prepare a record of duty status while on duty or driving;

(2) That portion of paragraph (a) that requires the driver's record of duty status be prepared in duplicate;

(3) That portion of paragraph (f)(2) that requires all entries relating to the driver's duty status be made in the driver's own handwriting;

(4) The precise grid form found in paragraph (g) is waived to permit the use of an electronically produced grid; and

(5) Those parts of paragraphs (c) and (h)(5) requiring a highway mile post or intersection designation where change of duty status does not occur at a city, town or village only during the current trip. This information must be shown by the use of a code and a code description on the electronically produced grid.

This exemption only applies to Frito-Lay, Inc. drivers operating company controlled truck-tractors in interstate or foreign commerce that are equipped with an on-board computer system capable of creating hours of service documentation.

A copy of the grant of exemption and "Description of On-board Computer System and Justification For Experimental Authorization Waiver of Portion of 49 CFR Part 395" are available for inspection in room 3404, Bureau of Motor Carrier Safety, 400

Seventh Street, SW., Washington, D.C. 20590.

(49 U.S.C. 3102; 49 CFR 1.48)

Issued on: April 11, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 85-9180 Filed 4-16-85; 8:45 am]

BILLING CODE 4910-22-M

[FHWA Docket No. 85-20]

Study of a Federal Weight-Distance Truck Tax; Opening of Docket

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for comments.

SUMMARY: Section 933 of the Deficit Reduction Act of 1984 directs the Department of Transportation (DOT), in consultation with the Department of Treasury, to conduct a study of weight-distance truck taxes. The purpose of this notice is to describe the scope of the study and to establish a public docket for receipt of information and comments related to areas of investigation.

DATE: Comments must be received on or before October 1, 1986.

ADDRESS: Submit written comments preferably in triplicate, to FHWA Docket Number 85-20, FHWA, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. Any comments received will be available for examination at the above address between 7:45 a.m. and 4 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Link, Chief, Operations Analysis Branch, (202) 426-0570; or Mr. Michael J. Laska, Office of Chief Counsel, (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Study Mandate

Section 933 of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 494) directs the DOT, in consultation with the Secretary of the Treasury to conduct a study of the feasibility and ability of weight-distance truck taxes to provide equity among highway users, to ease compliance costs, and improve administrative efficiency. Further, the study is to evaluate the evasion potential of such taxes and assess the benefits to interstate commerce of replacing all Federal truck taxes, except the fuel taxes, with a weight-distance tax. A final report on this subject, together with recommendations the Secretary of Transportation may deem advisable, is to be submitted to Congress no later than October 1, 1987.

Background

Prior Federal analysis of a national weight-distance truck tax has, to a great extent, been limited to assessment of its equity implications. The most recent Federal examination of weight-distance truck taxes was contained in the study of *Alternatives to Tax on Use of Heavy Trucks* mandated in section 513(g) of the Surface Transportation Assistance Act (STAA) of 1982 (Pub. L. 97-424, 96 Stat. 2097). During the study period there was a need to address, legislatively, the immediate concerns of the motor carrier industry regarding the use tax rates; this precluded an in-depth assessment of weight-distance truck taxes. However, the study did conclude that the principal highway cost variables of vehicle weight and mileage are not fully measured by the current highway tax structure.

In its present form, the tax structure attempts to collect for many types of variable highway costs with either fixed fees or taxes on products that are surrogates for highway use. Fair and efficient user charges require that collections be made for a variety of vehicle characteristics and uses as precisely as possible. In the long-term, a national weight-distance tax could improve equity among highway users by increasing the precision with which highway costs can be matched with user fees. The report noted that more information and analysis were needed to determine the feasibility of a federally administered weight-distance tax. Subsequently, Section 933 of the Deficit Reduction Act (DRA) of 1984 mandated further analysis of the issues. As a preliminary step to the study, Federal Highway Administration officials met with the National Motor Carrier Advisory Committee (NMCAC) in January to discuss the study effort. Among other concerns, the NMCAC identified the following areas as essential to a successful study:

- An analysis of the impact of a weight-distance tax on carriers by type, especially owner-operators;
- An evaluation of the effects of weight-distance taxes on commerce;
- An assessment of costs of recordkeeping to assure compliance; and
- The opportunity for public comment and public hearings on the study.

Study Scope

The purpose of this study is to determine the likely costs, savings or other impacts to the Government and taxpayers created by a Federal weight-distance tax.

In conducting the study, the Department of Transportation, in consultation with the Department of the Treasury proposes to collect and analyze information related to:

- Improvement to equity of using gross weight or axle weight by configuration type in combination with mileage as the basis for highway taxes;
- Assessment of optional weight-distance tax schedules, mileage/weight thresholds, and tax rates;
- Governmental data and recordkeeping necessary to determine taxpayer liability and maintain compliance;
- The availability of taxpayer data to support tax payment;
- Administrative procedures necessary to collect and enforce the tax;
- Administrative costs, both government and private, of a weight-distance tax program;
- Identification and assessment of impacts on motor carriers, shippers, and commerce;
- Evasion potential and methods of mitigation; and
- The potential for State participation in the collection and/or enforcement of the tax.

To conduct this investigation, the following tasks are proposed:

(1) Design conceptual weight-distance tax options to replace all Federal highway taxes, except fuel, and develop tax rates to meet highway cost responsiblity assignments for 1990.

(2) Compare options to identify and remove from consideration tax options that are seriously deficient based on likely administrative feasibility, taxpayer compliance, burdens on industry and equity criteria.

(3) Develop detailed weight-distance tax options to include alternative administrative plans under two possible scenarios: a federally administered plan; and a cooperative Federal-State plan where collection and enforcement responsibilities would be shared.

(4) Evaluate the impact of options on carriers and shippers to include, but not be limited to: a taxpayer compliance burden; change in transportation costs affecting modal choice and product costs; and affects on equipment usage.

(5) Assess the feasibility and efficiency of collection and enforcement procedures, evasion potential, equity improvements, and benefits to

commerce of optional administrative plans.

In addition, this Notice solicits comments and information on the following:

- Motor carrier administrative, recordkeeping and compliance experiences with States that impose weight-distance taxes including the amount and effects of administrative costs and tax payments on their operations and equipment usage and to the extent possible, comparison of the exerience with those of other types of taxes; and
- State administrative (collection and enforcement) practices involving weight-distance taxes including administrative cost, evasion potential and methods of mitigation. Analyses conducted on modal diversion and economic impacts of State weight-distance taxes are also requested.

Those wishing to comment on any aspect of the study or provide information related to the subject of weight-distance truck taxes are requested to send them to the docket established by this Notice. Further, public comment will be solicited at public hearings during the course of this study. Details of such hearings will appear in later Notices.

Issued on April 5, 1985.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-9289 Filed 4-16-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85-70]

Fees Relating to Vessel Services, Container Stations, and Warehouses

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Revised Fee Schedules.

SUMMARY: To return to the Government the approximate costs of certain services provided to private interests by Customs officers, this document sets forth revised fees to be collected for the following services:

1. To perform vessel services;
2. To establish container stations; and
3. To establish, alter, and relocate a warehouse facility.

The fees are being adjusted to reflect the Federal pay increase, administrative overhead charge and Medicare. The fees shall remain in effect until revised.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT:

James Kenny, Accounting Division, (202-566-2021),

and

John Holl, Office of Inspection and Control, (202-566-8151), Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background—Fees To Perform Vessel Services

Pub. L. 95-410, the "Customs Procedural Reform and Simplification Act of 1978," approved October 3, 1978, (the "Act"), repealed sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58; 46 U.S.C. 329, 330 and 333), the statutory authority under which Customs had been charging and collecting fees for specific services provided to vessels by Customs officers.

Because these "Navigation Fees," which are set forth in § 4.98(a), Customs Regulations (19 CFR 4.98(a)), did not cover the costs of providing the services, Section 214 of the Act authorized the Secretary of the Treasury to establish a new schedule of fees to be charged and collected for furnishing these services. The fees are to be consistent with 31 U.S.C. 9701, which provides that the costs of specific services for private interests shall be reimbursed to the Government.

By T.D. 80-25, published in the **Federal Register** on January 18, 1980 (45 FR 3570), Customs established a fee schedule to be used for 1980, and amended § 4.98(a), Customs Regulations, to provide that a revised fee schedule would be published in the **Federal Register** and Customs Bulletin in December of each year setting forth navigation fees for the specified vessel services to be performed during the following year. The revised fee schedule is to reflect not only changes in the rate of compensation paid to the Customs officer performing the service, but also a 15 percent administrative overhead charge on the cost to Customs of providing the service, (see T.D. 84-231, published in the **Federal Register** on November 23, 1984 (49 FR 46118)), and the Medicare compensation costs equal to 1.35 percent of the cost to Customs of providing the service (see T.D. 84-147, published in the **Federal Register** on July 16, 1984 (49 FR 28700)). The fees are to be calculated in accordance with § 24.17(d), Customs Regulations (19 CFR 24.17(d)), and based upon the amount of time the average service requires of a Customs officer in the fifth step of GS-9.

In a separate regulatory initiative, by T.D. 84-149, published in the **Federal Register** on July 16, 1984 (49 FR 28695), Customs amended § 4.98(a) to remove the requirement that the revised fee schedule be published in December of each year. That requirement was too restrictive, especially since there was no Federal pay increase in October 1983. As amended, § 4.98(a) provides that a revised fee schedule will be published "periodically" and will remain in effect until changed. That is consistent with the procedure followed in the publication of a fee charged to establish a container station in accordance with T.D. 83-56 (48 FR 9853, March 9, 1983), and discussed below.

Because of the latest Federal pay increase effective January 6, 1985, as well as the current rates for the administrative overhead charge and Medicare that Customs may assess on the services it provides, it is necessary for Customs to revise the schedule of fees to take into account this increased cost. The adjusted hourly rate used is $18.15. The fees have been rounded off.

Action

The following revised schedule of navigation fees will remain in effect until revised:

Fee No. and description of services	Fee
1. Entry of vessel, including American, from foreign port:	
(a) Less than 100 net tons	$9.00
(b) 100 net tons and over	18.00
2. Clearance of vessel, including American to foreign port:	
(a) Less than 100 tons	9.00
(b) 100 net tons and over	18.00
3. Issuing permit to foreign vessel to proceed from district to district, and receiving manifest	18.00
4. Receiving manifest of foreign vessel on arrival from another district, and granting a permit to unlade	18.00
5. Receiving post entry	9.00
6. Reserved	
7. Certifying payment of tonnage tax for foreign vessels only	4.50
8. Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated	18.00

Fee To Establish Container Stations

Container stations are secured areas within the U.S. into which containers of imported merchandise may be moved for the purpose of opening the container and delivering the contents before an entry is filed with Customs or duty is paid. A container station serves as a central location at a port for processing containerized merchandise which otherwise could not be handled timely at the dock, wharf, pier, or bonded carrier's terminal.

Sections 19.40 through 19.49, Customs Regulations (19 CFR 19.40–19.49), set forth the procedure for the establishment and use of container stations. To establish a container station under § 19.40, Customs Regulations, an application must be filed with the district director. Before the application may be approved, Customs must: (1) Determine that the application is in proper form; (2) survey the premises to determine that all physical requirements are met; (3) perform a background investigation of the applicant and the applicant's officers and employees; (4) prepare a report of that investigation; and (5) review the application, survey, and background investigation report, and prepare a response to the applicant.

Consistent with the User Charges Statute (31 U.S.C. 9701), by T.D. 83–56, published in the **Federal Register** on March 9, 1983 (48 FR 9853), Customs amended § 19.40, Customs Regulations, to authorize implementation of a fee schedule to establish a container station. That document provided that the fee schedule is to be published in the **Federal Register** and Customs Bulletin periodically to revise the fee to reflect the increased costs to establish the container station. The fee is to be calculated in accordance with § 24.17(d), Customs Regulations (19 CFR 24.17(d)). The published revised fee schedule will remain in effect until revised.

The fee charged for the service is based upon the amount of time the service requires of each Customs officer and equals the sum of the individual charges plus a charge for mileage incurred by the applicable Customs officer in using a vehicle to visit the premises to perform his or her respective task. The average mileage associated with performing the necessary tasks is 60 miles. Currently, mileage costs are reimbursed at 20.5 cents per mile. The mileage fee is $12.30 (60 miles × 20.5 cents). As set out in T.D. 84–45, published in the **Federal Register** on February 21, 1984 (49 FR 6433), the current fee to establish a container station is $879.00 ($867.19+12.30, rounded off). The current rates of 15 percent for the administrative overhead charge and 1.35 percent for Medicare are figured into the revised fees as well.

The (1) grade and step of each Customs officer performing his or her respective service; (2) the adjusted hourly rate or pay utilized; (3) the individual charge of each respective service based on the hourly rate of pay of each Customs officer performing his or her respective service; and (4) the total fee, including mileage, for the service rendered, follow:

Customs officer, grade/step	Individual charge
1. Clerk, 5/5	$59.87
2. Inspector, 11/5	307.55
3. Agent, 12/5	579.07
4. Administrator, 13/5	62.61
Total	$1,009.10

NOTE.—The mileage fee is $12.30 (60 miles × 20.5 cents).

Action

The total fee to establish a container station is $1,021.00 ($1,009.10+12.30, rounded off). The fee will remain in effect until revised.

Fee to Establish, Alter, and Relocate a Warehouse Facility

By T.D. 82–204, published in the **Federal Register** on November 1, 1982 (47 FR 49355), Customs amended various parts of the Customs Regulations to implement changes relating to the control of merchandise in Customs bonded warehouses by establishing an audit-inspection program. A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty.

As amended by T.D. 82–204, § 19.5, Customs Regulations (19 CFR 19.5), provides that each warehouse proprietor will be charged a fee to establish, alter, or relocate a warehouse facility which shall be determined under 31 U.S.C. 9701. Each warehouse proprietor granted the right to operate a warehouse facility shall be charged an annual fee which shall be determined under section 555, Tariff Act of 1930, as amended, (19 U.S.C. 1555). The fees will be revised annually and published in the **Federal Register** and Customs Bulletin.

The purpose of the annual warehouse fee is to reimburse the Customs appropriation for services rendered to the warehouse community including audit, inspection, and related administrative costs, and is to be projected on the basis of the actual annual cost to Customs in the preceding year plus any Federal salary incrases. The current rates for the administrative overhead charge and Medicare are figured into the fees as well. By T.D. 85–36 published in the **Federal Register** on February 27, 1985 (50 FR 8043) the annual fee was increased from $650.00 to $1400.00. Any increases in that fee will be subject to another **Federal Register** document. As set out in T.D. 84–45, published in the **Federal Register** on February 21, 1984 (49 FR 6433), the current fee to establish a bonded warehouse is $879.00; the current fee to alter or relocate an existing bonding warehouse is $328.00.

To recover the increased costs to Customs, the fees are to be calculated in accordance with § 24.17(d), Customs Regulations.

Action

The following fee schedule to establish, alter, and relocate a warehouse facility will remain in effect until revised.

1. Establish a Bonded Warehouse—$1,021.00.
2. Alter an Existing Bonded Warehouse—$442.00.
3. Relocate an Existing Bonded Warehouse—$442.00.

The fees have been rounded off to the nearest dollar.

Authority

(R.S. 251, as amended (19 U.S.C. 66), section 312, 46 Stat. 692, as amended (19 U.S.C. 1312), section 551, 46 Stat. 742, as amended (19 U.S.C. 1551), section 555, 46 Stat, 743, as amended (19 U.S.C. 1555), section 624, 46 Stat, 759 (19 U.S.C. 1624), section 22, 67 Stat. 520 (19 U.S.C. 1646a), 92 Stat. 888 (Pub. L. 95–410), 96 Stat. 1051 (31 U.S.C. 9701))

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: March 29, 1985.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 85–9214 Filed 4–16–85; 8:45 am]
BILLING CODE 4820-02-M

Removal of Prohibition on the Importation of Tuna and Tuna Products From the Solomon Islands

AGENCY: U.S. Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice is to advise that under the Fishery Conservation and Management Act of 1976 ("the Act"), the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has notified the Secretary of the Treasury that the reasons for the imposition of a prohibition on the importation of tuna and tuna products from the Solomon Islands no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from

warehouse for consumption of tuna and tuna products from the Solomon Islands is removed.

EFFECTIVE DATE: The prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from the Solomon Islands is removed effective April 17, 1985.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry, Operations and Trade Control Branch, Office of Commercial Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8651).

SUPPLEMENTARY INFORMATION:

Background

Section 205(a)(4)(C) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, *et seq.*), provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the U.S., while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the U.S., has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the U.S. The responsibility for this certification was delegated to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs by Department of State Delegation of Authority No. 138 of April 29, 1977.

Pursuant to section 205(b) of the Act, upon receiving the certification, the Secretary of the Treasury is required to take such action s may be necessary and appropriate to prohibit the importation of all fish and fish products from the fishery involved.

Section 205(c) of the Act provides that if the Secretary of State finds that the reasons for the import prohibition no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove the import prohibition.

On Ausust 23, 1984, a notice was published in the **Federal Register** (49 FR 33526) advising that under section 205(a)(4)(C) of the Act, on July 31, 1984, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs certified to the Secretary of the Treasury that a U.S. fishing vessel, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the U.S., was seized by the Solomon Islands as a consequence of a claim of jurisdiction which is not recognized by the U.S. Under the authority of section 205 (b) and (c) of the Act, on August 9, 1984, the Secretary of the Treasury determined that the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from the Solomon Islands was prohibited until the Department of State notified the Secretary of the Treasury that the reasons for this prohibition no longer prevailed.

On March 6, 1985, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs informed the Secretary of the Treasury that the reasons for the imposition of the import prohibition on tuna and tuna products no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from the Solomon Islands is removed.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, other personnel in the Customs Service and the Treasury Department participated in its development.

Dated April 2, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85–9213 Filed 4–16–85; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Grants Program: Accredited U.S. Institution of Higher Education in Support of an Undergraduate Scholarship Program for Central American Students

Reference: OMB clearance number 3116–0179. Expiration date January 31, 1987.

The Bureau of Education and Cultural Affairs announces a program of United States government-sponsored undergraduate scholarships for Central Americans to study at accredited U.S. institutions of higher education. The program has the following broad objectives: to improve the range and quality of educational opportunities for young Central Americans of limited financial means; to match educational opportunities with skill shortages in Central America; to build lasting links between the U.S. and Central America. Student scholarship awards funded by USIA through pilot-project grants to U.S. institutions of higher education may range from twelve to thirty months in length, including English language training and other program enhancements. An education institution may apply for only one program per campus. No one campus will receive fewer than five nor more than fifteen students, to be identified by a separate, Agency-sponsored mechanism.

To achieve the program's goals, two broad project types have been identified: undergraduate programs for primary and secondary school teachers, to upgrade knowledge of selected disciplines and to improve teaching skills; and undergraduate advanced programs in several subject disciplines.

Current plans call for recruiting students from Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama in subject fields of the following disciplines: education, social sciences, natural sciences, business, management, engineering, health.

Exact program requirements and dates will be specified in a Request for Proposals (RFP) to be issued on or about May 15, 1985.

To receive a copy of the RFP and supporting materials, interested academic institutions should write to: Office of Academic Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, Washington, D.C. 20547, Attention: Dr. Alan Adelman, Telephone: (202) 485–7365.

Dated: April 10, 1985.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 85–9245 Filed 4–16–85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 74
Wednesday, April 17, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Monday, April 22, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendment to Regulation AA (Unfair or Deceptive Acts or Practices) to implement, as to banks, the Credit Practices Rule adopted by Federal Trade Commission. (Proposed earlier for public comment; Docket No. R-0006)

2. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9315 Filed 4-15-85; 3:11 pm]

BILLING CODE 6210-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:45 a.m., Monday, April 22, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System Employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 12, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-9316 Filed 4-15-85; 12:00 pm]

BILLING CODE 6210-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 15, 22, 29, and May 6, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 15

Wednesday, April 17

2:30 p.m.
Briefing on TMI-1 Steam Generator and Other Plant Matters (Public Meeting)

Thursday, April 18

9:30 a.m.
Responses to NRC Staff Comments on TMI-1 Steam Generators (Public Meeting)

11:15 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Indian Point Order (tentative)

Week of April 22—Tentative

Tuesday, April 23

9:30 a.m.
Discussion of Pending Investigations (Closed—Ex. 5 & 7)

11:00 a.m.
Discussion of Diablo Canyon-2 Contested Issues (Closed—Ex. 10) (tentative)

2:30 p.m.
Discussion/Possible Vote on Diablo Canyon-2 Low Power License (Public Meeting)

Thursday, April 25

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of April 29—Tentative

Wednesday, May 1

10:00 a.m.
Discussion of Low Level Waste Issues (Public Meeting)

2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

4:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Thursday, May 2

10:00 a.m.
Discussion of Modified Rule on Material False Statements (Public Meeting)

Week of May 6—Tentative

Wednesday, May 8

10:30 a.m.
Briefing by AIF on State of the Industry (Public Meeting)

Thursday, May 9

10:00 a.m.
Briefing on Brookhaven Report on Independent Safety Organization (Public Meeting)

2:00 p.m.
Executive Branch Briefing (Closed—Ex. 1)

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, May 10

2:00 p.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

April 12, 1985.

[FR Doc. 85-9381 Filed 4-15-85; 4:30 pm]

BILLING CODE 7590-01-M

4

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: April 24–25, 1985, 9:00 a.m.

PLACE: Federal Building, South Auditorium, 915 Second Avenue, Seattle, Washington.

MATTERS TO BE CONSIDERED:

- Council Decision on Draft Load Forecasts
- Staff Presentation on the Status of Resource Portfolio Analysis
- Staff Presentation on Institutional Arrangements Issue Paper
- Council Decision on Use of Non-Firm Power (Including the Interruptibility of the Direct Service Industries)
- Public Comment on Proposed Council Intertie Access Policy Issue Paper
- Public Comment on Out-of-Region Imports/Exports Issue Paper
- Staff Presentation and Public Comment on Re-Evaluation of the Model Conservation Standards Issue Paper
- Staff Presentation on Potential and Achieveable Conservation Issue Paper
- Council Decision on Cost and Availability of Generating Resources
- Staff Presentation on Lost Opportunity Resources
- Public Comment on Research, Development and Demonstration of Promising Resources
- Council Business

Public comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–9282 Filed 4–15–85; 8:45 am]

BILLING CODE 6000-00-M

5

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 22, 1985.

An open meeting will be held on Tuesday, April, 23, 1985, at 2:30 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more to the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402)(a)(4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, April 23, 1985, at 2:30 p.m., will be:

1. Consideration of whether to approve under section 210(b) of the Investment Advisers Act of 1940 a program to share information with state securities officials regarding Commission adviser examinations. For further information, please contact Gene A. Gohlke at (202) 272–2024.

2. Consideration of whether to propose for public comment a revised Form ADV under the Investment Advisers Act of 1940 which would make the investment adviser registration application form a uniform form for use by both the commission and the states. For further information, please contact Mary Podesta at (202) 272–2107.

3. Consideration of whether to issue a release proposing for public comment revisions to Form BD, other related technical changes, and amendments to the broker-dealer successor rules, to reduce the regulatory burden on broker-dealers by revising the disciplinary question to remove duplicative information requirements and narrow the scope of that question, by clarifying the information required to be disclosed on the schedules, by making the information requested under Rule 17a-3 of the Securities Exchange Act of 1934 conform to that requiring in the revised Form U–4, and by amending the broker-dealer successor rules to allow a broker-dealer to file an amendment to Form BD rather than a complete Form BD. For further information, please contact Valerie Golden at (202) 272–2848.

4. Consideration of an amendment to Rule (b)(2) of the Commission's Conduct Regulation, 17 CFR 200.734–3(b)(2). For further information, please contact Myrna Siegel at (202) 272–2430.

5. Consideration of whether to adopt two new registration forms, Forms S–4 (for all registrants) and F–4 (for certain foreign private issuers) to be used for the registration of securities in connection with merger proxies and exchange Patricia B. Magee at (202) 272–2589 (re Form S–4) or Martin L. Meyrowitz at (202) 272–3250 (re Form F–4).

6. Consideration of whether to issue a release proposing technical amendments to Rule 3A–02 of Regulation S–X, "Consolidated financial statements of the registrant and its subsidiaries." For further information, please contact Dorothy Walker at (202) 272–7343.

(This item was previously noticed in 50 FR 14192, April 10, 1985)

The subject matter of the closed meeting scheduled for Tuesday, April 23, 1985, following the 2:30 p.m. open meeting, will be:

Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Opinion.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Angela Hall at (202) 272–3085.

April 15, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–9382 Filed 4–15–85 3:45 pm]

BILLING CODE 8010-10-M

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federal register

Wednesday
April 17, 1985

Part II

Department of the Interior

Bureau of Indian Affairs

List of Indian Estates Affected by Old Age Assistance Claims; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

List of Indian Estates Affected by Old Age Assistance Claims

ACTION: Notice of Reimbursement.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

SUMMARY: This notice lists all Indian trust estates identified by the Department of the Interior, from which unauthorized disbursements were made by the Secretary of the Interior to States, or political subdivisions thereof, as reimbursement for old age assistance provided to deceased Indians before death in violation of Federal laws. This notice is required by section 4(a) of the Old Age Assistance Claims Settlement Act of October 19, 1984, Pub. L. 98–500.

DATE: This notice establishes that tribes, bands, groups and individual Indians shall have until October 14, 1985, to submit to the Secretary of the Interior, through the proper Area Office, the names of any additional trust estates from which unauthorized disbursements were made and which are not contained in this list.

FOR FURTHER INFORMATION CONTACT:

Aberdeen Area Director, Bureau of Indian Affairs, 115 4th Avenue, S.E. Aberdeen, South Dakota 57401, Telephone: (605) 225–0250;

Albuquerque Area Director, Bureau of Indian Affairs, 5301 Central Avenue, N.E., P.O. Box 8327, Albuquerque, New Mexico 87198, Telephone: (505) 766–3170;

Anadarko Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 368, Anadarko, Oklahoma 73005, Telephone: (405) 247–6673;

Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 657–6315;

Eastern Area Director, Bureau of Indian Affairs, 1951 Constitution Avenue, N.W., Washington, D.C. 20245, Telephone: (703) 235–2571;

Juneau Area Director, Bureau of Indian Affairs, Federal Building, P.O. Box 3–8000, Juneau, Alaska 99802, Telephone: (907) 586–7177;

Minneapolis Area Director, Bureau of Indian Affairs, Chamber of Commerce Building, 15 South Fifth Street, 10th Floor, Minneapolis, Minnesota 55402, Telephone: (612) 349–3631;

Muskogee Area Director, Bureau of Indian Affairs, Old Federal Building, Muskogee, Oklahoma 74401, Telephone: (918) 687–2295;

Navajo Area Director, Bureau of Indian Affairs, P.O. Box M., Window Rock, Arizona 86515, Telephone: (602) 871–5151;

Phoenix Area Director, Bureau of Indian Affairs, 3030 North Central, P.O. Box 7007, Phoenix, Arizona 85011, Telephone: (602) 241–2305;

Portland Area Director, Bureau of Indian Affairs, 1425 Irving Street, N.E., Portland, Oregon 97208, Telephone: (503) 231–6702; and

Sacramento Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, Telephone: (916) 484–4682.

SUPPLEMENTARY INFORMATION: The Old Age Assistance Claims Settlement Act, Pub. L. 98–500, authorizes and directs the Secretary of the Interior to pay entitled individuals their portions of any unauthorized disbursement made from the trust estate of a deceased Indian to a State, or a political subdivision thereof, as reimbursement for old age assistance provided to the deceased Indian before death in violation of Federal laws governing Indian trust property. The Secretary of the Interior is further directed to search the records of the Department of the Interior to identify individuals who are entitled to payment, and to ascertain the amount of the unauthorized disbursement to which each of the individuals would be entitled. Any payment under the Act shall include simple interest at a rate of five percent per annum from the date on which such unauthorized disbursement was made from the trust estate of the deceased Indian. No payments shall be made with respect to any unauthorized disbursement from the trust estate of a deceased Indian if the total amount of such unauthorized disbursement was less than $50.

This notice lists all Indian trust estates, identified by the Department of the Interior, from which unauthorized disbursements were made for the purpose of reimbursement for old age assistance. Copies of the Old Age Assistance Claims Settlement Act, Pub. L. 98–500, and this document are being provided to all federally acknowledged Indian tribes.

Indian tribes, bands, groups and individual Indians have 180 days, or until October 14, 1985, to submit to the appropriate area Office, in writing, the names of any additional qualified estates not listed in this document. (See the **FOR FURTHER INFORMATION CONTACT** section of this document for the names, addresses and telephone numbers of the Area Offices.) The name of any additional qualified estate submitted to an Area Office must be accompanied by: (1) The name and tribal affiliation of the Indian decedent, (2) the date and number of the Departmental probate order determining heirs of the trust estate, and (3) evidence that a payment was made from the trust estate of the decedent as reimbursement for old age assistance. Within 30 days after the expiration of the 180-day period, the Secretary of the Interior will publish in the **Federal Register** a supplemental list identifying those additional qualified estates submitted to Area Offices by tribes, bands, groups and individual Indians.

The payment and acceptance of any claim, after its determination in accordance with the Act, shall be a full discharge to the United States and any State, or political subdivision thereof, of all claims and demands touching any of the matters involved in the controversy.

Because of the numerous estates listed in the document, this notice may be subject to technical clarification or change.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs.

Instruction Sheet

Each estate from which an unauthorized payment was made has been assigned a nine or ten character issue number (a letter followed by eight or nine numbers). The first six characters identify a specific Bureau of Indian Affairs Area Office, Agency Office and tribe. The last three or four characters represent the specific numbers assigned to that estate from which an unauthorized payment was made. For example, A013400001 indicates:

A01—Aberdeen Area Office/Cheyenne River Agency
340—Cheyenne River Sioux Tribe
0001—Estate number one

To locate an estate, begin with the Table of Contents which lists each affected tribe (grouped by Area Office and Agency) and the pages where the estates for individuals affiliated with such tribe can be found. The list of estates has been reproduced by photographing two pages of the list to each **Federal Register** page. The page number referred to in the Table of Contents is located at the top center above the name of the Area Office and is not the five digit **Federal Register** page number located on the outer portion of each page.

If a tribe is not listed in the Table of Contents, no estate was identified for any individual affiliated with such tribe.

Each page of estates contains five columns of information under the

headings: Issue Number, Decedent Name, Decedent ID, $ Allowed, $ Paid.

Issue Number: The nine or ten character code (explained above) which identifies the Area Office/Agency/Tribe/and specific number assigned to that estate.

Decedent Name: The name of the deceased Indian whose Departmental records contain evidence that an unauthorized payment was made from his/her trust estate as reimbursement for old age assistance.

Decedent ID: The decedent's identification number. This number usually coincides with the decedent's allotment number, tribal enrollment number, or, in their absence, a number assigned by the Bureau of Indian Affairs.

$ Allowed: The amount of money, cited in the decedent's probate order, which was allowed as a claim to be paid from the decedent's trust estate as reimbursement to the State, or political subdivision thereof, for old age assistance. This figure appears in the list as an indication that the Departmental records contain evidence that some money was actually paid from the decedent's trust estate as reimbursement for old age assistance.

$ Paid: The amount of money actually paiid (the amount of the unauthorized disbursement) from the decedent's trust estate as reimbursement to the State, or political subdivision thereof, for old age assistance. This figure is supported by evidence appearing in Departmental records. Where the Departmental records contain evidence that money was paid from the decedent's trust estate as reimbursement for old age assistance, but the exact amount is not known, the word UNKNOWN appears in this column; further research is needed to ascertain such amount. Those amounts ascertained after this list is published will appear on the supplementary list of estates to be published in the **Federal Register** 30 days after the expiration of the aforementioned 180-day period.

If, after locating an estate on the list, you desire further information, call or write the Area Office under which the estate is listed. The names, addresses, and telephone numbers for all Area Offices are contained in the **FOR FURTHER INFORMATION CONTACT** section of this document. Be sure to include the complete issue number in any correspondence with the Bureau of Indian Affairs Area or Agency Office. It is important to remember that additional qualified estates must be submitted in writing, together with evidence of the unauthorized disbursement, to the appropriate Area Office within 180 days of the publication of this document.

BILLING CODE 4310-02-M

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A00-007-0084	JONES ELLEN (WILSON)	42	471.50	UNKNOWN
A00-007-0094	HUAPAPI NANCY (WEST)	56	667.50	UNKNOWN
A00-007-0131	THOMAS LOVEJOY	N36137	2,664.00	UNKNOWN
A00-007-0132	JOHN A. LOVEJOY	U425	457.50	UNKNOWN
A00-007-0133	MINNIE LAWRENCE	U249	27.00	UNKNOWN
A01-340-0001	CIRCLE EAGLE WILLIAM (FOUR)	1408	3,343.00	UNKNOWN
A01-340-0002	LONE HORSE PETER	1410	695.68	638.38
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A01-340-0006	TOP OF THE LODGE JESSIE (EAGLE)	2032	269.00	269.00
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A01-340-0009	LITTLE WOUNDED JAMES	1441	969.50	556.94
A01-340-0010	LINDLEY LIZZIE M.	1924	82.50	82.50
A01-340-0011	WALKS RUNNING RATTLE CLARA	2136	21.00	21.00
A01-340-0012	WHITE WOLF THOMAS	1756	696.00	692.00
A01-340-0013	JAMES AFRAID OF LIGHTENING	1259	650.00	435.00
A01-340-0014	DOG ARM ABRAHAM	1155	866.00	79.54
A01-340-0015	PAPIN CHARLES (GABE)	322	428.00	463.83
A01-340-0016	MARSHALL THOMAS	1751	2,811.50	2,811.50
A01-340-0017	RICH LOUISE NARCELLE	1158	364.00	UNKNOWN
A01-340-0018	FIELDER TWO SPEARS ANNIE	1904	1,447.08	1,447.08
A01-340-0019	FOX LOUISE (BRIDGET CURELY)	1720	737.50	326.61
A01-340-0020	HAWK THAT DARES SOLOMON	16	487.50	487.50
A01-340-0021	BLACK CHICKEN SOPHIA	121	1,395.00	1,395.00
A01-340-0022	RED HEAD NELLIE	564	3,508.50	1,327.48
A01-340-0023	GETS OFF IDA	2685	5.00	5.00
A01-340-0024	DROPS AT A DISTANCE JESSIE	2551	446.50	446.50
A01-340-0025	COUNTING MARY	2186	5.00	5.00
A01-340-0026	CHANGER NELLIE	2640	4,000.00	4,000.00
A01-340-0027	RED BIRD MARY ALICE	2137	1,133.00	222.77
A01-340-0028	DUCHENEAUX JENNIE	2664	1,900.00	1,900.00
A01-340-0029	CONDON JOSEPHINE	1285	18.44	18.44
A01-340-0030	LAFFERTY BERT C.	870	5.00	5.00
A01-340-0031	MARROWBONE JOSEPH (LITTLE HAWK)	1560	46.00	46.00
A01-340-0032	TALKS GEORGE	1570	320.20	320.20
A01-340-0033	BEAR EAGLE FLORA	1414	4,734.00	4,734.00
A01-340-0034	BALD HEAD EMMA	1631	34.07	34.07
A01-340-0035	HOLLOW HORN JOHN	1752	2,971.00	2,971.00
A01-340-0036	BAZIL CLAYMORE	906	5.00	5.00
A01-340-0037	BLACK HORSE CHARLES	987	2,282.36	2,282.36
A01-340-0038	SWIFT EAGLE ALICE	1188	733.50	682.07
A01-340-0039	COUNTING DANIEL	1452	946.00	UNKNOWN
A01-340-0040	HIGH BEAR AMY	855	1,322.00	1,322.00
A01-340-0041	OWL KING JONAS	1146	2,591.00	56.46
A01-340-0042	GOOD HOOP	1592	5.00	5.00
A01-340-0043	STRAIGH HEAD ROBERT	1551	1,319.00	1,319.00
A01-340-0044	CURLEY KENTON	1203	510.70	306.36
A01-340-0045	CLAYMORE EMMA	2810	850.00	21.72
A01-340-0046	JENISE BERT	2044	100.00	100.00
A01-340-0047	GRASPING EAGLE CARRIE	1789	891.68	81.99
A01-340-0048	RED DOG LUCY	3057	1,674.50	1,674.50
A01-340-0049	CLAYMORE MARY	3116	430.00	430.00
A01-340-0050	WHITE EAGLE EMILY	2756	1,449.50	1,449.50
A01-340-0051	LONE EAGLE MARTHA	3033	368.00	368.00
A01-340-0052	ROAN BEAR SOPHIA	1935	577.10	280.85
A01-340-0053	KILLS TWO PAUL	174	911.73	911.73
A01-340-0054	CANE HARRY	1491	2,235.00	2,235.00
A01-340-0055	BLACKBIRD TAIL HENRY	1276	1,386.00	1,086.22
A01-340-0056	BLUE COAT PHILIP	1339	325.33	325.33
A01-340-0057	SWAN RICHARD	1391	241.20	40.34
A01-340-0058	BLACK HAWK JOHN	1387	49.00	38.89
A01-340-0059	RIVERS WILLIAM	24	2,139.00	1,335.05
A01-340-0061	BLACK EAGLE JUSTIN	1540	823.00	823.00
A01-340-0062	CROW ASA	1009	861.00	861.00
A01-340-0063	CHARGIN EAGLE THOMAS	1118	48.00	48.00
A01-340-0064	GARTER JOSEPH	570	620.50	620.50
A01-340-0065	POOR BUFFALO JESSIE	676	142.67	133.70
A01-340-0066	CECELIA CHARGING HAWK	472	3,382.00	217.00
A01-340-0067	LITTLE CROW GEORGE MRS.	685	720.00	720.00
A01-340-0068	JOHNSON FRED	459	16.81	16.81
A01-340-0069	BLACK BODY ANGELINE	2699	107.50	107.50
A01-340-0070	LEBEAU JULIA	2705	22.00	22.00
A01-340-0071	WARRIOR LOUISA	2547	630.30	630.30
A01-340-0072	CLAYMORE SOPHIA	2564	5.00	5.00
A01-340-0073	IRON LIGHTNING ROSE	2180	220.00	220.00

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A01-340-0074	POOR BUFFALO LUCY	2198	3,289.00	3,289.00
A01-340-0075	FIRST HAWK ALICE	2714	2,412.79	456.70
A01-340-0076	CURLEY LOUISA	2460	18.09	18.09
A01-340-0077	BEAR EAGLE GEORGE	1633	4,390.00	988.58
A01-340-0078	WHITE FEATHER GEORGE	1637	1,200.00	1,200.00
A01-340-0079	SMOKY WOMAN REBECCA	1632	269.50	12.79
A01-340-0080	CREEK WALTER DANIEL	1742	681.50	681.50
A01-340-0081	BRUGUIER AMBROSE	1084	5.00	5.00
A01-340-0082	SWIFT BEAR THOMAS	1479	15.75	15.75
A01-340-0083	ROBERTS JENNIE	1297	140.34	140.34
A01-340-0084	WHITE CROW EAGLE KATE	959	1,736.00	911.72
A01-340-0085	BLACK EAGLE GRACE	1379	1,466.50	1,466.00
A01-340-0086	SWAN WILLIE	1324	45.99	45.99
A01-340-0087	ELK HEAD PHILLIP	1541	575.00	562.72
A01-340-0088	BULL MAN MARY	1293	486.00	126.55
A01-340-0089	HIGH EAGLE AMOS	32	2,282.00	1,838.63
A01-340-0090	CARTER CATHERINE	617	23.24	16.47
A01-340-0091	ANNIE BLACKCOAT	1939	10.00	10.00
A01-340-0092	BLACKMAN NELLIE	3024	173.50	173.50
A01-340-0093	SPOTTED HORSE MRS. JOHN	2099	209.50	209.50
A01-340-0094	PETER ONE SKUNK	2939	709.50	709.50
A01-340-0095	KISS IN THE WOODS SOPHIA	2385	8.90	8.90
A01-340-0096	BEAR EAGLE ANNIE	3023	1,000.00	999.47
A01-340-0097	GROUSE RUNNING ANNIE	2426	275.00	161.62
A01-340-0098	EAGLE BODY ANNIE	2334	1,744.50	350.00
A01-340-0099	BLACK EAGLE LOUISE	2046	749.00	749.00
A01-340-0100	WHITE HAWK JOHN	1600	70.50	70.50
A01-340-0101	LONG LOG MARY	2582	18.00	14.32
A01-340-0102	DUPRIS EMILY	2358	4.41	4.41
A01-340-0103	DUCHENEAUX VICTOR SR.	44	5.00	5.00
A01-340-0104	LAUNDREAUX JOSEPHINE	188	2,097.43	2,097.43
A01-340-0105	STANDING ELK MATHEW	1247	256.50	256.50
A01-340-0106	VEO CHARLES	281	38.50	38.50
A01-340-0107	JEWETT LILLIE #2 (HIS HORSE)	2203	35.00	35.00
A01-340-0108	TWO CROW MILES	1529	504.00	504.00
A01-340-0109	HIGH EAGLE ROSE	2208	30.00	30.00
A01-340-0110	LIVERMONT MILLIE	1971	83.33	83.33
A01-340-0111	MOUND PHILLIP	516	86.00	86.00
A01-340-0112	RAISED HIM ABRAHAM	581	741.00	313.52
A01-340-0113	LARRABEE RICHARD	654	68.06	68.06
A01-340-0114	ROAN BEAR EDWARD	522	4,814.00	4,814.00
A01-340-0115	AFRAID OF THE BEAR MAGGIE	341	241.16	241.16
A01-340-0116	WOODS HARRY F.C.	796	1,136.50	450.00
A01-340-0117	HOWARD PHILIP	790	9.75	9.75
A01-340-0118	FIRST HAWK ALICE	2714	2,412.79	456.20
A01-340-0119	TWO CROW MAUDE	960	424.00	424.00
A01-340-0121	WEST ALLEN	932	241.86	241.86
A01-340-0122	HOLY BULL PETER	1111	783.50	670.29
A01-340-0123	HEAD OF BUCK ELK ELIAS	1467	663.00	663.00
A01-340-0124	LENS HIS HORSE WALLACE	268	2,724.50	138.64
A01-340-0125	FIRST HAWK PAUL	2716	399.00	399.00
A01-340-0126	CRANE PRETTY VOICE	2936	595.00	595.00
A01-340-0127	SPOTTED BIRD JESSE	3143	989.50	989.50
A01-340-0128	BUCK DENNIS	813	187.50	187.50
A01-340-0129	CHASHING HAWK HANNAH	2443	626.00	626.00
A01-340-0130	BENOIST CORA	3060	79.00	79.00
A01-340-0131	RED BIRD ISABELLE	2009	552.50	237.03
A01-340-0132	BLUE ARM CHARLES	1372	325.00	325.00
A01-340-0133	WALKING CRANE JOSEPH	13	1,759.43	1,252.63
A01-340-0134	FISHGUTS WILLIAM	983	115.00	115.00
A01-340-0135	WHITE DOG NELLIE	1945	747.00	747.00
A01-340-0136	GROUSE RUNNING	1110	192.00	192.00
A01-340-0137	IRON MOCCASIN MOSES	357	25.00	25.00
A01-340-0138	FIELDER RICHARD	804	308.70	308.70
A01-340-0140	BULL EAGLE JACK	1211	77.95	77.95
A01-340-0141	WALKING HUNTER SIMON	751	132.74	132.74
A01-340-0142	WHITE HORSE JAMES	296	239.00	239.00
A01-340-0143	CLOWN AMOS	677	92.75	92.75
A01-340-0144	BAD WARRIOR ELI	638	2,882.00	7.44
A01-340-0145	BEAR SHIELD SOPHIA	1024	30.34	30.34
A01-340-0146	STAMP PETER (STANDING ELK)	1428	1,115.50	1,115.50
A01-340-0147	RED HEAD JOHN	563	29.74	29.74
A01-340-0148	BROWN TWO FOR FOLLOW HIM MRS.	1071	36.46	36.46
A01-340-0149	MRS. HOLY GOOD WOMAN	112	879.50	650.00
A01-340-0150	RUNNING RAFFLE	590	1,123.00	540.00

ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A01-340-0151	POOR ELK ANNIE	1322	1,596.50	1,596.50
A01-340-0152	FOX THOMAS	3090	740.23	326.61
A01-340-0153	LEE HENRY	401	1,820.00	479.43
A01-340-0154	RICE EDWARD	85	835.00	686.56
A01-340-0155	MARSHALL IDA	877	149.50	149.50
A01-340-0156	TRAVERSIE ETTA	768	94.30	94.30
A01-340-0157	BOTTOM SHOULDER JOHN	587	531.50	531.50
A01-340-0158	IRON BIRD GEORGE	777	2,895.00	379.84
A01-340-0159	ON THE TREE GEORGE	550	1,339.00	700.00
A01-340-0160	HALF RED MAGGIE	3051	3,103.00	803.48
A01-340-0162	MARY OAKES POWELL	2894	6,104.00	145.36
A01-340-0163	HORSE WOMAN	2264	407.50	407.50
A01-340-0164	FOOL DOG	2101	334.27	334.27
A01-340-0165	ALBERT OWL KING	1142	1,732.50	1,732.50
A01-340-0166	JOHN DID NOT GO HOME	1082	933.00	314.14
A01-340-0167	LOUIS POSEY MORAN	925	1,916.00	813.31
A01-340-0168	EMMA DUNN	921	116.40	116.40
A01-340-0169	FRANK IRON HAWK	1066	1,043.50	1,043.50
A01-340-0170	MAGGIE RED HORSE	1165	36.00	36.00
A01-340-0171	NELLIE KILLS THEM FIRST	2844	400.00	400.00
A01-340-0172	EUGENE WHITNEY	136	545.50	545.50
A01-340-0173	HORACE TWO LANCE	356	2,483.50	2,483.50
A01-340-0174	GEORGE LANDREAUX	187	1,337.50	1,337.50
A01-340-0175	ALBERT SAND	235	1,177.00	1,177.00
A01-340-0176	ROUSSEAU JULIA	2312	10.00	10.00
A01-340-0177	LITTLE WOUNDED DELIA	2336	860.50	556.94
A01-340-0178	KNIFE CHARLES	1584	672.33	672.33
A01-340-0179	MARROWBONE DAVID	1570	35.00	35.00
A01-340-0180	BROWN WOLF PHILIP	1070	582.00	69.21
A01-340-0181	BATTLING RIB LOUIS	985	784.25	321.85
A01-340-0182	HAS WATER ELIZABETH	2697	3,893.50	2,105.14
A01-340-0183	MAKES IT LONG JONAH	1244	1,105.00	476.26
A01-340-0184	CANE KATE MRS.	2371	564.04	564.04
A01-340-0185	EAGLE CHASING RAY MRS.	2167	324.50	241.59
A01-340-0186	KINGMAN HARRY	838	355.00	355.00
A01-340-3185	HIGH BACK	2292	983.00	983.00
A01-340-3186	JOBE HOLY BULL	1152	520.95	520.95
A04-301-0072	PEPPERMINT	954	768.00	768.00
A04-301-0073	STAR DORA (GOUGH)	920	1,013.00	1,013.00
A04-301-0074	ANTELOPE WOMAN	1129	869.00	869.00
A04-301-0076	ALEX SAGE	1176	1,463.00	1,463.00
A04-301-0077	MRS. ENEMY DOG JUNEBERRIES	797	90.00	90.00
A04-301-0078	JOHN WHITE BODY SR.	1466	2,302.00	2,302.00
A04-301-0079	GEORGE PARSHALL	960	405.00	405.00
A04-301-0080	ERNEST WILKINSON SR.	116	1,304.21	1,304.21
A04-301-0081	ALICE FOX	817	718.00	718.00
A04-301-0083	FOUR DANCES	822	520.00	520.00
A04-301-0084	CROW CARRIE	132	419.00	419.00
A04-301-0085	BLUE BLANKET	365	1,379.00	1,379.00
A04-301-0086	GERTRUDE BLACK HAWK	63	220.00	220.00
A04-301-0088	STELLA HOWLING WOLF	408	234.00	234.00
A04-301-0089	GEORGE BATEMAN	705	688.00	603.00
A04-301-0090	FANNIE SITTING BEAR	764	210.00	210.00
A04-301-0091	MARTIN FOX	903	272.00	272.00
A04-301-0092	ALLEN SMITH	147	2,619.00	2,619.00
A04-301-0093	BLACK MEDICINE (LITTLE OWL	284	1,470.00	1,470.00
A04-301-0094	MARY NAGLE WALKER FREDERICKS	720	332.40	281.39
A04-301-0095	GRINNELL CHARLES	212 276A	332.19	332.00
A04-301-0096	FRED FOX SR.	190	925.00	901.45
A04-301-0097	BAKER JAMES	950	3,353.00	466.89
A04-301-0098	PERKINS ELI	565	2,291.00	2,291.00
A04-301-0099	NORA PAINTE	662	1,068.00	1,068.00
A04-301-0100	FLOYD MONTCLAIR	904	1,426.00	1,426.00
A04-301-0101	SNOW BIRD	532	1,208.00	67.50
A04-301-0209	BLUE BLANKET FOUR DANCES	327	2,917.00	418.99
A05-303-0100	BRAIN EUGENE	63 410A	22.00	22.00
A05-303-0101	COURT IGNATIUS	356	2,959.00	774.27
A05-303-0102	BLACK TIGER AGNES	433	155.41	UNKNOWN
A05-303-0103	PEOPLES WILFRED	492	3,495.00	1,955.67
A05-303-0104	WAKAKSAN NANCY (GUY)	U-2670	3,092.00	1,062.74
A05-303-0105	KEEBLE VICTORIA (ONE BEAR)	NA	267.15	UNKNOWN
A05-303-0106	DANCE EAGLE ROSALIE	169	1,432.00	702.28
A05-303-0107	LONGIE ANTHONY (LANGER)	184	3,480.00	1,043.90
A05-303-0108	ENLUND LOUISA (LANGER)	187	3,963.00	204.40
		189	191.00	191.00

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A05-303-0109	AIKINICAPI ANTHONY	193	429.99	429.99
A05-303-0160	TURNING EAGLE (SIPTO JOHSON)	90	65.00	65.00
A05-303-0161	HERRICK LOUIS	148	588.00	588.00
A05-303-0162	BOURD HEAD PHILOMENE	405	459.00	459.00
A05-303-0163	HOPKINS ANTHONY	300-A	458.00	458.00
A05-303-0164	TOMAHAWK THOMAS	569	3,012.00	3,012.00
A05-303-0165	CASKE ALBERT	386	444.00	444.00
A05-303-0166	YOUNG ADELE (LANGOR)	185	108.49	108.49
A05-303-0167	BROWN JOSEPHINE	905	1,652.00	1,652.00
A05-303-0168	HODYAHDIHENA (FALLING GRAY)	856	929.00	929.00
A05-303-0169	BROWN CLARA (MOON)	979	680.00	680.00
A05-303-0170	TWO HEARTS MARY (KING)	1169	288.00	288.00
A05-303-0171	STANDING JAMES	1120	176.41	176.41
A05-303-0172	HIGH ELK ANNIE	1062	194.95	194.95
A05-303-0173	BLACKSMITH MARY	U1169	1,266.00	1,266.00
A05-303-0174	MCKAY LUKE B.	27	4,900.00	1,310.89
A05-303-0175	FALLING CLOUD RACHEL	69	1,772.00	1,009.59
A05-303-0176	MATOHIN JOSEPH	106	2,614.00	1,356.24
A05-303-0177	JOHNSON MARGARET	143	3,377.00	86.85
A05-303-0178	LONGIE FRANCIS	300	3,394.00	2,463.47
A05-303-0179	CROW ONE BEAR MARTHA	485	1,922.00	1,838.32
A05-303-0180	PEOPLES THOMAS	536	1,481.06	1,481.06
A05-303-0181	LAWRENCE CHARLES	546	3,551.00	610.71
A05-303-0182	CASKE FREDERICK	593	940.00	674.54
A05-303-0183	PEOPLES CECELIA	291	4,334.00	1,970.38
A05-303-0184	WAANTAN ELIZA	225	672.00	512.53
A05-303-0185	GREYWIND JOSEPH	637	3,092.00	802.63
A05-303-0186	MEAD MICHAEL	234	78.89	78.89
A05-303-0187	WHITE HEAD NANCY	919	1,511.31	674.39
A05-303-0188	LONG HORN MABGIE	1144	492.00	400.40
A05-303-0189	TAMAHPIYATOWIN WABIDE	887	2,970.98	2,641.50
A05-303-0190	LITTLE ADELE (LONGIE)	859	2,494.00	148.01
A05-303-0191	WAKAKSAN JOSEPH A.	127	3,989.00	1,712.85
A05-302-0192	MCKAYMARY LOUISE	991	431.54	399.15
A05-303-0193	JAMES JULIA (IRISH)	679	1,091.47	357.90
A05-303-0194	RAINBOW CARRIE	691	3,945.00	493.26
A05-303-0195	ROSS JULIA	706	1,112.00	1,112.00
A05-303-0196	ALBERT JOSEPH	77	4,601.00	122.32
A05-303-0197	WAKASAN KATE (LAWRENCE)	98	7,757.25	261.84
A05-303-0198	MERRICK JOSEPH	150	4,041.00	662.64
A05-303-0199	BUISSON HENRY	319	34.39	31.50
A05-303-0200	EUGENE BRAIN	356	2,959.00	774.27
A05-303-0201	IGNATIUS COURT	433	155.41	UNKNOWN
A05-303-0202	AGNES BLACK TIGER	492	3,495.00	1,955.67
A05-303-0203	WILFRED PEOPLES	534	8,092.00	1,062.74
A05-303-0204	NANCY GUY WAKAKSAN	509	439.50	UNKNOWN
A05-303-0205	VICTORIA ONE BEAR KEEBLE	169	1,632.00	702.28
A05-303-0206	ROSALIE DANCE EAGLE	184	3,480.00	1,043.90
A05-303-0207	ANTHONY LANGER LONGIE	187	3,863.00	204.40
A05-303-0208	LOUISA LANGER EMLUND	189	191.00	191.00
A05-303-0209	EUGENE HIGH ELK	394	30.00	30.00
A05-303-0210	STAIGHT NANCY	996	1,994.00	1,994.00
A05-303-0211	BLACK WILLIAM	278	227.00	227.00
A05-303-0212	CAVANAUGH WALTER	270	521.00	440.10
A05-303-0214	PANMANI PAUL	650	3,160.00	95.00
A05-303-0215	DUNN RUPERT	641	3,563.00	490.20
A05-303-0216	IRON HAWK ANNIE	638	2,203.00	321.58
A05-303-0217	DOUGLAS STEVEN	244	742.00	53.75
A05-303-0218	LANGER ISABELLE	998	1,494.00	1,035.91
A05-303-0219	JACKSON JOSEPH	812	7,234.00	UNKNOWN
A05-303-0220	AGNES MYRICK MERRICK	779	2,166.00	1,350.37
A05-303-0221	SMITH MARY (HOPKINS)	1165	5,874.00	286.74
A05-303-0222	IRON HEART JOSEPH	1177	3,603.92	87.35
A05-303-0223	BLACK CLOUD LOUISA	689	952.88	952.18
A05-303-0224	FALLING CLOUD FRANK	1102	1,403.98	UNKNOWN
A05-303-0225	YOUNG GEORGE	1135	323.20	UNKNOWN
A05-303-0226	PEOPLES PETER	M-2668	3,116.00	321.00
A05-303-0227	YOUNG PETER	42	4,897.00	UNKNOWN
A05-303-0229	BIG TRACK ANNIE	1197	14.14	14.14
A05-303-0230	LITTLE JOSEPH	M-2477	23.00	23.00
A05-303-0231	MEAD WINONA	1024	387.97	220.31
A05-303-0232	DEGAR MARY JANE	MA	1,926.00	1,449.15
A05-303-0233	FOX SOLOMON	65	924.25	648.55
A05-303-0234	WANTAN MOSES	M-2795	1,887.00	888.67
A05-303-0235	GRAY PAUL SR.	856	929.00	929.00

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A05-303-0236	DEGAR LEO	16	1,968.00	915.15
A05-303-0237	LAWRENCE CEDINA	1143	2,985.00	1,250.38
A05-303-0238	LAHNER ANTHONY	M-2515	476.00	381.55
A05-303-0239	LEAF WILLIAM	234	3,943.00	147.50
A05-303-0240	ABRAHAM JACOB	808	150.00	150.00
A05-303-0242	DEMERCE JAMES	322	304.73	304.73
A05-303-0243	LAWRENCE FRED	543	478.15	69.98
A05-303-0244	KEYA JOSEPH	451	228.00	228.00
A05-303-0245	SMITH LAURA (LAHNES)	M-2593	244.00	141.52
A05-303-0296	ANTHONY AIKINICAPI	193	430.00	429.99
A06-344-0001	ROAN EAGLE BESSIE	7584	1,897.32	173.12
A06-344-0002	THUNDER CLUB PAUL	6591	1,138.05	956.38
A06-344-0003	POOR ELK CLARINDA	10145	892.24	892.24
A06-344-0004	IRON HAWK HOMER	6533	2,200.00	2,200.00
A06-344-0005	STAND UP JULIA	2509	61.64	61.64
A06-344-0006	JONES NANCY (YOUNG BEAR)	1907	458.60	458.60
A06-344-0007	ROUILLARD JENNIE	6175	184.50	184.50
A06-344-0008	BISSONETTE JOSEPH	3094	700.00	700.00
A06-344-0009	MAGPIE PAUL (WHITE)	6182	1,687.00	1,687.00
A06-344-0010	BROWN EAR NOSE GEORGE	6196	1,012.00	1,012.00
A06-344-0011	LITTLE WOLF BESSIE	2620	2,320.00	606.13
A06-344-0012	STIRK ANTHONY	2605	50.00	50.00
A06-344-0013	HERON HIGH	5087	1,014.41	1,014.41
A06-344-0014	RANDALL ROBERT	4531	616.00	284.44
A06-344-0015	LITTLE DOG	6150	359.00	359.00
A06-344-0016	FOOLISH WOMEN LEONARD	3954	319.65	319.65
A06-344-0017	LITTLE FINGER JENNIE	2850	1,374.80	1,374.80
A06-344-0018	TEN FINGERS ELLA	2935	419.00	419.00
A06-344-0019	LIVING OUTSIDE ISABELLE	2882	629.90	629.90
A06-344-0020	NOT HELP HIM JENNIE	2945	613.50	613.50
A06-344-0021	RATTLING CHASE JOHN	2861	1,855.50	1,855.50
A06-344-0022	LAYS HARD MILLIE	5930	447.25	447.25
A06-344-0023	BELT LEVI	5896	160.00	160.00
A06-344-0024	LITTLE SOLDIER AMELIA	6596	504.00	504.00
A06-344-0025	GOOD VOICE IRON CHARLES	7854	1,450.00	44.14
A06-344-0026	LITTLE BEAR JENNIE	9015	568.00	568.00
A06-344-0027	COMES OUT JENNIE	4371	1,208.50	1,208.50
A06-344-0028	VALANDRY VETAL	2460	5.00	5.00
A06-344-0029	BLACK CROW AUSTIN	2373	1,379.50	1,379.50
A06-344-0030	TWO STICKS HATTIE	2361	1,228.30	1,228.30
A06-344-0031	WHITE BIRD JAMES	6570	1,533.00	415.94
A06-344-0032	ROSE	6536	1,499.00	1,499.00
A06-344-0033	DON'T THINK MARY	6661	278.00	278.00
A06-344-0034	BLACK HAIR CATHERINE	6523	457.50	457.50
A06-344-0035	THUNDER HAWK THOMAS	1890	3,487.50	3,487.50
A06-344-0036	SMITH JULIA	1874	95.50	95.50
A06-344-0037	YELLOW BOY JOSEPHINE	5699	125.00	125.00
A06-344-0038	LITTLE SOLDIER HENRY	6203	1,816.50	1,816.50
A06-344-0039	IRON HAWK	6445	2,546.98	2,546.98
A06-344-0040	RUMP BONE	6450	31.50	31.50
A06-344-0041	TWO STICKS THOMAS	2360	449.00	449.00
A06-344-0042	CLINCHER GEORGE	4365	501.00	501.00
A06-344-0043	BONE NECKLACE	9214	954.36	954.36
A06-344-0044	HER HORSES	1879	400.00	400.00
A06-344-0045	STABBER JULIA	6691	140.00	140.00
A06-344-0046	LOUD VOICE HAWK MARY	6527	1,881.00	1,881.00
A06-344-0047	POOR BEAR LIZZIE	4393	84.00	84.00
A06-344-0048	LITTLE WAR BONNETT JESSIE	6528	2,849.16	1,738.92
A06-344-0049	CHANGING CROW WILLIAM	2091	1,328.15	1,328.15
A06-344-0050	CHARGING CROW NANCY	2092	46.50	46.50
A06-344-0051	BITTERS PATRICK	2042	235.15	235.15
A06-344-0052	JARVIS GRACE	6301	659.92	487.65
A06-344-0053	CROOKED EYES THOMAS	2314	841.00	841.00
A06-344-0054	SUSIE MERRIVAL	3592	1,600.00	131.00
A06-344-0055	BENJAMIN RICHARD	2333	200.00	200.00
A06-344-0056	MOUSSEAU JOSEPH	2326	327.90	327.90
A06-344-0057	BULL KNIFE GEORGE	1884	900.68	900.68
A06-344-0058	SWALLOW IDA	3256	116.92	116.92
A06-344-0059	NO TWO HORNS HILDA	3271	1,420.00	1,420.00
A06-344-0060	WHETSTONE JOSEPH	587	2,220.30	2,220.30
A06-344-0061	BLUFFING BEAR SOPHIA	2313	1,898.85	1,898.85
A06-344-0062	EAGLE BEAR	613	286.40	286.40
A06-344-0063	WHISTLER JULIAN	4301	123.39	123.39
A06-344-0064	LITTLE SOLDIER NANCY	4294	1,892.45	1,892.45
A06-344-0065	BLACK BEAR HARRY	4264	351.50	351.50

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
AQ6-344-0066	WOODEN GUN ALBERT	4219	12.00	12.00
AQ6-344-0067	YELLOW SHIRT STELLA	6438	552.80	552.80
AQ6-344-0068	BACK SIMON	6507	492.00	492.00
AQ6-344-0069	LITTLE WAR BONNETT PETER	6517	408.46	408.46
AQ6-344-0070	SANOVIA JAMES	4342	2,074.30	360.08
AQ6-344-0071	LONG COMMANDER JOHN	4345	321.60	321.60
AQ6-344-0072	USES BOW JULIA	2312	384.45	384.45
AQ6-344-0073	BLACK BEAR	2298	1,003.20	1,003.20
AQ6-344-0074	LITTLE KILLER JOHN	2047	149.10	149.10
AQ6-344-0075	CHIEF BEAR WILLIAM	2001	718.90	718.90
AQ6-344-0076	RANDALL WILLIAM	2037	5.00	5.00
AQ6-344-0077	SHORT BULL JESSIE	4347	448.50	448.50
AQ6-344-0078	EAGLE FOX MARY	4337	90.00	90.00
AQ6-344-0079	LAST HORSE JOSEPH	2053	1,161.55	1,161.55
AQ6-344-0080	SURROUNDED IN WOODS	2029	582.00	582.00
AQ6-344-0081	SCOUT JASPER	1122	2,594.50	2,594.50
AQ6-344-0082	BLACK BEAR EMMA	2299	1,018.20	1,018.20
AQ6-344-0083	YOUNG IDA	2513	111.72	111.72
AQ6-344-0084	SPIDER MACK	544	168.50	168.50
AQ6-344-0085	TWISS ADELIA	2142	50.00	50.00
AQ6-344-0086	HAWK WING LUKE	2162	538.23	538.23
AQ6-344-0087	RED BREACH BEAR MILDRED	6430	355.00	355.00
AQ6-344-0088	MEANS ALICE	2246	5.00	5.00
AQ6-344-0089	FIRE THUNDER MARY	6427	921.88	921.88
AQ6-344-0090	EAGLE PIPE	601	10.00	10.00
AQ6-344-0091	DULL KNIFE MARY	2116	954.00	954.00
AQ6-344-0092	FAST HORSE ANNA	2237	1,103.50	1,103.50
AQ6-344-0093	LINGMAN CHARLES	2089	1,595.50	1,595.00
AQ6-344-0095	RANDALL SUSIE	2038	209.22	209.22
AQ6-344-0096	JUMPING BULL	4356	679.00	479.00
AQ6-344-0097	YOUNG BEAR RACHEL	2250	266.25	226.25
AQ6-344-0098	SWALLOW HATTIE	2161	13.75	13.75
AQ6-344-0099	POOR BEAR ALBERT	2115	510.40	510.40
AQ6-344-0100	BLACK EYES ANNIE	2105	237.50	237.50
AQ6-344-0102	BAD WOUND ROBERT	2066	281.00	281.00
AQ6-344-0103	CLINCHER LIZZIE	4366	1,244.00	1,244.00
AQ6-344-0104	BELT FRANK	3274	578.50	578.50
AQ6-344-0105	KINDLE BEN	3150	2,154.30	208.81
AQ6-344-0106	LITTLE BULL MABEL	10793	874.50	874.50
AQ6-344-0107	SMITH ALICE	2379	341.05	34.20
AQ6-344-0108	STANDING BEAR DAVID	2415	540.00	540.00
AQ6-344-0109	GOODMAN JANICE	9760	48.00	48.00
AQ6-344-0110	BIG HEAD BRAVE JOHN	4170	1,739.00	1,739.00
AQ6-344-0111	GAY NANCY	4179	555.50	555.50
AQ6-344-0112	KILLS THE CHIEF JULIE	7612	1,527.85	1,527.85
AQ6-344-0113	STANDS NELLIE	7613	399.21	399.21
AQ6-344-0114	WHITE WHIRLWIND SUSIE	7611	727.66	727.66
AQ6-344-0115	EAGLE HAWK AGNES	7614	1,451.00	1,451.00
AQ6-344-0116	STINKING BEAR IDA	6611	406.84	406.84
AQ6-344-0117	RED BEAR SUSIE	6610	1,733.00	1,733.00
AQ6-344-0118	RED BEAR JOSEPH	6609	1,319.00	1,319.00
AQ6-344-0119	BROKEN LEG LUCY	1862	2,733.00	1,865.30
AQ6-344-0121	BLACK CROW JULIA	2374	790.50	790.50
AQ6-344-0122	WAR BONNETT JOSEPH	2380	559.50	559.20
AQ6-344-0123	EAGLE HAWK JOSEPH	3107	451.00	451.00
AQ6-344-0124	PALMER LAURA	3791	513.54	513.54
AQ6-344-0125	FROM AMONG THEM	3141	460.60	460.60
AQ6-344-0126	COMES FROM AMONG THEM DONALD	3140	1,201.37	1,178.82
AQ6-344-0127	NOT FAT EDNA	3112	649.50	649.50
AQ6-344-0128	DOG CHIEF MARY	4661	2,905.90	2,905.90
AQ6-344-0129	BROKEN NOSE FOX	6529	589.73	589.73
AQ6-344-0130	HIGH CAT LEE	6582	564.40	564.40
AQ6-344-0131	SHIELD LOUIS	957	150.00	150.00
AQ6-344-0132	RUNS FOR HILL	1145	44.00	44.00
AQ6-344-0133	YELLOW BEAR MARY	1043	647.20	647.20
AQ6-344-0134	WHITE EAGLE ROBERT	1026	423.00	423.00
AQ6-344-0135	WHIRLWIND	1024	955.55	955.55
AQ6-344-0136	CONQUERING BEAR ABE	1014	302.50	302.50
AQ6-344-0137	BLACK BEAR JOHN	998	406.50	406.50
AQ6-344-0138	LARABEE NANCY	479	957.55	957.55
AQ6-344-0139	KILLS ENEMY CHARLES	951	1,818.50	1,818.50
AQ6-344-0140	FIRE THUNER WILLIAM	943	1,211.43	1,211.43
AQ6-344-0141	WHITE THUNDER HARRISON	503	1,113.00	1,113.00
AQ6-344-0142	WHITE BRINGS ELLA	898	81.00	81.00
AQ6-344-0143	STABBER THOMAS	526	266.91	91.22
			1,680.00	1,680.00

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
AQ6-344-0144	BRINGS WHITE ANNIE	897	1,685.00	1,464.65
AQ6-344-0145	WHITE BULL # 2	462	152.95	152.95
AQ6-344-0146	ADAMS JOHN	459	1,007.50	1,007.50
AQ6-344-0147	YOUNG VICTOR	2519	6,582.50	27.21
AQ6-344-0148	ME DOG LUCY	3105	26.00	26.00
AQ6-344-0149	WEASEL BEAR CHARLES	3065	1,272.50	1,272.50
AQ6-344-0150	GARCIA LENA	8052	810.95	810.95
AQ6-344-0151	IRON BULL ANNIE	8014	3,624.00	1,876.63
AQ6-344-0152	WHITE HORSE GROVER	8039	599.50	599.50
AQ6-344-0153	KATE ROMERO	8029	365.28	365.00
AQ6-344-0154	GOOD HORSE BOB	8010	209.03	209.03
AQ6-344-0155	GETS THERE FIRST SUSAN	7946	90.30	UNKNOWN
AQ6-344-0156	POURIER JOSIE	7692	700.00	700.00
AQ6-344-0157	PACKED JACOB	3746	1,397.00	1,397.00
AQ6-344-0158	PROTECTOR ISAAC	862	571.50	363.31
AQ6-344-0159	CHASES IN MORNING STANLEY	911	388.50	388.50
AQ6-344-0160	SITTING UP ESTHER	1911	54.00	54.00
AQ6-344-0161	WHITE WOMAN	1940	772.00	772.00
AQ6-344-0162	FASTWOLF JENNIE	1926	1,199.50	1,199.50
AQ6-344-0163	FIRE THUNDER MARY	1944	20.00	20.00
AQ6-344-0164	RAIN BOW	2451	586.75	584.70
AQ6-344-0165	YOUNG LOUISA	2524	216.60	79.78
AQ6-344-0166	BETTLEYOUN JOSEPHINE	2181	5.00	5.00
AQ6-344-0167	SWIMMER JOHN	2435	1,381.29	1,381.29
AQ6-344-0168	YELLOW HORSE JOSEPH	2607	932.72	932.72
AQ6-344-0169	GOOD BUFFALO FRANK	5945	777.66	457.31
AQ6-344-0171	KILLS THE CHIEF	6016	990.40	990.40
AQ6-344-0172	YOUNG SOLDIER MILLIE	3828	360.30	360.30
AQ6-344-0173	HOLLOW HORN FANNIE	3815	393.94	393.94
AQ6-344-0174	MESTETH WILLIAM	2432	509.14	509.14
AQ6-344-0175	ROOKS CHARLES	2599	50.00	50.00
AQ6-344-0176	SITTING EAGLE ALBERT	1423	1,967.99	1,967.99
AQ6-344-0177	WOUNDED HEAD BROOKS	1667	462.00	462.00
AQ6-344-0178	CHEYENNE EFFIE	3064	903.48	903.48
AQ6-344-0179	WHITE HAWK MATTIE	3048	852.03	852.03
AQ6-344-0180	HORSE BESSIE	3043	1,366.60	326.09
AQ6-344-0181	BISSONETTE JOHN	3027	350.00	150.00
AQ6-344-0192	BLACK ELK NICK	3021	747.00	747.00
AQ6-344-0183	SHOULDER MARY	5623	785.00	785.00
AQ6-344-0184	POURIER JOSEPHINE	2609	88.00	88.00
AQ6-344-0185	BIRD EAGLE AUSTIN	1166	2,773.05	2,773.05
AQ6-344-0186	STANDING SOLDIER HENRY	2604	1,380.14	1,380.14
AQ6-344-0187	BLUE HORSE OWNER MINNIE	3160	2,600.00	395.35
AQ6-344-0188	AROUND HIM HOWARD	1966	300.00	300.00
AQ6-344-0189	FIRE THUNDER LOUISA	1950	11.00	11.00
AQ6-344-0190	SPOTTED CROW EDWARD	3722	945.50	945.50
AQ6-344-0191	COW HORN	2660	126.00	126.00
AQ6-344-0192	RED EAGLE ANNIE	3719	295.00	295.00
AQ6-344-0193	CLOSE GEORGE	5199	841.00	841.00
AQ6-344-0194	HOLY ELK LIZZIE	1908	984.00	984.00
AQ6-344-0195	PLENTY HORSES LIZZIE	3283	949.50	949.50
AQ6-344-0196	MOVES CAMP	1918	1,965.00	1,965.00
AQ6-344-0197	BLACK HORSE JAMES	2431	50.00	50.00
AQ6-344-0198	ARAPAHOE LUCY	5145	945.50	945.50
AQ6-344-0199	LAMONT MARY	5157	5.00	5.00
AQ6-344-0200	KILLS CLOSE TO LODGE BERT	5049	2,377.90	2,377.90
AQ6-344-0201	LITTLE KNIFE LOUISA (RED EYES)	5837	427.00	427.00
AQ6-344-0202	JEALOUS OF HIM LOUISA	5684	645.00	645.00
AQ6-344-0203	LOOKING CLOUD NANCY	5780	217.70	217.70
AQ6-344-0204	DANA LONE WOLF	4889	2,659.30	2,659.00
AQ6-344-0205	OWNS MANY HORSES WILLIAM	4892	1,442.90	1,442.90
AQ6-344-0206	SHORT BEAR MILLIE	5370	735.50	735.50
AQ6-344-0207	KILLS ON HORSE BACK JAMES	2775	3,687.10	1,393.74
AQ6-344-0208	EAGLE LOUSE JOHN	3411	2,917.30	174.07
AQ6-344-0209	CLIFFORD JOHN H.	2672	795.00	573.99
AQ6-344-0210	CLOSE FEATHER	5933	2,310.00	2,310.00
AQ6-344-0211	GILLESPIE ROBERT	3250	457.26	457.26
AQ6-344-0212	CANE WOMAN	5803	333.00	331.00
AQ6-344-0213	MARY ROUGH FEATHER	5862	250.00	250.00
AQ6-344-0214	LITTLE COMMANDER CECELIA	5516	1,515.25	1,515.25
AQ6-344-0215	YELLOW BOY	246	395.10	395.10
AQ6-344-0216	KILLS CLOSE TO LODGE MOLLIE	5050	357.96	357.96
AQ6-344-0217	POOR ELK ELIZABETH	3273	1,096.00	1,096.00
AQ6-344-0218	LONE WOLF NATHAN	3951	678.50	678.50
AQ6-344-0219	HOLY CLOUD JULIA	4193	532.57	532.57

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
AQ6-344-0220	PRETTY EAGLE MARY	5037	173.08	173.08
AQ6-344-0221	HORSE ROBERT	4998	1,887.90	1,887.90
AQ6-344-0222	WATER MAGGIE	4926	1,918.70	1,918.70
AQ6-344-0223	BLACK BEAR EDWARD	1433	1,381.00	1,381.00
AQ6-344-0224	GOES IN CENTER JOHN	5768	5.00	5.00
AQ6-344-0225	HIGH HORSE ANNA	5746	503.40	503.40
AQ6-344-0226	PLUME HOBART	5716	2,515.00	2,515.00
AQ6-344-0227	FLYING HORSE HOWARD	5048	797.50	797.50
AQ6-344-0228	RED OWL JESSIE	3941	766.20	766.20
AQ6-344-0229	SPOTTED EAGLE	4260	325.48	325.48
AQ6-344-0230	MORRISON LUCY	4251	948.23	948.23
AQ6-344-0231	ELK BOY JOSEPH	4418	944.67	944.67
AQ6-344-0232	ADAMS ALEX	345	781.85	781.85
AQ6-344-0233	HAWKINS JAMES	4612	5.00	5.00
AQ6-344-0234	STANDS PETER	3303	434.30	434.30
AQ6-344-0235	BETTELYOUN LIZZIE	4701	24.00	24.00
AQ6-344-0236	RED HORSE	4112	987.50	987.45
AQ6-344-0237	FAST WOLF JOHN	1981	3,833.00	3,234.04
AQ6-344-0238	FIGHTS BEAR	178	843.43	843.43
AQ6-344-0239	KILLS IN WATER SAMUEL	234	494.55	494.55
AQ6-344-0240	JEALOUS OF HIM OSCAR	32	197.50	197.50
AQ6-344-0241	LOOKING ELK SILVIA	S-3153	1,489.50	1,489.50
AQ6-344-0242	LAYS BEAR MARY	3140	1,200.00	1,200.00
AQ6-344-0243	RED PAINT LOUIS	3355	24.88	24.88
AQ6-344-0244	LOOKING HORSE ROSA	3458	840.00	840.00
AQ6-344-0245	KNIFE LUCY	4033	1,229.50	325.70
AQ6-344-0246	MEANS FANNIE (FAST HORSE)	4078	1,827.10	1,827.10
AQ6-344-0247	TWISS LIZZIE	2923	35.00	35.00
AQ6-344-0248	STANDING SOLDIER WILLIAM JR.	282	595.01	595.01
AQ6-344-0249	BIG CROW SUSIE	261	493.12	493.12
AQ6-344-0250	SMOKE EMMA	4921	546.00	546.00
AQ6-344-0251	MAKES OVER	2823	181.00	181.00
AQ6-344-0252	LITTLE ELK JEROME	3831	350.00	350.00
AQ6-344-0253	SMITH JEANETTE	2734	606.00	606.00
AQ6-344-0254	JAMES LOCKE	3951	143.43	143.00
AQ6-344-0255	RED ELK PHILLIP	5618	1,200.00	UNKNOWN
AQ6-344-0256	RED SHIRT ELLEN	6065	1,937.00	1,937.00
AQ6-344-0257	GOINGS FRANK	2591	355.14	355.14
AQ6-344-0258	TIBBITTS WILLIAM	2572	1,050.84	1,050.84
AQ6-344-0259	YELLOW WOLF CHARLES	5113	1,393.20	1,393.20
AQ6-344-0260	SHORT BEAR SILAS	5343	1,170.50	1,170.50
AQ6-344-0261	HOLLOW HORN MAR SUSIE	4751	560.10	560.10
AQ6-344-0262	LOCATION (KILLS REE)	3521	560.00	560.00
AQ6-344-0263	HEART MAN THOMAS	3497	1.00	1.00
AQ6-344-0264	KILLS A HUNDRED SUSIE	3492	70.00	70.00
AQ6-344-0265	TWO BULLS MARY	3477	1,280.50	1,280.50
AQ6-344-0266	GOES AFTER FANNIE	3310	1,159.16	1,159.16
AQ6-344-0267	TWO BULLS AMOS	2652	1,773.59	1,297.99
AQ6-344-0268	YELLOW THUNDER THOMAS	1382	387.90	387.90
AQ6-344-0269	JANIS MOLLIE	1783	75.41	75.41
AQ6-344-0270	HOLLOWHEAD JOHNSON	1747	2,186.50	2,186.50
AQ6-344-0271	FIRE PLACE WILLIAM	4128	478.50	478.50
AQ6-344-0272	LITTLE CLOUD MILLIE	4124	666.36	666.36
AQ6-344-0273	TWIN FRED	4115	1,237.00	1,237.00
AQ6-344-0274	GHOST BEAR WILLIAM	30	40.00	40.00
AQ6-344-0275	PAIN ON HIP CHARLES	1727	148.94	148.94
AQ6-344-0276	YANKTON HELEN	1744	779.90	599.77
AQ6-344-0277	WHITE DRESS LIZZIE	4082	1,042.50	1,042.50
AQ6-344-0278	PEMICAN	2784	2,936.00	2,936.00
AQ6-344-0279	TYON LUCY	3424	346.75	346.75
AQ6-344-0280	WALKS UNDER GROUND JACOB	1677	1,185.24	1,185.24
AQ6-344-0281	WALKING HAIL	3152	228.60	228.60
AQ6-344-0282	BLUE LEG GEORGE	1850	975.44	975.44
AQ6-344-0283	BROWN DAVID	4221	2,164.00	2,164.00
AQ6-344-0284	QUIVER HARRY	4226	1,107.60	1,107.60
AQ6-344-0285	IRON BEAR ALEC	477	1,283.10	440.90
AQ6-344-0286	BROWN EYES LOUIS	440	1,350.00	548.58
AQ6-344-0287	ROCK CHARLES	697	238.38	78.32
AQ6-344-0288	GOOD VOICE IRON CHARLES	2954	1,450.00	44.14
AQ6-344-0289	YANKTON SALLIE	1159	560.06	560.06
AQ6-344-0291	CUNY ANGELIQUE	2915	633.00	633.00
AQ6-344-0290	TWISS WILLIAM	2922	894.70	894.70
AQ6-344-0292	O'ROURKE LIZZIE	2917	75.00	75.00
AQ6-344-0293	PRAYS TO HER	5330	675.99	392.99
AQ6-344-0294	YELLOW BUG	5276	480.05	480.05

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
AQ6-344-0296	LONG SOLDIER ALBERT	1791	2,071.10	2,071.10
AQ6-344-0297	LIP GEORGE	3906	362.37	25.00
AQ6-344-0298	SOPHIA FILLS THE PIPE	3465	10.00	10.00
AQ6-344-0299	RED PAINT EDNA	6076	462.00	462.00
AQ6-344-0300	HORRISETTE LUCY	6102	10.00	10.00
AQ6-344-0301	FOOLS CROW	1435	2,029.09	2,029.09
AQ6-344-0302	ONE BEAR SAMUEL	1428	66.00	66.00
AQ6-344-0303	KILLS PLENTY	1513	108.50	108.50
AQ6-344-0304	HERNANDEZ REYS	1410	252.50	252.50
AQ6-344-0305	EAGLE ELK	6051	1,157.05	1,157.05
AQ6-344-0306	WOUNDED HORSE JULIA	2899	457.03	457.03
AQ6-344-0307	CUNY CHARLES	2907	5.00	5.00
AQ6-344-0308	LITTLE DOG RUTH	2957	1,723.00	1,723.00
AQ6-344-0310	EAGLE TAIL FEATHER STELLA	4110	293.65	293.65
AQ6-344-0309	RUNS AGAINST SOPHIA	2975	1141.90	1141.90
AQ6-344-0311	MESTETH MABLE	6245	399.00	399.00
AQ6-344-0312	GOOD WEASEL ETTA	6356	23.00	23.00
AQ6-344-0313	BREAST JOHN	4195	1,446.00	1,446.00
AQ6-344-0314	LONG WARRIOR ELLA	4083	687.38	687.38
AQ6-344-0315	BREAST LUCY	4237	743.00	743.00
AQ6-344-0316	TWISS FRANK	724	43.50	43.50
AQ6-344-0317	YOUNG BEAR MARTIN	795	48.00	48.00
AQ6-344-0318	PABLO ALEX	353	130.00	2.91
AQ6-344-0319	RED BOW ANNIE	6231	907.50	907.50
AQ6-344-0320	LITTLE HORSE ISAAC	632	1,255.50	1,255.50
AQ6-344-0321	BEAR SHIELD NANCY	2571	937.38	937.22
AQ6-344-0322	YELLOW HAWK #2	3982	946.30	946.30
AQ6-344-0323	YOUMAN ALICE (BETTLEYOUN)	4072	41.76	41.76
AQ6-344-0324	BETWEEN LODGES LUCY	3461	1,545.50	1,545.50
AQ6-344-0325	DILLION EMILY (STANDING BEAR)	4511	854.22	854.22
AQ6-344-0326	STOVER EDWARD	4636	30.00	30.00
AQ6-344-0327	LONG WARRIOR JOHNSON	4037	2,603.50	2,603.50
AQ6-344-0328	KILLS ABOVE	1246	1,347.05	1,347.05
AQ6-344-0329	ROMERO PHILIP	3991	10.00	10.00
AQ6-344-0330	FOOL HEAD JULIA	6010	509.00	509.00
AQ6-344-0331	JONES JOHN	3747	419.00	419.00
AQ6-344-0332	ELLA LADEAUX	2978	323.04	323.04
AQ6-344-0334	RANDALL ALICE	1991	1,449.00	1,449.00
AQ6-344-0335	CHIEF BEAR WILLIAM	2001	718.90	718.90
AQ6-344-0336	CHIEF BEAR SUSIE	2002	176.50	176.50
AQ6-344-0337	LITTLE SOLDIER HARRY	6394	1,940.80	1,940.80
AQ6-344-0338	CHARGES ENEMY JAMES	6393	97.01	97.01
AQ6-344-0339	LONG SKUNK	1969	308.50	308.50
AQ6-344-0340	RATTLING HAWK	4510	10.00	10.00
AQ6-344-0341	SPIDER BACKBONE JULIA	6260	1,030.15	626.42
AQ6-344-0342	MESIETH DAVID	6357	96.00	39.93
AQ6-344-0343	POOR BEAR BESSIE (TWO ELK)	4321	470.00	69.23
AQ6-344-0344	ELIZABETH FLOOD	2054	159.98	159.98
AQ6-344-0345	JOSEPH HIGH EAGLE	3456	2462.00	2462.00
AQ6-344-0346	POURIER JOHN	717	1.00	1.00
AQ6-344-0347	TWIN RUBEN	4113	1,204.26	1,204.26
AQ6-344-0348	FEATHERMAN JOHN	1330	901.50	438.98
AQ6-344-0349	WHITE WHIRLWIND GILBERT	1237	1,809.72	1,098.00
AQ6-344-0350	SHOUT AT JAMES	4915	190.00	190.00
AQ6-344-0351	HOLY TRACK	4884	541.50	541.50
AQ6-344-0352	LITTLE IRON WILLIAM ARNOLD	4931	251.00	251.00
AQ6-344-0353	GARNIER JULIA	3568	5.00	5.00
AQ6-344-0354	AMERICA HORSE DAWSON	42	1,124.50	1,124.50
AQ6-344-0355	MAKES SHINE OLIVER	256	463.50	463.50
AQ6-344-0356	RUNNING BEAR ALBERT	148	389.00	389.00
AQ6-344-0357	RANDALL SALLIE	1849	2,498.40	2,498.40
AQ6-344-0358	OLD HORSE JOSIE	1023	43.91	43.91
AQ6-344-0359	FIRE THUNDER	3025	78.00	78.00
AQ6-344-0360	CEDAR FACE WILLIAM	3044	362.00	362.00
AQ6-344-0361	BULL BEAR PETE	1697	1,794.50	1,794.50
AQ6-344-0362	HARD TO HIT	1716	311.50	311.50
AQ6-344-0363	STEALS HORSES THOMAS	1683	915.83	915.83
AQ6-344-0364	RED PAINT ROGER	3142	402.25	402.25
AQ6-344-0365	RED WITH BLOOD (WEASA)	4424	205.00	205.00
AQ6-344-0366	IRON HEART JOSEPHINE	5135	620.53	620.53
AQ6-344-0367	POOR BEAR PHILIP	5114	1,996.81	1,630.81
AQ6-344-0368	HOLY HAND	1443	755.50	755.50
AQ6-344-0369	HUDSPETH LILLIE	3364	1,592.65	1,592.65
AQ6-344-0370	WAR BONNETT #1	2954	1.00	1.00
AQ6-344-0371	BRAVE HEART JOHN	3176	2,075.00	386.74

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
AO6-344-0372	BRAVEHEART JOSEPH	3177	1,645.00	1,477.72
AO6-344-0373	LONG BULL JOHN	5003	460.55	460.55
AO6-344-0374	BRINGS WHITE	5083	370.50	370.50
AO6-344-0375	HOLY HORSE SUSIE	5006	352.50	352.50
AO6-344-0376	BAD HEART BULL DOLLIE	1232	1,970.50	1,970.50
AO6-344-0377	SWALLOW OLIVER	3241	400.00	400.00
AO6-344-0378	HER DOOR MARY	6111	55.00	55.00
AO6-344-0379	SLEEP BETSY	6085	1,661.10	1,661.10
AO6-344-0380	LONE WOMAN	2647	378.50	378.50
AO6-344-0381	KING MARY	2648	870.50	870.50
AO6-344-0382	SHOULDER JAMES	3898	618.50	618.50
AO6-344-0383	SMOKE WOMAN	3337	671.20	671.20
AO6-344-0384	BAD BEAR NELLIE	3346	334.50	334.50
AO6-344-0385	GAY WILLIAM	1321	1,100.00	8.03
AO6-344-0386	FAST WOLF THOMAS	1955	690.50	690.50
AO6-344-0387	BRINGS HIM BACK HENRY	3264	24.00	24.00
AO6-344-0388	PULLIAM LUCINDA	3632	1,426.00	1,426.00
AO6-344-0389	FILLS THE PIPE SILAS	3446	793.29	793.29
AO6-344-0390	MEANS GEORGE	3959	388.00	349.53
AO6-344-0391	ELK BOY MARY	4419	1,514.80	447.64
AO6-344-0392	RUNS BETWEEN	6029	490.00	490.00
AO6-344-0393	RICHARDS EVA	4694	1,494.50	1,494.50
AO6-344-0394	PARTS HIS HAIR EPHRIM	1387	1,611.00	1,611.00
AO6-344-0395	SIX FEATHERS JOHN	4622	413.50	413.50
AO6-344-0398	BIG HAWK PETER	1182	356.20	356.20
AO6-344-0400	WALKS OUT	5295	1,023.15	1,023.15
AO6-344-0401	STAR COMES OUT LIZZIE	3340	1,079.98	1,079.98
AO6-344-0402	SITS POOR FRANK	2807	1,700.00	47.30
AO6-344-0403	MEXICAN MILLIE	2883	781.50	781.50
AO6-344-0404	RUNSON MAR	3645	609.50	609.50
AO6-344-0405	GARNETTE CHARLES	3734	124.00	19.76
AO6-344-0406	RED EYES MOLLIE	7818	939.50	939.50
AO6-344-0407	BAD YELLOW HAIR JOSEPH	8056	5.00	5.00
AO6-344-0408	SIOUX BOB HENRY	7891	600.00	600.00
AO6-344-0409	AROUND HIM VICTORIA	1967	1,500.00	1,500.00
AO6-344-0410	HIS ROAN HORSE	636	274.00	274.00
AO6-344-0411	WHITE MOUSE CHARLIE	366	49.50	49.50
AO6-344-0412	KNIGHT JOSEPH	399	439.00	247.47
AO6-344-0413	BEARD ALICE	3642	664.00	276.98
AO6-344-0414	PRETTY BIRD JOHN	2890	759.50	759.50
AO6-344-0415	MOSSEAU LOUIS JR.	1856	94.00	94.00
AO6-344-0416	LAKOTA ALEXANDER	3014	575.00	412.53
AO6-344-0417	QUIVER FANNIE	4207	498.50	498.50
AO6-344-0418	BACKBONE SPIDER	6259	2,868.45	2,868.45
AO6-344-0419	WALKS OUT EUREKA	6237	131.35	131.35
AO6-344-0422	PLENTY WOUNDS	431	892.00	892.00
AO6-344-0423	RED HORSE MARY	2023	183.00	183.00
AO6-344-0424	BREAST SILAS	4204	2,194.00	2,194.00
AO6-344-0425	APPLE ROSA	3579	191.60	191.60
AO6-344-0426	EAGLE HEART	1429	539.50	539.50
AO6-344-0427	SWARD LOUISA	4161	399.00	399.00
AO6-344-0428	SOUND SLEEPER JOSEPH	6144	316.30	316.30
AO6-344-0429	WHITE COW KILLER EMMA	4186	867.90	867.90
AO6-344-0430	GETS THERE FIRST GEORGE	1490	505.50	505.50
AO6-344-0431	LAYS HARD FRANK	1523	778.70	778.70
AO6-344-0432	FEATHER MARY	1535	888.50	888.50
AO6-344-0433	LEFT HAND JESSIE	5013	693.00	693.00
AO6-344-0434	LITTLE BEAR HENRY	7891	1,748.00	1,748.00
AO6-344-0436	LONG BULL MARY	4549	4,050.50	2,112.37
AO6-344-0437	TALL NOAH	6414	280.50	280.50
AO6-344-0438	KILLS AT LARGE BERTHA	3421	275.50	275.50
AO6-344-0440	LEDEAUX BESSIE	1942	825.50	825.50
AO6-344-0441	RANDALL CHARLES SR.	4559	138.78	138.78
AO6-344-0442	RICHARD ALFRED	4673	103.88	103.88
AO6-344-0443	TURNING HOLY HENRY	4568	34.35	34.35
AO6-344-0444	YELLOW HAWK ELLEN	3927	465.83	465.83
AO6-344-0445	KILLS MEE JOHN	3522	1,288.00	1,288.00
AO6-344-0446	RUNNING HAWK HARRY	4910	929.43	929.43
AO6-344-0447	SHANGREAUX LIZZIE	3596	236.50	236.50
AO6-344-0449	GOOD SOLDIER RICHARD	2869	1,746.19	1,746.19
AO6-344-0450	GOOD SOLDIER CORA	2870	845.50	845.50
AO6-344-0451	BELT	2871	358.00	358.00
AO6-344-0452	TWO TWO ALEXANDER	198	200.00	200.00
AO6-344-0453	ALLMAN LOUISE	207	71.50	71.50
AO6-344-0454	TURNING HEART PHILOMENA	5987	222.50	222.50

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
AO6-344-0455	LONG HORN	4339	318.20	318.20
AO6-344-0456	QUIVER THOMAS	4309	574.50	574.50
AO6-344-0457	LONG SKUNK MILLIE	1970	258.50	258.50
AO6-344-0458	HORN CHIPS	1975	317.00	317.00
AO6-344-0459	PLENTY WOUNDS IDA	8059	1,149.11	1,149.11
AO6-344-0460	LITTLE BOY CECILA	7948	504.40	504.40
AO6-344-0461	BLACK FEATHER WASHINGTON	3013	2,315.40	1,303.71
AO6-344-0462	BEAR COMES OUT	3011	154.30	154.30
AO6-344-0463	RANDALL ANTOINE	1807	756.70	739.28
AO6-344-0464	DEON WILLIAM	5591	5.00	5.00
AO6-344-0465	UNDERSTANDING CROW	5329	1,612.00	1,612.00
AO6-344-0466	SHORT BULL THOMAS	5580	2,172.60	901.02
AO6-344-0467	RANDALL GEORGE	5557	3,150.00	3,150.00
AO6-344-0468	SHOT TO PIECES ANNIE	5336	69.00	69.00
AO6-344-0469	YELLOW HORSE WOMAN	2987	239.87	239.87
AO6-344-0470	WHITE COW BULL	6476	772.50	772.50
AO6-344-0471	SALWAY ALEX	5233	378.90	378.90
AO6-344-0472	HOLY BEAR LUCY	5216	1,807.50	1,807.50
AO6-344-0473	HAT SALLIE	2866	351.50	351.50
AO6-344-0474	PRETTY WOMAN	5964	280.90	280.90
AO6-344-0475	GOOD VOICE CROW	3633	236.00	236.00
AO6-344-0476	WHITE BELLY MATTIE	3696	368.00	368.00
AO6-344-0477	NO FAT ROSA (DREAMER)	4027	400.00	400.00
AO6-344-0478	BULLMAN SALLIE	3674	968.88	968.88
AO6-344-0479	LITTLE BOY RACHAEL	3992	826.50	826.50
AO6-344-0480	SCOFFEY ALICE	5451	377.90	377.90
AO6-344-0481	GOOD SHIELD OLIVER	742	1,378.94	1,378.94
AO6-344-0482	BLACK BEAR THOMAS	726	598.50	598.50
AO6-344-0483	PARTS HIS HAIR MAGGIE	778	455.00	455.00
AO6-344-0484	KILLS CROW INDIAN	789	1,783.00	1,783.00
AO6-344-0485	LITTLE ELK JOHN	648	1,449.32	1,449.32
AO6-344-0486	JONES CHARLES	2496	817.35	817.35
AO6-344-0487	AFRAID OF HAWK MABEL	2781	763.00	763.00
AO6-344-0488	EAGLE SHIRT WILLIAM	5998	2,115.00	2,114.90
AO6-344-0489	STANDING SOLDIER PHILLIP	3554	218.00	218.00
AO6-344-0490	HAWK	3253	1,476.60	1,476.60
AO6-344-0491	HOLLOW WOOD MOLLIE	3267	2,503.95	1,096.53
AO6-344-0492	PLENTY HORSES	1828	41.83	41.83
AO6-344-0493	WHITE BEAR JENNIE	1793	175.50	175.50
AO6-344-0494	SPOTTED SNAKE	3597	640.90	640.90
AO6-344-0495	RUNS WITH THEM MINNIE	6115	261.50	261.50
AO6-344-0496	MILK HATTIE	4354	2,244.00	2,244.00
AO6-344-1462	MAGGIE RED CROW	6705	934.10	934.10
AO6-344-1463	NANCY AMERICAN HORSE	6774	771.29	771.29
AO6-344-1464	FELIX LITTLE BALD EAGLE	993	2,650.00	35.37
AO6-344-1465	GEORGE MOUNTAIN SHEEP	3501	949.50	949.50
AO6-344-1466	ROSA HOLLOW HORN	3458	840.00	840.00
AO6-344-1467	LIZZIE PROTECTOR	6452	1,117.50	543.37
AO6-344-1468	JOHN APPLE SR.	3579	46.20	46.20
AO6-344-1469	YELLOW HORSE WOMAN CHASE	2987	239.87	239.87
AO6-344-1470	EMMA BROWN EARS	7216	2,635.00	2,635.00
AO6-344-1473	PETER CRIER	4335	270.00	270.00
AO6-344-1474	MILLIE TWIN SCRATCHER	4116	1,300.00	1,300.00
AO6-344-1475	AMOS RED OWL	1324	66.50	66.50
AO6-344-1476	JEFFERSON KING YELLOW SHIRT	925	686.68	686.68
AO6-344-1477	JOHN MONROE	2318	30.57	30.57
AO6-344-1478	ESTHER BRAVE HEART	7640	435.72	263.36
AO6-344-1479	JAMES TWO TWO	263	751.00	751.00
AO7-345-0001	BIG MISSOURI	2	732.50	732.50
AO7-345-0002	KNIFE SCABBARD OR HORN CLOUD	2333	811.42	811.42
AO7-345-0003	YELLOW HAIR WOMAN	2541.5	300.00	300.00
AO7-345-0004	DUBRAY JENNIE	2337.5	563.12	563.12
AO7-345-0005	KILLS HER ENEMY JOE	2325	3,299.75	3,279.75
AO7-345-0006	RATTLING HORSE JOHN	2321	357.50	357.50
AO7-345-0007	GOOD VOICE WOMAN	2250	260.50	260.50
AO7-345-0008	HER GOOD HORSE	2247.5	900.00	900.00
AO7-345-0009	AFRAID OF EAGLE	1335	336.82	336.82
AO7-345-0011	STANDS FOR THEM JAMES	2118	248.22	248.22
AO7-345-0012	RED HAWK FRANK	1551	907.98	907.98
AO7-345-0013	DAY PATTY	4019	345.50	286.81
AO7-345-0014	BLACK MOUNTAIN ALICE	3802	132.50	126.34
AO7-345-0015	EAGLE FACE ONE BATTLE	4131	748.50	748.50
AO7-345-0016	PRETTY VOICE EAGLE MOLLIE	4196.5	627.90	627.90
AO7-345-0018	DORIAN PHILLIP	107	4,905.00	159.25
AO7-345-0019	LITTLE CROW NELLIE	95.5	436.90	436.90

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A07-345-0020	LAROCHE EMMA DRAPPEAU	6489	846.00	846.00
A07-345-0021	CROW DOG JOHN	5400	229.50	229.50
A07-345-0022	BLACK BEAR ANNIE	5140	414.08	414.08
A07-345-0023	GOOD BOY	5904	534.34	534.34
A07-345-0024	BLACK CROW MAY JACK	5237	33.00	33.00
A07-345-0026	COWLEY MARY MCGHEE	6481	197.50	197.50
A07-345-0027	DRAPPEAU LEON	6498	1,124.00	1,124.00
A07-345-0028	HUNTS HORSES BELLE	6076	817.00	817.00
A07-345-0029	SCATTERS THEM MARY	6043	583.00	583.00
A07-345-0030	WHITE CROW BRAVE HAWK	3723.5	59.62	59.62
A07-345-0031	WHITE PIPE WARD	2935	538.13	538.13
A07-345-0032	BEAR DOCTOR MOSES S	80	4,296.50	82.60
A07-345-0033	BLANKETT PAUL	3727	1,629.10	1,629.10
A07-345-0034	BULL NANCY	3739	1,153.91	1,153.91
A07-345-0035	RED STAR LUCY	3757.5	744.00	744.00
A07-345-0036	NO LEAD OR BIRD ANNIE	3694	491.50	491.50
A07-345-0037	RED GOOSE JOHN	3709	235.64	235.64
A07-345-0038	WHITE LANCE JOSEPH HOWARD	3697	1,613.50	1,613.50
A07-345-0039	CROW GOOD VOICE WILLIAM	3682	192.00	192.00
A07-345-0040	LONG WOMAN MELLIE	2904	854.00	854.00
A07-345-0041	YELLOW CANE FAST BULL SUSIE	3351	454.00	342.58
A07-345-0042	HAIL WOMAN EMILY	3335	206.73	206.73
A07-345-0044	WHITE LANCE JOSEPH JESSE	2933	2,690.00	2,690.00
A07-345-0045	FACE CHARLES	2932	240.30	240.30
A07-345-0046	COFFEE NO. 2	3646	911.50	911.50
A07-345-0047	BONE SHIRT DAVID	3639	149.50	149.50
A07-345-0048	YELLOW ELK JOHN	3638	187.23	108.53
A07-345-0049	GOOD BIRD	2886	319.92	319.92
A07-345-0050	SWIFT CROCKERY BENJAMIN	2928	640.00	640.00
A07-345-0051	WHITE BUFFALO LIZZIE	2929	3,840.00	3,840.00
A07-345-0052	EAGLE BIRD WILLIAM	3656	1,819.50	1,819.50
A07-345-0053	BONE SHIRT SUSAN YELLOW BULL	3678	77.00	77.00
A07-345-0054	OWNS THE FIRE THOMAS	3798	307.05	307.05
A07-345-0055	GOES AMONG AMOS	3705	904.50	904.42
A07-345-0056	WHITE BIRD SAMUEL	2907	80.00	80.00
A07-345-0057	YELLOW HAWK DORA HIGH DOG	2754	993.00	993.00
A07-345-0059	MOLLIE EAGLE HORN	200	185.00	185.00
A07-345-0060	UNDER THE WATER THRINE JOHN	999	90.00	90.00
A07-345-0061	JACKSON EDWARD	921	0.66	0.66
A07-345-0062	QUICK BEAR MARY	527.5	170.55	170.55
A07-345-0063	MENARD GEORGE	NA	189.60	189.60
A07-345-0064	PAWNEE MARY	723.5	42.20	42.20
A07-345-0065	CORTIER GEORGE	597	131.40	131.40
A07-345-0066	BROKEN LEG LIZZIE	600	72.17	72.17
A07-345-0067	PIPE BOYD JOHN	889	200.00	200.00
A07-345-0068	BRAVE BOY GEORGE	852	200.00	200.00
A07-345-0069	BRAVE BOY MILLIE MARY	852.5	350.00	350.00
A07-345-0070	BUCKMAN PHILLIP FELIOLD AGE	325	200.00	200.00
A07-345-0071	IRON SHELL PETER	1749	28.26	28.26
A07-345-0072	EAGLE DOG LENA	1729	227.50	227.50
A07-345-0073	BRAVE BIRD STEVEN	1653	5.00	5.00
A07-345-0074	WHITE BEAR AMY	1550	172.80	172.80
A07-345-0075	RED SHIRT NELLIE	1323.5	127.50	127.50
A07-345-0076	NEIS ANNIE HER HOLY COMES BLUE CANE	1460	81.81	81.81
A07-345-0077	BORDEAUX SUSAN	185	80.00	80.00
A07-345-0078	SINGING WOMAN	1780.5	710.40	478.58
A07-345-0079	LITTLE THUNDER FRANK	1951	10.18	10.18
A07-345-0081	WALKER ANNIE	1283.5	37.35	37.35
A07-345-0082	BROKEN LEG JENNIE	1903.5	2,769.00	2,769.00
A07-345-0083	CHESTER BROKEN LEG	1903	700.68	700.68
A07-345-0084	HORNED EAGLE FRANK	1333	371.50	371.50
A07-345-0085	DILLON GEORGE	436	797.50	796.70
A07-345-0086	GOOD BREAST JOHN	1101	542.00	542.00
A07-345-0087	IRON BOY EDWARD	1415	700.00	700.00
A07-345-0088	STONE CYRUS	1637	715.93	715.83
A07-345-0089	MOORE CHARLES	1491	413.85	413.85
A07-345-0090	NO HEART CHARLES	1493	832.00	832.00
A07-345-0091	MAKES GOOD FRANCIS	1842	400.00	400.00
A07-345-0092	GREYHOUND JENNIE FAST DOG	921	589.30	589.30
A07-345-0093	GREYHOUND WILLIAM	922	629.40	629.40
A07-345-0095	ARCOREN JOSEPHINE	1193.5	1,449.13	1,449.13
A07-345-0096	HORNS HARRIS LEON	937	3,342.30	412.89
A07-345-0097	RATTLING WOMAN	1152.5	57.70	57.70
A07-345-0098	BRONCHO BILL HARRY	1158	1,402.50	1,402.50
A07-345-0099	BLACK BUFFALO KATE	1017	2,918.20	2,918.20

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A07-345-0100	EAGLE FEATHER HATTIE	899	2,703.00	2,703.00
A07-345-0101	BEAR LOOKS BEHIND JACK ISAAC	698	1,765.50	1,765.50
A07-345-0102	PRATT HENRY	816	1,140.00	1,140.00
A07-345-0103	BIGLER JOHN	650	2,302.00	2,302.00
A07-345-0104	FAST HORSE JACOB	866	1,219.55	1,219.55
A07-345-0105	CURLEY SHIELD GRACE	163.5	904.77	736.49
A07-345-0106	ANDREWS JANES	2038	2,054.00	2,054.00
A07-345-0107	WALKING EAGLE WILLIAM	1098	644.50	644.50
A07-345-0108	LITTLE ELK SADIE BIG CROW	1834	1,020.50	1,020.50
A07-345-0109	MAKES ROOM FOR THEM LUCY WOUNDED	1692.5	591.40	591.40
A07-345-0110	RED CROW SARAH	1702.5	355.00	355.00
A07-345-0111	YELLOW EYES AMOS	1594	1,689.00	1,089.00
A07-345-0112	MOCCASIN AMOS	1392	1,622.00	1,622.00
A07-345-0113	SHIELDS MORRIS	163	2,605.55	2,605.55
A07-345-0114	LEMMIE METCALF	489	1,489.50	236.00
A07-345-0115	FLY JAW MILLIE	536	3,492.50	473.34
A07-345-0116	IRON SHOOTER CECELIA	310	4,332.00	1,088.40
A07-345-0117	YELLOW FOX JESSIE	100.5	833.15	825.56
A07-345-0118	WINTER PHILLIP	301	3,965.50	1,761.85
A07-345-0119	PRUE SADIE	283	3,142.00	1,045.11
A07-345-0120	DILLON MARY CUTFOOT JONES	481	3,454.50	75.46
A07-345-0121	WRIGHT EMMA CORDIER	476	1,053.00	40.04
A07-345-0122	IRON HEART JAMES	451	4,894.50	1,694.69
A07-345-0123	HAWK LUKE	401	5,427.10	1,744.50
A07-345-0124	MORAN IDA GARY	397	2,486.00	66.70
A07-345-0125	STANDS AND LOOKS BACK MILLIE	159.5	723.50	723.50
A07-345-0126	YELLOW FACE LUKE	244	594.80	594.80
A07-345-0127	GARNEAUX JOSEPH	324	31.05	31.04
A07-345-0128	MCLEAN ADDIE (LARVIE)	371	3,213.50	114.02
A07-345-0129	ROAN EAGLE LIZZIE	161.5	408.90	408.90
A07-345-0130	GARNEAUX KATE	380.5	234.68	1.88
A07-345-0132	PLENTY HORSES JOSEPH	4001	2,681.00	2,681.00
A07-345-0133	NIGHT PIPE ANDREW	176	4,992.00	873.00
A07-345-0134	IRON SHOOTER CHARGER	156	1,751.00	90.10
A07-345-0135	FIREHEART JOSEPH	3987	789.00	789.00
A07-345-0136	LITTLE CROW STELLA	3814	570.50	570.50
A07-345-0137	STRANGER HORSE EDWARD	129	5,622.00	174.77
A07-345-0138	PRUE MILLIE NICHOLAS	121.5	6,401.75	1,136.68
A07-345-0139	SLEEPING BEAR FRANK	3989	5,214.00	161.09
A07-345-0140	SCISSORS ROSE E	5A	5,245.00	325.19
A07-345-0141	HIT HIM RUNNING MARY	3952	2,105.00	20.06
A07-345-0142	WHITE COW GIRL RICH ELIZABETH	6026	3,721.50	107.47
A07-345-0143	GIROUX LOUIS	1534	42.27	42.27
A07-345-0144	BLACK BULL JENNIE	1475	15.74	15.74
A07-345-0145	CHARGING CLOUD KATE	667	3,233.50	2,710.34
A07-345-0146	RED FACE WOMAN ELLA	933	300.00	225.66
A07-345-0147	STONE ARROW MARK	937	5,458.50	427.71
A07-345-0148	DUBRAY LOUISA FLOOD	1469.5	15.50	15.50
A07-345-0149	LITTLE ELK GEORGE	1587	453.70	70.89
A07-345-0150	MOUSE RICHARD	684	7,616.20	322.43
A07-345-0151	WHITE JAMES	1422	788.00	788.00
A07-345-0152	RUNNING HORSE RUSSELL	1299	2,384.50	543.13
A07-345-0153	HIGH PINE DAVID	1330	1,793.83	814.27
A07-345-0154	AFRAID OF EAGLE MAGGIE	1336	135.00	135.00
A07-345-0155	THIN ELK SOPHIE	1340	3,163.50	842.19
A07-345-0156	GALLINEAUX EMMA	1386.5	6,193.50	116.06
A07-345-0157	LITTLE BALD EAGLE DINAH (GARY)	394	3,793.00	392.26
A07-345-0158	CURTIS FELIOLD AGE	1596	104.71	106.62
A07-345-0159	WHITE WING EMMA	1585	2,579.00	1,768.39
A07-345-0160	SIDE HILL AMOS	1562	940.93	220.66
A07-345-0161	BLACK CROW CLINTON	1283	4,608.00	942.55
A07-345-0162	BLACK CROW ARRON	1282	1,554.00	130.93
A07-345-0163	POINTS AT HIM ALBERT	1236	1,766.08	1,571.70
A07-345-0164	EAGLE ELK BUSHEL	1214.5	400.00	399.95
A07-345-0165	EAGLE ELK JESSE	1214	400.00	400.00
A07-345-0166	METCALF LOUIS WILLIAM	1207	3,545.00	14.05
A07-345-0167	BEAR LOOKS BEHIND SOPHIA	697.5	246.60	246.60
A07-345-0168	BORDEAUX ELLEN	713	4,076.50	671.63
A07-345-0169	KILLS THE ENEMY COLD PAUL	1232	616.78	616.78
A07-345-0170	DOG SOLDIER LOUIE	201	7,811.50	265.29
A07-345-0171	WEEDS FATHER	2029	232.23	UNKNOWN
A07-345-0172	EAGLE BEAR EMMET	2024	4,218.50	598.30
A07-345-0173	NEW HAIRED HORSE STAMPEDE	1953	69.92	69.92
A07-345-0174	OWNS THE BATTLE ELLEN	1980.5	4,626.50	450.42
A07-345-0175	HENRY QUICK BEAR	1983	347.00	346.97

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A07-345-0176	LOOKING WHITE BENJAMIN	2013	4,793.00	1,260.50
A07-345-0177	BIG BELLE	2018.5	228.43	228.43
A07-345-0178	WHITE BUFFALO CHIEF EMMA	1617	1,887.30	1,003.68
A07-345-0179	GUN HAMMER AMY	995	336.50	37.78
A07-345-0180	GUN HAMMER THEODORE	993	570.73	247.20
A07-345-0182	OWNS THE BATTLE ANTHONY	3215	2,760.50	724.95
A07-345-0183	BLACK BEAR ROSA MOCCASIN	3782	2,944.00	520.99
A07-345-0184	BLACK BEAR CHARLES	3781	195.83	195.83
A07-345-0185	BULL NATION CONRAD	4761	2,666.50	20.37
A07-345-0186	HOLY WHITE WOMAN	4128.5	21.40	21.40
A07-345-0187	BEAR JULIAN FIRE HEART	4139	718.00	718.00
A07-345-0188	GOOD JOSEPH	4122	507.90	344.23
A07-345-0189	RED GOOD ROAD	4122.5	18.78	18.78
A07-345-0190	SLIDES OFF JAMES	4089	4,351.51	3,252.11
A07-345-0191	BEAR SHIELD ANNA RUTH	4047	3,080.30	141.70
A07-345-0192	RATTLING HAWK	4034	854.70	854.70
A07-345-0193	BIG CROW JOHN OR JOSEPH	4073	887.00	729.66
A07-345-0194	CRAZY BULL JULIA WALKER (RED HORSE)	1816	5.00	5.00
A07-345-0195	RUNS ABOVE LOUIS OR GOOD DAY	1829	1,348.50	1,154.53
A07-345-0196	LITTLE ELK FRANK	1840	3,610.50	1,033.16
A07-345-0197	RED LAME OMAHA LIZZIE	1866.5	219.00	219.00
A07-345-0198	FLOWER BRAVE BROWN LEAF	1597.5	3,888.60	195.08
A07-345-0199	LANCE WILLIAM (YELLOW)	900	294.00	294.00
A07-345-0200	YELLOW ROBE WILLIAM	1902	501.45	356.72
A07-345-0201	MCLEAN JOHN MOORE	1592	400.00	336.55
A07-345-0202	LEFT HAND BULL PETER	1744	945.34	944.84
A07-345-0203	SCOTT TITUS	1733	36.60	36.60
A07-345-0204	EAGLEMAN ALFRED	1781	3,787.00	633.68
A07-345-0205	WALKING BULL ALICE	4046.5	5,078.75	2,343.99
A07-345-0206	NOT GOOD CHARLES	1800	826.85	826.85
A07-345-0207	CLOUDMAN LOUISE RED EYE	897	3,052.30	474.58
A07-345-0209	HORN COMES OUT JULIA	924.5	542.50	542.50
A07-345-0209	SWIFT HAWK JOSEPH	1710	3,228.50	1,964.85
A07-345-0210	CHARGE ON HIM HARRY	1723	976.50	776.10
A07-345-0211	BRIDGEMAN THOMAS	1738	2,955.00	150.04
A07-345-0212	LEFT HAND BULL JACOB	1740	172.50	172.50
A07-345-0213	LEFT HAND BULL LAURENCE	1743	271.20	271.20
A07-345-0214	LITTLE EAGLE JOSEPHINE	1587.5	10.75	10.75
A07-345-0215	BORDEAUX CHARLES	664	7,441.00	584.66
A07-345-0216	EAGLE DOG LEVI	1094	3,787.50	54.11
A07-345-0217	ON THE GROUND MARY	1144	217.00	217.00
A07-345-0219	KNOCKS ADOLPH	1161	431.50	431.50
A07-345-0221	HIS BLUE HORSE CONRAD	2243	273.15	273.15
A07-345-0222	BROKEN LEG SAMUEL	2202	3,200.40	453.30
A07-345-0223	GRANT WILLIAM JOSEPH	2181	3,320.00	460.08
A07-345-0224	ROBERTS ANGELINE (LARVIE)	2177	4,807.00	293.27
A07-345-0226	RUNNING BIRD ARTHUR	3168	4,566.50	1,392.35
A07-345-0227	BLACK SPOTTED HORSE JOSEPH	2937	3,442.50	2,196.03
A07-345-0228	STANDING BULL OWEN	3791	2,954.00	206.79
A07-345-0229	MAID OWNS THE FIRE LUCY	3798.5	3,657.53	746.08
A07-345-0230	PRETTY BOY FIRE BELLE	2150	5,158.42	649.50
A07-345-0231	WALKING BULL THOMAS	2000	688.10	688.10
A07-345-0232	CRAZY BULL MARY LITTLE SUERUE	2781	1,600.00	23.47
A07-345-0233	YELLOW WOODEN SAMUEL DAVID	2491	877.15	875.25
A07-345-0234	LARVIE BENJAMIN	[illegible]	2,018.30	743.04
A07-345-0235	PONY BERTIE	3700	2,872.50	879.62
A07-345-0236	HER NATION ALICE	2414	3,611.50	675.90
A07-345-0237	CROOKED FOOT EDWARD	2773	3,546.00	2,329.20
A07-345-0238	WHITE BIRD JOHN	3222	571.50	571.50
A07-345-0239	BUFFALO LONE WOLF WILLARD	2924	402.00	299.68
A07-345-0240	CASE KNIFE DAVID	3242	4,193.00	55.08
A07-345-0241	RED BLANKET SALLIE HAIL BLACK CROW	3245	1,945.50	531.96
A07-345-0242	HER PRETTY DOOR OR CROOKED FOOT	3201	279.00	279.00
A07-345-0243	JONES HUGH	2767	115.12	115.12
A07-345-0244	YELLOW EAGLE CLAY	2793	2,704.50	1,856.00
A07-345-0245	GETTING AROUND LIZZIE GETTING ALONG	2365	11.95	11.95
A07-345-0246	CROW JOHN OR TAYLOR	3224	701.90	701.90
A07-345-0247	LONG ELK WILLIAM	2721	616.00	616.00
A07-345-0248	KING JACK	2694	231.50	231.50
A07-345-0249	WHITE CROW LIZZIE (KING)	2296	2,969.50	1,238.75
A07-345-0250	DUBRAY JOHN BOYD	2438	1,307.00	40.00
A07-345-0251	DUBRAY MARY	2354.5	1,015.00	889.41
A07-345-0252	WRIGHT THOMAS	2957	352.00	95.94
A07-345-0253	MURRAY STEPHEN	2098	4,501.50	38.76
A07-345-0254	STANDS FOR THEM CORA	2079	623.52	623.52

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A07-345-0255	BEAR SHIELD WILLIAM DEAFT	2072	455.00	455.00
A07-345-0256	CHARGING BEAR WHITE COW	2049.5	695.33	695.33
A07-345-0257	HORNED ANTELOPE CHARLES	2043	1,901.00	1,535.05
A07-345-0258	BLACK BULL PHILLIP	2048	613.30	297.97
A07-345-0259	KILLS AT NIGHT RICHARD	2130	4,338.30	507.02
A07-345-0260	GERRY ROSE (LARVIE)	1606	721.38	721.38
A07-345-0261	EAGLE CHIEF LEVI	1615	2,973.00	1,439.19
A07-345-0262	FORGETS NOTHING	2035	27.41	27.41
A07-345-0263	WILLIAMS MOLLIE (SKUNK)	2040	1,911.50	514.78
A07-345-0264	DIDIER JULIA (WHITE WOMAN)	1892	1,228.30	695.61
A07-345-0265	RUNNING HORSE BENJAMIN	1635	663.23	663.23
A07-345-0266	LITTLE BULL PETER	1662	274.00	274.00
A07-345-0267	HORSE LOOKING HENRY	1684	338.00	338.00
A07-345-0268	MAKES ROOM FOR THEM MARTIN	1692	3,774.40	1,039.09
A07-345-0269	KILLS THE ENEMY LUCILLE	3495	470.00	56.81
A07-345-0270	BEAR LOOKS BEHIND PETER	3603	990.00	990.00
A07-345-0271	SAWAT NANCY	3459	3,083.50	633.76
A07-345-0272	BORDEAUX ARTHUR	3326	2,111.30	160.33
A07-345-0273	MEYER MISSES A SHOT MAUDE	3337	834.00	834.00
A07-345-0274	NOT AFRAID FRANCES	3343	392.32	392.32
A07-345-0275	PRETTY VOICE	2682	245.50	245.50
A07-345-0276	MOCCASIN FACE LUKE	3347	894.40	548.22
A07-345-0277	PLUM MAN CHARLES	2541	701.93	179.87
A07-345-0278	STANDING BULL JACOB	2883	4,093.00	345.39
A07-345-0279	LEVER CHARLES	2667	860.00	860.00
A07-345-0280	BEAR HEELS CHARLES	2539	4,047.30	790.35
A07-345-0281	COLOMBE DAVID	2556	1,722.50	848.32
A07-345-0282	BEAR WILLIAM	1330	18.20	18.20
A07-345-0283	CROW HEAD PETER (THOMPSON)	2553	2,718.00	6.73
A07-345-0284	BROKEN LEG CLARA (FARMER)	1901	30.00	30.00
A07-345-0285	IRON DEER IDA (MCCLOSKEY)	412.5	29.17	29.17
A07-345-0286	BORDEAUX JOHN	710	6,148.60	1,379.35
A07-345-0287	DESEMA JOSEPHINE	543.5	5.00	5.00
A07-345-0288	WOOLEY HAIR FRED	590	199.30	199.30
A07-345-0289	GREASE STELLA (SPOTTED ELK)	880	2,995.00	61.84
A07-345-0290	WHITE BUFFALO WOMAN	885.5	139.00	1.45
A07-345-0291	MEDICINE PIPE LOUISE	14.5	149.00	149.00
A07-345-0292	IYOTTE JOSEPH JAMES	801	1,760.00	295.92
A07-345-0293	BAD HAND HARRY	4012	1,430.00	1,039.91
A07-345-0294	CLAIRMONT JESSE	18	1,928.30	408.76
A07-345-0295	WHITE WASH IRON SHOOTER ALICE	153	4,077.50	384.88
A07-345-0296	JULIA HIGH PIPE	3991	3,419.00	984.02
A07-345-0297	MARY STANDS KILLS ENEMY COLD	1232.5	2,624.30	2,538.72
A07-345-0298	JOSEPH SNOW FLY	904	813.00	284.44
A07-345-0299	MINNIE USES HER WORDS	2074	1,749.00	UNKNOWN
A07-345-0301	GLADYS HOLY PIPE FAST HORSE	867	5,066.00	2,817.01
A07-345-0302	HARRY MORAN	812	1,104.50	25.73
A07-345-0303	WHITE MOUSE	1561	450.00	450.00
A07-345-0304	WILLIAM THUNDER HAWK	1943	168.00	168.00
A07-345-0305	LUCY TWO TEETH OR END	1364	1,349.10	1,349.10
A07-345-0306	LOUIS YELLOW ROBE	1902	17.86	17.86
A07-345-0307	JOSEPH FRIGHTENED	1950	980.00	980.00
A07-345-0309	REBECCA HOLY EYES	1973.5	442.78	442.78
A07-345-0309	RICHARD FORGETS NOTHING	2034	578.00	578.00
A07-345-0310	ALBERT BLACK MOUNTAIN SHEEP	3803	626.50	391.06
A07-345-0311	JOSEPH JACKSON	818	10.00	10.00
A07-345-0312	JOSEPHINE BIG TAIL YELLOW	168.5	679.95	679.95
A07-345-0313	ALLEN YELLOW BEAR	843	609.53	609.53
A07-345-0314	LOUISE ROGERS TWO HEART	1048.5	400.00	400.00
A07-345-0315	WILLIAM BRIDGEMAN	1070	455.84	455.84
A07-345-0900	JOSHUA ROAN EAGLE	16	351.27	351.27
A07-345-0901	NELLIE NANCY SMELLS GOOD	457.5	435.00	435.00
A07-345-0902	JOSEPH THUNDER	2641	172.96	172.96
A07-345-0903	RATTLING WOMAN	2690	132.45	132.45
A07-345-0904	FRANK WHITE LARK	2657	504.96	504.96
A07-345-0906	JOHN DU BRAY	2354	5.00	5.00
A07-345-0907	OGLALA FOOT	2209.5	421.00	421.00
A07-345-0908	HENRY DIDIER	2374	451.00	451.00
A07-345-0909	HERMAN CROOKED FOOT	2650	4,860.50	4,860.30
A07-345-0910	WALLACE HIGH DOG	2645	3,710.20	3,710.20
A07-345-0911	HARRY WHITE WING	2478	834.57	834.57
A07-345-0912	CECILIA SCOUT WHITE LANCE EAGLE DOG	2492	993.65	893.65
A07-345-0913	JOSEPHINE LITTLE BULL LOOKING ELK	2509	2,611.00	2,611.00
A07-345-0915	GEORGE EAGLEMAN	1996	448.30	410.34
A07-345-0916	LUCY ELK SKY OR PLENTY BEAR	2056	25.95	25.95

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A07-345-0817	JOSEPH HORNED ANTELOPE	2042	872.90	872.90
A07-345-0818	FANNIE NIGHT CHASE(STRANGER HORSE)	2125	949.90	702.51
A07-345-0819	RICHARD LARVIE	2156	621.60	621.60
A07-345-0820	MARY LARVIE HILL	2175.5	1,174.75	1,174.75
A07-345-0821	SOPHIA RUNS CLOSE TO VILLAGE	2182.5	500.00	500.00
A07-345-0822	MAGGIE WHITE HORSE ROGERS CLAIRMONT	2199	198.00	198.00
A07-345-0823	WILLIAM BROWN	2516	56.50	56.50
A07-345-0824	PAUL BEAR HEELS	2540	1,760.50	1,760.50
A07-345-0825	ANDREW RED BLANKET	2544	591.60	591.60
A07-345-0826	MAGGIE WHITE YELLOW CLOUD	936.5	175.00	175.00
A07-345-0827	JESSE ROSS	2562	100.00	100.00
A07-345-0828	ESTELLA GOOD DAY HAWK TRACK	2595	457.00	457.00
A07-345-0829	ELIZABETH ELIZA OWNS THE WAR	2633.5	932.50	932.50
A07-345-0830	CURTIS FORKED TAIL	2623	1,342.00	1,342.00
A07-345-0831	ACQUILLA BIG HEART	2751	1,448.14	1,448.14
A07-345-0832	SUSAN RINGING SHLD/BARBED ARRW SPIK	105.5	354.01	237.39
A07-345-0833	ESTHER DORIAN BROKEN ROPE	407	43.00	43.00
A07-345-0834	JOHN CODER	475	395.20	395.20
A07-345-0835	JOSEPH WHITE BUFFALO	760	374.35	74.35
A07-345-0836	BENJAMIN BEAUVAIS JR.	484	47.84	47.84
A07-345-0837	EMMA RED HORSE OR TURNING HAWK	773.5	732.20	732.20
A07-345-0838	MARTHA NEVER MISSES A SHOT	1251	471.88	471.88
A07-345-0839	ALEXANDER TURNING HAWK	773	103.12	103.12
A07-345-0840	JOHN LAYS ON HIS BELLY	1247	513.77	513.77
A07-345-0841	LUCY LITTLE TAIL	1334	28.10	28.10
A08-346-0001	IRVING FRANK	822	3,013.00	3,013.00
A08-346-0002	PROVOST IDA	1061	400.00	400.00
A08-346-0003	NECKLACE SAMUEL BAKER	139	497.70	497.70
A08-346-0004	YELLOW-BROWN CANE	1334	170.00	170.00
A08-346-0005	BULL MARY EUGENE	845	334.50	334.50
A08-346-0006	PRIMEAU ROSE	994	60.00	60.00
A08-346-0007	JOHNSTON HERBERT	50-15	633.50	295.22
A08-346-0008	LOWE JULIA WELLS	524	36.65	36.65
A08-346-0009	DION JOSEPH ISAAC	1434	525.00	525.00
A08-346-0010	COURNOYER ANNIE	716	460.50	460.50
A08-346-0011	COOK LIZZIE HOPE	74	26.04	26.04
A08-346-0012	KUTENA ANNA	397	1,481.50	1,481.50
A08-346-0013	WAHCAHUNKA MARTIN	1026	373.50	373.50
A08-346-0015	NIMROD WINNIE ASHES	616	5,149.50	830.17
A08-346-0016	LAROCHE LOUISA	756	375.00	375.00
A08-346-0017	THUNDER HORSE GEORGE MARSHALL	488	422.50	422.50
A08-346-0018	BERNE JENNETTE MANY DOGS	989	1,001.82	1,001.82
A08-346-0019	HIGH ROCK EUGENE	1343	1,402.00	61.61
A08-346-0020	GOODTALKER LOUISA	318	363.75	363.75
A08-346-0021	PRETTY VOICE CROW SUSIE	941	587.50	587.22
A08-346-0022	FIELDER EMMA STANDING BULL	129	511.00	511.00
A08-346-0023	LITTLE OWL SARAH WALTERS	1358	48.00	48.00
A08-346-0024	YELLOW HAIR MARIE SWEENEY	780	5,113.20	92.33
A08-346-0025	WOOD CHARLES (HEHAKE)	471	477.30	477.30
A08-346-0026	WILLIAMS PETER (HEPANNA)	903	563.00	241.50
A08-346-0027	WILLIAMS JAMES SR. (SANICHA)	949	6,793.00	915.79
A08-346-0028	PATTERSON RACHEL	681	48.00	48.00
A08-346-0029	THORNTON CORA COLLINS	608	6,294.00	1,520.74
A08-346-0030	STRICKER GEORGE	820	507.30	507.30
A08-346-0031	SPOTTED EAGLE ROBERT	1184	125.00	125.00
A08-346-0032	SHUNK ADA WOOD	1131	3,902.00	48.25
A08-346-0033	REDLIGHTENING MARION LOUISE	970	4,931.90	101.70
A08-346-0034	HOMER REDLIGHTENING	1265	661.00	UNKNOWN
A08-346-0035	VASSER EMMA WAHPEZI-WIN	476	101.00	101.00
A08-346-0036	REE MCARLES LONGEAR	84	5,761.00	675.61
A08-346-0037	RED HORSE ELIZA ARTHUR	703	3.35	3.35
A08-346-0038	PROVOST WILLIAM	391	418.90	178.00
A08-346-0039	ORSON PACKARD	1002	167.50	83.00
A08-346-0040	OMAHA ISAAC	246	427.50	166.52
A08-346-0041	LAGRANDE MARRY SITTING CLOUD	1174	594.00	593.96
A08-346-0042	LAGRANDE PHILBRICK BENJAMIN	1399	168.00	168.00
A08-346-0043	JUMPING THUNDER DAVID	179	115.97	115.97
A08-346-0044	JANDREAU JULIA LONGEAR	81	1,235.00	UNKNOWN
A08-346-0045	IRVING HOWARD	827	1,301.00	1,134.31
A08-346-0046	IRONHAWK CHARLES	977	3,758.50	337.00
A08-346-0048	GRAYHAWK SOPHIA M.	287	227.50	227.50
A08-346-0049	GRAY JOHN	257	758.57	758.57
A08-346-0050	GRAY ALICE	69	3,974.00	399.43
A08-346-0051	GOODTALKER ALBERT	90	3,899.50	865.65
A08-346-0052	GASSMAN WILLIAM	991	43.50	43.50

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A09-346-0053	GASSMAN SAMUEL	1429	4,746.50	776.20
A09-346-0055	FLYING HAWK EDWARD	830	1,655.50	1,655.50
A09-346-0056	COOK MARY HAWK EAGLE	273	2,063.00	965.00
A08-346-0057	FELIX CHARLES	1371	1,045.48	1,030.14
A09-346-0058	DRAPEAU LOUIS	1181	1,754.00	1,754.00
A08-346-0059	CHINN HENRY	573	243.00	243.00
A09-346-0061	BLAINE STEPHEN	1086	1,287.00	1,287.00
A08-346-0062	BLAINE JAMES G.	1083	471.90	471.90
A09-346-0063	BATES THOMAS W.	224	1,098.50	1,041.88
A08-346-0064	PATTERSON ANNIE RAINBOW	542	2,354.00	20.00
A08-346-0065	BLACKMOON MAGGIE	409	2,922.00	1,701.05
A08-346-0066	SPOTTED EAGLE-ZINA WILLIAM	181	7,424.20	229.83
A08-346-0067	RUMNEY ANNIE MATO HARE	675	524.50	UNKNOWN
A08-346-0068	STINGER FRANK REE	564	1,130.50	UNKNOWN
A09-346-0069	ASHES SUSAN FEATHER	1069	353.50	UNKNOWN
A09-347-0001	KEEBLE ISAAC	1249	742.53	378.84
A09-347-0002	PAUL ADAM	95	618.35	618.35
A09-347-0003	STANDFAST THOMAS	948	2,083.16	2,083.16
A09-347-0004	GOODBIRD AMOS	889	939.60	421.36
A09-347-0005	BIRD SUSAN	932	3,381.62	408.26
A09-347-0006	THOMAS HEMINGER	656	913.50	257.00
A09-347-0007	CECELIA HILL	368	2,884.00	1,333.00
A09-347-0008	BEAR MANY	573	1,356.34	416.98
A09-347-0009	STAFFORD CECELIA (BARTLETT)	606	1,466.91	338.11
A09-347-0010	REDEARTH EMMA	632	4,473.90	165.16
A09-347-0011	GRAY SAMUEL	423	978.00	643.10
A09-347-0012	GRANT JENNIE	15	218.82	198.00
A09-347-0013	DEMARIAS MARY (WILLIAMS)	950	1,047.50	634.67
A09-347-0014	AMOS MARY	48	1,732.65	971.09
A09-347-0015	RENVILL SAMUEL	1004	4,443.50	752.28
A09-347-0016	ONEROAD CHARLES	396	5,662.35	142.37
A09-347-0017	WICITEMAZA LOUISA	397	648.18	646.38
A09-347-0018	WHITE KING ELLA	416	4,227.63	538.53
A09-347-0019	HOPKINS SAMUEL	435	2,932.00	210.44
A09-347-0020	WILLIAMS EDWARD R.	38	1,614.00	1,614.56
A09-347-0021	DEMARRIAS JOHN	754	4,129.50	247.75
A09-347-0022	DEMARRIAS NARCISSE	755	2,994.10	229.35
A09-347-0023	WILLIAMS JOHN (SUNKA)	757	5,270.50	297.47
A09-347-0024	ST. JOHN MOSES	790	2,091.00	466.18
A09-347-0025	ROBERTSON HELEN (DUGGAN)	232	945.00	32.44
A09-347-0026	PHILIP LOUIS	152	2,512.50	262.50
A09-347-0027	BARSE SARAH (RENVILLE)	1091	2,048.50	1,292.62
A09-347-0028	BEAR JOHN	634	843.00	843.00
A09-347-0029	BIRD ALVIN	A90517	50.00	50.00
A09-347-0031	CROSS NANCY	469	406.50	406.50
A09-347-0033	DUMARCE BAPTISTE JR.	625	119.50	119.50
A09-347-0034	ENOCH JAMES	498	891.00	891.00
A09-347-0035	FOSTER MARY	447	555.50	550.50
A09-347-0036	FRENIER AMOS	236	2,092.50	1,346.45
A09-347-0037	FRENIER BAPTISTE	369	1,929.00	1,929.00
A09-347-0038	GILBERT AMOS	1046	240.00	240.00
A09-347-0039	GRAHAM ZENAS	NE-842	750.00	750.00
A09-347-0040	HAYES DANIEL	323	496.00	496.00
A09-347-0041	JOHNSON JOHN W.	551	54.00	54.00
A09-347-0042	KEEBLE JOHN	1299	1,439.30	1,439.30
A09-347-0043	LALELLE PETER	1236	301.00	301.00
A09-347-0044	LAEROUX ALBERT	114	30.15	30.00
A09-347-0045	LAFROMBOISE MOSES	190	2,382.50	2,382.50
A09-347-0046	CAMPBELL LUCY (LOVEJOY)	166	5,684.01	264.66
A09-347-0047	QUINN CHARLES	640	9.17	9.17
A09-347-0048	RENVILLE DAVID	1008	7.23	7.23
A09-347-0049	RENVILLE MASON	2159	100.00	100.00
A09-347-0050	ROBERTSON WILLIAM M.	1093	105.36	105.36
A09-347-0051	ROGERS JOSEPH	962	110.00	105.93
A09-347-0052	SHEPHERD HANNAH T.	314	54.25	54.25
A09-347-0054	STANDFAST CATHERINE	612	199.84	199.84
A09-347-0055	WAKEMAN SOLOMAN	291	312.00	312.00
A09-347-0056	WHITE RAYMOND CLEMENT	451	684.50	684.50
A09-347-0057	CRAWFORD ABRAHAM	1000	1,711.50	939.33
A09-347-0058	RENVILLE ROSE RICE	1304	9,619.00	UNKNOWN
A09-347-0059	SHEPHERD MINNIE LAWRENCE	502	27.00	27.00
A09-347-0060	WEATHERSTON WILLIAM M.	1700	1,796.00	59.00
A09-347-0061	WHITE ELIZABETH	348	86.03	86.03
A09-347-0062	SPIDER MARY (LOVEJOY)	169	966.20	964.00
A09-347-0419	HANNAH BARKER REDEARTH	455	2,269.00	848.21

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A09-347-0420	AGNES FLUTE	1003	1,668.00	809.04
A10-302-0001	MANY HORSES CECELIA	3669	1,623.30	1,623.20
A10-302-0002	BRUSH HORNS EMMA	3664	17.23	17.23
A10-302-0003	WATER LOUISA	3658	594.50	594.50
A10-302-0004	EAGLEBOY MRS.	3653	1,011.00	1,011.00
A10-302-0006	CHASE ALONE JOSEPHINE	3645	3,590.00	UNKNOWN
A10-302-0009	RD HEART	3602	616.50	63.00
A10-302-0010	IRON NECKLACE LOUISA	3599	2,509.50	1,749.38
A10-302-0011	LONGBULL SADIE	3597	4,334.50	45.35
A10-302-0013	AGUNLA FEATHER EARRINGS	3577	287.50	189.00
A10-302-0014	PRETTY ELK SARAH	3486	877.00	397.19
A10-302-0015	WALKS IN THE WIND JULIA	3460	821.00	821.00
A10-302-0016	CHASING HAWK ELIZABETH	3367	1,447.55	1,447.55
A10-302-0017	LONG BULL JENNIE	3359	73.01	73.01
A10-302-0018	RED BIRD	3264	1,237.00	1,237.00
A10-302-0019	FASTHORSE LOUISA	3260	242.00	242.00
A10-302-0020	EAGLE BOY MRS.	3389	1,263.00	1,262.50
A10-302-0021	VILLAGE CENTER JULIA	3366	921.50	921.50
A10-302-0022	RED TOMAHAWK FRANCES	3276	1,490.00	648.90
A10-302-0023	HAND MAUD	3189	1,932.50	1,932.50
A10-302-0024	GRINDSTONE STELLA OR LOUELLA	3174	1,102.69	1,102.69
A10-302-0025	WHITE HORSE AGNES	3168	380.00	380.00
A10-302-0026	WHITE EAGLE TASINA	3164	2,786.90	1,312.08
A10-302-0027	MRS. EDWARD TAKES THE SHIELD	3574	610.00	UNKNOWN
A10-302-0028	JOSEPH EAGLEMAN	2647	174.00	174.00
A10-302-0029	WHITESELL JOHN	551	69.83	69.83
A10-302-0030	WALKING ELK MARK	703	212.50	212.50
A10-302-0031	IRON WING PAUL	31	1,038.00	1,038.00
A10-302-0032	CROW FEATHER FRANCIS	905	1,116.00	1,116.00
A10-302-0033	FEATHER EARRINGS MORRIS	809	1,747.00	915.19
A10-302-0034	BADGER JOVITA	827	702.00	609.45
A10-302-0035	LEFT HAND VERMUND (HAND)	850	1,641.50	UNKNOWN
A10-302-0036	JORDAN ANNIE	859	1,189.50	1,189.50
A10-302-0037	WHITEBULL	869	1,169.00	738.03
A10-302-0038	KILLS PRETTY ENEMY LEO	1024	1,113.75	1,006.27
A10-302-0039	LOOKING HORSE LOUIS	1026	2,200.50	523.04
A10-302-0040	USES HIS ARROWS SUIBERT	1029	312.00	312.00
A10-302-0041	MANY ELKS LUKE	1034	66.09	66.00
A10-302-0042	TAKE THE GUN REUBEN	1039	4,790.50	1,088.09
A10-302-0043	MALE BEAR LUKE	1052	1,031.00	1,021.00
A10-302-0044	SUNKAWANBLI JOHN (DOG EAGLE)	1057	531.00	531.00
A10-302-0045	KILLS AT NIGHT SAMUEL	1061	375.00	375.00
A10-302-0046	ELK JOHNSON (BROWN EAGLE)	1072	4,937.50	UNKNOWN
A10-302-0047	KILLS CROW INDIAN JOHN	1077	3,783.00	778.81
A10-302-0049	EAGLE BOY GROVER	1213	460.00	460.00
A10-302-0050	ROSEBUD JOSEPH	1234	15.48	15.48
A10-302-0051	LITTLE BEAR JOHN	1243	65.00	65.00
A10-302-0052	PRAYS TO HIM LAWRENCE	1274	424.00	424.00
A10-302-0053	OTTER ROBE JOSEPH	1332	1,260.00	1,059.47
A10-302-0054	WHITE COAT FREDERICK	1336	351.00	351.00
A10-302-0055	HAS HORNS JENNIE	1339	1,616.90	1,616.90
A10-302-0056	WHITE PAW FRANCIS	1350	184.00	UNKNOWN
A10-302-0058	MIDDLE BULL PAUL	1406	1,565.00	140.20
A10-302-0059	AGARD LOUIS	1420	413.30	196.19
A10-302-0060	GRAYEAGLE GABRIEL MRS.	1473	779.00	748.35
A10-302-0061	CEDAR BOY JAMES	1480	1,000.00	990.00
A10-302-0062	FLYING HORSE ANTHONY	1493	401.59	401.59
A10-302-0063	KILLS HAWK ROBERT	1500	430.00	430.00
A10-302-0064	TWO FACE JOSEPH	1501	2,823.50	2,550.56
A10-302-0065	ANTELOPE HERBERT (ALBERT)	1510	2,002.00	591.60
A10-302-0066	MAKES TROUBLE AUGUSTUS	1526	381.00	381.00
A10-302-0067	ELK NATION LOUIS	1535	282.00	164.87
A10-302-0068	MARSHALL CHARLES (SR.)	1548	10.00	10.00
A10-302-0069	GAYTON AMY	1725	387.30	387.30
A10-302-0070	LECOMPTE EDWARD	2	787.44	302.52
A10-302-0071	RED HORSE ZIDOL	26	4,030.50	4,030.50
A10-302-0072	IRON CLOUD SARAH	29	2,249.00	2,249.00
A10-302-0073	LONG BULL PAUL	40	194.50	194.50
A10-302-0074	LONG BULL DOMINICK	41	459.55	443.78
A10-302-0075	CHASE ALONE PETER (WEBSTER)	45	291.50	291.50
A10-302-0076	SWIFT CLOUD MARTIN	56	768.00	768.00
A10-302-0077	WHITE EAGLE SAM	54	186.90	113.88
A10-302-0078	HORSE THIEF AMOS	73	1,032.50	376.54
A10-302-0079	DISTRIBUTE JOHN (END OF CLOUD)	82	55.50	55.50
A10-302-0080	SHOOT THE BEAR MAURICE	102	816.60	816.60

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A10-302-0081	END OF CLOUD IGNATIUS	103	1,305.00	614.62
A10-302-0082	STANDING BEAR SAM HOWARD	154	424.00	424.00
A10-302-0083	CADOTTE JOHN J. (SR.)	173	1,685.62	1,144.22
A10-302-0084	YELLOW PROTEUS	195	611.95	611.85
A10-302-0085	KICKING BEAR THOMAS (G. V. BULL)	208	210.00	210.00
A10-302-0086	LITTLEMOON HENRY	213	340.50	UNKNOWN
A10-302-0087	EAGLE SAMUEL OR FRANCIS	220	4,288.50	2,992.52
A10-302-0088	BONECLUD MAUDE (TAKES THE GUN)	235	3,919.00	UNKNOWN
A10-302-0089	RAWHIDE GUS	269	28.50	UNKNOWN
A10-302-0090	TAYLOR MOLLIE MARSH	276	10.00	10.00
A10-302-0091	TAKE THE GUN LOUIS (GUNNER)	297	1,531.30	431.12
A10-302-0092	RED HAWK JOHN	305	5.00	5.00
A10-302-0093	RED HORSE ANNIE DAVIS	320	224.60	224.60
A10-302-0094	BLOODY KNIFE EMMA HOWARD	344	1,393.50	331.13
A10-302-0095	LOOKING BACK CHARLES	366	1,187.00	1,187.00
A10-302-0096	HAS HORNS QUEENS	376	3,145.00	2,978.36
A10-302-0097	TWO KILL JOSEPH	398	1,953.00	885.51
A10-302-0099	THUNDERSHIELD ELLA	415	821.00	798.06
A10-302-0100	THUNDERSHIELD JOSEPH	418	1,754.00	1,659.33
A10-302-0101	LAFROMBOISE FRANK	420	70.00	70.00
A10-302-0102	GRINDSTONE STANTON	480	245.00	245.00
A10-302-0103	GRINDSTONE PAUL	517	113.58	UNKNOWN
A10-302-0104	WATERS ISADORE	519	932.50	932.50
A10-302-0105	WHITESELL CHARLES	556	745.00	UNKNOWN
A10-302-0106	DOG LOUIS (SR.)	575	1,735.35	1,735.35
A10-302-0107	WALKING ELK FRANCES	591	3,760.00	2,655.50
A10-302-0108	END OF HORN WILLIAM	109	2,570.00	2,507.00
A10-302-0109	HER GOOD HORSE	602	50.00	50.00
A10-302-0110	MANY HORSES FRANCIS	605	1,226.50	1,226.50
A10-302-0112	IRONHORN CHARLES JR.	622	40.00	40.00
A10-302-0113	IRON HORSE CHARLES	623	40.00	40.00
A10-302-0114	RED FISH JAMES	641	721.50	UNKNOWN
A10-302-0115	FROWIN REEL	658	2,068.30	717.32
A10-302-0116	KILLS CROW INDIAN JULIA	3122	3,196.50	1,505.09
A10-302-0117	EAGLE ON HIGH ALMA	3145	447.00	447.00
A10-302-0118	TAKES THE GUN HANNAH	3253	126.00	126.00
A10-302-0121	DOG EAGLE JOHN (MRS.)	3282	387.00	387.00
A10-302-0122	SCHOLASTICS (MRS. BOBTAIL BULL)	3302	730.50	730.50
A10-302-0123	SHOT AT CATHERINE (MRS. LEO)	3304	218.00	218.00
A10-302-0124	MANY DEEDS STANTON MRS.	3334	160.00	43.93
A10-302-0126	FROWN MAN MARY	3337	107.00	107.00
A10-302-0127	KILLS CROW YNDIAN JULIA (MIDDLE)	3338	1,057.50	1,057.50
A10-302-0128	SPOTTED BEAR JULIA	3339	30.00	30.00
A10-302-0129	WHITETEMPLE FANNIE	3349	471.00	471.00
A10-302-0130	WHITE COAT HELEN	3371	5,050.70	2,124.55
A10-302-0131	PINE NANCY	3373	3,462.50	3,462.05
A10-302-0132	EAGLE FEATHER AUGUSTINE	3380	1,251.50	974.56
A10-302-0133	CARRY MOCCASIN MARTHA	3388	884.00	286.37
A10-302-0134	CLAYMORE ANTOINE	3393	1,063.50	1,063.50
A10-302-0135	ONE BULL OR WAMNIOMNILUTA	3398	393.00	393.00
A10-302-0136	HAWK BEDE OR TAWACINWASTEWIN	3401	1,846.72	373.93
A10-302-0137	CROSS WILLIAM	3407	410.50	410.50
A10-302-0138	ARCHAMBAULT SAM MRS.	3410	459.00	459.00
A10-302-0139	OLD BULL OR KANTOTAWIN	3421	551.50	445.55
A10-302-0140	WHITE SHIELD LOTTIE OR WICIGNA	3422	2,256.50	1,326.10
A10-302-0141	HAWK EAGLE SAMUEL MRS.	3432	1,514.00	1,514.00
A10-302-0142	WOKA AGNES	3456	1,448.00	573.82
A10-302-0143	WALKS QUIETLY OR CATAKWIN	3471	60.00	47.16
A10-302-0144	GOOD VOICE ELK	3474	216.27	216.27
A10-302-0145	SPOTTED HORSE THERESA	3484	1,736.50	1,736.50
A10-302-0146	HOLY WHITE MAN SARAH	3485	95.00	91.77
A10-302-0148	SPOTTED HORSE FELL	440	1,243.50	1,243.50
A10-302-0149	EAGLE HORN PAUL ALLEN	491	460.50	460.50
A10-302-0150	BEAR SOLDIER GEORGE (CHARLES)	542	504.00	504.00
A10-302-0151	BLACK BEAR WILLIAM (WALTER)	593	386.00	386.00
A10-302-0152	ROUGH SURFACE SAMUEL	717	1,009.50	300.53
A10-302-0153	FIRECLOUD JOSEPH SR.	750	5,536.40	520.00
A10-302-0154	LONGSTEPS BERNADINE	767	2,560.50	2,199.99
A10-302-0155	DRIVER GARFIELD	901	1,693.00	73.87
A10-302-0156	FIRE CLOUD ALFRED	918	403.50	403.50
A10-302-0157	WHITEHORSE LOUIS	954	2,320.00	2,320.00
A10-302-0158	SHOT AT LEO	960	555.00	555.00
A10-302-0159	MOKEKTE LAWRENCE	986	699.00	192.42
A10-302-0160	ONE BULL HENRY	990	453.00	453.00
A10-302-0161	CROSS JULIA (MRS. WILLIAM)	3132	2,204.00	1,612.09

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A10-302-0162	BEAR AT BAY JULIA	1018	588.50	588.50
A10-302-0163	YELLOW EARRINGS THOMAS	1502	4,715.00	2,456.35
A10-302-0164	ANTELOPE EDWIN OR EDWARD	1509	3,637.00	3,196.39
A10-302-0165	HONA GEORGE	1581	1,382.50	799.99
A10-302-0166	IRON BULL MARTIN	2368	1,516.00	UNKNOWN
A10-302-0167	VERMILLION CHARLES	2854	400.42	168.59
A10-302-0168	SHOOTER EDWARD	2892	1,026.50	828.00
A10-302-0169	JOHN ELK	2988	1,113.92	211.00
A10-302-0170	HIGH CAT BERTHA (MRS PAUL)	3027	541.50	541.50
A10-302-0171	IRON LAVATTA ANNIE	3392	116.00	116.00
A10-302-0172	MAKES TROUBLE CANOPA (ANNIE)	3281	601.50	601.50
A10-302-0173	DOG EAGLE JAMES	3838	431.15	431.15
A10-302-0174	SHOOT STRAW THOMAS	3871	3,792.05	1,925.73
A10-302-0175	INDUSTRIOUS LAWRENCE (PAUL)	3880	703.00	464.35
A10-302-0176	LONG BULL LIZZIE (SWIMMER)	4286	1,238.00	1,238.00
A10-302-0178	WEARS HORNS NELLIE	4587	3,034.00	1,379.27
A10-302-0179	DUNCA ELLEN	2933	2,237.77	2,232.77
A10-302-0181	YELLOW EARRINGS HARRIET	2922	1,658.50	1,657.84
A10-302-0182	FAST HORSE JOSEPH	2937	400.00	302.37
A10-302-0184	WHITE HORSE THOMAS	350	501.00	116.80
A10-302-0185	ERNEST TWO RUNS	459	730.50	581.08
A10-302-0186	LAWRENCE MAGPIE EAGLE	774	2,974.00	785.65
A10-302-0188	CRAZY BEAR	3052	55.00	55.00
A10-302-0189	RED PHEASANT SAM MRS.	3082	12.00	12.00
A10-302-0190	SHOT THE BEAR MAGGIE	3413	292.00	292.00
A10-302-0191	LONEMAN MARY	3465	11.00	11.00
A10-302-0192	WARRIOR LEAN MRS. OR WINCINCALA	2239	286.92	210.39
A10-302-0193	GOODIRON JOSEPH T.	2674	2,514.00	482.05
A10-302-0194	RED FOX CHARLES	2637	3,364.00	1,099.11
A10-302-0195	HUFF NELLIE (HORAIN)	2591	5,189.00	UNKNOWN
A10-302-0196	LANIGAN MAMIE (MELVIN)	2535	4,499.00	262.41
A10-302-0197	RUNS THE HOOPE AGNES	2549	837.00	837.00
A10-302-0198	HALSEY LOUIS	2474	224.00	224.00
A10-302-0199	ONE HORN DORA (PRETTY BEAR)	2470	359.00	359.00
A10-302-0200	COLD HAND CLEMENT	2450	5.00	5.00
A10-302-0201	OWNS MEDICINE HENRY	2419	199.02	199.02
A10-302-0202	BIG SHIELD PIUS	2415	613.00	613.00
A10-302-0203	WALKING CLOUD CHARLES	2403	314.96	186.47
A10-302-0204	SHIELD NECKLACE LEO	3403	49.00	UNKNOWN
A10-302-0205	RAMSEY CHARLES	2389	5,259.00	984.95
A10-302-0206	HUFF JOSEPH	2335	3,862.46	UNKNOWN
A10-302-0207	COLD HAND DANIEL	2312	852.00	13.94
A10-302-0208	NELSON EAGLE BOY	2286	359.00	359.00
A10-302-0209	EAGLE STAFF CHARLES	2274	2,541.00	2,541.00
A10-302-0210	IRELAND ANDREW	2260	82.50	UNKNOWN
A10-302-0211	MANY HORSES FRANCIS	2254	3,615.00	2,123.81
A10-302-0212	CHASE IN THE WOODS	2253	178.00	178.00
A10-302-0213	IRONSHIELD BERNARD	2250	490.00	490.00
A10-302-0214	SHOOT THE BUFFALO LUKE	2247	1,082.99	431.37
A10-302-0215	BLACKBEAR CHARLES OR SHUTTY BEAR	2221	3,660.00	1,920.89
A10-302-0216	WHITE LIGHTNING JOE	2190	1,076.00	477.76
A10-302-0217	BRAVE BULL CLAUDE	2189	789.07	788.06
A10-302-0218	RUNS THE MIDDLE MRS.	2140	768.00	768.00
A10-302-0219	COMES LAST THOMAS (EHAKAKU)	2159	197.00	UNKNOWN
A10-302-0220	LITTLE CROW JOHN	2063	5,128.00	1,272.90
A10-302-0221	CRAZY WALKING PAUL	2062	4,990.00	151.03
A10-302-0222	GOOD BOY OSCAR	2051	70.00	70.00
A10-302-0223	ALL YELLOW JAMES	2020	1,681.00	1,652.16
A10-302-0224	BUCKLEY JOHN	2012	349.00	UNKNOWN
A10-302-0225	BLACK HOOP BENEDICT	1998	1,447.00	1,447.00
A10-302-0226	LOVE JOY MARY (SMITH)	1996	1,147.00	407.60
A10-302-0227	BIG BOY MARY (TWO SHIELDS)	1976	361.00	361.00
A10-302-0228	YELLOW HAMMER EDWARD	1964	2,914.00	1,310.58
A10-302-0229	HAS TRICKS MARY	1946	815.00	215.79
A10-302-0230	HAS TRICKS JEROME	1943	4,241.00	423.25
A10-302-0231	DWARF CLAUDE	1939	3,506.00	946.29
A10-302-0232	SIAKA CLARENCE	1896	844.00	844.00
A10-302-0234	STANDING SOLDIER LOUISE	1864	287.00	287.00
A10-302-0235	CASKE DAVID SR.	1921	326.00	326.00
A10-302-0236	NO HEART ALBERT SR.	1746	72.90	72.90
A10-302-0237	CHARGING EAGLE JOHN	1739	345.00	345.00
A10-302-0238	WHITE BIRD PHILLIP	1730	97.59	97.59
A10-302-0239	TWIN JOSEPH SR.	1635	1,274.00	1,274.00
A10-302-0240	JOHNSON JACOB	1612	160.00	160.00
A10-302-0241	FORTE EMMA (BRUGIER)	1095	159.51	159.51

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ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A10-302-0242	STRIPED CLOUD LOUISA (LONEMAN)	802	3,307.00	31.67
A10-302-0243	STRIPED CLOUD CECELIA (BULLHEAD)	801	224.00	10.00
A10-302-0244	HALSEY SAMUEL	793	3,911.00	366.05
A10-302-0245	HALSEY JOSEPHINE (SILK)	789	4,585.00	46.11
A10-302-0246	HALSEY JACOB	786	5,987.00	UNKNOWN
A10-302-0247	BLACK CLOUD FELIX	430	771.50	355.91
A10-302-0248	WHITESELL JOHN	551	42.95	42.95
A10-302-0249	KILLS THE ENEMY MORY OR TOKAKTA	106	1,042.00	585.21
A10-302-0250	GRASS TWIN EMMA	3544	1,490.00	1,490.00
A10-302-0251	WALKER LUCY	3540	439.00	439.00
A10-302-0252	DIFFERENT TAIL (GOOD GENERATION)	3512	724.32	724.32
A10-302-0253	GAYTON MAGGIE	3467	334.95	136.46
A10-302-0254	LAFROMBOISE SALLY BAIN	3457	1,156.56	662.96
A10-302-0255	YELLOW LODGE ELLA	3240	2,124.00	2,124.00
A10-302-0256	YELLOW HAMMER FLORIA	3225	2,549.00	1,593.16
A10-302-0257	BUFFALO BOY JOSEPHINE	3208	2,638.00	2,638.00
A10-302-0258	EAGLE STAFF MRS. (CHIEF WOMAN)	3199	369.49	310.86
A10-302-0259	BEAR PAW JULIA	3178	58.92	58.92
A10-302-0260	TRACKRIDER MARGARET	3143	48.00	48.00
A10-302-0261	JOSEPH RED BEAR	1010	2,204.00	1,612.09
A10-302-0262	GOODIRON LUCILLE	3094	2,518.00	UNKNOWN
A10-302-0263	YOUNG BEAR BESSIE.	3092	4,690.00	1,238.93
A10-302-0264	IRONROAD MARY	3090	304.00	304.00
A10-302-0265	SEE THE BEAR REBECCA	3084	279.00	279.00
A10-302-0266	TAKES THE HAT CATHERINE	3066	222.00	214.00
A10-302-0267	LOANS HIM ARROWS MRS. OR GRAY HORNS	3063	2,702.00	698.43
A10-302-0269	AZURE HENRY	2958	502.65	104.90
A10-302-0269	WHITE TWIN WILLIAM	2955	4,008.00	1,200.48
A10-302-0271	IRONBOULDER JOHN JACK	2616	8,290.00	UNKNOWN
A10-302-0272	MOLASH MANDY (BUCKLEY)	2582	968.00	243.41
A10-302-0273	NO TWO HORNS JOSEPH	2367	424.00	424.00
A10-302-0274	IRONROAD ANDREW	2330	346.00	346.00
A10-302-0276	LEAN WARRIOR	2275	1,102.00	1,102.00
A10-302-0277	BEARS HEART EUGENE	2269	314.45	314.45
A10-302-0278	SHOOTS THE ENEMY JOSEPHINE	2265	1,101.00	1,101.00
A10-302-0279	USES HIS ARROW BLUE	2119	526.00	526.00
A10-302-0281	FOOL BEAR CHARLES SR.	2115	2,923.00	397.64
A10-302-0281	PRETTY BEAR JOHN	2111	4,999.00	UNKNOWN
A10-302-0282	SWIFT EAGLE ELI (WALKER)	2098	4,359.00	2,813.47
A10-302-0283	GOOD CROW AMOS	2096	1,521.00	1,521.00
A10-302-0284	KING SAMUEL	2083	121.07	83.86
A10-302-0285	KEEPSEAGLE LOUISA	2069	2,288.00	1,394.98
A10-302-0286	LAFROMBOISE LUCY (BROUGHT PLENTY)	1981	1,256.00	1,256.00
A10-302-0287	TIOKASIN RICHARD	1696	2,744.00	91.60
A10-302-0288	CALLOUS LEG AMOS	1679	1,940.00	1,940.00
A10-302-0289	STRIPED CLOUD FRANCIS	1642	1,953.00	532.37
A10-302-0290	CHASE RED HORSE	1628	3,172.00	1,271.57
A10-302-0291	ANTELOPE EMMA	1590	3,037.00	3,037.00
A10-302-0292	WHITE HORSE SEBASTIAN	1579	402.00	UNKNOWN
A10-302-0293	SILK JOHN SR.	956	221.91	39.98
A10-302-0296	ALKIRE JAMES	541	3,040.00	27.89
A10-302-0297	BRISTLING SOPHIE (MRS LUCAS)	3057	3,535.00	3,535.00
A10-302-0298	VAULTIER MATILDA	3052	3,511.00	3,511.00
A10-302-0299	IRONROAD HELEN	3111	1,305.00	631.99
A10-302-0300	BLACKTONGUE VICTORIA	3116	1,878.00	1,878.00
A10-302-0301	MANY HORSES MARY	3105	2,768.30	990.57
A10-302-0302	BULL BEAR JULIA	3169	216.00	122.19
A10-302-0303	BLUEBOY CLARA (WICIGA)	3155	1,698.00	1,698.00
A10-302-0304	WHITE TWIN MARY	3225	3,636.00	UNKNOWN
A10-302-0305	KIDDER JENNIE MRS.	3229	234.00	234.00
A10-302-0306	SWIFT HAWK ANNA	3237	750.00	750.00
A10-302-0307	COTTONWOOD LAURA	3237	4,565.00	302.95
A10-302-0309	HIGH DOG STELLA	3498	550.00	550.00
A10-302-0309	YELLOW BIRD MRS. (COLD HAND)	3423	99.00	99.00
A10-302-0310	YELLOW ELK MARY	3537	1,141.00	1,141.00
A10-302-0311	BRINGS WATER EMMA	3541	374.44	374.44
A10-302-0312	GRAYBULL ISABELLE	3543	2,268.00	1,930.54
A10-302-0313	AZURE MARY (LONDEE)	3559	5,483.00	UNKNOWN
A10-302-0314	FOLLOWS THE ROAD	3561	351.00	351.00
A10-302-0315	SMELLTRACK MARY (GOOD WOMAN)	3562	2,426.00	938.77
A10-302-0316	WHITE ABBIE (GAYTON)	3673	897.00	65.52
A10-302-0317	IRELAND ANDREW MRS.	3699	1,461.00	1,461.00
A10-302-0318	IRON BULL HARRIET	3692	106.00	106.00
A10-302-0319	FAST HORSE JANE	3707	153.00	153.00
A10-302-0320	WALKING THUNDER JOSEPHINE	3720	2,591.00	2,591.00

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A10-302-0321	BRINGS THEM MRS.	3726	2,470.00	2,470.00
A10-302-0322	ELK EDWARD MRS.	3736	234.76	234.71
A10-302-0323	FOUR YELLOW LODGE THERESA	3735	1,030.00	1,030.00
A10-302-0324	BEAR BOY PETER	2560	41.50	41.50
A10-302-0325	WHITE EAGLE JEROME	2187	198.00	198.00
A10-302-0326	IRONWOOD IGNATIUS	2301	796.66	353.27
A10-302-0327	IRON SHIELD HENRY	2412	182.00	182.00
A10-302-0328	BULL BEAR FRANK	2791	1,501.59	780.70
A10-302-0330	KATE TIOKEWIN	3040	443.00	UNKNOWN
A10-302-0331	MRS. NAPA BEARSHEART	3239	2,783.00	184.76
A10-302-1132	HENRY KILLS ALIVE	397	2,173.00	1,992.37
A10-302-1133	CHESTER CARRY MOCCASIN	455	498.00	270.01
A10-302-1134	THOMAS EAGLE SHIELD	3574	10.00	10.00
A10-302-1135	MRS.MAUD LEFT HAND	3189	1,932.50	UNKNOWN
A11-304-0002	JOHN KAKENOWASH	116	105.00	2.91
A11-304-0004	MARY RISING SUN	155	1,410.56	809.22
A11-304-0005	ALLERY JOSEPH	235	1,746.00	1,077.00
A11-304-0006	AZURE ALEXANDER	295	249.48	235.02
A11-304-0007	AZURE EMILY	303	100.00	2.08
A11-304-0008	AZURE ELIE	318	5,013.49	1,774.57
A11-304-0009	AZURE BERGER (GRAVELIN)	320	7,974.20	1,135.50
A11-304-0010	AZURE JOSEPH	386	2,889.00	382.64
A11-304-0011	BELGARDE VIRGINIA	450	487.50	487.50
A11-304-0012	BELGARDE JACQUES	471	450.00	UNKNOWN
A11-304-0013	BELGARDE VIGINIA (DUCHAIN)	489	3,520.00	1.00
A11-304-0014	AZURE MARY (BELGARDE)	498	1,114.13	1,114.13
A11-304-0015	BERCIER MARIE ROSE	561	231.99	13.00
A11-304-0016	CHAMPAGNE MARIE	740	3,310.00	1,705.91
A11-304-0017	CHARETTE SIMON	755	3,276.00	486.00
A11-304-0019	NORMAN DAUPHINAIS	787	4,549.50	88.46
A11-304-0019	DELORME PATRICE	1012	563.56	563.56
A11-304-0020	DUCEPT CELINA (WILKIE)	1081	1,083.11	400.77
A11-304-0021	ENNO MARY CELINA	1128	258.58	258.58
A11-304-0022	ENNO MARIE TISTIS (AZURE)	1137	7,032.00	1.65
A11-304-0023	FAGUANT JULIA (LAFOUNTAIN)	1147	4,930.00	118.93
A11-304-0024	GODON	1240	5,017.00	2.47
A11-304-0025	GOURNEAU JOSEPH JR.	1253	3,405.00	527.83
A11-304-0026	GOURNEAU LEANDER SR.	1265	70.00	70.00
A11-304-0027	LAVENDURE LARASE VANDAL	M703	53.33	53.33
A11-304-0029	GRANT CHARLES	1316	450.00	216.00
A11-304-0029	GRANT SARAH JANE (MCCLOUD)	1320	232.26	232.26
A11-304-0030	GRANT JOHN B.	1327	270.00	270.00
A11-304-0031	GRANT MARY	M22	8,280.00	558.33
A11-304-0032	GRANT WILLIAM	1355	1,210.00	610.82
A11-304-0033	HOULE WILLIAM JOHN	1447	990.00	23.91
A11-304-0034	HOULE JOSEPH	1451	402.89	80.00
A11-304-0035	JACQUEMART PETER	1472	176.00	176.00
A11-304-0036	JEANOTTE PATRICE	1491	4,878.00	88.50
A11-304-0037	JEROME FREDRICK	1508	4,348.00	163.08
A11-304-0038	LAFROMBOISE PATRICK	1644	649.76	627.09
A11-304-0039	LAFROMBOISE MARIE ROSE	1673	8,981.00	942.39
A11-304-0040	LAFROMBOISE PATRICE	1693	4,867.00	83.87
A11-304-0041	LAIRILLE CLEMENCE	1749	151.40	4.32
A11-304-0042	LAVALLIE FRANCIS	1789	6,750.00	320.97
A11-304-0043	LAVALLIE ELIZA (HOULE)	1790	572.00	572.00
A11-304-0044	LAVENDURE ISADORE	1812	230.00	230.00
A11-304-0045	LAVENDURE WILLIAM	1931	975.09	289.06
A11-304-0046	LEDEAUX ANTOINE	1869	881.71	23.06
A11-304-0047	LENOIR MICHAEL	1994	971.93	971.93
A11-304-0048	CECILIA MALATERRE	1930	10,292.19	42.00
A11-304-0049	MALATERRE JOHN	1931	2,584.00	46.35
A11-304-0050	MALATERRE EDWARD	1940	3,400.00	145.86
A11-304-0051	MALATERRE JOSEPH	1943	2,729.00	322.54
A11-304-0052	MALATERRE NAPOLEON	1947	8,629.41	395.22
A11-304-0053	MALATERRE PHILLIP	1949	4,635.17	484.16
A11-304-0054	AZURE MARY	1959	7,217.00	44.90
A11-304-0055	MASON JOSEPH	2035	2,922.00	398.62
A11-304-0056	MCCLOUD MARGARET	2026	1,765.00	1,765.00
A11-304-0057	MORTILLIS STARR (SECTOR)	2050	8.00	8.00
A11-304-0058	MONTOUR FRANCOIS	2073	529.00	350.78
A11-304-0059	MORIN ALEXANDER	2094	403.29	403.29
A11-304-0060	MORIN ISADORE	2134	432.00	432.00
A11-304-0061	NADEAU JOSEPH	2178	199.05	199.05
A11-304-0062	PAGE JOHN B.	2212	7,000.00	224.07
A11-304-0063	PAGE EDAR	2216	7,401.00	198.91

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A11-304-0064	PAGE JOSETTE	2219	7,485.00	302.39
A11-304-0065	PARISIEN JUSTINE CLAUDE	2235	5,168.00	1,392.39
A11-304-0066	PAYNAUDE SAMPSON	2246	870.91	870.91
A11-304-0067	ANTOINE PAUL	2269	620.60	620.60
A11-304-0068	PAYS PIERRE	2275	401.00	401.00
A11-304-0069	PELTIER BARTHALOMEW	2287	7,156.00	175.03
A11-304-0070	PERRINTEAU LARASE (LAPIERRE)	2325	3,344.00	13.81
A11-304-0071	POITRA ALFRED	2350	5,748.20	60.28
A11-304-0072	POITRA CHARLES (NO. 1)	2356	916.40	585.90
A11-304-0073	FOUGHTY ADELINE (POITRA)	2358	4,136.00	129.00
A11-304-0074	POITRA CHARLES (NO.3)	2365	1,480.59	1,480.59
A11-304-0075	PAGE JUDITH	2437	5,713.00	8.00
A11-304-0076	ROUSSIN EUSTACHE	2515	475.00	475.00
A11-304-0077	SMITH CHARLES	2554	121.65	121.65
A11-304-0078	SMITH ARTHUR	2579	2,996.00	106.50
A11-304-0079	ST.ARNAUD JOHN B.	2587	2,120.73	21.50
A11-304-0080	ST.ARNAUD JULIA B.	2588	2,899.45	34.59
A11-304-0081	ST.CLAIR ROBERT	2593	700.00	54.46
A11-304-0082	ST.GERMAINE ROSE	2602	5,373.00	558.37
A11-304-0083	ST.PIERRE MARTIN	2617	3,577.00	3,137.43
A11-304-0084	THOMAS MARGARET (HERMAN)	2660	1,106.00	1.97
A11-304-0085	THOMAS WILLIAM J.	2662	2,328.00	53.98
A11-304-0086	TURCOTTE MARGARET	2685	320.00	159.07
A11-304-0087	VIVIER NAPOLEON	2740	4,833.57	356.45
A11-304-0088	VIVIER ALEXANDER	2746	427.00	98.11
A11-304-0089	WARREN MARY DIONNE	2776	464.00	464.00
A11-304-0090	WILKIE JOSEPHINE (LAVENDURE)	2797	235.22	235.22
A11-304-0091	GRANDBOIS LOUISE (BELGARDE)	512	361.17	361.17
A11-304-0092	LONGIE LOUIS	1749	1,358.00	219.38
A11-304-0093	REFLECTING MAN MAGGIE	8	2,345.00	645.00
A11-304-0094	TOBINES MIKE MRS. (ENNEAS GIRL)	27	469.00	469.00
A11-304-0095	OSKINE	134	252.00	252.00
A11-304-0096	REFLECTING MAN JOHN	148	1,478.00	1,478.00
A11-304-0097	BELGARDE ANTOINE JR.	456	101.50	101.50
A11-304-0098	BONNEAU VICTORIA	579	52.28	52.28
A11-304-0099	MORIN MARYJUSTINE	711	1,202.83	1,202.83
A11-304-0100	DAUPHINAIS JOHN B.	784	284.00	284.00
A11-304-0101	DAUPHINAIS DAVID	788	1,516.00	1,516.00
A11-304-0102	DECOTEAU LAROSE (CHAMPAGNE)	901	3,183.00	1,191.07
A11-304-0103	DEJARLAIS LOUIS	967	5,074.00	3,648.00
A11-304-0104	TURCOTTE MARY LOUISE	968	3,961.00	2,893.56
A11-304-0106	LANDRY MARGARET	1723	111.74	111.74
A11-304-0107	LAFOUNTAIN SARAH (PRIMEAUX)	2467	101.00	73.66
A11-304-0108	VIVIER VIRGINIA	2745	699.73	699.73
A11-304-0109	WILKIE ALBERT	2786	8.00	8.00
A11-304-0110	BOTTINEAU MIKE	3190	352.00	352.00
A11-304-0111	BERCIER FRANCOIS	5537	406.30	406.30
A11-304-0112	BRELAND ALEX SR.	5726	6,911.00	179.23
A11-304-0113	DEMONTIGNY AMBROSE	6220	3,604.00	347.63
A11-304-0114	GRANT VIRGINIA	6998	901.00	400.00
A11-304-0115	LAFOUNTAIN ELIZABETH	7513	3,448.74	49.90
A11-304-0116	LATTERGRASS SARAH DIONNE	7847	238.95	238.95
A11-304-0117	BERCIER ANTOINE	11660	782.00	526.36
A11-304-0118	BELGARDE ADELE MARY	1194	6,022.50	108.62
A11-304-0119	GRANDBOIS DAVID	1296	132.00	UNKNOWN
A11-304-0239	WILLIAM ALLERY	207	982.45	360.47
A11-304-0240	GRANDBOIS LOUISE F. DESJARLAIS	510	361.17	361.17
A11-304-0241	PRIVRE MARY ALPHONSIN	665	772.93	17.55
A11-304-0242	BUNELL LOUIS	882	615.17	522.60
A11-304-0243	DELORME LOUIS	1019	790.00	54.35
A11-304-0244	GRANDBOIS DAVID	1296	132.00	2.23
A11-304-0245	LA FOUNTAIN PIERRE	1619	4,195.72	UNKNOWN
A11-304-0246	LA FOUNTAIN ISABEL DELOHAIS	1620	2,710.00	UNKNOWN
A11-304-0247	MARTELL MARY ROSE GLADUE	2003	910.36	910.36
A11-304-0249	MORIN ANASTASIA GLADUE	2111	265.05	265.05
A11-304-0249	MORIN ISADORE	2136	432.00	432.00
A11-304-0250	MORIN MARIE BEAUCHMAN	2155	33.35	33.34
A11-304-0251	POITRA JOSEPH ALFRED	2290	312.33	39.73
A11-304-0252	PRENEAU MARY JUSTINE	2469	225.85	225.85
A11-304-0253	ALLERY MARY LEMIRE	51470	163.92	163.92
A11-304-0254	WILKIE PAULINE ALLARD	09885	647.00	UNKNOWN
A11-790-0715	MITHCELL THOMAS	259	1,368.00	952.57
A11-790-0716	MARLAN RUEBEN	354	1,369.00	952.57
A11-790-0717	BLACK LUCY	433	1,370.27	367.59
A11-790-0718	PORTER PHILLIP	750	576.00	39.97

ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A13-380-0319	DICK JOSEPH	46-D	782.32	289.32
A13-380-0320	SHERIDAN JULIA (WHITE H.)	141-N	4,324.65	323.66
A13-380-0322	LASLEY JOHN	461	3,957.01	1,246.36
A13-380-0323	WILLIAM WEBSTER CAYOU	845-0180-N	2,361.92	1,835.00
A13-380-0324	SOLOMON HARRY	343	2,407.43	2,407.43
A13-380-0325	CANBY DAVID	811	708.05	UNKNOWN
A13-382-0134	JOHNSON JOSEPH (HAINES)	470	450.00	447.97
A13-382-0135	HOFFMAN SARAH	350	225.00	225.00
A13-382-0136	REDWING MARY ALLEN	793	198.95	198.95
A13-382-0137	ST. CLAIRE ELIZABETH	131	3,517.50	1,417.19
A13-382-0138	FLANDREAU NANCY (WEST)	456	467.50	619.50
A13-382-0140	BARKER CHARLES	382	1,714.00	1,714.00
A13-383-0112	LIEB JEANETTE (RICE)	368	213.95	213.95
A13-383-0113	WHITE LEO C.	1170	576.00	39.97
A13-383-0114	MENSLEY MARTHA (HENRY)	41	1,141.72	1,071.27
A13-383-0115	MCKEE ANSON	271	668.40	620.00
A13-383-0116	WHITE GROVER	942	1,222.99	1,222.99
A13-383-0117	LAMERE MARGUERETTE (KITTLE)	826	350.39	211.06
A13-383-0118	CLAY JOHN	643	2,812.22	981.12
A13-383-0119	OWENS MARY (HOUGHTON)	217	1,135.20	730.66
A13-383-0120	WHITE JAMES	941	3,179.43	439.05
A13-383-0121	CROSBY JOHN SR.	282	3,439.40	234.14
A13-383-0122	HUMPHREY HOMER	279	3,304.71	477.96
A13-383-0123	WOLF DANIEL	573	5,124.09	324.09
A14-342-0001	BLAKE JENNIE	1193	361.50	90.04
A14-342-0002	TWO ARROWS LULA	579	4,739.50	1,126.34
A14-342-0003	WILLIAMS EUNICE	701	4,502.00	680.50
A14-342-0004	WALKER WILLIAM	18	1,419.17	1,283.10
A14-342-0005	WHITE THOMAS	435	1,400.00	1,380.00
A14-342-0006	SAUL THOMAS	279	3,687.93	543.07
A14-342-0007	SKUNK GREGORY	1496	317.32	176.73
A14-342-0008	OWN ELIZABETH (ASHLEY)	720	816.00	516.61
A14-342-0010	PARKHURST JOSEPHINE (LODGE)	353	912.50	912.50
A14-342-0011	KEEBLE MAGGIE	361	926.00	926.00
A14-342-0012	WHITE MOUSE	367	7.30	7.30
A14-342-0013	WOUNDED KNEE PETER MRS. (SUGAR)	393	1,892.79	1,892.79
A14-342-0014	BIG EAGLE LEVI	290	3,514.05	2,906.28
A14-342-0015	MUSKRAT WALLCE (ASHLEY)	292	217.26	100.00
A14-342-0016	BIG EAGLE SARAH	296	1,067.75	1,067.75
A14-342-0017	WOOD PILER BLISS LEN	300	3,768.50	840.25
A14-342-0018	MEDICINE CROW	32	322.37	322.37
A14-342-0019	PLAYS WITH IRON	107	216.00	216.00
A14-342-0020	DRIFTING GOOSE LENA	423	503.50	503.50
A14-342-0021	IRVING JOSEPH	205	147.00	147.00
A14-342-0022	WHITE JAMES	209	409.41	409.41
A14-342-0023	ODD FACE GEORGE	250	187.50	187.50
A14-342-0024	OLDEST CHILD LUKE	254	186.95	186.95
A14-342-0025	EAR JOHN	270	256.67	256.67
A14-342-0026	FLUERY ROSE	274	317.50	260.24
A14-342-0027	CHUNKY WOMAN LOUISA	1218	205.75	205.75
A14-342-0028	HOWE SOPHIA	552	543.00	543.00
A14-342-0029	STANDING CLOUD AGNES	529	920.00	920.00
A14-342-0030	ST. JOHN JOSEPH	547	1,323.93	1,069.91
A14-342-0031	AGARD ANNA (WOMAN)	560	319.50	318.50
A14-342-0032	FIRE CLOUD JAMES	556	67.80	67.80
A14-342-0033	FIRE CLOUD THOMAS	567	328.20	328.20
A14-342-0034	MEDICINE CROW NELLIE	581	312.37	312.37
A14-342-0035	SHIELD AMOS	611	3,938.50	1,045.07
A14-342-0036	FOUR EAGLE BELLE	617	392.50	392.50
A14-342-0037	DARNY MARY	622	5,725.00	395.28
A14-342-0038	TREMBLING BLISS MAUD	313	1,552.00	1,552.00
A14-342-0039	SANTEE OLIVER	317	2,465.09	194.86
A14-342-0040	COMES UP FROM DIRT	342	28.35	28.35
A14-342-0041	NOYLE WOMAN MARY	337	1,081.50	1,081.50
A14-342-0042	CLARK SALLIE	344	1,244.00	1,052.32
A14-342-0043	LODGE MELVIN	362	4,006.50	1,074.28
A14-342-0044	ARROW HANNA	715	487.00	487.00
A14-342-0045	GOOD EAGLE MARY (PRATT)	736	119.00	339.00
A14-342-0046	STRONG BLANKET	786	2,128.90	2,128.90
A14-342-0047	RUNNING BEAR FLORENCE	809	5,698.00	2,784.19
A14-342-0048	WILGER MINNIE	910	234.40	234.40
A14-342-0049	JACOBS HENRY	800	1,673.50	1,673.50
A14-342-0050	THOMAS ROSS	946	512.00	512.00
A14-342-0051	STEP EMILY	950	336.00	336.00
A14-342-0052	ROSS PHILLIP	912	543.95	25.00

ABERDEEN AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
A14-342-0053	SHIELDS GRACE	663	793.50	450.36
A14-342-0054	OLD MAN CORA	677	351.50	351.50
A14-342-0055	BADGER JOHN	695	262.80	262.80
A14-342-0056	WHITE MOUSE EMMA	552	180.00	180.00
A14-342-0057	LITTLE EAGLE EDWARD	404	119.39	119.39
A14-342-0058	IRON NELLIE (SHIELD HELEN)	410	1,833.40	1,223.36
A14-342-0059	SMELLS THE EARTH	423	262.59	262.59
A14-342-0060	YOUST BENJAMIN	461	35.30	35.30
A14-342-0061	SURROUNDER JENNIE	470	3,389.00	438.05
A14-342-0062	MIDDLE TENT JOHN	511	380.00	380.00
A14-342-0063	HOWE GEORGE	764	693.75	693.75
A14-342-0064	BIG EAGLE SAMUEL	297	645.73	645.73
A14-342-0065	SAMUEL FLUERY	813	968.00	150.00
A14-342-0066	FIRETAIL LOUIS	591	3,266.50	124.00
A14-342-0067	STEP EMILY	850	336.00	336.00
A14-342-0068	FLUERY WILLIAM	844	3,373.50	1,461.38
A14-342-0069	SHORT BEAR SUSAN	660	513.05	513.05
A14-342-0070	WHITE MARY	644	255.00	255.00
A14-342-0071	BARRY CATHERNINE	623	3,193.50	1,830.91
A14-342-0072	JENNYS PETER	770	267.50	267.50
A14-342-0074	WALKING CRANE JOSEPH	1254	1,117.84	1,117.84
A15-343-0001	MCDONALD THOMAS	550	89.90	25.48
A15-343-0002	MEDICINE BIRD SAMUEL	64	4,229.00	2,571.01
A15-343-0003	SMALL DANIEL	110	4,775.95	1,163.54
A15-343-0004	LONG TURNKEY CHARLES	430	5,002.00	1,641.66
A15-343-0005	GOOD FACE HENRY	244	4,782.00	1,036.35
A15-343-0006	GRASS ROPE DANIEL	308	3,968.50	496.39
A15-343-0007	THOMPSON JOSEPH	15	2,840.50	789.40
A15-343-0009	ANNIE LA ROCHE	292	2,830.50	UNKNOWN
A15-343-0010	DRIVING HAWK	292	2,830.50	1,710.59
A15-343-0011	SWIFT HAWK JOSEPH EUGENE	21	4,810.50	1,094.42
A15-343-0012	IRON HAWK ROSIE	101	3,423.00	1,521.82
A15-343-0013	ESTES RUEBEN	509	5,715.50	551.69
A15-343-0014	THOMPSON MAR	16	295.30	295.30
A15-343-0015	TWO HAWK PETER	130	20.00	20.00
A15-343-0017	QUILT DANIEL	383	1,395.00	1,395.00
A15-343-0018	TOMPKINS ESTER	304	1,771.45	33.10
A15-343-0019	TOMPKINS GEORGE	305	793.99	354.65
A15-343-0020	BYRNES JAMES	183	660.00	660.00
A15-343-0021	HIGH ELK SAMUEL	255	459.50	459.50
A15-343-0022	FORKED BUTTE MAR	26	799.50	522.11
A15-343-0023	YELLOW GEORGE	27	586.00	586.00
A15-343-0024	FALLIS GROVER	55	5.00	5.00
A15-343-0025	YELLOW HELEN	269	3,334.50	630.73
A15-343-0026	FIRECLOUD JOHN	201	476.37	5.00
A15-343-0027	WALKING WOMAN	309	112.34	112.34
A15-343-0029	LEGGS SOPHIA	12	1,980.00	1,980.00
A15-343-0099	MARGARET SPOTTED BULL	479	616.00	123.50
A15-343-0100	GEORGE YELLOW	27	5.00	5.00

ANADARKO AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
B04-860-0155	ROSELLA GREEN	860N21-72	7,423.51	UNKNOWN
B04-861-0150	RACHEL MASQUAT DELACRUZ	7	265.71	84.90
B04-861-0151	DUDLEY MASQUAH	50	82.50	82.50
B04-861-0152	ROSA POYTOE WILLIAMS	91	330.00	330.00
B04-862-0132	MARTHA JACKSON	119	320.40	320.40
B04-862-0133	ALBERT J MASQUAT	134	2,277.52	189.98
B04-862-0134	WE ZAH	214	371.18	UNKNOWN
B04-862-0135	JOE TURTLE	211	1,962.56	UNKNOWN
B04-862-0136	ALICE WAHWASSUCK	208	533.48	77.63
B04-862-0137	PANASKA CHAPEAKOSHEKOKE	171	1,345.90	UNKNOWN
B04-862-0138	MARIE PEWAMO	380	592.31	UNKNOWN
B04-862-0139	FRED GREEMORE	446	3,736.30	UNKNOWN
B04-862-0140	MEXICO NORHACKUM	482	37.24	UNKNOWN
B04-862-0141	PO K TO	503	1,208.98	UNKNOWN
B04-862-0142	MAGGIE LINK	558	3,035.47	UNKNOWN
B04-862-0143	FRANCES K SHOPTEESE	590	2,649.30	UNKNOWN
B04-862-0144	JOHN WAHWASHOQUAH	654	491.70	UNKNOWN
B04-862-0145	THERESA THOMPSON GREEMORE	679	2,856.75	UNKNOWN
B04-862-0146	MAGGIE WHITEFISH BARNEY	715	105.00	UNKNOWN
B04-862-0147	SUSAN LECLAIR	738	1,665.49	50.00

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ANADARKO AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
B04-842-0148	WILLIE SHEKONE NESS	739	142.53	UNKNOWN
B04-842-0149	SQUA SE ZHICK	740	615.00	615.00
B04-842-0154	JOHN COOK	434N40-56	841.00	841.00
B04-943-0153	THOMAS GREEN	4	984.50	590.27

BILLINGS AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
C51-201-0028	GEORGE BULLCHILD	1731	312.00	UNKNOWN
C51-201-0029	PETERWHITEMAN	484	958.00	UNKNOWN
C51-201-0030	MARY OLDROCK	2498	282.00	UNKNOWN
C51-201-0031	PETER BLACKFACE GRANT	884	4,574.00	UNKNOWN
C51-201-0032	AGNES ROSE	316	5,944.25	UNKNOWN
C51-201-0033	DOUBLE OWLWOMN.AFTER.BUFFALO	1099	226.00	226.00
C51-201-0034	ARROWTOPKNOT	1732	180.00	180.00
C51-201-0035	RAGGEDWMN BEARMEDICINE	2013	110.00	110.00
C51-201-0036	VIRGINIA BILLEDEAUX	1985	486.87	UNKNOWN
C51-201-0037	DRESSEDLIKEAWOMAN/BLACKBULL	1201	5,059.00	1,613.94
C51-201-0039	FRED BLACKMAN	993	413.36	87.95
C51-201-0039	BLACKWEASEL	984	135.00	135.00
C51-201-0040	PERCY BULLCHILD	256	1,160.00	1,160.00
C51-201-0041	BARNEY CALFROBSERIBS	324	2,962.50	2,962.50
C51-201-0042	EMMA CALFROBE	199	240.00	240.00
C51-201-0043	MARY CHEWINGBLACKBONES	791	2,205.00	1,110.53
C51-201-0044	VICTOR CHIEFCOWARD	757	1,954.00	739.38
C51-201-0045	THOMAS DAWSON	1016	5,371.00	80.84
C51-201-0046	GEORGE DOGTAKINGGUN	1301	2,378.00	2,378.00
C51-201-0047	HERMAN DUSTYBULL	1762	543.00	UNKNOWN
C51-201-0048	GRETCHEN DUVALL	1364	376.00	376.00
C51-201-0049	PETER EAGLE	111	1,477.50	1,477.50
C51-201-0050	ELKYELLSINTHEWATERBEARCHIEF	796	195.00	195.00
C51-201-0051	UNDERBEAVERFLINTSMOKER	56	3,027.25	UNKNOWN
C51-201-0052	CECILE YOUNGMANCHIEF	1036	1,743.20	1,743.20
C51-201-0053	DIRTYFACEWHITEMAN	1364	539.40	539.40
C51-201-0054	ADAM WHITEMAN	429	2,337.00	122.13
C51-201-0055	MARY SHORTYWHITEGRASS	1406	1,115.46	1,115.46
C51-201-0056	THOMAS VIELLE	1675	2,980.00	871.12
C51-201-0057	SUSAN VIELLE	116	315.00	315.00
C51-201-0058	MARY WHITESHIELDVIELLE	1669	2,965.90	872.29
C51-201-0059	JOSEPHINE NEQUETTE	1935	1,092.00	371.60
C51-201-0060	MIDDLERIDER	999	2,522.40	2,522.40
C51-201-0061	MIDDLEPERSONNOCOAT	839	1,333.20	1,333.20
C51-201-0062	BAPTISTE MERCIER	1910	360.40	UNKNOWN
C51-201-0063	MILLIE MAGEE	437	602.32	UNKNOWN
C51-201-0064	ALBERT MADPLUME	339	1,792.00	1,792.00
C51-201-0065	PETER LUKIN	1607	135.00	135.00
C51-201-0066	TURTLE	1224	567.00	567.00
C51-201-0067	ANNIE TATSEY	24	2,005.25	1,594.91
C51-201-0068	FRONTSTRIKE TAKESGUNUP	1060	195.00	195.00
C51-201-0069	CHARLES POWELL	1787	922.79	UNKNOWN
C51-201-0070	JOSEPH OLLINGER	96	3,564.00	1,634.26
C51-201-0071	OLD ROCK	352	867.75	867.75
C51-201-0072	TIM NORUNNER	1383	2,073.72	2,073.72
C51-201-0073	WALLACE NIGHTGUN	1040	2,083.00	1,121.73
C51-201-0074	GEORGE HORN	123	651.00	651.00
C51-201-0075	MANYPIPES HOMEGUN	1916	2,461.00	1,490.96
C51-201-0076	HOMEGUN	1915	2,393.00	2,393.00
C51-201-0077	HENRY HAGAH	617	303.00	96.93
C51-201-0078	EMMA LAST STAR	1931	152.00	152.00
C51-201-0079	IRENE GOSS	1395	658.42	110.28
C51-201-0080	JAMES HOUSEMAN	1921	140.39	140.39
C51-201-0081	GOODMEDICINEPIPELAZYBOY	1499	519.40	519.40
C51-201-0082	GREENGRASSBULL	1373	3,123.80	3,123.80
C51-201-0083	GOODLEADERWOMAN HEAVYGUN	332	503.00	503.00
C51-201-0084	GOINGAFTERWATERSHORTROBE	1422	1,257.20	UNKNOWN
C51-201-0085	MIKEBADOLDMAN	436	4,293.00	833.94
C51-201-0086	ISABELLE BEARMEDICINE	1079	765.00	765.00
C51-201-0087	WEASELHEAD	1738	1,526.20	1,526.20
C51-201-0088	MINNIE WALYER	631	1,498.00	UNKNOWN
C51-201-0089	JOHN WAGNER	2195	1,006.27	1,006.27
C51-201-0090	JAPPY TAKESGUNONTOP	1743	495.80	495.80
C51-201-0091	MARGARET SPANISH	658	418.20	418.20
C51-201-0092	MARY SHORTY	1430	2,824.00	UNKNOWN

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
C51-201-0093	SHORTFACE	1796	3,034.40	1,307.04
C51-201-0094	SHOOTSFIRST	1432	240.00	240.00
C51-201-0095	RUSHESALONE RUNNINGFISHER	896	1,188.00	1,188.00
C51-201-0096	JOHN MORGAN	774	2,996.62	1,506.48
C51-201-0103	JOHN MESTAS	3124	1,170.00	426.20
C51-201-0104	CECILE CRE MEDICINEEAGLE HEAD	547	4,000.00	1,323.57
C51-201-0105	FRANK GUARDIPEE	2370	585.00	585.00
C51-201-0106	PETER MARCEAU	142	3,391.50	2,253.04
C51-201-0107	MARY WAGNER	2196	631.00	UNKNOWN
C51-201-0108	FRANK MOUNTAIN CHIEF	213	870.30	961.67
C51-201-0109	MINNIE DUSTYBULL GUARDIPEE	1723	4,045.00	4,045.00
C51-201-0110	BAPTISTE WEST WOLF	1107	3,263.00	UNKNOWN
C51-201-0111	JOSEPH YOUNGEAGLE	1769	591.80	91.11
C51-201-0112	JOSEPH WHITEGRASS	1405	2,065.38	1,032.38
C51-201-0113	HAIRY COAT	964	560.70	UNKNOWN
C51-201-1427	JEANETTE CALFROBE	183	2,424.00	1,301.14
C51-201-1428	JOHN MOUNTAIN CHIEF	223	44.00	44.00
C51-201-1429	JOHN P. CROFF	251	610.21	610.21
C51-201-1430	LOUISE CROFF	262	1,648.00	184.58
C51-201-1431	WILLIAM ROSE	319	796.00	UNKNOWN
C51-201-1432	MARY HEAVYGUN	335	1,267.00	1,267.00
C51-201-1433	MINNIE AIMSBACK	359	2,158.00	2,158.00
C51-201-1434	SWEETGRASSWOMAN GREENGRASSBULL	423	594.80	139.61
C51-201-1435	NIGHTHAWKFACE IRONEATER	453	757.75	757.75
C51-201-1436	CHARLES JUNEAU	466	540.00	21.71
C51-201-1437	JOHN DUCKHEAD	467	467.00	467.00
C51-201-1438	NETTIE RACINE	519	93.00	93.00
C51-201-1439	THOMAS RUNNINGRABBIT	536	258.00	UNKNOWN
C51-201-1440	MONROE ARNOUX	742	510.00	510.00
C51-201-1441	JOSEPH WOLFTAIL	777	1,741.00	UNKNOWN
C51-201-1442	WILLIAM TAILFEATHERS	801	239.00	UNKNOWN
C51-201-1443	WIPESHISEYES	998	70.00	70.00
C51-201-1444	CUTSDIFFERENT LITTLEPLUME	942	2,611.40	2,611.40
C51-201-1445	LOUIS LITTLEPLUME	945	1,466.00	UNKNOWN
C51-201-1446	FANNIE BLOOD	974	548.00	548.00
C51-201-1447	JOHN GOODGUN	987	3,178.00	3,179.00
C51-201-1448	ANNIE MIDDLERIDER	992	172.00	172.00
C51-201-1449	JOHN OLDCHIEF	1014	1,518.00	1,518.00
C51-201-1450	PETER AFTERBUFFALO	1084	175.00	175.00
C51-201-1451	CUTNOSE AFTERBUFFALO	1085	890.90	890.90
C51-201-1452	SAM MIDDLECALF	1114	4,421.00	1,912.24
C51-201-1453	MINNIE LABRECHE	1156	808.00	808.00
C51-201-1454	CROWEYES	1179	653.00	653.00
C51-201-1455	JOSEPHINE TURTLE	1199	2,054.00	2,054.00
C51-201-1456	ELLEN LONECHIEF	1209	632.11	UNKNOWN
C51-201-1458	ANNIE SPOTTEDBEAR	1271	498.00	498.00
C51-201-1459	SUTNSUNDER	1341	2,096.60	2,096.60
C51-201-1460	LOUIS CHAMPAGNE	1355	468.00	468.00
C51-201-1461	JAMES EARRINGS	1445	165.00	165.00
C51-201-1462	GENEVA CUTFINGER	1451	3,283.00	1,815.60
C51-201-1463	LAZYBOY	1520	2,366.40	2,366.40
C51-201-1464	JOSEPHINE GRANT	1619	728.95	728.95
C51-201-1465	CECILE YELLOWKIDNEY	1663	769.40	769.40
C51-201-1466	DANIEL LONECHIEF #1	1207	6,200.80	3,295.26
C51-201-1467	RIDESATTHEDOOR	1647	1,069.00	1,069.00
C51-201-1468	MARY KIPP #3	1702	2,436.00	2,169.70
C51-201-1469	CHARLES DUSTYBULL	1722	2,175.00	2,175.00
C51-201-1470	PHILLIP ARROWTOPKNOT	1734	2,853.00	460.24
C51-201-1471	MARGARET CROFF	1772	865.00	865.00
C51-201-1472	MARY POWELL	1785	285.00	285.00
C51-201-1473	JOHN GALBREATH	1809	201.00	201.00
C51-201-1474	ROBERT MANYHIDES	1909	3,470.00	UNKNOWN
C51-201-1475	PAUL HOMEGUN	1917	2,200.00	1,393.57
C51-201-1476	JAMES HOMEGUN	1920	986.00	UNKNOWN
C51-201-1477	MARY NEQUETTE	1936	420.00	420.00
C51-201-1478	EDUARD DOUBLERUNNER	1954	328.99	328.99
C51-201-1479	JOHN GROUND	2026	4,403.00	2,025.15
C51-201-1480	DORA DENNIS	2098	1,025.00	UNKNOWN
C51-201-1481	CECELIA MCKELVEY	2181	83.76	83.76
C51-201-1482	WILLIAM HENKEL	2319	1,075.00	UNKNOWN
C51-201-1483	ANNA FISHER	2314	1,562.00	69.21
C51-201-1484	VICTORY BEFORETIME WARBONNETT	2583	985.00	985.00
C51-201-1485	CAROLINE HENKEL	2652	3,838.00	UNKNOWN
C51-201-1486	FRANK J. BASTIEN	2698	2,573.00	113.04
C51-201-1487	CLARA SCHMIDT	3303	2,398.00	980.79

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
C51-201-1488	FRANK CHOATE	99	2,148.30	UNKNOWN
C51-201-1489	JOSEPH CALFROBE	108	457.00	UNKNOWN
C51-201-1490	HOLLARSATNIGHT BIGBEAVER	201 1/2	4,642.00	UNKNOWN
C51-201-1491	THOMAS SPOTTEDEAGLE	232	5,070.00	1,787.89
C51-201-1492	FRANK RACINE	518	4,450.00	UNKNOWN
C51-201-1493	HENRY MAIN	696	60.21	UNKNOWN
C51-201-1494	MARY GALLINEAUX	734	4,486.00	UNKNOWN
C51-201-1495	IRENE RUNNINGFISHER	905	2,200.00	UNKNOWN
C51-201-1496	MUDHEAD	956	364.80	UNKNOWN
C51-201-1497	JULIA POWELL	1154	2,909.99	UNKNOWN
C51-201-1498	GEORGE CROFF	1775	28.31	UNKNOWN
C51-201-1499	ANNIE POWELL	1787 1/2	220.00	UNKNOWN
C51-201-1500	CHARLES DELANEY	2089	3,560.00	UNKNOWN
C51-201-1501	WILBERT MORGAN	2415	126.66	UNKNOWN
C51-201-1502	MILLIE DOUGLAS	2438	22.10	22.10
C51-201-1503	MAGGIE ROSE MARCEAU	143	5,337.00	UNKNOWN
C52-202-0052	SMELL CHILD	923	1,816.00	1,816.00
C52-202-0053	TAKES ENEMY	1	1,061.00	UNKNOWN
C52-202-0054	LUCY HILL TURNSBACKPLENTY	1931	1,011.00	1,011.00
C52-202-0055	ELKIN STANDSOVERBULL	2114	992.00	UNKNOWN
C52-202-0056	JOSEPHINE GOODHORSE HILL	282	144.00	144.00
C52-202-0057	OTTO BEARCLOUD	1542	1,624.00	UNKNOWN
C52-202-0058	JOSEPHINE SHANE WHITECLOUD BEARORD	1705A	2,266.00	UNKNOWN
C52-202-0059	OLIVER LIONSHOWS	1892	2,311.00	UNKNOWN
C52-202-0060	ROSE DREAMER BEARCLOUD	2234	108.00	108.00
C52-202-0061	CHARLES ROBINSON	347	4,204.00	UNKNOWN
C52-202-0062	OLIVE RECORDBLADE VENNE	99	1,136.00	UNKNOWN
C52-202-0063	WILLIAM SHANE SR	155	1,683.00	UNKNOWN
C52-202-0064	AUSTIN LIONSHOWS	2190	1,295.00	178.68
C52-202-0065	DORA RECORD WHITEMAN	98	700.00	UNKNOWN
C52-202-0066	STANLEY RIDESHORSE	1763	3,263.00	1,622.07
C52-202-0067	TAKESHORSESONTHEPRAIRIE	2070	522.00	522.00
C52-202-0068	WOMANONTOPOFTHEMOUNTAIN	1087	1,953.00	1,953.00
C52-202-0069	BERNARD OLDCOYOTE	2031	225.00	225.00
C52-202-0070	YELLOWBIRD	1310	532.00	UNKNOWN
C52-202-0071	BEATRICE SACO	592	1,055.00	444.83
C52-202-0072	RALPH SACO	591	939.00	345.75
C52-202-0073	WESLEY MILLIKEN	1485A	485.00	485.00
C52-202-0074	MEDICINE OLD COYOTE	2030	36.00	36.00
C52-202-0075	THE WOMANMEDICINETOP	574	315.00	315.00
C52-202-0076	MRS. JACOB WOODTICK	2362	1,001.00	1,001.00
C52-202-0077	JACKSON STEWART	966	3,320.00	1,060.74
C52-202-0078	SARAH W PEASE	1317	2,380.00	307.33
C52-202-0079	PLAYS WITH HIMSELF	1226	1,333.00	1,333.00
C52-202-0080	FRANK BETHUNE	2281	119.00	119.00
C52-202-0081	OLD CRANE	1956	422.75	UNKNOWN
C52-202-0082	MOUNTAIN SHEEP	1091	573.25	UNKNOWN
C52-202-0083	JOSEPHINE LAFORGE	1254	110.00	110.00
C52-202-0084	KATIE DREAMER LODGEPOLE	1943	251.00	251.00
C52-202-0085	ROSE PETERS	1287	1,386.25	UNKNOWN
C52-202-0086	GETS DOWN	2023	222.00	222.00
C52-202-0087	PLENTY HAWK	1747	333.00	266.52
C52-202-0088	HARVEY BIG LAKE	4021	234.00	UNKNOWN
C52-202-0089	HARRY MEDICINE ROCK ABOVE	1798	365.00	UNKNOWN
C55-204-0038	KILLED IN LINE LITTLE SHIELD	136	130.00	130.00
C55-204-0039	ROUND HEAD	29	460.25	460.25
C55-204-0040	CHIEF WOMAN	1144	499.25	499.25
C55-204-0041	FIRSTKILLHEADDRESS	28	446.25	446.25
C55-204-0042	JOHN SHORTMAN	53	535.25	535.25
C55-204-0043	DANCING DOG MOCCASIN	469	757.25	757.25
C55-204-0044	BULL CAP	445	819.50	819.50
C55-204-0045	FOUR NATIONS STRIKE	1146	655.25	655.25
C55-204-0046	STANDING CHIEF	458	683.25	683.25
C55-204-0047	JAMES SNOW 1	85	673.50	673.50
C55-204-0048	STANDING BEAR	1142	490.50	490.50
C55-204-0049	RAISIND DAY	336	956.50	956.50
C55-204-0050	PAUL MEDICINE BOY	447	320.00	320.00
C55-204-0051	LAME CHICKEN	617	1,004.25	1,004.25
C55-204-0052	LOOKING WALKING	394	552.25	552.25
C55-204-0053	BELKNAP FOX	207	862.50	862.50
C55-204-0054	BULL HEAD	564	1,565.25	573.45
C55-204-0055	SINGER	295	1,276.18	1,276.18
C55-204-0056	LOUIS SPEAKSTHUNDER	281	584.00	584.00
C55-204-0057	SPEAK THUNDER	279	942.75	942.75
C55-204-0058	IRONWINGS REDELK	744	1,582.25	1,582.25

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
C55-204-0059	KILLEDINTHEBRUSH	594	1,394.25	1,394.25
C55-204-0060	TURN TOES	912	946.25	946.25
C55-204-0061	LOUIS STRIKE	470	1,095.25	1,095.25
C55-204-0062	TAKES THE BOW	47	1,052.25	1,052.25
C55-204-0063	HOLY TREE	670	675.26	675.26
C55-204-0064	CHARLES J BUCKMAN	101	1,059.57	1,059.57
C55-204-0065	ATTACKS	712	1,617.70	1,617.70
C55-204-0066	TAKESAPRISONER WARRIOR	544	949.40	949.40
C55-204-0067	THE GIRL	291	651.73	651.73
C55-204-0068	MEDICINEROSE	597	1,350.62	1,350.62
C55-204-0069	AMY BLACKBEAR WHITE	1081	1,026.00	749.47
C55-204-0070	IRON MAN 1	92	1,719.25	1,719.25
C55-204-0071	MRS J B DORRITY	1169	1,820.75	1,820.75
C55-204-0072	GROWINGWHITEWOMAN	592	1,348.84	1,348.84
C55-204-0073	RETURNING HUNTER	673	1,497.25	1,497.25
C55-204-0074	MARK FISH GUTS	601	1,379.05	1,094.54
C55-204-0075	HIRAM FACING	424	1,826.60	1,826.60
C55-204-0076	ONE WOMAN BUCK	250	843.25	843.25
C55-204-0077	WIND CHIEF	241	1,122.20	680.44
C55-204-0078	EMMA TRAIL LODGE	416	1,681.00	1,681.00
C55-204-0079	FELICITAS TWO KILL	822	2,239.00	2,239.00
C55-204-0080	GEORGE ROCK	525	2,235.00	2,235.00
C55-204-0081	BROWN BEAR WOMAN	532	3,040.10	2,453.89
C55-204-0082	SAM KING	171	1,210.50	1,210.50
C55-204-0083	JULIA SHADE	420	3,216.00	3,216.00
C55-204-0084	GARTER SNAKE	60	4,336.25	2,456.50
C55-204-0085	BOB TAILBEAR	141	5,003.00	857.60
C55-204-0086	JULIA TURCOTTE	185	544.00	544.00
C55-204-0087	MARY MATT HAWLEY	1072	2,899.53	839.24
C55-204-0088	HERBERT SOLDIER	750	934.00	562.54
C55-204-0089	THERESA BLACKBULL LONGFOX	791	2,777.00	2,777.00
C55-204-0090	THE BOY	567	2,576.25	2,576.25
C55-204-0091	DEAF WOMAN	247	611.01	245.07
C55-204-0092	MARY KIRKALDEI	425	559.25	559.25
C55-204-0093	CAROLIEN BIG BEAVER	923	6,353.50	4,392.82
C55-204-0094	EFFIE TALKSDIFFERENT	492	1,040.77	218.44
C55-204-0095	JOHN SANBORN	842	703.50	703.50
C55-204-0096	FIRST CHIEF	563	3,943.64	1,372.24
C55-204-0097	PAUL SLEEPINGBEAR	24	1,075.00	211.71
C55-204-0098	ALOYSIUS CHANDLER	1	4,449.00	3,704.58
C55-204-0099	RUSSELL YOUNG	1058	323.00	323.00
C55-204-0100	GERTRUDE HAWLEY	110	1,678.00	643.71
C55-204-0101	FRANK WHEELER	296	3,615.00	724.19
C55-204-0102	WOUNDED FOOT	290	7,490.25	209.96
C55-204-0103	HELEN EARTHBOY	629	4,522.00	617.85
C55-204-0104	FRED V LODGE	1039	3,846.00	3,846.00
C55-204-0105	PETER WETAN	260	336.00	UNKNOWN
C55-204-0106	SPIRIT BOY	623	1,369.98	1,369.98
C55-204-0107	LESLIE KILLEAGLE	987	5,202.00	5,202.00
C55-204-0108	WILLIAM KILLEAGLE	989	1,670.00	UNKNOWN
C56-206-0027	LIGHTENING WOMAN BEARNOSE	54	101.50	101.50
C56-206-0039	SAMUEL ALLISON	11	2,305.25	UNKNOWN
C56-206-0039	BEGS HIS OWN	59	1,568.25	1,568.25
C56-206-0040	HANNAH BOWSHIELDS	82	126.00	UNKNOWN
C56-206-0041	SAMUEL CONGER	185	2,288.00	UNKNOWN
C56-206-0042	ROSE CHASER CLEVELAND	161	1,698.00	UNKNOWN
C56-206-0043	SOPHIA BURSHIA	145	126.25	UNKNOWN
C56-206-0044	JOSEPH CLOUD HAIL	173	614.50	614.50
C56-206-0045	FANNIE CONGER	186	160.00	160.00
C56-206-0046	COUNTER	204	435.75	UNKNOWN
C56-206-0047	GOODHAND CROW	215	878.75	UNKNOWN
C56-206-0048	GOOD NEST DRUM	290	3,589.75	UNKNOWN
C56-206-0049	MABEL C DUPREE	290	864.20	UNKNOWN
C56-206-0050	HUGH EAGLEBEAR	295	182.74	124.45
C56-206-0051	GOODWOMAN EAGLEMAN	303	240.00	240.00
C56-206-0052	JOHN FOOTE	338	130.50	UNKNOWN
C56-206-0053	MARY FOOTE	339	3,045.00	3,045.00
C56-206-0054	ALBERT FOOTE	349	1,635.07	UNKNOWN
C56-206-0055	SANTEE IRON RING	450	709.00	351.81
C56-206-0056	EUNICE GRAY BEAR	379	120.00	120.00
C56-206-0057	KILLS SPOTTED	482	1,363.25	1,363.25
C56-206-0058	EDWARD LAMBERT	511	242.00	242.00
C56-206-0059	LIZZIE LAMBERT	518	876.25	876.25
C56-206-0060	LEWIS L. LAVATTA	529	1,000.00	931.94
C56-206-0061	LUCY LONE DOG	571	150.00	150.00

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ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
056-206-0062	FRANK LONGEE	574	581.30	UNKNOWN
056-206-0063	ELLA LONGEE	575	1,102.00	UNKNOWN
056-206-0064	WILBUR LOVES HIM	594	195.00	195.00
056-206-0065	JOHN LONGTREE #1	597	1,473.92	1,473.92
056-206-0066	MEDICINE EAGLE	636	137.50	UNKNOWN
056-206-0067	JAMES MELBOURNE #1	648	325.50	325.50
056-206-0068	RATTLING IRON	727	156.75	156.75
056-206-0070	MAT RING	803	1,325.00	1,325.00
056-206-0071	RAY SCOTT	836	156.00	156.00
056-206-0072	SCOUT	840	1,792.85	1,792.85
056-206-0073	FOUR CLOUD SHARP EYES	848	1,267.12	1,239.77
056-206-0074	RED BIRD SHARP EYES	854	713.00	713.00
056-206-0075	CHARLES TAKES THEM	931	2,532.50	2,532.50
056-206-0076	SHADOW TAKES THEM	932	66.00	UNKNOWN
056-206-0077	WILLIS TAYLOR	937	3,319.00	3,319.00
056-206-0079	ELLEN TURNING PINE	961	666.00	666.00
056-206-0080	SUSAN TWO FACE SMALL	970	3,208.00	3,208.00
056-206-0091	FRED WALKING EAGLE	990	4,247.00	516.92
056-206-0092	JAMES WALKING EAGLE	993	1,565.07	UNKNOWN
056-206-0093	JOHN WHITEHAWK	1034	3,171.50	3,171.50
056-206-0094	OWL SHIELD WOMAN	1039	320.00	320.00
056-206-0095	MARIANNA WHITEHAWK	1045	363.00	UNKNOWN
056-206-0096	YELLOW HAWK	1081	1,069.72	1,069.72
056-206-0097	SHECANA YOUNGMAN	1091	1,796.50	1,796.50
056-206-0098	CHESTER ARTHUR	1129	248.00	248.00
056-206-0099	BAD HAWK ADAM	1132	1,107.00	1,107.00
056-206-0090	BEARCUB	1142	369.00	369.00
056-206-0091	JAMES BEAR HILL	1147	156.00	156.00
056-206-0093	HER BLANKET BEARSKIN	1173	209.00	209.00
056-206-0094	GOOD BLACKBACK	1182	1,195.25	1,195.25
056-206-0095	ALLEN CLANCY	1238	817.00	817.00
056-206-0096	WALTER CLARK #1	1244	1,500.00	UNKNOWN
056-206-0097	CLAUDE BIRD #1	1251	157.00	157.00
056-206-0098	CLOUD	1257	7,195.00	7,195.00
056-206-0099	GEORGE CONNORS #1	1264	200.00	180.25
056-206-0100	GRAY MANE CRAZY BULL	1277	303.50	303.50
056-206-0101	USES JAW DIGS THE GROUND	1290	891.50	UNKNOWN
056-206-0102	THOMAS DUCK	1291	547.00	461.95
056-206-0103	MARGARET LAPLANTE	1300	973.50	973.50
056-206-0104	THOMAS FIRE MOON #1	1319	357.25	357.25
056-206-0105	HAIL FISK ROSEBUD	1326	2,072.52	1,763.42
056-206-0106	EUGENE GRANDCHAMP #1	1369	1,350.50	207.25
056-206-0107	NANCY GROWING THUNDER	1379	3,629.50	3,629.50
056-206-0109	HATCHET WOMAN	1399	235.00	UNKNOWN
056-206-0109	WING WOMAN KNAPP	1443	513.50	UNKNOWN
056-206-0110	CHARLES LAMBERT #1	1450	407.00	407.00
056-206-0111	CAROLINE LAROQUE	1458	530.94	UNKNOWN
056-206-0112	JACKSON LOOKING	1484	156.00	156.00
056-206-0113	JOHN LONG FOX	1489	1,997.26	1,997.26
056-206-0114	SPOTTED BLANKET LUCKY	1496	323.00	323.00
056-206-0115	MAKES CLOUD FIGHTER	1506	456.00	456.00
056-206-0116	JOSEPH MARTIN	1514	3,667.50	UNKNOWN
056-206-0117	MEDICINE HEAD NIGHT	1530	537.35	537.35
056-206-0118	REDFEATHER #2	1564	1,206.50	582.04
056-206-0119	JOSEPH ROSEBUD	1620	2,040.46	2,040.46
056-206-0120	STEPHEN STANDING	1677	6,034.50	723.43
056-206-0121	POINTING IRON	1741	3,396.00	3,396.00
056-206-0122	RALEIGH FOUR STAR	1839	2,428.00	UNKNOWN
056-206-0123	NELLIE KING	2026	4,233.75	UNKNOWN
056-206-0124	GILBERT WALKER	2027	98.00	98.00
056-206-0125	PEARL STANDING	2176	1,212.00	UNKNOWN
056-206-0126	SHADOW WOMAN THUNDER HORSE	2802	717.50	717.50
056-206-0127	HELEN SILVER	2803	280.00	280.00
056-206-0128	TWO BONNETS HIGH BACK	2805	4,343.00	UNKNOWN
056-206-0129	BLANCHE REDDOOR	40	526.25	526.25
056-206-0131	ROBERT BUCK ELK	120	630.00	UNKNOWN
056-206-0132	GOOD HOWLING BIG FOOT	125	317.75	UNKNOWN
056-206-0134	WALKING CLOUD HALF RED	385	123.32	UNKNOWN
056-206-0135	HOWARD IRON LEGGINGS	445	190.84	UNKNOWN
056-206-0136	NANCY MURRAY	679	50.00	UNKNOWN
056-206-0137	JOHNSON PORCUPINE QUILLS	709	1,500.00	1,500.00
056-206-0138	RED	751	1,424.00	1,424.00
056-206-0139	AGNES RED BOY	811	1,959.50	UNKNOWN
056-206-0140	ANDREW SHIELDS	864	4,991.00	UNKNOWN
056-206-0141	HENRY SHIELDS	864	499.75	499.75

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BILLINGS AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
056-206-0142	GOOD CLOUD EAGLE BEAR	956	660.50	660.50
056-206-0144	WHITE SHIELD	1062	1,033.75	UNKNOWN
056-206-0145	ROSE ADAMS YELLOW EAGLE	1102	1,428.00	401.07
056-206-0146	CHARLES BLACK DOG	1154	429.00	UNKNOWN
056-206-0147	TESSA BLOUNT	1191	1,044.00	1,044.00
056-206-0148	GEORGE BLUE TALK	1197	480.00	480.00
056-206-0149	CHASING HAWK	1236	1,485.89	99.98
056-206-0150	VICTORIA BIRD	1252	2,265.00	2,265.00
056-206-0151	CRAZY BULL #2	1276	501.50	501.50
056-206-0152	EAGLE FEATHER #2	1293	204.50	204.50
056-206-0153	THE GIRL EAGLEFEATHER	1296	559.50	559.50
056-206-0154	BEDFORD FORREST SR.	1345	60.00	60.00
056-206-0155	LODGEPOLE FOUR STAR	1352	1,317.50	UNKNOWN
056-206-0156	HARVEY HAMILTON	1388	2,245.00	2,245.00
056-206-0157	MARY HAMMOND MATHEWS	1394	230.00	230.00
056-206-0158	THOMAS HANCOCK	1395	318.00	UNKNOWN
056-206-0159	STONEWALL JACKSON #1	1438	2,243.00	2,243.00
056-206-0160	LAST	1567	1,104.50	1,104.50
056-206-0161	WHITEWOMAN ONE CLAW	1562	371.00	UNKNOWN
056-206-0162	JIM OLD ROCK	1563	388.00	UNKNOWN
056-206-0163	CHARLES PARNELL	1574	227.00	UNKNOWN
056-206-0164	RED DOG THUNDERINGWOMAN	1594	755.50	UNKNOWN
056-206-0165	JAMES ROBERTS	1615	1,062.50	UNKNOWN
056-206-0166	RUNS THROUGH	1692	2,952.60	2,952.60
056-206-0167	WHITEMAN	1727	782.50	782.50
056-206-0168	NECK WALKING BULL	1745	145.30	UNKNOWN
056-206-0169	JOHN HUNTER	1843	75.00	UNKNOWN
056-206-0170	SAMUEL SMALL	1931	5,247.50	1,937.81
056-206-0171	SUSIE MYRICK	2856	3,561.00	2,612.74
056-206-0172	JOHN LEFT HAND THUNDER	534	730.00	UNKNOWN
056-206-0173	ROBERT WAR CLUB	998	1,024.00	1,024.00
056-206-0174	JESSIE WEYSIT BEAR SKIN	1718	2,089.00	UNKNOWN
056-206-0180	GOOD NIGHT DOG WASHINGTON	66	519.00	519.00
057-207-0040	MARGARET RISINGSUN	20	1,839.00	UNKNOWN
057-207-0041	AUSTIN AMERICANHORSE	5	5,068.00	UNKNOWN
057-207-0042	WALTER ANT	23	910.00	810.00
057-207-0043	HELEN ANT	24	4,168.00	UNKNOWN
057-207-0044	MINNIE BEARQUIVER	49	3,559.07	946.16
057-207-0045	MARTHA PUNCH REDWATER	SHAV49	673.80	UNKNOWN
057-207-0046	LAURA BOXELDER	58	1,059.50	1,059.50
057-207-0047	DAVID BEAVERHERART	61	803.00	803.00
057-207-0048	WHITE BIGFOOT	93	120.00	UNKNOWN
057-207-0049	HINTON BIGLEG	112	2,967.00	UNKNOWN
057-207-0050	SAMUEL BIGNOSE	116	1,743.31	193.98
057-207-0051	PAUL BLACKBEE	144	238.97	UNKNOWN
057-207-0053	ELLEN BRADY	170	408.68	408.68
057-207-0054	JOSEPH BROWNBIRD	187	407.41	UNKNOWN
057-207-0055	ANNA BROWNBIRD	199	591.04	UNKNOWN
057-207-0056	MINNIE CLUBFOOT	216	280.63	UNKNOWN
057-207-0057	JENNIE CRAZYMULE	244	514.00	564.00
057-207-0058	SARAH CRAZYMULE	246	973.19	UNKNOWN
057-207-0059	THERESA COOK	251	911.94	UNKNOWN
057-207-0060	ROSA CROOK	252	470.04	470.04
057-207-0061	DAVID DEARY	261	1,592.72	UNKNOWN
057-207-0062	JOHN DIVESBACKWARDS	265	1,230.00	UNKNOWN
057-207-0063	BESSIE DULL KNIFE	276	694.50	UNKNOWN
057-207-0064	JACOB EAGLEFEATHERS	280	649.50	649.50
057-207-0065	PERRY EASTMAN	293	575.00	UNKNOWN
057-207-0066	EDGAR FIGHTINGBEAR	308	1,410.00	1,327.44
057-207-0067	OTIS FINGERS	316	627.15	627.15
057-207-0068	PETER FIRECROW	318	300.00	UNKNOWN
057-207-0069	EUGENE FISHER	322	405.00	UNKNOWN
057-207-0070	KITTY BELLE SPANG FISHER	323	1,159.00	31.40
057-207-0071	CALLEUS FISHER	328	1,951.97	UNKNOWN
057-207-0072	MYRA FLYING	342	724.50	90.50
057-207-0073	THOMAS FLYING	347	1,025.30	979.65
057-207-0074	NELLIE WHITEFROG FLYING	349	3,368.30	UNKNOWN
057-207-0075	EDWARD GRAY	366	3,133.50	562.57
057-207-0076	NELLIE GRAY	367	3,916.00	UNKNOWN
057-207-0077	BRYAN J. HARRIS	412	262.00	UNKNOWN
057-207-0079	ROSE ALICE HAIRLEGSBEARHEART	421	1,590.00	UNKNOWN
057-207-0079	CHARLES HEADSWIFT	432	440.56	213.00
057-207-0080	HUBERT HOLLOWBREAST	438	7,540.00	UNKNOWN
057-207-0081	THOMAS HORSEROADS	450	985.00	956.93
057-207-0082	CORA KILLSNIGHT	477	394.50	394.50

BILLINGS AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
C57-107-0083	CHARLES KILLSNIGHT	490	1,098.00	UNKNOWN
C57-107-0084	ROSA BLACKMED. LONEWOLF KLSNIT	497	1,387.00	379.46
C57-107-0085	HUGH KILLSNIGHT	497	184.00	184.00
C57-107-0086	STANLEY LAMEWOMAN	524	1,438.00	UNKNOWN
C57-107-0087	AUGUSTA LAMEWOMAN	525	1,439.50	327.48
C57-107-0088	FRED LASTBULL	532	1,375.08	54.96
C57-107-0089	ARTIE LIMBERHAND	536	5,511.00	772.02
C57-107-0090	VICTOR LITTLECHIEF	569	1,731.00	UNKNOWN
C57-107-0091	DORA LITTLEHAWK	576	3,636.25	UNKNOWN
C57-107-0092	MILTON LITTLEWHITEMAN	613	4,104.00	99.72
C57-107-0093	ROSA LITTLEWHITEMAN	616	2,223.39	694.78
C57-107-0094	FRANK LITTLEWOLF	633	2,747.67	440.55
C57-107-0095	WILLIAM LITTLEWOLF	642	4,803.00	UNKNOWN
C57-107-0096	MAY WOMANLEGGINS LITTLEWOLF	643	959.00	UNKNOWN
C57-107-0097	ANNA MEDICINE	708	25.35	25.35
C57-107-0098	NELSON MEDICINE BIRD	711	2,834.00	UNKNOWN
C57-107-0099	BASIL MEDICINELK	724	4,494.00	UNKNOWN
C57-107-0100	JENNIE EGLFTHS MDCELK WLKSLAST	726	4,021.98	UNKNOWN
C57-107-0101	JOHN MEDICINEFLYING	732	405.00	405.00
C57-107-0102	JOHN MEDICINETOP	739	5,284.72	697.64
C57-107-0103	JOSIE MERRITT	746	292.60	292.60
C57-107-0104	DANIEL OLDBULL	760	5,636.80	UNKNOWN
C57-107-0105	NORA WALKSEASYPINE	779	2,554.00	UNKNOWN
C57-107-0106	NORA BIGNOSEPINE	785	1,612.00	UNKNOWN
C57-107-0107	ALBERT MAGPIE	799	2,912.00	UNKNOWN
C57-107-0108	NANCY SLEEPINGWOLFREDBEADS	805	3,262.80	UNKNOWN
C57-107-0109	SUSIE REDBEADSHARDGROUND	806	232.00	UNKNOWN
C57-107-0110	TEDDY REDCHERRIES	823	1,806.00	1,339.81
C57-107-0111	JAMES REDFOX	834	780.90	UNKNOWN
C57-107-0112	HENRY REDNECK	840	3,163.00	UNKNOWN
C57-107-0113	PAUL REDNOSE	851	156.00	156.00
C57-107-0114	LUCY REDNOSE	852	922.72	UNKNOWN
C57-107-0115	NORA NICETALKER	855	1,168.00	1,168.00
C57-107-0116	JOHN SANDCRANE	963	346.49	346.49
C57-107-0117	HENRY MEDICINEBULL SANDCRANE	966	5,208.00	234.91
C57-107-0118	JOHN SEMINOLE	980	1,323.93	210.45
C57-107-0119	CHARLES SITTINGMAN	1034	1,747.90	UNKNOWN
C57-107-0120	BLANCHE SHEBEARSMITHSIOUX	1046	567.00	414.72
C57-107-0121	MAY BLACKBEE-STAR	1125	1,741.66	UNKNOWN
C57-107-0122	JOHN STRANGEOWL	1128	529.50	529.50
C57-107-0123	GERTIE STRANGEOWL	1129	529.50	529.50
C57-107-0124	MICHAEL SUNBEAR	1136	695.00	47.68
C57-107-0125	LENA SUNROADS	1139	500.00	UNKNOWN
C57-107-0126	DAVID SUNROADS	1140	1,998.00	UNKNOWN
C57-107-0127	HENRY SWEETMEDICINE	1152	454.00	UNKNOWN
C57-107-0128	NELLIE TANGLEHORNELK	1179	304.80	UNKNOWN
C57-107-0129	CHARLES EUGNE TANGLEYELLOWHAIR	1193	825.00	409.94
C57-107-0130	FANNIE HARDROBE TEETH	1192	827.00	UNKNOWN
C57-107-0131	BESSIEBIGBEAVERTWIN	1211	3,365.00	UNKNOWN
C57-107-0132	PETER TWOBIRDS	1214	1,820.80	UNKNOWN
C57-107-0133	LENORA ARAPAHOECHIEF	1215	5,198.00	UNKNOWN
C57-107-0134	CLARA TWOFEATHERS	1222	570.80	182.72
C57-107-0135	WILLIAM TWOMOONS	1226	1,385.00	1,385.00
C57-107-0136	CHARLES WALKINGBEAR	1232	137.00	137.00
C57-107-0137	JENNIE WALKINGBEAR	1243	769.50	769.50
C57-107-0138	ADOLPH WALKSNICE	1247	211.34	211.34
C57-107-0139	LENA WHITEBIRD	1282	462.90	UNKNOWN
C57-107-0140	LEO LEONARD WHITECRANE	1289	2,422.00	UNKNOWN
C57-107-0141	MAGGIE WHITEDIRT	1293	126.00	126.00
C57-107-0142	HUGH WHITEMOON	1307	2,729.77	482.10
C57-107-0143	DALLAS WOLFBLACK	1347	2,431.00	UNKNOWN
C57-107-0144	PAUL WOLFCHUM	1359	2,508.00	UNKNOWN
C57-107-0145	CHESTER WOODENTHIGH	1398	1,944.44	227.53
C57-107-0146	DAVIS WOODENEYE	1414	2,962.56	200.86
C57-107-0147	ROBERT YELLOWNOSE	1434	1,440.90	UNKNOWN
C57-107-0148	JOHN (BEANS) YOUNGBIRD	1455	5,878.32	781.01
C57-107-0149	ANDREW ANDY LARANCE	N5027	252.00	UNKNOWN

MINNEAPOLIS AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
F53-404-0041	WM JOHNSON	17	983.10	300.87
F53-405-0033	TOM DRIFT	139	672.50	672.50

MINNEAPOLIS AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
F53-405-0034	WM. O. COFFEY	118	90.61	90.61
F53-405-0035	RIGHT BONEY	83	10,341.53	928.19
F53-405-0036	CHARLES GOODSKY	120	279.00	279.00
F53-405-0037	JESSIE DRIFT SOREYES	148	2,921.66	2,921.66
F53-405-0038	JOHN WANNEGON	325	1,000.00	1,000.00
F53-405-0039	MRS. CHARLES GOODSKY	121	1,150.00	1,150.00
F53-405-0040	MAISH KOW WAY WE DUNG	324	2,985.92	944.00
F53-405-0041	WISH E BAH KAH MIG OKE	424	1,007.00	1,007.00
F53-405-0042	NAY NAH E QUAY	493	120.00	120.00
F53-405-0043	CHARLES F. GESHICK	494	50.00	50.00
F53-405-0156	LOUISA W. WOOD	MOO3067	919.00	368.59
F53-406-0011	MAY MIN WAUN DAH YAUSH EKE	496	363.50	363.50
F53-407-0229	PAISH KE WAY KE SHIG OKE	799	999.00	999.00
F53-407-0230	JAMES BURGESS	1119	1,154.63	1,154.63
F53-407-0231	LUCY CARIBOO LOUIS	GP 137	1,004.08	258.93
F53-407-0239	DORA STURGEON	363	1,000.00	1,000.00
F53-407-0240	MAGGIE MCCABE BURING	732	2,906.90	672.78
F53-407-0241	TOM LEE	1209	4,961.34	47.20
F53-407-0243	MRS. JOHN JACKSON	1599	900.00	417.06
F53-407-0244	MRS. JOHN FINEDAY	979	4,857.50	1,666.44
F53-407-0247	AY NE WAUSH	362	100.00	100.00
F53-407-0248	JOHN WOOD	1612	3,002.00	2,210.26
F53-407-0249	JOHN WHITECLOUD	1519	1,197.00	1,197.00
F53-407-0250	ROBERT A. BLAKELY	355	5,289.94	432.50
F53-407-0251	JOHN MINK	919	127.64	127.64
F53-407-0252	WAY MAH TIG OSH E QUAY	15	4,857.50	1,855.84
F53-407-0254	MARY JANE RICE	4960	140.20	140.20
F53-407-0256	QUAY QUAY CUB	1024	3,414.00	2,884.37
F53-407-0257	MRS. CHARLES RABBIT	778	1,004.55	1,004.55
F53-407-0258	MARY DRUMBEATER	721	1,606.23	1,371.75
F53-407-0259	BOB MOSOMO	1046	1,290.48	100.00
F53-407-0260	MRS. BOB MOSOMO	1047	861.00	453.00
F53-407-0261	ROBERT JOHNSON	1073	4,741.00	2,705.44
F53-407-0266	ANNA JACKSON	134	7,281.44	133.11
F53-407-0268	OSCAR WHITEFEATHER	409N4260	2,115.09	376.23
F53-407-0269	JAMES DROUILLARD	MOO1044	365.00	365.00
F53-407-0270	MARY NADEAU MORRIS	409N4069	1,281.00	1,166.97
F53-407-0271	MARY SPRUCE FISHER	GP194	4,366.01	311.11
F53-407-0272	MICHAEL FLATT	GP 234	2,514.57	168.19
F53-407-0273	ANGUS LESAGE	MOO1066	3,379.20	194.63
F53-407-0274	THERESA MORRISON	GP 91	7,983.40	515.91
F53-407-0658	JOHN JOSEPH BEDEAU	1342	240.00	240.00
F53-407-0954	JENNIE BEAULIEU	995	1,105.93	542.60	
F53-407-0955	MRS. JOHN MINK	1230	282.15	282.15
F53-408-0496	CHARLES CASSAWAY	2047	115.35	115.35
F53-408-0702	MARY LEQUIER	2055	100.00	100.00
F53-408-1956	MAGGIE PETERSON SQUIRREL	5169	787.20	357.63
F55-430-0089	MARY S. GREEN BRESETTE	132	651.50	651.50
F55-430-0089	DAVID MARKEMAN	4	3,328.15	160.40
F55-430-0090	CHARLOTTE MESSENGER	38	434.00	434.00
F55-431-0085	MARY HOMESKY LAWSON BAKER	28	8,598.98	765.00
F55-431-0086	WILLIAM BILLY BOY	5	1,886.50	1,886.50
F55-431-0087	ESTHER JAMES NAVIOSH MARTIN	MA000	1,146.75	44.45
F55-432-0049	AGNES BLUESKY DOUD	U2159	665.00	665.00
F55-432-0050	MAGGIE LINK	U2548	388.00	388.00
F55-432-0051	MAGGIE LINK	U2548	1,949.50	1,286.93
F55-434-0004	WILLIAM KESHICK	N4124	1,432.75	1,195.98
F55-436-0001	JOHN A. LAGREW	N5614	966.54	162.21
F55-439-0097	SNIDER BEAR	19	90.00	90.00
F55-439-0107	DAN BEARHEART	R3995	573.50	573.50
F55-439-0108	EMMA BLOWSNAKE GOODBEAR MIKE	N5551	1,138.51	1,138.51
F55-439-0109	HENRY THUNDER	R3477	815.95	653.45

PORTLAND AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
P03-101-0280	LUCY JIM TIMENTWA	S-1111	159.40	159.40
P03-101-0305	RUTH A. PARADIS CAIN	S-606	118.47	118.47
P03-101-0306	ANNIE JIM (WASH-WE)	S-982	71.02	71.02
P03-101-0307	ELIZA LAWSON	S-1784	552.64	552.64
P03-101-0309	WILLIAM SKOLASKIN	S-1728	1,680.03	85.33
P03-101-0310	KIST SOOMLA	S-333	211.46	211.46
P03-101-0311	GEORGE TILLETSON	C-114	255.29	255.29

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PORTLAND AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
P03-101+0315	ALICE ANTONIA WILLIAMS	NONE	88.83	88.83
P03-101+0317	LUCY JAMES	S-226	180.52	180.52
P04-190+0033	DOLLY PAT JOHNNY	NONE	1,008.00	1,008.00
P04-190+0034	JULIA GRANT (HOLBROOK)	562	1,000.00	1,000.00
P04-190+0036	MINNIE Y. LE SIEUR	91	680.00	680.00
P04-190+0039	EMBY POCATELLO	1454	446.00	446.00
P04-190+0039	SEEDOYAH SOYOUMA WOODABOGAN	328	575.00	575.00
P04-190+0040	MOSOZAH TINDORE	12	748.00	748.00
P04-190+0041	SEODA JOHNSON WARJACK	903	411.00	411.00
P05-181+0102	BASIL PEONE	484	65.60	65.60
P05-192+0071	ANDREW RED DUCK	539	707.00	250.31
P05-193+0005	PIERRE ENEAS CHIQUI	76	432.00	432.00
P06-117+0029	LIZZIE JOHNSON	456	50.00	50.00
P06-117+0032	LUCY AGNES FITZPATRICK	1796	1,115.32	1,115.32
P06-117+0033	WALTER FITZPATRICK	1557	2,695.00	2,695.00
P06-117+0035	JACK WARD	1406	122.61	122.61
P06-120+0012	HENRY R. ALLEN	50/5-A	12.18	2.15
P07-143+0030	JOSEPH WILD BILL THOMPSON	484	498.00	498.00
P09-145+0021	SALLY STACONA WILLIAMS	239	39.00	39.00
P10-109+0024	CHARLES JERRY	NONE	564.66	564.66
P10-109+0025	HENRY BILL HAMILTON	NONE	23.07	23.07
P10-130+0011	JOHN MIKE	13844	623.43	289.81
P11-124+0040	WYSOOKIE WYNOOKIE	2946	248.76	249.76
P11-124+0041	TOMMY THOMPSON	NONE	4,526.21	3,045.68
P11-124+0042	BILL (KOMSH) ANNISON TELASET	199	515.28	515.28
P11-124+0043	ELIZABETH POLLOCK CROW	1829	43.16	43.16
P11-124+0044	JOHN WHIZ	3110	271.50	271.50
P11-124+0046	THOMAS K. YALLUP	2476	245.00	245.00
P11-124+0048	ANNAHAT LALLASHUTE	1093	528.29	529.58
P11-124+0049	GEORGE SAM (TEMALOLES)	210	442.42	442.42
P11-124+0050	JAMES UMTUCK	1677	139.99	139.99
P11-124+0051	WILLIAM YALLUP	U366	802.48	802.48
P11-124+0055	MARY UMTUCH	1490	280.00	280.00
P12-102+0016	LUCY SOLOMON THOMAS	304	125.96	125.96
P13-203+0020	LOUIS COURVILLE JR.	58	900.00	795.99
P13-203+0021	EMILY FINLEY COURVILLE	69	730.00	730.00
P13-203+0022	MARY ASHLEY	89	180.00	180.00
P13-203+0024	WILLIAM ASHLEY	91	376.66	64.77
P13-203+0025	MARY ANN LA ROSE	111	1,125.00	1,125.00
P13-203+0027	HENRY B. CHALWAIN	231	67.47	67.27
P13-203+0028	THERESE S. FELSMAN	246	229.60	24.75
P13-203+0029	LOMAH MATT	292	486.81	486.81
P13-203+0030	JULE MATT	311	887.67	79.00
P13-203+0031	AGNES LUMPRY ANTOINE	340	1,287.00	143.39
P13-203+0032	(FRANK) PELASSIE COCOMBE	357	239.97	239.97
P13-203+0033	MELANE COCOMBE	368	399.00	399.00
P13-203+0035	JOHN W. FINLEY	419	896.00	896.00
P13-203+0036	MARY INMEE QUEQUESAH	441	395.20	395.20
P13-203+0037	JOSEPH SELPSTU	576	814.30	914.00
P13-203+0038	FELIX GENDRON	578	180.00	180.00
P13-203+0039	LUCY FINLEY CUNMAH	596	540.96	540.96
P13-203+0040	THERESE SELOU LUMPRY ASHLEY	648	1,551.40	671.40
P13-203+0042	HENRY MINESINGER	665	93.57	93.57
P13-203+0043	EDWARD GIBSON LACOURSE	715	3,285.22	1,621.81
P13-203+0044	EDWARD LOZEAU	746	1,028.64	1,028.64
P13-203+0045	MARY BIGJOHN	834	506.00	506.00
P13-203+0047	PHILIP ENEAS PIERRE	878	977.00	977.00
P13-203+0048	MARTIN CHESMESUE	884	2,081.00	2,081.00
P13-203+0049	THERESE MICHEL	887	1,861.00	1,861.00
P13-203+0050	ALEXANDER CALOWAHCAN (BEAVERHEAD)	901	1,566.40	1,566.40
P13-203+0051	MARY CATHERINE WOODCOCK	982	1,175.16	1,175.16
P13-203+0052	BAPTISTE FINLEY	1212	5,355.68	3,756.79
P13-203+0053	LOUISE FINLEY	1218	767.00	767.00
P13-203+0054	WILLIAM FINLEY	1219	3,934.00	3,664.06
P13-203+0055	JOHN GABE LUMPRY	1259	21.00	21.00
P13-203+0056	MARY LUMPRY VANDERBURG	1271	1,130.00	1,130.00
P13-203+0058	CECILLE CHARLO VANDERBURG	1284	2,873.00	2,759.79
P13-203+0059	JOSEPH FINLEY	1287	496.00	496.00
P13-203+0060	CARRIE COUTURE	1481	165.00	26.94
P13-203+0061	ANTOINE BARNABY	1486	838.19	480.24
P13-203+0062	JOHN CHARLEY	1501	1,015.00	1,015.00
P13-203+0063	MARY LOUIE	1561	1,227.00	1,227.00
P13-203+0064	PETER CAYE	2112	3,656.00	1,970.83
P13-203+0065	JOHN DELAWARE	1023	4,057.00	1,453.25
P13-203+0066	MARY WOODCOCK (CAYE)	1035	544.40	544.40

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PORTLAND AREA

ISSUE NUMBER	NAME OF DECEDENT	DECEDENT ID	$ALLOWED	$PAID
P13-203+0067	ISAAC PLANT	1062	1,059.00	488.64
P13-203+0068	ALEXANDER ASHLEY	1077	4,174.00	1,165.04
P13-203+0069	JOHN ASHLEY	1082	3,014.26	3,014.26
P13-203+0070	JOSEPH TALLMAN	1095	300.00	300.00
P13-203+0071	JOHN HOULE JR.	1132	1,504.00	1,163.67
P13-203+0072	CECILLIA SLOAN	1177	44.38	44.38
P13-203+0073	ANTOINE FELIX	1330	1,051.00	1,051.00
P13-203+0074	CECILLE FELIX	1331	1,419.00	785.12
P13-203+0075	JOSEPH POKERJIM	1537	998.00	998.00
P13-203+0076	CATHERINE POKERJIM	1541	258.00	258.00
P13-203+0077	PALCATNAW (PAUL) CHARLO	1554	92.39	17.66
P13-203+0078	MARTINE VANDERBURG SIWAHSAH	1558	904.17	904.17
P13-203+0080	MARY COOPER PIERRE YOSTSWEE	1596	3,100.00	2,882.25
P13-203+0081	MARY LOUISE PIERRE (NICOLAI)	1600	154.00	154.00
P13-203+0082	MOSES BIGSAM	1615	152.00	152.00
P13-203+0083	ISABEL WHITECOYOTE (BIGHAWK)	1618	240.00	240.00
P13-203+0084	GUS WHITE	1630	1,092.48	1,092.48
P13-203+0085	SUSAN FISHER VINSON	1637	3,635.00	743.01
P13-203+0086	LOUISE TSOOEE-PARKER-STOCKTAH	1642	894.00	894.00
P13-203+0087	MARY RATTLESNAKE	1727	935.44	935.44
P13-203+0088	ANTOINE STASSOO	1898	1,500.00	1,500.00
P13-203+0089	FRANK BEAUVAIS	1904	1,234.00	1,234.00
P13-203+0090	MARY LUCIER BEAUVAIS	1907	659.00	659.00
P13-203+0091	ROSETTE BIGBEAR	1951	928.93	828.93
P13-203+0092	ENEAS PAUL KOOSTAHTAH	2001	887.00	40.84
P13-203+0093	SUSETTE ISAAC KOOSTAHTAH	2005	2,967.00	2,796.47
P13-203+0094	ANTOINE JULIAN	2010	891.00	891.00
P13-203+0095	JOSEPH ONICKANILSEET	2015	150.00	150.00
P13-203+0096	ISABEL PIERRE	2027	703.24	703.24
P13-203+0097	JOHN KALLOWAT	2074	597.00	597.00
P13-203+0099	JOSEPHINE ENEAS YOUSTAH	2150	3,845.33	1,953.55
P13-203+0099	LOUISE PIGGRANE QUINTAH	2166	1,399.00	1,399.00
P13-203+0100	THERESE PLUFF	2229	846.79	846.79
P13-203+0101	SUSAN BULLROSE	2250	2,920.00	2,920.00
P13-203+0103	MADELINE PAIN CHARLEY	2284	3,769.00	3,531.96
P13-203+0104	MARY SUSTEEL SELPAH	2307	120.00	120.00
P13-203+0105	LOUIE ENEAS SCULKAH	2316	700.00	700.00
P13-203+0106	JOHN COCONAH	2324	135.00	110.33
P13-203+0107	ANN CHESCOLLAY	2393	462.00	462.00
P13-203+0108	ANNIE RILEY	2449	383.76	383.76
P13-203+0109	MARY SMALLMOUTH CHAGALTHMAKMA	2457	476.00	476.00
P13-203+0419	SEYMOUR ANDREW KUNUCKAH	2017	301.40	124.48
P13-203+0420	ANDREW TOOMAH	2057	775.34	775.34
P13-203+0421	LOUIE KAHTLAGO	2104	1,938.00	1,938.00
P13-203+0422	MARY KUNUCKAH	2072	700.00	700.00
P13-203+0423	PHILIP KALLOWAT	2076	427.00	427.00
P13-203+0424	NICHOLAI GRAVELLE	2115	305.00	305.00
P13-203+0425	MARY PACHE	2106	186.40	186.40
P13-203+0426	SAHKALE (FINLEY) LEFTHAND	2141	55.00	55.00
P13-203+0427	MADALINE LEFTHAND	2140	917.45	917.45
P13-203+0428	ROSALIE MICHEL	2126	1,272.00	1,272.00
P13-203+0429	ANN MATHIAS (CHIEFHAT)	2153	282.00	282.00
P13-203+0430	JOSEPH WILSON (SPOKANE JOE)	2163	428.64	428.64
P13-203+0431	ANTOINE LA ROSE	110	390.00	390.00
P13-203+0432	ALEXANDER HOMINSTO	2187	539.28	539.28
P13-203+0433	SUSAN MOICHAH	2219	100.00	100.00
P13-203+0434	LASSAW STASSO	2240	1,348.37	1,039.55
P13-203+0435	PHILOMENE FINLEY	619	143.00	143.00
P13-203+0436	ALEXANDER JOSEPH	687	550.00	550.00
P13-203+0437	JANE MICHEL-TELLIER-FINLEY	786	10.62	10.62
P13-203-1463	MARY ANN ENEAS FINLEY	434	829.60	829.60

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federal register

Wednesday
April 17, 1985

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 400 et al.

Medicare and Medicaid Programs; Peer Review Organizations; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 405, 412, 431, 433, 456, 460, 462, and 466

[HSQ-100-F]

Medicare and Medicaid Programs; Utilization and Quality Control Peer Review Organization (PRO); Assumption of Medicare Review Functions and Coordination With Medicaid

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule describes the review functions to be performed by a utilization and quality control peer review organization (PRO). It outlines the relationships that will be established among PROs, Medicare fiscal intermidiaries and carriers, providers, practitioners, and beneficiaries when a PRO assumes its review responsibilities. It also describes the relationship that should exist between PROs and State Medicaid agencies that contract with PROs to perform review.

This rule implements portions of the following statutes:

- Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248)
- Social Security Amendments of 1983 (Pub. L. 98-21)
- Deficit Reduction Act of 1984 (Pub. L. 98-369).

EFFECTIVE DATE: These regulations are effective May 17, 1985 except for the following:

(1) Section 466.78(a) that specifies that each hospital have a written contract with a PRO is effective June 17, 1985.

(2) Sections 412.44, 431.630, 456.654, 466.70, 466.72, 466.74, 466.78, 466.80 and 466.94 contain information collection requirements with which the public is not required to comply until the Executive Office of Management and Budget (EOMB) approves these requirements. See section VI of the preamble for a discussion of information collection.

FOR FURTHER INFORMATION CONTACT: Mary Kay Terry, (301) 594-7910.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. 97-248) amended Part B of Title XI of the Social Security Act (Act) by establishing the Utilization and Quality Control Peer Review Organization (PRO) program. This program, when fully implemented, will replace the existing Professional Standards Review Organization (PSRO) program. The responsibilities that PROs are assuming are similar to those now exercised by PSROs. PROs will review health care services funded under Title XVIII of the Act (Medicare) to determine whether those services are reasonable, medically necessary, furnished in the appropriate setting, and are of a quality which meets professionally recognized standards. Congress created the PRO program in order to redirect, simplify and enhance the cost-effectiveness and efficiency of the peer review of services reimbursed by Medicare.

The Social Security Amendments of 1983 established a prospective payment system for Medicare and amended section 1866(a)(1)(F) of the Act to specify that hospitals seeking reimbursement under the prospective payment system must enter into agreements with PROs by specified dates to review the following:

- The validity of diagnostic and procedural information supplied by the provider.
- The completeness, adequacy, and quality of care provided.
- The appropriateness of admissions and discharges.
- The appropriateness of care provided or proposed to be provided for which payment is sought on an "outlier" basis under the prospective payment system.

In addition, the amendments added section 1866(f)(2) of the Act to specify that the Secretary may deny payment or require the hospital to take corrective action if a PRO provides the Secretary with documentation that a hospital has circumvented the prospective payment system through unnecessary admissions or other practices.

The Deficit Reduction Act of 1984 (DRA) revised the provisions of the Social Security Amendments to require that all hospitals, not just those receiving payment under the prospective payment system, must maintain an agreement with a PRO. Effective November 15, 1984, all hospitals must have an agreement with a PRO as a condition of payment under Medicare.

The DRA amendments permit the Secretary to enter into contracts with entities or affiliated entities (other than self-insured employers) that directly or indirectly make payments to a provider or practitioner on or after November 15, 1984 if there is no other available entity. Section 1153(b)(3)(A) of the Act, as amended, clarifies that the Secretary can contract with this type of entity if the entity does not have more than one member of the governing board being affiliated through management, ownership or common control with a health maintenance organization or competitive medical plan which is an "eligible organization" as defined in section 1876(b) of the Act.

In addition, Congress modified the restriction in section 1153(b)(3) of the Act. The Secretary may now contract with an organization that has no more than 20 percent of the members of its governing board affiliated with health care facilities or associations of facilities through management, ownership or common control.

In June of 1984, HCFA began awarding contracts to PROs. On July 17, 1984, we published a proposed rule (NPRM) which describes the PROs' review responsibilities and the PROs' relationships with other PROs, fiscal intermediaries, carriers, providers, beneficiaries, and State Medicaid agencies (49 FR 29026). Seventy-eight items of corresponsence were received from the public. The provisions of the proposed rule, the comments we received and the changes that we made in response to those comments, as well as additional changes, are discussed below.

II. Provisions of the Proposed Regulations

A. PRO Implementation and Functions Under Medicare

The NPRM specified that HCFA would award contracts to PROs and further specified the procedures for notifying facilities to be reviewed by the PRO, State survey agencies, Medicare fiscal intermediaries and carriers, and the public about the PRO contract and the schedule for the implementation of review. The NPRM proposed general requirements for a PRO's assumption of review.

The NPRM included the specific dates by which health care facilities would be required to enter into an agreement with a PRO. As discussed in section I, above, these requirements have been revised by DRA.

The proposed regulations would have required PROs to negotiate memoranda of understanding with Medicare fiscal intermediaries and carriers that delineate the responsibilities of each party and provide for the exchange of data, notification of review determinations, and any other pertinent procedures. The NPRM proposed that any of the duties and functions of a PRO

for which a PRO has not assumed responsibility under its contract with HCFA must be performed in the manner and to the extent otherwise provided for under the Act.

The proposal specified that a PRO determination under 42 CFR Part 466 would be an initial determination that is final and binding unless it is reconsidered or revised in accordance with appeal procedures in 42 CFR Part 473, Subpart B. Final regulations for Part 473 are included elsewhere in this issue of the Federal Register.

The proposal described the correlation of the Title XI and Title XVIII functions of the PRO. A PRO's review determination with regard to reasonableness, medical necessity, and appropriateness of placement at an acute level of care would replace the utilization review activities required of health care institutions under sections 1861(e)(6), 1861(j)(8) and (j)(12), 1861(k) and 1865 of the Act. However, a PRO's review determination would not supersede HCFA's authority to enforce the coverage provisions of the statute. For example, although a service may have been medically necessary, it might be a service that is not covered under Medicare.

In order for a PRO to carry out its review functions, we proposed that a PRO be authorized to examine the operations and records of facilities that are pertinent to services provided to Medicare beneficiaries. A PRO would be permitted to examine the records of non-Medicare patients only if authorized to do so by the facility or practitioner or by HCFA under sections 1815 and 1833 of the Act.

We proposed that PRO review would differ from the current PSRO review with regard to requirements for the annotation of claims. PSROs were required to annotate all Medicare claims from health care facilities under their review to indicate whether the claims are approved for payment or denied. Because that procedure has been administratively cumbersome and ineffective, we proposed that PROs would not annotate every claim, but only those made for additional payment for an "outlier" case, those cases subject to preadmission review and those other claims that are denied.

The proposed regulations described the procedures a PRO must follow in making an initial denial determination. Before a PRO issues an initial denial determination, the proposed regulations would have required that the PRO afford the provider and the patient's attending physician (or other attending health care practitioner) the opportunity to discuss with the PRO physician advisor any proposed denial determination and the bases for that determination. The proposal also described the content of the notice and the procedures for notifying the patient or the patient's representative, the attending physician, the Medicare fiscal intermediary or carrier, and the facility.

The proposed rule specified that the PRO review period is generally within one year of the date that the claim containing the item or service was submitted to the Medicare fiscal intermediary or carrier. A PRO determination could be reopened and revised by the PRO within four years of the date that the claim was submitted to the Medicare fiscal intermediary or carrier if additional information is received on the patient's condition or if an error had been made. The proposed rule stated that a PRO determination could be reopened or revised at any time if it was obtained through fraud or a similar abusive practice.

The NPRM proposed qualifications for the PRO reviewers. Generally, the services ordered or furnished by a doctor of medicine, osteopathy or dentistry may be denied only by another doctor of medicine, osteopathy or dentistry, respectively, who has active admitting privileges at one or more hospitals in the PRO area.

The NPRM specified that a PRO would be required to negotiate with HCFA concerning the use of national or regional norms for conducting review to achieve the objectives set forth in the PRO contract. A PRO would also be required to establish written criteria and standards to be used in the conduct of review.

The NPRM proposed that a PRO, in order to achieve economical and efficient review, would be required to coordinate activities (including the exchange of information) among Medicare fiscal intermediaries and carriers, other PROs, and other public or private review organizations as appropriate.

B. PRO Relationships With Medicaid

The NPRM specified that, as with PSRO requirements, when a State contracts with a PRO for medical or utilization review, the State must submit a plan amendment to the Regional Office for approval. The proposed rule specified that the State plan would assure that the contract with the PRO satisfied certain requirements. Again, as with current PSRO policy, a State that contracts with a PRO will be eligible for Federal financial participation (FFP) at 75 percent for funds expended for the performance of medical and utilization review under the contract. If a State fails to make a satisfactory showing that it has an effective utilization control program (42 CFR 456.660), the reduction in FFP would not apply to facilities where either PSRO or PRO review is being conducted under an approved contract.

Under the proposed regulations, if a State contracts with a PRO, the medical and utilization requirements would be deemed to be met. However, the physician certification requirements and plan of care requirements would not be deemed met through an approved PRO contract. The proposed regulations added the requirement that the State agency, in its quarterly report that indicates that the State meets utilization requirements, must include facilities in which a PRO is performing review. As specified in the NPRM, the State agency's report for a quarter would have to include the dates a PRO was responsible for review in a facility for which a showing that the State met utilization requirements for recipients would otherwise have had to been made. More specific details of the proposal can be found in the document published on July 17.

III. Discussion of Comments

Note: We have made references within this preamble and regulations text to prospective payment regulations (previously §§ 405.470 through 405.477) that were redesignated under a new Part 412 on March 29, 1985 (50 FR 12740). References to these sections in the preamble of this document give both old and new citations for the benefit of the reader.

The majority of the comments we received on the proposed rule were from PSROs, hospitals, hospital associations, business groups and national medical organizations. The comments and our responses are set forth below and are grouped by subject area:

A. Statutory Provisions (§ 466.70)

Comment: One commenter noted that the proposed § 466.70(c) that would allow PROs to make payment determinations based on the completeness, adequacy and quality of care is not consistent with the PRO statute that only allows PROs to review services, not deny payment, based on these issues. Another commenter believed the regulations should not require the PRO to perform any duties in addition to those imposed by the statute.

Response: We agree with the first comment and have revised § 466.70(c), now redesignated as paragraph (d), to remove the reference to a PRO making a payment determination based on the completeness, adequacy and quality of care. We have deleted the reference to a

PRO making payment determinations based on quality contained in the definition of "Review responsibility" (§ 466.1). We have also removed the reference to a PRO making a payment determination based on changes resulting from DRG validations. As revised, the section provides that PROs will make payment determinations based on the reasonableness and medical necessity of services and the appropriateness of the acute care setting. Regarding the second comment, the Secretary has the authority, under section 1154(a)(8) of the Act, to issue regulations to implement the PRO program. We believe that all of the PRO activities required by these regulations are required by statute (sections 1154, 1866(a)(1)(F), 1886(f)(2) of the Act) and are necessary for an effective peer review program.

B. Notification of Designation and Implementation of Review (§ 466.72)

Comment: One commenter suggested that the PRO's notification that it is assuming review should include a list of the facilities to be under review. Another commenter believed that facilities should get a detailed explanation of the review process within 10 days of the signing of the PRO contract.

Response: Section 466.72(b)(2) of the proposed regulations specifies that the PRO will publish a notice in at least one local newspaper listing each facility to be under review. HCFA has also published newspaper notices announcing the award of individual PRO contracts. However, PROs are still required to issue a more detailed newspaper notice listing each facility under review and stating when and where their review plan is available for public inspection. Regarding the second comment, the regulations at § 466.72(b)(1) require that the hospital receive written notification of the date and manner by which the PRO will implement review. In addition, regulations at § 466.76 require a PRO to discuss the PRO's review process with the hospital. Also, the PRO's review plan is available at the PRO office for public inspection (§ 466.72(b)(2)). Therefore, we believe that the regulations contain adequate provisions to assure that hospitals are fully aware of the PRO's review procedures.

C. General Requirements for PROs (§ 466.74)

Comment: Fifteen commenters disagreed with the proposed regulations that specify that a PRO must not subcontract with a facility to conduct review activities that would affect payment. The commenters stated that this prohibition is unfair, inefficient, ineffective and costly and recommended deleting this section and replacing it with criteria for delegation. A national medical organization believed the PRO should be allowed to subcontract with members of the medical staff who are not employees of the hospital and who do not have an ownership interest in the hospital.

Response: Although the PRO statute does not specifically prohibit PROs from subcontracting review responsibilities to facilities, we believe that subcontracting review responsibilities to hospitals would compromise the intent of Congress that there be no financial conflict of interest. Since 1981, Social Security Act legislation has reflected a clear departure from delegated hospital review. The Omnibus Reconciliation Act of 1981 removed the requirement that PSRO review be delegated and allowed PSROs discretion about whether or not to delegate review. TEFRA continued and strengthened this trend away from hospital delegation by limiting PRO subcontracting of review to those instances where the PRO finds that the provider will effectively and efficiently review itself. The Social Security Amendments of 1983 created the prospective payment system, where payment is based on a single review decision that affects payment for an entire hospital stay rather than multiple decisions that affect smaller units of payment over the course of a hospital stay. This, together with the Congressional concern expressed in the TEFRA legislation that there be no financial conflict of interest in PRO review, leads us to conclude that subcontracting any review that affects Medicare payment under the prospective payment system not be allowed. We also believe this prohibition should apply to non-PPS hospitals. The majority of PRO review is conducted retrospectively, after the patient has left the hospital. If a hospital were given the responsibility to conduct PRO review, it would therefore be asked to review and deny care, the cost of which it has already incurred. We consider this an extreme conflict of interest. Therefore, we are retaining the prohibition against subcontracting any review except quality review in this final rule.

Comment: Two commenters expressed concern about the requirement that the PRO make it contract primary to all other activities and believed this may interfere with PRO contracts for private review.

Response: Section 1154(b)(11) of the Act encourages PROs to engage in private review activities, but only to the extent feasible and appropriate. The intent of this provision of the regulations is that Medicare review not be compromised by any other PRO contract activities.

Comment: One commenter questioned whether PROs will compile statistics to determine a provider's favorable presumption status under section 1879 of the Act and whether the PRO will be required to notify the provider of its waiver status.

Response: We have included in § 466.74(e) provisions for circumstances when PROs are required to compile statistics to determine a provider's favorable presumption status using the criteria contained in § 405.332(b) and notify the provider of its status. Instructions concerning these compilations will be included in administrative guidelines.

Comment: One commenter believed the regulations should reflect the PRO's responsibility for confirming the accuracy of a hospital patient's discharge destination.

Response: We believe that the specific obligations of an individual PRO should be contained in that PRO's individual contract with HCFA rather than in regulations. Therefore, we are not revising the final rule as a result of this comment.

D. Cooperation with Health Care Facilities (§ 466.76)

Comment: Three commenters believed the 30 day timeframe for implementing review makes it very difficult for PROs to fully discuss their review plans with facilities. Another commenter requested that the regulations specify how a PRO must cooperate with facilities.

Response: We believe it is essential that a PRO begin its review activities as soon as possible after its contract is signed. In fact, we encouraged organizations that submitted proposals for PRO contracts to provide evidence that they had initiated discussions with facilities or associations of facilities in their area. Thus, we believe the 30 day timeframe is adequate for the discussion of review plans with facilities. Regarding the second comment, the individual agreements between PROs and facilities will detail the relationship between the two organizations.

E. Responsibiities of Health Care Facilities (§ 466.78)

Comment: A hospital representative questioned whether the hospital's Medicare payment would be in jeopardy

if the hospital did not have a contract with a PRO by October 1, 1984. The representative noted that there is no designated PRO for the area.

Response: As described in the preamble, the DRA amendments revised the date by which a hospital must have an agreement with a PRO. That date is now November 15, 1984. We note that there are now PROs in each geographic area.

Comments: Twenty-four commenters objected to the requirement in the proposed regulations (§ 466.78(b)(2)) that hospitals photocopy and deliver pertinent information to the PRO because it would increase hospitals' operating costs. The commenters further stated that the PRO should be required to conduct onsite reviews at the hospital whenever possible. The commenters also suggested that the regulations impose some limitations on the volume of material a PRO can request from a hospital and that they ensure the confidentiality of the records. Another commenter requested that the regulations specify that the PRO can request pre-admission records of tests in addition to the post-admission record.

Response: We believe it is important that PROs have adequate access to medical records to enable them to carry out required activities. This includes the right to request and receive copies as they deem necessary, including preadmission test records. In some cases, this will mean that the PRO will request hospitals to photocopy specific medical records and mail them to the PRO.

The prospective payment rates are computed according to the provisions of the law and are also based on the best available data at the time of computation.

Administrative costs are included in the Federal and hospital specific portions of prospective payments by virtue of their being incurred and reported by hospitals for the years that represent the data bases for the prospective payment system.

Prior to the use of PROs, review of inpatient hospital services was carried out either at the hospital or offsite. Offsite review sometimes required that the hospital mail patient records to Medicare fiscal intermediaries. These costs were subsumed in the hospital's administrative costs which in turn were reflected in Medicare cost reimbursement. Costs related to such activites are accounted for, in some measure, in the prospective payment base rates.

We also believe that the fiscal benefits of PRO review will compensate for any such increased costs. For example, in many cases, PRO's preadmission review activities will protect hospitals from retrospective denials. Thus, there will be trade-offs between a hospital's cost of providing medical records to a PRO and the PRO's performance of review, that, in many cases, may assist hospitals in avoiding unnecessary expenditures.

We agree that the confidentiality of copied records is important and we plan to publish final regulations concerning PRO's protection of photocopied records as separate regulations.

Comment: One commenter questioned why the proposed rule did not contain provisions to satisfy the requirements under Section 1815(b) and 1861(w)(2) of the Act that specify that a hospital, as a condition of payment under Medicare, is obligated to pay a PRO an amount reasonably incurred by the PRO in conducting review activities at that hospital.

Response: Section 1153(c)(8) of the Act provides that reimbursement of PROs will be made in accordance with the terms of their contract with the Secretary. HCFA's policy in negotiating the terms of the PRO contracts has been that PROs will receive reimbursement directly from HCFA. This policy, which is in accordance with section 1153(c)(8) of the Act, eliminates the need for regulations that would specify that HCFA pay a hospital which in turn would pay a PRO for the conduct of review.

Comment: Many Commenters believed that hospitals should not be held financially liable for cases subject to preadmission review. The commenters believe that the PRO should be required to perform review in a timely manner and the beneficiary should be financially liable if the hospital notifies the beneficiary that services would not be covered. The commenters believed that the policy in the regulations is contrary to the limitation of liability provisions in section 1879 of the Act. Another commenter requested that we explain the difference between preadmission review and preadmission certification.

Response: We agree with the commenters that HCFA should not assign financial liability to providers in preadmission review cases in which both the patient and provider have knowledge that the proposed admission is medically unnecessary, unreasonable or inappropriate. Therefore, we have deleted this provision from § 466.78(b)(6) of the final rule. In accordance with section 1879(c) of the Act, if both the provider and beneficiary have knowledge that the proposed admission will not be covered by Medicare, HCFA will not pay the bill and settlement will be between the hospital and the beneficiary. We are retaining the requirement that a facility agree to accept financial liability if (1) the facility has been notified by the PRO of the admission categories that are subject to preadmission review and certification; (2) the required PRO review has not been performed; (3) the facility admits the patient; and (4) subsequent PRO review finds the admission to be medically unnecessary, unreasonable or inappropriate. However, we are revising § 466.78(b)(6) to state that a hospital is not automatically liable if, in accordance with its agreement with the PRO, it makes a timely request for preadmission review and the PRO does not review the case. The agreements between the hospital and the PRO will contain specific details regarding the PRO preadmission review process including the timing of the request for PRO review and the PRO's response.

Regarding the request for clarification on the difference between preadmission review and preadmission certification, preadmission review is the process for determining, for payment purposes, the reasonableness, medical necessity and appropriateness of placement at an acute level of care. Preadmission certification is a favorable determination, transmitted to the hospital and the fiscal intermediary, approving of the patient's admission for payment purposes. We have included definitions of these two terms in § 466.1 of this final rule.

Comment: One State government suggested that the beneficiary should be informed of the reconsideration and appeals process at the time of admission. However, other commenters believed that we should eliminate the requirement that the beneficiary be informed by the hospital at the time of admission about PRO review because it would harm the patient and because the commenters believe it is the responsibility of the Government to inform the beneficiary.

Response: We believe it is important that Medicare beneficiaries be informed about the PRO review process at admission and the § 466.78 of these regulations adequately ensures that beneficiaries are aware of that process. We believe that the hospital can most effectively and efficiently provide this information to the beneficiary at the time of admission. Also, additional detailed information concerning PRO reconsiderations will be made available to beneficiaries by the PRO whenever a PRO denial determination is issued.

Comment: One commenter believed the regulations should specify that the hospital will provide space to the PRO for its review functions in accordance with other demands on the hospital for space.

Response: In their agreement, the PRO and the facility should work out an arrangement that provides the PRO with adequate space to perform its review functions while not placing a hardship on the facility.

F. Coordination with Medicare Fiscal Intermediaries and Carriers (§ 466.80)

Comment: Two commenters questioned whether the agreement between the PRO and the Medicare fiscal intermediaries or carriers has to be approved by HCFA before review can begin because this could delay implementation of review. The commenters believed that we should establish timeframes for submission of the agreements to HCFA and for approval by HCFA.

Response: The regulations require that the agreements must be approved by HCFA before the PRO begins to make review determinations. Because PRO contracts will be signed at different times, each PRO contract will contain a timeframe that is adequate for the PRO and the fiscal intermediary or carrier to reach an agreement. Therefore, we are retaining this provision in § 466.80(c) of the final regulations. We do not believe that more rigid timeframes would necessarily facilitate the negotiation process. Also, every organization that submitted a proposal for a PRO contract was asked to provide a draft agreement and to verify that it had initiated discussions with the appropriate fiscal intermediary. It is our intention that all PRO contracts be awarded in sufficient time for agreements to be signed by the November 15th deadline.

G. Continuation of Functions (§ 466.82)

Comment: One commenter asked who is responsible for certain review activities once a PRO contract is effective. Specifically, the commenter asked who is responsible for review activities not initiated or not completed by the fiscal intermediary or former PSRO for Medicare hospital admissions occurring before the effective date of the PRO contract. Another commenter believed that § 466.82 dealing with the continuation of functions is unnecessary because, as of November 15, all hospitals will have review contracts with PROs.

Response: The pro is responsible for all review activities specified in its contract with HCFA. In most cases, these contracts include the completion of any PSRO activity. We believe that § 466.82 is still necessary because fiscal intermediaries must, in the unlikely event that a PRO contract terminates before a new contract is signed, be responsible for these review functions. The fiscal interemediary will also be responsible for any review function that the PRO has not yet assumed, but which it may assume at some future time.

Comment: Two commenters believed that the fiscal intermediaries should not be making determinations on medical necessity, reasonableness, or level of care. Another commenter believed that the PRO should use norms of care, not HCFA coverage policy, in making review determinations. One commenter believed the regulations appear to state that PRO review determinations are final and binding, but believed that all cases should be subject to appeal.

Response: In responses for the first comment, the regulations at § 466.85 provide that, if a PRO has assumed review responsibility, the PRO, in fact, is responsible for making determinations based on medical necessity, reasonableness and level of care. However, the fiscal intermediary will continue to make coverage determinations on other bases, including whether the service is a statutorily excluded service. It is bound, for payment purposes, by a PRO determination with respect to a medical necessity issue. Regarding the last comment, PRO initial denial determinations are final and binding, subject to appeal under 42 CFR Part 473. Final regulations for Part 473 are published elsewhere in this issue of the **Federal Register.**

Comment: One commenter believed that the regulations should state that the PRO's determination about whether outpatient or other inpatient care is appropriate must be consistent with medical care in the community and must take into consideration the availability and accessibility of care to the patient.

Response: Although we basically agree with the commenters, we do not believe the regulations should address these specific issues. In developing their review criteria, PROs must take into consideration the appropriate medical care in the community.

Comment: Two commenters objected to the need for hospitals to reinstate physician certification. The commenters believed that this will be an administrative burden on hospitals.

Response: The PRO statute does not contain the provision included in the PSRO statute at 1156(d)(1)(B) of the Act that permitted the use of PSRO review to meet the physician certification requirements of the Act. Therefore, to be consistent with the PRO statute, we are retaining this provision for the final rule.

H. PRO Access to Non-Medicare Patient Records (§ 466.88)

Comment: Thirty-five commenters argued that the proposed regulations regarding a PRO's access to the medical records of non-Medicare patients (§ 466.88(b)) are contrary to the provisions of the statute. Section 1866(a)(1)(E) of the Act requires a hospital to release these records to a PRO for its conduct of review under a contract with a private or public agency. As written, the proposed regulations would allow a hospital to deny the PRO access to the medical records of non-Medicare patients. One commenter also questioned whether the working aged are considered Medicare patients when Medicare is not the primary payor.

Response: We agree with the commenters and are revising § 466.88(b) to provide that a PRO may obtain non-Medicare patient records relating to review performed under a non-Medicare PRO contract, if authorized by the patient under State law. This includes records of the working aged and beneficiaries who are dually entitled under Titles XVIII and XIX. However, when these beneficiaries are receiving Medicare services, all Medicare review rules apply. A PRO may also obtain non-Medicare patient records in accordance with its quality review responsibilities under the Act, only if authorized by the institution or practitioner.

Quality review is an integral and essential element of the PRO statute. Section 1154(a)(1)(B) of the Act specifies that any PRO must (in accordance with its contract with the Secretary) perform review to determine whether the quality of care provided to Medicare beneficiaries meets professionally recognized standards of health care. This PRO requirement represents the continuation of a peer review function mandated by the Medicare statute over the past ten years. In section 1154(a)(8), the Congress provides the same process for PROs as it had for earlier Medicare peer review for prescribing the way in which quality review would be performed by PROs, namely, regulations of the Secretary. Furthermore, the provisions of section 1154(a)(7)(D) and (a)(9) direct PROs, in a way similar to earlier peer review organizations, to inspect facilities and collect information necessary to carry out PRO review functions, including quality review. Section 1866(a)(1)(E) imposes a similar obligation on Medicare providers to release patient care data to PROs for

review purposes including the conduct of Medicare quality review. Taken together, these provisions give statutory authority to PROs to conduct quality review in the same manner as conducted by previous Medicare peer review organizations.

The quality review process consists of screening patient care information to identify and verify quality problems in addition to conducting quality review studies. A quality review study is an assessment conducted by or for a PRO of a patient care problem for the purpose or improving the patient care of some or all providers or practitioners in the PRO area through peer analysis, intervention, and resolution of the problem and follow-up.

While the problem studied must affect Medicare patients, it usually affects other patients as well, especially in the context of acute inpatient care. This is because quality problems relate to the way in which care is delivered (i.e., the behavior of a provider or practitioner). In some of these cases, a problem can be adequately addressed for Medicare patients only by addressing the problem for all patients in an acute care setting.

This means that in some quality review studies a PRO must review both Medicare and non-Medicare patient records in order to resolve the problem for Medicare patients. For example, a Medicare quality review study may seek to analyze and resolve a problem in the use of prophylatic antibotics in certain operations which, when not used, increase the rate of infections post-operatively. However, for individual providers or specific practitioners, the frequency of certain operations for Medicare patients may be too low to draw reliable conclusions about the proper use of these antibiotics by that practitioner or in that provider on a timely basis (i.e., it may take a year of data collection for Medicare patients only). In contrast, the frequency for these operations performed on all patients may be adequate to permit timely and reliable assessment of the problem (i.e., within one to three months) and permit more rapid problem resolution for Medicare patients.

Also, physican and hospital-wide studies encourage general resolution of problems through the alteration of area practice patterns. This benefits both Medicare and non-Medicare patients and assures more substantive and longer lasting improvement in a problem than could have been achieved by focusing only on Medicare patients.

I. Examination of the Operation and Records of Facilities (§ 466.88)

Comment: Several commenters believed that PROs should only examine hospital information and charges for outlier cases and those other items required by law. Other commenters felt the language in § 466.88 is vague and requires PROs to duplicate fiscal intermediary efforts. Other commenters requested that we specify what aspects of a hospital's operation a PRO can examine and that PROs should be required to submit results of inspections in writing to the facility. Another commenter noted that the proposed regulations that allow a PRO to examine a hospital's operation in order to determine a hospital's capability to perform review should refer specifically to quality review, as this is the only review that may be delegated to a hospital. Another commenter questioned whether the facility may have access to PRO records.

Response: We believe that the regulations are consistent with the statute, which gives PROs the authority to inspect facilities and records of health care facilities and providers for the purpose of carrying out their responsibilities as specified in the Act. PROs may require hospital charge information for many types of review, such as ancillary services or quality review of inappropriate utilization. We have, however, deleted the reference to cost information from § 466.88(a) because we do not anticipate a need by PROs for this information in carrying out their statutory and contractual responsibilities. PRO review does not duplicate fiscal intermediary review because the functions of each are coordinated as described in § 466.88 of these regulations. For example, only PROs will make determinations based on medical necessity, reasonableness and appropriateness of inpatient care. Only fiscal intermediaries will make coverage determinations on services excluded by statute. The results of PRO review will be made known to hospitals in accordance with provisions that will be included in 42 CFR Part 476. We agree with the comment that the reference to the capability of the facility to perform review should refer specifically to quality review, and we have revised § 466.88(a)(3) accordingly.

J. Lack of Cooperation by a Health Care Facility or Practitioner (§ 466.90)

Comment: Some commenters questioned whether, if a PRO denies a claim because the hospital did not submit requested information, the hospital can then submit the information and request a reconsideration. Two commenters believed that the proposed regulations at § 466.90 are vague and requested definitions and clarifications.

Response: If a PRO denies a claim because a hospital did not submit requested information, the hospital may request a reopening of the case after submitting the requested information in accordance with regulations in 42 CFR Part 473. Final regulations for Part 473 are also published in this issue of the **Federal Register**. We are not making any significant changes to § 466.90 because we believe that the terms used in the section have been defined or explained elswhere in the text of the regulations.

K. Opportunity to Discuss Proposed Initial Denial Determination (§ 466.93)

Comment: Seven commenters recommended that we revise the proposed requirement that a PRO afford an opportunity for the provider and physician (or other attending health care practitioner) to discuss a proposed initial denial determination with the PRO physician advisor. The commenters believed that this requirement should not apply when a retrospective review is performed by the PRO after the patient is discharged from the hospital because it would result in an increased administrative burden to the PRO and would be impossible to implement. One commenter also suggested that if retrospective review is performed, an exit interview should be furnished to the hospital upon request. Another commenter questioned whether there is a need for both the provider and practitioner to discuss the proposed denial.

Response: Section 1154(a)(3) of the Act requires the PRO to afford an opportunity to the provider and practitioner to discuss any initial denial determination. In addition, our proposed rule would increase review flexibility and reduce the costs of issuing unnecessary denials or conducting reconsiderations by providing an opporutnity for discussion to both provider and practitioner prior to issuing a denial. We believe this is a more efficient and less cumbersome procedure than exit interviews or retrospective denials alone.

Comment: A hospital association suggested that the PRO should be required to notify the provider and the physician of the proposed denial within 24 hours of the denial decision. Another commenter recommended that the provider and physician be given 24-hours to respond to the PRO's notification.

Response: We do not believe it would be appropriate for the regulations to require a 24-hour limit for notification of the provider and practitioner or for their response. However, in their individual agreements with PROs, hospitals may wish to negotiate these types of provisions.

L. Notice of PRO Initial Denial Determination (§ 466.94)

Comment: Several commenters objected to the proposed requirements that the content of a PRO's notification to a patient of an initial denial determination be the same as that used to notify the practitioner or provider. The commenter argued that, since in most cases the patient would not be liable for payment, it is inappropriate to include the same amount of detail that would be given to the practitioner or provider. Another commenter believed the notice to the patient should only be issued after all local appeals are completed.

Response: Section 1154(a)(3) of the Act specifically requires that the PRO promptly notify the practitioner, provider, patient and payment agency of the denial decision. The Act does not specify that the patient should receive a less detailed notice than the other parties. Therefore, we believe it appropriate that the patient be fully informed and receive the same notice as the other parties and at the same time. Also, in order to appeal a denial determination, a patient must receive timely notice of the denial.

Comment: Three commenters believed that the regulations should contain the specific requirements for the content and format of the denial notice in order to ensure that the notices are understandable, complete, written in plain English, and clearly represent the nature of the PRO's decision. The commenters believed the PRO and the hospital should negotiate the wording of the notice.

Response: We believe the wording of the denial notice is the responsibility of the PRO and should not be subject to negotiation with the hospital. We do agree with the commenters that the regulations should contain specific requirements for the content of the denial notices and we have included appropriate language in § 466.94 of the final rule. Also, we will be monitoring PRO denial notices to ensure that they can be understood by all parties and do not cause unnecessarily adverse reactions among the recipients.

Comment: One commenter believed the regulations should not limit when a patient's representative can be involved.

Response: We believe the regulations adequately provide for the protection of the patient and the inclusion of a patient representative, when appropriate.

Comment: One commenter pointed out that since Saturday and Sunday are not always working days, it might take three days for the delivery of a denial notice. The commenter also questioned what "prompt written notice" to the fiscal intermediary would be and suggested it be the same timeframe as the issuance of the notice to the other parties.

Response: We agree with the commenter and have revised the proposed § 466.94(c) (this is § 466.94(a)(2) in the final rule) to specify that the time periods for delivery of the notices are all in terms of "working" days, rather than calendar days. We have also revised the timeframe for the notice to the fiscal intermediary to be the same as the notice to the other parties. We have also added timeframes for the notice to the practitioner and provider regarding changes as a result of a PRO's DRG validation.

M. Review Period and Reopening of Denial Determinations (§ 466.96)

Comment: Three commenters suggested that a PRO should not have more than 120 days to deny payment, rather than the one year generally specified in the regulations. Another commenter suggested that the proposed § 466.96(b) that would allow denial determinations to be made within four years of the date of the claim for service should be deleted because all reviews should be completed within one year.

Response: We believe the timeframes specified in the regulations are appropriate because they are similar to other Medicare review time limits at § 405.750(b)(2). To assure the efficiency of the review process, we are limiting to one year the time period during which a PRO may on its own make or reopen an initial denial determination or a change as a result of a DRG validation. In addition, we are revising § 466.96 to allow up to four years for an initial determination change or a change as a result of a DRG validation to be made, reconsidered or revised as described in the regulations. We have deleted the proposed requirement that these actions first be approved by the HCFA Regional Administrator.

N. Reviewer Qualifications and Participation (§ 466.98)

Comment: Several commenters believed that doctors of medicine (M.D.s) and osteopathy (D.O.s) should be allowed to review each others' care. Other commenters suggested that specialists be able to request review by another specialist in the same discipline. Another commenter was concerned that only appropriately qualified medical record personnel perform DRG validation. Another commenter believed the regulations should prohibit a person from performing review who is connected with a facility that is in competition with the facility under review. Also, one commenter suggested that any physician who receives compensation from a hospital should be prohibited from performing review. Another commenter believed the role of the non-physician in the review process should be detailed in the regulations.

Response: We believe it is the intent of the statute and the most effective method of peer review, for M.D.s to review M.D.s, and D.O.s to review D.O.s. We have, however, made an exception to this rule when the appropriate peer is not available to perform the review. Although the suggestions of the commenters regarding review by specialists may have merit, we do not believe these requirements should be included in regulations. However, we have revised the regulations to require that changes as a result of DRG validations be made by a physician and that individuals with training and experience in ICD–9–CM coding must review the technical coding issues. Additionally, the final regulations in Part 473 published elsewhere in this issue of the Federal Register do require that the reconsideration reviewer be a professional peer of the practitioner under review. Regarding the next two comments, we do not believe it is appropriate to include these limitations on the qualifications of reviewers. We believe that the regulations adequately protect against a conflict of interest and that further restrictions are not necessary. Regarding the last comment, we believe that § 466.102 adequately addresses the role of non-physicians in the review process.

O. Use of Norms and Criteria (§ 466.100)

Comment: Several commenters believed that the regulations do not reflect the Congressional intent that PROs use local norms, taking into consideration national norms. Other commenters expressed concern that the PRO may be discriminatory in applying different criteria to different locations and facilities. Other commenters suggested that the PRO be required to describe to the hospital how it arrived at the numbers of procedures selected for preadmission review. Another commenter believed the PRO should be required to make available to the

hospital the criteria, norms and standards used in review. Another commenter suggested that the regulations specify the body of knowledge to be used to determine national norms.

Response: Section 1153(c)(7) requires that negotiated PRO contracts include specifications for use of regional or national norms for setting contract objectives and performing review functions. Norms are statistical values used to establish standards of care and PRO objectives. In contrast to these norms, section 1154(a)(6) of the Act specifies that in their review PROs must use professionally developed norms based upon typical patterns of practice within the PRO area. These are in fact review criteria which are developed by each PRO. Criteria may reflect special circumstances in the PRO area. Regarding the last comment, the PRO agreement with the hospital should contain the specifics for exchange of data, including review criteria.

P. Coordination of Activities

Comment: One commenter suggested that PRO's should be allowed to exchange only aggregate data and that the regulations should preclude disclosure and redisclosure of unauthorized information. Another commenter suggested that the information should be exchanged only with those who have a financial interest in the case.

Response: The exchange of data is governed by the PROs review responsibilities as set forth in section 1154 of the Act. In some cases, the data may be aggregated, but in other cases may contain more detailed information. Regulations governing the acquisition, disclosure and redisclosure of PRO data will be contained in 42 CFR Part 476 and will be published in the **Federal Register.**

Q. HMOs

Comment: Two commenters suggested that HMO patients be exempted from review because the HMO receives a prospective payment and the HMO already has an incentive to provide efficient care.

Response: The statute does not exclude HMO patients from PRO medical review. We believe that PRO review is important because the quality of care is a critical issue for HMO and other patients treated on a capitated payment basis. Therefore, we are not revising the final rule to exempt HMO patients from PRO review.

R. Hospital Issued Denial Notice

Comment: One commenter suggested that the regulations provide that a patient be entitled to an expedited review of the hospital's denial notice and that the hospital be required to notify the patient of appeal rights before the notice is issued. Another commenter questioned whether the provisions of § 466.78(b)(4) are in conflict with a hospital's right to issue denials because that section would require that hospitals issue denials only in accordance with their agreement with the PRO.

Response: Regulations concerning the timing and review of hospital-issued denial notices are contained in § 412.42(c)(3) (previously § 405.472(b)(1)(iii)(C)). Therefore, we are revising § 466.78(b)(4) to specify that when a hospital has issued a written determination in accordance with § 412.42(c)(3) that a beneficiary no longer requires inpatient hospital care, it must submit a copy of its determination to the PRO within 3 working days.

S. Impact

Comment: Four commenters believed that the impact analysis that appeared in the NPRM was incorrect in stating that the regulations will not have an annual effect of $100 million.

Response: In the Impact Analysis of this final rule, we have included a voluntary regulatory impact and regulatory flexibility analysis. The analysis acknowledges that a substantial number of facilities, practitioners and beneficiaries will be affected by implementing the PRO program. However, for the following reasons, we believe that the annual impact will not be significant, nor will it meet the $100 million threshold criterion. The reasons we cite are: (1) The primary impact results from Congressional intent and from the individual PRO contracts; (2) the incremental differences between most PRO and previous peer review activities are not significant; and (3) the effect of PRO activities may not be the primary cause of these impacts. The influence of other factors like the prospective payment system and other third-party payor review efforts to reduce unnecessary admissions and procedures, may have a greater impact on costs than the effects of the PRO activity.

T. Objectives

Comment: Several commenters expressed concern that the objectives are, in fact, quotas and that they could have a negative impact on quality. Another commenter was concerned that setting unrealistic objectives will erode PRO credibility with the medical community. Some commenters were concerned that PROs would be held accountable for their contract objectives even though circumstances beyond their control prevented them from accomplishing their objectives.

Response: While PROs have negotiated specific contract objectives in accordance with requirements contained in section 1153(c)(7) of the Act, these objectives are targets, or quotas. We recognize that there are circumstances under which the objectives may need to be modified. For example, quality objectives would be modified if data developed during the course of the contract demonstrates that the problem targeted is not as severe as previously thought, or if the PRO identifies a different problem of greater importance. Utilization objectives would be modified as a result of demographic shifts (for example, an influx of Medicare beneficiaries into the PRO service area), the effects of new technology, etc.

This approach will allow us to be responsive should circumstances for the PRO change significantly, while also retaining the accountability and performance incentives built into a specified, outcome-oriented contract. In addition, we will periodically review all PRO required review activities to evaluate their appropriateness and cost effectiveness.

U. Medicaid Provisions

Comment: One commenter objected to the provision that reimburses a State at 75 percent when they contract with a PRO to perform medical and utilization review, but only 50 percent when they contract with any other organization. Another commenter questioned what the reimbursement will be for those States with superior utilization review systems waivers granted under 42 CFR 456.505, currently reimbursed at 75 percent.

Response: Sections 1903(a) (2) and (7) of the Act provide that States will be reimbursed at 75 percent for the cost of utilization review activities performed by a PRO under contract with a State or by State employees but only 50 percent for review performed by others under a contract. Under section 1903(a)(2) of the Act, States that have been granted superior systems waivers to perform utilization review activities can be reimbursed at 75 percent for those activities performed by State employees.

Comment: One commenter pointed out that we had an incorrect cross-reference in § 431.630(b).

Response: We agree and have corrected the cross-reference in the regulations text.

V. Definitions

Comment: One commenter pointed out that the definition of grace days conflicts with 42 CFR 405.472. which requires 2 graces days after termination of benefits.

Response: Grace days as used in our proposed definition at 42 CFR 466.1 and as defined in 42 CFR 405.330 refer to additional days of Medicare payment (not more than 2 days) that a PRO or fiscal intermediary may, at its discretion, provide to arrange for post discharge care. In contrast, the provisions at § 412.42(c) (previously § 405.472(b)) describe when a hospital may begin to charge a beneficiary for services provided during a stay otherwise covered by a DRG payment. These provisions do not provide for additional Medicare payment but do specify when a hospital may charge the beneficiary (i.e., the day after the second day after the issuance of a hosptial denial notice). Therefore, we believe our explanation of grace days is appropriate. We note that we are deleting the definition of grace days that was in our proposed § 466.1 because we did not specificially refer to grace days elsewhere in the proposed rule. We have, however, included our explanation of the term at § 466.70(d). We also note that we are changing our explanation of grace days. We previously stated that PROs may grant grace days for the purpose of arranging for post discharge care when neither the provider nor the patient knew or could reasonably be expected to have known that Medicare payment for the service would not be made. In accordance with section 1154(a)(2)(B) of the Act, we have revised our explanation to refer only to the provider's lack of knowledge regarding coverage of services.

Comment: Two commenters believed that the definition of "active staff privileges" is unduly restrictive. Many practitioners, such as psychologists, have privileges to practice independently in the hospital, but do not have admitting privileges. One commenter suggested that the definition include practitioners who are authorized to perform diagnostic services in a facility on a regular basis.

Response: The PRO program is a medical peer review program. To achieve true peer review, we believe it is essential that any PRO reviewing physician be actively practicing his or her profession which includes admitting patients to acute care hospitals.

Comment: One commenter questioned why the definitions of "length of stay norms" and "length of stay projections" only refer to PSROs. The commenter believes these definitions should also apply to PRO outlier reviews.

Response: We have revised these definitions to apply to both PSROs and PROs. PROs will be performing length-of-stay review in both non-PPs and specialty hospitals.

Comment: One commenter suggested that the definition of "quality review study" should include the element of follow-up to the problems identified to ensure that they are corrected.

Response: We agree with the commenter, and have added the element of follow-up to the definition of "quality review study".

Comment: One commenter suggested that the regulations should include a definition of "criteria".

Response: The definition of "criteria" is already contained in § 466.1. The definition did not appear in the July 17th Federal Register publication because the definition is unchanged from that contained in current regulations.

IV. Final Regulations

Based on the comments received and other considerations, we are making the following changes to the proposed rule. We also have made technical changes to the proposed regulations to correct drafting errors and to simplify and clarify certain sections.

A. Statutory Provisions

In the proposed § 466.70(a), we are replacing the reference to specific legislation with the important statutory cites relating to PRO review responsibilities. We are revising the proposed § 466.70(b) that is redesignated as § 466.70(c) to include the requirement that PROs make determinations as to whether a hospital has misrepresented admission or discharge information or has unnecessarily admitted patients to a hospital. This conforms to existing regulations at § 412.48 (previously § 405.472(e)). We are revising the proposed § 466.70(c) that is redesignated as § 466.70(d) to conform to section 1154 of the Act that specifies that a PRO cannot make payment determinations based on the quality of care. Additionally, in § 466.70(d), we are specifying that PROs may grant grace days. In accordance with section 1154(a)(2)(B) of the Act, we refer only to the provider's (and not the patient's) lack of knowledge regarding coverage of services.

B. General Requirements for the Assumption of Review

We are revising § 466.74(e) to require that PROs compile statistics to determine a provider's favorable presumption status and notify the provider of its status.

C. Responsibilities of Health Care Facilities

We are revising § 466.78(a) to conform to section 1866(a)(1)(F) of the Act as revised by the DRA to require that effective November 15, 1984, all hospitals seeking payment under Medicare must maintain an agreement with a PRO. We also are specifying that the agreement must be in writing. In order to allow time for these agreements to be established, we are specifying that this provision is effective June 17, 1985 rather than May 17, 1985 which is the effective date for the other provisions of this rule.

We are revising the proposed § 466.78(b) to specify that when a health care facility has issued a written determination in accordance with regulations at § 412.42(c)(3) (previously § 405.472(b)(1)(iii)(C)), it must submit a copy of its determination to the PRO within 3 working days. We are revising § 466.78(b)(5) that requires a facility to assure that each case subject to preadmission review has been approved by the PRO before admission, We are adding the alternative that the facility assure that a timely request for the PRO preadmission review has been made. In § 466.78(b)(6), we have deleted the proposed provisions that would have assigned financial liability to a hospital in cases in which both the patient and the provider had knowlege that a proposed admission was medically unnecessary, unreasonable or inappropriate. We are also adding a provision to state that a facility is not automatically liable if, in accordance with its agreement with the PRO, it makes a timely request for preadmission review and the PRO does not review the case. This type of case is subject to retrospective prepayment review.

D. Coordination with Medicare Fiscal Intermediaries and Carriers

For consistency, we are changing the references to an "MOU" in this section to "agreement". We are also adding language in § 466.80(b) to provide that the PRO inform intermediaries and carriers of changes that result from DRG validations and the revisions that result from the review of these changes. In § 466.80(e) that specifies that an intermediary will not make payment unit it receives notice that the PRO has

approved the admission, we are specifying that the PRO's approval will be after a preadmission or retrospective review.

E. Initial Denial Determinations

We are revising the proposed § 466.83 to include a clarification of what constitutes an initial denial determination. We are redesignating the proposed § 466.84 as § 466.85 and adding a new § 466.84 to explain that changes as a result of DRG validations may be reviewed by a PRO in accordance with 42 CFR Part 473. The newly designated § 466.85 is revised to specify that both PRO initial denial determinations and changes as a result of DRG validations are final and binding unless reconsidered, reviewed and revised in accordance with Part 473. We note that we have made changes in several other sections of the proposed regulations in order to include the PRO review activity regarding DRG validation.

F. Correlation of Functions

We are revising the format of the proposed § 466.86 for clarity. In some cases, we are changing the citations of the statute to the appropriate citations of the regulations. In § 466.86(a)(1)(iv), we are clarifying that PRO determinations regarding the appropriateness of the setting are conclusive for payment purposes. Additionally, we are revising and adding the proposed § 466.92(b) to § 466.86 of the final rule because both sections concern coverage determinations.

G. Examination of the Operation and Records of Facilities

We are revising § 466.88(a) and (c) to delete the requirement that facilities permit a PRO to examine their cost information. We are revising § 466.88(a)(1) that lists certain PRO functions for which a facility must provide the PRO access to its records and operations. We are specifying that PRO access is not limited to the functions listed. We also are revising the proposed § 466.88(a)(3) to specify that a facility must permit a PRO to examine its operation and records to evaluate the facility's capability to perform quality review. We are revising the proposed § 466.88(b) that previously permitted a PRO to have access to non-Medicare records only if authorized by a facility or practitioner. We are now stating that a PRO may examine these records if: (1) The records relate to review performed under a non-Medicare contract and if authorized by the patient in accordance with State law, or (2) necessary to perform quality review functions and if authorized by the facility or practitioner.

H. General Requirements for PRO Review

We are deleting the proposed § 466.92(a) regarding certain coverage issues that are involved in making a determination of the appropriateness of care. We are deleting this provision because the regulations contain a similar statement in § 466.86(c) that the Medicare fiscal intermediaries and carriers are not precluded from applying Medicare coverage policy rules. Additionally, we are adding the language contained in the proposed § 466.92(b) to § 466.86(c) since these sections are related and should be grouped together.

I. Notice of PRO Initial Denial Determination or Changes as a Result of a DRG Validation

We are revising the format of the proposed § 466.94 for clarity. In § 466.94(a) of this final rule, we discuss specific requirements for initial denial determination notices, including the parties to be notified and the timing of the notice. We are adding a requirement to this paragraph that PROs must document that the patient and facility receive notice of the initial denial determination in cases of preadmission review. We are clarifying that the time periods for the delivery of the notices are in terms of "working" days.

Also, we are adding a new paragraph (b) to include specific requirements for notice of changes as a result of DRG validations. We are including in this final rule at § 466.94(c) a requirement that PRO determination and DRG change notices be understandable and written in plain English.

Finally, we are revising § 466.94(d) and (e) to require that PROs notify payors of changes as a result of DRG validations and to expand the record retention requirements to include a record of these changes.

J. Review Period and Reopening of Determinations

We are revising the proposed § 466.96 for clarity and to include requirements for the review and reopening of changes as a result of DRG validations. We are limiting the time period to one year in which a PRO may make an initial denial determination or a change resulting from a DRG validation on its own. We are deleting the requirement in the proposed § 466.96(b) that denial determinations made after one year but within 4 years be approved by the HCFA Regional Administrator. Instead, we are requiring that HCFA evaluate on a case-by-case basis whether the PRO will be permitted to make an initial denial determination or change as a result of DRG validation after the one year review period but within 4 years. In evaluating whether the PRO may make an initial denial determination or change DRGs, within the 4 year period, HCFA will assess whether the potential benefits of the review activity are justified in terms of the administrative burden on HCFA. We are also adding a provision stating that if there is an error on the face of the evidence, an initial denial determination or change as a result of a DRG validation may be reopened after one year but within four years. We inadvertently omitted this in our proposed rule but had included it in the proposed regulations for 42 CFR Part 473 concerning PRO reconsiderations and appeals (49 FR 29041). We note that the provision allowing PROs to review, at anytime, claims involving fraud or abuse, includes claims that may not have been previously reviewed by the PRO or those that were reviewed but were not denied by the PRO.

K. Reviewer Qualification and Participation

In § 466.98, we are adding a new paragraph (c) and redesignating the proposed paragraph (c) as (d). The new provision clarifies that decisions about procedural and diagnostic information must be made by physicians. However, (OIG) technical coding issues must be reviewed by individuals with training and experience in ICD–9–CM coding. This change conforms to regulations in Part 473 that are published elsewhere in this issue of the **Federal Register**.

L. Definitions

We are making several changes to the definitions located at § 466.1 as follows:

- We are deleting the proposed definition of "annotation" because we had previously deleted the reference to this term in the regulations text.
- We are revising and moving the definition of "area" to § 400.200 that contains definitions for terms used throughout 42 CFR Chapter IV.
- We are deleting the reference to PSROs in the definition of "concurrent review" so that the definition applies to both PSROs and PROs.
- We are deleting the definition of "denial" because we have added further explanations of denials in §§ 466.84 and 466.85.
- We are revising the definition of "DRG" for clarity.
- We are deleting the defintion of "grace days" because we did not specifically refer to grace days in the

proposed rule. We note, however, that we are adding a provision at § 466.70(d) that states that PROs may grant grace days and explain the term.

- We are deleting the definition of "health care service" because this term is self-explanatory.
- We are deleting the reference to PSROs in the definitions of "length-of-stay norms" and "length-of-stay projections" so that the definitions apply to both PSROs and PROs.
- We are revising the definition of "non-facility organization" for purposes of clarity and to specify that it does not include entities that are owned by one or more associations of health care facilities. This requirement is specified in section 1153(b)(3) of the Act and we inadvertently omitted it from our proposal.
- We are adding the definitions of "preadmission certification", "preadmission review" and "preprocedure review".
- We are deleting the definition of "PRO" because it appears in § 400.200 that contains definitions that are used throughout 42 CFR Chapter IV.
- We are deleting the proposed definition of "provider" because this term has been defined in § 400.202. Since the definition we proposed included suppliers, we are making specific reference to suppliers where applicable in the regulations text.
- We are revising the definition of "quality review study" to limit it to the quality review studies conducted by or for a PRO for a patient care problem. We are also including an element of follow-up to the definition.
- We are revising the definition of "review responsibility" to delete an incorrect reference to a PRO's payment determination based on the quality of health care. We are also adding language to clarify that PRO decisions regarding changes as a result of DRG validations are conclusive.
- We are deleting the definition of "Utilization and Quality Control Peer Review Organization" because it is being added to the definitions in § 400.200 by anothe final rule published elsewhere in this issue of the **Federal Register** regarding the acquisition, protection and disclosure of PRO information.

We also are deleting the definitions of "area" and "PRO" in § 460.1. We are also deleting the definition of "PRO" in § 462.2 (that we are redesignating as § 462.1). These definitions are being deleted because they appear in 42 CFR Part 400 that is the general definition section for 42 CFR Chapter IV.

We are revising the definition of "payor organization" in the newly redesignated § 462.1 to conform with section 1153(b)(2)(A) as amended by DRA.

M. Other Technical and Conforming Changes

We are revising Part 405, Subpart G that contains the reconsideration and appeals procedures for Medicare Part A services. Specifically, we are revising § 405.704 that lists actions that are initial determinations to cross-reference Parts 466 and 473 regarding initial and reconsidered determinations made by a PSRO or PRO.

We are revising § 412.44 (previously § 405.472(c)) regarding medical review requirements for hospitals under the prospective payment system to more accurately reflect a PRO's review responsibilities. As revised, this section is consistent with the description of PROs' responsibilities in § 466.70(c)(4), (5), (6), and (7).

We are revising § 412.82(b) (previously § 405.475(c)(2)) to provide that a medical review entity (for example, a PRO) grants grace days for day outliers under the prospective payment system for inpatient hospital care.

We are deleting references to PSROs in § 431.630 regarding the coordination of Medicaid with peer review organizations to conform to section 1902(d) of the Act.

In § 456.2 concerning States contracting with PSROs, we are deleting a cross-reference to § 431.630 since we are no longer referring to PSROs in that section in accordance with section 1902(D) of the Act.

Again, in accordance with section 1902(d) of the Act, we are deleting the cross-reference to § 431.630 in § 456.650. We also are revising the language in the proposed § 456.650(c)(3) for consistency with paragraph (c)(2). We are deleting the proposed § 456.652(d) that would have implemented a penalty provision for States, contracting with PSROs or PROs, if the State failed to submit a quarterly showing that it met physician certification, recertification and plan of care requirements. The DRA amendments which deleted sections 1903(g)(1)(A) and (B) of the Act, removed the penalty provision for those States not meeting these patient care requirements. Instead, the patient care requirements are now included under the State plan requirements located at section 1902(a)(44) of the Act.

We will not require that States, after they have entered into a contract with a PSRO or PRO, to submit quarterly showings that they meet the patient care requirements except for the first quarter following the effective date of the contract. This will serve as notification to us to exclude that State or those particular facilities from our validation reviews. As specified in the proposed § 456.654(a)(5) and now in § 456.654(a)(4), if a facility is being reviewed by a PRO, the State need only list the date the PRO assumed review authority on the quarterly showing for that facility. However, a quarterly showing will continue to be required for any facility not being reviewed by a PRO or for any level of care that is still being reviewed by the State.

We are amending 42 CFR Part 462 regarding peer review organizations to establish a new Subpart A to include the definitions located at § 462.2. We are redesignating this section as § 462.1. Also in Part 462, we are making changes to §§ 462.102, 462.103 and 462.105 for clarity. We are revising § 462.105 to conform to section 1153(b)(3)(B) of the Act that defines an entity affiliated with a health care facility or association of facilities. We are further revising §§ 462.105 and 462.106 to conform to section 1153(b)(2)(A) that permits Medicare fiscal intermediaries to serve as PROs effective November 15, 1984. We are deleting the text at § 462.107(d)(2) because it duplicates the provisions contained in § 462.106.

V. Impact Analyses

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or have a significant adverse effect on competition, employment, investment, productivity, or innovation. In addition, the Regulatory Flexibility Act, Pub. L. 96–354, requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise ensure that the regulations are cost-effective.

In the Impact Analysis section of the proposed rule published on July 17, 1984, we stated that the effects of the regulation were not significant to the point of requiring a regulatory impact analysis or a regulatory flexibility analysis. However, after further review

of our proposed policies and as a result of substantive issues raised by the public commenters, we have decided to include a voluntary regulatory impact and regulatory flexibility analysis in this final rule. This analysis focuses primarily on the nature of the incremental differences between the PRO and PSRO programs and also on the impact of these differences on certain affected parties (e.g., the Federal government, hospitals, physicians, beneficiaries and recipients). Together with several specific comments noted in the preamble, the following discussion constitutes a voluntary analysis of this final rule.

B. Background

Since the inception of the Medicare program in 1965, and the Medicaid program in 1967, Utilization review has been an ongoing activity to assure that Federally reimbursed health care was furnished only when medically necessary. The Social Security Amendments of 1972 established the PSRO program to assure that the health services and items for which Federal payment is made conformed to appropriate professional standards and were delivered in the most efficient and economical manner possible. The Peer Review Improvement Act of 1982 focused on ". . . promoting effective, efficient, economical delivery of health care services and promoting the quality of services of the type for which payment may be made under this title . . ." (Congressional Record—August 17, 1982, page H6185). Thus, throughout the history of the Medicare and Medicaid programs, utilization and peer review strategies have been maintained to safeguard program expenditures and the quality of services and items provided to programs beneficiaries.

C. PROs and PSROs—Differences and Similarities

As noted in the background discussion in the NPRM, there are differences and similarities between the PSRO and PRO programs. A general discussion of these points will focus on significant distinctions between these programs and the effect these differences have on affected parties.

There are notable differences between the two programs. They include:

- PROs are expected to achieve specific, outcome oriented measurable objectives. PSROs emphasized the process of review.
- The funding mechanism (PRO contracts *vs.* PSRO grants) and length of the agreement (2-year PRO contracts *vs.* 1-year PSRO grants).
- The responsibilities of PROs to monitor potential utilization and quality problems inherent in the prospective payment system (increased admissions, multiple transfers, early discharges, procedure coding abuse). PSRO review was not strongly focused on outcomes or system impact.

The similarities between the PRO and PSRO programs include:

- Safeguarding Medicare and Medicaid funds from unnecessary and inappropriate expenditures.
- Using various initiatives to educate physician and hospital staff regarding more effective, efficient and economical ways to provide health care services to program beneficiaries.
- Conducting medical reviews by peers.

In this analysis, we are focusing on the impact of the provisions in the rule that are new or modifications to the current peer review effort. In particular, we will examine the effects of the PROs' assumption of review on hospitals under the prospective payment system and for all other facilities, practitioners, and beneficiaries.

D. The Nature of Estimated Impacts Resulting from this Final Rule

In discussing the expected impacts (benefits, costs and behavioral changes) resulting from the final rule, several contraints limit our ability to determine the nature and extent of the impacts. First, PRO efforts are related to the purpose and goals of the prospective payment system. The prospective payment system endeavors to change hospital behavior through financial incentives under Medicare. The PROs act as a safeguard to assure that, as certain behavorial changes occur in response to prospective payment system incentives, program abuses do not occur to adversely affect beneficiaries or the Medicare program. Therefore, it will be difficult to differentiate clearly the impact of PRO efforts from those of the prospective payment system.

A second consideration is that States, other third-party payors and numerous business health care coalitions are also examining the behavior of hospitals and practitioners in hopes of reducing unnecessary and inappropriate expenditures and services. Their efforts, which in some case are the result of PROs' initiatives through private contractual arrangements, will also serve to reduce unnecessary and inappropriate admissions and services. While we view these efforts as beneficial in nature, they must be considered in determining the nature and extent of the effect of this final rule.

Finally, we believe that much of the impact of the PRO program results from the intent of Congress, as expressed in the statute, rather than from this final rule.

For these reasons we believe that the impact of these regulations, as distinct from the total impact of the PRO program, will not be singularly significant. However, apart from these considerations, it is certain that a substantial number of hospitals, practitioners, beneficiaries, recipients and other parties, including the Federal government, will be directly or indirectly affected by this final rule.

E. Impacts on Affected Parties

1. *Medicare and Medicaid Programs.* As discussed in the Background section of this analysis, utilization and peer review programs have long been an integral part of both the Medicare and Medicaid programs. These medical review efforts have been safeguards over Federal expenditures for health care services and items furnished to Medicare and Medicaid beneficiaries. We believe that the PRO program will continue to assure that Federal funds will be spent only for necessary, reasonable and appropriate services and items and that beneficiaries will receive quality care.

To realize the continued safeguarding of Federal program expenditures and the provision of quality care, $339 million will be spent on the two-year PRO contracts for the period from the fourth quarter FY 1984 through the third quarter of FY 1986. Investing these Federal funds will enable the PROs to meet their individual contract objectives (admission, quality of care and utilization goals), and will result in certain dollar benefits to the government in excess of total contract costs. Also, we believe that by reducing inappropriate utilization, more Federal funds would be freed to provide needed care for a greater number of beneficiaries and recipients. Futhermore, reducing unnecessary utilization will lessen possible health complications and deaths that at times result from unnecessary admissions and inappropriate procedures. Thus, we believe that the Federal government will realize benefits of greater value than its expenditures in its effort to safeguard Federal Medicare and Medicaid program expenditures.

2. *Beneficiaries and Recipients.* Two issues of concern for Medicare beneficiaries and Medicaid recipients are the cost of health care, particularly out-of-pocket expenses, and the quality of care received from providers,

suppliers, and practitioners. As a result of PROs achieving their contractual objectives, we believe that beneficiaries and recipients will continue to receive necessary, reasonable and appropriate services and items. Beneficiaries, in particular, will be protected by PRO review from potential abuses that may result from the actions some providers may take in response to the incentives established by the prospective payment system (unnecessary increased admissions, inappropriate readmissions and unnecessary transfers to providers and units excluded from the prospective payment system.) Recipients in States operating under a cost reimbursement methodology will also benefit from the review activities of the PROs that will prevent unnecessary admissions and shortening lengths of stay. In both cases, individuals should save the out-of-pocket expenses (deductibles and coinsurance payment) related to unnecessary admissions, readmissions, transfers and lengths of stay.

In some instances, the impact of PRO review will be to change the site of service from inpatient to outpatient care. In these cases, the beneficiary would avoid paying the inpatient deductible amount ($400 in 1985), but would pay the amount of the outpatient deductible and coinsurance. To the extent that the sum of the out-of-pocket expense for the Part B services is less than the Part A deductible, the beneficiary will incur less personal liability than if the service was performed in an inpatient setting.

Regarding the quality of care issue, we believe that beneficiaries and recipients will benefit from the peer review efforts of the PROs. In particular, we note that individual beneficiaries and recipients will be advantaged by the reduction in the number of inappropriate or unnecessary admissions or procedures; by the anticipated outcomes of certain required review activities; and by the achievement of overall PRO objectives aimed at significant improvement in patient quality care. For example, we expect PROs will reduce avoidable deaths and complications after surgery. To the extent that PROs can achieve these quality goals, beneficiaries will benefit from the PROs' efforts.

Therefore, in summary, beneficiaries and recipients can anticipate beneficial outcomes in several respects, especially reduced personal expenditures, avoidance of unnecessary or inappropriate health services, and avoidance of unnecessary death and complications. We qualify this conclusion by noting that some beneficiaries could incur additional personal expenses under Part B if the site of care is changed from inpatient to an outpatient setting.

3. *Health Care Facilities.* Many of the public comments received on the proposed rule were from hospitals raising issues related to the impact of this rule on their operations. We are responding to many of these issues in the comment and response portion of the preamble. We also address in the preamble issues raised about other responsibilities and functions of health care facilities.

Earier in this analysis, we discussed the difficulties encountered in estimating precisely the impact of this rule. We noted that the requirements of the PRO statute itself have an impact on facilities; that in many respects the incremental differences between the impact of the PSRO program and the PRO program are not significant; and that the influence of the prospective payment system and the efforts of other third-party payors will also affect facilities.

However, even given these qualifications, we can identify several areas of potential impact that may result from implementing the PRO program. In summary, they include:

- A potential increase in reporting, recordkeeping and photocopying burdens that were not specifically part of the prospective payment rate calculations. As explained earlier in the preamble, collection of this information is necessary for PROs to make determinations that the items and services provided by a facility are necessary and appropriate.
- A reduction in expected Medicare payments to health care facilities. Some facilities, especially hospitals, can minimize the impact of potential payment denials, by ensuring that admissions are medically necessary and appropriate.
- Changes in behavior regarding the numbers and types of admissions. We believe that these changes will result from reductions in unnecessary and inappropriate admissions and procedures. Many other behavioral changes will result from the financial incentives of the prospective payment system that will be reinforced by PRO activity.

We believe that many of these costs and additional burdens will be offset by identifiable benefits to the facilities. For example, by providing PROs with needed medical record information for the PROs' conduct of preadmission review, in many cases hospitals will avoid the more burdensome retrospective denial process.

In summation, we believe that all health care facilities will benefit from PRO activity, particularly in light of the increasing fiscal constraints that are affecting many facilities. We believe that PRO initiatives will be effective in reducing some operating expenses that would otherwise be spent on unnecessary or inappropriate services.

4. *Physicians.* In recent years, variations in physicians' hospital admission and procedure rates have come under particular examination for their influence on the cost and quality of health care. Recent studies identify several primary causes for these variations and conclude that they may occur because of "practice style" (Wennberg, *HEALTH AFFAIRS*, Summer 1984), "reliance on the opinions of peers" (Eddy, *HEALTH AFFAIRS*, Summer 1984), or "provider efficiency" (McClure, *HEALTH AFFAIRS*, Summer 1984).

The conclusion reached from these and other investigations is that variations in physician behavior may unnecessarily drive up health care costs and cause needless complications and even deaths. Historically, PSROs provided a peer review mechanism to examine the impact of physician decisions related to items in the general course of treatment, the appropriateness of the setting, and the length of an inpatient's stay. In many respects, PRO activities will also focus on similar concerns.

We received a number of public comments concerning the impact of PRO initiatives on physicians. In our responses, we consider some of the potential impacts resulting from provisions like the examination of practitioner records and the necessity for the cooperation of practitioners in the conduct of PRO reviews. However, it is difficult to isolate the impact of PRO activities alone on affected physicians. One reason is that the prospective payment system itself is causing significant direct and indirect changes in physician practice styles and behaviors (for example, in terms of admissions and decisions about elective surgery). Also, other third-party payor activities seek to influence physicians' practice styles. The combined effect of these initiatives is to provide physicians with economic incentives to alter their practice styles in order to reduce unnecessary expenditures while preserving the quality of health care.

However, we can cite several examples of potential impacts on affected physicians resulting from the PRO program. First, the change from local peer review (PSRO) to statewide

peer review (PRO) by expanding the geographic scope of reviewers, may contribute to a decrease in local practice variations within a State. Second, physicians may realize some reduction in Medicare revenues as the result of a PRO's decision concerning the necessity of an admission or the efficacy of a procedure. However, we believe that in most cases, overall reductions in physician income will not be significant because the majority will practice in accordance with accepted norms thereby avoiding the risk of payment denials.

In summary, we believe that PRO activities will affect many physicians. However, through the educational efforts of individual PROs, we believe that unnecessary admissions and procedures will be reduced. This in turn would lead to reduction in the number of denials for submitted claims and the accompanying administrative burdens associated with processing denied claims.

F. Conclusion

In the introduction to this analysis, we stated that we are performing a voluntary regulatory impact and flexibility analysis. This decision results from a further examination of the effects of our proposed policies and because of the number of public comments received on several substantive issues. We conclude that a substantial number of health care facilities, beneficiaries, recipients and physicians are affected by the PRO program. However, we believe that the impact directly attributable to these final regulations is not significant for three reasons:

- The primary impact results from the requirements of the PRO statute itself.
- The incremental differences between most PRO and previous peer review activities are not significant.
- The effect of PRO activities may not be the primary cause of these impacts. Other factors, such as the prospective payment system and other third-party payor review efforts, may have a greater impact than the PRO activities.

For the reasons noted above, we have determined that this final rule does not meet the threshold criteria set forth in Executive Order 12291. Furthermore, we have determined, and the Secretary certifies, that this final rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act of 1980.

VI. Information Collection Requirements

Sections 412.44 (previously 405.472), 431.630, 456.654, 466.70, 466.72, 466.74, 466.78, 466.80 and 466.94 of this rule contain information collection requirements. They are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The public is not required to comply with the information collection requirements until OMB approves these requirements under section 3507 of the Paperwork Reduction Act of 1980. Comments on this requirement should be sent directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, D.C., Attention: Faye Iudicello. A notice will be published in the **Federal Register** when approval is obtained.

VII. Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish a general notice of proposed rulemaking in the **Federal Register**, and afford prior public comment on proposed rules. Such notice includes a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when an agency finds good cause that such a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rules issued.

These final rules include revisions to conform the regulations to sections 2315(d), 2334 and 2347 of the Deficit Reduction Act of 1984. Because these conforming changes do not involve significant discretion or the addition of significant procedure or detail for implementation, we believe that there is good cause to waive a proposed rulemaking as unnecessary. Furthermore, the changes made to conform the regulations to the DRA amendments are less stringent than existing regulations. Therefore, it is also in the public interest to waive the proposed rulemaking.

VIII. List of Subjects

42 CFR Part 400

Definitions, OMB control numbers.

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 431

Administrative practice and procedure, Contracts (Agreements), Fair hearings, Federal financial participation, Grant-in-Aid program—health, Health facilities, Health maintenance organizations (HMO), Indians, Information (Disclosure), Medicaid, Mental health centers, Prepaid health plans, Privacy, Quality control, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Assignment of Rights, Claims, Contracts (Agreements), Cost allocation, Federal financial participation, Federal matching provision, Grant-in-Aid program—health, Mechanized Claims Processing and Information Retrieval Systems, Medicaid, State fiscal administration, Third party liability.

42 CFR Part 456

Administrative practice and procedure, Grant-in-Aid program—health, Health facilities, Medicaid, Mental health centers, Nursing homes, Penalties, Reporting and recordkeeping requirements, Utilization control, Utilization review.

42 CFR Part 460

Health care, Health professions, Hospitals, Physicians, Professional Standards Review Organizations (PSRO).

42 CFR Part 462

Grant-in-Aid program—health, Health care, Professional Standards Review Organizations (PSRO).

42 CFR Part 466

Appeals, Delegation, Denials, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Hospitals, Hospital review, Norms/criteria/standards, Physicians, Professional Standards Review Organizations (PSRO), Reconsiderations, Utilization and Quality Control Peer Review Organizations (PRO).

42 CFR Chapter IV is amended as set forth below:

I. The table of contents is amended by revising the title of Part 466 as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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SUBCHAPTER D—PEER REVIEW ORGANIZATIONS

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Part 466—Utilization and Quality Control Review

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PART 400—INTRODUCTIONS; DEFINITIONS

The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

II. Section 400.200 is amended by adding in alphabetical order, the definition of "Area" to read as follows:

§ 400.200 General definitions.

* * * * *

"Area" means the geographical area within the boundaries of a State or a State or other jurisdiction designated as constitution an area with respect to which a Professional Standards Review Organization or a Utilization and Quality Control Peer Review Organization has been or may be designated.

* * * * *

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

III. Part 405 is amended as follows:

A. The authority citation for Subpart C is revised to read as follows:

Authority: Secs. 1102, 1154(a)(2)(B), 1815, 1833, 1842, 1862, 1866, 1870, 1871, and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c-3(a)(2)(B), 1395g, 1395l, 1395u, 1395y, 1395cc, 1395gg, 1395hh, 1395pp), and 31 U.S.C. 3711.

B. In Subpart C, § 405.330 is amended by revising paragraph (b) to read as follows:

§ 405.330 Payment for certain nonreimbursable expenses.

* * * * *

(b) Payment may be made under this provision for not more than 2 days for inpatient hospital services, post-hospital, SNF care, or home health services (as defined in §§ 409.10, 409.20, and 409.40, respectively) when the fiscal intermediary or PRO determines that additional time is required in order to arrange for post discharge care, and when the additional care is furnished after whichever of the following days is the earlier:

(1) The day on which the individual, to whom the services were furnished, has been determined, under § 405.332(a), to have knowledge, actual or imputed, that those services were excluded from coverage by reason of § 405.310(g) or § 405.310(k); or

(2) The day on which the provider of the services, has been determined, under § 405.332(b), to have knowledge, actual or imputed, that the services were excluded from coverage as custodial care (§ 405.310(g)) or as not reasonable and necessary (§ 405.310(k)).

C. The authority citation for Subpart G continues to read as follows:

Authority: Secs. 1102, 1154, 1155, 1869(b), 1871, 1872 and 1879 of the Social Security Act (42 U.S.C. 1302, 1320c, 1395ff(b), 1395hh, 1395ii and 1395pp).

In § 405.704(b), the introductory paragraph is reprinted, and paragraphs (b)(11) and (b)(12) are revised to read as follows:

§ 405.704 Actions which are initial determinations.

* * * * *

(b) *Requests for payment by or on behalf of individuals.* An initial determination with respect to an individual includes any determination made on the basis of a request for payment by or on behalf of the individual under Part A of Medicare, including a determination with respect to:

* * * * *

(11) The medical necessity of services (See Parts 466 and 473 of this chapter for provisions pertaining to initial and reconsidered determinations made by a PSRO or PRO.);

(12) When services are excluded from coverage as custodial care (§ 405.310(g)) or as not reasonable and necessary (§ 405.310(k)), whether the individual or the provider of services who furnished the services, or both, knew or could reasonably have been expected to know that the services were excluded from coverage (see § 405.332); and

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1871 and 1886 of the Social Security Act (42 U.S.C. 1302, 1395hh, 1395ww).

IV. Part 412 is amended as follows:

A. In § 412.44, the introductory language is reprinted without change for the convenience of the reader, paragraph (a) is revised and redesignated as paragraph (b), a new paragraph (a) is added, paragraphs (b) and (c) are redesignated as (c) and (d), and a new paragraph (e) is added. As revised § 412.44 reads as follows:

§ 142.44 Medical review requirements: Admissions and quality review.

Beginning on November 15, 1984, a hospital must have an agreement with a Utilization and Quality Control Peer Review Organization (PRO) to have the PRO review, on an ongoing basis, the following:

(a) The medical necessity, reasonableness and appropriateness of hospital admissions and discharges.

(b) The medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§412.82 and 412.84 of this chapter.

(c) The validity of the hospital's diagnostic and procedural information.

(d) The completeness, adequacy, and quality of the services furnished in the hospital.

(e) Other medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

B. Section 412.82 is amended by revising paragraph (b) to read as follows:

§ 412.82 Payment for extended length of stay cases (day outliers).

* * * * *

(b) The medical review entity (that is, a PSRO, PRO, or intermediary) must review and approve to the extent require by HCFA—

(1) The medical necessity and appropriateness of the admission and outlier services in the context of the entire stay;

(2) The validity of the diagnostic and procedural coding; and

(3) The granting of grace days.

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

V. Part 431 is amended as follows:

A. The table of contents for Part 431 is amended by revising the title of § 431.630 to read as follows:

* * * * *

Subpart M—Relations With Other Agencies

* * * * *

431.630 Coordination of Medicaid with PROs.

* * * * *

B. In § 431.630, the editorial note is removed and the section is revised to read as follows:

§ 431.630 Coordination of Medicaid with PROs.

(a) The State plan may provide for the review of Medicaid services through a contract with a PRO designated under Part 462 of this chapter. Medicaid requirements for medical and utilization review are deemed to be met for those services or providers subject to review under the contract.

(b) The State plan must provide that the contract with the PRO—

(1) Meets the requirements of § 434.6(a) of this part;

(2) Includes a monitoring and evaluation plan by which the State ensures satisfactory performance by the PRO;

(3) Identifies the services and providers subject to PRO review;

(4) Ensures that the review activities performed by the PRO are not inconsistent with PRO review activities of Medicare services and includes a description of whether and to what extent PRO determinations will be considered conclusive for Medicaid payment purposes.

PART 433—STATE FISCAL ADMINISTRATION

VI. Part 433 is amended as follows:

A. The authority citation for Part 433 is revised to read as follows:

Authority: Secs. 1102, 1902(a)(25), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), and 1912 of the Social Security Act (42 U.S.C. 1302, 1396a(a)(25), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), and 1396(k), unless otherwise noted.

B. Section 433.15 is amended by revising paragraph (b)(6)(i) to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) *Activities and rates.*

* * * * *

(6)(i) Funds expended for the performance of medical and utilization review by a PRO under a contract entered into under section 1902(d) of the Act: 75 percent (section 1903(a)(3)(C) of the Act).

* * * * *

PART 456—UTILIZATION CONTROL

The authority citation for Part 456 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302).

VII. Part 456 is amended as follows:

A. Section 456.2 is amended by revising paragraph (b) to read as follows:

§ 456.2 State plan requirements.

* * * * *

(b) These requirements may be met by the agency by:

(1) Assuming direct responsibility for assuring that the requirements of this Part are met:

(2) Deeming, if the agency contracts with a PSRO designated under Part 462 of this chapter; or

(3) Deeming of medical and utilization review requirements if the agency contracts with a PRO to perform that review, which in the case of inpatient acute care review will also serve as the initial determination for PRO medical necessity and appropriateness review for patients who are dually entitled to benefits under Medicare and Medicaid.

* * * * *

B. Section 456.650(c) is revised to read as follows:

§ 456.650 Basis, purpose and scope.

* * * * *

(c) *Scope.* The reductions required by this subpart do not apply to—

(1) Services provided under a contract with a health maintenance organization;

(2) Facilities in which a PSRO is performing review under contract with the Medicaid agency, but only until a contract is awarded in the area to a PRO; or

(3) Facilities in which a PRO is performing medical and utilization reviews under contract with the Medicaid agency in accordance with § 431.630 of this chapter.

C. In § 456.654(a), the introductory language is reprinted; paragraph (a)(4) is revised to include requirements for PRO reviews; paragraph (a)(6) is amended to change "as" to "an" and "provided" to "provider"; and paragraph (a)(7) is amended to change "facility and" to "facility that". The revised § 456.654(a)(4) reads as follows:

§ 456.654 Requirements for content of showings and procedures for submittal.

(a) An agency's showing for a quarter must—

* * * * * *

(4) If review has been contracted to a PRO under § 431.630 of this chapter or to a PSRO, list the date the PRO or PSRO contracted for review.

* * * * *

PART 460—AREA DESIGNATIONS

The authority citation for Part 460 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, 42 U.S.C. 1302. Subpart A is also issued under sec. 150 of Pub. L. 97-248, 42 U.S.C. 1320c note. Subpart B is also issued under secs. 1151 and 1153 of the Social Security Act, 42 U.S.C. 1320c and 1320c-2.

§ 460.1 [Amended]

VIII. Section 460.1 is amended by removing the definitions of "Area" and "PRO".

IX. Part 462 is amended as follows:

A. The table of contents is revised to reflect the establishment of a new Subpart A—General Provisions, to include the current § 462.2 which is redesignated as § 462.1; the redesignation of the current Subpart A as Subpart B to include the current § 462.1 which is redesignated as § 462.2 and the current §§ 462.3–462.16; the redesignation of the current Subpart B as Subpart C to include the current §§ 462.100–462.107; and the revision of the authority citation to read as follows:

PART 462—PEER REVIEW ORGANIZATIONS

Subpart A—General Provisions

Sec.
462.1 Definitions.

Subpart B—PSRO

462.2 Scope and applicability.
462.3 Eligibility for grants.
462.4 Requirements for designation as a priority PSRO.
462.5 Requirements for designation as an alternate PSRO.
462.6 Application requirements for conditional designation.
462.7 [Reserved]
462.8 Conditional designation as a PSRO.
462.9 [Reserved]
462.10 Limitation on period of conditional designation.
462.11 Duration, renewal and voluntary termination or nonrenewal of grants.
462.12 Involuntary termination of non-renewal or grants.
462.13 Use of grant funds.
462.14 Publications and copyrights.
462.15 Applicability of 45 CFR Part 74.
462.16 Additional terms and conditions.

Subpart C—Utilization and Quality Control Peer Review Organizations

462.100 Scope and applicability.
462.101 Eligibility requirements for PRO contracts.
462.102 Eligibility of physician-sponsored organizations.
462.103 Eligibility of physician-access organizations.
462.104 Requirements for demonstrating ability to perform review.
462.105 Prohibition against contracting with health care facilities.
462.106 Prohibition against contracting with payor organizations.
462.107 PRO contract award.

Authority: Sec. 1102 of the Social Security Act, 42 U.S.C. 1302. Subpart B is also issued under sec. 150 of Pub. L. 97–248 U.S.C. 1320c note. Subpart C is also issued under secs. 1152 and 1153 of the Social Security Act. U.S.C. 1320c and 1320–2.

B. The current Subparts A and B are redesignated as Subparts B and C, respectively.

C. 1. A new Subpart A—General Provisions is established to include the current § 462.2 which is redesignated as § 462.1.

2. The newly designated § 462.1 is amended by removing the definition of "PRO" and by revising the definition of "Payor organization" to read as follows:

§ 462.1 Definitions.

* * * * *

"Payor organization" means any organization, other than a self-insured employer, which makes payments directly or indirectly to health care practitioners or providers whose health care services are reviewed by the organization or would be reviewed by the organization if it entered into a PRO contract. "Payor organization" also means any organization which is affiliated with any entity which makes payments as described above, by virtue of the organization having two or more governing body members who are also either governing body members, officers, partners, 5 percent or more owners or managing employees in a health maintenance organization or competitive medical plan.

* * * * *

§ 462.1 [Redesignated as § 462.2]

D. The newly designated Subpart B is amended by redesignating the current § 462.1 as § 462.2.

E. The newly designated Subpart C is amended as follows:

1. Section 462.102 is amended by revising paragraph (a) to read as follows:

§ 462.102 Eligibility of physician-sponsored organizations.

(a) In order to be eligible for designation as a physician-sponsored PRO, an organization must meet the following conditions:

(1) Be composed of a substantial number of the licensed doctors of medicine and osteopathy practicing medicine or surgery in the review area and who are representative of the physicians practicing in the area.

(2) Not be a health care facility, health care facility association, or health care facility affiliate, as specified in § 462.105.

* * * * *

2. Sections 462.103, 462.105, and 462.106 are revised to read as follows:

§ 462.103 Eligibility of physician-access organizations.

(a) In order to be eligible for designation as a physician-access PRO, an organization must meet the following conditions:

(1) Have available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy practicing medicine or surgery in the review area to assure adequate peer review of the services provided by the various medical specialties and subspecialties.

(2) Not be a health care facility, health care facility association, or health care facility affiliate, as specified in § 462.105.

(b) An organization meets the requirements of paragraph (a)(1) of this section if it demonstrates—

(1) That it has available to it at least one physician in every generally recognized specialty; and

(2) The existence of an arrangement or arrangements with physicians under which the physicians would conduct review for the organization.

* * * * *

§ 462.105 Prohibition against contracting with health care facilities.

(a) *Basic rule.* Except as permitted under paragraph (b) of this section, the following are not eligible for PRO contracts:

(1) A health care facility in the PRO area.

(2) An association of health care facilities in the PRO area.

(3) A health care facility affiliate; that is, an organization in which more than 20 percent of the members of the governing body are also either a governing body member, officer, partner, five percent or more owner, or managing employee in a health care facility or association of health care facilities in the PRO area.

(b) *Exceptions.* Effective November 15, 1984, the prohibition stated in paragraph (a) of this section will not apply to a payor organization if HCFA determines under § 462.106 that there is no other eligible organization available.

(c) *Subcontracting.* A PRO must not subcontract with a facility to conduct any review activities except for the review of the quality of care.

§ 462.106 Prohibition against contracting with payor organizations.

Payor organizations are not eligible to become PROs for the area in which they make payments until November 15, 1984. If no PRO contract for an area is awarded before November 15, 1984, a payor organization will be determined eligible by HCFA, if an eligible organization that is not a payor organization is unavailable at that time. HCFA may determine the unavailability of nonpayor organizations based on the lack of response to an appropriate Request for Proposal.

3. In § 462.107, the introductory language is reprinted, and paragraph (d) is revised to read as follows:

§ 462.107 PRO contract award.

HCFA, in awarding PRO contracts, will take the following actions—

* * * * *

(d) Subject to the limitations established by §§ 462.105 and 462.106, award the contract for the given PRO area to the selected organization for a period of two years.

X. Part 466 is amended as set forth below:

A. The title of Part 466 is revised to read as set forth below.

B. The table of contents is amended to reflect the revision of Subpart A—"General Provisions" to include only current § 466.2, which is redesignated as § 466.1, the revision of the title and contents of Subpart B—PSRO Review, to include current § 466.1 which is redesignated as § 466.2 and current §§ 466.3 through 466.63 with center headings, the removal of the headings of Subparts D and E and the revision of the heading of Subpart C. As revised, the table of contents reads as follows:

PART 466—UTILIZATION AND QUALITY CONTROL REVIEW

Subpart A—General Provisions

Sec.
466.1 Definitions.

Subpart B—PSRO Review

General

466.2 Statutory provisions and applicability.
466.3 Review objectives.
466.4 Examination of the operation and records of hospitals.
466.5 Refusal of hospital to allow PSRO entry and performance of review.
466.6 Reports to HCFA.
466.10 General requirements for concurrent review.
466.11 Admission review.
466.12 Continued stay review.
466.13 Elective procedures review.
466.14 Preadmission review.
466.15 Modifications of review activities.
466.16 Notice of adverse determination.
466.17 Informing discharge planners.
466.18 Medical care evaluation (MCE) studies.
466.19 Profile analysis.

466.20 Involvement of health care practitioners other than physicians.
466.21 Reviewer qualifications and participation.
466.22 Alternative review methods.

Delegated Review

466.30 Opportunity for hospitals to seek delegation.
466.31 Letter of interest.
466.32 Details of delegated review plan.
466.33 Determination and notice of hospital capability.
466.34 Delegation of review activities.
466.35 Agreement with delegated hospitals.
466.36 PSRO monitoring and reassessment of hospital capability.
466.37 Reconsiderations.
466.38 Monitoring by HCFA.
466.39 PSRO responsibilities when delegation is denied, withdrawn, or disapproved.

Norms, Criteria, and Standards for Review

466.50 Basic requirement for PSRO area norms, criteria, and standards.
466.51 Establishment of norms, criteria, and standards.
466.52 Dissemination of norms, criteria, and standards.
466.53 Use of norms, criteria, and standards.
466.54 Revisions.
466.55 Regional norms, criteria, and standards.
466.56 Review of PSRO norms, criteria, and standards.

Financing of Review Activities

466.60 Applicability and scope.
466.61 Areawide budget.
466.62 Reimbursement to delegated hospitals.
466.63 Reimbursement for nondelegated hospitals.

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

466.70 Statutory bases, applicability and provisions.
466.72 Notification of PRO designation and implementation of review.
466.74 General requirements for assumption of review.
466.76 Cooperation with health care facilities.
466.78 Responsibilities of health care facilities.
466.80 Coordination with Medicare fiscal intermediaries and carriers.
466.82 Continuation of functions not assumed by PROs.

PRO Review Functions

466.83 Initial denial determinations.
466.84 Changes as a result of DRG validations.
466.85 Conclusive effect of PRO initial denial determinations and changes as a result of DRG validations.
466.86 Correlation of Title XI functions with Title XVIII functions.
466.88 Examination of the operations and records of health care facilities.
466.90 Lack of cooperation by a health care facility or practitioner.
466.92 General requirements for PRO review.
466.93 Opportunity to discuss proposed initial denial determination and changes as a result of a DRG validation.
466.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.
466.96 Review period and reopening of initial denial determinations and changes as a result of DRG validations.
466.98 Reviewer qualifications and participation.
466.100 Use of norms and criteria.
466.102 Involvement of health care practitioners other than physicians.
466.104 Coordination of activities.

Authority: Sec. 1102 of the Social Security Act. 42 U.S.C. 1302. Subpart B is also issued under sec. 150 of Pub. L. 97-248. 42 U.S.C. 1320c note. Subpart C is also issued under secs. 1151-1163, and 1868(a) of the Social Security Act. 42 U.S.C. 1320c-1320-12, and 1395cc(a).

C. Section 466.1 is redesignated as § 466.3 and § 466.2 is redesignated as § 466.1.

D. Newly designated § 466.1 is amended by removing definitions of "Act", "HCFA", "Health care service", "National Council", "Other Attending Health Care Practitioner" and "Secretary" and revising the definitions of "Active staff privileges", "Admission review", "Concurrent quality assurance", "Concurrent review", "Continued stay review", "Delegated Hospital", "Length-of-stay norms", "Length-of-stay projection", Non-delegated hospital", "Norm", "Physician", "Quality Review Study", "Skilled nursing facility (SNF)", "Working day", and adding in alphabetical order, the definitions of "Diagnosis-Related Group (DRG)", "DRG Validation", "Five Percent or more owner", "Health care facility or facility", "Non-facility organization", "Outliers", "Practitioner," "Preadmission certification," "Preadmission review," "Preprocedure review," "PRO review", "Retrospective review", "Review responsibility", "State survey agency," and "Subcontractor" as follows:

§ 466.1 Definitions.

Active staff privileges means: (a) That a physician is authorized on a regular, rather than infrequent or courtesy, basis: (1) To order the admission of patients to a facility; (2) to perform diagnostic services in a facility; or (3) to care for and treat patients in a facility; or (b) that a health care practitioner other than a physician is authorized on a regular, rather than infrequent or courtesy, basis to order the admission of patients to a facility.

Admission review means a review and determination by a PSRO or a PRO of the medical necessity and appropriateness of a patient's admission to a specific facility.

* * * * *

Concurrent quality assurance means a form of PSRO review that focuses on the quality of health services furnished to individual patients, and is performed while the patient is in the hospital.

Concurrent review means a review and determination that is focused on the necessity and appropriateness of inpatient hospital services and is performed while the patient is in the hospital. It includes admission review, continued stay review and, when appropriate, procedure review.

Continued stay review means PSRO or PRO review that is performed after admission review and during a patient's hospitalization to determine the medical necessity and appropriateness of continuing the patient's stay at a hospital level of care.

* * * * *

Delegated hospital means a hospital to which PSRO review functions are delegated under Subpart B.

Diagnosis related group (DRG) means a system for classifying inpatient hospital discharges. DRGs are used for purposes of determining payment to hospitals for inpatient hospital services under the Medicare prospective payment system.

DRG validation means a part of the prospective payment system in which a PRO validates that DRG assignments are based on the correct diagnostic and procedural information.

Five percent or more owner means a person (including, where appropriate, a corporation) who:

(a) Has an ownership interest of 5 percent or more;

(b) Has an indirect ownership interest equal to 5 percent or more;

(c) Has a combination of direct and indirect ownership interests (the possession of equity in the capital, the stock, or the profits of an entity) equal to five percent or more; or

(d) Is the owner of an interest of five percent or more in any obligation secured by an entity, if the interest equals at least five percent of the value of the property or assets of the entity.

* * * * *

Health care facility or *facility* means an organization involved in the delivery of health care services for which reimbursement may be made in whole or in part under Title XVIII of the Act.

* * * * *

Length-of-stay norms means established statistical measures of average lengths of stay for patients of similar age and diagnosis or condition.

Length-of-stay projection means a criterion that defines the time at which patients of similar age and diagnosis or condition would be expected to be ready for discharge.

* * * * * *

Non-facility organization means a corporate entity that (1) is not a health care facility; (2) is not a 5 percent or more owner of a facility; and (3) is not owned by one or more health care facilities or association of facilities in the PRO area.

Nondelegated hospital means a hospital in which the PSRO conducts review activities using its own review procedures, and to which it has not delegated review activities under Part 466, Subpart B of this chapter.

Norm means a pattern of performance in the delivery of health care services that is typical for a specified group.

Outliers means those cases that have either an extremely long length of stay or extraordinarily high costs when compared to most discharges classified in the same DRG.

* * * * * *

Physician means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery, or osteopathy. This includes medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Practitioner means an individual credentialed within a recognized health care discipline and involved in providing the services of that discipline to patients.

* * * * * *

Preadmission certification means a favorable determination, transmitted to the hospital and the fiscal intermediary, approving the patient's admission for payment purposes.

Preadmission review means review prior to a patient's admission to a hospital to determine, for payment purposes, the reasonableness, medical necessity and appropriateness of placement at an acute level of care.

Preprocedure review means review of a surgical or other invasive procedure prior to the conduct of the procedure.

PRO review means review performed in fulfillment of a contract with HCFA, either by the PRO or its subcontractors.

* * * * * *

Quality review study means an assessment conducted by or for a PRO of a patient care problem for the purpose of improving patient care through peer analysis, intervention, resolution of the problem and follow-up.

Retrospective review means review that is conducted after services are provided to a patient. The review is focused on determining the appropriateness, necessity, quality, and reasonableness of health care services provided.

* * * * * *

Review responsibility means (1) the responsibility of the PRO to perform review functions prescribed under Part B of Title XI of the Act and the Social Security Amendments of 1983 (Pub. L. No. 98–21) and the regulations of this part; (2) the responsibility to fulfill the terms and meet the objectives set forth in the negotiated contract between HCFA and the PRO; and (3) the authority of a PRO to make conclusive initial denial determinations regarding the medical necessity and appropriateness of health care and changes as a result of DRG validations.

Skilled nursing facility (SNF) means a health care institution or distinct part of an institution that (a) is primarily engaged in providing skilled nursing care or rehabilitative services to injured, disabled, or sick persons, and (b) has an agreement to participate in Medicare or Medicaid or both, and (c) is not a Christian Science sanatorium operated or listed and certified by the First Church of Christ Scientist, Boston, Massachusetts.

* * * * * *

State survey agency means an agency performing provider surveys in accordance with an agreement under § 405.685 of this chapter.

"Subcontractor" means a facility or a non-facility organization under contract with a PRO to perform PRO review functions.

Working day means any one of at least five days of each week (excluding, at the option of each PSRO or PRO, legal holidays) on which the necessary personnel are available to perform review.

Subparts B through E—[Amended]

E. The headings for Subparts C, D, and E are removed, and §§ 466.30 through 466.63 are incorporated into Subpart B. Subpart B is amended by revising the title to read "PSRO Review", including the newly redesignated § 466.2 and incorporating therein current §§ 466.3 through 466.63, and adding center headings as follows: Center heading "Delegated Review" is added immediately before § 466.30, center heading "Norms, Criteria, and Standards for Review" is added immediately before § 466.50 and center heading "Financing of Review Activities" is added immediately before § 466.60.

F. Subpart C consisting of §§ 466.70 through 466.104 is added to read as follows:

Subpart C—Review Responsibilities of Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

§ 466.70 Statutory bases, applicability and provisions.

(a) *Statutory basis.* Sections 1154, 1866(a)(1)(F) and 1886(f)(2) of the Act require that a PRO review those services furnished by physicians, other health care professionals, providers and suppliers as specified in its contract with the Secretary.

(b) *Applicability.* The regulations in this subpart apply to review conducted by a PRO and its subcontractors.

(c) *Scope of PRO review.* In its review, the PRO must determine (in accordance with the terms of its contract)—

(1) Whether the services are or were reasonable and medically necessary for the diagnosis and treatment of illness or injury or to improve functioning of a malformed body member, or (with respect to pneumococcal vaccine) for prevention of illness or (in the case of hospice care) for the palliation and management of terminal illness;

(2) Whether the quality of the services meets professionally recognized standards of health care;

(3) Whether those services furnished or proposed to be furnished on an inpatient basis could, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient health care facility of a different type;

(4) Through DRG validation, the validity of diagnostic and procedural information supplied by the hospital;

(5) The completeness, adequacy and quality of hospital care provided;

(6) The medical necessity, reasonableness and appropriateness of hospital admissions and discharges;

(7) The medical necessity, reasonableness and appropriateness of inpatient hospital care for which additional payment is sought under the outlier provisions of §§ 412.82 and 412.84 of this chapter; and

(8) Whether a hospital has misrepresented admission or discharge information or has taken an action that results in—

(i) The unnecessary admission of an individual entitled to benefits under Part A;

(ii) Unnecessary multiple admissions of an individual; or

(iii) Other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries.

(d) *Payment determinations.* On the basis of the review specified under paragraphs (c) (1), (3), (6) and (7), and (8) of this section, the PRO must determine whether payment may be made for these services. A PRO may grant a period of not more than two days (grace days) for the purpose of arranging post discharge care when the provider did not know or could not reasonably be expected to have known that payment for the service(s) would not be made under the Medicare program as specified in § 405.330(b).

(e) *Other duties and functions.* (1) The PRO must review at least a random sample of hospital discharges each quarter and submit new diagnostic and procedural information to the Medicare fiscal intermediary or carrier if it determines that the information submitted by the hospital was incorrect.

(2) The PRO must also perform other duties, functions, and responsibilities as required by HCFA.

§ 466.72 Notification of PRO designation and implementation of review.

(a) *Notice of HCFA's decision.* HCFA sends written notification of a PRO contract award to the State survey agency and Medicare fiscal intermediaries and carriers. The notification includes the effective dates of the PRO contract and specifies the area and types of health care facilities to be reviewed by the PRO. The PRO must make a similar notification when review responsibilities are subcontracted.

(b) *Notification to health care facilities and the public.* As specified in its contract with HCFA, the PRO must—

(1) Provide to each health care facility scheduled to come under review, a timely written notice that specifies the date and manner in which the PRO proposes to implement review, and the information to be furnished by the facility to each Medicare beneficiary upon admission as specified in § 466.78(b)(3) of this part.

(2) Publish, in at least one local newspaper of general circulation in the PRO area, a notice that states the date the PRO will assume review responsibilities and lists each area health care facility to be under review. The PRO must indicate that its plan for the review of health care services as approved in its contract with HCFA is available for public inspection in the PRO's business office and give the address, telephone number and usual hours of business.

§ 466.74 General requirements for the assumption of review.

(a) A PRO must assume review responsibility in accordance with the schedule, functions and negotiated objectives specified in its contract with HCFA.

(b) A PRO must notify the appropriate Medicare fiscal intermediary or carrier of its assumption of review in specific health care facilities no later than five working days after the day that review is assumed in the facility.

(c) A PRO must maintain and make available for public inspection at its principal business office—

(1) A copy of each agreement with Medicare fiscal intermediaries and carrier;

(2) A copy of its currently approved review plan that includes the PRO's method for implementing review; and

(3) Copies of all subcontracts for the conduct of review.

(d) A PRO must not subcontract with a facility to conduct any review activities except for the review of the quality of care. The PRO may subcontract with a non-facility organization to conduct review in a facility.

(e) If required by HCFA, a PRO is responsible for compiling statistics based on the criteria contained in § 405.332 of this chapter and making limitation of liability determinations on excluded coverage of certain services that are made under section 1879 of the Act. If required by HCFA, PROs must also notify a provider of these determinations. These determinations and further appeals are governed by the reconsideration and appeals procedures in Part 405, Subpart G of this chapter for Medicare Part A related determinations and Part 405, Subpart H of this chapter for Medicare Part B related determinations.

(f) A PRO must make its responsibilities under its contract with HCFA, primary to all other interests and activities that the PRO undertakes.

§ 466.76 Cooperation with health care facilities.

Before implementation of review, a PRO must make a good faith effort to discuss the PRO's administrative and review procedures with each involved health care facility.

§ 466.78 Responsibilities of health care facilities.

(a) Beginning November 15, 1984, every hospital seeking payment for services provided to Medicare beneficiaries must maintain a written agreement with a PRO operating in the area in which the hospital is located. These agreements must provide for the PRO review specified in § 466.70(c).

(b) *Cooperation with PROs.* Health care facilities that submit Medicare claims must cooperate in the assumption and conduct of PRO review. Facilities must—

(1) Allocate adequate space to the PRO for its conduct of review at the times the PRO is conducting review.

(2) Provide patient care data and other pertinent data to the PRO at the time the PRO is collecting review information that is required for the PRO to make its determinations. When review is performed away from the facility, the facility must photocopy and deliver to the PRO, without charge, all required information within 30 days of a request. When the PRO does post-admission, preprocedure review, the facility must provide the necessary information before the procedure is performed, unless it must be performed on an emergency basis.

(3) Inform Medicare beneficiaries at the time of admission, in writing, that the care for which Medicare payment is sought will be subject to PRO review and indicate the potential outcomes of that review. Furnishing this information to the patient does not constitute notice, under § 405.332(a) of this chapter, that can support a finding that the beneficiary knew the services were not covered.

(4) When the facility has issued a written determination in accordance with § 412.42(c)(3) of this chapter that a beneficiary no longer requries inpatient hospital care, it must submit a copy of its determination to the PRO within 3 working days.

(5) Assure, in accordance with the provisions of its agreement with the PRO, that each case subject to preadmission review has been reviewed and approved by the PRO before admission to the hospital or a timely request has been made for PRO review.

(6)(i) Agree to accept financial liability for any admission subject to preadmission review that was not reviewed by the PRO and is subsequently determined to be inappropriate or not medically necessary.

(ii) The provisions of paragraph (b)(6)(i) of this section do not apply if a facility, in accordance with its agreement with a PRO, makes a timely request for preadmission review and the PRO does not review the case timely. Cases of this type are subject to retrospective prepayment review under paragraph (b)(7) of this section.

(7) Agree that, if the hospital admits a case subject to preadmission review without certification, the case must receive retrospective prepayment review, according to the review priority established by the PRO.

§ 466.80 Coordination with Medicare fiscal intermediaries and carriers.

(a) *Procedures for agreements.* The Medicare fiscal intermediary or carrier must have a written agreement with the PRO. The PRO must take the initiative with the fiscal intermediary or carrier in developing the agreement. The following steps must be taken in developing the agreement.

(1) The PRO and the fiscal intermediary or carrier must negotiate in good faith in an effort to reach written agreement. If they cannot reach agreement, HCFA will assist them in resolving matters in dispute.

(2) The PRO must incorporate its administrative procedures into an agreement with the fiscal intermediary or carrier and obtain approval from HCFA, before it makes conclusive determinations for the Medicare program, unless HCFA finds that the fiscal intermediary or carrier has—

(i) Refused to negotiate in good faith or in a timely manner, or

(ii) Insisted on including in the agreement, provisions that are outside the scope of its authority under the Act.

(b) *Content of agreement.* The agreement must include procedures for—

(1) Informing the appropriate Medicare fiscal intermediaries and carriers of—

(i) Changes as a result of DRG validations and revisions as a result of the review of these changes; and

(ii) Initial denial determinations and revisions of these determinations as a result of ——— reconsideration and all approvals and denials with respect to cases subject to preadmission review and outlier claims in hospitals under a prospective payment system for health care services and items;

(2) Exchanging data or information;

(3) Modifying the procedures when additional review responsibility is authorized by HCFA; and

(4) Any other matters that are necessary for the coordination of functions.

(c) *Action of HCFA.* (1) Within the time specified in its contract, the PRO must submit to HCFA for approval its agreement with the Medicare fiscal intermediaries carriers, and if an agreement has not been established, the PRO's proposed administrative procedures, including any comments by the Medicare fiscal intermediaries and carriers.

(2) If HCFA approves the agreement or the administrative procedures (after a finding by HCFA as specified in paragraph (a)(2) of this section), the PRO may begin to make determinations under its contract with HCFA.

(3) If HCFA disapproves the agreement or procedures, it will—

(i) Notify the PRO and the appropriate fiscal agents in writing, stating the reasons for disapproval; and

(ii) Require the PRO and fiscal intermediary or carrier to revise its agreements or procedures.

(d) *Modification of agreements.* Agreements or procedures may be modified, with HCFA's approval—

(1) Through a revised agreement with the fiscal intermediary or carrier, or

(2) In the case of procedures, by the PRO, after providing opportunity for comment by the fiscal intermediary or carrier.

(e) *Role of the fiscal intermediary.* (1) The fiscal intermediary will not pay any claims for those cases which are subject to preadmission review by the PRO, until it receives notice that the PRO has approved the admission after preadmission or retrospective review.

(2) A PRO's determination that an admission is medically necessary is not a guarantee of payment by the fiscal intermediary. Medicare coverage requirements must also be applied.

§ 466.82 Continuation of functions not assumed by PROs.

Any of the duties and functions under Part B of Title XI of the Act for which a PRO has not assumed responsibility under its contract with HCFA must be performed in the manner and to the extent otherwise provided for under the Act or in regulations.

§ 466.83 Initial denial determinations.

A determination by a PRO that the health care services furnished or proposed to be furnished to a patient are not medically necessary, are not reasonable, or are not at the appropriate level of care, is an initial denial determination and is appealable under Part 473 of this chapter.

§ 466.84 Changes as a result of DRG validation.

A provider or practitioner may obtain a review by a PRO under Part 473 of this chapter for changes in diagnostic and procedural coding that resulted in a change in DRG assignment as a result of PRO validation activities.

§ 466.85 Conclusive effect of PRO initial denial determinations and changes as a result of DRG validations.

A PRO initial denial determination or change as a result of DRG validation is final and binding unless, in accordance with the procedures in Part 473—

(a) The initial denial determination is reconsidered and revised; or

(b) The change as a result of DRG validation is reviewed and revised.

§ 466.86 Correlation of Title XI functions with Title XVIII functions.

(a) *Payment determinations.*

(1) PRO initial denial determinations under this part with regard to the reasonableness, medical necessity, and appropriateness of placement at an acute level of patient care as are also conclusive for payment purposes with regard to the following medical issues:

(i) Whether inpatient care furnished in a psychiatric or tuberculosis hospital meets the requirements of § 405.1629 of this chapter.

(ii) Whether payment for inpatient hospital or SNF care beyond 20 consecutive days is precluded under § 489.50 of this chapter because of failure to perform review of long-stay cases.

(iii) Whether the care furnished was custodial care or care not reasonable and necessary and, as such, excluded under § 405.310(g) or § 405.310(k) of this chapter.

(iv) Whether the care was appropriately furnished in the inpatient or outpatient setting.

(2) Reviews with respect to determinations listed in paragraph (a)(1) of this section must not be conducted, for purposes of payment, by Medicare fiscal intermediaries or carriers except as outlined in paragraph (c) of this section.

(3) PROs make determinations as to the appropriateness of the location in which procedures are performed. A procedure may be medically necessary but denied if the PRO determines that it could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

(4) PRO determinations as to whether the provider and the beneficiary knew or could reasonably be expected to have known that the services described in paragraph (a)(1) of this section were excluded are also conclusive for payment purposes.

(b) *Utilization review activities.* PRO review activities to determine whether inpatient hospital or SNF care services

are reasonable and medically necessary and are furnished at the appropriate level of care fulfill the utilization review requirements set forth in §§ 405.1035, 405.1042, and 405.1137 of this chapter.

(c) *Coverage.* Nothing in paragraphs (a) (1) and (3) of this section will be construed as precluding HCFA or a Medicare fiscal intermediary or carrier, in the proper exercise of its duties and functions, from reviewing claims to determine:

(1) In the case of items or services not reviewed by a PRO, whether they meet coverage requirements of Title XVIII relating to medical necessity, reasonableness, or appropriateness of placement at an acute level of patient. However, if a coverage determination pertains to medical necessity, reasonableness, or appropriateness of placement at an acute level of patient care, the fiscal intermediary or carrier must use a PRO to make a determination on those issues if a PRO is conducting review in the area and must abide by the PRO's determination.

(2) Whether any claim meets coverage requirements of Title XVIII relating to issues other than medical necessity, reasonableness or appropriateness of placement at an acute level of patient care.

(d) *Payment.* Medicare fiscal intermediaries and carriers are not precluded from making payment determinations with regard to coverage determinations made under paragraph (c) of this section.

(e) *Survey, compliance and assistance activities.* PRO review and monitoring activities fulfill the requirements for compliance and assistance activities of State survey agencies under section 1864(a) with respect to sections 1861(e)(6), 1861(j)(8), 1861(j)(12), and 1861(k) of the Act, and activities required of intermediaries and carriers under §§ 421.100(d) and 421.200(f) of this chapter.

(f) *Appeals.* The requirements and procedures for PRO review of changes as a result of DRG validation and the reconsideration, hearing and judicial review of PRO initial denial determinations are set forth in Part 473 of this chapter.

§ 466.88 Examination of the operation and records of health care facilities and practitioners.

(a) *Authorization to examine records.* A facility claiming Medicare payment must permit a PRO or its subcontractor to examine its operation and records (including information on charges) that are pertinent to health care services furnished to Medicare beneficiaries and are necessary for the PRO or its subcontractor to—

(1) Perform review functions including, but not limited to—

(i) DRG validation;

(ii) Outlier review in facilities under a prospective payment system; and

(iii) Implementation of corrective action and fraud and abuse prevention activities;

(2) Evaluate cases that have been identified as deviating from the PRO norms and criteria, or standards; and

(3) Evaluate the capability of the facility to perform quality review functions under a subcontract with the PRO.

(b) *Limitations on access to records.* A PRO has access to the records of non-Medicare patients if—

(1) The records relate to review performed under a non-Medicare PRO contract and if authorized by those patients in accordance with State law; or

(2) The PRO needs the records to perform its quality review responsibilities under the Act and receives authorization from the facility or practitioner.

(c) *Conditions of examination.* When examining a facility's operation or records the PRO must—

(1) Examine only those operations and records (including information on charges) required to fulfill the purposes of paragraph (a) of this section;

(2) Cooperate with agencies responsible for other examination functions under Federal or Federally assisted programs in order to minimize duplication of effort;

(3) Conduct the examinations during reasonable hours; and

(4) Maintain in its principal office written records of the results of the examination of the facility.

§ 466.90 Lack of cooperation by a health care facility or practitioner.

(a) If a health care facility or practitioner refuses to allow a PRO to enter and perform the duties and functions required under its contract with HCFA, the PRO may—

(1) Determine that the health care facility or practitioner has failed to comply with the requirements of § 474.30(c) of this chapter and report the matter to the HHS Inspector General; or

(2) Issue initial denial determinations for those claims it is unable to review, make the determination that financial liability will be assigned to the health care facility, and report the matter to the HHS Inspector General.

(b) If a PRO provides a facility with sufficient notice and a reasonable amount of time to respond to a request for information about a claim, and if the facility does not respond in a timely manner, PRO will deny the claim.

§ 466.93 Opportunity to discuss proposed initial denial determination and changes as a result of a DRG validation.

Before a PRO reaches an initial denial determination or makes a change as a result of a DRG validation, it must—

(a) Promptly notify the provider or supplier and the patient's attending physician (or other attending health care practitioner) of the proposed determination or DRG change; and

(b) Afford an opportunity for the provider or supplier and the physician (or other attending health care practitioner) to discuss the matter with the PRO physician advisor and to explain the nature of the patient's need for health care services, including all factors which preclude treatment of the patient as an outpatient or in an alternative level of inpatient care.

§ 466.94 Notice of PRO initial denial determination and changes as a result of a DRG validation.

(a) *Notice of initial denial determination*—(1) *Parties to be notified.* A PRO must provide written notice of an initial denial determination to—

(i) The patient, or if the patient is expected to be unable to comprehend the notice, the patient's next of kin, guardian or other representative or sponsor;

(ii) The attending physician, or other attending health care practitioner;

(iii) The facility; and

(iv) The fiscal intermediary or carrier.

(2) *Timing of the notice.* The notice must be delivered to beneficiaries in the facility or mailed to those no longer in the facility, within the following time periods—

(i) For admission, on the first working day after the initial denial determination;

(ii) For continued stay (e.g., outliers in facilities under a prospective payment system), by the first working day after the initial denial determination if the beneficiary is still in the facility, and within 3 working days if the beneficiary has been discharged;

(iii) For preprocedure review, before the procedure is performed;

(iv) For preadmission review, before admission;

(v) If identification as a Medicare program patient has been delayed, within three working days of identification;

(vi) For retrospective review, (excluding DRG validation and post procedure review), within 3 working

days of the initial denial determination; and

(vii) For post-procedure review, within 3 working days of the initial denial determination.

(3) *Preadmission review.* In the case of preadmission review, the PRO must document that the patient and the facility received notice of the initial denial determination.

(b) *Notice of changes as a result of a DRG validation.* The PRO must notify the provider and practitioner of changes to procedural and diagnostic information that result in a change of DRG assignment, within 30 days of the PRO's decision.

(c) *Content of the notice.* The notice must be understandable and written in plain English and must contain—

(1) The reason for the initial denial determination or change as a result of the DRG validation;

(2) For day outliers in hospitals, the date on which the stay or services in the facility will not be approved as being reasonable and medically necessary or appropriate to the patients' health care needs;

(3) A statement informing each party or his or her representative of the right to request in accordance with the provisions of Part 473, Subpart B of this chapter—

(i) Review of a change resulting from DRG validation; or

(ii) Reconsideration of the initial denial determination;

(4) The locations for filing a request for reconsideration or review and the time period within which a request must be filed;

(5) A statement about who is liable for payment of the denied services under section 1879 of the Act; and

(6) A statement concerning the duties and functions of the PRO under the Act.

(d) *Notice to payers.* The PRO must provide prompt written notice of an initial denial determination or changes as a result of a DRG validation to the Medicare fiscal intermediary or carrier within the same time periods as the notices to the other parties.

(e) *Record of initial denial determination and changes as a result of a DRG validation.* (1) The PRO must document and preserve a record of all initial denial determinations and changes as a result of DRG validations for six years from the date the services in question were provided.

(2) The documentary record must include—

(i) The detailed basis for the initial denial determination or changes as a result of a DRG validation; and

(ii) A copy of the determination or change in DRG notices sent to all parties and identification of each party and the date on which the notice was mailed or delivered.

§ 466.96 Review period and reopening of initial denial determinations and changes as a result of DRG validation.

(a) *General timeframe.* A PRO or its subcontractor—

(1) Within one year of the date of the claim containing the service in question, may review and deny payment; and

(2) Within one year of the date of its decision, may reopen an initial denial determination or a change as a result of a DRG validation.

(b) *Extended timeframes.* (1) An initial denial determination or change as a result of a DRG validation may be made after one year but within four years of the date of the claim containing the service in question, if HCFA approves.

(2) A reopening of an initial denial determination or change as a result of a DRG validation may be made after one year but within four years of the date of the PRO's decision if—

(i) Additional information is received on the patient's condition;

(ii) Reviewer error occurred in interpretation or application of Medicare coverage policy or review criteria;

(iii) There is an error apparent on the face of the evidence upon which the initial denial or DRG validation was based; or

(iv) There is a clerical error in the statement of the initial denial determination or change as a result of a DRG validation.

(c) *Fraud and abuse.* (i) A PRO or its subcontractor may review and deny payment anytime there is a finding that the claim for service involves fraud or a similar abusive practice that does not support a finding of fraud.

(ii) An initial denial determination or change as a result of a DRG validation may be reopened and revised anytime there is a finding that it was obtained through fraud or a similar abusive practice that does not support a finding of fraud.

§ 466.98 Reviewer qualifications and participation.

(a) *Peer review by physician.* (1) Except as provided in paragraph (a)(2) of this section, each person who makes an initial denial determination about services furnished or proposed to be furnished by a licensed doctor of medicine or osteopathy or by a doctor of dentistry must be respectively another licensed doctor of medicine or osteopathy or of dentistry with active staff privileges in one or more hospitals in the PRO area.

(2) If a PRO determines that peers are not available to make initial denial determinations, a doctor of medicine or osteopathy may make denial determinations for services ordered or performed by a doctor in any of the three specialties.

(3) For purposes of paragraph (a)(1) of this section, individuals authorized to practice medicine in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands as "medical officers" may make determinations on care ordered or furnished by their peers but not on care ordered or furnished by licensed doctors of medicine or osteopathy.

(b) *Peer review by health care practitioners other than physicians.* Health care practitioners other than physicians may review services furnished by other practitioners in the same professional field.

(c) *DRG validation review.* Decisions about procedural and diagnostic information must be made by physicians. Technical coding issues must be reviewed by individuals with training and experience in ICD–9–CM coding.

(d) *Persons excluded from review.* (1) A person may not review health care services or make initial denial determinations or changes as a result of DRG validations if he or she, or a member of his or her family—

(i) Participated in developing or executing the beneficiary's treatment plan;

(ii) Is a member of the beneficiary's family; or

(iii) Is a governing body member, officer, partner, 5 percent or more owner, or managing employee in the health care facility where the services were or are to be furnished.

(2) A member of a reviewer's family is a spouse (other than a spouse who is legally separated under a decree of divorce or separate maintenance), child (including a legally adopted child), grandchild, parent, or grandparent.

§ 466.100 Use of norms and criteria.

(a) *Use of norms.* As specified in its contract, a PRO must use national, or where appropriate, regional norms in conducting review to achieve PRO contract objectives. However, with regard to determining the number of procedures selected for preadmission review, a PRO must use national admission norms.

(b) *Use of criteria.* In assessing the need for and appropriateness of an inpatient health care facility stay, a PRO must apply criteria to determine—

(1) The necessity for facility admission and continued stay (in cases of day outliers in hospitals under prospective payment);

(2) The necessity for surgery and other invasive diagnostic and therapeutic procedures; or

(3) The appropriateness of providing services at a particular health care facility or at a particular level of care. The PRO must determine whether the beneficiary requires the level of care received or whether a lower and less costly level of care would be equally effective.

(c) *Establishment of criteria and standards.* For the conduct of review a PRO must—

(1) Establish written criteria based upon typical patterns of practice in the PRO area, or use national criteria where appropriate; and

(2) Establish written criteria and standards to be used in conducting quality review studies.

(d) *Variant criteria and standards.* A PRO may establish specific criteria and standards to be applied to certain locations and facilities in the PRO area if the PRO determines that—

(1) The patterns of practice in those locations and facilities are substantially different from patterns in the remainder of the PRO area; and

(2) There is a reasonable basis for the difference which makes the variation appropriate.

§ 466.102 Involvement of health care practitioners other than physicians.

(a) *Basic requirement.* Except as provided in paragraph (b) of this section, a PRO must meet the following requirements:

(1) Consult with the peers of the practitioners who furnish the services under review of the PRO review care and services delivered by health care practitioners other than physicians.

(2) Assure that in determinations regarding medical necessity of services or the quality of the services they furnish, these practitioners are involved in—

(i) Developing PRO criteria and standards;

(ii) Selecting norms to be used; and

(iii) Developing review mechanisms for care furnished by their peers.

(3) Ensure that an initial denial determination or a change as a result of DRG validation of services provided by a health care practitioner other than a physician is made by a physician only after consultation with a peer of that practitioner. Initial denial determinations and changes as a result of DRG validations must be made only by a physician or dentist.

(b) *Exception.* The requirements of paragraph (a) of this section do not apply if—

(i) The PRO has been unable to obtain a roster of peer practitioners available to perform review; or

(ii) The practitioners are precluded from performing review because they participated in the treatment of the patient, the patient is a relative, or the practitioners have a financial interest in the health care facility as described in § 466.98(d).

(c) *Peer involvement in quality review studies:* Practitioners must be involved in the design of quality review studies, development of criteria, and actual conduct of studies involving their peers.

(d) *Consultation with practitioners other than physicians.* To the extent practicable, a PRO must consult with nurses and other professional health care practitioners (other than physicians defined in 1861(r) (1) and (2) of the Act) and with representatives of institutional and noninstitutional providers and suppliers with respect to the PRO's responsibility for review.

§ 466.104 Coordination of activities.

In order to achieve efficient and economical review, a PRO must coordinate its activities (including information exchanges) with the activities of—

(a) Medicare fiscal intermediaries and carriers;

(b) Other PROs; and

(c) Other public or private review organizations as may be appropriate.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No 13.773, Medical—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: December 17, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-9000 Filed 4-11-85; 2:42 pm]

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42 CFR Parts 405, 420, 474 and 489

[HSQ-109-F]

Medicare Program; Utilization and Quality Control Peer Review Organizations—Imposition of Sanctions on Health Care Practitioners and Providers of Health Care Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements the portion of the Peer Review Improvement Act of 1982 that imposes certain obligations on health care practitioners and other persons who provide health care services to Medicare beneficiaries. The rule also: (1) Establishes sanctions that the Secretary may impose for violations of the obligations; (2) imposes certain responsibilities on utilization and quality control peer review organizations; and (3) provides that an exclusion sanction will automatically become effective if the Secretary fails to act within a 120-day review period.

EFFECTIVE DATE: May 17, 1985. However, peer review organizations are not required to comply with the information collection requirements contained in §§ 474.36(b), 474.38(b), 474.38(c), 474.39(b), 474.40(b), and 474.40(c) until they are approved by the Office of Management and Budget. (See section VI.C. of the preamble for a discussion of the information collection requirements.)

FOR FURTHER INFORMATION CONTACT:

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William M. Libercci (OIG)—(Department process), (301) 594-5035.

SUPPLEMENTARY INFORMATION:

I. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA, Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act by establishing the Utilization and Quality Control Peer Review Organization (PRO) program. The PRO legislation, enacted on September 3, 1982, seeks to redirect, simplify, and enhance the cost-effectiveness of the peer review program under Medicare.

Section 143 of TEFRA amends sections 1151 through 1163 of the Social Security Act (the Act). As amended, section 1156 of the Act imposes certain obligations upon health care practitioners and other persons who furnish or order services under Medicare. Section 1156 of the Act also provides for sanctions if the Secretary determines that the obligations were not met. These sanctions are recommended to the Secretary by PROs that contract with the Secretary. PROs have the responsibility to determine whether practitioners and other persons are complying with their obligations under the statute. Based upon the PRO recommendations, the Secretary is authorized, by statute, to exclude practitioners or other persons from the

Medicare program or, in lieu of exclusion, require payment of a monetary penalty as a condition of continued eligibility to receive reimbursement under the program.

II. Discussion of Proposed Rule

On April 18, 1984, we published a proposed rule to implement section 1156 of the Act (49 FR 15233). Briefly, the major provisions of the proposal were as follows:

A. PRO Review Process

We proposed to require PROs to review activities of practitioners and other persons who furnish or order health care services or items and, when warranted, make determinations that obligations were violated and that corrective action is needed.

Under the proposal, when a practitioner or other person fails to comply substantially with an obligation in a substantial number of cases, or violates an obligation in a gross and flagrant manner, the PRO must report the violation to the Secretary. The Office of the Inspector General (OIG), Department of Health and Human Services, would act as the Secretary's designee.

The proposal detailed the procedures the PRO must follow in giving notice to the practitioner or other person and providing an opportunity for discussion before making a final determination that a practitioner or other person has violated an obligation. If, after following those procedures, the PRO still determines that a violation has occurred, the PRO would send its report and recommendations to the OIG.

The OIG would review the PRO report and either agree or disagree with the PRO's recommendations. If the OIG agrees with the PRO determination, it could exclude the practitioner or other person from the Medicare program, or in lieu of exclusion, require payment of a monetary penalty as a condition for continued participation in the program.

As provided in section 1156(b)(1) of the Act and our proposal, an exclusion would automatically become effective 120 days after a PRO recommendation for exclusion is received by the OIG, unless the OIG specifically rejects the recommendation. This provision *would not* apply to recommendations for a monetary penalty.

B. Effect of an Exclusion

Under the proposed rule, payment under Medicare would not be made to a practitioner or other person who has been excluded from the program for services or items furnished on or after the effective date of the exclusion. Also, payment would not be made for services or items *ordered* by an excluded practitioner or other person. Further details of our proposal, and the rationale for the proposed policies may be found in the preamble to the April 18 document.

III. Analysis and Response to Comments

We received comments on the proposed rule from 52 commenters including individuals, hospitals, medical societies, hospital and other professional associations, and professional standards review organizations (PSROs). These comments and our responses to them are discussed below.

A. Comment Period

Comment: Some commenters believe that the comment period for the proposed regulations was too short. They stated that 30 days was not enough to address all the issues and implications adequately. The commenters also suggested that the deadline for PRO contracts be revised from October 1, 1984 to January 1, 1985 to allow more time for review and comment.

Response: We believe 30 days was adequate time for commenters to address the proposal. The comment period was limited to 30 days to allow HCFA ample time to review, analyze, and incorporate pertinent comments into the final rule. The initial date mandated by Congress for the implementation of the PRO program was October 1, 1984. The implementation date was subsequently extended to November 15, 1984 by the Deficit Reduction Act of 1984 (Pub. L. 98-369).

B. Definitions (§ 474.0(b))

Comment: One of the obligations of a health care practitioner or other person who furnishes or orders health care services under Medicare, is to assure that those services are furnished economically (proposed § 474.30(a)). The proposed rule stated that *economically* meant that services were provided at the least expensive, medically appropriate type of setting or level of care.

A few commenters suggested revisions to the definition of the term *economically*, stating that although a physician may agree that services could be provided at a lower level of care, that lower level may not exist or be available. In addition, commenters stated that the longer and more complicated inpatient stays should not be arbitrarily terminated because less intensive services could be given in another setting. They believe that, in many cases, the continuity and completion of the patient care plan would be disrupted by such a move.

Other related comments on termination of stays cited the serious stress a patient could suffer, time wasted in the patient's physical transfer and transfer of medical records, and the adjustment problems the patient could have becoming familiar with new staff for a very short period of time.

Some commenters also suggested that the definition of *economically* should require transfer of a patient to another setting only when the new setting can actually take care of the patient. These commenters recommended that the definition be related to the availability of alternative settings or levels or care.

Response: We agree with the recommendation to revise the definition of *economically* and have added the word *available* to the definition. Thus, the requirement at § 474.30(a) that the practitioner provide services economically, means that the services must be provided at the least expensive, medically appropriate type of setting or level of care available. "Available", for this purpose, relates to the availability of alternative settings or levels of care with certain limitations (§ 405.1627). For example, if a patient no longer requires acute hospital care but could receive treatment, covered under Medicare, in a skilled nursing facility and there is no bed available to the patient, that continued stay in the hospital would be considered covered care. However, if a patient no longer needs an acute inpatient level of care but requires home health care services, any continued inpatient stay would not be considered covered care even though the necessary home health care services are not available. Consideration of alternatives by the PROs in no way implies any modification of current coverage policy.

Comment: One commenter believes that the definition of *economically* ignores the special needs of patients in rehabilitation hospitals and that the interpretation of the term *least expensive, medically appropriate type of setting or level of care* could cause significant problems. Another commenter stated that the proposed definition of *economically* could create the impression that the PRO or the physician is to make a comparative cost determination between institutional and other types of services. The commenter believes that this aspect should be clarified.

Response: The term *least expensive, medically appropriate* does not imply that a patient should be placed in or transferred to a facility or level of care

because the cost of the services needed is lower than in another similar facility (or level of care). The definition of *economically* for the final rule reads "least expensive, medically appropriate type of setting or level of care available". We believe this modified definition also addresses concerns related to special needs of patients in all types of settings.

Comment: Several commenters noted that the regulations do not define the criteria that PROs will utilize when making a determination that a practitioner or other person has (1) failed substantially to comply with any obligation in a substantial number of cases, or (2) grossly and flagrantly violated any obligation in one or more instances (§ 474.34(c)). Some commenters also stated that no definitions were given for *substantial* or *gross and flagrant* in the proposed rule. The commenters stated that without definitions, the interpretations will vary from one locality to another and even within a particular PRO area. The commenters believe that this will lead to inconsistent application of sanctions.

Response: We are not specifying the criteria for determining violations of the statutory obligations contained in section 1156(a) of the Act and § 474.30 of these final regulations. The PROs have responsibility for the review of the professional activities of practitioners or other persons. In rendering medical judgments, the PROs must apply, as principal points of evaluation and review, professionally developed norms of care, diagnosis, and treatment based on typical patterns of practice within the geographic area served by the organization. We agree with part of the comments and have added definitions for what will be considered *gross and flagrant* and *substantial* violations (§ 474.0(b)).

We have differentiated between substantial violation and gross and flagrant by interpreting the language used by the statute. Substantial violation in a substantial number of cases means a pattern of care has been provided that is inappropriate, unnecessary or does not meet the recognized professional standards of care or is not supported by the necessary documentation of care as required by the PRO. Gross and flagrant violation means a violation of an obligation has occurred in one or more instances which presents an imminent danger to health, safety or well being of a Medicare beneficiary or places the beneficiary unnecessarily in high risk situations.

Comment: One commenter suggests that the definition for Statewide Council be deleted because Statewide Councils do not apply to the PRO program and are no longer operational in the PSRO program.

Response: We agree and have deleted the definition for Statewide Council.

C. Obligations of Practitioners or Other Persons (§ 474.30)

Comment: One commenter believes that the practitioner's or other person's obligation to assure that services are of a quality that meet professionally recognized standards of health care (proposed § 474.30(b)) could be a problem. The commenter states that a PRO may not be qualified to define these standards. Similarly, one commenter states that the proposed sanction process imposes the judgment of non-professionals on medical professionals without due process of law. A third commenter wants us to ensure that the sanction process is objective. This commenter is concerned that the proposed regulations could result in reviewers who are not familiar with certain procedures making arbitrary determinations of violations.

Response: The requirements and criteria for determining the capability of a PRO to perform medical review were specified in the request for proposal for PRO contracts. As part of the requirements, a PRO must have sufficient physician resources to conduct all required review activities. This requirement assures adequate peer review. The process followed in developing a sanction case under this regulation is very similar to the process used under the PSRO program. These procedures have been tested in court and found to be constitutionally sound.

Comment: Proposed § 474.30(c) stated that practitioners or other persons who furnish or order health care services under Medicare would be obligated to assure that the services are supported by evidence of medical necessity and quality in the form and fashion that the reviewing PRO may reasonably require. Some commenters believe that § 474.30(c) is not consistent with the related provision in the statute (section 1156(a)(3) of the Act). These commenters stated that this paragraph would require a hospital to substantiate its compliance with pre-admission or pre-procedure review requirements. They noted, however, that the request for proposal for PROs sent out by HCFA indicates that no review function except quality review studies will be delegated to a hospital by the PRO. The commenters believe, in essence, that the proposed rule would require hospitals to develop a system to comply with a review activity that only the PRO is supposed to conduct.

Some commenters believe that the practitioner's or other person's obligation to comply with pre-admission or pre-procedure review requirements allows PROs to exercise a broad authority not supported by statute. They recommend that the reference to pre-admission and pre-procedure reviews be deleted from § 474.30(c). One commenter suggested that the pre-admission and pre-procedure reviews cited in § 474.30(c) should be performed on a delegated basis because this method would be the most cost-effective.

Response: The commenters are correct when they point out that no pre-admission or pre-procedure review activity will be delegated to hospitals and only the PROs will conduct this type of review. However, the intent of the requirement was misunderstood by the commenters and only needs to be clarified here. A PRO may require that practitioners or other persons follow certain procedures to enable the PRO to conduct this type of review, and all practitioners or other persons must comply. Hospitals must develop procedures to ensure that categories of patients subject to pre-admission review are, in fact, reviewed before admission. A violation of these procedures could result in a sanction. At its discretion, a PRO could request evidence of compliance with its review procedures to assure that a practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act. Therefore, we do not believe that any changes are required in § 474.30(c).

Comment: Many commenters believe that PROs should not be provided with copies of medical records at the expense of the practitioner or other person (§ 474.30(c)). They stated that this provision shifts substantial unreimbursed costs to the practitioner or other person, causing an undue financial burden. One commenter noted that under the prospective payment system, the high non-reimbursable costs for retrieving, copying, and transporting records will result in higher charges to private pay patients.

Response: We believe it is important that PROs have adequate access to medical records to enable them to carry out required activities. This includes the right to request and receive copies as they deem necessary. In some cases, this will mean that the PRO will request hospitals to photocopy specific medical records and mail them to PRO. However, the cost of photocopying records is a hospital operating cost and,

as such, is covered by the DRG prospective payments.

The prospective payment rates are computed according to the provisions of the law and are also based on the best available data at the time of the computation. Administrative costs are included in the Federal and hospital specific portions of prospective payments by virtue of being incurred and reported by hospitals for the years that represent the data bases for the prospective payment system.

Prior to the use of PROs, review of inpatient hospital services was carried out either at the hospital or offsite. Offsite review sometimes required that the hospital mail patient records to Medicare fiscal intermediaries. These costs were subsumed in the hospital's administrative costs that in turn were reflected in Medicare cost reimbursement calculations. Costs related to such activities are accounted for, in some measure, in the prospective payment base rates.

We also believe that the fiscal benefits of PRO review will compensate for any such increased costs. For example, in many cases, PROs' pre-admission review activities will protect hospitals from many retrospective denials. Thus, there will be trade-offs between hospitals' costs of providing medical records to PROs and PROs' performance of review that in many cases, may assist hospitals in avoiding unnecessary expenditures.

Accordingly, we are not changing this section of the regulations.

D. Sanctions (§ 474.32)

Comment: One commenter stated that § 474.32(b) does not completely reflect the Act's provisions and limitations in section 11256(b)(3). The commenter believes that although the proposed rule reflects the fact that monetary penalties are to be imposed in lieu of exclusion and are limited to an amount not in excess of the cost of improper or unnecessary services, the proposed rule does not indicate that monetary penalties can be imposed only when "such acts or conduct involved the provision or ordering . . . of health care services which were medically improper or unnecessary."

Response: We agree and have modified § 474.32(b) to specifically state that penalty is only available in cases of unnecessary or improper services.

Comment: One commenter recommends that the time for payment of a monetary assessment be extended from six months to one year since the amount of the penalty may be substantial.

Response: We believe six months is a sufficient period of time for payment of any monetary assessment. The practitioner or other person will have an option of taking six months to pay the monetary assessment or having it deducted from any sums the Federal Government owes the practitioner or other person. We believe the six month period is appropriate given the basis for determining the amount of the penalty and the need to adequately monitor its enforcement.

Comment: One commenter states that HCFA should promote a means of coordinating sanction activity between the Medicare and Medicaid programs.

Response: We agree and are coordinating sanction activity to the extent that legislation allows notification to State agencies when sanctions are being imposed on practitioners and other persons participating in the Medicare program.

E. PRO Responsibilities (§ 474.34)

Comment: A commenter recommends that the regulations be amended to provide a means of accommodating the practitioner's or other person's comments prior to the PRO's identification of a violation. The commenter stated that before a PRO identifies a violation, the PRO should be required to speak with the practitioner or other person to obtain his or her view of the facts and to see if a mutually satisfactory resolution could be reached.

Response: We agree with the comments but have not accepted the recommendation to revise the proposed rule because the requirements suggested are beyond the scope of the regulations and have already been included in the peer review plan of the PRO. A PRO must use all appropriate mechanisms of review and intervention to resolve adverse situations and assure compliance with the statutory obligations prior to using the sanction procedures specified in these final regulations. The sanction process is viewed as a measure of last resort in the peer review program. We believe that the broad scope of the basic responsibilities addressed in § 474.34(a) applies to the requirement of resolving situations before using the sanction procedures under this final rule.

Comment: Proposed § 474.34(e) requires the PRO to deny Medicare payment for services or items ordered by an excluded practitioner or other person when the PRO identifies such services or items and reports the findings to HCFA. One commenter stated that it will be almost impossible for a PRO to identify items or services ordered by an excluded practitioner from another area or State, given the present state-of-the-art for tracking excluded practitioners. The commenter suggested that § 474.34(e) be modified to recognize this difficulty.

Response: We have not changed this section because we believe that the provisions requiring that notice of sanction be provided to the PRO who originated the sanction report and PROs in adjacent areas (as defined in § 474.52(e) (1) and (2)) reduce the potential difficulty that may be encountered by a PRO in identifying services or items ordered by an excluded practitioner. Section 474.34(e) does not require a tracking mechanism for an excluded practitioner outside the jurisdiction of a PRO. However, PROs are statewide organizations and are expected to conduct statewide monitoring. The OIG's internal procedures requiring monthly notice of sanctioned individuals to every State and PRO could facilitate the identification of an out-of-State practitioner who could be furnishing services in another State.

F. Action of Identification of a Violation (§ 474.36)

Comment: One commenter stated that § 474.36(b), concerning PRO action if the PRO determines that a violation is a substantial failure to comply in a substantial number of cases, should require the PRO to send the practitioner or other person a written initial notice when the PRO identifies the violation.

Response: We agree with this comment and have clarified the section to require the PRO to send a written notice when a substantial violation is identified.

Comment: One commenter believes that a summary of the information used by the PRO in arriving at its determination (which is supplied to the practitioner or other person at the time a violation is identified) is insufficient to support action by the PRO at that time. The commenter believes that the practitioner or other person would be unable to respond properly to the PRO's allegations, unless detailed supporting material were provided at the time of notice.

Response: We believe the summary information that the PRO provides with the written notice at the time a substantial violation is identified is adequate. This summary must be complete enough to advise the physician or other person of the issues involved and to identify the significant information on cases used in determining the violation. Section 474.38(b) requires the PRO to provide a

copy of all the material used by the PRO if it is determined that a violation has, in fact, occurred.

G. PRO Determination of a Violation (§ 474.39)

Comment: The proposed regulations allow a practitioner or other person 20 or 30 days to respond to PRO notices during different stages of the sanction process (§§ 474.36(b)(6), 474.38(b)(5), and 474.39(b)(2)). Various commenters stated that 20 or 30 days is not enough time for a reasonable reply. One commenter also noted that the failure of a PRO to release notices in a timely manner and potential delays in the postal system could limit the available time even more. The commenters suggested that: (1) The time frames be extended by 10 or 15 days, (2) practitioners or other persons be given 20 to 30 days to reply from the date the PRO notification is *received*, and (3) only work days be considered in the time frames.

Response: Sections 474.36(b)(6), 474.38(b)(5), and 474.39(b)(2) have been modified to incorporate the suggestion that practitioners or other persons be given 20 or 30 days, as specified, to reply from the date the PRO notification is received. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary. We are not further extending these timeframes for the final rule. These timeframes have been extended already from the time allowed under the previous sanction regulations. Extending the timeframes any longer would prolong an already lengthy process. We believe that the time allowed is adequate for a practitioner or other person to respond.

Comment: We proposed that if the issue concerning the PRO's determination of a violation is not resolved to the PRO's satisfaction, the PRO would submit its report and recommendation to the OIG, and the practitioner or other person would have 30 days to submit additional material to the OIG. One commenter recommends that the proposal be revised to allow the OIG to accept information beyond the proposed 30-day period if the practitioner or other person has exercised diligence in providing or obtaining information, and acceptance of the information could materially affect the outcome of the case.

Response: We believe the time limits specified in the regulations are sufficient for the practitioner or other person to submit additional material to the OIG. Additionally, in view of the statutory mandate that the Secretary act within 120 days of the receipt of a PRO recommendation for exclusion, the granting of any additional time in which to submit additional information would interfere with the OIG responsibility in this regard.

H. PRO Report to OIG (§ 474.40)

Comment: One commenter states that the language contained in § 474.40(c)(4) was merely repetitive of the language in the statute and requested a more thorough explanation as to how a "finding" could be made as to whether a practitioner or other person is unable or unwilling substantially to comply with his or her obligations.

Response: We have changed the word "finding" to "recommendation" in § 474.40(c)(4). Section 1156(b) of the Act requires the Secretary, rather than the PRO, to make the determination before invoking a sanction, that the practitioner or other person is unable or unwilling substantially to comply with the statutory obligations. We have not specified the information that the PRO must use in making its recommendation in the final regulation. The PROs are responsible for determining in each situation the information that would best support their recommendation. For example, the PRO could base its recommendation on the experience the PRO has had with the particular practitioner as well as any other information considered relevant by the PRO.

I. Basis for Recommended Sanction (§ 474.41)

Comment: Proposed § 474.41 contains the various considerations on which the PRO would base its recommendations for a specific type of sanction. A commenter stated that two of the listed considerations were duplicative, and that we should require consideration of the availability of alternative sources of services in the community.

Response: The repetition was due to a typographical error that has been corrected in these final regulations. The proposal should have required, in place of the duplication, a consideration of the deterrent value of the sanction. Also, the commenter's request concerning alternative sources of services in the community has been accepted. However, as discussed in section III.B. of this preamble, consideration of alternatives by the PROs in no way implies any modification of current coverage policy.

J. Review of PRO Report by the OIG (§ 474.42)

Comment: One commenter suggests that § 474.42(b) should be revised to expand the bases for OIG review of a PRO's report and recommendations to include, in the case of evidentiary violations, whether the PRO's procedures and demands for documentation in the cases at issue were reasonable and necessary to performance of its duties under the Act.

Response: We believe the requirement contained at § 474.42(b)(1) that the OIG determine whether the PRO is following its procedures is sufficient to substantiate whether the PRO's actions were reasonable and necessary.

Comment: One commenter noted that paragraphs (d) through (f) of § 474.42 were incorrectly designated since paragraph (c) was omitted.

Response: Appropriate redesignations have been made to correct the typographical error.

Comment: One commenter stated that § 474.42(e) (2) and (3) (redesignated in this final rule as paragraphs (d) (2) and (3)) were not clear as to how the type and severity of offense would be classified and weighed in the OIG's sanction determination.

Response: We believe the present language adequately advises the reader of the manner in which the OIG determines the appropriateness of any sanction. Identical language was found in former § 474.10, relating to HCFA's deliberations concerning the imposition of a sanction following the receipt of a PSRO report.

Comment: Many commenters disagree with the automatic imposition of an exclusion if the OIG (acting as the Secretary's designee) does not act within the 120-day review period (proposed § 474.42(f)). These commenters believe that this is an arbitrary intrusion into the Secretary's discretionary role that fails to consider special circumstances that may arise. The commenters want some action required by the OIG before an exclusion could be effective. One commenter stated that the automatic exclusion is inappropriate because action by the OIG *is* required to reinstate a practitioner or other person in the Medicare program.

Response: We are unable to accept these comments because the 120-day provision for the automatic implementation of an exclusion is required by section 1156(b)(1)(B) of the Act. However, if an exclusion sanction becomes effective because a decision was not made within 120 days, the OIG will complete the review of the case and issue a notice to the practitioner or other person affirming or modifying the PRO recommendation. We would note that proposed § 474.42(f) has been

redesignated as § 474.42(e) in this final rule.

Comment: Several comments were received concerning the imposition of a monetary penalty in lieu of an exclusion. Specifically, the proposed rule states that the 120-day provision for automatic imposition does not apply to the recommendations for a monetary penalty. Commenters requested specific language to reflect the appropriate handling of monetary penalty recommendations, specifying the action that OIG will take in these cases.

Response: We have modified the section pertaining to the automatic imposition of an exclusion to accommodate the comments. We have also added a new paragraph (§ 474.42(f)) relating to monetary penalty recommendations to address the comments.

K. Notice of Sanction (§ 474.52)

Comment: In the case of an exclusion under the proposed rule, the OIG would specify the earliest date on which it would accept a request for reinstatement. One commenter believes that the OIG should consider reinstatement of a practitioner without inflexible time limits when to do so would serve the interest of patients and the program.

Response: Under current HCFA regulations in 42 CFR Part 420—Program Integrity, § 420.132, Criteria for Action on Request for Reinstatement, provides that reinstatement will not be granted unless it is reasonably certain that the violations that led to exclusion will not be repeated. Statutory authority is given to the Secretary to exclude either permanently or for such period as may be determined. By excluding for a specific period of time, the practitioner or other person will have sufficient time to improve his or her medical practice or services and to demonstrate to the Secretary that the violations that led to exclusion will not recur. Furthermore, allowing reinstatment prior to the period specified by the Secretary would mitigate against the effect of imposing a sanction. To permit the practitioner or other person to apply for reinstatement when the practitioner or other persons believes that he or she is ready to be reinstated would be totally unmanageable and would not be of benefit to the program. This could allow the person to apply one week after the effective date.

Comment: Many commenters are concerned that the new regulations do not adequately address the administrative appeals process available to a practitioner or other person who receives a sanction notice from the OIG.

Response: Several modifications have been made to accommodate these concerns. We have added a new paragraph (g) to § 474.52 to specify that the OIG's determination and notice of sanction under these regulations constitute an "initial determination" and a "notice of initial determination" for purposes of the administrative appeals process. These initial determinations are not subject to reconsideration. Instead, if dissatisfied with an initial determination, a practitioner or other person must request a hearing. We have revised § 474.56 to clarify that the OIG's determination that the basis for the exclusion no longer exists and that there is reasonable assurance that the problems will not recur must be made in accordance with 42 CFR 420.130–420.136. We have also revised § 474.58 to clarify that a practitioner or other persons dissatisfied with the OIG's determination or an automatic exclusion sanction is entitled to a hearing before an Administrative Law Judge and may also request a review of that decision by the Appeals Council in accordance with 42 CFR 405.1530 through 405.1595 of this chapter.

Comment: Many commenters strongly believe that, since hospitals and other health care providers could potentially be held liable for services ordered by the sanctioned practitioner, the OIG should notify hospitals and other health care providers where the sanctioned practitioner may be practicing.

Response: We agree, in part, with these comments, and have added a requirement to § 474.52(e)(5) that notifications be given to the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known.

L. Effect of an Exclusion on Medicare Payments and Services (§ 474.54)

Comment: Many commenters noted that under § 474.54(a)(2) providers will not be paid for items or services ordered by the excluded practitioner or other person even though the provider may not be aware of the exclusion. These commenters believe that a provider (especially the institutions where the practitioner practices) must get adequate notice of sanction if the provider is going to be held liable in this manner. The commenters stated that the provision, as proposed, imposes an undue financial burden on providers because they will not be aware of particular sanctions.

Response: As previously noted, we will notify the hospital where the sanctioned individual's case originated and where the individual currently has visting privileges, if known.

Comment: We proposed to continue payment for inpatient hospital or skilled nursing services for 30 days after the effective date of an exclusion, for services furnished to a beneficiary who was admitted before the effective date of the exclusion. One commenter questioned why the length of stay should be determined by a sanction when a patient's admission is found to be medically necessary and appropriate (§ 474.54(b)(1)). This commenter noted that the prospective payment system already has sufficient remedies for lengths of stay and total costs that exceed the designated limits. The commenter believes that the hospitals should receive payment for items and services covered by the Medicare program and found by the PRO to be provided appropriately, regardless of the relationship of the length of stay to the effective date of the sanction.

Response: This is a statutory requirement contained in section 1866(b)(3) of the Act, and we cannot revise that policy in § 474.54(b)(1). Although we received no comments related to the payment exception for home health services or items, we have modified § 474.54(b)(2) to reflect a recent change to the Act that was contained in section 2348 of the Deficit Reduction Act of 1984 (Pub. L. 98–369). That statutory revision amended section 1866(b)(4) of the Act to permit payment for home health services or items furnished under a plan established before the effective date of exclusion to be available for services or items furnished up to 30 days after the effective date.

M. Hearings and Appeals (§ 474.58)

Many commenters are concerned about the hearings and appeals that woud be available under the proposed regulations. The following comments illustrate these concerns.

Comments:

- The proposed sanction process deprives practitioners or other persons of their constitutionally guaranteed right to legal counsel and judicial proceedings prior to the imposition of a sanction.
- An individual practitioner's reputation in the community could be irreparably damaged by an incorrect finding and publication of a sanction. All alleged violators should be accorded the right to a full, fair, and impartial evidentiary hearing prior to the imposition of a sanction and public disclosure. Publication of a sanction should be postponed until appeals are

completed, or until the time to appeal has expired.

• There is no opportunity to appeal a substantive error during the period that the OIG is reviewing the PRO's determination.

• Sections 474.36 and 474.38 of the proposed regulations (PRO identification and determination of a violation) should be revised. The regulations do not provide for an evidentiary hearing, permit the alleged violator to cross-examine witnesses or call witnesses in its defense, nor provide for an objective forum to judge the PRO's determination. Under the proposed regulations, the PRO would determine that a violation exists and then would judge whether or not the determination is correct.

• The practitioner or other person should have at least as much time to develop its documentation as the PRO took in preparing the determination of a violation.

• The regulations preclude any meaningful administrative review. Proposed § 474.52 provides that a sanction would be effective 15 days after the practitioner or other person is notified. A sanction could be entered, imposed, publicized, and implemented before the practitioner or other person has had any hearing and before there has been any opportunity to be heard by an independent forum. The regulations should provide that a sanction will not go into effect before a provider has had an opportunity to exhaust administrative review rights and not until one month after any petition for judicial review is filed.

• The regulations should require the PRO to provide the practitioner or other person with the actual information used by the PRO to determine that a violation exists. The summary of information (§ 474.36(b)(7)) required in the proposed regulations is not sufficient for a practitioner or other person to prepare an adequate defense.

• The regulations do not provide the practitioner or other person with a hearing before the OIG. While § 474.39(b)(2) grants the right to submit additional material to the OIG, it does not allow critical activities such as the right to cross-examine and probe the data upon which the PRO has relied.

Response: We do not agree that a formal hearing is required before implementation of a sanction.

Section 1156(c) of the Act provides for a hearing and judicial review as provided in section 205(b) and (g) of the Act, respectively. In accordance with these sections, the hearing and judicial review of administrative determinations do not occur before the decision is implemented.

Provision has been made in the regulations for an opportunity for the practitioner or other person to submit additional documentary evidence or written argument to the OIG before any sanction is imposed. This information must be submitted within 30 days from the date of receipt of final notice of a violation (§ 474.39(b)). We believe that the two opportunities to meet with the PRO in the case of a substantial violation (one opportunity in a gross and flagrant situation) before a final determination of a violation is made, and the opportunity to submit additional written argument or evidence to the OIG prior to its determination, along with the opportunity for an evidentiary hearing and judicial review after the implementation of a sanction, fully satisfy the due process standards as set forth by the United States Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319 (1976).

In the *Eldridge* case, the Supreme Court made clear that due process does not require a full evidentiary pretermination hearing. The Court in the *Eldridge* case set forth three factors to be evaluated in deriving specific requirements of due process for a given situation:

(a) The private interest involved;

(b) The reliability of the process in making correct determinations and the probable value of additional safeguards; and

(c) The government's interest, including the fiscal and administrative burdens of additional safeguards (424 U.S. at 335).

The private interest here concerns practitioners' or providers' abilities to furnish services for which payment may be made under the Medicare program. Continued access to Medicare funds is not a prerequisite for the practitioner or provider continuing to furnish health care services to patients but concerns the physicians' access to one group of potential customers for their services. The government's interest, on the other hand, is not only fiscal but also the health and safety of individuals who are eligible for Medicare benefits.

In our view, the meeting with the PRO before it files a sanction report, and then the opportunity to provide additional written evidence or argument to the OIG before a determination is made, assures a high degree of reliability for the OIG's actions and safeguards against the erroneous imposition of a sanction.

We believe that requiring a full evidentiary hearing prior to the OIG's actions would not only be contrary to the Act but would adversely affect the health and safety of individuals. It also would add to the OIG's administrative and fiscal burdens by precluding prompt action and by allowing the continuation of benefit payments pending a conclusion of the hearing, without adding significantly to the reliability of the OIG's decision.

IV. Summary of Changes to the Proposed Rule

The following summary of regulations changes is provided for the reader's reference.

1. Section 405.1502

• We have added a new paragraph (f) to specify that the determination and notice of sanction under the PRO program is one of the initial determinations made by the Secretary.

2. Section 405.1503

• This section has been revised to distinguish between the notification procedures for initial determinations under the PRO sanction process and the notification procedures for other types of initial determinations.

3. Section 420.115(c)

• This paragraph has been revised to reflect a recent statutory change contained in section 2348 of Pub. L. 98–369. The statutory change provides that Medicare payment may be made for certain services furnished up to 30 days after the date of termination from the Medicare program.

4. Section 420.126(e)

• This paragraph has also been revised to reflect the recent statutory change contained in section 2348 of Pub. L. 98–369. The statutory change provides that Medicare payment may be made for certain services furnished up to 30 days after the date of termination from the Medicare program.

5. Section 474.0(a)

• The reference to Statewide Councils has been deleted from paragraph (a)(2).

6. Section 474.0(b)

• The definition of *economically* has been revised to clarify that the appropriate level of care is a level of care that is actually available.

• A definition for *gross and flagrant violation* has been added.

• A definition for *substantial violation* has been added.

• The definition for *Statewide Council* has been deleted.

• The definitions for *PRO* and *PSRO* have been deleted because the terms are already defined in Part 400, § 400.200 General definitions.

7. Section 474.36(b)

- The term *substantial failure to comply* has been changed to read *a substantial violation in a substantial number of cases.*
- We have clarified that the PRO's notice to the practitioner or other person must be in writing.

8. Sections 474.36(b)(6), 474.38(b)(5), and 474.39(b)(2)

- These sections have been revised to specify that the practitioner's or other person's time to respond to the PRO notice begins on the date the PRO notice is received. Further, the date of the receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

9. Section 474.40(c)(4)

- The word *finding* has been changed to *recommendation* to clarify that the PRO makes a recommendation and not a determination concerning the practitioner's or other person's ability to comply with an obligation that was violated.

10. Section 474.41

- The typographical error in paragraph (c) of the proposed rule has been corrected by adding the statement originally intended.
- A new paragraph (e) has been added to recognize that a PRO must consider the availability of alternative sources of service in the community when deciding whether to recommend a sanction.
- Paragraph (e) of the proposed rule has been redesignated as paragraph (f) in this final rule.

11. Section 474.42

- To correct a typographical error in the proposed rule, paragraphs (d), (e), and (f) have been redesignated as paragraphs (c), (d), and (e), respectively.
- Paragraph (e) has been revised to clarify the provisions concerning an automatic exclusion sanction.
- A new paragraph (f) has been added to clarify the provisions concerning a monetary penalty.

12. Section 474.52

- Paragraph (e)(5) has been revised to clarify that a notice of sanction will be provided to the hospital where the sanctioned individual has privileges and to the hospital where the case originated, if known.
- Paragraph (f) of the proposed rule has been revised to clarify the notification procedures when an automatic exclusion sanction is involved.
- A new paragraph (g) has been added to clarify that the determination and notice of sanction constitute an initial determination and a notice of initial determination for purposes of administrative appeals procedures.

13. Section 474.54(b)

- This paragraph has been revised as required by section 2348 of Pub. L. 98–369. The statute provides that Medicare payment may be made for certain services furnished up to 30 days after the date of termination from the Medicare program.

14. Section 474.56(a)

- This paragraph has been revised to clarify that the OIG must comply with §§ 420.130 through 420.136 when deciding whether an exclusion sanction should be terminated.

15. Section 474.58(a)

- This paragraph was revised to clarify the practitioner's or other person's appeal rights.

16. Section 489.55

- This section was also revised to reflect a change contained in section 2348 of Pub. L. 98–369. The statutory change provides that Medicare payment may be made for certain services furnished up to 30 days after the date of termination from the Medicare program.

17. Miscellaneous changes

- We have made numerous minor editorial and technical revisions to clarify and correct the language in the regulations and to provide easier reading. All regulations sections contain one or more of these types of revisions.

18. Conforming changes

- Sections 405.1504, 405.1530, and 405.1531 have been revised to include a cross-reference to new § 405.1502(f).

V. Waiver of Notice of Proposed Rulemaking for Certain Sections

The revisions in §§ 420.115(c), 420.126(e), 474.54(b), and 489.55 are conforming changes made necessary by section 2348 of Pub. L. 98–369. This statutory provision became effective on July 18, 1984, the date of enactment of Pub. L. 98–369. Our conforming changes are being issued as part of this final rule because the effective date of the provision was statutorily mandated and because the provision itself is self-implementing.

The conforming changes do not expand upon the statutory provision, but merely paraphrase it. Accordingly, we find that a notice of proposed rulemaking for the conforming changes would be impractical and unnecessary, and find good cause to waive it.

VI. Impact Analyses

A. Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be performed for any "major" regulation; that is, a regulation that will result in an economic impact of $100 million or more, or a regulation that meets other criteria specified in section 1(b) of the Order.

Under these final regulations, a PRO can recommend certain sanctions to the OIG when a practitioner or other person fails to meet obligations specified at section 1156(a) of the Act.

The PRO can recommend exclusion or, in lieu of exclusion, the assessment of a monetary penalty. An exclusion will become effective automatically 120 days after a PRO submits a recommendation for exclusion to the OIG, if a decision is not made within the 120-day period. This does not represent a major change from our current sanction activities. Although these regulations will expedite the review and completion of sanction cases, the incremental impact of these regulations will be negligible.

In this final rule, we are also clarifying and revising certain provisions of the proposed rule to accommodate questions and issues raised by numerous commenters. Taken as a whole, these changes are not significant departures from our current policies and procedures. Therefore, we have determined that a regulatory impact analysis is not required because these regulations do not meet the criteria for a "major" regulation.

B. Regulatory Flexibility Act

We do not expect these regulations to cause a significant incremental increase in our sanction activity. Historically, we have imposed administrative sanctions only in particularly abusive situations. Therefore, we believe that these sanction regulations will affect relatively few practitioners or other persons. Accordingly, we have determined that these regulations will not result in a significant impact on a substantial number of providers and practitioners.

Therefore, the Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that these regulations will not result in a significant impact on a substantial number of small entities.

C. Reporting and Recordkeeping Requirements

Sections 474.36(b), 474.38(b), 474.38(c), 474.39(b), 474.40(b), and 474.40(c) contain information collection requirements to which PROs must adhere. We are submitting the requirements in these regulations to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). PROs are not required to comply with these information collection requirements until OMB approves them. Comments on these requirements should be sent directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, D.C., Attention: Fay Iudicello. A notice will be published in the **Federal Register** when approval is obtained.

VII. LIST OF SUBJECTS

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reasonable charges, Reporting and recordkeeping requirements, Rural areas, Prospective payment system, X-rays.

42 CFR Part 420

Abuse, Administrative practice and procedure, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Information (Disclosure), Lawyers, Medicaid, Medicare, Penalties, Professional Standards Review Organizations (PSRO), Reporting and recordkeeping requirements, Supervision.

42 CFR Part 474

Health care, Health professions, Penalties, Professional Standards Review Organization (PSRO), Reporting and recordkeeping requirements, Sanctions, and Utilization and Quality Control Peer Review Organization (PRO).

42 CFR Part 489

Clinics, Health care, Health facilities, Medicare, Provider Agreements, Rural health clinics, Termination procedures.

42 CFR Chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

1. The authority citation for Subpart O is revised to read as follows:

Authority: Secs. 1102, 1866, 1869, 1871, and 1872 of the Social Security Act; 42 U.S.C. 1302, 1395cc, 1395ff, 1395hh, and 1395ii, unless otherwise noted.

2. The introductory paragraph for § 405.1502 is reprinted unchanged and the section is amended by adding a new paragraph (f) to read as follows:

§ 405.1502 Initial determinations.

The Secretary will make findings setting forth the pertinent facts and conclusions, and an initial determination with respect to:

* * * * *

(f) The determination and notice of sanction provided for in §§ 474.52(a) and 474.52(g) of this chapter.

3. Section 405.1503 is revised to read as follows:

§ 405.1503 Notice of initial determinations.

A written notice of an initial determination as specified in paragraphs (a) through (f) of § 405.1502 will—

(a) Be mailed to the concerned provider, supplier, or practitioner; and

(b) Include the basis or reasons for the determination, and information concerning appeal rights. (See § 405.1510 concerning the right to a reconsideration, if applicable, and § 405.1530 concerning the right to a hearing.)

4. Section 405.1504 is revised by adding a cross-reference to § 405.1502(f) to read as follows:

§ 405.1504 Effect of initial determination.

The initial determination shall be final and binding upon the parties to the determination unless: (a) It is revised (see § 405.1519); (b) in the case of a determination described in § 405.1502 (a), (b)(1), or (d)(1), it is reconsidered in accordance with § 405.1514; or (c) in the case of a determination described in § 405.1502 (b)(2), (c), (d)(2), (e), or (f), a request for a hearing is filed and the initial determination is reversed.

5. Section 405.1530 is revised by adding a cross-reference to § 405.1502(f) to read as follows:

§ 405.1530 Hearing: Right to hearing.

After an initial and reconsidered determination described in §§ 405.1502 (a), (b)(1), (d)(1), and 405.1514, or after an initial determination described in § 405.1502 (b)(2), (c), (d)(2), (e), or (f); or after a revised determination described in § 405.1519, an institution, agency, clinic, laboratory, portable X-ray supplier, ambulatory surgical center, end-stage renal disease treatment facility, or person shall be entitled to a hearing with respect to such determination, if such person or the representative of the institution, agency, clinic, laboratory, portable X-ray supplier, ambulatory surgical center, end-stage renal disease treatment facility, or person files a written request for hearing as provided in § 405.1531.

6. Section 405.1531(a) is revised by adding a cross-reference to § 405.1502(f) to read as follows:

§ 405.1531 Filing a request for a hearing; time and manner of filing.

(a) The request for a hearing shall be made in writing, signed by the person, or a proper official of the institution, agency, clinic, laboratory, portable X-ray supplier, ambulatory surgical center, or end-stage renal disease treatment facility concerned and filed at an office of the Department of Health and Human Services, or with a presiding officer of the Appeals Council of the Office of Hearings and Appeals. The request must be filed within 60 days after the date notice of an initial determination provided for in § 405.1502 (b)(2), (c), (d)(2), (e), or (f); or a reconsidered or revised determination, is received by the institution, agency, clinic, laboratory, portable X-ray supplier, ambulatory surgical center, end-stage renal disease treatment facility, or person (see §§ 405.1503, 405.1516, and 405.1520), except where the time is extended for "good cause" (see § 405.1569). For purposes of this section, the date of receipt of notice of the initial, reconsidered or revised determination shall be presumed to be 5 days after the date of such notice, unless there is a reasonable showing to the contrary.

* * * * *

PART 420—PROGRAM INTEGRITY

B. Part 420 is amended as follows:

1. The authority citation for Part 420 continues to read as follows:

Authority: Secs. 1102, 1862(d) (1), (2), (3), and (4), 1862(e), 1866(b) (2)(D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1395y(d), 1395cc, 1395hh, 1396a, and 1396b, unless otherwise noted).

2. Section 420.115(c) is revised to read as follows:

§ 420.115 Effect of exclusion.

* * * * *

(c) *Exceptions.* Payment is available for up to 30 days after the effective date of exclusion for—

(1) Inpatient hospital services or posthospital skilled nursing facility care services furnished to a beneficiary who was admitted to a hospital or a SNF before the effective date of exclusion; and

(2) Home health services furnished under a plan established before the effective date of exclusion.

3. Section 420.125(e) is revised to read as follows:

§ 420.125 Effect of suspension.

* * * * *

(e) *Exceptions.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services or posthospital skilled nursing facility care furnished to a beneficiary who was admitted to a hospital or a SNF before the effective date of the suspension; and

(2) Home health services furnished under a plan established before the effective date of the suspension.

PART 474—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES

C. Part 474 is amended as follows:

1. The table of contents and the authority statement are revised to read as follows:

Subpart A—General Provisions

Sec.
474.0 Scope and definitions.

Subpart B—Sanctions Under the PSRO Program

474.1 Statutory obligations of practitioners and providers.
474.2 Sanctions.
474.3 PSRO responsibilities.
474.4 Action on potential violation.
474.5 Factors in PSRO determination of a violation.
474.6 Basis for recommended sanction.
474.7 Notice and review of PSRO determination of violation.
474.8 PSRO report to the Statewide Council or to HCFA.
474.9 Role and functions of the Statewide Council.
474.10 Action by HCFA on receipt of the report.
474.14 Effective dates of exclusion.
474.15 Reinstatement after exclusion.
474.17 Right to judicial review.

Subpart C—Sanctions under the PRO Program: General Provisions

474.30 Statutory obligations of practitioners and other persons.
474.32 Sanctions.

Subpart D—PRO Responsibilities

474.34 Basic responsibilities.
474.36 Action on identification of a violation.
474.38 Action on determination of a violation.
474.39 Final PRO determination of a violation.
474.40 PRO report to OIG.
474.41 Basis for recommended sanction.

Subpart E—OIG Responsibilities

474.42 Acknowledgment and review of report.
474.52 Notice of sanction.

Subpart F—Effect and Duration of Exclusion

474.54 Effect of an exclusion on Medicare payments and services.
474.56 Reinstatement after exclusion.

Subpart G—Appeals

474.58 Appeal rights.

Authority: Section 1102 of the Social Security Act, 42 U.S.C. 1302. Subpart B is also issued under sec. 150 of Pub. L. 97–248, 42 U.S.C. 1320c note. Subparts C through G are also issued under sec. 1156 of the Social Security Act, 42 U.S.C. 1320c—5.

2. A new Subpart A entitled "General Provisions" is established to include the current § 474.0.

3. Section 474.0 is revised to read as follows:

§ 474.0 Scope and definitions.

(a) *Scope.*

This part implements section 150 of Pub. L. 97–248 (PSROs) and section 1156 of the Act (PROs) by—

(1) Setting forth certain obligations imposed on practitioners and providers of services under Medicare;

(2) Establishing criteria and procedures for the reports required from PSROs and PROs when there is failure to meet those obligations;

(3) Specifying the policies and procedures for making determinations on violations and imposing sanctions; and

(4) Defining the procedures for appeals by the affected party and the procedures for reinstatements.

(b) *Definitions.* As used in this part, unless the context indicates otherwise:

"Economically" means that services are provided at the least expensive, medically appropriate type of setting or level of care available.

"Exclusion" means that items or services furnished or ordered by a specified health care practitioner, provider, or other person during a specified period are not reimbursed under Medicare.

"Gross and flagrant violation" means a violation of an obligation has occurred in one or more instances which presents an imminent danger to the health, safety or well-being of a Medicare beneficiary or places the beneficiary unnecessarily in high-risk situations.

"Health care services" or "Services" means services or items for which payment may be made (in whole or in part) under the Medicare program.

"Obligation" means any of the obligations specified at section 1156(a) of the Act.

"OIG" stands for the Office of the Inspector General, Department of Health and Human Services.

"Other person" means a hospital or other health care facility, an organization, or an agency that furnishes health care services for which payment may be made under the Medicare program.

"Physician" means a doctor of medicine or osteopathy or another individual who is authorized under State or Federal law to practice medicine and surgery or osteopathy.

"Practitioner" means a physician or other health care professional licensed under State law to practice his or her profession.

"PRO area" means the geographic area subject to review by a particular PRO.

"Provider" means a hospital or other health care facility, agency, or organization.

"PSRO area" means the geographic area subject to review by a particular PSRO.

"Sanction" means an exclusion or monetary penalty that the Secretary may impose on a practitioner or other person as a result of a recommendation from a PRO.

"Substantial violation in a substantial number of cases" means a pattern of care has been provided that is inappropriate, unnecessary, or does not meet recognized professional standards of care, or is not supported by the necessary documentation of care as required by the PRO.

4. A new Subpart B entitled "Sanctions Under the PSRO Program" is established to include current §§ 474.1–474.17.

5. New Subparts C through G are added to read as follows:

Subpart C—Sanctions Under the PRO Program: General Provisions

§ 474.30 Statutory obligations of practitioners and other persons.

It is the obligation of any health care practitioner or other person who furnishes or orders health care services that may be reimbursed under Medicare, to ensure, to the extent of his or her authority, that those services are—

(a) Furnished economically and only when and to the extent medically necessary;

(b) Of a quality that meets professionally recognized standards of health care; and

(c) Supported by evidence of the medical necessity and quality of the services in the form and fashion that the reviewing PRO may reasonably require (including copies of the necessary documentation and evidence of compliance with pre-admission or pre-procedure review requirements to ensure that the practitioner or other person is meeting the obligations imposed by section 1156(a) of the Act.

§ 474.32 Sanctions.

In addition to any other sanction provided under law, a practitioner or other person may be—

(a) Excluded from Medicare; or

(b) In lieu of exclusion and as a condition for continued participation in Medicare, if the violation involved the provision or ordering of health care services that were medically improper or unnecessary, required to pay an amount not in excess of the cost of the improper or unnecessary services that were furnished or ordered. The practitioner or other person will be required either to pay the monetary assessment within 6 months of the date of notice or have it deducted from any sums the Federal Government owes the practitioner or other person.

Subpart D—PRO Responsibilities

§ 474.34 Basic responsibilities.

(a) The PRO must use its authority or influence to enlist the support of other professional or government agencies to ensure that each practitioner or other person complies with the obligations specified in § 474.30.

(b) The PRO must identify situations where the obligations specified in § 474.30 are violated and afford the practitioner or other person reasonable notice and opportunity for discussion in accordance with §§ 474.36 and 474.38.

(c) The PRO must submit a report to the OIG after the notice and opportunity provided under paragraph (b) of this section, if the PRO determines that the practitioner or other person has—

(1) Failed substantially to comply with any obligation in a substantial number of cases; or

(2) Grossly and flagrantly violated any obligation in one or more instances.

(d) The PRO report to the OIG must comply with the provisions of § 474.40.

(e) The PRO must deny services or items ordered by an excluded practitioner or other person when the PRO identifies the services or items and reports the findings to HCFA.

§ 474.36 Action on identification of a violation.

When a PRO identifies a violation, it must determine the nature of the violation.

(a) If the PRO determines the violation as one that is gross and flagrant, it must proceed in accordance with § 474.38.

(b) If the PRO determines the violation as a substantial violation in a substantial number of cases it must send the practitioner or other person a written initial notice of the identification of a violation containing the following information:

(1) The obligation involved.

(2) The situation, circumstances, or activity that resulted in a violation.

(3) The authority and responsibility of the PRO to report violations of obligations.

(4) At the discretion of the PRO, a suggested method for correcting the situation and a time period for corrective action.

(5) The sanction that the PRO could recommend to the OIG if the violation continues.

(6) An invitation to submit additional information to or discuss the problem with respresentatives of the PRO within 20 days of receipt of the notice. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(7) A summary of the information used by the PRO in arriving at its determination of a violation of an obligation.

§ 474.38 Action on determination of a violation.

(a) *Written notice.* The PRO must give written notice to the practitioner or other person if it determines that—

(1) A substantial violation has occurred in a substantial number of cases; or

(2) A violation is gross and flagrant in one or more cases.

(b) *Contents.* The notice must contain the following information:

(1) The determination of a violation.

(2) The obligation violated.

(3) The basis for the determination.

(4) The sanction the PRO will recommend to the OIG.

(5) The right of the practitioner or other person to submit to the PRO within 30 days of receipt of the notice, additional information or a written request for a meeting with the PRO to review and discuss the determination, or both. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(6) A copy of the material used by the PRO in arriving at its determination.

(c) *Review of PRO determination.*

(1) The PRO may, on the basis of additional information received, affirm, modify, or reverse its determination.

(2) The PRO must give written notice to the practitioner or other person, of any action it takes as a result of the additional information received, as specified in § 474.39.

§ 474.39 Final PRO determination of a violation.

If the issue is not resolved to the PRO's satisfaction as specified in § 474.38(c), the PRO must—

(a) Submit its report and recommendation to the OIG; and

(b) Send the affected practitioner or other person a concurrent final notice, with a copy of the PRO report that is being forwarded to the OIG, advising that—

(1) The PRO recommendation has been submitted to the OIG;

(2) The practitioner or other person has 30 days from receipt of this final notice to submit any additional material to the OIG at its central office location. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary; and

(3) Due to the 120-day statutory requirement specified at § 474.42(e), the period for submitting additional information will not be extended and any material received by the OIG after the 30-day period will not be considered.

§ 474.40 PRO report to OIG.

(a) *Manner of reporting.* If the PRO determines that a substantial violation has occurred in a substantial number of cases or that a gross and flagrant violation has occurred, it must submit a report and recommendation to the OIG at the regional office with jurisdiction.

(b) *Content of report.* The PRO report must include the following information—

(1) Identification of the practitioner or other persons and when applicable, the

name of the director, administrator, or owner of the entity involved;

(2) The type of health care services involved;

(3) A description of each failure to comply with an obligation, including specific dates, places, circumstances, and any other relevant facts;

(4) Pertinent documentary evidence;

(5) Copies of written correspondence and written summaries of oral exchanges with the practitioner or other person regarding the violation;

(6) The PRO's determination that an obligation under section 1156(a) of the Act has been violated and that the violation is substantial and has occurred in a substantial number of cases or is gross and flagrant;

(7) The professional qualifications of the PRO's reviewers; and

(8) The PRO's sanction recommendation.

(c) *PRO Recommendation.* The PRO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable; and

(4) A recommendation as to whether the practitioner or other person is unable or unwilling substantially to comply with the obligation that was violated.

§ 474.41 Basis for recommended sanction.

The PRO's specific recommendation must be based on a consideration of—

(a) The type of offense involved:

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioners's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the PRO considers relevant (for example, the duration of the problem).

Subpart E—OIG Responsibilities

§ 474.42 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the PRO of the date it received the PRO's report and recommendation.

(b) *Review.* The OIG will review the PRO report and recommendation to determine whether—

(1) The PRO is following its procedures;

(2) A violation has occurred; and

(3) The practitioner or other person has demonstrated an unwillingness or lack of ability substantially to comply with an obligation.

(c) *Rejection of the PRO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the PRO that recommended the sanction and the affected practitioner or other person that the recommendation is rejected.

(d) *Decision of sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the PRO;

(2) The type of offense;

(3) The severity of the offense;

(4) The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare carrier or intermediary has had with the practitioner or other person;

(7) Whether the practitioner or other person is unable or unwilling to comply substantially with the obligations; and

(8) Any other matters relevant to the particular case.

(e) *Exclusion sanction.* If the PRO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 474.52(f).

(f) *Monetary penalty.* If the PRO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 474.52 (a) through (e).

§ 474.52 Notice of sanction.

(a) The OIG notifies the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 15 days from the date of receipt of the notice. The date of receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice specifies—

(1) The legal and factual basis for the determination;

(2) The sanction to be imposed;

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person; and

(5) In the case of exclusion, the earliest date on which the OIG will accept a request for reinstatement.

(d) The OIG notifies the public by publishing in a newspaper of general circulation in the PRO area a notice that identifies the sanctioned practitioner or other person, the obligation that has been violated, the sanction imposed and, if the sanction is exclusion, the effective date and duration.

(e) Notice of the sanction is also provided to the following entities as appropriate:

(1) The PRO that originated the sanction report.

(2) PROs in adjacent areas.

(3) State Medicaid fraud control units and State licensing bodies.

(4) Appropriate Medicare contractors and State agencies.

(5) Hospitals, including the hospital where the sanctioned individual's case originated and where the individual currently has privileges, if known; skilled nursing facitilies, home health agencies, and health maintenance organizations (HMOs).

(6) Medical societies and other professional organizations.

(7) Medicare carriers and intermediaries, health care prepayment plans, and other affected agencies and organizations.

(f) If an exclusion sanction is effected because a decision was not made within 120 days after receipt of the PRO recommendation, notification is as follows:

(1) The OIG notifies the practitioner or other person that the exclusion from the Medicare program is effective 15 days from the date the notice is received by the practitioner or other person. The date of receipt is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(2) Notice of the sanction is also provided as specified in paragraph (e) of this section.

(3) As soon as possible after the 120th day, the OIG will issue a notice to the practitioner or other person affirming the PRO recommendation or modifying the recommendation based on the OIG's review of the case.

(g) The determination and notice of sanction provided for in this section constitute an "initial determination" and a "notice of initial determination" for purposes of the administrative appeals procedures specified in Part 405, Subpart O of this chapter concerning determinations and appeals procedures for providers and suppliers.

Subpart F—Effect and Duration of Exclusion

§ 474.54 Effect of an exclusion on Medicare payments and services.

(a) *General provisions.* Except as provided under paragraphs (b) and (c) of this section—

(1) Payment will not be made under Medicare to an excluded practitioner or other person for services or items furnished or ordered during the period of exclusion;

(2) Payment will not be made under Medicare to any provider for services or items ordered by an excluded practitioner or other person when the order was a necessary precondition for payment under Medicare; and

(3) Assignment of a beneficiary's claim for services or items furnished or ordered by an excluded practitioner or other person on or after the effective date of exclusion will not be valid.

(b) *Exceptions.* Payment is available for services or items provided up to 30 days after the effective date of an exclusion for—

(1) Inpatient hosptial or skilled nursing services or items furnished to a beneficiary who was admitted before the effective date of the exclusion; and

(2) Home health services or items furnished under a plan established before the effective date of the exclusion.

(c) *Denial of payments to beneficiaries.* If a beneficiary submits claims for services or items furnished or ordered by an excluded practitioner or other person on or after the effective date of exclusion—

(1) HCFA pays the first claim submitted and immediately gives the beneficiary notice of the exclusion; and

(2) The beneficiary's right to payment extends to services or items furnished or ordered up to 15 days after the date on the notice.

(d) *Effective date of termination of provider agreement.* The effective date of termination of a Medicare provider agreement is determined in accordance with §§ 489.53 and 489.55 of this chapter.

§ 474.56 Reinstatement after exclusion.

Exclusion will remain in effect until—

(a) The OIG determines, in accordance with §§ 420.130 through 420.136 of this chapter, that the basis for the exclusion no longer exists and there is reasonable assurance that the problems will not recur, or

(b) The OIG's determination to exclude is reversed by a hearing decision.

Subpart G—Appeals

§ 474.58 Appeal rights.

(a) *Right to administrative review.*

(1) A practitioner or other person dissatisfied with an OIG determination or an exclusion that results from a determination not being made within 120 days is entitled to a hearing before an Administrative Law Judge and may also request a review of that decision by the Appeals Council in accordance with §§ 405.1530 through 405.1595 of this chapter.

(2) Due to the 120-day statutory requirement specified at § 474.42(e) of this part, the following limitations apply:

(i) The period for submitting additional information will be not be extended.

(ii) Any material received by the OIG after the 30-day period allowed, will not be considered and will not be subject to review by the Administrative Law Judge and the Appeals Council.

(3) OIG's determination continues in effect unless reversed by a hearing decision.

(b) *Right to judicial review.* Any practitioner or other person dissatisfied with a decision of the Appeals Council or an administrative law judge (if a request for Appeals Council review is denied), may file a civil action in accordance with the provisions of section 205(g) of the Act.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

D. Part 489 is amended as follows:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. Section 489.55 is revised to read as follows:

§ 489.55 Exceptions to effective date of termination.

Payment is available for up to 30 days after the effective date of termination for—

(a) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of termination; and

(b) Home health services furnished under a plan established before the effective date of termination.[1]

(Catalog of Federal Domestic Assistance Programs, No. 13.773, Medicare—Hospital Insurance and No. 13.774, Medicare—Supplementary Medical Insurance)

[1] For terminations before July 18, 1984, payment was available through the calendar year in which the termination was effective.

Dated: December 11, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: January 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-9001 Filed 4-11-85; 2:42 pm]

BILLING CODE 4120-01-M

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42 CFR Parts 400 and 476

[HSQ-110-F]

Medicare Program; Acquisition, Protection, and Disclosure of Utilization and Quality Control Peer Review Organization (PRO) Information

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These regulations govern the acquisition, protection, and disclosure of information obtained or generated by Utilization and Quality Control Peer Review Organization (PROs). The Peer Review Improvement Act of 1982 authorizes PROs to acquire information necessary to fulfill their duties and functions, places limits on disclosure of PRO information, and establishes penalties for unauthorized disclosure. These regulations implement the PROs' statutory right of access to necessary information and set forth their responsibilities to assure that information once acquired is adequately safeguarded and disclosed only for proper purposes.

EFFECTIVE DATE: The regulations are effective May 17, 1985.

Sections 476.105, 476.116, and 476.134 of this rule contain information collection requirements with which the public is not required to comply until the Executive Office of Management and Budget (EOMB) approves these requirements. (See section VI. of the preamble for a discussion of information collection.)

FOR FURTHER INFORMATION CONTACT: Mary K. Terry, (301) 594-7910.

SUPPLEMENTARY INFORMATION:

I. Legislative History

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248)) amended Part B of Title XI of the Social Security Act (Act) to establish the Utilization and Quality

Control Peer Review Organization (PRO) program.

Congress originally enacted Part B of Title XI in 1972, establishing the Professional Standards Review Organization (PSRO) program. The purpose of the PSRO program was to assure that health care services and items for which payment may be made under the Medicare, Medicaid and Maternal and Child Health and Crippled Children's programs were medically necessary, conformed to appropriate professional standards and were delivered in the most efficient and economical manner possible. The 1982 legislation provided for PROs to assume PSRO responsibilities for the review of health care services funded under Title XVIII of the Act (Medicare) to determine whether those services are medically necessary, are furnished at the appropriate level of care, and are of a quality that meets professionally recognized standards. In addition, PROs will monitor and validate a sample of diagnostic and procedural information supplied by providers to fiscal intermediaries regarding prospective payments to hospitals. To carry out their responsibilities PROs, like PSROs, will acquire information from the medical records of patients and from other records maintained by health institutions, practitioners, and claims payment agencies. In addition, they will generate information regarding the quality and appropriateness of health care services. PROs will use this information to develop and review profiles (patterns of utilization and practice) and to assess the quality of care being furnished. PROs will then transmit their determinations to organizations responsible for making payments under the Act.

The PRO legislation contains several provisions affecting data collection and disclosure. Under section 1154(a)(7)(C) of the Act, PROs have the authority to examine pertinent records of any practitioner or provider of health care services for which the PRO has review responsibility. Section 1154(a)(9) of the Act requires that PROs "collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1160." The other relevant language in section 1154 authorizes PROs to exchange information with claims payment agencies, other PROs and other public or private review organizations as may be appropriate (section 1154(a)(10)). Section 1160 of the Act contains the majority of a PRO's statutory responsibilities concerning the disclosure of information. This section recognizes both the need to protect the interests of patients, health care practitioners and providers of health care in the confidentiality of their medical records and the need to disclose certain information.

II. Proposed Rule

On April 16, 1984 we published in the Federal Register a proposed rule that would implement that part of the PRO statute concerning acquisition, protection, and disclosure of PRO information (49 FR 14977). The major provisions of the proposed rule are as follows:

A. General Provisions

1. PRO information must be held in confidence and not be disclosed unless the disclosure is necessary to carry out the purposes of the PRO statute or is provided for by regulations published by the Secretary.

2. The proposal describes the procedures for disclosure by a PRO of information necessary to carry out the purposes of the statute, including notice requirements, limitations on redisclosure and penalties for unauthorized disclosure. It also specifies the applicability of certain other statutes and implementing regulations to PRO information.

B. PRO Access to Information

1. Under the proposal, PROs are permitted to require institutions or practitioners to provide to the PRO copies of records and information pertinent to health care services furnished in the PRO area to Medicare beneficiaries. If authorized by the institution of practitioner, PROs also have access to the records of other patients.

2. PROs are permitted to have access to records held by Medicare intermediaries or carriers and certain other information collected or generated by institutions, practitioners or other entities. Certain limitations on PRO data collection were also specified in the proposed regulations.

C. PRO Responsibilities

1. In the proposal, we delineate PRO responsibility for: maintaining the confidentiality of information in their possession, including the responsibilities of PRO officers and employees; training requirements, including those for persons with authorized access to confidential information; purging of personal identifiers; and data systems procedures.

2. A PRO would be required to place a public notice in a newspaper announcing the existence of its data system, the types of information acquired by the PRO, and the procedures by which each patient, practitioner, and institution may obtain information about themselves.

D. Disclosure of Nonconfidential Information

Diclosure of nonconfidential information would be required of PROs regardless of the source of the request. PROs may also disclose this information to anyone who they believe would be interested in the information.

E. Disclosure of Confidential Information

1. The proposal requires the disclosure of all information requested by the Department. The Department includes HCFA and other Departmental components that are responsible for assuring that funds for the PRO programs are expended in accordance with the law and regulations.

2. The April 16th document permits some disclosure of patient-identified information to a patient or his or her representative. If the patient's request is not made in connection with a denial decision, the proposed regulations require the PRO to allow the attending practitioner an opportunity to comment on the appropriateness of disclosing the information to the patient.

3. Under the proposed rule, disclosure of practitioner-identified information is permitted only to the individual practitioner, to the institution where the individual practices or, with the practitioner's consent, to any designated person, agency or organization.

4. PROs would be required to provide limited access to certain identifying information to Federal and State agencies, including fraud and abuse agencies and licensing and certification bodies and researchers, who have a significant need for information to carry out their recognized responsibilities or in order to avoid duplication in collecting and processing information. PRO information must be disclosed to public health agencies if the PRO determines the disclosure of the information is necessary to protect against and imminent danger to individuals or to the public health.

5. PRO deliberations must not be disclosed except to HCFA or the Office of the Inspector General (OIG). The reasons for PRO decisions may be disclosed.

6. The proposal would require disclosure of quality review studies with identifiers, but only on-site and only to: practitioners or institutions identified in the study; authorized personnel from the General Accounting Office; HCFA; accreditation, licensure, and certification bodies; Federal and State fraud and abuse agencies; and, under certain circumstances, a medical review board established under section 1881 of the Act which pertains to End Stage Renal Disease facilities.

7. PROs could disclose their interpretations of the quality of health care in a particular institution to the public.

8. PROs would be required to disclose sanction reports directly to the OIG, HCFA, and Federal and State fraud and abuse agencies.

9. In addition to PRO's authorization to disclose information at their discretion to carry out the purposes of the PRO statute, the proposal gives PROs discretion to disclose confidential information to research agencies and establishes criteria and guidelines for the PRO to use in exercising this discretion.

III. Public Comments

We received over 160 letters of comment in response to the proposed rule. Comments were received from hospitals, State and national medical associations, hospital councils, peer review organizations, members of Congress and other interested parties. The comments and our responses to those comments are set forth below:

A. General Provisions

1. *Definition of confidential information.*

Comment: One commenter stated that the definition of confidential information in § 476.101(b) of the proposed rule was inconsistent with the statute in the section 1160(b)(2) of the Act recognizes as confidential only statistical data that explicitly identify an individual. Therefore, data that implicitly identify an individual would be considered non-confidential.

Response: The PRO statute does not support such a distinction between explicit and implicit disclosure. We believe that permitting the disclosure of information that identifies an individual, even though not explicitly, would undermine the rationale of the statute. The statute does not preclude our prohibiting the disclosure of such information, and the intent of the statute is to limit the disclosure of information concerning identifiable individuals to specific situations, whether that identification is implicit or explicit.

2. *Distinction between confidential and non-confidential information.*

Comment: We received several comments regarding the distinction between confidential and non-confidential information. Some though that the regulations should adhere more closely to the statutory presumption that all PRO data should be held in confidence except under clearly defined circumstances.

Response: We are retaining the distinction between confidential and non-confidential information in order to permit the disclosure of information that does not identify an individual and to limit the release of patient- or practitioner-identified information to that required for PRO review or for other statutorily mandated reasons. Section 1160(a)(2) of the Act imposes on the Secretary the statutory obligation to identify in regulations the cases and circumstances under which PRO information may be disclosed.

3. *Notice requirements—15 days.*

Comment: Fifteen commenters believed that § 476.105 of the regulations should require PROs to give more than 15 calendar days notification to institutions before the disclosure of information about the institution that is not routinely prepared for PRO use.

Response: We agree and are changing the 15 calendar day notification requirement in § 476.105 to 30 calendar days. In addition, if the comments are received after the 30-day timeframe, the PRO is obligated to forward the comments to the recipient of the disclosed information.

We are revising § 476.105(a) to clarify that the PRO must notify an identified institution of the PRO's intention to disclose information, other than reports routinely submitted to HCFA (including Medicare fiscal agents) or reports submitted to or from PRO subcontractors or to or from an institution, about that institution.

4. *Exceptions to PRO notice requirements.*

Comment: Several commenters disagree with the exception to the notice requirements (§ 476.106) that PROs need not notify an institution of a disclosure if the disclosure is made in an investigation of fraud or abuse and the information is related to a potentially prosecutable offense. The commenters believe that practitioners and providers should be notified by the PRO when fraud or abuse is suspected in a potentially prosecutable offense.

Response: We understand the commenters concern; however, any such notification would serve only to impede the investigation of fraud or abuse. We believe this exception is required to protect the investigative process in pursuing cases involving fraud or abuse. We are modifying § 476.106 to require that all investigative agencies except the Office of the Inspector General and General Accounting Office (GAO), must specify in writing to the PRO that the information requested is related to a potentially prosecutable criminal offense.

5. *Limitations on redisclosure.*

Comment: One commenter requested that we clarify § 476.107, Limitations on redisclosure, to prevent the release of information that identifies individuals other than the individual who is releasing the information.

Response: This section permits a patient or practitioner to redisclose information about himself or herself and permits an institution to redisclose information about itself. We agree with the commenter that there is a potential in the section, as written, for information to be released that might identify other individuals. Therefore, we are modifying § 476.107(g) to state that information pertaining to a patient or practitioner may be redisclosed by those individuals provided it does not identify any other patient or practitioner.

Comment: One commenter requested that we modify § 476.107(h) to restrict redisclosure by an institution if the redisclosure would identify a practitioner.

Response: We believe this is a valid concern; therefore, we have modified § 476.107(h) to state that an institution may disclose information pertaining to itself provided the information does not identify an individual practitioner or patient.

Comment: Several commenters stated that the regulation does not adequately address the redisclosure of confidential information by public agencies.

Response: We believe we have sufficiently limited redisclosure by public agencies under § 476.107 (i) and (j) of the regulations. These paragraphs specify the instances when public agencies can redisclose information, such as in a judicial, administrative or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. We also believe there is an overwhelming need to ensure that State and local public health officials are able to redisclose appropriate information where there is substantial risk to the public health. Therefore, we are permitting additional redisclosures by public health agencies in order to protect the interests of patients, practitioners and providers under section 1160(a)(2) of the Act. In addition,

we have modified paragraph (f) for clarification and are adding a paragraph (k) to permit redisclosure as necessary for the OIG and GAO to carry out their statutory responsibilities.

We do not believe any further changes are necessary to regulations. However, to be consistent with the statute we have deleted from § 476.107(i) the reference to Federal and State health planning agencies. Also, Federal and State health planning agencies do not receive confidential information under the PRO statute; therefore, they are not subject to the redisclosure limitations contained in § 476.107.

6. *Penalties for unauthorized disclosure.*

Comment: Several commenters believed that the penalties for unauthorized disclosure should be strengthened.

Response: Section 1160(c) of the statute provides for the penalties described in § 476.108 of the regulations; therefore, we are making no change to the regulations based on this comment. However, we are correcting a grammatical error in the second half of the sentence in § 476.108 to now read: ". . . be fined no more than $1000 *or* imprisoned for no more than 6 months, or both . . ." (emphasis added).

7. *Extent of an institution's right to privacy.*

Comment: Seventy-five commenters stated that because §§ 476.120(g) and 476.141 allow for disclosure of information that identifies a particular institution, there is a potential for misinterpretation and misuse of these data with no due process for institutions.

Response: Section 476.120(g) (redesignated as § 476.120(a)(7)) provides for disclosure of nonconfidential aggregate statistical information that does not identify individual patients, practitioners or reviewers and § 476.141 provides for the disclosure of PRO interpretations, and generalizations on the quality of care that identify a particular institution. We agree with the commenters and have made several changes to the regulations based on the ideas contained in those comments. The following changes will afford a provider the protection needed to avoid possible misinterpretation where the PRO releases data concerning that provider. We have specified that §§ 476.120(a)(7) and 476.141 are subject to the procedures for disclosure and notice of disclosure specified in §§ 476.104 and 476.105 that require a PRO to notify an institution of its intent to disclose information about the institution that is not routinely prepared for PRO use, provide the institution with a copy of that information, and give the institution an opportunity to comment on the information. Further, as stated earlier in the comment on the 15-day notice requirement, we have amended that requirement to extend the time period for a provider to comment on disclosed information from 15 to 30 calendar days, thereby providing additional protection for hospitals.

We therefore believe that the final rule assures adequate protection of the rights and interests of institutions, because under these regulations the institution has the opportunity to provide explanatory statements regarding the data which the PRO is considering disclosing. For example, if the PRO's statistics relate to mortality, the hospital might include additional information such as case mix statistics, the severity of the illnesses treated, or the number and ages of its patients. If the PRO releases nosocomial infection rate data, the hospital could add information regarding special services susceptible to such infections, such as burn units. The PRO must attach these comments to the disclosed material. However, to alleviate some confusion, we have also revised the phrase "not routinely prepared for PRO use" to make reference instead to reports routinely submitted to HCFA (including Medicare fiscal agents) or reports submitted to or from PRO subcontractors or to or from an institution.

Comment: One commenter requested that we define the phrase "interpretations and generalizations on the quality of health care" as used in § 476.141.

Response: A PRO's "interpretations and generalizations on the quality of health care" means an assessment of the quality of care furnished by an individual provider or group of providers based on the PRO's knowledge of the area gained from its medical review experience (e.g., quality review studies) and any other information obtained through the PRO's review activities.

Comment: Thirty-nine commenters objected to the exclusion of information that identifies hospitals from the proposed definition of confidential information.

They believe that hospitals should be afforded the same protection as practitioners in terms of disclosure policies.

Response: Section 1160(a)(2) of the Act states that the Secretary shall provide by regulation for adequate protection of the interests of patients as well as for practitioners and providers. Public interest is served by providing access to certain PRO data by the public or by agencies that have public responsibilities to which PRO data are relevant. PROs deal with matters of great public concern—the provision and cost of health care.

They are, therefore, an important source of information to aid consumers and consumer organizations in reaching informed decisions about the types of health care services that are offered. Also, the policy of disclosure of provider-specific, but not practitioner-specific information is supported by recommendations in the congressionally mandated Institute of Medicine October 1981 study entitled "Access to Medical Review Data: Disclosure Policy For Professional Standards Review Organizations".

However, while we believe that disclosing provider information is appropriate and necessary to the public interest, we do not intend that such disclosure be misused. As stated in the previous comment, the regulations contain the requirement that the institution may submit comments on information to be disclosed and the PRO must attach these comments to the disclosed material. Also, the regulations contain the caveat that a PRO must not release nonconfidential information in instances where the identity of a patient, practitioner or reviewer; e.g., publishing the surgical mortality rates of a hospital that has only one surgeon, will be obvious to an individual with an understanding of the area.

B. PRO Access to Information

1. *Access to information from institutions and practitioners*

Comment: Section 476.111(b) of the proposed rule permits PROs to have access to and obtain information from records of non-Medicare patients, if access is authorized by the institution or practitioner. Fifty-two commenters believed that this section is ambiguous regarding PRO access to records of private-pay patients, and that the patient's consent should be required before a PRO is given access.

Response: We agree. We are adding a new § 476.111(b) to clarify that PROs may obtain specific non-Medicare patient records relating to review the PRO performs under non-Medicare contracts if authorized by those patients in accordance with State law. We are redesignating the proposed paragraph § 476.111(b) as paragraph (c) and modifying it to specify that PROs may have access to and obtain records of non-Medicare patients who are not covered under a private review contract held by the PRO only in connection with their quality review responsibilities and

only if authorized by the institution or practitioner.

Quality review is an integral and essential element of the PRO statute. Section 1154(a)(1)(B) of the Act specifies that any PRO must (in accordance with its contract with the Secretary) perform review to determine whether the quality of care provided to Medicare beneficiaries meets professionally recognized standards of health care. Furthermore, this PRO requirement represents the continuation of a peer review function mandated by Medicare statute over the past ten years. Also, in section 1154(a)(8), the Congress provides the same process for PROs as it had for earlier Medicare peer review for prescribing the way in which quality review would be performed by PROs, namely, regulations of the Secretary. The provisions of section 1154(a)(7)(D) and (a)(9) direst PROs, in a way similar to earlier peer review organizations, to inspect facilities and collect information necessary to carry out PRO review functions, including quality review. Section 1866(a)(1)(E) imposes a similar obligation on Medicare providers to release patient care data to PROs for review purposes including the conduct of Medicare quality review.

Taken together, these provisions give statutory authority to PROs to conduct quality review in the same manner as conducted by previous Medicare peer review organizations.

The quality review process consists of screening patient care information to identify and verify quality problems in addition to conducting quality review studies. A quality review study (QRS) is an assessment conducted by or for a PRO of a patient care problem for the purpose of improving the patient care of some of all providers or practitioners in the PRO area through peer analysis, intervention, and resolution of the problem and follow-up. Patient consent is not needed to access these records because unlike utilization review under private contracts, PRO quality review assesses the professional practice patterns of providers and practitioners.

While the identified problem must affect Medicare patients, it usually affects other patients as well, especially in the context of acute inpatient care. This is because quality problems relate to the way in which care is delivered (i.e., the behavior of a provider or practitioner). In some of these cases, a problem can be adequately addressed for Medicare patients only by addressing the problem for all patients in an acute care setting.

This means that in some quality review studies a PRO must review both Medicare and non-Medicare patient records in order to resolve the problem for Medicare patients. For example, a Medicare quality review study may seek to analyze and resolve a problem concerning the increase in the rate of post-operative infections in certain operations when prophylactic antibiotics were not used. However, for individual providers or specific practitioners, the frequency with which certain operations are performed on Medicare patients may be too low to draw reliable conclusions about the proper use of these antibiotics by that practitioner or in that provider on a timely basis (i.e., it may take a year of data collection for Medicare patients only). In contrast, the frequency with which these operations are performed on all patients may be adequate to permit timely and reliable assessment of the problem (i.e., within one to three months) and permit more rapid problem resolution for Medicare patients.

Also, physician and hospital-wide studies encourage general resolution of problems through the alteration of area practice patterns. This benefits both Medicare and non-Medicare patients and assures more substantive and longer lasting improvement in a problem than could have been achieved by focusing only on Medicare patients.

2. *Access to information of intermediaries and carriers.*

Comment: We received comments on various aspects of the provision set forth in § 476.112. Several commenters believed the regulation is vague as to what records and information (private or Medicare records) are available to the PRO. Several commenters requested that we add time periods for the transfer of information to the PRO. One commenter believed that the protection of confidential information transmitted by fiscal agents to PROs is not safeguarded through any clearly stated mechanism. Two commenters recommended patient consent before PROs could obtain access to patient records and information held by intermediaries or carriers. Regarding patient consent, one commenter believed that subsequent PRO disclosures of data could go beyond the intent of the individual who authorized the fiscal agent to obtain the data originally.

Response: We agree with commenters concerning the vagueness as to what records and information are available to the PRO under this provision. We are, therefore, modifying § 476.112 to specify that PROs can access only Medicare records or information held by intermediaries or carriers.

We do not believe it is necessary to specify in regulations time periods and safeguards for the transfer of information to the PRO because they will be covered in each PRO's agreement with a fiscal agent. The requirements for maintaining the confidentiality of information transferred to PROs are covered under § 476.115. Therefore, it is not necessary to add any additional safeguards in § 476.112.

Concerning the comments on patient consent, we do not believe it is necessary to obtain separate patient consent prior to accessing each record or piece of information, because patient consent is already given as a condition of payment under Medicare. For subsequent PRO disclosures that might go beyond the original intent of the authorizing individual, we believe the disclosure and redisclosure provisions contained in these regulations are sufficiently detailed and comprehensive to adequately protect the rights of individual patients. We are, therefore, making no changes to the regulations with regard to this issue.

3. *Access to information collected for PRO purposes.*

Comment: Several commenters believed that the provisions under § 476.113 requiring institutions to disclose to a PRO information collected for PRO purposes and information generated in quality review studies would allow a PRO access to internal hospital review and quality assurance decisions rather than only that information needed for a PRO's QRS.

Response: We agree that there is potential for PROs to have access to internal hospital review documents and do not believe it is proper to allow PROs such broad access to hospital records. Therefore, we are changing the definition of "quality review study" in § 476.101 to clarify that a QRS for purposes of these regulations means only a QRS conducted by or for a PRO. Thus, a PRO would not have access to a hospital's quality assurance information not collected for a PRO. We are also modifying this definition to conform to the definition of "quality review study" contained in § 466.1 of final regulations concerning a PRO's assumption of review published elsewhere in this issue of the **Federal Register.**

4. *Limitation on data collection.*

Comment: Two commenters thought that proposed § 476.114 should be expanded to include private patient data as well.

Response: The statutory bases for § 476.114, which are contained in sections 1154 (a)(7)(C) and (a)(9) of the Act, provide a PRO with access to information for the purposes of carrying

out its responsibilities under Title XI of the Act which, under circumstances described in § 476.111 may include non-Medicare patient information.

However, we are clarifying in § 476.114 that the reference to 44 U.S.C., Chapter 35 refers only to the PRO's collection of information as a Federal contractor.

C. PRO Responsibilities

1. *Requirements for maintaining confidentiality.*

Comment: The proposed § 476.115(d)(1) permits authorized access to confidential PRO information to an individual who "is undergoing or has completed a training program" in the proper handling of PRO information. We received two comments requesting that we delete the phrase "is undergoing".

Response: We agree with these commenters and are amending § 476.115(d) as requested. The training required to assure appropriate handling of confidential peer review data is generally accomplished within a short period. Therefore, it does not appear that requiring this training to be completed prior to permitting an individual to have access to this information would unduly burden a PRO.

Comment: One commenter suggested that training in the handling of confidential information should be a condition of PRO employment.

Response: We believe that the handling of confidential information is important. Therefore, § 476.115(c) requires that a PRO train participants of the PRO review system in the proper handling of confidential information, and § 476.115(d), as amended under these final regulations, does not permit an individual participating in the PRO review system on a routine or ongoing basis to have authorized access to confidential PRO information until that individual has completed a training program in the handling of PRO information. We believe that these provisions provide the necessary safeguards for the handling of confidential information without unduly restricting the PRO's abilities to hire staff.

Comment: One commenter believed that under § 476.115(e)(1) of the regulations PROs should be able to determine when it is appropriate to purge personal identifiers from PRO files rather than requiring them to wait for notification from HCFA.

Response: We do not believe that PROs should decide when identifiers are to be removed from confidential information because HCFA may require access to this information for longer periods than a PRO. Therefore, we are retaining this provision.

2. *Public notice of PRO information.*

Comment: Several commenters opposed the proposed requirements in § 476.116 concerning publication in the newspaper and notification to individual patients, practitioners, and institutions of the availability of PRO information because there is no statutory requirement for this notice and because they believe it could lead to PROs acting as clearinghouses for confidential information. Several commenters were also concerned about requiring notice to individuals and institutions under review, viewing this as cumbersome and resulting in unnecessary paperwork for the PRO.

Response: We agree with the commenters concerning publication of a newspaper notice and are amending § 476.116 of the regulations by deleting this requirement to avoid any possibility of inadvertently placing a clearinghouse function on a PRO. However, we are retaining the requirement that PROs notify patients, practitioners, and institutions under review concerning the type of information collected and its availability.

Although there is no specific statutory requirement for such notification, we believe these provisions are in keeping with recognized practices to assure that individuals are aware of information collected about them.

D. Disclosure of Confidential Information

1. To the Department.

Note.—A question was raised during the review of comments as to whether the requirement for disclosure to the Department under § 476.130 included the disclosure of patient records to Administrative Law Judges of the Social Security Administration. We wish to clarify that ALJs as part of the Department may request and obtain from the PROs these patient records.

Comment: Fifty-six commenters expressed concern that information or reports disclosed by the PRO to the Department would then be subject to redisclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552).

Response: We understand the commenter's concern. It is true that Federal agencies are subject to the provisions of the FOIA. However, the reports routinely submitted to HCFA do not identify patients or practitioners. Also, sensitive information such as quality review studies and PRO deliberations are accessible to the Department in very limited circumstances. Since the Department generally cannot request that this information be sent to it, this information cannot routinely be disclosed by the Department. Moreover, the FOIA protects personal privacy by exempting from complusory disclosure information contained in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. 552(b)(6)). Also, the Department's regulations protect individual privacy under 45 CFR 5.16 and 5.71. We have amended regulations located at § 476.130 to clarify that the Department's access to PRO information is limited by the disclosure provisions for PRO deliberations and quality review study information contained in §§ 476.139(a) and 476.140.

2. *Disclosure about patients.*

Comment: Several commenters requested that we modify the proposed § 476.132(b)(1) to apply the proposed 15-day physician notification period required when a request is not in connection with denial cases to denial cases as well.

Response: We do not believe this is necessary because the appeal and reconsideration process assures proper physician notice and opportunity to comment.

Comment: One commenter was concerned that, in determining whether released information would harm a mentally ill patient, the PRO should give more consideration to the medical opinion of psychiatrists.

Response: According to the proposed § 476.132(b)(2) (§ 476.132(a)(2) of these final regulations), the attending physician decides whether release of the requested information would harm the patient. If the attending physician feels that another specialist should be consulted, he or she may do so. For example, if a case involved a mentally-ill patient, the attending physician would be free to consult with a psychiatrist. However, the final decision to release the requested information will remain with the attending physician. We do not believe any change regarding this issue is warranted. However, we have changed the regulations to replace the term "physician" with "attending practitioner" in setting forth who can decide whether information would harm the patient.

Comment: The proposed rule in § 476.132 requires the PRO to provide patient information to the patient or to an individual designated by the PRO as the patient's representative if the patient is incompetent. One commenter wanted to know how "patient representative" is defined. Five others believe the PRO should rely on the hospital medical

record for determining who is responsible. One commenter questioned whether the PRO should decide who is competent. Finally, five commenters felt that the PRO has no authority for providing patients with their records.

Response: We are adding a definition of "patient representative" to the definition section of this subpart (§ 476.101(b)). "Patient representative" means an individual designated by the patient, in writing, as authorized to request and receive PRO information that would otherwise be disclosable to that patient, or an individual identified by the PRO in accordance with § 476.132(c)(3) when the beneficiary is mentally, physically or legally unable to designate. We are also modifying § 476.132(c)(3) to indicate that when a patient is unable to designate a representative, the PRO must first rely on the medical record to determine who is responsible. If the name of the responsible person is not recorded in the medical record, then the PRO may rely upon the attending practitioner for information. If the attending practitioner is unable to identify a responsible person, then the PRO must make a determination based on other reliable information. As to the determination of patient competency, we believe such a determination can be made by the PRO based on the documentation provided in the medical record. With regard to comments concerning patient records, the authority under which a PRO may provide patients with their records is inherent in its responsibilities under Title XI to provide patients with information relating to denial decisions and reconsiderations.

3. *Verification and amendment of PRO information.*

Comment: Several commenters wanted to know the types of information to be verified by the PRO for accuracy and also clarification of how the PRO will verify this information (§ 476.134). One commenter thought there was no recourse for the individual or institution if the PRO disagrees with a proposed amendment. Another commenter said that when the PRO disagrees with an amendment, the PRO should include the reasons given for the proposed amendment along with reasons for refusal.

Response: A description of the information to be verified and the methods by which PROs will verify its accuracy will be specified in the PRO contracts and in administrative guidelines. We do not believe it is appropriate to include these details in the regulations. We agree with the request that the reasons for the requested amendment be included along with the reasons for refusal. Section 476.134 of the regulations has been amended to require that a statement of the reasons for the request be included with the disclosed information as well as the reasons for refusal. We believe this will provide sufficient recourse for an individual or institution should a PRO disagree with a requested amendment.

4. *Disclosure necessary to perform review responsibilities.*

Comment: One commenter believed that HCFA should impose stringent restrictions concerning redisclosure of PRO information to subcontractors, consultants, and medical review boards.

Response: We believe that § 476.107, Limitations on redisclosure, assures adequate protection for the redisclosure of confidential information; therefore, we believe that no changes in the regulations are necessary.

5. *Disclosure to intermediaries and carriers.*

Comment: One commenter believed that there was no need for intermediaries and carriers to obtain copies of records from the PRO. The commenter believed that if they needed to review records, they should do so onsite at the PRO.

Response: We believe it is both necessary and appropriate for intermediaries and carriers to receive copies of records from PROs when they are making coverage determinations for payment of claims. However, we believe that the number of cases for which copies of records will be requested will be few.

6. *Optional disclosure of confidential information.*

Comment: Five commenters were concerned that the PRO may release confidential information without a request to do so, also indicating that section 1160(b) of the Act allows disclosure of information identified as necessary by fraud and abuse agencies, public health agencies, and licensing and certification agencies, but only upon request (with the exception of cases where there may be a substantial risk to the public health).

Response: While the statute states explicitly that disclosure by the PRO without request is allowed in cases involving substantial risk to the public health (section 1160(b)(1)(B)(ii)), section 1160(a)(2) of the Act authorizes the Secretary to issue regulations that permit additional disclosures to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care. We believe that PROs should be permitted to, and have an obligation to, disclose information to agencies without a request when the situation warrants. For example, whenever the PRO determines that a case may involve fraud or abuse, the case should be referred to fraud and abuse agencies to protect patients and Medicare funds.

Comment: One commenter stated that PROs may be liable for providing confidential information to fraud and abuse agencies, without a request, if, for example, the recipient agency determines that no illegal activities occurred (§ 476.137).

Response: It is our opinion that a PRO could not be held liable for such a disclosure so long as the disclosure is made in accordance with these regulations.

HCFA believes that regulations are not the proper vehicle for dealing with this type of litigation but that each suit must be dealt with on a case-by-case basis.

Comment: One commenter thought that disclosure to State governmental agencies should include disclosure to State agencies responsible for administering Title XIX (Medicaid) funds.

Response: Section 1160 of the Act does not address disclosure to State agencies administering Title XIX funds. However, HCFA will notify Medicaid State agencies concerning sanctions. Therefore, we are making no changes to this section of the regulations.

7. *Disclosure to the courts.*

Comment: Two commenters questioned whether proposed § 476.138(c) (now § 476.138(a)(3)) which states that patient records in the possession of a PRO are not subject to subpoena or discovery in a civil action conflicts with § 476.107(i) and (j) which permit certain redisclosures of confidential information.

Response: Section 1160(d) of the Act only provides protection from subpoena or discovery in a civil action for patient records in the possession of the PRO. Furthermore, section 1160(b) of the Act permits the redisclosure of such information by certain governmental agencies when the redisclosure is made in a judicial, administrative or other legal proceeding resulting from the agency's investigation. Therefore, no changes are being made to the regulations as a result of these comments.

Comment: One commenter recommended that "civil action" in the proposed §§ 476.138(c) (§476.138(a)(3) of these final regulations) and 476.140(d) be defined and that the definition include civil arbitration. The commenter requested this change because of a court decision which held that a State agency

chartered with responsibility for disciplinary sanctions could subpoena the confidential records of a medical review committee (a group exercising functions similar to those of PROs).

Response: We agree with the commenter. Congress precluded patient-identified records held by PROs from subpoena or discovery in civil actions. We, therefore, believe it would be within congressional intent to preclude patient-identified records from subpoena or discovery in a variety of civil actions, including administrative, judicial or arbitration proceedings.

We also believe that quality review study information with identifiers held by PROs should be protected in the same manner as other patient identified information because quality review study information is based on medical records and consists of patient identified information. Therefore, we are amending regulations at §§ 476.138(a)(3) and 476.140(d) (redesignated as (e)) to prohibit the disclosure of patient-identified records and quality review study information that identifies patients in a civil action, including an administrative, judicial or arbitration proceeding. These restrictions do not apply to the Department's administrative subpoena authority under the Social Security Act, the Inspector General's subpoena authority, or to disclosures to the General Accounting Office as necessary to carry out its statutory responsibilities.

8. *Disclosure of PRO deliberations and decisions.*

Comment: Two commenters stated that practitioners and providers should have access to PRO deliberations or at least to an indepth narrative of the deliberations, especially for sanctions. One commenter suggested adding that deliberations are not subject to subpoena or discovery in a civil action.

Response: In response to the first comment, the strict limitations on disclosure of PRO deliberations set forth at § 476.139 are necessary to encourage frank discussions among those involved. Also, a PRO may disclose the reasons for PRO decisions (see § 476.139(b)). In response to the second comment, there is no statutory basis for protecting PRO deliberations from subpoena or discovery in a civil action. Therefore, we are not changing the regulations.

Comment: One commenter questioned whether § 476.139 supersedes other sections of these regulations addressing disclosure of confidential information when the information involves PRO deliberations (§§ 476.132, 476.133, 476.137, and 476.138). Another stated that if the reasons for PRO decisions are disclosed, they should not identify practitioners or providers. Other commenters believed that the OIG and General Accounting Office (GAO) should have access to PRO deliberations other than just the deliberations included in sanction reports.

Response: With regard to the comment concerning PRO deliberations, § 476.139 is controlling over the disclosure requirements in other sections of the regulations. Each of the sections cited by the commenter have been amended to clarify this fact. Regarding the protection of practitioners and providers when the reasons for a PRO decision are disclosed, § 476.139(b) addresses this concern because it states that reasons for PRO decisions may be disclosed only if the opinions or judgments of a particular individual cannot be discerned. We are revising § 476.139(b) to clarify that opinions or judgments of a particular individual, patient, or practitioner cannot be discerned and are making a technical change to § 476.139(b) to revise the heading to "Reasons for PRO decisions", so that it more accurately describes the information contained in that paragraph.

Regarding the comment on OIG and GAO access to PRO deliberations, we agree and are changing § 476.139 to make clear that the OIG and GAO have access to PRO deliberations to carry out their statutory responsibilities. This change includes offsite access to provide for those very limited circumstances where offsite access would be essential to the carrying out of the Inspector General's responsibility to eliminate fraud, abuse and waste in HHS programs and the General Accounting Office's statutory responsibilities.

We have made several other changes to § 476.139 which are discussed more fully under section IV. Changes to the Regulations.

9. *Disclosure of quality review study information.*

Comment: A number of commenters were concerned that providers would have access to quality review studies containing identifiers of particular providers.

Response: We agree. As worded, § 476.140(b) would have permitted a PRO to disclose quality review study information to all institutions and practitioners involved in the study with all identifiers included. We are therefore amending this section to prevent disclosure of information identifying a particular institution or practitioner to other institutions or practitioners.

We are also making several technical changes to § 476.140 as specified in section IV., Changes to the Regulations.

Comment: Two commenters were concerned that there is no statutory basis for release of quality review studies to accreditation, licensure, and certification agencies.

Response: Section 1160(b)(1)(C) of the act requires the PROs, in accordance with procedures and safeguards established by the Secretary, to provide data and information which may identify specific providers and practitioners to these agencies.

10. *Practitioner-identified information.*

Comment: The proposed rule requested comments regarding the advisability of releasing practitioner-identified information.

Most commenters concur with our proposal for maintaining the confidentiality of practitioner-identified information. There is concern that the release of such data could be misinterpreted and misunderstood. Several other commenters concurred as well, but would also maintain the confidentiality of institution-identified information.

One commenter stated that our proposal to reveal practitioner-identified information was in violation of the statute and indicates the extent to which the proposed regulations favor public disclosure over the protection of individual privacy.

A number of commenters favor increased access to practitioner-identified information, believing that such information is necessary to assist employees and consumers in choosing physicians, to control costs, and to assist efforts aimed at increasing the quality of care.

Commenters also expressed concern that limiting the disclosure of practitioner-identified information may serve as a precedent for limiting disclosure of other information. One commenter would modify § 476.133(b) to allow a PRO, on its own initiative, to disclose to an institution, practitioner-identified information pertaining to a physician's practice or performance patterns in the institution.

There were also several comments on practitioner-identified information concerning § 476.130 (which calls for disclosure of information to the Department). Commenters stated that disclosure may hinder physician cooperation in the review process. One commenter indicated that blanket authorization for the PRO to release practitioner-identified information to the Department serves no purpose and should be limited to situations where a clear pattern of potential abuse is evident.

Response: While a number of commenters believe that general disclosure of practitioner-identified information is necessary to control health care costs and to assist consumers and others in health-related matters, we continue to believe that general disclosure is inappropriate. The potential is great for such information to be misinterpreted and misused. Public disclosure of PRO data about identified physicians could be misleading, perhaps with significant damage to reputations and practices. Releasing information that may damage the reputation of practitioners is particularly troublesome because even if the information is completely accurate, it may not fully describe all the factors relevant to a practitioner's practice. For example, mortality figures for coronary surgery may be higher for Surgeon A than for Surgeon B. However, this may be because Surgeon A is performing more complicated procedures or because Surgeon A's patients are on the average sicker than Surgeon B's patients. Furthermore, the general disclosure of practitioner-identified information could reduce the effectiveness of the peer review process under the PRO program. Also, as mentioned earlier, the Institute of Medicine report supported limitation on disclosure of practitioner-identified information. Therefore, as proposed, we would permit the disclosure of practitioner-identified information to the individual practitioner, to the institution where the individual practices, or, with the practitioner's consent, to any designated person, agency or organization. Practitioner-identified information may also be disclosed to recognized Federal and State agencies in certain situations (§§ 476.130, 476.137 and 476.138).

11. *Disclosure of sanction reports.*

Comment: One commenter said that the State Medicaid agency should be advised of any possible sanction in progress by a PRO against a Medicare provider because any abuse in Medicare could have possible implications for Medicaid.

Response: Because no decision has been reached concerning sanctions in progress, the information in the PRO's possession is subject to the same disclosure limitations as any other confidential information.

12. *Disclosure to research and statistical agencies.*

Comment: Twenty commenters objected to the proposed rule permitting PROs to disclose confidential information on its own initiative to research and statistical agencies, stating that there is no specific statutory basis for such action. Seven commenters believed that the PRO should have patient, and practitioner, and provider consent before releasing the information. Six said that because there is no protection from redisclosure after the information is released, patient practitioner identifiers should be deleted.

Response: The primary responsibility of a PRO is to review services provided under the Medicare program to assure that Medicare payment is made only for services that are medically necessary, delivered in the most appropriate setting, and meet professionally accepted standards of patient care quality. In order to accomplish this task, a PRO must perform preadmission review and review hospital admissions occuring within seven days of a previous discharge, every permanent cardiac pacemaker insertion, all transfers, a random sample of all Medicare admissions, day and cost outliers, and validate whether the diagnostic and procedural information reported by hospitals for DRG assignment is correct. PROs also have utilization and quality of care objectives that have to be met under the terms of their contract. The PROs, therefore, carry a heavy workload in order to fulfill their primary responsibilities.

A significant additional burden would be placed on PROs were they to routinely decide on which research or statistical agency requests for confidential information to honor.

Nevertheless, we did consider two approaches concerning PRO release of information to researchers and statisticians.

The first approach would be to require every PRO to release all PRO confidential information to a research agency upon request. The second approach would be to give the PRO the option of releasing confidential information. However, there are problems with both approaches; the mandatory method leaves the PRO with no control over the type of confidential information that may be released. The optional approach would result in inconsistent decisions among PROs as to what constitutes appropriate releases. This lack of uniformity would be unfair to patients, practitioners and researchers.

After careful consideration, we recognize that, while PRO confidential information may be helpful to some researchers, the preponderance of effects would have a significant adverse impact on PRO review. Therefore, we have decided to delete the proposed § 476.143 in its entirety.

We are redesignating proposed § 476.144 as § 476.143.

E. Cost of Duplicating Medical Records and Impact Analysis.

Comments: We received approximately 100 comments expressing concern over the costs of copying medical records requested by PROs under §§ 476.111(a) and 476.131 of the proposed regulations.

Response: We believe it is important that PROs have adequate access to medical records to enable them to carry out required activities. This includes the right to request and receive copies as they deem necessary including preadmission test records. In some cases, this will mean that the PRO will request hospitals to photocopy specific medical records and mail them to the PRO.

The prospective payment rates are computed according to the provisions of the law and are also based on the best available data at the time of computation. Administrative costs are included in the Federal and hospital specific portions of prospective payments by virtue of their being incurred and reported by hospitals for the years that represent the data bases for the prospective payment system.

Prior to the use of PROs, review of inpatient hospital services was carried out either at the hospital or offsite. Offsite review sometimes required that the hospital mail patient records to Medicare fiscal intermediaries. These costs were subsumed in the hospital's administrative costs that in turn were reflected in Medicare cost reimbursement calculations. Costs related to such activities are accounted for, in some measure, in the prospective payment base rates.

We also believe that the fiscal benefits of PRO review will compensate for any such increased costs. For example, in many cases, PROs' preadmission review activities will protect hospitals from retrospective denials. Thus, there will be trade-offs between a hospital's cost of providing medical records to PROs and a PRO's performance of review that, in many cases, may assist hospitals in avoiding unnecessary expenditures.

Comment: Five commenters stated that both a regulatory impact and a regulatory flexibility analysis were required in the NPRM, since the annual economic impact of these provisions meets the threshold criteria of Executive Order 12291 and the Regulatory Flexibility Act.

Response: We agree with the commenters that certain impacts (benefits, costs, and behavioral changes) will result from implementing this final

rule. However, we believe that our selection of policy alternatives in the implementation of the PRO program is responsive to Congressional intent and will result in net benefits to affected providers, practitioners, and beneficiaries.

Concerning their position that the annual economic impact will meet the threshold criteria of Executive Order 12291 or of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we believe that the primary impact of this final rule will result from requiring hospitals to photocopy and send specific medical records under certain conditions (proposed §§ 476.111(a) and 476.131). In addition, as we remarked in our response to the previous comment, hospitals will experience benefits from PRO reviews, not just costs.

We estimate that in FY 1985 hospitals will incur about $9.8 million in additional operating expenses to photocopy records and mail them to PROs. This estimate assumes that PROs will perform retrospective offsite review on about 7 percent of the Medicare discharges in FY 1985. We estimate that the number of Medicare discharges, and thus the number of patient records to be reviewed offsite, will not increase significantly in FY 1986. Thus, the hospitals will incur no significant additional expenses above the FY 1985 estimated costs of $9.8 million. We estimate that these total costs will result in an average per hospital cost of less than $2,000 each year.

Because the photocopying provision, which is the provision that is most likely to have the greatest impact, does not meet any of the threshold requirements, we have determined that neither a regulatory impact or a regulatory flexibility analysis is required.

IV. Changes to the Regulations

Based on comments received and other considerations, we are making the following substantive changes to the proposed rules. We also have made technical changes to the proposed regulations in order to correct drafting and typographical errors and to clarify certain sections.

A. General Provisions

We are adding the definition of "Utilization and Quality Control Peer Review Organization (PRO)" to the definition section for 42 CFR Chapter IV located at § 400.200. We are adding this term because we make frequent references to it throughout 42 CFR Chapter IV.

In § 476.101(b) that includes the definitions for Part 476, we are making the following changes:

- We are modifying the definition of "abuse" to make it more consistent with the PRO sanction process.
- We are amending the definition of "confidential information". The phrase "Quality review study information which identifies patients" has been modified to read "Quality review studies which identify patients, practitioners or institutions".
- We are deleting the definition of "Medicare patient" because we believe that the term is self-explanatory.
- We are deleting the definition of "subcontracted institution" and adding a definition of "subcontractor" that is consistent with the definition contained in § 466.1 of the proposed regulations concerning a PRO's assumption of review that was published on July 17, 1984 (49 FR 29036).
- We are adding the definitions of "health care facility", "non-facility organization" and "patient representative".
- We are revising the definition of "practitioner" to conform to the definition contained in the proposed regulations concerning a PRO's assumption of review.
- We are adding language to the definition of "PRO deliberations" to further clarify its meaning.
- We are changing the definition of "quality review study" (QRS) to specify that a QRS for purposes of these regulations means only a QRS conducted by or for a PRO and to conform to the definition of QRS contained in § 466.1 of final regulations concerning a PRO's assumption of review published elsewhere in this issue of the **Federal Register**.
- We are adding definitions for "aggregate statistical data", "implicitly identify(ies)" and "PRO interpretations and generalizations on the quality of health care" to further clarify these terms.

These final rules amend the proposed regulations located at § 476.104 regarding the procedures for disclosure to clarify that the requirements for providing a notice of the disclosure specified in § 476.105 also apply. We are further revising § 476.104 to delete the requirement that information may not be redisclosed without written consent from the person or institution to which it pertains. This provision was not consistent with the proposed limits pertaining to redisclosure set forth in § 476.107.

In § 476.105 we are making the following changes:

- We are amending the notification requirement from 15 calendar days to 30 calendar days.
- We are clarifying the term "not routinely prepared for PRO use" contained in § 476.105(a).
- We are amending § 476.105(b)(2) to clarify that a PRO must notify a practitioner or institution of the PRO's intent to disclose information about that practitioner or institution except in cases involving fraud or abuse or an imminent danger to individuals or the public health. This revision is necessary to make § 476.105 conform to § 476.106.

These final rules amend proposed regulations located at § 476.106(b) to require that all investigative agencies, except the OIG and GAO, must specify in writing to the PRO that the information requested is related to a potentially prosecutable criminal offense.

We are amending regulations at § 476.107 by adding a paragraph (k) that would expand redisclosure as necessary for the Office of the Inspector General to carry out its statutory responsibilities. Paragraph (f) has also been amended to clarify that redisclosure is permissable as necessary for the GAO to carry out its statutory responsibilities. Regulations located at § 476.107 (g) and (h) are clarified to indicate that an institution, patient, or practitioner may disclose information pertaining to them provided that no other specific patient or practitioner is identified in that information. We are also amending § 476.107(i) to delete reference to Federal and State health planning agencies with respect to redisclosure of certain information.

We are amending regulations located at § 476.108 to correct a grammatical error with respect to the penalty for unauthorized disclosure of information.

B. PRO Access to Information

We are amending regulations located at § 476.111 to:

- Clarify that PROs may obtain specific non-Medicare patient records relating to review performed under non-Medicare contracts held by the PRO if authorized by those patients in accordance with State law; and
- Redesignate paragraph (b) as (c) and modify it to specify that a PRO may have access to and obtain records of non-Medicare patients who are not covered under a private review contract held by the PRO only in connection with its quality review responsibilities and only if authorized by the institution or practitioner.

The proposed regulations located at § 476.112 are amended to specify that PROs can only have access to Medicare records and information held by carriers or intermediaries.

We are clarifying in § 476.114 of the regulations that the requirements of 44 U.S.C. Chapter 35 only apply to a PRO's collection of information as a federal contractor.

C. PRO Responsibilities

Section § 476.115(d)(1) is amended to delete "is undergoing" from the reference to training programs. We further amended § 476.115 by revising paragraph (e) to clarify that patient records must also be purged of personal identifiers.

We are also amending regulations located at § 476.116 to delete the requirement for publication of notice in a newspaper of the availability of certain PRO information.

D. Disclosure of Nonconfidential Information

We are amending § 476.120 to clarify that the procedures for disclosure and notice of the disclosure specified in §§ 476.104 and 476.105 apply to the information subject to disclosure under § 476.120. We are also clarifying that the PRO must disclose certain aggregate statistical information to Federal or State health planning agencies.

E. Disclosure of Confidential Information

We are amending regulations at § 476.130 to specify that a PRO's disclosure of information to the Department is limited by §§ 476.139(a) and 476.140 of the regulations.

We are amending regulations located at § 476.132 to:

- Clarify that when patient identified information is disclosed to a specific patient or patient's representative, all other practitioner or patient identification must be removed;
- Clarify that the patient representative must be designated by the patient;
- Replace the term "physician" with "attending practitioner" in setting forth who can decide whether disclosure of information would harm the patient;
- Clarify that in the case of a disclosure request from a patient or the patient's representative regarding an initial denial determination, a PRO must release the information in accordance with the procedures for disclosure under § 473.28. The PRO is not required to notify the patient's practitioner of the request;
- Clarify that the regulations located at §§ 476.139(a) and 476.140 regarding the disclosure of PRO deliberations and quality review study information control over the disclosure provisions of § 476.132; and
- Establish the procedures by which a PRO determines who is responsible for a patient in cases in which the direct disclosure of information to a patient could harm the patient.

We are amending regulations located at § 476.133 to clarify that the disclosure of information about practitioners, reviewers and institutions under this section is also subject to requirements specified in other sections of these regulations. Additionally, we are specifying that the information disclosed by the PRO under this section concerning a particular practitioner or reviewer must not identify other individuals.

Regulations located at § 476.134 are amended to require that when a PRO disagrees with a request for amendment to PRO information, it must include with any disclosure of that information the reasons for the requested amendment as well as the reasons for refusal.

We are amending the regulations at §§ 476.136, 476.137 and 476.138 to specify that the provisions relating to the disclosure of PRO deliberations and quality review study information (§§ 476.139(a) and 476.140) control over the provisions for disclosure in §§ 476.136, 476.137 and 476.138.

We are further amending the regulations located at § 476.138 to clarify that, as provided in section 1160(b)(1)(C) of the Act, a PRO must disclose information to Federal and State agencies only to the extent required by the agency to carry out a function which is within the jurisdiction of the agency under Federal or State law. Also, we have revised the language at § 476.138(a)(3) (this was § 476.138(b) of the proposed regulations) referring to "imminent danger" to conform with section 1160(b)(1)(B) of the Act that refers to "a substantial risk to the public health".

We are amending regulations at §§ 476.138 and redesignating § 476.140(d) to (e) to preclude the use of a subpoena or other discovery methods in a variety of civil actions, including administrative, judicial or arbitration proceedings in order to obtain patient-identified records from a PRO. The restriction does not apply to the Department's administrative subpoena authority under the Social Security Act, the Inspector General's subpoena authority, or to disclosures to the General Accounting Office as necessary to carry out its statutory responsibilities.

We are amending regulations at § 476.139 to make several changes. First, § 476.139 is revised to insure that the opinions or judgments of a particular patient or practitioner cannot be identified. Second, we are amending § 476.139 of the regulations to specify that the OIG and GAO have access to PRO deliberations to carry out their statutory responsibilities including offsite access for those very limited circumstances where such access is essential. PRO deliberations are not disclosable, either in written form or through oral testimony, in connection with the administrative hearing or review of a beneficiary's claim. We believe this is necessary so as not to inhibit the frank and open discussions between peer reviewers when they are discussing a beneficiary's case. We have also clarified the regulations to specify that a PRO must disclose, if requested, in connection with the administrative hearing or review of a beneficiary's claim, the reasons for PRO decisions. The PRO must include the detailed facts, findings and conclusions that support the PRO's determination. The PRO must insure that the opinions or judgments of a particular individual or practitioner cannot be identified through the materials that are disclosed.

We are amending regulations at § 476.140(a)(1) to make the language consistent with that in § 476.107 (f), (i) and (j) regarding the responsibilities of various Federal, State and local agencies and to make it consistent with the changes made by the new paragraph (b) discussed below. We are also revising § 476.140 (a)(2) and (3) to limit further the onsite review of quality review studies. We are redesignating the proposed § 476.140 (b) to (c) and amending it to clarify that PROs may disclose certain quality review information offsite and to prevent the disclosure of quality review study information which identifies a particular institution or practitioner to other institutions or practitioners. Paragraphs (c) and (d) are redesignated as (d) and (e) respectively. In addition, a new paragraph (b) is being added to require PRO disclosure, both onsite and offsite, of quality review study information to the OIG and GAO as necessary to carry out their statutory responsibilities.

We are amending § 476.141 to clarify that the procedures for disclosure and notice of the disclosure specified in §§ 476.104 and 476.105 apply to the information disclosed under § 476.141.

We are amending regulations to delete § 476.143 in its entirety and to redesignate the proposed § 476.144 as § 476.143.

V. Impact Analysis

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on

the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in section 1(b) of the Executive Order. In addition, the Regulatory Flexibility Act, Pub. L. 96–354, requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise ensure that the regulations are cost-effective.

A. Executive Order 12291

In section III. E. of the preamble, we respond to 100 commenters concerning the potential cost of duplicating and sending patient records to a PRO. In that section we also address comments about the absence of an initial regulatory impact analyses in the proposed rule. We believe that our earlier determination that an E.O. 12291 impact analysis was not required was correct and that our responses in section III. E. fully address the questions raised by the commenters.

In response to other public comments, we have made changes to some of the provisions contained in the proposed rule. We believe that these changes will simplify and clarify our intended policies; and, that, taken as a whole, this rule will not result in an annual economic impact of $100 million annually, or that meets the threshold criteria of section 1(b) of the Executive Order. Thus, a final regulatory impact analysis is not required. It is our contention that these changes will, in fact, be beneficial to the PROs, providers, practitioners and beneficiaries by providing clarity in our policies and procedures that govern the acquisition, protection and disclosure of information obtained or generated by a PRO.

Regulatory Flexibility Act

As noted in the Executive Order discussion, we have responded to comments concerning the potential impact on providers resulting from these provisions. In Section III. E. we state most hospitals will incur some additional cost in duplicating patient records and information. However, for the reasons noted in that section of our response, we believe that the increase in cost resulting from these changes will not be significant, on average, for a substantial number of providers.

Also, for the purposes of this final rule, we have examined the changes noted in this preamble and conclude that the impact of these changes will also not be significant. These changes are primarily clarifications of our policies and procedures and, as such, will not result in additional costs and, in fact, should be beneficial to providers, practitioners, PROs and beneficiaries. Therefore, we have determined, and the Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that this final rule, taken as a whole, will not result in a significant impact on a substantial number of small entities.

VI. Information Collection Requirements

Sections 476.103, 476.116, and 476.134 of this rule contain information collection requirements. They are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The public is not required to comply with these requirements until OMB approves them under the Paperwork Reduction Act of 1980. Comments on these requirements should be sent directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, D.C., Attention: Fay Iudicello. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 400

Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare.

42 CFR Part 476

Health care, Health professions, Health records, Privacy, Professional Standards Review Organizations (PSRO); and Utilization and Quality Control Peer Review Organizations (PROs).

42 CFR Chapter IV is amended as set forth below:

A. The table of contents is amended by revising the title of Part 476 in Subchapter D to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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SUBCHAPTER D—PEER REVIEW ORGANIZATIONS

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PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

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PART 400—INTRODUCTION; DEFINITIONS

The authority citation for Part 400 reads as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

B. In Part 400, § 400.200 is amended by adding, in alphabetical order, the definition of "Utilization and Quality Control Peer Review Organization (PRO)" to read as follows:

§ 400.200 General definitions.

* * * * *

"Utilization and Quality Control Peer Review Organization" (PRO) means an organziation that has a contract with HCFA to review, under Part B of Title XI of the Act, the health care services or items furnished or proposed to be furnished to Medicare beneficiaries.

C. Part 476 is amended as set forth below:

1. The title of Part 476 is revised to read as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

2. The table of contents is amended to reflect the establishment of a new Subpart A—"Professional Standards Review Organizations", to include current §§ 476.1–476.4. The table of contents is further amended by adding a new Subpart B and revising the authority citation to read as follows:

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

Sec.
476.101 Scope and definitions.
476.102 Statutory bases for acquisition and maintenance of information.
476.103 Statutory bases for disclosure of information.
476.104 Procedures for disclosure by a PRO.
476.105 Notice of disclosures made by a PRO.
476.106 Exceptions to PRO notice requirements.
476.107 Limitations on redisclosure.
476.108 Penalties for unauthorized disclosure.
476.109 Applicability of other statutes and regulations.

PRO Access to Information

476.111 PRO access to records and information of institutions and practitioners.

Sec.
476.112 PRO access to records and information of intermediaries and carriers.
476.113 PRO access to information collected for PRO purposes.
476.114 Limitations on data collection.

PRO Responsibilities

476.115 Requirements for maintaining confidentiality.
476.116 Notice to individuals and institutions under review.

Disclosure of Nonconfidential Information

476.120 Information subject to disclosure.
476.121 Optional disclosure of nonconfidential information.

Disclosure of Confidential Information

476.130 Disclosure to the Department.
476.131 Access to medical records for the monitoring of PROs.
476.132 Disclosure of information about patients.
476.133 Disclosure of information about practitioners, reviewers and institutions.
476.134 Verification and amendment of PRO information.
476.135 Disclosure necessary to perform review responsibilities.
476.136 Disclosure to intermediaries and carriers.
476.137 Disclosure to Federal and State enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare program.
476.138 Disclosure for other specified purposes.
476.139 Disclosure of PRO deliberations and decisions.
476.140 Disclosure of quality review study inforation.
476.141 Disclosure of PRO interpretations on the quality of health care.
476.142 Disclosure of sanction reports.
476.143 PRO involvement in shared health data systems.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302). Subpart A is also issued under sec. 150 of Pub. L. 97–248, 42 U.S.C. 1320c note. Subpart B is also issued under secs. 1154(a), 1156(a) and 1160 of the Social Security Act, 42 U.S.C. 1320c–3(a), 1320c–5(a), and 1320c–9.

3. A new Subpart B is added to read as follows:

Subpart B—Utilization and Quality Control Peer Review Organizations (PROs)

General Provisions

§ 476.101 Scope and definitions.

(a) *Scope.* This subpart sets forth the policies and procedures governing—

(1) Disclosure of information collected, acquired or generated by a Utilization and Quality Control Peer Review Organization (PRO) (or the review component of a PRO subcontractor) in performance of its responsibilities under the Act and these regulations; and

(2) Acquisition and maintenance of information by a PRO to comply with its responsibilities under the Act.

(b) *Definitions.* As used in this part:

"Abuse" means any unlawful conduct relating to items or services for which payment is sought under Title XVIII of the Act.

"Aggregate statistical data" means any utilization, admission, discharge or diagnostic related group (DRG) data arrayed on a geographic, institutional or other basis in which the volume and frequency of services are shown without identifying any individual.

"Confidential information" means any of the following:

(1) Information that explicitly or implicitly identifies an individual patient, practitioner or reviewer.

(2) Sanction reports and recommendations.

(3) Quality review studies which identify patients, practitioners or institutions.

(4) PRO deliberations.

"Health care facility" or "facility" means an organization involved in the delivery of health care services or items for which reimbursement may be made in whole or in part under Title XVIII of the Act.

"Implicitly identify(ies)" means data so unique or numbers so small so that identification of an individual patient, practitioners or reviewer would be obvious.

"Non-facility organization" means a corporate entity that: (1) Is not a health care facility; (2) is not a 5 percent or more owner of a facility; and (3) is not owned by one or more health care facilities in the PRO area.

"Patient representative" means—(1) An individual designated by the patient, in writing, as authorized to request and receive PRO information that would otherwise be disclosable to that patient; or (2) and individual identified by the PRO in accordance with § 476.132(c)(3) when the beneficiary is mentally, physically or legally unable to designate a representative.

"Practitioner" means an individual credentialed within a recognized health care discipline and involved in providing the services of that discipline to patients.

"PRO deliberations" means discussions or communications (within a PRO or between a PRO and a PRO subcontractor) including, but not limited to, review notes, minutes of meetings and any other records of discussions and judgments involving review matters regarding PRO review responsibilities and appeals from PRO determinations, in which the opinions of, or judgment about, a particular individual or institution can be discerned.

"PRO information" means any data or information collected, acquired or generated by a PRO in the exercise of its duties and functions under Title XI Part B or Title XVIII of the Act.

"PRO interpretations and generalizations on the quality of health care" means an assessment of the quality of care furnished by an individual provider or group of providers based on the PRO's knowledge of the area gained from its medical review experience (e.g., quality review studies) and any other information obtained through the PRO's review activities.

"PRO review system" means the PRO and those organizations and individuals who either assist the PRO or are directly responsible for providing medical care or for making determinations with respect to the medical necessity, appropriate level and quality of health care services that may be reimbursed under the Act. The system includes—

(1) The PRO and its officers, members and employees;

(2) PRO subcontractors;

(3) Health care institutions and practitioners whose services are reviewed;

(4) PRO reviewers and supporting staff; and

(5) Data support organizations.

"Public information" means information which has been disclosed to the public.

"Quality review study" means an assessment, conducted by or for a PRO, of a patient care problem for the purpose of improving patient care through peer analysis, intervention, resolution of the problem and follow-up.

"Quality review study information" means all documentation related to the quality review study process.

"Reviewer" means review coordinator, physician, or other person authorized to perform PRO review functions.

"Sanction report" means a report filed pursuant to section 1156 of the Act and Part 474 of this chapter documenting the PROs determination that a practitioner or institution has failed to meet obligations imposed by section 1156 of the Act.

"Shared health data system" means an agency or other entity authorized by Federal or State law that is used by the PRO review system to provide information or to conduct or arrange for the collection, processing, and dissemination of information on health care services.

"Subcontractor" means a facility or a non-facility organization under contract

with a PRO to perform PRO review functions.

§ 476.102 Statutory bases for acquisition and maintenance of information.

(a) Section 1154(a)(7)(C) of the Act requires PROs to the extent necessary and appropriate to examine the pertinent records of any practitioner or provider of health care services for which payment may be made under Title XVIII of the Act.

(b) Section 1154(a)(9) of the Act requires PROs to collect and maintain information necessary to carry out their responsibilities under the Act.

(c) Section 1156(a)(3) of the Act requires health care practitioners and providers to maintain evidence of the medical necessity and quality of health care services they provide to Medicare patients as required by PROs.

§ 476.103 Statutory bases for disclosure of information.

(a) Section 1154(a)(10) of the Act requires PROs to exchange information with intermediaries and carriers with contracts under sections 1816 and 1842 of the Act, other PROs, and other public or private review organizations as appropriate.

(b) Section 1160 of the Act provides that PRO information must be held in confidence and not be disclosed except where—

(1) Necessary to carry out the purpose of Title XI Part B of the Act;

(2) Specifically permitted or required under this subpart;

(3) Necessary, and in the manner prescribed under this subpart, to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse;

(4) Necessary, and in the manner prescribed under the subpart to assist Federal or State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health;

(5) Necessary, and in the manner prescribed under this subpart to assist appropriate State agencies having responsibility for licensing or certification of providers or practitioners; or

(6) Necessary, and in the manner prescribed under this subpart to assist Federal or State health planning agencies by furnishing them aggregate statistical data on a geographical institution or other basis.

§ 476.104 Procedures for disclosure by a PRO.

(a) *Notice to accompany disclosure.* (1) Any disclosure of information under the authority of this subpart is subject to the requirements in § 476.105 relating to the providing of a notice of the disclosure.

(2) Disclosure of confidential information made under the authority of this subpart, except as provided in § 476.106, must be accompanied by a written statement informing the recipient that the information may not be redisclosed except as provided under § 476.107 that limits redisclosure.

(b) *PRO interpretations.* A PRO may provide a statement of comment, analysis, or interpretation to guide the recipient in using information disclosed under this subpart.

(c) *Fees.* A PRO may charge a fee to cover the cost of providing information authorized under this subpart. These fees may not exceed the amount necessary to recover the cost to the PRO for providing the information.

(d) *Format for disclosure of public information.* A PRO is required to disclose public information (§ 476.120(a)(6)) only in the form in which it is acquired by the PRO or in the form in which it is maintained for PRO use.

(e) *Medicare provider number.* A PRO must include the provider identification number assigned by Medicare program on information that HCFA requests.

§ 476.105 Notice of disclosures may be made by a PRO.

(a) *Notification of the disclosure of nonconfidential information.* Except as permitted under § 476.106, at least 30 calender days before disclosure of nonconfidential information, the PRO must notify an identified institution of its intent to disclose information about the institution (other than reports routinely submitted to HCFA or Medicare fiscal intermediaries, or to or from PRO subcontractors, or to or from the institution) and provide the institution with a copy of the information. The institution may submit comments to the PRO that must be attached to the information disclosed if received before disclosure, or forwarded separately if received after disclosure.

(b) *Notification of the disclosure of confidential information.* (1) A PRO must notify the practitioner who has treated a patient, of a request for disclosure to the patient or patient representative in accordance with the requirements and expections to the requirements for disclosure specified under § 476.132.

(2) A PRO must notify a practitioner or institution of the PRO's intent to disclose information on the practitioner or institution to an investigative or licensing agency (§§ 476.137 and 476.138) except for cases specified in § 476.106 involving fraud or abuse or imminent danger to individuals or the public health. The practitioner or institution must be notified and provided a copy of the information to be disclosed at least 30 calendar days before the PRO discloses the identifying information. The PRO must forward with the information any commentsd submitted by the practitioner or institution in response to the PRO notice if received before disclosure, or forwarded separately if received after disclosure.

§ 476.106 Exceptions to PRO notice requirements.

(a) *Imminent danger to individuals or public health.* When the PRO determines that requested information is necessary to protect against an imminent danger to individuals or the public health, the notification required in § 476.105 may be sent simultaniously with the disclosure.

(b) *Fraud or Abuse.* The notification requirement in § 476.105 does not apply if—

(1) The disclosure is made in an investigation of fraud or abuse by the Office of the Inspector General or the General Accounting Office; or

(2) The disclosure is made in an investigation of fraud or abuse by any other Federal or State fraud or abuse agency and the investigative agency specifies in writing that the information is related to a potentially prosecutable criminal offense.

§ 476.107 Limitations on redisclosure.

Persons or organizations that obtain confidential PRO information must not further disclose the information to any other person or organization except—

(a) As directed by the PRO to carry out a disclosure permitted or required under a particular provision of this part;

(b) As directed by HCFA to carry out specific responsibilities of the Secretary under the Act;

(c) As necessary for HCFA to carry out its responsibilities for appeals under section 1155 of the Act or for HCFA to process sanctions under section 1156 of the Act;

(d) If the health care services furnished to an individual patient are reimbursed from more than one source, these sources of reimbursement may exchange confidential information as necessary for the payment of claims;

(e) If the information is acquired by the PRO from another source and the receiver of the information is authorized under its own authorities to acquire the

information directly from the source, the receiver may disclose the information in accordance with the source's redisclosure rules;

(f) As necessary for the General Accounting Office to carry out its statutory responsibilities;

(g) Information pertaining to a patient or practitioner may be disclosed by that individual provided it does not identify any other patient or practitioner;

(h) An institution may disclose information pertaining to itself provided it does not identify an individual patient or practitioner;

(i) Governmental fraud or abuse agencies and State licensing or certification agencies recognized by HCFA may disclose information as necessary in a judicial, administrative or other formal legal proceeding resulting from an investigation conducted by the agency;

(j) State and local public health officials to carry out their responsibilities, as necessary, to protect against a substantial risk to the public health; or

(k) As necessary for the Office of the Inspector General to carry its statutory responsibilities.

§ 476.108 Penalties for unauthorized disclosure.

A person who discloses information not authorized under Title XI Part B of the Act or the regulations of this part will, upon conviction, be fined no more than $1,000, or be imprisoned for no more than six months, or both, and will pay the costs of prosecution.

§ 476.109 Applicability of other statutes and regulations.

The provisions of 21 U.S.S. 1175 governing confidentiality of alcohol and drug abuse patients' records, and the implementing regulations at 42 CFR Part 2, are applicable to PRO information.

PRO Access to Information

§ 476.111 PRO access to records and information of institutions and practitioners.

(a) A PRO is authorized to have access to and obtain records and information pertinent to the health care services furnished to Medicare patients, held by any institution or practitioner in the PRO area. The PRO may require the institution or practitioner to provide copies of such records or information to the PRO.

(b) A PRO may obtain non-Medicare patient records relating to review performed under a non-Medicare PRO contract if authorized by those patients in accordance with State law.

(c) In accordance with its quality review responsibilities under the Act, a PRO may have access to and obtain information from, the records of non-Medicare patients who are not covered under a private review contract held by a PRO if authorized by the institution or practitioner.

§ 476.112 PRO access to records and information of intermediaries and carriers.

A PRO is authorized to have access to and require copies of Medicare records or information held by intermediaries or carriers if the PRO determines that the records or information are necessary to carry out PRO review responsibilities.

§ 476.113 PRO access to information collected for PRO purposes.

(a) Institutions and other entities must disclose to the PRO information collected by them for PRO purposes.

(b) Information collected or generated by institutions or practitioners to carry out quality review studies must be disclosed to the PRO.

§ 476.114 Limitation on data collection.

A PRO or any agent, organization, or institution acting on its behalf, that is collecting information under authority of this part, must collect only that information which is necessary to accomplish the purposes of Title XI Part B of the Act in accordance with 44 U.S.C. Chapter 35, Coordination of Federal Reporting Services Information Policy.

PRO Responsibilities

§ 476.115 Requirements for maintaining confidentiality.

(a) *Responsibilities of PRO officers and employees.* The PRO must provide reasonable physical security measures to prevent unauthorized access to PRO information and to ensure the integrity of the information, including those measures needed to secure computer files. Each PRO must instruct its officers and employees and health care institution employees participating in PRO activities of their responsibility to maintain the confidentiality of information and of the legal penalties that may be imposed for unauthorized disclosure of PRO information.

(b) *Responsible individuals within the PRO.* The PRO must assign a single individual the responsibility for maintaining the system for assuring the confidentiality of information within the PRO review system. That individual must notify HCFA of any violations of these regulations.

(c) *Training requirements.* The PRO must train participants of the PRO review system in the proper handling of confidential information.

(d) *Authorized access.* An individual participating in the PRO review system on a routine or ongoing basis must not have authorized access to confidential PRO information unless that individual—

(1) Has completed a training program in the handling of PRO information in accordance with paragraph (c) of this section or has received comparable training from another source; and

(2) Has signed a statement indicating that he or she is aware of the legal penalties for unauthorized disclosure.

(e) *Purging of personal identifiers.* (1) the PRO must purge or arrange for purging computerized information, patient records and other noncomputerized files of all personal identifiers as soon as it is determined by HCFA that those identifiers are no longer necessary.

(2) The PRO must destroy or return to the facility from which it was collected confidential information generated from computerized information, patient records and other noncomputerized files when the PRO determines that the maintenance of hard copy is no longer necessary to serve the specific purpose for which it was obtained or generated.

(f) *Data system procedures.* The PRO must assure that organizations and consultants providing data services to the PRO have established procedures for maintaining the confidentiality of PRO information in accordance with requirements defined by the PRO and consistent with procedures established under this part.

§ 476.116 Notice to individuals and institutions under review.

The PRO must establish and implement procedures to provide patients, practitioners, and institutions under review with the following information—

(a) The title and address of the person responsible for maintenance of PRO information;

(b) The types of information that will be collected and maintained;

(c) The general rules governing disclosure of PRO information; and

(d) The procedures whereby patients, practitioners, and institutions may obtain access to information about themselves.

Disclosure of Nonconfidential Information

§ 476.120 Information subject to disclosure.

Subject to the procedures for disclosure and notice of disclosure

specified in §§ 476.104 and 476.105, the PRO must disclose (a) Nonconfidential information to any person upon request, including—

(1) The norms, criteria, and standards it uses for initial screening of cases, and for other review activities;

(2) Winning technical proposals for contracts from the Department, and winning technical proposals for subcontracts under those contracts (except for proprietary or business information);

(3) Copies of documents describing administrative procedures, agreed to between the PRO and institutions or between a PRO and the Medicare intermediary or Medicare carrier;

(4) Routine reports submitted by the PRO to HCFA to the extent that they do not contain confidential information.

(5) Summaries of the proceedings of PRO regular and other meetings of the governing body and general membership except for those portions of the summaries involving PRO deliberations, which are confidential information and subject to the provisions of § 476.139;

(6) Public information in its possession;

(7) Aggregate statiscal information that does not implicitly or explicity identify individual patients, practitioners or reviewers;

(8) Quality review study information including summaries and conclusions from which the identification of patients, practitioners and institutions has been deleted; and

(9) Information describing the characteristics of a quality review study, including a study design and methodology.

(b) Aggregate statistical information that does not implicitly or explicitly identify individual patients, practitioners or reviewers, to Federal or State health planning agencies (including Health Systems Agencies and State Health Planning and Development Agencies) in carrying out their health care planning and related activities.

§ 476.121 Optional disclosure of nonconfidential information.

A PRO may, on its own initiative, subject to the notification requirements in § 476.105, furnish the information available under § 476.120 to any person, agency, or organization.

Disclosure of Confidential Information

§ 476.130 Disclosure to the Department.

Except as limited by §§ 476.139(a) and 476.140 of this subpart, PROs must disclose all information requested by the Department to it in the manner and form required.

§ 476.131 Access to medical records for the monitoring of PROs.

HCFA or any person, organization or agency authorized by the Department or Federal statute to monitor a PRO will have access to medical records maintained by institutions or health care practitioners on Medicare patients. The monitor can require copies of the records.

§ 476.132 Disclosure of information about patients.

(a) *General requirements for disclosure.*

Except as specified in paragraph (b) of this section, a PRO must—

(1) Disclose patient identified information in its possession to the identified patient or the patient's representative if—

(i) The patient or the patient's representative requests the information in writing;

(ii) The request by a patient's representative includes the designation, by the patient, of the representative; and

(iii) All other patients and practitioner identifiers have been removed.

(2) Seek the advice of the attending practitioner that treated the patient regarding the appropriateness of direct disclosure to the patient 15 days before the PRO provides the requested information. If the attending practitioner states that the released information could harm the patient, the PRO must act in accordance with paragraph (c)(2) of this section. The PRO must make disclosure to the patient or patient's representative within 30 calendar days of receipt of the request.

(b) *Exceptions.* (1) If the request is in connection with an initial denial determination under section 1154(a)(3) of the Act, the PRO—

(i) Need not seek the advice of the practitioner that treated the patient regarding the appropriateness of direct disclosure to the patient; and

(ii) Must provide only the information used to support that determination in accordance with the procedures for disclosure of information relating to determinations under § 473.28.

(2) A PRO must disclose information regarding PRO deliberation only as specified in § 476.139(a).

(3) A PRO must disclose quality review study information only as specified in § 476.140.

(c) *Manner of disclosure.* (1) The PRO must disclose the patient information directly to the patient unless knowledge of the information could harm the patient.

(2) If knowledge of the information could harm the patient, the PRO must disclose the information to the patient's designated representative.

(3) If the patient is mentally, physically or legally unable to designate a representative, the PRO must disclose the information to a person whom the PRO determines is responsible for the patient.

The PRO must first attempt to make that determination based on the medical record. If the responsible person is not named in the medical record, then the PRO may rely on the attending practitioner for the information. If the practitioner is unable to provide a name, then the PRO must make a determination based on other reliable information.

§ 476.133 Disclosure of information about practitioners, reviewers and institutions.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

(1) *Disclosure to the identified individual or institution.* A PRO must disclose, to particular practitioners, reviewers and institutions, information about themselves, upon request, and may disclose it to them without a request.

(2) *Disclosure to others.* (i) A PRO must disclose to an institution, upon request, information on a practitioner to the extent that the information displays practice or performance patterns of the practitioner in that institution.

(ii) A PRO must disclose to Federal and State agencies that are responsbile for the investigation of fraud and abuse of the Medicare program and for licensing and certification, upon request, information that displays practice or performance patterns of a practitioner or institution, in accordance with the procedures for disclosure specified in §§ 476.137 and 476.138.

(iii) A PRO may disclose to any person, agency or organization, information on a particular practitioner or reviewer with the consent of that practitioner or reviewer provided that the information does not identify other individuals.

(b) *Exceptions.* (1) If the request is in connection with an initial denial determination or a change resulting from a diagnostic related group (DRG) coding validation under Part 466 of this subchapter, the PRO must provide only the information used to support that determination in accordance with the procedures for disclosure of information relating to determinations under § 473.24.

(2) A PRO must disclose information regarding PRO deliberations only as specified in § 476.139(a).

(3) A PRO must disclose quality review study information only as specified in § 476.140.

§ 476.134 Verification and amendment of PRO information.

(a) A PRO must verify the accuracy of its information concerning patients, practitioners, reviewers, and institutions and must permit the individual or institution to request an amendment of pertinent information that is in the possession of the PRO.

(b) If the PRO agrees with the request for amendment, the PRO must correct the information in its possession. If the information being amended has already been disclosed, the PRO must forward the amended information to the requester where it may affect decisions about a particular provider, practitioner or case under review.

(c) If the PRO disagrees with the request for amendment, a notation of the request reasons for the request, and the reasons for refusal must be included with the information and attached to any disclosure of the information.

§ 476.135 Disclosure necessary to perform review responsibilities.

(a) *Disclosure to conduct review.* The PRO must disclose or arrange for disclosure of information to individuals and institutions within the PRO review system as necessary to fulfill their particular duties and functions under Title XI Part B of the Act.

(b) *Disclosure to consultants and subcontractors.* The PRO must disclose to consultants or subcontractors the information they need to provide specified services to the PRO.

(c) *Disclosure to other PRO and medical review boards.* The PRO must disclose—

(1) To another PRO, information on patients and practitioners who are subject to review by the other PRO; and

(2) To medical review boards established under section 1881 of the Act, confidential information on patients, practitioners and institutions receiving or furnishing end stage renal disease services.

§ 476.136 Disclosure to intermediaries and carriers.

(a) *Required disclosure.* Except as specified in §§ 476.139(a) and 476.140 relating to disclosure of PRO deliberations and quality review study information, a PRO must disclose to intermediaries and carriers PRO information that relates to, or is necessary for, payment of claims for Medicare as follows:

(1) Review determinations and claims forms for health care services, furnished in the manner and form agreed to by the PRO and the intermediary or carrier.

(2) Upon request, copies of medical records acquired from practitioners or institutions for review purposes.

(3) PRO information about a particular patient or practitioner if the PRO and the intermediary or carrier (or HCFA if the PRO and the intermediary or carrier cannot agree) determine that the information is necessary for the administration of the Medicare program.

(b) *Optional disclosure.* The PRO may disclose the information specified in paragraph (a) of this section to intermediaries and carriers without a request.

§ 476.137 Disclosure to Federal and State enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare program.

(a) *Required disclosure.* Except as specified in §§ 476.139(a) and 476.140 relating to disclosure of PRO deliberations and quality review study information, the PRO must disclose confidential information relevant to an investigation of fraud or abuse of the Medicare program, including PRO medical necessity determinations and other information that includes patterns of the practice or performance of a practitioner or institution, when a written request is received from a State or Federal enforcement agency responsible for the investigation or identification of fraud or abuse of the Medicare program that—

(1) Identifies the name and title of the individual initiating the request,

(2) Identifies the physician or institution about which information is requested, and

(3) States affirmatively that the institution or practitioer is currently under investigation for fraud or abuse of the Medicare program and that the information is needed in furtherance of that investigation.

(b) *Optional disclosure.* The PRO may provide the information specified in paragraph (a) of this section to Federal or State fraud and abuse enforcement agencies responsible for the investigation or identification of fraud or abuse of the Medicare program, without a request.

§ 476.138 Disclosure for other specified purposes.

(a) *General requirements for disclosure.* Except as specified in paragraph (b) of this section, the following provisions are required of the PRO.

(1) *Disclosure to licensing and certification bodies.* (i) A PRO must disclose confidential information upon request, to State or Federal licensing bodies responsible for the professional licensure of a practitioner or a particular institution. Confidential information, including PRO medical necessity determinations that display the practice or performance patterns of that practitioner, must be disclosed by the PRO but only to the extent that it is required by the agency to carry out a function within the jurisdiction of the agency under Federal or State law.

(ii) A PRO may provide the information specified in paragraph (a)(1)(i) of this section to the State or Federal licensing body without request.

(2) *Disclosure to State and local public health officials.* A PRO must disclose PRO information to State and local public health officials whenever the PRO determines that the disclosure of the information is necessary to protect against a substantial risk to the public health.

(3) *Disclosure to the courts.* Patient identified records in the possession of a PRO, are not subject to subpoena or discovery in a civil action, including an administrative, judicial or arbitration proceeding.

(b) *Exceptions.* (1) The restriction set forth in paragraph (a)(3) of this section does not apply to HHS, including Inspector General, administrative subpoenas issued in the course of audits and investigations of Department programs, in the course of administrative hearings held under the Social Security Act or to disclosures to the General Accounting Office as necessary to carry out its statutory responsibilities.

(2) A PRO must disclose information regarding PRO deliberations and quality review study information only as specified in §§ 476.139(a) and 476.140.

§ 476.139 Disclosure of PRO deliberations and decisions.

(a) *PRO deliberations.* (1) A PRO must not disclose its deliberations except to—

(i) HCFA, at the PRO office or at a subcontracted organization;

(ii) HCFA, to the extent that the deliberations are incorporated in sanction and appeals reports; or

(iii) The Office of the Inspector General, and the General Accounting Office as necessary to carry out statutory responsibilities.

(2) PRO deliberations are not disclosable, either in written form or through oral testimony, in connection with the administrative hearing or review of a beneficiary's claim.

(b) *Reasons for PRO decisions.* (1) A PRO may disclose to those who have access to PRO information under other provisions of this subpart, the reasons for PRO decisions pertaining to that information provided that the opinions or judgements of a particular individual or practitioner cannot be identified.

(2) A PRO must disclose, if requested in connection with the administrative hearing or review of a beneficiary's claim, the reasons for PRO decisions. The PRO must include the detailed facts, findings and conclusions supporting the PRO's determination. The PRO must insure that the opinions or judgements of a particular individual or practitioner cannot be identified through the materials that are disclosed.

§ 476.140 Disclosure of quality review study information.

(a) A PRO must disclose, onsite, quality review study information with identifiers of patients, practitioners or institutions to—

(1) Representatives of authorized licensure, accreditation or certification agencies as is required by the agencies in carrying out functions which are within the jurisdiction of such agencies under state law; to federal and state agencies responsible for identifying risks to the public health when there is substantial risk to the public health; HCFA; or to Federal and State fraud and abuse enforcement agencies;

(2) An institution or practitioner, if the information is limited to health care services furnished by the institution or practitioner; and

(3) A medical review board established under section 1881 of the Act pertaining to end-stage renal disease facilities, if the information is limited to health care services subject to its review.

(b) A PRO must disclose quality review study information with identifiers of patients, practitioners or institutions to the Office of the Inspector General and the General Accounting Office as necessary to carry out statutory responsibilities.

(c) A PRO may disclose information offsite from a particular quality review study to any institution or practitioner involved in that study, provided the disclosed information is limited to that institution or practitioner.

(d) An institution or group of practitioners may redisclose quality review study information, if the information is limited to health care services they provided.

(e) Quality review study information with patient identifiers is not subject to subpoena or discovery in a civil action, including an administrative, judicial or arbitration proceeding. This restriction does not apply to HHS, including Inspector General, administrative subpoenas issued in the course of audits and investigations of Department programs, in the course of administrative hearings held under the Social Security Act, or to disclosures to the General Accounting Office as necessary to carry out its statutory responsibilities.

§ 476.141 Disclosure of PRO interpretations on the quality of health care.

Subject to the procedures for disclosure and notice of disclosure specified in §§ 476.104 and 476.105, a PRO may disclose to the public PRO interpretations and generalizations on the quality of health care that identify a particular institution.

§ 476.142 Disclosure of sanction reports.

(a) The PRO must disclose sanction reports directly to the Office of the Inspector General and, if requested, to HCFA.

(b) The PRO must upon request, and may without a request, disclose sanction reports to State and Federal agencies responsible for the identification, investigation or prosecution of cases of fraud or abuse in accordance with § 476.137.

(c) HCFA will disclose sanction determinations in accordance with Part 474 of this chapter.

§ 476.143 PRO involvement in shared health data systems.

(a) *Information collected by a PRO.* Except as prohibited in paragraph (b) of this section, information collected by a PRO may be processed and stored by a cooperative health statistics system established under the Public Health Service Act (42 U.S.C. 242k) or other State or Federally authorized shared data system.

(b) *PRO participation.* A PRO may not participate in a cooperative health statistics system or other shared health data system if the disclosure rules of the system would prevent the PRO from complying with the rules of this part.

(c) *Disclosure of PRO information obtained by a shared health data system.* PRO information must not be disclosed by the shared health data system unless—

(1) The source from which the PRO acquired the information consents to or requests disclosure; or

(2) The PRO requests the disclosure of the information to carry out a disclosure permitted under a provision of this part.

(Catalog of Federal Domestic Assistance Program Nos. 13.773 Medicare—Hospital Insurance; 13.774 Medicare—Supplementary Medical Insurance)

Dated: December 17, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-9002 Filed 4-11-85; 2:43 pm]

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42 CFR Part 473

[HSQ-111-F]

Medicare Program; Utilization and Quality Control Peer Review Organization (PRO) Reconsiderations and Appeals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These regulations implement that portion of the Peer Review Improvement Act of 1982 that provides for reconsiderations and appeals of Utilization and Quality Control Peer Review Organization (PRO) initial determinations. We are establishing procedures for a PRO to reconsider both its initial denial determinations regarding the medical necessity, reasonableness and appropriateness of health care services furnished or proposed to be furnished to a Medicare beneficiary in a health care institution and the application of the limitation of liability provision. We are also including in this final rule procedures for administrative appeals to the Department following a PRO reconsidered determination and judicial review following administrative appeals.

In addition, these regulations establish procedures for review of a PRO change in the diagnostic and procedural coding information that results in assignment of a discharge to a different diagnosis related group (DRG). This pertains to the review of claims for services furnished in hospitals reimbursed by Medicare under the prospective payment system.

EFFECTIVE DATE: May 17, 1985. Sections 473.18, 473.34 473.36 and 473.42 of this rule contain information collection requirements with which the public is not required to comply until the Executive Office of Management and Budget (EOMB) approves these requirements. (See section V. of this preamble for a discussion of information collection.)

FOR FURTHER INFORMATION CONTACT:
Mary Kay Terry, (301) 594–7910.

SUPPLEMENTARY INFORMATION:

1. Background

The Peer Review Improvement Act of 1982 (Title I, Subtitle C of the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, Pub. L. 97–248) amended Part B of Title XI of the Social Security Act (the Act) to establish the Utilization and Quality Control Peer Review Organization (PRO) program. This program, when fully implemented, will replace the existing Professional Standards Review Organization (PSRO) program. Initially, PROs have assumed responsibility for the review of hospital inpatient health care services for which payment may be made by Medicare. A PRO determines whether those services are reasonable and medically necessary, are of a quality that meets professionally recognized standards, and whether services and items provided on an inpatient basis could be effectively provided more economically on an outpatient basis or in a different type of inpatient facility.

Title VI of the Social Security Amendments of 1983, Pub. L. 98–21, added another review function. Under the new section 1886(d) of the Act, Medicare payment for hospital inpatient operating costs is based on a fixed amount, determined in advance for each case, according to a diagnosis-related code (DRG), which will be assigned to a case. Section 1866(a)(1)(F) of the Act requires PRO review of the validity of the diagnostic and procedural information supplied by the hospital and used by the intermediary to assign the DRG.

On July 17, 1984, we published a notice of proposed rulemaking (NPRM) (49 FR 29041) concerning reconsiderations and appeals of PRO determinations under section 1155 of the Act, which was added by the Peer Review Improvement of 1982. The proposal elicited 47 letters from the public. The provisions of the NPRM, the comments received and the changes in response to those comments, as well as additional changes made for clarity, are discussed below. Additional details of our proposal and the rationale for the proposed policies are contained in the preamble to the NPRM.

It should be noted that the provisions of this final rule may be revised later to bring them into conformance with planned amendments to the rules implementing section 1879 of the Act, which concerns the limitation on liability when Medicare claims are disallowed because the services or items were excluded from coverage as not medically reasonable and necessary or as custodial care. Proposed amendments are being developed and will be published for comment.

II. Provisions of the Proposed Rule

In the July 17, 1984 NPRM, we proposed that a party to an initial PRO determination who is dissatisfied with the determination is entitled to a PRO reconsideration of whether the services that were furnished (or proposed to be furnished)—

- Are medically necessary and reasonable, given the diagnosis and circumstances under which they were or would be furnished; and
- Were furnished in an appropriate setting.

If a PRO has determined that liability will not be waived under section 1879 of the Act for a noncovered furnished service, only the provider, practitioners or beneficiary who is liable would be entitled to a reconsideration of the determination. In addition, when it is established that the beneficiary (who is liable) is not pursuing his or her appeal rights, a provider or practitioner would be entitled to a reconsideration under section 1879 of the Act.

We proposed procedures and time limits for—

- Submitting reconsideration requests;
- Providing the parties with an opportunity to review all medical information upon which the initial determination was based and to submit additional information to be considered by the PRO in making its reconsidered determination; and
- Making the reconsidered determination and notifying the parties.

In addition, we proposed qualifications for organizations and individuals who perform the reconsideration of an initial determination so that the reconsideration would be fair.

We also proposed to use the current Part A procedures under 42 CFR Part 405, Subpart G for administrative appeals and judicial review. However, some modifications were made to reflect the fact that under section 1155 of the Act the amount in controversy necessary for a beneficiary to receive a hearing is $200 and $2,000 for a judicial review. However, these amounts do not apply to hearings under section 1879 of the Act, for which the amount in controversy is $100 for a hearing and (for Part A only) $1,000 for a judicial review. (There is no judicial review of determinations of Part B claims under section 1879 of the Act.)

III. Analysis and Response to Comments

We received 47 letters from individuals and organizations. These commenters included hospitals, associations representing hospitals, a State agency concerned with the elderly, an association representing the elderly, two legal advocates for the elderly, organizations representing physicians, an organization representing nurses, an organization representing medical colleges, professional standards review organizations (PSROs), an organization representing PSROs, and two Medicare fiscal intermediaries. The main issues in the letters that we received and our responses to them are discussed below.

A. HCFA Should Prepare Special Information for the Beneficiary That Explains Reconsideration and Appeals

Comment: Two commenters think that a beneficiary will have difficulty in understanding the reconsideration and appeals process. Therefore, the commenters urge HFCA to prepare a brochure that describes the reconsideration and appeals process for a beneficiary to receive at the time of a hospital admission.

Response: We believe that it is of utmost importance that beneficiaries be fully informed of the PRO review process, especially PRO determinations that affect payment. We agree that a beneficiary should receive a description of the reconsideration and appeals process, but believe that the best time for receipt of this information will be at the time of receipt of the initial denial notice. Therefore, under § 466.94 (contained in another final rule published in this issue of the **Federal Register**, Utilization and Quality Control Peer Review Organization (PRO): Assumption of Responsibilities and Medicare Review Functions and Coordination of Medicaid with Peer Review Organization (PRO Review)), we are requiring that a PRO include this information in the beneficiary's initial denial notice. The denial notice must include a statement informing each party or the party's representative—

(1) Of the right to reconsideration;

(2) When and how to request a reconsideration; and

(3) The locations for filing the request.

Information regarding hearings will be supplied with notices of reconsidered determinations.

Also, hospitals are not precluded from making this information available at the time of a beneficiary's admission.

B. PRO Review of Changes in Procedural or Diagnostic Information That Result in a DRG Change

Comment: One commenter requested clarification of the proposed § 473.18(d), which lets the PRO decide whether to review its changes to diagnostic and procedural coding supplied by the hospital that resulted in a DRG change based upon DRG validation.

Response: We agree that this was unclear and have modified proposed § 473.18(d) (now § 473.15). At the request of a provider or a practitioner, the PRO will review a DRG change resulting from a DRG validation that changed the diagnostic or procedural information and caused lower payment. This review by the PRO is under section 1866(a)(1)(F) of the Act; and that section does not provide for further review; that is, the review of the DRG coding change is final and is not subject to a further hearing.

C. Provide for Reconsideration and Appeal of Denial of Grace Days

Comment: Several commenters believe that denial of grace days should be appealable because they may affect the health care of beneficiaries if not enough time is allowed for post-discharge arrangements. In contrast, another commenter said that the final rule should state that the PRO decision regarding the number of grace days available to a beneficiary is not subject to a reconsideration.

Response: The granting of grace days is purely discretionary and not an initial denial determination that would be subject to a reconsideration. Section 1154(a)(2) of the Act specifies that PROs are to make initial determinations based upon review described at sections 1154(a)(1)(A) and 1154(a)(1)(C) of the Act. Initial determinations under section 1154 (a)(1)(A) of the Act involve the issue of whether the services were reasonable and medically necessary or constituted custodial care. Section 1154(a)(1)(C) of the Act involves the issue of whether services proposed to be furnished would be delivered in the most appropriate setting.

Under section 1154(a)(2) of the Act, these determinations are conclusive for Medicare payment purposes, with four exceptions. One of these exceptions is that a PRO may extend payment for not more than two days when it finds that post-discharge planning is necessary and that the provider did not know that payment for these days would not otherwise be made (section 1154(a)(2)(B) of the Act.) This PRO function is therefore different from the determinations based on sections 1154(a)(1)(A) and 1154(a)(1)(C) of the Act because, when a PRO allows "grace days" under section 1154(a)(2)(B) of the Act, it does not do so based on medical necessity, reasonableness, or appropriateness of the care in question. Further, section 1154(a)(2)(C) of the Act makes clear that only a determination under sections 1154(a)(1) (A) or (C) is subject to the hearing provisions in section 1155. Section 1154(a)(2)(C) of the Act applies to "such determination", clearly referring only to the determinations made under sections 1154(a)(1) (A) or (C) of the Act. The awarding of "grace days" under section 1154(a)(2)(B) of the Act is not a determination under section 1154(a)(1) (A) or (C). Section 1154(a)(2)(C) of the Act thus clearly contemplates that the awarding of "grace days" was not the type of PRO activity that was intended to be subject to the hearing and review provisions in section 1155 of the Act.

We agree that this final rule should state that the granting of grace days is not subject to reconsideration, and § 473.14(c)(1) contains this information.

D. No Reconsideration or Appeal Should be Allowed if There are no Direct Medicare Payment Issues in Dispute

1. *Comment:* One commenter wants our final rule to continue the current procedures that allow the *beneficiary* to pursue an appeal based on the coverage issues even if payment is made under the limitation of liability provisions in section 1879 of the Act because no supplemental insurance policy will pay the portion not covered by Medicare if the PRO has issued a denial involving medical necessity. Another commenter questions whether Congress intended, in providing in section 1155 of the Act for a reconsideration, that a *party* merely be "dissatisfied" with a PRO denial even if there are no payment consequences to that party.

Response: We agree with the first comment. We will continue to allow a beneficiary to obtain a reconsideration or hearing of a coverage issue in dispute even if we have paid for the denied service under the limitation of liability provisions of section 1879 of the Act.

With regard to the second comment, any party, including providers, practitioners, or beneficiaries who are dissatisfied with an initial denial determination, has access to a PRO reconsideration. However, section 1155 of the Act further provides for a hearing only for the beneficiary, and only when the reconsideration is adverse to the beneficiary. As noted above in the first comment, a determination of noncoverage on grounds that medical necessity was lacking may be adverse even if we make payment for the noncovered services under section 1879 of the Act. A determination of that kind may also preclude future payments under section 1879 of the Act for a similar service, since the beneficiary is on notice of the noncoverage.

2. *Comment:* In addition, some commenters believe that providers or practitioners should be given the right to a reconsideration even if they are not liable for payment under the limitation of liability provision.

Response: We agree with this comment. Section 473.16 governs reconsideration rights under the PRO program, not the limitation of liability provisions. Therefore, providers or practitioners may obtain a reconsideration on the issues of medical necessity, reasonableness of care, and appropriateness of the setting.

E. PRO Criteria

Comment: One commenter suggested that practitioners be allowed to appeal the PRO criteria and review process that the practitioner considers to be unreasonable and detrimental to patient care or which may affect the general public interest.

Response: We believe that PRO criteria should be developed with local peer participation to assure that they are reasonable or not detrimental. Section 1154(a)(6) of the Act requires that a PRO develop professionally deeveloped norms of care, diagnosis and treatment critiera (as defined in Part 466) based on local patterns of medical practice. Such criteria are developed by physician members of the PRO. We believe that this is the appropriate process for raising questions concerning PRO criteria. These criteria are used by a PRO for the purpose of screening cases for possible unnecessary, unreasonable or inappropriate care.

If any questionable case is identified using these criteria, a peer physician or surgeon associated with the PRO will contact or attempt to contact the physician to discuss the case further. A denial may be issued only after this discussion or attempt and only if the peer physician concludes that the proposed procedure is not reasonable or medically necessary, or could, with adequate safety, be provided on an outpatient basis.

F. Justification for Reconsideration Requests

Comment: Three PSROs recommend that a provider or practitioner be required to supply a detailed justification with each reconsideration

request to prevent a frivolous request that may result in unnecessarily burdening a PRO staff and causing excessive delay in completing other reconsiderations.

Response: Under section 1155 of the Act, a beneficiary, provider, or practitioner who is dissatisfied with a PRO determination is entitled to a reconsideration by the PRO that made the initial determination.

To afford a practitioner and a provider adequate opportunity for this statutorily required reconsideration, we believe that a provider or practitioner should be required only to submit the request for reconsideration timely and in writing. Any additional restrictions would be inconsistent with the intention of the statute. However, the PRO will reconsider its determination based on the record, which includes the same record on which the initial determination was based and additional information submitted along with a reconsideration request.

G. Where to File a Request for Reconsideration

Comment: Several commenters object to the proposed § 473.20(a)(2), which allows a beneficiary to file a request for a reconsideration with a PRO representative at a hospital. The commenters believe that, because these representatives will be present only a few days each month, the hospital will be burdened with the costs of handling the requests. Another commenter recommends that a provider and practitioner be allowed to use the same filing locations as a beneficiary.

Response: We agree that the proposed provision that allows a beneficiary to file a request for a reconsideration with a PRO representative at the hospital may place an unreasonable burden on the hospital. Therefore, we are revising that section (now § 473.18) and omitting that provision from the final rule. However, we are retaining the other locations available to a beneficiary for filing for a reconsideration.

With regard to the second comment, it is appropriate that beneficiaries, because of their relative lack of familiarity with the health care system as compared with practitioners and providers, be given the broadest opportunity to initiate a reconsideration; whereas practitioners and providers are thoroughly familiar with requesting reconsiderations and should have no problem in making a request to the PRO or its subcontractor who made the initial determination.

H. Time Period for Request of Review of Preadmission Denial

Comment: One commenter suggested that the proposed § 473.28(b) (now § 473.20) be revised to allow a party more than three days to request a reconsideration for a preadmission denial. This commenter believes that three days is not enough time to permit the provider, practitioner and beneficiary to file a request and prepare documentation that would be sufficient to support a reconsideration.

Response: This three day rule for requesting a reconsideration is to obtain expedited PRO reconsideration. It does not replace a party's right to request a reconsideration within the usual 60 day time period. We have clarified that the three day time period applies to receiving an expedited reconsideration. The short timeframe is necessary to avoid delay in obtaining proper hospital treatment if the initial denial determination is reversed and the admission is found to be necessary. Therefore, a late request for an expedited reconsideration will not be granted. If a party so wishes, it may take up to 60 days to request a reconsideration. However, we note that the filing date and reconsideration date are not necessarily the same. In most cases, we expect that the reconsideration will not be held until the third day after the request is received by the PRO. This time is available to a claimant to prepare and submit additional documentation.

I. Provider and Attending Practitioner Notification When Beneficiary Requests a Reconsideration

Comment: One commenter recommends that we require the PRO to notify the provider and attending practitioner whenever a beneficiary requests a reconsideration.

Response: We assume that the commenter recommended this notification to allow the provider the opportunity to represent the beneficiary. Because the provider cannot represent the beneficiary in a reconsideration, this additional notification would serve no purpose. (See response to comment U of this section: Provider representation of beneficiary). The provider and practitioner are notified of the reconsidered determination. Therefore, we will not make this requested change.

J. Proving That a Beneficiary Will Not Seek Reconsideration of an Initial Determination

1. *Comment:* Two commenters think that we should establish specific criteria to explain how the provider or practitioner can establish that a beneficiary who is liable is not going to pursue his or her right to a reconsideration of the initial determination. In addition, some commenters believe that a provider or practitioner should be given the right to a reconsideration even if it is not liable for payment due to the limitation of liability provision in section 1879 of the Act.

Response: These comments reflect some confusion. In § 473.18(a) of the NPRM (now § 473.16(a)), we clearly stated that a provider or practitioner has a right to reconsideration of a PRO determination as to reasonableness, medical necessity, and appropriateness. This is not dependent on whether the beneficiary also asks for reconsideration. Section 473.16(a) repeats this provision (although it has been redrafted for clarity). The commenters were probably reacting to § 473.18(c) of the NPRM, which described appeal rights not under section 1155 of the Act (the PRO statute), but rather under the limitation of liability provisions in section 1879(d) of the Act. That provision clearly states that a provider or practitioner may appeal a determination under section 1879 of the Act only after we determine that the beneficiary will not exercise his or her appeal rights. We cannot change this statutory limitation. However, to clarify the regulation, we are removing most of the references to section 1879 procedures from Subpart B of 42 CFR Part 473. Instead, in § 473.14(c), we refer the reader to the regulations containing the procedures for appealing Medicare determinations made by HCFA and its fiscal intermediaries and carriers, including thise under section 1879 of the Act.

K. PRO Release of Medical Records

Comment: Thirteen commenters recommended that the proposed § 473.32 (now § 473.24) be revised to prohibit the PRO from releasing to the beneficiary the material upon which the initial determination was based. They stated that it is inappropriate for the PRO to release the patient's medical record without the provider's consent.

Response: This final rule addresses PRO information used in reaching a decision and the need of individuals to verify that that information is correct.

However, we recognize that there must be safeguards to which PROs must adhere to assure that certain sensitive patient information will not be released. We plan to publish those rules in a future issue of the **Federal Register**. They will be located in Part 476 of this

chapter, which contains the Department's rules concerning Acquisition, Disclosure, and Protection of PRO information. Once information is in possession of a PRO, it belongs to that PRO and it would be inappropriate to require that a PRO obtain approval before releasing its own information to a beneficiary. We have clarified the proposed § 473.32 (now § 473.24(a)) and § 476.132(b)(1) to require a PRO to provide the beneficiary only with the information that was used to support the initial denial determination.

L. Identify PRO Reviewers and Make Public PRO Deliberations

Comment: Several commenters stated that PROs should furnish the identity of reviewers and the record of the initial determination deliberation to the parties to aid in their understanding and appeal of an adverse determination.

Response: As stated earlier, parties to a reconsideration should be given the information that formed the basis of the determination. The PRO will release information about the facts and reasons supporting its decision so that the parties will be fully informed about the determination. Also, we agree that the identity of a reviewer can be released if the reviewer agrees. However, we are prohibiting a PRO from releasing the record of the PRO deliberations because we believe that release of this information would inhibit frunk and thorough discussion among the reviewers.

M. Charges for PRO Photocopying

Comment: Five commenters object to the requirement that a provider is not allowed to charge a PRO for photocopying of information that is submitted to a PRO for a reconsideration and is not reimbursed by HCFA for such costs.

Response: We believe it is important that PROs have adequate access to medical records to enable them to carry out required activities. This includes the right to request and receive copies as they deem necessary including preadmission test records. In some cases, this will mean that the PRO will request hospitals to photocopy specific medical records and mail them to the PRO.

The prospective payment rates are computed according to the provisions of the law and are also based on the best available data at the time of computation. Administrative costs are included in the Federal and hospital specific portions of prospective payments by virtue of their being incurred and reported by hospitals for the years that represent the data bases for the prospective payment system. These bases include all allowable administrative costs of a hospital, including many that are not specifically incurred for Medicare purposes.

Prior to the use of PROs, review of inpatient hospital services was carried out either at the hospital or offsite. Offsite review sometimes required that the hospital mail patient records to Medicare fiscal intermediaries. These costs were subsumed in the hospital's administrative costs that in turn were reflected in Medicare cost reimbursement calculations. Costs related to such activities are accounted for, in some measure, in the prospective payment base rates.

We also believe that the fiscal benefits of PRO review will compensate for any possible increased costs. For example, in many cases, PROs' preadmission review activities will protect hospitals from retrospective denials. Thus, there will be trade-offs between a hospital's cost of providing medical records to PROs and PRO's performance of review that may assist hospitals in avoiding unnecessary expenditures.

N. Incentive for PRO To Affirm Its Initial Determination

Comment: Two commenters feel that due process will be compromised because a PRO has a strong incentive to affirm the initial determination during the reconsideration process because the PRO contract has specified targets and because we would allow the individual who makes the initial determination to also reconsider that determination.

Response: PRO objectives are targets for reducing unnecessary or inappropriate care, not rigid quotas. While PROs have negotiated specific contract objectives, we recognize that there are circumstances under which the objectives may need to be modified. For example, quality objectives would be modified if data developed during the course of the contract demonstrate that the problem targeted is more severe than previously thought, or if the PRO identifies a different problem of greater importance. Utilization objectives would be modified for demographic shifts (for example, an influx of Medicare beneficiaries into the PRO service area), for the effects of new technology, etc.

We agree with the second part of the comment that the individual who makes the reconsidered determination should not be the individual who made the initial denial determination. Therefore, we have revised the proposed § 473.24 (now § 473.28), Qualifications of a reconsideration reviewer, accordingly.

O. Who Should Make the Reconsidered Determination

1. *Comment:* One commenter wants to know the circumstances in which we would allow a physician to reconsider an initial denial determination involving services provided by a dentist.

Response: We believe it is the intent of the statute that the most effective method of peer review is for doctors of medicine to review doctors of medicine, doctors of osteopathy to review doctors of osteopathy, and doctors of dentistry to review doctors of dentistry. We have, however, made an exception to this rule in § 466.98 (published in another final rule elsewhere in this issue of the Federal Register), in situations where a PRO determines that peer practitioners are not available to perform peer review effectively. For example, if there is a shortage of peers which hinders adequate and timely review, a doctor of medicine or doctor of osteopathy may make initial denial determinations involving services provided by a doctor of medicine, doctor of osteopathy, or doctor of dentistry.

2. *Comment:* Several commenters believe that we should require that the reconsideration reviewer be a specialist in the type of services under review. Furthermore, commenters believe that the individual who reviews the change in DRG coding should have experience and proficiency in ICD–9–CM coding and DRG assignment.

Response: We agree that a reconsideration reviewer should be a specialist in the type of services under review except where meeting this requirement would compromise the effectiveness or efficiency of PRO review. For example, if the only specialist available to reconsider a case is located at the opposite side of the state, we would not require that the specialist travel an excessive distance to hold the reconsideration or for the party to travel an excessive distance to reach the reconsideration reviewer.

We also agree that the individual who reviews changes in DRG coding must be qualified through training and experience to review ICD–9–CM coding. In addition, we are providing that the individual who reviews changes in DRG procedural or diagnostic information must be a physician. These provisions are located in the regulations at § 473.15.

Q. Scope of Information To Be Considered During Reconsideration

Comment: Three commenters believe that proposed § 473.34, Evidence to be considered by the reconsideration reviewer, is too restrictive and should

be revised to allow oral testimony by the parties, declarations from medical witnesses and submission of rebuttal evidence upon completion of the initial presentation to the reconsideration reviewer. In addition, one commenter suggests that if we decide to prohibit a reconsideration hearing, we should not limit the scope of written evidentiary materials that may be submitted, as long as they pertain to the issues under review.

Response: Nothing in the proposed § 473.34 (now § 473.30) restricts the types of additional evidence that may be submitted by a party. We believe that the use of "additional evidence submitted by a party" as contained in § 473.30 is very broad and permits the PRO to consider declarations from medical witnesses and submission of rebuttal evidence. However, the types of issus raised do not generally lend themselves to oral testimony; rather they lend themselves to a review of documentation. Should a PRO choose to accept oral testimony, we will spell out procedures the PRO must follow in accepting such testimony in the PRO administrative guidelines. We anticipate, however, that the need for oral evidence should be rare. Therefore, we are making no substantive changes to § 473.30 of this final rule.

R. Timely Completion of Reconsidered Determination

Comment: Eighteen commenters suggested that proposed § 473.42(b) (now § 473.32(b)) require that a reconsideration requested by a provider or practitioner be performed in a timely manner; that is, within 30 days of the receipt of the reconsideration request. The commenters are concerned that payment decisions for providers and practitioners may be deferred indefinitely.

Response: We agree, and § 473.32 provides that a PRO must complete its reconsideration and send written notice within 30 working days after receipt of a request for reconsideration from a provider or practitioner.

S. Issue Notice of Reconsidered Determination Within a Specific Time Period

Comment: Two commenters suggest that rather than requiring the PRO to provide "prompt" written notice of its reconsidered determination to the intermediary or carrier, as appropriate (proposed § 473.44(b)), we should require that this notice be issued within a specific time period.

Response: We agree; therefore, we are revising proposed § 473.44(b) (now § 473.34(b)) to require that the PRO provide written notification of its reconsidered determination to the intermediary or carrier, as appropriate, within 30 days of the determination. We are also requiring that the PRO make this notification of the reconsidered determination only if the initial denial determination is modified or reversed.

T. Access to Record of PRO Reconsidered Determination

Comment: One commenter thinks that the proposed rule does not adequately explain who has access to the record of a PRO reconsideration.

Response: As indicated in the proposed rule, section 1160 of the Act sets forth the statutory rules that govern access and disclosure of the record of a PRO reconsideration. As noted earlier, we plan to publish the final rule implementing that section, Acquisition, Protection, and Disclosure of Utilization and Quality Control Peer Review Organization (PRO) Information in a future issue of the **Federal Register**. The regulations will be placed in Part 476 of this chapter.

U. Provider Representation of Beneficiary

Comment: Ten commenters believe that providers should be allowed to represent beneficiaries in hearings regarding medical necessity issues.

Response: We are not accepting this suggestion. We believe that it would be inappropriate to permit a provider to represent a beneficiary in appealing claims under Medicare because, under section 1879 of the Act, liability for the Medicare claim may be assigned to the beneficiary, physician, or other attending practitioner that furnished the service. Therefore, allowing a provider to represent a beneficiary whose claim has been denied could result in a conflict of interest. As to PRO appeals, section 1155 of the Act was clearly designed to permit hearings only for beneficiaries and not for providers, physicians, and other practitioners. Allowing a provider to represent a beneficiary would permit an alternative avenue of provider appeal rights clearly not authorized under section 1155 or 1879 of the Act and not in accordance with Congressional intent. We have not addressed this issue in the regulations text, because we will continue current Medicare policy, as provided in section 3789C of the Part A Intermediary Manual (page 3–262.14, revision 1079). Extant Medicare policy is that a provider may not represent a beneficiary in appealing claims denied under Part A of Medicare.

V. Time Period for Beneficiary to Request a Hearing

Comment: Two commenters believe that there should be a time limit on how long the beneficiary has to decide not to request a hearing in order that a provider or practitioner be able to file timely, if the liability of the beneficiary is at issue.

Response: Under § 473.42(b) (proposed at § 473.28), the beneficiary has 60 days from receipt of the notice of the PRO reconsidered determination to request a hearing.

Providers and practitioners may protect their right to a administrative hearing under section 1879 of the Act by submitting their request during this same 60 day period.

W. Hearing Issues for a Provider and Practitioner

Comment: Twenty-three commenters stated that proposed § 473.50(c) should not limit a provider and practitioner to a hearing based only on the issues of knowledge under Medicare's limitation of liability provision. These commenters believe that providers and practitioners will be denied their right to due process of law because the provider and practitioner are entitled only to a reconsideration, and are prohibited from obtaining a hearing on medical necessity, reasonableness, and appropriateness of the setting in which services were furnished. Furthermore, the commenters state that since the implementation of a prospective payment system covering inpatient hospital services, limitation of liability and coverage issues are tied so closely together that the provider and practitioner should be able to obtain a hearing on both issues.

Response: This limitation is imposed by section 1155 of the Act, which states that where the reconsideration is adverse a hearing is available only to the beneficiary. However, section 1879 of the Act entitles a provider and practitioner to an adminstrative hearing of a determination that finds them financially liable for a furnished service, because they knew or should have known that the service would not be covered, but only if the beneficiary is not going to exercise his or her right of appeal.

Also, we believe that due process is quite adequately afforded a provider and practitioner by the rules published today. Under §466.93, opportunity to discuss proposed initial denial determination, the provider or practitioner is provided with an opportunity to discuss the proposed

initial denial determination with the PRO physician before it is issued, including the nature of the patient's need for health care services and all factors that preclude treatment of the patient as an outpatient or in an alternative level of inpatient care. Then, after the issuance of a denial, the provider or practitioner can again present its side of the argument in a reconsideration, including relevant information not previously made available to the PRO. These procedures for peer review and provider appeals were consistently applied in the PSRO program, which preceded the PRO program.

X. Time Period to Request a Hearing and Date of Request for a Hearing

Comment: One commenter thinks that—(1) The timing of the request for a hearing under proposed § 473.54(b) should run from the date the reconsidered determination notice was received; and (2) The date of the request for an administrative hearing should be the date postmarked on the request.

Reponse: We agree. We are changing § 473.42(b) to include these provisions. Also, we are revising proposed § 473.28 (now § 473.20) to be consistent with Medicare appeals procedures. The regulations now state that a request for a reconsideration or hearing must be filed within 60 days after the date of receipt of the notice of the initial denial determination or the reconsidered determination, respectively. Receipt is presumed to be five days after the date of the notice. Further, we are deleting proposed § 473.24(a)(7). Section 473.24(a)(7) referred to nonreceipt of notice as a good cause for late filing. The time limit for receipt only begins with the receipt of a notice; therefore, nonreceipt is a separate issue from good cause for late filing.

Regarding the second comment, a request for a reconsideration or a hearing will be considered timely if the postmark date of the request is within the period for timely filing. We have added this to §§ 473.20 and 473.42.

Y. Amount in Dispute Necessary for Obtaining a Hearing

Comment: Two commenters want to know why we require that $200 be in dispute to permit some hearings while only $100 need be in dispute to permit other hearings.

Response: Section 1155 of the Act requires that at least $200 must be in controversy for a beneficiary to obtain a hearing by an ALJ after a PRO reconsidered determination. However, limitation of liability determinations are made under section 1879 of the Act, not title XI. Section 1869(b) of the Act permits a beneficiary to seek a hearing by an ALJ of a reconsidered limitation of liability determination under Part A where the amount in controversy is $100 or more, and section 1879(d) of the Act gives a provider or practitioner the same appeal rights a beneficiary has to appeal a limitation of liability determination when the beneficiary does not exercise appeal rights.

Z. Reopening a Reconsidered Determination for Fraud or Similar Abusive Practice

Comment: One commenter is concerned that the proposed § 473.80 (now § 473.48) extends reopenings to include reconsiderations obtained through similar abusive practice that does not support a formal finding of fraud. This commenter is afraid that this gives the PRO wide discretionary authority to reopen a reconsidered determination at any time depending upon the PRO's subjective definition of similar abusive practice.

Response: Many practices that do not involve a fraudulent act nevertheless result in unnecessary and wasteful expenditure of Medicare funds. In order to increase efficiency of the Medicare program, we believe it is appropriate to permit reopenings at any time such practices are discovered.

IV. Changes to the NPRM

Based on the comments received and other considerations, we are making the following changes to the proposed rule. We have also made technical changes to the proposed regulations to correct drafting errors and to simplify and clarify certain sections:

A. Changes Based on Public Comments

- We have added a new § 473.14(c)(1) to state that the granting of grace days is not subject to reconsideration.
- We have changed proposed § 473.18(d) (now § 473.15) to require a PRO to review changes as a result of a DRG validation that caused an assignment of a different DRG, if the review is requested by a provider or practitioner.
- In § 473.15(a)(3), we require the individual who reviews changes in DRG procedural or diagnostic information to be a physician, and we require the individual who reviews changes in DRG coding to be qualified through training and experience with ICD–9–CM coding.
- We have changed proposed § 473.20 (now § 473.18) to prohibit a beneficiary from requesting a reconsideration from a PRO representative at the health care facility because this may place an unreasonable burden on the hospital.
- The proposed § 473.28 (now § 473.20) now explains that a beneficiary has three days in which to request an expedited reconsideration of a preadmission denial or the normal 60 day period to request a regular reconsideration of a preadmission denial.
- Also, under § 473.20, a request for a reconsideration must be filed within 60 days after receipt of the notice of the initial determination, and we presume receipt to occur five days after the date of the notice. In addition, a request for a reconsideration is considered filed on the day it is postmarked.
- Proposed § 473.24 (now § 473.28) has been revised to prohibit the individual who made the initial denial determination from also making the reconsidered determination.
- Under proposed § 473.32 (now § 473.24) the PRO has to provide the parties only with the information that was used to support the initial denial determination.
- Proposed § 473.42 (now § 473.32) has been revised to require a PRO to complete its reconsideration and send written notice within 30 working days after receipt of a request for reconsideration from a provider or practitioner.
- Proposed § 473.44 (now § 473.34) has been revised to require that the PRO provide written notification of its reconsidered determination to the intermediary or carrier, as appropriate, within 30 days of the determination, if the initial denial determination has been modified or reversed.
- Proposed § 473.54 (now § 473.42) restates Medicare policy that a request for a hearing must be filed within 60 days after receipt of the notice of the reconsidered determination and that we presume receipt to occur five days after the date of the notice. In addition a request for a hearing is considered filed on the day it is postmarked.

B. Technical Changes

- We have reorganized the regulations text. Many procedures have been rewritten for clarity and are in regulations sections that are different from the proposed sections.
- We now refer to initial determinations that may be appealed on the issues of reasonableness or medical necessity of the services or appropriateness of the inpatient setting as initial denial determinations. We now refer to a review of a DRG coding change rather than a reconsideration of a DRG coding change so that it will be clear that no additional appeal is available.

• We have removed most references to the limitation of liability determinations under section 1879 of the Act and have specified that the rules under 42 CFR Part 405, Subparts, G or H, for reconsiderations and appeals of limitation of liability determinations in the Medicare program are applicable instead of the procedures in this rule.

• In proposed § 473.60 (now § 473.44) Determining the amount in controversy, we now indicate that the dismissal of a request for an ALJ hearing occurs when the ALJ determines that the amount in controversy is less than $200. In the proposal, we did not clearly indicate when the dismissal occurs.

V. Impact Analysis

A. Executive Order 12291

We have determined that these final regulations are not likely to result in an annual economic effect of $100 million or more, or meet other threshold criteria of section 1(b) of the Executive Order. Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which will:

• Result in annual effect on the national economy of $100 million or more;

• Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

• Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

This final rule is one of several efforts to promote a more efficient peer review program. Specifically, we streamlined the PRO reconsideration process primarily by not prescribing the details of that process. Our experience has shown that due to our stringent review instructions, the PSRO reconsideration process has taken the form of an evidentiary hearing. This is a relatively costly process as it can involve various professionals and numerous staff hours to complete the reconsideration review. PROs now have the option of conducting the reconsideration through oral presentations and a review of documentation, or through a review of documentation only.

We believe that this final rule will allow for administrative ease through the deletion of the requirement for professional consultation at the administrative hearing level and by having PROs make all limitation of liability determinations associated with their initial denials. These changes will be less costly to the program, and may result in some negligible savings.

At this time, we can not estimate precisely the increase or decrease in the number of reconsiderations, administrative appeals and judicial reviews that will occur in fiscal year 1985. We do not believe that this final rule will either encourage or discourage appeals. Since we assume that there will not be a significant incremental change in the number of reconsiderations and appeals, we conclude that this final rule is not likely to result in an annual economic effect that will meet any of the threshold criteria of the Order.

B. Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980, Pub. L. 96–354, that these regulations will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that although the regulations will reduce the costs of the peer review reconsideration and appeals process, we do not expect the reduction to be significant.

We do not believe that providers will be significantly affected by these regulations because the total number of peer review reconsidered determinations and appeals currently average less than one reconsideration or appeal per provider per year. As noted above, we do not expect a significant incremental change in the number of reconsiderations and appeals in future fiscal years. Therefore, providers will not incur significant additional costs because of these provisions.

C. Paperwork Reduction Act of 1980

Sections 473.18, 473.34, 473.36 and 473.42 of this final rule impose information collection requirements on the public. They are subject to review by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504–3507). We are seeking OMB approval of these requirements under section 3507 of that Act. When we obtain OMB approval, we will publish a notice in the **Federal Register**. The public need not comply with those sections of the regulations until OMB approval is obtained. Comments on these requirements should be sent directly to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Washington, D.C., Attn: Fay Iudicello.

VI. List of Subjects in 42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Professional standards review organizations (PSRO), Reconsiderations, Utilization and quality control, Peer review organizations (PRO).

42 CFR Part 473 is amended as set forth below:

A. The table of contents for Chapter IV, Subchapter D is amended by revising the title of Part 473 to read as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Part

* * * * *

Subchapter D—Peer Review Organizations

* * * * * *

473 Reconsiderations and Appeals.

* * * * * *

B. 42 CFR Part 473 is amended as follows:

1. The title of Part 473 is revised to read as follows:

PART 473—RECONSIDERATIONS AND APPEALS

2. The table of contents is amended to reflect the establishment of a new Subpart A to encompass §§ 473.1—473.6 and the addition of a new Subpart B; and to revise the authority citation to read as follows:

Subpart A—PSRO Reconsiderations and Appeals

Sec.

473.1 Applicability.
473.2 Right to reconsideration review and hearing.
473.3 Utilization of procedures under Title XVIII. Part A, hearing procedures.
473.4 Professional consultation.
473.5 Determining amount in controversy in case of proposed services.
473.6 Right of judicial review.

Subpart B—Utilization and Quality Control Peer Review Organization (PRO) Reconsiderations and Appeals

473.10 Scope.
473.12 Statutory basis.
473.14 Applicability.
473.15 PRO review of changes resulting from DRG validation.
473.16 Right to reconsideration.
473.18 Location for submitting requests for reconsideration.
473.20 Time limits for requesting reconsideration.
473.22 Good cause for late filing of a request for a reconsideration or hearing.
473.24 Opportunity for a party to obtain and submit information.
473.26 Delegation of the reconsideration function.
473.28 Qualifications of a reconsideration reviewer.

473.30 Evidence to be considered by the reconsideration reviewer.
473.32 Time limits for issuance of the reconsidered determination.
473.34 Notice of a reconsidered determination.
473.36 Record of reconsideration.
473.38 Finality of a reconsidered determination.
473.40 Beneficiary's right to a hearing.
473.42 Submitting a request for a hearing.
473.44 Determining the amount in controversy for a hearing.
473.46 Appeals Council and judicial review.
473.48 Reopening and revision of a reconsidered determination or a hearing decision.

Authority: Sec. 1102 of the Social Security Act, 42 U.S.C. 1302. Subpart A is also issued under sec. 150 of Pub. L. 97–248, 42 U.S.C. 1320c note. Subpart B is also issued under sections 1154(a), 1155, 1866(a), 1871, and 1879 of the Social Security Act, 42 U.S.C. 1320c–3(a), 1320c–4, 1395cc(a), 1395hh, and 1395pp.

3. A new Subpart B is added to read as follows:

Subpart B—Utilization and Quality Control Peer Review Organization (PRO) Reconsiderations and Appeals

§ 473.10 Scope.

This subpart establishes the requirements and procedures for—

(a) Reconsiderations conducted by a Utilization and Quality Control Peer Review Organization (PRO) or its subcontractor or initial determinations concerning services furnished or proposed to be furnished under Medicare;

(b) Hearings and judicial review of reconsidered determinations; and

(c) PRO review of a change in diagnostic and procedural coding information.

§ 473.12 Statutory basis.

(a) Under section 1155 of the Act—

(1) A Medicare beneficiary, a provider, or an attending practitioner who is dissatisfied with a PRO initial denial determination made under the provisions of section 1154 of the Act, that services furnished or proposed to be furnished are not reasonable, necessary, or delivered in the most appropriate setting, is entitled to a reconsideration by the PRO that made the initial denial determination;

(2) A Medicare beneficiary is entitled to a hearing by an administrative law judge (ALJ) if $200 or more is still in controversy after a reconsidered determination; and

(3) A Medicare beneficiary is entitled to judicial review of a final determination of the Department if $2,000 or more is still in controversy.

(b) Under section 1866(a)(1)(F) of the Act, a hospital that is reimbursed by the Medicare program must maintain an agreement with a PRO under which the PRO will review the validity of diagnostic information furnished by the hospital.

§ 473.14 Applicability.

(a) *Basic provision.* This subpart applies to reconsiderations and hearings of a PRO initial denial determination involving the following issues:

(1) Reasonableness of services.

(2) Medical necessity services.

(3) Appropriateness of the inpatient setting in which services were furnished or are proposed to be furnished.

(b) *Concurrent appeal.* A reconsideration or hearing provided under this subpart fulfills the requirements of any other review, hearing, or appeal under the Act to which a party may be entitled with respect to the same issues.

(c) *Nonapplicability of rules to related determinations.* (1) A PRO may not reconsider its decision whether to grant grace days.

(2) Limitation of liability determinations on excluded coverage of certain services are made under section 1879 of the Act. Initial determinations under section 1879 and further appeals are governed by the reconsideration and appeal procedures in Part 405, Subpart G of this chapter for determinations under Medicare Part A, and Part 405, Subpart H of this chapter for determinations under Medicare Part B. References in those subparts to initial and reconsidered determinations made by an intermediary, carrier or HCFA mean initial and reconsidered determinations made by a PRO.

§ 473.15 PRO review of changes resulting from DRG validation.

(a) *General rules.* (1) A provider or practitioner dissatisfied with a change to the diagnostic or procedural coding information made by a PRO as a result of DRG validation under section 1866(a)(1)(F) of the Act is entitled to a review of that change if—

(i) The change caused an assignment of a different DRG; and

(ii) Resulted in a lower payment.

(2) A beneficiary may obtain a review of a PRO DRG coding change only if that change results in noncoverage of a furnished service.

(3) The individual who reviews changes in DRG procedural or diagnostic information must be a physician, and the individual who reviews changes in DRG coding must be qualified through training and experience with ICD–9–CM coding.

(b) *Procedures.* Procedures described in §§ 476.18–473–36, 473.38(b), and 473.48 (a) and (c) for a PRO reconsideration or reopening also apply to PRO review of a DRG coding change.

(c) *Finality of review.* No additional review or appeal for matters governed by paragraph (a) of this section is available.

§ 473.16 Right to reconsideration.

A beneficiary, provider or practitioner who is dissatisfied with a PRO initial denial determination on one of the issues specified in § 473.14(a) has a right to a reconsideration of that determination by the PRO that made the initial denial determination.

§ 473.18 Location for submitting requests for reconsideration.

(a) *Beneficiaries.* Except as povided in paragraph (c) of this section concerning requests for expedited reconsideration, a beneficiary who wishes to obtain a reconsideration must submit a written request to one of the following:

(1) The PRO or the PRO subcontractor that made the initial determination.

(2) An SSA District Office.

(3) A Railroad Retirement Board Office, if the beneficiary is a railroad retiree.

(b) *Others.* A provider, physician or other practitioner that wishes to obtain reconsideration must submit a written request to the PRO or PRO subcontractor that made the initial determination.

(c) *Expedited reconsideration.* A request for an expedited reconsideration of a preadmission denial determination must be submitted directly to the PRO.

§ 473.20 Time limits for requesting reconsideration.

(a) *Basic rules.* (1) Except for a request for expedited reconsideration as provided in paragraph (c) of this section, or a late request with good cause under § 473.22, a dissatisfied party must file a request for reconsideration within 60 days after receipt of the notice of an initial determination.

(2) The date of receipt of the notice of the initial determination is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(3) A request is considered filed on the date it is postmarked.

(b) *Late filing of request.* A PRO will accept a request filed after 60 days after receipt of the notice of the initial determination if the PRO finds under the criteria set forth in § 473.22 that there was good cause for the party's failure to file a timely request.

(c) *Request for expedited reconsideration.* A request for an expedited reconsideration under

§ 473.18(c) must be submitted within three days after receipt of the notice of the initial denial determination.

§ 473.22 Good cause for late filing of a request for a reconsideration or hearing.

(a) *General Rule.* In determining whether a party has good cause for not filing a request for reconsideration or hearing timely, the PRO or ALJ, respectively, must consider the following:

(1) What circumstances kept the party from making the request on time.

(2) Whether an action by the PRO misled the party.

(3) Whether the party understood the requirements of the Act as affected by amendments to the Act, other legislation, or court decisions.

(b) *Examples.* Examples of circumstances in which good cause may exist include, but are not limited to, the following:

(1) A party was seriously ill and was prevented from requesting a reconsideration in person, through another person, or in writing.

(2) There was a death or serious illness in a party's immediate family.

(3) Important records were accidentally destoryed or damaged by fire or other cause.

(4) A party made a diligent effort but could not find or obtain necessary relevent information within the appropriate time period.

(5) A party requested additional information to further explain the determination within the time limit, and requested reconsideration within 60 days of receiving the explanation (or within 30 days for an Appeals Council hearing).

(6) The PRO gave the party incorrect or incomplete information about when and how to request a reconsideration or hearing.

(7) A party sent the request to another Government agency in good faith within the time limit, but the request did not reach an office authorized to receive the request until after the time period had expired.

(8) Other unusual or unavoidable circumstances exist that—

(i) Show that a party could not have known of the need to file timely; or

(ii) Prevented a party from filing timely.

§ 473.24 Opportunity for a party to obtain and submit information.

(a) Subject to the rules concerning disclosure of PRO information in section 1160 of the Act, at the request of a provider, practitioner or beneficiary, the PRO must provide an opportunity for examination of the material upon which the initial denial determination was based. The PRO may not furnish a provider, practitioner or beneficiary with—

(1) A record of the PRO deliberation; or

(2) The identity of the PRO review coordinators, physician advisors, or consultants who assisted in the initial denial determination without their consent.

(b) The PRO may require the requester to pay a reasonable fee for the reproduction of the material requested.

(c) The PRO must provide a party with an opportunity to submit new evidence before the reconsidered determination is made.

§ 473.26 Delegation of the reconsideration function.

A PRO may delegate the authority to reconsider an initial determination to a nonfacility subcontractor, including the organization that made the initial determination as a PRO subcontractor.

§ 473.28 Qualifications of a reconsideration reviewer.

A reconsideration reviewer must be someone who is—

(a) Qualified under § 466.98 of this chapter to make an initial determination.

(b) Not the individual who made the initial denial determination.

(c) A specialist in the type of services under review, except where meeting this requirement would compromise the effectiveness or efficiency of PRO review.

§ 473.30 Evidence to be considered by the reconsideration reviewer.

A reconsidered determination must be based on—

(a) The information that led to the initial determination;

(b) New information found in the medical records; or

(c) Additional evidence submitted by a party.

§ 473.32 Time limits for issuance of the reconsidered determination.

(a) *Beneficiaries.* If a beneficiary files a timely request for reconsideration of an initial denial determination, the PRO must complete its reconsidered determination and send written notice to the beneficiary within the following time limits—

(1) Within three working days after the PRO receives the request for reconsideration if—

(i) The beneficiary is still an inpatient in a hospital for the stay in question when the PRO receives the request for reconsideration; or

(ii) The initial determination relates to institutional services for which admission to the institution is sought, the initial determination was made before the patient was admitted to the institution; and a request was submitted timely for an expedited reconsideration.

(2) Within 10 working days after the PRO receives the request for reconsideration if the beneficiary is still an inpatient in a SNF for the stay in question when the PRO receives the request for reconsideration.

(3) Within 30 working days after the PRO receives the request for reconsideration if—

(i) The initial determination concerns ambulatory or noninstitutional services;

(ii) The beneficiary is no longer an inpatient in a hospital or SNF for the stay in question; or

(iii) The beneficiary does not submit a request for expedited reconsideration timely.

(b) *Providers or practitioners.* If the provider or practitioners files a request for reconsideration of an initial determination, the PRO must complete its reconsidered determination and send written notice to the provider or practitioner within 30 working days.

§ 473.34 Notice of a reconsidered determination.

(a) *Notice to parties.* A written notice of a PRO reconsidered determination must contain the following:

(1) The basis for the reconsidered determination.

(2) A detailed rationale for the reconsidered determination.

(3) A statement explaining the Medicare payment consequences of the reconsidered determination.

(4) A statement informing the parties of their appeal rights, including the information concerning what must be included in the request for hearing, the amount in controversy, locations for submitting a request for an administrative hearing and the time period for filing a request.

(b) *Notice to payers.* (1) A PRO must provide written notice of its reconsidered determination to the appropriate Medicare intermediary or carrier within 30 days if the initial determination is modified or reversed.

(2) This notice must contain adequate information to allow the intermediary or carrier to locate the claim file. This must include the name of the beneficiary, the Health Insurance Claim Number, the name of the provider, date of admission, and dates or services for which Medicare payment will not be made.

§ 473.36 Record of reconsideration.

(a) *PRO requirements.* A PRO must maintain the record of its reconsideration until the later of the following:

(1) Four years after the date on the

notice of the PRO's reconsidered determination.

(2) Completion of litigation and the passage of the time period for filing all appeals.

(b) *Contents of the record.* The record of the reconsideration must include:

(1) The initial determination.

(2) The basis for the initial determination.

(3) Documentation of the date of the receipt of the request for reconsideration.

(4) The detailed basis for the reconsidered determination.

(5) Evidence submitted by the parties.

(6) A copy of the notice of the reconsidered determination that was provided to the parties.

(7) Documentation of the delivery or mailing and, if appropriate, the receipt of the notice of the reconsidered determination by the parties.

(c) *Confidentiality.* The record of a PRO reconsideration is subject to prohibitions against disclosure of information as specified in section 1160 of the Act.

§ 473.38 Finality of a reconsidered determination.

A PRO reconsidered determination is final and binding upon all parties to the reconsideration unless—

(a) A hearing is requested in accordance with § 473.40 and a final rendered; or

(b) The reconsidered determination is later reopened and revised in accordance with § 473.48

§ 473.40 Beneficiary's right to a hearing.

(a) *Amount in controversy.* If the amount in controversy is at least $200, a beneficiary (but not a provider or practitioner) who is dissatisfied with a PRO reconsidered determination may obtain a hearing by an administrative law judge (ALJ) of the Office of Hearings and Appeals of the SSA.

(b) *Subject matter.* A beneficiary has a right to a hearing on the following issues:

(1) Reasonableness of the services.

(2) Medical necessity of the services;

(3) Appropriateness of the setting in which the services were furnished.

(c) *Governing provisions.* The provisions of Subpart G, Reconsiderations and Appeals under the Hospital Insurance Program, of Part 405 of this chapter apply to hearings and appeals under this subpart unless they are inconsistent with specific provisions in this subpart, References in that Subpart G to initial and reconsidered determinations made by an intermediary, carrier, or HCFA should be read to mean initial and reconsidered determinations made by a PRO.

§ 473.42 Submitting a request for a hearing.

(a) *Where to submit the written request.* A beneficiary who wants to obtain a hearing under § 473.40 must submit a written request to one of the following:

(1) The office of the PRO or PRO subcontractor that made the initial determination.

(2) A SSA District Office.

(3) An office of the Office of Hearings and Appeals of SSA.

(4) An office of the Railroad Retirement Board, in the case of a beneficiary who is a railroad retiree.

(b) *Time limit for submitting a request for a hearing.* (1) The request for a hearing must be filed within 60 days of receipt of the notice of the PRO reconsidered determination, unless the time is extended for good cause as provided in § 473.22.

(2) The date of receipt of the notice of the reconsidered determination is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(3) A request is considered filed on the date it is postmarked.

§ 473.44 Determining the amount in controversy for a hearing.

(a) After a party has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740 of this chapter.

(b) If the ALJ determines that the amount in controversy is less than $200, the ALJ, without holding a hearing, notifies the parties to the hearing that the parties have 15 calendar days to submit additional evidence to prove that the amount in controversy is at least $200.

(c) At the end of the 15-day period, if the ALJ determines that the amount in controversy is less than $200, the ALJ, without holding a hearing, dismisses the request for a hearing without ruling on the substantive issues involved in the appeal and notifies the parties to the hearing and the PRO that the PRO reconsidered determination is conclusive for Medicare payment purposes.

§ 473.46 Appeals Council and judicial review.

(a) The circumstances under which the Appeals Council of the Social Security Administration will review an ALJ hearing decision or dismissal are specified in 20 CFR 404.970, Cases the Appeals Council will review.

(b) If $2,000 or more is in controversy, a party may obtain judicial review of an Appeals Council decision, or an ALJ hearing decision if a request for review by the Appeals Council was denied, by filing a civil action under the Federal Rules of Civil Procedure within 60 days after the date the party received notice of the Appeals Council decision or denial.

§ 473.48 Reopening and revision of a reconsidered determination or a hearing decision.

(a) *PRO reopenings—(1) General rule.* A PRO or PRO subcontractor that made a reconsidered determination, or conducted a review of a DRG change as described in § 473.15, that is otherwise final, may reopen and revise the reconsidered determination or review, either on its own motion or at the request of a party, within one year from the date of the reconsidered determination or review.

(2) *Extension of time limit.* A PRO or PRO subcontractor may reopen and revise its reconsidered determination, or its review of a DRG change as described in § 473.15, that is otherwise final, after one year but within four years of the date of the determination or review if—

(i) The PRO receives new material evidence;

(ii) The PRO erred in interpretation or application of Medicare coverage policy;

(iii) There is an error apparent on the face of the evidence upon which the reconsidered determination was based; or

(iv) There is a clerical error in the statement of the reconsidered determination.

(b) *ALJ and Appeals Council Reopening—Applicable procedures.* The ALJ or the Appeals Council, whichever made the final decision, may reopen and revise the decision in accordance with the procedures set forth in § 405.750(b) of this chapter, which concerns reopenings and revisions under Subpart G of Part 405 of this chapter.

(c) *Fraud or similar abusive practice.* A reconsidered determination, a review of a DRG change, or a decision of an ALJ or the Appeals Council may be reopened and revised at any time, if the reconsidered determination, review, or decision was obtained through fraud or a similar abusive practice that does not support a formal finding of fraud.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: December 6, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: January 28, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-9003 Filed 4-11-85; 2:43 pm]

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Wednesday
April 17, 1985

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, 65 and 91

Use of Alcohol or Drugs; Final Rule and Submission to Alcohol Tests, Supplemental Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, and 91

[Docket No. 21958; Amdt. Nos. 61-74, 63-23, 65-29, and 91-188]

Use of Alcohol or Drugs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish rules governing the use of alcohol or drugs by any crewmember assigned to perform duty during the operation of an aircraft. In addition to maintaining current provisions regarding the use of alcohol or drugs before serving as a crewmember, it delineates the maximum allowable blood alcohol content level. Crewmembers also will be required to furnish the Administrator with the results of any test that is performed that may indicate the percentage of alcohol in the blood or the presence of drugs in the body when such tests have been taken within 4 hours after acting or attempting to act as a crewmember. Failure to furnish or authorize the release of the results of these tests will result in certificate action or other sanctions. These rules are based, in part, on a National Transportation Safety Board determination that alcohol is a cause or factor in about 40 aircraft accidents annually, almost all of which are fatal. These amendments are intended to facilitate enforcement of the present drug and alcohol regulations and to reduce aircraft accidents and incidents attributable to consumption of alcoholic beverages and the use of drugs. For this same purpose, the FAA is proposing elsewhere in this issue of the Federal Register to require crewmembers to submit to tests for alcohol given by law enforcement officers under certain circumstances.

EFFECTIVE DATE: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Mike Sacrey or Roger Baker, Federal Aviation Administration, General Aviation & Commercial Division, Operations Branch (AFO-820), 800 Independence Avenue, SW., Washington, D.C. 20591; Phone: (202) 426-8194.

SUPPLEMENTARY INFORMATION:

Background

Rules relating to the use of drugs and the consumption of alcoholic beverages in connection with aircraft operations are set forth in § 91.11 of the Federal Aviation Regulations (FAR) (14 CFR 91.11). This section provides that no person may act as a crewmember of a civil aircraft (1) within 8 hours after the consumption of any alcoholic beverage, (2) while under the influence of alcohol, or (3) while using any drug that affects the faculties in any way contrary to safety. "Crewmember" is defined in FAR Part 1 as "a person assigned to perform duty in an aircraft during flight time." A pilot, flight engineer, flight navigator, or flight attendant is such as person.

The National Transportation Safety Board (NTSB) has recommended that the FAA add an implied consent clause to the FAR and specify an alcohol level at which a pilot would be considered to be under the influence. The General Accounting Office (GAO) made similar recommendations in a Report to Congress by the Comptroller General entitled "Stronger Federal Aviation Administration Requirements Needed to Identify and Reduce Alcohol Use Among Civilian Pilots" (CED-78-58; March 20, 1978).

The FAA is concerned about the serious hazard, during aircraft operations, resulting from impairment of the pilot's faculties due to alcohol. Even small amounts of alcohol affect judgment, coordination, performance, and reaction time. Vision, hearing, touch, information processing, memory, reasoning, and attention span also may be affected by alcohol consumption. Inflight testing of experienced professional aviators has shown that even 40 milligrams percent by weight of alcohol in the blood exerts detrimental effects on performance which are incompatible with flight safety (Report on "The Effects of Alcohol on Pilot Performance During Instrument Flight" by Aviation Medicine Research Laboratory, Ohio State University; FAA Report No., FAA-AM-72-4). Moreover, the effects of alcohol on performance are additive to the expected hypoxic effects with increased altitude.

The ability of a crewmember to function without impairment of performance is an essential element in the safety of flight and in the effectiveness of the air traffic system. Since alcohol can affect the ability of a crewmember to function properly and thus is detrimental to aviation safety, the FAA must make every reasonable effort to prevent those who are under the influence of alcohol from flying.

For a number of years the FAA has expended a substantial amount of time and funds trying to educate the flying public to this danger. As part of this effort, the agency worked closely with groups such as the Aircraft Owners and Pilots Association and the Air Line Pilots Association to establish effective educational programs. Although these programs have been beneficial, the problem still remains. There continues to be a significant number of accidents each year where alcohol is found to be a factor or cause. For example, in 1979, according to an NTSB study, U.S. general aviation aircraft were involved in 34 accidents where alcohol impairment was a cause/factor, 30 of which were fatal. This represents an 88 percent fatality rate for alcohol-related accidents as compared to a 17 percent fatality rate for all of general aviation. In addition, in recent Congressional testimony, the FAA stated that there were 155 reported accidents from 1980 through 1982 in which evidence of drug carriage was found. Therefore, the FAA must take additional steps to reduce the frequency of these accidents by strengthening the rules relating to the use of alcohol and drugs.

The FAA published Notice of Proposed Rulemaking (NPRM) No. 81-9 on July 27, 1981 (46 FR 38480), proposing regulations that were intended to deter persons from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and to provide a basis for necessary enforcement action. Seventy-four comments were received as a result of the NPRM. These amendments reflect both FAA consideration of those comments and its continuing responsibility to uphold and encourage safety in air commerce.

Blood Alcohol Content

Currently, § 91.11(a) (1) and (2) provides that no person may act as a crewmember of a civil aircraft within 8 hours after the consumption of any alcoholic beverage or while under the influence of alcohol. In response to the recommendations from the NTSB and the GAO, Notice 81-9 proposed a further amendment to that section to prohibit acting as a crewmember while having 40 milligrams percent or more by weight of alcohol in the blood.

Some commenters oppose the proposed 40 milligrams, recommending that a level of 100 milligrams percent by weight, as used in many state motor vehicle statutes, be used instead. A number of other commenters agree that the proposed level is appropriate in view of the high performance required of pilots and the additive effects of alcohol at higher altitudes.

The FAR currently requires strict separation between alcohol and flying. The consumption of any alcohol within 8 hours before acting as a crewmember is prohibited. The FAA is adding a new prohibited level of alcohol which can be

used to take enforcement action against a crewmember even where witness statements alone are insufficient to establish violations of the 8-hour rule or the under-the-influence rule. The FAA proposed a value of 40 milligrams percent by weight based on the latest and most extensive study and research, at the time of the proposal, into the amount of impairment induced by specific levels of alcohol content within the blood. Inflight testing of experienced professional aviators showed that 40 milligrams percent by weight of alcohol in the blood produced detrimental effects on performance that were incompatible with flight safety. Based on the available evidence, the FAA proposed that 40 milligrams percent by weight of alcohol in the blood be incorporated into the regulations. It is important to note, however, that it is possible to be under the influence of alcohol, or to have 40 milligrams or more percent by weight of alcohol in the blood, or both, more than 8 hours after consuming an alcoholic beverage.

Some commenters question what the term "40 milligrams percent by weight of alcohol" means, suggesting that a more common term be used. That term means 40 milligrams of alcohol in a sample of 100 milliliters of blood. This is equivalent to .04 percent alcohol in the blood. States, in their motor vehicle statutes, normally use percent to describe blood alcohol levels. The FAA agrees that it is appropriate to use a term which is more commonly understood. The rule, as adopted, thus expresses the prohibited blood alcohol level as ".04 percent."

Several commenters note that it is possible to have a blood alcohol level higher than .04 percent more than 8 hours after consuming an alcoholic beverage. This is true and is one reason why the "under the influence" provision and the ".04 percent" provision are needed in § 91.11 in addition to the 8-hour rule.

Breath Test

Notice 81–9 proposed criteria for requiring a crewmember to submit to a chemical test of the breath for blood alcohol levels. Such a test would have corroborated other evidence, such as a person's appearance or conduct, and it was anticipated that it would have aided in enforcing the regulations. The test would have been conducted by a representative of the Administrator on reasonable grounds to believe that the crewmember had violated § 91.11.

After further consideration, it appears that it would be impractical to have representatives of the Administrator equipped and trained to conduct the tests. As a number of commenters state, due to staffing levels and the large geographic areas covered by district offices, FAA inspectors are rarely able to respond to a report of a crewmember who is suspected of violating § 91.11 quickly enough to make a breath test useful. Breath testers would not be used often enough by FAA inspectors to warrant the expense of the testers and initial and recurrent training of the inspectors. There appears to be no practical method of requiring suspected violators to submit to a chemical test of the breath conducted by a representative of the Administrator. For this reason, the proposals requiring submission to a chemical test of the breath when requested by the Administrator and the consequences of refusal to submit to such a test are withdrawn.

Many commenters note that state and local law enforcement officers are often the first officials on the scene of an incident. Many state or local law enforcement officers are authorized, trained, and equipped to conduct, or are authorized to direct others to conduct, a chemical test of the breath or other test to determine the presence of alcohol or drugs in the body. The Administrator is proposing, in a supplemental notice of proposed rulemaking (published elsewhere in this **Federal Register**), that crewmembers be required to submit to such a test under certain conditions when requested by a law enforcement officer. This amendment allows the Administrator to request the results of these tests, as well as medical tests, based on reasonable grounds for believing that the person acted, or attempted to act, as a crewmember of a civil aircraft in violation of § 91.11. The Administrator's ability to elicit the results of these tests should act as a positive deterrent to those persons who might otherwise attempt to act as a crewmember while under the influence of alcohol or drugs.

Attempting To Act as a Crewmember

Notice 81–9 also proposed to prohibit attempting to act as a crewmember under any of the criteria specified in § 91.11(a). Several commenters oppose this proposal, arguing that it may be difficult to establish when a person is attempting to act as a crewmember. However, circumstances do exist under which a person may be found to have attempted to act as a crewmember, such as when a person enters an aircraft to assume his or her duties as a crewmember while demonstrating by manner or physical indications that he or she appears to be intoxicated or under the influence of drugs. In such a case, an FAA inspector will not have the dilemma of choosing between trying to dissuade a person from acting as a crewmember or waiting for that person to actually execute his or her duties as a crewmember before a violation can be established.

One commenter questions whether flight attendants should be subject to the provisions of § 91.11, stating that there appears to be no history of accidents caused by flight attendants acting in violation of this section. As crewmembers, flight attendants should not be under the influence of drugs or alcohol while on duty since it would affect passenger safety. For this reason, flight attendants have been included in §91.11 since it was first proposed. Their inclusion in this final rule is consistent with the purpose of the regulation.

Alcohol and Drug Test Results

Notice 81–9 proposed to amend § 91.11 to require that on the Administrator's request, a crewmember must furnish to the Administrator the results of any medical tests taken that indicate the level of alcohol in the blood or the presence of drugs in the body. The request would be made in the course of an enforcement investigation and would be based on reasonable grounds for believing that the person may have acted or attempted to act as a crewmember of a civil aircraft in violation of § 91.11(a). For a person to be required to submit the results of such a medical test, the test must have been given within 4 hours after the person acted or attempted to act as a crewmember. Substantial penalties were also proposed in §§ 61.16 and 63.12(a) for refusal to furnish the requested medical test results.

One commenter states that the 4-hour time period in which the medical test would have to be given is too long and suggests that a person should only be required to produce the results of tests conducted within 1 hour after acting or attempting to act as a crewmember. However, scientifically valid results can be obtained in the 4-hour time period proposed. Further, the 1-hour limit suggested would substantially reduce the usefulness of the rule since it is anticipated that it often will be more than 1 hour between the act and the time the test is taken. This amendment should allow the Administrator to obtain more easily the results of hospital or medical tests performed on a crewmember following an accident or incident.

As discussed under the section entitled "Breath Test," these amendments also allow the

Administrator to request the results of tests conducted in accordance with Federal, state, or local laws if there is reason to believe the person may have violated § 91.11. Therefore, § 91.11, as adopted, requires that a crewmember furnish or authorize the release of the results of tests taken under the circumstances described. It should be emphasized, however, that the rules as adopted here do not permit the Administrator to require a person to submit to tests to determine the presence of alcohol or drugs. Note that this amendment does not in any way affect the Administrator's authority to request information under § 67.31 regarding a person's qualification for a medical certificate.

Eligibility After Drug Conviction

Sections 61.15, 63.12, and 65.12 currently provide that no person who is convicted of violating any Federal or state statute relating to the growing, processing, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is eligible for any certificate or rating issued under Part 61, 63, or 65 for a period of 1 year after final conviction, and that such a conviction is grounds for suspension or revocation of any airman certificate (certificate action) issued under these parts. Notice 81–9 proposed amendments to these sections to provide that a conviction for the violation of a Federal or state statute relating to drugs would be grounds for disqualification or certificate action only when the violation involved the use of an aircraft. The proposal was an attempt to remove disqualification for those convictions that do not evidence a disposition towards the irresponsible exercise of airman privileges.

A number of commenters oppose these proposed amendments, stating that while an airman's violation of a drug statute may not have involved the use of an aircraft, it may still indicate a lack of the high standards of integrity, responsibility, and compliance attitude required of airmen. The FAA has reconsidered the proposal in the light of these comments. As indicated by several commenters, violations of the drug laws as set forth in the rule may indicate that the applicant would not be compliance-minded regarding the many safety rules in aviation. The courts have supported this view. The United States Court of Appeals for the Ninth Circuit affirmed the revocation of the private pilot certificate held by a man who had been convicted of possessing marihuana for sale. The court held that there was a rational relationship between a conviction for possessing drugs for sale and the potential for unsafe use of an aircraft for drug smuggling in the future. *Walters* v. *McLucas*, 597 F.2d 1230 (9th Cir. 1979). In another case, the United States Court of Appeals for the District of Columbia Circuit affirmed the revocation of the private pilot certificate of a person who had been convicted of conspiring to import marihuana, even though an aircraft had not been used in illegal or unsafe operations. This court held that there is a rational connection between past drug trafficking and future unsafe aircraft operations. *Rahm* v. *NTSB*, No. 74–1959 (D.C. Cir. Oct. 1, 1975) (memorandum opinion). The FAA agrees; therefore, this proposal is withdrawn to allow the Administrator to maintain his regulatory authority to take certificate action, when appropriate, against airmen who have been convicted of violating drug laws, whether or not that violation involved the use of an aircraft. This rule is consistent with the President's efforts to combat the illegal use and transportation of drugs.

Sections 61.15(a), 63.12(a), and 65.12(a) also currently make a person ineligible for a new certificate or rating for 1 year after final conviction. These sections make it mandatory that the Administrator deny an application for a new certificate or rating for 1 year after the date of the conviction. However, the current rule provides for but does not require the suspension or revocation of an existing certificate; rather, the Administrator may refrain from such action as appropriate. To provide this same flexibility to applicants for a new certificate or rating, the notice proposed to provide that such a conviction is "grounds for" denial rather than to provide that a conviction makes the airman ineligible for a certificate. The intent of the proposal is adopted. By stating such a conviction "is grounds for" denial, the Administrator may use discretion in determining eligibility for a certificate or rating.

There appears to be some confusion over the wording of §§ 61.15(a), 63.12(a), and 65.12(a) regarding the phrase "period of up to 1 year after the date of final conviction." It was not clear to some commenters whether the 1-year period referred to the time in which an application could be denied by the Administrator (that is, in the nature of a statute of limitations) or to the maximum duration of the sanction. The proposal was meant to provide that the denial could last for up to 1 year after the final conviction but not beyond that date. The rule, as adopted, is reorganized to clarify this intent.

As proposed in Notice 81–9, §§ 63.12(b) and 65.12(b) did not provide that the commission of an act prohibited by § 91.11(a) or § 91.12(a) is grounds for revocation or suspension of a certificate or rating issued under Part 63 or Part 65, respectively. These provisions are contained in the current rule and were not inended to be removed. Therefore, §§ 63.12(b) and 65.12(b), as adopted, incorporate these provisions.

Notice 81–9 proposed, in §§ 61.16(b) and 63.12(b), a "minimum 1-year" suspension or revocation of a certificate issued under Part 61 or Part 63, respectively, for violation of § 91.11 (c) or (d). The "minimum 1-year" is removed because it is inconsistent with the need for flexibility in enforcing the rule, as previously discussed.

Note that on October 19, 1984, the Aviation Drug-Trafficking Control Act was passed (Pub. L. 98–499). This act, in general, requires the Administrator to revoke the certificates of airmen who have committed certain Federal or state drug felonies involving aircraft. In those cases in which the new Act applies, its provisions will be used. In other cases, the current rules, as amended in this final rule, will apply.

Refusal To Carry Intoxicated Persons

Section 91.11(b) presently provides that, except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft. Recognizing the difficulty of interpreting the word "obviously," Notice 81–9 proposed to clarify the rule by referring to a person who demonstrates by manner or physical indications that he or she is under the influence of intoxicating liquors or drugs.

Three commenters oppose the proposed changes in the wording of this regulation as it relates to alcohol. One commenter states that the proposed rule is too strict, since it indicates that a passenger who had only one or two drinks would not be permitted on board because that person would be "under the influence." This commenter suggests that the rule only prohibit boarding of passengers whom the pilot has reason to believe will be a danger, such as those who are violent or angry. Another commenter suggests that wording in § 121.575(c) of the FAR has been effective in its application to Part 121 air carriers and should be used in § 91.11(b). Section 121.575(c) states: "No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated." The FAA

agrees that the wording "appears to be intoxicated" is appropriate and is more likely to be correctly interpreted. The FAA has therefore added this phrase to the proposed rule and amended § 91.11(b) to provide that no pilot of a civil aircraft may allow any person who appears to be intoxicated, or who demonstrates by manner or physical indication that he or she is under the influence of drugs, to be carried aboard that aircraft.

Regulatory Evaluation

It is expected that these amendments will deter a person from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and will prevent some accidents that might otherwise occur. The exact number, however, is impossible to calculate.

While there might be some minor costs incurred in obtaining the results of tests and submitting them to the Administrator, the economic benefits provided by increased deterrence are greater than the relatively small costs involved.

Conclusion

While a minor cost may be incurred by suspected violators if asked to furnish the results of tests, compliance with these amendments will not impose any other cost or economic burden on airmen. Accordingly, it has been determined that this is not a major regulation under Executive Order 12291. However, this rule is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since these amendments have a minor cost impact and apply to individuals rather than small entities, I certify that under the criteria of the Regulatory Flexibility Act, these amendments will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Alcohol and alcoholic beverages, Narcotics, Air safety, Safety, Aviation safety, Drug abuse.

14 CFR Part 63

Airmen, Narcotics, Air safety, Safety, Aviation safety, Drug abuse.

14 CFR Part 65

Airmen, Narcotics, Air safety, Safety, Aviation safety, Drug abuse.

14 CFR Part 91

Aviation safety, Safety, Aircraft pilots, Liquor, Narcotics, Pilots.

Adoption of the Amendment

Accordingly, Parts 61, 63, 65, and 91 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, and 91) are amended as follows, effective June 17, 1985.

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. By revising § 61.15 to read as follows:

§ 61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this Part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by § 91.11(a) or § 91.12(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

2. By adding a new § 61.16 to read as follows:

§ 61.16 Refusal to furnish test results.

(a) No person who refuses to furnish or authorize the release of the results of a test already taken, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is eligible for any certificate or rating under this part for a period of 1 year after the date of that refusal.

(b) A refusal to furnish or authorize the release of test results, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is grounds for suspension or revocation of any certificate or rating issued under this part.

PART 63—CERTIFICATION: CREWMEMBERS OTHER THAN PILOTS

3. By revising § 63.12 to read as follows:

§ 63.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this Part.

(b) The commission of an act prohibited by § 91.11(a) or § 91.12(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

4. By adding a new § 63.12a to read as follows:

§ 63.12a Refusal to furnish test results.

(a) No person who refuses to furnish or authorize the release of the results of a test already taken, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is eligible for any certificate or rating under this Part for a period of 1 year after the date of that refusal.

(b) A refusal to furnish or authorize the release of test results, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is grounds for suspension or revocation of any certificate or rating issued under this part.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. By revising § 65.12 to read as follows:

§ 65.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or

depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by § 91.12(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

PART 91—GENERAL OPERATING AND FLIGHT RULES

6. By revising § 91.11 to read as follows:

§ 91.11 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol;

(3) While using any drug that affects the person's faculties in any way contrary to safety; or

(4) While having .04 percent by weight or more alcohol in the blood.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

(c) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(1), (a)(2), or (a)(4) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

(d) Whenever the Administrator has a reasonable basis to believe that a person may have violated paragraph (a)(3) of this section, that person shall, upon request by the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates the presence of any drugs in the body.

(e) Any test information obtained by the Administrator under paragraph (c) or (d) of this section may be evaluated in determining a person's qualifications for any airman certificate or possible violations of this chapter and may be used as evidence in any legal proceeding under section 602, 609, or 901 of the Federal Aviation Act of 1958.

(Secs. 313(a), 601, 602, and 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1422, and 1429), and 49 U.S.C. 106(g) (Revised, Pub. L. 97-449; January 12, 1983))

Issued in Washington, D.C., on December 13, 1984.

Donald D. Engen,

Administrator.

[FR Doc. 85-9244 Filed 4-12-85; 4:05 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 91

[Docket No. 21956; Notice No. 81-9A]

Submission to Alcohol Tests

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice supplements an FAA Notice of Proposed Rulemaking which, in part, proposed to require aircraft crewmembers to submit to a chemical test of the breath given by a representative of the Administrator under certain conditions. After further analysis, the FAA concluded that it is not practicable to have FAA employees conduct these tests. This notice proposes to require crewmembers to submit to tests for alcohol given by law enforcement officers under certain conditions. It is based, in part, on the National Transportation Safety Board (NTSB) determination that alcohol is a cause or factor in about 40 aircraft accidents annually, almost all of which are fatal. The proposed amendment would facilitate the enforcement of the present alcohol regulations. It is intended to reduce aircraft accidents and incidents attributed to consumption of alcoholic beverages.

DATE: Comments must be received on or before July 16, 1985.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration; Office of the Chief Counsel; Attn: Rules Docket (AGC-204), Docket No. 21956; 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 21956. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Sacrey or Roger Baker, Operations Branch (AFO-820), General Aviation and Commercial Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone (202) 426-8194.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 21956." The postcard will be dated, time stamped, and returned to the commenter.

Availability of This Notice

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration; Office of Public Affairs; Attention: Public Information Center, APA-430; 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Rules relating to the consumption of alcoholic beverages in connection with aircraft operations are set forth in § 91.11 of the Federal Aviation Regulations (FAR) (14 CFR 91.11). This section provides that no person may act as a crewmember of a civil aircraft within 8 hours after the consumption of any alcoholic beverage or while under the influence of alcohol. In addition, the FAA has adopted a rule, explained below, which prohibits acting as a crewmember of a civil aircraft while having a blood alcohol level of .04 percent or more by weight. "Crewmember" is defined in FAR Part 1 as "a person assigned to perform duty in an aircraft during flight time." A pilot, flight engineer, flight navigator, or flight attendant is such a person.

The FAA is concerned about the serious hazard, during aircraft operations, resulting from impairment of the pilot's faculties due to alcohol. Even small amounts of alcohol affect judgment, coordination, performance, and reaction time. Although the FAA and aviation groups have expended a substantial amount of time and funds for a number of years trying to educate the flying public to this danger, the problem still remains. There continues to be a significant number of accidents each year where alcohol is found to be a factor or cause.

For example, according to an NTSB study, in 1979 general aviation aircraft were involved in 34 accidents where alcohol impairment was a cause/factor, 30 of which were fatal. This represents an 88 percent fatality rate for all of general aviation. Therefore, the FAA has taken additional steps to reduce the frequency of these accidents by strengthening the rules relating to the use of alcohol and drugs.

On July 27, 1981, the FAA published Notice of Proposed Rulemaking (NPRM) No. 81-9 (46 FR 38480), proposing regulations that were intended to deter persons from acting or attempting to act as a crewmember while under the influence of alcohol or drugs and to provide a basis for necessary enforcement action. Among other amendments, Notice 81-9 proposed to prohibit acting or attempting to act as a crewmember of a civil aircraft while having .04 percent or more alcohol in the blood.

Notice 81-9 also proposed to provide that a person whom the FAA had reason to believe had acted or attempted to act as a crewmember in violation of the alcohol rules, on request of the Administrator, would be required to submit to a chemical test of the breath.

Elsewhere in this **Federal Register**, the FAA is adopting a final rule disposing of the proposals in Notice 81-9, with the exception of the breath test. As proposed, the breath test would have been conducted by a representative of the Administrator on reasonable grounds to believe that the crewmember had violated § 91.11. After further consideration, it appears that it would be impracticable to have representatives of the Administrator equipped and trained to conduct the tests. As a number of commenters stated, due to staffing levels and the large geographic areas covered by district offices, FAA inspectors rarely are able to respond to

a report of a crewmember who is suspected of violating § 91.11 quickly enough to make a breath test useful. Breath testers would not be used often enough by FAA inspectors to warrant the expense of the testers and initial and recurrent training of the inspectors. There appears to be no practical method of requiring suspected violators to submit to a chemical test of the breath conducted by a representative of the Administrator. For this reason, the proposal requiring submission to a chemical test of the breath when requested by the Administrator and the consequences of refusal to submit to such a test were withdrawn.

The FAA recognizes, however, that chemical tests for alcohol content can be very useful in investigating alleged incidents involving alcohol. Many commenters note that state and local law enforcement officers have authority to conduct alcohol tests under their own laws or may arrange for others to conduct alcohol tests. The officers often are trained and equipped to recognize and handle people who may be under the influence of alcohol. The commenters also note that it is particularly important to obtain information on the pilot of an aircraft as soon as possible following an accident or incident and that state and local law enforcement officers often are at the scene hours before an FAA inspector can arrive. Many commenters suggest that the FAA take advantage of these officers' expertise and availability.

The FAA has determined that these comments have merit. Most law officers have the authority under state or local laws to conduct alcohol tests or to arrange for tests to be given. These officers have training in dealing with individuals who may be under the influence of alcohol and often are called to the scene of aircraft accidents or incidents. The FAA has, in the past, taken action against airmen for violating the alcohol rules based on information collected by state or local law enforcement officers pursuant to their own investigations, including observation of the airman or a chemical test to determine blood alcohol level.

The FAA does not currently require a crewmember to coooperate with such an investigation by a law enforcement officer. Under current rules, if the crewmember were to refuse to take a chemical test of the breath requested by a law officer who had reason to believe that the crewmember may have violated the FAA's alcohol rules, and if there was insufficient evidence to establish the violation without the test, the FAA could take no action against the crewmember. Requiring crewmembers to submit to a test to determine the blood alcohol level, given by a state or local law enforcement officer, would be an effective method of obtaining additional evidence regarding suspected violations of the alcohol rules. The knowledge that such a test may be given also would act as a deterrent to individuals who wish to drink and fly.

The FAA expects that adopting a rule such as the one proposed in this notice would benefit the local communities whose law enforcement officers would be administering the breath tests. Both the FAA and these communities have an interest in protecting its citizens who use the airspace, as well as persons and property on the ground. During the comment period the FAA will seek comments and suggestions from a number of local police organizations. If the rule is adopted, the FAA will work closely with local police in a cooperative effort to ensure the effectiveness of the rule.

These proposed amendments are similar to those contained in Notice No. 81-9. However, since this rule would involve state and local communities, the FAA has determined this supplemental notice should be issued to afford these communities and other interested persons an opportunity to comment on these provisions.

Supplemental Proposal

The FAA proposes to require a crewmember of a civil aircraft to submit to testing to indicate the percentage by weight of alcohol in the blood, on the request of a law enforcement officer who is authorized under state or local law to conduct or otherwise obtain such a test, if there is a reasonable basis to believe that the crewmember may have violated the alcohol rules, including being under the influence of alcohol. The proposal also would make clear that failure to submit to the test could result in denial of a new certificate or a rating or suspension or revocation of a certificate or rating. In addition, a civil penalty action could be taken against the crewmember. Flight attendants, who do not hold airman certificates, would be subject to civil penalty action. The proposal would continue the new rule that crewmembers provide or release copies of medical test results which indicate blood alcohol levels.

The law officer conducting or obtaining the test would be acting under his or her own state or local authority. The Administrator does not propose to grant additional authority to state and local law enforcement officers. The proposed rule merely would require the crewmember to cooperate with an otherwise lawful investigation by a law enforcement officer. This is similar to § 61.3(h) which, in part, requires a pilot to present his or her airman certificate for inspection upon request of a Federal, state, or local law enforcement officer.

The test could be a chemical test of the breath or any other test for alcohol conducted by the officer or by another person in accordance with the laws and procedures governing the officer. For instance, an officer might investigate an incident and come to the conclusion that a pilot may have operatied an aircraft while under the influence of alcohol. Alternatively, an FAA inspector might observe a pilot to be apparently under the influence of alcohol and call this to the attention of an officer. The officer might then arrange for a breath test or blood test to be conducted pursuant to state or local law. The pilot, of course, would be (and currently is) subject to the state or local law regarding submission to the test. Under this proposal the pilot also would be required to submit to the test or face FAA Enforcment action.

In the past, the FAA generally has relied on observations by witnesses to enforce the alcohol rules. Witnesses have testified to indicia of alcohol observed in crewmembers such as stumbling, slurred speech, odor of alcohol, or difficulty with balance. The FAA has had success in such enforcement actions when the enforcement tribunal found the witnesses' testimony to be credible. The use of blood alcohol tests enable the FAA to take successful enforcement action in those cases in which witness observations alone may not provide sufficient evidence. The proposed rule would make blood alcohol tests more easily obtainable and would permit the FAA to take enforcement action against crewmembers who do not submit to a test under the conditions described. The FAA anticipates, however, that if the proposed rule were adopted, there would still be cases in which only witness observations were available and no blood alcohol tests were done. In such case, the FAA would proceed with enforcement action as it does now.

Economic Evaluation

The proposed rules would be enforcement tools. They would have no economic impact on crewmembers who are not suspected of failing to comply with the alcohol rules. The impact on those who would be requested to submit to an alcohol test would consist of a brief period of time spent undergoing the test.

A regulatory evaluation was prepared for Notice 81–9. The cost to the crewmember of complying with the proposal relating to breath tests would have been essentially the same as for the proposal contained in this supplemental notice. The regulatory evaluation for Notice 81–9 made the same conclusions regarding the economic impact as are made for this proposal.

Conclusion

Compliance with this proposal could impose only a minimal cost or economic burden on airmen. Accordingly, it has been determined that this is not a major regulation under Executive Order 12291. However, the proposal is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since these proposals could have only a minor cost impact and would apply to individuals rather than small entities, I certify that under the criteria of the Regulatory Flexibility Act, these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. Because the cost of these proposals is so minimal, no regulatory evaluation has been prepared.

List of Subjects

14 CFR Part 61

Airmen, Aircraft pilots, Pilots, Alcohol and alcoholic beverages, Air safety, Safety, Aviation safety.

14 CFR Part 63

Airmen, Air safety, Safety, Aviation safety.

14 CFR Part 91

Avaition safety, Safety, Aircraft pilots, Liquor, Pilots.

The Proposed Rule

Accordingly, it is proposed to revise Parts 61, 63, and 91 of the Federal Aviation Regulations (14 CFR Parts 61, 63, and 91) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. By revising § 61.16 to read as follows:

§ 61.16 Refusal to submit to an alcohol test or to furnish test results.

(a) No person who refuses to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer in accordance with § 91.11(c) of this chapter, or who refuses to furnish or authorize the release of the results of a test already taken, when those results are requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is eligible for any certificate or rating under this Part for a period of 1 year after the date of that refusal.

(b) A refusal to submit to a test given by a law enforcement officer to indicate the percentage by weight of alcohol in the blood, when requested in accordance with § 91.11(c) of this chapter, or a refusal to furnish or authorize the release of test results, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is grounds for suspension or revocation of any certificate or rating issued under this Part.

PART 63—CERTIFICATION: CREWMEMBERS OTHER THAN PILOTS

2. By revising § 63.12a to read as follows:

§ 63.12a Refusal to submit to an alcohol test or to furnish test results.

(a) No person who refuses to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer in accordance with § 91.11(c) of this chapter, or who refuses to furnish or authorize the release of the results of a test already taken, when those results are requested by the Adminstrator in accordance with § 91.11 (c) or (d) of this chapter, is eligible for any certificate or rating under this Part for a period of 1 year after the date of that refusal.

(b) A refusal to submit to a test given by a law enforcement officer to indicate the percentage by weight of alcohol in the blood, when requested in accordance with § 91.11(c) of this chapter, or a refusal to furnish or authorize the release of test results, when requested by the Administrator in accordance with § 91.11 (c) or (d) of this chapter, is grounds for suspension or revocation of any certificate or rating issued under this Part.

PART 91—GENERAL OPERATING AND FLIGHT RULES

3. By revising § 91.11(c) to read as follows:

§ 91.11 Alcohol or drugs.

* * * * *

(c) Whenever there is a reasonable basis to believe that a person who acted or attempted to act as a crewmember of a civil aircraft may have committed an act which is in violation of paragraph (a)(1), (a)(2), or (a)(4) of this section, that person shall do the following:

(1) On request of any law enforcement officer, submit to a test which the officer is authorized to obtain under state or local law to indicate the percentage by weight of alcohol in the blood.

(2) On request of the Administrator, furnish the Administrator, or authorize any clinic, hospital, doctor, or other person to release to the Administrator, the results of each test taken within 4 hours after acting or attempting to act as a crewmember that indicates percentage by weight of alcohol in the blood.

* * * * *

(Secs. 302, 313(a), 601, 602, and 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1342, 1354(a), 1421, 1422, and 1429), and 49 U.S.C. 106(g) (Revised, Pub. L. 97–449; January 12, 1983))

Issued in Washington, D.C., on December 13, 1984.

Donald D. Engin,

Adminstrator.

[FR Doc. 85–9243 Filed 4–12–85; 4:05 pm]

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Wednesday
April 17, 1985

Part V

Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Underground Uranium Mines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3914-7]

National Emission Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions from Underground Uranium Mines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. District Court for the Northern District of California has ordered EPA to promulgate a final standard for airborne emissions of radionuclides from underground uranium mines by April 10, 1985, or to find that radionuclides are clearly not a hazardous air pollutant. This final rule is designed to limit exposure of the public to radon-222 emissions from underground uranium mines.

EFFECTIVE DATE: This final rule is effective on April 17, 1985. For existing sources, the standards shall not apply until 90 days after the effective date.

ADDRESSES: The rulemaking record is contained in Docket No. A–79–11. This docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Paul J. Magno, Environmental Standards Branch (ANR–460), Criteria and Standards Division, Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557–0704.

SUPPLEMENTARY INFORMATION:

I. Supporting Documents

A final Background Information Document has been prepared and single copies may be obtained by writing the Program Management Office, Office of Radiation Programs (ANR–458), U.S. Environmental Protection Agency, Washington, D.C. 20460, or by calling (703) 557–8351. Please refer to "Background Information Document: Standard for Radon-222 Emissions to Air from Underground Uranium Mines." This document contains a description of the uranium mining industry, projected exposures and risks to nearby individuals and to the general population, and descriptions of radon-222 control methods.

II. History of Uranium Mine Standard Development

On April 6, 1983, the Agency announced in the **Federal Register** a proposed standard to limit radon-222 emissions from underground uranium mines (48 FR 15076, April 6, 1983). This proposed standard was withdrawn by the Administrator in October 1984 on the basis that it did not meet the legal requirements of section 112 of the Clean Air Act (49 FR 43906, October 31, 1984). The Agency has also received additional technical information that suggested that bulkheads and other techniques to control radon-222 emissions may be feasible. The withdrawal action was taken in response to an order by the U.S. District Court for the Northern District of California compelling EPA, by October 23, 1984, to promulgate standards or make a finding that radionuclides are not a hazardous air pollutant within the context of section 112 of the Clean Air Act.

On December 11, 1984, the Court found the Administrator and the Agency in contempt of its previous order and directed the following remedial actions:

1. (a) Issue within 30 days of the date of the order final radionuclide emission standards for Department of Energy (DOE) facilities, Nuclear Regulatory Commission (NRC)-licensed and non-DOE Federal facilities, and elemental phosphorous plants, and

(b) Issue within 120 days of the date of the order final radionuclide emission standards for underground uranium mines; or

2. Make a finding based on the information presented at hearings during the rulemaking, that radionuclides are clearly not a hazardous air pollutant.

The Agency promulgated final standards for DOE facilities, NRC-licensed and non-DOE Federal facilities, and elemental phosphorous plants on January 17, 1985 (50 CFR 5190, February 6, 1985), although it is noted that the Agency intends to pursue its pending appeal of this portion of the District Court's order. A complete history of the events leading to this action is contained in the **Federal Register** notice announcing the final standards.

On February 21, 1985, EPA published in the **Federal Register** a proposed work practice standard to limit radon-222 emissions from underground uranium mines (50 FR 7280, February 21, 1985). The proposed work practice standard required bulkheading abandoned and temporarily abandoned mine areas to reduce the amount of radon-222 emitted to the above ground air from the mines. Following publication of the proposed standard, EPA conducted a public hearing in Albuquerque, New Mexico, on February 27 and 28, 1985. The public record was held open until March 28, 1985, to allow for written comments to be received, however, EPA asked that comments be submitted as soon as possible to allow the Agency maximum time to consider them. A significant number of comments were received by the Agency on the last day of the public comment period. The short time between the submission of all the public comments and the Court deadline for promulgating the rule allowed the Agency a limited opportunity to respond to all of the comments. The Agency has generally reviewed all of the comments and is responding to the major issues and points in this notice. The Agency did not receive any comments or information subsequent to the public hearing that warranted a dramatic alteration in its approach. Changes made to the final rule in response to points raised in oral and written comments are discussed in the following sections.

III. Summary of the Final Rule

This rule is designed to limit exposure of the public to radon-222 emissions from underground uranium mines. The final rule differs in a number of ways from the proposed rule because of changes the Agency has made in response to public comments. This section provides an overview of the final rule; changes from the proposed rule are noted. The rationale for each of these changes is provided in the following sections of this notice. Both the **Federal Register** notice describing the proposed rule (50 FR 7280) and the Background Information Document provide further information on those portions of the final rule that have not changed from proposal.

The final rule:

(1) Applies to an owner or operator of an active underground uranium mine which has mined or will mine over 100,000 tons of ore during the life of the mine. A mine which will have or has had an annual ore production rate greater than 10,000 tons must also comply with the standard, unless it can be demonstrated that the mine will not exceed a cumulative ore production of 100,000 tons. (The proposed standard did not include the exclusion for mines producing greater than 10,000 tons of ore per year, but with an expected cumulative ore production of less than 100,000 tons.)

(2) Requires that an owner or operator of an underground uranium mine install and maintain bulkheads to isolate all abandoned and temporarily abandoned

areas of the mine. If a negative pressure behind the bulkhead is necessary, then a maximum of 20 percent of the total volume of air contained in the sealed area may be exhausted per day. A mine owner or operator may apply for an alternative standard, if necessary to protect miner health and safety. (The proposed standard did not provide a mine owner or operator the opportunity to seek an alternative standard based on miner health and safety.)

(3) Requires quarterly inspections of bulkheads and quarterly measurements of the air exhaust rate for those bulkheaded areas maintained under negative pressure. (The proposed standard required monthly bulkhead inspections and monthly measurements of the air exhaust rate.)

(4) Requires that any necessary repairs to bulkheads be made within ten days. (The proposed standard required that bulkhead repairs be made within three days.)

(5) Requires an annual certification of compliance with the standard. (The proposed standard required an annual report summarizing the number and volumes of abandoned and temporarily abandoned mine areas; the number of bulkheads maintained; and an estimate of the average amount of air in the bulkheaded areas which is exhausted per day.)

In establishing its final standard for radon-222 emissions from underground uranium mines, EPA had to weigh protection of the public health with protection of the mine personnel. The Agency believes that this standard will not significantly increase the radon decay product concentrations to which the underground miners are exposed. EPA intends to work with the Mine Safety and Health Administration to ensure that implementation of this standard will not jeopardize miner health and safety.

This final standard requires a work practice, i.e., bulkheading, which is commonly used throughout the uranium mining industry to direct fresh air to the working areas of the mine. However, the application of bulkheads to seal worked-out areas for reducing radon-222 emissions from underground mines has not been thoroughly tested. Because of the limited time allowed by the Court order, EPA was unable to completely evaluate bulkheading or other potentially applicable work practices. EPA intends, once this standard is promulgated, to begin long-term studies, as necessary, to evaluate the efficiency of bulkheads and other techniques for decreasing radon-222 emissions from underground uranium mines.

IV. Background Information

A. Industry Description

Uranium mining involves the handling of large quantities of ore containing uranium-238 and its decay products. The concentrations of these radionuclides in ore may be up to one thousand times greater than their concentration in other rocks and soils. Uranium mining is predominantly carried out by either surface (open pit) or underground mining methods, depending on the depth, ore grade, and thickness of the ore deposit. Underground uranium mines have generally accounted for about thirty to forty percent of the uranium oxide production in the United States.

The underground uranium mining industry has undergone substantial changes in recent years due to declining demand and competition from low-cost foreign sources. The total number of underground mines fell from a peak of 300 in 1980 to only six by March 1985. Currently, all underground uranium mining in the United States takes place in the western United States. In general, the mines presently operating are located in relatively remote areas of New Mexico, Colorado, Utah, and Arizona. Further reduction in the number of operating mines is expected during 1985.

Production of uranium oxide by underground mines peaked at 9600 tons in 1980; the industry estimates that uranium oxide production in 1985 will be approximately 1300 tons. EPA estimates that, based on Department of Energy projections of uranium oxide demand, the industry will produce close to 3100 tons of uranium oxide in 1985. The Agency has taken into account both its own and industry projections of uranium oxide production in assessing the risk associated with radon-222 emissions from underground uranium mines.

B. Radionuclide Emissions from Underground Uranium Mines

Radon-222 is the most significant radionuclide emitted to the above ground air from underground uranium mining activities. Radon-222 is released from underground mines in relatively high concentrations through mine ventilation systems. Results of measurement studies made at 27 large underground uranium mines during 1978–1979 showed that radon–222 emissions to air from individual mines ranged from 200 to 30,000 curies per year (Ci/y) with an average of 5600 Ci/y. These mines accounted for approximately 65 percent of the uranium oxide produced by all underground mines in 1978. Based on these measurement results, the total radon-222 emissions from all underground uranium mines in 1978 were about 240,000 curies. EPA estimates emissions of radon-222 will be about 80,000 curies in 1985, based on DOE projections of uranium oxide demand. Using industry projections of uranium oxide production, emissions of radon-222 will be about 35,000 curies in 1985.

It is important to note that the rate of radon-222 emissions from underground uranium mines is highly variable, depending upon a number of interrelated factors, including mine ventilation rates, ore grade, exposed surface area, mining practices, and geologic formations. In addition, these mines can differ significantly in their configuration. The wide diversity among mines makes it difficult to predict emission rates of the effectiveness of emission reduction practices at any given mine.

C. Estimates of Exposure and Risk

The risk associated with emissions from underground uranium mines is primarily due to the short half-life decay products of radon-222. Radon-222 decays into a series of short-lined radionuclides. These decay products readily attach to dust particles that may become lodged in the lung when inhaled, thus irradiating the surrounding cells.

Individuals living near an underground uranium mine can be exposed to increased levels of radon decay products of a result of radon-222 being released from the mine ventilation shafts. Radon-222 contained in the outside atmosphere enters homes and other structures built near the mine exhaust vents through doors and windows, as well as other openings in the structure. The occupants of these structures may then be exposed to potentially harmful levels of radon-222 decay products.

The increased lifetime risk of fatal lung cancer to individuals living near large underground uranium mines from the mine emissions is estimated to range from about one in one thousand to one in one hundred. The potential exists for an increased risk as great as one in ten in some situations, e.g, a person living very close to several horizontal mine vents or in areas influenced by multiple mine emissions. EPA estimates the increase in the fatal cancer risk to the total population from radon-222 emissions from underground uranium mines to have been about one to four fatal cancer cases per year during the peak production period of 1978–1982. With the decrease in the number of operating underground uranium mines, the increased risk of fatal cancer is

expected to range from four-tenths to two fatal cancer cases per year during the period 1983–1990. Based on industry production projections, the increased risk of fatal cancer in 1985 is estimated to range from three-tenths to six-tenths of a fatal cancer case.

Exposure levels are derived from emission estimates, dispersion modelling, and population data. For any given emission rate, dispersion models predict concentrations at different distances from the emission source. By combining those estimated concentrations with census data on population densities, the number of people exposed at different concentrations can be estimated. However, several factors suggest that actual exposure levels to nearby individuals will be lower than those estimated. In estimating exposure, exposed individuals are assumed to be subjected to the emissions for 24 hours every day for 70 years (roughly a lifetime). This does not consider, for instance, the fact that most people in their daily routines move in and out of the specific areas where the concentrations are the highest. In the case of underground uranium mines, the average life of a mine ranges from 10–20 years, although some mines have operated for almost thirty years.

Several commenters expressed concern about the Agency's risk estimates and the need for regulation of this source category. Three specific points were addressed: (1) The risk from radon-222 emissions from underground uranium mines is not of the magnitude necessary to warrant regulation under section 112 of the Clean Air Act, therefore, the Agency should "delist" radionuclides from regulatory consideration under section 112; (2) little evidence exists to indicate health effects result below total exposure levels of one hundred working level months; and (3) the decline in the uranium mining industry significantly deflates the already overestimated health risks presented by the Agency.

The Agency has considered these interrelated issues and has concluded that the "listing" of radionuclides as a hazardous air pollutant within the context of section 112 of the Clean Air Act was entirely appropriate. Section 122 of the Clean Air Act requires the Administrator to review all available relevant information and determine whether emissions of radioactive pollutants to the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator concludes that emissions of radionuclides meets this criterion, he must list and regulate radionuclides under section 108(a)(1), section 111(b)(1)(A), or, if he finds that radionuclide emissions cause, or contribute to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, section 112(b)(1)(A) of the Act, or take any combination of such actions.

The Agency believes that emission of radionuclides from underground uranium mines meets the general criterion for an affirmative finding under section 122. Further, the Agency believes that emissions of radionuclides from underground uranium mines meet the criterion for regulation under section 112 of the Act. Specifically, there is no doubt that radionuclides are carcinogenic, mutagenic, and teratogenic. This conclusion is based on extensive scientific evidence derived from studies of both human and animal populations. Underground uranium mines emit radon-222 and its decay products in large quantities. Many studies in the United States and other countries of miners exposed to radon-222 gas and its decay products have presented highly convincing evidence that exposure to these radionuclides causes or contributes to lung cancer.

Estimating the magnitude of the increased risk of developing lung cancer to individuals living near underground uranium mines and to the general population living downwind of the mines is complicated and uncertain. Epidemiological data exist that demonstrate a relationship between cumulative exposure to radon-222 decay products and increased lung cancer risk. There is substantial evidence that relates cummulative exposure of greater than approximately one hundred working level months (WLM) to an increased risk of lung cancer. While some studies based on human data indicate that exposure to less than one hundred WLM increases the risk of lung cancer, these data are less conclusive. There are considerable difficulties in demonstrating increased risk at a statistical confidence level of 95 percent for exposure at relatively low concentrations of radon-222 decay products because a very large study population is needed. It is often difficult to identify appropriate study populations large enough to conduct such studies to examine risks at very low levels.

Cumulative exposure to a person living near an undergound uranium mine due to mine emissions is not likely to exceed twenty WLM over his lifetime. (This assumes exposure to about 0.3 WLM per year for about 70 years.) While this is considerably below cumulative exposures at which we have substantial human evidence relating to lung cancer, the Agency believes that such exposure is not below a threshold at which no signficant health damage could occur. Radiation protection organizations, national authorities, and prestigious scientific committees worldwide use the assumption that there is no threshold below which exposure to radiation does not pose some risk to health. For example, the National Academy of Sciences' Committee on Biological Effects of Ionizing Radiation recommended that health risks from low level exposures to alpha radiation, such as that produced by radon-222 decay products, be estimated by extrapolating risks from higher exposures using a linear nonthreshold model. Therefore, extrapolations from the available miner epidemiological data have been used by EPA to estimate risk at exposure levels caused by radon-222 emissions from underground uranium mines.

Section 112 requires not only a finding that the pollutant at issue is hazardous in the abstract, but also that it poses a public health risk in its from as an air pollutant. By coupling information on radon-222 emissions form mines, air transport models, and health risk models, the Agency estimates that the increased lifetime risk to individuals living near an underground uranium mine could be about one chance in one hundred of incurring lung cancer because of the emissions. For perspective, the current average lifetime risk of developing lung cancer in the United States is about three in one hundred. Clearly, radon-222 emissions from underground uranium mines may significantly affect a nearby individual's lung cancer risk. In addition, several fatal cancers per year may result in the total population due to these emissions, depending on the quantity of ore production each year.

In making its health risk estimates, EPA evaluated the air pollution risk of radon-222 emissions from underground uranium mines based on the magnitude of both current and potential emissions, on observed and estimated ambient radon-222 concentrations, on the proximity of large populations to emitting sources, on estimates of health risk to exposed populations, and on considerations of uncertainties associated with risk estimates. The assessments and the assumptions used to estimate lifetime risks are described

in more detail in the Background Information Document. In addition, a study conducted during the period 1978–1980 by the New Mexico Environmental Improvement Division clearly demonstrated elevated concentrations of radon-222 in air near underground uranium mines in the Ambrosia Lake area of New Mexico.

The Agency believes that there is sufficient evidence to conclude that potential increases in the risk of lung cancer to individuals and the general population due to radon-222 emissions from underground uranium mines may be anticipated to endanger public health and may be anticipated to result in an increase in mortality. Consequently, regulation of this source category under sections 122 and 112 is appropriate.

The Agency also believes that a standard limiting exposure of the public to radon-222 emissions from underground uranium mines is warranted, despite the low number of operating mines. The Congress intended in section 112 that EPA act by a date certain to protect the health of current and future generations from emissions of pollutants that it determined to be hazardous. This is still the Agency's responsibility even if, as some might argue, current production levels have reduced risk. Demand for uranium oxide may increase. In the peak production years, the increase in an individual's lifetime risk of lung cancer from radon-222 emissions from underground uranium mines may have been as high as one in ten to those individuals exposed to mulitiple mine vents and increased population risk may have been as high as four fatal cancers per year. Without a standard such as this, risks to the public, both nationally and regionally, would increase if demand and production of uranium oxide increases.

Section 122 of the Clear Air Act allows EPA to use section 108(a)(1) or section 111(b)(l)(A) in combination with section 112 if the Administrator determines it to be suitable. At this time, the Agency has chosen to regulate radon-222 emissions from underground uranium mines only under section 112. Current information suggests that regulation under these other sections would not significantly improve control of radon-222 emissions from underground uranium mines. Should new information alter this conclusion, the Agency may reconsider its approach to regulating underground uranium mines.

D. Control Technology

Since radon-222 is a noble gas and the volume of air discharged through mine vents is very large, at present there is no practical method to remove radon-222 from the mine exhaust air. Application of conventional methods to remove radon-222 from mine ventilation air at the volumes of air which must be treated would require large, complex, unproven systems that would be extremely costly, i.e., adding at least $18 to $44 to the total cost of producing a pound of uranium oxide. (Currently, the average cost to produce one pound of uranium oxide from an underground mine is about $35.) The industry now employs a number of practices to reduce radon decay product concentrations in the mine to meet occupational exposure standards established by the Mine Safety and Health Administration. These practices, which include bulkheading abandoned areas of the mine, have the effect of reducing radon-222 emissions to the above ground air.

At EPA's request, the U.S. Bureau of Mines evaluated the cost and effectiveness of various work practices in reducing radon-222 emissions. The results of the study suggested that bulkheading could reduce emissions of radon-222 by about 10 to 60 percent. Based on the peak production year, the amount of population risk reduction achieved could range from two-tenths to two fatal cancer cases per year. Estimates for 1983, the most recent year for which actual production data are available, range from one-tenth to one fatal case per year. In 1985, based on industry production projections, the amount of population risk reduction is estimated to range from three-hundredths to three-tenths of a fatal cancer case per year. These are only rough estimates based on installing bulkheads in a presently uncontrolled mine (i.e., a mine with no bulkheads).

Information presented during the public comment period indicates that uncertainty exists as to the amount of radon-222 emission reduction achievable by bulkheading in existing mines. This is in part due to the complexity in the configuration of these mines, past mining practices, and consideration of miner health and safety. The extent to which additional bulkheads can be installed to further reduce radon-222 emissions can only be determined on a case-by-case basis.

Comments from the industry supported EPA's conclusion that bulkheading is the only practical work practice that could be used to reduce radon-222 emissions to the above ground air. Other methods, such as rock sealants and backfilling, may also reduce radon-222 emissions; however, they are not thought to be as cost-effective or practical as bulkheading. After considering all the available information on control technologies, the Agency has concluded that bulkheading abandoned and temporarily abandoned mine areas to seal the radon-222 underground is a practical method of reducing radon-222 emissions from the mines to the above ground air.

E. Bulkheading

Bulkheads are air-restraining barriers used to direct air and prevent contamination or leakage of fresh air going to the active areas of the mine. This practice reduces the radon-222 and decay product concentrations in the active areas of the mine and also reduces the volumes of air needed to ventilate the mine. Bulkheading practices vary among mines; some mines make extensive use of bulkheads, while others use few bulkheads.

A secondary benefit of bulkheading inactive areas of a mine is that radon-222 emanating from the rock surface will decay in the isolated area. Hence, this technique can also reduce radon-222 emissions to the above ground air. The amount of emission reduction achieved is dependent on the volume of inactive areas that are sealed with bulkheads and the amount of air removed from these areas.

The radon-222 in the sealed area behind a bulkhead will build up to relatively high concentrations (i.e., tens of thousands of picocuries per liter), so it is necessary to prevent or minimize any leakage of air from behind the bulkhead into the working areas of the mine. Any such leakage could significantly increase the radon decay product concentration to which the miners are exposed. Therefore, it is often necessary to maintain a negative differential pressure behind the bulkhead to prevent leakage of contaminated air into the active mine airways. This negative pressure is achieved by bleeding (i.e., removing) air from behind the bulkhead into an exhaust airway. For bulkheads to be effective in reducing radon-222 emissions to above ground air, however, the amount of air bleed necessary to maintain an adequate pressure differential across the bulkhead must be minimized. The smaller the air bleed, the more radon-222 will decay behind the bulkhead rather than being released above ground.

V. The Final Standard

The complexity in the structure of underground uranium mines, the uncertainties in the effectiveness of in-mine control techniques, and the lack of suitable control technology to capture

radon-222 being vented from the mines cause the Agency to conclude that an emission standard is not feasible. The effectiveness of techniques for radon-222 emission reduction is not known. This means that predictable, hence measurable, steps toward compliance with a generic emission standard can not be identified. In this instance, section 112(e)(1) of the Clean Air Act allows the Agency to prescribe a work practice or other type standard to control the pollutant. This standard, therefore, requires that bulkheading be used to reduce emissions of radon-222 from the mines. A more thorough description of the individual components of the standard and the rationale follows.

A. Applicability

The standard is applicable to an owner or operator of an active underground uranium mine which has mined or will mine over 100,000 tons of ore during the life of the mine. Mines which have had or will have an annual ore production rate greater than 10,000 tons must also comply with the standard, unless it can be demonstrated that the mine will not exceed a cumulative ore production of 100,000 tons.

An evaluation of radon-222 emissions from underground mines operating in 1978 as a function of cumulative ore production showed that 188 mines or 75 percent of all the mines had a cumulative ore production of less than 100,000 tons. The estimated radon-222 emission rate from each of these mines was less than 200 curies per year, and as a group they contributed only five percent of the total curies emitted by all underground uranium mines in 1978. Since the radon-222 emissions from underground uranium mines with cumulative ore productions of less than 100,000 tons are small, the Agency has concluded that these mines need not be covered by the standard.

One commenter suggested that the Agency eliminate the 100,000 tons of cumulative ore production criterion; another suggested increasing it to 500,000 tons. The Agency has decided to maintain the cutoff at 100,000 tons cumulative ore production in order to include older mines which are likely to have significant emissions of radon-222 due to the large amount of surface area emanating this radionuclide. EPA chose the 100,000 tons cutoff based on the results of the study discussed previously. Ninety-five percent of the radon-222 emissions from underground uranium mines in 1978 were from mines with a cumulative ore production of 100,000 tons or greater.

The annual ore production value of 10,000 tons was selected to ensure that mines which are likely to exceed 100,000 tons of cumulative ore production will be covered by the standard on the effective date of the standard or at the time a new mine begins production. Evidence exists which indicates that mines with an annual ore production rate of 10,000 tons or greater are likely to mine 100,000 tons of ore during their lifetime. The standard allows a mine owner or operator to demonstrate that the mine will not exceed 100,000 tons of cumulative ore production, and, thus, not be subject to the standard.

B. Bulkheading Requirements

Comments generally agreed with the Agency's conclusion that bulkheading is a practical method to reduce radion-222 emissions to the above ground air from underground uranium mines. One commenter suggested that backfilling abandoned areas with mill tailings might also yield some reduction in radon-222 emissions. This final rule, while prescribing bulkheading requirements, allows a mine owner or operator the flexibility to use other methods of radon-222 control, such as backfilling, upon approval by the Administrator.

The standard requires that an owner or operator of an underground uranium mine install and maintain reliable bulkheads to isolate all abandoned and temporarily abandoned areas of the mine. If a negative pressure behind the bulkhead is necessary, then a maximum of 20 percent of the total volume of air contained in the sealed area may be exhausted per day. Many commenters expressed concern about limiting the amount of air which can be drawn from behind a bulkhead to achieve a negative pressure. In some situations, this practice may result in an increase in radon-222 decay product concentrations in the working areas of the mine. In addition, it may be difficult or impractical to measure the amount of air removed from a bulkheaded area. Commenters requested that EPA eliminate the limitation on the amount of air which can be drawn from behind a bulkhead.

EPA does not intend to promulgate a standard which increases miner exposure to radon decay products. However, a limit on the rate of removal of air from behind a bulkhead is necessary to provide sufficient residence time for the radon-222 in the isolated area to decay. A 20 percent per day value was selected as a balance between the need to minimize the rate of air removed from the isolated area and the need to maintain adequate negative pressure to prevent radon-222 from leaking into active mine airways and increasing the radon-222 decay product exposure to the miners. Our analysis estimates that, when the exhaust rate is maintained at 20 percent, approximately 50 percent of the radon-222 trapped behind the bulkhead will decay and thus will not be vented to the above ground air. Reducing the air exhaust rate to 10 percent per day would result in a radon-222 reduction of approximately 65 percent, but we do not have enough information at the present time to know if this will provide adequate protection of the miners.

Industry representatives explained to EPA that the ventilation routes in many existing mines are designed so that air from active areas is exhausted through the inactive areas of the mine. As fresh air is brought into the mine, care is taken to prevent its contamination with radon-222 decay products prior to its reaching the active work areas. Bulkheads are constructed primarily to seal unused portions of the mine adjacent to the intake airways to prevent fresh air from escaping or becoming contaminated. In current practice, the mined-out areas become exhaust airways as the mining process retreats towards intake airways. Therefore, a major portion of the mined-out areas must be kept open to allow passage of air to the exhaust vents. In the case of one mine, ninety-six percent of the mine is inactive areas which serve as exhaust routes for contaminated air. Bulkheading is unlikely to be practical in these inactive areas unless major changes are made in the ventilation schemes of the mines, such as constructing new ventilation shafts. In addition, entering these areas to construct bulkheads may jeopardize the health and safety of the miners because of high concentrations of radon-222 decay products and ground instability. Commenters requested that EPA exempt from the requirements of the standard inaccessible areas and those areas which serve as ventilation passageways.

After hearing the comments discussed above and reviewing the configurations of several existing mines, the Agency has decided to include a provision in the standard to allow mine owners or operators to apply for an alternative standard, if necessary to protect miner health and safety. By including this option, rather than simply eliminating the air exhaust rate limitation and exempting certain areas of a mine based on their function, the Agency hopes to provide incentive to design new mines in such a way as to limit radon-222 emissions to above ground air. Industry

representatives acknowledged at the public hearing that a new mine could be designed to limit the number of inactive areas used as exhaust routes and to maximize the amount of area which could be bulkheaded.

C. Reporting and Recordkeeping

The Agency received numerous comments on the reporting and recordkeeping requirements of the proposed rule. In an effort to minimize the amount of additional time personnel must spend in a mine to meet its standard, EPA has decreased the number and frequency of the reporting and recordkeeping requirements imposed by the final rule. The revisions are as follows:

(1) Inspections The frequency of inspections of bulkhead conditions and measurements of the air exhaust rate for those bulkheaded areas maintained under negative pressure has been reduced from monthly to quarterly. Records of these inspections must be kept at the mine and be available for review by EPA.

(2) Bulkhead repairs The length of time allowed to make necessary repairs to bulkheads has been lengthened from three days to ten days. This change allows mine operators greater flexibility in managing their work force.

(3) Annual report The amount of information that is required to be submitted annually to EPA has been reduced. A mine owner or operator must submit an annual certification of compliance with the final rule. Records of the number and volumes of abandoned and temporarily abandoned areas, the number of bulkheads maintained, and an estimate of the average amount of air in the bulkheaded areas which is exhausted per day must be kept at the mine. Annual submission of this information was required in the proposed rule.

D. Definitions

Based on public comments, several definitions were modified in the final rule.

(1) The definitions of "abandoned mine area" and "temporarily abandoned mine area" have been modified to exempt not only those areas which function as escapeways, but also areas formerly-used as lunchrooms, shops, and transformer or pumping stations. These areas have been exempted because they are nonproduction areas which have low radon-222 emanation rates. In addition, the exemption for ventilation passageways is now limited to ventilation passageways designed to minimize the distance to vents and no longer allows large mined-out areas to function as ventilation passageways. Exempting these areas from the bulkheading requirements would limit the amount of radon-222 emission reduction achieved by the standard. In particular, the Agency wants to ensure that new mines are designed to avoid this practice.

(2) The definition of "active mine" has been modified to include only those mines in which ore or waste material are currently removed by conventional methods. This change was made to exempt slope leaching which does not require workers to enter the mine, except in rare instances.

(3) A definition of "work" has been added to clarify the intent of the standard. For the purposes of the standard, "work" means mining activity done in the usual and ordinary course of developing and operating an underground uranium mine.

VI. Effects of the Final Standard

The deadline imposed by the District Court requires the Agency to promulgate a standard for underground uranium mines based only on the currently available technical information. An accurate estimate of the radon-222 emission reduction achieved by the standard cannot be made with existing information. The bulkheading requirements of the rule are expected to result in a decline in individual and population risks as emissions of radon-222 are reduced. Though the maximum individual risk in particular has not been reduced to levels EPA has selected in other standards, the very short time available for developing this rule, and the possibility that any reduction in risk to the general population might be achievable only by increasing the risk to miners, make it impossible to impose further controls at this time. EPA will continue to investigate this matter to determine the possibility of tightening controls in the future. Since most mines already install bulkheads to reduce ventilation requirements, it is not possible to estimate the incremental radon-222 emission reduction achieved by the standard. EPA intends to gather additional information on the extent and nature of existing bulkheading practices and the efficacy of the standards.

Further, the cost of the standard can only be generally estimated. Because we do not know the extent of present bulkheading practices or what additional bulkheading is practical, we cannot precisely estimate the cost to meet this standard. Limited modelling analysis shows that the cost of installing bulkheads ranges from about one to five cents per pound of uranium oxide produced. Based on the peak production year, the total cost to the industry could range from $200,000 to $1,000,000 per year. Cost to the total industry in the first year is estimated to range from $30,000 to $150,000. Even if these costs are significantly underestimated for some mines, it is highly unlikely that the cost of the standard would exceed one percent of the cost of producing uranium oxide.

EPA intends to begin long-term studies, as necessary, to more thoroughly determine the efficiency and cost of bulkheads and other techniques for decreasing radon-222 emissions to the above ground air from underground uranium mines. Such a study would examine ways to reduce air emissions further without increasing potential exposure to miners. The results of a study may lead to some modification of the Agency's standard.

VII. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of this standard. The docket allows interested persons to identify and locate documents so they can effectively participate in the rulemaking process. It also serves as the record for judicial review. Transcripts of the hearings, all written statements, and other relevant documents are placed in the docket and are available for inspection and copying during normal working hours.

B. General Provisions

The general provisions of 40 CFR Part 61, subpart A apply to all sources regulated by this rule.

C. State Implementation and Enforcement of Emission Standards

D. Communications

Communications with the Administrator regarding the reporting and recordkeeping requirements of this rule, as well as requests for waivers, shall follow the provisions of § 61.10, except as otherwise noted in this rule.

E. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, requires that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be less than $100 million. Also, it will not cause a major increase in costs or prices for any sector of the economy or for any

geographic region. Further, it will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Under Executive Order 12291, this rule was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB to EPA, and responses to those comments, are included in the docket.

F. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060-0115.

G. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory analysis" describes the effect of the proposed rule on small business entities.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed . . . rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA believes this final rule will have little or no impact on small business because the total costs associated with the standard will have relatively little impact on the total cost of producing uranium oxide. In addition, the standard will apply only to large, operating underground uranium mines.

For the preceding reasons, I certify that this rule, will not have significant economic impact on a substantial number of small entities.

H. Judicial Review

Judicial review of these standards is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication date. The requirements established in this notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce them.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl chloride, Benzene, Arsenic, Radionuclides.

Dated: April 10, 1985.

Lee M. Thomas,

Administrator.

Part 61 of Chapter 1 of Title 40 of the Code of Federal Regulations is amended by adding the following Subpart B consisting of §§ 61.20 through 61.28:

PART 61—[AMENDED]

Subpart B—National Emission Standard for Radon-222 Emissions from Underground Uranium Mines

Sec.
61.20 Applicability.
61.21 Definitions.
61.22 Standard.
61.23 Alternatives Standard.
61.24 Bulkhead Inspection and Testing.
61.25 Bulkhead Repair.
61.26 Recordkeeping.
61.27 Reporting Requirements.
61.28 Source Reporting and Waiver Request.

Authority: Sec. 112 and 301(a) Clean Air Act, as amended, 42 U.S.C. 7412, 7601(a).

Subpart B—National Emission Standard for Radon-222 Emissions from Underground Uranium Mines

§ 61.20 Applicability.

The provisions of this subpart are applicable to an owner or operator of an active underground uranium mine which:

(a) Has mined or will mine over 100,000 tons of ore during the life of the mine; or

(b) Has had or will have an annual ore production rate greater than 10,000 tons, unless it can be demonstrated that the mine will not exceed a total ore production of 100,000 tons during the life of the mine.

§ 61.21 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Clean Air Act or in subpart A of Part 61 and the following terms shall have the specific meanings given below:

(a) "Abandoned area" means a deserted mine area in which work has ceased and in which further work is not intended. Areas which function as escapeways, and areas formerly-used as lunchrooms, shops, and transformer or pumping stations are not considered abandoned areas. Except for designated ventilation passageways designed to minimize the distance to vents, worked-out mine areas are considered abandoned areas for the purpose of this subpart.

(b) "Active mine" means an underground uranium mine from which ore or waste material is currently removed by conventional methods.

(c) "Area" means a man-made underground void from which ore or waste has been removed.

(d) "Bulkhead" means an air-restraining barrier constructed for long-term control of radon-222 and radon-222 decay product levels in mine air.

(e) "Inactive mine" is a mine from which uranium ore has been previously removed but which is not an active mine as of the effective date of the standard. Inactive mines which become active mines after the effective date of the standard are considered new sources under the provisions of subparts A and B of this part.

(f) "Modification" as applied to an active underground uranium mine means any major change in the method of operation or mining procedure which will result in an increase in the amount of radon-222 emitted to air. The normal development or operation of an active mine, even though it results in an increase in emissions, is not considered a modification for the purposes of this subpart.

(g) "Temporarily abandoned area" means a mine area in which further work is not intended for at least six months. Areas which function as escapeways, formerly-used lunchrooms, shops, and transformer or pumping stations are not considered abandoned areas. Except for designated ventilation passageways designed to minimize the distance to vents, worked-out mine areas are considered temporarily abandoned areas for the purpose of this subpart if work is not intended in the area for at least six months.

(h) "Underground uranium mine" means a man-made underground excavation made for the purpose of removing material containing uranium for the principal purpose of recovering uranium.

(i) "Work" means mining activity done in the usual and ordinary course of developing and operating a mine.

§ 61.22 Standard.

(a) An owner or operator of an underground uranium mine subject to this subpart shall install and maintain bulkheads to isolate all abandoned and temporarily abandoned areas according to the following requirements:

(1) The bulkhead shall be a structure designed and constructed for long-term control of the isolated area and shall be sealed to minimize air leakage through

the bulkhead. The bulkhead shall be of sufficient structural strength to resist mechancial abuse, blasting shocks, air pressure differentials, and rock movement for an extended period of time in the mine-operating environment. The basic bulkhead structure may consist of a timber or metal stud frame, covered with lumber, expanded metal lath, plywood, or other sheet products. It may be a continuous nonporous membrane or it may support such a membrane. A sealant shall be applied onto the basic structure and in the joints between the structure and the rock to form a continuous seal and radon barrier. The sealant shall be of a type that will provide a protective seal, and will not easily crack or develop holes or leaks. A sealant may consist of coatings of mortar, masonry, latex, uretane foam, or similar materials. A properly constructed and sealed bulkhead shall have no visible cracks or gaps.

(2) If negative pressure behind the bulkhead is used, then a maximum of 20 percent of the total volume of air contained in the isolated area can be exhausted per day.

(3) As mine areas become abandoned or temporarily abandoned after the applicable date of this standard, the mine owner or operator must install a bulkhead in compliance with the provisions of § 61.22(a) within 30 days of the area becoming abandoned or temporarily abandoned.

(b) Upon written application from an owner or operator of an underground uranium mine subject to this subpart, the Administrator may approve alternative bulkhead designs or construction, or other methods for isolating abandoned or temporarily abandoned areas, if such alternatives can be shown to provide isolation of the area equivalent to the requirements of § 61.22(a)(1).

§ 61.23 Alternative Standard.

(a) If compliance with the requirements of § 61.22 will result in increased radon-222 decay product concentrations in the active areas of the mine, will require workers to enter unsafe areas, or will otherwise be impractical to achieve because of unique or unusual circumstances, then the owner or operator of an existing source (i.e., existing active mine) may apply to the Administrator for an alternative standard. The Administrator may establish an alternative standard if the applicant demonstrates that an alternative is necessary to provide for the health and safety of the workers and will minimize the exposure of nearby individuals and the general population to radon-222 decay products, to the extent practical. Applications for an alternative standard shall be made within 90 days of the effective date of the standard and include the following information:

(1) The reasons for requesting an alternative;

(2) A description of the alternative requested;

(3) A description of all measures that have been taken or will be taken by the mine owner or operator to minimize the exposure of nearby individuals and the general population to radon-222 decay products, to the extent practical.

(4) A schedule for complying with the alternative standard.

(b) An inactive mine which again becomes active may request an alternative standard under § 61.23(a). Application for an alternative standard must be submitted as part of an application for approval of construction or modification as required under § 61.07.

(c) Requests for an alternative standard shall be sent to the Assistant Administrator for Air and Radiation (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

§ 61.24 Bulkhead Inspection and Testing.

An owner or operator of an underground mine subject to the requirements of § 61.22 shall conduct the following bulkhead inspections and tests:

(a) A visual inspection of the condition of each bulkhead required under § 61.22(a) shall be conducted every three months by a qualified representative of the mine owner or operator to determine if, in his or her judgment, the integrity of the bulkhead is in compliance with the requirements of § 61.22(a)(1). A record of each inspection shall be made in accordance with the requirements of § 61.26.

(b) For bulkheaded areas maintained under negative pressure, measurement of the air exhaust rate from the area shall be made at least every three months to determine compliance with the requirement of § 61.22(a)(2). A record of each exhaust rate measurement shall be made in accordance with the requirements of § 61.26.

(c) Upon written application from an owner or operator of an underground uranium mine subject to this subpart, the Administrator may approve alternative testing and inspection procedures if such alternative procedures can be shown to provide reasonable assurance that the mine is in compliance with the requirements of § 61.22(a).

§ 61.25 Bulkhead Repair.

Bulkheads determined not to be in compliance with the requirements of § 61.22(a) during inspections required under § 61.24 shall be repaired within ten days in accordance with the requirements of § 61.22(a)

§ 61.26 Recordkeeping.

Records of inspections and tests required under § 61.24 shall be maintained as described below. These records shall include a bulkhead identification number and location and the date of each inspection or test.

(a) The results of each inspection required under § 61.24(a) shall be recorded as follows:

(1) A description of the condition of the bulkhead including identification of any damage and the extent of damages.

(2) A determination that the bulkhead is in compliance with the specifications of § 61.22(a) or that repairs are needed.

(b) A record shall be maintained for each bulkhead repaired under the requirements of § 61.25.

(c) A record shall be maintained for each air flow rate measurement conducted under the requirements of § 61.24(b). These records shall show the results of each test and the method used, The percent of the total air volume behind the bulkheaded area which is exhausted per day at the measured flow rate shall be recorded.

(d) Records of inspections and tests shall be maintained at the mine and made available for inspection and copying by the Administrator for a minimum of two years.

(e) A current map or schematic of the mine showing the location of each bulkhead required under § 61.22(a) and the approximate air volume of the isolated area shall be maintained. Each bulkhead shall be assigned an identification number which shall be used in inspections and tests, and the reporting requirements of §§ 61.24 and 61.26. This map shall be kept at the mine and be made available for review by the Administrator.

(Approved by the Office of Management and Budget under the control number 2060–0115)

§ 61.27 Reporting Requirements.

(a) An owner or operator of an underground uranium mine subject to the requirements of this subpart shall submit a certification to the Administrator by March 1, 1986, and annually thereafter. This certification shall be based on information and data concerning the calendar year immediately preceding the required data for submission of the certification and shall consist of a statement that the

bulkheading requirements of § 61.22(a) or any alternative standard established under § 61.23 have been implemented.

(b) If a waiver of compliance is granted, this certification is to be submitted on a date scheduled by the Administrator.

(Approved by the Office of Management and Budget under control number 2060-0115)

§ 61.25 Source Reporting and Waiver Request.

(a) The owner or operator of any existing source, or any new source to which a standard prescribed under this subpart is applicable which had an initial startup which preceded the effective date of a standard prescribed under this subpart shall, within 90 days after the effective date, provide the following information in writing to the Administrator:

(1) Name and address of the owner or operator;

(2) The location of the source;

(3) A brief description of the nature, size, design, and method of operation of the mine including: (i) current or expected annual ore production rates, (ii) current cumulative ore production, (iii) expected cumulative ore production over the life of mine;

(4) The number of abandoned and temporarily abandoned areas in the mine and the number of these areas which are isolated by bulkheads; and

(5) A statement by the owner or operator of the source as to whether he can comply with the standard prescribed in this subpart within 90 days of the effective date.

(b) An owner or operator of an existing underground uranium mine (i.e., existing source) unable to operate in compliance with the standard prescribed under this subpart or lacking sufficient information to apply for an alternative standard within 90 days of the effective date of the standard may request a waiver of compliance with such standard for a period not exceeding two years from the effective date. Any request shall be in writing and shall include the following information:

(1) The reasons for requesting the waiver;

(2) A schedule for achieving compliance with the standard, or if applicable, the alternative standard, including the steps which will be taken to come into compliance including a date by which each step will be achieved; and

(3) Interim emission control steps will be taken during the waiver period.

(c) Changes in the information provided under paragraph (a) of this section shall be provided to the Administrator within 30 days after such change, except that if changes will result from modification of the source, as defined in §§ 61.02, the provisions of § 61.07 and 61.08 are applicable.

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Wednesday
April 17, 1985

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 13 and 17

Importation of Green Sea Turtle Parts and Products; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Importation of Green Turtle Parts and Products

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Response to petition for rulemaking; proposed rule.

SUMMARY: The Cayman Islands Government, on behalf of the Cayman Turtle Farm, Ltd., has petitioned the Fish and Wildlife Service to amend the existing prohibition on importation into the United States of the parts and products of green sea turtles (*Chelonia mydas*). In response, the Service proposes to amend the existing regulations applicable to trade in green sea turtle parts and products. The proposed rule would allow importation of green sea turtle parts and products derived from populations approved for such trade by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and by the Director of the Service. The proposed rule would allow neither trade in live green sea turtles nor taking of green sea trutles from the wild.

DATE: Public comments will be accepted until June 7, 1985.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, or delivered to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m. Comments should bear the identifying notation REG *17–02*. All materials received, including the Cayman Islands' Petition, may be inspected weekdays during normal business hours at the Office of the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Enforcement Specialist, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005. Telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION:

Background

The green sea turtle is a species listed pursuant to the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531–1543. The green sea turtle is listed as threatened, except for certain populations that are listed as endangered. 50 CFR 17.11. Species listed as threatened generally are subject to regulations that allow importation only pursuant to permit, for noncommercial purposes and under extremely limited circumstances. 50 CFR 17.21 and 17.31. The Service may, however, promulgate special regulations for a species or population listed as threatened. 16 U.S.C. 1533(d); 50 CFR 17.31(c). On July 28, 1978, the Service and the National Marine Fisheries Service jointly issued special regulations that, among other things, prohibit all importation of the green sea turtle. 43 FR 32800; 50 CFR 17.42(b), 227.71 and 227.72. The Cayman Turtle Farm, Ltd. (CTF), which operates a mariculture operation in the Cayman Islands where it breeds green sea turtles for scientific purposes, challenged the regulations. A federal court ruled, however, that the omission of a mariculture exemption was within the agencies' authority under the Endangered Species Act, was not precluded by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and was adequately supported by the administrative record. *Cayman Turtle Farm, Ltd.* v. *Andrus*, 478 F. Supp. 125 (D. D.C. 1979).

The green sea turtle is also listed on Appendix I to CITES. *See* 50 CFR 23.23. CITES provides that species listed on Appendix I may only be traded if they are accompanied by import and export permits that may only be issued under certain conditions. Art. III, ¶¶ 2,3; 50 CFR Part 23, Subpart B. An import permit may only be issued if, among other things, the import will be for purposes that are not detrimental to the survival of the species and not primarily commercial. Art. III, ¶ 3(a), (c). Species listed on Appendix II to CITES may be traded if the country of export issues a permit for their shipment. Art. IV, ¶ 2. Under certain conditions a population of a species listed on Appendix I may be deemed to be included on Appendix II and thus be subject to the less restrictive permit requirements applicable to Appendix II species. For instance, Article VII, Paragraph 4 of CITES provides, among other things, that specimens of animal species included in Appendix I that are bred in captivity for commercial purposes shall be deemed to be included on Appendix II. Conf. 2.12, a resolution adopted by the Parties to CITES in 1979, confirms that such specimens are subject to the export permit and other provisions of Article IV. Another example is Conf. 3.15, which was adopted by the Parties in 1981. Conf. 3.15 allows a population of species included in Appendix I to be included in Appendix II if the population is no longer endangered and would benefit by ranching. Ranching is defined to mean the rearing in a controlled environment of species taken from the wild.

By letter dates May 24, 1984, the government of the Cayman Islands submitted to the Secretary of the Interior a petition to amend 50 CFR Part 17 in order to allow importation and reexportation of green sea turtle parts and products and their trade in interstate and foreign commerce. The requested regulatory amendment would apply only to parts and products of members of a population listed on Appendix II of CITES or to an operation that, in the judgment of the Secretary, is entitled to the bred in captivity exception in Article IV, Paragraph 4 of CITES or otherwise qualifies under CITES for international trade for commercial purposes.

The United Kingdom has filed a proposal on behalf of the Cayman Island that would allow the transfer of the green sea turtle population maintained by CTF from Appendix I to Appendix II and allow trade in parts and products of that population. This proposal has been submitted for approval at the Fifth Meeting of the Conference of the Parties to CITES to be held in Buenes Aires, Argentina from April 22 through May 3, 1985. Similar proposals have been submitted by Surinam and Reunion. The United States will participate in this Meeting as a Party to CITES.

The Service's Wildlife Permit Office, which is the Management Authority of the United States designated in accordance with Article IX of CITES, is preparing negotiating positions with respect to each proposal that will be presented to the Conference of the Parties to CITES in Buenes Aires. The proposed negotiating position of the United States with respect to the various green sea turtle proposals that will be before the Parties to CITES in Buenes Aires is that the United States will amend its regulations to allow import and trade for commercial purposes of green sea turtle parts and products derived from populations removed by the Parties to CITES from Appendix I and/or listed on Appendix II or III. The final negotiating positions of the United States will be announced before April 22, 1985.

The Proposed Rule

In response to the rulemaking petition submitted by the Government of the Cayman Islands the Service proposes to amend 50 CFR Parts 13 and 17 to allow for import and commercial trade in green sea turtle parts and products

derived from green sea turtle populations that, as a result of action by the Parties to CITES, have been removed from Appendix I listed on Appendix II or III. The Service will not issue a final rule unless the Conference of the Parties to CITES approve at least one of the proposals dealing with listing and trade in green sea turtle parts and products, and will not issue a final rule earlier than 90 days following the Buenes Aires meeting, when any amendment to Appendices I and II would become effective. CITES Art. XV, ¶ 1(c).

Section 4(d) of the Endangered Species Act, 16 U.S.C. 1533(d), requires that the Service shall issue regulations for threatened species as it "deems necessary and advisable to provide for the conservation of the species." The Service believes that any proposal to move a particular green sea turtle population from Appendix I that is approved by the Parties to CITES would meet this standard. Approved ranching operations must, for instance, "be primarily beneficial to the conservation of the local population" and "have no significant detrimental impact on wild populations." Conf. 3.15. Approved bred in captivity operations must be "established in a manner not detrimental to the survival of the species in the wild." Conf. 2.12.

In declining to include a mariculture exemption in 50 CFR 17.42(b) when it was first promulgated in 1978, the Service advanced several supporting arguments. The Service found that (1) trade in commercial mariculture products would have a deleterious impact upon wild sea turtle populations, (2) measures to enforce compliance with the exemption were inadequate to avoid threats to the wild populations, (3) the scientific research benefits from the exemption did not outweigh the risks to survival of the wild populations, and (4) the Cayman Turtle Farm was not totally independent of wild eggs and turtles. The court in *Cayman Turtle Farm, Ltd.* v. *Andrus, supra,* ruled that each of these findings had support in the administrative record of the rulemaking. The Service does not, however, believe that these findings are applicable to the current rulemaking. Each of the four factors that militated against granting a mariculture exemption in the 1978 rulemaking referred to a potential adverse impact on wild populations of green sea turtles. The proposed rule, on the other hand, would effectively require a finding that wild populations would not be harmed prior to commencement of commercial import and trade in green sea turtle parts and products. As noted above, Conf. 2.12 and 3.15, which became effective subsequent to the 1978 rulemaking and the *Cayman Turtle Farm* decision, require that approved ranching and bred in captivity operations not operate to the detriment of wild populations. The proposed rule thus would allow imports only from an operation found by the Parties to CITES to operate without detriment to wild populations. In addition, the Service believes that the permit and marking system set out in the proposed rule would ensure compliance with the rule to avoid illegal imports of wild green sea turtle parts and products.

The proposed rule consists primarily of the addition of a new subparagraph (c) to 50 CFR 17.42. The sea turtle special rule in 50 CFR 17.42(b) would apply as in the past except that it would not apply to populations of green sea turtle special listed in 50 CFR 17.11. These populations, which would have to be approved by the Parties to CITES for removal from Appendix I and/or inclusion on Appendix II or III, would instead be subject to the provisions of proposed 50 CFR 17.42(c), provided that the Director of the Service also approved their special listing in 50 CFR 17.11.

Proposed 50 CFR 17.42(c) would allow import and trade in green sea turtle parts and products but would not authorize import and trade in live turtles and takings of green sea turtles from the wild. Any commercial importation of or other commercial trade in green sea turtle parts and products would be allowed to take place only pursuant to a special permit issued in accordance with proposed 50 CFR 17.42(c)(4). In addition, imported or commercially traded green sea turtle parts and products would have to be marked and identified in accordance with proposed 50 CFR 17.42(c)(5).

Determination of Effects

The Department of the Interior has determined that the proposed rule is not a major rule under Executive Order 12291. The Department has also certified that the proposed rule will have no significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. These determinations are discussed in more detail in a "Determination of Effects"' which has been prepared by the Service. A copy of that document may be obtained by contacting the person identified above under **"FOR FURTHER INFORMATION CONTACT."**

Paperwork Reduction Act

The collection of information requirements contained in the proposed rule, including the maintenance and retention of records and the application for permits, has been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h) of the Paperwork Reduction Act. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Interior Desk Officer, Room 3201, Washington, D.C. 20503. The information collection requirements contained in proposed 50 CFR 17.42(c) that relate to marking and labeling of the parts and products of the specially listed population do not require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than ten respondents annually.

Natural Environmental Policy Act

A draft Environmental Assessment has been prepared in conjunction with this proposed rule. It is on file with the Division of Law Enforcement, U.S. Fish and Wildlife Service, 3rd Floor, 1375 K Street NW., Washington, D.C. 20005, and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting requirements, Wildlife.

50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (Agriculture).

Regulation Promulgation

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50 *Code of Federal Regulations* is proposed to be amended as follows:

PART 13—[AMENDED]

1. Authority for Part 13:

Authority: 18 U.S.C. 42; sec. 4, Pub. L. 97–79, 95 Stat. 1074 (16 U.S.C. 3373); sec. 7, Pub. L. 97–79, 95 Stat. 1078 (16 U.S.C. 3376); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); sec. 2, 54 Stat. 251, as amended by sec. 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a); sec. 102, 76 Stat. 73 (19 U.S.C. 1201, "Schedule 1, Part 15D, Headnote 2(1),

Tariff Schedules of the United States"; sec. 9(d), Pub. L. 93-205, 87 Stat. 893 (16 U.S.C. 1538(d); sec. 6(a)(1), Pub. L. 96-159, 93 Stat. 1228 (16 U.S.C. 1537a); E.O. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112, sec. 101, Pub. L. 93-205, 87 Stat. 898, as amended by secs. 2 and 3, Pub. L. 94-359, 90 Stat. 3760; sec. 7, Pub. L. 96-359, 90 Stat. 911 and 912; sec. 5, Pub. L. 95-632, 92 Stat. 3760; sec. 7, Pub. L. 96-159, 93 Stat. 1230 (16 U.S.C. 1539); sec. 11, Pub. L. 93-205, 87 Stat. 897, as amended by sec. 6(4), Pub. L. 95-632, 92 Stat. 3761 (16 U.S.C. 1540(b)(2)(f); sec. 13(d), 88 Stat. 905, amending 85 Stat. 480 (16 U.S.C. 742j-1); Title I amended by Title II sec. 201(e), Pub. L. 96-470, 94 Stat. 2241 (16 U.S.C. 1362); 85 Stat. 290 (31 U.S.C. 483(a)).

Source: 39 FR 1161, Jan. 4, 1974, unless otherwise noted.

2. § 13.11(b)(2) is revised to read as follows:

§ 13.11 [Amended]

* * * * *

(b) * * *

(2) Exception to designated port (50 CFR Part 14), import/export license (50 CFR 14.93), special listed population trade (50 CFR 17.42), migratory bird permit, other than banding (50 CFR Part 21) and bald or golden eagle permits (50 CFR Part 22)—special agent in charge of the law enforcement district in which the applicant resides or maintains its principal place of business if the applicant is a corporation or business, or, if the applicant is a foreign national, business, or corporation, in which the resident agent designated to accept service of legal process and to maintain records, resides, or maintains its principal place of business. (See 50 CFR 10.22 for addresses and boundaries of the law enforcement districts).

3. Amend § 13.11, paragraph (d)(4) by adding under the column Type of Permit the words "Special Listed Population—Trade, (Part 17)" and under the column Fee the figure "$100."

4. § 13.12 [Amended]

(b) Amend § 13.12, paragraph (b) by adding under the topic Type of Permit, the words "Special Listed Population—Trade" and under the topic Section, the entry "§ 17.42."

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

5. Authority for Part 17.

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359; 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, et seq.), unless otherwise noted.

6. Section 17.11(h) is amended by inserting the following entry into the table under appropriate column headings:

§ 17.11 [Amended]

* * * * *

Common name	Scientific name	Historic range	Vetebrate population where endangered or threatened	Status	When listed	Critical habitat	Specific rules
Turtle, green sea.	*Chelonia mydas*	Circumglobal in tropical and temperate seas and oceans.	Wherever found except where listed as threatened special listed captive population or endangered below.	T	42	NA	17.42(b) Parts 220 and 227.
Turtle, green sea.	*Chelonia mydas*	Captive population held in Reunion, Surinam, Grand Cayman Is.	Special listed captive population held in Reunion, Surinam, and Grand Cayman Is.	T	.....	NA	17.42(c).

7. Section 17.42(b) is revised as shown below:

§ 17.42 [Amended]

* * * * *

(b) Green sea turtle (Chelonia mydas), loggerhead sea turtle (Caretta caretta), olive ridley sea turtle (Lepidochelys olivacea) (these do not include the populations listed as endangered in § 17.11 or the populations of green sea turtle subject to regulation as special listed populations in § 17.42(c).)

* * * * *

8. A new § 17.42(c) is added to read as follows:

* * * * *

(c) Green sea turtle (Chelonia mydas)-Special listed populations.

(1) *Scope.* The regulations of this subparagraph (c) are a special rule which apply only to trade in parts and products derived from populations of the green sea turtle (Chelonia mydas) approved for delisting from Appendix I or listed on Appendix II or III as a result of an action by the Parties, Convention on International Trade in Endangered Species of Wild Fauna and Flora, and approved by the Director. These regulations do not apply and do not permit trade in live specimens of green sea turtle (Chelonia mydas) which shall continue to be subject to the full protection of the most restrictive listing applicable to the specimen and in particular to the regulations and exceptions in §§ 17.21, 17.31, 17.42(b) and 227.72.

(2) *Definitions.* As used in this special rule:

"Identification Number" means a unique number identifying product unit by country, product registration number and year of craft e.g. KYO1/85, KY represents the Cayman Islands utilizing the two letter code to be included in 50 CFR Appendix A, Chapter I, 01 represents the item registration number and 85 represents the year.

"Label" is an affixation to or markings made using silk screen or other process using permanent inks or dyes placed directly on a manufactured article or container giving information as to the nature, quality, numbers, weight, or the contents of a package or container, name of the maker, and any other information.

"Master Carton" is a unit, package or container for sea turtle parts or products which is the smallest unit of that specific part or product to be imported. Regardless of dimensions, the master carton is constructed of materials and in a manner or form so that, once closed, sealed, or packaged in the country of origin of the sea turtle from which the part or products were derived, the master carton cannot be opened without physical and readily visible destruction of the integrity of the carton itself. While the master carton may contain smaller packages of sea turtle parts or products, those smaller packages or the products are not eligible for import except within the exception for noncommercial importations as personal accompanying baggage.

"Product" is anything manufactured, produced, fabricated or crafted from or by human or mechanical effort, resulting from a natural process, or part of specimens included in a specially listed population from an operation approved pursuant to CITES Resolutions and does not include live specimens.

"Product Unit" means the smallest item of each sea turtle part and product that will be individually marked and entered into trade.

"Primary Container" means any container used to wrap or otherwise immediately to contain sea turtle parts or products.

"Uniform Marking System" means a system of marking each product unit approved by the Parties, Convention on International Trade in Endangered Species for a specially listed population of a species which as a minimum includes the International Organization for Standardization code for the country of origin, a unique identification number and the year of production, or if for product units on hand or manufactured from products of the operation on hand at the time the proposal for special listing of that species was approved by CITES.

(3) *Prohibitions.* The following prohibitions apply to all parts and products of green sea turtle (Chelonia mydas) subject to this subparagraph:

(i) *Import.* No person may import green sea turtle (*Chelonia mydas*) parts and products except parts and products marked and identified in accordance with this special rule and imported from the country of origin or a nonproducing country approved by the Service which is also without an indigenous population of green sea turtle (*Chelonia mydas*) listed as endangered pursuant to 50 CFR Part 17 or on Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (50 CFR Part 23). (i) Any natural person may import as a noncommercial importation as part of personal accompanying baggage only properly marked and identified items of polished shell, shell products, finished cosmetic products, and leather goods when each item is marked by the producing country and accompanied by valid documentation stating that the item is a part or product of that producing country's approved ranched or otherwise specially listed population of green sea turtle (*Chelonia mydas*). (ii) Any importation that is not a noncommercial importation as defined by § 17.42(c)(3)(a)(i) is a commercial importation of green sea turtle and shall only be imported pursuant to special permit issued by the Service pursuant to subparagraph (4).

(ii) *Export or Re-export.* Export or re-export of green sea turtle (Chelonia mydas) parts or products subject to this special rule is prohibited.

(iii) *Commercial Transactions Other Than Importations.* No person may deliver, receive, carry, transport or ship by any means whatsoever or may sell (except at retail to the final and ultimate consumer of the part or product), purchase (except at retail as the final and ultimate consumer), or offer for sale or purchase, any parts or products of green sea turtle (Chelonia mydas) which have been imported subject to this special rule except pursuant to special permit issued under conditions of 50 CFR Part 13 and in accordance with subparagraph (4).

(4) *Permits.* In addition to the general conditions set forth in Part 13 of this chapter, each permit issued under this special rule is subject to the following special conditions.

(i) Permits, except for permits in accordance with § 17.32 are not available for live specimens of green sea turtles (*Chelonia mydas*);

(ii) The application for a special permit must be submitted to and approved by the Director by the person who wishes to engage in any commercial activity related to green sea turtle (*Chelonia mydas*) parts or products from a specially listed population and must be submitted on an official application form (Form 3–200) provided by the Service. The application shall contain as an attachment the following information:

(A) The name, and address of the applicant. If the applicant is a business or corporation, whether foreign or domestic, the application shall designate a resident agent for the applicant listing the name and correct address of the agent and shall provide that the resident agent is appointed and designated to receive and accept on behalf of the applicant all legal process related to the enforcement of these regulations; any permit issued under this subchapter shall lapse and be void if at any time a business or corporation, foreign or domestic, fails to be represented by a duly appointed and acting resident agent. The Director shall be notified immediately and in writing of any change in the name and/or address of the resident agent;

(B) The category or categories of commercial activity for which the permit is to be issued whether import, manufacture or fabrication, wholesale, or retail;

(C) A description of the applicant's business organization and the location, including the address and description of the physical plant in which any manufacture, fabrication, wholesale or retail activity will occur or the ports at which import will occur;

(D) The name and address and telephone number of the custodian of all records, books, and inventories required by this special rule or any other regulation and an agreement that all such books, records, and inventories, including actual merchandise, shall be available for inspection by Service officials at any reasonble time;

(E) A complete inventory of any and all specimens, parts or products of sea turtles on hand at the time of the application listing the specimens, parts and products by number and/or weight and by species; and,

(F) A statement that the application and all information contained in it or any attachment is true and correct under penalty of perjury.

(iii) The permit for commercial transaction in specially listed populations shall be subject to the following conditions:

(A) Only a permittee who possesses a permit issued under the provisions of this subparagraph and valid for the category of importation may import into the United States for purposes of sale, barter, carriage, transportation or shipment or other commercial activities, including manufacture or fabrication, parts or products of green sea turtle (*Chelonia mydas*) from a specially listed population;

(B) A permittee may not manufacture or fabricate in any way a part or product of green sea turtle (*Chelonia mydas*) except one from a special listed population which was imported, purchased, sold, bartered, carried, transported, shipped or otherwise acquired in the course of a commercial activity except in accordance with a permit issued under provisions of this paragraph and valid for the category of manufacture or fabrication.

(C) A permittee may not buy a part or product of green sea turtle (*Chelonia mydas*) except from one holding a permit issued under provisions of this paragraph and valid for the category of wholesale or retail trade;

(D) A permittee may not sell, barter, offer to sell or barter, deliver, transport, carry or ship by any means whatsoever, a part or product or an item manufactured or fabricated from the part or product of the green sea turtle (*Chelonia mydas*) of a special listed population imported subject to this rule except to one who holds a permit issued under provisions of this paragraph and valid for the categories and wholesale or retail trade except that a retail sale of a part or product or of an item manufactured or fabricated from a part or product of green sea turtle of a special listed population subject to this rule may be sold to, and delivered or transported by, a retail purchaser who is the final and ultimate consumer of the part, product, or manufactured or fabricated item;

(E) A permittee may not violate any State, Federal, or foreign law or regulation concerning any specimen, part or product of green sea turtle (*Chelonia mydas*);

(F) A permittee must maintain complete and accurate inventory control of all specimens, parts, products, or

items manufactured or fabricated from parts or products of the green sea turtle (*Chelonia mydas*) including the residue or detritus of any manufacturing or fabricating process and must maintain accurate and complete bookkeeping records in accordance with the requirements of § 13.46 of this Chapter for all transactions related to the acquisition or disposition of parts or products of the green sea turtle (*Chelonia mydas*) in the permittee's possession at any time. For all transactions involving the green sea turtle or any species of sea turtle the permittee must maintain on file a copy of the permit or other document required or issued pursuant to Part 23 of this Chapter or any other document issued by a State, Federal or foreign government related to transactions in the parts or products of green sea turtle.

(G) The permittee holding a permit valid for the category of import must file on or before March 31 of each year a written report, certified under penalty of perjury, in English, of all transactions during the preceding calendar year ending December 31 involving the green sea turtle (*Chelonia mydas*) and other species of sea turtles including the number of parts and products or the weight of such parts or products on hand at the beginning and end of the accounting period, the number of transactions in each type of part and product, and the number of parts or products involved in each transaction or the weight of the part or product of sea turtle in each transaction.

(H) A permittee may not transport, ship, carry, deliver or otherwise transport by any means whatsoever any part or product or any item manufactured or fabricated from the part or product of green sea turtle (*Chelonia mydas*) subject to this rule unless such part, product or item is packaged in a master carton and tagged or labeled in a manner that indicates that the part, product, item, or any package containing parts, products or items of green sea turtle (*Chelonia mydas*); the quantity of the part or product enclosed in a package, if any; the name and address of the seller or consignor, and of the manufacturer or fabricator if the item is one made from parts or products of the green sea turtle (*Chelonia mydas*).

(I) A special permit for specially listed populations shall be valid only for one year from the date of issuance and must be renewed annually by appropriate application to the Director. Any failure to comply with any special condition of the permit, including a failure to maintain a designated resident agent, shall result in the nonrenewal of the permit.

(5) *Marking and identification.* Only the parts or products listed of the green sea turtle, marked, identified, and packaged in a master carton, in accordance with this subparagraph shall be eligible for import for commercial purposes or for other commercial transaction after importation. Properly marked, identified, and packaged parts and products, when transported or shipped in interstate commerce by a permittee shall not require any additional permit from the Service.

(i) *Edible products.* The unit of edible products to be imported into the United States shall be the master carton. Each master carton, whatever the physical dimensions, shall contain no more than 50 pounds gross weight of edible product. Each master carton shall be labeled with the producer's name and address, a correct description of the edible product contained in the carton and the product weight, and the complete identification number for the carton. The identification number of each master carton shall be reflected on all business documents, including invoices, and on all import or export documents or certificates. Each master carton shall be sealed upon closure by the producer and shall be so constructed that it cannot be opened without destruction of the sealing material or device. Only the following edible products, packaged in separate master cartons, may be imported:

(A) Fillet or chunk steaks of a weight not to be less than 3 oz. per fillet or chunk. Each fillet or chunk shall be individually wrapped in a wrapper reflecting the producer's name and the country of origin code;

(B) Steak pieces may be shipped in bulk packages but shall be contained within a sealed wrapper in the master carton. the wrapper shall reflect the producer's name and country of origin code and shall be of such material and construction that it cannot be opened without destruction of the sealing material or device;

(C) Calipee or calipash, a cartilaginous product, shall be packaged only in bulk, contained within a sealed wrapper in the master carton. The wrapper shall reflect the producer's name and the country of origin code. Each wrapper shall be of material and construction that it cannot be opened without destruction of the sealing material or device;

(D) Neck and tail bones shall be packaged only in bulk, contained in a sealed wrapper in a master carton. The wrapper shall reflect the producer's name and country of origin code. Each wrapper shall be of such material and construction that it cannot be opened without destruction of the sealing material or device;

(E) Whole or skinned flipper may be packaged only in bulk, contained in a sealed wrapper in a master carton. The wrapper shall reflect the producer's name and country of origin code. Each wrapper shall be of such material and construction that it cannot be opened without destruction of the sealing material or device;

(ii) *Decorative Products.* The smallest product unit of decorative products made of green sea turtle parts to be imported shall be as defined by each product listed below:

(A) *Whole polished shells.* Each shell shall be labeled with the producer's name and a complete identification number. Each label would be made of tamper evident material which would be destroyed if removed from the product. Any packaging of a shell or shells shall be in a carton printed with the producer's name, address, product description and weight, and listing all shell identification number(s) for enclosed shells. Each shell's identification number shall be listed on all invoices, and all import or export documents or certificates.

(B) *Scutes.* Scutes or portions of shell shall be bulk packaged in master cartons of 50 lbs. net weight. each master carton shall reflect the producer's name and address and a complete identification number. Each identification number for each carton of scute shall be listed on all invoices and all import or export documents or certificates.

(C) *Shell shapes.* Shell shapes which are processed parts of the whole turtle shell shall be packaged in bulk, in packages containing no more than 5 lbs. per package. Each package shall be wrapped in a wrapper reflecting the producer's name and country of origin code. Packages shall be sealed by the producer and shipped in a master carton, of a gross weight of 50 lbs., constructed so that it cannot be opened without destruction of the sealing material or device. All master cartons shall be labeled with the producer's name and address, a correct description of the contents and product weight and the complete identification number of the carton.

(D) *Jewelry.* Jewelry shall be labeled with a complete identification number and accompanied by individual documentation listing the identification number for each place. If the item is too small for one class of the complete

identification number, it shall be labeled with the country of origin code and sealed by the producer in a wrapper bearing the producer's name, a product description and the complete identification number for the wrapped jewelry. The wrapper shall be of such material and construction so that it cannot be opened without destroying the wrapper.

(E) *Finished leather goods* shall be individually labeled with the producer's name and a complete identification number. Each item shall be accompanied by documents listing the identification number for each item.

(iii) *Skins.* Skins of the green sea turtle may be imported only as salted or unfinished hides or pieces. Each hide piece shall be labeled with the country of origin code. Hide pieces may be packaged in a bag containing no more than 50 lbs. and sealed by a seal numbered with the complete identification number for that bag. The seal shall be fixed and of such material that it must be destroyed in order to open the bag. Bags may be packed in larger crates labeled with the producer's name, address, and product name, identification, weight, and the identification numbers of all bags contained in the crate.

(iv) *Oil and Cosmetics.* Oil produced and cosmetics manufactured from the green sea turtle shall be eligible for import only as follows:

(A) *Oil* may only be packaged in 55 gallon metal drums holding no more than 400 lbs. net weight. All drums shall be sealed with press-on metal covers constructed and affixed so that the corner must be destroyed to be removed. Each drum shall be labled with the producer's name, address, the product description, and shall be individually numbered with a complete identification number for each drum.

(B) *Cosmetics.* Finished cosmetics shall be sealed in primary containers by the producer and shall be clearly labeled giving product name, the producing company, and shall state that any oil in the cosmetics was obtained from specially listed sea turtles. Primary containers may be shipped in larger, sealed master cartons containing no more than twelve primary containers of any item. Each master carton shall be sealed by the producer and labeled with the producer's name and address, a complete description and list of primary containers enclosed and shall bear a complete identification number. The identification number for each master carton shall be reflected on all invoices and all import or export documents or certificates.

Dated: April 5, 1985.

J. Craig Potter,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-9295 Filed 4-16-85; 8:45 am]

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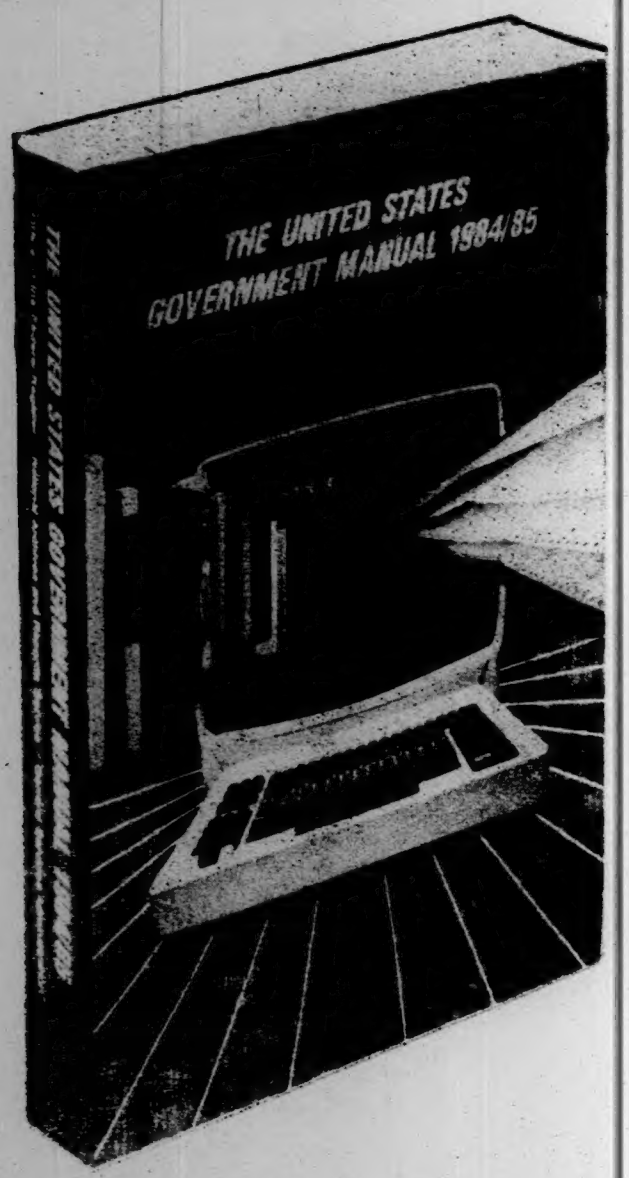
H.J. Res. 74 / Pub. L. 99-20

To designate the week of September 8, 1985, as "National Independent Retail Grocer Week". (Apr. 14, 1985; 99 Stat. 44) Price: $1.00

S.J. Res. 35 / Pub. L. 99-21

To authorize and request the President to issue a proclamation designating April 21 through April 27, 1985, as "National Organ Donation Awareness Week". (Apr. 14, 1985; 99 Stat. 45) Price: $1.00

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